CLASSIFIED INDEX
of
NATIONAL LABOR RELATIONS BOARD
DECISIONS
and
RELATED COURT DECISIONS

VOLUMES 247 THROUGH 265

JANUARY 1980 THROUGH DECEMBER 1982

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

PREFACE

The Board and court decision classifications and scope notes in this classified index have been prepared by the Board's Legal Research and Policy Planning Branch, Division of Advice, Office of the General Counsel, as a selective index to decisions issued by the Board and to related court decisions. They are in no sense official rulings or pronouncements of the Board, nor are they to be viewed as official interpretations of Board or court decisions.

The classification system used is that established by the Classification Outline for Decisions of the National Labor Relations Board and Related Court Decisions. As the format of this index publication renders it unsuitable for direct access to classification headings, reference should be made to the Classification Outline for the subject matter headings desired for research and for their associated numerical code identification. Instructions for the use of the Outline and this Index are contained in the preface of the Outline.

This publication covers Board decisions issued from January 1, 1980, through December 31, 1982 (part of Volume 247 through Volume 265) and contains court decisions issued during this period. No unreported court decisions are included. The index entries supplement those published in the publication of this same title dated June 1974, December 1976, and December 1979, which are available from the Superintendent of Documents, Washington, D.C. 20402. All other publications of the same title should be discarded.

Board decisions are cited by volume and folio number. Court decisions are cited by official reporter citation where available and by other commercial services when not available. JD references refer to Administrative Law Judge's decisions adopted by the Board under section 10(c) of the National Labor Relations Act, as amended, and section 102.48 of the Board's Rules and Regulations. DS references refer to Decisions by Stipulation issued by the Board upon approval of formal settlement agreements in unfair labor practice proceedings.

Copies of Decisions by Stipulation and Administrative Law Judge Decisions are available upon request directed to the Freedom of Information Officer, N.L.R.B., Washington, D.C. 20570, subject to payment of fees in accordance with the Agency fee schedule. Such requests should specify the case, name, the date of issuance and the case number for each document requested. These decisions will also be available for inspection in the public reading room of the National Labor Relations Board, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570. Copies will be available to any member of the public upon a payment of direct duplication costs.

ABBREVIATIONS

affd	Affirmed
affg	Affirming
ALJ	Administrative Law Judge
ans	Answer
br	Brief
Bd	Board
C	Complaint
c/d	Cease and desist
c/d/b	Cease doing business
CongRec	Congressional Record
ct	Court
distg	Distinguished
D/O	Decision and order
E	Employer
Ee	Employee
enf/rev	Enforcement and review proceedings
Gc	General Counsel
inj	Injunction
LMRA	Labor Management Relations Act, as amended
mtn	Motion
NMB	National Mediation Board
opn	Opinion
P&M	Production and Maintenance
ptn	Petition
qcr	Question concerning representation
R	Representation
RD	Regional Director
R/O	Remedial order
R/R	Rules and Regulations
SCt	Supreme Court
SIC	Standard Industrial Classification
TRO	Temporary restraining order
U	Union
Us	Unions
ULP	Unfair labor practice(s)
w/o	Without
w/i	Within

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100 NLRA, AS AMENDED

111 CONSTITUTIONALITY OF APPLICATION OF NLRA

0100 GENERALLY

St. Elizabeth Community Hospital **259 NLRB No. 156**

5000 FIRST AMENDMENT TO CONSTITUTION

N.L.R.B. v. Retail Store Employees, Local 1001 **444 US 1011 (U.S. SCt. June 1981)**

(inasmuch as secondary picketing spreads labor discord by coercing neutral party to join fray, prohibition on picketing in furtherance of such unlawful objectives does not offend First Amendment and, consequently, as applied to picketing that predictably encourages consumers to boycott a secondary business, 8(b)(4)(ii)(B) imposes no impermissible restrictions on constitutionally protected free speech)

Valley Camp Coal Company **265 NLRB No. 149**

(where Bd issued *subpoena ad testificandum* directing newspaper editor to testify at ULP hearing about article she had written on closing of E's operation, and she was granted TRO from district ct restraining Bd from enforcing subpoena which was later vacated by Ct of Appeals for failure to utilize available administrative remedies, request for special permission to appeal ALJ's order denying mtn to revoke subpoena denied under R/R Sec. 102.31(b) since initial mtn to revoke was not filed w/i 5 days of service; moreover, contention that compliance with subpoena will impinge on Constitution's guarantee of free press under *Branzburg* rejected)

Lewis University **265 NLRB No. 157**

(jurisdiction asserted over university which was initially established as high school through efforts of Catholic laypersons and Archdiocese, and eventually operated as university run by religious teaching order which finally transferred operation over to board of trustees, since university was not church-operated as contemplated by *Catholic Bishop*, in view of fact that Diocese neither exercised administrative or secular control over university nor owned land or property used by school nor performed services for it; Bd found no *significant risk* of constitutionally impermissible entanglement between church and state by its assertion of jurisdiction)

Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399 (Delta Air Lines, Inc.) **263 NLRB No. 153**

(in finding that U, having dispute with primary E, unlawfully distributed handbills at secondary E's facilities and unlawfully published them in U newspapapers, Bd did not pass upon whether U's conduct was protected by first amendment to constitution, since Bd, as administrative agency, will presume constitutionality of Act it is charged with administering, absent binding contrary ct decisions; and since U's conduct was not saved by publicity proviso, Bd presumed constitutionality of its finding of violation)

St. Elizabeth Community Hospital **259 NLRB No. 156**

(Bd asserted jurisdiction over Catholic Hospital because 1974 Health Care Amendments extended Bd jurisdiction to hospitals and legislative history clearly shows that Congress did not exclude religiously operated hospitals from coverage; moreover, Bd regulation of hospital will not involve it in excessive entanglement in religion for primary purpose of hospital is health care and not sectarian teaching as found in *Catholic Bishop of Chicago* and right of Ees to be represented by collective-bargaining representative will not interfere with free exercise of religion or tend to establish a religion)

Jacobo Marti & Sons, Inc. **255 NLRB No. 189**

(Bd asserted jurisdiction over E which was set up by Association composed of mainly Amish farmers to take raw milk furnished by farmers and process same into milk and cheese which Association sold and paid E percentage of profits; Association not church sanctioned or *church operated* but merely business corporation; E exclusively controls, disciplines, hires, fires and sets pay of its Ees, majority of whom are not Armish)

Harborcreek School for Boys **249 NLRB No. 177**

(jurisdiction asserted over agency engaged in care and rehabilitation of socially and emotionally disturbed boys, which agency was founded, owned and controlled by Catholic Diocese; record showed that none of E's professional and support staff were required to have any particular religious background or that any Ee was directly or indirectly involved in teaching religious philosophy; school's operating income received from various governmental agencies; exercise of jurisdiction not violative of religion clause of first amendment to Constitution)

World Evangelism, Inc. **248 NLRB No. 117**

(jurisdiction asserted over nonprofit corporation controlling network of Evangelical ministries and associated fund-raising programs in its operation of complex of hotel, offices and commercial space in view of its substantial commercial activity related to its religious activity only as source of funds and Ees' performance of work necessarily associated with those commercial activities)

RJR Communications, Inc. **248 NLRB No. 124**

(order requiring E to resume 6 o'clock newscast does not infringe E's first amendment rights where newscast discriminatorily discontinued and media *has no special privileges to invade rights and liberties of others*)

Mid American Health Services, Inc. **247 NLRB No. 109**

(final determination concerning whether Bd's asserting jurisdiction over nursing home run by Seventh Day Adventists is unconstitutional under the 1st amendment must come from cts)

Catholic Community Services **247 NLRB No. 103**

(jurisdiction asserted over nonprofit corporation providing health, social and related services; exercise of jurisdiction not violative of first amendment of Constitution since purpose of E was not promulgation of Roman Catholic faith but providing of social services on nondenominational basis)

N.L.R.B. v. Lay Faculty Association, Local 1261 **623 F.2d 818 (C.A. 2, 1980)**

(ct rejected Bd's claim to jurisdiction over Catholic high school notwithstanding title and responsibility for operating school visited in lay board, since it is suffusion of religion into curriculum and mandate of faculty to infuse students with religious creed which create conflict with Religion Clauses, not vesting of title, and Bd could not avoid becoming entangle with religious mission of school in setting of mandatory collective bargaining)

Jacobo Marti & Sons, Inc. v. N.L.R.B. **676 F.2d 975 (C.A. 3, Apr. 1982)**

(Bd properly asserted jurisdiction over E who processes cheese from milk supplied by cooperative controlled by Amish farmers who oppose Us as matter of religious belief where ct held, contrary to E, that E was not exempt on First Amendment grounds since E failed to show that such governmental obligation to be imposed *interferes with the Free Exercise rights of the Amish;* moreover, Bd decision alternately sustained where E is in fact an independent organization that controls its own Ee relationship)

Jacobo Marti & Sons, Inc. v. N.L.R.B. **676 F.2d 975 (C.A. 3, Apr. 1982)**

(Bd lacks jurisdiction to pass on constitutional questions but must be especially sensitive when confronted with First Amendment free exercise objections)

Tressler Lutheran Home For Children, t/a Frostburg Village of Allegany County Nursing Home v. N.L.R.B. **677 F.2d 302 (C.A. 3, Apr. 1982)**

(although Bd may not rule on constitutional issues in choosing to exercise its jurisdiction over institutions which have religious affiliations, it must be aware that it is treading in areas where sensitivity to impartant values of First Amendment must be rule, not exception. Attitude that may be appropriate when regulating E that is profit making entity in industrial setting is not necessarily permissible when E is church-related institution which is being challenged for its religious practices)

Newspaper Guild, Local 10 v. N.L.R.B. **636 F.2d 550 (C.A.D.C. 1980)**

(defense of 1st Amendment rights to allegation that E-newspaper unilaterally imposed Code of Ethics on its Ees, rejected, as newspaper not immune from coverage of N.L.R.A. and Bd ruling did not impinge on E's exclusive control over those aspects of its operation, w/o burden of mandatory bargaining, which are fundamental to the enterprise; i.e., Bd interference with editorial integrity or other aspects lying at heart of its independence)

N.L.R.B. v. St. Louis Christian Home **663 F.2d 60 (C.A. 8, Nov. 1981)**

(jurisdiction properly asserted over children home run by Christian Church; First Amendment rights do not attach where Home does not devote itself to propogation of religion, unlike facts in *Catholic Bishop of Chicago* 440 U.S.

5000—Cont.

501, operates same way as secular child care institution, receives money primarily from government sources, operates on non sectarian basis)

N.L.R.B. v. Associated General Contracters of California, Inc. 633 F.2d 766 (C.A. 9, 1980)
(disclosure of information sought (roster of membership) not violative of trade association's members' *First Amendment* rights where there was no *clear and present* danger that U will engage in violent, harassing, or unlawful conduct justifying association's refusal to supply information sought)

St. Elizabeth Community Hospital v. N.L.R.B. 625 F.2d 123 (C.A. 9, 1980)
(First Amendment challenge to Bd's jurisdiction over charitable hospital operated by religious order held timely raised, notwithstanding contention that issue could have been litigated at R proceedings before RD and no new or previously unavailable evidence was offered or special circumstances alleged to require Bd's consideration, since it is sufficient that hospital raised First Amendment issue in R proceedings before Bd and did not defer its challenge to enforcement proceedings; case remanded to Bd for further consideration in light of SCt's opinion in *NLRB v. Catholic Bishop*, 440 U.S. 490)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)
(contention by U, engaged in consumer picketing at neutral retail store against sale of nonlocal soft drinks, that Bd's application of 8(b)(4)(B) to find that U's conduct was unlawful so severely restricts U's power to appeal to public that it violates First Amendment, rejected; Bd carefully adhered to narrow construction of Act required by Tree Fruits case, and marshalled evidence demonstrating that picketing herein placed peculiarly severe burden on commerce by imposing on neutral E economic pressure disproportionate to U's legitimate campaign to protect its members' jobs)

Operating Engineers, Local Union No. 132 v. N.L.R.B. No. 79-2355-CH, Oct. 1, 1979, DC S.D. WV (unreported)
(Bd order granting mtn to set aside *on-th-record settlement agreements* and consolidating settled cases with another pending C case held unlawful, since settlement agreements had been consumated and conditions thereof performed and accomplished; action was abuse of Bd's powers and denial of petitioner's constitutional rights)

5800 FIFTH AMENDMENT TO CONSTITUTION

N.L.R.B. v. Union Nacional De Trabajadores, et al. 611 F.2d 926 (C.A. 2, 1979)
(U president and U that were found in violation of Act and required to publish in newspapers Bd's notice were in civil contempt of Bd's order when U, adjacent to Bd's required notice published side notice published side notice which contained statements destroying substance and purpose of required notice and expressed U's intention to threaten and use violence in future; side notice not protected by first amendment where it did not express U's political opinion but eviscerated Bd's lawful publication requirement)

N.L.R.B. v. Hy-Land Enterprises, Inc., d/b/a Hy-Land Convalescent Hospital Dkt. No. 78-1713 (C.A. 9, March 21, 1979 (unreported))
(failure to hold evidentiary hearing on E's objections to elections did not deny E right to due process of law)

6300 TENTH AMENDMENT TO CONSTITUTION

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)
(Bd's assertion of juridiction over disputes involving jai alai players proper where Bd found that employment characteristics of jai alai players were like those of Ees in casino gambling industry, state regulated industry over which Bd previously had asserted jurisdiction in that Ees constituted stable work force, and that State's regulation would not conflict with Bd's regulation of employment regulationship between players and E; also players had special need for U representation as player contracts were written in English and players were almost all Spanish-speaking)

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)
(contention by State that by its stringent regulation of gambling industry it is tantamount to relationship between state and its Ees, and that holding in *National League of Cities v. Usery* 426 U.S. 883, that applies to regulation of *States as States* as distinguished from regulation of private business should be extended to where contested federal measure appears to effect only business regulated by state but which, in reality, is so closely tied to stat that it interferes with state's sovereign functions, rejected)

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)
(tenth amendment does not preclude Bd from asserting jurisdiction over state regulated industry as amendment does not prohibit Congress from displacing State police power laws regulating private industry)

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)
(district ct had jurisdiction over C that challenged Bd's jurisdiction over labor disputes in jai alai industry and asked for declaratory judgment as C alleged Bd abused its discretion under Sec. 14(c)(1) of Act because it directly contravened firm policy Bd had established for identical Ees in horse or dog racing branches of State's gambling industry; furthermore, jurisdiction impinged on State industry in violation of tenth amendment. These claims obviously arise under Constitution or law of U.S.; therefore, ct had jurisdiction under 28 U.S.C. Sec. 1331)

Florida Board of Business Regulation, etc., et al. v. N.L.R.B. 497 F.Supp. 599 (D Ct. FL, 1980)
(Bd's assertion of juriadiction over jai alai industry does not violate Tenth Amendment, as regulation if that industry does not impose a direct obligation upon the state but is indirect interference through Congressional effort to regulate same object)

Florida Board of Business Regulation, etc., et al. v. N.L.R.B. 497 F.Supp. 599 (D Ct. FL, 1980)
(District Ct will assert jurisdiction under *Leedom v. Kyne*, 358 U.S. 184, where circumstances show that party seeking relief will not otherwise have avenue for review if jurisdiction declined, and here, if E acceded to certification and Bd order so that no ULP proceeding will ensue, State may be precluded from seeking review under Sec. 10 of Act; alternatively, D Ct could assert jurisdiction under *Fay v. Douds*, 172 F.2d 720 since there is substantial claim by State that action taken by Bd has violated constitutional rights of complaining party; State's 10th Amendment rights)

7500 FOURTEENTH AMENDMENT TO CONSTITUTION

122 PURPOSE AND POLICY OF NLRA

0100 GENERALLY

Barrentine et al. v. Arkansas-Best Freight System, Inc., et al. 450 US 728 (U.S. SCt. Apr. 1981)

(NLRA, as amended, reflect Congress' determination that to improve economic well-being of workers, and thus promote industrial peace, interests of some Ees in bargaining unit may have to be subordinated to collective interests of majority of their co-workers)

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(*anyone sued upon a contract may set up as a defense that it is a violation of Act of Congress, and if found to be so, that fact will constitute a good defense to the action*—; a defendant proferring defense of illegal contract seeks only to be relieved of an illegal obligation and does not ask any affirmative remedy based on antitrust or labor laws)

3300 LEGISLATIVE HISTORY

Ford Motor Co. v. N.L.R.B. 305 U.S. 364 (S. Ct US, 1979)

(in enacting Sec. 8(d), Congress delegated to Board primary responsibility of marking out scope of statutory language and of statutory duty to bargain; Bd's view that in-plant food prices and services are mandatory subjects of bargaining is entitled to considerable deference and should be enforced)

New York Telephone Co. et al. v. New York State Department of Labor, et al. 440 U.S. 519 (S Ct., 1979)

(NLRA does not preclude state from enacting unemployment compensation law which pays benefits to strikers notwithatanding fact that this law put majority of financial burden on struck E and enabled strikers to extend length of strike; Legislative history of NLRA indicates that Congress recognized potential conflict between state law and Act but did not intend to preempt that exercise of state power)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150

(1947 amendment of Section *10(c)* of NLRA does not address *in part* or *dominent motive* analysis or allocations of burdens *but* legislative history of such amendment does; E required to make out what is actually affirmative defense to overcome *prima facie* case of wrongful motive)

Mid American Health Services, Inc. 247 NLRB No. 109

(legislative history of 1974 health care amendments to Act indicates that Congress intended Act to apply to health care institutions operated by religious institutions thus nursing home run by Seventh Day Adventists comes w/i Bd's jurisdiction)

Tressler Lutheran Home For Children, t/a Frostburg Village of Allegany County Nursing Home v. N.L.R.B. 677 F.2d 302 (C.A. 3, Apr. 1982)

(in amending Act to give Bd jurisdiction over health care facilities, Congress rejected provision which would have exempted religiously owned health care facilities)

N.L.R.B. v. L. B. Priester & Son, Inc. 669 F.2d 355 (C.A. 5, Mar. 1982)

(in case involving alleged untimely withdrawal from multi-E bargaining unit, respect for Bd's expertise is particularly proper because of Congress deliberate inaction with regard to multi-E bargaining as this indicates commitment by Congress of the issues raised to Bd's specialized judgment)

Cincinnati Association For The Blind v. N.L.R.B. 672 F.2d 567 (C.A. 6, Mar. 1982)

(NLRB's legislative history did not show Congress's intent regarding sheltered workshops, and court did not infer intent that Act not conver handcapped workers on basis of other legislation where NLRA statutory language was broad and unequivocal)

N.L.R.B. v. Electrical Workers, Local Union No. 73 621 F.2d 1035 (C.A. 9, June 1980)

(major concern of Congress in enacting 8(b)(1)(B) of NLRA, was to prevent Us from forcing Es into or out of multi-E bargaining units and to guarantee that E's bargaining representative would be completely faithful to E's desires)

Plumbers, Local Unions Nos. 141, 229, 681, and 706 v. N.L.R.B. 675 F.2d 1257 (C.A.D.C., Apr. 1982)

(Section 14(b))

6700 SAVINGS PROVISION

133 RELATIONSHIP TO OTHER STATUTES AND PUBLIC POLICY

0100 GENERALLY

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(*rules of estoppel will not be permitted to thwart the purposes of statutes of the U.S.* even if petitioner waited over long to assert defense of illegality (waiting to after contract expired))

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(*--federal cts may decide labor law questions that emerge as collateral issues in suits brought under independent federal remedies, including the anti-trust laws*)

0600 SECTION 301 - SUITS FOR VIOLATION OF CONTRACT

0625 SUITS BY EMPLOYERS

Complete Auto Transit, Inc., et al. v. Reis et al. **451 US 401 (U.S. SCt. May 1981)**

(E's ptn for damages from individual U members for breach of no-strike contract by engaging in strike unauthorized nor approved by U, dismissed; Sec. 301(a) does not sanction damage actions against individuals, whether or not U participated in or authorized strike; legislative history shows Congress intended to shield individuals from breach of no-strike clause, even though it might leave E unable to recover his losses; and Sec. 301(b)'s prohibition against money judgment against U from being enforced against individual U members does not suggest that Ees should be liable where U is not liable for strike)

0675 SUITS BY EMPLOYEES

Clayton v. Automobile Workers, et al. **451 US 679 (U.S. SCt. May 1982)**

(aggrieved Ee who filed Sec. 301(a) suit against both E and U, seeking reinstatement from E and monetary relief from both E and U, held not required to exhaust internal U appeals procedures prior to bringing suit, since such U procedures cannot reactivate Ee's grievance nor grant him reinstatement; policy of forestalling judicial interference is strictly limited to dispute over U matters such as interpretation and application of U constitution while, here, Ee's allegation of breach of U's duty of fair representation extends to *issues in the public domain* going beyond internal U interests)

Clayton v. Automobile Workers, et al. **451 US 679 (U.S. SCt. May 1982)**

(while national labor policy encourages private rather than judicial resolution of disputes arising over bargaining agreements, and while a requirement that aggrieved Ees exhaust internal U remedies might lead to nonjudicial resolution of some contractual grievances, ct declined to impose a universal exhaustion requirement lest Ees with meritorious Sec. 301 claims be forced to exhaust themselves and their resources by submitting their claims to potentially lenghty internal U procedures that may not be adequate to redress their underlying grievances)

Clayton v. Automobile Workers, et al. **451 US 679 (U.S. SCt. May 1982)**

(in exercising discretion to decide whether to require exhaustion of internal U procedures by aggrieved Ee seeking Sec. 301 relief, cts have three relevant factors to consider: (1) whether U officials are so hostile to Ee that he could not hope to obtain a fair hearing on his claim; (2) whether internal U appeals procedures would be inadequate either to reactivate Ee's grievance or to award him the relief he seeks under Sec. 301; and (3) whether exhaustion of internal procedures would unreasonably delay Ee's opportunity to obtain a judicial hearing on merits of his claim)

Clayton v. Automobile Workers, et al. **451 US 679 (U.S. SCt. May 1982)**

(restrictions on relief available through internal U appeals procedures held to render those procedures inadequate with respect to Ee seeking reinstatement from E and monetary relief from both E and U in his Sec. 301 suit; although some monetary relief in form of backpay award might be attained through internal U appeals procedure, U could neither reinstate Ee to his job nor reactivate his grievance because time limit for arbitration had expired by time Ee learned of U's decision not to pursue grievance, and U was therefore bound by its earlier decision not to pursue Ee's grievance past third stage of grievance)

Clayton v. Automobile Workers, et al. **451 US 679 (U.S. SCt. May 1982)**

(where internal U appeals procedures can result in either complete relief to, or reactivation of grievance of, Ee seeking Sec. 301 relief, exhaustion of U procedures would advance national labor policy of encouraging private resolution of contractual labor disputes; but where Ee cannot obtain such relief, national labor policy would not be served by exhaustion of U remedies, and exhaustion would be useless gesture since it would delay judicial consideration w/o eliminating it, and one federal policy underlying Sec. 301 is relatively rapid disposition of labor disputes, which would be undermined by exhaustion requirement)

Clayton v. Automobile Workers, et al. **451 US 679 (U.S. SCt. May 1982)**

(ct rejected ct of appeals' assumption that exhaustion of internal U appeals for purposes of Ee's Sec. 301 suit would focus issues for ultimate judicial determination on basis of U's compiled record that would greatly assist ct in determining U's liability for alleged breach of duty of fair R which would depend on reasons for U's withdrawal of arbitration request: here, record did indicate reasons for withdrawing request, there is no guarantee that exhaustion will result in useful interpretation of U rules, and in many cases, as here, U tribunal is not permitted to consider certain allegations Ee could assert under Sec. 301)

Clayton v. Automobile Workers, et al. **451 US 679 (U.S. SCt. May 1982)**

(a trial ct requiring exhaustion of internal U appeals procedures with respect to Ee's Sec. 301 suit against respondent U but not with respect to respondent E would face undesirable alternatives of staying action against E pending resolution of U internal procedures, thereby requiring exhaustion with respect to E, which would violate national labor policy; or of permitting action against E while tolling statute of limitations in suit against U until its internal procedures had been exhausted, thereby finding itself with two separate suits based on same facts and proceeding at different paces in its courtroom)

Clayton v. Automobile Workers, et al. **451 US 679 (U.S. SCt. May 1982)**

(in holding that Ee was not required to exhaust internal U appeals procedures before filing Sec. 301 suit against E and U, ct stated that in contrast to contractual grievance and arbitration procedures, which are generally designed to provide exclusive method for resolving disputes under parties' agreement, internal U procedures are designed to settle disputes between Ee and U arising under U's constitution; consequently, policy of encouraging private resolution of grievances arising out of bargaining process is not directly applicable to issue whether to require exhaustion of internal U procedures)

1200 SECTION 302(a) - RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

Turnbull Enterprises, Inc. **259 NLRB No. 122**

(E's contention that it was prohibited by Sec. 302(c)(5) from making contributions to U's health and welfare fund on ground it was not party to agreement with U, rejected; Sec. 302(c)(5) is aimed at corruption of collective bargaining through bribery of Ee representatives, and it was not intended to preclude E's payment into fund for benefit of its Ees, even though bargaining agreement had expired)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's insisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors*, 559 F.2d 222)

1200—Cont.

Central Florida Sheet Metal Contractors Association, Inc. v. N.L.R.B. **664 F.2d 489 (C.A. 5, Dec. 1981)**

(Bd's interpretation of Sec. 8(d) of NLRA as permitting U to participate in selection of E-appointed trustee did not fail to accommodate Sec. 302 of LMRA since Sec. 8(b)(1)(B) of NLRA does not limit U's freedom to induce E to select a particular trustee because NLRA and LMRA have different purposes and standards to enforce, and to prevent U from striking to obtain E's participation in multi-E trust fund when E objects to trustee selection mechanism would hinder congressional policy favoring multi-E trust funds)

1400 SECTION 302(c) - EXEMPTION FROM APPLICABILITY OF 302(a)

N.L.R.B. v. Amax Coal Co., A Division of Amax, Inc., et al. **101 U.S. 2789 (U.S. SCt, June 1981)**

(E-selected trustees of trust fund created under Sec. 302(c)(5) held not Sec. 8(b)(1)(B) E representatives for purposes of bargaining or adjusting grievances, since their duties are not consistent with E-agent's duties but rather are duties of loyalty to trust's beneficiaries under established equity principles and Sec. 302(c)(5) language and legislative history; Congress codified strict fiduciary standards in ERISA with intent to prevent dual loyalty; it passed Sec. 8(b)(1)(B) to prevent Us from pressuring Es about choosing representatives U wanted, not about contributing to multi-E funds as here)

N.L.R.B. v. Driver Salesmen, Warehousemen, Food Handlers, Clerical & Industrial Production Teamsters Union, Local No. 582, a/w Teamsters **670 F.2d 855 (C.A. 9, Mar. 1982)**

(ct, in applying the rationale in *NLRB v. Amax Coal Co.* (S. Ct 1981), held discretionary acts of trustees who are fiduciaries are subject to regulation under Sec. 302 of Taft-Hartley and Sec. 404 of ERISA, neither of which is w/i jurisdiction of Bd)

2500 LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(*anyone sued upon a contract may set up as a defense that it is a violation of Act of Congress, and if found to be so, that fact will constitute a good defense to the action*—; a defendant proferring defense of illegal contract seeks only to be relieved of an illegal obligation and does not ask any affirmative remedy based on antitrust or labor laws)

Carpenters Local Union No. 35 (Klaus Martin, an Individual) **264 NLRB No. 108**

(public policy considerations dictate that Ees be afforded full and unimpeded access to other governmental agencies, and in administering Act Bd must consider full panoply of congressional labor policies, including those embodied in LMRDA, in determining legality of conduct engaged in by a respondent)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**

(*29 U.S.C. Section 186* was intended to prevent corruption by labor and management, and does not apply to Bd decisions which are enforced through ct order)

Central Florida Sheet Metal Contractors Association, Inc. v. N.L.R.B. **664 F.2d 489 (C.A. 5, Dec. 1981)**

(Bd's interpretation of Sec. 8(b)(3) of NLRA found reasonable where it found that U did not violate Sec. 8(b)(3) by bargaining to impasse and striking to have included in contract provision for trust fund alleged by E to violate Sec. 302(5) of LMRA where district ct, the body with authority to enforce LMRA, had not found trust fund illegal under LMRA at time of decision, and trust fund document was not illegal on its face)

Charles E. Helton v. N.L.R.B. **656 F.2d 883 (C.A.D.C., Jun 1981)**

(U's conduct in removing Ee's materials critical of U from U's bulletin board was not insulated by internal U affairs proviso, since it did not serve legitimate U interest and would have frustrated free speech rights guaranteed by LMRDA)

3000 MARITIME LAWS

Pennux Towing Corporation **258 NLRB No. 113**

(where no basis existed for concluding Ee's conduct violated Congressional enactment dealing with mutiny and it did not appear Ee was prosecuted for any criminal offense in that respect, there was no impediment based upon accomodating marine and labor relations legislation to according Ee usual reinstatement and backpay remedy under Act)

3500 EXECUTIVE ORDERS

3600 OCCUPATIONAL SAFETY AND HEALTH ACT

Serendippity-Un-Ltd and Tigerrr, Inc. **263 NLRB No. 190**

(rights guaranteed Ees under Act are distinct from and not subordinate to provisions of OSHA)

Plough, Inc. **262 NLRB No. 141**

(Bd has not abicated its authority to OSHA to determine E obligations under Sec. 8(a)(5) to bargain in good faith)

Tamara Foods, Inc. **258 NLRB No. 180**

(strike protesting unhealthy conditions not rendered unprotected by fact strike was in breach of plant rule and plant had been found not to violate OHSA regulations)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**

(filing and pursuit of *OSHA* charges were concerted activities)

Newport News Shipbuilding & Dry Dock Company **234 NLRB No. 043**

(where discriminatees filed charges with Bd and OSHA alleging violative discharges, Bd not required to defer to OSHA as Ees were engaged in U activity and although some remedies are same, only Bd can issue notice advising Ees of their rights to engage in U activity)

N.L.R.B. v. Tamara Foods, Inc. **692 F.2d 1171 (C.A. 8, Nov. 1982)**

(Bd was not required because of existence of OSHA to deny relief to Ees who walked out over unhealthy working conditions, since Ees' rights guaranteed under Act are superior to provisions of OSHA; Ees had twice sought relief from OSHA w/o success and their symptoms from ammonia fumes were objectively proven and their apprehension of injury was reasonable)

3700 URBAN MASS TRANSPORTATION ACT OF 1969

3800 INTERSTATE COMMERCE ACT

3900 IMMIGRATION AND NATURALIZATION ACT

A & B Janitorial Service, Inc. **JD-(SF)-169-81**

(Bd has authority to order reinstatement of illegal aliens knowingly hired by E. Contention against public policy since US immigration law prohibits individual who does not have green card from engaging in employment and reinstatement would require E to violate state law which prohibits knowingly employing alien not entitled to lawful residence in US if such employment would have adverse effect on lawful resident workers rejected. Illegal alien not exception to *employee* in Act. Bd has no expertise or authority in immigration, and it has not been determined by state SCt whether state law is enforceable as in conflict with US immigration law.)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. **672 F.2d 592 (C.A. 7, Feb. 1982)**

(award of reinstatement and backpay to illegal aliens who had been constructively discharged by E's notice to INS and permitted by INS to depart voluntarily, as opposed to deportation, held justified as vindication of policy of Act and to deter other Es from similar conduct)

4000 EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

GAF Corporation **265 NLRB No. 176**

(no violation where E refused to submit claim that it changed retirees benefits w/o explanation to grievance procedure of collective bargaining agreement, but rather elected to go under claims procedures provided under separate ERISA Pension Agreement executed by U and E, as latter procedure specifically designed to handle such disputes, required to be utilized by ERISA and E willing to have grievance's merits resolved under its provisions)

Admiral Merchants Motor Freight, Inc. **264 NLRB No. 012**

(E's going directly to Ees and coercing agreement to reduce their remuneration w/o notifying U of pending ERISA action requiring E to pay its debts to another U and unilaterally reducing Ees' wages, violative notwithstanding E's contention that inj under ERISA insulated it from Bd finding that Sec. 8(a)(5) and (1) were violated, since inj or any proposed order by Bd would not be in conflict either through asserted clashing of NLRA and ERISA or through principles of comity or judicial administration where inj could not be construed to have been in any way aimed at U represented Ees)

National Union of Hospital and Health Care Employees, Division of RWDSU, AFL-CIO; et al. (Sinai Hospital of Baltimore, Inc.) **248 NLRB No. 086**

(ERISA and NLRA permit persons to act as both trustee of fund administering benefit plan and as U official; however when controlling trustee-U official denied E information on trust fund operations which was necessary and relevant to enable E to perform its collective-bargaining functions,

4000—Cont.

official breached his fiduciary duty by acting inimical to interest of beneficiaries in that it undermined good faith bargain on which E contributions providing benefits depend)

Dellwood Foods, Inc., f/k/a Deltown Foods, Inc. JD-(SF)-213-81

(ALJ held that ERISA or case law did not divest Bd of its jurisdiction concerning ULPs or its power to remedy such practices in case involving *make whole* remedy to discriminatees who were found entitled to full past service pension credit for all prior employment including employment prior to acquisition of business)

N.L.R.B. v. Driver Salesmen, Warehousemen, Food Handlers, Clerical & Industrial Production Teamsters Union, Local No. 582, a/w Teamsters 670 F.2d 855 (C.A. 9, Mar. 1982)

(ct, in applying the rationale in *NLRB v. Amax Coal Co.* (S. Ct 1981), held discretionary acts of trustees who are fiduciaries are subject to regulation under Sec. 302 of Taft-Hartley and Sec. 404 of ERISA, neither of which is w/i jurisdiction of Bd)

5000 FEDERAL SERVICE CONTRACT ACT OF 1965

Teamsters Local 70, a/w Teamsters (United States of America, Department of The Navy) 261 NLRB No. 079

5600 PRIVACY ACT

5800 FEDERAL WIRETAPPING STATUTE

6200 FREEDOM OF INFORMATION ACT (SEE 883-2500)

Ronald Hackenberger d/b/a Ron's Trucking Service v. N.L.R.B. 628 F.2d 966 (C.A. 6, 1980)

(ct held that E failed to establish that Bd had improperly computed back pay of discharged Ee where ct rejected E's contention that E was prevented from showing that Ee failed to act reasonably to mitigate his damages because Bd denied FOIA request for information in its possession relating to interim employment, since counsel for E failed to request continuance or adjournment in order to familiarize himself with this material when information concerning interim employment was provided at or near beginning of supplemental back pay proceeding)

6201 GENERALLY

Madeira Nursing Center, Inc. v. N.L.R.B. (Emil C. Farkas, RD) 615 F.2d 728 (C.A. 6) (1980)

(applicability of FOIA exemptions must be determined in context of specific individual documents and request for *any documents indicating Region's final determination of the petitioner's showing of interest or lack thereof* is too general)

Louis Alirez v. N.L.R.B. No. 79-Z-1243, Feb. 26, 1980, DC CO (unreported)

(FOIA is to be broadly construed and its basic policy is in favor of disclosure; its exemptions are to be narrowly construed, with all doubts resolved in favor of disclosure; and burden is on administrative agency to prove that documents sought are w/i statutory exemptions from disclosure)

6225 (EXEMPTION 4) TRADE SECRETS

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. 441 U.S. 281 (S Ct US, 1979)

(FOIA purely disclosure statute and petitioner not afforded private right of action to enjoin agency disclosures of material submitted by petitioner)

American Airlines, Inc. v. National Mediation Board, et al. 598 F.2d 663 (C.A. 2, 1978)

(U authorization cards held exempt from disclosure as commercial information where U supplied information to National Mediation Board in reliance on regulations that it would be kept confidential; information relates to delicate area of labor relations as it deals with U's effort to obtain majority support and certification and disclosure would adversely affect U's competative position with other Us and e itself)

6250 EXEMPTION 5

Federal Open Market Committee of The Federal Reserve System v. Merrill 443 U.S. 340 (June 1979)

(Exemption 5 incorporates qualified privilege for confidential commercial information to the extent that this information is generated by Government itself in process leading up to awarding contract)

Federal Open Market Committee of The Federal Reserve System v. Merrill 443 U.S. 340 (June 1979)

(sensitivity of commercial secrets involved and harm inflicted on Government by premature disclosure are relevant criteria for determining applicability of Exemption 5 privilege; if these criteria are met then slight delay in publication of such information as authorized in 12 CRF Sec. 271.5 is permitted under Exemption 5)

Scott Management Company et al. v. N.L.R.B. 626 F.2d 1327 (C.A. 6, Aug. 1980)

(issue of whether hearing officer's report was exempt from public disclosure remanded to District Ct to be examined *in camera* to determine if document would not flow freely w/i agency unless protected from public disclosure)

N.L.R.B. v. Martins Ferry Hospital Association No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))

(advice memorandum privileged from disclorive under Exemption 5 of FOIA as an intra-agency memorandum setting forth GC's strategy in putative litigation before Bd)

6260 (EXEMPTION 6)

Howard Johnson Company, Inc. v. N.L.R.B. 618 F.2d 1 (C.A. 6, 1980)

(district ct reversed and case remanded to Bd with directions to enter summary judgment in favor of Bd position on U authorization cards falling w/i exemption 6 of FOIA)

Madeira Nursing Center, Inc. v. N.L.R.B. (Emil C. Farkas, RD) 615 F.2d 728 (C.A. 6) (1980)

(Exemption 6 of FOIA precludes E from obtaining signed U authorization cards or other Bd documents which reveal voting preferences of individual Ees because such disclosure would be an invasion of personal privacy; ct held authorization cards fell w/i meaning of *similar files* of exemption refusing to give term narrow and technical meaning)

N.L.R.B. v. Martins Ferry Hospital Association No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))

(authorization cards are important to Bd's investigation of ULP and are exempt from disclosure under Exemption 7(A) of FOIA notwithstanding that initially cards were executed and forwarded to Bd for purpose then only, at best, indirectly related to law enforcement; and under Exemption 6 to prevent unwarranted invasion of personal privacy for if Ees knew E would be able to see signed cards they might be reluctant to sign)

6275 EXEMPTION 7

N.L.R.B. v. Craft Metals, Inc. Dkt. Nos. 74-3052 and 74-3101, (C.A. 5, Jan. 5, 1979 (unreported))

(affidavits taken by Bd in its investigation fall w/i FOIA Exemption 7(A) and need not be disclosed prior to hearing even in civil contempt cases as herein; there is no distinction between enforcement proceedings before ALJ and contempt proceedings as both are instituted to enforce compliance with Act, and Bd's prosecutorial function remains the same; risk of intimidation of witnesses because of premature disclosure is no less a risk in contempt cases; and it is irrelevant that there is no reason to suspect that E herein would attempt to coerce a witness)

N.L.R.B. v. Craft Metals, Inc. Dkt. Nos. 74-3052 and 74-3101, (C.A. 5, Jan. 5, 1979 (unreported))

(applying FOIA Exemption 7(A) in contempt proceeding, Special Master required Bd, ten days prior to hearing, to provide E with summary of expected testimony of exempted witnesses w/o disclosing their names, and required Bd, on day any such witness is to testify, to provide E with any affidavit or prior statement of such witness w/i its possession)

Louis Alirez v. N.L.R.B. No. 79-Z-1243, Feb. 26, 1980, DC CO (unreported)

(former Ee's request, following Bd's denial of his appeal from its refusal to file charge against E, for affidavits of witnesses relating to investigation of charges filed by Ee with Bd, granted, since exemption 7(A) is not applicable, and Bd submitted no evidence that release of documents to former Ee would inhibit future investigations at E's plant, or elsewhere)

Louis Alirez v. N.L.R.B. No. 79-Z-1243, Feb. 26, 1980, DC CO (unreported)

(Bd's claim of exemption under 7(C) or 7(D) with regard to release of investigatory file sought by former Ee following Bd's denial of his appeal from its refusal to file charge against E, rejected, where no absolute guaranty of confidentiality was claimed by Bd even though an *expressed assurance* of confidentiality was granted to one witness: such an assurance should not operate so as to insure total anonymity, and fellow Ees are not to be regarded as confidential sources; SCt's Robbins Tire and Rubber Co. case distinguished)

N.L.R.B. v. Martins Ferry Hospital Association No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))

(authorization cards are important to Bd's investigation of ULP and are exempt from disclosure under Exemption 7(A) of FOIA notwithstanding that initially cards were executed and forwarded to Bd for purpose then only, at best, indirectly related to law enforcement; and under Exemption 6 to prevent unwarranted invasion of personal privacy for if Ees knew E would be able to see signed cards they might be reluctant to sign)

6287 APPEALS FROM INITIAL DETERMINATION

6287—Cont.

The Capital Times Company v. N.L.R.B. 483 F.Supp. 247 (D Ct. WD) (1980)
(statutory policy allows agency to determine *first* the merits of FOiA request)

7000 EQUAL ACCESS TO JUSTICE ACT

Wyandotte Savings Bank 260 NLRB No. 130
(E's request under Equal Access to Justice Act for award of fees incurred by E in ct case in which enforcement of Bd's order was denied, plus legal fees and costs incurred by E before Bd, dismissed, since, pursuant to Sec. 2412(d)(3) of Equal Access to Justice Act, Bd has no jurisdiction because instant matter is pending before ct of appeals; moreover, Bd's D/O was issued prior to date such Act became applicable to administrative adjudications)

Kaiser Foundation Hospitals and Kaiser Foundation Health Plan of Oregon 259 NLRB No. 075
(where U's complaint that E had violated Act by not complying with U's request to discharge Ees who had failed to pay dues pursuant to U security clause was dismissed because Bd found U had failed to furnish Ees with statement of precise amount owed, request of one Ee for *attorney's fees and other costs* under Equal Access to Justice Act denied, since such Act was not effective until after Bd's decision had issued; moreover Ee was not entitled to award under Bd's R/R Sec. 102.143, where he was not a respondent who prevailed in an adversary proceeding or even a party in the matter)

Kaiser Foundation Hospitals and Kaiser Foundation Health Plan of Oregon 259 NLRB No. 075
(Bd R/R Sec. 102.148(c) provides that filing of motion for reconsideration does not stay time for filing application for award under Equal Access to Justice Act)

Bakery, Workers Union, Local No. 213 (Krispy Kreme Division, Beatrice Foods Co.) JD-467-82
(application for attorney's fees and expenses under EAJA dismissed where, although GC did not prevail, GC's position was reasonable in law and fact; for most part, ALJ's decision in C proceeding turned on credibility resolutions and GC's position was *substantially justified*)

Power Contractors, Ltd. JD-(SF)-268-82
(GC's mtn to dismiss granted in EAJA case where former counsel for defunct corporation filed application on his own behalf to recover fees and expenses and not on behalf of respondent corporation, or any trustee, conservator, executor, or any other individual or entity authorized to act on behalf of defunct corporation; furthermore, GC found to be substantially justified in issuing complaint and proceeding to trial in underlying case)

Power Contractors, Ltd. JD-(SF)-268-82
(standard imposed by EAJA should not be read as raising presumption that GC's position was not substantially justified simply because GC did not prevail)

Tilton Rack and Basket Corporation JD-(NY)-99-82
(legislative history of EAJA relating to provision for award of fees and expenses to eligible parties, unless government can establish that its position in litigation was *substantially justified* establishes that standard for government's position is essentially one of *reasonableness* and not to be equated with *a substantial probability of prevailing*)

Tilton Rack and Basket Corporation JD-(NY)-99-82
(application of E who prevailed on certain, but not on all issues, for attorney's fees and expenses pursuant to EAJA, dismissed, where, had GC's evidence been credited he might well have prevailed, and it was only after resolution of *bona fide* credibility issues that E prevailed; it is not GC's function to resolve such issues is absence of a hearing, and in this context, GC's position was not unreasonable and was *substantially justified* under EAJA requirement for government's establishment of such position so as to preclude award of fees and expenses to E)

Gerson Electric Construction Company JD-209-82
(application for fees and expenses for successful defense of ULP C, untimely where, although material mistakenly sent in place of application was received on Monday after Saturday due date, application itself was not received until Tuesday, 3 days beyond statutory period, and neither statute nor implementing regulations provide for extension of filing date)

7200 ANTITRUST STATUTES

H. A. Artists & Associates, Inc., et al. v. Actors' Equity Assn. et al. 451 US 704 (U.S. SCt. May 1981)
(agents for actors are *labor group* as their function is representation of U members in sale of their labor; agents are franchised by U and this system is substitute for hiring hall; agents controversy with U over payment of franchise fee is *labor dispute* w/i meaning of Norris-LaGuardia Act)

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)
(petitioner's contractual promise to UMW to report and make contributions to specified U health and retirement funds based on specified amount, *on each ton of — coal* procured for use or sale by petitioner from producers not under contract with UMW was illegal under anti-trust and labor laws and thus valid defense to suit for such contributions by trustees of U funds)

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)
(*–federal cts may decide labor law questions that emerge as collateral issues in suits brought under independent federal remedies, including the anti-trust laws*)

7300 FEDERAL MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

7500 ECONOMIC STABILIZATION ACT OF 1971

7600 DAVIS BACON ACT

Local 701, International Brotherhood of electrical Workers (The University of Chicago d/b/a Argonne National Laboratory) 255 NLRB No. 148
(contention that contract between E and Department of Energy providing for DOE to determine which work is to be covered by Davis-Bacon Act removes Bd from jurisdiction on grounds that DOE and Department of Labor, exempted from Bd's jurisdiction, are necessary parties and that assertion of jurisdiction will deprive Ees of right to receive area standard wages pursuant to that Act, rejected)

Local 701, International Brotherhood of electrical Workers (The University of Chicago d/b/a Argonne National Laboratory) 255 NLRB No. 148
(where contract between E and Department of Energy provided that DOE determine which work was covered by Davis-Bacon Act, DOE's determination that disputed work is *uncovered* favors award of work to E's Ees rather than to Ees of subcontractor)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) 248 NLRB No. 082
(contention that definition of jobsite work in construction industry proviso of 8(e) should be indentical to definition of jobsite work in Davis-Bacon Act, rejected, since that Act broader in coverage as remedial statute than 8(e) proviso)

Joint Council of Teamsters, No. 42 v. N.L.R.B. 671 F.2d 305 (C.A. 9, Dec. 1981)
(neither legislative history of Section 8(e) nor text of Act suggest that Congress intended Section 8(e) to parallel Davis Bacon Act)

7700 FAIR LABOR STANDARDS ACT

Barrentine et al. v. Arkansas-Best Freight System, Inc., et al. 450 US 728 (U.S. SCt. Apr. 1981)
(not all disputes between Ee and his E are suited for binding resolution in accordance with procedures established by collective bargaining; while cts should defer to arbital decision where Ee's claim is based on rights arising out of collective-bargaining agreement, different considerations apply where Ee's claim is based on rights arising out of statute (FLSA) designed to provide minimum substantive guarantees to individual workers)

Barrentine et al. v. Arkansas-Best Freight System, Inc., et al. 450 US 728 (U.S. SCt. Apr. 1981)
(in contrast to NLRA which was designed to minimize industrial strife and to improve working conditions by encouraging Ees to promote their interests *collectively*, FLSA was designed to give specific minimum protections to *individual* workers)

Barrentine et al. v. Arkansas-Best Freight System, Inc., et al. 450 US 728 (U.S. SCt. Apr. 1981)
(cts have held that congressionally granted FLSA rights take precedence over conflicting provisions in collective bargained compensation arrangement)

8100 RAILWAY LABOR ACT

International Brotherhood of Electrical Workers, et al. v. Foust RD 442 U.S. 42 (S Ct US, 1979)
(punitive damages were not permitted under Railway Labor Act for U's breach of duty of fair representation)

Elliott Flying Service, Inc. 260 NLRB No. 068
(Bd did not assert jurisdiction over E engaged in operation of air charter and taxi service, as well as in selling and servicing of Beechcraft aircraft, training of pilots, providing of pilots for owners of small aircraft, and providing of fueling and emergency aircraft maintenance for an airline, since the National Mediation Board advised Bd that E was subject to provisions of Railway Labor Act)

ARA Environmental Services, Inc. 260 NLRB No. 011
(Bd set aside election where National Mediation Board advised Bd that activities and Ees of E who provided cleaning and security services to airline were subject to Railway Labor Act and thus properly w/i jurisdic-

8100—Cont.

tion of National Mediation Board in view of nature of activities performed by E and degree of control exercised by airline)

Ground Services, Inc. 253 NLRB No. 080
(Bd refused to assert jurisdiction over corporation engaged in business of providing ground or fleet service to air carriers and other enterprises where National Mediation Board advised that corporation and its Ees were subject to the Railway Labor Act in view of nature of activities and control exercised by air carriers)

Air Cleveland, Inc. 253 NLRB No. 059
(ptn of Ees of E engaged in providing certain ground services to air carrier dismissed, since National Mediation Board, by request of Bd, determined that E was w/i scope of *Title II of the Railway Labor Act)*

Mercury Service, Inc.; Mercury Refueling, Inc.; and Crew Transit 253 NLRB No. 057
(jurisdiction not asserted over E engaged in providing support services for international air carriers where Bd advised by National Medication Board that Es activities and Ees performing activities were subject to Railway Labor Act)

Missouri-Illinois Central Industries Limited 252 NLRB No. 143
(Bd did not assert jurisdiction over E engaged in freight handling services to various common carriers engaged in interstate commerce where *National Mediation Board* found activities of E and Ees performing such activities were subject to the *Railway Labor Act)*

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) v. N.L.R.B. No. 78 C 749 (D Ct. Il., Sept. 28, 1978 (unreported))
(Bd correctly refused to order election among E's truckdrivers and deferred to ruling by National Mediation Board that E was carrier under Railway Labor Act and not subject to Bd jurisdiction)

8200 BANKRUPTCY STATUTES

Sealift Maritime, Inc. 265 NLRB No. 154
(contract executed when E had status of debtor-in-possession held bar, as Bankruptcy Reform Act of 1978 grants debtor-in-possession all powers that trustee had under Bankruptcy Act of 1898, and contract will serve as bar to ptn unless and until contract rejected by bankruptcy ct)

Tucson Yellow Cab, Inc., A Debtor in Possession 265 NLRB No. 062
(Bd complied with inj of U.S. Bankruptcy Ct in granting summary judgment only to extent that Bd found E had committed ULPs w/o ordering normal remedies; Bd retained jurisdiction over present case pending outcome of bankruptcy)

I.S.G. Extrusion Toolings, Inc. 262 NLRB No. 037
(Bd is not deprived of its jurisdiction or authority to process ULP complaint to final disposition notwithstanding adjudication of Respondent as bankrupt)

Nelson Electric, Gary C. Nelson, Inc., and Gary C. Nelson Electric 260 NLRB No. 003
(E's filing of petition for bankruptcy not grounds for Bd to stay backpay specification proceedings in ULP case, since bankruptcy proceedings do not deprive Bd of jurisdiction or authority to entertain and process ULP case to its final disposition)

Turnbull Enterprises, Inc. 259 NLRB No. 122
(E's mtn to dismiss C alleging unlawful discontinuance of contributions to U's health and welfare fund because of provisions of Bankruptcy Act, denied, where E purchased facility involved free and clear of all liens and other interests, and trustee in bankruptcy continued to make payments to U's health and welfare fund in accordance with practice established by debtor under contract with U)

Ralph Schaffner, an Individual d/b/a Schaffner Construction Co. 252 NLRB No. 136
(Respondent's contention that ptn for summary judgment in backpay proceeding should be stayed pending discharge of Respondent's ptn from Bankruptcy ct in which Bd and discriminatees are named as creditors, rejected, since adjudication in Bankruptcy does not deprive Bd of jurisdiction or authority to process ULP case to final disposition; since mtn to stay did not specifically deny or respond in any way to allegations of backpay specification, allegations of specification are deemed admitted)

Miami Foundry Corporation 252 NLRB No. 002
(mtn to stay ULP proceedings pending final disposition of ptn for arrangement under Chapter XI of Bankruptcy Act denied where Bd has exclusive jurisdiction to hear and decide ULP cases to final disposition)

International Technical Products Corporation, and its Subsidiary, Rel, Inc.; et al. 249 NLRB No. 103
(bankruptcy ct's order allowing successor E to purchase predecessor's assets free of all liens, claims, and encumbrances cannot affect Bd's order which requires that successor E make predecessor's discriminatees whole for backpay due them since, unlike bankruptcy ct's order which affects only assets of bankrupt, Bd order, which enforces public rather than private right, reaches beyond assets of E and attaches to employing entity itself)

World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession 247 NLRB No. 201
(where Respondent was debtor in possession and refused to file answer to complaint contending that bankruptcy court has exclusive jurisdiction over all controversies affecting debtor, this does not constitute *good cause* for failure to file mtn and summary judgment granted)

Adams Delivery Service, Inc. JD-(SF)-275-81
(bankrupt E's application for removal of backpay proceeding to bankruptcy court found ineffective due to exemption of Bd proceedings from removal statute as action of governmental unit in exercise of its regulatory powers; in absence of precedents under removal statute, ALJ based his holding on BD and court decisions involving statutory provisions which contained essentially identical language, namely automatic stay provisions of bankruptcy code)

Yellow Cab Company of Philadelphia (Debtor in Possession) JD-247-81
(adjudication in bankruptcy of E in ULP proceeding, including order of District Court staying all judicial and administrative proceedings against E, does not deprive Bd of its jurisdiction or authority to entertain and process ULP case to its final disposition)

Retail Delivery Service, Inc., and Robert A. Baines, Esq. JD-436-80
(as receiver of E under Bankruptcy Act and trustee in bankruptcy, named individual has been successor in law or *alter ego* of E, and Bd's order of reparation for backpay due Ee is provable against said trustee as debt of bankrupt E owed to Bd as agent for Ee)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession 682 F.2d 72 (C.A. 3, June 1982)
(in case of first impression involving apparent conflict between NLRA and Bankruptcy Code policies, arising from Bd order requiring debtor-in-possession to honor bargaining agreement by making all delinquent contributions and payments thereunder, and district ct's affirmance of bankruptcy ct's rejection of bargaining agreement, ct held Bankruptcy Code permits rejection of bargaining agreements since it does not indicate that they are unique among executory contracts and are immune from rejection, and it permits inference that Congress did not distinguish bargaining agreements from executory contracts)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession 682 F.2d 72 (C.A. 3, June 1982)
(while usual test for rejection of executory contracts in bankruptcy situation is *business judgment* test, i.e., whether rejection would benefit estate, impact of rejection of bargaining agreement on workers' rights, calling for more stringent examination of evidence to justify rejection, requires *thorough scrutiny and careful balancing of equities on both sides*; such test accommodates NLRA's labor policies but does not erect impossible barriers to rejection of labor contracts in violation of bankruptcy law's policies and plots a middle course requiring sensitive weighing of competing interests)

N.L.R.B. v. Evans Plumbing Company 639 F.2d 291 (C.A. 5, 1981)
(enforcement granted where Bd ordered E who filed voluntary bankruptcy ptn to reinstate with backpay two discriminatorily discharged Ees since, contrary to E's contention, ct held that Bd proceeding falls w/i statutory exemption to automatic stay provision of Bankruptcy Act of 1978)

Shippers Interstate Service, Inc. v. N.L.R.B. 618 F.2d 9 (C.A. 7, 1980)
(where company is being reorganized rather than liquidated and assets are not threatened, Bankruptcy Rule 11-44 shall not apply and regulatory proceedings of NLRB are not subject to automatic stay provisions of that rule)

N.L.R.B. v. Trans-Coal Barge Co. and Vincent J. Shannon, Trustee No. 3-78-0199, Dec. 31, 1979, DC N.D. CA (unreported)
(trustee's objection to Bd's claim for backpay against bankrupt, overruled, even though Bd's claim was not timely filed, where due to procedural irregularity on part of bankrupt, ct assumed Bd did not receive notice of bar date for filing claim which arose during bankruptcy proceeding)

N.L.R.B. v. Trans-Coal Barge Co. and Vincent J. Shannon, Trustee No. 3-78-0199, Dec. 31, 1979, DC N.D. CA (unreported)
(even in absence of procedural irregularity resulting in overruling of trustee's objection to Bd's backpay claim against bankrupt, bankruptcy ct would overrule trustee's objection, in view of appeals ct's *liberality in amendments* rule)

N.L.R.B. v. Trans-Coal Barge Co. and Vincent J. Shannon, Trustee No. 3-78-0199, Dec. 31, 1979, DC N.D. CA (unreported)
(although automatic stay under Bankruptcy Act would appear to apply to Bd's ULP C involving backpay claim against bankrupt, bankruptcy ct held that, in instant liquidating proceeding, it was appropriate for ct to *stay its hand* and terminate automatic stay since Bd has necessary specialized expertise for litigation of dispute, and there is no apparent reason why such expertise should be bypassed in favor of litigation in bankruptcy ct)

8200—Cont.

N.L.R.B. v. Trans-Coal Barge Co. and Vincent J. Shannon, Trustee No. 3-78-0199, Dec. 31, 1979, DC N.D. CA (unreported)

(in terminating automatic stay under Bankruptcy Act and permitting Bd to proceed with ULP C and determination of backpay against bankrupt, bankruptcy ct, recognizing trustee's dilemma in deciding whether to contest C or not to proceed in the matter, advised delay on part of all parties to await determination of availability of assets and, if contrary to trustee's wishes, matter is pursued, trustee could seek instructions from ct on question of defending against C)

N.L.R.B. v. Trans-Coal Barge Co. and Vincent J. Shannon, Trustee No. 3-78-0199, Dec. 31, 1979, DC N.D. CA (unreported)

(while terminating automatic stay under Bankruptcy Act and permitting Bd to proceed with ULP C involving backpay claim against bankrupt, bankruptcy ct did not terminate automatic stay and reserved jurisdiction over question of priority to be given any backpay claim in connection with ULP and any distributions to be made by trustee on account of such claim)

In The Matter Of: The Connecticut Celery Company No. H-79-146, July 9, 1980, DC CO (unreported)

(Section 313 Bankruptcy Act empowers Bankruptcy Ct to permit rejection of executory labor contracts reasoning by analogy to successor E, debtor-in-possession need not be bound by existing labor contract; however, *because of importance of policies behind Labor Act, bankruptcy cts must scrutinize with particular care petitions to reject collective bargaining agreements*)

The Seeburg Corporation, et al. v. N.L.R.B. No. 79-B-39597, Nov. 13, 1980, DC N.D. IL (unreported)

(order staying Bd's ULP proceedings vacated and bankruptcy judge ordered to refrain from hearing ULP charges, since proceedings by BD are not automatically stayed by bankruptcy filling; all bankrupt's assets were being sold to single entity with full knowledgeo f ULP charges and possibility of backpay assessment which made transfer of assets *a reorganization,* and not *a liquidation*; ULP charges and question of successorship left to Bd's superior expertise)

N.L.R.B. v. Shippers Interstate Service, Inc. No. FB-78-00662, May 16, 1979, DC N.D. IN (unreported)

(Chapter XI automatic stay provision of Bankruptcy Act applies to proceedings before NLRB, and therefore bankruptcy ct was not w/o jurisdiction to restrain Bd from commencing or continuing proceedings against debtor)

8300 FOREIGN SOVEREIGN IMMUNITY ACT OF 1976

8400 FEDERAL COMMUNICATIONS ACT

8500 FEDERAL ANTI-INJUNCTION STATUTE

Bill Johnson's Restaurants, Inc. v. N.L.R.B. 660 F.2d 1335 (C.A. 9, Nov 1981)

(*Federal anti-inj statute 28 U.S.C. Sec. 2283 does not prevent Bd from curbing state-ct action that interferes with Bd's exercise of its own jurisdiction)*

8600 FEDERAL TAX CODE

8700 STATE STATUTES

8701 GENERALLY

Serendippity-Un-Ltd and Tigerrr, Inc. 263 NLRB No. 100

(although documents supporting conclusions of State unemployment bureau that Ees *quit* w/o *just cause* were received in evidence, such documents not given governing weight in interpreting statutory questions whether Ees *quit* or whether they left work while engaging in concerted protected activity; in defining *quit*, purpose and ends of State statute are not necessarily consistent with protections afforded by Act; and interpretation of events under State statute cannot control, much less bind, Bd concerning whether action of Ees amounted to *quit* under Act)

8775 MUNICIPAL ORDINANCES

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)

(State ct decisions limited to interpretation of term *Es* for purposes of workmen's compensation coverage were not dispositive of E-Ee relationship in context of NLRB particularly in light of 1947 amendments to that legislation)

8900 FEDERAL RULES OF CIVIL PROCEDURE

Upjohn Co. et al. v. United States et al. 445 US 925 (U.S. SCt. Jan. 1981)

(ct upheld E's contention that questionaires, memoranda, notes of interviews conducted by its attorneys among Ees protected from disclosure by attorney-client privilege and constitute work product of attorney prepared in anticipation of litigation; further, *control group* test (officers and agents responsible for directing company's actions in response to legal advice does not apply as attorneys need information from all Ees to enable them to give sound advice; Rule 26(b)(3) of FRCP provides that work product can't be disclosed w/o showing of substantial need and inability to obtain equivalent w/o undue hardship)

East Texas Motor Freight 262 NLRB No. 101

(*Federal Rules of Civil Procedure,* which are applicable in U.S. District Cts, are not controlling in administrative hearings before Bd; GC and charging party are not preferred litigants before Bd and are under same obligation to produce relevant evidence where appropriate)

9000 TITLE (VII) OF THE CIVIL RIGHTS ACT

Texas Department of Community Affairs v. Burdine 450 U.S. 248 (U.S. SCt., Mar. 1981)

(in Title VII cases after plaintiff proves by a preponderance of the evidence a prima facie case of discrimination, burden shifts to defendant to rebut presumption of discrimination by production of admissable evidence of legitimate nondiscriminatory reason for its employment action sufficient to raise a genuine issue of fact and legally sufficient to justify judgment for defendant; burden of persuasion remains with plaintiff)

Steelworkers v. Weber, et al. 443 U.S. 193 (June 1979)

(Title VII does not prohibit race conscious affirmative action plans; private E and U voluntarily agreed upon affirmative action plan that accorded preference to Black trainees in order to eliminate conspicuous racial imbalance segregated job categories upheld)

Minnesota Mining and Manufacturing Company 261 NLRB No. 002

(fact that litigation under *Title VII of the Civil Rights Act of 1964* is pending does not restrict Us' rights to information concerning alleged discrimination)

Frank Briscoe Inc. v. N.L.R.B. 637 F.2d 946 (C.A. 3, 1981)

(where Bd finds that Ees engaged in protected concerted activity and E's refusal to reinstate is violative, fact that Ees may also have remedy under Title VII does not deprive Bd of jurisdiction)

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC v. N.L.R.B. 648 F.2d 18 (C.A.D.C., Nov. 1980)

(Title VII's (anti discrimination) purpose and procedures strongly suggest that individual does not forfeit his private cause of action if he first pursues grievance to final arbitration under nondiscrimination clause of bargaining agreement)

Laurie L. Abraham v. Graphic Arts International Union, AFL-CIO, CLC, et al. 592 F.2d 1189 (D Ct DC, 1980)

(mtn for summary judgment against E dismissed where it was clear from record that no genuine issues as to facts material to resolution of instant action existed; ct not persuaded that plaintiff made *prima facie* case regarding E's discrimination against her for U activities by firing her and not granting her maternity leave)

9100 SOCIAL SECURITY ACT-MODEL CITIES PROGRAM

New York Telephone Co. et al. v. New York State Department of Labor, et al. 440 U.S. 519 (S Ct., 1979)

(NLRA does not preclude state from enacting unemployment compensation law which pays benefits to strikers notwithstanding fact that this law put majority of financial burden on struck E and enabled strikers to extend length of strike; Legislative history of NLRA indicates that Congress recognized potential conflict between state law and Act but did not intend to preempt that exercise of state power)

9500 MINE SAFETY AND HEALTH ACT

Atlas Minerals, Division of Atlas Corporation 256 NLRB No. 022

(judicial notice taken of agreement between GC and Mine Safety and Health Administration to the effect that, while safety and health activities may be protected solely under Mine Safety Act, many such activities may be protected under both Mine Safety Act and NLRA)

Atlas Minerals, Division of Atlas Corporation 256 NLRB No. 022

(uranium mining company's mtn to dismiss C on ground its allegations were w/i exclusive jurisdiction of Mine Safety and Health Administration and beyone jurisdiction of Bd, denied, since nothing in Mine Safety Act deprives Bd of its general power, set forth in Sec. 10(a) of NLRA, to prevent ULPs affecting commerce, which shall not be affected by any other means of adjustment or prevention that has been established by agreement, law, or otherwise; and ALJ herein is not empowered to determine if C should have issued, but only to determine if its allegations have merit)

9700 ALL WRITS ACT

In Re: Charles K. Sewell 690 F.2d 403 (C.A. 4, Sept. 1982)

(appellate ct is authorized to issue a writ of mandamus pursuant to All Writs Act in aid of its jurisdiction to confine inferior ct to lawful exercise of its

9700—Cont.

prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so, but only in exceptional circumstance amounting to judicial usurpation of power; moreover petitioner must show that he had no other adequate means to attain the desired relief, a showing of simple error being insufficient)

In Re: Charles K. Sewell 690 F.2d 403 (C.A. 4, Sept. 1982)

(where, after E refused to bargain with Bd-certified U to obtain appellate ct review of certification, U sued E's president under state tort law in state ct action, which was removed to federal district ct, appellate ct was empowered to issue pursuant to All Writs Act writ of mandamus petitioned for by E's president, with Bd as intervenor, on grounds of preemption under *Garmon* doctrine to confine the district ct to its jurisdiction, since, if the preemption claim was valid, the district ct would have infringed on the Bd's primary jurisdiction of labor relations and the appellate ct's jurisdiction to review Bd orders)

In Re: Charles K. Sewell 690 F.2d 403 (C.A. 4, Sept. 1982)

(appellate ct held that U's action in district ct under state tort law against official of E which had refused to bargain must be dismissed, and mandamus that official petitioned for with Bd as intervenor, granted since federal labor law vested exclusive jurisdiction in Bd to adjudicate controversies over refusals to bargain, subject to appellate ct review; federal law preempted state law pertaining to same controversy under *Garmon* doctrine, and federal district ct could not invoke latter to reexaime official's conduct but had to defer to Bd's exclusive competence to avert danger of state law interfering with national policy)

144 CONSTRUCTION

5000 LEGISLATIVE HISTORY

Longshoremen's Association, and Local 799;
etc.(Allied International, Inc.) **257 NLRB No. 151**

(intent of 8(b)(4) is to protect third person who is wholly unconcerned with disagreement)

Bally's Park Place, Inc. **257 NLRB No. 132**

(prohibition in Sec. 9(b)(3) against certifying affilated labor organizations to represent guard units)

Teamsters Local Union No. 326 (The Firestone
Plastics Company) **253 NLRB No. 074**

(statute does not define the term *excessive* The legislative history of the Act shows that the purpose of Section 8(b)(5) was to prevent the circumvention of Sections 8(a)(3) and 8(b)(2), which interdict closed shops, by the device of requiring new members to pay exhorbitant initiation fees)

Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C. **253 NLRB No. 054**

(Bd held law firm's clerical and support staff not *confidential* workers under *Bell Aerospace* and the *Taft-Hartley* legislative history, adhering to its traditional restrictive definition of confidential workers as individuals acting in confidential capacity to those Ees formulating, determining and effectuating management's labor relations policies for their own E)

Automobile Workers (UAW) and Its Local 1519 v.
N.L.R.B. **619 F.2d 580 (C.A. 6, Apr. 1980)**

(Bd's determination of work assignment dispute takes precedence over contrary award of arbitrator, regardless of which action was initiated first; both legislative history and case law on such issue support finding that Bd's 10(k) determination takes priority)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno
Townehouse **647 F.2d 905 (C.A. 9, June 1981)**

(*Wright Line* rule found consistent both with legislative history showing intent to require E to reveal that Ee was discharged for cause and with reality of E's having best access to proof of motivation; also it strikes acceptable balance between protecting Ees' rights and preserving E's rights to discharge Ees for valid business reasons)

Beth Israel Hospital and Geriatric Center v.
N.L.R.B. **688 F.2d 697 (C.A. 10, Sept. 1982)**

(en banc ct held Bd must determine, when certifying bargaining unit in health care institutions, whether unit is appropriate w/o resorting to presumption that shifts to E burden of showing proffered unit is appropriate, and Bd must state why unit it chooses complies with Congress' admonition; Bd cannot rely on E's failure to show that units are inappropriate; if Bd declines to redetermine whether an appropriate unit was selected, then that issue is not addressed at ULP proceeding, and thus Federal Rule of Evidence 301 would not apply and E could challenge unit selection only through judicial review)

Beth Israel Hospital and Geriatric Center v.
N.L.R.B. **677 F.2d 1343 (C.A. 10, July 1981)**

(enforcement denied where Bd erred in applying its prior decisions finding/concluding that unit restricted exclusively to registered nurses is presumptively appropriate and that E must overcome presumption by producing evidence that limited bargaining units are less appropriate than broader bargaining units; continued acceptance and endorsement of Bd's presumptive and evidentiary policies by ct would simply serve to enhance undue proliferation of health care bargaining units, in direct derogation to congressional mandate set forth in House and Senate committee reports)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**

(*Bd must expressly consider the congressional admonition* to prevent proliferation of bargaining units in health care industry *in making unit determinations* and focus on *disparity of interests between Ee groups which would prohibit or inhibit fair representation of Ee interests*)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**

(requiring health care industry Es to bear burden of producing evidence that limited bargaining units are more inappropriate than broader bargaining units runs contrary to Congress' admonition)

Lone Star Steel Company v. N.L.R.B. **639 F.2d 545 (C.A. 10, 1980)**

(ct, considering *products* and *cease doing business* clauses as well as legislative history of Section 8(e) of LMRDA of 1959, found no indication that Congress was concerned with agreements by common carriers or Es in other industries relating to sale of their businesses or of assets as was done in instant case)

7500 COURT INTERPRETATION OF STATUTORY PROVISIONS

N.L.R.B. v. Hendricks County Rural Electric
Membership Corp. **454 US 170 (U.S. SCt. Dec. 1981)**

(construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong, especially where Congress has refused to alter the administrative construction)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**

(*Mt. Healthy*, 429 U.S. 274 (1977), procedure accomodates legitimate competing interests inherent in dual motivation cases, while at same time serving to effectuate policies and objectives of Section *8(a)(3)* of Act)

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**

(while deference is to be given to agency's intepretation of statute it administers, it is cts that have final responsibility under constitution on matters of statutory interpretation)

Louis V. Baldovin, Jr., RD v. International
Longshoremen's Association, AFL-CIO, et al. **626 F.2d 445 (C.A. 5, 1980)**

(inj denied since no basis to believe U's refusal to load grain aboard ships bound for Russia in order to protest Russia's invasion of another country, and avoid enhancing economic status of Russia *affected commerce*, where only political decision by foreign government could satisfy U's grievance; notwithstanding U's action affected producers and transporters of grain and those who loaded it aboard ships; boycott secondary in that U did not seek to affect labor relations of E's with which it had contract or terms and conditions of employment of their Ees)

155 AMENDMENTS OF NLRA

2000 CONSTITUTIONALITY OF AMENDMENTS

4000 EFFECTIVE DATE OF APPLICATION

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**

(ct found that striking Ees were effectively terminated prior to effective date of health care amendments and therefore did not acquire *Ee* status under Act merely because strike was in progress on effective date)

6000 RETROACTIVE APPLICATION

8000 EFFECT OF AMENDMENTS

Plumbers, Local Unions Nos. 141, 229, 681 and 706 (International Paper Company, Southern Kraft Division) **252 NLRB No. 181**

(Section 14(b))

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**

(1947 amendment of Section *10(c)* of NLRA does not address *in part* or *dominent motive* analysis or allocations of burdens *but* legislative history of such amendment does; E required to make out what is actually affirmative defense to overcome *prima facie* case of wrongful motive)

Bon Secours Hospital, Inc. **248 NLRB No. 019**

(1974 health care amendments show intent of Congress that Ees of religiously operated hospitals, unlike schools, are covered as it specifically refused to exclude such hospitals from coverage under Act; therefore assertion of jurisdiction proper)

N.L.R.B. v. HMO International/California Medical Group Health Plan, Inc. **678 F.2d 806 (C.A. 9, June 1982)**

(where Bd failed to give weight to nonproliferation policy of health care amendments and failed to apply court-mandated test based on legislative history of amendments as to whether *disparity of interest* of Ees in different classifications required a number of units, Bd was to state on remand precisely how it proposed to modify its traditional community of interest standard so as to implement herein the congressional amendment's nonproliferation mandate)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(State ct decisions limited to interpretation of term *Es* for purposes of workmen's compensation coverage were not dispositive of E-Ee relationship in context of NLRB particularly in light of 1947 amendments to that legislation)

Plumbers, Local Unions Nos. 141, 229, 681, and 706 v. N.L.R.B. **675 F.2d 1257 (C.A.D.C., Apr. 1982)**

(Section 14(b))

1633-5057—Cont.

[illegible] removal service)

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant [illegible]

[illegible]

Power Service Co., T and T Truck and Trailer [illegible]

166 SEPARABILITY OF PROVISIONS

[illegible]

Electric of New York, Inc., et al. [illegible]

[illegible]

Pinnacle Roofing Co., Inc. [illegible]

[illegible]

177 STATUTORY DEFINITIONS

0800 *PERSON*

0850 SECTION 2(1) DEFINITION OF 'ANY PERSON'

International Longshoremen's Association, AFL-CIO (Kansas Farm Bureau, et al.) **264 NLRB No. 055**
(foreign flagship is *person* under Act, as 1959 amendments to Sec. 8(b)(4) inserted *any person engaged in commerce* in place of *any E*, bringing activities directed against entities which did not fall w/i definition of E w/i secondary boycott provisions)

1600 'EMPLOYER'

Group W Cable, Inc. **265 NLRB No. 021**
(Bd held, contrary to E's allegation that it is not E w/i meaning of Act on ground that such allegation was conclusion of law and not statement of fact, E is an E w/i meaning of Act, since E had agreed it was E engaged in commerce w/i meaning of Sec. 2(6) and (7) when it entered into Stipulation for Certification Upon Consent Election and admitted in its Ans that it was corporation which in course of business operation annually purchases and receives goods or services valued in excess of $50,000 directly from suppliers located outside state and annually derives gross revenues in excess of $500,000)

1601 GENERALLY

Radio Free Europe/Radio Liberty, Inc. **262 NLRB No. 063**
(jurisdiction asserted over non profit private corporation engaged in production and transmission of radio broadcasts to Eastern Europe that is funded and evaluated by government agency established for that purpose, though Agency exercises no control of corporation's labor relations, since under *right to control* test E is private corporation and has enough control over labor relations to engage in collective bargaining)

Operating Engineers, Local 926 (George L. Smith, II, Georgia World Congress Center) **254 NLRB No. 116**
(even corporation that acted *ultra vires* when it filed charge)

Taylor Hospital **249 NLRB No. 031**
(hospital, rather than vending company responsible for dietary department, found E of dietary Ees at hospital where hospital demonstrated its authority to determine policies, terms and conditions of employment for dietary Ees, and community of interest of dietary Ees with hospital's other Ees had not been diminished by hospital's arrangement with vending company)

United States Steel Corporation **248 NLRB No. 090**
(safety and education plan found not an E notwithstanding plan is composed of 79 E-members, including 3 Es who fund and sponsor a school preparing individuals to become licensed officers pursuant to agreement)

R. W. Harmen & Sons, Inc. v. N.L.R.B. **664 F.2d 248 (C.A. 10, Nov. 1981)**
(in finding that Bd properly asserted jurisdiction over E providing school bus transportation services to school districts, assertedly exempt from Bd jurisdiction under Sec. 2(2), which had authority to reject job applicants and to recommend dismissals, ct stated that cts view absolute power to hire and fire workers as relevant but not essential indication of E-Ee relationship)

1617 AGENT OF EMPLOYER (SEE ALSO GENERAL LEGAL PRINCIPLES 712)

Quality Drywall Company, Inc. **254 NLRB No. 075**
(individual held agent of E whether or not he was supervisor, where he conveyed information and distributed work assignments and materials to Ees; he could reasonably have been viewed by Ees as E's representative as he was clothed with implied authority to act for management)

1633 PERSONS FOUND TO BE EMPLOYERS

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**
(fact that teachers assigned by foreign government to teach at E's private, nonprofit school were admitted to this country under *A-2* visas, which E contends are granted only to representatives of foreign government temporarily admitted to perform official duties, held not to establish that E, w/i meaning of Sec. 2(2) of Act, is foreign government, where *A-2* visas specifically state that such individuals are admitted in order to perform pedagogical duties for E; and, their immigration status does not alter fact that they, as Ees in this country, are entitled to protection of Act)

1633-5000 Combinations of employers

1633-5017 Independent contractors

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(dump truck operators were held independent contractors in prior Bd decisions involving same parties herein or their privies and under principles of res judicata and collateral estoppel parties are foreclosed from litigating status of operators)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(Bd instructed to apply same general agency principles as would cts in determining whether or not individual (cab driver) is an Ee or an independent contractor)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(two elements in instant case determinative of leased cab drivers' status as independent contractors and not as Ees were; (1), lack of control by lessor in manner and means in which drivers carry on their business and (2), rent that lessor receives for lease of cab was not related to amount of fares collected by lessee-driver)

1633-5033 Lessors of leased departments

Trans-States Lines, Inc. **256 NLRB No. 116**
(trucking company (lessee) and fleet owner (lessor) held joint Es, since lessee was fully involved in (lessor's) employment process and exercised other controls over lessor's Ees)

1633-5041 Owners of rental property

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(ability to establish lease terms unilaterally was not in itself enough to establish existence of E-Ee relationship (between cab owners and cab drivers); critical question was whether terms of lease vest excessive control in lessor (cab owner))

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(control exercised over *manner and means of performance* is identifying characteristic of E-Ee relationship, not merely economic controls which many corporations exercise over independent contractors)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that government regulation has made supervision or control by lessor (cab owner) unnecessary was not equivalent of presence of actual supervision or control)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(length of lease term in no way affects relationship between taxi companies and their drivers while latter are operating leased vehicles)

1633-5050 Parent and subsidiary

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(parent corporation and its wholly owned subsidiary held single E where they have interlocking officers and directors, and share use of common computer and accountant)

1633-5067 Enterprises under common management

Consolidated Dress Carriers, Inc., et al. **259 NLRB No. 083**
(three corporations serving garment industry one of which was engaged in actual physical transportation of goods, one created solely for purpose of supplying equipment and one created for purpose of supplying labor held single E in view of common management, where common supervision over

1633-5067—Cont.

clericals of operations, centralized control of labor relations, and totally integrated operations where interchange of Ees and equipment shared warehouse, office facility and fixtures, trucks, and shared cleaning and rubbish removal service)

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(full menu restaurant and fast food shop constitute single E which meets Bd's jurisdictional standards where fast food shop was sole stockholder of restaurant; one individual was president of fast food shop and vice-president and treasurer of restaurant as well as general manager of both food operations)

Power Service Co., T and T Truck and Trailer Leasing, Inc., Night Hawk Motor Transportation, Inc., and Vork Motor Transport, Inc. **JD-151-82**
(three Es engaged in transportation business having common management, supervision, labor relations and other common business functions held *single E,* since companies were shown to have existed for principal purpose of serving one another)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**
(entities, by whatever name used, operated by one individual held operated as *alter egos* of other entities operated by that one individual, since they had substantially same ownership, identical management, business purpose, operations, equipment, premises, customers, supervision and labor relations policies)

Clifford Cook, d/b/a Pinnacle Company and Pinnacle Roofing Co., Inc. **JD-(SF)-196-79**
(*alter egos* in view of common ownership, management, customers, equipment and common control over labor relations)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**
(notwithstanding Es were separate corporations Es were joint Es, since they had some common ownership; one E leased space from the other E; president of one E was director of other; executive vice-president of one E was president and a director of the other E)

N.L.R.B. v. Big Bear Supermarkets #3 and its alter ego Richard Homes **640 F.2d 924 (C.A. 9, Apr 8, 1980)**
(where E franchised one of its stores to individual but retained under contract terms a sufficient number of controls over operation of store so that it continued to operate essentially as any other of E's stores, ct held common management criterion favored a finding of single-E status)

1633-5069 Franchisor and franchisee

Wolf Street Supermarkets, Inc. d/b/a Jim's Big M; and Big M Supermarkets, Inc. **264 NLRB No. 150**
(mere showing of franchise relationship existing between two companies w/o evidence of inference by franchisor is not enough to supply proof of alter ego, successorship, single E, or joint-E relationship)

1633-5071 Enterprises with common ownership

Consolidated Dress Carriers, Inc., et al. **259 NLRB No. 083**
(three corporations serving garment industry one of which was engaged in actual physical transportation of goods, one created solely for purpose of supplying equipment and one created for purpose of supplying labor held single E in view of common management, where common supervision over clericals of operations, centralized control of labor relations, and totally integrated operations where interchange of Ees and equipment shared warehouse, office facility and fixtures, trucks, and shared cleaning and rubbish removal service)

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(full menu restaurant and fast food shop constitute single E which meets Bd's jurisdictional standards where fast food shop was sole stockholder of restaurant; one individual was president of fast food shop and vice-president and treasurer of restaurant as well as general manager of both food operations)

Tulsa Yellow Cab Company, Inc. and Peoples Checker Cab Company, Inc. **247 NLRB No. 092**
(Bd lacked jurisdiction over two cab companies owned by members of same family where neither E had gross revenues exceeding $500,000 and Bd found no significant integration of enterprises to constitute both as joint Es)

Royce Lindsay d/b/a Royce Lindsay Plumbing, Heating, and Refrigeration Supply Company, etc. **JD-(SF)-3-82**
(common ownership of newly-formed companies held indicated by stock breakdown where companies were located in community property state and division of stock of two companies was nearly 50-50 with 51 and 49 percent divided between husband and wife, respectively, who wholly owned companies herein; identical corporate ownership, however, is not *sine qua non* of *alter ego* status)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**
(entities, by whatever name used, operated by one individual held operated as *alter egos* of other entities operated by that one individual, since they had substantially same ownership, identical management, business purpose, operations, equipment, premises, customers, supervision and labor relations policies)

Clifford Cook, d/b/a Pinnacle Company and Pinnacle Roofing Co., Inc. **JD-(SF)-196-79**
(*alter egos* in view of common ownership, management, customers, equipment and common control over labor relations)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**
(notwithstanding Es were separate corporations Es were joint Es, since they had some common ownership; one E leased space from the other E; president of one E was director of other; executive vice-president of one E was president and a director of the other E)

N.L.R.B. v. Big Bear Supermarkets #3 and its alter ego Richard Homes **640 F.2d 924 (C.A. 9, Apr 8, 1980)**
(criterion relating to common management or financial control favored finding of single-E status, where E franchised one of its stores to individual but franchise arrangement was a sham transaction executed for purpose of evading E's bargaining obligations with Us)

1633-5073 Double-breasted operations

Al Bryant, Inc., Harrisburg Drywall and Construction Corporation, and Al Bryant Associates, Inc. **260 NLRB No. 010**
(two corporations (one formed after charge was filed) operating non-U in construction industry held single E along with U corporation where latter bore all administrative and clerical expenses, loaned equipment w/o established rental charge, management and Ees were integrated and three had common ownership)

Malcolm Boring Co., Inc. B. C. Malcolm and Bruce C. Malcolm **259 NLRB No. 081**
(refusal of construction equipment company to honor construction company's contract with U, not unlawful notwithstanding companies were found double-breasted operation of single E herein, where construction equipment Ees were found to comprise separate unit from construction Ees' unit and not to be covered by latter's contract)

A-1 Fire Protection, Inc., and Corcoran Automatic Sprinklers, Inc. **250 NLRB No. 034**
(E's refusal to extend collective-bargaining agreement which describes scope of unit represented by U to Ees in its non-U company not violative as parties voluntarily entered into agreement with full knowledge of double breasted operation of E; therefore use of *clear and unmistakable waiver* standard is not applicable as parties never intended to include Ees of non-U company in bargaining unit)

1633-5075 Single integrated enterprise

Hillside Bus Corp. **262 NLRB No. 152**
(three corporations engaged in transporting students under contract with the Board of Education held single integrated enterprise and jurisdiction asserted in view of interchange of Ees, fact that sole owner and manager of one managed other two corporations, two corporations had no offices, and one corporation paid office and garage rent for all, one corporation hired and fired for all, all checks from Board of Education sent to one corporation)

Consolidated Dress Carriers, Inc., et al. **259 NLRB No. 083**
(three corporations serving garment industry one of which was engaged in actual physical transportation of goods, one created solely for purpose of supplying equipment and one created for purpose of supplying labor held single E in view of common management, where common supervision over clericals of operations, centralized control of labor relations, and totally integrated operations where interchange of Ees and equipment shared warehouse, office facility and fixtures, trucks, and shared cleaning and rubbish removal service)

Air-Vac Industries, Inc., Leeward Constructors, Inc., Air-Vac Environmental Limited **259 NLRB No. 051**
(single E status for purposes of NLRA depends upon all circumstances of case, and not all the single *controlling criteria* specified by SCt in *Radio and Television Broadcasting Technicians,* 380 U.S. 255, 256 (1965), need be present)

Air-Vac Industries, Inc., Leeward Constructors, Inc., Air-Vac Environmental Limited **259 NLRB No. 051**
(three business entities held single integrated enterprise where two of them were admittedly single E and all three were; commonly owned, had same sole directors and officers of the corporations, formulating and administering common labor policies, operated out of same facility with same equipment, Ees of all three were supervised by single supervisor and entities utilized single compliment of Ees)

1633-5075—Cont.

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 036**

(four plants held single integrated E in view of common management, ownership, financial control, interchange of machinery and all garments are inspected at one plant)

Miami Foundry Corporation **252 NLRB No. 002**

(corporation which had acquired stock of iron foundry and such foundry held single integrated enterprise where foundry continued operations with management, finances, ownership, and labor relations policies resting in hands of new owner)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**

(notwithstanding that two Es were separate legal entities with separate bank accounts etc., they were held single E where operations of both Es were interrelated; one E was other's sole customer and existed for sole purpose of serving other; both Es had common management, supervision and elements of common ownership)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**

(2 Es found single integrated enterprise and/or joint E where they have same majority owner, president, dispatcher, and office manager, same business, facilities and Ees, and, most significantly, same person determining labor relations policy)

Land Equipment Inc. **248 NLRB No. 098**

(company renting construction equipment with operators to building contractors and company furnishing labor to above company held single E in view of interrelationship of operations, and common ownership, management and control of labor relations policies)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**

(U and nonU plants held single or joint E in view of same ownership, managers, engineers, research staff, maintenance staff, office clerical staff, head manager and director of labor policy and interchange of personnel and resources)

Rena Management Inc. **JD-(NY)-75-82**

(affiliated business with common officers and operators constituted single integrated business enterprise where owners of businesses administered common labor policy)

Power Service Co., T and T Truck and Trailer Leasing, Inc., Night Hawk Motor Transportation, Inc., and York Motor Transport, Inc. **JD-161-82**

(three Es engaged in transportation business having common management, supervision, labor relations and other common business functions held *single E*, since companies were shown to have existed for principal purpose of, serving one another)

Hanely Hardwood Lumber Co. **JD-285-81**

(three corporations engaged in lumber business held single E in view of common ownership, fact same individuals were officers in all corporations, and one individual possessed and exercised authority to control labor relations of all three corporations, companies utilized same attorney and accountant, Ees of all three entities used same health benefit plan; further, three entities were nothing more than divisions of integrated enterprises where one entity formed to handle sales of product of already estabilshed E, and third company formed for purpose of processing lower grade lumber produced by company into saleable product)

Master Products, Inc.; et al. **JD-726-80**

(leasing company was part of single intergrated enterprise and constituted single integrated E, along with two manufacturing corporations in view of substantial common ownership and financial control over it by same person who exercised control over two manufacturing corporations; operation of the three entities were interrelated and had common control of their labor relations)

Tri-State Warehouse & Distributing, Inc. and Public Warehousing Corp. **JD-261-80**

N.L.R.B. v. Browning-Ferris Industries of Pennsylvania, Inc. **691 F.2d 1117 (C.A. 3, Oct. 1982)**

(*single E* relationship exists where two nominally separate entities are actually part of single integrated enterprise so that there is a single E and the question is whether such enterprises constitute only one integrated enterprise; in deciding question, Bd considers four factors approved by SCt: 1) functional integration of operations; 2) centralized control of labor relations; 3) common management; and 4) common ownership; single E status ultimately depends on all circumstances of case and is characterized as absence of *an arm's length relationship found among unintegrated companies*)

N.L.R.B. v. Browning-Ferris Industries of Pennsylvania, Inc. **691 F.2d 1117 (C.A. 3, Oct. 1982)**

(*joint E* relationship does not depend upon existence of single integrated enterprise but assumes that Es are independent legal entities that have merely historically chosen to handle jointly important aspects of their E-Ee relationship; and no finding of arm's length transaction or unity of control of ownership is required as in single E cases; it is rather matter determining which of two, or whether both, Es control, in capacity of E, labor relations of given Ee group, and business entities are in fact separate but share matters governing essential terms and conditions of employment)

Nelson Electric, Gary C. Nelson, Inc. and Gary C. Nelson Electric v. N.L.R.B. **638 F.2d 965 (C.A. 6, Jan. 1981)**

(two business enterprises held *alter ego* of third company and single integrated E with the company where E made all management decisions, supervised all work, and operated out of same office; moreover, cash assets of all three businesses were completely commingled)

1633-5083 Joint ventures

Heck's Properties, Incorporated, Engineering Division and/or Mountaineer Investment Co., Inc. **264 NLRB No. 071**

(two corporations held joint Es of ventures and are jointly liable for each others' ULPs, notwithstanding no common ownership where firms performed parallel functions of constructing department stores merely depending upon U or nonunion status of particular job, one corporation lacked independent identity with respect to operations, administration, personnel, capital holdings and management has commonality with each other)

1633-5091 Employer associations

McCormick-Boyett Plumbing Company **JD-(ATL)-93-82**

(Es held multi-E bargaining entity and single E for purposes of collective bargaining notwithstanding negotiations by informal group w/o specific delegation of authority rather than by formal association, or that Es in group customarily separately signed negotiated agreement, where Es have indicated unequivocal intent to bargain as group rather than as individuals; further, herein there was history of multi-E bargaining and appropriateness of multi-E unit not disputed)

N.L.R.B. v. Associated General Contractors of California, Inc. **633 F.2d 766 (C.A. 9, 1980)**

(two or more Es, if they are *alter egos*, may be treated as *single* E under the NLRA)

1633-7500 Employer alter ego

Fugazy Continental Corp.; Elite Services, Inc. **265 NLRB No. 165**

(in determining whether purchaser is *alter ego* of seller, Bd considers following factors, no one of which, taken alone, is *sine qua non* of *alter ego* status: common management and ownership; common business purpose; nature of operations and supervision; common premises and equipment; common customers, i.e., whether Es constitute *the same business in the same market*; nature and extent of negotiations and formalities surrounding transaction; and whether purpose behind creation of alleged *alter ego* was legitimate or had purpose of evading responsibilities under Act)

Fugazy Continental Corp.; Elite Services, Inc. **265 NLRB No. 165**

(in finding purchaser of part of E's operations *alter ego* of E, Bd considered fact that sale, accompanied by highly irregular practices, was not arm's length transaction, where E directed and managed both ends of transaction and continued to retain financial interest in purchaser's operations; until instant proceedings began, all of purchaser's business consisted of work for E, and thereafter purchaser performed work for outsiders on a small scale, thereby indicating that purchaser's business *virtually exists at the sufferance* of E)

Fugazy Continental Corp.; Elite Services, Inc. **265 NLRB No. 165**

(in finding purchaser of part of E's operations *alter ego* of E, Bd considered fact that sale was not motivated by E's financial losses and would not have taken place but for E's desire to crush Ees' successful organizing efforts; E's animus toward Ees' statutory rights was amply demonstrated herein and was among factors which tipped balance in favor of finding of *alter ego*; E's contention that sale was long contemplated and motivated by legitimate business considerations was inconsistent with its ferocious anti-U ULPs committed up to and beyond time of alleged sale)

Fugazy Continental Corp.; Elite Services, Inc. **265 NLRB No. 165**

(purchaser of part of E's operations held *alter* ego of E, since sale was not *bona fide* arm's length transaction but, rather, was hastily and haphazardly arranged maneuver to continue E's operations in disguised form while avoiding its statutory obligations and responsibilities, where E did not intend to sell its operations until and unless it became only remaining means to thwart Ee organization, and following U's election victory, E set up one of its trusted supervisors as surrogate, carrying on same business, in same location, with same supervision for benefit of E itself)

Shellmaker, Inc., and Bayside Dredging Company, Inc. **265 NLRB No. 109**

(no alter ego status found between dredging company operating own, larger dredges, and company which operates smaller marina dredge, in view of different customers, i.e., one works for Army Corps of Engineers and others for marinas; they hold themselves out as separate entities with separate

1633-7500—Cont.

books; no common ownership, management, or labor relations; and Ees were separately supervised; fact that one company would not have started business w/o loan from other company held not critical in absence of strings attached to loan)

Campbell-Harris Electric, Inc. and Campbell Electric, Inc. **263 NLRB No. 167**
(identical corporate ownership is not *sine qua non* of *alter ego* status)

Campbell-Harris Electric, Inc. and Campbell Electric, Inc. **263 NLRB No. 167**
(sole proprietorship established by former partner of partnership held *alter ego* of the partnership where there was substantial identity of ownership and management between the two entities)

Pinter Bros., Inc., Retnip Corp., Pin-Bro Leasing, Inc., GLT Transportation Lines, Inc., a/k/a Moon Express Co., INc. **263 NLRB No. 091**
(no alter-ego relationship found where: sole owners of new company owned less than 20 percent of old company; new company leased space from old on same basis as other lessees; operation is on much smaller scale; only about 30 percent of customers are same; equipment although same was either purchased or leased in arms-length transaction; moreover although management and labor relations is similar, this is not enough to support alter-ego finding in light of above factors)

American Pacific Concrete Pipe Company, Inc. **262 NLRB No. 139**
(*alter ego* relationship found where one company leased trucks to other company and both companies had substantially identical business purpose, operations, equipment, and customers, and while there was no common ownership, there was common management, supervision and control of labor relations)

Master Food Services, Inc., Noah Robinson, and Al Williams d/b/a A & W Catering Co. **262 NLRB No. 105**
(manager and former Ee of college cafeteria held alter ego of company who managed cafeteria and of sole proprietorship who personally controlled that company as purported sole or transfer of operation to manager was sham and hurriedly devised to prevent unionization)

F & F Construction Co., Inc., and Roland L. Barker, d/b/a R. L. Barker Construction Company **262 NLRB No. 98**
(in supplemental proceeding, individual d/b/a sole proprietorship held *alter ego* of respondent company since individual was sole owner and chief operating official of both and as supervisor in company was responsible for most of ULPs committed by company; individual had discontinued operations of company after Bd decision in underlying ULP case and established sole proprietorship to perform same operations)

Chippewa Motor Freight, Inc. and Action Carrier, Inc. **261 NLRB No. 066**
(E not found alter-ego where old enterprise closed solely for financial reasons and although new and old enterprise have substantially identical ownership, lower-echalon management and supervision is different, method of business operation, equipment and customers are totally different)

Denzil S. Alkire, a Sole Proprietorship; et al. **259 NLRB No. 174**
(where sole proprietorship dissolved company and terminated Ees and then formed new corporate entity, newly-formed company held successor and alter ego of dissolved company, where both entities had substantially identical business purpose, operation, equipment and customers, and predecessor and his family owned and controlled new company)

Denzil S. Alkire, a Sole Proprietorship; et al. **259 NLRB No. 174**
(where proprietorship dissolved company and formed new corporate entity, found its alter ego herein, which was subsequently leased by another E, such E held successor and alter ego of proprietorship and the new corporate entity, since there was substantially identical business purpose, operation, equipment, and customers; proprietor continued to play substantial role in actual operation of busienss; and economic realities of lease agreement whereby new E invested no capital and proprietor retained all financial risks and received all profits demonstrated that E was directly or indirectly subject to economic power of proprietor)

Friederich Truck Service, Inc. and FTL, Inc. **259 NLRB No. 053**
(no alter ego status found between two transportation companies, notwithstanding both were owned by members of same family, where the companies were maintained as to tally independent corporations with regard to their operations as well as control of labor management)

Custom Manufacturing Company (Successor to Zion Industries, Inc.—Curtain and Drapery Division); etc. **259 NLRB No. 066**
(in finding company not alter ego of companies involved in backpay proceeding, ALJ improperly relied on fact that evidence failed to show that company was set up for purpose of evading Act and that there was no transfer of assets; although ALJ acknowledged that such 2 factors were not necessary elements to find alter ego status, ALJ nevertheless weighed them along with other factors in finding company herein not alter ego)

Custom Manufacturing Company (Successor to Zion Industries, Inc.—Curtain and Drapery Division); etc. **259 NLRB No. 066**
(in backpay proceeding, drapery company held alter ego of 3 other companies which were successively formed earlier and each followed pattern of discontinuing its drapery business and commending scaled-down operation; changes in companies' operations did not represent abrupt shift but another step in evolution of drapery business from manufacturer to broker and from residential to institutional customers; there was no real hiatus between alter ego and preceding company since it was spinoff of former business and it was not so changed as to put it beyond Bd's backpay order)

Imperial Hospital; Donald W. Henry, Trustee in Bankruptcy **257 NLRB No. 061**
(trustee in bankruptcy is *alter ego* of bankrupt E and successor in law *vis-a-vis* U)

Whitehall Packing Company, Inc. and W.P.C., Ltd. **257 NLRB No. 043**
(new operation of E found alter ego of original plant where: substantially owned and controlled by same individuals who determined labor relations for both companies and companies were functionally integrated)

Hageman Underground Construction; etc. **253 NLRB No. 007**
(alter ego found where non-U company performs identical work as company which had U contract, is owned and managed by same persons, has same Ees, location and equipment, and U company went out of business after formation of non-U company and after completing jobs in progress)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(one corporation *alter ego* of other corporation where ownership, control of operating policies and labor relations of both eminated from single source)

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(individual proprietorship held alter ego of corporation and obligated to recognize and bargain where individual, who became sole proprietor, had been chairman of board and with his wife owned all stock of corporation, proprietorship continued in same business at essentially same locations serving same sole customer and using same suppliers)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(alter ego found where business continued in same form except for name; same owner-manager, finished 2 projects started by first company, purchased all equipment, rehired all Ees, and although stock held in different proportions, family ownership same)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(new company held alter ego of prior company where prior company owned physical premises which housed new company and its operations; new company organized to perform exactly the same work formerly performed by prior company; work of new company performed by identical Ees and supervision; new company operated with machinery and equipment transfered from prior company)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(sole proprietorship held *alter ego* of and single E with corporation where sole proprietorship was established by president and sole shareholder of corporation and assumed and continued corporation's operations for benefit of corporation, utilizing substantially same capital and equipment, employing same management and supervisors, and providing same services to substantially same customers as corporation)

Local 1115, Joint Board, Nursing Home & Hospital Employees—Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **248 NLRB No. 167**
(successor E held not alter ego of predecessor where ownerships were not *substantially identical*, and there was no element of disguised continuation of prior enterprise; moreover, although E never disavowed contracts neither did it expressly assume them)

International Harvester Company and Muller International Trucks, Inc. **247 NLRB No. 140**
(international trucking corporation held alter ego of corporation owning its only voting stock, maintaining 3 to 1 majority on its board, and with power to approve all major decisions, including execution of U contract, where both corporations used same facilities, trucks and spare parts, and office and service equipment, had same overall supervision and engaged in same business in same market)

Iowa Parcel Service, Inc. and Iowa Express Distribution, Inc. **JD-238-82**
(alter ego status as to individual, company he owned, and company started by his former Ees not established in view of different ownership – notwithstanding he made them an interest-free startup loan – and different control of labor relations and operations and size and scope of operations)

1633-7500—Cont.

Royce Lindsay d/b/a Royce Lindsay Plumbing, Heating, and Refrigeration Supply Company, etc. **JD-(SF)-3-82**

(factors considered by Bd in determining whether separate Es are single employing entity are: interrelation of operations, centralized control of labor relations, common management, and common ownership and control; while no individual factor has been found controlling, emphasis is usually placed on such factors, particularly control of labor relations; and, generally, Bd has found *alter ego* status where enterprises have substantially identical management, business purpose of operation, equipment, customers, supervision, and ownership)

Royce Lindsay d/b/a Royce Lindsay Plumbing, Heating, and Refrigeration Supply Company, etc. **JD-(SF)-3-82**

(common ownership of newly-formed companies held indicated by stock breakdown where companies were located in community property state and division of stock of two companies was nearly 50-50 with 51 and 49 percent divided between husband and wife, respectively who wholly owned companies herein; identical corporate ownership, however, is not *sine qua non* of *alter ego* status)

Chippewa Motor Freight, Inc. **JD-425-81**

(where original company closed for economic reasons and new company established for economic reasons alter-ego status not found where although top management and one of prior locations remained the same, lower level management different, only one office left instead of 17, different type of hauling performed and all business dealings between two companies were at fair market prices)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**

(entities, by whatever name used, operated by one individual held operated as *alter egos* of other entities operated by that one individual, since they had substantially same ownership, identical management, business purpose, operations, equipment, premises, customers, supervision and labor relations policies)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**

(individual who operated his business under variety and succession of corporate names and structures each of which, had been *alter egos* held individually liable for ULPs he personally committed; circumstances warranted *piercing corporate veil* where individual threatened to *close down* and reopen under new name as he had done in past)

Clifford Cook, d/b/a Pinnacle Company and Pinnacle Roofing Co., Inc. **JD-(SF)-196-79**

(*alter egos* in view of common ownership, management, customers, equipment and common control over labor relations)

Master Products, Inc.; et al. **JD-726-80**

Dawson Masonry, Inc. and its alter egos, Shoals Masonry, Inc., and Charles Dawson **JD-(STL)-12-80**

(corporation which coexisted with and had substantially same ownership, controlling management, supervision and business purpose as respondent corporation held alter ego of respondent)

Dawson Masonry, Inc. and its alter egos, Shoals Masonry, Inc., and Charles Dawson **JD-(STL)-12-80**

(individual who owned, managed, and supervised two businesses which were alter ego of each other, used checks of one and paid under the name of the other found alter ego of both corporations)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**

(new corporation held alter ego of former E where new corporation manufactured same products, at same place, used same factor previously used by former E, and former E still exerted substantial financial control over new corporation and participated significantly, through its president, in formulation of labor policies to be pursued by new corporation)

Tri-State Warehouse & Distributing, Inc. and Public Warehousing Corp. **JD-261-80**

Atlas Inc. **JD-890-79**

(E which acquired all physical assets of predecessor, engaged in substantially same business operations as formerly engaged in by predecessor, and employed as manager the predecessor's president and principal stockholder, held successor to and *alter ego* of predecessor)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession **682 F.2d 72 (C.A. 3, June 1982)**

(debtor-in-possession, who had obtained permission from bankruptcy ct to reject bargaining agreement, held not alter ego of debtor nor party to bargaining agreement; rather, debtor-in-possession is new entity with its own rights and duties subject to bankruptcy ct's supervision and is comparable to trustee and is an officer of the ct; debtor-in-possession is analogous to successor E and may be required to bargain with U, but it is not party to predecessor's bargaining agreement unless it is assumed, and it is able to reject agreement w/o following 8(d) procedures)

N.L.R.B. v. Scott Printing Corporation and J&J House of Composition **612 F.2d 783 (C.A. 3)**

(where no real change in operation of composing room after sale to company formed by former Ees, and older company continued to maintain substantial degree of control over business operations finding of alter-ego proper)

N.L.R.B. v. Borg Warner Corporation; et al. **660 F.2d 324 (C.A. 6, Oct. 1981)**

(wholly-owned subsidiary of corporation held alter ego to another wholly-owned subsidiary of same corporation where they shared top executive officers, common offices, post office boxes, and lockboxes, and vice president for personnel rendered labor advice for both subsidiaries)

Nelson Electric, Gary C. Nelson, Inc. and Gary C. Nelson Electric v. N.L.R.B. **638 F.2d 965 (C.A. 6, Jan. 1981)**

(two business enterprises held *alter ego* of third company and single integrated E with the company where E made all management decisions, supervised all work, and operated out of same office; moreover, cash assets of all three businesses were completely commingled)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins **616 F.2d 966 (C.A. 6, 1980)**

(individual who was chief officer and virtually sole stockholder of two related companies held alter ego of both companies)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins **616 F.2d 966 (C.A. 6, 1980)**

(individual who was chief officer and virtually sole stockholder of two related companies held alter ego of both companies)

J. M. Tanaka Construction, Inc. v. N.L.R.B. **675 F.2d 1029 (C.A. 9, Apr. 1982)**

(non-U construction company held alter ego of state-wide U construction company which closed one month after non-U company was incorporated, in view of centralized control of labor relations, common management, close interrelationship between operations (took over plant, Ees, 2 unfinished projects, had same attorney, common ownership and control) and evidence that non-U company was created for purpose of eliminating high cost of dealing with U)

N.L.R.B. v. Associated General Contractors of California, Inc. **633 F.2d 766 (C.A. 9, 1980)**

(two or more Es, if they are *alter egos*, may be treated as *single* E under the NLRA)

N.L.R.B. v. Flite Chief, Inc.; et al. **566 F.2d 1182 (C.A. 9, 1979)**

(successor E held alter ego of prior E where successor was corporation with single shareholder who in turn was son of husband and wife owning prior E, and successor was created to avoid unionization)

N.L.R.B. v. Tricor Products, Inc., and/or C & J Pattern Co. **636 F.2d 266 (C.A. 10, 1980)**

(E held *alter ego* of, rather than successor to, company it absorbed in view of continuity of ownership, management and Ees, use of same machinery and equipment, and E's fulfillment of absorbed company's pending orders)

Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO, Local 576, et al. v. N.L.R.B. **663 F.2d 223 (C.A.D.C., Dec. 1980)**

(alter ego not found where sale was arms length transaction in which owners of majority of predecessor relinquished all interest and only present owner had interest in predecessor, 18 percent, and now he has 30% interest in present store; this does not constitute substantially identical ownership, nor does contingent liability of predecessor owners on lease alter this holding)

1633-8700 Deliverymen and owners, drivers, lessors and lessees of trucks

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(dump truck operators were held independent contractors in prior Bd decisions involving same parties herein or their privies and under principles of res judicata and collateral estoppel parties are foreclosed from litigating status of operators)

1642 SINGLE EMPLOYER

Shellmaker, Inc., and Bayside Dredging Company, Inc. **265 NLRB No. 109**

Redlands Construction Co., Inc., and Felts Construction Co. **265 NLRB No. 079**

(two corporations held single E where they were owned by mother and son, one corporation provided original capitalization and leased space and equipment to other corporation, at dissolution of one corporation all assets and operations were absorbed by other corporation in return for forgiveness of

1642—Cont.

original loan, and both entities had common management and common control of labor relations)

Alle Arecibo Corporation and Alle Industries Ltd. **264 NLRB No. 163**
(manufacturer and seller/distributor of same products held single E, where both entities were owned and controlled by same individuals, chief executive of both entities handles sales and distribution efforts for manufacturer, manufacturer was only client for seller/distributor and chief executive directed both operations and controlled them entirely)

Cardio Data Systems Corp. **264 NLRB No. 011**
(three nominally separate companies engaged in integrated business held single E, where one company owns other 2 companies and provides all their needed personnel, accounting, and other services; officers of 3 companies are husband and wife, each owning substantial stock in owning company; Ees of all 3 companies have profit sharing plan based on owning company's profits and have identical Ee benefits and common Ee handbook; and when election was sought in company involved herein, owning company's posted notice of event made all-encompassing references to companies and their Ees)

Hillside Bus Corp. **262 NLRB No. 152**
(three corporations engaged in transporting students under contract with the Board of Education held single integrated enterpirse and jurisdiction asserted in view of interchange of Ees, fact that sole owner and manager of one managed other two corporations, two corporations had no offices, and one corporation paid office and garage rent for all, one corporation hired and fired for all, all checks from Board of Education sent to one corporation)

Consolidated Dress Carriers, Inc., et al. **259 NLRB No. 083**
(in determining whether enterprises constitue single E, controlling criteria set out and elaborated in Bd decisions are: interrelation of operations, common management, centralized control of labor relations, and common ownership; single E status for purposes of NLRA depends upon all circumstances of case and not all controlling criteria need be present)

Consolidated Dress Carriers, Inc., et al. **259 NLRB No. 083**
(three corporations serving garment industry one of which was engaged in actual physical transportation of goods, one created solely for purpose of supplying equipment and one created for purpose of supplying labor held single E in view of common management, where common supervision over clericals of operations, centralized control of labor relations, and totally integrated operations where interchange of Ees and equipment shared warehouse, office facility and fixtures, trucks, and shared cleaning and rubbish removal service)

Malcolm Boring Co., Inc. B. C. Malcolm and Bruce
C. Malcolm **259 NLRB No. 081**
(E engaged in construction work and E who supplied machinery with which construction work was performed found single E in view of common ownership, management, and pool of Ees; high degree of Ee interchange and functional integration of operations; and central control of labor relations)

Better Building Supply Corp., and Evergreen
Roofing, Inc., Its Alter Ego **259 NLRB No. 063**
(single E relationship found where one family owned both corporations, managed both, both performed the same type work at same location)

Air-Vac Industries, Inc., Leeward Constructors, Inc.,
Air-Vac Environmental Limited **259 NLRB No. 051**
(single E status for purposes of NLRA depends upon all circumstances of case, and not all the single *controlling criteria* specified by SCt in *Radio and Television Broadcasting Technicians,* 380 U.S. 255, 256 (1965), need be present)

Air-Vac Industries, Inc., Leeward Constructors, Inc.,
Air-Vac Environmental Limited **259 NLRB No. 051**
(three business entities held single integrated enterprise where two of them were admittedly single E and all three were; commonly owned, had same sole directors and officers of the corporations, formulating and administering common labor policies, operated out of same facility with same equipment, Ees of all three were supervised by single supervisor and entities utilized single compliment of Ees)

DMR Corp. and Harrill Electric Contractors, Inc. **258 NLRB No. 139**
(single E found where husband and wife own 80% of both companies, financial affairs closely intertwined, identical nature of business, second company inheriting 2 major customers of first company; therefore refusal of second company to recognize and bargain with U first company had collective-bargaining agreement with is violative)

Mastell Trailer Corporation **258 NLRB No. 167**
(single-E found where Respondent had either full or substantial ownership in both business, each had offices in same facility and newly formed company paid no rent, Respondent handled clerical needs and pick up and delivery service for both companies; moreover, absence of Respondent from day-to-day operations at newly formed company immaterial)

Lamar Advertising Associates of Dayton d/b/a
Lamar Outdoor Advertising **257 NLRB No. 022**
(subsidiary and parent corporation found single E where subsidiary is substantially owned and wholly directed and controlled by parent; they have common management, common officers, general manager of subsidiary is subordinate to officials of parent, personal policies are unified)

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(E and its wholly owned subsidiaries held single E where they were affiliated business with common officers, ownership, directors, and operators and were single integrated business enterprise with said directors and operators formulating and administering common labor policy for its Ees)

Hageman Underground Construction; etc. **253 NLRB No. 007**
(two companies held single E where business and principle customer are same, one company no longer bids on work, transferred its Ees, and companies have common facility, ownership, management, and share equipment)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 131**
(parent corporation and its wholly owned subsidiary held single E where they have interlocking officers and directors, and share use of common computer and accountant)

Cannon Air Conditioning and Heating Co., Inc.
and Yor-Tex, Inc. **252 NLRB No. 091**
(two separate legal entities held single E where they have common owner and management, all of one company's business is derived from arrangement with the other company whereby the former performs work that the latter contracted to do, one individual sets labor relations policy for both companies, and one company uses the other's building and depends upon its clerical help)

The Arundel Corporation **252 NLRB No. 089**
(E and its subsidiary resurrected by E for sole purpose of serving as corporate instrumentality through which E could operate quarry held single E in view of various factors such as same individuals at managerial level, E's ownership of equipment used by subsidiary, ultimate control of subsidiary by E's managers, and negotiation of subsidiary's contract with U by E's officials)

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(four corporations which are completely controlled by one family held single E, where the four corporation's manufacture a product in integrated fashion, whereby three corporations are in effect contractors of the fourth which is the selling arm, and the family controls labor relations of the four companies)

Miami Foundry Corporation **252 NLRB No. 093**
(corporation which had acquired stock of iron foundry and such foundry held single integrated enterprise where foundry continued operations with management, finances, ownership, and labor relations policies resting in hands of new owner)

Bacchus Wine Cooperative, Inc., and Bacchus Wine
International **251 NLRB No. 207**
(E-member of agricultural cooperative and the cooperative held single E in view of interrelation of operations, common management, centralized control of labor relations, and lack of arms-length relationship, notwithstanding minimal common ownership)

Sumco Manufacturing Co., Inc. Summit Grinding
Company **251 NLRB No. 046**
(corporation which primarily manufactured scissor jacks and jack stands and corporation which made component parts for jacks for manufacturing corporation, held single E, where between two corporations was common ownership and financial control, integration of operations, centralized control of labor relations, and partial degree of common management)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(notwithstanding that two Es were separate legal entities with separate bank accounts etc., they were held single E where operations of both Es were interrelated; one E was other's sole customer and existed for sole purpose of serving other; both Es had common management, supervision and elements of common ownership)

Yellow Taxi Company of Minneapolis, d/b/a
Suburban Yellow Taxi Company **249 NLRB No. 038**
(two taxi companies held single E where one company had no separate corporate indentity but existed solely as operating branch of other, same E officials signed U contract for both, there was common ownership, all of one company's business and personnel policies were established by officials of other company, taxis from each company's garage received orders relayed from same dispatching office, major support and repair services provided at one garage, and paychecks for both companies drawn on one bank account)

SFS Painting and Drywall, Inc.; James Sach d/b/a
J. Sach Painting and Drywall **249 NLRB No. 009**
(sole proprietorship held *alter ego* of and single E with corporation where sole proprietorship was established by president and sole shareholder of corporation and assumed and continued corporation's operations for benefit of corporation, utilizing substantially same capital and equipment, employing same management and supervisors, and providing same services to substantially same customers as corporation)

1642—Cont.

Teamsters, Local Union No. 560 (Curtin Matheson Scientific, Inc.) **248 NLRB No. 156**
(in secondary boycott case involving picketing at one of national company's branches in support of primary dispute at another branch, Bd held E and its branches constituted single E, in view of E's policy of cross-shipping whereby other branches perform work of struck branch, and fact that E's control over labor relations, though not on day-to-day basis, gives appearance of single-E by way of tactical advantage in dealing with labor disputes at local level)

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(two diners held single E where they were owned by same individual who was in charge of their industrial relations, they employed same accountant, interchanged managers and waitresses, and were engaged in same business activity)

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**
(corporation founded for sole purpose of constructing and owning real property of home for enfeebled and infirm adults found single E with home, in view of common ownership and management and centralized control over labor relations)

Land Equipment Inc. **248 NLRB No. 098**
(company renting construction equipment with operators to building contractors and company furnishing labor to above company held single E in view of interrelationship of operations, and common ownership, management and control of labor relations policies)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. **248 NLRB No. 089**
(two separately identifiable business entities, held single E, where two individuals owned and operated both entities, closely supervised both operations, and determined their labor policy)

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(full menu restaurant and fast food shop constitute single E which meets Bd's jurisdictional standards where fast food shop was sole stockholder of restaurant; one individual was president of fast food shop and vice-president and treasurer of restaurant as well as general manager of both food operations)

Rana Management Inc. **JD-(NY)-75-82**
(affiliated business with common officers and operators constituted single integrated business enterprise where owners of businesses administered common labor policy)

Power Service Co., T and T Truck and Trailer Leasing, Inc., Night Hawk Motor Transportation, Inc., and York Motor Transport, Inc. **JD-161-82**
(three Es engaged in transportation business having common management, supervision, labor relations and other common business functions held *single E*, since companies were shown to have existed for principal purpose of serving one another)

Valley View Hospital **JD-(SF)-88-82**
(service corporation and 2 hospitals it directed found single E notwithstanding hospitals were separate legal entities with separate bank accounts, lines of credit, payrolls and accounting, where there was common ownership and financial control of all 3, and hospitals were located near each other and had common management, centralized control of labor relations, and integration and interrelation of operations)

Royce Lindsay d/b/a Royce Lindsay Plumbing, Heating, and Refrigeration Supply Company, etc. **JD-(SF)-3-82**
(factors considered by Bd in determining whether separate Es are single employing entity are: interrelation of operations, centralized control of labor relations, common management, and common ownership and control; while no individual factor has been found controlling, emphasis is usually placed on such factors, particularly control of labor relations; and, generally, Bd has found *alter ego* status where enterprises have substantially identical management, business purpose of operation, equipment, customers, supervision, and ownership)

Royce Lindsay d/b/a Royce Lindsay Plumbing, Heating, and Refrigeration Supply Company, etc. **JD-(SF)-3-82**
(new corporate entities formed by owner of individual proprietorship held single E where enterprises had substantially identical management, business purpose had not been altered, there was common ownership, and enterprises were wholly owned by members of same family and by same individuals)

E. A. Fuller Boutique, Inc. d/b/a Boutique Lounge **JD-600-81**
(two corporations which operated bars and lounges and sole proprietorship which operated restaurant held single E, where one individual was sole owner of majority of stock of two corporations and also sole proprietor of restaurant and individual exercised ultimate control over three entities, personally setting wages for managers, granting stock options, paying vacation benefits, providing automobiles and medical insurance for management clearly controlling labor relations and three entities were held out to public as owned and operated by one corporation)

Chippewa Motor Freight, Inc. **JD-425-81**
(single-E relationship not found where although 2 companies were owned by same family they were separately operated, engaged in unrelated activities, all records and accounts kept separately and dealt with each other at arm's length)

Hensly Hardwood Lumber Co. **JD-285-81**
(three corporations engaged in lumber business held single E in view of common ownership, fact same individuals were officers in all corporations, and one individual possessed and exercised authority to control labor relations of all three corporations, companies utilized same attorney and accountant, Ees of all three entities used same health benefit plan; further, three entities were nothing more than divisions of integrated enterprises where one entity formed to handle sales of product of already established E, and third company formed for purpose of processing lower grade lumber produced by company into saleable product)

Domicile Manor, Inc. McCormick Health Centers, Inc. **JD-(SF)-52-81**
(two corporations held single E where they were affiliated business enterprises with common officers, management and supervision; they formulated and administered common labor policy, shared common personnel and facilities, interchanged personnel, and maintained coordinated purchasing functions)

Master Products, Inc.; et al. **JD-726-80**
(leasing company was part of single intergrated enterprise and constituted single integrated E, along with two manufacturing corporations in view of substantial common ownership and financial control over it by same person who exercised control over two manufacturing corporations; operation of the three entities were interrelated and had common control of their labor relations)

Marlboro Trucking Co., Inc., C-J Construction Co., Inc., Suburban Yelow Cab, Inc. **JD-441-80**
(Bd looks to 4 principal factors in determining joint, or single E status: 1) interrelation of operations; 2) common management; 3) centralized control of labor relations, and 4) common ownership or financial control)

Marlboro Trucking Co., Inc., C-J Construction Co., Inc., Suburban Yelow Cab, Inc. **JD-441-80**
(3 Es held to constitute single and/or joint Es where all 3 Es operate from single facility, single office clerk bills customers and issues pay checks to Ees of 3 Es, 1 individual controls labor matters relating to all 3 Es, there is substantial flexibility in work assignment of Ees among 3 Es, all of which evidence substantial degree of common financial control and intermingling of services and assets)

W S H Construction Company, Inc., J. B. Shannon and James A. Hurd, Equipment Rental Company **JD-70-80**
(corporation and partnership engaged in coal stripping business and road construction business respectively, held single E where corporation's president and vice president were sole partners in partnership, both companies had common office facilities, wife of corporation's vice president performed office, bookkeeping, and clinical functions for both companies, some of same Ees worked for corporation in winter and for partnership in summer and operations of the two companies were somewhat complimentary)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(controlling criteria are (1) interrelation of operations (2) common management (3) centralized control of labor relations and (4) common ownership; perhaps most important in Bd's eyes is degree of centralized control over labor relations; it is essentially factual determination and not to be disturbed provided substantial evidence in record supports Bd's findings)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(three corporations held single E where corporate structure evolved from common ancestor, and in view of interrelation of operations and common flow of management personnel from one corporation to another, common ownership by one family, some interchange of Ees and shared premises, and one person had and exercised power to make major decisions, including labor relations matters)

N.L.R.B. v. Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **646 F.2d 706 (C.A. 1, Apr 1981)**
(ct declined to disturb Bd's finding that two restaurants were single E, notwithstanding that degree to which restaurants' operations fulfill some of *C. K. Smith* criteria might be debatable, since record provides substantial evidence from which Bd could rationally draw conclusion that they were single E)

1642—Cont.

Mestall Trailer Corporation v. N.L.R.B. **682 F.2d 753 (C.A. 8, July 1982)**
(two companies whose owner had sold 25 percent of one company but retained 75 percent of such company held single E, where both companies shared common office space, and same Ees worked for both companies with same compensation, supervision, and conditions of employment)

N.L.R.B. v. Leavitt J. Cofer, Eunice Cofer, and Travelodge International, Inc., a partnership, d/b/a Marysville Travelodge **637 F.2d 1309 (C.A. 9, 1981)**
(no abuse of discretion in Bd's finding that motel's local partner and corporate partner were single E for purposes of jurisdiction where there was sufficient justification for such finding, in view of partners' joint venture agreement requiring that corporate partner be consulted prior to any U dealings by local partner, together with numerous other indications of close connection between partners that were spelled out by Bd)

N.L.R.B. v. Associated General Contractors of California, Inc. **633 F.2d 766 (C.A. 9, 1980)**
(two or more Es, if they are *alter egos,* may be treated as *single* E under the NLRA)

Safety Electric Corporation and San Joaquin Pacific Corporation **620 F.2d 311(T) (C.A. 9, 1980)**
(single E found where same individual was functioning as chief executive officer of two corporations)

N.L.R.B. v. Big Bear Supermarkets #3 and its alter ego Richard Homes **640 F.2d 924 (C.A. 9, Apr 8, 1980)**
(business purpose, equipment, and customers of chain store remained substantially the same before and after E franchised store to individual, and E performed accounting services for individual, all of which showed sufficient degree of interrelation of operations to favor finding of single-E status)

N.L.R.B. v. Big Bear Supermarkets #3 and its alter ego Richard Homes **640 F.2d 924 (C.A. 9, Apr 8, 1980)**
(where E franchised one of its stores to individual but retained under contract terms a sufficient number of controls over operation of store so that it continued to operate essentially as any other of E's stores, ct held common management criterion favored a finding of single-E status)

N.L.R.B. v. Big Bear Supermarkets #3 and its alter ego Richard Homes **640 F.2d 924 (C.A. 9, Apr 8, 1980)**
(criterion relating to common management or financial control favored finding of single-E status, where E franchised one of its stores to individual but franchise arrangement was a sham transaction executed for purpose of evading E's bargaining obligations with Us)

N.L.R.B. v. Big Bear Supermarkets #3 and its alter ego Richard Homes **640 F.2d 924 (C.A. 9, Apr 8, 1980)**
(although individual to whom E franchised one of its stores exercised full control over labor relations, Bd properly gave little weight to such control in finding that single-E status existed, where franchised agreemnet was not a bona fide, arm's length transaction but a sham arrangement for purpose of evading E's bargaining obligations with Us)

N.L.R.B. v. Big Bear Supermarkets #3 and its alter ego Richard Homes **640 F.2d 924 (C.A. 9, Apr 8, 1980)**
(presence of all four criteria of single-E test (interrelation of operations, common management, centralized control of labor relations, and common ownership) is not necessary to finding of single-E status; ultimate question is whether there is an absence of arm's length relationship between business entities in question)

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat **614 F.2d 777 (C.A. 9) (1980)**
(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**
(single-E status depends on *all the circumstances of the case* and is characterized as absence of *arm's length relationship found among unintegrated companies* and is based on four criteria: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership; determination of single-E status is sustained *if it has warrant in the record and a reasonable basis in law*)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**
(two Es held single E in view of interrelation of operations shown by transfer of Ees and tools to one E from other E, common accountant and address, (2) common management in view of control at policy level and same *qualifying* individual on license for both Es, (3) centralized labor relations where same person who formed nonU crew signed U contract and dealt with U, and (4) common ownership, same person owning 70% of one E, 50% of other)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**
(in finding that E's operation of unionized subsidiary and newly acquired non-U subsidiary constituted separate appropriate Ee units, ct rejected U's contention that fact that subsidiaries comprised a single E necessarily established that single unit of Ees of both subsidiaries was appropriate; a single E determination does not necessarily establish that E-wide unit is appropriate)

1642-0100 Generally

Chippewa Motor Freight, Inc. and Action Carrier, Inc. **261 NLRB No. 066**
(no single-E finding where notwithstanding same family owned both companies, controlled finances, overall labor relations and performed top management functions, there is insufficient interrelation of operations as business operation is different, operates out of small portion of prior enterprises' facility and low level management is different)

N.L.R.B. v. Browning-Ferris Industries of Pennsylvania, Inc. **691 F.2d 1117 (C.A. 3, Oct. 1982)**
(*joint E* and *single E* concepts are distinct in that they approach issue of *who is the E* from two different viewpoints with different standards required for each as enunciated in SCt's *Radio Union* decision applying *single E* concept and that set out in SCt's *Boire* decision applying *joint E* concept)

N.L.R.B. v. Browning-Ferris Industries of Pennsylvania, Inc. **691 F.2d 1117 (C.A. 3, Oct. 1982)**
(*single E* relationship exists where two nominally separate entities are actually part of single integrated enterprise so that there is a single E and the question is whether such enterprises constitute only one integrated enterprise; in deciding question, Bd considers four factors approved by SCt: 1) functional integration of operations; 2) centralized control of labor relations; 3) common management; and 4) common ownership; single E status ultimately depends on all circumstances of case and is characterized as absence of an *arm's length relationship found among unintegrated companies*)

1650 JOINT EMPLOYERS

Michigan Eye Bank **265 NLRB No. 179**
(state university (exempt entity) with which eye bank contracted for medical and administrative services not joint E with eye bank of eye bank technicians and thus jurisdiction asserted, since university retained no control over wages, hours or other terms and conditions of technicians' employment, notwthstanding most began relationship with eyebank as student assistants at university, where eye bank hired; trained, and set compensation and paid technicians directly from its own accounts rather than indirectly from funds granted by university)

Heck's Properties, Incorporated, Engineering Division and/or Mountaineer Investment Co., Inc. **264 NLRB No. 071**
(two corporations held joint Es of ventures and are jointly liable for each others' ULPs, notwithstanding no common ownership where firms performed parallel functions of constructing department stores merely depending upon U or nonunion status of particular job, one corporation lacked independent identity with respect to operations, administration, personnel, capital holdings and management has commonality with each other)

Educational & Recreational Services, Inc. d/b/a Associated Charter Bus Co., Las Virgenes Division **263 NLRB No. 135**
(Bd declined jurisdiction over E primarily engaged in supplying school bus transportation and related public services for students of School District, where School District not only had considerable authority over E's operations by virtue of express language of parties' agreement but also exercised extensive control over wages, benefits, hiring, termination, discipline, supervision, and work assignments of E's bus drivers; Bd noted that District had substantial control over E's labor relations of at least substantial segment of unit sought, and was joint E of E's Ees)

Trend Construction Corporation and General Electric Corporation, Individually and as Joint Employers **263 NLRB No. 044**
(contractor for furnishing and installing steam turbine and related equipment for power plant, and contractor with which it subcontracted to furnishing necessary labor, including millwrights, held joint Es of Ees in millwrights unit, notwithstanding separate corporations w/o common management or centralized control of labor relations where contractor participated in hiring and firing Ees for subcontractor's work, changing rate of pay, determining number of Ees in unit, and assessing and directing their work)

1650—Cont.

C. R. Adams Trucking, Inc., and Michael Cann 262 NLRB No. 067
(joint E relationship found between corporate E and individual proprietorship who do contract hauling where latter leased truck to former and both *shared and co-determined* working conditions of Ees who drove lessor's truck)

Educational and Recreational Services, Inc., d/b/a Associated Charter Bus Company, San Bernardino Division 261 NLRB No. 055
(Bd precluded from asserting jurisdiction over E primarily engaged in providing school bus transportation to Unified School District, in view of District's authority over E's operations by virtue of express language in contract between E and District and in (E's) drivers' handbook; established operational practices at E's terminal conclusively demonstrated that District exercised extensive control over wages, benefits, hiring, discipline, supervision and work assignments of E's Ees; District joint E of E's Ees)

Denzil S. Alkire, a Sole Proprietorship; et al. 259 NLRB No. 174
(where sole proprietorship dissolved its company during strike and formed new corporate entity, found its alter ego herein, which was subsequently leased by another E, all three Es held liable for unlawful acts of formed corporate entity and lessee E in requiring striking Ees to file new job applications as condition of employment, since newly-formed corporate entity and lessee E were found joint Es and each was found alter ego of original proprietorship)

Browning-Ferris Industries of Pennsylvania, Inc. 259 NLRB No. 021
(E who operated refuse transfer site and independent trucking brokers held joint Es of drivers employed by brokers where E effectively discharged and rehired drivers, treated drivers as its own Ees by providing them with coveralls bearing E's logo and by providing medical insurance to certain drivers under its own group plan, and establishing set hours of employment as opposed to simply requiring, under contract, 24 hour service from brokers)

American Air Filter Company, Inc. 258 NLRB No. 010
(lessee of unit Ees' services found joint E with lessor of their services in view of lessee's control of daily employment relationship with Ees)

Dining and Kitchen Administration, d/b/a DAKA 257 NLRB No. 046
(International House (IH) operator of IH cafeteria held joint Es as cafeteria was part of integrated enterprise offered to students and IH exercised control over E's labor relations policy, operating budget, and menu)

Moderate Income Management Company, Inc., and Marineview Housing Company No. 1 256 NLRB No. 179
(management company held joint E with owner-operator of housing project in view of fact that while project owner retains active and complete control of Ees' wages, hours and other terms of employment by exercising its right of approval of all labor relations policies prior to implementation by management company, the company has equal, if not greater, impact on terms of Ees' working conditions by its daily management of the properties)

General Electric Corporation, Installation & Service Engineering Division 256 NLRB No. 124
(joint-E relationship found between E who furnished laborers for construction project under contract with other E who furnished their supervisors where supervisor made decision to discharge Ee of former E)

Trans-States Lines, Inc. 256 NLRB No. 116
(trucking company (lessee) and fleet owner (lessor) held joint Es, since lessee was fully involved in (lessor's) employment process and exercised other controls over lessor's Ees)

Teamsters & Auto Truck Drivers, Local No. 85 (William Volker and Company) 253 NLRB No. 089
(no joint E relationship exists where two companies have: separate historical development, no common management, ownership or financial control, or centralized control of labor relations; functional relationship between companies is result of contract between them)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. 250 NLRB No. 042
(2 Es found single integrated enterprise and/or joint E where they have same majority owner, president, dispatcher, and office manager, same business, facilities and Ees, and, most significantly, same person determining labor relations policy)

Wayne County Neighborhood Legal Services, Inc. 249 NLRB No. 180
(E operating legal services organization held not joint E with federal agency, where E is contractor who needs no clearance from agency to hire and fire Ees and establish conditions of employment, engages in collective bargaining w/o permission or consultation with agency, has no agency Ees supervising its activities, and agency's monitoring reports and fiscal audits are directed at performance of management, not labor; changes in statute and regulations since Bd last asserted jurisdiction over E did not pertain to labor relations and practices of E)

Kenner Products Division, CPG Products Corporation, and Jeannine Robbins, d/b/a Schnabel's Drivers For Lease 249 NLRB No. 163
(joint-E relationship found where one E leases its drivers to other E; lessor hires, maintains fleet, handles all payroll functions, establishes and maintains written rules; lessee-E dispatches Ees, gives orders as to what runs to take, which trucks to use, proper routes to take, and controls discipline)

Kenner Products Division, CPG Products Corporation, and Jeannine Robbins, d/b/a Schnabel's Drivers For Lease 249 NLRB No. 163
(two businesses not found joint-Es where businesses are separately owned, completely different types of businesses, separate E identification numbers, separate unemployment compensation accounts, separate tax accounts, one business owns trucks and employs drivers to make deliveries and other E leases drivers to truck owning company, notwithstanding close family relationship between owners of companies)

Capriccios Restaurant, Inc. 249 NLRB No. 100
(resolution of any issue which may arise regarding nature of joint E relationship between E and another enterprise and successor E relationship between E and purchaser left to compliance stage)

California Labor Industries, Inc. 249 NLRB No. 087
(limited instances of company's participation in management of E, set against an otherwise complete absence of participation in E's labor relations, is insufficient to establish joint-E relationship)

J. M. Tanaka Construction, Inc. 249 NLRB No. 028
(company which acted as job broker and financier for E not joint E where: no common ownership, n1 authority or day-to-day control over Ees' work, lack of control over labor relations)

Children's Receiving Home of Sacramento 248 NLRB No. 053
(where governmental department made precise recommendations as to number of positions and their accompanying wages and benefits at childrens' home but home was free to deviate from recommendations, governmental department was not joint E with home)

U.S. Pipe & Foundry Company and Winfrey Enterprises, Inc. 247 NLRB No. 012
(manufacturing concern and company supplying it with drivers for its leased equipment held joint Es, notwithstanding absence of common ownership, officers, or financial interest, where manufacturer exercised effective control over drivers' working conditions and co-determined matters governing essential terms and conditions of employment of drivers used in fulfilling contract between the two companies)

Snow's Rent-A-Car JD-(SF)-283-82
(where operator of new taxicab business bought operating permits for his cabs from existing taxicab fleet owner and had latter dispatch his cabs as part of latter's fleet, they were joint Es of new business's drivers since existing fleet owner exercised authority over significant aspects of employment relations of new business's drivers and these drivers operated as integral part of fleet owner's fleet of cabs)

Endell Watts III, an individual, d/b/a Watts Transfer and Delivery Service, and Super-Rite Freightways, Inc. JD-110-82
(2 companies, one U, other nonU, held joint E notwithstanding they each kept separate accounting books charging each other for advances, charges and expenses)

Joseph Charles Tafarella A.K.A. Steve Rossi, and Total Productions Concepts, Inc. JD-(SF)-212-81
(E's which produced and sold musical shows held joint Ees of musicians where both possessed and exercised managerial and supervisory authority notwithstanding entitled to different percentages; and one E acted as payroll agent while one E concerned mainly with only one of shows involved)

American Federation of State, County and Municipal Employees Council 79; etc. JD-(ATL)-28-80
(council and local, both labor organizations, held joint Es in view of common management and centralized control of labor relations over council staff assigned to local in person of officer of local who was also council's staff director, with salary in both capacities paid by council)

Marlboro Trucking Co., Inc., C-J Construction Co., Inc., Suburban Yelow Cab, Inc. JD-441-80
(Bd looks to 4 principal factors in determining joint, or single E status: 1) interrelation of operations; 2) common management; 3) centralized control of labor relations, and 4) common ownership or financial control)

Marlboro Trucking Co., Inc., C-J Construction Co., Inc., Suburban Yelow Cab, Inc. JD-441-80
(3 Es held to constitute single and/or joint Es where all 3 Es operate from single facility, single office clerk bills customers and issues pay checks to Ees of 3 Es, 1 individual controls labor matters relating to all 3 Es, there is substantial flexibility in work assignment of Ees among 3 Es, all of which evidence substantial degree of common financial control and intermingling of services and assets)

1650—Cont.

International House v. N.L.R.B. 676 F.2d 906 (C.A. 2, Apr. 1982)

(E who operates cafeteria in International House (IH) held not joint E with IH as latter lacks immediate supervision or control of Ees (limitation on numbers of hours for resident workers was solely to comport with Immigration and Naturalization Law))

International House v. N.L.R.B. 676 F.2d 906 (C.A. 2, Apr. 1982)

(ct rejected Bd's reliance on appearance that IH operated cafeteria and cost-plus accounting method with IH's authority to review costs as there merely insured satisfactory work product w/o unnecessary charges being incurred)

International House v. N.L.R.B. 676 F.2d 906 (C.A. 2, Apr. 1982)

(operator of cafeteria in International House (IH) held independent contractor where contract provides that all *hiring and supervision* duties, sanitation, dishwashing, Ees' tax and insurance records envisioned of sub-contracting rather than joint E relationship; IH's control over cafeteria's hours, prices, menus, standards of *qualify, cleanliness, safety and health*, right to approve budget and inspect books was *monitoring aimed at satisfactory work product* rather than control over day-to-day operation or entitle IH to supervise workers in any manner)

N.L.R.B. v. Browning-Ferris Industries of Pennsylvania, Inc. 691 F.2d 1117 (C.A. 3, Oct. 1982)

(E, who operated refuse transfer site for city, and independent truckers (*brokers*) who furnished tractors and drivers to haul refuse from transfer station to landfill held joint Es, where E and brokers shared matters governing essential terms and conditions of employment; E established drivers' work hours and provided them with same uniform as own drivers; E and brokers together determined drivers' compensation; E directed drivers at transfer and landfill sites under its own rules; and used its own forms for record keeping)

The North American Soccer League, etc., et al. v. N.L.R.B. 613 F.2d 1379 (C.A. 5) (1980)

(soccer league and its constituent member clubs held joint E where league exercised significant degree of control over essential aspects of the clubs' labor relations and each club granted the league authority over not only its own labor relations but also, on its behalf, authority over labor relations of other member clubs)

Miami Foundry Corporation, Ravenna Industries, Inc., and A.C. Williams Company v. N.L.R.B. 682 F.2d 587 (C.A. 6, July 1982)

(ct affirmed Bd's finding that foundry company and new company which had purchased 59% of foundry's stock, together with new company's wholly-owned subsidiary, were single integrated enterprise constituting joint E, where E never ceased as a business entity, its owner still owned 41% of the stock and under new arrangement and management, it became increasingly active in the enterprise with the other two companies)

L. R. Davis, d/b/a Holiday Inn of Benton v. N.L.R.B. 617 F.2d 1264 (C.A. 7, 1980)

(where husband and wife employed by innkeeper operating motel and restaurant assumed his restaurant lease as partnership, partnership was found not to be joint E with innkeeper since partners made all decisions on labor relations at restaurant, managed it, did not include innkeeper in partnership and had no financial interest in his motel franchise)

N.L.R.B. v. Chicago Youth Centers 616 F.2d 1028 (C.A. 7, 1980)

(public agency has control over funding, job classification and compensation, and other terms and conditions of employment of head start program run by private agency; thus public and private agencies are joint-Es and private agency shares exemption of public agency under Sec. 2(2) of Act from Bd jurisdiction)

Industrial Personnel Corp. v. N.L.R.B. 657 F.2d 226 (C.A. 8, 1981)

(joint-E relationship depends on whether two separate businesses have (1) functional interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control; while none of these factors, viewed separately, is controlling, particular stress has been laid upon first three factors which reveal functional integration with particular reference to whether there is centralized control of labor relations)

Industrial Personnel Corp. v. N.L.R.B. 657 F.2d 226 (C.A. 8, 1981)

(manufacturing company and personnel company providing drivers for manufacturing company's trucking operations held joint Es since there is significant functional interrelation of operations between the two companies, which was the factor relied upon by the Bd; and while personnel company controls direct labor relations, manufacturing company's control of working conditions will inevitably involve it in labor relations; fact that there was no common management, ownership or financial control is not considered crucial to ct's determination; *Pulitzer Publishing Co. v. N.L.R.B.*, 618 F.2d 1275, dissg)

Miscellaneous Drivers and Helpers Union, Local No. 610 v. N.L.R.B. 624 F.2d 831 (C.A. 8, 1980)

(funeral home operator not joint E of funeral vehicle drivers with service company that provided home with funeral vehicle services under either *Southland* test of one party's control of other party's labor relations -- which was used by Bd -- or *Pulitzer* test of interrelated functions, centralized control of labor relations and common ownership and management where funeral home was not involved in hiring, disciplining, or discharging of drivers and has never recommended such action be taken by service company and has no financial management interchange with home)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. 621 F.2d 890 (C.A. 8, 1980)

(notwithstanding Es were separate corporations Es were joint Es, since they had some common ownership; one E leased space from the other E; president of one E was director of other; executive vice-president of one E was president and a director of the other E)

The Pulitzer Publishing Company v. N.L.R.B. 618 F.2d 1275 (C.A. 8, 1980)

(newspaper publisher held not joint E with newspaper delivery company of drivers delivering publisher's newspapers, since they have no common ownership or management, their operations are not substantially interrelated except for delivery company's contractual delivery of publisher's newspapers, and there is neither centralized control of labor relations nor substantial control of labor relations by publisher)

Tanforan Park Food Purveyors Council and the Hapsmith Company v. N.L.R.B 656 F.2d 1358 (C.A. 9, 1981)

(*joint E relationship exists when E exercises authority over employment conditions which are w/i area of mandatory bargaining*)

Tanforan Park Food Purveyors Council and the Hapsmith Company v. N.L.R.B 656 F.2d 1358 (C.A. 9, 1981)

(corporations held joint Es where one corporation operated common area for tenants of resturants in shopping center, employed unit Ees, paid Ees' compensation, insurance and social security, and paid maintenance expenses and taxes for which it assessed tenants, and another corporation managed entire complex and provided administrative assistance to first corporation but imposed no pricing or other restrictions, and had no authority to hire, fire or otherwise influence terms and conditions of employment)

Zapex Corporation and BDM Services Company v. N.L.R.B. 621 F.2d 328 (C.A. 9, 1980)

(no joint E relationship where E, under terms of cost-plus-fee contract with Army, retained *substantial control* over such bargaining subjects as hiring, discharging, wages, hours, grievance proceedings, and other terms of employment, and allowed to negotiate collective bargaining agreements, notwithstanding Army wielded *some* influence over wages, promotions, discharges, set dress code and Ees used army facilities)

Sun-Maid Growers of California v. N.L.R.B. 618 F.2d 56 (C.A. 9, 1980)

(where E transferred 3 of its Ees to another E's payroll but continued to control work schedules, assigned work and decided when additional Ees needed; joint-E relationship exists)

1650-0100 Generally

N.L.R.B. v. Browning-Ferris Industries of Pennsylvania, Inc. 691 F.2d 1117 (C.A. 3, Oct. 1982)

(*joint E* and *single E* concepts are distinct in that they approach issue of *who is the E* from two different viewpoints with different standards required for each as enunciated in SCt's *Radio Union* decision applying *single E* concept and that set out in SCt's *Boire* decision applying *joint E* concept)

N.L.R.B. v. Browning-Ferris Industries of Pennsylvania, Inc. 691 F.2d 1117 (C.A. 3, Oct. 1982)

(*joint E* relationship does not depend upon existence of single integrated enterprise but assumes that Es are independent legal entities that have merely historically chosen to handle jointly important aspects of their E-Ee relationship; and no finding of arm's length transaction or unity of control of ownership is required as in single E cases; it is rather matter of determining which of two, or whether both, Es control, in capacity of E, labor relations of given Ee group, and business entities are in fact separate but share matters governing essential terms and conditions of employment)

1667 SUCCESSOR EMPLOYERS

C.J.B. Industries 250 NLRB No. 184

(new owner held successor where he operates business as predecessor did, using same equipment to produce same product, at same location and although he failed to retain former Ees, it was because of their U affiliation)

Capriccios Restaurant, Inc. 249 NLRB No. 100

(resolution of any issue which may arise regarding nature of joint E relationship between E and another enterprise and successor E relationship between E and purchaser left to compliance stage)

Saks & Company d/b/a Saks Fifth Avenue 247 NLRB No. 139

(clothing store held successor to clothing store with which it had previously shared building and to which it had subcontracted alterations, and obligated

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to bargain, when it moved to separate building, established own alterations department and hired 16 of 18 individuals who had performed its alterations as subcontractor's Ees of other clothing store since no hiatus; notwithstandind contention no successorship since Ees from former unit did not constitute majority of members of appropriate storewide unit at new store, as no presumption storewide unit appropriate and alteration Ees' history of separate bargaining)

Patio Lodge, Inc., and Fountain Lodge, Inc. **JD-(ATL)-40-82**
(lessee operator of nursing homes who leased homes from former operator/owners held successors and obligated to bargain with U who represented Ees of predecessor, where employed full Ee complement of predecessors' Ees, continued operation of nursing homes in same facilities using names similar to predecessors, units continued with same Ees, and no hiatus in operations)

N.L.R.B. v. Winco Petroleum Company and Cooper Oil Company, Inc., Successor Employer **668 F.2d 973 (C.A. 8, Jan. 1982)**
(ct held that substantial evidence supported Bd's findings that E who bought company was successor E and obligated to remedy predecessor E's ULPs where (1) successor E acquired company with actual knowledge of pending ULP charges, (2) there was little or no interruption in business operations at company as result of acquisition, (3) successor E continued to operate enterprise w/o substantial change, and (4) a majority of successor E's Ees at acquired enterprise were predecessor E's Ees)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**
(E held successor and obligated to recognize and bargain with U where immediately after takeover all Ees in unit were Ees of predecessor E, and notwithstanding flucuation in size of unit during following 77 days, Ees of predecessor constituted majority of unit)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**
(Bd certification not necessary to trigger obligation to bargain of successor E)

1667-0100 Generally

Aircraft Magnesium, A Division of Grico Corporation **265 NLRB No. 172**
(traditional criteria for test of successorship include whether there has been substantial continuity in following: 1) business operations; 2) plant; 3) work force; 4) jobs and working conditions; 5) supervisors; 6) machinery, equipment, and methods of production; and 7) product, customers or service)

General Processing Corporation **263 NLRB No. 13**
(Bd found respondent E was not successor E and did not violate Act by failing to bargain with U, where successorship turned on whether majority of respondent's unit Ees had been unit Ees of previous E, and correct computation reveals that from date of respondent's receipt of U's demand through date of complaint's issuance, there never was a time when majority of respondent's unit Ees were Ees who had worked for the previous E)

Turnbull Enterprises, Inc. **259 NLRB No. 122**
(one-week hiatus in production held not to affect E's successorship role inasmuch as it resumed substantially same operations with substantially same work force and supervision)

Marco, Inc. d/b/a Towne Plaza Hotel **258 NLRB No. 016**
(purchase of stock in corporate entity which continued to exist after purchase, albeit under different management and w/o any hiatus in operations involves stock transfer rather than successor relationship; where stock transfer occurred during period between expiration of prior collective-bargaining agreement and U's execution of successor agreement with E, E may not decline to recognize and bargain with U in appropriate unit)

Southwestern Broadcasters, Inc. **255 NLRB No. 083**
(E who purchased assets of radio station held not successor E and thus not obligated to bargain with Us representing predecessor's Ees where E did not hire nor indicate that it planned to retain Ee complement of predecessor, supervisory hierarchy was replaced, and Us did not represent unit majority subsequent to E's acquisition of station; moreover, GC did not prove that E sought to avoid bargaining obligation by unlawfully refusing to hire sufficient number of predecessor's Ees in order for Us to maintain majority status)

Navajo Freight Lines, Inc. **254 NLRB No. 166**
(transaction whereby E assumed control over predecessor's business was not stock transfer but successor relationship, and therefore issue of whether E was aware of predecessor's ULP litigation was not eliminated; issue of E's liability was framed at hearing in terms of whether E was successor with knowledge of predecessor's ULP litigation, and E was not accorded opportunity to litigate stock transfer theory; stock sales agreement was admitted into evidence solely to allow consideration of its indemnification clauses, and stock ownership did not merely pass into new hands but was followed by predecessor's ceasing to exist as entity)

Sylan Pontiac **252 NLRB No. 037**
(E who took over automobile dealership, continued operations of selling new and used cars, employed virtually same work force, found successor E and refusal to bargain with collective bargaining representative of predecess E violative)

Westwood Import Company, Inc. **251 NLRB No. 162**
(purchaser of business held successor and obligated to bargain with U representing Ees of seller where it engaged in same business at same facility and sold to substantially same customers as seller and employed all of supervisory and nonsupervisory Ees in their same job classifications; further, purchaser may not justify its failure to bargain on basis of or basis of good faith doubt of Us majority where it acquired business with full knowledge of seller's unlawful refusal to bargain)

Local 1115, Joint Board, Nursing Home & Hospital Employees—Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **248 NLRB No. 167**
(E held bound for purposes of determining whether it should arbitrate whether it was bound by any provisions of its predecessor's agreements, where E for purposes of SCt's Wiley decision, under Sec. 301, was successor, since there was a *substantial continuity of identity in the business enterprises,* and a complete *continuity in the identity of the work force across the change in ownership*)

Local 1115, Joint Board, Nursing Home & Hospital Employees—Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **248 NLRB No. 167**
(while mere existence of successorship clause cannot bind E to substantive terms or to arbitration absent substantial continuity of identity in business enterprises, successor who refused to assume any obligations under predecessor's agreements was bound to arbitrate since substantial continuity was present; moreover, E never refused to assume any obligations under predecessor's contract)

Hospital San Miguel, Inc. **JD-287-80**
(where transfer of stock and sale of assets with lease back to E occurried, and hospital's name unchanged, same equipment used, Ees remained same, supervisory staff unchanged, corporate charter unchanged, refusal to bargain with U violative either because Respondent, a corporate entity remained same employing entity, or because E held successor)

Oil, Chemical and Atomic Workers International Union, Local 6-578 (D & M Truck Stop, Inc.) **JD-207-80**
(E who takes over business from another E becomes successor E only where bargaining unit remains unchanged and majority of Ees hired by new E are represented by U seeking recognition)

Saks & Company v. N.L.R.B. **634 F.2d 681 (C.A. 2, 1980)**
(transfer of assets is evidence of requisite of continuity of business operations necessary to finding of successor E but it is not necessary condition)

Bellingham Frozen Foods, Inc. v. N.L.R.B. **626 F.2d 674 (C.A. 9, 1980)**
(E not required to reinstate office clerical Ee who was unlawfully discharged by predecessor E where E did not hire any of predecessor's office clericals and thus E was not successor with regard to predecessor's office clerical worker unit)

1667-5000 Same employing industry

Jeffries Lithograph Company, A Subsidiary of The Ticor Printing Group, Inc. **265 NLRB No. 190**
(commercial printer held successor of commercial printer whose assets it purchased where it used same facility, employed same work force and foreman, and made no showing that it changed Ees' duties, served a different class fo customers over different geographic area or so changed managerial and sales operations as to substantially alter the enterprise's identity)

Aircraft Magnesium, A Division of Grico Corporation **265 NLRB No. 172**
(E who purchased business from predecessor's creditor shortly after bankruptcy ptn was filed held successor, in view of substantial continuity in employing industry, where parties stipulated that E resumed same work, at same location, with same equipment 4 weeks after successor closed operations, and with same job classifications, at least 1 supervisor, had same supplier and customers and majority of predecessor's Ees were hired)

Aircraft Magnesium, A Division of Grico Corporation **265 NLRB No. 172**
(hiatus of 3-4 weeks did not relieve successor E of duty to bargain with U which had contract with bankrupt predecessor, as hiatus is significant in determining successorship status only where other substantial changes in operations have occurred)

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Aircraft Magnesium, A Division of Grico Corporation 265 NLRB No. 172

(successorship status was not defeated by purchasing business from predecessor's creditor in bankruptcy, and telling Ees at time of hire that it would be non-U but would have option of U representation at later dae)

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal 265 NLRB No. 121

(purchasing E of company found successor where same business operations were continued w/o hiatus at same location with same supervision, same equipment and same persons controlling labor relations; furthermore, name on company trucks had not changed to name of purchasing E)

New-Stan Dyeing and Finishing Co., Inc. 263 NLRB No. 140

(company which purchased another company's assets, land, buildings, and equipment held successor to the other company where purchaser engaged in same operations and business as other company in same plant and utilized substantially same work force with same jobs and working conditions and used same equipment)

Pinter Bros., Inc., Retnip Corp., Pin-Bro Leasing, Inc., GLT Transportation Lines, Inc., a/k/a Moon Express Co., INc. 263 NLRB No. 091

(existance of successorship depends upon whether former employing enterprise has been substantially continued in existance by new owner and here where majority of Ees at new enterprise had not previously been employed by old and there was no assumption of old enterprise's operation there can be no successorship)

Premium Foods, Inc. 260 NLRB No. 092

(new enterprise formed by old operation's manager upon its closure held successor to former operation where new enterprise used same plant, processing equipment, and job classifications as were used by former E; there was significant carryover of managerial authority, and initial work complement consisted of former E's Ees; and while product lines had been changed and significant changes made in clientele served, such changes were not of such magnitude as to be controlling since new enterprise operated in same industry and employed same classification of Ees in essentially unchanged working conditions)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040

(purchaser of nursing home held successor E where, following purchase, location of business and its nature, equipment, number and identity of patients, level of care and funding for them, and lower-ranking supervisors remained the same; there was no hiatus in operation of business; and, with few exceptions, E hired most of seller's Ees)

Denzil S. Alkire, a Sole Proprietorship; et al. 259 NLRB No. 174

(where sole proprietorship dissolved company and terminated Ees and then formed new corporate entity, newly-formed company held successor and alter ego of dissolved company, where both entities had substantially identical business purpose, operation, equipment and customers, and predecessor and his family owned and controlled new company)

Denzil S. Alkire, a Sole Proprietorship; et al. 259 NLRB No. 174

(where proprietorship dissolved company and formed new corporate entity, found its alter ego herein, which was subsequently leased by another E, such E held successor and alter ego of proprietorship and the new corporate entity, since there was substantially identical business purpose, operation, equipment, and customers; proprietor continued to play substantial role in actual operation of business; and economic realities of lease agreement whereby new E invested no capital and propreitor retained all financial risks and received all profits demonstrated that E was directly or indirectly subject to economic power of proprietor)

Contract Carrier, Inc. 258 NLRB No. 043

(lessee of trucks held successor to former lessee and obligated to recognize and bargain with U which represented Ees of former lessee where four out of five Ees in unit had been employed by former lessee and performed same type work as they had for former lessee i.e. loading same product in same trucks used by former lessee and delivering to same type customer, notwithstanding 29% of predecessor's customers not serviced, and fewer truck-drivers employed as such change in scale of operations not considered extreme as to affect successor finding)

Landmark International Trucks, Inc. 257 NLRB No. 170

(successor E found where E operated facility at same location w/o hiatus, was identical type business rendering same service and product, did business with same customers and retained most of Ees of predecessor E)

Petros Coal Corporation and Blue Coal Corporation 257 NLRB No. 016

(E who failed to file answer in backpay proceeding found successor E where he took over operations of company with knowledge of predecessor's unremedied ULPs at same location, provided same services to same customers, had same supervisors and Ees)

Marlene Industries Corporation; et al. 255 NLRB No. 193

(E held successor where there was substantial continuity of identity in work force from previous to succeeding E)

W. Q. T., Inc. 254 NLRB No. 098

(lessor of predecessor's premises and purchaser of its goodwill, inventory, assets, name, etc., but hired none of its Ees held not successor and therefore its refusal to grant seniority for predecessor's striking Ees found not violative)

Kraft Plumbing and Heating, Inc. 252 NLRB No. 126

(corporation formed from stock transfer from sole-owner father to son held successorship where there was *substantial continuity of employing industry* in that new corporation continued same type of plumbing repair and remodeling work, operated business out of same location, and employed same Ees)

Stroehmann Brothers Company 252 NLRB No. 139

(purchaser of baked goods distributorship held successor E where there was continuity in business operation, continuation of same types of product lines, departmental organization, Ee identity and job functions)

Franklin Fouts, d/b/a B & F Cartage 251 NLRB No. 066

(purchaser of business found successor E where it continued same business in same location under virtually same conditions, using same equipment, and giving same service and with duty to employ same work force)

Cablevision Systems Development Company, A Partnership 252 NLRB NO. 176

(cable TV company held successor E to subcontractor where it terminated subcontracting relationship, bought certain amount of subcontractors' equipment and vehilces, took over subcontractor's functions, and hired Ees of whom vast majority had been employed by subcontractor to do same work that they had done for subcontractor)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. 249 NLRB No. 003

World Evangelism, Inc. 248 NLRB No. 117

(network of interdenominational Evangelical Christian ministries found successor E to hostelry from which it purchased hotel-office-building complex as commercial source of revenue)

L.A.X. Medical Clinic, Inc.; et al. 248 NLRB No. 112

(E held successor and obligated to recognize and bargain with U representing Ees of predecessor where after purhase it continued same operation at same location using essentially same equipment and providing same services to substantially same individuals)

Barclay Hospital, Inc. 247 NLRB No. 144

(E held successor in view of continuity of employing industry where E had knowledge that predecessor's Ees had selected U as their representative in Bd election, E purchased assets of predecessor and took over operation w/o any interruption of services, and retained all of predecessor's supervisory personnel as well as its employees; changes eventually implemented by successor did not render operation substantially different from that of predecessor, nor was there any contention that changes rendered certified unit inappropriate)

Evergreen Lumber Company, Inc. JD-(SF)-296-82

(purchaser of business not successor E where, between time prior owner shut down facility and purchaser reopened it for business, there was hiatus of about 14 months and real question existed as to unit Ees' desires with regard to continued representation by U which had represented predecessor's Ees; in addition, when new owner began operating facility, it changed Ees' terms and conditions of employment, changed production techniques, did business with different customers, and employed entirely new supervisory staff)

Transportation Manpower Services of Ohio, Inc. JD-(SF)-192-82

(E held successor where it hired 5 of 10 drivers of predecessor and continued to engage in substantially same business w/o interruptions as predecessor had before it and successor E failed to hire one or more of predecessor drivers for anti-U reasons)

Croley Coal Corporation JD-288-82

(purchaser of mine who acquired all equipment, used it at same site, retained all foremen; and w/i two weeks reached same level of work force as previously existed found successor E)

Power Service Co., T and T Truck and Trailer Leasing, Inc., Night Hawk Motor Transportation, Inc., and York Motor Transport, Inc. JD-161-82

(successor E liable for acts of its predecessor where record supported finding that there was substantial identity of interest among Respondents)

Valley Vista Hospital JD-(SF)-68-82

(single E – consisting of large hospital, small hospital it had purchased, and service corporation which directed them both – found successor E to small hospital where it operated same facility with same equipment and Ees and performed same functions)

Ridgway Trucking Company and Sand & Stone Transport, Inc. JD-22-82

(where ULPs occurred while predecessor was in bankruptcy proceedings and it survived those proceedings, continuing in same operation, with only

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change in ownership successor E is jointly liable with predecessor for remedying ULPs)

Haym Salomon Home For The Aged, et al., d/b/a Lawson Life Extension Organization **JD-(NY)-78-81**
(de facto receiver whose status as receiver was subsequently approved by ct to take over operations of home for the aged and who later became actual owner of the home held successor to prior owner-operator of home, in view of continuity of patient care and operations, and continuity of work force in toto; case here is stronger for finding successorship than analogy of receivers and trustees in bankruptcy who are in nature of custodians and not considered permanent in their positions)

S & J Lines **JD-(SF)-248-81**
(E held not to be successor to predecessor E where only 6 of E's 23 Ees were formerly employed by predecessor E)

Marine Machine Works, Inc.; et al. **JD-(SF)-227-81**
(Respondent which acquired assets of predecessor E, continued its business w/o change or interruption, with same supervisors and Ees, and was aware of ULP charges against E and potential liability at time of sale is successor E and obligated to remedy ULP's of predecessor E)

Cascade Chevrolet Company **JD-(SF)-136-81**
(company that purchased General Motors franchise of predecessor held successor E and therefore obligated to bargain with U before making unilateral changes, E where location, equipment, etc., was same, it hired 11 out of 15 of predecessors Ees, and opened for business 3 days later under new name)

Atlanta Baking Company, Inc. **JD-288-80**
(purchaser-lessee of terminated bakery's inventory, plant, equipment and business found successor to seller-lessor in view of continuation of same business operations w/o hiatus, use of same facilities and work force as predecessor with same mode of payment and same customers served in same manner)

Venture Stores, Inc. **JD-81-80**
(E which built distribution center to service both its previously owned and its newly purchased stores held not successor at distribution center to E from which it purchased stores, since purchaser neither employed majority of seller's Ees there on critical date nor was it perfectly clear that it would do so in future; moreover distribution center did not involve same location, plant, equipment, methods, service or customers as seller's distribution facility and its Ees were not accretion to unit of Ees employed at stores which were purchased)

Atlas Inc. **JD-890-79**
(E which acquired all physical assets of predecessor, engaged in substantially same business operations as formerly engaged in by predecessor, and employed as manager the predecessor's president and principal stockholder, held successor to and *alter ego* of predecessor)

N.L.R.B. v. Cablevision Systems Development Company, et al. **671 F.2d 737 (C.A. 2, Mar. 1982)**
(cable TV company, which recaptured operation previously performed by independent contractor and carried over bulk of contractor's Ees to perform same work as before, found successor to independent contractor, notwithstanding overall businesses of the two companies were quite different, since the operations affecting U members were the same)

N.L.R.B. v. Hudson River Aggregates, Inc. **639 F.2d 865 (C.A. 2, 1981)**
(E which purchased and carried on same business on same premises using same supervisors and equipment and with Ees performing essentially same tasks held successor notwithstanding purchaser planned to expand business since this would not alter nature or structure of enterprise)

Saks & Company v. N.L.R.B. **634 F.2d 681 (C.A. 2, 1980)**
(where unit Ees of predecessor E performed alterations only on women's clothing and unit Ees of successor E work on mens, womens, and children's clothing, this minor change not sufficient to prevent finding of successorship as work skills are same)

N.L.R.B. v. Hot Bagels and Donuts of Staten Island, Inc., and Amboy Baking, Inc. **622 F.2d 1113 (C.A. 2, 1980)**
(fact that title to equipment is now vested in bank, and that foreclosure sale intervened between predecessor's disappearance and successor's emergence pose no legal bar to Bd's finding of successorship where *employing industry* test is met)

N.L.R.B. v. Hot Bagels and Donuts of Staten Island, Inc., and Amboy Baking, Inc. **622 F.2d 1113 (C.A. 2, 1980)**
(successor relationship established notwithstanding no sale or other legal transaction between the 2 corporations as test is whether employing industry remains essentially same after transfer of ownership and, here, successor sold same line of goods, at same location, with same equipment, with high percentage of predecessor's former Ees and hiatus between predecessor's demise and successor's birth was short)

Westwood Import Co. Inc., and Gamut Designs, Inc., d/b/a Westwood Import Co. v. N.L.R.B. **681 F.2d 664 (C.A. 9, July 1982)**
(substantial evidence supported Bd's finding that E was successor to former E where after sale, successor essentially continued predecessor's business operations and employed substantially same work force as predecessor)

N.L.R.B. v. World Evangelism, Inc. **656 F.2d (C.A. 9, 1981)**
(nonprofit religious organization held successor to predecessor E where it retained all of bargaining unit Ees, continued to operate predecessor's hotel facilities and its commercial leasing operations, and unit Ees continued to work at same location performing same tasks)

Karl Kallmann, d/b/a Love's Barbeque Restaurant, No. 62 v. N.L.R.B. **640 F.2d 1094 (C.A. 9, 1981)**
(new E held successor E where majority of predecessor's Ees would have survived takeover of business but for E's discrimination in not rehiring former Ees because of their U affiliation)

1672 BANKRUPTCY TRUSTEE OR DEBTOR-IN-POSSESSION

Sealift Maritime, Inc. **265 NLRB No. 154**
(contract executed when E had status of debtor-in-possession held bar, as Bankruptcy Reform Act of 1978 grants debtor-in-possession all powers that trustee had under Bankruptcy Act of 1898, and contract will serve as bar to ptn unless and until contract rejected by bankruptcy ct)

Nathan Yorke, Trustee in Bankruptcy, Successor in Bankruptcy, or alter ego To The Seeburg Corporation and Seeburg Service Parts Co., a single employer **259 NLRB 105**
(trustee in bankruptcy is alter ego of bankrupt E, and, like that E, is under duty to comply with NLRA, including requirement to engage in collective bargaining)

Imperial Hospital; Donald W. Henry, Trustee in Bankruptcy **257 NLRB No. 061**
(trustee in bankruptcy is *alter* ego of bankrupt E and successor in law *vis-a-vis* U)

World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession **247 NLRB No. 201**

Belair Chateau Hospital, Inc., d/b/a University Heights Hospital **JD-(SF)-213-80**
(trustee in bankruptcy derivatively liable for bankrupt E hospital's unlawful discharges where trustee knew of claims of unlawfully discharged Ees and had ample opportunity to shield itself against continuing accrual of backpay by offering reinstatement to claimants, course it deliberately eschewed)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession **682 F.2d 72 (C.A. 3, June 1982)**
(debtor-in-possession, who had obtained permission from bankruptcy ct to reject bargaining agreement, held not alter ego of debtor nor party to bargaining agreement; rather, debtor-in-possession is new entity with its own rights and duties subject to bankruptcy ct's supervision and is comparable to trustee and is an officer of the ct; debtor-in-possession is analogous to successor E and may be required to bargain with U, but it is not party to predecessor's bargaining agreement unless it is assumed, and it is able to reject agreement w/o following 8(d) procedures)

1673 PURCHASER OF ASSETS OF BANKRUPT

The Seeburg Corporation, et al. v. N.L.R.B. **No. 79-B-39597, Nov. 13, 1980, DC N.D. IL (unreported)**
(order staying Bd's ULP proceedings vacated and bankruptcy judge ordered to refrain from hearing ULP charges, since proceedings by BD are not automatically stayed by bankruptcy filing; all bankrupt's assets were being sold to single entity with full knowledge of ULP charges and possibility of backpay assessment which made transfer of assets *a reorganization,* and not *a liquidation*; ULP charges and question of successorship left to Bd's superior expertise)

1675 FOREIGN CORPORATIONS

State Bank of India **262NLRB No. 143**
(jurisdiction asserted over bank since it had no special status as instrumentality of Government of India insofar as American labor laws were concerned and did not come w/i exclusions provided for Sec. 2(2))

1683 STATUTORY EXCLUSIONS FROM EMPLOYER STATUS

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(contention that E operating legal services organization is statutorily exempt from Act as joint E with federal agency, rejected, where governing agency

1683—Cont.

by very terms of statute which created it was removed from Sec. 2(2) exemption and, in any event, E is not joint E with agency)

1683-2500 Wholly owned government corporations

Radio Free Europe/Radio Liberty, Inc. **262 NLRB No. 063**
(jurisdiction asserted over non profit private corporation engaged in production and transmission of radio broadcasts to Eastern Europe that is funded and evaluated by government agency established for that purpose, though Agency exercises no control of corporation's labor relations, since under *right to control* test E is private corporation and has enough control over labor relations to engage in collective bargaining)

1683-5000 State or political subdivision

Michigan Eye Bank **265 NLRB No. 179**
(jurisdiction not asserted over research assistants who worked on eye bank program over which jurisdiction asserted and which contracted with state university for medical and administrative services, since important labor relations matters including wages, hours, and working conditions of research assistants controlled by university to extent that it would be impossible for parties to engage in meaningful bargaining w/o involving university, which is exempt governmental institution)

Michigan Eye Bank **265 NLRB No. 179**
(state university (exempt entity) with which eye bank contracted for medical and administrative services not joint E with eye bank of eye bank technicians and thus jurisdiction asserted, since university retained no control over wages, hours or other terms and conditions of technicians' employment, notiwthstanding most began relationship with eyebank as student assistants at university, where eye bank hired; trained, and set compensation and paid technicians directly from its own accounts rather than indicrectly from funds granted by university)

St. Jude Industrial Park Board **265 NLRB No. 087**
(jurisdiction asserted over unincorporated entity in business of promoting industrial development for fourth class city (on population basis) where development was both federally and privately funded and which, during 1980, directly purchased goods and supplies exceeding $50,000 from outside state; city had no removal power over members of (industrial) Park Board appointed by private developer; (industrial) Park Board was neither direct creation of state nor was it administered by individuals responsible to public officials or to general electorate, nor did it have any control over budget of Park Board)

Greater Framingham Mental Health Association, d/b/a Youth Guidance Center **263 NLRB No. 146**
(E jurisdiction asserted over E which operated mental health clinic under partnership contract with state who loaned some supervisory and managerial personnel to E who were paid wholly by state and received state pay and benefits, and some bybrid Ees paid partly by state and partly by association, and inspected by state; since E had not ceded control to state where E governed by independent board of directors on which no state officials sit, E had control over all hiring, salaries, evaluation and termination of Ees including hybrid Ees, but excluding state Ees, and standards of supervision set by E)

Target, Inc. **263 NLRB No. 101**
(jurisdiction declined over nonprofit corporation providing residential mental health care and vacational day care for mentally retarded adults as it shares with State exemption under Sec. 2(2) in view of state's retention of substantial control over Ees' wages, benefits, hiring and working conditions through funding budget reviews, and close monitoring of E's operations; contract in which salaries, client/staff ratio, client selection and treatment, etc., are specified, must conform to court consent decree to which State is bound)

Jervis Public Library Association, Inc. **262 NLRB No. 148**
(jurisdiction declined over public library because it is an administrative arm of state in providing educational services to public as evidenced by a city and the State exercising significant control over E's expenditures by reason of required submission of its armed budget to each prior to funding approval with right to modify budget vested in these governmental authorities and E's Ees participate in State retirement system and city's health plan)

Hillside Bus Corp. **262 NLRB No. 152**
(jurisdiction asserted over corporations engaged in transporting students under contract with Board of Education since insufficient control by Board of Education to preclude corporations from bargaining effectively about terms and conditions of employment, notwithstanding master seniority list for all drivers, mechanics, dispatchers employed by Board of Education's contractors who furnished 5 vehicles or less, where corporations had only 1 Ee subject to that agreement, and only requirements imposed by Board of Education were to pay minimum wage and make contributions to welfare and pension plans)

Radio Free Europe/Radio Liberty, Inc. **262 NLRB No. 063**
(political subdivision exemption applies only to states and not to non profit corporation funded by government agency for purpose of producing and transmitting radio broadcasts to Eastern Europe)

Wordsworth Academy **262 NLRB No. 042**
(E operating private school participating in State educational plan for children with learning disabilities held not exempt political subdivision, where, despite close relationship between E and State, E has full authority to conduct its affairs and is not directly responsible to public officials or general electorate; State standards, while clearly having an effect on E and other private schools, are no more than licensing requirements for engaging in business of education and for doing business w/i State under its special education plan)

United Truck and Bus Service Co. **257 NLRB No. 051**
(mtn to dismiss R-ptn granted where Bd found that local Union was not labor organization w/i meaning of Act due to requirement, in its constitution that members must be Ees of public Es; therefore, since public Es are not Es as defined in Sec. 2(2) of Act and that Ees of such Es are not Ees as defined in Sec. 2(3) of Act, Local does not exist for purpose of dealing with Es as defined in Act)

K & E Bus Lines, Inc. **258 NLRB No. 137**
(Bd asserted jurisdiction over E majority of whose business was performed pursuant to contract with school district since E retained sufficient control over employment conditions to bargain effectively, notwithstanding contract provided that school district determined bus routes and schedules, prescribed rules of conduct for students on buses, reserved right to recommend hiring and dismissal of drivers, and provided contractor will work under direct supervision of school official, inasmuch as contract did not confer on school district right to supervise Ees; nor were regulations in state school bus manual so restrictive as to preclude bargaining)

Madison County Mental Health Center, Inc. **250 NLRB No. 030**
(jurisdiction not asserted over county mental health center which operates facilities in county hospital and house owned by private organization, where E was created by county government to fulfill statutory obligation to provide care for mentally retarded and mentally ill persons, funding is 80 percent federal and state, budget is subject to approval and labor relations are generally governed by guidelines adopted by statutory mandated boards composed of members appointed by state agency and county commissioners)

Community Health and Home Care, Inc. **251 NLRB No. 094**
(E providing and administering comprehensive public health nursing and homemaker program to 10-town area in State held agency of towns it serves where E's board of directors is accountable to and appointed by public officials in towns served by the agency and therefore it is a political subdivision and exempt from Bd's jurisdiction)

Vantage Petroleum Corp. **247 NLRB No. 202**
(jurisdiction asserted over E petroleum company's operation of state parkway gas service stations under contract with the state, since state's actual exercise of control over E's operations is not to such degree as to impair E's control over labor relations so as to render E incompetent to bargain efficaciously with a U, nor does E's performance of services for state constitute performance of services intimately related to traditional state functions warranting nonassertion of jurisdiction)

Crestline Memorial Hospital Association, Inc. v. N.L.R.B. **668 F.2d 243 (C.A. 6, Jan. 1982)**
(political subdivision exemption limited to entities that are either (1) created by state, so as to constitute departments or administrative arms of government, or (2) administered by individuals who are responsible to public officials or to general electorate)

N.L.R.B. v. St. Louis Comprehensive Neighborhood Health Center, Inc. **633 F.2d 1268 (C.A. 8, 1980)**
(Bd exercise of jurisdiction over *HEW* funded non-profit E which provided health services to county residents, held proper where E was not arm of federal or state government nor did its board members serve at pleasure of public officials or general electorate; board of directors of E had primary responsibility for personnel policies, wages and other conditions of employment; limitations placed on E by *HEW* served to define economic framework for E and U bargaining)

1683-7500 Persons subject to Railway Labor Act

Elliott Flying Service, Inc. **240 NLRB No. 068**
(Bd did not assert jurisdiction over E engaged in operation of air charter and taxi service, as well as in selling and servicing of Beechcraft aircraft, training of pilots, providing of pilots for owners of small aircraft, and providing of fueling and emergency aircraft maintenance for an airline, since the National Mediation Board advised Bd that E was subject to provisions of Railway Labor Act)

DHL Corporation **240 NLRB No. 012**
(ptn dismissed and jurisdiction not asserted over corporation engaged in transportation by air of mail and other time-sensitive commodities where Bd was advised by the National Mediation Board that it is of the opinion this corporation is carrier w/i scope of Title II of the Railway Labor Act)

1683-7500—Cont.

Air Cleveland, Inc. 253 NLRB No. 059
(ptn of Ees of E engaged in providing certain ground services to air carrier dismissed, since National Mediation Board, by request of Bd, determined that E was w/i scope of *Title II of the Railway Labor Act)*

Missouri-Illinois Central Industries, Limited 252 NLRB No. 143
(Bd did not assert jurisdiction over E engaged in freight handling services to various common carriers engaged in interstate commerce where *National Mediation Board* found activities of E and Ees performing such activities were subject to the *Railway Labor Act*)

1683-8700 Labor organization or officer thereof

1683-8750 Labor organization acting as employer

Carpenters Local Union No. 35 (Klaus Martin, an Individual) 264 NLRB No. 108
(when U takes on role of E, Act applies to it *just as it would to any other E*)

2400 EMPLOYEE (SEE 440-1760 AND 460-5000 FOR DEFINITION OF EMPLOYEE TYPES AND CATEGORIES)

Montgomery Ward & Co., Inc. v. N.L.R.B. 668 F.2d 291 (C.A. 7, Dec. 1981)
(a person who has no reasonable expectation of future employment as of date of U recognition demand cannot be considered to be an *Ee* w/i meaning of Act for purposes of determining majority status; *reasonable expectation of employment* standard includes two elements that must be satisfied before an Ee's card may be counted: a subjective element - the Ee's intent or expectation - and an objective element - the reasonableness of the expectation)

Montgomery Ward & Co., Inc. v. N.L.R.B. 668 F.2d 291 (C.A. 7, Dec. 1981)
(ct determined that since two Ees never returned to their job after holiday then it could be inferred that they abandoned their job as of day after holiday and thus were not Ees on date of U demand nor should authorization cards signed by them be counted in determining whether U had support of majority of Ees on that date; fact that Ee who has abandoned his job is still carried on E's records is not sufficient to make that person an *Ee* as matter of law)

2401 GENERALLY

Abbey Medical/Abbey Rents, Inc. 264 NLRB No. 129
(strike replacements are considered Ees, and E's failure to comply with contract to make required fringe benefit payments to contractual trust funds on their behalf is violative)

T.H.E. Co. d/b/a L. D. Brinkman Southeast 261 NLRB No. 025
(threatening Ee with discharge for U activity violative, notwithstanding E's contention that Ee had *resigned* at time of threat, since Ee would have remained statutory Ee w/i meaning of Sec. 2(3) after alleged resignation)

Musicians Union Local 47, etc. (American Broadcasting Company, etc.) 255 NLRB No. 065
(Ee who performed services for various Es during applicable period held Ee w/i meaning of Act, since Ee definition does not require showing that individual is employed by specific E inasmuch as it includes not only existing Ees of any E but also, in a generic sense, members of the working class)

Henry A. Young, d/b/a Columbia Engineers International 249 NLRB No. 144
(individuals not deprieved of Ee status notwithstanding also employed by U as organizer)

N.L.R.B. v. Union Nacional De Trabajadores, et al. 611 F.2d 926 (C.A. 2, 1979)
(Ees hired by E to pump gas during strike found to be Ees and entitled to protection of Act notwithstanding Ees were Ees of security firm engaged by gas station operator to provide individuals to pump gas and report threats to persons and damage to property)

N.L.R.B. v. Villa Avila, Palm Springs Sun Dial and Tom Sawyer Construction Co. 673 F.2d 281 (C.A. 9, Mar. 1982)
(*Section 2(3) of Act states that Ees protected by act shall not be limited to Ees of particular Es.* Thus Ees of U subcontractors protected from acts of non-U general contractors in control of job site)

B. W. Herman & Sons, Inc. v. N.L.R.B. 664 F.2d 248 (C.A. 10, Nov. 1981)
(in finding that Bd properly asserted jurisdiction over E providing school bus transportation services to school districts, assertedly exempt from BD jurisdiction under Sec. 2(2), which had authority to reject job applicants and to recommend dismissals, ct stated that ct view absolute power to hire and fire workers as relevant but not essential indication of E-Ee relationship)

2401-6700 Entitlement of managerial employees to protection of the Act

N.L.R.B. v. Yeshiva University 440 U.S. 906 (U.S. SCt, Feb 20, 1980)
(managerial Ees are defined as those who *formulate and effectuate management policies by expressing and making operative the decisions of their Es*; they must exercise discretion w/i or even independently of established E policy and must be aligned with management)

N.L.R.B. v. Yeshiva University 440 U.S. 906 (U.S. SCt, Feb 20, 1980)
(faculty at university exercised managerial authority by virtue of their authority in academic matters being absolute; they decided what courses will be offered, when they will be scheduled, to whom they will be taught to, teaching methods, grading policies, class sizes, and matriculation standards; furthermore, while these decisions required use of independent professional judgment it does not take decision makers out of *managerial* status)

Bentley Hedges Travel Service, Inc. 263 NLRB No. 184
(discharge of managerial Ee for his part in writing Ees' grievance letter, attendance at U meeting and signing of U authorization card, not unlawful, since managerial Ees are excluded from protection of Act and like supervisors may be disciplined for U or concerted activity)

Florida Memorial College 263 N.L.R.B. 160
(faculty of private, nonprofit educational institution did not exercise managerial authority, notwithstanding E's assertion that administration arrived at its decisions after *consultation* with faculty members, since mere consultation did not give it effective control in formulating management policies; in contrast to situation in *Yeshiva*, faculty's authority in strictly academic matters was far from absolute and faculty exercised no substantial control in spheres beyond the strictly academic)

Florida Memorial College 263 N.L.R.B. 160
(academic division chairpersons appointed by college president to oversee certain administrative functions in addition to teaching held not managerial, notwithstanding E's contention that academic council, of which chairpersons were members, *addressed* number of issues involving academic policy where there was no showing that in doing so, academic council generally made operative decisions; further, chairpersons' occasional recommendations regarding size of salary increase to be granted faculty members were made w/i established limits which were narrowly circumscribed by administration)

Bradford College 261 NLRB No. 081
(division chairs at college held not managerial Ee, and included in faculty unit, notwithstanding chairs had written authority to prepare departmental budgets, evaluate appropriate faculty members, assign students to faculty members for advice purposes, hire faculty and assign courses, where in actual practice academic dean had hired faculty members w/o consultation, overruled recommendations on faculty retentions, fired individuals as division chairs who had been elected division chairs by faculty, made appointment commitments for following academic year to faculty members prior to receiving division chair's evaluation)

Bradford College 261 NLRB No. 081
(B.A. coordinators at college, most of whom also division charis, held not to be supervisors or managerial Ees and included in faculty unit, where each was regarded as faculty and spent insignificant amount of time in collateral functions)

Bradford College 261 NLRB No. 081
(full-time faculty at college held Ees rather than managerial Ees and thus subject to Act where faculty alone had no power to set academic or administrative policies, major changes in curriculum approved by board of trustees, faculty salaries determined by president of college, grades and discipline of students have been reversed by academic dean w/o notice or over objection of faculty member, academic dean and president have ignored recommendations of division chairs as to hiring, evaluations, and other professional decisions)

Ithaca College 261 NLRB No. 083
(full time faculty at college held managerial Ees and ptn dismissed, in view of their extensive authority to formulate and effectuate policies, absolute authority as to curriculum, determines academic policies, faculty hiring, tenure, budgetary matters and facilities planning)

N.L.R.B. v. Yeshiva University 582 F.2d 686 (C.A. 2)
(professional Ees may also be categorized as supervisory and managerial Ees ineligible for inclusion in bargaining unit)

2401-6750 Tests for managerial status

University of San Francisco 265 NLRB No. 155
(part-time faculty members, who write curricula for university's college of professional studies held not managerial, where their only authority was to submit curricula for approval, and even this narrow authority was substantially different from that contemplated by SCt in *Yeshiva University* where faculty substantially operated school; while curricula writers may teach classes part-time, they do so pursuant to separate contract; and thus, rather than deriving any authority with respect to management of school from their faculty status, curricula writers are hired essentially as consultants to perform a specific task)

2401-6750—Cont.

College of Osteopathic Medicine and Surgery **265 NLRB No. 037**
(in holding faculty at college managerial, Bd rejected U's contention that if faculty were unprotected by bargaining agreement, E could unilaterally remove any managerial authority that faculty had achieved through collective bargaining, since *Yeshiva* decision did not distinguish situations in which managerial authority was gained through collective bargaining from situations in wich such authority was more freely granted; Bd looks to extent of managerial authority held by faculties rather than manner in which authority was obtained)

Seven-Up Bottling of Phoenix, Inc. **263 NLRB No. 085**
(merchandise manager found managerial Ee where he had responsibility to schedule his own activities to ensure that E's policies were effectuated, to ensure that other Ees complied with and fulfilled these policies, he was management representative in field and dealt with store managers, had responsibility to provide effective management and enhance E's image and to do this exercised independent judgment; thus he was more aligned with management than rank-and-file Ees)

Bradford College **261 NLRB No. 081**
(librarian and assistant librarian at college held not managerial Ees and included in faculty unit where did not spend more than 50% of their time supervising unit Ees, librarian's budget proposals had been reduced by academic dean, locks and keys to library were changed w/o prior consultation with librarian, academic dean and dean of students determined library hours)

Thiel College **261 NLRB No. 084**
(unit of full-time faculty at college held managerial Ees and ptn dismissed, since faculty did not have professional interest apart from E and played large role in operating college, where it set requirements for admission and graduation, formulated curriculum and grading system, selected chairmen of departments subject to confirmation of academic dean and vice-president for academic services, was involved in setting course schedules and teaching loads and budgetary matters including faculty salaries and benefits, and effectively participated in faculty hiring, firing, promotion and tenure)

Montefiore Hospital and Medical Center **261 NLRB No. 082**
(determination of managerial status of doctors may not be based on decision making which is part of routine discharge of professional duties. Only if activities of professional Ees fall outside scope of duties routinely performed by similarly situated professionals will they be found aligned with management. And in health care context, Bd must evaluate facts of each case to determine whether decisions alleged to be managerial or supervisory are incidental to professional's treatment of patient)

2401-6750-3300 Is aligned with management so as to be in potential conflict with fellow employees

Modern Manufacturing Company, Inc. **261 NLRB No. 078**
(individual who was son and nephew of owners of majority of E and son of manager and had special privileges, favorable working conditions and personnel information denied other Ees, found aligned with management and excluded from unit)

Modern Manufacturing Company, Inc. **261 NLRB No. 078**
(emancipated and economically independent daughter of officer and co-owner, who performs no managerial functions only duties like those of her fellow Ees found not aligned with management, included in unit)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **240 NLRB No. 113**
(Ee who held title of banquet and sales representative of E hotel but exercised no supervisory authority, held managerial Ee since his duty to monitor performance and seek its correction through supervisory officials placed him in potential conflict with fellow Ees)

United States Steel Corporation, Inland Steel Company, Bethlehem Steel Corporation v. N.L.R.B. **644 F.2d 206 (C.A. 3, Mar 19, 1981)**
(*Curtis Industries, Division of Curtis Noll Corporation*, 218 NLRB 447 (1975) is consistent with, and not departure from, community of interest analyses developed by Bd in long line of cases; ct concurs with fifth circuit's opn that *the factors for estcblishing when participation in managerial trainee program will amount to managerial status— derive from a series of cases decided by Bd many years earlier* than *Curtis Noll*; *NLRB v. Kent Corp.*, 564 F.2d 186, 188 (5th Cir. 1977))

2401-6750-6700 Engages in employer's policy making or exercises independent discretion in performance of duties

Lewis University **265 NLRB No. 157**
(Bd found faculty members were professional Ees w/i meaning of Sections 2(12) and 2(3) and also found under *Yeshiva* that faculty members, either as individuals or in their capacity as members of various committees, exercised independent judgment in routine discharge of their professional duties, but did not effectively formulate and effectuate policies of E; therefore, they were not excluded from coverage under Act as managerial Ees)

Lewis University **265 NLRB No. 157**
(faculty at university held not managerial Ees in view of fact that they do not exercise absolute or dominant authority in numerous critical areas including academic matters, hiring, tenure, sabbaticals, termination, and promotion; furthermore, although faculty members determined content of, and how to teach, courses, they did not decide grading policies, matriculation standards, academic calendars, or which students would be admitted or graduated; moreover, they did not determine size of student body, tuition to be charged, or location of school; finally, administration decision making authority was unequivocally articulated in management-rights clause)

Florence Volunteer Fire Department, Inc. **265 NLRB No. 134**
(full-time paid fire fighters held managerial Ees, notwithstanding U's contention that those on E's executive committee abstained from voting on wage and benefit matters, that E's bylaws could be amended to preclude conflict of interest, and that paid members would not likely exercise *effective control* over E's policies; Bd found lack of participation by members on executive committee regarding wages and benefits was of little significance, since every paid and unpaid member shared equal voice in management decisions)

College of Osteopathic Medicine and Surgery **265 NLRB No. 037**
(faculty at college held managerial Ees where it had almost plenary authority in academic matters and significant input into important non-academic matters, was instrumental not only in day-to-day operation of college but also in its long-range policy planning, and faculty members had influence over colleagues' job security and advancement)

Loretto Heights College **264 NLRB No. 149**
(college faculty members not managerial Ees where they organized to promote individual interests divergent from college's interests, their participation in governance was essentially advisory with administration retaining ultimate control, their administrative weight in day-to-day affairs was exceeded by program directors, and the academic dean was the managerial authority in academic matters)

New York Medical College **263 NLRB No. 124**
(faculty members, including physicians, Ph. D's, dentists, and registered nurses, who work 8 or more hours per week held not managerial Ees under *Yeshiva* criteria since governance of college rested with board of trustees, vice president and chief financial officer, president, dean, associate deans, and department chairmen)

Cooperativa De Credito Y Aharro Vegabajena **261 NLRB No. 161**
(two of 50 voting delegates in E's assembly of delegates, that rarely participate in affairs of E whose labor relations and day-to-day management are vested in E's board of directors, are not managerial, since assembly of delegates *minimally* participated in management of E w/o ability to *formulate or effectuate management policies by expressing or making operative* E's decisions; thus, there was no unprotected purpose in Ees striking in attempt to pursuade E to negotiate with two voting delegates who were members of U negotiating team)

Duquesne University of The Holy Ghost **261 NLRB No. 085**
(faculty members at law school held managerial Ees and ptn for unit of those faculty members dismissed where faculty exercised significant control over curriculum and hiring and tenure, established standards for admission, remaining in school and for graduation; faculty committee, against whose recommendation Dean had no authority to act, screened candidates for full-time faculty positions, faculty could veto hiring decision made by Dean, tenured faculty made recommendations regarding granting of tenure, notwithstanding faculty had no authority in terminations)

District #1, Pacific Coast District, Marine Engineers Beneficial Association **259 NLRB No. 109**
(Ee on headquarters staff of E, a U, not managerial, notwithstanding she received large salary, had large office and secretary, where she did not promote E policy *by taking or recommending discretionary actions that effectively control or implement E policy*, nor did her activities -- mainly involved with information gathering -- involve formulation and effectuating E policies)

Drukker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. **258 NLRB No. 097**
(district advisors held not managerial Ees where their duties consisted of recruiting and training school boy and girl carriers, making collections from carriers, handling of customer complaints, and were subject to supervision and guidance by their supervisors)

Lorimar Productions, Inc. **257 NLRB No. 180**
(unit production managers at motion picture and TV production facility held managerial Ees where evidence did not establish any significant limitation on normal discretion exercised by UPMs when engaged in contract negotiations and settling grievances)

Pratt Institute **256 NLRB No. 178**
(unit of nonacademic administrative Ees at art institute, appropriate contrary to E's contention that Bd lacked authority under SCt's *Yeshiva* decision to find the unit appropriate, since U in *Yeshiva* sought a unit of ful-time faculty members who acted in truly collegial capacity to make decisions for the university, whereas unit here is composed of nonfaculty administrative Ees who carry out decisions made by higher authority; Bd does not believe that SCt in its *Yeshiva* decision intended to exclude from the Act's protection administrative Ees performing their duties in an institute of the type here)

2401-6750-6700—Cont.

Arizona Electric Power Cooperative, Inc. 259 NLRB No. 110
(load dispatchers and their leadman employed by electric power cooperative not supervisors where they did not oversee work performed pursuant to their directions, did not use independent judgment in directing other Ees; any discretion they used in buying and selling power was insufficient to render them managerial Ees)

Alco-Gravure, Inc. 249 NLRB No. 137
(Bd held process control supervisor for E engaged in rotogravure printing of newspaper supplements and advertising materials was not managerial Ee, notwithstanding his duties required use of independent judgment and discretion, where he did not exercise such discretion independent of E's established policies or make any managerial decisions as to levels of manpower required for projects)

Alco-Gravure, Inc. 249 NLRB No. 137
(Bd held control monitors and job operators who perform much the same functions in ensuring quality of publications for E engaged in rotogravure printing of newspaper supplements and advertising materials were not supervisors, where they did not exercise real supervisory authority over Ees and did not possess any of usual indicia of supervisory authority; nor were they managerial Ees as they did not exercise judgment and discretion independent of E's established policies and were not involved in formulation, determination, and effectuation of management policies)

Permanent Label Corporation 248 NLRB No. 021
(Ees who exercise some independent judgment based on their technical expertise held technical Ees not managerial)

The Trustees of Stevens Institute of Technology JD-(NY)-109-82
(regular full-time faculty at non-profit institution of higher learning awarding engineering and scientific degrees found managerial Ees in view of their decisive participation in all but monetary aspects of institution where they formulated curricula and its courses, determined academic structure, and were involved in selecting president, provost, department heads and teachers, awarding promotions and tenure and meeting building needs)

Fremont Auto Center, Inc. d/b/a Fremont Mazda JD-(SF)-13-81
(Ee at auto dealership held managerial, where she was taken off floor to engage in managerial function, the exchange of automobiles between and among dealerships in which capacity she had right to commit E's credit and make sales at price she negotiated; in addition, she was seen as *manager* by E-president and by workforce generally, and was given access to health plan)

Carlina Knitting Co., Inc., et al. JD-321-80
(although Ee was carried among payroll records of managerial Ees, he was held plant clerical and not managerial Ee, where majority of his time was spent on physical work along with *floor boys* and any orders he gave them was purely of ministerial nature)

N.L.R.B. v. Yeshiva University 582 F.2d 686 (C.A. 2)
(full time faculty members excluded from unit as supervisory and managerial Ees where they exercised substantial and pervasive authority at particular university by recommending hiring, promotion, salary and tenure of faculty, adopting standards of admission, curruiculum, grading system, and graduation requirements; further, faculty was not acting on own behalf but rather on behalf of university, nor did fact decisions subject to ultimate authority of trustees preclude finding of managerial status where faculty's recommendations were effective)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. 620 F.2d 720 (C.A. 9, 1980)
(instructors herein not managerial w/i meaning of *NLRB v. Yeshiva University* but simply Ees, where they have no input into policy decisions and do not engage in management level decision making, and E does not resemble nonprofit *mature* university in that case)

2401-6800 Confidential employee

N.L.R.B. v. Hendricks County Rural Electric Membership Corp. 454 US 170 (U.S. SCt. Dec. 1981)
(ct upheld Bd decision which held that only those confidential Ees with *labor nexus* are properly excluded from bargaining unit and rejected claim that all Ees with access to confidential information do not fall w/i definition of *Ee* in Section 2(3) of Act)

Grove Valve and Regulator Company 262 NLRB No. 035
(secretary to industrial relations manager found not confidential Ee where no evidence she was involved with any matters concerning labor relations)

Carolina Telephone and Telegraph Company 258 NLRB No. 189
(secretaries to district managers not confidential Ees even if they acted in confidential capacity to district managers because district managers were not responsible for formulating, determining, and effectuating E's labor relations policies)

Lorimar Productions, Inc. 257 NLRB No. 150
(objections to election on ground that production coordinators at motion picture and TV production facility should be excluded from appropriate unit since PCs were confidential Ees where they assisted and acted in confidential capacity to persons who formulated, determined, and effectuated management policies in field of labor relations)

Maidsville Coal Co., Inc. 257 NLRB No. 148
(weight master in cool mining operation found not to be confidential Ee as business information he possessed was no different than that possessed by shipping and receiving clerks and other production clerks who have not lost their statutory protection)

Greyhound Lines, Inc. 257 NLRB No. 055
(secretary to manager of maintenance and service center held not confidential Ee where manager did not formulate and determine management policies in field of labor relations; and secretary's access to personnel files, her typing of replies to correspondence, including that marked confidential, and her typing and filing of Ee evaluations, letters or notices concerning Ee personnel and disciplinary actions, letters from manager to U, replies to grievances, and manager's recommendations as to E's proposals for collective-bargaining agreements did not render secretary confidential Ee)

Firmat Manufacturing Corp. 255 NLRB No. 153
(sole secretary and bookkeeper of E's owner and president held confidential Ee where she occupied desk in immediate and open proximity to him and could not help but be privy to conversations involving labor and personnel matters)

Milwaukee Children's Hospital Association 255 NLRB No. 130
(Ee health nurse in Ee Relations Dept is not managerial or confidential Ee where her duties include: conducting preemployment physical exams, maintaining confidential Ee health records, handling workmen's compensation claims, preparing accident reports, examining Ees returning to work after an accident; however, she does not exercise discretion in dealing with Ees, and mere access to confidential medical records is insufficient to establish she acts in confidential capacity to her supervisor, vice president of Ee relations)

Clinton Corn Processing Company, A Division of Standard Brands Inc. 253 NLRB No. 084
(individual held not confidential Ee notwithstanding she maintained personnel files, performed payroll functions, which involved confidential personnel information such as wage rates)

Stroock & Stroock & Lavan 253 NLRB No. 052
(those who act in confidential capacity involving their E's labor relations, not those of another E)

Stroock & Stroock & Lavan 253 NLRB No. 052
(executive committee secretaries not confidential Ees where when executive committee does consider labor policies or decisions for firm no clerical Ees are present)

Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C. 253 NLRB No. 054
(Bd held law firm's clerical and support staff not *confidential* workers under *Bell Aerospace* and the *Taft-Hartley* legislative history, adhering to its traditional restrictive definition of confidential workers as individuals acting in confidential capacity to those Ees formulating, determining and effectuating management's labor relations policies for their own E)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(office clerical who served as secretary to credit manager held not confidential Ee since routine secretarial assistance to official who formulates and effectuates labor relations policies is not sufficient to warrant exclusion from unit as confidential Ee)

Kaplan, Sicking, Hessen, Sugarman, Rosenthal & Zientz (Office and Professional Employees, Local No. 128) 250 NLRB No. 065
(Ees who primarily do maintenance-type work, including caring for lawn and parking lot, cleaning premises, making deliveries, and filing, held, contrary to E labor law firm's contention, not confidential Ees, since Ees' activities can hardly be considered as assisting and acting in confidential capacity to E in connection with labor relations)

Kaplan, Sicking, Hessen, Sugarman, Rosenthal & Zientz (Office and Professional Employees, Local No. 128) 250 NLRB No. 065
(Ees of labor law firm, not confidential Ees even though they might have access to confidential information relating to labor relations of their E's clients; it is implicit in rationale for finding confidential status that such persons work in confidential capacity with someone who formulates, determines and effectuates labor relations policies for their own E, not some other E)

Pilgrim Life Insurance Company 249 NLRB No. 140
(Ee who rendered general assistance to E's president held not confidential Ee, notwithstanding president was official who formulated and effectuated labor relations policies, since she was excluded form handling any matters related to labor relations policies inasmuch as president was assisted in these matters by another officer)

2401-6800—Cont.

Reymond Baking co. 249 NLRB No. 156

(challenge to ballot of *receptionist/typist/floater* sustained since such Ee acts in confidential capacity to person involved in formulating, determining and effectuating E's labor relations and is therefore confidential Ee)

Marcus J. Lawrence Memorial Hospital 249 NLRB No. 090

(Ee found not to be confidential Ee and included in unit where she was hired as secretary, did general typing and only small amount of personnel work, including voter eligibility list)

Union College 247 NLRB No. 069

(secretaries to divisional deans held confidential Ees where they have access to grievance files and E's notes relating to grievances and help with work in connection with labor relations functions of divisional deans)

Hendricks County Rural Electric Membership Corporation 247 NLRB No. 068

(on ct remand, Bd found under standard erected by ct that Ee was not confidential Ee where she not only did not work in confidential capacity in respect to labor relations matters, but did not perform confidential duties in connection with nonlabor relations or personnel areas)

Hendricks County Rural Electric Membership Corporation v. N.L.R.B. 627 F.2d 766 (C.A. 7, July 1980)

(confidential Ees are excluded from coverage under Act under *broad definition* not limited to those having *labor nexus*)

Hendricks County Rural Electric Membership Corporation v. N.L.R.B. 603 F.2d 25 (C.A. 7, 1979)

(ct remanded to Bd for determination as to whether dischargee was statutory Ee or *confidential Ee* under Taft-Hartley Act as broadly interpreted in Bell Aerospace rather than whether she acted in confidential capacity regarding labor relations under narrower B.F. Goodrich test)

N.L.R.B. v. Los Angeles New Hospital 640 F.2d 1017 (C.A. 9, Mar 3, 1981)

(individual not confidential Ee where determination based merely on access to confidential information or typing of confidential labor relations memorandum; *Bd refrains from broad definition of confidential Ees because most Ees have arguably confidential relationship with management and because expensive application of exclusionary rule would deprive many Ees of right to bargain collectively)*

2401-7500 Retirees included as employees

Powman-Lawrence, Inc. d/b/a Belt Supermarket 260 NLRB No. 017

(in absence of strike, retired individual would not be regarded as Ee and would be ineligible to vote)

2401-8700 Foreign nationals or illegal aliens

Dining and Kitchen Administration, d/b/a DAKA 257 NLRB No. 046

(foreign students, residents of International House, who regularly worked in International House's cafeteria found Ees as they had same supervisors and did same work as nonresidents and work was unrelated to studies. Students did not receive actual cash for time worked, but received credits toward their room and meal charges)

Actors' Equity Association 247 NLRB No. 172

(contention that Bd should decline jurisdiction because alleged ULPs affected only a few non-resident aliens, rejected; Bd enforces Act as to all Ees, including aliens, unless regulation of practice involved is properly left to some other sovereign authority)

N.L.R.B. v. Actors' Equity Association 644 F.2d 939 (C.A. 2, Mar 17, 1981)

(alien Ees protected under Act since *nothing in terms of construction of NLRA limits meaning of words Ees to American citizens or permanent residents)*

2401-9000 Professional union organizers

N.L.R.B. v. Circo Resorts, Inc., d/b/a Circus, Circus 646 F.2d 403 (C.A. 9, May 1981)

(E's contention that discriminatees who had engaged in soliciting U authorization cards were not bona fide Ees of E, rejected, where E supported contention by authority which related to Ees who were actually on payroll of U for organizing purposes, and there was no suggestion that discriminatees were working for anyone other than E at time of discharge)

2401-9900 Other

N.L.R.B. v. Sanford Home For Adults 669 F.2d 35 (C.A. 2, Dec. 1981)

(Bd did not improperly exclude two individuals from unit where one individual completed a tax form and U membership card but did not commence work nor was ever paid; and other individual began his term of employment only four days before and completed it one day after U's recognition demand date with bulk of his working time spent in organizing activities for U; consequently, both individuals did not qualify as Ees in determining whether U had majority support)

2414 INDICIA OF EMPLOYEE STATUS

2414-0100 Generally

Capital Parcel Delivery Company 256 NLRB No. 050

(owner operators found Ees rather than independent contractors under *right to control* test, where they: perform functions essential to E's business, have permanent working relationship with E, do business pursuant to E's delivery contract, E provides substantial assistance and guidance, follow E's rules and procedural requirements, and trained by E and are not involved in any financial risk; fact that E does not grant vacations or fringe benefits or provide workman's compensation is not controlling)

The Oakland Press Co., a Subsidiary of Capital Cities Communications, Inc. 249 NLRB No. 143

(newspaper carriers found Ees where E has reserved right to control result achieved and also means used in attaining results; factors considered are: substantial control over carriers by district managers, carriers have no proprietary interest, insulated from most economic losses, limited opportunity to significantly increase income)

Mitchell Bros. Truck Lines 249 NLRB No. 051

(owner-drivers of trucks leased to common carrier found Ees, not independent contractors, because of amount of control exercised over drivers; fact that controls imposed by Federal and State regulations immaterial, for controls define carriers employment relationship with its drivers; also carrier assumes money responsibilities for owner which minimize driver's entrepreneurial risks; furthermore, fact little supervision exercised by E not controlling where nature of work requires little supervision, there is no need for actual control)

2414-1100 Continuity and regularity of work

Jurisearch, Inc. 250 NLRB No. 091

(law researcher held Ee rather than independent contractor where he was to work on regular basis so long as his work was satisfactory)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)

(length of lease term in no way affects relationship between taxi companies and their drivers while latter are operating leased vehicles)

2414-2200 Control and supervision of methods, terms, and conditions of work

Michigan Eye Bank 265 NLRB No. 179

(eye bank technicians who performed corneal excision for eyebank held Ees rather than independent contractors, notwithstanding under no obligation to be present at certain hours, received flat fee for each case, received no fringe benefits, had no income tax or social security deducted, and fact E exercised no day to day supervision over work, where technicians received all training from E, E supplied technicians with instruments, and technicians provided services exclusively to E; further, work required little supervision after technicians trained, work virtually indistinguishable from work of E and work monitored by required weekly meetings with technicians)

Perrysville Coal Company 264 NLRB No. 046

(truckdrivers held Ees of truck-lessor rather than Ees of independent-contractor truck owners or independent contractors where they owned trucks in view of lessor's contract with U representing them, contractual right to hire and fire and actual firing of drivers, laying off by seniority, disciplining of and imposing guidelines for drivers, making standard payroll deductions and contributions (including U dues and benefits), contract with lessor's stating drivers were considered Ees, and notification of change to independent contractors)

Puerto Rico Hotel Association 259 NLRB No. 088

(*in deciding whether individuals are Ees as defined in Act or are excluded therefrom as independent contractors, common law agency test must be applied. Under this test, E-Ee relationship exists where person for whom services are performed reserves right to control not only ends to be achieved but also means to be used to achieve such ends. All of these facts must be analyzed in applying test. It is the right, not the exercise of control, that is important. Test applies to individuals who may be supervisors as well as to those who may be Ees*)

Puerto Rico Hotel Association 259 NLRB No. 088

(hotels held E of musicians who play on their premises; musicians held Ees rather than independent contractors and their leaders held supervisors in view of hotel's control over type of music, schedules and leave, fact musicians, issued cards by hotels entitling them to charge food and beverages, to discounts and Ee parking, promulgation of rules regarding restricting gambling and storage of instruments, and attire, notwithstanding musicians did not fill out employment applications filled out by other Ees, do not punch time clock, follow detailed grievance procedure or undergo orientation training)

Franklin Fouts, d/b/a B & F Cartage 251 NLRB No. 068

(Ees who *spotted* trailor trucks by backing trailor into dock or pulling it away and parking it found not to be independent contractors since there was no exercise of entrepreneurial skills)

2414-2200—Cont.

Jurisearch, Inc. **250 NLRB No. 091**
(where E controlled part-time law school graduate's research technique and method of writing of legal memoranda, graduate held Ee rather than independent contractor)

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**
(lounge musicians at resort hotels found Ees rather than independent contractors in view of obedience to hotel managers' desires, lack of entrepreneurial risk, manager's control over means and manner of performance, and their leaders' contractual function of carrying out hotel's instructions as to musical selections and manner of performance)

Exhibitors Film Delivery & Service, Inc. **247 NLRB No. 066**
(contract delivery drivers for common carrier who drive their own trucks held Ees rather than independent contractors under *right of control* test where they perform functions of E's business rather than of independent business, have permanent working arrangement with E, do business in E's name and sell E's services, work under contracts promulgated and unilaterally changed by E, account to E for funds, have no properitary interest in E's routes, take no risk but are limited to E's routes and E's prices for their services)

N.L.R.B. v. Maine Caterers, Inc., et al. **654 F.2d 131 (C.A. 1, July 1981)**
(driver-salesmen who sold products of industrial caterer held Ees rather than independent contractors where E had right to control not only results sought but also means by which those results are achieved, all routes were property of E, drivers' control of prices was limited, and drivers did not own their trucks but leased them, paying for their gasoline and other maintenance)

N.L.R.B. v. Amber Delivery Service, Inc. **651 F.2d 57 (C.A. 1, June 1981)**
(owner-operators of package delivery trucks found Ees not independent contractors where E exercises substantial control over drivers performance of deliveries, starting time strictly controlled, daily work load determined by company dispatcher, drivers prohibited from using vehicle to provide related service elsewhere, E conducts mandatory safety meetings, drivers must wear uniform of E, paint vehicle with company colors, carry liability and cargo insurance for E's protection and subject to termination for poor performance; moreover, E sets customer rates and assignments of drivers effectively controlling Ees' income)

N.L.R.B. v. Fugazy Continental Corporation **603 F.2d 214(T) (C.A. 2, 1979)**
(drivers held Ees rather than independent contractors, since, notwithstanding their franchises, they lacked freedom of operation where E set fares and percentage thereof on which their incomes were based, dictated their dress, conduct and types of vehicle, disciplined them for violations, restricted them so that outside business was less profitable, and by its policies rendered their franchises of little continuing value; E was distinguished from driver-formed association which was administrative creature providing facilities and opportunities for a price)

N.L.R.B. v. Tri-State Transport Corporation **649 F.2d 993 (C.A. 4, May 1981)**
(*In distinguishing Ees from independent contractors, there is no shorthand formula or magic phrase that can be applied to find the answer, but all incidents of the relationship must be assessed and weighed with no one factor being decisive. What is important is that the total factual context is assessed, in light of pertinent common law agency principles. These common law principles may be referred to as right-to-control test*)

N.L.R.B. v. Tri-State Transport Corporation **649 F.2d 993 (C.A. 4, May 1981)**
(driver of vehicle leased by trucking firm held not to be Ee of firm but rather Ee of, or profit sharer with, owner-lessor of vehicle since most alleged control by firm resulted from its obligation to enforce government regulations and where firm usually paid lessor rather than driver, did not make deduction for driver's tax or social security, and had to get permission from owner to dispatch truck or obtain substitute driver, notwithstanding contention right to control rather than reason for its existence is crucial element and regulations requiring haulers to exercise control over their drivers created statutory Ees)

Newspaper Drivers and Handlers Local Union No. 372, a/w Teamsters v. N.L.R.B. **682 F.2d 116 (C.A. 6, June 1982)**
(ct reversed its earlier finding and concluded in light of Bd's more recent decisions that newspaper carriers were Ees w/i meaning of Act and not independent contractors, in view of substantial control by district managers over carriers, absence of proprietary interest on part of carriers, their insulation from most losses, and limited opportunity for significantly increasing their income)

St. Charles Journal, Inc. v. N.L.R.B. **679 F.2d 759 (C.A. 8, June 1982)**
(determination of whether newspaper carriers are independent contractors or Ees requires examination of degree to which principal has *right to control* details of agent's performance; all incidents of work relationship must be assessed and weighed including, inter alia, right to hire and discharge persons doing work, method and determination of amount of payment to workmen, whether he stands to make profit on work of those under him, and which party furnishes tools or materials with which work is done)

City Cab Company of Orlando, Inc., et al. v. N.L.R.B. **628 F.2d 261 (C.A.D.C. 1980)**
(ct affirmed Bd determination that taxi drivers were Ees under Act and not independent contractors where E effectively retained control over manner in which its drivers perform their duties)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(ability to establish lease terms unilaterally was not in itself enough to establish existence of E-Ee relationship (between cab owners and cab drivers); critical question was whether terms of lease vest excessive control in lessor (cab owner))

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(control exercised over *manner and means of performance* is identifying characteristic of E-Ee relationship, not merely economic controls which many corporations exercise over independent contractors)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that government regulation has made supervision or control by lessor (cab owner) unnecessary was not equivalent of presence of actual supervision or control)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(lessee-drivers who are practically uncontrolled by cab companies in manner and means that they operate their cabs not considered as *Ees* w/i scope of NLRA in view of clear intent of Act's legislative history)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(two elements in instant case determinative of leased cab drivers' status as independent contractors and not as Ees were; (1), lack of control by lessor in manner and means in which drivers carry on their business and (2), rent that lessor receives for lease of cab was not related to amount of fares collected by lessee-driver)

2414-3300 Right of control, not exercise thereof, is determinative

N.L.R.B. v. International Longshoremen's Assn., AFL-CIO, et al. **447 US 490 (U.S. SCt. June 1980)**
(lawful *work preservation* agreement must pass two tests: (1) it must have as objective preservation of work traditionally performed by Ees represented by U; and (2) contracting E must have power to give Ees work in question - the so-called *right of control* test)

Puerto Rico Hotel Association **259 NLRB No. 058**

Mitchell Bros. Truck Lines **249 NLRB No. 051**
(owner-drivers of trucks leased to common carrier found Ees, not independent contractors, because of amount of control exercised over drivers; fact that controls imposed by Federal and State regulations immaterial, for controls define carriers employment relationship with its drivers; also carrier assumes money responsibilities for owner which minimize driver's entrepreneurial risks; furthermore, fact little supervision exercised by E not controlling where nature of work requires little supervision, there is no need for actual control)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**

2414-4400 Control of earning potential by person ordering or directing work

Jurisearch, Inc. **250 NLRB No. 091**
(law researcher held Ee rather than independent contractor where E authorized fixed number of hours per assignment, paid hourly rate and set deadlines so that researcher could not increase his income by entrepreneurship and had no capital investment or risk of loss)

N.L.R.B. v. Amber Delivery Service, Inc. **651 F.2d 57 (C.A. 1, June 1981)**

N.L.R.B. v. Fugazy Continental Corporation **603 F.2d 214(T) (C.A. 2, 1979)**
(drivers held Ees rather than independent contractors, since, notwithstanding their franchises, they lacked freedom of operation where E set fares and percentage thereof on which their incomes were based, dictated their dress, conduct and types of vehicle, disciplined them for violations, restricted them so that outside business was less profitable, and by its policies rendered their franchises of little continuing value; E was distinguished from driver-formed association which was administrative creature providing facilities and opportunities for a price)

2414-4400—Cont.

St. Charles Journal, Inc. v. N.L.R.B. **679 F.2d 759 (C.A. 8, June 1982)**

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(two elements in instant case determinative of leased cab drivers' status as independent contractors and not as Ees were; (1), lack of control by lessor in manner and means in which drivers carry on their business and (2), rent that lessor receives for lease of cab was not related to amount of fares collected by lessee-driver)

2414-5500 Control of equipment furnished by employer

Michigan Eye Bank **265 NLRB No. 179**

St. Charles Journal, Inc. v. N.L.R.B. **679 F.2d 759 (C.A. 8, June 1982)**

2414-6600 Compensation

Key Opportunities, Inc. **265 NLRB No. 178**
(aides employed by E who operated sheltered workshops for handicapped clients found Ees and not supervisors even if clients they supervised were held herein to be *Ees*, where authority over clients was too indirect and insubstantial; moreover, aides were paid on an hourly basis, punched a timeclock, and two of the three aides had previously been in *sheltered* program as clients unlike any one else in management)

Perrysville Coal Company **264 NLRB No. 046**

United States Steel Corporation **248 NLRB No. 090**
(Ees who attended E-sponsored summer school to prepare for Coast Guard licensing examination held to have remained in bargaining unit of ship's unlicensed personnel while they were attending shcool; Es intended students to remain in unit where guidelines provided that students receive wages and benefits as though on ship, they could return to their unit if they did not pass examination, they were not required to resign from U, and U dues were deducted on their return to unit work)

St. Charles Journal, Inc. v. N.L.R.B. **679 F.2d 759 (C.A. 8, June 1982)**

2414-7700 Pension and retirement plans

Perrysville Coal Company **264 NLRB No. 046**

United States Steel Corporation **248 NLRB No. 090**
(Ees who attended E-sponsored summer school to prepare for Coast Guard licensing examination held to have remained in bargaining unit of ship's unlicensed personnel while they were attending shcool; Es intended students to remain in unit where guidelines provided that students receive wages and benefits as though on ship, they could return to their unit if they did not pass examination, they were not required to resign from U, and U dues were deducted on their return to unit work)

2414-8800 Contract determination

Jurisearch, Inc. **250 NLRB No. 091**
(law researcher held Ee rather than independent contractor where E set terms and conditions of employment unilaterally and had E-Ee relationship rather than contractual one with worker)

2428 CONTINUATION OR LOSS OF EMPLOYEE STATUS

2428-0100 Generally

Escambia River Electric Cooperative, Inc. **265 NLRB No. 128**
(contrary to E's contention, Ee, although recently discharged, was an *employee* w/i meaning of Act and entitled to its protection)

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(ct found that striking Ees were effectively terminated prior to effective date of health care amendments and therefore did not acquire *Ee* status under Act merely because strike was in progress on effective date)

2428-2500 Individuals whose work has ceased as result of labor dispute

Texaco Oil Company **259 NLRB No. 062**
(individuals who at onset of strike were sick or disabled and unable to work, not strikers, so long as they continue disabled to perform work duties and have not indicated support for strike)

2428-5000 Individuals whose work has ceased as result of ULP

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**
(discriminatees, who were unlawfully laid off, remain Ees)

2428-7500 Individuals whose work has ceased as result of nondiscriminatory interruption or termination of employment

Bowman-Lawrence, Inc. d/b/a Belt Supermarket **260 NLRB No. 017**
(retiree ineligible to vote notwithstanding that he participated in picketing E after he retired, since picketing did not evince intention to return to work after strike was ended; retired Ee, like everyone in public at large was free to support strike)

King Trucking Company **259 NLRB No. 079**
(irregular fill-in Ee who would contact E when he wanted work was not discharged but voluntarily discontinued his established employment arrangement since he has not bothered to contact E further)

Schlegel Oklahoma, Inc. **259 NLRB No. 012**
(discharged Ee found statutory Ee for purposes of finding threat against him and other Ee unlawful)

Valley Rock Products, Inc. **JD-(SF)-288-79**
(individual on leave of absence held Ee and ballot ordered counted, since no evidence employment relationship severed by positive action, where when applying for leave of absence and at time leave granted individual stated verbally and in writing he intended to return to work after leave, and in letter granting leave E asked to be advised of approximate return date; moreover, individual was never removed from E's rolls and continued to work for E during leave when E was short-handed)

2456 STRIKERS

2456-0100 Generally

Styrest Nursing Home **JD-(ATL)-98-82**
(*picketing for U or otherwise participating in strike does not render individual striking Ee. Key is whether Ee is withholding services from E in support of labor dispute.* Thus Ee who picketed while not cleared by doctor to return to work and Ees who picket during off duty hours are not considered strikers against whom E may act)

Texaco Oil Company **259 NLRB No. 062**
(individuals who at onset of strike were sick or disabled and unable to work, not strikers, so long as they continue disabled to perform work duties and have not indicated support for strike)

Bethlehem Steel Corporation **252 NLRB No. 138**
(where Ees engaged in unprotected work stoppage in violation of no strike provision of contract, Ee who left work for different reason but later joined strikers in their activity found striker also) >0851217724560100000300800930

Bethlehem Steel Corporation **252 NLRB No. 138**
(where Ees engaged in unprotected work stoppage in violation of no strike provision of contract, Ee who left work for different reason but later joined strikers i

John H. Fournelle v. N.L.R.B. **670 F.2d 331 (C.A.D.C., Feb. 1982)**
(Ee found striker in violation of no-strike clause, although he left premises to go to dentist rather than to join strike, since, before going to dentist he joined other strikers at U hall and gave TV interview in support of strike in contravention of no-strike clause which precluded encouraging and sanctioning strikes)

2456-1700 Misconduct of strikers

AMPAC, a subsidiary of Kane-Miller Corp. **259 NLRB No. 151**
(hitting non-striking Ee outside plant)

AMPAC, a subsidiary of Kane-Miller Corp. **259 NLRB No. 151**
(punching passenger in car and trying to pull him out amounts to serious strike misconduct)

AMPAC, a subsidiary of Kane-Miller Corp. **259 NLRB No. 151**
(discharge of striker who merely disconnected air hose (which only took few seconds to reconnect)from tractor to trailer on truck entering E's plant held violative, since incident not significant enough to justify discharge)

2456-3300 Effect of no-strike agreement

Stevens Ready-Mix Concrete **263 NLRB No. 178**
(challenged ballots of 7 members of Teamsters' U, who failed to return to work after being notified by E they were in violation of bargaining agreement's contractual no-strike clause where they engaged in sympathy strike by refusing to cross picket line established by Operating Engineers' U, opened and counted, since agreement did not waive Ees' right to engage in sympathy strike; no evidence that E took any action to terminate striking Ees since he claimed they quit and sympathy strikers treated as economic strikers for voting eligibility)

Lincoln Technical Institute, Inc. **256 NLRB No. 032**
(discharge of strikers not violative where collective bargaining agreement contained no-strike clause and strike was not ULP strike because suspensions strikers were protesting were not ULPs)

Lincoln Technical Institute, Inc. **256 NLRB No. 032**
(discharge of Ees who supported non ULP strike in contravention of no-strike clause in collective-bargaining agreement not violative, notwithstanding they did not participate in strike)

2456-5000 ULP strikers

2456-5000—Cont.

Brunswick Hospital Center, Inc. **265 NLRB No. 112**

International Business Systems, Inc. **258 NLRB No. 017**
(in determining whether strike was ULP or economic strike where 7 out of 12 strikers did not testify as to their motivation for striking, no assumption that witnesses GC did not call would have testified contrary to his position, since GC not obligated to call every witness to event and bringing 4 strikers to stand sufficient to avoid any adverse inference)

International Business Systems, Inc. **258 NLRB No. 017**
(burden on E to show that Ees that went out on strike and had not been reinstated struck for economic reasons rather than as result of ULPs, notwithstanding those particular Ees did not testify as to their motivation for striking, where other strikers testified they were motivated by E's ULPs; further, those strikers by going along with ULP strikers had manifested their support and acquired rights of those whom they supported)

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(Ees who were separated or terminated prior to onset of strike for reasons not alleged as unlawful held not ULP strikers)

Connecticut Distributors, Inc. **255 NLRB No. 170**
(casual Ee who did not report for work during strike and who was not for or against strike, held ULP striker as he was in fact striking whether or not he supported U as he has Sec. 7 right to engage in or refrain from engaging in protected activity)

John Cuneo, Inc. **253 NLRB No. 110**
(*when Ees strike for recognition which should have been granted at time they went on strike and where E engaged in contemporaneous widespread illegal conduct designed to frustrate statutory scheme, and bargaining in particular, striking Ees are ULP strikers*)

N.L.R.B. v. Shaw Industries, Inc., A Division of Crystal Springs Shirt Corp.; etc. **671 F.2d 1377(T) (C.A. 5, Mar. 1982)**
(where ULP strike was in progress at one of E's plants, sympathy strike at second plant was ULP strike as timing of beginning and end of their strike coincided with ULP strike at first plant and some picket signs specified strike was in support of ULP strikers)

N.L.R.B. v. Shaw Industries, Inc., A Division of Crystal Springs Shirt Corp.; etc. **671 F.2d 1377(T) (C.A. 5, Mar. 1982)**
(if ULP is a contributing cause of strike, then strike is ULP strike. Even if we assume there are dual motives (ULPs and economic reasons) involved in decision to strike, that dual motivation does not deprive Ee of status of ULP striker if E's ULP is a contributing cause)

N.L.R.B. v. James R. McCaffrey and Edward A. Cook, d/b/a ABC Concrete Company **619 F.2d 620 (C.A. 6, 1980)**
(where unlawful discharge was cause of Ees' picketing)

Road Sprinkler Fitters Local Union No. 669, etc. v. N.L.R.B. **681 F.2d 11 (C.A.D.C., June 1982)**
(Ees who struck E after he refused U's valid demand for recognition converted to ULP strikers where after its refusal to bargain E embarked on unlawful course of conduct designed to destroy U majority; See *Drug Package* 228 NLRB at 111)

2456-6700 Economic strikers

Brinkerhoff Signal Drilling Co. **264 NLRB No. 049**
(where Ees were on inactive status due to E layoffs at time strike began, they must have engaged in overt conduct during strike which would give E reasonable notice of strike support before they need be placed on preferential hiring list)

Brinkerhoff Signal Drilling Co. **264 NLRB No. 049**
(Ee who was laid off prior to strike and then broke his arm prior to strike found not to be striker where he was not released as able to work until after strike ended, notwithstanding he performed picket line duty especially where he was not denied accrued disability benefits)

Brinkerhoff Signal Drilling Co. **264 NLRB No. 049**
(Ees who were on layoff status at time strike commenced found strikers where E routinely reemployed laid-off Ees, and when after strike began E offered them reemployment which they declined in support of U's strike)

Brinkerhoff Signal Drilling Co. **264 NLRB No. 049**
(Ee who was on layoff status at time strike began and never responded to E's offer to return to work during strike and found other equal employment held not to be striking Ee entitled to preferential treatment)

Brinkerhoff Signal Drilling Co. **264 NLRB No. 049**
(temporary Ee who was not recalled when layoff ended found not to be Ee of E during strike and thus not striker entitled to preferential reinstatement)

Brinkerhoff Signal Drilling Co. **264 NLRB No. 049**
(Ee who was on leave of absence at time strike began found not to be striker)

R. L. White Company, Inc. **262 NLRB No. 069**
(Ee who was on sick leave at time strike began and never returned to work found to be striker where she had informed one Ee she intended to honor picket line and participated in picket line activities, notwithstanding she never attempted to inform E that she would not be returning to work because she was honoring picket line)

International Business Systems, Inc. **258 NLRB No. 017**
(in determining whether strike was ULP or economic strike where 7 out of 12 strikers did not testify as to their motivation for striking, no assumption that witnesses GC did not call would have testified contrary to his position, since GC not obligated to call every witness to event and bringing 4 strikers to stand sufficient to avoid any adverse inference)

International Business Systems, Inc. **258 NLRB No. 017**
(burden on E to show that Ees that went out on strike and had not been reinstated struck for economic reasons rather than as result of ULPs, notwithstanding those particular Ees did not testify as to their motivation for striking, where other strikers testified they were motivated by E's ULPs; further, those strikers by going along with ULP strikers had manifested their support and acquired rights of those whom they supported)

Famous Supply Company, Inc. **254 NLRB No. 091**
(Ees engaged in sympathy strike became economic strikers when they began informational picketing for recognition, thus engaging in protected concerted and protected U activities)

Sunnyland Foods, Inc. **JD-(ATL)-36-80**
(strikers were economic strikers where strike ceased to be ULP strike prior to time of offer to return to work)

2456-7500 Sympathy strikers

Abbey Medical/Abbey Rents, Inc. **264 NLRB No. 129**
(clerical Ees who struck in support of economically striking truckdriver Ees are sympathy strikers and possess status of economic strikers)

R. C. Lapeer Builders, Inc. **258 NLRB No. 165**
(Ees who refused to cross picket line set up by economic strikers engaged in sympathy strike and protected by Act)

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(strike held ULP strike where unlawful discharges were precipitating cause of strike, intertwined with dischargees' mutual grievances regarding conditions of employment; strikes at E's other facilities in sympathy with strike, also ULP strikes)

Shaw Industries, Inc., a Division of Crystal Springs Shirt Corp.; et al. **255 NLRB No. 117**
(where basis of strike at plant was sympathy for ULP strikers at E's other plant, strikers also are ULP strikers and entitled to immediate reinstatement upon unconditional offer to return to work)

Levitz Furniture Company of The Eastern Region, Inc. (Local 1361, Retail Clerks and Store Employees) **248 NLRB No. 003**
(sympathy strikers are viewed as in same position of economic strikers they support and where election held more than 2 years after strike ended sympathy strikers not eligible to vote notwithstanding they are entitled to reinstatement should replacements leave E)

N.L.R.B. v. Shaw Industries, Inc., A Division of Crystal Springs Shirt Corp.; etc. **671 F.2d 1377(T) (C.A. 5, Mar. 1982)**
(where ULP strike was in progress at one of E's plants, sympathy strike at second plant was ULP strike as timing of beginning and end of their strike coincided with ULP strike at first plant and some picket signs specified strike was in support of ULP strikers)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(when refusal to cross stranger picket line results in only partial work stoppage, E must demonstrate legitimate business reason for replacing Ee)

2456-8300 Replaced economic strikers

John Cuneo, Inc. **253 NLRB No. 110**
(upon their unconditional offer to return to work, economic strikers are entitled to immediate reinstatement to their former positions, or, if those positions have been filled by permanent replacements, to full reinstatement upon departure of their replacements, unless E can show legitimate and substantial business reasons for not reinstating the Ees)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(entitled to reinstatement as positions become available)

2461 Probationary employees

Airco Alloys, a Division of Airco, Inc. **240 NLRB No. 081**
(entitled to same protections and rights under Act as other Ees)

Brockway Glass Company, Inc. **JD-(SF)-117-81**
(discharge of probationary Ee, hired to do carton assembling, assertedly for complaining about this being assigned to janitorial work, *for going to the U,*

2461—Cont.

and refusing to perform assigned janitorial work, held unlawful, where other unsatisfactory probationary Ees were granted extensions of their probation when their work was unsatisfactory, there was no credible evidence to support finding that Ee refused to do assigned work or was *insubordinate*, and Ee had statutory right to engage in U activities)

2463 TRAINEES

United States Steel Corporation, Inland Steel Company, Bethlehem Steel Corporation v. N.L.R.B. **644 F.2d 286 (C.A. 3, Mar 19, 1981)**

(E's Ees who attended special summer school which prepared Ees to take Coast Guard licensing examination which would qualify passing applicants for supervisory positions, held to be supervisory trainees, since students attending school for purpose of becoming licensed officers, that is, non-bargaining unit Ees)

United States Steel Corporation, Inland Steel Company, Bethlehem Steel Corporation v. N.L.R.B. **644 F.2d 286 (C.A. 3, Mar 19, 1981)**

(*Curtis Industries, Division of Curtis Noll Corporation*, 218 NLRB 447 (1975) is consistent with, and not departure from, community of interest analyses developed by Bd in long line of cases; ct concurs with fifth circuit's opn that *the factors for establishing when participation in managerial trainee program will amount to managerial status---- derive from a series of cases decided by Bd many years earlier* than *Curtis Noll; NLRB v. Kent Corp.*, 564 F.2d 186, 188 (5th Cir. 1977))

2470 PROSPECTIVE EMPLOYEES

2470-8000 Job applicants

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**

(failure to consider leading U advocate's wife's application for employment held violative, since inference was reasonable that she was not considered because of E's posture of hostility towards applicant's husband's U and protected concerted activities)

2477 MEDICAL INTERNS, RESIDENTS, OR CLINICAL FELLOWS

Physicians National House Staff Association et al. v. John H. Fanning et al. **642 F.2d 492 (C.A.D.C. Jul 11, 1981)**

(ct of appeals affd D. Ct's dismissal for lack of jurisdiction suit seeking declaration that house staffs of non-profit hospitals-- consisting of physicians serving as interns, residents and clinical fellows participating in hospital-based training programs in medical specialties-- were Ees, contrary to Bd determination that they were *primarily students*)

2484 STATUTORY EXCLUSIONS FROM EMPLOYEE STATUS

2484-0100 Generally

2484-0150 Teachers in church-operated schools

N.L.R.B. v. Lay Faculty Association, Local 1261 **623 F.2d 818 (C.A. 2, 1980)**

(ct rejected Bd's claim to jurisdiction over Catholic high school notwithstanding title and responsibility for operating school vested in lay board, since it is suffusion of religion into curriculum and mandate of faculty to infuse students with religious creed which create conflict with Religion Clauses, not vesting of title, and Bd could not avoid becoming entangled with religious mission of school in setting of mandatory collective bargaining)

2484-1200 Any individual employed as an 'agricultural laborer'

2484-1201 Generally

2484-1201-2500 FLSA Sec. 3(f) sole criterion for defining 'agricultural laborer'

Drummond Coal Company **249 NLRB No. 139**

(under Sec. 3(f) of FLSA that Bd employs in determining whether workers are *Ees* or *agricultural laborers* workers engaged in revegetation of mined areas held agricultural laborers notwithstanding products grown on revegetated land is not sold and revegetation mandated by Federal and State statutes, since workers in preparing seedbeds are engaged in cultivation and tillage of soil under Sec. 3(f))

C & D Foods, Inc. v. N.L.R.B. **626 F.2d 578 (C.A. 7, 1980)**

(Ees who raise ducklings until ready for processing on five *grow-out* farms which were separate from E's main complex exempt from unit as agricultural Ees as defined by FLSA Sec. 3(f); moreover, Ees on remaining farm who raised ducklings and also performed *substantial and regular amount of work* on ducks raised by local growers under contract with E not exempt as agricultural Ees, but excluded on basis they did not share sufficient community of interests with unit Ees)

N.L.R.B. v. C & D Foods, Inc. **626 F.2d 578 (C.A. 7, July 1980)**

2484-1201-5000 Discretion of Board in considering mixed functions agricultural

C & D Foods, Inc. v. N.L.R.B. **626 F.2d 578 (C.A. 7, 1980)**

(Ees who raise ducklings until ready for processing on five *grow-out* farms which were separate from E's main complex exempt from unit as agricultural Ees as defined by FLSA Sec. 3(f); moreover, Ees on remaining farm who raised ducklings and also performed *substantial and regular amount of work* on ducks raised by local growers under contract with E not exempt as agricultural Ees, but excluded on basis they did not share sufficient community of interests with unit Ees)

N.L.R.B. v. C & D Foods, Inc. **626 F.2d 578 (C.A. 7, July 1980)**

(determination of *agricultural Ee* properly left, in first instance to Bd, *whose special duty is to apply this broad statutory language to varying fact patterns*; Bd's determination must be accepted by reviewing ct *if it has warrant in the record and a reasonable basis in law*)

2484-1225 Tests

2484-1225-1200 Totality of situation determines applicability of secondary definition of agriculture

Dairy Fresh Products Co., A Division of Cal-Maine & Foods, Inc., d/b/a Stahmann Egg Farms **251 NLRB No. 163**

(farm workers employed in egg processing held exempt as agricultural Ees where their work falls w/i FLSA definition of *preparation for market* of indicated commodities and meets secondary test for agriculture)

Dairy Fresh Products Co., A Division of Cal-Maine & Foods, Inc., d/b/a Stahmann Egg Farms **251 NLRB No. 163**

(farm workers employed in feed mill operation held exempt as agricultural Ees, where their work falls w/i FLSA definition of performance *incident to or in conjunction with* exempt farming operations to extent feed mill is utilized for E's own farm operations and thus meets secondary test for agriculture; feed provided to State University at cost in conjunction with research project does not convert feed mill operations into nonagricultural commercial endeavor)

2484-1225-7500 Whether activity is carried on as part of agricultural function or is separately organized

Cornell University **254 NLRB No. 027**

(meatcutters at E's retail sales meat shop which is separately staffed and administered as a commercial enterprise separate from and independent of E's facility where it raises livestock held not exempt as agricultural Ees)

2484-1225-8700 Poultry raiser's farmer status

Dairy Fresh Products Co., A Division of Cal-Maine & Foods, Inc., d/b/a Stahmann Egg Farms **251 NLRB No. 163**

(farm workers employed in poultry raising and egg production operations, exempt as agricultural workers where their work comes w/i FLSA primary definition of agriculture; poultry raising is specifically included in definition, and eggs are farm commodities)

C & D Foods, Inc. v. N.L.R.B. **626 F.2d 578 (C.A. 7, 1980)**

(Ees who raise ducklings until ready for processing on five *grow-out* farms which were separate from E's main complex exempt from unit as agricultural Ees as defined by FLSA Sec. 3(f); moreover, Ees on remaining farm who raised ducklings and also performed *substantial and regular amount of work* on ducks raised by local growers under contract with E not exempt as agricultural Ees, but excluded on basis they did not share sufficient community of interests with unit Ees)

2484-1250 Activities exempt as agricultural

2484-1250-1200 Landscaping and raising trees

Drummond Coal Company **249 NLRB No. 139**

(under Sec. 3(f) of FLSA that Bd employs in determining whether workers are *Ees* or *agricultural laborers* workers engaged in revegetation of mined areas held agricultural laborers notwithstanding products grown on revegetated land is not sold and revegetation mandated by Federal and State statutes, since workers in preparing seedbeds are engaged in cultivation and tillage of soil under Sec. 3(f))

2484-1250-3300 Egg production and processing

Dairy Fresh Products Co., A Division of Cal-Maine & Foods, Inc., d/b/a Stahmann Egg Farms **251 NLRB No. 163**

(farm workers employed in poultry raising and egg production operations, exempt as agricultural workers where their work comes w/i FLSA primary definition of agriculture; poultry raising is specifically included in definition, and eggs are farm commodities)

2484-1250-7800 Transporting produce, etc.

2484-1250-7850 Transportation from fields of independent growers not agricultural work

2484-1250-7550—Cont.

N.L.R.B. v. Hudson Farms, Inc. 681 F.2d 1105 (C.A. 8, July 1982)

(truck drivers and yard workers who transport poultry between independent contract growers and E's processing plant are Ees rather than *agricultural laborers*)

2484-1275 Activities not exempt as agricultural

2484-1275-3300 *Processing poultry independent of farm*

N.L.R.B. v. Hudson Farms, Inc. 681 F.2d 1105 (C.A. 8, July 1982)

(truck drivers and yard workers who transport poultry between independent contract growers and E's processing plant are Ees rather than *agricultural laborers*)

2484-1275-8800 *Growing, packing and/or distributing produce or horticultural products*

Spirit Mountain Farms, Inc., et al d/b/a Spirit Mountain Farms 259 NLRB No. 140

(E engaged in business of packaging and selling melons produced by other agricultural producers held not w/i statutory exclusion of agricultural E)

2484-3700 'Any individual employed by his parent or spouse'

Campbell-Harris Electric, Inc. and Campbell Electric, Inc. 263 NLRB No. 167

(discharge of U adherent, who is son of shareholders of 30-percent of closely held corporation, not unlawful, notwithstanding reason for discharge was to avoid bargaining obligation, since employed son is excluded under Sec. 2(3) from status of *employee* as an *individual employed by his parent or spouse* and therefore not protected by Act)

Campbell-Harris Electric, Inc. and Campbell Electric, Inc. 263 NLRB No. 167

(where son of principal stockholders of former entity had not lost employment as an *employee* as result of ULP or as result of labor dispute, new E entity, found *alter ego*, had no obligation to offer Ee reinstatement)

Joseph J. Mattes Co. 258 NLRB No. 161

(son of E's vice president and manager did not share community of interest with other Ees)

Harvey & Madding, Inc., d/b/a Dublin Honda JD-(ATL)-97-81

(challenge to ballot of son of president and part owner of E, sustained where evidence showed that son possessed special status which allied his interest with those of management)

Clifford Cook, d/b/a Pinnacle Company and Pinnacle Roofing Co., Inc. JD-(SF)-196-79

(sons of owner)

N.L.R.B. v. H. M. Patterson & Son, Inc. 636 F.2d 1014 (C.A. 5, 1981)

(sons of E who owned 20% of stock in company at which election held not eligible to vote since they were employed by parents and thus, under Section 2(3) of Act, not Ees of E; or alternatively ineligible under Section 9(b) as *closely aligned with management* where until recently they had been in college with large part of expenses paid by their father and had lived with their parents and in home owned by father)

N.L.R.B. v. H. M. Patterson & Son, Inc. 636 F.2d 1014 (C.A. 5, 1981)

(E's contention that challenge to ballots of sons of E improperly sustained since sustained on basis of Section 9(b) where U had challenged ballots on basis of Section 2(3), rejected, in view of close relation historically between two sections, and absent abuse of discretion by Bd)

2484-5000 'Independent contractor'

2484-5033 Indicia of status

Kentucky Prince Coal Corporation 253 NLRB No. 070

(coal haulers found independent contractors and excluded from unit where trucks driven by owners and owner's Ees, E pays owner who is responsible for all maintenance, E carries no workmen's compensation, unemployment compensation, pays no social security or withhold taxes on drivers behalf; E provides no benefits, may not substitute drivers between trucks although owners do w/o E's knowledge, and haulers not subject to E's work rules)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Tova Trucking Company) 249 NLRB No. 088

(owner operators of dump trucks held independent contractors where they were paid by hour, mileage or tonnage rates, responsible for entire cost of their enterprises, select jobs want to work on and may hire drivers or subcontract work)

International House v. N.L.R.B. 676 F.2d 906 (C.A. 2, Apr. 1982)

(operator of cafeteria in International House (IH) held independent contractor where contract provides that all *hiring and supervision* duties, sanitation, dishwashing, Ees' tax and insurance records envisioned of sub-contracting rather than joint E relationship; IH's control over cafeteria's hours, prices, menus, standards of *quality, cleanliness, safety and health*, right to approve budget and inspect books was *monitoring aimed at satisfactory work product* rather than control over day-to-day operation or entitle IH to supervise workers in any manner)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)

(Bd's interpretation of issues is entitled to no particular deference where issues involved are purely legal or otherwise outside Bd's particular expertise; Bd's vacillation in regard to question of status of cab leasing-independent contractor-made attitude of judicial deference to its decision especially inappropriate)

2484-5033-0100 Generally

Better Building Supply Corp., and Evergreen Roofing, Inc., Its Alter Ego 259 NLRB No. 063

(roofing subcontractors held Ees of roofing corporation where they: are assigned specific jobs by E, furnished with supplies and equipment, almost never refuse jobs assigned to them, have no opportunity to improve their profit)

Puerto Rico Hotel Association 259 NLRB No. 088

(*in deciding whether individuals are Ees as defined in Act or are excluded therefrom as independent contractors. common law agency text must be applied. Under this test, E-Ee relationship exists where person for whom services are performed reserves right to control not only ends to be achieved but also means to be used to achieve such ends. All of these facts must be analyzed in applying test. It is the right, not the exercise of control, that is important. Test applies to individuals who may be supervisors as well as to those who may be Ees*)

Franklin Foote, d/b/a B & F Cartage 251 NLRB No. 068

(Ees who *spotted* trailor trucks by backing trailor into dock or pulling it away and parking it found not to be independent contractors since there was no exercise of entrepreneurial skills)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) 248 NLRB No. 140

(in finding taxicab driver-owners and sublessees Ees rather than independent contractors, Bd held right to unilaterally promulgate and change terms and conditions of employment is itself evidence of right to control manner and means in which services are to be provided as well as absence of arm's-length relationship between two contracting parties)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) 248 NLRB No. 140

(in finding taxicab driver-owners and sublessees Ees rather than independent contractors, Bd held E's exercise of discipline over drivers clearly established E's right to control them)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) 248 NLRB No. 140

(in finding taxicab driver-owners and sublessees Ees rather than independent contractors, Bd held control exercised by E over drivers' entrepreneurial opportunities indicated an E-Ee relationship and not an arm's length relationship between two business entities)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) 248 NLRB No. 140

(in finding taxicab driver-owners and sublessees Ees rather than independent contractors, Bd held control exercised by E over drivers' subleasing and sale of their taxicabs indicated E-Ee relationship)

Air Transit, Inc. (Communication Workers of America, AFL-CIO) 248 NLRB No. 140

(in finding taxicab driver-owners and sublessees at airport Ees rather than independent contractors, Bd held E's contract with FAA evidenced E-Ee relationship where FAA contract explicitly prohibited E from assigning its exclusive right to pick up passengers at airport, number of drivers testified E never told them their relationship was based on franchise or that they were independent contractors, and E required drivers to comply only with portions of contract that it deemed should be enforced)

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating 247 NLRB No. 099

(Ee who instructs other Ees in welding held regular part-time Ee not independent contractor where he had no authority at all and was paid on hourly basis)

Carpetland U.S.A., Inc. JD-(ATL)-29-80

(although unilateral establishment of prices and temporary nature of relationship between carpet installers and store for which they performed services would normally indicate Ee status, such is not the case here, and installers were found to be independent contractors, since bidding procedures for jobs were not reduced to non-negotiated status, and there was no *right to terminate* in contract between store and installers whose relationship would continue unless installer failed to meet requirements of carpet installation profession)

Carpetland U.S.A., Inc. JD-(ATL)-29-80

(contention that carpet installers at store were not independent contractors because they were paid for any overtime work they performed evenings or on week ends, rejected, since payment was not for overtime but rather a

2484-5033-0100—Cont.

premium paid to encourage installers to perform work at a particularly designated evening hour or week and time)

Carpetland U.S.A., Inc. **JD-(ATL)-39-80**

(contention that carpet installers at store were not independent contractors because store became involved in hiring process for helpers of installers, rejected; fact that store on occasion referred to installer an application from some individual interested in installing carpet, and that on limited number of occasions, E's management personnel requested installer to hire member of family did not constitute attempt by store to influence hiring process of helpers for installers)

Carpetland U.S.A., Inc. **JD-(ATL)-39-80**

(contention that carpet installers at store were not independent contractors because they did not advertise their services, rejected, where installers placed business cards in public places, and one installer sponsored bowling team; question is not whether installers used best or most appropriate means to gainfully advertise their business but rather whether they did advertise, which, in fact, they did)

Carpetland U.S.A., Inc. **JD-(ATL)-39-80**

(factor indicative of carpet installer's independent contractor status was that, in accordance with installation subcontract with store, installer was responsible for any damage to customer's property, and manner in which installer took care of such damage was totally w/i his discretion)

Carpetland U.S.A., Inc. **JD-(ATL)-39-80**

(factor indicative of carpet installer's independent contractor status was that at various times certain of the installers had had bargaining agreements with Us covering their helpers)

Carpetland U.S.A., Inc. **JD-(ATL)-39-80**

(contention that fact that carpet installers at store were able to profit from labor of others and thus become entrepreneurs should not be considered indicative of independent contractor status, rejected; whether individual was able to profit as entrepreneur from labor of others is factor toward possible finding of independent contractor status, and it is one more element to be considered in conjunction with all other factors in determining such status)

N.L.R.B. v. Tri-State Transport Corporation **649 F.2d 993 (C.A. 4, May 1981)**

(in distinguishing Ees from independent contractors, there is no shorthand formula or magic phrase that can be applied to find the answer, but all incidents of the relationship must be assessed and weighed with no one factor being decisive. What is important is that the total factual context is assessed, in light of pertinent common law agency principles. These common law principles may be referred to as right-to-control test)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(Bd instructed to apply same general agency principles as would cts in determining whether or not individual (cab driver) is an Ee or an independent contractor)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(length of lease term in no way affects relationship between taxi companies and their drivers while latter are operating leased vehicles)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36, etc. v. N.L.R.B. **649 F.2d 759 (C.A.D.C., Feb. 1981)**

(Act does not define independent contractor but Congress intended Bd and ct to apply general agency principles in distinguishing between Ees and independent contractors under Act. In applying agency principles Bd and cts look at all aspects of individual's relationship with putative E although no one part of relationship is determinative, degree of supervision over means and manner of performing task assigned is most important in determining whether relationship is that of Ee or independent contractor)

2484-5033-0133 Amount of control reserved by person for whom work is done

The Comedy Store **265 NLRB No. 183**

(standup comedians regularly performing at respondent's comedy store found independent contractors, notwithstanding respondent's manager's effectively claimed right of control concerning details of their performance resulting from their need to follow her suggestions in order to get good performance spots at respondent's talent showcase, since they do not receive their livelihood from respondent and do perform concurrently elsewhere, they supply their own routines, costumes and props, publicize their talent, hire managers and agents and treat these costs as business expenses on their tax returns)

Michigan Eye Bank **265 NLRB No. 179**

Perryville Coal Company **264 NLRB No. 046**

(truckdrivers held Ees of truck-lessor rather than Ees of independent-contractor truck owners or independent contractors where they owned trucks in view of lessor's contract with U representing them, contractual right to hire and fire and actual firing of drivers, laying off by seniority, disciplining of and imposing guidelines for drivers, making standard payroll deductions and contributions (including U dues and benefits), contract with lessor's stating drivers were considered Ees, and notification of change to independent contractors)

Fort Wayne Newspapers, Inc. **263 NLRB No. 112**

(distributors who deliver E's newspapers to dealers held independent contractors and not *employees* since they control manner and means of their performing tasks, where they decide whether to hire helpers and substitutes and set their terms and conditions of employment, distributors submit no financial records to E, they carry liability insurance, are permitted to hold outside jobs, and they alone are responsible for maintaining vehicles used in delivering E's product; the limited control exercised by E is directed solely toward accomplishing the ultimate goal, i.e., delivery of newspapers to dealers and their sale to the general public)

Capital Parcel Delivery Company **256 NLRB No. 050**

(owner operators found Ees rather than independent contractors under *right to control* test, where they: perform functions essential to E's business, have permanent working relationship with E, do business pursuant to E's delivery contract, E provides substantial assistance and guidance, follow E's rules and procedural requirements, and trained by E and are not involved in any financial risk; fact that E does not grant vacations or fringe benefits or provide workman's compensation is not controlling)

Pettibone Corporation **255 NLRB No. 151**

(Ee whose working conditions are identical with other admitted Ees but who is permitted to leave early and receives no fringe benefits or standard deduction held Ee as she lacks ear-marks of independent entrepreneur and is employed in this capacity for convenience of E who totally controls Ee's work efforts and compensation)

Tarheel Coals, Inc.; Newcon Coals, Inc.; Sigmond Enterprises, A Partnership; Bass Trucking a/k/a Bass Transit, Inc. **253 NLRB No. 071**

(case dismissed where Bd held truck owners were independent contractors since Es retained no control over right to substitute drivers, unilaterally change or impose working conditions, discipline truck owners or drivers, or control performance of drivers or truck owners away from Es' premises)

Liquid Transporters, Inc. **250 NLRB No. 163**

(owner-operators and their drivers held Ees of interstate common carrier where E maintained single seniority list for *all* drivers, *all* drivers were dispatched by E's dispatcher, *all* drivers were subject to same discipline for failure to comply with E's dispatch procedures and for violation of government regulations and company rules, single grievance committee was available to *all* drivers, and E insured equipment to *all* drivers in conduct of E's business)

Liquid Transporters, Inc. **250 NLRB No. 163**

(permanent sleeper teams who lease their equipment to E and operate their trucks on long distance trips for E *included* in drivers unit where they are qualified to drive for E and operate under authority of E (interstate common carrier); they make out applications and take written or drivers' tests like all other E's drivers and, in same fashion as other drivers for owneroperators who are Ees of E)

Jurisearch, Inc. **250 NLRB No. 091**

(where E controlled part-time law school graduate's research technique and method of writing of legal memoranda, graduate held Ee rather than independent contractor)

Jurisearch, Inc. **250 NLRB No. 091**

(law researcher held Ee rather than independent contractor where E authorized fixed number of hours per assignment, paid hourly rate and set deadlines so that researcher could not increase his income by entrepreneurship and had no capital investment or risk of loss)

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**

(lounge musicians at resort hotels found Ees rather than independent contractors in view of obedience to hotel managers' desires, lack of entrepreneurial risk, manager's control over means and manner of performance, and their leaders' contractual function of carrying out hotel's instructions as to musical selections and manner of performance)

Amber Delivery Service, Inc. **250 NLRB No. 016**

Georgia Pacific Corporation **249 NLRB No. 101**

(contrary to *Georgia Pacific Corp.*, 225 NLRB 866 (1976), Bd found truckdrivers to be Ees of *contract carriers* (independent contractors) and not E, since by terms of new agreements between E and contract carriers: (1) carriers and their drivers, rather than E, determined route to use; (2) carriers are no longer required to coordinate their services solely with E's operations; (3) E no longer retained right to subject carriers to all *instructions* concerning time and manner of performing their services; and (4) E did not have right to reject vehicles or drivers which failed to meet E's safety standards)

2484-5033-0133—Cont.

[illegible] & Sons, Inc. **240 NLRB No. 129**

Propane Transport, Inc. and Propane Chemical Leasing Co., Inc. **247 NLRB No. 131**
(owner-operators and non-owner drivers of leased trucks held Ees of lessee E and not independent contractors or Ees of independent contractors since E maintained extensive control over owner-operators as was demonstrated by E's exclusive possession, control, and use of said leased trucks, E's unilateral determination of owner-operator compensation, display of E's insignia and ICC certification on trucks, and, among other factors, overall effect of degree of control over equipment and personnel required by State and Federal regulations of motor carriers)

Exhibitors Film Delivery & Service, Inc. **247 NLRB No. 066**
(contract delivery drivers for common carrier who drive their own trucks held Ees rather than independent contractors under *right of control* test where they perform functions of E's business rather than of independent business, have permanent working arrangement with E, do business in E's name and sell E's services, work under contracts promulgated and unilaterally changed by E, account to E for funds, have no properitary interest in E's routes, take no risk but are limited to E's routes and E's prices for their services)

American Federation of Musicians, Local No. 76, AFL-CIO **JD-(SF)-297-81**
(musician who played regularly at restaurant found Ee and not independent contractor based on restaurant owner's right to control his performance, notwithstanding owner never overtly exercised control over musician)

N.L.R.B. v. Amber Delivery Service, Inc. **651 F.2d 57 (C.A. 1, June 1981)**
(in determining independent contractor status Bd looks to: right of control-results sought and means by which results achieved-, risk of loss and opportunity for profit; determination depends on assessment of all factors with no one being decisive)

Hilton International Company d/b/a Caribe Hilton Hotel v. N.L.R.B. **690 F.2d 318 (C.A. 2, Sept. 1982)**
(enforcement of order based on finding that band leaders in charge of steady engagement hotel musicians were hotel supervisors and musicians were hotel Ees, denied since band leaders were independent contractors and musicians their Ees, where leaders hired, fired, instructed and disciplined musicians, dealt with hotels through booking agents, bands were not subject to hotel personnel policies and had independent identity; also, musicians are highly skilled members of distinct occupation and usually provide own instruments and sheet music)

N.L.R.B. v. Tri-State Transport Corporation **649 F.2d 993 (C.A. 4, May 1981)**
(*in distinguishing Ees from independent contractors, there is no shorthand formula or magic phrase that can be applied to find the answer, but all incidents of the relationship must be assessed and weighed with no one factor being decisive. What is important is that the total factual context is assessed, in light of pertinent common law agency principles. These common law principles may be referred to as right-to-control test*)

N.L.R.B. v. Tri-State Transport Corporation **649 F.2d 993 (C.A. 4, May 1981)**
(in applying *right to control* test to owner-operator, and non-owner drivers of trucks leased to carriers governed by government regulations, contractor is Ee rather than independent contractor, only if there is *layer of carrier regulation put upon contractor beyond what was required by government regulation, impairing contractor's independent*)

Newspaper Drivers and Handlers Local Union No. 372, a/w Teamsters v. N.L.R.B. **682 F.2d 116 (C.A. 6, June 1982)**
(ct reversed its earlier finding and concluded in light of Bd's more recent decisions that newspaper carriers were Ees w/i meaning of Act and not independent contractors, in view of substantial control by district managers over carriers, absence of proprietary interest on part of carriers, their insulation from most losses, and limited opportunity for significantly increasing their income)

St. Charles Journal, Inc. v. N.L.R.B. **679 F.2d 759 (C.A. 8, June 1982)**
(determination of whether newspaper carriers are independent contractors or Ees requires examination of degree to which principal has *right to control* details of agent's performance; all incidents of work relationship must be assessed and weighed including, inter alia, right to hire and discharge persons doing work, method and determination of amount of payment to workmen, whether he stands to make profit on work of those under him, and which party furnishes tools or materials with which work is done)

City Cab Company of Orlando, Inc., et al. v. N.L.R.B. **628 F.2d 261 (C.A.D.C. 1980)**
(ct affirmed Bd determination that taxi drivers were Ees under Act and not independent contractors where E effectively retained control over manner in which its drivers perform their duties)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(ability to establish lease terms unilaterally was not in itself enough to establish existence of E-Ee relationship (between cab owners and cab drivers); critical question was whether terms of lease vest excessive control in lessor (cab owner))

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(control exercised over *manner and means of performance* is identifying characteristic of E-Ee relationship, not merely economic controls which many corporations exercise over independent contractors)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that government regulation has made supervision or control by lessor (cab owner) unnecessary was not equivalent of presence of actual supervision or control)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(lessee-drivers who are practically uncontrolled by cab companies in manner and means that they operate their cabs not considered as *Ees* w/i scope of NLRA in view of clear intent of Act's legislative history)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(two elements in instant case determinative of leased cab drivers' status as independent contractors and not as Ees were; (1), lack of control by lessor in manner and means in which drivers carry on their business and (2), rent that lessor receives for lease of cab was not related to amount of fares collected by lessee-driver)

2484-5067 Specific operations

2484-5067-1500 Carpet installers

Carpetland U.S.A., Inc. **JD-(ATL)-39-80**
(carpet installers performing installation work for store engaged in retail sales of carpeting held independent contractors, rather than Ees, where control reserved by store was only to the result sought, not the manner and means by which result was accomplished; Sears case (176 NLRB 876), determining that installers were independent contractors, is controlling inasmuch as factors considered by Bd were present in instant case as enumerated herein and also specifically commented upon; other cases, in which carpet installers were found to be Ees, held distinguishable)

2484-5067-2000 Contract drivers

Fort Wayne Newspapers, Inc. **263 NLRB No. 112**
(distributors who deliver E's newspapers to dealers held independent contractors and not *employees* since they control manner and means of their performing tasks, where they decide whether to hire helpers and substitutes and set their terms and conditions of employment, distributors submit no financial records to E, they carry liability insurance, are permitted to hold outside jobs, and they alone are responsible for maintaining vehicles used in delivering E's product; the limited control exercised by E is directed solely toward accomplishing the ultimate goal, i.e., delivery of newspapers to dealers and their sale to the general public)

Drukker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. **258 NLRB No. 097**
(delivery contract holders found not independent contractors where E assigns delivery area, sets subscription price of newspapers, and pays them fixed weekly stipend over amount they collect on their own)

Capital Parcel Delivery Company **256 NLRB No. 050**
(owner operators found Ees rather than independent contractors under *right to control* test, where they: perform functions essential to E's business, have permanent working relationship with E, do business pursuant to E's delivery contract, E provides substantial assistance and guidance, follow E's rules and procedural requirements, and trained by E and are not involved in any financial risk; fact that E does not grant vacations or fringe benefits or provide workman's compensation is not controlling)

Reliable Interstate, Inc. **255 NLRB No. 127**
(owner-operators and drivers hauling steel for interstate carrier held Ees where E supervises Ees and controls details of work by enforcement of Federal and state regulations and either controls or retains right to control drivers beyond such regulations by requiring report of all accidents, retains right to control trip leasing, E pays part of medical insurance premiums, sets rates unilaterally, Ees drive primarily for E, notwithstanding Ees have limited entrepreneurial risk, may refuse loads, are paid by job, and E has attempted to define drivers as independent contractors by contract)

Liquid Transporters, Inc. **250 NLRB No. 163**
(owner-operators and their drivers held Ees of interstate common carrier where E maintained single seniority list for *all* drivers, *all* drivers were dispatched by E's dispatcher, *all* drivers were subject to same discipline for failure to comply with E's dispatch procedures and for violation of government regulations and company rules, single grievance committee was availa-

2484-5067-2000—Cont.

ble to *all* drivers, and E insured equipment to *all* drivers in conduct of E's business)

Liquid Transporters, Inc. **250 NLRB No. 143**
(permanent sleeper teams who lease their equipement to E and operate their trucks on long distance trips for E *included* in drivers unit where they are qualified to drive for E and operate under authority of E (interstate common carrier); they make out applications and take written or drivers' tests like all other E's drivers and, in same fashion as, other drivers for owneroperators who are Ees of E)

Georgia Pacific Corporation **249 NLRB No. 181**
(contrary to *Georgia Pacific Corp.*, 225 NLRB 866 (1976), Bd found truck-drivers to be Ees of *contract carriers* (independent contractors) and not E, since by terms of new agreements between E and contract carriers: (1) carriers and their drivers, rather than E, determined route to use; (2) carriers are no longer required to coordinate their services solely with E's operations; (3) E no longer retained right to subject carriers to all *instructions* concerning time and manner of performing their services; and (4) E did not have right to reject vehicles or drivers which failed to meet E's safety standards)

Mitchell Bros. Truck Lines **249 NLRB No. 051**
(owner-drivers of trucks leased to common carrier found Ees, not independent contractors, because of amount of control exercised over drivers; fact that controls imposed by Federal and State regulations immaterial, for controls define carriers employment relationship with its drivers; also carrier assumes money responsibilities for owner which minimize driver's entrepreneurial risks; furthermore, fact little supervision exercised by E not controlling where nature of work requires little supervision, there is no need for actual control)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(owner operators of dump trucks held independent contractors where they were paid by hour, mileage or tonnage rates, responsible for entire cost of their enterprises, select jobs want to work on and may hire drivers or subcontract work)

Propane Transport, Inc. and Propane Chemical Leasing Co., Inc. **247 NLRB No. 131**
(owner-operators and non-owner drivers of leased trucks held Ees of lessee E and not independent contractors or Ees of independent contractors since E maintained extensive control over owner-operators as was demonstrated by E's exclusive possession, control, and use of said leased trucks, E's unilateral determination of owner-operator compensation, display of E's insignia and ICC certification on trucks, and, among other factors, overall effect of degree of control over equipment and personnel required by State and Federal regulations of motor carriers)

Exhibitors Film Delivery & Service, Inc. **247 NLRB No. 066**
(contract delivery drivers for common carrier who drive their own trucks held Ees rather than independent contractors under *right of control* test where they perform functions of E's business rather than of independent business, have permanent working arrangement with E, do business in E's name and sell E's services, work under contracts promulgated and unilaterally changed by E, account to E for funds, have no properitary interest in E's routes, take no risk but are limited to E's routes and E's prices for their services)

N.L.R.B. v. Tri-State Transport Corporation **649 F.2d 993 (C.A. 4, May 1981)**
(in applying *right to control* test to owner-operator, and non-owner drivers of trucks leased to carriers governed by government regulations, contractor is Ee rather than independent contractor, only if there is *layer of carrier regulation put upon contractor beyond what was required by government regulation, impairing contractor's independent*)

N.L.R.B. v. Tri-State Transport Corporation **649 F.2d 993 (C.A. 4, May 1981)**
(driver of vehicle leased by trucking firm held not to be Ee of firm but rather Ee of, or profit sharer with, owner-lessor of vehicle since most alleged control by firm resulted from its obligation to enforce government regulations and where firm usually paid lessor rather than driver, did not make deduction for driver's tax or social security, and had to get permission from owner to dispatch truck or obtain substitute driver, notwithstanding contention right to control rather than reason for its existence is crucial element and regulations requiring haulers to exercise control over their drivers created statutory Ees)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36, etc. v. N.L.R.B. **669 F.2d 759 (C.A.D.C., Feb. 1981)**
(dump truck operators obtained by contractors from brokers held independent contractors notwithstanding brokers rent trailers to some operators, insure their rented trailers, makes fuel available for purchase by operators, perform all billing and collection services for operators and pay truck operators monthly whether bills are collected), since no supervision exercised by brokers and contractor personnel only tell operators where to unload; operators own their trucks and responsible for licensing, insurance, repairs, maintenance, operating costs and may subcontract jobs)

2484-5067-3500 Delivery drivers

Austin Tupler Trucking, Inc., and Gold Coast, Inc. **261 NLRB No. 029**
(owner-operators who lease their equipment to E held independent contractors because E obtains jobs for them and receives 10 percent commission, E does not supervise work, owner-operators can perform work for anyone, set own hours, have high degree of independence, exercise entrepreneurial judgment regarding mechanical specifications of trucks; thus, controlling both manner and means by which hauls are accomplished)

Amber Delivery Service, Inc. **250 NLRB No. 016**
(owner operators held Ees and not independent contractors where E exercised such daily control as: work load, routes taken, drivers having no proprietary interest in routes, and E's warehouse Ees assisting in loading and unloading; moreover, fact that E does not withhold taxes, provide workmen's compensation, drivers receive no paid holidays, pay cost of own repairs and fuel and contract sets forth that drivers are not Ees is not controlling)

Talley's Truck Line **JD-(SF)-113-82**
(drivers held Ees rather than independent contractors notwithstanding only paid for time worked, where were available to E full time and did not own equipment they drove or used and E patently exercised full and complete control over all phases of work of drivers in regard to when or where they drove, drivers were required to adhere to E's rules, paid wages and benefits set by E)

N.L.R.B. v. Amber Delivery Service, Inc. **651 F.2d 57 (C.A. 1, June 1981)**
(owner-operators of package delivery trucks found Ees not independent contractors where E exercises substantial control over drivers performance of deliveries, starting time strictly controlled, daily work load determined by company dispatcher, drivers prohibited from using vehicle to provide related service elsewhere, E conducts mandatory safety meetings, drivers must wear uniform of E, paint vehicle with company colors, carry liability and cargo insurance for E's protection and subject to termination for poor performance; moreover, E sets customer rates and assignments of drivers effectively controlling Ees' income)

2484-5067-4000 Driver salesmen

Charmer Industries, Inc. **250 NLRB No. 031**
(salesmen working for wholesalers held statutory Ees and not in business for themselves, where U contract lists number of causes for their discharge, Es assign, supervise, and take away from salesmen accounts they are to service, and also establish quotas against which their performance is evaluated)

Bellacicco & Sons, Inc. **249 NLRB No. 129**
(drivers who purchased exclusive right from producer of bread to distribute its product in a certain area and had right to sell route, held independent contractors, where responsible generally for insuring and maintaining trucks, may employ substitute driver w/o company's approval, distribute other products, set prices for cash customers, set own hours, did not attend company meetings or have company manuals issued to them; further there was no withholding of taxes or social security nor unemployment or workman's compensation contributions made on their behalf and company reimbursed by drivers for his share of medical insurance)

N.L.R.B. v. Maine Caterers, Inc., et al. **654 F.2d 131 (C.A. 1, July 1981)**
(driver-salesmen who sold products of industrial caterer held Ees rather than independent contractors where E had right to control not only results sought but also means by which those results are achieved, all routes were property of E, drivers' control of prices was limited, and drivers did not own their trucks but leased them, paying for their gasoline and other maintenance)

2484-5067-6000 Taxicab drivers

Yellow Taxi Company of Minneapolis, d/b/a Suburban Yellow Taxi Company **262 NLRB No. 089**
(taxi drivers found to be Ees where E requires drivers to maintain trip sheets, mandates extensive system of flat rate fares drivers must charge, controls driver's source of business, significantly regulates hours drivers may work and is recipient of goodwill generated by services drivers provide; thus, E effectively retains control over manner in which it drivers perform their duties)

Yellow Taxi Company of Minneapolis, d/b/a Suburban Yellow Taxi Company **249 NLRB No. 088**
(taxicab drivers who leased cabs from E found Ees rather than independent contractors where areas of control over lessee drivers included collection of alleged driver overcharges, use of flat fare rates, requirements that lessees clean their cabs, restrictions on freedom of lessees to refuse to accept assigned runs w/o penalty, restrictions on use of radio, mandates by various laws, enforced by E, violation of which could result in refusal of leases, E's retention of right to end leasing relationship, and E's precluding lessees from allowing others to drive during their lease terms)

2484-5067-6000—Cont.

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**

(taxicab driver-owners and sublessees at airport held Ees rather than independent contractors, notwithstanding factors indicating independent contractor status, in view of 7 enumerated factors such as E's retention of unilateral control over drivers' revenue by control of fare structure, performance of drivers' services in E's name, E's absolute control over determination of satisfactory performance, and managerial assistance and control at E's taxistand)

Air Transit, Inc. v. N.L.R.B. **679 F.2d 1095 (C.A. 4, June 1982)**

(taxicab drivers for airport taxicab service (Service) found independent contractors where: drivers', pay Service flat fee for participating; Service does not receive any share or percentage of drivers' earnings; drivers not required to keep *trip sheets*; drivers control their own work schedules, may work any locations they wish, and drivers own their cabs; moreover, Service provides no vacation time, sick leave, workmen's compensation; does not train drivers or test them; notwithstanding drivers are required to paint cabs in uniform manner, carry more insurance than required by law, and comply with state regulations)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(ability to establish lease terms unilaterally was not in itself enough to establish existence of E-Ee relationship (between cab owners and cab drivers); critical question was whether terms of lease vest excessive control in lessor (cab owner))

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(fact that government regulation has made supervision or control by lessor (cab owner) unnecessary was not equivalent of presence of actual supervision or control)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(length of lease term in no way affects relationship between taxi companies and their drivers while latter are operating leased vehicles)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(lease-drivers who are practically uncontrolled by cab companies in manner and means that they operate their cabs not considered as *Ees* w/i scope of NLRA in view of clear intent of Act's legislative history)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(two elements in instant case determinative of leased cab drivers' status as independent contractors and not as Ees were; (1), lack of control by lessor in manner and means in which drivers carry on their business and (2), rent that lessor receives for lease of cab was not related to amount of fares collected by lessee-driver)

2484-5067-7000 Newspaper dealers

The Washington Post Company **254 NLRB No. 014**

(E's contention that circulation managers in its newspaper's circulation department should be excluded because of department's special labor relations history involving inclusion of managers in U contract, at time of their conversion to independent contractor status, only to preserve their pension and welfare funds, rejected, since managers are Ees of company, have been included in unit in past, and are specifically included by reference in Bd-certified unit)

2484-5067-8000 Newspaper carriers

The Oakland Press Co., a Subsidiary of Capital Cities Communications, Inc. **249 NLRB No. 142**

(newspaper carriers found Ees where E has reserved right to control result achieved and also means used in attaining results; factors considered are: substantial control over carriers by district managers, carriers have no proprietary interest, insulated from most economic losses, limited opportunity to significantly increase income)

Newspaper Drivers and Handlers Local Union No. 372, a/w Teamsters v. N.L.R.B. **682 F.2d 136 (C.A. 6, June 1982)**

(ct reversed its earlier finding and concluded in light of Bd's more recent decisions that newspaper carriers were Ees w/i meaning of Act and not independent contractors, in view of substantial control by district managers over carriers, absence of proprietary interest on part of carriers, their insulation from most losses, and limited opportunity for significantly increasing their income)

St. Charles Journal, Inc. v. N.L.R.B. **679 F.2d 759 (C.A. 8, June 1982)**

(determination of whether newspaper carriers are independent contractors or Ees requires examination of degree to which principal has right to control details of agent's performance; all incidents of work relationship must be assessed and weighed including, inter alia, right to hire and discharge persons doing work, method and determination of amount of payment to workmen, whether he stands to make profit on work of those under him, and which party furnishes tools or materials with which work is done)

2484-5067-8400 University faculty

Bradford College **261 NLRB No. 061**

(faculty teaching one-half time or less (part time) excluded from unit of faculty at college, since classified as independent contractors, generally cannot vote by ballot on major curriculum changes, are paid flat fee twice a semester, are not eligible for e's programs relating to life insurance, social security deductions or retirement)

2484-5067-8800 Day care centers

Rosemount Center **248 NLRB No. 163**

(home mothers employed by child day care facility, who provide day care services in their homes, held Ees, rather than independent contractors, in view of E's control over their work conditions and environment)

2484-5067-8700 Theatrical entertainers

The Comedy Store **265 NLRB No. 183**

(standup comedians regularly performing at respondent's comedy store found independent contractors, notwithstanding respondent's manager's effectively claimed right of control concerning details of their performance resulting from their need to follow her suggestions in order to get good performance spots at respondent's talent showcase, since they do not receive their livelihood from respondent and do perform concurrently elsewhere, they supply their own routines, costumes and props, publicize their talent, hire managers and agents and treat these costs as business expenses on their tax returns)

2484-5067-9400 Musicians

Puerto Rico Hotel Association **259 NLRB No. 058**

(hotels held E of musicians who play on their premises; musicians held Ees rather than independent contractors and their leaders held supervisors in view of hotel's control over type of music, schedules and leave, fact musicians, issued cards by hotels entitling them to charge food and beverages, to discounts and Ee parking, promulgation of rules regarding restricting gambling and storage of instruments, and attire, notwithstanding musicians did not fill out employment applications filled out by other Ees, do not punch time clock, follow detailed grievance procedure or undergo orientation training)

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**

(lounge musicians at resort hotels found Ees rather than independent contractors in view of obedience to hotel managers' desires, lack of entrepreneurial risk, manager's control over means and manner of performance, and their leaders' contractual function of carrying out hotel's instructions as to musical selections and manner of performance)

American Federation of Musicians, Local No. 76, AFL-CIO **JD-(SF)-297-81**

(musician who played regularly at restaurant found Ee and not independent contractor based on restaurant owner's right to control his performance, notwithstanding owner never overtly exercised control over musician)

2484-6200 Supervisor (for definition see 177-8500)

N.L.R.B. v. B & B Theatre Company, Inc. **636 F.2d 149 (C.A. 6, 1980)**

(refusal to hire applicant for *projectionist-manager* position, only position available, because applicant was member of U, not violative, since record indicated position was supervisory, and therefore, not protected under *Labor Management Relations Act*)

3200 'REPRESENTATIVE'

3900 'LABOR ORGANIZATION'

3901 GENERALLY

H. A. Artists & Associates, Inc., et al. v. Actors' Equity Assn. et al. **451 US 704 (U.S. SCt. May 1981)**

(agents for actors are *labor group* as their function is representation of U members in sale of their labor; agents are franchised by U and this system is substitute for hiring hall; agents controversy with U over payment of franchise fee is *labor dispute* w/i meaning of Norris-LaGuardia Act)

College of Osteopathic Medicine and Surgery **265 NLRB No. 037**

(U held not labor organization w/i meaning of Act where faculty members in unit were managerial Ees, and unit was comprised solely of managerial Ees)

The Exchange Bank **264 NLRB No. 111**

(*bargaining group* formed by Ees held labor organization w/i meaning of Sec. 2(5), notwithstanding E's contention that individual whom E contended to be supervisor, was active in formation of group and that activity fatally tainted status of group as labor organization, where individual was at no relevant time Sec. 2(11) supervisor, assuming that supervisory participation in organization of group would have been fatal)

3901—Cont.

Mac Towing, Inc., et al. **262 NLRB No. 168**

(Inland Rivermen's Association of American found labor organization in absence of evidence that Ees do not participate in it and in view of collective-bargaining agreement between it and E)

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**

(in finding that U was labor organization, ALJ relied on credited testimony of U official regarding U's status as labor organization and also on *Certification of Representative,* which ALJ admitted over E's objection, since document reflected that U was certified as bargaining representative of unit found appropriate herein)

French Hospital Medical Center **254 NLRB No. 083**

(E's contention that petitioner Local U is not labor organization and that International is petitioner since Local is a sham because it depends on International for its financial existence, rejected, while petitioner does not yet represent anyone and consequently receives no dues, it was formed to represent health care professionals with respect to wages, hours and other conditions of employment, has staff and issues newsletter; however, ptn was amended to reflect petitioner's association with International)

3901-7500 Capacity to sue and be sued

Aquaslide 'N' Dive Corporation **263 NLRB No. 059**

(E's contention that U was not labor organization that could be certified because it is only a division of International rather than separate organization and that this fact is evidenced by International, rather than division, filing mtn in Federal court to enjoin E in matter concerning unit Ees and thereby International claimed to represent Ees in disregard of Bd certification, rejected because omission of name of certified U in pleadings was either inadvertent or deemed unnecessary)

3925 PREREQUISITES

3925-2000 Employee particpation-organization need not be composed exclusively of employees

Lewis University **268 NLRB No. 157**

(Bd held that, contrary to E's contention, Faculty Life Committee of College of Arts and Sciences is *labor organization* under Sec. 2(3) where Ees participate in it and purpose of organization is to bargain collectively with E)

3925-4000 Purpose of dealing with employers with regard to employee working conditions

Barry S. Solof, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group **264 NLRB No. 019**

(Ees of medical clinic who refused to work until management heard their grievances do not constitute *labor organization;* and thus, were not required to give notice under *Sec. 8(g) of Act* of intended work stoppage; however, 8(g) *of Act* does not apply only to work stoppages in support of bargaining demands)

Keyway, A Division of Phase Inc. **263 NLRB No. 172**

(group of Ees who shared common, reasonably specific grievance (protesting discharge of past supervisor and criticizing new supervisor) held not to have been *labor organization w/i meaning of Act;* Ees acted w/o structure or organization and combination of Ees did not exist for purpose of treating with E as to other matters concerning Ees' terms and conditions of employment)

Mac Towing, Inc., et al. **262 NLRB No. 168**

(Inland Rivermen's Association of American found labor organization in absence of evidence that Ees do not participate in it and in view of collective-bargaining agreement between it and E)

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**

(E's contention that neither petitioner nor intervenor, involved in case herein dealing with question of jurisdiction over private, nonprofit school having relationship with foreign government, are labor organizations because some of their members are employed by foreign government or its school system, rejected, since petitioner and intervenor are willing to represent Ees and exist for purpose of dealing with Es concerning wages, hours, and other terms and conditions of employment)

Steiner-Life Textile Products Co. **259 NLRB No. 147**

(Ee representatives held labor organization, notwithstanding they did not engage in collective bargaining with E, where they did deal with E concerning grievances, wages, hours of employment, and conditions of work)

Memphis Furniture Manufacturing Co. **259 NLRB No. 061**

(Association, held labor organization notwithstanding fact that Association had no history of representing truckdrivers, where established for express purpose of bargaining with E over wages, hours, and conditions of employment)

United Truck and Bus Service Co. **257 NLRB No. 031**

(mtn to dismiss R-ptn granted where Bd found that local Union was not labor organization w/i meaning of Act due to requirement, in its constitution that members must be Ees of public Es; therefore, since public Es are not Es as defined in Sec. 2(2) of Act and that Ees of such Es are not Ees as defined in Sec. 2(3) of Act, Local does not exist for purpose of dealing with Es as defined in Act)

Ralph K. Davies Medical Center **256 NLRB No. 153**

(Bd rejected E's contention that petitioner was not labor organization because E's former director of nursing, an admitted supervisor at time of employment with E, was involved in petitioner's formation and one of its purposes was promoting her reinstatement as director of nursing with E; petitioner limited its objectives from the start to terms and conditions of employment of its own members; said supervisor was never a member as supervisors were specifically excluded, and there is no evidence that she took part in petitioner's formation)

A & D Davenport Transportation, Inc. and San-Fair Special Service Transportation, A Division of A & D Davenport Transportation, Inc. **256 NLRB No. 079**

(E's contention that it was a health care institution and that Ees forfeited protection of Act by engaging in concerted refusal to work w/o giving 10 days notice pursuant to Sec. 8(g) of Act rejected, since strictures of Sec. 8(g) apply only to labor organizations as defined in Sec. 2(5) and here, group (unaffiliated with any existing labor organization) was totally unstructured and was doing nothing more than presenting grievances and thus was not statutorily defined labor organization)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(Building and Construction Trades Council held labor organization, notwithstanding Council did not meet statutory requirement that Ees participate in *labor organization*, did not engage in collective bargaining, nor existed for purpose of dealing with Es concerning grievances labor disputes, wages, hours of conditions of employment; where it had objectives of safeguarding jurisdictional rights of Ees, protecting their wages, hours and working conditions; further, an organization need not engage in collective bargaining to qualify as labor organization)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 182**

(committee of representatives elected by Ees from three of E's departments to present their grievances to E's representatives held labor organization)

Streamway Division of The Scott & Fetzer Co. **249 NLRB No. 054**

(in-plant Ee committee held labor organization, notwithstanding that only one grievance pertaining to vacations was actually adjusted at committee meetings with E, where committee had purpose of dealing with E who had established committee for ostensible purpose of securing adjustments in terms and conditions of employment)

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**

(FASH Local 100 found to be labor organization where it exists in part to represent Ees with regard to employment conditions, not withstanding it has concurent purpose of attempting to reform Teamsters)

South Nassau Communities Hospital **247 NLRB No. 067**

(*Nursing Advisory Committee* participated in by Ees and which dealt with E concerning Ees' grievances and conditions of employment held to have been *labor organization* notwithstanding Committee was also concerned with hospital administration and professional matters not related to wages, hours and working conditions)

Clifford Cook, d/b/a Pinnacle Company and Pinnacle Roofing Co., Inc. **JD-(SF)-196-79**

United Brick and Clay Workers of America Local No. 957, AFL-CIO (Ralco Sewing Industries) **JD-280-80**

(unaffiliated Ee association consisting of 10-member grievance committee with elected spokesperson but no officers, constitution, by-laws, or membership rolls, which was formed for collective bargaining purposes and has met and bargained with E concerning Ees' working conditions since its formation and which has notified Ees of and held meetings that they attended where minutes were kept, held labor organization)

N.L.R.B. v. Streamway Division of The Scott & Fetzer Company **691 F.2d 288 (C.A. 6, Oct. 1982)**

(committee established and structured by E not labor organization since its purpose was not that of dealing with E regarding working conditions but that of allowing Ees to question, complain about or raise matters concerning said conditions; there was no evidence that anyone viewed it as anything other than a communication device)

3925-6000 Formal organization not essential

Keyway, A Division of Phase Inc. **263 NLRB No. 172**

(group of Ees who shared common, reasonably specific grievance (protesting discharge of past supervisor and criticizing new supervisor) held not to have been *labor organization w/i meaning of Act;* Ees acted w/o structure or organization and combination of Ees did not exist for purpose of treating

3925-6000—Cont.

with E as to other matters concerning Ees' terms and conditions of employment)

3925-8000 Collective bargaining not essential

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(Building and Construction Trades Council held labor organization, notwithstanding Council did not meet statutory requirement that Ees participate in *labor organization*, did not engage in collective bargaining, nor existed for purpose of dealing with Es concerning grievances labor disputes, wages, hours of conditions of employment; where it had objectives of safeguarding jurisdictional rights of Ees, protecting their wages, hours and working conditions; further, an organization need not engage in collective bargaining to qualify as labor organization)

3950 TYPES OF LABOR ORGANIZATIONS

3950-1800 Organizations representing individuals employed by government agencies

National Medical Convalescent of San Diego, d/b/a Ojai Valley Community Hospital **254 NLRB No. 163**

(contention that association precluded from representing Ees sought herein since not labor organization where it represents, among others, Ees of public agencies which are not Es under Act nor are their workers Ees under Act, rejected; since association does not limit membership to Ees of government agencies and Ees sought would form separate unit if certified)

3950-2700 Employee committees, medical interns' associations, etc.

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

(committee of representatives elected by Ees from three of E's departments to present their grievances to E's representatives held labor organization)

South Nassau Communities Hospital **247 NLRB No. 067**

(*Nursing Advisory Committee* participated in by Ees and which dealt with E concerning Ees' grievances and conditions of employment held to have been *labor organization* notwithstanding Committee was also concerned with hospital administration and professional matters not related to wages, hours and working conditions)

Lacks Industries, Inc. **JD-346-82**

(Ee committee formed for purpose of holding meetings with management to discuss Ee problems held not labor organization, where there was no evidence that committee existed for purpose of dealing with E concerning grievances, wages, and working conditions, and E had established practice of inviting gripes from Ees and perhaps was attempting a more formalized procedure to discuss problems)

United Brick and Clay Workers of America Local No. 957, AFL-CIO (Ralco Sewing Industries) **JD-200-80**

(unaffiliated Ee association consisting of 10-member grievance committee with elected spokesperson but no officers, constitution, by-laws, or membership rolls, which was formed for collective bargaining purposes and has met and bargained with E concerning Ees' working conditions since its formation and which has notified Ees of and held meetings that they attended where minutes were kept, held labor organization)

3950-4500 Organizing committees, central labor councils, etc.

Berry-Mahurin Construction, Inc. **298 NLRB No. 171**

(Local U held labor organization w/i Act notwithstanding fact following merger of several locals into council Local did not negotiate agreements with E, did not deal with Es concerning grievances labor disputes, wages, hours or conditions of employment, inasmuch as these functions were delegated to council, since council and its representatives were acting specifically in furtherance of U's interest they are agents of U which is responsible for their actions)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(Building and Construction Trades Council held labor organization, notwithstanding Council did not meet statutory requirement that Ees participate in *labor organization*, did not engage in collective bargaining, nor existed for purpose of dealing with Es concerning grievances labor disputes, wages, hours of conditions of employment; where it had objectives of safeguarding jurisdictional rights of Ees, protecting their wages, hours and working conditions; further, an organization need not engage in collective bargaining to qualify as labor organization)

Carpenters, Local # 360 v. N.L.R.B. **690 F.2d 661 (C.A. 8, July 1982)**

(U's contention that it lost its status as labor organization when it joined other locals to form district council, rejected, since although council assumed responsibility for bargaining on behalf of locals, individual locals continued to represent their members concerning certain benefits; further, council had no Ee members, but consisted of elected members of affiliated locals and inasmuch as council acted in furtherance of locals' interests, its representatives were agents of locals)

3950-7700 Organizations subject to influence, domination or control by supervisors

Sealift Maritime, Inc. **265 NLRB No. 154**

(admission of supervisors to membership in organization which Ees may participate and join and which exists for collective bargaining does not alter intervenor's status as labor organization in absence of substantial evidence that there exists clear and present danger of conflicts of interest between U and Ees)

North Shore University Hospital **259 NLRB No. 121**

(nurses' association one of whose purposes is to represent nurses in collective bargaining held labor organization, notwithstanding that it admits supervisors to membership, since mere presence of supervisors in labor organization is irrelevant to determining status under Sec. 2(5))

National Medical Convalescent of San Diego, d/b/a Ojai Valley Community Hospital **254 NLRB No. 163**

(Association which represented nurses at several hospitals not precluded from representing Ees at hospital herein as no supervisors on Bd of Directors of Association is employed by E; furthermore, no conflict of interest even if there were supervisors of competing hospitals on Bd of Directors since each bargaining unit negotiates independently of Association or of any of its other bargaining units, and additionally, since no supervisors presently on Bd, possibility that in future supervisors may exert some influence against interest of E's Ees is too remote and speculative)

French Hospital Medical Center **254 NLRB No. 083**

(E's contention that intervenor nurses association was disqualified from representing its Ees since conflict of interests existed where supervisors at other health care related institutions were on association's board of directors and one of its members was employed as supervisor by E particularly where individuals employed by institutions that were E's competitors in recruiting nurses, rejected, absent evidence supervisors employed by other institutions could influence bargaining relationship between E and intervenor to impermissable degree)

Abington Memorial Hospital **250 NLRB No. 098**

(state-wide nurses' association in which Ees participate and which exists, at least in part, for purpose of representing its members in collective bargaining held labor organization, even though supervisors hold leadership positions in organization)

N.T. Enloe Memorial Hospital **250 NLRB No. 078**

(in unit of Ees represented by association which admitted supervisors to membership, there is no conflict of interest which would disqualify association as bargaining representative where one unit member is supervisor but is not engaged in collective bargaining)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**

(Nurses' Association held labor organization not disqualified to represent E's Ees, even assuming that competitive relationships existed between E and other area hospitals, where there was no showing of conflict of interest between influence w/i Association of supervisor-members employed by competing hospitals and Association's capacity to represent E's Ees; presence alone of third-party supervisors in Association is not sufficient, since Bd will not assume any *inherent* conflict of interest between supervisors and Ees in bargaining process; see also Oak Park Community Hospital, 249 NLRB No. 120)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**

(Nurses' Assoc. held labor organization not disqualified to represent E's Ees, notwithstanding E's contention that specified supervisors, officials of Assoc. and employed by other hospitals, could influence to an impermissible degree bargaining between E and Assoc., since all bargaining responsibilities of Assoc. reside w/i Assoc.'s commission all of whose members are nonsupervisory nurses, bargaining on local level is conducted by elected Ee bargaining committee, and there was no reasonable likelihood that specified supervisors could meaningfully affect bargaining between E and Assoc.)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**

(Nurses' Association held labor organization not disqualified to represent E's Ees; Ees' interest in R is not affected adversely by Association's rendering of personal employment-related assistance to one of their supervisor-members inasmuch as members of Accoaition's bargaining commission exercise individual discretion both as to whether to assist supervisor and as to form such assistance should take, and E is able independently to determine whether supervizor so indebted to U should be assigned to bargain on its behalf with such U; see also *Oak Park Community Hospital*, 249 NLRB No. 120)

Sierra Vista Hospital, Inc. **249 NLRB No. 066**

(where Bd had rescinded its denial of E's mtn to revoke certification of nurses association and remanded case to RD to give parties opportunity to fully litigate issue as to whether association was disqualified to represent E's nonsupervisory nurses because of supervisory participation in positions of authority in the association, Bd held E had failed to meet burden of proving clear and present danger of conflicts of interest under *Sierra Vista*, 241 NLRB

3950-7700—Cont.

No. 107, and denied E's mtn to revoke certification: See also *Sierra Vista Hospital, Inc.* 249 NLRB No. 067)

Exeter Hospital 248 NLRB No. 056

(nurses association which included supervisors in leadership positions found to be unqualified to represent Ees since there was clear and present danger of conflict of interest which would interfere with collective bargaining process)

Healdsburg General Hospital 247 NLRB No. 030

(nurses association held labor organization and not disqualified from acting as Ee representative on ground association is subject to control of supervisors who are permitted to be members, since (1) there was no evidence E's supervisors belonged to association, and Bd will not resort to speculation about possibility, as claimed by E, that supervisors might join at some future time, and (2) E failed to meet *heavy burden* of showing *direct* conflict of interest because of possible relation between E and Es of supervisors participating in bargaining process)

Healdsburg General Hospital 247 NLRB No. 030

(nurses association held labor organization and not disqualified from acting as Ee representative on ground that association is subject to control by supervisors who are permitted to be members; even assuming that association is influenced by supervisors, that association represents *all* nurses including supervisors, and that such representation is costly and controversial, Bd held E failed to establish that any of these factors create conflict of interest sufficient to prevent association from acting as Ee representative)

Sidney Farber Cancer Institute 247 NLRB No. 001

3950-8100 Supervisors' union not 'labor organization'

Comprehensive Health Planning Council of Southeastern Michigan 256 NLRB No. 183

(petitioner, Council of division managers of nonprofit corporation providing health care planning services, not labor organization w/i meaning of Act, since it was comprised of supervisors and did not represent Ees)

3950-9000 Guards' union

Bally's Park Place, Inc. 257 NLRB No. 132

(local that exists for betterment of wages, hours, and working conditions of security officers and contemplates no other members, has five unpaid officers, constitution, and by-laws held labor organization)

N.L.R.B. v. J. W. Mays, Inc. 675 F.2d 442 (C.A. 2, Feb. 1982)

(U representing *guards* not disqualified from representing Ee guards where non-guards were not members of U nor did U solicit non-guards for membership; U was not purporting to represent Ee who was officer of U but worked in non-guard position in his non-guard capacity)

3975 SUCCESSOR LABOR ORGANIZATIONS

Robert E. Johnson and Geneva H. Johnson, a Partnership, d/b/a Jolie Belts Company 265 NLRB No. 141

(District Council held successor to U where U's merger into District Council complied with U's constitution and only element missing but mandated by Bd was evidence that all eligible Ees were properly notified and provided opportunity to vote; however, E cannot now attack validity of merger where subsequent to merger, E entered into bargaining relationship with District Council as the continuation of the U)

Yates Industries, Inc., California Division 264 NLRB No. 161

(local U's disaffiliation from U's International and affiliating with another International by vote of membership while agreement in effect designating local U and International, the certified representative, as joint bargaining representatives was untimely attempt to rid themselves of their certified bargaining representative contrary to Bd policy; certification not amended, International U didn't relinquish its status as certified representative; thus, new local U's demand for recognition after disaffiliation, E's conceding to its demand, withdrawing recognition from International and local, unlawful)

Lord Jim's 259 NLRB No. 164

(where ALJ took judicial notice of district ct's finding in related case that 5 Us with which E had agreements were unilaterally ordered to be merged into Bartenders' U by its international president, ALJ found Bartenders' U was not successor to the Us merged into it, since merger procedures failed to meet due process requirements, and there was no evidence that members of other Us than Bartenders' U voted in any election relating to merger)

Warehouse Groceries Management, Inc. 254 NLRB No. 021

(U resulting from merger of U designated on authorization cards with another U held successor to representational rights where merged U has assumed all assets and liabilities, including contract obligations)

Wellman Industries, Inc. 248 NLRB No. 029

(U consisting of two merged labor organizations found successor to one of merged Us as continuation of old U under new name with continuity of representation and no change in operations found successor)

Amoco Production Company v. N.L.R.B. 613 F.2d 107 (C.A. 5, Mar. 1980)

(in making factual determination of whether affiliated U was successor to independent U, ct must consider whether changes have occurred in rights and obligations of U's leadership and membership, and in relationships between putative bargaining agent, its affiliate, and E; however, such factual determination is for Bd to make initially)

3987 EFFECT OF DISAFFILIATION, AFFILIATION, OR MERGER

Robert E. Johnson and Geneva H. Johnson, a Partnership, d/b/a Jolie Belts Company 265 NLRB No. 141

(District Council held successor to U where U's merger into District Council complied with U's constitution and only element missing but mandated by Bd was evidence that all eligible Ees were properly notified and provided opportunity to vote; however, E cannot now attack validity of merger where subsequent to merger, E entered into bargaining relationship with District Council as the continuation of the U)

The Exchange Bank 264 NLRB No. 111

(no affiliation occurred where, when U (*Group*) failed to obtain recognition from E, Ees who had supported it dissolved *Group* upon determining that International U could better serve their needs, held meeting during which they passed resolution dissolving *Group* and *Group* effectively ceased to exist as labor organization)

Yates Industries, Inc., California Division 264 NLRB No. 161

(where international was certified bargaining representative and local signed bargaining agreement, international never relinquished its status as representative, and both local and international have participated as joint representatives of Ees, both held joint representatives)

Yates Industries, Inc., California Division 264 NLRB No. 161

(local U's disaffiliation from U's International and affiliating with another International by vote of membership while agreement in effect designating local U and International, the certified representative, as joint bargaining representatives was untimely attempt to rid themselves of their certified bargaining representative contrary to Bd policy; certification not amended, International U didn't relinquish its status as certified representative; thus, new local U's demand for recognition after disaffiliation, E's conceding to its demand, withdrawing recognition from International and local, unlawful)

Texas Plastics, Inc. 263 NLRB No. 59

(merger of two international Us to form new international did not affect representation at local level, since nothing but local's designation—*i.e.*, that it was chartered by new international—had changed and no improprieties by local's former international were established; E's contention that change of name on local's charter was improper because its Ees and local's members had not participated in or ratified merger rejected, since constitution of Ees' former international expressly authorized its executive board to merge with other international Us)

Knapp-Sherrill Company 263 NLRB No. 060

(E estopped from challenging procedures employed in merger of two local U's two years after it took place where it satisfied all elements of estoppel—knowledge, intent, mistaken belief and detrimental reliance; had knowledge of U merger, was aware it had right to refuse to recognize it as successor, and after merger E dealt with successor as its Ees' bargaining representative including forwarding dues payments, adjusting grievances, and bargaining over terms of proposed midterm wage reopener, and local relied on E's business as usual approach to its detriment when it took no further action to establish its status as collective-bargaining representative)

Knapp-Sherrill Company 263 NLRB No. 060

(merger of 2 Internationals into UFCW proper where Us held convention attended by both Us to effectuate merger; UFCW's executive board comprised of both International's officers' geographical divisions, districts of Meat Cutters unaltered, committees survived, local Us charter members and not required to merge with other locals, UFCW assumed rights, property, obligations of Internationals; although Local 171 did not send delegates to convention out of choice, its members did not vote on proposed merger; merger did not affect representation at local level, was provided for in Meat Cutters constitution, thus RD's amendment of certification proper)

Lord Jim's 259 NLRB No. 164

(where ALJ took judicial notice of district ct's finding in related case that 5 Us with which E had agreements were unilaterally ordered to be merged into Bartenders' U by its international president, ALJ found Bartenders' U was not successor to the Us merged into it, since merger procedures failed to meet due process requirements, and there was no evidence that members of other Us than Bartenders' U voted in any election relating to merger)

Warehouse Groceries Management, Inc. 254 NLRB No. 021

(if ALJ finds card majority on remand, bargaining order may issue to successor U formed by merger of U designated on authorization cards with another U, since designated U continued to exist as evidenced by successor U's retention of some offices, all property rights and assumption of all assets and liabilities, including contract obligations)

3987—Cont.

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(election purporting to affiliate Ee committee and its constituent Ees with international U held ineffective and void where voting violated all principles of fair election inasmuch as there was no voting list or record kept of who received ballots, and who voted, and there was no assurance that ballots represented votes of legitimate voters; and on day following voting, after ballots had been counted, Ee, who was most active in promoting affiliation, handed in two ballots purporting to be vote of other Ees, who apparently voted in favor of affiliation and broke election's tie vote)

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(election purporting to affiliate Ee committee with international U held ineffective and void since it was conducted in violation of minimal standards of democratic procedure or due process, where no notice was given Ees, advising them of meeting for conducting vote; no opportunity was allowed for discussion among Ees on merits of affiliation; majority of Ees had been informed that they were not voting on affiliation with international but on whether they wanted to hear about it; and there was lack of safeguards against rigged or otherwise unfair election)

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(valid affiliation election held not to create new labor organization nor does it result in dissolution of existing labor organization, and agreement between affiliating U and E remains effective until its stated expiration date; in case of void affiliation election, it is even more obvious that such election and any derivative actions do not dissolve pre-existing labor organization or its contract with E)

Wellman Industries, Inc. **248 NLRB No. 029**
(U consisting of two merged labor organizations found successor to one of merged Us as continuation of old U under new name with continuity of representation and no change in operations found successor)

4700 'COMMERCE'

5500 'AFFECTING COMMERCE'

Radio Free Europe/Radio Liberty, Inc. **262 NLRB No. 063**
(notwithstanding record did not establish any direct or indirect inflow of goods or services for non profit private corporation, receipt of 90 million dollar in year from U.S. Government demonstrates that E's operations have substantial impact on commerce, and establishes required statutory jurisdiction of this Bd)

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**
(*Bd's assertion of jurisdiction compelled if clear language of Act placing foreign commerce w/i Bd's jurisdiction is to have any meaning*, Bd is not deprived of jurisdiction where American neutral Ees are directly and adversely affected by purely secondary conduct violative of Section 8(b)(4))

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**
(*SCt has never barred or indicated its intention to bar Bd's jurisdiction over activity between exclusively American entities simply because that activity has some relation to foreign maritime operations* reading SCt decisions limiting Bd's jurisdiction to situations where disputed conduct involved and inescapably interfered with maritime operations of foreign vessels is *unduly expansive*)

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**
(absence of primary dispute does not preclude invocation of Section 8(b)(4) protection)

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**
(Bd asserted jurisdiction where U's refusal to handle cargo from USSR to protest its invasion of another country where refusal affected U.S. users of products on ships; Bd is not necessarily deprived of jurisdiction over *all* secondary conduct engaged in to further primary dispute which itself is beyond Bd's jurisdiction merely because dispute is with foreign entity)

Actors' Equity Association **247 NLRB No. 172**
(contention that Bd should decline jurisdiction because alleged ULPs affecting only a few non-resident aliens had no significant effect on commerce, rejected; in exercising its jurisdiction, Bd looks to impact of E's operations on commerce and does not attempt to measure impact of specific ULPs alleged, unless they are de minimis)

E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge ***JD-490-81***

Peninsula Association for Retarded Children and Adults **JD-(SF)-269-80**
(E subject to Bd's jurisdiction notwithstanding its operations are local in character as (1) it is retail store, part of interstate chain of stores and is integral part of chain, and (2) Bd had asserted jurisdiction over respondent in prior case)

Lewis V. Baldovin, Jr., RD v. International Longshoremen's Association, AFL-CIO, et al. **626 F.2d 445 (C.A. 5, 1980)**
(inj denied since no basis to believe U's refusal to load grain aboard ships bound for Russia in order to protest Russia's invasion of another country, and avoid enhancing economic status of Russia *affected commerce*, where only political decision by foreign government could satisfy U's grievance; notwithstanding U's action affected producers and transporters of grain and those who loaded it aboard ships; boycott secondary in that U did not seek to affect labor relations of E's with which it had contract or terms and conditions of employment of their Ees)

N.L.R.B. v. First Termite Control Co., Inc. **646 F.2d 424 (C.A. 9, May 1981)**
(enforcement denied where Bd failed to establish statutory jurisdictional requirement of interstate commerce (interstate business more than *de minimis* by admissable evidence)

N.L.R.B. v. W. Carter Maxwell, dba Pioneer Concrete Co. **637 F.2d 698 (C.A. 9, 1981)**
(labor dispute found to *affect commerce* where E purchased $6,000 worth of goods originating in other states including $1,920 worth of cement from out-of-state suppliers and also by purchasing large ensurance policies written with out-of-state companies through local agents; these purchases more than *de minimous* and support finding of jurisdiction)

6200 'UNFAIR LABOR PRACTICE'

7000 'LABOR DISPUTE'

7001 GENERALLY

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**
(*Bd's assertion of jurisdiction compelled if clear language of Act placing foreign commerce w/i Bd's jurisdiction is to have any meaning*, Bd is not deprived of jurisdiction where American neutral Ees are directly and adversely affected by purely secondary conduct violative of Section 8(b)(4))

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**
(absence of primary dispute does not preclude invocation of Section 8(b)(4) protection)

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**
(primary conduct which interferes with foreign maritime operations is not subject to Bd jurisdiction regardless of whether charging party is primary or secondary E)

N.L.R.B. v. Greyhound Lines, Inc. **660 F.2d 354 (C.A. 8, Sep 1981)**
(labor dispute is any controversy concerning terms, tenure, or conditions of employment, and can have labor dispute w/o utilizing grievance procedures)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. **657 F.2d 1252 (C.A.D.C., Oct. 1980)**
(where U, engaged in consumer picketing at neutral retail store against sale of nonlocal soft drinks, had no conventional labor dispute with store or nonlocal suppliers, ct rejected U's contention that Bd has no authority to resolve controversies that do not contain *labor dispute* as defined in Sec. 2(9); that section is not a jurisdictional requirement, and is construed as a definitional provision only, designed to ensure uniform meaning to important phrase statute)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. **657 F.2d 1252 (C.A.D.C., Oct. 1980)**
(even if Sec. 2(9) were construed as jurisdictional requirement, definition of *labor dispute* therein might be broad enough to encompass instant controversy involving U engaged in consumer picketing at retail store against sale of nonlocal soft drinks and having no conventional labor dispute with store or nonlocal suppliers; however, where U's goal is economic not political, and especially where U's motive is to obtain more employment for its members, it may well be involved in a labor dispute)

7067 STRIKE

Brown & Root, Inc. v. N.L.R.B. **634 F.2d 816 (C.A. 5, 1980)**
(cessation of work to avoid unsafe conditions where rain began to blow on electrical equipment with which Ees were working held not strike)

7067-3300 Economic strike

AMPAC, a subsidiary of Kane-Miller Corp. **259 NLRB No. 151**
(strike *economic* rather than *ULP strike* where evidence made clear that Ees and U decided to strike because of E's bargaining positions and posture which did not constitute bad faith bargaining)

Walker Die Casting, Inc. **255 NLRB No. 034**
(strike was not ULP strike at inception as ULP committed day before strike did not contribute to strike and U told Ees that strike would be economic; strike was economic as it was caused by E's failure to agree to contract)

7067-3300—Cont.

W. G. Best Homes Corporation 253 NLRB No. 123

(strike held economic strike where precipitated by inability to reach agreement on economic matters in bargaining agreement and was not converted into ULP strike by E's failure to bargain regarding its decision to subcontract where U never requested bargaining on issue)

Deister Concentrator Company, Inc. 253 NLRB No. 040

(economic strike not converted to ULP strike where E's conduct subsequent to strike had no causal effect on continuation of strike)

Interstate Paper Supply Company, Inc. 251 NLRB NO. 189

(Bd disavowed ALJ's statement that U's objective during strike, as an alternative to obtaining more money, is to put E out of business if he does not yield)

Interstate Paper Supply Company, Inc. 251 NLRB NO. 189

(while agreeing with ALJ that strike was economic at its inception, Bd disavowed his characterization of GC's withdrawal of one 8(a)(5) complaint allegation to the effect that as of date strike started, E unlawfully paid its strike replacements higher wages than it had offered during negotiations as a *legal admission* that strike was an economic one)

Redlands Christian Migrant Association 250 NLRB No. 027

(strike over alleged unfavorable working conditions)

Excavation-Construction, Inc. 248 NLRB No. 081

(discharge of Ees who participated in 1-day work stoppage in support of U's bargaining position violated Act as this is strike and not *intermittent work stoppage* which would be unprotected)

Road Sprinkler Fitters Local Union No. 669, etc. v. N.L.R.B. 681 F.2d 11 (C.A.D.C., June 1982)

(lawful strike for U recognition is economic strike unless ULPs committed by E are *contributing cause of strike*)

7067-3350 Conversion to ULP strike

Sadloff Publications, Inc. 265 NLRB No. 139

(E's statements i.e., informing strikers that it might be possible to work out solution to strikers' complaints if strikers dropped U and came back to work, but that their return to work depended on dropping U, abandoning strike, and withdrawing ULP charges were not of *such character as to conclude that strike was converted or prolonged as result of them*)

Platte Valley Plumbing and Heating 264 NLRB No. 157

Vulcan-Hart Corporation (St. Louis Division) 262 NLRB No. 017

(economic strike converted to ULP strike when E discharged 19 strikers or approximately one-half of unit)

Cooperativa De Credito Y Ahorro Vegabajena 261 NLRB No. 161

(strike, whether economic or ULP strike at its inception, became ULP strike where record revealed strike was prolonged by unlawful discharge of Ee)

Hayden Electric, Inc. 256 NLRB No. 104

(economic strike converted into ULP strike by reason of E's conduct of unilaterally reducing wages and benefits, dealing directly with Ees, and failing to implement terms and conditions of bargaining agreement)

Gulf Envelope Company 256 NLRB No. 058

(economic strike held converted to ULP strike where E induced abandonment of strike by threats that strikers jobs might be permanently filled and any reinstatement would be w/o seniority, refused to pay accrued vacation benefits to strikers, and illegally discharged Ees, notwithstanding lack of direct evidence of Ees' concern with E's actions since violations of Act which have *inherently destructive effect upon Ees' Section 7 rights will affect conversion of economic strike despite failure of Ees to perceive fully unlawfulness of ULPs*)

Connecticut Distributors, Inc. 255 NLRB No. 170

(E's refusal to meet and bargain with U converted economic strike into ULP strike)

Walker Die Casting, Inc. 255 NLRB No. 034

(E's withdrawal of last contract proposal converted economic striked to ULP strike)

W. G. Best Homes Corporation 253 NLRB No. 123

(strike held economic strike where precipitated by inability to reach agreement on economic matters in bargaining agreement and was not converted into ULP strike by E's failure to bargain regarding its decision to subcontract where U never requested bargaining on issue)

Associated Grocers 253 NLRB No. 005

(no conversion of economic strike to ULP strike where ULPs committed by E did not prolong strike)

Berger Transfer and Storage, Inc. 253 NLRB No. 002

(after E threatened to discharge economic strikers)

Inta-Roto, Inc. 252 NLRB No. 111

(where E terminated contract in retaliation for strike)

Interstate Paper Supply Company, Inc. 251 NLRB NO. 189

(E's unlawful refusal to bargain with U for 5-month period extended strike thus turning economic strike into ULP strike)

Crestline Memorial Hospital Association, Inc. 250 NLRB No. 028

(economic strike converted to ULP strike when E refused to bargain in good faith by insistence on contract termination date coincidental with certification year)

Raimund Cornum Co., Inc. d/b/a Raycor Co. 249 NLRB No. 078

(although Ees' strike in support of U demand that their lawfully discharged co-Ees be returned to work was economic strike, it was converted to ULP strike by E's unlawful discharge of economic strikers for not abandoning strike)

Harding Glass Industries 248 NLRB No. 091

(unlawful withdrawal of member from E-association during negotiations converted economic strike to ULP strike)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)

(*strike converts to ULP strike when E commits intervening ULP which is found to have prolonged strike. It must be found not only that E committed ULP after commencement of strike, but that as result, strike was expanded to include protest over that ULP. Objective and subjective factors may be probative of conversion. Applying objective criteria, Bd and reviewing ct may properly consider probable impact of type of ULP on reasonable strikers in relevant context. Applying subjective criteria, Bd and ct may give substantial weight to strikers' characterization of their motive for continuing strike after ULP*)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)

(economic strike not converted into ULP strike by E's unlawful granting of wage increases, absent substantial evidence violation prolonged strike or was contributing cause of dispute, where U's predominant if not sole concern remained improving wages; nor may evidence of later events contribute retroactively to converting strike at earlier date)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)

(economic strike not converted to ULP strike by E's failure to bargain regarding transfer of work absent evidence E's actions in that regard aggravated, changed focus or in any way prolonged strike)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)

(economic strike not converted to ULP strike by misconduct of supervisors towards strikers where actions gave strikers encouragement that strike was suceeding since to be converted strike must have been expanded to include protest over ULP which restrianed or coerced Ees in exercise of their Section 7 rights, not conduct which encouraged, strengthened or aided protected conduct)

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(economic strike may be converted into an ULP strike when E engages in violations of Act which prolong or aggravate a work stoppage or when E informs Ees that he has hired others to replace them in their jobs, before E has in fact done so (civil contempt proceeding))

N.L.R.B. v. Proler International Corporation 635 F.2d 351 (C.A. 5, 1981)

(*for economic strikes to be converted to ULP strike, E's ULP must be contributing factor in causing or prolonging strike*)

N.L.R.B. v. Proler International Corporation 635 F.2d 351 (C.A. 5, 1981)

(economic strike not converted to ULP strike by E's vice-president informing Ees who had walked off job to protest working conditions that Ees would lose their jobs unless they returned to work by certain time, since no discharge absent evidence E or Ees considered Ees discharged, no final check, or termination notices sent, and no indication on picket signs or other means that continuation of strike motivated by threat of discharge which, in and of itself, was violative)

Walker Die Casting, Inc. v. N.L.R.B. 682 F.2d 592 (C.A. 6, July 1982)

(economic strike converted to ULP strike where E withdrew recognition w/o good faith doubt that was reasonably grounded and thereby prolonged strike)

Skrl Die Casting, Inc. v. N.L.R.B. 681 F.2d 1218 (C.A. 6, June 1981)

(E's unlawful statements and denial of overtime to Ee when considered in context of record as a whole and, since isolated, were not sufficient to support finding E was not bargaining in good faith, and did not convert economic strike to ULP strike)

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)

(recognitional strike converted to ULP strike when E threatened strikers with discharge)

Harding Glass Industries, Inc. v. N.L.R.B. 672 F.2d 1330 (C.A. 10, Feb. 1982)

(economic strike held to have become ULP strike when E unlawfully withdrew from multi-E unit at which time E's unlawful refusal to bargain became at least as significant from Ees' viewpoint as the effort to obtain

7067-3350—Cont.

favorable economic terms, and thus Bd could infer refusal to bargain became an operative cause of strike as of the date of E's withdrawal)

7067-4700 Unfair labor practice strike

The Exchange Bank 264 NLRB No. 111
(strike held ULP strike where work stoppage and strike were in protected concerted protest of unlawful discharges)

Struthers Wells Corporation 262 NLRB No. 136
(strike held ULP strike where, while E did not engage in bad faith bargaining on all counts as alleged, it did engage in bargaining w/o intent to reach agreement in areas of wages, seniority, jurisdiction-unit, and elimination of job posting and bidding procedures; such bargaining was part of reason Ees struck, and another reason was to protest E's failure to remedy ULPs found against it in prior Bd case)

Convair Corporation 261 NLRB No. 178
(where U representative appeared at E's plant and informed Ees that ULP strike was in progress, it is insignificant that strike started w/o advance notice to Ees)

Lion Uniform, Janesville Apparel Division 259 NLRB No. 142
(although at time of Ees' walkout E had committed ULPs by stricter enforcement of work rules and threats of discharge for striking, strike held not ULP strike, where there was no evidence that prior to strike e was negligent, dilatory or otherwise remiss in its bargaining obligation; U not E was unavailable to meet and negotiate; there was no evidence that Ees were motivated by E's ULPs or that ULPs contributed to initiation or prolongation of strike; and there was no direct evidence of causal connection between ULPs and strike)

Teamsters Local Union No. 574, a/w Teamsters
(Lola Wheeler, an Individual) 259 NLRB No. 037
(strike in protest of ULPs)

Ricks Construction Company, Inc. 259 NLRB No. 043
(strike held ULP strike where instituted to protest E's refusal to bargain with U after certification)

Research Products/Blankenship Company 258 NLRB No. 003
(strike held ULP strike where it was in protest of harassment of Ees and E's continuing refusal to bargain in good faith)

Lincoln Technical Institute, Inc. 256 NLRB No. 032
(discharge of strikers not violative where collective bargaining agreement contained no-strike clause and strike was not ULP strike because suspensions strikers were protesting were not ULPs)

Limestone Apparel Corp. 255 NLRB No. 101
(where Ees went out on strike because they were outraged at firing of two U adherents)

Rockingham Machine-Lunex Company 255 NLRB No. 015
(strike held ULP strike where Ees voted to strike after being informed of what had transpired during negotiations)

Quality Drywall Company, Inc. 254 NLRB No. 078
(strike held ULP strike where it was clearly to protest unlawful discharge)

Warehouse Groceries Management, Inc. 254 NLRB No. 021
(ULP strike found where Ees complained to U leader about harassment, interrogation about card signing, identify of card distributor, and threats of store closure)

Atlas Metal Parts Co., Inc. 252 NLRB No. 029
(strike held ULP strike since caused and prolonged by E's bad faith bargaining where Ees voted to strike after being informed E had been bargaining in bad faith and that U intended to file charges with NLRB, notwithstanding that at time of strike parties were apart only on two issues)

O.K. Machine & Tool Corp. and Gyrotronics, Inc. 251 NLRB No. 030
(strike for recognition of one U as representative of strikers found ULP strike)

Mediterranean Diner, Inc., t/a Bay Diner 250 NLRB No. 029
(picketing which was precipitated by ULPs not ULP strike since Ees did not withhold services)

Excavation-Construction, Inc. 248 NLRB No. 081
(strike caused in part by E's institution of unilateral change in terms of employment)

B. N. Beard Company 248 NLRB No. 016
(strike caused by E's failure to make payments to welfare and pension funds required under contracts with Us held ULP strike; failure to comply with notice and strike deferral provisions of Sec. 8(d) held not to make strike illegal since Sec. 8(d) is not applicable to ULP strike)

Jacques Syl Knitwear, Inc. 247 NLRB No. 191
(ULP strike where caused and prolonged by E's unlawful threats and discharges)

Crosby Coal Corporation JD-295-82
(strike which began immediately after successor E informed predecessor's Ees that they would only be employed if they renounced U is ULP strike)

Sanders Bus Line, Inc. JD-(SF)-120-82
(strike held ULP strike where Ees on strike in effort to persuade E to bargain with U after U had been certified)

Circle X Corporation JD-(SF)-222-80
(strike caused by E's refusal to meet with full U negotiating committee, ULP strike)

Anderson Sand & Gravel Company JD-608-80
(held ULP strike where Ees of 1 U struck to protest hiring of Ees represented by different U who were not subject of contract of first U and E's unilaterally contracting with outside U for work claimed by first U, notwithstanding no-strike clause and U representative attempt to get Ees back to work and statement that walkout violated contract)

Mather Federal Credit Union JD-(SF)-8-80
(fact that Ees who protested E's ULPs also expected to put economic pressure upon E and thereby obtain acceptable contract held not to lessen their rights as ULP strikers)

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 78-4222, Sept. 2, 1980, C.A. 2, (unreported)
(strike held ULP strike in view of E's ULPs committed just four months prior to strike and ending just days before strike began (civil contempt proceeding))

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)
(in order to be considered an ULP strike, a causal relationship must be shown between work stoppage or prolongation of existing strike and E's violation of Act, and strike must be sole or substantial contributing cause of strikers' action; however, strike may be ULP strike even though it also has economic objectives (civil contempt) proceeding)

N.L.R.B. v. Shaw Industries, Inc., A Division of
Crystal Springs Shirt Corp.; etc. 671 F.2d 1377(T) (C.A. 5, Mar. 1982)
(where ULP strike was in progress at one of E's plants, sympathy strike at second plant was ULP strike as timing of beginning and end of their strike coincided with ULP strike at first plant and some picket signs specified strike was in support of ULP strikers)

N.L.R.B. v. Robin American Corporation 654 F.2d 1022 (C.A. 5, 1981)
(refusal to reinstate striking Ees, violative, where strike was found ULP strike in view of fact that Ees struck in protest of unlawful lay-offs and discharges, unlawful closing of department, and unlawful threats and interrogations)

United Services For The Handicapped v. N.L.R.B. 678 F.2d 661 (C.A. 6, May 1982)
(strike held ULP strike where, while strikers obviously had economic demands, such demands cannot be said to have been sole reason for strike, and strikers were complaining at the time about continued harassment by E)

7067-6750 Causal relation of ULP must be shown

Airport Parking Management 264 NLRB No. 002
(strike held ULP strike where one of purposes of strike was to protest unlawful discharge)

Cooperativa De Credito Y Ahorro Vegabajeno 261 NLRB No. 161
(strike, whether economic or ULP strike at its inception, became ULP strike where record revealed strike was prolonged by unlawful discharge of Ee)

White Coffee Corporation 261 NLRB No. 149
(strike held ULP strike where provoked by unlawful discharge)

Heads and Threads Company, a Division of MSL
Industries, Inc. 261 NLRB No. 115
(in protest of unlawful discharges, threats, conditional promises of promotion, changes in working conditions, and denial of recognition of U)

Billion Motors, Inc., d/b/a Billion Oldsmobile-
Toyota 260 NLRB No. 099
(strike was ULP strike from its inception and throughout its duration, where it was motivated by E's unlawful efforts to bargain individually with Ees and its distribes against U; moreover E's unlawful bargaining tactics significantly prolonged strike)

Lion Uniform, Janesville Apparel Division 259 NLRB No. 142

Hudson Chemical Company 258 NLRB No. 009
(failure of E to bargain in good faith by refusing to supply U with information requested during negotiations)

International Business Systems, Inc. 258 NLRB No. 017
(strike held ULP strike since causal connection between strike and E's unlawful issuance of warning letters rather than noting Ee's errors on form which was followed by discharge of Ee who had received 3 letters; contention strikers did not strike over specific behavior found to be unlawful i.e. change in communication method w/i disciplinary system but rather struck on phantom issue of change in disciplinary standards rejected)

Pace Oldsmobile, Inc. 256 NLRB No. 111
(strike motivated by unlawful layoff)

7067-6750—Cont.

Gulf Envelope Company **256 NLRB No. 058**
(economic strike held converted to ULP strike where E induced abandonment of strike by threats that strikers jobs might be permanently filled and any reinstatement would be w/o seniority, refused to pay accrued vacation benefits to strikers, and illegally discharged Ees, notwithstanding lack of direct evidence of Ees' concern with E's actions since violations of Act which have *inherently destructive effect upon Ees' Section 7 rights will effect conversion of economic strike despite failure of Ees to perceive fully unlawfulness of ULPs*)

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(strike held ULP strike where unlawful discharges were precipitating cause of strike, intertwined with dischargees' mutual grievances regarding conditions of employment; strikes at E's other facilities in sympathy with strike, also ULP strikes)

Walker Die Casting, Inc. **255 NLRB No. 034**
(strike was not ULP strike at inception as ULP committed day before strike did not contribute to strike and U told Ees that strike would be economic; strike was economic as it was caused by E's failure to agree to contract)

John Cuneo, Inc. **253 NLRB No. 110**

Climate Control Corporation **251 NLRB No. 102**

Caterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) **250 NLRB No. 089**
(strike in protest of E's unlawful action in unilaterally changing transfer request system affecting voluntary demotion, held ULP strike from its inception)

Burns Motor Freight, Inc. **250 NLRB No. 045**
(strike held ULP strike notwithstanding it commenced several months after ULPs, where ULPs were unremedied at time of strike and E's refusal to bargain continued)

Talbert Manufacturing, Inc. **250 NLRB No. 026**

Amber Delivery Service, Inc. **250 NLRB No. 016**
(strike called over lawful Ee discharges not ULP strike notwithstanding E committed other ULPs at same time as no causal relationship existed between strike and ULPs)

Cable Vision, Inc. **249 NLRB No. 062**
(where picket signs used during strike noted there was ULP charge and bargaining in bad faith, E's conduct, found unlawful herein, caused strike and therefore was ULP strike)

ABL General Systems Corp. **JD-(NY)-67-82**
(strike caused in part by unlawful withdrawal of recognition of U found ULP strike)

Lucy's, Inc. **JD-832-79**
(strike held ULP strike, notwithstanding presence of economic issues, where Ees were apprised of E's ULP conduct before engaging in strike)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(*it is not simply the case that whenever in course of strike E commits act that is found to constitute ULP, strike is thereby transformed into ULP strike; some showing of prolongation and causation is required to support finding of conversion*)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(mere fact that ULP is committed prior to a strike does not necessarily render that strike ULP strike; there must be evidence of causal connection)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(where strike not ULP strike, ct will not enforce Bd's order of reinstatement and backpay; record was devoid of evidence that impasse over nonmandatory subject (presence of stenographers at negotiating sessions) contributed to U's decision to strike)

N.L.R.B. v. Shaw Industries, Inc., A Division of Crystal Springs Shirt Corp.; etc. **671 F.2d 1377(T) (C.A. 5, Mar. 1982)**
(if ULP is a contributing cause of strike, then strike is ULP strike. Even if we assume there are dual motives (ULPs and economic reasons) involved in decision to strike, that dual motivation does not deprive Es of status of ULP striker if E's ULP is a contributing cause)

N.L.R.B. v. Crystal Springs Shirt corporation, Bernstein and Sons Shirt Corporation **637 F.2d 399 (C.A. 5, 1981)**
(ct found that substantial evidence supported Bd finding that E's unilateral changes in piece rates and production quotas were contributing causes to strike, thus making it ULP strike)

N.L.R.B. v. Proler International Corporation **635 F.2d 351 (C.A. 5, 1981)**

Walker Die Casting, Inc. v. N.L.R.B. **682 F.2d 592 (C.A. 6, July 1982)**
(economic strike converted to ULP strike where E withdrew recognition w/o good faith doubt that was reasonably grounded and thereby prolonged strike)

Bellingham Frozen Foods, Inc. v. N.L.R.B. **626 F.2d 674 (C.A. 9, 1980)**
(strikers entitled to unconditional reinstatement as ULP strikers where E had refused to bargain with U as representative of seasonal as well as nonseasonal workers and as E cannot unilaterally change scope of recognized bargaining unit, its attempt to do so made strike an unfair labor strike)

7067-6775 Conversion to economic strike

Murphy Bonded Warehouse, Inc. **254 NLRB No. 178**
(economic strike converted to ULP strike by E's unlawful refusal to sign agreement where all terms agreed upon except return to work of strikers when U accepted E's final proposal and offered return to work of strikers but E falsely claimed to have permanent replacements)

Sunnyland Foods, Inc. **JD-(ATL)-36-80**
(ULP strike caused by E's unlawful refusal to bargain converted to economic strike after E complied with Bd's bargaining order and strike continued for five months after E began lawful bargaining)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(*it is not simply the case that whenever in course of strike E commits act that is found to constitute ULP, strike is thereby transformed into ULP strike; some showing of prolongation and causation is required to support finding of conversion*)

7800 'NATIONAL LABOR RELATIONS BOARD'

8500 'SUPERVISOR'

8501 GENERALLY

Key Opportunities, Inc. **265 NLRB No. 178**
(individuals E called *supervisors* found *Ees* w/i meaning of Act, notwithstanding they possessed and exercised authority in supervisory capacity, where they supervised clients in sheltered workshop environment who had mental, emotional, social, or physical handicaps and such clients were not Ees for purposes of Act; E's supervisors would be *supervisors* w/i meaning of Act if clients were *Ees*)

ITT Lighting Fixtures, Division of ITT Corporation **265 NLRB No. 188**
(on ct remand for further findings on supervisory authority of group leaders and whether their pro-U activity could effectively affect Ees' votes, Bd viewed it as law of the case, and as proper statement of law, that group leader is major (as opposed to minor) supervisor, whose pro-U activity could affect Ees' free choice in election, only if group leader possesses authority to hire, fire, promote, or issue written warnings on his own volition, or has authority to recommend such action)

Childers Manufacturing Company, Inc. **JD-(SF)-11-82**
(statutory definition of supervisor is not to be construed by Bd so broadly that it results in deprivation of statutory rights to individuals who, in reality, are Ees)

Crown Dielectric Industries, Inc. d/b/a Crown Auto Top Manufacturing **JD-93-80**
(possession of any one of enumerated powers set forth in Sec. 2(11) of Act establishes supervisory status)

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**
(professional Ees may also be categorized as supervisory and managerial Ees ineligible for inclusion in bargaining unit)

Southern Indiana Gas and Electric Co. v. N.L.R.B. **657 F.2d 878 (C.A. 7, Aug 1981)**
(ct found inapposite cases cited by Bd in support of its decision that system supervisors at electrical utility were supervisors, finding that Bd's asserted distinctions between cited cases and case herein reflected only semantic differences; Bd decisions, relied upon by Bd, were undermined by denial of enforcement in such cases; in respect to ct decisions concerning supervisory independent discretion, Bd's view was clearly contrary to existing ct law; and Bd relied on case which did not provide sufficient grounds on which ct could base conclusion)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(supervisory functions listed in Section 2(11) read in disjunctive and existence of any one of the functions sufficient to confer supervisory status)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. **643 F.2d 687 (C.A. 10, Mar 2, 1981)**
(finding of supervisory status not always necessary before imputing individual's actions to E)

8501-2000 Existence of statutory power controlling

Kern Council Services To The Developmentally Disabled, Inc. **259 NLRB No. 108**
(challenge to Ee's ballot sustained where Ee was found to be supervisor in light of her authority to grant or deny sick leave and vacation leave, to discipline an Ee, to evaluate her work performance, and to effectively recommend that her salary be increased; Bd held Ee's constant *possession* of supervisory authority, regardless of frequency of its exercise, is to be distin-

8501-2000—Cont.

guished from instances where an individual lacks supervisor status because he possesses supervisory authority sporadically or infrequently)

Garnbo Lace Mills, Inc. **249 NLRB No. 093**
(if Ee possesses any one of supervisory criteria of Sec. 2(11) of Act he will be found supervisor as balancing test is not used to determine supervisory status)

Mid-City Beverage Dist., Inc. **JD-(SF)-253-81**
(powers of supervisors enumerated in Section 2(11) are to be read in disjunctive)

N.L.R.B. v. St. Mary's Home, Inc., t/a St. Mary's Infant Home **690 F.2d 1062 (C.A. 4, Sept. 1982)**
(statutory definition of supervisor is to be read in disjunctive and that, if Ee has been delegated real authority to exercise any one of the statutory powers requiring use of independent judgment as opposed to being merely routine or clerical, regardless of frequency of exercise of such power, that Ee, whatever his job title, is to be treated as supervisor under the Act)

N.L.R.B. v. Dadco Fashions, Inc. **632 F.2d 493 (C.A. 5, Dec. 1980)**
(*functions of supervisor listed in statute are disjunctive. Bd need not show that an Ee performed all or several of functions to support finding of supervisory status*)

N.L.R.B. v. Berger Transfer & Storage Co. **678 F.2d 679 (C.A. 7, May 1982)**
(only one of criteria in Section 2(11) need be present to find supervisory status)

Southern Indiana Gas and Electric Co. v. N.L.R.B. **657 F.2d 878 (C.A. 7, Aug 1981)**
(since Sec. 2(11) must be read in the disjunctive, supervisory status is proven if evidence establishes the presence of any one of the criteria listed therein)

Southern Indiana Gas and Electric Co. v. N.L.R.B. **657 F.2d 878 (C.A. 7, Aug 1981)**
(existence of supervisory authority, not frequency of its use, determines supervisory authority under Sec. 2(11))

N.L.R.B. v. Dick Seidler Enterprises, dba Joe & Dodie's Tavern **666 F.2d 383 (C.A. 9, Jan. 1982)**
(existence of any one of statutory powers, regardless of frequency of exercise is sufficient to confer supervisory status if person uses independent judgment in connection with power)

8501-3000 Stipulation by parties

Rosehill Cemetery Association **262 NLRB No. 164**
(oral agreement between E and U to exclude individuals alleged to be supervisors from unit held not binding since Bd will not be bound by any agreement of parties, outside of narrow exception in *Banner Bedding, Inc.* 214 NLRB 1013, that is not written and signed and which does not expressly provide that issues of eligibility resolved by it shall be final and binding upon parties. Furthermore, Bd will not be bound by any written or oral agreement of parties where statutory issue of inclusion or exclusion of alleged supervisors in unit is raised for Bd resolution)

A & B Cartage, Inc. **256 NLRB No. 003**
(Bd not bound by Norris-Thermador list on issues of supervisory status)

8501-4000 Functions, duties, and authority, rather than titles significant

Key Opportunities, Inc. **265 NLRB No. 178**
(individuals E called *supervisors* found *Ees* w/i meaning of Act, notwithstanding they possessed and exercised authority in supervisory capacity, where they supervised clients in sheltered workshop environment who had mental, emotional, social, or physical handicaps and such clients were not Ees for purposes of Act; E's supervisors would be *supervisors* w/i meaning of Act if clients were *Ees*)

Tru-Mar Communications, Inc. **265 NLRB No. 089**
(duties Ee held at time of discharge control question of Ee's supervisory status)

RAHCO, Inc. **265 NLRB No. 030**

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**
(rank-and-file Ee cannot be transformed into supervisor merely by investing him or her with a title and theoretical power to perform one or more of enumerated functions)

Hydro Conduit Corporation **254 NLRB No. 068**
(production foreman at manufacturer of concrete pipe not supervisor since he lacked authority to effectively recommend changes in Ee's status or make decisions involving exercise of independent judgment but acted only as conduit between Ees and management, notwithstanding empowered to assign work, give verbal reprimands, grant leave requests, assign overtime, handle Ee complaints and grievances, report poor production, and violations of work rules and provide input regarding evaluation of Ees, attended management meetings, and did little actual production work)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(notwithstanding E referred to Ee as supervisor, Ee found to be an agent of E and not a supervisor,where Ee had none of the authority vested in supervisory personnel and relayed information from management to Ees; he had been placed by management in strategic position where Ees could reasonably believe he spoke on E's behalf)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(individual held not supervisor absent evidence of supervisory authority, notwithstanding he was referred to as supervisor and on occasion introduced to new Ees as supervisor since *supervisory status may not be determined on basis of title alone, but upon application of Section 2(11) standards*)

Childers Manufacturing Company, Inc. **JD-(SF)-11-82**
(in assessing whether supervisory status exists, specific job title is not, of itself, controlling; mere designation of Ee as *manager*, of itself did not confer supervisory status)

Mid-City Beverage Dist., Inc. **JD-(SF)-253-81**
(*sales supervisor* for beer distributor, notwithstanding title, higher pay, and daily evaluation of salesmen since evaluations routine and did not require independent judgment, he could not or make effective recommendations regarding hiring, discharge, discipline or promotion, grant time off, assign Ees or effectively determine length of training; further, *supervisor* substituted for salesmen on routes, used same sign in sheets and received same vacation as salesmen)

International Union of Elevator Constructors, Local No. 16 (Otis Elevator Company) **JD-183-80**

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand **615 F.2d 962 (C.A. 2, 1980)**
(individual designated *night acting manager* at food stand held not supervisor, notwithstanding cousin of owner, where he performed same duties as countermen most of shift, compensation less than that of some individuals in unit, only responsibility associated with title was counting of receipts and locking of doors; further, individual had hired only one person which was reviewed by management, and had no control over wages or scope of work of person hired, nor is his expressing displeasure when co-workers did not perform their share of duties)

N.L.R.B. v. Wilson-Crissman Cadillac, Inc. **659 F.2d 728 (C.A. 6, 1981)**
(Bd's finding that Ee not *supervisor* or *managerial* supported by substantial evidence; although Ee's title was that of *assistant parts manager*, job title not controlling; Ee did not hire or fire and gave only routine instructions to Ees in his department and record was devoid of any involvement with E's labor relations by Ee)

Southern Indiana Gas and Electric Co. v. N.L.R.B. **657 F.2d 878 (C.A. 7, Aug 1981)**
(in finding system supervisors at electrical utility supervisory, ct considered fact that E's designation of position as supervisory, while not itself determinative, was a significant factor in ascertaining supervisory status; weight should be accorded to job description which specified that major challenge of job was *ability to handle effectively necessary spontaneous actions and decisions required in emergencies*, and acknowledged that supervisors' impact on purchasing and power control had immeasurable effect; nor was job description mere pretense by not fairly reflecting actual duties of supervisors)

McDonnell Douglas Corporation v. N.L.R.B. **655 F.2d 932 (C.A. 9, 1981)**
(to qualify as supervisor, it is only necessary that person supervise statutory *Ees* directly or indirectly through chain of command)

8501-5000 Determination in another proceeding not conclusive

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**
(Ees' supervisory status determined in underlying R case may not be relitigated in C case absent newly discovered evidence, changed circumstances affecting R case findings or other extraordinary circumstances; see Bd's *R/R, Section* 102.67(f))

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. **643 F.2d 687 (C.A. 10, Mar 2, 1981)**
(ULP proceedings under Sec. 8(a)(1) or (3) are not so related to prior R proceedings that relitigation of common issues is precluded under Section 102.67(f) of Bd's R/R)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. **643 F.2d 687 (C.A. 10, Mar 2, 1981)**
(different policy considerations underlie determination of *supervisor* in R and ULP proceedings)

8501-6000 Voting in election not conclusive

King Trucking Company **259 NLRB No. 079**
(supervisor's voting in election not indicative of his status)

8501-6000—Cont.

N.L.R.B. v. Concord Furniture Industries, Inc., d/b/a Bradford Furniture Company 675 F.2d 426 (C.A. 1, Mar. 1982)

8520 INDICIA OF SUPERVISORY STATUS

8520-0100 Generally

Key Opportunities, Inc. 265 NLRB No. 178

(aides employed by E who operated sheltered workshops for handicapped clients found Ees and not supervisors even if clients they supervised were held herein to be *Ees*, where authority over clients was too indirect and insubstantial; moreover, aides were paid on an hourly basis, punched a timeclock, and two of the three aides had previously been in *sheltered* program as clients unlike any one else in management)

Tru-Mar Communications, Inc. 265 NLRB No. 089

(duties Ee held at time of discharge control question of Ee's supervisory status)

RAHCO, Inc. 265 NLRB No. 030

(burden of proving supervisory status rests on party alleging that such status exists)

8520-0800 Authority to hire, discipline, assign, etc.

Serendippity-Un-Ltd and Tigerrr, Inc. 263 NLRB No. 100

(low-level day supervisor at plant manufacturing truck beds, who has power to direct work in his discretion held supervisory, notwithstanding his lack of power to hire or fire Ees)

The Washington Post Company 254 NLRB No. 014

(while other functions and duties of assistant public relations manager in newspaper's public relations department did not indicate supervisory authority, his exercise of discretion in hiring and selecting tour guides for public relations department warrants finding him supervisory)

Liquid Transporters, Inc. 250 NLRB No. 163

(shift leaders employed in maintenance shop and cleaning rack of interstate common carrier held supervisors where, notwithstanding that they had same benefits as other Ees, they were solely responsible for their respective shifts; in their discretion, they scheduled and assigned work to Ees under them; they had authority to transfer Ees, give Ees time-off and overtime and made effective oral and written recommendations concerning Ees' work performance)

Han-Dee Pak, Inc. 249 NLRB No. 107

(leadmen held supervisors, notwithstanding little opportunity to exercise their authority to hire, fire, or discipline Ees; furthermore, E placed leadmen in strategic position where Ees could reasonably believe that they speak on E's behalf)

ITT Lighting Fixtures, Division of ITT Corporation 249 NLRB No. 061

(sole group leader in department held supervisor where she trains Ees, corrects their work, adjusts Ee grievances, approves overtime, grants time off, reassigns Ees to different work areas and issues oral warnings, notwithstanding she lacks authority to hire, fire, promote or grant wage increases)

Commercial Testing & Engineering Co. (Teamsters, Local Union 175) 248 NLRB No. 096

(notwithstanding much of time spent performing unit work)

Leyendecker Paving, Inc. 247 NLRB No. 010

(although Ee at highway and construction company worked with his hands, supervisory status was found where Ee was paid substantially greater wages than rest of his crew, drove company truck, had power to authorise overtime work, recommended wage increases, assigned or transferred jobs based on his discretion, had authority to discipline and conceded his job was similar to admitted supervisor)

Carpenters, Local Union 1096 (Basic Industries, Inc.) JD-(ATL)-83-82

Childers Manufacturing Company, Inc. JD-(SF)-11-82

(absence of power to hire Ees or to recommend that any Ee be hired or fired does not, of itself, preclude conclusion that Ee had been a statutory supervisor for it is the existence of supervisory power, and not necessarily constant and continuous utilization of it, which determines supervisory status)

Transportation By La Mar, Inc. JD-279-81

(administrative assistant, employed by passenger bus service, who oversees supervisors and has authority to hire and fire held supervisor)

Gladwin Corporation JD-565-80

N.L.R.B. v. Robin American Corporation 654 F.2d 1022 (C.A. 5, 1981)

(Bd correctly found Ees not supervisors where they did not make hiring and firing decisions but merely made casual suggestions and each performed manual routine tasks)

N.L.R.B. v. Dadco Fashions, Inc. 632 F.2d 493 (C.A. 5, Dec. 1980)

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)

Southern Indiana Gas and Electric Co. v. N.L.R.B. 657 F.2d 878 (C.A. 7, Aug 1981)

(in finding system supervisors at electrical utility supervisory, ct considered scope of their authority in emergency situations which, in absence of their chief, required them to design an emergency schedule and to give field Ees step-by-step instructions by radio upon which field Ees were totally dependent; while switching schedules are usually double-checked, it is not done in an emergency unless chief supervisor is present; and fact that emergencies are infrequent does not minimize supervisor's role, since existence of supervisors authority, not frequency of its use, determines supervisory status)

8520-1600 Power 'effectively to recommend'

ITT Lighting Fixtures, Division of ITT Corporation 265 NLRB No. 108

(authority effectively to recommend generally means that recommended action is taken with *no* independent investigation by supervisors, not simply that recommendation is ultimately followed)

Kern Council Services To The Developmentally Disabled, Inc. 259 NLRB No. 108

(challenge to Ee's ballot sustained where Ee was found to be supervisor in light of her authority to grant or deny sick leave and vacation leave, to discipline an Ee, to evaluate her work performance, and to effectively recommend that her salary be increased; Bd held Ee's constant *possession* of supervisory authority, regardless of frequency of its exercise, is to be distinguished from instances where an individual lacks supervisor status because he possesses supervisory authority sporadically or infrequently)

The Washington Post Company 254 NLRB No. 014

(while assistant editors who substitute 2 times a week for day sports editor at newspaper were not sought to be excluded from unit, Bd held there was no showing that assistant editors have same daily input that day sports editor, herein found supervisory, possesses regarding effective recommendation of hiring, discharge, and other supervisory indicia)

S. L. Industries Inc. and Extruded Products, Corp. 252 NLRB No. 151

(hourly paid leadlady held supervisor where she effectively recommended retention of probationary Ees, responsibly directed work of Ees in her department and Ees were led to believe that she was in charge of department)

Liquid Transporters, Inc. 250 NLRB No. 163

(shift leaders employed in maintenance shop and cleaning rack of interstate common carrier held supervisors where, notwithstanding that they had same benefits as other Ees, they were solely responsible for their respective shifts; in their discretion, they scheduled and assigned work to Ees under them; they had authority to transfer Ees, give Ees time-off and overtime and made effective oral and written recommendations concerning Ees' work performance)

James F. Stanford, Inc. d/b/a Ace Machine Co. 249 NLRB No. 073

(supervisor, despite E's denial that individual was or is supervisor)

Childers Manufacturing Company, Inc. JD-(SF)-11-82

(absence of power to hire EEs or to recommend that any Ee be hired or fired oes not, of itself, preclude conclusion that Ee had been a statutory scpervisor for it is the existence of supervisory power, and not necessarily constant and continuous utilization of it, which determines supervisory status)

Gladwin Corporation JD-565-80

Cardinal Heating and Cooling, Inc. JD-835-79

(although Ee could not take final action as to hiring, firing, or granting wage increases, Ee was able to effectively recommend such actions, and thus be considered supervisor)

N.L.R.B. v. Clark Manor Nursing Home Corp. 671 F.2d 657 (C.A. 1, Feb. 1982)

(activities director)

N.L.R.B. v. Dadco Fashions, Inc. 632 F.2d 493 (C.A. 5, Dec. 1980)

The Berry Schools v. N.L.R.B. 653 F.2d 966 (C.A. 5, Oct. 1980)

(college department chairman held supervisor where he could effectively recommend firing, retention, and merit increases of other faculty members in his department)

8520-2400 Responsible direction

Clear Lam Packaging, Inc. 268 NLRB No. 96

(individuals held supervisors and challenge to ballots upheld where, notwithstanding their authority to assign Ees limited by oral instructions from superior, frequent rush jobs, breakdown of machine, or lack of material necessitated exercise of discretion in assignments demonstrating independent judgment and responsible direction)

8520-2400—Cont.

Washington Beef Producers, Inc. **264 NLRB No. 155**
(Ees found supervisors where they were recognized to be supervisory and held themselves out as such; moreover, they approved time away from work and responded to Ee complaints; finally, Ee ratio to supervisors would be inordinately high if these Ees were not determined to be supervisors)

Serendippity-Un-Ltd and Tigerrr, Inc. **263 NLRB No. 100**
(low-level day supervisor at plant manufacturing truck beds, who has power to direct work in his discretion held supervisory, notwithstanding his lack of power to hire or fire Ees)

Teamsters Local Union No. 574, a/w Teamsters (Lois Wheeler, an Individual) **259 NLRB No. 037**
(office manager handing out routine typing assignments to other clericals who happen not to be busy, not indicia of supervisory status)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(hourly paid leadlady held supervisor where she effectively recommended retention of probationary Ees, responsibly directed work of Ees in her department and Ees were led to believe that she was in charge of department)

Liquid Transporters, Inc. **250 NLRB No. 163**
(shift leaders employed in maintenance shop and cleaning rack of interstate common carrier held supervisors where, notwithstanding that they had same benefits as other Ees, they were solely responsible for their respective shifts; in their discretion, they scheduled and assigned work to Ees under them; they had authority to transfer Ees, give Ees time-off and overtime and made effective oral and written recommendations concerning Ees' work performance)

Chair Makers, Inc. **JD-(SF)-4-82**
(leadperson in sewing department of E's fabric facility held supervisor where person was salaried rather than paid by piece work or hourly wage like production Ees and sewing department had only one supervisor for some 70 Ees; ratio favored finding leadperson was supervisor. Furthermore, individual responsibly directs Ees in sufficient manner to be supervisor, recommends when overtime is needed and selects individuals to do this work)

N.L.R.B. v. St. Mary's Home, Inc., t/a St. Mary's Infant Home **690 F.2d 1062 (C.A. 4, Sept. 1982)**
(*test of responsible direction does not depend on complexity and difficulty of work... adoption of that test would unrealistically rule out finding of responsible direction in all situations where work involved does not require high degree of skill and technical competence*)

Monongahela Power Company v. N.L.R.B. **657 F.2d 608 (C.A. 4, 1981)**
(control room foremen (CRF's) found supervisors where they are in charge of control room and thus operation of entire power plant; they coordinate activities of operators and maintenance men during startup and shutdown, act quickly and independently in emergency situations; therefore fact that they do not have authority with regard to hiring, firing, etc. is not controlling as test for supervisory status is disjunctive)

Southern Indiana Gas and Electric Co. v. N.L.R.B. **657 F.2d 878 (C.A. 7, Aug 1981)**
(in finding system supervisors at electrical utility supervisory because they responsibly directed other Ees pursuant to their job description which stipulated that they had *authority to direct crews to assure safe and adequate power production*, ct held fact that system supervisors do not exercise complete authority over Ees does not mean that they do not direct them; nor did cooperative spirit in which work is performed deprive supervisors of supervisory status)

Meredith Corporation v. N.L.R.B. **679 F.2d 1332 (C.A. 10, June 1982)**

8520-3300 Training, instruction and inspection functions

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**

Carpenters, Local Union 1098 (Basic Industries, Inc.) **JD-(ATL)-83-82**

8520-3900 Adjustment of grievances

Comprehensive Health Planning Council of Southeastern Michigan **266 NLRB No. 183**
(managers of operating divisions of nonprofit corporation providing health care planning service, held supervisors, notwithstanding they spent significant amount of time performing same type of work as professionals where they were paid at higher hourly rate than professionals beneath them in E's hierarchy, assigned, coordinated and reviewed work of their subordinates, prepared annual evaluations which became part of Ee's permanent personnel file, were persons with whom Ees dealt with at first stage of grievance procedure, and E indicated by want ads and job descriptions that these Ees were supervisors)

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**

Carpenters, Local Union 1098 (Basic Industries, Inc.) **JD-(ATL)-83-82**

Gladwin Corporation **JD-362-80**
(hourly paid *crew leader* of machinists held supervisor wherein he was sole representative of E in charge of machinists at plant of E; in his own discretion, he assigned and reassigned work, he granted Ees time off, effectively recommended hire of machinists and adjusted grievances at first step of grievance procedure)

8520-4700 'Independent judgment' in exercise of authority

Clear Lam Packaging, Inc. **265 NLRB No. 96**
(individuals held supervisors and challenge to ballots upheld where, notwithstanding their authority to assign Ees limited by oral instructions from superior, frequent rush jobs, breakdown of machine, or lack of material necessitated exercise of discretion in assignments demonstrating independent judgment and responsible direction)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**
(Ee designated by E as *supervisor* not supervisory, since he did not sufficiently possess authority to exercise independent judgment nor was it shown that he *responsibly* directed other maintenance workers or *effectively* recommended such action)

Kern Council Services To The Developmentally Disabled, Inc. **259 NLRB No. 108**
(challenge to Ee's ballot sustained where Ee was found to be supervisor in light of her authority to grant or deny sick leave and vacation leave, to discipline an Ee, to evaluate her work performance, and to effectively recommend that her salary be increased; Bd held Ee's constant *possession* of supervisory authority, regardless of frequency of its exercise, is to be distinguished from instances where an individual lacks supervisor status because he possesses supervisory authority sporadically or infrequently)

G. H. Skipper, Inc. **254 NLRB No. 053**
(foreman found supervisor and excluded from unit where had broad independent authority to discharge or suspend crew members notwithstanding their day-to-day functions are comparable to crew leaders whom Bd had previously found not to be supervisors)

Hydro Conduit Corporation **251 NLRB No. 048**
(production foreman at manufacturer of concrete pipe not supervisor since he lacked authority to effectively recommend changes in Ee's status or make decisions involving exercise of independent judgment but acted only as conduit between Ees and management, notwithstanding empowered to assign work, give verbal reprimands, grant leave requests, assign overtime, handle Ee complaints and grievances, report poor production, and violations of work rules and provide input regarding evaluation of Ees, attended management meetings, and did little actual production work)

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**
(group leaders who possessed authority to adjust grievances, issue oral warnings, grant overtime, initial timecards, grant time off, reassign Ees to different work areas, enforce E's rules regarding safety, monitor abuse of coffee breaks and restroom priveleges and required to exercise independent judgment in performance of duties)

Childers Manufacturing Company, Inc. **JD-(SF)-11-82**
(supervisory status exists only if the power is exercised with independent judgment, and not in a routine or clerical manner)

Misericordia Hospital Medical Center v. N.L.R.B. **623 F.2d 808 (C.A. 2, 1980)**

N.L.R.B. v. Porta Systems Corporation **625 F.2d 399 (C.A. 2, 1980)**
(finding upheld that leadpersons at electronics manufacturer were supervisors in view of their exercise of independent judgment in their responsible direction of Ees' work, effective recommendation of Ees' wage increases, discipline of Ees, and assignment of work to Ees)

N.L.R.B. v. Porta Systems Corporation **625 F.2d 399 (C.A. 2, 1980)**
(use of independent judgment in interest of management as ultimate test)

N.L.R.B. v. St. Mary's Home, Inc., t/a St. Mary's Infant Home **690 F.2d 1062 (C.A. 4, Sept. 1982)**
(applicability of *independent judgment* test in determining nurse's supervisory status depends on whether exercise of judgment by her is merely *incident of professional service or is in addition to professional service*)

N.L.R.B. v. Dadco Fashions, Inc. **632 F.2d 493 (C.A. 5, Dec. 1980)**

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. **659 F.2d 830 (C.A. 7, Sept. 1981)**
(office manager of retail and wholesale tire company held supervisor where she made decisions regarding availability and amount of credit to be extended to customers, interviewed applicants for employment, effectively recommended hiring and directed day-to-day activities of Ees)

8520-4700—Cont.

Southern Indiana Gas and Electric Co. v. N.L.R.B. 657 F.2d 878 (C.A. 7, Aug 1981)
(in finding system supervisors at electric utility supervisory, ct found existence of guidelines regarding switching operations insufficient to deprive supervisors of supervisory status; although some routine switching schedules were available, there was no evidence to indicate that they covered every potential contingency or that they were actually used by supervisors; even if it were found that written guidelines covered every eventuality, it does not demonstrate that independent judgment was not exercised)

8520-5000 Different terms and conditions of employment

Tra-Mar Communications, Inc. 265 NLRB No. 089
(fact that supervisor continued to receive weekly salary when transferred to P&M work rather than hourly wage received by P&M Ees not indicative of Ee's supervisory status)

Comprehensive Health Planning Council of Southeastern Michigan 256 NLRB No. 183
(managers of operating divisions of nonprofit corporation providing health care planning service, held supervisors, notwithstanding they spent significant amount of time performing same type of work as professionals where they were paid at higher hourly rate than professionals beneath them in E's hierarchy, assigned, coordinated and reviewed work of their subordinates, prepared annual evaluations which became part of Ee's permanent personnel file, were persons with whom Ees dealt with at first stage of grievance procedure, and E indicated by want ads and job discriptions that these Ees were supervisors)

Childers Manufacturing Company, Inc. JD-(SF)-11-82
(fact that wage rate of Ee had been raised to higher level does not suffice to establish supervisory status)

Southern Indiana Gas and Electric Co. v. N.L.R.B. 657 F.2d 878 (C.A. 7, Aug 1981)
(in finding, contrary to Bd, that system supervisors at electrical utility were supervisory, ct considered Bd's failure to give any weight to fact that supervisors are salaried Ees ineligible for overtime pay; while such factor, standing alone, may not be overly significant, it merits some weight when considered with the rest of the evidence supporting supervisory status)

8520-5800 Different employment functions

Tra-Mar Communications, Inc. 265 NLRB No. 089
(duties Ee held at time of discharge control question of Ee's supervisory status)

8520-6200 Substitution for supervisor

The Washington Post Company 254 NLRB No. 014
(finding of supervisory status based in part on fact that deputy metro editor in newspaper's newsroom acts as supervisor 2 days a week during his supervisor's absence and also during his vacation)

McKesson & Robbins Drug Co. JD-(SF)-275-79
(Ee who acted as interim supervisor held supervisor where she observed other Ees, evaluated them, made recommendations concerning discipline and E relied upon her for advice)

N.L.R.B. v. St. Mary's Home, Inc., t/a St. Mary's Infant Home 690 F.2d 1062 (C.A. 4, Sept. 1982)
(finding of supervisor status based in part on fact that LPN performed same functions and exercised same powers on 2 days per week that RN, admitted supervisor, was not present)

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital 614 F.2d 777(T) (C.A. 9) (1980)
(day shift staff registered nurse reassigned from her night shift supervisor position held not Ee working in appropriate unit w/i voting eligibility period, in view of her nearly one year term as relief night shift supervisor with understanding that she would continue in her supervisory capacity until new person could be found and trained)

8520-7000 Ostensible authority

Washington Beef Producers, Inc. 264 NLRB No. 155
(Ees found supervisors where they were recognized to be supervisory and held themselves out as such; moreover, they approved time away from work and responded to Ee complaints; finally, Ee ratio to supervisors would be inordinantly high if these Ees were not determined to be supervisors)

R. L. White Company, Inc. 262 NLRB No. 069
(Ee who had been supervisor prior to plant reorganization found to retain sufficient indicia of authority for E to be held responsible for anti-U activity)

G.T.A. Enterprises, Inc. d/b/a Restaurant Norhaus 260 NLRB No. 029
(office manager of restaurant found supervisor where even if he didn't have actual authority, E cloaked him with sufficient apparent authority for Ees to regard him as supervisor)

Comprehensive Health Planning Council of Southeastern Michigan 256 NLRB No. 183
(managers of operating divisions of nonprofit corporation providing health care planning service, held supervisors, notwithstanding they spent significant amount of time performing same type of work as professionals where they were paid at higher hourly rate than professionals beneath them in E's hierarchy, assigned, coordinated and reviewed work of their subordinates, prepared annual evaluations which became part of Ee's permanent personnel file, were persons with whom Ees dealt with at first stage of grievance procedure, and E indicated by want ads and job discriptions that these Ees were supervisors)

Burnup & Sims, Inc. 256 NLRB No. 142
(crew foreman of subcontractor engaged in cable splicing work for telephone company held supervisor and whose decision to grant time off to his *entire crew* E was bound, since foreman was management representative empowered to grant days off as well as directing work of splicing crew; crew could have reasonably believed that foreman was acting for and on behalf of E)

S. L. Industries Inc. and Extruded Products, Corp. 252 NLRB No. 151
(hourly paid leadlady held supervisor where she effectively recommended retention of probationary Ees, responsibly directed work of Ees in her department and Ees were led to believe that she was in charge of department)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital 247 NLRB No. 074
(Ee found to be supervisor w/i meaning of Act; and assuming, *arguendo*, that she was not, she had held herself out to other Ees as agent of E)

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital 614 F.2d 777(T) (C.A. 9) (1980)
(day shift staff registered nurse reassigned from her night shift supervisor position held not Ee working in appropriate unit w/i voting eligibility period, in view of her nearly one year term as relief night shift supervisor with understanding that she would continue in her supervisory capacity until new person could be found and trained)

8520-7800 Ratio to supervised employees

Washington Beef Producers, Inc. 264 NLRB No. 155
(Ees found supervisors where they were recognized to be supervisory and held themselves out as such; moreover, they approved time away from work and responded to Ee complaints; finally, Ee ratio to supervisors would be inordinantly high if these Ees were not determined to be supervisors)

The Washington Post Company 254 NLRB No. 014
(E's contention that if row supervisors in phone room of newspaper's classified advertising department are not found supervisory, supervisory/Ee ratio would be too low, rejected, since ratio is not so small as it seems because only 68 of 135 telephone solicitors work full time and only 11 or 12 work at any time on particular row)

The Washington Post Company 254 NLRB No. 014
(while probative, ratio of supervisors to Ees is not determinative where remainder of salient facts do not otherwise indicate supervisory status; accordingly, fact that administrative assistant to supervisor in newspaper's advertising accounts receivable department was the only purported supervisor in department with ratio being 1:45 is not indicative of supervisory status)

The Washington Post Company 254 NLRB No. 014
(fact that supervisor/Ee ratio would be 1:99 if deputy metro editor in newspaper's newsroom were not found supervisory noted as basis for finding him to be a supervisor)

The Washington Post Company 254 NLRB No. 014
(neither executive food editor nor food editor of newspaper's food section held supervisory where supervisor/Ee ratio would be 2 to 1 if both were found to be supervisors)

The Washington Post Company 254 NLRB No. 014
(photo assignment editor and night picture editor in newspaper's photo and art department, not supervisory, where there would be 4 supervisors to 14 photographers if they were found to be supervisory)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation 249 NLRB No. 126
(clerical found member of unit and eligible to vote where her duties are of routine nature and Ees who work with her require no direction; moreover since only 2 Ees work with her it would result in unrealistic supervisor/Ee ratio)

Chair Makers, Inc. JD-(SF)-4-82
(leadperson in sewing department of E's fabric facility held supervisor where person was salaried rather than paid by piece work or hourly wage like production Ees and sewing department had only one supervisor for some 70 Ees; ratio favored finding leadperson was supervisor. Furthermore, individual responsibly directs Ees in sufficient manner to be supervisor, recommends when overtime is needed and selects individuals to do this work)

8520-8000 Training for supervisory positions

The Washington Post Company **254 NLRB No. 014**
(assistant purchasing manager in purchasing department of newspaper's administrative services department held not supervisory since, if he were found supervisory, there would be 2 supervisors and only 4 full-time and 1 part-time Ee in purchasing department)

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(individual held supervisor and interrogation imputed to E where E had announced individual was soon to be supervisor and she assumed increasingly supervisory functions of interviewing and screening applicants, developing productivity rating system, instructing Ees and setting priorities)

United States Steel Corporation, Inland Steel Company, Bethlehem Steel Corporation v. N.L.R.B. **644 F.2d 206 (C.A. 3, Mar 19, 1981)**
(E's Ees who attended special summer school which prepared Ees to take Coast Guard licensing examination which would qualify passing applicants for supervisory positions, held to be supervisory trainees, since students attending school for purpose of becoming licensed officers, that is, nonbargaining unit Ees)

United States Steel Corporation, Inland Steel Company, Bethlehem Steel Corporation v. N.L.R.B. **644 F.2d 206 (C.A. 3, Mar 19, 1981)**
(*Curtis Industries, Division of Curtis Noll Corporation,* 218 NLRB 447 (1975) is consistent with, and not departure from, community of interest analyses developed by Bd in long line of cases; ct concurs with fifth circuit's opn that *the factors for establishing when participation in managerial trainee program will amount to managerial status— derive from a series of cases decided by Bd many years earlier* than *Curtis Noll; NLRB v. Kent Corp.,* 564 F.2d 186, 188 (5th Cir. 1977))

8520-9200 Unless found supervisor, shop without supervisor

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**

Gladwin Corporation **JD-565-80**
(hourly paid *crew leader* of machinists held supervisor wherehe was sole representative of E in charge of machinists at plant of E; in his own discretion, he assigned and reassigned work, he granted Ees time off, effectively recommended hire of machinists and adjusted grievances at first step of grievance procedure)

Comfort Health Corporation d/b/a Kendallville Nursing Home **JD-329-80**
(*relief charge aide* on shift at nursing home held supervisor where had authority to discipline and if not supervisor home would be w/o supervisor for several hours each day)

International Union of Elevator Constructors, Local No. 16 (Otis Elevator Company) **JD-183-80**
(construction foreman, also designated mechanic-in-charge, engaged in elevator construction at jobsite)

N.L.R.B. v. Faulkner Hospital **691 F.2d 51 (C.A. 1, Oct. 1982)**
(security-guard on hospital night-shift found not supervisory notwithstanding his title was *security supervisor* where any authority he possessed was of routine nature not requiring independent judgment and he periodically switched shifts with rank-and-file security officers and supervisors resulting in occasions when there was in fact *no designated supervisor* present on the night shift)

Southern Indiana Gas and Electric Co. v. N.L.R.B. **657 F.2d 878 (C.A. 7, Aug 1981)**
(in finding system supervisors at electrical utility supervisory, ct upheld contention that unless supervisors were considered supervisors, E's system would be operated w/o any supervision during certain hours and in emergencies; supervisors were responsible for complete operation of E's system; fact that they may consult with superior in an emergency or may advise superiors of action taken, does not obscure fact that they can virtually do anything to protect system; moreover, switching schedules were rarely reviewed and supervisors' purchase of emergency power had occurred w/o prior approval)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. **643 F.2d 687 (C.A. 10, Mar 2, 1981)**
(only admitted supervisor visited department 1 hour weekly)

8520-9300 Attendance at supervisors' meetings

Southern Indiana Gas and Electric Co. v. N.L.R.B. **657 F.2d 878 (C.A. 7, Aug 1981)**
(in finding, contrary to Bd, that system supervisors at electrical utility were supervisory, ct considered conflicting evidence regarding supervisors' participation in management meetings; while Bd seized upon supervisor's denial that he ever attended management meetings, it gave no weight to E's testimony that supervisors were invited to management meetings, which has been cited by a ct as one factor supporting supervisory status; and Bd oversimplified dispute herein when it credited testimony of the only supervisor who testified and disregarded E's testimony on the subject)

8540 TYPES OF EMPLOYEES FOUND SUPERVISORY (BY SIC)

8540-1200 Bituminous coal and lignite mining

Maidsville Coal Co., Inc. **257 NLRB No. 148**
(working foreman, although apparently self-appointed to position, found supervisor where he regularly directed afternoon shift and exercised independent judgement in doing so)

8540-1500 Building construction - general contractors and operative builders

Sterie Sons Construction Co., Inc. **260 NLRB No. 173**
(foreman of stonemasons held supervisor where he relayed orders from project superindent to journeyman masons, earned 50 cents more an hour than journeymen, ceased working with his tools, laid out job and if foremen not found supervisor stonemasons would have no supervisor)

8540-1600 Construction other than building construction - general contractors

Leyendecker Paving, Inc. **247 NLRB No. 010**
(although Ee at highway and construction company worked with his hands, supervisory status was found where Ee was paid substantially greater wages than rest of his crew, drove company truck, had power to authorize overtime work, recommended wage increases, assigned or transferred jobs based on his discretion, had authority to discipline and conceded his job was similar to admitted supervisor)

G. H. Skipper, Inc. **254 NLRB No. 053**
(foreman found supervisor and excluded from unit where had broad independent authority to discharge or suspend crew members notwithstanding their day-to-day functions are comparable to crew leaders whom Bd had previously found not to be supervisors)

8540-1700 Construction - special trade contractors

Don Pizzolato, Inc. **249 NLRB No. 136**
(salaried Ee who assigned work to other Ees, supervises their performance, reprimands them, recommends change in employment conditions, hiring, pledges firm's credit, in charge when E absent, has keys to office and no other officers or supervisors exist held supervisor)

Burnup & Sims, Inc. **256 NLRB No. 142**
(crew foreman of subcontractor engaged in cable splicing work for telephone company held supervisor and whose decision to grant time off to his *entire crew* E was bound, since foreman was management representative empowered to grant days off as well as directing work of splicing crew; crew could have reasonably believed that foreman was acting for and on behalf of E)

Victor Electric Company **JD-365-82**
(journeymen electrician found supervisor where he assigned work, overtime, checked for completeness of work, consulted with company president on layoffs, and was sole job foreman directing 20 electricians)

Local 28, Bricklayers & Allied Craftsmen (AFL-CIO) (Sal Masonry Contractors, Inc.) **265 NLRB No. 108**
(masonry contractor's Ee who was member of U held supervisor since he had authority to hire and fire, and authority to resolve Ee grievances on the job)

Local Union No. 46 Metallic Lathers and Reinforcing Iron Workers (Cement League) **259 NLRB No. 010**
(foremen found supervisors notwithstanding they were expressly included in unit description where they had authority to assign work, resolve grievances, to hire, layoff and discharge Ees)

Carpenters, Local Union 1098 (Basic Industries, Inc.) **JD-(ATL)-83-82**
(general foreman employed by general contractor's scaffold division held supervisor where he represented E for purpose of adjusting Ee grievances concerning terms and conditions of employment)

International Union of Elevator Constructors, Local No. 16 (Otis Elevator Company) **JD-183-80**
(construction foreman, also designated mechanic-in-charge, engaged in elevator construction at jobsite)

8540-2000 Food and kindred products

Premium Foods, Inc. **260 NLRB No. 092**
(butcher and gang leader at operation engaged in purveying meat and meat products)

Pacific Coast International Meat Co. **260 NLRB No. 183**
(foremen in steakcutting and wrapping subdivision of E engaged in meat processing where they attended production meetings, informed Ees of need

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for overtime and initialed time cards, were paid at higher rate and received benefits not available to rank and file Ees, interviewed job applicants and made recommendations notwithstanding independently reviewed)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(leadmen held supervisors, notwithstanding little opportunity to exercise their authority to hire, fire, or discipline Ees; furthermore, E placed leadmen in strategic position where Ees could reasonably believe that they speak on E's behalf)

8540-2200 Textile mill products

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(head packer at yarn producing facility)

Gurabo Lace Mills, Inc. **249 NLRB No. 093**
(Ee found supervisor, not leadman, where he was responsible for daily assignment of jobs, assisted Ees with problems, made Ee reassignments, adjusted grievances, interviewed prospective Ees; moreover, fact that he was only Spanish speaking person in authority caused E to rely heavily on his hiring recommendations)

Gurabo Lace Mills, Inc. **265 NLRB No. 044**
(supervisor status found where Ee is responsible for daily assignment of jobs, assists Ees when problems arise, makes necessary Ee reassignments, adjust Ee grievances, handles most of daily management of plant, and is intimately involved in hiring status due to fact that he is spanish speaking; plant located in Puerto Rico and general manager does not speak Spanish)

8540-2300 Apparel and other finished products made from fabrics and similar materials

Alle Arecibo Corporation and Alle Industries Ltd. **264 NLRB No. 163**
(cutter at womens' lingerie manufacturing plant held supervisor, where she had keys to plant and was in charge of it, continued to function as cutter but assigned work to Ees and reported to E's chief officer hours worked by each Ee)

N.L.R.B. v. Dadco Fashions, Inc. **632 F.2d 493 (C.A. 5, Dec. 1980)**
(individual at manufacturer of childrens' clothing held supervisors where they did little production work themselves but instead told other Ees what to do, Ees were told to follow instructions of these individuals and individuals performed additional supervisory duties such as monitoring time cards, singing production sheets, and assigning new work)

8540-2500 Furniture and fixtures

Chair Makers, Inc. **JD-(SF)-4-82**
(leadperson in sewing department of E's fabric facility held supervisor where person was salaried rather than paid by piece work or hourly wage like production Ees and sewing department had only one supervisor for some 70 Ees; ratio favored finding leadperson was supervisor. Furthermore, individual responsibly directs Ees in sufficient manner to be supervisor, recommends when overtime is needed and selects individuals to do this work)

8540-2600 Paper and allied products

Nice-Pak Products, Inc. **248 NLRB No. 173**
(leadperson on day shift found supervisor on other shifts where she assumed supervisory authority in absence of supervisors)

8540-2700 Printing, publishing, and allied industries

Kenosha News Publishing Corporation **264 NLRB No. 050**
(sports editor of daily newspaper, found supervisory on basis of his exercise of authority to hire part-time Ees)

Cox Enterprises, Inc., d/b/a Atlanta Newspapers **263 NLRB No. 81**
(newspaper publisher's route managers who work in conjunction with distributors and jumpers in distributing morning paper held supervisors, where they effectuate personnel actions with regard to the distributors and jumpers, including hire, discipline, and discharge; and further, such personnel actions are often taken w/o securing E's prior approval)

The Washington Post Company **254 NLRB No. 014**
(zone sales manager and chain and department store manager in newspaper's retail advertising department)

The Washington Post Company **254 NLRB No. 014**
(phone room training manager in newspaper's classified advertising department)

The Washington Post Company **254 NLRB No. 014**
(classified sales manager in newspaper's classified sales department responsible for special promotions and projects as well as outside selling efforts)

The Washington Post Company **254 NLRB No. 014**
(assistant manager in newspaper's advertising services department producing display advertising for general, retail real estate, and classified advertising departments)

The Washington Post Company **254 NLRB No. 014**
(customer relations manager in customer relations department, constituting part of newspaper's advertising department, which handles complaints from customers regarding newspaper advertisements)

The Washington Post Company **254 NLRB No. 014**
(home delivery managers in newspaper's circulation department)

The Washington Post Company **254 NLRB No. 014**
(assistant public relations manager in newspaper's public relations department which handles newspaper's community relations and publicity needs, and to some extent its internal communications)

The Washington Post Company **254 NLRB No. 014**
(chief telephone operator at centrex switchboard section in newspaper's administrative services section)

The Washington Post Company **254 NLRB No. 014**
(supervisor of composing room assistants who perform janitorial work in composing room and are in building services division of newspaper's administrative services department)

The Washington Post Company **254 NLRB No. 014**
(manager of food services in newspaper's administrative services department)

The Washington Post Company **254 NLRB No. 014**
(insurance administrator in newspaper's insurance department, who is responsible for group insurance plans, enrollment, insurance claims, and workmen compensation claims)

The Washington Post Company **254 NLRB No. 014**
(national editor, as well as deputy national editor, at national desk in newspaper's newsroom)

The Washington Post Company **254 NLRB No. 014**
(deputy metro editor at newspaper's metro desk)

The Washington Post Company **254 NLRB No. 014**
(area metro editor on metro desk at newspaper)

The Washington Post Company **254 NLRB No. 014**
(chief copy editor on metro desk at newspaper)

The Washington Post Company **254 NLRB No. 014**
(deputy editors for separate style section of newspaper dealing with entertainment, society, travel, and food)

The Washington Post Company **254 NLRB No. 014**
(managing editor responsible for preperation of newspaper's weekly book review section)

The Washington Post Company **254 NLRB No. 014**
(picture editor in newspaper's photo and art department)

The Washington Post Company **254 NLRB No. 014**
(art director in newspaper's photo and art department)

The Washington Post Company **254 NLRB No. 014**
(foreign editor on newspaper's foreign desk who oversees daily operations of desk)

The Washington Post Company **254 NLRB No. 014**
(day sports editor, as well as night sports editor, on newspaper's sports desk)

The Washington Post Company **254 NLRB No. 014**
(chief copy editor in newspaper's sports department)

The Washington Post Company **254 NLRB No. 014**
(news editor on newspaper's night operations news desk)

Times-Herald, Inc. **255 NLRB No. 066**
(sports editor at newspaper held supervisor where he effectively recommended hire of Ee and played role in hiring another Ee)

Times Herald Printing Company **252 NLRB No. 043**
(man-in-charge position found supervisory where Ees in those positions; are in charge of press, choose their assistants, substitute for foremen; assign crew members to various work tasks, evaluate trainees, write up Ees for rule infractions, attend management seminars, received priority parking spaces; moreover fact that these Ees did not have authority to hire or discharge is not dispositive)

Teamsters Local 296 (Northwest Publications, Inc.) **250 NLRB No. 126**
(*working foreman at newsprint warehouse held supervisor where he selected job applicants for hire, unilaterally determined overtime for other Ees; effectively recommended an Ee's transfer and implemented straight time* plan for reducing E's payroll expenses)

The Oakland Press Co., a Subsidiary of Capital Cities Communications, Inc. **249 NLRB No. 143**
(district managers who have authority to hire, discharge, assign, transfer and responsibly direct newspaper carriers who have been found to be Ees held supervisors)

N.L.R.B. v. Publishers Printing Company, Inc. **625 F.2d 746 (C.A. 6, 1980)**
(head of shipping and receiving department at commercial magazine publishing company held supervisory, where he assigned and directed work, and effectively recommended hiring of Ees)

N.L.R.B. v. Publishers Printing Company, Inc. **625 F.2d 746 (C.A. 6, 1980)**
(lead man or foreman responsible for stock paper control and delivery for commercial magazine publisher found supervisory in view of his hiring authority and overall responsibility)

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N.L.R.B. v. Publishers Printing Company, Inc. **623 F.2d 796 (C.A. 6, 1980)**
(foreman of pressroom section for commercial magazine publisher held supervisor where he assigned work and checked on its quality and had authority to hire and fire)

8540-2800 Chemicals and allied products

Avon Products, Inc. **250 NLRB No. 141**
(representative service department auditor/trainees at cosmetics manufacturer's branch operation found supervisory Ees where they are responsible for training team members and overseeing their work and that of team correspondents to enforce proper procedures and guidelines)

Innovative Chemical Corporation **JD-409-81**
(foreman for manufacturer, seller, and distributor of automobile care products held supervisor where he had responsibility to observe work of Ees, to assign them to various tasks and to insure that work process continued in accordance with company objectives)

8540-2900 Petroleum refining and related industries

Cato Oil & Grease Company, Inc. **258 NLRB No. 153**
(warehouse foreman found supervisor where he supervises work of other Ees in warehouse, relays instructions from management, does all paperwork, has desk of his own, distributes pay checks and signs Ees and his own time sheets, only spends 25 percent of time in actual physical labor, and if he were not supervisor Ees in warehouse would be unsupervised; moreover fact that his salary level is less than that of acknowledged supervisors is not determinative)

8540-3000 Rubber and miscellaneous plastics products

R.C. Plastics, Inc. **258 NLRB No. 161**
(foremen at plant producing plastic molding held supervisors where they oversee their shifts, make work assignments and oversee quality of production, seek to meet production requirements, evaluate Ees' work, monitor work of newly-hired Ees, direct Ees' work, allocate production resources, participate in management meetings and receive income three times that of production workers)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(hourly paid leadlady held supervisor where she effectively recommended retention of probationary Ees, responsibly directed work of Ees in her department and Ees were led to believe that she was in charge of department)

8540-3200 Stone, clay, glass, and concrete products

Hopcraft Art and Stained Glass Works, Inc. **258 NLRB No. 190**
(Ee at stained glass manufacturing plant held supervisor, where she managed office and ran it independently during E's frequent absences, and, *inter alia*, hired, fired, granted time off, carried keys to premises, reprimanded Ees, made recommendations to E about wage increases for office Ees, and was paid on salary basis)

Fenestral, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(individual in window fabrication division of manufacturer of windows and glass walls for office and apartment buildings held supervisor and ineligible to vote where he disciplined and corrected work of others, gave permission to leave work early, had overall responsibility for production in division and in view of vast difference in earnings from other individuals; further, if not held supervisor floor would be w/o supervisor)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(Ee at tile mortar and grout manufacturing plant held supervisor where Ee exercised sufficient independent judgment in matters of work assignments, direction of Ees, and control of their work performance)

8540-3300 Primary metal industries

A & T Manufacturing Company **265 NLRB No. 201**
(*night shift foreman* at E engaged in fabrication of metal for heavy industrial plants where he directed work of Ees and received higher rate of pay than other individuals who were Ees)

The Swingline Company; Spotnails, Inc. **256 NLRB No. 119**
(personnel clerk found supervisor where he had authority to hire Ees w/o consulting with management)

The Metalloy Corporation **JD-23-81**
(foreman at plant producing aluminum castings held supervisor where he was salaried Ee, attended supervisory meetings like other supervisory personnel, had responsibility for looking after various departments and their Ees, and possessed authority to effectively recommend disciplinary action against Ees)

8540-3400 Fabricated metal products, except machinery and transportation equipment

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(packaging foreman at manufacturer of automobile jacks found supervisor where she was represented to Ees as *boss*, did written evaluations on Ees, granted Ees time off, had authority to impose minor discipline w/o necessarily having right to discharge or recommend their discharge, and normally determined what person to assign to which job, thus exercising independent judgment based on her knowledge of abilities of persons involved)

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(second shift foreman at manufacturer of automobile jacks found supervisor where he was only foreman on second shift which had some 12 Ees, and assigned Ees to jobs)

Donnelly Manufacturing Co. Division of Brockhouse Corp. **265 NLRB No. 196**
(*leadman* in welding department of manufacturer of sheet metal where he had authority to issue warnings, instructed Ees in work and oversaw performance of work in manner requiring use of independent expertise, effectively made recommendations regarding selection of Ees to work overtime, discipline and pay raises, and monitored attendance)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(substantial evidence supported Bd's finding that foreman at sheet metal contractor was supervisor where he made recommendations to owners of E about who they should assign to particular jobs, spent 75% of his time checking on jobs to see how they were progressing, assigned Ees to work, asked Ees to put in overtime and transferred Ees from one job to another on owners' orders)

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating **247 NLRB No. 099**
(Ee at metal fabricating plant who on day shift is rank-and-file Ee held supervisor on night shift because when on night shift he has complete charge of shift in every respect)

8540-3500 Machinery, except electrical

Dixon Industries, Inc. **247 NLRB No. 185**
(three leadmen in different departments of manufacturer of lawn moving equipment held supervisors, where one exercised independent judgment in training instruction, inspection, assignments, transfers, and quota fulfillment; another in scheduling work; and all in daily production process)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(Ee who assigned jobs to other Ees, selected Ees to perform jobs, designated particular jobs as rush found supervisor and not eligible to vote in election)

Jeffrey Manufacturing Division, Dresser Industries, Inc. v. N.L.R.B. **684 F.2d 944 (C.A. 4, 1981)**
(Ee at mining conveyor components factory found supervisory where he assigned work, checked work product, was consulted about work-related problems and time off, and signed procurement slips)

Gladwin Corporation **JD-565-80**
(hourly paid *crew leader* of machinists held supervisor wherehe was sole representative of E in charge of machinists at plant of E; in his own discretion, he assigned and reassigned work, he granted Ees time off, effectively recommended hire of machinists and adjusted grievances at first step of grievance procedure)

A.P.F. Electronics, Inc. **257 NLRB No. 068**
(*shop manager* at E engaged in service and repair of calculators held supervisor where on salary which amounted to substantially more than hourly pay of Ees of E, did not punch time clock, hired and suspended Ees, authorized Ees to take time off, adjusted grievances and assigned work)

L. A. Water Treatment, Division of Chromalloy American Corporation **263 NLRB No. 022**
(assistant plant superintendent of company engaged in design and fabrication of water treatment equipment held supervisor where he attended supervisor meetings, expedited production and monitored work, received higher wages than unit Ees, issued work orders to leadmen and Ees, performed no unit work himself, had authority to issue disciplinary warnings and grant time off but not to discharge Ees)

Long Manufacturing Company **JD-(SF)-290-81**
(superintendent's *assistant* at plant manufacturing commercial ovens, stoves, and grills held supervisor where he shared office space with superintendent, screened applicants for production job, and performed variety of other tasks for superintendent suggestive of supervisory authority, including performing quality control work and rectifying paycheck discrepancies; by virtue of his title, salaried status, and office proximity to superintendent, he was held out to Ees as having managerial status and his statements would necessarily be viewed by Ees as carrying management's *imprimatur*)

Long Manufacturing Company **JD-(SF)-290-81**
(individual employed by manufacturer of commercial ovens, stoves, and grills held supervisor where he was classified 2 pay grades higher than other 5 workers in electrical subassembly area where he worked as part of ar-

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rangement whereby he assisted department foreman and further arrangement was implemented so he would have authority to discharge Ees)

8540-3600 Electrical and electronic machinery, equipment, and supplies

High Energy Corporation 259 NLRB No. 097

(purchasing agent, management trainees, maintenance supervisor, working leadman, and Ee working in clerical capacity in inventory control at plant manufacturing ceramic and oil-filled capacitors for use in transmitters, satellites, and various electronic equipment)

Simpson Electric Company, a Division of American Gage & Machnie Company, Inc. 250 NLRB No. 035

(group leader found supervisor where she assigned work, evaluated employees and effectively recommended actions to be taken on evaluations)

ITT Lighting Fixtures, Division of ITT Corporation 249 NLRB No. 061

(sole group leader in department held supervisor where she trains Ees, corrects their work, adjusts Ee grievances, approves overtime, grants time off, reassigns Ees to different work areas and issues oral warnings, notwithstanding she lacks authority to hire, fire, promote or grant wage increases)

ITT Lighting Fixtures, Division of ITT Corporation 249 NLRB No. 061

(group leaders who possessed authority to adjust grievances, issue oral warnings, grant overtime, initial timecards, grant time off, reassign Ees to different work areas, enforce E's rules regarding safety, monitor abuse of coffee breaks and restroom priveleges and required to exercise independent judgment in performance of duties)

EMR Photoelectric, A Division of Sangamo Weston Inc. 251 NLRB No. 214

(supervisor in *quality control* at plant manufacturing photoelectric devices held very low-level supervisor)

EMR Photoelectric, A Division of Sangamo Weston Inc. 251 NLRB No. 214

(master mechanic described as maintenance supervisor at plant manufacturing photoelectic devices held, at most, low-level supervisor)

8540-3700 Transportation equipment

Serendippity-Un-Ltd and Tigerrr, Inc. 263 NLRB No. 100

(low-level day supervisor at plant manufacturing truck beds, who has power to direct work in his discretion held supervisory, notwithstanding his lack of power to hire or fire Ees)

Quick Find Co. 259 NLRB No. 144

(Ee who spends most of his day at physical labor in operating punch press found supervisor where he recommended one discharge, trains new Ees and evaluates them for retention, receives higher pay then other Ees and is left in charge when general manager is away)

Fort Wayne Truck Parts & Equipment, Inc. JD-371-82

(*line leaders* in production department at manufacturer of truck parts and cab assemblies, notwithstanding could not hire or fire Ees, where they assigned work of Ees and performed little actual production work themselves, were held out as supervisors and Ees believed and accepted status as supervisors, did not wear work clothes and occupied offices with acknowledged supervisors)

Fort Wayne Truck Parts & Equipment, Inc. JD-371-82

(*warehouse supervisor* at manufacturer of truck parts and cab assemblies, notwithstanding hourly paid and punched time clock, where he assigned Ees work, approved requests for time off and assigned overtime work, had office and performed little if any unit work; further, since warehouse separated from rest of plant, if not held supervisor, Ees whould be w/o daily supervision)

Neckover Trailer Manufacturing Company JD-256-80

(assistant personnel manager at livestock trailer manufacturing plant)

Crown Dielectric Industries, Inc. d/b/a Crown Auto Top Manufacturing JD-93-80

(Ee who corrected errors on time cards, granted Ees time off from work found supervisor where, if she were not, E would have only 1 supervisor for 140 Ees in 4-storey plant)

Aeronomic Corporation JD-(Atl)-110-81

(*set up man* on day shift held supervisor where he was highest paid hourly Ee, assigns work, E told other Ees he was foreman and is frequently sole representative of management on premises)

N.L.R.B. v. Chem Fab Corporation 691 F.2d 1252 (C.A. 8, Nov. 1982)

(ct, in rejecting E's challenges to Bd's attribution of supervisory status to *lead leadman* at aircraft manufacturing plant held that Bd's findings were supported by evidence in that such individual possessed and exercised authority with respect to job assigaments, transferring Ees from one department to another, directing work, correcting time clock cards, and effectively recommending discharges and wage increases)

Charles Dean d/b/a Hopp Topp Mfg. Co. 250 NLRB No. 154

(*leadman* employed in fiberglass department of camper tops manufacturer held *supervisor* where he possessed and exercised authority to hire and fire Ees, responsibly directed work of Ees in his department and granted Ees time off)

8540-3800 Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks

Photo-Sonics, Inc.; et al. 254 NLRB No. 069

(leadperson for manufacturer of photographic equipment held supervisor where she had authority to hire, fire, direct and assign or to effectively recommend such action)

8540-3900 Miscellaneous manufacturing industries

Hedison Manufacturing Company 249 NLRB No. 096

(floorlady at costume jewelry manufacturing plant)

8540-4100 Local and suburban transit and interurban highway passenger transportation

Transportation By La Mar, Inc. JD-279-81

(administrative assistant, employed by passenger bus service, who oversees supervisors and has authority to hire and fire held supervisor)

Hillside Bus Corp. 262 NLRB No. 152

(dispatcher/driver at E engaged in transportation of students under contract with school district where he received higher salary than other drivers, responsibly directed work of other drivers rather than merely relayed instructions, resolved problems with parents and drivers, notwithstanding did not hire or fire)

K & E Bus Lines, Inc. 255 NLRB No. 137

(wife of E's owner who was introduced to Ees as *manager or second-in-command* and whose authority to terminate Ees was not contested at time of Ees' discharge)

8540-4200 Motor freight transportation and warehousing

Berger Transfer and Storage, Inc. 283 NLRB No. 002

(salesman who used title of Vice President held supervisor where he interviewed prospective salesment and his recommendations against hiring were final decisions, was closely allied with management during strike and his statements were ratified by management)

Thurston Motor Lines 258 NLRB No. 048

(dock foreman for E engaged in interstate transportation of freight by truck held supervisor where he directed Ees in loading of trucks, dispatched trucks, selected Ees for overtime work, initialed timecards of Ees and released Ees to go home upon his determination that work had been done; if he were not supervisor, it would mean that E allowed its terminal to remain open and its Ees to work w/o supervision from time terminal manager left premises until closing)

Connecticut Distributors, Inc. 258 NLRB No. 170

(dispatcher found supervisory Ee where he had authority to hire casual Ees and directed work of unit Ees; overall direction of Ees went beyond mere routine exercise of authority)

Liquid Transporters, Inc. 250 NLRB No. 163

(shift leaders employed in maintenance shop and cleaning rack of interstate common carrier held supervisors where, notwithstanding that they had same benefits as other Ees, they were solely responsible for their respective shifts; in their discretion, they scheduled and assigned work to Ees under them; they had authority to transfer Ees, give Ees time-off and overtime and made effective oral and written recommendations concerning Ees' work performance)

Tennessee Cartage Co., Inc. 280 NLRB No. 018

(dock foreman at E engaged in transporting foods found supervisor where he had authority to hire and fire, did not do physical labor but instructed warehousemen, did paperwork, and handled grievances from Ees)

Mason-Dixon Recycling Corp JD-283-82 (*assistant yard foreman at E engaged* in collection of newspapers from homes and delivery of collected newspapers to recycling plant)

Commercial Carriers, Inc. JD-136-80

(*yard supervisor* at E engaged in shipping newly manufactured cars)

Graves Trucking, Inc. v. N.L.R.B. 692 F.2d 470 (C.A. 7, Nov. 1982)

(ct held there was adequate support for Bd's finding that Ee of E engaged in transportation of construction material was supervisor where he held himself out as *the boss of the job* and E also held Ee out to other Ees as *the man running the job*, although Ee and the other four drivers performed similar driving duties at same rate of pay, Ee clearly had been given additional responsibilities and some degree of authority over other Ees)

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Justak Brothers and Company, Inc. v. N.L.R.B. **644 F.2d 1074 (C.A. 7, Nov. 1981)**
(foremen who wore hats distinguishing them from laborers, pay scale twice as high as laborers, assigned work, directed Ees, checked Ees job performance, sent Ees home and transferred Ees between jobs, properly found supervisor)

York Cold Storage **251 NLRB No. 054**
(Ee held supervisor and challenge to his ballot sustained, where he was classified as supervisor of warehouse for cold storage firm, before he was hired no one was classified as supervisor for this particular warehouse, other Ees were advised of his supervisory authority and were directed to take orders from him, and although he spent 50% of his time performing unit work, remainder of time was spent overseeing work of two or three Ees at warehouse; he had authority to reprimand Ees, request replacements if he felt Ees were incapable of handling work and could recommend raises)

8540-4400 Water transportation

United States Steel Corporation, Inland Steel Company, Bethlehem Steel Corporation v. N.L.R.B. **644 F.2d 286 (C.A. 3, Mar 19, 1981)**
(E's Ees who attended special summer school which prepared Ees to take Coast Guard licensing examination which would qualify passing applicants for supervisory positions, held to be supervisory trainees, since students attending school for purpose of becoming licensed officers, that is, nonbargaining unit Ees)

Pentax Towing Corporation **258 NLRB No. 113**
(relief captain for operator of tugboat held supervisor where he was regular captain with captain's authority full-time for substantial periods of time and even in his role as relief captain while captain was on board he possessed authority to discharge)

8540-4700 Transportation services

Air Transit, Inc. (Communication Workers of America, AFL-CIO) **248 NLRB No. 140**
(taxicab driver-owners who subleased their vehicles to other drivers and, in subleasing their vehicles, participated in hiring, firing and setting of wages and other terms and conditions of employment)

8540-4900 Electric, gas, and sanitary services

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(working foremen at electrical contractor held supervisor where, if they were not supervisors, many Ees would be w/o supervision most of the time, they had considerable leeway in assigning men to specific tasks and in transfering Ees from one job to another, they were paid higher wages than other Ees, Ees considered them to be their supervisors, and they were responsible for inspecting work of Ees and ordering such corrections as they deemed necessary)

Illinois Valley Electric Cooperative, Inc. **JD-281-81**
(line superintendent for provider of electrical power held supervisor where he was instrumental in hiring at least one Ee, possessed authority to discipline Ees by oral and written reprimands, responsibly directed Ees in performance of their duties, independently resolved Ee problems on job and earned substantially more in wages than other Ees)

Maine Yankee Atomic Power Company v. N.L.R.B. **624 F.2d 347 (C.A. 1, 1980)**
(shift operating supervisors (SOS) at nuclear power plant found statutory supervisors where they: are in charge of control room, required to be there at all times, give responsible directions requiring use of independent judgment to two lower level classes, salaries 17 percent higher than lower level Ees, attend management meetings; responsibility level high due to complex, criterial character of job requirements; fact that SOS must inform his supervisor if emergency occurs does not strip him of authority to act)

Monongahela Power Company v. N.L.R.B. **657 F.2d 608 (C.A. 4, 1981)**
(control room foremen (CRF's) found supervisors where they are in charge of control room and thus operation of entire power plant; they coordinate activities of operators and maintenance men during startup and shutdown, act quickly and independently in emergency situations; therefore fact that they do not have authority with regard to hiring, firing, etc. is not controlling as test for supervisory status is disjunctive)

Southern Indiana Gas and Electric Co. v. N.L.R.B. **657 F.2d 878 (C.A. 7, Aug 1981)**
(system supervisors at electrical utility)

8540-5000 Wholesale trade - durable goods

Battery Bill, Inc. **249 NLRB No. 030**
(*technical advisor* at E engaged in wholesale and retail sale of batteries where he effectively participated in employment of Ees)

Battery Bill, Inc. **249 NLRB No. 030**
(individual at E engaged in retail and wholesale of batteries where he approved leaves, participated in and made effective recommendations as to raises and hiring)

Brueckner Sand & Gravel, Inc. **JD-(SF)-312/81**
(batch plant operator at gunnite plant for processor and nonretail distributor of sand and gravel products and ready-mix concrete held supervisor where he was in charge of plant and four to six drivers reported to him; he scheduled their work, and they looked to him for direction and as person authorized to give them time off; he was salaried, third man in command at E's business, and was at times highest official on E's premises)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(ct upheld Bd's determination that individual who was *day warehouse foreman* at wholesale distributor of building and flooring materials supervisor where individual had exercised independent judgment in performance of his duties at least once, where he reassigned Ees in order to cover for ill Ees; existence of any one of functions listed in Section 2(11) sufficient to confer supervisory status thus Bd's decision had reasonable basis in law, notwithstanding individual had no authority to hire, promote or discharge Ees or even to recommend such actions and had voted in election w/o challenge)

Battery Bill, Inc. **249 NLRB No. 030**
(*technical advisor* at E engaged in wholesale and retail sale of batteries where he effectively participated in employment of Ees)

Battery Bill, Inc. **249 NLRB No. 030**
(individual at E engaged in retail and wholesale of batteries where he approved leaves, participated in and made effective recommendations as to raises and hiring)

8540-5100 Wholesale trade - nondurable goods

Vee Cee Provisions, Inc. **256 NLRB No. 125**
(packing superintendent at plant of processor and wholesaler of ham products held supervisor where he runs packing line, assigns Ees work, instructs them on their duties, disciplines Ees after discussions with E's vice-president, and makes effective recommendations on disciplinary matters)

Best Distributing Co., Inc. **258 NLRB No. 034**
(warehouseman employed by beer distributing company held supervisor, where his directions to Ees concerning work are not subject to prior instruction, and if he were not considered to be supervisor, facility would remain unsupervised approximately one half of time)

Indian Head Lubricants, Inc. **261 NLRB No. 003**
(Ee who supervised work of other Ees in warehouse held supervisor where he responsibly directed work of warehousemen, notwithstanding he had no authority to hire or fire)

8540-5300 General merchandise stores

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads **261 NLRB No. 130**
(office manager at department store where she interviews and recommends applicants for hire; evaluates Ees; schedules vacations, time off, and lunch hours; assigns work, and recommends raises)

8540-5400 Food stores

Ivex-Ivan and Foodarama, Inc, d/b/a Foodarama **260 NLRB No. 046**
(head cashier found supervisor where she: schedules work of other cashiers and bag boys, oversees cashiers, helps interview job applicants, only works as cashier in emergency, has hiring authority and trains all new cashiers)

Giant Food, Inc. **252 NLRB No. 182**
(lieutenant in security force found supervisor where he travels from store to store checking on appearance of guards, reports problems to higher management which result in discipline, sometimes administers discipline himself, had direct control over at least one Ee)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(Ee who was in charge of meat department, directed work of 3 Ees, determined conditions of employment, recommended wage increases and issued reprimands for deficient work held supervisor)

Big Star #189 **JD-375-82**
(Ee who was in charge of supermarket at night and directed night stockers found supervisor where he was salaried and scheduled to receive benefits not available to rank-and-file Ees, did not punch the clock, possessed keys to store, and generally had community of interests more closely aligned with management than with stock crew with whom he worked; moreover, Ee possessed hiring and firing authority, or at least authority to effectively recommend such action)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**
(individual held supervisor since he was found manager of market, rather than clerk there as contended by E, where he had received a raise in pay on being transferred from management of a mini-market to said market and had assumed duties there of former market manager)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**
(individual who was head of meat department of market found supervisor with authority to hire and fire Ees and determine their wage rates)

[illegible] Finer Foods **JD-609-81**
(deli managers at supermarkets held supervisors)

8540-5400—Cont.

Foodway of Odessa, Inc. **JD-(SF)-30-81**
(meat market manager at retail grocery held supervisor where he hired and fired Ees, granted Ees time off work, earned higher rate of pay than rank and file meat department Ees, and E considered meat market managers to be supervisors)

N.L.R.B. v. Ely's Foods Inc., d/b/a Scotto's I.G.A. **656 F.2d 290 (C.A. 8, 1981)**
(individual *in charge of* meat department at grocery store held supervisor since he exercised independent judgment with regard to work functions where he set hours, successfully recommended pay raises and reprimands)

United Supermarkets, Inc. **261 NLRB No. 179**
(*head meat cutters* and *market manager*)

8540-5500 Automotive dealers and gasoline service stations

Jensen's Motorcycle, Inc. d/b/a Honda of San Diego **254 NLRB No. 165**
(assistant manager of service department held supervisor where he substituted for manager on regular basis accounting for 25 percent of his working time, while acting as manager had authority to discharge Ees and if not supervisor rest of service department Ees would have regularly been without supervision)

Elizabeth Motors, Inc. **252 NLRB No. 161**
(service manager)

Elizabeth Motors, Inc. **252 NLRB No. 161**
(parts manager)

8540-5700 Furniture, home furnishings, and equipment stores

Best Products Co., Inc. **259 NLRB No. 016**
(manager trainee found supervisor where he worked on different shift than departmental manager and his duties and responsibilities were virtually identical to those of manager)

Wickes Furniture, A Division of The Wickes Corporation **255 NLRB No. 080**
(*senior warehouseman* at furniture store held supervisor where he assigned and directed work of Ees, granted time off, approved job transfers, interviewed job applicants, and unlike other warehousemen had desk in warehouse office and was considered by other warehousemen to be supervisor)

N.L.R.B. v. Concord Furniture Industries, Inc., d/b/a Bradford Furniture Company **675 F.2d 426 (C.A. 1, Mar. 1982)**
(*warehouse manager* at retail furniture chain where he was introduced to Ees as their boss and was told by E's executives that he was to run warehouse, gave Ees permission to leave early and take time off, assigned work, changed delivery routes; further, when individual left, it was necessary for another individual to actively supervise warehouse)

8540-5800 Eating and drinking places

Baja's Place, Inc. **263 NLRB No. 120**
(*head cook* at restaurant who effectively recommended hiring of Ees and on whom E had conferred appearances of managerial authority, as he appeared to be chief conduct of all managerial decisions to kitchen Ees i.e. hiring, promoting, calling in Ees for extra duty, posting schedule, participating in managerial meetings)

Antonopoulos, Incorporated d/b/a Roger's of Santa Clara **261 NLRB No. 060**
(head waitress employed by E for 29 years found supervisor where she frequently exercises independent judgment, responsibly directs other waitresses, bus persons and cashiers, and has on numerous occasions hired waitresses)

G.T.A. Enterprises, Inc. d/b/a Restaurant Horikawa **260 NLRB No. 029**
(assistant manager held supervisor where he occasionally hired Ees on his own, directed, scheduled, reprimanded and instructed Ees)

G.T.A. Enterprises, Inc. d/b/a Restaurant Horikawa **260 NLRB No. 029**
(section heads in restaurant held supervisors where they directed Ees, scheduled them, helped interview applicants, and disciplined Ees in their sections)

Lucky Lion Edgewater, Inc. d/b/a Lucky Lion **JD-(SF)-345-80**
(bar managers at cocktail lounge held supervisory)

American Diversified Foods, Inc., d/b/a Arby's v. N.L.R.B. **640 F.2d 893 (C.A. 7, 1981)**
(shift managers at restaurant held supervisory where they were in charge of restaurant's operation when they served as duty managers during periods in their shifts and as such, exercised independent judgment)

8540-5900 Miscellaneous retail

ABC Liquors, Inc. **263 NLRB No. 174**
(director of security for multistore liquor retailer found supervisor where he had interviewed and hired at least one Ee and had directed at least two Ees' investigation of unit Ees' U activities and suspected thefts and was admittedly E's *limited agent*)

Colorfax Laboratories, Inc. (Retail Store Employees Union Local 400) **248 NLRB No. 068**
(store managers of E engaged in providing photographic processing, printing and related services to professional photographers through retail outlets, held supervisory, where each store manager provides Ees under him with all requisite training, directs Ees in their duties, sets Ees' hours of work, and may, w/o prior approval and at his or her discretion, instruct Ees to work overtime)

8540-6300 Insurance

Pilgrim Life Insurance Company **249 NLRB No. 140**
(*group claims manager* at insurance company who was represented by E to Ees as supervisor, authorized to assign work, reviewed and corrected work of Ees, and whose earnings exceeded those of other clericals)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(individual in charge of IBM room at insurance company who trained new Ees, participated in hiring interviews, recommended Ees for raises, and was represented to Ees as supervisor)

8540-7000 Hotels, rooming houses, camps, and other lodging places

Puerto Rico Hotel Association **259 NLRB No. 088**
(bandleaders at hotel)

Hospitality Motor Inn, Inc. **249 NLRB No. 148**
(*executive housekeeper* and *assistant executive housekeeper* at motel held supervisors, and alleged threats to them thus not violative, where they recommended hiring, were authorized to suspend Ees, assigned, checked, and evaluated work of Ees)

8540-7200 Personal services

Le Roy Fantasies, Inc., and Hardwicke's Plum, Inc., A Joint Venture, d/b/a Maxwell's Plum **256 NLRB No. 036**
(working foreman at laundry facility held supervisor where she approved Ees' hours on timecards, assigned overtime work, granted requests for time off, received calls from Ees reporting their absence, gave permission to use E's telephone, reprimanded Ees for tardiness and excessive talking, independently handled work-related problems and grievances, and instructed Ees as to proper performances of their jobs)

8540-7300 Business services

Justak Brothers and Company, Inc. **253 NLRB No. 146**
(leadmen for firm furnishing laborers and vaccum trucks services for oil refineries held supervisors where in exercise of independent judgment, they responsibly directed other Ees)

Justak Brothers and Company, Inc. **253 NLRB No. 146**
(leadmen for firm furnishing laborers and vaccum trucks services for oil refineries held nonsupervisory where they served as *leadmen* for only 1 day)

International Maintenance Systems Group, Inc. **JD-(NY)-109-81**
(individuals employed by provider of building cleaning, maintenance, and related services held supervisors where they had authority to assign work, were responsible for attendance of Ees under their control, had authority to discipline Ees, could recommend Ees for discharge, interview Ees prior to their group assignments, and attend supervisory meetings)

8540-7500 Automotive repair, services, and garages

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car **260 NLRB No. 118**
(rental agent at airport counter of car rental company found supervisor where she had been supervisor at counter before her transfer to office work and her replacement was told she would be replacement's supervisor; during office transfer she continued to handle customer complaints, personnel disputes, etc., and continued to have different benefits and to grant time off)

8540-7600 Miscellaneous repair services

Interstate Custom Reupholstery **JD-(SF)-239-81**
(only bilingual Ee in predominantly Spanish speaking plant found supervisor where he assigned work, managed daily running of shop, had authority to inspect work, repirmand and discipline Ees, interviewed new Ees, although lacked final authority to hire; moreover, he was only salaried Ee, receiving substantially greater pay than any other Ee)

8540-7800 Motion pictures

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**
(sound mixer on production of film found lacking supervisory authority where he did not possess actual authority to hire, fire, or discipline; recommendation regarding hiring of coworker was subject to independent investigation and final decision by others)

8540-8000 Health services

8540-8050 Nursing and personal care facilities

8540-8050—Cont.

Emery Nursing Home, Inc. d/b/a Emery Convalescent Home 260 NLRB No. 071

(charge nurse at nursing home held supervisory, notwithstanding agreement of E to allow charge nurses to vote in election, where she had authority to evaluate performance of Ees and, were charge nurses not deemed supervisors, E's nursing home would be operating for substantial number of hours per day w/o presence of supervisory authority)

Clark Manor Nursing Home Corp. 254 NLRB No. 054

(activity director at nursing home held supervisor, where she responsibly directed work of Ee and effectively made recommendations to her superior as to hiring and discharging Ees)

Clark Manor Nursing Home Corp. 254 NLRB No. 054

(nurse at nursing home held supervisor where she was only person directing day-to-day activities of people on shift, and made recommendations for discipline, assignments, shifts or swaps of assignments)

Comfort Health Corporation d/b/a Kendallville Nursing Home JD-329-80

(*relief charge aide* on shift at nursing home held supervisor where had authority to discipline and if not supervisor home would be w/o supervisor for several hours each day)

N.L.R.B. v. Clark Manor Nursing Home Corp. 671 F.2d 657 (C.A. 1, Feb. 1982)

(activities director)

N.L.R.B. v. St. Mary's Home, Inc., t/a St. Mary's Infant Home 690 F.2d 1062 (C.A. 4, Sept. 1982)

(LPN held supervisor where she exercised on reguler basis 2 days per week same function and powers that RN exercised 3 days per week where RN was admitted supervisor, LPN was *highest ranking official on duty*, was recognized by E and Ees as *boss* had duties similar to *charge* nurse, and was only person directing Ees, including recommending discipline, assignment, shifts, or swaps of assignment)

Beverly Enterprises, dba Beverly Manor Convalescent Centers 661 F.2d 1095 (C.A. 6, Oct. 1981)

(on question of supervisory status of LPNs at nursing home, Bd must determine: Do LPN activities respecting patient care involve independent professional judgment? If not LPNs properly included in unit. If yes, and that independent professional judgment exercised primarily in connection with patient care, not in interest of her E, then LPNs should be included; however, if judgment exercised in interest of her E, then supervisor and not included in unit)

8540-8060 Hospitals

Northwoods Manor, Inc. 260 NLRB No. 110

(charge nurses at hospital held supervisors where they had independent authority to discipline Ees and effectively recommend discharge; were charge nurses not supervisors, an unrealistic supervisor-to-Ee ratio would exist at E's facilities and no statutory supervisor at all would be present during at least one hospital work shift)

Wright Memorial Hospital 255 NLRB No. 173

(charge nurses held supervisors, since they have authority to require overtime, release Ees from work, assign work, set work priorities, call in off-duty Ees, resolve complaints, give written Ee evaluations and reprimands, suspend Ees and recommend discipline, including discharge; on 2d and 3d shifts and weekends, they represent and exercise highest authority of E)

National Medical Convalescent of San Diego, d/b/a Ojai Valley Community Hospital 254 NLRB No. 163

(supervisors of obstetric, intensive care/coronary care, operating room, recovery room and emergency room special units of nursing department at hospital held supervisors under Act where they had authority to assign work, transfer Ees in and out of unit, instruct and train Ees, issue written reprimands, and evaluate Ees' work and adjust grievances)

Exeter Hospital 248 NLRB No. 056

(charge nurses held supervisors since they were responsible for preparing work schedules of Ees in their respective units and evaluating Ees for merit pay increases, and had authority to entertain grievances and to discipline Ees)

Lodi Memorial Hospital Association, Inc. 249 NLRB No. 121

(head nurses at acute care nonprofit hospital)

8540-8090 Other

Comprehensive Health Planning Council of Southeastern Michigan 256 NLRB No. 183

(managers of operating divisions of nonprofit corporation providing health care planning service, held supervisors, notwithstanding they spent significant amount of time performing same type of work as professionals where they were paid at higher hourly rate than professionals beneath them in E's hierarchy, assigned, coordinated and reviewed work of their subordinates, prepared annual evaluations which became part of Ee's permanent personnel file, were persons with whom Ees dealt with at first stage of grievance procedure, and E indicated by want ads and job discriptions that these Ees were supervisors)

8540-8200 Educational services

Trustees of Tufts College 251 NLRB No. 100

(accounts payable supervisor excluded from unit where she directs work of 4 Ees, with authority to excuse them from work, verbally discipline them, recommend written warnings, assign work, settle work disputes and grievances, evaluate Ees and also attends supervisors meetings)

N.L.R.B. v. Yeshiva University 582 F.2d 686 (C.A. 2)

(full time faculty members excluded from unit as supervisory and managerial Ees where they exercised substantial and pervasive authority at particular university by recommending hiring, promotion, salary and tenure of faculty, adopting standards of admission, curruiculum, grading system, and graduation requirements; further, faculty was not acting on own behalf but rather on behalf of university, nor did fact decisions subject to ultimate authority of trustees preclude finding of managerial status where faculty's recommendations were effective)

The Berry Schools v. N.L.R.B. 653 F.2d 966 (C.A. 5, Oct. 1980)

(college department chairman held supervisor where he could effectively recommend firing, retention, and merit increases of other faculty members in his department)

8560 INDICIA OF NONSUPERVISORY STATUS

The Washington Post Company 254 NLRB No. 014

(minimal relationship between assistant insurance manager in newspaper's insurance department and her secretary and clerk held not to indicate supervisory status)

The Washington Post Company 254 NLRB No. 014

(night Ee relations manager, not supervisory, where in *adjusting grievances* he performs nothing more than functions endemic to Ee relations department and, as such, routinely implements department policy pursuant to E guidelines, and he is not so much an adjuster of grievances, as he is an answerer of questions)

8560-0100 Generally

RAHCO, Inc. 265 NLRB No. 030

(reporting of Ee misconduct is matter of monitoring rather than manifestation of supervisory authority)

Artcraft Displays, Inc. 262 NLRB No. 151

(in finding leadmen in employ of Es engaged in various aspects of convention and trade show business not supervisory, Bd noted that they have historically been covered by bargaining agreements)

The Washington Post Company 254 NLRB No. 014

(subordinate area editor on metro desk at newspaper, not supervisory, notwithstanding E's contention that conflict of interest exists between him and reporters by virtue of the assigning and editing process)

The Washington Post Company 254 NLRB No. 014

(fact that some assistant editors on metro desk at newspaper have interviewed prospective Ees, or have made comments to superior editors regarding quality of reporter's work is insufficient to render their positions supervisory, especially in view of fact that there are two higher levels of supervision)

N.L.R.B. v. Circo Resorts, Inc., d/b/a Circus, Circus 646 F.2d 403 (C.A. 9, May 1981)

(Ee who gives minor orders or directives is not necessarily a supervisor and Ee herein, apart from suggesting possible job candidate, was not engaged in supervisory activities)

8560-1000 Routine direction derived from skill and experience

Clear Lam Packaging, Inc. 265 NLRB No. 96

(individual held not supervisor and challenge to ballot overruled where his direction of other Ees and assignment of work were analogous to those relayed by skilled workers to apprentices and helpers)

Humes Electric, Inc. 263 NLRB No. 159

(*foreman* employed by electrical contractor in construction industry *not supervisor* where *foreman* was none other than conduit who relayed orders to Ees nor did he exercise any significant degree of independent judgment)

Howland Hook Marine Terminal Corporation 263 NLRB No. 040

(*tractor foreman* of E engaged in performing stevedoring and marine terminal functions held *leadman* rather than supervisor where his primary duties related to operation of equipment rather than direction or supervision of Ees; Ees' duties were completely routine and required little or no supervision or direction; *leadman* exercised no independent judgment and his threats to discipline Ees were never carried out)

8560-1000—Cont.

Artcraft Displays, Inc. **262 NLRB No. 151**
(leadmen in employ of Es engaged in various aspects of convention and trade show business who, although having authority to direct their crews, do so only in accordance with instructions and floor plans furnished by Es, and are thus engaged in essentially routine direction which does not entail independent judgment)

Cement Masons Union Local No. 526 of The Operative Plasterers' and Cement Masons' International Association, AFL-CIO (P. J. Dick Contracting, Inc.) **261 NLRB No. 159**
(Ee hired as journeyman cement finisher by E contractor, who intended to make Ee supervisor when opening occurred held not supervisor, since Ee's duties, immediately after his being hired, including advising cement finishers when their work was completed calling hiring hall when new workers needed, did not rise to level of indicia of supervisory status as set forth in *Sec.* 2(11) *of Act*)

Williams Litho Service, Inc. **260 NLRB No. 101**
(Ees who assigned work to other Ees not supervisors where such authority flowed from their senior, experienced, craft position and not with managerial power as source; fact that one Ee was given supervisory title does not make him statutory supervisor in absence of demonstrated statutory supervisory power, possession or exercise)

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) **259 NLRB No. 037**
(deference by other Ees to statements or advice of another Ee because of his expertise, ability, or experience does not amount to evidence of supervisory authority)

Pure-Chem Southern, Inc. **258 NLRB No. 027**
(E's memo to Ee which stated that Ee would continue to *supervise* other Ees and requested all Ees to contact Ee in routine matters did not give him supervisory status where, in light of his experience and familiarity with operations of department, he would naturally be consulted by other Ees on routine matters)

The Washington Post Company **254 NLRB No. 014**
(fact that assistant newstand and street sales managers in newspaper's circulation department hire and control part-timers who work 2 hours a night, 6 nights a week, held not to warrant finding them supervisory, where status of part-timers had not been clarified either in record or in parties' briefs, control and supervision of part-timers was routine and did not require use of independent judgment, and assistant managers did not use discretion or independent judgment in hiring part-timers)

The Washington Post Company **254 NLRB No. 014**
(responsibilities concerning time off and vacations exercised by supervisor of accounting circulation receivables in newspaper's accounting department held nothing more than exercise of routine function which consists of following company policy of permitting an Ee time off on vacation if there are no conflicts with other Ees)

The Washington Post Company **254 NLRB No. 014**
(where newspaper editors assign reporters to events by mutual consent, and editor's primary duty is to check quality of copy and require unsatisfactory copy to be rewritten, editor's authority is routine and not supervisory)

Post Manufacturing Company **251 NLRB No. 153**
(*troubleshooter* who worked on second shift in high pressure die cast aluminum department of injection molding manufacturer *not supervisor* where, although he was paid more than other production Ees, his benefits, working conditions and pay day were same as other Ees'; he did not attend supervisors' meetings, nor did he exercise independent judgment in assigning Ees to machines or effectively recommend discipline; he gave only routine directions and told Ees that *he was not in charge*)

Central Freight Lines, Inc. **250 NLRB No. 063**
(*leadman* at freight distribution center not supervisor where his instructions to workers on loading dock were simply routine in nature and evidence was persuasive that Ee lacked any true authority over other personnel)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(Ee in charge of cash room found not supervisor but lead person where nature of work routine and additional responsibility arose from experience and familiarity with E's operations)

Judd Valve Co., Inc. **248 NLRB No. 018**
(leadman not supervisory where, because of his expertise, he was relied on by E to lend technical assistance to fellow Ees)

American Diversified Foods, Inc. **247 NLRB No. 009**
(shift managers of fast food restaurant found non supervisory personnel in light of fact that as senior Ees they were familiar with store's operational routine, helped counter Ees work smoothly in cooperative rather than controlling manner, performed same work functions as counter Ees, worked regular shifts. Shift managers were at most lead-men who had no role in formulating or affecting management policy)

Banker's Graphics, Inc. **JD-339-82**
(Ee found not supervisor where his responsibility was derived from fact that he was most experienced Ee but he did not direct other Ees or exercise independent judgment)

Childers Manufacturing Company, Inc. **JD-(SF)-11-82**
(supervisory status exists only if the power is exercised with independent judgment, and not in a routine or clerical manner)

Mr. Herbert of California, Inc. **JD-(SF)-83-81**
(*head cutter* in cutting room of manufacturer of ladies' coats, held *leadman* and not supervisor where there was no evidence that his skill and specialized knowledge derived from anything other than his experience in trade; E had always treated him as being part of bargaining unit)

Linn Gear Company **JD-(SF)-360-80**
(on ct remand, JD held leadman was not supervisor, notwithstanding that he trained inexperienced workers and to some extent directed work of other Ees, where he had no authority to hire, transfer, suspend, lay off, recall, promote, discharge, or to effectively recommend such action)

N.L.R.B. v. J. W. Mays, Inc. **675 F.2d 442 (C.A. 2, Feb. 1982)**
(Bd's wide discretion in determining who is *supervisor* w/i meaning of Act not disturbed where evidence supported Bd's decision that lieutenants (in guard unit) are supervisors but sergeants and corporals are not; sergeants collect information so that others can make decisions, and routinely direct nontitled guards to do jobs others have assigned them)

N.L.R.B. v. Wilson-Crissman Cadillac, Inc. **659 F.2d 728 (C.A. 6, 1981)**

8560-1500 Lack of authority to hire, discipline, assign, etc.

RAHCO, Inc. **265 NLRB No. 030**
(assistant assembly line supervisor employed by combine modifier of agricultural machinery, held not supervisory where record failed to establish that he had authority to assign, discipline or direct Ees or effectively recommend such action using his independent judgment as contemplated by Act)

American Medical Services, Inc., d/b/a River Hills Nursing Home West **262 NLRB No. 185**
(incident occuring under unique and isolated circumstances in which RN spontaneously recommended discharge of Ee for neglecting nursing home patient, subsequently approved by director, held not indicative of RN's supervisory authority)

Artcraft Displays, Inc. **262 NLRB No. 151**
(leadmen in employ of Es engaged in various aspects of convention and trade show business whose authority to lay off Ees is mechanical and routine, since layoffs are governed by seniority; and they have no role in instigating or preparing letters to U whereby discharges are effected by notifying U that Ee should no longer be referred to E)

Cement Masons Union Local No. 526 of The Operative Plasterers' and Cement Masons' International Association, AFL-CIO (P. J. Dick Contracting, Inc.) **261 NLRB No. 159**
(Ee hired as journeyman cement finisher by E contractor, who intended to make Ee supervisor when opening occurred held not supervisor, since Ee's duties, immediately after his being hired, including advising cement finishers when their work was completed calling hiring hall when new workers needed, did not rise to level of indicia of supervisory status as set forth in *Sec.* 2(11) *of Act*)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**
(Ee designated by E as *supervisor* not supervisory, since he did not sufficiently possess authority to exercise independent judgment nor was it shown that he *responsibly* directed other maintenance workers or *effectively* recommended such action)

Institutional Food Services **258 NLRB No. 086**
(general warehouseman whose working time was largely spent in loading trucks and distributing job orders to drivers held not supervisor and included in unit of warehousemen and truckdrivers, since record contained no evidence that Ee hired, fired or disciplined any warehouse Ees or that Ee possessed or exercised any supervisory indicia)

The Washington Post Company **254 NLRB No. 014**
(assistant art directors in newspaper's advertising administration department, not supervisory, where, at best, art director relies on technical review by assistant art director and not on his general opinion or appraisal of applicant's work; instead, art director reviews applicant and portfolio in all instances)

The Washington Post Company **254 NLRB No. 014**
(fact that assistant newstand and street sales managers in newspaper's circulation department hire and control part-timers who work 2 hours a night, 6 nights a week, held not to warrant finding them supervisory, where status of part-timers had not been clarified either in record or in parties' briefs, control and supervision of part-timers was routine and did not require use of independent judgment, and assistant managers did not use discretion or independent judgment in hiring part-timers)

8360-1500—Cont.

The Washington Post Company 254 NLRB No. 014

(participation by swing editor on newspaper's night operations newsdesk in hire of Ee held not to warrant finding him supervisor where he was engaged in consensus decision making more akin to that of skilled craftsmen passing judgment on technical merit of applicant rather than an effective exercise of supervisory authority)

Central Freight Lines, Inc. 250 NLRB No. 063

(*leadman* at freight distribution center not supervisor where his instructions to workers on loading dock were simply routine in nature and evidence was persuasive that Ee lacked any true authority over other personnel)

Linn Gear Company JD-(SF)-360-80

(on ct remand, JD held leadman was not supervisor, notwithstanding that he trained inexperienced workers and to some extent directed work of other Ees, where he had no authority to hire, transfer, suspend, lay off, recall, promote, discharge, or to effectively recommend such action)

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand 618 F.2d 962 (C.A. 2, 1980)

N.L.R.B. v. Wilson-Crissman Cadillac, Inc. 659 F.2d 728 (C.A. 6, 1981)

8360-1800 Prospect of being promoted to supervisor

Sylvester's Corp.; d/b/a Gene Sylvester Alarm Co.; et al. 249 NLRB No. 161

(challenge to ballot of former supervisor overruled where Ee, initially returned to do unit work to complete complex installation but since then has performed on other jobs as well though he has not exercised any supervisory authority whatsover, E has not informed Ees of former supervisor's change in status and installation not yet completed)

8360-2500 Performance of duties once performed by supervisor

N.L.R.B. v. Andrea Associates, a joint venture d/b/a Pinecrest Hospital 614 F.2d 777(T) (C.A. 9) (1980)

(*temporary supervisor* is person who has been temporarily detailed out of Ee unit with virtual certainty of returning to that unit; *temporary supervisor* analogous to Ee in temporary layoff status at time of election and as such is eligible to vote in election)

8360-4000 Relaying of orders and information; assignment of work

Division of Plessey Materials Corporation, Plessey Micro Science, A Wholly Owned Subsidiary of Plessey Inc. 263 NLRB No. 182

(*leadpersons* employed by E engaged in chemical milling manufacturing business *not supervisors* where they exercised no independent judgment concerning personnel matters and had no authority other than to tell people to stay at or return to work in order that work continu in orderly fashion)

Humes Electric, Inc. 263 NLRB No. 159

(*foreman* employed by electrical contractor in construction industry *not supervisor* where *foreman* was none other than conduit who relayed orders to Ees nor did he exercise any significant degree of independent judgment)

Howland Hook Marine Terminal Corporation 263 NLRB No. 040

Medical Investors Association 260 NLRB No. 124

(Ee who acted as conduit for supervisor because he translated instructions from English to Spanish not found supervisor where he possessed no other indications of supervisory status)

Hydro Conduit Corporation 254 NLRB No. 048

(production foreman at manufacturer of concrete pipe not supervisor since he lacked authority to effectively recommend changes in Ee's status or make decisions involving exercise of independent judgment but acted only as conduit between Ees and management, notwithstanding empowered to assign work, give verbal reprimands, grant leave requests, assign overtime, handle Ee complaints and grievances, report poor production, and violations of work rules and provide imput regarding evaluation of Ees, attended management meetings, and did little actual production work)

The Washington Post Company 254 NLRB No. 014

(assistant art directors in newspaper's advertising administration, not supervisory, where their assignment of art work is routine inasmuch as primary factor in determining assignments is work load and, although assistants may make assignments based on artists's skills, such assignment is to be expected when more experienced person decides there is more efficient way for particular process to be completed)

The Washington Post Company 254 NLRB No. 014

(deputy financial editor on newspaper's financial desk, not supervisory, where he spends 80-90 percent of his time writing stories, and time he spends in making assignments is de minimis)

Judd Valve Co., Inc. 248 NLRB No. 018

(leadman at check valve manufacturing plant, who acts as conduit to management, not supervisory)

N.L.R.B. v. J. W. Mays, Inc. 675 F.2d 442 (C.A. 2, Feb. 1982)

(Bd's wide discretion in determining who is *supervisor* w/i meaning of Act not disturbed where evidence supported Bd's decision that lieutenants (in guard unit) are supervisors but sergeants and corporals are not; sergeants collect information so that others can make decisions, and routinely direct nontitled guards to do jobs others have assigned them)

8360-5000 Limited or sporadic exercise of supervisory power

Vinyl-Fab Industries, Inc. 265 NLRB No. 133

(*group leaders* employed by swimming pool cover manufacturer not supervisors where they were generally no more than laisons between E and Ees; did not, except in E's absence, exercise independent judgment and only temporarily assumed E's duties in his absence)

RAHCO, Inc. 265 NLRB No. 030

(although assistant assembly line supervisor was not statutory supervisor, E was responsible for his conduct where assistant regularly directed Ees' work pursuant to E's authorization, acted as assembly line supervisor on rare occassions when head supervisor was absent from work, and assistant wore gold hat which was emblem of management; E placed assistant in position whereby Ees would have just cause to believe he was acting for and on behalf of management)

American Medical Services, Inc., d/b/a River Hills Nursing Home West 262 NLRB No. 185

(incident occuring under unique and isolated circumstances in which RN spontaneously recommended discharge of Ee for neglecting nursing home patient, subsequently approved by director, held not indicative of RN's supervisory authority)

Artcraft Displays, Inc. 262 NLRB No. 151

(even if leadmen in employ of Es engaged in various aspects of convention and trade show business possess authority to lay off Ees out of order of seniority, such authority is so restricted and exercised so sporadically that it is not an indicium of supervisory status)

Marion Rohr Corporation 261 NLRB No. 138

(Ee whose substitution for supervisor is sporadic and limited (less than 50% of his time) cannot be deemed statutory supervisor)

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) 259 NLRB No. 037

The Washington Post Company 254 NLRB No. 014

(supervisory authority of newspaper's advertising agency representative as well as that of co-op manager held not established by their shared and limited responsibility over their respective clerical Ees)

The Washington Post Company 254 NLRB No. 014

(sporadic hiring and terminating of temporaries does not convert rank-and-file Ee to statutory supervisor)

The Washington Post Company 254 NLRB No. 014

(sporadic and limited exercise of authority by editor of special subsection for inclusion in separate section of newspaper, who made one recommendation regarding a news aide and that a particular reporter transfer to write column for separate section held not to demonstrate supervisory authority)

Judd Valve Co., Inc. 248 NLRB No. 018

(insufficient to establish leadman as supervisor)

Childers Manufacturing Company, Inc. JD-(SF)-11-82

(isolated, sporadic incident of Ee's giving written warning to an Ee held not, of itself, sufficient to establish that Ee possessed statutory supervisory authority; nor was there any showing that E relied upon Ee's notice so as to affect recipient Ee's job status)

McDonnell Douglas Corporation v. N.L.R.B. 655 F.2d 932 (C.A. 9, 1981)

(transport pilot who ferried E's executives and other persons between E's facilities held Ee and not supervisor; Ee did not exercise authority over non-pilot crew members and only infrequently exercised supervisory authority)

8360-6000 Substitution for supervisor

Vinyl-Fab Industries, Inc. 265 NLRB No. 133

(*group leaders* employed by swimming pool cover manufacturer not supervisors where they were generally no more than laisons between E and Ees; did not, except in E's absence, exercise independent judgment and only temporarily assumed E's duties in his absence)

RAHCO, Inc. 265 NLRB No. 030

(although assistant assembly line supervisor was not statutory supervisor, E was responsible for his conduct where assistant regularly directed Ees' work pursuant to E's authorization, acted as assembly line supervisor on rare occassions when head supervisor was absent from work, and assistant wore gold hat which was emblem of management; E placed assistant in position whereby Ees would have just cause to believe he was acting for and on behalf of management)

Sharondale Corporation 262 NLRB No. 158

(Electrician at mine who was filling in temporarily as foreman but was not salaried nor received any other emoluments of regular supervisors but did

8560-6000—Cont.

receive shift premiums not received by supervisors; further he received orders from general mine foreman and called general foreman every night for specific instructions regarding assignments of work and carried out specified, predirected duties)

The Washington Post Company 254 NLRB No. 014
(substitution for supervisor of advertising accounts receivable in newspaper's accounting department by assistant supervisor held not basis for finding latter supervisory, where substitution occurs only during vacations and other short periods of time)

The Washington Post Company 254 NLRB No. 014
(senior budget analyst in budget section of newspaper's accounting department not supervisory where his substitution for administrative assistant is not frequent, and he exercises no more authority in such role than he does normally while acting as senior analyst in department)

The Washington Post Company 254 NLRB No. 014
(fact that swing editor in newspaper's newsroom substitutes for supervisor on weekends held not indicative of supervisory status where staff is small and assignments prearranged, and there is little room for independent judgment or discretion)

The Washington Post Company 254 NLRB No. 014
(swing editor on newspaper's night operations news desk, not supervisory, where his substitution for news editor did not involve him in substantive personnel decisions or require use of independent judgment or discretion in exercise of his duties)

8560-7000 Training, instruction and inspection functions

Para-Chem Southern, Inc. 258 NLRB No. 027
(Ee's receipt of copies of memorandums sent to management and supervisory personnel did not give him supervisory status where he, as senior person in shipping and receiving department, would have to have knowledge of procedures outlined in memos in order for department to function efficiently)

Para-Chem Southern, Inc. 258 NLRB No. 027
(Ee's attendance at management training class did not give him supervisory status where, at time of meeting, he was only Ee in department)

The Washington Post Company 254 NLRB No. 014
(although production editor on newspaper's night operations news desk may give directions to production people, such direction is not supervisory but informative)

Permanent Label Corporation 248 NLRB No. 021
(Ees who exercise some independent judgment based on their technical expertise held technical Ees not managerial)

Linn Gear Company JD-(SF)-360-80
(on ct remand, JD held leadman was not supervisor, notwithstanding that he trained inexperienced workers and to some extent directed work of other Ees, where he had no authority to hire, transfer, suspend, lay off, recall, promote, discharge, or to effectively recommend such action)

8560-8000 Making of factual reports

RAHCO, Inc. 265 NLRB No. 030
(reporting of Ee misconduct is matter of monitoring rather than manifestation of supervisory authority)

Artcraft Displays, Inc. 262 NLRB No. 151
(leadmen in employ of Es engaged in various aspects of convention and trade show business whose responsibility to review and initial time cards and to prepare other paperwork is merely routine and clerical)

8560-9000 Recommendctions reviewed by supervisors

Knogo Corporation 265 NLRB No. 130
(lead person who reports to management any rule infractions or repeated incidents of poor performance, since any discipline for such conduct is administered only after independent investigation by management; same for recommendations that Ees be transferred from one type of work to another)

Ahrens Aircraft, Inc. 259 NLRB No. 112
(shop supervisors in aircraft manufacturing plant found nonsupervisory where only indication of supervisory authority was in their title; evaluations made by them were reviewed by higher management and often modified)

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand 615 F.2d 962 (C.A. 2, 1980)

8560-9500 Pay and/or benefit

Para-Chem Southern, Inc. 258 NLRB No. 027
(Ee's being salaried Ee and receiving higher pay than other Ees did not give him supervisory status where he was made salaried Ee because his overtime wages were, in opinion of E, too high and at time he became salaried, his duties did not change)

Para-Chem Southern, Inc. 258 NLRB No. 027
(Ee's coverage under long-term disability insurance did not give him supervisory status where two other Ees were also included on policy)

Para-Chem Southern, Inc. 258 NLRB No. 027
(fact that Ee had his own mailbox and reserved parking space did not give him supervisory status where he received mailbox at time he commenced working in department, at which time he was only Ee in department and he had received parking space only shortly before leaving E, and other nonsupervisory Ees also received reserved parking spaces)

Para-Chem Southern, Inc. 258 NLRB No. 027
(failure to receive annual bonus that went to all supervisors)

8580 TYPES OF EMPLOYEES FOUND NONSUPERVISORY (BY SIC)

8580-1200 Bituminous coal and lignite mining

Sharondale Corporation 262 NLRB No. 159
(Electrician at mine who was filling in temporarily as foreman but was not salaried nor received any other emoluments of regular supervisors but did receive shift premiums not received by supervisors; further he received orders from general mine foreman and called general foreman every night for specific instructions regarding assignments of work and carried out specified, predirected duties)

8580-1600 Construction other than building construction - general contractors

Stafford Construction Co. 250 NLRB No. 128
(*grade checker* found nonsupervisory where he works as assistant to foreman, does not assign operators to equipment, never had any supervisory authority and unlike foreman is hourly paid)

8580-1700 Construction - special trade contractors

Gary Concrete Products, Inc. JD-(ATL)-65-82
(Ee who was more skilled than others and paid at higher rate found nonsupervisory where his direction of other Ees was of routine nature and he lacked authority required to be considered supervisor)

8580-2000 Food and kindred products

Jacobo Marti & Sons, Inc. 264 NLRB No. 007
(Ee held not supervisor because he exercised virtually no independent judgment; however, Ee held E's agent because while working on night shift Ee's duties were to keep eye on plant and report any and all problems to president)

Holly Hill Fruit Products Co., Inc. 256 NLRB No. 035
(tank farm operators found non-supervisory notwithstanding are *in charge* on night shift; these Ees who rotate through night shift at 2-week intervals act as leadmen on basis of superior technical competence rather than exercise of managerial function, moreover, where no evidence that these Ees exercise any supervisory authority, mere fact that night shift is thus unsupervised does not support finding of supervisory status)

Ralston Purina Company 260 NLRB No. 053
(lead sanitarian in sanitation department of cereal manufacturer found nonsupervisory where in assigning work and preparing daily work schedule the functioned as conduit for manager of department rather than as a supervisor)

8580-2200 Textile mill products

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(section men at yarn producing facility)

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(utility and air conditioning mechanic at yarn producing facility)

8580-2300 Apparel and other finished products made from fabrics and similar materials

Mr. Herbert of California, Inc. JD-(SF)-83-81
(*head cutter* in cutting room of manufacturer of ladies' coats, held *leadman* and not supervisor where there was no evidence that his skill and specialized knowledge derived from anything other than his experience in trade; E had always treated him as being part of bargaining unit)

8580-2400 Lumber and wood products, except furniture

Universal Veneer Mill Corp. 261 NLRB No. 110
(individual at veneer manufacturing plant who was log handler on second shift until he was transferred to third shift and assertedly told to take charge of plant on that shift held not supervisor, where he neither possessed nor exercised any of necessary authority enumerated in Sec. 2(11))

8580-2500 Furniture and fixtures

N.L.R.B. v. Memphis Furniture Manufacturing Company 616 F.2d 964 (C.A. 6, 1980)
(shipping clerk of furniture manufacturing company, held nonsupervisory Ee)

Brodart, Inc. 257 NLRB No. 077
(*payroll supervisor* for manufacturer of library furniture and wholesale distributor of books, not supervisor where she did not possess authority to use her independent judgment with respect to exercise by her of one or more of

8580-2500—Cont.

indicia of supervisory authority listed in Section 2(11); and there was no *kinship to management* or *empathetic relationship between E and Ee* so as to regard Ee as E's *supervisor*)

Brodart, Inc. JD-140-81
(*payroll supervisor* of E engaged in manufacture of library furniture and wholesale distribution of books held not supervisor since she did not possess authority to use independent judgment with respect to one or more of indicia of supervisory authority listed in Section 2(11); title of *payroll supervisor* is not, w/o more, determinative of issue; and there is no *kinship to Management* or *empathetic relationship between E and Ee* so as to regard her as *supervisor*)

8580-2700 Printing, publishing, and allied industries

Kenosha News Publishing Corporation 264 NLRB No. 050
(horizons editor of daily newspaper found nonsupervisory where participation in interviewing and hiring of employment applicants did not indicate authority to recommend hiring but rather role of preserving harmonious working relationships)

Kenosha News Publishing Corporation 264 NLRB No. 050
(subeditors of daily newipaper not supervisory where their editing of stories of others in their departments and rewriting of some stories did not constitute responsible directing of other Ees or making of assignments which required exercise of independent judgment)

The Washington Post Company 254 NLRB No. 014
(phone room row supervisors in newspaper's classified advertising department)

The Washington Post Company 254 NLRB No. 014
(copy desk supervisor engaged in processing copy from phone room in newspaper's classified advertising department)

The Washington Post Company 254 NLRB No. 014
(principal clerk in production unit of newspaper's general advertising department which processes national advertising orders)

The Washington Post Company 254 NLRB No. 014
(advertising agency representative in newspaper's advertising administration who acts as liaison for newspaper with advertising agencies which place ads in newspaper)

The Washington Post Company 254 NLRB No. 014
(co-op manager in newspaper's advertising administration department who is responsible for locating and bringing to attention of sales persons funds allocated by manufacturer or distributor for advertising cooperatively with local retailers)

The Washington Post Company 254 NLRB No. 014
(assistant art director in art department w/i newspaper's advertising administration)

The Washington Post Company 254 NLRB No. 014
(customer relations supervisor in customer relations department, constituting part of newspaper's advertising department, which handles complaints from customers regarding newspaper advertisements)

The Washington Post Company 254 NLRB No. 014
(assistant newstand and street sales managers in newspaper's circulation department)

The Washington Post Company 254 NLRB No. 014
(assistant night circulation managers in newspaper's circulation department)

The Washington Post Company 254 NLRB No. 014
(service desk assistant managers in newspaper's circulation service department which receives telephones calls from customers regarding circulation, including complaints, requests, address changes, and the like)

The Washington Post Company 254 NLRB No. 014
(art director in newspaper's promotions department operating as in-house ad agency, producing media advertisements, and assisting in advertising and circulation promotions)

The Washington Post Company 254 NLRB No. 014
(assistant market research manager in newspaper's research department which supplies market research and media information to other departments to assist in selling newspaper as an advertising medium)

The Washington Post Company 254 NLRB No. 014
(printing services supervisor in printing services section of administrative services department which provides support services for printing, telephone, centrex, building services, mail purchasing, and travel)

The Washington Post Company 254 NLRB No. 014
(assistant purchasing manager in purchasing department of newspaper's administrative services department)

The Washington Post Company 254 NLRB No. 014
(assistant manager in newspaper's insurance department)

The Washington Post Company 254 NLRB No. 014
(night Ee relations manager at newspaper who deals with complaints and other grievance related problems)

The Washington Post Company 254 NLRB No. 014
(supervisor and assistant supervisor of advertising accounts receivable in newspaper's accounting department)

The Washington Post Company 254 NLRB No. 014
(supervisor for accounting circulation receivables in newspaper's accounting department)

The Washington Post Company 254 NLRB No. 014
(credit supervisors of regular accounts and transient accounts in newspaper's advertising account department)

The Washington Post Company 254 NLRB No. 014
(assistant cashier in accounting department at newspaper)

The Washington Post Company 254 NLRB No. 014
(accounts payable supervisor in accounting department at newspaper)

The Washington Post Company 254 NLRB No. 014
(paper marker supervisor in accounting department at newspaper, who keeps track of classified ads)

The Washington Post Company 254 NLRB No. 014
(senior budget analyst in budget section in accounting department at newspaper)

The Washington Post Company 254 NLRB No. 014
(payroll supervisor in newspaper's accounting department)

The Washington Post Company 254 NLRB No. 014
(manager of computer operators in data processing department at newspaper)

The Washington Post Company 254 NLRB No. 014
(national assistant editor in newspaper's newsroom)

The Washington Post Company 254 NLRB No. 014
(national assistant editor in newspaper's newsroom, who performs special projects and *swing* work involving variety of tasks)

The Washington Post Company 254 NLRB No. 014
(night metro editor on metro desk at newspaper)

The Washington Post Company 254 NLRB No. 014
(where newspaper editors assign reporters to events by mutual consent, and editor's primary duty is to check quality of copy and require unsatisfactory copy to be rewritten, editor's authority is routine and not supervisory)

The Washington Post Company 254 NLRB No. 014
(subordinate area editors on metro desk at newspaper)

The Washington Post Company 254 NLRB No. 014
(fact that some assistant editors on metro desk at newspaper have interviewed prospective Ees, or have made comments to superior editors regarding quality of reporter's work is insufficient to render their positions supervisory, especially in view of fact that there are two higher levels of supervision)

The Washington Post Company 254 NLRB No. 014
(assistant editor on metro desk at newspaper who is involved in layout, graphics, and production of weekly section)

The Washington Post Company 254 NLRB No. 014
(assistant editor for separate style section of newspaper dealing with entertainment, society, travel, and food)

The Washington Post Company 254 NLRB No. 014
(night editor for separate style section of newspaper dealing with entertainment, society, travel, and food who is essentially involved in production work)

The Washington Post Company 254 NLRB No. 014
(chief copy editor for separate style section of newspaper dealing with entertainment, society, travel, and food)

The Washington Post Company 254 NLRB No. 014
(editor of special subsection concerned with domestic arts, crafts, architecture and the like for inclusion in separate section of newspaper)

The Washington Post Company 254 NLRB No. 014
(executive fond editor and food editor for newspaper's food section)

The Washington Post Company 254 NLRB No. 014
(editor of newspaper's Sunday television suplement)

The Washington Post Company 254 NLRB No. 014
(editor of newspaper's Sunday section which contains news analysis, in-depth articles, and editorial and op-ed pages)

The Washington Post Company 254 NLRB No. 014
(photo assignment editor and night picture editor in newspaper's photo and art department)

The Washington Post Company 254 NLRB No. 014
(assistant art director in newspaper's photo and art department)

The Washington Post Company 254 NLRB No. 014
(deputy financial editor on newspaper's financial desk)

8580-2700—Cont.

The Washington Post Company **254 NLRB No. 014**
(assistant financial editor who is chief copy editor on newspaper's financial desk)

The Washington Post Company **254 NLRB No. 014**
(assistant editors in newspapers real estate department)

The Washington Post Company **254 NLRB No. 014**
(while individual was added as assistant editor to newspaper's real estate department to improve its quality and was delegated responsibility for its efficient functioning, such responsibility is part of craft or function of newspaper person; it does not, w/o more, convert rank-and-file Ee into supervisor)

The Washington Post Company **254 NLRB No. 014**
(librarian in reference library in newspaper's research department who performs research and other library work)

The Washington Post Company **254 NLRB No. 014**
(librarian in reference library in newspaper's research department who performs research and other library work, not supervisory, merely because he sometimes schedules work or reminds Ees when they are late)

The Washington Post Company **254 NLRB No. 014**
(night foreign editor on newspaper's foreign desk who is chief copy desk person in department)

The Washington Post Company **254 NLRB No. 014**
(production editor on newspaper's night operations news desk)

The Washington Post Company **254 NLRB No. 014**
(swing editor on newspaper's night operations newsdesk)

The Washington Post Company **254 NLRB No. 014**
(chief make-up editor on newspaper's night operations who is newsdesk and newsroom representative in composing room)

The Washington Post Company **254 NLRB No. 014**
(late night editor on newspaper's night operations newsdesk)

The Washington Post Company **254 NLRB No. 014**
(metro news editor on newspaper's night operations newsdesk)

The Washington Post Company **254 NLRB No. 014**
(editorial department copy chief at newspaper)

Nevada County Publishing Co., d/b/a The Union **251 NLRB No. 143**
(assistant foreman at newspaper held not supervisor notwithstanding facts that he sometimes acted as foreman in absence of foreman, including filling in for him at management meetings, occasionally authorized overtime w/o checking with anyone else and took it upon himself to go and secure late copy from reporters, where his activities as supervisor were performed on sporadic basis; he never granted time off, had no authority to either hire or fire or to recommend same, or to rate or evaluate Ees, or to suspend them or even to reprimand and was not regarded by other Ees as boss)

Courier Life Publications, Inc. **JD-88-82**
(individual at newspaper held not supervisor notwithstanding her sporadic and temporary assumption of supervisory functions in art director's absence and her occasional reviewing of work done by coworkers)

Courier Life Publications, Inc. **JD-88-82**
(individual at newspaper who worked in layout, pasteup and production held not supervisor, powers exercised by him were those over *makeup* and format of E's product, not over Ees)

Courier Life Publications, Inc. **JD-88-82**
(typesetter at newspaper held not supervisor notwithstanding that she may have been of assistance in technicalities of typesetting to other less experienced)

Walla Walla Union-Bulletin, Inc. v. N.L.R.B. **631 F 2d 609 (C.A. 9, Oct. 1980)**
(photo editor responsible for makup of newspaper's photo work found nonsupervisory where he acts as coordinator for photography vis-a-vis rest of news department, does not attend managerial meetings or supervise or discipline other Ees and was involved in hiring of summer intern only to extent of making a recommendation to the managing editor)

Walla Walla Union-Bulletin, Inc. v. N.L.R.B. **631 F.2d 609 (C.A. 9, Oct. 1980)**
(sports editor of newspaper who was primarily responsible for content and lay-out of sports page found non-supervisory where he had no supervisory authority to hire, fire, discipline or suspend sports staff Ees, did not handle grievances, and received overtime pay only when authorized by the managing news editor)

Walla Walla Union-Bulletin, Inc. v. N.L.R.B. **631 F.2d 609 (C.A. 9, Oct. 1980)**
(wire editor of newspaper who evaluated copy coming into the newsroom on wire services, selected important news items and passed them on to the news editor for discussion, and laid out articles and photographs with aid of rotating staff assistant found nonsupervisory since she exercised no statutory supervisory responsibilities)

Alco-Gravure, Inc. **249 NLRB No. 157**
(Bd held control monitors and job operators who perform much the same functions in ensuring quality of publications for E engaged in rotogravure printing of newspaper supplements and advertising materials were not supervisors, where they did not exercise real supervisory authority over Ees and did not possess any of usual indicia of supervisory authority; nor were they managerial Ees as they did not exercise judgment and discretion independent of E's established policies and were not involved in formulation, determination, and effectuation of management policies)

Print-O-Stat, Inc. **247 NLRB No. 047**
(*gang leaders* in production departments at printing plant, since performance of their duties did not require exercise of independent judgment, but rather they functioned essentially as senior experienced lead personnel and their direction of other Ees was dictated solely by demands of each production job, notwithstanding they had authority to grant time off, assign Ees to work overtime, and make job assignments)

8580-2800 Chemicals and allied products

Division of Plessey Materials Corporation, Plessey Micro Science, A Wholly Owned Subsidiary of Plessey Inc. **263 NLRB No. 182**
(*leadpersons* employed by E engaged in chemical milling manufacturing business *not supervisors* where they exercised no independent judgment concerning personnel matters and had no authority other than to tell people to stay at or return to work in order that work continue in orderly fashion)

Pura-Chem Southern, Inc. **258 NLRB No. 027**
(shipping department Ee for producer of adhesives and chemicals held not supervisor where any direction or instruction by him was attributable essentially to his familiarity with operation of shipping and receiving department)

8580-3000 Rubber and miscellaneous plastics products

Injected Rubber Products Corp. **258 NLRB No. 092**
(leadmen at manufacturer of rubber parts held not supervisors, where they did not hire, transfer, suspend, lay off, recall, promote, discharge, reward, discipline nor effectively recommend such actions, were paid on hourly basis, received overtime pay, had no office, desk or telephone, and spent most of their shift doing manual labor; notwithstanding reviewed and signed timeslips, transmitted verbal warnings to Ees, were paid more per hour than other Ees, and fact management made decisions based on leadmen's information w/o further verification)

Permanent Label Corporation **248 NLRB No. 021**
(floor lady position which was purely routine and involved no exercise of discretion not supervisory)

8580-3200 Stone, clay, glass, and concrete products

Hydro Conduit Corporation **254 NLRB No. 048**
(production foreman at manufacturer of concrete pipe not supervisor since he lacked authority to effectively recommend changes in Ee's status or make decisions involving exercise of independent judgment but acted only as conduit between Ees and management, notwithstanding empowered to assign work, give verbal reprimands, grant leave requests, assign overtime, handle Ee complaints and grievances, report poor production, and violations of work rules and provide imput regarding evaluation of Ees, attended management meetings, and did little actual production work)

8580-3300 Primary metal industries

Dura-Vent Corporation **257 NLRB No. 083**
(working foremen for manufacturer and seller of metal products not supervisory, where they did not have authority to hire, fire or effectively recommend hire and fire of Ees;nor did they grant Ees vacation or sick leave or participate in handling of Ee grievances; fact that working foremen had role in general direction and training of Ees and in maintaining product quality control did not support a finding that working foremen were supervisors w/i meaning of 2(11))

Rich's Precision Foundry, Inc. **262 NLRB No. 001**
(individual who was maintenance man and electrician at foundry, notwithstanding gave Ees warnings, since an admitted supervisor initiated or made decisions to reprimand on own investigation, individual attended production meetings where attendance was primarily to obtain work schedules and assigned tasks to apprentices and helpers, as individual exercised no independent judgment in performing this function and assignments and directions were type given by skilled workers to apprentices and helpers)

Post Manufacturing Company **261 NLRB No. 183**
(*troubleshooter* who worked on second shift in high pressure die cast aluminum department of injection molding manufacturer *not supervisor* where, although he was paid more than other production Ees, his benefits, working conditions and pay day were same as other Ees'; he did not attend supervisors' meetings, nor did he exercise independent judgment in assigning Ees to machines or effectively recommend discipline; he gave only routine directions and told Ees that *he was not in charge*)

8580-3400 Fabricated metal products, except machinery and transportation equipment

8580-3400—Cont.

Childers Manufacturing Company, Inc. JD-(SF)-11-82
(leadman bearing title of *manager* in heating production department at plant engaged in manufacturing hot oil heaters, asphalt storage tanks, parts and accessories)

High Performance Tube, Inc. 231 NLRB No. 101
(foreman found leadman not supervisor where lacked authority to hire, recommend personel actions to management and actions such as asking Ee to increase production, recommending improvements in tool room, training new Ees, inspecting product, keeping production records do not elevate status to that of supervisor)

8580-3500 Machinery, except electrical

RAHCO, Inc. 265 NLRB No. 080
(assistant assembly line supervisor employed by combine modifier of agricultural machinery, held not supervisory where record failed to establish that he had authority to assign, discipline or direct Ees or effectively recommend such action using his independent judgment as contemplated by Act)

TRW-United Greenfield Division 260 NLRB No. 013
(dispatchers whose normal work involved routing tools through production process found nonsupervisory notwithstanding they pointed out deficiencies in production line to supervisors as this is incidental to normal nonsupervisory work)

Firmat Manufacturing Corp. 255 NLRB No. 153
(individual employed by manufacturer of precision tools held non-supervisory, notwithstanding he receives much larger rate of pay and considerably larger bonus than other Ees, had received an additional holiday and allegedly had hired on one occasion a new Ee, where he had not hired any other Ee, fired any Ee or effectively recommended such action; nor had he recommended discipline or responsibly directed work of other Ees)

Bodolay Packaging Machinery, Inc. 263 NLRB No. 038
(leadman who had no authority to hire or fire, did not attend supervisors' meetings, grant time off or select Ees for overtime work found non-supervisor where he merely recommended to foremen which Ees should be disciplined and foremen decided what action should be taken if any)

Micro Metl Corporation 267 NLRB No. 066
(leadman for manufacturer, seller, and distributor of air-conditioning components, not supervisor where he had no authority to hire, fire, discipline, promote or suspend Ees and never exercised such authority and he did not direct Ees or exercise supervisory functions in name of management or by utilizing independent judgment)

8580-3600 Electrical and electronic machinery, equipment and supplies

Knogo Corporation 265 NLRB No. 130
(lead person whose duties include checking work of other Ees, monitoring production and performing actual production work, and who voted in Bd election, receives same fringe benefits as other production Ees and punches timeclock)

Swanson-Nunn Electric Company 256 NLRB No. 131
(foreman at electrical contractor found not supervisor where he exercised no supervisory authority or independent judgement and was merely skilled Ee)

Swanson-Nunn Electric Company 256 NLRB No. 131
(shift foreman at electrical contractor not supervisor where his duties were misterial and he had no authority to hire, fire or discipline Ees)

ABL General Systems Corp. JD-(NY)-67-83
(quality control inspector employed by manufacturer of machine and mechanical parts and electronic communications devices, not supervisor where he gave instruction and directions requiring Ees to conform to customer's standards but did not use independent judgment or responsibly direct Ees' work)

EMR Photoelectric, A Division of Sangamo Weston Inc. 251 NLRB No. 214
(Ee who described himself as leadman-supervisor at plant manufacturing photoelectric devices)

8580-3700 Transportation equipment

Fort Wayne Truck Parts & Equipment, Inc. JD-371-82
(*leadman* in paint shop at manufacturer of truck parts and cab assemblies who was hourly paid and puched time clock, had no authority over Ees, assignment of work by leadman was routine based on work orders given him, he had no office and frequently performed unit work)

Ahrens Aircraft, Inc. 259 NLRB No. 112
(shop supervisors in aircraft manufacturing plant found nonsupervisory where only indication of supervisory authority was in their title; evaluations made by them were reviewed by higher management and often modified)

Mercury Marine Division of Brunswick Corporation 254 NLRB No. 146
(process coordinators who operate electronically programmed die-casting machines at corporation's marine division)

8580-3800 Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks

Gerber Scientific Instrument Company, Inc., A Wholly Owned Subsidiary of Gerber Scientific, Inc. JD-188-82
(leadmen at manufacturer of automated design equipment who was paid hourly wages, punched time clock and received same fringe benefits, notwithstanding that he broke down production schedule in order to assign jobs, was paid higher wages, and received reports from Ees on time expended on each machine)

Brooks Cameras, Inc. 260 NLRB No. 116
(warehouse clerk in charge of receiving at warehouse of retailer of cameras and photographic equipement, not supervisory where he lacked authority to hire, fire, discipline, grant time off or schedule work assignments, exercised independent judgment only once, and, although second most senior of all warehouse Ees, he was paid less than truck drivers)

8580-3900 Miscellaneous manufacturing industries

Vinyl-Fab Industries, Inc. 265 NLRB No. 133
(*group leaders* employed by swimming pool cover manufacturer not supervisors where they were generally no more than laisons between E and Ees; did not, except in E's absence, exercise independent judgment and only temporarily assumed E's duties in his absence)

Hedison Manufacturing Company 249 NLRB No. 096
(plant nurse at costume jewelry manufacturing plant)

8580-4200 Motor freight transportation and warehousing

Institutional Food Services 258 NLRB No. 086
(general warehouseman whose working time was largely spent in loading trucks and distributing job orders to drivers held not supervisor and included in unit of warehousemen and truckdrivers, since record contained no evidence that Ee hired, fired or disciplined any warehouse Ees or that Ee possessed or exercised any supervisory indicia)

Berger Transfer and Storage, Inc. 253 NLRB No. 002
(warehouse foreman held non supervisor where his job of seeing that trucks were properly loaded and Ees left with trucks to which they were assigned did not involve use of independing judgment)

Tri-State Motor Transit Company 251 NLRB No. 104
(dispatcher at freight transportation company held nonsupervisory where he associated with Ees as fellow Ee, sometimes did rank-and-file yard work, and only assignment of work to Ees was of sporadic and routine nature, in connection with duties as dispatcher; any direct action, so far as Ees were concerned, could be taken only after clearance with terminal manager or company headquarters)

Central Freight Lines, Inc. 259 NLRB No. 063
(*leadman* at freight distribution center not supervisor where his instructions to workers on loading dock were simply routine in nature and evidence was persuasive that Ee lacked any true authority over other personnel)

Tennessee Cartage Co., Inc. 259 NLRB No. 015
(leadmen at E engaged in transporting foods found not to be supervisors where they had no true discretion, performed physical labor 90 to 100% of time, were expected to move same amount of freight with other Ees, and voted as unit Ees in prior Bd election w/o objection from E)

Gra-Bell Truck Line, Inc. JD-72-82
(*office supervisor* found not to be supervisor under Act where she exercised basically routine clerical functions, and did not exercise any real authority but merely acted as conduit for directives of management)

Connecticut Distributors, Inc. v. N.L.R.B 681 F.2d 127 (C.A. 2, June 1982)
(dispatcher found nonsupervisor where although he had authority to hire Ees for temporary and casual work, decided which Ees to call for work, changed driver's routes and granted time off his, duties were of routine notice and he lacked power of *effective recommendation*)

Central Freight Lines, Inc. v. N.L.R.B. 653 F.2d 1023 (C.A. 5, Aug 1981)
(leadman at freight distribution center not supervisor where his only exercise of judgment was in distributing dockmen among available trailers for loading and like other dock Ees, he spent most of his time engaged in manual labor, and was paid only 5 cents per hour more than others)

Justak Brothers and Company, Inc. v. N.L.R.B. 664 F.2d 1074 (C.A. 7, Nov. 1981)
(Ees properly included in bargaining unit where paid less than leadmen, were designated laborers in employment records and did laborers work)

Aero Warehouse, Inc. JD-(NY)-48-81
(dispatcher at E engaged in warehousing and distribution of electronic equipment, held not supervisor, notwithstanding he was salaried and received higher compensation than E's warehousemen, absent evidence truck owner-operators whom he allegedly supervised were Ees w/i Act or that he

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exercised supervisory authority over warehousemen or other Ees or exercised independent judgment to assign or contract with owner-operators)

N.L.R.B. v. Berger Transfer & Storage Co. **678 F.2d 679 (C.A. 7, May 1982)**

(*warehouse foreman* at moving and transfer company whose primary responsibility was to see that trucks were properly loaded and that Ees left with trucks to which assigned and who had no power to hire, fire or discipline)

8580-4400 Water transportation

Pennant Towing Corporation **258 NLRB No. 113**

(tugboat pilot held not supervisor, where he had no authority to make command decisions and were he deemed supervisor, ratio of supervisors to crew would be 3 to 3)

Howland Hook Marine Terminal Corporation **263 NLRB No. 040**

(*tractor foreman* of E engaged in performing stevedoring and marine terminal functions held *leadman* rather than supervisor where his primary duties related to operation of equipment rather than direction or supervision of Ees; Ees' duties were completely routine and required little or no supervision or direction; *leadman* exercised no independent judgment and his threats to discipline Ees were never carried out)

8580-4500 Transportation by air

McDonnell Douglas Corporation v. N.L.R.B. **655 F.2d 932 (C.A. 9, 1981)**

(transport pilot who ferried E's executives and other persons between E's facilities held Ee and not supervisor; Ee did not exercise authority over non-pilot crew members and only infrequently exercised supervisory authority)

8580-4800 Communication

Rock Hill Telephone Company v. N.L.R.B. **605 F.2d 139 (C.A. 4, 1979)**

(finding of nonsupervisory status supported by substantial evidence)

Meredith Corporation v. N.L.R.B. **679 F.2d 1332 (C.A. 10, June 1982)**

(directors and production assistants of TV commercials at TV stations where, they did not effectively recommend personnel actions, direction given was routine, technical or aesthetically motivated, and programming collaborative effort, nor did directors attend management meetings)

Community Tele-Communications, Inc., d/b/a Helena Cable T.V. **249 NLRB No. 085**

(individual who identified herself as *office manager* at E engaged in installation and servicing of cable television systems since she lacked authority to direct Ees or to effectively recommend hires, nature of work routine and individual's authority at most was that of leadman, some clericals were hired w/o any consultation with individual and consultation in other cases brief and informal)

8580-4900 Electric, gas, and sanitary services

Human Electric, Inc. **263 NLRB No. 159**

(*foreman* employed by electrical contractor in construction industry *not supervisor* where *foreman* was none other than conduit who relayed orders to Ees nor did he exercise any significant degree of independent judgment)

Upshur-Rural Electric Cooperative Corporation **254 NLRB No. 057**

(construction foremen for E engaged in distribution of electric power held not supervisors, where any authority they have is derived from their job experience, and any direction they give is that given by experienced Ees to those less experienced; moreover, if construction foremen were found supervisors, there would be the unrealistic ratio of 7 supervisors to 13 Ees)

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**

(load dispatchers and their leadman employed by electric power cooperative not supervisors where they did not oversee work performed pursuant to their directions, did not use independent judgment in directing other Ees; any discretion they used in buying and selling power was insufficient to render them managerial Ees)

Empire Gas, Inc. of Denver **254 NLRB No. 076**

(office manager for wholesale and retail seller and distributor of gas held not supervisor where she was engaged in merely routine or clerical exercises which did not require her use of genuinely independent judgment)

8580-5000 Wholesale trade - durable goods

Goldies, Inc. v. N.L.R.B. **628 F.2d 706 (C.A. 1, 1980)**

(countermen who acted as salesmen of auto parts at supplier of domestic and foreign automobile and truck parts found nonsupervisory where they had power only to spasmodically and infrequently give reprimands and their occasional assignment of partsmen and giving of directions were routine)

Dillon Tile Supply Co., Inc. **257 NLRB No. 157**

(warehouse manager for wholesale seller and distributor of ceramic tile held not supervisor where he had title but not authority of manager and had no authority to hire or fire or grant raise or overtime; work assignments he made and other duties he performed were only of routine nature and minor disciplinary action he exercised was hardly sufficient to establish that he had supervisory authority contemplated by Sec. 2(11) of Act)

Dillon Tile Supply Co., Inc. **JD-(SF)-128-81**

(Ee at warehouse of wholesale tile distributor held nonsupervisory notwithstanding he had title of manager where he did not interview anyone, had no authority to hire or fire or grant raise or overtime, was an hourly Ee and exercised no real independent judgment, and work assignments he made were only of routine nature)

Windsor Industries, Inc. **265 NLRB No. 145**

(Ee employed by importer and distributor of electronic products held not supervisor, where her authority to assign work was limited to passing on of instructions to Ees from higher supervisors and she did not advise E as to work performance of any specific Ee; she spent her time working along with and performing work similar to other unit Ees, and she punched time clock as did other unit Ees)

8580-5100 Wholesale trade - nondurable goods

Wisconsin Beef Industries, Inc. **269 NLRB No. 034**

(*lead person* at E engaged in packing and wholesale distribution of meat since she possessed no true supervisory authority notwithstanding suggested names for possible hiring and went over orders to make sure things were cleaned up at end of day and could allow persons to leave during day)

Mid-City Beverage Dist., Inc. **JD-(SF)-253-81**

(*sales supervisor* for beer distributor, notwithstanding title, higher pay, and daily evaluation of salesmen since evaluations routine and did not require independent judgment, he could not or make effective recommendations regarding hiring, discharge, discipline or promotion, grant time off, assign Ees or effectively determine length of training; further, *supervisor* substituted for salesmen on routes, used same sign in sheets and received same vacation as salesmen)

Teamsters Local 115 v. N.L.R.B. (Haddon House Food Products, Inc.) **640 F.2d 392 (C.A.D.C. 1981)**

(Ee employed by wholesale food distributor held not supervisor where although he was paid more than some fellow Ees, other rank-and-file Ees earned more than he did, he occasionally communicated orders from management but did not have other supervisory, disciplinary or hiring powers, and he performed manual work side by side with other Ees)

Teamsters Local 115 v. N.L.R.B. (Haddon House Food Products, Inc.) **640 F.2d 392 (C.A.D.C. 1981)**

(Ee employed by wholesale food distributor held not supervisor where, although he might have routed some trucks on occasion, he essentially served as truck driver)

8580-5300 General merchandise stores

N.L.R.B. v. J. W. Mays, Inc. **675 F.2d 442 (C.A. 2, Feb. 1982)**

(Bd's wide discretion in determining who is *supervisor* w/i meaning of Act not disturbed where evidence supported Bd's decision that lieutenants (in guard unit) are supervisors but sergeants and corporals are not; sergeants collect information so that others can make decisions, and routinely direct nontitled guards to do jobs others have assigned them)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**

(clerical found member of unit and eligible to vote where her duties are of routine nature and Ees who work with her require no direction; moreover since only 2 Ees work with her it would result in unrealistic supervisor/Ee ratio)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**

(Ee in charge of cash room found not supervisor but lead person where nature of work routine and additional responsibility arose from experience and familiarity with E's operations)

8580-5400 Food stores

Prior's Pic-Pac Supermarkets, Inc. **256 NLRB No. 123**

(grocery store stock clerk acting as leader for new Ees and receiving more pay than other stock clerks but performing same duties, nonsupervisory)

Grocery Carts, Inc. **264 NLRB No. 140**

(former manager of one of E's grocery stores rehired as cashier-clerk in second store held not supervisor or agent because she had been relieved of all managerial functions due to unsatisfactory work before she stopped working at first store)

Diaz Enterprises, Inc., d/b/a Valley Mart Supermarkets **264 NLRB No. 026**

(produce manager of supermarket held not supervisor where he had only one full and one part time Ee in department, exercised none of indicia of supervisory status, and his responsibilities were limited to types of produce ordered, received and stocked)

G.E.S., Inc., d/b/a Big Star No. 185 **258 NLRB No. 040**

(produce manager at retail grocery store who punches time clock, is hourly paid, performs simple, routine, manual duties of handling produce, cannot hire, fire, discipline or effectively recommend such action, and exercises no independent judgment)

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Quik-Pik Food Stores, Inc. 282 NLRB No. 076
(assistant manager at one of E's multiple retail food stores held not supervisor, notwithstanding she was higher rated Ee than cashiers, was paid more, possessed keys to store, was in charge of closing books at end of week, where she had no authority to hire and fire or authority effectively to recommend such action, no authority to issue formal reprimands; she functioned simply as experienced Ee with *lead* authority)

8580-5500 Automotive dealers and gasoline service stations

Movement Corporation, World Parts Division 261 NLRB No. 110
(personnel office secretary under immediate supervision of personnel manager of E engaged in distribution of automotive parts, not supervisor, notwithstanding her access to confidential information)

8580-5800 Eating and drinking places

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern 254 NLRB No. 045
(working lead bartender held not supervisor where he gave instructions on mixing drinks, worked out Ee schedules, and requested cocktail waitresses to work beyond their shifts if business warranted it but was powerless to discipline waitress on his own if she refused and did not responsibly direct work of bar area Ees other than in routine fashion)

B. K. Restaurants Olean, Inc., d/b/a Burger King Restaurant 282 NLRB No. 065
(crew leader at restaurant, not supervisory Ee, where her duty was routine in nature and did not involve exercise of independent judgment)

American Diversified Foods, Inc. 247 NLRB No. 009
(shift managers of fast food restaurant found non supervisory personnel in light of fact that as senior Ees they were familiar with store's operational routine, helped counter Ees work smoothly in cooperative rather than controlling manner, performed same work functions as counter Ees, worked regular shifts. Shift managers were at most lead-men who had no role in formulating or affecting management policy)

Ground Round Restaurant, A Division of Howard Johnson JD-(SF)-191-82
(*head cook* at restaurant, notwithstanding he was consulted on personnel decisions and instructed new cooks, where ultimate decisions made by management and he exercised no independent judgment and had no real authority over other cooks)

N.L.R.B. v. Valentine A. Heid Estate, d/b/a Heid's Lunch Stand 615 F.2d 962 (C.A. 2, 1980)
(individual designated *night acting manager* at food stand held not supervisor, notwithstanding cousin of owner, where he performed same duties as countermen most of shift, compensation less than that of some individuals in unit, only responsibility associated with title was counting of receipts and locking of doors; further, individual had hired only one person which was reviewed by management, and had no control over wages or scope of work of person hired, nor is his expressing displeasure when co-workers did not perform their share of duties)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern JD-(SF)-239-80
(working lead bartender at restaurant held nonsupervisory where he did not have authority to hire or fire bar area Ees, nor did he effectively recommend such action except in 3 limited instances and merely exercised some ministerial supervisory functions such as working out Ee work schedules)

8580-6000 Banking

The Exchange Bank 264 NLRB No. 111
(head bookkeeper at bank held not supervisor where she had no authority to hire or fire Ees and work performed in bookkeeping department was routine in nature and each Ee was familiar with routine work performed by her each day)

Fall River Savings Bank v. N.L.R.B. 649 F.2d 50 (C.A. 1, May 1981)
(assistant branch managers of bank found nonsupervisory where although they often assumed command of bank in absence of manager, they had no authority over hiring, firing, promotions and salary increases and responsibilities did not require use of independent judgment)

8580-6300 Insurance

Pilgrim Life Insurance Company 249 NLRB No. 140
(individual in charge of *office pays* at insurance company who punched time clock, was paid time and half for overtime, and received same benefits as others in department, had never recommended that any Ee be disciplined, fired, or hired, and absent evidence she could effectively recommend such actions or that she directed work of Ees in any way)

8580-6500 Real estate

Elias Mallouk Realty Corp. 265 NLRB No. 186
(superintendents of apartment houses who oversee routine work of handy man and porter and have no power to hire, discipline or fire w/o approval of higher authority)

8580-7000 Hotels, rooming houses, camps, and other lodging places

Howard Johnson Motor Lodge 261 NLRB No. 123
(head of maintenance at motel not supervisor where had no power to hire, fire, transfer suspend, layoff or effectively recommend such action, and contact with most Ees *under* him was minimal)

Maros, Inc. d/b/a Towne Plaza Hotel 250 NLRB No. 016
(co-assistant housekeepers for operator of hotel and restaurant held not supervisors, notwithstanding they earned 15 cents per hour more than other maids and assigned work when substituting for housekeeping supervisor where any authority they exercised was essentially routine, they could not hire, fire, grant time off, discipline, permit overtime, or effectively recommend such actions, and they spent most of their time working as maids)

Robert King d/b/a Regency At The Rodeway Inn 256 NLRB No. 133
(Ee found non-supervisory where although she handled scheduling assignment of waitresses, instructed waitresses, booked and handled details for banquets, was paid higher wages, she did not have any authority to hire or fire waitresses)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel 248 NLRB No. 113
(food clerk who maintains food and beverage inventories in E hotel's storerooms, held not supervisor or agent w/i meaning of Section 2(11) of Act)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel 248 NLRB No. 113
(electrician who for 10 months prior to his discharge was *supervisor* in maintenance department of E hotel, held nonsupervisory Ee, where his direction of Ees was of no more than routine nature or required no exercise of independent judgment)

8580-7300 Business services

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising 257 NLRB No. 022
(group leader of construction crew not found supervisor where he gave minimal direction to crew which performed unskilled, routine work, was not involved in personnel decisions and did not consider himself part of management)

California Plant Protection, Incorporated, d/b/a C.P.P. Security Services 259 NLRB No. 039
(security officers, employed by E providing protective services for other Es, who are designated *sergeants* and *lieutenants*)

8580-7800 Motion pictures

Wehrenberg Theatres, Inc. d/b/a Melba Theatre and Skyvue Drive-In 260 NLRB No. 001
(projectionist held not supervisor where he is on call 24 hours per day and has no actual supervisory responsibilities, although he has some additional duties when he substitutes for his supervisor-father)

8580-7900 Amusement and recreation services, except motion pictures

Magic Mountain Corporation JD-337-80
(ski patrol member at ski resort, held to be not supervisor, where he enjoyed no special privileges as an assistant patrol leader, shared same working conditions with 4 other ski patrol members, had higher pay resulting from his seniority on patrol, never disciplined any Ee, and had no authority to hire, discharge, suspend, promote, grant time off, or to effectively recommend such actions)

8580-8000 Health services

8580-8050 Nursing and personal care facilities

Beverly Enterprises d/b/a Beverly Manor Convalescent Centers 264 NLRB No. 128
(LPN charge nurses found non-supervisory notwithstanding they direct activities of aides and orderlies where such direction primarily fosters patient care and not personnel policies of E; LPN's additional duties of verifying Ee work hours and reviewing timecards are routine and clerical and do not demand exercise of independent judgment)

American Medical Services, Inc., d/b/a River Hills Nursing Home West 262 NLRB No. 185
(registered nurses serving as charge, p.m. or night supervisors at nursing home held not supervisory; *Northwoods Manor*, in which Bd rejected application of 50-percent rule, is not controlling, even though there are factual circumstances herein similar to those in *Northwoods*; unlike in that case, there was no evidence here of a *substantial supervisory function* which represents *a principal duty common to the entire group of Ees sought to be represented*)

American Medical Services, Inc., d/b/a River Hills Nursing Home West 262 NLRB No. 185
(incident occuring under unique and isolated circumstances in which RN spontaneously recommended discharge of Ee for neglecting nursing home

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patient, subsequently approved by director, held not indicative of RN's supervisory authority)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 049
(*head housekeeper* at nursing home)

Beverly Enterprises, dba Beverly Manor Convalescent Centers 661 F.2d 1095 (C.A. 6, Oct. 1981)
(on question of supervisory status of LPNs at nursing home, Bd must determine: Do LPN activities respecting patient care involve independent professional judgment? If not LPNs properly included in unit. If yes, and that independent professional judgment exercised primarily in connection with patient care, not in interest of her E, then LPNs should be included; however, if judgment exercised in interest of her E, then supervisor and not included in unit)

Red Oaks Nursing Home, Inc. v. N.L.R.B. 633 F.2d 503 (C.A. 7, 1980)
(Ee of nursing home found lead person or *straw boss* and not supervisor, notwithstanding her title as *assistant food supervisor,* where Ee exercised no substantial power in areas where independent judgment was required)

American Medical Services, Inc. d/b/a River Hills Nursing Home West 258 NLRB No. 087
(unit Ees, (registered nurses) found not supervisors where although they represented highest authority present on their shifts they did not mete out discipline or make assignments without consulting their supervisors)

Trinity Lutheran Home For Children, t/a Frostburg Village of Allegany County Nursing Home v. N.L.R.B. 677 F.2d 302 (C.A. 3, Apr. 1982)
(LPNs at nursing home held not supervisors)

8580-8060 Hospitals

Milwaukee Children's Hospital Association 255 NLRB No. 130
(assistant head nurses and charge nurses not supervisors and included in unit of registered nurses where patient care functions are same as those performed by staff registered nurses, notwithstanding their work involves assignment of work to nursing personnel as this is exercise of professional judgment not supervisory authority)

Milwaukee Children's Hospital Association 255 NLRB No. 130
(staff development instructors who direct inservice orientation and education not supervisors where have no authority to hire, transfer, discipline, assign work or extend probationary period of any staff nurse; mere exercise of professional discretion does not establish managerial status)

Milwaukee Children's Hospital Association 255 NLRB No. 130
(Ee health nurse in Ee Relations Dept is not managerial or confidential Ee where her duties include: conducting preemployment physical exams, maintaining confidential Ee health records, handling workmen's compensation claims, preparing accident reports, examining Ees returning to work after an accident; however, she does not exercise discretion in dealing with Ees, and mere access to confidential medical records is insufficient to establish she acts in confidential capacity to her supervisor, vice president of Ee relations)

N.L.R.B. v. Faulkner Hospital 691 F.2d 51 (C.A. 1, Oct. 1982)
(security-guard on hospital night-shift found not supervisory notwithstanding his title was *security supervisor* where any authority he possessed was of routine nature not requiring independent judgment and he periodically switched shifts with rank-and-file security officers and supervisors resulting in occasions when there was in fact *no designated supervisor* present on the night shift)

The Board of Trustees of City Hospital, Inc. 254 NLRB No. 097
(hematology section supervisor and assistant chief technician at hospital held nonsupervisory where her job performance was in nature of professional Ee acting as lead person)

Mount Airy Foundation d/b/a Mount Airy Psychiatric Center 253 NLRB No. 120
(charge nurses and charge persons holding master's degrees found nonsupervisory as they give direction to other Ees, perform their tasks in exercise of professional judgment, incidental to their treatment of patients, rather than supervise others as representatives of management, do not hire, fire, or effectively recommend disciplinary action and thus are included in unit of professional Ees)

Misericordia Hospital Medical Center v. N.L.R.B. 623 F.2d 808 (C.A. 2, 1980)
(*head nurse* hat hospital held not supervisor since her direction of other Ees incidental to primary duty to maintain welfare of patients; further, she lacked authority to effectively recommend promotion or discharge of Ees or to make other independent decisions not involving patient welfare)

8580-8200 Educational services

United Services For The Handicapped v. N.L.R.B. 678 F.2d 661 (C.A. 6, May 1982)
(Ee who worked as dispatcher of drivers for nonprofit public service organization engaged in servicing its own preschool for children with learning disabilities)

Florida Memorial College 263 N.L.R.B. 160
(academic chairpersons at college included in unit of full-time faculty members, professional librarians and professional counselors notwithstanding E's contention that they should be excluded on grounds that they were supervisors; chairpersons exercised certain authority over nonunit Ees which was arguably supervisory in character; although they had role in hiring and retention of both clerical Ees and part-time faculty members, they devoted only small fraction of time to such responsibilities and since neither part-time faculty nor clerical personnel were included in unit, these functions of chairpersons did not preclude their inclusion in unit)

Florida Memorial College 263 N.L.R.B. 160
(professional counselors who serve as dormitory resident managers at college included in unit of full-time faculty members, professional librarians and professional counselors notwithstanding E's contention that they should be excluded on grounds that they were supervisors; whatever supervisory authority might occasionally be exercised by counselors who served as resident managers related solely to dormitory janitors who were not unit Ees)

New York Medical College 263 NLRB No. 124
(physicians at college held not supervisors where they were under direction of and were responsible to acknowledged supervisors, did not possess indicia of supervisory authority with respect to unit Ees, and finding that they were supervisors would result in unusually high proportion of supervisors)

New York Medical College 263 NLRB No. 124
(section chiefs, division chiefs, associate chiefs or associate directors of service, and department vice chairmen held not supervisors where evidence was insufficient to show they possess supervisory authority, and finding that they were supervisors would result in unusually high proportion of supervisors)

Bradford College 261 NLRB No. 081
(B.A. coordinators at college, most of whom also division charis, held not to be supervisors or managerial Ees and included in faculty unit. where each was regarded as faculty and spent insignificant amount of time in collateral functions)

8580-8300 Social services

Catholic Community Services 254 NLRB No. 090
(case manager at E's center providing health, social and related services held nonsupervisory, notwithstanding she enabled case aides to carry out program at hospital and participated in evaluation and interviewing process, where she did not have or exercise requisite authority to make effective recommendations with regard to hiring, firing, granting time off, or other personnel matters)

8580-8600 Membership organizations

Professional Air Traffic Controllers Organization 261 NLRB No. 122
(director of research for labor U held not supervisor where he neither assigned nor reviewed work, lacked authority to hire or fire, and may have once evaluated coworker)

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) 259 NLRB No. 037
(office manager of local U)

9300 'PROFESSIONAL EMPLOYEES'

9301 GENERALLY

N.L.R.B. v. Yeshiva University 582 F.2d 686 (C.A. 2)
(professional Ees may also be categorized as supervisory and managerial Ees ineligible for inclusion in bargaining unit)

9350 FOUND PROFESSIONAL

Illinois Valley Community Hospital 261 NLRB No. 155
(medical technologists' performing and evaluating broad spectrum of clinical laboratory tests in many disciplines held predominantly intellectual and sufficiently varied to be professional work, although nonprofessional medical laboratory technicians (MLTs) could perform most of the laboratory tests; medical technicians were more proficient and performed tests not assigned to MLTs, and these differences were attributable to medical technologists' specialized educational background which distinguished them from nonprofessionals)

Utah Power & Light Company 258 NLRB No. 138
(engineers specializing in electrical, civil, mechanical, aeronautical, and nuclear engineering at public utility held professional Ees, since they are engaged in challenging intellectual work which requires advanced knowledge of engineering and consistent use of informed discretion)

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Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(non-degree lab technician found professional Ee and excluded from unit where he has same supervision, performs same functions as degree technicians and is considered responsible technologist by E)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(*designer* at manufacturer and distributor of children's clothing excluded from unit of production and maintenance Ees and ineligible to vote since professional Ee)

9375 FOUND NOT PROFESSIONAL

Beverly Enterprises d/b/a Beverly Manor Convalescent Centers **264 NLRB No. 128**
(LPN's not professional Ees but rather technical Ees and exercise judgment based on their technical expertise, but it is appropriate to refer to their exercising *independent professional judgment*)

Community Health Services, Inc. **259 NLRB No. 048**
(challenges to ballots of mental health workers who were included in professional unit employed by community and home care service organization, sustained where, notwithstanding that all but three of them had either bachelor's or master's degree, they were not licensed by the State nor were they registered or certified by any national or state professional organization; they assisted professional staff but did not engage in types of treatment normally performed by professional psychologists or psychiatrists; therefore, held technical Ees)

Samson-AU Industries, Inc. v. N.L.R.B. **654 F.2d 932 (C.A. 3, 1981)**
(giving usual deference to Bd's expertise, ct concluded that Bd did not err in its ruling that computer programmers are not *professional Ees*; Bd has generally considered computer programmers to be technical and thus non-professional Ees, and Bd's factual determination herein of their non-professional status was supported by substantial evidence)

9700 HEALTH CARE INSTITUTIONS

9712 HOSPITALS

Montefiore Hospital and Medical Center **261 NLRB No. 082**
(staff doctors at medical center held professional Ees as defined in Section 2(12) of Act, and may constitute appropriate bargaining unit separate from other professional Ees even though in health care industry Bd is required to avoid fragmentation of units)

St. Elizabeth Community Hospital **259 NLRB No. 186**
(Bd asserted jurisdiction over Catholic Hospital because 1974 Health Care Amendments extended Bd jurisdiction to hospitals and legislative history clearly shows that Congress did not exclude religiously operated hospitals from coverage; moreover, Bd regulation of hospital will not involve it in excessive entanglement in religion for primary purpose of hospital is health care and not sectarian teaching as found in *Catholic Bishop of Chicago* and right of Ees to be represented by collective-bargaining representative will not interfere with free exercise of religion or tend to establish a religion)

9725 CONVALESCENT HOSPITALS

Beverly Enterprises d/b/a Beverly Manor Convalescent Centers **264 NLRB No. 128**
(LPN's not professional Ees but rather technical Ees and exercise judgment based on their technical expertise, but it is appropriate to refer to their exercising *independent professional judgment*)

9737 HEALTH MAINTENANCE ORGANIZATIONS

Keyway, A Division of Phase Inc. **263 NLRB No. 173**

9750 HEALTH CLINICS

Georgetown University Dental Clinic of Georgetown University **263 NLRB No. 077**
(E's dental clinic comprising of a training clinic and a private practice facility held health care institution rather than educational institution; while one of purposes of dental clinic is educational in nature, at same time it is engaged in direct day-to-day delivery of dental services, i.e., health care, and in this respect it is more analogous to university hospital where training of medical personnel occurs in context of delivery of health services and less like medical school where predominant purpose is purely educational)

9799 Other

Barclay Hospital, Inc. **247 NLRB No. 144**
(medical school at private university held not health care institution where medical school's primary purpose is to educate rather than to provide medical services to community; although medical school's clinical programs involved treatment of patients, such programs were auxiliarly to fulfillment of medical school's primary educational mission)

Trustees of University of Pennsylvania **247 NLRB No. 132**
(medical school at private university held not health care institution where medical shcool's primary purpose is to educate rather than to provide medical services to community; although medical school's clinical programs involved treatment of patients, such programs were auxiliary to fulfillment of medical shcool's primary educational mission)

Albert Einstein College of Medicine of Yeshiva University **247 NLRB No. 070**
(medical college which provided *education and health services* held not health care institution under Section 2(14) of Act, since primary purpose was to train physician's and to promote research and not to provide medical services to community, *See Albany Medical College*, 239 NLRB No. 106)

John V. Lane, P.C. d/b/a American Dental Centers **JD-(NY)-110-82**
(dental clinic held health care institution where services range from periodic teeth cleanings to complicated operations performed by dentists or oral surgeons, e.g., cancer biopsies, take x-rays and employ local anesthesia)

Ruehle's Paramedic Ambulance, Inc. **JD-128-82**
(E who provides ambulance service is health care institution w/i Sec. 2(14) because its primary purpose is to provide medical services to the community as an extension of emergency rooms of general hospital)

North Suburban Blood Center v. N.L.R.B. **661 F.2d 632 (C.A. 7, Oct 1981)**
(blood bank with separate building found to be health care institution, overruling Bd's determination that it was not where it was formed by 13 hospitals to meet their blood needs, it recruits donors, collects, tests, processes, prepares blood, consults with doctors regarding particular patients, and performs some patient treatment including donors who experienced complications while donating blood; in any further proceedings Bd must follow congressional directive against undue proliferation of bargaining units in health care institutions in determining appropriate unit)

188 AUTHORITY AND STRUCTURE OF NLRB AS AGENCY

0100 GENERALLY

2000 ADMINISTRATIVE PROCEDURE ACT REQUIREMENTS

2075 SEPARATION OF FUNCTIONS; 5 USC SECTION 554

Machinery Movers, Riggers and Machinery Erectors Local 136, Iron Workers (United Exposition Service Co., Inc.) **282 NLRB No. 058**

(APA not violated where GC investigates as well as prosecutes case; separability provision requires separation of those functions from decision making function)

2080 Evidentiary standards; 5 U.S.C. Section 556 and 5 U.S.C. 706(2)(e)

Steadman v. Securities and Exchange Commission **446 US 917 (U.S. SCt. Feb. 1981)**

(*substantial evidence* phrase of SEc. 7 of the Administrative Procedure Act which provides that agency must not impose sanctions unless *supported by and in accordance with reliable, probative and substantial evidence* requires that agency decision be based on quality of evidence rather than setting standard of quality; and in accordance with weight of evidence to justify, if trial were to jury, refusal to direct verdict. Thus, SEC properly used preponderance-of-evidence rather than clear-and-convincing standard of proof in determining whether anti-fraud provision of federal securities law violated)

Steadman v. Securities and Exchange Commission **446 US 917 (U.S. SCt. Feb. 1981)**

(Sec. 7(c) of APA which provides that agency may not impose sanctions or issue order unless *supported by and in accordance with reliable, probative, and substantial evidence* requires agency decision be in accordance with weight of evidence; by contrast Sec. 10(e) does not permit reviewing ct to weigh the evidence, but only determine that there is in record such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; to conclude that phrase *substantial evidence* in 7(c) defines scope of judicial review would make substantial evidence language of 10(e) redundant)

2080-3000 Legislative history

Steadman v. Securities and Exchange Commission **446 US 917 (U.S. SCt. Feb. 1981)**

4000 RELATIONSHIP TO OTHER GOVERNMENTAL AGENCIES

4050 OTHER FACTFINDING AGENCIES

Newport News Shipbuilding & Dry Dock Company **254 NLRB No. 043**

(where discriminatees filed charges with Bd and OSHA alleging violative discharges, Bd not required to defer to OSHA as Ees were engaged in U activity and although some remedies are same, only Bd can issue notice advising Ees of their rights to engage in U activity)

4050-3300 Board not bound by findings of state unemployment compensation tribunal

Armored Transport of Nevada, Inc. **265 NLRB No. 209**

(unemployment compensation decision showing that Ee was discharged for cause was admitted but would not be controlling)

E. I. Dupont De Nemours **263 NLRB No. 015**

(opinion of state unemployment compensation commission not binding on Bd)

Jaybill Steel Products, Inc.; etc. **258 NLRB No. 157**

(decision of state unemployment insurance appeal board denying benefits, because charging party lost job through conduct, received into evidence; however, since ALJ drew differnet factual conclusions and ULP not considered by unemployment tribunal, award not given controlling weight)

6000 THE BOARD

6001 GENERALLY

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**

(Bd and its regional offices are free to reconsider their own decisions in light of changing circumstances and needs, but reversal of previous jurisdictional finding, which was *final*, must be applied *prospectively* only)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. **657 F.2d 1252 (C.A.D.C., Oct. 1980)**

(where U, engaged in consumer picketing at neutral retail store against sale of nonlocal soft drinks, had no conventional labor dispute with store or nonlocal suppliers, ct rejected U's contention that Bd has no authority to resolve controversies that do not contain *labor dispute* as defined in Sec. 2(9); that section is not a jurisdictional requirement, and is construed as a definitional provision only, designed to ensure uniform meaning to important phrase statute)

6001-8000 Responsible for development of national policy under NLRA

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**

(*for purposes of affirming no less than reversing its orders, appellate ct cannot intrude upon the domain which Congress has exclusively entrusted to administrative agency*)

6033 AUTHORITY UNDER STATUTE

6033-2000 Conduct elections and certify results

Glenn McClendon Trucking Co., Inc. **255 NLRB No. 168**

(it is Bd's responsibility, *not that of parties*, to establish proper procedure for conduct of elections)

N.L.R.B. v. General Motors Corporation **510 F.Supp. 338 (DC S.D. OH, Sept. 1980)**

(Bd will conduct R election if: (1) involved E's business affects commerce; (2) qcr exists; (3) group of Ees which U seeks to represent is appropriate unit; and (4) petitioner has made *sufficient showing of interest* to justify holding election)

6033-4000 Adjudicate ULP allegations

6033-4001 Generally

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(Bd vested with primary jurisdiction to determine what is or is not ULP; federal cts do not have jurisdiction over activity which *is arguably subject to Sec. 7 or Sec. 8 of (NLRA)* and *they must defer to exclusive competence of Bd. However, federal cts have duty to determine whether contract violates federal law before enforcing it)*

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(while only Bd may provide affirmative remedies for ULPs, ct may not enforce contract provision which violates 8(e))

N.L.R.B. v. Zeno Table Company, Inc. **610 F.2d 567 (C.A. 9, 1979)**

(Bd vested with great discretion in resolution of ULP disputes but may not employ this authority in manner which deprives party of fair and adequate hearing)

6033-4050 Not affected by other means of adjustment or prevention

N.L.R.B. v. Fourco Glass Company, Rolland Division **646 F.2d 983 (C.A. 4, Apr 1981)**

(although E violated Act by unilaterally terminating incentive pay program and implementing new wage plan with new hourly rate, Bd order was moot as E and U renegotiated their contract in light of E's economic difficulties)

6033-6000 Prescribe remedies

6033-6001 Generally

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(while only Bd may provide affirmative remedies for ULPs, ct may not enforce contract provision which violates 8(e))

Schnadig Corporation 265 NLRB No. 020

(whether counsel for GC seeks backpay remedy immaterial since Bd has full authority over remedial aspects of decisions)

R. J. E. Leasing Corp. 262 NLRB No. 40A

(matters of remedy (in instant case, Bd ordered E to withdraw wage increases or other benefits established pursuant to invalid contract) are traditionally w/i Bd's province, and may be addressed by Bd *sua sponte*)

F.M.L. Supply, Inc. 258 NLRB No. 083

(Bd does not refuse to invoke remedies where Respondent's concealment of conduct injures parties entitled to protection of Act; Respondent estopped from denying consciously deceptive conduct (appearing to be party to successive U contracts) over long period of time)

Ace Beverage Co. 250 NLRB No. 066

(Bd found no jurisdictional bar to review of GC's action in compliance stage and to issues raised by mtn for determination of compliance with Bd's order, since Sec. 101.13(b) of Bd's Statements of Procedures provides that, despite compliance, Bd's order is continuing one and that closing of case is conditioned upon continued compliance with order, which is equally true when proposed backpay formula fails to comply with order as it is when respondent has breached compliance provisions)

Garrett Railroad Car & Equipment, Inc. v. N.L.R.B. 683 F.2d 731 (C.A. 3, June 1982)

(Bd's changing burden to wrongdoer in *Abilities and Goodwill* which creates rebuttable presumption in favor of Ee who was discharged unlawfully during ULP strike was w/i Bd's discretion)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(Bd has broad authority to grant U access to company property as part of remedial order, however, Bd must make clear that such access is necessary to offset adverse effects of unlawful E conduct)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(imposition of remedies is matter of special administrative competence, subject to very limited judicial review; selection of remedies made by Bd must stand, *unless it can be shown that the order is patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act*)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(Bd has power-and indeed obligation-to take into account history of recalcitrance in designing remedial order)

6033-6001-3300 Limitation of Section 8(d)

Clearwater Finishing Company, a Division of United Merchants and Manufacturers, Inc. v. N.L.R.B. 670 F.2d 464 (C.A. 4, Feb. 1982)

(ct held that Bd's order that E grant proposed wage increase retroactively was beyond scope of its authority where such term was mandatory subject of bargaining; ct found that rule of *H.K. Porter* applied equally to orders requiring agreement on subjects of bargaining in cases arising under Sec. 8(a)(1) and 8(a)(5))

East Bay Chevrolet dba Time Chevrolet v. N.L.R.B. 659 F.2d 1006 (C.A. 9, Oct. 1981)

(enforcement denied and case remanded to Bd where R/O improperly prescribed substantive provision for future agreement between E and U; namely, effective date of agreement be made retroactive to effective date of agreement between E and 3 Us representing other units of E, notwithstanding in previous successful negotiations, all 4 Us had conducted joint bargaining with E association of which E had properly withdrawn from)

6033-6001-6700 Authority under Section 10(c)

N.L.R.B. v. Carbonex Coal Company 679 F.2d 200 (C.A. 10, May 1982)

(under section 10(c) of Act, Bd has considerable discretion in fashioning remedy for ULPs)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(powers of Bd are remedial, not punitive, and Bd may not justify order solely on ground that it will deter future violations of Act)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(notwithstanding that Bd's affirmative remedies may appear *punitive* in context of individual case concerning recidivist violators of Act, they are clearly *remedial*, and are therefore proper, in context of total conduct of recidivist violator)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(access as remedial measure at unorganized plants (of E) may be predicated on Bd's finding that E's unlawful bargaining strategy at organized plant has chilled Ee rights at (E's) unorganized plants; access is ordered to remedy effects of unlawful behavior and *not* to punish or deter E)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(burden lies upon Bd to substantiate its conclusion that access is necessary remedy to offset consequences of unlawful E conduct)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(Bd was clearly entitled to consider extensive record of past unlawful activity of E in shaping its remedial order in instant case)

6033-8000 Rulemaking authority

6033-8001 Generally

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. 441 U.S. 281 (S Ct US, 1979)

(substantive agency regulations--those that *affect individual rights and obligations*--have *force and effect of law* if grant of authority by Congress contemplates regulations issued, meet any limitations so imposed by Congress, and promulgation of such regulations must conform with any procedural requirements imposed by Congress)

6033-8050 Specific rules (see also subject matter affected by rule)

6033-8050-2119 Rule 102.119

Alumbaugh Coal Corporation v. N.L.R.B. 635 F.2d 1380 (C.A. 8, 1980)

(mtn to dismiss C proceedings because former Bd attorney, employed at Bd's R/O when U filed R ptn, participated in case on U's behalf, denied, where ALJ fairly determined attorney's involvement in case was nonprejudicial to E's rights; moreover, Bd's determination as to effect of technical violation of its rules should not be lightly overturned since procedural fairness to litigant must be balanced against severe impact of dismissal on parties' substantive rights and public's interests under Act, and absent abuse of discretion, such determination is particularly w/i Bd's discretion)

6067 DELEGATION OF AUTHORITY

6067-2000 To Board panel

A.G.S. Graphics, A Division of George Lithograph Co. 265 NLRB No. 129

(policy of Bd for same panel which decides case to pass on request for reconsideration of panel decision and for full Bd to consider such request only if panel refers it to full Bd)

Melrose-Wakefield Hospital Association, Inc. v. N.L.R.B. 615 F.2d 563 (C.A. 1) (1980)

(in rejecting contention that Bd's post-election review of campaign objections was arbitrary and capricious, ct found statutorily permissible procedure where Bd delegates any or all of its powers to three member panels of Bd members and Bd has wide discretion in setting standards for conduct of representation election; furthermore, Bd members themselves and not staff assistants made decision whether to review RD's decision concerning election)

6067-6000 To Regional Directors

Colonial Manor 1977, Inc. 253 NLRB No. 151

(Sec. 3(b) of Act authorizes Bd to delegate to its RDs final decision making power in post election proceedings, subject to discretionary review by Bd)

6067-8000 To General Counsel

Ace Beverage Co. 250 NLRB No. 066

(contention that GC's authority and discretion in compliance matters is analogous to that granted him under Sec. 3(d) of Act with respect to issuance of complaints, and that, therefore, his action in compliance matters is also final, rejected, since in compliance matters GC does not act on his own initiative as he does in issuance of complaints but as Bd agent in effectuating remedy ordered)

7500 QUORUM REQUIREMENTS

Photo-Sonics, Inc., et al. v. N.L.R.B. 678 F.2d 121 (C.A. 9, May 1982)

(contention Bd's order not enforceable inasmuch as decision not made by properly constituted three member panel where member of panel resigned effective same day decision issued and allegedly could not have participated, rejected, since two members of panel may constitute quorum and conduct business, thus in view of agreement of all panel members decision valid whether or not resigned member participated)

8000 THE GENERAL COUNSEL

8001 GENERALLY

8001—Cont.

Ace Beverage Co. **250 NLRB No. 066**
(contention that GC's authority and discretion in compliance matters is analogous to that granted him under Sec. 3(d) of Act with respect to issuance of complaints, and that, therefore, his action in compliance matters is also final, rejected, since in compliance matters GC does not act on his own initiative as he does in issuance of complaints but as Bd agent in effectuating remedy ordered)

8033 STATUTORY AUTHORITY

Rockford Redi-Mix Co., Inc. v. Glen Zipp, RD **632 F.2d 30 (C.A. 7, 1980)**
(contention that GC violated Act when he failed to issue ULP complaint against U that picketed for recognition after date of expedited election under 8(b)(7)(C) during period in which challenges to validity of election were being resolved, rejected; assuming limited review may be available under Freedom v. Kyne, ct held there is no specific and unambiguous provision of Act requiring action in conformity with E's immediate certification theory, and jurisdiction is, accordingly not present to consider GC's failure to treat as valid an election that had not yet been determined to be valid)

8033-3300 Final authority to investigate charges and issue complaints

Signal Transformer Co., Inc. **265 NLRB No. 033**
(Charging Party may not pursue contention in attempt to add allegations to complaint, which GC has refused to do)

8033-3375 Dismissal of charge not reviewable by courts

Foley-Wismer & Becker and Shurtleff & Andrews Construction v. N.L.R.B. **695 F.2d 424 (C.A. 9, Dec. 1982)**
(E's request for review of GC's dismissal of charge against U, denied, since GC has *final authority* on whether to issue C on ULP charges, and his decision is not reviewable in any judicial forum)

Pacific Southwest Airlines v. N.L.R.B. **611 F.2d 1309 (C.A. 9, Jan. 1980)**
(GC's decision not to issue C is not subject to review by Ct of appeals whether or not GC's decision considered *final order* or not as Section 3(d) of Act provides that GC has final authority on behalf of Bd in investigation of charges and issuance of C)

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD **482 F.Supp. 489 (D Ct. IL)**
(GC's refusal to issue complaint based upon alleged ULPs, not violation of a constitutional right, and hence district ct lacked subject matter jurisdiction to review GC's refusal)

8033-6700 Exclusive authority to prosecute complaint

K & E Bus Lines, Inc. **255 NLRB No. 137**
(Section 10(b) of Act provides that no complaint should issue based upon ULP occuring more than 6 months prior to filing charge. This section, however, only relates to actual filing of charges and, once charge has been timely filed, control over and disposition of that charge is vested exclusively with GC pursuant to Section 3(d) of Act, who has decision to act on charge as he deems fit)

8033-6733 Controls theory of case

Electrical Workers, Local Union No. 1186 (Pacific Electrical Contractors Association, etc.) **264 NLRB No. 097**
(where conduct not alleged in C and Respondent not otherwise put on notice that evidence of this conduct might be basis of finding of independent violation and even after hearing GC did not argue before ALJ that this conduct violated Act, nor did ALJ include it in his statement of case, issues not fully litigated and *ALJ's conclusion that this conduct constituted violation improperly intrudes on GC's authority to frame case*)

8033-6767 Sole authority to amend complaint

Signal Transformer Co., Inc. **265 NLRB No. 033**
(Charging Party may not pursue contention in attempt to add allegations to complaint, which GC has refused to do)

Penntech Papers, Inc.; etc. **263 NLRB No. 033**
(ALJ's granting Charging Party's mtn to amend C to allege unlawful failure to bargain regarding decision to close one of its plants in addition to allegation in C of failure to bargain regarding effects of plant closing, improper, where GC had resisted Charging Party's attempt to amend C at hearing and therefore issue not properly before ALJ, notwithstanding contention issue fully litigated at hearing and that GC cannot limit scope of judicial decision and where proof was admitted w/o objection)

200 NLRB JURISDICTION

201 GENERALLY

3300 POLICY OF BOARD

Alstate Coin Machine Co., Inc. **JD-(SF)-272-79**
(alleged E violation of arbitration agreement not proper subject for Bd determination and complaint dismissed as Bd policy is to let court of competent jurisdiction resolve issue)

Golden Day Schools, Inc. v. N.L.R.B. **644 F.2d 834 (C.A. 9, May 8, 1981)**
(Bd's determination, that E met $250,000 standard for exercising jurisdiction over *day-care center* rather than $1,000,000 standard for *educational institutions* will not be set aside *in the absence of extraordinary circumstances, such as unjust discrimination*)

6700 EFFECT OF PRIOR DECISIONS

American Totalisator Company, Inc. **264 NLRB No. 148**
(where Bd had conducted election in another subsidiary of E which was engaged in construction, assembly, repair and servicing of paramutuel wagering equipment used for off track betting, difference in customers not sufficient basis for refusal to assert jurisdiction over E's Ees performing simular duties involving similar machines used at track, notwithstanding issue in prior decision framed in terms of rescinding or amending Bd's rule which precludes its assertion of jurisdiction over horseracing industry)

Jacobo Marti & Sons, Inc. **264 NLRB No. 007**
(ALJ found E subject to jurisdiction of Act based on earlier Bd decision holding that Respondent was E and that it would effectuate purposes of Act to assert jurisdiction over it)

World Evangelism, Inc. **261 NLRB No. 008**
(Bd asserted jurisdiction over E where in prior case involving same E it asserted jurisdiction and here failed to comply with subpoena duces tecum for its financial records and introduced no evidence to show its financial situation had changed since prior determination)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(Bd's assertion of jurisdiction in prior R case underlying instant ULP proceeding held res judicata of every contention raised in R case to avoid Bd's jurisdiction as well as any contention that could have been raised)

Tripp Electric, Inc.; Triple B Electric; Robert
Stephen Tripp d/b/a Coordinated Systems;
Ronald J. Tripp d/b/a Integrated Systems **JD-(SF)-220-81**
(jurisdiction asserted over signatories to multi-E bargaining agreement where notice was taken that jurisdiction had been asserted over same multi-E association in prior Bd case, creating presumption of continuing jurisdiction which was not rebutted by E)

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(Bd and its regional offices may not render jurisdictional decisions, and then overrule them *retroactively* and thereby transform E's interim behavior, legal when pursued, into illegal ULPs; E's conduct after formal declaration by Bd that he is not covered by Act and before re-examination of that issue, cannot subsequently be branded ULP subjecting E to liability for back-pay)

N.L.R.B. v. Porko's Enterprises, Inc. **661 F.2d 941(T) (C.A. 9, Sep. 1981)**
(findings of statutory jurisdiction in prior cases involving same E based on stipulated jurisdictional facts, provide prima facie basis for jurisdiction in subsequent proceeding)

6750 PRIOR DECISIONS NOT CONTROLLING

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(Bd and its regional offices are free to reconsider their own decisions in light of changing circumstances and needs, but reversal of previous jurisdictional finding, which was *final,* must be applied *prospectively* only)

Golden Day Schools, Inc. v. N.L.R.B. **644 F.2d 834 (C.A. 9, May 8, 1981)**
(prior cases to contrary, test for whether proprietary child-care facility is subject to Bd's jurisdiction is *whether E has sufficient control over employment conditions of its Ees to enable it to bargain with labor organization which represents them*)

8300 TIMELINESS OF RAISING ISSUE

Overhead Door Corporation (Todco Division) **261 NLRB No. 094**
(where E had stated at hearing that it had reinstated striker discharged for strike misconduct to minimize backpay liability and would discharge him again after hearing if original discharge were found lawful, and ALJ declared that reinstatement constituted condonation, Bd did not rule on issue of condonation in view of its policy not to prejudge factual or legal issues)

Builders Distributors Sand and Gravel, Inc. **257 NLRB No. 053**
(Bd held that question of jurisdiction untimely raised in exceptions to Bd as E admitted jurisdiction earlier and did not contest it at pre-trial or trial stage of hearing)

St. Elizabeth Community Hospital v. N.L.R.B. **625 F.2d 123 (C.A. 9, 1980)**
(First Amendment challenge to Bd's jurisdiction over charitable hospital operated by religious order held timely raised, notwithstanding contention that issue could have been litigated at R proceedings before RD and no new or previously unavailable evidence was offered or special circumstances alleged to require Bd's consideration, since it is sufficient that hospital raised First Amendment issue in R proceedings before Bd and did not defer its challenge to enforcement proceedings; case remanded to Bd for further consideration in light of SCt's opinion in *NLRB v. Catholic Bishop,* 440 U.S. 490)

St. Anthony Hospital Systems v. N.L.R.B. **655 F.2d 1028 (C.A. 10, Aug 1981)**
(failure of non-profit hospital, run by religious order, to raise before Bd in R proceeding constitutionality of Bd's assertion of jurisdiction on ground that it is religious organization exempt from governmental regulation under First Amendment, precluded hospital from raising issue before Bd or ct in ULP case. *While statutory jurisdiction of Bd may be challenged at any time, facts upon which Bd determines it has jurisdiction may be challenged only upon timely exception, in absence of which Bd's findings are not open to attack in proceeding for enforcement*)

St. Anthony Hospital Systems v. N.L.R.B. **655 F.2d 1028 (C.A. 10, Aug 1981)**
(failure of non-profit hospital, run by religious order, to raise before Bd in R proceeding constitutionality of Bd's assertion of jurisdiction on ground that it is religious organization exempt from governmental regulation under First Amendment, precluded hospital from raising issue before Bd or ct in ULP case. *While statutory jurisdiction of Bd may be challenged at any time, facts upon which Bd determines it has jurisdiction may be challenged only upon timely exception, in absence of which Bd's findings are not open to attack in proceeding for enforcement*)

220 STATUTORY JURISDICTION

0100 GENERALLY

N.L.R.B. v. St. Louis Christian Home **663 F.2d 60 (C.A. 8, Nov. 1981)**

(Congress intended to grant NLRB, under commerce clause, broadest possible jurisdiction permitted by Constitution)

0150 INCUMBENT ON BOARD TO ESTABLISH LEGAL JURISDICTION AS AUTHORITY TO PROCEED

Margate Bridge Company **247 NLRB No. 205**

(when legal jurisdiction has been established and some relevant standard for assertion of jurisdiction has been met, immaterial that jurisdiction might be asserted under one of several different standards)

N.L.R.B. v. First Termite Control Co., Inc. **646 F.2d 424 (C.A. 9, May 1981)**

(enforcement denied where Bd failed to establish statutory jurisdictional requirement of interstate commerce (interstate business more than *de minimis* by admissable evidence)

0175 ABSENCE OF CLEAR EXPRESSION OF CONGRESSIONAL INTENT

N.L.R.B. v. Yeshiva University **440 U.S. 906 (U.S. SCt, Feb 20, 1980)**

(absence of explicit congressional direction does not preclude Bd from reaching any particular type of employment)

2500 PREEMPTION OF JURISDICTION OVER SUBJECT MATTER REGULATED BY ACT

2525 BOARD HAS EXCLUSIVE JURISDICTION IN ENFORCING ACT

2525-4000 Not subject to other means of adjustment or prevention established by agreement, laws, or otherwise

N.L.R.B. v. South Central Bell Telephone Company **688 F.2d 345 (C.A. 5, Oct. 1982)**

(to permit ratification or incorporation of arbitration decisions also involving ULPs, whether express or implied, into contracts would circumvent express policy of 29 U.S.C. 160 (a) which gives Bd exclusive power to decide ULP questions)

Automobile Workers (UAW) and Its Local 1519 v. N.L.R.B. **619 F.2d 580 (C.A. 6, Apr. 1980)**

(Bd has express authority to settle work assignment disputes as stated in Section 10(k) whenever person has engaged in *Section 8(b)(4)(D)* ULP)

Automobile Workers (UAW) and Its Local 1519 v. N.L.R.B. **619 F.2d 580 (C.A. 6, Apr. 1980)**

(Bd's determination of work assignment dispute takes precedence over contrary award of arbitrator, regardless of which action was initiated first; both legislative history and case law on such issue support finding that Bd's 10(k) determination takes priority)

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(Bd vested with primary jurisdiction to determine what is or is not ULP; federal cts do not have jurisdiction over activity which *is arguably subject to Sec. 7 or Sec. 8 of (NLRA)* and *they must defer to exclusive competence of Bd. However, federal cts have duty to determine whether contract violates federal law before enforcing it)*

2525-6000 Board jurisdiction not ousted because suit also arises under section 301(a)

Automobile Workers (UAW) and Its Local 1519 v. N.L.R.B. **619 F.2d 580 (C.A. 6, Apr. 1980)**

(when E has been acting in accord with ultimate Bd *Section 10(k)* ruling, E is not liable for damages to disappointed U; even in a *LMRA Section 301* suit)

2525-6050 Board may deal with unfair labor practice which also violates contract

Diplomat Envelope Corporation **263 NLRB No. 078**

(E's mtn to dismiss C because of prior pending Federal judicial proceedings denied. Though Federal Courts have concurrent jurisdiction to decide matters arising under bargaining agreement, even where conduct arguably protected or prohibited by Act may be involved, Bd is vested with primary jurisdiction to determine what is or is not ULP. Here, ct stayed proceeding pending disposition by Bd of ULP, which is normal procedure, to allow special administrative competence of Bd to take precedence in making determination on the issues)

The Dow Chemical Company **261 NLRB No. 031**

(E's contention that Bd lacked jurisdiction in case because no more than question of contract interpretation was involved, rejected since issues were whether E violated Sec. 8(a)(5) and (1), as well as Sec. 8(d) through unilaterally modifying subsisting collective labor agreement and unilaterally changing that agreement during its term)

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**

Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC v. Standard-Coosa-Thatcher Carpet Yarn Division, Inc. **516 F.Supp. 1078 (D Ct AL, June 1981)**

(ct w/o concurrent jurisdiction and must defer to Bd in dispute where U, claiming informal settlement between U and E and subsequently approved by RD, who afterwards set aside settlement in view of E's breach, was binding contract under Sec. 301, since exception to *Garmon* 359 U.S. 236 (1959), announced in *Smith v. Evening News* 371 U.S. 195 (1962), relates only to disputes arising under collective bargaining agreements; RD validly set aside contract and since it no longer exist, U cannot claim that it is 3rd party beneficiary)

2525-6075 Board without original jurisdiction to enforce bargaining contract violations not constituting ULP's

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(Bd vested with primary jurisdiction to determine what is or is not ULP; federal cts do not have jurisdiction over activity which *is arguably subject to Sec. 7 or Sec. 8 of (NLRA)* and *they must defer to exclusive competence of Bd. However, federal cts have duty to determine whether contract violates federal law before enforcing it)*

Alstate Coin Machine Co., Inc. **JD-(SF)-272-79**

(alleged E violation of arbitration agreement not proper subject for Bd determination and complaint dismissed as Bd policy is to let court of competent jurisdiction resolve issue)

2525-7000 Board proceedings not stayed pending bankruptcy proceeding involving respondent

Ralph Schaffner, an Individual d/b/a Schaffner Construction Co. **252 NLRB No. 136**

(Respondent's contention that ptn for summary judgment in backpay proceeding should be stayed pending discharge of Respondent's ptn from Bankruptcy ct in which Bd and discriminatees are named as creditors, rejected, since adjudication in Bankruptcy does not deprive Bd of jurisdiction or authority to process ULP case to final disposition; since mtn to stay did not specifically deny or respond in any way to allegations of backpay specification, allegations of specification are deemed admitted)

2550 COURTS WITHOUT CONCURRENT JURISDICTION TO REDRESS UNFAIR LABOR PRACTICES

2550—Cont.

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**
(–federal cts may decide labor law questions that emerge as collateral issues in suits brought under independent federal remedies, including the anti-trust laws)

2550-1800 Doctrine of primary jurisdiction requires judicial abstention

Malone, Commissioner of Labor and Industry For Minnesota v. White Motor Corp. et al. **435 U.S. 497 (SCt, 1978)**
(state statute which sought to regulate pension plans which were product of collective bargaining negotiations and are mandatory subject of bargaining under NLRA held constitutional; NLRA did not preempt state statute since Federal Welfare and Pension Disclosure Act of 1958 expressly recognized and preserved state authority to regulate pension plans)

2550-3600 Injunctive powers of courts do not include jurisdiction to determine existence of and redress unfair labor practices

Bill Johnson's Restaurants, Inc. v. N.L.R.B. **660 F.2d 1335 (C.A. 9, Nov 1981)**
(Federal anti-inj statute 28 U.S.C. Sec. 2283 does not prevent Bd from curbing state-ct action that interferes with Bd's exercise of its own jurisdiction)

2550-4500 Arguable existence of unfair labor practice precludes assumption of jurisdiction by court

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**
(Bd vested with primary jurisdiction to determine what is or is not ULP; federal cts do not have jurisdiction over activity which *is arguably subject to Sec. 7 or Sec. 8 of (NLRA)* and *they must defer to exclusive competence of Bd. However, federal cts have duty to determine whether contract violates federal law before enforcing it)*

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(however, concept deemed inapplicable to Section 301 suits, with NLRB and federal cts having concurrent authority with respect to disputes arising under collective bargaining agreement even where conduct arguably protected or prohibited by Act involved)

The United Credit Bureau of America, Inc. v. N.L.R.B. **643 F.2d 1017 (C.A. 4, Mar. 1981)**
(under *Sears,* 436 US 180 and *Garmon*, preemption of state ct is required where E's fraud allegation in state ct is based wholly on Ee's exercise of protected rights of engaging in protected concerted activity and filing ULP charge for unlawful discharge and party who could have presented protection issue has done so)

2550-7200 Damage actions on account of unfair labor practices may be maintained

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(however, concept deemed inapplicable to Section 301 suits, with NLRB and federal cts having concurrent authority with respect to disputes arising under collective bargaining agreement even where conduct arguably protected or prohibited by Act involved)

Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC v. Standard-Coosa-Thatcher Carpet Yarn Division, Inc. **516 F.Supp. 1078 (D Ct AL, June 1981)**
(ct w/o concurrent jurisdiction and must defer to Bd in dispute where U, claiming informal settlement between U and E and subsequently approved by RD, who afterwards set aside settlement in view of E's breach, was binding contract under Sec. 301, since exception to *Garmon* 359 U.S. 236 (1959), announced in *Smith v. Evening News* 371 U.S. 195 (1962), relates only to disputes arising under collective bargaining agreements; RD validly set aside contract and since it no longer exist, U cannot claim that it is 3rd party beneficiary)

2550-8100 Garmon preemption doctrine applicable

In Re: Charles K. Sewell **690 F.2d 403 (C.A. 4, Sept. 1982)**
(where, after E refused to bargain with Bd-certified U to obtain appellate ct review of certification, U sued E's president under state tort law in state ct action, which was removed to federal district ct, appellate ct was empowered to issue pursuant to All Writs Act writ of mandamus petitioned for by E's president, with Bd as intervenor, on grounds of preemption under *Garmon* doctrine to confine the district ct to its jurisdiction, since, if the preemption claim was valid, the district ct would have infringed on the Bd's primary jurisdiction of labor relations and the appellate ct's jurisdiction to review Bd orders)

In Re: Charles K. Sewell **690 F.2d 403 (C.A. 4, Sept. 1982)**
(since invocation of state law to redress conduct prohibited by Sec. 8 of the Act comes w/i *Garmon* doctrine of preemption, E's violation of Sec. 8 cannot constitute conduct sufficient to invoke state law, because that would undermine the preemption principle)

In Re: Charles K. Sewell **690 F.2d 403 (C.A. 4, Sept. 1982)**
(appellate ct held that U's action in district ct under state tort law against official of E which had refused to bargain must be dismissed, and mandamus that official petitioned for with Bd as intervenor, granted since federal labor law vested exclusive jurisdiction in Bd to adjudicate controversies over refusals to bargain, subject to appellate ct review; federal law preempted state law pertaining to same controversy under *Garmon* doctrine, and federal district ct could not invoke latter to reexamine official's conduct but had to defer to Bd's exclusive competence to avert danger of state law interfering with national policy)

The United Credit Bureau of America, Inc. v. N.L.R.B. **643 F.2d 1017 (C.A. 4, Mar. 1981)**
(under *Sears,* 436 US 180 and *Garmon*, preemption of state ct is required where E's fraud allegation in state ct is based wholly on Ee's exercise of protected rights of engaging in protected concerted activity and filing ULP charge for unlawful discharge and party who could have presented protection issue has done so)

Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC v. Standard-Coosa-Thatcher Carpet Yarn Division, Inc. **516 F.Supp. 1078 (D Ct AL, June 1981)**
(ct w/o concurrent jurisdiction and must defer to Bd in dispute where U, claiming informal settlement between U and E and subsequently approved by RD, who afterwards set aside settlement in view of E's breach, was binding contract under Sec. 301, since exception to *Garmon* 359 U.S. 236 (1959), announced in *Smith v. Evening News* 371 U.S. 195 (1962), relates only to disputes arising under collective bargaining agreements; RD validly set aside contract and since it no longer exist, U cannot claim that it is 3rd party beneficiary)

2550-9000 Garmon preemption doctrine not applicable

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(preemption not applicable to Section 301 suits with NLRB and federal cts having concurrent authority with respect to disputes arising under collective bargaining agreement even where conduct arguably protected or prohibited by Act)

Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC v. Standard-Coosa-Thatcher Carpet Yarn Division, Inc. **516 F.Supp. 1078 (D Ct AL, June 1981)**
(ct w/o concurrent jurisdiction and must defer to Bd in dispute where U, claiming informal settlement between U and E and subsequently approved by RD, who afterwards set aside settlement in view of E's breach, was binding contract under Sec. 301, since exception to *Garmon* 359 U.S. 236 (1959), announced in *Smith v. Evening News* 371 U.S. 195 (1962), relates only to disputes arising under collective bargaining agreements; RD validly set aside contract and since it no longer exist, U cannot claim that it is 3rd party beneficiary)

2562 STATE AGENCY JURISDICTION IN REPRESENTATION MATTERS

Albert Einstein Medical Center **248 NLRB No. 009**
(Bd refused to extend comity to certification by state agency of combined unit of RNs and LPNs as this is contrary to Bd policy of placing LPNs in technical unit unless parties have so stipulated, existing separate representation or separate bargaining history; furthermore, absent special circumstances Bd has declined to direct elections in combined units of LPNs and RNs which excluded other technical Ees)

2587 STATE REGULATION OF PREEMPTED SUBJECT MATTER

2587-2500 State statute

New York Telephone Co. et al. v. New York State Department of Labor, et al. **440 U.S. 519 (S Ct., 1979)**
(NLRA does not preclude state from enacting unemployment compensation law which pays benefits to strikers notwithstanding fact that this law put majority of financial burden on struck E and enabled strikers to extend length of strike; Legislative history of NLRA indicates that Congress recognized potential conflict between state law and Act but did not intend to preempt that exercise of state power)

Malone, Commissioner of Labor and Industry For Minnesota v. White Motor Corp. et al. **435 U.S. 497 (SCt, 1978)**
(state statute which sought to regulate pension plans which were product of collective bargaining negotiations and are mandatory subject of bargaining under NLRA held constitutional; NLRA did not preempt state statute since Federal Welfare and Pension Disclosure Act of 1958 expressly recognized and preserved state authority to regulate pension plans)

5000 STATUTORY CRITERIA OF JURISDICTION

7500 TERRITORIAL JURISDICTION

7567 OTHER

7567-1400 Puerto Rico

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**

(contention that Bd has no jurisdiction because Constitution of Commonwealth of Puerto Rico and laws enacted thereunder regulate labor relations in Puerto Rico, rejected)

7700 BOYCOTT OF FOREIGN PRODUCTS

International Longshoremen's Association, AFL-CIO (Kansas Farm Bureau, et al.) **264 NLRB No. 088**

(Bd asserted jurisdiction over alleged Sec. 8(b)(4) conduct in which U told E that no labor would be supplied to load grain destined for a few days after President ordered grain embargo on exports to USSR. Thus, Federal jurisdiction embodied in N.L.R.A. is supported by national interests affected by U's boycott especially in view of U.S. Government sanction of this shipment)

Longshoremen's Association, Local 1414, AFL-CIO (Occidental Chemical Co.) **261 NLRB No. 001**

(Bd asserted jurisdiction over alleged unlawful 8(b)(4) conduct resulting from U's refusal, because of Russia's invasion of Afghanistan, to handle Russian cargoes delivered in foreign flagships to U.S. ports, where U's conduct caused serious injury to neutral parties, who had nothing to do with dispute between U and Russia, by bringing direct economic pressure to bear on such parties resulting in substantial interference with their business and contractual obligations; fact that foreign flagships are neutrals does not mandate different result since they are still *persons* w/i meaning of 8(b)(4))

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**

(*Bd's assertion of jurisdiction compelled if clear language of Act placing foreign commerce w/i Bd's jurisdiction is to have any meaning.* Bd is not deprived of jurisdiction where American neutral Ees are directly and adversely affected by purely secondary conduct violative of Section 8(b)(4))

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**

(*SCt has never barred or indicated its intention to bar Bd's jurisdiction over activity between exclusively American entities simply because that activity has some relation to foreign maritime operations reading SCt decisions limiting* Bd's jurisdiction to situations where disputed conduct involved and inescapably interfered with maritime operations of foreign vessels is *unduly expansive*)

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**

(primary conduct which interferes with foreign maritime operations is not subject to Bd jurisdiction regardless of whether charging party is primary or secondary E)

240 DISCRETION IN EXERCISE OF JURISDICTION

0100 GENERALLY

Trinity Lutheran Home For Children, t/a Frostburg Village of Allegany County Nursing Home v. N.L.R.B. 677 F.2d 383 (C.A. 3, Apr. 1982)

(although Bd may not rule on constitutional issues in choosing to exercise its jurisdiction over institutions which have religious affiliations, it must be aware that it is treading in areas where sensitivity to important values of First Amendment must be rule, not exception. Attitude that may be appropriate when regulating E that is profit making entity in industrial setting is not necessarily permissible when E is church-related institution which is being challenged for its religious practices)

N.L.R.B. v. Leavitt J. Cafer, Eunice Cafer, and Travelodge International, Inc., a partnership, d/b/a Marysville Travelodge 637 F.2d 1309 (C.A. 9, 1981)

(no abuse of discretion in Bd's finding that motel's local partner and corporate partner were single E for purposes of jurisdiction where there was sufficient justification for such finding, in view of partners' joint venture agreement requiring that corporate partner be consulted prior to any U dealings by local partner, together with numerous other indications of close connection between partners that were spelled out by Bd)

0150 DISCRETION TO DECLINE TO EXERCISE JURISDICTION

United Technologies Corporation 260 NLRB No. 196

(deferral appropriate where all of criteria and standards required for deferral under *Spielberg* were met)

0150-5000 Instrumentalities of foreign governments

State Bank of India 262NLRB No. 143

(jurisdiction asserted over bank since it had no special status as instrumentality of Government of India insofar as American labor laws were concerned and did not come w/i exclusions provided for Sec. 2(2))

0167 JURISDICTION MAY BE EXERCISED UPON STATUTORY BASIS ONLY

0167-0100 Generally

N.L.R.B. v. St. Mary's Home, Inc., t/a St. Mary's Infant Home 690 F.2d 1062 (C.A. 4, Sept. 1982)

(E's contention that it was outside the bounds of Bd jurisdiction absent showing of *massive impact on interstate commerce* because it was traditional charitable non-profit, non-commercial institution, rejected)

0167-3300 Absence of direct information

Keyway, A Division of Phase Inc. 263 NLRB No. 172

(jurisdiction asserted over nonprofit E providing service involving prevention and treatment of drug abuse, alchoholism and domestic violence. E's revenues last year were $482,597, of which, $299,322 were derived from Federal sources. This satisfies Bd's discretionary jurisdictional standard of $250,000 in gross revenues for health care institutions and legal jurisdiction need not be established by proof of direct or indirect inflow of goods or services where record establishes that greatest portion of E's revenues derive from Federal sources under nationally administered programs. Transfer of such funds across state lines constitutes commerce)

Radio Free Europe/Radio Liberty, Inc. 262 NLRB No. 063

(notwithstanding record did not establish any direct or indirect inflow of goods or services for non profit private corporation, receipt of 90 million dollar in year from U.S. Government demonstrates that E's operations have substantial impact on commerce, and establishes required statutory jurisdiction of this Bd)

0167-6700 Non-cooperation of employer

George E. Masker, Inc. 261 NLRB No. 016

(where E refused to complete commerce questionaire and to comply with subpoena to furnish records of purchases, but did admit to purchases from sources directly outside state though less than discretionary amount for direct inflow, Bd asserted jurisdiction as admission satisfied legal jurisdiction and under *Tropicana* 122 NLRB 121, discretionary standard need not be met if Bd satisfied such action will best effectuate policies of Act)

U.S. Bus, Inc. JD-391-82

(where E failed to comply with subpoena requesting jurisdictional information, ALJ conducted hearing and allowed GC to adduce secondary evidence obtained from R-case hearing involving same E and also other reports filed with ICC and Maryland Public Service Commission)

Marlboro Trucking Co., Inc., C-J Construction Co., Inc., Suburban Yelow Cab, Inc. JD-441-80

(statutory jurisdiction asserted over Es, w/o regard to whether Es' operations met Bd's jurisdictional standards because Es failed to respond to numerous *subpoenas duces tecum* which sought jurisdictional information and evidence elicited at hearing demonstrated that revenues derived from Es' activities affecting interstate commerce were more than *de minimis*)

0175 JURISDICTION OVER INTERNATIONAL ORGANIZATIONS AND FOREIGN CORPORATIONS

N.L.R.B. v. St. Mary's Home, Inc., t/a St. Mary's Infant Home 690 F.2d 1062 (C.A. 4, Sept. 1982)

(E's contention that it was outside the bounds of Bd jurisdiction absent showing of *massive impact on interstate commerce* because it was traditional charitable non-profit, non-commercial institution, rejected)

0183 De minimis or isolated violations

Ray-Lec, A Division of Genuine Parts Company 265 NLRB No. 211

E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge JD-498-81

(1500 dollars of indirect inflow not de minimus)

1700 BOARD AUTHORITY TO ESTABLISH SCOPE OF DISCRETIONARY JURISDICTION

1701 GENERALLY

N.L.R.B. v. Mars Sales & Equipment Co. 626 F.2d 567 (C.A. 7, 1980)

(Bd did not abuse its discretion by exercising jurisdiction over 2 man unit since Congress vested Bd with jurisdiction to fullest extent constitutionally permissible under commerce clause)

1701-1400 May be established by decision; rule making not mandatory

K & E Bus Lines, Inc. 255 NLRB No. 137

(contention that Bd should alter cts jurisdictional standards only through rule making procedure rather than by administrative adjudication, rejected)

1701-6600 Retroactive application

K & E Bus Lines, Inc. 255 NLRB No. 137

(standard for assertion of jurisdiction applied retroactively since any other policy would benefit party whose actions transgressed provisions of Act at expense of victim of such actions and of public policy)

Transportation Enterprises, Inc. v. N.L.R.B. 630 F.2d 421 (C.A. 5, 1980)

(Bd and its regional offices may not render jurisdictional decisions, and then overrule them *retroactively* and thereby transform E's interim behavior, legal when pursued, into illegal ULPs; E's conduct after formal declaration by Bd that he is not covered by Act and before re-examination of that issue, cannot subsequently be branded ULP subjecting E to liability for back-pay)

1767 LIMITATIONS AS TO ESTABLISHING OR CHANGING STANDARDS (14(c)(1))

1767—Cont.

St. Jude Industrial Park Board 265 NLRB No. 087
(Bd not barred by *Section* 14(c)(1) of Act from exercising discretionary jurisdiction over fourth class city's (industrial) Park Board, since Park Board's tenants reimburse city for funds spent on developement programs and city does not exercise any appreciable control over Park's supervision, budget, discipline, grievance procedure, seniority hiring, firing or wages of Ees of Park Board notwithstanding Ees receive their paycheck from City payroll and are covered by City's health, welfare and retirement programs since these costs too are reimbursed by tenants)

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)
(district ct had jurisdiction over C that challenged Bd's jurisdiction over labor disputes in jai alai industry and asked for declaratory judgment as C alleged Bd abused its discretion under Sec. 14(c)(1) of Act because it directly contravened firm policy Bd had established for identical Ees in horse or dog racing branches of State's gambling industry; furthermore, jurisdiction impinged on State industry in violation of tenth amendment. These claims obviously arise under Constitution or law of U.S.; therefore, ct had jurisdiction under 28 U.S.C. Sec. 1331)

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)
(where Bd failed to give any justification for its different treatment of 2 branches of State's gambling industry (jai alai and horse or dog racing), identical in all comparable respects, where as to former it asserted jurisdiction, latter it declined to do so, Bd abused its Sec. 14(c)(1) discretion)

2500 ADVISORY OPINIONS AS TO JURISDICTION (FOR JURISDICTIONAL HOLDINGS SEE 280)

Oriental Realty Corp., d/b/a Manhattan Beach Hotel 255 NLRB No. 044
(AO that Bd would assert jurisdiction over hotel owner where it annually derives in excess of $500,000 from its hotel building, and more than $50,000 is involved in interstate commerce in annual purchase of goods and services)

Mosyan Estates, Inc., and Planning Efficiency Management 253 NLRB No. 160
(AO that Bd would assert jurisdiction over owner and managing agent of residential apartment building, notwithstanding owner does not derive $500,000 annual gross revenues from such building, where its managing agent generates in excess of $500,000 annually from this building together with three others it manages, and therefore Bd's monetary standard is met)

North Middledale Corp. 253 NLRB No. 060
(AO that Bd would assert jurisdiction over E engaged in business of managing and also functioning as owner of three apartment complexes w/i the state where it had gross revenues of approximately $790,000 per year and it was assumed that it purchased more than a *de minimis* amount of goods from outside the state)

Elias Mallouk Realty Corp. 253 NLRB No. 001
(ptn for AO dismissed since record was inadequate to determine whether E met jurisdictional standard where E's denials of commerce allegations of R ptn and pending complaint were at variance with commerce data to which it had stipulated; further, adjudication of jurisdiction issue may be obtained in pending ULP proceeding and should await determination there, absent urgent need for earlier determination)

A. J. Clarke Management Corp. 249 NLRB No. 187
(AO that Bd would assert jurisdiction over E engaged in business of providing management services to residential apartment buildings where total gross annual rental revenues derived from apartments managed by E are in excess of $500,000 standard established by Bd for residential apartments, and out-of-state purchases exceed $50,000)

Mandel Management Corporation (Local 32B–Local 32J, Service Employees) 248 NLRB No. 066
(AO that Bd would assert jurisdiction over E engaged in business of managing residential and commercial properties in large city where E's annual gross rental revenues were in excess of $1 million and, assuming that E's out-of-state purchases are more than de minimis, they satisfied Bd's statutory jurisdiction)

Double A Property Associates, et al. 249 NLRB No. 080
(Bd declined to issue AO requested by E who participated in ULP proceeding before State Bd, but did not raise jurisdiction issue therein, despite its sole and exclusive knowledge of jurisdictional commerce data; E's basic reason for filing instant ptn appears to be its dissatisfaction with State Bd's denial of mtn to reopen hearing and to secure different forum in which to be heard; State Bd's refusal to reopen hearing has nothing to do with issues of jurisdiction and is not relevant to ptn herein)

Wave Hill, Inc. (District Council 37, AFSCME, AFL-CIO) 248 NLRB No. 149
(AO that Bd would not assert jurisdiction over not-for-profit environmental center which operates (1) aboretum and botanical garden, (2) arts and/or cultural center, and (3) environmental science center for conservation, education, and scientific studies, where E's annual gross revenue did not meet Bd's $1 million standard for assertion of jurisdiction over enterprises such as; E in many ways is similar to an art museum, contributes to cultural and educational values of community and thus acts as adjunct to educational system)

Mandel Management Corporation (Local 32B–Local 32J, Service Employees) 248 NLRB No. 066(AO that Bd would assert jurisdiction over E engaged in business of managing residential and commercial properties in large city where E's annual gross rental revenues were in excess of $1 million and, assuming that E's out-of-state purchases are more than de minimis, they satisfied Bd's statutory jurisdiction)

2501 GENERALLY

The Western Pennsylvania School For The Deaf 262 NLRB No. 028
(ptn for Advisory Opinion dismissed as not w/i intent of Bd's Advisory Opinion rules where petitioners desired opinion on whether Bd would or would not assert jurisdiction over non-profit educational institution because of its relationship to state and Advisory Opinion proceedings are designed primarily to determine applicability of Bd's discretionary jurisdictional standards to E's *commerce* operations)

Tavern Owners, Inc., d/b/a The Lighthouse Restaurant 251 NLRB No. 120
(no evidentiary hearing provided for)

2550 LIMITED TO DETERMINATION OF APPLICABILITY OF DISCRETIONARY STANDARDS

Rebecca Blaylock Nursery School, Inc. 260 NLRB No. 198
(Advisory Opinion ptn dismissed as request for reconsideration of whether Bd's discretionary standard for nonprofit day care centers should be lowered was not w/i intendment of Advisory Opinion rules; R/R 102.98 requires state courts, agencies and parties to state proceedings are only permitted to ptn Bd for Advisory Opinion when there is doubt that Bd would assert jurisdiction)

Snohomish County Headstart/Community Action Council 254 NLRB No. 171
(Bd declined to issue AO requested by E since there is no proceeding involving question of Bd's jurisdiction pending in any agency or state court; furthermore Bd will not issue AO where it is whether or not E shares exemption of its governmental grantors and thereby precludes assertion of jurisdiction over E)

Fundacion Educativa Ana G. Mendez, Inc. 249 NLRB No. 142
(AO ptn dismissed since basic issue presented was whether E's full-time faculty members of college were covered by Act which does not fall w/i intendment of Bd's AO rules which are designed primarily to determine questions of jurisdiction by application of Bd's discretionary standards; furthermore, ptn would be dismissed because there is pending before Bd ULP proceeding which has advanced to formal stage when binding adjudication of jurisdictional issue can be obtained)

Double A Property Associates, et al. 249 NLRB No. 080
(in declining to issue AO requested by E who participated in ULP proceedings before State Bd, Bd did not pass upon propriety of State Bd's rulings adverse to E, since AO is designed primarily for determining whether E's operations meet Bd's discretionary jurisdictional standard)

2900 DECLARATORY JUDGMENTS AS TO JURISDICTION

3300 BOARD DEFERENCE TO OTHER MEANS OF ADJUSTMENT

Barrentine et al. v. Arkansas-Best Freight System, Inc., et al. 450 US 728 (U.S. SCt. Apr. 1981)
(not all disputes between Ee and his E are suited for binding resolution in accordance with procedures established by collective bargaining; while cts should defer to arbital decision where Ee's claim is based on rights arising out of collective-bargaining agreement, different considerations apply where Ee's claim is based on rights arising out of statute (FLSA) designed to provide minimum substantive guarantees to individual workers)

3333 BOARD AUTHORITY UNDER STATUTE

3333-3000 Authority under section 10(a)

Nabisco, Inc. JD-(SF)-34-82

(no deference to arbitrator's award in C case where it was alleged that Ee suffered reprisal for having previously filed charge or gave testimony under Act, since resolution of such allegation *must* be left to Bd as mandated by Congress; grievant in arbitration sought to confine issues to those arising from collective bargaining agreement)

3333-6700 Discretion to defer

East Texas Motor Freight 262 NLRB No. 101

(where grievance-arbitration hearing is not before independent arbitrator, and grievant, identified dissident, is party to existing ULP litigation against grievant's bargaining representative, Bd's exercise of discretion, not to defer, is appropriate)

Westinghouse Electric Corporation JD-(ATL)-89-81

(no portion of instant proceeding alleging violations of Sections 8(a)(5), (4), (3) and (1) appropriate for deferral; E's alleged refusal to provide information to U (8(a)(5) was intimately connected with 8(a)(3) allegations and as such were inappropriate for deferral; charges of Sec. 8(a)(4) and (3) related to discharge of Ee where Bd no longer defers)

Campbell Industries JD-(SF)-108-81

(deferral principles of neither *Spielberg* nor *Adolph Coors* applicable to proceeding initiated by Ee in his individual capacity and not through auspices of collective-bargaining agreement and there was no basis in record for concluding that in pursuing his rights in Federal OSHA matter and in State suit, Ee was designating those tribunals as final arbiters of question of whether E's failure to hire former Ee was discriminatory)

N.L.R.B. v. Local 1034, Teamsters 651 F.2d 136 (C.A. 2, June 1981)

(enforcement granted where Bd's determination of composition of unit was matter *which parties' contract's grievance arbitration is designed to resolve* and parties have clearly and consistently expressed their willingness to be bound by arbitrator's decision; Bd was construing parties' contract which set up original unit; ct did not reject result (of Bd decision) which would have been same if Bd had deferred to arbitrator's determination)

N.L.R.B. v. The Motor Convoy, Inc. 673 F.2d 734 (C.A. 4, Mar. 1982)

(Bd's refusal to defer to decision of arbitration panel which complied with Spielberg criteria in holding that Ee had been discharged for just cause and not for U activities; improper, since contrary to NLRB's policy to defer to arbitration decisions which meet Spielberg criteria; although NLRB is free to depart from this policy *departure may not be sub silento to reach a different unexplained result in a single case. Until NLRB explicitly adopts a different policy through formal rulemaking or adjudication procedures, it must defer to private arbitration which complies with those guidelines in Spielberg*)

Roadway Express, Inc. v. N.L.R.B. 647 F.2d 415 (C.A. 4, Apr 1981)

(Bd has discretion to defer in favor of voluntary settlement of underlying issue in ULP charge; and when Bd has exercised discretion to establish policy of deferral under clearly articulated criteria whether by formal rule-making or by adjudicative proceedings, it must adhere to that policy as so established in subsequent decisions or explain reasons for its departure)

3333-7000 Discretion to retain jurisdiction during deferral

The Standard Oil Company (Ohio) 264 NLRB NO. 012

3367 CIRCUMSTANCES OF DEFERRAL

3367-0100 Generally

Richel Home Centers, Division of Supermarkets General Corporation 262 NLRB No. 93

(*deferral to arbitration award is affirmative defense in which burden of proof is assigned to moving party* thus burden is not met and defense not sustained where Respondent has not even offered arbitration award into evidence)

United Parcel Service, Inc. 262 NLRB No. 148

(Bd will not defer to arbitration award unless evidence relevant to ULP case has been presented to arbitrator or panel)

N.L.R.B. v. Designcraft Jewel Industries, Inc. 675 F.2d 493 (C.A. 2, Mar. 1982)

(cts have strongly encouraged settlement of labor disputes by arbitration and have recognized that reaching of such goal is aided by a policy of deferral on part of Bd; while Bd is not obligated by statute to defer to arbitral determination, and while it has broad discretion to determine circumstances under which it will defer, once Bd has enunciated standards of deference it cannot lightly change rules on case by case basis)

N.L.R.B. v. Designcraft Jewel Industries, Inc. 675 F.2d 493 (C.A. 2, Mar. 1982)

(while noting that 3-year delay in bringing to ct issue of whether E was required to produce information requested by U regarding subcontracting of unit work raises serious question as to whether Bd's refusal to defer to arbitrator's award comports with national labor policy favoring arbitration of disputes, ct, nevertheless, was constrained to find that Bd was, for reasons stated herein, w/i its discretion in not deferring to arbitrator's determination regarding the furnishing of U's requested information)

Hammermill Paper Company v. N.L.R.B. 658 F.2d 155 (C.A. 3, 1981)

(*Bd defers not because arbitrator could have reached and decided ULP issues in grievance arbitration, but because in very process of deciding contractual issue, arbitrator may necessarily dispose of question of whether Ee's legitimate rights under Section 7 of Act were interfered with impermissibly*)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. 618 F.2d 1009 (C.A. 3, 1980)

(even when resolution of contract is more central to a case, Bd is not pre-empted by overlapping domain of arbitrator; Bd may choose to defer not only when there is an outstanding arbitral award but also in some circumstances when no award has been issued)

N.L.R.B. v. Haberman Construction Company 641 F.2d 351 (C.A. 5, Apr. 1981)

(E's contention that constructive discharges as result of Ees' resignations due to E's unlawful conduct should not be found unlawful because U contract contained grievance procedure, rejected, since contractual remedy does not deprive Bd of jurisdiction to condemn conduct which constitutes ULP)

Caterpillar Tractor Co. v. N.L.R.B. 658 F.2d 140 (C.A. 7, Sept. 1981)

(Bd did not abuse its discretion by refusing to defer to grievance-arbitration procedure alleged unlawful discontinuance of Ees' right to request transfers involving down-grading, since Bd's determination that determinative issue required interpretation of Act rather mere contract interpretation, not unreasonable)

3367-0115 Purpose of fostering and facilitating existing collective-bargaining relationship

Newspaper Guild, Local 10 v. N.L.R.B. 636 F.2d 550 (C.A.D.C. 1980)

(Bd policy is to defer to arbitration where disputes turn on collective bargaining agreements but not when they rest upon interpretation of Act)

District 1199E, National Union of Hospital and Health Care Employees v. N.L.R.B. 613 F.2d 1102 (C.A.D.C.) (1980)

(*submission to grievance and arbitration proceedings of disputes which might involve ULPs would be substantially discouraged if disputants thought Bd would give de novo consideration to issue which arbitrator might resolve*)

3367-0125 Good faith disagreement between parties

Herman Brothers, Inc. 262 NLRB No. 121

3367-0150 Spielberg standard of fairness

Thatcher Glass Manufacturing Co., A Division of Dart Industries, Inc. 265 NLRB No. 041

The Liberal Market, Inc. 264 NLRB No. 109

(deferral to arbitral award under *Spielberg* which found that E had no obligation to bargain about decision to close its warehouse and garage operation and that it had not bargained in bad faith by failing to reveal contemplated closure during negotiations, held appropriate since arbitrator's resolutions were not repugnant to Act, especially in light of *First National Maintenance*)

Ciba-Geigy Pharmaceuticals Division 264 NLRB No. 134

(criteria set forth for deferral)

The Rasicracion Press, Ltd. 264 NLRB No. 170

(no deferral to decision of six member arbitration panel, three chosen by E and three by U, which included U steward who had refused to accept alleged discriminatee's grievance, and foreman who was found to have violated Act by his conduct, meeting lasted less than hour, no witnesses called, no minutes or record made, and alleged discriminatee not present; since deferral to such informal grievance procedure mechanism inappropriate inasmuch as there is no award to be examined for conformity with Spielberg requirements)

Furr's, Inc. 264 NLRB No. 077

(appropriate where arbitration proceedings fair, regular, parties agreed to be bound (Ees involved in this proceeding are not same as those involved in arbitration proceeding but issue involves same contractual question, interests of Ees adequately represented) result not clearly repugnant to Act. Dispute involved revocation of checkoff authorizations as provided for in contract and was essentially contract interpretation rather than interpretation of Act. Bd has held such issues are capable of resolution through arbitration; arbitrator's determination that contract provision be applied w/o reference to authorization cards is not wrong as matter of law)

Consolidation Coal Company 263 NLRB No. 188

(deferral to arbitrator's award upholding disparate treatment of U officers who were singled out for discipline because they participated in unauthorized work stoppage along with other rank-and-file Ees based on their status as U officers held inappropriate as repugnant to Act; statutory right of Ees to support and assist U by becoming officers cannot be sacrificed to contrac-

3367-0150—Cont.

tual right of Ee to be free from unauthorized work stoppages; moreover, ULP issue herein was neither presented to nor considered by arbitrator)

Inland Steel Company **263 NLRB No. 147**
(the test of repugnancy under *Spielberg* is not whether the Bd would have reached the same result as an arbitrator, but whether the arbitrator's award is palpably wrong as a matter of law)

Joyce Brothers Storage and Van Company **263 NLRB No. 078**
(deferral inappropriate where there was no basis upon which to determine whether ULP aspect of Ee's grievance played part in joint grievance committee's deliberations)

Rickel Home Centers, Division of Supermarkets General Corporation **262 NLRB No. 93**

United Parcel Service **261 NLRB No. 142**
(deferral inappropriate where issue of Ee's insistence on what he considered his contractual right to take his twenty minute break on road, although presented to grievance committee, was not even mentioned in committee's decision)

Consolidated Freightways Corporation of Delaware **257 NLRB No. 177**
(no deferral to arbitration where panel did not consider question of unlawful motivation of Ee's discharge)

Kahn's and Company, Division of Consolidated Food Co. **253 NLRB No. 004**

Hammermill Paper Company **252 NLRB No. 172**
(no deferral to arbitrator's award where arbitrator, in dealing with discharge of U steward, found steward's treatment unrelated to U activity; also, under award, U steward would not receive back pay as Bd remedy provides)

Bay Shipbuilding Corporation **251 NLRB No. 114**
(mtn for summary judgment granted and C dismissed where Bd deferred to arbitration award finding that E did not violate contract by changing insurance carrier since coverage which could only be changed by mutual consent under contract did not include carrier, and level of benefits remained the same; arbitrator stated he would not decide Sec. 8(a)(5) violation, but made factual findings, in course of resolving contractual issue, which resolved ULP issues)

Amoco Texas Refining Company **251 NLRB No. 202**

Botany 500, A Division of Rapid-American Monroewear, Inc. **251 NLRB No. 075**
(ALJ rejected GC's contention that arbitration proceeding, denying discharge grievance, was not fair and regular because of Ee's status as U dissident in conflict with U leadership, key witness' lack of credibility in critical area, failure to present surveillance issue, and fact that Ee, in running for U office, challenged U and its relationship with E; in accord with Bd's ruling, such issues, including E's Spielberg defense, were best resolved at hearing wherein they were fully litigated)

Botany 500, A Division of Rapid-American Monroewear, Inc. **251 NLRB No. 075**
(doubt regarding fairness of arbitration proceeding because arbitrator was permanent under parties' contract, and assertedly had vested interest in being retained in subsequent contracts by incumbent U officials held not justified; there was no trace of fraud or collusion either alleged or disclosed, and nothing in record to establish that U official involved in proceeding has or had anything to do with designating permanent arbitrator; arbitration proceeding in all other respects was fair and regular and award was not repugnant to Act)

Botany 500, A Division of Rapid-American Monroewear, Inc. **251 NLRB No. 075**
(deferral to arbitration award denying discharge grievance, appropriate, where dischargee insisted on having expedited arbitration hearing which she was granted and was duly represented therein by U attorney whom she had requested and who assisted her in securing witnesses and otherwise preparing for arbitration; dischargee was provided full opportunity and litigated not only circumstances of discharge but also matters relative to her protected concerted activity and, in addition, she submitted her own position paper to arbitrator)

American Bakeries Co., Inc. **249 NLRB No. 170**
(C dismissed where ALJ failed to defer to arbitrator's pre-discharge award concerning discharge of U stewards for their participation in work stoppage; *Spielberg* doctrine applicable to instant case and arbitrator's decision was not repugnant to Act notwithstanding stewards singled out for severest punishment, since U stewards had clearly instigated or led unauthorized illegal work stoppage)

Colonial Stores Incorporated **248 NLRB No. 143**
(no deferral to arbitration award denying Ee's grievance and finding that Ee was discharged for cause, where cause found by arbitrator was in fact Ee's protected concerted activity of protesting E's admitted failure to implement grievance settlement and U's failure to enforce agreement)

Van Haaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc. **247 NLRB No. 17**

General Warehouse Corp. **247 NLRB No. 142**
(deferral to arbitrator's award regarding discriminatee's discharge assertedly because of his absentee record, not appropriate where, notwithstanding that arbitration hearing was fair and impartial, arbitrator made no finding with regard to evidence concerning discriminatee's protected activity, which evidence was presented at arbitration hearing; deferral to arbitrator's award would not effectuate Bd's protection of (Ee's) Section 7 rights)

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(Bd announced that it will no longer honor results of arbitration proceeding under Spielberg unless ULP issue was both presented to and considered by arbitrator, that Bd will give no deference to arbitration award which bears no indication that arbitration ruled on statutory issue of discrimination in determining propriety of E's disciplinary actions, and that party seeking Bd deferral to arbitration award has burden of proving that issue of discrimination was litigated before arbitrator; Electronic Reproduction, 213 NLRB 758, overruled)

American Freight System, Inc. **JD-481-81**
(Bd will not defer to arbitration under *Spielberg* unless ULP issue before Bd was presented to and considered by arbitrator and here arbitration committee refused to permit alleged discriminatee to litigate the ULP issue before it; thus deferral inappropriate)

Campbell Industries **JD-(SF)-108-81**
(deferral principles of neither *Spielberg* nor *Adolph Coors* applicable to proceeding initiated by Ee in his individual capacity and not through auspices of collective-bargaining agreement and there was no basis in record for concluding that in pursuing his rights in Federal OSHA matter and in State suit, Ee was designating those tribunals as final arbiters of question of whether E's failure to hire former Ee was discriminatory)

Honeywell, Inc. - Tampa Operations **JD-116-81**
(no deferral to arbitrator's award where arbitrator refused to determined whether Ees' membership resignations and dues authorization revocations sent to U during hiatus period between contracts effectively cancelled E's authority to deduct U dues from Ees' pay; furthermore, Ees involved in present Bd proceeding were not parties to arbitration proceeding)

Andersen Sand & Gravel Company **JD-635-80**
(no deferral to decision of arbitration panel where characteristics of forum cannot be determined nor basis for award shown)

Hammermill Paper Company v. N.L.R.B. **658 F.2d 155 (C.A. 3, 1981)**
(where disciplined Ee fails to even raise ULP issue in arbitral proceeding, subsequent Bd inquiry into that issue will not be limited by arbitral award favorable to E. But failure to raise statutory issue before arbitrator is not sine qua non for refusal to defer even assuming compliance with three Spielberg criteria)

N.L.R.B. v. The Motor Convoy, Inc. **673 F.2d 734 (C.A. 4, Mar. 1982)**
(Bd's refusal to defer to decision of arbitration panel which complied with Spielberg criteria in holding that Ee had been discharged for just cause and not for U activities; improper, since contrary to NLRB's policy to defer to arbitration decisions which meet Spielberg criteria; although NLRB is free to depart from this policy *departure may not be sub silento to reach a different unexplained result in a single case. Until NLRB explicitly adopts a different policy through formal rulemaking or adjudication procedures, it must defer to private arbitration which complies with those guidelines in Spielberg*)

N.L.R.B. v. South Central Bell Telephone Company **688 F.2d 345 (C.A. 5, Oct. 1982)**

N.L.R.B. v. United Parcel Service, Inc. **677 F.2d 421 (C.A. 6, May 1982)**
(Bd did not depart from standards of its decision in *Spielberg* in proceeding to hear Ee's grievance even though it had earlier been subject of arbitration proceedings under existing collective bargaining agreement)

Ad Art, Inc. v. N.L.R.B. **645 F.2d 669 (C.A. 9, Dec 9, 1980)**
(Bd's refusal under *Spielberg* standard to defer to arbitrator's decision that discharge of grievant was for cause held not abuse of discretion, since issue of whether discharge was a ULP because it was for a protected activity, i.e., for filing grievances, was not decided where statutory protection under Sec. 7 was not analyzed or even mentioned)

N.L.R.B. v. Max Factor and Company **640 F.2d 197 (C.A. 9, 1980)**
(where Bd could reasonably conclude that E violated Act and arbitrator failed to consider ULP aspects of Ees suspension, refusal to defer proper where to do so would produce result repugnant to Act)

N.L.R.B. v. Gould, Inc., Switchgear Division **638 F.2d 159 (C.A. 10, 1980)**
(no deferral to arbitration award which clearly ignores long line of precedent by assuming ipso facto that no-strike clause waived Ees' right to engage in sympathy strike)

3367-0150—Cont.

District 1199E, National Union of Hospital and Health Care Employees v. N.L.R.B. 613 F.2d 1102 (C.A.D.C.) (1980)

3367-0175 Adequate representation of Employee rights

3367-0175-6700 Where substantial conflict exists

Servair, Inc. 265 NLRB No. 014
(Bd refused to defer to arbitrator's decision which upheld discharge of Ees for violating no-strike clause as dischargees favored U attempting to oust incumbent U; thus, there existed potential conflict of interest with incumbent U representing Ees it knew were opposed to it; because of this potential conflict, question of whether strike was ULP strike was not placed before arbitrator, nor did arbitrator consider whether seriousness of discriminatory discharge that strikers were protesting would warrant conclusion that strikers were not prohibited from striking, notwithstanding no-strike clause. Therefore, Ees interests were not adequately represented)

Russ Togs, Inc. 253 NLRB No. 099
(no deferral where U shop steward w/o discussing matter with grievants reported to E that grievants were urging other Ees to grieve E's underpayment of contractual wage rate and slow down in protest thereof, and U attorney told grievants that his representation in the arbitration of their grievance was for the U, not for them)

United Parcel Service, Inc. 282 NLRB No. 145
(deferral inappropriate where U failed both to advocate Ee's claim that he was discharged for dissident activities and to present evidence on that claim)

United Parcel Service, Inc. 282 NLRB No. 145
(deferral inappropriate where U failed both to advocate Ee's claim that he was discharged for dissident activities and to present evidence on that claim)

Herman Brothers, Inc. v. N.L.R.B. 658 F.2d 201 (C.A. 3, 1981)
(E's request for deferral made after close of hearing at time E filed briefs with ALJ but before his decision satisfies notice requirement where arbitration decision was issued after hearing ended and submitting copy of it with brief was timely, thus Bd should have considered whether or not to defer)

3367-0400 Bars to deferral in advance of arbitration

3367-0401 Generally

Mackkin Freight Lines, Inc. 261 NLRB No. 193
(deferral inappropriate in light of uncertainty surrounding which of two bargaining agreements was applicable in situation)

Jack Thompson Oldsmobile, Inc. 256 NLRB No. 014
(no deferral where issue was not raised until after hearing and thus not fully litigated; in addition two members of Bd panel would find deferral inappropriate since complaint alleged 8(a)(3) violation)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. 618 F.2d 1009 (C.A. 3, 1980)
(Bd properly refused E's request to defer to ongoing arbitration proceedings since deferral is considered only if raised as an affirmative defense, and E failed to make any explicit request for deferral)

3367-0405 Deferral inappropriate where charge involves individuals rights

Wolff & Munier, Inc. 262 NLRB No. 045
(Bd found it inappropriate to defer to decision disposing of grievances filed over discharges that gave rise to 8(a)(3) and (1) allegations)

John Gear Chevrolet Co., Inc., d/b/a Parkwood Chevrolet 262 NLRB No. 034
(alleged Sec. 8(a)(1) and (3) violations)

Grane Trucking Company 261 NLRB No. 089
(E's *Motion to Refer to Arbitration* denied, notwithstanding E's contention that its primary defense involved issues arising under collective bargaining agreement between it and U, and that therefore deferral to arbitration proceeding as provided by that contract was appropriate, citing *Collyer Insulated Wire*, since, in *General American Transportation Corporation*, Bd expressly held that policy enunciated in *Collyer* does not apply to cases involving alleged violations of Sec. 8(a)(1) or (3), sections at issue in proceeding)

Jack Thompson Oldsmobile, Inc. 256 NLRB No. 014
(no deferral where issue was not raised until after hearing and thus not fully litigated; in addition two members of Bd panel would find deferral inappropriate since complaint alleged 8(a)(3) violation)

Carpenters and Joiners, Local No. 1914 (W & H Conveyor Systems, Inc.) 250 NLRB No. 182
(Bd declined to dismiss 8(b)(2) and (1)(A) complaint and to defer to grievance arbitration procedured provided by contract, since it is not Bd's policy to defer cases alleging interference with individual Ees' statutory rights)

United States Postal Service JD-(SF)-101-82
(no deferral under *Collyer* of 8(a)(3) charge filed by individual although resolution of complaint required interpretation of contract language)

ITT McDonnel and Miller, A Unit of Fluid Handling Division of International Telephone and Telegraph Corp. JD-337-82
(alleged unilateral modification of contract by prohibiting posting of grievances on E's bulletin boards, made available to U under contract, deferred, since allegation calls for interpretation of contract inasmuch as posted grievances were removed by E who decided U had no right under contract to post grievances, and such issue is one which may properly be deferred to arbitrator; while Bd has not approved deferral of 8(a)(1) and (a)(3), and 8(b)(1)(A) and 8(b)(2) allegations, it has approved deferral in cases involving 8(a)(5) and 8(b)(3) allegations with some exceptions)

Salem Gravure Division of World Color Press, Inc. JD-152-81

3367-0420 Adequacy of representation of employee rights

3367-0420-6700 Where substantial conflict exists

Pacemaker Yacht Co., A Division of Mission Marine, Inc. 253 NLRB No. 095
(deferral to arbitration award not warranted where interests of U are not in substantial harmony with those of Ee-grievants over operation of U's health and welfare fund)

Electrical Workers Local 401 (Stone and Webster Engineering Corporation) 251 NLRB NO. 039
(deferral to U's grievance procedure inappropriate where interests of Ees are in conflict with that of U)

3367-0430 Inhibition of access to grievance procedure

United States Postal Service 263 NLRB No. 043
(deference not appropriate, since complaint alleged unilateral change of policy regarding grieving Ees' immediate access to U stewards rather than mere temporary modification of such policy, and U's ability to use grievance procedures goes to core of labor-management relations)

3367-0460 Willingness of parties to arbitrate

New York University Medical Center 261 NLRB No. 118
(in finding deferral inappropriate because arbitrator's decision with respect to Ee was repugnant to policies of Act, ALJ held that, in addition, deferral was inappropriate as to other Ees, who participated in protected concerted activity with Ee in question, because they did not agree to be bound by results of arbitration)

General Motors Corporation, Delco Moraine Division 257 NLRB No. 146
(U's right to original timestudy worksheets on which E based its production standards found not appropriate matter for deferral to arbitration, since Bd will not defer U's request for bargaining information to which it is statutorily entitled, and record herein indicates that parties have not chosen to arbitrate present dispute)

3367-0480 Availability of arbitration

3367-0480-2300 Effect of prior arbitration

Arthur N. Stephenson v. N.L.R.B. 614 F.2d 1210 (C.A. 9) (1980)
(contention that Bd erred in concluding that discharge was for cause because decision was contrary to arbitration panel's conclusion, rejected; Bd was not entitled to rely upon finding of panel because it did not decide whether ULP had been committed and only determined that agreement had been breached, and Bd found no ULP had been committed herein; proper means to enforce binding arbitration award is an action in district ct)

3367-0480-5000 Non-arbitrable issue

L.M. Settles Construction Co., Inc. 259 NLRB No. 087
(no deferral of E's refusal to allow complete audit of its financial records, including general ledger, to determine whether it is complying with fringe benefit fund obligations of contract since grievances relating to fringe benefits funds were expressly exempt from application of grievance and arbitration provisions of contract)

Newspaper Guild, Local 10 v. N.L.R.B. 636 F.2d 550 (C.A.D.C. 1980)
(Bd policy is to defer to arbitration where disputes turn on collective bargaining agreements but not when they rest upon interpretation of Act)

3367-0800 Availability of arbitration proceedings

Geary Motor Sales, d/b/a Geary Ford 261 NLRB No. 168
(where contention that case should be deferred to grievance and arbitration procedure was first raised in exceptions, Bd found no basis for determining whether deferral would have been appropriate, since issue of deferral was not fully litigated)

Wayne & Co. Installers JD-(SF)-170-82
(contention that E should have and was required to avail himself of bargaining agreement's arbitration and grievance procedure before he could avail himself of Bd's processes held w/o merit)

3367-0825 Scope of grievance and arbitration contract provisions

3367-0825—Cont.

Barrentine et al. v. Arkansas-Best Freight System, Inc., et al. **450 US 728 (U.S. SCt. Apr. 1981)**
(when Ee's claim is based upon breach of collective bargaining agreement, he is bound by terms of that agreement which govers manner in which contractual rights may be enforced. Only if arbitration process has been tainted; e.g., by U's breach of its duty of fair representation, may Ee pursue his grievance in ct)

Roadway Express, Inc. **JD-201-80**
(deferral to grievance machinery which did not provide for arbitration, unwarranted)

3367-0825-3300 Provisions arguably encompassing dispute

L.M. Sattler Construction Co., Inc. **259 NLRB No. 087**
(no deferral of E's refusal to allow complete audit of its financial records, including general ledger, to determine whether it is complying with fringe benefit fund obligations of contract since grievances relating to fringe benefits funds were expressly exempt from application of grievance and arbitration provisions of contract)

3367-0825-6700 Provisions limiting arbitrator's review or remedial powers

Barrentine et al. v. Arkansas-Best Freight System, Inc., et al. **450 US 728 (U.S. SCt. Apr. 1981)**
(even though arbitrator competent to apply statutory law, he may not have contractual authority to do so since his power is derived from, and limited by, collective bargaining agreement; accordingly, if arbital decision is based solely upon arbitrator's view of enacted legislation, rather than on interpretation of agreement, arbitrator has exceeded scope of submission and no enforcement)

3367-1200 Willingness of parties to arbitrate

United States Postal Service **JD-(SF)-101-82**
(deferral under *Dubo* inappropriate and unwarranted where, although U had filed a grievance, it did not take matter to arbitration, and contractual time period had since expired)

Newspaper Printing Corporation **JD-203-80**
(no deferral to arbitration where issue is E's insistance on referring grievances to arbitration solely on question of arbitrability since E has *evidenced course of conduct designed to rid itself of established bargaining relationship and attendent thereto* and grievance involved, which is classic example of whether Ee voluntarily quit or was constructively discharged, is ripe for arbitration)

3367-1700 Nature of proceeding

3367-1712 Proceeding established by contract

3367-1712-5000 Grievance procedure with impartial arbitration

United Parcel Service, Inc. **263 NLRB No. 063**
(no deferral to arbitration decision regarding discharge, absent evidence Charging Party's protected activity of filing grievances was fully considered, and where arbitration panel rendered summary decision precluding any review of its consideration of ULP aspect of discharge; further, fact no neutral member on arbitration panel foreclosed grievance from proceeding to final step of procedure)

American Bakeries Co., Inc. **249 NLRB No. 170**
(C dismissed where ALJ failed to defer to arbitrator's pre-discharge award concerning discharge of U stewards for their participation in work stoppage; *Spielberg* doctrine applicable to instant case and arbitrator's decision was not repugnant to Act notwithstanding stewards singled out for severest punishment, since U stewards had clearly instigated or led unauthorized illegal work stoppage)

3367-1712-7500 Grievance procedure with joint-committee

American Freight System, Inc. **264 NLRB No. 018**
(Bd refused to defer to grievance arbitration panel's decision, upholding Ee's discharge for refusing to drive truck which Ee reasonably believed to be unsafe, since statutory issue (ULP) was not resolved by arbitrator; contractual standard of *justified*, considered by arbitrators, may have conflicted with Ees' Section 7 rights and award did not resolve issue; legal standards employed to resolve contractual and statutory issues, even though factually congruous, are not identical)

3367-1731 AFL-CIO internal disputes procedure

Jackson Engineering Co. **265 NLRB No. 175**
(deferral to decision of impartial umpire in proceeding under constitution of AFL-CIO, inappropriate; although issue of Ee representation was considered and decided in proceeding, Bd standards, policies, considerations and precedents were not evaluated or considered in either ULP or R case area; and Bd has exclusive jurisdiction to resolve qcr, and it will not defer to private resolutions of such questions in proceedings such as that herein)

3367-1775 Court suit

3367-1775-3300 Under Section 301

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(no deferral to decision in Section 301 suit upholding legality of contract provision requiring revocation of dues checkoff authorization only on forms provided by U since decision not res judicata where neither NLRB nor charging parties were parties to suit and Ees from whose pay dues were allegedly unlawfully withheld failed to appear, nor did ct express desire to dispose of ULP issue of whether continued withholding of dues was lawful after Ees had withdrawn checkoff authorizations by letter)

Newspaper Printing Corporation **JD-203-80**
(refusal to arbitrate not per se violation of Section 8(a)(5); however where refusal to arbitrate, like refusal to comply with any contract provision, evidences intention to violate entire contractual undertaking and is part and parcel of unlawful scheme to repudiate bargaining obligation then refusal to arbitrate unlawful; in such circumstances Bd will order remedy even though U might also have remedy under Section 301 of Act)

Newspaper Printing Corporation **JD-203-80**
(E's refusal to arbitrate or even submit to third step of grievance procedure involving whether E voluntarily quit or was discharged, unlawful; notwithstanding U might also have Section 301 remedy; nor was deferral to arbitration appropriate)

Automobile Workers (UAW) and Its Local 1519 v. N.L.R.B. **619 F.2d 580 (C.A. 6, Apr. 1980)**
(when E has been acting in accord with ultimate Bd *Section 10(k)* ruling, E is not liable for damages to disappointed U; even in a *LMRA Section 301* suit)

3367-1787 Non-Board settlement by parties

United States Steel Corporation **250 NLRB No. 069**
(C not dismissed notwithstanding grievance settlement agreement where unclear extent to which settlement agreement dealt with ULP issue and participation of charging party in settlement discussions, charging party never signed agreement nor is he willing to accept its terms since his acceptance conditional and conditions not met)

Alabama By-Products Corporation **JD-(ATL)-49-82**
(no deferral to non-Bd pre-arbitral settlement of grievance which did not consider 8(a)(3) aspect of case and by which only E agreed to be bound, U never so agreeing and Ee being coerced into agreeing)

Roadway Express, Inc. v. N.L.R.B. **647 F.2d 415 (C.A. 4, Apr 1981)**
(deferral to voluntary settlement appropriate, since substantial evidence on record did not support Bd finding of nondeferral (in plurality opn) that legality of Ee's discharge was never discussed during settlement negotiations or that Ee never agreed to abandonment of claim for backpay, where propriety of discharge had been discussed between U and E from start of controversy and had been submitted to arbitration panel; and before settlement was agreed to, Ee had been advised orally and in writing that proposed settlement included no-backpay provision, and had for over four months acquiesced in settlement)

N.L.R.B. v. Franklin Art Glass Studios, Inc. **678 F.2d 106 (C.A. 6, Mar. 1982)**
(private settlements to which Bd is not party are not binding on Bd)

3367-3300 Authority of tribunal making determination

3367-3320 Binding nature of determination

New York University Medical Center **261 NLRB No. 110**
(in finding deferral inappropriate because arbitrator's decision with respect to Ee was repugnant to policies of Act, ALJ held that, in addition, deferral was inappropriate as to other Ees, who participated in protected concerted activity with Ee in question, because they did not agree to be bound by results of arbitration)

United States Postal Service **JD-224-81**
(pre-arbitration settlements did not warrant deferral where they did not rise to stature of final and binding decisions on merits by impartial tribunal)

Campbell Industries **JD-(SF)-108-81**

3367-3340 Identity of issues

Hammermill Paper Company v. N.L.R.B. **658 F.2d 155 (C.A. 3, 1981)**
(where disciplined Ee fails to even raise ULP issue in arbitral proceeding, subsequent Bd inquiry into that issue will not be limited by arbitral award favorable to E. But failure to raise statutory issue before arbitrator is not sine qua non for refusal to defer even assuming compliance with three Spielberg criteria)

3367-3340-5000 ULP proceedings

American Freight System, Inc. **264 NLRB No. 018**
(Bd refused to defer to grievance arbitration panel's decision, upholding Ee's discharge for refusing to drive truck which Ee reasonably believed to be unsafe, since statutory issue (ULP) was not resolved by arbitrator; contractual standard of *justified*, considered by arbitrators, may have conflicted with

3367-3340-5000—Cont.

Ees' Section 7 rights and award did not resolve issue; legal standards employed to resolve contractual and statutory issues, even though factually congruous, are not identical)

United Parcel Service, Inc. **263 NLRB No. 148**
(Bd will not defer to arbitration award unless evidence relevant to ULP case has been presented to arbitrator or panel)

Suburban Motor Freight, Inc. **268 NLRB No. 082**
(Bd announced that it will no longer honor results of arbitration proceeding under Spielberg unless ULP issue was both presented to and considered by arbitrator, that Bd will give no deference to arbitration award which bears no indication that arbitration ruled on statutory issue of discrimination in determining propriety of E's disciplinary actions, and that party seeking Bd deferral to arbitration award has burden of proving that issue of discrimination was litigated before arbitrator; Electronic Reproduction, 213 NLRB 758, overruled)

Michigan Gas Utilities Company **JD-260-82**
(deferral to arbitration decision inappropriate in regard to charge of unlawful discharge since arbitrator did not consider whether E's discharge stemmed from demand for U representation, prior association with U, and use of contractual grievance procedure)

Wright-Bernet, Inc. **JD-827-81**
(contention that deferral was inappropriate because arbitrator had not considered GC's allegation herein that cause E gave for terminating Ee – his falsifying testimony at arbitration hearing – was pretext to rid E of U officer active in processing grievances rejected for lack of supporting evidence)

Champion International Corporation **JD-283-81**
(8(a)(3) complaint dismissed where arbitrator had considered and found no credible evidence to support claim of antiU motivation)

N.L.R.B. v. Designcraft Jewel Industries, Inc. **675 F.2d 493 (C.A. 2, Mar. 1982)**
(E held required to furnish U E's various business records for determining whether E violated contract's prohibition against subcontracting of unit work when its Ees were laid off; Bd did not abuse its discretion in failing to defer to arbitrator's determination that E was required to furnish specified records, but later denied U's request for additional information, since Bd was not obligated to defer under criterion set forth in its *Suburban Motor Freight* decision inasmuch as no evidence was presented to or considered by arbitrator regarding ULP charge concerning E's failure to produce records)

Hammermill Paper Company v. N.L.R.B. **658 F.2d 155 (C.A. 3, 1981)**
(*Bd defers not because arbitrator could have reached and decided ULP issues in grievance arbitration, but because in very process of deciding contractual issue, arbitrator may necessarily dispose of question of whether Ee's legitimate rights under Section 7 of Act were interfered with impermissibly*)

Hammermill Paper Company v. N.L.R.B. **658 F.2d 155 (C.A. 3, 1981)**
(where ULP charge alleged enhanced discipline because of U stewardship, Bd did not defer to arbitrator's decision which held that though there was no cause for discharge of steward with clean work record for refusing to perform assigned work as other Ees involved with clean workrecord only suspended, nevertheless arbitrator refused to order backpay in addition to reinstatement since resulting suspension w/o pay not inappropriate since no finding of legitimate E motive; further, arbitrator, although presented with evidenceof possible unlawful motive for discipline, specially refused to reach issue of whether motive proscribed)

N.L.R.B. v. The Motor Convoy, Inc. **673 F.2d 734 (C.A. 4, Mar. 1982)**
(arbitration met Spielberg criteria, notwithstanding contention arbitration panel did not consider whether E committee ULPs in connection with Ee's discharge but only issue of whether discharged for just cause under bargaining contract, since ULP issue was identical to contractual issue where bargaining agreement provided that Ees could not be discharged for U activities)

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. **623 F.2d 1173 (C.A. 7, 1980)**
(Bd's decision not to defer issue of Ees' discharge to arbitration award, appropriate, where dubious process of selecting arbitrator had been employed, arbitrator failed to discuss thoroughly issue of whether E had condoned misconduct given as reasons for Ees' discharge, and arbitrator failed to consider issue of Ees' picket line activities, which E expressly included among reasons for discharge and which GC claimed were protected activities)

Ad Art, Inc. v. N.L.R.B. **645 F.2d 669 (C.A. 9, Dec 9, 1980)**
(Bd's refusal under *Spielberg* standard to defer to arbitrator's decision that discharge of grievant was for cause held not abuse of discretion, since issue of whether discharge was a ULP because it was for a protected activity, i.e., for filing grievances, was not decided where statutory protection under Sec. 7 was not analyzed or even mentioned)

3367-3360 Adequacy of decision

Thatcher Glass Manufacturing Co., A Division of Dart Industries, Inc. **265 NLRB No. 041**
(no deferral to prearbitral agreement where grievances not adjudicated, alleged discriminatees not involved in final settlement, and no award which may be examined for conformity with *Spielberg* requirements)

The Rosicrucian Press, Ltd. **264 NLRB No. 170**
(no deferral to decision of six member arbitration panel, three chosen by E and three by U, which included U steward who had refused to accept alleged discriminatee's grievance, and foreman who was found to have violated Act by his conduct, meeting lasted less than hour, no witnesses called, no minutes or record made, and alleged discriminatee not present; since deferral to such informal grievance procedure mechanism inappropriate inasmuch as there is no award to be examined for conformity with Spielberg requirements)

United Parcel Service, Inc. **263 NLRB No. 063**
(no deferral to arbitration decision regarding discharge, absent evidence Charging Party's protected activity of filing grievances was fully considered, and where arbitration panel rendered summary decision precluding any review of its consideration of ULP aspect of discharge; further, fact no neutral member on arbitration panel foreclosed grievance from proceeding to final step of procedure)

Designcraft Jewel Industries, Inc. **254 NLRB No. 094**
(as ULP issue of production of information was not and could not be dealt with by arbitrator as separate and distinct grievable dispute, there is no arbitration award to which Bd may defer)

All-Type Welding & Boiler Repair Co., Inc. **JD-(NY)-70-82**
(no deferral to arbitration award where arbitrator did not explicate facts or reasons for his conclusions, omitted reference to statutory issues, and could not have considered all the evidence on ULP issues because grievant did not have opportunity to present all his evidence; moreover grievant lacked adequate representation)

Anderson Sand & Gravel Company **JD-655-80**
(no deferral to decision of arbitration panel where characteristics of forum cannot be determined nor basis for award shown)

N.L.R.B. v. Designcraft Jewel Industries, Inc. **675 F.2d 493 (C.A. 2, Mar. 1982)**
(E held required to furnish U E's various business records for determining whether E violated contract's prohibition against subcontracting of unit work when its Ees were laid off; Bd did not abuse its discretion in failing to defer to arbitrator's determination that E was required to furnish specified records, but later denied U's request for additional information, since Bd was not obligated to defer under criterion set forth in its *Suburban Motor Freight* decision inasmuch as no evidence was presented to or considered by arbitrator regarding ULP charge concerning E's failure to produce records)

Hammermill Paper Company v. N.L.R.B. **658 F.2d 155 (C.A. 3, 1981)**
(no deferral where arbitrator, although presented with evidence of possible unlawful motive of E for discipline, specifically refused to reach question of whether motive was statutorily proscribed)

3367-5800 Fair and regular nature of proceeding

3367-5801 Generally

Farr's, Inc. **264 NLRB No. 077**
(appropriate where arbitration proceedings fair, regular, parties agreed to be bound (Ees involved in this proceeding are not same as those involved in arbitration proceeding but issue involves same contractual question, interests of Ees adequately represented) result not cleraly repugnant to Act. Dispute involved revocation of checkoff authorizations as provided for in contract and was essentially contract interpretation rather than interpretation of Act. Bd has held such issues are capable of resolution through arbitration; arbitrator's determination that contract provision be applied w/o reference to authorization cards is not wrong as matter of law)

Babcock & Wilcox Co. **249 NLRB No. 099**
(Bd did not defer to arbitrator's award upholding discharge of U president allegedly for participating in wildcat strike, where award was repugnant to purposes and policies of Act; arbitrator did not explain what actions of president constituted *adoption* and *open support* of strike, and upheld discharge on president's failure or inability to stop strike, which was in direct repudiation of Bd principle that U officials may be disciplined on same basis as other Ees, but not for their failure to satisfy affirmative duty to stop strike)

Babcock & Wilcox Co. **249 NLRB No. 099**
(Bd did not defer to arbitrator's award upholding discharge of U president allegedly for participating in wildcat strike, where award was repugnant to purposes and policies of Act where, among other things, award failed to meet Bd's standard that *findings are consistent with the record evidence;* moreover, Bd did not engage in any review of record made before arbitrator, de novo or otherwise, in order to determine that arbitrator's conclusions were not supported by evidentiary facts he found)

3367-5001—Cont.

Hammermill Paper Company v. N.L.R.B. **658 F.2d 155 (C.A. 3, 1981)**

(where disciplined Ee fails to even raise ULP issue in arbitral proceeding, subsequent Bd inquiry into that issue will not be limited by arbitral award favorable to E. But failure to raise statutory issue before arbitrator is not sine qua non for refusal to defer even assuming compliance with three Spielberg criteria)

3367-5025 Properly constituted tribunal

The Rosicrucian Press, Ltd. **264 NLRB No. 170**

(no deferral to decision of six member arbitration panel, three chosen by E and three by U, which included U steward who had refused to accept alleged discriminatee's grievance, and foreman who was found to have violated Act by his conduct, meeting lasted less than hour, no witnesses called, no minutes or record made, and alleged discriminatee not present; since deferral to such informal grievance procedure mechanism inappropriate inasmuch as there is no award to be examined for conformity with Spielberg requirements)

Herman Brothers, Inc. **252 NLRB No. 121**

(Spielberg principles are applicable in cases involving arbitration panels which operate w/o neutral arbitrators)

Herman Brothers, Inc. v. N.L.R.B. **658 F.2d 201 (C.A. 3, 1981)**

(where arbitration panel consisted only of U and management representatives, both of whose interests were aligned against Ee because of his opposition to adopting bargaining agreement, Bd's refusal to defer proper as proceedings were not fair and regular)

3367-5050 Adequate procedures

The Rosicrucian Press, Ltd. **264 NLRB No. 170**

(no deferral to decision of six member arbitration panel, three chosen by E and three by U, which included U steward who had refused to accept alleged discriminatee's grievance, and foreman who was found to have violated Act by his conduct, meeting lasted less than hour, no witnesses called, no minutes or record made, and alleged discriminatee not present; since deferral to such informal grievance procedure mechanism inappropriate inasmuch as there is no award to be examined for conformity with Spielberg requirements)

3367-5075 Result not repugnant to Act

Barrentine et al. v. Arkansas-Best Freight System, Inc., et al. **450 US 728 (U.S. SCt. Apr. 1981)**

(because arbitrator is required to effectuate intent of parties rather than enforce statute, he may issue ruling inimical to public policies underlying FLSA, thus depriving Ee of protected statutory right)

Servair, Inc. **265 NLRB No. 014**

(Bd refused to defer to arbitrator's decision which upheld discharge of Ees for violating no-strike clause as dischargees favored U attempting to oust incumbent U; thus, there existed potential conflict of interest with incumbent U representing Ees it knew were opposed to it; because of this potential conflict, question of whether strike was ULP strike was not placed before arbitrator, nor did arbitrator consider whether seriousness of discriminatory discharge that strikers were protesting would warrant conclusion that strikers were not prohibited from striking, notwithstanding no-strike clause. Therefore, Ees interests were not adequately represented)

Ciba-Geigy Pharmaceuticals Division **264 NLRB No. 134**

(deferral inappropriate where arbitrator determined that implementation of new Attendance Control Procedure was not inconsistent with contract terms because definition of such concepts as *recurring absences* resides with E where contract is silent, as arbitrator did not follow or consider Bd precedent, his reliance on silence ignores requirement of bargaining over contract changes involving mandatory subjects of bargaining, and new system of penalties, including discharge was not in contract and may violate Sec. 8(a)(5))

Pet, Incorporated, Bakery Division **264 NLRB No. 166**

(deferral appropriate since arbitrator's findings were consistent with Bd precedent and not repugnant to the Act; arbitrator found that E's new work rules were separate from the contract and did not conflict with it and that, since E had bargained in good faith to impasse, its implementation of work rules did not violate 8(a)(5); strike was therefore not ULP strike, and discharge of strikers for violating no-strike clause, not unlawful)

Dunham-Bush, Inc. **264 NLRB No. 175**

(GC's cross mtn for summary judgment granted where E violated Act by unilaterally modifying its collective-bargaining agreement by instituting new rule prohibiting Ees from leaving plant during lunchbreak and discharging 3 Ees for disobeying rule; Bd refused to defer to arbitrators decision upholding E's actions because arbitrator's finding that modification is not violative is repugnant to Act)

Richmond Tank Car Company **264 NLRB No. 028**

(arbitrator's decision found repugnant to Act because of determination that E was contractually entitled to discharge U steward either because he led walkout w/o securing prior U approval as required by contract – although arbitrator found walkout protected under Sec. 502– or because he broke plant rule against abusive language, since arbitrator failed to give Sec. 502 statutory protection of walkout precedence over steward's contractual violation and disregarded import of his Sec. 502 finding by failing to evaluate steward's language as part of *res gestae* of concerted protected walkout)

United States Steel Corporation **264 NLRB No. 010**

(Bd will not defer to arbitrators' award which is repugnant to Act, and here where arbitrator upheld suspension of sympathy striker for violating contractual no-strike clause deferral is inappropriate because Bd and cts have held that waiver of right to engage in sympathy strikes will not be inferred from general no strike clause and any waiver must be clear and unmistakable and there is no such evidence of waiver; moreover, under *doctrine of coterminous application* Bd and cts have refused to find sympathy strike to be encompassed in broad no-strike pledges)

Inland Steel Company **264 NLRB No. 015**

(no deferral to arbitrator's decision which held discharge of sympathy striker not violation of contract inasmuch as right to engage in sympathy strike had been waived by prior failure to contend broad no-strike clause did not encompass sympathy strikers. Notwithstanding arbitrator considered discharge possible violation of Act and his mode of analysis of cases not clearly repugnant to Act, evidence of bargaining history relied upon to substantiate waiver was insufficient as matter of law to warrant finding of waiver of statutory right since past failure to assert right does not foreclose assertion forever)

Consolidation Coal Company **263 NLRB No. 188**

(deferral to arbitrator's award upholding disparate treatment of U officers who were singled out for discipline because they participated in unauthorized work stoppage along with other rank-and-file Ees based on their status as U officers held inappropriate as repugnant to Act; statutory right of Ees to support and assist U by becoming officers cannot be sacrificed to contractual right of Es to be free from unauthorized work stoppages; moreover, ULP issue herein was neither presented to nor considered by arbitrator)

Inland Steel Company **263 NLRB No. 147**

(the test of repugnancy under *Spielberg* is not whether the Bd would have reached the same result as an arbitrator, but whether the arbitrator's award is palpably wrong as a matter of law)

Transport Service Co. **263 NLRB No. 128**

(deferral inappropriate where tribunal failed to consider whether discriminatee was engaged in protected concerted activity when it upheld his discharge and also because decision upholding discharge is repugnant for purposes and policies of Act)

Boise Cascade Corporation, Specialty Paperboard Division **263 NLRB No. 067**

(deferral appropriate and result of arbitrator's decision not repugnant to Act as contended where arbitrator considered statutory issue, holding contractual language provided E with *unilateral right to abolish jobs*)

New York University Medical Center **261 NLRB No. 118**

(deferral inappropriate where arbitrator determined that E's issuance of warning letters to Ee, followed by his suspension and discharge, was for just cause because of language contained in leaflets Ee participated in distributing, accusing Ee of engaging in racist tactics; language in question was protected under Act, and arbitrator's decision to the contrary was clearly repugnant to purposes and policies of Act)

G & H Products, Inc. **261 NLRB No. 047**

(where shop steward was discharged for unlawful activity of encouraging Ees to engage in insubordination and discharge went to arbitration wherein arbitrator concluded that steward was discharged for insubordination and not for exercising duties as U steward, deferral appropriate as result reached is not palpably wrong as matter of law and test is not whether Bd would have reached same result)

United Technologies Corporation **260 NLRB No. 196**

(arbitrator's determination repugnant to Act where it was based on E's statement that distribution of material at certain point interfered with its operations since necessity for prohibiting distribution there was not shown by facts)

Stop and Shop Companies, Inc. Medi Mart Division **259 NLRB No. 124**

(deferral to arbitrator's award inappropriate where ULP issue was neither explicitly or implicitly decided; furthermore, deferral not appropriate where award only granted partial backpay with a warning)

American Interstate Freight Lines **258 NLRB No. 131**

(no deferral where arbitration panel awarded backpay for only 6 of 47 days Ee entitled to)

Designcraft Jewel Industries, Inc. **254 NLRB No. 094**

(no deferral where arbitrator by ignoring issue of relevancy of information sought by U, failed to follow well established Bd and ct precedent in this area)

3367-5075—Cont.

Russ Togs, Inc. **253 NLRB No. 099**
(no deferral where arbitration award let discharges stand although protected activity was a cause for the discharges and arbitrator believed it was a cause)

Herman Brothers, Inc. **252 NLRB No. 121**
(no deferral to arbitration award regarding discharge alleged unlawful herein since award repugnant to Act where there was misrepresentation to panel that Ee had previously been discharged for same offense)

Ameco Texas Refining Company **251 NLRB No. 202**
(deferral to arbitrator's decision that Ee was obligated to obey supervisor's order to step aside for private conversation between themselves w/o U steward even though supervisor did not answer Ee's question of whether conversation would involve discipline since award not repugnant to Act)

General Telephone Company of Michigan **251 NLRB No. 099**
(no deferral to arbitrator's award suspending Ee for harrasing other Ees because they had not participated in strike, since arbitrator's decision was repugnant to Act; decision relied on subjective reactions of harassed Ees rather than effect harassment tended to produce)

American Bakeries Co., Inc. **249 NLRB No. 170**
(C dismissed where ALJ failed to defer to arbitrator's pre-discharge award concerning discharge of U stewards for their participation in work stoppage; *Spielberg* doctrine applicable to instant case and arbitrator's decision was not repugnant to Act notwithstanding stewards singled out for severest punishment, since U stewards had clearly instigated or led unauthorized illegal work stoppage)

General Telephone Company of Ohio **248 NLRB No. 010**
(arbitrator's theory that E was free to change its general instructions which it had agreed with U to apply to unit herein held repugnant to Act, since application was pursuant to mutual agreement establishing certain working conditions and supplementing contract)

General Warehouse Corp. **247 NLRB No. 142**
(deferral to arbitrator's award regarding discriminatee's discharge assertedly because of his absentee record, not appropriate where, notwithstanding that arbitration hearing was fair and impartial, arbitrator made no finding with regard to evidence concerning discriminatee's protected activity, which evidence was presented at arbitration hearing; deferral to arbitrator's award would not effectuate Bd's protection of (Ee's) Section 7 rights)

Butera's Finer Foods **JD-599-81**
(no deferral to arbitrator's award where his action constituted denial of remedy for unlawful discharge)

Wright-Bernet, Inc. **JD-827-81**
(contention that arbitral decision–finding that Ee was justifiably terminated for falsifying testimony on behalf of discharged fellow Ees at their arbitration hearing–was result repugnant to Act, rejected where arbitrator considered protected nature of testifying in grievance proceeding, recognized import of prior Bd decisions involving false testimony, and concluded that Ee had testified with intent to deceive)

Hammermill Paper Company v. N.L.R.B. **658 F.2d 155 (C.A. 3, 1981)**
(where ULP charge alleged enhanced discipline because of U stewardship, Bd did not defer to arbitrator's decision which held that though there was no cause for discharge of steward with clean work record for refusing to perform assigned work as other Ees involved with clean workrecord only suspended, nevertheless arbitrator refused to order backpay in addition to reinstatement since resulting suspension w/o pay not inappropriate since no finding of legitimate E motive; further, arbitrator, although presented with evidenceof possible unlawful motive for discipline, specially refused to reach issue of whether motive proscribed)

N.L.R.B. v. Pincus Brothers, Inc. - Maxwell **620 F.2d 367 (C.A. 3, 1980)**
(enforcement denied where Bd committed error in declining to defer to arbitration award as clearly repugnant to Act where arbitrator had determined that E had discharged Ee for just cause; Ee's conduct arguably unprotected and where arbitration award arguably characterizable as not inconsistent with Bd policy, Bd must defer to arbitrator's decision)

N.L.R.B. v. South Central Bell Telephone Company **688 F.2d 345 (C.A. 5, Oct. 1982)**
(no abuse of discretion by Bd where it refused to defer to arbitration decision upholding harsher discipline of U stewards for participation in strike in violation of no strike agreement on basis decision repugnant to Act since its construction and application of statute regarding alleged violation reasonably defensible, had reasonable basis in law nor was there attempt to usurp policy decisions of Congress)

N.L.R.B. v. Max Factor and Company **640 F.2d 197 (C.A. 9, 1980)**
(where Bd could reasonably conclude that E violated Act and arbitrator failed to consider ULP aspects of Ees suspension, refusal to defer proper where to do so would produce result repugnant to Act)

Douglas Aircraft Company, a component of McDonnell Douglass Corporation v. N.L.R.B. **609 F.2d 352 (C.A. 9, 1979)**
(conditioning award of backpay on withdrawal of ULP charge repugnant to purposes and policies of Act)

Douglas Aircraft Company, a component of McDonnell Douglass Corporation v. N.L.R.B. **609 F.2d 352 (C.A. 9, 1979)**
(Bd must defer to arbitrator's award notwithstanding he clarified reasons for award after charge filed with RD and stated 2 independent reasons for denying backpay, one of which repugnant to Act; furthermore if reasoning behind award is susceptible to 2 interpretations, one permissable and one impermissible under Act, permissible one should be accepted in order to give arbitration *hospitable acceptance*)

3367-5076 Consideration of unfair labor practices

Servair, Inc. **265 NLRB No. 014**
(Bd refused to defer to arbitrator's decision which upheld discharge of Ees for violating no-strike clause as dischargees favored U attempting to oust incumbent U; thus, there existed potential conflict of interest with incumbent U representing Ees it knew were opposed to it; because of this potential conflict, question of whether strike was ULP strike was not placed before arbitrator, nor did arbitrator consider whether seriousness of discriminatory discharge that strikers were protesting would warrant conclusion that strikers were not prohibited from striking, notwithstanding no-strike clause. Therefore, Ees interests were not adequately represented)

American Freight System, Inc. **264 NLRB No. 018**
(Bd refused to defer to grievance arbitration panel's decision, upholding Ee's discharge for refusing to drive truck which Ee reasonably believed to be unsafe, since statutory issue (ULP) was not resolved by arbitrator; contractual standard of *justified*, considered by arbitrators, may have conflicted with Ees' Section 7 rights and award did not resolve issue; legal standards employed to resolve contractual and statutory issues, even though factually congruous, are not identical)

Consolidation Coal Company **263 NLRB No. 188**
(deferral to arbitrator's award upholding disparate treatment of U officers who were singled out for discipline because they participated in unauthorized work stoppage along with other rank-and-file Ees based on their status as U officers held inappropriate as repugnant to Act; statutory right of Ees to support and assist U by becoming officers cannot be sacrificed to contractual right of Es to be free from unauthorized work stoppages; moreover, ULP issue herein was neither presented to nor considered by arbitrator)

Inland Steel Company **263 NLRB No. 147**
(deferral to arbitration award appropriate where arbitrator upheld discharge of U adherent for falsification of employment application in violation of E's long-established rule, notwithstanding fact that discovery of such falsification was result of investigation instigated by E when Ee came to E's attention by engaging in U and other protected activities; arbitrator considered statutory issues of anti-U animus and disparity of treatment in finding discharge warranted)

Transport Service Co. **263 NLRB No. 125**
(deferral inappropriate where tribunal failed to consider whether discriminatee was engaged in protected concerted activity when it upheld his discharge and also because decision upholding discharge is repugnant for purposes and policies of Act)

United Parcel Service, Inc. **263 NLRB No. 063**
(no deferral to arbitration decision regarding discharge, absent evidence Charging Party's protected activity of filing grievances was fully considered, and where arbitration panel rendered summary decision precluding any review of its consideration of ULP aspect of discharge; further, fact no neutral member on arbitration panel foreclosed grievance from proceeding to final step of procedure)

Joyce Brothers Storage and Van Company **263 NLRB No. 078**
(deferral inappropriate where there was no basis upon which to determine whether ULP aspect of Ee's grievance played part in joint grievance committee's deliberations)

Babcock & Wilcox Company d/b/a B & W Construction Company **263 NLRB No. 051**
(deferral inappropriate where arbitrator specifically disavowed any intent to resolve ULP issue; arbitrator's subsequent offhand observation that he found no evidence of discharge because of Ee's U activities was insufficient to indicate that arbitrator was resolving ULP issue)

Professional Porter & Window Cleaning Co., Division of Prapoco, Inc. **263 NLRB No. 034**
(no deference where arbitrator considered only contractual issue of discharge for cause by Ee's letter, signed by 8 other Ees, to former E criticizing work of subcontractor and present E of Ee as Bd found that question of the nature of the protected concerted activity was not presented to or considered though arbitrator aware that charge filed. Grievant not required to raise any statutory issue and is not deprived of statutorily created forum for adjudication of ULP charges)

United Parcel Service, Inc. **261 NLRB No. 134**
(no deferral where concerted activities of charging parties were not brought up at any grievance meetings except for brief mention but no discussion of these issues was held)

3367-5076—Cont.

Phil Smidt & Son, Inc. 260 NLRB No. 090
(deferral to arbitrator's decision concerning discharge of Ee held inappropriate where ULP issue was neither presented to arbitrator nor considered or decided by him)

Al Bryant, Inc., Harrisburg Drywall and Construction Corporation, and Al Bryant Associates, Inc. 260 NLRB No. 010
(deferral inappropriate where arbitrator expressly declined to resolve statutory issue of single E in construction industry but rather looked at contract to determine if coporation was subsidiary to other)

Stop and Shop Companies, Inc. Medi Mart Division 259 NLRB No. 124
(deferral to arbitrator's award inappropriate where ULP issue was neither explicitly or implicitly decided; furthermore, deferral not appropriate where award only granted partial backpay with a warning)

Consolidated Freightways Corporation of Delaware 257 NLRB No. 177
(no deferral to arbitration where panel did not consider question of unlawful motivation of Ee's discharge)

General Motors Corporation, Delco Moraine Division 257 NLRB No. 146
(U's right to original timestudy worksheets on which E based its production standards held not to have been determined by prior arbitration as contended by E, where E presented no evidence that U's statutory right to said documents sought here was presented to or considered by arbitrators, and argument that Bd should defer to arbitrators' decisions found w/o merit)

Ogden & Moffett Company 254 NLRB No. 181
(deferral to arbitration award not appropriate where ULP issue was not placed before and considered by arbitration committee)

Magnetics International, Inc. 254 NLRB No. 062
(deferral to arbitration decision finding that grievant's discharge was for just cause inappropriate, where arbitrator considered only contractual restraints on E and did not decide if E was motivated in whole or in part by grievant's activities protected by Act)

Aeronca, Inc. 253 NLRB No. 026
(Bd did not defer to arbitration award which rejected U grievance concerning Christmas turkey bonus because bonus was not covered, or protected, by contract, since arbitrator had not addressed himself to ULP issue and his award was contrary to ULP decisions under the Act)

B & L Motor Freight, Inc. 253 NLRB No. 014
(deferral inappropriate where arbitration panel did not consider whether Ee discharged for engaging in protected concerted activity)

Kohn's and Company, Division of Consolidated Food Co. 253 NLRB No. 004
(no deferral to arbitrator's award where he did not consider whether discharge was motivated by discrimination for filing too many grievances)

Hammermill Paper Company 252 NLRB No. 172
(no deferral to arbitrator's award where arbitrator, in dealing with discharge of U steward, found steward's treatment unrelated to U activity; also, under award, U steward would not receive back pay as Bd remedy provides)

The Motor Convoy, Inc. 252 NLRB No. 175
(no deferral where arbitration panel did not consider whether Ee was in any way discharged for U or concerted activity)

Herman Brothers, Inc. 252 NLRB No. 121
(no deferral to arbitration award regarding discharge alleged unlawful herein where panel did not consider or rule upon statutory issue of discrimination)

Herman Brothers, Inc. 252 NLRB No. 121
(no deferral to arbitration award which upheld discharge since deferral would be repugnant to policies and purposes of Act where principal reason for discharge was E's irritation over Ee's protected activities)

Albertsons, Inc. 252 NLRB NO. 081
(deferral inappropriate notwithstanding evidence concerning ULP presented to arbitrator where arbitrator did not discuss ULP in his decision)

Chemical Leaman Tank Lines, Inc. 251 NLRB No. 146
(deferral warranted where arbitration award contains complete factual findings on safety issue, and there is the necessary parallelism between contractual and statutory issues; thus panel implicitly decided ULP question)

Keppel, Inc. 251 NLRB No. 096
(deferral inappropriate where arbitrator was presented with evidence of discriminatee's protected activity but made no reference to such evidence or finding concerning activities as related to discharge)

Van Haaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc. 247 NLRB No. 171
(no deferral to decision of Joint State Committee regarding alleged unlawful discharge where committee did not hear testimony of supervisor who discharged Ee and decision did not indicate that consideration was given to issue of whether Ee's protected activities were reason for discharge; arbitrator must consider these issues though generally not necessary to pass upon ULP directly)

Roadway Express, Inc. JD-(SF)-250-82
(no deferral of issue concerning discharge of U steward assertedly for insubordination, where joint grievance committee changed discharge to suspension but there was no evidence in the record that committee considered 8(a)(1) and 8(a)(3) allegations in C; assertion that such issues were considered by committee in reaching its decision is mere speculation in absence of evidence of committee's decision)

Michigan Gas Utilities Company JD-260-82
(deferral to arbitration decision of charge that alleged Ee was denied representation at interview with E where arbitrator explicitly considered whether E violated Ee's *Weingarten* rights but found Ee not entitled to representation, though he requested it, since interview involved only giving instructions and correction of work techniques)

Kasler Corporation, Continental Heller Corp., and Fruin-Colnon Corp., A Joint Venture JD-(SF)-118-82
(no deferral where arbitrator refused to take evidence on whether discharge, assertedly for cause, was motivated by Ee's raising jurisdictional dispute issue to U steward of another trade)

Nabisco, Inc. JD-(SF)-34-82
(no deference to arbitrator's award in C case where it was alleged that Ee suffered reprisal for having previously filed charge or gave testimony under Act, since resolution of such allegation *must* be left to Bd as mandated by Congress; grievant in arbitration sought to confine issues to those arising from collective bargaining agreement)

American Freight System, Inc. JD-481-81
(Bd will not defer to arbitration under *Spielberg* unless ULP issue before Bd was presented to and considered by arbitrator and here arbitration committee refused to permit alleged discriminatee to litigate the ULP issue before it; thus deferral inappropriate)

Ohio Ferro - Alloys Corporation JD-246-81
(where U steward discharged for beating up supervisor but U failed to advance any ULP theories in binding arbitration proceeding, Bd did not defer to arbitration ruling)

Pachle Packing Company JD-(NY)-33-80
(deferral appropriate where arbitrator was presented with ULP issue and with substantially all evidence that was presented later at ULP proceeding, and specifically dealt with U's argument of discriminatory motive for suspension and discharge and implicitly rejected it)

Pioneer Finishing Corporation v. N.L.R.B. 667 F.2d 199 (C.A. 1, Nov. 1981)
(where arbitrator's decision clearly indicates that he was solely concerned with whether Ee had violated contract by distributing leaflets, and not statutory issue of whether he was engaged in protected activity, refusal to defer proper)

N.L.R.B. v. The Motor Convoy, Inc. 673 F.2d 734 (C.A. 4, Mar. 1982)
(arbitration met Spielberg criteria, notwithstanding contention arbitration panel did not consider whether E committee ULPs in connection with Ee's discharge but only issue of whether discharged for just cause under bargaining contract, since ULP issue was identical to contrcactual issue where bargaining agreement provided that Ees could not be discharged for U activities)

Albertson's, Inc. v. N.L.R.B. 661 F.2d 939(T) (C.A. 9, Sep. 1981)
(Bd erred in refusing to defer to arbitrator's decision that discharge was for cause, since arbitration proceedings were fair and regular, not repugnant to policies of Act, and, although arbitrator did not state, in so many words, that discharge did not violate 8(a)(1), he was presented with statutory issue and adequately considered it as basis for his decision, and not to defer to arbitration herein reduces practice of deferral to only those instances in which Bd is satisfied with arbitration results, which is not deferral but rather de novo review)

N.L.R.B. v. W. Carter Maxwell, dba Pioneer Concrete Co. 637 F.2d 698 (C.A. 9, 1981)
(deferral inappropriate where parties had agreed to arbitration proceeding but did not pursue it to conclusion as Bd may not defer unless arbitral tribunal has clearly decided ULP issue)

N.L.R.B. v. Max Factor and Company 640 F.2d 197 (C.A. 9, 1980)
(where Bd could reasonably conclude that E violated Act and arbitrator failed to consider ULP aspects of Ees suspension, refusal to defer proper where to do so would produce result repugnant to Act)

N.L.R.B. v. Gould, Inc., Switchgear Division 638 F.2d 159 (C.A. 10, 1980)
(no deferral to arbitration award which clearly ignores long line of precedent by assuming ipso facto that no-strike clause waived Ees' right to engage in sympathy strike)

3367-6000 All affected parties taking part in proceeding

3367-5090—Cont.

Thatcher Glass Manufacturing Co., A Division of Dart Industries, Inc. **265 NLRB No. 041**

(no deferral to prearbitral agreement where grievances not adjudicated, alleged discriminatees not involved in final settlement, and no award which may be examined for conformity with *Spielberg* requirements)

The Rosicrucian Press, Ltd. **264 NLRB No. 170**

(no deferral to decision of six member arbitration panel, three chosen by E and three by U, which included U steward who had refused to accept alleged discriminatee's grievance, and foreman who was found to have violated Act by his conduct, meeting lasted less than hour, no witnesses called, no minutes or record made, and alleged discriminatee not present; since deferral to such informal grievance procedure mechanism inappropriate inasmuch as there is no award to be examined for conformity with Spielberg requirements)

3367-6700 Stage to which contract enforcement proceeding has progressed

3367-6712 Procedure available under contract, but no recourse

United Parcel Service, Inc. **263 NLRB No. 063**

(no deferral to arbitration decision regarding discharge, absent evidence Charging Party's protected activity of filing grievances was fully considered, and where arbitration panel rendered summary decision precluding any review of its consideration of ULP aspect of discharge; further, fact no neutral member on arbitration panel foreclosed grievance from proceeding to final step of procedure)

3367-6787 After in-plant contract procedure, additional step available

Laredo Packing Company **254 NLRB No. 001**

(no deferral of grievance regarding reprimand of Ee where although contract provided for grievance procedure cluminating in binding arbitration, parties settled a earlier stage)

3367-6762 Arbitration or joint-committee proceedings

3367-6762-6700 After decision

Anderson Sand & Gravel Company **JD-655-80**

(no deferral to decision of arbitration panel where characteristics of forum cannot be determined nor basis for award shown)

3367-8300 Issues for which deference is sought

3367-8301 Generally

3367-8301-3300 Issues of contract meaning or application

Asbestos Workers Local Union No. 27, (Master Insulators Association, Inc.) **263 NLRB No. 118**

(determination of whether E-association representatives on Joint Apprenticeship Committee (JAC) are Sec. 8(b)(1)(B) collective-bargaining representatives is inappropriate for deferral where contract provides duties of JAC members which is to flesh out bargaining agreement by formulating, adopting and administering apprenticeship program; therefore members necessarily act as bargaining representatives and this determination is one of statutory construction and is determination properly made by Bd)

United Parcel Service **261 NLRB No. 142**

(deferral inappropriate where issue of Ee's insistence on what he considered his contractual right to take his twenty minute break on road, although presented to grievance committee, was not even mentioned in committee's decision)

Alameda County Association For The Mentally Retarded, Inc. **255 NLRB No. 086**

(deferral of dispute over interpretation of wage provision contained in newly executed contract, inappropriate, where parties' efforts to resolve dispute were not conducted pursuant to contractual grievance-arbitration procedure but were attempt to negotiate amicable settlement w/o resorting to such procedure; in any event, E did not raise deferral to arbitration as affirmative defense to C, nor raise any such contention at hearing; and E has joined charging party and GC in excepting to ALJ's conclusion that salary dispute was suitable for deferral to arbitration)

Consolidation Coal Company **253 NLRB No. 104**

(disputes over existence of agreement between parties rather than interpretation of such agreements are not subject to deferral by Bd)

Bay Shipbuilding Corporation **251 NLRB No. 114**

(mtn for summary judgment granted and C dismissed where Bd deferred to arbitration award finding that E did not violate contract by changing insurance carrier since *coverage* which could only be changed by mutual consent under contract did not include carrier, and level of benefits remained the same; arbitrator stated he would not decide Sec. 8(a)(5) violation, but made factual findings, in course of resolving contractual issue, which resolved ULP issues)

ITT McDonnel and Miller, A Unit of Fluid Handling Division of International Telephone and Telegraph Corp. **JD-337-82**

(alleged unilateral modification of contract by prohibiting posting of grievances on E's bulletin boards, made available to U under contract, deferred, since allegation calls for interpretation of contract inasmuch as posted grievances were removed by E who decided U had no right under contract to post grievances, and such issue is one which may properly be deferred to arbitrator; while Bd has not approved deferral of 8(a)(1) and (a)(3), and 8(b)(1)(A) and 8(b)(2) allegations, it has approved deferral in cases involving 8(a)(5) and 8(b)(3) allegations with some exceptions)

ITT McDonnel and Miller, A Unit of Fluid Handling Division of International Telephone and Telegraph Corp. **JD-337-82**

(in deferring to arbitration alleged unlawful prohibition against posting of grievances on E's bulletin boards made available to U under contract, ALJ rejected GC's contention that right to post grievances exists under contract's provision for U posting, and that there was no evidence U expressly waived its right to post grievances; use of E's bulletin boards is not a statutory right, and if, as GC alleges, right herein is derived from contract, it is incongruous to place any significance on lack of evidence that one party waived a right whose very existence is at issue)

Laborers' International Union of North America, Local 89, AFL-CIO **JD-(SF)-266-80**

(deferral appropriate where charge alleged 8(a)(5) unilateral change because E granted Ees additional days off but refused to pay them)

Liquor Salesmen's Union Local 2 of The State of New York, Distillery, Rectifying, Wine & Allied Workers' International Union, AFL-CIO v. N.L.R.B. **664 F.2d 318 (C.A. 2, July 1981)**

(ct denied enforcement of Bd's order based on finding that Es violated 8(a)(5), and instead concluded that Bd abused its discretion in declining to defer to arbitrator's award which held that Es did not violate contract with U when they unilaterally instituted new collection procedures for their salesmen since arbitrator found, as matter of contract interpretation and in light of examination of past practice, that Es' institution of new procedures did not impose change in rules)

N.L.R.B. v. Safeway Stores, Inc. **622F.2d 425 (C.A. 9, 1980)**

(Bd not required to defer to arbitrator's decision on grievability of Ees' transfers where sole issue presented to Bd was whether E had committed ULP by refusing to produce requested documents to defend its decision to transfer Ees)

N.L.R.B. v. Northeast Oklahoma City Manufacturing Company **631 F.2d 669 (C.A. 10, Sept. 1980)**

(Bd properly refused to defer case involving E's allegedly unlawful unilateral delays in paying Ees monthly bonuses over 6 month period, and allegedly unlawful discharge of Ees for walking out in protest over such delays; ct analyzed Act to show why arbitration would not necessarily dispose of 8(a)(3) allegation, and stated that question as to whether 8(a)(5) violation, if found, rises to level of *serious* ULP requires interpretation of Act, not contract, and such determination is w/i exclusive province of Bd, not an arbitrator)

3367-8301-6700 Issues of contract enforcement

American Freight System, Inc. **264 NLRB No. 018**

(Bd refused to defer to grievance arbitration panel's decision, upholding Ee's discharge for refusing to drive truck which Ee reasonably believed to be unsafe, since statutory issue (ULP) was not resolved by arbitrator; contractual standard of *justified*, considered by arbitrators, may have conflicted with Ees' Section 7 rights and award did not resolve issue; legal standards employed to resolve contractual and statutory issues, even though factually congruous, are not identical)

Pioneer Finishing Corporation v. N.L.R.B. **667 F.2d 199 (C.A. 1, Nov. 1981)**

(if consideration of contractual issues will determine statutory issues, Bd may find that arbitrator considered statutory issue through consideration of the contractual issue)

3367-8312 Unit or representative status issues

3367-8312-1400 Representative determination

Cannon Air Conditioning and Heating Co., Inc. and Yor-Tex, Inc. **252 NLRB No. 091**

(deferral to arbitration, inappropriate, where issues presented involved questions of accretion, representation, and appropriate unit; such issues are matters for decision by Bd rather than arbitrators)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**

(qcr, accretion and appropriate unit involve application of statutory policy rather than contract interpretation, hence they are inappropriate issues for deferral to grievance-arbitration procedure)

3367-8312-1400—Cont.

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**
(no deferral where issue was one of representation and appropriate unit)

3367-8312-4200 Unit determination

Marine Optical, Inc. **255 NLRB No. 198**
(Bd will not defer to arbitration issues concerning appropriateness of units for purposes of bargaining)

Cannon Air Conditioning and Heating Co., Inc. and Yor-Tex, Inc. **252 NLRB No. 091**
(deferral to arbitration, inappropriate, where issues presented involved questions of accretion, representation, and appropriate unit; such issues are matters for decision by Bd rather than arbitrators)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(qcr, accretion and appropriate unit involve application of statutory policy rather than contract interpretation, hence they are inappropriate issues for deferral to grievance-arbitration procedure)

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**
(no deferral where issue was one of representation and appropriate unit)

N.L.R.B. v. Local 1034, Teamsters **651 F.2d 136 (C.A. 2, June 1981)**
(enforcement granted where Bd's determination of composition of unit was matter *which parties' contract's grievance arbitration is designed to resolve* and parties have clearly and consistently expressed their willingness to be bound by arbitrator's decision; Bd was construing parties' contract which set up original unit; ct did not reject result (of Bd decision) which would have been same if Bd had deferred to arbitrator's determination)

3367-8312-5600 Unit clarification

Mercury Marine Division of Brunswick Corporation **259 NLRB No. 110**
(Bd will not defer to arbitration where issue is appropriateness of bargaining unit)

Boston Cutting Die Company **258 NLRB No. 101**
(in UC proceeding, RD properly refused to defer to arbitration decision which found working foreman supervisory, since questions of representation, accretion and appropriate unit involve application of statutory policy rather than contract interpretation, and issue of working foreman's alleged supervisory status clearly falls w/i parameter of nondeferral to arbitration)

Mercury Marine Division of Brunswick Corporation **254 NLRB No. 146**
(Bd did not defer to reasoning of arbitrator who had found E had not violated contract by assigning operation of newly installed electronically programmed die-casting machines to personnel outside unit; instead, Bd accreted machine operators to existing unit pursuant to clarification ptn which is appropriate procedure for resolving ambiguities concerning unit placement of individuals who come w/i newly established classification of disputed unit placement; in any event, issues involving appropriateness of unit and criteria are particularly w/i Bd's expertise)

The Washington Post Company **254 NLRB No. 014**
(contention that U C ptn was untimely because district ct had held that agreement between parties was still in effect, rejected, where ct had instead ruled that issue was whether arbitration was mandated pursuant to expired contract; fact that contract terms may continue during negotiations for new contract does not deprive Bd of jurisdiction in dispute herein, and contention that issue might possibly be decided by arbitration cannot be seriously considered because issue of statutory status of Ees involved herein is matter for Bd to determine)

3367-8312-5633 Certified unit

Magna Corporation **261 NLRB No. 009**
(Bd did not defer to arbitrator's award in UC proceeding as it is Bd policy not to defer in representation, accretion, and appropriate unit issues since not question of contract interpretation but involves application of statutory policy, standards and criteria)

3367-8312-8400 Accretion

Cannon Air Conditioning and Heating Co., Inc. and Yor-Tex, Inc. **252 NLRB No. 091**
(deferral to arbitration, inappropriate, where issues presented involved questions of accretion, representation, and appropriate unit; such issues are matters for decision by Bd rather than arbitrators)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(qcr, accretion and appropriate unit involve application of statutory policy rather than contract interpretation, hence they are inappropriate issues for deferral to grievance-arbitration procedure)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(where question was whether newly-acquired plant involving transfer of 121 Ees to merged location was accretion to existing unit covered by bargaining agreement, deferral to pending grievance proceeding involving interests of only 8 Ees held inappropriate, since Bd has consistently declined to leave to arbitrator responsibility for determining whether newly-acquired plant was accretion to unit covered by bargaining agreement, and Ees and issues involved in the grievance proceeding are not coextensive with those involved herein)

3367-8325 Jurisdictional disputes

United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry, Local Union NO. 741 (The Ashton Company, Inc.)
(no voluntary method for adjustment of instant jurisdictional dispute, since all parties were not bound to Impartial Jurisdictional Disputes Board procedure)

National Association of Broadcast Employees and Technicians, AFL-CIO, CLC (Metromedia, Inc.) **255 NLRB No. 087**
(filing grievance and initiating ct proceedings, assertedly in face of 10(k) determination, to compel E to arbitrate grievance over assignment of disputed work to Ees represented by another U, not unlawful, where 10(k) award was open to reasonable doubt because of its ambiguity and changed circumstances resulting from passage of time; U filed grievances under contract, executed almost 2 years after award, which gave grievances colorable basis and was not attempt to circumvent award; and evidence did not show U refused to comply with award or unlawfully coerced E)

National Association of Broadcast Employees and Technicians, AFL-CIO, CLC (Metromedia, Inc.) **255 NLRB No. 087**
(where U allegedly violated 8(b)(4)(ii)(D) because it assertedly failed to abide by 10(k) award by filing grievances and initiating ct proceedings to compel E to arbitrate grievance over assignment of disputed work to Ees represented by another U, Bd dismissed complaint after evaluating evidence in light of Federal labor policy encouraging use of grievance-arbitration procedures, Bd's reluctance to interfere with parties' mechanism for private resolution, and its exercise of authority in manner that does not needlessly restrict party's access to judicial remedies)

National Association of Broadcast Employees and Technicians, AFL-CIO, CLC (Metromedia, Inc.) **255 NLRB No. 087**
(in dismissing C alleging U violated 8(b)(4)(ii)(D) because it assertedly failed to abide by 10(k) award by filing grievances and initiating ct proceedings to compel E to arbitrate grievance over assignment of disputed work to Ees represented by another U, Bd held it was not suggesting that filing grievance and ct suit can never constitute ULP; however, U here acted properly as Ee representative in pursuing its legal remedies for arbuably meritorious claim under properly negotiated contract, and there was no evidence of threats, restraint, or coercion of E)

Automobile Workers (UAW) and Its Local 1519 v. N.L.R.B. **619 F.2d 580 (C.A. 6, Apr. 1980)**
(Bd's determination of work assignment dispute takes precedence over contrary award of arbitrator, regardless of which action was initiated first; both legislative history and case law on such issue support finding that Bd's 10(k) determination takes priority)

3367-8331 Section 8(a)(4) alleged violations

United States Steel Corporation **264 NLRB No. 010**
(Bd will not defer to arbitration involving Ees' access to Bd's processes as protected by Section 8(a)(4))

Art Steel of California, Inc. **256 NLRB No. 140**

Interlake, Inc. **253 NLRB No. 076**
(Bd has not deferred complaints alleging violations of Section *8(a)(4)* of Act to contractual grievance and arbitration procedures)

Nabisco, Inc. **JD-(SF)-34-82**
(no deference to arbitrator's award in C case where it was alleged that Ee suffered reprisal for having previously filed charge or gave testimony under Act, since resolution of such allegation *must* be left to Bd as mandated by Congress; grievant in arbitration sought to confine issues to those arising from collective bargaining agreement)

3367-8350 Discharge, layoffs or disciplinary action

Pet, Incorporated, Bakery Division **264 NLRB No. 166**
(deferral appropriate since arbitrator's findings were consistent with Bd precedent and not repugnant to the Act; arbitrator found that E's new work rules were separate from the contract and did not conflict with it and that, since E had bargained in good faith to impasse, its implementation of work rules did not violate 8(a)(5); strike was therefore not ULP strike, and discharge of strikers for violating no-strike clause, not unlawful)

Richmond Tank Car Company **264 NLRB No. 025**
(arbitrator's decision found repugnant to Act because of determination that E was contractually entitled to discharge U steward either because he led walkout w/o securing prior U approval as required by contract -- although arbitrator found walkout protected under Sec. 502-- or because he broke plant rule against abusive language, since arbitrator failed to give Sec. 502

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statutory protection of walkout precedence over steward's contractual violation and disregarded import of his Sec. 502 finding by failing to evaluate steward's language as part of *res gestae* of concerted protected walkout)

American Freight System, Inc. **264 NLRB No. 018**
(Bd refused to defer to grievance arbitration panel's decision, upholding Ee's discharge for refusing to drive truck which Ee reasonably believed to be unsafe, since statutory issue (ULP) was not resolved by arbitrator; contractual standard of *justified*, considered by arbitrators, may have conflicted with Ees' Section 7 rights and award did not resolve issue; legal standards employed to resolve contractual and statutory issues, even though factually congruous, are not identical)

Inland Steel Company **264 NLRB No. 015**
(no deferral to arbitrator's decision which held discharge of sympathy striker not violation of contract inasmuch as right to engage in sympathy strike had been waived by prior failure to contend broad no-strike clause did not encompass sympathy strikers. Notwithstanding arbitrator considered discharge possible violation of Act and his mode of analysis of cases not clearly repugnant to Act, evidence of bargaining history relied upon to substantiate waiver was insufficient as matter of law to warrant finding of waiver of statutory right since past failure to assert right does not foreclose assertion forever)

Professional Porter & Window Cleaning Co., Division of Propoco, Inc. **263 NLRB No. 034**
(no deference where arbitrator considered only contractual issue of discharge for cause by Ee's letter, signed by 8 other Ees, to former E criticizing work of subcontractor and present E of Ee as Bd found that question of the nature of the protected concerted activity was not presented to or considered though arbitrator aware that charge filed. Grievant not required to raise any statutory issue and is not deprived of statutorily created forum for adjudication of ULP charges)

East Texas Motor Freight **262 NLRB No. 101**
(where grievance-arbitration hearing is not before independent arbitrator, and grievant, identified dissident, is party to existing ULP litigation against grievant's bargaining representative, Bd's exercise of discretion, not to defer, is appropriate)

Wolff & Munier, Inc. **262 NLRB No. 046**
(Bd found it inappropriate to defer to decision disposing of grievances filed over discharges that gave rise to 8(a)(3) and (1) allegations)

Blue Arrow, Inc., a Subsidiary of Kysor Industrial Corporation **261 NLRB No. 138**
(deferral inappropriate where ULP issue here was not considered)

New York University Medical Center **261 NLRB No. 118**
(deferral inappropriate where arbitrator determined that E's issuance of warning letters to Ee, followed by his suspension and discharge, was for just cause because of language contained in leaflets Ee participated in distributing, accusing Ee of engaging in racist tactics; language in question was protected under Act, and arbitrator's decision to the contrary was clearly repugnant to purposes and policies of Act)

United Technologies Corporation **260 NLRB No. 196**
(deferral appropriate where Ee was found insubordinate and discharged for refusing to terminate pre-grievance discussion even after exhausting additional time given him by E and for throwing suspension notice down on floor and refusing to have it read to him before 2 supervisors w/o shop steward's presence)

Seattle Trucking Corporation **260 NLRB No. 079**
(deferral inappropriate, where issue of Ees' discharge, contrary to E's contention that dispute involved terms or meaning of contract, was properly before Bd since alleged reason for discharges was Ees' participation in ULP strike and/or engaging in other concerted activity for their mutual aid or protection)

Laredo Packing Company **254 NLRB No. 001**
(no deferral of grievance regarding reprimand of Ee where although contract provided for grievance procedure cluminating in binding arbitration, parties settled a earlier stage)

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 096**
(deferral to arbitration award not warranted where interests of U are not in substantial harmony with those of Ee-grievants over operation of U's health and welfare fund)

United Parcel Service, Inc. **252 NLRB No. 145**
(Bd will not defer to arbitration award unless evidence relevent to ULP case has been presented to arbitrator or panel)

United Parcel Service, Inc. **252 NLRB No. 145**
(deferral inappropriate where U failed both to advocate Ee's claim that he was discharged for dissident activities and to present evidence on that claim)

Herman Brothers, Inc. **252 NLRB No. 121**
(no deferral to arbitration award regarding discharge alleged unlawful herein since award repugnant to Act where there was misrepresentation to panel that Ee had previously been discharged for same offense)

Herman Brothers, Inc. **252 NLRB No. 121**
(no deferral to arbitration award regarding discharge alleged unlawful herein where panel did not consider or rule upon statutory issue of discrimination)

Herman Brothers, Inc. **252 NLRB No. 121**
(no deferral to arbitration award which upheld discharge since deferral would be repugnant to policies and purposes of Act where principal reason for discharge was E's irritation over Ee's protected activities)

Botany 500, A Division of Rapid-American Menswear, Inc. **251 NLRB No. 075**
(deferral to arbitration award denying discharge grievance, appropriate, where there was no evidence establishing U's complicity in discharge, no conflict existed between dischargee and U, her protected concerted activity was fully aired at hearing, arbitrator rejected dischargee's assertion that discharge resulted from confrontation with E in connection with her running for U office, and instead found that real reason for discharge was poor workmanship)

Caterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) **250 NLRB No. 009**
(no deferral where issue were whether E violated its bargaining obligation by unilaterally implementing changes in transfer request system w/o bargaining with U, unlawfully discharged or suspended Ees for engaging in protected strike, and unlawfully terminated two of those Ees because of their official status in U)

American Bakeries Co., Inc. **249 NLRB No. 170**
(C dismissed where ALJ failed to defer to arbitrator's pre-discharge award concerning discharge of U stewards for their participation in work stoppage; *Spielberg* doctrine applicable to instant case and arbitrator's decision was not repugnant to Act notwithstanding stewards singled out for severest punishment, since U stewards had clearly instigated or led unauthorized illegal work stoppage)

Babcock & Wilcox Co. **249 NLRB No. 099**
(Bd did not defer to arbitrator's award upholding discharge of U president allegedly for participating in wildcat strike, where award was repugnant to purposes and policies of Act; arbitrator did not explain what actions of president constituted *adoption* and *open support* of strike, and upheld discharge on president's failure or inability to stop strike, which was in direct repudiation of Bd principle that U officials may be disciplined on same basis as other Ees, but not for their failure to satisfy affirmative duty to stop strike)

Babcock & Wilcox Co. **249 NLRB No. 099**
(Bd did not defer to arbitrator's award upholding discharge of U president allegedly for participating in wildcat strike, where award was repugnant to purposes and policies of Act where, among other things, award failed to meet Bd's standard that *findings are consistent with the record evidence;* moreover, Bd did not engage in any review of record made before arbitrator; de novo or otherwise, in order to determine that arbitrator's conclusions were not supported by evidentiary facts he found)

Colonial Stores Incorporated **248 NLRB No. 142**
(no deferral to arbitration award denying Ee's grievance and finding that Ee was discharged for cause, where *cause* found by arbitrator was in fact Ee's protected concerted activity of protesting E's admitted failure to implement grievance settlement and U's failure to enforce agreement)

General Warehouse Corp. **247 NLRB No. 142**
(deferral to arbitrator's award regarding discriminatee's discharge assertedly because of his absentee record, not appropriate where, notwithstanding that arbitration hearing was fair and impartial, arbitrator made no finding with regard to evidence concerning discriminatee's protected activity, which evidence was presented at arbitration hearing; deferral to arbitrator's award would not effectuate Bd's protection of (Ee's) Section 7 rights)

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(Bd announced that it will no longer honor results of arbitration proceeding under Spielberg unless ULP issue was both presented to and considered by arbitrator, that Bd will give no deference to arbitration award which bears no indication that arbitration ruled on statutory issue of discrimination in determining propriety of E's disciplinary actions, and that party seeking Bd deferral to arbitration award has burden of proving that issue of discrimination was litigated before arbitrator; Electronic Reproduction, 213 NLRB 758, overruled)

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(upon overruling Electronic Reproduction, 213 NLRB 758, and returning to standard for deferral which existed prior to that decision, Bd held that ALJ properly refused to defer to results of arbitration proceedings wherein ULP issues ofdiscrimination involving reprimands and discharge were not litigated)

Roadway Express, Inc. **JD-(SF)-280-83**
(no deferral of issue concerning discharge of U steward assertedly for insubordination, where joint grievance committee changed discharge to suspension but there was no evidence in the record that committee considered 8(a)(1) and 8(a)(3) allegations in C; assertion that such issues were consid-

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ered by committee in reaching its decision is mere speculation in absence of evidence of committee's decision)

Michigan Gas Utilities Company JD-260-82
(deferral to arbitration decision of charge that alleged Ee was denied representation at interview with E where arbitrator explicitly considered whether E violated Ee's *Weingarten* rights but found Ee not entitled to representation, though he requested it, since interview involved only giving instructions and correction of work techniques)

Michigan Gas Utilities Company JD-260-82
(deferral to arbitration decision inappropriate in regard to charge of unlawful discharge since arbitrator did not consider whether E's discharge stemmed from demand for U representation, prior association with U, and use of contractual grievance procedure)

Rainbo Baking Company JD-(SF)-117-82
(no deferral to board of adjustment decision where such board failed to provide backpay remedy for unlawful termination)

Metro-Young Construction Company, A Division of Olson Construction Co., Inc. JD-(SF)-12-82
(filing action in U.S. District Court joining discharged Ee as respondent along with U and seeking order to compel arbitration of Ee's discharge as provided for in collective bargaining agreement, violative, as Ee has Sec. 7 right to seek vindication of his discharge with NLRB; E's lawsuit was coercive under Sec. 8(a)(1) and discriminatory under Sec. 8(a)(4) as Bd does not defer under *Collyer* charges filed under Sec. 8(a)(1) and (3))

Westinghouse Electric Corporation JD-(ATL)-80-81
(no portion of instant proceeding alleging violations of Sections 8(a)(5), (4), (3) and (1) appropriate for deferral; E's alleged refusal to provide information to U (8(a)(5) was intimately connected with 8(a)(3) allegations and as such were inappropriate for deferral; charges of Sec. 8(a)(4) and (3) related to discharge of Ee where Bd no longer defers)

Peschke Packing Company JD-(NY)-33-80
(deferral appropriate where arbitrator was presented with ULP issue and with substantially all evidence that was presented later at ULP proceeding, and specifically dealt with U's argument of discriminatory motive for suspension and discharge and implicitly rejected it)

Newspaper Printing Corporation JD-283-80
(no deferral to arbitration where issue is E's insistance on referring grievances to arbitration solely on question of arbitrability since E has *evidenced course of conduct designed to rid itself of established bargaining relationship and attendant thereto* and grievance involved, which is classic example of whether Ee voluntarily quit or was constructively discharged, is ripe for arbitration)

Hammermill Paper Company v. N.L.R.B. 658 F.2d 155 (C.A. 3, 1981)
(where ULP charge alleged enhanced discipline because of U stewardship, Bd did not defer to arbitrator's decision which held that though there was no cause for discharge of steward with clean work record for refusing to perform assigned work as other Ees involved with clean workrecord only suspended, nevertheless arbitrator refused to order backpay in addition to reinstatement since resulting suspension w/o pay not inappropriate since no finding of legitimate E motive; further, arbitrator, although presented with evidenceof possible unlawful motive for discipline, specially refused to reach issue of whether motive proscribed)

N.L.R.B. v. Pincus Brothers, Inc. - Maxwell 620 F.2d 367 (C.A. 3, 1980)
(enforcement denied where Bd committed error in declining to defer to arbitration award as clearly repugnant to Act where arbitrator had determined that E had discharged Ee for just cause; Ee's conduct arguably unprotected and where arbitration award arguably characterizable as not inconsistent with Bd policy, Bd must defer to arbitrator's decision)

N.L.R.B. v. The Motor Convoy, Inc. 673 F.2d 734 (C.A. 4, Mar. 1982)
(Bd's refusal to defer to decision of arbitration panel which complied with Spielberg criteria in holding that Ee had been discharged for just cause and not for U activities; improper, since contrary to NLRB's policy to defer to arbitration decisions which meet Spielberg criteria; although NLRB is free to depart from this policy *departure may not be sub silento to reach a different unexplained result in a single case. Until NLRB explicitly adopts a different policy through formal rulemaking or adjudication procedures, it must defer to private arbitration which complies with those guidelines in Spielberg*)

N.L.R.B. v. South Central Bell Telephone Company 688 F.2d 345 (C.A. 5, Oct. 1982)
(no abuse of discretion by Bd where it refused to defer to arbitration decision upholding harsher discipline of U stewards for participation in strike in violation of no strike agreement on basis decision repugnant to Act since its construction and application of statute regarding alleged violation reasonably defensible, had reasonable basis in law nor was there attempt to usurp policy decisions of Congress)

Ad Art, Inc. v. N.L.R.B. 645 F.2d 669 (C.A. 9, Dec 9, 1980)
(Bd's refusal under *Spielberg* standard to defer to arbitrator's decision that discharge of grievant was for cause held not abuse of discretion, since issue of whether discharge was a ULP because it was for a protected activity, i.e., for filing grievances, was not decided where statutory protection under Sec. 7 was not analyzed or even mentioned)

Arthur N. Stephenson v. N.L.R.B. 614 F.2d 1210 (C.A. 9) (1980)
(contention that Bd erred in concluding that discharge was for cause because decision was contrary to arbitration panel's conclusion, rejected; Bd was not entitled to rely upon finding of panel because it did not decide whether ULP had been committed and only determined that agreement had been breached, and Bd enforces arbitration award after concluding that ULP had been committed, but Bd found no ULP herein; proper means to enforce binding arbitration award is an action in district ct)

N.L.R.B. v. Northeast Oklahoma City Manufacturing Company 631 F.2d 669 (C.A. 10, Sept. 1980)
(Bd properly refused to defer case involving E's allegedly unlawful unilateral delays in paying Ees monthly bonuses over 6 month period, and allegedly unlawful discharge of Ees for walking out in protest over such delays; ct analyzed Act to show why arbitration would not necessarily dispose of 8(a)(3) allegation, and stated that question as to whether 8(a)(5) violation, if found, rises to level of *serious* ULP requires interpretation of Act, not contract, and such determination is w/i exclusive province of Bd, not an arbitrator)

3367-8363 Harassing or discriminatory action

Cecil Walker Machinery Co. 257 NLRB No. 081
(Bd rejected E's contentions that ALJ erred in not deferring to arbitrator's award since arbitrator's decision concerned only charging party's 3-day suspension which was not in issue before Bd)

3367-8362 Bargaining obligation

3367-8362-1000 Repudiation of agreement

Ford Brothers, Inc. 263 NLRB No. 011
(no deferral of issues concerning questions of repudiation of contract and repudiation of existing bargaining representative)

3367-8362-2000 Duty to furnish information

L.M. Settles Construction Co., Inc. 259 NLRB No. 087
(no deferral of E's refusal to allow complete audit of its financial records, including general ledger, to determine whether it is complying with fringe benefit fund obligations of contract since grievances relating to fringe benefits funds were expressly exempt from application of grievance and arbitration provisions of contract)

3367-8362-2001 Generally

Loral Electronic Systems, A Division of Loral Corporation 253 NLRB No. 116
(no deferral of E's alleged refusal to furnish information where bargaining agreement did not provide that such information need not be furnished)

Westinghouse Electric Corporation JD-(ATL)-80-81
(no portion of instant proceeding alleging violations of Sections 8(a)(5), (4), (3) and (1) appropriate for deferral; E's alleged refusal to provide information to U (8(a)(5) was intimately connected with 8(a)(3) allegations and as such were inappropriate for deferral; charges of Sec. 8(a)(4) and (3) related to discharge of Ee where Bd no longer defers)

3367-8362-2050 Time study

General Motors Corporation, Delco Moraine Division 257 NLRB No. 146
(U's right to original timestudy worksheets on which E based its production standards found not appropriate matter for deferral to arbitration, since Bd will not defer U's request for bargaining information to which it is statutorily entitled, and record herein indicates that parties have not chosen to arbitrate present dispute)

3367-8362-3000 Power to abolish jobs

Boise Cascade Corporation, Specialty Paperboard Division 263 NLRB No. 067
(deferral appropriate and result of arbitrator's decision not repugnant to Act as contended where arbitrator considered statutory issue; holding contractual language provided E with *unilateral right to abolish jobs*)

3367-8362-4000 Power to subcontract unit work

N.L.R.B. v. Designcraft Jewel Industries, Inc. 675 F.2d 493 (C.A. 2, Mar. 1982)
(Bd acted w/i its discretion in not deferring to arbitral award regarding E's failure to furnish U with requested information concerning E's subcontracting of unit work; while underlying grievance which U sought to have arbitrated was alleged violation of contract and issue of U's request for E's records was procedural matter, ULP charge herein was that E had violated U's statutory right to examine relevant records and brought instant matter w/i ambit of Bd's *Montgomery Ward* decision; and there was no showing that violation was considered by arbitrator)

3367-8362-6000 Power to transfer or terminate operations

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3367-8362-6000—Cont.

The Liberal Market, Inc. 264 NLRB No. 109

(deferral to arbitral award under *Spielberg* which found that E had no obligation to bargain about decision to close its warehouse and garage operation and that it had not bargained in bad faith by failing to reveal contemplated closure during negotiations, held appropriate since arbitrator's resolutions were not repugnant to Act, especially in light of *First National Maintenance*)

Bay Shipbuilding Corp. 263 NLRB No. 166

(E's contention issuance of C alleging it unlawfully refused to apply bargaining agreement to Ees transferred to newly established department was contrary to policies of Act since U's rights might have been pursued through other proceedings including unit clarification and/or arbitration, rejected; E, having chosen to resolve matter itself, rather than by filing UC ptn, has violated Act if it took erroneous view as to unit and UC proceeding would not provide remedy for that violation, E has not requested deferral to arbitration, and U is not precluded from exercising its rights under Act by not proceeding to arbitration)

3367-8362-8000 Power to make unilateral changes in terms and conditions of employment

Ciba-Geigy Pharmaceuticals Division 264 NLRB No. 134

(deferral inappropriate where arbitrator determined that implementation of new Attendance Control Procedure was not inconsistent with contract terms because definition of such concepts as *recurring absences* resides with E where contract is silent, as arbitrator did not follow or consider Bd precedent, his reliance on silence ignores requirement of bargaining over contract changes involving mandatory subjects of bargaining, and new system of penalties, including discharge was not in contract and may violate Sec. 8(a)(5))

Navajo Freight Lines, Inc. 254 NLRB No. 166

(deferral of 8(a)(5) proceedings involving unilateral change in vacation pay to arbitrator's award holding that agreements between E and U were valid, not appropriate, where arbitrator specifically refused to permit U to litigate any ULP issues and stated that award was w/o prejudice to parties proceeding in any other forum to litigate such issues; contention that Bd's Suburban Motor Freight case is limited to arbitrator's awards dealing with discharge and discipline cases, rejected)

3367-8362-8006 Overtime pay

Westinghouse Electric Corporation JD-(ATL)-88-81

(no portion of instant proceeding alleging violations of Sections 8(a)(5), (4), (3) and (1) appropriate for deferral; E's alleged refusal to provide information to U (8(a)(5) was intimately connected with 8(a)(3) allegations and as such were inappropriate for deferral; charges of Sec. 8(a)(4) and (3) related to discharge of Ee where Bd no longer defers)

3367-8362-8012 Benefits

The Standard Oil Company (Ohio) 254 NLRB NO. 012

(dismissal of C recommended where Respondent's mtn to defer was meritorious because contract provided for binding arbitration and whether or not E could provide medical examinations w/o bargaining with U beforehand was matter of contract interpretation)

3367-8362-8021 Rules

Pet, Incorporated, Bakery Division 264 NLRB No. 166

(deferral appropriate since arbitrator's findings were consistent with Bd precedent and not repugnant to the Act; arbitrator found that E's new work rules were separate from the contract and did not conflict with it and that, since E had bargained in good faith to impasse, its implementation of work rules did not violate 8(a)(5); strike was therefore not ULP strike, and discharge of strikers for violating no-strike clause, not unlawful)

3367-8362-8039 Production quota

N.L.R.B. v. Safeway Stores, Inc. 622F.2d 425 (C.A. 9, 1980)

(Bd not required to defer to arbitrator's decision on grievability of Ees' transfers where sole issue presented to Bd was whether E had committed ULP by refusing to produce requested documents to defend its decision to transfer Ees)

3367-8362-8056 Vacation pay

Vesuvius Crucible Company 252 NLRB No. 179

(E's mtn to defer contract interpretation of accrued vacation pay for economic strikers denied as E's denial of pay is interference with basic statutory rights and warrants Bd's determination)

3367-8362-8060 Safety

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. 659 F.2d 830 (C.A. 7, Sept. 1981)

(binding arbitration provision covered disputes over safety where contract contained clause which provides that parties will cooperate in prevention of accidents and in protection and promotion of safety and health of Ees, though this clause, unlike others, did not specify fines or prescribe corrective action for their violations, nor was safety clause explicitly linked to arbitration procedure)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. 659 F.2d 830 (C.A. 7, Sept. 1981)

(presumption of arbitrability applies to safety disputes in same manner as it does to other areas of potential management-labor dispute)

3367-8362-8075 Change in job classifications

Maine Yankee Atomic Power Company 258 NLRB No. 112

(deferral inappropriate as to issue regarding E's unilateral creation of new position outside unit since E neither substantively nor adjectively raised proper defense for deferral under *Collyer*, where E at no time requested deferral of basic underlying issue whether disputed position was in or out of unit; and E did not raise issue of arbitration in its pleadings or at hearing but, instead, first raised it in its brief to ALJ; hence, since issue was not litigated at hearing, record evidence before Bd was insufficient for finding that deferral was warranted)

Caterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) 250 NLRB No. 089

(no deferral where issue were whether E violated its bargaining obligation by unilaterally implementing changes in transfer request system w/o bargaining with U, unlawfully discharged or suspended Ees for engaging in protected strike, and unlawfully terminated two of those Ees because of their official status in U)

3367-8362-8077 Change in movement of personnel

Caterpillar Tractor Co. v. N.L.R.B. 638 F.2d 140 (C.A. 7, Sept. 1981)

(Bd did not abuse its discretion by refusing to defer to grievance-arbitration procedure alleged unlawful discontinuance of Ees' right to request transfers involving down-grading, since Bd's determination that determinative issue required interpretation of Act rather mere contract interpretation, not unreasonable)

3367-8362-8083 Delays in payment of monthly bonus

N.L.R.B. v. Northeast Oklahoma City Manufacturing Company 631 F.2d 609 (C.A. 10, Sept. 1980)

(Bd properly refused to defer case involving E's allegedly unlawful unilateral delays in paying Ees monthly bonuses over 6 month period, and allegedly unlawful discharge of Ees for walking out in protest over such delays; ct analyzed Act to show why arbitration would not necessarily dispose of 8(a)(3) allegation, and stated that question as to whether 8(a)(5) violation, if found, rises to level of *serious* ULP requires interpretation of Act, not contract, and such determination is w/i exclusive province of Bd, not an arbitrator)

3367-8362-8085 Discontinuance of holiday bonus

Aeronca, Inc. 253 NLRB No. 026

(Bd did not defer to arbitration award which rejected U grievance concerning Christmas turkey bonus because bonus was not covered, or protected, by contract, since arbitrator had not addressed himself to ULP issue and his award was contrary to ULP decisions under the Act)

3367-8366 Union refusal to bargain

Local 1115, Joint Board, Nursing Home & Hospital Employees—Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) 248 NLRB No. 167

(U's mtn to defer 8(b)(3) C proceeding to arbitration award, denied, where arbitrator dealt solely with issue presented to him by ct's order, and did not consider whether award, and U's demand upon E to comply with award, violated 8(b)(3))

3367-8367 Contractual obligations

3367-8367-0100 Generally

Metro-Young Construction Company, A Division of Olson Construction Co., Inc. JD-(SF)-12-82

(filing action in U.S. District Court joining discharged Ee as respondent along with U and seeking order to compel arbitration of Ee's discharge as provided for in collective bargaining agreement, violative, as Ee has Sec. 7 right to seek vindication of his discharge with NLRB; E's lawsuit was coercive under Sec. 8(a)(1) and discriminatory under Sec. 8(a)(4) as Bd does not defer under *Collyer* charges filed under Sec. 8(a)(1) and (3))

3367-8367-1000 No-strike clause

United States Steel Corporation 264 NLRB No. 010

(Bd will not defer to arbitrators' award which is repugnant to Act, and here where arbitrator upheld suspension of sympathy striker for violating contractual no-strike clause deferral is inappropriate because Bd and cts have held that waiver of right to engage in sympathy strikes will not be inferred from general no strike clause and any waiver must be clear and unmistakable and there is no such evidence of waiver; moreover, under *doctrine of coterminous application* Bd and cts have refused to find sympathy strike to be encompassed in broad no-strike pledges)

3367-8367-1000—Cont.

Inland Steel Company **264 NLRB No. 015**

(no deferral to arbitrator's decision which held discharge of sympathy striker not violation of contract inasmuch as right to engage in sympathy strike had been waived by prior failure to contend broad no-strike clause did not encompass sympathy strikers. Notwithstanding arbitrator considered discharge possible violation of Act and his mode of analysis of cases not clearly repugnant to Act, evidence of bargaining history relied upon to substantiate waiver was insufficient as matter of law to warrant finding of waiver of statutory right since past failure to assert right does not foreclose assertion forever)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. **659 F.2d 830 (C.A. 7, Sept. 1981)**

(where safety issue is one that must be submitted to binding arbitration, obligation not to strike over matter is considered to be coterminus and any stoppage violates implied no-strike clause unless safety hazzard suddenly arose and presented immediate threat; i.e., *Washington Aluminum* situation)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. **659 F.2d 830 (C.A. 7, Sept. 1981)**

(2 requisites required for finding no-strike obligation; (1) contract imposes upon both parties duties of submitting to final and binding arbitration; and (2) matter is one which it has been agreed to will be covered by compulsory terminal arbitration)

3367-8367-2000 Discipline under 'just cause' provision

American Freight System, Inc. **264 NLRB No. 018**

(Bd refused to defer to grievance arbitration panel's decision, upholding Ee's discharge for refusing to drive truck which Ee reasonably believed to be unsafe, since statutory issue (ULP) was not resolved by arbitrator; contractual standard of *justified*, considered by arbitrators, may have conflicted with Ees' Section 7 rights and award did not resolve issue; legal standards employed to resolve contractual and statutory issues, even though factually congruous, are not identical)

3367-8367-3000 Discharge grievance under 'discriminatory and arbitrary treatment' provision

Nabisco, Inc. **JD-(SF)-34-82**

(no deference to arbitrator's award in C case where it was alleged that Ee suffered reprisal for having previously filed charge or gave testimony under Act, since resolution of such allegation *must* be left to Bd as mandated by Congress; grievant in arbitration sought to confine issues to those arising from collective bargaining agreement)

3367-8367-8500 Referral provision

Sachs Electric Company **248 NLRB No. 092**

(in case involving U's discriminatory refusal to acord qualified members of other Us placement on referral list, Bd declined to defer to arbitration award of appeals committee since issue framed by committee was not factually parallel to statutory issue herein)

3367-8367-9900 Other

ITT McDonnel and Miller, A Unit of Fluid Handling Division of International Telephone and Telegraph Corp. **JD-337-82**

(alleged unilateral modification of contract by prohibiting posting of grievances on E's bulletin boards, made available to U under contract, deferred, since allegation calls for interpretation of contract inasmuch as posted grievances were removed by E who decided U had no right under contract to post grievances, and such issue is one which may properly be deferred to arbitrator; while Bd has not approved deferral of 8(a)(1) and (a)(3), and 8(b)(1)(A) and 8(b)(2) allegations, it has approved deferral in cases involving 8(a)(5) and 8(b)(3) allegations with some exceptions)

3367-8383 Union coercion of employer in selection of representatives

Asbestos Workers Local Union No. 27, (Master Insulators Association, Inc.) **263 NLRB No. 118**

(determination of whether E-association representatives on Joint Apprenticeship Committee (JAC) are Sec. 8(b)(1)(B) collective-bargaining representatives is inappropriate for deferral where contract provides duties of JAC members which is to flesh out bargaining agreement by formulating, adopting and administering apprenticeship program; therefore members necessarily act as bargaining representatives and this determination is one of statutory construction and is determination properly made by Bd)

3367-8385 Status as 'employee' or 'supervisor'

Boston Cutting Die Company **258 NLRB No. 101**

(in UC proceeding, RD properly refused to defer to arbitration decision which found working foreman supervisory, since questions of representation, accretion and appropriate unit involve application of statutory policy rather than contract interpretation, and issue of working foreman's alleged supervisory status clearly falls w/i parameter of nondeferral to arbitration)

3367-8387 Other interference with Section 7 rights

Caterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) **250 NLRB No. [illegible]**

(no deferral where issue were whether E violated its bargaining obligation by unilaterally implementing changes in transfer request system w/o bargaining with U, unlawfully discharged or suspended Ees for engaging in protected strike, and unlawfully terminated two of those Ees because of their official status in U)

ITT McDonnel and Miller, A Unit of Fluid Handling Division of International Telephone and Telegraph Corp. **JD-337-82**

(alleged independent violation of 8(a)(1) by E's prohibition against posting of grievances on E's bulletin boards, made available to U under contract, deferred to arbitration; while under certain circumstances, E commits ULPs if he removes notices from bulletin board where notices meet his *rule or standards*, here there was no way to measure such standards except by reference to contract; prior nonposting of grievances suggests E's rule did not permit it; there was no evidence of hostility to U or filing of grievances; and deferral will not undermine any statutory interests)

3367-8387-2500 Use of bulletin board

N.L.R.B. v. Container Corporation of America **640 F.2d 1213 (C.A. 6, May 1981)**

(deferral inappropriate where issue was not construction of ambiguous contract provision, but was Ees' Sec. 7 right to post, on plant bulletin board, notices related to official U business)

3367-8387-5000 Union discipline of employee member

Musicians Union Local 47, etc. (American Broadcasting Company, etc.) **255 NLRB No. 065**

(issue of deferral to arbitration held not presented or applicable where U allegedly unlawfully withheld member's paycheck, transmitted by E through U, for failing to pay dues; Collier doctrine applies to disputes arising under bargaining agreements between Es and Us, and there was no showing that member's dispute with U could have been resolved under agreement; Act provides that Bd's power to prevent ULPs shall not be affected by any other means of adjustment or prevention; and Bd has not adopted policy of deferral for exhaustion of internal disputes resolution procedures between Us and their members)

Hospital and Institutional Workers Union, Local 250, SEIU, AFL-CIO (Associated Hospitals of The East Bay) **254 NLRB No. 103**

(deferral to arbitration inappropriate in cases alleging violations of Section 8(b)(1)(A))

5000 CESSION OF JURISDICTION TO STATE OR TERRITORIAL AGENCIES

6700 EFFECT OF OTHER STATUTES

6712 BANKRUPTCY ACT

Adams Delivery Service, Inc. **JD-(SF)-275-81**

(bankrupt E's application for removal of backpay proceeding to bankruptcy court found ineffective due to exemption of Bd proceedings from removal statute as action of governmental unit in exercise of its regulatory powers; in absence of precedents under removal statute, ALJ based his holding on BD and court decisions involving statutory provisions which contained essentially identical language, namely automatic stay provisions of bankruptcy code)

6737 RAILWAY LABOR ACT

DHL Corporation **260 NLRB No. 012**

(ptn dismissed and jurisdiction not asserted over corporation engaged in transportation by air of mail and other time-sensitive commodities where Bd was advised by the National Mediation Board that it is of the opinion that corporation is carrier w/i scope of Title II of the Railway Labor Act)

Local 295, Teamsters (Emery Air Freight Corporation) **258 NLRB No. 135**

(U's contention that dispute between 2 Us is so related and controlled by common carrier w/i meaning of RLA that RLA jurisdiction will be asserted, rejected as relationship herein is that of shipper by air pursuant to contract as E does not, though it owns, operate aircraft for forwarding freight, rather it either uses charter airlines or utilizes regularly scheduled commercial airlines to transport freight and employs no pilots)

Emery Air Freight Corporation **JD-(NY)-36-81**

(U's intention that RLA has jurisdiction rejected, as E is air freight forwarder, did not operate aircraft and separate carrier retains full control over flight operations, loading, unloading, fueling and maintenance; fact that E owns aircraft maintained by another carrier at another airport or that e recently held but never used CAB certificate authorizing it to engage in all air cargo services was of no significance)

6750 FAIR LABOR STANDARDS ACT

6750—Cont.

Barrentine et al. v. Arkansas-Best Freight System, Inc., et al. **450 US 728 (U.S. SCt. Apr. 1981)**
(not all disputes between Ee and his E are suited for binding resolution in accordance with procedures established by collective bargaining; while cts should defer to arbital decision where Ee's claim is based on rights arising out of collective-bargaining agreement, different considerations apply where Ee's claim is based on rights arising out of statute (FLSA) designed to provide minimum substantive guarantees to individual workers)

Margate Bridge Company **247 NLRB No. 205**
(Bd not bound by Labor's Wage and Hour Division classification of private toll bridge as non-retail establishment because Fair Labor Standards Act concerned with Es engaged in commerce while Bd's jurisdiction extends to Es *affecting commerce*)

6767 OSHA

Campbell Industries **JD-(SF)-106-81**
(deferral principles of neither *Spielberg* nor *Adolph Coors* applicable to proceeding initiated by Ee in his individual capacity and not through auspices of collective-bargaining agreement and there was no basis in record for concluding that in pursuing his rights in Federal OSHA matter and in State suit, Ee was designating those tribunals as final arbiters of question of whether E's failure to hire former Ee was discriminatory)

6777 TITLE VII OF THE CIVIL RIGHTS ACT

Frank Briscoe Inc. v. N.L.R.B. **637 F.2d 946 (C.A. 3, 1981)**
(where Bd finds that Ees engaged in protected concerted activity and E's refusal to reinstate is violative, fact that Ees may also have remedy under Title VII does not deprive Bd of jurisdiction)

6787 FREEDOM OF INFORMATION ACT

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. **441 U.S. 281 (S Ct US, 1979)**
(FOIA purely disclosure statute and petitioner not afforded private right of action to enjoin agency disclosures of material submitted by petitioner)

8300 LIMITATIONS ON DISCRETION IN EXERCISE OF JURISDICTION

8312-3500 Unit status

Dura-Vent Corporation **257 NLRB No. 083**
(mtn to defer case to arbitration process contained in contract denied, where issues in case go to scope of E'srecognition of U, statutory rights of Ees involved, and legal rights of E to undertake the actions it did; these matters are w/i special competence of Bd rather than arbitrator)

260 STANDARDS FOR ASSERTION OF JURISDICTION

0100 GENERALLY

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**

(fact that E, who operates private, nonprofit school, has relationship to foreign government which may place E under handicaps or even substantial hardship in bargaining held no reason for Bd to refuse jurisdiction)

0150 NOT-FOR-PROFIT EMPLOYERS SUBJECT TO STANDARDS ON SAME BASIS AS FOR-PROFIT EMPLOYERS

Institutional Food Services **258 NLRB No. 086**

(jurisdiction asserted over nonprofit corporation engaged in business of distribution and preparation of food primarily for cafeterias at secondary schools operated by Roman Catholic Archdiocese and which corporation annually purchases goods valued in excess of $50,000, originating indirectly from outside commonwealth; unlike *Catholic Bishop.*, 440 U.S. 490 (1979) Ees' work was not related to mission of Archdiocese to propogate its religious beliefs)

N.L.R.B. v. Southeast Association For Retarded Citizens, Inc., d/b/a Southeast Work Training Center **666 F.2d 428 (C.A. 9, Jan. 1982)**

(ct found no obvious unjust discrimination by Bd in exercising jurisdiction over nonprofit organization engaged in training handicapped people which would constitute sufficiently extraordinary circumstances for ct to intervene)

3300 COMPUTATION OF MONETARY VOLUME OF GOODS AND SERVICES

3320 MEASURE OF COMMERCE

3320-0100 Generally

Radio Free Europe/Radio Liberty, Inc. **262 NLRB No. 063**

(notwithstanding record did not establish any direct or indirect inflow of goods or services for non profit private corporation, receipt of 90 million dollar in year from U.S. Government demonstrates that E's operations have substantial impact on commerce, and establishes required statutory jurisdiction of this Bd)

David D. Sutherland d/b/a Musco Auto Painting and Body Work **249 NLRB No. 184**

(jurisdiction asserted over E engaged in business of performing body work and painting of automobiles notwithstanding E failed to meet Bd's income requirements for retail enterprises, since non-retail revenue of $51,874 derived from Es who themselves meet Bd's standards for Es affecting commerce; goods valued at $27,856 purchased by E directly from sources located outside E's state and goods valued at $27,710 purchased from suppliers located in E's state who themselves purchased goods directly from outside state, when added together, establish Bd's jurisdiction)

Margate Bridge Company **247 NLRB No. 205**

(when legal jurisdiction has been established and some relevant standard for assertion of jurisdiction has been met, immaterial that jurisdiction might be asserted under one of several different standards)

K.T.V.B., Inc. **JD-(SF)-53-81**

(discretionary gross volume standard for TV station is 100,000 dollars and statutory standard is usually satisfied by showing that broadcaster advertises national brand products or is member of interstate news service, not be interstate purchase of goods)

N.L.R.B. v. First Termite Control Co., Inc. **646 F.2d 424 (C.A. 9, May 1981)**

(enforcement denied where Bd failed to establish statutory jurisdictional requirement of interstate commerce (interstate business more than *de minimis* by admissible evidence)

3320-0137 Total business of employer

W. Q. T., Inc. **284 NLRB No. 098**

(jurisdiction not asserted over new E (not successor) where it had sales of $193,000 of which 2200 was direct out-of-state and all purchases made w/i state)

Greenlawn Funeral Home, Inc. **249 NLRB No. 141**

(in determining whether funeral home's gross revenues meet Bd's jurisdictional standards for retail enterprises revenues from *pre-need* sales deducted from its gross revenues since state law requires all *pre-need* income be held in trust until all contracted for services are provided or customer voids contract and requests refund)

3320-5000 Outflow

3320-5001 Generally

N.L.R.B. v. Southeast Association For Retarded Citizens, Inc., d/b/a Southeast Work Training Center **666 F.2d 428 (C.A. 9, Jan. 1982)**

(contention that Bd can only assert statutory jurisdiction when the enterprise directly sells or purchases goods out of state, rejected)

3320-5067 Indirect

Castle Instant Maintenance/Maid, Inc. **286 NLRB No. 029**

(jurisdiction asserted over nonretail enterprise providing janitorial maintenance services in excess of $50,000 to U.S. Maring Corps, since E's operations satisfied Bd's indirect outflow standards for nonretail enterprises)

3320-5067-2500 Goods and/or services

Southern Alleghenies Disposal Services, Inc. **256 NLRB No. 135**

(jurisdiction asserted over E that entered contract with city to provide city with garbage service, notwithstanding city is exempt from Bd's jurisdiction under Sec. 2(2) of Act where city's operations were of magnitude that Bd would assert jurisdiction if they were nonexempt, and E's sales of services to city are in excess of $50,000, and meet the indirect outflow standard)

3320-7500 Inflow

3320-7501 Generally

N.L.R.B. v. Southeast Association For Retarded Citizens, Inc., d/b/a Southeast Work Training Center **666 F.2d 428 (C.A. 9, Jan. 1982)**

(contention that Bd can only assert statutory jurisdiction when the enterprise directly sells or purchases goods out of state, rejected)

3320-7501-4800 Source of inflow

Mayar Marganroth and Jack Ferris, Co-Partners d/b/a The Leland; et al. **249 NLRB No. 159**

(supplies and equipment from entity previously found by Bd to be engaged in interstate commerce)

3320-7501-5000 Non-recurring capital expenditures

N.L.R.B. v. East Side Sanitation Service, Inc. **633 F.2d 217(T) (C.A. 6, 1980)**

(Bd did not abuse discretion in including non-recurring capital expediture for trucks when it applied non-retail standard of annual direct or indirect inflow or outflow of at least $50,000)

3320-7501-6700 Volume of inflow is immaterial

3320-7501-6750 'De minimis' affords a limiting test

N.L.R.B. v. First Termite Control Co., Inc. **646 F.2d 424 (C.A. 9, May 1981)**

(enforcement denied where Bd failed to establish statutory jurisdictional requirement of interstate commerce (interstate business more than *de minimis* by admissible evidence)

3320-7833 Direct

Clark & Hinojosa, Attorneys at Law, A Professional Corporation **247 NLRB No. 099**

(legal statutory jurisdiction asserted over professional corporation providing legal services where firm's direct *out-of-state* purchases together with its

3320-7533—Cont.

indirect purchases in commerce would reach $7,500. minimally when projected for 12 month period)

3320-7567 Indirect

Clark & Hinajosa, Attorneys at Law, A Professional Corporation **247 NLRB No. 089**
(legal statutory jurisdiction asserted over professional corporation providing legal services where firm's direct out-of-state purchases together with its indirect purchases in commerce would reach $7,500. minimally when projected for 12 month period)

Local No. 340, Electrical Workers (Warren B. Burgess, d/b/a AJR Electric) **JD-(SF)-165-80**
(jurisdiction asserted over electrical subcontractor performing services valued in excess of $50,000 during year for general contractor who met Bd's administrative jurisdictional standards on basis of *direct inflow*, therefore, sub-contractor met Bd's jurisdictional standard on basis of *indirect outflow*)

Nelson Electric, Gary C. Nelson, Inc. and Gary C. Nelson Electric v. N.L.R.B. **638 F.2d 965 (C.A. 6, Jan. 1981)**
(Bd properly asserted jurisdiction over electrical contractor since such E transacted sufficient business affecting commerce because it was member of multi-E association where E signed letter of assent expressly designating multi-E association as collective bargaining representative and did not withdraw according to time requirements specified in agreement; furthermore, E submitted payroll report to association after commencement of new bargaining agreement)

3320-7567-5000 Local purchases of supplies whose original source was outside of state

First Termite Control Co., Inc. **265 NLRB No. 200**
(where supplier purchased $1.5 million worth of lumber: 50% from w/i state and 50% outside state, and commingled the lumber, Bd held that E-respondent who purchased $20,000 worth of lumber met jurisdictional standard since reasonable to assume that portion of lumber E purchased that came from outside state was not *de minimis*. Bd had earlier held that purchases of $1,500 which travelled across state lines to their purchaser was not *de minimis*)

Institutional Food Services **258 NLRB No. 086**
(jurisdiction asserted over nonprofit corporation engaged in business of distribution and preparation of food primarily for cafeterias at secondary schools operated by Roman Catholic Archdiocese and which corporation annually purchases goods valued in excess of $50,000, originating indirectly from outside commonwealth; unlike *Catholic Bishop*, 440 U.S. 490 (1979) Ees' work was not related to mission of Archdiocese to propogate its religious beliefs)

Welfare, Pension and Vacation Funds, Blasters, Drillrunners and Miners Union Local No. 29, etc. **256 NLRB No. 170**
(jurisdiction asserted over U welfare, pension and vacation funds, and its trustees where funds annually received in excess of $50,000 for its services from contractor which purchased goods in excess of $50,000 from out of state suppliers; moreover Bd previously asserted jurisdiction over respondent funds in case which was enforced)

Michael Bohm Jr., d/b/a M & M Bohm and Associates **JD-638-81**
(jurisdiction asserted over refabrication contractor providing painting, wallpaper, and staining services for apartments, condominiums and townhouses for 2 managing companies where each had gross revenues in excess of 500,000 and one purchased $1,060 and other $5000 worth of goods from outside of state)

E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge **JD-498-81**
(jurisdiction asserted over two corporations and sole proprietorship constituting single E, where considered as single E, minimum gross retail sales volume is met through indirect inflow of natural originating outside of state totaling $4,000, thus providing sufficient nexus with interstate commerce to support jurisdiction over retail sales enterprise since amount involved not di minimus)

N.L.R.B. v. Perko's Enterprises, Inc. **661 F.2d 941(T) (C.A. 9, Sep. 1981)**

N.L.R.B. v. W. Carter Maxwell, dba Pioneer Concrete Co. **677 F.2d 699 (C.A. 9, 1981)**
(labor dispute found to *affect commerce* where E purchased $6,000 worth of goods originating in other states including $1,920 worth of cement from out-of-state suppliers and also by purchasing large insurance policies written with out-of-state companies through local agents; these purchases more than *de minimous* and support finding of jurisdiction)

3320-8700 Non-cooperating employer

World Evangelism, Inc. **261 NLRB No. 088**
(Bd asserted jurisdiction over E where in prior case involving same E it asserted jurisdiction and here failed to comply with subpoena duces tecum for its financial records and introduced no evidence to show its financial situation had changed since prior determination)

3340 PERIOD OF COMPUTATION

3340-0100 Generally

Seafarers International Union of North America, Pacific District, AFL-CIO, and Its Affiliates (American Pacific Container Lines, Inc. (AMPAC)) **252 NLRB No. 105**
(although charging party was not an E w/i meaning of Act at time of alleged ULPs under Bd's discretionary standards, by date of hearing it received gross revenues, from its interstate operations, in excess of $50,000, and thus it was appropriate for Bd to assert jurisdiction)

Sparkie's Special Delivery & Messenger Service, Inc. **247 NLRB No. 084**
(where successor-E allegedly committed ULPs soon after taking over predecessor-E's business, Bd declined jurisdiction over successor-E absent evidence that predecessor-E's business during any 12-month period satisfied an applicable jurisdictional standard, or that successor-E's partial business projected forward satisfied an applicable jurisdictional standard)

Marvin J. Schiff Trust R-501, Marvin J. Schiff, Trustee, d/b/a Nevada Palace Casino & Motor Inn **JD-(SF)-277-81**
(gross revenue for most recent or calendar year or for 12-month period immediately preceeding hearing rather than revenue for one month, week or day, measured to determine jurisdiction)

David D. Sutherland, d/b/a Maaco Auto Painting and Body Work v. N.L.R.B. **646 F.2d 1373 (C.A. 8, Apr 1981)**
(Bd properly asserted jurisdiction over auto painting and body repair shop under non-retail standards where company grossed over $50,000 from non-retail services provided to companys subject to Bd jurisdiction and it purchased over $50,000 worth of goods from points out-of-state; moreover, fact that owner had purchased company and had managed it for less than 1 year immaterial)

3340-5000 Projection from short period

Clark & Hinajosa, Attorneys at Law, A Professional Corporation **247 NLRB No. 089**

Sparkie's Special Delivery & Messenger Service, Inc. **247 NLRB No. 084**
(where successor-E allegedly committed ULPs soon after taking over predecessor-E's business, Bd declined jurisdiction over successor-E absent evidence that predecessor-E's business during any 12-month period satisfied an applicable jurisdictional standard, or that successor-E's partial business projected forward satisfied an applicable jurisdictional standard)

3360 ENTERPRISE WHOSE GOODS AND SERVICES ARE MEASURED

3340-3300 Integrated enterprise

Tulsa Yellow Cab Company, Inc. and Peoples Checker Cab Company, Inc. **247 NLRB No. 092**
(Bd lacked jurisdiction over two cab companies owned by members of same family where neither E had gross revenues exceeding $500,000 and Bd found no significant integration of enterprises to constitute both as joint Es)

3340-3333 Single employer

C. R. Adams Trucking, Inc., and Michael Cates **262 NLRB No. 067**
(jurisdiction asserted over 2 Es found to be joint Es herein though only one E met Bd's standards for assertion of jurisdiction)

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(full menu restaurant and fast food shop constitute single E which meets Bd's jurisdictional standards where fast food shop was sole stockholder of restaurant; one individual was president of fast food shop and vice-president and treasurer of restaurant as well as general manager of both food operations)

E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge **JD-498-81**
(jurisdiction asserted over two corporations and sole proprietorship constituting single E, where considered as single E, minimum gross retail sales volume is met through indirect inflow of natural originating outside of state totaling $4,000, thus providing sufficient nexus with interstate commerce to support jurisdiction over retail sales enterprise since amount involved not di minimus)

3340-3367 Particular industry or business

3340-3367-4200 Chain stores

Peninsula Association for Retarded Children and Adults **JD-(SF)-249-80**
(E subject to Bd's jurisdiction notwithstanding its operations are local in character as (1) it is retail store, part of interstate chain of stores and is integral part of chain, and (2) Bd had asserted jurisdiction over respondent in prior case)

3360-5000 Successor employer

International Technical Products Corporation, and its Subsidiary, Rel, Inc.; et al. **249 NLRB No. 183**
(jurisdiction asserted over successor E since it stipulated that earlier predecessor was found to be engaged in commerce w/i meaning of Act in prior Bd decision and that it is successor, having employed same complement of Ees and continued predecessor's operations in same manner and successor E did not contest Bd's jurisdiction over it)

Sparkie's Special Delivery & Messenger Service, Inc. **247 NLRB No. 084**
(where successor-E allegedly committed ULPs soon after taking over predecessor-E's business, Bd declined jurisdiction over successor-E absent evidence that predecessor-E's business during any 12-month period satisfied an applicable jurisdictional standard, or that successor-E's partial business projected forward satisfied an applicable jurisdictional standard)

3360-8400 Employer engaged in both exempt and nonexempt enterprises

Harborcreek School for Boys **249 NLRB No. 177**
(jurisdiction asserted over agency engaged in care and rehabilitation of socially and emotionally disturbed boys, which agency was founded, owned and controlled by Catholic Diocese; record showed that none of E's professional and support staff were required to have any particular religious background or that any Ee was directly or indirectly involved in teaching religious philosophy; school's operating income received from various governmental agencies; exercise of jurisdiction not violative of religion clause of first amendment to Constitution)

3380 SECONDARY BOYCOTT CASES

Longshoremen's Association, Local 1414, AFL-CIO (Occidental Chemical Co.) **261 NLRB No. 001**
(presence of foreign flagships did not invoke limitation of Bd's commerce jurisdiction delineated in SCt decisions which bar Bd from asserting jurisdiction over primary activity directed against foreign flagships and over secondary conduct inextricably intertwined with primary activity; in instant case, conduct was purely secondary since primary dispute was between U's and Russia because of Russia's invasion of Afghanistan, and no primary activity occurred concerning such dispute; instead, Us' action was wholly directed against parties having no involvement in or power to directly affect primary dispute)

Longshoremen's Association, Local 1414, AFL-CIO (Occidental Chemical Co.) **261 NLRB No. 001**
(presence of foreign flagships did not invoke limitations on Bd's commerce jurisdiction delineated in SCt decisions in which its major concern was that assertion of jurisdiction would interfere with maritime operations, principles of comity and international trade and relations; here, secondary activity did not affect internal affairs of foreign ships so as to implicate such matters; instead, assertion of jurisdiction protects ships' right to do business free from economic pressure by U engaged in dispute with another nation over latter's foreign policy)

3390 SERVICES INTIMATELY RELATED TO OPERATIONS OF EXEMPT ENTERPRISE

Teledyne Economic Development Co. **265 NLRB No. 153**
(jurisdiction asserted over E operating job corps center under contract with Department of Labor, where E recruits and hires staff, develops and maintains personnel management policies, maintains grievance procedure in which E has final decision, and remains responsible for hiring, firing, promotions, transfers, demotions, and other terms and conditions of employment subject only to broad outlines of DOL contract; E has broad discretion and control over day-to-day labor relations policies and practices, and fact that DOL retains final right of approval for bargaining agreement does not excuse E from duty to bargain)

Management and Training Corporation **265 NLRB No. 143**
(jurisdiction asserted over corporation operating job corps center under contract with Department of Labor in view of E's control over Ees and their wages, hours, and conditions of employment; E's lack of hiring authority for higher salaried Ees w/o DOL approval was not determinative of its authority to bargain with U nor was the degree of its contact with DOL in operating the center, since the issue was not DOL's means of assuring contract compliance but E's controlling labor relations sufficiently to enable it to bargain)

Florence Volunteer Fire Department, Inc. **265 NLRB No. 134**
(Bd asserted jurisdiction over E engaged in providing fire protection services, on contract basis for city, notwithstanding E's contention that it shared city's exemption under Sec. 2(2) of Act on grounds that city created E and that E performed municipal function for city, where E was separate entity from city, exercised almost complete autonomy over matters affecting its Ees' terms of employment and working conditions, and was capable of engaging in meaningful bargaining)

New York Medical College **263 NLRB No. 124**
(jurisdiction asserted over medical college, not-for-profit state corporation, as to professionals employed by college at affiliated hospitals where hospitals, through executive directors, who represented city and commissioner designated by county, had limited role with respect to college personnel and college retained sufficient control over terms and conditions of employment of its professionals to be capable of effective bargaining)

Montefiore Hospital and Medical Center **261 NLRB No. 082**
(Bd asserted jurisdiction over health service facility which was operated by medical center under contract with city to provide medical services for prison inmates, since not w/i political subdividison exemption of Act, notwithstanding certain limitations imposed by city, since medical center retained sufficient control over terms and conditions of employment at facility to be capable of effective bargaining)

Management Training Corporation (Formerly Thiokol Corporation) **261 NLRB No. 013**
(Bd will assert jurisdiction over job corps training centers operated for U.S. Department of Labor. See *The Singer Company,* 240 NLRB 965)

Faith-Center—WHCT Channel 18 **261 NLRB No. 011**
(Bd declined jurisdiction over non-profit church TV station where, notwithstanding fact that ten percent of station's programing was secular in nature solely to meet programing diversification requirements of F.C.C., station was operated to promote religious objectives of church and its broadcasting was *purely religious* activity carried on by religious institution or, at very least, constituted activity ancillary to church's religious objectives)

The Mental Health Association of North Central Massachusetts, Inc. d/b/a Herbert Lipton Community Mental Health Center **258 NLRB No. 005**
(mental health association did not share state's exempt political status under Sec. 2(2) of Act where immediate formulation of labor relations policies and procedures for Ees sought was function performed by association, association was exclusively responsible for hiring, firing, and disciplining its Ees, and association could negotiate and enter into agreement with representative of its Ees)

Moderate Income Management Company, Inc., and Marineview Housing Company No. 1 **256 NLRB No. 179**
(jurisdiction asserted over management company and owner-operator of low to moderate housing project, found herein to be joint Es; contrary to RD, Bd concluded Es do not share State's statutory exemption through NJHFA since Es control their labor relations policies and thus can engage in meaningful bargaining, where they promulgate and implement their labor relations policies w/o agency guidelines or approval, and agency reviews only their budget and mortgage repayment)

Southern Alleghenies Disposal Services, Inc. **256 NLRB No. 135**
(jurisdiction asserted over E that entered contract with city to provide city with garbage service, notwithstanding city is exempt from Bd's jurisdiction under Sec. 2(2) of Act where city's operations were of magnitude that Bd would assert jurisdiction if they were nonexempt, and E's sales of services to city are in excess of $50,000, and meet the indirect outflow standard)

Jacobo Marti & Sons, Inc. **255 NLRB No. 189**
(Bd asserted jurisdiction over E which was set up by Association composed of mainly Amish farmers to take raw milk furnished by farmers and process same into milk and cheese which Association sold and paid E percentage of profits; Association not church sanctioned or *church operated* but merely business corporation; E exclusively controls, disciplines, hires, fires and sets pay of its Ees, majority of whom are not Armish)

The Krebs School Foundation, Inc. **251 NLRB No. 187**
(jurisdiction asserted over institution providing special education to children with physical or mental disabilities, notwithstanding E's contention that federal district ct decision supported its argument that institution was exempt adjunct of state public school system, since Bd in prior decision had asserted jurisdiction over same institution and jurisdictional standard in district court case — whether defendent acted *under color of state law* — is based on entirely different considerations than is Bd's jurisdiction standards)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(jurisdiction asserted over nonprofit community action service corporation providing Head Start preschooling, legal and housing services and summer camping under Federal agency since it met commerce standards and had sufficient control of employment conditions to bargain with its Ees' representative, where w/i agency guidelines it hired, discharged, promoted and determined wages and working conditons of its Ees and was not their joint E with Federal agency)

Metro Ambulance Service, Inc. **249 NLRB No. 088**
(Bd asserted jurisdiction over corporation providing ambulance services for city, notwithstanding contention that control exercised over corporation's Ees and business affairs by city agency and related entities rendered corporation joint E with city and that corporation should share exemption of political subdivision, since corporation's relationship with city agency and related entities was essentially contractual, and corporation retained virtually full control over wages, hours of employment and working conditions)

3390—Cont.

Jacobo Marti & Sons, Inc. v. N.L.R.B. **676 F.2d 975 (C.A. 3, Apr. 1982)**

(Bd properly asserted jurisdiction over E who processes cheese from milk supplied by cooperative controlled by Amish farmers who oppose Us as matter of religious belief where ct held, contrary to E, that E was not exempt on First Amendment grounds since E failed to show that such governmental obligation to be imposed *interferes with the Free Exercise rights of the Amish;* moreover, Bd decision alternately sustained where E is in fact an independent organization that controls its own Ee relationship)

Jacobo Marti & Sons, Inc. v. N.L.R.B. **676 F.2d 975 (C.A. 3, Apr. 1982)**

(Bd lacks jurisdiction to pass on constitutional questions but must be especially sensitive when confronted with First Amendment free exercise objections)

Crenshaw Memorial Hospital Association, Inc. v. N.L.R.B. **668 F.2d 243 (C.A. 6, Jan. 1982)**

(Bd properly asserted jurisdiction over private, nonprofit hospital which operates facilities leased from city as municipal general hospital; administrators are not *responsible* to public officials; moreover fact that all citizens of city as members of corporation and eligible to vote for Board of Directors not determinative where Directors are not responsible by law to citizens since no city or local laws govern formation or operation of hospital but only by corporation's constitution which is subject to change and in addition hospital has full control of labor relations of its Ees)

Museum Associates d/b/a Los Angeles County Museum of Art v. N.L.R.B. **688 F.2d 1278 (C.A. 9, Sept. 1982)**

(ct affd Bd order to bargain where ct could not find that Bd had no foundation in evidence for its determination that Art Museum had sufficient control over labor relations to allow for meaningful bargaining to warrant exercising jurisdiction under Act nor could ct say that Bd acted contrary to law; E's contention that it was exempt from Act because it was substantially controlled by county so it could neither bargain meaningfully nor implement effectively contract with U rejected; however, ct noted that if county takes over funding for unit Ees as contended, E would be free to reapply to Bd)

Zapex Corporation and BDM Services Company v. N.L.R.B. **621 F.2d 328 (C.A. 9, 1980)**

(jurisdiction asserted where E, under terms of cost-plus-fee contract with Army, retained *substantial control* over such bargaining subjects as hiring, discharging, wages, hours, grievance proceedings, and other terms of employment, and allowed to negotiate collective bargaining agreements, notwithstanding Army wielded *some* influence over wages, promotions, discharges, set dress code and Ees used army facilities)

Board of Trustees of The Memorial Hospital of Fremont County Wyoming, A Political Subdivision of The State of Wyoming v. N.L.R.B. **624 F.2d 177 (C.A. 10, 1980)**

(where lease agreement between Trustees, who are exempt from Act, and Hospital provided that Hospital could not engage in collective bargaining Bd does not retain jurisdiction over Hospital for government subdivision's control over labor relations leaves Hospital unable to engage in meaningful collective bargaining)

3395 CONTROL OVER LABOR RELATIONS BY EXEMPT ENTERPRISE

Educational & Recreational Services, Inc. d/b/a Associated Charter Bus Co., Las Virgenes Division **263 NLRB No. 135**

(Bd declined jurisdiction over E primarily engaged in supplying school bus transportation and related public services for students of School District, where School District not only had considerable authority over E's operations by virtue of express language of parties' agreement but also exercised extensive control over wages, benefits, hiring, termination, discipline, supervision, and work assignments of E's bus drivers; Bd noted that District had substantial control over E's labor relations of at least substantial segment of unit sought, and was joint E of E's Ees)

Fargo, Inc. **263 NLRB No. 101**

(jurisdiction declined over nonprofit corporation providing residential mental health care and vocational day care for mentally retarded adults as it shares with State exemption under Sec. 2(2) in view of state's retention of substantial control over Ees' wages, benefits, hiring and working conditions through funding budget reviews, and close monitoring of E's operations; contract in which salaries, client/staff ratio, client selection and treatment, etc., are specified, must conform to court consent decree to which State is bound)

Wordsworth Academy **262 NLRB No. 043**

(E operating private school participating in State educational plan for children with learning disabilities held not exempt from Bd's jurisdiction as adjunct to public school system, since no reason exists for applying adjunct test herein and thereby treating schools differently from other Es having close ties with exempt entity; same reasons for Bd's rejection test set forth in *National Transportation* compel similar result for adjunct test; and, henceforth, Bd shall rely on standard announced in *National Transportation* to determine whether to assert jurisdiction over Es with close ties to exempt entity)

Educational and Recreational Services, Inc., d/b/a Associated Charter Bus Company, San Bernardino Division **261 NLRB No. 028**

(Bd precluded from asserting jurisdiction over E primarily engaged in providing school bus transportation to, Unified School District, in view of District's authority over E's operations by virtue of express language in contract between E and District and in (E's) drivers' handbook; established operational practices at E's terminal conclusively demonstrated that District exercised extensive control over wages, benefits, hiring, discipline, supervision and work assignments of E's Ees; District joint E of E's Ees)

Local 701, International Brotherhood of electrical Workers (The University of Chicago d/b/a Argonne National Laboratory) **255 NLRB No. 148**

(jurisdiction asserted over E operating facility funded by Department of Energy where DOE determines which work will be performed by E's Ees and therefore not covered under Davis-Bacon Act and work done by outside contractors which is covered under that Act, as E retains sufficient control over terms and conditions of employment to be capable of collective bargaining)

K.A.L. Leasing, Inc. **254 NLRB No. 145**

(jurisdiction asserted over E which contracted with school district to provide transportation for students, notwithstanding contention district exercised degree of control over labor relations policy of E which precluded E from engaging in meaningful bargaining in view of requirement that E obtain approval of district prior to employing or terminating any Ee or changing benefits, and E and district's joint grievance system; where wages and benefits not in contract, approval of hirings and firings essentially automatic and direct supervision by E grievance system designed to deal with complaints against drivers rather than Ee grievances and never utilized)

Community Action Program of Oklahoma City and County, Inc. **251 NLRB No. 016**

(Bd asserted jurisdiction over nonprofit social services corporation funded primarily by grants from city, state and Federal agencies where only control Federal agency exercised over labor relations was salary limitations while E had control over disciplinary actions, hiring, firing and setting initial salaries)

R. W. Harmon & Sons, Inc. **250 NLRB No. 025**

(jurisdiction asserted over contractor furnishing bus service to school district, notwithstanding contention that E was exempt school district because contractual provisions gave school board right to make changes in routing, request transfer of drivers, require insurance and safety guidelines, and dismiss drivers it felt not qualified to operate bus, where contractor retained control over hiring, discharge, rates of pay, fringe benefits, grievances, assignment of drivers to routes, hours, and contract provided that company was independent contractor; *local in character* test rejected)

Soy City Bus Services, Division of R. W. Harmon & Sons, Inc. **249 NLRB No. 167**

(jurisdiction asserted over E that contracted with school district for bus services; Bd rejected contention that jurisdiction should not be asserted since bus service local-in-character; inasmuch as Bd no longer applies local-in-character test to educational institutions but instead employs *degree-of-control* test)

Metro Ambulance Service, Inc. **249 NLRB No. 008**

(Bd asserted jurisdiction over corporation providing ambulance services for city, notwithstanding contention that control exercised over corporation's Ees and business affairs by city agency and related entities rendered corporation joint E with city and that corporation should share exemption of political subdivision, since corporation's relationship with city agency and related entities was essentially contractual, and corporation retained virtually full control over wages, hours of employment and working conditions)

N.L.R.B. v. Newtown Corporation **671 F.2d 219 (C.A. 6, Feb. 1982)**

(Bd properly asserted jurisdiction over E who operates solid waste transfer station pursuant to five-year contract with county government where county has no input regarding wages, holidays or other benefits and E retains sole responsibility for hiring, firing, assigning work and settling grievances—thus retaining sufficient control over its labor relations to engage in meaningful collective bargaining)

N.L.R.B. v. Chicago Youth Centers **616 F.2d 1028 (C.A. 7, 1980)**

(public agency has control over funding, job classification and compensation, and other terms and conditions of employment of head start program run by private agency; thus public and private agencies are joint-Es and private agency shares exemption of public agency under Sec. 2(2) of Act from Bd jurisdiction)

6700 STANDARDS APPLICABLE TO SPECIFIC TYPES OF ENTERPRISES

6736 NATIONAL DEFENSE

6736-5000 Substantial impact on national defense

Castle Instant Maintenance/Maid, Inc. 256 NLRB No. 029
(janitorial maintenance services performed for U.S. Marine Corps were sufficient to have substantial impact on national defense w/i meaning of Bd's discretionary guidelines for asserting jurisdiction)

Pentagon Barber Shop, Inc. 255 NLRB No. 165
(jurisdiction *not* asserted over barbershop in concourse of Pentagon building, since E's operations did not satisfy Bd's retail standard for jurisdiction nor did they exert substantial impact on national defense; shop easily accessible to public and numerous other barbershops available to Pentagon Ees in local vicinity)

6744 NONRETAIL ENTERPRISES

Castle Instant Maintenance/Maid, Inc. 256 NLRB No. 029
(jurisdiction asserted over nonretail enterprise providing janitorial maintenance services in excess of $50,000 to U.S. Maring Corps, since E's operations satisfied Bd's indirect outflow standards for nonretail enterprises)

6750 DAY CARE CENTERS

Rebecca Blaylock Nursery School, Inc. 260 NLRB No. 195
(although ptn for Advisory Opinion was not proper procedure for reconsideration by Bd of its standard for day care centers, Bd determined that it would not reconsider *at this time* its $250,000 jurisdictional standard)

Aid For The Retarded, Inc. 256 NLRB No. 106
(day care centers standard for assertion of jurisdiction by Bd is gross annual revenue of $250,000)

N.L.R.B. v. St. Louis Christian Home 663 F.2d 60 (C.A. 8, Nov. 1981)
(jurisdictional standard for day care centers is $250,000 in gross annual revenues; thus where home for battered, abused and neglected children gross income exceeded $600,000, Bd properly asserted jurisdiction notwithstanding Home purchased all its supplies from in-state merchants where it also paid $16,000 to companies providing telephone and electrical service who engaged in interstate commerce for as little as $2,000 has been held to be sufficient)

Golden Day Schools, Inc. v. N.L.R.B. 644 F.2d 834 (C.A. 9, May 8, 1981)
(prior cases to contrary, test for whether proprietary child-care facility is subject to Bd's jurisdiction is *whether E has sufficient control over employment conditions of its Ees to enable it to bargain with labor organization which represents them*)

Golden Day Schools, Inc. v. N.L.R.B. 644 F.2d 834 (C.A. 9, May 8, 1981)
(Bd's determination, that E met $250,000 standard for exercising jurisdiction over *day-care center* rather than $1,000,000 standard for *educational institutions* will not be set aside *in the absence of extraordinary circumstances, such as unjust discrimination*)

6756 HOSPITALS

Crestline Memorial Hospital Association, Inc. v. N.L.R.B. 668 F.2d 243 (C.A. 6, Jan. 1982)
(Bd properly asserted jurisdiction over private, nonprofit hospital which operates facilities leased from city as municipal general hospital; administrators are not *responsible* to public officials; moreover fact that all citizens of city as members of corporation and eligible to vote for Board of Directors not determinative where Directors are not responsible by law to citizens since no city or local laws govern formation or operation of hospital but only by corporation's constitution which is subject to change and in addition hospital has full control of labor relations of its Ees)

6758 CLINICS AND OTHER HEALTH CARE INSTITUTIONS

Keyway, A Division of Phase Inc. 263 NLRB No. 172
(jurisdiction asserted over nonprofit E providing service involving prevention and treatment of drug abuse, alchoholism and domestic violence. E's revenues last year were $482,597, of which, $299,322 were derived from Federal sources. This satisfies Bd's discretionary jurisdictional standard of $250,000 in gross revenues for health care institutions and legal jurisdiction need not be established by proof of direct or indirect inflow of goods or services where record establishes that greatest portion of E's revenues derive from Federal sources under nationally administered programs. Transfer of succh funds across state lines constitute commerce)

6764 RADIO, TELEVISION, TELEGRAPH, AND TELEPHONE COMPANIES

K.T.V.B., Inc. JD-(SF)-53-81
(discretionary gross volume standard for TV station is 100,000 dollars and statutory standard is usually satisfied by showing that broadcaster advertises national brand products or is member of interstate news service, not be interstate purchase of goods)

6776 RETAIL ENTERPRISES

Nordstrom's Ambulance Service, Inc. and Atlantic Ambulance Service, Inc. 251 NLRB No. 137
(retail standard applicable to E's ambulance service operation, where overwhelming majority of E's gross revenue is derived from services to individual patients rather than institutions to or from which they are being transported, E has no contract with any institution for its services, and fact that payment for services to individuals is by third parties such as insurance companies or state welfare agencies does not transform such activity into nonretail sales; E's revenue which is arguably derived from institutions is *de minimis* as compared to revenues from individual patients)

280 ENTERPRISES OVER WHICH THE BOARD DID OR DID NOT ASSERT JURISDICTION

0100 AGRICULTURAL PRODUCTION - CROPS

0200 AGRICULTURAL PRODUCTION - LIVESTOCK

0700 AGRICULTURAL SERVICES

0800 FORESTRY

0900 FISHING, HUNTING, AND TRAPPING

1000 METAL MINING

1090 MISCELLANEOUS METAL ORES

Atlas Minerals, Division of Atlas Corporation **256 NLRB No. 022**
(uranium mining company's mtn to dismiss C on ground its allegations were w/i exclusive jurisdiction of Mine Safety and Health Administration and beyone jurisdiction of Bd, denied, since nothing in Mine Safety Act deprives Bd of its general power, set forth in Sec. 10(a) of NLRA, to prevent ULPs affecting commerce, which shall not be affected by any other means of adjustment or prevention that has been established by agreement, law, or otherwise; and ALJ herein is not empowered to determine if C should have issued, but only to determine if its allegations have merit)

1100 ANTHRACITE MINING

1200 BITUMINOUS COAL AND LIGNITE MINING

1300 OIL AND GAS EXTRACTION

1400 MINING AND QUARRYING OF NONMETALLIC MINERALS, EXCEPT FUELS

1500 BUILDING CONSTRUCTION - GENERAL CONTRACTORS AND OPERATIVE BUILDERS

1600 CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION - GENERAL CONTRACTORS

1700 CONSTRUCTION - SPECIAL TRADE CONTRACTORS

1720 PAINTING, PAPER HANGING, AND DECORATING

Michael Behm Jr., d/b/a M & M Behm and Associates **JD-638-81**
(jurisdiction asserted over refabrication contractor providing painting, wallpaper, and staining services for apartments, condominiums and townhouses for 2 managing companies where each had gross revenues in excess of 500,000 and one purchased $1,000 and other $5000 worth of goods from outside of state)

2000 FOOD AND KINDRED PRODUCTS

2100 TOBACCO MANUFACTURES

2200 TEXTILE MILL PRODUCTS

2300 APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS

2400 LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE

2500 FURNITURE AND FIXTURES

2600 PAPER AND ALLIED PRODUCTS

2700 PRINTING, PUBLISHING, AND ALLIED INDUSTRIES

2800 CHEMICALS AND ALLIED PRODUCTS

2900 PETROLEUM REFINING AND RELATED INDUSTRIES

3000 RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS

3100 LEATHER AND LEATHER PRODUCTS

3200 STONE, CLAY, GLASS, AND CONCRETE PRODUCTS

3300 PRIMARY METAL INDUSTRIES

3400 FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT

3500 MACHINERY, EXCEPT ELECTRICAL

3600 ELECTRICAL AND ELECTRONIC MACHINERY, EQUIPMENT, AND SUPPLIES

3700 TRANSPORTATION EQUIPMENT

3800 MEASURING, ANALYZING, AND CONTROLLING INSTRUMENTS; PHOTOGRAPHIC, MEDICAL, AND OPTICAL GOODS; WATCHES AND CLOCKS

3900 MISCELLANEOUS MANFACTURING INDUSTRIES

4000 RAILROAD TRANSPORTATION

4040 RAILWAY EXPRESS SERVICE

Missouri-Illinois Central Industries, Limited **252 NLRB No. 143**
(Bd did not assert jurisdiction over E engaged in freight handling services to various common carriers engaged in interstate commerce where *National Mediation Board* found activities of E and Ees performing such activities were subject to the *Railway Labor Act*)

4100 LOCAL AND SURBURBAN TRANSIT AND INTERURBAN HIGHWAY PASSENGER TRANSPORTATION

4110 LOCAL AND SUBURBAN PASSENGER TRANSPORTATION

4110—Cont.

Nordstrom's Ambulance Service, Inc. and Atlantic Ambulance Service, Inc. **251 NLRB No. 137**
(having concluded that retail standard applies to E's ambulance service operation, Bd declined jurisdiction over E since its annual gross revenues were well below the $500,000 retail standard)

Metro Ambulance Service, Inc. **249 NLRB No. 008**
(Bd asserted jurisdiction over corporation providing ambulance services for city, notwithstanding contention that control exercised over corporation's Ees and business affairs by city agency and related entities rendered corporation joint E with city and that corporation should share exemption of political subdivision, since corporation's relationship with city agency and related entities was essentially contractual, and corporation retained virtually full control over wages, hours of employment and working conditions)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(jurisdiction asserted over E engaged in transportation of airline passengers between hotels and airport where E derived revenue in excess of $50,000 from its operations and satisfied jurisdictional tests as *link* in interstate commerce)

4120 TAXICABS

Tulsa Yellow Cab Company, Inc. and Peoples Checker Cab Company, Inc. **247 NLRB No. 092**
(Bd lacked jurisdiction over two cab companies owned by members of same family where neither E had gross revenues exceeding $500,000 and Bd found no significant integration of enterprises to constitute both as joint Es)

4150 SCHOOL BUSSES

Educational & Recreational Services, Inc. d/b/a Associated Charter Bus Co., Las Virgenes Division **263 NLRB No. 135**
(Bd declined jurisdiction over E primarily engaged in supplying school bus transportation and related public services for students of School District, where School District not only had considerable authority over E's operations by virtue of express language of parties' agreement but also exercised extensive control over wages, benefits, hiring, termination, discipline, supervision, and work assignments of E's bus drivers; Bd noted that District had substantial control over E's labor relations of at least substantial segment of unit sought, and was joint E of E's Ees)

Educational and Recreational Services, Inc., d/b/a Associated Charter Bus Company, San Bernardino Division **261 NLRB No. 055**
(Bd precluded from asserting jurisdiction over E primarily engaged in providing school bus transportation to Unified School District, in view of District's authority over E's operations by virtue of express language in contract between E and District and in (E's) drivers' handbook; established operational practices at E's terminal conclusively demonstrated that District exercised extensive control over wages, benefits, hiring, discipline, supervision and work assignments of E's Ees; District joint E of E's Ees)

K & E Bus Lines, Inc. **255 NLRB No. 137**
(Bd will no longer use *intimate connection* test for ascertaining whether its assertion of jurisdiction over E with association with exempt entity but rather whether E has sufficient control over employment conditions of its Ees to enable it to bargain with U as representative)

K & E Bus Lines, Inc. **255 NLRB No. 137**
(Bd asserted jurisdiction over E majority of whose business was performed pursuant to contract with school district since E retained sufficient control over employment conditions to bargain effectively, notwithstanding contract provided that school district determined bus routes and schedules, prescribed rules of conduct for students on buses, reserved right to recommend hiring and dismissal of drivers, and provided contractor will work under direct supervision of school official, inasmuch as contract did not confer on school district right to supervise Ees; nor were regulations in state school bus manual so restrictive as to preclude bargaining)

K.A.L. Leasing, Inc. **254 NLRB No. 145**
(jurisdiction asserted over E which contracted with school district to provide transportation for students, notwithstanding contention district exercised degree of control over labor relations policy of E which precluded E from engaging in meaningful bargaining in view of requirement that E obtain approval of district prior to employing or terminating any Ee or changing benefits, and E and district's joint grievance system; where wages and benefits not in contract, approval of hirings and firings essentially automatic and direct supervision by E grievance system designed to deal with complaints against drivers rather than Ee grievances and never utilized)

R. W. Harmon & Sons, Inc. **250 NLRB No. 025**
(jurisdiction asserted over contractor furnishing bus service to school district, notwithstanding contention that E was exempt school district because contactual provisions gave school board right to make changes in routing, request transfer of drivers, require insurance and safety guidelines, and dismiss drivers it felt not qualified to operate bus, where contractor retained control over hiring, discharge, rates of pay, fringe benefits, grievances, assignment of drivers to routes, hours, and contract provided that company was independent contractor; *local in character* test rejected)

Soy City Bus Services, Division of R. W. Harma n & Sons, Inc. **249 NLRB No. 167**
(jurisdiction asserted over E that contracted with school district for bus services; Bd rejected contention that jurisdiction should not be asserted since bus service local-in-character; inasmuch as Bd no longer applies local-in-character test to educational institutions but instead employs *degree-of-control* test)

R. W. Harmon & Sons, Inc. v. N.L.R.B. **664 F.2d 248 (C.A. 10, Nov. 1981)**
(Bd properly asserted jurisdiction over E providing school bus transportation service to school districts in 2 states, notwithstanding contention that because E's business is essentially local in character its labor activities do not affect interstate commerce; Bd may regulate any business engaged in interstate commerce, or if essentially local in nature, if its activities affect interstate commerce; and E's annual revenues of more than $16,000,000 from 9-state operation and purchases of thousands of dollars of goods for use in its business activities in 2 states herein clearly bring E w/i Bd's statutory jurisdiction)

R. W. Harmon & Sons, Inc. v. N.L.R.B. **664 F.2d 248 (C.A. 10, Nov. 1981)**
(Bd properly asserted jurisdiction over E providing school transportation to shcool districts, notwithstanding contention that school districts are exempt from Bd's jurisdiction, where E retained substantial control over basic bargaining subjects of wages, seniority, grievance procedures, and retirement plans; even if school districts exercised their authority to reject applicants or recommend dismissals, E still would control and could bargain over most employment conditions; and, while E cannot bargain about certain items, E controls wages and benefits concerning which it can engage in meaningful bargaining)

4200 MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING

Institutional Food Services **258 NLRB No. 066**
(jurisdiction asserted over nonprofit corporation engaged in business of distribution and preparation of food primarily for cafeterias at secondary schools operated by Roman Catholic Archdiocese and which corporation annually purchases goods valued in excess of $50,000, originating indirectly from outside commonwealth; unlike *Catholic Bishop*, 440 U.S. 490 (1979) Ees' work was not related to mission of Archdiocese to propogate its religious beliefs)

4210 TRUCKING, LOCAL AND LONG DISTANCE

Jimmy Kilgore Trucking Company **254 NLRB No. 112**
(jurisdiction asserted over trucking company, hauling coal exclusively for mining company, where former annually received in excess of $50,000 for hauling services, of direct and indirect outflow nature, performed for mining company, itself an E meeting Bd's direct inflow standard)

4400 WATER TRANSPORTATION

4500 TRANSPORTATION BY AIR

4510 AIR TRANSPORTATION, CERTIFICATED CARRIERS

DHL Corporation **260 NLRB No. 012**
(ptn dismissed and jurisdiction not asserted over corporation engaged in transportation by air of mail and other time-sensitive commodities where Bd was advised by the National Mediation Board that it is of the opinion that corporation is carrier w/i scope of Title II of the Railway Labor Act)

4580 FIXED FACILITIES AND SERVICES RELATED TO AIR TRANSPORTATION

Elliott Flying Service, Inc. **260 NLRB No. 068**
(Bd did not assert jurisdiction over E engaged in operation of air charter and taxi service, as well as in selling and servicing of Beechcraft aircraft, training of pilots, providing of pilots for owners of small aircraft, and providing of fueling and emergency aircraft maintenance for an airline, since the National Mediation Board advised Bd that E was subject to provisions of Railway Labor Act)

ARA Environmental Services, Inc. **260 NLRB No. 011**
(Bd set aside election where National Mediation Board advised Bd that activities and Ees of E who provided cleaning and security services to airline were subject to Railway Labor Act and thus properly w/i jurisdiction of National Mediation Board in view of nature of activities performed by E and degree of control exercised by airline)

Ground Services, Inc. **[illegible] NLRB No. [illegible]**
(Bd refused to assert jurisdiction over corporation engaged in business of providing ground or fleet service to air carriers and other enterprises where

4580—Cont.

National Mediation Board advised that corporation and its Ees were subject to the Railway Labor Act in view of nature of activities and control exercised by air carriers)

Air Cleveland, Inc. **253 NLRB No. 059**
(ptn of Ees of E engaged in providing certain ground services to air carrier dismissed, since National Mediation Board, by request of Bd, determined that E was w/i scope of *Title II of the Railway Labor Act*)

Mercury Service, Inc.; Mercury Refueling, Inc.; and Crew Transit **253 NLRB No. 057**
(jurisdiction not asserted over E engaged in providing support services for international air carriers where Bd advised by National Medication Board that Es activities and Ees performing activities were subject to Railway Labor Act)

4600 PIPE LINES, EXCEPT NATURAL GAS

4700 TRANSPORTATION SERVICES

4710 FREIGHT FORWARDING

Emery Air Freight Corporation **JD-(NY)-36-81**
(jurisdiction asserted over E engaged in business of air freight forwarder who charters aircraft for its exclusive use during portion of each day, as E did not itself operate aircraft and separate air carrier retains full control over flight operation, loading, unloading, fueling and maintenance)

Emery Air Freight Corporation **JD-(NY)-36-81**
(jurisdiction asserted over E engaged in providing baggage and cargo handling services, janitorial services, etc., to airline industry)

4800 COMMUNICATION

4830 RADIO AND TELEVISION BROADCASTING

Musicians Union Local 47, etc. (American Broadcasting Company, etc.) **255 NLRB No. 065**
(operations of company engaged in radio and television broadcasting held of sufficient magnitude for assertion of jurisdiction, where during 12-month period before hearing company derived gross revenues in excess of $500,000 and, through its division involved herein, received services valued in excess of $50,000; 12-month period embraced period covering commission of ULP and date on which charge was filed, and there was no assertion that company's operations during other periods differed from those occurring during pre-hearing 12-month period)

4900 ELECTRIC, GAS, AND SANITARY SERVICES

4950 SANITARY SERVICES

Florida Cities Water Company **247 NLRB No. 111**
(jurisdiction asserted over investor-owned, for profit, private water and sewer utility company operating pursuant to state franchise notwithstanding it is subject to various regulations by State, where it has sufficient control over Ees' working conditions to enable it to bargain meaningfully with U)

N.L.R.B. v. Newtown Corporation **671 F.2d 219 (C.A. 6, Feb. 1982)**
(Bd properly asserted jurisdiction over E who operates solid waste transfer station pursuant to five-year contract with county government where county has no input regarding wages, holidays or other benefits and E retains sole responsibility for hiring, firing, assigning work and settling grievances--thus retaining sufficient control over its labor relations to engage in meaningful collective bargaining)

5000 WHOLESALE TRADE - DURABLE GOODS

5100 WHOLESALE TRADE - NONDURABLE GOODS

5200 BUILDING MATERIALS, HARDWARE, GARDEN SUPPLY, AND MOBILE HOME DEALERS

5300 GENERAL MERCHANDISE STORES

5400 FOOD STORES

5500 AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS

5600 APPAREL AND ACCESSORY STORES

5700 FURNITURE, HOME FURNISHINGS AND EQUIPMENT STORES

5800 EATING AND DRINKING PLACES

5810 EATING AND DRINKING PLACES

Tavern Owners, Inc., d/b/a The Lighthouse Restaurant **251 NLRB No. 130**
(Bd did not assert jurisdiction over tavern and restaurant enterprise where annual gross volume of business is less that $200,000 and business is not subject to interstate inflow or outflow standard)

Hotel Employees Union Local 471 (Arasers, Inc.) **JD-361-82**
(after remand to ALJ for purpose of receiving evidence on jurisdiction and receipt into evidence of affidavit of E's vice-president stating that E provided food services at 78 tracks, stadiums and sports arenas in several states, Bd asserted jurisdiction)

N.L.R.B. v. Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **646 F.2d 706 (C.A. 1, Apr 1981)**
(enforcement granted, notwithstanding contention Bd improperly exercised jurisdiction over two restaurant corporations, since ct upheld Bd's finding they were single E, and although one corporation's annual goss volume of business exceeded only $140,000, combined gross volume of both corporations met Bd's discretionary standard of $500,000 for retail establishments; even if Bd erred in factually finding corporations were single E, ct should not refuse to enforce Bd order for want of jurisdiction since *Bd has administrative discretion to disregard its own self-imposed jurisdictional yardstick*)

5900 MISCELLANEOUS RETAIL

6000 BANKING

6020 COMMERCIAL AND STOCK SAVINGS BANKS

State Bank of India **262NLRB No. 143**
(jurisdiction asserted over bank since it had no special status as instrumentality of Government of India insofar as American labor laws were concerned and did not come w/i exclusions provided for Sec. 2(2))

6100 CREDIT AGENCIES OTHER THAN BANKS

6200 SECURITY AND COMMODITY BROKERS, DEALERS, EXCHANGES, AND SERVICES

6300 INSURANCE

6370 PENSION, HEALTH, AND WELFARE FUNDS

Welfare, Pension and Vacation Funds, Blasters, Drillrunners and Miners Union Local No. 29, etc. **256 NLRB No. 170**
(jurisdiction asserted over U welfare, pension and vacation funds, and its trustees where funds annually received in excess of $50,000 for its services from contractor which purchased goods in excess of $50,000 from out of state suppliers; moreover Bd previously asserted jurisdiction over respondent funds in case which was enforced)

6400 INSURANCE AGENTS, BROKERS, AND SERVICE

6500 REAL ESTATE

6510 REAL ESTATE OPERATORS (EXCEPT DEVELOPERS) AND LESSORS

R & C Management Co. and Roth Bros. Partnership Co. **264 NLRB No. 117**
(Bd would assert jurisdiction over copartnership engaged in business of owning, operating, and managing several apartment buildings where gross dollar volume of business of all apartment buildings exceeds standard established by Bd, and it purchases goods and services in interstate commerce in excess of $50,000 per annum)

Moderate Income Management Company, Inc., and Marineview Housing Company No. 1 **256 NLRB No. 179**
(jurisdiction asserted over management company and owner-operator of low to moderate housing project, found herein to be joint Es; contrary to RD, Bd concluded Es do not share State's statutory exemption through NJHFA since Es control their labor relations policies and thus can engage in meaningful bargaining, where they promulgate and implement their labor relations policies w/o agency guidelines or approval, and agency reviews only their budget and mortgage repayment)

Rent Stabilization Association of NYC, Inc. **256 NLRB No. 038**
(AO that Bd would assert jurisdiction over not-for-profit real estate industry association which does not operate or manager real estate but which supplies services to public and to association members who own rent stabilized apartment buildings in city where it has 4 million dollars in gross revenue and 200,000 dollars in interstate inflow)

6510—Cont.

Meayan Estates, Inc., and Planning Efficiency Management **253 NLRB No. 160**

(AO that Bd would assert jurisdiction over owner and managing agent of residential apartment building, notwithstanding owner does not derive $500,000 annual gross revenues from such building, where its managing agent generates in excess of $500,000 annually from this building together with three others it manages, and therefore Bd's monetary standard is met)

6530 REAL ESTATE AGENTS AND MANAGERS

Moderate Income Management Company, Inc., and Marineview Housing Company No. 1 **256 NLRB No. 179**

(jurisdiction asserted over management company and owner-operator of low to moderate housing project, found herein to be joint Es; contrary to RD, Bd concluded Es do not share State's statutory exemption through NJHFA since Es control their labor relations policies and thus can engage in meaningful bargaining, where they promulgate and implement their labor relations policies w/o agency guidelines or approval, and agency reviews only their budget and mortgage repayment)

North Middledale Corp. **253 NLRB No. 060**

(AO that Bd would assert jurisdiction over E engaged in business of managing and also functioning as owner of three apartment complexes w/i the state where it had gross revenues of approximately $790,000 per year and it was assumed that it purchased more than a *de minimis* amount of goods from outside the state)

A. J. Clarke Management Corp. **249 NLRB No. 157**

(AO that Bd would assert jurisdiction over E engaged in business of providing management services to residential apartment buildings where total gross annual rental revenues derived from apartments managed by E are in excess of $500,000 standard established by Bd for residential apartments, and out-of-state purchases exceed $50,000)

Mandel Management Corporation (Local 32B–Local 32J, Service Employees) **248 NLRB No. 066**

(AO that Bd would assert jurisdiction over E engaged in business of managing residential and commercial properties in large city where E's annual gross rental revenues were in excess of $1 million and, assuming that E's out-of-state purchases are more than de minimis, they satisfied Bd's statutory jurisdiction)

Mandel Management Corporation (Local 32B–Local 32J, Service Employees) **248 NLRB No. 066(AO that Bd would assert jurisdiction over E engaged in business of managing residential and commercial properties in large city where E's annual gross rental revenues were in excess of $1 million and, assuming that E's out-of-state purchases are more than de minimis, they satisfied Bd's statutory jurisdiction)**

6550 SUBDIVIDERS AND DEVELOPERS

St. Jude Industrial Park Board **265 NLRB No. 087**

(jurisdiction asserted over unincorporated entity in business of promoting industrial development for fourth class city (on population basis) where development was both federally and privately funded and which, during 1980, directly purchased goods and supplies exceeding $50,000 from outside state; city had no removal power over members of (industrial) Park Board appointed by private developer; (industrial) Park Board was neither direct creation of state nor was it administered by individuals responsible to public officials or to general electorate, nor did it have any control over budget of Park Board)

St. Jude Industrial Park Board **265 NLRB No. 087**

(Bd not barred by *Section* 14(c)(1) of Act from exercising discretionary jurisdiction over fourth class city's (industrial) Park Board, since Park Board's tenants reimburse city for funds spent on developement programs and city does not exercise any appreciable control over Park's supervision, budget, discipline, grievance procedure, seniority hiring, firing or wages of Ees of Park Board notwithstanding Ees receive their paycheck from City payroll and are covered by City's health, welfare and retirement programs since these costs too are reimbursed by tenants)

6600 COMBINATIONS OF REAL ESTATE, INSURANCE, LOANS, LAW OFFICES

6700 HOLDING AND OTHER INVESTMENT OFFICES

7000 HOTELS, ROOMING HOUSES, CAMPS, AND OTHER LODGING PLACES

World Evangelism, Inc. **248 NLRB No. 117**

(jurisdiction asserted over nonprofit corporation controlling network of Evangelical ministries and associated fund-raising programs in its operation of complex of hotel, offices and commercial space in view of its substantial commercial activity related to its religious activity only as source of funds and Ees' performance of work necessarily associated with those commercial activities)

7010 HOTELS, MOTELS, AND TOURIST COURTS

Piedmont Properties, Inc. **263 NLRB No. 87**

(Bd advised parties that it would assert jurisdiction over motor hotel, where its gross annual revenues exceed $500,000 and its annual purchases of goods and services involved in interstate commerce are valued in excess of $500,000)

Oriental Realty Corp., d/b/a Manhattan Beach Hotel **255 NLRB No. 044**

(AO that Bd would assert jurisdiction over hotel owner where it annually derives in excess of $500,000 from its hotel building, and more than $50,000 is involved in interstate commerce in annual purchase of goods and services)

Waterford Park, Inc. **251 NLRB No. 124**

(Bd asserted jurisdiction over motel facility not withstanding it has close financial ties with racetrack; no evidence that labor dispute at motel would disrupt racetrack operations and also no significant state regulation of Ees working at motel)

7200 PERSONAL SERVICES

7240 BARBER SHOPS

Pentagon Barber Shop, Inc. **255 NLRB No. 165**

(jurisdiction *not* asserted over barbershop in concourse of Pentagon building, since E's operations did not satisfy Bd's retail standard for jurisdiction nor did they exert substantial impact on national defense; shop easily accessible to public and numerous other barbershops available to Pentagon Ees in local vicinity)

7300 BUSINESS SERVICES

7340 SERVICES TO DWELLINGS AND OTHER BUILDINGS

Castle Instant Maintenance/Maid, Inc. **256 NLRB No. 029**

(jurisdiction asserted over nonretail enterprise providing janitorial maintenance services in excess of $50,000 to U.S. Maring Corps, since E's operations satisfied Bd's indirect outflow standards for nonretail enterprises)

7500 AUTOMOTIVE REPAIR, SERVICES, AND GARAGES

7530 AUTOMOTIVE REPAIR SHOPS

David D. Sutherland, d/b/a Maaco Auto Painting and Body Work v. N.L.R.B. **646 F.2d 1273 (C.A. 8, Apr 1981)**

(Bd properly asserted jurisdiction over auto painting and body repair shop under non-retail standards where company grossed over $50,000 from non-retail services provided to companys subject to Bd jurisdiction and it purchased over $50,000 worth of goods from points out-of-state; moreover, fact that owner had purchased company and had managed it for less than 1 year immaterial)

7540 AUTOMOTIVE SERVICES, EXCEPT REPAIR

David D. Sutherland d/b/a Maaco Auto Painting and Body Work **249 NLRB No. 184**

(jurisdiction asserted over E engaged in business of performing body work and painting of automobiles notwithstanding E failed to meet Bd's income requirements for retail enterprises, since non-retail revenue of $51,874 derived from Es who themselves meet Bd's standards for Es affecting commerce; goods valued at $27,856 purchased by E directly from sources located outside E's state and goods valued at $27,710 purchased from suppliers located in E's state who themselves purchased goods directly from outside state, when added together, establish Bd's jurisdiction)

7550 GASOLINE SERVICE STATIONS

Vantage Petroleum Corp. **247 NLRB No. 202**

(jurisdiction asserted over E petroleum company's operation of state parkway gas service stations under contract with the state, since state's actual exercise of control over E's operations is not to such degree as to impair E's control over labor relations so as to render E incompetent to bargain efficaciously with a U, nor does E's performance of services for state constitute performance of services intimately related to traditional state functions warranting nonassertion of *jurisdiction*)

7600 MISCELLANEOUS REPAIR SERVICES

7800 MOTION PICTURES

7900 AMUSEMENT AND RECREATION SERVICES, EXCEPT MOTION PICTURES

7940 COMMERCIAL SPORTS

American Totalisator Company, Inc. **264 NLRB No. 148**

(Bd not precluded by its R/R Sec. 102.3 which precludes assertion of juridiction over horseracing industry from asserting jurisdiction over Ees of E engaged in construction, assemply, repair and servicing of paramutuel wagering equipment, including small electronic machines used to record and dispense tickets at racetracks and computers which computes odds and payments to bettors on winners, since mere fact paramutuel equipment was designed for use at racetrack does not make E integral part of racing industry and in view of lack of hiring and control of Ees of E by track owners)

American Totalisator Company, Inc. **264 NLRB No. 148**

(where Bd had conducted election in another subsidiary of E which was engaged in construction, assembly, repair and servicing of paramutuel wagering equipment used for off track betting, difference in customers not sufficient basis for refusal to assert juridiction over E's Ees performing simular duties involving similar machines used at track, notwithstanding issue in prior decision framed in terms of rescinding or amending Bd's rule which precludes its assertion of juridiction over horseracing industry)

Waterford Park, Inc. **251 NLRB No. 124**

(Bd asserted jurisdiction over motel facility not withstanding it has close financial ties with racetrack no evidence that labor dispute at motel would disrupt racetrack operations and also no significant state regulation of Ees working at motel)

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. **606 F.2d 1362 (C.A. 11, Sept. 1982)**

(Bd's decision to take juridiction over jai alai Ees and not race track Ees is arbitrary as Bd treated 2 industries, identical in all comparable respects, differently, and gave no reasons for doing so; thus, where Bd asserts right to act arbitrarily in its decision to assert juridiction, this is abuse of discretion)

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. **606 F.2d 1362 (C.A. 11, Sept. 1982)**

(Bd's assertion of juridiction over disputes involving jai alai players proper where Bd found that employment characteristics of jai alai players were like those of Ees in casino gambling industry, state regulated industry over which Bd previously had asserted juridiction in that Ees constituted stable work force, and that State's regulation would not conflict with Bd's regulation of employment regulationship between players and E; also players had special need for U representation as player contracts were written in English and players were almost all Spanish-speaking)

7990 MISCELLANEOUS AMUSEMENT AND RECREATION SERVICES

Bally's Park Place, Inc. **259 NLRB No. 107**

(neither separate units of *hard count* and of *soft count* Ees, nor their combined teams at hotel and gambling casino, held appropriate, where hard and soft count Ees require no specific skill, require no formal training, and their work is clearly routine and repetitive; fact that Ees work on shifts that vary from those of other Ees furnishes no basis for separate representation, nor does fact that they are isolated from most other Ees in their daily counting of coins and currency, with whom they share same Ee benefits, furnish basis for their isolation)

8000 HEALTH SERVICES

8050 NURSING AND PERSONAL CARE FACILITIES

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**

(juridiction asserted over E operating nursing home where it was stipulated that projected annual gross revenues would be in excess of $100,000 and E has or will purchase goods and materials in excess of $5,000 for representative 2-month period from supplier w/i state who has made purchases and received goods valued in excess of $50,000 per year from outside state)

Tressler Lutheran Home For Children t/a Frostburg Village of Allegany County Nursing Home **254 NLRB No. 015**

(juridiction asserted over church-operated nursing home; See, e.g. *Mid-American Health Services, Inc.*, 247 NLRB No. 109 (1980), See also *Bon Secours Hospital, Inc.*, 248 NLRB 115 (1980))

Tressler Lutheran Home For Children, t/a Frostburg Village of Allegany County Nursing Home v. N.L.R.B. **677 F.2d 302 (C.A. 3, Apr. 1982)**

(juridiction asserted over nursing home operated by church and not rejected on religious affiliation where directors and administrators did not belong to faith operating home, Ees were not limited to adherents of church which operated facility, and religious atmosphere was secondary to patient care. On balance, infringement on E's operation does not outweigh statutory policy; further, in amending Act to give Bd jurisdiction over health care facilities, Congress rejected provision which would have exempted religiously owned health care facilities)

N.L.R.B. v. St. Mary's Home, Inc., t/a St. Mary's Infant Home **690 F.2d 1062 (C.A. 4, Sept. 1982)**

(E's contention that it was outside the bounds of Bd juridiction absent showing of *massive impact on interstate commerce* because it was traditional charitable non-profit, non-commercial institution, rejected)

8060 HOSPITALS

Saint Marys Hospital **260 NLRB No. 175**

(Bd asserted juridiction over non profit religious hospital in keeping with intent of Congress)

St. Elizabeth Community Hospital **259 NLRB No. 156**

(Bd asserted juridiction over Catholic Hospital because 1974 Health Care Amendments extended Bd juridiction to hospitals and legislative history clearly shows that Congress did not exclude religiously operated hospitals from coverage; moreover, Bd regulation of hospital will not involve it in excessive entanglement in religion for primary purpose of hospital is health care and not sectarian teaching as found in *Catholic Bishop of Chicago* and right of Ees to be represented by collective-bargaining representative will not interfere with free exercise of religion or tend to establish a religion)

Bon Secours Hospital, Inc. **248 NLRB No. 019**

(1974 health care amendments show intent of Congress that Ees of religiously operated hospitals, unlike schools, are covered as it specifically refused to exclude such hospitals from coverage under Act; therefore assertion of juridiction proper)

Mid American Health Services, Inc. **247 NLRB No. 109**

(legislative history of 1974 health care amendments to Act indicates that Congress intended Act to apply to health care institutions operated by religious institutions thus nursing home run by Seventh Day Adventists comes w/i Bd's juridiction)

Crestline Memorial Hospital Association, Inc. v. N.L.R.B. **568 F.2d 243 (C.A. 6, Jan. 1982)**

(Bd properly asserted juridiction over private, nonprofit hospital which operates facilities leased from city as municipal general hospital; administrators are not *responsible* to public officials; moreover fact that all citizens of city as members of corporation and eligible to vote for Board of Directors not determinative where Directors are not responsible by law to citizens since no city or local laws govern formation or operation of hospital but only by corporation's constitution which is subject to change and in addition hospital has full control of labor relations of its Ees)

Truman Medical Center, Inc. v. N.L.R.B. **641 F.2d 570 (C.A. 8, Feb 11, 1981)**

(ct affd Bd's finding that failure of medical center, a not-for-profit corporation, to abide by U-security provision formerly in effect between medical center and U was unlawful, since, contrary to medical center's contention, it was not a political subdivision of State or a joint E with City, County and University, and Bd's assertion of juridiction was proper)

Board of Trustees of The Memorial Hospital of Fremont County Wyoming, A Political Subdivision of The State of Wyoming v. N.L.R.B. **624 F.2d 177 (C.A. 10, 1980)**

(where lease agreement between Trustees, who are exempt from Act, and Hospital provided that Hospital could not engage in collective bargaining Bd does not retain juridiction over Hospital for government subdivision's control over labor relations leaves Hospital unable to engage in meaningful collective bargaining)

8090 HEALTH AND ALLIED SERVICES, NOT ELSEWHERE CLASSIFIED

Michigan Eye Bank **265 NLRB No. 179**

(juridiction not asserted over research assistants who worked on eye bank program over which juridiction asserted and which contracted with state university for medical and administrative services, since important labor relations matters including wages, hours, and working conditions of research assistants controlled by university to extent that it would be impossible for parties to engage in meaningful bargaining w/o involving university, which is exempt governmental institution)

Michigan Eye Bank **265 NLRB No. 179**

(state university (exempt entity) with which eye bank contracted for medical and administrative services not joint E with eye bank of eye bank technicians and thus juridiction asserted, since university retained no control over wages, hours or other terms and conditions of technicians' employment, notwithstanding most began relationship with eyebank as student assistants at university, where eye bank hired, trained, and set compensation and paid

8090—Cont.

technicians directly from its own accounts rather than indicroctly from funds granted by university)

Greater Framingham Mental Health Association, d/b/a Youth Guidance Center **263 NLRB No. 146**
(E jurisdiction asserted over E which operated mental health clinic under partnership contract with state who loaned some supervisory and managerial personnel to E who were paid wholly by state and received state pay and benefits, and some bybrid Ees paid partly by state and partly by association, and inspected by state; since E had not ceded control to state where E governed by independent board of directors on which no state officials sit, E had control over all hiring, salaries, evaluation and termination of Ees including hybrid Ees, but excluding state Ees, and standards of supervision set by E)

Madison County Mental Health Center, Inc. **253 NLRB No. 030**
(jurisdiction not asserted over county mental health center which operates facilities in county hospital and house owned by private organization, where E was created by county government to fulfill statutory obligation to provide care for mentally retarded and mentally ill persons, funding is 80 percent federal and state, budget is subject to approval and labor relations are generally governed by guidelines adopted by statutory mandated boards composed of members appointed by state agency and county commissioners)

N.L.R.B. v. St. Louis Comprehensive Neighborhood Health Center, Inc. **633 F.2d 1268 (C.A. 8, 1980)**
(Bd exercise of jurisdiction over *HEW* funded non-profit E which provided health services to county residents, held proper where E was not arm of federal or state government nor did its board members serve at pleasure of public officials or general electorate; board of directors of E had primary responsibility for personnel policies, wages and other conditions of employment; limitations placed on E by *HEW* served to define economic framework for E and U bargaining)

8100 LEGAL SERVICES

Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C. **253 NLRB No. 054**
(Bd declined to reconsider, as urged by E, its decision to assert jurisdiction over law firms, enunciated in *Foley, Hoag & Eliot*, notwithstanding E's contention of impairment of attorney-client privilege; Bd was not persuaded that Ees of law firm differ from other Ees in a way to justify carving out exception to principle that U membership is not compatible with Ees' duty of loyalty to E, including duty of confidentiality)

Kaplan, Sicking, Hessen, Sugarman, Rosenthal & Zientz (Office and Professional Employees, Local No. 128) **250 NLRB No. 065**
(jurisdiction asserted over labor law firm where its gross revenue figures come w/i Bd's expressed discretionary jurisdictional standards for law firms, and there was no sufficient policy reason for Bd to treat labor law firms differently than other law firms)

Kaplan, Sicking, Hessen, Sugarman, Rosenthal & Zientz (Office and Professional Employees, Local No. 128) **250 NLRB No. 065**
(jurisdiction asserted over labor law firm with respect to allegation that the firm violated 8(a)(2) by recognizing and bargaining with U which it also represented as client)

8110 LEGAL SERVICES

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(legal services organization established and funded by Congress and providing legal services to qualified indigent persons held subject to Bd's discretionary standard, where it had gross annual revenues in excess of $2,000,000 and made purchases out of state in excess of $18,000; fact that direct purchases from outside state were less than $50,000 is immaterial)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**
(jurisdiction asserted over nonprofit community action service corporation providing Head Start preschooling, legal and housing services and summer camping under Federal agency since it met commerce standards and had sufficient control of employment conditions to bargain with its Ees' representative, where w/i agency guidelines it hired, discharged, promoted and determined wages and working conditons of its Ees and was not their joint E with Federal agency)

Clark & Hinojosa, Attorneys at Law, A Professional Corporation **247 NLRB No. 089**
(legal statutory jurisdiction asserted over professional corporation providing legal services where firm's direct out-of-state purchases together with its indirect purchases in commerce would reach $7,500. minimally when projected for 12 month period)

8200 EDUCATIONAL SERVICES

8210 ELEMENTARY AND SECONDARY SCHOOLS

Wordsworth Academy **263 NLRB No. 042**
(jurisdiction asserted over private school participating in State educational plan for children with learning disabilities, where E was not exempt as political subdivision or adjunct to public school system, and E retained sufficient control over Ees' employment conditions to enable it to bargain with U; minimum State standards affecting E's employment of Ees decisions did not distinguish E from other schools in State; State considerations of teacher qualifications and E's salary expenditures did not require E to take any action; and State played no role in E's firing, discipline, promotions, resolving grievances, or setting day-to-day working conditions)

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**
(jurisdiction asserted over E operating private, nonprofit school having relationship with foreign government, where schools total gross receipts were in excess of $1 million dollars, and it received gross revenues in excess of $50,000 from outside state; and E is not w/i terms of any exclusions contained in Sec. 2(2) of Act)

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**
(jurisdiction asserted over E operating private, nonprofit school having relationship with foreign government, where E conceded it can engage in meaningful bargaining w/o restriction by foreign government over wages and conditions of employment of locally hired Ees and teachers; and E is able to bargain about various aspects of employment of teachers, who are civil servants of foreign government assigned by it to teach at school, apart from salary schedules, fringe benefits, and other working conditions set by foreign government)

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**
(in asserting jurisdiction over E operating private, nonprofit school having relationship with foreign government, Bd rejected E's contention that foreign government and not E is E of assigned teachers at school who are civil servants of foreign government; even apart from various controls exercised over assigned teachers by E, such teachers had obtained leaves of absence from foreign government which cautioned them that they were in employ of E and not foreign government; and such employment relationship was confirmed by documents from foreign government)

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**
(Bd rejected E's contention that, even assuming Bd has statutory jurisdiction over E operating private, nonprofit school, it should exercise its discretion and not assert jurisdiction because E is substantially controlled by foreign government; E is not an *agency* or *instrumentality* of foreign government, but rather is an unincorporated voluntary association; school operates like other nonprofit schools, complies with federal and state laws, and is operated by school society membership and board which hires and fires Ees who are Ees of E and not of foreign government)

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**
(fact that E, who operates private, nonprofit school, has relationship to foreign government which may place E under handicaps or even substantial hardship in bargaining held no reason for Bd to refuse jurisdiction)

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**
(fact that teachers assigned by foreign government to teach at E's private, nonprofit school were admitted to this country under *A-2* visas, which E contends are granted only to representatives of foreign government temporarily admitted to perform official duties, held not to establish that E, w/i meaning of Sec. 2(2) of Act, is foreign government, where *A-2* visas specifically state that such individuals are admitted in order to perform pedagogical duties for E; and, their immigration status does not alter fact that they, as Ees in this country, are entitled to protection of Act)

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**
(in asserting jurisdiction over E operating private, nonprofit school having relationship with foreign government, Bd gave little weight to E's reliance on its assertion that Bd should not assert jurisdiction because no federal income taxes are paid by teachers assigned by foreign government to teach at E's school; Bd declined to speculate as to reasons why such taxes are not withheld or paid, and Bd was unwilling to ascribe any probative value to evidence on issue absent any official interpretation from IRS)

The New York Institute For The Education of the Blind **284 NLRB No. 085**
(jurisdiction declined over educational and residential care facility for blind and blind-multiply handicapped children, since it is agent and administrative arm of state in view of 150 year history of serving state in providing state residents with facility for handicapped, Institute established by State statute, State commissioner of education has full power to appoint students, requires annual budget be submitted and state audit procedures)

8210—Cont.

The Kreis School Foundation, Inc. **251 NLRB No. 187**

(jurisdiction asserted over institution providing special education to children with physical or mental disabilities, notwithstanding E's contention that federal district ct decision supported its argument that institution was exempt adjunct of state public school system, since Bd in prior decision had asserted jurisdiction over same institution and jurisdictional standard in district court case — whether defendent acted *under color of state law* — is based on entirely different considerations than is Bd's jurisdiction standards)

St. Joseph's High School **248 NLRB No. 123**

(Bd reversed its assertion of jurisdiction over Catholic School in view of intervening Supreme Ct decision *NLRB v. Catholic Bishop of Chicago*)

Cardinal Timonthy Manning, Roman Catholic Archbishop of the Archdiocese of Los Angeles, A Corporation Sole; et al. **247 NLRB No. 121**

(on remand to reconsider in light of Supreme Ct's decision in *NLRB v. Catholic Bishop of Chicago*, Bd refused to assert jurisdiction over parochial high schools operated by Catholic Church and dismissed compiaint)

N.L.R.B. v. Lay Faculty Association, Local 1261 **623 F.2d 818 (C.A. 2, 1980)**

(ct rejected Bd's claim to jurisdiction over Catholic high school notwithstanding title and responsibility for operating school visited in lay board, since it is suffusion of religion into curriculum and mandate of faculty to infuse students with religious creed which create conflict with Religion Clauses, not vesting of title, and Bd could not avoid becoming entangle with religious mission of school in setting of mandatory collective bargaining)

8220 COLLEGES, UNIVERSITIES, PROFESSIONAL SCHOOLS, AND JUNIOR COLLEGES

N.L.R.B. v. Yeshiva University **440 U.S. 906 (U.S. SCt, Feb 20, 1980)**

(faculty at university exercised managerial authority by virtue of their authority in academic matters being absolute; they decided what courses will be offered, when they will be scheduled, to whom they will be taught to, teaching methods, grading policies, class sizes, and matriculation standards; furthermore, while these decisions required use of independent professional judgment it does not take decision makers out of *managerial* status)

N.L.R.B. v. Yeshiva University **440 U.S. 906 (U.S. SCt, Feb 20, 1980)**

(faculty at university held to be managerial, not professional, Ees and outside jurisdiction of Bd)

Lewis University **265 NLRB No. 157**

(jurisdiction asserted over university which was initially established as high school through efforts of Catholic laypersons and Archdiocese, and eventually operated as university run by religious teaching order which finally transferred operation over to board of trustees, since university was not church-operated as contempiated by *Catholic Bishop*, in view of fact that Diocese neither exercised administrative or secular control over university nor owned land or property used by school nor performed services for it; Bd found no *significant risk* of constitutionally impermissible entanglement between church and state by its assertion of jurisdiction)

Michigan Eye Bank **265 NLRB No. 179**

(jurisdiction not asserted over research assistants who worked on eye bank program over which jurisdiction asserted and which contracted with state university for medical and administrative services, since important labor relations matters including wages, hours, and working conditions of research assistants controlled by university to extent that it would be impossible for parties to engage in meaningful bargaining w/o involving university, which is exempt governmental institution)

Michigan Eye Bank **265 NLRB No. 179**

(state university (exempt entity) with which eye bank contracted for medical and administrative services not joint E with eye bank of eye bank technicians and thus jurisdiction asserted, since university retained no control over wages, hours or other terms and conditions of technicians' employment, notiwthstanding most began relationship with eyebank as student assistants at university, where eye bank hired; trained, and set compensation and paid technicians directly from its own accounts rather then indicrectly from funds granted by university)

Duquesne University of The Holy Ghost **261 NLRB No. 085**

(Bd not precluded from asserting jurisdiction under *Catholic Bishop of Chicago* over law school controlled by Catholic Church since Bd in *Barber-Scotia College Inc.* held *Catholic Bishop* precluded assertion of jurisdiction only over church controlled elementary and secondary schools)

Thiel College **261 NLRB No. 084**

(jurisdiction asserted over church owned college since under SCt decision in *Tilton v. Richardson* and Bd's decision *Barber-Scotia College*, contrary to secondary schools in *Catholic Bishop of Chicago*, purpose of college is primarily providing secular education rather than religious indocrination. Herein, college's constitution provided that its purpose is to train young people for various vocations and professions; no requirement that students take religious courses or engage in worship; teachers and students need not belong to faith that owns college)

8230 LIBRARIES AND INFORMATION CENTERS

Jervis Public Library Association, Inc. **262 NLRB No. 145**

(jurisdiction declined over public library because it is an administrative arm of state in providing educational services to public as evidenced by a city and the State exercising significant control over E's expenditures by reason of required submission of its armed budget to each prior to funding approval with right to modify budget vested in these governmental authorities and E's Ees participate in State retirement system and city's health plan)

8290 SCHOOLS AND EDUCATIONAL SERVICES, NOT ELSEWHERE CLASSIFIED

San Diego County Association For The Retarded **259 NLRB No. 136**

(jurisdiction asserted over non-profit E engaged in educating and training mentally retarded children and adults where during past calendar year, E received gross revenues in excess of $250,000 and $5000 in grants from U.S. Department of Labor for its operations as well as purchasing and receiving $5000 in goods and products from outside State)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**

(jurisdiction asserted over nonprofit community action service corporation providing Head Start preschooling, legal and housing services and summer camping under Federal agency since it met commerce standards and had sufficient control of employment conditions to bargain with its Ees' representative, where w/i agency guidelines it hired, discharged, promoted and determined wages and working conditons of its Ees and was not their joint E with Federal agency)

Golden Day Schools, Inc. v. N.L.R.B. **644 F.2d 834 (C.A. 9, May 8, 1981)**

(Bd's determination, that E met $250,000 standard for exercising jurisdiction over *day-care center* rather than $1,000,000 standard for *educational institutions* will not be set aside *in the absence of extraordinary circumstances, such as unjust discrimination*)

8300 SOCIAL SERVICES

8330 JOB TRAINING AND VOCATIONAL REHABILITATION SERVICES

Teledyne Economic Development Co. **265 NLRB No. 153**

(jurisdiction asserted over E operating job corps center under contract with Department of Labor, where E recruits and hires staff, develops and maintains personnel management policies, maintains grievance procedure in which E has final decision, and remains responsible for hiring, firing, promotions, transfers, demotions, and other terms and conditions of employment subject only to broad outlines of DOL contract; E has broad discretion and control over day-to-day labor relations policies and practices, and fact that DOL retains final right of approval for bargaining agreement does not excuse E from duty to bargain)

Management and Training Corporation **265 NLRB No. 143**

(jurisdiction asserted over corporation operating job corps center under contract with Department of Labor in view of E's control over Ees and their wages, hours, and conditions of employment; E's lack of hiring authority for higher salaried Ees w/o DOL approval was not determinative of its authority to bargain with U nor was the degree of its contact with DOL in operating the center, since the issue was not DOL's means of assuring contract compliance but E's controlling labor relations sufficiently to enable it to bargain)

Management Training Corporation (Formerly Thiokol Corporation) **261 NLRB No. 013**

(Bd will assert jurisdiction over job corps training centers operated for U.S. Department of Labor. See *The Singer Company*, 240 NLRB 965)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**

(jurisdiction asserted over nonprofit community action service corporation providing Head Start preschooling, legal and housing services and summer camping under Federal agency since it met commerce standards and had sufficient control of employment conditions to bargain with its Ees' representative, where w/i agency guidelines it hired, discharged, promoted and determined wages and working conditons of its Ees and was not their joint E with Federal agency)

Cincinnati Association For The Blind v. N.L.R.B. **672 F.2d 567 (C.A. 6, Mar. 1982)**

(Bd's assertion of jurisdiction over nonprofit corporation employing visually handicapped, not abuse of discretion in absence of evidence of Congressional intent as to NLRA coverage of sheltered workshops and in view of statute's broad, unequivocal language and Bd's practice of case by case determination; Bd here determined corporation's relationship to workers was more

8330—Cont.

economic than therapeutic in view of long-term employment and acquisition of skills for corporation's production)

8350 CHILD DAY CARE SERVICES

Rebecca Blaylock Nursery School, Inc. **260 NLRB No. 195**

(although ptn for Advisory Opinion was not proper procedure for reconsideration by Bd of its standard for day care centers, Bd determined that it would not reconsider *at this time* its $250,000 jurisdictional standard)

Aid For The Retarded, Inc. **256 NLRB No. 106**

(Bd asserted jurisdiction over no profit corporation which provided rehabilitation, training, educational services to mentally retarded children and adults where E received revenues totaling more than $250,000, rendered more than $140,000 in services to corporations engaged in interstate commerce and purchased more than $50,000 in supplies directly and indirectly from out-of-state suppliers)

The Krebs School Foundation, Inc. **251 NLRB No. 187**

(jurisdiction asserted over institution providing special education to children with physical or mental disabilities, notwithstanding E's contention that federal district ct decision supported its argument that institution was exempt adjunct of state public school system, since Bd in prior decision had asserted jurisdiction over same institution and jurisdictional standard in district court case — whether defendent acted *under color of state law* — is based on entirely different considerations than is Bd's jurisdiction standards)

The Salvation Army of Massachusetts Dorchester Day Care Center **247 NLRB No. 062**

(objection to Bd's assertion of jurisdiction over day care center overruled since principles of Catholic Bishop of Chicago do not preclude assertion of jurisdiction inasmuch as Bd has held that day care centers are primarily concerned with custodial care of children, and only secondarily concerned with education)

Golden Day Schools, Inc. v. N.L.R.B. **644 F.2d 834 (C.A. 9, May 8, 1981)**

(prior cases to contrary, test for whether proprietary child-care facility is subject to Bd's jurisdiction is *whether E has sufficient control over employment conditions of its Ees to enable it to bargain with labor organization which represents them*)

Golden Day Schools, Inc. v. N.L.R.B. **644 F.2d 834 (C.A. 9, May 8, 1981)**

(Bd's determination, that E met $250,000 standard for exercising jurisdiction over *day-care center* rather than $1,000,000 standard for *educational institutions* will not be set aside *in the absence of extraordinary circumstances, such as unjust discrimination*)

8360 RESIDENTIAL CARE

Target, Inc. **263 NLRB No. 101**

(jurisdiction declined over nonprofit corporation providing residential mental health care and vacational day care for mentally retarded adults as it shares with State exemption under Sec. 2(2) in view of state's retention of substantial control over Ees' wages, benefits, hiring and working conditions through funding budget reviews, and close monitoring of E's operations; contract in which salaries, client/staff ratio, client selection and treatment, etc., are specified, must conform to court consent decree to which State is bound)

N.L.R.B. v. St. Louis Christian Home **663 F.2d 60 (C.A. 8, Nov. 1981)**

(Bd properly asserted jurisdiction over Christian Children's Home operated by Christian Church Disciples of Christ where activities of Home relate only tangentially to religious mission of Christian Church and any inquiry into operation of Home should not intrude on any activity substantially religious in character as Home operates as seculor child care institution, unlike in *Cathlic Bishop of Chicago* 440 U.S. 501, and voluntarily accepts state regulation and governmental moneys)

8390 SOCIAL SERVICES, NOT ELSEWHERE CLASSIFIED

Keyway, A Division of Phase Inc. **263 NLRB No. 172**

(jurisdiction asserted over nonprofit E providing service involving prevention and treatment of drug abuse, alchoholism and domestic violence. E's revenues last year were $482,597, of which, $299,322 were derived from Federal sources. This satisfies Bd's discretionary jurisdictional standard of $250,000 in gross revenues for health care institutions and legal jurisdiction need not be established by proof of direct or indirect inflow of goods or services where record establishes that greatest portion of E's revenues derive from Federal sources under nationally administered programs. Transfer of succh funds across state lines constitute commerce)

Catholic Community Services **254 NLRB No. 090**

(jurisdiction asserted over E for same reasons Bd asserted jurisdiction over some E in *Catholic Community Services*, 247 NLRB NO. 103)

Harborcreek School for Boys **249 NLRB No. 177**

(jurisdiction asserted over agency engaged in care and rehabilitation of socially and emotionally disturbed boys, which agency was founded, owned and controlled by Catholic Diocese; record showed that none of E's professional and support staff were required to have any particular religious background or that any Ee was directly or indirectly involved in teaching religious philosophy; school's operating income received from various governmental agencies; exercise of jurisdiction not violative of religion clause of first amendment to Constitution)

Catholic Community Services **247 NLRB No. 103**

(jurisdiction asserted over nonprofit corporation providing health, social and related services; exercise of jurisdiction not violative of first amendment of Constitution since purpose of E was not promulgation of Roman Catholic faith but providing of social services on nondenominational basis)

8400 MUSEUMS, ART GALLERIES, BOTANICAL AND ZOOLOGICAL GARDENS

8410 MUSEUMS AND ART GALLERIES

Museum Associates d/b/a Los Angeles County Museum of Art v. N.L.R.B. **688 F.2d 1278 (C.A. 9, Sept. 1982)**

(ct affd Bd order to bargain where ct could not find that Bd had no foundation in evidence for its determination that Art Museum had sufficient control over labor relations to allow for meaningful bargaining to warrant exercising jurisdiction under Act nor could ct say that Bd acted contrary to law; E's contention that it was exempt from Act because it was substantially controlled by county so it could neither bargain meaningfully nor implement effectively contract with U rejected; however, ct noted that if county takes over funding for unit Ees as contended, E would be free to reapply to Bd)

8420 ARBORETA, BOTANICAL AND ZOOLOGICAL GARDENS

Wave Hill, Inc. (District Council 37, AFSCME, AFL-CIO) **248 NLRB No. 149**

(AO that Bd would not assert jurisdiction over not-for-profit environmental center which operates (1) aboretum and botanical garden, (2) arts and/or cultural center, and (3) environmental science center for conservation, education, and scientific studies, where E's annual gross revenue did not meet Bd's $1 million standard for assertion of jurisdiction over enterprises such as; E in many ways is similar to an art museum, contributes to cultural and educational values of community and thus acts as adjunct to educational system)

8600 MEMBERSHIP ORGANIZATIONS

8630 LABOR UNIONS AND SIMILAR LABOR ORGANIZATIONS

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**

(contention of U council, acting in role of E, that Bd should decline jurisdiction when Ees are disciplined for allegedly unprotected participation in internal U politics, rejected, where Ees were treated disparately for engaging in protected activity of attending meeting called by their U for purpose of addressing discharge of fellow Ee by U council)

Furriers Joint Council of New York, UFCW International Union, AFL-CIO **JD-(NY)-24-82**

(jurisdiction asserted over U-E that, during calendar year, collected and received dues and initiation fees in excess of $100,000 and remitted from its New York facility to its Washington, D.C. facility per capita taxes and dues in excess of $25,000; Bd's jurisdictional rules are more flexible regarding assertion of jurisdiction over Us as Es compared to Es engaged in commercial operations)

8660 RELIGIOUS ORGANIZATIONS

Faith-Center—WHCT Channel 18 **261 NLRB No. 011**

(Bd declined jurisdiction over non-profit church TV station where, notwithstanding fact that ten percent of station's programing was secular in nature solely to meet programing diversification requirements of F.C.C., station was operated to promote religious objectives of church and its broadcasting was *purely religious* activity carried on by religious institution or, at very least, constituted activity ancillary to church's religious objectives)

Catholic Community Services **254 NLRB No. 090**

(jurisdiction asserted over E for same reasons Bd asserted jurisdiction over some E in *Catholic Community Services*, 247 NLRB NO. 103)

Tressler Lutheran Home For Children t/a Frostburg Village of Allegany County Nursing Home **254 NLRB No. 015**

(jurisdiction asserted over church-operated nursing home; See, e.g. *Mid-American Health Services, Inc.*, 247 NLRB No. 109 (1980), See also *Bon Secours Hospital, Inc.*, 248 NLRB 115 (1980))

World Evangelism, Inc. **248 NLRB No. 117**

(jurisdiction asserted over nonprofit corporation controlling network of Evangelical ministries and associated fund-raising programs in its operation of complex of hotel, offices and commercial space in view of its substantial commercial activity related to its religious activity only as source of funds

8660—Cont.

and Ees' performance of work necessarily associated with those commercial activities)

Cardinal Timothy Manning, Roman Catholic Archbishop of the Archdiocese of Los Angeles, A Corporation Sole; et al. **247 NLRB No. 121**
(on remand to reconsider in light of Supreme Ct's decision in *NLRB v. Catholic Bishop of Chicago*, Bd refused to assert jurisdiction over parochial high schools operated by Catholic Church and dismissed complaint)

Catholic Community Services **247 NLRB No. 103**
(jurisdiction asserted over nonprofit corporation providing health, social and related services; exercise of jurisdiction not violative of first amendment of Constitution since purpose of E was not promulgation of Roman Catholic faith but providing of social services on nondenominational basis)

N.L.R.B. v. St. Louis Christian Home **663 F.2d 60 (C.A. 8, Nov. 1981)**
(Bd properly asserted jurisdiction over Christian Children's Home operated by Christian Church Disciples of Christ where activities of Home relate only tangentially to religious mission of Christian Church and any inquiry into operation of Home should not intrude on any activity substantially religious in character as Home operates as seculor child care institution, unlike in *Cathlic Bishop of Chicago* 440 U.S. 501, and voluntarily accepts state regulation and governmental moneys)

N.L.R.B. v. World Evangelism, Inc. **656 F.2d (C.A. 9, 1981)**
(Bd properly assumed jurisdiction over non-profit religious organization where organization's operations were commercial, its gross revenue was well w/i Bd's jurisdictional guidelines, and its unit Ees spent substantial portion of time engaged in commercial activities; limited exception to jurisdiction carved out in *NLRB v. Catholic Bishop of Chicago, 440 U.S. 490* not applicable)

8800 PRIVATE HOUSEHOLDS

8900 MISCELLANEOUS SERVICES

9100 EXECUTIVE, LEGISLATIVE, AND GENERAL GOVERNMENT, EXCEPT FINANCE

9200 JUSTICE, PUBLIC ORDER, AND SAFETY

9220 PUBLIC ORDER AND SAFETY

Florence Volunteer Fire Department, Inc. **265 NLRB No. 126**
(Bd asserted jurisdiction over E engaged in providing fire protection services, on contract basis for city, notwithstanding E's contention that it shared city's exemption under Sec. 2(2) of Act on grounds that city created E and that E performed municipal function for city, where E was separate entity from city, exercised almost complete autonomy over matters affecting its Ees' terms of employment and working conditions, and was capable of engaging in meaningful bargaining)

9300 PUBLIC FINANCE, TAXATION, AND MONETARY POLICY

9400 ADMINISTRATION OF HUMAN RESOURCES PROGRAMS

9430 ADMINISTRATION OF PUBLIC HEALTH PROGRAMS

Madison County Mental Health Center, Inc. **253 NLRB No. 030**
(jurisdiction not asserted over county mental health center which operates facilities in county hospital and house owned by private organization, where E was created by county government to fulfill statutory obligation to provide care for mentally retarded and mentally ill persons, funding is 80 percent federal and state, budget is subject to approval and labor relations are generally governed by guidelines adopted by statutory mandated boards composed of members appointed by state agency and county commissioners)

Community Health and Home Care, Inc. **251 NLRB No. 094**
(E providing and administering comprehensive public health nursing and homemaker program to 10-town area in State held agency of towns it serves where E's board of directors is accountable to and appointed by public officials in towns served by the agency and therefore it is a political subdivision and exempt from Bd's jurisdiction)

9500 ADMINISTRATION OF ENVIRONMENTAL QUALITY AND HOUSING PROGRAMS

9530 ADMINISTRATION OF HOUSING AND URBAN DEVELOPMENT PROGRAMS

St. Jude Industrial Park Board **265 NLRB No. 087**
(jurisdiction asserted over unincorporated entity in business of promoting industrial development for fourth class city (on population basis) where development was both federally and privately funded and which, during 1980, directly purchased goods and supplies exceeding $50,000 from outside state; city had no removal power over members of (industrial) Park Board appointed by private developer; (industrial) Park Board was neither direct creation of state nor was it administered by individuals responsible to public officials or to general electorate, nor did it have any control over budget of Park Board)

St. Jude Industrial Park Board **265 NLRB No. 087**
(Bd not barred by *Section* 14(c)(1) of Act from exercising discretionary jurisdiction over fourth class city's (industrial) Park Board, since Park Board's tenants reimburse city for funds spent on developement programs and city does not exercise any appreciable control over Park's supervision, budget, discipline, grievance procedure, seniority hiring, firing or wages of Ees of Park Board notwithstanding Ees receive their paycheck from City payroll and are covered by City's health, welfare and retirement programs since these costs too are reimbursed by tenants)

9600 ADMINISTRATION OF ECONOMIC PROGRAMS

9700 NATIONAL SECURITY AND INTERNATIONAL AFFAIRS

9900 NONCLASSIFIABLE ESTABLISHMENTS

300 INVESTIGATION AND CERTIFICATION OF REPRESENTATIVE

301 GENERALLY

5000 EXISTENCE OF QUESTION OF REPRESENTATION

Catholic Community Service **247 NLRB No. 103**

(no QCR where unit sought by petitioner was inappropriate; unit included only some Ees in each of E's five divisions but did not include all of E's facilities or all Ees in any one division; neither petitioner nor E had specified alternate unit; unit Ees did not share community of interest; unit petitioned for was arbitiary grouping of Ees)

Newport News Shipbuilding and Dry Dock Company v. N.L.R.B. **653 F.2d 1079 (C.A. 4, 1980)**

(Sec. 9(c)(1) prohibits ct from ordering Bd to conduct hearing in R case since hearing must be provided only after Bd has reasonable cause to believe qcr exists; since Bd met its statutory obligation by conducting investigation, ct cannot interfere with Bd's evaluation of investigation short of Bd's arbitrary action, and Bd's decision herein to dismiss decertification ptn, whether right or wrong, was not arbitrary)

N.L.R.B. v. General Motors Corporation **510 F.Supp. 338 (DC S.D. OH, Sept. 1980)**

(Bd will conduct R election if: (1) involved E's business affects commerce; (2) qcr exists; (3) group of Ees which U seeks to represent is appropriate unit; and (4) petitioner has made *sufficient showing of interest* to justify holding election)

308 WHO MAY RAISE QUESTION OF REPRESENTATION

0100 GENERALLY

2000 EMPLOYEE OR GROUP OF EMPLOYEES

4000 INDIVIDUAL

6000 LABOR ORGANIZATION

8000 EMPLOYER

8050 WHEN CLAIM TO BE RECOGNIZED HAS BEEN PRESENTED

Albuquerque Insulation Contractor, Inc. **256 NLRB No. 015**

(construction contractor's 9(c)(1)(B) election ptn, dismissed, since U's request for lawful 8(f) agreement did not raise qcr inasmuch as it did not request recognition of a *representative as defined in section 9(a),* as provided in 9(c)(1)(B), which requires majority status; and 9(c)(1)(B), therefore, permits elections on E ptn only when E has been presented with claim of majority status which U did not make herein; nor did U's statements and conduct following E's refusal to sign agreement establish that U's request was *tantamount* to a majority claim)

Albuquerque Insulation Contractor, Inc. **256 NLRB No. 015**

(in dismissing contruction contractor's 9(c)(1)(B) election ptn since U's request for lawful 8(f) agreement did not raise qcr because it was not request for recognition as majority representative, Bd relied on plain language of Act and legislative history; on procedures whereby E may seek election, when U is either signatory to 8(f) agreement or seeks 8(f) recognition, to determine Ees' and U's intentions; and on fact that 9(c)(1)(B) requirement that E may secure election only in face of majority claim was placed in Act to prevent E from precipitating a premature election before U has opportunity to organize)

Albuquerque Insulation Contractor, Inc. **256 NLRB No. 015**

(in dismissing E's election ptn since U's request for lawful 8(f) agreement did not raise qcr because it was not request for recognition as majority representative, Bd held U's conduct following E's refusal to sign agreement did not establish that U's request was *tantamount* to majority claim, where U's declared intention to engage in informational picketing merely indicated U intended to engage in protected activity; whether such activity would have established request for recognition as majority representative is pure speculation, especially since U subsequently stated that it was not going to engage in any picekting)

316 HOW QUESTION OF REPRESENTATION IS RAISED

0100 GENERALLY

3300 DEMAND FOR AND REFUSAL OF RECOGNITION

3301 GENERALLY

3301-5000 Demand to represent employees as accretion to existing unit does not raise question of representation

United Hospitals, Incorporated and The Children's Hospital, Inc. **249 NLRB No. 063**
(no qcr raised where U sought to accrete unrepresented group of Ees employed in multi-E association, overwhelming majority of whom were excluded from covered unit, as Bd will not, on piecemeal basis, accrete to that unit unrepresented Ees of Es of multi-E association, and U did not seek to represent Ees in separate unit)

3375 IMPLIED DEMAND

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(Ees transferred from closed facility to, and co-mingled with similarly situated Ees covered by U contracts at, another of E's facilities, held not accretion to that contract, and qcr found since transferred Ees, although performing functions and duties similar to those performed prior to merger, had been represented previously by Us different from those representing Ees at merged location; transferred Ees continued to be subject of competing representational claims and none of Us involved herein represented overwhelming majority of Ees in units found appropriate)

6700 FILING OF PETITION FOR ELECTION

6701 GENERALLY

6701-3300 Filing of petition as demand for recognition

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation **258 NLRB No. 142**
(U ptn for certification of representative does not constitute demand for recognition)

6717 ADEQUACY OF PETITION

6717-3300 As to description of representative seeking certification

United Truck and Bus Service Co. **257 NLRB No. 051**
(District Council filing on behalf of local files as agent of local)

6717-6700 As to description of unit

Community Tele-Communications, Inc., d/b/a Helena Cable T.V. **249 NLRB No. 065**
(U's contention that deauthorization ptn should be dismissed since appropriate unit should include both office Ees and installers and technicians rather than only office Ees as pattern of bargaining has been to include separately certified units under one contract rejected, where no intent to merge two units into single unit as evidenced by reference in supplemental agreement to 2 units)

Catholic Community Services **267 NLRB No. 103**
(no QCR where unit sought by petitioner was inappropriate; unit included only some Ees in each of E's five divisions but did not include all of E's facilities or all Ees in any one division; neither petitioner nor E had specified alternate unit; unit Ees did not share community of interest; unit petitioned for was arbitiary grouping of Ees)

6725 PETITION BY EMPLOYER

United States Postal Service **256 NLRB No. 095**
(RM ptn is appropriate (1) when E is faced with organizational or recognitonal picketing w/o ptn having been filed under 8(b)(7)(c), (2) E is confronted with demand for exclusive recognition or faced with conflicting R demands in unit alleged as appropriate, or (3) E has good-faith doubt as to U's continued majority support w/i unit it already represents)

United States Postal Service **256 NLRB No. 095**
(postal services' RM ptn seeking election in single, national unit, dismissed, since there was no *reasonable cause to believe that qcr* existed, where no claim was made by any U for recognition in such unit; contention that existing units have never been appropriate because they do not constitute traditional crafts, and have become less appropriate because of U raiding, technological changes, and other factors, rejected, since E may not force U to election in larger unit merely because existing unit may be inappropriate)

United States Postal Service **256 NLRB No. 095**
(Bd rejected contention that postal service's RM ptn for single, national unit should be entertained because PRA created special labor-management provisions, of which unit determination is one; PRA text itself and legislative history show that bargaining in postal service should be treated like that in case of any other E, except for specifically stated exceptions)

Albuquerque Insulation Contractor, Inc. **256 NLRB No. 015**
(construction contractor's 9(c)(1)(B) election ptn, dismissed, since U's request for lawful 8(f) agreement did not raise qcr inasmuch as it did not request recognition of a *representative as defined in section 9(a)*, as provided in 9(c)(1)(B), which requires majority status; and 9(c)(1)(B), therefore, permits elections on E ptn only when E has been presented with claim of majority status which U did not make herein; nor did U's statements and conduct following E's refusal to sign agreement establish that U's request was *tantamount* to a majority claim)

Albuquerque Insulation Contractor, Inc. **256 NLRB No. 015**
(in dismissing contruction contractor's 9(c)(1)(B) election ptn since U's request for lawful 8(f) agreement did not raise qcr because it was not request for recognition as majority representative, Bd relied on plain language of Act and legislative history; on procedures whereby E may seek election, when U is either signatory to 8(f) agreement or seeks 8(f) recognition, to determine Ees' and U's intentions; and on fact that 9(c)(1)(B) requirement that E may secure election only in face of majority claim was placed in Act to prevent E from precipitating a premature election before U has opportunity to organize)

Albuquerque Insulation Contractor, Inc. **256 NLRB No. 015**
(in dismissing E's election ptn since U's request for lawful 8(f) agreement did not raise qcr because it was not request for recognition as majority representative, Bd held U's conduct following E's refusal to sign agreement did not establish that U's request was *tantamount* to majority claim, where U's declared intention to engage in informational picketing merely indicated U intended to engage in protected activity; whether such activity would have established request for recognition as majority representative is pure speculation, especially since U subsequently stated that it was not going to engage in any picekting)

6733 PETITION FOR DECERTIFICATION OF REPRESENTATIVE

Young's Market Company **265 NLRB No. 094**
(no qcr raised by decertification ptns which were dismissed as inappropriate because petitioning units were not coextensive with multi-E unit of which they were a part)

324 SHOWING OF INTEREST IN REPRESENTATION

0100 GENERALLY

0150 PURPOSE OF REQUIREMENT TO LIMIT ELECTIONS TO THOSE SITUATIONS WHERE THERE IS ENOUGH INTEREST TO JUSTIFY THEM

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**

(*Sec. 9(c)(1)(A) substantial interest requirement* is not jurisdictional prerequisite to Bd action; rather it is *administrative expedient only,* adopted to enable Bd to determine for itself whether or not further proceedings and warranted)

N.L.R.B. v. General Motors Corporation **510 F.Supp. 338 (DC S.D. OH, Sept. 1980)**

(Bd will conduct R election if: (1) involved E's business affects commerce; (2) qcr exists; (3) group of Ees which U seeks to represent is appropriate unit; and (4) petitioner has made *sufficient showing of interest* to justify holding election)

0187 SHOWING NOT REQUIRED WHERE EMPLOYEES ARE UNIT ACCRETION

King Radio Corporation **257 NLRB No. 070**

(E which granted U recognition, w/o proof of majority status for P&M Ees at one of its plants not covered by previously negotiated contract for its other plant violated Act where plant was not accretion to first bargaining unit; accretion not found for following reasons: (1) plant was in operation prior to time E recognized U at other plant, and (2) unit always excluded from coverage because U did not present proof of card majority)

2000 INTEREST SHOWING AS NONLITIGABLE ADMINISTRATIVE MATTER

2033 WHERE REQUIREMENT IS BOARD POLICY

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**

(no need to litigate U support at initial ptn stage)

4000 EXTENT OF INTEREST REQUIRED

4020 BY PETITIONER

4020-1400 Designation by at least 30 percent of employees required for showing of interest (R&R 101.18(a))

N.L.R.B. v. Klinger Electric Corporation, Klinger Electronics Division and Klinger Manufacturing Division **686 F.2d 76 (C.A. 5, 1981)**

(objection that leadpersons signed and solicited U authorization cards, thereby tainting showing of interest overruled, even assuming leadpersons were supervisors as alleged, since U's showing of interest was sufficient to warrant processing ptn for election even if all such cards were excluded)

4020-2100 Showing where union merger or affiliation occurred

Monmouth Medical Center **247 NLRB No. 075**

(second election ordered; contention of E that after first election held U voted to affiliate with another U, therefore, new showing of interest required, rejected, since no showing of interest required, rejected, since no showing of schism which would lead to confusion among voters as to organization designated to represent them; further Ees have indicated through original showing of interest an underlying intent of desire to have election and election will afford Ees opportunity to also vote on affiliation)

4020-4260 Where Board directed unit different from that sought by petitioner

ECM, Inc. **264 NLRB No. 141**

(where unit found appropriate was substantially different from that requested, petitioner accorded period of 10 days to submit requisite showing of interest to support election)

4020-4267 Petitioner's showing must be adequate before election held

The Folger Coffee Company **250 NLRB No. 001**

(petitioner accorded 10 days from date of instant *Decision on Review* in which to submit requisite showing of interest to support election, since *voting group* found appropriate in instant case was larger than unit requested)

Propane Transport, Inc. and Propane Chemical Leasing Co., Inc. **247 NLRB No. 131**

(where record, on review of RD's decision, was unclear as to whether petitioner had made sufficient showing of interest for unit of E's truckdrivers expanded to include owner-operators and non-owner drivers of trucks leased to E, petitioner accorded period of 10 days in which to submit requisite showing interest to support instant election)

4060 DEAUTHORIZATION PETITIONER

4060-2500 Cannot be supervisor

Community Tele-Communications, Inc., d/b/a Helena Cable T.V. **249 NLRB No. 085**

(U's contention that individual was supervisor and therefore ineligible to file deauthorization ptn, rejected, since petitioner was held Ee)

4080 RERUN ELECTIONS

4080-3300 New showing not required

Monmouth Medical Center **247 NLRB No. 075**

(second election ordered; contention of E that after first election held U voted to affiliate with another U, therefore, new showing of interest required, rejected, since no showing of interest required, rejected, since no showing of schism which would lead to confusion among voters as to organization designated to represent them; further Ees have indicated through original showing of interest an underlying intent of desire to have election and election will afford Ees opportunity to also vote on affiliation)

6000 TIME FOR SUBMISSION OF SHOWING OF INTEREST

6033 BY PETITIONER

6033-3300 Showing need not be submitted with petition

The Folger Coffee Company **250 NLRB No. 001**

(petitioner accorded 10 days from date of instant *Decision on Review* in which to submit requisite showing of interest to support election, since *voting group* found appropriate in instant case was larger than unit requested)

8000 VALIDITY OF SHOWING

8001 GENERALLY

N.L.R.B. v. Keystone Pretzel Bakery, Inc. **674 F.2d 197 (C.A. 3, Apr. 1982)**

(substantial evidence supported ALJ's conclusion that cards were invalid, and Bd's determination to contrary could not stand, where U agent told Ees he solicited that purpose of card was to get federal election into plant for purpose of negotiating contract and Ees were unaware of any differences between what they were told and what was on card)

N.L.R.B. v. Hitchiner Manufacturing Company **634 F.2d 1110 (C.A. 8, 1980)**

(validity of signed authorization cards upheld notwithstanding contention Ees advised that cards needed to secure election and, therefore, did not indicate support for U, since card stated that Ee authorizes U to represent him in collective bargaining and so card presumptively counts as indicating support of U absent misrepresentation to signer to disregard language above his signature)

8025 AUTHENTICITY OF AUTHORIZATION

8025-1700 Must be showing of interest in representation, not merely election

Warehouse Groceries Management, Inc. **254 NLRB No. 021**

(Ee's card found valid in view of card's unambiguous language in designating U as signer's representative and Ee organizer made no statement that cancelled card's language)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**

(U cards counted toward majority determination where Ees filled in, dated, signed and turned over cards to organizers after detailed explanation of meaning of cards was made both in English and Spanish, and after they were afforded opportunity to read cards before signing them)

8025-3300 Solicitation by supervisor

Wehrenberg Theatres, Inc. d/b/a Melba Theatre and Skyvue Drive-In **260 NLRB No. 001**

(supervisor's asking Ee to sign U card did not taint cards as supervisor and son also signed cards and Ees had no cause to believe that supervisor would retaliate; therefore Ees were not deprived of their free choice in selecting bargaining representative)

8025-5000 Authorizations to different unions

N.L.R.B. v. Unit Train Coal Sales, Inc. **636 F.2d 1121 (C.A. 6, 1980)**

(E's recognition of U not violative since U was validly designated as majority representative of the six unit Ees, of whom five had signed authorization cards for the U, nowithstanding contention that two of such five Ees had signed cards for another U while employed by E's predecessor, where dual card signers implicitly demonstrated repudiation of first cards by individually participating along with other members of unit in negotiating and signing agreement between E and U)

8025-7500 Revoked authorizations

8025-7550 Employer engaged in ULP

Air Products and Chemicals, Inc. **263 NLRB No. 045**

(Ee ptn which indicated that Ees withdrew their support from U and withdrew their applications for membership not valid proof that U no longer enjoyed valid support where it was prepared two weeks after U requested recognition and well after E had embarked upon course of serious ULPs)

Warehouse Groceries Management, Inc. **254 NLRB No. 021**

(Ee's attempt to revoke authorization card found ineffective since E was already engaged in coercive conduct designed to undermine U support which raises presumption that revocation resulted from E's unlawful conduct)

8050 CURRENCY OF SHOWING

8050-2000 Stale showing

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**

(*authorization cards not stale* where elapsed time was about five months from date first card was signed in September, 1976, until ptn that resulted in election; request for recognition was made in November)

8075 DESIGNATION OF REPRESENTATIVE

8075-3300 Designation other than of petitioner

8075-3320 Of parent international

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car **260 NLRB No. 119**

CAM Industries, Inc. (Millmen-Industrial Carpenters Local 262) **251 NLRB No. 004**

(E's refusal to bargain with U after card check established majority status violative notwithstanding authorization cards designated only International, for Bd has long held that such card serves as valid designation of affiliate when there was no confusion as to identity of potential representative in minds of signers)

8075-3380 Of predecessor union

Warehouse Groceries Management, Inc. **254 NLRB No. 021**

(if ALJ finds card majority on remand, bargaining order may issue to successor U formed by merger of U designated on authorization cards with another U, since designated U continued to exist as evidenced by successor U's retention of some offices, all property rights and assumption of all assets and liabilities, including contract obligations)

Monmouth Medical Center **247 NLRB No. 075**

(second election ordered; contention of E that after first election held U voted to affiliate with another U, therefore, new showing of interest required, rejected, since no showing of interest required, rejected, since no showing of schism which would lead to confusion among voters as to organization designated to represent them; further Ees have indicated through original showing of interest an underlying intent of desire to have election and election will afford Ees opportunity to also vote on affiliation)

332 DISCLAIMER OF INTEREST IN BEING REPRESENTATIVE

0100 GENERALLY

2500 IN PROCEEDINGS INITIATED BY EMPLOYER

2540 RESULT OF EFFECTIVE DISCLAIMER

2540-1700 Dismissal of petition in absence of question of representation

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. 251 NLRB No. 113

(petitioner's request to withdraw R ptn granted in view of fact neither petitioner nor intervenor currently has interest in representing Ees)

2540-3300 Revocation of certification where union certified

Mount Vernon College 254 NLRB No. 017

(pursuant to E's notification to GC, following ct's enforcement of Bd's bargaining order, that U disclaimed interest, and request that Bd delete name of U from D/O and revoke U's certification, and upon GC's mtn to amend Bd's order accordingly, Bd deleted name of U, requiring instead that E bargain with any duly certified U, and revoked U's certification in view of U's disclaimer of interest)

2540-9000 Removal of contract as bar

N.L.R.B. v. Circle A & W Products Company 647 F.2d 924 (C.A. 9, June 1981)

(ct agreed with position of E, who had refused to bargain following U's disclaimer of representation in unit, with newly elected U on contract bar grounds, claiming that Ees are not free to avoid contract by electing new bargaining representative for any reason; ct recognized inconsistency in Bd's prior cases with later case in which, due to dispute over U security clause, as here, Bd required E to bargain, thereby rejecting E's defense based on contract bar rule w/o explicitly recognizing important policy of protecting E by preserving stability of bargaining agreement)

2540-6700 Disclaimer after decision directing election

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. 251 NLRB No. 113

(petitioner's request to withdraw R ptn granted in view of fact neither petitioner nor intervenor currently has interest in representing Ees)

5000 WITHDRAWAL BY PETITIONING UNION OR INTERVENOR

5012 DISCLAIMER OF INTEREST BY INCUMBENT UNION

William Moses, Estate of Bella Moses 247 NLRB No. 20

(intervening incumbent U's disclaimer of interest in unit petitioned for by outside U held untimely and ineffective attempt to withdraw from multi-E bargaining unit, where intervenor had been bargaining representative of Ees for many years, it continued to represent them for 3 years after seeking to sever relationship with E, and it participated in recent contract negotiations for 6 months before announcing its disclaimer at time agreement was reached on virtually all issues)

William Moses, Estate of Bella Moses 247 NLRB No. 20

(intervening incumbent U's attempted disclaimer of interest in representing Ees in unit petitioned-for by outside U, disallowed where disruptive of stable multi-E bargaining relationship; Bd's concern for stability in multi-E bargaining relationship not diminished merely because attempted disclaimer would remove intervenor from further bargaining; multi-E association had reason to believe negotiations with intervenor would reach fruition and existing bargaining relationship would endure; and if disclaimer were allowed intervenor would be reshaping composition of unit)

5075 RESULT OF EFFECTIVE WITHDRAWAL OR DISCLAIMER

5075-7500 After election but before certification

The Hartz Mountain Corporation 260 NLRB No. 055

(disclaimer of interest by U receiving majority of votes in contested election found unconditional where U did not contest objections to election filed by other participating U concerning conduct of disclaiming U, disclaiming U was previously found to have been assisted by E, disclaimer extended both to petitions filed and to its intervention in proceeding on petition of other U, and disclaiming U engaged in no actions inconsistent with its disclaimer; accordingly election declared nullity and case remanded to RD for purpose of holding another election so that Ees can vote for or against remaining parties)

7500 DISCLAIMER IN DECERTIFICATION PROCEEDINGS

339 WHO MAY ACT AS REPRESENTATIVE

0100 GENERALLY

2500 LABOR ORGANIZATIONS

2512 LOCAL UNION

United Truck and Bus Service Co. **257 NLRB No. 051**

(mtn to dismiss R-ptn granted where Bd found that local Union was not labor organization w/i meaning of Act due to requirement, in its constitution that members must be Ees of public Es; therefore, since public Es are not Es as defined in Sec. 2(2) of Act and that Ees of such Es are not Ees as defined in Sec. 2(3) of Act, Local does not exist for purpose of dealing with Es as defined in Act)

Westinghouse Electric Corporation **JD-(ATL)-88-81**

(under multi plant contract signed by local)

2525 INTERNATIONAL UNION

French Hospital Medical Center **254 NLRB No. 083**

(E's contention that petitioner Local U is not labor organization and that International is petitioner since Local is a sham because it depends on International for its financial existence, rejected, while petitioner does not yet represent anyone and consequently receives no dues, it was formed to represent health care professionals with respect to wages, hours and other conditions of employment, has staff and issues newsletter; however, ptn was amended to reflect petitioner's association with International)

2582 JOINT REPRESENTATIVES

Yates Industries, Inc., California Division **264 NLRB No. 161**

(where international was certified bargaining representative and local signed bargaining agreement, international never relinquished its status as representative, and both local and international have participated as joint representatives of Ees, both held joint representatives)

Yates Industries, Inc., California Division **264 NLRB No. 161**

(E entering into new agreement with recognition of new local as sole representative during existing terms of contract, violative, where international (the certified representative) and local (U that executed contract) were joint representatives, notwithstanding local disaffiliated itself from international since international never relinquished its status, no amendment made to certification, no schism, old local not defunct; therefore contract act as bar to attempt midterm modification of bargaining representative in contract)

5000 INDIVIDUALS

7500 DISQUALIFICATION AS REPRESENTATIVE

7501 GENERALLY

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**

(E's contention that no bargaining order should be issued because of U representative's misconduct during U organizing campaign, rejected, since U is not thereby disqualified from representing E's Ees inasmuch as issue herein is whether E should be ordered to bargain with U, not with U representative who may no longer be associated with U, or may not be U representative for bargaining with E)

7525 CHARACTER OF REPRESENTATIVE

7525-6700 Representative limited by charter or bylaws to membership eligibility or purpose

United Truck and Bus Service Co. **257 NLRB No. 051**

(mtn to dismiss R-ptn granted where Bd found that local Union was not labor organization w/i meaning of Act due to requirement, in its constitution that members must be Ees of public Es; therefore, since public Es are not Es as defined in Sec. 2(2) of Act and that Ees of such Es are not Ees as defined in Sec. 2(3) of Act, Local does not exist for purpose of dealing with Es as defined in Act)

7525-8300 Representative practices or bias policy of sex, race, creed or age discrimination

Memphis Furniture Manufacturing Co. **259 NLRB No. 061**

(Intervenor's contention that Petitioner, if certified, is unlikely to represent black Ees fairly and equally, w/o merit, since Bd does not consider contention of that sort before certification; if certification is abused by certified representative by failing to represent all unit Ees fairly, Bd will then consider mtn to revoke certification)

Colonial Manor 1977, Inc. **253 NLRB No. 151**

(E's allegations that U has engaged in and is engaging in prohibited discrimination on basis of race and sex held inappropriately raised as defense in 8(a)(5) summary judgment proceeding for reasons set forth in Handy Andy and similar cases)

7550 DOMINATION OR ASSISTANCE BY EMPLOYER

7550-5000 Participation of supervisors in union affairs

French Hospital Medical Center **254 NLRB No. 083**

(E's contention that intervenor nurses association was disqualified from representing its Ees since conflict of interests existed where supervisors at other health care related institutions were on association's board of directors and one of its members was employed as supervisor by E particularly where individuals employed by institutions that were E's competitors in recruiting nurses, rejected, absent evidence supervisors employed by other institutions could influence bargaining relationship between E and intervenor to impermissable degree)

Rockford Memorial Association d/b/a Rockford Memorial Hospital **247 NLRB No. 051**

(contention U disqualified from representing Ees because of presence of supervisors in internal organization of International, rejected, absent evidence E's supervisors or these of third parties directly participated in or influenced U's bargaining process where all bargaining agreements negotiated by local committee composed of only bargaining unit personnel w/o interference, or requirement of approval by International's Bd of Directors)

7562 FRONTING FOR ANOTHER LABOR ORGANIZATION

French Hospital Medical Center **254 NLRB No. 083**

(E's contention that petitioner Local U is not labor organization and that International is petitioner since Local is a sham because it depends on International for its financial existence, rejected, while petitioner does not yet represent anyone and consequently receives no dues, it was formed to represent health care professionals with respect to wages, hours and other conditions of employment, has staff and issues newsletter; however, ptn was amended to reflect petitioner's association with International)

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**

(international U not acting as front for local U of different international U; local was not substitute for international but was international's agent for handling matters concerning election, processes, ULPs, collective bargaining and contract enforcement; E, presented no evidence that international U intended to cede its certification to local or to abandon its bargaining rights)

7575 CONFLICT OF INTERESTS OF REPRESENTATIVE

7575-2500 Arising from relationship to employees

French Hospital Medical Center **254 NLRB No. 083**

(E's contention that petitioner should be disqualified from representing E's registered nurses since another Local U of same International represented E's nursing attendants and licensed vocational nurses and under state law registered nurses responsible for insuring that nursing attendants and LVNs perform their duties and thus loyalty of registered nurses would be torn between their professional responsibility and reluctance to counsel member of another local because of U sympathy or fear of retribution, rejected as pure conjecture)

7575-2525 Union which owns or controls business that competes against or does business with employer

7575-2525—Cont.

St. John's Hospital and Health Center **264 NLRB No. 132**

(statewide nursing organization (CNA) disqualified from representing Ees at hospital because over its regional subdivisions who operate nurse registry services collecting percentage of earnings from such referrals, as these registries could create conflicts with U's collective bargaining responsibilities in that CNA has financial interest in maintaining and enhancing its customer relationship (hospital is a customer) that conflicts with requirement that collective bargaining agent have *single minded purpose of protecting and advancing interests of* unit Ees)

Visiting Nurses Association, Inc. Serving Alameda County **254 NLRB No. 005**

(petitioner precluded from representing Ees of E because, through operation of nurses' registry by one of its affiliates, it runs a placement service that directly competes with E, since registry is under control and management of affiliate over whom petitioner exercises considerable power through its right to dissolve affiliates and responsibility of affiliates to impliment policies of petitioner)

7575-5000 Arising from relationship to other employers

Abington Memorial Hospital **250 NLRB No. 098**

(fact that leadership positions in labor organization representing E's Ees were held by supervisors employed by other Es does not, standing alone, create a conflict of interest disqualifying organization from representing E's Ees; Bd does not assume inherent conflict of interest in bargaining process between supervisors and Ees; rather, conflict of interest may result only when connection is shown between E of Ees who seek to be represented and third party Ees, and E failed to make such showing)

7575-5010 Officials employed by competitors

National Medical Convalescent of San Diego, d/b/a Ojai Valley Community Hospital **254 NLRB No. 163**

(Association which represented nurses at several hospitals not precluded from representing Ees at hospital herein as no supervisors on Bd of Directors of Association is employed by E; furthermore, no conflict of interest even if there were supervisors of competing hospitals on Bd of Directors since each bargaining unit negotiates independently of Association or of any of its other bargaining units, and additionally, since no supervisors presently on Bd, possibility that in future supervisors may exert some influence against interest of E's Ees is too remote and speculative)

French Hospital Medical Center **254 NLRB No. 083**

(E's contention that intervenor nurses association was disqualified from representing its Ees since conflict of interests existed where supervisors at other health care related institutions were on association's board of directors and one of its members was employed as supervisor by E particularly where individuals employed by institutions that were E's competitors in recruiting nurses, rejected, absent evidence supervisors employed by other institutions could influence bargaining relationship between E and intervenor to impermissible degree)

7575-5050 Financial investment in competitor

N.L.R.B. v. Pinkerton's, Inc. **621 F.2d 1322 (C.A. 6, June 1980)**

(no conflict of interest that would relieve E of bargaining obligation where in exchange for not organizing subsidiary of E's competitor for 9 months, competitor's supervisor gave U organizer names of E's Ees and clients, since agreement not to organize Ees of competitor-subsidiary not inconsistent with representing Ees inasmuch as U had no financial stake in continued existence of competitor or E except insofar as continued existence in interest of Ees; in short, if U has nothing to gain by not asserting Ees' best interests, there is no conflict of interest)

7575-7800 Arising from relationship to other employees

Burns Electronic Security Services, Inc. **256 NLRB No. 139**

(operator/runners found guards and excluded from unit of all Ees where duties require them to wear uniforms, carry weapons, have police whistle and identification badge; operator/runners respond to alarms at customers premises, investigate scene, cooperate with police, secure premises and restore protective system)

7575-7850 Union representing guards

California Plant Protection, Incorporated, d/b/a C.P.P. Security Services **259 NLRB No. 039**

(U seeking to represent security officers at E's branch facility where E supplies security officers to Es w/i state held not disqualified from certification to represent guards' unit because of its affiliation with federation which E asserts is affiliated with two other organizations which admit non-guards to membership, since, as previously found by Bd, only a limited relationship existed between federation and one of the organizations and no present or past affiliation existed between them that would disqualify U, and there was no showing that second organization represented Ees other than guards)

National Medical Convalescent of San Diego, d/b/a Ojai Valley Community Hospital **254 NLRB No. 163**

(U which represented public Ees including city policemen not precluded from representing Ees at hospital at which police furnished protection since police are not guards w/i Section 9(b)(3) of Act where not employed by E and only contact with E is through municipal function of rendering assistance when needed)

N.L.R.B. v. J. W. Mays, Inc. **675 F.2d 442 (C.A. 2, Feb. 1982)**

(U representing *guards* not disqualified from representing Ee guards where non-guards were not members of U nor did U solicit non-guards for membership; U was not purporting to represent Ee who was officer of U but worked in non-guard position in his non-guard capacity)

7575-8100 Arising from relationship to other unions

7575-8125 Guard union affiliated with nonguard union

Bally's Park Place, Inc. **257 NLRB No. 132**

(guard U is *affiliated indirectly* with nonguard U where *extent and duration of (guard U's) dependence upon (nonguard U), or vice versa, indicates lack of freedom and independence in formulating its own policies and deciding its own course of action.* But Bd will permit substantial latitude where guard U is assisted by nonguard U merely during former's formulative stages)

Bally's Park Place, Inc. **257 NLRB No. 132**

(reversing *Wackenhut Corporation* 223 NLRB 83 (1976), Bd returned to its prior practice of permitting nonqualified Us to participate in R elections conducted among guard Ees and of certifying arithmetic election results only when such Us are victorious but not certifying these Us; however, noncertification will not prevent such Us from representing guards should they win such elections)

7575-8150 Parent union controlled, influenced or dominated by supervisors and affiliated unions

National Medical Convalescent of San Diego, d/b/a Ojai Valley Community Hospital **254 NLRB No. 163**

(Association which represented nurses at several hospitals not precluded from representing Ees at hospital herein as no supervisors on Bd of Directors of Association is employed by E; furthermore, no conflict of interest even if there were supervisors of competing hospitals on Bd of Directors since each bargaining unit negotiates independently of Association or of any of its other bargaining units, and additionally, since no supervisors presently on Bd, possibility that in future supervisors may exert some influence against interest of E's Ees is too remote and speculative)

French Hospital Medical Center **254 NLRB No. 083**

(E's contention that petitioner should be disqualified from representing E's registered nurses since another Local U of same International represented E's nursing attendants and licensed vocational nurses and under state law registered nurses responsible for insuring that nursing attendants and LVNs perform their duties and thus loyalty of registered nurses would be torn between their professional responsibility and reluctance to counsel member of another local because of U sympathy or fear of retribution, rejected as pure conjecture)

Eastern Maine Medical Center **253 NLRB No. 024**

(on remand from Bd for further hearing in light of Bd's Sierra Vista Hospital decision issued subsequent to ALJ's original decision, ALJ issued supplemental decision, adopted by Bd, which he based on detailed analysis of structure and internal functioning of nurses association involved herein, and held that association was not disqualified from representing E's Ees, since E failed to show disqualifying conflict of interest, presenting a clear and present danger to Ees or bargaining process, which may result from connection between E and any other E whose supervisors participate in affairs of nurse association)

Eastern Maine Medical Center **253 NLRB No. 024**

(on remand from Bd for further hearing in light of Bd's Sierra Vista Hospital decision issued subsequent to ALJ's original decision, ALJ issued supplemental decision finding that nurses association was not disqualified from representing E's Ees since, under Sierra Vista, Bd will not examine internal affairs of labor organization or role third party supervisors play in bargaining process absent demonstrated connection or relation between Ees and Es of supervisors who have positions of authorization in labor organization; here, E failed to show any such connection detrimental to association-represented Ees)

Abington Memorial Hospital **250 NLRB No. 098**

(mere assertion that E's supervisors hold leadership positions w/i nurses' labor organization insufficient to demonstrate *clear and present* danger of conflict of interest interfering with bargaining process; such participation will result in disqualification of labor organization only where activities of supervisors will affect E's interest in loyalty of its supervisors or Ees in representative uncompromised by loyalty to their E; and E failed to adduce evidence that its supervisors' activities w/i organization had any connection with organization's bargaining activities)

Abington Memorial Hospital **250 NLRB No. 098**

(fact that leadership positions in labor organization representing E's Ees were held by supervisors employed by other Es does not, standing alone, create a conflict of interest disqualifying organization from representing E's Ees; Bd does not assume inherent conflict of interest in bargaining process

7575-8150—Cont.

between supervisors and Ees; rather, conflict of interest may result only when connection is shown between E of Ees who seek to be represented and third party Ees, and E failed to make such showing)

Abington Memorial Hospital **250 NLRB No. 098**

(in finding that state-wide labor organization was not disqualified from representing Ees because supervisors held leadership positions in organization, Bd noted that organization had insulated its bargaining activities at local level from supervisory participation or influence, where local units, chartered by organization's commission solely for purpose of bargaining with an E, operated independently of state organization and made all decisions with regard to bargaining; and commission controlled expenditures of its own funds, and was not accountable to state organization for expenditures)

Healdsburg General Hospital **247 NLRB No. 030**

(nurses association held labor organization and not disqualified from acting as Ee representative on ground that association is subject to control by supervisors who are permitted to be members; even assuming that association is influenced by supervisors, that association represents *all* nurses including supervisors, and that such representation is costly and controversial, Bd held E failed to establish that any of these factors create conflict of interest sufficient to prevent association from acting as Ee representative)

Sidney Farber Cancer Institute **247 NLRB No. 001**

(professional nurses association not precluded from representing Ees notwithstanding contention disqualified by fact high percentage of state and district officers and directors of association are supervisors, absent evidence of supervisory domination of bargaining activities; since no Ees of E serve as officers or directors and supervisors excluded from membership in local chapters at which level bargaining decisions are made)

7575-9300 Union subject to influence and control by supervisors

Sealift Maritime, Inc. **265 NLRB No. 154**

(admission of supervisors to membership in organization which Ees may participate and join and which exists for collective bargaining does not alter intervenor's status as labor organization in absence of substantial evidence that there exists clear and present danger of conflicts of interest between U and Ees)

North Shore University Hospital **259 NLRB No. 121**

(nurses' association not disqualified from representing nurses notwithstanding admission of supervisors to membership, in view of nonparticipation of supervisors as officials of association, exclusion of supervisors from bargaining unit councils which control bargaining process, Bd's rejection in prior similar cases of E's contentions regarding conflict of interest issues, and fact that supervisors' participation in association's voting sessions in conventions or by secret ballot concerning association policy and functioning does not present danger of conflict of interest)

North Shore University Hospital **259 NLRB No. 121**

(nurses' association not disqualified from representing nurses notwithstanding admission of other Es' supervisors to membership; assertions of disqualifying conflict of interest when *third party* supervisors were members of nurses' associations' board of directors have been rejected by Bd absent showing of connection between hospital involved and Es of such supervisors; nor was association disqualified because it maintained committee concerned with interests of supervisors, because supervisors may hold positions of authority at some future time, or because association submits names of nominees for appointment to state's board of nursing)

National Medical Convalescent of San Diego, d/b/a
Ojai Valley Community Hospital **254 NLRB No. 163**

(Association which represented nurses at several hospitals not precluded from representing Ees at hospital herein as no supervisors on Bd of Directors of Association is employed by E; furthermore, no conflict of interest even if there were supervisors of competing hospitals on Bd of Directors since each bargaining unit negotiates independently of Association or of any of its other bargaining units, and additionally, since no supervisors presently on Bd, possibility that in future supervisors may exert some influence against interest of E's Ees is too remote and speculative)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**

(Nurses' Association held labor organization not disqualified to represent E's Ees, even assuming that competitive relationships existed between E and other area hospitals, where there was no showing of conflict of interest between influence w/i Association of supervisor-members employed by competing hospitals and Association's capacity to represent E's Ees; presence alone of third-party supervisors in Association is not sufficient, since Bd will not assume any *inherent* conflict of interest between supervisors and Ees in bargaining process; see also Oak Park Community Hospital, 249 NLRB No. 120)

Lodi Memorial Hospital Association, Inc. **249 NLRB No. 121**

(Nurses' Assoc. held labor organization not disqualified to represent E's Ees, notwithstanding E's contention that specified supervisors, officials of Assoc. and employed by other hospitals, could influence to an impermissible degree bargaining between E and Assoc., since all bargaining responsibilities of Assoc. reside w/i Assoc.'s commission all of whose members are nonsupervisory nurses, bargaining on local level is conducted by elected Ee bargaining committee, and there was no reasonable likelihood that specified supervisors could meaningfully affect bargaining between E and Assoc.)

Sierra Vista Hospital, Inc. **249 NLRB No. 066**

(where Bd had rescinded its denial of E's mtn to revoke certification of nurses association and remanded case to RD to give parties opportunity to fully litigate issue as to whether association was disqualified to represent E's nonsupervisory nurses because of supervisory participation in positions of authority in the association, Bd held E had failed to meet burden of proving clear and present danger of conflict of interest under *Sierra Vista*, 241 NLRB No. 107, and denied E's mtn to revoke certification: See also *Sierra Vista Hospital, Inc.* 249 NLRB No. 067)

Exeter Hospital **248 NLRB No. 056**

(nurses association which included supervisors in leadership positions found to be unqualified to represent Ees since there was clear and present danger of conflict of interest which would interfere with collective bargaining process)

Rockford Memorial Association d/b/a Rockford
Memorial Hospital **247 NLRB No. 051**

(contention U disqualified from representing Ees because of presence of supervisors in internal organization of International, rejected, absent evidence E's supervisors or these of third parties directly participated in or influenced U's bargaining process where all bargaining agreements negotiated by local committee composed of only bargaining unit personnel w/o interference, or requirement of approval by International's Bd of Directors)

Healdsburg General Hospital **247 NLRB No. 030**

(nurses association held labor organization and not disqualified from acting as Ee representative on ground association is subject to control of supervisors who are permitted to be members, since (1) there was no evidence E's supervisors belonged to association, and Bd will not resort to speculation about posibility, as claimed by E, that supervisors might join at some future time, and (2) E failed to meet *heavy burden* of showing *direct* conflict of interest because of possible relation between E and Es of supervisors participating in bargaining process)

347 BARS TO CONDUCT OF ELECTION

0100 GENERALLY

2000 PRIOR DETERMINATION OF REPRESENTATIVE

2017 BOARD CERTIFICATION AS REPRESENTATIVE OUTSTANDING

2017-5000 Computation of certification year

2017-5067 From date employer accepts bargaining obligation

Nansemond Convalescent Center, Inc. **255 NLRB No. 089**

(in order to place E and U in as nearly same situation as posible which existed during early negotiations it was ordered that upon resumption of bargaining and for 8 months thereafter U be regarded as if initial certification year had not expired)

Chicago Health and Tennis Clubs, Inc. **251 NLRB No. 018**

(decertification ptn dismissed as untimely because filed w/i certification year extended pursuant to ct enforced Bd D/O since year did not begin to run at time E made offer to bargain with U which also contained preconditions regarding nonmandatory subject of bargaining which U was free to, and did, reject; therefore, such offer did not rise to *good faith* bargaining)

2083 ELECTION WITHIN PRECEDING 12 MONTHS

2083-7500 Deauthorization election

2083-7583 Barred when precluded by State statute

Asamera Oil (U.S.) Inc. **251 NLRB No. 085**

(ptn dismissed where filed less than year after *authorization* election held pursuant to state law which provided for state conducted election before authorizing U security provision)

4000 CONTRACT WITH INCUMBENT REPRESENTATIVE

4001 GENERALLY

N.L.R.B. v. Circle A & W Products Company **647 F.2d 924 (C.A. 9, June 1981)**

(in implementing contract bar rules, Bd may find it appropriate to infer or presume prohibited purpose to avoid bargaining agreement if U's disclaimer of representation of unit is insignificant, minor, or contrary to policies of Act; however, there will be some circumstances, in addition to schism or U defunctness, in which change in representation is necessary in order to ensure Ees fair, adequate, and effective representation; Bd must exercise its discretion to reach appropriate balance where objectives of contract stability and adequate Ee representation conflict)

4001-2500 Board contract bar rules as discretionary rules

4001-2550 May be applied or waived by Board as facts require

N.L.R.B. v. Circle A & W Products Company **647 F.2d 924 (C.A. 9, June 1981)**

(Bd, which formulated contract bar rule in order to preserve stability in bargaining agreements, has principal discretion to waive or apply rule in order to effectuate its policy underpinning; however, Bd discretion must not run counter to other policies of Act, and certain guidelines are required in applying rule)

4001-2575 Factors considered in establishment

4001-2575-5000 Balance between stability of labor relations and employee's freedom of choice

N.L.R.B. v. Bob's Big Boy Family Restaurants, a Division of Marriott Corporation **693 F.2d 904 (C.A. 9, Dec. 1982)**

(where objectives of contract stability and adequate Ee representation conflict, Bd must exercise its discretion to reach appropriate balance, but it must give explicit recognition to both sides of balance)

N.L.R.B. v. Circle A & W Products Company **647 F.2d 924 (C.A. 9, June 1981)**

(in implementing contract bar rules, Bd may find it appropriate to infer or presume prohibited purpose to avoid bargaining agreement if U's disclaimer of representation of unit is insignificant, minor, or contrary to policies of Act; however, there will be some circumstances, in addition to schism or U defunctness, in which change in representation is necessary in order to ensure Ees fair, adequate, and effective representation; Bd must exercise its discretion to reach appropriate balance where objectives of contract stability and adequate Ee representation conflict)

4001-4300 Must be valid collective bargaining agreement

Radio Free Europe/Radio Liberty, Inc. **262 NLRB No. 063**

(contract not bar where it had expired and U's letter accepting offer of salary increase did not constitute contract that would bar petition; contract to serve as bar must contain substantial terms and conditions of employment deemed sufficient to stabilize bargaining relationship; no bar if limited to wages only or to one or several provisions not deemed substantial)

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**

(E's contention that contract bar exists because of bargaining agreement allegedly in effect between foreign government and foreign labor organizations covering teachers assigned by foreign government to teach at E's school, rejected, since alleged agreement was not fruit of collective bargaining but was rather unilaterally imposed by foreign government and enacted into law; assigned teachers are on leave of absence from their foreign government civil service positions and work for E; and asserted agreement, limited to wages only, is insufficient to constitute bar)

Crompton Company, Inc. **260 NLRB No. 069**

(written agreement must be signed by both parties in order to bar election and here where parties had agreed prior to date of election petition but did not sign agreement until 16 days later contract cannot act as bar to election)

Crompton Company, Inc. **260 NLRB No. 069**

(extension agreement signed during insulated 60 day period prior to expiration of contract is not premature extension)

4010 PERIOD DURING WHICH CONTRACT WILL BAR PETITION

4010-0100 Generally

N.L.R.B. v. Bob's Big Boy Family Restaurants, a Division of Marriott Corporation **693 F.2d 904 (C.A. 9, Dec. 1982)**

(Bd has considerable discretion in formulation and application of contract-bar rule since rule does not find its source in express language of statute nor is it judicially compelled)

4010-2000 Duration of contract

4010-2014 Bar for term of contract not to exceed 3 years

Vanity Fair Mills, Inc., Clarke Mills Division **256 NLRB No. 168**

(only contracts of reasonable duration will act as bars to ptns for elections. Bd has held that bargaining agreements of three years duration of less are of reasonable duration. Contracts with fixed terms of more than three years will act as bars to ptns only during first three years, the 60-90 day period for filing of ptns is measured from first anniversary date of start of contract and not from expiration date of contract, and 60 day insulated period is likewise 60 days immediately proceeding third anniversary of contract)

Westwood Import Company, Inc. **251 NLRB No. 162**

Westwood Import Co. Inc., and Gamut Designs, Inc., d/b/a Westwood Import Co. v. N.L.R.B. **681 F.2d 664 (C.A. 9, July 1982)**

(contract bar rule expresses long-standing policy of Bd not to entertain any challenge to incumbent U's majority status, absent unusual circumstances, during term of collective bargaining agreement, not exceeding three years)

Peoples Gas System, Inc. v. N.L.R.B. **625 F.2d 35 (C.A.D.C., 1980)**

4010-2030 Contracts for less than 90 days

4010-2030—Cont.

Crompton Company, Inc. **260 NLRB No. 069**

(agreement for less than 90 days cannot act as contract bar as they provide either an abbreviated period or no period during which Ees may act to remove bargaining representative; moreover this is true if agreement is extention of existing contract or new contract)

4010-2035 Contracts of unreasonable duration

Shen-Valley Meat Packers, Inc. **261 NLRB No. 144**

(in finding amendment to 5-year contract, executed after contract's third year anniversary date, barred ptn filed after execution of amendment, Bd held amendment governed timeliness of ptn, where amendment was for fixed term and effective through remainder of agreement, it expressly reaffirmed agreement as shown by parties' intent which was evidenced by their reference to agreement in amendment and in its title, phrasing of amendment in terms of amendments to agreement, its acknowledgment of agreement's reopening date, and its coverage of significant terms and conditions of employment rather than being limited to wages)

Shen-Valley Meat Packers, Inc. **261 NLRB No. 144**

(while mid-term modification will not remove a bar where contract would otherwise be bar, modification mid-term of long-term contract may, if it meets requirements set forth in *Southwestern Portland Cement*, as here, extend operation of contract as bar beyond third year anniversary date; in determining whether or not mid-term modification reaffirms a long-term contract for bar purposes, scope of modification clause is a relevant consideration)

Shen-Valley Meat Packers, Inc. **261 NLRB No. 144**

(Bd held that purpose of 3-year reasonable duration rule is to promote stable bargaining relationships while preserving right of Ees to change their representative which is achieved, first, by fact that *open period* ensures Ees opportunity to change representative regardless of actions of contracting parties and, second, by fact that Ees have further opportunity to exercise thier choice after 3-year period if parties do not renew their agreement; thus, statutory policy favoring stability is stronger, as compared to Ee free choice, where bargaining relationship is active and agreement reflects contemporaneous conditions)

Vanity Fair Mills, Inc., Clarke Mills Division **256 NLRB No. 168**

(only contracts of reasonable duration will act as bars to ptns for elections. Bd has held that bargaining agreements of three years duration of less are of reasonable duration. Contracts with fixed terms of more than three years will act as bars to ptns only during first three years, the 60-90 day period for filing of ptns is measured from first anniversary date of start of contract and not from expiration date of contract, and 60 day insulated period is likewise 60 days immediately preceding third anniversary of contract)

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**

(if contract term exceeds three years, (R) ptn will be dismissed if it is outside 60-90 day period preceding contract's third *anniversary* date, even though it is filed between 60-90 days before contract's actual expiration date)

4010-2042 Contracts of indefinite duration

Crompton Company, Inc. **260 NLRB No. 069**

(extension agreement which extended contract term 30 days or until new contract was signed, whichever was sooner, held not to be contract bar as it is of no fixed term and party wishing to file representation petition are not apprised of open period)

4010-4000 Open period for filing during contract

4010-4001 Generally

Abbey Medical/Abbey Rents, Inc. **264 NLRB No. 129**

(under contract bar rules, during term of 3-year or less collective-bargaining agreement, election ptn is timely filed only if submitted during 30-day *open period* running from 90th day to 60th day prior to existing contract's termination date, absent unusual circumstances)

RCA del Caribe, Inc. **262 NLRB No. 116**

(*Shea Chemical* 121 NLRB 1027, which required E to withdraw from bargaining with incumbent U after ptn had been filed by outside U overruled; E neutrality is best preserved by continued bargaining with incumbent, thus E will not violate Sec. 8(a)(2) by postpetition negotiation or execution of contract with incumbent U and will not violate Sec. 8(a)(3) even if it contains U-security clause; however, if contract is executed and incumbent loses election, contract with incumbent will be null and void)

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**

(issue of whether current three year contract was bar to election ptn remanded to Bd to explain, why *membership* as used in contract should be interpreted differently depending on whether word appeared in U security clause or health benefit clause, and whether petitioner, to its detriment, reasonably relied on contract's cover dates in determining when to file election ptn; Bd must follow its own precedent by excluding extrinsic evidence from its consideration or explain why its rules should be disregarded; ct not allowed to substitute different rationale for that provided by Bd)

4010-4033 Petitions may not be filed more than 90 days before expiration date

4010-4033-2500 Dismissed if filed prior thereto

Vanity Fair Mills, Inc., Clarke Mills Division **256 NLRB No. 168**

(it is well established as general proposition that existing bargaining agreement acts as bar to election and precludes filing of ptn for election. There are, however, two qualifications to that general proposition. First, there is open period from 60-90 days prior to expiration of existing contract, during which period existence of contract will not act as bar to ptn. However, during final 60 days of agreement-the insulated period-contract again becomes bar to ptns for elections. If new contract is entered into during insulated period, new contract will become bar to ptns.)

Westwood Import Company, Inc. **251 NLRB No. 163**

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**

(if contract term exceeds three years, (R) ptn will be dismissed if it is outside 60-90 day period preceding contract's third *anniversary* date, even though it is filed between 60-90 days before contract's actual expiration date)

4010-4067 Petitions may not be filed less than 60 days before expiration date

4010-4067-2500 Dismissed if filed within 60 day insulated period

Vanity Fair Mills, Inc., Clarke Mills Division **256 NLRB No. 168**

(it is well established as general proposition that existing bargaining agreement acts as bar to election and precludes filing of ptn for election. There are, however, two qualifications to that general proposition. First, there is open period from 60-90 days prior to expiration of existing contract, during which period existence of contract will not act as bar to ptn. However, during final 60 days of agreement-the insulated period-contract again becomes bar to ptns for elections. If new contract is entered into during insulated period, new contract will become bar to ptns.)

Vanity Fair Mills, Inc., Clarke Mills Division **256 NLRB No. 168**

(ptn improperly dismissed, notwithstanding filed w/i insulated period of 60 days prior to third anniversary of contract for more than three years and that prior to filing of ptn in proper form parties had executed new contract, where petitioner acted on advice of Regional Office which was unaware of and did not attempt to find out origination date and duration of contract)

Westwood Import Company, Inc. **251 NLRB No. 163**

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**

(if contract term exceeds three years, (R) ptn will be dismissed if it is outside 60-90 day period preceding contract's third *anniversary* date, even though it is filed between 60-90 days before contract's actual expiration date)

4010-4067-5000 Petitions during insulated period alleging ground why contract is not bar

N.L.R.B. v. Bob's Big Boy Family Restaurants, a Division of Marriott Corporation **693 F.2d 904 (C.A. 9, Dec. 1982)**

(ct denied enforcement of Bd order requiring E to bargain with U certified by Bd notwithstanding contract-bar rule which Bd found did not preclude election initiated by ptn filed outside *window period* because of erroneous dates of duration printed on cover of circulated contract, where Bd abused its discretion by presuming w/o foundation that E *contributed to the confusion over contract dates* since record does not show that E caused in any way or even knew about misprint on cover of booklet reproducing contract)

4010-6000 Insulated period of contract

4010-6033 Petitions may not be filed during 60 day period preceding expiration date

Vanity Fair Mills, Inc., Clarke Mills Division **256 NLRB No. 168**

(it is well established as general proposition that existing bargaining agreement acts as bar to election and precludes filing of ptn for election. There are, however, two qualifications to that general proposition. First, there is open period from 60-90 days prior to expiration of existing contract, during which period existence of contract will not act as bar to ptn. However, during final 60 days of agreement-the insulated period-contract again becomes bar to ptns for elections. If new contract is entered into during insulated period, new contract will become bar to ptns.)

Vanity Fair Mills, Inc., Clarke Mills Division **256 NLRB No. 168**

(ptn improperly dismissed, notwithstanding filed w/i insulated period of 60 days prior to third anniversary of contract for more than three years and that prior to filing of ptn in proper form parties had executed new contract, where petitioner acted on advice of Regional Office which was unaware of and did not attempt to find out origination date and duration of contract)

4010-6067 Contract executed during insulated period constitutes valid bar thereafter

4010-6067—Cont.

Vanity Fair Mills, Inc., Clarke Mills Division **256 NLRB No. 168**

(it is well established as general proposition that existing bargaining agreement acts as bar to election and precludes filing of ptn for election. There are, however, two qualifications to that general proposition. First, there is open period from 60-90 days prior to expiration of existing contract, during which period existence of contract will not act as bar to ptn. However, during final 60 days of agreement-the insulated period-contract again becomes bar to ptns for elections. If new contract is entered into during insulated period, new contract will become bar to ptns.)

4010-8000 Termination of contract prior to expiration

4010-8020 By mutual consent

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**

(integrity of bargaining unit cannot be unilaterally attacked; once unit is certified, it may be changed only by mutual agreement of parties or by Bd action)

4010-9000 Automatic renewal of contract in absence of notice to terminate

Empire Screen Printing, Inc. **249 NLRB No. 101**

(where contract contained automatic renewal clause unless either party gave timely written notice prior to contract's anniversary date of desire to modify or terminate agreement, Bd adhered to its position that parties, by their course of bargaining, did not waive untimeliness of U's notice to modify contract, and did not forestall renewal of contract)

Empire Screen Printing, Inc. **249 NLRB No. 101**

(decertification ptn dismissed where existing contract specifically required timely notice of intention to modify or terminate contract in order to forestall renewal, but neither party herein gave such timely notice, and contract by its terms automatically renewed for one year)

4020 CIRCUMSTANCES OF EXECUTION

4020-3300 Validity of contract execution

4020-3350 Satisfaction of requirements of

4020-3350-0800 Majority status

Giordano Construction Co. **256 NLRB No. 010**

(U, originally recognized under *Section* 8(f), can achieve *Section* 9(a) status by (1) demonstrating that it had achieved majority status *among Ees who make up a permanent and stable work force of the E* or (2) by demonstrating majority status of Ees employed at particular jobsite)

4020-6700 Pendency of rival claim or petition

4020-6725 Contract executed while rival claim pending does not bar petition on claim

RCA del Caribe, Inc. **262 NLRB No. 116**

(*Shea Chemical* 121 NLRB 1027, which required E to withdraw from bargaining with incumbent U after ptn had been filed by outside U overruled; E neutrality is best preserved by continued bargaining with incumbent, thus E will not violate Sec. 8(a)(2) by postpetition negotiation or execution of contract with incumbent U and will not violate Sec. 8(a)(3) even if it contains U-security clause; however, if contract is executed and incumbent loses election, contract with incumbent will be null and void)

4020-6750 Contract executed while petition is pending

RCA del Caribe, Inc. **262 NLRB No. 116**

(*Shea Chemical* 121 NLRB 1027, which required E to withdraw from bargaining with incumbent U after ptn had been filed by outside U overruled; E neutrality is best preserved by continued bargaining with incumbent, thus E will not violate Sec. 8(a)(2) by postpetition negotiation or execution of contract with incumbent U and will not violate Sec. 8(a)(3) even if it contains U-security clause; however, if contract is executed and incumbent loses election, contract with incumbent will be null and void)

4020-6750-0100 Generally

Crompton Company, Inc. **260 NLRB No. 069**

(written agreement must be signed by both parties in order to bar election and here where parties had agreed prior to date of election petition but did not sign agreement until 16 days later contract cannot act as bar to election)

4020-6750-1700 Petition filed during open period not barred

4020-6750-1750 Barred unless employer had knowledge of petition prior to execution

RCA del Caribe, Inc. **262 NLRB No. 116**

(*Shea Chemical* 121 NLRB 1027, which required E to withdraw from bargaining with incumbent U after ptn had been filed by outside U overruled; E neutrality is best preserved by continued bargaining with incumbent, thus E will not violate Sec. 8(a)(2) by postpetition negotiation or execution of contract with incumbent U and will not violate Sec. 8(a)(3) even if it contains U-security clause; however, if contract is executed and incumbent loses election, contract with incumbent will be null and void)

4030 STATUS OF CONTRACTING UNION AS REPRESENTATIVE

4030-3700 Defunct labor organization

4030-3750 Test of defunctness

Yates Industries, Inc., California Division **264 NLRB No. 161**

(bargaining representative is considered defunct and its contract is not bar, only if it is unable or unwilling to represent Ees. Mere temporary inability to function does not constitute defunctness; nor is loss of all members in unit equivalent of defunctness if representative otherwise continues in existence and is willing and able to represent Ees)

4030-4300 Foreign labor organizations

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**

(asserted interest of foreign labor organization, which represents foreign government's civil servants assigned to teach at E's private, nonprofit school, in also representing E's locally hired teachers held no bar, since E conceded that no bargaining agreement covering such Ees yet exists)

4030-5000 Schism or transfer of affiliation

4030-5050 Effect of schism on existing contract

Yates Industries, Inc., California Division **264 NLRB No. 161**

(no schism existed where members of local U voted to disaffiliate from International because of personal animosity with president of International and feeling that International failed to properly represent local at that step of grievance procedure which required grievances be handled by International, since no basic intra-U conflict over policy at highest level resulting in such confusion that bargaining relationship stability can only be restored by election, but rather disagreement between E local and International)

4030-6700 Relinquishment or abandonment of jurisdiction

4030-6712 Affirmative disclaimer

Westwood Import Co. Inc., and Gamut Designs, Inc., d/b/a Westwood Import Co. v. N.L.R.B. **681 F.2d 664 (C.A. 9, July 1982)**

(unusual circumstances may make application of contract bar rule inappropriate; Bd will not apply rule in cases where U is unwilling or unable to represent Ees at time its status is questioned)

4030-9100 Joint representative

Yates Industries, Inc., California Division **264 NLRB No. 161**

(where international was certified bargaining representative and local signed bargaining agreement, international never relinquished its status as representative, and both local and international have participated as joint representatives of Ees, both held joint representatives)

Yates Industries, Inc., California Division **264 NLRB No. 161**

(E entering into new agreement with recognition of new local as sole representative during existing terms of contract, violative, where international (the certified representative) and local (U that executed contract) were joint representatives, notwithstanding local disaffiliated itself from international since international never relinquished its status, no amendment made to certification, no schism, old local not defunct; therefore contract act as bar to attempt midterm modification of bargaining representative in contract)

4040 ADEQUACY OF CONTRACT FORM AND SUBSTANCE

4040-0100 Generally

Radio Free Europe/Radio Liberty, Inc. **262 NLRB No. 063**

(contract not bar where it had expired and U's letter accepting offer of salary increase did not constitute contract that would bar petition; contract to serve as bar must contain substantial terms and conditions of employment deemed sufficient to stabilize bargaining relationship; no bar if limited to wages only or to one or several provisions not deemed substantial)

4040-1700 Form of contract

4040-1720 Oral contract

4040-1720-5000 Ineffective as bar

Empire Screen Printing, Inc. **249 NLRB No. 101**

(oral agreement concerning wage increase held no bar to decertification ptn since it did not satisfy requirements that for agreement to achieve bar quality it must contain substantial terms and conditions of employment, and must be signed by all parties)

4040-1750 Questionable signature, initialed or unsigned document

4040-1750—Cont.

Gaylord Broadcasting Co. d/b/a Television Station WVTV **250 NLRB No. 058**
(parties' initials on agreement satisfied Bd's requirements that written agreement be signed by both parties in order to bar election)

4040-1760 Supplementary, amendatory, and subsidiary agreements

4040-1760-5030 * Amendment to contract

Shen-Valley Meat Packers, Inc. **261 NLRB No. 144**
(even though ptn, filed after third anniversary date of 5-year contract, would have been timely, amendment to contract, executed prior to filing of ptn, reaffirmed parties' original agreement for remainder of its term, and thereby barred ptn)

Shen-Valley Meat Packers, Inc. **261 NLRB No. 144**
(in finding amendment to 5-year contract, executed after contract's third year anniversary date, barred ptn filed after execution of amendment, Bd held amendment governed timeliness of ptn, where amendment was for fixed term and effective through remainder of agreement, it expressly reaffirmed agreement as shown by parties' intent which was evidenced by their reference to agreement in amendment and in its title, phrasing of amendment in terms of amendments to agreement, its acknowledgment of agreement's reopening date, and its coverage of significant terms and conditions of employment rather than being limited to wages)

Shen-Valley Meat Packers, Inc. **261 NLRB No. 144**
(Bd held that purpose of 3-year reasonable duration rule is to promote stable bargaining relationships while preserving right of Ees to change their representative which is achieved, first, by fact that *open period* ensures Ees opportunity to change representative regardless of actions of contracting parties and, second, by fact that Ees have further opportunity to exercise thier choice after 3-year period if parties do not renew their agreement; thus, statutory policy favoring stability is stronger, as compared to Ee free choice, where bargaining relationship is active and agreement reflects contemporaneous conditions)

4040-1780 Informal document

Radio Free Europe/Radio Liberty, Inc. **262 NLRB No. 063**
(contract not bar where it had expired and U's letter accepting offer of salary increase did not constitute contract that would bar petition; contract to serve as bar must contain substantial terms and conditions of employment deemed sufficient to stabilize bargaining relationship; no bar if limited to wages only or to one or several provisions not deemed substantial)

4040-1780-5000 May constitute bar

Farrel Rochester Division of USM Corporation **256 NLRB No. 162**
(informal document which contains substantial terms and conditions of employment is sufficient as contract-bar if it satisfies other contract-bar requirements, and here where E and U had signed written memorandum of agreement, initialed documents which were incorporated by reference, agreement was sufficient to stabalize bargaining relationship, parties scheduled no further negotiations after signing, Ees ratified agreement which E implemented; clearly it was intended to be final and binding and is bar to decertification ptn notwithstanding afterwards dispute over interpretation of provision arose and parties continued to negotiate)

4040-3300 Unit covered

4040-3333 Employees covered by contract do not constitute appropriate unit

4040-3333-3300 Contract held not bar

Sunray Ltd. **258 NLRB No. 072**
(election not barred by previous 8(f) relationships with dual-function Ees where competing Us did not represent majority in unit in that some work of Ees fell w/i juridiction of each U and thus neither U could claim 9(a) relationship; therefore Bd directed election in unit covering all Ees, giving Ees a choice to be represented by one of the two rival Us or no U)

4040-3333-3333 Where employees covered are not accretion but contitute separate appropriate unit

Auto Processing Company and Auto Warehousing Company **258 NLRB No. 115**
(where body shop operations with Ees represented by two Us were transferred to body shop operations of another facility with overall unit represented by another U, no accretion found since (1) all body shop Ees may constitute appropriate unit in light of being in separate building and different type of work performed by other Ees; (2) transferred Ees have had long history of separate collective bargaining representation by different Us and under different agreements; and (3) larger number of transferred Ees would have representative changed by smaller number of body shop Ees represented by U for overall unit)

Westwood Import Company, Inc. **251 NLRB No. 163**
(where relevant considerations are not free from doubt as to whether or not Ees are accretion to existing unit, Bd and cts are in agreement that best way to resolve close question is through election process because accretion doctrine applied restrictively since it deprives Ees of opportunity to express their desires)

4040-3367 Members only contract

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **259 NLRB No. 084**
(on ct remand Bd held that extrinsic evidence must be excluded in contructing meaning of *members only* provision of health benefits provision)

4040-3367-3300 Contract not equally applied to union members and nonmember employees no bar

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**
(contract which contains provision extending special benefits to U members only, known as *members only* clause, will not bar election ptn; such contracts do not establish kind of stability that NLRA seeks to protect)

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**
(issue of whether current three year contract was bar to election ptn remanded to Bd to explain, why *membership* as used in contract should be interpreted differently depending on whether word appeared in U security clause or health benefit clause, and whether petitioner, to its detriment, reasonably relied on contract's cover dates in determining when to file election ptn; Bd must follow its own precedent by excluding extrinsic evidence from its consideration or explain why its rules should be disregarded; ct not allowed to substitute different rationale for that provided by Bd)

4040-3367-3350 Although contract on its face covers all employees

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**

4040-3367-6700 Contract held bar where ambiguity limiting coverage resolved by parties' intent and practice

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**
(Bd will not consider extrinsic evidence to determine if ambiguous contract provisions were intended to have, or in practice had, illegal effects)

4040-5000 Sufficiency of terms

4040-5001 Generally

4040-5001-5000 No bar where terms insufficient to stabilize labor relations

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**
(in order to constitute a bar, contract must contain substantial terms and conditions of employment deemed sufficient to stabilize bargaining relationship; it will not constitute a bar if it is limited to wages only)

Farrel Rochester Division of USM Corporation **256 NLRB No. 162**
(informal document which contains substantial terms and conditions of employment is sufficient as contract-bar if it satisfies other contract-bar requirements, and here where E and U had signed written memorandum of agreement, initialed documents which were incorporated by reference, agreement was sufficient to stabalize bargaining relationship, parties scheduled no further negotiations after signing. Ees ratified agreement which E implemented; clearly it was intended to be final and binding and is bar to decertification ptn notwithstanding afterwards dispute over interpretation of provision arose and parties continued to negotiate)

4040-5040 Terms and conditions of employment

Artcraft Displays, Inc. **242 NLRB No. 151**
(tripartite agreement entered into by Es with Sign Painters representing decorators herein sought to be represented, and with Carpenters, held no bar, where decorators' presently expired agreements and not tripartite agreement, governed their bargaining relationship with Es; tripartite agreement set only wages for decorators' work thereunder with decorators' agreements supplying all other employment terms, and contract limited to wages is no bar; and since tripartite and decorators' agreements had different expiration dates with parties enabled to execute contracts indefinitely, ptn would never be barred if tripartite agreement were found a bar)

Gaylord Broadcasting Co. d/b/a Television Station WVTV **250 NLRB No. 058**
(signing of informal agreement covering substantial terms and conditions of employment is sufficient for contract bar purposes even though it was contemplated that contract would be formally executed by parties at later date)

Gaylord Broadcasting Co. d/b/a Television Station WVTV **250 NLRB No. 058**
(contract that was intended by parties to cover substantial terms and conditions of employment and initialed by parties barred decertification ptn notwithstanding another document prepared for formal execution which included two provisions not in initialed agreement, also amended vacation pay clause, and which contract E refused to sign because decertification ptn had meanwhile been filed)

4040-5000 Contract duration and termination

Shen-Valley Meat Packers, Inc. **261 NLRB No. 144**

(any evidence of parties' *understanding* of contract's expiration date, which contract expressly stated as being otherwise, is irrelevant to determination of contract's duration for contract-bar purposes; and if such evidence were necessary to determine expiration date, contract would be ineffective as a bar)

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **259 NLRB No. 004**

(on ct remand, Bd affirmed that contract was not bar where Ees relied on incorrect date on cover page of contract rather than date at end of contract, as E and U created situation by misleading Ees as to correct date through Association's distribution of document with cover page)

4040-5800 8(f) Contracts

Sunray Ltd. **258 NLRB No. 072**

(election not barred by previous 8(f) relationships with dual-function Ees where competing Us did not represent majority in unit in that some work of Ees fell w/i jurisdiction of each U and thus neither U could claim 9(a) relationship; therefore Bd directed election in unit covering all Ees, giving Ees a choice to be represented by one of the two rival Us or no U)

4040-6700 Legality of terms

4040-6701 Generally

4040-6701-5000 Construction of terms

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**

4040-8300 Midterm negotiation, modification or notice

4040-8314 Notice to reopen, modify or terminate contract

4040-8314-5000 Notice prior to automatic renewal date forestalls renewal of contract

4040-8314-5033 Despite agreement for continuation of contract during negotiation

Crompton Company, Inc. **260 NLRB No. 069**

(extension agreement which extended contract term 30 days or until new contract was signed, whichever was sooner, held not to be contract bar as it is of no fixed term and party wishing to file representation petition are not apprised of open period)

4040-8342 Modification clauses

Shen-Valley Meat Packers, Inc. **261 NLRB No. 144**

(while mid-term modification will not remove a bar where contract would otherwise be bar, modification mid-term of long-term contract may, if it meets requirements set forth in *Southwestern Portland Cement*, as here, extend operation of contract as bar beyond third year anniversary date; in determining whether or not mid-term modification reaffirms a long-term contract for bar purposes, scope of modification clause is a relevant consideration)

4040-8384 Premature extension of contract

Crompton Company, Inc. **260 NLRB No. 069**

(extension agreement signed during insulated 60 day period prior to expiration of contract is not premature extension)

4040-8384-3300 Midterm extension of expiration date does not bar petition timely in relation to original date

The Hertz Corporation, Rent-A-Car Division **265 NLRB No. 138**

(where parties had modified original contract expiring February, 1981, by extending its expiration date to November, 1981, and in February, 1981, executed new contract to expire in November 1984, new contract was premature extension and did not bar ptn filed w/i 90 to 60 days of expiration date of contract modification expiration date of November, 1981; by executing modification of initial contract, parties gave notice of revised open period dates, and to foreclose open period would result in parties capitalizing on modification on which petitioner relied)

4040-8384-6700 Applicability of premature extension rule

Shen-Valley Meat Packers, Inc. **261 NLRB No. 144**

(while Bd has defined *premature extension* as a new contract or amendment executed during term of existing contract *which contains a later terminal date than that of existing contract*, it would serve no useful purpose in cases where parties assert as a bar an amendment to their long-term contract, executed during period of reasonable duration, to distinguish between amendments that altered expiration date and those that did not)

Shen-Valley Meat Packers, Inc. **261 NLRB No. 144**

(amendment to 5-year contract, executed *after* contract's third year anniversary date, was, in effect, premature extension and governed timeliness of ptn, but premature extension doctrine did not operate to remove original contract as bar since ptn was not filed in open period relative to third anniversary date of long-term contract)

4050 CHANGED CIRCUMSTANCES WITHIN CONTRACT TERM

4050-1700 New plant or operation

4050-1767 New plant relocation of older plant

N.L.R.B. v. United Optical Workers Union Local 408, Electrical Workers (Marine Optical, Inc.) **671 F.2d 11 (C.A. 1, Feb. 1982)**

(E's withdrawal of recognition, refusal to bargain on demand, and unilateral changes after relocating operations violated 8(a)(5) and 8(d); contract's description of unit as consisting of Ees employed at address of E's old facility was not shown to be intended as geographical limitation, as contended, and continuity was sufficient for Bd to apply modified contract-bar doctrine and find contract effective at new facility where there was substantial continuity of operations and in bargaining unit after relocation, and new facility was near old facility and in same state)

Westwood Import Co. Inc., and Gamut Designs, Inc., d/b/a Westwood Import Co. v. N.L.R.B. **681 F.2d 664 (C.A. 9, July 1982)**

(ct upheld Bd's application of contract bar rule in circumstances of E's relocation because it found there was *continuity of enterprise* between old and new plant locations; only question considered by Bd was whether sufficient number of Ees had transferred so as to justify application of contract bar rule, and Bd's decision to count any Ee who had worked in old facility before transfer as member of old bargaining unit represented application of long-standing rule)

Westwood Import Co. Inc., and Gamut Designs, Inc., d/b/a Westwood Import Co. v. N.L.R.B. **681 F.2d 664 (C.A. 9, July 1982)**

(E's contention that contract bar rule was incorrectly applied because less than majority of Ees transferred to new facility rejected; ct upheld Bd's and ALJ's finding that six replacement Ees, hired just before move to new location were part of transferring unit)

4050-3300 Merger of operations

4050-3367 Consolidation of separately located operations

Massachusetts Electric Company (Local Union No. 12067, Steelworkers) **248 NLRB No. 098**

(Ees transferred from closed facility to, and co-mingled with similarly situated Ees covered by U contracts at, another of E's facilities, held not accretion to that contract, and qcr found since transferred Ees, although performing functions and duties similar to those performed prior to merger, had been represented previously by Us different from those representing Ees at merged location; transferred Ees continued to be subject of competing representational claims and none of Us involved herein represented overwhelming majority of Ees in units found appropriate)

4050-6700 Change in union affiliation

Yates Industries, Inc., California Division **264 NLRB No. 161**

(E entering into new agreement with recognition of new local as sole representative during existing terms of contract, violative, where international (the certified representative) and local (U that executed contract) were joint representatives, notwithstanding local disaffiliated itself from international since international never relinquished its status, no amendment made to certification, no schism, old local not defunct; therefore contract act as bar to attempt midterm modification of bargaining representative in contract)

4060 MULTIEMPLOYER CONTRACTS

4060-5000 Timely petition for single-employer unit processed notwithstanding multiemployer contract

Burns International Security Service, Inc. **257 NLRB No. 026**

(multi-E association bargaining history not controlling and not bar to processing R-ptns for 2 separate individual units of multi-E unit where many provisions of multi-E collective bargaining agreement are expressly not applicable to Ees in petitioned for units, terms and conditions of employment were individually negotiated and vary substantially from those in contract; Bd will not give deference to such multi-E bargaining history where Ees sought to be represented were not benefited under the terms of the collective bargaining agreement)

4065 MULTIUNION CONTRACTS

4065-6700 Petition for single union unit

Artcraft Displays, Inc. **262 NLRB No. 151**

(tripartite agreement entered into by Es with Sign Painters representing decorators herein sought to be represented, and with Carpenters, held no bar, where decorators' presently expired agreements and not tripartite agreement, governed their bargaining relationship with Es; tripartite agreement set only wages for decorators' work thereunder with decorators' agreements supplying all other employment terms, and contract limited to wages is no

4065-6700—Cont.

bar; and since tripartite and decorators' agreements had different expiration dates with parties enabled to execute contracts indefinitely, ptn would never be barred if tripartite agreement were found a bar)

4080 PREHIRE CONTRACT PURSUANT TO SECTION 8(f)

4080-3300 Contract no bar in initial bargaining situation with minority union

Sunray Ltd. **258 NLRB No. 072**
(election not barred by previous 8(f) relationships with dual-function Ees where competing Us did not represent majority in unit in that some work of Ees fell w/i jurisdiction of each U and thus neither U could claim 9(a) relationship; therefore Bd directed election in unit covering all Ees, giving Ees a choice to be represented by one of the two rival Us or no U)

4080-6700 Ordinary contract-bar rules apply to continued bargaining relationship with majority union

Giordano Construction Co. **256 NLRB No. 010**
(U, originally recognized under *Section* 8(f), can achieve *Section* 9(a) status by (1) demonstrating that it had achieved majority status *among Ees who make up a permanent and stable work force of the E* or (2) by demonstrating majority status of Ees employed at particular jobsite)

4080-6725 Union demonstration of majority

Giordano Construction Co. **256 NLRB No. 010**
(U, originally recognized under *Section* 8(f), can achieve *Section* 9(a) status by (1) demonstrating that it had achieved majority status *among Ees who make up a permanent and stable work force of the E* or (2) by demonstrating majority status of Ees employed at particular jobsite)

Giordano Construction Co. **256 NLRB No. 010**
(existing 8(f) agreement cannot bar election ptn, since U failed to demonstrate that it had achieved representational status under *Section* 9(a) of the Act; E had no ongoing jobsites and had none since well prior to filing of instant ptn and had no permanent and stable work force; mere fact U might indeed have represented majority of Ees at E's previous job sites is of no consequence inasmuch as U must demonstrate its majority at each new jobsite in order to establish its representational status under 9(a) and convert its contract with E to one that possesses bar qualities)

4080-6750 Contract held no bar

Giordano Construction Co. **256 NLRB No. 010**
(existing 8(f) agreement cannot bar election ptn, since U failed to demonstrate that it had achieved representational status under *Section* 9(a) of the Act; E had no ongoing jobsites and had none since well prior to filing of instant ptn and had no permanent and stable work force; mere fact U might indeed have represented majority of Ees at E's previous job sites is of no consequence inasmuch as U must demonstrate its majority at each new jobsite in order to establish its representational status under 9(a) and convert its contract with E to one that possesses bar qualities)

6000 PENDENCY OF OTHER PROCEEDINGS

6020 BOARD PROCEEDINGS

6020-2500 Other representation proceedings

RCA del Caribe, Inc. **262 NLRB No. 116**
(*Shea Chemical* 121 NLRB 1027, which required E to withdraw from bargaining with incumbent U after ptn had been filed by outside U overruled; E neutrality is best preserved by continued bargaining with incumbent, thus E will not violate Sec. 8(a)(2) by postpetition negotiation or execution of contract with incumbent U and will not violate Sec. 8(a)(3) even if it contains U-security clause; however, if contract is executed and incumbent loses election, contract with incumbent will be null and void)

6020-5000 Unfair labor practice proceedings

6020-5033 Blocking charges

6020-5033-7500 Dismissal of petition

Kennicott Bros. Company **256 NLRB No. 002**
(Bd found incorrect RD's opn that it would be inappropriate following withdrawal of ULP charge to reinstate decertification ptn which had previously been dismissed because of the pendency of that charge)

Carol Eaton and 166 Other Warehouse Facility Employees v. N.L.R.B. **No. 78-4068 (D Ct. ES, Jan. 5, 1979 (unreported))**
(application of *blocking charge rule* to decertification ptn during pendency of ULP charges filed by U and Cs issued on behalf of Bd concerning charges, held appropriate, since it was reasonable to assume RD, at time of dismissal of ptn, had some idea whether U's charges were substantial and whether representation election could fairly be held)

6020-5075 Resumption of processing of petition when ULP no longer pending

The Hartz Mountain Corporation **260 NLRB No. 055**
(disclaimer of interest by U receiving majority of votes in contested election found unconditional where U did not contest objections to election filed by other participating U concerning conduct of disclaiming U, disclaiming U was previously found to have been assisted by E, disclaimer extended both to petitions filed and to its intervention in proceeding on petition of other U, and disclaiming U engaged in no actions inconsistent with its disclaimer; accordingly election declared nullity and case remanded to RD for purpose of holding another election so that Ees can vote for or against remaining parties)

6040 COURT PROCEEDINGS

6040-7500 Bankruptcy

Sealift Maritime, Inc. **265 NLRB No. 154**
(contract executed when E had status of debtor-in-possession held bar, as Bankruptcy Reform Act of 1978 grants debtor-in-possession all powers that trustee had under Bankruptcy Act of 1898, and contract will serve as bar to ptn unless and until contract rejected by bankruptcy ct)

8000 UNIT CONSIDERATIONS

8015 INAPPROPRIATE UNIT

Catholic Community Services **247 NLRB No. 103**
(no QCR where unit sought by petitioner was inappropriate; unit included only some Ees in each of E's five divisions but did not include all of E's facilities or all Ees in any one division; neither petitioner nor E had specified alternate unit; unit Ees did not share community of interest; unit petitioned for was arbitiary grouping of Ees)

8020 STABILITY OF UNIT

8020-2000 Representative complement

8020-2025 Appropriateness of election

St. John of God Hospital, Inc. **260 NLRB No. 117**
(notwithstanding Ee complement at time of hearing was not representative and substantial in professional units, and because election was to be *Sonotone* election (90 NLRB 1236) whereby professional unit could elect to be separately represented; nevertheless, election ordered where at hearing E presented its hiring plans which indicated that in 4 or 5 months it would have completed its hiring campaign, and by date of Bd decision, 11 months later, E whould be at or near full Ee strength with substantive and representative Ee complement)

8020-2025-6700 Fifty percent of job classifications

Whitteman Steel Mills, Inc. **253 NLRB No. 041**
(E found to employ substantial and representative work force where at time of R hearing it employed 54 Ees in 15 job classifications of planned projection of 149 Ees in approximately 36 classifications 4 to 5 months out; furthermore, w/i 30 days of hearing E plans to employ 22 of the additional Ees in 6 additional job classifications; E's plans to expand to 250 in 2 years too indefinite to use to measure substantiality of work force as equipment must be ordered and construction has not started)

California Labor Industries, Inc. **249 NLRB No. 087**
(contract bar to ptn for election where requirement that at least 50 percent of job classifications to be filled at time contract was executed had been satisfied; when contract was executed probationary Ees were performing work which was the equivalent of existence of classifications for *General Extrusion* 121 NLRB 1165, 1167 (1958) purposes, notwithstanding E classified all Ees on payroll as general laborers)

8020-4000 Expanding unit

8020-4025 Appropriateness of election

St. John of God Hospital, Inc. **260 NLRB No. 117**
(notwithstanding Ee complement at time of hearing was not representative and substantial in professional units, and because election was to be *Sonotone* election (90 NLRB 1236) whereby professional unit could elect to be separately represented; nevertheless, election ordered where at hearing E presented its hiring plans which indicated that in 4 or 5 months it would have completed its hiring campaign, and by date of Bd decision, 11 months later, E whould be at or near full Ee strength with substantive and representative Ee complement)

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(E found to employ substantial and representative work force where at time of R hearing it employed 54 Ees in 15 job classifications of planned projection of 149 Ees in approximately 36 classifications 4 to 5 months out; furthermore, w/i 30 days of hearing E plans to employ 22 of the additional Ees in 6 additional job classifications; E's plans to expand to 250 in 2 years too indefinite to use to measure substantiality of work force as equipment must be ordered and construction has not started)

8020-6000 Change in operations affecting unit

8020-6050 Cessation of employer's operations

8020-8050—Cont.

Giordano Construction Co. **256 NLRB No. 010**

(existing 8(f) agreement cannot bar election ptn, since U failed to demonstrate that it had achieved representational status under *Section* 9(a) of the Act; E had no ongoing jobsites and had none since well prior to filing of instant ptn and had no permanent and stable work force; mere fact U might indeed have represented majority of Ees at E's previous job sites is of no consequence inasmuch as U must demonstrate its majority at each new jobsite in order to establish its representational status under 9(a) and convert its contract with E to one that possesses bar qualities)

8040 ONE-MAN UNIT

Sunray Ltd. **258 NLRB No. 072**

(contract covering single Ee not bar to election where Bd will not enforce contract covering single person unit nor certify such as appropriate unit)

8040-5000 Certification precluded by statute

United Truck and Bus Service Co. **257 NLRB No. 051**

(mtn to dismiss R-ptn granted where Bd found that local Union was not labor organization w/i meaning of Act due to requirement, in its constitution that members must be Ees of public Es; therefore, since public Es are not Es as defined in Sec. 2(2) of Act and that Ees of such Es are not Ees as defined in Sec. 2(3) of Act, Local does not exist for purpose of dealing with Es as defined in Act)

8500 JURISDICTIONAL DISPUTES

9000 NO RAID PACTS

355 TYPES OF ELECTIONS

1100 REPRESENTATION

1101 GENERALLY

N.L.R.B. v. General Motors Corporation **510 F.Supp. 338 (DC S.D. OH, Sept. 1980)**

(Bd will conduct R election if: (1) involved E's business affects commerce; (2) qcr exists; (3) group of Ees which U seeks to represent is appropriate unit; and (4) petitioner has made *sufficient showing of interest* to justify holding election)

1133 REPEAT

Pine Valley Meats, Inc. **255 NLRB No. 061**

(new election appropriate where E's ULPs such as discharge of U adherents and promising and granting benefits interfered with first election)

B. E. & K., Inc. **252 NLRB No. 036**

(in event U does not win election because of E's unlawful preelection conduct and interference, election ordered to be set aside and case to be remanded to RD to conduct second election)

1133-5000 Validity of prior election

Mark Lines, Inc. **255 NLRB No. 191**

(new election appropriate in view of E's ULPs such as coercive interrogations, threats of loss of priveleges and benefits, creating impression of surveillance, and informing Ees that designation of U would be futile)

1167 RUNOFF

1167-0100 Generally

Sohio Petroleum Co., a division of Sohio Natural Resources Co. v. N.L.R.B. **625 F.2d 223 (C.A. 9, June 1980)**

(where first election was only was only referendum on whether Ees desired separate representation for unit and second election was held to determine which U would be Ees' bargaining representative, *second election* was *not a runoff,* and Bd properly permitted more than two choices on ballot)

1167-8700 R & R paragraph 102.70

Sohio Petroleum Co., a division of Sohio Natural Resources Co. v. N.L.R.B. **625 F.2d 223 (C.A. 9, June 1980)**

2200 SELF-DETERMINATION ELECTION

Pacific Northwest Bell Telephone Company **253 NLRB No. 108**

(self-determination election as to which one of two labor organizations Ees wanted, appropriate, where Ees in newly formed homogeneous group, although equally drawing from membership of the two labor organizations, constituted separate and distinct unit from their previous represented units; Ees were under separate supervision, performed identical duties, and interchanged with one another w/i group, and strong potential for conflicts w/i group existed if Ees remained in former bargaining units)

2201 GENERALLY

Sohio Petroleum Co., a division of Sohio Natural Resources Co. v. N.L.R.B. **625 F.2d 223 (C.A. 9, June 1980)**

(where first election was only was only referendum on whether Ees desired separate representation for unit and second election was held to determine which U would be Ees' bargaining representative, *second election* was *not a runoff,* and Bd properly permitted more than two choices on ballot)

2201-9000 Globe doctrine

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**

(where it appeared that meter readers for electric company had sufficient community of interest to be included with either transmission and distribution and stores department unit or customer service department unit found appropriate herein, meter readers were permitted to vote Globe-type ballot to express their desire for inclusion in either of the two units and to decide what representation they would select in that unit)

2220 ADDITIONS TO EXISTING UNIT

2220-9000 Voting groups

The Folger Coffee Company **250 NLRB No. 001**

(separate unit of *laboratory technicians* not appropriate where they are not technical Ees since they possess no special training and tests performed can be learned through short period of on-job training; furthermore, pay, benefits, work, working conditions and supervision same as for P&M Ees and plant clericals; appropriate voting group is one composed of laboratory technicians and unrepresented plant clericals)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**

(where it appeared that meter readers for electric company had sufficient community of interest to be included with either transmission and distribution and stores department unit or customer service department unit found appropriate herein, meter readers were permitted to vote Globe-type ballot to express their desire for inclusion in either of the two units and to decide what representation they would select in that unit)

2240 SEVERANCE FROM EXISTING UNIT

Memphis Furniture Manufacturing Co. **259 NLRB No. 061**

(unit of over-the-road truckdrivers who delivered furniture manufactured by E may, if they so desire, constitute separate appropriate unit for purposes of collective bargaining apart from historic P&M unit in which they were included where they did no plant work, did not load their trucks, had no contact with P&M Ees, spent 95% of worktime away from plant, had different hours, mode of pay, supervision from P&M Ees and, unlike local drivers, were subject to regulations of Department of Transportation)

2260 PROFESSIONAL EMPLOYEES IN UNIT WITH NONPROFESSIONAL EMPLOYEES

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 160**

(all teachers, librarian, and counselors at private, nonprofit school held professionals entitled to vote in self-determination election; accordingly elections directed in unit of bus drivers, and in unit consisting of separate voting groups of professional and nonprofessional Ees)

St. John of God Hospital, Inc. **260 NLRB No. 117**

(notwithstanding Ee complement at time of hearing was not representative and substantial in professional units, and because election was to be *Sonotone* election (90 NLRB 1236) whereby professional unit could elect to be separately represented; nevertheless, election ordered where at hearing E presented its hiring plans which indicated that in 4 or 5 months it would have completed its hiring campaign, and by date of Bd decision, 11 months later, E whould be at or near full Ee strength with substantive and representative Ee complement)

Utah Power & Light Company **258 NLRB No. 138**

(while reaffirming its policy requiring that unit for decertification be coextensive with existing unit, Bd made exception to such policy in unique situation herein, in which ptn sought decertification of professional engineers who were part of larger mixed unit, because engineers were never afforded opportunity to vote in self-determination election as required by 9(b)(1) on whether they were to be included in existing unit; accordingly, Bd found requested unit not inappropriate and directed election among engineers)

Utah Power & Light Company **258 NLRB No. 138**

(in directing a decertification election among professional engineers who were part of larger mixed unit, Bd noted that decertification proceeding was initiated at an appropriate time under 9(b)(1) provision intended for their protection, not by an E who seized upon issue as asserted basis for withholding recognition in midst of strike by its Ees)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 100**

(professional Ees given opportunity to vote whether to be included in E-wide unit of community action agency Ees or to be represented separately

2260—Cont.

Rosemount Center **248 NLRB No. 163**
(separate elections directed in voting groups of nonprofessional and professional Ees at E's child day care facility)

3300 DECERTIFICATION

Young's Market Company **263 NLRB No. 094**
(decertification ptns dismissed as inappropriate where petitioning unit was not coextensive with multi-E unit of which they were a part)

American Recreation Centers, Inc., d/b/a Mel's Bowl (Hotel & Restaurant Employees, Local 28, AFL-CIO) **250 NLRB No. 142**
(Bd directed decertification election in unit of bartenders at restaurant, where operator leased restaurant part of operation to lessee; even though lessee signed same restaurant association agreement to which lessor was signatory and which included bar and restaurant Ees in same unit, bar and restaurant were operated as independent businesses, and unit was severed when lessor leased restaurant to lessee who independently contracted for restaurant Ees, and U acquiesced in de facto separation of bar and restaurnat Ees)

3301 GENERALLY

Utah Power & Light Company **258 NLRB No. 138**
(while reaffirming its policy requiring that unit for decertification be coextensive with existing unit, Bd made exception to such policy in unique situation herein, in which ptn sought decertification of professional engineers who were part of larger mixed unit, because engineers were never afforded opportunity to vote in self-determination election as required by 9(b)(1) on whether they were to be included in existing unit; accordingly, Bd found requested unit not inappropriate and directed election among engineers)

Utah Power & Light Company **258 NLRB No. 138**
(in directing a decertification election among professional engineers who were part of larger mixed unit, Bd noted that decertification proceeding was initiated at an appropriate time under 9(b)(1) provision intended for their protection, not by an E who seized upon issue as asserted basis for withholding recognition in midst of strike by its Ees)

3350 IN CERTIFIED OR RECOGNIZED UNIT ONLY

Tom Kelly Ford, Inc. **264 NLRB No. 143**
(Bd directed RD to open and count impounded ballots cast in decertification election in appropriate unit of service department mechanics at auto dealer's facility, excluding body shop, parts department, and used-car reconditioning Ees, where most recent recognition clause did not require E to bargain over excluded Ees' terms and conditions of employment but rather required E to do so for only specifically covered Ees; parties did not negotiate over excluded Ees' employment conditions since execution of most recent contract; and, significantly, E thought it unnecessary to discuss with U change in body shop's incentive plan)

Houston Distributing Company, Inc. **261 NLRB No. 020**
(U's objection to election that Ees who were in stipulated unit for election but not in bargaining unit voted, overruled since their votes were not determinative of election)

Kardon Chevrolet, Inc. **249 NLRB No. 086**
(in decertification proceeding, part-time salesmen excluded from unit of full-time salesmen at auto agency, since parties mutually agreed to modify certified unit to exclude them where, upon original certification, executed contract eliminated any specific reference to part-time Ees; contract specifically prohibited hiring of part-time salesmen and created special status for current part-time salesmen which would not have been necessary if part-time salesmen were included in unit; and E has not hired any part-time salesmen since execution of contract)

4400 DEAUTHORIZATION

5500 EXPEDITED

5567 HEARING ON PETITION NOT REQUIRED

United States Postal Service **256 NLRB No. 095**
(postal service's contention that RD's dismissal of its RM ptn for single, national unit was arbitrary and capricious and that it was entitled to hearing and benefit of record, rejected, where ptn failed to comply with statutory requirements of PRA and NLRA, and with implementing regulations; and ptn was defective in that it merely sought to have Bd determine appropriate unit w/o regard to admitted lack of any U claim for U representation)

United States Postal Service **256 NLRB No. 095**
(Bd dismissed postal service's RM ptn for single, national unit, and denied hearing on RD's dismissal of ptn, since granting of E's request would require hearing that would consume much time when current bargaining agreement was about to expire; conduct of election would be task of mammoth proportions which Bd would undertake in appropriate circumstances which are not present herein; and E did not demonstrate that it truly questioned representative status of various Us in long-established units)

6600 REMEDIAL

6601 GENERALLY

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**

7700 UNIT CLARIFICATION

8800 AMENDMENT OF CERTIFICATION ELECTION

362 ELIGIBILITY TO PARTICIPATE IN ELECTION

3300 DETERMINATIVE PAYROLL PERIOD

3312 ELIGIBILITY ESTABLISHED BY EMPLOYMENT DURING PAYROLL PERIOD IMMEDIATELY PRECEDING DIRECTION OF ELECTION AND ON DATE OF ELECTION

Harvey & Madding, Inc., d/b/a Dublin Honda **JD-(ATL)-97-81**

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**

3312-0100 Generally

Gator Products, Inc. **250 NLRB No. 046**
(Ee working at any time during the payroll period satisfies the employment during payroll period aspect of the eligibility test, even if Ee is no longer employed on the last day of the payroll period)

3312-5000 Temporary interruption of work

Gator Products, Inc. **250 NLRB No. 046**
(Ee who worked during payroll period but was not employed on last day of period and who was subsequently reemployed before election date and was on payroll on election date held eligible to vote)

6700 EMPLOYEE TENURE AND STATUS

6701 GENERALLY

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(Bd overruled challenged ballot where Ee, notwithstanding Ee's enhanced responsibilities, was found an agent of E and not a supervisor)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(challenge to Ees' ballots rejected where Ees were found working lead persons and not, as contended, supervisors)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(challenge to Ee's ballot rejected where during period substantially preceding election Ee was not functioning as supervisor w/i meaning of Act)

6703 ELIGIBILITY DETERMINED BY AGREEMENT OF PARTIES

Clear Lam Packaging, Inc. **265 NLRB No. 96**
(*Norris Thermador* list not dispositive of challenged voters' eligibility to vote where challenged on grounds of statutory supervisory status as this is exception to rule)

Rosehill Cemetery Association **262 NLRB No. 164**
(oral agreement between E and U to exclude individuals alleged to be supervisors from unit held not binding since Bd will not be bound by any agreement of parties, outside of narrow exception in *Banner Bedding, Inc.* 214 NLRB 1013, that is not written and signed and which does not expressly provide that issues of eligibility resolved by it shall be final and binding upon parties. Furthermore, Bd will not be bound by any written or oral agreement of parties where statutory issue of inclusion or exclusion of alleged supervisors in unit is raised for Bd resolution)

St. Peters Manor, Inc. d/b/a St. Peters Manor Care Center **261 NLRB No. 171**
(in stipulation for cert. election, parties stipulated to unit which excluded business office clericals; thereafter, at preelection conference parties orally agreed to include these clericals. Bd upheld challenge to their ballots as outside stipulated unit since stipulation clear and unequivocal and no evidence parties did not intend to exclude business office clericals)

Consolidated Print Works, Inc., and Auto Screen Print Corp. **260 NLRB No. 129**
(setting aside election not warranted, where, though stipulation for consent election contained an eligibility date, Bd agent had informed parties that this date was conditioned on date Rd approved stipulation and, though U protested orally in interim period about any change in eligibility date, it took no further actions that were available to it to protest change in eligibility date set forth in approved stipulation; thus U effectively acquiesced in changed date)

Drukker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. **258 NLRB No. 097**
(written agreement resolving issues of eligibility is final determination of eligibility issue and oral modification will not be honored absent narrow exceptions)

Drukker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. **258 NLRB No. 097**
(where parties entered into preelection stipulation agreeing upon status of individual as Ee, Respondent may not raise contention that Ee is managerial Ee and improperly included in unit)

A & B Cartage, Inc. **256 NLRB No. 003**
(Bd not bound by Norris-Thermador list on issues of supervisory status)

G. H. Skipper, Inc. **254 NLRB No. 053**
(where U and E agreed that Ees from satalite operation which was to be closed down and Ees shifted to main location were to be included in unit at main location, unit proper and all Ees allowed to vote; RD's *exclusion* of satalite unit consistent with finding that Ees from that unit included in main unit as parties stipulated)

Net Television, Inc., a Wholly Owned Subsidiary of Educational Broadcasting Corporation **252 NLRB No. 088**
(summary judgment denied where RD erroneously refused E's request to withdraw stipulation prior to representation election that Ee was supervisor which E entered into with belief that two other Ees who occupied analogous positions were also supervisors but were determined afterwards not to be supervisors by RD; stipulation did not factually address Ee's actual job duties and authority nor was Ee's status litigated in that regard)

Illinois Valley Community Hospital **249 NLRB No. 058**
(RD properly determined eligibility of individual Ees in question, regardless of parties' agreement, since it is contrary to Act and established Bd policy to agree that a group of Ees, as a class, will not be able to vote when some of those Ees are *prima facie* members of bargaining unit)

Judd Valve Co., Inc. **248 NLRB No. 018**
(issue of eligibility, relating to challenges of voters as supervisors, is to be decided upon facts surrounding such voters' status, rather than upon finality of Norris Thermador agreement)

Judd Valve Co., Inc. **248 NLRB No. 018**
(leadman, whose eligibility was challenged on basis of his supervisory status and even though his name was included in Norris Thermador list, held eligible to vote since he did not possess supervisory authority)

N.L.R.B. v. Boston Beef Co., Inc. **682 F.2d 223 (C.A. 1, July 1981)**
(Bd may not rely upon *community of interest* test to subvert clear intent of parties (in stipulated election) but, where intent is unclear or stipulation ambiguous, Bd may properly rely on *community of interest* principles to help resolve ambiguity of whether Ee eligible to vote)

6706 ELIGIBILITY DETERMINED BY TENURE AND STATUS AS EMPLOYEE DURING DETERMINATIVE PAYROLL PERIOD AND ON DATE OF ELECTION

West Virginia Newspaper Publishing Company **268 NLRB No. 060**
(challenges to votes of *on call* Ees sustained where Ees, although included in existing bargaining unit by practice and by coverage and application of contract, were held not eligible to vote in decertification election because they did not regularly average 4 hours of work per week in quarter preceding election)

6706—Cont.

Radio Free Europe/Radio Liberty, Inc. **262 NLRB No. 063**
(assertion that 7 Ees who would soon be returning were ineligible to vote, rejected)

Genley Industries, Inc. **260 NLRB No. 189**
(challenge to ballots of Ees who simply exercised *lead authority* rather than *supervisory authority* under act, overruled)

Consolidated Print Works, Inc., and Auto Screen Print Corp. **260 NLRB No. 129**
(setting aside election not warranted, where, though stipulation for consent election contained an eligibility date, Bd agent had informed parties that this date was conditioned on date Rd approved stipulation and, though U protested orally in interim period about any change in eligibility date, it took no further actions that were available to it to protest change in eligibility date set forth in approved stipulation; thus U effectively acquiesced in changed date)

Town Concrete Pipe of Washington, Inc. **259 NLRB No. 137**
(ballots of Ees who refused reinstatement after strike counted where no evidence these Ees had abandoned employment on date of election)

Town Concrete Pipe of Washington, Inc. **259 NLRB No. 137**
(Ee who quit 9 days before election for medical reasons but was rehired 2 days later but did not return to work prior to election was eligible to vote in election where E's past practice was to try to retain valuable Ees and work with them concerning their probelms; no evidence that E was trying to *pack* unit notwithstanding Ee was anti-U)

Lake Development Management Co. **259 NLRB No. 069**
(Bd sustained challenge to ballot where by and before election, Ee had abandoned any interest in employment by E)

Sylvester's Corp.; d/b/a Gene Sylvester Alarm Co.; et al. **249 NLRB No. 161**
(challenge to ballot of former supervisor overruled where Ee, initially returned to do unit work to complete complex installation but since then has performed on other jobs as well though he has not exercised any supervisory authority whatsover, E has not informed Ees of former supervisor's change in status and installation not yet completed)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(Ees who did not work on date U demanded recognition because they had been informed of their termination on that day or beforehand not included in unit)

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**
(E's contention that there was mutual mistake of fact as to ending date of payroll period and date inserted in Stipulation for Certification upon Consent Election not grounds for relief because mistake by one party to agreement, where not induced by other falls on party making mistake)

N.L.R.B. v. Andrea Associates, a joint venture d/b/a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**
(day shift staff registered nurse reassigned from her night shift supervisor position held not Ee working in appropriate unit w/i voting eligibility period, in view of her nearly one year term as relief night shift supervisor with understanding that she would continue in her supervisory capacity until new person could be found and trained)

Universal Paper Goods Company v. N.L.R.B. **638 F.2d 1159 (C.A. 9, Aug 8, 1981)**
(Ee who had announced her retirement, been given retirement check, ceased work and had her retirement announced in company bulletin applied for Social Security benefits found to be retired and not eligible to vote notwithstanding E placed her on 2-month leave of absence with instructions that she could come back to work if she wanted to, continued her health insurance, and Ee did return to work w/i 2 month period, because Ee had intent to retire, and expressed no interest in returning to work until after election held)

6709 VOTING SUBJECT TO CHALLENGE

University of San Francisco **265 NLRB No. 155**
(part-time librarian at university and director of university's radio station)

New York Medical College **263 NLRB No. 124**
(principal investigators at college who were not acknowledged supervisors, permitted to vote subject to challenge, notwithstanding fact that they decided which professionals were to be on research staff, since it was not clear whether this function was more than sporadic and minimal in terms of their nonsupervisory teaching and clinical work)

Liquid Transporters, Inc. **250 NLRB No. 163**
(laid-off drivers permitted to vote subject to challenge where record was inadequate to determine whether such Ees had reasonable expectancy of recall in immediate future)

6712 PART-TIME EMPLOYEES

6712-2800 Regular part-time

Artcraft Displays, Inc.; et al. **263 NLRB No. 117**
(upon mtns for clarification stating that there were several interpretations of prior Bd decision regarding which part-time Ees were eligible to vote, Bd deleted language in unit descriptions defining part-time Ees as those *with over 1,000 hours seniority* since it had appeared in unit descriptions inadvertently; *1,000 hour* seniority requirement should be included as alternative eligibility formula, since no party objected to such requirement at hearing, or subsequently)

Artcraft Displays, Inc. **262 NLRB No. 151**
(promulgation of eligibility formula for part-time Ees depends on careful balancing of factors of length, regularity, and currency of employment giving due regard for industry involved; in cases involving year-round operations with fluctuating need for extra Ees, Bd has found it equitable to include in unit, on basis of available employment records, all extra Ees who had worked minimum of 15 days in quarter preceding eligibility date, reasoning that devoting that much time to unit work evidenced a substantial and continuing interest in unit)

Artcraft Displays, Inc. **262 NLRB No. 151**
(in seasonal convention and trade show business in which peak occurs in second calendar quarter, Bd applied *Mamcraft* formula, modified so that it applies to second calendar quarter and which will include only part-time Ees with enough seniority so that they have reasonable expectation of employment and share community of interest with full-time unit Ees; accordingly, Bd held part-time Ees eligible to vote are those who have worked for minimum of 15 days during second calendar quarter)

Rich's Precision Foundry, Inc. **262 NLRB No. 081**
(full time college student who was brother of E's manager and worked part-time at foundry as maintenance helper and electrician during school year, and full time during summer, and who had been laid off and then recalled on election day, included in unit and eligible to vote, since regularly employed during relevant period, and absent evidence ineligible for recall or had no reasonable expectation of recall)

Lifemark Hospitals of Texas, Inc. d/b/a Mid-Jefferson County Hospital **259 NLRB No. 103**
(where stipulation include in unit *regularly scheduled part-time Ees,* Ees included where they regularly receive schedule for same hours notwithstanding they may refuse these hours or may be called in to work on days not scheduled as part of hours were worked according to schedule and therefore, they do not qualify as casual Ees)

Tiffin Enterprise, Inc. **258 NLRB No. 012**
(challenges to ballots of temporary part-time Ees sustained where parties intended to exclude temporary part-time Ees from stipulated unit and even assuming *arguendo* that employment history of disputed Ees brings them w/i Bd's definition of *regular part-time Ees,* parties' agreement to exclude such Ees would not contravene Bd policy)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(expert mechanic, veteran Ee, who maintained continuing and on-going relationship with bargaining unit by working 10 hours monthly except for Summer when he worked full time)

Trustees of Tufts College **251 NLRB No. 108**
(to be eligible to vote regular part-time Ee must work at least 21 hours per week and be covered by E's regular benefit program)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(eligible)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(despite Ee's additional maintenance work performed at homes of E's officers and ALJ determination that Ee was domestic, Bd found Ee's ballot valid where Ee performed unit work on regular part-time basis for protracted period of 3 years preceding election and shared community of interest with other unit Ees)

Banker's Graphics, Inc. **JD-339-82**
(regular parttime Ee who was employed during eligibility period and on election day eligible to vote)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**
(2 part-time Ees, 1 of them a high school student, who each worked 1-day per week for 8 hours as regular Ees, eligible)

N.L.R.B. v. Boston Beef Co., Inc. **652 F.2d 223 (C.A. 1, July 1981)**
(test for *community of interest* standard for allegedly regular part-time Ee includes consideration of whether Ee: (1) worked at regularly assigned hours during substantial number of hours per week; (2) performed duties similar to those of unit Ees; and (3) shared same supervision, working conditions, wages, and fringe benefits as did unit Ees)

6712-2850 Eligible irrespective of number of hours worked

Bradford College **261 NLRB No. 081**
(faculty teaching one-half time or less (part time) excluded from unit of faculty at college, since classified as independent contractors, generally cannot vote by ballot on major curriculum changes, are paid flat fee twice a

6712-2550—Cont.

semester, are not eligible for e's programs relating to life insurance, social security deductions or retirement)

6712-5000 Irregular or infrequent part-time

6712-5050 Ineligible as lacking sufficient interest

N.L.R.B. v. Wehrenberg Theatres, Inc., d/b/a Melba Theatre and Skyvue Drive-In **690 F.2d 159 (C.A. 8, Oct. 1982)**

(Bd properly excluded part-time Ee and summer Ee from bargaining unit where they were not employed on regular basis when U sought recognition and bargaining)

6712-7300 Part-time with regular job elsewhere

Montefiore Hospital and Medical Center **261 NLRB No. 082**

(unit apart from medical center's other facilities composed of full-time and part-time physicians at its health care facility which it operates under contract with city to provide medical services for prison inmates, notwithstanding part-time physicians hourly paid, receive no fringe benefits, and hold other full-time jobs, in view of legislative concern regarding proliferation of units at health care facilities)

Dooley Equipment Corporation **252 NLRB No. 020**

(where Ee worked regularly throughout year before election and received substantial earnings up to election, he was found regular part-time Ee and eligible to vote)

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(part time Ee who also was employed part time in home of E's president eligible, notwithstanding contention she was hired after ptn filed in expectation she would be anti-U; contention that she did not share sufficient community of interests with other Ees because of her association with owner's family as worker in household, rejected)

6718 TEMPORARY EMPLOYEES

University of San Francisco **265 NLRB No. 155**

(part-time faculty members (lecturers) at university held not temporary Ees, since hiring of Ees on basis of their special expertise is not indicative of temporary status; there was no evidence to support finding that substantial number of part-time lecturers were hired in emergency situations created by illnesses or unexpected leaves of absence; they are not restricted from applying for reappointment and, when hired, are not told that position being filled is temporary; and disclaimer of *tenure* in contract did not, w/o more, demonstrate temporary status)

Weyerhaeuser Company **264 NLRB No. 124**

(challenge to ballot of Ee who had been hired for limited period of time to perform certain work of limited duration, sustained, since she was temporary Ee hired for specific project and, as such, lacked sufficient community of interest with unit Ees to be included in unit)

Comet Corporation **261 NLRB No. 188**

(college student hired temporarily for summer excluded from unit of production and maintenance workers at manufacturer and distributor of semi trailers and van bodies, notwithstanding he inquired about permanent employment when unable to return to college)

Pen Mar Packaging Corporation **261 NLRB No. 127**

(challenge to Ee's ballot on grounds that he was uneligible voter sustained, since he was hired as temporary Ee inasmuch as he was informed he was being hired only for summer with no expectancy of permanent employment, and there was no evidence to indicate that his employment status changed between time he was hired and the eligibility date)

Town Concrete Pipe of Washington, Inc. **259 NLRB No. 137**

(Ee who was hired prior to election regular not temporary Ee and thus eligible to vote in election where although he was on layoff status from another job he had no reasonable expectation of being recalled to that position)

Pandick Press Midwest, Inc. **251 NLRB No. 059**

(Ee who worked regular schedule and performed regular duties but did not share in fringe benefits and whose paycheck originated at local office rather than main office of E found not to be temporary Ee as there was no other difference between her terms and conditions of employment and those of other Ees)

6721 TEMPORARY PART-TIME EMPLOYEES

Tiffin Enterprise, Inc. **258 NLRB No. 012**

(challenges to ballots of temporary part-time Ees sustained where parties intended to exclude temporary part-time Ees from stipulated unit and even assuming *arguendo* that employment history of disputed Ees brings them w/i Bd's definition of *regular part-time Ees*, parties' agreement to exclude such Ees would not contravene Bd policy)

6724 SEASONAL EMPLOYEES

Blayer Industries, Inc. **260 NLRB No. 038**

(refusal of some Ees on E's season recall list to return to work does not constitute newly discovered evidence relevant to preelection determination of voting eligibility of those Ees)

6724-5000 Seasonal nature of work immaterial

Maine Apple Growers, Inc. **254 NLRB No. 060**

(challenges to votes of *laid off* seasonal apple packers not sustained where Ees had reasonable expectation of future employment; E permitted former Ees to reapply for work and in some cases acted (favorably) on their applications)

6730 CASUAL, EXTRA, OR INTERMITTENT EMPLOYEES

Gauley Industries, Inc. **260 NLRB No. 189**

(challenge sustained where voter was retired Ee, worked for E, after retirement on *on-call* basis and at time of election, was vice-president of E and who signed corporate resolutions)

N.L.R.B. v. Boston Beef Co., Inc. **652 F.2d 223 (C.A. 1, July 1981)**

(ct reluctant to substitute its judgment on issue of whether Ee was casual rather than regular part-time Ee, where Bd possessed significant expertise and minor factual differences are so important, so long as substantial evidence supported Bd's conclusion)

6730-5000 Ineligible

Quick-Lahmann Express, Inc. **262 NLRB No. 021**

(individual listed as *extra roster driver* at E engaged in forwarding freight by truck held casual Ee and excluded from unit of all full time and regular part-time driver salesmen and dispatchers and excluding casual drivers pursuant to stipulation, in view of difference in wages and benefits, and fact he worked irregularly during relevant period with no expectation of transfer to regular roster or continued employment on extra roster)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**

(casual Ee who did not work regularly, either full or part-time, and who was employed only when E needed him held not eligible to vote in election)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

(college student who was employed for two months during summer and then returned to college not eligible to vote since temporary and casual Ee particularly absent evidence he would continue employment with E)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**

(part-time Ee working on sporadic basis)

Clifford Cook, d/b/a Pinnacle Company and Pinnacle Roofing Co., Inc. **JD-(SF)-196-79**

(various friends of sons of owner who were employed from time to time by E not included in unit of all Ees of E who work w/i job classifications covered by contract between E and Us, since they were casual Ees)

N.L.R.B. v. Boston Beef Co., Inc. **652 F.2d 223 (C.A. 1, July 1981)**

(student Ee hired for display work not reguarded as regular part-time Ee where: his display work was performed at remote location under supervision of non-unit Ee; he was paid flat weekly salary rather than hourly wage for display work; Ee had no contract with unit Ees while doing display work; and additional loading work done by Ee for E not done on regular basis)

6734 ON-CALL EMPLOYEES

West Virginia Newspaper Publishing Company **265 NLRB No. 060**

(challenges to votes of *on call* Ees sustained where Ees, although included in existing bargaining unit by practice and by coverage and application of contract, were held not eligible to vote in decertification election because they did not regularly average 4 hours of work per week in quarter preceding election)

6736 STUDENT EMPLOYEES

6736-3300 Summer employees considered temporary

Rich's Precision Foundry, Inc. **262 NLRB No. 081**

(full time college student who was brother of E's manager and worked part-time at foundry as maintenance helper and electrician during school year, and full time during summer, and who had been laid off and then recalled on election day, included in unit and eligible to vote, since regularly employed during relevant period, and absent evidence ineligible for recall or had no reasonable expectation of recall)

Comet Corporation **261 NLRB No. 188**

(college student hired temporarily for summer excluded from unit of production and maintenance workers at manufacturer and distributor of semi trailers and van bodies, notwithstanding he inquired about permanent employment when unable to return to college)

6736-3300—Cont.

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(college student who was employed for two months during summer and then returned to college not eligible to vote since temporary and casual Ee particularly absent evidence he would continue employment with E)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(college student who was hired as temporary Ee, worked only a short period of time, had irregular work hours, and left to return to school, excluded from unit as temporary Ee who, on date of U recognition demand, did not share a community of interest with other Ees)

6736-5000 Interns

Sharondale Corporation **262 NLRB No. 158**
(full time students who worked on internship basis earning college credit while they worked, and who were not given all privileges and benefits accorded full-time Ees, lacked sufficient community of interest to be included in unit since employment incidental to education)

6736-6700 Part-time employees

Rich's Precision Foundry, Inc. **262 NLRB No. 061**
(full time college student who was brother of E's manager and worked part-time at foundry as maintenance helper and electrician during school year, and full time during summer, and who had been laid off and then recalled on election day, included in unit and eligible to vote, since regularly employed during relevant period, and absent evidence ineligible for recall or had no reasonable expectation of recall)

Connecticut Foundry Company **247 NLRB No. 145**
(high school student who was daughter of boss and hired when strike commenced and continued employment over summer excluded from voter eligibility where she intended to and did attend college in fall and also in light of fact that she held *special status* at plant due to family relationship)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**
(2 part-time Ees, 1 of them a high school student, who each worked 1-day per week for 8 hours as regular Ees, eligible)

Firmat Manufacturing Corp. **255 NLRB No. 153**
(challenge to ballot of discriminatorily discharged student apprentice sustained, notwithstanding he was entitled to reinstatement, where relationship between student and E was *more as an educational rather than as an employment relationship*)

Firmat Manufacturing Corp. **255 NLRB No. 153**
(challenge to ballot of discriminatorily discharged student apprentice overruled where he had every expectancy of continued employment as fulltime Ee which he would have attained upon graduation, but for unlawful discrimination and prior to election)

6742 PROVISIONAL EMPLOYEES

6742-8000 Pensioners

Gawley Industries, Inc. **260 NLRB No. 189**
(challenge sustained where voter was retired Ee, worked for E, after retirement on *on-call* basis and at time of election, was vice-president of E and who signed corporate resolutions)

6766 EMPLOYEES NOT WORKING ON ELIGIBILITY DATES

Weyerhaeuser Company **264 NLRB No. 124**
(challenge to ballot of Ee who had been hired prior to payroll eligibility date, but did not actually begin working until 2 days after eligibility date, sustained; although Ee received 2 hours' pay on date of hire, she did not meet Bd's *employed and working* on eligibility date requirement, since she was not performing unit work at that time but was undergoing interviews and work orientation instructions)

High Energy Corporation **259 NLRB No. 097**
(entitlement of laid-off Ees to vote in election depends upon whether such Ees have reasonable expectancy of recall in near future; determination of such expectancy depends on objective factors, including past experience of E, its future plans, and what Ees were told as to likelihood of recall; and appropriate time frame when determining expectancy of recall is situation as it existed at time of election rather than subsequent developments)

6766-1000 Laid off

High Energy Corporation **259 NLRB No. 097**
(Ee unlawfully laid off entitled to reinstatement and eligible to vote)

6766-1080 Eligible if reasonable expectancy of reemployment

High Energy Corporation **259 NLRB No. 097**
(laid off Ee held not eligible to vote where she did not have expectancy of returning to work; E's earlier expressed intent to recall Ee, w/o more, is not dispositive of her actual expectancy of recall months later when election was held, and as election approached she was told that recall situation was gloomier than ever due to poor sales; after initial layoff period, laid off Ee was given no encouragement as to recall and her job benefits had been cancelled throughout period of layoff; and other laid off Ees continued to be in lay off status)

American Display Manufacturing Co., Inc. **259 NLRB No. 006**
(challenges to ballots of Ees whose layoffs were not discriminatorily motivated and were permanent, sustained)

Maine Apple Growers, Inc. **254 NLRB No. 060**
(challenges to votes of *laid off* seasonal apple packers not sustained where Ees had reasonable expectation of future employment; E permitted former Ees to reapply for work and in some cases acted (favorably) on their applications)

B. E. & K., Inc. **252 NLRB No. 036**
(laid off Ees eligible to vote where construction project involved and Es' plans envisioned need for hiring of additional Ees in time period subsequent to layoff, reason given for layoff was necessary delay for certain type of work, and at time of layoff E made it clear to Ees that there would be a need for rehiring and that they would be the first to be hired or rehired)

Liquid Transporters, Inc. **250 NLRB No. 163**
(laid-off drivers permitted to vote subject to challenge where record was inadequate to determine whether such Ees had reasonable expectancy of recall in immediate future)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(individual who had been on medical leave and was told there were no openings when he informed E he was able to return to work and had reasonable expectation of reemployment was eligible to vote where E had expressed to individual hope that he would soon return to work and indicated on application form for public aid that firm would rehire him; replacement and termination did not disqualify individual where notification was day after election)

Heatcraft, Division of Lennox Industries, Inc. **250 NLRB No. 021**
(ineligible in instant case where E told Ees layoff was *indefinite* and that they should accept other employment if offered)

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**
(fact that laid off Ees had been referred to as *terminated* in different Bd proceeding immaterial where E had history of recalling former Ees; moreover, fact that these Ees were employed by another E at time of election irrelevant where there was reasonable likelihood of their reemployment)

Windsor Woodworking, Inc. v. N.L.R.B. **647 F.2d 859 (C.A. 8, May 1981)**
(challenged ballots of 7 Ees, who had been *let go* by E at start of E's slow season and before new plant was in full production, opened and counted, since Ees had reasonable expectation of returning to work; failure of E to state to the 7 Ees that they were terminated rather than laid off (was) some indication that E, at very least, wanted to retain its options)

Windsor Woodworking, Inc. v. N.L.R.B. **647 F.2d 859 (C.A. 8, May 1981)**
(although evidence of recall of Ees who were *let go* previously was not conclusive, it certainly permitted inference that Ees had reasonable expectation of returning to work)

N.L.R.B. v. Andrea Associates, a joint venture d/b/a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**
(*temporary supervisor* is person who has been temporarily detailed out of Ee unit with virtual certainty of returning to that unit; *temporary supervisor* analogous to Ee in temporary layoff status at time of election and as such is eligible to vote in election)

6766-2000 Ill

Logan Coca Cola Bottling Company **250 NLRB No. 164**
(Ee not working due to back injury and receiving workmen's compensation held eligible to vote)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(individual who had been on medical leave and was told there were no openings when he informed E he was able to return to work and had reasonable expectation of reemployment was eligible to vote where E had expressed to individual hope that he would soon return to work and indicated on application form for public aid that firm would rehire him; replacement and termination did not disqualify individual where notification was day after election)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(Ee who was on personal sick leave of absence included in unit where, as of U's recognition demand date, Ee had only been absent 15 weeks, which was not of sufficient duration to make her expectation of reemployment unreasonable; fact that Ee decided not to return to work when her leave of absence terminated is not determinative since E's expectation that Ee would return to work was evidenced by fact that during Ee's leave of absence E carried her on its active payroll and paid her for holidays and vacations)

6766-2000—Cont.

N.L.R.B. v. Connecticut Foundry Company **683 F.2d 871 (C.A. 2, July 1982)**

(hearing not warranted on eligibility of Ee where E gave only hearsay evidence that Ee had indicated on disability application that he could not work for 12 months as Ee gave sworn statement that he would return to job if U won or if strike ended; E's burden was to present some tangible evidence of his medical disability)

6766-3000 On leave of absence

Sid Eland, Inc. **261 NLRB No. 005**

(Ee who was on extended leave of absence to take care of out-of-state family business not eligible to vote in election when in 2 month period prior to election he had worked only 3 days at which time he requested another leave of absence and only showed up for work on day of election, and did not speak to E about possibility of returning to work; thus no reasonable expectation that he would return to work for E)

Town Concrete Pipe of Washington, Inc. **259 NLRB No. 137**

(Ee who quit 9 days before election for medical reasons but was rehired 2 days later but did not return to work prior to election was eligible to vote in election where E's past practice was to try to retain valuable Ees and work with them concerning their probelms; no evidence that E was trying to *pack* unit notwithstanding Ee was anti-U)

Capriccios Restaurant, Inc. **249 NLRB No. 100**

(challenge to ballot of Ee overruled where Ee was not laid off or terminated by E but was on leave whose duration and its extension were not specified by E)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(Ees who were on leaves of absence for work-related injuries and whose leaves were not of indefinite duration included in unit since they had reasonable expectation of returning to work; Ees' absences of 5, 6, and 10 months held not of such length as to establish that they had no expectation of returning to work, particularly since Ees were collecting workmen's compensation for on-the-job injuries)

Banker's Graphics, Inc. **JD-339-82**

(Ee on leave of absence not eligible to vote where there was no terminal date and thus no reasonable expectation of reemployment)

Valley Rock Products, Inc. **JD-(SF)-285-79**

(individual on leave of absence held Ee and ballot ordered counted, since no evidence employment relationship severed by positive action, where when applying for leave of absence and at time leave granted individual stated verbally and in writing he intended to return to work after leave, and in letter granting leave E asked to be advised of approximate return date; moreover, individual was never removed from E's rolls and continued to work for E during leave when E was short-handed)

Universal Paper Goods Company v. N.L.R.B. **638 F.2d 1159 (C.A. 9, Aug 8, 1981)**

(Ee who had announced her retirement, been given retirement check, ceased work and had her retirement announced in company bulletin applied for Social Security benefits found to be retired and not eligible to vote notwithstanding E placed her on 2-month leave of absence with instructions that she could come back to work if she wanted to, continued her health insurance, and Ee did return to work w/i 2 month period, because Ee had intent to retire, and expressed no interest in returning to work until after election held)

6766-5000 On vacation

Capriccios Restaurant, Inc. **249 NLRB No. 100**

(challenge to ballot on ground Ee was not employed on eligibility date, overruled, where Ee was on vacation during period encompassing eligibility date, and Ee continued to work for some time after election)

6766-6000 Hired but not yet working

Harvey & Madding, Inc., d/b/a Dublin Honda **JD-(ATL)-97-81**

N.L.R.B. v. Magnesium Casting Company, Inc. **668 F.2d 13 (C.A. 1, Dec. 1981)**

(ct held that Bd exclusion from majority status count of Ees who were hired before eligibility date but who did not start work until after eligibility date, appropriate)

6766-6500 On preferential hiring list

Levitz Furniture Company of The Eastern Region, Inc. (Local 1361, Retail Clerks and Store Employees) **248 NLRB No. 003**

(sympathy strikers are viewed as in same position of economic strikers they support and where election held more than 2 years after strike ended sympathy strikers not eligible to vote notwithstanding they are entitled to reinstatement should replacements leave E)

6766-7000 Dischargees

Rosauer's Super Markets, Inc. **258 NLRB No. 111**

(challenge to ballot of Ee who was unlawfully discharged for U activities overruled and ballot counted)

Jaybil Steel Products, Inc.; etc. **258 NLRB No. 157**

(challenges to ballots of unlawfully discharged Ees overruled and ballots ordered counted)

Gomen Company, a Division of the United States Gypsum Company **254 NLRB No. 041**

(challenge to ballot of Ee who had been lawfully discharged prior to election for possession of alcoholic beverages on E's premises upheld)

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

(challenge upheld to ballots of Ees whose discharges prior to election held not unlawful)

Han-Dee Pak, Inc. **249 NLRB No. 107**

(challenge sustained where Ee was not employed by E on date of election and was not determined to be unlawfully discharged)

Capriccios Restaurant, Inc. **249 NLRB No. 100**

(challenge to ballots of Ees, overruled, where they had been unlawfully terminated and were challenged on sole ground that their names were not on eligibility list)

Connecticut Foundry Company **247 NLRB No. 145**

(Ee considered by E to be dischargee for picket line misconduct found not to be dischargee and eligible to vote where E never gave Ee any notice that he had been discharged and Ee never took any action to indicate he abandoned his employment)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

(Ees held to be unlawfully discharged, eligible, and challenges to ballots overruled)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(Ees who did not work on date U demanded recognition because they had been informed of their termination on that day or beforehand not included in unit)

6766-8000 Discriminatees

Hillside Avenue Pharmacy, Inc. **265 NLRB No. 205**

(determinative of election result ballot of Ee who was discriminatorily discharged and was ordered made whole but was not ordered reinstated because of his misconduct, not counted, since he was not employed on date of election as unit Ee)

Corn Brothers, Inc. **262 NLRB No. 041**

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**

(discriminatees, who were unlawfully laid off, remain Ees)

Gauley Industries, Inc. **260 NLRB No. 189**

Mitchell's Disposal Service, Inc. **260 NLRB No. 019**

(Ee eligible to vote in election in light of his unlawful discharge prior to election)

Dimensions In Metal, Inc. **258 NLRB No. 078**

Rosauer's Super Markets, Inc. **258 NLRB No. 111**

(challenge to ballot of Ee who was unlawfully discharged for U activities overruled and ballot counted)

Glengarry Contracting Industries, Inc. **258 NLRB No. 156**

(entitled to have ballots counted)

Jaybil Steel Products, Inc.; etc. **258 NLRB No. 157**

(challenges to ballots of unlawfully discharged Ees overruled and ballots ordered counted)

Firmat Manufacturing Corp. **255 NLRB No. 153**

(challenge to ballots overruled where Ees were discriminatorily discharged prior to election)

Gordonsville, Industries, Inc. **252 NLRB No. 054**

Dooley Equipment Corporation **252 NLRB No. 020**

(discriminatorily discharged Ee held eligible to vote)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**

(eligible)

Han-Dee Pak, Inc. **249 NLRB No. 107**

(despite absence of Ees' names on eligibility list, challenges overruled where Ees were unlawfully discharged and therefore entitled to reinstatement at time of election)

Alumbaugh Coal Corporation **247 NLRB No. 112**

(discriminatorily terminated Ee, eligible)

Sea-Alaska Products, Inc. **JD-(SF)-120-82**

(challenges to unlawfully laid-off and discharged Ees overruled and their ballots ordered counted)

6766-8000—Cont.

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**

R.E. Peterson Products, Inc., and Will Products, Inc. **JD-285-80**
(challenge to ballot of unlawfully discharged Ee overruled and ballot opened and counted)

Garden State Motors Co. **JD-160-80**
(challenged overruled)

Jeffrey Manufacturing Division, Dresser Industries, Inc. v. N.L.R.B. **654 F.2d 944 (C.A. 4, 1981)**
(unlawfully discharged Ee, eligible)

6766-9000 Alleged discriminatees

Gowan Company, a Division of the United States Gypsum Company **254 NLRB No. 041**
(challenge to Ee's ballots overruled since held discriminatees in ULP case with which *R* case consolidated)

Fenestrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(challenge upheld to ballots of Ees whose discharges prior to election held not unlawful)

Charles Dean d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(Ee not discriminatorilly discharged prior to election not eligible to vote; challenge to his ballot sustained and ballot not counted)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(Ees unlawfully discharged, eligible)

6772 EMPLOYEES SEPARATED FROM JOBS

United Supermarkets, Inc. **261 NLRB No. 179**
(Ees who signed U cards but did not work during or after date of determinative payroll period included in unit absent evidence that they had been separated from unit prior to such date)

United Supermarkets, Inc. **261 NLRB No. 179**
(Ee whose name appeared on determinative payroll period and on following payroll period lists, but who worked no hours during those periods or thereafter, excluded from unit, where there was no explanation why his name continued to appear on lists when E's records showed he had been previously terminated, and E's records were considered the more reliable indicia of when his employment ceased)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**
(Ee discharged previous year for stealing, not eligible since he had no reasonable expectation of employment)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**
(Ee transferred permanently from market and w/o expectation of return, rather than transferred temporarily during pre-election period as claimed by E, not eligible)

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**
(fact that laid off Ees had been referred to as *terminated* in different Bd proceeding immaterial where E had history of recalling former Ees; moreover, fact that these Ees were employed by another E at time of election irrelevant where there was reasonable likelihood of their reemployment)

6772-6700 Who have or intend to quit

Radio Free Europe/Radio Liberty, Inc. **262 NLRB No. 063**
(assertion that 2 Ees who would soon be returning were ineligible to vote, rejected)

Powman-Lawrence, Inc. d/b/a Belt Supermarket **260 NLRB No. 017**
(challenge to ballot of economic striker sustained where she left her employment with E approximately two months before election to move with her family 50 miles from E's facility and applied for position with another E; evidence sufficed to warrant finding that Ee abandoned job with first E and move was intended to be permanent)

Town Concrete Pipe of Washington, Inc. **259 NLRB No. 137**
(ballots of Ees who refused reinstatement after strike counted where no evidence these Ees had abandoned employment on date of election)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(individual who had voluntarily quit to avoid loss of social security benefits not eligible)

Connecticut Foundry Company **247 NLRB No. 145**
(Ee who quit his job prior to joining strike and prior to eligibility date not entitled to vote notwithstanding he picketed up until date of election)

Universal Paper Goods Company v. N.L.R.B. **638 F.2d 1159 (C.A. 9, Aug 8, 1981)**
(Ee who had announced her retirement, been given retirement check, ceased work and had her retirement announced in company bulletin applied for Social Security benefits found to be retired and not eligible to vote notwithstanding E placed her on 2-month leave of absence with instructions that she could come back to work if she wanted to, continued her health insurance, and Ee did return to work w/i 2 month period, because Ee had intent to retire, and expressed no interest in returning to work until after election held)

6775 EMPLOYEES ON ASSIGNMENT TO NONUNIT JOBS

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**
(Ee transferred permanently from market and w/o expectation of return, rather than transferred temporarily during pre-election period as claimed by E, not eligible)

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**
(*temporary supervisor* is person who has been temporarily detailed out of Ee unit with virtual certainty of returning to that unit; *temporary supervisor* analogous to Ee in temporary layoff status at time of election and as such is eligible to vote in election)

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital **614 F.2d 777(T) (C.A. 9) (1980)**
(day shift staff registered nurse reassigned from her night shift supervisor position held not Ee working in appropriate unit w/i voting eligibility period, in view of her nearly one year term as relief night shift supervisor with understanding that she would continue in her supervisory capacity until new person could be found and trained)

EMPLOYEES HAVING JOB-RELATED CHARACTERISTICS DISTINCT FROM UNIT EMPLOYEES

B. E. & K., Inc. **252 NLRB No. 036**
(expediter at construction project, classified as journeyman millwright, held eligible to vote in millwright unit election in view of community of interest with unit Ees' despite wearing of distinctive headgear and his travels over many areas of project unlike millwrights who are located in one work section at a time, and his work was closely related to and integrated with millwrights' work)

Rodger & Geiger Supply Co., Inc. **JD-6-81**
(Ee whose job – only one of its kind in plant – was to maintain systematic display of literature and brochures constantly coming from manufacturers and to give or show catalogues to customers when regular countermen sent customers to him held plant clerical and eligible to vote, notwithstanding his individual interest in employment conditions varied from those of other categories in unit)

6778 STRIKERS

6778-2500 Sympathy strikers

Stevens Ready-Mix Concrete **263 NLRB No. 175**
(challenged ballots of 7 members of Teamsters' U, who failed to return to work after being notified by E they were in violation of bargaining agreement's contractual no-strike clause where they engaged in sympathy strike by refusing to cross picket line established by Operating Engineers' U, opened and counted, since agreement did not waive Ees' right to engage in sympathy strike; no evidence that E took any action to terminate striking Ees since he claimed they quit and sympathy strikers treated as economic strikers for voting eligibility)

6778-3300 ULP strikers

Pace Motor Lines, Inc. **260 NLRB No. 189**
(E's challenges to ballots of ULP strikers rejected where, contrary to E's contention that these Ees had accepted permanent employment elsewhere and thereby had abandoned their interest in former jobs, ULP strikers were unlawfully denied reinstatement prior to election and did not reject valid, good-faith offers of reinstatement)

6778-6700 Economic strikers

6778-6733 Replaced economic strikers eligible in election within 12 months after commencement of strike

Levitz Furniture Company of The Eastern Region, Inc. (Local 1361, Retail Clerks and Store Employees) **248 NLRB No. 003**
(sympathy strikers are viewed as in same position of economic strikers they support and where election held more than 2 years after strike ended sympathy strikers not eligible to vote notwithstanding they are entitled to reinstatement should replacements leave E)

Prairie Glove Division, Advance Glove Company **JD-164-80**
(where representation questions arose from E's unilateral withdrawal of recognition from incumbent U, Ees still on economic strike when recognition was withdrawn held part of the bargaining unit for purposes of selecting representation more than 12 months after commencement of strike, absent

6778-6733—Cont.

evidence indicating that the striking Ees had ever been permanently replaced)

6778-6767 Acceptance of new employment

N.L.R.B. v. Connecticut Foundry Company 688 F.2d 871 (C.A. 2, July 1982)

(hearing was warranted on E's challenge to voter who had been employed by another company for 2 months before election notwithstanding Ee's sworn statement that he would return to work if conditions improve and strike ends where E showed that Ee had not picketed and told E that he was happy at his new job and wouldn't be interested in returning to work created factual issue of whether he had abandoned job)

6778-6767-5000 Eligible unless old job abandoned

Foote and Davies, Inc. 262 NLRB No. 029

(striker held eligible to vote since, contrary to contention, his statement that he knew he could never return to E did not on its face manifest clear intention to quit; secondly, Ee demonstrated continuing interest in his job by visiting picket line on regular basis from time he began working for another company until election date; and, finally, he made significantly more money with E herein which militates against finding he abandoned interest in returning to his job)

Lake Development Management Co. 259 NLRB No. 069

(challenges of ballots of economic strikers because they were *employed elsewhere* overruled since there is presumption of continued eligibility for economic strikers, which is not rebutted by mere fact that one takes job elsewhere; here there was no evidence that these Ees abandoned their employment)

Connecticut Foundry Company 247 NLRB No. 145

(Ee who found another job because he refused to cross picket line, held job over 1 year and made no attempt to regain old job after picket line was removed found to have abandoned first job and ineligible to vote)

6778-6798 Abandonment of interest in job

Pace Motor Lines, Inc. 260 NLRB No. 189

(E's challenges to ballots of ULP strikers sustained where Ees voluntarily resigned before election)

Powman-Lawrence, Inc. d/b/a Belt Supermarket 260 NLRB No. 017

(challenge to ballot of economic striker sustained where she left her employment with E approximately two months before election to move with her family 50 miles from E's facility and applied for position with another E; evidence sufficed to warrant finding that Ee abandoned job with first E and move was intended to be permanent)

Powman-Lawrence, Inc. d/b/a Belt Supermarket 260 NLRB No. 017

(in absence of strike, retired individual would not be regarded as Ee and would be ineligible to vote)

Powman-Lawrence, Inc. d/b/a Belt Supermarket 260 NLRB No. 017

(retiree ineligible to vote notwithstanding that he participated in picketing E after he retired, since picketing did not evince intention to return to work after strike was ended; retired Ee, like everyone in public at large was free to support strike)

Connecticut Foundry Company 247 NLRB No. 145

(Ee considered by E to be dischargee for picket line misconduct found not to be dischargee and eligible to vote where E never gave Ee any notice that he had been discharged and Ee never took any action to indicate he abandoned his employment)

N.L.R.B. v. Connecticut Foundry Company 688 F.2d 871 (C.A. 2, July 1982)

(hearing was warranted on E's challenge to voter who had been employed by another company for 2 months before election notwithstanding Ee's sworn statement that he would return to work if conditions improve and strike ends where E showed that Ee had not picketed and told E that he was happy at his new job and wouldn't be interested in returning to work created factual issue of whether he had abandoned job)

6780 REPLACEMENTS FOR DISCRIMINATEES

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. JD-(NY)-79-81

(ineligible to vote)

6784 REPLACEMENTS FOR STRIKERS

6784-3300 For ULP strikers

6784-3350 Not eligible

Jacques Syl Knitwear, Inc. 247 NLRB No. 191

6784-6700 For economic strikers

6784-6701 Generally

Lake Development Management Co. 259 NLRB No. 069

(economic strikers could be permanently replaced and those replacements were eligible to vote, absent showing by U that they were hired on temporary basis)

6790 DUAL FUNCTION EMPLOYEES

Drukker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. 238 NLRB No. 097

(mailroom Ee who formerly spend 100 percent of time in mail room but later changed to 50% of time in mailroom and 50% doing clerical work still included in unit of mailroom Ees as she has substantial interest in working conditions in unit)

6796 PART-TIME OR TEMPORARY SUPERVISORS

Rich's Precision Foundry, Inc. 252 NLRB No. 081

(full time college student who was brother of E's manager and worked part-time at foundry as maintenance helper and electrician during school year, and full time during summer, and who had been laid off and then recalled on election day, included in unit and eligible to vote, since regularly employed during relevant period, and absent evidence ineligible for recall or had no reasonable expectation of recall)

6796-5000 Eligible regardless of employee status at time of election

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital 614 F.2d 777(T) (C.A. 9) (1980)

(*temporary supervisor* is person who has been temporarily detailed out of Ee unit with virtual certainty of returning to that unit; *temporary supervisor* analogous to Ee in temporary layoff status at time of election and as such is eligible to vote in election)

N.L.R.B. v. Andrea Associates, a joint venture d/b/ a Pinecrest Hospital 614 F.2d 777(T) (C.A. 9) (19

(day shift staff registered nurse reassigned from her night shift supervisor position held not Ee working in appropriate unit w/i voting eligibility period, in view of her nearly one year term as relief night shift supervisor with understanding that she would continue in her supervisory capacity until new person could be found and trained)

6798 RELATIVES OF MANAGEMENT

Connecticut Foundry Company 247 NLRB No. 145

(high school student who was daughter of boss and hired when strike commenced and continued employment over summer excluded from voter eligibility where she intended to and did attend college in fall and also in light of fact that she held *special status* at plant due to family relationship)

6798-2500 Relationship to management

Ellis Funeral Homes, Inc. 258 NLRB No. 119

(challenge to ballot of clerical whose interests were more closely allied with those of management than those of fellow Ees sustained, where Ee's mother was officer and member of board of directors and second largest shareholder of corporation engaged in retail sale of funeral services; furthermore, mother was direct supervisor to all clerical Ees making it virtual certainty that daughter would get more attentive ear than other clerical Ees)

Pandick Press Midwest, Inc. 251 NLRB No. 088

(daughter of plant manager who also has title of *president* not eligible to vote in election and excluded from unit where she lives at home with her father, has more flexible shift schedule than other Ees and her easy access to management gives her status and area of interest distinct from other Ees)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting 251 NLRB No. 027

(contention that sons, herein excluded from unit, were not employed by their father but by partnership entity owned by father and partner, and that prior Bd decision required GC to prove sons' *special status* for their exclusion, rejected; cited decisions do not relate to issue herein but primarily to Ees of corporations, Congress has definitively excluded child of owner from status of *Ee*, and father herein, sole operator of partnership because of partner's illness, was directly responsible for day-to-day operation of partnership's business)

Han-Dee Pak, Inc. 249 NLRB No. 107

(challenge to ballot sustained where Ee was son of VP and 50 percent stockholder of E and, thus, deemed employed by his parent and excluded from Ee unit because of relationship to substantial owner)

J. P. Stevens and Company, Inc. 247 NLRB No. [illegible]

(son of plant manager, who was college student hired as temporary Ee, excluded from unit where he enjoyed special status in employment relationship in view of higher pay, irregular work hours, and ease with which he was rehired; and it was most likely that he was not financially independent

6798-2500—Cont.

from his father whose influence would tend to predispose son to follow management views and ally him with management)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**
(part-time Ee excluded from unit on basis of (a) family relationship where he was son of E's manager and half owner, lived at home with and was supported by his father and (b) *special status* on job where he was salaried, took time off at height of season, and was privy to personnel information unlike most Ees)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**
(Ee excluded from unit on basis of (a) family relationship where he was son of E's manager and half owner, derived his income from his employment with E, and lived in home purchased with loan from father and (b) *special status* on job where he was salaried, and received incentive pay and large open-ended loan from E unlike other Ees)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**
(Ee excluded from unit on basis of (a) family relationship as son of E's manager and half owner and (b) *special status* on job where he was salaried, had keys to all areas of E, and had authority to sign checks, prepare work schedules, and take charge of produce company)

Harvey & Madding, Inc., d/b/a Dublin Honda **JD-(ATL)-97-81**
(challenge to ballot of son of president and part owner of E sustained where evidence showed that son possessed special status which allied his interest with those of management)

Linn Gear Company **JD-(SF)-360-80**
(on ct remand, JD held that Ee, despite his family's substantial ownership interest and his father's role in management of company, shared common interest with other Ees in voting unit and therefore challenge to Ee's ballot overruled; Ee shared similarity in wages, hours, supervision and working conditions with other voting Ees, had no contact with father on job, was fanancially independent although living at parents' house where he paid room and board, had continuous contacts with fellow Ees many of whom were his social friends as opposed to *de minimus* contact with father, and regularly discussed working conditions with other voting unit Ees)

6798-5000 Identification of interests with management

Linn Gear Company **JD-(SF)-360-80**
(on ct remand, JD held that Ee, despite his family's substantial ownership interest and his father's role in management of company, shared common interest with other Ees in voting unit and therefore challenge to Ee's ballot overruled; Ee shared similarity in wages, hours, supervision and working conditions with other voting Ees, had no contact with father on job, was fanancially independent although living at parents' house where he paid room and board, had continuous contacts with fellow Ees many of whom were his social friends as opposed to *de minimus* contact with father, and regularly discussed working conditions with other voting unit Ees)

6798-7500 Circumstances of employment

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(challenge to ballot of Ee who was relative of official rejected, where no evidence was adduced that such relationship caused any special treatment of Ee or that Ee functioned other than as rank-and-file Ee in job w/i voting unit)

Linn Gear Company **JD-(SF)-360-80**
(on ct remand, JD held that Ee, despite his family's substantial ownership interest and his father's role in management of company, shared common interest with other Ees in voting unit and therefore challenge to Ee's ballot overruled; Ee shared similarity in wages, hours, supervision and working conditions with other voting Ees, had no contact with father on job, was fanancially independent although living at parents' house where he paid room and board, had continuous contacts with fellow Ees many of whom were his social friends as opposed to *de minimus* contact with father, and regularly discussed working conditions with other voting unit Ees)

N.L.R.B. v. Connecticut Foundry Company **688 F.2d 871 (C.A. 2, July 1982)**
(children of company officials held ineligible to vote where they enjoyed considerable flexibility in scheduling work hours around school and vacations and they intended to attend college shortly after election)

370 MECHANICS OF ELECTION

0100 GENERALLY

Glenn McClendon Trucking Co., Inc. 255 NLRB No. 168
(it is Bd's responsibility, *not that of parties,* to establish proper procedure for conduct of elections)

0700 DATE OF ELECTION

0717 AUTHORITY AND RESPONSIBILITY FOR SETTING DATE

Consolidated Print Works, Inc., and Auto Screen Print Corp. 260 NLRB No. 129
(setting aside election not warranted, where, though stipulation for consent election contained an eligibility date, Bd agent had informed parties that this date was conditioned on date Rd approved stipulation and, though U protested orally in interim period about any change in eligibility date, it took no further actions that were available to it to protest change in eligibility date set forth in approved stipulation; thus U effectively acquiesced in changed date)

0733 FACTORS CONSIDERED IN DETERMINING DATE OF ELECTION

0733-1700 Opportunity to vote

Daylight Grocery Company, Inc. v. N.L.R.B. 678 F.2d 905 (C.A. 11, June 1982)
(E's procedural objection that Bd's giving inadequate notice (13 days) of election date and failing to reschedule election violated E's statutory and due process interests held w/o merit, since Bd's scheduling may be reversed only on showing abuse of discretion which denies an Ee the opportunity to vote, and E failed to show prejudice where it had adequate time to campaign and consider the issues)

0733-1750 Work schedule

0733-1750-2500 Employees away on business

Glenn McClendon Trucking Co., Inc. 255 NLRB No. 168
(election set aside and second election directed where three eligible voters whose votes could have affected outcome of election were unable to participate in election because E had dispatched them to places distant from polling place)

0733-3300 Opportunity to campaign

Daylight Grocery Company, Inc. v. N.L.R.B. 678 F.2d 905 (C.A. 11, June 1982)
(E's procedural objection that Bd's giving inadequate notice (13 days) of election date and failing to reschedule election violated E's statutory and due process interests held w/o merit, since Bd's scheduling may be reversed only on showing abuse of discretion which denies an Ee the opportunity to vote, and E failed to show prejudice where it had adequate time to campaign and consider the issues)

0750 FACTORS CONSIDERED IN DETERMINING WHETHER OR NOT TO POSTPONE ELECTION

0750-7000 Effect of employer's actions

0750-7067 Not postponed

Glenn McClendon Trucking Co., Inc. 255 NLRB No. 168
(election set aside and second election directed where three eligible voters whose votes could have affected outcome of election were unable to participate in election because E had dispatched them to places distant from polling place)

0750-8400 Unfair labor practice charges pending

0750-8467 Not postponed

0750-8467-3300 Waiver of right to object

Connecticut Foundry Company 247 NLRB No. 145
(E who signed agreement in which U agreed that *We will not restrain or coerce Ees of E in the exercise of rights guaranteed in Section 7 of Act* (not conventional request to proceed) waived its rights to have election set aside due to ULP's which were part or could have been part of settlement agreement it entered into with U, thereby enabling election to take place before end of posting period, effectively waived its right to protest U's ULP's committed prior to execution of agreement)

0750-9100 Other Factors

0750-9167 Not postponed

Daylight Grocery Company, Inc. v. N.L.R.B. 678 F.2d 905 (C.A. 11, June 1982)
(E's procedural objection that Bd's giving inadequate notice (13 days) of election date and failing to reschedule election violated E's statutory and due process interests held w/o merit, since Bd's scheduling may be reversed only on showing abuse of discretion which denies an Ee the opportunity to vote, and E failed to show prejudice where it had adequate time to campaign and consider the issues)

1400 PLACE OF ELECTION

1425 AUTHORITY AND RESPONSIBILITY TO DETERMINE LOCATION

1425-3300 Regional Director

Halliburton Services (Coffeyville, Kansas), A Division of Halliburton Company 265 NLRB No. 144
(although Bd has broad remedial power under Sec. 10(c) to designate election site, neither record nor briefs disclosed any reason for deviating from practice of leaving decision to discretion of RD)

1475 CHANGE FROM PREDETERMINED LOCATION (See also 370-2867)

N.L.R.B. v. Granite State Minerals, Inc. 674 F.2d 101 (C.A. 1, Mar. 1982)
(E's objections to election upheld and E not obligated to bargain where, unilaterally departing from time and place set in stipulated election agreement, Bd allowed U to drive Ee who would be away at time of election to Bd's regional office to cast vote w/o U observers; conduct objectionable whether or not actual prejudice to E, absent exploration by Bd of alternatives to insure Ee's right to vote w/o breaching material terms of election agreement, and particularly where Ee had not heard E's case, nor seen election notices)

2100 TIME OF ELECTION

2150 FACTORS CONSIDERED IN SETTING TIME

2150-5000 Opportunity to vote

Glenn McClendon Trucking Co., Inc. 255 NLRB No. 168
(election set aside and second election directed where three eligible voters whose votes could have affected outcome of election were unable to participate in election because E had dispatched them to places distant from polling place)

2800 NOTICE OF ELECTION

2817 SUFFICIENCY OF NOTICE

2817-3300 Content

2817-3311 Date, time, and/or place

Bokum Resources Corporation v. N.L.R.B. 655 F.2d 1021 (C.A. 10, 1981)
(election notice which did not contain polling times, place and Us involved not defective enough to frustrate election especially where 12 hours prior to election notice containing correct information was posted; moreover, no evidence that faulty notice was posted by U and Bd has held that conduct not attributable to opposing party cannot be basis for setting aside election)

2817-3544 Employee rights clause

2817-3544-3300 Inclusion of

Rattan Art Gallery, Ltd. **260 NLRB No. 018**
(laboratory conditions of election were destroyed with regard to needs of Filipino-speaking Ees who could not read or speak English, where standard statement of Ee rights was omitted in bilingual election notice, and translation of rest of notice into second language was confusing)

2817-6700 Use of foreign language notices

Rattan Art Gallery, Ltd. **260 NLRB No. 018**
(laboratory conditions of election were destroyed with regard to needs of Filipino-speaking Ees who could not read or speak English, where standard statement of Ee rights was omitted in bilingual election notice, and translation of rest of notice into second language was confusing)

Pine Valley Meats, Inc. **255 NLRB No. 061**
(appropriate that notice of election be posted in both English and Polish)

Tanforan Park Food Purveyors Council and the Hagenish Company v. N.L.R.B **656 F.2d 1358 (C.A. 9, 1981)**
(ct remanded to Bd for hearing on whether retranslation of notice of election in Samoan into English by Samoan unit Ee suggested that Samoan version of notice was so garbled and confusing that Bd did not meet duty to present election notices to Ees in languages they understand)

2833 RECEIPT OF NOTICE

2833-5000 Timely receipt

2833-5050 Length of time posted

Contractors Redi-Mix, Inc. **230 NLRB No. 022**
(certification of election results rather than rerunning election, held warranted notwithstanding E's objection that election notice was not posted until the day before election; E contributed to the delay by failing to post the notice until 3 days after receiving it; Ees had opportunities prior to election to read the notice; parties independently apprised Ees of details of election arrangements; and all active Ees voted)

Associated Air Freight, Inc. **247 NLRB No. 158**
(where E delayed posting of notices until day after receipt thereof, even assuming *arguendo* that posting took place in morning rather than later in day, such late posting, only 2 days before election, failed to give Ees sufficient advance notice of election in view of their various different work schedules, and constituted substantial disregard of posting instructions; *Printhouse* case not controlling)

2850 DEFACED NOTICE

2850-6700 Marked sample ballot

2850-6733 For nonunion choice

Armstrong Cork Company **150 NLRB No. 147**
(*altered sample ballot* distributed by E to Ees on day and evening before election, held objectionable, since E's use of *altered Bd ballot* created impression that Bd had allied itself with E's (anti-U) campaign)

2867 FAILURE TO CONDUCT ELECTION IN ACCORDANCE WITH NOTICE

2867-2800 Change of time

National Medical Hospital of Compton, d/b/a Dominguez Valley Hospital **251 NLRB No. 119**
(notwithstanding that during day of election when periodic announcements of election were made over E's public address systems and operator made one erroneous announcement that polls would close at 4:30 p.m. rather than scheduled 4 p.m. closing, election was not set aside, since it was unreasonable to find that inadvertent and minimal deviation of one incorrect announcement weighed against numerous correct announcements and posted notices would so confuse or mislead significant number of eligible Ees who did not cast ballots)

2867-5000 Change of place

N.L.R.B. v. Granite State Minerals, Inc. **674 F.2d 101 (C.A. 1, Mar. 1982)**
(E's objections to election upheld and E not obligated to bargain where, unilaterally departing from time and place set in stipulated election agreement, Bd allowed U to drive Es who would be away at time of election to Bd's regional office to cast vote w/o U observers; conduct objectionable whether or not actual prejudice to E, absent exploration by Bd of alternatives to insure Ee's right to vote w/o breaching material terms of election agreement, and particularly where Ee had not heard E's case, nor seen election notices)

3500 VOTING PROCEDURE AND ELECTION FACILITIES

3533 VOTING PROCEDURE

3533-4000 Identification of voters (includes use of eligibility list)

3533-4050 Use of eligibility list

Illinois Valley Community Hospital **249 NLRB No. 058**
(RD properly determined eligibility of individual Ees in question, regardless of parties' agreement, since it is contrary to Act and established Bd policy to agree that a group of Ees, as a class, will not be able to vote when some of those Ees are *prima facie* members of bargaining unit)

3533-4050-2800 Maintenance of list of who did or did not vote

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center **652 F.2d 856 (C.A. 9, Aug 1981)**
(hearing not warranted on issue where affiant stated that *observers had a list in front of them* but failed to suggest anyone else had a list; Bd prohibits keeping of any list of persons who have voted aside from the official eligibility list)

3533-4075 Failure to be included on eligibility list (effect on opportunity to vote)

N.L.R.B. v. Triangle Express, Inc. **683 F.2d 337 (C.A. 10, July 1982)**
(Bd did not abuse its discretion in not setting aside election, notwithstanding that names of four eligible voters were omitted from *Excelsior* list and the four Ees did not vote since, contrary to contention, such Ees were not disenfranchised because of the list's inaccuracy; an eligible Ee whose name is not on list may nevertheless vote and the ballot is set aside as a challenged ballot for later resolution, but under no circumstances is an Ee prohibited from voting because his or her name is not on the list)

3533-6000 Casting ballot

3533-6060 Ability to cast knowledgeable vote

3533-6060-7500 Sufficiency of time

Kerrville Bus Co., Inc. **257 NLRB No. 004**
(whether or not late ballot may be cast is a matter left to reasonable discretion of Bd and its agent conducting election. In each case Bd has traditionally considered following factors: (1) reason Ee was late; (2) how late Ee was; (3) how long voting period was; and (4) whether ballot box was opened or tally commenced at arrival of Ee. As a matter of fundamental statutory policy, it behooves Bd to afford Ees broadest possible participation in Bd elections as long as election procedures are not unduly interfered with or hampered)

3533-6080 Incorrectly marked ballot

The Wackenhut Corporation v. N.L.R.B. **666 F.2d 464 (C.A. 11, Jan. 1982)**
(Bd will count irregularly marked ballots whenever intent of voter is clearly apparent)

3533-7000 Failure to vote

Whatcom Security Agency, Inc. **258 NLRB No. 127**
(election set aside where doors to polling place were inadvertently locked for substantial period of time thereby preventing all eligible voters from voting; RD's investigation and conclusion that election result was *not* thereby affected, was not proper method for determining voting intentions of voters and was not consistent with Bd precedent; irregularity in essential election conditions, which calls into question determinative number of ballots affecting outcome, requires setting aside election; large number of Ees involved could have affected election results; deviation from normal election procedures creates uncertainty as to election results)

3533-7001 Generally

Berryfast, Inc. **265 NLRB No. 094**
(in cases dealing with disenfranchisement of Ees, Bd's primary concern is with such disenfranchisement and not with any separate E claim of reliance upon orderly Bd proceedings; although a party is generally estopped from profiting from its own misconduct, Bd has in the past overlooked this principle in circumstances where Ees have been disenfranchised, through no fault of their own; thus, election was set aside based on E's objections where Ees were unable to vote because they were away from polling place in normal course of their duties for E)

Berryfast, Inc. **265 NLRB No. 094**
(where party to an election, through its own action, negligence, or good-faith mistake has prevented eligible Ee from voting, only the other, nonacting party has any foundation for an objection based on a breakdown in Bd's processes; to hold otherwise would invite abuse of both Bd's election procedures and postelection objection process)

Berryfast, Inc. **265 NLRB No. 094**
(where Ee failed to vote because E mistakenly told her she was ineligible, and E objected to election based on its own conduct in regard to Ee, Bd held that, since E was attempting to rely on its own actions, and its conduct had not prejudiced other party to election, proper focus of case was disenfranchisement of eligible voter)

3533-7001—Cont.

National Medical Hospital of Compton, d/b/a Dominguez Valley Hospital **231 NLRB No. 119**

(notwithstanding that during day of election when periodic announcements of election were made over E's public address systems and operator made one erroneous announcement that polls would close at 4:30 p.m. rather than scheduled 4 p.m. closing, election was not set aside, since it was unreasonable to find that inadvertent and minimal deviation of one incorrect announcement weighed against numerous correct announcements and posted notices would so confuse or mislead significant number of eligible Ees who did not cast ballots)

3533-7017 Reasonable attempt by employee to vote

Berryfast, Inc. **265 NLRB No. 004**

(election not set aside based on eligible voter's failure to cast her ballot since she did not take sufficient reasonable steps to vote, and her own conduct was instrumental in her not voting where, instead of showing up at plant to vote, she sent her husband to determine her eligibility; and, instead of following instructions in Bd's *Notice of Elections* to communicate concerning eligibility rules to RD, husband relied on mistaken statement by E's representative that she was ineligible, and then failed to pursue matter any further)

3533-7033 Illness

Central Distributors, Inc. **263 NLRB No. 161**

(if job related and vote could be determinative of election election may be rerun)

3533-7050 Away on Employer's business

Glenn McClendon Trucking Co., Inc. **255 NLRB No. 168**

(election set aside and second election directed where three eligible voters whose votes could have affected outcome of election were unable to participate in election because E had dispatched them to places distant from polling place)

4200 BALLOT

4201 GENERALLY

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**

(where it appeared that intervenor, who was represented in common by petitioner's counsel, waived all rights to examine and cross-examine witnesses, had nearly identical officials as petitioner, and appeared herein only when issue arose as to whether it was dominated by E, Bd did not place intervenor on ballot since record did not clearly reflect that intervenor wished to do so; however, in event intervenor determines that it wishes to appear on ballot, Bd authorized RD, upon appropriate mtn and in his discretion, to amend direction of election accordingly)

4270 USE OF FOREIGN LANGUAGE BALLOT

Flo-Tronic Metal Mfg., Inc. **231 NLRB No. 208**

(failure to include in election notice full statement of rights of Ees in both English and Spanish as agreed to by parties, held interference notwithstanding that information with respect to date, time and place of polling, eligibility requirements, and type of ballot to be used was posted both in English and in Spanish)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center **652 F.2d 856 (C.A. 9, Aug 1981)**

(E's objection to failure to provide ballots in Spanish properly overruled where no pre-election suggestion was made that they should be supplied, and there was no evidence that any Spanish speaking Ee was actually confused about the voting procedure)

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**

(support of U was *clearly manifested* in instant case where challenged ballots of two of E's 15 Spanish speaking Ees were marked *si* in *YES-SI* box rather than in *NO-NO* box; Bd properly counted those challenged ballots as votes in favor of U)

4900 OBSERVERS

4925 APPROPRIATENESS OF INDIVIDUAL AS OBSERVER

4925-0100 Generally

N.L.R.B. v. U. S. Cablevision Corp. **614 F.2d 341 (C.A. 2) (1980)**

(where U designated as official observer w/o his consent Ee who was considered to be anti-U, and U won election by 1 vote, ct denied Bd hearing on E's objections to elections and enforced Bd order as this is not type of practice which impairs validity of election and Ee made effort to counteract inference that his designation demonstrated support for U)

4925-2000 Individuals closely associated with management

4925-2017 Supervisor

Photo-Sonics, Inc.; et al. **234 NLRB No. 069**

(designation of supervisor as observer at polls by E was basis for recommending setting aside of election; it is established Bd policy that supervisors may not act as observers for E)

4925-8000 Individuals closely associated with union

4925-8020 Union official

New England Lumber Division of Diamond International Corporation v. N.L.R.B. **646 F.2d 1 (C.A. 1, Apr 1981)**

(designation of U official as observer at election does not warrant overturning election absent evidence official engaged in improper conduct while acting in that capacity)

New England Lumber Division of Diamond International Corporation v. N.L.R.B. **646 F.2d 1 (C.A. 1, Apr 1981)**

(Bd has broad discretion to interpret ambiguities in Stipulation for Certification Upon Consent Election and here stipulation provided that observers must be nonsupervisory Ees of E (division of large company) and U's use of Ee, U president employed at another division of company, as observer found consistent with terms of stipulation)

4937 AUTHORITY TO DESIGNATE OBSERVER

Summa Corporation d/b/a Frontier Hotel v. N.L.R.B. **625 F.2d 293 (C.A. 9, Aug. 1980)**

(where parties had stipulated prior to election that each would be allowed 2 observers, and U, with Bd agent's permission, had 3rd observer present, election set aside as E entitled to insist that Bd and U diligently adhere to provisions of stipulation designed to insure fair election; moreover, no showing of actual prejudice necessary)

4962 FUNCTIONS AND RESPONSIBILITIES OF OBSERVERS

4962-0100 Generally

N.L.R.B. v. Masonic Homes of California, Inc. **624 F.2d 88 (C.A. 9, July 1980)**

(Bd properly rejected E's contention that Bd agent improperly permitted U observer to leave balloting room and enter hall through which voters passed where there was no evidence of contact or conversation between voters and U observer)

4962-2000 Challenge voters

Monterey Carmel Convalescent, Inc., d/b/a Carmel Convalescent Hospital **252 NLRB No. 041**

(objection that Bd agent failed to adequately instruct U's observer at voting session on proper challenge procedures which thereby caused observer to believe failure or refusal to initial voter's name on eligibility list constituted challenge of that voter overruled; it is well settled that an observer should indicate clearly intent to challenge, and that in absence of such clarity, particularly when question is specifically asked by Bd agent, as here, and there is no affirmative response, Bd agent cannot reasonably be expected to interpret observer's conduct as conveying intent to challenge)

4962-8000 Certificatin of conduct of election

Keystone Metal Moulding Company **249 NLRB No. 075**

(failure of Bd agent to have observers sign certification of conduct form until after second voting session not sufficient departure from normal procedure to raise reasonable doubt as to fairness and validity of election)

4975 CONDUCT OF OBSERVER

4975-2500 Maintaining voter list

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**

(setting aside of election not warranted where U observer had Ee voting list and may have briefly compared his list to official list of those who had voted since he could have recorded only small number of those who voted and this occured during period of time when no eligible voters in voting area; thus coercive atmosphere not created)

N.L.R.B. v. Masonic Homes of California, Inc. **624 F.2d 88 (C.A. 9, July 1980)**

(ct remanded to Bd question of whether maintenance by U observers of prohibited list of voters in voting area while balloting was taking place had more tha de minimis effect)

4975-5000 Electioneering

The Nestle Company **248 NLRB No. 106**

(U observer talking to several Ees in polling room not objectionable when alleged objectionable conduct occurred 10 minutes prior to opening of polls and any other talking by observer was not *sustained* conversations with prospective voters waiting to vote

4975-5000—Cont.

South Pacific Furniture, Inc. v. N.L.R.B. **627 NLRB No. 173 (C.A. 9, 1980)**

(U observer's statement *come on and vote, exercise your power* said to Ees in room adjacent to balloting area, not objectionable and not *electioneering* since statement was not one that can be said to have inhibited Ees' free choice in selecting their representative)

5600 CHALLENGE OF VOTER

6300 MAIL BALLOTING

6375 PROCEDURE FOR CONDUCTING ELECTION BY MAIL

6375-3700 Mailing ballot to voter

N.L.R.B. v. Pinkerton's, Inc. **621 F.2d 1322 (C.A. 6, June 1980)**

(remand for evidentiary hearing on whether ballots were in fact sent to Ees who did not receive them, particularly in view of fact no proof of mailing had been presented)

6375-7500 Timeliness of receipt of cast ballots

6375-7550 Late receipt

Kerrville Bus Co., Inc. **257 NLRB No. 034**

(challenge to mail ballots received in regional office after return receipt date overruled since mailed at time when they could reasonably be anticipated to be received by deadline i.e. 3 days where w/i same city or w/i 100 miles of regional office)

Kerrville Bus Co., Inc. **257 NLRB No. 034**

(challenge to mail ballots cast in combination mail and manual election overruled notwithstanding ballots received in regional office after return receipt date and were mailed after time when they could reasonably be anticipated to be received by deadline, since whether late ballots may be cast w/i discretion of Bd or agent conducting election, ballots challenged were received prior to counting of mail ballots and manual portion of election did not occur until 2 days after ballots mailed)

6375-8100 Lost ballots

N.L.R.B. v. Pinkerton's, Inc. **621 F.2d 1322 (C.A. 6, June 1980)**

(remand for evidentiary hearing on whether ballots were in fact sent to Ees who did not receive them, particularly in view of fact no proof of mailing had been presented)

7000 SECRECY OF BALLOT

7001 GENERALLY

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**

(if Ee would have helped non-English speaking Ee to vote it would be clearly inappropriate because Bd's requirement of complete secrecy of ballot (in elections) cannot be waived)

7033 NATURE OF VOTING CONDITIONS RAISING QUESTION OF OPPORTUNITY TO CAST SECRET BALLOT

Crown Cork & Seal Company, Inc. v. N.L.R.B. **659 F.2d 127 (C.A. 10, Sept. 1981)**

(E's allegation that ballots were not secret because even after they were folded mark was visible, dismissed, where no evidence that Ees knew their votes were not secret)

7033-3300 Location of voting area

7033-3333 Automobile

Fotomat Corporation v. N.L.R.B. **634 F.2d 320 (C.A. 6, 1980)**

(balloting on hood of Bd agent's car with 3-sided box to shield ballot held not prejudicial)

7033-6700 Voting facilities in voting area

7033-6733 Polling booth

7033-6733-3300 Employees occupying booth at same time

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**

(if Ee would have helped non-English speaking Ee to vote it would be clearly inappropriate because Bd's requirement of complete secrecy of ballot (in elections) cannot be waived)

7067 IDENTITY OF VOTER

7067-9000 Waiver

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**

(if Ee would have helped non-English speaking Ee to vote it would be clearly inappropriate because Bd's requirement of complete secrecy of ballot (in elections) cannot be waived)

7700 COUNT

7701 GENERALLY

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**

(ballot cast by person using name of person never employed by E at any time left unopened and uncounted)

7725 VALIDITY OF BALLOT

7725-0100 Generally

San Joaquin Compress & Warehouse Company **251 NLRB No. 007**

(in invalidating ballot where intent of voter was unclear because of irregular markings on ballot, Bd stated that it did not intend to make presumption that intent is unclear whenever irregularity in marking occurs; rather, its holding was that markings herein made it impossible to conclude what voter meant where markings were in one box and were thoroughly confusing)

7725-0150-5033 Unambiguous - valid

The Wackenhut Corporation v. N.L.R.B. **666 F.2d 464 (C.A. 11, Jan. 1982)**

(ballot printed in Spanish and cast by Spanish speaking Ee with word *NO* written in both *SI* and *NO* boxes held valid, since intent of voter was free from doubt)

7725-1700 Properly or improperly marked ballots

Hydro Conduit Corporation **260 NLRB No. 178**

(ballot which was left blank on front side but had word *si* on back held vote for U as voter's intent was clearly manifested; Bd reversed Columbus Nursing Home, Inc., 188 NLRB 825 in light of refusal of several courts of appeals to accept Board's policy and refusal of Supreme Court to grant certiorari on this issue)

N.L.R.B. v. Manhattan Corporation, Manhattan Guest House, Inc. **620 F.2d 53 (C.A. 5, Jun 1980)**

(ballot with *No* written on back not voided but counted as vote against representation)

N.L.R.B. v. Beverly Manor Convalescent Hospital **659 F.2d 1069(T) (C.A. 9, July 1981)**

(ct approved Bd's policy of counting each ballot that clearly manifests voter's intent even if ballot is improperly marked, provided mode of designation does not reveal voter's identity)

7725-3300 Properly or improperly marked ballot

7725-3333 Intent of voter

Kaufman's Bakery, Inc. **264 NLRB No. 033**

(Bd overruled challenges to ballots which were marked with an *X* and additional marks w/i *Yes* box where Bd viewed mark in only one box, despite some irregularity, as presumptively a clear indication of intent of voter; *San Joaquin* overruled)

7725-3333-2500 Erasures on ballot

Daylight Grocery Company, Inc. v. N.L.R.B. **678 F.2d 905 (C.A. 11, June 1982)**

(ballot with clear check in *Yes* box and partial line in *No* box, which was obvious result of attempt at erasure, properly included in tally, since intent of voter was clear)

7725-3333-3300 Both boxes marked

Harry Lunstead Designs, Inc. **265 NLRB No. 110**

(by marking *no* in both boxes, voter indicated desire to vote against U and was simply emphasizing strength of his conviction)

7725-3333-7500 Wording, lettering or other markings on front or back of ballot

Mallin Bros. Co. **261 NLRB No. 145**

(ballot blank on its face but containing word *No* written on its back held not void, since voter manifested his intent, albeit irregularly expressed, on back of ballot)

Missoula Textile Services **261 NLRB No. 116**

(Bd held ballot which was blank on its face, but contained word *No* written on its back was properly counted as vote against U in accord with Bd's new position on such ballots as enunciated in *Hydro-Conduit*, 260 NLRB No. 178; Bd will henceforth, consistent with its policy of considering voter intent expressed irregularly on front of ballot, also give effect to intent of voter if such intent is manifested on back of ballot)

N.L.R.B. v. Connecticut Foundry Company **688 F.2d 871 (C.A. 2, July 1982)**

(ballots left blank on faces but marked *NO* and *no* on reverse sides held votes against U rather than void)

7725-3333-7500—Cont.

N.L.R.B. v. Connecticut Foundry Company 688 F.2d 871 (C.A. 2, July 1982)

(ballot in which *no* was written in both *yes* and *no* boxes held vote against U rather than void)

N.L.R.B. v. Consolidated Liberty, Inc., d/b/c Hy-Land Convalescent Hospital 672 F.2d 788 (C.A. 9, Mar. 1982)

(2 ballots which were not marked on front but had written on back *no* and *no U* should be counted unless investigation reveals identity of voters)

7725-5000 Intent of voter

Hydro Conduit Corporation 260 NLRB No. 178

(ballot which was left blank on front side but had word *si* on back held vote for U as voter's intent was clearly manifested; Bd reversed Columbus Nursing Home, Inc., 188 NLRB 825 in light of refusal of several courts of appeals to accept Board's policy and refusal of Supreme Court to grant certiorari on this issue)

N.L.R.B. v. Beverly Manor Convalescent Hospital 659 F.2d 1089(T) (C.A. 9, July 1981)

(ct approved Bd's policy of counting each ballot that clearly manifests voter's intent even if ballot is improperly marked, provided mode of designation does not reveal voter's identity)

The Wackenhut Corporation v. N.L.R.B. 666 F.2d 464 (C.A. 11, Jan. 1982)

(Bd will count irregularly marked ballots whenever intent of voter is clearly apparent)

7725-5033 Mark other than x used to designate choice

A. G. Parrott Company 255 NLRB No. 037

(Bd properly counted ballot as *yes* vote where voter put *C* in *yes* box)

N.L.R.B. v. A. G. Parrott Company 630 F.2d 212 (C.A. 4, 1980)

(*Yes* ballot marked with a *C* held to have been properly counted in favor of U since marking did not in any way reveal identity of Ee who cast ballot, and voting preference was clear)

7725-5050 Wording or lettering on ballot

San Joaquin Compress & Warehouse Company 251 NLRB No. 007

(ballot marked in pencil with *X* or checkmark and additional random markings in *No* box, with no markings in *Yes* box, invalid, since ballot does not disclose intent of voter with required degree of certainty; deciding whether voter had decided to make *no-choice* by obliterating mark in *No* box or merely intended emphasis by darkening whatever mark had been made originally in *No* box would have been mere speculation)

N.L.R.B. v. Metro-Truck Body, Inc. 613 F.2d 746 (C.A. 9) (1980)

(support of U was *clearly manifested* in instant case where challenged ballots of two of E's 15 Spanish speaking Ees were marked *si* in *YES-SI* box rather than in *NO-NO* box; Bd properly counted those challenged ballots as votes in favor of U)

7725-5050-3300 Unambiguous - valid

N.L.R.B. v. Manhattan Corporation, Manhattan Guest House, Inc. 620 F.2d 53 (C.A. 5, Jan 1980)

(ballot with *No* written on back not voided but counted as vote against representation)

The Wackenhut Corporation v. N.L.R.B. 666 F.2d 464 (C.A. 11, Jan. 1982)

(ballot printed in Spanish and cast by Spanish speaking Ee with word *NO* written in both *SI* and *NO* boxes held valid, since intent of voter was free from doubt)

7725-5083 Miscellaneous markings on ballots other than lettering

7725-5083-3300 Unambiguous - valid

N.L.R.B. v. Leonard Creations of California, Inc. 638 F.2d 111 (C.A. 9, 1981)

(voter intended to register *No* vote where contested ballot exhibited full *X* in box indicating vote against U representation and slash in the box in favor of it; ct found little support for Bd's conclusion that voter's intent was unclear)

7725-5083-6700 Ambiguous - void

San Joaquin Compress & Warehouse Co. (Local 78, Longshoremen's and Warehousemen's Union) 250 NLRB No. 007

(challenge to ballot marked in pencil with what appeared to be an *X* or checkmark and random additional markings in *No* box and no markings in *yes* box, overruled and ballot declared void as it does not disclose intent of voter with required degree of certainty)

7725-6700 Ballot cast for choice not listed

A. G. Parrott Company 255 NLRB No. 037

(ballot which reveals identity of voter is void)

A. G. Parrott Company 255 NLRB No. 037

(where Bd agent inadvertently disclosed signed *no* ballot to E's representative, and then refused to let him inspect ballot for himself, election set aside and second election ordered since, if ballot is merely declared void in this instance, it would give majority to U, and if counted, would deprive U of majority)

N.L.R.B. v. A. G. Parrott Company 630 F.2d 212 (C.A. 4, 1980)

(signed ballot, decisive of outcome of election which, through Bd agent's inadvertent error, revealed voter's *No* choice required setting aside of election and direction of new election, where Bd denied E right, generally granted, to see signature thereby requiring E to accept, in blind faith, Bd's conclusion that ballot bore an invalidating signature and to abandon protection of inspection otherwise routinely available; E should not bear unfavorable consequences where Bd agent was at fault, and Bd's injustice to E would be equally unjust to U if *No* ballot were counted)

7750 BALLOTS OF CHALLENGED VOTERS

7750-0100 Generally

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. JD-(NY)-79-81

(ballot cast by person using name of person never employed by E at any time left unopened and uncounted)

Skyline Corporation v. N.L.R.B. 613 F.2d 1328 (C.A. 5) (1980)

(setting aside election not warranted notwithstanding provisions of N.L.R.B. Casehandling Manual were not precisely followed where Bd agent did not seal envelopes containing challenged ballots with tape, there was no label with name of person who sealed envelope, and no memo placed in file stating where challenged ballots were stored, since Bd secured and safeguarded ballots)

7750-1000 When determinative of result

Gauley Industries, Inc. 260 NLRB No. 189

(Bd declined to adopt recommendation of ALJ that challenge to ballot of Ee be sustained where record was insufficient to permit determination of Ee's eligibility (to vote); *only* in event that Ee's ballot remained determinative after revised tally, should further hearing on Ee's eligibility be held)

7750-3000 Destruction of

N.L.R.B. v. Loewy Drug Company, Inc. 595 F.2d 1217(T) (C.A. 4, 1979)

(where challenged ballot which had been ordered counted was destroyed election set aside and new election ordered in which current Ees shall determine whether they wish to be represented by U, provided U makes new showing of interest w/i 60 days)

7750-4000 Ballots commingled with nonchallenged ballots

Dutch Boy, Inc., Glow-Lite Division 263 NLRB No. 001

7750-6000 Opening and counting of certain challenged ballots prior to resolution of challenge

Premium Fine Coal, Inc. 262 NLRB No. 060

(opening of 2 determinative challenged ballots cast by individuals who were alleged discriminatees in pending ULP proceeding, appropriate in seeking to resolve qcr expeditiously, where theirs were the only challenged ballots, and they clearly and voluntarily waived their right to secrecy of their ballots and requested that their ballots be opened by voluntarily submitting signed affidavits)

8400 MAJORITY CONCEPT UTILIZED BY BOARD

8467 MAJORITY CONSISTS OF MORE THAN HALF WHO CAST VALID BALLOTS

8467-0100 Generally

The Nyack Hospital 248 NLRB No. 043

(where there are three choices on ballot and none receives majority, election is inconclusive)

9100 ROLE OF BOARD AGENT

9133 PERSONAL CONDUCT

9133-3300 Bias

N.L.R.B. v. Forest City Enterprises, Inc. 663 F.2d 34 (C.A. 6, Nov. 1981)

(E's charge that *laboratory conditions* required for conduct of election were destroyed by what E claimed was Bd agent's pro-U bias, rejected where not enough Ees to change outcome of election were affected, and irregularities were not so extreme as to destroy confidence in Bd's election process)

9133-3350 Fraternization with party to election

9133-3350—Cont.

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**
(Bd agent's casual conversation with U observer at election not objectionable where no voter was present during conversation, all observers had already voted and remarks could not have affected outcome of election)

9133-3347 Statements

Sonoma Vineyards, Inc. **264 NLRB No. 085**
(E's cross-mtn for withdrawal of order transferring proceeding to Bd and Notice to Show Cause denied since Bd rejected alleged newly discovered evidence showing bias on part of Bd agent who conducted election where agent's comments at polls regarding U's ability to overcome challenges to ballots were not, if stated, overheard by voters as to have impact on election, and furthermore, agent's subsequent employment with U 3 years after election is not evidence of bias nor contravenes R/R 102.119 inasmuch as there is no evidence that former agent is representing U in any capacity before Bd in this proceeding; accordingly Bd granted mtn for summary judgment)

N.L.R.B. v. Allen's I.G.A. Foodliner **633 F.2d 217(T) (C.A. 6, 1980)**
(Bd agent's comment to E observer that *if Ees had been treated right she would not be there holding election* was improper but not prejudicial where no voters were present in polling place at time remark was made, most voters had cast their ballots, and there was no evidence in the record that agent's remark was relayed to any voter who had not yet cast his/her ballot)

9133-3383 Selection of observer

Sonoma Corporation d/b/a Frontier Hotel v. N.L.R.B. **625 F.2d 298 (C.A. 9, Aug. 1980)**
(where parties had stipulated prior to election that each would be allowed 2 observers, and U, with Bd agent's permission, had 3rd observer present, election set aside as E entitled to insist that Bd and U diligently adhere to provisions of stipulation designed to insure fair election; moreover, no showing of actual prejudice necessary)

9167 FUNCTIONS AND RESPONSIBILITIES

9167-4000 Opening of polls

9167-4050 Late

Jobbers Meat Packing Co. Inc. **252 NLRB No. 068**
(notwithstanding that one eligible voter was disenfranchised as result of Bd agent's unavoidably opening polls two hours later than scheduled, U was certified and election results not set aside after tally of ballots showed 11 for and seven against U with one challenged ballot, since votes of challenged ballot and excluded voter would not have been determinative of election even if both had voted against U)

N.L.R.B. v. Klinger Electric Corporation, Klinger Electronics Division and Klinger Manufacturing Division **656 F.2d 76 (C.A. 5, 1981)**
(E's objection that Bd agent opened election 17 minutes late overruled, where E did not offer slightest indication how this minor departure from election schedule could have influenced election)

9167-5400 Maintain free opportunity to vote

9167-5450 Police electioneering

N.L.R.B. v. Klinger Electric Corporation, Klinger Electronics Division and Klinger Manufacturing Division **656 F.2d 76 (C.A. 5, 1981)**
(Bd agent's allowing bitter but brief confrontation between pro-U Ee and E's observor -- assuming Bd agent precipitated confrontation -- not sufficient to invalidate election where remarks had no substantial connection to election issue and were not shown to have effect on election; moreover there was no evidence that pro-U person was acting as U's agent or representative, and comments were not *prolonged* or even a *conversation*, so that there was no violation of the *Milchem rule*, as E alleged)

9167-6100 Granting of voting privilege

9167-6150 Denial of right to vote

9167-6150-6700 After close of polls

Kerrville Bus Co., Inc. **257 NLRB No. 034**
(whether or not late ballot may be cast is a matter left to reasonable discretion of Bd and its agent conducting election. In each case Bd has traditionally considered following factors: (1) reason Ee was late; (2) how late Ee was; (3) how long voting period was; and (4) whether ballot box was opened or tally commenced at arrival of Ee. As a matter of fundamental statutory policy, it behooves Bd to afford Ees broadest possible participation in Bd elections as long as election procedures are not unduly interfered with or hampered)

9167-6160 Challenge procedure

9167-6161 Generally

Monterey Carmel Convalescent, Inc., d/b/a Carmel Convalescent Hospital **252 NLRB No. 041**
(objection that Bd agent failed to adequately instruct U's observer at voting session on proper challenge procedures which thereby caused observer to believe failure or refusal to initial voter's name on eligibility list constituted challenge of that voter overruled; it is well settled that an observer should indicate clearly intent to challenge, and that in absence of such clarity, particularly when question is specifically asked by Bd agent, as here, and there is no affirmative response, Bd agent cannot reasonably be expected to interpret observer's conduct as conveying intent to challenge)

9167-6200 Handling challenged ballots

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**
(setting aside election not warranted notwithstanding provisions of N.L.R.B. Casehandling Manual were not precisely followed where Bd agent did not seal envelopes containing challenged ballots with tape, there was no label with name of person who sealed envelope, and no memo placed in file stating where challenged ballots were stored, since Bd secured and safeguarded ballots)

9167-9000 Closing of polls

National Medical Hospital of Compton, d/b/a Dominguez Valley Hospital **251 NLRB No. 119**
(notwithstanding that during day of election when periodic announcements of election were made over E's public address systems and operator made one erroneous announcement that polls would close at 4:30 p.m. rather than scheduled 4 p.m. closing, election was not set aside, since it was unreasonable to find that inadvertant and minimal deviation of one incorrect announcement weighed against numerous correct announcements and posted notices would so confuse or mislead significant number of eligible Ees who did not cast ballots)

9500 UNION AFFILIATION AND DISAFFILIATION ELECTIONS

Amoco Production Company **262 NLRB No. 160**
(*members only* affiliation vote held invalid since it violates due process standards; to consider affiliation vote as internal U matter in which Bd will not intrude is inconsistent with Bd's obligation to assure that affiliation election satisfies due process; it is also inconsistent to permit all unit Ees to vote in R but not in affiliation election which affects interest of all Ees; and affiliation vote, directly impacting on statutory matters, results in undermining Bd's own election and certification procedures)

Amoco Production Company **262 NLRB No. 160**
(in finding *members only* affiliation election vote not an internal U matter and invalid since it violates due process standards, Bd held question of affiliation is distinguishable from situations involving strike votes, contract ratification, etc., since only affiliation vote directly impacts upon matters w/in breadth of Act and results in undermining Bd's own election and certification procedures)

Amoco Production Company **262 NLRB No. 160**
(in holding *members only* affiliation election invalid, Bd declined to accept concept of due process as including requirement that nonmembers be permitted to join U prior to any affiliation vote and thus permitted to participate in such vote; Bd was unwilling to adhere to such concept since it would continue the course of conduct in past cases, based on rationales and standards of varying Bd majorities, in which the only consistency was the ultimate result of upholding *members only* affiliation elections)

Amoco Production Company **262 NLRB No. 160**
(in holding *members only* affiliation election invalid, Bd rejected view, which would uphold validity of such election based on fact that, even if disenfranchised Ees were permitted to vote, they could not have affected outcome; rather, decision herein is to assure adequate due process in all affiliation votes, since effects of exclusion cannot be measured by numerical tally)

Amoco Production Company **262 NLRB No. 160**
(in holding *members only* affiliation election invalid, Bd held such holding does not deprive Ees of freely choosing their representative and denying them fruits of collective bargaining, since exclusion of nonmembers from affiliation election would ignore wishes of all Ees and permit only U members to impose their wishes on all Ees, even when only minority of Ee complement consists of U members)

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(election purporting to affiliate Ee committee and its constituent Ees with international U held ineffective and void where voting violated all principles of fair election inasmuch as there was no voting list or record kept of who received ballots, and who voted, and there was no assurance that ballots represented votes of legitimate voters; and on day following voting, after ballots had been counted, Ee, who was most active in promoting affiliation, handed in two ballots purporting to be vote of other Ees, who apparently voted in favor of affiliation and broke election's tie vote)

9500—Cont.

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(election purporting to affiliate Ee committee with international U held ineffective and void since it was conducted in violation of minimal standards of democratic procedure or due process, where no notice was given Ees, advising them of meeting for conducting vote; no opportunity was allowed for discussion among Ees on merits of affiliation; majority of Ees had been informed that they were not voting on affiliation with international but on whether they wanted to hear about it; and there was lack of safeguards against rigged or otherwise unfair election)

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(valid affiliation election held not to create new labor organization nor does it result in dissolution of existing labor organization, and agreement between affiliating U and E remains effective until its stated expiration date; in case of void affiliation election, it is even more obvious that such election and any derivative actions do not dissolve pre-existing labor organization or its contract with E)

Aurelia Osborn Fox Memorial Hospital **247 NLRB No. 43**
(in vote to affiliate with International fact that vote was not secret or that votes not held in individual bargaining units does not negate validity of affiliation election)

378 CONDUCT INTERFERING WITH ELECTION CHOICE

0100 GENERALLY

0120 BOARD RESPONSIBLE FOR FAIR ELECTION

Midland National Life Insurance Company **263 NLRB No. 024**

(Bd rule governing R proceeding need not be *absolute guarantee* that election will, w/o exception, reflect choice of majority of voting Ees; rather, rule simply must be *consistent with* and constitute *justifiable and reasonable adjustment of democratic process*)

Glenn McClendon Trucking Co., Inc. **258 NLRB No. 168**

(it is Bd's responsibility, *not that of parties*, to establish proper procedure for conduct of elections)

Hall-Brooke Hospital, a division of Hall-Brooke Foundation, Inc. **645 F.2d 158 (C.A. 2, Mar 31, 1981)**

(in reviewing Bd's action in not setting aside election to which objections were raised allegedly because of improper use of campaign material, ct noted that Bd is entrusted with broad discretion in creating and enforcing standards to ensure fair election)

Wells Fargo Guard Services, A Division of Baker Protective Services, Inc. v. N.L.R.B. **659 F.2d 363 (C.A. 3, Sep. 1981)**

(enforcement denied and case remanded to Bd for evidentiary hearing where issue, of whether allegedly unfit leader remained in control of U, had significant impact on election won by U; strictness of Bd action in setting aside first election because of E's distributing altered facsimile ballot prior to election when contrasted with its flexibility in certifying U after second election supplies additional reason for remand)

The Wackenhut Corporation v. N.L.R.B. **666 F.2d 464 (C.A. 11, Jan. 1982)**

0160 ISOLATED CONDUCT

United Broadcasting Company of New York, Inc. **248 NLRB No. 065**

(U's threats to blacklist Ee if he failed to support U warranted setting aside of election, notwithstanding contention no effect on election where Ee threatened failed to vote, and as to other Ees aware of threat, one was ineligible and other cast undeterminative challenged ballot; since *whether conduct warrants setting aside of election does not turn on election results, but rather on its likelihood to coerce prospective voters to cast their votes in particular manner*, nor were threats unobjectionable because directed at one individual since could reasonably be expected to be repeated)

Lacks Industries, Inc. **JD-346-82**

(election not set aside on basis of dissemination by Ee to other Ees of conversation he had with supervisor when latter had allegedly unlawfully interrogated Ee where, because of size of unit of 126-130 Ees, misconduct had limited impact on unit Ees)

Pascack Valley Hospital Association **JD-(NY)-85-81**

(no interference, where E threatened Ee with loss of future raises because of his U activities; threat, occurring more than month prior to election, was isolated occurrence, not part of coordinated or concerted effort to deprive Ees of free choice in election)

0160-5000 Impact where election lost by close margin

N.L.R.B. v. ARA Services, Inc. **678 F.2d 438 (C.A. 3, Apr. 1982)**

(where objections involve extremely close election, *even minor misconduct cannot be summarily excused on ground that it could not have influenced election*)

0170 CONDUCT MUST AFFECT EMPLOYEES IN UNIT VOTING

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**

(contention that unlawful wage increase granted to Ees of E constituting single integrated enterprise with another E cannot serve as basis for setting aside election among latter E's Ees, rejected, since wage increase was likely to have impacted on second E's Ees where there was substantial Ee interchange between relatively small groups of Es' Ees, and second E's drivers made deliveries for, and were paid by, both Es)

0180 TIMING OF CONDUCT

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**

(evidence of misconduct occurring before filing of representation ptn will not be considered by Bd)

0180-1700 Remote in time

Authur Briggs, Inc. **265 NLRB No. 038**

(*for purposes of evaluating objections only, conduct occurring between filing of ptn and election may be considered as basis for setting aside election, although pre-petition conduct may be considered insofar as it lends meaning and dimension to post-petition conduct or assists in its evaluation*)

Air Products and Chemicals, Inc. **263 NLRB No. 045**

(violative interogation of Ee which occurred prior to filing of representation ptn cannot be considered as basis for objections to election)

Oklahoma City Collection District of Browning-Ferris, Inc. **263 NLRB No. 012**

(violative interrogation of Ee may not serve as basis for setting aside election where it predated opening of critical periods)

Reliable Ambulance Service, Inc. **256 NLRB No. 174**

(E's proposal of profit sharing program during critical period before 1st election objectionable conduct and election set aside and E's announcement and implementation of same profit sharing program while objections to 1st election pending before Bd was objectionable conduct causing 2nd election to be set aside notwithstanding original proposal outside critical period of 2nd election)

Maywood, Inc. **251 NLRB No. 129**

(while agreeing with ALJ's finding that under *Dressler Industries, Inc.*, 231 NLKB 591, E's prepetition ULPs may be considered insofar as they lend meaning and dimension to related post-petition conduct, Bd declined to adopt her further finding that under *Dressler Industries* E's unlawful prepetition conduct may be considered as valid grounds for setting aside election as there are no circumstances here to warrant departure from rule of *The Ideal Electric and Manufacturing Company*, 134 NLRB 1275)

Safeway Stores, Inc. **JD-(SF)-61-81**

(new Ee's training instructor's response to Ee that store was goint to open *non-union*, not objectionable, where evidence did not sustain U's contention that it was E's *absolute* intent to operate *non-U* and remark was made prior to time U filed its ptn for certification)

Datagraphix, Inc. **JD-(SF)-344-80**

(unlawful conduct did not warrant setting aside election where 6 months elapsed between occurrence of such conduct and balloting in election, and evidence did not disclose that in this period of time E was engaged in vigorous and impermissible anti-U campaign)

0180-3300 Critical period

Authur Briggs, Inc. **265 NLRB No. 038**

(*for purposes of evaluating objections only, conduct occurring between filing of ptn and election may be considered as basis for setting aside election, although pre-petition conduct may be considered insofar as it lends meaning and dimension to post-petition conduct or assists in its evaluation*)

Danzansky-Goldberg Memorial Chapels, Inc. **264 NLRB No. 112**

(election set aside and new election ordered where supervisor asked Ee when she was applicant and new Ee how she felt about Us, informed her E's owner was anti-U, advised her to refrain from joining U, asked her to let management know if pro-U Ees were harassing her, and linked possibility of E paying for Ee's schooling to Ee's anti-U position, notwithstanding violations involved only one Ee and were relatively modest in coerciveness, since occurred during critical pre-election period and it was not virtually imposi-

0180-3300—Cont.

ble to conclude they could have affected results of election, particularly in view of small size of unit)

Rosewood Mfg. Co., Inc. **263 NLRB No. 055**
(E's distributing letters and leaflets, and delivering speech to Ees during critical period before election with emphasis on linking selection of U with unprofitability, low productivity, subsequent plant closure and loss of jobs held coercive, since such emphasis destroyed laboratory conditions and prevented Ees from expressing free choice in election)

Scott Glass Products, Inc. **261 NLRB No. 129**
(contention that evidence of conduct pre-dating U's filing of ptn for election was improperly admitted at trial and could not serve as basis for overturning election rejected; although substantial raise was announced before critical period, it became effective and was first paid in critical period and was clearly related to violation w/i critical period, namely new rule to not talk about wage increase)

Carson International, Inc. **259 NLRB No. 146**
(where U withdrew first ptn filed 43 days before filing second ptn, hiatus of 31 days occurred between withdrawal of first ptn and filing of second ptn, and there was no C case consolidated with R case in which ULPs were found, Bd applied *Ideal Electric rule* (134 NLRB 1275) and dated critical pre-election period from date of filing of second ptn; Bd declined to make an exception to *Ideal Electric* rule on basis of *Monroe Tube* (220 NLRB 302) wherein second ptn came immediately on heels of first ptn, whereas here there was significant period during which Bd processes were not involved)

Walter Carpet Mills, Inc. **259 NLRB No. 096**
(*critical period has been held to include day on which ptn was filed rather than running from that date*)

Micro Metl Corporation **257 NLRB No. 005**
(only objectionable conduct which occurs after election ptn is filed may be considered in determining whether election should be set aside)

Levi Strauss & Co., Inc. **256 NLRB No. 182**
(prohibiting Ee conversations during 24 hours before election, interference, whether prohibitions resulted from supervisors misinterpreting management's instructions or E intentionally attempting to monopolize the final hours of the election campaign, since there was no legitimate business justification involving concern about production on election day where Ees were released from work after conclusion of the election and talking ban was not in effect after election)

Reliable Ambulance Service, Inc. **256 NLRB No. 174**
(E's proposal of profit sharing program during critical period before 1st election objectionable conduct and election set aside and E's announcement and implementation of same profit sharing program while objections to 1st election pending before Bd was objectionable conduct causing 2nd election to be set aside notwithstanding original proposal outside critical period of 2nd election)

Evans Brothers Barber & Beauty Salons, Inc. **256 NLRB No. 023**
(election set aside and new election ordered where during critical period, E unlawfully threatened more onerous working conditions, unlawfully questioned Ees about U meeting, and unlawfully questioned Ee about her attendance at U meeting; furthermore, related pre-ptn conduct also considered as indicative that post-ptn ULPs were not isolated incidents)

Lippincott Industries, Inc. **251 NLRB No. 034**
(election ordered set aside where E's ULPs w/i critical period involved interrogation of Ee and unlawful discharge of U adherent 3 hours before election in which U lost by one vote)

Moody Nursing Home, Inc. **251 NLRB No. 022**
(truthfull written propoganda concerning U dues distributed along with paychecks on election day not violative as only content of material is relevant to effect on election, not timing)

Ashcraft's Market, Inc. **251 NLRB No. 025**
(E's announcement of dental plan during critical pre-election period did not warrant setting election aside, since decision regarding plan was made outside critical period and E followed usual custom of announcing benefit changes at Christmas party and putting change into effect on or about January 1)

Marconi, Inc., d/b/a El Caballo **251 NLRB No. 009**
(pre-election threat made by pro-U supervisor, objectionable, where supervisor still occupied his supervisory position and at time of election was in position to thrust his pro-U sympathies onto Ees and to implement his threat)

Armstrong Cork Company **250 NLRB No. 147**
(E's letter to Ees prior to election stating that *you will decide whether you want to give up your rights*— concerning direct dealing with plant manager or supervisor, held objectionalbe, since letter conveyed unmistakable message that existing right or benefit will be revoked if Ees vote for U)

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters) **230 NLRB No. 133**
(discharge violative of 8(a)(3) held not objectionable conduct where it occurred prior to filing of representation ptn)

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters) **230 NLRB No. 133**
(ten-percent wage increase, which was not provided for and not outgrowth of wage survey initiated before U activities began but was granted after U activities began and one week before election, violative and objectionable conduct)

The Nestle Company **248 NLRB No. 106**
(while E's conduct before and after initial and runoff elections was called into question by ULP charges, it is only conduct occurring between the two elections which may properly be considered in regard to objections to runoff election)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 087**
(bus service provided by E to its Ees week before election and continued only until after election found objectionable, since conduct provided preelection benefit and limited ability of U to communicate with Ees)

N.L.R.B. v. St. Mary's Home, Inc., t/a St. Mary's Infant Home **690 F.2d 1062 (C.A. 4, Sept. 1982)**
(where alleged coercive conduct by Ee, herein found supervisor, occurred 2 months before election as this extended time period between alleged coercive conduct and election itself is such that any assumption that such conduct prejudiced fairness of election was too tenuous to require hearing)

0180-6700 Cut-off date

Conair Corporation **261 NLRB No. 178**
(contention by E, citing Sec. 10(b) 6-months statute of limitations applicable to complaints, that conduct upon which objections to election are based must have occurred w/i 6 months of date of objections, rejected, and ULPs which occurred between date of filing of R-ptn and date of election considered in determining whether election should be set aside)

Blue Bird Body Company **251 NLRB No. 196**
(prepetition conduct may be considered in determining whether party has engaged in objectionable conduct where such prepetition conduct lends *meaning and dimension* to post-election conduct)

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 068**
(E's statement to Ee, threatening to close shop if U came in, excluded from consideration as objectionable conduct since it occurred before filing of ptn)

1400 STANDARD FOR ELECTION CONDUCT

1401 GENERALLY

Blue Cross of Kansas City, Inc. and Blue Shield of Kansas City, Inc. **259 NLRB No. 070**
(speech may constitute objectionable conduct in R proceeding yet will not be violative as ULP because protected under 8(c), as standard for speech in R election is more restrictive)

Melrose-Wakefield Hospital Association, Inc. v. N.L.R.B. **615 F.2d 563 (C.A. 1) (1980)**
(Bd has wide discretion in setting standards for conduct of representation elections and its rulings on effect of particular campaign practices will be set aside only if they are in an abuse of discretion)

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. **658 F.2d 934 (C.A. 2, Sept. 1981)**
(Bd views its elections as affording Ees opportunity to cast their ballots for or against U in atmosphere conducive to informed exercise of franchise, free not only from unlawful interference, restraint or coercion, but also from other elements which prevent or impede a reasoned choice)

Baird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(for review of Bd's decision regarding *objections to election*, standard is whether Bd acted w/i *wide degree of discretion* vested in it by Congress regarding R matters)

Baird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(R elections are not to be set aside lightly)

1401-2000 ULP conduct a fortiori interference with election

Avecor, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(petitioner's mtn to consolidate and/or for reconsideration as result of Bd finding of 8(a)(1) violations on basis of conduct which was subject of previ-

1401-2500—Cont.

ously overruled objection to election in instant decertification proceeding, denied; Bd rejected contention that, since (8a)(1) conduct *a fortiori* interferes with election, such finding invalidates retroactively Bd's conclusion herein that E's conduct did not warrant setting election aside; *a fortiori* principle was attempt by Bd to avoid *mechanical approach* and Bd looks to economic realities of E-Ee relationship in determining whether to set aside election)

Local 300, Cosmetic and Novelties Workers' Union, Affiliated With International Production Service and Sales Employees Union **257 NLRB No. 174**
(threat to Ees, some of whom were illegal aliens, by U agent, interpreter, that Ees would be deported if they did not vote for U held violative and warranted setting aside election)

Custom Trim Products **255 NLRB No. 096**
(new election directed, where E's ULPs such as sending letter to all Ees stating futility of selecting U and posting unlawful no-distribution rule during critical period was, *a fortiori*, conduct which interfered with exercise of Ees' free choice and sufficient to set aside first election)

Dunmore Heating Corporation **254 NLRB No. 030**
(conduct which does not interfere with conduct of election *a fortiori*, would not constitute violation of Sec. 8(a)(1))

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(discriminatory layoff)

Han-Dee Pak, Inc. **249 NLRB No. 107**

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**

Lyman Steel Company **249 NLRB No. 040**
(ULPs during critical period between date of first election and date of rerun election)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(election set aside due to conduct constituting ULPs during pendency of representation ptn)

1401-5000 'Laboratory conditions' standard

Arolam, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(petitioner's mtn to consolidate and/or for reconsideration as result of Bd finding of 8(a)(1) violation on basis of conduct which was subject of previously overruled objection to election in instant decertification proceeding, denied; effect of narrow ruling herein was that, if U has won election despite E's campaign against it, election results stand as against mechanical insistence on *laboratory conditions*; and fact that E's conduct was later found violative does not cast issue into any light significantly different from that in which Bd first examined it)

Douglas Parking Company **262 NLRB No. 024**
(door prizes given by E to Ees at appreciation dinner on evening before election destroyed laboratory conditions necessary for free and fair election where they were of sufficient number and value that it is likely that the receiving Ees felt obligation to favor E)

Weyerhaeuser Company **247 NLRB No. 147**
(proper standard in cases involving objections to conduct affecting results of election is whether the conduct reasonably tends to interfere with Ee's freedom of choice in election)

Aero Warehouse, Inc. **JD-(NY)-48-81**
(objections to election overruled where objectionable conduct was not attributable or imputed to U; objectinable conduct did not meet standards articulated by Bd in *Hollywood Ceramics Company, Inc.* 140 NLRB 221 (1962); as E had sufficient time to reply)

N.L.R.B. v. Hudson River Aggregates, Inc. **639 F.2d 865 (C.A. 2, 1981)**
(although *laboratory conditions* test may not always be satisfied Bd must insure that coercive atmosphere, regardless if atmosphere caused by unit members and not E or U, did not exist during election such as would prevent fair and free election from taking place)

Season-All Industries, Inc. v. N.L.R.B. **654 F.2d 932 (C.A. 3, 1981)**
(while agreeing with proposition that in establishing and maintaining *laboratory conditions* condiucive to an election, no conduct disruptive or destructive of voter's free choice can be tolerated regardless of whether actions are those of U agent or mere Ee, ct was precluded, because of RD's failure to afford hearing, from setting aside election on basis of E's objection that rank-and-file Ee improperly electioneered at polling place as U agent; ct did no more than adhere to Bd's own policies which require an evidentiary hearing when objections raise substantial and material issues of fact)

1401-6700 Conduct objectionable which may reasonably be expected to have significant impact on election

Rosewood Mfg. Co., Inc. **263 NLRB No. 088**
(E's distributing letters and leaflets, and delivering speech to Ees during critical period before election with emphasis on linking selection of U with unprofitability, low productivity, subsequent plant closure and loss of jobs held coercive, since such emphasis destroyed laboratory conditions and prevented Ees from expressing free choice in election)

Salem No. 1, Inc. d/b/a The Seville **262 NLRB No. 157**
(asserted misconduct of U, prior to election, which allegedly included slashing tire on supervisor's car, heavy evidence of threats to slash tire and threatening phone calls to one Ee not so aggravated as to render free election impossible, since there was no evidence that U agents who involved in alleged misconduct nor did acts involve widespread threats or acts of violence)

Blue Cross of Kansas City, Inc. and Blue Shield of Kansas City, Inc. **259 NLRB No. 070**
(statements individually unobjectionable are not made objectionable by virtue of their repetition)

Liquid Transporters, Inc. **257 NLRB No. 052**
(Bd set aside election and directed new election where Bd sustained U's objection in regard to E's letter to Ees with repeated references associating U with strikes, loss of jobs, and loss of business which Bd held had coercive impact on Ees by tending to create impression that such adverse consequences would be direct result of unionization)

The Swingline Company; Spotnails, Inc. **256 NLRB No. 119**
(where E engaged in misconduct which affected both competing Us, absent conduct which supported winning U, Bd will not order second election, especially in light of fact that winning U won by wide majority and single interrogation, threat and statements of U support came from low level supervisor)

Evans Brothers Barber & Beauty Salons, Inc. **256 NLRB No. 023**
(election set aside and new election ordered where during critical period, E unlawfully threatened more onerous working conditions, unlawfully questioned Ees about U meeting, and unlawfully questioned Ee about her attendance at U meeting; furthermore, related pre-ptn conduct also considered as indicative that post-ptn ULPs were not isolated incidents)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital **255 NLRB No. 045**
(solicitation for benefit of hospital or for charity is recognized and permissable exemption from valid no-solicitation rule and does not constitute disparate application of rule barring outside solicitation and distribution by non-Ee organizers; such solicitation and distribution no ground for setting aside elections in units of hospital Ees)

Jobbers Meat Packing Co. Inc. **252 NLRB No. 008**
(notwithstanding that one eligible voter was disenfranchised as result of Bd agent's unavoidably opening polls two hours later than scheduled, U was certified and election results not set aside after tally of ballots showed 11 for and seven against U with one challenged ballot, since votes of challenged ballot and excluded voter would not have been determinative of election even if both had voted against U)

National Medical Hospital of Compton, d/b/a Domiquez Valley Hospital **251 NLRB No. 119**
(where U distributed pamphlets to E's Ees comparing their wage rates with those of Ees in county (public) hospitals and in private hospitals and misrepresented to Ees that U had negotiated both public and private hospitals' contracts, when in fact, had negotiated only private hospitals' contracts, Bd dismissed objection as private hospital pay rates were substantially higher than pay rates cited at public hospitals and, therefore, Ees would not have been induced to vote for U because of lower rates at public hospital)

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**
(discouraging Ee from voting warranted sustaining U's objection and directing second election)

United Broadcasting Company of New York, Inc. **248 NLRB No. 065**
(U's threats to blacklist Ee if he failed to support U warranted setting aside of election, notwithstanding contention no effect on election where Ee threatened failed to vote, and as to other Ees aware of threat, one was ineligible and other cast undeterminative challenged ballot; since *whether conduct warrants setting aside of election does not turn on election results, but rather on its likelihood to coerce prospective voters to cast their votes in particular manner*, nor were threats unobjectionable because directed at one individual since could reasonably be expected to be repeated)

Aero Warehouse, Inc. **JD-(NY)-48-81**
(objections to election overruled where objectionable conduct was not attributable or imputed to U; objectinable conduct did not meet standards articulated by Bd in *Hollywood Ceramics Company, Inc.* 140 NLRB 221 (1962); as E had sufficient time to reply)

Melrose-Wakefield Hospital Association, Inc. v. N.L.R.B. **615 F.2d 563 (C.A. 1) (1980)**
(in refusing to remand case so RD could conduct new investigation under stricter *Hollywood Ceramics* standards, ct noted that RD found relevant objections had no merit even under *Hollywood Ceramics* (in footnote) and Bd ruled on E's appeal applying explicitly *Hollywood Ceramics* and *General Knit*, assuring itself that RD had considered stricter standard with full vigor)

N.L.R.B. v. Hudson River Aggregates, Inc. **639 F.2d 865 (C.A. 2, 1981)**
(factors Bd must consider in determining whether fair and free choice by Ees was impossible are: number of threats; severity of threats; whether those threatened were put in fear; number of workers threatened; timing; whether

1401-6700—Cont.

they remained in Ees' minds, whether threats were widely circulated; whether effect of pro-U threats were cancelled by promanagement threats; closeness of vote; whether threats attributable to U or management)

Wells Fargo Guard Services, A Division of Baker Protective Services, Inc. v. N.L.R.B. 659 F.2d 363 (C.A. 3, Sep. 1981)

(determination of truth of party's allegation in objecting to conduct of election requires evidentiary hearing, since allegation that past president did not remove himself from operation of U, if true, would lead to setting election aside)

Vitek Electronics, Inc. v. N.L.R.B. 653 F.2d 785 (C.A. 3, June 1981)

(in assessing campaign rhetoric, Bd tolerates a degree of hyperfole; intemperance and inaccuracy, and an election will only be set aside when there has been a substantial departure from truth that may reasonably be expected to have s significant impact on the election)

Vicksburg Hospital, Inc. v. N.L.R.B. 653 F.2d 1070 (C.A. 5, Aug 1981)

(in order to gain right to new election, E has entire burden of 1) offering specific evidence of specific events from or about specific people, and 2) showing that these objectionable activities, when considered as a whole, either tended to or did influence outcome of election)

N.L.R.B. v. Carroll Contracting and Ready-Mix, Inc. 636 F.2d 111 (C.A. 5, 1981)

(election set aside where two former Ees with *vote Teamsters* on their hats, before polls opened, positioned themselves in parking lot where line of waiting voters formed and repeatedly and continuously, throughout polling period, urged waiting voters to vote for U by gesturing to *YES* box on ballot pinned to their shirts; once polls had opened, Ees waiting outside in line to vote became part of polling place, and were entitled to safeguards against interference espoused by *Milchem, Inc.* 170 NLRB 362 (1968); actions of rank and file of its supporters do not need to be attributed to U)

N.L.R.B. v. Carroll Contracting and Ready-Mix, Inc. 636 F.2d 111 (C.A. 5, 1981)

(acts not attributable to U warrant setting aside election if acts disrupted voting procedure or destroyed atmosphere necessary to (Ees') exercise of free choice in R election)

N.L.R.B. v. Gulf States Canners, Inc. 634 F.2d 215 (C.A. 5, 1981)

(Bd did not abuse discretion in determining that U's offer to purchase gasoline for Ees who transported other workers to U meetings and/or campaigned on behalf of U at their fellow Ees' homes did not have such tendency to influence election that new election would be required)

N.L.R.B. v. Gulf States Canners, Inc. 634 F.2d 215 (C.A. 5, 1981)

(simple misconduct alone is not sufficient to set aside election; E must also show that acts interfered with Ees' exercise of free choice to such extent that they materially affected results of election)

N.L.R.B. v. Claxton Manufacturing Company, Inc. 613 F.2d 1364 (C.A. 5) (1980)

(representation election may be set aside only if objectionable activities, when considered as whole, either tended to or did influence outcome of election)

N.L.R.B. v. Gulf States Canners, Inc. 598 F.2d 896 (C.A. 5)

(*in determining whether election should be invalidated focus should be on effects of particular act on electorate rather than on actor's intent;* test objective rather subjective, and determination should be based on all relevant facts)

The Standard Register Company v. N.L.R.B. 649 F.2d 412 (C.A. 6, May 1981)

(Bd did not abuse its discretion when it determined that misrepresentation concerning wage differentials at E's plants was not material under *Hollywood Ceramics* test and did not affect election result)

N.L.R.B. v. Sara Knoca, a sole proprietor d/b/a Clio Convalescent Center 633 F.2d 217(T) (C.A. 6, 1980)

(ct held omission in campaign letter respecting dietary aides and cooks could not have had effect of misleading those Ees as to their rights to participate in election, particularly in view of other notices which were plainly posted throughout facility and in view of absence of any evidence that such Ees were, in fact, misled)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. 649 F.2d 589 (C.A. 8, May 1981)

(election will be overturned only if coercive actions have created *an atmosphere of fear and reprisal such as to render free expression of choice impossible* where threats or violence are not attributable to U or E because neither Us nor Es can prevent misdeeds by persons over whom they have no control)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. 649 F.2d 589 (C.A. 8, May 1981)

(burden is on objecting party to prove prejudice to fairness of election)

N.L.R.B. v. Advanced Systems, Inc. 681 F.2d 918 (C.A. 9, Apr. 1982)

(party seeking to overturn election because of coercive conduct carries heavy burden. Question is whether coercive conduct so influenced *potential voters that free choice was impossible.* In assessing effect of conduct on election less weight is accorded to conduct not attributable to U or E. Test for setting aside election because of third party conduct is whether conduct was *so aggravated that it made free choice impossible*)

Spring City Knitting Company v. N.L.R.B. 647 F.2d 1011 (C.A. 9, June 1981)

(objecting party who claims that campaign tactics in election were so coercive as to require overturning election faces heavy burden; question is whether coercive conduct so influenced potential voters that free choice by Ees was impossible)

Worley Mills, Inc. v. N.L.R.B. 685 F.2d 362 (C.A. 10, July 1982)

(Bd has broad discretion in supervising elections and will not be overturned unless record shows interference was present to extent that inference can be drawn that conduct materially affected election)

1401-6750 De minimis impact of conduct

Douglas Parking Company 262 NLRB No. 024

(supervisor's conduct held interference where he created impression of surveillance in his pre-election conversation with Ee and impliedly threatened his discharge; although made to single Ee, remarks were found to be subject of repetition and discussion among voters and, therefore, impact of remarks was widespread and not *de minimus,* in view of *presumption of repetition* regarding statements made during election campaign, and E's failure to meet burden of showing that dissemination had not occurred)

Medical Center of Beaver County, Inc. 261 NLRB No. 096

(one voter, in voting unit of approximately 315 Ees saw list of voters, which was maintained by petitioner during election, though not openly; action was *de minimis* and not grounds for setting aside election)

Masonic Homes of California, Inc. 258 NLRB No. 006

(directed where several Ees saw U observer keep list of hash marks and voters' names continuously through morning voting session and part of afternoon session; such conduct is not de minimis)

Micro Metl Corporation 257 NLRB No. 005

(unlawful threat of plant closing and surveillance did nt constitute basis for setting election aside, notwithstanding U lost election by close margin, where E's misconduct was not disseminated and had limited impact and therefore no inference that election outcome was influenced by E's misconduct could be made)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital 255 NLRB No. 045

(banning solicitation in Ee breakroom held objectionable conduct, since breakroom was area in which solicitation must be permitted by E and not *de minimus* conduct; conduct warranted setting aside election)

Mastercraft Leather Manufacturing Company, Inc. 249 NLRB No. 068

(sole ULP established w/i post-ptn period not de minimis since pre-ptn misconduct of twice threatening Ee with plant closure and same Ee victim of post-ptn ULPs added meaning and dimension to related post-ptn conduct)

Flagler Memorial Park 247 NLRB No. 204

(U's furnishing E fragmentary copy of U's constitution, even if it constituted substantial misrepresentation, not basis for setting aside election, where there was no showing that alleged misrepresentation was material to issue of whether Ees wanted U as their bargaining representative, and E was aware of the misrepresentation almost a month before the election)

N.L.R.B. v. Production Plated Plastics, Inc. 663 F.2d 709 (C.A. 6, Nov. 1981)

(whether or not Ees acting as agent of U while making threats to fellow Ees during U campaign, laboratory conditions for election not destroyed in view of limited nature of their condict, subsequent apologies by Ees, absence of violence in campaign and sizable U majority)

1401-7100 Subjective understanding of remarks not competent evidence

Jacksonville Warehouse Company 264 NLRB No. 084

(Bd will no longer probe into truth or falsity of parties' campaign statements and elections will no longer be set aside on basis of misleading campaign statements)

Beaird-Poulan Division, Emerson Electric Company 247 NLRB No. 180

(rumor that U adherent *brandished a gun at anti-U Ees after receiving an anti-union handbill* held false rumor of threat of violence, and even if Ees believed U adherent was pointing gun at them their subjective reactions were irrelevant to question of objectionable conduct)

1401-7800 Atmosphere of fear and violence

1401-7500—Cont.

North Electric Company, Plant No. 10, Gray, Tennessee **263 NLRB No. 174**
(pursuant to ct remand requiring Bd to determine whether E's objections to election, when viewed with documentary evidence in record, require a hearing, Bd held alleged objectionable conduct, consisting of pre-election threats of property damage or destruction made telephonically by various callers to Ees who had worn *Vote No* buttons, was not attributable to U nor of such character as to result in atmosphere of fear and coercion and did not reveal evidence of substantial and material factual issues which would require a hearing)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(election will be overturned only if coercive actions have created *an atmosphere of fear and reprisal such as to render free expression of choice impossible* where threats or violence are not attributable to U or E because neither Us nor Es can prevent misdeeds by persons over whom they have no control)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center **652 F.2d 856 (C.A. 9, Aug 1981)**
(pre-election fire and burglary, not interference where E offered no evidence linking incident to U or election or showing coercion or intimidation of any Ee)

1401-8700 Conduct must be attributable to party unless so disruptive as to preclude free expression of choice

Aero Warehouse, Inc. **JD-(NY)-46-81**
(objections to election overruled where objectionable conduct was not attributable or imputed to U; objectinable conduct did not meet standards articulated by Bd in *Hollywood Ceramics Company, Inc.* 140 NLRB 221 (1962); as E had sufficient time to reply)

N.L.R.B. v. ARA Services, Inc. **678 F.2d 435 (C.A. 3, Apr. 1982)**
(even assuming arguendo that RD was correct in finding that individuals were not U agents, their conduct in threatening and intimidating Ee and possibly other Ees, could not be tolerated, particularly in situation where only one vote could change outcome of election)

N.L.R.B. v. Carroll Contracting and Ready-Mix, Inc. **636 F.2d 111 (C.A. 5, 1981)**
(acts not attributable to U warrant setting aside election if acts disrupted voting procedure or destroyed atmosphere necessary to (Ees') exercise of free choice in R election)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(election will be overturned only if coercive actions have created *an atmosphere of fear and reprisal such as to render free expression of choice impossible* where threats or violence are not attributable to U or E because neither Us nor Es can prevent misdeeds by persons over whom they have no control)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center **652 F.2d 856 (C.A. 9, Aug 1981)**
(alleged general disorder and raucousness in area immediately outside polling area, not interference, since E made no effort to attribute said conduct to U, conversations between U representatives and Ees which are only innocuous neutral statements do not constitute interference, and E's showing that such conduct made affiant Ee *uneasy* did not demonstrative Ee's inability to exercise free choice at the polls)

1700 ABUSE OF BOARD PROCESSES

Rolligon Corporation **234 NLRB No. 004**
(use by any party of mass subpenas as device merely to generate Ee enthusiasm or interest, or to cause mass Ee attendance at Bd proceeding, condemned by Bd, since it clearly has potential to disrupt E's production schedule and is not purpose for which Bd subpenas were intended; subpenas are, on their face, issued to require attendance of potential witnesses, and if use of subpenas confused Ees or created appearance of Bd partisanship or ohterwise impacted upon exercise of free choice by Ees, election would be set aside)

Rolligon Corporation **234 NLRB No. 004**
(unlike cases involving altered documents or misstatements of law, Bd subpena does not involve misrepresentation of Bd actions; Bd issues subpenas in representation matters for all parties, at their request, and it is not apparent how their issuance could imply that Bd favored one party or the other)

Rolligon Corporation **234 NLRB No. 004**
(RD's issuance of subpenas upon proper application is ministerial act which is largely automatic, but if there is abuse of Bd process, aggrieved party may bring matter to RD's attention and move to quash; moreover, should Bd discover widespread abuse of tis process, it will consider sua sponte revisions of its R/R to meet such problem)

2100 SPEECHES TO MASSED EMPLOYEES WITHIN 24 HOURS OF ELECTION (PEERLESS PLYWOOD RULE)

Belcor, Inc. d/b/a San Jose Care and Guidance Center **263 NLRB No. 152**
(on ct remand ALJ found no captive audience speech w/i 24 hours preceding election by U in violation of *Peerless Plywood* rule, as alleged, since U adherents' party/meeting was held on private rather than company premises and after hours rather than on company time, U officials were present only to answer questions rather than make speeches, and attendance was not mandatory notwithstanding *mandatory attendance* printed at bottom of notice of party/meeting as *inside joke*)

Land O'Frost of Arkansas, Inc. **252 NLRB No. 001**
(where supervisors on day of election visited half of eligible Ees at their work stations, urged them to vote and said that if they were undecided a *no* vote would be appreciated, did not violate Act as this conduct did not amount to speech to massed Ees within 24 hours of election)

Moody Nursing Home, Inc. **251 NLRB No. 022**
(does not prohibit right of any party to circulate campaign literature, on or off premises during critical 24-hour period prior to election)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center **652 F.2d 856 (C.A. 9, Aug 1981)**
(where E had submitted with its objections to election an index card concerning U meeting on which *Mandatory Attendance* was written and contended that U meeting held w/i 24 hours before election was not voluntary and not exempt form *Peerless Plywood* rule ct could not affirm RD's finding to contrary on basis of record w/o supporting documentation therefor and remanded case for hearing to resolve substantial and material issues raised by index card)

2800 CONDUCT OF EMPLOYER

2801 GENERALLY

Axelson, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(petitioner's mtn to consolidate and/or for reconsideration as result of Bd finding of 8(a)(1) violation on basis of conduct which was subject of previously overruled objection to election in instant decertification proceeding, denied; effect of narrow ruling herein was that, if U has won election despite E's campaign against it, election results stand as against mechanical insistence on *laboratory conditions;* and fact that E's conduct was later found violative does not cast issue into any light significantly different from that in which Bd first examined it)

Spring City Knitting Company v. N.L.R.B. **647 F.2d 1011 (C.A. 9, June 1981)**
(objecting party who claims that campaign tactics in election were so coercive as to require overturning election faces heavy burden; question is whether coercive conduct so influenced potential voters that free choice by Ees was impossible)

2801-3300 Protections of Section 8(c) of Act

Blue Cross of Kansas City, Inc. and Blue Shield of Kansas City, Inc. **259 NLRB No. 070**
(speech may constitute objectionable conduct in R proceeding yet will not be violative as ULP because protected under 8(c), as standard for speech in R election is more restrictive)

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(E holding meeting prior to decertification election at which slides were shown contrasting benefits currently received by unrepresented Ees of E, and which Ees would receive should U lose election, with benefits received by Ees represented by U, not unlawful, since not promise of benefits, where E merely furnished details inasmuch as its practices known; further, U was stressing protections it offered and Section 9(c) permits E to clearly portray its practices with regard to unrepresented Ees)

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(E's distribution of letters to Ees prior to decertification election in which it urged Ees to consider what would be best for them and their families, stated election would be carefully conducted by Bd, sought to assure Ees regarding job security, not violative, since contained neither promises of benefits nor threats of reprisals and did not warrant setting election aside)

Dow Chemical Company, Texas Division v. N.L.R.B. **660 F.2d 637 (C.A. 5, Nov 1981)**
ct held pre-election statements and questions of E to U members were protected speech under the Act where statements prior to decertification election were not promises but truthful or accurate observation of fact w/i bounds of legitimate electioneering or expressions of opinion by supervisors)

2801-3333 Has no application to R cases

2801-3333—Cont.

Rosewood Mfg. Co., Inc. **263 NLRB No. 055**
(Section 8(c) of Act was intended by Congress to apply only to ULP cases and not R proceedings)

2801-4700 Neutralizing coercive effect

Whiting Manufacturing Company, Inc. **258 NLRB No. 058**
(E's president at meeting on day before election stating that U shop would run him out of business warranted setting aside of election, since coercive effect not neutralized by explanation of E's labor relations advisor at same meeting that what E's president meant to say was that E was in competition with non-U states of south and was already paying Ees all it could and remain competitive; this actually reinforced E's statement that U victory would make E noncompetitive)

2804 EMPLOYER OBLIGATION TO NEGOTIATE WITH INCUMBENT UNION DURING CAMPAIGN

Richmond Waterfront Terminals, Inc. and Terminal Stevedores, Inc. **265 NLRB No. 152**
(no interference with election where E executed contract with incumbent-intervenor U after petitioner-U served on parties copies of its request for review of dismissal of ptn to Bd as E and U under obligation to bargain and reach agreement. (*RCA Del Caribe* 262 NLRB No. 116) However, after ptn reinstated by Bd, E interfered with election when it rescinded contract w/i 10 days prior to election because E under obligation to honor such contract until incumbent is no longer bargaining representative; therefore, election set aside and 2nd election directed)

2806 EMPLOYER OBLIGATION TO SIGN OR HONOR CONTRACT WITH INCUMBENT UNION DURING CAMPAIGN

Richmond Waterfront Terminals, Inc. and Terminal Stevedores, Inc. **265 NLRB No. 152**
(no interference with election where E executed contract with incumbent-intervenor U after petitioner-U served on parties copies of its request for review of dismissal of ptn to Bd as E and U under obligation to bargain and reach agreement. (*RCA Del Caribe* 262 NLRB No. 116) However, after ptn reinstated by Bd, E interfered with election when it rescinded contract w/i 10 days prior to election because E under obligation to honor such contract until incumbent is no longer bargaining representative; therefore, election set aside and 2nd election directed)

2816 ADDRESSING OR INTERVIEWING EMPLOYEES

2816-3300 Statements to employees individually or in groups

Mechanical Seal Division, Borg-Warner Corporation **254 NLRB No. 071**
(where E incorrectly informed Ee she was not eligible to vote because she was probationary Ee and later informed her she was eligible, such possible disenfranchisement where unintentional and vote not determinative is not conduct warranting setting aside election)

Land O'Frost of Arkansas, Inc. **252 NLRB No. 001**
(where supervisors on day of election visited half of eligible Ees at their work stations, urged them to vote and said that if they were undecided a *no* vote would be appreciated, did not violate Act as this conduct did not amount to speech to massed Ees within 24 hours of election)

2824 INTERROGATION

Halliburton Services (Coffeyville, Kansas), A Division of Halliburton Company **265 NLRB No. 144**
(supervisor's asking Ee as to how *the girls* are going to vote, held interference)

Danzansky-Goldberg Memorial Chapels, Inc. **264 NLRB No. 112**
(election set aside and new election ordered where supervisor asked Ee when she was applicant and new Ee how she felt about Us, informed her E's owner was anti-U, advised her to refrain from joining U, asked her to let management know if pro-U Ees were harassing her, and linked possibility of E paying for Ee's schooling to Ee's anti-U position, notwithstanding violations involved only one Ee and were relatively modest in coerciveness, since occured during critical pre-election period and it was not virtually impossible to conclude they could have affected results of election, particularly in view of small size of unit)

Air Products and Chemicals, Inc. **263 NLRB No. 045**
(violative interogation of Ee which occurred prior to filing of representation ptn cannot be considered as basis for objections to election)

Oklahoma City Collection District of Browning-Ferris, Inc. **265 NLRB No. 012**
(violative interrogation of Ee may not serve as basis for setting aside election where it predated opening of critical periods)

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads **261 NLRB No. 130**
(asking Ee whether he has read company campaign literature and insisting that he read it, violative and objectionable conduct)

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads **261 NLRB No. 130**
(where Ee worked strictly on commission, new store managers statement to Ee that he fired one guy to keep 10 people happy, asking her whether she was *happy* and calling her one of U's biggest supporters held unlawful announcement of grant of benefit, coercive interrogation, Ee surveillance, and constitutes objectionable conduct)

Graham Architectural Products Corporation **259 NLRB No. 153**
(former supervisor asking U supporter what she thought U could get for her held violative notwithstanding question came up in personal conversation about Ee's baby and general discussion about U benefits and wages around country as such *friendly* interrogation is unlawful and Ee's former supervisor was still E's agent)

Graham Architectural Products Corporation **259 NLRB No. 153**
(although supervisor assured Ee that nothing would happen to Ee if she answered questioned about how she felt about U, inquiry into Ee's views toward U held violative even in context of assurances against reprisals)

Graham Architectural Products Corporation **259 NLRB No. 153**
(asking Ee whether she was *for the U* violative notwithstanding Ee replied she did not need to tell him but then answered, since here, supervisor, though conceding Ee did not need to answer *did not withdraw the question* and so silence could be construed as support for U)

Brookwood Furniture, Division of U.S. Industries **258 NLRB No. 028**
(interrogation about U activities generally found interference, and interrogation specifically as to why Ee attended U meeting, whether Ees had any questions about E's anti-U speeches, and whether one Ee could change the mind of his wife who was on the in-plant organizing committee, unlawful and interference)

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. **257 NLRB No. 045**

Borun Brothers, Inc., A Wholly Owned Subsidiary of Thrifty Corporation **257 NLRB No. 003**
(unlawful interrogation and/or polling of Ees)

B. E. & K., Inc. **252 NLRB No. 036**
(E's preelection conduct in asking Ees how they were going to vote and why they felt they needed U, unlawful and interference, where there was no evidence that there existed, or that Ees were advised of, a legitimate need or purpose for such interrogation, or that Ees were given assurances of nonreprisals concerning such interrogation)

Maremont Corporation, World Parts Division **251 NLRB No. 110**
(supervisor's distributing pro-company hats with *vote no* buttons on them to Ees shortly before election, held an unlawful interrogation of Ees concerning their U membership, activities, and desires, and also an interference with election)

Maywood, Inc. **251 NLRB No. 139**

Industry Products Company **251 NLRB No. 183**

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(violation and interference by interrogation of Ee about her signing U card by nonsupervisory Ee whom Ees could reasonably believe to be speaking for management)

Forrest-Lannom Associates, Inc. (Carpenters Union No. 978) **248 NLRB No. 067**
(objection to single interrogation of Ee overruled where he was found to be nonunit Ee and interrogation thus not to have impacted on free choice of unit members)

Paceco, A Division of Fruehauf Corporation **247 NLRB No. 166**
(on remand Bd adhered to finding of unlawful interrogations during critical period based on timing of interrogations and lack of evidence of valid purpose for questioning Ees on U sentiments)

Tape Industries, d/b/a Tape Market **JD-(SF)-52-83**
(interrogating Ee as to whether her son, another Ee, had been attending U meetings, unlawful and objectionable)

2827 SOLICITATION OF GRIEVANCES

Schnadig Corporation **265 NLRB No. 020**
(election set aside where E's chairman of the board, following speech in which he made coercive threat to close plant, asked Ee at her work station *if there was anything he could do for her*, and when Ee informed him that rubber matting would make standing more comfortable, chairman said he would see what he could do)

Moody Nursing Home, Inc. **251 NLRB No. 022**

Ellis Hospital **JD-164-83**
(E did not engage in unlawful conduct nor interfere with election by allegedly soliciting grievances and promising to redress them, where E told Ees

2827—Cont.

of its economic problems and urged Ees to vote against U but did not ask Ees to tell him of their problems)

Ellis Hospital **JD-164-82**

(alleged solicitation of grievance from Ee by supervisor and implied promise to redress it, not unlawful nor interference with election, where supervisor had stated to Ee that his door was open to Ee anytime Ee wanted to talk to him, supervisor credibly testified that such was always the case, and even Ee's testimony did not make out a case of solicitation of grievances and promise to redress them)

Liberty Vinyl Corporation **JD-(SF)-268-80**

(soliciting grievances at meetings during U campaign with labor relations consultant and interpretor not violative, where consultant gave general disclaimer that he had no power to correct grievances but would pass them to management and E, who had held previous meetings where Ees were invited to discuss problems and make recommendations, did not deviate from past practices)

2829 SOLICITATION OF OPPOSITION TO UNION

Maywood, Inc. **251 NLRB No. 139**

(telling newly-hired Ee that Ees in her department were not for U and did not sign authorization cards, interference)

2832 DISCRIMINATORY TREATMENT OR THREAT THEREOF

Mead Nursing Home, Inc. **265 NLRB No. 135**

(E stating that if U calls strike, Ees may no longer have jobs after strike, and under law E does not need to rehire Ees, implicitly threatened to sever employment relationship permanently. E implied that it was w/i its sole discretion to terminate the employment relationship, thereby terminating all rights to reinstatement. Not only is implication contrary to law, but it is impermissible threat to Ees that if they strike they would lose their jobs)

Hahn Property Management Corporation **263 NLRB No. 080**

(E's general manager's telling Ees that if U won election communication would then be *Ee to U to management* and Ees could no longer talk to him directly about wages, problems, complaints, held interference)

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads **261 NLRB No. 130**

(discharging experienced clothing salesman who signed U card, discussed U with other Ees and had been steward at prior E violative where several shortcomings alleged at hearing were not stated at exist interview)

R. G. Barry Corporation **260 NLRB No. 023**

(E's conduct in issuing written warnings of suspension or termination to Ees for engaging in U solicitation during working time held unlawful and interference with election, where E's conduct was directed at 4 U activists who constituted 40 percent of U's Ee organizing committees, anti-U Ees engaged in similar conduct were not subjected to threat of suspension or discharge; and awareness of treatment of U activists at whom E had previously directed display of U animus can reasonably be expected to have been disseminated to other Ees)

La Mousse, Inc. **259 NLRB No. 007**

(E's pre-election constructive discharge of illegal alien Ees who supported U by calling immigration service to investigate undocumented alien Ees and thus bringing about their deportation held interference with election)

American Geri-Care, Inc. **258 NLRB No. 147**

(election set aside where E made unlawful promise of benefits, and unlawfully harassed and discharged U adherent)

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation **258 NLRB No. 142**

(Bd, contrary to ALJ, refused to assume from U's failure to list dischargee among other alleged discriminatory discharges in its election objections or in original charge that this Ee's discharge did not play role in undermining or dissipation of U's majority status and it subsequent loss of election; E did not meet its burden to show that Ee's termination one day after intensively surveilled U meeting which Ee attended was not widely known fact of significance to unit Ees)

Kawasaki Motors Corporation, U.S.A. **257 NLRB No. 069**

(discriminatory discharge held interference)

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. **257 NLRB No. 045**

(discharge of and/or refusal to re-employ Ees for engaging in U activity, interference)

Baron Brothers, Inc., A Wholly Owned Subsidiary of Thrifty Corporation **257 NLRB No. 083**

(discriminatory issuance of warning and discharge, interference)

Propellex Corporation, a Subsidiary of Essex Cryogenics Industries, Inc. **254 NLRB No. 037**

(election set aside and second election ordered, where prior to first election, E threatened Ees with loss of wages and overtime compensation, with loss of insurance, seniority, and vacation benefits, and with imposition of more onerous working conditions in event that Ees selected U as their bargaining agent)

Gossen Company, a Division of the United States Gypsum Company **254 NLRB No. 041**

(election set aside in view of E's unlawful suspension of merit wages increases during election campaign and discriminatory discharges and warnings)

B. E. & K., Inc. **252 NLRB No. 036**

(E's preelection response to Ees complaints about wages that they did not have to stay, that *it could be a lot worse* because they could be getting nothing, and that if they did not like state's low pay scales they could get out of state held unlawful implied threat of loss of jobs and interference with election)

B. E. & K., Inc. **252 NLRB No. 036**

(objection that E threatened apprentices with nonprogression if U won election, overruled, where E's statements compared its ratio of apprentices to journeymen to ratio in U's contracts with other Es, and such statements were not to be construed as expected acts of reprisal but rather as what Ees could expect if U secured contract with E)

Maywood, Inc. **251 NLRB No. 139**

(stripping Ee of his leadperson duties in retaliation against him for his U sympathies and activities held interference)

Maywood, Inc. **251 NLRB No. 139**

(E's assigning more onerous work to Ees in retaliation for their U activities held interference)

Maywood, Inc. **251 NLRB No. 139**

(threatening to find excuse to discharge Ee because of his U activities held interference)

Maywood, Inc. **251 NLRB No. 139**

(statement that if Ees got U in *all benefits including profit sharing and incentive would be dropped* and Ees would be *dropped back to the minimum wage*, held interference)

Maywood, Inc. **251 NLRB No. 139**

(discharge of Ees because of their U activities and sympathies, interference)

Maywood, Inc. **251 NLRB No. 139**

(transfer of U leader to less desirable job assertedly in interest of increasing production, interference, where her pre-transfer job was reassigned to less-experienced person, E was hostile to U adherents, and transfer came about next working day after she testified for U under subpoena at hearing in RC-case)

Industry Products Company **251 NLRB No. 183**

(unlawful discharge)

McLane/Western, Inc. **251 NLRB No. 185**

(violation and interference where E was discharged, allegedly for breach of no-stealing rule by eating one cracker from damaged, unsalvageable carton, since E applied the rule in retaliation for Ee's suspected U support and as warning to other Ees)

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**

(violation and interference by threat by nonsupervisory Ee whom Ees could reasonably believe to be speaking for E that Ees would lose their jobs or that E would close down company if U won election)

Armstrong Cork Company **150 NLRB No. 147**

(E's letter to Ees prior to election stating that *you will decide whether you want to give up your rights*— concerning direct dealing with plant manager or supervisor, held objectionalbe, since letter conveyed unmistakable message that existing right or benefit will be revoked if Ees vote for U)

Patsy Bee, Inc. **249 NLRB No. 125**

(election set aside where E's ULPs interfered with holding of free and fair election)

Pascack Valley Hospital Association **JD-(NY)-85-81**

(no interference, where E threatened Ee with loss of future raises because of his U activities; threat, occurring more than month prior to election, was isolated occurrence, not part of coordinated or concerted effort to deprive Ees of free choice in election)

Scoggin, Inc. **JD-433-81**

(E's reduction in work week of two U adherents who had testified at Bd hearing and thus causing one of the adherents to leave E's employ, not unlawful and did not warrant setting election aside, since reason for reduction in hours was financial situation of E rather than U activity)

Safeway Stores, Inc. **JD-(SF)-61-81**

(*layoff* in event majority of Ees voted for U)

Safeway Stores, Inc. **JD-(SF)-61-81**

(manager's threat to Ee's husband that he would discharge Ee because of her suspected U activity held violative and objectionable)

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Krafcor Corporation **JD-259-80**
(preelection speech threatening Ees with more severe discipline if they selected U as their representative, including examples referring to Ees in context of incidents for which they would be discharged, held unlawful and election set aside)

The Fort Miller Company, Inc. (Local 294, Teamsters) **JD-141-80**
(supervisor's stating on election day that *after today probably everybody will be standing in the unemployment line,* or that *after today probably none of us will be working here any more,* held not threat of plant closure because of Ee U activity; at most, the statement constituted prediction or warning of unemployment w/o regard to outcome of election)

The Fort Miller Company, Inc. (Local 294, Teamsters) **JD-141-80**
(supervisor's stating, in answer to Ee's question as to what would happen if U won election, that *whatever way it goes, we'll all be out of work,* that they would both be out of a job, that *it would all be over with,* or that *whatever way it goes it will all be over with,* held not threat of discharge or plant closure if U won election; at most the statement indicated either that there would be more loss of jobs regardless to outcome of election, or that campaign would be over once election took place)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(*arguably* coercive threats over 10 week campaign involving 800 voters did not warrant setting aside election)

2835 PREDICTION OF DETRIMENTAL RESULTS OF UNIONIZATION

Donnelly Manufacturing Co. Division of Brockhouse Corp. **265 NLRB No. 196**
(election set aside where E unlawfully threatened to close plant)

A. J. Schmidt Co., William A. Schmidt and Sons, Inc. **265 NLRB No. 208**
(E may predict to Ees effects it believes unionization would have so long as prediction is carefully phrased on basis of objective facts to convey E's belief as to demonstrate probable consequences beyond its control)

Schnadig Corporation **265 NLRB No. 020**
(election set aside where E's chairman of board informed Ees he had purchased plant as non-U and expected it to stay that way, that he was in business to stay, hopefully at present site but if not there somewhere else, and needed Ees help to make plant profitable, that Ees were entitled to do as they saw fit but he did not believe U was good for future and being intelligent people Ees should not believe U's snow job, since reference to plant closing not based on objective facts supporting probable consequences beyond E's control, and supervisors had previously threatened plant closure)

Rosewood Mfg. Co., Inc. **263 NLRB No. 055**
(E's distributing letters and leaflets, and delivering speech to Ees during critical period before election with emphasis on linking selection of U with unprofitability, low productivity, subsequent plant closure and loss of jobs held coercive, since such emphasis destroyed laboratory conditions and prevented Ees from expressing free choice in election)

United Supermarkets, Inc. **261 NLRB No. 179**
(leaflets which were either posted in E's stores or mailed to Ees dealing exclusively with other Es' store closings, loss of Ees' jobs, and violence resulting from Ees' selection of U held interference, notwithstanding that accuracy of such events was not contested, in view of context of E's unlawful anti-U campaign)

Cafe Tartuffo, Inc. d/b/a Fiorella **261 NLRB No. 033**
(statements in letter to Ees before election that U had negotiated contract at another of E's facilities *which in my opinion gave Ees no more than they would have gotten w/o U, and probably less* and *we can negotiate agreement with U that does not cost any more in wages and benefits than w/o U,* not objectionable, since legitimate campaign propaganda inasmuch as did not state or imply that E acting independently would grant same wages and benefits granted at unionized facility, nor indicate policy to treat represented and unrepresented Ees alike, or that Ees were receiving all they could expect U to obtain)

Blue Cross of Kansas City, Inc. and Blue Shield of Kansas City, Inc. **259 NLRB No. 070**
(E's remarks in speeches and handouts regarding bargaining from scratch and starting negotiations with two blank pieces of paper held not violative where E stated that he was obligated to bargain in good faith, all benefits were not guaranteed but would be negotiated, and no intent was expressed to unilaterally remove Ee benefits)

Whiting Manufacturing Company, Inc. **258 NLRB No. 068**
(E's president at meeting on day before election stating that U shop would run him out of business warranted setting aside of election, since coercive effect not neutralized by explanation of E's labor relations advisor at same meeting that what E's president meant to say was that E was in competition with non-U states of south and was already paying Ees all it could and remain competitive; this actually reinforced E's statement that U victory would make E noncompetitive)

International Harvester Company **258 NLRB No. 155**
(E's statement to Ees that they would lose their Savings and Investment Program *SIP* if they chose U violative as loss of *SIP* was not *demonstrably probable* consequence beyond control of E; moreover E's later statement that *SIP* would be subject to negotiations did not cure earlier statement where it was combined with reminder that no other U-organized clerical unit in its other locations had been able to negotiate retention of *SIP*)

International Harvester Company **258 NLRB No. 155**
(E's statement to clerical Ee that they could no longer bid into nonunit technical jobs if they chose to be represented by U violative as there is nothing in U's national contract which would prohibit Ees from continuing to apply their office clerical seniority in attempting to transfer into unorganized technical vacancies)

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. **257 NLRB No. 045**

Levi Strauss & Co., Inc. **256 NLRB No. 182**
(assuming that supervisor had made statement to Ee, as asserted, that if U came in warning system would be eliminated and she could be fired right there, such statement held insufficient to overturn election: (1) remark was made by low-level supervisor on day of election leaving little time for it to circulate; and (2) supervisor also told Ee that nothing would change except that Ees would have to pay dues thus leaving, at best, Ee with ambiguous impression concerning what would happen if U won)

Educational and Recreational Services, Inc., a Wholly-Owned Subsidiary of ARA Services, Inc., etc. **253 NLRB No. 140**
(leaflet, inserted by E in Ees' paycheck envelope immediately prior to election, stating that *U dues have not been deducted—different—if U wins—VOTE NO—,* held not objectionable, since document does not indicate that dues would automatically be withdrawn from paychecks w/o Ee consent; inserted leaflet was campaign propaganda and did not interfere with Ees' freedom of choice which would warrant setting aside election)

North American Car Corporation **253 NLRB No. 128**
(informing Ees two days before election that their benefits exceeded those of U Ees and that they were receiving *special treatment* but if they voted for U *you'll simply be considered another U shop,* that everything was subject to renegotiation, and that in case of strike they could be permanently replaced warranted setting election aside; notwithstanding E subsequently explained that wages and benefits would be determined by bargaining, since statements viewed as total course of conduct emphasized E's control over Ees' economic status and futility and hazards of selecting U)

Armstrong Cork Company **250 NLRB No. 147**
(E's letter to Ees prior to election stating that *you will decide whether you want to give up your rights*— concerning direct dealing with plant manager or supervisor, held objectionalbe, since letter conveyed unmistakable message that existing right or benefit will be revoked if Ees vote for U)

General Dynamics Corporation **250 NLRB No. 096**
(violation where E's total campaign propoganda including posters, handbills, and captive audience speeches gave impression of futility of bargaining, and likelihood of strikes, violence, plant closings and job loss)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. **249 NLRB No. 020**
(E's leaflet in form of obituary dealing with closing of nearby plant and E's preelection speeches held interference, where evidence did not support E's message that unionization caused closure of other area plants or that unionization would lead to strikes, plant closure, job loss, and other unidentified disasters, and E thereby failed to convey permissible noncoercive prediction that unionization might lead to economic dispute that could result in loss of jobs; Ees take hints of plant closing as coercive threats rather than honest forecasts)

Ellis Hospital **JD-164-82**
(doctors' letter to hospital Ees giving their negative opinion of U, thereby implying that selection of U would lead to closure of hospital, not unlawful nor interference with election, where letter presented doctors' general opposition to Us in health care institutions and to U herein in particular, and concluded that U would be of no help in solving hospital's financial problems; unlawful statements by other management member did not vitiate otherwise permissible communication herein, and letter amounted neither to substantial misrepresentation nor threat of closure)

Ellis Hospital **JD-164-82**
(E did not interfere with election nor unlawfully threaten Ees with closure of its facility in order to influence Ees to vote against U, where statement regarding posibility of closure if certain Ees struck related to different group of Ees than those involved in organizational campaign, and due to E's adverse financial situation at the time, such statement was not an unreasonable prediction)

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Scoggin, Inc. JD-433-81
(E's president statement that selecting U would be futile because he would not bargain with intent to reach agreement, or enter into agreement, unlawful and warranted setting aside election)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation JD-(SF)-160-80
(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, did not warrant setting aside election, since was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. 629 F.2d 305 (C.A. 3, 1980)
(editorial printed in local newspaper on day of election which predicted plant would close if U won election found to reinforce E's prior threats of plant closings and warrants issuance of bargaining order)

The Wackenhut Corporation v. N.L.R.B. 666 F.2d 464 (C.A. 11, Jan. 1982)
(Ee's statement to Ees, prior to election, that similar E was no longer in business because it was unionized held violative and election set aside, since statement implied similar E out of business in retaliation for Ees voting for U and that instant E would do same thing)

2837 SHOWING MOTION PICTURE MOVIES, SLIDE PRESENTATIONS, ETC.

Sab Harmon Industries, Inc. 252 NLRB No. 132
(showing of anti-U film *The Springfield Gun* did not warrant setting aside election, absent evidence of U animus or ULPs on part of E)

2839 WAGE INCREASES AND OTHER BENEFITS, OR PROMISES THEREOF

Tio Pepe, Inc. 263 NLRB No. 170
(on remand Bd set aside election and held E not obligated to bargain where captains in its restaurant promised waiters and bus boys that, if U won election, captains, who had sole authority over tip division, would change division of tips to increase shares of waiters and busboys, since offer would have impaired election whether or not captains supervisors)

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads 261 NLRB No. 130
(granting Ees dental plan 16 days before election, violative where motivation was to head of U drive at store involved in instant case and at another chain in area that was part of same holding company)

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. 257 NLRB No. 045
(promise of benefits to discourage U activity, interference)

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters) 250 NLRB No. 133
(implementation and announcement of improved retirement plan held not unlawful or objectionable conduct where plan was developed and adopted prior to beginning of U activities with timing of its announcement determined by economic, not U-related matters)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 057
(bus service provided by E to its Ees week before election and continued only until after election found objectionable, since conduct provided preelection benefit and limited ability of U to communicate with Ees)

N.L.R.B. v. Tio Pepe, Inc. 629 F.2d 964 (C.A. 4, 1980)
(ct denied enforcement of bargaining order and remanded case to Bd for evidentiary hearing on two issues advanced in E's mtn to reopen record since E made sufficient *prima facie* factual showing of after-discovered evidence that *captains* had promised other dining room Ees that, if U won, captain's distribution of pooled tips would be adjusted in their favor, which, if sustained later at full hearing, would undermine Bd's reasons for its denial of supervisory status for *captains* in unit of dining room Ees and further significantly affect election by way of monetary inducement for U support)

2839-1700 Statements concerning benefits

Duszansky-Goldberg Memorial Chapels, Inc. 264 NLRB No. 111
(election set aside and new election ordered where supervisor asked Ee when she was applicant and new Ee how she felt about Us, informed her E's owner was anti-U, advised her to refrain from joining U, asked her to let management know if pro-U Ees were harassing her, and linked possibility of E paying for Ee's schooling to Ee's anti-U position, notwithstanding violations involved only one Ee and were relatively modest in coerciveness, since occured during critical pre-election period and it was not virtually impossible to conclude they could have affected results of election, particularly in view of small size of unit)

Blue Cross of Kansas City, Inc. and Blue Shield of Kansas City, Inc. 259 NLRB No. 070
(E's remarks in speeches and handouts regarding bargaining from scratch and starting negotiations with two blank pieces of paper held not violative where E stated that he was obligated to bargain in good faith, all benefits were not guaranteed but would be negotiated, and no intent was expressed to unilaterally remove Ee benefits)

Aunt Millie's Sauces, Inc. and Aunt Millie's Sauces Division of Specialty Brands, Inc. 259 NLRB No. 040
(no interference where 2 weeks before election E announced to Ees of company it planned to purchase its wage and benefits package as the terms under which E sought their application for employment, and 2 days before election E commenced operations with new—and generally better-wages and benefits in effect; E's purpose was to bring new Ees into line with E's facilities everywhere else which was consistent with normal business practices)

Ashcraft's Market, Inc. 251 NLRB No. 035
(E's announcement of dental plan during critical pre-election period did not warrant setting election aside, since decision regarding plan was made outside critical period and E followed usual custom of announcing benefit changes at Christmas party and putting change into effect on or about January 1)

2839-3300 To unit employees

Pacific Telephone Company 256 NLRB No. 070
(second election ordered in view of E's statements to Ees that they would receive all benefits of U contract w/o U, that U representation for Ees would be futility and that in no event would U representation result in improvements of working conditions for Ees)

2839-3333 Preceding election

Schnadig Corporation 265 NLRB No. 020
(election set aside where principal U organizor promised promotion if he would *take off U hat* and help defeat U)

General Merchandise Distributors, Inc. 263 NLRB No. 126
(construction of baseball field and installation of picnic tables one week prior to election is conduct attempting to influence election absent proof that E had already promised such benefits to Ees prior to U campaign)

Scott Glass Products, Inc. 261 NLRB No. 129
(substantial across-the-board wage increase which was effective, and first paid w/i critical period and the subject of new rule instituted in critical period, held interference)

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads 261 NLRB No. 130
(where Ees are paid on commission basis, telling Ees before election that it had solved overstaffing problem by firing Ee, violation as it was grant of benefit by enlarged commission earning opportunities)

Cafe Tartuffo, Inc. d/b/a Fiorella 261 NLRB No. 033
(E's statements in letter to Ees before election that after becoming bargaining representative at another of E's facilities U negotiated contract which *in my opinion gave Ees no more than they would have gotten had there been no U and probably less* and *we can negotiate agreement with U that does not cost any more in wages and benefits than w/o U and may even cost less* held not promise of benefit warranting setting aside election, but rather E's opinion based on outcome of negotiations at other facility that U would be willing to negotiate contract which would not result in significant increases)

Blue Cross of Kansas City, Inc. and Blue Shield of Kansas City, Inc. 259 NLRB No. 070
(E's remarks in speeches and handouts regarding bargaining from scratch and starting negotiations with two blank pieces of paper held not violative where E stated that he was obligated to bargain in good faith, all benefits were not guaranteed but would be negotiated, and no intent was expressed to unilaterally remove Ee benefits)

American Geri-Care, Inc. 258 NLRB No. 147
(election set aside where E made unlawful promise of benefits, and unlawfully harassed and discharged U adherent)

Brockwood Furniture, Division of U.S. Industries 259 NLRB No. 028
(offer of money and promotions to Ees if they would work against U, interference)

Kawasaki Motors Corporation, U.S.A. 257 NLRB No. [illegible]

Allegheny Warehouse Company, Inc., and Star Warehouse Corporation 256 NLRB No. [illegible]
(statements in effect offering Ees choice between immediate wage increase if they voted against U in decertification election or possibility of lengthy bargaining and seemingly small gains in wages should U be recertified held interference since statements contained implied promise of wage increase and threats of denial thereof; E's contention that statements were not objectionable because they were accurate statement of facts and law and because there was no threat Ees would be denied wage increase if they failed to decertify U nor any threat to negotiate in bad faith if U won, rejected)

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Crown Chevrolet Co. 255 NLRB No. 108

(objection to decertification election sustained where E's lawyers informed Ees at meeting held 28 hours before election that even if U were decertified contractual rates would still be in effect under state law and if U decertified E intended to implement its latest bargaining proposals relating to hours, night openings and holidays, since statement constituted promise of increased benefits if Ees voted against U inasmuch as implication was that E had made concessions in bargaining sessions for new contract which usually coincide with decertification proceedings)

Educational and Recreational Services, Inc., a Wholly-Owned Subsidiary of ARA Services, Inc., etc. 253 NLRB No. 140

(E's delay in giving its Ees wage increase during critical period between filing of pn and conduct of election, not objectionable, since petitioner did not allege conduct was objectionable and 4 days before election, petitioner assured E that it had no objection to implementation of increase; Ees were made aware of increase by letter and bulletin-board 2 weeks prior to election and Ees' receipt of wage increase was not unexpected)

North American Car Corporation 253 NLRB No. 120

(informing Ees two days before election that their benefits exceeded those of U Ees and that they were receiving *special treatment* but if they voted for U *you'll simply be considered another U shop*, that everything was subject to renegotiation, and that in case of strike they could be permanently replaced warranted setting election aside; notwithstanding E subsequently explained that wages and benefits would be determined by bargaining, since statements viewed as total course of conduct emphasized E's control over Ees' economic status and futility and hazards of selecting U)

Maywood, Inc. 251 NLRB No. 139

(grant of wage increases prior to election, not interference where changes in wages and benefits conformed with past practice and were motivated by business considerations and not designed to defeat U in Bd election)

The Dow Chemical Company, Texas Division 250 NLRB No. 103

(E holding meeting prior to decertification election at which slides were shown contrasting benefits currently received by unrepresented Ees of E, and which Ees would receive should U lose election, with benefits received by Ees represented by U, not unlawful, since not promise of benefits, where E merely furnished details inasmuch as its practices known; further, U was stressing protections it offered and Section 9(c) permits E to clearly portray its practices with regard to unrepresented Ees)

The Dow Chemical Company, Texas Division 250 NLRB No. 103

(E's distribution of letters to Ees prior to decertification election in which it urged Ees to consider what would be best for them and their families, stated election would be carefully conducted by Bd, sought to assure Ees regarding job security, not violative, since contained neither promises of benefits nor threats of reprisals and did not warrant setting election aside)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. 250 NLRB No. 042

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home 249 NLRB No. 162

(reinstatement of more favorable sick leave policy to induce Ees to withdraw support from U constituted interference and violation)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home 249 NLRB No. 162

(reinstatement of more favorable sick leave policy to induce Ees to withdraw support from U constituted interference and violation)

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home 249 NLRB No. 162

(violation and interference where after U campaign began and right before election E introduced beneficial uniform purchase plan suggested by Ees year before)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home 249 NLRB No. 162

(violation and interference where after U campaign began and right before election E introduced beneficial uniform purchase plan suggested by Ees year before)

Simpson Electric Company, a Division of American Gauge and Machine Company 249 NLRB No. 024

(unlike past practice of leaving *house* organ at different places around plant, issue before election which contained announcement of wage and benefit increases were handed out to individual Ees)

John V. Lane, P.C. d/b/a American Dental Centers JD-(NY)-119-82

(announcing preexisting benefits to its Ees during U campaign not violative even if Ees not aware of these benefits as to prevent this would deprive E of legitimate campaign strategy. However, E must be legally committed to these benefits and not be able to discontinue them. Furthermore, E can not husband benefits until right before election and spring them on Ees in manner calculated to influence their choice)

Ellis Hospital JD-164-82

(E's statement in pre-election letter to Ees that U's organizational campaign was caused in part at least by certain problems which E sought to resolve hopefully w/o having to bargain with U, unlawful and interference with election, since E thereby clearly promised to improve terms and conditions of employment)

The Wackenhut Corporation v. N.L.R.B. 666 F.2d 464 (C.A. 11, Jan. 1982)

(letter and leaflets distributed by E to its Ees, two weeks before election, announcing *a better medical plan* for Ees at increased cost to be absorbed by E, held violative and election set aside, since E may not grant new benefits on change existing conditions of employment during election campaign for purpose of influencing Ees' choice in election)

2839-3367 After election while objections pending

Reliable Ambulance Service, Inc. 256 NLRB No. 174

(E's proposal of profit sharing program during critical period before 1st election objectionable conduct and election set aside and E's announcement and implementation of same profit sharing program while objections to 1st election pending before Bd was objectionable conduct causing 2nd election to be set aside notwithstanding original proposal outside critical period of 2nd election)

2843 DENIAL OR WITHHOLDING OF WAGE INCREASE OR OTHER BENEFITS, OR THREATS THEREOF

Alpha Cellulose Corporation 265 NLRB No. 010

(E's letter to Ees declaring that wages and benefits would be frozen during contract negotiations held unlawful and interference with election, since E thereby misinformed Ees by stating that negotiations prevented wage increases and implied that rejection of U would free E to grant raises and other benefits, thereby leading Ees to conclude that penalty was attached to exercise of their rights in choosing U; E has general duty to proceed as it would have in absence of U and, even during negotiations, E may lawfully implement benefits which have become conditions of employment by virtue of prior commitment or practice)

General Merchandise Distributors, Inc. 263 NLRB No. 126

(announcement to Ees 1 week prior to election that pay raise due to take effect shortly after election was being postponed and also that another group of Ees who had chosen U representation had now gone full year with no raise and were still waiting for contract to be negotiated is threat to Ees of loss of benefits if they choose U)

Cargill Incorporated d/b/a Dent's Poultry 260 NLRB No. 167

(objection in regard to E's conduct of threatening to withdraw unilaterally existing benefits sustained, notwithstanding fact that it occurred at beginning of U campaign, since E never retracted such statements during course of campaign or in any way led Ees to believe that E would not carry out its threats in event of U victory)

Lifemark Hospitals of Texas, Inc. d/b/a Mid-Jefferson County Hospital 259 NLRB No. 103

(telling Es that if U won election, Ees would have to punch timeclock and take breaks at specified times held interference)

Blue Cross of Kansas City, Inc. and Blue Shield of Kansas City, Inc. 259 NLRB No. 070

(E's remarks in speeches and handouts regarding bargaining from scratch and starting negotiations with two blank pieces of paper held not violative where E stated that he was obligated to bargain in good faith, all benefits were not guaranteed but would be negotiated, and no intent was expressed to unilaterally remove Ee benefits)

International Harvester Company 258 NLRB No. 155

(E's statement to Ees that they would lose their Savings and Investment Program *SIP* if they chose U violative as loss of *SIP* was not *demonstrably probable* consequence beyond control of E; moreover E's later statement that *SIP* would be subject to negotiations did not cure earlier statement where it was combined with reminder that no other U-organized clerical unit in its other locations had been able to negotiate retention of *SIP*)

Brookwood Furniture, Division of U.S. Industries 258 NLRB No. 038

(threats of loss of benefits, interference)

Kawasaki Motors Corporation, U.S.A. 257 NLRB No. 069

(threats to withhold benefits such as labor grades or job reviews or other unspecified benefits held interference)

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. 257 NLRB No. 045

(unlawful threats of discharge held interference)

2843—Cont.

Allegheny Warehouse Company, Inc., and Star Warehouse Corporation **286 NLRB No. 089**
(statements in effect offering Ees choice between immediate wage increase if they voted against U in decertification election or possibility of lengthy bargaining and seemingly small gains in wages should U be recertified held interference since statements contained implied promise of wage increase and threats of denial thereof; E's contention that statements were not objectionalbe because they were accurate statement of facts and law and because there was no threat Ees would be denied wage increase if they failed to decertify U nor any threat to negotiate in bad faith if U won, rejected)

Associated Roofing & Sheet Metal Co., Inc. **285 NLRB No. 178**
(where E had practice of discussing Ees' grievances with them, letter prior to election which stated that individual Ees would no longer be able to settle matters personally was improper threat to unilaterally terminate existing beneficial situation)

Propellex Corporation, a Subsidiary of Essex Cryogenics Industries, Inc. **254 NLRB No. 037**
(election set aside and second election ordered, where prior to first election, E threatened Ees with loss of wages and overtime compensation, with loss of insurance, seniority, and vacation benefits, and with imposition of more onerous working conditions in event that Ees selected U as their bargaining agent)

Educational and Recreational Services, Inc., a Wholly-Owned Subsidiary of ARA Services, Inc., etc. **253 NLRB No. 140**
(E's delay in giving its Ees wage increase during critical period between filing of ptn and conduct of election, not objectionable, since petitioner did not allege conduct was objectionable and 4 days before election, petitioner assured E that it had no objection to implementation of increase; Ees were made aware of increase by letter and bulletin-board 2 weeks prior to election and Ees' receipt of wage increase was not unexpected)

North American Car Corporation **253 NLRB No. 128**
(informing Ees two days before election that their benefits exceeded those of U Ees and that they were receiving *special treatment* but if they voted for U *you'll simply be considered another U shop*, that everything was subject to renegotiation, and that in case of strike they could be permanently replaced warranted setting election aside; notwithstanding E subsequently explained that wages and benefits would be determined by bargaining, since statements viewed as total course of conduct emphasized E's control over Ees' economic status and futility and hazards of selecting U)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(statement implying that Ees would lose insurance coverage paid for by E if U were certified, unlawful and interference)

BRK Electronics (Electrical Workers, Local Union No. 461) **248 NLRB No. 169**
(E president's failure to explain, in direct response to Ee questions, that election of U would not automatically result in loss or suspension of regularly scheduled vacation benefits warranted setting aside election, since president's failure would tend to create in minds of Ees doubt and uncertainty where none need have existed)

Ellis Hospital **JD-164-82**
(letter informing Ees that in event they selected U they would not receive regularly scheduled wage increase held unlawful threat and interference with election where annual wage increase was established working condition, notwithstanding that precise amount for the year had not yet been set)

Ellis Hospital **JD-164-82**
(informing Ees that in event they selected U they would be unable to meet directly with management to talk about grievances and other matters, unlawful and interference with election; while E may explain that U will be participant in E-Ee relations generally, E cannot threaten to cut off unilaterally permissible direct dealing with Ees for selecting U)

The Marley Heat Transfer Company **JD-(SF)-263-80**
(no violation where E who recently purchased plant promised that new wages and benefits package would take effect on certain date but before election told Ees that if U won, E would negotiate with U concerning wages and benefits, where E's package was *discretionary* and amount had not been determined before advent of U or election)

2843-5000 Placing onus for withholding on union

Gossen Company, a Division of the United States Gypsum Company **234 NLRB No. 041**
(election set aside in view of E's unlawful suspension of merit wages increases during election campaign and discriminatory discharges and warnings)

Armstrong Cork Company **180 NLRB No. 147**
(E's letter to Ees prior to election stating that *you will decide whether you want to give up your rights*— concerning direct dealing with plant manager or supervisor, held objectionalbe, since letter conveyed unmistakable message that existing right or benefit will be revoked *if* Ees vote for U)

2847 RULES RESTRICTING UNION ACTIVITY

(See also 512-5012)

Levi Strauss & Co., Inc. **286 NLRB No. 182**
(prohibiting Ee conversations during 24 hours before election, interference, whether prohibitions resulted from supervisors misinterpreting management's instructions or E intentionally attempting to monopolize the final hours of the election campaign, since there was no legitimate business justification involving concern about production on election day where Ees were released from work after conclusion of the election and talking ban was not in effect after election)

2847-3300 No distribution, no solicitation

Schnadig Corporation **265 NLRB No. 020**

St. Joseph's Hospital and Medical Center **262 NLRB No. 176**
(election set aside on basis of E's maintenance of overly broad no-distribution/no-solicitation rule during critical period; rule, as set out in Ee handbook and in E's policy manual, required management authorization for any activity on E premises)

Borun Brothers, Inc., A Wholly Owned Subsidiary of Thrifty Corporation **257 NLRB No. 003**
(maintenance of invalid no-solicitation no-distribution rule during pre-election period, interference)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital **255 NLRB No. 045**
(solicitation for benefit of hospital or for charity is recognized and permissible exemption from valid no-solicitation rule and does not constitute disparate application of rule barring outside solicitation and distribution by non-Ee organizers; such solicitation and distribution no ground for setting aside elections in units of hospital Ees)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital **255 NLRB No. 045**
(E hospital's no-solicitation rule, prohibiting solicitation in *immediate patient care areas*, which was made clear to be in halls and corridors, lobby and waiting room, and nurses stations of small one-story facility, held to be reasonably specific and not ambiguous)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital **255 NLRB No. 045**
(only areas in which Ee solicitation must be permitted, at instant hospital which has no large area for Ees, are relatively small (Ee) *breakrooms*, since they do present viable, albeit limited, channel of communication by Ees for organizational purposes)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital **255 NLRB No. 045**
(banning solicitation in Ee breakroom held objectionable conduct, since breakroom was area in which solicitation must be permitted by E and not *de minimus* conduct; conduct warranted setting aside election)

Industry Products Company **251 NLRB No. 183**

Styrest Nursing Home **JD-(ATL)-95-82**
(election set aside and new election ordered in view of E's unlawful no solicitation rule and request that Ees report to E any *harassment* resulting from U solicitation at their home)

Vanity Fair Mills, Inc. **JD-(ATL)-35-82**
(setting aside of election and ordering of new election warranted in view of E's promulgation of unlawful no-solicitation/no-distribution rules; disparate enforcement of these rules, and unlawful reprimand)

American Safety Equipment Corporation v. N.L.R.B. **643 F.2d 693 (C.A. 10, Mar. 1981)**
(Bd decision setting aside election set aside where basis for decision was two rules in Ee handbook prohibiting solicitation and distribution during *working hours*; E rebutted *presumed* interference with Ee rights as it produced evidence showing: 1) Ees were told lunch time and break time were their own; 2) Ees were aware rules only applied to working time; 3) Ees openly engaged in U activity during non working time and were not disciplined and 4) rules consistently properly applied by E)

2847-5000 Restriction on use of bulletin board

Axelson, Inc., Subsidiary of U. S. Industries, Inc. **251 NLRB No. 044**
(decertification election not set aside notwithstanding Ees' claim that campaign conditions were unfairly tilted in U's favor where E's restriction on Ees' right to post literature in certain nonworking areas was impliedly directed to U, U made no attempt to post or distribute literature on company property. Ees took full advantage of distributing literature in non-restricted areas as well as inadvertant distribution in restricted areas, and E conducted its own campaign in support of Ees' position)

2847-6700 Restriction of employees' meetings or movements within plant

2847-6700—Cont.

Halliburton Services (Coffeyville, Kansas), A Division of Halliburton Company 265 NLRB No. 144
(allowing antiU Ees to move about plant and talk to Ees during work hours while denying same privilege to proU Ees, held interference)

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. 257 NLRB No. 045
(institution and enforcement of stricter rules against leaving work area or plant during U campaign held interference)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital 255 NLRB No. 045
(E hospital justified in banning solicitation in halls and corridors, lobbies, waiting rooms, and nurses stations, since prohibitions were presumptively valid in small facility which, from its inception, has been too small to accommodate all its medical needs and solicitation may be legimately prohibited in other areas if justified by hospital as necessary)

Sherwood-Trimble Medical Building 247 NLRB No. 160
(requiring U adherent to take breaks at specified times and restricting U adherent to her desk and restricting others as well to disguise restriction of U adherent)

2847-6800 Restriction of employee's access to plant

Panavision, Inc. 264 NLRB No. 165
(election set aside and new election ordered where E ordered laid off Ees with reasonable expectation of recall, and thus eligible to vote in election, who were distributing U literature in its driveway and parking lot prior to election, off its premises and threatened laid off Ees with arrest for trespass in presence of other Ees thereby preventing Ees from discussing U and preventing Ees from soliciting support)

Maywood, Inc. 251 NLRB No. 139
(barring off-duty Ees from plant premises, held interference, where off-duty Ees were seeking access to cafeteria, a non-working area, for purpose of soliciting for U, and had no intention of *wandering about the plant,* as E contended, and there was no rule limiting access to plant or rule which met standards defined in *Tri-County Medical Center, Inc.,* 222 NLRB 1089)

2847-8400 Requiring removal of union insignia

Halliburton Services (Coffeyville, Kansas), A Division of Halliburton Company 265 NLRB No. 144
(restricting display of U insignia in work areas violative, where E permitted other nonwork related materials to be publicly posted, e.g., calendars and pin-ups, violative)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation JD-(SF)-140-80
(supervisor threatening Ees with discharge if they continued to wear U buttons did not warrant setting aside of election, where E had no proclivity towards ULPs, E promptly informed supervisors that Ees were free to wear U buttons, specifically advised Ees threatened that threats were not position of E, and that they were free to wear buttons, and posted notice to that effect on bulletin board)

2847-9200 Requiring wearing of antiunion insignia

The Nestle Company 248 NLRB No. 106
(invalid enforcement of rule prohibiting wearing of jewelry and nonuniform clothing with U insignia in E's production areas not objectionable where invalid enforcement equally affected both Us in initial and runoff elections)

2851 DENIAL OF ACCESS TO EMPLOYER'S PREMISES BY NONEMPLOYEE ORGANIZERS

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 106
(decertification election set aside where, severe restriction of access by non-Ee U representatives to fulfill U's statutory obligation to represent Ees, which continued notwithstanding filing of decertification ptn, made U appear weak and ineffectual; arrest of U officials for asserting such right immediately following distribution of E's letter, questioning U's effectiveness and announcing that bargaining and wages would be suspended for duration of election period, diminished Ees' perception of value of U and seriously interfered with Ees' right to deal through their chosen representative)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital 255 NLRB No. 045
(solicitation for benefit of hospital or for charity is recognized and permissable exemption from valid no-solicitation rule and does not constitute disparate application of rule barring outside solicitation and distribution by non-Ee organizers; such solicitation and distribution no ground for setting aside elections in units of hospital Ees)

2855 SURVEILLANCE OR IMPRESSION THEREOF

Halliburton Services (Coffeyville, Kansas), A Division of Halliburton Company 265 NLRB No. 144
(shop foreman's standing in guard office watching Ees passing out U literature, held interference)

Borun Brothers, Inc., A Wholly Owned Subsidiary of Thrifty Corporation 257 NLRB No. 003
(surveillance and/or creation of impression of surveillance, interference)

Maywood, Inc. 251 NLRB No. 139
(supervisor's saying to in-plant committee member, *I hear you have been making house calls,* held interference, where supervisor testified that he had heard someone say the committee member was making house calls, and he wanted to know why; he knew committee member was active in U and he had idea that that was what house calls were about, but he *couldn't prove it*)

Woodland Molded Plastics Corp. 250 NLRB No. 020
(setting aside of election warranted where E's treasurer observed for 10-15 minutes activities between U organizers and Ees taking place on public property; notwithstanding his initial presence was for lawful purpose of keeping U organizers off E's property in response to reports U organizers on company property)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home 249 NLRB No. 162
(violation and interference where E responded to inquiry about how E knew what was said at U meeting that E had people there who gave E information, thus giving impression of surveillance)

Alumbaugh Coal Corporation 247 NLRB No. 112
(E's statement that he had a list of yes votes and no votes created impression of surveillance and interfered with election)

Vanity Fair Mills, Inc. JD-(ATL)-38-82
(E's observation of U handbilling not interferance with election where E's assertion it observed handbilling because of concern with traffic situation; further U and E were already parties to bargaining agreement and this was no initial U campaign, and identity of U supporters known)

2855-3300 Recruiting employees for surveillance

Maywood, Inc. 251 NLRB No. 139
(E's soliciting Ee to observe and report to supervision U activities of other Ees held interference)

2855-6700 Informing employees of surveillance

Oklahoma City Collection District of Browning-Ferris, Inc. 263 NLRB No. 012
(remark by E *there goes that U man* which created impression of surveillance to Ee and which occurred during critical preelection period not found to be ground for setting aside election where Ee was terminated prior to election and that remark was not of serious enough nature to create presumption of dissemination to other Ees)

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads 261 NLRB No. 130
(where Ee worked strictly on commission, new store managers statement to Ee that he fired one guy to keep 10 people happy, asking her whether she was *happy* and calling her one of U's biggest supporters held unlawful announcement of grant of benefit, coercive interrogation, Ee surveillance, and constitutes objectionable conduct)

Safeway Stores, Inc. JD-(SF)-61-81
(manager's remark that he already knew how many Ees attended U meeting on previous day, held violative and objectionable)

2858 DIRECTING EMPLOYEES TO REPORT U HARASSMENT OR COERCION

A. J. Schmidt Co., William A. Schmidt and Sons, Inc. 265 NLRB No. 200
(E held to have engaged in preelection objectionable conduct by requesting its Ees to report harassment by U organizers)

Clifton Plastics, Inc. 262 NLRB No. 168
(E's requesting Ees to report subjectively offensive conduct held interference since such requests clearly were sufficiently broad to encompass lawful conduct of Ees engaged in protected activities; moreover, E's requests went beyond confines of workplace and extended into homes of its Ees where E had no legitimate interests)

Bil-Mar Foods of Ohio, Inc. 255 NLRB No. 160
(E's statement asking Ees to report to him or their supervisors any harassment, coercion, pressure or threats by U agents held interference, since statement, in effect, directed Ees to inform on their coworkers who might have been soliciting support for U, and thereby created a chilling effect on Ees' U activity; Dillman Foods, Inc., 253 NLRB No. 114, distinguished; H.R. Huntting Co. (unreported), relied on by E, held overruled sub silentio by long line of published cases supporting conclusion herein)

2858—Cont.

Syrent Nursing Home JD-(ATL)-95-82
(election set aside and new election ordered in view of E's unlawful no solicitation rule and request that Ees report to E any *harassment* resulting from U solicitation at their home)

Ellis Hospital JD-164-82
(E's letter directing its Ees to report their contacts with U during its organizational campaign, unlawful and interference with election, where E's claim that soliciting Ees to report any invasion of their privacy was lawful was too broad and could reasonably cover mere attempts by pro-U Ees to contact other *Ees* at their homes, which is contemplated by requiring E to furnish names and addresses of Ees eligible to vote under *Excelsior* rule)

2862 VARIOUS ULP's DURING CRITICAL PERIOD

Hillside Avenue Pharmacy, Inc. 265 NLRB No. 205
(where E engaged in unlawful acts consisting of interrogation, threats, harassment of Ees, creation of impression of surveillance, and of informing Ees that dues would be deducted from their pay if U won, election set aside, since such unlawful acts fell w/i scope of objections to election herein)

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 106
(decertification election set aside where, severe restriction of access by non-Ee U representatives to fulfill U's statutory obligation to represent Ees, which continued notwithstanding filing of decertification ptn, made U appear weak and ineffectual; arrest of U officials for asserting such right immediately following distribution of E's letter, questioning U's effectiveness and announcing that bargaining and wages would be suspended for duration of election period, diminished Ees' perception of value of U and seriously interfered with Ees' right to deal through their chosen representative)

Schnadig Corporation 265 NLRB No. 020
(election set aside and bargaining order issued in view of E's unlawful threats to close plant, maintenance of overly broad no solicitation and no distribution rule, and promise of promotion to U adherent in return for opposition to U)

Arthur Briggs, Inc. 265 NLRB No. 038
(election set aside and bargaining order issued in view of E's unlawful refusal to reinstate strikers, threats of plant closure, and surveillance which dissipated U majority)

De Queen General Hospital 264 NLRB No. 069

Larid Printing, Inc. 264 NLRB No. 040
(election set aside and bargaining order warranted where U had authorization card majority, in view of E's numerous violations in effort to defeat U including interrogations, threats, requiring immediate repayment of loans, discharges, and prohibition against talking about U on E's premises, particularly since Ee complement was small, many violations committed by high level officials and E's unlawful conduct continued after election)

General Electric Company 264 NLRB No. 126
(election set aside where E threatened Ees with loss of direct communication with management, there were several instances of interrogation by supervisors, supervisors prohibited distribution of U literature on parking lot; all w/i crucial preelection period)

United Supermarkets, Inc. 261 NLRB No. 179
(finding that E's extensive and serious ULPs did not require nonmajority bargaining order because totality of E's conduct did not completely foreclose possibility of holding fair election, Bd directed second election, but ordered extraordinary access and notice remedies)

Conair Corporation 261 NLRB No. 178
(ULPs committed during critical preelection period held objectionable conduct sufficient to warrant setting aside election where conduct consisted of numerous instances of threats of plant closure, discharge, and loss of benefits; promises of increased or new benefits; coercive interrogation; acts of soliciting grievance with promises to remedy same, and grant of benefits; also, E failed to give timely reinstatement to certain ULP strikers, discharged and refused to reinstate others, and effected mass discharge of strikers)

Conair Corporation 261 NLRB No. 178
(objections to election sustained and election set aside where objections to E conduct interfering with election were coextensive with ULPs set forth in complaint, and subject of objections were substantiated as 8(a)(1) and 8(a)(3) violations)

Scott Glass Products, Inc. 261 NLRB No. 129
(new rule to stop talking about wage increase, interference)

Revider Farms, Inc. 261 NLRB No. 113
(unlawful discharge)

Nanticoke Homes, Inc. 261 NLRB No. 107
(unlawful threats and interrogation)

Jo-Wan Sportswear, Ltd. and Iris Sportswear, Inc. 260 NLRB No. 172
(unlawfully threatening to close plant, interrogating Ees, and promising them benefits in order to discourage support for U held interference)

R. G. Barry Corporation 260 NLRB No. 023
(E's conduct in issuing written warnings of suspension or termination to Ees for engaging in U solicitation during working time held unlawful and interference with election, where E's conduct was directed at 4 U activists who constituted 40 percent of U's Ee organizing committees, anti-U Ees engaged in similar conduct were not subjected to threat of suspension or discharge; and awareness of treatment of U activists at whom E had previously directed display of U animus can reasonably be expected to have been disseminated to other Ees)

Graham Architectural Products Corporation 259 NLRB No. 153
(another election directed where E's ULP's were not isolated as ALJ found 3 instances of interrogation and Bd found additional ULPs directly involving at least 6 Ees and word of ULPs was disseminated to additional Ees)

High Energy Corporation 259 NLRB No. 097
(objections to election closely paralleling certain ULP allegations set forth in complaint, including discharge of principal U activist, and several threats, through various supervisors, to close plant if Ees selected U as their bargaining representative, sustained)

Walter Carpet Mills, Inc. 259 NLRB No. 096
(election set aside and new election ordered in view of unlawful threats, promises of benefits, enlisting aid of Ee in preventing other Ees from signing U authorization cards, interrogations, and creating impression of surveillance)

American Display Manufacturing Co., Inc. 259 NLRB No. 006
(election set aside and bargaining order to be issued, if after counting of ballots U did not win election, in view of fact U had authorization cards from 33 out of 47 unit Ees, and in view of E's ULPs including suggesting formation of Ee committee to bargain with U and threatening plant closure)

Glengarry Contracting Industries, Inc. 258 NLRB No. 156

Jaybil Steel Products, Inc.; etc. 258 NLRB No. 157
(election ordered set aside and bargaining order to be issued, if as consequence of revised tally after counting of challenged ballots, U loses election, in view of E's numerous ULPs including threats of discharges and plant removal, promises of benefits, changes in method of compensation, discharges and offers of reemployment conditioned on U rejection)

Brookwood Furniture, Division of U.S. Industries 258 NLRB No. 028
(statements to Ees that they would get in trouble by supporting U and by being on U organizing committee, that leadman could not afford to vote for U, and that Ee seeking higher wages for another Ee should change his negative attitude held interference and violative of 8(a)(1))

Brookwood Furniture, Division of U.S. Industries 258 NLRB No. 028
(oral announcement and warning regarding overly broad no-solicitation policy, interference)

Presbyterian/St. Luke's Medical Center 258 NLRB No. 021
(election set aside where E deliberately blocked out Ees' names except first initial and last name on Excelsior list, unlawfully interrogated Ees on their U activities, and unlawfully reprimanded and discharged U adherents)

Kawasaki Motors Corporation, U.S.A. 257 NLRB No. 069
(threatening plant closure, more onerous or arduous work duties, futility of selecting U, and plant relocation, and advising Ees that U was responsible for making bomb threats at plant held interference)

Anja Engineering Corporation 256 NLRB No. 161
(unlawful dismissal of extremely ill U activist during election process on election day and widely broadcast among Ees, interference)

Mark I Tune-Up Centers, Inc. 256 NLRB No. 138
(election set aside and second election directed, where E engaged in ULPs by interrogating Ees concerning U activities; threatening Ees with closure of facility, more onerous working conditions, and loss of benefits; and providing unscheduled bonus; conduct violative of 8(a)(1) is, a fortiori, conduct which interferes with election, and the only exception to such rule, involving violations that could not possibly affect election results, is not applicable herein)

Metropolitan Life Insurance Company 256 NLRB No. 100
(election set aside and new election ordered in light of ULPs such as unlawful interrogations, surveillance, threats of discharge, and promises of benefits if Ees voted against U)

Precision Graphics, Inc. 256 NLRB No. 057
(threat of plant closure constituting 8(a)(1) violation a fortiori interference with election)

Evans Brothers Barber & Beauty Salons, Inc. 256 NLRB No. 023
(election set aside and new election ordered where during critical period, E unlawfully threatened more onerous working conditions, unlawfully questioned Ees about U meeting, and unlawfully questioned Ee about her attendance at U meeting; furthermore, related pre-ptn conduct also considered as indicative that post-ptn ULPs were not isolated incidents)

2862—Cont.

Richland Co. & Assoc., Division of McDonald Construction, Inc. **256 NLRB No. 026**

(threat to close business and of loss of benefits, promise of benefits, statement that Ees would not have to pay insurance premiums if U lost election, and delay of promised wage increase until after election, unlawful and interference)

Sunline Care, Inc. d/b/a Parkview Acres Convalescent Center **255 NLRB No. 149**

(setting aside election warranted in view of unlawful interrogations, threats of discharge and actual discharges, solicitation of grievances, and requiring U adherent to work under less desirable conditions)

Custom Trim Products **255 NLRB No. 096**

(new election directed, where E's ULPs such as sending letter to all Ees stating futility of selecting U and posting unlawful no-distribution rule during critical period was, *a fortiori*, conduct which interfered with exercise of Ees' free choice and sufficient to set aside first election)

Associated Milk Producers, Inc. **255 NLRB No. 104**

(election set aside and new election ordered where E's ULPs such as unlawful discharge, interrogation, solicitation of grievances, and withholding wage increase interfered with Ees free choice)

General Electric Company **255 NLRB No. 092**

(setting aside of election warranted in view of E's threats, interrogation, creation of impression of sruveillance and withdrawal of benefits)

Gesko & Meyer, Inc. **255 NLRB No. 095**

(election set aside, in view of unlawful interrogation, threat of lay off, promise of benefit, solicitation of Ee to deal directly with E rather than U, statement to Ee that he was receiving pay raise in order to dissuade him from supporting U and unlawful discharge of Ee)

Pine Valley Meats, Inc. **255 NLRB No. 061**

(new election appropriate where E's ULPs such as discharge of U adherents and promising and granting benefits interfered with first election)

Ed Chandler Ford, Inc. **254 NLRB No. 082**

Overnite Transportation Company **254 NLRB No. 011**

(new election appropriate where first election set aside because unlawful discharges and other ULPs interfered with Ees' free and uncoerced choice)

Photo-Sonics, Inc.; et al. **254 NLRB No. 069**

(substantial violations of 8(a)(1) which occurred during relevant period between filing of ptn and holding of election, held interference)

Gessin Company, a Division of the United States Gypsum Company **254 NLRB No. 041**

(election set aside in view of E's unlawful suspension of merit wages increases during election campaign and discriminatory discharges and warnings)

Eastern Maine Medical Center **253 NLRB No. 024**

(E's conduct held interference with decertification election where existence of unlawful broad no-solicitation rule at time of election and failure to bargain in good faith after filing of decertification ptn provide sufficient grounds for setting election aside; although withheld wage increase was found unlawful herein it did not constitute interference with election inasmuch as it was announced well before date decertification ptn was filed)

B. E. & K., Inc. **252 NLRB No. 036**

(supervisor's preelection statement to Ees that wearing of U stickers revealed belligerency, unlawful and interference, where supervisor had previously threatened Ees with discharge for distributing stickers)

McLane/Western, Inc. **251 NLRB No. 185**

(threats of plant closure and having to bargain from scratch and threat to punch Ee in nose for initiating U campaign)

Chester Valley, Inc. **251 NLRB No. 190**

(post-ptn conduct which constitutes ULPs is also conduct which invalidates subsequent election at least where change of 3 or 4 votes, as herein, would change election result and at least some of such conduct was known practically to all Ees; accordingly, ALJ did not consider which ULPs were fairly encompassed w/i objections)

Chester Valley, Inc. **251 NLRB No. 190**

(election set aside on basis of promises of benefits, various threats, offer of increased payments into Ee's profit-sharing plan, solicitation of grievances with implied promise to remedy them, and granting of wage increases)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

(violation and interference where E misstated law on strikers' rights by declaring that it had no duty to rehire Ees who were replaced during strike and thus threatened Ees with future permanent loss of employment if they engaged in economic strike)

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**

(election set aside and third election directed, where E made unlawful wage and benefit increases in order to undermine U's organizational campaign during critical period)

Conagra, Inc. **248 NLRB No. 085**

(election set aside in view of E's unlawful interrogation, threats, statements regarding futility of choosing U and that E would bargain from stratch and informing Ees that denial of wage increase was due to U campaign)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

(setting aside of election warranted in view of unlawful discharges, refusal to pay strikers for accrued vacation, threats of reprisal and permanent replacement of ULP strikers)

Fluid Packaging Company, Inc. **247 NLRB No. 196**

Tartan Marine Company **247 NLRB No. 073**

(setting aside of election warranted and bargaining order issued in view of E's unlawful interrogation, threats, solicitation of Ees to withdraw U cards, encouraging Ees not to honor Bd subpoena, denial of wage increase and refusal to rehire U adherent)

Thermo King Corporation **247 NLRB No. 040**

(single violation resulting from threat of economic or other reprisals for voting for U held not to warrant inference that it affected election results, since it was too isolated in reference to total circumstances and to number of Ees involved and to vote count in election)

J. H. Block & Co., Inc. **247 NLRB No. 041**

(election set aside)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**

(E's truthful representation to Ee prior to election that E had acquired some machinery from defunct operations which had failed because of economic hardships that had befallen such enterprises due to excessive U bargaining demands held not unlawful threat to close plant and not interference)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**

(E's alleged statement to Ee prior to election that E would decline to enter into contract with U held not unlawful and not interference, where E had stated that, if U won, E would bargain with it because he was not opposed to unionization of plant, but he cautioned that he could not afford U's economic demands which would affect his corporate solvency)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**

(E's preelection change in Ees' life insurance coverage held not unlawful and not interference, since E was not statutorily obligated to stay or abandon implementation of new beneficial insurance program based on sound business considerations simply because election had been scheduled to take place some 6 months in the future, and implementation of plan was not achieved until shortly before election because of administrative bungling)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**

(increase in excess of amounts required by newly announced federal minimum wage rate, not unlawful and not interference with election, where in accordance with E's prior bookkeeping procedures E essayed to pay wage increase in increments of 25 cents in order to simplify its payroll calculations, increases were not announced or paid prior to election, and there was otherwise no evidence that E had object of influencing Ees in their choice of representative)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**

(preelection promises to Ees of new pension plan and of possible pay raises effective after election, and extensive coercive interrogation of Ees concerning U activities)

Chef's Pantry, Inc. **247 NLRB No. 018**

(interference where E solicited grievances at periodic meetings with Ees; unilaterally instituted new educational benefits program; discriminatorily denied such benefits to leader of organizing campaign; revised long-standing policy prohibiting beards, and shortly before election permitted Ees to grow beards; and during week preceding election asked Ees if they had any complaints which E could remedy)

United Maintenance Company, Inc. **JD-(SF)-169-82**

Wilson Trucking, Inc. **JD-119-82**

Tops Industries, d/b/a Tops Market **JD-(SF)-83-82**

(ordering U activist to knock off all activities of stirring people up, and conditioning his continued employment on his doing so, unlawful and objectionable)

Tops Industries, d/b/a Tops Market **JD-(SF)-83-82**

(impliedly threatening reprisals by requesting Ee to tell her son, also an Ee, *what could happen* because of his attending U meetings, unlawful and objectionable)

Tops Industries, d/b/a Tops Market **JD-(SF)-83-82**

(threat that sale of plant would terminate further possibility of unionization of E's Ees, unlawful and objectionable)

2862—Cont.

Tilden Rack and Basket Corporation JD-(NY)-2-82
(election set aside and new election found appropriate in view of ULPs such as unlawful interrogations, unlawfully creating impression of surveillance, unlawful statements equating U activity with disloyalty, and unlawful threat of plant closure)

Union Carbide Corporation JD-(SF)-13-80
(solicitation of grievances, asking Ees to speak to coworkers negatively about U and threatening messed up benefits and insurance constituted interference)

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)
(election set aside and bargaining order issued in view of E's numerous ULPs which included unlawful discharges, suspensions, interrogations, granting of benefits and threats)

2870 TOTALITY OF PRE-ELECTION CONDUCT

B. E. & K., Inc. 252 NLRB No. 036
(objection to election averring that *By these and other acts* E interfered with Ees' statutory rights, sustained and election set aside, in view of E's acts of interrogation and threats, and discriminatory layoffs)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. 629 F.2d 305 (C.A. 3, 1980)
(where implied threats of plant closure communicated to significant number of Ees by senior company officials, psychological impact on all Ees is unlikely to dissipate and factors undermining first election would be present at future election; therefore bargaining order proper remedy)

2874 INTERFERENCE WITH ORDERLY ELECTION PROCESSES

Glenn McClendon Trucking Co., Inc. 255 NLRB No. 168
(election set aside and second election directed where three eligible voters whose votes could have affected outcome of election were unable to participate in election because E had dispatched them to places distant from polling place)

Mechanical Seal Division, Borg-Warner Corporation 254 NLRB No. 071
(where E incorrectly informed Ee she was not eligible to vote because she was probationary Ee and later informed her she was eligible, such possible disenfranchisement where unintentional and vote not determinative is not conduct warranting setting aside election)

Moody Nursing Home, Inc. 251 NLRB No. 022
(E who conditioned Ee's right to vote upon first picking up paycheck committed objectionable conduct as this indicates to Ees that their franchise depends upon sufferance of E rather than it being an absolute Sec. 7 right)

Contractors Redi-Mix, Inc. 250 NLRB No. 022
(certification of election results rather than rerunning election, held warranted notwithstanding E's objection that election notice was not posted until the day before election; E contributed to the delay by failing to post the notice until 3 days after receiving it; Ees had opportunities prior to election to read the notice; parties independently apprised Ees of details of election arrangements; and all active Ees voted)

2878 FURNISHING OF LISTS OF EMPLOYEES NAMES AND ADDRESSES (EXCELSIOR LIST)

2878-1400 Adequacy of list furnished

2878-1460 Substantial compliance

Chance Collar Company, Division of W. R. Grace & Company 265 NLRB No. 151
(where *Excelsior* list was received in Regional Office one day late and w/o zip codes of Ees, Bd found substantial compliance with *Excelsior* requirements, and setting aside election was not warranted in view of fact that list was received in Regional Office at 7:57 a.m. the day after it was due, it had been mailed 4 days prior to filing date, E immediately supplied zip codes upon being informed of their omission, and U had complete list for 18 days before election in which time it utilized list for at least 4 mailings)

Houston Distributing Company, Inc. 261 NLRB No. 020
(U's objection to adequacy of Excelsior list that failed to include names and addresses of unit Ees who were engaged in economic strike against E, overruled, since no egregious avoidance of obligation where E had furnished names, addresses, and telephone numbers of strikers in earlier list and in ample time for election)

St. Francis Hospital 249 NLRB No. 017
(where excelsior list provided by E contained some incorrect and misleading information; such as, surnames and first and middle initials and E failed to inform R/O of corrected addresses, no violation as no evidence that E intended to willfully frustrate Bd processes; however, if facts revealed such willfulness violation could be found)

2878-1470 Adequacy of requirement not satisfied

Avon Products, Inc. 263 NLRB No. 005
(election set aside since U suffered prejudice in its election campaign where it received Excelsior list which Bd rendered deficient by broadening scope of unit upon review of RD's unit determination, and substantial number of Ees who had voted in election were omitted from list; Bd should have stayed election)

Dutch Boy, Inc., Glow-Lite Division 262 NLRB No. 001
(where E supplied names of 104 of approximately 156 eligible voters notwithstanding failure was in effort to maintain its position that certain laid off Ees were not eligible to vote)

Centre Engineering, Inc. 253 NLRB No. 028
(list of Ees which was alphabetized by just names of Ees, w/i each letter of alphabet, and addresses did not include zip codes or departmental breakdown not adequate and warrants setting aside election)

N.L.R.B. v. All-Weather Architectural Aluminum, Inc. 692 F.2d 76 (C.A. 9, Nov. 1982)
(where E only supplied partial list until a few days before election and then complied and U received complete list on day before election, U was precluded from using list in any effective manner and Bd did not abuse discretion in overturning election)

2878-4200 Late submission of list

Chance Collar Company, Division of W. R. Grace & Company 265 NLRB No. 151
(where *Excelsior* list was received in Regional Office one day late and w/o zip codes of Ees, Bd found substantial compliance with *Excelsior* requirements, and setting aside election was not warranted in view of fact that list was received in Regional Office at 7:57 a.m. the day after it was due, it had been mailed 4 days prior to filing date, E immediately supplied zip codes upon being informed of their omission, and U had complete list for 18 days before election in which time it utilized list for at least 4 mailings)

Red Carpet Building Maintenance Corp. 263 NLRB No. 176
(election not set aside since U failed to establish that it was materially prejudiced by 1-day delay in its receipt of *Excelsior*list, where at time U agreed to date for election, it knew that Ees living in remote areas were difficult to contact, and it therefore assumed consequences of its agreement; U took no affirmative action to obtain list until 7 days before election nor requested that election be postponed because of late receipt; and U obtained list 6 days before election in relatively small unit and had sufficient time to notify Ees of U meetings)

Red Carpet Building Maintenance Corp. 263 NLRB No. 176
(in finding setting aside of election not warranted because of 1-day delay in U's receipt of *Excelsior* list, Bd held delay in instant case was insignificant compared to delay in *McGraw Edison* case under circumstances therein, and in *Coca-Cola* case there was a much more substantial delay than that present herein; moreover, unlike in *McGraw* case, U herein had not shown that its election campaign in smaller unit than in that case was affected materially by its late receipt of list, and also U herein never sought to postpone election)

N.L.R.B. v. All-Weather Architectural Aluminum, Inc. 692 F.2d 76 (C.A. 9, Nov. 1982)
(where E only supplied partial list until a few days before election and then complied and U received complete list on day before election, U was precluded from using list in any effective manner and Bd did not abuse discretion in overturning election)

2878-5600 Failure to furnish list

N.L.R.B. v. Thom Brown Shoes, Inc. No. 79-C-3173, Feb. 20, 1980, DC E.D. NY (unreported)
(E's failure to furnish *Excelsior* list constitutes grounds for setting aside election when timely objections filed by U)

2885 PRE-ELECTION PROPAGANDA

2885-0100 Generally

Van Dorn Plastic Machinery Co., Division of Van Dorn Company 253 NLRB No. 029
(case remanded to ALJ for purpose of conducting further hearing on issue of E's objection to election under *General Knit of California, Inc.*, 239 NLRB 619, where ALJ relied solely on formal papers submitted in R proceeding in analyzing E's objection and resolved the case entirely on application of standard set out in *Shopping Kart Food Market, Inc.*, and, on last day of hearing in the R proceeding, w/o knowledge of parties to the R proceeding, Bd, in *General Knit of California, Inc.*, overruled *Shopping Kart Food Market, Inc.*)

Robbins and Myers, Inc. v. N.L.R.B. 643 F.2d 455(T) (C.A. 6, Dec 11, 1980)
(Bd did not depart from requirements of controlling law in determining to set aside election which was won by E where pre-election speech by E's plant manager contained substantial misrepresentations reasonably expected to have significant impact on election)

2885-0140 Economic dependency of employees to be considered

Baird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(wages)

2885-0160 Statements must be phrased on basis of objective facts

A. J. Schmidt Co., William A. Schmidt and Sons, Inc. **265 NLRB No. 208**
(E may predict to Ees effects it believes unionization would have so long as prediction is carefully phrased on basis of objective facts to convey E's belief as to demonstrate probable consequences beyond its control)

Associated Roofing & Sheet Metal Co., Inc. **255 NLRB No. 178**
(E's statement at meeting of Ees on day before election that if U came in it would not be able to get business interfered with election choice where it was not supported by objective facts)

2885-0180 Reasonable predictions of consequences

Cafe Tartuffo, Inc. d/b/a Fiorella **261 NLRB No. 033**
(E's statements in letter to Ees before election that after becoming bargaining representative at another of E's facilities U negotiated contract *which in my opinion gave Ees no more than they would have gotten had there been no U and probably less* and *we can negotiate agreement with U that does not cost any more in wages and benefits than w/o U and may even cost less* held not promise of benefit warranting setting aside election, but rather E's opinion based on outcome of negotiations at other facility that U would be willing to negotiate contract which would not result in significent increases)

Cafe Tartuffo, Inc. d/b/a Fiorella **261 NLRB No. 033**
(E's statements in letter to Ees before election that based on experience with U at another of its facilities *we can negotiate agreement* with U that does not cost us anymore in wages and benefits and may cost even less not objectionable threat of loss of wages or benefits or jobs but merely permissible prediction of consequences of unionization and did not correlate unionization with loss of job security)

2885-0180-5000 Employer's obligation to produce objective evidence that consequences predicted were beyond his control

A. J. Schmidt Co., William A. Schmidt and Sons, Inc. **265 NLRB No. 208**
(E may predict to Ees effects it believes unionization would have so long as prediction is carefully phrased on basis of objective facts to convey E's belief as to demonstrate probable consequences beyond its control)

Associated Roofing & Sheet Metal Co., Inc. **255 NLRB No. 178**
(E's statement at meeting of Ees on day before election that if U came in it would not be able to get business interfered with election choice where it was not supported by objective facts)

2885-1000 Opportunity for other party to respond

Robert E. Johnson and Geneva H. Johnson, a Partnership, d/b/a Jolie Bois Company **265 NLRB No. 141**
(Bd held that E's misleading campaign statements 2 days prior to election regarding E's alleged economic right to *invoke* joint negotiations with another E in area, and if U struck one E, the other E would lock out its Ees, did not warrant setting aside election under *Midland National Life Insurance Company*)

N.L.R.B. v. Leslie Metal Arts Company, Inc. **673 F.2d 168 (C.A. 6, Mar. 1982)**
(Bd did not abuse its discretion in overruling E's objections to election on ground that U misrepresented percentage of Ees required to indicate interest in U before there could be election since statements referred to were made so far in advance of election that E had ample opportunity to respond if in fact there was misrepresentation)

Spring City Knitting Company v. N.L.R.B. **647 F.2d 1011 (C.A. 9, June 1981)**
(in order for election to be set aside due to misrepresentations, one party must have misrepresented material facts, the other party had no opportunity to reply, and resulting distorted presentations significantly impaired election process)

2885-2000 Employer statements

2885-2033 Kinds of statements

2885-2033-1700 Maintenance of existing level of benefits

Associated Roofing & Sheet Metal Co., Inc. **255 NLRB No. 178**
(where E had practice of discussing Ees' grievances with them, letter prior to election which stated that individual Ees would no longer be able to settle matters personally was improper threat to unilaterally terminate existing beneficial situation)

Liberty Vinyl Corporation **JD-(SF)-268-80**
(pamphlet stating that present salaries, benefits and working conditions are up for grabs and subject to negotiations held not violative where labor relations consultant who distributed them made spoken remarks which dissipated misapprehension about status of existing benefits and wages if U got in)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, did not warrant setting aside election, since was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

2885-2033-3300 Declaration of union preference

N.L.R.B. v. San Antonio Portland Cement Company **611 F.2d 1148 (C.A. 5, 1980)**
(not just any advocacy of U by supervisor rises to level of supervisory pressure or coercion; mere statement of personal preference by supervisor is not coercive; no supervisory taint so long as nothing in words, deeds, or atmosphere of supervisor's request for authorization cards contain seeds of potential reprisal, punishment, or intimidation)

2885-2033-4100 Inevitability of loss or delay of pay raise

General Merchandise Distributors, Inc. **263 NLRB No. 126**
(announcement to Ees 1 week prior to election that pay raise due to take effect shortly after election was being postponed and also that another group of Ees who had chosen U representation had now gone full year with no raise and were still waiting for contract to be negotiated is threat to Ees of loss of benefits if they choose U)

BRK Electronics (Electrical Workers, Local Union No. 461) **248 NLRB No. 169**
(E president's telling Ees, in response to Ee's question, that whether or not Ees received their pay raises prior to vacation would depend on outcome of upcoming election held interference, since comment carried message that pay raises would be affected by results of the upcoming election)

2885-2033-5000 Declaration of opposition to union

Safeway Stores, Inc. **JD-(SF)-41-81**
(new Ee's training instructor's response to Ee that store was goint to open *non-union*, not objectionable, where evidence did not sustain U's contention that it was E's *absolute* intent to operate *non-U* and remark was made prior to time U filed its ptn for certification)

2885-2033-5800 Disparagement of union officials

Wells Fargo Guard Services, A Division of Baker Protective Services, Inc. v. N.L.R.B. **659 F.2d 363 (C.A. 3, Sep. 1981)**
(enforcement denied and case remanded to Bd for evidentiary hearing where issue, of whether allegedly unfit leader remained in control of U, had significant impact on election won by U; strictness of Bd action in setting aside first election because of E's distributing altered facsimile ballot prior to election when contrasted with its flexibility in certifying U after second election supplies additional reason for remand)

2885-2033-6700 Inevitability of loss of jobs

A. J. Schmidt Co., William A. Schmidt and Sons, Inc. **265 NLRB No. 208**
(U's objection that E unlawfully threatened plant closure and job losses as direct result of unionization, sustained, where E's preelection literature did not contain any demonstrable evidence to support its message that unionization caused other plants to either close or lay off large number of Ees and that unionization of E could lead to same result; although E did not explicitly threaten job losses if U won election, its repeated emphasis on job security, along with constant references to companies that suffered economic hardship, raised implication that job losses were virtually certain if U won)

Maud Nursing Home, Inc. **265 NLRB No. 133**
(E stating that if U calls strike, Ees may no longer have jobs after strike, and under law E does not need to rehire Ees, implicitly threatened to sever employment relationship permanently. E implied that it was w/i its sole discretion to terminate the employment relationship, thereby terminating all rights to reinstatement. Not only is implication contrary to law, but it is impermissible threat to Ees that if they strike they would lose their jobs)

Alpha Cellulose Corporation **265 NLRB No. 010**
(E's letter indicating to Ees not only that, if they struck, they could be permanently replaced, as is permitted, but that they could lose their jobs as result of striking held unlawful and interference with election, since such clear threats to sever employment relationships in event Ees engage in economic strike amount to unlawful threats of job loss)

Alpha Cellulose Corporation **265 NLRB No. 010**
(E's letter to Ees held unlawful and basis for valid objection to election, where letter, when read in light of E's prior letter to Ees found unlawful herein because it stated that Ees could lose their jobs as result of engaging in economic strike, confirmed to Ees that an exercise of their right to strike would, as a matter of course, lead to permanent loss of their jobs and accompanying benefits)

2885-2033-6700—Cont.

Schnadig Corporation 265 NLRB No. 020

(election set aside where E's chairman of board informed Ees he had purchased plant as non-U and expected it to stay that way, that he was in business to stay, hopefully at present site but if not there somewhere else, and needed Ees help to make plant profitable, that Ees were entitled to do as they saw fit but he did not believe U was good for future and being intelligent people Ees should not believe U's snow job, since reference to plant closing not based on objective facts supporting probable consequences beyond E's control, and supervisors had previously threatened plant closure)

Cafe Tartuffo, Inc. d/b/a Florelle 261 NLRB No. 033

(E's statements in letter to Ees before election that based on experience with U at another of its facilities *we can negotiate agreement* with U that does not cost us anymore in wages and benefits and may cost even less not objectionable threat of loss of wages or benefits or jobs but merely permissible prediction of consequences of unionization and did not correlate unionization with loss of job security)

Whiting Manufacturing Company, Inc. 258 NLRB No. 058

(E's president at meeting on day before election stating that U shop would run him out of business warranted setting aside of election, since coercive effect not neutralized by explanation of E's labor relations advisor at same meeting that what E's president meant to say was that E was in competition with non-U states of south and was already paying Ees all it could and remain competitive; this actually reinforced E's statement that U victory would make E noncompetitive)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. 249 NLRB No. 020

(E's speech, 2 days before election, telling Ees that if they were not careful, *disaster could hit* and everything could be lost held interference, since reference shortly before election conveyed not too subtle message that vote for U would lead to strikes or plant closing and resulting loss of jobs; E thereby sought to take advantage of Ee concerns about job security and informed Ees that only way to protect their jobs was to vote against U)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. 249 NLRB No. 020

(claim that E did not threaten Ees with job loss because it did not directly or explicitly attribute strikes, plant closing, or job loss to unionization, rejected; communications hovering on edge of permissible and impermissible are objectionable since person should be held accountable for use of double intendres at level of his audience rather than of sophisticated tribunals, Scholars, etc.; E's use of leaflet in form of obituary dealing with closing of nearby plant and reference to impending disasters are examples of brinkmanship which overstepped and tumbled over brink)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. 249 NLRB No. 020

(Bd held that, in context of E's specific threats of plant closure, E's repeated statements in its speeches and campaign material constantly referring to U as being strike happy and associating U with strikes, plant closure, and loss of jobs constituted additional objectionable conduct which interfered with election)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. 249 NLRB No. 020

(even if E did not engage in specific threats of plant closure, overall impact of E's campaign created coercive atmosphere sufficient to set aside election, where E constantly emphasized themes such as likelihood that strikes, plant closure, and loss of jobs would be direct result of unionization)

Louis Gallet, Inc. 247 NLRB No. 013

(setting aside of election warranted where E in letters to Ees prior to election implied threats of plant closure and expressed belief strikes would be inevitable if U voted in)

2885-2033-7000 Bargain from scratch

General Merchandise Distributors, Inc. 263 NLRB No. 126

(division manager's statement made during Ee meeting that if U won election, bargaining would start from scratch, objectionable)

Blue Cross of Kansas City, Inc. and Blue Shield of Kansas City, Inc. 259 NLRB No. 070

(E's remarks in speeches and handouts regarding bargaining from scratch and starting negotiations with two blank pieces of paper held not violative where E stated that he was obligated to bargain in good faith, all benefits were not guaranteed but would be negotiated, and no intent was expressed to unilaterally remove Ee benefits)

Brookwood Furniture, Division of U.S. Industries 258 NLRB No. 028

(E's anti-U speeches telling Ees that negotiations would start from blank, that they might end up with less, more, or the same benefits, held interference where made against background of E's ULPs)

BRK Electronics (Electrical Workers, Local Union No. 461) 248 NLRB No. 169

(E president's declaring to Ees that when U got in benefits contained in Ee manual would become *null and void* and that bargaining over those benefits would *start from scratch* warranted setting aside election, notwithstanding president's subsequent qualifying comments that everything would be negotiable; president's qualification of his *null and void* comment was insufficient to overcome the clear message that if Ees elected U, they would lose their existing benefits)

Liberty Vinyl Corporation JD-(SF)-268-80

(pamphlet distributed by labor consultant during U campaign stating that negotiations start from scratch held not violative, as it is truthful and unobjectionable for E to point out that contract negotiations involve tradeoffs and no benefits are exempt from bargaining process that E must engage in good faith)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation JD-(SF)-140-80

(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, did not warrant setting aside election, since was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

2885-2033-8300 Inevitability of strikes and shutdown

Dutch Boy, Inc., Glow-Lite Division 262 NLRB No. 001

(E's campaign message informing Ees that strikes weren't always successful not violative; message found to be permissable free speech)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. 249 NLRB No. 020

(although E's pamphlet did not directly attribute closing of nearby plant to unionization, distribution of pamphlet held interference, where it made graphic presentation of such plant closing in form of obituary notice which was clear attempt to communicate by form if not words clear message to Ees–unionization caused nearby plant to close and unionization would likewise cause E to close its plant)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. 249 NLRB No. 020

(E's speech, 2 days before election, telling Ees that if they were not careful, *disaster could hit* and everything could be lost held interference, since reference shortly before election conveyed not too subtle message that vote for U would lead to strikes or plant closing and resulting loss of jobs; E thereby sought to take advantage of Ee concerns about job security and informed Ees that only way to protect their jobs was to vote against U)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. 249 NLRB No. 020

(E's leaflet in form of obituary dealing with closing of nearby plant and E's preelection speeches held interference, where evidence did not support E's message that unionization caused closure of other area plants or that unionization would lead to strikes, plant closure, job loss, and other unidentified disasters, and E thereby failed to convey permissible noncoercive prediction that unionization might lead to economic dispute that could result in loss of jobs; Ees take hints of plant closing as coercive threats rather than honest forecasts)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. 249 NLRB No. 020

(claim that E did not threaten Ees with job loss because it did not directly or explicitly attribute strikes, plant closing, or job loss to unionization, rejected; communications hovering on edge of permissible and impermissible are objectionable since person should be held accountable for use of double intendres at level of his audience rather than of sophisticated tribunals, Scholars, etc.; E's use of leaflet in form of obituary dealing with closing of nearby plant and reference to impending disasters are examples of brinkmanship which overstepped and tumbled over brink)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. 249 NLRB No. 020

(Bd held that, in context of E's specific threats of plant closure, E's repeated statements in its speeches and campaign material constantly referring to U as being strike happy and associating U with strikes, plant closure, and loss of jobs constituted additional objectionable conduct which interfered with election)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. 249 NLRB No. 020

(even if E did not engage in specific threats of plant closure, overall impact of E's campaign created coercive atmosphere sufficient to set aside election, where E constantly emphasized themes such as likelihood that strikes, plant closure, and loss of jobs would be direct result of unionization)

PPG Industries, Inc. Shelby Plant, Fiber Glass Division 247 NLRB NO. 114

(speech permissible campaign propoganda, where E's remarks about strikes were in direct response to U's campaign position that E would not take a strike shutting down operations, and there was nothing in speech that would suggest that Ees would have to strike to secure gains, that strike was inevitable, that E rejected principles of collective bargaining, or that plant would be closed or jobs lost simply because U won election)

2885-2033-8300—Cont.

Louis Gallet, Inc. **247 NLRB No. 015**
(setting aside of election warranted where E in letters to Ees prior to election implied threats of plant closure and expressed belief strikes would be inevitable if U voted in)

Jet Industries **JD-(SF)-25-82**
(leaflet captioned *Truth About Strikes* which told about hardships on Ee's during strikes, what might happen to Ees and that Us cause strikes need additional text)

2885-2033-8700 Promise to correct grievances

Ellis Hospital **JD-164-82**
(alleged solicitation of grievance from Ee by supervisor and implied promise to redress it, not unlawful nor interference with election, where supervisor had stated to Ee that his door was open to Ee anytime Ee wanted to talk to him, supervisor credibly testified that such was always the case, and even Ee's testimony did not make out a case of solicitation of grievances and promise to redress them)

Ellis Hospital **JD-164-82**
(election set aside and second election directed where objections to election were generally coextensive with ULPs found herein which were sufficient to affect election results and problems Ees had or thought they had were gravamen of organizational campaign, or at least was so perceived by E and, therefore, promise to rectify those problems and asking Ees to vote against U so that E could do so w/o having to bargain with U must necessarily have had effect on election)

2885-2033-9000 Concerning organizational activities

Bryce Corporation **261 NLRB No. 169**
(case remanded for purpose of hearing to determine merits of E's contention that notice posted for 2 days, 5 weeks before election, urging Ees to report any pressure to join U which E would stop immediately, was not objectionable conduct having coercive effect on election)

2885-2033-9100 Futility of unionization

Cafe Tartuffo, Inc. d/b/a Fiorella **261 NLRB No. 033**
(statements in letter to Ees before election that U had negotiated contract at another of E's facilities *which in my opinion gave Ees no more than they would have gotten w/o U, and probably less* and *we can negotiate agreement with U that does not cost any more in wages and benefits than w/o U*, not objectionable, since legitimate campaign propaganda inasmuch as did not state or imply that E acting independently would grant same wages and benefits granted at unionized facility, nor indicate policy to treat represented and unrepresented Ees alike, or that Ees were receiving all they could expect U to obtain)

Cafe Tartuffo, Inc. d/b/a Fiorella **261 NLRB No. 033**
(E's statements in letter to Ees before election that from experience at its other facility U would negotiate contract which *produces nothing more than you would expect to receive if w/o U, for that you are afforded privilege of paying dues*, not objectionable, since merely stated E's view of contract U had negotiated at another of E's facilities and of what U would seek in negotiations, nor did E indicate what its position would be if U won election; statement in regard to dues permissible campaign propaganda since not coupled with further objectionable statements)

2885-2033-9150 Employer will not bargain

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**
(threat to refuse to negotiate or sign a contract with any U selected by Ees, unlawful and objectionable)

Scoggin, Inc. **JD-433-81**
(E's president statement that selecting U would be futile because he would not bargain with intent to reach agreement, or enter into agreement, unlawful and warranted setting aside election)

2885-2033-9200 Employer will not deal directly with employees

Mead Nursing Home, Inc. **265 NLRB No. 135**
(letter to Ees 3 days before election which outlined for Ees what they could lose if U won, including *right to speak and think for yourself* because you will have deal through U representatives, was retaliatory threat to terminate unilaterally existing benefit of Ees to deal directly with E if U won election)

Ellis Hospital **JD-164-82**
(informing Ees that in event they selected U they would be unable to meet directly with management to talk about grievances and other matters, unlawful and interference with election; while E may explain that U will be participant in E-Ee relations generally, E cannot threaten to cut off unilaterally permissible direct dealing with Ees for selecting U)

2885-4000 Misrepresentation concerning material issue

Ellis Hospital **JD-164-82**
(E telling Ees that if U shop were negotiated everyone would be required to join U held not interference with election, notwithstanding that E did not precisely spell out proviso to Sec. 8(a)(3), since statement was not so misleading as to be objectionable, there was no indication that U membership would be predicate for obtaining a job, and failing to spell out possibility of Ees paying service fee was too subtle to be objectionable)

2885-4001 Generally

Resorts International, Inc. **264 NLRB No. 142**
(as objection alleges misrepresentation but with no allegation that documents in question were forgeries which rendered voters unable to recognize propaganda for what it is, objection is overruled. See *Midland National Life Insurance Company* 263 NLRB No. 24 (1982))

Midland National Life Insurance Company **263 NLRB No. 024**
(Bd will no longer probe into truth or falsity of parties' campaign statements, and will not set elections aside on basis of misleading campaign statements; Bd will, however, intervene in cases where party has used forged documents which render voters unable to recognize propaganda for what it is; thus, Bd will set election aside not because of substance of representation, but because of deceptive manner in which it was made (overruling *General Knit* and *Hollywood Ceramics* and returning to rule in *Shopping Kart*))

N.L.R.B. v. Nixon Gear, Inc. **649 F.2d 906 (C.A. 2, May 1981)**
(while not every misrepresentation in course of election campaign requires setting aside of election since a certain degree of inaccuracy and ambiguity is recognized as indigenous to campaign propoganda which may be left to common sense appraisal of voters, ct does not hesitate to set aside election where misrepresentation arises under circumstances which effectively precludes voter from ascertaining its falsity)

Vitek Electronics, Inc. v. N.L.R.B. **653 F.2d 785 (C.A. 3, June 1981)**
(in assessing campaign rhetoric, Bd tolerates a degree of hyperfole; intemperance and inaccuracy, and an election will only be set aside when there has been a substantial departure from truth that may reasonably be expected to have a significant impact on the election)

L. M. Berry and Company v. N.L.R.B. **668 F.2d 247 (C.A. 6, Jan. 1982)**
(election set aside for campaign misrepresentations only where statements 1) substantially misrepresent material fact; 2) are timed so that other party is prevented from making effective reply; 3) are made by party who has special knowledge of true facts; and 4) concern matters outside independent knowledge of Ees so that they are unable to effectively evaluate statements)

J.F. Hink & Son v. N.L.R.B. **684 F.2d 729(T) (C.A. 9, July 1981)**
(*Bd conducted election will be overturned because of misrepresentation only if (1) misrepresentation is material and comes from one who appears to have special knowledge of matter (2) opposing party has not had opportunity to reply and (3) resulting distorted presentation significantly imparied election. Burden of proof is on party making allegation*)

2885-4014 Timing, opportunity to rebut

Associated Milk Producers, Inc. **255 NLRB No. 104**
(E's letter not objectionable even if it contained misrepresentations where U replied by letter and addressed disputed paragraphs in U meeting)

Ellis Hospital **JD-164-82**
(supervisor's comments during organizational campaign that in event Ees sought to decertify U it would be almost impossible to do so and U could fine them for such attempt held not interference with election, in view of U's constitution to that effect, and fact that statement about impossibility of decertifying U, while perhaps stretching matters a bit, was not such a material misrepresentation as to affect election, particularly where statement was made by one supervisor to one Ee of about 1100 Ees a week before election in time for U to rebut statement)

Vitek Electronics, Inc. v. N.L.R.B. **653 F.2d 785 (C.A. 3, June 1981)**
(RD improperly overruled E's objections to election based on U's alleged misrepresentation of wage rates at other Es' unionized plants, where RD held that U's misrepresentation of wage rates was pardonable because it was *prompted* by E's study of area wage rates which dispelled any genuine factual issue concerning E's ability to respond to U's misrepresentation in one available day before election; U's misrepresentation referred to past wage rates, while E's study concerned current rates, and RD relied on sheer supposition in assuming that prior to election E possessed sufficient data to rebut U's wage claims)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(*adequate time to reply* (to misrepresentation) *must mean adequate time to make an effective reply—(A) last minute bare denial cannot be effective reply*)

2885-4042 Employees capable of evaluation

Resorts International, Inc. **264 NLRB No. 142**
(as objection alleges misrepresentation but with no allegation that documents in question were forgeries which rendered voters unable to recognize propaganda for what it is, objection is overruled. See *Midland National Life Insurance Company* 263 NLRB No. 24 (1982))

2885-4042—Cont.

N.L.R.B. v. Sara Kness, a sole proprietor d/b/a Clio Convalescent Center 633 F.2d 217(T) (C.A. 6, 1980)

(ct held claimed misrepresentation concerning arbitration provisions of pre-existing agreement would not have affected result of election, especially in view of Ees' own knowledge of and experience with that agreement)

Baird-Poulan Division, Emerson Electric Company v. N.L.R.B. 649 F.2d 589 (C.A. 8, May 1981)

(in assessing preelection campaign statements, concerning other plants in instant case, for both Es and Us, Bd does not ordinarily *police or censor* propoganda used in elections it conducts, but rather leaves to the good sense of voters the appraisal of such matters, and to opposing parties task of correcting inaccuracies and unlawful statements and only if there has been material misrepresentation which involves substantial departure from truth at time other party cannot reply and has *real* impact on election will it be set aside)

2885-4062 Union fines

Ellis Hospital JD-164-82

(E's distribution of literature indicating to Ees that it would be virtually impossible to decertify U and that fine could be imposed for attempting to do so, not unlawful and not interference with election, where E correctly paraphrased U's constitution)

Ellis Hospital JD-164-82

(supervisor's comments during organizational campaign that in event Ees sought to decertify U it would be almost impossible to do so and U could fine them for such attempt held not interference with election, in view of U's constitution to that effect, and fact that statement about impossibility of decertifying U, while perhaps stretching matters a bit, was not such a material misrepresentation as to affect election, particularly where statement was made by one supervisor to one Ee of about 1100 Ees a week before election in time for U to rebut statement)

2885-4066 Misleading representation of the law

Robert E. Johnson and Geneva H. Johnson, a Partnership, d/b/a Jolie Belts Company 265 NLRB No. 141

(Bd held that E's misleading campaign statements 2 days prior to election regarding E's alleged economic right to *invoke* joint negotiations with another E in area, and if U struck one E, the other E would lock out its Ees, did not warrant setting aside election under *Midland National Life Insurance Company*)

Mead Nursing Home, Inc. 265 NLRB No. 135

(E stating that if U calls strike, Ees may no longer have jobs after strike, and under law E does not need to rehire Ees, implicitly threatened to sever employment relationship permanently. E implied that it was w/i its sole discretion to terminate the employment relationship, thereby terminating all rights to reinstatement. Not only is implication contrary to law, but it is impermissable threat to Ees that if they strike they would lose their jobs)

Jensen Sound Laboratories 258 NLRB No.

(statement to Ees that any attempts to decertify U would result in U imposing heavy fines on its members violative as being contrary to Bd law)

Borun Brothers, Inc., A Wholly Owned Subsidiary of Thrifty Corporation 257 NLRB No. 003

(objection that E misrepresented that under U constitution a member's property could be confiscated for nonpayment of dues, overruled, where U constitution referred to dues as *legal obligations . . . enforceable in a court of law*, and there was no showing by the U that such enforcement could not be reduced to judgment and subject debtor's property to levy and attachment)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home 249 NLRB No. 162

(E's misstatement that Ees would be required to join U and pay dues if U won election held interference but not 8(a)(1) violation absent threat to Ee rights)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home 249 NLRB No. 162

(violation and interference where E misstated law on strikers' rights by declaring that it had no duty to rehire Ees who were replaced during strike and thus threatened Ees with future permanent loss of employment if they engaged in economic strike)

LOF Glass, Inc. 249 NLRB No. 087

(E's statement on two occasions shortly before election that individual right of Ees to handle grievances personally would be gone once U was voted in warranted setting aside election, since misrepresentation occurred when U did not have opportunity to make effective response and was serious enough to interfere with Ees' free choice; furthermore, Ees frequent use of E's *open door* policy made its repeated loss significant reason to reject U)

LOF Glass, Inc. 249 NLRB No. 087

(E's statement intending to inform Ees that E's *open door* policy could no longer exist once U was voted in was serious misrepresentation of Ees' right under Sec. 9(a) to present their own grievances and have them adjusted w/o reference to any contractual procedures as long as substance of adjustment was not inconsistent with contract)

2885-4070 Union dues and fees

Educational and Recreational Services, Inc., a Wholly-Owned Subsidiary of ARA Services, Inc., etc. 253 NLRB No. 140

(leaflet, inserted by E in Ees' paycheck envelope immediately prior to election, stating that *U dues have not been deducted—different—if U wins—VOTE NO—*, held not objectionable, since document does not indicate that dues would automatically be withdrawn from paychecks w/o Ee consent; inserted leaflet was campaign propaganda and did not interfere with Ees' freedom of choice which would warrant setting aside election)

Moody Nursing Home, Inc. 251 NLRB No. 022

(truthfull written propoganda concerning U dues distributed along with paychecks on election day not violative as only content of material is relevant to effect on election, not timing)

2885-4078 Salaries and benefits of union representatives

Midland National Life Insurance Company 263 NLRB No. 024

(in announcing that Bd will no longer probe into truth or falsity of parties' campaign statements, and will not set elections aside on basis of misleading campaign statements, Bd held E's distributing document on afternoon of election containing numerous misrepresentations of fact designed to portray U as organization staffed by highly paid officials and Ees who were ineffectual as bargaining representatives did not constitute basis for setting election aside)

2885-4079 Effectiveness of Union representative

Midland National Life Insurance Company 263 NLRB No. 024

(in announcing that Bd will no longer probe into truth or falsity of parties' campaign statements, and will not set elections aside on basis of misleading campaign statements, Bd held E's distributing document on afternoon of election containing numerous misrepresentations of fact designed to portray U as organization staffed by highly paid officials and Ees who were ineffectual as bargaining representatives did not constitute basis for setting election aside)

2885-4084 Union responsible for reduction of jobs and eventual closure of another plant

The Wackenhut Corporation v. N.L.R.B. 666 F.2d 464 (C.A. 11, Jan. 1982)

(Ee's statement to Ees, prior to election, that similar E was no longer in business because it was unionized held violative and election set aside, since statement implied similar E out of business in retaliation for Ees voting for U and that instant E would do same thing)

2885-4093 Board position, processes or document

A. J. Schmidt Co., William A. Schmidt and Sons, Inc. 265 NLRB No. 208

(in sustaining part of *other objectionable conduct* regarding alleged misrepresentation of Bd's processes, RD correctly applied law in effect at time of his decision; but since then Bd has found misrepresentation of Bd has found misrepresentation of Bd's processes not to be objectionable; accordingly, Bd overruled portion of *other objectionable conduct* concerning such misrepresentations)

Midland National Life Insurance Company 263 NLRB No. 024

(Bd will set elections aside when official Bd document has been altered in such way as to indicate endorsement by Bd of party to election)

Jensen Sound Laboratories 258 NLRB No. 181

(attaching copy of Bd publication to anti-U memo distributed by E not violative as it was clearly attached to E's memo and also clearly identified as being prepared in the General Counsel's Office of the Board and no inordinate reference to attachment was contained in body of memo)

Lockwood, Kessler & Bartlett, Inc. A Subsidiary of Viatech, Inc. 251 NLRB No. 084

(campaign leaflets reproducing fact portions of Bd decisions involving U in order to show conduct U had engaged in, not interference, where E did not state or imply that such practices were supported by Bd or mischaracterize Bd law or principles, E's comments regarding case facts were accurate, and other statements merely advised Ees that voting against U would prevent their being involved in similar situations; whether Bd found described conduct violative or not violative is immaterial to question of whether conduct occurred or whether Ees could avoid being subjected to it)

Lockwood, Kessler & Bartlett, Inc. A Subsidiary of Viatech, Inc. 251 NLRB No. 084

(in case involving distribution of campaign leaflets containing fact portions of Bd decisions involving U, Bd held it is neither necessary nor appropriate

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to find that reproduction of incomplete Bd decisions obfuscates legal principles; to make such ruling would fashion a per se rule that any Bd document which is reproduced in part, for whatever reason and even if only reproduced portion is relevant, misuses Bd processes)

Pacific Motel Corp. d/b/a Best Western Motel (Hotel & Restaurant Employees, Local 162) **248 NLRB No. 179**
(E's distribution to Ees at meeting of sample ballot with writing *Vote No* on it and in large type statement *Your X in this square of the official ballot will mean that you do not want the union,* with an arrow pointing to the *No Box* of the ballot constituted interference)

2885-6000 Comments and instructions concerning election

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**
(E's campaign message concerning mechanics of voting in Bd election, not violative; permissable free speech)

2885-6023 Making available antiunion T-shirts

R. L. White Company, Inc. **262 NLRB No. 069**
(distributing T-shirts in each department in sufficient members so that each Ee could get one and encouraging Ees to wear pro E T-shirts violative)

The Tappan Company **254 NLRB No. 080**
(supervisor's making available to Ees anti-U T-shirts when he walked around with them on his arm while inspecting Ees' work held interference; neither supervisor's duty to inspect Ees' work nor his silent display of the shirts alleviated pressure place on Ees to disclose their preference)

2885-6025 Urging 'no' vote letters

Community Hospital, Inc. of East St. Louis **251 NLRB No. 149**
(E's letter on day of election urging *No* vote and stating failure to vote was automatic *yes* vote did not warrant setting aside election, notwithstanding elections determined by majority of Ees actually voting, since merely exhortation to vote absent evidence Ees refrained from voting as result of statement)

2885-6050 Posting or distribution of ballot marked 'no'

Pacific Motel Corp. d/b/a Best Western Motel (Hotel & Restaurant Employees, Local 162) **248 NLRB No. 179**
(E's distribution to Ees at meeting of sample ballot with writing *Vote No* on it and in large type statement *Your X in this square of the official ballot will mean that you do not want the union,* with an arrow pointing to the *No Box* of the ballot constituted interference)

2885-6062 Failure to post or delay in posting election notices

Earle Industries, Inc. **248 NLRB No. 011**
(E's failure to post election notice until 2 days prior to election found not violative where notice was posted beside time-clock which all Ees were required to use and 97 percent of Ees voted in election)

2885-7000 Defacing of election notice

National King Coal, Inc. **JD-(SF)-24-81**
(E who allowed official NLRB notice in which *X* had been placed in *no-box* to remain on bulletin board did not violate Act where E's agents did not cause *X* to be placed on sample and no evidence that it interfered restrained or coerced Ees)

2889 PROUNION CONDUCT OF SUPERVISORS

ITT Lighting Fixtures, Division of ITT Corporation **265 NLRB No. 188**
(election is not *per se* invalid merely because there was some pro-U activity on part of supervisor; instead, there must be a showing that supervisor's conduct reasonably tends to have such a coercive effect on Ees that it was likely to impair their freedom of choice in election; and pro-U supervisory conduct may reasonably tend to coerce Ees even where supervisors have made no threats of retaliation)

ITT Lighting Fixtures, Division of ITT Corporation **265 NLRB No. 188**
(Bd observed that ct's remand opn herein pointed out that, in absence of threats, determining whether pro-U supervisory conduct was coercive requires examination of (1) degree of supervisory authority, and (2) nature and openness of pro-U activity; as to (1), Bd read ct's opn as approving Bd's distinction between *major* and *minor* supervisory authority in assessing coercive effect of supervisors' U activities; such distinction is based on recognition that only *major* supervisors who can take or effectively recommend adverse action possess retaliatory potential sufficient to coerce Ees in U campaign)

ITT Lighting Fixtures, Division of ITT Corporation **265 NLRB No. 188**
(on ct remand for further findings on supervisory authority of group leaders and whether their pro-U activity could effectively affect Ees' votes, Bd viewed it as law of the case, and as proper statement of law, that group leader is major (as opposed to minor) supervisor, whose pro-U activity could affect Ees' free choice in election, only if group leader possesses authority to hire, fire, promote, or issue written warnings on his own volition, or has authority to recommend such action)

ITT Lighting Fixtures, Division of ITT Corporation **265 NLRB No. 188**
(pro-U activities of group leaders did not reasonably tend to coerce Ees and impair their freedom of choice so as to justify setting election aside, where there was no danger leaders could retaliate if so inclined, since no hiring, firing, promotions, or written reprimands were effected w/o independent investigation by foremen or personnel office; leaders' issuance of unrecorded oral warnings did not warrant finding that they had sufficient retaliatory potential to coerce Ees; and there was no evidence of any action taken to make any Ee fear possible retribution by leader for not supporting U)

ITT Lighting Fixtures, Division of ITT Corporation **265 NLRB No. 188**
(pro-U group leader's remarks at U meeting that those who do not vote for U should not complain to her about their problems afterwards because she did not want to hear them held not to indicate that leader could retaliate by refusing to resolve Ees' grievances if they voted against U; rather, statement simply expressed leader's position that she would have no sympathy for Ees who complained to her in future about being mistreated by E, but were unwilling to unionize; in any event, E failed to show that leader had any grievance adjustment authority)

Bally's Park Place, Inc. **265 NLRB No. 098**
(objection that supervisors coerced Ees under their supervision to vote for U properly rejected where, Bd found (1) alleged objectionable activity was limited to oral remarks made to or in presence of Ees; (2) remarks were not patently coercive, nor implied retaliation for voting against U, but appeared to express speakers' personal views about unionization; (3) supervisors who made remarks were low in supervisory hierarchy; (4) several statements were made in presence of other supervisors; and (5) one supervisor's remarks supportive of unionization were uttered in response of contrary remarks by another supervisor during discussion with Ees)

Quick Find Co. **259 NLRB No. 144**
(supervisor's participation held not interference where he applied no pressure on Ees to sign cards, he and Ees were discharged before election and such termination made clear that E did not favor U)

Marconi, Inc., d/b/a El Caballo **251 NLRB No. 069**
(pre-election threat made by pro-U supervisor, objectionable, where supervisor still occupied his supervisory position and at time of election was in position to thrust his pro-U sympathies onto Ees and to implement his threat)

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. **658 F.2d 934 (C.A. 2, Sept. 1981)**
(participation of supervisor in U election may in some circumstances so undermine Ees' freedom of choice as to warrant setting election aside; where supervisors actively encourage Ees to vote for U and E takes no known stance to the contrary, Ees might be led to believe that E favors U, and another effect of such conduct is possibility that it could coerce Ee into supporting U out of fear of future retaliation by U-oriented supervisor)

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. **658 F.2d 934 (C.A. 2, Sept. 1981)**
(election is not per se invalid merely because there was some pro-U activity on part of a supervisor; rather, there must be a showing that supervisor's conduct reasonably tended to have such a coercive effect on Ees that it was likely to impair their freedom of choice in election)

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. **658 F.2d 934 (C.A. 2, Sept. 1981)**
(in absence of threat by supervisor to use his supervisory powers in retaliation against Ee who disfavors U promoted by supervisor, Bd looks to two factors in determining whether pro-U supervisory conduct coerced Ees: (1) degree of supervisory authority, and (2) extent, nature, and openness of pro-U activity)

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. **658 F.2d 934 (C.A. 2, Sept. 1981)**
(determination of whether election was tainted by coercive effect of pro-U supervisory conduct is essentially a matter of drawing inferences, and agency's conclusions based upon such inferences should not be set aside by reviewing ct unless they transgress bounds of reason)

N.L.R.B. v. St. Mary's Home, Inc., t/a St. Mary's Infant Home **690 F.2d 1062 (C.A. 4, Sept. 1982)**
(where alleged coercive conduct by Ee, herein found supervisor, occurred 2 months before election as this extended time period between alleged coercive conduct and election itself is such that any assumption that such conduct prejudiced fairness of election was too tenuous to require hearing)

N.L.R.B. v. Welfed Catfish, Inc. **674 F.2d 1076 (C.A. 5, May 1982)**
(E is estopped from challenging election on ground that pro-U conduct of one of its supervisors influenced outcome of election where conduct occurred one month prior to election and E made no effort to communicate to Ees that it disavowed supervisor's conduct, though E did tell supervisor to

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stop such conduct and he complied and notwithstanding U knew about pro-U conduct and did nothing)

N.L.R.B. v. San Antonio Portland Cement Company **611 F.2d 1148 (C.A. 5, 1980)**
(not just any advocacy of U by supervisor rises to level of supervisory pressure or coercion; mere statement of personal preference by supervisor is not coercive; no supervisory taint so long as nothing in words, deeds, or atmosphere of supervisor's request for authorization cards contain seeds of potential reprisal, punishment, or intimidation)

N.L.R.B. v. San Antonio Portland Cement Company **611 F.2d 1148 (C.A. 5, 1980)**
(no supervisory coercion where one supervisor wore U button at U meeting on eve of election)

N.L.R.B. v. Biomedical Resources Corporation of Northern California **624 F.2d 192(T) (C.A. 9, 1980)**
(where 2 supervisors signed U authorization cards and voted, subject to challenge, in election, this is not sufficient misconduct to warrant setting aside election; their activity was minor and they did not threaten or coerce other Ees to vote for U)

2891 COUNTERACTING UNION'S CAMPAIGN

Bryor Corporation **261 NLRB No. 169**
(case remanded for purpose of hearing to determine merits of E's contention that notice posted for 2 days, 5 weeks before election, urging Ees to report any pressure to join U which E would stop immediately, was not objectionable conduct having coercive effect on election)

2893 ASSISTANCE, SUPPORT OR DOMINATION OF LABOR ORGANIZATION

Halo Lighting Division of McGraw Edison Company **259 NLRB No. 086**
(objections to election on ground that E utilized plant bulletin boards to display incumbent U's literature, met individually and collectively with U's representatives and with captive groups of Ees during working hours, and distributed letters and pamphlets threatening loss of jobs and benefits if Ees were no longer represented by incumbent U, overruled, since favoritism to incumbent U was not established; E did not engage in objectionable conduct by meeting with Ees for campaign purposes on working time, and accuracy of facts and figures published in E's letters and pamphlets was not refuted)

Yolox Mold & Die Co., Inc. **256 NLRB No. 006**
(hiring Ees who were for incumbent U to assist incumbent and defeat petitioner in Bd election violated Act and interfered with election)

2897 GIFTS AND OTHER INDUCEMENTS OF VALUE

Don Pizzolato, Inc. **249 NLRB No. 136**
(E who purchased lunch for Ee prior to election violated Act where meals not ordinarily provided and no compelling need to provide meal existed)

2897-2500 Cocktail parties, dinners, etc.

N.L.R.B. v. Dolchamps, Inc. **653 F.2d 225 (C.A. 5, Aug 1981)**
(while E may exclude U supporters from meetings during working hours at which E expressed its opposition to U, and E's conduct in providing free meals to Ees during nonworking hours at campaign meetings does not *per se* constitute interference with election, combination of those 2 tactics, to which is added payment of wages to some, but not all, of its Ees for attendance at meetings during their scheduled off-hours constitutes violation of Act)

2897-7500 Contests

Stride Rite Corporation **264 NLRB No. 029**
(pre-election contest in which Ees answered questions based on E's campaign literature about election issues with 2 prizes having combined value of less than $450 held not interference where prizes were not so great as to divert attention of Ees away from election and its purpose; nor were prizes so substantial as to inherently induce eligible voters to support E's position)

2897-9900 Other

R. L. White Company, Inc. **262 NLRB No. 069**
(although manner of E's distribution of pro-E T-shirts was violative, T-shirts themselves are not unlawful grant of benefit but merely distribution of inexpensive pieces of campaign propaganda)

B. E. & K., Inc. **252 NLRB No. 006**
(E's conduct in having Ees meet at polling area on plant premises, and assertedly making them wait before allowing them to vote, not interference, where E had Ees meet before polls opened)

Maywood, Inc. **251 NLRB No. 139**
(supervisor's telling Ee that she might be relieved of onerous assignment imposed on her if she revoked her signature on U authorization card and ceased associating with U advocates, held interference)

4200 CONDUCT OF LABOR ORGANIZATION

4201 GENERALLY

Connecticut Foundry Company **247 NLRB No. 145**
(fact that Ee serves as U observer at election or is prominent in organizing campaign does not make him U official and Bd is reluctant to set aside election due to conduct of such Ee)

Aero Warehouse, Inc. **JD-(NY)-48-81**
(objections to election overruled where objectionable conduct was not attributable or imputed to U; objectinable conduct did not meet standards articulated by Bd in *Hollywood Ceramics Company, Inc.* 140 NLRB 221 (1962); as E had sufficient time to reply)

Spring City Knitting Company v. N.L.R.B. **647 F.2d 1011 (C.A. 9, June 1981)**
(objecting party who claims that campaign tactics in election were so coercive as to require overturning election faces heavy burden; question is whether coercive conduct so influenced potential voters that free choice by Ees was impossible)

4214 VERBAL PROMISES

National Duct Corporation **265 NLRB No. 050**
(U promising Ees journeymen work permits if Ees supported U in election did not warrant setting aside election, since permits part of system which would only operate if U became bargaining representative and thus not objectionable conduct to inform Ees that such a system would be instituted if they supported U)

National Duct Corporation **265 NLRB No. 050**
(U informing Ee he would have to go to school before receiving journeyman work permit, under U's system to be instituted if U won election where as another Ee was promised permit w/o having to go to school, did not warrant setting aside election, absent evidence Ee who was informed he would be required to attend school was opposed to U)

Revco D.S., Inc. and/or White Cross Stores, Inc., No. 14 v. N.L.R.B. **653 F.2d 264 (C.A. 6, July 1981)**
(U agents' statement that U could obtain agreement by certain date not interference, since statements did not promise tangible benefits, or misrepresent existing material facts and E was not precluded from making effective reply)

N.L.R.B. v. Allen's I.G.A. Foodliner **633 F.2d 217(T) (C.A. 6, 1980)**
(U's promise to Ees of benefits they would receive if elected, not unlawful)

4228 VERBAL THREATS

National Duct Corporation **265 NLRB No. 050**
(*U representative informing Ee If you don't play game my way, you don't play at all and Go ahead and vote no because we don't need you did not warrant setting election aside since no threat of bodily harm or of affect on Ee's working conditions*)

National Duct Corporation **265 NLRB No. 050**
(U promising Ees journeymen work permits if Ees supported U in election did not warrant setting aside election, since permits part of system which would only operate if U became bargaining representative and thus not objectionable conduct to inform Ees that such a system would be instituted if they supported U)

National Duct Corporation **265 NLRB No. 050**
(U informing Ee he would have to go to school before receiving journeyman work permit, under U's system to be instituted if U won election where as another Ee was promised permit w/o having to go to school, did not warrant setting aside election, absent evidence Ee who was informed he would be required to attend school was opposed to U)

North Electric Company, Plant No. 16, Gray, Tennessee **263 NLRB No. 174**
(pursuant to ct remand requiring Bd to determine whether E's objections to election, when viewed with documentary evidence in record, require a hearing, Bd held alleged objectionable conduct, consisting of pre-election threats of property damage or destruction made telephonically by various callers to Ees who had worn *Vote No* buttons, was not attributable to U nor of such character as to result in atmosphere of fear and coercion and did not reveal evidence of substantial and material factual issues which would require a hearing)

Gensley Industries, Inc. **260 NLRB No. 189**
(objection that U representative told Ee that he had heard that Ee would be fired if she did not vote in election, overruled, as statement purported to convey rumor as to matter not w/i control of U, and whose coercive reach related to participation in election, rather than manner in which Ee voted)

4228—Cont.

Local 300, Cosmetic and Novelties Workers' Union, Affiliated With International Production Service and Sales Employees Union **257 NLRB No. 174**
(threat to Ees, some of whom were illegal aliens, by U agent, interpreter, that Ees would be deported if they did not vote for U held violative and warranted setting aside election)

Interstate Cigar Co., Inc. and L. S. Amster Co., Inc. **256 NLRB No. 082**
(conduct of non-Ee pickets, after ptn filed, of photographing Ees and vehicles entering and leaving E's plant, of recofding license numbers of those vehicles, not violative nor objectionable, since actions were isolated and carried out by persons unknown; in instant case there was lack of credible evidence that Ees were threatened nor did U elicit strike by E's Ees but set up picket line for organizational purposes)

United Broadcasting Company of New York, Inc. **248 NLRB No. 068**
(U's threats to blacklist Ee if he failed to support U warranted setting aside of election, notwithstanding contention no effect on election where Ee threatened failed to vote, and as to other Ees aware of threat, one was ineligible and other cast undeterminative challenged ballot; since *whether conduct warrants setting aside of election does not turn on election results, but rather on its likelihood to coerce prospective voters to cast their votes in particular manner*, nor were threats unobjectionable because directed at one individual since could reasonably be expected to be repeated)

Valley Rock Products, Inc. **JD-(SF)-285-79**
(U representative's unprovoked threats and assaults on E's president and vice-president in bar only six days before election warranted setting aside election where witnessed by some Ees and became widely known to other Ees thus creating climate of tension and coercion)

N.L.R.B. v. Granite State Minerals, Inc. **674 F.2d 101 (C.A. 1, Mar. 1982)**
(Bd's investigation inadequate where Ee alleged threats by U which were corroborated but when asked for further details indicated he had smartened up and would say no more, Bd merely asked Ee if he had been threatened and U if it had threatened Ee; RD's conclusion based on ground that no evidence U had made threat improper, since *where coercion threatening freedom of election is at issue, it does not matter whether coercive acts are shown to be attributable to U itself*)

N.L.R.B. v. Columbus Hi, Inc., d/b/a Columbus Hilton Inn **652 F.2d 614 (C.A. 6, Feb 1981)**
(no merit in E's contention that alleged threat to educable mentally retarded Ee should be subject to stricter scrutiny than other preelection conduct)

Episcopal Homes Foundation dba Los Gatos Meadows, a California non-profit corporation v. N.L.R.B. **644 F.2d 888(T) (C.A. 9, Mar 5, 1981)**
(no hearing required of E's objections where E failed to make prima facie showing of U involvement in alleged threats or vandalism or that conduct actually affected any votes)

N.L.R.B. v. Masonic Homes of California, Inc. **624 F.2d 88 (C.A. 9, July 1980)**
(questions of harassment of Ee when soliciting her vote and expression of fear of reprisals from U remanded to Bd to determine whether such coercive conduct made impossible free expression of choice)

4235 VIOLENCE

Sub-Zero Freezer Company, Inc. **268 NLRB No. 194**
(damage to 4 autos in E's parking lot during U campaign not conduct interfereing with Ees' election choice, since damage was similar in nature and extent to vandalism which occurred in E's parking lot prior to advent of U campaign)

Valley Rock Products, Inc. **JD-(SF)-285-79**
(U representative's unprovoked threats and assaults on E's president and vice-president in bar only six days before election warranted setting aside election where witnessed by some Ees and became widely known to other Ees thus creating climate of tension and coercion)

Episcopal Homes Foundation dba Los Gatos Meadows, a California non-profit corporation v. N.L.R.B. **644 F.2d 888(T) (C.A. 9, Mar 5, 1981)**
(no hearing required of E's objections where E failed to make prima facie showing of U involvement in alleged threats or vandalism or that conduct actually affected any votes)

4242 ADDRESSING OR INTERVIEWING EMPLOYEES

Rolligon Corporation **254 NLRB No. 004**
(Bd held there was insufficent evidence to support E's objection to election on ground that U agent's statments in presence of Ees left impression that he was acting as Bd agent in distributing Bd subpenas to Ees, since ALJ made no credibility rulings regarding agent's and E's testimony, and objecting party has burden of establishing objectionable conduct)

Rolligon Corporation **254 NLRB No. 004**
(U agent's meeting with Ees at Bd's offices after close of R hearing, assertedly conveying impression that Bd favored U held not interference, where agent requested Ees, who had witenessed alleged assault on him, to meet with him to discuss the incident)

4242-2000 Conversing with employees in immediate vicinity of polling area

The Nestle Company **248 NLRB No. 106**
(U observer talking to several Ees in polling room not objectionable when alleged objectionable conduct occurred 10 minutes prior to opening of polls and any other talking by observer was not *sustained* conversations with prospective voters waiting to vote

N.L.R.B. v. Silverman's Men's Wear, Inc. **656 F.2d 53 (C.A. 3, 1981)**
(campaigning among Ees in Ee cafeteria just prior to election which was to be held in recreation room is not conduct which would interfere with election choice)

N.L.R.B. v. Silverman's Men's Wear, Inc. **656 F.2d 53 (C.A. 3, 1981)**
(U adherent who stood near line of voters staring at them and telling them when it was their turn to vote did not interfere with election choice)

Midwest Stock Exchange, Inc.; et al. v. N.L.R.B. **620 F.2d 629 (C.A. 7, 1980)**
(Bd finding of no interference in U observer's conversation with voters at polling place during election misapplied Bd's Milchem decision, since 5-minute converation herein was considered by Bd sufficient under Milchem to void election, regardless of conversation's substance and effect; Bd predicated its decision upon context of observer's conversation and ignored last minute distraction of voters as well as *appearance of electioneering* that might result from prolonged converation, and fact that, as in Milchem, conversation was not *one-to-one*)

South Pacific Furniture, Inc. v. N.L.R.B. **627 NLRB No. 173 (C.A. 9, 1980)**
(U observer's statement *come on and vote, exercise your power* said to Ees in room adjacent to balloting area, not objectionable and not *electioneering*, since statement was not one that can be said to have inhibited Ees' free choice in selecting their representative)

N.L.R.B. v. Single Manufacturing Company **686 F.2d 788 (C.A. 1, 1981)**
(ct held that substantial evidence on record supported Bd finding that Ee who was recently discharged and subject of ULP charge did not interfere with free choice of Ees in representation election where Ee did not represent U when he engaged in conversations with voters waiting to cast ballots nor was his presence at polls coercive, disruptive, or so aggravated that free expression of choice was impossible since as Ee he had right to be present and to vote in election)

4263 PHOTOGRAPHING

Interstate Cigar Co., Inc. and L. S. Amster Co., Inc. **256 NLRB No. 082**
(conduct of non-Ee pickets, after ptn filed, of photographing Ees and vehicles entering and leaving E's plant, of recording license numbers of those vehicles, not violative nor objectionable, since actions were isolated and carried out by persons unknown; in instant case there was lack of credible evidence that Ees were threatened nor did U elicit strike by E's Ees but set up picket line for organizational purposes)

4270 PRE-ELECTION PROPAGANDA

Rolligon Corporation **254 NLRB No. 004**
(U's ill-considered decision to subpena one-half of unit Ees held not interference, since it did not reasonably create impression that Bd favored U or was in league with it, where U distributed subpoenas w/o making any statements or engaging in any other conduct that might have misled Ees; E had sufficient time to set record straight and correct any misunderstanding, and if it believed en masse subpenaing was merely device to harass it, it could have brought matter to RD's attention for appropriate relief; *Earringhouse Imports*, 227 NLRB 1107, dist'g'd)

4270-0100 Generally

Sub-Zero Freezer Company, Inc. **268 NLRB No. 194**
(Bd will no longer probe into truthfulness or falsity of campaign statements or set elections aside on basis of alleged misleading campaign statements; See *Marine Midland Life Insurance Company*, 263 NLRB No. 24 (1982))

Jacksonville Warehouse Company **264 NLRB No. 084**
(Bd will no longer probe into truth or falsity of parties' campaign statements and elections will no longer be set aside on basis of misleading campaign statements)

Midland National Life Insurance Company **263 NLRB No. 024**
(Bd will no longer probe into truth or falsity of parties' campaign statements, and will not set elections aside on basis of misleading campaign statements; Bd will, however, intervene in cases where party has used forged documents which render voters unable to recognize propaganda for what it is; thus, Bd will set election aside not because of substance of representation, but because

4270-0100—Cont.

of deceptive manner in which it was made (overruling *General Knit* and *Hollywood Ceramics* and returning to rule in *Shopping Kart*))

N.L.R.B. v. Allis-Chalmers Corporation 642 F.2d 766 (C.A. 5, Apr. 1981)
(E not required to comply with collective bargaining terms of Bd's Supplemental Order in view of fact that U's material misstatement concerning Bd's adjudicatory process, prior to election in instant case, nullified the certification by election because E/U statements vitiated election by not clearing up impression left by U's material misrepresentation (claim that E found guilty of ULPs when in fact only hearing before ALJ was scheduled))

N.L.R.B. v. Calco-Imports-Exports, Inc. d/b/a Calco-Hawaiian Mfg. 621 F.2d 1029 (C.A. 9, 1980)
(where U mailed Ees letter containing misstatements 8 days prior to election and clarified its misstatements in second letter Bd's finding of no violation upheld where E made no effort to clarify mistake supplied no evidence to show any Ee vote was affected and made no effort to ask for evidentiary hearing)

Bokum Resources Corporation v. N.L.R.B. 655 F.2d 1021 (C.A. 10, 1981)
(no affirmative duty to disclose all facts in campaign propoganda)

4270-3300 Marked ballots and election notices

Gleason Plant Security, Inc. 262 NLRB No. 125
(U's reproduction and distribution to Ees of Bd's sample ballot and voting instructions with addition of words *Vote Yes Federation* and arrow pointing to *yes* box which had in it warranted setting aside election, since ballot was exact reproduction of Bd's sample ballot and gave no indication that U was responsible for alterations)

Armstrong Cork Company 150 NLRB No. 147
(*altered sample ballot* distributed by E to Ees on day and evening before election, held objectionable, since E's use of *altered Bd ballot* created impression that Bd had allied itself with E's (anti-U) campaign)

Hall-Brooke Hospital, a division of Hall-Brooke Foundation, Inc. 645 F.2d 158 (C.A. 2, Mar 31, 1981)
(U's preelection mailing of leaflets containing reproduction of Bd's official election notice entitled *Rights of Employees* and also questions and answers favorable to U was properly held not interference, where Bd relied on fact that document merely set out Bd's legal duties and certain ULPs; it was unaltered, contained no U propoganda, and stated that Bd endorsed neither party; U material was clearly identifiable as U's campaign material; and preelection posting of complete Bd notice let Ees know it was part of overall government document and not endorsement of either party)

Hall-Brooke Hospital, a division of Hall-Brooke Foundation, Inc. 645 F.2d 158 (C.A. 2, Mar 31, 1981)
(in agreeing with Bd's decision that U's preelection mailing of leaflets containing reproduction of portion of Bd's election notice was not interference, ct held Bd precedent did not significantly broaden restrictions against use of Bd documents in campaign materials or indicate Bd departure from determining in each case whether use of Bd documents would reasonably suggest Bd's enforcement of particular party, and *ambiguity* created by use of Bd materials does not require setting election aside where comments added to Bd documents are clearly separated and attributable to one party)

N.L.R.B. v. Foxigee Company, Inc. 574 F.2d 529 (C.A. 6, Mar. 1982)
(E not entitled to evidentiary hearing on election objections where, assuming U's observer did deface posted sample ballot, as contended, by marking *yes* column, it is not clear that E would have grounds for relief absent evidence that U authorized or condoned misconduct, and no evidence was furnished that defacement affected fairness of election)

N.L.R.B. v. Masonic Homes of California, Inc. 624 F.2d 98 (C.A. 9, July 1980)
(Bd was w/i its discretion in rejecting E's contention that sample ballots on company wall which were marked with vote for U, gave impression that Bd favored it)

4270-4000 Change in working conditions

Gourley Industries, Inc. 260 NLRB No. 189
(objection that U representative told Ee that he had heard that Ee would be fired if she did not vote in election, overruled, as statement purported to convey rumor as to matter not w/i control of U, and whose coercive reach related to participation in election, rather than manner in which Ee voted)

Vitek Electronics, Inc. v. N.L.R.B. 653 F.2d 785 (C.A. 3, June 1981)
(U's preelection handbill asserting that before it arrived on scene at E's plant few safety precautions were taken to protect Ees from carbon monoxide fumes as result of which Ees got sick and lost pay held to have had significant impact in U campaign, since handbill conveyed impression that E's plant was generally unsafe and Ees had choice between ruining their health or earning their pay, and that U's appearance created present, more healthful climate at E's plant, which well may have amounted to significant distortion of truth)

N.L.R.B. v. Allen's I.G.A. Foodliner 620 F.2d 217(1) (C.A. 6, 1980)
(U's promises to Ees of benefits they would receive if elected, not unlawful)

Crown Cork & Seal Company, Inc. v. N.L.R.B. 659 F.2d 127 (C.A. 10, Sept. 1981)
(U's truthful campaign promise that it would enforce contract provision that would be applicable to them through master contract E had with U at its other plants, not conduct interfering with election choice as it is not analogus to E's promise of benefits showing its power but rather culmination of prior bargaining with E)

4270-5000 Appeals to racial, sexual or religious prejudice

N.L.R.B. v. Silverman's Men's Wear, Inc. 656 F.2d 53 (C.A. 3, 1981)
(effective appeal to religious prejudice prima facie warrants setting election aside, and here where U officer allegedly made speech containing such slur prior to election, hearing warranted to determine whether remark was made and to what extent it affected election)

N.L.R.B. v. Metro-Truck Body, Inc. 613 F.2d 746 (C.A. 9) (1980)
(contention by E, in objecting to election, that U had created racially inflamatory atmosphere precluding fair election, rejected, where E failed to *supply prima facie evidence presenting substantial and material factual issues which would warrant setting aside election*)

4270-6700 Misrepresentation concerning material issues

Wells Fargo Guard Services, A Division of Baker Protective Services, Inc. v. N.L.R.B. 659 F.2d 363 (C.A. 3, Sep. 1981)
(determination of truth of party's allegation in objecting to conduct of election requires evidentiary hearing, since allegation that past president did not remove himself from operation of U, if true, would lead to setting election aside)

Vitek Electronics, Inc. v. N.L.R.B. 653 F.2d 785,(C.A. 3, June 1981)
(RD improperly overruled E's objection to election based on U handbill's alleged misrepresentation regarding cost of living adjustment U negotiated at Es' other unionized plants; RD could not properly determine on basis of his investigation that Ees would adopt interpretation other than that of E; and because of significance of alleged discrepancy between truth and falsity of U's misrepresentation, and ct's skepticism that item would be interpreted as other than a misrepresentation, RD should have afforded E a hearing in which to challenge RD's assumption that handbill would be interpreted by Ees consistently with truth)

Advertisers Manufacturing Company v. N.L.R.B. 677 F.2d 544 (C.A. 7, Apr. 1982)
(U's statements to Ees that *U could be voted out just as easily as it was voted in* did not amount to misrepresentation; fact that U did not say *when* a decertification election could be conducted did not convert true statement into a misrepresentation)

4270-6701 Generally

Sub-Zero Freezer Company, Inc. 265 NLRB No. 194
(Bd will no longer probe into truthfulness or falsity of campaign statements or set elections aside on basis of alleged misleading campaign statements; See *Marine Midland Life Insurance Company*, 263 NLRB No. 24 (1982))

Van Dorn Plastic Machinery Co., Division of Van Dorn Company 265 NLRB No. 036
(where Bd issued *General Knit* decision while this case was pending before ALJ, ALJ based his decisions on *General Knit* standard for misrepresentation; Bd, however, returned to *Shopping Kart* standard after ALJ's decisions had issued, and since Bd would no longer analyze truth of campaign statement and set aside elections on basis of misleading statements, it found U's campaign material not objectionable)

Harry Lunstead Designs, Inc. 265 NLRB No. 110
(in *Midland*, 263 NLRB No. 24, Bd returned to *Shopping Kart*, 228 NLRB 1311, principles and will *no longer probe into truth or falsity of parties' campaign statements* but under *Midland* Bd will continue to *intervene in cases where party has used forged documents which render voters unable to recognize propaganda for what it is* or alterations of Bd document which indicate Bd endorsement of U or E)

Radisson Muehlebach Hotel 265 NLRB No. 091
(allegation alleging nothing more than misrepresentations of fact were overruled as Bd will no longer probe into truth or falsity of parties' campaign statements which do not involve use of documents which render voters unable to recognize propaganda or altered Bd document indicating Bd endorsement of party)

Midland National Life Insurance Company 263 NLRB No. 024
(Bd will no longer probe into truth or falsity of parties' campaign statements, and will not set elections aside on basis of misleading campaign statements; Bd will, however, intervene in cases where party has used forged documents

4270-6701—Cont.

which render voters unable to recognize propaganda for what it is; thus, Bd will set election aside not because of substance of representation, but because of deceptive manner in which it was made (overruling *General Knit* and *Hollywood Ceramics* and returning to rule in *Shopping Kart*))

PPG Industries, Inc., Lexington Plant, Fiber Glass Division 258 NLRB No. 107
(alleged preelection misrepresentations by U held not sufficient to warrant setting aside election whether considered either under Shopping Kart standard pertaining to statements recognizable as propaganda, prevailing at time of Bd's overruling of objections herein but subsequently overruled, or under more stringent and presently applicable standard of Hollywood Ceramics pertaining to substantial and material misrepresentation of fact)

N.L.R.B. v. Nixon Gear, Inc. 649 F.2d 906 (C.A. 2, May 1981)
(while not every misrepresentation in course of election campaign requires setting aside of election since a certain degree of inaccuracy and ambiguity is recognized as indigenous to campaign propoganda which may be left to common sense appraisal of voters, Bd does not hesitate to set aside election where misrepresentation arises under circumstances which effectively precludes voter from ascertaining its falsity)

Vitek Electronics, Inc. v. N.L.R.B. 653 F.2d 785 (C.A. 3, June 1981)
(In assessing campaign rhetoric, Bd tolerates a degree of hyperfole; intemperance and inaccuracy, and an election will only be set aside when there has been a substantial departure from truth that may reasonably be expected to have a significant impact on the election)

Vitek Electronics, Inc. v. N.L.R.B. 653 F.2d 785 (C.A. 3, June 1981)
(inaccuracy alone in U's preelection statements does not raise substantial and material factual issues entitling E to hearing, since there are situations that render misrepresentation immaterial, such as, where Ees possess special independent knowledge or sophistication which enables them to evaluate statements critically; where Ees have no reason to believe that author of statements has any special knowledge on which they can rely; where E had adequate opportunity to set record straight; or where inaccuracy is too minor or insignificant to affect voters' choice)

N.L.R.B. v. Pinkerton's, Inc. 621 F.2d 1322 (C.A. 6, June 1980)
(U not required to give more information which would make statements unmistakably clear where statements literally true but may have been taken out of context)

J.F. Hink & Son v. N.L.R.B. 654 F.2d 729(T) (C.A. 9, July 1981)
(Bd conducted election will be overturned because of misrepresentation only if (1) misrepresentation is material and comes from one who appears to have special knowledge of matter (2) opposing party has not had opportunity to reply and (3) resulting distorted presentation significantly imperiled election. Burden of proof is on party making allegation)

N.L.R.B. v. Biomedical Resources Corporation of Northern California 624 F.2d 192(T) (C.A. 9, 1980)
(election will be invalidated only if material fact has been misrepresented, opponent has no opportunity to reply and election process is impaired)

4270-6705 Union dues and initiation fees

Sherry Loveland Designs, Inc. 265 NLRB No. 110
(objection that U's statements that its only sources of financial support were dues, initiation fees, and voluntary offerings and that constitution and bylaws do not provide for fines or assessments was overruled under *Midland* 263 NLRB No. 24, as Bd will no longer probe into truth or falsity of campaign statements)

Sherry Loveland Designs, Inc. 265 NLRB No. 110
(objection that U made material misrepresentation of fact by stating, *No dues are paid to U during unemployment or time off due to illness or injury* was overruled, under *Midland*, as Bd will no longer probe into truth or falsity of campaign statements)

Bolner, Inc. d/b/a San Jose Care and Guidance Center 263 NLRB No. 183
(on ct remand ALJ found that Ee organizer for U had not, as alleged, made statement that initiation fees of Ees who signed U authorization cards would be waived, where one Ee who had made the allegation admitted that she knew that Ee organizer was not agent for U and that U official had told her that the alleged statement was not true, and the other Ee who had made the allegation was not credible witness)

United Sanitation Services, Division of Sanitas Service Corp. 262 NLRB No. 173
(E's contention in objection to election that U made material misrepresentations by telling Ees that dues could be as little as Ees wanted them to be when, in fact, U's constitution required that they be minimum of $11 per month, rejected since evidence concerning what representations were made to Ees by U was extremely vague; furthermore, E did not substantiate its claim that U's constitution required that dues be minimum of $11 per month; in any event, E addressed this issue when it deducted $10 from Ees' paychecks in order to demonstrate to them effect of U dues on amount of check)

Masonic Homes of California, Inc. 258 NLRB No. 006
(U's letter to Ees which sets forth lawful fee waiver policy and distributed four months after alleged unlawful promise to waive fees clarified U's waiver policy)

N.L.R.B. v. Whitney Museum of American Art 636 F.2d 19 (C.A. 2, 1980)
(U's offers of waiver of initiation fees and organizing charges and of allegedly lower-than-usual dues structure, not such material misrepresentation of its constitituion and bylaws as to require new election; and, moreover, even if they constituted misrepresentations, E had opportunity to respond, and did in fact respond)

N.L.R.B. v. Polyflex M Company 622 F.2d 128 (C.A. 5, 1980)
(case remanded to Bd for evidentiary hearing where Ee affidavit raised substantial and material issue that would warrant setting aside election by presenting prima facie case that U representatives made statements which were subject to reasonable interpretation by Ees that they could avoid initiation fees by joining U prior to election)

N.L.R.B. v. Claxton Manufacturing Company, Inc. 613 F.2d 1364 (C.A. 5) (1980)
(it is permissible for U to waive initiation fees for or to confer any other benefit upon those who join before representation election only if it does same for those who join after election)

Tanforan Park Food Purveyors Council and the Hapsmith Company v. N.L.R.B 656 F.2d 1358 (C.A. 9, 1981)
(U's statement that contract must be ratified by members before it is adopted and that dues would be delayed until 31 days after members approved contract, did not warrant setting aside election, since statements referred to U members' ability to ratify contract and defer fees for a month, privileges and benefits not conditioned on joining U prior to election nor were same rights denied to other Ees)

4270-6706 Employees capable of evaluation

Aventura Country Club d/b/a Turnberry Isle Country Club 263 NLRB No. 051
(U's campaign literature which contained information about benefits which would be extended to Ees' families in *future* did not warrant setting aside election where this statement amounted to no more than typical campaign promise, amenable to Ee evaluation and E response)

Melrose-Wakefield Hospital Association, Inc. v. N.L.R.B. 615 F.2d 563 (C.A. 1) (1980)
(*Monmouth Medical Center* distinguished in that U's impairment of Bd's neutrality was more substantial and pervasive than that caused by U leaflet in instant case where leaflet did not claim E had been judged of any violation, and overstatements amounted only to layman's rendition which was unlikely to substantially mislead voters as to status of Bd's action)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. 649 F.2d 589 (C.A. 8, May 1981)
(In assessing preelection campaign statements, concerning other plants in instant case, for both Es and Us, Bd does not ordinarily *police or censor* propoganda used in elections it conducts, but rather leaves to the good sense of voters the appraisal of such matters, and to opposing parties task of correcting inaccuracies and unlawful statements and only if there has been material misrepresentation which involves substantial departure from truth at time other party cannot reply and has *real* impact on election will it be set aside)

El Monte Tool and Die Casting, Inc. v. N.L.R.B. 633 F.2d 160 (C.A. 9, 1980)
(statements concerning company's health plan and wage practices contained in pamphlets distributed 1 and 2 days prior to election which Ee affidavits stated were incorrect held *typical campaign propaganda* not materially affecting outcome of election; moreover, such topics are w/i Ee knowledge and capable of their independent evaluation)

4270-6715 De minimis effect; no real impact on election

Revco D.S., Inc. and/or White Cross Stores, Inc., No. 14 v. N.L.R.B. 653 F.2d 264 (C.A. 6, July 1981)
(allegation that U promised $50 per week in strike benefits should strike occur found unsupported by evidence, but assuming allegation was true, statement did not constitute interference as it did not affect how Ees voted, and E was not precluded from making effective reply)

N.L.R.B. v. Biomedical Resources Corporation of Northern California 624 F.2d 192(T) (C.A. 9, 1980)

4270-6720 False wage data - employer's plant

4270-6720—Cont.

Purnell's Pride, Inc. 265 NLRB No. 146
(U misrepresenting E's method of wage increases and decreases, did not warrant setting aside election)

Advertisers Manufacturing Company v. N.L.R.B. 677 F.2d 544 (C.A. 7, Apr. 1982)
(U letters containing alleged misrepresentations about wage increases sent to E three weeks before election cannot be basis for overturning election where period of three weeks afforded E adequate time for rebuttal)

El Monte Tool and Die Casting, Inc. v. N.L.R.B. 633 F.2d 160 (C.A. 9, 1980)
(statements concerning company's health plan and wage practices contained in pamphlets distributed 1 and 2 days prior to election which Ee affidavits stated were incorrect held *typical campaign propaganda* not materially affecting outcome of election; moreover, such topics are w/i Ee knowledge and capable of their independent evaluation)

Crown Cork & Seal Company, Inc. v. N.L.R.B. 659 F.2d 127 (C.A. 10, Sept. 1981)
(campaign poster posted by U which set forth higher wages Ees could expect to earn if U were chosen did not materially misrepresent facts where it was true statement of effect of cost of living wages which would be applicable to them under master contract if they chose U; furthermore, E only presented unsupported statements to back up its objection)

4270-6725 Administration and operation of union

Harry Lunstead Designs, Inc. 265 NLRB No. 110
(objection that portion's of U's leaflet distorted realities of U affairs and neglected to inform Ees about dissolution, expulsion, or administrationship powers of U, was overruled under *Midland,* 263 NLRB No. 24, as Bd will no longer probe into truth or falsity of campaign statements)

4270-6730 Hospitalization or other insurance benefits

United Sanitation Services, Division of Sanitas Service Corp. 262 NLRB No. 173
(E's contention in objection to election that U made material misrepresentationby telling Ees that they would have option of requiring E to pay entire amount for insurance coverage, rejected since statement did not exceed bounds of privileged campaign propaganda)

El Monte Tool and Die Casting, Inc. v. N.L.R.B. 633 F.2d 160 (C.A. 9, 1980)
(statements concerning company's health plan and wage practices contained in pamphlets distributed 1 and 2 days prior to election which Ee affidavits stated were incorrect held *typical campaign propaganda* not materially affecting outcome of election; moreover, such topics are w/i Ee knowledge and capable of their independent evaluation)

4270-6740 False wage data - employer's other plants

Purnell's Pride, Inc. 265 NLRB No. 146
(U misrepresenting E's method of wage increases and decreases, did not warrant setting aside election)

The Standard Register Company v. N.L.R.B. 649 F.2d 412 (C.A. 6, May 1981)
(Bd did not abuse its discretion when it determined that misrepresentation concerning wage differentials at E's plants was not material under *Hollywood Ceramics* test and did not affect election result)

N.L.R.B. v. Van Gorp Corporation 615 F.2d 759 (C.A. 8) (1980)
(U official's informing unit Ees on night before election that U's contract with E's owner at another plant allowed twelve cents per quarter for cost of living adjustment (COLA) warranted setting aside election, since in fact the contract provided only twelve cents per year and COLA was important issue in the campaign, and U's last minute misrepresentation was accompanied by U supporters' threatening three Ees opposed to U and assaulting a fourth)

4270-6780 Timing, opportunity to rebut

Mosey Manufacturing Company, Inc. 258 NLRB No. 077

Aventura Country Club d/b/a Turnberry Isle Country Club 253 NLRB No. 051
(U's campaign literature which contained information about benefits which would be extended to Ees' families in *future* did not warrant setting aside election where this statement amounted to no more than typical campaign promise, amenable to Ee evaluation and E response)

N.L.R.B. v. Nixon Gear, Inc. 649 F.2d 906 (C.A. 2, May 1981)
(Bd improperly refused to order hearing on E's objection to election on ground it did not have reasonable opportunity to reply to U's misrepresentation that E had bribed pro-U Ee to campaign against U, where it was unlikely that E, who first learned of misrepresentation on day before election, could have adequately replied and contacted all voters; Ees could reasonably have expected U's charge was directly based on testimony of bribed Ee but could not independently investigate charge's truthfulness since Ee was not identified; and false charge might well have influenced Ees and, thus, election)

Jamesway Corporation v. N.L.R.B. 676 F.2d 63 (C.A. 3, Mar. 1982)
(ct set aside election where U's handbill circulated on eve and same morning of election, although truthful on its face, misrepresented the effect on recently hired Ees of voting down U since handbill was offered w/o time for rebuttal by E and the demonstrated impact on so close an election; moreover, E could not lawfully promise job security in writing on eve of election as requested by U in handbill)

Vicksburg Hospital, Inc. v. N.L.R.B. 653 F.2d 1070 (C.A. 5, Aug 1981)
(U's misrepresentation of nature of ULP and economic strikes did not warrant setting aside election where E had ample opportunity to, and did on several occasions, reply to U's misrepresentations)

Revco D.S., Inc. and/or White Cross Stores, Inc., No. 14 v. N.L.R.B. 653 F.2d 264 (C.A. 6, July 1981)
(U agents' statement that U could obtain agreement by certain date not interference, since statements did not promise tangible benefits, or misrepresent existing material facts and E was not precluded from making effective reply)

Revco D.S., Inc. and/or White Cross Stores, Inc., No. 14 v. N.L.R.B. 653 F.2d 264 (C.A. 6, July 1981)
(allegation that U promised $50 per week in strike benefits should strike occur found unsupported by evidence, but assuming allegation was true, statement did not constitute interference as it did not affect how Ees voted, and E was not precluded from making effective reply)

Revco D.S., Inc. and/or White Cross Stores, Inc., No. 14 v. N.L.R.B. 653 F.2d 264 (C.A. 6, July 1981)
(one Ee's statement to another Ee that if it wasn't for the U campaign, she would not have a job, not interference since it was not attributable to U, where speaker was not U officer or agent, and E was not precluded from making effective reply)

Howard Plating Industries, Inc. v. N.L.R.B. 635 F.2d 532 (C.A. 6, 1980)
(enforcement denied and election set aside where U's distribution, day before R election, grossly distorted profit sharing plan then in effect; misrepresentation in leaflet was substantial departure from truth and made at time when E was prevented from making effective reply)

N.L.R.B. v. Trans Continental Airlines, Inc. 614 F.2d 1116 (C.A. 6) (1980)
(objection on grounds of alleged misrepresentation overruled where E held scheduled meeting with his Ees but failed to rebut U statements)

Advertisers Manufacturing Company v. N.L.R.B. 677 F.2d 544 (C.A. 7, Apr. 1982)
(U letters containing alleged misrepresentations about wage increases sent to E three weeks before election cannot be basis for overturning election where period of three weeks afforded E adequate time for rebuttal)

Advertisers Manufacturing Company v. N.L.R.B. 677 F.2d 544 (C.A. 7, Apr. 1982)
(U Secretary-Treasurer's characterization of E's president as a *liar* is insufficient to set aside election where such conduct is commonplace name-calling in hotly contested campaign and president had opportunity to respond and did so two days before election)

N.L.R.B. v. Van Gorp Corporation 615 F.2d 759 (C.A. 8) (1980)
(U official's informing unit Ees on night before election that U's contract with E's owner at another plant allowed twelve cents per quarter for cost of living adjustment (COLA) warranted setting aside election, since in fact the contract provided only twelve cents per year and COLA was important issue in the campaign, and U's last minute misrepresentation was accompanied by U supporters' threatening three Ees opposed to U and assaulting a fourth)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center 652 F.2d 856 (C.A. 9, Aug 1981)
(U letter blaming nursing home industry for preventing passage of a bill allegedly allowing hospital Ees a wage increase, not misrepresentation constituting interference, since letter was addressed to all U members rather than voters only, related general political issues rather than specific factual statements, was mailed sixteen days in advance allowing E ample time to reply, and was not shown to deceive Ees so as to affect election process)

Spring City Knitting Company v. N.L.R.B. 647 F.2d 1011 (C.A. 9, June 1981)
(In order for election to be set aside due to misrepresentations, one party must have misrepresented material facts, the other party had no opportunity to reply, and resulting distorted presentations significantly impaired election process)

4270-6785 Strikers and strike benefits

4270-6755—Cont.

Harry Lunstead Designs, Inc. **265 NLRB No. 130**
(objection that U made misrepresentations that *all* strikers receive benefits, contrary to its By-laws that require picket registration and service, was overruled under *Midland,* as Bd will no longer probe into truth or falsity of campaign statements)

Harry Lunstead Designs, Inc. **265 NLRB No. 110**
(objection that E told Ees that only ULP strike could be called, was overruled under *Midland,* as Bd will no longer probe into truth or falsity of campaign statements)

4270-6760 False wage data - rival or other employers or other industries

Purnell's Pride, Inc. **265 NLRB No. 146**
(U misrepresenting wages, hours, and working conditions in effect at another E's plant located in same city as E's plant, did not warrant setting election aside)

National Medical Hospital of Compton, d/b/a Dominguez Valley Hospital **251 NLRB No. 119**
(where U distributed pamphlets to E's Ees comparing their wage rates with those of Ees in county (public) hospitals and in private hospitals and misrepresented to Ees that U had negotiated both public and private hospitals' contracts, when in fact, had negotiated only private hospitals' contracts, Bd dismissed objection as private hospital pay rates were substantially higher than pay rates cited at public hospitals and, therefore, Ees would not have been induced to vote for U because of lower rates at public hospital)

Baird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(where E raised issue of conditions at another plant to counter U's arguments as to unionization benefits and stated that the other plant did not have contract with this U, this U's handbill stating that other plant and its U had agreed on contract providing for $9,000 insurance policy held not interference-since statement of future contract provisions did not constitute misrepresentation; nor was statement of wages of assembler there interference notwithstanding incomparability of his required skills with those of assemblers at E's herein, since E did not use available information to counter U's agreement)

N.L.R.B. v. Silverman's Men's Wear, Inc. **656 F.2d 53 (C.A. 3, 1981)**
(no ground for setting election aside where U made no substantial departure from truth about wage rates it negotiated at neighborhood plant and there was ample time for E to make response; *Hollywood Ceramics* test not satisfied)

Vitek Electronics, Inc. v. N.L.R.B. **653 F.2d 785 (C.A. 3, June 1981)**
(U's preelection handbills asserting that E's wages were *the lowest in the area* and that U had negotiated cost of living protection at other Es' unionized plants could not be dismissed as *mere prattle or puffery* since wages are breath and *stuff of life for Us and members;* U's claim that it was decribing its own contracts with nearby Es lent its misrepresentations air of authenticity that likely carried significant weight in Ees' minds, and U's apparent expertise was not countered by independent knowledge that previously non-U Ees were likely to possess)

Vitek Electronics, Inc. v. N.L.R.B. **653 F.2d 785 (C.A. 3, June 1981)**
(U's preelection handbills misrepresenting that it had negotiated cost of living protection at other Es' unionized plants in area held not *insubstantial* departure from truth, where U's contract wages at other Es' plants lost an average of 61 cents per hours to inflation, thus failing by such amount to keep pace with inflation, contrary to representation in handbill; and such misrepresentation of wages is distortion of sufficient magnitude to exert an impermissible influence on election results)

Vitek Electronics, Inc. v. N.L.R.B. **653 F.2d 785 (C.A. 3, June 1981)**
(RD improperly concluded that U's preelection handbill, stating that wages at other Es' unionized plants were increased regularly to keep pace with cost of living increase, was not a simple lie but rather a statement *subject to varying interpretations;* his subtle distinction would not be appreciated by Ees in heat of election campaign; and even Bd's reputed expertise in labor matters cannot prompt ct to accept RD's conclusory determination that Ees would be likely to interpret phrase *to keep pace with* in such a way as to render handbill congruent with truth)

Vitek Electronics, Inc. v. N.L.R.B. **653 F.2d 785 (C.A. 3, June 1981)**
(E's objections to election and supporting material established prima facie case for setting aside election because of U's preelection handbills misrepresenting that E's wages were lowest in area and that U had negotiated cost of living protection for Ees at other Es' unionized plants; this, together with apparent last-minute nature of U handbills, entitled E to hearing on its objections; here, RD improperly resolved factual issues bearing on materiality of U's misrepresentations through an administrative investigation which is no substitute for a hearing)

Vitek Electronics, Inc. v. N.L.R.B. **653 F.2d 785 (C.A. 3, June 1981)**
(RD improperly overruled E's objections to election based on U's alleged misrepresentation of wage rates at other Es' unionized plants, where RD held that U's misrepresentation of wage rates was pardonable because it was *prompted* by E's study of area wage rates which dispelled any genuine factual issue concerning E's ability to respond to U's misrepresentation in one available day before election; U's misrepresentation referred to past wage rates, while E's study concerned current rates, and RD relied on sheer supposition in assuming that prior to election E possessed sufficient data to rebut U's wage claims)

Vitek Electronics, Inc. v. N.L.R.B. **653 F.2d 785 (C.A. 3, June 1981)**
(RD improperly overruled E's objection to election based on U handbill's alleged misrepresentation regarding cost of living adjustment U negotiated at Es' other unionized plants; RD could not properly determine on basis of his investigation that Ees would adopt interpretation other than that of E; and because of significance of alleged discrepancy between truth and falsity of U's misrepresentation, and ct's skepticism that item would be interpreted as other than a misrepresentation, RD should have afforded E a hearing in which to challenge RD's assumption that handbill would be interpreted by Ees consistently with truth)

Colfor, Inc. v. N.L.R.B. **678 F.2d 657 (C.A. 6, May 1982)**
(statements about layoffs and comparative wages at nearby unionized E, not sufficiently misrepresentative to warrant overturning election where made in heat of election, and were rather vague and subject to several interpretations, only some of which might be construed as misrepresentations)

Baird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(misrepresentations about wages go to what is perhaps most crucial issue of any organization effort)

4270-6765 Employer's profits

Gauley Industries, Inc. **260 NLRB No. 139**
(objection that U misrepresented profit picture of E overruled where statement made w/o reference to confirmatory facts which would lend credence to claimed profitability of E. Element of special knowledge of subject matter lacking and statement subject to evaluation by Ees)

Colfor, Inc. v. N.L.R.B. **678 F.2d 657 (C.A. 6, May 1982)**
(U did not misrepresent E's profit as 20% on basis of its financial report when profit, as opposed to return on equity (which was 20%), was only 2.5% where U read E's financial report to Ees verbatim and had no obligation to prevent Ees from misinterpreting the data)

N.L.R.B. v. Pinkerton's, Inc. **621 F.2d 1322 (C.A. 6, June 1980)**
(where objections had been filed on basis of U's letter alleging *average contribution* of Ees based only on subtraction of salaries from income and E had answered in letter which set forth other items which must be deducted from income to determine profitability but not amounts, bargaining order based on certification must be denied, since RD did not rule on whether profitability was important issue and did not hold hearing to determine whether figures misleading, E's version must be accepted; however, since remand for hearing on other grounds, remand also for hearing on what knowledge Ees had with respect to profits of E)

J.F. Hink & Son v. N.L.R.B. **656 F.2d 729(T) (C.A. 9, July 1981)**
(U's alleged circulation of rumor that E's owner had purchased $300,000 computer and thus leading Ees to believe that E had more assets than it claimed and unjustifiably cancelled its prior pension plan, did not warrant setting aside election, since Ees attributed computer purchase to E's owner rather than to E)

4270-6767 Employer profit-sharing plan

Howard Plating Industries, Inc. v. N.L.R.B. **626 F.2d 832 (C.A. 6, 1980)**
(enforcement denied and election set aside where U's distribution, day before R election, grossly distorted profit sharing plan then in effect; misrepresentation in leaflet was substantial departure from terth and made at time when E was prevented from making effective reply)

4270-6770 Statements concerning employer conduct

Harry Lunstead Designs, Inc. **265 NLRB No. 110**
(objection that U leaflet states that E promulgated *lies and half-truths* designed to divert Ees *from real issues,* overruled under *Midland,* as Bd will no longer probe into truth or falsity of campaign statements)

North Electric Company, Plant No. 10, Gree. Tennessee **262 NLRB No. 174**
(U's election eve letter to Ees assertedly materially misrepresenting that large number of named Ees listed in letter were laid off because of their lack of U representation held not interference, where letter was distributed to

4270-6770—Cont.

refute E's contrary comments in accompanying newspaper article and offered for Ees' consideration in evaluating plausibility of E's layoff/recall statement in article; in this context, E's accounting for status of 367 of 1080 names on list as having quit or terminated their employment for similar reasons fails to establish that U's list substantially departed from the truth)

Masonic Homes of California, Inc. 286 NLRB No. 086

(false statements that E lined up Ees and said they looked like U supporters and spread rummors about strikes and Ees being replaced by nurses aides held not objectionable as they do not involve Bd or its processes, was limited to some departments and did not impugn E's integrity, therefore did not impact on election)

N.L.R.B. v. Nixon Gear, Inc. 649 F.2d 906 (C.A. 2, May 1981)

(Bd improperly refused to order hearing on E's objection to election on ground it did not have reasonable opportunity to reply to U's misrepresentation that E had bribed pro-U Ee to campaign against U, where it was unlikely that E, who first learned of misrepresentation on day before election, could have adequately replied and contacted all voters; Ees could reasonably have expected U's charge was directly based on testimony of bribed Ee but could not independently investigate charge's truthfulness since Ee was not identified; and false charge might well have influenced Ees and, thus, election)

Hanes Corporation v. N.L.R.B. 677 F.2d 1008 (C.A. 4, May 1982)

(U's misrepresentations in attacking E and its attorneys held interference where misrepresentations were material to election, U was in position to have knowledge as to true facts pertaining to E's attorneys involved in case, and nature of charges made it impossible for E to fully refute the material; U's attacks on attorneys and thus on E's management were sort of *inflammatory statements which create conditions which make impossible sober, informed exercise of franchise...*)

Advertisers Manufacturing Company v. N.L.R.B. 677 F.2d 544 (C.A. 7, Apr. 1982)

(U Secretary-Treasurer's characterization of E's president as a *liar* is insufficient to set aside election where such conduct is commonplace name-calling in hotly contested campaign and president had opportunity to respond and did so two days before election)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center 652 F.2d 856 (C.A. 9, Aug 1981)

(U letter blaming nursing home industry for preventing passage of a bill allegedly allowing hospital Ees a wage increase, not misrepresentation constituting interference, since letter was addressed to all U members rather than voters only, related general political issues rather than specific factual statements, was mailed sixteen days in advance allowing E ample time to reply, and was not shown to deceive Ees so as to affect election process)

Spring City Knitting Company v. N.L.R.B. 647 F.2d 1011 (C.A. 9, June 1981)

(ct held that RD did not err in overruling w/o hearing E's objection to election that eight days prior to election U distributed handbill allegedly charging that earlier announcement by E that it would close another plant had been made for sole purpose of intimidating Ees into voting against U representation)

N.L.R.B. v. Masonic Homes of California, Inc. 624 F.2d 88 (C.A. 9, July 1980)

(ct remanded to Bd to determine whether coercive conduct by U 2 days prior to election of stating falsely that it was impossible for health care Ees to have legal strike and falsely accusing E of committing ULP by questioning Ees about their U sympathies so influenced potential voters that free choice by Ees was impossible)

N.L.R.B. v. Alson Mfg. Aerospace Division of Alson Industries, Inc. 599 F.2d 1087 (C.A. 9, 1979)

(following ct remand to Bd for full evidentiary hearing on E's objections to election and after careful analysis of evidence produced at evidentiary hearing, ct enforced Bd's order upholding certification of U, notwithstanding ct would have preferred second election, in view of U's calling E's document circulated to Ees prior to election *all lies* when it was merely campaign propaganda and in view of U representatives' presence at polling area on election day)

4270-6775 Distribution of Board documents

Crown Cork & Seal Company, Inc. v. N.L.R.B. 659 F.2d 127 (C.A. 10, Sept. 1981)

(campaign brochure distributed by U which contained reprint portion of Bd publication did not give appearance of U having Bd support where U was clearly identified as author of entire handbill and thus Ees would not be misled)

4270-6780 Benefits gained by union

Aventura Country Club d/b/a Turnberry Isle Country Club 253 NLRB No. 081

(U's campaign literature which contained information about benefits which would be extended to Ees' families in *future* did not warrant setting aside election where this statement amounted to no more than typical campaign promise, amenable to Ee evaluation and E response)

4270-6780-3300 At employer's plant

Radisson Muehlebach Hotel 265 NLRB No. 091

(on day before election U posted false handbill stating that U had negotiated wage increase for nontipped Ees and negotiations were halted with filing of decertification pet, Bd applied *Midland*, 263 NLRB No. 24 standard and overruled objection, finding that it alleged nothing more than misstatement of fact and Bd will not probe into truth or falsity of campaign statements)

Radisson Muehlebach Hotel 265 NLRB No. 091

(allegation that cards distributed to Ees on election day which stated that Ees could lose *negotiated wage increases* by voting against U was nothing more than misrepresentation of fact and objection was overruled because Bd will no longer probe into truth or falsity of parties' campaign statements)

4270-6780-6700 At other plants

Purnell's Pride, Inc. 265 NLRB No. 146

(U guaranteeing that Ees would select bargaining committee which would make same demands as those made in other plants where it represented Ees, did not warrant setting aside election)

Purnell's Pride, Inc. 265 NLRB No. 146

(U guaranteeing *its members can buy a lot more groceries with their paycheck than E's Ees able to purchase with their paychecks,* did not warrant setting aside election)

Purnell's Pride, Inc. 265 NLRB No. 146

(U claiming credit for wages, hours, and working conditions at another E's plant located in same city as E's plant, did not warrant setting aside election)

Mosey Manufacturing Company, Inc. 255 NLRB No. 077

(U's representation to Ees, made before election, that Ees in another U plant, through U's efforts, had received 10 percent pay increase, although pay increase was 5 percent, not substantive departure from truth where statement was reasonably interpreted as referring to both base pay and cost-of-living increases; representation was not departure from truth warranting setting aside election; see *Hollywood Ceramics Company* 140 NLRB 221 (1962))

N.L.R.B. v. Leslie Metal Arts Company, Inc. 673 F.2d 168 (C.A. 6, Mar. 1982)

(Bd did not abuse its discretion in overruling E's objections to election on ground that U seriously misrepresented wages being paid by competitor whose Ees were represented by U since E failed to establish wages actually being paid by competitor and any misstatement of those wages was not serious)

Baird-Poulan Division, Emerson Electric Company v. N.L.R.B. 649 F.2d 589 (C.A. 8, May 1981)

(in assessing preelection campaign statements, concerning other plants in instant case, for both Es and Us, Bd does not ordinarily *police or censor* propoganda used in elections it conducts, but rather leaves to the good sense of voters the appraisal of such matters, and to opposing parties task of correcting inaccuracies and unlawful statements and only if there has been material misrepresentation which involves substantial departure from truth at time other party cannot reply and has *real* impact on election will it be set aside)

Tanforan Park Food Purveyors Council and the Hagsmith Company v. N.L.R.B 656 F.2d 1358 (C.A. 9, 1981)

(U's description of benefits members received at nearby market to potential members sought at resturants, did not warrant setting aside election, since E in its objections did not allege information false and material but merely that part-time Ees might have been confused about their rights)

4270-6785 NLRB rulings and decisions

Affiliated Midwest Hospital Incorporated, d/b/a Riveredge Hospital 264 NLRB No. 146

(U leaflet issued 1 month prior to election which implied that Bd had issued C against E, when actually charge was settled by non admissions clause, not conduct sufficient to interfere with election choice. Bd overruled *Formco, Inc.* 233 NLRB 61 by holding that mischaracterizations of Bd actions are to be treated in same manner as other misrepresentations, and not as if a physical alteration of Bd document took place; thus, Bd's neutrality is not impunged)

Allis-Chalmers Corporation 262 NLRB No. 112

(on ct remand, U's distribution of leaflet prior to election stating that Bd had recommended that Ee be put back to work with full back pay but that E is still fighting for their right to fire anyone whenever they want to, held not interference by U as E had sufficient time to make effective reply)

4270-6785—Cont.

Kinney Shoe Corporation **251 NLRB No. 078**
(mischaracterization of Bd settlement agreement is serious misrepresentation which warrants setting aside election because Bd is unable to intervene during election campaign if its documents or processes have been misrepresented)

Melrose-Wakefield Hospital Association, Inc. v. N.L.R.B. **615 F.2d 563 (C.A. 1) (1980)**
(*Monmouth Medical Center* distinguished in that U's impairment of Bd's neutrality was more substantial and pervasive than that caused by U leaflet in instant case where leaflet did not claim E had been judged of any violation, and overstatements amounted only to layman's rendition which was unlikely to substantially mislead voters as to status of Bd's action)

N.L.R.B. v. Allis-Chalmers Corporation **642 F.2d 766 (C.A. 5, Apr. 1981)**
(E not required to comply with collective bargaining terms of Bd's Supplemental Order in view of fact that U's material misstatement concerning Bd's adjudicatory process, prior to election in instant case, nullified the certification by election because E/U statements vitiated election by not clearing up impression left by U's material misrepresentation (claim that E found guilty of ULPs when in fact only hearing before ALJ was scheduled))

4270-6787 Misstatement of law

County Line Cheese Company, A Division of Beatrice Foods Co. **265 NLRB No. 193**
(statement that *if U wins it is virtually impossible to ever get U out* not objectionable conduct warranting setting aside election since setting aside election not warranted by misrepresentation of Bd processes; thus issue need not be set for hearing)

Connecticut Foundry Company **247 NLRB No. 145**
(newspaper article based on interview with U representative stating that Bd had dismissed all charges filed against U when in actuality parties had entered into settlement agreement was not sufficient misrepresentation to interfere with election, moreover E had 3 weeks in which it could have corrected impression given by article and it did nothing)

Vicksburg Hospital, Inc. v. N.L.R.B. **653 F.2d 1070 (C.A. 5, Aug 1981)**
(U's misrepresentation of nature of ULP and economic strikes did not warrant setting aside election where E had ample opportunity to, and did on several occasions, reply to U's misrepresentations)

N.L.R.B. v. Holland American Wafer Company **683 F.2d 135 (C.A. 6, July 1982)**
(U's pre-election statements to Ees that it had right to ask E's customers to discontinue doing business with E unless E agreed to their contract demands and that this *pressure* would make strike unnecessary held not substantial misrepresentation, notwithstanding E's claim that U had misrepresented its ability under S.Ct's opn in *Servette* to engage in illegal secondary boycott against E's customers, where U carefully described activities it intended to encompass w/i term *pressure* and there was no indication of intent to induce work stoppages)

N.L.R.B. v. Leslie Metal Arts Company, Inc. **673 F.2d 168 (C.A. 6, Mar. 1982)**
(Bd did not abuse its discretion in overruling E's objections to election on ground that U misrepresented percentage of Ees required to indicate interest in U before there could be election since statements referred to were made so far in advance of election that E had ample opportunity to respond if in fact there was misrepresentation)

N.L.R.B. v. Masonic Homes of California, Inc. **624 F.2d 88 (C.A. 9, July 1980)**
(ct remanded to Bd to determine whether coercive conduct by U 2 days prior to election of stating falsely that it was impossible for health care Ees to have legal strike and falsely accusing E of committing ULP by questioning Ees about their U sympathies so influenced potential voters that free choice by Ees was impossible)

4270-6790 Circumstances of conduct or effect of election

Parnell's Pride, Inc. **265 NLRB No. 146**
(U guaranteeing that Ees would select bargaining committee which would make same demands as those made in other plants where it represented Ees, did not warrant setting aside election)

N.L.R.B. v. Calco-Imports-Exports, Inc. d/b/a Calco-Hawaiian Mfg. **621 F.2d 1029 (C.A. 9, 1980)**
(where U mailed Ees letter containing misstatements 8 days prior to election and clarified its misstatements in second letter Bd's finding of no violation upheld where E made no effort to clarify mistake supplied no evidence to show any Ee vote was affected and made no effort to ask for evidentiary hearing)

4270-6791 Majority of employees had signed union authorization cards

Parnell's Pride, Inc. **265 NLRB No. 146**
(U claiming majority of Ees had signed authorization cards asking to be represented by U, did not warrant setting aside election)

4270-6795 Endorsement of union by Board or U.S. Government

Parnell's Pride, Inc. **265 NLRB No. 146**
(U distributing literature that created impression that U.S. government was supporting U and desired that Ees also support U and misrepresented Ees Section 7 rights by guaranteeing E would not be able to take away benefits during bargaining process not misrepresentation that would warrant setting aside election either under standard in *Formco Inc.* or *Riveredge Hospital*; misrepresentations of Bd actions, as opposed to alteration of Bd documents, treated as any other misrepresentations and evaluated under standards of *Midland National Life*)

R. L. White Company, Inc. **262 NLRB No. 049**
(supervisor who showed Ees copy of Bd sample ballot on day before election, held it so his thumb covered *yes* box and told them E wanted them to vote *no* did not violate Act as nothing supervisor said could have mislead Ees into thinking there was only 1 choice on ballot or that Bd had endorsed E and statement was not coupled with any forms of coercion)

Hall-Brooke Hospital, a division of Hall-Brooke Foundation, Inc. **645 F.2d 158 (C.A. 2, Mar 31, 1981)**
(U's preelection mailing of leaflets containing reproduction of Bd 's official election notice entitled *Rights of Employees* and also questions and answers favorable to U was properly held not interference, where Bd relied on fact that document merely set out Bd's legal duties and certain ULPs; it was unaltered, contained no U propoganda, and stated that Bd endorsed neither party; U material was clearly identifiable as U's campaign material; and preelection posting of complete Bd notice let Ees know it was part of overall government document and not endorsement of either party)

Hall-Brooke Hospital, a division of Hall-Brooke Foundation, Inc. **645 F.2d 158 (C.A. 2, Mar 31, 1981)**
(in agreeing with Bd's decision that U's preelection mailing of leaflets containing reproduction of portion of Bd's election notice was not interference, ct held Bd precedent did not significantly broaden restrictions against use of Bd documents in campaign materials or indicate Bd departure from determining in each case whether use of Bd documents would reasonably suggest Bd's endorsement of particular party, and *ambiguity* created by use of Bd materials does not require setting election aside where comments added to Bd documents are clearly seperated and attributable to one party)

N.L.R.B. v. ARA Services, Inc. **678 F.2d 426 (C.A. 3, Apr. 1982)**
(RD and Bd did not err in overruling, w/o benefit of evidentiary hearing, E's objection that conduct of Bd agent and U observer during election gave impression that election was U controlled where statement by E observer referred to no specific misconduct by either Bd agent or U observer)

Vicksburg Hospital, Inc. v. N.L.R.B. **653 F.2d 1070 (C.A. 5, Aug 1981)**
(circulating leaflet with language encouraging Ees to stand up for their right to have U, reminding Ees that their right to join U is protected by U.S. Government, and depicting figure of Uncle Sam did not warrant setting aside election where thrust of leaflet was to explain Ees' rights under NLRA)

Vicksburg Hospital, Inc. v. N.L.R.B. **653 F.2d 1070 (C.A. 5, Aug 1981)**
(no possible impression of Bd sponsorship for U created by letter sent by U to E, complaining about Ee who made anti-U remarks in emergency room and about E's failure to enforce no-solicitation rule and asserting that *your refusal to treat all Ees fairly and equally in administration of hospital rules and policies has resulted in violation of National Labor Relations Act*, where E neither alleged nor showed that U made Ees aware of letter)

N.L.R.B. v. Leslie Metal Arts Company, Inc. **673 F.2d 168 (C.A. 6, Mar. 1982)**
(Bd did not abuse its discretion in overruling E's objections to election on ground that U improperly traded upon prestige of Bd by circulating writing in which Bd agent was quoted since U had not sought to give impression that Bd favored U, but had merely quoted Bd agent in responding to misrepresentation by E)

Crown Cork & Seal Company, Inc. v. N.L.R.B. **659 F.2d 127 (C.A. 10, Sept. 1981)**
(campaign brochure distributed by U which contained reprint portion of Bd publication did not give appearance of U having Bd support where U was clearly identified as author of entire handbill and thus Ees would not be misled)

4270-6799 Other union benefits

4270-6799 Other benefits

4270-6799—Cont.

Alyeska Pipeline Service Company **261 NLRB No. 010**
(U's statements to Ees prior to election that if they were U members they would receive priority treatment in operation of referral hall violative because they unlawfully promise to represent U members differently than nonmembers are especially coercive in this situation since U controls all access to construction jobs in Alaska)

4277 PAYMENT TO VOTERS ACTING AS ELECTION OBSERVERS

Emco Tools, Inc. (United Steelworkers of America, AFL–CIO–CLC) **248 NLRB No. 108**
(where U paid two Ees more than their regular pay for 8-hour workday for serving as election observers for U, regardless of whether they returned to work or took off from work after election, and Ees spent less than a total of two hours each in connection with their assignment as observers, Bd set aside the election since integrity of Bd election is better served by directing new election in the circumstances)

4284 GIFTS AND OTHER INDUCEMENTS OF VALUE

N.L.R.B. v. Gulf States Canners, Inc. **634 F.2d 215 (C.A. 5, 1981)**
(Bd did not abuse discretion in determining that U's offer to purchase gasoline for Ees who transported other workers to U meetings and/or campaigned on behalf of U at their fellow Ees' homes did not have such tendency to influence election that new election would be required)

4284-3000 Free food or drinks

Labor Services, Inc. **259 NLRB No. 127**
(petitioning U's business manager's buying drinks for E's Ees both immediately before and during time polls were open and saying to Ees *don't forget how to vote* held not to have been objectionable conduct absent evidence of advance inducement of Ees to come to bar or to vote for U in order to get free drinks; incident occurred outside polling area and value of drinks not sufficient to interfere with Ees' free choice at election)

4284-3700 Reimbursing employees for attending hearing

N.L.R.B. v. Klinger Electric Corporation, Klinger Electronics Division and Klinger Manufacturing Division **656 F.2d 76 (C.A. 5, 1981)**
(E's objection to U's presenting Ees with checks at meeting for attending representation hearing with no proof of *objectionable effect* except proof of incident itself, not proof of incident egregious enough to influence outcome of election decided by large margin; objection thus properly overruled)

4284-5000 Initiation fees

A.G.S. Graphics, A Division of George Lithographic Co. **262 NLRB No. 137**
(U's impermissibly ambiguous offer to waive initiation fees during *organization drive* held cured by U's subsequent clarification in pre-election letters to Ees stating that *There are no fees and nothing to pay until we have a contract after the election is won*)

Polyflex M Company **260 NLRB No. 150**
(in denying mtn for reconsideration, Bd held any arguably ambiguous *Savair* statements made at Ee meetings were sufficiently clarified, where U's clearly permissible initiation fee policy was adequately explained to unit Ees by leaflet that U mailed to Ees shortly before election; that leaflet stated, *There will not be any intiation (sic) fee or any other fee to join the union.*)

Claxton Manufacturing Co., Inc. **258 NLRB No. 056**
(election set aside and new election directed where U stated to Ees during election campaign that Ees who signed U cards before election would not be subject to initiation fees but that the Ees could determine whether to impose initiation fees on those Ees who signed U cards after election since suggestion that initiation fees might be imposed after election linked such waiver of fees to support of U before election)

Polyflex M Company **258 NLRB No. 108**
(no interference that would warrant setting aside election where testimony that U representative had stated once newly organized and chartered, local U could set initiation fee, and other testimony that U representative had in fact said that any straglers that came in later on to obtain benefits after contract signed would have to pay initiation fees, since neither statement violation of *Savair* rule which was concerned with intentional and deliberate waiver or reduction of initiation fees conditioned upon outcome of impending election based on objective interpretation by Ees of message actually communicated to them by U)

Gulf Coast Automotive Warehouse Company, Inc. **248 NLRB No. 058**
(ALJ upon remand from Bd and ct found E failed to show that U engaged in pre-election misconduct involving Savair rule which would warrant setting aside results of election)

N.L.R.B. v. Whitney Museum of American Art **636 F.2d 19 (C.A. 2, 1980)**
(U's unconditional waiver of organizing charges and of initiation fees for all unit Ees, not unlawful, since U merely lowered self-imposed barriers to membership; and whether dues scale U offered was lower than usual scale need not be determined)

Vicksburg Hospital, Inc. v. N.L.R.B. **653 F.2d 1070 (C.A. 5, Aug 1981)**
(E not entitled to post-election hearing on waiver of initiation fees issue where it failed to present prima facie proof of facts sufficient to invalidate election under *Savair*)

Hickory Springs Manufacturing Company v. N.L.R.B. **645 F.2d 506 (C.A. 5, May 21, 1981)**
(U which asked Ees who signed U authorization cards to pay one month's dues and initiation fee at that time (prior to election) did not violate Act; this is opposite of vote buying in *Savair*, no duress was involved and choice to put money up was free one)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(it is permissible for U to waive initiation fees for or to confer any other benefit upon those who join before representation election only if it does same for those who join after election)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center **652 F.2d 856 (C.A. 9, Aug 1981)**
(ct remanded case to Bd for hearing, since affidavits submitted by E with its exceptions to RD's rulings on objection to election alleging *Savair* violation raised such substantial and material factual issues that Bd should have ordered hearing; affidavits stated that Ees had signed recognition slips to avoid paying dues after U activist promised affiants fee waivers for signing recognition slips before election, and evidence adduced at hearing might support a finding that U either authorized or condoned activist's conduct so as to give him agency status)

N.L.R.B. v. Mike Yurosek & Sons, Inc. **597 F.2d 661 (C.A. 9, 1979)**
(statement that any reduction in initiation fees would be available to all those signing authorization cards prior to execution of contract, lawful)

4284-6300 Raffles

Ducane Heating Corporation **254 NLRB No. 080**
(raffle tied to voting in election did not interfere with election as no evidence that E conditioned raffle on outcome of election)

4284-7000 Assistance to strikers

N.L.R.B. v. Connecticut Foundry Company **688 F.2d 871 (C.A. 2, July 1982)**
(hearing was warranted on E's objection to U's cash payments to strikers prior to election where E presented affidavits of possible improprieties in U's payments to satisfy its burden of establishing prima facie case. Bd must take into account E's access to information and evidence in absence of discovery. Also close vote increased need for hearing)

4284-8000 Waiver or reduction of union dues

King Wholesale, Inc. **264 NLRB No. 118**
(U's statement to Ees that initiation fee *is automatically waived for 60 days* found to constitute impermissible inducement to Ees and is objectional conduct warranting setting aside election where 60 days expired prior to election date and thus limits waiver to period ending before election; U's additional statement that local U could possibly get extension of that period suggest that wavier of fees might be linked to U support before election)

Polyflex M Company **258 NLRB No. 108**
(no interference that would warrant setting aside election where testimony that U representative had stated once newly organized and chartered, local U could set initiation fee, and other testimony that U representative had in fact said that any straglers that came in later on to obtain benefits after contract signed would have to pay initiation fees, since neither statement violation of *Savair* rule which was concerned with intentional and deliberate waiver or reduction of initiation fees conditioned upon outcome of impending election based on objective interpretation by Ees of message actually communicated to them by U)

Weyerhaeuser Company **247 NLRB No. 147**
(*Savair Manufacturing Co.* 414 U.S. 270 standard of conduct applies to pre and post petition conduct)

Bokum Resources Corporation v. N.L.R.B. **655 F.2d 1021 (C.A. 10, 1981)**
(U which offered Ees reduction in fees did not engage in conduct warranting setting aside election where reduction was available to Ees whether they indicated support for or sought to join U *before or after* election)

4284-9900 Other

National Duct Corporation **265 NLRB No. 080**
(U informing Ee he would have to go to school before receiving journeyman work permit, under U's system to be instituted if U won election whereas another Ee was promised permit w/o having to go to school, did not warrant setting aside election, absent evidence Ee who was informed he would be required to attend school was opposed to U)

4284-9900—Cont.

Aventura Country Club d/b/a Turnberry Isle Country Club **283 NLRB No. 061**
(U's continuation of insurance coverage for U members, responsibility for which E had relinquished prior to election, not interference since recipients of insurance coverage were not receiving something new from U, but rather were being permitted to retain status quo; unlike cash gift or bribe, continuance of insurance coverage through U's payment of premiums had legitimate relationship to suitability of U – from Ees' point of view – as bargaining representative)

Aventura Country Club d/b/a Turnberry Isle Country Club **283 NLRB No. 061**
(statements made by U business agent that U would try to secure backpay for Ees did not justify setting aside election where this was kind of statement that party in representation election would make to voters to demonstrate potential support they could expect through its representation; it did not promise reward or condition a benefit on their vote, but simply set forth one area in which U would assist Ees)

Bristol Spring Manufacturing Company **267 NLRB No. 034**
(payments to Ees for 1 to 3 hours spent after normal working day giving statements in aid of an investigation of ULP charges held not interference with election in view of purpose of payments, recipients' understanding thereof, and timing, some 4 weeks before election)

N.L.R.B. v. Nixon Gear, Inc. **649 F.2d 906 (C.A. 2, May 1981)**
(Bd improperly refused to order hearing on E's objection to election on ground U promised to obtain improved employment for Ee at unionized plant if he supported U and U won election, since E was entitled to hearing if it demonstrated, by prima facie evidence, existence of substantial and material factual issues supporting its allegation, and despite E's strong evidence indicating U offered improper inducement to Ees, Bd insisted upon stronger showing of improper U conduct, which was wholly unreasonable and abuse of its discretion which was exacerbated by extremely close, one-vote election result)

N.L.R.B. v. Gulf States Canners, Inc. **598 F.2d 896 (C.A. 5)**
(effect of U's gifts of gasoline to Ees on electorate, rather than intent of U, should be criteria in determining whether election should be set aside; all relevant facts should be considered including whether size of benefit conferred bore proper relationship to U's stated purpose in conferring it, number of Ees receiving benefit, views of Ees concerning purpose of gifts, and timing of gifts)

5600 EMPLOYEE CONDUCT

5625 RANK-AND-FILE UNIT EMPLOYEES

5625-0100 Generally

Devlan Engineering, Inc. **262 NLRB No. 104**
(solicitation of authorization cards by Ees, standing alone, does not make those Ees agents of U)

Six Flags Over Mid-America, Inc. **283 NLRB No. 012**
(less weight to be accorded to conduct of rank-and-file Ees than that of parties to election in considering election objections)

Six Flags Over Mid-America, Inc. **283 NLRB No. 013**
(Ees' discussion with other Ees of unaltered RD report and recommendations overruling some of U's objections and referring rest to hearing did not rise to level of objectionable conduct warranting setting aside of election; nothing was said or done that would arguably impair or call into question Bd's neutrality or constitute objectionable pre-election conduct)

Season-All Industries, Inc. v. N.L.R.B. **654 F.2d 932 (C.A. 3, 1981)**
(while agreeing with proposition that in establishing and maintaining *laboratory conditions* conducive to an election, no conduct disruptive or destructive of voter's free choice can be tolerated regardless of whether actions are those of U agent or mere Ee, ct was precluded, because of RD's failure to afford hearing, from setting aside election on basis of E's objection that rank-and-file Ee improperly electioneered at polling place as U agent; ct did no more than adhere to Bd's own policies which require an evidentiary hearing when objections raise substantial and material issues of fact)

EDS-IDAB, Inc. v. N.L.R.B. **666 F.2d 971 (C.A. 5, Feb. 1982)**
(where alleged improper conduct is not that of agents of one of parties then such conduct will warrant setting aside election if acts disrupt voting procedure or destroy atmosphere necessary to exercise of free choice in election; however, if representative of any party engages in prolonged conversation with voters waiting to cast their ballots, regardless of content of such conversations, election will be set aside)

EDS-IDAB, Inc. v. N.L.R.B. **666 F.2d 971 (C.A. 5, Feb. 1982)**
(remanded for determination of whether Ee's alleged violative conduct while electioneering and other evidence that linked this Ee to threats of U retaliation and to violence can be found to have been condoned by U, for if Ee held to be agent of U then standard used to determine if his conduct interfered with election is stricter than if he is considered mere Ee)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(election will be overturned only if coercive actions have created *an atmosphere of fear and reprisal such as to render free expression of choice impossible* where threats or violence are not attributable to U or E because neither Us nor Es can prevent misdeeds by persons over whom they have no control)

N.L.R.B. v. Advanced Systems, Inc. **681 F.2d 570 (C.A. 9, Apr. 1982)**
(party seeking to overturn election because of coercive conduct carries heavy burden. Question is whether coercive conduct so influenced *potential voters that free choice was impossible.* In assessing effect of conduct on election less weight is accorded to conduct not attributable to U or E. Test for setting aside election because of third party conduct is whether conduct was *so aggravated that it made free choice impossible*)

5625-3300 Predictions and threats of physical violence

Sub-Zero Freezer Company, Inc. **265 NLRB No. 194**
(threats made by Ee who *joked around* with threatened Ees and by Ee whose threat was met with laughter did not create atmosphere of fear reprisal and were not intimidating so as to interfere with Ees' choice in election)

Salem No. 1, Inc. d/b/a The Seville **262 NLRB No. 197**
(asserted misconduct of U, prior to election, which allegedly included slashing tire on supervisor's car, heavy evidence of threats to slash tire and threatening phone calls to one Ee not so aggravated as to render free election impossible, since there was no evidence that U agents who involved in alleged misconduct nor did acts involve widespread threats or acts of violence)

Anchor Inns, Inc. d/b/a Anchor Inn Hotel of St. Croix **262 NLRB No. 148**
(on remand, election set aside because it was conducted in atmosphere of fear and refusal where Ee who held himself out as U agent, but not found herein U agent, threatened one E with loss of job and 2 Ees with physical violence if they didn't vote for U which they felt he was capable of carrying out)

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(rumor that U adherent *brandished a gun at anti-U Ees after receiving an anti-union handbill* held false rumor of threat of violence, and even if Ees believed U adherent was pointing gun at them their subjective reactions were irrelevant to question of objectionable conduct)

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(rank-and-file Ee's statement that female Ee had better go home and watch her kids held voicing of annoyance over female Ee's ceaseless palaver rather than threat of retaliatory action)

N.L.R.B. v. Eskimo Radiator Mfg. Co. **688 F.2d 1315 (C.A. 9, Oct. 1982)**
(threats of physical harm attributable to Ees who are not agents of U are *entitled to less weight* in determining whether free election was possible)

N.L.R.B. v. Masonic Homes of California, Inc. **624 F.2d 88 (C.A. 9, July 1980)**
(questions of harassment of Ee when soliciting her vote and expression of fear of reprisals from U remanded to Bd to determine whether such coercive conduct made impossible free expression of choice)

5625-6700 Statements not attributable to the parties

Six Flags Over Mid-America, Inc. **283 NLRB No. 013**
(conduct of rank-and-file unit Ees not objectionable pre-election conduct where not attributable to a party)

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(*misrepresentations not attributable to either party require setting aside of election only when they create such an atmosphere of fear and violence that free and fair elections have been rendered impossible*)

N.L.R.B. v. St. Mary's Home, Inc., t/a St. Mary's Infant Home **690 F.2d 1062 (C.A. 4, Sept. 1982)**
(hearing not required on threatening anonymous phone calls to off-duty Ees in absence of evidence connecting these calls to U representative)

EDS-IDAB, Inc. v. N.L.R.B. **666 F.2d 971 (C.A. 5, Feb. 1982)**
(where alleged improper conduct is not that of agents of one of parties then such conduct will warrant setting aside election if acts disrupt voting procedure or destroy atmosphere necessary to exercise of free choice in election; however, if representative of any party engages in prolonged conversation with voters waiting to cast their ballots, regardless of content of such conversations, election will be set aside)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(Ee actions and statements that are not attributable to U are generally entitled to less weight and cannot by themselves be used to set aside representation election)

5625-6700—Cont.

Revco D.S., Inc. and/or White Cross Stores, Inc., No. 14 v. N.L.R.B. 653 F.2d 264 (C.A. 6, July 1981)

(one Ee's statement to another Ee that if it wasn't for the U campaign, she would not have a job, not interference since it was not attributable to U, where speaker was not U officer or agent, and E was not precluded from making effective reply)

Revco D.S., Inc. and/or White Cross Stores, Inc., No. 14 v. N.L.R.B. 653 F.2d 264 (C.A. 6, July 1981)

(remarks of Ees who supported U campaign about cut in working hours, percent of profits going to payroll, and wages E could afford, not interference, since remarks were mere speculation and it was not shown that U was aware of or had ratified Ees' conduct)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center 652 F.2d 856 (C.A. 9, Aug 1981)

(ct remanded case to Bd for hearing, since affidavits submitted by E with its exceptions to RD's rulings on objection to election alleging *Savair* violation raised such substantial and material factual issues that Bd should have ordered hearing; affidavits stated that Ees had signed recognition slips to avoid paying dues after U activist promised affiants fee waivers for signing recognition slips before election, and evidence adduced at hearing might support a finding that U either authorized or condoned activist's conduct so as to give him agency status)

N.L.R.B. v. Mike Yurosek & Sons, Inc. 597 F.2d 661 (C.A. 9, 1979)

(rumor of illegal aliens being reported to immigration authorities if U lost held not attributable to U and not interference with election as matter of law)

N.L.R.B. v. Single Manufacturing Company 656 F.2d 785 (C.A. 1, 1981)

(ct held that substantial evidence on record supported Bd finding that Ee who was recently discharged and subject of ULP charge did not interfere with free choice of Ees in representation election where Ee did not represent U when he engaged in conversations with voters waiting to cast ballots nor was his presence at polls coercive, disruptive, or so aggravated that free expression of choice was impossible since as Ee he had right to be present and to vote in election)

5625-6733 Having substantial impact

The Pope, Inc. 263 NLRB No. 170

(on remand Bd set aside election and held E not obligated to bargain where captains in its restaurant promised waiters and bus boys that, if U won election, captains, who had sole authority over tip division, would change division of tips to increase shares of waiters and busboys, since offer would have impaired election whether or not captains supervisors)

N.L.R.B. v. Hudson River Aggregates, Inc. 639 F.2d 865 (C.A. 2, 1981)

(election set aside where Ees threatened fellow Ees with physical harm if U did not win election; moreover, it is immaterial that Ees were not agents of U)

5625-6767 Having insubstantial impact

Maremont Corporation, World Parts Division 251 NLRB No. 110

(statement by personnel office secretary that E would close or relocate plant if U won election, not interprence, where personnel secretary was nonunit Ee and her statement was not attributable to E nor was it of so serious nature that it could only have resulted in confusion and fear of reprisal which would have rendered impossible rational and uncoerced rational and uncoerced choice by Ees)

N.L.R.B. v. Morgan Health Care Center, Inc. 618 F.2d 127 (C.A. 1, 1980)

(Ee's statement that E intended to rehire unpopular supervisor after election did not warrant setting aside election where Ee did not claim outcome of election would influence E's decision on rehiring and absent evidence statement influenced Ees' votes)

N.L.R.B. v. Morgan Health Care Center, Inc. 618 F.2d 127 (C.A. 1, 1980)

(Ee's statement that E intended to rehire unpopular supervisor after election did not warrant setting aside election where Ee did not claim outcome of election would influence E's decision on rehiring and absent evidence statement influenced Ees' votes)

N.L.R.B. v. Production Plated Plastics, Inc. 663 F.2d 709 (C.A. 6, Nov. 1981)

(whether or not Ees acting as agent of U while making threats to fellow Ees during U campaign, laboratory conditions for election not destroyed in view of limited nature of their condict, subsequent apologies by Ees, absence of violence in campaign and sizable U majority)

N.L.R.B. v. Eskimo Radiator Mfg. Co. 688 F.2d 1315 (C.A. 9, Oct. 1982)

(deportation rumors which are not attributable to U do not automatically result in overturning election; evidence that Ee was deterred from voting his or her personal choice is necessary)

5625-7000 List keeping

Masonic Homes of California, Inc. 258 NLRB No. 086

(directed where several Ees saw U observer keep list of hash marks and voters' names continuously through morning voting session and part of afternoon session; such conduct is not de minimis)

N.L.R.B. v. Masonic Homes of California, Inc. 624 F.2d 88 (C.A. 9, July 1980)

(ct remanded to Bd question of whether maintenance by U observers of prohibited list of voters in voting area while balloting was taking place had more tha de minimis effect)

5625-8300 Threats to other employees

Anchor Inns, Inc. d/b/a Anchor Inn Hotel of St. Croix 262 NLRB No. 148

(on remand, election set aside because it was conducted in atmosphere of fear and refusal where Ee who held himself out as U agent, but not found herein U agent, threatened one E with loss of job and 2 Ees with physical violence if they didn't vote for U which they felt he was capable of carrying out)

Anchor Inns, Inc. d/b/a Anchor Inn Hotel of St. Croix 262 NLRB No. 148

(telling Ee who opposed U campaign that if U won and Ee did not join w/i 30 days he would lose job not violative as reference was to possible U security contract)

Baird-Poulan Division, Emerson Electric Company 247 NLRB No. 180

(threat of one member of in-plant organizing committee to take another member to ct because he quit going to U meetings, not unlawful, since threat was of peaceful action from U, not individual)

N.L.R.B. v. Hudson River Aggregates, Inc. 639 F.2d 865 (C.A. 2, 1981)

(election set aside where Ees threatened fellow Ees with physical harm if U did not win election; moreover, it is immaterial that Ees were not agents of U)

N.L.R.B. v. ARA Services, Inc. 678 F.2d 435 (C.A. 3, Apr. 1982)

(ct rejected Bd's argument that since statement submitted by, E from Ee described isolated incidents involving *vague* threatening statements by mere Ees it was not sufficient to establish *prima facie* case for overturning election; Bd's argument ignored its own prior decisions which set aside elections on basis of threats made by pro-U Ees; in addition, evidence of a few threats of reprisal directed against *one* Ee may be sufficient to create *general atmosphere of fear and coercion* that warrants setting aside election decided by one vote)

EDS-IDAB, Inc. v. N.L.R.B. 666 F.2d 971 (C.A. 5, Feb. 1982)

(Ee who had allegedly threatened other Ees with violence and allegedly struck another Ee because they were not pro-U and then sat near the U's observation table for 15 minutes during election may have engaged in conduct sufficient to destroy atmosphere necessary for free choice in election and case remanded for hearing)

N.L.R.B. v. Production Plated Plastics, Inc. 663 F.2d 709 (C.A. 6, Nov. 1981)

(whether or not Ees acting as agent of U while making threats to fellow Ees during U campaign, laboratory conditions for election not destroyed in view of limited nature of their condict, subsequent apologies by Ees, absence of violence in campaign and sizable U majority)

5625-8800 Property damage

Salem No. 1, Inc. d/b/a The Seville 262 NLRB No. 157

(asserted misconduct of U, prior to election, which allegedly included slashing tire on supervisor's car, heavy evidence of threats to slash tire and threatening phone calls to one Ee not so aggravated as to render free election impossible, since there was no evidence that U agents who involved in alleged misconduct nor did acts involve widespread threats or acts of violence)

5625-9000 Acceptance of state unemployment insurance

N.L.R.B. v. Connecticut Foundry Company 688 F.2d 871 (C.A. 2, July 1982)

(hearing was warranted on E's challenge to ballots of voters who had received unemployment compensation benefits during strike as it placed at issue their interest in their jobs as state law allows unemployment benefits to persons unemployed as result of labor dispute only upon showing *he is not participating in or financing or directly interested in labor dispute which caused the unemployment*; furthermore, Ees may have made false statements in their applications for benefits)

5650 EMPLOYEES OUTSIDE BARGAINING UNIT

5650-2000 Supervisors

United Supermarkets, Inc. 261 NLRB No. 179

(presence of pro-U supervisor and of other supervisors at U meetings held not interference where, other than pro-U supervisor, no other supervisors

5650-2500—Cont.

actively participated in urging Ees to support U; E's opposition to U showed Ees that any pro-U sentiment expressed by supervisor did not represent management's view; supervisors' presence at U meetings did not affect Ees' freedom of choice at time of election by fear of retaliation by U-oriented supervisors; and E's discharge of pro-U supervisor for threatening non-U Ees assured Ees that he would have no opportunity for retaliation)

United Supermarkets, Inc. **261 NLRB No. 179**
(threats made to Ees by pro-U supervisor held not interference, where E immediately made known to Ees its unalterable opposition to U; supervisor was discharged some 6 weeks before election for threatening anti-U ees and, although charges were filed that his discharge was unlawful, at time of election no complaint had issued seeking his reinstatement or rehire)

J. C. Penney Company, Inc. **260 NLRB No. 132**
(supervisor who had discussions with Ees prior to election in which he indicated he felt Ees needed U and then later indicated Ees might not need U did not engage in conduct which would coerce Ees into voting for U out of fear of retaliation; moreover, where E posted letters assuring Ees they would not be subject to reprisals no matter how they voted, they were free to complain about any unfair treatment and to file charges with Bd, this further removed any coercive effect supervisor's mild and inconsistent support of U might have had)

Fall River Savings Bank v. N.L.R.B. **649 F.2d 80 (C.A. 1, May 1981)**
(supervisors who made known to Ees their support for U did not interfere with election choice where they never told any Ee how to vote or threatened any form of retaliation against Ees who failed to support U; moreover, E vigorously expressed its opposition to U so that activities of supervisors did not mislead Ees as to E's position)

N.L.R.B. v. Manufacturer's Packaging Co., Inc. **645 F.2d 223 (C.A. 4, Apr 1, 1981)**
(E cannot defend its refusal to bargain on grounds that election was tainted by sub-supervisors where their activities were minimal, occurred prior to their exclusion from unit, were made principally in response to Ee inquiry and E knew of activity prior to and subsequent to date they were designated supervisors, yet E did not disavow conduct)

N.L.R.B. v. Klinger Electric Corporation, Klinger Electronics Division and Klinger Manufacturing Division **656 F.2d 76 (C.A. 5, 1981)**
(objections to isolated and relatively mild threats by alleged supervisors – assuming leadpersons were supervisors – against nonU supporters and anti-U Ees properly overruled, particularly where U won election by wide margin)

N.L.R.B. v. Dobbs Houses, Inc. **613 F.2d 1254 (C.A. 5) (1980)**
(if E knows that its supervisory personnel are advocating U and takes no action to dissipate effect, such advocacy cannot be used as basis for setting aside election)

Worley Mills, Inc. v. N.L.R.B. **685 F.2d 362 (C.A. 10, July 1982)**
(supervisory involvement in elections on side of U was not per se reason to invalidate election, and election is tainted only by express or implied threats that result in fear of retaliation and create environment of tension)

5662 EX-EMPLOYEES

N.L.R.B. v. Carroll Contracting and Ready-Mix, Inc. **636 F.2d 111 (C.A. 5, 1981)**
(election set aside where two former Ees with *vote Teamsters* on their hats, before polls opened, positioned themselves in parking lot where line of waiting voters formed and repeatedly and continuously, throughout polling period, urged waiting voters to vote for U by gesturing to *YES* box on ballot pinned to their shirts; once polls had opened, Ees waiting outside in line to vote became part of polling place, and were entitled to safeguards against interference espoused by *Milchem, Inc.* 170 NLRB 362 (1968); actions of rank and file of its supporters do not need to be attributed to U)

N.L.R.B. v. Sagle Manufacturing Company **658 F.2d 785 (C.A. 1, 1981)**
(ct held that substantial evidence on record supported Bd finding that Ee who was recently discharged and subject of ULP charge did not interfere with free choice of Ees in representation election where Ee did not represent U when he engaged in conversations with voters waiting to cast ballots nor was his presence at polls coercive, disruptive, or so aggravated that free expression of choice was impossible since as Ee he had right to be present and to vote in election)

7000 CONDUCT OF NON-PARTICIPANTS IN ELECTION

7075 LOCAL NEWSPAPER, RADIO OR TV STATION

U. S. Electrical Motors, A Division of Emerson Electric Co. **261 NLRB No. 184**
(newspaper article and editorial discussing E's economic problem and U organizing campaign at its plant with potential strike violence and plant closing found not to create general atmosphere of fear and coercion rendering conduct of free election impossible, in view of newspaper's front-page publication of U's rebuttal next day (which was day before election) and record as a whole)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(editorial printed in local newspaper on day of election which predicted plant would close if U won election found to reinforce E's prior threats of plant closings and warrants issuance of bargaining order)

7099 OTHERS

Daylight Grocery Company, Inc. v. N.L.R.B. **678 F.2d 905 (C.A. 11, June 1982)**
(Bd did not err in finding that customer's telling several store Ees they had better vote for U, in absence of specific threat, did not create coercive atmosphere prejudicing electoral process)

8400 ELECTIONEERING AT OR NEAR POLLS WHILE OPEN

8401 GENERALLY

Bally's Park Place, Inc. **265 NLRB No. 098**
(establishment of area in which electioneering is not permitted must in first instance be left to informed judgment of RD and agents conducting election)

Northern Telecom, Inc. **260 NLRB No. 085**
(Ee electioneering using paraphernalia previously supplied by E did not interfere with voter's free choice where E had no part in their conduct, and it took place outside of polling area)

Cumberland Nursing & Convalescent Center (Retail Store Employees Union, Local 692) **248 NLRB No. 063**
(objection by E to consent election, overruled and did not warrant hearing where E failed to present *prima facie* case in support of his objections which alleged, *inter alia*, objectionable electioneering; proffered evidence failed to disclose unequivocally that polls were in part open at time electioneering took place; it was not certain where Ees were at time alleged prohibited conduct was supposed to have occurred)

Season-All Industries, Inc. v. N.L.R.B. **654 F.2d 932 (C.A. 3, 1981)**
(since voters, in the last few moments before voting, must be free from interference as possible, Ees waiting outside in line to vote are part of polling place and are entitled to safeguards against interference which is not to be reserved only for those Ees who have gained access to actual polling place)

N.L.R.B. v. Vista Hill Foundation d/b/a Vista Hill **639 F.2d 479 (C.A. 9, 1980)**
(ct affd Bd finding that U observor's conversations with voters consisting of social pleasantries were not objectionable and its finding that his comments were innocuous where he answered inquiry as to whether he would be U representative if U won by stating that he would be if Ees wanted him and said that if U won he would not be in so much trouble with the E)

Worley Mills, Inc. v. N.L.R.B. **685 F.2d 362 (C.A. 10, July 1982)**
(under Bd's lesser standard for third party electioneering, such conduct must warrant inference that free choice has been stultified)

8410 AGENCY RELATIONSHIP IN COMMISSION OF ELECTIONEERING

Season-All Industries, Inc. v. N.L.R.B. **654 F.2d 932 (C.A. 3, 1981)**
(while agreeing with proposition that in establishing and maintaining *laboratory conditions* conducive to an election, no conduct disruptive or destructive of voter's free choice can be tolerated regardless of whether actions are those of U agent or mere Ee, ct was precluded, because of RD's failure to afford hearing, from setting aside election on basis of E's objection that rank-and-file Ee improperly electioneered at polling place as U agent; ct did no more than adhere to Bd's own policies which require an evidentiary hearing when objections raise substantial and material issues of fact)

EDS-IDAB, Inc. v. N.L.R.B. **666 F.2d 971 (C.A. 5, Feb. 1982)**
(remanded for determination of whether Ee's alleged violative conduct while electioneering and other evidence that linked this Ee to threats of U retaliation and to violence can be found to have been condoned by U, for if Ee held to be agent of U than standard used to determine if his conduct interfered with election is stricter than if he is considered mere Ee)

N.L.R.B. v. Carroll Contracting and Ready-Mix, Inc. **636 F.2d 111 (C.A. 5, 1981)**
(election set aside where two former Ees with *vote Teamsters* on their hats, before polls opened, positioned themselves in parking lot where line of waiting voters formed and repeatedly and continuously, throughout polling period, urged waiting voters to vote for U by gesturing to *YES* box on ballot pinned to their shirts; once polls had opened, Ees waiting outside in line to vote became part of polling place, and were entitled to safeguards

8410—Cont.

against interference espoused by *Milchem, Inc.* 170 NLRB 362 (1968); actions of rank and file of its supporters do not need to be attributed to U)

Worley Mills, Inc. v. N.L.R.B. 685 F.2d 362 (C.A. 10, July 1982)
(no agency established where leading U adherent who had sat with U representatives at meetings and served as translator and electioneering engaged in by Ee involving line but outside immediate voting area not attributed to U as U did not ask him to electioneer, was not aware of this activity and Ee did not hold himself out as U agent)

8420 ORAL COMMUNICATION TO VOTERS

N.L.R.B. v. Vista Hill Foundation d/b/a Vista Hill 639 F.2d 479 (C.A. 9, 1980)
(ct affd Bd finding that U observor's conversations with voters consisting of social pleasantries were not objectionable and its finding that his comments were innocuous where he answered inquiry as to whether he would be U representative if U won by stating that he would be if Ees wanted him and said that if U won he would not be in so much trouble with the E)

8420-3300 Location of communication

8420-3325 Conversation within voting area

EDS-IDAB, Inc. v. N.L.R.B. 666 F.2d 971 (C.A. 8, Feb. 1982)
(where alleged improper conduct is not that of agents of one of parties then such conduct will warrant setting aside election if acts disrupt voting procedure or destroy atmosphere necessary to exercise of free choice in election; however, if representative of any party engages in prolonged conversation with voters waiting to cast their ballots, regardless of content of such conversations, election will be set aside)

8420-3325-5000 By union (representative, observer, or agent)

The Nestle Company 248 NLRB No. 106
(U observer talking to several Ees in polling room not objectionable when alleged objectionable conduct occurred 10 minutes prior to opening of polls and any other talking by observer was not *sustained* conversations with prospective voters waiting to vote

8420-3325-7500 Others

Parnell's Pride, Inc. 265 NLRB No. 146
(two rank and file Ees engaging in conversation in voting area with Ees waiting to vote did not warrant setting election aside, absent evidence of content of conversations or that Ees were agents of U; *mere conversations between voters who are not representatives of any party do not per se warrant setting election aside*)

8420-3350 Conversation just outside voting area or within designated 'no electioneering' area

8420-3350-5000 By union (representative or agent)

Midwest Stock Exchange, Inc.; et al. v. N.L.R.B. 620 F.2d 629 (C.A. 7, 1980)
(Bd finding of no interference in U observer's conversation with voters at polling place during election misapplied Bd's Milchem decision, since 5-minute conversation herein was considered by Bd sufficient under Milchem to void election, regardless of conversation's substance and effect; Bd predicated its decision upon context of observer's conversation and ignored last minute distraction of voters as well as *appearance of electioneering* that might result from prolonged conversation, and fact that, as in Milchem, conversation was not *one-to-one*)

South Pacific Furniture, Inc. v. N.L.R.B. 627 NLRB No. 173 (C.A. 9, 1980)
(U observers's statement *come on and vote, exercise your powers* said to Ees in room adjacent to balloting area, not objectionable and not *electioneering,* since statement was not one that can be said to have inhibited Ees' free choice in selecting their representative)

8420-3350-7500 Others

N.L.R.B. v. Campbell Products Department, Harry T. Campbell Sons Company, Division of Flintkote Company 623 F.2d 876 (C.A. 3, 1980)
(where rank-and-file Ee, active U adherent, engaged other Ees in conversation in vicinity of polling place while on their way to vote, this electioneering not considered conduct which would interfere with election choice although, if agent or representative of party to election had engaged in such conduct, Bd would have been justified in taking stricter view)

EDS-IDAB, Inc. v. N.L.R.B. 666 F.2d 971 (C.A. 8, Feb. 1982)
(Ee who had allegedly threatened other Ees with violence and allegedly struck another Ee because they were not pro-U and then sat near the U's observation table for 15 minutes during election may have engaged in conduct sufficient to destroy atmosphere necessary for free choice in election and case remanded for hearing)

8420-3375 Conversation away from immediate vicinity or outside designated 'no electioneering' area

8420-3375-5000 By union (representative or agent)

Bally's Park Place, Inc. 265 NLRB No. 096
(objection that no specific no-electioneering area was clearly designated by Bd agent properly overruled where alleged conduct did not violate *Milchem* rule because U statements were not made to voters in polling place or while waiting in line to vote nor was conduct otherwise of a nature to warrant an inference that it interfered with exercise of Ee free choice)

Revco D.S., Inc. and/or White Cross Stores, Inc., No. 14 v. N.L.R.B. 653 F.2d 264 (C.A. 6, July 1981)
(U representatives' pointing at and speaking to Ees away from polling area about three hours before election starting time not interference, where there was no evidence of improper remarks)

8420-3375-7500 Others

N.L.R.B. v. Carroll Contracting and Ready-Mix, Inc. 636 F.2d 111 (C.A. 5, 1981)
(election set aside where two former Ees with *vote Teamsters* on their hats, before polls opened, positioned themselves in parking lot where line of waiting voters formed and repeatedly and continuously, throughout polling period, urged waiting voters to vote for U by gesturing to *YES* box on ballot pinned to their shirts; once polls had opened, Ees waiting outside in line to vote became part of polling place, and were entitled to safeguards against interference espoused by *Milchem, Inc.* 170 NLRB 362 (1968); actions of rank and file of its supporters do not need to be attributed to U)

Worley Mills, Inc. v. N.L.R.B. 685 F.2d 362 (C.A. 10, July 1982)
(no agency established where leading U adherent who had sat with U representatives at meetings and served as translator and electioneering engaged in by Ee involving line but outside immediate voting area not attributed to U as U did not ask him to electioneer, was not aware of this activity and Ee did not hold himself out as U agent)

8430 MERE PHYSICAL PRESENCE

8430-2500 Within voting area

8430-2525 By employer or employer representative

American Display Manufacturing Co., Inc. 259 NLRB No. 086
(supervisor's appearance at voting line during election, not unlawful, where at most supervisor walked past voting area, and where Ee made statement to effect he did not want to vote, called Ee upstairs, and tole Ee that he should vote because *your vote will help us*)

8430-2550 By union official or representative

New England Lumber Division of Diamond International Corporation v. N.L.R.B. 646 F.2d 1 (C.A. 1, Apr 1981)
(designation of U official as observer at election does not warrant overturning election absent evidence official engaged in improper conduct while acting in that capacity)

8430-2575 Others

Baird-Poulan Division, Emerson Electric Company 247 NLRB No. 180
(objection that U supporters were permitted to stay in polling area after casting their ballots, overruled; at most some Ees waiting in line said vote yes and others vote no, which did not constitute coercive and disruptive conduct)

N.L.R.B. v. Single Manufacturing Company 658 F.2d 785 (C.A. 1, 1981)
(ct held that substantial evidence on record supported Bd finding that Ee who was recently discharged and subject of ULP charge did not interfere with free choice of Ees in representation election where Ee did not represent U when he engaged in conversations with voters waiting to cast ballots nor was his presence at polls coercive, disruptive, or so aggravated that free expression of choice was impossible since as Ee he had right to be present and to vote in election)

8430-5000 Just outside voting area or within designated 'no electioneering' area

B. E. & K., Inc. 252 NLRB No. 036
(observed presence of E agents in hallway outside conference room in which voting was taking place, held not interference, since U's understanding that hallway constituted immediate area of voting was its interpretation of what constituted such area, but facts of case did not support such interpretation)

8430-5025 By employer or employer representative

Electric Hose and Rubber Company 262 NLRB No. 014
(stationing of supervisor just outside voting area objectionable notwithstanding that area was w/i his area of responsibility)

Electric Hose and Rubber Company 262 NLRB No. 014
(supervisor who walked past voting polls w/o stopping but did glance in did not engage in surveillance which would interfere with election choice)

8430-5050 By union official or representative

8430-5050—Cont.

N.L.R.B. v. Connecticut Foundry Company 688 F.2d 871 (C.A. 2, July 1982)

(no hearing required on E's objection that U agents entered w/i 150 feet of polling area 3 times notwithstanding agreement that they would not enter polling area where period was brief and they made no Ee contacts)

N.L.R.B. v. Alson Mfg. Aerospace Division of Alson Industries, Inc. 599 F.2d [illegible]87 (C.A. 9, 1979)

(following ct remand to Bd for full evidentiary hearing on E's objections to election and after careful analysis of evidence produced at evidentiary hearing, ct enforced Bd's order upholding certification of U, notwithstanding ct would have preferred second election, in view of U's calling E's document circulated to Ees prior to election *all lies* when it was merely campaign propaganda and in view of U representatives' presence at polling area on election day)

8430-7900 Away from immediate vicinity or outside designated 'no electioneering' area

Boston Insulated Wire & Cable Co. 259 NLRB No. 149

(electioneering held not interference where it was conducted away from polling place, there was absence of designated *no electioneering* area, electioneering was not directed at Ees waiting in line to vote, and did not violate any instructions by Bd agent; voters standing in line to vote were separated from electioneering by set of doors, which remained closed during balloting)

Northern Telecom, Inc. 259 NLRB No. 085

(Ee electioneering using paraphernalia previously supplied by E did not interfere with voter's free choice where E had no part in their conduct, and it took place outside of polling area)

Beaird-Poulan Division, Emerson Electric Company 247 NLRB No. 180

(objection that U supporters were permitted to stay in polling area after casting their ballots, overruled; at most some Ees waiting in line said vote yes and others vote no, which did not constitute coercive and disruptive conduct)

N.L.R.B. v. Carroll Contracting and Ready-Mix, Inc. 636 F.2d 111 (C.A. 5, 1981)

(election set aside where two former Ees with *vote Teamsters* on their hats, before polls opened, positioned themselves in parking lot where line of waiting voters formed and repeatedly and continuously, throughout polling period, urged waiting voters to vote for U by gesturing to *YES* box on ballot pinned to their shirts; once polls had opened, Ees waiting outside in line to vote became part of polling place, and were entitled to safeguards against interference espoused by *Milchem, Inc.* 170 NLRB 362 (1968); actions of rank and file of its supporters do not need to be attributed to U)

8440 WEARING OF INSIGNIAS

8440-3300 Within voting area

8440-3350 By observer

The Nestle Company 248 NLRB No. 106

(objection overruled where observer for 1 U wore bumper sticker of his U on his shirt and observer for other U wore smaller U button on his shirt)

N.L.R.B. v. Connecticut Foundry Company 688 F.2d 871 (C.A. 2, July 1982)

(U observer's display of *skull and crossbones* to voters waiting in line held not *trivial* and minor misconduct cannot be summarily excused on ground that it could not have inferenced election; Bd erred in not giving appropriate weight to this evidence)

EDS-IDAB, Inc. v. N.L.R.B. 666 F.2d 971 (C.A. 5, Feb. 1982)

(U observer's conduct of wearing U badge bearing words *VOTE YES—FOR IAM* will not ordinarily by itself be sufficient to invalidate election)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center 652 F.2d 856 (C.A. 9, Aug 1981)

(objection to *display of ... union insignia by the Board* where customary U logo was imprinted on identification badges worn by election observers found frivolous)

8440-3375 By other persons

EDS-IDAB, Inc. v. N.L.R.B. 666 F.2d 971 (C.A. 5, Feb. 1982)

(Ee who had allegedly threatened other Ees with violence and allegedly struck another Ee because they were not pro-U and then sat near the U's observation table for 15 minutes during election may have engaged in conduct sufficient to destroy atmosphere necessary for free choice in election and case remanded for hearing)

8440-6700 Outside voting area

N.L.R.B. v. Carroll Contracting and Ready-Mix, Inc. 636 F.2d 111 (C.A. 5, 1981)

(election set aside where two former Ees with *vote Teamsters* on their hats, before polls opened, positioned themselves in parking lot where line of waiting voters formed and repeatedly and continuously, throughout polling period, urged waiting voters to vote for U by gesturing to *YES* box on ballot pinned to their shirts; once polls had opened, Ees waiting outside in line to vote became part of polling place, and were entitled to safeguards against interference espoused by *Milchem, Inc.* 170 NLRB 362 (1968); actions of rank and file of its supporters do not need to be attributed to U)

8450 USE OF PLACARDS

8450-3300 Within voting area

N.L.R.B. v. Connecticut Foundry Company 688 F.2d 871 (C.A. 2, July 1982)

(U observer's display of *skull and crossbones* to voters waiting in line held not *trivial* and minor misconduct cannot be summarily excused on ground that it could not have inferenced election; Bd erred in not giving appropriate weight to this evidence)

8450-6700 Outside voting area

Northern Telecom, Inc. 259 NLRB No. 085

(Ee electioneering using paraphernalia previously supplied by E did not interfere with voter's free choice where E had no part in their conduct, and it took place outside of polling area)

8460 DISTRIBUTION OF CAMPAIGN LITERATURE

8460-2500 Time of distribution

Moody Nursing Home, Inc. 251 NLRB No. 022

(E who conditioned Ee's right to vote upon first picking up paycheck committed objectionable conduct as this indicates to Ees that their franchise depends upon sufferance of E rather than it being an absolute Sec. 7 right)

8470 PHYSICAL COERCION OR THREATS THEREOF AND OTHER TYPES OF RESTRAINT

B. E. & K., Inc. 252 NLRB No. 036

(E's attorney who told laid off Ees, who appeared at polling place on E's premises for purpose of voting in election, that they were trespassing on private property and were liable to arrest held interference, since attorney's conduct was tantamount to assertion of control of election by party and interfered with Ees' right to vote by injecting possibility of arrest for exercising such protected right)

EDS-IDAB, Inc. v. N.L.R.B. 666 F.2d 971 (C.A. 5, Feb. 1982)

(remanded for determination of whether Ee's alleged violative conduct while electioneering and other evidence that linked this Ee to threats of U retaliation and to violence can be found to have been condoned by U, for if Ee held to be agent of U than standard used to determine if his conduct interfered with election is stricter than if he is considered mere Ee)

Revco D.S., Inc. and/or White Cross Stores, Inc., No. 14 v. N.L.R.B. 653 F.2d 264 (C.A. 6, July 1981)

(U representative's giving Ees a *look* on election day when they expressed uncertainty as to whether they would vote when E and U notified them polls were open did not warrant evidentiary hearing or setting aside of election)

N.L.R.B. v. Masonic Homes of California, Inc. 624 F.2d 88 (C.A. 9, July 1980)

(questions of harassment of Ee when soliciting her vote and expression of fear of reprisals from U remanded to Bd to determine whether such coercive conduct made impossible free expression of choice)

9000 ACTIONS OF BOARD OR BOARD AGENT

9033 ACTION OF BOARD

N.L.R.B. v. Granite State Minerals, Inc. 674 F.2d 101 (C.A. 1, Mar. 1982)

(E's objections to election upheld and E not obligated to bargain where, unilaterally departing from time and place set in stipulated election agreement, Bd allowed U to *drive* Ee who would be away at time of election to Bd's regional office to cast vote w/o U observers; conduct objectionable whether or not actual prejudice to E, absent exploration by Bd of alternatives to insure Ee's right to vote w/o breaching material terms of election agreement, and particularly where Ee had not heard E's case, nor seen election notices)

9033—Cont.

N.L.R.B. v. Granite State Minerals, Inc. 674 F.2d 181 (C.A. 1, Mar. 1982)

(Bd's investigation inadequate where Ee alleged threats by U which were corroborated but when asked for further details indicated he had smartened up and would say no more, Bd merely asked Ee if he had been threatened and U if it had threatened Ee; RD's conclusion based on ground that no evidence U had made threat improper, since *where coercion threatening freedom of election is at issue, it does not matter whether coercive acts are shown to be attributable to U itself*)

N.L.R.B. v. Lowry Drug Company, Inc. 598 F.2d 1217(T) (C.A. 4, 1979)

(where challenged ballot which had been ordered counted was destroyed election set aside and new election ordered in which current Ees shall determine whether they wish to be represented by U, provided U makes new showing of interest w/i 60 days)

9067 ACTION OF BD AGENT

Jobbers Meat Packing Co. Inc. 262 NLRB No. 098

(notwithstanding that one eligible voter was disenfranchised as result of Bd agent's unavoidably opening polls two hours later than scheduled, U was certified and election results not set aside after tally of ballots showed 11 for and seven against U with one challenged ballot, since votes of challenged ballot and excluded voter would not have been determinative of election even if both had voted against U)

N.L.R.B. v. ARA Services, Inc. 678 F.2d 436 (C.A. 3, Apr. 1982)

(RD and Bd did not err in overruling, w/o benefit of evidentiary hearing, E's objection that conduct of Bd agent and U observer during election gave impression that election was U controlled where statement by E observer referred to no specific misconduct by either Bd agent or U observer)

Fotomat Corporation v. N.L.R.B. 634 F.2d 320 (C.A. 6, 1980)

(Bd agent's removal of literature from E's bulletin boards during election and not reposting it during non-election period did not affect election)

N.L.R.B. v. Allen's I.G.A. Foodliner 630 F.2d 217(T) (C.A. 6, 1980)

(Bd agent's comment to E observer that *if Ees had been treated right she would not be there holding election* was improper but not prejudicial where no voters were present in polling place at time remark was made, most voters had cast their ballots, and there was no evidence in the record that agent's remark was relayed to any voter who had not yet cast his/her ballot)

N.L.R.B. v. Eskimo Radiator Mfg. Co. 688 F.2d 1315 (C.A. 9, Oct. 1982)

(Bd agent explained ballot to Spanish speaking Ee who misunderstood directions and believed Bd agent was telling him to vote for U found not to have engaged in any misconduct interfering with election choice, especially where no other Ee's heard Bd agent)

Summa Corporation d/b/a Frontier Hotel v. N.L.R.B. 625 F.2d 293 (C.A. 9, Aug. 1980)

(where parties had stipulated prior to election that each would be allowed 2 observers, and U, with Bd agent's permission, had 3rd observer present, election set aside as E entitled to insist that Bd and U diligently adhere to provisions of stipulation designed to insure fair election; moreover, no showing of actual prejudice necessary)

N.L.R.B. v. Masonic Homes of California, Inc. 624 F.2d 88 (C.A. 9, July 1980)

(Bd properly rejected E's contention that Bd agent improperly permitted U observer to leave balloting room and enter hall through which voters passed where there was no evidence of contact or conversation between voters and U observer)

385 POST-CERTIFICATION AND UNIT CLARIFICATION ISSUES

0100 GENERALLY

1200 VALIDITY OF CERTIFICATION

2500 AMENDMENT OF CERTIFICATION

2501 GENERALLY

Texas Plastics, Inc. 263 NLRB No. 89

(merger of two international Us to form new international did not affect representation at local level, since nothing but local's designation—i.e., that it was chartered by new international—had changed and no improprieties by local's former international were established; E's contention that change of name on local's charter was improper because its Ees and local's members had not participated in or ratified merger rejected, since constitution of Ees' former international expressly authorized its executive board to merge with other international Us)

2525 CHANGE IN REPRESENTATIVE

2525-0800 Affiliation of union with international

Seattle-First National Bank 265 NLRB No. 088

(after withdrawing record on review before appellate ct, Bd reconsidered, *sua sponte*, its decision in the case and held that affiliation of certified independent U with international U did not meet minimal due-process standards and was improper where nonU members of unit were not permitted to vote; accordingly, decision and amended certification vacated)

Palo Alto Medical Clinic JD-(SF)-282-80

(affiliation of local independent U (Council) with an AFL-CIO chartered U (AFT) did not result in new bargaining entity where no changes made in Council's 1) bargaining committee; 2) administrative structure; 3) authority over its bargaining, content of and administration of agreement; 4) name; 5) bylaws; and 6) authority to levy dues notwithstanding Council agreed to subject itselfto AFT's a) constitution and bylaws; b) dues requirements; and c) strike fund and attendent regulations)

J.F. Hink & Son v. N.L.R.B. 684 F.2d 729(T) (C.A. 9, July 1981)

(post-election objections based on U's (or international's) merger or change of affiliation with another U is not automatically entitled to hearing addressing is of *continuity of representation* i.e., whether successor U is contínciation of elected U, or substantially different organization but objection must be supported by substantial and material evidence standard applicable to any post-election objection)

2525-1700 Substitution of local for certified international

Duquesne Light Company and Its Wholly Owned Subsidiary, Allegheny County Steam Heating Company (System Council U-10, Electrical Workers) 248 NLRB No. 168

(ptn to amend certification to substitute local Us for international U as certified bargaining representative granted, since amendment's effect would be no more than recognizing local Us de facto status as exclusive bargaining representative and unit Ees had also sanctioned status of local Us as their bargaining representative not only by acquiescing in local Us' principal role in negotiations and administration of agreements, but also by ratifying contracts recognizing local Us as their bargaining representative)

2525-3400 Substitution of union with which certified representative has affiliated

Garlock Equipment Company 263 NLRB No. 96

(Bd reaffirmed RD's finding that affiliation vote was valid where vote was open to all Ees in bargaining unit and due-process requirements were satisfied)

2525-5000 Substitution of union with which certified representative has merged

St. Mary's Home, Inc. t/a St. Mary's Infant Home 255 NLRB No. 147

(E's assertion that U was not same labor organization that petitioned for certification, rejected as E did not mention alleged change in U's identity in its Request for Review; moreover, Bd had already held in earlier case that new international U was continuation of and successor to representational rights of Retail Clerks International Association and Amalgamated Meat Cutters which 2 Us had merged)

2525-8400 Employee approval of substitution of representative

2525-8450 Approval by vote on issue

2525-8450-4000 Eligibility to vote

The House of The Good Samaritan and The Samaritan-Keep Nursing Home, Inc. 248 NLRB No. 048

(selection of delegates to state annual convention from volunteers by division president at meeting where membership had opportunity to appear and express their desires not violative of by-laws or denial of due process)

2525-8450-4033 Unit members

Aurelia Osborn Fox Memorial Hospital 247 NLRB No. 48

2525-8450-4067 Union members

Seattle-First National Bank 265 NLRB No. 088

(after withdrawing record on review before appellate ct, Bd reconsidered, *sua sponte*, its decision in the case and held that affiliation of certified independent U with international U did not meet minimal due-process standards and was improper where nonU members of unit were not permitted to vote; accordingly, decision and amended certification vacated)

Palo Alto Medical Clinic JD-(SF)-282-80

Palo Alto Medical Clinic JD-(SF)-282-80

(contention that vote by Council (independent U) members on affiliation with AFL-CIO chartered U was improper because vote was restricted to Council members only, rejected, as there was opportunity for nonmembers to become members and affiliation vote procedures are internal U matters)

2525-8450-6000 Regularity of voting procedures

Duquesne Light Company and Its Wholly Owned Subsidiary, Allegheny County Steam Heating Company (System Council U-10, Electrical Workers) 248 NLRB No. 168

(Bd more lenient towards voting procedures used by locals to obtain unit Ees' approval for AC where vote is on substitution of locals for International with which they are affiliated, rather than merger or affiliation)

The House of The Good Samaritan and The Samaritan-Keep Nursing Home, Inc. 248 NLRB No. 048

(absence of secret ballot on affiliation not violation of by-laws or denial of due process where membership w/o opposition instructed delegate to vote for permanent affiliation, and no one requested or moved for secret ballot; as to absence of quorum, division had modified (de facto) the quorum provision to comport with average attendance)

Aurelia Osborn Fox Memorial Hospital 247 NLRB No. 48

(when collective bargaining representative affiliated with International U and E refused to bargain with U after this point, E violated Act where successor U is same bargaining entity as predecessor U, and since it had right to make its own policy determinations, negotiate contracts, call strikes, and retained right to establish and keep its own dues, local U is autonomous from International; vote in favor of affiliation was unanimous, conformed to U constitution; moreover, fact that vote was not secret or separate vote by unit Ees not held does not negate validity as Us are not held to Bd's own election standards)

2525-8450-8000 Approval by majority of those voting

The House of The Good Samaritan and The Samaritan-Keep Nursing Home, Inc. 248 NLRB No. 048

2537 CHANGE IN NAME ONLY

Colonial Manor 1977, Inc. 263 NLRB No. 151

(E's contention that two merged Us cannot assume certification issued to one of them prior to merger, w/o affording E opportunity to litigate whether alleged merger created a labor organization with which E is obligated to

2537—Cont.

bargain, rejected, since Bd had previously found that merged U merely represented change of name from that of originally certified U; and E's refusal to bargain did not arise out of any concern with respect to merger in view of fact that it did not answer originally certified U's demands for bargaining for which it gave no explanation)

5000 SUSPENSION OR REVOCATION OF CERTIFICATION

5050 GROUNDS FOR SUSPENSION OR REVOCATION

5050-7800 Failure to represent employees

5050-7833 Conflict of interest

North Shore University Hospital **259 NLRB No. 121**

(E's mtn to revoke certification of nurses' association on ground it is not a labor organization and is disqualified from acting as bargaining representative because it is influenced, dominated and controlled by supervisory/managerial members, denied)

Sierra Vista Hospital, Inc. **249 NLRB No. 066**

(where Bd had rescinded its denial of E's mtn to revoke certification of nurses association and remanded case to RD to give parties opportunity to fully litigate issue as to whether association was disqualified to represent E's nonsupervisory nurses because of supervisory participation in positions of authority in the association, Bd held E had failed to meet burden of proving clear and present danger of conflict of interest under *Sierra Vista*, 241 NLRB No. 107, and denied E's mtn to revoke certification: See also *Sierra Vista Hospital, Inc.* 249 NLRB No. 067)

7500 UNIT CLARIFICATION

7501 GENERALLY

Consolidated Papers, Inc. v. N.L.R.B. **670 F.2d 754 (C.A. 7, Feb. 1982)**

(ct denied enforcement ofBd order predicated upon unit clarification proceeding and Bd's finding that salaried Ees who were transferred to facility in question from another location were accretion to existing unit at the facility, since Bd should have dismissed ptn as untimely under *Wallace-Murray* rule, where ptn was filed during mid-term of existing bargaining contract, and contract's description of unit as *hourly paid* Ees *clearly defined unit to exclude salaried Ees*)

7501-2500 Board authority

7501-2501 Generally

Magna Corporation **261 NLRB No. 069**

(where disputed job did not exist - at least in present form - at time of certification and U has consistently endeavored to establish its placement in unit, clarification question is presented)

United States Postal Service **256 NLRB No. 095**

(Bd refused postal service's request, should Bd find no qcr, to treat its RM ptn for overall national unit as one seeking unit clarification since, as recognized by E if it is correct in its argument that national unit is appropriate, an election would be necessary to determine majority bargaining representative, and UC ptn is never appropriate to determine qcr and therefore could not achieve unit sought by E)

The Washington Post Company **254 NLRB No. 014**

(while certain positions sought to be excluded by UC ptn may have long been included under previous contracts, and job duties of such positions have remained unchanged, Bd is compelled, under Act's specific exclusion of supervisors and well settled rule excluding managerial and confidential Ees, to exclude such Ee categories if it can be shown that persons in such positions meet the test for establishing supervisory, managerial, or confidential status)

Shop Rite Foods, Inc. **247 NLRB No. 143**

(UC ptn filed 101 days prior to expiration of then-current 3-year contract, timely filed, since Bd has processed UC ptn filed 90 days prior to expiration of agreement in *Beth Israel Medical Center, 231 NLRB 295 (1977)*; ptn in instant case was only slightly earlier filed; Bd does not lack authority to clarify unit established by agreement of parties)

7501-2511 No clarification where question of representation exists

Boston Cutting Die Company **258 NLRB No. 101**

The Washington Post Company **256 NLRB No. 190**

(UC ptn to accrete confidential secretaries to unit dismissed for failure to show compelling reason for altering unit placement of Ees historically excluded from unit where their positions were not significantly changed as alleged; ptn raised qcr which may not be resolved in UC ptn, and, although closure of R hearing w/o fully litigating unit placement issues was erroneous, it did not prejudice U or warrant casting aside UC criteria or Ees' rights to vote in representation election; dismissal was w/o prejudice to filing R ptn)

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center **251 NLRB No. 206**

(determination of whether position of secretary to administrator of nursing service, which predated current collective-bargaining agreement, should be included in unit raises qcr and is not considered in unit clarification proceeding)

James A. McBrady, Inc. and Maine Erection, Inc. **247 NLRB No. 017**

(Bd refused to clarify unit when job classification was in existence at time previous collective bargaining agreement entered into and this agreement makes no specific reference to job classification; further, Ees in this job classification perform function separate and apart from other Ees; thus, ptn raises QCR which precludes Bd from changing previously established bargaining unit w/o first holding election)

7501-2537 Clarification of uncertified unit permitted under section 9(b)

Stafford-Lowdon Company, An American-Standard Company **253 NLRB No. 031**

(where E informed U during negotiations that it had filed U C ptn but would sign new contract subject to outcome of proceeding and U agreed, subsequent execution of 1-year collective bargaining agreement does not render U C ptn moot or unnecessary)

7501-2862 Board may clarify unit on own motion

The Washington Post Company **254 NLRB No. 014**

(Bd can decide placement of disputed Ees through clarification process even though unit has not been certified, E does not question representative status of U, and no other U seeks to represent them)

7501-2887 Clarification not available to resolve jurisdictional dispute

United Food Commercial Workers International Union, Local No. 1222, AFL-CIO, CLC(Fedmart Stores, Inc.) **262 NLRB No. 88**

(where dispute is not over assignment of work to one group of Ees rather than another within meaning of Sec. 8(b)(4)(D) but rather revolves around question of which U shall represent Ees whom E has chosen or will choose in future to operate *SCORE* marking system, matter is not dispute within meaning of Sec. 10(k) and notice of hearing quashed. However, determination was made in UC hearing)

7501-2890 Availability of clarification for modification of unit description

Mercury Marine Division of Brunswick Corporation **254 NLRB No. 146**

(Bd did not defer to reasoning of arbitrator who had found E had not violated contract by assigning operation of newly installed electronically programmed die-casting machines to personnel outside unit; instead, Bd accreted machine operators to existing unit pursuant to clarification ptn which is appropriate procedure for resolving ambiguities concerning unit placement of individuals who come w/i newly established classification of disputed unit placement; in any event, issues involving appropriateness of unit and criteria are particularly w/i Bd's expertise)

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**

(during mid-term contract negotiations Bd would refuse to entertain mid-term U C ptn to exclude alleged supervisors where parties were aware of unit placement problems when contract executed; to do so would be disruptive of established bargaining relationships)

7501-5000 No showing of interest required

Consolidated Papers, Inc. v. N.L.R.B. **670 F.2d 754 (C.A. 7, Feb. 1982)**

(ct denied enforcement ofBd order predicated upon unit clarification proceeding and Bd's finding that salaried Ees who were transferred to facility in question from another location were accretion to existing unit at the facility, since Bd should have dismissed ptn as untimely under *Wallace-Murray* rule, where ptn was filed during mid-term of existing bargaining contract, and contract's description of unit as *hourly paid* Ees *clearly defined unit to exclude salaried Ees*)

7533 ISSUES RESOLVABLE BY CLARIFICATION PROCEEDING

7533-2000 Job classification coverage

7533-2001 Generally

Boston Cutting Die Company **258 NLRB No. 101**

(UC ptn seeking to include working foremen at plant manufacturing cutting dies, dismissed as untimely, where such classification has been historically excluded, and ptn was filed in contract's midterm; although UC ptns filed midterm for unit classifications contractually or historically established are

7533-2001—Cont.

considered by Bd where classification has undergone recent substantial changes or clarification is necessary to avoid violation of Act or Bd policy, neither exception applies to foreman who performed same duties as preceding foreman, and petitioner presented no evidence that exclusion of his classification will violate Act or Bd policy)

Boston Cutting Die Company **258 NLRB No. 101**
(Bd disagreed with RD's finding that because working foreman, sought to be included in unit pursuant to UC ptn, performed essentially same work for almost 3 years before he was promoted to working foreman in same department, it would not be disruptive of parties' bargaining relationship to entertain UC ptn; instead, Bd found that because foreman's promotion was in conformity with E's established practice of promotion after substantial period of departmental experience, it was a bona fide promotion, and consequently, foreman was currently bona fide member of working foreman classification)

7533-2001-0000 Intention of parties to include or exclude classification

Shop Rite Foods, Inc. **247 NLRB No. 143**

7533-2020 Classifications existing at time of certification or recognotion

7533-2020-3300 Employees sought excluded from prior representation

The Washington Post Company **256 NLRB No. 190**
(UC ptn to accrete confidential secretaries to unit dismissed for failure to show compelling reason for altering unit placement of Ees historically excluded from unit where their positions were not significantly changed as alleged; ptn raised qcr which may not be resolved in UC ptn, and, although closure of R hearing w/o fully litigating unit placement issues was erroneous, it did not prejudice U or warrant casting aside UC criteria or Ees' rights to vote in representation election; dismissal was w/o prejudice to filing R ptn)

James A. McBrady, Inc. and Maine Erection, Inc. **247 NLRB No. 017**
(Bd refused to clarify unit when job classification was in existence at time previous collective bargaining agreement entered into and this agreement makes no specific reference to job classification; further, Ees in this job classification perform function separate and apart from other Ees; thus, ptn raises QCR which precludes Bd from changing previously established bargaining unit w/o first holding election)

7533-2020-6700 Petitioner never represented employees sought

Southwestern Bell Telephone Company **254 NLRB No. 052**
(*engineering clerks* not represented by any other labor organization accreted into company-wide unit of clerical Ees where after E reorganized company engineering department ceased to exist; engineering clerks are only unrepresented Ees in segment and have substantial community of interest with clerical Ees already in bargaining unit; accretion proper notwithstanding engineering clerks' job titles and duties had not changed in 20 years and, therefore, Bd does not usually allow classifications of Ees who have been historically excluded from unit to be accreted into unit)

7533-2040 Classification functionally related

Missouri Pacific Employees' Hospital Association
and St. Louis-Little Rock Hospitals, Inc. d/b/a
Compton Hill Medical Center **251 NLRB No. 206**
(secretary to president of E who is not involved with formulation of labor relations policies included in unit where her duties are similar to those performed by represented clerks and record not clear that position existed prior to bargaining agreement)

Missouri Pacific Employees' Hospital Association
and St. Louis-Little Rock Hospitals, Inc. d/b/a
Compton Hill Medical Center **251 NLRB No. 206**
(financial administrator of E included in unit where newly created position and she performs duties not unlike those clerks already represented by U)

7533-2060 Classification established subsequent to certification or recognition

Holly Hill Fruit Products Co., Inc. **256 NLRB No. 035**
(position of tank farm operators in newly established operation included in unit where 2 out of 3 were transferees from other positions with E, pay and benefits remained same, skills were similar to those utilized in prior positions; moreover fact that they receive higher pay and have different break schedules from other production Ees is insufficient to require exclusion from unit)

Missouri Pacific Employees' Hospital Association
and St. Louis-Little Rock Hospitals, Inc. d/b/a
Compton Hill Medical Center **251 NLRB No. 206**
(position of medical laboratory technologist falls w/i definition of *professional* Ee as they have completed college *degree* program and are registered with professional association and use independent judgment and discretion in performance of their duties when analyzing and interpreting medical tests and, therefore, are excluded from technical unit w/o separate election)

Missouri Pacific Employees' Hospital Association
and St. Louis-Little Rock Hospitals, Inc. d/b/a
Compton Hill Medical Center **251 NLRB No. 206**
(position of ward manager included in unit because of Ee's contact with other Ees represented by U, creation of position post-dated bargaining agreement, and there is no other unit in which Ee could be included)

Missouri Pacific Employees' Hospital Association
and St. Louis-Little Rock Hospitals, Inc. d/b/a
Compton Hill Medical Center **251 NLRB No. 206**
(secretary to president of E who is not involved with formulation of labor relations policies included in unit where her duties are similar to those performed by represented clerks and record not clear that position existed prior to bargaining agreement)

Missouri Pacific Employees' Hospital Association
and St. Louis-Little Rock Hospitals, Inc. d/b/a
Compton Hill Medical Center **251 NLRB No. 206**
(financial administrator of E included in unit where newly created position and she performs duties not unlike those clerks already represented by U)

Metromedia, Inc.—KMBC-TV **247 NLRB No. 087**
(Bd clarified certified unit of cameramen to also include cameramen using newly introduced minicams where supervision same for minicam cameramen as for film cameramen, operation of both types of cameras and mechanical skills involved are same, and most important, job functions - video gathering of news - are essentially identical)

7533-2080 Classification changed subsequent to certification or recognition

Magnus Corporation **261 NLRB No. 069**
(position of full-time plant storeroom specialist which encompasses all duties of old part-time receiver/stocker (not included in unit) and much more, properly included in unit which includes plant clerical Ees and shipping clerks though he does not share community of interest with other unit Ees; duties performed are essentially plant clerical; therefore, fact that position is salaried rather than hourly paid as other unit Ees is insufficient to preclude inclusion in unit)

The Washington Post Company **256 NLRB No. 190**
(UC ptn to accrete confidential secretaries to unit dismissed for failure to show compelling reason for altering unit placement of Ees historically excluded from unit where their positions were not significantly changed as alleged; ptn raised qcr which may not be resolved in UC ptn, and, although closure of R hearing w/o fully litigating unit placement issues was erroneous, it did not prejudice U or warrant casting aside UC criteria or Ees' rights to vote in representation election; dismissal was w/o prejudice to filing R ptn)

7533-4000 Expanded or changed operations following certification or voluntary recognition

7533-4020 Subsequently acquired operations

Mac Towing, Inc., et al. **262 NLRB No. 168**
(where E acquired another company, Ees in newly acquired unit found not to be accretion to existing bargaining unit where there has been no interchange of vessels or Ees w/other affiliated companies and Bd will not compel group of Ees who may constitute separate appropriate unit to be included in overall unit without allowing Ees to express their preference)

7533-4040 New locations

Westwood Import Company, Inc. **251 NLRB No. 162**
(an accretion is by definition merely an addition of new Ees plus an already group of Ees so added to existing bargaining unit are regarded as part of that unit; in deciding whether new group of Ees is accretion to existing unit, Bd not only considers such factors as functional integration level of management control, similarity of working conditions, organizing history of Ee interchange, job skills, and physical separateness, but also gives special consideration to interests of unrepresented Ee in exercising their own right to self organization)

7533-4060 New operations

United Food Commercial Workers International
Union, Local No. 1222, AFL-CIO,
CLC(Fedmart Stores, Inc.) **262 NLRB No. 88**
(where dispute is not over assignment of work to one group of Ees rather than another within meaning of Sec. 8(b)(4)(D) but rather revolves around question of which U shall represent Ees whom E has chosen or will choose in future to operate *SCORE* marking system, matter is not dispute within meaning of Sec. 10(k) and notice of hearing quashed. However, determination was made in UC hearing)

Holly Hill Fruit Products Co., Inc. **256 NLRB No. 035**
(position of tank farm operators in newly established operation included in unit where 2 out of 3 were transferees from other positions with E, pay and benefits remained same, skills were similar to those utilized in prior positions; moreover fact that they receive higher pay and have different break schedules from other production Ees is insufficient to require exclusion from unit)

7533-4060—Cont.

Westwood Import Company, Inc. **291 NLRB No. 162**
(an accretion is by definition merely an addition of new Ees plus an already group of Ees so added to existing bargaining unit are regarded as part of that unit; in deciding whether new group of Ees is accretion to existing unit, Bd not only considers such factors as functional integration level of management control, similarity of working conditions, organizing history of Ee interchange, job skills, and physical separateness, but also gives special consideration to interests of unrepresented Ee in exercising their own right to self organization)

Local 282, Teamsters (Mid-County Transit Mix, Inc.) **290 NLRB No. 076**
(when 2 affiliated companies merged into 3rd company (successor) and remaining Ee of one affiliated company transferred to unit of successor, Bd held Ee accretion to successor's bargaining unit notwithstanding member of different U)

7533-4080 Reorganization of operations

United Hospitals, Incorporated and The Children's Hospital, Inc. **249 NLRB No. 063**
(where 3 E members of 21 E multi-E association planned merger and admitting clerks of 2 of these 3 E's were unrepresented by U, U's request that unrepresented Ees be treated as accretion to unit denied because out of 21 Ee groups only 2 were represented by U and Bd will not add unrepresented Ees to multi-E unit on a piece meal basis, notwithstanding all admitting clerks would be on 1 payroll, work in single admitting department, perform similar job functions under common supervision)

7533-4080-7500 Merged employees unrepresented

Southwestern Bell Telephone Company **284 NLRB No. 082**
(*engineering clerks* not represented by any other labor organization accreted into company-wide unit of clerical Ees where after E reorganized company engineering department ceased to exist; engineering clerks are only unrepresented Ees in segment and have substantial community of interest with clerical Ees already in bargaining unit; accretion proper notwithstanding engineering clerks' job titles and duties had not changed in 20 years and, therefore, Bd does not usually allow classifications of Ees who have been historically excluded from unit to be accreted into unit)

7533-8000 Consolidation of existing units represented by same petitioner

7533-8004 Employerwide unit presumptively appropriate

7533-8004-5000 Existing units related by bargaining history

Stafford-Lowdon Company, An American-Standard Company **283 NLRB No. 031**
(two-plant bargaining unit found appropriate and U C ptn dismissed where although differces in Ee skills, terms and conditions of employment, operations in two plants exist, these differences prevailed for past 21 years and only new difference since new ownership in last year is assignment of separate manager for both; this change not substantial enough to negate long bargaining history)

7533-8080 Rejection of clarification would leave parties no early course of relief

Shop Rite Foods, Inc. **267 NLRB No. 143**
(UC ptn filed 101 days prior to expiration of then-current 3-year contract, timely filed, since Bd has processed UC ptn filed 90 days prior to expiration of agreement in *Beth Israel Medical Center, 231 NLRB 295 (1977)*; ptn in instant case was only slightly earlier filed; Bd does not lack authority to clarify unit established by agreement of parties)

7533-9000 Division of single unit into multi units

Stafford-Lowdon Company, An American-Standard Company **283 NLRB No. 031**
(two-plant bargaining unit found appropriate and U C ptn dismissed where although differces in Ee skills, terms and conditions of employment, operations in two plants exist, these differences prevailed for past 21 years and only new difference since new ownership in last year is assignment of separate manager for both; this change not substantial enough to negate long bargaining history)

393 PROCEDURE IN REPRESENTATION PROCEEDINGS

0100 GENERALLY

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. 619 F.2d 563 (C.A. 6, 1980)
(ct found that striking Ees were effectively terminated prior to effective date of health care amendments and therefore did not acquire *Ee* status under Act merely because strike was in progress on effective date)

0133 EXEMPT FROM APA ADJUDICATION REQUIREMENTS

N.L.R.B. v. Eskimo Radiator Mfg. Co. 688 F.2d 1315 (C.A. 9, Oct. 1982)

1000 PARTIES

1001 GENERALLY

Axelson, Inc., subsidiary of U.S. Industries, Inc. 263 NLRB No. 010
(U which was vitally interested party in instant decertification proceeding but was not party and did not have opportunity to participate in related ULP case held not bound by record made in latter case)

2000 INTERVENTION

2033 INTERVENTION TO EXTENT INTEREST MAY APPEAR

Bally's Park Place, Inc. 257 NLRB No. 132
(reversing *Wackenhut Corporation* 223 NLRB 83 (1976), Bd returned to its prior practice of permitting nonqualified Us to participate in R elections conducted among guard Ees and of certifying arithmetic election results only when such Us are victorious but not certifying these Us; however, noncertification will not prevent such Us from representing guards should they win such elections)

2050 INTERVENTION BEFORE HEARING

Union College 247 NLRB No. 069
(motion by Ees' Association to intervene in instant case denied and cross ptn by Ees' association for election in another case dismissed, since association had not submitted timely showing of interest that predated election hearing)

3000 SERVICE OF DOCUMENTS

4000 SUBPOENAS

4001 GENERALLY

4001-5000 Nature and scope

Lodi Memorial Hospital Association, Inc. 249 NLRB No. 121
(E's subpena for production from Nurses' Association, on statewide or regional basis, of documents concerning its employment-related assistance to supervisors who are members of Association held not improperly limited by RD in its geographical scope to Es w/i county; in view of Bd's finding that E's conflict-of-interest theory concerning Association's assistance to supervisors was w/o merit, additional evidence obtained under subpena would not be relevant)

Lodi Memorial Hospital Association, Inc. 249 NLRB No. 121
(RD's denial of E's interim appeals from rulings of hearing officer sustained, where E's subpena sought complete minutes of Nurses' Association's board of directors and those of its region, hearing officer ruled that he would conduct in camera inspection of portions of minutes not voluntarily produced by Association, and further granted Association's mtn to quash E's subpena for minutes of Association's administration commission; evidence sought is not relevant in view of Bd's ruling that E's conflict-of-interest theory concerning whether Association is qualified to represent Ees was w/o merit)

4001-5033 Attendance and testimony of witnesses

Rolligon Corporation 254 NLRB No. 004
(Bd did not accept ALJ's recommendation that Bd should administratively require U, which distributed Bd subpenas to attend Bd R hearing, to pay subpenaed Ees witness and mileage fees; although statements signed by Ees did not constitute explicit waiver of their right to such fees, issue of money owed for fees is matter between U and subpenaed Ees that has not been raised by either party and is not before Bd; moreover, there is no administrative process whereby Bd could compel such payment)

Rolligon Corporation 254 NLRB No. 004
(use by any party of mass subpenas as device merely to generate Ee enthusiasm or interest, or to cause mass Ee attendance at Bd proceeding, condemned by Bd, since it clearly has potential to disrupt E's production schedule and is not purpose for which Bd subpenas were intended; subpenas are, on their face, issued to require attendance of potential witnesses, and if use of subpenas confused Ees or created appearance of Bd partisanship or otherwise impacted upon exercise of free choice by Ees, election would be set aside)

Rolligon Corporation 254 NLRB No. 004
(unlike cases involving altered documents or misstatements of law, Bd subpena does not involve misrepresentation of Bd actions; Bd issues subpenas in representation matters for all parties, at their request, and it is not apparent how their issuance could imply that Bd favored one party or the other)

Rolligon Corporation 254 NLRB No. 004
(RD's issuance of subpenas upon proper application is ministerial act which is largely automatic, but if there is abuse of Bd process, aggrieved party may bring matter to RD's attention and move to quash; moreover, should Bd discover widespread abuse of its process, it will consider sua sponte revisions of its R/R to meet such problem)

4001-5067 Production of any evidence

N.L.R.B. v. Thom Brown Shoes, Inc. No. 79-C-3173, Feb. 28, 1980, DC E.D. NY (unreported)
(names and addresses of Ees eligible to vote in R proceeding were proper subject of Bd *subpoena duces tecum*)

4060 REVOCATION

4060-0100 Generally

N.L.R.B. v. Pinkerton's, Inc. 621 F.2d 1322 (C.A. 6, June 1980)
(Bd or hearing officer has power to revoke subpoena)

4060-4700 Grounds for revocation

N.L.R.B. v. Pinkerton's, Inc. 621 F.2d 1322 (C.A. 6, June 1980)
(subpoena of materials for purpose of establishing possible proprietary interest of U in competitor of E properly quashed since not relevant, absent evidence for believing relationship existed or that there was potential conflict of interests that would preclude U from representing Ees of E)

5000 EXPEDITED ELECTION PROCEDURE

Rockford Redi-Mix Co., Inc. v. Glen Zipp, RD 632 F.2d 30 (C.A. 7, 1980)
(district ct had no jurisdiction to review Bd decision denying certification to expedited election conducted pursuant to 8(b)(7)(C) during period in which challenges to validity of election were being resolved; ct rejected contention that Bd's rule that election becomes valid under 8(b)(7)(B) when all challenges and objections to it have been resolved is contrary to Act when applied to expedited election conducted under 8(b)(7)(C))

Rockford Redi-Mix Co., Inc. v. Glen Zipp, RD 632 F.2d 30 (C.A. 7, 1980)
(contention that GC violated Act when he failed to issue ULP complaint against U that picketed for recognition after date of expedited election under 8(b)(7)(C) during period in which challenges to validity of election were being resolved, rejected; assuming limited review may be available under Freedom v. Kyne, ct held there is no specific and unambiguous provision of Act requiring action in conformity with E's immediate certification theory, and jurisdiction is, accordingly not present to consider GC's failure to treat as valid an election that had not yet been determined to be valid)

Rockford Redi-Mix Co., Inc. v. Glen Zipp, RD 632 F.2d 30 (C.A. 7, 1980)
(ct declined to rule on issue as to validity of Bd's R/R and procedures set forth in GC's case handling manual which provide for holding hearings prior to conducting expedited elections in certain extraordinary cases, and which E claimed were in conflict with clear command of 8(b)(7)(C); contro-

5000—Cont.

versy as to Bd and GC is hypothetical, abstract, and not ripe for review, and E lacks standing to contest their validity)

6000 PRE-ELECTION PROCEDURE

6007 FILING OF PETITION

6007-1700 Timeliness

Vanity Fair Mills, Inc., Clarks Mills Division **256 NLRB No. 148**

(ptn improperly dismissed, notwithstanding filed w/i insulated period of 60 days prior to third anniversary of contract for more than three years and that prior to filing of ptn in proper form parties had executed new contract, where petitioner acted on advice of Regional Office which was unaware of and did not attempt to find out origination date and duration of contract)

Chicago Health and Tennis Clubs, Inc. **251 NLRB No. 018**

(decertification ptn dismissed as untimely because filed w/i certification year extended pursuant to ct enforced Bd D/O since year did not begin to run at time E made offer to bargain with U which also contained preconditions regarding nonmandatory subject of bargaining which U was free to, and did, reject; therefore, such offer did not rise to *good faith* bargaining)

6007-3300 Adequacy

Community Tele-Communications, Inc., d/b/a Helena Cable T.V. **249 NLRB No. 088**

(U's contention that deauthorization ptn should be dismissed since appropriate unit should include both office Ees and installers and technicians rather than only office Ees as pattern of bargaining has been to include separately certified units under one contract rejected, where no intent to merge two units into single unit as evidenced by reference in supplemental agreement to 2 units)

6014 PRELIMINARY INVESTIGATION

Chester Valley, Inc. **251 NLRB No. 190**

(election can be set aside on basis of conduct discovered during investigation even though particular conduct was not object of specific objection)

Newport News Shipbuilding and Dry Dock Company v. N.L.R.B. **633 F.2d 1079 (C.A. 4, 1980)**

(Sec. 9(c)(1) prohibits ct from ordering Bd to conduct hearing in R case since hearing must be provided only after Bd has reasonable cause to believe qcr exists; since Bd met its statutory obligation by conducting investigation, ct cannot interfere with Bd's evaluation of investigation short of Bd's arbitrary action, and Bd's decision herein to dismiss decertification ptn, whether right or wrong, was not arbitrary)

6027 WITHDRAWAL OF PETITION

6027-2000 Basis of withdrawal

ECM, Inc. **256 NLRB No. 141**

(where petitioner at hearing expressed willingness to proceed to election in broader unit, if found appropriate, but was not asked and did not indicate whether it wished to proceed in smaller unit found appropriate herein, Bd held that, in event petitioner does not wish to proceed with election as directed, it may withdraw its ptn w/o prejudice by notice to RD w/i 7 days from date of instant decision)

Fenestral, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

(petitioner's request to withdraw R ptn granted in view of fact neither petitioner nor intervenor currently has interest in representing Ees)

6034 DISMISSAL OF PETITION

The Washington Post Company **256 NLRB No. 014**

(dismissal of U C ptn denied where, apart from its timeliness, its processing is now proper, in view of peculiar genesis of case arising from fact that, but for RD's proposals, properly acquiesced in by E at time of hearing, and subsequent election, earlier R hearing would have continued and E would have been permitted to present its case on unit placement issues and, consequently, instant U C ptn is offshoot of earlier hearing)

6034-1400 Authority of Regional Director

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**

(decisions of RD, if not set aside by Bd,are entitled to same weight as determinations by Bd; RD's opinion *final* determination binding parties where party with prerogative to appeal to Bd did not do so)

6034-2000 Basis for dismissal

Alma Plastics Company **249 NLRB No. 068**

(ptn for P&M unit limited to one of two plants located in city dismissed, where citywide P&M complement is approximately 10 times larger than petitioned-for unit, and petitioner has not indicated a desire to proceed to election in broader unit)

Jones Collings, Inc. **249 NLRB No. 053**

(mtn to dismiss ptn based on assertion that only one person was left in unit denied, where GC and charging party opposed on ground that mtn deprived them of opportunity to cross-examine witnesses and examine in formal proceeding E's assertions as to unit size; E not prejudiced as to filing mtn to revoke certification if U certified)

Ithaca College **261 NLRB No. 083**

(full time faculty at college held managerial Ees and ptn dismissed, in view of their extensive authority to formulate and effectuate policies, absolute authority as to curriculum, determines academic policies, faculty hiring, tenure, budgetary matters and facilities planning)

Thiel College **261 NLRB No. 084**

(unit of full-time faculty at college held managerial Ees and ptn dismissed, since faculty did not have professional interest apart from E and played large role in operating college, where it set requirements for admission and graduation, formulated curriculum and grading system, selected chairmen of departments subject to confirmation of academic dean and vice-president for academic services, was involved in setting course schedules and teaching loads and budgetary matters including faculty salaries and benefits, and effectively participated in faculty hiring, firing, promotion and tenure)

Vanity Fair Mills, Inc., Clarks Mills Division **256 NLRB No. 148**

(ptn improperly dismissed, notwithstanding filed w/i insulated period of 60 days prior to third anniversary of contract for more than three years and that prior to filing of ptn in proper form parties had executed new contract, where petitioner acted on advice of Regional Office which was unaware of and did not attempt to find out origination date and duration of contract)

United States Postal Service **256 NLRB No. 095**

(Bd dismissed postal service's RM ptn for single, national unit, and denied hearing on RD's dismissal of ptn, since granting of E's request would require hearing that would consume much time when current bargaining agreement was about to expire; conduct of election would be task of mammoth proportions which Bd would undertake in appropriate circumstances which are not present herein; and E did not demonstrate that it truly questioned representative status of various Us in long-established units)

Albuquerque Insulation Contractor, Inc. **256 NLRB No. 015**

(construction contractor's 9(c)(1)(B) election ptn, dismissed, since U's request for lawful 8(f) agreement did not raise qcr inasmuch as it did not request recognition of a *representative as defined in section 9(a),* as provided in 9(c)(1)(B), which requires majority status; and 9(c)(1)(B), therefore, permits elections on E ptn only when E has been presented with claim of majority status which U did not make herein; nor did U's statements and conduct following E's refusal to sign agreement establish that U's request was *tantamount* to a majority claim)

Gaithersburg-Washington Grove Fire Dept., Inc. **255 NLRB No. 128**

(ptn dismissed w/o prejudice to its being refiled at a later date since issues raised by it were not ripe for adjudication where county laws under which E, providing fire fighting and rescue squad services for county, must operate were in such a state of evolution that Bd was unable to determine whether E met *employer* definition of Sec. 2(2), or whether E had sufficient control over employment conditions of its Ees to enable it to bargain with U as their representative)

Catholic Community Services **254 NLRB No. 090**

(E's mtn to dismiss ptn on grounds that ptn was filed w/i 6 months of dismissal of ptn in prior case and that showing of interest was tainted by participation of supervisors in petitioner's organizational campaign denied where (1) ptn in prior case was dismissed because unit petitioned for was not appropriate and accordingly there was no 6-month period of prejudice and no bar to filing of ptn, and (2) there was no evidence that supervisors participated in solicitation of showing of interest)

Chicago Health and Tennis Clubs, Inc. **251 NLRB No. 018**

(decertification ptn dismissed as untimely because filed w/i certification year extended pursuant to ct enforced Bd D/O since year did not begin to run at time E made offer to bargain with U which also contained preconditions regarding nonmandatory subject of bargaining which U was free to, and did, reject; therefore, such offer did not rise to *good faith* bargaining)

Union College **247 NLRB No. 069**

(motion by Ees' Association to intervene in instant case denied and cross ptn by Ees' association for election in another case dismissed, since association had not submitted timely showing of interest that predated election hearing)

William Mann, Estate of Belle Mann **247 NLRB No. 20**

(ptn dismissed since no qcr existed where intervening incumbent U's disclaimer of interest in representing petitioned-for unit of Ees was untimely and ineffective attempt to withdraw from multi-E bargaining)

6034-4200 Effect of

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**

(decisions of RD, if not set aside by Bd,are entitled to same weight as determinations by Bd; RD's opinion *final* determination binding parties where party with prerogative to appeal to Bd did not do so)

6034-5000 Adequacy of statement of reasons

United States Postal Service **256 NLRB No. 095**

(postal service's contention that RD's dismissal of its RM ptn for single, national unit was arbitrary and capricious and that it was entitled to hearing

6034-5600—Cont.

and benefit of record, rejected, where ptn failed to comply with statutory requirements of PRA and NLRA, and with implementing regulations; and ptn was defective in that it merely sought to have Bd determine appropriate unit w/o regard to admitted lack of any U claim for U representation)

6034-7000 Appeal to Board

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(decisions of RD, if not set aside by Bd,are entitled to same weight as determinations by Bd; RD's opinion *final* determination binding parties where party with prerogative to appeal to Bd did not do so)

6034-7033 Timeliness

The Washington Post Company **254 NLRB No. 014**
(U C ptn filed immediately following election held timely despite U's assertion that unit found appropriate by RD was identical to contractually recognized unit, since certified unit excluded supervisors, managers, and confidential Ees, which are Ee categories in dispute herein; E never indicated intention to abandon its unit composition contentions introduced at R hearing; and dismissal of ptn is not warranted because of statutory issues involved)

The Washington Post Company **254 NLRB No. 014**
(contention that U C ptn was untimely because district ct had held that agreement between parties was still in effect, rejected, where ct had instead ruled that issue was whether arbitration was mandated pursuant to expired contract; fact that contract terms may continue during negotiations for new contract does not deprive Bd of jurisdiction in dispute herein, and contention that issue might possibly be decided by arbitration cannot be seriously considered because issue of statutory status of Ees involved herein is matter for Bd to determine)

6038 REINSTATEMENT OF PETITION

College of Osteopathic Medicine and Surgery **265 NLRB No. 037**
(Bd's determination that college faculty members were managerial Ees not qualified for protection of Act was dependent on particular facts of current situation; if college later removed sufficient authority from its faculty members so that they reverted to status of nonmanagerial Ees, Bd would process proffered R ptn at that time)

6041 CONSOLIDATION OF PROCEEDINGS

6041-3300 R case with C case

6041-3367 Inappropriate

Axelson, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(petitioner's mtn to consolidate and/or for reconsideration on ground Bd decision in instant decertification proceeding overruling objection to election should be considered together with subsequent Bd decision finding violation by E on basis of conduct which was subject of objection, denied, where E did not seek to have ULP case consolidated or considered with instant proceeding until after ULP decision issued; contentions that consideration will facilitate final, just resolution of issues and relief to be accorded, and that relief granted for E's violation is wholly inadequate, rejected)

Axelson, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(petitioner's mtn to consolidate and/or for reconsideration based on allegedly inconsistent decisions as result of Bd decision finding violation on basis of conduct which was subject of previously overruled objection to election in instant decertification proceeding denied as untimely; findings of fact are based on respective records in each case, and record herein shows insufficient evidence to warrant setting aside election; to extent petitioner argues Bd's findings herein are erroneous on record then before it, regardless of record in ULP case, petitioner's second mtn for reconsideration is a year late)

Axelson, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(petitioner's mtn to consolidate and/or for reconsideration as result of Bd finding of 8(a)(1) violation on basis of conduct which was subject of previously overruled objection to election in instant decertification proceeding, denied; Bd rejected contention that, since (8a)(1) conduct *a fortiori* interferes with election, such finding invalidates retroactively Bd's conclusion herein that E's conduct did not warrant setting election aside; *a fortiori* principle was attempt by Bd to avoid *mechanical approach* and Bd looks to economic realities of E-Ee relationship in determining whether to set aside election)

Axelson, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(petitioner's mtn to consolidate and/or for reconsideration as result of Bd finding of 8(a)(1) violation on basis of conduct which was subject of previously overruled objection to election in instant decertification proceeding, denied; effect of narrow ruling herein was that, if U has won election despite E's campaign against it, election results stand as against mechanical insistence on *laboratory conditions;* and fact that E's conduct was later found violative does not cast issue into any light significantly different from that in which Bd first examined it)

6054 CONSENT ELECTION AGREEMENTS

6054-0100 Generally

Affiliated Midwest Hospital Inc., d/b/a Riveredge Hospital **251 NLRB No. 029**
(where consent election agreements have been approved and elections held, Bd will look to circumstances to ascertain parties' intent or agreement and then if issue is still in doubt declare the agreement defective and the election a nullity)

New England Lumber Division of Diamond International Corporation v. N.L.R.B. **646 F.2d 1 (C.A. 1, Apr 1981)**
(Bd has broad discretion to interpret ambiguities in Stipulation for Certification Upon Consent Election and here stipulation provided that observers must be nonsupervisory Ees of E (division of large company) and U's use of Ee, U president employed at another division of company, as observer found consistent with terms of stipulation)

Summa Corporation d/b/a Frontier Hotel v. N.L.R.B. **625 F.2d 293 (C.A. 9, Aug. 1980)**
(where parties had stipulated prior to election that each would be allowed 2 observers, and U, with Bd agent's permission, had 3rd observer present, election set aside as E entitled to insist that Bd and U diligently adhere to provisions of stipulation designed to insure fair election; moreover, no showing of actual prejudice necessary)

Summa Corporation d/b/a Frontier Hotel v. N.L.R.B. **625 F.2d 293 (C.A. 9, Aug. 1980)**
(where breach of election agreement occurs, results of election should be overturned only if breach is material or prejudicial)

6054-6700 Agreements for determination of post election issues by Board

6054-6750 Stipulation of unit

St. Peters Manor, Inc. d/b/a St. Peters Manor Care Center **261 NLRB No. 171**
(in stipulation for cert. election, parties stipulated to unit which excluded business office clericals; thereafter, at preelection conference parties orally agreed to include these clericals. Bd upheld challenge to their ballots as outside stipulated unit since stipulation clear and unequivocal and no evidence parties did not intend to exclude business office clericals)

Affiliated Midwest Hospital Inc., d/b/a Riveredge Hospital **251 NLRB No. 029**
(where parties incorporated Norris-Thermador lists by reference into consent election agreements rather than describing the units, Bd found that they had consented to requirement that decertification elections be held in previously recognized units, and that units described in the ptns conformed to existing contractual units with minor variences)

6054-8200 Circumstances warranting withdrawal from agreement

Consolidated Print Works, Inc., and Auto Screen Print Corp. **260 NLRB No. 129**
(setting aside election not warranted, where, though stipulation for consent election contained an eligibility date, Bd agent had informed parties that this date was conditioned on date Rd approved stipulation and, though U protested orally in interim period about any change in eligibility date, it took no further actions that were available to it to protest change in eligibility date set forth in approved stipulation; thus U effectively acquiesced in changed date)

6061 BLOCKING CHARGE POLICY

6061-3300 Pending charge of ULP affecting unit employees

Gould, Inc. v. Robert S. Fuchs, et al. **486 F.Supp. 164 (D Ct, CT, 1980)**
(Bd's mtn to dismiss for lack of jurisdiction E's mtn for preliminary inj or writ of mandamus to set aside Bd's postponement of election under its *blocking charge* policy, granted for case not w/i *Leedom v. Kyne* exception to Sec. 10 limitation on appellate cts' jurisdiction to review Bd's nonfinal orders; postponement was pursuant to exercise of Bd's discretion in formulating *blocking charge* policy and not in excess of delegated powers for failure to analyze whether to postpone or conduct election, or in contravention of specific prohibition of Act for failure to conduct election)

6061-3309 Deferral of decertification proceeding required in face of refusal to bargain charge

W & W Steel Company v. N.L.R.B. **599 F.2d 934 (C.A. 10, 1979)**
(decertification ptn wrongfully dismissed where ptn for election covering single plant purchased by new E and existing certification covered E-wide unit was filed one week prior to E receiving notice that ULP charges had been filed against it, although U had filed charges five days earlier)

6061-3362 Dismissal of petition

6061-3362—Cont.

Kennicott Bros. Company **256 NLRB No. 082**
(Bd found incorrect RD's opn that it would be inappropriate following withdrawal of ULP charge to reinstate decertification ptn which had previously been dismissed because of the pendency of that charge)

Carol Estes and 166 Other Warehouse Facility Employees v. N.L.R.B. No. 78-4068 (D Ct. KS, Jan. 5, 1979 (unreported))
(application of *blocking charge rule* to decertification ptn during pendency of ULP charges filed by U and Cs issued on behalf of Bd concerning charges, held appropriate, since it was reasonable to assume RD, at time of dismissal of ptn, had some idea whether U's charges were substantial and whether representation election could fairly be held)

6061-6700 Request to proceed

6061-6750 Constitutes waiver of election objections based upon charge

Graham Architectural Products Corporation **259 NLRB No. 153**
(not in all cases)

6068 HEARING

6068-0100 Generally

Semco Printing Center, Inc. **265 NLRB No. 073**
(in summary judgment proceeding, Bd rejected E's contention that it is entitled to hearing on specified objections to election, where Bd, prior to adopting findings and recommendations of RD's report with respect to objections, considered report, exceptions thereto, and entire record and, by its adoption of portion of report recommending that objections herein be overruled, necessarily found that such objections raised no material issue warranting a hearing)

Semco Printing Center, Inc. **265 NLRB No. 073**
(parties do not have right to hearing on objections to election; it is only when moving party presents *prima facie* showing of substantial and material issues which would warrant setting aside election that it is entitled to evidentiary hearing; absent arbitrary action, this qualified right to hearing satisfies due process requirements)

The Altoona Hospital **253 NLRB No. 107**
(parties do not have absolute right to hearing on objections to election; it is only when moving party presents *prima facie* showing of substantial and material issues which would warrant setting aside election that it is entitled to evidentiary hearing)

The North American Soccer League, etc., et al. v. N.L.R.B. **613 F.2d 1379 (C.A. 5) (1980)**
(soccer league not denied due process by Bd's refusal to conduct representation hearing in any city other than a named city, where there was presence of league offices and records in the named city and there was testimony at hearings by representatives of some of the clubs)

6068-4000 Continuation or postponement of

Radio Free Europe/Radio Liberty, Inc. **262 NLRB No. 063**
(E's request that hearing on decertification ptn be postponed because its counsel was out of country was erroneously denied)

6068-6000 Hearing Officer

6068-6003 Qualification

N.L.R.B. v. Elixir Industries **682 F.2d 867 (C.A. 9, July 1982)**
(E's contention certification improper where student legal assistant used as hearing officer in representation hearing, rejected; notwithstanding this function not included in job description)

6068-6067 Authority of

6068-6067-5000 Examination of witnesses

Mid-Con Cables, Inc. **256 NLRB No. 120**
(case remanded for hearing for limited purpose of permitting E to cross-examine petitioner's witness where, after witness had testified on direct examination, HO denied E's request for cross-examination of such witness)

6068-6067-6700 Obligation to develop complete record

Crown Coach Corporation v. N.L.R.B. **626 F.2d 865(T) (C.A. 9, 1980)**
(enforcement denied and case remanded for further hearing where ct found prejudicial error in denial of E during hearing on objections to election to question Es witness on issue of U agency in regard to Es misconduct)

6068-8000 Procedural due process at hearing

Radio Free Europe/Radio Liberty, Inc. **262 NLRB No. 063**
(E's request that hearing on decertification ptn be postponed because its counsel was out of country was erroneously denied)

Daylight Grocery Company, Inc. v. N.L.R.B. **678 F.2d 905 (C.A. 11, June 1982)**
(E's procedural objection that hearing officer's failure to consider E's request for 14-day extension of briefing date after hearing on unit question violated Bd's procedure and E's statutory and due process interests held w/o merit, where RD granted 3-day extension and E made no showing of prejudice)

6068-8500 Bias and prejudice

French Hospital Medical Center **254 NLRB No. 083**
(contention by E that it was denied due process since RD's adverse rulings and denial of E's request for continuance were motivated by bonus under Senior Executive Service wage system amount of which would be based partly on speed with which ptns are processed; rejected, inasmuch as processing time is only one element in determining amount of bonus, all RD's rulings are subject to Bd review with quality of decisions and percentage of reversals by Bd also considered as factors)

6081 DECISION ON PETITION

6081-2000 Decision by Regional Director

French Hospital Medical Center **254 NLRB No. 083**
(contention by E that it was denied due process since RD's adverse rulings and denial of E's request for continuance were motivated by bonus under Senior Executive Service wage system amount of which would be based partly on speed with which ptns are processed; rejected, inasmuch as processing time is only one element in determining amount of bonus, all RD's rulings are subject to Bd review with quality of decisions and percentage of reversals by Bd also considered as factors)

6081-2001 Generally

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(Bd and its regional offices are free to reconsider their own decisions in light of changing circumstances and needs, but reversal of previous jurisdictional finding, which was *final,* must be applied *prospectively* only)

6081-4000 Review of Regional Director's decision

6081-4033 Grounds for request to Board

6081-4033-2000 Substantial question of law or policy

6081-4033-2033 Absence of officially reported Board precedent

Educational and Recreational Services, Inc., d/b/a Associated Charter Bus Company, San Bernardino Division **261 NLRB No. 055**
(unpublished Bd decisions affirming regional determinations have no binding precedential value)

6081-4080 Review limited to record

National Duct Corporation **265 NLRB No. 050**
(statements of witnesses are expressly excluded from record as defined in Bd's R/R Section 102.69(g)(1)(ii); however when appended to objections they become part of record and are considered by BD)

Summa Corporation d/b/a Frontier Hotel **265 NLRB No. 046**
(record in objections cases where no hearing is held consists of objections which were filed, RD's report or decision, all documentary evidence, except statements of witnesses, relied on by RD in his report or decision, any briefs or other legal memorandum submitted by parties, and any other motions, rulings or order of RD. Moreover, party may append to its exception or opposition any affidavit or other documentary evidence which it has timely submitted to RD, and these documents will become part of record and fully considered by Bd)

Summa Corporation d/b/a Frontier Hotel **265 NLRB No. 046**
(to obtain *de novo* review of entire investigatory file, objecting party must demonstrate that substantial or material factual issues exist)

Wickes Furniture, A Division of The Wickes Corporation **261 NLRB No. 151**
(*Sec.* 102.67(f) of Bd's R/R, concerning *request for review* applies with equal force to proposition that Respondent is precluded from relitigating issues which were or could have been litigated in prior R proceeding, whether R proceeding involves decision made in first instance by Bd, RD's decision which Bd has declined to review, RD's report which Bd has adopted, or hearing officer's report which Bd has adopted)

Bon Secours Hospital, Inc. **248 NLRB No. 019**
(where E's brief to Bd contains factual statements not in record of hearing Bd will accept brief but will not rely on facts not established in record)

6081-4067 Effect of denial of request

6081-4067-3300 Affirmance of Regional Director's action

6081-4067-3300—Cont.

Educational and Recreational Services, Inc., d/b/a Associated Charter Bus Company, San Bernardino Division — 261 NLRB No. 055

(unpublished Bd decisions affirming regional determinations have no binding precedential value)

6081-6000 Decision by Board

6081-6050 Dismissal of petition

Young's Market Company — 265 NLRB No. 094

(Bd found decertification ptns raised no qcr and dismissed them as inappropriate because petitioning units were not coextensive with multi-E unit of which they were a part; contention that petitioning Ees' E's withdrawal was effective because U was fragmented, rejected, since even if original multi-E unit were fragmented, E still functioned as part of smaller multi-E unit of withdrawing Es)

6081-6075 Direction of election

6081-6075-5000 Requirement of furnishing of lists of employees (Excelsior)

United Food and Commercial Workers, Local 400, a/w United Food and Commercial Workers, AFL-CIO v. N.L.R.B. — 694 F.2d 276 (C.A.D.C., Nov. 1982)

(Bd's *Excelsior* requirement does not specifically appear in NLRA and cannot reasonably be viewed as *statutory mandate* violation under *Leedom v. Kyne* exception where Bd failed to send U complete list of Ees eligible to vote prior to R election. Therefore, district ct lacked jurisdiction to order Bd to order another election as Bd decision in this election case is not final agency action that is subject to judicial review)

N.L.R.B. v. Thom Brown Shoes, Inc. — No. 79-C-3173, Feb. 20, 1980, DC E.D. NY (unreported)

(names and addresses of Ees eligible to vote in R proceeding were proper subject of Bd *subpoena duces tecum*)

6081-8000 Reconsideration of decision

Transportation Enterprises, Inc. v. N.L.R.B. — 630 F.2d 421 (C.A. 5, 1980)

(Bd and its regional offices are free to reconsider their own decisions in light of changing circumstances and needs, but reversal of previous jurisdictional finding, which was *final*, must be applied *prospectively* only)

6081-8025 Articulation of rationale

Carter-Glogau Laboratories, Inc. — 265 NLRB No. 017

(E's contention that it was denied due process by Bd's failure to explicate its reason for denying E's request for review in underlying representation proceeding held w/o merit, since in denying request for review, Bd adopted as its own rationale set forth by RD in his Supplemental Decision and Order, and Bd has held that no greater articulation of its rationale is required of it)

6088 RECORD

6088-3300 R&R 102.68

Odom Sausage Co., Inc. of Arkansas — 256 NLRB No. 045

(Bd maintains that under Sec. 102.68 of R/R, affidavits submitted in support of objections to election are not part of record)

N.L.R.B. v. The Cambridge Wire Cloth Company, Inc. — 622 F.2d 1195 (C.A. 4, 1980)

(where RD determines that objections to election do not require hearing, RD, and not objecting party, is responsible for transmitting *whole* record (all evidence considered in reaching decision) to Bd for its review on appeal, notwithstanding R/R 102.69(g) places responsibility for submission of documents on objecting party)

6088-6700 Does not include investigatory files

National Duct Corporation — 265 NLRB No. 080

(statements of witnesses are expressly excluded from record as defined in Bd's R/R Section 102.69(g)(1)(ii); however when appended to objections they become part of record and are considered by BD)

Summa Corporation d/b/a Frontier Hotel — 265 NLRB No. 046

(record in objections cases where no hearing is held consists of objections which were filed, RD's report or decision, all documentary evidence, except statements of witnesses, relied on by RD in his report or decision, any briefs or other legal memorandum submitted by parties, and any other motions, rulings or order of RD. Moreover, party may append to its exception or opposition any affidavit or other documentary evidence which it has timely submitted to RD, and these documents will become part of record and fully considered by Bd)

North Electric Company, Plant No. 10, Gray, Tennessee — 262 NLRB No. 174

(Bd accepted as law of the case ct's remand instruction to review Ee's affidavit obtained by RD during investigation of objections, but noted that it continues to be Bd policy that affidavits independently acquired by RD during investigation of objections are confidential and not part of record)

Odom Sausage Co., Inc. of Arkansas — 256 NLRB No. 045

(under Section 102.68 of R/R affidavits independently acquired during investigation of election objections are confidential and are not part of record in representation or subsequent ULP proceeding)

N.L.R.B. v. Eskimo Radiator Mfg. Co. — 688 F.2d 1315 (C.A. 9, Oct. 1982)

(even if RD failed to include E's affidavits in record when he transferred case to Bd, this is harmless error where E filed its own affidavits with Bd)

6096 REOPENING RECORD AND REMAND

N.L.R.B. v. Tio Pepe, Inc. — 629 F.2d 964 (C.A. 4, 1980)

(ct denied enforcement of bargaining order and remanded case to Bd for evidentiary hearing on two issues advanced in E's mtn to reopen record since E made sufficient *prima facie* factual showing of after-discovered evidence that *captains* had promised other dining room Ees that, if U won, captain's distribution of pooled tips would be adjusted in their favor, which, if sustained later at full hearing, would undermine Bd's reasons for its denial of supervisory status for *captains* in unit of dining room Ees and further significantly affect election by way of monetary inducement for U support)

7000 POST-ELECTION PROCEDURE

7011 FILING OF CHALLENGES AND OBJECTIONS TO ELECTION

7011-2000 Time for filing

Cardio Data Systems Corp. — 264 NLRB No. 011

(Bd disavowed ALJ's remark in his ULP decision that U was no longer able to file timely objections in concurrent R proceeding where election had occurred over a year prior to issuance of ALJ's decision, where in R proceeding ballots had been impounded and there had not yet been tally of ballots; in such circumstances, time for filing of objections had not yet begun to run; see R/R Sec. 102.69)

Monier Roof Tiles — 249 NLRB No. 092

(Acting Regional Director's recommendation, that E's objections to election be overruled for lack of evidence, adopted by Bd where E by rejecting proposed settlement, accepted submission of its objections to the Regional Director but failed to do so; Region did not abuse its discretion, since E presented no evidence in support of objections by mandated deadline)

7011-2001 Generally

Browning-Ferris Industries, Chemical Services, Inc. — 259 NLRB No. 009

(mtn to include amended allegations to objections to election after Bd had ruled on objections denied as untimely request to file objections)

Burns International Security Services, Inc. — 256 NLRB No. 168

(Bd did not intend in *American Safety Equipment*, 234 NLRB 501, that failure to file objections w/i time provided by Bd's R/R can no longer serve as basis for refusing to consider them)

7011-2050 Within 5 days of furnishing of tally of ballots

Fay's Drug Company, Inc. — 256 NLRB No. 042

(objections to election not timely filed where objections not received in Regional Office until day after deadline, notwithstanding filed by telegram in afternoon of due date where petitioner advanced no valid or compelling reason for its lateness in filing and sending telegram 1-1/2 hours before Regional Office which is not substantial compliance)

N.L.R.B. v. Campbell Products Department, Harry T. Campbell Sons Company, Division of Flintkote Company — 623 F.2d 876 (C.A. 3, 1980)

(where E filed timely objection and subsequently filed another objection after 5 day period, Bd erred in not considering merits of latter objection holding it was untimely filed, since established Bd policy is that once timely objection filed RDs are *required* to consider *all* evidence of improper conduct brought to their attention or that they discover themselves during their investigation)

7011-2075 Within 3 days of furnishing revised tally of ballots

Stanco, Inc. — 240 NLRB No. 171

(where E was not present at opening of certain E's ballot, Bd rejected E's contentions that it was denied due process and that Ee's ballot should be declared void, notwithstanding E's assertion that its counsel did not receive RD's letter advising parties of date and time when Ee's ballot would be opened until 3 days after date scheduled for opening, one day after E had been furnished revised tally; E failed to either file objection to revised tally, or request for extention of time in which to do so)

7011-4000 Statement of reasons for objections

N.L.R.B. v. Advanced Systems, Inc. — 681 F.2d 918 (C.A. 9, Apr. 1982)

(where RD failed to submit full record to Bd, Bd's contention that it was entitled to rely on RD's report w/o resort to full administrative record in view of lack of specificity of E's exceptions to report, rejected, since difficulty in determining whether exceptions materially dispute RD's findings

7011-4000—Cont.

stems not from E's lack of specificity but from RD's failure to disclose evidentiary basis for his conclusion)

The Fort Miller Company Inc. v. Thomas W. Seeler, RD (78-CV-482 Dec. 11, 1978, D Ct. NY) (unreported)

(ct had no jurisdiction to enjoin Bd from conducting any further investigation of objections to election on basis that objections did not comply with Bd's R/R which require short statement of reasons for objections since plaintiff's only recourse for review was under sections 10(e) and (f) of Act where Bd did not act in excess of its powers or contrary to Act; herein, procedure followed by RD was practical and fundamentally fair and evidence furnished by U satisfied provisions of Bd's R/R)

7011-5000 Obligation to furnish evidence in support of objections

7011-5000 Obligation to furnish evidence in support of objections

European Parts Exchange, Inc. 264 NLRB No. 032

(where E failed to supply Bd with specific evidence tantamount to offer of proof which *prima facie* would warrant setting election aside, Bd did not remand for investigation of objections but certified Representative)

St. Peters Manor, Inc. d/b/a St. Peters Manor Care Center 261 NLRB No. 171

(affidavit, submitted directly to Bd in support of exception to RD's decision that challenge to ballot be sustained, not considered by Bd since not timely submitted where dated 8 days after issuance of RD's report submitted directly to Bd, furthermore, not contended evidence in affidavit was newly discovered or previously unattainable)

Monier Roof Tiles 249 NLRB No. 092

(Acting Regional Director's recommendation, that E's objections to election be overruled for lack of evidence, adopted by Bd where E by rejecting proposed settlement, accepted submission of its objections to the Regional Director but failed to do so; Region did not abuse its discretion, since E presented no evidence in support of objections by mandated deadline)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. 649 F.2d 589 (C.A. 8, May 1981)

(burden is on objecting party to prove prejudice to fairness of election)

N.L.R.B. v. Advanced Systems, Inc. 681 F.2d 918 (C.A. 9, Apr. 1982)

(party seeking to overturn election because of coercive conduct carries heavy burden. Question is whether coercive conduct so influenced *potential voters that free choice was impossible.* In assessing effect of conduct on election less weight is accorded to conduct not attributable to U or E. Test for setting aside election because of third party conduct is whether conduct was *so aggravated that it made free choice impossible*)

7011-9000 Affidavits containing hearsay may be submitted

EDS-IDAB, Inc. v. N.L.R.B. 666 F.2d 971 (C.A. 5, Feb. 1982)

(Ee affidavits submitted by E to support his objections to election improperly excluded from consideration by RD because they contained hearsay statements, for at this stage of proceeding all witnesses are voluntary, and reluctent witnesses, who were quoted in affidavits, can be subpoened to testify at hearing)

7011-6000 Service on other parties

Theta Cable of California 261 NLRB No. 175

(Bd considered E's objections despite fact that E served objections to wrong party, where error was due to clerical inadvertence rather than disregard for Bd's rules, and E supported its deviation from clear requirements of R/R Sec. 102.69 by showing *an honest attempt to substantially comply* with rules on service of objections in that E timely served regional office, and E, once notified that attempted service had been unsuccessful, took immediate steps to effectuate proper service on petitioner)

Empire Moving & Storage, Inc. 261 NLRB No. 183

(objections not dismissed notwithstanding U served E with copies of objections 3 calendar days and 1 working day after time stipulated in Bd's R/R Section 102.69(a) for service on other parties to election, in view of fact only 1 business day late, failure to serve E was not deliberate and U served E immediately upon being informed by Region of its oversight in matter)

Glenby Wholesale, Inc. 259 NLRB No. 088

(objections remanded to RD for consideration on merits, notwithstanding lack of proof of immediate service as required by Bd's R/R 102.69 since failure to attach proof of service was clerical inadvertance and there was *honest attempt to substantially comply with requirement where proof of service form was attached to objections when objections prepared, there was good faith belief it remained attached when filed with Region, and transmittal letter stated that copy of objections had been served* "ERR16"as is more fully set forth in attached proof of service)

Allegheny Warehouse Company, Inc., and Star Warehouse Corporation 256 NLRB No. 009

(Bd denied E's mtn to dismiss U's objections on ground U failed to make timely service on parties when it timely served RD by express mail but simultaneously mailed copies to parties by regular mail, which were untimely received by E; although technically not in compliance because different methods were used in serving RD and parties, U made *an honest attempt to substantially comply* since it made actual service on E and provided contemparaneous evidence of such service; to rule otherwise would require *slavish adherence to form rather than substance*)

St. Johns Smithtown Episcopal Hospital 259 NLRB No. 077

(petitioner's mtn to dismiss intervenor's objections to election, granted, where intervenor did not comply with Bd's R/R Sec. 102.69(a) by serving its objections on petitioner 2 months after election, and illness of intervenor's counsel at time objections were filed was not *valid and compelling reason why compliance is not possible*; nor was there *an honest attempt to substantially comply* with Bd's R/R on service of objections in intervenor's belated service on petitioner after being informed that it had failed to conform to R/R)

Platt Brothers 250 NLRB No. 049

(E's mtn to dismiss petitioner's objections for lack of timely service of copy of objections on opposing party granted where E did not receive copy until 2 weeks after filing date; absence or prejudice to party by lack of timely service irrelevant; also fact that Bd agent read objections verbatim to E 4 days after objections filed or petitioner forwarding objections to E immediately upon being served with E's mtn to reject objections constitutes compliance with Sec. 102.69(a))

Auto Chevrolet, Inc. 249 NLRB No. 070

(E's mtn to dismiss objections, granted, where U established neither *an honest attempt to substantially comply* with service requirement under Bd's R/R Sec. 102.69(a) nor *a valid and compelling reason why compliance was not possible,* since U did not justify its failure to comply by claiming that Regional Office advised E via telegram that U was filing objections and, thus, E could have called U if it had not received copy, and by claiming that U representative made personal service of copy to E's secretary)

Auto Chevrolet, Inc. 249 NLRB No. 070

(in finding U failed to show honest attempt to substantially comply with service of objections on E under Bd's R/R Sec. 102.69(a), Bd noted that it was not signalling return to inflexible definition of *immediately* and it was not suggesting that, in all circumstances,, it would consider a few days' delay as barring objecting party from establishing substantial compliance; however, U's service on E 7 working days (11 calendar days) late, in conjunction with U's misreading of R/R, did not constitute substantial compliance)

Auto Chevrolet, Inc. 249 NLRB No. 070

(U's misreading of Bd's R/R Sec. 102.69(a) as allowing 5-day period for service of objections on E upon filing of timely objections did not justify its failure to *immediately* make such service as required by R/R)

Auto Chevrolet, Inc. 249 NLRB No. 070

(contention that Bd's R/R should be changed so as to provide that RDs will serve copies of objections to election on opposing party in procedure similar to RD's service of ULP charges on charged party, rejected, since such service is a courtesy only and RDs do not have responsibility for serving other parties' documents in any Bd proceeding, nor is there any compelling reason to make exception to Bd's general practice by imposing on RDs obligation to serve copies of objections)

Auto Chevrolet, Inc. 249 NLRB No. 070

(in order to maintain orderly processing of R cases, there must be adherence to Bd's R/R, and time requirements in R/R will not be ignored on singular ground that party has not produced any evidence that it was prejudiced by another party's failure to comply with service requirements)

Union Carbide Corporation JD-(SF)-13-80

(belated receipt of objections by E held not to nullify them where U made honest attempt to comply with rules and no prejudice due to delayed receipt was shown)

7016 OBJECTIONS TO CERTIFICATION BECAUSE OF INVIDIOUS DISCRIMINATION BY REPRESENTATIVE

7016-2000 To be filed within time for filing objections

Kessler Institute For Rehabilitation v. N.L.R.B. 669 F.2d 138 (C.A. 3, Jan. 1982)

(Bd Rule, Sec. 102.114, provides, inter alia, maximum time period for Bd to receive documents with additional 3 day period allowed if Bd uses mail to serve notice of right to file documents, and further, if time period ends on Sunday or holiday (Saturday considered holiday), these days are not counted in response period and 3 day mailing period is tacked on beginning on 2nd day following such Sunday or holiday)

7016-8000 Issues which can be raised

7016-5033 Discrimination in admission to membership

Memphis Furniture Manufacturing Co. 259 NLRB No. 061

(Intervenor's contention that Petitioner, if certified, is unlikely to represent black Ees fairly and equally, w/o merit, since Bd does not consider contention of that sort before certification; if certification is abused by certified representative by failing to represent all unit Ees fairly, Bd will then consider mtn to revoke certification)

7022 INVESTIGATION OF CHALLENGES AND OBJECTIONS

7022-0100 Generally

North Electric Company, Plant No. 10, Gray, Tennessee 262 NLRB No. 174

(Bd accepted as law of the case ct's remand instruction to review Ee's affidavit obtained by RD during investigation of objections, but noted that it continues to be Bd policy that affidavits independently acquired by RD during investigation of objections are confidential and not part of record)

Burns International Security Services, Inc. 256 NLRB No. 165

(Bd did not intend in *American Safety Equipment*, 234 NLRB 501, that failure to file objections w/i time provided by Bd's R/R can no longer serve as basis for refusing to consider them)

Colonial Manor 1977, Inc. 253 NLRB No. 151

(Ee affidavits independently acquired by RD during investigation of objections are confidential and should not be part of the record, before Bd in R proceeding or in related ULP proceeding)

N.L.R.B. v. Granite State Minerals, Inc. 674 F.2d 101 (C.A. 1, Mar. 1982)

(E's objections to election upheld and E not obligated to bargain where, unilaterally departing from time and place set in stipulated election agreement, Bd allowed U to drive Ee who would be away at time of election to Bd's regional office to cast vote w/o U observers; conduct objectionable whether or not actual prejudice to E, absent exploration by Bd of alternatives to insure Ee's right to vote w/o breaching material terms of election agreement, and particularly where Ee had not heard E's case, nor seen election notices)

N.L.R.B. v. Granite State Minerals, Inc. 674 F.2d 101 (C.A. 1, Mar. 1982)

(Bd's investigation inadequate where Ee alleged threats by U which were corroborated but when asked for further details indicated he had smartened up and would say no more, Bd merely asked Ee if he had been threatened and U if it had threatened Ee; RD's conclusion based on ground that no evidence U had made threat improper, since *where coercion threatening freedom of election is at issue, it does not matter whether coercive acts are shown to be attributable to U itself*)

N.L.R.B. v. Dobbs House, Inc. 613 F.2d 1254 (C.A. 5) (1980)

(objecting party must present specific evidence to RD in order for him to determine if investigation is required)

7022-1700 Regional Director's authority to resolve issues on basis of investigation

Burns International Security Services, Inc. 256 NLRB No. 165

(Bd made clear in *American Safety Equipment corporation*, 234 NLRB 501, that scope of investigation is w/i informed discretion of RD; period during which investigation proceeds was never intended to provide more time for objecting party to extend its own investigation in hope of finding basis for objection that lies beyond matters covered in RD's investigation)

N.L.R.B. v. Howard Johnson Company d/b/a Howard Johnson Distribution Center 680 F.2d 741 (C.A. 8, July 1981)

(no abuse of RD's discretion requiring remand by Bd for further investigation where he failed to interview two of E's witnesses since objections simply stated two management officials would give testimony relating to alleged misrepresentation w/o naming them and Region did interview other witnesses actually named. Party seeking to have Bd overrule RD's recommendation required under Bd policy to supply Bd with specific evidence tantamont to offer of proof, which would warrant setting aside election before Bd will direct hearing or require RD to pursue investigation further)

N.L.R.B. v. Dobbs House, Inc. 613 F.2d 1254 (C.A. 5) (1980)

(RD not required to interview Ees named in C where objecting party failed to allege any specific events concerning specific people with respect to alleged U threats)

7022-3300 Obligation of protesting party to furnish supporting evidence

Parnell's Pride, Inc. 265 NLRB No. 146

(absent specificallegations of objectionable conduct, RD not required to seek out evidence, including viewing documents to determine whether any were forgeries, which would warrant setting aside election)

Parnell's Pride, Inc. 265 NLRB No. 146

(RD did not err when he failed to take affidavits or receive and investigate certain documents offered in support of objections, where it was not alleged that these documents contained any objectionable material not otherwise referred to or submitted subsequent to RD's decision; *absent allegation of misconduct, RD not obligated to engage in fishing expedition, taking affidavits and examining documents for purpose of uncovering objectionable conduct*)

European Parts Exchange, Inc. 264 NLRB No. 092

(where E failed to supply Bd with specific evidence tantamount to offer of proof which *prima facie* would warrant setting election aside, Bd did not remand for investigation of objections but certified Representative)

Campbell Products Department, Harry T. Campbell Sons Company, Division of Flintkote Company 260 NLRB No. 161

(the burden of proving its objections to elections is on party making objections and Bd staff has no duty to seek out evidence which would warrant setting aside election)

Cumberland Nursing & Convalescent Center (Retail Store Employees Union, Local 692) 248 NLRB No. 063

(objection by E to consent election, overruled and did not warrant hearing where E failed to present *prima facie* case in support of his objections which alleged, *inter alia*, objectionable electioneering; proffered evidence failed to disclose unequivocally that polls were in part open at time electioneering took place; it was not certain where Ees were at time alleged prohibited conduct was supposed to have occurred)

Judd Valve Co., Inc. 248 NLRB No. 018

(in R case involving challenged ballot, Bd did not consider statement by U in its exceptions to RD's failure to contact Ee who was willing to give a sworn affidavit where U attached to its exceptions a signed statement prepared by Ee but failed to state when Ee's name was given to RD, and why signed statement was not submitted to RD; see R/R Sec. 102.69(g))

N.L.R.B. v. Howard Johnson Company d/b/a Howard Johnson Distribution Center 690 F.2d 741 (C.A. 8, July 1981)

(Bd's refusal to remand E's objections for further investigation where Bd agent failed to interview two of E's witnesses who would have supported E's position in no way precluded E from demonstrating that their testimony would have supported objections)

N.L.R.B. v. Howard Johnson Company d/b/a Howard Johnson Distribution Center 680 F.2d 741 (C.A. 8, July 1981)

(Bd did not abuse its discretion in refusing to remand E's objections in underlying R proceeding to RD for further investigation where Bd agent had failed to interview two of E's witnesses who would have supported E's position, since E's objections simply stated two management officials would give testimony relating to alleged misrepresentation w/o naming them, Region did interview witnesses actually named, and E's exceptions to Bd's decision failed to specify disagreement with RD's findings, or indicate what witnesses might testify to)

N.L.R.B. v. Howard Johnson Company d/b/a Howard Johnson Distrubution Center 680 F.2d 741 (C.A. 8, July 1981)

(no abuse of RD's discretion requiring remand by Bd for further investigation where he failed to interview two of E's witnesses since objections simply stated two management officials would give testimony relating to alleged misrepresentation w/o naming them and Region did interview other witnesses actually named. Party seeking to have Bd overrule RD's recommendation required under Bd policy to supply Bd with specific evidence tantamont to offer of proof, which would warrant setting aside election before Bd will direct hearing or require RD to pursue investigation further)

N.L.R.B. v. Claxton Manufacturing Company, Inc. 613 F.2d 1364 (C.A. 5) (1980)

(conclusory allegations are not sufficient to obtain hearing in representation case; losing party bears heavy burden)

N.L.R.B. v. Dobbs House, Inc. 613 F.2d 1254 (C.A. 5) (1980)

(burden is on objecting party to present specific evidence to warrant setting aside election, not Bd staff)

N.L.R.B. v. Dobbs House, Inc. 613 F.2d 1254 (C.A. 5) (1980)

(RD not required to interview Ees named in C where objecting party failed to allege any specific events concerning specific people with respect to alleged U threats)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center 682 F.2d 886 (C.A. 9, Aug 1981)

(objections must be specific and suppurted *by offers of proof*)

N.L.R.B. v. Biomedical Resources Corporation of Northern California 624 F.2d 192(T) (C.A. 9, 1980)

(party challenging election has heavy burden to show coercion took place and is not entitled to evidentiary hearing unless it supplies prima facie evidence presenting substantial and material factual issues which would warrant setting aside election)

7022-5000 Consideration of conduct not included in objections by parties

7022-5000—Cont.

Purnell's Pride, Inc. **265 NLRB No. 146**
(absent specificallegations of objectionable conduct, RD not required to seek out evidence, including viewing documents to determine whether any were forgeries, which would warrant setting aside election)

Purnell's Pride, Inc. **265 NLRB No. 146**
(RD did not err when he failed to take affidavits or receive and investigate certain documents offered in support of objections, where it was not alleged that these documents contained any objectionable material not otherwise referred to or submitted subsequent to RD's decision; *absent allegation of misconduct, RD not obligated to engage in fishing expedition, taking affidavits and examining documents for purpose of uncovering objectionable conduct*)

Red Carpet Building Maintenance Corp. **263 NLRB No. 176**
(Bd directed hearing be held on *other investigatory disclosures* RD obtained during investigation of objections, pertaining to certain alleged E conduct that, although not specifically urged by U as objectionable, may have interfered with election; Bd's established policy permits RD to set aside election based on conduct which he has discovered during his investigation, even though that conduct had not been subject of a specific objection)

Burns International Security Services, Inc. **256 NLRB No. 165**
(newly discovered evidence that bears directly on timely objections should normally be considered only upon presentation of clear and convincing proof that it is not only newly discovered but also, previously unavailable since consideration of newly discovered evidence might enlarge scope and delay conclusion of investigation)

Stride Rite Corporation **254 NLRB No. 039**
(RD properly recommended that evidence received in his investigation not specifically alleged in timely filed written objection be resolved in hearing)

Clark Manor Nursing Home Corp. **254 NLRB No. 064**
(where respondent commits ULP during critical period before election, that misconduct is to be considered as basis for overturning election even if not alleged in written objections to election filed in R case)

Moody Nursing Home, Inc. **251 NLRB No. 022**
(RD may set aside election based on conduct discovered during investigation, notwithstanding that conduct was not subject of specific objection)

Airlines Parking, Inc. **250 NLRB No. 081**

Chef's Pantry, Inc. **247 NLRB No. 018**
(although RD, in setting objection to election for hearing, did not specifically mention incident giving rise to E's objection to receipt of evidence relating thereto, RD's order directing hearing did not purport to forbid hearing of any evidence fairly encompassed by objection in question)

N.L.R.B. v. Campbell Products Department, Harry T. Campbell Sons Company, Division of Flintkote Company **623 F.2d 876 (C.A. 3, 1980)**
(where E filed timely objection and subsequently filed another objection after 5 day period, Bd erred in not considering merits of latter objection holding it was untimely filed, since established Bd policy is that once timely objection filed RDs are *required* to consider *all* evidence of improper conduct brought to their attention or that they discover themselves during their investigation)

7022-8000 Waiver of challenges or objections

Connecticut Foundry Company **247 NLRB No. 148**
(E who signed agreement in which U agreed that *We will not restrain or coerce Ees of E in the exercise of rights guaranteed in Section 7 of Act* (not conventional request to proceed) waived its rights to have election set aside due to ULP's which were part or could have been part of settlement agreement it entered into with U, thereby enabling election to take place before end of posting period, effectively waived its right to protest U's ULP's committed prior to execution of agreement)

7033 HEARING ON CHALLENGES AND OBJECTIONS

7033-0100 Generally

Stoneham Laundry, Inc., Brooks, Inc. d/b/a Rutters Linen Service **256 NLRB No. 176**
(parties do not have absolute right to hearing on objections to election; it is only when moving party presents prima facie showing of *substantial and material issues* which would warrant setting aside election that, absent arbitrary action, this qualified right to hearing satisfies constitutional requirements of due process)

Chef's Pantry, Inc. **247 NLRB No. 018**
withdrawal of objection to election did not preclude consideration of refusal to bargain allegation, or any conduct alleged in remaining objections which relates to it; pleadings fully apprised E of matters to be litigated and GC opened no *new areas* at hearing which were not covered by amended consolidated complaint, extant charges upon which it was based, and objections to be heard)

N.L.R.B. v. Nixon Gear, Inc. **640 F.2d 906 (C.A. 2, May 1981)**
(Bd improperly refused to order hearing on E's objection to election on ground it did not have reasonable opportunity to reply to U's misrepresentation that E had bribed pro-U Ee to campaign against U, where it was unlikely that E, who first learned of misrepresentation on day before election, could have adequately replied and contacted all voters; Ees could reasonably have expected U's charge was directly based on testimony of bribed Ee but could not independently investigate charge's truthfulness since Ee was not identified; and false charge might well have influenced Ees and, thus, election)

N.L.R.B. v. Nixon Gear, Inc. **640 F.2d 906 (C.A. 2, May 1981)**
(Bd improperly refused to order hearing on E's objection to election on ground U promised to obtain improved employment for Ee at unionized plant if he supported U and U won election, since E was entitled to hearing if it demonstrated, by prima facie evidence, existence of substantial and material factual issues supporting its allegation, and despite E's strong evidence indicating U offered improper inducement to Ees, Bd insisted upon stronger showing of improper U conduct, which was wholly unreasonable and abuse of its discretion which was exacerbated by extremely close, one-vote election result)

N.L.R.B. v. Nixon Gear, Inc. **640 F.2d 906 (C.A. 2, May 1981)**
(need for hearing on objections to election is particularly acute when an election is close, for in such a situation, even minor misconduct cannot be summarily excused on ground it could not have influenced election)

N.L.R.B. v. U. S. Cablevision Corp. **614 F.2d 341 (C.A. 2) (1980)**
(whether hearing on objections required or not, ct stated *conduct of representation elections is the very architype of a purely administrative function with no quasi about it, concerning which cts should not interfere save for the most glaring discrimination or abuse* however, if party demonstrates by prima facie evidence existence of *substantial and material factual issues which if resolved in its favor, would require setting aside election* hearing is required),

N.L.R.B. v. ARA Services, Inc. **678 F.2d 435 (C.A. 3, Apr. 1982)**
(findings made by RD having been predicated upon testimony which had never been tested by cross-examination and which had been formulated w/o giving E opportunity to adduce other evidence, cannot be accorded weight of findings made after evidentiary hearing in which both parties have participated)

Vitek Electronics, Inc. v. N.L.R.B. **653 F.2d 785 (C.A. 3, June 1981)**
(in remanding for hearing on objections, ct rejected BD's contention that RD is entitled to ignore issues of fact raised by affidavits not *setting forth such facts as would be admissible in evidence* (Fed. R. Civ. P. 56(e)), where RD did not draw any distinction between hearsay and nonhearsay evidence and ct could not assume that this was sole or dispositive basis for decision not to hold hearing; Rule 56(e) does not apply, and even if it did and evidence relating to objections was solely hearsay, it might still be admissible; and narrations of affidavits were not hearsay for all purposes)

N.L.R.B. v. Fuelgas Company, Inc. **674 F.2d 529 (C.A. 6, Mar. 1982)**
(E not entitled to evidentiary hearing on election objections where, assuming U's observor did deface posted sample ballot, as contended, by marking *yes* column, it is not clear that E would have grounds for relief absent evidence that U authorized or condoned misconduct, and no evidence was furnished that defacement affected fairness of election)

N.L.R.B. v. Advanced Systems, Inc. **681 F.2d 918 (C.A. 9, Apr. 1982)**
(*Bd's denial of evidentiary hearing on election objections may be disturbed only for abuse of discretion. To obtain a hearing a party must make a prima facie showing of substantial and material issues that would if true, warrant setting aside election*)

Spring City Knitting Company v. N.L.R.B. **647 F.2d 1011 (C.A. 9, June 1981)**
(ct held that it was not abuse of discretion for RD to overrule w/o evidentiary hearing E's objections based on alleged U coercion absent showing in affidavits that any Ee felt so coerced by U's activities prior to election that Ee was unable to exercise free choice at polls)

Crown Cork & Seal Company, Inc. v. N.L.R.B. **659 F.2d 127, (C.A. 10, Sept. 1981)**
(hearing required on objections only if request shows by *prima facie* evidence existence of substantial and material factual dispute which, if resolved in its favor, would require setting aside election. No hearing required where Bd assumes truth of party's contentions, and then rules as matter of law that, assuming facts alleged, conduct does not warrant setting aside election)

7033-1100 Required where substantial and material issues of fact

7033-1100—Cont.

County Line Cheese Company, A Division of Beatrice Foods Co. **263 NLRB No. 193**
(objections which raised issues of fact and/or credibility)

North Electric Company, Plant No. 10, Gray, Tennessee **262 NLRB No. 174**
(pursuant to ct remand requiring Bd to determine whether E's objections to election, when viewed with documentary evidence in record, require a hearing, Bd held alleged objectionable conduct, consisting of pre-election threats of property damage or destruction made telephonically by various callers to Ees who had worn *Vote No* buttons, was not attributable to U nor of such character as to result in atmosphere of fear and coercion and did not reveal evidence of substantial and material factual issues which would require a hearing)

Erie Coke & Chemical Company **261 NLRB No. 088**
(Bd remanded proceeding to RD for hearing on election objection where E had supplied affidavits to RD showing Ee was victim of threat on his life from someone purporting to be U representative after Ee had expressed support for E to his fellow Ees; although only made to single Ee, serious threat would affect other Ees in selection of U as it would be inevitably discussed by them)

F. W. Woolworth Co. **258 NLRB No. 176**
(mtn for summary judgment on refusal to bargain complaint denied and E entitled to hearing on underlying objections to election since E raised litigable material issues of fact where certified representative had merged with another U and while intended merger was raised in objections to election, there was no consideration in R case of actual merger and issue of U's successorship)

Burns International Security Services, Inc. **256 NLRB No. 165**
(E did not raise any issues requiring hearing, since everything essential to Bd's review of question of whether E had made *prima facie* case for setting aside election was before Bd and E, in excepting to RD's finding, did not *show what evidence will be presented to support contrary finding*)

Colfor, Inc. **254 NLRB No. 100**
(no denial of due process and further hearing on objections not warranted since all objections duly considered where objections had been investigated by RD, some objections were subject of hearing and recommendations of hearing officer in which, contrary to contention of E, credibility resolutions were made, and findings and recommendations of Hearing Officer affirmed by Bd on appeal)

Evans Rotork, Inc. **251 NLRB No. 073**
(only required where moving party presents *prima facie* showing of issues which would warrant setting aside election)

Cumberland Nursing & Convalescent Center (Retail Store Employees Union, Local 692) **248 NLRB No. 063**
(objection by E to consent election, overruled and did not warrant hearing where E failed to present *prima facie* case in support of his objections which alleged, *inter alia*, objectionable electioneering; proffered evidence failed to disclose unequivocally that polls were in part open at time electioneering took place; it was not certain where Ees were at time alleged prohibited conduct was supposed to have occurred)

Fall River Savings Bank v. N.L.R.B. **649 F.2d 50 (C.A. 1, May 1981)**
(hearing on objection based on alleged threat to Ee not necessary where even if incident occurred it did not represent coercion by supervisor and was not basis for setting aside election)

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(hearing was not required on whether alleged misrepresentation had impact on election and whether attributable to U since no material issues of fact existed where E failed to come forward with specific evidence to refute RD's finding that statement did not affect Ees' votes)

N.L.R.B. v. Nixon Gear, Inc. **649 F.2d 906 (C.A. 2, May 1981)**
(while E seeking a hearing on its objections to election bears a heavy burden inasmuch as conduct of election is purely an administrative function which cts should not interfere with save for most glaring discrimination or abuse, E is entitled to hearing if by prima facie evidence it demonstrates existence of substantial and material factual issues which, if resolved in its favor, would require setting aside of election)

N.L.R.B. v. Whitney Museum of American Art **636 F.2d 19 (C.A. 2, 1980)**
(no hearing required where objecting party offered no evidence of factual disputes, and those disputes alleged were not material, since new election would not be called for even if they were resolved in favor of objecting party)

The Cyril and Julia C. Johnson Memorial Hospital v. N.L.R.B. **598 F.2d 1288**
(no hearing required where *conclusionary allegations were insufficient to present substantial and factual issues*, no issue of credibility involved and decision turned on inferences to be drawn from undisputed facts)

N.L.R.B. v. ARA Services, Inc. **678 F.2d 426 (C.A. 3, Apr. 1982)**
(whether party has established prima facie case triggering requirement of hearing *is question of law and ultimately question for courts*)

N.L.R.B. v. ARA Services, Inc. **678 F.2d 426 (C.A. 3, Apr. 1982)**
(where objections to election raise substantial and material factual issues which go to fairness of election, RD cannot resolve disputed facts w/o holding evidentiary hearing in which parties may participate, examine witnesses, and produce evidence; however, if RD, having assumed truth of all evidence proffered by objecting party, then finds no basis for setting election aside, no evidentiary hearing is required)

N.L.R.B. v. ARA Services, Inc. **678 F.2d 426 (C.A. 3, Apr. 1982)**
(RD, by failing to assume truth of E's allegations, which presented substantial factual issues, erred in resolving issues raised by E, where he did so, based solely on his *ex parte* investigation, instead of through evidentiary hearing)

N.L.R.B. v. ARA Services, Inc. **678 F.2d 426 (C.A. 3, Apr. 1982)**
(upon concluding that E was improperly denied evidentiary hearing with respect to its objection which asserted that threats and coercion tainted representation election, enforcement of Bd's order denied and case remanded for evidentiary hearing as to that issue)

Wells Fargo Guard Services, A Division of Baker Protective Services, Inc. v. N.L.R.B. **659 F.2d 363 (C.A. 3, Sep. 1981)**
(determination of truth of party's allegation in objecting to conduct of election requires evidentiary hearing, since allegation that past president did not remove himself from operation of U, if true, would lead to setting election aside)

Wells Fargo Guard Services, A Division of Baker Protective Services, Inc. v. N.L.R.B. **659 F.2d 363 (C.A. 3, Sep. 1981)**
(enforcement denied and case remanded to Bd for evidentiary hearing where issue, of whether allegedly unfit leader remained in control of U, had significant impact on election won by U; strictness of Bd action in setting aside first election because of E's distributing altered facsimile ballot prior to election when contrasted with its flexibility in certifying U after second election supplies additional reason for remand)

Vitek Electronics, Inc. v. N.L.R.B. **653 F.2d 785 (C.A. 3, June 1981)**
(inaccuracy alone in U's preelection statements does not raise substantial and material factual issues entitling E to hearing, since there are situations that render misrepresentation immaterial, such as, where Ees possess special independent knowledge or sophistication which enables them to evaluate statements critically; where Ees have no reason to believe that author of statements has any special knowledge on which they can rely; where E had adequate opportunity to set record straight; or where inaccuracy is too minor or insignificant to affect voters' choice)

Vitek Electronics, Inc. v. N.L.R.B. **653 F.2d 785 (C.A. 3, June 1981)**
(although ct's inquiry necessarily touched upon areas committed in some degree to Bd's discretion, ct held E's objections to election based on U's misrepresentations were entitled to hearing since question whether E raised substantial and material factual is a question of law and ultimately a question for the cts)

Vitek Electronics, Inc. v. N.L.R.B. **653 F.2d 785 (C.A. 3, June 1981)**
(E's contention that it was entitled to hearing on question of whether U engaged in preelection intimidation, rejected; in view of RD's lack of explanation in disposing of E's affidavits, there was no adequate record from which to tell whether RD correctly determined that no hearing was necessary; and, consequently, ct could not tell whether affidavits did, or did not, in RD's view, set forth *substantial and material issues of fact*)

Anchor Inns, Inc., d/b/a Anchor Inn Hotel of St. Croix v. N.L.R.B. **644 F.2d 292 (C.A. 3, Mar 20, 1981)**
(in order to obtain evidentiary hearing objector's proffer of evidence must prima facie warrant setting aside election, the proffer may not be conclusory or vague; it must point to specific events and specific people, on the other hand, an evidentiary hearing is not required when, if all evidence proffered by objecting party is accepted as true, no ground for produced which would warrant setting aside election)

Anchor Inns, Inc., d/b/a Anchor Inn Hotel of St. Croix v. N.L.R.B. **644 F.2d 292 (C.A. 3, Mar 20, 1981)**
(when material factual issues are raised in affidavit alleging specific instances of unlawful conduct by party to election, allegations giving rise to these issues may not be disregarded simply because of hearsay nature, in favor of

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7033-1100—Cont.

evidence gathered during exparte administrative investigation. Once right to hearing is established, investigation is not a substitute for hearing)

Anchor Inns, Inc., d/b/a Anchor Inn Hotel of St. Croix v. N.L.R.B. **644 F.2d 292 (C.A. 3, Mar 20, 1981)**

(ct remanded for previously denied hearing on E's objections to election and held Bd had erred in denying mtn for reconsideration after certification, not withstanding contentions that individual who made allegedly objectionable remarks not agent of U, and that proferred evidence had been available prior to certification, where affidavits reasonably supported claim of U agency and admitted withholding evidence from Bd agent due to threats which supported allegation of objectionable conduct)

N.L.R.B. v. St. Mary's Home, Inc., t/a St. Mary's Infant Home **690 F.2d 1062 (C.A. 4, Sept. 1982)**

(where alleged coercive conduct by Ee, herein found supervisor, occurred 2 months before election as this extended time period between alleged coercive conduct and election itself is such that any assumption that such conduct prejudiced fairness of election was too tenuous to require hearing)

N.L.R.B. v. St. Mary's Home, Inc., t/a St. Mary's Infant Home **690 F.2d 1062 (C.A. 4, Sept. 1982)**

(hearing not required on threatening anonymous phone calls to off-duty Ees in absence of evidence connecting these calls to U representative)

EDS-IDAB, Inc. v. N.L.R.B. **666 F.2d 971 (C.A. 5, Feb. 1982)**

(hearing required where company's prima facie evidence supporting objections to conduct of election related to specific events and people and raised substantial and material issues of fact as to whether the threats and violence were sufficient to destroy atmosphere necessary to exercise of free choice in election)

N.L.R.B. v. Klinger Electric Corporation, Klinger Electronics Division and Klinger Manufacturing Division **656 F.2d 76 (C.A. 5, 1981)**

(allegation that Bd should have stayed election pending resolution of issue as to whether leadpersons were supervisors with implication that if they were labeled supervisors they might have campaigned for E found insufficiently specific to require a hearing where E stated no specific support in facts and identified no specific leadperson)

Hickory Springs Manufacturing Company v. N.L.R.B. **645 F.2d 506 (C.A. 5, May 21, 1981)**

(record established that E entitled to hearing before Bd on questions of whether alleged preelection threats as to what would happen to Ees who crossed picket line and drove E's trucks, and picket line violence were made or adopted by U and if such conduct interfered in representation election since threats were conditioned on U winning election and strike ensued)

N.L.R.B. v. South Mississippi Electric Power Association **616 F.2d 837 (C.A. 5, 1980)**

(*neither constitution nor Congress grant a right to a full evidentiary hearing in U election challenges;* where factual issues unresolved not substantial or material, hearing not required)

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**

(Bd acted w/i discretion when it refused to hold hearing where facts presented by objecting party, even if credited, would not warrant setting election aside)

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**

(no statutory requirement for post-election evidentiary hearing on objections and unless there are substantial and materials issues of fact; Bd's own investigation is sufficient; and here E's contention that Bd agents failed to follow case handling manual concerning handling of challenged ballots in minor respects does not warrant setting aside election)

Elliason Corporation v. N.L.R.B. **688 F.2d 22 (C.A. 6, Sept. 1982)**

(remand for hearing on E's objections to election that Ee who was U supporter had intimidated other Ees in voting in underlying R case, where Bd had adopted RD's report on objections overruling objections and recommending U be certified and granted mtn for summary judgment in ULP proceeding alleging refusal to bargain, w/o benefit of underlying evidence on which RD based recommendation)

Kusan Manufacturing Company, a Division of Kusan, Inc. v. N.L.R.B. **673 F.2d 150 (C.A. 6, Mar. 1982)**

(hearing required where allegations established factual questions attacking basic fairness of election and Ee affidavits detail specific threats against Ees who failed to announce public support for U)

ATR Wire and Cable Company v. N.L.R.B. **671 F.2d 188 (C.A. 6, Feb. 1982)**

(E entitled to hearing on exceptions to election since E demonstrated existence of factual issues concerning fairness of election where affidavits were facially sufficient to establish prima facie case that laboratory conditions were destroyed)

N.L.R.B. v. Forest City Enterprises, Inc. **663 F.2d 34 (C.A. 6, Nov. 1981)**

(no hearing required in absence of substantial and material issues of fact)

Mid America Media, Inc., WTRX-AM v. N.L.R.B. **663 F.2d 17 (C.A. 6, Oct 1981)**

(no hearing required, since objections to R election did not raise substantial and material factual issues)

Reichart Furniture Company v. N.L.R.B. **649 F.2d 397 (C.A. 6, May 1981)**

(hearing was not required on E's election objections as E failed to present factual issues and offers of proof thereon which demand Bd hearing)

Randall, Burkart/Randall Division of Textron, Inc. v. N.L.R.B. **638 F.2d 951 (C.A. 6, 1981)**

(Bd did not abuse its discretion by refusing to grant evidentary hearing on objection concerning pre-election misconduct since E failed to raise *substantial and material factual issues* and evidence received for another objection concerning misconduct was *coextensive* with this objection giving E overlapping opportunities to supply evidence)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **618 F.2d 6 (C.A. 6, 1980)**

Pinetree Transportation Company v. N.L.R.B. **686 F.2d 740 (C.A. 9, Aug. 1982)**

(evidentiary hearing must be held when party's objections to election raise substantial material issues of fact relating to validity of election)

N.L.R.B. v. Advanced Systems, Inc. **681 F.2d 918 (C.A. 9, Apr. 1982)**

(*Bd is entitled to rely on RD's report on objections to election in absence of specific exceptions supported by offers at proof of facts contrary to RD's findings. If, however, there are substantial disputes between report and exceptions hearing is required*)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center **652 F.2d 856 (C.A. 9, Aug 1981)**

(disputes between facts as presented in RD's report and facts as presented in the exceptions must be resolved through a hearing, not on the basis of the RD's *ex parte* investigation)

J.F. Hink & Son v. N.L.R.B. **654 F.2d 729(T) (C.A. 9, July 1981)**

(mtn for reconsideration after election held must be supported by prima facie evidence that presents *substantial and material* issues which warrant setting aside election since once completed, Bd-conducted election is presumed legitimate and standard for reversal of BD's denial of hearing on post election objection is *abuse of discretion*)

J.F. Hink & Son v. N.L.R.B. **654 F.2d 729(T) (C.A. 9, July 1981)**

(post-election objections based on U's (or international's) merger or change of affiliation with another U is not automatically entitled to hearing addressing is of *continuity of representation* i.e., whether successor U is contínciation of elected U, or substantially different organization but objection must be supported by substantial and material evidence standard applicable to any post-election objection)

Spring City Knitting Company v. N.L.R.B. **647 F.2d 1011 (C.A. 9, June 1981)**

(in order to obtain hearing on post election objections, party must make prima facie showing of facts that present substantial and material factual issues which, if true, would constitute grounds for Bd to set aside election)

El Monte Tool and Die Casting, Inc. v. N.L.R.B. **633 F.2d 160 (C.A. 9, 1980)**

(refusal to grant evidentiary hearing not in error where E failed to present prima facie evidence of substantial and material effect of erroneous statements on election process but instead showed misrepresentations made)

South Pacific Furniture, Inc. v. N.L.R.B. **627 NLRB No. 173 (C.A. 9, 1980)**

(hearing on objections to election not required where E, seeking to void Bd conducted election, did not supply *prima facie* evidence presenting substantial and material factual issues which would warrant setting election aside; E cannot demand evidentiary hearing simply to inquire further into unspecified possible election improprieties)

N.L.R.B. v. Biomedical Resources Corporation of Northern California **624 F.2d 192(T) (C.A. 9, 1980)**

(party challenging election has heavy burden to show coercion took place and is not entitled to evidentiary hearing unless it supplies prima facie

7033-1100—Cont.

evidence presenting substantial and material factual issues which would warrant setting aside election)

N.L.R.B. v. Metro-Truck Body, Inc. **612 F.2d 746 (C.A. 9) (1980)**
(hearing not required in every case to determine validity of objections to Bd-conducted election)

Daylight Grocery Company, Inc. v. N.L.R.B. **678 F.2d 905 (C.A. 11, June 1982)**
(Bd's denial of hearing on E's post election objections and ruling on basis of record which did not contain full record relied upon by RD-- namely 3 affidavits of whose contents E was aware notwithstanding their confidentiality-- if error, was harmless, since affidavits before RD but not before Bd showed that affidavits did not set out *prima facie* case that election had been improperly influenced so as to require a hearing)

Computer Sciences Corporation, as successor to Federal Electric Corporation v. N.L.R.B. **677 F.2d 804 (C.A. 11, June 1982)**
(ptn by Bd for adjudication that alleged successor E was in civil contempt of prior judgment which granted enforcement of bargaining order issued against E's competitor, which E had underbid for government contract, dismissed on grounds that highly factual issue of whether bargaining unit remains appropriate existed and this requires more complete development of factual record by Bd and falls w/i its statutory authority to make unit determinations)

7033-1500 Request for hearing

Pinetree Transportation Company v. N.L.R.B. **686 F.2d 740 (C.A. 9, Aug. 1982)**
(filing of papers establishing substantial material factual issues effects a demand for hearing and waiver cannot be inferred from mere failure to make formal request)

7033-6600 Role of counsel for Regional Office

Salem Village I, Inc., Salem Village II, Inc., and Salem Village III, Inc. **263 NLRB No. 111**
(contention that E would be prejudiced by holding hearing on election objections in ULP proceeding rejected as GC takes nonadversarial role at this type of hearing as would be the case if proceedings had not proceeded beyond representation stage)

7033-7700 Production of statement of witnesses

7033-7701 Generally

Fotomat Corporation v. N.L.R.B. **634 F.2d 320 (C.A. 6, 1980)**
(refusal of Hearing Officer to require GC to furnish E with Ee affidavits after GC used them to impeach E's witnesses held harmless error as record indicates no prejudicial effect upon fairness of election; Bd admitted its error and limited testimony of such witnesses)

7033-7733 Producible only after witness has testified

Tuf-Flex Glass, A Part Of Libby-Owens-Ford Company **262 NLRB No. 053**
(Hearing Officer did not commit error by denying mtn to have *subpena duces tecum* revoked where E required to produce affidavits taken from Ees by its counsel as E only required to produce them after Ees had testified at hearing, use restricted to impeaching witnesses and did not cover matters w/i scope of their corporate duties which could bind E but covered statements made by nonsupervisory Ees about upcoming election)

Fotomat Corporation v. N.L.R.B. **634 F.2d 320 (C.A. 6, 1980)**
(no violation of due process by denying E access to reports of Bd agents concerning conduct of election where request was made before agents testified and was not renewed after they testified)

7033-7750 Statements in possession of any agent of Board

Fotomat Corporation v. N.L.R.B. **634 F.2d 320 (C.A. 6, 1980)**
(no violation of due process by denying E access to reports of Bd agents concerning conduct of election where request was made before agents testified and was not renewed after they testified)

7033-7767 Usable only for purposes of cross- examination

Tuf-Flex Glass, A Part Of Libby-Owens-Ford Company **262 NLRB No. 053**
(Hearing Officer did not commit error by denying mtn to have *subpena duces tecum* revoked where E required to produce affidavits taken from Ees by its counsel as E only required to produce them after Ees had testified at hearing, use restricted to impeaching witnesses and did not cover matters w/i scope of their corporate duties which could bind E but covered statements made by nonsupervisory Ees about upcoming election)

7033-8800 Procedural due process at hearing

Polyflex M Company **258 NLRB No. 108**
(E's contention due process denied where upon ct's denial of enforcement and remand to Bd of alleged Section 8(a)(5) violation its objections to election were considered in ULP proceeding rather than in R hearing, rejected, since hearing granted E satisfied requirement of due process; further, E has not alleged any specific prejudice resulting from consideration of its objections in ULP hearing)

Fotomat Corporation v. N.L.R.B. **634 F.2d 320 (C.A. 6, 1980)**
(scope of hearing was not improperly limited in light of objections filed)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(E had full and fair hearing where, it was ably represented by consel, had opportunity to produce evidence and cross examine adverse witnesses, and demonstrated no prejudice as result of GC's dual role at hearing)

7055 HEARING OFFICER'S REPORT

7055-3300 Contents

7055-3325 Resolutions of credibility

Murphy Brothers, Inc. **261 NLRB No. 062**
(in finding that undetermined challenges were no longer sufficient to affect results of election resulting in U victory, Bd overruled E's exceptions to hearing officer's credibility resolutions, since it is established Bd policy not to overrule such resolutions unless clear preponderance of all relevant evidence convinces Bd that resolutions are incorrect; *Coca-Cola Bottling Co.*, 132 NLRB 481, and *Stretch-Tex Co.*, 118 NLRB 1359, cited)

Colfor, Inc. **254 NLRB No. 100**
(no denial of due process and further hearing on objections not warranted since all objections duly considered where objections had been investigated by RD, some objections were subject of hearing and recommendations of hearing officer in which, contrary to contention of E, credibility resolutions were made, and findings and recommendations of Hearing Officer affirmed by Bd on appeal)

7066 EXCEPTIONS TO REPORT AND BRIEFS

7066-2000 Filing

Kessler Institute For Rehabilitation v. N.L.R.B. **669 F.2d 138 (C.A. 3, Jan. 1982)**
(Bd Rule, Sec. 102.114, provides, inter alia, maximum time period for Bd to receive documents with additional 3 day period allowed if Bd uses mail to serve notice of right to file documents, and further, if time period ends on Sunday or holiday (Saturday considered holiday), these days are not counted in response period and 3 day mailing period is tacked on beginning on 2nd day following such Sunday or holiday)

7066-4000 Service

Auto Chevrolet, Inc. **249 NLRB No. 070**
(in order to maintain orderly processing of R cases, there must be adherence to Bd's R/R, and time requirements in R/R will not be ignored on singular ground that party has not produced any evidence that it was prejudiced by another party's failure to comply with service requirements)

7066-6000 Adequacy

Seth Thomas Division, General Time Corporation **262 NLRB No. 099**
(affidavits properly not accepted by Bd's Executive Secretary as part of record under Bd's R/R Sec. 102.69(g) notwithstanding that under Bd's R/R Sec. 102.69(g)(3) party may submit affidavits not included in brief by appending them to record, since here party objecting to election refused to serve affidavits on all parties pursuant to Bd R/R Sec. 102.69(c))

The Nyack Hospital **248 NLRB No. 043**
(hearing officer's recommendation to sustain objection adopted pro forma where objection was only to recommendation that election be set aside and new election ordered rather than to resolution of objection on merits)

7066-8000 Effect of failure to file

Prestolite Wire Division, Eltra Corporation **251 NLRB No. 132**
(absence of exceptions to RD's ruling that objections be overruled removes those objections from further consideration)

7077 DECISION ON OBJECTIONS OR CHALLENGES

7077-2000 Decision by Regional Director

Burns International Security Services, Inc. **256 NLRB No. 166**
(Bd found RD properly considered on merits E's timely objections, but dismissed supplementary and second supplementary objections as untimely, contrary to RD who had misinterpreted Bd's application of *American Safety Equipment Corporation*, 234 NLRB 501, as establishing that failure to file these objections w/i time provided by Bd's R/R can no longer serve as basis for refusing to consider them)

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Spring City Knitting Company v. N.L.R.B. **647 F.2d 1011 (C.A. 9, June 1981)**

(ct held that it was not abuse of discretion for RD to overrule w/o evidentiary hearing E's objections based on alleged U coercion absent showing in affidavits that any Ee felt so coerced by U's activities prior to election that Ee was unable to exercise free choice at polls)

7077-2020 Transfer to Board

Burns International Security Services, Inc. **256 NLRB No. 165**

(Bd declined to rule on E's mtn for transmittal of RD's investigative file where evidence needed to resolve merits of timely objections, necessity of hearing, and challenges to U's qualification was before Bd because E had submitted it with its exceptions)

7077-4000 Review of Regional Director's decision

Colonial Manor 1977, Inc. **253 NLRB No. 151**

(RD's failure to foweard to Bd affidavits obtained during investigation of objections held not to make Bd's review of R proceeding improper; RD's decision was final decision on the record, Bd's R/R require request for review to be self-contained document enabling Bd to rule on basis of its contents w/o recourse to record, it was no abuse of Bd's discretion to deny request solely on basis of RD's decision and E's request for review which presented no substantial and material issue of fact; and action herein accords with Bd's policy of expeditiously resolving qcr)

Colonial Manor 1977, Inc. **253 NLRB No. 151**

(E's reliance on *Prestolite Wire* decision held misplaced with respect to its argument about Bd's review obligations in R proceeding wherein RD makes a final decision on record pursuant to Bd's R/R, since *Prestolite Wire* dealt with type of R proceeding wherein Bd itself makes find decision on the record)

N.L.R.B. v. Advanced Systems, Inc. **681 F.2d 918 (C.A. 9, Apr. 1982)**

(*Bd is entitled to rely on RD's report on objections to election in absence of specific exceptions supported by offers at proof of facts contrary to RD's findings. If, however, there are substantial disputes between report and exceptions hearing is required*)

7077-4025 Effect of consent election agreement

Houston Distributing Company, Inc. **261 NLRB No. 020**

(U's objection to election that Ees who were in stipulated unit for election but not in bargaining unit voted, overruled since their votes were not determinative of election)

Affiliated Midwest Hospital Inc., d/b/a Riveredge Hospital **251 NLRB No. 029**

(where parties incorporated Norris-Thermador lists by reference into consent election agreements rather than describing the units, Bd found that they had consented to requirement that decertification elections be held in previously recognized units, and that units described in the ptns conformed to existing contractual units with minor variances)

Summa Corporation d/b/a Frontier Hotel v. N.L.R.B. **625 F.2d 293 (C.A. 9, Aug. 1980)**

(where parties had stipulated prior to election that each would be allowed 2 observers, and U, with Bd agent's permission, had 3rd observer present, election set aside as E entitled to insist that Bd and U diligently adhere to provisions of stipulation designed to insure fair election; moreover, no showing of actual prejudice necessary)

Summa Corporation d/b/a Frontier Hotel v. N.L.R.B. **625 F.2d 293 (C.A. 9, Aug. 1980)**

(where breach of election agreement occurs, results of election should be overturned only if breach is material or prejudicial)

7077-4033 Grounds for request to Board

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center **652 F.2d 856 (C.A. 9, Aug 1981)**

(*the Board is entitled to rely on the report of the Regional Director in the absence of specific assertions of error.*)

7077-4033-3000 Change in Board policy or law

Gaithersburg-Washington Grove Fire Dept., Inc. **251 NLRB No. 045**

(remand to RD for hearing to determine if E now has sufficient control over employment relations to enable it to bargain where new county regulations are radically different from those under which original decision rendered)

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**

(where RD made decision on objections to elections using *Hollywood Ceramics* standard and Bd later adopted less stringent *Shopping Kart* standard before returning to former standard and Bd's adoption of RD's decision occurred under latter standard, *Shopping Kart*; no denial of due process where Bd merely adopted report as written as it is not assumed that Bd considered objection under standard other than that used by RD)

7077-4033-4000 Clear and prejudicial error on factual issue

Sav-On Drugs, Inc. **261 NLRB No. 189**

(Bd acted w/i its authority in granting Petitioner's request for review of RD's decision in underlying R case where RD's basis for dismissing ptn, i.e., U was not labor organization, was incorrect as matter of law; further, Bd's conclusion that head pharmacists or pharmacy managers at Respondents' drug stores were not supervisors as a class, finding based on full record and premised on factors not alluded to in RD's decision, cannot be said to have denied Respondent due process, since Respondent afforded and availed itself of opportunity to raise and litigate issues)

7077-4033-6000 Prejudicial procedural error

Glenby Wholesale, Inc. **259 NLRB No. 008**

(objections remanded to RD for consideration on merits, notwithstanding lack of proof of immediate service as required by Bd's R/R 102.69 since failure to attach proof of service was clerical inadvertance and there was *honest attempt to substantially comply with requirement where proof of service form was attached to objections when objections prepared, there was good faith belief it remained attached when filed with Region, and transmittal letter stated that copy of objections had been served* *ERR16*as is more fully set forth in attached proof of service)

Daylight Grocery Company, Inc. **256 NLRB No. 112**

(RD did not abuse his discretion in refusing to grant 24-day extension of time for filing briefs rather than 3-day extension; notwithstanding rapidity with which cases are processed is one of factors considered in determining salary increases under the Senior Executive Service compensation plan)

Monier Roof Tiles **249 NLRB No. 092**

(Acting Regional Director's recommendation, that E's objections to election be overruled for lack of evidence, adopted by Bd where E by rejecting proposed settlement, accepted submission of its objections to the Regional Director but failed to do so; Region did not abuse its discretion, since E presented no evidence in support of objections by mandated deadline)

7077-4067 Effect of denial of request

7077-4067-3300 Affirmance of Regional Director's action

Fremont Manufacturing Division, The Oil Gear Company, Inc. **255NLRB No. 113**

(E's exception to hearing officer's refusal to allow E to present evidence concerning supervisory status of certain Ees, overruled, where E was attempting to relitigate issue which Bd had previously and conclusively decided when it denied E's request for review of RD's unit determination finding Ees properly included in unit, and E did not contend in its objections that Ees' status had since changed or that determination of their status was based on an inadequate record)

Fremont Manufacturing Division, The Oil Gear Company, Inc. **255NLRB No. 113**

(E's exception to hearing officer's recommendation to overrule E's objection to refusal of Bd agent conducting election to honor E's challenge to ballot of alleged supervisory Ee and to hearing officer's finding that Ee's conduct did not interfere with election, overruled, where Bd had previously decided issue of Ee's supervisory status in its denial of E's request for review of RD's unit determination finding Ee properly included in unit)

7077-4067-6700 Precludes relitigation in subsequent ULP proceeding

Semco Printing Center, Inc. **265 NLRB No. 073**

(in summary judgment proceeding, Bd rejected E's contention that it is entitled to hearing on specified objections to election, where Bd, prior to adopting findings and recommendations of RD's report with respect to objections, considered report, exceptions thereto, and entire record and, by its adoption of portion of report recommending that objections herein be overruled, necessarily found that such objections raised no material issue warranting a hearing)

Wickes Furniture, A Division of The Wickes Corporation **261 NLRB No. 151**

(*Sec.* 102.67(f) of Bd's R/R, concerning *request for review* applies with equal force to proposition that Respondent is precluded from relitigating issues which were or could have been litigated in prior R proceeding, whether R proceeding involves decision made in first instance by Bd, RD's decision which Bd has declined to review, RD's report which Bd has adopted, or hearing officer's report which Bd has adopted)

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. **658 F.2d 934 (C.A. 2, Sept. 1981)**

(where Bd limited its review to issue of proper status to be awarded challenged ballots and thereby affirmed RD's decision that, even assuming all groupleaders were supervisors, they had not engaged in objectionable preelection conduct, ct found that result ensuing from application of Bd's R/R that affirmance of RD's action precludes relitigating any issue in related ULP proceeding, was untenable in view of scant treatment given by RD to groupleaders' conduct in his findings)

7077-6000 Decision by Board

7077-6001 Generally

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(*arguably* coercive threats over 10 week campaign involving 800 voters did not warrant setting aside election)

7077-6017 Remand for hearing

Bryce Corporation **261 NLRB No. 169**
(case remanded for purpose of hearing to determine merits of E's contention that notice posted for 2 days, 5 weeks before election, urging Ees to report any pressure to join U which E would stop immediately, was not objectionable conduct having coercive effect on election)

Gauley Industries, Inc. **260 NLRB No. 189**
(Bd declined to adopt recommendation of ALJ that challenge to ballot of Ee be sustained where record was insufficient to permit determination of Ee's eligibility (to vote); *only* in event that Ee's ballot remained determinative after revised tally, should further hearng on Ee's eligibility be held)

Carson International, Inc. **259 NLRB No. 146**
(where Bd ruled that, because of significant period encompassing U's withdrawal of first ptn and filing of second ptn, date of critical pre-election period commenced from date of filing of second ptn, Bd denied E's request that case on objections to election be remanded to RD, not for purposes of conducting hearing on objections, but rather to determine whether improper conduct occurred during such critical period)

Educational and Recreational Services, Inc., a Wholly-Owned Subsidiary of ARA Services, Inc., etc. **253 NLRB No. 140**
(to resolve material issues of fact with respect to objections)

Van Dorn Plastic Machinery Co., Division of Van Dorn Company **253 NLRB No. 029**
(case remanded to ALJ for purpose of conducting further hearing on issue of E's objection to election under *General Knit of California, Inc.*, 239 NLRB 619, where ALJ relied solely on formal papers submitted in R proceeding in analyzing E's objection and resolved the case entirely on application of standard set out in *Shopping Kart Food Market, Inc.*, and, on last day of hearing in the R proceeding, w/o knowledge of parties to the R proceeding, Bd, in *General Knit of California, Inc.*, overruled *Shopping Kart Food Market, Inc.*)

N.L.R.B. v. Howard Johnson Company d/b/a Howard Johnson Distribution Center **650 F.2d 741 (C.A. 5, July 1981)**
(Bd's refusal to remand E's objections for further investigation where Bd agent failed to interview two of E's witnesses who would have supported E's position in no way precluded E from demonstrating that their testimony would have supported objections)

N.L.R.B. v. Howard Johnson Company d/b/a Howard Johnson Distribution Center **650 F.2d 741 (C.A. 5, July 1981)**
(Bd did not abuse its discretion in refusing to remand E's objections in underlying R proceeding to RD for further investigation where Bd agent had failed to interview two of E's witnesses who would have supported E's position, since E's objections simply stated two management officials would give testimony relating to alleged misrepresentation w/o naming them, Region did interview witnesses actually named, and E's exceptions to Bd's decision failed to specify disagreement with RD's findings, or indicate what witnesses might testify to)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center **652 F.2d 856 (C.A. 9, Aug 1981)**
(where Bd finds a factual dispute, case must be remanded to region for a hearing)

7077-6033 Remand for revised tally or for counting impounded ballots

Tom Kelly Ford, Inc. **264 NLRB No. 143**
(where Bd found that unit encompassing only service department mechanics at auto dealer's facility was appropriate, rather than broader unit in which RD had directed election, Bd remanded case to RD for purpose of opening and counting ballots, impounded pending outcome of instant proceedings, cast by Ees in unit found appropriate herein, and to issue appropriate certification)

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads **261 NLRB No. 130**
(remand to open and count ballot cast by Ee, herein found unlawfully discharged, and issue certification if U received majority; otherwise set election aside and conduct new election)

Gauley Industries, Inc. **260 NLRB No. 189**
(Bd declined to adopt recommendation of ALJ that challenge to ballot of Ee be sustained where record was insufficient to permit determination of Ee's eligibility (to vote); *only* in event that Ee's ballot remained determinative after revised tally, should further hearng on Ee's eligibility be held)

Swanson-Nunn Electric Company **256 NLRB No. 131**
(challenged ballots are to be opened and if revised tally shows U won then U will be certified; if U loses election then second election to be held)

Kenshin Charter Service, Inc. **250 NLRB No. 117**
(where R case consolidated with C cases for limited purpose of taking evidence on challenged ballots, RD ordered to open ballots of Ees held eligible and issue certification if U received majority, where U never filed objections to election, notwithstanding E held to have committed ULPs)

7077-6050 Direction of another election

Mead Nursing Home, Inc. **265 NLRB No. 135**
(another election directed where E misstated Sec. 7 rights to engage in protected concerted activity by saying that if U calls strike, Ees may no longer have job at nursing home when strike is over because under law E does not need to rehire you an impermissible threat, and letter to Ees that they could lose right to think and speak for yourself if U wins, but must go through U representatives which was retaliatory threat to terminate unilaterally existing benefit)

Halliburton Services (Coffeyville, Kansas), A Division of Halliburton Company **265 NLRB No. 144**
(new election ordered where E, during critical period, created impression of surveillance of protected concerted activities, threatened Ees with less favorable layoff or transfer policies if U won, interrogated Ee regarding U sentiments of fellow Ees, removed and destroyed U insignias displayed on Ee's tool box, while allowing antiU and nonwork related materials such as pin-ups and calendars to remain posted but not U materials)

Arrow Molded Plastics, Inc. **265 NLRB No. 174**

Rexall Corporation **265 NLRB No. 015**

Avon Products, Inc. **262 NLRB No. 005**
(election set aside since U suffered prejudice in its election campaign where it received Excelsior list which Bd rendered deficient by broadening scope of unit upon review of RD's unit determination, and substantial number of Ees who had voted in election were omitted from list; Bd should have stayed election)

Indian Head Lubricants, Inc. **261 NLRB No. 063**
(where evidence of fraud during election discovered at ULP hearing which was not available at time RD certified results of election, Bd exercised its discretion to reopen R case to consider evidence and having done so set aside election and ordered second election)

G.T.A. Enterprises, Inc. d/b/a Restaurant Horikawa **260 NLRB No. 029**
(new election to be held at time RD deems circumstances permit free choice of bargaining representative)

Graham Architectural Products Corporation **259 NLRB No. 153**
(another election directed where E's ULP's were not isolated as ALJ found 3 instances of interrogation and Bd found additional ULPs directly involving at least 6 Ees and word of ULPs was disseminated to additional Ees)

Fieldcrest Mills, Inc. **259 NLRB No. 098**
(where interrogations, threats of plant closure and to fire person behind U and unlawful discharge of Ee found)

Lifemark Hospitals of Texas, Inc. d/b/a Mid-Jefferson County Hospital **259 NLRB No. 103**
(if U fails to receive majority of valid ballots cast in election, E's threats of loss of privileges and changes in working conditions together with coercive interrogation warrants setting aside election and directing second election)

Walter Carpet Mills, Inc. **259 NLRB No. 096**
(election set aside and new election ordered in view of unlawful threats, promises of benefits, enlisting aid of Ee in preventing other Ees from signing U authorization cards, interrogations, and creating impression of surveillance)

Masonic Homes of California, Inc. **258 NLRB No. 006**
(directed where several Ees saw U observer keep list of hash marks and voters' names continuously through morning voting session and part of afternoon session; such conduct is not de minimis)

Raley's, Inc. **256 NLRB No. 155**
(new election ordered where E unlawfully favored one of two competing U's)

Harrison Steel Castings Company **262 NLRB No. 059**
(rerun election ordered where threats of layoff, job loss, denial of overtime, interference with Ees' rights to distribute U literature and unlawful discharge found violative)

The Swingline Company; Spotnails, Inc. **256 NLRB No. 119**
(where E engaged in misconduct which affected both competing Us, absent conduct which supported winning U, Bd will not order second election, especially in light of fact that winning U won by wide majority and single interrogation, threat and statements of U support came from low level supervisor)

7077-6050—Cont.

General Electric Company **255 NLRB No. 09[illegible]**

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(where challenged ballots were determinative in election, objections to which were found meritorious, RD directed to open and count challenged ballots and to issue certification of representative if revised tally shows U majority; in event tally shows no majority, RD directed to set aside election and direct second election)

MGM Grand-Reno, Inc. **249 NLRB No. 183**
(at such time as RD deems appropriate)

Custom Coating & Laminating Corporation **249 NLRB No. 117**
(directed where E violated Sec. 8(a)(1) by engaging in surveillance, creating impression of surveillance, threatening plant closure and discharge together with promises of improved working conditions)

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**
(election set aside and third election directed, where E made unlawful wage and benefit increases in order to undermine U's organizational campaign during critical period)

The Nyack Hospital **248 NLRB No. 043**
(where there are three choices on ballot and none receives majority, election is inconclusive)

Louis Gallet, Inc. **247 NLRB No. 013**
(setting aside of election warranted where E in letters to Ees prior to election implied threats of plant closure and expressed belief strikes would be inevitable if U voted in)

Gary Concrete Products, Inc. **JD-(ATL)-65-82**

M & G Fleet Service, Inc. **JD-(ATL)-60-82**
(another election directed where during critical period E threatened discharge, plant closure and that he would not bargain if U won)

N.L.R.B. v. Connecticut Foundry Company **688 F.2d 871 (C.A. 2, July 1982)**
(no remand for hearing on challenges to voters and election objections where 4 years have passed since election because company's burden would be too difficult, U election victory was very narrow, workforce at E has probably changed and so no way of knowing that U enjoys majority support; therefore new election ordered)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(in assessing preelection campaign statements, concerning other plants in instant case, for both Es and Us, Bd does not ordinarily *police or censor* propoganda used in elections it conducts, but rather leaves to the good sense of voters the appraisal of such matters, and to opposing parties task of correcting inaccuracies and unlawful statements and only if there has been material misrepresentation which involves substantial departure from truth at time other party cannot reply and has *real* impact on election will it be set aside)

7077-6050-5000 To be held within 30 days

ECM, Inc. **264 NLRB No. 141**
(where unit found appropriate was smaller than unit in which election was conducted, Bd vacated election and directed election in smaller unit)

7077-6067 Certification of results

Bally's Park Place, Inc. **257 NLRB No. 132**
(reversing *Wackenhut Corporation* 223 NLRB 83 (1976), Bd returned to its prior practice of permitting nonqualified Us to participate in R elections conducted among guard Ees and of certifying arithmetic election results only when such Us are victorious but not certifying these Us; however, noncertification will not prevent such Us from representing guards should they win such elections)

7077-6083 Certification of representative

Bally's Park Place, Inc. **257 NLRB No. 132**
(reversing *Wackenhut Corporation* 223 NLRB 83 (1976), Bd returned to its prior practice of permitting nonqualified Us to participate in R elections conducted among guard Ees and of certifying arithmetic election results only when such Us are victorious but not certifying these Us; however, noncertification will not prevent such Us from representing guards should they win such elections)

Burns International Security Services, Inc. **256 NLRB No. 165**
(U certified where E's contention that RD's investigation was inadequate was rejected because E failed to make out *prima facie* showing in connection with any of its timely objections, or demonstrate that material factual issues existed as to correctness of RD's findings)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(where challenged ballots were determinative in election, objections to which were found meritorious, RD directed to open and count challenged ballots and to issue certification of representative if revised tally shows U majority; in event tally shows no majority, RD directed to set aside election and direct second election)

7077-6091 Consideration of conduct not included in objections

Tuf-Flex Glass, A Part Of Libby-Owens-Ford Company **262 NLRB No. 053**
(Bd will not consider conduct which was neither alleged in timely filed objection nor discovered by RD in course of his investingation of such objection absent clear and convincing proof that evidence is newly discovered or previously unavailable)

Halo Lighting Division of McGraw Edison Company **259 NLRB No. 086**
(U's objections held broad enough to encompass conduct found violative of 8(a)(1), where U filed objections for reason that *E unduly influenced and coerced Ees* in exercise of their statutory rights, and E was on notice at trial that U rested its case on GC's evidence regarding E's alleged ULPs; mere fact that ULPs were not specifically alleged in U's objections is insufficient to disregard serious objectionable conduct w/i critical preelection period)

North American Car Corporation **253 NLRB No. 128**
(contention conduct objectionable not considered on merits where raised for first time in exceptions)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(Bd may consider ULPs committed subsequent to election in determining whether to issue bargaining order as they demonstrate E's continued opposition to unionization)

N.L.R.B. v. Eskimo Radiator Mfg. Co. **688 F.2d 1315 (C.A. 9, Oct. 1982)**
(closeness of vote is only one factor Bd and cts consider in scrutinizing preelection conduct)

7077-6095 Disposition of objections to election

Affiliated Midwest Hospital Inc., d/b/a Riveredge Hospital **251 NLRB No. 029**
(where it determined consent election agreement was not inadequate, Bd remanded case to RD for disposition of objections to election including allegation that discrepancy between units in notices of election and Norris-Thermador lists in consent election agreement confused Ees and for investigation and determination as to effect of omission of classifications in technical unit composition in Norris-Thermador lists)

7077-6098 Based on grounds other than those raised at election

Salem Village I, Inc., Salem Village II, Inc., and Salem Village III, Inc. **263 NLRB No. 111**
(on ct remand, hearing on objections was limited only to those issues raised before Bd in E's original objections, as ct opn does not say that it intended to ignore 10(e) limitation and refers only to objections that were discussed)

N.L.R.B. v. H. M. Patterson & Son, Inc. **636 F.2d 1014 (C.A. 5, 1981)**
(E's contention that challenge to ballots of sons of E improperly sustained since sustained on basis of Section 9(b) where U had challenged ballots on basis of Section 2(3), rejected, in view of close relation historically between two sections, and absent abuse of discretion by Bd)

7077-8000 Reconsideration of decision

Benchmark Industries, Inc. **262 NLRB No. 031**
(*Respondent's mere assertion in its opposition to mtn for summary judgment that it has unspecified information to submit concerning appropriateness of unit does not suffice as offer of newly discovered or previously unavailable evidence* that would require Bd to reexamine decision made in underlying R proceeding)

Memphis Furniture Manufacturing Co. **259 NLRB No. 061**
(Intervenor's contention that Petitioner, if certified, is unlikely to represent black Ees fairly and equally, w/o merit, since Bd does not consider contention of that sort before certification; if certification is abused by certified representative by failing to represent all unit Ees fairly, Bd will then consider mtn to revoke certification)

J.F. Hink & Son v. N.L.R.B. **654 F.2d 729(T) (C.A. 9, July 1981)**
(mtn for reconsideration after election held must be supported by prima facie evidence that presents *substantial and material* issues which warrant setting aside election since once completed, Bd-conducted election is presumed legitimate and standard for reversal of BD's denial of hearing on post election objection is *abuse of discretion*)

7077-8025 Reconsideration by Board in subsequent ULP proceeding

Salem Village I, Inc., Salem Village II, Inc., and Salem Village III, Inc. **263 NLRB No. 111**
(on ct remand to hold hearing on objections to election before ALJ, Bd treated as mtn for reconsideration of Board's Order Remanding Proceeding to RD for Hearing, E's letter contending that ULP hearing on objections

7077-8025—Cont.

was illegal and in contempt of ct; mtn was denied since longstanding Bd policy provides for such hearing and avoids delay that would result from reinstatement of representation ptn)

Axelson, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(petitioner's mtn to consolidate and/or for reconsideration on ground Bd decision in instant decertification proceeding overruling objection to election should be considered together with subsequent Bd decision finding violation by E on basis of conduct which was subject of objection, denied, where E did not seek to have ULP case consolidated or considered with instant proceeding until after ULP decision issued; contentions that consideration will facilitate final, just resolution of issues and relief to be accorded, and that relief granted for E's violation is wholly inadequate, rejected)

Axelson, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(petitioner's mtn to consolidate and/or for reconsideration based on allegedly inconsistent decisions as result of Bd decision finding violation on basis of conduct which was subject of previously overruled objection to election in instant decertification proceeding denied as untimely; findings of fact are based on respective records in each case, and record herein shows insufficient evidence to warrant setting aside election; to extent petitioner argues Bd's findings herein are erroneous on record then before it, regardless of record in ULP case, petitioner's second mtn for reconsideration is a year late)

Axelson, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(petitioner's mtn to consolidate and/or for reconsideration as result of Bd finding of 8(a)(1) violation on basis of conduct which was subject of previously overruled objection to election in instant decertification proceeding, denied; Bd rejected contention that, since (8a)(1) conduct *a fortiori* interferes with election, such finding invalidates retroactively Bd's conclusion herein that E's conduct did not warrant setting election aside; *a fortiori* principle was attempt by Bd to avoid *mechanical approach* and Bd looks to economic realities of E-Ee relationship in determining whether to set aside election)

Axelson, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(petitioner's mtn to consolidate and/or for reconsideration as result of Bd finding of 8(a)(1) violation on basis of conduct which was subject of previously overruled objection to election in instant decertification proceeding, denied; effect of narrow ruling herein was that, if U has won election despite E's campaign against it, election results stand as against mechanical insistence on *laboratory conditions;* and fact that E's conduct was later found violative does not cast issue into any light significantly different from that in which Bd first examined it)

The Westin Hotel **261 NLRB No. 141**
(intervenor's mtn for reconsideration (in underlying RC case) contending that unit was inappropriate and evidence of area practice should be taken on remand, denied as lacking in merit because Intervenor did not allege any newly discovered or previously unavailable evidence or special circumstances which would warrant grant of request and intervenor had opportunity to present such evidence at hearing)

Indian Head Lubricants, Inc. **261 NLRB No. 003**
(where evidence of fraud during election discovered at ULP hearing which was not available at time RD certified results of election, Bd exercised its discretion to reopen R case to consider evidence and having done so set aside election and ordered second election)

Hyatt Regency New Orleans **260 NLRB No. 066**
(Respondent's request that full Bd reconsider denial of Respondent's request for review of RD's Supplemental Decision and Certification of Representative denied as it is policy of Bd for same panel which decided case to pass upon reconsideration and full Bd only considers such mtn if panel refers it to full Bd)

7088 RECORD

Prairie Tank Southern, Inc. **261 NLRB No. 117**
(E's failure to previously argue that RD improperly failed to transmit complete record in underlying R case to Bd not justified by Region's refusal in instant case to enter into stipulation to effect that affidavits taken during Region's investigation of R case not forwarded to Bd. E may not now raise this as defense to failure to bargain, since no requirement that RDs enter into such stipulations, and E was familiar with requirements for filing exceptions to elections and what constitutes record thereunder; further, E had notice through RD's report as to what would constitute record)

Odom Sausage Co., Inc. of Arkansas **256 NLRB No. 048**
(Bd maintains that under Sec. 102.68 of R/R, affidavits submitted in support of objections to election are not part of record)

N.L.R.B. v. Curtis Noll Corporation, Curtis Industries Division **634 F.2d 1027 (C.A. 6, 1980)**
(enforcement denied and E's objections to consent election remanded to Bd for further consideration where evidence relied upon by RD concerning determination of E's objections was not transmitted to Bd, hence was not transmitted to ct; ct held that Bd had abused its discretion by adopting report of RD when RD failed to transmit to BD evidence relied upon by RD)

N.L.R.B. v. Advanced Systems, Inc. **681 F.2d 918 (C.A. 9, Apr. 1982)**
(cts which have considered Bd's Rule 102.69(g) have concluded that rule is too ambiguous to put party on notice that complete record will not be forwarded to Bd)

N.L.R.B. v. Advanced Systems, Inc. **681 F.2d 918 (C.A. 9, Apr. 1982)**
(where RD failed to submit full record to Bd, Bd's contention that it was entitled to rely on RD's report w/o resort to full administrative record in view of lack of specificity of E's exceptions to report, rejected, since difficulty in determining whether exceptions materially dispute RD's findings stems not from E's lack of specificity but from RD's failure to disclose evidentiary basis for his conclusion)

N.L.R.B. v. Advanced Systems, Inc. **681 F.2d 918 (C.A. 9, Apr. 1982)**
(remanded for evidentiary hearing Bd refused to hold w/o reviewing documentary evidence underlying RD's report on objections and w/o making such evidence part of record for judicial review. RD did not send any documentation relied on in report and only documentary evidence before Bd was affidavit attached to exceptions. RD's failure to transmit documents not harmless since not submitted by objecting E either)

7088-0100 Generally

N.L.R.B. v. Klinger Electric Corporation, Klinger Electronics Division and Klinger Manufacturing Division **656 F.2d 76 (C.A. 5, 1981)**
(ct found that RD could reach a decision on objections to election w/o endangering confidentiality of affidavits gathered during his own investigation by not including them in the record, because they are not essential for decision; objecting party bears burden of adducing prima facie proof of facts sufficient to invalidate election, and RD could reach a decision based only on evidence offered by objecting party)

7088-3300 Where administrative investigation made

Seth Thomas Division, General Time Corporation **262 NLRB No. 099**
(affidavits properly not accepted by Bd's Executive Secretary as part of record under Bd's R/R Sec. 102.69(g) notwithstanding that under Bd's R/R Sec. 102.69(g)(3) party may submit affidavits not included in brief by appending them to record, since here party objecting to election refused to serve affidavits on all parties pursuant to Bd R/R Sec. 102.69(c))

Knickerbocker Foods, Inc., A Division of Knickerbocker Meats, Inc. **260 NLRB No. 121**
(statements of witnesses which were before RD in his disposition of election objections and challenged ballots are expressly excluded from definition of *documentary evidence* in Sec. 102.69(g)(1)(ii) of R/R, and this accords with Bd policy of protecting investigatory affidavits from disclosure when witnesses have not testified at hearing, thus E was not denied due process and party which wants Bd to consider statements of witnesses must append them to its submission to Bd)

Harvard Folding Box Co., Inc. **259 NLRB No. 102**
(affidavits not part of record under R/R 102.69(g) and are expressly excluded from definition of *documentary evidence* by 1981 amendment R/R 102.69(g)(1)(ii))

Keystone Metal Moulding Company **249 NLRB No. 078**
(affidavits of E taken by RD during investigation of objections to election considered by Bd upon remand after finding by ct; Bd must make decision based on complete record)

N.L.R.B. v. The Cambridge Wire Cloth Company, Inc. **622 F.2d 1195 (C.A. 4, 1980)**
(where RD determines that objections to election do not require hearing, RD, and not objecting party, is responsible for transmitting *whole* record (all evidence considered in reaching decision) to Bd for its review on appeal, notwithstanding R/R 102.69(g) places responsibility for submission of documents on objecting party)

N.L.R.B. v. Klinger Electric Corporation, Klinger Electronics Division and Klinger Manufacturing Division **656 F.2d 76 (C.A. 5, 1981)**
(contrary to Bd, ct interpreted contents of record to be filed in the ct of appeals in a review or enforcement case as set forth in the first sentence of Sec. 102.69(g) as applying to all such proceedings, whether or not a hearing had been required; it also held that any reasonable interpretation of *documentary evidence* included all portions of affidavits or other documents relevant to the evidentiary basis of the RD's decision and recommendation)

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**
(failure of RD to include affidavits obtained during investigation of objections to election in file as part of record on review is not *per se* basis for setting aside report)

7088-3300—Cont.

N.L.R.B. v. Dobbs House, Inc. **613 F.2d 1254 (C.A. 5) (1980)**
(failure to include affidavits in record is harmless error where E included contents of affidavits in his exceptions to RD's report and documents were adequately summarized in E's Request for Review)

Eliason Corporation v. N.L.R.B. **688 F.2d 22 (C.A. 6, Sept. 1982)**
(remand for hearing on E's objections to election that Ee who was U supporter had intimidated other Ees in voting in underlying R case, where Bd had adopted RD's report on objections overruling objections and recommending U be certified and granted mtn for summary judgment in ULP proceeding alleging refusal to bargain, w/o benefit of underlying evidence on which RD based recommendation)

ATR Wire and Cable Company v. N.L.R.B. **671 F.2d 188 (C.A. 6, Feb. 1982)**
(ct held that Bd abused its discretion by adopting RD's report on objections to election since RD failed to transmit U affidavits obtained *in camera* to Bd upon which RD relied)

N.L.R.B. v. North Electric Company, Plant No. 10 **644 F.2d 580 (C.A. 6, Mar 26, 1981)**
(in absence of hearing, regulation requires RD to transmit record to Bd so that *all* evidence relied on by RD in recommending that E's objections be overruled and U certified can be reviewed by Bd)

N.L.R.B. v. Allis-Chalmers Corporation **680 F.2d 1166 (C.A. 7, June 1982)**
(enforcement of bargaining order denied, certification set aside, and case remanded to Bd for appropriate action where Bd had adopted RD's decision overruling objections to election w/o seeing evidence in RD's investigatory file relied on by RD)

N.L.R.B. v. Eskimo Radiator Mfg. Co. **688 F.2d 1315 (C.A. 9, Oct. 1982)**
(even if RD failed to include E's affidavits in record when he transferred case to Bd, this is harmless error where E filed its own affidavits with Bd)

N.L.R.B. v. Advanced Systems, Inc. **681 F.2d 918 (C.A. 9, Apr. 1982)**
(Bd abused discretion when: 1) adopted RD's report w/o reviewing underlying documents because E failed to append to its exceptions documents given by it to RD; and 2) failed to include this documentation in record to ct. No waives by E for failure to raise issue of complete record during Bd proceeding as E didn't discover fact until Bd filed its certificate of record. Bd Rule 102.69(g) to ambiguous to put E on notice complete record not sent to Bd, nor did RD's report give notice documents secured by RD himself would be excluded from record or clearly indicate that E's documents would be excluded unless appended to exceptions)

N.L.R.B. v. Advanced Systems, Inc. **681 F.2d 918 (C.A. 9, Apr. 1982)**
(Bd's interpretation that Rule 102.69(g) required less extensive record to be transferred to Bd in R cases where no hearing was held than in cases where hearing was held, held error by ct.)

N.L.R.B. v. Consolidated Liberty, Inc., d/b/a Hy-Land Convalescent Hospital **672 F.2d 788 (C.A. 9, Mar. 1982)**
(case remanded to Bd so that RD can supply Bd with contested ballots because w/o ballots Bd cannot consider all relevant evidence which was before RD, where as here E supplied all other relevant evidence to Bd to support its objections)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center **652 F.2d 856 (C.A. 9, Aug 1981)**
(any error in RD's failure to send to Bd, in transmitting election report, underlying documentation gathered during region's *ex parte* investigation and to submit E's affidavits and other documentation held harmless, where E filed all documents it had given RD when it filed its exceptions with Bd)

7088-6700 Inclusion of affidavits

National Duct Corporation **265 NLRB No. 050**
(mtn of E who had filed objections to compel RC to transmit to Bd entire file including affidavits and investigatory notes, denied, where statements of witnesses submitted to RD by E which constituted all of E's evidence in support of objections, were appended to objections and thus became part of record under Bd's R/R Section 102.69(g) and were considered by Bd)

Summa Corporation d/b/a Frontier Hotel **265 NLRB No. 046**
(record in objections cases where no hearing is held consists of objections which were filed, RD's report or decision, all documentary evidence, except statements of witnesses, relied on by RD in his report or decision, any briefs or other legal memorandum submitted by parties, and any other motions, rulings or order of RD. Moreover, party may append to its exception or opposition any affidavit or other documentary evidence which it has timely submitted to RD, and these documents will become part of record and fully considered by Bd)

Benchmark Industries, Inc. **262 NLRB No. 031**
(E's contention RD erred when he failed to send Bd copies of all affidavits and other data accumulated during investigation of E's objections to election for its consideration with E's request for review, rejected, since no material or substantial issues of fact existed, and in accordance with Section 102.67(d) of Bd's R/R which provides that, any request for review be self contained document enabling Bd to rule on basis of its contents w/o necessity of recourse to record, E attached to its request for review documentary evidence relied upon by RD and Bd did consider this evidence)

The Bakery, Incorporated **259 NLRB No. 099**
(in *no hearing* cases witnesses' statements excluded from record)

Burns International Security Services, Inc. **256 NLRB No. 165**
(Bd declined to rule on E's mtn for transmittal of RD's investigative file where evidence needed to resolve merits of timely objections, necessity of hearing, and challenges to U's qualification was before Bd because E had submitted it with its exceptions)

Odom Sausage Co., Inc. of Arkansas **256 NLRB No. 045**
(under Section 102.68 of R/R affidavits independently acquired during investigation of election objections are confidential and are not part of record in representation or subsequent ULP proceeding)

N.L.R.B. v. Decibel Products, Inc. **657 F.2d 727 (C.A. 5, 1981)**
(enforcement of bargaining order denied and case remanded for consideration on basis of entire record; it was error for Bd to consider nothing but RD's report in determining whether E committed ULP)

N.L.R.B. v. North Electric Company, Plant No. 10 **644 F.2d 580 (C.A. 6, Mar 26, 1981)**
(in absence of hearing, regulation requires RD to transmit record to Bd so that *all* evidence relied on by RD in recommending that E's objections be overruled and U certified can be reviewed by Bd)

El Monte Tool and Die Casting, Inc. v. N.L.R.B. **633 F.2d 160 (C.A. 9, 1980)**
(where official record compiled by Bd did not include in its table of contents Ee affidavits, not conclusive that Bd did not consider affidavits where NLRB attorney prepared them and information contained in Bd's D/O appeared in affidavits)

7088-8300 Supplementing record

Harry Lunstead Designs, Inc. **265 NLRB No. 110**
(under Sec. 102.69(g)(1)(ii) and (2) of R/R, record was complete after RD amended report to include record of proceeding, and E submitted to Bd documentary evidence not included in that report but previously submitted to RD during investigation)

7096 REOPENING RECORD AND REMAND

Weyerhaeuser Company **264 NLRB No. 124**
(E's mtn to reopen record, requesting Bd to consider issues raised by ALJ's alternative rationales for sustaining challenges to Ees' ballots, denied, where Bd relied on ALJ's primary findings concerning Ees' status in sustaining challenges, and E's request to consider ALJ's alternative rationales is no longer a viable mtn)

Arden Electric, et al. **263 NLRB No. 037**
(Bd remanded case to RD for taking of evidence on sole issue of continuing existence or validity of multi-E unit that RD had administratively found to constitute bar to ptns, particularly as to multi-E association's authority to bargain with Us other than IBEW local for electrical construction work, degree to which specific named E-members attempted to withdraw from association, and manner in which they sought to or did withdraw)

8000 UNIT CLARIFICATION PROCEDURE

Mac Towing, Inc., et al. **262 NLRB No. 168**
(UC ptn dismissed where Petitioner's request for merger of engineering units and deck Ees units, and a further merger of separate E units into one fleetwide unit involves issues which fall outside proper scope of UC proceeding; parties have previously agreed to bargain within framework of separate bargaining units and Bd without showing of changed circumstances will not interfere with bargaining relationship)

Holly Hill Fruit Products Co., Inc. **256 NLRB No. 035**
(ptn filed in middle of contract term, held timely, since here unit clarification procedure invoked to determine unit placement of Ees performing new operation)

Mercury Marine Division of Brunswick Corporation **254 NLRB No. 146**
(Bd did not defer to reasoning of arbitrator who had found E had not violated contract by assigning operation of newly installed electronically programmed die-casting machines to personnel outside unit; instead, Bd accreted machine operators to existing unit pursuant to clarification ptn which is appropriate procedure for resolving ambiguities concerning unit placement of individuals who come w/i newly established classification of disputed unit placement; in any event, issues involving appropriateness of unit and criteria are particularly w/i Bd's expertise)

8000—Cont.

The Washington Post Company 254 NLRB No. 014
(in determining supervisory, managerial or confidential status of Ees involved in instant U C proceeding, Bd held important consideration is active facts relating to job performance and not titles or job description; while wage data may be somewhat probative of status, it is not conclusive or determinative; moreover, U was permitted to examine witnesses on their wages and E's wage structure, and E relied little, if any, on disparity in wages)

The Washington Post Company 254 NLRB No. 014
(in U C proceeding, Bd found it unnecessary to make credibility resolutions, since it ordinarily does not do so in determining unit issues)

Arizona Electric Power Cooperative, Inc. 250 NLRB No. 110
(during mid-term contract negotiations Bd would refuse to entertain mid-term U C ptn to exclude alleged supervisors where parties were aware of unit placement problems when contract executed; to do so would be disruptive of established bargaining relationships)

Shop Rite Foods, Inc. 247 NLRB No. 143
(UC ptn filed 101 days prior to expiration of then-current 3-year contract, timely filed, since Bd has processed UC ptn filed 90 days prior to expiration of agreement in *Beth Israel Medical Center, 231 NLRB 295 (1977);* ptn in instant case was only slightly earlier filed; Bd does not lack authority to clarity unit established by agreement of parties)

Consolidated Papers, Inc. v. N.L.R.B. 670 F.2d 754 (C.A. 7, Feb. 1982)
(ct denied enforcement ofBd order predicated upon unit clarification proceeding and Bd's finding that salaried Ees who were transferred to facility in question from another location were accretion to existing unit at the facility, since Bd should have dismissed ptn as untimely under *Wallace-Murray* rule, where ptn was filed during mid-term of existing bargaining contract, and contract's description of unit as *hourly paid* Ees *clearly defined unit to exclude salaried Ees*)

9000 AMENDMENT OF CERTIFICATION PROCEDURE

Knapp-Sherrill Company 263 NLRB No. 060
(E estopped from challenging procedures employed in merger of two local U's two years after it took place where it satisfied all elements of estoppel–knowledge, intent, mistaken belief and detrimental reliance; had knowledge of U merger, was aware it had right to refuse to recognize it as successor, and after merger E dealt with successor as its Ees' bargaining representative including forwarding dues payments, adjusting grievances, and bargaining over terms of proposed midterm wage reopener, and local relied on E's business as usual approach to its detriment when it took no further action to establish its status as collective-bargaining representative)

Knapp-Sherrill Company 263 NLRB No. 060
(merger of 2 Internationals into UFCW proper where Us held convention attended by both Us to effectuate merger; UFCW's executive board comprised of both International's officers' geographical divisions, districts of Meat Cutters unaltered, committees survived, local Us charter members and not required to merge with other locals, UFCW assumed rights, property, obligations of Internationals; although Local 171 did not send delegates to convention out of choice, its members did not vote on proposed merger; merger did not affect representation at local level, was provided for in Meat Cutters constitution, thus RD's amendment of certification proper)

400 BARGAINING UNITS

401 GENERALLY

1200 STATUTORY OBJECTIVES IN DEFINING BARGAINING UNITS

Alaska Statebank v. N.L.R.B. 653 F.2d 1285 (C.A. 9, Aug 1981)

(Act itself provides little guidance to Bd in determining what appropriate bargaining unit shall be. When the Act does give instruction it does so in relation to rights of Ees. Assuring Ees of free exercise of their rights is paramount criterion in determining what will be bargaining unit)

2500 POWER AND DISCRETION OF BOARD

Big Y Foods, Inc. v. N.L.R.B. 651 F.2d 40 (C.A. 1, June 1981)

(The issue as to what unit is appropriate for bargaining is one for which no absolute rule of law is laid down by statute, and none should be by decision. It involves of necessity a large measure of informed discretion, and the decision of the Board, if not final, is rarely to be disturbed... Packard Motor Car Co. v. N.L.R.B., 330 U.S. 485, 491-492 (1947))

N.L.R.B. v. Purnell's Pride, Inc. 609 F.2d 1153 (C.A. 5, Jan. 1980)

(Bd has broad discretion in making unit determination; it must select *an* appropriate unit, not *the most* appropriate unit)

2501 GENERALLY

Magic Pan, Inc. v. N.L.R.B. 627 F.2d 105 (C.A. 7, 1980)

(issue as to what unit is appropriate for bargaining involves, of necessity, large measure of informed discretion; no absolute rule of law is laid down by statute, and none should be by decision)

Magic Pan, Inc. v. N.L.R.B. 627 F.2d 105 (C.A. 7, 1980)

(Bd's decision on appropriateness of single restaurant of nation-wide chain being appropriate unit, not arbitrary or capricious where Bd's findings and conclusions were supported by substantial evidence and in accordance with law)

Spring City Knitting Company v. N.L.R.B. 647 F.2d 1011 (C.A. 9, June 1981)

(Bd is not required to select most appropriate bargaining unit so long as unit chosen is w/i range of units appropriate under circumstances)

Sohio Petroleum Co., a division of Sohio Natural Resources Co. v. N.L.R.B. 625 F.2d 223 (C.A. 9, June 1980)

(ct will not disturb Bd's (unit) determination unless there has been abuse of discretion and bargaining unit is clearly inappropriate; issue of bargaining unit determination is w/i particular expertise of Bd)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)

(Bd has *rebuttably* presumed single facility units appropriate *where there is no bargaining history in more comprehensive unit and-degree of functional integration with other facilities is insufficient to negate-separate identity of-facility in which a U seeks representative status*)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)

(ct must insure that Bd's exercise of discretion, as to what unit is appropriate for bargaining, is not unreasonable, arbitrary, unsupported by evidence, or in conflict with congressional intent)

2525 BOARD AUTHORITY UNDER STATUTE

Big Y Foods, Inc. 251 NLRB No. 123

(E's contention that Bd had not fulfilled its statutory duty to make unit determination in its Decision and Direction of Elections and summary judgment fails because of new issue that could not have been previously raised held w/o merit; Bd had found that either Unit A or Unit B was appropriate, and therefore affirmative duty placed on Bd by Sec. 9(b) was not violated by allowing Ees to express their desires in elections)

La Crosse Printing Company, Inc. 249 NLRB No. 027

(in ruling on challenges in cases involving stipulated units, Bd will rely on scope of stipulation itself unless it is contrary to Act or established Bd policy)

Magic Pan, Inc. v. N.L.R.B. 627 F.2d 105 (C.A. 7, 1980)

(issue as to what unit is appropriate for bargaining involves, of necessity, large measure of informed discretion; no absolute rule of law is laid down by statute, and none should be by decision)

N.L.R.B. v. C & D Foods, Inc. 626 F.2d 578 (C.A. 7, July 1980)

(Bd not required to choose most appropriate unit but only to choose appropriate unit w/i range of several units in given factual situation; ct has recognized that Bd has vast discretion in deciding appropriate unit)

Alaska Statebank v. N.L.R.B. 653 F.2d 1285 (C.A. 9, Aug 1981)

(appropriate bargaining unit selected by Bd need only be appropriate one, it need not be the only appropriate one or even optimal unit)

Alaska Statebank v. N.L.R.B. 653 F.2d 1285 (C.A. 9, Aug 1981)

(Act itself provides little guidance to Bd in determining what appropriate bargaining unit shall be. When the Act does give instruction it does so in relation to rights of Ees. Assuring Ees of free exercise of their rights is paramount criterion in determining what will be bargaining unit)

Beth Israel Hospital and Geriatric Center v. N.L.R.B. 688 F.2d 697 (C.A. 10, Sept. 1982)

(en banc ct held Bd must determine, when certifying bargaining unit in health care institutions, whether unit is appropriate w/o resorting to presumption that shifts to E burden of showing proffered unit is appropriate, and Bd must state why unit it chooses complies with Congress' admonition; Bd cannot rely on E's failure to show that units are inappropriate; if Bd declines to redetermine whether an appropriate unit was selected, then that issue is not addressed at ULP proceeding, and thus Federal Rule of Evidence 301 would not apply and E could challenge unit selection only through judicial review)

Beth Israel Hospital and Geriatric Center v. N.L.R.B. 677 F.2d 1343 (C.A. 10, July 1981)

(enforcement denied where Bd erred in applying its prior decisions finding/concluding that unit restricted exclusively to registered nurses is presumptively appropriate and that E must overcome presumption by producing evidence that limited bargaining units are less appropriate than broader bargaining units; continued acceptance and endorsement of Bd's presumptive and evidentiary policies by ct would simply serve to enhance undue proliferation of health care bargaining units, in direct derogation to congressional mandate set forth in House and Senate committee reports)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)

(*Bd must expressly consider the congressional admonition* to prevent proliferation of bargaining units in health care industry *in making unit determinations* and focus on *disparity of interests between Ee groups which would prohibit or inhibit fair representation of Ee interests*)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)

(requiring health care industry Es to bear burden of producing evidence that limited bargaining units are more inappropriate than broader bargaining units runs contrary to Congress' admonition)

2550 ARBITRARY OR ARTIFICIAL GROUPINGS

Trustees of University of Pennsylvania 247 NLRB No. 132

(E's voluntary recognition of arbitrary grouping of Ees held insufficient justification for excluding similarly classified Ees, thereby splintering Ees who have common community of interest evidenced by centralized hiring procedures, personnel policies, benefits, and labor relations, and by performance of similar duties)

2550—Cont.

Catholic Community Services **247 NLRB No. 103**
(no QCR where unit sought by petitioner was inappropriate; unit included only some Ees in each of E's five divisions but did not include all of E's facilities or all Ees in any one division; neither petitioner nor E had specified alternate unit; unit Ees did not share community of interest; unit petitioned for was arbitiary grouping of Ees)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**
(*dissimilarity of interests* relevant to collective bargaining process determines which Ees are not to be included in proposed unit, *not similarity* of Ees' training, hours, conditions and activities which determine appropriateness of unit)

2562 EXTENT OF EMPLOYEE ORGANIZATION MAY NOT CONTROL UNIT DETERMINATION

Marriott In-Flite Services, A Division of Marriott Corporation v. N.L.R.B. **652 F.2d 202 (C.A. 1, June 1981)**
(separate unit of handlers, helpers, coordinators and auto mechanics in E's transportation department rather than plant-wide unit appropriate where Bd's evaluation of considerations tending to show presence or absence of community of interest among Ees involved *a large measure of informed discretion* and was supported by substantial evidence; extent of U organization of Ees not controlling; Bd entitled to give greater weight to Ees' (desires) than Bd's view of boundries of unit; Bd's unit determinations for other of E's facilities not controlling)

2575 LIMITATIONS UPON AUTHORITY IMPOSED BY NLRA

2575-1400 Professional employees

Montefiore Hospital and Medical Center **261 NLRB No. 082**
(staff doctors at medical center held professional Ees as defined in Section 2(12) of Act, and may constitute appropriate bargaining unit separate from other professional Ees even though in health care industry Bd is required to avoid fragmentation of units)

2575-1450 May not be included in unit with nonprofessionals without selfdetermination election (See also 177-2484-9300)

Utah Power & Light Company **258 NLRB No. 138**
(while reaffirming its policy requiring that unit for decertification be coextensive with existing unit, Bd made exception to such policy in unique situation herein, in which ptn sought decertification of professional engineers who were part of larger mixed unit, because engineers were never afforded opportunity to vote in self-determination election as required by 9(b)(1) on whether they were to be included in existing unit; accordingly, Bd found requested unit not inappropriate and directed election among engineers)

Utah Power & Light Company **258 NLRB No. 138**
(in directing a decertification election among professional engineers who were part of larger mixed unit, Bd noted that decertification proceeding was initiated at an appropriate time under 9(b)(1) provision intended for their protection, not by an E who seized upon issue as asserted basis for withholding recognition in midst of strike by its Ees)

Harborcreek School for Boys **249 NLRB No. 177**

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(*designer* at manufacturer and distributor of children's clothing excluded from unit of production and maintenance Ees and ineligible to vote since professional Ee)

2575-2800 Guards

2575-2825 May not be included in unit with other employees

Supreme Sugar Company, Inc. **258 NLRB No. 039**
(E's refusal to adhere to terms of collective-bargaining agreement regarding pay and benefits of watchman (found to be guard) not violative, notwithstanding E voluntarily agreed to include watchmen in unit, in view of express prohibition of Sec. 9(b)(3) that *Bd shall not decide that any unit is appropriate for (purposes of collective bargaining) if it includes, together with other Ees, any individual employed as guard*)

Burns Electronic Security Services, Inc. **256 NLRB No. 139**
(operator/runners found guards and excluded from unit of all Ees where duties require them to wear uniforms, carry weapons, have police whistle and identification badge; operator/runners respond to alarms at customers premises, investigate scene, cooperate with police, secure premises and restore protective system)

Wright Memorial Hospital **256 NLRB No. 173**
(ambulance department Ees on 2d and 3d shifts held guards and excluded from unit of all ambulance department Ees where, in addition to their ambulance duties, they make security rounds of hospital and so are employed to enforce, against Ees and others, rules to protect E's property and safety of persons on premises, and notwithstanding they wear no guard uniforms or do not themselves enforce rules but notify department heads of infractions)

National Medical Convalescent of San Diego, d/b/a Ojai Valley Community Hospital **254 NLRB No. 163**
(U which represented public Ees including city policemen not precluded from representing Ees at hospital at which police furnished protection since police are not guards w/i Section 9(b)(3) of Act where not employed by E and only contact with E is through municipal function of rendering assistance when needed)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(individual ineligible to vote since held guard and excluded from unit where he opens up plant before work and closes at end of day, *watches* Ees while in plant, punches and signs time cards where corrections necessary, inspects handbags of Ees leaving plant, and requests unauthorized persons to leave plant)

Burns Electronic Security Services, Inc. v. N.L.R.B. **624 F.2d 403 (C.A. 2, 1980)**
(remanded for reconsideration of question of whether Ees known as *Operator/Runners* were guards w/i meaning of Sec. 9(b)(3) where Bd had determined Ees were not guards on basis of R hearing only, did not consider relevant information introduced at ULP hearing on related charge and avoided addressing inconsistency between classification of Ees in present case and Ees with same title in three Bd decisions involving same E, notwithstanding Bd's argument that R/R Sec. 102.67(f) required party to produce all available evidence at R hearing rather than attempt to relitigate unit issue at ULP hearing)

2575-2850 Union admitting employees other than guards to membership may not represent guards

Purolator Courier Corp. **265 NLRB No. 086**
(ptn by U to represent courier guards dismissed because U admits to membership Ees other than guards in violation of Sec. 9(b)(3) of Act)

Purolator Courier Corp. **254 NLRB No. 072**
(U which admits other than guards to membership may not be certified as representative of courier/guards of E who is engaged in business of safeguarding and transporting commodities throughout the United States, since courier/guards are guards w/i meaning of Sec. 9(b)(3) of Act, inasmuch as they are employed to protect valuable property of E's customers; *Brinks, Inc.*, 226 NLRB 1182 and *MDS Courier Services, Inc.*, 248 NLRB 1320, cited)

MDS Courier Service, Inc. (Teamsters Local No. 150) **248 NLRB No. 181**
(U which represented non-guards may not represent drivers who transported packages typically containing documents mortgage papers, engineering specifications and sealed pouches which might contain bank deposits, bearer bonds and jewelry since Ees held guards where employed to protect valuable property of E's customers; notwithstanding not armed, not required to wear uniforms, and deliveries made in privately owned vehicles)

N.L.R.B. v. J. W. Mays, Inc. **675 F.2d 442 (C.A. 2, Feb. 1982)**
(U representing *guards* not disqualified from representing Ee guards where non-guards were not members of U nor did U solicit non-guards for membership; U was not purporting to represent Ee who was officer of U but worked in non-guard position in his non-guard capacity)

2575-4200 Supervisors

2575-4250 Statutory exclusion from employee status (See also 177-2484-6200 and 177-8500)

The Washington Post Company **254 NLRB No. 014**
(pursuant to Act's specific exclusion of supervisors from unit and well settled rule excluding managerial and confidential Ees, Bd is required, when presented with an appropriate ptn or claim, to exclude positions from unit where inclusion of those positions would violate Act)

Clifford Cook, d/b/a Pinnacle Company and Pinnacle Roofing Co., Inc. **JD-(SF)-196-79**

3700 EFFECT OF ACTION BY OTHER AUTHORITIES

3725 ARBITRATION AWARDS

N.L.R.B. v. Local 1034, Teamsters **651 F.2d 136 (C.A. 2, June 1981)**
(enforcement granted where Bd's determination of composition of unit was matter *which parties' contract's grievance arbitration is designed to resolve* and parties have clearly and consistently expressed their willingness to be bound by arbitrator's decision; Bd was construing parties' contract which set up original unit; ct did not reject result (of Bd decision) which would have been same if Bd had deferred to arbitrator's determination)

3750 STATE AGENCY ACTION

3750—Cont.

Wordsworth Academy **262 NLRB No. 042**

(Bd policy is to accord comity to elections and certifications of responsible State agencies, provided that State proceedings reflect true desires of affected Ees, election irregularities are not involved, and there has been no substantial deviation from due process; moreover, while State agency's unit determination need not conform to Bd precedent, unit must not be repugnant to Act)

Wordsworth Academy **262 NLRB No. 042**

(Bd declined to grant comity to State board's certification of unit similar to one sought herein, where State board's certified unit differed from unit sought by parties herein since State certified unit included all professional Ees and did not expressly exclude certain Ee categories, whereas stipulated unit herein expressly excluded such Ees; moreover, parties stipulated to exclude certain named Ees who may or may not be covered by State board's certification)

3775 FEDERAL AGENCY ACTION

Yellow Taxi Company of Minneapolis, d/b/a Suburban Yellow Taxi Company **249 NLRB No. 035**

(deferral to rulings by IRS and EEOC that lessee taxicab drivers were independent contractors, unwarranted since Bd's determination was based on record developed after hearing in which parties participated, presented evidence and cross-examined witnesses)

5000 EFFECT OF STIPULATIONS BY PARTIES TO BOARD PROCEEDINGS

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**

(where E stipulated to appropricateness of unit in underlying R proceeding but in its ans to 8(a)(5) C herein denied such allegation, E held bound by earlier agreement, since E took no position at hearing or on brief that facts underlying stipulation had changed and, consequently, offered no evidence to show that stipulation did not continue to be valid, nor did E expressly withdraw from stipulation; moreover, R-case decision showed that unit was presumptively appropriate and record herein further disclosed that unit, in consonance with parties' agreement, was appropriate)

5050 STIPULATIONS BY PARTIES NOT INCLUDING RD

5050-0100 Generally

Valley View Hospital **252 NLRB No. 160**

(it is settled Bd policy to accept stipulations from parties as to composition of unit, unless such stipulations are contrary either to statutory provisions of Act, or established Bd policy)

5050-6700 Stipulations as to composition

A & B Cartage, Inc. **256 NLRB No. 003**

(Bd not bound by Norris-Thermador list on issues of supervisory status)

Valley View Hospital **252 NLRB No. 160**

(GC's mtn for summary judgment denied where RD had found unit including RNs appropriate in view of stipulation of parties; however, there was no testimony at R hearing which would indicate RNs were technical Ees, or performed duties different from those implied in their job classification, and stipulation alone cannot override mandate of 9(b) requiring professional Ees to vote on inclusion in unit with non-professional Ees)

N.L.R.B. v. Boston Beef Co., Inc. **652 F.2d 223 (C.A. 1, July 1981)**

(Bd may not rely upon *community of interest* test to subvert clear intent of parties (in stipulated election) but, where intent is unclear or stipulation ambiguous, Bd may properly rely on *community of interest* principles to help resolve ambiguity of whether Ee eligible to vote)

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**

(ct concluded Bd erred in its determination that drivers should be included in unit since parties had agreed to drivers exclusion and at oral argument Bd agreed drivers should be excluded)

5075 STIPULATIONS IN CONSENT AGREEMENT APPROVED BY RD

5075-3300 Stipulations as to scope

Penetone Corporation **260 NLRB No. 188**

(E, in C case, cannot challenge appropriateness of unit, since E had stipulated to unit's appropriateness in R proceeding and U was certified as bargaining representation for E's Ees in unit)

G. H. Skipper, Inc. **264 NLRB No. 053**

(where U and E agreed that Ees from satellite operation which was to be closed down and Ees shifted to main location were to be included in unit at main location, unit proper and all Ees allowed to vote; RD's *exclusion* of satellite unit consistent with finding that Ees from that unit included in main unit as parties stipulated)

La Crosse Printing Company, Inc. **249 NLRB No. 027**

(in ruling on challenges in cases involving stipulated units, Bd will rely on scope of stipulation itself unless it is contrary to Act or established Bd policy)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**

(Bd may give same effect to stipulation in R case that Es were joint Es as it gives to litigated determination)

5075-6700 Stipulations as to composition

Penetone Corporation **260 NLRB No. 188**

(E, in C case, cannot challenge appropriateness of unit, since E had stipulated to unit's appropriateness in R proceeding and U was certified as bargaining representation for E's Ees in unit)

Lifemark Hospitals of Texas, Inc. d/b/a Mid-Jefferson County Hospital **259 NLRB No. 103**

(where stipulation include in unit *regularly scheduled part-time Ees*, Ees included where they regularly receive schedule for same hours notwithstanding they may refuse these hours or may be called in to work on days not scheduled as part of hours were worked according to schedule and therefore, they do not qualify as casual Ees)

7500 CRITERIA FOR DETERMINATION OF UNIT SCOPE AND COMPOSITION

Air-Vac Industries, Inc., Leeward Constructors, Inc., Air-Vac Environmental Limited **259 NLRB No. 051**

(determination that two affiliated firms constitute single E *does not necessarily establish that an E-wide unit is appropriate, as the factors which are relevant in identifying brea(d)th of an E's operation are not conclusively determinative of the scope of an appropriate unit*)

La Crosse Printing Company, Inc. **249 NLRB No. 027**

(challenges to ballots of composing room Ees sustained and those Ees excluded from stipulated unit of *all P&M Ees of printing and lithographic presses and associated devices employed in (E's) pressroom* in view of their separate representation by Intervenor for over 25 years; Petitioner was attempting to replace U which had represented traditionally appropriate unit)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**

(traditional factors used in scope determinations *must be put in balance against - public interest in preventing fragmentation in - health care field*; Bd must specify *manner in which its unit determination(s) implement or reflect that admonition*)

7550 EMPLOYEE COMMUNITY OF INTEREST CONTROLLING

Allied Gear and Machine Company, Inc. **250 NLRB No. 097**

(separate unit limited to Ees of E's pattern and plate department held inappropriate where all production Ees, including pattern and plate Ees, were hourly paid, received same benefits, were subject to same work rules, payroll classifications and performance reviews and used common plant facilities; skills of Ees sought were not complex and neither previous experience nor formal training were conditions for their employment; Ees' operations were closely integrated with other departments)

Catholic Community Services **247 NLRB No. 103**

(no QCR where unit sought by petitioner was inappropriate; unit included only some Ees in each of E's five divisions but did not include all of E's facilities or all Ees in any one division; neither petitioner nor E had specified alternate unit; unit Ees did not share community of interest; unit petitioned for was arbitiary grouping of Ees)

N.L.R.B. v. Boston Beef Co., Inc. **652 F.2d 223 (C.A. 1, July 1981)**

(test for *community of interest* standard for allegedly regular part-time Ee includes consideration of whether Ee: (1) worked at regularly assigned hours during substantial number of hours per week; (2) performed duties similar to those of unit Ees; and (3) shared same supervision, working conditions, wages, and fringe benefits as did unit Ees)

N.L.R.B. v. Purnell's Pride, Inc. **609 F.2d 1153 (C.A. 5, Jan. 1980)**

(in determining community of interest Bd considers factors such as bargaining history, operational integration, geographic proximity, common supervision, similarity in job function, and degree of Ee interchange)

N.L.R.B. v. Purnell's Pride, Inc. **609 F.2d 1153 (C.A. 5, Jan. 1980)**

(finding of community of interest such that proposed unit is appropriate is equivalent to finding that aggregate of evidence under all relevant factors preponderates in favor of proponent; crucial consideration is weight or significance, not number of factors related to particular case)

7550—Cont.

Seligman and Associates, Inc. v. N.L.R.B. 639 F.2d 307 (C.A. 6, 1981)
(notwithstanding RD decision in representation case was still pending before Bd. Bd's findings in ULP case of E-Ee relationship and appropriate unit was proper since issue was relevant to Bd's request for bargaining order and fully litigated below; Bd's findings supported by substantial evidence where it showed E's full and centralized control over Ees and Ees had common interest necessary to comprise appropriate unit)

Tomy Corporation, A Wholly Owned Subsidiary of Tomy Kogyo, Inc. v. N.L.R.B. 667 F.2d 1032 (C.A. 9, Dec. 1981)
(critical determinant in defining bargaining units is whether Ees share substantial community of interests sufficient to justify their mutual inclusion in single bargaining unit)

Sohio Petroleum Co., a division of Sohio Natural Resources Co. v. N.L.R.B. 625 F.2d 223 (C.A. 9, June 1980)
(critical consideration)

8700 EFFECT UPON DETERMINATION OF IMMINENT CHANGE IN EMPLOYER'S OPERATION

G. H. Skipper, Inc. 254 NLRB No. 053
(where U and E agreed that Ees from satalite operation which was to be closed down and Ees shifted to main location were to be included in unit at main location, unit proper and all Ees allowed to vote; RD's *exclusion* of satalite unit consistent with finding that Ees from that unit included in main unit as parties stipulated)

420 FACTORS RELEVANT TO DETERMINATION OF SCOPE OR COMPOSITION OF UNIT

0100 GENERALLY

Alaska Statebank v. N.L.R.B. **653 F.2d 1285 (C.A. 9, Aug 1981)**

(*Act itself provides little guidance to Bd in determining what appropriate bargaining unit shall be. When the Act does give instruction it does so in relation to rights of Ees. Assuring Ees of free exercise of their rights is paramount criterion in determining what will be bargaining unit*)

0150 PRESUMPTION OF APPROPRIATENESS OF 9(b) UNITS

Big Y Foods, Inc. v. N.L.R.B. **651 F.2d 40 (C.A. 1, June 1981)**

(after considering relevant factors, NLRB's application of presumption under which it found that a meat department exists in multi-department retail food store and justifies determination that meat department is appropriate unit unless opponent proves that in particular circumstances it is not appropriate unit; presumption is substantive, not procedural, presumption and is rebuttable, not conclusive; it does no more than shift burden of proof)

Big Y Foods, Inc. v. N.L.R.B. **651 F.2d 40 (C.A. 1, June 1981)**

(only pertinent limitation on Bd's unit determinations is Sec. 9(b) statutory direction to NLRB to make decision *in each case*. This statutory direction invalidates conclusive presumption but does not invalidate rebuttable presumption)

Big Y Foods, Inc. v. N.L.R.B. **651 F.2d 40 (C.A. 1, June 1981)**

(Court may set aside NLRB Sec. 9(b) determination only if Bd has not disclosed basis of its determination, or determination is not supported by substantial evidence, or determination is in violation of Act, or some other statute, or Constitution, or is arbitrary or unreasonable)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**

(Bd has *rebuttably* presumed single facility units appropriate *where there is no bargaining history in more comprehensive unit and-degree of functional integration with other facilities is insufficient to negate-separate identity of-facility in which a U seeks representative status*)

0600 PRIOR UNIT DETERMINATION

1200 BARGAINING HISTORY AND PRACTICE

1201 GENERALLY

The Washington Post Company **254 NLRB No. 014**

(bargaining history of long-standing inclusion of Ees in unit is not determinative of disputed Ee categories whose exclusion may be required because of statute or policy reasons; however, history of inclusion of Ees for many years and absence of changed circumstances in terms of job duties may constitute evidence on status of individuals sought to be excluded)

1209 BARGAINING HISTORY IN APPROPRIATE UNIT

Marco, Inc. d/b/a Towne Plaza Hotel **258 NLRB No. 016**

(unit encompassing hotel's housekeepers and maintenance Ees constituted appropriate unit where such unit had been recognized unit in successive collective-bargaining agreements and during previous negotiations)

1218 ABSENCE OF BARGAINING HISTORY

United Parcel Service, Inc. **258 NLRB No. 030**

(upon review Bd found that 10 operating centers comprising Metro Division unit servicing one metropolitan area of nation-wide delivery service, rather than systemwide unit servicing 2 states including metropolitan area, supra, appropriate where: (1) Ees had common divisional supervision; (2) centers were geographically and administratively separate from all other of Ee's district centers; and (3) both interchange and bargaining history were absent among operating center clerks)

Hegins Corporation **255 NLRB No. 160**

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**

(Bd has *rebuttably* presumed single facility units appropriate *where there is no bargaining history in more comprehensive unit and-degree of functional integration with other facilities is insufficient to negate-separate identity of-facility in which a U seeks representative status*)

1227 EMPLOYEES COVERED BY EXISTING CONTRACT

West Virginia Newspaper Publishing Company **265 NLRB No. 060**

(scope of appropriate unit in decertification election is coextensive with existing recognized or certified unit)

Puerto Rico Hotel Association **259 NLRB No. 058**

(contention of hotel E Association that unit of all Ee musicians of hotels, excluding bandleaders, not appropriate, because some hotels had attempted to withdraw from multi-E bargaining and bandleaders had historically been included in unit, rejected, since E hotels signatories to mutual aid and protection pact and participated in negotiating through E association; attempted withdrawal from multi-E bargaining was untimely, where after U had presented demands, and placement of leaders in unit never issue in negotiations and inclusion of supervisors in unit does not render it inappropriate)

1236 EMPLOYEES EXCLUDED FROM CONTRACT COVERAGE

Malcolm Boring Co., Inc. B. C. Malcolm and Bruce C. Malcolm **259 NLRB No. 081**

(Ees engaged in construction work and Ees engaged in maintenance, repair and fabrication of construction equipment found members of separate bargaining units employed by single E in light of evidence of intent of E and U where language of relevant contract was ambiguous and for prior three years they had applied contract to only one group of Ees)

Classic Truck Rental Corp. **251 NLRB No. 056**

(agreement held not to cover drivers' helpers, even though helpers were mentioned in preamble of drivers' contract, where preamble was purely boiler-plate language; only drivers' wages were specified in body of agreement and no mention was made of other Ee classifications described in preamble; and, pursuant to U's general practice in agreements with other Es, Ee classifications mentioned in preamble but not assigned wage scale in contract are not included in unit)

1245 BARGAINING HISTORY OF EMPLOYER'S PREDECESSOR

Stroehmann Brothers Company **252 NLRB No. 139**

(shipping Ees in company that distributed bake goods held appropriate unit, contrary to E's contention that these Ees should be included in established unit of route salesman, over-the-road drivers, and mechanics of competing U, where shipping Ees historically were in separate unit of another U and sale of business to new E would not alter this since shipping Ees were homogeneous group with separate supervisors employed different skills, had no apparent on-the-job contract with Ees of established unit, and never performed work of Ees in other unit)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**

(presumption of continuing majority notwithstanding predecessor E's recognition of U was forty years ago and there has been no subsequent election or certification)

1263 BARGAINING HISTORY AT EMPLOYER'S OTHER PLANTS

Big Y Foods, Inc. v. N.L.R.B. **651 F.2d 40 (C.A. 1, June 1981)**

(presumption that separate meat department unit appropriate in multi-department retail food store was not rebutted by 10-year bargaining history between E and U with respect to 5 stores not involved herein as this fact is not

1263—Cont.

part of bargaining history of Ees in petitioned-for unit of meat department Ees in 11 other stores of E)

1281 BARGAINING PRACTICE IN INDUSTRY

Weatherite Company, Inc. **261 NLRB No. 095**

(proposition that finding accretion to unit in construction industry is proper on ground that it is unwise to further *fractionalize* units in industry because it has been historically plagued with jurisdictional disputes and restrictive work rules is erroneous; rather, a fundamental consideration in determining accretion issue is to assure Ees fullest freedom in exercise of their Sec. 9(b) rights; moreover, Bd has intentionally treated industry differently because collective bargaining for Ee groups identified by function and by craft skills has proven successful and has become established accomodation to needs of industry and Ees)

1295 VOLUNTARY RECOGNITION

Trustees of University of Pennsylvania **247 NLRB No. 132**

(E's voluntary recognition of arbitrary grouping of Ees held insufficient justification for exluding similarly classified Ees, thereby splintering Ees who have common community of interest evidenced by centralized hiring procedures, personnel policies, benefits, and labor relations, and by performance of similar duties)

1700 REASONS FOR DISREGARD OF BARGAINING HISTORY

1787 BARGAINING HISTORY CONTRARY TO BOARD POLICY

The Washington Post Company **254 NLRB No. 014**

(bargaining history of long-standing inclusion of Ees in unit is not determinative of disputed Ee categories whose exclusion may be required because of statute or policy reasons; however, history of inclusion of Ees for many years and absence of changed circumstances in terms of job duties may constitute evidence on status of individuals sought to be excluded)

2300 CHANGED CIRCUMSTANCES SINCE PRIOR DETERMINATION OR HISTORY

2310 IN OWNERSHIP

Stroehmann Brothers Company **252 NLRB No. 139**

(shipping Ees in company that distributed bake goods held appropriate unit, contrary to E's contention that these Ees should be included in established unit of route saleman, over-the-road drivers, and mechanics of competing U, where shipping Ees historically were in separate unit of another U and sale of business to new E would not alter this since shipping Ees were homogeneous group with separate supervisors employed different skills, had no apparent on-the-job contract with Ees of established unit, and never performed work of Ees in other unit)

2320 IN PLANT LOCATION

Drukker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. **258 NLRB No. 097**

(relocation of mailroom from one location to another does not affect bargaining unit of mailroom Ees)

2360 MERGER OF FORMER UNITS

Sears, Roebuck and Co. **253 NLRB No. 025**

(one store, rather than 2-store unit, appropriate, notwithstanding claim that units had been merged by parties' conduct, where there was no evidence that parties had mutually agreed to extinguish separateness of units, in view of contract provisions covering both stores leading to inference that, despite negotiation of single contract, parties did not contemplate creating single unit; moreover, each store operated as self-contained unit with no operational interchange between them and, in absence of specific language to the contrary, inference cannot be drawn that parties agreed to extinguish separate units)

2370 NEW PLANT OR LOCATION

Marine Optical, Inc. **255 NLRB No. 158**

(unit at relocated operations, rather than unit limited to old operations, appropriate, where during phasing out of old operations, E continued as integrated operation and Ees continued to constitute single unit performing same work, under essentially same supervision, on same machinery, producing same products for same customers)

Monongahela Valley Hospital, Inc. **240 NLRB No. 013**

(where E built new facility 3 miles away and transferred all patients, equipment, and Ees from old facility except 4 boiler firemen who remained behind at old structure which enjoyed limited use in support of new facility; these 4 boiler firemen remained in unit at new facility because of common supervision and community of interest; U did not waive any rights to their representation by waiting 3 months after move before filing charges)

N.L.R.B. v. United Optical Workers Union Local 408, Electrical Workers (Marine Optical, Inc.) **671 F.2d 11 (C.A. 1, Feb. 1982)**

(contractual unit included Ees at new location after E transferred operations where there was substantial continuity of operations and employment)

2900 SIMILARITY OF TERMS AND CONDITIONS OF EMPLOYMENT

Rosemount Center **248 NLRB No. 163**

(E's contention that CETA Ees have working conditions different from those of other Ees on ground annotations in Ee handbook reflected both special requirements of CETA and recognition by E of different status of CETA Ees, rejected, where few changes were made in handbook, and those made were minor; no changes were made in key areas of conditions of employment; and extra grievance procedure provided for CETA Ees was never utilized by any CETA Ee)

2901 GENERALLY

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**

(*dissimilarity of interests* relevant to collective bargaining process determines which Ees are not to be included in proposed unit, *not similarity* of Ees' training, hours, conditions and activities which determine appropriateness of unit)

2903 SIMILAR WAGE RATES

The Folger Coffee Company **250 NLRB No. 001**

Rosemount Center **248 NLRB No. 163**

(E's contention that CETA Ees do not have community of interest with E's other Ees because it does not have same control over hiring of CETA Ees' and because CETA grant finances Ee wage and benefit package, rejected; although prime sponsor determines eligibility for CETA employment, E decides which eligible applicant to hire, E's salary schedule for different CETA positions, submitted as part of its contract proposal, was not changed by CETA officials, and E and petitioner stipulated that benefits are equal for similar lenghts of service for regular and CETA Ees)

2906 DIFFERENT WAGE RATES

Institutional Food Services **258 NLRB No. 086**

Century Moving & Storage, Inc. **251 NLRB No. 083**

2912 DIFFERENT MODE OF PAYMENT

Century Moving & Storage, Inc. **251 NLRB No. 083**

Liquid Transporters, Inc. **250 NLRB No. 163**

(mechanics and their helpers, checkout lane Ees, and cleaning rack Ees constitute separate unit and are not included in unit of drivers of interstate common carrier where their regular work contacts with drivers was negligible; they were paid at diffurent time and on different basis than were drivers; they had seniority list, Ee committee and grievance procedure separate from E's drivers)

2915 SIMILAR HOURS OF WORK

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(individual who cleaned offices and buses for E who chartered buses included in unit and eligible to vote notwithstanding contention lacked community of interest where at time of election she had not been assigned bus cleaning for several months since under same supervision as bus cleaners and worked similar irregular hours; further, individual would be unrepresented if not included in unit since had nothing in common with office clericals and no other labor organization sought to represent office cleaners)

2918 DIFFERENT HOURS OF WORK

Institutional Food Services **258 NLRB No. 086**

2921 SIMILAR FRINGE BENEFITS

The Folger Coffee Company **250 NLRB No. 001**

Rosemount Center **248 NLRB No. 163**

(E's contention that CETA Ees do not have community of interest with E's other Ees because it does not have same control over hiring of CETA Ees' and because CETA grant finances Ee wage and benefit package, rejected; although prime sponsor determines eligibility for CETA employment, E decides which eligible applicant to hire, E's salary schedule for different CETA positions, submitted as part of its contract proposal, was not changed by CETA officials, and E and petitioner stipulated that benefits are equal for similar lenghts of service for regular and CETA Ees)

2927 UNIFORM WORKING CONDITIONS

Allied Gear and Machine Company, Inc. **250 NLRB No. 097**

(separate unit limited to Ees of E's pattern and plate department held inappropriate where all production Ees, including pattern and plate Ees, were hourly paid, received same benefits, were subject to same work rules,

2927—Cont.

payroll classifications and performance reviews and used common plant facilities; skills of Ees sought were not complex and neither previous experience nor formal training were conditions for their employment; Ees' operations were closely integrated with other departments)

The Folger Coffee Company **250 NLRB No. 001**

2930 DIFFERENT WORKING CONDITIONS

Hamilton Test Systems New York, Inc. **265 NLRB No. 085**

Continental Web Press, Inc. **262 NLRB No. 170**

(unit of all pressroom Ees in E's pressroom department held appropriate rather than combined unit of pressmen and preparatory department Ees in E's lithographic production process, since pressroom Ees shared distinct community of interest; their duties related solely to high level skills in operating press equipment; pressroom Ees had minimal contact and no interchange w/preparatory department Ees; pressroom Ees were separately supervised and trained w/their own line of progression w/varied working conditions from preparatory Ees)

Institutional Food Services **258 NLRB No. 086**

2933 COMMON SUPERVISION

The Folger Coffee Company **250 NLRB No. 001**

2936 SEPARATE SUPERVISION

Hamilton Test Systems New York, Inc. **265 NLRB No. 085**

Continental Web Press, Inc. **262 NLRB No. 170**

(unit of all pressroom Ees in E's pressroom department held appropriate rather than combined unit of pressmen and preparatory department Ees in E's lithographic production process, since pressroom Ees shared distinct community of interest; their duties related solely to high level skills in operating press equipment; pressroom Ees had minimal contact and no interchange w/preparatory department Ees; pressroom Ees were separately supervised and trained w/their own line of progression w/varied working conditions from preparatory Ees)

United Parcel Service, Inc. **258 NLRB No. 030**

(upon review Bd found that 10 operating centers comprising Metro Division unit servicing one metropolitan area of nation-wide delivery service, rather than systemwide unit servicing 2 states including metropolitan area, supra, appropriate where: (1) Ees had common divisional supervision; (2) centers were geographically and administratively separate from all other of Ee's district centers; and (3) both interchange and bargaining history were absent among operating center clerks)

Associated Milk Producers, Inc. **251 NLRB No. 186**

(two-location unit rather than three-location unit of milk marketer held appropriate where two of E's facilities located in one city were only three miles apart while E's third, a leased facility, was in another city 32 miles away; Ees of two-location facilities had frequent contact and shared immediate supervision while Ees at third facility had, little frequent contact with other two facility Ees, separate immediate supervision, and separate seniority based upon prior employment with lessor)

2948 SEPARATE SENIORITY LISTS

Century Moving & Storage, Inc. **251 NLRB No. 063**

Associated Milk Producers, Inc. **251 NLRB No. 186**

(two-location unit rather than three-location unit of milk marketer held appropriate where two of E's facilities located in one city were only three miles apart while E's third, a leased facility, was in another city 32 miles away; Ees of two-location facilities had frequent contact and shared immediate supervision while Ees at third facility had, little frequent contact with other two facility Ees, separate immediate supervision, and separate seniority based upon prior employment with lessor)

Liquid Transporters, Inc. **250 NLRB No. 163**

(mechanics and their helpers, checkout lane Ees, and cleaning rack Ees constitute separate unit and are not included in unit of drivers of interstate common carrier where their regular work contacts with drivers was negligible; they were paid at different time and on different basis than were drivers; they had seniority list, Ee committee and grievance procedure separate from E's drivers)

2966 NATURE OF WORK DIFFERENT

Institutional Food Services **258 NLRB No. 086**

Great Scot of Florida, Inc. **256 NLRB No. 126**

(Bd upheld RD's finding that meat department Ees in E's retail store had separate community of interest from other grocery Ees despite limited interchange among clerks and were therefore excluded from appropriate unit where Bd had previously denied E's request for review which under R/R Sec. 102.67(f) precludes relitigation of representation issue in related subsequent ULP proceeding; Bd noted that E's reliance on *Ashcraft's Market, Inc.* 346 NLRB No. 68, was unfounded where factors evidencing separate community of interest from other store Ees in instant case were missing in *Ashcraft*)

2993 SIMILAR RELATIONSHIP WITH EMPLOYER

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(individual who cleaned offices and buses for E who chartered buses included in unit and eligible to vote notwithstanding contention lacked community of interest where at time of election she had not been assigned bus cleaning for several months since under same supervision as bus cleaners and worked similar irregular hours; further, individual would be unrepresented if not included in unit since had nothing in common with office clericals and no other labor organization sought to represent office cleaners)

2996 DIFFERENT RELATIONSHIP WITH EMPLOYER

Keeshin Charter Service, Inc. **250 NLRB No. 117**

(part time Ee who also was employed part time in home of E's president eligible, notwithstanding contention she was hired after ptn filed in expectation she would be anti-U; contention that she did not share sufficient community of interests with other Ees because of her association with owner's family as worker in household, rejected)

3400 CHARACTERISTICS OF EMPLOYEES

4000 EMPLOYER'S ADMINISTRATIVE STRUCTURE

4008 CENTRAL CONTROL OF MANAGEMENT FUNCTIONS

Air-Vac Industries, Inc., Leeward Constructors, Inc., Air-Vac Environmental Limited **259 NLRB No. 051**

(single unit of Ees commonly employed by three entities, comprising single integrated enterprise, held appropriate for bargaining purposes because of their common ownership, officers, directors, supervision, common facility, single compliment of Ees, similar nature of work and utilization of same equipment)

Hegins Corporation **255 NLRB No. 160**

(single location unit of P&M Ees appropriate where department supervisors retain substantial autonomy to direct and discipline Ees and, after consultation with president, to discharge them; this factor was more significant then central record keeping or functional integration)

4016 LOCAL CONTROL OF MANAGEMENT FUNCTIONS

United Parcel Service, Inc. **258 NLRB No. 030**

(upon review Bd found that 10 operating centers comprising Metro Division unit servicing one metropolitan area of nation-wide delivery service, rather than systemwide unit servicing 2 states including metropolitan area, supra, appropriate where: (1) Ees had common divisional supervision; (2) centers were geographically and administratively separate from all other of Ee's district centers; and (3) both interchange and bargaining history were absent among operating center clerks)

4025 CENTRAL CONTROL OF LABOR RELATIONS

Air-Vac Industries, Inc., Leeward Constructors, Inc., Air-Vac Environmental Limited **259 NLRB No. 051**

(single unit of Ees commonly employed by three entities, comprising single integrated enterprise, held appropriate for bargaining purposes because of their common ownership, officers, directors, supervision, common facility, single compliment of Ees, similar nature of work and utilization of same equipment)

4041 CENTRAL CONTROL OF HIRING AND DISCHARGE

Air-Vac Industries, Inc., Leeward Constructors, Inc., Air-Vac Environmental Limited **259 NLRB No. 051**

(single unit of Ees commonly employed by three entities, comprising single integrated enterprise, held appropriate for bargaining purposes because of their common ownership, officers, directors, supervision, common facility, single compliment of Ees, similar nature of work and utilization of same equipment)

4050 LOCAL AUTONOMY IN HIRING AND DISCHARGE

Hegins Corporation **255 NLRB No. 160**

(single location unit of P&M Ees appropriate where department supervisors retain substantial autonomy to direct and discipline Ees and, after consultation with president, to discharge them; this factor was more significant then central record keeping or functional integration)

4600 EXTENT OF INTEGRATION OF OPERATION

4601 GENERALLY

Gustave Fisher, Inc. **256 NLRB No. 130**

(manner in which E has organized his plant and utilizes particular skills of his labor force (how Ees interact so as to carry out E's business purposes) has direct bearing on community of interest among various groups of Ees in plant and is thus important consideration in any unit determination)

4617 HIGHLY INTEGRATED OPERATIONS

Hegins Corporation **255 NLRB No. 160**

(single location unit of P&M Ees appropriate where department supervisors retain substantial autonomy to direct and discipline Ees and, after consultation with president, to discharge them; this factor was more significant then central record keeping or functional integration)

4633 LITTLE OR NO INTEGRATION OF OPERATION

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**

(Bd has *rebuttably* presumed single facility units appropriate *where there is no bargaining history in more comprehensive unit and-degree of functional integration with other facilities is insufficient to negate-separate identity of-facility in which a U seeks representative status*)

5000 EXTENT OF CONTACT BETWEEN EMPLOYEES

5027 FREQUENT INTERCHANGE OR TRANSFER OF THE EMPLOYEES

Air-Vac Industries, Inc., Leeward Constructors, Inc., Air-Vac Environmental Limited **259 NLRB No. 051**

(single unit of Ees commonly employed by three entities, comprising single integrated enterprise, held appropriate for bargaining purposes because of their common ownership, officers, directors, supervision, common facility, single compliment of Ees, similar nature of work and utilization of same equipment)

Big Y Foods, Inc. v. N.L.R.B. **651 F.2d 40 (C.A. 1, June 1981)**

(Bd properly viewed two-way interchange between meat clerks and Ees in other departments from Ee's view rather than from E's view especially in light of no one asking for unit of meat clerks and majority of Ees in meat department were meat cutters who never transferred)

5034 LITTLE OR NO INTERCHANGE OR TRANSFER OF EMPLOYEES

Hamilton Test Systems New York, Inc. **265 NLRB No. 085**

Continental Web Press, Inc. **262 NLRB No. 170**

(unit of all pressroom Ees in E's pressroom department held appropriate rather than combined unit of pressmen and preparatory department Ees in E's lithographic production process, since pressroom Ees shared distinct community of interest; their duties related solely to high level skills in operating press equipment; pressroom Ees had minimal contact and no interchange w/preparatory department Ees; pressroom Ees were separately supervised and trained w/their own line of progression w/varied working conditions from preparatory Ees)

Institutional Food Services **258 NLRB No. 086**

United Parcel Service, Inc. **258 NLRB No. 030**

(upon review Bd found that 10 operating centers comprising Metro Division unit servicing one metropolitan area of nation-wide delivery service, rather than systemwide unit servicing 2 states including metropolitan area, supra, appropriate where: (1) Ees had common divisional supervision; (2) centers were geographically and administratively separate from all other of Ee's district centers; and (3) both interchange and bargaining history were absent among operating center clerks)

Hegins Corporation **255 NLRB No. 160**

(presumptive appropriateness of single-location unit not overcome by some Ee interchange in which few Ees were sent to second facility to do shipping and packing, although not w/i six months prior to hearing, and occasionally Ees in second facility were sent to other facility to unload and do maintenance work for both locations)

Century Moving & Storage, Inc. **251 NLRB No. 083**

Associated Milk Producers, Inc. **251 NLRB No. 186**

(two-location unit rather than three-location unit of milk marketer held appropriate where two of E's facilities located in one city were only three miles apart while E's third, a leased facility, was in another city 32 miles away; Ees of two-location facilities had frequent contact and shared immediate supervision while Ees at third facility had, little frequent contact with other two facility Ees, separate immediate supervision, and separate seniority based upon prior employment with lessor)

Liquid Transporters, Inc. **250 NLRB No. 163**

(mechanics and their helpers, checkout lane Ees, and cleaning rack Ees constitute separate unit and are not included in unit of drivers of interstate common carrier where their regular work contacts with drivers was negligible; they were paid at different time and on different basis than were drivers; they had seniority list, Ee committee and grievance procedure separate from E's drivers)

5075 EMPLOYEES WORK IN SEPARATE PARTS OF PLANT OR LOCATION

Hamilton Test Systems New York, Inc. **265 NLRB No. 085**

5600 FREQUENCY OR REGULARITY OF WORK

6200 DIFFERENCE IN EMPLOYER OR IN LOCATION OF WORK

6260 EMPLOYEES WORK AT DIFFERENT PLANTS OR LOCATIONS

Pickering & Company (Local 810, Teamsters) **248 NLRB No. 099**

(unit of all production maintenance and warehouse Ees at two facilities of E which manufactures audio equipment rather than production maintenance and warehouse Ees at one facility since presumption of appropriateness of single plant unit rebutted where geographical separation minimized by frequent E furnished transportation and in view of high degree of production integration and common management of administrative and production matters common benefits and seniority, notwithstanding lack of day-to-day interchange of Ees)

Commercial Testing & Engineering Co. (Teamsters, Local Union 175) **248 NLRB No. 096**

(2 Ees performing same work as other unit Ees though at facility 20 miles away and receiving same benefits and wages and having same supervision included in unit)

6280 GEOGRAPHICAL LOCATION OF PLANTS

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car **260 NLRB No. 118**

(multi location unit of rental and service agents at E's airport car rental facility and office Ees at nearby office held appropriate, but Ees of facility in another state 85 miles away not included in unit in view of dissimilar working conditions and lack of community of interest)

Associated Milk Producers, Inc. **251 NLRB No. 186**

(two-location unit rather than three-location unit of milk marketer held appropriate where two of E's facilities located in one city were only three miles apart while E's third, a leased facility, was in another city 32 miles away; Ees of two-location facilities had frequent contact and shared immediate supervision while Ees at third facility had, little frequent contact with other two facility Ees, separate immediate supervision, and separate seniority based upon prior employment with lessor)

6290 GEOGRAPHIC CLUSTER

Associated Milk Producers, Inc. **251 NLRB No. 186**

(two-location unit rather than three-location unit of milk marketer held appropriate where two of E's facilities located in one city were only three miles apart while E's third, a leased facility, was in another city 32 miles away; Ees of two-location facilities had frequent contact and shared immediate supervision while Ees at third facility had, little frequent contact with other two facility Ees, separate immediate supervision, and separate seniority based upon prior employment with lessor)

Wyandotte Savings Bank v. N.L.R.B. **669 F.2d 386 (C.A. 6, Jan. 1982)**

(Bd holding that bargaining unit appropriate reversed and enforcement of Bd order denied in case involving branch banks where banks are in close geographical proximity and minimal authority vested in branch managers; See *Wayne-Oakland Banks v. N.L.R.B.* 462 F.2d 666 (6th Cir. 1972))

6700 LEGAL REQUIREMENTS OF OTHER AUTHORITIES

7300 DESIRE OF PARTIES OR OF EMPLOYEES

7303 UNIT SOUGHT BY PETITION

La Crosse Printing Company, Inc. **249 NLRB No. 027**

(challenges to ballots of composing room Ees sustained and those Ees excluded from stipulated unit of *all P&M Ees of printing and lithographic presses and associated devices employed in (E's) pressroom* in view of their separate representation by Intervenor for over 25 years; Petitioner was attempting to replace U which had represented traditionally appropriate unit)

7306 DESIRE OF EMPLOYEES

7306—Cont.

Marriott In-Flite Services, A Division of Marriott Corporation v. N.L.R.B. **652 F.2d 202 (C.A. 1, June 1981)**
(separate unit of handlers, helpers, coordinators and auto mechanics in E's transportation department rather than plant-wide unit appropriate where Bd's evaluation of considerations tending to show presence or absence of community of interest among Ees involved *a large measure of informed discretion* and was supported by substantial evidence; extent of U organization of Ees not controlling; Bd entitled to give greater weight to Ees' (desires) than Bd's view of boundries of unit; Bd's unit determinations for other of E's facilities not controlling)

7312 STIPULATION BY PARTIES

Tiffin Enterprise, Inc. **258 NLRB No. 012**
(challenges to ballots of temporary part-time Ees sustained where parties intended to exclude temporary part-time Ees from stipulated unit and even assuming *arguendo* that employment history of disputed Ees brings them w/i Bd's definition of *regular part-time Ees*, parties' agreement to exclude such Ees would not contravene Bd policy)

La Crosse Printing Company, Inc. **249 NLRB No. 027**
(in ruling on challenges in cases involving stipulated units, Bd will rely on scope of stipulation itself unless it is contrary to Act or established Bd policy)

La Crosse Printing Company, Inc. **249 NLRB No. 027**
(challenges to ballots of composing room Ees sustained and those Ees excluded from stipulated unit of *all P&M Ees of printing and lithographic presses and associated devices employed in (E's) pressroom* in view of their separate representation by Intervenor for over 25 years; Petitioner was attempting to replace U which had represented traditionally appropriate unit)

7384 NO UNION SEEKS SEPARATE UNIT

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(individual who cleaned offices and buses for E who chartered buses included in unit and eligible to vote notwithstanding contention lacked community of interest where at time of election she had not been assigned bus cleaning for several months since under same supervision as bus cleaners and worked similar irregular hours; further, individual would be unrepresented if not included in unit since had nothing in common with office clericals and no other labor organization sought to represent office cleaners)

7390 NO UNION SEEKS BROADER UNIT

Hegins Corporation **255 NLRB No. 160**

7900 ANTICIPATED CHANGES IN WORK CIRCUMSTANCES

7950 SUBSTANTIAL INCREASE IN SIZE OF UNIT PLANNED

Whiteman Steel Mills, Inc. **253 NLRB No. 041**
(E found to employ substantial and representative work force where at time of R hearing it employed 54 Ees in 15 job classifications of planned projection of 149 Ees in approximately 36 classifications 4 to 5 months out; furthermore, w/i 30 days of hearing E plans to employ 22 of the additional Ees in 6 additional job classifications; E's plans to expand to 250 in 2 years too indefinite to use to measure substantiality of work force as equipment must be ordered and construction has not started)

8400 AVOIDANCE OF INCONGRUOUS RESULTS

8412 SEGMENT OF APPROPRIATE UNIT

American Broadcasting Companies, Inc. **257 NLRB No. 160**
(4 petitioned-for small groups of Ees found not to constitute appropriate bargaining units where they share strong community of interest, based on common job functions, working conditions, wage structure and fringe benefits with hundreds of others of E's Ees, and do not possess any skills or training which would set them apart)

8417 EXCLUSION OF EMPLOYEES WITH SKILLS OR INTERESTS SIMILAR TO THOSE OF EMPLOYEES INCLUDED

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(individual who cleaned offices and buses for E who chartered buses included in unit and eligible to vote notwithstanding contention lacked community of interest where at time of election she had not been assigned bus cleaning for several months since under same supervision as bus cleaners and worked similar irregular hours; further, individual would be unrepresented if not included in unit since had nothing in common with office clericals and no other labor organization sought to represent office cleaners)

8423 UNIT DOES NOT INCLUDE ALL UNREPRESENTED EMPLOYEES

United Parcel Service, Inc. **258 NLRB No. 030**
(unrepresented clerks working in feeder and package areas at administrative headquarters of E's Metro Division included in unit which included operating center clerks of Metro Division since unrepresented clerks performed duties identical to operating center clerks)

American Broadcasting Companies, Inc. **257 NLRB No. 160**
(4 petitioned-for small groups of Ees found not to constitute appropriate bargaining units where they share strong community of interest, based on common job functions, working conditions, wage structure and fringe benefits with hundreds of others of E's Ees, and do not possess any skills or training which would set them apart)

8429 AVOIDING LEAVING EMPLOYEES WITHOUT REPRESENTATION

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(individual who cleaned offices and buses for E who chartered buses included in unit and eligible to vote notwithstanding contention lacked community of interest where at time of election she had not been assigned bus cleaning for several months since under same supervision as bus cleaners and worked similar irregular hours; further, individual would be unrepresented if not included in unit since had nothing in common with office clericals and no other labor organization sought to represent office cleaners)

8446 AVOIDING FRAGMENTATION OF INDIVIDUAL EMPLOYEE'S FUNCTIONS

Sunray Ltd. **258 NLRB No. 072**
(election not barred by previous 8(f) relationships with dual-function Ees where competing Us did not represent majority in unit in that some work of Ees fell w/i jurisdiction of each U and thus neither U could claim 9(a) relationship; therefore Bd directed election in unit covering all Ees, giving Ees a choice to be represented by one of the two rival Us or no U)

American Broadcasting Companies, Inc. **257 NLRB No. 160**
(4 petitioned-for small groups of Ees found not to constitute appropriate bargaining units where they share strong community of interest, based on common job functions, working conditions, wage structure and fringe benefits with hundreds of others of E's Ees, and do not possess any skills or training which would set them apart)

9000 MULTIEMPLOYER UNIT DETERMINATION FACTORS

9064 IDENTITY OF OWNERSHIP OR MANAGEMENT

Air-Vac Industries, Inc., Leeward Constructors, Inc., Air-Vac Environmental Limited **259 NLRB No. 051**
(single unit of Ees commonly employed by three entities, comprising single integrated enterprise, held appropriate for bargaining purposes because of their common ownership, officers, directors, supervision, common facility, single compliment of Ees, similar nature of work and utilization of same equipment)

9600 MISCELLANEOUS OTHER FACTORS

9615 EXTENT OF ORGANIZATION OF EMPLOYEES

Marriott In-Flite Services, A Division of Marriott Corporation v. N.L.R.B. **652 F.2d 202 (C.A. 1, June 1981)**
(separate unit of handlers, helpers, coordinators and auto mechanics in E's transportation department rather than plant-wide unit appropriate where Bd's evaluation of considerations tending to show presence or absence of community of interest among Ees involved *a large measure of informed discretion* and was supported by substantial evidence; extent of U organization of Ees not controlling; Bd entitled to give greater weight to Ees' (desires) than Bd's view of boundries of unit; Bd's unit determinations for other of E's facilities not controlling)

9620 DECERTIFICATION PETITION

American Recreation Centers, Inc., d/b/a Mel's Bowl (Hotel & Restaurant Employees, Local 28, AFL-CIO) **250 NLRB No. 142**
(Bd directed decertification election in unit of bartenders at restaurant, where operator leased restaurant part of operation to lessee; even though lessee signed same restaurant association agreement to which lessor was signatory and which included bar and restaurant Ees in same unit, bar and restaurant were operated as independent businesses, and unit was severed when lessor leased restaurant to lessee who independently contracted for restaurant Ees, and U acquiesced in de facto separation of bar and restaurant Ees)

9625 JOB TITLES AND WAGE STRUCTURE

9625—Cont.

The Washington Post Company 254 NLRB No. 014

(in determining supervisory, managerial or confidential status of Ees involved in instant U C proceeding, Bd held important consideration is active facts relating to job performance and not titles or job description; while wage data may be somewhat probative of status, it is not conclusive or determinative; moreover, U was permitted to examine witnesses on their wages and E's wage structure, and E relied little, if any, on disparity in wages)

9698 CONTROL OVER HIRING

Rosemount Center 248 NLRB No. 163

(E's contention that CETA Ees do not have community of interest with E's other Ees because it does not have same control over hiring of CETA Ees' and because CETA grant finances Ee wage and benefit package, rejected; although prime sponsor determines eligibility for CETA employment, E decides which eligible applicant to hire, E's salary schedule for different CETA positions, submitted as part of its contract proposal, was not changed by CETA officials, and E and petitioner stipulated that benefits are equal for similar lenghts of service for regular and CETA Ees)

440 DETERMINATIONS OF SCOPE OF UNIT

1700 SINGLE LOCATION UNITS

1720 PLANTWIDE UNITS

1720-0100 Generally

1720-0133 Presumptive appropriateness

Montefiore Hospital and Medical Center **261 NLRB No. 082**

Orkin Exterminating Company, Inc. **258 NLRB No. 102**
(unit of technicians at single location branch office of E providing pest control services, inappropriate, notwithstanding geographic distances between branch offices in district and presumptive appropriateness of single-facility unit, in view of broad authority of district manager over daily operations and labor relations of all branch offices w/i district, uniform working conditions and Ee skills, and substantial Ee interchange)

Penn Color, Inc. **249 NLRB No. 151**
(presumption favoring single-plant unit not rebutted and request for such unit granted, in view of sufficiently autonomous supervision at each of E's two plants, lack of significant Ee interchange, absence of any bargaining history among unit Ees, and fact that no labor organization seeks to represent Ees on broader basis)

N.L.R.B. v. Living and Learning Centers, Inc. **652 F.2d 209 (C.A. 1, June 1981)**
(unit of E's Ees at single day care center rather than at all E's locations in state or at all of its locations in four states, appropriate; E did not show unit was *clearly not appropriate* and did not rebut presumption that single facility unit in chain of units is appropriate notwithstanding centralized administration of labor relations, since there is ct precedent that local manager need not have authority finally to decide collective bargaining issues for local branch unit to be appropriate, and director here had authority to resolve some of them such as discharge, disputes, hiring and working hours)

N.L.R.B. v. Forest City Enterprises, Inc. **663 F.2d 34 (C.A. 6, Nov. 1981)**
(single store bargaining unit of multi-state retail store chain rather than two-store citywide unit appropriate in view of store manager's control of daily operations, lack of Ee interchange between stores and fact organization of Ees was attempted at only one store)

Alaska Statebank v. N.L.R.B. **653 F.2d 1285 (C.A. 9, Aug 1981)**
(Bd has adopted in retail sales, industrial, insurance and banking industries, presumption that single store plant, office or branch is appropriate unit rather than E wide)

Spring City Knitting Company v. N.L.R.B. **647 F.2d 1011 (C.A. 9, June 1981)**
(there is presumption that single plant is appropriate bargaining unit)

Beth Israel Hospital and Geriatric Center v. N.L.R.B. **688 F.2d 697 (C.A. 10, Sept. 1982)**
(en banc ct held Bd must determine, when certifying bargaining unit in health care institutions, whether unit is appropriate w/o resorting to presumption that shifts to E burden of showing proffered unit is appropriate, and Bd must state why unit it chooses complies with Congress' admonition; Bd cannot rely on E's failure to show that units are inappropriate; if Bd declines to redetermine whether an appropriate unit was selected, then that issue is not addressed at ULP proceeding, and thus Federal Rule of Evidence 301 would not apply and E could challenge unit selection only through judicial review)

Beth Israel Hospital and Geriatric Center v. N.L.R.B. **677 F.2d 1343 (C.A. 10, July 1981)**
(enforcement denied where Bd erred in applying its prior decisions finding/concluding that unit restricted exclusively to registered nurses is presumptively appropriate and that E must overcome presumption by producing evidence that limited bargaining units are less appropriate than broader bargaining units; continued acceptance and endorsement of Bd's presumptive and evidentiary policies by ct would simply serve to enhance undue proliferation of health care bargaining units, in direct derogation to congressional mandate set forth in House and Senate committee reports)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**
(Bd has *rebuttably* presumed single facility units appropriate *where there is no bargaining history in more comprehensive unit and-degree of functional integration with other facilities is insufficient to negate-separate identity of-facility in which a U seeks representative status*)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**
(enforcement denied where Bd erred in accepting presumptively appropriate unit restricted to registered nurses at single facility of E's 3 hospitals in single city, since there was sufficient evidence adduced to sustain appropriateness of all professional unit excluding physicians; evidence was sufficient to sustain finding of inappropriateness of proposed unit had it been accepted)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**
(requiring health care industry Es to bear burden of producing evidence that limited bargaining units are more inappropriate than broader bargaining units runs contrary to Congress' admonition)

1720-3300 Specific unit determinations (by SIC category)

Clinton Corn Processing Company, A Division of Standard Brands, Inc. **251 NLRB No. 133**
(overall unit rather than petitioned-for unit limited to utility Ees at corn milling operation appropriate where corn milling operation was highly integrated production process in which there existed substantial functional and operational integration among Ees who shared communities of interest of such magnitude as to preclude placing utility Ees in separate unit)

Spring City Knitting Company v. N.L.R.B. **647 F.2d 1011 (C.A. 9, June 1981)**
(Bd's designation that each of two plants of E who manufactures men's and boy's underwear as separate bargaining unit held proper in view of absence of Ee interchange between plants, local power to hire and fire, geographical distance of plants which were 140 miles apart, and lack of collective bargaining history)

Print-O-Stat, Inc. **247 NLRB No. 047**
(unit of all Ees including Ees in purchasing, estimating, repair, and customer service departments, outside salesmen, inventory control clerk, at main plant of E engaged in printing and retail distribution of architectual engineering supplies and office furniture, appropriate, rather than unit limited to production Ees, notwithstanding contention insufficient community of interest, in view of overall common supervision and frequent contacts among departments and job interchangeability)

Gustave Fisher, Inc. **256 NLRB No. 130**
(overall unit of Ees of E engaged in retail sale and service of office furniture and office supplies appropriate, rather than unit of warehouse Ees in view of high degree of integration of operation with high degree of Ee interaction among various classifications of Ees where emphasis appears to be placed on completion of tasks, flexibility of Ees' work, common fringe benefits, notwithstanding blurring of supervisory distinctions)

Yaohan of California, Inc. **252 NLRB No. 050**
(unit of all Ees at retail grocery store including meat department Ees held appropriate since meat department Ees did not perform skilled tasks of meatcutting traditionally performed by butchers and meatcutters which is indicative of separate community of interest but instead worked with boxed meats)

B. Siegel Company v. N.L.R.B. **670 F.2d 64 (C.A. 6, Jan. 1982)**
(certification of separate bargaining units for each of 3 stores out of E's 7 retail women's apparel shops in city rather than of one unit of all 7 stores, not abuse of discretion – notwithstanding 7 stores' geographic proximity and centralized organization and labor relations – in view of individual stores' autonomy, store managers' involvement with Ees' daily work and discretion in areas important to them, and lack of bargaining history or any U seeking broader unit)

1720-3300—Cont.

Alaska Statebank v. N.L.R.B. 653 F.2d 1285 (C.A. 9, Aug 1981)

(unit of Ees at single branch of bank rather than unit of Ees at all branches and headquarters of bank, appropriate, where branch was geographically isolated, local managers retained control over day to day Ee relations, and there was no significant amount of Ee interchange among branches; ct applied single-location unit presumption which it had approved for retail sales and held presumption had not been overcome by single facility's lack of meaningful identity)

N.L.R.B. v. H. M. Patterson & Son, Inc. 636 F.2d 1014 (C.A. 5, 1981)

(unit limited to all full time and regular part-time funeral directors, assistant funeral directors, embablers, apprentices and attendant receptionists at funeral home, rather than all Ee unit, appropriate; since share community of interest in view of fact all are involved with working with body of deceased)

Oklahoma Blood Institute, Inc. 265 NLRB No. 195

(multilocation unit of Ees at three of the five facilities of E engaged in collecting, processing and distributing blood and blood products, rather than requested single facility unit, appropriate in view of integration of the three facilities; factors of common supervision and total functional dependency of small satellite location of one facility on the other facilities precluded finding that requested unit could constitute appropriate separate unit)

1720-6700 Placement of employees in plantwide unit (by SIC category)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers 251 NLRB No. 017

(Ee who during crucial period of contract signing spent 70% of his time in production tasks for E engaged in asphalt road-sealing work included in unit, notwithstanding he was salaried, was present at contract talks (although he did not participate), and later concentrated on sales and estimates rather than production)

Print-O-Stat, Inc. 247 NLRB No. 047

(unit of all Ees including Ees in purchasing, estimating, repair, and customer service departments, outside salesmen, inventory control clerk, at main plant of E engaged in printing and retail distribution of architectual engineering supplies and office furniture, appropriate, rather than unit limited to production Ees, notwithstanding contention insufficient community of interest, in view of overall common supervision and frequent contacts among departments and job interchangeability)

Yaohan of California, Inc. 252 NLRB No. 050

(unit of all Ees at retail grocery store including meat department Ees held appropriate since meat department Ees did not perform skilled tasks of meatcutting traditionally performed by butchers and meatcutters which is indicative of separate community of interest but instead worked with boxed meats)

Great Day, Inc. (Retail Store Employees Union, Local No. 20) 248 NLRB No. 079

(inclusion of full-time meat department Ees in storewide unit of retail grocery store Ees, rather than separate unit of such Ees, appropriate, where they substantially interchange with other Ees, lack traditional meatcutting skills, are supervised by E's president and store manager as are other Ees, and have same uniform job and wage classifications, benefits and working conditions as other ees)

1740 Plant subdivision units

1740-5000 Departmental units (See 440-1760, for departmental units defined by employee types or category)

1740-5025 Specific determinations (by SIC category)

The Concord Telephone Company 248 NLRB No. 044

(separate unit of full-time and regular part-time Ees of telephone company's plant department, rather than systemwide unit combining plant department with E's traffic and commercial departments, appropriate, in view of plant department's distinct functional integration and fact that Ee complement of plant department is not so small as to warrant finding only system wide unit appropriate)

Sears, Roebuck and Co. 261 NLRB No. 035

(unit of Ees in E's automotive department found appropriate rather than storewide unit where auto center Ees have limited contact with other Ees, constitute functionally integrated group working in recognized product line under separate supervision with community of interest sufficiently different from other Ees i.e. hours, vacation schedule)

Anaheim Operating, Inc., d/b/a Sheraton-Anaheim Hotel 252 NLRB No. 134

(unit limited to operating engineers, maintenance Ees and their helpers, and painters employed exclusively in hotel's engineering department, rather than hotelwide unit, held appropriate where Ees in engineering department shared community of interests separate from that of E's other Ees and there was absence of bargaining history on broader unit basis)

Bally's Park Place, Inc. 255 NLRB No. 006

(petitoned for unit of Ees in slot machine department of gambling casino, including slot attendants and slot machine mechanics, appropriate, although casino wide unit may also be appropriate, slot machine department unit appropriate in view of separate immediate supervision, distinctive duties and skills, absence of temporary interchange with any other casino Ees and no other U seeks to represent all casino Ees)

1760 EMPLOYEE TYPE OR CATEGORY UNITS

1760-0500 Production employees unit

1760-0560 Placement of production employees in other unit (by SIC category)

Stanley M. Feil, Inc. 250 NLRB No. 065

(separate unit of warehouse Ees, at manufacturer of garments appropriate rather than unit of warehouse and factory Ees in view of difference in skills, working conditions and wages of Ees)

1760-0580 Placement of other employee in production unit (by SIC category)

International Business Systems, Inc. 247 NLRB No. 102

(stockboy who performed duties unrelated to lithographic process on regular basis, included in lithographic unit at E engaged in manufacture of business forms, since he actually functioned as pressroom helper)

G. F. Business Equipment, Inc. 252 NLRB No. 123

(purchasing clerk excluded from unit of production Ees where she is salaried, does not punch time clock, free to determine own break time, works in main office typing purchase orders for Ees who are not in unit; also contacts with unit Ees minimal)

G. F. Business Equipment, Inc. 252 NLRB No. 123

(production control clerk excluded from production Ees unit where: training was with non-unit Ees, salaried, no scheduled breaks, responsible for departmental records, works in main office; moreover, despite fact that her clerical function are related to production her community of interest is with office clerical Ees)

Allied Gear and Machine Company, Inc. 250 NLRB No. 097

(separate unit limited to Ees of E's pattern and plate department held inappropriate where all production Ees, including pattern and plate Ees, were hourly paid, received same benefits, were subject to same work rules, payroll classifications and performance reviews and used common plant facilities; skills of Ees sought were not complex and neither previous experience nor formal training were conditions for their employment; Ees' operations were closely integrated with other departments)

Linn Gear Company JD-(SF)-360-80

(on ct remand, JD held that Ee who was in charge of inventory control, Ee who prepared work orders, and Ee who was production scheduler for manufacturer of gears and sprockets were members of voting unit and therefore challenges to their ballots overruled; Ees worked in production office adjacent to plant's warehouse, were supervised by production manager, received hourly wages and overtime pay, received same fringe benefits as unit Ees, had regular contact with unit Ees, and their work was functionally integrated with work of voting unit Ees)

1760-1000 Maintenance employees unit

1760-1040 Specific determination (by SIC category)

Franklin Mint Corporation 254 NLRB No. 084

(E-wide unit of maintenance Ees at E's three facilities w/i seven mile radius held appropriate where maintenance department has own administrative offices, work areas and supervisory hierarchy, and absence of interchange with production Ees)

1760-1060 Placement of maintenance employees in other unit (by SIC category)

Purnell's Pride, Inc. 252 NLRB No. 018

(maintenance Ees included in unit of production Ees in light of regular contact of both groups, transfers between departments, other interchange and also maintenance department is located at processing facility)

1760-1080 Placement of other employees in maintenance unit (by SIC category)

Franklin Mint Corporation 254 NLRB No. 084

(toolmakers and toolroom machinists included in maintenance unit in E-wide unit where supervised by maintenance department supervisors, function principally to provide support service for production process and do not engage in repetitive production operations)

1760-1500 Production & maintenance unit employees unit

1760-1501 Generally

1760-1501—Cont.

Cincinnati Association For The Blind v. N.L.R.B. **672 F.2d 567 (C.A. 6, Mar. 1982)**
(Bd's certification of P&M unit including both sighted and visually handicapped Ees, not abuse of discretion where Bd found differences between them as to discipline and wage structure insufficient to affect unit's appropriateness)

1760-1540 Specific determination (by SIC category)

Home Insulation Service, A Division of Sunstate Wholesalers **258 NLRB No. 050**
(unit of production and maintenance Ees at all branches of E which installed building insulation, appropriate, rather than at one branch, absent separate community of interests, in view of same pay and benefits, interchange and transfer of Ees among branches)

Funky, Inc. **254 NLRB No. 042**
(unit of all production and maintenance employees including cutters, spreaders helpers, pickers, packers, billers and truckdriver's employed in manufacturing garments held appropriate)

Texprint, Inc. **253 NLRB No. 138**
(single unit of P&M Ees of corporation engaged in printing patterns on fabric rather than combined unit with P&M Ees of another corporation engaged in screen production necessary for printing fabric appropriate where Bd held, even though both operations were in same building, that each corporation was separate legal entity in view of degree of autonomy in each operation, absence of common controlling ownership in both firms, lack of substantial interchange of Ees between corporations, and distinctive character of work performed by each corporation)

1760-1580 Placement of other employees in P&M unit (by SIC category)

Sharondale Corporation **262 NLRB No. 158**
(mine warehouseman included in unit of all underground and above ground production and maintenance Ees at mine, but excluding office clericals, since held not to be office clerical and to have sufficient community of interest with other surface Ees included in unit inasmuch as was hourly paid, received same fringe benefits, and has same supervision as other surface Ees)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(office porter at yarn producing facility held office clerical and excluded from unit of P & M Ees where porter spends less than an hour a day in plant, his contact with unit Ees is minimal, his primary duties are performed either in front office or away from plant, and his schedule is different from that of unit Ees)

Gordonsville Industries, Inc. **252 NLRB No. 054**
(testers performing simple, easily-learned manual quality control work included in P&M unit)

Funky, Inc. **254 NLRB No. 042**
(pattern makers and sample makers properly excluded from P&M unit where excluded Ees physically separated from other Ees, E's operations organized along *preproduction* and production processes with pattern maker and sample makers in former catagory, pattern makers highest paid hourly Ees, sample makers supervisor has no authority over unit Ees, and sample makers only sewing machine operators)

Avon Products, Inc. **250 NLRB No. 141**
(all representative service department Ees except department secretary and secretarial, office supply and cash sale clerks included in P&M unit at cosmetic manufacturer's branch operation in view of involvement in single highly integrated order-flow process and facility-wide terms and conditions of employment)

Avon Products, Inc. **250 NLRB No. 141**
(secretarial clerk in representative service department, department manager's secretary and administrative clerks in packaging department, and all department secretaries in all departments excluded from P&M unit at cosmetics manufacturers' branch operation as office clericals)

Avon Products, Inc. **250 NLRB No. 141**
(office supply and cash sales clerks in representative service department excluded from P&M unit at cosmetics manufacturer's branch operation where they play no role in order flow process and are physically separated from unit Ees)

Avon Products, Inc. **250 NLRB No. 141**
(data processing department Ees and transportation department dispatcher, expediting clerk typist, transportation coordinator and correspondent, and order-service, lost-order, cost-and-tonnage, and transportation clerks included in P&M unit at cosmetics manufacturer's branch operation as plant clericals in view of involvement in order flow process, contacts and interchange with unit Ees and facility-wide terms and conditions of employment)

Avon Products, Inc. **250 NLRB No. 141**
(visual order entry (VOE) operators in data processing department and (VOE) terminal operators in merchandise control and material handling departments included in P&M unit of cosmetics manufacturer's branch operation in view of interchange and work-related contact with unit Ees and central role in order flow process)

Avon Products, Inc. **250 NLRB No. 141**
(line balance clerk, mechanical assembly operator, and merchandise assembly clerk in shipping department included in P&M unit of cosmetics manufacturer's branch operation in view of repeated daily contact with unit Ees, and facility-wide terms and conditions of employment)

Avon Products, Inc. **250 NLRB No. 141**
(dock loader, stacker/strapper and sealer/labeler in transportation department included in P&M unit at cosmetics manufacturer's branch operation as production Ees)

Avon Products, Inc. **250 NLRB No. 141**
(cost accounting, planning, accounts payable, and perpetual inventory clerks in inventory, cost and planning department included in P&M unit at cosmetics manufacturer's branch operation as plant clericals in view of jobs related to order flow process and contact with unit Ees)

Avon Products, Inc. **250 NLRB No. 141**
(management shipment coordinator and merchandise expediter in merchandise control department included in P&M unit at cosmetics manufacturer's branch operation as plant clericals in view of job function and role in order flow process; all other merchandise department Ees included as production, maintenance or plant clerical Ees)

Avon Products, Inc. **250 NLRB No. 141**
(terminal operators, clerk manifest, and warehouse control and receiving control clerks and inventory control analyst in material handling department included in P&M unit at cosmetics manufacturer's branch operation in view of daily contact with unit Ees and facility-wide terms and conditions of employment)

Avon Products, Inc. **250 NLRB No. 141**
(all processing department Ees, all packaging department Ees except secretaries and administrative clerks, all quality assurance department Ees except secretaries and chemists, and all engineering department Ees except secretary included in P&M unit of cosmetics manufacturer's branch operation as determined by RD)

Avon Products, Inc. **250 NLRB No. 141**
(expediters, master record, container records, and manifest clerks in production control department included in P&M unit at costmetics manufacturer's branch operation where they share facility-wide terms and conditions of employment)

Avon Products, Inc. **250 NLRB No. 141**
(all industrial engineering and purchasing department Ees excluded from P&M unit at cosmetics manufacturer's branch operation for lack of community interest as found by RD)

Avon Products, Inc. **250 NLRB No. 141**
(tour hostesses employed only as tour hostesses excluded from P&M unit at costmetics manufacturer's branch operation; however, tour hostesses holding regular full-time positions in addition to their tour hostess duties should have their status in unit determined by whether or not their full-time position has been included in unit found appropriate herein)

Penn Color, Inc. **249 NLRB No. 151**
(quality control and research and development technicians at plant engaged in production of color concentrates excluded from P&M unit, where supervision of P&M Ees is totally different from that of technicians; there is no interchange between P&M Ees and technicians; while technicians have option of being paid on salary basis, P&M Ees are compensated on hourly rate; basis for and frequency of promotions are different; and there are different requirements regarding education background and on-the-job training)

Marion Rohr Corporation **261 NLRB No. 139**
(cutters and spreaders included with packers and bundlers in cutting room in overall P&M unit of plant since many of their duties are same as other cutting room Ees who are included in unit and all of whom are under same supervisor, and no other U seeks to represent cutters and spreaders)

Whitteman Steel Mills, Inc. **253 NLRB No. 041**
(laboratory technicians not included in unit of P&M Ees where lacked sufficient community of interest and will perform some duties as laboratory technicians excluded from P&M unit previously represented by another U)

Magna Corporation **261 NLRB No. 009**
(Bd clarified unit by including position of plant storeroom specialist in P&M unit as duties performed were essentially plant clerical in nature which are included in unit notwithstanding lack of community of interest and salaried rather than hourly paid)

Comet Corporation **261 NLRB No. 188**
(truck drivers excluded from P&M unit at manufacturer and distributor of semi-trailers and van bodies since they essentially functioned as distinct group possessing different skills and qualifications with little or no transfers between production workers and drivers, and in view of different hours, conditions, and pay)

1760-1900 Office clerical employees unit

1760-1920 Identifying characteristics

1760-1920-6000 Line of supervision and administration

United Parcel Service, Inc. **258 NLRB No. 030**
(clerical Ees who work in E's district department offices at one of E's 10 Metro division offices found to be office clericals and were excluded from unit including operating clerical Ees where they performed dissimilar functions in separate work areas under different supervision from operating clericals)

1760-1920-8000 Working conditions different from those of production employees

United Parcel Service, Inc. **258 NLRB No. 030**
(clerical Ees who work in E's district department offices at one of E's 10 Metro division offices found to be office clericals and were excluded from unit including operating clerical Ees where they performed dissimilar functions in separate work areas under different supervision from operating clericals)

1760-1940 Specific determination (by SIC category)

Nevada Club, Inc., d/b/a Fitzgerald's Hotel/Casino **255 NLRB No. 084**
(separate unit of hotel clericals as requested by petitioner rather than overall hotel unit held appropriate consistent with Bd's policy of granting such separate unit upon request supported by adequate showing of distinct community of interest)

Stroock & Stroock & Lavan **253 NLRB No. 052**
(stipulated unit of clerical and support staff of 2 law firms that merged and combined these staffs at one location, appropriate)

1760-1960 Placement of office clerical employees in other unit (by SIC category) (See also 440-1760-2400)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(*billing clerk* and individual who filed and operated office equipment at manufacturer and distributor of children's clothing held to be ineligible to vote since w/i office-clerical exclusion from warehouse unit notwithstanding they performed some of their duties in warehouse building)

Montgomery Ward & Co., Inc. **259 NLRB No. 041**
(office and warehouse clericals included in residual group of unrepresented warehouse Ees at nation-wide distribution center of general merchanidse)

1760-1980 Placement of other employees in office clerical unit (by SIC Category) (See also 440-1760-2800)

ITT Grinnell **253 NLRB No. 077**
(accounts receivable collection coordinator not included in office clerical Ees unit notwithstanding he can make only recommendations with regard to customer's credit level, where 60% of his time spent resolving payment disputes and this involves customer contact and independent judgment)

ITT Grinnell **253 NLRB No. 077**
(credit escalation analyst excluded from unit of office clerical Ees and found technical Ee where she is responsible for functions requiring specialized training and independent judgment; moreover she is salaried, has 2-year degree in accounting and no interchange with other unit Ees)

ITT Grinnell **253 NLRB No. 077**
(secretary to assistant plant manager found confidential Ee and excluded from office clerical unit; manager has significant responsibility for formulation and effectuation of labor relations policy and she has sole responsibility for his filing and typing)

ITT Grinnell **253 NLRB No. 077**
(secretary to engineering supervisor whose job description contains no duties concerning personnel matters or formulation of labor relations policy and possibility of such duties only speculative found not confidential secretary and included in unit)

ITT Grinnell **253 NLRB No. 077**
(property accountant, aid to confidential secretary found not to be confidential secretary and included in unit of office clerical Ees where none of her work involved labor relations and future possibilities only speculative)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(bookkeeper at insurance company excluded from unit since he lacked community of interest with other clericals in view of disparity between his salary and prevailing wage in clerical unit, his flexible working time, and lack of managerial supervision over his daily routines)

Stroock & Stroock & Lavan **253 NLRB No. 052**
(paralegals excluded from unit of office clericals notwithstanding they share common working hours and fringe benefits where their duties require analytic skills, supervisory structure is different, no daily interchange, clients are billed for paralegals time, and position treated as preparation for law school)

Stroock & Stroock & Lavan **253 NLRB No. 052**
(law office librarians included in unit of office clericals where share working hours, same benefits and perform similar clerical functions)

1760-2400 Plant clerical employees unit

1760-2460 Placement of plant clericals in other unit (by SIC category) (See also 440-1760-2900)

ITT Lighting Fixtures, Division of ITT Corporation **249 NLRB No. 061**
(Ee found plant clerical not office clerical and included in bargaining unit where her duties are integral part of warehouse operation; 75% of her time spent on record keeping for warehouse Ees, office adjoins warehouse and is separate from office clericals, she goes onto warehouse floor to perform part of her duties, and shares same intermediate supervision, works same hours as warehouse Ees)

Montgomery Ward & Co., Inc. **259 NLRB No. 041**
(office and warehouse clericals included in residual group of unrepresented warehouse Ees at nation-wide distribution center of general merchanidse)

1760-2480 Placement of other employees in plant clerical unit (by SIC category) (See also 440-1760-2900)

Texprint, Inc. **253 NLRB No. 138**
(inclusion of process control clerks of corporation engaged in printing patterns in unit of plant clericals appropriate where their duties are essentially those of plant clericals, they are hourly paid, receive same benefits, have same supervisor and work in enclosed area on production floor with virtually no contact with office clericals)

1760-2900 Office and plant clericals combined unit

1760-2960 Placement of office/plant clericals in other unit (by SIC category)

Montgomery Ward & Co., Inc. **259 NLRB No. 041**
(office and warehouse clericals included in residual group of unrepresented warehouse Ees at nation-wide distribution center of general merchanidse)

1760-3400 Technical employees unit

1760-3401 Generally

Beverly Enterprises d/b/a Beverly Manor Convalescent Centers **264 NLRB No. 128**
(technical Ees are those who do not meet strict requirements of term *professional Ee* as defined in Act but whose work is of technical nature involving use of independent judgment and requiring exercise of specialized training usually acquired in colleges or technical schools or through special courses)

1760-3420 Identifying characteristics

1760-3420-0100 Generally

The Folger Coffee Company **250 NLRB No. 001**

1760-3600 Grocery employees unit

1760-3680 Placement of other employees in grocery unit

Great Scot of Florida, Inc. **256 NLRB No. 126**
(Bd upheld RD's finding that meat department Ees in E's retail store had separate community of interest from other grocery Ees despite limited interchange among clerks and were therefore excluded from appropriate unit where Bd had previously denied E's request for review which under R/R Sec. 102.67(f) precludes relitigation of representation issue in related subsequent ULP proceeding; Bd noted that E's reliance on *Ashcraft's Market, Inc.* 246 NLRB No. 68, was unfounded where factors evidencing separate community of interest from other store Ees in instant case were missing in *Ashcraft*)

N.L.R.B. v. Steven Davis and Michael Provenzano, d/b/a Carlton's Market **642 F.2d 350 (C.A. 9, Apr 20, 1981)**
(meat Ee properly excluded from unit containing grocery Ees at market in line with current industry practice separating meat and grocery Ees)

1760-4000 Office, clerical, and technical employees combined unit

1760-4040 Specific unit determination (by SIC category)

Trustees of Tufts College **251 NLRB No. 108**
(unit of clerical and technical Ees at undergraduate and law campus excluding such Ees at graduate campus appropriate where undergraduate campus is 6 miles from graduate, employment practices and conditions of employment differ, day-to-day management of labor relations is separate, hiring is separate and also hospitalization coverage differs, almost no Ee interchange and no temporary Ee interchange)

1760-4080 Placement of other employees in office/clerical/technical unit (by SIC category)

Trustees of Tufts College **251 NLRB No. 108**
(nurses aide at campus infirmary included in unit where work situs, hours of work and on-the-job contacts with infirmary technicians and clericals provides sufficient community of interest)

1760-4080—Cont.

Trustees of Tufts College **251 NLRB No. 108**
(former police officer employed as police clerk included in unit where his duties are basically clerical and he does not engage in police work)

Trustees of Tufts College **251 NLRB No. 108**
(vehicle taggers who issue parking tickets but do not perform police duties included in unit especially where excluded from voting with police unit)

1760-4300 Professional employees unit

1760-4340 Specific determination (by SIC category)

Duquesne University of The Holy Ghost **261 NLRB No. 085**
(faculty members at law school held managerial Ees and ptn for unit of those faculty members dismissed where faculty exercised significant control over curriculum and hiring and tenure, established standards for admission, remaining in school and for graduation; faculty committee, against whose recommendation Dean had no authority to act, screened candidates for full-time faculty positions, faculty could veto hiring decision made by Dean, tenured faculty made recommendations regarding granting of tenure, notwithstanding faculty had no authority in terminations)

Wordsworth Academy **262 NLRB No. 042**
(teachers, psychologists, and therapists unit at private school participating in State educational plan for children with learning disabilities held appropriate, where they are Ees rather than managerial Ees since, unlike *Yeshiva University*, teachers are professional Ees whose decision making is limited to routine discharge of professional duties in assigned projects; and no basis exists for finding psychologists and therapists managerial, since they do not act beyond scope of their professional duties, and only treat students and advise teachers regarding convenient times to schedule classes so that they can arrange their appointments with students)

University of San Francisco **265 NLRB No. 155**
(unit of part-time faculty members (lecturers) at university, appropriate, where they have in common method by which they are hired and compensated, including standard university memorandum of employment which sets forth terms and conditions of their employment, as well as freedom to design own curriculum and teaching methods w/i parameters of course description; great majority of them work in close proximity at university's main campus and thus have opportunity for contact with other unit members; and they work similar hours and are subject to same administrative structure)

University of San Francisco **265 NLRB No. 155**
(election directed in separate unit of adjunct faculty members at university's college of professional studies (CPS) providing continuing education for working adults, where factors distinguishing them from university's part-time lecturers established that they have clear community of interest among themselves, and petitioning U indicated at hearing its willingness to represent CPS faculty in separate unit)

Bradford College **261 NLRB No. 081**
(unit at college of full and three fourth time faculty, division chairs, B.A. coordinators, librarian and assistant librarian, but excluding director and generic specialist of College Learning Program, director and faculty of program which teaches English as a second language, half and one-fourth time faculty, held appropriate and election ordered since petitioned for individuals held Ees rather than managerial Ees)

Bradford College **261 NLRB No. 081**
(director and instructors at *English Language Institute*, which teaches English as a second language at college, excluded from faculty unit since lack community of interest, notwithstanding they have *faculty status* where they vote only on certain issues at faculty meetings, teach different hours from regular faculty, are not subject to faculty manual, have no advising responsibility, and do not share same employment benefits)

Bradford College **261 NLRB No. 081**
(director and generic specialist in *College Learning Program* which assisted bright students from high schools in accomodating their learning disabilities and in developing skills, excluded from unit of faculty members at college at which program located since they lacked community of interest where hours and range of salaries were different from full-time faculty members)

1760-4380 Placement of other employees in professional employee unit (by SIC category)

Utah Power & Light Company **258 NLRB No. 138**
(although decertification ptn requested unit consisting of graduate professional engineers, Bd included in unit non-degree-holding engineer, and any others hired in future, who have same job responsibilities as degree-holding engineers and are therefore found to be professional Ees)

Community Health Services, Inc. **259 NLRB No. 045**
(challenges to ballots of mental health workers who were included in professional unit employed by community and home care service organization, sustained where, notwithstanding that all but three of them had either bachelor's or master's degree, they were not licensed by the State nor were they registered or certified by any national or state professional organization; they assisted professional staff but did not engage in types of treatment normally performed by professional psychologists or psychiatrists; therefore, held technical Ees)

Wordsworth Academy **263 NLRB No. 042**
(physical education faculty members at private school participating in State educational plan for children with learning disabilities included in professional faculty unit where, although physical department selects Ees to act as coaches and officials at games, such action is closer to making teaching assignments than it is to *hiring*, as contended by E; moreover, physical education faculty's recommendation of wage scale is not enough by itself to warrant excluding them as managerial Ees from faculty unit)

University of San Francisco **265 NLRB No. 155**
(adjunct faculty members at university's college of professional studies (CPS), providing continuing education for working adults, excluded from unit of university's part-time lecturers, where CPS faculty are interviewed, hired, evaluated, and compensated by methods unlike those pertaining to part-time lecturers, they sign different form of contract and have unique responsibility to follow prescirbed curriculum, have faculty meetings which are exclusively their own, and do not attend non-CPS faculty meetings; there is no interchange between CPS faculty and those of other schools and colleges; and they report to separate administrative hierarchy)

University of San Francisco **265 NLRB No. 155**
(clinical teaching assistants (CTAs) at university's school of nursing included in unit of university's part-time lecturers, where it was clear from facts presented by E and from reading of job description for CTAs that E has no policy of refusing to reappoint CTAs so as to limit systematically their employment to single year, and fact that they may choose to seek other employment following year with E, rather then seek reappointment, does not render them temporary Ees, or destroy their community of interest with other part-time Ees)

Florida Memorial College **263 N.L.R.B. 160**
(academic chairpersons at college included in unit of full-time faculty members, professional librarians and professional counselors notwithstanding E's contention that they should be excluded on grounds that they were supervisors; chairpersons exercised certain authority over nonunit Ees which was arguably supervisory in character; although they had role in hiring and retention of both clerical Ees and part-time faculty members, they devoted only small fraction of time to such responsibilities and since neither part-time faculty nor clerical personnel were included in unit, these functions of chairpersons did not preclude their inclusion in unit)

Florida Memorial College **263 N.L.R.B. 160**
(professional counselors who serve as dormitory resident managers at college included in unit of full-time faculty members, professional librarians and professional counselors notwithstanding E's contention that they should be excluded on grounds that they were supervisors; whatever supervisory authority might occasionally be exercised by counselors who served as resident managers related solely to dormitory janitors who were not unit Ees)

Bradford College **261 NLRB No. 081**
(division chairs at college held not managerial Ee, and included in faculty unit, notwithstanding chairs had written authority to prepare departmental budgets, evaluate appropriate faculty members, assign students to faculty members for advice purposes, hire faculty and assign courses, where in actual practice academic dean had hired faculty members w/o consultation, overruled recommendations on faculty retentions, fired individuals as division chairs who had been elected division chairs by faculty, made appointment commitments for following academic year to faculty members prior to receiving division chair's evaluation)

Bradford College **261 NLRB No. 081**
(B.A. coordinators at college, most of whom also division charis, held not to be supervisors or managerial Ees and included in faculty unit, where each was regarded as faculty and spent insignificant amount of time in collateral functions)

Bradford College **261 NLRB No. 081**
(librarian and assistant librarian at college held not managerial Ees and included in faculty unit where did not spend more than 50% of their time supervising unit Ees, librarian's budget proposals had been reduced by academic dean, locks and keys to library were changed w/o prior consultation with librarian, academic dean and dean of students determined library hours)

1760-5300 Plant Protection and Protective Services Employees Unit

1760-5320 Identifying characteristics

1760-5320-0100 Generally

Wright Memorial Hospital **258 NLRB No. 173**
(ambulance department Ees on 2d and 3d shifts held guards and excluded from unit of all ambulance department Ees where, in addition to their ambulance duties, they make security rounds of hospital and so are employed to enforce, against Ees and others, rules to protect E's property and safety of persons on premises, and notwithstanding they wear no guard uniforms or do not themselves enforce rules but notify department heads of infractions)

1760-5320-0100—Cont.

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(individual ineligible to vote since held guard and excluded from unit where he opens up plant before work and closes at end of day, *watches* Ees while in plant, punches and signs time cards where corrections necessary, inspects handbags of Ees leaving plant, and requests unauthorized persons to leave plant)

1760-5320-2500 Responsibility for protection of customer property

Purolator Courier Corp. **265 NLRB No. 086**
(courier guards for nationwide delivery service held statutory guards where they were employed to pick up commodities from customers usually from locked vaults with keys supplied by management and deliver them through an interconnecting system to their destinations)

MDS Courier Service, Inc. (Teamsters Local No. 150) **248 NLRB No. 181**
(individuals held guards since they were employed to protect property of E's customers where as couriers they transported important papers, negotiable instruments and other valuables; notwithstanding, they were not armed, not required to wear uniforms and made deliveries in privately owned vehicles)

1760-5320-2800 Responsibility for protection of plant property

Supreme Sugar Company, Inc. **258 NLRB No. 039**
(watchmen held guards under Sec. 9(b)(3) where they were sole guardians against loss or damage to property during times they work)

Electro-Protective Corporation of Georgia **251 NLRB No. 154**
(service Ees, employed by E which manufacture's, sells, installs and monitors burglar and fire alarm systems and provides its customers with other protective services, held guards and excluded from E's P&M unit, since they played significant protective role in services offered to E's customers; in carrying out their duties, they faced possibility of personal confrontation with intruders; cf. *Wells Fargo Alarm Services,* 218 NLRB 68 (1975), enfd. 553 F.2d 121 (1976) where element of potential personal confrontation was not present)

1760-5320-4200 Armed, deputized, or uniformed

Burns Electronic Security Services, Inc. **256 NLRB No. 139**
(operator/runners found guards and excluded from unit of all Ees where duties require them to wear uniforms, carry weapons, have police whistle and identification badge; operator/runners respond to alarms at customers premises, investigate scene, cooperate with police, secure premises and restore protective system)

Electro-Protective Corporation of Georgia **251 NLRB No. 154**
(Ees who wore uniforms and were dispatched to customers premises after alarm set off and required to patrol premises preventing unauthorized entry or egress of property until police and/or customer showed up, held guards because of risk of personal confrontation)

1760-5320-5600 Control of access to, or movement about employer's property

Electro-Protective Corporation of Georgia **251 NLRB No. 154**
(Ees who wore uniforms and were dispatched to customers premises after alarm set off and required to patrol premises preventing unauthorized entry or egress of property until police and/or customer showed up, held guards because of risk of personal confrontation)

1760-5340 Specific determination (by SIC category)

1760-5340-6700 Found inappropriate

1760-5340-6737 Bank Couriers

Purolator Courier Corp. **265 NLRB No. 086**
(unit of courier-guards limited to single terminal w/i E's south-central administrative region, held inappropriate in view of integration of operations and time-sensitive and secure delivery, overlapping supervision, frequent contact among all guards in region, uniformity of working conditions and broad authority of regional office over operations and labor relations)

1760-5360 Placement of plant protection employees in other unit (by SIC category)

Supreme Sugar Company, Inc. **258 NLRB No. 039**
(E's refusal to adhere to terms of collective-bargaining agreement regarding pay and benefits of watchman (found to be guard) not violative, notwithstanding E voluntarily agreed to include watchmen in unit, in view of express prohibition of Sec. 9(b)(3) that *Bd shall not decide that any unit is appropriate for (purposes of collective bargaining) if it includes, together with other Ees, any individual employed as guard*)

Kentucky Prince Coal Corporation **253 NLRB No. 070**
(watchmen excluded from unit of production Ees notwithstanding they perform some nonguard functions where majority of time spent guarding E's equipment, have keys which other Ees do not have access to, carry C-B radios and permitted to carry handguns)

Electro-Protective Corporation of Georgia **251 NLRB No. 154**
(service Ees, employed by E which manufacture's, sells, installs and monitors burglar and fire alarm systems and provides its customers with other protective services, held guards and excluded from E's P&M unit, since they played significant protective role in services offered to E's customers; in carrying out their duties, they faced possibility of personal confrontation with intruders; cf. *Wells Fargo Alarm Services,* 218 NLRB 68 (1975), enfd. 553 F.2d 121 (1976) where element of potential personal confrontation was not present)

1760-6200 Drivers (including driver-salesmen) unit

1760-6240 Specific determination (by SIC category)

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**
(drivers unit excluding miners and mechanics found appropriate where completely different nature of their duties and skills and only minimal amount of interchange between groups of Ees)

S & J Lines **JD-(SF)-248-81**
(unit restricted to in-town bus drivers found inappropriate since in-town and out-of-town drivers share community of interest in view of same supervision, wages and benefits, and working conditions)

Liquid Transporters, Inc. **250 NLRB No. 163**
(permanent sleeper teams who lease their equipment to E and operate their trucks on long distance trips for E *included* in drivers unit where they are qualified to drive for E and operate under authority of E (interstate common carrier); they make out applications and take written or drivers' tests like all other E's drivers and, in same fashion as, other drivers for owneroperators who are Ees of E)

Marlboro Trucking Co., Inc., C-J Construction Co., Inc., Suburban Yelow Cab, Inc. **JD-441-80**
(truck drivers of single E constituted clearly identifiable and functionally distinct group who hauled to customers in construction sites and were thus distinguishable from Es' other Ees; no other Ees undertook hauling assignments for Es, and truck drivers, unlike Es' taxi drivers, were paid on hourly basis)

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**
(bus drivers at private, nonprofit school who work different hours from other Ees, are paid on weekly basis rather than monthly basis of other Ees, are separately supervised, are rarely in contact with other Ees, have separate lunch, assembly, and bathroom facilities, and perform their duties under different working conditions included in separate unit from unit comprised of separate voting groups of nonprofessional and professional Ees consisting of teachers, counselors, and librarian)

1760-6260 Placement of drivers in other unit (by SIC category)

Mitchell Bros. Truck Lines **249 NLRB No. 051**
(overall unit of owner-operators and non-owner operators of equipment leased by owners to E found appropriate)

1760-6280 Placement of other employees in drivers unit (by SIC category)

Cal-Maine Farms, Inc. **249 NLRB No. 133**
(shipping and receiving Ee not included in unit of truckdrivers at E engaged in production, processing, and distribution of shell eggs in view of lack of community of interests where separate supervision, infrequent contact, minimal job interchange, and different wage scales)

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**
(drivers unit excluding miners and mechanics found appropriate where completely different nature of their duties and skills and only minimal amount of interchange between groups of Ees)

Wilson Engraving Company, Inc. **252 NLRB No. 048**
(inclusion of dual-function Ees in unit of city-drivers employed by manufacturer of photographic plates and color separations, appropriate where they performed similar delivery and pickups as included drivers during substantial portions of their working time; furthermore, these Ees shared community of interest in unit's wages, hours, and working conditions)

Wilson Engraving Company, Inc. **252 NLRB No. 048**
(dual-function Ees excluded from unit of city-drivers employed by manufacturer of photographic plates and color separations, where driving duties occupy less than twenty-five percent of their working time, thus lacking sufficient community of interest to warrant inclusion)

Liquid Transporters, Inc. **250 NLRB No. 163**
(mechanics and their helpers, checkout lane Ees, and cleaning rack Ees constitute separate unit and are not included in unit of drivers of interstate common carrier where their regular work contacts with drivers was negligible; they were paid at different time and on different basis than were drivers; they had seniority list, Ee committee and grievance procedure separate from E's drivers)

1760-6280—Cont.

Marathon Service Sales, Inc., Fleet Service, Inc. **263 NLRB No. 054**
(Bd clarified unit by excluding garage Ees from current bargaining unit of its drivers, since parties did not intend to create single bargaining unit consisting of drivers and garage Ees when they executed supplemental agreement incorporating garage Ees into contract which covered single unit of drivers only, where only a few months after signing of supplemental agreement, parties executed current contract covering single unit of drivers, which does not contain a mechanic's classification nor does it contain reference to the supplemental agreement)

1760-6700 Warehouse Employees Unit

1760-6740 Specific determination (by SIC category)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(separate unit of warehouse Ees, at manufacturer of garments appropriate rather than unit of warehouse and factory Ees in view of difference in skills, working conditions and wages of Ees)

Sears, Roebuck and Co. **250 NLRB No. 074**
(unit limited to parts department Ees rather than overall unit including repair department Ees of E engaged in receipt, warehousing, distribution, and repair of merchandise, held appropriate, where parts department Ees possess separate and distinct community of interest from Ees in repair department)

Gustave Fisher, Inc. **256 NLRB No. 130**
(overall unit of Ees of E engaged in retail sale and service of office furniture and office supplies appropriate, rather than unit of warehouse Ees in view of high degree of integration of operation with high degree of Ee interaction among various classifications of Ees where emphasis appears to be placed on completion of tasks, flexibility of Ees' work, common fringe benefits, notwithstanding blurring of supervisory distinctions)

Wickes Furniture, A Division of The Wickes Corporation **255 NLRB No. 080**
(separate unit of warehouse and refinishing Ees at furniture store, appropriate, notwithstanding all Ees ate in same lunch room, worked same length shift and had same fringe benefits in view of separate work location, and minimal interchange with other Ees, and fact refinishing Ees worked preponderately in shop and warehouse areas and have substantial daily work contact with warehouse Ees)

Montgomery Ward & Co., Inc. **259 NLRB No. 041**
(if they so decide in self-determination election, residual group of unrepresented office and warehouse clericals, inside sales Ees, and maintenance Ees may be included in traditional warehouse unit at nation-wide distribution center of general merchandise, in view of common supervision and benefits, sales Ees were physically located in warehouse and maintenance Ees work in warehouse; petitioner represents existing unit of traditional warehouse Ees and no other labor organization seeks to separately represent various clerical, sales and maintenance Ees here involved who essentially constitute remaining unrepresented warehouse Ees)

1760-6760 Placement of warehouse employees in other unit (by SIC category)

Cal-Maine Farms, Inc. **249 NLRB No. 133**
(shipping and receiving Ee not included in unit of truckdrivers at E engaged in production, processing, and distribution of shell eggs in view of lack of community of interests where separate supervision, infrequent contact, minimal job interchange, and different wage scales)

Gustave Fisher, Inc. **256 NLRB No. 130**
(overall unit of Ees of E engaged in retail sale and service of office furniture and office supplies appropriate, rather than unit of warehouse Ees in view of high degree of integration of operation with high degree of Ee interaction among various classifications of Ees where emphasis appears to be placed on completion of tasks, flexibility of Ees' work, common fringe benefits, notwithstanding blurring of supervisory distinctions)

1760-6780 Placement of other employees in warehouse employees unit (by SIC category)

Montgomery Ward & Co., Inc. **259 NLRB No. 041**
(if they so decide in self-determination election, residual group of unrepresented office and warehouse clericals, inside sales Ees, and maintenance Ees may be included in traditional warehouse unit at nation-wide distribution center of general merchandise, in view of common supervision and benefits, sales Ees were physically located in warehouse and maintenance Ees work in warehouse; petitioner represents existing unit of traditional warehouse Ees and no other labor organization seeks to separately represent various clerical, sales and maintenance Ees here involved who essentially constitute remaining unrepresented warehouse Ees)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(billing clerk and individual who filed and operated office equipment at manufacturer and distributor of children's clothing held to be ineligible to vote since w/i office-clerical exclusion from warehouse unit notwithstanding they performed some of their duties in warehouse building)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(separate unit of warehouse Ees, at manufacturer of garments appropriate rather than unit of warehouse and factory Ees in view of difference in skills, working conditions and wages of Ees)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(warehouse driver not included in warehouse unit since he does not share community of interests where salaried, does not punch time clock, received different medical benefits, and in warehouse for only five hours a week)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(Ees who on occasion performed warehouse work not included in warehouse unit where basically Ees are office clericals)

American Parts System, Inc. **254 NLRB No. 106**
(operations center Ees at E engaged in storage and wholesale distribution of automobile parts and accessories included in warehouse unit where operations center Ees and warehouse Ees handle same form essential to their respective job functions, i.e. picking ticket; are in constant contact regarding processing of orders and during breaks, share common wages scale and benefits)

Windsor Industries, Inc. **265 NLRB No. 145**
(unit limited to warehouse Ees rather than unit also including technicians at plant of E engaged in importation and distribution of electronic products, held appropriate in view of technicians' spending all of their time in physically separate room, performing distinctly different job functions, limited contact between technicians and warehouse Ees, absence of transfers between technicians and warehouse Ees, and fact that warehouse Ees were hourly paid and punched time clock whereas technicians did not punch clock, and were paid daily salary at higher scale)

Wickes Furniture, A Division of The Wickes Corporation **255 NLRB No. 080**
(*will call clericals* at furniture store excluded from unit of warehouse and refinishing Ees since their interests were more closely allied with non-unit sales, office clerical, and data processing Ees, in view of more frequent contact with these Ees)

Montgomery Ward & Co., Inc. **259 NLRB No. 041**
(inside salespersons who sell at warehouse included in warehouse unit as part of residual group of unrepresented Ees at nation-wide distribution center of general merchandise)

Montgomery Ward & Co., Inc. **259 NLRB No. 041**
(maintenance Ees included in warehouse unit as part of residual group of unrepresented warehouse Ees at nation-wide distribution center of general merchandise)

1760-7200 Sales personnel (including driver- salesmen when grouped with sales personnel) unit

1760-7260 Placement of sales personnel in other unit (by SIC category)

Montgomery Ward & Co., Inc. **259 NLRB No. 041**
(inside salespersons who sell at warehouse included in warehouse unit as part of residual group of unrepresented Ees at nation-wide distribution center of general merchandise)

1760-7280 Placement of other employees in sales personnel unit (by SIC category)

Larry Faul Oldsmobile Co., Inc.; Union Leasing Co., Inc. **262 NLRB No. 048**
(finance and insurance salespersons employed by auto dealer included in unit with automobile salespersons because finance and insurance salespersons are involved in every purchase or lease of automobile and engage in some direct sales and leasing; additionally, they receive weekly salaries, commission, monthly and annual bonuses, health and welfare insurance, same vacation, holiday and profit sharing benefits, work similar hours, have use of demonstrator automobile; moreover, they attend all sales meetings, compete in sales contest, comply with dress code, are supervised by same individuals as automobile salespersons)

Larry Faul Oldsmobile Co., Inc.; Union Leasing Co., Inc. **262 NLRB No. 048**
(fleet sales administrator/part-time salesperson included in unit of automobile salespersons, notwithstanding they perform both clerical and selling or leasing functions because they work alongside salespersons, are in constant contact with them, are supervised by same individual and receive same benefits thus sharing sufficient community of interest to be included in same unit)

Ed Chandler Ford, Inc. **254 NLRB No. 082**
(Ee at automobile dealership who regularly worked substantial number of hours for E as part-time salesperson included in unit of full-time salespersons, where they share same supervision and method of compensation)

Ed Chandler Ford, Inc. **254 NLRB No. 082**
(finance managers at automobile dealership not included in unit of salespersons, in view of different method of compensation, different working condi-

1760-7280—Cont.

tions, skills and qualifications, different job functions and different basis for judging work performance)

Kardon Chevrolet, Inc. **249 NLRB No. 086**
(in decertification proceeding, part-time salesmen excluded from unit of full-time salesmen at auto agency, since parties mutually agreed to modify certified unit to exclude them where, upon original certification, executed contract eliminated any specific reference to part-time Ees; contract specifically prohibited hiring of part-time salesmen and created special status for current part-time salesman, which would not have been necessary if part-time salesmen were included in unit; and E has not hired any part-time salesmen since execution of contract)

1760-7300 Nonselling personnel

1760-7360 Placement of nonselling personnel in other unit (by SIC category)

Larry Faul Oldsmobile Co., Inc.; Union Leasing Co., Inc. **262 NLRB No. 048**
(inventory control clerk and receptionist who serves as secretary to management officials, maintains inventory records used by salespersons and is in constant contact with salespersons, has same supervision and benefits, has sufficient community of interest to be included in unit of automobile salespersons)

1760-7380 Placement of other employees in nonselling unit (by SIC category)

Bradford College **261 NLRB No. 081**
(faculty teaching one-half time or less (part time) excluded from unit of faculty at college, since classified as independent contractors, generally cannot vote by ballot on major curriculum changes, are paid flat fee twice a semester, are not eligible for e's programs relating to life insurance, social security deductions or retirement)

1760-7600 Service employees unit

1760-7640 Specific determination (by SIC category)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(separate units of electric company's transmission and distribution stores department Ees and customer service department Ees, appropriate)

1760-7660 Placement of service employees in other unit (by SIC category)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(where it appeared that meter readers for electric company had sufficient community of interest to be included with either transmission and distribution and stores department unit or customer service department unit found appropriate herein, meter readers were permitted to vote Globe-type ballot to express their desire for inclusion in either of the two units and to decide what representation they would select in that unit)

1760-7680 Placement of other employees in service employees unit (by SIC category)

Gentile Pontiac **260 NLRB No. 056**
(parts manager in auto dealer's service department excluded from unit of service department Ees where, unlike latter Ees, manager received salary plus commission, drove a company car, wore different uniform, identifying him as manager, came into daily contact with public; and, although he had no Ees under his supervision, he was not himself subject to direct supervision and worked independently)

1760-7800 Service and maintenance employees unit

1760-7840 Specific determination (by SIC category)

Liquid Transporters, Inc. **250 NLRB No. 163**
(mechanics and their helpers, checkout lane Ees, and cleaning rack Ees constitute separate unit and are not included in unit of drivers of interstate common carrier where their regular work contacts with drivers was negligible; they were paid at different time and on different basis than were drivers; they had seniority list, Ee committee and grievance procedure separate from E's drivers)

Morco, Inc. d/b/a Towne Plaza Hotel **258 NLRB No. 016**
(unit encompassing hotel's housekeepers and maintenance Ees constituted appropriate unit where such unit had been recognized unit in successive collective-bargaining agreements and during previous negotiations)

N.L.R.B. v. Continental Corporation of Michigan, Inc. d/b/a Holiday Inn West **612 F.2d 257 (C.A. 6)**
(although ct disagreed with wisdom of Bd's approval of small bargaining unit of hotel Ees, ct decided Bd could reasonably have found in its discretion that housekeeping, laundry and maintenance Ees made up proper unit, excluding Ees with different functions and different supervision; ct felt perhaps it would have been better to have single unit of all Ees, but that it was not ct's role to substitute its judgment for that of Bd)

Trustees of University of Pennsylvania **247 NLRB No. 132**
(unit of medical utility men and animal laboratory technicians at medical school of private university held inappropriate since unit is arbitrary grouping of nonprofessional Ees, and unit is inappropriate under Bd precedent concerning bargaining units at colleges and universities; E's voluntary recognition of such arbitrary grouping of Ees held insufficient justification for splintering Ees who have common community of interests)

1760-7860 Placement of service and maintenance employees in other unit (by SIC category)

Montgomery Ward & Co., Inc. **259 NLRB No. 041**
(maintenance Ees included in warehouse unit as part of residual group of unrepresented warehouse Ees at nation-wide distribution center of general merchandise)

1760-7900 Service and warehouse employees unit

1760-7980 Placement of other employees in service and warehouse unit (by SIC category)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*truckdrivers* of various types and styles of trucks used by two Es comprising single E included in single appropriate unit despite their lack of interchange; lack of interchange was no different than lack of interchange of job functions between Ees in any two job classifications)

Hamilton Test Systems New York, Inc. **265 NLRB No. 085**
(field service representatives and nonsupervisory customer service supervisors (dispatchers) excluded from unit of crib attendants, technicians and truck drivers employed by E engaged in supplying and servicing computerized automobile emission test machines for service stations; customer service supervisors and field service representatives supervised by different supervisor, have no interchange with other Ees, have separate promotional ladder, dispatchers receive higher wages and field service representatives only have company car and receive separate training from technicians after initial training session)

1760-8600 Seamen's unit

1760-8640 Specific determination (by SIC category)

Pantex Towing Corporation **258 NLRB No. 113**
(requested unit limited to E's tugboat held appropriate in view of boat's autonomous operation, separate location, separate supervision of Ees, absence of any demonstrated interchange with any other of E's boats, absence of any collective-bargaining history, and fact that no broader unit was either sought or asserted to be appropriate)

1760-9100 Craft unit

1760-9133 Identifying characteristics

1760-9133-3400 Degree of skill possessed

Continental Web Press, Inc. **262 NLRB No. 170**
(unit of all pressroom Ees in E's pressroom department held appropriate rather than combined unit of pressmen and preparatory department Ees in E's lithographic production process, since pressroom Ees shared distinct community of interest; their duties related solely to high level skills in operating press equipment; pressroom Ees had minimal contact and no interchange w/preparatory department Ees; pressroom Ees were separately supervised and trained w/their own line of progression w/varied working conditions from preparatory Ees)

Allied Gear and Machine Company, Inc. **250 NLRB No. 097**

1760-9133-4800 No need for special training or skill

Allied Gear and Machine Company, Inc. **250 NLRB No. 097**

1760-9167 Specific determination (by specific craft)

1760-9167-0200 Automobile mechanics

1760-9167-0233 Found appropriate

Tom Kelly Ford, Inc. **264 NLRB No. 143**
(unit of service mechanics at auto dealer's facility, excluding body shop, parts department, and used-car reconditioning Ees, appropriate where none of latter three Ee classifications were ever included in recognition clauses of any past or present contracts; E did not speak with U about extending existing agreement to newly opened body shop with new Ees who, unlike covered Ees, have flexible work hours and breaktimes, different wage scale, and method of scheduling vacations, and have never filed grievances or were U stewards)

1760-9167-1800 Carpenters

1760-9167-1833 Found appropriate

ECM, Inc. **264 NLRB No. 141**
(unit limited to journeymen carpenters, rather than requested larger, mixed unit of carpenters and laborers comprising crews at construction project,

1760-9167-1833—Cont.

appropriate, where journeymen carpenters are separately supervised, physically separated from crew carpenters by reason of their work which requires them to have, when hired, prior carpentry experience; on the other hand, crew carpenters are not skilled craftsmen, do not perform traditional carpentry work, and have interests and working conditions more closely aligned with laborers than with journeymen carpenters who admittedly constitute separate craft unit)

1760-9167-2400 **Electricians**

1760-9167-2433 Found appropriate

N.L.R.B. v. Metal Container Corporation **660 F.2d 1309 (C.A. 8, Oct 1981)**

(separate unit of maintenance electricians rather than *wall-to-wall* P&M unit at plant manufacturing beer cans appropriate, notwithstanding highly integrated nature of plant's operation, where electricians are highly skilled, highly paid workers who exercise independent judgment and are supervised from w/i their own craft; moreover they voted to be represented separately rather than included in P&M unit)

1760-9167-2467 Found inappropriate

Proctor and Gamble Paper Products Company **251 NLRB No. 077**

(separate unit of electrical support technicians at plant manufacturing sanitary paper products, inappropriate, since not craft unit, even though they are most highly skilled electricians at plant, perform electrical work 100 percent of time, and have separate supervision, work area, and promotion criteria, where substantial amount of electrical work is also performed by more than 200 other technicians, one-half of support technicians work is done in production areas where they function as a team with production technicians, they are not licensed nor journeymen electricians, and do not undergo formal apprenticeship)

Proctor and Gamble Paper Products Company **251 NLRB No. 077**

(separate unit of all electrical maintenance technicians at plant manufacturing sanitary paper products, inappropriate, where they primarily perform typical production, warehouse, or maintenance functions; have only limited electrical skills; spend only small part of time performing electrical work; and, hence, do not constitute or function as true craft electricians; moreover, not only do they cut across departmental lines, production and warehouse electricians normally work alongside technicians who have no electrical expertise whatever; and electrical work which they routinely perform is highly integrated with E's production process)

1760-9167-7400 **Powerhouse employees**

1760-9167-7433 Found appropriate

Sohio Petroleum Co., a division of Sohio Natural Resources Co. v. N.L.R.B. **625 F.2d 223 (C.A. 9, June 1980)**

(unit of power station Ees only who produced electricity for oil production complex in Alaska, appropriate, since they share community of interest, have their own separate work station, supervision, and no interchange with other Ees; Bd only required to pick *appropriate* unit not *most appropriate* unit)

1760-9167-7600 **Pressmen**

1760-9167-7633 Found appropriate

Continental Web Press, Inc. **262 NLRB No. 170**

(unit of all pressroom Ees in E's pressroom department held appropriate rather than combined unit of pressmen and preparatory department Ees in E's lithographic production process, since pressroom Ees shared distinct community of interest; their duties related solely to high level skills in operating press equipment; pressroom Ees had minimal contact and no interchange w/preparatory department Ees; pressroom Ees were separately supervised and trained w/their own line of progression w/varied working conditions from preparatory Ees)

1760-9167-9200 **Truckdrivers**

1760-9167-9233 Found appropriarte

Memphis Furniture Manufacturing Co. **259 NLRB No. 061**

(unit of over-the-road truckdrivers who delivered furniture manufactured by E may, if they so desire, constitute separate appropriate unit for purposes of collective bargaining apart from historic P&M unit in which they were included where they did no plant work, did not load their trucks, had no contact with P&M Ees, spent 95% of worktime away from plant, had different hours, mode of pay, supervision from P&M Ees and, unlike local drivers, were subject to regulations of Department of Transporiation)

1760-9400 Multicraft unit

1760-9467 Specific determination

1760-9467-6700 **Found inappropriate**

Brown & Root, Inc. **258 NLRB No. 130**

(requested unit of pipefitters, pipewelders, boilermakers, boilerwelders, pipefitters' helpers and boilermakers' helpers involved in constructing boiler at power plant inappropriate, where unit does not satisfy requirements of either a craft unit or a functionally distinct group with common interests separate from E's other skilled workers at the job site)

1760-9900 Other units defined by employee type or category, or combinations of such

1760-9901 Generally

Sunray Ltd. **258 NLRB No. 072**

(election not barred by previous 8(f) relationships with dual-function Ees where competing Us did not represent majority in unit in that some work of Ees fell w/i jurisdiction of each U and thus neither U could claim 9(a) relationship; therefore Bd directed election in unit covering all Ees, giving Ees a choice to be represented by one of the two rival Us or no U)

1760-9940 Specific determination (by SIC category)

Bally's Park Place, Inc. **255 NLRB No. 006**

(petitoned for unit of Ees in slot machine department of gambling casino, including slot attendants and slot machine mechanics, appropriate, although casino wide unit may also be appropriate, slot machine department unit appropriate in view of separate immediate supervision, distinctive duties and skills, absence of temporary interchange with any other casino Ees and no other U seeks to represent all casino Ees)

Stroehmann Brothers Company **252 NLRB No. 139**

(shipping Ees in company that distributed bake goods held appropriate unit, contrary to E's contention that these Ees should be included in established unit of route salesman, over-the-road drivers, and mechanics of competing U, where shipping Ees historically were in separate unit of another U and sale of business to new E would not alter this since shipping Ees were homogeneous group with separate supervisors, employed different skills, had no apparent on-the-job contact with Ees of established unit, and never performed work of Ees in other unit)

Stanley M. Feil, Inc. **250 NLRB No. 065**

(separate unit of warehouse Ees, at manufacturer of garments appropriate rather than unit of warehouse and factory Ees in view of difference in skills, working conditions and wages of Ees)

Calpine Containers, A California Corporation **251 NLRB No. 199**

(unit of all regular part-time and full-time P&M Ees and truckdrivers and forklift operators, excluding office clericals, at E's facility for warehousing and assembling agricultural-product packing boxes, appropriate, rather than unit of truckdrivers and forklift operators outside production area separate from P&M unit, where all Ees punch time clock, receive hourly pay, have same supervision, seniority list, break and lunch periods, and technological changes have resulted in highly integrated operation with frequent interchange of unskilled jobs so that bargaining history of separate units has little weight)

Ives Business Forms, Inc. **263 NLRB No. 36**

(unit of warehouse Ees, truck drivers and warehouse clericals held appropriate where warehouse Ees and drivers engage almost exclusively in traditional warehouse and delivery functions)

Todd Pacific Shipyards Corporation (Driver Sales and Warehousemen, Teamsters Local 117, Affiliated With International Brotherhood of Teamsters, Chauffeurs, Warehousement and Helpers of America, Independent) **250 NLRB No. 138**

(unit of administrative Ees in purchasing and material control departments at shipyard, inappropriate where administrative Ees in all E's departments, rather than just those in purchasing and material control departments, are in constant contact and frequently transferred between departments, receive comparable wages and benefits for similar jobs, and are subject to common facility-wide personnel policy)

Institutional Food Services **258 NLRB No. 086**

(unit of all regular full-time warehouse Ees and truckdrivers, appropriate, rather than unit of all nonsupervisory Ees at warehouse and cafeterias where record demonstrates that warehousemen and truckdrivers were geographically separated from other Ees performed dissimilar job functions, had different rates of pay, hours, working conditions from other Ees and no interchange with other Ees)

WTEV--TV, Inc., d/b/a WLNE--TV **259 NLRB No. 158**

(requested unit of news cameramen at television station held inappropriate since they did not share community of interest separate and apart from other Ees involved in and contributing to production and presentation of news programs in view of their regular contact on assignment with other Ees, similarity of benefits, common supervision w/i news department, and some integration of job functions)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**

(separate units of electric company's transmission and distribution stores department Ees and customer service department Ees, appropriate)

Broadway Catering Corp. d/b/a Studio 54 **250 NLRB No. 166**

(separate unit of *stagehands* at public dance hall, inappropriate, where they are not required to possess unique skills or experience in order to perform their jobs and are subject to common supervision; operations are functionally integrated and some job functions are interchanged; during renovations all

1760-9940—Cont.

Ees work together with minimal differentiation based on job classifications; and unique nature of E's business involving a *production* combining music, lights, props, and interaction among all Ees and Ees and patrons sets it apart from cases involving traditional stage shows in which Bd has found stagehand unit appropriate)

Howard Johnson Company **250 NLRB No. 161**
(E's contention that unit of motel housekeeping Ees was inappropriate because it excluded, among others, front desk clerks, rejected, where case relied on by E is hereby overruled in view of later decisions cited by RD in his D/O directing election which fully supported his determination; *Howard Johnson Co.*, 201 NLRB 376, overruled)

N.L.R.B. v. Holly's, Inc., d/b/a Holiday Inn South **644 F.2d 895(T) (C.A. 6, Jan 5, 1981)**
(exclusion of front desk porters and yardmen from unit of housekeeping Ees at motel w/i discretion of Bd since facts similar to other cases where unit composed of only housekeeping Ees held appropriate)

Le Roy Fantasies, Inc., and Hardwicke's Plum, Inc., A Joint Venture, d/b/a Maxwell's Plum **256 NLRB No. 036**
(separate unit of laundry Ees at restaurant, rather than all Ees at restaurant, appropriate where laundry is physically separate and managerially autonomous entity, there is only sporadic Ee interchange and laundry operations are functionally separate from both kitchen and dining room operations)

N.L.R.B. v. H. M. Patterson & Son, Inc. **636 F.2d 1014 (C.A. 5, 1981)**
(unit limited to all full time and regular part-time funeral directors, assistant funeral directors, embalmers, apprentices and attendant receptionists at funeral home, rather than all Ee unit, appropriate; since share community of interest in view of fact all are involved with working with body of deceased)

Commercial Testing & Engineering Co. (Teamsters, Local Union 175) **248 NLRB No. 096**
(combined unit of preparation Ees and laboratory Ees in coal testing laboratory appropriate where tests performed on coal samples by each group, while different are functionally indistinct from each other, neither group required to have special skills; though tests performed in separate buildings and Ees use separate timeclocks, buildings are only 45 yards apart, contract between groups occur several times daily and wages and benefits approximately same)

Inverrary Country Club, Inc. **251 NLRB No. 155**
(separate unit of food and beverage department Ees, rather than unit also including several categories of manual operating Ees, at private membership club providing recreational facilities, appropriate in view of their separate and independent function, separate supervision, lack of interchange with operating Ees and fact that operating Ee's performance of food-service type functions was not regular or substantial)

N.L.R.B. v. Circo Resorts, Inc., d/b/a Circus, Circus **646 F.2d 403 (C.A. 9, May 1981)**
(although unit of stagehands at hotel and casino complex was small, Bd was not required to include all manual Ees in same unit, and its choice of unit of stagehands was not arbitrary or capricious, where they performed identical duties, all had training or experience in that area, their work was confined to particular part of hotel, and they did not work with other maintenance Ees)

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**
(teachers assigned by foreign government to teach at E's private, nonprofit school, who are paid salaries and other compensation as mandated by applicable laws of foreign government included in unit with E's locally hired teachers and other Ees, since in almost every relevant consideration, other than compensation, assigned teachers share community of interest with E's locally hired Ees)

Pratt Institute **256 NLRB No. 175**
(unit of nonacademic administrative Ees at art institute, appropriate contrary to E's contention that Bd lacked authority under SCt's *Yeshiva* decision to find the unit appropriate, since U in *Yeshiva* sought a unit of ful-time faculty members who acted in truly collegial capacity to make decisions for the university, whereas unit here is composed of nonfaculty administrative Ees who carry out decisions made by higher authority; Bd does not believe that SCt in its *Yeshiva* decision intended to exclude from the Act's protection administrative Ees performing their duties in an institute of the type here)

Century Moving & Storage, Inc. **251 NLRB No. 083**
(unit of warehousemen, local drivers and helpers *excluding* long haul drivers held appropriate where long haul drivers had little contact with local drivers, different compensation and mode of compensation from local drivers, as well as different seniority roster from local drivers)

1760-9960 Placement of (subject) employees in (other) unit (by SIC category)

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(where it appeared that meter readers for electric company had sufficient community of interest to be included with either transmission and distribution and stores department unit or customer service department unit found appropriate herein, meter readers were permitted to vote Globe-type ballot to express their desire for inclusion in either of the two units and to decide what representation they would select in that unit)

1760-9980 Placement of (other) employees in (subject) unit (by SIC category)

Century Moving & Storage, Inc. **251 NLRB No. 083**
(unit of warehousemen, local drivers and helpers *excluding* long haul drivers held appropriate where long haul drivers had little contact with local drivers, different compensation and mode of compensation from local drivers, as well as different seniority roster from local drivers)

Alumbaugh Coal Corporation **247 NLRB No. 112**
(welder with separate contract terminable at E's will included in unit of P&M Ees and truckdrivers at coal mine where unit Ees were also terminable at will, like welder took E's vehicles home, and had similar pay, hours and benefits)

Alumbaugh Coal Corporation **247 NLRB No. 112**
(Ee performing work both as mechanic and laborer at filling station and mine of coal miner included in unit of P&M Ees and truckdrivers at coal mine in view of same hours, supervisors, holidays and benefits, and notwithstanding his lease of apartment over E's office where two other Ees also occupied company-owned apartments)

ECM, Inc. **264 NLRB No. 141**
(unit limited to journeymen carpenters, rather than requested larger, mixed unit of carpenters and laborers comprising crews at construction project, appropriate, where journeymen carpenters are separately supervised, physically separated from crew carpenters by reason of their work which requires them to have, when hired, prior carpentry experience; on the other hand, crew carpenters are not skilled craftsmen, do not perform traditional carpentry work, and have interests and working conditions more closely aligned with laborers than with journeymen carpenters who admittedly constitute separate craft unit)

Ives Business Forms, Inc. **263 NLRB No. 36**
(warehouse clericals included in unit of warehouse Ees and truckdrivers as they spend considerable amount of time in warehouse performing typical warehouse functions such as counting merchandise and preparing specialty merchandise for packaging. Even at thier desks they are processing orders and tracing merchandise)

Dooley Equipment Corporation **JD-215-80**
(skilled part-time welder included in unit of mechanics and parts Ees notwithstanding has full-time employment elsewhere which he come to work when requested, used E's shop and equipment and occasionally worked with E's mechanics under same supervision)

Daylight Grocery Company, Inc. v. N.L.R.B. **678 F.2d 905 (C.A. 11, June 1982)**
(including baggers in unit of clerks and cashiers at grocery store was not abuse of discretion, since baggers' work was performed at checkout counter like cashiers' work and was closely integrated with cashiers' work; further, they shared same direct supervision, and other such units in area included baggers)

N.L.R.B. v. Holly's, Inc., d/b/a Holiday Inn South **644 F.2d 895(T) (C.A. 6, Jan 5, 1981)**
(exclusion of front desk porters and yardmen from unit of housekeeping Ees at motel w/i discretion of Bd since facts similar to other cases where unit composed of only housekeeping Ees held appropriate)

Bel-Air Bowl, Inc. **247 NLRB No. 093**
(babysitters and janitors excluded from unit of mechanics, pin chasers, and desk clerks at bowling alley and restaurant, in view of dissimilarity of job skills and functions and lack of contact and exchange of tasks with unit Ees)

Legal Action of Wisconsin, Inc. **261 NLRB No. 157**
(three attorneys involved with E's statewide programs providing legal services included in single-location unit consisting of staff attorneys, paraprofessionals, and office clerical Ees in view of their frequent substantial contact with unit Ees, their subjection to same terms and conditions of employment as other office attorneys, and their receiving some direction from office managing attorney and little, if any, direct supervision from individual at headquarters who was purportedly their supervisor)

Rosemount Center **248 NLRB No. 163**
(CETA Ees at E's child day care facility included in unit of E's regular Ees where substantial similarities in wages, fringe benefits, and working conditions of E's non-CETA and CETA Ees, and Ees' integrated positions in E's staff weigh heavily in affording CETA Ees representation in same unit as E's regular Ees; neither indefinite length of employment of, nor additional benefits available to, CETA Ees preclude finding that they share sufficient community of interest with E's regular Ees)

Rosemount Center **248 NLRB No. 163**
(home mothers employed by child day care facility, who provide day care services in their homes, held to have sufficient community of interest with E's regular Ees to be included in unit since they are integral part of E's

1760-9980—Cont.

operation, perform same infant care work as performed at E's facility, are trained along with other infant care Ees, and are similarly supervised)

Catholic Community Services 254 NLRB No. 090
(members of religious orders at E's center providing health, social and related services included in unit of professional and nonprofessional Ees, where they are subject to same terms and conditions of employment as other Ees, receiving same rates of pay, performing same job functions and being subject to same personnel policies)

Catholic Community Services 254 NLRB No. 090
(CETA Ees at E's center providing health, social and related services included in unit of professional and non-professional Ees where they are employed in same classifications as other Ees, are interviewed for employment in same manner as unit Ees, and are subject to same terms and conditions of employment w/o interference or control from CETA)

Montgomery County Opportunity Board, Inc. 249 NLRB No. 103
(Head Start program teachers and parent coordinators included in community action agency's E-wide unit absent evidence that they are supervisory or managerial, i.e., that they are on parent advisory council or that council controls program's personnel policies)

Montgomery County Opportunity Board, Inc. 249 NLRB No. 103
(project directors of Youth Community Conservation and Improvements Project held nonmanagerial and included in community action agency E-wide unit where their duties are specifically defined with little flexibility, they do not attend management meetings and are not involved in formulation of goals and policies)

Montgomery County Opportunity Board, Inc. 249 NLRB No. 103
(CETA Ees employed by nonprofit community action agency included in E-wide unit, notwithstanding limited durationof their jobs, in view of their community of interest with other unit Ees and E's attempts to place them elsewhere after their CETA jobs have run out)

1780 OTHER EMPLOYEE GROUPINGS

1780-4000 Fringe groups

1780-4050 Appropriateness of separate unit of fringe employees

1780-4050-3300 Previously unrepresented employees

United Parcel Service, Inc. 258 NLRB No. 030
(unrepresented clerks working in feeder and package areas at administrative headquarters of E's Metro Division included in unit which included operating center clerks of Metro Division since unrepresented clerks performed duties identical to operating center clerks)

1780-6000 Residual employee units

1780-6025 Identifying characteristics

Montgomery Ward & Co., Inc. 259 NLRB No. 041
(if they so decide in self-determination election, residual group of unrepresented office and warehouse clericals, inside sales Ees, and maintenance Ees may be included in traditional warehouse unit at nation-wide distribution center of general merchandiser, in view of common supervision and benefits, sales Ees were physically located in warehouse and maintenance Ees work in warehouse; petitioner represents existing unit of traditional warehouse Ees and no other labor organization seeks to separately represent various clerical, sales and maintenance Ees here involved who essentially constitute remaining unrepresented warehouse Ees)

1780-6050 Appropriateness of residual employees

1780-6050-0100 Generally

Bel-Air Bowl, Inc. 247 NLRB No. 003
(unit of mechanics, pin chasers and desk clerks excluding janitors and baby sitters at bowling alley and restaurant, appropriate rather than residual unit of all above Ees, in view of lack of sufficient community of interest of babysitters and janitors with mechanic, pin chasers, and desk clerks)

1780-6050-3300 Previously unrepresented employees

Montgomery Ward & Co., Inc. 259 NLRB No. 041
(if they so decide in self-determination election, residual group of unrepresented office and warehouse clericals, inside sales Ees, and maintenance Ees may be included in traditional warehouse unit at nation-wide distribution center of general merchandiser, in view of common supervision and benefits, sales Ees were physically located in warehouse and maintenance Ees work in warehouse; petitioner represents existing unit of traditional warehouse Ees and no other labor organization seeks to separately represent various clerical, sales and maintenance Ees here involved who essentially constitute remaining unrepresented warehouse Ees)

1780-8000 Voting groups

1780-8033 Identifying characteristics

The Folger Coffee Company 250 NLRB No. 001
(separate unit of *laboratory technicians* not appropriate where they are not technical Ees since they possess no special training and tests performed can be learned through short period of on-job training; furthermore, pay, benefits, work, working conditions and supervision same as for P&M Ees and plant clericals; appropriate voting group is one composed of laboratory technicians and unrepresented plant clericals)

1780-8067 Specific determination (by SIC category)

The Folger Coffee Company 250 NLRB No. 001
(separate unit of *laboratory technicians* not appropriate where they are not technical Ees since they possess no special training and tests performed can be learned through short period of on-job training; furthermore, pay, benefits, work, working conditions and supervision same as for P&M Ees and plant clericals; appropriate voting group is one composed of laboratory technicians and unrepresented plant clericals)

3300 MULTIPLE-LOCATION UNITS OF SINGLE EMPLOYER

3301 GENERALLY

*New England Telephone and Telegraph Company*8249 NLRB No. 165
(Bd found instant case distinguishable from cases cited by E in support of contention that RD's decision that less than systemwide unit wasappropriate was contrary to other recent Bd precedent involving E herein)

Magic Pan, Inc. v. N.L.R.B. 627 F.2d 105 (C.A. 7, 1980)
(Bd's decision on appropriateness of single restaurant of nation-wide chain being appropriate unit, not arbitrary or capricious where Bd's findings and conclusions were supported by substantial evidence and in accordance with law)

Alaska Statebank v. N.L.R.B. 653 F.2d 1285 (C.A. 9, Aug 1981)
(Bd has adopted in retail sales, industrial, insurance and banking industries, presumption that single store plant, office or branch is appropriate unit rather than E wide)

3325 CRITERIA OF APPROPRIATENESS

United Parcel Service, Inc. 258 NLRB No. 030
(upon review Bd found that 10 operating centers comprising Metro Division unit servicing one metropolitan area of nation-wide delivery service, rather than systemwide unit servicing 2 states including metropolitan area, supra, appropriate where: (1) Ees had common divisional supervision; (2) centers were geographically and administratively separate from all other of Ee's district centers; and (3) both interchange and bargaining history were absent among operating center clerks)

Hegins Corporation 255 NLRB No. 160
(single location unit of P&M Ees appropriate where department supervisors retain substantial autonomy to direct and discipline Ees and, after consultation with president, to discharge them; this factor was more significant then central record keeping or functional integration)

Tennessee Gas Pipeline, A Division of Tenneco, Inc. 254 NLRB No. 129
(unit limited to a district of gas transmission company held inappropriate, since individual districts (of which there are 37) are not major administrative subdivisions in view of high degree of control exercised by headquarters over daily operation of entire system, frequent transfer of Ees between districts and divisions, uniformity of wages, benefits, personnel policies applied to all Ees, and lack of substantial autonomy on part of district superintendents with respect to day-to-day personnel matters)

Beckett Aviation Corporation–Cleveland 254 NLRB No. 013
(unit of pilots at single E location rather than E wide unit of pilots encompassing all widely dispersed E locations, appropriate, where each location separately supervised by chief who is personally involved with daily matters that make up their grievances, no forms of communication exist among pilots at different locations, absence of any bargaining negotiations among Ees and no U seeks to represent Ees on broader bases and notwithstanding centralized personnel policies and highly intergrated operations)

Sears, Roebuck and Co. 253 NLRB No. 025
(one store, rather than 2-store unit, appropriate, notwithstanding claim that units had been merged by parties' conduct, where there was no evidence that parties had mutually agreed to extinguish separateness of units, in view of contract provisions covering both stores leading to inference that, despite negotiation of single contract, parties did not contemplate creating single unit; moreover, each store operated as self-contained unit with no operational interchange between them and, in absence of specific language to the contrary, inference cannot be drawn that parties agreed to extinguish separate units)

Purnell's Pride, Inc. 252 NLRB No. 018
(single plant unit rather than E-wide unit found appropriate where there exists: separate supervision, different job functions, lack of transfers and Ee contact and interchange, geographic separation of processing facility, distinct, and separate community of interest; other factors considered were lack of bargaining history and no other labor organization sought to represent E's Ees in broader unit)

3325—Cont.

N.L.R.B. v. J. W. Mays, Inc. **675 F.2d 442 (C.A. 2, Feb. 1982)**

(Bd's choice of single-store unit not arbitrary despite centrality of E's management and labor relations in view of geographic factor (Manhattan and Woodmere, Long Island), lack of E-wide unionization and lack of contact between Ees at different stores)

N.L.R.B. v. Purnell's Pride, Inc. **609 F.2d 1153 (C.A. 5, Jan. 1980)**

(where Bd determined that several locations of E's processing facility comprised separate bargaining units, ct remanded for further articulation of rationale as Bd failed to explore possibility that proposed unit fell w/i exception that single plant unit presumptively appropriate that exists when there is *functional integration with operations of other facilities to obliterate separate plant identity*)

3350 EMPLOYERWIDE UNITS

3350-2500 Separate firms as single employer

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**

(*truckdrivers* of various types and styles of trucks used by two Es comprising single E included in single appropriate unit despite their lack of interchange; lack of interchange was no different than lack of interchange of job functions between Ees in any two job classifications)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**

(Ees of E's two companies constituted single appropriate unit, in view of same skills, functions, working conditions and work situs; contention that Bd determination was erroneous as matter of law because Bd failed to consider whether new company's crew was accretion to existing crew, rejected, since issue was appropriateness of unit rather than accretion; contention that Bd must determine whether combined unit was only appropriate unit and, if not, any finding of accretion would be erroneous also rejected)

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. **676 F.2d 826**

(fact that two companies constitute *single employer* does not in itself define them as single bargaining unit)

3350-7500 Specific unit determination (by SIC category)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**

(E-wide unit of community action agency's Ees appropriate where E has centralized control over determination of terms and conditions of employment of all its Ees)

Wyandotte Savings Bank v. N.L.R.B. **669 F.2d 386 (C.A. 6, Jan. 1982)**

(Bd holding that bargaining unit appropriate reversed and enforcement of Bd order denied in case involving branch banks where banks are in close geographical proximity and minimal authority vested in branch managers; See *Wayne-Oakland Banks v. N.L.R.B.* 462 F.2d 666 (6th Cir. 1972))

Home Insulation Service, A Division of Sunstate Wholesalers **255 NLRB No. 050**

(unit of production and maintenance Ees at all branches of E which installed building insulation, appropriate, rather than at one branch, absent separate community of interests, in view of same pay and benefits, interchange and transfer of Ees among branches)

Hegins Corporation **255 NLRB No. 160**

(unit of Ees at one location eleven miles from other location of E engaged in manufacture of ladies clothing appropriate, in view of autonomous supervision in each plant, lack of significant Ee interchange, absence of bargaining history, and no labor organization seeks representation on broader basis)

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**

(single overall unit of two plants rather than two separate units of individual plants held appropriate, where both plants are owned and operated by signle integrated E, both manufacture women garments, share common supervision and common control of labor relations policy)

Pickering & Company (Local 810, Teamsters) **248 NLRB No. 099**

(unit of all production maintenance and warehouse Ees at two facilities of E which manufactures audio equipment rather than production maintenance and warehouse Ees at one facility since presumption of appropriateness of single plant unit rebutted where geographical separation minimized by frequent E furnished transportation and in view of high degree of production integration and common management of administrative and production matters common benefits and seniority, notwithstanding lack of day-to-day interchange of Ees)

Tennessee Gas Pipeline, A Division of Tenneco, Inc. **254 NLRB No. 129**

(unit limited to a district of gas transmission company held inappropriate, since individual districts (of which there are 37) are not major administrative subdivisions in view of high degree of control exercised by headquarters over daily operation of entire system, frequent transfer of Ees between districts and divisions, uniformity of wages, benefits, personnel policies applied to all Ees, and lack of substantial autonomy on part of district superintendents with respect to day-to-day personnel matters)

Big Y Foods, Inc. v. N.L.R.B. **651 F.2d 40 (C.A. 1, June 1981)**

(after considering relevant factors, NLRB's application of presumption under which it found that a meat department exists in multi-department retail food store and justifies determination that meat department is appropriate unit unless opponent proves that in particular circumstances it is not appropriate unit; presumption is substantive, not procedural, presumption and is rebuttable, not conclusive; it does no more than shift burden of proof)

Land Equipment Inc. **248 NLRB No. 098**

(E-wide unit of all E's Ees except office clericals of company renting construction equipment with operators to building contractors and company providing operators, which were found single E herein, appropriate where both companies use same pool of Ees regardless of which is nominal E on two-week job assignments)

3375 LESS THAN EMPLOYERWIDE UNITS

3375-0100 Generally

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**

(all general utility Ees at chain's single fast food operation, encompassing Ees engaged in food preparation and serving, cashiering, and cleaning up, rather than multi-facility unit, held appropriate, where Ees work under daily supervision of manager having total responsibility for operation of restaurant, assistant manager, and night shift manager, assigned solely to operation herein; no labor organization seeks to represent Ees in broader unit; and unit is consonant with parties' stipulation)

3375-1200 Less than citywide

N.L.R.B. v. Forest City Enterprises, Inc. **663 F.2d 34 (C.A. 6, Nov. 1981)**

(single store bargaining unit of multi-state retail store chain rather than two-store citywide unit appropriate in view of store manager's control of daily operations, lack of Ee interchange between stores and fact organization of Ees was attempted at only one store)

3375-1250 Specific determination (by SIC category)

Alaska Statebank v. N.L.R.B. **653 F.2d 1285 (C.A. 9, Aug 1981)**

(unit of Ees at single branch of bank rather than unit of Ees at all branches and headquarters of bank, appropriate, where branch was geographically isolated, local managers retained control over day to day Ee relations, and there was no significant amount of Ee interchange among branches; ct applied single-location unit presumption which it had approved for retail sales and held presumption had not been overcome by single facility's lack of meaningful identity)

3375-2500 City-wide

Associated Milk Producers, Inc. **251 NLRB No. 186**

(two-location unit rather than three-location unit of milk marketer held appropriate where two of E's facilities located in one city were only three miles apart while E's third, a leased facility, was in another city 32 miles away; Ees of two-location facilities had frequent contact and shared immediate supervision while Ees at third facility had, little frequent contact with other two facility Ees, separate immediate supervision, and separate seniority based upon prior employment withlessor)

3375-2580 Specific determination (by SIC category)

Alma Plastics Company **265 NLRB No. 065**

(P&M unit limited to one of two plastic products manufacturing plants located in city, inappropriate, even though plant utilizes production process distinct from second plant, since presumption of appropriateness of single-plant unit was rebutted by fact that plants are but 800 feet apart, both are engagaged in plastic compounds processing, and utilize Ees having similar skills; there is centralized administration for both plants; repair, maintenance and other services are supplied by requested plant unit Ees to other plant; and there is citywide seniority in layoffs; thus, plant involved constituted specialized production department of second plant)

Alma Plastics Company **265 NLRB No. 065**

(in finding presumption that single-plant P&M unit in one of two plants of plastic products manugacturer in city was appropriate to have been rebutted, Bd held facts of case herein showed more than just centralized administration, since personnel policy was formulated by triumvirate of plant and personnel managers which is exclusively responsible for hiring Ees at both plants, seniority for purposes of layoff and recall are E-wide, and Ees laid off from one plant may be recalled to other plant)

Beckett Aviation Corporation–Cleveland **254 NLRB No. 013**

(unit of pilots at single E location rather than E wide unit of pilots encompassing all widely dispersed E locations, appropriate, where each location separately supervised by chief who is personally involved with daily matters that make up their grievances, no forms of communication exist among pilots at different locations, absence of any bargaining negotiations among Ees and

3375-2550—Cont.

no U seeks to represent Ees on broader bases and notwithstanding centralized personnel policies and highly intergrated operations)

3375-3700 Metropolitan area (including multistate metropolitan areas)

3375-3750 Specific determination (by SIC category)

United Parcel Service, Inc. **258 NLRB No. 030**

(upon review Bd found that 10 operating centers comprising Metro Division unit servicing one metropolitan area of nation-wide delivery service, rather than systemwide unit servicing 2 states including metropolitan area, supra, appropriate where: (1) Ees had common divisional supervision; (2) centers were geographically and administratively separate from all other of Ee's district centers; and (3) both interchange and bargaining history were absent among operating center clerks)

Texas Electric Service Co. **261 NLRB No. 190**

(unit of all hourly paid Ees assigned to transmission and distribution departments in one of state public electric utility's six geographic divisions rather than systemwide unit appropriate, in view of autonomy in applying centralized personnel policy and conducting labor relations, few transfers or interchanges with other divisions, functionally integrated task of unit Ees, geographical discreetness, and separate community of interest)

White Castle System, Inc. **264 NLRB No. 043**

(single-store units found inappropriate where: commonality of job skills, terms, conditions of employment, significant amount of Ee interchange, centralized, uniform operating and personnel procedures, lack of autonomy over day-to-day labor relations at individual restaurants as shown by fact that district supervisors regularly visit stores to see if E's policies are being carried out, take corrective actions; close supervision of individual store's supervisor's disciplinary and other actions which are reversed regularly, foregoing combined with bargaining history in area-wide unit rebut presumption that single store unit appropriate)

Automobile Club of Michigan, Detroit Autobile Inter-Insurance Exchange; etc. v. N.L.R.B. **631 F.2d 82 (C.A. 6, 1980)**

(unit of salaried and commissioned sales and service representatives in all E's branch offices in *Detroit Metropolitan Area* found appropriate rather than all such Ees w/i State where such differences in pay scales, concentration of work force, interchangeability of Ees w/i Ees out of metropolitan area justify separateness of units; moreover certification will be upheld so long as unit is not inappropriate)

3375-5000 Less than statewide other than metropolitan area

New England Telephone and Telegraph Company **247 NLRB No. 161**

(where segment of E's statewide operation constitutes geographically cohesive unit w/i major administrative division of E's total operation, and manager of devision has authority to discharge Ees, unit sought by U appropriate for bargaining from standpoint of geography and administrative control)

3375-5050 Specific determination (by SIC category)

New England Telephone and Telegraph Company **258 NLRB NO. 175**

(requested unit of telephone company's district Ees, inappropriate, since unit is too narrow in scope, where district was one of two districts in company's dividison, hiring was centralized at single employment office for both districts, district managers have no authority to hire, terminate, or transfer Ees, requisitions for new Ees require approval of division manager, ees are not solely responsible for operations in entire State or division, there was significant Ee interchange with other districts, and district managers did not have sufficient control over requested Ees to find unit appropriate)

Big Y Foods, Inc. v. N.L.R.B. **651 F.2d 40 (C.A. 1, June 1981)**

(unit of Ees in most departments of E's 11 unrepresented retail stores held appropriate)

N.L.R.B. v. Fuelgas Company, Inc. **574 F.2d 529 (C.A. 6, Mar. 1982)**

(two particular offices together out of propane gas distributor's 16 offices in state held appropriate *single plant* unit inasmuch as they are only 14 miles apart and are under control of single branch manager whose policies apply equally at both locations)

Burns International Security Service, Inc. **257 NLRB No. 026**

(single-location units of guards found appropriate notwithstanding E has established centralized hiring and offsite training procedures, where individual site commanders exercise immediate direct supervision of day-to-day operations, have responsibility for personnel matters once applicant hired, guards at each location receive specialized training particular to site where they are employed and there is little Ee interchange)

Oklahoma Blood Institute, Inc. **265 NLRB No. 195**

(unit encompassing all five of E's facilities of E engaged in collecting, processing and distributing blood and blood products found inappropriate, notwithstanding Ees at all facilities shared common working conditions and product integration, where factors of permanent interchange, autonomous local supervision, and geographic separation weighed heavily against finding that Ees of two facilities must be included in unit with Ees at other locations)

Oklahoma Blood Institute, Inc. **263 NLRB No. 198**

(multilocation unit of Ees at three of the five facilities of E engaged in collecting, processing and distributing blood and blood products, rather than requested single facility unit, appropriate in view of integration of the three facilities; factors of common supervision and total functional dependency of small satellite location of one facility on the other facilities precluded finding that requested unit could constitute appropriate separate unit)

Legal Action of Wisconsin, Inc. **261 NLRB No. 157**

(single-location unit of attorneys, paraprofessionals, and office clerical Ees rather than E-wide unit found appropriate, in view of little direct supervision between E's coordinator and staff attorneys, substantial geographic distance between offices, autonomy in day-to-day matters, absence of interchange or transfer of Ees between offices, minimal contact between Ees at this location and Ees of other offices, and fact that local program committee established priority work for this office)

3375-6200 Statewide

3375-6250 Specific determination (by SIC category)

New England Telephone and Telegraph Company8249 NLRB No. 165

(requested unit of telephone utility's two business servicecenters located in New Hampshire held appropriate rather than systemwide unit ofE's 27 business service centers located in five New England states, where in addition to precedent and particular facts relied upon by RD, Bd relied on substantial degree of autonomy in day-to-day operations which local managers at the two centers possess; furthermore, subsequent to request for review herein, Bd has held that less than systemwide unit consisting of residential service center Ees at 12 locations in E's Western Division in Massachusetts was appropriate)

N.L.R.B. v. Living and Learning Centers, Inc. **652 F.2d 209 (C.A. 1, June 1981)**

(unit of E's Ees at single day care center rather than at all E's locations in state or at all of its locations in four states, appropriate; E did not show unit was *clearly not appropriate* and did not rebut presumption that single facility unit in chain of units is appropriate notwithstanding centralized administration of labor relations, since there is ct precedent that local manager need not have authority finally to decide collective bargaining issues for local branch unit to be appropriate, and director here had authority to resolve some of them such as discharge, disputes, hiring and working hours)

3375-7500 All locations in two or more states

3375-7550 Specific determination (by SIC category)

Purolator Courier Corp. **265 NLRB No. 086**

(unit of courier-guards limited to single terminal w/i E's south-central administrative region, held inappropriate in view of integration of operations and time-sensitive and secure delivery, overlapping supervision, frequent contact among all guards in region, uniformity of working conditions and broad authority of regional office over operations and labor relations)

N.L.R.B. v. Living and Learning Centers, Inc. **652 F.2d 209 (C.A. 1, June 1981)**

(unit of E's Ees at single day care center rather than at all E's locations in state or at all of its locations in four states, appropriate; E did not show unit was *clearly not appropriate* and did not rebut presumption that single facility unit in chain of units is appropriate notwithstanding centralized administration of labor relations, since there is ct precedent that local manager need not have authority finally to decide collective bargaining issues for local branch unit to be appropriate, and director here had authority to resolve some of them such as discharge, disputes, hiring and working hours)

3375-8700 Less than all locations in two or more states

3375-8750 Specific determination (by SIC category)

Atlanta Baking Company, Inc. **JD-288-80**

(bakery route salesmen at two locations in two states employed by successor E not accretion to successor E's E-wide unit of route salesmen but appropriate separate unit in view of their having sufficient operational separation to retain their separate identity)

Orkin Exterminating Company, Inc. **258 NLRB No. 102**

(unit of technicians at single location branch office of E providing pest control services, inappropriate, notwithstanding geographic distances between branch offices in district and presumptive appropriateness of single-facility unit, in view of broad authority of district manager over daily operations and labor relations of all branch offices w/i district, uniform working conditions and Ee skills, and substantial Ee interchange)

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car **260 NLRB No. 118**

(multi location unit of rental and service agents at E's airport car rental facility and office Ees at nearby office held appropriate, but Ees of facility in

3375-8750—Cont.

another state 85 miles away not included in unit in view of dissimilar working conditions and lack of community of interest)

5000 MULTIEMPLOYER UNITS (SEE ALSO 530-5700)

5033 IDENTIFYING CHARACTERISTICS

5033-6000 Employers associated in bargaining

The North American Soccer League, etc., et al. v. N.L.R.B. **613 F.2d 1379 (C.A. 5) (1980)**
(leaguewide unit of soccer clubs, appropriate notwithstanding substantial financial autonomy of individual clubs, where club-members of soccer league form, through the league, an integrated group with common labor problems and high degree of centralized control over labor relations)

5033-6020 Intent of employers

Artcraft Displays, Inc. **262 NLRB No. 151**
(single E, rather than multi-E, unit appropriate where Es clearly manifested intent not to be bound as group as evidenced by fact that there was no history of multi-E bargaining, during negotiations Es' spokesman clearly made known to all participants that Es were not bargaining as group, representatives of other Es also actively participated in negotiations, and each E entered into separate contracts containing recognition clauses stating that each individual E recognized U as exclusive Ee representative)

N.L.R.B. v. New York Typographical Union No. 6 **632 F.2d 171 (C.A. 2, 1980)**

6700 ADDITIONS OF GROUPS OF EMPLOYEES TO EXISTING UNITS

6701 GENERALLY

Weatherite Company, Inc. **261 NLRB No. 095**
(proposition that finding accretion to unit in construction industry is proper on ground that it is unwise to further *fractionalize* units in industry because it has been historically plagued with jurisdictional disputes and restrictive work rules is erroneous; rather, a fundamental consideration in determining accretion issue is to assure Ees fullest freedom in exercise of their Sec. 9(b) rights; moreover, Bd has intentionally treated industry differently because collective bargaining for Ee groups identified by function and by craft skills has proven successful and has become established accomodation to needs of industry and Ees)

Weatherite Company, Inc. **261 NLRB No. 095**
(Bd has followed restrictive policy in finding accretion because it forecloses Ees' basic right to select their bargaining representative; thus, no accretion was found to exist where, among Ees in new and existing unit, there was absence or infrequency of interchange, lack of common supervision and of physical, functional, and administrative integration; and no accretion was found where there were different skills and functions in the two groups, and there was history of exclusion of new Ees from existing unit)

Westwood Import Company, Inc. **251 NLRB No. 162**
(an accretion is by definition merely an addition of new Ees plus an already group of Ees so added to existing bargaining unit are regarded as part of that unit; in deciding whether new group of Ees is accretion to existing unit, Bd not only considers such factors as functional integration level of management control, similarity of working conditions, organizing history of Ee interchange, job skills, and physical separateness, but also gives special consideration to interests of unrepresented Ee in exercising their own right to self organization)

Westwood Import Company, Inc. **251 NLRB No. 162**
(Bd will not under guise of accretion, compel group of Ees, who may constitute separate appropriate unit, to be included in an overall unit w/o allowing those Ees opportunity of expressing their preference in secret ballot election or by some other election or by some other evidence that they wish to authorize U to represent them)

Westwood Import Company, Inc. **251 NLRB No. 162**
(where relevant considerations are not free from doubt as to whether or not Ees are accretion to existing unit, Bd and cts are in agreement that best way to resolve close question is through election process because accretion doctrine applied restrictively since it deprives Ees of opportunity to express their desires)

6725 SINGLE-LOCATION UNITS

6725-2500 Plantwide units

6725-2550 Specific determination

6725-2550-5300 Employees held to be accretion

Southwestern Bell Telephone Company **254 NLRB No. 082**
(*engineering clerks* not represented by any other labor organization accreted into company-wide unit of clerical Ees where after E reorganized company engineering department ceased to exist; engineering clerks are only unrepresented Ees in segment and have substantial community of interest with clerical Ees already in bargaining unit; accretion proper notwithstanding engineering clerks' job titles and duties had not changed in 20 years and, therefore, Bd does not usually allow classifications of Ees who have been historically excluded from unit to be accreted into unit)

6725-2550-6700 Employees held not to be accretion

Auto Processing Company and Auto Warehousing Company **258 NLRB No. 115**
(where body shop operations with Ees represented by two Us were transferred to body shop operations of another facility with overall unit represented by another U, no accretion found since (1) all body shop Ees may constitute appropriate unit in light of being in separate building and different type of work performed by other Ees; (2) transferred Ees have had long history of separate collective bargaining representation by different Us and under different agreements; and (3) larger number of transferred Ees would have representative changed by smaller number of body shop Ees represented by U for overall unit)

6725-5000 Plant subdivision units

6725-5050 Departmental units

6725-5050-5000 Specific determination

6725-5050-5033 Employees held to be accretion

J. C. Penney Company **252 NLRB No. 047**
(retail store's catalog sales department held accretion to existing unit of floor sales department Ees, where catalog sales Ees primarily performed sales and related functions, handled merchandise they sold,, dealt directly with customers, used same mechanical aids, and had same or comparable work shifts and other conditions as floor sales Ees represented by U and covered by E-U contract)

6725-5050-5067 Employees held not to be accretion

Massachusetts Electric Company (Local Union No. 12007, Steelworkers) **248 NLRB No. 008**
(Ees transferred from closed facility to, and co-mingled with similarly situated Ees covered by U contracts at, another of E's facilities, held not accretion to that contract, and qcr found since transferred Ees, although performing functions and duties similar to those performed prior to merger, had been represented previously by Us different from those representing Ees at merged location; transferred Ees continued to be subject of competing representational claims and none of Us involved herein represented overwhelming majority of Ees in units found appropriate)

6725-7500 Employee type or category units

6725-7505 Production employees unit

6725-7505-5000 Specific determination

6725-7505-5033 Employees held to be accretion

Mercury Marine Division of Brunswick Corporation **254 NLRB No. 146**
(process coordinators at corporation's marine division who operate electronically programmed automatic die-casting machines held accretion to existing plant-wide unit, where process coordinator position was established when electronically programmed system was installed; process coordinators, who originally were part of existing unit, work in same area as other unit Ees, share same responsibility for quantity and quality of products, and assist each other when trouble develops in their machines; and support personnel, who service both manual and automatic machines, are part of same unit and share same overall supervision)

6725-7505-5067 Employees held not to be accretion

Cannon Air Conditioning and Heating Co., Inc. and Yor-Tex, Inc. **252 NLRB No. 091**
(bin repair-men employed by company which is affiliated with E and performs repair work contracted by E, held not accretion to E's sheet metal workers represented by U where there is insufficient community of interest between bin repair Ees and sheet metal workers)

6725-7515 Production and maintenance employees unit

6725-7515-5000 Specific determination

6725-7515-5067 Employees held not to be accretion

Gould, Inc., Electrical Components Division **253 NLRB No. 035**
(P&M Ees of operation that relocated to facility where there was a certified P&M unit of another of E's operations held not accretion to certified unit; issue determined on facts that existed on date of U's demand for recognition, where whatever indicia of accretion existed at inception of relocated operation were counterbalanced by later events; favorable ratio of Ees of certified unit to Ees of relocated operation that initially obtained was reversed after short period; this, and development of separate lines of organization and supervision outweighed elements which beiefly favored finding of accretion)

6725-7567 Warehouse employees unit

6725-7567-5000 Specific determination

6725-7567-5067 Employees held not to be accretion

6725-7567-5067—Cont.

Westwood Import Company, Inc. **251 NLRB No. 162**
(after relocation E established warehouse function for first time and these newly hired warehouse Ees held not accretion to unit where warehouse Ees had different pay scales, performed different kind of work requiring different skills there was no interchange of Ee or contact between with unit Ees; notwithstanding warehouse Ees use same time clock, paid on same day, have same fringe benefit

6725-7574 Combined selling and nonselling personnel unit

6725-7574-8000 Specific determinations

6725-7574-8067 Employees held not to be accretion

Safeway Stores, Inc. **256 NLRB No. 146**
(Bd held, contrary to ALJ, that newly-established delicatessen department was not accretion to bakery department where many duties of delicatessen Ees were more similar to duties of Ees in meat department that in bakery department, there was no scheduled interchange between delicatessen and bakery Ees; and Bd gave little weight to factors stressed by ALJ since record clearly indicated that E consciously manipulated these factors for purposes of justifying its pre-hire recognition of favored U and preventing representation by a rival U)

6725-7583 Mechanics unit

6725-7583-8000 Specific determination

6725-7583-8033 Employees held to be accretion0323

N.L.R.B. v. St. Regis Paper Company **674d 104 (C.A. 1, Mar. 1982)**
(Bd did not abuse its discretion in determining that mechanics of new garage accreted to bargaining unit at headquarters several miles away, where work performed at each location was identical, mechanics from each location worked together at various jobsites, they were all under supervision of same person whose office was at headquarters, and hiring and firing at new garage were controlled from headquarters)

6725-7586 Seamen's unit

6725-7586-8000 Specific determination

6725-7586-8067 Employees held not to be accretion

Mac Towing, Inc., et al. **262 NLRB No. 168**
(where E acquired another company, Ees in newly acquired unit found not to be accretion to existing bargaining unit where there has been no interchange of vessels or Ees w/other affiliated companies and Bd will not compel group of Ees who may constitute separate appropriate unit to be included in overall unit without allowing Ees to express their preference)

6725-7591 Craft unit

6725-7591-8000 Specific determination

6725-7591-8067 Employees held not to be accretion

Weatherite Company, Inc. **261 NLRB No. 095**
(urethane foam roofers held not accretion to existing unit of built-up roofers where factors favoring accretion do not outweigh factors militating against accretion, since there is no interchange of Ees between foam and built-up divisions, methods and equipment used in application of foam are different from those used in built-up roofing, operations of the two divisions are virtually autonomous, and there is no indication that foam roofers share any more of a community of interest with built-up roofers than the latter share with separately represented sheet metal roofers)

6750 MULTIPLE-LOCATION UNITS OF SINGLE EMPLOYER

6750-3300 Employerwide units

The Arundel Corporation **252 NLRB No. 059**
(if new location may constitute a separate appropriate unit, Bd will not permit U to insist that its broad contractual recognition clause, purporting to cover *all* operations of E, whether or not in existence at time contract was executed, automatically blankets in Ees at new operation under guise of accretion; to do so would effectively disenfranchise Ees at new location thereby violating their appropriate unit rights under Sec. 9(b))

The Arundel Corporation **252 NLRB No. 059**
(since entire new unit could not be properly added as accretion to E's existing unit, there is no reason to suppose that portion of new unit can appropriately be severed and lumped into group with other of E's units with which it has no special affinity)

6750-3350 Specific determination

6750-3350-3300 Employees held to be accretion

Ford Brothers, Inc. **263 NLRB No. 011**
(new facility held accretion to existing bargaining unit where bargaining unit work was transferred to new facility and such facility was substantially manned by transferred bargaining unit Ees)

United Food Commercial Workers International Union, Local No. 1222, AFL-CIO, CLC(Fedmart Stores, Inc.) **262 NLRB No. 88**
(*SCORE* marking Ees found to be accretion to clerks unit rather than warehousemen's unit, where, prior to introduction of *SCORE* marking system, clerks inventoried and priced incoming merchandise and Ees represented by warehousemen unloaded trucks, counted pallets and staged merchandise and *SOCRE* marking Ees perform same basic functions as clerks bargaining unit Ees did under E's previous system, notwithstanding location of work changed from sales floor to remote marking area in backroom)

Arizona Public Service Company **256 NLRB No. 065**
(P&M Ees at nuclear power plant held accretion to existing systemwide P&M unit of public utility which operates several nonnuclear power plants in view of E's centralized labor relations policies, similarity of classifications and terms and conditions of employment with unit Ees, transfers of Ees, and history of bargaining on systemwide basis and notwithstanding Ees at nuclear plant receive some specialized training)

6750-3350-6700 Employees held not to be accretion

Save-It Discount Foods, Inc. **263 NLRB No. 097**
(new store not accretion to unit consisting of all of E's other stores notwithstanding stores sell same merchandise which is determined for stores by vice-president, have identical checkout machines, etc., use common pricing policy, clerical functions for stores performed centrally, joint advertising, infrequent Ee transfer, vice-president has over-all responsibility for labor relations where disputed store had substantial instore autonomy as managers had responsibility for scheduling, hiring, ordering, purchasing, discipline, there is minimal Ee interchange so presumptive appropriateness of single-store unit not rebutted)

General Instrument Corporation, Antone Systems Division **262 NLRB No. 140**
(Ees at E's two new operations found not to be accretions to existing unit where there is only minimal Ee interchange, facilities are separately supervised, no evidence of centralized control of labor relations, and one of new operations requires different mix of job classifications, and although this operation is short distance from one of existing units, its uniqueness requires that it be considered separate appropriate unit)

Mego Corp. and Samet and Wells, Inc. **254 NLRB No. 031**
(accretion of Ees in E's new plant which manufactured new line of stretch-skin dolls to Ees of unionized plants which manufactured toys, not appropriate, where there was no centralized personnel management department, common labor policy, Ee interchange or transfers, commonality of supervision, geographic proximity of plants, or community of interest)

Plumbing Distributors, Inc. (Teamsters, Local Union No. 70) **248 NLRB No. 054**
(notwithstanding ultimate common control and operation of new facility and existing facilities, new facility constituted separate appropriate unit and not accretion to existing facilities, where there was no interchange between Ees, day-to-day supervision was independent from other facilities, and contracts do not explicitly grant recognition to U for new operations established w/i its territorial jurisdiction)

6750-6700 Less than employerwide units

The Arundel Corporation **252 NLRB No. 059**
(if new location may constitute a separate appropriate unit, Bd will not permit U to insist that its broad contractual recognition clause, purporting to cover *all* operations of E, whether or not in existence at time contract was executed, automatically blankets in Ees at new operation under guise of accretion; to do so would effectively disenfranchise Ees at new location thereby violating their appropriate unit rights under Sec. 9(b))

6750-6750 Specific determination

6750-6750-6700 Employees held not to be accretion

King Radio Corporation **257 NLRB No. 070**
(E which granted U recognition, w/o proof of majority status for P&M Ees at one of its plants not covered by previously negotiated contract for its other plant violated Act where plant was not accretion to first bargaining unit; accretion not found for following reasons: (1) plant was in operation prior to time E recognized U at other plant, and (2) unit always excluded from coverage because U did not present proof of card majority)

The Arundel Corporation **252 NLRB No. 059**
(Ees of subsidiary herein found single E with parent corporation, which resurrected subsidiary to operate quarry held, in retail store context, not to constitute accretion to parent corporation's existing unit in view of separation of locations, lack of substantial interchange and contact between Ees at those locations, different character of work performed at both locations, and considerable authority of president of parent corporation over personnel policies of subsidiary)

Atlanta Baking Company, Inc. **JD-288-80**
(bakery route salesmen at two locations in two states employed by successor E not accretion to successor E's E-wide unit of route salesmen but appropri-

6750-6750-6700—Cont.

ate separate unit in view of their having sufficient operational separation to retain their separate identity)

Venture Stores, Inc. JD-81-80

(E which built distribution center to service both its previously owned and its newly purchased stores held not successor at distribution center to E from which it purchased stores, since purchaser neither employed majority of seller's Ees there on critical date nor was it perfectly clear that it would do so in future; moreover distribution center did not involve same location, plant, equipment, methods, service or customers as seller's distribution facility and its Ees were not accretion to unit of Ees employed at stores which were purchased)

6775 MULTIEMPLOYER UNITS

6775-5000 Specific determination

6775-5067 Employees held not to be accretion

Mac Towing, Inc., et al. 262 NLRB No. 168

(where E acquired another company, Ees in newly acquired unit found not to be accretion to existing bargaining unit where there has been no interchange of vessels or Ees w/other affiliated companies and Bd will not compel group of Ees who may constitute separate appropriate unit to be included in overall unit without allowing Ees to express their preference)

8300 SEVERANCE OF GROUPS OF EMPLOYEES FROM EXISTING UNITS

8325 SINGLE-LOCATION UNITS

8325-7500 Employee type of category units

8325-7562 Drivers (including driver-salesmen) unit

8325-7562-5000 Specific determination

8325-7562-5033 Severance permitted

Memphis Furniture Manufacturing Co. 259 NLRB No. 061

(unit of over-the-road truckdrivers who delivered furniture manufactured by E may, if they so desire, constitute separate appropriate unit for purposes of collective bargaining apart from historic P&M unit in which they were included where they did no plant work, did not load their trucks, had no contact with P&M Ees, spent 95% of worktime away from plant, had different hours, mode of pay, supervision from P&M Ees and, unlike local drivers, were subject to regulations of Department of Transportation)

460 DETERMINATION OF COMPOSITION OF UNIT

2500 DETERMINATIONS INCLUDING OR EXCLUDING EMPLOYEE JOB CATEGORIES FROM UNITS (SEE APPROPRIATE HEADING UNDER TYPE OF UNIT INVOLVED, UNDER 440-0000)

5000 EFFECT OF EMPLOYMENT CATEGORY, STATUS, OR TENURE UPON PLACEMENT IN A UNIT

5001 GENERALLY

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) **259 NLRB No. 037**

(U field representatives both at international and local level, and *Teamster* business agents, not managerial Ees notwithstanding they are charged with responsibility for executing U policies and representing U in dealings with Es and its membership. It follows that office personnel who assist business agents are not *managerial* either)

N.L.R.B. v. C & D Foods, Inc. **626 F.2d 578 (C.A. 7, July 1980)**

(ct agrees with Bd that because of exemption of *agricultural Ees*, it could not certify unit comprising all of E's hourly Ees)

5033 CATEGORY OR TYPE OF EMPLOYEE

5033-2500 Employees allied with management

Kenhin Charter Service, Inc. **250 NLRB No. 117**

(part time Ee who also was employed part time in home of E's president eligible, notwithstanding contention she was hired after ptn filed in expectation she would be anti-U; contention that she did not share sufficient community of interests with other Ees because of her association with owner's family as worker in household, rejected)

5033-2501 Generally

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) **259 NLRB No. 037**

(U field representatives both at international and local level, and *Teamster* business agents, not managerial Ees notwithstanding they are charged with responsibility for executing U policies and representing U in dealings with Es and its membership. It follows that office personnel who assist business agents are not *managerial* either)

N.L.R.B. v. H. M. Patterson & Son, Inc. **636 F.2d 1014 (C.A. 5, 1981)**

(E's contention that challenge to ballots of sons of E improperly sustained since sustained on basis of Section 9(b) where U had challenged ballots on basis of Section 2(3), rejected, in view of close relation historically between two sections, and absent abuse of discretion by Bd)

5033-2501-5000 Policy as to placement

N.L.R.B. v. H. M. Patterson & Son, Inc. **636 F.2d 1014 (C.A. 5, 1981)**

(factors to be considered in determining whether to include or exclude a blood related Ee from bargaining once under section 9(b) are *how high percentage of stock parent or spouse owns; how many shareholders are related to one another; whether shareholder is actively in management or holds supervisory position; how many relatives are employed as compared with total number of Ees; whether relative lives in same household or is partially dependent on shareholder; U activity of Ee; and overall ties and social activities of family involved*)

5033-2550 Nature of relationship

5033-2550-1200 Lessor

Alumbaugh Coal Corporation **267 NLRB No. 113**

(Ee who was also lessor of land being mined for coal to coalmining E held to have interest so aligned with management as to extinguish his community of interest with other Ees)

5033-2550-1700 Stockholder

Circle T. Corporation; Meat Man, Inc., d/b/a Royal T Meat **JD-(SF)-201-81**

(stockholder should be included in bargaining unit and was therefore properly included as backpay claimant in backpay specification where he had no effective voice in formulation and determination of corporate policy and he enjoyed no preferential treatment)

5033-2550-2900 Member of religious Order

Mercy Hospital of Buffalo **250 NLRB No. 136**

(where E's bylaws require that majority of board of trustees be member of religious order which ran hospital, and administrator also member of Order, member of that order found ineligible to vote as she is considered part of E and is fundamentally different from Ees in bargaining unit)

Mercy Hospital of Buffalo **668 F.2d 661 (C.A. 2, Jan. 1982)**

(fact that, pursuant to hospital's bylaws, hospital administrator and majority of its board of trustees were members of religious order that sponsored hospital was not sufficient ground alone to establish that such religious order controlled hospital and that member of such order who worked in hospital as clerk and enjoyed same terms and conditions of employment as lay clerks in unit was sufficiently different from them and so closely related to E that she should be excluded from unit)

5033-2550-3300 Child

Modern Manufacturing Company, Inc. **261 NLRB No. 078**

(individual who was son and nephew of owners of majority of E and son of manager and had special privileges, favorable working conditions and personnel information denied other Ees, found aligned with management and excluded from unit)

Modern Manufacturing Company, Inc. **261 NLRB No. 078**

(emancipated and economically independent daughter of officer and co-owner, who performs no managerial functions only duties like those of her fellow Ees found not aligned with management, included in unit)

Joseph J. Motter Co. **250 NLRB No. 161**

(son of E's vice president and manager did not share community of interest with other Ees)

Pandick Press Midwest, Inc. **251 NLRB No. 058**

(daughter of plant manager who also has title of *president* not eligible to vote in election and excluded from unit where she lives at home with her father, has more flexible shift schedule than other Ees and her easy access to management gives her status and area of interest distinct from other Ees)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**

(contention that sons, herein excluded from unit, were not employed by their father but by partnership entity owned by father and partner, and that prior Bd decision required GC to prove sons' *special status* for their exclusion, rejected; cited decisions do not relate to issue herein but primarily to Ees of corporations, Congress has definitively excluded child of owner from status of *Ee*, and father herein, sole operator of partnership because of partner's illness, was directly responsible for day-to-day operation of partnership's business)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**

(part-time Ee excluded from unit on basis of (a) family relationship where he was son of E's manager and half owner, lived at home with and was supported by his father and (b) *special status* on job where he was salaried, took time off at height of season, and was privy to personnel information unlike most Ees)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**

(Ee excluded from unit on basis of (a) family relationship where he was son of E's manager and half owner, derived his income from his employment with E, and lived in home purchased with loan from father and (b) *special status* on job where he was salaried, and received incentive pay and large open-ended loan from E unlike other Ees)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**

(Ee excluded from unit on basis of (a) family relationship as son of E's manager and half owner and (b) *special status* on job where he was salaried,

5033-2550-3300—Cont.

had keys to all areas of E, and had authority to sign checks, prepare work schedules, and take charge of produce company)

N.L.R.B. v. H. M. Patterson & Son, Inc. **636 F.2d 1014 (C.A. 5, 1981)**
(factors to be considered in determining whether to include or exclude a blood related Ee from bargaining once under section 9(b) are *how high percentage of stock parent or spouse owns; how many shareholders are related to one another; whether shareholder is actively in management or holds supervisory position; how many relatives are employed as compared with total number of Ees; whether relative lives in same household or is partially dependent on shareholder; U activity of Ee; and overall ties and social activities of family involved)*

N.L.R.B. v. H. M. Patterson & Son, Inc. **636 F.2d 1014 (C.A. 5, 1981)**
(sons of E who owned 20% of stock in company at which election held not eligible to vote since they were employed by parents and thus, under Section 2(3) of Act, not Ees of E; or alternatively ineligible under Section 9(b) as *closely aligned with management* where until recently they had been in college with large part of expenses paid by their father and had lived with their parents and in home owned by father)

5033-2550-5000 Husband or wife

United Supermarkets, Inc. **261 NLRB No. 179**
(supervisor's wife responsible for stocking grocery store's drug section included in store unit, notwithstanding that her position was unique in E's operation, where she does not exercise supervisory authority; unlike supervisory personnel, she was hourly paid and did not attend supervisory or managerial meetings; and there was no evidence that she received special privileges or benefits)

Riverside Community Memorial Hospital, Inc. **250 NLRB No. 166**
(registered nurse regularly scheduled on monthly schedule on *on-call* basis, eligible since she met test for Ee-wife of nonowning manager by not enjoying special status where her strictly *on-call* work schedule was not special in view of the number of hours she worked on prearranged and regular basis)

5033-2550-8300 Other type of relative

Modern Manufacturing Company, Inc. **261 NLRB No. 078**
(individual who was son and nephew of owners of majority of E and son of manager and had special privileges, favorable working conditions and personnel information denied other Ees, found aligned with management and excluded from unit)

Swanson-Nunn Electric Company **256 NLRB No. 131**
(84 year-old father of E included in unit where he works regular hours, paid only for hours he works, reports to manager of warehouse, is not stockholder, was never involved in business, notwithstanding he lives in his own home next door to his son's, since he is totally independent of his son and interests are more closely alligned with unit)

5033-5000 Confidential employees

5033-5001 Generally

The Washington Post Company **254 NLRB No. 014**
(pursuant to Act's specific exclusion of supervisors from unit and well settled rule excluding managerial and confidential Ees, Bd is required, when presented with an appropriate ptn or claim, to exclude positions from unit where inclusion of those positions would violate Act)

Stroock & Stroock & Lavan **253 NLRB No. 052**
(those who act in confidential capacity involving their E's labor relations, not those of another E)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(Ee who rendered general assistance to E's president held not confidential Ee, notwithstanding president was official who formulated and effectuated labor relations policies, since she was excluded form handling any matters related to labor relations policies inasmuch as president was assisted in these matters by another officer)

5033-5001-5000 Policy as to placement

Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C. **253 NLRB No. 054**
(Bd held law firm's clerical and support staff not *confidential* workers under *Bell Aerospace* and the *Taft-Hartley* legislative history, adhering to its traditional restrictive definition of confidential workers as individuals acting in confidential capacity to those Ees formulating, determining and effectuating management's labor relations policies for their own E)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(office clerical who served as secretary to credit manager held not confidential Ee since routine secretarial assistance to official who formulates and effectuates labor relations policies is not sufficient to warrant exclusion from unit as confidential Ee)

Hendricks County Rural Electric Membership Corporation v. N.L.R.B. **627 F.2d 766 (C.A. 7, July 1980)**
(Bd's finding that Ee was not confidential Ee not supported by substantial evidence where only standard applied was *labor nexus* and upon remand Bd did not reopen proceedings to take evidence under different *Bell Aerospace* 416 U.S. 267 (1974), standard)

N.L.R.B. v. Los Angeles New Hospital **640 F.2d 1017 (C.A. 9, Mar 3, 1981)**
(individual not confidential Ee where determination based merely on access to confidential information or typing of confidential labor relations memorandum; *Bd refrains from broad definition of confidential Ees because most Ees have arguably confidential relationship with management and because expensive application of exclusionary rule would deprive many Ees of right to bargain collectively)*

5033-5050 Identifying characteristics

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center **251 NLRB No. 206**
(secretaries to administrative heads which formulated labor relations policy held confidential Ees and excluded from unit)

5033-5050-0100 Generally

Air Express International Corporation v. N.L.R.B. **659 F.2d 610 (C.A. 5, Oct. 1981)**
(district manager's former secretary held non-confidential at time of discharge where all confidential duties were withdrawn at time ptn was filed, month earlier)

5033-5050-5000 Access to information regarding

Maidsville Coal Co., Inc. **257 NLRB No. 148**
(weight master in cool mining operation found not to be confidential Ee as business information he possessed was no different than that possessed by shipping and receiving clerks and other production clerks who have not lost their statutory protection)

5033-5050-5020 Labor relations

N.L.R.B. v. Hendricks County Rural Electric Membership Corp. **454 US 170 (U.S. SCt. Dec. 1981)**
(ct upheld Bd decision which held that only those confidential Ees with *labor nexus* are properly excluded from bargaining unit and rejected claim that all Ees with access to confidential information do not fall w/i definition of *Ee* in Section 2(3) of Act)

Lorimar Productions, Inc. **257 NLRB No. 150**
(objections to election on ground that production coordinators at motion picture and TV production facility should be excluded from appropriate unit since PCs were confidential Ees where they assisted and acted in confidential capacity to persons who formulated, determined, and effectuated management policies in field of labor relations)

Greyhound Lines, Inc. **257 NLRB No. 055**
(secretary to manager of maintenance and service center held not confidential Ee where manager did not formulate and determine management policies in field of labor relations; and secretary's access to personnel files, her typing of replies to correspondence, including that marked confidential, and her typing and filing of Ee evaluations, letters or notices concerning Ee personnel and disciplinary actions, letters from manager to U, replies to grievances, and manager's recommendations as to E's proposals for collective-bargaining agreements did not render secretary confidential Ee)

The Washington Post Company **254 NLRB No. 014**
(assistant manager of insurance in newspaper's insurance department held not confidential Ee where she does not have confidential relationship with vice president for labor relations; while she may calculate costs of various insurance programs, it does not mean she is privy to precise labor rates used by E's negotiating team; and her job of studying pension plans and calculating benefits for Ees under such plans, or future benefits, does not create such conflict or so closely align her with management as to mandate her exclusion from unit)

The Washington Post Company **254 NLRB No. 014**
(fact that night Ee relations manager in Ee relations department at newspaper discusses matters with executive vice president for labor relations does not mean he is assisting or acting in confidential capacity to persons who formulate, determine, and effectuate management policies in field of labor relations)

The Washington Post Company **254 NLRB No. 014**
(Bd looks not to the confidentiality of information, but to the confidentiality of the relationship between Ee and persons who exercise *managerial* functions in field of labor relations)

The Washington Post Company **254 NLRB No. 014**
(senior budget analyst in budget section of newspaper's accounting department held not confidential since mere access to information and compiling thereof does not convert Ee into one having confidential status; nor does his relationship to labor relations department make him confidential since much of information involved is available through public record, and more than just access to or dealing with E's labor relations aspects are required for finding confidential status; and E's claim of conflict of interest because of analyst's access to information was not bourne out by record)

5033-5050-5020—Cont.

The Washington Post Company **254 NLRB No. 014**

(payroll supervisor in newspaper's accounting department held not confidential Ee since his access to payroll information is insufficient to make him confidential Ee)

The Washington Post Company **254 NLRB No. 014**

(newspaper's editorial writer who also writes speeches for publisher and has worked on preparation of publisher's statements condering labor relations matters held confidential Ee)

ITT Grinnell **253 NLRB No. 077**

(secretary to assistant plant manager found confidential Ee and excluded from office clerical unit; manager has significant responsibility for formulation and effectuation of labor relations policy and she has sole responsibility for his filing and typing)

ITT Grinnell **253 NLRB No. 077**

(secretary to engineering supervisor whose job description contains no duties concerning personnel matters or formulation of labor relations policy and possibility of such duties only speculative found not confidential secretary and included in unit)

Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C. **253 NLRB No. 054**

(Bd held law firm's clerical and support staff not *confidential* workers under *Bell Aerospace* and the *Taft-Hartley* legislative history, adhering to its traditional restrictive definition of confidential workers as individuals acting in confidential capacity to those Ees formulating, determining and effectuating management's labor relations policies for their own E)

Pilgrim Life Insurance Company **249 NLRB No. 140**

(Ee who rendered general assistance to E's president held not confidential Ee, notwithstanding president was official who formulated and effectuated labor relations policies, since she was excluded form handling any matters related to labor relations policies inasmuch as president was assisted in these matters by another officer)

Raymond Baking co. **249 NLRB No. 156**

(challenge to ballot of *receptionist/typist/floater* sustained since such Ee acts in confidential capacity to person involved in formulating, determining and effectuating E's labor relations and is therefore confidential Ee)

Union College **247 NLRB No. 069**

(secretaries to divisional deans held confidential Ees where they have access to grievance files and E's notes relating to grievances and help with work in connection with labor relations functions of divisional deans)

N.L.R.B. v. Rish Equipment Company, a Subsidiary of Bluefield Supply Company, Inc. **687 F.2d 36 (C.A. 4, Sept. 1982)**

(secretary to branch manager of regional office held confidential Ee where manager supervised day to day operations of branch operating under general rules set by home office and was *in the thick of* all labor contract matters, including negotiations generally and grievances at branch; secretary has access to all files, types all out-going correspondence, including Ee grievances, and evaluations; and does all filing)

5033-5050-5040 Business and financial records

The Washington Post Company **254 NLRB No. 014**

(accounts payable supervisor in accounting department at newspaper held not confidential Ee since mere access to all of E's accounts does not make her confidential; her purported access to accounts of E's labor counsel does not involve confidential information as to render position handling such items confidential; and fact that she participated in computerization program does not make her confidential Ee even though she might have access to information regarding personnel changes)

The Washington Post Company **254 NLRB No. 014**

(operating statements clerk in newspaper's accounting department, who is responsible for input of journal vouchers to data processing department and for balancing outputs, held not confidential Ee; remote possibility that clerk could monitor management-labor policy by keeping track of pattern of top executives through evaluation of their expense accounts cannot be used to exclude Ee who otherwise performs unit work)

5033-5050-5060 Personnel records

Modern Manufacturing Company, Inc. **261 NLRB No. 078**

(individual who was son and nephew of owners of majority of E and son of manager and had special privileges, favorable working conditions and personnel information denied other Ees, found aligned with management and excluded from unit)

The Washington Post Company **254 NLRB No. 014**

(fact that Ee relations manager at newspaper has personnel files or discusses possible changes in procedures utilized for primarily mechanical Ees held not to render his position confidential)

The Washington Post Company **254 NLRB No. 014**

(accounts payable supervisor in accounting department at newspaper held not confidential Ee since mere access to all of E's accounts does not make her confidential; her purported access to accounts of E's labor counsel does not involve confidential information as to render position handling such items confidential; and fact that she participated in computerization program does not make her confidential Ee even though she might have access to information regarding personnel changes)

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**

(Ee found not to be confidential Ee and included in unit where she was hired as secretary, did general typing and only small amount of personnel work, including voter eligibility list)

5033-7500 Managerial employees

5033-7501 Generally

N.L.R.B. v. Yeshiva University **440 U.S. 906 (U.S. SCt, Feb 20, 1980)**

(faculty at university held to be managerial, not professional, Ees and outside jurisdiction of Bd)

New York Medical College **263 NLRB No. 124**

(faculty members, including physicians, Ph. D's, dentists, and registered nurses, who work 8 or more hours per week held not managerial Ees under *Yeshiva* criteria since governance of college rested with board of trustees, vice president and chief financial officer, president, dean, associate deans, and department chairmen)

Modern Manufacturing Company, Inc. **261 NLRB No. 078**

(emancipated and economically independent daughter of officer and co-owner, who performs no managerial functions only duties like those of her fellow Ees found not aligned with management, included in unit)

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) **259 NLRB No. 037**

(U field representatives both at international and local level, and *Teamster* business agents, not managerial Ees notwithstanding they are charged with responsibility for executing U policies and representing U in dealings with Es and its membership. It follows that office personnel who assist business agents are not *managerial* either)

The Washington Post Company **254 NLRB No. 014**

(pursuant to Act's specific exclusion of supervisors from unit and well settled rule excluding managerial and confidential Ees, Bd is required, when presented with an appropriate ptn or claim, to exclude positions from unit where inclusion of those positions would violate Act)

N.L.R.B. v. Yeshiva University **582 F.2d 686 (C.A. 2)**

(professional Ees may also be categorized as supervisory and managerial Ees ineligible for inclusion in bargaining unit)

5033-7550 Identifying characteristics

Cooperativa De Credito Y Ahorro Vegabajena **261 NLRB No. 161**

(loan collector who was paid minimum hourly wage, and punched clock like other Ees in unit, not listed as administrative/managerial Ee, and whose job was to collect delinquent accounts and set up payment schedules, not managerial, since he had very little discretion with regard to how this was done; he was supervised directly by administrator who approved payment schedules)

Thiel College **261 NLRB No. 004**

(unit of full-time faculty at college held managerial Ees and ptn dismissed, since faculty did not have professional interest apart from E and played large role in operating college, where it set requirements for admission and graduation, formulated curriculum and grading system, selected chairmen of departments subject to confirmation of academic dean and vice-president for academic services, was involved in setting course schedules and teaching loads and budgetary matters including faculty salaries and benefits, and effectively participated in faculty hiring, firing, promotion and tenure)

The Washington Post Company **254 NLRB No. 014**

(assistant art director in newspaper's photo and art department, not managerial, where he spends much of his working hours performing artist's work)

5033-7550-0100 Generally

N.L.R.B. v. Yeshiva University **440 U.S. 906 (U.S. SCt, Feb 20, 1980)**

(managerial Ees are defined as those who *formulate and effectuate management policies by expressing and making operative the decisions of their Es*; they must exercise discretion w/i or even independently of established E policy and must be aligned with management)

N.L.R.B. v. Yeshiva University **440 U.S. 906 (U.S. SCt, Feb 20, 1980)**

(faculty at university exercised managerial authority by virtue of their authority in academic matters being absolute; they decided what courses will be offered, when they will be scheduled, to whom they will be taught to, teaching methods, grading policies, class sizes, and matriculation standards; furthermore, while these decisions required use of independent professional judgment it does not take decision makers out of *managerial* status)

Bradford College **261 NLRB No. 081**

(division chairs at college held not managerial Ee, and included in faculty unit, notwithstanding chairs had written authority to prepare departmental budgets, evaluate appropriate faculty members, assign students to faculty

5033-7550-0100—Cont.

members for advice purposes, hire faculty and assign courses, where in actual practice academic dean had hired faculty members w/o consultation, overruled recommendations on faculty retentions, fired individuals as division chairs who had been elected division chairs by faculty, made appointment commitments for following academic year to faculty members prior to receiving division chair's evaluation)

Bradford College **261 NLRB No. 081**

(B.A. coordinators at college, most of whom also division charis, held not to be supervisors or managerial Ees and included in faculty unit, where each was regarded as faculty and spent insignificant amount of time in collateral functions)

Bradford College **261 NLRB No. 081**

(librarian and assistant librarian at college held not managerial Ees and included in faculty unit where did not spend more than 50% of their time supervising unit Ees, librarian's budget proposals had been reduced by academic dean, locks and keys to library were changed w/o prior consultation with librarian, academic dean and dean of students determined library hours)

Ithaca College **261 NLRB No. 083**

(full time faculty at college held managerial Ees and ptn dismissed, in view of their extensive authority to formulate and effectuate policies, absolute authority as to curriculum, determines academic policies, faculty hiring, tenure, budgetary matters and facilities planning)

Duquesne University of The Holy Ghost **261 NLRB No. 085**

(faculty members at law school held managerial Ees and ptn for unit of those faculty members dismissed where faculty exercised significant control over curriculum and hiring and tenure, established standards for admission, remaining in school and for graduation; faculty committee, against whose recommendation Dean had no authority to act, screened candidates for full-time faculty positions, faculty could veto hiring decision made by Dean, tenured faculty made recommendations regarding granting of tenure, notwithstanding faculty had no authority in terminations)

Drukker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. **258 NLRB No. 097**

(district advisors held not managerial Ees where their duties consisted of recruiting and training school boy and girl carriers, making collections from carriers, handling of customer complaints, and were subject to supervision and guidance by their supervisors)

The Washington Post Company **254 NLRB No. 014**

(newspaper's editorial writers held not managerial since their duties do not differ significantly from those of editorial writers whom Bd has found not to be managerial in the past)

5033-7550-2000 Formulation or effectuation of employer's policies

Lewis University **265 NLRB No. 157**

(Bd found faculty members were professional Ees w/i meaning of Sections 2(12) and 2(3) and also found under *Yeshiva* that faculty members, either as individuals or in their capacity as members of various committees, exercised independent judgment in routine discharge of their professional duties, but did not effectively formulate and effectuate policies of E; therefore, they were not excluded from coverage under Act as managerial Ees)

Lewis University **265 NLRB No. 157**

(faculty at university held not managerial Ees in view of fact that they do not exercise absolute or dominant authority in numerous critical areas including academic matters, hiring, tenure, sabbaticals, termination, and promotion; furthermore, although faculty members determined content of, and how to teach, courses, they did not decide grading policies, matriculation standards, academic calendars, or which students would be admitted or graduated; moreover, they did not determine size of student body, tuition to be charged, or location of school; finally, administration decision making authority was unequivocally articulated in management-rights clause)

Florence Volunteer Fire Department, Inc. **265 NLRB No. 134**

(full-time paid fire fighters held managerial Ees, notwithstanding U's contention that those on E's executive committee abstained from voting on wage and benefit matters, that E's bylaws could be amended to preclude conflict of interest, and that paid members would not likely exercise *effective control* over E's policies; Bd found lack of participation by members on executive committee regarding wages and benefits was of little significance, since every paid and unpaid member shared equal voice in management decisions)

Florida Memorial College **263 N.L.R.B. 160**

(faculty of private, nonprofit educational institution did not exercise managerial authority, notwithstanding E's assertion that administration arrived at its decisions after *consultation* with faculty members, since mere consultation did not give it effective control in formulating management policies; in contrast to situation in *Yeshiva*, faculty's authority in strictly academic matters was far from absolute and faculty exercised no substantial control in spheres beyond the strictly academic)

Florida Memorial College **263 N.L.R.B. 160**

(academic division chairpersons appointed by college president to oversee certain administrative functions in addition to teaching held not managerial, notwithstanding E's contention that academic council, of which chairpersons were members, *addressed* number of issues involving academic policy where there was no showing that in doing so, academic council generally made operative decisions; further, chairpersons' occasional recommendations regarding size of salary increase to be granted faculty members were made w/i established limits which were narrowly circumscribed by administration)

Cooperativa De Credito Y Ahorro Vegabajena **261 NLRB No. 161**

(two of 30 voting delegates in E's assembly of delegates, that rarely participate in affairs of E whose labor relations and day-to-day management are vested in E's board of directors, are not managerial, since assembly of delegates *minimally* participated in management of E w/o ability to *formulate or effectuate management policies by expressing or making operative* E's decisions; thus, there was no unprotected purpose in Ees striking in attempt to pursuade E to negotiate with two voting delegates who were members of U negotiating team)

Lorimar Productions, Inc. **257 NLRB No. 150**

(unit production managers at motion picture and TV production facility held managerial Ees where evidence did not establish any significant limitation on normal discretion exercised by UPMs when engaged in contract negotiations and settling grievances)

Pratt Institute **256 NLRB No. 175**

(unit of nonacademic administrative Ees at art institute, appropriate contrary to E's contention that Bd lacked authority under SCt's *Yeshiva* decision to find the unit appropriate, since U in *Yeshiva* sought a unit of ful-time faculty members who acted in truly collegial capacity to make decisions for the university, whereas unit here is composed of nonfaculty administrative Ees who carry out decisions made by higher authority; Bd does not believe that SCt in its *Yeshiva* decision intended to exclude from the Act's protection administrative Ees performing their duties in an institute of the type here)

The Washington Post Company **254 NLRB No. 014**

(advertising agency representative who acts as liaison for newspaper with advertising agencies which place ads in newspaper held not managerial; although he was involved in various business contacts on behalf of newspaper, he was not involved in setting of managerial policy)

The Washington Post Company **254 NLRB No. 014**

(co-op manager in newspaper's advertising administration department who is responsible for locating and bringing to attention of sales persons funds allocated by manufacturer or distributor for advertising cooperatively with local retailers held not managerial where he does not set management or advertising policy)

The Washington Post Company **254 NLRB No. 014**

(assistant market research manager in newspaper's research department which supplies information to other departments to assist in selling newspaper as advertising medium held not managerial, since mere gathering and study of information designed to increase E's advertising market does not show authority to formulate, determine, or effectuate E policy, or otherwise is closely related to management)

The Washington Post Company **254 NLRB No. 014**

(editor of travel subsection of newspaper, not managerial, where he is limited to predetermined number of pages and by budget determined by superiors or circumstances, and his exercise of judgment in purchasing free lance material and in deciding what trips to take does not amount to use of discretionary judgment in implementing or determining E policy)

The Washington Post Company **254 NLRB No. 014**

(participation by production editor on newspaper's night operations news desk on various quality control and production committees held not to reflect managerial status where committees are investigatory and informative in nature, and production editor does not set management policy or determine, formulate, or effectuate E's labor relations policy)

The Washington Post Company **254 NLRB No. 014**

(fact that night Ee relations manager in Ee relations department at newspaper discusses matters with executive vice president for labor relations does not mean he is assisting or acting in confidential capacity to persons who formulate, determine, and effectuate management policies in field of labor relations)

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**

(load dispatchers and their leadman employed by electric power cooperative not supervisors where they did not oversee work performed pursuant to their directions, did not use independent judgment in directing other Ees; any discretion they used in buying and selling power was insufficient to render them managerial Ees)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**

(Head Start program teachers and parent coordinators included in community action agency's E-wide unit absent evidence that they are supervisory or managerial, i.e., that they are on parent advisory council or that council controls program's personnel policies)

Montgomery County Opportunity Board, Inc. **249 NLRB No. 103**

(project directors of Youth Community Conservation and Improvements Project held nonmanagerial and included in community action agency E-wide unit where their duties are specifically defined with little flexibility,

5033-7550-2000—Cont.

they do not attend management meetings and are not involved in formulation of goals and policies)

The Trustees of Stevens Institute of Technology JD-(NY)-108-82
(regular full-time faculty at non-profit institution of higher learning awarding engineering and scientific degrees found managerial Ees in view of their decisive participation in all but monetary aspects of institution where they formulated curricula and its courses, determined academic structure, and were involved in selecting president, provost, department heads and teachers, awarding promotions and tenure and meeting building needs)

Dooley Equipment Corporation JD-215-80
(Ee in training period for managerial position with 6 months remaining in period working under close supervision of supervisor with little discretion to determine departmental policy not managerial Ee)

N.L.R.B. v. Yeshiva University 582 F.2d 686 (C.A. 2)
(full time faculty members excluded from unit as supervisory and managerial Ees where they exercised substantial and pervasive authority at particular university by recommending hiring, promotion, salary and tenure of faculty, adopting standards of admission, curruiculum, grading system, and graduation requirements; further, faculty was not acting on own behalf but rather on behalf of university, nor did fact decisions subject to ultimate authority of trustees preclude finding of managerial status where faculty's recommendations were effective)

Walla Walla Union-Bulletin, Inc. v. N.L.R.B. 631 F.2d 609 (C.A. 9, Oct. 1980)
(editor of editorial page of newspaper held managerial Ee, where his primary duty is to write editorials and edit other articles appearing in editorial page, he has responsibility for selecting syndicated columns and editorial cartoons, attends meetings with other members of editorial board that approves, by majority vote, editorial topics and his vote carries same weight as other members of board, all of whom are management representatives)

5033-7550-4000 Attendance at management meetings

Montgomery County Opportunity Board, Inc. 249 NLRB No. 103
(project directors of Youth Community Conservation and Improvements Project held nonmanagerial and included in community action agency E-wide unit where their duties are specifically defined with little flexibility, they do not attend management meetings and are not involved in formulation of goals and policies)

Walla Walla Union-Bulletin, Inc. v. N.L.R.B. 631 F.2d 609 (C.A. 9, Oct. 1980)
(editor of editorial page of newspaper held managerial Ee, where his primary duty is to write editorials and edit other articles appearing in editorial page, he has responsibility for selecting syndicated columns and editorial cartoons, attends meetings with other members of editorial board that approves, by majority vote, editorial topics and his vote carries same weight as other members of board, all of whom are management representatives)

5033-7550-6000 Authority to pledge employer's credit

The Washington Post Company 254 NLRB No. 014
(printing services supervisor in printing services section of newspaper's administrative services department which provides services for E's various functions held not managerial since ordering of supplies and repairs is not *pledging of E's credit,* nor is selection of services or training such managerial authority as to involve discretion or action outside E's guidelines which convert rank-and-file Ee into managerial Ee)

The Washington Post Company 254 NLRB No. 014
(credit supervisors in advertising account department at newspaper held not managerial where they follow guidelines set by E in liquidating or collecting advertising accounts; fact that they may on occasion grant extension of credit beyond $3000 guideline given them does not show management authority)

5033-7550-8000 Interests otherwise identified with management

Wordsworth Academy 262 NLRB No. 042
(teachers, psychologists, and therapists unit at private school participating in State educational plan for children with learning disabilities held appropriate, where they are Ees rather than managerial Ees since, unlike *Yeshiva University,* teachers are professional Ees whose decision making is limited to routine discharge of professional duties in assigned projects; and no basis exists for finding psychologists and therapists managerial, since they do not act beyond scope of their professional duties, and only treat students and advise teachers regarding convenient times to schedule classes so that they can arrange their appointments with students)

Wordsworth Academy 262 NLRB No. 042
(physical education faculty members at private school participating in State educational plan for children with learning disabilities included in professional faculty unit where, although physical department selects Ees to act as coaches and officials at games, such action is closer to making teaching assignments than it is to *hiring,* as contended by E; moreover, physical education faculty's recommendation of wage scale is not enough by itself to warrant excluding them as managerial Ees from faculty unit)

The Washington Post Company 254 NLRB No. 014
(commissioned sales manager in newspaper's retail advertising department held managerial, where he is management representative in his relationship with newspaper's commissioned sales agents, was almost solely responsible for interviewing and hiring initial complement of commissioned sales agents, and works with agents in approving credits, resolving problem accounts, training, and terminating hiring contract if agent violates it)

The Washington Post Company 254 NLRB No. 014
(sales development and training manager in newspaper's advertising administration department held managerial, where his planning and effectuation of incentive award programs and development of tactics, strategies, and promotions involved with awards created actual or potential conflict of interest which is factor to be considered in determining managerial status)

The Washington Post Company 254 NLRB No. 014
(special promotions manager in newspaper's advertising administration department held not managerial; fact that he primarily develops ideas does not *inherently* invest his position with managerial authority and, like a salesman, he is responsible for generating advertising by supplements or other promotions to be placed in newspaper; moreover, his alleged *policy implementations* are subject to complete review by managerial Ees)

The Washington Post Company 254 NLRB No. 014
(customer relations supervisor held not managerial; fact that he can authorize adjustments up to $2000 does not of itself dictate conclusion that he has managerial status since such decisions are made w/i guidelines prescribed by E, which are to be followed at all times)

The Washington Post Company 254 NLRB No. 014
(assistant home delivery managers, suburban and country traveling representatives, and assistant newstand and street sales managers in newspaper's circulation department held not managerial where they do not exercise own discretion with respect to significant management policy in performing their duties and do not independently enter into or cancel contracts nor commit E to number of persons used and to compensation they receive; fact that they make adjustments of credit, w/i prescribed guidelines and reviewed by higher management, for lost or damaged newspapers does not make them managerial)

The Washington Post Company 254 NLRB No. 014
(assistant night circulation managers in newspaper's circulation department held not managerial since their determination of order in which trucks run does not constitute managerial discretion but rather is more in nature of routine decision effectuating ultimate delivery to customer; moreover, their decision to order extra papers run, although committing E to expend more capital for its business, is not exercise of true managerial discretion)

The Washington Post Company 254 NLRB No. 014
(art director in newspaper's promotions department responsible for promoting advertising of newspaper held not managerial on basis of authority to use free lance artists, where their use is prescribed by E's budget, and little possibility of conflict exists because art director must decide whether to use unit Ee or free lancer since latter is used because of such factors as techniques or complexity, or availability of in-house artist)

The Washington Post Company 254 NLRB No. 014
(printing services supervisor in printing services section of newspaper's administrative services department which provides services for E's various functions held not managerial since ordering of supplies and repairs is not *pledging of E's credit,* nor is selection of services or training such managerial authority as to involve discretion or action outside E's guidelines which convert rank-and-file Ee into managerial Ee)

The Washington Post Company 254 NLRB No. 014
(assistant purchasing manager in newspaper's purchasing department held not managerial where, although he is able to commit E to purchasing stock items, he must conform to certain E guidelines and, on occasion, must clear decisions with higher department or company authorities)

The Washington Post Company 254 NLRB No. 014
(assistant manager of insurance in newspaper's insurance department held not managerial since she is not involved in training program leading either to higher management position or, failing that, having trainees leave newspaper; while she has secretary and office and participates in pension plan different from that of unit Ees, her functions regarding insurance programs are similar to those of other Ees; fact that she is well-educated and uniquely talented in her area of expertise does not convert her into managerial Ee; and her close relationship with department manager does not indicate managerial status)

The Washington Post Company 254 NLRB No. 014
(night Ee relations manager in newspaper's Ee relations department held not managerial where, although he is the only representative for Ee relations department during night hours, his functions are no different than those of various other Ees w/i department; fact that he may monitor various job aspects such as Ee records or employment problems does not convert what are otherwise rank-and-file duties to level of management duties)

5033-7550-8000—Cont.

The Washington Post Company **254 NLRB No. 014**
(manager of training and development in newspaper's Ee relations department held managerial where she has sole direction in performing and directing training programs which primarily involve management Ees)

The Washington Post Company **254 NLRB No. 014**
(accounts payable supervisor in accounting department at newspaper held not managerial where her approval of price discrepancies is w/i E's guidelines, and fact that she may have made recommendations concerning efficient use and implementation of automating accounts payable system does not make her managerial)

The Washington Post Company **254 NLRB No. 014**
(research consultants in advance systems research department at newspaper held managerial where their department is involved in special projects and planning which will affect jobs and utilization of equipment and other facilities for E's operation)

The Washington Post Company **254 NLRB No. 014**
(national assistant editor in newspaper's newsroom held not managerial where his control over out-of-town bureaus did not reflect managerial authority, there was no evidence that he prepared budget or was directly responsible for expenditures, and his relationship with stringers and free lancers did not indicate managerial status)

The Washington Post Company **254 NLRB No. 014**
(special projects editor who assists in developing story ideas for reporters on style desk which produces separate section of newspaper dealing with entertainment, society, travel, and food held managerial where he is responsible for project to study newspaper's style section, which encompasses proposals for revising style section and contains analysis which may lead to significant changes)

The Washington Post Company **254 NLRB No. 014**
(editor of newspaper's special subsection concerned with domestic arts, crafts, architecture, and the like, not managerial, since editor's authority to purchase free lance material and his planning on what stories will appear in section did not demonstrate managerial status, and there was no potential for conflict of interest with respect to whether a particular Ee will be permitted to write an article on company time since editor's superior made such decisions)

The Washington Post Company **254 NLRB No. 014**
(executive food editor and food editor for newspaper's food section, not managerial since their authority to hire free lancers does not make them managerial)

The Washington Post Company **254 NLRB No. 014**
(editor of newspaper's Sunday television suplement, not managerial, where his procurement of free lance material is highly structured and payment of free lance fees is fixed)

The Washington Post Company **254 NLRB No. 014**
(editor of newspaper's Sunday section which contains news analysis, in-depth articles, and editorial and op-ed pages, not managerial, since his payment for free lance work, or contracting with writers to prepare articles for section is not sufficiently managerial in nature)

The Washington Post Company **254 NLRB No. 014**
(deputy financial editor on newspaper's financial desk, not managerial; although involved in expansion plans for financial desk and changes in newspaper's financial section, he did so at behest of his superior and, while he may have desired and urged such changes, he was not managerial entity determining whether they would go into effect)

The Washington Post Company **254 NLRB No. 014**
(function of librarian in newspaper's research department in purchasing books held not to form basis for finding him managerial since that is part of librarian's job and is limited by budget restraints; authority to exercise considerable discretion does not render Ee managerial where decisions must conform to established policy)

The Washington Post Company **254 NLRB No. 014**
(foreign editor on newspaper's foreign desk who oversees daily operations of desk, held managerial, where he oversees daily operation of desk and, while his superior controls overall operation of foreign department, foreign relations editor daily insures smooth operation of desk)

The Washington Post Company **254 NLRB No. 014**
(deputy (day) foreign editor on newspaper's foreign desk held not managerial, since mere fact that he may play part in deciding what will oppear in newspaper is insufficient to demonstrate managerial status; moreover, he is subordinate to foreign editor in maintaining frequent contact with correspondents, and his relationship to assistant foreign editors does not provide basis for his exclusion)

The Washington Post Company **254 NLRB No. 014**
(swing editor on newspapers night operations news desk held not magerial since his decision as to news worthiness of story and its placement in news section are not *policy* decisions but rather a reflection of purely journalistic judgment as to probable importance of particular story and technical judgment as to placement of story so as to insure reader's attention)

The Washington Post Company **254 NLRB No. 014**
(late night editor on newspaper's night operations newsdesk held not managerial where he shares similar duties with other editors on newsdesk who are not managerial Ees)

Walla Walla Union-Bulletin, Inc. v. N.L.R.B. **631 F.2d 609 (C.A. 9, Oct. 1980)**
(editor of editorial page of newspaper held managerial Ee, where his primary duty is to write editorials and edit other articles appearing in editorial page, he has responsibility for selecting syndicated columns and editorial cartoons, attends meetings with other members of editorial board that approves, by majority vote, editorial topics and his vote carries same weight as other members of board, all of whom are management representatives)

5067 STATUS OR TENURE OF EMPLOYEE

5067-0100 Generally

5067-0140 Illegal aliens

Duke City Lumber Company, Inc. (UBC Texas Council of Industrial Workers, UB of C & J of A., AFL-CIO) **251 NLRB No. 012**
(status as illegal alien not grounds for exclusion from bargaining unit)

5067-0150 Retirees

Powman-Lawrence, Inc. d/b/a Belt Supermarket **260 NLRB No. 017**
(in absence of strike, retired individual would not be regarded as Ee and would be ineligible to vote)

5067-1400 Apprentices and trainees

United States Steel Corporation **248 NLRB No. 090**
(Ees who attended E-sponsored summer school to prepare for Coast Guard licensing examination held to have remained in bargaining unit of ship's unlicensed personnel while they were attending shcool; Es intended students to remain in unit where guidelines provided that students receive wages and benefits as though on ship, they could return to their unit if they did not pass examination, they were not required to resign from U, and U dues were deducted on their return to unit work)

5067-1450 Criteria relevant to placement

N.L.R.B. v. Steven Davis and Michael Provenzano, d/b/a Carlton's Market **642 F.2d 350 (C.A. 9, Apr 20, 1981)**
(management trainee with special status more closely aligning him with management than with Ees, properly excluded from unit)

5067-2800 Employees anticipating change in status or tenure

5057-2801 Generally

Montgomery Ward & Co., Inc. v. N.L.R.B. **668 F.2d 291 (C.A. 7, Dec. 1981)**
(a person who has no reasonable expectation of future employment as of date of U recognition demand cannot be considered to be an *Ee* w/i meaning of Act for purposes of determining majority status; *reasonable expectation of employment* standard includes two elements that must be satisfied before an Ee's card may be counted: a subjective element - the Ee's intent or expectation - and an objective element - the reasonableness of the expectation)

Montgomery Ward & Co., Inc. v. N.L.R.B. **668 F.2d 291 (C.A. 7, Dec. 1981)**
(ct determined that since two Ees never returned to their job after holiday then it could be inferred that they abandoned their job as of day after holiday and thus were not Ees on date of U demand nor should authorization cards signed by them be counted in determining whether U had support of majority of Ees on that date; fact that Ee who has abandoned his job is still carried on E's records is not sufficient to make that person an *Ee* as matter of law)

5067-2850 Criteria relevant to placement

Wright Plastic Products, Inc. **247 NLRB No. 101**
(Ee who had given E notice that he would be quitting to enter Navy in 1 month considered regular full-time Ee notwithstanding he has tendered his resignation)

5067-4200 Regular part-time employees

Artcraft Displays, Inc.; et al. **263 NLRB No. 117**
(upon mtns for clarification stating that there were several interpretations of prior Bd decision regarding which part-time Ees were eligible to vote, Bd deleted language in unit descriptions defining part-time Ees as those *with over 1,000 hours seniority* since it had appeared in unit descriptions inadvertently; *1,000 hour* seniority requirement should be included as alternative eligibility formula, since no party objected to such requirement at hearing, or subsequently)

5067-4201 Generally

5067-4201—Cont.

Century Moving & Storage, Inc. 251 NLRB No. 083

(local driver working regularly for E while he was on vacation from his railroad job; not casual Ee and included in unit)

5067-4250 Criteria relevant to placement

Rich's Precision Foundry, Inc. 262 NLRB No. 081

(full time college student who was brother of E's manager and worked part-time at foundry as maintenance helper and electrician during school year, and full time during summer, and who had been laid off and then recalled on election day, included in unit and eligible to vote, since regularly employed during relevant period, and absent evidence ineligible for recall or had no reasonable expectation of recall)

Ed Chandler Ford, Inc. 254 NLRB No. 082

(Ee at automobile dealership who regularly worked substantial number of hours for E as part-time salesperson included in unit of full-time salespersons, where they share same supervision and method of compensation)

Dooley Equipment Corporation JD-215-80

(skilled part-time welder included in unit of mechanics and parts Ees notwithstanding has full-time employment elsewhere where he came to work when requested, used E's shop and equipment and occasionally worked with E's mechanics under same supervision)

N.L.R.B. v. Boston Beef Co., Inc. 652 F.2d 223 (C.A. 1, July 1981)

(test for *community of interest* standard for allegedly regular part-time Ee includes consideration of whether Ee: (1) worked at regularly assigned hours during substantial number of hours per week; (2) performed duties similar to those of unit Ees; and (3) shared same supervision, working conditions, wages, and fringe benefits as did unit Ees)

N.L.R.B. v. Boston Beef Co., Inc. 652 F.2d 223 (C.A. 1, July 1981)

(student Ee hired for display work not reguarded as regular part-time Ee where: his display work was performed at remote location under supervision of non-unit Ee; he was paid flat weekly salary rather than hourly wage for display work; Ee had no contract with unit Ees while doing display work; and additional loading work done by Ee for E not done on regular basis)

5067-4500 Students

Rich's Precision Foundry, Inc. 262 NLRB No. 081

(full time college student who was brother of E's manager and worked part-time at foundry as maintenance helper and electrician during school year, and full time during summer, and who had been laid off and then recalled on election day, included in unit and eligible to vote, since regularly employed during relevant period, and absent evidence ineligible for recall or had no reasonable expectation of recall)

Comet Corporation 261 NLRB No. 188

(college student hired temporarily for summer excluded from unit of production and maintenance workers at manufacturer and distributor of semi trailers and van bodies, notwithstanding he inquired about permanent employment when unable to return to college)

Century Moving & Storage, Inc. 251 NLRB No. 083

(full time college student who worked only 25 hours during first month of 3-month period prior to election, *not* included in unit)

Century Moving & Storage, Inc. 251 NLRB No. 083

(college students who perform full-time unit work during summer months as well as part-time unit work on regular basis during remainder of year, included in unit)

Century Moving & Storage, Inc. 251 NLRB No. 083

(student who works only during summer months excluded from unit)

5067-4501 Generally

Jacques Syl Knitwear, Inc. 247 NLRB No. 191

(college student who was employed for two months during summer and then returned to college not eligible to vote since temporary and casual Ee particularly absent evidence he would continue employment with E)

5067-4550 Criteria relevant to placement

Sharondale Corporation 262 NLRB No. 158

(full time students who worked on internship basis earning college credit while they worked, and who were not given all privileges and benefits accorded full-time Ees lacked sufficient community of interest to be included in unit since employment incidental to education)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility 260 NLRB No. 073

(excluded from P&M unit where student worked for 4 to 6 hours per day as draftsman for E *depending on classes* as part of *work co-op program,* reported directly to plant manager in whose office he worked and received no *fringe benefits*)

Century Moving & Storage, Inc. 251 NLRB No. 083

5067-4900 Employees performing dual functions

5067-4901 Generally

Sunray Ltd. 258 NLRB No. 072

(election not barred by previous 8(f) relationships with dual-function Ees where competing Us did not represent majority in unit in that some work of Ees fell w/i jurisdiction of each U and thus neither U could claim 9(a) relationship; therefore Bd directed election in unit covering all Ees, giving Ees a choice to be represented by one of the two rival Us or no U)

5067-4950 Criteria relevant to placement

Wilson Engraving Company, Inc. 252 NLRB No. 048

(inclusion of dual-function Ees in unit of city-drivers employed by manufacturer of photographic plates and color separations, appropriate where they performed similar delivery and pickups as included drivers during substantial portions of their working time; furthermore, these Ees shared community of interest in unit's wages, hours, and working conditions)

Wilson Engraving Company, Inc. 252 NLRB No. 048

(dual-function Ees excluded from unit of city-drivers employed by manufacturer of photographic plates and color separations, where driving duties occupy less than twenty-five percent of their working time, thus lacking sufficient community of interest to warrant inclusion)

5067-5600 Seasonal employees

5067-5650 Criteria relevant to placement

Tomy Corporation, A Wholly Owned Subsidiary of Tomy Kogyo, Inc. v. N.L.R.B. 667 F.2d 1032 (C.A. 9, Dec. 1981)

(ct upheld Bd's determination that seasonal Ees with only a day of service with E were eligible to vote, but in ct's view whether seasonal Ees who have minimal time of employment with company can be said to have substantial mutual interest with permanent Ees in working conditions is questionable; however ct's review of a Bd determination that particular bargaining unit is appropriate is narrowly circumscribed; and here ct did not find abuse of discretion by Bd, and Bd's other factual findings were supported by substantial evidence)

5067-7000 Temporary employees

5067-7001 Generally

Comet Corporation 261 NLRB No. 188

(college student hired temporarily for summer excluded from unit of production and maintenance workers at manufacturer and distributor of semi trailers and van bodies, notwithstanding he inquired about permanent employment when unable to return to college)

Jacques Syl Knitwear, Inc. 247 NLRB No. 191

(college student who was employed for two months during summer and then returned to college not eligible to vote since temporary and casual Ee particularly absent evidence he would continue employment with E)

5067-7050 Criteria relevant to placement

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility 260 NLRB No. 073

(temporary Ees excluded from unit of regular P&M Ees where they were informed, when hired, their job was only temporary and they acknowledged in writing they were to work only temporarily and as temporaries, they would receive no Ee benefits supplied E's permanent Ees; they were excluded from across-the-board wage increase granted to regular Ees, and had no reasonable expectation of recall when they were terminated)

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. 255 NLRB No. 098

(temporary Ee excluded from unit where clear that his employment had not been for indefinite period and it appeared there was no likelihood his employment would resume)

Montgomery County Opportunity Board, Inc. 249 NLRB No. 103

(CETA Ees employed by nonprofit community action agency included in E-wide unit, notwithstanding limited durationof their jobs, in view of their community of interest with other unit Ees and E's attempts to place them elsewhere after their CETA jobs have run out)

Rosemount Center 248 NLRB No. 163

(CETA Ees employed at E's child day care facility held not temporary Ees; fact that CETA grant might expire and not be renewed does not necessarily make Ees involved under such grant temporary; CETA Ees, like all of E's Ees, are dependent upon exigencies of revenues from Federal, State, and municipal sources which are generally reviewed annually; and even if grant is not refunded, some CETA workers could reasonably expect continued employment because E's contract with prime sponsor required E to make good faith effort to place at least half of CETA Ees in permanent positions)

5067-7700 Intermittent, occasional, or casual employees

5067-7701 Generally

5067-7701—Cont.

Century Moving & Storage, Inc. 251 NLRB No. 083
(local driver working regularly for E while he was on vacation from his railroad job; not casual Ee and included in unit)

Jacques Syl Knitwear, Inc. 247 NLRB No. 191
(college student who was employed for two months during summer and then returned to college not eligible to vote since temporary and casual Ee particularly absent evidence he would continue employment with E)

5067-7750 Criteria relevant to placement

Quick-Lahmann Express, Inc. 262 NLRB No. 021
(individual listed as *extra roster driver* at E engaged in forwarding freight by truck held casual Ee and excluded from unit of all full time and regular part-time driver salesmen and dispatchers and excluding casual drivers pursuant to stipulation, in view of difference in wages and benefits, and fact he worked irregularly during relevant period with no expectation of transfer to regular roster or continued employment on extra roster)

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car 260 NLRB No. 118
(Ee who worked irregular hours auditing E's books, usually at night, did not interchange with and had little contact with other Ees was found casual Ee and excluded from unit of service agents and office Ees at E engaged in airport in rental service)

Lifemark Hospitals of Texas, Inc. d/b/a Mid-Jefferson County Hospital 259 NLRB No. 103
(regular part time Ees included in unit where they worked substantial number of hours on regular work, performed same work under same conditions and supervision as unit Ees)

Clifford Cook, d/b/a Pinnacle Company and Pinnacle Roofing Co., Inc. JD-(SF)-196-79
(various friends of sons of owner who were employed from time to time by E not included in unit of all Ees of E who work w/i job classifications covered by contract between E and Us, since they were casual Ees)

Dooley Equipment Corporation JD-215-80
(skilled part-time welder not included in unit where he only worked 15 hours in quarter preceeding election)

Justak Brothers and Company, Inc. v. N.L.R.B. 664 F.2d 1074 (C.A. 7, Nov. 1981)
(Bd properly excluded part time Ees from unit where their employment was on sporadic, intermittent basis)

5067-8200 On call employees

Riverside Community Memorial Hospital, Inc. 250 NLRB No. 166
(registered nurse regularly scheduled on monthly schedule on *on-call* basis who worked approximately 6 hours per week in 14 weeks preceding eligibility date, eligible since she met both test for *on-call* Ees by working average of 4 hours per week in pre-eligibility-period quarter and test for *on-call* registered nurses by working 30 hours in 11-week period)

5067-8400 Employees on layoff or leave-of-absence status

Price's Pic-Pac Supermarkets, Inc. 256 NLRB No. 123
(new Ee who worked a short time, made many mistakes and was laid off indefinitely until such time as she might possibly be recalled and trained further, excluded from unit for lack of reasonable expectancy of further employment)

Price's Pic-Pac Supermarkets, Inc. 256 NLRB No. 123
(unit Ee absent due to injury with reasonable expectancy of continued employment upon recovery, included in unit)

5067-8450 Criteria relevant to placement

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility 260 NLRB No. 073
(Ee on pregnancy leave on dates U demanded recognition and who later returned to work, included in unit)

Justak Brothers and Company, Inc. v. N.L.R.B. 664 F.2d 1074 (C.A. 7, Nov. 1981)
(Bd properly included 4 Ees in unit who had left E's employ where they had been employed on demand date for 4 months and continued to work until 1 month after demand date and no evidence to show these Ees were hired to work only until definite termination date)

5067-9100 Employees of another employer

5067-9150 Criteria relevant to placement

Justak Brothers and Company, Inc. v. N.L.R.B. 664 F.2d 1074 (C.A. 7, Nov. 1981)
(driver Ees of one E not included in unit of driver Ees of another E though both companies owned and controlled by same individuals where separate supervision, performed different work, drove different trucks, no transfer or exchange of duties, no similarity in pay structure)

N.L.R.B. v. Steven Davis and Michael Provenzano, d/b/a Carlton's Market 642 F.2d 350 (C.A. 9, Apr 20, 1981)
(individual who was essentially a pricing expert working for prior owner of company rather than for company itself properly excluded from unit)

5067-9900 Other employees

United Supermarkets, Inc. 261 NLRB No. 179
(Ee who worked in grocery store's *check office* included in store unit, where her sole duties were to make telephone calls, type and mail letters, all with reference to bad checks; there was no evidence that her position had anything to do with security, that her duties were those of confidential Ee, or that she had no community of interest with unit Ees; and GC's alleged unit description neither included nor excluded office Ees; and while U would exclude Ee as plant clerical, plant clericals are included in P&M unit unless excluded by agreement)

Teamsters Local Union No. 574, a/w Teamsters (Lois Wheeler, an Individual) 259 NLRB No. 037
(U field representatives both at international and local level, and *Teamster* business agents, not managerial Ees notwithstanding they are charged with responsibility for executing U policies and representing U in dealings with Es and its membership. It follows that office personnel who assist business agents are not *managerial* either)

Avon Products, Inc. 250 NLRB No. 141
(*reserve employees* who have worked 4 or more hours per week in 9 out of 13 weeks preceding issuance of RD decision, eligible)

5067-9950 Criteria relevant to placement

Cincinnati Association For The Blind v. N.L.R.B. 672 F.2d 567 (C.A. 6, Mar. 1982)
(Bd's certification of P&M unit including both sighted and visually handicapped Ees, not abuse of discretion where Bd found differences between them as to discipline and wage structure insufficient to affect unit's appropriateness)

7500 EMPLOYEE CATEGORIES EXCLUDED FROM UNIT BY STATUTORY DEFINITION (FOR DEFINITIONS, SEE 177-0000)

7550 TYPES OF EMPLOYEES AFFECTED BY STATUTE

7550-1200 Agricultural laborers

N.L.R.B. v. C & D Foods, Inc. 626 F.2d 578 (C.A. 7, July 1980)
(ct agrees with Bd that because of exemption of *agricultural Ees*, it could not certify unit comprising all of E's hourly Ees)

7550-7500 Relatives of management

Joseph J. Mottin Co. 258 NLRB No. 161
(son of E's vice president and manager did not share community of interest with other Ees)

Clifford Cook, d/b/a Pinnacle Company and Pinnacle Roofing Co., Inc. JD-(SF)-196-79
(sons of owner)

7550-8700 Supervisors

Teamsters Local Union No. 574, a/w Teamsters (Lois Wheeler, an Individual) 259 NLRB No. 037
(discharge of supervisor for U related considerations held violative, since discharge caused interference with rights of other Ees)

Clifford Cook, d/b/a Pinnacle Company and Pinnacle Roofing Co., Inc. JD-(SF)-196-79

470 HEALTH CARE INSTITUTION UNITS

0100 GENERALLY (FOR DEFINITIONS OF HEALTH CARE INSTITUTIONS SEE 177-9700-0000-0000)

St. Francis Hospital **265 NLRB No. 120**

(physicians, RNs, other professional Ees, technical Ees, business office clerical Ees, service and maintenance Ees, and skilled maintenance Ees represent groupings of Ees that *may* constitute appropriate units for bargaining. Only after determining that unit sought fits one of thse classifications does Bd apply traditional unit principles to determine whether specific Ees involved do, in fact, display requisite community of interest to warrant separate representation)

0150 LEGISLATIVE HISTORY

Oklahoma Blood Institute, Inc. **265 NLRB No. 195**

(multilocation unit including health care institution Ees and nonhealth care institution Ees appropriate since Bd has specifically held that there is nothing in history of 1974 health care amendments which precludes such unit from being appropriate)

Beverly Enterprises d/b/a Beverly Manor Convalescent Centers **264 NLRB No. 123**

(congress in enacting 1974 health care amendments stated that *Bd has carefully avoided applying definition of supervisor to a health care professional who gives direction to other Ees in the exercise of professional judgment, which direction is incidental to professional's treatment of patients, and thus not the exercise of supervisory authority in the interest of the E*)

St. Elizabeth Community Hospital **259 NLRB No. 156**

(Bd asserted jurisdiction over Catholic Hospital because 1974 Health Care Amendments extended Bd jurisdiction to hospitals and legislative history clearly shows that Congress did not exclude religiously operated hospitals from coverage; moreover, Bd regulation of hospital will not involve it in excessive entanglement in religion for primary purpose of hospital is health care and not sectarian teaching as found in *Catholic Bishop of Chicago* and right of Ees to be represented by collective-bargaining representative will not interfere with free exercise of religion or tend to establish a religion)

Newton-Wellesley Hospital **250 NLRB NO. 986**

(in holding separate unit of registered nurses at hospital appropriate, Bd noted legislative history of health care amendments does not require Bd to forego consideration of community of interests among Ees w/i health care industry notwithstanding requirement that Bd give due consideration to avoiding unwarranted fragmation of bargaining units in this industry)

N.L.R.B. v. Mercy Hospital Association **606 F.2d 22 (C.A. 2, 1979)**

(ct held that Bd determination of health care Ees unit must put traditional community of interest factors in balance against public interest in preventing fragmentation in health care field, and Bd's decision must specify manner in which unit determination implements or reflects said congressional admonition)

N.L.R.B. v. Frederick Memorial Hospital, Inc. **691 F.2d 191 (C.A. 4, Oct. 1982)**

(Bd may not depend solely on traditional community of interest test when making unit determination for health care institution Ees but must give due consideration to congressional admonition against proliferation of bargaining units; Bd decision must clearly explain *manner in which its unit determination... implement(s) or reflect(s) that admonition*; Bd cannot leave its explanation to implication or argument of its counsel)

N.L.R.B. v. Frederick Memorial Hospital, Inc. **691 F.2d 191 (C.A. 4, Oct. 1982)**

(ct remanded case involving Bd's certification of bargaining unit composed of registered nurses at hospital and denied enforcement of Bd's order, notwithstanding E's argument that legislative history of health care amendments established that only unit composed of all E's professional Ees was appropriate, where acceptance of such argument would deny Bd flexibility in unit determination that Congress intended to preserve; moreover, validity of unit of registered nurses was not foreclosed if Bd considered all relevant factors, including prevention of proliferation of bargaining units in reaching its decision)

Beverly Enterprises, dba Beverly Manor Convalescent Centers **661 F.2d 1095 (C.A. 6, Oct. 1981)**

(1974 amendments did not alter the pertinent law, or change way in which Bd should approach question of supervisory status of health care professionals)

Mary Thompson Hospital, Inc. **621 F.2d 858 (C.A. 7, 1980)**

(Bd should heed congressional admonition to avoid fragmentation of units in health care facilities rather than applying traditional community of interest standards)

N.L.R.B. v. HMO International/California Medical Group Health Plan, Inc. **678 F.2d 806 (C.A. 9, June 1982)**

(where Bd failed to give weight to nonproliferation policy of health care amendments and failed to apply court-mandated test based on legislative history of amendments as to whether *disparity of interest* of Ees in different classifications required a number of units, Bd was to state on remand precisely how it proposed to modify its traditional community of interest standard so as to implement herein the congressional amendment's nonproliferation mandate)

Beth Israel Hospital and Geriatric Center v. N.L.R.B. **688 F.2d 697 (C.A. 10, Sept. 1982)**

(en banc ct held Bd must determine, when certifying bargaining unit in health care institutions, whether unit is appropriate w/o resorting to presumption that shifts to E burden of showing proffered unit is appropriate, and Bd must state why unit it chooses complies with Congress' admonition; Bd cannot rely on E's failure to show that units are inappropriate; if Bd declines to redetermine whether an appropriate unit was selected, then that issue is not addressed at ULP proceeding, and thus Federal Rule of Evidence 301 would not apply and E could challenge unit selection only through judicial review)

St. Anthony Hospital Systems v. N.L.R.B. **655 F.2d 1028 (C.A. 10, Aug 1981)**

(Bd holding that unit restricted to registered nurses at hospital presumptively appropriate and E had duty of rebutting presumption, improperly relieved GC of burden to establish ULP occured and violated congress directive to avoid proliferation of bargaining units in health care cases)

Beth Israel Hospital and Geriatric Center v. N.L.R.B. **677 F.2d 1343 (C.A. 10, July 1981)**

(enforcement denied where Bd erred in applying its prior decisions finding/concluding that unit restricted exclusively to registered nurses is presumptively appropriate and that E must overcome presumption by producing evidence that limited bargaining units are less appropriate than broader bargaining units; continued acceptance and endorsement of Bd's presumptive and evidentiary policies by ct would simply serve to enhance undue proliferation of health care bargaining units, in direct derogation to congressional mandate set forth in House and Senate committee reports)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**

(traditional factors used in scope determinations *must be put in balance against - public interest in preventing fragmentation in - health care field*; Bd must specify *manner in which its unit determination(s) implement or reflect that admonition)*

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**

(*Bd must expressly consider the congressional admonition* to prevent proliferation of bargaining units in health care industry *in making unit determinations* and focus on *disparity of interests between Ee groups which would prohibit or inhibit fair representation of Ee interests*)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**

(requiring health care industry Es to bear burden of producing evidence that limited bargaining units are more inappropriate than broader bargaining units runs contrary to Congress' admonition)

1700 PROFESSIONAL UNITS

1701 GENERALLY

Community Health Services, Inc. **259 NLRB No. 045**

(possession of college degree does not necessarily establish professional status)

1716 PHYSICIANS AND SURGEONS UNIT

1716-0100 Generally

Montefiore Hospital and Medical Center **261 NLRB No. 082**

(staff doctors at medical center held professional Ees as defined in Section 2(12) of Act, and may constitute appropriate bargaining unit separate from other professional Ees even though in health care industry Bd is required to avoid fragmentation of units)

1716-4000 Specific determination

Montefiore Hospital and Medical Center **261 NLRB No. 082**

(unit composed of all physicians and dentists regularly employed 19 hours or more a week at hospitals, medical centers, medical school, medical group practices, located at both of two college campuses, and satellite family care center and community mental health center, located 7 and 5 miles, respectively, from hospital held appropriate in view of centralized labor policies and salary guidelines and shared community of interests)

1716-8000 Placement of other employees in doctors' unit

Montefiore Hospital and Medical Center **261 NLRB No. 082**

(unit apart from medical center's other facilities composed of full-time and part-time physicians at its health care facility which it operates under contract with city to provide medical services for prison inmates, notwithstanding part-time physicians hourly paid, receive no fringe benefits, and hold other full-time jobs, in view of legislative concern regarding proliferation of units at health care facilities)

1733 REGISTERED NURSES UNIT

1733-0100 Generally

St. Francis Hospital **265 NLRB No. 120**

(RNs can, but not *per se* be entitled to own unit. Bd will decide on case-by-case and no presumption of appropriateness)

Milwaukee Children's Hospital Association **255 NLRB No. 130**

(separate registered nurses unit is not appropriate *per se*)

Newton-Wellesley Hospital **250 NLRB NO. 086**

(in holding separate unit of registered nurses at hospital appropriate, Bd noted legislative history of health care amendments does not require Bd to forego consideration of community of interests among Ees w/i health care industry notwithstanding requirement that Bd give due consideration to avoiding unwarranted fragmation of bargaining units in this industry)

Long Island Jewish-Hillside Medical Center v. N.L.R.B. **685 F.2d 29 (C.A. 2, July 1982)**

(Bd finding that separate unit of registered nurses at one of E's facilities appropriate that was based on presumption that single-facility bargaining unit is more appropriate where there is no bargaining history in more comprehensive unit and degree of functional integration with other facilities is insufficient to negate separate identity of unit sought, remanded in light of ct's determination that single facility presumption is inapplicable in health care context because public interest is in preventing proliferation, notwithstanding standard previously applied in question of composition of unit not scope)

N.L.R.B. v. Frederick Memorial Hospital, Inc. **691 F.2d 191 (C.A. 4, Oct. 1982)**

(ct remanded case involving Bd's certification of bargaining unit composed of registered nurses at hospital and denied enforcement of Bd's order, notwithstanding E's argument that legislative history of health care amendments established that only unit composed of all E's professional Ees was appropriate, where acceptance of such argument would deny Bd flexibility in unit determination that Congress intended to preserve; moreover, validity of unit of registered nurses was not foreclosed if Bd considered all relevant factors, including prevention of proliferation of bargaining units in reaching its decision)

N.L.R.B. v. HMO International/California Medical Group Health Plan, Inc. **678 F.2d 806 (C.A. 9, June 1982)**

(where E refused to bargain on ground that Bd certified RN unit should have included LVNs, Bd on remand must state why Ees' tasks and E's personnel policies mandated that RNs be classified as professional Ees and LVNs as technical Ees, why RNs should not be preliminarily certified in same unit with LVNs with proviso of a *Sonotone* election, and how precisely it proposed to modify its traditional community of interest standard so as to implement herein the congressional nonproliferation mandate)

St. Anthony Hospital Systems v. N.L.R.B. **655 F.2d 1028 (C.A. 10, Aug 1981)**

(Bd holding that unit restricted to registered nurses at hospital presumptively appropriate and E had duty of rebutting presumption, improperly relieved GC of burden to establish ULP occured and violated congress directive to avoid proliferation of bargaining units in health care cases)

Beth Israel Hospital and Geriatric Center v. N.L.R.B. **677 F.2d 1343 (C.A. 10, July 1981)**

(enforcement denied where Bd erred in applying its prior decisions finding/concluding that unit restricted exclusively to registered nurses is presumptively appropriate and that E must overcome presumption by producing evidence that limited bargaining units are less appropriate than broader bargaining units; continued acceptance and endorsement of Bd's presumptive and evidentiary policies by ct would simply serve to enhance undue proliferation of health care bargaining units, in direct derogation to congressional mandate set forth in House and Senate committee reports)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**

(enforcement denied where Bd erred in accepting presumptively appropriate unit restricted to registered nurses at single facility of E's 3 hospitals in single city, since there was sufficient evidence adduced to sustain appropriateness of all professional unit excluding physicians; evidence was sufficient to sustain finding of inappropriateness of proposed unit had it been accepted)

1733-4000 Specific determination

St. John of God Hospital, Inc. **260 NLRB No. 117**

(unit consisting of all RNs, nurse practitioners, RN permanent charge nurses, and all technical Ees including LPNs, LPN interim charge nurses, and respiratory therapists found appropriate, subject to requirement that majority of professional Ees vote for inclusion in unit where substantial community of interest exists among these Ees)

Ralph K. Davies Medical Center **256 NLRB No. 151**

(separate unit of registered nurses at medical center, appropriate in view of their central role in patient care; their common educational background, licensing, and unique skills resulting in job interchangeability and functional interaction with each other but little interchange or contact with other professionals; their separate supervision and budgetary treatment; and fact that grant of separate unit would result in only two units, each of substantial size, and allow E to compete with area hospitals as to pay adjustments)

The Long Island College Hospital **256 NLRB No. 034**

(separate unit of RNs rather than unit including all professional hospital Ees appropriate where 80 percent of RNs are administratively separated into department of nursing which is overseen by an RN and has supervisory hierarchy completely composed of RNs, RNs have similar education and training and are subject to uniform state licensure requirement, and RNs share unique functional responsibilities involving continual patient contact; holistic approach to patient care did not affect factors establishing separate community of interest)

National Medical Convalescent of San Diego, d/b/a Ojai Valley Community Hospital **254 NLRB No. 163**

(separate unit, limited to RNs at hospital, apart from licensed vocational nurses or nurses aides, or pharmacists and laboratory technologists appropriate, notwithstanding policy against proliferation of units in health care facilities; in view of lack of community of interest due to differences in education, training, experience licensing and responsibilities from LVNs and nurses aides, and limited contact with and separate supervision from pharmacists and laboratory technicians)

Frederick Memorial Hospital, Inc. **254 NLRB No. 002**

(where RD issued his decision that unit of registered nurses excluding other professionals at hospital was appropriate w/o his having benefit of recent *Newton-Wellesley* case wherein Bd reexamined at some length its approach to appropriateness of registered nurse units, Bd fully agrees with RD that all registered nurse unit is appropriate after having examined his conclusion in light of *Newton-Wellesley*)

Addison-Gilbert Hospital **253 NLRB No. 141**

(unit of RNs, including charge nurses, patient care coordinator, and certified registered nurse anesthetists, appropriate, in view of community of interest separate and apart from other alleged professionals in type of work performed concerning direct patient care, educational and licensing requirements imposed by State, hours of work and pay received, separate supervision, and obligations imposed by State on E concerning RNs; moreover, petitioning U desires to represent only nurses herein, no other U seeks to represent unit different from that found appropriate herein, and there was no opposition to appropriateness of unit)

Brookwood Hospital Management Corporation d/b/a Brookwood Hospital **252 NLRB No. 107**

(separate RN unit, rather than overall professional unit at acute care nursing facility, appropriate as team approach does not require inclusion of all professional Ees in single unit and there are significant differences in training, supervision and responsibility between registered nurses and other professionals)

Newton-Wellesley Hospital **250 NLRB NO. 086**

(separate unit of registered nurses apart from other professional personnel at hospital, appropriate, in view of community of interest where vast majority

1733-4000—Cont.

of nurses are administratively separated in nursing division as required by state law, subject to common supervision, work in close and continuous contact with one another with limited contact with other professionals, and in view of similar education, training, and experience, and fact most possess same license)

Milwaukee Children's Hospital Association **255 NLRB No. 130**
(separate unit of registered nurses appropriate where: registered nurses share common separate organization and supervision, common education, and licensing requirements, broad range of generalized patient care skills, high degree of job interchangeability and daily functional interaction, little interchange with other Ees)

1733-6000 Placement of registered nurses in other unit

St. John of God Hospital, Inc. **260 NLRB No. 117**
(unit consisting of all RNs, nurse practitioners, RN permanent charge nurses, and all technical Ees including LPNs, LPN interim charge nurses, and respiratory therapists found appropriate, subject to requirement that majority of professional Ees vote for inclusion in unit where substantial community of interest exists among these Ees)

Doctors' Hospital of Montclair **254 NLRB No. 175**
(registered nurses excluded from unit of professional Ees at hospital, where registered nurses, unlike other professional Ees, were primarily involved in direct patient care, and interaction with Ees in professional unit was minimal and only incidental to primary responsibility of patient care; *Newton Wellesley,* 250 NLRB No. 86, distinguished)

Valley View Hospital **252 NLRB No. 160**
(GC's mtn for summary judgment denied where RD had found unit including RNs appropriate in view of stipulation of parties; however, there was no testimony at R hearing which would indicate RNs were technical Ees, or performed duties different from those implied in their job classification, and stipulation alone cannot override mandate of 9(b) requiring professional Ees to vote on inclusion in unit with non-professional Ees)

1733-8000 Placement of other employees in registered nurses unit

Ralph K. Davies Medical Center **256 NLRB No. 151**
(utilization review coordinators excluded from unit of registered nurses at medical center where they do not care for patients but use patients' records to monitor patient care to determine the most effective and efficient use of hospital's facilities and assess whether its falls w/i government and insurance company guidelines, an administrative function under financial officer)

Milwaukee Children's Hospital Association **255 NLRB No. 130**
(part-time registered nurses included in unit of registered nurses where worked 1 regularly scheduled 8-hour shift bi-weekly, notwithstanding ineligible for most Ee fringe benefits where perform same duties and have substantial community of interest with full-time registered nurses and part-time registered nurses working 20 hours or more a week)

Addison-Gilbert Hospital **253 NLRB No. 141**
(utilization review coordinators whose function is to provide for most effective and efficient utilization of hospital's facilities excluded from unit of RN's, where they do not provide any patient care, have limited contact with nurses of administrative nature, do not have to be nurses or possess education or license of nurse, have different working hours, and spend much of their work time in office)

Mount Airy Foundation d/b/a Mount Airy Psychiatric Center **253 NLRB No. 139**
(unit of RNs and all other professional Ees found appropriate where some professional Ees hold master's degrees, perform essentially same jobs as RNs, even to point of substituting for them; remaining professional Ees, while not having as strong community of interest with RNs as above professional Ees and not having sufficient community of interest among themselves to justify separate unit, nevertheless included in unit rather than having residual unit)

Brookwood Hospital Management Corporation d/b/ a Brookwood Hospital **252 NLRB No. 107**
(associate psychologist excluded from RN unit at acute care nursing facility where he is responsible to director of psychiatric nursing, in view of his part time status and that he arranges own schedule on orders from various physicians)

Albert Einstein Medical Center **248 NLRB No. 009**
(Bd refused to extend comity to certification by state agency of combined unit of RNs and LPNs as this is contrary to Bd policy of placing LPNs in technical unit unless parties have so stipulated, existing separate representation or separate bargaining history; furthermore, absent special circumstances Bd has declined to direct elections in combined units of LPNs and RNs which excluded other technical Ees)

1767 UNITS OF OTHER PROFESSIONALS

1767-2000 Identifying characteristics

Community Health Services, Inc. **259 NLRB No. 045**
(possession of college degree does not necessarily establish professional status)

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center **251 NLRB No. 206**
(position of medical laboratory technologist falls w/i definition of *professional* Ee as they have completed college *degree* program and are registered with professional association and use independent judgment and discretion in performance of their duties when analyzing and interpreting medical tests and, therefore, are excluded from technical unit w/o seperate election)

1767-6000 Placement of (subject) employees in other unit

Brookwood Hospital Management Corporation d/b/ a Brookwood Hospital **252 NLRB No. 107**
(separate RN unit, rather than overall professional unit at acute care nursing facility, appropriate as team approach does not require inclusion of all professional Ees in single unit and there are significant differences in training, supervision and responsibility between registered nurses and other professionals)

1767-8000 Placement of other employees in (subject) unit

Community Health Services, Inc. **259 NLRB No. 045**
(challenges to ballots of mental health workers who were included in professional unit employed by community and home care service organization, sustained where, notwithstanding that all but three of them had either bachelor's or master's degree, they were not licensed by the State nor were they registered or certified by any national or state professional organization; they assisted professional staff but did not engage in types of treatment normally performed by professional psychologists or psychiatrists; therefore, held technical Ees)

Doctors' Hospital of Montclair **254 NLRB No. 175**
(registered nurses excluded from unit of professional Ees at hospital, where registered nurses, unlike other professional Ees, were primarily involved in direct patient care, and interaction with Ees in professional unit was minimal and only incidental to primary responsibility of patient care; *Newton Wellesley,* 250 NLRB No. 86, distinguished)

Mount Airy Foundation d/b/a Mount Airy Psychiatric Center **253 NLRB No. 139**
(unit of RNs and all other professional Ees found appropriate where some professional Ees hold master's degrees, perform essentially same jobs as RNs, even to point of substituting for them; remaining professional Ees, while not having as strong community of interest with RNs as above professional Ees and not having sufficient community of interest among themselves to justify separate unit, nevertheless included in unit rather than having residual unit)

Mt. Graham Community Hospital **250 NLRB No. 060**
(Manpower Ee under CETA program at hospital included in unit of regular part-time nurses aides, notwithstanding limited duration of her job, where she performed same duties as hospital's regular nurses aides, under same supervision, and her wages and fringe benefits although slightly lower than those received by unit Ees were comparable to wage rate and fringe benefits of unit Ees when differing levels of experience were taken into account)

Beverly Enterprises, dba Beverly Manor Convalescent Centers **661 F.2d 1095 (C.A. 6, Oct. 1981)**
(on question of supervisory status of LPNs at nursing home, Bd must determine: Do LPN activities respecting patient care involve independent professional judgment? If not LPNs properly included in unit. If yes, and that independent professional judgment exercised primarily in connection with patient care, not in interest of her E, then LPNs should be included; however, if judgment exercised in interest of her E, then supervisor and not included in unit)

N.L.R.B. v. Foundation For Comprehensive Health Services **684 F.2d 731(T) (C.A. 9, July 1981)**
(bargaining order denied and case remanded to Bd for reconsideration of determination of bargaining unit at health care services foundation and application of *disparity of interest test* to exclusion of only one professional Ee, a social worker, from unit of family nurse practitioners, physician assistants, and registered nurses; Bd to also consider whether exclusion of classification of social workers, whose numbers are expected to increase, would create residual group of Ees eluding classification)

3300 TECHNICAL EMPLOYEES UNIT

3301 GENERALLY

St. Francis Hospital **265 NLRB No. 120**
(smallest appropriate unit which would encompass LPNs would be unit of all technical Ees)

3320 IDENTIFYING CHARACTERISTICS

3320—Cont.

Beverly Enterprises d/b/a Beverly Manor Convalescent Centers 264 NLRB No. 128

(technical Ees are those who do not meet strict requirements of term *professional Es* as defined in Act but whose work is of technical nature involving use of independent judgment and requiring exercise of specialized training usually acquired in colleges or technical schools or through special courses)

3340 SPECIFIC DETERMINATION

Watonwan Memorial Hospital, Inc. 263 NLRB No.

(unit of technical Ees at small hospital found appropriate rather than overall unit)

Watonwan Memorial Hospital, Inc. 263 NLRB No. 099

(unit of technical Ees at small hospital found appropriate rather than overall unit)

3360 PLACEMENT OF TECHNICAL EMPLOYEES IN OTHER UNIT

Community Health Services, Inc. 259 NLRB No. 045

(challenges to ballots of mental health workers who were included in professional unit employed by community and home care service organization, sustained where, notwithstanding that all but three of them had either bachelor's or master's degree, they were not licensed by the State nor were they registered or certified by any national or state professional organization; they assisted professional staff but did not engage in types of treatment normally performed by professional psychologists or psychiatrists; therefore, held technical Ees)

Vicksburg Hospital, Inc. v. N.L.R.B. 653 F.2d 1070 (C.A. 5, Aug 1981)

(ct deferred to Bd's determination that unit of service, maintenance and technical Ees at hospital was appropriate, notwithstanding E showed that bargaining unit of its technical Ees would be appropriate, where E failed to establish that combined unit of service, maintenance and technical Ees was clearly *not* appropriate)

3380 PLACEMENT OF OTHER EMPLOYEES IN TECHNICAL UNIT

St. John of God Hospital, Inc. 260 NLRB No. 117

(unit consisting of all RNs, nurse practitioners, RN permanent charge nurses, and all technical Ees including LPNs, LPN interim charge nurses, and respiratory therapists found appropriate, subject to requirement that majority of professional Ees vote for inclusion in unit where substantial community of interest exists among these Ees)

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center 251 NLRB No. 206

(position of ward manager included in unit because of Ee's contact with other Ees represented by U, creation of position post-dated bargaining agreement, and there is no other unit in which Ee could be included)

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center 251 NLRB No. 206

(secretary to president of E who is not involved with formulation of labor relations policies included in unit where her duties are similar to those performed by represented clerks and record not clear that position existed prior to bargaining agreement)

Missouri Pacific Employees' Hospital Association and St. Louis-Little Rock Hospitals, Inc. d/b/a Compton Hill Medical Center 251 NLRB No. 206

(financial administrator of E included in unit where newly created position and she performs duties not unlike those clerks already represented by U)

Butler Hospital 250 NLRB No. 168

(mental health workers found technical Ees and included in technical unit at nonprofit hospital providing psychiatric and mental health services where they are mostly college graduates, receive intensive, specialized on-the-job training, consult daily with professional staff, are considered part of nursing staff, and regularly exercise independent judgment)

Albert Einstein Medical Center 248 NLRB No. 009

(Bd refused to extend comity to certification by state agency of combined unit of RNs and LPNs as this is contrary to Bd policy of placing LPNs in technical unit unless parties have so stipulated, existing separate representation or separate bargaining history; furthermore, absent special circumstances Bd has declined to direct elections in combined units of LPNs and RNs which excluded other technical Ees)

5000 SERVICE AND MAINTENANCE EMPLOYEES UNIT

5060 PLACEMENT OF SERVICE AND MAINTENANCE EMPLOYEES IN OTHER UNIT

Divine Providence Hospital of Pittsburgh 248 NLRB No. 078

(service and maintenance Ees at hospital held not properly encompassed in single unit with plant operations department Ees where service Ees do not possess level or type of skill required of operations Ees, they are separately supervised, work different hours and shifts, some have direct patient contact, they wear different colored uniforms, share no responsibilities with operations Ees, and there was practically no interchange)

5080 PLACEMENT OF OTHER EMPLOYEES IN SERVICE AND AND MAINTENANCE UNIT

A. W. Schlesinger Geriatric Center, Inc. 260 NLRB No. 058

(LVNs excluded as technical Ees from S&M unit at nursing home in view of their training, skills and job functions; LVNs are licensed by the state, receive separate in-house training, are the only ones performing certain jobs, and direct and report rule infractions by S&M Ees)

A. W. Schlesinger Geriatric Center, Inc. 260 NLRB No. 058

(occupational therapist and aides, and EKG/inhalation/X-ray technician excluded from unit of S&M Ees at nursing home in view of stipulation that they are technicals, and in view of their distinct functions, training and education)

Taylor Hospital 249 NLRB No. 031

(cart technicians, mail messenger and transporters of patients at hospital, classifications which were created after original unit determination, included in unit of hospital Ees since they share community of interest with hospital Ees)

Tressler Lutheran Home For Children, t/a Frostburg Village of Allegany County Nursing Home v. N.L.R.B. 677 F.2d 302 (C.A. 3, Apr. 1982)

(Bd did not err in including LPNs in unit of service and maintenance Ees, nursing and physiotheraphy assistants, desk orderlies, housekeeping and laundry Ees at nursing home since substantial evidence LPNs not supervisors and inclusion serves to limit proliferation of units in health care facilities)

Vicksburg Hospital, Inc. v. N.L.R.B. 653 F.2d 1070 (C.A. 5, Aug 1981)

(ct deferred to Bd's determination that unit of service, maintenance and technical Ees at hospital was appropriate, notwithstanding E showed that bargaining unit of its technical Ees would be appropriate, where E failed to establish that combined unit of service, maintenance and technical Ees was clearly *not* appropriate)

Beverly Enterprises, dba Beverly Manor Convalescent Centers 661 F.2d 1095 (C.A. 6, Oct. 1981)

(where position of supply clerk included in unit of service and maintenance Ees at nursing home because of it's community of interest with LPN's who were included in unit and ct remanded case to Bd to articulate reasons and to redecide if LPNs should be included, decision on supply clerk must also be reconsidered)

5800 MAINTENANCE EMPLOYEES UNIT

5820 IDENTIFYING CHARACTERISTICS

St. Francis Hospital 265 NLRB No. 120

(among factors considered in determining whether separate maintenance unit appropriate are: job tasks involved and level of skills required to perform them, location of maintenance department, amount of work integration with other Ees, and level of personnel interchange with other Ees)

5840 SPECIFIC DETERMINATION

St. Francis Hospital 265 NLRB No. 120

(maintenance Ees at E's hospital, rather than unit of service and maintenance Ees, found appropriate where: their wages are concentrated in higher ranges of E's service and maintenance pay plan; they report to separate locations at start of shifts; are separately administered and supervised; possess greater skills and experience than service Ees; share no duties with service departments and their functions are not functionally integrated with other hospital departments)

N.L.R.B. v. Mercy Hospital Association 606 F.2d 22 (C.A. 2, 1979)

(ct did not uphold Bd's conclusion that separate unit of maintenance Ees was appropriate on basis of community of interest criteria where Bd's single reference to congressional admonition against proliferation of bargaining units in its determination of appropriateness of separate maintenance Ees unit was conclusion that congressional admonition *did not preclude appropriateness of maintenance unit*)

5840—Cont.

Mary Thompson Hospital, Inc. 621 F.2d 858 (C.A. 7, 1980)
(Ct refused to enforce Bd's order that E bargain with separate unit of licensed sanitary engineers apart from other engineering and maintenance department Ees at hospital since in finding unit appropriate Bd failed to heed congressional admonition to avoid fragmentation of units at health care facilities but rather applied traditional community of interests standard)

5860 PLACEMENT OF MAINTENANCE EMPLOYEES IN OTHER UNIT

St. Francis Hospital 265 NLRB No. 120
(among factors considered in determining whether separate maintenance unit appropriate are: job tasks involved and level of skills required to perform them, location of maintenance department, amount of work integration with other Ees, and level of personnel interchange with other Ees)

6700 OFFICE CLERICAL UNITS

7500 CRAFT UNITS

8300 OTHER UNITS DEFINED BY TYPE OR CATEGORY OR COMBINATIONS THEREOF

8301 GENERALLY

Oklahoma Blood Institute, Inc. 265 NLRB No. 195
(multilocation unit including health care institution Ees and nonhealth care institution Ees appropriate since Bd has specifically held that there is nothing in history of 1974 health care amendments which precludes such unit from being appropriate)

Divine Providence Hospital of Pittsburgh 248 NLRB No. 078
(in finding plant operations department Ees at hospital entitled to separate representation from service and maintenance Ees, Bd held ct decisions relied on by E for asserting single unit appropriate did not announce per se rule proscribing certification of unit herein but, rather, required Bd to balance Ees' interest in adequate representation against special consideration of avoiding disruption in health care industry)

Monongahela Valley Hospital, Inc. 248 NLRB No. 013
(where E built new facility 3 miles away and transferred all patients, equipment, and Ees from old facility except 4 boiler firemen who remained behind at old structure which enjoyed limited use in support of new facility; these 4 boiler firemen remained in unit at new facility because of common supervision and community of interest; U did not waive any rights to their representation by waiting 3 months after move before filing charges)

8360 PLACEMENT OF (SUBJECT) EMPLOYEES IN OTHER UNIT

Divine Providence Hospital of Pittsburgh 248 NLRB No. 078
(plant operations department Ees at hospital held entitled to separate representation from service and maintenance Ees in view of the many differences in job classifications between the 2 Ee groups, and operations Ees' wide variety of skills, separate supervision, and distinct uniforms and identification badges)

8380 PLACEMENT OF OTHER EMPLOYEES IN (SUBJECT) UNIT

Georgetown University Dental Clinic of Georgetown University 262 NLRB No. 077
(clerical Ees and histopathologist technician included in unit of dental assistants, clinical assistants and dental technicians, in view of common work locations, identical benefits and similar working conditions; also, since Bd found dental clinic was health care institution, inclusion of disputed Ees in clinic unit is compatible with and in furtherance of Congressional intent that fragmentation of units in this field be avoided)

Wright Memorial Hospital 255 NLRB No. 173
(ambulance department Ees on 2d and 3d shifts held guards and excluded from unit of all ambulance department Ees where, in addition to their ambulance duties, they make security rounds of hospital and so are employed to enforce, against Ees and others, rules to protect E's property and safety of persons on premises, and notwithstanding they wear no guard uniforms or do not themselves enforce rules but notify department heads of infractions)

Divine Providence Hospital of Pittsburgh 248 NLRB No. 078
(chauffeur-groundskeeper-laborers at hospital included in unit of plant operations department Ees, where responsibilities of all plant operations Ees, in continuing maintenance and improvement of facility, outweigh differences between chauffeur-groundskeeper-laborers and remainder of plant operations Ees and mandates their inclusion in unit)

8500 MULTIPLE-LOCATION UNITS OF SINGLE EMPLOYER

8533 EMPLOYER WIDE

8533-0100 Generally

Long Island Jewish-Hillside Medical Center v. N.L.R.B. 685 F.2d 29 (C.A. 2, July 1982)
(Bd finding that separate unit of registered nurses at one of E's facilities appropriate that was based on presumption that single-facility bargaining unit is more appropriate where there is no bargaining history in more comprehensive unit and degree of functional integration with other facilities is insufficient to negate separate identity of unit sought, remanded in light of ct's determination that single facility presumption is inapplicable in health care context because public interest is in preventing proliferation, notwithstanding standard previously applied in question of composition of unit not scope)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)
(Bd has *rebuttably* presumed single facility units appropriate *where there is no bargaining history in more comprehensive unit and-degree of functional integration with other facilities is insufficient to negate-separate identity of-facility in which a U seeks representative status*)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)
(requiring health care industry Es to bear burden of producing evidence that limited bargaining units are more inappropriate than broader bargaining units runs contrary to Congress' admonition)

8567 LESS THAN EMPLOYER WIDE

8567-0100 Generally

Long Island Jewish-Hillside Medical Center v. N.L.R.B. 685 F.2d 29 (C.A. 2, July 1982)
(Bd finding that separate unit of registered nurses at one of E's facilities appropriate that was based on presumption that single-facility bargaining unit is more appropriate where there is no bargaining history in more comprehensive unit and degree of functional integration with other facilities is insufficient to negate separate identity of unit sought, remanded in light of ct's determination that single facility presumption is inapplicable in health care context because public interest is in preventing proliferation, notwithstanding standard previously applied in question of composition of unit not scope)

8567-5000 Specific determination

Health and Medical Care Foundation d/b/a Pomona Golden Age Convalescent Home 265 NLRB No. 167
(single location unit of convalescent home Ees, rather than E-wide unit of 8 homes in metropolitan area plus one home 100 miles away, appropriate in view of geographic separateness by 5 miles from any other facility, administrator at home exercises substantial degree of authority over day-to-day labor relations, insignificant Ee interchange, and absence of bargaining history notwithstanding headquarters provides centralized administration and purchasing for all homes, including uniform labor relations policies)

Valley Vista Hospital JD-(SF)-88-82
(presumption of appropriateness of single hospital unit rebutted, notwithstnading prior bargaining history of single hospital unit, where said hospital was sold and became part of single E of which another hospital was also part; two-hospital unit then became appropriate where hospitals were of same kind, rendered same kind of services, were near each other, and had centralized management and control of labor relations and personnel, and considerable functional and operational integration and interchange of personnel)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)
(enforcement denied where Bd erred in accepting presumptively appropriate unit restricted to registered nurses at single facility of E's 3 hospitals in single city, since there was sufficient evidence adduced to sustain appropriateness of all professional unit excluding physicians; evidence was sufficient to sustain finding of inappropriateness of proposed unit had it been accepted)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)
(sufficient evidence adduced to sustain appropriateness of all professional unit rather than unit of registered nurses at one facility where E employed multi-disciplinary team approach to patient care; interaction between RNs and other professionals is encouraged; pharmacists physically relocated to nursing stations; and social workers at facility spend 1/2 their time in patient care units)

8800 RESIDUAL EMPLOYEE UNITS

8820 Identifying characteristics

8820—Cont.

Mount Airy Foundation d/b/a Mount Airy Psychiatric Center 253 NLRB No. 139

(unit of RNs and all other professional Ees found appropriate where some professional Ees hold master's degrees, perform essentially same jobs as RNs, even to point of substituting for them; remaining professional Ees, while not having as strong community of interest with RNs as above professional Ees and not having sufficient community of interest among themselves to justify separate unit, nevertheless included in unit rather than having residual unit)

8840 APPROPRIATENESS TO SEPARATE UNIT OF RESIDUAL EMPLOYEES

Mount Airy Foundation d/b/a Mount Airy Psychiatric Center 253 NLRB No. 139

(unit of RNs and all other professional Ees found appropriate where some professional Ees hold master's degrees, perform essentially same jobs as RNs, even to point of substituting for them; remaining professional Ees, while not having as strong community of interest with RNs as above professional Ees and not having sufficient community of interest among themselves to justify separate unit, nevertheless included in unit rather than having residual unit)

9000 ADDITIONS OF GROUPS OF EMPLOYEES TO EXISTING UNITS

9025 SPECIFIC DETERMINATION

9025-6700 Employees held not to be accretion

United Hospitals, Incorporated and The Children's Hospital, Inc. 249 NLRB No. 063

(where 3 E members of 21 E multi-E association planned merger and admitting clerks of 2 of these 3 E's were unrepresented by U, U's request that unrepresented Ees be treated as accretion to unit denied because out of 21 Ee groups only 2 were represented by U and Bd will not add unrepresented Ees to multi-E unit on piece meal basis, notwithstanding all admitting clerks would be on 1 payroll, work in single admitting department, perform similar job functions under common supervision)

9100 SEVERANCE OF GROUPS OF EMPLOYEES FROM EXISTING UNITS

480 POSTAL SERVICE UNITS

0100 GENERALLY

United States Postal Service **256 NLRB No. 095**
(Bd rejected contention that postal service's RM ptn for single, national unit should be entertained in view of Bd cases in which Bd directed election in E's requested unit even though there was no immediate claim by any U in larger unit; such cases are inapplicable, since Us there merely sought to continue to represent distinct crafts or groups; in instant case, there was no recent merger of units, no substantial changes in those units, and no ongoing disputes concerning Us' representation of Ees w/i traditional units; and use of RM ptn is limited to certain tangible events not present here)

United States Postal Service **256 NLRB No. 095**
(Bd rejected contention that postal service's RM ptn for single, national unit should be entertained because proposed bargaining structure for current negotiations is unworkable and that problems in reaching agreements are exacerbated by U raiding campaigns; E is not entitled, either by NLRA or PRA, through RM ptn, to seek solution to its problems; processing ptn would result in holding of election in unit which no U claims to represent; Bd proceedings are designed to determine identity of bargaining agent, not structure or pattern of bargaining; and there is no evidence that separate bargaining is unworkable)

United States Postal Service **256 NLRB No. 095**
(postal service's contention that RD's dismissal of its RM ptn for single, national unit was arbitrary and capricious and that it was entitled to hearing and benefit of record, rejected, where ptn failed to comply with statutory requirements of PRA and NLRA, and with implementing regulations; and ptn was defective in that it merely sought to have Bd determine appropriate unit w/o regard to admitted lack of any U claim for U representation)

United States Postal Service **256 NLRB No. 095**
(Bd dismissed postal service's RM ptn for single, national unit, and denied hearing on RD's dismissal of ptn, since granting of E's request would require hearing that would consume much time when current bargaining agreement was about to expire; conduct of election would be task of mammoth proportions which Bd would undertake in appropriate circumstances which are not present herein; and E did not demonstrate that it truly questioned representative status of various Us in long-established units)

0125 POSTAL REORGANIZATION ACT OF 1970

United States Postal Service **256 NLRB No. 095**
(Bd rejected contention that postal service's RM ptn for single, national unit should be entertained because PRA created special labor-management provisions, of which unit determination is one; PRA text itself and legislative history show that bargaining in postal service should be treated like that in case of any other E, except for specifically stated exceptions)

3300 SCOPE OF UNITS (SEE 480-6700 FOR PLACEMENT OF PARTICULAR CATEGORIES OF EMPLOYEES IN THESE UNITS)

6700 COMPOSITION OF UNITS

500 UNFAIR LABOR PRACTICES

501 GENERALLY

1400 NATURE AND SCOPE OF PROSCRIPTIONS

1467 ONLY ACTIVITIES SPECIFICALLY PROHIBITED ARE UNFAIR LABOR PRACTICES

1467-6700 Picketing for proscribed purposes only prohibited

Anco Insulations, Inc. **247 NLRB No. 081**
(company's refusal to permit contractor's lawfully discharged Ee to work for another contractor at company's construction site not violative where Ee, individually, picketed entrance gate at construction site causing other Ees using such gate to stay off job; Ee picketed to protest his discharge not to protest safety conditions or other working conditions; since Ee sought something for himself only, his picketing was not concerted activity protected by Act)

2800 Section 8(c)

2825 DISSEMINATION OF VIEWS, WHAT CONSTITUTES

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**
(*Section* 8(a)(1) and *Section* 8(c) of Act, when read together, leave E free to communicate to his Ees his views respecting Us so long as that communication does not contain a *threat of reprisal or force or promise of benefit*)

Amoco Fabrics Co., Patchogue-Plymouth Division/ Nashville Mills **260 NLRB No. 038**
(E's communication to Ees that negotiations with U might result in reduction in wages or benefits due to give and take of collective-bargaining not violative)

N.L.R.B. v. Arrow Molded Plastics, Inc. **653 F.2d 280 (C.A. 6, July 1981)**
(*though E's free speech right to communicate to its Ees cannot be infringed upon by U or Bd, such right to free speech is not absolute. Threats of reprisal or force, or promise of benefit do not constitute protected speech w/i meaning of section 8(c) of Act. Any assessment of precise scope of E expression, of course, must be made in context of labor relations setting. Thus, E's rights cannot outweigh equal rights of Ees to associate freely, as those rights are embodied in Section 7 and protected by Section 8(a)(1) and proviso to section 8(c)*)

2837 STATEMENTS NOT CONTAINING THREATS OR PROMISES MAY BE COERCIVE

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(Bd's statement made in Fedelity Telephone that *A respondent is responsible only for the remarks it makes to Ees and not for the impressions that Ees may derive from remarks* was not intended to license interference with Ees' rights by use of subtlety, innuendo, and inference, prohibiting only blunt and categorical acts of restraint and coercion)

Dow Chemical Company, Texas Division v. N.L.R.B. **660 F.2d 637 (C.A. 5, Nov 1981)**
ct held pre-election statements and questions of E to U members were protected speech under the Act where statements prior to decertification election were not promises but truthful or accurate observation of fact w/i bounds of legitimate electioneering or expressions of opinion by supervisors)

2850 STATEMENTS NOT TO BE CONSIDERED IN ISOLATION

Walter Carpet Mills, Inc. **259 NLRB No. 096**
(in making distinction between protected speech and proscribed threats or promises of benefit *inquiry encompasses not only what E intends to imply, but what its Ees reasonably might have inferred from these remarks, thus remarks, relatively innocuous in themselves, may be considered violative when considered in totality of E's conduct. Moreover, if subject matter discussed by E is one particularly under his control (e.g. closing of plant, moving plant, loss of wage increases or benefits) speech will be carefully scrutinized by Bd*)

2862 PATTERN OR COURSE OF CONDUCT MAY BE CONTROLLING

St. Francis Hospital **263 NLRB No. 109**
(E statements, which individually were unobjectionable are not objectionable by virtue of their repetition)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**
(leading U advocate being assigned to undesireable night shift, his demotion, disciplinary reprimands and eventual discharge held unlawful where valid grounds for E's actions were frequently false or exaggerated, adverse action against Ee occurred when Ee became in-plant spokesman for U and Ee who opposed advocate's election to U office was more tenderly treated for his acts of misconduct)

2875 CONDUCT PROTECTED BY SECTION 8(c)

2875-0100 Generally

Convair Corporation **261 NLRB No. 178**
(in balancing right of E expression, as embodied in Sec. 8(c), with Sec. 7 rights of Ees to associate freely, as protected by Sec. 8(a)(1), right of E cannot outweigh Ees' guaranteed rights, since in balancing such rights, one must take into account economic dependence of Ees on E, and there is necessary tendency of former to pick up intended implications of latter that might be more readily dismissed by more disinterested ear)

Huntington Rubber Company, Division of New Idria, Inc. **260 NLRB No. 133**
(E's statement that if Ees chose U as bargaining representative U might bargain for changes in existing conditions not violative)

Marine World USA **251 NLRB No. 161**
(in remanding proceedings to Bd for consideration of whether E's announcements to Ees concerning wage increase constituted noncoercive speech protected by 8(c), ct stated that speech which might otherwise be found coercive w/i meaning of 8(a)(1) cannot in view of 8(c) be basis of a violation unless coercion found amounts to a *threat of reprisal or force or promise of benefits*)

Ellis Hospital **JD-164-82**
(Sec. 8(c) specifically guarantees an E's right to speak out against representation of its Ees, limited by fact that E may not threaten Ees or promise them benefits; and if Es are permitted to mount active campaigns against their Ees' choosing collective bargaining, necessarily there can be no presumption of illegality when they do so)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **642 F.2d 899 (C.A. 2, Sep. 1981)**
(anti-U statements *plainly w/i (management's) rights ... do lend a significance to otherwise ambiguous events when the question is whether given course of conduct was actuated by anti-U animus*)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**
(plant manager's statement to U officials that less favorable contract would be negotiated if outsiders from E's other plants participated in plants participated in negotiations held protected by Sec. 8(c) and First Amendment; Bd has the competence in the first instance to judge impact of E utterances, and whether E's comments are coercive is a factual one and Bd's finding of violation is affirmed since it is supported by substantial evidence)

2875-0700 Explanatory remarks lose protection when accompanied by threats of reprisal

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**
(*Section* 8(a)(1) and *Section* 8(c) of Act, when read together, leave E free to communicate to his Ees his views respecting Us so long as that communication does not contain a *threat of reprisal or force or promise of benefit*)

2875-0700—Cont.

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation **258 NLRB No. 142**
(remarking that if E had similar contract to one competitor E had ... and then stating that when Ees of other E selected U it had five stores but subsequently closed them and opened two larger stores, held not unlawful where E was merely expressing its views about unionism w/o any threat of reprisals or promise of benefits)

TRW, Incorporated v. N.L.R.B. **654 F.2d 307 (C.A. 5, 1981)**
(E may communicate to his Ees any of his views about Us so long as no threat of reprisal is involved)

N.L.R.B. v. Proler International Corporation **638 F.2d 351 (C.A. 5, 1981)**
(E's personnel director asking Ees whether they were going to attend U meeting that day, and when an Ee answered she wasn't sure, stating that if Ee did attend she should not sign any papers because U would be lying, held not unlawful since w/i E's section 8(c) right to express opinion as no threat or promise of benefit made where question merely prefaced later remarks, occured at end of routine conversation was not aimed at determining if Ees supported U or part of larger unlawful campaign of interrogation)

2875-4500 Expression of opinion

Belcher Towing Company **265 NLRB No. 159**
(while E may properly point out hazards of bargaining process to Ees and may lawfully inform Ees prior to election that bargaining may start from *scratch* or *zero*, E's handbill threatening bargaining from *ground zero* and statements about *hard bargaining* held not mere expressions of opinion as to normal and natural hazards of bargaining; rather, Ees were left with impression that E would see to it that Ees lost rather than gained benefits if they voted for U, and that they would lose existing benefits for less certain, U-proposed benefits)

Butler Shoes New York, Inc. **263 NLRB No. 150**
(E's speech to Ees prior to election not violative where statements contained therein were expressions of its opinion of relative merits of unionization and its rejection)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **260 NLRB No. 048**
(E's instructions to supervisors to talk to 5 new or undecided Ees and attempt to influence them by pointing out E's benefits and disadvantages of U plant held protected as they wer not told to make promises of benefits, threats or to engage in unlawful interrogation)

Fieldcrest Mills, Inc. **259 NLRB No. 098**
(supervisor's statement to Ees who were wearing U buttons that he did not see why they wanted U; that pay was pretty good, not violative as attempt to indirectly ascertain U sentiments of Ee standing with him but mere expression of opinion)

Fieldcrest Mills, Inc. **259 NLRB No. 098**
(supervisor's statement to Ees that *U wouldn't be any good for us* and that paying dues would be waste of money not violative but expression of opinion)

Walter Carpet Mills, Inc. **259 NLRB No. 096**

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation **258 NLRB No. 142**
(remarking that if E had similar contract to one competitor E had ... and then stating that when Ees of other E selected U it had five stores but subsequently closed them and opened two larger stores, held not unlawful where E was merely expressing its views about unionism w/o any threat of reprisals or promise of benefits)

Billings Chrysler-Plymouth, Inc. **251 NLRB No. 089**
(E's statement to Ee that it would be wise to wait until U was certified before he joined not violative as protected statement of opinion)

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(E holding meeting prior to decertification election at which slides were shown contrasting benefits currently received by unrepresented Ees of E, and which Ees would receive should U lose election, with benefits received by Ees represented by U, not unlawful, since not promise of benefits, where E merely furnished details inasmuch as its practices known; further, U was stressing protections it offered and Section 9(c) permits E to clearly portray its practices with regard to unrepresented Ees)

Nan-Dee Pak, Inc. **260 NLRB No. 107**
(supervisor's comments to Ees concerning past experience of being in U and how U didn't help him, that when U was voted in Ees would have to have negotiated contract, not unlawful as mere expressions of opinion and protected by Sec. 8(c) right of free speech)

Marriott In-Flight Services a Division of Marriott Corporation **260 NLRB No. 072**
(sentence in E's letter to Ees which makes it clear that in E's view signing cards is not in the Ees' best interest held campaign propaganda protected by 8(c))

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(telling Ees that they *probably* would not get raise if U won because all raises would then be subject to negotiation, held not violative, citing *Strumpf Motor Company*, 208 NLRB 431, 432 (1974))

Signode Corporation **JD-161-80**

Like Corporation **JD-(SF)-69-80**
(legitimate economic prediction that there could possibly be strike if U came in not violative)

Dow Chemical Company, Texas Division v. N.L.R.B. **660 F.2d 637 (C.A. 5, Nov 1981)**
ct held pre-election statements and questions of E to U members were protected speech under the Act where statements prior to decertification election were not promises but truthful or accurate observation of fact w/i bounds of legitimate electioneering or expressions of opinion by supervisors)

N.L.R.B. v. Sacramento Clinical Laboratory, Inc. **623 F.2d 110 (C.A. 9, July 1980)**
(comment to Ee by E's business manager that U would make all the decisions, not unlawful, where remark indicated manager's opinion what U might do and not what was w/i E's power to make come true)

2875-5600 Opposition to union or collective bargaining, expression of

Danzansky-Goldberg Memorial Chapels, Inc. **264 NLRB No. 112**
(supervisor at funeral home stating that he felt that while Us might have a definite place in large corporations they had no place in funeral homes which were mostly small and family operated, and suggested that Ees find jobs elsewhere in view of antagonisms at funeral home which put everyone under considerable tensions, not unlawful threat, but opinion as to how Ees might advance own best interests where Ee who was not U supporter included in suggestion that Ees find work elsewhere, and remarks followed Ees' comments about tensions and question as to why supervisor remained on job)

R. L. White Company, Inc. **262 NLRB No. 069**
(supervisor who showed Ees copy of Bd sample ballot on day before election, held it so his thumb covered *yes* box and told them E wanted them to vote *no* did not violate Act as nothing supervisor said could have mislead Ees into thinking there was only 1 choice on ballot or that Bd had endorsed E and statement was not coupled with any forms of coercion)

Gauley Industries, Inc. **260 NLRB No. 189**
(E's president's reference to fact that his family would fight Ees to the end, and his opn that their (Ees') U activity would fail to succeed, not violative when considered independently of president's threat of plant closure)

Raley's, Inc. **256 NLRB No. 155**
(E may lawfully state its preference between competing U's in R election but here where E accorded encumbent U privileges and favored treatment to detriment of petitioning U it violated Act)

Thomas Industries, Inc. **255 NLRB No. 094**
(E's statement *We do not want U here, and we think it would be in your best interests if there is no U here*, not unlawful, where only unlawful conduct in which E had engaged at time statement was made was unlawful reprimand given two months previously; nor did statement's timing in relation to E's unlawful polling of Ees make it coercive)

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**
(E's response to Ees' questions that, if Ees voted in U, E must negotiate in good faith but did not have to sign contract if unable to agree to its terms, not coercive and not unlawful or statement that electing U would be futile since E would not negotiate contract, as alleged, but rather was correct statement of E's legal obligation)

2875-6300 Economic prediction of consequences of unionization

Donnelly Manufacturing Co. Division of Brockhouse Corp. **265 NLRB No. 196**
(manager stating to Ees that E's president couldn't stand for U coming in and would have to close business, unlawful threat of plant closing, notwithstanding jesting manner, since did not predicate statement on economic basis or give any supporting figures for conclusion)

Schnadig Corporation **265 NLRB No. 020**
(violation, where E's chairman of board informed Ees he had purchased plant as non-U and expected it to stay that way, that he was in business to stay, hopefully at present location, but if not there, somewhere else, and needed Ees to help make it profitable, that Ees were entitled to do as they saw fit, but he did not believe U was good for future and being intelligent people Ees should not believe U's snow job, since reference to plant closing not based on objective facts supporting demonstrable probable consequences beyond his control, and supervisors had previously threatened plant closure)

Life Savers, Inc. **264 NLRB No. 162**
(letter to Ees stating that if Ees elected U it could jeopardize *continued effectiveness of our plant* and Ees' *jobs and livelihoods could be affected.*

2875-6300—Cont.

violative where E did not show that such prediction was based on objective facts)

Conair Corporation **261 NLRB No. 178**

(Sec. 8(c) allows E to express his opinions about reasonably probable effects of unionization so long as threats of reprisal or promises of benefits are avoided and, in making prediction about effects of unionization, E's prediction must be carefully phrased on basis of objective fact to convey E's belief as to demonstrably probable consequences beyond his control and not constitute threats of economic reprisals to be taken solely on his own volition)

Conair Corporation **261 NLRB No. 178**

(E's preelection statements concerning plant closure held not permissible predictions of possible adverse consequences of unionization, where E, aware of rumors in plant that E would close down and having ample opportunity to advise Ees rumor was not true, failed to do so, thus creating inference that rumor served E's purpose of dampening enthusiasm for U)

High Energy Corporation **259 NLRB No. 097**

(manager's statement concerning possibility of plant closure in event of unionization, unlawful, since it constituted a threat of retaliation rather than a prediction, where E introduced no evidence that his statements were based on fact or that eventuality of plant closure was a demonstrable probable consequence of such fact; and chairman of E's board of directors subsequently pointed up inaccuracy of manager's remarks by assuring Ees that plant would not be closed in event of unionization)

Halo Lighting Division of McGraw Edison Company **259 NLRB No. 096**

(E's prediction that, if E lost incumbent U's label as result of U's loss of impending election, U members would refuse to install E's product with resultant loss of business and jobs, unlawful, where E's evidence showed that refusal of U members to handle E's product occurred at point too remote in time to support E's stated belief; and, while E's further evidence indicated E's belief in advantages of having U contract, it did not show that U members as a group would not handle E's product, or that U would unlawfully induce its members to do so)

Halo Lighting Division of McGraw Edison Company **259 NLRB No. 096**

(E who wishes to predict adverse consequences to Ees based on outcome of election must use care to assure that its predictions are based on objective fact concerning matters beyond its control, and will not convey the impression that it will take steps on its own to adversely affect employment status of its Ees)

Halo Lighting Division of McGraw Edison Company **259 NLRB No. 096**

(E's prediction that, if E lost incumbent U's label as result of U's loss of impending election, U members would refuse to install E's product with resultant loss of business and jobs, unlawful, since predictions were serious in nature in that they posed threat to Ees' livelihood, and E failed to use required care that its predictions were based on objective fact concerning matters beyond its control; moreover, in context of other violations of 8(a)(1), E's predictions were conscious effort to further instill fear in its Ees)

Walter Carpet Mills, Inc. **259 NLRB No. 096**

(in making distinction between protected speech and proscribed threats or promises of benefit *inquiry encompasses not only what E intends to imply, but what its Ees reasonably might have inferred from these remarks, thus remarks, relatively innocuous in themselves, may be considered violative when considered in totality of E's conduct. Moreover, if subject matter discussed by E is one particularly under his control (e.g. closing of plant, moving plant, loss of wage increases or benefits) speech will be carefully scruntinized by Bd*)

Best Products Co., Inc. **259 NLRB No. 016**

(E's comments to Ees that if U were voted in Ees might lose some benefits to make up for any wage increases they gained not violative as this is explanation of bargaining process)

Great Scot of Florida, Inc. **256 NLRB No. 126**

(E's campaign literature and speech to Ees that stores that were U were being closed and Ees were out of jobs, both nationwide and locally, and noting success of non-U operations, violative as implicit threat that E may or may not take action solely on his own initiative for reasons unrelated to economic necessities; statements do not contain management decision already arrived at to close plant in event of unionism, but contained threats to make decision after Ees had voted in election)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**

(supervisors' pre-election statements to Ees to effect that *if U got in*, E's sole customer for steel cans *would switch to less costly aluminum cans and (E) would be forced to shut down* held violative, since E had not met its burden of providing objective factual basis for statements because it does not necessarily follow that a U election victory per se would increase E's labor costs disproportionately to customer's willingness to pay)

Chester Valley, Inc. **251 NLRB No. 190**

(telling Ee that benefits which Ee wanted U to obtain for Ees were too expensive for E's gasoline station and E would turn it into self-service station if he had to, not unlawful, since remarks dealt with an economical means of accomodating two objectively demonstrable circumstances, namely, specific proposed U demands and gasoline station's financial condition)

United Investment Corporation d/b/a Santa's Bakery — **249 NLRB No. 150**

(predictions made with reasonable basis in fact and w/o retaliatory motive, lawful)

Patsy Bee, Inc. **249 NLRB No. 125**

(Bd held, contrary to ALJ, that E's threatening plant closure and job loss was unlawful, and not protected by 8(c) by virtue of E's president's predictions based on his subjective belief that unionization would cause it to suffer severe economic hardships leading to the threatened results)

Banker's Graphics, Inc. **JD-329-82**

(E's statement to Ees that if U came in it would not be able to bid as competitively on new jobs and might not get them, not violative as E was expressing events which might occur which were out of his control)

Ellis Hospital **JD-164-82**

(E did not interfere with election nor unlawfully threaten Ees with closure of its facility in order to influence Ees to vote against U, where statement regarding posibility of closure if certain Ees struck related to different group of Ees than those involved in organizational campaign, and due to E's adverse financial situation at the time, such statement was not an unreasonable prediction)

National King Coal, Inc. **JD-(SF)-24-81**

(E which posted copy of Bd decision containing statement that *bargaining starts with blank piece of paper and could result in loss of existing benefits* did not violate Act as this is accurate description of one possible consequence of lawful collective bargaining)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**

(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, not unlawful, since it was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

N.L.R.B. v. Berger Transfer & Storage Co. **678 F.2d 679 (C.A. 7, May 1982)**

(*whether or not threats of plant closure are threats or predictions of economic consequences of U organization which fall outside of ambit of SEction 8(a)(1) turn on nature of E's statement. E's prediction must be carefully phrased on basis of objective facts to convey demonstrably probable consequences beyond his control or management decision already arrived at. If there is any implication that E may take action solely on his own initiative for reasons unrelated to economic necessity statement is threat of retaliation*)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. **672 F.2d 592 (C.A. 7, Feb. 1982)**

(E's statements implying that *yes* vote would result in little work held threat as it was warning of adverse economic impact w/o objective basis for Ees to believe that predicted result was not caused solely at E's initiative)

Patsy Bee, Inc. v. N.L.R.B. **654 F.2d 515 (C.A. 8, 1981)**

(ct held, contrary to Bd, that E's statements that unionization would result in plant closure were free speech protected under Sec. 8(c), rather than unlawful threat, where evidence showed them to be predictions of probable consequences beyond E's personal control based on objective facts of key customers' antiU policies, E's poor financial health, and similar situations observed at other plants and statements contained no threats or antiU comments)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**

(E may speak against Us in general or against particular U seeking representation, and he is entitled to make predictions regarding effects he perceives unionization will have on operation of his plant; such predictions, however, *must be carefully phrased on basis of objective fact* and if there is any implication that action may be taken by E for reasons unrelated to economic necessities, *statement is no longer reasonable prediction based on available facts but threat of retaliation*)

2875-7000 Prediction of consequences of organization

Rexall Corporation **265 NLRB No. 015**

(supervisor who spoke to Ees prior to election and described his experiences as unit Ee under U did not violate Act where his description was truthful, he accurately described specific provisions in labor agreement under which some of E's Ees worked, and repeatedly stressed to Ees that he was not telling them changes would occur but that they could occur; thus, there was no threat of reprisal)

2875-7000—Cont.

Rexall Corporation **265 NLRB No. 015**

(supervisor's statement to Ees that benefit some Ees that benefit some Ees enjoyed of being able to leave 5 minutes early to catch bus would become negotiable if U came in not violative as it was accurate statement that hours of work would become negotiable if U won election)

Cafe Tartuffo, Inc. d/b/a Fiorella **261 NLRB No. 033**

(statements in letter to Ees before election that U had negotiated contract at another of E's facilities which *in my opinion gave Ees no more than they would have gotten w/o U, and probably less and we can negotiate agreement with U that does not cost any more in wages and benefits than w/o U,* not objectionable, since legitimate campaign propaganda inasmuch as did not state or imply that E acting independently would grant same wages and benefits granted at unionized facility, nor indicate policy to treat represented and unrepresented Ees alike, or that Ees were receiving all they could expect U to obtain)

Chester Valley, Inc. **251 NLRB No. 190**

(E's claim made to Ees that unionization will lead to adverse actions resulting from requirement for physical examinations of Ees, elimination of part-time Ees, refusal to accomodate work hours to Ees' personal schedules, and change to self-service gasoline sales held to constitute unlawful threats rather than lawful predictions)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**

(E's statements that unionization would subject Ees to *grave risk* and that E would respond to selection of U by action that would jeopardize Ees' livelihood, unlawful, even though E, from time to time, asserted that it would bargain in good faith, that it intended no reprisals, and attempted to cite consequences of unionization as results that *could* happen)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**

(telling Ees that they *probably* would not get raise if U won because all raises would then be subject to negotiation, held not violative, citing *Strumpf Motor Company,* 208 NLRB 431, 432 (1974))

C-F Air Freight, Inc. **247 NLRB No. 060**

(E's statements threatening to close plant, unlawful, where statements conveyed impression that decision to close plant would be made after Ees selected U as representative, E's stated economic reasons as basis of lawful prediction relative to plant closing remarks were spurious, at time statements were made Ees had not even approached U and E was not confronted with contract demands, and continuation of E's facility for over 7 years of financial losses does not support claim that E's statements were merely predictions)

C-F Air Freight, Inc. **247 NLRB No. 060**

(notwithstanding merit to E's claim that its statements were privileged as lawful predictions, E's reference to improved working conditions at Ee meeting constituted unlawful implied promise of benefit, where E's statements, although not unlawful standing alone, contained implication that Ees' forbearance in organizing efforts would result in improved working conditions such as promotions)

Lacks Industries, Inc. **JD-346-82**

(supervisor's statement to Ees that as result of U organization Ees would not be able to come to supervisors and talk to them as they had in the past because U would be Ees' exclusive representative, not unlawful, since statement was not a threat but simply campaign rhetoric and an opinionated prediction on part of supervisor as to impact of U organization which would result in a change in communication between supervisors and Ees)

Lacks Industries, Inc. **JD-346-82**

(E's statements to Es during U organizational campaign that E's plant could end up same way as another E's plant with workforce half of what it was, not unlawful, where statements reflected facts involving other Es in allied industries and in same area and therefore was statement of opinion as to possible consequences of unionization based upon economic factors in area and, as such, was protected by 8(c) proviso)

Valleydale Packers, Inc. **JD-(SF)-81-81**

(E who conducted active anti-U campaign did not violate Act where its speeches contained statements that, all existing benefits are on table and wages and benefits could go up or down as this is not threat to withdraw benefits)

N.L.R.B. v. Sacramento Clinical Laboratory, Inc. **623 F.2d 110 (C.A. 9, July 1980)**

(statement to Ee that if U came in Ee would not be able to talk with E directly but would have to go through channels, perhaps shop steward, not unlawful)

2875-7600 In answer to employee's question

Daniel Construction Company, A Division of Daniel International Corporation **264 NLRB No. 079**

(E's response, to Ee asking if customers would cancel contracts with E if U came in, that *if E was no longer competitive, they would cancel contract* held not violative even in absence of explanation as to various ways E would become noncompetitive, since answer was merely plain statement of fact and not prediction, and no threat of reprisals if U came in; therefore, statement was protected by Section 8(c) of Act)

Marriott In-Flight Services a Division of Marriott Corporation **249 NLRB No. 072**

(supervisor's statement to Ee that bargaining could lead to strike and possible shutdown of flight kitchen held protected by 8(c))

2875-7700 Threats of reprisal

Thermo King Corporation **247 NLRB No. 048**

(baseball poster, displayed by E during election campaign, bearing slogan *You only get one strike and you are out. And that's the way it is with the Union* held not to constitute threat of discharge, since factual representations that when Ees engage in strike they are not receiving pay, and they are walking or out on picket line, are permitted as expressions of free speech)

Lacks Industries, Inc. **JD-346-82**

(alleged unlawful threat of loss of benefits, made by E during U organizational campaign, not unlawful, where E was trying to communicate to Ees that collective bargaining could result in lessening of current wages and benefits, and comments, unaccompanied by threats, were protected by 8(c) proviso)

2875-8800 Statements concerning labor strife

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**

(E's campaign message informing Ees that strikes weren't always successful not violative; message found to be permissable free speech)

General Electric Company **253 NLRB No. 155**

(Ee's statement that if they had good U leadership like old John L., men would probably hit the bricks until things straightened out held protected and not incitement to engage in wildcat strike)

2887 CONDUCT NOT PROTECTED BY 8(c)

2887-0100 Generally

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**

(Ees were led to believe that anti-U Ee group, known as *SCAB*, was acting on behalf of and with E's approval where E asked Ees to join *SCAB*, permitted SCAB members to use worktime for solicitation to join anti-U campaign and provided SCAB members and E's supervisors with time, equipment and *Vote No* buttons to promote anti-U campaign)

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**

(E's announcement of its intention to go *open shop* held not protected, since Sec. 8(c) does not protect speech which is in itself coercive, and announcement, which conveyed E's intention to withdraw its recognition of U, was coercive)

2887-0800 Announcements of benefits or concessions

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**

(unlike past practice of leaving *house* organ at different places around plant, issue before election which contained announcement of wage and benefit increases were handed out to individual Ees)

Jules V. Lane, P.C. d/b/a American Dental Centers **JD-(NY)-110-82**

(announcing preexisting benefits to its Ees during U campaign not violative even if Ees not aware of these benefits as to prevent this would deprive E of legitimate campaign strategy. However, E must be legally committed to these benefits and not be able to discontinue them. Furthermore, E can not husband benefits until right before election and spring them on Ees in manner calculated to influence their choice)

N.L.R.B. v. Arrow Molded Plastics, Inc. **653 F.2d 280 (C.A. 6, July 1981)**

2887-1200 Misleading or distorted explanation of Act

Beck Studios, Inc. **260 NLRB No. 044**

(E's implying (in event it chose to agree to U security provisions in bargaining agreement) that it would discharge Ees for nonmembership in U even if it had reason to believe that such membership was not available to them on same terms and conditions generally available to other members, or that membership was denied or terminated for reasons other than their failure to tender periodic dues and initiation fees uniformly required as condition of acquiring or retaining membership held violative as egregious misrepresentation of law relative to Ee's rights in event E agrees to U shop)

2887-1600 Attacks upon union or officials, particular forms of

N.L.R.B. v. Proler International Corporation **635 F.2d 351 (C.A. 5, 1981)**

(E's personnel director asking Ees whether they were going to attend U meeting that day, and when an Ee answered she wasn't sure, stating that if Ee did attend she should not sign any papers because U would be lying, held not unlawful since w/i E's section 8(c) right to express opinion as no threat or promise of benefit made where question merely prefaced later remarks,

2887-1600—Cont.

occured at end of routine conversation was not aimed at determining if Ees supported U or part of larger unlawful campaign of interrogation)

2887-4100 Influencing strike vote

St. Francis Hospital **263 NLRB No. 109**
(E's statement concerning its labor relations advisor (Modern Management Inc., a/k/a 2M in E's anti-U campaign) over whom Ees felt *really under duress* that *If U wins, 2M stays. If U doesn't win, 2M goes* held violative, since in event of U victory, management would continue to keep them (Ees) *under duress*)

2887-4900 Interference with election

Rosewood Mfg. Co., Inc. **263 NLRB No. 055**
(Section 8(c) of Act was intended by Congress to apply only to ULP cases and not R proceedings)

R. L. White Company, Inc. **262 NLRB No. 069**
(supervisor who showed Ees copy of Bd sample ballot on day before election, held it so his thumb covered *yes* box and told them E wanted them to vote *no* did not violate Act as nothing supervisor said could have mislead Ees into thinking there was only 1 choice on ballot or that Bd had endorsed E and statement was not coupled with any forms of coercion)

Blue Cross of Kansas City, Inc. and Blue Shield of Kansas City, Inc. **259 NLRB No. 070**
(speech may constitute objectionable conduct in R proceeding yet will not be violative as ULP because protected under 8(c), as standard for speech in R election is more restrictive)

2887-6600 Predictions as to effect of unionization

Alpha Cellulose Corporation **265 NLRB No. 010**
(statements in E's letters to Ees that they would be unable to find employment with area employers after being replaced in strike held not predictions of consequences of unionization, but unlawful, where statements were not-so-subtle threat that Ees who engaged in protected activities would be blacklisted by E and would, for discriminatory reasons, be denied employment by other Es, since E's letters made no mention of unemployment in area nor spoke to general problems of unemployed persons gaining employment and, instead, suggested that replaced striker would not be hired by other Ees, thereby impressing upon Ees folly and futility of electing U)

Schnadig Corporation **265 NLRB No. 020**
(violation, where E's chairman of board informed Ees he had purchased plant as non-U and expected it to stay that way, that he was in business to stay, hopefully at present location, but if not there, somewhere else, and needed Ees to help make it profitable, that Ees were entitled to do as they saw fit, but he did not believe U was good for future and being intelligent people Ees should not believe U's snow job, since reference to plant closing not based on objective facts supporting demonstrable probable consequences beyond his control, and supervisors had previously threatened plant closure)

St. Francis Hospital **263 NLRB No. 109**
(E's statement to Ees at Ee meeting, to effect that Ees cannot count on having better benefits—and Ees shouldn't be fooled by fact that U can help Ees, not violative, since statement was found to constitute permissable electioneering; although E implied bargaining would take *anywhere up to several years,* he did not also imply that E would engage in bad-faith bargaining)

Granite City Journal, Inc. **262 NLRB No. 140**
(E's statements to recently hired and therefore most vulnerable Ees that E was overstaffed and plans to acquire another enterprise had to be shelved because of U's advent, unlawful, since E thereby conveyed threat of lost employment or work opportunities because of U; E's comment was not straightforward announcement of business decision because it was not reasoned prediction based on objective facts demonstrating probable consequences outside E's control; and it was not free speech protected by 8(c) but unadorned warning of adverse consequences designed to discourage Ees' U activity)

Progressive Supermarkets, Inc. **259 NLRB No. 074**
(where E's campaign speeches contained constant references to U's own anti-U campaign where it had forced strike and permanently replaced strikers, these references found violative as *not so subtle threat* that E would also force strike resulting in permanent replacement of strikers)

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(violation where E made reference to strike in the event of U coming with consequence of loss of pay to Ees)

Patsy Bee, Inc. **249 NLRB No. 125**
(Bd held, contrary to ALJ, that E's threatening plant closure and job loss was unlawful, and not protected by 8(c) by virtue of E's president's predictions based on his subjective belief that unionization would cause it to suffer severe economic hardships leading to the threatened results)

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**
(E's statement to Ee, who had previously been threatened with plant closing if U came in, that neighboring plant had closed because of U's demands, and that *maybe U wants more for people and get bankrupt,* unlawful)

Providence Rest Home, Inc. **JD-(NY)-51-80**
(prediction that if U won some Ees could or would be let go, violative, since based only on subjective considerations)

2887-7500 Promise of economic or other benefits

2887-7550 Implied promises

United States Postal Service **253 NLRB No. 158**
(E's contention that its issuance of certificate of excellence awards to Ees was protected, rejected, where awards impliedly promised similar benefit to nonrecipient Ees of receiving certificate for their personnel files if they, like recipients, did not file grievances or complaints which was one of the criteria for granting award; by its very terms, Sec. 8(c) excludes such statements granting or promising benefits)

2887-9100 Threats of reprisal

2887-9180 Threats of shutdown

Mark I Tune-Up Centers, Inc. **256 NLRB No. 138**
(E representative's threat of closure of U's facility, unlawful where, although E has right to present its views concerning U and pending election, Ees were aware of E's considerable U animus, representative failed to show that predictions were based on objective facts which would demonstrate probable consequences beyond its control; and, although representative was sincere, his predictions were based more on his anti-U bias than on facts required of business realities)

Great Scot of Florida, Inc. **256 NLRB No. 126**
(E's campaign literature and speech to Ees that stores that were U were being closed and Ees were out of jobs, both nationwide and locally, and noting success of non-U operations, violative as implicit threat that E may or may not take action solely on his own initiative for reasons unrelated to economic necessities; statements do not contain management decision already arrived at to close plant in event of unionism, but contained threats to make decision after Ees had voted in election)

Charge Card Association v. N.L.R.B. **653 F.2d 272 (C.A. 6, July 1981)**
(supervisor's statement that E would *fold* if U came in violative where not based on demonstrable probable consequences beyond his control)

4200 EFFECTIVENESS OF UNFAIR LABOR PRACTICE NEED NOT BE SHOWN

4233 ACT DOES NOT REQUIRE PROOF THAT EMPLOYER'S CONDUCT HAD ITS DESIRED EFFECT

Fairleigh Dickinson University **264 NLRB No. 098**
(*test for whether interrogation is coercive. It is well settled that test of interference, restraint, or coercion under Section 8(a)(1) does not turn on E's motive or whether coercion succeeded or failed. Test is whether E engaged in conduct which it could reasonably be said, tends to interfere with free exercise of Ees' rights under Act*)

Frank J. Schroeder d/b/a National Apartment Leasing Company **263 NLRB No. 003**
(telling Ee that E would fold and everyone would lose their jobs if U's organizing efforts succeeded, violative; such remarks may reasonably be said to interfere with free exercise of Ee rights under Act and neither speaker's intent nor successful effect of remarks on Ee is material)

The Maumee Stone Company, Union Quarry Division **259 NLRB No. 150**
(test for determining violation of Sec. 8(a)(1) is not whether E intended to discourage U activity or whether its' conduct had that effect, but whether E's conduct *reasonably tends to interfere with free exercise of Ee rights under Act*)

Service Garage, Inc. **247 NLRB No. 118**
(lawfulness of E's conduct does not turn on whether particular Ee feels that he had been interfered with, restrained or coerced, but on whether E was motivated by U animus)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(elements of Section 8(a)(1) violation are determined by reference to objective test; it is not necessary to show that particular Ees actually felt coerced, or that E intended to produce impermissible effect; rather only need show that E's actions would tend to coerce reasonable Ee; however, E can defend on grounds of business justification and then there is violation only when Sec. 7 rights outweighs business justification for E's actions)

4267 MAY BE INFERRED BY BOARD

John Cuneo, Inc. **253 NLRB No. 110**
(not unreasonable to infer that other Ees were aware of E's unlawful conduct against their coworkers-discharges and delay in reinstatement of strikers-in view of small size of unit and severity of discriminatory practices)

5600 EMPLOYER'S CONTROL OF BUSINESS PRESERVED

5601 GENERALLY

Public Services Planning and Analysis Corporation, d/b/a Airport Connection JD-(SF)-310-79

(while Act does not prevent Es from founding and operating businesses which seek to be *personal-oriented,* or which attempt to apply progressive social principles to their operations, Ees have right to collectively resist application of such principles in order to better their conditions of employment through U representation, and under Act E, despite sincere belief in *human scale* operational philosophy, has duty of forebearance when Ees seek to achieve their ends)

Texas Instruments Incorporated v. N.L.R.B. 599 F.2d 1067 (C.A. 1, 1979)

(E's asserted defense of business justification to discharge pursuant to valid rule is to be weighed *with some delicacy and deference;* Bd may not substitute its business judgment for E's, rather there must be weighing of relative strengths of good and bad motivations, not to determine how Bd would have behaved under similar circumstances, but to determine what in fact motivated E)

5601-5000 Unrestricted by Act if no unfair labor practice

Industrial Label Corporation JD-(SF)-127-81

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)

(anti-U statements *plainly w/i (management's) rights ... do lend a significance to otherwise ambiguous events when the question is whether given course of conduct was actuated by anti-U animus*)

N.L.R.B. v. Joseph, d/b/a Meat Packers International 605 F.2d 466 (C.A. 9, 1979)

(discharge of Ee, who had testified at prior Bd proceedings, in order to make room for one reinstated disciminatee not violative where Ee was least competent of workers available; management was entitled to make such selection in order to comply with order of ALJ)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. 600 F.2d 930 (C.A.D.C., 1979)

(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

5614 DISCHARGE POWER FOR NORMAL REASONS UNIMPAIRED

Rose's Stores, Inc. 256 NLRB No. 076

(mere presence of possible valid reason (*bad attitude*) for discipline does not insulate discharge (*for protected activity*) if those reasons were not, in fact, reasons for discharge)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)

(*purpose of* section 10(c) *is to make it abundantly clear that Bd is not to interfere with exercise by Es of their traditional right to discharge Ees for adequate cause*)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)

(Act is violated only when E with anti-U animus discharges Ee he would not have fired *but for* Ee's U activity)

L'Eggs Products, Inc. v. N.L.R.B. 619 F.2d 1337 (C.A. 9, 1980)

N.L.R.B. v. First National Bank of Pueblo 623 F.2d 686 (C.A. 10, 1980)

5628 DISCONTINUANCE OF OPERATIONS FOR ECONOMIC REASONS PROPER

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division 257 NLRB No. 152

(when economic reasons compel E to decide whether or not to shut down part of its business, E's need to operate freely outweighs any incremental benefit that might be gained through U's participation in decision-making)

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division 257 NLRB No. 152

(contractor, engaged in providing maintenance and construction services for facility of petro-chemical industry, who terminated its custodial business entirely and laid off its entire janitorial work force w/o consulting with certified U representing custodial Ees, not in violation of Act where marginal profitability of janitorial division had turned into loss; E's actions were founded upon substantial economic factors rather than being motivated by unlawful considerations)

St. Regis Paper Company 247 NLRB No. 105

(burden upon Respondent of establishing, by credited and/or other probative evidence, that its conduct was result of legitimate business considerations)

5656 DISCIPLINE: EMPLOYER MAY TAKE ACTION TO MAINTAIN

East Texas Motor Freight 262 NLRB No. 101

(warning letters and counselling various Ees for actions contrary to E's work rules and policies not violative where other Ees were warned and counselled for same offenses which were work related, were not discriminatory and did not involve Ees' protected activity)

Clark Equipment Company 250 NLRB No. 178

(no violation by suspension of leader of U organizing campaign for calling supervisor bastard and threatening to whip him if he caught him on the street; contention rejected that action was protected because it occurred during E's anti-U meeting)

Illinois Bell Telephone Company JD-178-82

(suspension assessed against Ees who had engaged in work stoppage in response to disciplinary suspension of fellow Ee, not violative where strike was in violation of no-strike clause and was not initiated nor authorized by contracting U; strike was unprotected activity for which E was entitled to institute discipline of participating Ees)

United States Postal Service JD-(SF)-273-79

(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time,* w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

United States Postal Service JD-(SF)-273-79

(letter warning Ee of discipline for his irregular attendance held not to have been pretext to disguise E's unlawful conduct where other Ees received similar letter for their irregular attendance; letter was not arbitrary nor unrelated to E's ordinary business practices)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)

(result of *partial motivation* test was to immunize U activists against legitimate discipline for genuine offenses, and to deprive Es of freedom to apply their own rules uniformly to all their Ees)

Anchortank, Inc. v. N.L.R.B. 618 F.2d 1153 (C.A. 5, 1980)

(Section 7 does not grant Ee right to representation at interview conducted *solely* to inform Ee of, and acting upon, predetermined disciplinary decision)

7000 CIRCUMSTANCES INDICATING VIOLATION

7020 CIRCUMSTANCES SURROUNDING ACTS IN QUESTION MUST BE CONSIDERED

Austell Box Board Corporation 249 NLRB No. 044

(not only was it proper for Bd, for purposes of making independent evaluation, to look at all facts and circumstances surrounding Ee's discharge to decide whether it was connected with Ee's threat to go to Bd and to examine allegedly legitimate reasons for discharge to determine whether Ee would have been discharged if he had not threatend to go to Bd, but it was Bd's obligation to draw its own inferences from all the evidence to determine presence or absence of discriminatory motivation)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)

(anti-U statements *plainly w/i (management's) rights ... do lend a significance to otherwise ambiguous events when the question is whether given course of conduct was actuated by anti-U animus*)

United States Steel Corporation v. N.L.R.B. 682 F.2d 98 (C.A. 3, June 1982)

(Third Circuit standard for 8(a)(1) violations requires showing that *under the existing circumstances* E's conduct reasonably tends to coerce or intimidate Ees in exercise of protected rights)

Pittsburgh-Des Moines Corporation v. N.L.R.B. 663 F.2d 956 (C.A. 9, Dec. 1981)

(Bd must consider *totality of the circumstances which are indicative of mental state* in deciding *whether or not (E) genuinely desires to reach an agreement;* it does not suffice to rely solely upon the terms of contract proposals which Bd can properly look at. In addition, however, Bd must show substantial evidence that E's attitude was inconsistent with its duty to seek agreement)

7020—Cont.

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. **643 F.2d 687 (C.A. 10, Mar 2, 1981)**
(reasonable inference of knowledge of U support may be established by circumstantial evidence such as: supervisor's singling out discriminatee for derision regarding subpoena and supervisor's interest in inducing discriminatee not to honor it; supervisor's multiple references to Ee's *U brothers* as well as small size of market in which both supervisor and Ee worked)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(under *National Woodworking* 386 U.S. 612 (1967) *all surrounding circumstances* must be examined and this requires inquiry into work patterns both before and after technological innovation is introduced rather than just post-innovation work patterns because to do only latter would remove any opportunity for pre-innovation workers to preserve their work and Bd must show that new work is sufficiently unrelated to old work before ignoring traditional work patterns)

7060 ANTIUNION ATTITUDE AND POLICIES OF EMPLOYER

7060-0100 Generally

Hudson Oxygen Therapy Sales Company **264 NLRB No. 004**
(overreaction by E in diciplining Ee for violating work rule, even if valid, especially when rule had not been evenly enforced or necessary to maintain production standards, supports inference that Ee's violation of rule has been seized upon as pretext, and is supported only by invidious and discriminatory motive)

7060-0150 Isolated statements or incidents insufficient to establish antiunion attitude

East Texas Motor Freight **262 NLRB No. 101**
(unlawful conduct outside 10(b) *period* not violative nor can such conduct be used to establish Respondent's U animus in instant case)

7060-1700 Absence of, indicates no unfair labor practice

United States Postal Service **260 NLRB No. 009**
(discharge of mail carrier, U adherent, because postmaster could have reasonably believed Ee was about to attack him during emotional meeting concerning Ee's work assignment, not violative absent anti-U motivation, and any evidence of disparate treatment)

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division **257 NLRB No. 152**
(contractor, engaged in providing maintenance and construction services for facility of petro-chemical industry, who terminated its custodial business entirely and laid off its entire janitorial work force w/o consulting with certified U representing custodial Ees, not in violation of Act where marginal profitability of janitorial division had turned into loss; E's actions were founded upon substantial economic factors rather than being motivated by unlawful considerations)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(*but for* standard requires determination by Bd, based on all evidence, that, wholly apart from alleged illegal motive, E would (or would not) have discharged Ee for conduct ascribed to him by E)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(Act is violated only when E with anti-U animus discharges Ee he would not have fired *but for* Ee's U activity)

Vesuvius Crucible Company v. N.L.R.B. **668 F.2d 162 (C.A. 3, Nov. 1981)**
(refusal to pay strikers accrued vacation pay pursuant to expired contract not violative, as E had good faith belief that entitlement to and amount of vacation pay was to be determined under new collective bargaining contract if and when contract executed. Such conduct, unlike offering non-strikers benefits, or threatening strikers with loss of benefits if they did not return to work, is not inherently destructive of Ee rights so as to obviate need to show prohibited motive; furthermore, here E's good faith belief does not show anti-U motivation on part of E)

Motor Inn of Perrysburg, Inc. d/b/a Holiday Inn of Perrysburg v. N.L.R.B. **647 F.2d 692 (C.A. 6, May 1981)**
(E's imposition, after U had lost two certification elections, of so-called *captain system* and *revised captain system* which changed working conditions and method of compensating waiters and waitresses, not violative where new *systems*, although unpopular with some Ees, were no basis for constructive discharge, and were imposed equally upon all Ees, not only U sympathizers; E's motive was to increase sale of food and lack of discrimination detracted from E's anti-U animus)

7060-1800 Indicia of antiunion attitude

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **265 NLRB No. 161**
(selling trucks less than one week after ct order to reinstate discriminatees, violative as it discloses illegal motive of thwarting ct order by reducing unit work)

St. Francis Hospital **263 NLRB No. 109**
(refusing to pay registration fees and grant time off to two Ees to attend U-sponsored seminar held violative, since E, in past years, allowed Ees to attend U-sponsored seminars when there was no U activity among its Ees; E's motivation, regardless of whether Ee-applicants for seminar were pro-U or anti-U, was to take away benefits because of Ees' exercise of their Section 7 rights)

Coil-Acc, Inc. **262 NLRB No. 012**
(sudden termination of U adherent w/i two days of U's request for recognition w/o notice and before end of his work week together with E's interrogation of, and threats to, its Ees warranted inference of discriminatory motive)

Richland Co. & Assoc., Division of McDonald Construction, Inc. **256 NLRB No. 026**
(although E's calling Ee *backstabber* because he was to be U witness in support of U's objections to election was not found violative since it was neither alleged in C nor sufficiently litigated, ALJ properly considered such name-calling in assessing degree and duration of E's hostility to U activity)

Swift and Company **250 NLRB No. 182**
(supervisor's threat to discharge another Ee along with shifting reasons for discharge and disparate enforcement of rules indicating pretextual reasons for discharge evidence U animus)

Louisiana Council No. 17, AFSCME, AFL-CIO **260 NLRB No. 072**
(E's statement that he would not hold Ee's U activities against him held not to indicate absence of U animus, where statement occurred during meeting with Ee after his unlawful suspension; by referring to Ee's earlier U activity E strenghtened Ee's belief that he and other Ees had been treated disparately for engaging in protected conduct, and E never apologized for his earlier actions nor sought to rectify earlier unlawful conduct; consequently, E's statements were entirely self-serving and merely reinforced Ee's belief that he was being singled out for disparate treatment)

U. S. Gypsum Company **JD-(ATL)-28-82**

Michael Behm Jr., d/b/a M & M Behm and Associates **JD-638-81**
(discharge of painter, leading U advocate, because of his chronic tardiness, erratic performance, complaining, attitude and insubordination held violative where tardiness was general problem, and Ee was singled out for discharge; there was no evidence that other reasons for discharge were significant influence upon E in discharging Ee; in discharging Ee, E said *this talk of U is the last straw*)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(anti-U statements *plainly w/i (management's) rights ... do lend a significance to otherwise ambiguous events when the question is whether given course of conduct was actuated by anti-U animus*)

7060-5000 Intimation and subtle manifestations of employer's attitude

Limestone Apparel Corp. **255 NLRB No. 101**
(E's dislike for Us communicated to his Ees is factor which may be evaluated, along w/o other pertinent evidence, in ariving at actual cause of Ees' discharge)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**
(E's hostility to Ee (U advocate) was evidenced by E's adverse references to Ee's *attitude* which E had linked to Ee's protected efforts to obtain reinstatement of a discharged Ee)

7060-6700 Motive of employer in interpreting conduct

F.M.L. Supply, Inc. **258 NLRB No. 080**
(discharge of U Ee because Ee refused to accept change in his pay rate, which had been accepted by non-U Ees, and discussing U with non U Ees held violative, since E was motivated by Ee's discussions of U and Ee's refusal to abide by changed working conditions was causing unrest among non-U Ees; Ee was accused of *destroying* E)

Limestone Apparel Corp. **255 NLRB No. 101**
(timing of discharge is persuasive evidence as to E's motivation)

7060-6700—Cont.

Nabisco, Inc. JD-(SF)-34-82

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)

(result of *partial motivation* test was to immunize U activists against legitimate discipline for genuine offenses, and to deprive Es of freedom to apply their own rules uniformly to all their Ees)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)

(burden of persuasion with respect to ultimate question of determining causal link between bad motive and the discharge remains always with GC)

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(E's motivation for unlawful action taken against Ee due to Ee's U activities may be proven by circumstantial evidence, including timing of action taken, hostility towards unionization in general and discriminatee in particular, and shifting nature and/or insubstantiality of explanation offered by E for its action (civil contempt proceeding))

Behring International, Inc. v. N.L.R.B. 675 F.2d 83 (C.A. 3, Apr. 1982)

(*it is true purpose or real motive in hiring or firing that constitutes test* whether Act has been violated)

Electric Machinery Company v. N.L.R.B. 653 F.2d 958 (C.A. 5, Aug 1981)

(GC has burden of establishing that E's conduct was so egregious as to be *inherently destructive of important Ee rights* or that E acted with intent to discourage U membership)

N.L.R.B. v. Wismer and Becker Contracting Engineers, and Electrical Workers Local Union 497 654 F.2d 731(T) (C.A. 9, June 1981)

(*Section* 8(a)(1), 8(a)(2), 8(b)(1)(A) and 8(b)(2) are violated only when actor's *true purpose* in discriminating was to encourage or discourage U membership; intent must be proved specifically unless actor's conduct implied prohibited motive)

N.L.R.B. v. Wismer and Becker Contracting Engineers, and Electrical Workers Local Union 497 654 F.2d 731(T) (C.A. 9, June 1981)

(enforcement denied when Bd's finding of violations based solely on discriminatory impact and consequent encouraging of U membership, which, w/o showing of intent, is erroneous legal foundation)

Golden Day Schools, Inc. v. N.L.R.B. 644 F.2d 834 (C.A. 9, May 8, 1981)

(discharge of U advocates assertedly for disparaging E, inducing parents to withdraw their children from E's day-care center and unsatisfactorily performing their work, violative where discharge followed immediately upon U organizing activity and E's anti-U bias was amply supported by record; false assertions of lawful purpose support inference that declarant's motive was unlawful)

7060-8300 Proof of, strengthens proof of unfair labor practice

Bandag, Incorporated v. N.L.R.B. 583 F.2d 765 (C.A. 5)

(Bd's finding *multitude* of other acts displaying anti-U animus of E and its supervisors, though not alleged as independent violations, were relevant in assessing violations that were alleged in complaint)

8400 AFFIRMATIVE DEFENSES

8407 ECONOMIC NECESSITY, PRESSURE OR HARDSHIP

St. Regis Paper Company 247 NLRB No. 105

(burden upon Respondent of establishing, by credited and/or other probative evidence, that its conduct was result of legitimate business considerations)

C. Cowles & Company JD-(NY)-52-82

(layoff of active U protagonist because of downturn in sales of automotive parts manufacturer, not violative, since Ee was least senior in E's department being cut back because of depressed sales in automotive industry and E's usual custom was to use departmental seniority w/o *bumping* other Ees; E satisfied burden of proving lawful justification for discharge)

8407-7000 Statute permits no immunity because of hardship or economic pressure

Schnoor Construction Company 258 NLRB No. 173

(E's failure to make payments into fringe benefit fund as required by bargaining agreement, unlawful; E's defense that its failure to do so was caused by financial conditions beyond its control and was not intentional evasion, rejected; *It is well established that economic necessity is not cognizable as defense to unilateral repudiation of monetary provisions in bargaining agreement*)

8414 'CLEAN HANDS' DOCTRINE

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 147

(contention that charging party, E's bargaining representative, was equitably barred in instant 8(b)(1)(B) proceeding from obtaining any relief sought, rejected, since *clean hands* doctrine does not operate against charging party inasmuch as proceedings are brought not for vindication of private rights but are brought in public interest and to effectuate statutory policy)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. 615 F.2d 1289 (C.A. 10, 1980)

(inequitable to fault only one of two parties since both contributed to ambiguity of situation, where E's conduct was inconsistent with nonmembership in multi-E association and U continued to accept uncertainty as to E's membership)

8418 INTERVENING COURT STAY

Bay Medical Center, Inc. 252 NLRB No. 189

(Respondent's duty to bargain not stayed by order of Circuit Ct of Appeals where stay was limited to appellate proceedings and had no effect on duty to bargain)

8421 MOOTNESS

Hollander Home Fashion Corp. 255 NLRB No. 142

(finding Mister Softee case inapposite and relying on Georgia Hosiery Mills case, Bd held E's removal of unlawfully imposed written warnings from personnel files of Ees involved did not moot matter or obviate need for appropriate remedy)

Boyer Ford Trucks, Inc. 254 NLRB No. 184

(E's contention that execution of collective-bargaining agreement with U rendered moot all of allegations relating to unlawful conduct directed at its Ees during or after election campaign, rejected since GC prosecutes ULP complaints in order to vindicate public interest, not private interest, so private contractual agreements can in no way expunge ULPs or prevent imposition of remedial order aimed at preventing recurrence of same conduct)

8427 MOTIVE AND INTENT

Baltimore Rebuilders, Inc. v. N.L.R.B. 611 F.2d 1372 (C.A. 4)

(*true purpose* or *real motive* is test for determining whether conduct falls w/i statutory ban; proof of subjective motive can, in limited situations, be made out from conduct itself, but where impact is slight or indirect, or where it may be explained by reference to other lawful considerations, it is prima facie lawful, and an affirmative showing of improper motivation must be made)

8427-0100 Generally

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150

(in *Mt. Healthy* case, 429 U.S. 274 (1977), SCt established two-part test to be applied in dual motivation context; Ee must establish that protected conduct was *substantial or motivating* factor; once this is accomplished, burden shifts to E to demonstrate that it would have reached same decision absent protected conduct)

Charles Batchelder Company, Inc. 250 NLRB No. 089

(question of motivation where alleged unlawful discharge involved is to be resolved by determination based on consideration and weighing of all relevant evidence and not one to be answered by crediting or discrediting E's professed reason for discharge)

Landmark Beef Processors, Inc. 248 NLRB No. 041

(absence of U animus no less than its presence is relevant factor in assessing motive for discharge)

Permanent Label Corporation 248 NLRB No. 021

(fact that E converted violative discharge to suspension w/o pay does not legalize discharge as discriminatory motive still exists)

CTS Keene, Inc. 247 NLRB No. 141

(E's intent not material to finding that its interrogation of Ee violated 8(a)(1))

Electric Machinery Company v. N.L.R.B. 653 F.2d 958 (C.A. 5, Aug 1981)

(conduct that *directly and unambiguously penalizes or deters protected activity* such as; discharging Ees for participation in U activities, granting superseniority to strike breakers or intention to operate *open shop* must be shown by GC before necessity to prove U animus is eliminated under *Great Dane Trailers* 388 U.S. 26 (1967))

L'Eggs Products, Inc. v. N.L.R.B. 619 F.2d 1337 (C.A. 9, 1980)

(If discharge is motivated by both legitimate business consideration and protected U activity, improper motive must be shown to be dominant one for discharge to be violative)

8427-2000 Absence of unlawful motive may not be defense

8427-2500—Cont.

Frank J. Schroeder d/b/a National Apartment Leasing Company **263 NLRB No. 003**
(telling Ee that E would fold and everyone would lose their jobs if U's organizing efforts succeeded, violative; such remarks may reasonably be said to interfere with free exercise of Ee rights under Act and neither speaker's intent nor successful effect of remarks on Ee is material)

Limestone Apparel Corp. **255 NLRB No. 101**
(finding of *pretext* necessarily means that reasons advanced by E either did not exist or were not in fact relied upon, thereby leaving in tact inference of wrongful motive established by GC)

Norton Concrete Company of Longview, Inc. **249 NLRB No. 172**
(motive or whether coercion succeeded or failed immaterial to prove violation of Sec. 8(a)(1); test is whether E has engaged in conduct which reasonably tends to interfere with free exercise of Ee rights under Act)

8427-7500 Lack of intent to violate Act may not be defense

Jefferson Electric Co., Inc. **251 NLRB No. 129**
(E's subsequent recognition of U, occuring after its initial, unlawful refusal to bargain, insufficient to withstand *Motion for Summary Judgment,* since Ees' statutory rights had been violated)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(result of *partial motivation* test was to immunize U activists against legitimate discipline for genuine offenses, and to deprive Es of freedom to apply their own rules uniformly to all their Ees)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(*but for* standard requires determination by Bd, based on all evidence, that, wholly apart from alleged illegal motive, E would (or would not) have discharged Ee for conduct ascribed to him by E)

N.L.R.B. v. Wismer and Becker Contracting Engineers, and Electrical Workers Local Union 497 **654 F.2d 731(T) (C.A. 9, June 1981)**
(*Section* 8(a)(1), 8(a)(2), 8(b)(1)(A) and 8(b)(2) are violated only when actor's *true purpose* in discriminating was to encourage or discourage U membership; intent must be proved specifically unless actor's conduct implied prohibited motive)

8437 REPUDIATION OF UNLAWFUL CONDUCT

Precision Graphics, Inc. **256 NLRB No. 057**
(E's posted notice to Ees allegedly repudiating prior threat of plant closure held to have no legal effect where, although there was adequate publication, notice was not unambiguous nor free from same proscribed conduct as prior closure announcement; notice was not timely, having been delayed for month so that Ees could ponder impact of earlier threat; it admitted no wrongdoing and gave no assurance of no future interference with Ees' statutory rights by such coercive conduct; and, since Gissel bargaining order is warranted, E's repudiation could not effectuate what Bd remedy could not do)

United States Postal Service **253 NLRB No. 158**
(E's prompt ameliorative action in posting notice disclaiming any intent to induce Ees to relinquish right to file grievances as result of excellance awards issued to some Ees partly because they had not filed grievances, herein found to constitute unlawful implied promise of benefits to other Ees, held not to preclude issuance of remedial order, since notice failed to recognize unlawful nature of E's actions and to assure Ees that E will not in future engage in similar conduct, and E did little more than reassert right to issue unlawful awards)

8448 ADVICE OF COUNSEL NO DEFENSE

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**

Eastern Maine Medical Center **253 NLRB No. 024**
(fact that E withheld wage increases from unit Ees during bargaining negotiations with U on advice of counsel held insignificant in determining that E's conduct was unlawful)

Post Manufacturing Company **251 NLRB No. 153**
(no violation where in response to subpoenaed witness's question as to what could be done to her if she did not appear at hearing, E's lawyer said nothing much unless Bd sought enforcement, since attorney under no obligation to affirmatively advise witness of her obligation to honor subpoena in absence of question regarding whether to appear or not)

8461 CONTRACTUAL RIGHTS OR OBLIGATIONS

New York Typographical Union No. 6 (Haber Typographers, Inc.) **JD-(NY)-78-80**
(in field of labor relations, if parties have agreed upon terms of bargaining agreement, they are bound by terms agreed upon notwithstanding failure to sign it)

8461-3300 Breach of contract

8461-3350 Bargaining agreement does not excuse interference with employee rights

East Texas Motor Freight **262 NLRB No. 101**
(denying dissident U Ee right to post intra-U political literature on company bulletin board located in Ees' break room held violative where E permitted other Ees to use bulletin board for other than *official U business* but denied dissident U Ee right to advertise his U activity on board; E enforced otherwise legimate contractual limitation on use of bulletin board in disparate manner)

AMPAC, a subsidiary of Kane-Miller Corp. **259 NLRB No. 151**
(E's objection to international U's designation of officials of Local U to police agreement, not violative where exclusion of such officials did not adversely affect representation of Ees involved; international U's representative who had authority under contract to do so acquiesced to E's request)

8471 DE MINIMUS

The Catholic Medical Center of Brooklyn and Queens, Inc., et al. v. N.L.R.B. **620 F.2d 20 (C.A. 2, 1980)**
(E's 3-week suspension of salary review w/o consulting with U, unlawful and though inconsequential, it was distinguishable from violations where Bd applied *de minimis* doctrine)

8475 ISOLATED CHARACTER OF VIOLATION NO DEFENSE

8475-3300 Where part of general unfair labor practice background

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(picketing at gate reserved for neutrals at jobsite, unlawful and warranted remedial order, notwithstanding involved picketing by only two pickets for one day, in view of Respondent's unlawful picketing at another jobsite at same time in connection with dispute with same E)

8475-6700 Limitation of conduct to few of many plants · immaterial

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(well-coordinated unlawful campaign at one plant may produce chilling effects throughout corporate structure)

8481 UNION MISCONDUCT, AND FEAR OR THREATS THEREOF

Land Equipment Inc. **248 NLRB No. 098**
(E's contention that it was coerced into signing 8(f) agreement by U's illegal conduct and should therefore not be required to honor said contract, rejected where U's conduct could not be considered because it was outside 10(b) period)

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**
(evidence of prior *use* or *misuse* of information requested of E by U is quite relevant in determining whether E was bargaining in good faith)

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**
(prior harassment of Ees and their legitimate fear of harassment justified E's subsequent refusal to provide U payroll information on replacement workers or names and addresses of unit Ees)

8485 EMPLOYER ULP's NO JUSTIFICATION FOR 8(b) COERCIVE TACTICS

N.L.R.B. v. Laborer's International Union of North America, Local No. 721 **649 F.2d 33 (C.A. 1, May 1981)**
(Bd properly held E's refusal to hire U-designated steward was not sufficiently serious ULP to justify strike in view of no-strike provision and availability of arbitration procedure to settle dispute which arose not as result of E's refusal to honor U's contractual right to have steward on jobsite but came about because of simple dispute as to identity of steward, and consequently there was no effort on part of E to undermine U as Ees' representative; moreover, Bd is best deferred to by cts in view of its expertise in areas such as this)

8488 UNION RULES AND JURISDICTION

8488—Cont.

Howland Hook Marine Terminal Corporation **263 NLRB No. 040 (designation of agent of Ees' collective bargaining representative (appointment of interim steward) is purely internal U affair and resolution of dispute, regarding who would be interim steward rested with U and not Bd; *Section 8(a)(5) of Act* not applicable to internal U dispute concerning who had authority to conduct business of local U and E not required to determine which of 2 representatives was the validly designated one)**

506 EMPLOYEE RIGHTS PROTECTED BY SECTION 7

0100 GENERALLY

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(defense by E, operating legal services as contractor of federal agency, on ground that statute establishing agency forbade Ee conduct for which they were allegedly unlawfully disciplined, rejected; enabling statute is construed to refer to NLRA, to have recognized its provisions, and to have incorporated various interpretations and applications of Sec.7)

0128 RIGHT TO FORM, JOIN, OR ASSIST LABOR ORGANIZATIONS

Sealy Mattress Company of Michigan, Inc. **262 NLRB No. 011**
(discharge of Ee for joining U violative notwithstanding he may not have been properly part of unit he sought to join since his efforts were protected activity against which E could not lawfully retaliate)

Teamsters Local Union No. 574, a/w Teamsters
(Lola Wheeler, an Individual) **259 NLRB No. 037**
(discharge of office manager by U's Secretary-Treasurer because office manager favored another candidate for U office of Secretary-Treasurer and was instrumental in writing letter to U attorney in attempt to preserve jobs of office staff held violative because activities office manager undertook, in conjunction with other Ees, related to wages, hours, terms and conditions of employment and discharge was in derogation of office manager's right to form and support clerical Ee U)

Pantex Towing Corporation **258 NLRB No. 113**
(Ee's work stoppage held protected, notwithstanding assertion that Ee was engaged in mutiny; *Southern Steamship Company v. N.L.R.B., 316 U.S. 31,* distg)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(payroll supervisor's response to U steward's request for his paycheck, to effect that —*you're always in trouble*, not violative, since it was passing remark by payroll supervisor, as contrasted with supervisor in area policed by U steward, and as such was not threat)

0142 RIGHT TO BARGAIN COLLECTIVELY THROUGH REPRESENTATIVE OF OWN CHOOSING

Public Services Planning and Analysis Corporation,
d/b/a Airport Connection **JD-(SF)-310-79**
(while Act does not prevent Es from founding and operating businesses which seek to be *personal-oriented*, or which attempt to apply progressive social principles to their operations, Ees have right to collectively resist application of such principles in order to better their conditions of employment through U representation, and under Act E, despite sincere belief in *human scale* operational philosophy, has duty of forebearance when Ees seek to achieve their ends)

0156 RIGHT TO ENGAGE IN OTHER CONCERTED ACTIVITIES FOR PURPOSE OF COLLECTIVE BARGAINING

Corbin-Dykes Electric Company **JD-(SF)-200-82**
(individual Ee's complaints involving safety deemed protected and concerted as long as complaints are based on reasonable belief that existing condition was dangerous, hazardous or unsafe, or that collective bargaining agreement had been violated; reasonableness of Ee's belief is based upon circumstances as they existed and not upon whether in fact there actually existed such danger or that E had actually violated agreement)

D & D Supermarket, Inc. **JD-293-82**
(by warning Ee not to talk to other Ees about working conditions, E effectively precluded Ee from engaging in concerted activity and thereby violated Act)

0170 RIGHT TO ENGAGE IN OTHER CONCERTED ACTIIVITIES FOR OTHER MUTUAL AID OR PROTECTION

Materials Research Corporation **262 NLRB No. 122**
(protection afforded by Sect. 7 does not vary depending on whether involved conduct is related, directly or indirectly to U activity or collective bargaining)

Brookline Corporation d/b/a Hi Fi Buys **257 NLRB No. 166**
(Ees' concerted protest of another Ee's discharge and their seeking improved wages and hours held protected concerted activities w/i meaning of the Act)

Brookline Corporation d/b/a Hi Fi Buys **257 NLRB No. 166**
(discharge of Ees engaged in lawful concerted activities violative where E's district manager, in response to Ees' asking if they were discharged, said they were acting too much like a U instead of saying *no*)

Burnup & Sims, Inc. **256 NLRB No. 142**
(discharge of Ees assertedly because they failed to report to work held violative where E had given Ees permission to be absent from work to consult with Bd, EEOC, attorney and labor U concerning Ees' job security and other work problems notwithstanding work was interrupted; E's motive irrelevant as reason for discharge was for engaging in protected concerted activities)

Automotive Armature Co., Inc. **256 NLRB No. 043**
(E's forbidding Ees from talking about engaging in strike or work stoppage held violative)

Intermountain Rural Electric Association **253 NLRB No. 164**
(reprimand of Ee E knew was *strong* U adherent, for entering engineering director's office on another Ee's behalf and proposing attempt be made to reach E's operations manager to clarify other Ee's job status held violative, since U adherent joined other Ee *for purpose—of mutual aid or protection*)

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(Ee's complaint to management regarding their order of recalling Ees and requiring that Ees use their vacation time during period of forced layoff held protected concerted activity; Ee's complaint constituted effort to gain benefit not only for herself but for her coworker and other senior Ees as well)

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(Ee's comment, made in presence of coworkers, that another Ee should not start work until time set by E held concerted activity, since remark was attempt to induce fellow Ees not to perform work for which they would not be paid)

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(fact that Ee was not specifically chosen as spokesperson by Ees to speak for them in discussions with supervision was irrelevant to issue of concerted activity, since it was clear that Ee spoke on Ees' behalf as well as her own)

Meatcorp (Formerly Seymour Packing Division of
Seymour America, Inc.) **251 NLRB NO. 047**
(Ees are not required to give E notice or obtain its permission to engage in protected activity)

Anco Insulations, Inc. **247 NLRB No. 081**
(threat by contractor to discharge Ee because he had registered complaint over safety of insulating work being done on furnace installation by another contractor at construction project held violative since such complaint constituted protected concerted activity)

Corbin-Dykes Electric Company **JD-(SF)-200-82**
(individual Ee's complaints involving safety deemed protected and concerted as long as complaints are based on reasonable belief that existing condition was dangerous, hazardous or unsafe, or that collective bargaining agreement had been violated; reasonableness of Ee's belief is based upon circumstances as they existed and not upon whether in fact there actually existed such danger or that E had actually violated agreement)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(soliciting Ees to take their complaints to individual whom Ee considered to be *boss* of facility though he had no official connection with E at that time rather than through regular channels held to have been concerted activity where Ees' complaints and dissatisfaction were directed to employment

0170—Cont.

conditions of concern to other Ees and protected because *boss's* conduct was such that even though he had officially severed his connection with E he was held agent of E)

N.L.R.B. v. Faulkner Hospital **691 F.2d 51 (C.A. 1, Oct. 1982)**
(E's discharge of Ee who gave statement to Ee of another E closely allied with first E to use in his unemployment compensation hearing and statement was also used in grievance proceeding for that Ee, violative as Ee who gave statement was engaged in protected concerted activity whether grievant won or lost, because circumstances of another Ee's discharge were at issue in unemployment compensation hearing and bore sufficiently close nexus to terms and conditions of employment to be protected)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(Section 7 protects concerted activity by Ees; and one Ee's request for presence of another unit Ee at an interview is *concerted activity*)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(before R election is held, E may nondiscriminatorily exclude from his property U representative who is to represent Ee in an interview; this result would obtain even if Ee's request was concerted activity)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(section 7 (of Act) protects Ees who engage in sympathy strike in support of lawful primary strike by sister U of same E; respect for integrity of picket line may well be source of strength of whole collective bargaining process in which every U member has legitimate and protected economic interest)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(activities for neutral aid or protection not limited to those w/i E-ee relationship or those aimed at changing conditions of employment; section 7 (of Act) protects Ees' concerted lobbying for changes in national policy regarding job security)

Local 175, Automobile Workers, (UAW) v. N.L.R.B. **645 F.2d 1151 (C.A.D.C. Mar 1981)**
(distribution of leaflets in nonworking areas of plant during nonworking time by U concerning U endorsed candidates for public office, not protected, since insufficient relationship to Ee's interests to come w/i guarantee of Section 7 mutual aid and protection where principal thrust of leaflet was to induce Ees to vote for specific candidates, not educate them on political issues relevant to their employment)

0184 RIGHT TO REFRAIN FROM EXERCISE OF SECTION 7 RIGHTS

Texaco Oil Company **259 NLRB No. 062**
(Ees who are sick or disabled at onset of strike have Section 7 right to refrain from declaring their position on strike while medically excused)

United States Postal Service **258 NLRB No. 193**
(violation where supervisor threatened U steward with disciplinary action for refusing to attend meeting unless informed in advance of purpose, since meeting did not concern supervisor-Ee relationship which existed between them as supervisor was addressing Ee in his U steward capacity and by threatening Ee in connection with his performance as U steward interfered with his Sec. 7 rights to engage or not engage in U activities as steward)

Sav-On Drugs, Inc. **JD-(SF)-214-81**
(statements to Ees and applicants for employment that they would have to join (particular) U as condition of employment and posting of letter threatening Ees that they would not be scheduled for work unless they joined U, held violative)

Planned Parenthood of Alameda and San Francisco Counties **JD-(SF)-294-80**
(informing Ee she was to be put on probation for failing *to voice her concerns in constructive manner* where she failed to attend meeting with management on her own time to discuss working conditions, and had allegedly made statements regarding incompetency of management to third parties, unlawful, since refraining from exercising her Section 7 right to attend meeting, protected; further, E lacked sufficient evidence of Ee's criticism to third parties on which to base honest belief of misconduct required for punitive action; fact probation never put into effect did not nullify unlawful threat to discipline)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. **679 F.2d 673 (C.A. 7, May 1982)**
(threatening Ees with retaliation for engaging in concerted activities, violative even if Ees have not attempted or even contemplated exercising their Section 7 rights)

0184-5000 Subject to membership requirement of valid agreement

N.L.R.B. v. Machinists Local 1327, District Lodge 115 **608 F.2d 1219 (C.A. 9, 1979)**
(U member has right to resign from U but U can proscribe rule which limits right to resign during strike to protect its members and U during that critical period)

0188 RIGHT TO BE FREE FROM UNFAIR, IRRELEVANT, OR INVIDIOUS TREATMENT BY REPRESENTATIVE

The Buffalo Newspaper Guild, Local 26, and The Newspaper Guild, AFL-CIO-CLC (Buffalo Courier Express, Inc.) **265 NLRB No. 048**
(U member who filed UC ptn with Bd engaged in protected activity notwithstanding Bd's rules permit only E or U to file such ptn as proceeding was initiated for purpose of requesting Bd to reconsider its policy and such proceedings are as deserving of protection as those filed in conformity with existing standards)

0192 RIGHTS DERIVED FROM OTHER FEDERAL LABOR STATUTES

Carpenters Local Union No. 35 (Klaus Martin, an Individual) **264 NLRB No. 108**
(public policy considerations dictate that Ees be afforded full and unimpeded access to other governmental agencies, and in administering Act Bd must consider full panoply of congressional labor policies, including those embodied in LMRDA, in determining legality of conduct engaged in by a respondent)

2000 NATURE OF ACTIVITIES PROTECTED

2001 GENERALLY

Douglas Aircraft Company, Component of McDonnell Douglas Corporation **260 NLRB No. 180**
(E's contention that in order to have violation of 8(a)(1) E must have knowledge of concerted nature of Ee activity, but that it lacked such knowledge with regard to Ee's distribution to Ees of his open letter to E protesting E's time restriction on Ees' use of plant vending machines, rejected, where Ee informed security guards, at gate at which he was distributing, that letter *pertains to several hundred people,* and letter itself put E on notice when it referred to *work force* as being subject to restriction which *we find* frustrating)

Hudson T. Marsden, A Sole Proprietorship **259 NLRB No. 118**
(Ees who refused to work outside on rainy day and went home w/o informing E engaged in protected concerted activity and discharge violative)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(so long as concerted activity is not unlawful, in breach of contract or disloyal, Ees engaged in concerted activity do not lose protection of Act simply because their activity contravenes E's rule or policies; application of Sec. 7 of Act does not depend on manner in which Ees choose to press despute, but rather on matter they are protesting)

Norton Concrete Company of Longview, Inc. **249 NLRB No. 172**

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(fact that Ees who participate in concerted activities are not members of same U, or Ees of same E, does not alter concerted nature of activity or deprive it of protection accorded such activity by Act)

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**
(E conduct *inherently destructive of important Ee rights* is (1) conduct which jeopardizes U's position as bargaining agent or diminishes U's capacity effectively to represent Ees, and (2) conduct which directly and unambiguously penalizes or deters protected activity)

2001-5000 Concerted activity defined

Richdel, Inc. **265 NLRB No. 064**
(mere enlisting of other Ees' assistance in furtherance of personal dispute between Ee and supervisor does not draw activity undertaken in furtherance of that dispute into protections of Act; no other Ees had experienced similar problems with supervisor and Ee was not acting on behalf of other Ees)

London Chop House, Inc. **264 NLRB No. 083**
(bargaining committee member's initial support of contract ratification and his later decision and action taken in opposition to ratification held protected activity and not *ethically and morally reprehensible;* and his actions were *concerted* since gravamen of C alleged that he was engaged in U, or intra-U, activity and, consequently, fact that he was acting alone is immaterial)

Sherwood Ford, Inc. **264 NLRB No. 116**
(Ee's protesting E's failure to pay holiday pay on behalf of herself and other Ees, protected, notwithstanding Ee's telling office manager she was *tired of being lied to* as part of *res gestae*, since Ee's language was not so inaccurate or offensive as to remove her from Act's protection)

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Cox Enterprises, Inc., d/b/a Atlanta Newspapers **264 NLRB No. 120**
(conversation involving 1 speaker and 1 listener can be concerted activity as long as remarks have some relation to group action in interest of Ees. Where remarks were about rumored strike, speaker's failure to state explicitly or to demonstrate otherwise that she supported rumored strike is insufficient to disqualify conversation as protected activity regardless whether or not supervisor is listener)

Mills Patrol Service, Inc. **264 NLRB No. 065**
(during meeting with E's president and vice president, Ee's discussing possibility of obtaining sick benefits, medical coverage and U representation held not protected concerted activity as Ee did not discuss these matters with any Ee, none knew of his efforts, and no uniform plan where any changes made to one Ee would have to apply to all Ees)

Transport Service Co. **263 NLRB No. 125**
(discharge of Ee who refused to drive truck which was overweight and in violation of state law (though w/i *tolerances* allowed by states and therefore exempt from criminal prosecution), violative, as Ee was engaged in protected concerted activity when he refused to drive; refusals to violative state law are presumptively protected concerted actively; moreover, inquires into private motivations for asserting such reasons is limited to whether it was asserted in good faith or maliciously)

M K Laboratories, Inc. **261 NLRB No. 021**
(Ees, acting in concert, have Sec. 7 right to attend unemployment compensation hearings involving discharge of fellow Ee, which is to be balanced against E's interest in efficiently operating his business)

Douglas Aircraft Company, Component of McDonnell Douglas Corporation **260 NLRB No. 180**
(Ee's distribution to Ees of his open letter to E protesting E's new time restriction on Ees' use of plant vending machines held group action rather than personal gripe, where letter was in response to group concern and had sanction of U steward; letter's purpose was to advance Ees' common interest and concern over restriction and was for their mutual aid and protection; and Ee's conduct would have been concerted and protected irrespective of whether he was overtly designated by other Ees to act on their behalf, or whether he had outlined to them what he was going to do)

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**
(Ee's conduct in arguing with E about her refusal to participate in E's insurance program and in protesting E's failure to provide paycheck stub with salary deductions listed held to constitute individual rather than concerted action)

Kyle & Stephen, Inc. **259 NLRB No. 087**
(Ees held engaged in protected concerted activity where they pursued their wage claim under state law)

Mount Desert Island Hospital **259 NLRB No. 080**
(Ee who wrote letter to newspaper setting forth Ee complaints about working conditions at E engaged in protected concerted activity where Ee had engaged in discussions with fellow Ees regarding alleged deficiencies in pay, benefits, and working conditions at E's facility)

Cal-Walts, Inc. **258 NLRB No. 126**
(*an individual's actions may be concerted in nature if they relate to conditions of employment that are matters of mutual concern to all affected Ees; in such circumstances an Ee doesn't have to actually act in concert with others*)

Smithfield Packing Co. **258 NLRB No. 022**
(discharge of Ees who refused to work overtime more than the 8 hours E had predicted they would work violative as Ees were engaged in protected concerted activity as previous unannounced concerted refusal to work overtime prompted by dissatisfaction with E's overtime policies was *presumptively concerted activity*; moreover, their refusal to work does not lose its protected status because it took place during overtime hours and was not previously announced)

McLean Trucking Company **257 NLRB No. 179**
(Ee's complaint to other Ees that terminal manager asked him not to tell anyone he was being paid for extra time when he returned late to the terminal after experiencing mechanical troubles with his truck, held protected)

Brookline Corporation d/b/a Hi Fi Buys **257 NLRB No. 166**
(Ees' concerted protest of another Ee's discharge and their weeking improved wages and hours held protected concerted activities w/i meaning of the Act)

Rai Research Corporation **257 NLRB No. 127**
(displaying in his car windshield sign reading *Please don't feed management. They only suck blood*, violative as language was aimed at shaking co-workers out of their lethargy and hence protected)

Greyhound Lines, Inc. **257 NLRB No. 088**
(Ee's physically writing dictated letter from U to E concerning alleged harassment of Ees held protected concerted activity)

Ross's Stores, Inc. **256 NLRB No. 076**
(individual Ee's protesting E's assigning Sunday work to Ee and other Ees held to have been concerted activity, since Ee's protest concerned issue which earlier had been subject of group protest and Ee was acting on behalf of other Ees who shared Ee's concern)

Atlas Minerals, Division of Atlas Corporation **256 NLRB No. 042**
(contention that single Ee, when utilizing agency involved in regulating Ee working conditions, is not engaged in concerted activity under analysis of various cts, rejected by ALJ, since Bd law is binding upon him, and E's threat to terminate an Ee for going to agency was made to all Ees and applied with equal force to chill collective and individual recourse to agency)

Zurn Industries, Inc. **255 NLRB No. 098**
(Ee's statement *to hell with way management wants that skip, we need it for safety; it's the way we want it, not the way they want it*, held protected and not insubordinate because it was expression of opinion on occupational safety)

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(Ee's complaint to management regarding their order of recalling Ees and requiring that Ees use their vacation time during period of forced layoff held protected concerted activity; Ee's complaint constituted effort to gain benefit not only for herself but for her coworker and other senior Ees as well)

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(Ee's comment, made in presence of coworkers, that another Ee should not start work until time set by E held concerted activity, since remark was attempt to induce fellow Ees not to perform work for which they would not be paid)

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**
(discharge of Ee who complained to supervisor about his raise and then circulated letter offering to represent Ees to management to obtain cost-of-living adjustment violative as Ee's action was intended to produce group activity and constituted concerted protected activity)

National Wax Company **251 NLRB No. 147**
(Ee inquiring about merit pay increase for himself held not concerted activity where he was not acting on behalf of any other Ee and his endeavors, even if successful, would not directly relate to or advance likelihood of merit wage increases for any other Ee)

E. A. Nord Company **250 NLRB No. 068**
(discharge of Ee because of his expressed intent to file contractual grievance unlawful, conduct was concerted since it could establish precedent for other Ees)

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**
(derogatory comments of two Ees concerning management and expression of differences regarding policies and programs, not concerted, notwithstanding Ees together iterated various attitudes, since no effort made during more than 3 months to cultivate dissatisfaction into confrontational form of expression where Ees did not invite other Ees into coalition, formulated no agenda, filed no grievances, nor made any demands)

Sentry Investigation Corp. **249 NLRB No. 130**
(*Ees have no statutorily protected right to be represented by outside counsel in investigatory or disciplinary interviews requested by their E; representation of Ee by his personal attorney is not equivalent of U representation w/i meaning of NLRB v. Weingarten; nor does representation of by his personal attorney constitute concerted activity w/i purview of Act as construed in Glomac Plastics*)

Colonial Stores Incorporated **248 NLRB No. 142**
(where Ee and her husband, a non-Ee, circulated ptn among Ees protesting E's alleged failure to abide by bargaining agreement and U's failure to enforce agreement, and subsequently the husband drove to E's parking lot with signs stating, *E had no regard for its Ees' rights*, Bd held Ee's displaying signs in her husband's car constituted protected concerted activity, since it was protest concerned with E's adherence to grievance settlement under terms of contract, a subject of potential concern to other Ees, and it was not undertaken for unlawful purpose or in unlawful manner)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(Ee demanding improvement of wages, pensions, and health benefits held concerted activity rather than effort to obtain objective only for self, since Ee's demands would inure to benefit of all Ees; moreover, Ee had spoken to several of his fellow Ees and apprised them of his intentions and they had not expressed disinterest in his taking action)

Ontario Knife Company **247 NLRB No. 168**
(fact that Ee, who together with another Ee had grievance discussion with supervisor, walked out alone held not to prevent walkout from being protected concerted activity, where grievance in question was group concern of Ees, and Ee and other Ee were engaged in group action up to the point when Ee walked out alone following supervisor's *off-color* remarks made during grievance discussion)

Fall River Savings Bank **247 NLRB No. 088**
(questioning order of seniority in which Ees are called for weekend work found concerted, since seniority is a matter of common concern)

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Wayne & Co. Installers JD-(SF)-170-83
(Ee is engaged in protected concerted activities when he or she, either acting alone or in concert with fellow Ees, complains or inquires about contract violations)

Avis-Rent-A-Car Systems, Inc. JD-62-82
(Ee who files grievance either on his own behalf or behalf of fellow Ees is engaged in protected concerted activity, notwithstanding there may be no merit to grievance, therefore discharge of suspended Ee who came on E's property, to file grievance over suspension violative)

High Energy Corporation JD-109-83
(discharge of Ees who walked off job to protest unsafe working conditions violative as Ees engaged in protected activity and protection is not lost because Ees did not give prior notice, moreover, it is immaterial whether Ees were correct about the unsafe conditions)

Gastown, A Division of Enco Marketing Company JD-66-82
(Ee who testified at unemployment compensation hearing for coworker engaged in protected activity)

Lang Manufacturing Company JD-(SF)-298-81
(various protests voiced by Ees held concerted in character where they were directed at E's uniform pay system having common application to Ees as whole)

Linx Corporation JD-588-81
(Ees' temporarily withholding their services until they were assured that their paychecks were good held protected concerted activity where E had spotty record of untimely payment)

Westinghouse Electric Corporation JD-(ATL)-40-81
(U steward's refusal to work overtime in order to attend U meeting concerted activity notwithstanding Ee acted alone where E had contractual obligation to honor steward's request to leave job for U business)

Wal-Mart Stores, Inc. JD-(ATL)-88-81
(Ees were engaged in concerted activities for purpose of their mutual aid and protection when they complained to regional manager concerning methods employed by district manager in his handling of problems at store)

Meat Cutters, Local 391 JD-(SF)-304-80
(filing of grievance with E and subsequent calls to officials of E to check on veracity of supervisor's discharge threats held protected concerted activity)

Meat Cutters, Local 391 JD-(SF)-304-80
(grievance that dealt at least in part with areas of supervisor's performance which had impact on both Ees' job interests and their ability to perform tasks for which they were hired was grievance over working conditions, rather than attack on supervisor; as such, Ees conduct was protected)

Scott Paper Company JD-623-80
(Ee's alleged concern about safety conditions held not to be concerted where there was no evidence that, at any time, any of his co-Ees showed *concern* as to safety of operation, and he did not consult any other Ee before his refusal to perform assigned task)

Shuttle Motor Corporation JD-327-80
(Ee's inquiry of state agency regarding legality of *back-stubbing* i.e., E refusing to pay for current work in order to recoup where Ee had been paid too much for previous work, not concerted, where *back-stubbing* was not matter of common C among Ees; further, Ee called agency before any adverse action taken against him and subsequent *back-stubbing against him rectified*)

Public Service Company of New Mexico JD-(SF)-157-80

B & F Turgeon, Inc. JD-274-80
(if Ees are engaged in group activity it is considered concerted and existence of group need not be communicated to management)

Ontario Knife Company v. N.L.R.B. 637 F.2d 840 (C.A. 2, Dec. 1980)
(not only must ultimate objective be *mutual* but activity must be *concerted* or, if taken by an individual, must be looking toward group action)

Frank Briscoe Inc. v. N.L.R.B. 637 F.2d 946 (C.A. 3, 1981)
(filing charges with EEOC held concerted activity where charges filed w/i 3 days of layoff; nature of complaints similar; complaints referred to discrimination against other Ees)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. 618 F.2d 1009 (C.A. 3, 1980)
(Ees' refusals to operate crane for safety reasons held concerted activity rather than individual action, since there was some group action by Ees involved in interest of Ee safety, U was also involved by filing C with OSHA concerning potential danger to all Ees, Ees involved acted as spokesmen for safety of all Ees, and their action was undertaken for mutual aid or protection)

Tyler Business Services, Inc. v. N.L.R.B. 680 F.2d 338 (C.A. 4, June 1982)
(Ee's remarks to one of E's most important customers concerning unlawful discharge of part-time Ee and lack of insurance for part-time Ees held not protected concerted activity, since, in order to establish that single Ee is engaged in such activity, evidence must show that Ee is seeking either to enforce a bargaining agreement, to induce group action, or to act on behalf of other Ees, and such showing was not made herein; and personal concerns or missions are insufficient to demonstrate concerted action)

Excavation-Construction, Inc. v. N.L.R.B. 660 F.2d 1015 (C.A. 4, Oct. 1981)

Krispy Kreme Doughnut Corp. v. N.L.R.B. 635 F.2d 304 (C.A. 4, 1980)
(Ee's refusal to forego workman's compensation claim did not constitute protected *concerted* activity, since there was no evidence that action of solitary Ee here contemplated any group activity or that he was *in fact . . . acting on behalf of or as representative of other employees*; at most his action can be said to have been *for the benefit of other employees only in a theoretical sense*)

Pioneer Natural Gas Company v. N.L.R.B. 662 F.2d 408 (C.A. 5, Nov. 1981)
(Ee's telling fellow Ee to go to supervisor about another coworker's racially discriminatory remarks against fellow Ee, not concerted protected activity where first Ee never suggested it was a collective effort)

N.L.R.B. v. Datapoint Corporation 642 F.2d 123 (C.A. 5, Apr 8, 1981)
(where Ee, in rude and beligerant manner, complained to fellow Ees about E's plan to layoff Ees for 1 week while plant moved to new location, discharge of Ee not violative as such activity is not protected where no evidence that Ee had object of initiating or inducing or preparing for group action; activity which consists of mere talk, in order to be protected, must be talk looking toward group action)

Brown & Root, Inc. v. N.L.R.B. 634 F.2d 816 (C.A. 5, 1980)
(activity concerted where two individuals among twenty EEs who had ceased work and sought shelter to avoid unsafe conditions when rain began to blow on electrical equipment with which they were working refused to obey foreman's order to return to work, since two Ees acted in concert and minimum number not required by Section 7)

Anchortank, Inc. v. N.L.R.B. 618 F.2d 1153 (C.A. 5, 1980)
(Section 7 protects concerted activity by Ees; and one Ee's request for presence of another unit Ee at an interview is *concerted activity*)

Anchortank, Inc. v. N.L.R.B. 618 F.2d 1153 (C.A. 5, 1980)
(before R election is held, presence of U representative (at interview) does not have effect on other Ees essential to satisfaction of *Interboro* standard for concerted activity; thus Ee's actions in seeking presence of the representative at that time does not constitute *concerted activity;* but Ee's request for U representation by U which has won challenged election *is protected concerted activity*)

Timet, a Division of Titanium Metals Corporation of America v. N.L.R.B. 671 F.2d 973 (C.A. 6, Mar. 1982)
(preparing for group activity by telling E that he intended to organize Ees to protest dissatisfaction with amount of salary increase and conveying this intention to some Ees held protected notwithstanding he was discharged before any Ees had opportunity to join him)

Timet, a Division of Titanium Metals Corporation of America v. N.L.R.B. 671 F.2d 973 (C.A. 6, Mar. 1982)
(drafting and circulating letter in which Ee offered to represent Ees to management to obtain cost-of-living adjustment held protected notwithstanding he was discharged before any Ee joined him as he was preparing for group activity)

Bay Wood Industries, Inc. v. N.L.R.B. 666 F.2d 1011 (C.A. 6, Dec. 1981)
(not made solely on behalf of individual Ee, but it must be made on behalf of other Ees or at least be made with object of inducing or preparing for group action and have some arguable basis in collective bargaining agreement)

Supreme Optical Company, Inc. v. N.L.R.B. 628 F.2d 1262 (C.A. 6, 1980)
(attendance of 5 Ees at unemployment compensation hearing at request of former Ee held protected in view of sufficiently close nexus to terms and conditions of employment since termination of particular Ee potentially affects relationship between all Ees and E)

Pelton Casteel, Inc. v. N.L.R.B. 627 F.2d 23 (C.A. 7, July 1980)
(ct reversed Bd finding of unlawful discharge where record did not support conclusion that Ee's continuous complaints about job rates and mandatory overtime were more than individual gripes, and was only one of several items E considered in disciplining Ee for poor attitude)

Koch Supplies, Inc. v. N.L.R.B. 646 F.2d 1257 (C.A. 8, Apr 1981)
(Ee's complaints to E about E's promise of vacation benefits to new Ee, unprotected where it was not shown that complaining Ee intended that her activities would relate to group action)

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Albertson's, Inc. v. N.L.R.B. **661 F.2d 939(T) (C.A. 9, Sep. 1981)**

(in finding discharge not unlawful, ct relied in part on existence of substantial doubt that dischargee's alleged *U activity*, consisting of seeking enforcement of contract as to break periods, was in fact more than dischargee's pursuance of her own complaint of discontent)

N.L.R.B. v. Brewton Fashions, Inc., a Division of Judy Bond **682 F.2d 918 (C.A. 11, Aug. 1982)**

(refusal of two women to individually push heavy carts held protected and concerted where they had good-faith belief they would be physically injured by pushing cart alone and task had formerly been done by men)

Lee G. Kohls v. N.L.R.B. **629 F.2d 173 (C.A.D.C., 1980)**

(discharge of Ee for refusing to drive assigned truck because *breaks were not good enough for me*, not unlawful, since protest and refusal not concerted and *Interboro Contractors* doctrine not applied, notwithstanding contention was Ee was asserting contractual right, where Ee was not asserting right on behalf of anyone other than himself nor speaking for others, no evidence Ee and U working in concert to assert contract, and fact Ee withdrew grievance filed on his behalf by U)

2017 NOT ALL CONCERTED ACTIVITIES PROTECTED

Keyway, A Division of Phase Inc. **263 NLRB No. 172**

(Bd applies same standard to health care institutions as it does to other enterprises in determining whether Ees have engaged in unprotected conduct)

Zurn Industries, Inc. **255 NLRB No. 088**

(Ee's statement *to hell with way management wants that skip, we need it for safety; it's the way we want it, not the way they want it*, found not insubordinate and held protected)

Fall River Savings Bank **247 NLRB No. 088**

(protected activity's protection not lost because of Ee's being unpleasant, rude or impolite in course of such activity)

2017-0800 Activity of such character as to render employee unfit for further service

Richmond Tank Car Company **264 NLRB No. 025**

(profanity in violation of plant rule which was provoked by E's unresponsiveness to Ees' well founded concerns about safety conditions and which were kind of language commonly heard in industrial workplace was not so egregious or flagrant as to remove protection of the Act or so violent or serious as to render Ee uttering it unfit for service and justify discharge)

Tyler Business Services, Inc. **256 NLRB No. 088**

(E's statements that he believed E's failure to provide part-time Ees hospitalization benefits was unfair, protected; nor was statement rendered unprotected by his remarks to third party concerning personal lives of E's officials since remarks did not relate to E's product or operations nor constitute deliberate intent to impugne company)

F. W. Woolworth Co. **251 NLRB No. 152**

(violation where E suspended, then discharged Ee allegedly for insubordination where Ee insisted on asking E question during E's captive audience anti-U propaganda speech in disobedience of E's gag on Ee participation; E had right to protest gag and did not engage in misconduct sufficient to remove protection of Act where he used no threats, profanity or inciteful language)

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**

(derogatory comments about E's management by Ees of center for disturbed and displaced youth and expression of differences regarding policies not protected, since aimless rather than concerted, and nature of Ees' concerns was not effect of policies on own working conditions but on quality of program and welfare of residents inasmuch as these are peculiarly management's concern; further, Ees' use of profanity in criticizing management in presence of residents and disrupting and demoralizing effect of their actions on other Ees, particularly in view of E's mission, rendered them unfit for further service)

United States Postal Service **250 NLRB No. 002**

(assuming U steward uttered obscenity toward supervisor in course of formally investigating possible grievance over working conditions on behalf of unit Ee when supervisor failed to see steward immediately and directly, such utterance was part of *res gestae* of investigation and was not so flagrant or egregious as to remove protection of Act)

Childers Manufacturing Company, Inc. **JD-(SF)-11-82**

(while remarks by Ee, participating in protected activity of meeting with E to obtain wage increase, may have been offensive to E, they were not so disruptive of E's right to maintain order as to render Ee unfit for further service; Ee's right to express his concern on wage increase issue was not lost because of his lack of deference to E, since his action was not so extreme as to fall outside Act's protection)

2017-1700 Activities tending to disrupt employer's or union's operations

G.T.A. Enterprises, Inc. d/b/a **Restaurant Horikawa** **260 NLRB No. 029**

(Ee who engaged in non-violent concerted activity of joining in with 30 other non-Ee demonstrators and boisterously marching through E's restaurant during crowded dinner hour not protected where such conduct was disruptive of E's business and transgressed boundaries by which even non-violent conduct protesting E's ULP's is deemed protected by Act; therefore, discharge not violative)

Mount Desert Island Hospital **259 NLRB No. 080**

(letter to newspaper which set forth poor working conditions at hospital protected where intention was not to harass, disparage, or harm E)

United States Steel Corporation **253 NLRB No. 083**

(Ee's refusal to report to office as directed by supervisor, unprotected, as it undermined E's right to maintain discipline and order)

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**

(derogatory comments about E's management by Ees of center for disturbed and displaced youth and expression of differences regarding policies not protected, since aimless rather than concerted, and nature of Ees' concerns was not effect of policies on own working conditions but on quality of program and welfare of residents inasmuch as these are peculiarly management's concern; further, Ees' use of profanity in criticizing management in presence of residents and disrupting and demoralizing effect of their actions on other Ees, particularly in view of E's mission, rendered them unfit for further service)

Anco Insulations, Inc. **247 NLRB No. 081**

(company's refusal to permit contractor's lawfully discharged Ee to work for another contractor at company's construction site not violative where Ee, individually, picketed entrance gate at construction site causing other Ees using such gate to stay off job; Ee picketed to protest his discharge not to protest safety conditions or other working conditions; since Ee sought something for himself only, his picketing was not concerted activity protected by Act)

The Learning Castle, Inc. **JD-669-80**

(discharge of 2 Ees who refused to perform driving part of their job assignments not violative as this was true reason, not fact that Ees had telephoned insurance agent and State agency asking questions concerning driving on job)

Excavation-Construction, Inc. v. N.L.R.B. **660 F.2d 1015 (C.A. 4, Oct. 1981)**

(discharging Ees for concertedly refusing to work specific job on Saturday because it did not pay time and half held not violative where Ees knew that E would pay only straight time and rule that Saturday work was voluntary but if Ee signed up for that day must work on any job assigned by E and penalty for not working was discharge. Claim that Ees were engaged in 1 day strike rejected, since Ees only refused to work that specific job that day and not other jobs which was equivalent to Ees seeking to work under terms prescribed by them which is not protected activity)

Giant Food Markets, Inc. and S. S. Kresge Company v. N.L.R.B. **633 F.2d 18 (C.A. 6, 1980)**

(remand for evidence on effect of relocating, pursuant to TRO, area standards pickets from private property near store entrance to public area across parking lot at entrance to 2-store shopping center and to determine, (1) whether picketing at store entrance is protected, and (2) whether E's peaceful demand that pickets leave, violated 8(a)(1))

Can-Tex Industries, A Division of Harsco Corporation v. N.L.R.B. **683 F.2d 1183 (C.A. 8, July 1982)**

(E did not violate Act when it discharged 13 Ees who shut off their extrusion machines and left work to protest their dissatisfaction with wages and holidays because Ees' action caused E to lose two days' production and Ees could have walked off job w/o shutting off machines as machines could run w/o supervision w/o damage; thus Ees did more than stop work-they interfered with company property and was usurpation of E's option of continuing production; thus Ees were engaged in unprotected activity)

2017-3300 Cessation of work for personal reasons

Henry J. Kaiser Company **259 NLRB No. 001**

(while Ee's adverse criticism of his foreman for performing overtime work claimed by Ee was protected, manner in which Ee protested was not protected where E subsequently had no right to protest foreman's performance of overtime work by refusing to work for which he was discharged for cause)

Ontario Knife Company **247 NLRB No. 188**

(Ee's walkout held protected concerted activity, even assuming that supervisor's *off color* remarks were proximate cause of Ee's personal decision to walk out, since supervisor's statements must be considered in context of entire conversation between Ee and supervisor regarding Ee's grievance, which was clearly protected concerted activity, and *off color* remarks per-

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ticularly emphasized that supervisor was unwilling to consider seriously Ee's complaint)

Bay Wood Industries, Inc. v. N.L.R.B. 666 F.2d 1011 (C.A. 6, Dec. 1981)

(dismissal of Ee because he refused to operate saw unless guard was installed on saw to protect Ee's fingers not violative, since Ee's complaints and actions did not constitute *concerted activities*; Ee enlisted no other Ees in this dispute, nor did he file grievance nor did he attempt to represent any interests other than his own; Ee's complaint did not meet test for *concerted* activities enunciated in *Aro, Inc. v. N.L.R.B.*, 596 F.2d 713 (1979))

2017-4000 No impact upon terms and conditions of employment

Good Samaritan Hospital & Health Center 265 NLRB No. 092

(discharge of two occupational therapists by coordinator of agency providing developmental therapy for learning disabled children, because therapists complained of coordinator's mismanagement of program and inappropriate treatment model to be used by agency held not violative, since therapists were in no way disturbed or troubled by any personal demands imposed on them by coordinator's policy decisions; welfare of children was therapists' concern; therapists criticisms and recommendations related to disputes outside objectives of mutual aid or protection provisions of NLRA)

Keyway, A Division of Phase Inc. 263 NLRB No. 172

(discharge of Ees who collectively *walked out* (for approximately 3 hours) from facility, engaged in prevention and treatment of alchoholism, drug abuse and domestic violence, in protest of discharge of past clinical director, criticizing new director, and expressing concern over quality of treatment of E's clients, not violative, since record contained no evidence that identity and capability of director involved had direct impact on Ees' own job interests; *walk out* not protected activity, since it did not encompass protest by Ees over actual terms and conditions of their employment)

Keyway, A Division of Phase Inc. 263 NLRB No. 172

(failure of nonE's supervisor to meet with Ees which played role in Ees walking off job, unprotected since such reason does not relate to Ees' terms and conditions of employment if only because supervisor employed by E who was not E of Ees)

Champion Parts Rebuilders, Inc., Northeast Division 260 NLRB No. 098

(Ee who filed grievance over alleged failure of E's vice-president to wear safety glasses in plant was not engaged in protected activity as E's conduct had no direct or reasonably foreseeable impact upon terms and conditions of employment of unit Ees; thus, E's remarks concerning Ee's grievance filing activity not violative)

2017-5000 Resort to prohibited means

Lutheran Social Service of Minnesota, Inc. 250 NLRB No. 018

(derogatory comments about E's management by Ees of center for disturbed and displaced youth and expression of differences regarding policies not protected, since aimless rather than concerted, and nature of Ees' concerns was not effect of policies on own working conditions but on quality of program and welfare of residents inasmuch as these are peculiarly management's concern; further, Ees' use of profanity in criticizing management in presence of residents and disrupting and demoralizing effect of their actions on other Ees, particularly in view of E's mission, rendered them unfit for further service)

Bechtel Incorporated 248 NLRB No. 158

(neither Ees' daily repetition of action contrary to supervisor's express instructions and to work rule they had admittedly received was protected where Ees resorted to self-help to impose their chosen terms rather than grieve their work rules dispute, nor was their refusal to sign resulting warning slips which refusal was in support of and inseparable from their prior insubordination)

Texas Instruments Inc. v. N.L.R.B. 637 F.2d 822 (C.A. 1, 1981)

(discharge of U adherents for violation of E's valid security rule not violative where: Ees published E's confidential wage survey report which Ees had obtained outside of normal course of employment (each page of report was stamped strictly private), Ee manual set forth E's rule against disclosure of confidential information; moreover, Ees' organizing activity not dependent on access to confidential information)

2017-6700 Activities prohibited by statute

Timothy Kasmoch and David G. Kasmoch d/b/a Warrendale Garage and Trucking JD-174-82

(it is not necessary that complaint by Ee to E regarding working conditions be found to be meritorious in order to hold that activity was protected; it is sufficient if complaint by Ee to E regarding working conditions was apparently reasonable, made for legitimate purposes, and was not fabricated for personal motives)

Gullett & Gould Ltd. JD-676-80

(requiring driver to drive tractor-trailer which exceeded state's legal length restrictions held concerted as well as protected activity)

2017-6900 Conduct violating valid provisions of contract

Pioneer Finishing Corporation v. N.L.R.B. 667 F.2d 199 (C.A. 1, Nov. 1981)

(contract which contained specific limitations on access of U officials to E's premises to performance of specific duties, not including distribution of literature, and established bulletin board for posting official notices does not waive Ees' rights to circulate literature dealing with employment conditions)

N.L.R.B. v. Maryland Shipbuilding and Drydock Company 683 F.2d 109 (C.A. 4, July 1982)

(Ee who stopped work for one-half hour to pursue grievance over work assignment which he believed violated safety provision of collective bargaining agreement was not engaged in protected activity where contract prohibited any work stoppage and established three step procedure for resolution of grievances; moreover, situation did not rise to level of *abnormally dangerous* which would protect stoppage in face of no-strike clause; thus suspension of Ee for work stoppage not violative)

2017-9100 Conduct in derogation of bargaining representation

Villa Care, Inc., d/b/a Edmonds Villa Care Center 249 NLRB No. 095

(Ees' demand for premium pay for working on *short* crew and strike in support thereof not unprotected where demand was not in derogation of U's status as bargaining representative and not a demand for unlawful unilateral change by E)

United Brick and Clay Workers of America Local No. 957, AFL-CIO (Ralco Sewing Industries) JD-290-80

(Ee labor organization's posting on bulletin board of notices seeking to continue its solicitation of Ees' grievances so as to continue negotiating with E over grievances which should have been processed through contractual grievance procedure held unprotected, since posting was in continued derogation of certified U which was Ees' lawful representative)

2033 BOARD HAS FUNCTION OF BALANCING CONFLICTING EMPLOYEE AND EMPLOYER INTERESTS

Minnesota Mining and Manufacturing Company 261 NLRB No. 002

(Bd required to balance U's need for relevant, but assertedly confidential, information against any *legitimate and substantial* confidentiality interests established by E)

Anchortank, Inc. v. N.L.R.B. 618 F.2d 1153 (C.A. 5, 1980)

(E's property rights must yield to Ee's request for U representation when U has been certified or voluntarily recognized as bargaining agent; at interview U representative is better able to fulfill *Weingarten* functions than is another Ee)

N.L.R.B. v. Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union, Local 705, Teamsters 630 F.2d 505 (C.A. 7, 1980)

(in denying enforcement of Bd's findings that E's dismissal of Ees was unlawful, ct stated that Bd had failed to consider E's legitimate business interest, or to balance Ee's right to ptn against E's right to performance of assigned duties in loyal manner)

F. W. Woolworth Co. v. N.L.R.B. 655 F.2d 151 (C.A. 8, 1981)

(ct affd Bd's findings that Ee's interrupting E's anti-U captive audience meeting with questions was not part of any plan to disrupt E's meeting and thus was concerted activity, and that discharging Ee for such interruptions was unlawful; Bd's balancing of Ee's right to engage in concerted activity against E's right to maintain order and respect held neither illogical nor arbitrary where Ee's conduct was not *egregious* or a challenge or threat to E's above-mentioned right)

Lone Star Steel Company v. N.L.R.B. 639 F.2d 545 (C.A. 10, 1980)

(*successorship clause* which restricted sale or disposition of operations only to Es who agreed to assume bargaining agreement not unlawful and was *mandatory* subject of bargaining; Bd fairly balanced rights of E and Ees)

2060 EMPLOYEES' MISTAKEN BELIEF AS TO VALIDITY OF GRIEVANCE IMMATERIAL

Keyway, A Division of Phase Inc. 263 NLRB No. 172

Artley Incorporated 260 NLRB No. 107

(U steward who asserted good faith claim for premium pay under contract provision did not forfeit protection of Act when claim turned out not to be covered by contract and discharge violative)

Maryland Shipbuilding and Dry Dock Co. 256 NLRB No. 069

(E protesting what he considered to be violation of safety provisions of bargaining agreement regarding working in remote areas, protected, since efforts to obtain compliance with bargaining agreement protected even if Ee acting alone, it was reasonable to believe area in which Ee was assigned to work would be considered remote due to diminished presence of Ees during his shift, and further, effort to obtain compliance with agreement protected even if Ee's construction of agreement wrong)

2083 UNION ACTIVITY NEED NOT BE INVOLVED OR COLLECTIVE BARGAINING CONTEMPLATED

Cox Enterprises, Inc., d/b/a Atlanta Newspapers 264 NLRB No. 120

(discharging Ee for telling E about strike rumor violative notwithstanding she did not state that she supported rumored strike as Ee speech to supervisor or another Ee must be protected because it is often essential means of achieving group goals)

Interstate Security Services, Inc. 263 NLRB No. 002

(where interview was such that Ee could reasonably believe it result in disciplinary action against him, he has the right to request representation at that meeting, notwithstanding E is non-U facility; thus his refusal to participate in meeting is protected and his discharge for such refusal violative)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)

(activities for neutral aid or protection not limited to those w/i E-ee relationship or those aimed at changing conditions of employment; section 7 (of Act) protects Ees' concerted lobbying for changes in national policy regarding job security)

3000 REFUSAL TO CROSS PICKET LINE

3001 GENERALLY

3001-5000 Employer may replace non-striking employee refusing to cross line if business reasons so require

Browning-Ferris Industries, Chemical Services, Inc. 259 NLRB No. 009

(E's contention that he replaced drivers who had refused to cross picket line because he needed all his drivers two days hence rejected, since E could not demonstrate that replacements were ever needed where he had often scheduled assignments to accomodate drivers w/o adversely affecting business operations)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)

(when refusal to cross stranger picket line results in only partial work stoppage, E must demonstrate legitimate business reason for replacing Ee)

3033 AT PREMISES OF ANOTHER EMPLOYER

3033-0100 Generally

Browning-Ferris Industries, Chemical Services, Inc. 259 NLRB No. 009

(Ees' refusing to cross picket line at another E's plant protected regardless of whether it was motivated by sympathy for strikers or by fear)

3033-5000 Primary picket line

Erie Haven, Inc. JD-194-82

(suspension of Ee, truckdriver, for refusing to cross informational picket line at construction site held violative, since Ee was exercising concerted right protected by Act)

Padd, Inc. d/b/a Truckee Meadows Construction Co. JD-(SF)-308-81

(discharge of Ee who refused to cross picket line at another E's where he was to make delivery violative)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1382 (C.A. 9, Jun 1981)

(section 7 (of Act) protects Ees who engage in sympathy strike in support of lawful primary strike by sister U of same E; respect for integrity of picket line may well be source of strength of whole collective bargaining process in which every U member has legitimate and protected economic interest)

3033-7500 Secondary picket line

N.L.R.B. v. Southern California Edison Company 646 F.2d 1382 (C.A. 9, Jun 1981)

(sympathy striker's refusal to cross stranger picket line does not violate general no-strike clause, since underlying dispute is between secondary E and its U; dispute is not subject to arbitration provisions of sympathetic striker's collective bargaining agreement)

3067 AT OWN EMPLOYER'S PREMISES

3067-1700 Primary line of another union at employee's place of work

Inland Steel Company 264 NLRB No. 015

(Ee's refusal to cross picket line of Ees represented by another local on strike against contractor performing work at his E's facility, protected, where picketing not violative of Section 8(b)(4) since complied with *Moore Drydock* criteria, and right to engage in sympathy strike not explicitly waived by broad no-strike clause or by U's or Ee's previous failure to assert that no-strike clause did not encompass sympathy strikes)

Joseph Charles Tafarella A.K.A. Steve Rossi, and Total Productions Concepts, Inc. JD-(SF)-212-81

(discharge of U musicians for refusing to cross picket line of another U at hotel at which they were working)

3067-5000 As result of sympathy strike

Inland Steel Company 264 NLRB No. 015

(It has long been established that sympathy strikers are accorded no greater protection than is available to primary strikers. Therefore, if a sympathy striker honors picket line which is illegal, whether or not he has knowledge of its illegality, he, like primary striker, is engaged in unprotected activity)

Inland Steel Company 264 NLRB No. 015

(Ee's refusal to cross picket line of Ees represented by another local on strike against contractor performing work at his E's facility, protected, where picketing not violative of Section 8(b)(4) since complied with *Moore Drydock* criteria, and right to engage in sympathy strike not explicitly waived by broad no-strike clause or by U's or Ee's previous failure to assert that no-strike clause did not encompass sympathy strikes)

St. Regis Paper Company 253 NLRB No. 162

(suspension or discharge of sympathy strikers for refusing to cross picket line at own E's premises in violation of no-strike clause not unlawful, where overall bargaining history pointed decisively to conscious waiver of right to engage in sympathy strikes during contract period)

AMCAR Division, ACF Industries, Incorporated 247 NLRB No. 138

(U did not waive Ees' right to engage in sympathy strikes or to honor picket lines of other Us picketing at E's plant, where contract's no-strike provision did not expressly refer to such activity, and bargaining history shows U understood no-strike clause as not covering activity in question; while E adopted contrary position, U did not capitulate to E's interpretation but preserved its ability to contest E's position)

N.L.R.B. v. Gould, Inc., Switchgear Division 638 F.2d 159 (C.A. 10, 1980)

(Ees' right to honor own U's lawful picket line at their E's premises and directed at non-U contractor held protected where sympathy strike was spontaneous action of ees, was not directed or induced by U w/i 8(b)(4)(i) and where U made no threat to force E to c/d/b with non-U contractor w/i 8(b)(4)(ii))

4000 OBJECTIVE AS DETERMINANT OF PROTECTED STATUS OF ACTIVITY

4001 GENERALLY

Brookline Corporation d/b/a Hi Fi Buys 257 NLRB No. 166

(discharge of Ees engaged in lawful concerted activities violative where E's district manager, in response to Ees' asking if they were discharged, said they were acting too much like a U instead of saying no)

4001-5000 Racial discrimination

Pioneer Natural Gas Company v. N.L.R.B. 662 F.2d 408 (C.A. 5, Nov. 1981)

(Ee's telling fellow Ee to go to supervisor about another coworker's racially discriminatory remarks against fellow Ee, not concerted protected activity where first Ee never suggested it was a collective effort)

4033 OBJECTIVES WARRANTING PROTECTION OF ACTIVITY

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 147

(U's contention that its picketing, threatening strike or work stoppage and related conduct were not aimed at removal of E's representative but solely at his resort to violence, and therefore U's actions constituted protected activity since his presence on job threatened Ee safety, rejected; in labor dispute Act allows Ees to engage in any concerted activity unless it falls, as herein, w/i proscription of 8(b)(1)(B) which is not conditioned upon perfect conduct by representative and places some limitation on Ees' right to strike)

4033-0300 Educating fellow employees regarding employment problems

Boston Mutual Life Insurance Company 259 NLRB No. 172

(U steward who gave advice to new insurance agents on company procedures engaged in protected activity notwithstanding E did not appreciate substance of advice given as steward was explaining agent's rights under contract)

Mathews Ready Mix, Inc. 259 NLRB No. 002

(U activist's statement to fellow Ee that he was not receiving same wage as comparable Ee and telling him to request raise held protected)

Fun Striders, Inc. 250 NLRB No. 087

(distribution of literature containing inflamatory political material protected where it also referred to many matters dealing with employment relationship)

Koch Supplies, Inc. 249 NLRB No. 160

(discharge of Ee who complained to management about superior terms of employment given to new Ee violative where Ee had discussed subject with other Ees, mentioned to E that its action was detrimental to Ee morale and

4033-0300—Cont.

was thus not aimed at solving personal problem but included welfare of others)

Special Machine and Engineering, Inc. **247 NLRB No. 077**
(Ee's posting wage and classification scale of another E on union bulletin board at plant where employed held protected concerted activity since material was not, as contended, *want-ad* but, relevant to union business)

Edward Blankstein, Inc. v. N.L.R.B. **623 F.2d 320 (C.A. 3, 1980)**
(Ee who contacted other Ees to interest them in obtaining group hospitalization insurance was engaged in protected concerted activity as she was not acting solely for herself)

Timet, a Division of Titanium Metals Corporation of America v. N.L.R.B. **671 F.2d 973 (C.A. 6, Mar. 1982)**
(drafting and circulating letter in which Ee offered to represent Ees to management to obtain cost-of-living adjustment held protected notwithstanding he was discharged before any Ee joined him as he was preparing for group activity)

4033-0800 Holding union or employee meeting

Church's Fried Chicken, Inc. **JD-(SF)-301-79**

4033-1100 Protesting lawful discharge

Brookline Corporation d/b/a Hi Fi Buys **257 NLRB No. 166**
(Ees' concerted protest of another Ee's discharge and their seeking improved wages and hours held protected concerted activities w/i meaning of the Act)

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(walk out by Ees in support of discharged Ee, plus picketing outside plant with placards referring to unkept promises by E, to scab labor, and to unfairness to minorities reasonably relates to matters protected by Act; and there was no requirement that Ees had to undertake less drastic forms of protest before walking off their jobs)

4033-1200 Criticizing or protesting actions of supervisor

Keyway, A Division of Phase Inc. **263 NLRB No. 172**
(discharge of Ees who collectively *walked out* (for approximately 3 hours) from facility, engaged in prevention and treatment of alchobolism, drug abuse and domestic violence, in protest of discharge of past clinical director, criticizing new director, and expressing concern over quality of treatment of E's clients, not violative, since record contained no evidence that identity and capability of director involved had direct impact on Ees' own job interests; *walk out* not protected activity, since it did not encompass protest by Ees over actual terms and conditions of their employment)

Calvin D. Johnson Nursing Home **261 NLRB No. 044**
(Ee complaints about their supervisor's treatment of them have consistently been held to constitute protected concerted activity)

Avalon-Carver Community Center **255 NLRB No. 141**
(Ee who prepared grievance on behalf of other Ees criticizing performance of supervisor engaged in protected concerted activity and discharge violative)

Pacific Coast International Meat Co. **248 NLRB No. 183**
(Ees complaining about supervisor's continual threats of discharge and favoritism in allocating work, protected)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(discharge of Ees for drafting, mailing, and distributing letter which complained about manager's operation of hotel and which was signed by supervisors as well as other Ees and sent to E, violative since Ees' conduct constituted legitimate concerted activity w/i meaning of Sec. 7, and discharge of supervisory/managerial personnel for their participation was also violative because of natural tendency of these discharges to discourage Ees from exercising rights guaranteed them in Sec. 7)

Roadway Express, Inc. **JD-(SF)-238-82**
(U steward who met with supervisor for purpose of questioning supervisor's authority under U contract to conduct performance interview with Ee absent U representation held protected concerted activity, since this was not merely case of Ee pursuing rights which he believes were granted him by U contract but, rather, Ee in his official U capacity as steward asserting an interpretation of contract with ramifications extending beyond prospective grievant's problem)

United Parcel Service, Inc. **JD-644-81**
(Ee's aiding in writing and distributing U article criticizing E's management for goofing off, protected)

Mid-City Beverage Dist., Inc. **JD-(SF)-253-81**
(sending letter to high level management complaining about manner in which supervisor exercised his supervisory authority, protected)

Radiator Specialty **JD-339-80 [illegible] Gypsum Company JD-442-80**

N.L.R.B. v. Container Corporation of America **649 F.2d 1213 (C.A. 6, May 1981)**
(in notice posted on plant bulletin board, U vice president's letter containing his perception of E's attitude toward grievance steps, though referring to management in derogatory manner, held protected, as U rhetoric that is *abusive* or *insulting* is protected)

Sullair P.T.O., Inc. v. N.L.R.B. **641 F.2d 500 (C.A. 7, Feb 19, 1981)**
(discharging Ee for obscene language directed at management when he voiced concern about E's change in gasoline policy held not violative, as he had previously been warned about such behavior and complaint about gas policy was not even *motivating factor* in discharge)

4033-1300 Attempting to ask question at employer's antiunion meeting

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 5, 1980)**
(discharge of Ee for conduct at E-Ee meeting violative as Ees were discussing employment terms with E)

4033-1500 Protesting layoffs

N.L.R.B. v. Greyhound Lines, Inc. **660 F.2d 354 (C.A. 8, Sep 1981)**
(suspension of two Ees because they issued press release announcing intent of drivers to strictly obey speed limit over holiday weekend violative as Ees were engaged in protected activity where release related to ongoing labor dispute over 55 mph requirement, did not disparage E's reputation, and was not maliciously motivated)

4033-1700 Protesting employment practices based on racial and other minority group considerations

I. T. O. Corporation of Baltimore **255 NLRB No. 138**
(Ee's participation in picketing aimed not at E but at rectification of racially discriminatory personnel practices in city's harbor held to constitute exercise of constitutionally protected freedom of expression and, particularly since Ee made common cause with other Ees in such action, to constitute protected concerted activity)

Honeywell, Inc. **250 NLRB No. 019**
(Ee's criticism of E's promotion policy as being racially motivated constitutes protected concerted activity)

Frank Briscoe Inc. v. N.L.R.B. **637 F.2d 946 (C.A. 3, 1981)**
(laid off Ees who filed charges with EEOC involved in protected concerted activity and refusal to reinstate while charges pending violative)

4033-1800 Protesting employment practices based on sex condiderations

Paul Stuart, Inc. **JD-140-80**

Blaw-Knox Foundry & Mill Machinery Inc., Wheeling Works Division v. N.L.R.B. **646 F.2d 113 (C.A. 4, Apr 1981)**
(where supervisor allegedly sexually harrassed Ee's cousin, Ee's action of protesting to supervisor not *concerted* activity but merely action of individual Ee who was neither attempting to enforce collective bargaining agreement nor acting on behalf of a group)

N.L.R.B. v. Downslope Industries, Inc., and Greenbrier Industries, Inc. **676 F.2d 1114 (C.A. 6, Apr. 1982)**
(*freedom from sexual harassment is a working condition which Ees may organize to protect*)

4033-1900 Enforcing a State Employment standard

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**

Peninsula Association for Retarded Children and Adults **JD-(SF)-269-80**
(filing of wage claims before state agency protected concerted activity even if individual acts on his own)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(filing of safety C with state agency by Ee acting alone not protected concerted activity in absence of collective-bargaining agreement as there is no agreement to implement which would be source of Ee's claimed rights)

4033-2100 Soliciting fellow employees to sign union card

Paramount Mining Corporation v. N.L.R.B. **631 F.2d 346 (C.A. 4, Oct. 1980)**
(U supporter's attempt to persuade fellow Ee to sign U card, not protected, where the attempt was accompanied with volgar threats and uninvited shaking or patting head of the fellow Ee)

4033-2200 Protesting unlawful discharge

4033-2200—Cont.

Limestone Apparel Corp. **255 NLRB No. 101**
(where Ees went out on strike because they were outraged at firing of two U adherents)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**
(E's hostility to Ee (U advocate) was evidenced by E's adverse references to Ee's *attitude* which E had linked to Ee's protected efforts to obtain reinstatement of a discharged Ee)

4033-2400 Protesting working Sundays or holidays

Technicolor Graphic Services, Inc., South Dakota Operations **262 NLRB No. 153**
(Ee committee members' signing letter alleging discriminatory treatment by E in curtailing Christmas party activities and in granting of time off on New Year's Eve, protected notwithstanding absence of showing that actual events supported allegations of discrimination)

Rose's Stores, Inc. **256 NLRB No. 076**
(individual Ee's protesting E's assigning Sunday work to Ee and other Ees held to have been concerted activity, since Ee's protest concerned issue which earlier had been subject of group protest and Ee was acting on behalf of other Ees who shared Ee's concern)

4033-2500 Protesting change in bonus policy

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde **259 NLRB No. 073**
(strike and actions of Ees in striking held protected where strike occurred in protest against E's unlawful unilateral discontinuance of Christmas bonus and its refusal to bargain over such unilateral discontinuance)

David D. Sutherland, d/b/a Maaco Auto Painting and Body Work v. N.L.R.B. **646 F.2d 1273 (C.A. 8, Apr 1981)**
(discharge of Ee for approaching E and expressing Ees' dissatisfaction with wages and bonus plan violation as Ee had spoken to other Ees and was attempting to obtain benefits for all Ees)

4033-2600 Protesting overtime

Smithfield Packing Co. **258 NLRB No. 022**
(discharge of Ees who refused to work overtime more than the 8 hours E had predicted they would work violative as Ees were engaged in protected concerted activity as previous unannounced concerted refusal to work overtime prompted by dissatisfaction with E's overtime policies was *presumptively concerted activity*; moreover, their refusal to work does not lose its protected status because it took place during overtime hours and was not previously announced)

Illinois Bell Telephone Company **255 NLRB No. 063**
(E who disciplined shop steward and U vice president for posting notices informing Ees of their right to seek U representation if E requested Ees to work mandatory overtime violated Act; U was not advocating Ees to refuse to work overtime which could be unprotected partial strike but rather was engaging in protected activity of urging Ees to seek help through U)

Westinghouse Electric Corporation **JD-(ATL)-40-81**
(U steward's refusal to work overtime in order to attend U meeting concerted activity notwithstanding Ee acted alone where E had contractual obligation to honor steward's request to leave job for U business)

Chipmore Manufacturing Co., Inc. **JD-432-80**
(strike protesting making overtime mandatory where it had previously been optional, protected)

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(concerted refusal to work overtime presumptively protected where there was no bargaining relationship, only inchoate relationship with U which did not provide *structured procedures* for conflict resolution)

N.L.R.B. v. Adams Delivery Service, Inc. **623 F.2d 96 (C.A. 9, July 1980)**
(discharge of Ee for protesting lack of contractually-guaranteed overtime pay to U representative, violative, as consultation with U representative to resolve employment dispute is more than mere griping and is not w/i category of obtaining objectives only for himself)

4033-2800 Protesting deprivation of overtime

Henry J. Kaiser Company **259 NLRB No. 001**
(Ee's complaints about not being given adequate overtime work held not only protected but also concerted activity where there were number of Ees who were disturbed about distribution of overtime to U members rather than to members of other locals (travelers); Ee's complaint was merely extension of same kind of complaint that other travelers had made, and his complaint may have tended to redound to benefit of all travelers)

Lane Trenching, Inc. **247 NLRB No. 183**
(threat to discharge Ee if he continued to make contractual overtime claims held violative, since Ee has statutorily protected right to seek to enforce contract)

4033-3000 Seeking assistance of Union representative or co-worker at investigatory interview

Tokheim Corporation **263 NLRB No. 210**
(fact that Ees are not represented by U at time of discharge interview would not, of itself, detract from Ee's right to representation at interview)

Tokheim Corporation **263 NLRB No. 210**
(denying Ee any representation at discharge meeting when Ee asked for *witness*, not unlawful, where sole purpose of meeting was to inform Ee of her discharge and discussion which ensued after Ee was informed of discharge was insufficient to convert meeting into interview requiring *Weingarten* protections regardless of whether Ee merely requested *witness* as distinguished from a *representative*)

A & T Manufacturing Company **265 NLRB No. 201**
(refusal to permit former U steward to accompany Ee to interview which resulted in Ee being interviewed about decline in his production violative of Section 8(a)(1) since Ee denied opportunity to have fellow Ee present during course of interview which could reasonably lead to discipline and in view of continued interview of Ee after request, notwithstanding Ees of E were unrepresented; however, no violation of Section 8(a)(5) since E had lawfully withdrawn recognition from U)

Bridgeport Hospital **265 NLRB No. 054**
(E lawfully issued warning notices to security guards solely for walking out of meeting on instructions of U representative because E denied Ees request to have steward present at meeting to discuss vandalism on E's property and suspicions that guard themselves might be involved in such incidents; though walkout was concerted, Ees had been assured meeting was not disciplinary investigation, and thus, walkout not protected because not done to protest term or condition of employment)

Northwest Engineering Company **265 NLRB No. 026**
(E did not violate Act when it denied request of Ee to have U representative present during lunchroom meeting of group of Ees, purpose of which was to review work rules; *Weingarten* rights do not attach when purpose of meeting is not investigatory and here no questions were asked and no discipline meted out; and fact that meeting may have been prompted by Ee misconduct does not establish that it was investigatory or disciplinary. *Weingarten* not concerned with punishments for future offenses but relates to past conduct for which Ees fear current sanctions)

Northwest Engineering Company **265 NLRB No. 026**
(suspension of Ee for insubordination by using vulgarity to supervisor at meeting called by Ee to discuss work rules not violative where E did not violate Act by having Ees attend meeting as this was not type of meeting to which *Weingarten* rights attach, notwithstanding insurbordinate Ee had been singled out as one guilty of rule infractions because no discipline was intended for this conduct and thus presence of U representative unnecessary)

Consolidated Freightways Corporation of Delaware **264 NLRB No. 076**
(*Weingarten* rights are not hinged on Ee's personality; nor may steward, regardless of his knowledge of labor law and participation in grievance procedure, be compelled to forgo Sec. 7's guarantee of right to mutual aid of other Ees)

Bodolay Packaging Machinery, Inc. **263 NLRB No. 038**
(E violated Act where it denied Ee's request for representation at an interview which Ee believed would lead to discipline, compelled Ee to attend interview w/o representation, and issued oral written warning as result of interview)

L. A. Water Treatment, Division of Chromalloy American Corporation **263 NLRB No. 022**
(Ee's request for presence of former U steward at disciplinary interview, held protected where no other U representative or steward was available at time of interview, E made no attempt to locate steward and did not offer to delay interview until steward could be located, contract did not require presence of U representative at interviews, and E and U had reached no oral understanding establishing procedure for representation at interviews)

E. I. Dupont De Nemours **263 NLRB No. 015**
(denial of Ee's request for witness at meeting with supervisor and with E's industrial relations counsel, unlawful, where Ee had reason to believe meetings would involve discipline, and notwithstanding no U was in picture representing Ees)

Interstate Security Services, Inc. **263 NLRB No. 002**
(where interview was such that Ee could reasonably believe it result in disciplinary action against him, he has the right to request representation at that meeting, notwithstanding E is non-U facility; thus his refusal to participate in meeting is protected and his discharge for such refusal violative)

Pacific Telephone and Telegraph Company **262 NLRB No. 127**
(E violated Act when it refused to inform two Ees or their U representative of the nature of the matter which was being investigated and on which they were to have an interview with E; this follows Bd's finding in *Climax Molybdenum Company* 227 NLRB 1189, which held that Ees have Sec. 7 right to consult with their U representative before any interview to which

4033-3000—Cont.

Weingarten rights attach and for consultation to be meaningful, Ees must be informed of nature of misconduct and a *general statement as to the subject matter of the interview . . . will suffice*)

Pacific Telephone and Telegraph Company **263 NLRB No. 127**
(E violated Act when it refused to inform two Ees or their U representative of the nature of the matter which was being investigated and on which they were to have an interview with E; this follows Bd's finding in *Climax Molybdenum Company* 227 NLRB 1189, which held that Ees have Sec. 7 right to consult with their U representative before any interview to which *Weingarten* rights attach and for consultation to be meaningful, Ees must be informed of nature of misconduct and a *general statement as to the subject matter of the interview . . . will suffice*)

Materials Research Corporation **262 NLRB No. 122**
(unrepresented Ees were entitled to right of representation by coworker at investigatory interview, as *Weingarten* right is derived from Sect. 7's protection of concerted action for mutual aid or protection and requires E to respect Ee's choice or forego interview)

Materials Research Corporation **262 NLRB No. 122**
(interview is for investigatory purposes where E elicits information which provides further basis for any discipline meted out notwithstanding E may have already made up its mind to discipline Ee)

Salt River Valley Water Users' Association **262 NLRB No. 129**
(E who denied Ee's request for U representative at disciplinary meeting and then discharged him for refusing to answer questions at interview violated Act because Ee was engaged in protected concerted activity when he refused to participate in interview (no interview held to have occurred) w/o presence of U representative and discharge was for this refusal not for underlying misconduct)

Gulf States **261 NLRB No. 119**
(denial of U representative at meeting to inform Ee of previously made decision to discipline him, violative, where E's additional conduct at meeting of delving into Ee's justification for his actions and, in effect, sought further facts in support of its actions against Ee removed meeting from narrow holding of *Baton Rouge Water Works Co.*, 246 NLRB 995, and, accordingly, a right to U representation attached)

ITT Lighting Fixtures, Division of ITT Corporation **261 NLRB No. 034**
(under *Weingarten,* if Ee refuses interview (with E) w/o representative, E is free to proceed as it chooses as long as it does not base discipline on (Ee's) refusal)

ITT Lighting Fixtures, Division of ITT Corporation **261 NLRB No. 034**
(meeting of supervisors and Ee held *investigatory* and not disciplinary where Ee was questioned about his conduct and suspension was announced at second meeting; assuming that only 1 meeting was held and E made up its mind beforehand to discipline Ee, questioning Ee for some 10 to 15 minutes about his conduct went beyond limits prescribed by Bd for disciplinary interview in seeking facts or evidence to support disciplinary action; therefore, Ee requesting representation during meeting, which was denied, was exercising his Weingarten rights under Sec. 7)

St. Francis Hotel **260 NLRB No. 174**
(where E and U had entered into settlement agreement guaranteeing Ees *Weingarten* rights, E did not engage in post settlement violation when it issued memorandum to supervisors which set forth their obligation under settlement agreement to include giving Ee opportunity to have U representative present at disciplinary meeting, setting forth role of shopsteward as observer, assisting Ee to answer questions but who was not allowed to speak for Ee; although memorandum is ambiguous it was never communicated to Ees, no Ees were aware of its existence there is no evidence that Ees could have been misled by memorandum to forego their *Weingarten rights*)

E. I. Du Pont De Nemours and Company **259 NLRB No. 161**
(E violated Act when he refused Ees request to have U steward present at investigory interview, an interview he reasonably feared prospect of discipline)

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(*Weingarten* rights not available to Ee being reprimanded for tardiness where Ee waived such rights by saying *I'm late again* then said *I know I'm wrong* and waived his right to a witness (to reprimand) when supervisor offered it: Ee's disclosure was not result of any E questioning; furthermore E had made up its mind already to issue reprimand when Ee told to sign written reprimand)

Sun Petroleum Products Company, A Division of
Sun Oil Company of Pennsylvania **257 NLRB No. 048**
(indefinite suspension of Ee who *refused* to work overtime not violative notwithstanding Ee requested presence of witness at interview called to discuss his refusal and E refused, because although *Weingarten* rights would normally attach where as here the Ee did not know what the motive of interview was, in this instance no meeting took place and E conducted an independent investigation of Ee's case, making its decision based on results of that investigation which is its right under *Weingarten*)

Sun Petroleum Products Company, A Division of
Sun Oil Company of Pennsylvania **257 NLRB No. 048**
(by going from plant floor to supervisor's office but not entering office for investigatory meeting, Ee did not lose his *Weingarten* rights)

United States Postal Service **256 NLRB No. 012**
(denial of Ee's request for U representation at disciplinary interview, unlawful, where there was no waiver of U representation consonant with Bd standards for waiver of Ee's Weingarten rights; even if contract could be interpreted as waiving Ee's rights of U representation, it was not clear that waiver would apply herein since contract waiver was ambiguous; moreover, E had reasonable fear of discipline in view of prior similar situation, and E not only denied request but also failed to offer Ee option of continuing interview unaccompanied by U representative or having no interview at all)

Price Pfister, A Division of Norris Industries **256 NLRB No. 021**
(E's refusal to allow Ee to have U representative present at meeting to inform her of suspension violative where although E had made decision to suspend Ee prior to meeting it began meeting with question creating investigatory meeting)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**
(disciplinary interview held prior to other meetings with E violative, but later meetings which were confined to announcement and issuance of previously decided disciplinary actions only, not violative)

Montgomery Ward & Co., Inc. **254 NLRB No. 102**
(E who held investigatory meeting with Ees and refused to allow them to have U representative present while he questioned them regarding stolen merchandise and cash violated Act; moreover, waiver Ees signed at beginning of interview, agreeing to be interviewed and acknowledging that they were free to leave at anytime does not constitute waiver of *Weingarten* rights where request for U representation made subsequent to signing)

Montgomery Ward & Co., Inc. **254 NLRB No. 102**
(no violation despite investigatory nature of interview where Ee did not request presence of U representative at interview)

Appalachian Power Company, John E. Amos Plant **253 NLRB No. 135**
(in *Weingarten* SCt endorsed Bd's view that *Ee* must request representation)

Appalachian Power Company, John E. Amos Plant **253 NLRB No. 135**
(denial of Ee's request for presence of U steward at disciplinary interview with maintenance superintendent not violative where Ee's call to U steward prior to interview was not effective invocation of Ee's *Weingarten* rights, since maintenance superintendent was not *privy* to call to U steward; therefore, request not directed to official who is in position to grant or deny request)

Stewart-Warner Corporation **253 NLRB No. 016**
(*Weingarten* rights do not attach to meeting between supervisor and Ee intended to clarify Ee's duties or to set forth plant safety rules with no disciplinary overtones)

Kahn's and Company, Division of Consolidated
Food Co. **253 NLRB No. 004**
(denial of Ee's request for U [illegible]resentative during investigative interview in which he was discharged, [illegible]tive; discharge itself is not independent violation of 8(a)(1) where it is unrelated to exercise of *Weingarten* rights)

General Motors Corporation **251 NLRB No. 121**
(E proceeding with interview after Ee requested U representation interfered with Ee's *Weingarten* rights; no voluntary waiver of these rights occurred where Ee was constrained to respond to E's inquiries)

Great Western Coca Cola Bottling Company, d/b/a
Houston Coca Cola Bottling Company **251 NLRB No. 122**
(no violation of Ee's right to have representative at interviews with E concerning Ee's suspension and then discharge for excessive tardiness where purpose of interviews was to announce and implement previously determined disciplinary action; E had decided respectively to suspend and to discharge Ee before meetings, on basis of facts which it had obtained w/o talking to Ee; see *Baton Rouge Water Works* 246 NLRB No. 161 (1979))

Roadway Express, Inc. **251 NLRB No. 138**
(supervisor's refusing Ee's request for U representation during interview regarding Ee's suspension for violating E's rule concerning coffee breaks while driving truck held violative, since interview was disciplinary rather than investigative; disciplinary action had to be taken if violation of E's rule had in fact occurred)

Amoco Texas Refining Company **251 NLRB No. 202**
(deferral to arbitrator's decision that Ee was obligated to obey supervisor's order to step aside for private conversation between themselves w/o U steward even though supervisor did not answer Ee's question of whether conversation would involve discipline since award not repugnant to Act)

Kraft Foods, Inc. **251 NLRB No. 006**
(effectively depriving Ee, who was involved in forklift accident and fight with another Ee, of his right to U representation at investigatory interview which Ee reasonably believed might result in disciplinary action unless U representative was present, violative)

4033-3000—Cont.

Texaco, Inc. **251 NLRB No. 063**
(E who instructed U representative that he must remain silent during interview of Ee relating to his possible misconduct on job violated Act as *Weingarten* right to representation includes not only presence of representative but also active assistance where confrontation threatens Ee's job security)

Texaco, Inc. **251 NLRB No. 063**
(E who required U representative to remain silent during meeting with Ee held solely for purpose of informing him of 3-day suspension did not violate Act as E is not statutorily obligated to furnish representation at such interview and thus fact that representative was required to remain silent irrelevant)

Southwestern Bell Telephone Company **251 NLRB No. 061**
(E who insisted that U steward remain silent during investigatory interview violated Act as mere presence of steward while Ee was being interrogated about alleged theft of company property is insufficient to alter inbalance which SCt sought to allevaiate in its *Weingarten* decision)

Southwestern Bell Telephone Company **251 NLRB No. 061**
(denying Ee presence of U steward at meeting between E and Ee not violative where sole purpose of meeting was to inform Ee of her discharge as *Weingarten* does not apply to meetings held for such purposes)

Illinois Bell Telephone Company **251 NLRB No. 128**
(Ee entitled to have any Ee present with her at disciplinary meeting with E and E's refusal to allow anyone but Ee with official U status be present, violative)

Southern Bell Telephone and Telegraph **251 NLRB No. 159**
(refusal of Ee's request for U representative to be present at investigatory meeting made when Ee became aware that meeting might *result in disciplinary action* against her, and imposition of discipline for conduct which was subject of interview, violative)

Coyne Cylinder Company **251 NLRB No. 198**
(E's interview of Ee violated Ee's *Weingarten* rights where, prior to interview, no final decision had been made whether to discharge Ee for smoking marijuana during his lunch breaks and E denied Ee's request made during interview to have U representative present during remainder of interview)

Coyne Cylinder Company **251 NLRB No. 198**
(*Weingarten* rights do not extend to allowing Ee to produce witnesses on his behalf)

Coyne Cylinder Company **251 NLRB No. 198**
(where other Ees were discharged for same offense charging party accused of, he had reasonable basis to believe discipline was in offing when called for interview)

Prudential Insurance Company of America **251 NLRB No. 213**
(where E conducted investigatory interview with *disciplinary* overtones and denied Ee's request for U representative to be present and failed to offer Ee options of continuing interview w/o U representative or discontinuing interview, it violated Act; no management right to secure information from Ee absent requested U representatory interview with disciplinary overtones)

United Telephone Company of Florida **251 NLRB No. 101**
(*test for determining whether Ee reasonably believes interview might reasonably result in disciplinary action is measured by objective standards under all circumstances of the case rather than by Ees subjective motivations)*

Airco Alloys, a Division of Airco, Inc. **249 NLRB No. 081**
(*Weingarten* rights attach prior to decision on discipline)

First National Supermarkets, Inc. d/b/a Pick-N-Pay Supermarkets, Inc. **247 NLRB No. 162**
(where Ee did not request U representation at disciplinary meeting no *Weingarten* violation exists; moreover, fact that discipline was justified is not determinative)

Gary Concrete Products, Inc. **JD-(ATL)-65-82**
(unsatisfactory Ees who were discharged prior to their request for witness were not deprived of *Weingarten* rights and E did not violate Act)

Continental Air Transport Co., Inc. **JD-125-82**

Service Spring Company A Division of Garlock, Inc. A Wholly-Owned Subsidiary of Colt Industries **JD-123-82**
(*counseling* was part of disciplinary procedure as results placed in personnel file and meeting was investigaroty in nature even if purpose is to rationalize E's decision to discipline; therefore, when Ee requested *witness*, request was denied, and meeting held *Weingarten* violation occurred because Weingarten rights are derived principally from Sec. 7 right of mutual aid and is not dependent on representational rights under Sec. 8(a)(5))

Brookwood Furniture, Division of U.S. Industries **JD-(Atl)-4-82**
(Ee's *Weingarten* rights not violated notwithstanding E denied Ee's request for U representative to be present at meeting where sole purpose of meeting was to inform Ee that note detailing problems with quality of his work was being placed in his personnel file)

U. S. Postal Service **JD-(SF)-96-81**
(refusing to permit Ee, upon request, to have U representative present during investigatory interview (with E) which Ee reasonably believed might result in disciplinary action and actually suspending Ee, violative)

Wolverine World Wide, Inc. **JD-183-80**
(discipline and ultimate discharge of Ee for her refusal to leave her work station w/o being accompanied by Ee representative to attend meeting with supervisor which she believed could result in imposition of discipline not violative for Ee has no protected right to refuse to go to office and can be lawfully disciplined for such refusal; See *Roadway Express* 246 NLRB No. 180 overruling *Glomac Plastics* 234 NLRB 1309)

Wolverine World Wide, Inc. **JD-183-80**
(Ee's rights were not violated where she was denial presence of Ee representative at interview with E as sole purpose was to inform her that decision had already been made to discharge her; See *Baton Rouge* 246 NLRB No. 161)

Southwestern Bell Telephone Company v. N.L.R.B. **667 F.2d 470 (C.A. 5, Feb. 1982)**
(investigatory interview conducted with requested U representative not violative notwithstanding E told U representative not to answer any questions but to let Ee answer and Ee confessed to theft of E's property despite fact that U representative had instructed him prior to interview not to answer questions because E's conduct did not interfere with U representative's ability to clarify facts or bring additional facts to E's attention after Ee finished speaking)

Lennox Industries, Inc. v. N.L.R.B. **637 F.2d 340 (C.A. 5, 1981)**
(*under Weingarten an Ee is entitled to U representative only when interview in question is investigatory i.e. when designed to elicit answers to work-related questions which might affect Ee or bargaining unit, and Ee reasonably fears that discipline might result from interview; thus where purpose of meeting is disciplinary rather than investigatory, i.e. where meeting designed simply to impose discipline, no U representative is required...., similarly where purpose of meeting is supervisory rather than investigatory i.e., designed to show Ee how to improve work performance, no right to U representative inheres*)

Lennox Industries, Inc. v. N.L.R.B. **637 F.2d 340 (C.A. 5, 1981)**
(ct rejected language of other cts which suggested that it is only when disciplinary action is *probable* or *seriously considered* that right of representation arises, since purpose of interview may be to decide whether Ee should be disciplined, and also interview which E does not intend to result in discipline *may* result in discipline either then, or in building case culminating in discipline at later date; it is whenever risk of discipline reasonably inheres in investigatory interview that U representative is required, and not merely when discipline is *probable* or *seriously considered*)

Good Hope Refineries, Inc. v. N.L.R.B. **620 F.2d 57 (C.A. 5, 1980)**
(violation where personnel manager required Ee to participate in absence-counseling interview w/o U representation, since personnel manager had authority to approve absence and unapproved absence could result in discipline)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(before R election is held, presence of U representative (at interview) does not have effect on other Ees essential to satisfaction of *Interboro* standard for concerted activity; thus Ee's actions in seeking presence of the representative at that time does not constitute *concerted activity;* but Ee's request for U representation by U which has won challenged election *is protected concerted activity*)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(E's property rights must yield to Ee's request for U representation when U has been certified or voluntarily recognized as bargaining agent; at interview U representative is better able to fulfill *Weingarten* functions than is another Ee)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(compelling Ee to attend investigatory interview, which Ee reasonably believed might result in disciplinary action, when his request for U R has been denied, held violative)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(*Weingarten* protection applies to both *investigatory* and *disciplinary* interviews save only those conducted for exclusive purpose of notifying Ee of previously determined disciplinary action)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(Section 7 does not grant Ee right to representation at interview conducted *solely* to inform Ee of, and acting upon, predetermined disciplinary decision)

N.L.R.B. v. Kahn's and Company, Division of Consolidated Food Company **694 F.2d 1070 (C.A. 6, Dec. 1982)**
(Ee's request to have U steward present when he was interviewed concerning his overstaying his allotted time in restroom, held protected)

4033-3000—Cont.

General Motors Corporation v. N.L.R.B. **674 F.2d 576 (C.A. 6, Apr. 1982)**
(E's ignoring Ee's request for U representation at third investigatory interview with E (though no request was made at first two interviews) concerning report of Ee's presence at nearby bowling alley during working hours held violative and Bd's c/d order enforced, since Ee had right to U representation under SCt's decision in *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975) and once request made Ee has absolute right to U representative and such right is not waived by answering questions of E who ignores request)

Spartan Stores, Inc. v. N.L.R.B. **628 F.2d 953 (C.A. 6, 1980)**
(Bd finding that Ee was discharged for refusing to participate in interview he reasonably believed could result in disciplinary action w/o U representation reversed, since substantial evidence did not support Bd's application of *Weingarten* doctrine where Ee had no reasonable grounds to believe that interview might result in his discipline after E gave assurances that it would not, and concomitantly, Ee's action of getting steward himself, contrary to established policy that supervisor would summon steward upon Ee's request and orders of supervisors, does not imply possible disciplinary action)

Super Valu Xenia, a Division of Super Valu Stores, Inc. v. N.L.R.B. **627 F.2d 13 (C.A. 6, 1980)**
(ct held contrary to Bd that Ee during disciplinary interview waived any right to U representation when Ee decided to proceed with meeting w/o U stewards present)

N.L.R.B. v. Illinois Bell Telephone Company **674 F.2d 618 (C.A. 7, Mar. 1982)**
(Ee found not to have waived her right to have U representative present at investigatory interview, where after being informed U steward that she requested was not on premises she was not informed that she might terminate interview or suspend it until U officer could be present)

N.L.R.B. v. Illinois Bell Telephone Company **674 F.2d 618 (C.A. 7, Mar. 1982)**
(Ee who asked E at outset of investigatory interview, *should I have someone in here with me, someone from the U* found to have sufficiently direct request for U representation and E's denial violative)

N.L.R.B. v. Illinois Bell Telephone Company **674 F.2d 618 (C.A. 7, Mar. 1982)**
(U representative Ee requests need not be U steward or officer)

Montgomery Ward & Co., Inc. v. N.L.R.B. **664 F.2d 1095 (C.A. 8, Nov. 1981)**
(*make whole* relief, including back pay and reinstatement, *improper* where Ees were discharged for admittedly stealing goods from E and not for requesting U assistance at investigatory interview; Section 10(c) of Act, precludes back pay order and reinstatement under such circumstances)

N.L.R.B. v. Texaco, Inc. **639 F.2d 124 (C.A. 9, 1981)**
(Ees possess right to have U representative present at investigatory interviews with their E where *risk of discipline reasonably inheres*; right to presence of U representative does not, however, extend to meeting which is held *solely* for purpose of informing Ee of disciplinary decision)

N.L.R.B. v. Texaco, Inc. **639 F.2d 124 (C.A. 9, 1981)**
(E's refusal to permit representative to speak, and relegating him to role of passive observer, violative since E did not afford Ee representation to which he was entitled)

N.L.R.B. v. Southern Bell Telephone and Telegraph **676 F.2d 499 (C.A. 11, May 1982)**
(E who violated Act by refusing Ee's request for U representative at disciplinary meeting not required to expunge record of 2 week suspension which followed interview nor pay backpay, because, here, disciplinary action lawful as not result of any information obtained at interview but of information E had prior to interview and no animus exhibited against Ee for invoking *Weingarten* rights)

4033-3100 Protesting employer's racist tactics

New York University Medical Center **261 NLRB No. 118**
(Ees' distribution of leaflets accusing E of *using the security guards for fascist gestapo tactics to intimidate black and Spanish workers* held protected concerted activity, since Ees did not know that statement was false nor was it published with reckless disregard for whether statement was false or not; while use of term *fascist gestapo* is not condoned, SCt has stated that *the most repulsive speech enjoys immunity provided it falls short of a deliberate or reckless untruth*)

4033-3300 Employee's advising other employees of right to file charges with Board

Hotel & Restaurant Employees and Bartenders Union Local 2 **JD-(SF)-178-80**
(Ee's advising other Ees of right to file charges with Bd against E held protected activity)

4033-3500 Seeking union membership or representation

Comet Fast Freight, Inc. **262 NLRB No. 040**
(discharge of Ee for his refusal to drive truck he alleged was unsafe not violative as Ee was not engaged in concerted activity where he was only Ee who complained about truck's condition and testified that *I was looking out for myself, not the other drivers*; thus, while Ee's subjective lack of concern for his fellow Ees is not controlling, fact that other Ees did not share his concerns about truck shows he was acting alone)

Sealy Mattress Company of Michigan, Inc. **262 NLRB No. 011**
(discharge of Ee for joining U violative notwithstanding he may not have been properly part of unit he sought to join since his efforts were protected activity against which E could not lawfully retaliate)

Burnup & Sims, Inc. **256 NLRB No. 142**
(discharge of Ees assertedly because they failed to report to work held violative where E had given Ees permission to be absent from work to consult with Bd, EEOC, attorney and labor U concerning Ees' job security and other work problems notwithstanding work was interrupted; E's motive irrelevant as reason for discharge was for engaging in protected concerted activities)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**

4033-3900 Performance of union representative's duties

United States Postal Service **252 NLRB No. 083**
(U representative seeking to honor Ee's request for U representation will be deemed protected activity)

N.L.R.B. v. Villa Avila, Palm Springs Sun Dial and Tom Sawyer Construction Co. **673 F.2d 281 (C.A. 9, Mar. 1982)**
(*Ees covered by bargaining agreements have rights that are protected under Section 7 of Act. These rights include right to be visited by U representatives at reasonable times and places to conduct legitimate U business. In balancing rights of persons in possession of property against statutory rights of Us to exercise Section 7 rights, Bd has broadly construed Section 7 and has given U representative benefit of presumption that required visits to job site are required for legitimate Section 7 purposes until contrary appears*)

4033-4100 Demanding compliance with union contract

Vincent Brass & Aluminum Co. **264 NLRB No. 070**
(E's superintendent threatening to layoff whole shift because of exercise of their contractual right to bid on jobs, unlawful)

John Geer Chevrolet Co., Inc., d/b/a Parkwood Chevrolet **262 NLRB No. 034**
(Ee who protested unilateral change in layoff provisions of existing contract engaged in protected concerted activity)

General Motors Corporation, Assembly Division **261 NLRB No. 075**
(discharge of Ee for leaving plant to consult physician when injured, after being denied permission by supervisor, unlawful, where contract provided that supervisor must grant request to visit physician under such circumstances; whether Ee had punched out before seeking permission, immaterial)

Western Marine Electronics, Inc. **257 NLRB No. 057**

City Disposal Systems, Inc. **256 NLRB No. 073**
(when Ee makes complaints concerning safety matters embodied in contract, he is acting not only in his own interest but is attempting to enforce contract in interest of all Ees covered by contract)

Maryland Shipbuilding and Dry Dock Co. **256 NLRB No. 069**
(E protesting what he considered to be violation of safety provisions of bargaining agreement regarding working in remote areas, protected, since efforts to obtain compliance with bargaining agreement protected even if Ee acting alone, it was reasonable to believe area in which Ee was assigned to work would be considered remote due to diminished presence of Ees during his shift, and further, effort to obtain compliance with agreement protected even if Ee's construction of agreement wrong)

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(Ees who pursue in good faith alleged mistaken interpretation of contract are engaged in protected activity and do not forfeit protection of Act)

McLean Trucking Company **252 NLRB No. 104**
(discharge of Ee and subsequent conversion of discharge into suspension and written warning because he refused to drive tractor-trailer which he honestly and reasonably believed to be unsafe held unlawful, since refusal was right Ee was at liberty to exercise under contract even though at time of refusal he had not made any specific reference to contract)

Albertsons, Inc. **252 NLRB NO. 081**
(discharge of Ee for insistence on break periods provided for in collective-bargaining agreement violative)

Clayton Construction Corporation **250 NLRB No. 121**
(U steward's protests against E's assignment of work to another Ee as contrary to contract, protected)

4033-4100—Cont.

Pay-Wood Industries, Inc. 249 NLRB No. 096

(although Ee acted alone, his Cs concerning job safety and refusal to operate allegedly unsafe machine, are concerted activities since Cs were grievances w/i framework of contract that affects rights of all Ees in unit)

Colonial Stores Incorporated 248 NLRB No. 142

(part-time Ee and her non-Ee husband's circulating ptn among Ees during non-working time stating that E was not complying with contract provision requiring it to maintain greatest possible number of full-time job and that, if U failed to make E adhere to agreement, Ees were not getting full representation, held protected concerted activity notwithstanding that Ee was trying to gain more hours of employment for herself; ptn involved matters of obvious concern to Ees and, moreover, other Ees signed the ptn)

Colonial Stores Incorporated 248 NLRB No. 143

(where Ee and her husband, a non-Ee, circulated ptn among Ees protesting E's alleged failure to abide by bargaining agreement and U's failure to enforce agreement, and subsequently the husband drove to E's parking lot with signs stating, *E had no regard for its Ees' rights,* Bd held Ee's displaying signs in her husband's car constituted protected concerted activity, since it was protest concerned with E's adherence to grievance settlement under terms of contract, a subject of potential concern to other Ees, and it was not undertaken for unlawful purpose or in unlawful manner)

Von Hoaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc. 247 NLRB No. 171

Blaw-Knox Foundry & Mill Machinery 247 NLRB No. 36

(complaint of female Ee and co-worker concerning offensive touching of female's person by supervisor held concerted, protected protest against working conditions and effort to enforce contract)

Roadway Express, Inc. JD-(SF)-250-82

(U steward who met with supervisor for purpose of questioning supervisor's authority under U contract to conduct performance interview with Ee absent U representation held protected concerted activity, since this was not merely case of Ee pursuing rights which he believes were granted him by U contract but, rather, Ee in his official U capacity as steward asserting an interpretation of contract with ramifications extending beyond prospective grievant's problem)

Wayne & Co. Installers JD-(SF)-170-82

(Ee is engaged in protected concerted activities when he or she, either acting alone or in concert with fellow Ees, complains or inquires about contract violations)

Palau Corporation JD-(SF)-28-82

Westinghouse Electric Corporation JD-(ATL)-40-81

(U steward's refusal to work overtime in order to attend U meeting concerted activity notwithstanding Ee acted alone where E had contractual obligation to honor steward's request to leave job for U business)

Stearns-Roger, Inc. JD-10-81

(even if grievance is unmeritorious)

Huron Cement Division, National Gypsum Company JD-770-80

(suspension of Ee not unlawful, since for cause rather than for presenting grievance, where after being reprimanded for absenteeism Ee threatened to file grievance over supervisors doing unit work, repeatedly called supervisor approbrious term in abusive and hostile fashion in front of other Ees and refusing direct order to leave premises thereby losing protection of Section 7)

Evans Plumbing Company JD-(ATL)-15-80

(Ees' questioning E about his failure to send payments to U's vacation fund as required in contract, protected activity)

Redman Construction Company, Inc. JD-(SF)-105-80

(discharge of Ee who sought to implement contractual benefits regarding overtime pay violative irrespective of whether asserted claims are found meritorious)

N.L.R.B. v. Maryland Shipbuilding and Drydock Company 683 F.2d 109 (C.A. 4, July 1982)

(Ee who stopped work for one-half hour to pursue grievance over work assignment which he believed violated safety provision of collective bargaining agreement was not engaged in protected activity where contract prohibited any work stoppage and established three step procedure for resolution of grievances; moreover, situation did not rise to level of *abnormally dangerous* which would protect stoppage in face of no-strike clause; thus suspension of Ee for work stoppage not violative)

McLean Trucking Company v. N.L.R.B. 689 F.2d 605 (C.A. 6, Sept. 1982)

(ct held substantial evidence supported Bd's finding that drivers were unlawfully disciplined for engaging in protected and concerted activity when they refused to drive tractor-trailor they believed to be unsafe pursuant to U instructions invoking provision of collective bargaining agreement; E's reliance on *Jim Causley Pontiac,* 675 F.2d 125 (6th Cir. 1982), unwarranted where ct held, *inter alia,* that E knew that drivers made their complaints pursuant to U activity; ct also reaffirmed its rejection of *Interboro* doctrine)

N.L.R.B. v. Clayton Construction Corporation 652 F.2d 6 (C.A. 8, June 1981)

(U steward's assertion that E's assignment of work to certain Ees was in violation of its agreement with U protected, even if assertion is ultimately found incorrect)

Albertson's, Inc. v. N.L.R.B. 661 F.2d 939(T) (C.A. 9, Sep. 1981)

(discharge of Ee allegedly for engaging in protected activity of seeking enforcement of contract as to break periods, not unlawful, where evidence showed that Ee would have been fired for incompetence despite any U activity, and there was substantial doubt that alleged *U activity* was in fact more than Ee's pursuance of her own complaint of discontent)

N.L.R.B. v. W. Carter Maxwell, dba Pioneer Concrete Co. 637 F.2d 698 (C.A. 9, 1981)

(discharge of Ee for attempting to enforce overtime provisions of collective-bargaining agreement violative)

4033-4200 Demanding contract wage

Western Marine Electronics, Inc. 257 NLRB No. 087

4033-4300 Enlisting union's assistance in appointment of steward

Moon Equipment Company 262 NLRB No. 076

(Ee's conduct in asking on behalf of all Ees, for better hospitalization and additional holiday held protected concerted activity)

Harper & Arterburn Co., Inc. 255 NLRB No. 106

(enlisting U's assistance in appointment of steward on job and talking about U on job, protected)

4033-4900 Obtaining wage increase

Moon Equipment Company 262 NLRB No. 076

(Ee's conduct in asking company official for wage increase for himself and fellow Ee held protected concerted activity, where company official's adverse testimony was discredited, and fellow Ee was found to have authorized Ee to speak on his behalf concerning wages)

Pettibone Corporation 255 NLRB No. 131

Jimmy Kilgore Trucking Company 254 NLRB No. 112

(Ees joining together and discussing wages and work, later presenting E with demand for commission rate increase, and expressing desire not to work following day because of unsafe conditions on job held protected concerted activity)

Timet, A Division of Titanium Metals Corporation of America 251 NLRB No. 157

(discharge of Ee who complained to supervisor about his raise and then circulated letter offering to represent Ees to management to obtain cost-of-living adjustment violative as Ee's action was intended to produce group activity and constituted concerted protected activity)

National Wax Company 251 NLRB No. 147

(Ee inquiring about merit pay increase for himself held not concerted activity where he was not acting on behalf of any other Ee and his endeavors, even if successful, would not directly relate to or advance likelihood of merit wage increases for any other Ee)

David D. Sutherland d/b/a Maaco Auto Painting and Body Work 249 NLRB No. 184

(discharge of Ee who acted as spokesman to express dissatisfaction to E about Ees' wages and working conditions, unlawful, where discharge was motivated by *disturbance* created by Ee in registering such dissatisfaction)

AAR Technical Service Center 249 NLRB No. 176

(letter written by disgruntled Ee who had been denied pay raise he thought he deserved not protected where it contained threats to sabotage E's product)

Charles H. McCauley Associates, Inc. 248 NLRB No. 067

(Ee demanding improvement of wages, pensions, and health benefits held concerted activity rather than effort to obtain objective only for self, since Ee's demands would inure to benefit of all Ees; moreover, Ee had spoken to several of his fellow Ees and apprised them of his intentions and they had not expressed disinterest in his taking action)

General Warehouse Corp. 247 NLRB No. 142

(assignment of more onerous and undesirable work to leader of Ee movement rejecting E's request for Ees' waiver of cost of living increase held violative)

Professional Ambulance Service of Middlesex JD-848-80

(discharging ambulance EMT attendant for attempting to induce other Ees to strike in support of demand for increased wages, violative, although Ee denied activity and believed that state's Abandonment Law prohibited strikes)

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Royal Travel Corporation **JD-306-80**

N.L.R.B. v. American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. **670 F.2d 1236 (C.A. 1, Feb. 1982)**
(Ee's discussion of his wages, because it touched off chain of discourse among his fellow Ees, protected activity)

Timet, a Division of Titanium Metals Corporation of America v. N.L.R.B. **671 F.2d 973 (C.A. 6, Mar. 1982)**
(preparing for group activity by telling E that he intended to organize Ees to protest dissatisfaction with amount of salary increase and conveying this intention to some Ees held protected notwithstanding he was discharged before any Ees had opportunity to join him)

N.L.R.B. v. James R. McCaffrey and Edward A. Cook, d/b/a ABC Concrete Company **619 F.2d 620 (C.A. 6, 1980)**
(Ee's going into E's office together to request increase in salaries and pay for overtime upheld as concerted protected activity; determination thereof need not be premised, as E claimed, on finding of *prior requests or constant complaints by employees culminating in a labor dispute* but may be activity taking place at same time demand is made)

David D. Sutherland, d/b/a Maaco Auto Painting and Body Work v. N.L.R.B. **646 F.2d 1273 (C.A. 8, Apr 1981)**
(discharge of Ee for approaching E and expressing Ees' dissatisfaction with wages and bonus plan violation as Ee had spoken to other Ees and was attempting to obtain benefits for all Ees)

4033-5000 Protesting qualifications for benefit plans

Tyler Business Services, Inc. **256 NLRB No. 088**
(E's statements that he believed E's failure to provide part-time Ees hospitalization benefits was unfair, protected; nor was statement rendered unprotected by his remarks to third party concerning personal lives of E's officials since remarks did not relate to E's product or operations nor constitute deliberate intent to impugne company)

4033-5100 Protesting pay shortages

Searle Auto Glass, Inc. d/b/a Best Glass Company **264 NLRB No. 169**
(dishcarge of glazier unlawful, notwithstanding E's assertion that discharge was because of Ee's suspected activities in *skimming operation* and because he was engaged in glazing work in competition with E, since asserted reasons were found a sham herein and real reason was Ee's filing wage claim against E with state labor commission, in view of E's explanation to state labor department after Ee had filed for unemployment compensation that reason for discharge was Ee's filing of *unjustifiable* wage claim against E)

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. **255 NLRB No. 098**
(Ee's initiation of wage rate discussions with other Ees because he believed he had not received wages promised him, protected)

Robert Batchelor d/b/a Batchelor Electric Co., a sole proprietorship **254 NLRB No. 156**
(discharge of electrician assertedly because of tardiness and failure to follow orders held violative where there was no evidence that Ee failed to follow orders, no other Ee had ever been discharged for similar record of tardiness and reason for discharge was Ee's not working in protest of E's refusal to pay Ee at prevailing wage rate on government projects; protest viewed as concerted activity objective which was matter of common interest and concern to all Ees)

Quality Broadcasting Corp. of San Juan d/b/a WQBS–AM Radio Station La Gran Cadena **254 NLRB No. 118**
(Bd reaffirmed its previous D/O agreeing with ALJ that discharge of Ee was unlawful, notwithstanding E's assertion that reason for discharge was its dissatisfaction with Ee's work performance, where E's real motive for discharge was Ee's activities in connection with overtime pay claims; Bd held ALJ's method of analysis was sufficient to satisfy any of various causality tests that have been articulated as appropriate for this type of case)

J. N. Moser Trucking, Incorporated **249 NLRB No. 106**
(Ee engaged in protected concerted activity when he pressed his claim for travel pay and refused to cooperate with E in its attempt to defend against claims made by Wage and Hour Division of U.S. Department of Labor)

A. J. Librero Disposal Cartage and Trucking, Inc. d/b/a A. J. Librero Disposal Service, Inc. **247 NLRB No. 118**

Elliott Carpet Installations **JD-(SF)-93-82**
(discharge of Ee who constantly discussed with other Ees his dissatisfaction with travel allowance he was receiving under U contract for commuting to job, unlawful, notwithstanding caused disruption on job or fact Ee refused to contact U in order to settle matter, where E never talked with Ee before discharging him and Ee was trying to convince other Ees they too should be receiving more pay under contract)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. **691 F.2d 1133 (C.A. 4, Sept. 20, 1982)**
(threatening Ee with discharge for protesting shortages in paycheck violative as protest is clearly concerted activity; moreover, truth or falsity of Ee's views does not deprive such activity of its protection)

4033-5200 Refusing to work without pay

Red Ball Motor Freight, Inc. **250 NLRB No. 111**
(Ee's comment, made in presence of coworkers, that another Ee should not start work until time set by E held concerted activity, since remark was attempt to induce fellow Ees not to perform work for which they would not be paid)

4033-5300 Protesting change in computing pay (piece rate, etc.)

Herman Brothers, Inc. **252 NLRB No. 121**
(driver not deemed to have voluntarily quit pursuant to rule that would consider drivers as having quit where they failed to report their availability for work for three days, but rather discharged, since motivating factor in E's action was driver's circulating letter opposing provision in proposed bargaining contract which would substitute mileage for number of hours worked as basis for computing drivers' wages)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **281 NLRB No. 047**
(refusing to work at reduced piecework rates)

4033-5400 Protesting withdrawal of incentive wage increases

Enterprise Products, Inc. **264 NLRB No. 125**
(discharge of Ee because of his remarks in ans to E's announcement of proposed production incentive of free tickets to athletic and other events rather than wage increase, violative where Ee responded that he would be hard pressed to improve production if increased production would be rewarded as proposed by E; Ee's remarks constituted protected activity and were not, as contended, threat to slow down production)

4033-5500 Protesting working conditons

Ebb Tide Processing, Inc. **264 NLRB No. 100**
(female Ee's complaining about being confronted by drunken supervisor, whether amorous or not, found protected activity and concerted, since matter was important to all Ees and investigated by E's board because of concern about other female Ees)

American Freight System, Inc. **264 NLRB No. 018**
(discharge of driver for refusing to drive truck which he reasonably believed to be unsafe because of good faith belief that truck's tires were unsafe held violative, since driver's reasonable concern about safety of tires constituted attempt to enforce contract provisions reguarding Ee rights not to be compelled to operate unsafe equipment; thus, his conduct amounted to protected concerted activity)

Barry S. Solof, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group **264 NLRB No. 019**
(discharge of Ees who refused to work until management heard their grievances concerning, *inter alia* lack of (medical) supervision of their paramedical responsibilities held violative, since such lack was matter plainly affecting Ees' terms and conditions of employment and their insistance that they be heard was protected activity)

Diversified Case Company, Inc. **263 NLRB No. 119**
(Ees who walked off job to protest extreme cold in shop engaged in protected activity, notwithstanding they did not recite what conditions would have to be met prior to their return to work)

Serendippity-Un-Ltd and Tigerrr, Inc. **263 NLRB No. 100**
(Ees' concerted walkout because of their perceived serious health and safety violations in plant, which was later confirmed by OSHA, and because of their perceived inadequate coverage of E's health insurance plan held concerted protected activity, especially since they had no bargaining representative, and notwithstanding reasonableness of Ees' perception, any lack of notification to E of intent to cease work or reasons therefor, and alternative methods of solving problems; nor was Ee action any less protected even though they were not in economic confrontation or because supervisor played prominent role in trigering walkout)

Farmland Soy Processing Company **263 NLRB No. 18**
(discharging Ee for not immediately signing orientation form for new Ees concerning safety conditions and procedures and asking for more time to read form, violative as this incident was pretext in ivew of E's later statement to dischargee's co-worker in which E admitted he was looking for way to discharge Ee, E told Ee in discharge interview that he had been *picking* on E, and this referred to Ee's many complaints about safety)

Steak and Ale Restaurant, Sharonville **263 NLRB No. 014**
(discharge of Ees who engaged in protected concerted activity of protesting E's tip policy, lack of bus boy assistance and changes in health case programs, violative)

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Dupont Puerto Rico, Inc. **262 NLRB No. 128**
(Ee's inquiry of warehouse manager with regard to denial of raise to fellow Ee because of his five absences and his inquiry as to E's personnel policy on sick leave, disability, and promotions, protected)

Wagner-Smith Company **262 NLRB No. 130**
(discharge of 4 Ees for complaining about hazardous working conditions violative)

W. C. Electrical Co., Inc. **262 NLRB No. 066**
(discharge of Ee for protesting discontinuance of E's practice of providing sick pay, violative since sick pay is term and condition of employment and Ee had obtained support of fellow Ees before speaking to E about sick leave policy; activity in protest of discontinued past practice involves matter of mutual concern to Ees and this common concern was not negated because it coincided with dischargee's individual sick pay concern)

Lafayette Steel Erector, Inc. **260 NLRB No. 160**
(discharge of Ee who protested E's failure to provide Ees who worked high off ground with safety belts violated Act as Ee engaged in protected activity, notwithstanding Ee chose to protest by removing his shirt which was violation of E's rules)

Roadway Express, Inc. **260 NLRB No. 078**
(E's placing of poster on bulletin board and distribution of newspaper from another subdivision of U protesting E's use of production cards at another facility of E held protected concerted activity, since Ees have no less interest in or concern about work rule that has been imposed than one that is being considered; in former situation Ees may legitimately protest use and application of rule and seek its rescission, and here E's actions were clearly designed to make his fellow Ees aware that such a legitimate protest might be appropriate)

Teresa Coal Company, Inc. **259 NLRB No. 047**
(miners refusal to work after E's failure to comply with their request that road into mine be repaired so that *mantrip* could be used to ride into mine in view of miners' fear that *scoop* being used to carry them into mine was unsafe and their concern about delay in carrying out injured Ee, protected, whether or not conditions complained of were objectively unsafe, since concerned solely with concerted presentation of grievances, and right to cease work in support thereof and not with question cognizable under Section 502 of Act)

Fibracan Corp. **259 NLRB No. 014**
(safety conditions in plant and quantity of production which has bearing on job evaluation)

Tamara Foods, Inc. **258 NLRB No. 100**
(strike protesting unhealthy conditions not rendered unprotected by fact strike was in breach of plant rule and plant had been found not to violate OHSA regulations)

L & M Radiation, Inc. **258 NLRB No. 030**
(layoff of Ees who had been very active in protesting about poor working conditions to management violative)

A.P.F. Electronics, Inc. **257 NLRB No. 068**
(Ee contacting U representative regarding making and receiving phone calls on job, protected; *fact that grievance may be groundless does not in any way affect protected right of Ee to bring it to attention of U representative*)

True Drilling Company **257 NLRB No. 072**
(intoxicated Ee with whom Ees refused to work on oil rig not abnormally hazardous condition w/i Section 502; nor were Ees justified in their refusal where only danger cited was that Ee might fall from board above platform onto Ees where Ee did not wear hard hat and would be strapped on board. Ees refusal and walkout held voluntary quit)

Trans Air Supply Company, Inc. **257 NLRB No. 023**
(leadman's attempt to improve working conditions at request of fellow Ees which resulted in heated argument with plant superintendent over need for fans to be turned on to clear smoke and fumes from work area held protected, where he obeyed order to return to work area yet continued protest; E invited such protest by telling Ees to bring problems directly to him)

Maryland Shipbuilding and Dry Dock Co. **256 NLRB No. 089**
(E protesting what he considered to be violation of safety provisions of bargaining agreement regarding working in remote areas, protected, since efforts to obtain compliance with bargaining agreement protected even if Ee acting alone, it was reasonable to believe area in which Ee was assigned to work would be considered remote due to diminished presence of Ees during his shift, and further, effort to obtain compliance with agreement protected even if Ee's construction of agreement wrong)

Bronco Wine Company **256 NLRB No. 013**
(disciplinary warning issued to Ees who complained about lack of parts and materials violative as complaints related to terms and conditions of employment)

Pettibone Corporation **255 NLRB No. 151**
(Ees' discussion of working conditions, e.g. lack of air conditioning, poor lighting, empty boxes blocking passage ways and partially blocking fire exit, with supervisor after his announcement that they would have to do all inventory unlike previous year in which part of work was sent out, held protected)

Ogden & Moffett Company **254 NLRB No. 181**
(laying drivers off because they and their fellow Ees made complaints to state agency regarding overloaded or defective trailers and also because they refused to operate trailers they considered overloaded or defective, violative)

Borman's, Inc. **254 NLRB No. 130**
(asking Ees to remove, or turn inside out, T-shirts with Company name and words *I's tired of bustin my ass*, violative as purpose of shirts was to publicize grievance, did not interfere with order and discipline; it villified no company official and language used is not so obscence as to be objectionable)

Jimmy Kilgore Trucking Company **254 NLRB No. 112**
(Ees joining together and discussing wages and work, later presenting E with demand for commission rate increase and expressing desire not to work following day because of unsafe conditions on job held protected concerted activity)

Oakwood Manor, Inc., d/b/a Danville Nursing Home **254 NLRB No. 106**
(walkout by 5 aides in protest over assignment to fewer hours and accusations of vandalism of Ee's car held protected and discharge for walkout held violative; Ees did not lose protection by their failure to give 10 days notice required by 8(g) as no U called, instigated or promoted work stoppage)

Newport News Shipbuilding & Dry Dock Company **254 NLRB No. 043**
(discharge of Ee after his election to U office and increased activity regarding safety conditions violative)

Quality Drywall Company, Inc. **254 NLRB No. 078**
(work stoppage and Ee meeting were of concerted nature triggered by Ees' displeasure and complaints over deplorable conditions of portable toilets at work site, and were protected activities)

ITT Continental Baking Company American Bakeries Company, Inc. **253 NLRB No. 149**
(protesting use of hot bun pans which made working conditions more onerous than usual, protected)

Universal City Studios, Inc. **253 NLRB No. 142**
(talking to other Ees about working conditions held protected)

Consolidated Freightways **253 NLRB No. 137**
(protesting operation of tractor under unsafe and dangerous conditions)

Jim Causley Pontiac, Division Jim Causley, Inc. **253 NLRB No. 101**
(Ee who filed complaint with State Health Department engaged in protected concerted activity and E found to have knowledge of concerted nature of activity where E was aware State complaint form filled out with plural pronoun we where complaint form identified area of shop where discriminatee and other Ee worked, listed paint fumes as hazard and in past many Ees had complained to E about fumes and evidence that many Ees had discussed poor ventilation system, complaining to management)

Service Machine & Shipbuilding Corp. **253 NLRB No. 088**
(simultaneous, spontaneous refusal of four welders to work in the rain held concerted protected activity, where one of them expressed fear of illness as result thereof; moreover, testimony showed that they felt danger of electrical shock so apparent that comment on it to supervisors was unnecessary)

Deister Concentrator Company, Inc. **253 NLRB No. 040**
(Ees protest to E about working along side Ee with suspected health problem protected activity)

McLean Trucking Company **252 NLRB No. 104**
(discharge of Ee and subsequent conversion of discharge into suspension and written warning because he refused to drive tractor-trailer which he honestly and reasonably believed to be unsafe held unlawful, since refusal was right Ee was at liberty to exercise under contract even though at time of refusal he had not made any specific reference to contract)

Irvin H. Whitehouse & Sons Company **252 NLRB No. 140**
(discharge of Ees who refused to work because of safety hazards violative where contract did not contain no-strike provision)

E. R. Carpenter Co. **252 NLRB No. 096**
(discharging Ees for refusing to work in toxic atmosphere in deteriorating moon suits, violative where Ees were concerned not only about unsanitary nature of the suits, but also about holes in suits and possibility that toxic fumes were passing through the holes; Ees had good-faith belief that their working conditions were dangerous and this alone rendered their refusal to work protected)

Hawthorne Mazda, Inc. **251 NLRB No. 038**
(Ee held engaged in protected concerted activity where he had been instrumental in securing fellow Ees' support in form of pts for confronting E's management with their concerns regarding, pay, scheduling, and lack of a changing room; in securing meeting at which concerns could be addressed; and in presenting concerns to management in a way that conveyed their

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group nature, with Ee acting as spokesman for Ees in communicating with management which knew he was acting in that capacity)

Pay-Wood Industries, Inc. 269 NLRB No. 056
(although Ee acted alone, his Cs concerning job safety and refusal to operate allegedly unsafe machine, are concerted activities since Cs were grievances w/i framework of contract that affects rights of all Ees in unit)

Anco Insulations, Inc. 247 NLRB No. 081
(threat by contractor to discharge Ee because he had registered complaint over safety of insulating work being done on furnace installation by another contractor at construction project held violative since such complaint constituted protected concerted activity)

Bucyrus-Erie Company 247 NLRB No. 069
(discharge of probationary Ee violative where E asserted reason for discharge was crack in weld Ee had completed but no other Ee had ever been discharged for that reason and true motive for discharge was Ee's protesting unsafe working conditions, a protected concerted activity)

Blaw-Knox Foundry & Mill Machinery 247 NLRB No. 36
(complaint of female Ee and co-worker concerning offensive touching of female's person by supervisor held concerted, protected protest against working conditions and effort to enforce contract)

Corbin-Dykes Electric Company JD-(SF)-208-82
(individual Ee's complaints involving safety deemed protected and concerted as long as complaints are based on reasonable belief that existing condition was dangerous, hazardous or unsafe, or that collective bargaining agreement had been violated; reasonableness of Ee's belief is based upon circumstances as they existed and not upon whether in fact there actually existed such danger or that E had actually violated agreement)

Ground Round Restaurant, A Division of Howard Johnson JD-(SF)-191-82
(Ees of restaurant who had, after conferring among themselves and expressing dissatisfaction with manager regarding new work schedule which resulted in reduced hours with possible loss of insurance benefits and with other working conditions, requested meeting with owner, were engaged in protected activity when they gathered in bar area before end of shift to await arrival of owner, since no customers in bar, service not disrupted, Ees had completed duties, and there was no violence)

Francrete Corporation JD-(NY)-87-82
(discharge of Ee for filing too many reports concerning unsafe vehicles violative as such conduct is protected concerted activity where other drivers had voiced similar concerns)

Timothy Kasmach and David G. Kasmach d/b/a Warrendale Garage and Trucking JD-174-82
(it is not necessary that complaint by Ee to E regarding working conditions be found to be meritorious in order to hold that activity was protected; it is sufficient if complaint by Ee to E regarding working conditions was apparently reasonable, made for legitimate purposes, and was not fabricated for personal motives)

Timothy Kasmach and David G. Kasmach d/b/a Warrendale Garage and Trucking JD-174-82
(discharge of truck driver because he refused to operate truck based on *his belief* that loaded truck would be overweight under laws of 2 states held violative, since such refusal is protected concerted activity; discharge had effect, intended or not, of serving as warning to other drivers that they were in danger of losing their jobs if they refused to violate state laws by operating overweight vehicles)

High Energy Corporation JD-100-82
(discharge of Ees who walked off job to protest unsafe working conditions violative as Ees engaged in protected activity and protection is not lost because Ees did not give prior notice, moreover, it is immaterial whether Ees were correct about the unsafe conditions)

E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge JD-698-81
(Ees ceasing work and requesting meeting with management to concertedly present complaints about harassment, protected, whether justified or not)

Johns-Manville, Private Carriage JD-(ATL)-89-81
(discharge not violative where Ee's protests concerning alleged unsafe conditions of front axle tires of truck, were not concerted activity since protests had no object to cause E to change its policies concerning criterion of safety for front tires which it had established but was *solely for Ee's own benefit*)

Brodart, Inc. JD-148-81
(supervisor who threatened to discharge Ees for complaining about hazardous working conditions, a protected activity violated Act notwithstanding he had no authority to implement threat as Ees may not have been aware that he lacked authority)

American Youth Soccer Organization JD-(SF)-29-81
(Ees' presentation of grievances protected where Ees acted concertedly, notwithstanding Ees did not follow procedure in Ee handbook where they presented grievances simultaneously rather than in two steps to individuals designated to receive grievances and also transmitted list of grievances to E's board of directors although manual had no provision for grievances to go to board, since under Section 7 Ees have right to file grievances where they will do most good w/o fear of reprisal)

Perry Cap & Set Screw Company JD-671-80
(suspension of U committeeman allegedly for walking off job because management failed to meet with him and other Ees, violative, where Ee tried to arrange meeting between Ees and management about working conditions and he had informed his supervisors of medical appointment and would not work that day of meeting)

The Pacific Telephone and Telegraph Company JD-(SF)-322-80
(U steward's activity in seeking action from supervisor regarding matters of common concern to maintenance Ees (private telephones, private break facilities, taxi service for female Ees who worked late comparable to that afforded E's female office Ees) held protected)

Alaga Whitfield Foods, Inc. JD-504-80
(discharge of Ee truckdrivers who refused to work because of violence occurring on highway in independent trucker's protest violative, as Ees' activity protected because of safety concerns)

Batavia Nursing Convalescent Inn, Inc. JD-23-80
(soliciting Ees to take their complaints to individual whom Ee considered to be *boss* of facility though he had no official connection with E at that time rather than through regular channels held to have been concerted activity where Ees' complaints and dissatisfaction were directed to employment conditions of concern to other Ees and protected because *boss's* conduct was such that even though he had officially severed his connection with E he was held agent of E)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection JD-(SF)-310-79
(presenting informal complaints to E relating to wages, hours, and other terms and conditions of employment)

Emblematic Jewellry Products of U.S.A., Inc. JD-814-79
(work stoppage to protest cancellation of coffee breaks)

Pioneer Finishing Corporation v. N.L.R.B. 667 F.2d 199 (C.A. 1, Nov. 1981)
(Ee who distributed leaflet protesting safety conditions in plant engaged in protected concerted activity)

N.L.R.B. v. Charles H. McCauley Associates, Inc. 657 F.2d 685 (C.A. 5, 1981)
(Ee's discussion at meeting with E's officers and supervisors concerning lifetime employment contract for himself and improvement for all Ees in areas of health benefits, pension rights, wage increases, bonuses, and layoff policy, and expression of intent to discuss such problems with other Ees held protected concerted activity, where prior to meeting Ee had discussed working conditions with other Ees, and he advanced complaints at meeting on behalf of all Ees, although w/o their express support; and his complaints were not personal but a clear predicate for group activity)

Brown & Root, Inc. v. N.L.R.B. 634 F.2d 816 (C.A. 5, 1980)
(Ees ceasing work and seeking shelter to avoid unsafe conditions where rain was blowing on electrical equipment with which they were working, protected)

McLean Trucking Company v. N.L.R.B. 689 F.2d 605 (C.A. 6, Sept. 1982)
(ct held substantial evidence supported Bd's finding that drivers were unlawfully disciplined for engaging in protected and concerted activity when they refused to drive tractor-trailor they believed to be unsafe pursuant to U instructions invoking provision of collective bargaining agreement; E's reliance on *Jim Causley Pontiac*, 675 F.2d 125 (6th Cir. 1982), unwarranted where ct held, *inter alia*, that E knew that drivers made their complaints pursuant to U activity; ct also reaffirmed its rejection of *Interboro* doctrine)

N.L.R.B. v. Downslope Industries, Inc., and Greenbriar Industries, Inc. 676 F.2d 1114 (C.A. 6, Apr. 1982)
(*freedom from sexual harassment is a working condition which Ees may organize to protect*)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. 675 F.2d 125 (C.A. 6, Apr. 1982)
(although affirming finding that discharged Ee's filing of MIOSHA complaint was protected concerted activity, ct for second time remanded case to Bd to determine whether E had *actual* knowledge of *concertedness* of Ee's actions where Bd on previous remand had relied on evidence already submitted and applied wrong standard in holding that it was sufficient if E *knew or should have known* that Ee's actions were concerted)

N.L.R.B. v. Lloyd A. Fry Roofing Company, Inc. of Delaware 651 F.2d 442 (C.A. 6, June 1981)
(Ee's articulating at meetings between drivers and E complaints about condition of trucks and comparing them unfavorably with E's prior equipment held protected)

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Bowman's, Inc. v. N.L.R.B. 676 F.2d 1138 (C.A. 6, May 1982)

(E's forbidding Ees from advertising grievance by *wearing a shirt with the slogan 'I'm tired of bustin' my ass'* not violative, since E's conduct was isolated and no substantial evidence supported Bd's finding that wearing of T-shirt constituted exercise of any right protected under NLRA)

Great Lakes Steel, Division of National Steel Corporation v. N.L.R.B. 625 F.2d 131 (C.A. 6, July 1980)

(ct upheld Bd finding that Ee's possession of pamphlet critical of E's ambulance policy with intent to distribute among other Ees was protected activity and subsequent discharge for such Ee activity violative as supported by substantial evidence on record)

Vic Tanny International, Inc. v. N.L.R.B. 622 F.2d 237 (C.A. 6, 1980)

(Ees jointly participating in walkout to present job related grievances to E held engaged in protected concerted activity regardless of whether or not Ees are members of U; E, having same options available to him as to E faced with economic strike by U Ees, entitling him to pay Ees who left work, or to replace Ees with other workers, is prohibited from discharging, or threatening to discharge, unorganized Ees involved herein because they engaged in protected concerted activity)

Vic Tanny International, Inc. v. N.L.R.B. 622 F.2d 237 (C.A. 6, 1980)

(unorganized Ees who jointly participate in walkout to present job related grievances to E are engaged in protected concerted activity regardless of whether or not they are U members; no distinction exists in Act or its remedies between organized and unorganized Ees who act in concert to deal with their grievances)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. 620 F.2d 122 (C.A. 6, 1980)

(ct agreed with Bd that Ee's complaints to E and MIOSHA of excessive paint fumes and danger of their proximity to gas heater pilot lights were protected concerted activity, where complainant got the other affected Ee's permission to use his name and referred to him in complaint, however, ct remanded case to Bd for finding on issue, not addressed by Bd, as to whether E knew of other Ee's involvement and that activity in question was concerted)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. 659 F.2d 830 (C.A. 7, Sept. 1981)

(where safety issue is one that must be submitted to binding arbitration, obligation not to strike over matter is considered to be coterminus and any stoppage violates implied no-strike clause unless safety hazzard suddenly arose and presented immediate threat; i.e., *Washington Aluminum* situation)

Carlson Roofing Co., Inc. v. N.L.R.B. 627 F.2d 77 (C.A. 7, 1980)

(in discussion with E Ees voicing their opposition in orderly fashion to E's interpretation of contract provision that Ees had to work alone on jobs and no Ee flatly refused to work alone, held protected concerted activity)

N.L.R.B. v. Tamara Foods, Inc. 692 F.2d 1171 (C.A. 8, Nov. 1982)

(Bd did not err in concluding that walkout because of ammonia fumes in workplace was concerted protected activity, in view of facts strikingly similar to those in *Washington Aluminum* case, particularly where Ees were not represented by U and had no collective bargaining agreement; contention that Bd should have determined whether walkout was protected by objective standard of danger and whether Ees had an alternative and that Bd should have balanced Ees' rights against E's superior rights against E's superior rights, rejected)

N.L.R.B. v. Bighorn Beverage 614 F.2d 1238 (C.A. 9) (1980)

(filing of safety C with state agency by Ee acting alone not protected concerted activity in absence of collective-bargaining agreement as there is no agreement to implement which would be source of Ee's claimed rights)

Lee G. Kohls v. N.L.R.B. 629 F.2d 173 (C.A.D.C., 1980)

(discharge of Ee for refusing to drive assigned truck because *breaks were not good enough for me*, not unlawful, since protest and refusal not concerted and *Interboro Contractors* doctrine not applied, notwithstanding contention was Ee was asserting contractual right where Ee was not asserting right on behalf of anyone other than himself nor speaking for others, no evidence Ee and U working in concert to assert contract, and fact Ee withdrew grievance filed on his behalf by U)

4033-5800 Protesting work quotas

Fibracan Corp. 259 NLRB No. 014

(safety conditions in plant and quantity of production which has bearing on job evaluation)

4033-6000 Protesting performance of employee's work by other employees

Interior Alterations, Inc. 264 NLRB No. 093

(Ees' protesting assignment of contractual unit work to nonunit Ees and seeking to implement terms of contract, protected)

4033-6100 Protesting racial harassment by outsiders

J. W. Microelectronics Corporation 259 NLRB No. 089

(work stoppage to protest community members' racially motivated verbal and physical harassment of Ees as they left work held protected concerted activity where, notwithstanding harassment did not occur on job, Ees' problem existed only because of their attendance at work and harassment was not beyond E's control, since he was tenant of property on which harassment occurred)

4033-6200 Protesting employer's unauthorized use of union label

Exhibition, Inc. JD-543-81

4033-6400 Protesting financial management of trust fund or benefit plan

Pacemaker Yacht Co., A Division of Mission Marine, Inc. 253 NLRB No. 095

(discharge and failure to reinstate Ees who struck E, contrary to contractual no-strike clause, to protest failure of U's health and welfare fund to fulfill its contractual medical insurance obligations held violative, since *no-strike* pledge relied upon by E did not constitute clear and unequivocal waiver of Ees' right to strike against actions of third party (*Fund*) which affected terms and conditions of employment)

4033-6500 Protesting promotion policy

N.L.R.B. v. Ford Motor Company 683 F.2d 156 (C.A. 6, July 1982)

4033-6600 Protesting removal of supervisor

Keyway, A Division of Phase Inc. 263 NLRB No. 172

(discharge of Ees who collectively *walked out* (for approximately 3 hours) from facility, engaged in prevention and treatment of alchoholism, drug abuse and domestic violence, in protest of discharge of past clinical director, criticizing new director, and expressing concern over quality of treatment of E's clients, not violative, since record contained no evidence that identity and capability of director involved had direct impact on Ees' own job interests; *walk out* not protected activity, since it did not encompass protest by Ees over actual terms and conditions of their employment)

The American Federation of State, County and Municipal Employees 263 NLRB No. 121

(for strike protesting discharge of supervisor to be protected it must be shown that identity of and capability of supervisor had direct impact on Ees job interests and that Ees were concern with job impact and not merely assisting supervisor inpersonal plight)

S. L. Industries Inc. and Extruded Products, Corp. 252 NLRB No. 151

(walkout by Ees to protest discharge of low level supervisor who was sympathetic to Ee problems held to have been *protected activity*, since identity and capability of supervisor involved had direct impact on Ees' own job interests)

Emblematic Jewellry Products of U.S.A., Inc. JD-614-79

(discharge of supervisor)

Puerto Rico Food Products Corp., et al. v. N.L.R.B. 619 F.2d 153 (C.A. 1, 1980)

(Ees' strike over discharge of supervisor not protected activity where protest was not over actual conditions of employment of Ees; none of Ees who protested gave slightest indication that discharged supervisor's assistance to their unionization efforts motivated their protest)

4033-7600 Seeking removal of supervisor

Allied Industrial Workers of America, AFL-CIO, Region 8 265 NLRB No. 077

(filing of internal charges with E, a U, to cause impeachment of its regional director not protected, since Ee activities to cause changes in management personnel are not protected)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel 248 NLRB No. 113

(discharge of Ees for drafting, mailing, and distributing letter which complained about manager's operation of hotel and which was signed by supervisors as well as other Ees and sent to E, violative since Ees' conduct constituted legitimate concerted activity w/i meaning of Sec. 7, and discharge of supervisory/managerial personnel for their participation was also violative because of natural tendency of these discharges to discourage Ees from excercising rights guaranteed them in Sec. 7)

N.L.R.B. v. Sheraton Puerto Rico Corp., d/b/a Puerto Rico Sheraton Hotel 651 F.2d 49 (C.A. 1, June 1981)

(enforcement denied of Bd order in case involving discharge of supervisors and some Ees for writing letter to E's president criticizing general manager and requesting his removal from that position where there was not substantial evidence in record that such managerial protest concerned actual conditions of non-supervisory employment; ct noted that enforcement might have been granted if non-supervisory Ees had written letter, participated signifi-

4033-7600—Cont.

cantly in its drafting, or even had drafting taken place after consultation with them)

4033-7700 Protesting designation of supervisor

The Singer Company, Education Division, Career Systems, San Jose Job Corps Center 206 NLRB No. 187

(Ees' work stoppage and demonstration, w/o consulting U, in protest over supervisory appointment at Job Corps Center held not protected, as position lacked sufficient direct impact on Ees' working conditions to bring protest w/i protection of Act)

Ford Motor Company 231 NLRB No. 066

(Ees who file grievances, civil suits, or ULP charges in protest of E's promotional policies to supervisory positions, protected)

4033-7800 Seeking removal of union steward

General Indicator Corporation, Radco Division 260 NLRB No. 179

(seeking to replace U steward held protected activity)

4033-8900 Protesting payment of wages by check not covered by funds

Medical Center News, Inc. d/b/a Health Care News 263 NLRB No. 139

(discharge of Ee for protesting along with fellow Ees at E sponsored meeting fact that they frequently had to hold their paychecks because of insufficient funds in E's account violative as such protest is protected concerted activity)

Cal-Walts, Inc. 258 NLRB No. 126

Linx Corporation JD-686-81

(Ees' temporarily withholding their services until they were assured that their paychecks were good held protected concerted activity where E had spotty record of untimely payment)

4033-9100 Protesting intra-union election procedures

Carpenters Local Union No. 35 (Klaus Martin, an Individual) 264 NLRB No. 108

(U members, one of whom was trustee, were engaged in procedures and of alleged misuse of U funds by financial secretary; also investigation into misuse of funds by contacting credit U for information protected activity; thus, discharge of these members, who were also U Ees, for intra-U activity and not for any Ee misconduct, violative)

4033-9200 Engaging in intraunion activities

Carpenters Local Union No. 35 (Klaus Martin, an Individual) 264 NLRB No. 108

(U members, one of whom was trustee, were engaged in procedures and of alleged misuse of U funds by financial secretary; also investigation into misuse of funds by contacting credit U for information protected activity; thus, discharge of these members, who were also U Ees, for intra-U activity and not for any Ee misconduct, violative)

East Texas Motor Freight 262 NLRB No. 105

(denying dissident U Ee right to post intra-U political literature on company bulletin board located in Ees' break room held violative where E permitted other Ees to use bulletin board for other than *official U business* but denied dissident U Ee right to advertise his U activity on board; E enforced otherwise legimate contractual limitation on use of bulletin board in disparate manner)

Welfare and Pension Funds, Blasters, Drillrunners and Miners Union Local No. 29 and Their Trustees Louis Sanzo, Amadio A. Patise, Paul Crowley, and Theodore King 251 NLRB No. 168

(Ee of U pension fund involved in protected intra-U activity when he protested to President of U.S. about loss of U jobs, how members were referred to jobs, sought reelection as secretary-treasurer of U; discharge for such activity violative)

Local 24, Hotel & Restaurant Employees (George Dora, an Individual) JD-414-82

(Ee's extensive intra-U efforts to remove his suspension from job referral list, by seeking assistance of every U official he could reach, held protected U activity)

Allied Supermarkets, Inc. JD-401-81

(E in bankruptcy, by preventing Ee from posting on bulletin board and distributing intra U election campaign material in cafeteria during non-work time and in non-work area violated Act as right to run in intra U election is protected and U has no power to waive these rights in contract, which, in effect U did by agreeing to overly broad no-solicitation no-distribution clause)

4033-9300 Protesting hiring or job assignment practices

Red Ball Motor Freight, Inc. 263 NLRB No. 111

(Ee's complaint to management regarding their order of recalling Ees and requiring that Ees use their vacation time during period of forced layoff held protected concerted activity; Ee's complaint constituted effort to gain benefit not only for herself but for her coworker and other senior Ees as well)

Firestone Steel Products Company, A Division of Firestone Tire and Rubber Company 248 NLRB No. 089

(protesting job assignment outside Ees' work classification, protected)

Kasler Corporation, Continental Heller Corp., and Fruin-Colnon Corp., A Joint Venture JD-(SF)-118-82

(violation where Ee was discharged for raising jurisdictional dispute issue with U steward of another trade)

Brockway Glass Company, Inc. JD-(SF)-117-81

(discharge of probationary Ee, hired to do carton assembling, assertedly for complaining about this being assigned to janitorial work, for *going to the U*, and refusing to perform assigned janitorial work, held unlawful, where other unsatisfactory probationary Ees were granted extensions of their probation when their work was unsatisfactory, there was no credible evidence to support finding that Ee refused to do assigned work or was *insubordinate*, and Ee had statutory right to engage in U activities)

New York State United Teachers JD-(NY)-53-81

(reprimand of Ee who had filed grievance regarding Ees' job assignments which was then in arbitration for telling delegates of affiliated organizations of E about arbitration case and which E did not want divulged, violative, since Ee's remarks concerned grievance, did not disparage his E nor reach level of impropriety or disloyalty to E which would result in remarks losing its protected nature)

Master Painting & Sheeting, Inc. JD-(SF)-119-80

(Ees who protested about E's practice of having same Ee be both U steward and foreman engaged in protected concerted activity as possibility of conflict of interest directly related to their conditions of employment)

N.L.R.B. v. Slotkowski Sausage Company 620 F.2d 642 (C.A. 7, 1980)

(discharge of Ee who chronically complained that he wished to be driver rather than shipping department Ee not violative as Ee was engaged in unprotected unilateral attempt to promote himself; moreover, fact that U represented drivers immaterial because Ee was not employed as driver, never became part of drivers' unit and no U security clause existed so that Ee was not attempting to seek benefits under collective-bargaining agreement)

Hendricks County Rural Electric Membership Corporation v. N.L.R.B. 603 F.2d 25 (C.A. 7, 1979)

(circulation of ptn criticizing E's refusal to reinstate injured Ee held protected, since issue was one about which Ees had legitimate interest in making known their views to management)

4033-9400 Publicizing inability to reach agreement

New York State United Teachers JD-(NY)-53-81

(reprimand of Ee who had filed grievance regarding Ees' job assignments which was then in arbitration for telling delegates of affiliated organizations of E about arbitration case and which E did not want divulged, violative, since Ee's remarks concerned grievance, did not disparage his E nor reach level of impropriety or disloyalty to E which would result in remarks losing its protected nature)

4033-9500 Publicizing organizational efforts

St. Joseph Hospital Corporation 260 NLRB No. 089

(Ee's conduct in causing to be published in U newspaper an article under her name which, in addition to seeking support of other Us in demonstration to be conducted on E's premises in furtherance of a U's organizational efforts at E's facility, was highly critical of E and stated that E *has continually lied to, harassed, and even threatened to jail U representative* held protected w/i context of concerted activity)

4033-9600 Publicizing adverse working conditions

Interstate Security Services, Inc. 263 NLRB No. 082

(Ees engaged in protected activity where they generated newspaper article about labor dispute at E which revealed some of E's internal operation as Ees are protected in expressing views on pending labor disputes to public so long as such expressions do not constitute disloyalty or disparagement of E's product or reputation and discharge for such conduct violative)

Mount Desert Island Hospital 259 NLRB No. 080

(Ee who wrote letter to newspaper setting forth Ee complaints about working conditions at E engaged in protected concerted activity where Ee had engaged in discussions with fellow Ees regarding alleged deficiencies in pay, benefits, and working conditions at E's facility)

D & D Supermarket, Inc. JD-292-82

(by warning Ee not to talk to other Ees about working conditions, E effectively precluded Ee from engaging in concerted activity and thereby violated Act)

4067 OBJECTIVES RENDERING ACTIVITIES UNPROTECTED

Aher Plastics Company, Inc. 262 NLRB No. 147

(Ee's defacement with derogatory comments of announcement of Christmas party, which Ees criticized because given in lieu of bonus, held not to constitute part of *res gestae* of concerted activities, since they are distinguish-

4067—Cont.

able from that type of excusable exuberant misconduct occurring spontaneously and concurrent with protected activity)

4067-0100 Generally

Timothy Kasmach and David G. Kasmach d/b/a Warrendale Garage and Trucking JD-174-82

(individual acting alone may engage in protected concerted activity but it must appear, at very least, that activity was engaged in with object of initiating or inducing or preparing for group action or that it had some relation to group action in interest of Ees)

The Ohio Casualty Insurance Co. JD-292-81

(discharge of Ee who protested work assignment in loud, vulgar language not violative notwithstanding she was communicating with other Ees as this is *mere griping* which Act does not protect)

Timet, a Division of Titanium Metals Corporation of America v. N.L.R.B. 671 F.2d 973 (C.A. 6, Mar. 1982)

(drafting and circulating letter in which Ee offered to represent Ees to management to obtain cost-of-living adjustment held protected notwithstanding he was discharged before any Ee joined him as he was preparing for group activity)

4067-1000 To obtain objective only for self

Richdel, Inc. 265 NLRB No. 064

(mere enlisting of other Ees' assistance in furtherance of personal dispute between Ee and supervisor does not draw activity undertaken in furtherance of that dispute into protections of Act; no other Ees had experienced similar problems with supervisor and Ee was not acting on behalf of other Ees)

Grocery Carts, Inc. 264 NLRB No. 140

(E's conversation with manager in which she asked his opinion about raise for herself in joking manner held unprotected because it was not concerted; she acted w/o knowledge of other Ees, did not tell them about her request, no Ees were considering group action, and she asked only for his opinion of more pay solely for herself)

Mills Patrol Service, Inc. 264 NLRB No. 065

(during meeting with E's president and vice president, Ee's discussing possibility of obtaining sick benefits, medical coverage and U representation held not protected concerted activity as Ee did not discuss these matters with any Ee, none knew of his efforts, and no uniform plan where any changes made to one Ee would have to apply to all Ees)

W. C. Electrical Co., Inc. 262 NLRB No. 066

(discharge of Ee for protesting discontinuance of E's practice of providing sick pay, violative since sick pay is term and condition of employment and Ee had obtained support of fellow Ees before speaking to E about sick leave policy; activity in protest of discontinued past practice involves matter of mutual concern to Ees and this common concern was not negated because it coincided with dischargee's individual sick pay concern)

Comet Fast Freight, Inc. 262 NLRB No. 040

(discharge of Ee for his refusal to drive truck he alleged was unsafe not violative as Ee was not engaged in concerted activity where he was only Ee who complained about truck's condition and testified that *I was looking out for myself, not the other drivers*; thus, while Ee's subjective lack of concern for his fellow Ees is not controlling, fact that other Ees did not share his concerns about truck shows he was acting alone)

Overseas Motors, Inc. 260 NLRB No. 105

(threatening to discharge Ee if he filed charge with Bd and first suspending him and then discharging him after he filed charges violative notwithstanding original reason Ee wished to file charge involved denial of wage increase and concerned only himself and was not concerted activity)

Mount Desert Island Hospital 259 NLRB No. 080

(Ee who wrote letter to newspaper setting forth Ee complaints about working conditions at E engaged in protected concerted activity where Ee had engaged in discussions with fellow Ees regarding alleged deficiencies in pay, benefits, and working conditions at E's facility)

Faulkner Hospital 259 NLRB No. 052

(Ee's writing of letter on behalf of discharged fellow Ee which was voluntarily undertaken in support of and in concert with statutory Ee, not unprotected since it was not action taken alone or solely on matter of personal concern)

Distler Brothers Printing Company 258 NLRB No. 084

(threatening court action against E through family attorney, not concerted, protected activity where it involved only Ee's individual work performance)

City Disposal Systems, Inc. 256 NLRB No. 073

(when Ee makes complaints concerning safety matters embodied in contract, he is acting not only in his own interest but is attempting to enforce contract in interest of all Ees covered by contract)

Thomas Industries, Inc. 255 NLRB No. 094

(attempting to file grievance against another Ee regarding provocation of fight on E's property, not protected, since *mere fact alleged incident occurred on company property does not by itself, link it sufficiently with conditions of employment to make it a matter of mutual aid and protection w/i purview of Section 7 of Act)*

Red Ball Motor Freight, Inc. 253 NLRB No. 111

(fact that Ee was not specifically chosen as spokesperson by Ees to speak for them in discussions with supervision was irrelevant to issue of concerted activity, since it was clear that Ee spoke on Ees' behalf as well as her own)

Jim Causley Pontiac, Division Jim Causley, Inc. 253 NLRB No. 101

(Ee who filed complaint with State Health Department engaged in protected concerted activity and E found to have knowledge of concerted nature of activity where E was aware State complaint form filled out with plural pronoun *we* where complaint form identified area of shop where discriminatee and other Ee worked, listed paint fumes as hazard and in past many Ees had complained to E about fumes and evidence that many Ees had discussed poor ventilation system, complaining to management)

United States Steel Corporation 253 NLRB No. 083

(Ee's insistence on having *safety men present when he inspected factory cranes for repair found not protected activity where he spoke only himself, not for or in concert with other Ees)*

Timet, A Division of Titanium Metals Corporation of America 251 NLRB No. 157

(discharge of Ee who complained to supervisor about his raise and then circulated letter offering to represent Ees to management to obtain cost-of-living adjustment violative as Ee's action was intended to produce group activity and constituted concerted protected activity)

National Wax Company 251 NLRB No. 147

(Ee inquiring about merit pay increase for himself held not concerted activity where he was not acting on behalf of any other Ee and his endeavors, even if successful, would not directly relate to or advance likelihood of merit wage increases for any other Ee)

Koch Supplies, Inc. 249 NLRB No. 160

(discharge of Ee who complained to management about superior terms of employment given to new Ee violative where Ee had discussed subject with other Ees, mentioned to E that its action was detrimental to Ee morale and was thus not aimed at solving personal problem but included welfare of others)

United Investment Corporation d/b/a Santa's Bakery 249 NLRB No. 150

(Ee's filing of claim with state agency held concerted as well as protected activity even if Ee had acted as individual in so doing; here, however, he had also discussed the matter and gone to state office to file claim with other Ees acting in concert with him to seek *mutual aid* and agency's *protection*; moreover E was aware of concerted nature of Ee's conduct)

Pay-Wood Industries, Inc. 249 NLRB No. 056

(although Ee acted alone, his Cs concerning job safety and refusal to operate allegedly unsafe machine, are concerted activities since Cs were grievances w/i framework of contract that affects rights of all Ees in unit)

Capitol Ornamental Concrete Specialties, Inc. 248 NLRB No. 109

(complaining about condition of road in Ee parking lot not concerted activity where no evidence that any other Ees had ever complained or even discussed the matter; thus not matter of common concern)

Anco Insulations, Inc. 247 NLRB No. 081

(company's refusal to permit contractor's lawfully discharged Ee to work for another contractor at company's construction site not violative where Ee, individually, picketed entrance gate at construction site causing other Ees using such gate to stay off job; Ee picketed to protest his discharge not to protest safety conditions or other working conditions; since Ee sought something for himself only, his picketing was not concerted activity protected by Act)

Reeves Transportation Company JD-(ATL)-82-82

(Ee's complaint to management in resistance to her pay being changed from salary to hourly, being assigned to telephone switchboard, and her quarrel with her assignment to duplicate payments job, held unprotected since all of Ee's complaints were unique to her and would not inure to benefit of other Ees)

Francrete Corporation JD-(NY)-97-82

(Ee who continually complained to E about alleged shortages in his paycheck was not engaged in protected activity as he was concerned solely with pressing his personal claim for additional compensation for his time)

Palex Corporation JD-(SF)-28-82

Johns-Manville, Private Carriage JD-(ATL)-89-81

(discharge not violative where Ee's protests concerning alleged unsafe conditions of front axle tires of truck, were not concerted activity since protests had no object to cause E to change its policies concerning criterion of safety for front tires which it had established but was *solely for Ee's own benefit)*

Peninsula Association for Retarded Children and Adults JD-(SF)-209-80

(filing of wage claims before state agency protected concerted activity even if individual acts on his own)

4067-1000—Cont.

Scott Paper Company JD-623-80
(Ee's alleged concern about safety conditions held not to be concerted where there was no evidence that, at any time, any of his co-Ees showed *concern* as to safety of operation, and he did not consult any other Ee before his refusal to perform assigned task)

Public Service Company of New Mexico JD-(SF)-157-80
(Ee's refusal to comply with company policy that Ees furnish description or map to place to where they live when they gave company post office box as address, not protected, since reason was personal one of not wanting former wife to know where he lived; nor did fact Ee spoke to other Ees about his refusal, implying E wanted information to check up on sick leave make activity concerted where Ee was simply advertising his own defiance)

Public Service Company of New Mexico JD-(SF)-157-80
(Ee's refusal to show E marriage license to verify fact of marriage for purpose of insurance coverage for which only spouses and dependents were eligible, not protected, where Ee had first requested coverage for wife prior to marriage and E had no proof of her subsequent eligibility; Ee's refusal was personal rather than concerted, and he was not enforcing contract right)

Public Service Company of New Mexico JD-(SF)-157-80
(Ee of public utility drafting letter to TV station and showing it to other Ees in which he stated that *consumer is being rolled over by utility monopolies,* not protected, since Ee wrote as consumer and stock holder, letter was not directed at improvement in conditions for Ees but was motivated by personal vendetta)

Public Service Company of New Mexico JD-(SF)-157-80
(Ee's writing letter to E's insurance supervisor concerning E's refusal to extend insurance coverage to his new wife w/o seeing marriage certificate and in which he called company officials insulting names, not protected, since letter not attempt to enforce contract right but was simply personal diatribe)

Giuliano Apparel Corp. JD-162-80
(Ee's leaving work early because she was too cold held not to constitute protected concerted activity where cold temperature was localized at Ee's work station and was therefore not matter of concern to other Ees that day and there was no evidence that Ee was seeking to advance common interest)

N.L.R.B. v. American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. 670 F.2d 1236 (C.A. 1, Feb. 1982)
(Ee's discussion of his wages, because it touched off chain of discourse among his fellow Ees, protected activity)

Edward Blankstein, Inc. v. N.L.R.B. 623 F.2d 320 (C.A. 3, 1980)
(Ee who contacted other Ees to interest them in obtaining group hospitalization insurance was engaged in protected concerted activity as she was not acting solely for herself)

Tyler Business Services, Inc. v. N.L.R.B. 680 F.2d 338 (C.A. 4, June 1982)
(Ee's remarks to one of E's most important customers concerning unlawful discharge of part-time Ee and lack of insurance for part-time Ees held not protected concerted activity, since, in order to establish that single Ee is engaged in such activity, evidence must show that Ee is seeking either to enforce a bargaining agreement, to induce group action, or to act on behalf of other Ees, and such showing was not made herein; and personal concerns or missions are insufficient to demonstrate concerted action)

Blaw-Knox Foundry & Mill Machinery Inc., Wheeling Works Division v. N.L.R.B. 646 F.2d 113 (C.A. 4, Apr 1981)
(where supervisor allegedly sexually harrassed Ee's cousin, Ee's action of protesting to supervisor not *concerted* activity but merely action of individual Ee who was neither attempting to enforce collective bargaining agreement nor acting on behalf of a group)

Krispy Kreme Doughnut Corp. v. N.L.R.B. 635 F.2d 304 (C.A. 4, 1980)
(Ee's refusal to forego workmen's compensation claim did not constitute protected *concerted* activity, since there was no evidence that action of solitary Ee here contemplated any group activity or that he was *in fact . . . acting on behalf of or as representative of other employees;* at most his action can be said to have been *for the benefit of other employees only in a theoretical sense)*

Scooba Manufacturing Company v. N.L.R.B. 694 F.2d 82 (C.A. 5, Dec. 1982)
(Ee's remark that it would be nice to have a U, that a lot of things would not be going on that were going on, not protected, since it was merely made as part of a personal dispute with supervisor; there was no showing that collective Ee action was contemplated, no record of organizational effort or talk of collective bargaining, and no claim that Ee purported to act for others or threatened to contact U)

N.L.R.B. v. Datapoint Corporation 642 F.2d 123 (C.A. 5, Apr 8, 1981)
(where Ee, in rude and belligerant manner, complained to fellow Ees about E's plan to layoff Ees for 1 week while plant moved to new location, discharge of Ee not violative as such activity is not protected where no evidence that Ee had object of initiating or inducing or preparing for group action; activity which consists of mere talk, in order to be protected, must be talk looking toward group action)

City Disposal Systems, Inc. v. N.L.R.B. 683 F.2d 1005 (C.A. 6, July 1982)
(discharge of Ee who refused to drive truck he believed to be unsafe not violative where Ee was not engaged in concerted activity as he was acting solely for himself, did not attempt to warn other Ees that truck was unsafe, did not seek assistance of U representative in effort to avoid driving truck, and only made isolated comment to E that E cared more about garbage than men)

Bay Wood Industries, Inc. v. N.L.R.B. 666 F.2d 1011 (C.A. 6, Dec. 1981)
(dismissal of Ee of because he refused to operate saw unless guard was installed on saw protect Ee's fingers not violative, since Ee's complaints and actions did not constitute *concerted activities;* Ee enlisted no other Ees in this dispute, nor did he file grievance nor did he attempt to represent any interests other than his own; Ee's complaint did not meet test for *concerted* activities ununciated in *Aro, Inc. v. N.L.R.B.,* 596 F.2d 713 (1979))

United Parcel Service v. N.L.R.B. 654 F.2d 12 (C.A. 6, July 1981)
(discipline of Ee who refused to open door of truck, alleging that it was unsafe not violative as Ee's complaint about unsafe conditions was not made on behalf of any other Ees and was therefore not concerted activity)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. 620 F.2d 122 (C.A. 6, 1980)
(ct agreed with Bd that Ee's complaints to E and MIOSHA of excessive paint fumes and danger of their proximity to gas heater pilot lights were protected concerted activity, where complainant got the other affected Ee's permission to use his name and referred to him in complaint, however, ct remanded case to Bd for finding on issue, not addressed by Bd, as to whether E knew of other Ee's involvement and that activity in question was concerted)

N.L.R.B. v. Town & Country LP Gas Service Company 687 F.2d 187 (C.A. 7, Aug. 1982)
(Ee who filed grievance pursuant to collective-bargaining agreement over his discharge engaged in Sec. 7 activity notwithstanding grievance was primarily individual complaint as its resolution which provided for reinstatement and backpay created precedent affecting all other Ees)

N.L.R.B. v. Slotkowski Sausage Company 620 F.2d 642 (C.A. 7, 1980)
(discharge of Ee who chronically complained that he wished to be driver rather than shipping department Ee not violative as Ee was engaged in unprotected unilateral attempt to promote himself; moreover, fact that U represented drivers immaterial because Ee was not employed as driver, never became part of drivers' unit and no U security clause existed so that Ee was not attempting to seek benefits under collective-bargaining agreement)

David D. Sutherland, d/b/a Manco Auto Painting and Body Work v. N.L.R.B. 646 F.2d 1273 (C.A. 8, Apr 1981)
(discharge of Ee for approaching E and expressing Ees' dissatisfaction with wages and bonus plan violation as Ee had spoken to other Ees and was attempting to obtain benefits for all Ees)

Koch Supplies, Inc. v. N.L.R.B. 646 F.2d 1257 (C.A. 8, Apr 1981)
(Ee's complaints to E about E's promise of vacation benefits to new Ee, unprotected where it was not shown that complaining Ee intended that her activities would relate to group action)

N.L.R.B. v. Bighorn Beverage 614 F.2d 1238 (C.A. 9) (1980)
(filing of safety C with state agency by Ee acting alone not protected concerted activity in absence of collective-bargaining agreement as there is no agreement to implement which would be source of Ee's claimed rights)

Lee G. Kohls v. N.L.R.B. 629 F.2d 173 (C.A.D.C., 1980)
(discharge of Ee for refusing to drive assigned truck because *brakes were not good enough for me,* not unlawful, since protest and refusal not concerted and *Interboro Contractors* doctrine not applied, notwithstanding contention was Ee was asserting contractual right, where Ee was not asserting right on behalf of anyone other than himself nor speaking for others, no evidence Ee and U working in concert to assert contract, and fact Ee withdrew grievance filed on his behalf by U)

4067-3000 Personal problems

General Electric Corporation, Installation & Service Engineering Division 256 NLRB No. 126
(walking off job protest over Ee with 2 union cards held not protected where no other Ee participated, U steward declined to join him, and his object was not enforcement of collective bargaining agreement)

4067-3000—Cont.

N.L.R.B. v. Adams Delivery Service, Inc. 623 F.2d 96 (C.A. 9, July 1980)

(discharge of Ee for protesting lack of contractually-guaranteed overtime pay to U representative, violative, as consultation with U representative to resolve employment dispute is more than mere griping and is not w/i category of obtaining objectives only for himself)

4067-6000 To compel unlawful conduct

Transport Service Co. 263 NLRB No. 125

(discharge of Ee who refused to drive truck which was overweight and in violation of state law (though w/i *tolerances* allowed by states and therefore exempt from criminal prosecution), violative, as Ee was engaged in protected concerted activity when he refused to drive; refusals to violative state law are presumptively protected concerted actively; moreover, inquires into private motivations for asserting such reasons is limited to whether it was asserted in good faith or maliciously)

4067-9000 Employee's bad faith, knowledge of falsity, intent to harass, or similar improper motives

Interstate Security Services, Inc. 263 NLRB No. 002

(Ees engaged in protected activity where they generated newspaper article about labor dispute at E which revealed some of E's internal operation as Ees are protected in expressing views on pending labor disputes to public so long as such expressions do not constitute disloyalty or disparagement of E's product or reputation and discharge for such conduct violative)

Wagner-Smith Company 262 NLRB No. 130

(merits of Ee's complaints irrelevant to determination of whether Ee's conduct protected under Act, so long as complaint not made in bad faith)

St. Joseph Hospital Corporation 260 NLRB No. 089

(E held to have unlawfully maintained and to have given effect to work rule which prohibited, *inter alia,* utterance of inadvertent or unknowingly false statements which Bd has held protected w/i context of concerted activity; also rule was unlawful in that it was overly broad because it prohibited making of such statements during Ees' nonworking time and while off company property)

Missouri Towing & Barge, Inc. 257 NLRB No. 089

(Ee was not engaged in protected activity when he knowingly filed false workmen's compensation claim)

AAR Technical Service Center 249 NLRB No. 176

(letter written by disgruntled Ee who had been denied pay raise he thought he deserved not protected where it contained threats to sabotage E's product)

Pioneer Finishing Corporation v. N.L.R.B. 667 F.2d 199 (C.A. 1, Nov. 1981)

(leaflet distributed by Ee describing unsafe conditions at E's plant although inflamatory is not removed from protection of Act since statements made are *rhetorical hypebole* and there is no evidence that they were made maliciously or without some foundation in fact)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. 691 F.2d 1133 (C.A. 4, Sept. 20, 1982)

(threatening Ee with discharge for protesting shortages in paycheck violative as protest is clearly concerted activity; moreover, truth or falsity of Ee's views does not deprive such activity of its protection)

N.L.R.B. v. Lummus Industries, Inc. 679 F.2d 229 (C.A. 11, June 1982)

(Ee who made telephone survey of Ees to elicit their concerns over contract and whether they had heard or believed rumors of sellout by U to E engaged in protected activity since no evidence survey taken was accusing company of bribery knowing such accusation was false or with reckless disregard for truth)

4067-9300 Disloyalty of employees

Cooperativa De Credito Y Ahorro Vegabajena 261 NLRB No. 161

(picketing by asking credit U members to withdraw money from Credit-U-E is simply asking them to c/d/b with E which is protected activity)

Inland Steel Company 257 NLRB No. 013

(wearing T-shirt with vulgar slogan (*INLAND SUCKS*) that rediculed E, protected, where no management official said anything to E about T-shirt or even saw him wearing it during working hours no less told Ee to take it off)

Tyler Business Services, Inc. 256 NLRB No. 088

(E's statements that he believed E's failure to provide part-time Ees hospitalization benefits was unfair, protected; nor was statement rendered unprotected by his remarks to third party concerning personal lives of E's officials since remarks did not relate to E's product or operations nor constitute deliberate intent to impugne company)

Borman's, Inc. 254 NLRB No. 130

(asking Ees to remove, or turn inside out, T-shirts with Company name and words *I's tired of bustin my ass,* violative as purpose of shirts was to publicize grievance, did not interfere with order and discipline; it villified no company official and language used is not so obscene as to be objectionable)

Public Service Company of New Mexico JD-(SF)-157-80

(Ee of public utility drafting letter to TV station and showing it to other Ees in which he stated that *consumer is being rolled over by utility monopolies,* not protected, since Ee wrote as consumer and stock holder, letter was not directed at improvement in conditions for Ees but was motivated by personal vendetta)

Misericordia Hospital Medical Center v. N.L.R.B. 623 F.2d 808 (C.A. 2, 1980)

(Ees of hospital preparing report for accrediting authority catagloging alleged inadequacies in operation of hospital held protected activity since matters considered involving working conditions; Section 7 protection not lost by seeking relief outside E-Ee relationship, nor did report constitute disloyal statement outside Section 7 protection)

N.L.R.B. v. Greyhound Lines, Inc. 660 F.2d 354 (C.A. 8, Sep 1981)

(suspension of two Ees because they issued press release announcing intent of drivers to strictly obey speed limit over holiday weekend violative as Ees were engaged in protected activity where release related to ongoing labor dispute over 55 mph requirement, did not disparage E's reputation, and was not maliciously motivated)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. 600 F.2d 132 (C.A. 8, 1979)

(maintaining rule which forbids false, vicious or malicious statements about company, its Ees, its products, or methods of manufacture, unlawful, since rule not limited to maliciously false statements but also included merely false statements; further, E may not justify promulgation of broad rule by its need to protect itself from disloyal statements but rather must meet need by rule limited to disloyal statements)

6000 FORMS OF ACTIVITY

6001 GENERALLY

N.L.R.B. v. South Central Bell Telephone Company 688 F.2d 345 (C.A. 5, Oct. 1982)

(membership as used in Section 8(a)(3) refers not only to Ees basic decision whether to join U but also his decision as to level of his participation in U and U activities)

6020 PICKET LINE ACTIVITIES

6020-0100 Generally

A. Duie Pyle, Inc. 263 NLRB No. 092

(Bd has differentiated between those cases in which Ees have arguably exceeded bounds of lawful conduct during strike in *moment of animal exuberance* from those cases in which misconduct is so flagrant or egregious as to require subordinat thus, E is not entitled to discharge striker for engaging in threats unless they are accompanied by *physical acts or gestures* that would provide added emphasis or meaning to striker's words sufficient to warrant finding that striker should not be reinstated)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121

(strikers' stopping only 2 trucks, while on picket line, out of 125 vehicles entering and leaving E's plant daily, held insufficient to prove *blocking* of access to plant or to establish *mass* picketing)

Atlas Metal Parts Co., Inc. 252 NLRB No. 029

(picket line activity is generally protected, and the duty of going forward with evidence of conduct which would remove mantle of statutory protection is upon Respondent if, upon such alleged misconduct, it bases its post-strike employment decisions)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 167

(U's contention that its picketing, threatening strike or work stoppage and related conduct were not aimed at removal of E's representative but solely at his resort to violence, and therefore U's actions constituted protected activity since his presence on job threatened Ee safety, rejected; in labor dispute Act allows Ees to engage in any concerted activity unless it falls, as herein, w/i proscription of 8(b)(1)(B) which is not conditioned upon perfect conduct by representative and places some limitation on Ees' right to strike)

Giant Food Markets, Inc. and S. S. Kresge Company v. N.L.R.B. 633 F.2d 18 (C.A. 6, 1980)

(remand for evidence on effect of relocating, pursuant to TRO, area standards pickets from private property near store entrance to public area across parking lot at entrance to 2-store shopping center and to determine, (1) whether picketing at store entrance is protected, and (2) whether E's peaceful demand that pickets leave, violated 8(a)(1))

6020-3300 Violence

East Texas Motor Freight 262 NLRB No. 101

(local U's processing intra-U charges against 2 dissident members resulting in their suspension; one for 6 months and other for 3 years, not violative, since

6020-3300—Cont.

findings were based on sufficient cause (violence) unrelated to protected activity)

6030 REFUSAL TO CROSS PICKET LINE

6030-0100 Generally

Saint Luke's Hospital **258 NLRB No. 045**
(asking health care Ee, who indicated that he would not cross picket line during anticipated strike, if he was *pressured* into that decision, violative as supervisor made no mention of whether pressure brought on Ee during working time)

6030-2300 Primary line of another union at another employer

Erie Haven, Inc. **JD-194-82**
(suspension of Ee, truckdriver, for refusing to cross informational picket line at construction site held violative, since Ee was exercising concerted right protected by Act)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(section 7 (of Act) protects Ees who engage in sympathy strike in support of lawful primary strike by sister U of same E; respect for integrity of picket line may well be source of strength of whole collective bargaining process in which every U member has legitimate and protected economic interest)

6050 STRIKE ACTIVITY

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde **259 NLRB No. 073**
(strike and actions of Ees in striking held protected where strike occurred in protest against E's unlawful unilateral discontinuance of Christmas bonus and its refusal to bargain over such unilateral discontinuance)

6050-0100 Generally

East Chicago Rehabilitation Center, Inc. **259 NLRB No. 135**
(striking Ees did not lose protections afforded health care Ees under Act, notwithstanding E's contention that strike caused disruptions in patient care, where walkout involved fewer than half of day-shift Ees, with remaining Ees and supervisors working as scheduled, strike lasted only 2 hours and there was no showing that strike jeopardized any patient's safety or health)

Seattle-First National Bank **258 NLRB No. 164**
(fact that U members, engaged in strike activity of disseminating labor dispute information at struck operation's location, are not employed by such operation, does not affect protected nature of their activity)

Professional Ambulance Service of Middlesex **JD-548-80**
(discharging ambulance EMT attendant for attempting to induce other Ees to strike in support of demand for increased wages, violative, although Ee denied activity and believed that state's Abandonment Law prohibited strikes)

6050-0117 Effect of Section 13

Kaiser Steel Corporation **259 NLRB No. 085**
(refusing to permit striking Ees to remove their personally owned tools from plant during strike held violative of Sections 7 and 13 where non striking Ees were permitted to remove tools, as use of such economic weapon frustrated strikers' ability to find other employment during strike)

6050-0133 Limitations on right to strike must be narrowly construed

United States Steel Corporation **264 NLRB No. 010**
(sympathy striker who distributed leaflets urging other Ees to join strike engaged in protected concerted activity and his suspension violative; notwithstanding contract contained no-strike clause as Bd has long held that sympathy strikes are not encompassed by no-strike clauses absent clear waiver)

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 095**
(discharge and failure to reinstate Ees who struck E, contrary to contractual no-strike clause, to protest failure of U's health and welfare fund to fulfill its contractual medical insurance obligations held violative, since *no-strike* pledge relied upon by E did not constitute clear and unequivocal waiver of Ees' right to strike against actions of third party (*Fund*) which affected terms and conditions of employment)

6050-0150 Activities constituting participation in strike

Texaco Oil Company **259 NLRB No. 062**
(those Ees who at onset of strike were sick or disabled entitled to accident or sick benefits during strike until they have affirmatively shown support of strike; fact those medically excused exhibited some strike support after medical release and testified if physically able they would have joined strike, irrelevant, nor did visit to picket line by Ee on leave manifest sufficient public support of strike to deny Ee continued entitlement to accident and sick benefits)

Charge Card Association **247 NLRB No. 119**
(Ees who called in sick in protest of their grievances were strikers engaged in protected concerted activity)

6050-1200 What constitutes strike

Ground Round Restaurant, A Division of Howard Johnson **JD-(SF)-191-82**
(Ees of restaurant who had, after conferring among themselves and expressing dissatisfaction with manager regarding new work schedule which resulted in reduced hours with possible loss of insurance benefits and with other working conditions, requested meeting with owner, were engaged in protected activity when they gathered in bar area before end of shift to await arrival of owner, since no customers in bar, service not disrupted, Ees had completed duties, and there was no violence)

6050-1220 Cessation of work

Barry S. Selaf, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group **264 NLRB No. 019**
(discharge of Ees who refused to work until management heard their grievances concerning, *inter alia* lack of (medical) supervision of their paramedical responsibilities held violative, since such lack was matter plainly affecting Ees' terms and conditions of employment and their insistance that they be heard was protected activity)

Diversified Case Company, Inc. **263 NLRB No. 119**
(Ees who walked off job to protest extreme cold in shop engaged in protected activity, notwithstanding they did not recite what conditions would have to be met prior to their return to work)

Nanticoke Homes, Inc. **261 NLRB No. 107**
(work stoppage over working conditions, Ee parking lot, and wages, protected)

Alaga Whitfield Foods, Inc. **JD-504-80**
(discharge of Ee truckdrivers who refused to work because of violence occurring on highway in independent trucker's protest violative, as Ees' activity protected because of safety concerns)

N.L.R.B. v. Maryland Shipbuilding and Drydock Company **683 F.2d 109 (C.A. 4, July 1982)**
(Ee who stopped work for one-half hour to pursue grievance over work assignment which he believed violated safety provision of collective bargaining agreement was not engaged in protected activity where contract prohibited any work stoppage and established three step procedure for resolution of grievances; moreover, situation did not rise to level of *abnormally dangerous* which would protect stoppage in face of no-strike clause; thus suspension of Ee for work stoppage not violative)

Brown & Root, Inc. v. N.L.R.B. **634 F.2d 816 (C.A. 5, 1980)**
(cessation of work to avoid unsafe conditions where rain began to blow on electrical equipment with which Ees were working held not strike)

6050-1240 Spontaneous work stoppage as walkout

Diversified Case Company, Inc. **263 NLRB No. 119**
(Ees who left work after protesting to E over bitterly cold working conditions and shortages in their paychecks stating that they would return next day, were involved in protected concerted strike activity and their discharges violative; moreover, fact that one Ee did not return to work next day or thereafter does not remove him from Act's protection where Ees who did return were told they had been fired and other Ee's timecard was missing and thus Ee could assume that if he were to return on the next day he was scheduled to work he would have been fired also)

Go-Lightly Footwear, Inc. **251 NLRB No. 068**
(walk out by Ees in support of discharged Ee, plus picketing outside plant with placards referring to unkept promises by E, to scab labor, and to unfairness to minorities reasonably relates to matters protected by Act; and there was no requirement that Ees had to undertake less drastic forms of protest before walking off their jobs)

Go-Lightly Footwear, Inc. **251 NLRB No. 068**
(while Ees violated company rules when they walked off job w/o punching out and w/o notifying their supervisor, their walk out did not lose protection of Act because of violations of those kinds of rules; although existence of those rules could be significant if Ees had engaged in series of short-term walkouts, or even if they had planned to do so, here there was only one walkout and no evidence of any plan to undertake any more)

Go-Lightly Footwear, Inc. **251 NLRB No. 068**
(Ee's refusal to work rest of the day after Ees she had walked off job with returned to work held protected, since Ee's decision to do so was integral part of protest about employment conditions at plant, and E, who fired all Ees engaged in walk out, made no distinction in its reaction to Ee's activities when she was acting directly in concert with her fellow Ees and when she departed for remainder of day)

6050-1240—Cont.

Firestone Steel Products Company, A Division of Firestone Tire and Rubber Company **248 NLRB No. 069**
(departure from plant after refusing to perform assigned duties and effort to see management to complain about assignment held strike)

High Energy Corporation **JD-100-82**
(discharge of Ees who walked off job to protest unsafe working conditions violative as Ees engaged in protected activity and protection is not lost because Ees did not give prior notice, moreover, it is immaterial whether Ees were correct about the unsafe conditions)

Vic Tanny International, Inc. v. N.L.R.B. **622 F.2d 237 (C.A. 6, 1980)**
(spontaneous banding together of Ees in form of work stoppage as manifestation of their disagreement with E's conduct in changing certain duties from voluntary basis to assigned work held protected concerted activity)

Vic Tanny International, Inc. v. N.L.R.B. **622 F.2d 237 (C.A. 6, 1980)**
(Ees jointly participating in walkout to present job related grievances to E held engaged in protected concerted activity regardless of whether or not Ees are members of U; E, having same options available to him as to E faced with economic strike by U Ees, entitling him to pay Ees who left work, or to replace Ees with other workers, is prohibited from discharging, or threatening to discharge, unorganized Ees involved herein because they engaged in protected concerted activity)

Vic Tanny International, Inc. v. N.L.R.B. **622 F.2d 237 (C.A. 6, 1980)**
(unorganized Ees who jointly participate in walkout to present job related grievances to E are engaged in protected concerted activity regardless of whether or not they are U members; no distinction exists in Act or its remedies between organized and unorganized Ees who act in concert to deal with their grievances)

6050-1260 Refusal to perform portion of assigned duties

Daniel Construction Company **264 NLRB No. 104**
(discharge of Ee who refused to perform job task which he believed unsafe not violative as Ee was not engaged in protected activity; Ee was not contending that E was not following safety procedures and was not engaged in strike because he was trying to choose which job tasks he would perform)

Vic Koenig Chevrolet **263 NLRB No. 088**
(discharge of Ee who had crossed picket line and then refused to perform portion of usual duties not violative as Ee was engaging in partial strike—accepting pay for performing part of work while avoiding disadvantage of complete strike action--and such conduct not protected by Act)

Excavation-Construction, Inc. v. N.L.R.B. **660 F.2d 1015 (C.A. 4, Oct. 1981)**
(discharging Ees for concertedly refusing to work specific job on Saturday because it did not pay time and half held not violative where Ees knew that E would pay only straight time and rule that Saturday work was voluntary but if Ee signed up for that day must work on any job assigned by E and penalty for not working was discharge. Claim that Ees were engaged in 1 day strike rejected, since Ees only refused to work that specific job that day and not other jobs which was equivalent to Ees seeking to work under terms prescribed by them which is not protected activity)

6050-1280 Refusal to work overtime, Sundays, or holidays

Illinois Bell Telephone Company **255 NLRB No. 063**
(E who disciplined shop steward and U vice president for posting notices informing Ees of their right to seek U representation if E requested Ees to work mandatory overtime violated Act; U was not advocating Ees to refuse to work overtime which could be unprotected partial strike but rather was engaging in protected activity of urging Ees to seek help through U)

6050-2900 Intermittent, recurrent, or partial strike

Keyway, A Division of Phase Inc. **263 NLRB No. 172**
(*attempt to maintain benefits of remaining in paid Ee status while refusing, nonetheless, to perform all work they were hired to do*)

Illinois Bell Telephone Company **255 NLRB No. 063**
(E who disciplined shop steward and U vice president for posting notices informing Ees of their right to seek U representation if E requested Ees to work mandatory overtime violated Act; U was not advocating Ees to refuse to work overtime which could be unprotected partial strike but rather was engaging in protected activity of urging Ees to seek help through U)

N.L.R.B. v. GAIU Local 13-B, Graphic Arts International Union **682 F.2d 304 (C.A. 2, June 1982)**
(Ees refusal to perform overtime work as required by U rule banning overtime, unprotected where overtime was mandatory and lawfully required, rule was imposed as bargaining tactic rather than as response to E's ULP as contended, and rule jeopardized employment relationship, imperiled Ees' livelihood by subjecting them to discharge or other discipline, and impaired national labor policy)

Excavation-Construction, Inc. v. N.L.R.B. **660 F.2d 1015 (C.A. 4, Oct. 1981)**
(discharging Ees for concertedly refusing to work specific job on Saturday because it did not pay time and half held not violative where Ees knew that E would pay only straight time and rule that Saturday work was voluntary but if Ee signed up for that day must work on any job assigned by E and penalty for not working was discharge. Claim that Ees were engaged in 1 day strike rejected, since Ees only refused to work that specific job that day and not other jobs which was equivalent to Ees seeking to work under terms prescribed by them which is not protected activity)

6050-3700 Limitations of Section 8(d)

6050-3717 Legislative history

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**

6050-3762 Notice to mediation agencies mandatory

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**
(burden of notifying agencies on first party seeking to terminate or modify agreement, other party's refusal to agree to modifications desired does not affect this obligation. Burden does not shift with twists and turns of bargaining negotiations)

6050-3762-2800 Purpose to give agencies time to intervene

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**
(*notice provision is not concerned with good faith, it is designed to give mediation services time to intervene before disruptive economic action is taken by one of parties*; unilateral departure during 60 day waiting period from terms of contract prohibited whether or not strike or lockout follows)

6050-3762-8300 Strike prohibited until expiration of contract

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**

6050-5000 Effect of section 502 - abnormally dangerous condition

True Drilling Company **257 NLRB No. 072**
(intoxicated Ee with whom Ees refused to work on oil rig not abnormally hazardous condition w/i Section 502; nor were Ees justified in their refusal where only danger cited was that Ee might fall from board above platform onto Ees where Ee did not wear hard hat and would be strapped on board. Ees refusal and walkout held voluntary quit)

6050-5001 Generally

N.L.R.B. v. Tamara Foods, Inc. **692 F.2d 1171 (C.A. 8, Nov. 1982)**
(Sec. 502 does not modify Ee rights under Sec. 7)

6050-5075 Refusal to perform assigned duties

American Freight System, Inc. **264 NLRB No. 018**
(discharge of driver for refusing to drive truck which he reasonably believed to be unsafe because of good faith belief that truck's tires were unsafe held violative, since driver's reasonable concern about safety of tires constituted attempt to enforce contract provisions reguarding Ee rights not to be compelled to operate unsafe equipment; thus, his conduct amounted to protected concerted activity)

Baker Marine Corporation **238 NLRB No. 091**
(no violation where E suspended and discharged Ees for refusing to work on legs being assembled for drilling rig in contravention of no-strike clause since, contrary to GC's contention that such work was *abnormally dangerous* w/i Sec. 502 of Act, conditions considered dangerous by Ees had been in existence w/o change for considerable period of time and had been previously accepted by Ees w/o complaint)

True Drilling Company **257 NLRB No. 072**
(permanently replacing and refusing to reinstate Ees who walked off job, stating they did not want to work on oil rig with Ee who was allegedly intoxicated, not unlawful, since Ees voluntarily quit; intoxicated Ee did not meet *objective* test of abnormally hazardous condition w/i Section 502, where only danger cited was that intoxicated Ee might fall from board above platform onto Ees where Ee did not wear hard hat, worked in that position only for short time and would be strapped to board)

6050-6200 Effect of no-strike agreements

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 130**
(U did not waive Ees' right to engage in sympathy strikes or to honor picket lines of other Us picketing at E's plant, where contract's no-strike provision did not expressly refer to such activity, and bargaining history shows U understood no-strike clause as not covering activity in question; while E adopted contrary position, U did not capitulate to E's interpretation but preserved its ability to contest E's position)

6050-6210 Contractual waiver of protected employee rights will be narrowly construed

6050-6210—Cont.

United States Steel Corporation 264 NLRB No. 010
(Bd will not defer to arbitrators' award which is repugnant to Act, and here where arbitrator upheld suspension of sympathy striker for violating contractual no-strike clause deferral is inappropriate because Bd and cts have held that waiver of right to engage in sympathy strikes will not be inferred from general no strike clause and any waiver must be clear and unmistakable and there is no such evidence of waiver; moreover, under *doctrine of coterminous application* Bd and cts have refused to find sympathy strike to be encompassed in broad no-strike pledges)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)
(waiver of right to strike or engage in sympathy strike may be implied by binding arbitration clause; even in case of express no-strike clause, waiver of right to strike is generally coterminous with scope of arbitration clause)

6050-6220 Agreement must be interpreted in light of entire contract

Irvin H. Whitehouse & Sons Company 252 NLRB No. 160
(contract containing provision requiring disputes to be referred to Joint Local Trade Board for arbitration not found to contain no-strike clause where section concerning safety does not directly state that those disputes be submitted to final and binding arbitration and clause is silent as to fines or remedial actions)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)

6050-6260 Not applicable in case of walkout or refusal to work due to abnormally dangerous conditions

N.L.R.B. v. Maryland Shipbuilding and Drydock Company 683 F.2d 109 (C.A. 4, July 1982)
(Ee who stopped work for one-half hour to pursue grievance over work assignment which he believed violated safety provision of collective bargaining agreement was not engaged in protected activity where contract prohibited any work stoppage and established three step procedure for resolution of grievances; moreover, situation did not rise to level of *abnormally dangerous* which would protect stoppage in face of no-strike clause; thus suspension of Ee for work stoppage not violative)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. 659 F.2d 830 (C.A. 7, Sept. 1981)
(binding arbitration provision covered disputes over safety where contract contained clause which provides that parties will cooperate in prevention of accidents and in protection and promotion of safety and health of Ees, though this clause, unlike others, did not specify fines or prescribe corrective action for their violations, nor was safety clause explicitly linked to arbitration procedure)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. 659 F.2d 830 (C.A. 7, Sept. 1981)
(where safety issue is one that must be submitted to binding arbitration, obligation not to strike over matter is considered to be coterminus and any stoppage violates implied no-strike clause unless safety hazzard suddenly arose and presented immediate threat; i.e., *Washington Aluminum* situation)

6050-6280 Right to strike against ULP may be waived by explicit contractual provision

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)

6050-7500 Unprotected strikes

Isadore Spiegel, an Individual t/a Spiegel Trucking Company; Spiegel Trucking Company, Inc.; I & L Trucking Company, Inc. 257 NLRB No. 020
(Bd held strike protected concerted activity contrary to E's contention that strike was unprotected because E was defrauded of large sums of money immediately preceeding strike; however it was not established that Ees knew about or participated in fraud or that strike was caused by or in furtherance of fraud)

6050-7520 Strike in violation of 8(d)

Barry S. Solof, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group 264 NLRB No. 019
(since discriminatees were not subject to notice requirement of Sec. 8(g) of Act, they also were not subject to penalties set out in Sec. 8(d) of Act)

Greens Disposal Service 233 NLRB No. 097
(U's failure to send notice to state agency rejected as defense to E's refusal to reinstate strikers, where no appropriate agency existed in state)

6050-7530 Activity in violation of section 8(g)

Barry S. Solof, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group 264 NLRB No. 019
(Ees of medical clinic who refused to work until management heard their grievances do not constitute *labor organization;* and thus, were not required to give notice under *Sec. 8(g) of Act* of intended work stoppage; however, 8(g) *of Act* does not apply only to work stoppages in support of bargaining demands)

East Chicago Rehabilitation Center, Inc. 259 NLRB No. 126
(failure of Ees to provide 8(g) notice did not render walkout unprotected since notice requirements of Sec. 8(g) run to Us, not Ees; failure of Ees to give such notice prior to striking health care institution does not deprive strike of its normally protected character)

A & D Davenport Transportation, Inc. and San-Fair Special Service Transportation, A Division of A & D Davenport Transportation, Inc. 256 NLRB No. 079
(E's contention that it was a health care institution and that Ees forfeited protection of Act by engaging in concerted refusal to work w/o giving 10 days notice pursuant to Sec. 8(g) of Act rejected, since strictures of Sec. 8(g) apply only to labor organizations as defined in Sec. 2(5) and here, group (unaffiliated with any existing labor organization) was totally unstructured and was doing nothing more than presenting grievances and thus was not statutorily defined labor organization)

Oakwood Manor, Inc., d/b/a Danville Nursing Home 256 NLRB No. 108
(walkout by 5 aides in protest over assignment to fewer hours and accusations of vandalism of Ee's car held protected and discharge for walkout held violative; Ees did not lose protection by their failure to give 10 days notice required by 8(g) as no U called, instigated or promoted work stoppage)

Villa Care, Inc., d/b/a Edmonds Villa Care Center 249 NLRB No. 095
(walkout by two nurses aides held not to have lost protection under Sec. 8(g), notwithstanding their failure to give 10 days' notice of intent to strike, since Sec. 8(g) does not apply where labor organization is not involved, and strike here did not involve labor organization, and E and U were not then discussing issue which precipitated strike)

Montefiore Hospital and Medical Center v. N.L.R.B 621 F.2d 510 (C.A. 2, 1980)
(doctors' strike in sympathy with striking unionized Ees at health care institution held protected as to Sec. 8(g) notwithstanding lack of notice to E, in view of 8(g) language applying only to labor organizations and not individuals, legislative history focusing on large scale and not individual activity, and purpose of giving health care institutions enough notice to arrange for patient care - doctors here created no danger or risk of harm to patients)

6050-7550 Sit-in strikes

Ground Round Restaurant, A Division of Howard Johnson JD-(SF)-191-82
(Ees of restaurant who had, after conferring among themselves and expressing dissatisfaction with manager regarding new work schedule which resulted in reduced hours with possible loss of insurance benefits and with other working conditions, requested meeting with owner, were engaged in protected activity when they gathered in bar area before end of shift to await arrival of owner, since no customers in bar, service not disrupted, Ees had completed duties, and there was no violence)

6050-7560 Strike creating risk of property damage

Con-Tex Industries, A Division of Harsco Corporation v. N.L.R.B. 683 F.2d 1183 (C.A. 8, July 1982)
(E did not violate Act when it discharged 13 Ees who shut off their extrusion machines and left work to protest their dissatisfaction with wages and holidays because Ees' action caused E to lose two days' production and Ees could have walked off job w/o shutting off machines as machines could run w/o supervision w/o damage; thus Ees did more than stop work-they interfered with company property and was usurpation of E's option of continuing production; thus Ees were engaged in unprotected activity)

6050-7570 Strike to compel unlawful act

Villa Care, Inc., d/b/a Edmonds Villa Care Center 249 NLRB No. 095
(Ees' demand for premium pay for working on *short* crew and strike in support thereof not unprotected where demand was not in derogation of U's status as bargaining representative and not a demand for unlawful unilateral change by E)

6050-7580 Strike in violation of no-strike agreement

United States Steel Corporation 264 NLRB No. 010
(Bd will not defer to arbitrators' award which is repugnant to Act, and here where arbitrator upheld suspension of sympathy striker for violating contractual no-strike clause deferral is inappropriate because Bd and cts have held that waiver of right to engage in sympathy strikes will not be inferred from general no strike clause and any waiver must be clear and unmistakable and there is no such evidence of waiver; moreover, under *doctrine of coter-*

6050-7580—Cont.

mission application Bd and cts have refused to find sympathy strike to be encompassed in broad no-strike pledges)

Owens-Corning Power and Process, a Division of Owens-Corning Fiberglas, Inc. **JD-(SF)-208-80**
(where Ees engaged in economic strike which was initially rendered unprotected by breach of no-strike clause, E's later condonation of strike by reinstatement of strikers and its agreement that *the slate would be wiped clean* estopped it from asserting unlawful nature of strike)

The Dow Chemical Company v. N.L.R.B. **636 F.2d 1352 (C.A. 3, 1980)**
(E's unilateral announcement and implementation of a shift change from a 7 to 5 day work week held not to justify strike protesting E's action, since U breached contract's no-strike clause w/o exhausting grievance procedures; strike was over conflicting interpretations of contract, and it would be unrealistic to suggest that no-strike clause was not intended to apply to dispute over meaning of contract; consequently, Bd's finding that strike was not breach of contract cannot be sustained as an application of rule of contract interpretation as to coverage of no-strike provision announced in SCt's Mastro Plastics decision)

Caterpillar Tractor Co. v. N.L.R.B. **638 F.2d 140 (C.A. 7, Sept. 1981)**
(strike not protected, notwithstanding contention strike ULP and no waiver under contract to strike regarding ULP since contract provided that there would be no strikes until grievance procedure exhausted and grievance on underlying dispute was pending; nor was E's unlawful unilateral changes regarding transfers *serious* labor dispute w/i Mastro Plastics so as to preclude waiver of right to strike regarding ULPs)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(sympathy striker's refusal to cross stranger picket line does not violate general no-strike clause, since underlying dispute is between secondary E and its U; dispute is not subject to arbitration provisions of sympathetic striker's collective bargaining agreement)

6050-8300 Wildcat strike

Keyway, A Division of Phase Inc. **263 NLRB No. 172**
(discharge of Ees who collectively *walked out* (for approximately 3 hours) from facility, engaged in prevention and treatment of alchoholism, drug abuse and domestic violence, in protest of discharge of past clinical director, criticizing new director, and expressing concern over quality of treatment of E's clients, not violative, since record contained no evidence that identity and capability of director involved had direct impact on Ees' own job interests; walk out not protected activity, since it did not encompass protest by Ees over actual terms and conditions of their employment)

Virginia Electric and Power Company **262 NLRB No. 144**
(wildcat strike held unprotected in view of no-strike clause and grievance-arbitration procedure in contract and U had filed grievance protesting Ee discharge which precipitated strike)

6050-8700 Sympathy strike

United States Steel Corporation **264 NLRB No. 010**
(sympathy striker who distributed leaflets urging other Ees to join strike engaged in protected concerted activity and his suspension violative; notwithstanding contract contained no-strike clause as Bd has long held that sympathy strikes are not encompassed by no-strike clauses absent clear waiver)

Geiger & Peters, Inc. **JD-(SF)-248-81**
(Ees' refusal to cross lawful picket line protected as sympathy strike notwithstanding E's good-faith belief that picket line was violative w/i meaning of 8(b)(4)(D))

Montefiore Hospital and Medical Center v. N.L.R.B **621 F.2d 510 (C.A. 2, 1980)**
(doctors' strike in sympathy with striking health care institution Ees lost protection of Act as sympathy strike when doctors discouraged patients from entering clinic by telling them at picket line, in reckless disregard of truth or falsity of their statements, that they could not be taken care of at clinic; such misconduct went beyond limits of fair persuasion and honest appeals to public)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(section 7 (of Act) protects Ees who engage in sympathy strike in support of lawful primary strike by sister U of same E; respect for integrity of picket line may well be source of strength of whole collective bargaining process in which every U member has legitimate and protected economic interest)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(right to engage in sympathy strikes may be waived by collective bargaining agreement)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(Bd analyzes language of collective bargaining agreement and factual circumstances of labor controversy to determine whether U has waived right to engage in sympathy strikes; contract need not explicitly prohibit sympathy strikes to show intent to waive right to engage in such activity)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(sympathy striker's refusal to cross stranger picket line does not violate general no-strike clause, since underlying dispute is between secondary E and its U; dispute is not subject to arbitration provisions of sympathetic striker's collective bargaining agreement)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(sympathy strike cannot be enjoined pending arbitration of scope of no-strike clause, since agreement to arbitrate disputes does not necessarily imply promise to refrain from sympathy strikes pending arbitration)

6060 STATEMENTS REGARDING EMPLOYER'S LABOR RELATIONS

Interstate Security Services, Inc. **263 NLRB No. 082**
(Ees engaged in protected activity where they generated newspaper article about labor dispute at E which revealed some of E's internal operation as Ees are protected in expressing views on pending labor disputes to public so long as such expressions do not constitute disloyalty or disparagement of E's product or reputation and discharge for such conduct violative)

6060-3000 Derogatory remark in context of protected activity

Rai Research Corporation **257 NLRB No. 127**
(displaying in his car windshield sign reading *Please don't feed management. They only suck blood,* violative as language was aimed at shaking co-workers out of their lethargy and hence protected)

Trans Air Supply Company, Inc. **257 NLRB No. 023**
(Ee's use of profane epithet during argument over working conditions found not insubordinate and held protected as Ee's use of profane epithet occurred after discharge and supervisor had earlier referred to Ee with variation of same epithet)

Inland Steel Company **257 NLRB No. 013**
(wearing T-shirt with vulgar slogan (*INLAND SUCKS*) that ridiculed E, protected, where no management official said anything to E about T-shirt or even saw him wearing it during working hours no less told Ee to take it off)

Tyler Business Services, Inc. **256 NLRB No. 088**
(E's statements that he believed E's failure to provide part-time Ees hospitalization benefits was unfair, protected; nor was statement rendered unprotected by his remarks to third party concerning personal lives of E's officials since remarks did not relate to E's product or operations nor constitute deliberate intent to impugne company)

Bowman's, Inc. **254 NLRB No. 130**
(asking Ees to remove, or turn inside out, T-shirts with Company name and words *I's tired of bustin my ass,* violative as purpose of shirts was to publicize grievance, did not interfere with order and discipline; it villified no company official and language used is not so obscene as to be objectionable)

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 157**
(where unlawfully discharged Ee distributed letter derogatory to E after ALJ issued decision, Ee entitled to reinstatement as letter stated truth about his discharge and repeated his original offer to represent Ees concerning matters of common concern)

Go-Lightly Footwear, Inc. **251 NLRB No. 008**
(picketing Ees' conversations with newspaper reporter, advising him of placards used in picketing and about E's alleged favoritism and misleading employment advertisements held protected, since Ees do not lose Act's protection merely because they choose to use *channels outside the immediate E-Ee relationship*)

Pioneer Finishing Corporation **247 NLRB No. 182**
(leaflet distributed by Ees to other Ees critical of E's safety conditions, although not accurate representations of fact, constituted concerted protected activity; leaflet's statements were mere *rhetorical hyperbole* and were not intended nor understood as representations of fact)

New York State United Teachers **JD-(NY)-53-81**
(reprimand of Ee who had filed grievance regarding Ees' job assignments which was then in arbitration for telling delegates of affiliated organizations of E about arbitration case and which E did not want divulged, violative, since Ee's remarks concerned grievance, did not disparage his E nor reach level of impropriety or disloyalty to E which would result in remarks losing its protected nature)

6060-6700 Truth of statement not proper test

Tyler Business Services, Inc. **256 NLRB No. 088**

Pioneer Finishing Corporation **247 NLRB No. 182**
(leaflet distributed by Ees to other Ees critical of E's safety conditions, although not accurate representations of fact, constituted concerted protected activity; leaflet's statements were mere *rhetorical hyperbole* and were not intended nor understood as representations of fact)

6060-6700—Cont.

N.L.R.B. v. Lummus Industries, Inc. 679 F.2d 229 (C.A. 11, June 1982)

(Ee who made telephone survey of Ees to elicit their concerns over contract and whether they had heard or believed rumors of sellout by U to E engaged in protected activity since no evidence survey taken was accusing company of bribery knowing such accusation was false or with reckless disregard for truth)

6070 STATEMENTS REGARDING EMPLOYER'S BUSINESS

6070-2500 Defamation of employer's product not protected

Interstate Security Services, Inc. 263 NLRB No. 002

New York University Medical Center 261 NLRB No. 118

Planned Parenthood of Alameda and San Francisco Counties JD-(SF)-294-80

(while Ees complaints to third party regarding incompetency of management or vilification of E's product may in certain situations consituted unprotected activity, E must have, at very least, honestly held belief that Ee engaged in such serious acts of misconduct before taking punitive action)

Montefiore Hospital and Medical Center v. N.L.R.B 621 F.2d 510 (C.A. 2, 1980)

(doctors' strike in sympathy with striking health care institution Ees lost protection of Act as sympathy strike when doctors discouraged patients from entering clinic by telling them at picket line, in reckless disregard of truth or falsity of their statements, that they could not be taken care of at clinic; such misconduct went beyond limits of fair persuasion and honest appeals to public)

6070-5000 Derogatory remark in context of protected activity protected

Standard Motor Products, Inc. 265 NLRB No. 088

(utterance of inadvertently or unknowingly false statements made by Ees in context of concerted activity is protected under Act)

Professional Porter & Window Cleaning Co., Division of Propoco, Inc. 263 NLRB No. 034

(Ee's writing letter to former E about working conditions of new subcontractor and determination of work held protected as purpose was not to injure her new E but to encourage improvement in working conditions)

Aker Plastics Company, Inc. 262 NLRB No. 147

(Ee's defacement with derogatory comments of announcement of Christmas party, which Ees criticized because given in lieu of bonus, held not to constitute part of *res gestae* of concerted activities, since they are distinguishable from that type of excusable exuberant misconduct occurring spontaneously and concurrent with protected activity)

Boston Mutual Life Insurance Company 259 NLRB No. 172

(U steward who gave advice to new insurance agents on company procedures engaged in protected activity notwithstanding E did not appreciate substance of advice given as steward was explaining agent's rights under contract)

Tyler Business Services, Inc. 256 NLRB No. 088

(E's statements that he believed E's failure to provide part-time Ees hospitalization benefits was unfair, protected; nor was statement rendered unprotected by his remarks to third party concerning personal lives of E's officials since remarks did not relate to E's product or operations nor constitute deliberate intent to impugne company)

Go-Lightly Footwear, Inc. 251 NLRB No. 008

(picketing Ees' conversations with newspaper reporter, advising him of placards used in picketing and about E's alleged favoritism and misleading employment advertisements held protected, since Ees do not lose Act's protection merely because they choose to use *channels outside the immediate E-Ee relationship*)

Allied Aviation Service Company of New Jersey, Inc. 248 NLRB No. 026

(Ee's letters to E's customers regarding lack of safety in E's function of servicing commercial aircraft held concerted protected activity since Ees may properly communicate with third party in order to obtain latter's assistance where communication is related to legitimate ongoing labor dispute between Ees and E, and communication does not constitute disparagement of E's product or reputation)

Planned Parenthood of Alameda and San Francisco Counties JD-(SF)-294-80

(while Ees complaints to third party regarding incompetency of management or vilification of E's product may in certain situations consituted unprotected activity. E must have, at very least, honestly held belief that Ee engaged in such serious acts of misconduct before taking punitive action)

Tribal American Consulting Corporation JD-(SF)-314-80

(Ees' meeting with newspaper reporter and discussing alleged improprieties and withdrawal of federal funding of child development center)

Misericordia Hospital Medical Center v. N.L.R.B. 623 F.2d 808 (C.A. 2, 1980)

(Ees of hospital preparing report for accrediting authority catagloging alleged inadequacies in operation of hospital held protected activity since matters considered involving working conditions; Section 7 protection not lost by seeking relief outside E-Ee relationship, nor did report constitute disloyal statement outside Section 7 protection)

Great Lakes Steel, Division of National Steel Corporation v. N.L.R.B. 625 F.2d 131 (C.A. 6, July 1980)

(ct upheld Bd finding that Ee's possession of pamphlet critical of E's ambulance policy with intent to distribute among other Ees was protected activity and subsequent discharge for such Ee activity violative as supported by substantial evidence on record)

6070-6000 Truth of statement not proper test

Professional Porter & Window Cleaning Co., Division of Propoco, Inc. 263 NLRB No. 034

(whether Ee's statement is protected by Act is not determined by truth or falsity of statement)

6070-7900 Good faith in misrepresenting facts relevant

American Cast Iron Pipe Company, a corporation v. N.L.R.B. 600 F.2d 132 (C.A. 8, 1979)

(maintaining rule which forbids false, vicious or malicious statements about company, its Ees, its products, or methods of manufacture, unlawful, since rule not limited to maliciously false statements but also included merely false statements; further, E may not justify promulgation of broad rule by its need to protect itself from disloyal statements but rather must meet need by rule limited to disloyal statements)

6080 ACTIVITIES IN SUPPORT OF UNION

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072

(solicitation by U council's Ees of state international organization, which involved matters relating to wages, hours, and working conditions, and their seeking and obtaining aid of state organization's president in transmitting resolution concerning discharge of Ee by council to parent organization's president held protected)

6080-0800 Enlistment of third party support or representation

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072

(Ee-staff members of U council held not to have engaged in unprotected activity in securing assistance of state labor organization's president in transmitting to parent organization's president resolution calling for reinstatement of Ee discharged by council; bargaining representative has broad discretion in selecting those individuals in organization it desires to act on its behalf, and it also has largely unfettered discretion in seeking and obtaining from others aid it may need to fulfill its statutory representative responsibilities)

6080-1700 Participation in Board proceedings

6080-1767 Formal hearing

N.L.R.B. v. Joseph, d/b/a Meat Packers International 605 F.2d 466 (C.A. 9, 1979)

(discharge of Ee, who had testified at prior Bd proceedings, in order to make room for one reinstated disciminatee not violative where Ee was least competent of workers available; management was entitled to make such selection in order to comply with order of ALJ)

6080-3300 Supplying information to Board agents

Crown Cork & Seal Company, Inc. 255 NLRB No. 004

6080-8700 Obtaining information for union

Wilson Foods Corporation JD-(SF)-272-80

(after E refused to supply data on job classification, brackets assigned to jobs, and wages to U president per request by International, his speaking with Ees on plant floor to obtain data, after end of shift, held protected, notwithstanding he violated plant rule by not securing foreman's permission to talk on plant floor)

Texas Instruments Inc. v. N.L.R.B. 637 F.2d 822 (C.A. 1, 1981)

(discharge of U adherents for violation of E's valid security rule not violative where: Ees published E's confidential wage survey report which Ees had obtained outside of normal course of employment (each page of report was stampted strictly private), Ee manual set forth E's rule against disclosure of confidential information; moreover, Ees' organizing activity not dependent on access to confidential information)

6085 FILING LAW SUITS AGAINST EMPLOYER

Dickran Kassaian v. N.L.R.B. 630 F.2d 36 (C.A. 1, 1980)

(discharge of Ee for calling E's bank with misinformation about E forming credit union with that bank (an illegal activity) and threatening to sue both E and bank, not violative, as Ee's calls were not protected and clearly exceeding bounds of protected activity; also no evidence that E had any other motivation for Ee's discharge)

6090 OTHER FORMS OF ACTIIVITIES PROTECTED

6090-0100 Generally

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(so long as concerted activity is not unlawful, in breach of contract or disloyal, Ees engaged in concerted activity do not lose protection of Act simply because their activity contravenes E's rule or policies; application of Sec. 7 of Act does not depend on manner in which Ees choose to press despute, but rather on matter they are protesting)

6090-0200 Solicitation on behalf of union

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(discharge of U activist assertedly for talking U on her break while Ee was working violative where U activist did not interfere with her own or other Ee's work)

6090-0300 Distribution of literature

United States Steel Corporation **264 NLRB No. 010**
(sympathy striker who distributed leaflets urging other Ees to join strike engaged in protected concerted activity and his suspension violative; notwithstanding contract contained no-strike clause as Bd has long held that sympathy strikes are not encompassed by no-strike clauses absent clear waiver)

New York University Medical Center **261 NLRB No. 118**
(Ee literature, otherwise protected, loses such status only in limited circumstances, such as if literature contains attack on E's products or services, material so disruptive as to threaten plant discipline, or malicious falsehood)

New York University Medical Center **261 NLRB No. 118**
(Ees' distribution of leaflets accusing E of *using the security guards for fascist gestapo tactics to intimidate black and Spanish workers* held protected concerted activity, since Ees did not know that statement was false nor was it published with reckless disregard for whether statement was false or not; while use of term *fascist gestapo* is not condoned, SCt has stated that *the most repulsive speech enjoys immunity provided it falls short of a deliberate or reckless untruth*)

Douglas Aircraft Company, Component of McDonnell Douglas Corporation **260 NLRB No. 180**
(refusal to permit Ee to distribute to Ees during nonwork time in nonwork area his open letter to E protesting E's new time restriction on Ees' use of plant vending machines, unlawful, where E was well aware that Ee wanted to pass out to fellow Ees letter which protested institution of restriction affecting, and of concern to, Ees; Ee, who had discussed matter with fellow Ees and had steward's approval, was ensuring that E and Ees were aware of extent of Ee dissatisfaction over restriction; and Bd has repeatedly held similar activity to be protected and concerted)

Douglas Aircraft Company, Component of McDonnell Douglas Corporation **260 NLRB No. 180**
(Ee's distribution to Ees of his open letter to E protesting E's new time restriction on Ees' use of plant vending machines held group action rather than personal gripe, where letter was in response to group concern and had sanction of U steward; letter's purpose was to advance Ees' common interest and concern over restriction and was for their mutual aid and protection; and Ee's conduct would have been concerted and protected irrespective of whether he was overtly designated by other Ees to act on their behalf, or whether he had outlined to them what he was going to do)

Douglas Aircraft Company, Component of McDonnell Douglas Corporation **260 NLRB No. 180**
(E's contention that in order to have violation of 8(a)(1) E must have knowledge of concerted nature of Ee activity, but that it lacked such knowledge with regard to Ee's distribution to Ees of his open letter to E protesting E's time restriction on Ees' use of plant vending machines, rejected, where Ee informed security guards, at gate at which he was distributing, that letter *pertains to several hundred people*, and letter itself put E on notice when t referred to *work force* as being subject to restriction which *we find frustrating*)

Douglas Aircraft Company, Component of McDonnell Douglas Corporation **260 NLRB No. 180**
(Ee's distribution to Ees of open letter to E protesting E's restriction on use of plant vending machines was protected and was not attempt to bypass contracting U; contracting parties cannot waive Ees' Sec. 7 rights which might be seriously diluted by banning distribution such as that herein; there was no evidence that production or discipline made controls necessary; and, consequently, Ee was not required to proceed through contract grievance procedure nor to seek redress only through U; moreover contract prohibitions against districution were overly broad and were unlawfully applied to Ee's distribution)

Douglas Aircraft Company, Component of McDonnell Douglas Corporation **260 NLRB No. 180**
(Ee's distribution to Ees of his open letter to E protesting E's time restriction on Ees' use of plant vending machines held protected concerted activity, notwithstanding E's contention that letter was *libelous, scurrilous*, or contained statements so *disloyal* as to forfeit protection of Act; Ee herein was expressing displeasure regarding restriction in effort to make E aware of Ees' dissatisfaction therewith and, as such, it was related to E's labor policy; and E's hypersensitivity to unclear and sarcastic statements in letter did not convert otherwise protected activity into unprotectd activity)

Fun Striders, Inc. **250 NLRB No. 087**
(distribution of literature containing inflamatory political material protected where it also referred to many matters dealing with employment relationship)

National Southwire Aluminum **247 NLRB No. 178**
(E's statements to U adherent to *get rid of U literature* and *clean up U literature* do not rise to level of promulgation against distribution of literature but does interfere with Ee rights to distribute literature)

Texas Instruments Incorporated **247 NLRB No. 037**
(E's rule requiring discharge of any Ee who disclosed classified materials to unauthorized persons held invalid as it was applied to Ees distributing leaflets containing --*strictly private* area wage surveys of E and its competitors, since Ees were engaged in protected concerted activity; Ees were encouraging collective action to improve wages; none of E's reasons for rule qualified as sufficient business justification to validate rule as applied in instant case)

Pioneer Finishing Corporation v. N.L.R.B. **667 F.2d 199 (C.A. 1, Nov. 1981)**
(Ee who distributed leaflet protesting safety conditions in plant engaged in protected concerted activity)

Texas Instruments Inc. v. N.L.R.B. **637 F.2d 822 (C.A. 1, 1981)**
(discharge of U adherents for violation of E's valid security rule not violative where: Ees published E's confidential wage survey report which Ees had obtained outside of normal course of employment (each page of report was stamped strictly private), Ee manual set forth E's rule against disclosure of confidential information; moreover, Ees' organizing activity not dependent on access to confidential information)

Fun Striders, Inc. v. N.L.R.B. **658 F.2d 716 (C.A. 9, 1981)**
(distribution of literature that is purely political is unprotected activity; where, however, leaflets contain non-political matter as well as political matter related to Ee interests, distribution is protected)

6090-0600 Holding union or employee meeting

Bromet Property Management Corporation **JD-(SF)-80-81**
(violation, where E informed Ee who had acted as spokesman for Ees who deserved to bring concerns to attention of E, that Ees were not to have anymore meetings, and that Ee would be fired if Ees held anymore meetings, and upon being informed Ees intended to have another meeting, fired Ee)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(vowing to E to meet *outside management's presence* with other Ees to discuss common concerns relating to conditions of employment)

6090-0700 Attempts by employees to change representative's attitude toward particular bargaining subject

Colonial Stores Incorporated **248 NLRB No. 142**
(part-time Ee and her non-Ee husband's circulating ptn among Ees during non-working time stating that E was not complying with contract provision requiring it to maintain greatest possible number of full-time job and that, if U failed to make E adhere to agreement, Ees were not getting full representation, held protected concerted activity notwithstanding that Ee was trying to gain more hours of employment for herself; ptn involved matters of obvious concern to Ees and, moreover, other Ees signed the ptn)

6090-1000 Implementation of contract by stewards

Apollo Clothes, Inc. **JD-206-82**

6090-1200 Invocation of terms of collective bargaining agreement

Interior Alterations, Inc. **264 NLRB No. 093**
(Ees' protesting assignment of contractual unit work to nonunit Ees and seeking to implement terms of contract, protected)

Babcock & Wilcox Company d/b/a B & W Construction Company **263 NLRB No. 001**
(U member's threat to file intra-U charge against supervisor held protected notwithstanding Sec. 8(b)(1)(B) violation which resulted from U's pursuit of charge, since threat was not unlawful and violation of Sec. 8(b)(1)(B) occurred only when U acted in response to charge; fact that U member stated he would implement his contractual rights through intra-U charge rather than through contractual grievance procedure should not remove him from Act's protection)

Corbin-Dykes Electric Company **JD-(SF)-208-82**
(individual Ee's complaints involving safety deemed protected and concerted as long as complaints are based on reasonable belief that existing condition was dangerous, hazardous or unsafe, or that collective bargaining agreement had been violated; reasonableness of Ee's belief is based upon circumstances

6090-1200—Cont.

as they existed and not upon whether in fact there actually existed such danger or that E had actually violated agreement)

ITT McDonnel and Miller, A Unit of Fluid Handling Division of International Telephone and Telegraph Corp. JD-337-82

(Ee's conduct in interfering with supervisor's removal of grievances which Ee had posted on E's bulletin boards, made available to U under contract, not protected, since E's conduct was neither reasonably related to assertion of contract right nor reasonable in the circumstances in view of Ee's actions in physically blocking supervisor's removal of grievances and his exit from bulletin board area; although Ee may take reasonable steps to enforce his view of bargaining agreement, such steps do not include physical confrontation)

Hanson Rubber Company JD-290-82

(discharge of Ee for uttering obscenity during course of meeting with E dealing with contract provision concerning pay for negotiating sessions violative as Ee was engaged in protected concerted activity and his conduct was not so egregious to remove it from protection of Act where it was uttered in heat of an argument)

Palsa Corporation JD-(SF)-20-82

Public Service Company of New Mexico JD-(SF)-157-80

(Ee's refusal to show E marriage license to verify fact of marriage for purpose of insurance coverage for which only spouses and dependents were eligible, not protected, where Ee had first requested coverage for wife prior to marriage and E had no proof of her subsequent eligibility; Ee's refusal was personal rather than concerted, and he was not enforcing contract right)

Public Service Company of New Mexico JD-(SF)-157-80

(Ee's writing letter to E's insurance supervisor concerning E's refusal to extend insurance coverage to his new wife w/o seeing marriage certificate and in which he called company officials insulting names, not protected, since letter not attempt to enforce contract right but was simply personal diatribe)

N.L.R.B. v. Adams Delivery Service, Inc. 623 F.2d 96 (C.A. 9, July 1980)

(discharge of Ee for protesting lack of contractually-guaranteed overtime pay to U representative, violative, as consultation with U representative to resolve employment dispute is more than mere griping and is not w/i category of obtaining objectives only for himself)

Leo G. Kohls v. N.L.R.B. 629 F.2d 173 (C.A.D.C., 1980)

(discharge of Ee for refusing to drive assigned truck because *breaks were not good enough for me*, not unlawful, since protest and refusal not concerted and *Interboro Contractors* doctrine not applied, notwithstanding contention was Ee was asserting contractual right, where Ee was not asserting right on behalf of anyone other than himself nor speaking for others, no evidence Ee and U working in concert to assert contract, and fact Ee withdrew grievance filed on his behalf by U)

6090-1600 Acting as union steward or officer

Cook Paint and Varnish Company 258 NLRB No. 166

(consultation between U steward and Ee potentially subject to E discipline, involving conversations as well as notes kept by steward in course of fulfilling his representational function in grievance/arbitration procedure involving Ee, held protected activity)

Apollo Clothes, Inc. JD-296-82

Salem Gravure Division of World Color Press, Inc. JD-182-81

(U shop steward's use of obscenity toward supervisor when supervisor handed him copy of notice relating to strict enforcement of E's rules toward Ees, not protected where U requested that it be given all notices made by E applicable to its Ees, and E voluntarily complied with request; U representative is not thereby authorized to spout every kind of obscenity which comes to mind and then request and obtain protection of Act)

Master Painting & Sheeting, Inc. JD-(SF)-119-80

(Ees who protested about E's practice of having same Ee be both U steward and foreman engaged in protected concerted activity as possibility of conflict of interest directly related to their conditions of employment)

Pioneer Finishing Corporation v. N.L.R.B. 667 F.2d 199 (C.A. 1, Nov. 1981)

(where contract contained prohibitions against U officials distributing literature on E's premises, and official is also Ee, it will not be assumed that such Ee has waived any of his rights unless he has done so specifically or unless his activities are distructive to collective bargaining process)

Hammermill Paper Company v. N.L.R.B. 658 F.2d 155 (C.A. 3, 1981)

Cook Paint and Varnish Company v. N.L.R.B. 648 F.2d 712 (D Ct D.C., Apr 1981)

(ct remanded case for further proceedings as to whether U steward was entitled to special protection due to his status as U steward in regard to being compelled to answer questions at pre-arbitration interview concerning grievance of fellow Ee in which steward may have been initially responsible for processing grievance; altho ct recognized possible serious infringement on protected activity if representatives were required to submit to compulsory interviews, it indicated that *blanket rule* would be inappropriate)

6090-1700 Attempts by employees to change union leadership

East Texas Motor Freight 262 NLRB No. 101

(denying dissident U Ee right to post intra-U political literature on company bulletin board located in Ees' break room held violative where E permitted other Ees to use bulletin board for other than *official U business* but denied dissident U Ee right to advertise his U activity on board; E enforced otherwise legimate contractual limitation on use of bulletin board in disparate manner)

N.L.R.B. v. Transcon Lines 599 F.2d 719 (C.A. 5, 1979)

(material, distributed by U dissident, attacking incumbent U's leadership and proposing opposition to incumbent officers in upcoming election held protected)

N.L.R.B. v. Lummus Industries, Inc. 679 F.2d 229 (C.A. 11, June 1982)

(Ee who distributed leaflet which criticized both E and U and sought improvement of U representation engaged in protected concerted activity)

6090-1800 Activities as a safety committeeman

Atlas Minerals, Division of Atlas Corporation 256 NLRB No. 022

(Ee's participation, as miner's representative, in mine safety inspection conducted by federal agency held protected activity)

6090-1900 Participation in concerted activity at another employer's premises or with another employer's employees

N.L.R.B. v. Faulkner Hospital 691 F.2d 51 (C.A. 1, Oct. 1982)

(E's discharge of Ee who gave statement to Ee of another E closely allied with first E to use in his unemployment compensation hearing and statement was also used in grievance proceeding for that Ee, violative as Ee who gave statement was engaged in protected concerted activity whether grievant won or lost, because circumstances of another Ee's discharge were at issue in unemployment compensation hearing and bore sufficiently close nexus to terms and conditions of employment to be protected)

6090-2400 Circulation of petition to obtain time off for holiday season

Pyromatics, Inc. 251 NLRB No. 141

(E's contention that Ee's circulation of ptn for obtaining holiday season time off did not relate to mutual aid and protection of Ees, rejected, in view of use of term *hours* in Sec. 8(d)'s definition of *collective bargaining*, as term used in Sec. 7, as *conferring with respect to wages, hours, and other terms and conditions of employment*: in view thereof, collective request for time off cannot be conceived as not protected under Sec. 7; and leaves of absence have been found bargainable, and thus a term or condition of employment)

6090-2500 Attendance or testifying at unemployment compensation proceedings

M K Laboratories, Inc. 261 NLRB No. 021

(Ees, acting in concert, have Sec. 7 right to attend unemployment compensation hearings involving discharge of fellow Ee, which is to be balanced against E's interest in efficiently operating his business)

N.L.R.B. v. Faulkner Hospital 691 F.2d 51 (C.A. 1, Oct. 1982)

(E's discharge of Ee who gave statement to Ee of another E closely allied with first E to use in his unemployment compensation hearing and statement was also used in grievance proceeding for that Ee, violative as Ee who gave statement was engaged in protected concerted activity whether grievant won or lost, because circumstances of another Ee's discharge were at issue in unemployment compensation hearing and bore sufficiently close nexus to terms and conditions of employment to be protected)

Supreme Optical Company, Inc. v. N.L.R.B. 628 F.2d 1262 (C.A. 6, 1980)

(attendance of 5 Ees at unemployment compensation hearing at request of former Ee held protected in view of sufficiently close nexus to terms and conditions of employment since termination of particular Ee potentially affects relationship between all Ees and E)

6090-3300 Wearing or otherwise displaying union insignia or signs

Midstate Telephone Company 262 NLRB No. 167

(Ees' reporting to work wearing T-shirts on which appeared facsimile of E's logo depicting logo as cracked and displaying accompanying slogan, *I survived Midstate strike of 1971-1975-1979* held protected, where T-shirts worn by Ees were clearly directed at promoting solidarity by publicizing that Ees had *survived* recent prolonged 5-month strike and there were no *special circumstances* which would warrant deviation from general rule protecting right of Ees to wear insignia at work pertaining to Us or working conditions)

6090-3200—Cont.

Inland Steel Company 257 NLRB No. 063
(wearing T-shirt with vulgar slogan (*INLAND SUCKS*) that rediculed E, protected, where no management official said anything to E about T-shirt or even saw him wearing it during working hours so less told Ee to take it off)

The Nestle Company 248 NLRB No. 106
(enforcing company rule prohibiting wearing jewelry and nonuniform clothing w/i E's production areas held violative where rule was not applied to non-U related jewelry and clothing worn by Ees not favoring U; rule was discriminatorily enforced)

Pay 'N Save Corporation 247 NLRB No. 184
(right to wear U buttons is legitimate form of U activity)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. 247 NLRB No. 128
(wearing of arm band with U insignia not protected in hospital setting where arm band superimposed on uniform was highly obtrusive)

Coors Container Company v. N.L.R.B. 628 F.2d 1283 (C.A.D.C.)
(Ees' display of sign urging boycott of E's product held concerted protected activity, notwithstanding E's contention that Bd's finding to that effect unlawfully interfered with enforcement of E's rule prohibiting boycottsigns on E's premises necessary for maintaining plant securityand avoiding incidents at plant gates; prohibition was not justified by special circumstances inasmuch as sign was displayedover mile from any work facility, and wording was not so provocative as to remove protection of Act)

Coors Container Company v. N.L.R.B. 628 F.2d 1283 (C.A.D.C.)
(Ees' decision to display sign urging boycott of E's product held not rendered unprotected even if fear of picketing strikers played a part in their decision to do so, since fear was not sole motivating factor inasmuch asEe's were also motivated by desire to encourage strikers)

6090-3300 Discussion between employees about possibility of joining union in order to secure benefits

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant 259 NLRB No. 065
(manager's telling Ees that she didn't want Ees to be talking over telephones about U; she didn't want Ees to call one another; nor did she want 1st-shift Ees to be talking to 2nd-shift Ees; all violative, since requests constituted prohibition against Ees exercise of their statutory rights on nonworking time)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 057
(announcement by manager to assembled Ees that he did not want them to discuss U, held violative)

6090-3400 Discussing wages

Donnelly Manufacturing Co. Division of Brockhouse Corp. 265 NLRB No. 196
(Ees discussing amount of their pay raises given by E with other Ees of E, protected)

6090-4200 'Griping' to other employees about working conditions

Lutheran Social Service of Minnesota, Inc. 250 NLRB No. 018
(derogatory comments about E's management by Ees of center for disturbed and displaced youth and expression of differences regarding policies not protected, since aimless rather than concerted, and nature of Ees' concerns was not effect of policies on own working conditions but on quality of program and welfare of residents inasmuch as these are peculiarly management's concern; further, Ees' use of profanity in criticizing management in presence of residents and disrupting and demoralizing effect of their actions on other Ees, particularly in view of E's mission, rendered them unfit for further service)

Elliott Carpet Installations JD-(SF)-93-82
(discharge of Ee who constantly discussed with other Ees his dissatisfaction with travel allowance he was receiving under U contract for commuting to job, unlawful, notwithstanding caused disruption on job or fact Ee refused to contact U in order to settle matter, where E never talked with Ee before discharging him and Ee was trying to convince other Ees they too should be receiving more pay under contract)

The Ohio Casualty Insurance Co. JD-292-81
(discharge of Ee who protested work assignment in loud, vulgar language not violative notwithstanding she was communicating with other Ees as this is *mere griping* which Act does not protect)

The Ohio Casualty Insurance Co. JD-292-81
(Ee's statement to another Ee in response to comment by other Ee during conversation in loud vulgar language considered *mere griping* and thus unprotected; therefore, discharge for this conduct not violative)

Washington University School of Medicine, A Division of the Washington University JD-154-81

Floyd Monroe & Sons, Inc. JD-80-81
(supervisor telling Ees that they were not to discuss their *problems* among themselves but were to take them only to supervisors held violative, since instruction prevented Ees from discussing matters concerning their wages, hours or other conditions of employment among themselves)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection JD-(SF)-310-79
(raising matters of mutual concern with other Ees relating to wages, hours, and other terms and conditions of employment)

N.L.R.B. v. American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. 670 F.2d 1236 (C.A. 1, Feb. 1982)
(Ee's discussion of his wages, because it touched off chain of discourse among his fellow Ees, protected activity)

N.L.R.B. v. Datapoint Corporation 642 F.2d 123 (C.A. 5, Apr 8, 1981)
(where Ee, in rude and beligerent manner, complained to fellow Ees about E's plan to layoff Ees for 1 week while plant moved to new location, discharge of Ee not violative as such activity is not protected where no evidence that Ee had object of initiating or inducing or preparing for group action; activity which consists of mere talk, in order to be protected, must be talk looking toward group action)

6090-4900 Invocation of Board processes (see also 8(a)(4))

The Buffalo Newspaper Guild, Local 26, and The Newspaper Guild, AFL-CIO-CLC (Buffalo Courier Express, Inc.) 265 NLRB No. 048
(U member who filed UC ptn with Bd engaged in protected activity notwithstanding Bd's rules permit only E or U to file such ptn as proceeding was initiated for purpose of requesting Bd to reconsider its policy and such proceedings are as deserving of protection as those filed in conformity with existing standards)

Bay State Gas Company 255 NLRB No. 089
(discharge of Ee who had filed charge with Bd not violative where discharge took place 1 month after charge withdrawn, discharged for excessive absenteeism and GC failed to establish *prima facie* case that Ee was discharged for protected activity)

OMC Stern Drive, A Division of Outboard Marine Corporation 253 NLRB No. 062
(while finding it unnecessary to pass on 8(a)(4) portion of complaint on basis of which ALJ found that U steward's suspension and discharge violated 8(a)(4); as well as 8(a)(3), Bd found that E interfered with statutorily protected right to file charges and present testimony to Bd by giving unexcused absences to Ees, who gave last minute notice from work, after E learned that they went to Bd's Regional Office)

Giant Food, Inc. 232 NLRB No. 182
(Ee who urged another Ee to aid U by supporting its objections to election involved in protected activity not harrassment and discharge violative; moreover, E's belief that had Ee engaged in misconduct does not justify discharge where in fact he had not engaged in such misconduct)

St. Regis Paper Company 247 NLRB No. 105
(statements to Ees that filing ULP charges against E could lead to plant closure held violative)

Clark & Hinojosa, Attorneys at Law, A Professional Corporation 247 NLRB No. 089
(refusal to pay benefits to discharged Ee, to whom E promised one-half month's salary as post-termination pay, held violative inasmuch as E treated Ee differently than other discharged Ees because of Ee's expressed intent to seek redress from Bd)

Clark & Hinojosa, Attorneys at Law, A Professional Corporation 247 NLRB No. 089
(complainants who *mistakenly* seek to invoke Bd processes considered w/i Sec. 8(a)(4)'s protective reach)

Carl Karcher Enterprises JD-(SF)-227-82
(filing of ULP charges)

6090-5000 Organizing protest regarding working conditions

Sun Belt Linens, Inc., d/b/a South Texas Linen Service (Laundry and Dye House Workers, Local 281, a/w Teamsters) 260 NLRB No. 174
(Ee's encouraging other Ees during nonworking time to engage in walkout if Ees were required to work beyond 6 p.m. without being provided a meal held protected concerted activity)

6090-5200 Right to resign from union

N.L.R.B. v. Machinists Local 1327, District Lodge 115 608 F.2d 1219 (C.A. 9, 1979)
(U member has right to resign from U but U can proscribe rule which limits right to resign during strike to protect its members and U during that critical period)

6090-5400 Opposition to union hierarchy

6090-5400—Cont.

Lummus Industries, Inc. 264 NLRB No. 079

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Nelson Freight Lines, Inc., et al.) 240 NLRB No. 096

(member criticizing administration of U official, protected, notwithstanding member had not declared his candidacy to oust official)

Local 394, Laborers' (Building Contractors Association of New Jersey) 247 NLRB No. 085

(attempts to restrict hiring hall referrals to non-pensioners)

Master Painting & Sheeting, Inc. JD-(SF)-119-80

(Ees who protested about E's practice of having same Ee be both U steward and foreman engaged in protected concerted activity as possibility of conflict of interest directly related to their conditions of employment)

N.L.R.B. v. Transcon Lines 599 F.2d 719 (C.A. 5, 1979)

(material, distributed by U dissident, attacking incumbent U's leadership and proposing opposition to incumbent officers in upcoming election held protected)

6090-5450 Reform group

Central Storage and Transfer Co. of Harrisburg 263 NLRB No. 089

(E's refusal to hire former Ee because it was aware that discriminatee was member of *Teamsters for a Democratic U* a reform group w/i U and opposed E's training program, length of workday and notion of giving up negotiated benefits if necessary to sustain economically troubled company, violative, as this refusal based on his expression of protected U-related matters including advocating strict adherence to Master Freight Agreement)

6090-5600 Opposition to bargaining representative

London Chop House, Inc. 264 NLRB No. 083

(Bd has held that Act protects Ees against actions taken in reprisal for their activities in opposition to U and, specifically, such protection applies for activities in opposition to contract ratification; contract ratification votes and procedures are internal U matters upon which E is not free to intrude; and protection of Act is not lost because Ees, engaged in opposition to U, concurrently hold official position in U)

London Chop House, Inc. 264 NLRB No. 083

(bargaining committee member's initial support of contract ratification and his later decision and action taken in opposition to ratification held protected activity and not *ethically and morally reprehensible;* and his actions were *concerted* since gravamen of C alleged that he was engaged in U, or intra-U, activity and, consequently, fact that he was acting alone is immaterial)

N.L.R.B. v. Lummus Industries, Inc. 679 F.2d 229 (C.A. 11, June 1982)

(Ee who distributed leaflet which criticized both E and U and sought improvement of U representation engaged in protected concerted activity)

6090-5800 Contacting union representative

A.P.F. Electronics, Inc. 257 NLRB No. 068

(Ee contacting U representative regarding making and receiving phone calls on job, protected; *fact that grievance may be groundless does not in any way affect protected right of Ee to bring it to attention of U representative*)

6090-5900 Organizing protest regarding change in working conditions

Lutheran Social Service of Minnesota, Inc. 250 NLRB No. 018

(derogatory comments about E's management by Ees of center for disturbed and displaced youth and expression of differences regarding policies not protected, since aimless rather than concerted, and nature of Ees' concerns was not effect of policies on own working conditions but on quality of program and welfare of residents inasmuch as these are peculiarly management's concern; further, Ees' use of profanity in criticizing management in presence of residents and disrupting and demoralizing effect of their actions on other Ees, particularly in view of E's mission, rendered them unfit for further service)

Floyd Monroe & Sons, Inc. JD-80-81

(discharge of school bus driver assertedly because she had been *troublemaker, agitator* and *bitch on wheels* held violative where Ee was discharged solely because she had urged her fellow Ees to engage in strike to protest announced wage cut)

6090-6300 Discussion filing or presentation of grievances

Barry S. Salaf, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group 264 NLRB No. 019

(discharge of Ees who refused to work until management heard their grievances concerning, *inter alia* lack of (medical) supervision of their paramedical responsibilities held violative, since such lack was matter plainly affecting Ees' terms and conditions of employment and their insistence that they be heard was protected activity)

Keyway, A Division of Phase Inc. 263 NLRB No. 172

Champion Parts Rebuilders, Inc., Northeast Division 260 NLRB No. 098

(Ee who filed grievance over alleged failure of E's vice-president to wear safety glasses in plant was not engaged in protected activity as E's conduct had no direct or reasonably foreseeable impact upon terms and conditions of employment of unit Ees; thus, E's remarks concerning Ee's grievance filing activity not violative)

Southwestern Bell Telephone Company 260 NLRB No. 086

(action of U steward protesting E's practice of *red lining* Ees who had refused to work overtime protected, and stewards outburst during confrontation with E does not make him lose Act's protection, thus E's warning steward and later suspending him for 4 hours for his outburst violative)

San Diego County Association For The Retarded 259 NLRB No. 136

(discharge of Ees who sought to resolve their grievances through strike action rather than through E's established grievance procedure held unlawful, since Ees were engaged in strike for purpose of causing E to resolve their *work-related grievances* in manner satisfactory to Ees)

Trans Air Supply Company, Inc. 257 NLRB No. 023

(leadman's attempt to improve working conditions at request of fellow Ees which resulted in heated argument with plant superintendent over need for fans to be turned on to clear smoke and fumes from work area held protected, where he obeyed order to return to work area yet continued protest; E invited such protest by telling Ees to bring problems directly to him)

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising 257 NLRB No. 022

(discharge of Ee who had taken active roll in presenting common grievances of Ees, checked out U rates of pay and argued with E to obtain such rates for Ees violative as Ee was engaged in protected concerted activity)

Avalon-Carver Community Center 255 NLRB No. 141

(Ee who prepared grievance on behalf of other Ees criticizing performance of supervisor engaged in protected concerted activity and discharge violative)

Hacienda Hotel and Casino 254 NLRB No. 007

(rule against Ees either individually or concertedly initially seeking recourse with respect to matters pertaining to wages, hours or working conditions through means other than U, overbroad)

OMC Stern Drive, A Division of Outboard Marine Corporation 253 NLRB No. 042

(E's exception to ALJ's reliance on previous disciplinary warnings as evidence of animosity that E held toward U steward and his U activities, overruled; steward's activities were good faith attempts to process grievances, and alleged violations by him of grievance procedure were, at most, technical and were not so clearly transgressions as to remove grievance activity from protection of Act; moreover, steward's good faith is shown by fact that his use of working time to conduct U business other than processing grievances ceased once arbitrator ruled that such activity violated contract)

Omark-RCBS, A Division of Omark Industries 252 NLRB No. 089

(E's statements requesting Ees to deal directly with management, asking for complaints or gripes and requesting opportunity to resolve problems, held violative since they constituted clear attempt to dissuade Ees from supporting U by soliciting grievances and holding out possibility of more favorable treatment)

Ford Motor Company 251 NLRB No. 066

(Ees who file grievances, civil suits or ULP charges in protest of E's promotional policies to supervisory positions, protected)

Hawthorne Mazda, Inc. 251 NLRB No. 038

(Ee held engaged in protected concerted activity where he had been instrumental in securing fellow Ees' support in form of ptn for confronting E's management with their concerns regarding, pay, scheduling, and lack of a changing room; in securing meeting at which concerns could be addressed; and in presenting concerns to management in a way that conveyed their group nature, with Ee acting as spokesman for Ees in communicating with management which knew he was acting in that capacity)

United States Postal Service 250 NLRB No. 002

(assuming U steward uttered obscenity toward supervisor in course of formally investigating possible grievance over working conditions on behalf of unit Ee when supervisor failed to see steward immediately and directly, such utterance was part of *res gestae* of investigation and was not so flagrant or egregious as to remove protection of Act)

Colonial Stores Incorporated 248 NLRB No. 143

(where Ee and her husband, a non-Ee, circulated ptn among Ees protesting E's alleged failure to abide by bargaining agreement and U's failure to enforce agreement, and subsequently the husband drove to E's parking lot with signs stating, *E had no regard for its Ees' rights,* Bd held Ee's displaying signs in her husband's car constituted protected concerted activity, since it was protest concerned with E's adherence to grievance settlement under

6090-6300—Cont.

terms of contract, a subject of potential concern to other Ees, and it was not undertaken for unlawful purpose or in unlawful manner)

Lane Trenching, Inc. **247 NLRB No. 183**
(threat to discharge Ee if he continued to make contractual overtime claims held violative, since Ee has statutorily protected right to seek to enforce contract)

Van Hoaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc. **247 NLRB No. 171**

St. Regis Paper Company **247 NLRB No. 166**
(statements linking loss of work and overtime to U's pursuit of grievance under contract held violative, since statements tended to create chilling effect on Ees' rights to file or process grievances)

St. Regis Paper Company **247 NLRB No. 166**
(transferring work from one of E's plants to another of E's plants in another city to eliminate overtime, subject of an Ees' grievance, held violative, since grievance was protected activity)

Oscar Roberts Company **JD-334-82**

Avis-Rent-A-Car Systems, Inc. **JD-62-82**
(Ee who files grievance either on his own behalf or behalf of fellow Ees is engaged in protected concerted activity, notwithstanding there may be no merit to grievance, therefore discharge of suspended Ee who came on E's property, to file grievance over suspension violative)

Kimberly-Clark Corporation **JD-(SF)-291-81**

E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge **JD-498-81**
(Ees ceasing work and requesting meeting with management to concertedly present complaints about harassment, protected, whether justified or not)

Roadway Express **JD-(ATL)-25-81**
(discharge not violative where Ee would have been discharged in accordance with contract even in absence of any protected conduct with respect to filing of grievances or workmen's compensation claim)

Stearns-Roger, Inc. **JD-10-81**
(even if grievance is unmeritorious)

Planned Parenthood of Alameda and San Francisco Counties **JD-(SF)-294-80**
(Ees voluntarily attending meeting with management on own time to discuss working conditions, or refraining from attending, protected)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(soliciting Ees to take their complaints to individual whom Ee considered to be *boss* of facility though he had no official connection with E at that time rather than through regular channels held to have been concerted activity where Ees' complaints and dissatisfaction were directed to employment conditions of concern to other Ees and protected because *boss's* conduct was such that even though he had officially severed his connection with E he was held agent of E)

N.L.R.B. v. St. Anne's Hospital **648 F.2d 67 (C.A. 1, May 1981)**
(protest by operating room nurses against hospital's call-in policy)

United States Postal Service v. N.L.R.B. **652 F.2d 409 (C.A. 5, July 1981)**
(Act's protection of E's conduct during grievance meeting does not necessarily terminate instant E ends discussion. Bd may extend protection to cooling off period of brief duration at termination of grievance meetings, since protection of Ees' participation in grievance meetings would be seriously threatened if E could at any emotional or argumentative point during meeting call immediate halt to operation of Act. Appropriateness and duration of cooling off period will depend on facts of each case and determination left to Bd's discretion)

N.L.R.B. v. Ford Motor Company **683 F.2d 156 (C.A. 6, July 1982)**

N.L.R.B. v. Mr. A's Restaurant **647 F.2d 171(T) (C.A. 9, Mar 1981)**
(filing grievance)

6090-6400 Employee meetings concerning grievances

Ferry Cap & Set Screw Company **JD-671-80**
(suspension of U committeeman allegedly for walking off job because management failed to meet with him and other Ees, violative, where Ee tried to arrange meeting between Ees and management about working conditions and he had informed his supervisors of medical appointment and would not work that day of meeting)

6090-6600 Dealing with public agencies regulating working conditions

Stauffer Chemical Company **263 NLRB No. 179**
(E's maintaining rule prohibiting Ees (environmental engineers) from contacting government agencies (polluting authorities of EPA) *directly* for information relating to occupational health and safety standards regarding removal of organic waste from effluent water held not violative, since rule was valid on its face and E demonstrated legitimate and substantial business justification for its rule; Ees used such information for interpreting EPA regulations for E's Environmental control Department; rule (in issue) operated to establish orderly way of obtaining work-related information)

IMCO/International Measurement & Control Company, Inc. **261 NLRB No. 100**
(closure of plant for afternoon with no pay to Ees because of Ees' complaints to health department regarding unsanitary conditions in plant due to presence of cats adopted by E, unlawful, where neither health department nor actual conditions required closure)

Ciampi Transportation Company **256 NLRB No. 173**
(going to Wage-Hour *labor-board* to file complaint)

Burnup & Sims, Inc. **256 NLRB No. 142**
(discharge of Ees assertedly because they failed to report to work held violative where E had given Ees permission to be absent from work to consult with Bd, EEOC, attorney and labor U concerning Ees' job security and other work problems notwithstanding work was interrupted; E's motive irrelevant as reason for discharge was for engaging in protected concerted activities)

Atlas Minerals, Division of Atlas Corporation **256 NLRB No. 022**
(contention that single Ee, when utilizing agency involved in regulating Ee working conditions, is not engaged in concerted activity under analysis of various cts, rejected by ALJ, since Bd law is binding upon him, and E's threat to terminate an Ee for going to agency was made to all Ees and applied with equal force to chill collective and individual recourse to agency)

United Services For The Handicapped **251 NLRB No. 117**
(issuing reprimand and threatening to discharge Ee for not following grievance procedure, when he complained to *CETA* official that he, as recalled discriminatee, was working only two or three hours per day while newly hired drivers under *CETA* were working full time held violative, since Ee's activities in protesting his part-time status were protected activity)

Van Hoaren Specialized Carriers, Inc., A Subsidiary of Dobson Heavy Haul, Inc. **247 NLRB No. 171**

Frank Briscoe Incorporated **247 NLRB No. 006**
(contention that laid-off black Ees who filed EEOC charges engaged in protected concerted activity only with respect to other black Ees in laid-off group because black Ees could only succeed with EEOC at expense of white Ees in group, rejected; action by Ee group to vindicate right against discrimination constitutes protected concerted activity on behalf of all Ees)

Carl Karcher Enterprises **JD-(SF)-227-83**
(Ee's initiation and registration of complaints with State OSHA, relating to unsafe conditions at E's facility, and advanced on behalf of all Ees thereat, held protected concerted activity, notwithstanding Ee's stated objective of achieving revenge against E for refusing to promote him; Ee was not acting in irresponsible or hostile manner with reckless purpose to injure when he sought assistance of E in correcting what he believed were unsafe conditions verified in OSHA inspections; and revenge was not motivating factor in Ee's efforts, which were based on legitimate, substantive grounds relating to job safety)

The Learning Castle, Inc. **JD-669-80**
(discharge of 2 Ees who refused to perform driving part of their job assignments not violative as this was true reason, not fact that Ees had telephoned insurance agent and State agency asking questions concerning driving on job)

Boro Buses Co. **JD-480-80**
(Ee's seeking assistance of United States Department of Labor, while attempting to pursue grievance concerning his seniority, protected)

Shuttle Motor Corporation **JD-327-80**
(Ee's inquiry of state agency regarding legality of *back-stubbing* i.e., E refusing to pay for current work in order to recoup where Ee had been paid too much for previous work, not concerted, where *back-stubbing* was not matter of common C among Ees; further, Ee called agency before any adverse action taken against him and subsequent *back-stubbing against him rectified*)

N.L.R.B. v. Lloyd A. Fry Roofing Company, Inc. of Delaware **651 F.2d 442 (C.A. 6, June 1981)**
(Ee's filing Equipment Complaint Report and Federal Highway Administration's Driver Vehicle Condition Report held protected as purpose was to eliminate safety hazard's on E's trucks)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(filing of safety C with state agency by Ee acting alone not protected concerted activity in absence of collective-bargaining agreement as there is no agreement to implement which would be source of Ee's claimed rights)

6090-7000 Prosecution of FLSA claims

6090-7000—Cont.

J. N. Moser Trucking, Incorporated 249 NLRB No. 106
(Ee engaged in protected concerted activity when he pressed his claim for travel pay and refused to cooperate with E in its attempt to defend against claims made by Wage and Hour Division of U.S. Department of Labor)

6090-7700 Prosecution of civil suit

Ford Motor Company 251 NLRB No. 066
(Ees who file grievances, civil suits, or ULP charges in protest of E's promotional policies to supervisory positions, protected)

6090-7800 Gathering documentation in support of allegations to government agency

Operating Engineers and Participating Employers Pre-Apprentice, Apprentice and Journeymen Affirmative Action Training Fund For Hawaii and Operating Engineers Joint Apprenticeship Committee For Hawaii 265 NLRB No. 131
(2 Ees of U apprentice training fund furnishing information to federal authorities concerning shakedown of contractors by U sponsoring apprentice program, protected, notwithstanding Ees furnishing information were not members of unit represented by U engaging in alleged corruption)

Carpenters Local Union No. 35 (Klaus Martin, an Individual) 264 NLRB No. 108
(U members, one of whom was trustee, were engaged in procedures and of alleged misuse of U funds by financial secretary; also investigation into misuse of funds by contacting credit U for information protected activity; thus, discharge of these members, who were also U Ees, for intra-U activity and not for any Ee misconduct, violative)

6090-8000 Filing, or threatening to file claims with government agencies

Carpenters Local Union No. 35 (Klaus Martin, an Individual) 264 NLRB No. 108
(U members, one of whom was trustee, were engaged in procedures and of alleged misuse of U funds by financial secretary; also investigation into misuse of funds by contacting credit U for information protected activity; thus, discharge of these members, who were also U Ees, for intra-U activity and not for any Ee misconduct, violative)

Grumman Flxible Corporation 264 NLRB No. 034
(question on employment application concerning prior workmen's compensation claims not violative as it is pertinent question bearing upon applicant's history of personal injury)

Michigan Metal Processing Corporation 262 NLRB No. 125
(E who threatened to discharge Ees who filed claim with OSHA violated Act as such conduct is protected activity)

Ohio Brass Company 261 NLRB No. 018
(E's inquiry of applicant on its employment application form whether applicant had previously filed industrial or workers' compensation claim, not violative since E had legitimate and substantial business justification for its inquiry, i.e., health and safety of its work force)

Country Club of Little Rock 260 NLRB No. 151
(discharge of Ee for filing charge with EEOC against E and discussing that charge with news media violative, since Ee was engaged in protected concerted activity)

Missouri Towing & Barge, Inc. 257 NLRB No. 039
(Ee was not engaged in protected activity when he knowingly filed false workmen's compensation claim)

Bay State Gas Company 255 NLRB No. 099
(discharge of Ee for excessive absenteeism who had filed workmen's compensation claim not violative where GC failed to establish *prima facie* case that protected activity was cause for discharge)

Crown Cork & Seal Company, Inc. 255 NLRB No. 004
(filing and pursuit of *OSHA* charges were concerted activities)

Ogden & Moffett Company 254 NLRB No. 101
(laying drivers off because they and their fellow Ees made complaints to state agency regarding overloaded or defective trailers and also because they refused to operate trailers they considered overloaded or defective, violative)

G. B. Williams Company 252 NLRB No. 146
(soliciting withdrawal of charges filed by Ees with State Human Rights Department and threatening job security of Ee if he didn't withdraw charge, unlawful)

United Services For The Handicapped 251 NLRB No. 117
(issuing reprimand and threatening to discharge Ee for not following grievance procedure, when he complained to *CETA* official that he, as recalled discriminatee, was working only two or three hours per day while newly hired drivers under *CETA* were working full time held violative, since Ee's activities in protesting his part-time status were protected activity)

Stafford Construction Co. 250 NLRB No. 128
(discharge of Ee who threatened to file charges with mine safety agency violative)

United Investment Corporation d/b/a Santo's Bakery 249 NLRB No. 100
(Ee's filing of claim with state agency held concerted as well as protected activity even if Ee had acted as individual in so doing; here, however, he had also discussed the matter and gone to state office to file claim with other Ees acting in concert with him to seek *mutual aid* and agency's *protection*; moreover E was aware of concerted nature of Ee's conduct)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart 247 NLRB No. 125

Niagara Falls Sightseeing By Sheridan, Inc. JD-447-82
(filing of claim for unemployment compensation pursuant to state statute protected and concerted as matter of interest to other Es)

Methadone Maintenance Health Program, Inc. JD-173-82

California Pacific National JD-(SF)-260-81
(questioning Ee about whether he had filed OSHA complaint violative)

Wise Machine Co., Inc. JD-308-81
(discharge of U adherent allegedly because Ee pursued claim for workmen's compensation benefits, not violative where no Ee ever had been disciplined by E for filing any claim whether for workmen's compensation, unemployment compensation or accident and sickness benefits; sole reason for Ee's discharge was his *actually* having worked for another E while off on disability claim)

Roadway Express JD-(ATL)-28-81
(discharge not violative where Ee would have been discharged in accordance with contract even in absence of any protected conduct with respect to filing of grievances or workmen's compensation claim)

Peninsula Association for Retarded Children and Adults JD-(SF)-269-80
(filing of wage claims before state agency protected concerted activity even if individual acts on his own)

Roadway Express, Inc. JD-201-80
(with Department of Transportation; protected)

Frank Briscoe Inc. v. N.L.R.B. 637 F.2d 946 (C.A. 3, 1981)
(laid off Ees who filed charges with EEOC involved in protected concerted activity and refusal to reinstate while charges pending violative)

Krispy Kreme Doughnut Corp. v. N.L.R.B. 635 F.2d 304 (C.A. 4, 1980)
(Ee's refusal to forego workmen's compensation claim did not constitute protected *concerted* activity, since there was no evidence that action of solitary Ee here contemplated any group activity or that he was *in fact . . . acting on behalf of or as representative of other employees*; at most his action can be said to have been *for the benefit of other employees only in a theoretical sense*)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. 675 F.2d 125 (C.A. 6, Apr. 1982)
(although affirming finding that discharged Ee's filing of MIOSHA complaint was protected concerted activity, ct for second time remanded case to Bd to determine whether E had *actual* knowledge of *concertedness* of Ee's actions where Bd on previous remand had relied on evidence already submitted and applied wrong standard in holding that it was sufficient if E *knew or should have known* that Ee's actions were concerted)

N.L.R.B. v. Lloyd A. Fry Roofing Company, Inc. of Delaware 651 F.2d 442 (C.A. 6, June 1981)
(Ee's filing Equipment Complaint Report and Federal Highway Administration's Driver Vehicle Condition Report held protected as purpose was to eliminate safety hazard's on E's trucks)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. 620 F.2d 122 (C.A. 6, 1980)
(ct agreed with Bd that Ee's complaints to E and MIOSHA of excessive paint fumes and danger of their proximity to gas heater pilot lights were protected concerted activity, where complainant got the other affected Ee's permission to use his name and referred to him in complaint, however, ct remanded case to Bd for finding on issue, not addressed by Bd, as to whether E knew of other Ee's involvement and that activity in question was concerted)

6090-8100 Attending or serving as witness in hearings before government agencies

The American Federation of State, County and Municipal Employees 262 NLRB No. 121
(testifying in court case bought by discharged supervisor to vindicate her rights under strike settlement agreement, not protected, since it was not shown that identity of supervisor, and hence her reinstatement as result of ct decision, would affect working conditions)

6090-8100—Cont.

Gentown, A Division of Emro Marketing Company JD-66-82
(Ee who testified at unemployment compensation hearing for coworker engaged in protected activity)

N.L.R.B. v. Faulkner Hospital 691 F.2d 51 (C.A. 1, Oct. 1982)
(E's discharge of Ee who gave statement to Ee of another E closely allied with first E to use in his unemployment compensation hearing and statement was also used in grievance proceeding for that Ee, violative as Ee who gave statement was engaged in protected concerted activity whether grievant won or lost, because circumstances of another Ee's discharge were at issue in unemployment compensation hearing and bore sufficiently close nexus to terms and conditions of employment to be protected)

6090-9300 Refusing to perform job assignment

Transport Service Co. 263 NLRB No. 125
(discharge of Ee who refused to drive truck which was overweight and in violation of state law (though w/i *tolerances* allowed by states and therefore exempt from criminal prosecution), violative, as Ee was engaged in protected concerted activity when he refused to drive; refusals to violative state law are presumptively protected concerted actively; moreover, inquires into private motivations for asserting such reasons is limited to whether it was asserted in good faith or maliciously)

Florida Steel Corporation 262 NLRB No. 102
(discharge of Ee who refused to drive truck not violative as he was discharged for refusal to perform assigned task; moreover, although he had reported to E that truck was unsafe and in need of repair, upon his reassignment to it two days later he made no attempt to ascertain if it had been repaired (which was normal policy) but merely refused to drive truck giving no explanation and was thus not engaged in protected activity)

Babcock & Wilcox, B & W Construction Company 255 NLRB No. 068
(no violation for discharging two Ees who refused to perform assertedly dangerous job in violation of *no stoppage of work* clause in contract and GC did not rely on Section 502; fact that Ees did not use word *refuse* is of no consequence nor fact that supervisor did not threaten Ees with discharge if they did not perform work)

Deister Concentrator Company, Inc. 253 NLRB No. 040
(Ees protest to E about working along side Ee with suspected health problem protected activity)

Timothy Kasmoch and David G. Kasmoch d/b/a Warrendale Garage and Trucking JD-174-82
(it is not necessary that complaint by Ee to E regarding working conditions be found to be meritorious in order to hold that activity was protected; it is sufficient if complaint by Ee to E regarding working conditions was apparently reasonable, made for legitimate purposes, and was not fabricated for personal motives)

Timothy Kasmoch and David G. Kasmoch d/b/a Warrendale Garage and Trucking JD-174-82
(discharge of truck driver because he refused to operate truck based on *his belief* that loaded truck would be overweight under laws of 2 states held violative, since such refusal is protected concerted activity; discharge had effect, intended or not, of serving as warning to other drivers that they were in danger of losing their jobs if they refused to violate state laws by operating overweight vehicles)

Gullett & Gould Ltd. JD-676-80
(discharging Ee for refusing to drive tractor-trailer into state in violation of state's length restrictions, violative)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. 618 F.2d 1009 (C.A. 3, 1980)
(refusal of Ees to perform job assignment for safety reasons)

City Disposal Systems, Inc. v. N.L.R.B. 683 F.2d 1005 (C.A. 6, July 1982)
(discharge of Ee who refused to drive truck he believed to be unsafe not violative where Ee was not engaged in concerted activity as he was acting solely for himself, did not attempt to warn other Ees that truck was unsafe, did not seek assistance of U representative in effort to avoid driving truck, and only made isolated comment to E that E cared more about garbage than men)

United Parcel Service v. N.L.R.B. 654 F.2d 12 (C.A. 6, July 1981)
(discipline of Ee who refused to open door of truck, alleging that it was unsafe not violative as Ee's complaint about unsafe conditions was not made on behalf of any other Ees and was therefore not concerted activity)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. 659 F.2d 830 (C.A. 7, Sept. 1981)
(where safety issue is one that must be submitted to binding arbitration, obligation not to strike over matter is considered to be coterminus and any stoppage violates implied no-strike clause unless safety hazzard suddenly arose and presented immediate threat; i.e., *Washington Aluminum* situation)

N.L.R.B. v. Browton Fashions, Inc., a Division of Judy Bond 682 F.2d 918 (C.A. 11, Aug. 1982)
(refusal of two women to individually push heavy carts held protected and concerted where they had good-faith belief they would be physically injured by pushing cart alone and task had formerly been done by men)

Leo G. Kohls v. N.L.R.B. 629 F.2d 173 (C.A.D.C., 1980)
(discharge of Ee for refusing to drive assigned truck because *breaks were not good enough for me*, not unlawful, since protest and refusal not concerted and *Interboro Contractors* doctrine not applied, notwithstanding contention was Ee was asserting contractual right, where Ee was not asserting right on behalf of anyone other than himself nor speaking for others, no evidence Ee and U working in concert to assert contract, and fact Ee withdrew grievance filed on his behalf by U)

6095 OTHER FORMS OF ACTIVITY UNPROTECTED

ITT McDonnel and Miller, A Unit of Fluid Handling Division of International Telephone and Telegraph Corp. JD-337-82
(Ee's conduct in interfering with supervisor's removal of grievances which Ee had posted on E's bulletin boards, made available to U under contract, not protected, since E's conduct was neither reasonably related to assertion of contract right nor reasonable in the circumstances in view of Ee's actions in physically blocking supervisor's removal of grievances and his exit from bulletin board area; although Ee may take reasonable steps to enforce his view of bargaining agreement, such steps do not include physical confrontation)

6095-0100 Generally

Local 175, Automobile Workers, (UAW) v. N.L.R.B. 648 F.2d 1151 (C.A.D.C. Mar 1981)
(distribution of leaflets in nonworking areas of plant during nonworking time by U concerning U endorsed candidates for public office, not protected, since insufficient relationship to Ee's interests to come w/i guarantee of Section 7 mutual aid and protection where principal thrust of leaflet was to induce Ees to vote for specific candidates, not educate them on political issues relevant to their employment)

6095-6000 Seeking assistance of counsel at investigatory or disciplinary interview

Sentry Investigation Corp. 249 NLRB No. 120
(Ees have no statutorily protected right to be represented by outside counsel in investigatory or disciplinary interviews requested by their E; representation of Ee by his personal attorney is not equivalent of U representation w/i meaning of NLRB v. Weingarten; nor does representation of by his personal attorney constitute concerted activity w/i purview of Act as construed in Glomac Plastics)

8000 INDEPENDENT ACTIVITIES OF EMPLOYEES REPRESENTED BY RECOGNIZED UNION

8025 TYPES OF ACTIVITY

8025-6000 Protest not an attempt to engage in direct negotiations

United Brick and Clay Workers of America Local No. 957, AFL-CIO (Ralco Sewing Industries) JD-200-80
(Ee labor organization's posting on bulletin board of notices seeking to continue its solicitation of Ees' grievances so as to continue negotiating with E over grievances which should have been processed through contractual grievance procedure held unprotected, since posting was in continued derogation of certified U which was Ees' lawful representative)

8033 SANCTION OF ACTIVITY BY REPRESENTATIVE

8033-7800 Absence of sanction

Virginia Electric and Power Company 263 NLRB No. 144
(self-designated committee representing wildcat strikers was not engaged in protected concerted activities when it asked to meet with E during strike as basic objective of Act is to encourage negotiation and enforcement of collective bargaining agreements between Es and duly designated representative of Ees and such strikers was destructive of Us rights and obligations and U tried to get Ees back to work and told Ees strike was illegal)

8067 OBJECTIVES OF ACTIVITIES IN RELATION TO REPRESENTATIVES POSITION

8067-5000 Inconsistent with representatives position

8067-5000—Cont.

Virginia Electric and Power Company 262 NLRB No. 144

(self-designated committee representing wildcat strikers was not engaged in protected concerted activities when it asked to meet with E during strike as basic objective of Act is to encourage negotiation and enforcement of collective bargaining agreements between Es and duly designated representative of Ees and such strikers was destructive of Us rights and obligations and U tried to get Ees back to work and told Ees strike was illegal)

General Warehousemen, Local 598, Teamsters JD-(SF)-196-80

(Ees' conduct in circulating ptn, addressed to question of what type of insurance coverage Ees should be demanding during contract negotiations, which conduct sought to undermine U's declared bargaining goals regarding insurance coverage, held protected concerted activity)

N.L.R.B. v. Lummus Industries, Inc. 679 F.2d 229 (C.A. 11, June 1982)

(Ee who distributed leaflet which criticized both E and U and sought improvement of U representation engaged in protected concerted activity)

N.L.R.B. v. Lummus Industries, Inc. 679 F.2d 229 (C.A. 11, June 1982)

(Ee who made telephone survey of Ees to elicit their concerns over contract and whether they had heard or believed rumors of sellout by U to E engaged in protected activity since no evidence survey taken was accusing company of bribery knowing such accusation was false or with reckless disregard for truth)

8067-8700 Effort to persuade union to take more aggressive position with respect to employer's adverse actions

General Electric Company 253 NLRB No. 155

(Ee's statement that if they had good U leadership like old John L., men would probably hit the bricks until things straightened out held protected and not incitement to engage in wildcat strike)

9000 REFRAINING FROM PROTECTED ACTIVITY

512 EMPLOYER INTERFERENCE WITH EMPLOYEE SECTION 7 RIGHTS (8(a)(1))

0100 GENERALLY

Palas Corporation JD-(SF)-28-82

(illegality of E's conduct determined by whether conduct had tendency to interfere with free exercise of Ee rights under Act)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)

(elements of Section 8(a)(1) violation are determined by reference to objective test; it is not necessary to show that particular Ees actually felt coerced, or that E intended to produce impermissible effect; rather only need show that E's actions would tend to coerce reasonable Ee; however, E can defend on grounds of business justification and then there is violation only when Sec. 7 rights outweighs business justification for E's actions)

N.L.R.B. v. Burger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)

(*test of interference with right of self-organization is not whether attempt at coercion has succeeded or failed, but whether E has engaged in conduct which reasonably tends to interfere with, restrain or coerce Ee in free exercise of their Section 7 rights*)

Fun Striders, Inc. v. N.L.R.B. 686 F.2d 716 (C.A. 9, 1981)

(violation of one of Sections 8(a)(2)-(5) will support a finding that Section 8(a)(1) has been derivatively violated)

Fun Striders, Inc. v. N.L.R.B. 686 F.2d 716 (C.A. 9, 1981)

(independent violation of Sec. 8(a)(1) is established by showing: (1) that Ees are engaged in protected activities; (2) that E's conduct tends to *interfere with, restrain, or coerce Ees* in those activities; and (3) that E's conduct is not justified by legitimate and substantial business reason)

0117 SCOPE OF PROSCRIPTION

0117-5000 Extends to employers other than those of employees engaged in protected activity

N.L.R.B. v. Villa Avila, Palm Springs Sun Dial and Tom Sawyer Construction Co. 673 F.2d 281 (C.A. 9, Mar. 1982)

(*Section 2(3) of Act states that Ees protected by act shall not be limited to Ees of particular Er.* Thus Ees of U subcontractors protected from acts of non-U general contractors in control of job site)

0125 INDIVIDUALS AFFECTED

0125-1200 Laid off employees

E. R. Carpenter Co. 260 NLRB No. 091

(E's failure to recall laid off U adherent during general recall not violative where E followed routine recall procedures and Ee was not home to receive phone call requesting return to work; moreover, fact that Ee was one of best workers not relevant where past work performance had no bearing upon order of recall)

Philips Industries, Inc. Lau Division JD-424-82

(refusal to reinstate laid off Ee to former position because he filed grievance under collective-bargaining agreement violative)

0125-1400 Former employees

Mineola Ford Sales, Ltd. 258 NLRB No. 052

(E's request that discharged Ee submit detailed information to E each week concerning Ee's efforts to obtain interim employment and hours worked and amounts of earnings in such employment, not unlawful, since E was *interrogated* not about U or other concerted protected activities, but rather about matters of legitimate concern to E regarding its possible backpay liability; and lack of any obligation to comply on dischargee's part is not sufficient to make request for information unlawful; W. W. Granger, Inc., 255 NLRB No. 145, distg)

W. W. Grainger, Inc. 255 NLRB No. 145

(E who questioned discharged Ee who was seeking reinstatement in Bd proceeding about his U activity violated Act where it failed to observe *Johnnie's Poultry* safeguards; it is recognized that E's power to coerce a current or prospective Ee is greater than discharged Ee who may be reinstated, however this distinction does not justify diminution of *Johnnie's Poultry* safeguards)

W. W. Grainger, Inc. 255 NLRB No. 145

(interrogation of former Ee who voluntarily quit concerning U activities without observing *Johnnie's Poultry* safeguards not violative of Act as danger of coercion is absent)

Schlegel Oklahoma, Inc. 250 NLRB No. 012

(discharged Ee found statutory Ee for purposes of finding threat against him and other Ee unlawful)

N.L.R.B. v. Southern Plasma Corp. 626 F.2d 1287 (C.A. 5, 1980)

(refusal to rehire discharged Ee not violative of Sec. 8(a)(1) as Sec. 8(a)(1) deals with Ee rights and applicant no longer Ee)

Motor Inn of Perrysburg, Inc. d/b/a Holiday Inn of Perrysburg v. N.L.R.B. 647 F.2d 692 (C.A. 6, May 1981)

(threat to terminate restaurant operation rather than bargain with U, not violative, since evidence disclosed that any such threat was made only to former Ees and did not suggest threat was to be recommunicated to then current Ees)

0125-1800 Union stewards

Haco Engineering Company 265 NLRB No. 062

(telling former Ee he would not rehire him because of his past activities as U steward violative)

Champion Parts Rebuilders, Inc., Northeast Division 260 NLRB No. 090

(warning issued to U steward for minor infraction violative where done in retaliation for stewards filing grievance over foreman's performing bargaining unit work)

Clarklift of St. Louis, Inc. 259 NLRB No. 062

(discharge of U steward for instructing Ees to falsify work tickets and using his office as steward to gain special favors for himself not violative where sole cause for discharge was unprotected activity of steward)

Cook Paint and Varnish Company 258 NLRB No. 166

(in seeking to obtain from U steward representing Ee in grievance/arbitration procedure information relating to grievance, E may not unilaterally determine relevance of information and its entitlement to obtain such information through threats of discipline against steward; such actions restrain Ees in their willingness to candidly discuss matters with their representative and also inhibit stewards in obtaining needed information)

Cook Paint and Varnish Company 258 NLRB No. 166

(threatening U steward with discipline for refusing to submit to questioning and to submit written material kept in course of steward's representation of Ee in grievance/arbitration proceeding, unlawful, where steward's participation throughout grievance process was result of execution of duties as steward, questioning impinged upon protected activity of Ee and steward, and such conduct cast chilling effect over all Ees and stewards in disciplinary matters; however, Bd did not herein hold that all discussions between Ees and stewards are confidential and protected or that stewards are, in all instances, insulated from interrogation)

Cook Paint and Varnish Company 258 NLRB No. 166

(where E unlawfully questioned and threatened U steward for not submitting information concerning consultations with Ee about his grievance, Bd rejected E's defense that, pursuant to bargaining obligation of Sec. 8(d), steward was obligated to turn over documents in his possession relating to grievance, obtained in course of representing Ee; no case supports proposition that notes kept by steward representing Ees are subject to requirements of supplying relevant information; and, even if information was relevant to bargaining and E was entitled to it, Act provides appropriate mechanism for E to assert its rights, but E rejected such course)

United States Postal Service 258 NLRB No. 193

(threatening U steward with discipline if he did not return to his work station not violative as steward was not engaged in protected activity at time)

0125-1500—Cont.

United States Postal Service 258 NLRB No. 193
(refusing to allow U steward to leave his work area contrary to normal policy violative when in retaliation for steward's protected activity as shop steward)

United States Postal Service 258 NLRB No. 193
(violation where supervisor threatened U steward with disciplinary action for refusing to attend meeting unless informed in advance of purpose, since meeting did not concern supervisor-Ee relationship which existed between them as supervisor was addressing Ee in his U steward capacity and by threatening Ee in connection with his performance as U steward interfered with his Sec. 7 rights to engage or not engage in U activities as steward)

New York Telephone Company JD-(NY)-76-82
(discipline of U steward for using his desk phone for U business not violative where no one was supposed to use office phones for personal or U business and there was phone available in Ee lounge which steward could use on his break or lunch time)

0125-1600 Employees of person other than respondent

Monongahela Steel Corporation JD-392-80
(successor's refusal to hire applicant because while employed by predecessor he was leader of concerted group activity designed to establish level of wages and benefits and nature of working conditions under which they would be employed when successor took over, unlawful)

0125-2800 Off-duty employees

S. B. Thomas, Inc. 256 NLRB No. 132
(notwithstanding laid-off Ee's testimony that she was waiting to be recalled, laid-off Ee held not off-duty Ee during period she was leafletting U material on E's premises, where there were no *objective factors* entered into evidence such as E's experience, future plans, circumstances of layoff, whether there was decline in business, etc.; accordingly, GC did not make requisite showing that Ee enjoyed reasonable expectancy of recall)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital 255 NLRB No. 048
(E's *no-access* rule restricting off-duty Ees from remaining on hospital premises cannot be used to prohibit solicitation by off-duty Ees, since it did not prohibit access for *all* purposes; rule did not meet standard enunciated in *Tri-County Medical Center, Inc.*, 222 NLRB 1089 (1976))

0125-3700 Employees not engaged in protected activity

N.L.R.B. v. Rich's Precision Foundry, Inc. 667 F.2d 613 (C.A. 7, Dec. 1981)
(layoff of 2 Ees caused by reduction in work due to discriminatory dischrge of 2 other Ees violative as layoffs would not have occurred but for discriminatory action)

0125-5800 Seasonal employees

Maine Apple Growers, Inc. 254 NLRB No. 060
(delaying recall, after election, of seasonal apple packers, who had requested raise in wages and had directed grievance letter to E's board of directors, assertedly because they were responsible for low production held violative where E's business justification for its action had not been established; E's unlawful statement to Ees that *agitation* had to cease coupled with its unexplained deviation from its normal method of disciplining overly talkative Ees established E's unlawful motive)

0125-6700 Probationary employees

Georgia Kraft Company, Woodkraft Division 258 NLRB No. 121
(refusal of E to process grievance over discharge of probationary Ee because of his absenteeism not violative, since probationary Ee had no rights to such proceeding and grievance was not presented in conformity with contract terms)

Walker Die Casting, Inc. 255 NLRB No. 004
(discharging probationary Ees while on strike, violative)

Bucyrus-Erie Company 247 NLRB No. 089
(discharge of probationary Ee violative where E asserted reason for discharge was crack in weld Ee had completed but no other Ee had ever been discharged for that reason and true motive for discharge was Ee's protesting unsafe working conditions, a protected concerted activity)

Brockway Glass Company, Inc. JD-(SF)-117-81
(statement by E's assistant personnel manager that probationary Ee was terminated because —*(he) went to the U*, held violative)

0125-7000 Apprentices

Firmat Manufacturing Corp. 255 NLRB No. 153
(discharge of U card signer who was associated with E as an apprentice in educational program violative, notwithstanding he was not Ee w/i meaning of Sec. 2(3), since his discharge was integral part of pattern of conduct aimed at ridding shop of U adherents and penalizing Ees for their U activities)

0125-7200 Employees legitimately absent from work (sick leave, vacation, etc.)

Texaco, Inc. 260 NLRB No. 165
(when during course of economic strike, E ceased paying accident and sick benefits to 3 Ees who had been out of work on authorized sick leave prior to inception of strike it violated Act where it had no knowledge that Ees supported strike and fact that they were U members and had supported strikes in past not enough to show they supported this strike)

0125-7800 Supervisors

Gurabo Lace Mills, Inc. 265 NLRB No. 044
(issuance of warning to Ee found to be supervisor not violative of Sec. 8(a)(3) although in retaliation for engaging in U activities as supervisors are not protected under Act; warning also not violative under Sec. 8(a)(1) as Bd has disavowed *integral pattern of conduct rationale* as basis for finding violation of Sec. 8(a)(1). See *Chevrolet, Inc.* 262 NLRB No. 58 (1982))

Bechtel Power Corporation 264 NLRB No. [illegible]
(refusal to rehire supervisor who quit over alleged unlawful appointment of job steward, not unlawful, since such protest was not protected activity; Bd would not find appointment which prompted supervisor to quit unlawful absent notice and litigation of issue)

H. H. Robertson Company 263 NLRB No. 170
(*E violates Section 8(a)(1) by discharging supervisor for providing information to Bd regarding ULPs since providing of such information assists Ees in obtaining vindication of their rights through Bd's processes*)

Serendippity-Un-Ltd and Tigerrr, Inc. 263 NLRB No. 100
(in light of Bd's *Parker-Robb Chevrolet* decision issued subsequent to issuance of ALJ's decision, Bd reversed ALJ's finding that discharge of supervisor for participating in strike in protest over working conditions at E's plant violated 8(a)(1), since in *Parker-Robb* Bd held that discharge of supervisors for participating in U or concerted activity is not unlawful)

Earl Kuhns, d/b/a Frenchy's K & T and Earl's News Stand 263 NLRB No. 007
(discharge of supervisor because he failed to issue written disciplinary warnings to pro-U Ees so that E would be able to discharge them, violated Act as this interferes with rights of nonsupervisory Ees by permitting supervisors to respect statutory rights of Ees w/o fear of reprisal)

Roma Baking Company 263 NLRB No. 004
(discharge of supervisor who was vigorous U supporter not violative as protection of Act does not extend to supervisors who are disciplined or discharged for participation in U or concerted activity; See, *Parker-Robb Chevrolet, Inc.* 262 NLRB No. 58)

Howard Johnson Motor Lodge 261 NLRB No. 123
(asking supervisor if she had *heard any U talk*, what were Ees unhappy about, if she had attended U meeting or signed U card, not violative, since it is not unlawful for E to request or require such information from supervisor)

World Evangelism, Inc. 261 NLRB No. 088
(discharge of supervisor because he was unable to control U activity of Ees not violative where record does not establish that E expected supervisor to use coercive or unlawful means to further E's position or that it suggested he engage in any ULPs)

Beech Branch Coal Company 260 NLRB No. 122
(discharge of supervisor for siding with Ees against management over new work hours imposed by management, not violative; no exceptions)

Quick Find Co. 259 NLRB No. 144
(interrogation of supervisor by asking him if he knew about election ptn that E had just received held not violative, notwithstanding supervisor's wife, an Ee, was present, as E's interrogation of supervisor was legitimate and did not radiate unlawful fallout on Ee)

Cal-Walts, Inc. 258 NLRB No. 126
(termination of supervisor, not unlawful, since not for his refusal to unlawfully discharge Ees inasmuch as he did not perceive he was being ordered to commit unlawful act and did discharge Ees; nor was there pattern of unlawful conduct affecting Ees and supervisors alike where distinction between rights of Ees and supervisors can not be perceited by Ees as supervisor did not encourage or participate in same protected activity which caused unlawful discharge of Ees)

Hadison Manufacturing Company 256 NLRB No. 054
(discharge of supervisor who objected to unlawful layoff of Ee, encouraged recall of Ee, and made proposals which would have obstructed E's illegal goals, not unlawful, since supervisor's actions did not constitute refusal to engage in ULPs and facts did not *fall strictly w/i Section 8(a)(1) violation for firing supervisor because he would not engage in ULPs*; notwithstanding E understood supervisor would not cooperate in its desire to rid itself of U adherents; however his discharge violative on theory it was integral part of scheme to discharge Ees in his department for their U activities)

Empire Gas, Inc. of Denver 254 NLRB No. 076
(discharge of supervisor, unlawful where he was discharged contemporaneously with Ees for participating with them in bringing concerted presure upon E for favorable resolution of their complaint regarding futher bonus payments, and such discharge impacted directly upon statutorily protected rights of Ees)

0125-7500—Cont.

Times Herald Printing Company 232 NLRB No. 043
(discharge of supervisory Ees for engaging in U activities not violative where discharges in no way affected other Ees' rights)

B. E. & K., Inc. 252 NLRB No. 036
(interrogation of supervisors concerning their or others' U membership desires, or activities, not unlawful)

Childers Manufacturing Company, Inc. JD-(SF)-11-82
(in order for Bd to exercise jurisdiction over supervisory discipline or discharge, GC must, under doctrine that it must be *integral part of a pattern of conduct aimed at penalizing Ees for their U activities*, make affirmative showing that supervisory discipline is being used in order to strike down or attempt to strike down Ees' statutory rights; only when it is established that supervisory discipline is a necessary element in pattern of ULPs directed at Ees can it then be concluded that such discipline satisfies *integral part* doctrine and is w/i Bd's jurisdiction)

Albuquerque's Best Tires, d/b/a A. B. Tires JD-(SF)-283-81
(discharge of two supervisors who had protested working conditions not violative as act does not protect supervisory Ees; moreover E proved they were discharged for cause)

Pess, Inc.; J. Pess Inc.; and Riverside Warehouse, Inc. JD-441-81

Comfort Health Corporation d/b/a Kendallville Nursing Home JD-329-80
(discharge of supervisor solely for that supervisor's own U activities does not contravene...Act)

Belcher Towing Company v. N.L.R.B. 614 F.2d 88 (C.A. 5, Mar. 1980)
(E's discharge of ship's captain for refusal to enforce no solicitation rule requiring him to report all U activity on board his boat, unlawful, notwithstanding captain was supervisor since discharge motivated by his refusal to participate in unlawful surveillance)

N.L.R.B. v. Downslope Industries, Inc., and Greenbriar Industries, Inc. 676 F.2d 1114 (C.A. 6, Apr. 1982)
(discharge of supervisor who had complained of sexual harassment by another supervisor along with discharge of her supervisees who had been hired by supervisor and were either related to or friends of supervisor and who made similar complaints, unlawful, and supervisor ordered reinstated, since she was used as conduit to discharge her supervisees and squelch Section 7 activity or was an integral part of attempt by E to discourage exercise of Sec. 7 rights by Ees)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse 647 F.2d 905 (C.A. 9, June 1981)
(cts have found that Es violated 8(a)(1) by conduct toward supervisors and ordered reinstatement in 3 basic situations; first, discipline of supervisor for refusing to commit ULP; second, discipline of supervisor for testifying before Bd; and third, discharge of supervisor as pretext for terminating pro-U crew which he had hired as his own crew)

0125-8700 Relatives of employees

Operating Engineers, Local 400 268 NLRB No. 168
(terminating independent contract for janitorial service of Ee's wife because Ee engaged in protected activity)

Brunswick Hospital Center, Inc. 265 NLRB No. 112
(statements made by E to alleged discriminatee expressing E's annoyance with organizational efforts of alleged discriminatee's wife who was an Ee, held violative, since statements interfered with alleged discriminatee's rights under the Act)

Maine Apple Growers, Inc. 254 NLRB No. 060
(failure to recall Ee because she lived with her mother, U advocate, who was also Ee but one E did not want to come back to work, violative)

Charles Dean d/b/a Hopp Topp Mfg. Co. 280 NLRB No. 154
(telling Ee that Ee had better talk to his brother, fellow Ee, and get him to vote no in election or brother would not be working there any longer, violative)

0125-8900 Managerial employee

Seven-Up Bottling of Phoenix, Inc. 263 NLRB No. 085
(discharge of managerial Ee who had tried to withdraw monies from pension fund not violative where Act's protection did not extend to him as managerial Ee. See *Parker Robb Chevrolet, Inc.* 262 NLRB No. 52)

0125-9000 Confidential employees

N.L.R.B. v. Hendricks County Rural Electric Membership Corp. 454 US 170 (U.S. SCt. Dec. 1981)
(discharge of confidential secretary who protested discharge of fellow Ee violative where secretary did not act in *confidential capacity*, with respect to labor relations matters and was thus protected by Act)

0125-9800 Applicants for employment

J. M. Tanaka Construction, Inc. v. N.L.R.B. 675 F.2d 1029 (C.A. 9, Apr. 1982)
(requiring job applicant to sign agreement that E would pay him and not U all fringe benefits and would be responsible for reimbursement to U if problem arose, held violative of Ees' right to organize because they might conclude that this was binding agreement to remain non-U)

0133 ISOLATED ACTS

Carruthers Ready Mix, Inc. 262 NLRB No. 090
(coercive remark made to striker in presence of other strikers, not isolated, since its coercive effect could be far reaching)

Complas Industries, Inc. 255 NLRB No. 186
(E's questioning of one Ee about another Ee's work performance and U activity, unlawful since it was neither isolated nor innocuous and did not meet *Johnnie's Poultry* standards, where Ee was questioned more than one time on same subject by high management official and was not assured against reprisals or informed that he was free to refuse to answer; neither *Johnnies Poultry* nor later cases have limited requirements of that case strictly to attorneys)

Musicians Union Local 47, etc. (American Broadcasting Company, etc.) 256 NLRB No. 068
(U's unlawful withholding of member's paychecks transmitted by Es through U, for nonpayment of dues held not de minimis, notwithstanding checks had ultimately been transmitted to member and U had promulgated curative notice, where notice did not satisfy Bd's standards for effective repudiation of ULPs inasmuch as it did not refer to withholding of member's paychecks nor state that U would refrain from doing so as lever to extract members' dues, notice was not published until 5 months after member received checks, and E had engaged in similar actions with respect to other members)

Douglas & Lomason Company 253 NLRB No. 009
(E's violations not isolated, or *de minimis* since E's actions were reasonably calculated to coerce Ees in exercise of their Section 7 rights)

Brooks Cameras, Inc. 250 NLRB No. 116
(interrogation which, although addressed to single Ee, concerned all Ees in unit and sought information that could be used to discourage or prevent unionization of these Ees found neither isolated nor minimal)

Safeway Stores, Inc. JD-482-82
(isolated threat of suspension for contacting U about work related problem before coming to E found technical violation not meriting order)

Mr. Herbert of California, Inc. JD-(SF)-83-81
(E's asking prospective supervisor *suppose there is a vote, How are you going to vote?*; not violative, since statements were too vague and ambiguous; statements reflected isolated interrogation conducted in noncoercive setting)

Byrne Sand & Gravel Co., Inc. JD-314-80
(supervisor asking Ee *what's this I hear about U*, not unlawful, where isolated incident and absent U animus)

Borman's, Inc. v. N.L.R.B. 676 F.2d 1138 (C.A. 6, May 1982)
(E's forbidding Ees from advertising grievance by *wearing a shirt with the slogan 'I'm tired of bustin' my ass'* not violative, since E's conduct was isolated and no substantial evidence supported Bd's finding that wearing of T-shirt constituted exercise of any right protected under NLRA)

N.L.R.B. v. Brooks Cameras, Inc. 691 F.2d 912 (C.A. 9, Nov. 1982)
(interrogation isolated and minimal and no remedial order warranted, where E had good faith belief individual questioned was supervisor, no other Ees present at interrogation, and no indication individual questioned told fellow Ees of incident)

Childers Manufacturing Company, Inc. JD-(SF)-11-82
(in order for Bd to exercise jurisdiction over supervisory discipline or discharge, GC must, under doctrine that it must be *integral part of a pattern of conduct aimed at penalizing Ees for their U activities*, make affirmative showing that supervisory discipline is being used in order to strike down or attempt to strike down Ees' statutory rights; only when it is established that supervisory discipline is a necessary element in pattern of ULPs directed at Ees can it then be concluded that such discipline satisfies *integral part* doctrine and is w/i Bd's jurisdiction)

0142 DE MINIMIS VIOLATIONS

Holladay Park Hospital 262 NLRB No. 026
(in determining whether particular action warrants finding of violation and affording a remedy, it is irrelevant that respondent may not have engaged in any other unlawful acts, or that U has been successful in negotiating a contract despite respondent's unlawful conduct, or that the Ees have discontinued their protected concerted activities because of respondent's unlawful conduct)

0142—Cont.

Douglas & Lomason Company 263 NLRB No. 009
(E's violations not isolated, or *de minimis* since E's actions were reasonably calculated to coerce Ees in exercise of *their* Section 7 rights)

Edgar L. Landen t/a Speed Mail Service 261 NLRB No. 064
(E's unexplained change w/o warning during U campaign of time of distribution of Ees' paychecks from Friday morning to Friday afternoon so that Ees could not cash them at noon held not *de minimis* or noncoercive; unlawful motive became unmistakably clear upon E's sudden resumption of its established practice of morning distribution after U lost election and it is unlikely Ees missed import of this *sudden* action)

Brooks Cameras, Inc. 260 NLRB No. 116
(interrogation which, although addressed to single Ee, concerned all Ees in unit and sought information that could be used to discourage or prevent unionization of these Ees found neither isolated nor minimal)

Gibbs Die Casting Aluminum Corporation JD-267-81
(unlawful promulgation and enforcement of no-solicitation rule not so *de minimis* as not to warrant remedial order, where E maintained rule at time of incipient U organizational efforts; and although only one U activist may have been disciplined, coercion of U activist inherently tends to have impact well beyond immediate object)

N.L.R.B. v. Brooks Cameras, Inc. 691 F.2d 912 (C.A. 9, Nov. 1982)
(interrogation isolated and minimal and no remedial order warranted, where E had good faith belief individual questioned was supervisor, no other Ees present at interrogation, and no indication individual questioned told fellow Ees of incident)

0150 ACTS OR STATEMENTS NEUTRALIZING COERCIVE EFFECT OF PREJUDICIAL CONDUCT

The Broyhill Company 260 NLRB No. 183
(posting of notice that disavowed supervisor's unlawful statements, declared it would not in that manner or any other manner interfere with Ees' Sec. 7 rights, and named those rights on day after E learned of said statements obviated need for additional remedial action; posting 5 weeks after ULP was timely and sooner than posting in litigated cases; publication was adequate where notice was on E's bulletin board and 3 Ees testified to seeing it--to imply that other Ees might have had no chance to see it was speculation; and notice was sufficiently specific although it did not name supervisor or mention circumstances, since Bd notices do not do so)

Association of Apartment Owners of The Whaler on Kaanapali Beach 255 NLRB No. 010
(E's statements in Ee meeting that if U come in wage rates would be set by U-master agreement not violative where upon questioning by Ees, E agreed that wages would be negotiable, thus neutralizing potentially violative statement)

Scoggin, Inc. JD-439-81
(E's president telling Ees, who had contacted U and secured authorization cards, in angry tone he could not believe Ees sought U representation behind his back, not implied threat nor unlawful, in view of presence of U representatives and their immediate intervention, reassurance to Ees, and explanation to Ees and E's president that Ees were protected under federal law from discharge for U activities)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation JD-(SF)-140-80
(supervisor threatening Ees with discharge if they continued to wear U buttons, not unlawful, where E had no proclivity towards ULPs, E promptly informed supervisors that Ees were free to wear U buttons, specifically advised Ees threatened that threats were not position of E and that they were free to wear buttons, and posted notice to that effect on bulletin board)

N.L.R.B. v. American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. 670 F.2d 1236 (C.A. 1, Feb. 1982)
(use of U adherent as translator for anti-U speech by E not violative where translating just ministerial function, part of Ee's daily responsibilities and group that needed translation was small so easy for Ee to convey true feelings)

0150-5000 Neutralizing effect not attained

Electric Hose and Rubber Company 262 NLRB No. 014
(E's statement that NLRA requires it to bargain in good faith not sufficient disclaimer as to negate fears of plant closure, job loss, frozen or reduced wages which where all mentioned by Ees possible results of unionization)

The Celotex Corporation 259 NLRB No. 159
(threat by supervisor to Ee who opposed U during critical period that if U won, E would go by book, violative, because such threat might inhibit Ee from changing his mind about U)

Lake Development Management Co. 259 NLRB No. 069
(E's threat to discharge Ees for U activity during discussion with Ee concerning U meeting, violative notwithstanding E's contention that threat was effectively retracted, since E's subsequent statement to Ees that they could attend U meetings w/o fear of termination was not effective repudiation of E's unlawful conduct, where E's statement did not disavow E's threat as unlawful, disavow E's other contemporaneous unlawful conduct, or give assurances to Ees that E in future would not interfere with Sec. 7 rights)

Southern Moldings, Inc. 265 NLRB No. 115
(posting of valid no-solicitation, no-distribution rule did not effectively repudiate unlawful rule where E took no positive steps to inform Ees that rule had been changed, old rule was posted throughout most of pre-election campaign, and new rule was posted for the 9 days immediately preceding election)

Musicians Union Local 47, etc. (American Broadcasting Company, etc.) 265 NLRB No. 065
(U's unlawful withholding of member's paychecks, transmitted by Es through U, for nonpayment of dues held not de minimis, notwithstanding checks had ultimately been transmitted to member and U had promulgated curative notice, where notice did not satisfy Bd's standards for effective repudiation of ULPs inasmuch as it did not refer to withholding of member's paychecks nor state that U would refrain from doing so as lever to extract members' dues, notice was not published until 5 months after member received checks, and E had engaged in similar actions with respect to other members)

Montgomery Ward & Co., Inc. 263 NLRB No. 023
(supervisor's statement that he could no longer support Ee's application for management position because of Ee's U activities unlawful, notwithstanding supervisor's later repudiation of remarks)

Semi-Serv, Division of Catalox Corporation 263 NLRB No. 106
(E's rescission of unlawful no solicitation rules does not preclude finding of violation where Ees were not effectively notified of rescission)

Stanley M. Feil, Inc. 260 NLRB No. 065
(supervisor asking Ee what she thought of speech in opposition to U by E's president, unlawful, since question necessarily constituted attempt to ascertain Ee's feelings about U and had coercive effect where supervisor had previously interrogated Ee)

Sturdi-Craft, Inc. JD-(SF)-151-82
(where supervisors had threatened Ees with plant shutdown if the U came in, imposed more rigorous work scheduled and discharged U's key in-plant organizer, subsequent series of campaign letters which stated that supervisors who threatened shutdown had spoken without authority and gave assurances that plant would not be shutdown if U came in, not effective enough to preclude E from having to take further remedial action in light of other ULPs which were not mentioned in letters)

Kimberly-Clark Corporation JD-(SF)-291-81
(no effective repudiation of threats of E's assistant superintendent by disavowals and assurances of E's employee relations manager where not all threats repudiated and in view of subsequent proscribed conduct, and attempted disavowal by E's manager was untimely to effectively neutralize threats made ten months previously)

Graves Trucking, Inc. v. N.L.R.B. 692 F.2d 470 (C.A. 7, Nov. 1982)
(in affirming Bd finding the E was responsible for physical assault by supervisor on U steward who was engaged in protected concerted activity since incident pertained to matters w/i responsibilities E had conferred on supervisor, ct concluded that E's single expression of disapproval after the fact did not suffice as a repudiation where such disapproval was not made known to all Ees affected and, in any event, was accompanied and followed by reiteration of supervisor's authority)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. 676 F.2d 483 (C.A. 11, May 1982)
(statements couched in terms of E's opinion of deleterious effects U would have on competitive position of plant, violative where they were not *carefully phrased on basis of objective fact* and clear implication was that Ees' continued employment and plant's reopening were contingent upon vote against U; E's assurance to Ees that outcome of election would not determine future of plant could not remove threatening import of E's other messages)

0167 ATTITUDE OR MOTIVE OF EMPLOYER

Fairleigh Dickinson University 264 NLRB No. [illegible]
(*test for whether interrogation is coercive. It is well settled that test of interference, restraint, or coercion under Section 8(a)(1) does not turn on E's motive or whether coercion succeeded or failed. Test is whether E engaged in conduct which it could reasonably be said, tends to interfere with free exercise of Ees' rights under Act*)

CTS Keene, Inc. 267 NLRB No. 141
(E's intent not material to finding that its interrogation of Ee violated 8(a)(1))

0167—Cont.

Baltimore Rebuilders, Inc. v. N.L.R.B. 611 F.2d 1372 (C.A. 4)
(in same way that E, unmotivated by intent to discourage U membership, may make decisions having foreseeable effect of discouraging U membership, so also may U make decisions reasonably calculated to further welfare of all Ees it represents, non-U as well as U, even though foreseeable result of decision may be to encourage U membership)

0167-3300 Neutral attitude

Central Freight Lines, Inc. 266 NLRB No. 063
(terminal manager's telling leadman not to participate in U activities and to remain neutral)

0167-6700 Antiunion attitude

Air Products and Chemicals, Inc. 263 NLRB No. 045
(E's extreme hostility to U organizers during prior campaign, one year earlier, used as background in evaluating ULP allegations in instant proceeding)

Gasley Industries, Inc. 260 NLRB No. 189
(E's president's reference to his Ees' *plans* made during U's organizing campaign held violative, since reference was made to Ees' U activities and in context of E's animus towards U and was veiled, though clear, reference to (Ees') U activity)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility 260 NLRB No. 073
(letter to unit Ees from E's vice president making clear E's opposition to U and instructing Ees *do not sign a U card — under any circumstances — you don't know what it's going to cost you in the future.* held violative)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility 260 NLRB No. 073
(E's making clear, by letter and speech to its assembled Ees *that their choice is simply between no U* or strikes, violence, layoffs and related adverse consequences held violative in context of E's intense anti-U campaign and accompanying acts of discrimination and coercion)

Limestone Apparel Corp. 255 NLRB No. 101
(E's dislike for Us communicated to his Ees is factor which may be evaluated, along w/o other pertinent evidence, in arriving at actual cause of Ees' discharge)

Crown Cork & Seal Company, Inc. 255 NLRB No. 004
(E's hostility to Ee (U advocate) was evidenced by E's adverse references to Ee's *attitude* which E had linked to Ee's protected efforts to obtain reinstatement of a discharged Ee)

Edgar L. Landen t/a Speed Mail Service 251 NLRB No. 064
(E's unexplained change w/o warning during U campaign of time of distribution of Ees' paychecks from Friday morning to Friday afternoon so that Ees could not cash them at noon held not *de minimis* or noncoercive; unlawful motive became unmistakably clear upon E's sudden resumption of its established practice of morning distribution after U lost election and it is unlikely Ees missed import of this *sudden* action)

Permanent Label Corporation 248 NLRB No. 021
(where most of E's anti-U activity occurred after violative discharge of 2 U adherents, this activity can be used to support finding of E's anti-U attitude immediately prior to discharge)

Eight In One Pet Products, Inc. JD-(NY)-106-82
(in absence of evidence of E's animus towards U, discriminatory motive (on part of E) may not be inferred)

Marion Distributing Company, Inc. JD-702-80
(it is reasonable unlawful statements made to U representative were intended to be related to Ees directly involved; such statements demonstrate E's antiunion animus and are violative as if directly communicated to Ees)

Cardinal Heating and Cooling, Inc. JD-825-79
(anti-U animus may be shown by conduct that does not violate Sec. 8(a)(1))

Jack Horton d/b/a Horton Construction Company JD-797-79
(layoff motivated by Ees U activity violative, and showing of animous independent of layoff itself is not essential element in finding discrimination)

Bandag, Incorporated v. N.L.R.B. 583 F.2d 765 (C.A. 5)
(Bd's finding *multitude* of other acts displaying anti-U animus of E and its supervisors, though not alleged as independent violations, were relevant in assessing violations that were alleged in complaint)

0167-8300 Motive

Frank J. Schroeder d/b/a National Apartment Leasing Company 263 NLRB No. 080
(telling Ee that E would fold and everyone would lose their jobs if U's organizing efforts succeeded, violative; such remarks may reasonably be said to interfere with free exercise of Ee rights under Act and neither speaker's intent nor successful effect of remarks on Ee is material)

T.H.E. Co. d/b/a L. D. Brinkman Southeast 261 NLRB No. 026
(Bd rule for purposes of Sec. 8(a)(1) is that it is not E's intent or effect of conduct, but whether *conduct may reasonably be said to have tendency to interfere with exercise of Ee rights under Act*)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 049
(E's statement to Ees on different occasions that, if he were able to remove 30 percent of U supporters, he would be able to win election, unlawful; such statement was highly persuasive of E's unlawful motive in refusing to recognize and bargain with U and in discharging or failing to retain certain U Ees who had been employed by predecessor E)

Wayne Construction, Inc. 259 NLRB No. 062
(*discriminatory motive, otherwise established, is not disproved by E's proof that it did not weed out all U adherents*)

Saint Luke's Hospital 258 NLRB No. 049
(supervisor's asking Ees why they wanted U and whether it was related to her supervisory activity violative, as E interference, restraint and coercion does not turn on motive but whether conduct may reasonably be said to interfere with free exercise of Ee rights)

Burnup & Sims, Inc. 256 NLRB No. 143
(discharge of Ees assertedly because they failed to report to work held violative where E had given Ees permission to be absent from work to consult with Bd, EEOC, attorney and labor U concerning Ees' job security and other work problems notwithstanding work was interrupted; E's motive irrelevant as reason for discharge was for engaging in protected concerted activities)

Limestone Apparel Corp. 255 NLRB No. 101
(timing of discharge is persuasive evidence as to E's motivation)

Maine Apple Growers, Inc. 254 NLRB No. 069
(delaying recall, after election, of seasonal apple packers, who had requested raise in wages and had directed grievance letter to E's board of directors, assertedly because they were responsible for low production held violative where E's business justification for its action had not been established; E's unlawful statement to Ees that *agitation* had to cease coupled with its unexplained deviation from its normal method of disciplining overly talkative Ees established E's unlawful motive)

Intermountain Rural Electric Association 253 NLRB No. 164
(manager's remark to U adherent that he had been thinking of suspending her and that she would *probably be fired* if she failed to report for work despite having doctor's note to take leave, violative, since remark was motivated by adherent's U activities)

Chester Valley, Inc. 251 NLRB No. 190
(neither E intent not to threaten Ees nor absence of Ee coercion in reaction to E's threats render threats lawful, since test of interference and coercion under 8(a)(1) does not depend on E's motive nor on successful effects of coercion; rather, legality is determined by whether conduct may reasonably be said to have tendency to interfere with exercise of Ee rights under Act)

Norton Concrete Company of Longview, Inc. 240 NLRB No. 172
(motive or whether coercion succeeded or failed immaterial to prove violation of Sec. 8(a)(1); test is whether E has engaged in conduct which reasonably tends to interfere with free exercise of Ee rights under Act)

Permanent Label Corporation 248 NLRB No. 021
(fact that E converted violative discharge to suspension w/o pay does not legalize discharge as discriminatory motive still exists)

Bell Industries, Inc. JD-479-82
(asking Ee repeatedly why he did not take advantage of availability of E furnished T-shirts with anti-U message to wear something more comfortable than too warm flannel shirt, unlawful, since coercive regardless of motivation)

Eight In One Pet Products, Inc. JD-(NY)-106-82
(in absence of evidence of E's animus towards U, discriminatory motive (on part of E) may not be inferred)

Lovard Industries, Limited JD-293-82
(ordering U adherent Ees to *get the hell out* held violative where E's order was motivated by U filing charge)

The Berry Schools v. N.L.R.B. 653 F.2d 966 (C.A. 5, Aug 1981)
(management can take unfavorable action for good cause, or bad cause or no cause at all; it has, as master of its own business affairs, complete freedom with but one specific definite qualification; it may not take unfavorable action when real motivating purpose is to do that which Sec. 8(a)(1) forbids)

The Berry Schools v. N.L.R.B. 653 F.2d 966 (C.A. 5, Aug 1981)
(E's knowledge of Ee's protected activity and its biased attitude could not support finding of ULP; unlawful motivation can not be based solely on general bias or anti-U attitude of E, whether proved or conceded, but must be established by other facts in each individual case)

TRW-United Greenfield Division v. N.L.R.B. 637 F.2d 410 (C.A. 5, 1981)
(test for violation of 8(a)(1) is whether E's questions, threats, or statements tend to be coercive, not whether Ees are in fact coerced and statement must be evaluated in light of totality of circumstances)

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0167-8300—Cont.

Ad Art, Inc. v. N.L.R.B. 645 F.2d 669 (C.A. 8, Dec 9, 1980)
(respondent's contention that Bd's standard for measuring motivation was incorrect, that it should have used *dominant motive* rather than motivation *in large measure* or *in large part*, rejected; Bd is not required to use particular language in its findings in each case and in this case it has not been demonstrated that there is a meaningful difference between Bd's finding that discharge was *in large measure* or *in large part* unlawfully motivated and a finding that the dominant motive was unlawful)

Fun Striders, Inc. v. N.L.R.B. 658 F.2d 716 (C.A. 9, 1981)
(although anti-U motive is required in Sec. 8(a)(3) violations, it is not essential element of Sec. 8(a)(1) violations; nonetheless, motive is relevant)

N.L.R.B. v. Wirmer and Becker Contracting Engineers, and Electrical Workers Local Union 497 654 F.2d 731(T) (C.A. 9, June 1981)
(*Section* 8(a)(1), 8(a)(2), 8(b)(1)(A) and 8(b)(2) are violated only when actor's *true purpose* in discriminating was to encourage or discourage U membership; intent must be proved specifically unless actor's conduct implied prohibited motive)

L'Eggs Products, Inc. v. N.L.R.B. 619 F.2d 1337 (C.A. 9, 1980)
(If discharge is motivated by both legitimate business consideration and protected U activity, improper motive must be shown to be dominant one for discharge to be violative)

0183 INDIRECT INTERFERENCE

EMR Photoelectric, A Division of Sangamo Weston Inc. 251 NLRB No. 214
(Bd's statement made in Fedelity Telephone that *A respondent is responsible only for the remarks it makes to Ees and not for the impressions that Ees may derive from remarks* was not intended to license interference with Ees' rights by use of subtlety, innuendo, and inference, prohibiting only blunt and categorical acts of restraint and coercion)

0183-5000 Employment reference

Arnold Ready Mix Corporation 259 NLRB No. 026
(violation where E threatenes Ees with reprisals, including bad work assignment and bad references because they filed grievances protesting E's use of relatives while other U members were on layoff)

5000 FORMS OF EMPLOYER CONDUCT

5006 STATEMENTS BY EMPLOYER

L.B.L., d/b/a China Night of Superior JD-373-82
(threatening Ee with $500,000 civil lawsuit for surreptitiously taping two E meetings, violative, as there was no wrong in taping because it was part of concerted activity to organize collectively and threat of substantial fine interfered with Sec. 7 rights)

5006-0100 Generally

Cardio Data Systems Corp. 264 NLRB No. 011
(fact that Ee may on occasion start discussion with supervisors about U held not to excuse coercive and intimidating statements made by supervisors)

Conair Corporation 261 NLRB No. 178
(fact that 8(a)(1) statement is uttered by *friendly supervisor* does not lessen severity of impact of such statement and, in fact, warnings from such friendly source may carry an even greater aura of reliability and truthfulness and, therefore, bedoubly effective)

Conair Corporation 261 NLRB No. 178
(E's proffer of evidence to show that its supervisors were instructed not to make unlawful statements is no defense to supervisors' statements found unlawful herein, since the only question is whether statements were in fact made)

Conair Corporation 261 NLRB No. 178
(coercive and unlawful effect of statement is not blunted merely because accompanied by laughter or made in an offhand way)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility 260 NLRB No. 073
(*Section* 8(a)(1) and *Section* 8(c) of Act, when read together, leave E free to communicate to his Ees his views respecting Us so long as that communication does not contain a *threat of reprisal or force or promise of benefit*)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(Bd is entitled to consider emphatic anti-U attitudes as *background* against which to measure impact on Ees of management's statements and conduct)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(in finding 8(a)(1) violations, ALJ considered fact that E's statements were part of overall pattern of conduct aimed at coercing Ees in exercise of their statutory rights and that E had the power to hire and fire Ees; moreover, E never gave assurances against reprisal and, in some cases, did make threats of reprisal)

Atlas Minerals, Division of Atlas Corporation 256 NLRB No. 022
(supervisor's remark to Ee that he was told by his superior not to show favoritism to Ee and to keep an eye on him, not unlawful, since evidence did not meet GC'sburden of showing that Act had been violated by threat sounding in protected activity)

Marion Distributing Company, Inc. JD-702-80
(it is reasonable unlawful statements made to U representative were intended to be related to Ees directly involved; such statements demonstrate E's antiunion animus and are violative as if directly communicated to Ees)

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)
(Bd correctly examined E's remarks in determining coercive effect of its conversations with Ees *from listener's point of view*, and taking into account the economic dependence of Ees on their Es and necessary tendency of former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear)

TRW, Incorporated v. N.L.R.B. 654 F.2d 307 (C.A. 5, 1981)
(E may communicate to his Ees any of his views about Us so long as no threat of reprisal is involved)

TRW-United Greenfield Division v. N.L.R.B. 637 F.2d 410 (C.A. 5, 1981)
(test for violation of 8(a)(1) is whether E's questions, threats, or statements tend to be coercive, not whether Ees are in fact coerced and statement must be evaluated in light of totality of circumstances)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. 676 F.2d 483 (C.A. 11, May 1982)
(test is not whether E actions regarding effects he perceives unionization will have on operation of his plant actually have effect of restraining or coercing Ees, but whether they would tend to have such effect)

5006-1700 Coercive character question of fact for Board

N.L.R.B. v. Garry Manufacturing Company 630 F.2d 934 (C.A. 3, 1980)
(cts should defer to Bd expertise, particularly where Ees may be especially sensitive to implied threats)

5006-1701 Generally

St. Francis Hospital 263 NLRB No. 109
(E's statement to Ees at Ee meeting, to effect that Ees cannot count on having better benefits—and Ees shouldn't be fooled by fact that U can help Ees, not violative, since statement was found to constitute permissable electioneering; although E implied bargaining would take *anywhere up to several years*, he did not also imply that E would engage in bad-faith bargaining)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. 660 F.2d 1335 (C.A. 9, Nov 1981)
(*test is whether interrogation tends to be coercive not whether Ee was in fact coerced*)

5006-1733 Inherently harmless statements may become coercive as part of course of conduct

St. Francis Hospital 263 NLRB No. 109
(E statements, which individually were unobjectionable are not objectionable by virtue of their repetition)

St. Francis Hospital 263 NLRB No. 109
(supervisor saying, in response to Ee's refusal to talk to supervisor because Ee was too busy when requested, *okay just wait until you want to talk to me about something*, held not violative, since statement, standing alone was too nebulous to constitute unlawful threat of reprisal; no evidence linking supervisor's statement to any job action supervisor might take against Ee)

St. Francis Hospital 249 NLRB No. 017
(E's statement that if U won election it would refuse U demands, causing U to strike and Ees to lose jobs would not be violative standing alone but in context of E's other anti-U statements showing inevitability of strike and job loss it is violative)

Werth Engineering, Inc. JD-295-80
(questioning of Ee by E about his U activities is inherently coercive and fact that supervisor and Ee are personal friends is immaterial)

N.L.R.B. v. Laredo Coca Cola Bottling Company 613 F.2d 1338 (C.A. 5) (1980)
(in assessing E's activity alleged to constitute unlawful restraint or coercion, relevant inquiry is not limited to examining ostensible meaning or likely impact on Ees of E's statement; scope of inquiry must encompass entire pattern of E conduct)

J. M. Tanaka Construction, Inc. v. N.L.R.B. 675 F.2d 1029 (C.A. 9, Apr. 1982)
(asking Ees *what did you have to sign (U card) for?* held violative where E did not give reason for question or assurance of no reprisal, asked Ees other than charging party and had pattern of hostility toward U)

5006-1767 Must be considered in connection with surrounding circumstances

5006-1767—Cont.

St. Francis Hospital **263 NLRB No. 109**
(supervisor saying, in response to Ee's refusal to talk to supervisor because Ee was too busy when requested, *okay just wait until you want to talk to me about something,* held not violative, since statement, standing alone was too nebulous to constitute unlawful threat of reprisal; no evidence linking supervisor's statement to any job action supervisor might take against Ee)

St. Francis Hospital **263 NLRB No. 109**
(E's statement concerning its labor relations advisor (Modern Management Inc., a/k/a 2M in E's anti-U campaign) over whom Ees felt *really under duress* that *If U wins, 2M stays. If U doesn't win, 2M goes* held violative, since in event of U victory, management would continue to keep them (Ees) *under duress*)

Grove Valve and Regulator Company **262 NLRB No. 035**
(statements made by E in speeches to Ees prior to election which emphasized inevitability of strikes, threatened loss of strikers jobs and plant closure violative especially in light of fact that they were made in context of other violative conduct)

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**
(vice-president's remark to Ees, in response to Ee question whether U would be help to E, made in context of E's numerous ULPs during U campaign, that his prior job was *best he had ever had — but company went broke after U came in...* held violative as implied threat to Ees that U victory in election would result in loss of jobs)

Gauley Industries, Inc. **260 NLRB No. 189**
(E's president's reference to fact that his family would fight Ees to the end, and his opn that their (Ees') U activity would fail to succeed, not violative when considered independently of president's threat of plant closure)

Gauley Industries, Inc. **260 NLRB No. 189**
(E's president's reference to his Ees' *plans* made during U's organizing compaign held violative, since reference was made to Ees' U activities and in context of E's animus towards U and was veiled, though clear, reference to (Ees') U activity)

Truck Stations, Inc., d/b/a Woody's Truck Stops **258 NLRB No. 094**
(where E issued warning to two Ees, one U member and one not and told non-U member that only reason she received warning was to avoid appearance of harrassing U member, statement violated Act as it could be construed as evidence of E's willingness to retaliate against Ees for their U activities and also to engage in subterfuge to avoid legal scrutiny of its actions)

Warehouse Groceries Management, Inc. **254 NLRB No. 021**
(telling Ees that store would not close did not cure various threats of closure where E distributed pamphlet with photo of 2 stores and stated that the U was in both these stores and they are now closed)

Stewart-Warner Corporation **253 NLRB No. 016**
(foreman's threat to discharge Ee because of his participation in U activity violative, not withstanding foreman and Ee were friends as impact of statement is probably greater in view of source)

Marine World USA **251 NLRB No. 161**
(where ct found E's announcements to Ees concerning withholding of wage increase and comments about incumbent U contained no express threat of reprisal or force or promise of benefit and remanded case to Bd for consideration of whether threat of reprisal or force or promise of benefit can be inferred from surrounding circumstances, Bd held that although E's statements were critical of U, threat of reprisal or force or promise of benefit cannot be inferred from the circumstances and concluded, under ct's analysis, announcements were not violative)

Blue Bird Body Company **251 NLRB No. 196**
(E's prepared anti U speech made to eligible voters prior to election, violative where E used symbol of living or dying *Bluebird* as reference to *company E* and such use was implied threat of plant closure or removal if Ees chose U to be their representative)

The Nestle Company **248 NLRB No. 106**
(foreman's statements to U adherent that Ee's U was *a loser, -- no good and bunch of crooks,* held not violative, where statements were made in natural give and take of shoptalk where Ees vigorously campaigned for their favored organization)

Carl Karcher Enterprises **JD-(SF)-227-82**
(interrogation of Ees about their U or protected activities may or may not amount to coercion, depending upon manner in which it is done and surrounding circumstances; objective test to be applied in determining whether questions are unlawfully coercive is whether conduct reasonably tends to interfere with free exercise of Ees' statutory rights)

New Mayo, Inc., d/b/a Mayo Products Company **JD-(ATL)-18-81**
(placing bumper stickers which in effect stated *give E a chance vote 'No'* along with letters expressing futility of voting for U in Ee pay envelopes just prior to election, violative)

Giallem Apparel Corp. **JD-162-80**
(E president's statement to Ees that he didn't think U would do Ees any good, that nobody would shove contract down his throat, and that he was only boss, not unlawful, where E president expressed willingness to sign contract with U and his remarks about benefit to Ees of contract reflected expression of opinion about how little benefit this would be to Ees rather than message of futility)

J. P. Stevens & Co., Inc. v. N.L.R.B. **638 F.2d 676 (C.A. 4, 1980)**
(ct modified Bd finding Section 8(a)(1) violation in E's comment to Ee that company did not need U and any more U cards to include additional violation of calling Ee's attention to unlawful notice posted by E to dissuade solicitation of U cards during course of conversation)

TRW-United Greenfield Division v. N.L.R.B. **637 F.2d 410 (C.A. 5, 1981)**
(test for violation of 8(a)(1) is whether E's questions, threats, or statements tend to be coercive, not whether Ees are in fact coerced and statement must be evaluated in light of totality of circumstances)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(supervisor's asking Ee shortly before election about U's prospects and *who do you think will win election,* and E president's asking another Ee if he had written letter critical of E officials, violative, in view company hostility toward U that was clearly manifested to Ees)

N.L.R.B. v. Brewton Fashions, Inc., a Division of Judy Bond **682 F.2d 918 (C.A. 11, Aug. 1982)**
(proper evaluation of the evidence, however, requires more than merely examining a list of factors since intimidation may occur even if all factors cut in favor of the E)

5006-3300 Coercive effect of statements

A & T Manufacturing Company **265 NLRB No. 201**
(informing Ee that E was *n longer U,* not unlawful, since not coercive inasmuch as simply true statement of fact)

Brunswick Hospital Center, Inc. **265 NLRB No. 112**
(threat made by E to guard that two striking nurses were troublemakers and no matter what outcome of strike would be, they would not be employed again by E held violative, notwithstanding threat was made to *guard* not member of unit of nurses; *guards* not supervisors as defined in Act and customary exclusionary language in Act does not presume guards are supervisors; both guards and nurses had Ee status, therefore threat was coercive)

St. Francis Hospital **263 NLRB No. 109**
(E's statement concerning its labor relations advisor (Modern Management Inc., a/k/a 2M in E's anti-U campaign) over whom Ees felt *really under duress* that *If U wins, 2M stays. If U doesn't win, 2M goes* held violative, since in event of U victory, management would continue to keep them (Ees) *under duress*)

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**
(E's letter to Ees falsely claiming that business was down held violative, since letter was implied threat that unionization could tip scales against (E's) survival; letter failed to reveal work was transferred elsewhere)

Modern Manufacturing Company, Inc. **261 NLRB No. 078**
(E's asking Ees to vote *NO* in election found coercive, where, although such request standing alone might not constitute unlawful conduct, here throughout U's organizational campaign, E engaged in various unlawful activities, including threats, coercive interrogations, and terminations based on Ee U activities)

Modern Manufacturing Company, Inc. **261 NLRB No. 078**
(E's letter advising Ees not to sign U cards, coercive)

Sterling Sugars, Inc. **261 NLRB No. 071**
(falsely accusing Ee of soliciting other Ees' signatures on U cards during worktime on company premises, violative)

St. Mary's Home, Inc. t/a St. Mary's Infant Home **258 NLRB No. 134**
(telling Ees that they could be sued for lending their names in support of legitimate U propaganda, unlawful)

Daniel Construction Company, A Division of Daniel International Corporation **257 NLRB No. 176**
(E's misstatement of law that Ee would have to join U if it won election, not violative since statement contained no threat to interfere with Ees' rights and was therefore not coercive)

E. I. Dupont De Nemours & Company, Inc. **257 NLRB No. 033**
(advising Ees who were named discriminatees in ULP proceedings that notices stating such were inserted in their personnel files, not unlawful)

Metropolitan Life Insurance Company **256 NLRB No. 100**
(asking U adherent who intended to resign in near future if it would be fair for him to vote in election in view of fact that Ee intended to leave shortly, violative, where remark was made a week before election and E had already told Ee that he would be permitted to remain employed at company until end of year; Ee decided not to vote in election)

Jax Mold & Machine, Inc. **256 NLRB No. 129**
(supervisor's question, *Do you reckon we could have chance to get rid of U* held coercive, notwithstanding both may have been friends)

5006-3300—Cont.

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(Bd held supervisor's stating to Ee that, in his opinion, E had planned to open new weaving process in named town, but *because of what had happened, they didn't think that they would* held unlawful and declined to consider opinion nature of supervisor's statement or his status as low-level supervisor to be conclusive, since Ees can reasonably assume that supervisor is privy to decisions of E's management, supervisor's comment *because of what has happened* can be reasonably construed as referring to U election or campaign, and the remark was made in course of extensive unlawful activity by E)

Marine World USA **251 NLRB No. 161**
(where ct found E's announcements to Ees concerning withholding of wage increase and comments about incumbent U contained no express threat of reprisal or force or promise of benefit and remanded case to Bd for consideration of whether threat of reprisal or force or promise of benefit can be inferred from surrounding circumstances, Bd held that although E's statements were critical of U, threat of reprisal or force or promise of benefit cannot be inferred from the circumstances and concluded, under ct's analysis, announcements were not violative)

Billings Chrysler-Plymouth, Inc. **251 NLRB No. 089**
(E's statement to Ee that it would be wise to wait until U was certified before he joined not violative as protected statement of opinion)

Chester Valley, Inc. **251 NLRB No. 190**
(neither E intent not to threaten Ees nor absence of Ee coercion in reaction to E's threats render threats lawful, since test of interference and coercion under 8(a)(1) does not depend on E's motive nor on successful effects of coercion; rather, legality is determined by whether conduct may reasonably be said to have tendency to interfere with exercise of Ee rights under Act)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(statement to job inspector that she was lying about U adherent's job production count, that matter was serious and that she had better brush up her story, unlawful, since it restrained inspector in her protected right and obligation to give testimony under Act)

Norton Concrete Company of Longview, Inc. **249 NLRB No. 172**
(Ees' subjective response to threat of job loss by E is irrelevant as objective basis is used to determine if E's statement violates Act)

Hall of Mississippi, Inc. **249 NLRB No. 119**
(supervisor's statement to Ees that supervisors would be fired for allowing U to come in, violative)

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 059**
(foreman's action in throwing U grievance in trash container with comment, *this is what I think of your damn U* unlawful)

The Nestle Company **248 NLRB No. 106**
(foreman's statements to U adherent that Ee's U was *a loser, – no good and bunch of crooks,* held not violative, where statements were made in natural give and take of shoptalk where Ees vigorously campaigned for their favored organization)

Big Star #189 **JD-375-82**
(stating during employment interview that E was non-U and E would like to keep it that way, not unlawful, where E's expression of preference, absent any additional remark, did not give statement a coercive character)

Scoggin, Inc. **JD-433-81**
(E's president telling Ees, who had contacted U and secured authorization cards, in angry tone he could not believe Ees sought U representation behind his back, not implied threat nor unlawful, in view of presence of U representatives and their immediate intervention, reassurance to Ees, and explanation to Ees and E's president that Ees were protected under federal law from discharge for U activities)

Datagraphix, Inc. **JD-(SF)-344-80**
(supervisor's statement to Ees, on occasion of their orientation session that Ees be *aware of what you are signing,* not unlawful where statement inferred no unlawful limitation upon or improper E intrusion into U activities of Ees)

Highland Foods, Inc. and Vickable Industrial Corporation **JD-364-80**
(announced isolation of Ee who was attempting to organize Ees, violative)

Consumer Enterprises, Inc. **JD-342-80**
(remarks to Spanish-speaking Ees blaming Ees' U activity or their signing of U cards for U.S. Immigration and Naturalization Services raid at E's plant in search of illegal immigrants, violative)

Giuliana Apparel Corp. **JD-142-80**
(E president's statement to Ee that heads would roll if he found out who was behind U, unlawful)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(E's statement to Ee that he knew some of the Ees wanted to be represented by U and that *he was going to go that way any way,* not unlawful, where E's brief statement took place after Ees executed U cards and was not calculated to elicit information or create impression of surveillance)

K & K Gourmet Meats, Inc. v. N.L.R.B. **640 F.2d 460 (C.A. 3, 1981)**
(E's comments to Ee that U would be blocked are not violative as this statement is not coercive in character and falls w/i Section 8(c) protection which allows for exchange of information between U and management)

Heilstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(test of coercion is not whether misconduct proves effective, but whether under circumstances existing it may reasonably tend to coerce Ees)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. **691 F.2d 1133 (C.A. 4, Sept. 20, 1982)**
(E's statement to U adherent during campaign, that he thought she was on his side, is violative as it has tendency to intimidate, especially given absence of any apparent legitimate reason for conduct)

McLean Trucking Company v. N.L.R.B. **626 F.2d 1168 (C.A. 4, 1980)**
(superintendent's inquiry to Ee about contacting U, not unlawful, since it lacked coercive effect and was an honest corroborating repetition of Ee's own U business agent's volunteered information to superintendent)

Pioneer Natural Gas Company v. N.L.R.B. **662 F.2d 408 (C.A. 5, Nov. 1981)**
(supervisor's statement that Ee's reprimand might be due to U activities not unlawful when considered with later statement that he (supervisor) would get a lawyer to see if something could be done; Ee was encouraged to assert her rights rather than coerced)

N.L.R.B. v. Robin American Corporation **654 F.2d 1022 (C.A. 5, 1981)**
(ct held that evidence amply supported the tendency of interrogations and threats during critical period to coerce)

Central Freight Lines, Inc. v. N.L.R.B. **624 F.2d 1301 (C.A. 5, Aug. 1980)**
(*prior case law establishes that even the Bd's determination involving statements alleged to be in violation of Section 8(a)(1) of the Act are to be reviewed under the usual substantial evidence standard. The focus is on whether or not the words themselves or the context in which they are used suggest an element of coercion*)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. **679 F.2d 673 (C.A. 7, May 1982)**
(*tendency* of E's statement to produce coercive effect judged from standpoint of economically dependent Ee)

J. M. Tanaka Construction, Inc. v. N.L.R.B. **675 F.2d 1029 (C.A. 9, Apr. 1982)**
(asking Ees *what did you have to sign (U card) for?* held violative where E did not give reason for question or assurance of no reprisal, asked Ees other than charging party and had pattern of hostility toward U)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. **660 F.2d 1335 (C.A. 9, Nov 1981)**
(*test is whether interrogation tends to be coercive not whether Ee was in fact coerced*)

N.L.R.B. v. Chatfield-Anderson Co., Inc., dba Truss-Span Co. **606 F.2d 266 (C.A. 9, 1979)**
(notwithstanding ct affirming Bd's finding of violations, ct stated that threats were generally mild and company issued disclaimers which tended to dissipate coercive impact; furthermore, statements made by low-level supervisors are more likely to express individual views and less likely to influence Ee's decision than statements by high-level officials which bears the imprint of company policy)

5006-5000 Kinds of statements

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**
(supervisor's statement to disciplined Ee that if Ee had kept his mouth shut at disciplinary hearing, discipline would not have been imposed, not unlawful, where supervisor did not initiate conversation but only responded to comment made by Ee, whole exchange totaled only 2 minutes, remark was not made in hostile or vindictive tone, and Ee's conduct at hearing made remark not inappropriate)

5006-5010 Antiunion statements, generally

Danzansky-Goldberg Memorial Chapels, Inc. **264 NLRB No. 112**
(violation, where supervisor asked Ee when she was applicant and new Ee how she felt about Us, warned her that U adherents who were poor role models would try to recruit her into U and that she should let supervisor know if harassed in any way, informed her that owner was opposed to U, and advised her to stay out of U)

ABC Liquors, Inc. **263 NLRB No. 174**
(informing Ee that another Ee was being transferred from store to warehouse in order to vote against U in upcoming election, violative)

Granite City Journal, Inc. **262 NLRB No. 140**
(E official's anti-U statements to Ee, stating he knew where Ee was vis-a-vis U, accusing Us of having outlived their purpose and being communistic, and implying that he was fearful of losing his job and that he would do whatever was necessary to save his career, while accusing Ee of participating in conduct which was ruining his life, not unlawful, since official's assumption

5006-5010—Cont.

that he knew where Ee stood in regard to U was more rhetorical than informational as alleged, and there was no threat of unspecified reprisals)

Eau Claire Press Company 260 NLRB No. 148
(suggesting to U adherent that she stop U activity before election was held, violative)

Marathon Letourneau Company, Longview Division 256 NLRB No. 054
(supervisor's conduct in thumping Ee's U button for emphasis while stating that Ee had better quit worrying about outside interference, other people, and *get his act together,* unlawful)

Marathon Letourneau Company, Longview Division 256 NLRB No. 054
(supervisor's conduct in touching Ee's U button and telling him that he could stay but U button would have to go, not unlawful, since such nebulous remark does not reasonably tend to interfere with Ee's statutory rights)

Marathon Letourneau Company, Longview Division 256 NLRB No. 054
(supervisor's statement to Ee that he should not be wearing U button, not unlawful; while E's edicts concerning supervisors' do's and don'ts during U campaign, of which supervisor was aware, are not controlling since supervisor's convictions will override management's policies, in any event supervisor's remark was not coercive or restrained Ee's exercise of his statutory rights)

Sanitas Cura, Inc. d/b/a Parkview Acres Convalescent Center 255 NLRB No. 149
(telling Ees not to discuss U, violative)

Walker Die Casting, Inc. 255 NLRB No. 034
(telling Ee who returned to work after strike began *to mind her own knitting* violative, as it referred to her pre-strike U activities)

EMR Photoelectric, A Division of Sangamo Weston Inc. 251 NLRB No. 214
(E's statements that unionization would subject Ees to *grave risk* and that E would respond to selection of U by action that would jeopardize Ees' livelihood, unlawful, even though E, from time to time, asserted that it would bargain in good faith, that it intended no reprisals, and attempted to cite consequences of unionization as results that *could* happen)

Magnesium Casting Company, Inc. 250 NLRB No. 107
(E's statement to Ee that *maybe all this wouldn't have been happening* if Ees had not tried to get U in, unlawful, since Ee could reasonably interpret statement as reference to his discharge and discharge and discipline of other Ees during U campaign)

Central Freight Lines, Inc. 250 NLRB No. 063
(terminal manager's telling leadman not to participate in U activities and to remain neutral)

Transportation Manpower Services of Ohio, Inc. JD-(SF)-192-82
(successor E's telling prospective Ees that it could hire no more than 50 percent of predecessor work force, violative)

N.L.R.B. v. Proler International Corporation 635 F.2d 351 (C.A. 5, 1981)
(E's personnel director asking Ees whether they were going to attend U meeting that day, and when an Ee answered she wasn't sure, stating that if Ee did attend she should not sign any papers because U would be lying, held not unlawful since w/i E's section 8(c) right to express opinion as no threat or promise of benefit made where question merely prefaced later remarks, occured at end of routine conversation was not aimed at determining if Ees supported U or part of larger unlawful campaign of interrogation)

J. M. Tanaka Construction, Inc. v. N.L.R.B. 675 F.2d 1029 (C.A. 9, Apr. 1982)
(asking Ees *what did you have to sign (U card) for?* held violative where E did not give reason for question or assurance of no reprisal, asked Ees other than charging party and had pattern of hostility toward U)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. 676 F.2d 483 (C.A. 11, May 1982)
(no violation, where, in letter, E advised Ees of scheduled election, stated E was opposed to U, and asked Ees too consider pros and cons of U representation before signing cards)

5006-5015 That employer would refuse to bargain with union

Granite City Journal, Inc. 262 NLRB No. 140
(E's statement to Ee, during anti-U diatribe herein found not unlawful, that he would not permit U to tell him how to run his business held unlawful, since it gave rise to reasonable assumption, in view of E's vehement opposition to U, that statement was a warning that E would resist bargaining with U)

Bedford Farmers Cooperative 259 NLRB No. 165
(manager's remark, during time E was bargaining with U, that *it would be hard to ever get a contract agreed on because Board of Directors couldn't agree on contract,* not violative, since manager did not suggest bargaining would be futile but that it would be difficult)

Bedford Farmers Cooperative 259 NLRB No. 165
(manager's remark, overheard by two Ees, that E was not required to sign any contract with U held violative, since Ees concluded E had no intention of joining in collective bargaining with U)

Vincent Et Vincent of Allentown Mall, Inc. 259 NLRB No. 113
(stating that E would never engage in collective bargaining with a U, violative)

Marine Optical, Inc. 255 NLRB No. 158
(advising Ees, prior to transferring operations to new location, that E would not recognize U or apply existing contract at new location, and that wages, hours, and benefits at new location would be different from those in effect at old location, unlawful)

B. E. & K., Inc. 252 NLRB No. 036
(alleged statement by E to Ees that E would not negotiate with U as to any wage increases, herein asserted to be a threat of futility, not unlawful, where Ees' testimony to that effect constituted a conclusion of what E had said rather than an accurate recollection of what had been said, and E's denial of making statement was credited)

Palby Lingerie, Inc. and Argus Lingerie Corp. 252 NLRB No. 032
(E's owner stating to Ees that she would never negotiate with U if it came into plant, violative)

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. 250 NLRB No. 131
(threatening Ee that E would refuse to negotiate with U if it prevailed in decertification election, unlawful)

American Telecommunications Corporation, Electromechanical Division 249 NLRB No. 149
(statement that E would not give unionized Ees more benefits than unrecognized Ees violative as it showed E had no intention of bargaining with U and would violate Section 8(a)(5))

Henry A. Young, d/b/a Columbia Engineers International 249 NLRB No. 144
(E threat to move business or to file bankruptcy rather than to pay U scale or benefits, unlawful)

Fotomat Corporation 248 NLRB No. 150

Conagra, Inc. 248 NLRB No. 085
(statement that E would not sign contract that would improve wages or working conditions and that it might take up to three years to get contract signed, that no benefits could be obtained w/o E agreeing and E would close plant before it agreed, unlawful)

Temp Tech Industries, Inc. JD-235-82
(E's statement that he would personally go to bargaining table if it would prevent strike but would not do so as long as strike existed violative, since statement could reasonably be perceived as threat to delay progress of negotiations if Ees went on strike)

Ellis Hospital JD-164-82
(letter to Ees allegedly containing anticipatory refusal to bargain with U, not unlawful, where letter referred to management rights clause contained in Ee handbook, rights and responsibilities cited in handbook were substantially same as might reasonably be expected in any bargaining agreement, and statement in letter did not suggest to Ees futility of selecting U as their representative)

Scoggin, Inc. JD-433-81
(allegation in complaint that E's president informed Ee he would not abide by outcome of election dismissed since statement of E's president that *he wasn't going to accept contract* and *was not going to give U any trouble, but he would not accept contract either,* not unlawful as statement that is ambiguous and cannot be equated to E would challenge election process or U right to represent Ees)

Scoggin, Inc. JD-433-81
(E's president's statement that electing U would be futile because he would not bargain with intent to reach agreement or enter into agreement, unlawful)

Mather Federal Credit Union JD-(SF)-8-80
(telling Ees that contract with U would not be signed)

N.L.R.B. v. United Optical Workers Union Local 408, Electrical Workers (Marine Optical, Inc.) 671 F.2d 11 (C.A. 1, Feb. 1982)
(E's statements to Ees which made it clear that the U contract would end upon relocation of operations and that E intended to change conditions of employment held violative, where statements, following E's withdrawal of recognition from and refusal to bargain with U, could reasonably be interpreted by Ees as a message that U membership would be futile)

N.L.R.B. v. Haberman Construction Company 618 F.2d 288 (C.A. 5, 1980)
(E's announcement of its intention to go *open shop* simultaneously with its repudiation of obligation to pay contractual benefits held message that E would not recognize and bargain with U, rather than statement, as contended, that E would abide by State *right to work* law)

5006-5015—Cont.

Dunn Products, Inc. and American Metals Corp. v. N.L.R.B. 613 F.2d 162 (C.A. 6)
(E's actions including speech in which E described what happens in negotiations held not threat of sham bargaining)

5006-5020 Attacks upon union or officials, particular forms of

Billion Motors, Inc., d/b/a Billion Oldsmobile-Toyota 260 NLRB No. 099
(E's statement that if Ees did not get raise it would be U's fault and would show U agent did not care about Ees unlawful)

Kawasaki Motors Corporation, U.S.A. 257 NLRB No. 069
(statement conveying thought that U was responsible for making bomb threats and linking threat to plant closure, unlawful)

Gossen Company, a Division of the United States Gypsum Company 254 NLRB No. 041

Martin K. Eby Construction Co., Inc. 250 NLRB No. 149
(foreman's remarks to Ee criticizing U steward, violative)

5006-5020-3300 Disparagement generally

Raley's, Inc. 256 NLRB No. 155
(supervisor's statement to Ee that she didn't want to hear from U because of *pressure and vandalism* denigrated U and is violative)

Reeves Rubber, Inc. 252 NLRB No. 926
(disparaging need of Ees for U and urging them to vote U out, all in context of statements asserting that Ees had forfeited pay increases and benefits which would have accrued to them had they not selected U, violative)

New Process Gear, Division of Chrysler Corporation 249 NLRB No. 158
(payroll supervisor's response to U steward's request for his paycheck, to effect that —*you're always in trouble*, not violative, since it was passing remark by payroll supervisor, as contrasted with supervisor in area policed by U steward, and as such was not threat)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. 247 NLRB No. 135
(supervisor reading to each Ee individually its decertification memo for purpose of disparaging U, unlawful)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. 247 NLRB No. 135
(no violation, where in response to Ee's inquiry as to basis for E's statements in support of its decertification ptn E's personnel director informed Ee U was not reputable and asked Ee *why Ees needed U when E gave them benefits anyway* since Ee initiated conversation and question was rhetorical)

Perry Plaza, Inc. JD-(SF)-367-80
(E's denigration of U and its business representative to Ee is attempt to undermine Ee's support of U and violated Act)

5006-5020-6700 Characterization as

5006-5020-6733 Reds, radicals, Communists, fascists, or un-Americans

Zero Corporation, Zero East Division 263 NLRB No. 064

Nice-Pak Products, Inc. 248 NLRB No. 173
(E's warning to Ee 2 weeks after U lost election to stay away from *radicals* violative as both understood E to mean U supporters)

5006-5020-6767 Corrupt

Southland Knitwear, Inc. and Metropolitan Industries, Inc. 260 NLRB No. 087
(telling Ees that representative of U competing with incumbent U was from Mafia, violative)

Wometco Coca-Cola Bottling Company of Nashville, Inc. 255 NLRB No. 069
(E posting warning on bulletin board that signing any document for U would cause U to repeat unethical conduct of forging Ees' signatures on other documents, unlawful)

The Nestle Company 248 NLRB No. 106
(foreman's statements to U adherent that Ee's U was *a loser, – no good and bunch of crooks*, held not violative, where statements were made in natural give and take of shoptalk where Ees vigorously campaigned for their favored organization)

Vinci Investment Co., d/b/a Pacific Honda JD-(SF)-56-81
(discussion with Ees about organized crime in connection with U pension fund, violative)

5006-5025 Disparagement of employees

Danzansky-Goldberg Memorial Chapels, Inc. 264 NLRB No. 112
(violation, where supervisor asked Ee when she was applicant and new Ee how she felt about Us, warned her that U adherents who were poor role models would try to recruit her into U and that she should let supervisor know if harassed in any way, informed her that owner was opposed to U, and advised her to stay out of U)

Vincent Brass & Aluminum Co. 264 NLRB No. 070
(E's superintendent disparaging Ees who had exercised their contractual right to bid on jobs, unlawful)

Randall E. Wheeler, Kevin E. Wheeler, and Edmund J. Wheeler, A General Partnership d/b/a Wheelco Co. 260 NLRB No. 109
(E who made statement at Ee meeting that some *spineless individual* had filed complaint to Wage and Hour Division violated Act as it constituted implied threat that E would take some action against individual involved)

Gorman Machine Corporation 257 NLRB No. 010
(foreman's statements depicting U adherents as *bums* and illiterates, not unlawful where they were merely expressions of his personal opn which could not reasonably tend to threaten or coerce any Ee in violation of his Sec. 7 rights)

Central Freight Lines, Inc. 255 NLRB No. 056
(telling Ees that if U got in, it could happen that full-timers would be part-timers and some would have no job; and study was underway that could result in increase of insurance benefits)

Wometco Coca-Cola Bottling Company of Nashville, Inc. 255 NLRB No. 069
(calling U adherent back-stabber and troublemaker, informing adherent nobody liked him; accusing him of bad attitude, and asking him if he was ready to resign, constituted threat to discharge for U activity, not withstanding U no mentioned)

Huck Manufacturing Company 254 NLRB No. 088
(E who made speech to assembled Ees remonstrating them for participation in strike and warning them that any further misconduct would not be tolerated, violated Act as misconduct of strikers was not established and speech was reprimand for engaging in lawful strike)

Maine Apple Growers, Inc. 254 NLRB No. 060
(E's statement to Ees, who requested wage raise and directed grievance letter to E's Board of Directors, that *agitating talk* must cease held violative, since it was, in instant case, intended to interfere with, restrain, and coerce Ees)

Capriccios Restaurant, Inc. 249 NLRB No. 100
(E unlawfully threatened Ee by telling him that Ee was lowdown for not telling E about fellow Ees' U activities and Ee was therefore traitor, costing E money)

Pullman Trailmobile, A Division of Pullman Incorporated 249 NLRB No. 059
(statement by E that U steward was troublemaker and E was having problems in department which could reasonably be interpreted by U officials to mean that E's problem was overzealous steward who filed too many grievances and solution to problem was transfer of steward, unlawful)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 057
(holding some members of U committee up to ridicule and scorn in front of assembled Ees and referring to them as *jokers and clowns* violative)

Oak Harbor Freight Lines, Inc. JD-(SF)-211-82
(violation where E issued letter to Ees labelling two Ees who had complained about supervisor doing unit work as *trouble makers*, threatening to close facility and lay Ees off unless they opposed these two Ees, expressing readiness to sue these Ees, and advising Ees *to file a protest against* these two Ees with U *before it is too late*)

Oak Harbor Freight Lines, Inc. JD-(SF)-211-82
(sponsoring and inviting Ee signatures on ptn describing Ee who was involved in efforts to stop supervisor from doing unit work as *constant source of trouble and agitation*)

Harvey & Madding, Inc., d/b/a Dublin Honda JD-(ATL)-97-81
(manager's telling Ee that Ee's former E told present E that Ee was *union rabble rouser* held violative, since remark was intended to inhibit Ee's protected activity)

R.E. Peterson Products, Inc., and Will Products, Inc. JD-285-80
(calling suspected U adherent derogatory names prior to election, violative, since action discouraged Ee participation in U activities)

Redman Construction Company, Inc. JD-(SF)-105-80
(E's referral to violatively discharged Ee who had attempted to implement terms of contract as *troublemaker, rabble-rouser and/or instigator* in conversation with other Ees violative)

N.L.R.B. v. Eastern Steel Company 671 F.2d 104 (C.A. 3, Feb. 1982)
(E's expression of hostility toward U by making derogatory remarks about people who join Us, unlawful)

5006-5026 Union supporter should quit

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric 265 NLRB No. 203
(E's conduct held unlawful where, during conversation with Ee-U adherent, E implicitly threatened Ee with discharge by making thinly veiled allusions

5006-5026—Cont.

to discharge on previous day of another U protagonist and then stating that E *didn't want any trouble in the shop* and that if Ee thought *he could do better that he could go elsewhere*, such invitation to quit is coercive and threatening because it conveys to Ees clear message that support for U and continued employment are not compatible)

Mueller Insulation Co. and The Mueller Company of Missouri, Inc., Successor Employer and/or Alter Ego 263 NLRB No. 095
(telling Ees that they must choose to work non-U only if they stayed with new company, violative)

Rolligon Corporation 254 NLRB No. 004
(E's telling assembled Ees that Ees who are unhappy and would rather work in U shop would do E great service by finding job elsewhere, unlawful, because it conveyed clear message that support for U and continued employment by E were incompatible)

High Performance Tube, Inc. 251 NLRB No. 181

Lorard Industries, Limited JD-293-82
(ordering U adherent Ees to *get the hell out* held violative where E's order was motivated by U filing charge)

Harvard Cooperative Society, Inc. JD-246-82
(during Ee meeting, referring to Ees wearing green buttons and stating *If you don't like it here, there's the door. You can leave* violative because it conveys message that U support and continued employment are incompatible)

Jet Industries JD-(SF)-25-82
(in context of discussion about U activities, E's suggestion that Ee quit conveyed message that U activity and continued employment were incompatible and constituted threat of loss of employment)

N.L.R.B. v. Steinerfilm, Inc. 669 F.2d 845 (C.A. 1, Feb. 1982)
(E's statement that if Ee did not like conditions at company, he could leave violative as covert threat of discharge)

5006-5027 Union supporter should be segregated

Warehouse Groceries Management, Inc. 254 NLRB No. 021
(telling Ee that E did not want him to hang around specific Ee who obtained card signatures, violative)

Smith Auto Service, Inc. 252 NLRB No. 068
(telling Ee to *stay clear* of another Ee because of the latter's membership in and activities on behalf of U, violative)

Smith Auto Service, Inc. 252 NLRB No. 068
(violation where E president told prospective Ee not to associate with known U adherent and his stepson because they were *troublemakers* and U adherent was *instigator*)

Tennessee Cartage Co., Inc. 250 NLRB No. 015
(warning Ees not to associate with U adherents, unlawful)

N.L.R.B. v. Flite Chief, Inc.; et al. 566 F.2d 1182 (C.A. 9, 1979)
(telling Ee not to associate with U adherent, unlawful)

5006-5030 Union adherence or other protected activity as employee disaffection or disloyalty toward employer

Paul Distributing Co., Inc. 264 NLRB No. 179
(E's statement to U adherents that they were stabbing him in back, violative)

Metropolitan Life Insurance Company 256 NLRB No. 100
(telling Ees that E wanted no betrayers on staff and that E was tired of time being wasted on U, violative, where such statements conveyed message to Ees that E equated U activity with Ees' disloyalty)

Golden Beverage of San Antonio, Inc. 256 NLRB No. 081
(telling Ee that Ee would not like any job where Ees were not represented by U, and therefore he would not like job as fire fighter as they weren't U, violative)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation 249 NLRB No. 126

Peavey Company 249 NLRB No. 110
(E's vice president informing Ee that Ees that started U might be considered disloyal and that disloyal Ees do not move up, unlawful, notwithstanding Ee admitted she thought vice president was speaking of companies in general, where Ee was asked to inform other Ees of vice president's thoughts)

Harvard Cooperative Society, Inc. JD-246-82
(store manager telling Ee *lately I have been disappointed in some people* violative where made week after observing Ee handing out cards and talking with co-worker as it implies that she had lost favor because of U activities)

Tilden Rack and Basket Corporation JD-(NY)-2-82
(E's telling U adherents that they were *stabbing him in the back and not giving him a fair chance*, violative, where such statement conveyed to Ees that their U activity was equated with disloyalty to E)

Scoggin, Inc. JD-438-81
(E's president telling Ees, who had contacted U and secured authorization cards, in angry tone he could not believe Ees sought U representation behind his back, not implied threat nor unlawful, in view of presence of U representatives and their immediate intervention, reassurance to Ees, and explanation to Ees and E's president that Ees were protected under federal law from discharge for U activities)

Ashtabula Forge, A Division of ABS Industries, Inc. JD-388-80
(industrial relations manager informing Ee that he would not have been hired if E had known he was son of U president, unlawful)

Peavey Company v. N.L.R.B. 648 F.2d 460 (C.A. 7, May 1981)
(joining U considered disloyal, decreasing chance of promotion)

General Thermo, Inc. v. N.L.R.B. 664 F.2d 195 (C.A. 8, Nov. 1981)
(ct found that E's comment to Ee to quit *bad-mouthing* company, not unlawful, where ct, unlike Bd, refused to assume that comment referred to U activity)

Coors Container Company v. N.L.R.B. 628 F.2d 1283 (C.A.D.C.)
(inquiry by guard at plant gate of Ees displaying sign in their vehicle, urging boycott of E's product, whether they were sympathetic to striking Ees and stating that if they were they shouldn't be working for E, unlawful)

5006-5031 Employment reference

Samuel J. Wade, an Individual d/b/a Major Cab Company 255 NLRB No. 181
(stating that E had already fired one U adherent and threatened to fire another Ee if Ee continued U activity against E's wishes, violative)

Clark Manor Nursing Home Corp. 254 NLRB No. 054
(writing on personnel change form that Ee was *U organizer of good nursing ability*, unlawful where comments were intended as specific recommendation against reemployment)

National Steel Products 252 NLRB No. 120

Cooley's, Inc. JD-71-82
(calling up Ee's new E and discrediting Ee after Ee had filed charges with Bd, violative)

5006-5033 Opposition to enhancement of union status

Zero Corporation, Zero East Division 262 NLRB No. 064

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility 260 NLRB No. 073
(letter to unit Ees from E's vice president making clear E's opposition to U and instructing Ees *do not sign a U card — under any circumstances — you don't know what it's going to cost you in the future*, held violative)

Bedford Farmers Cooperative 259 NLRB No. 168
(manager's warning Ee to *—stay away from the U* coupled with remark that he (manager) was acting to defeat U (at same time E was bargaining with U) held violative, since manager was using his position as supervisor to restrain Ee from supporting U)

Blue Bird Body Company 251 NLRB No. 196
(E's prepared anti U speech made to eligible voters prior to election, violative where E used symbol of living or dying *Bluebird* as reference to *company E* and such use was implied threat of plant closure or removal if Ees chose U to be their representative)

5006-5035 Defeat or renunciation of U necessary before correction of employee grievances

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant 261 NLRB No. 081
(violations, where E following demanded by U for recognition called meeting of all Ees and interrogated Ees as to why they wanted U, promised to discuss benefits after Ees signed ptn against U, threatened to close restaurant if U came in, and w/i five days w/o warning to Ees closed restaurant for two and a half weeks which had never been previously closed)

N.L.R.B. v. Arrow Molded Plastics, Inc. 653 F.2d 280 (C.A. 6, July 1981)
(making granting of wage increase to raise scale to level of E competitors expressly contingent upon U defeat, unlawful)

N.L.R.B. v. Arrow Molded Plastics, Inc. 653 F.2d 280 (C.A. 6, July 1981)
(violation where E during preelection period hired personnel consultant who held meetings with Ees in recognition of fact *there was U knocking at door*, such meetings were unprecedented, it was suggested grievances would be resolved only if Ees rejected U representation, and E took steps to resolve grievances under questionable circumstances)

5006-5036 Threatening to report employees to immigration authorities, IRS or other government agencies

5006-5036—Cont.

Halo Lighting Division of McGraw Edison Company 259 NLRB No. 086
(threatening to call Immigration Service and stating that a lot of people who had no legal rights would get into trouble, unlawful)

Caffe Giovanni, Inc. d/b/a Giovanni's 259 NLRB No. 031
(threatening action by immigration service against Spanish-speaking Ees because of their U activities, unlawful)

Sioux Products, Inc. 257 NLRB No. 056
(threatening Ees with loss of jobs and with possible difficulties with immigration authorities if U won election, violative)

Justak Brothers and Company, Inc. 253 NLRB No. 146
(supervisor telling four Spanish-Speaking Ees that those who had signed U cards would be laid off aand subjected to investigation by *immigration*, unlawful)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart 247 NLRB No. 125
(owner of restaurant informing waitress that he did not like her going to government agency alleging E was violating law by not paying for upkeep of uniforms and reminding her that tax law required that Ees declare all their tips, unlawful, since this conveyed threat to report Ee to IRS if she persisted in protected activity; owner's response to question that he was not demanding she declare all her tips not sufficient to dispel threatening character of remark)

Normike Contractors, Inc. JD-(NY)-51-81
(reminding alien Ee that he did not have *green card*, violative where use of phrase was attempt to confront alien Ee and to instill fear in him regarding his work status for purpose of getting him to forsake his U affiliation)

Like Corporation JD-(SF)-69-80
(warning that Mexican nationals would be sent back to Mexico if U came in is implied threat of discharge)

5006-5037 Advising employee on procedure for withdrawal from or decertification of union

Wagner Distribution Services, Inc. d/b/a Distribution Services West 262 NLRB No. 096
(E soliciting Ees to sign anti-U ptn that was submitted as decertification ptn and got her Ees to circulate ptn unlawful)

R. L. White Company, Inc. 262 NLRB No. 069

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cucumins Component Plant 259 NLRB No. 065
(manager's unlawful statements to Ees together with supervisor paying for phone call to Bd and his providing postage for decertification ptn held violative since conduct constituted unlawful assistance and encouragement in filing decertification ptn for Ees)

Maron, Inc. d/b/a Towne Plaza Hotel 258 NLRB No. 016
(E's sending letter to Ees informing them of their right to withdraw from U and how to do so, not violative where Ee freedom of choice was not hampered)

Landmark International Trucks, Inc. 257 NLRB No. 170
(E who sent letter to Ees with instructions on how to withdraw from U, revoke checkoff authorizations, and form letter and envelope, with which to do so, violated Act as E had no valid reason for obtaining information and result was coercive)

Polk Bros. Concrete Products 256 NLRB No. 128
(E violated Act where its plant manager first initiated U activity w/o knowledge of E and then solicited Ees to sign ptn disavowing interest in U especially where E had expressed its opposition to U, notwithstanding plant manager acted contrary to E's specific instructions not to involve himself with ptn; moreover, Ee's thought supervisor was speaking for E; therefore, R/O proper remedy)

Humana Corp. d/b/a Sunrise Hospital Medical Center 254 NLRB No. 176

Comay Drilling Company 254 NLRB No. 019
(encouraging circulation of petition to secure U-shop deauthorization election)

Tarton Marine Company 247 NLRB No. 073
(E's posting notice informing Ees they *had an absolute and moral right to cancel their U cards and have them returned* and that if they desired to get their cards back, they should write letter to U with a copy to Bd asking that their cards be cancelled and returned to them and providing Us and Bd's addresses, not unlawful, where Ees had requested information; however, supervisor calling Ee's attention to notice, after Ee expressed desire to attend company meetings, violative)

Chateau Vegas JD-(SF)-132-82

Nordstrom, Inc. JD-(SF)-142-82
(E may answer Ee questions and explain decertification including giving Ees NLRB's Regional Office's telephone number)

5006-5038 Telling employees to quit if they wanted union

Danzansky-Goldberg Memorial Chapels, Inc. 264 NLRB No. 112
(supervisor at funeral home stating that he felt that while Us might have a definite place in large corporations they had no place in funeral homes which were mostly small and family operated, and suggested that Ees find jobs elsewhere in view of antagonisms at funeral home which put everyone under considerable tensions, not unlawful threat, but opinion as to how Ees might advance own best interests where Ee who was not U supporter included in suggestion that Ees find work elsewhere, and remarks followed Ees' comments about tensions and question as to why supervisor remained on job)

Rolligon Corporation 254 NLRB No. 004
(E's telling assembled Ees that Ees who are unhappy and would rather work in U shop would do E great service by finding job elsewhere, unlawful, because it conveyed clear message that support for U and continued employment by E were incompatible)

Croley Coal Corporation JD-285-82
(successor E's statement to Ees that he would operate facility non-U and they must abandon U to continue employment, violative)

5006-5039 Advising employees concerning cancellation of checkoff authorizations

R. L. White Company, Inc. 262 NLRB No. 069
(E who conducted meeting with Ees during which he explained how they could get their U authorization cards back did not violate Act where he made no attempt to ascertain whether Ees will avail themselves of this right nor offers any assistance, notwithstanding Ees never requested this information and E furnished addresses of U and Regional Office)

5006-5040 Proposal of or statement of preference for inside union

Gregory Chevrolet, Inc. 258 NLRB No. 034
(violation where E, during meeting held with U's permission to determine whether Ee's were *conned* into signing cards, suggested that Ees form *company U* instead and that with such a U *things can change*)

Wisconsin Beef Industries, Inc. 249 NLRB No. 034

Moterway Freight Lines, Inc. JD-(SF)-193-82
(E's president requesting that Ee look into possibility of in-house U, unlawful, since motivated by desire to block outside U's organization of Ees)

Lorord Industries, Limited JD-293-82

Cashmere Lumber Company JD-(SF)-93-80
(supervisor's request that Ee support incumbent U officials in upcoming U election, made half-year before election, and unaccompanied by any kinds of threats or promises held not to violate 8(a)(2) nor 8(a)(1))

5006-5042 Telling employees they would not be discharged for not joining union despite existence of union-security clause

Regal Shoe Shops #2421 & 2340 249 NLRB No. 179
(E's announcement to striker replacement that it would protect him if he chose not to join U even if there was U-security clause in contract to be executed, violative, as such promise has tendency to discourage replacement from joining or supporting U)

5006-5043 Informing employee that nonunion involvement was reason for not being disciplined

Crown Dielectric Industries, Inc. d/b/a Crown Auto Top Manufacturing JD-93-80
(E's statement to Ee that she would not have been recalled after her discharge if he had not learned that she did not give another Ee U card, violative)

5006-5044 Informing employee that protected activity was reason for denial of promotion

Nissan Motor Corporation in U.S.A. 263 NLRB No.
(statement that Ee would not be considered for promotion because of U's organizing campaign violative)

Nissan Motor Corporation in U.S.A. 263 NLRB No. 083
(statement that Ee would not be considered for promotion because of U's organizing campaign violative)

Bodolay Packaging Machinery, Inc. 263 NLRB No. 038
(telling Ee he would have to abandon U if he desired promotion to supervisor violative)

E. I. Dupont De Nemours 263 NLRB No. 015
(supervisor asking black Ee who was wearing U insignia why Ee was getting so involved with U, if any one was pressuring him to join U and in same conversation indicating to Ee that E would be making more black supervisors but that Ee should not wear pro-U insignia and to continue to do so would result in his not being considered for supervisor position, unlawful)

5006-5044—Cont.

E. I. Dupont De Nemours 265 NLRB No. 015
(supervisor informing Ee wearing tee shirt with U insignia *If you hadn't been wearing all of this tee shirt and stuff you would have been supervisory material,* unlawful)

Virginia Electric and Power Company 260 NLRB No. 050
(telling Ee that she was denied a promotion because of her U activities, unlawful)

Montgomery Ward & Co., Inc. 258 NLRB No. 023
(supervisor's statement that he could no longer support Ee's application for management position because of Ee's U activities unlawful, notwithstanding supervisor's later repudiation of remarks)

Coating Products, Inc. 251 NLRB No. 170

Ford Motor Company 251 NLRB No. 066
(supervisor's statement to Ees who filed grievances, contemplated civil suits and filed ULP charges over E's promotional policies *are not looked upon favorably* and would not be promoted, unlawful)

Marriott In-Flite Services, A Division of Marriott Corporation JD-(NY)-27-81
(E's telling U adherent to *cool it* in order to be promoted, not unlawful, where there was no evidence supporting assertion that remark was related to Ee's U activities, but rather referred to Ee refraining from obtaining any more moving violations, avoiding any further problems in getting along with fellow Ees, and to telling the truth in future in light of Ee's failure to disclose his driving record when he was being considered for promotion)

5006-5045 Informing employee that protected activity was reason for discharge or suspension

Humana of West Virginia, Inc. d/b/a Greenbrier Valley Hospital 265 NLRB No. 126
(E's telling Ees that any of E's personnel, including supervisors, have been discharged because they filed charges under the Act, violative)

Modern Manufacturing Company, Inc. 261 NLRB No. 078
(violation, where company president told Ees at company meeting that he had fired Ee for organizing for U)

C & D Transfer 258 NLRB No. 080
(informing Ees that U adherent was discharged because he filed application for U membership, violative)

Truck Stations, Inc., d/b/a Woody's Truck Stops 258 NLRB No. 094
(statements by supervisor to Ees that 2 discharged Ees were fired for their U activities violative, notwithstanding discharges found to be for cause and not violative)

Samuel J. Wade, an Individual d/b/a Major Cab Company 255 NLRB No. 181
(telling U adherents that they were being fired because they were *instigators of the U,* violative)

K & S Circuits, Inc. 255 NLRB No. 163
(impliedly and expressly telling U adherents that they were terminated because of their U activities, violative)

K & E Bus Lines, Inc. 255 NLRB No. 137
(informing Ee he was laid off or discharged because he was member of U, unlawful)

Vere Cinema Corp. 254 NLRB No. 167
(E's statement to Ee that she was permanently replaced because U had refused to give in to E's bargaining position, violative)

Elk Brand Manufacturing Company 253 NLRB No. 132
(telling Ee that another Ee had been discharged because of her U activity, unlawful)

Rose M. Alexander d/b/a A & B Janitorial Service 253 NLRB No. 064
(statement that Ees were discharged for soliciting on premises when no valid no-solicitation rule was in effect, unlawful)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division 251 NLRB No. 156
(where Ee had conversation with supervisor during which Ee remarked that she had heard that supervisor *had lost an operator due to union activity or soliciting for the union,* and supervisor answered affirmatively, identified the operator, and explained that she was not discharged for *following another person to their job, talking to them about the union.* Bd held supervisor's comments unlawful; the comments implied that operator's U activity was related to her discharge)

Compuneral Corporation 251 NLRB No. 069
(statements to several Ees immediately following mass discharge and layoffs that individuals in question were terminated because they were U adherents violative)

Scioto Coca-Cola Bottling Company 251 NLRB No. 105
(informing Ees that they had been discharged for participation in lawful economic strike, unlawful)

Nevada County Publishing Co., d/b/a The Union 251 NLRB No. 145
(E's telling Ees that another Ee was fired because of his U activities, unlawful)

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(notifying Ees that they had been suspended for attending U meeting, unlawful)

Tennessee Cartage Co., Inc. 250 NLRB No. 015
(telling Ees their discharges had been caused by their U activities and U activities of U ringleaders, unlawful)

DRW Corporation d/b/a Brothers Three Cabinets 248 NLRB No. 055
(informing Ee that coworkers have been discharged for their U activity)

North State Supply Co., Inc. 247 NLRB No. 181
(E's statement to Ee that another Ee had been discharged for trying to start U, violative as threat that other Ees would be discharged if engaged in U activity)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand 247 NLRB No. 167
(E's statement two weeks prior to election that Ee had been discharged for joining U violative; fact that this might not be true immaterial)

Production Plated Plastics, Inc. 247 NLRB No. 076

Brockway Glass Company, Inc. JD-(SF)-117-81
(statement by E's assistant personnel manager that probationary Ee was terminated because *—(he) went to the U,* held violative)

Ford Motor Company, Automotive Division, Twin Cities Plant JD-57-81
(statement to Ee that headquarters had given orders to eliminate job of U caucus adherent and fire him to keep U caucus from breaking E's back, unlawful)

Lauridsen Foods, Inc. JD-36-81
(informing Ees that another Ee was discharged because of U activities, violative)

RMX, Inc. JD-583-80
(conveying to Ees that Ee was discharged for U activities, unlawful)

Retail Delivery Service, Inc., and Robert A. Baime, Esq. JD-486-80
(informing Ee that his stated intention to complain to U and Bd was reason for discharge, violative)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass JD-452-80
(comment to U official in presence of other Ees blaming U for Ee's termination, violative)

Falconer and Sons JD-(SF)-232-80
(E's statement at meeting that shop steward was discharged because he was *just too involved in his union activities,* unlawful)

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) JD-[illegible]-79
(informing strikers that they had lost their status as Ees because their positions had been filled during the strike, unlawful)

5006-5046 Informing employees that wages or benefits could not be increased because of union campaign or objections

Alpha Cellulose Corporation 265 NLRB No. 010
(E's letter to Ees declaring that wages and benefits would be frozen during contract negotiations held unlawful and interference with election, since E thereby misinformed Ees by stating that negotiations prevented wage increases and implied that rejection of U would free E to grant raises and other benefits, thereby leading Ees to conclude that penalty was attached to exercise of their rights in choosing U; E has general duty to proceed as it would have in absence of U and, even during negotiations, E may lawfully implement benefits which have become conditions of employment by virtue of prior commitment or practice)

Schnadig Corporation 265 NLRB No. 020
(supervisor informing Ee who was U *organizer* when Ee requested his annual raise that E couldn't give Ee raise right now before election, since U might view it as bribery, and that supervisor was uncertain as to when evaluation for raise was due, not unlawful, absent evidence E would have given Ee raise at that time in absence of U activity)

Schnadig Corporation 265 NLRB No. 020
(denying Ee anticipated annual wage increase because of his U activity, and informing Ee when Ee inquired about increase after election that increase could not be granted until U certified, unlawful)

Champion Road Machinery International Corporation 254 NLRB No. 123
(supervisor's telling Ees that E could not grant early performance reviews because it would look like bribery due to Ees' U organizing campaign, unlawful)

5006-5046—Cont.

Larid Printing, Inc. 264 NLRB No. 040
(E's president informing Ee he had intended to give Ee night work differential, but could not because of U campaign, unlawful)

Larid Printing, Inc. 264 NLRB No. 040
(E's president asking Ee why Ee wanted U and stating Ee could not get raise or promotion because of presence of U, unlawful)

Huttig Sash and Door Company 263 NLRB No. 163
(where Ee was told at time of hire that he would receive wage increase in 30 days, failing to grant increase on grounds that U had come into picture, violative)

East Bay Newspapers, Inc., d/b/a Contra Costa Times 263 NLRB No. 076
(informing Ees that *U talk* would jeopardize implementation of already decided upon wage increases violative)

Knogo Corporation 262 NLRB No. 171
(speech informing Ees they did not need U to receive improvements in job benefits and if it were not for U campaign they would be receiving increased benefits put onus on U for delay and violated Act)

R. L. White Company, Inc. 262 NLRB No. 069
(supervisor's statement to Ee that if U came in *everything would be frozen* not violative threat of loss of benefits but statement of legal effect of selecting bargaining representatives)

Zero Corporation, Zero East Division 262 NLRB No. 064

Zero Corporation, Zero East Division 262 NLRB No. 064

Progressive Supermarkets, Inc. 259 NLRB No. 074
(E who postponed scheduled payraise for Ees during critical period and placed onus on U violated Act)

Blackstone Company, Inc. 258 NLRB No. 124
(statement to Ees that consideration of wage increase would have to be deferred until after election violative)

Associated Milk Producers, Inc. 255 NLRB No. 104
(withholding for 5 weeks, its system-wide wage increase because of U campaign and election, violative)

Gasum Company, a Division of the United States Gypsum Company 254 NLRB No. 041
(announcing that merit wages increases were frozen because of U organizing campaign, unlawful; since, although no regularity in merit increases after first 90 days of employment, merit review system as implemented became term and condition of employment and Ees had reasonable expectation merit raise system would continue where merit pay had assumed pattern based upon reward for good work)

Intermountain Rural Electric Association 253 NLRB No. 164
(manager's telling Ee that E *had put a blanket on all raises...because of the filing* of election ptn by U held violative)

Centre Engineering, Inc. 253 NLRB No. 028
(E's statement that it could not give raise because of U campaign violative where E was blaming U for its inability to give raise and it made no assurances that raise would be given after U campaign or made retroactive)

Douglas & Lomason Company 253 NLRB No. 039
(informing Ees that they would have received more or higher wage increases and more paid holidays, if not for presence of U, unlawful)

G. F. Business Equipment, Inc. 252 NLRB No. 123

Cable Vision, Inc. 249 NLRB No. 062

Conagra, Inc. 248 NLRB No. 085

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 057
(informing Ees that E had *discontinued efforts to obtain group health insurance—as a result of commencement of the U organizing campaign* not unlawful where GC failed to prove E had denied Ees any benefits)

Permanent Label Corporation 248 NLRB No. 021
(E's recitation of *no promises* formula or statement that it was precluded from making commitments, does not cancel inferences that grievances solicited in pre-election context would be corrected)

Service Garage, Inc. 247 NLRB No. 115
(violation where E made statement that Ees would receive 7 percent pay raise and then later told them they would not receive raise because of Ees' U activities)

University of Southern California JD-(SF)-188-81
(announcing to Ees that because of their U activities, their scheduled wage increase would be held in reserve, violative)

Texas Industrial Services JD-(SF)-188-80

A.S.K., a subsidiary of Intermedics JD-(SF)-161-80
(E informing Ee on advice of counsel he could not give Ee wage increase in view of U activity, not unlawful, since rescission was correction of error in offering unlawful increase)

Mather Federal Credit Union JD-(SF)-8-80

Southside Electric Cooperative, Inc. JD-800-79
(falsely attributing rescission of wage increase to U held violative as effort to undermine U's standing among Ees)

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)
(violation, where E impliedly blamed U for E's decision to withhold wage increases)

N.L.R.B. v. Porta Systems Corporation 625 F.2d 399 (C.A. 2, 1980)

Florida Steel Corporation v. N.L.R.B. 648 F.2d 233 (C.A. 5, June 1981)
(violation since E misstated law in that it implied it might lawfully withhold customary periodic increases, and other benefits that would otherwise be granted where E informed Ees via videotape that at one of E's unionized plants Ees did not receive wage increase during months of negotiations since E required to bargain before granting wage increases based on annual wage survey whereas during same period Ees at E's non-U plant had received increase, and only after U voted out after negotiations did not result in contract did Ees receive wage increase)

N.L.R.B. v. Boise Drainage, Inc. 639 F.2d 789(T) (C.A. 9, 1981)
(telling Ee that U activity was cause of E's unwillingness to give wage increases or to reinstate Ees, violative)

5006-5047 Informing employee or union that protected activity was reason for layoff

RAHCO, Inc. 265 NLRB No. 030

Martin-Brower Company 261 NLRB No. 111

Gauley Industries, Inc. 260 NLRB No. 189
(manager's statement in reference to layoffs *—that he knew that they were coming, but the U had speeded them up,* held violative)

Lion Uniform, Janesville Apparel Division 259 NLRB No. 142
(telling Ee that strikers were fired upon their refusal to return to work, unlawful (actual discharge not alleged))

K & E Bus Lines, Inc. 255 NLRB No. 137
(informing Ee he was laid off or discharged because he was member of U, unlawful)

K & E Bus Lines, Inc. 255 NLRB No. 137
(informing Ees that they were being laid off to get that Ee out of U, unlawful)

Ogden & Moffett Company 254 NLRB No. 181
(telling Ees that fellow drivers were laid off because Ees had complained to state agency about safety conditions and because Ees had refused to operate trailers they considered unsafe, violative)

Sumco Manufacturing Co., Inc. Summit Grinding Company 251 NLRB No. 046
(advising Ee that layoff was to get rid of people organizing for U, unlawful)

East Wind Enterprises 250 NLRB No. 101

Kall of Mississippi, Inc. 249 NLRB No. 119
(telling Ees that they were being laid off because of their U activities and implying that E would transfer work from local plant to another plant, violative)

5006-5048 Informing employee that protected activity was reason for less favorable treatment

Tra-Mar Communications, Inc. 265 NLRB No. 089
(E's statement that —*any privileges that you have now are definitely going to be taken away if the U is voted (in)* held violative, since remark constituted threat of more onerous working conditions and loss of privileges if Ees were to select U as their representative)

Village IX, Inc. d/b/a Shenanigans 264 NLRB No. 122
(statement to U adherent that she didn't deserve to be invited to E's anniversary party violative)

Winges Company, Inc. 263 NLRB No. 021
(informing Ee that U activity was cause of stricter discipline)

Gorman Machine Corporation 257 NLRB No. 010
(telling Ees, subsequent to U election, that their overtime work was terminated because U won election, violative)

Woonsocket Spinning Company 252 NLRB No. 163
(telling Ee he might have received bonus if he had not voted for U)

Pacific Intermountain Express 250 NLRB No. 180
(violation where E removed customer accounts from Ee and told other Ees that it had done so because of customer's demand that U sales representatives not service them)

5006-5048—Cont.

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(E agent's telling Ees that *they was pissed because of the Union,* violative where the statement was given in response to Ee question as to why E unilaterally changed working hours of Ees)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's telling Ee that he knew E was cutting hours of Ees so they would be unable to support their families, would *have to quit and the union thing would go down the drain,* violative)

Production Plated Plastics, Inc. **247 NLRB No. 076**

Motorway Freight Lines, Inc. **JD-(SF)-193-82**
(E informing Ees it had instituted profit sharing plan from which U members would be excluded, unlawful)

5006-5049 Informing employee that protected activity was reason for refusal to hire, reinstate or re-employ

Haco Engineering Company **265 NLRB No. 002**
(telling former Ee he would not rehire him because of his past activities as U steward violative)

A & A Ornamental Iron, Inc. **259 NLRB No. 138**
(telling job applicant that E did not hire individuals who were U members, unlawful)

Mark Twain Marine Industries, Inc. **254 NLRB No. 144**
(advising ULP strikers that they had been replaced and no longer worked for E, violative)

Stafford Construction Co. **250 NLRB No. 128**
(telling prospective Ees that employment was conditioned on withdrawal from U)

Kenneth and Mary M. McGlaughlin, Copartners, d/b/a Hudson-High Super Duper **247 NLRB No. 199**
(telling applicant he would not be hired because he was honoring U picket line at another retail store held violative)

Niagara Falls Sightseeing By Sheridan, Inc. **JD-447-82**
(telling Ee that filing for unemployment compensation on basis of his reduced hours of work was reason he was laid off, unlawful)

Alpha Beta Company **JD-201-82**
(E's informing Ees laid off or formerly employed at one of its facilities that its refusal to hire Ees at another of its facilities was due to Ee's U membership, unlawful)

Transportation Manpower Services of Ohio, Inc. **JD-(SF)-192-82**
(telling prospective Ees that it was hiring Ee because he was not member of U, violative)

John Campbell t/d/b/a Chef John's Restaurant **JD-49-81**
(telling applicants for employment that E would not hire predecessor's Ees who were picketing facility on behalf of U, violative)

N.L.R.B. v. Consolidated Freightways Corporation of Delaware **651 F.2d 436 (C.A. 6, Mar 1981)**
(E's refusal to hire former president of local U who had threatened to break E's manager's arms and legs and informing applicant who was later hired that it did not hire U president because of his protected activities, not unlawful, notwithstanding existence of mixed motive for refusal to hire, absent evidence threats were pretext for refusal to hire or that explanation for refusal interfered with Ee's rights under Act)

N.L.R.B. v. Bolsa Drainage, Inc. **639 F.2d 789(T) (C.A. 9, 1981)**
(telling Ee that U activity was cause of E's unwillingness to give wage increases or to reinstate Ees, violative)

5006-5050 Misleading or distorted explanation of Act

Alpha Cellulose Corporation **265 NLRB No. 010**
(E's letter to Ees declaring that wages and benefits would be frozen during contract negotiations held unlawful and interference with election, since E thereby misinformed Ees by stating that negotiations prevented wage increases and implied that rejection of U would free E to grant raises and other benefits, thereby leading Ees to conclude that penalty was attached to exercise of their rights in choosing U; E has general duty to proceed as it would have in absence of U and, even during negotiations, E may lawfully implement benefits which have become conditions of employment by virtue of prior commitment or practice)

General Electric Company **264 NLRB No. 126**
(statements to Ees during U campaign that selection of U would mean loss of communication with managements on subjects not covered by U's grievance procedure are violative as threat and misrepresentation of Sec. 9(a) rights)

R. L. White Company, Inc. **262 NLRB No. 069**
(telling Ee that E had right to discharge economic striker violative as misstatement of law and threat to discharge in event of strike)

St. Rita's Medical Center **261 NLRB No. 067**
(statement concerning that once U was in you can't vote it out although not completely true, was not so blatant as to constitute *per se* violation of Act)

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**
(E's thinly veiled attacks on U and promulgation of erroneous labor law to the effect that because Ees had no contract there was no U, unlawful)

Beck Studios, Inc. **260 NLRB No. 044**
(E's implying (in event it chose to agree to U security provisions in bargaining agreement) that it would discharge Ees for nonmembership in U even if it had reason to believe that such membership was not available to them on same terms and conditions generally available to other members, or that membership was denied or terminated for reasons other than their failure to tender periodic dues and initiation fees uniformly required as condition of acquiring or retaining membership held violative as egregious misrepresentation of law relative to Ee's rights in event E agrees to U shop)

Dimensions in Metal, Inc. **258 NLRB No. 078**
(E's statement that *no Bd could make us put (discriminatorily discharged Ee) back to work,* violative)

Jensen Sound Laboratories **258 NLRB No. 181**
(statement to Ees that any attempts to decertify U would result in U imposing heavy fines on its members violative as being contrary to Bd law)

Daniel Construction Company, A Division of Daniel International Corporation **257 NLRB No. 176**
(E's misstatement of law that Ee would have to join U if it won election, not violative since statement contained no threat to interfere with Ees' rights and was therefore not coercive)

Harrison Steel Castings Company **262 NLRB No. 059**
(statement by E that after economic strike ends those replaced will have *no job to return to* violative as it is ambiguous in that it could lead Ees to think that if they struck they would be terminated)

Limestone Apparel Corp. **255 NLRB No. 101**
(if Ees select U, they gave up right to come to E and present their own grievances held violative)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern **254 NLRB No. 045**
(E's communication to Ees that they would *absolutely* lose all direct access to management if they chose to be represented by U and that E *would be legally obligated to deal solely through U* was erroneous statement of Ees' Sec. 9(a) rights and unlawful threat of loss of benefits)

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(violation by misstating law by implying that Ees, in order to retain jobs if U wins, would have to pay U fines, assessments and have dues checkoff, in view of these statements being made in context of repeated unlawful threats and statement that victory for U would destroy job security)

Peat Manufacturing Company **252 NLRB No. 153**
(telling economic strikers that *they were not going to get their jobs back,* violative, since they were entitled their jobs once strike had ended, they applied for reinstatement and openings for which they were qualified became available)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where E misstated law on strikers' rights by declaring that it had no duty to rehire Ees who were replaced during strike and thus threatened Ees with future permanent loss of employment if they engaged in economic strike)

Madison Newspapers, Inc. **JD-197-82**
(informing Ees that strikers would not have to be recalled and that E was committed to not hiring them back, unlawful since E was obligated to recall them pursuant to preferential hiring list instituted by E upon strikers' unconditional offer to return)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern **JD-(SF)-339-80**
(threatening Ees with loss of access to management if U became Ees' representative, unlawful, where E conveyed message to Ees by letter on day before election that if U represented Ees, Ees could not deal directly with E and E would be legally obligated to deal solely through U regarding all aspects of Ees' terms of employment; E thereby misstated Ees' statutory rights under Sec. 9(a))

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(telling Ees that if U won election there would be no automatic wage increases or other benefits, but that wages and benefits would be frozen by law while negotiations are going on between E and U, often times for many months, violative)

Peavey Company v. N.L.R.B. **648 F.2d 460 (C.A. 7, May 1981)**
(telling Ee she was confidential Ee and not allowed to participate in U activities)

5005-5051 Informing employees that protected activity was reason for transfer or denial of transfer

Electric Hose and Rubber Company 262 NLRB No. 014
(informing Ee that his right to transfer to new facility was denied because of his U activities, violative)

Union Oil Company of California, Polymer PLant 258 NLRB No. 188

Western Marine Electronics, Inc. 257 NLRB No. 057
(violation, where Ee transferred from machine shop to dusty, monotonous sanding job after he filed grievance contending he was in unit covered by bargaining agreement and was not receiving contract wage or benefits, and after meeting on his grievance Ee was told he was being transferred because of grievance)

Williams and Lane, Inc. 254 NLRB No. 074
(E who required Ees to resign from U before he would transfer them to new non-U facility violated Act)

L. M. Berry and Company 254 NLRB No. 003
(advising U adherent that but for her U activities she could be transferred as desired, violative)

5006-5052 Informing employee that protected activity was reason for warning

RAHCO, Inc. 265 NLRB No. 030

East Texas Motor Freight 262 NLRB No. 101
(letter to dissident U Ee warning him of discipline connected with E's disparate enforcement of contractual limitation on use of bulleting board)

C. R. Adams Trucking, Inc., and Michael Cates 262 NLRB No. 067
(telling Ees that they must join U prior to 30-day grace period, or they will be discharged, violative)

Truck Stations, Inc., d/b/a Woody's Truck Stops 258 NLRB No. 094
(where E issued warning to two Ees, one U member and one not and told non-U member that only reason she received warning was to avoid appearance of harrassing U member, statement violated Act as it could be construed as evidence of E's willingness to retaliate against Ees for their U activities and also to engage in subterfuge to avoid legal scrutiny of its actions)

Maine Apple Growers, Inc. 254 NLRB No. 060
(E's statement to Ees, who requested wage raise and directed grievance letter to E's Board of Directors, that *agitating talk* must cease held violative, since it was, in instant case, intended to interfere with, restrain, and coerce Ees)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. 691 F.2d 1133 (C.A. 4, Sept. 20, 1982)

5006-5053 Futile to join or choose union

Woodview Rehabilitation Center 265 NLRB No. 122
(violation where E made speech to Ees in which it threatened that they would lose benefits, would no longer be able to resolve their grievances by going to E if they selected U to represent them, and threatened that selection of U would be futile since E, not U, would decide on manpower requirements and timing of pay raises)

Alpha Cellulose Corporation 265 NLRB No. 010
(statements in E's letters to Ees that they would be unable to find employment with area employers after being replaced in strike held not predictions of consequences of unionization, but unlawful, where statements were not-so-subtle threat that Ees who engaged in protected activities would be blacklisted by E and would, for discriminatory reasons, be denied employment by other Es, since E's letters made no mention of unemployment in area nor spoke to general problems of unemployed persons gaining employment and, instead, suggested that replaced striker would not be hired by other Es, thereby impressing upon Ees folly and futility of electing U)

Acme Motors, Inc., t/a Acme Datsun 263 NLRB No. 077
(informing Ees that it would be futile for them to select U and/or seek to use Bd processes or seek its protection, violative)

E. I. Dupont De Nemours 263 NLRB No. 015
(informing Ees that if U were selected E would negotiate with U by listening to U's proposals and then making single final overall counterproposal package which U could accept, but if U did not, strike would result, unlawful, since Ees could reasonably conclude that Ees would end up with no better terms and conditions of employment than if they had no representation and thus it was futile to select U to represent them)

E. I. Dupont De Nemours 263 NLRB No. 015
(supervisor informing Ees that *He didn't see that company would give any more than they were giving regardless of whether we went U or not,* unlawful)

E. I. Dupont De Nemours 263 NLRB No. 015
(supervisor indicating that if E had to bargain with U it would listen, but that was all it would have to do, unlawful, since conveyed to Ees idea it would make no difference to Ees' situation if U represented them)

South Nassau Communities Hospital 262 NLRB No. 145
(management executive's remarks at regularly scheduled monthly staff meeting, in response to question raised regarding U, that E will only be unionized *over my dead body,* unlawful, since such phrase convey's a sense of futility to Ees that selection of U would be to no avail)

R. L. White Company, Inc. 262 NLRB No. 069

Conair Corporation 261 NLRB No. 178
(supervisor's statements to Ees that there would be no election because E did not want election to be held or U to represent Ees, unlawful, since, in view of E's numerous ULPs, supervisor's statements clearly imparted to Ees E's total control over their terms and conditions of employment; and imparted to Ees total futility of proceeding in exercise of their statutory rights whose scope, if any, would be determined by E)

Electric Hose and Rubber Company 262 NLRB No. 014
(E's statement that it will maintain its policy of granting same benefits to its U and non U plants made during organizing campaign violative as threat that its unionized Ees would not receive more than its non-U Ees; therefore, no need for U)

Herider Farms, Inc. 261 NLRB No. 113
(seeking to prevent discussion of U on break time and warning that organizing attempts would be futile, violative)

Sterling Sugars, Inc. 261 NLRB No. 071

Fred Lewis Carpets, Inc. 260 NLRB No. 108
(constantly reminding Ees that E would never go U, violative)

Emory Nursing Home, Inc. d/b/a Emory Convalescent Home 260 NLRB No. 071
(telling Ee that U would take Ees' money and not do anything for them because E was *too small,* violative)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(E's statement to Ees on different occasions that U wasn't going to tell him what to pay Ees nor how he should run his operation, unlawful)

G.T.A. Enterprises, Inc. d/b/a **Restaurant Horikawa** 260 NLRB No. 029

Dimensions in Metal, Inc. 258 NLRB No. 078
(E's executive vice-president's statement that he would *guarantee* that Ees would get nothing if U were brought in, violative since it clearly manifested closed mind and determination that bargaining would be futile)

Litton Mellonics Systems Division, A Division of Litton Systems, Inc. 258 NLRB No. 084
(remarking to Ees that Ee-formed U would not have much bargaining power held not unlawful prediction of futility if Ees chose U where GC cited no authority for interpreting remark as such and, moreover, immediately following remark, E readily acknowledged duty to bargain in good faith with U if certified)

Union Oil Company of California, Polymer PLant 258 NLRB No. 188

Transportation Management Corporation 258 NLRB No. 061
(E's statement to Ee that it would take 2 years to get U in, another 4 to get contract and that he would fight them all the way violative)

Saint Luke's Hospital 258 NLRB No. 045
(department head's calling Ees to office, warning them to *think twice* about what they were getting into before getting involved with U because E would never recognize U, held unlawful threat of reprisal and futility of organizing efforts, notwithstanding personal and friendly nature of conversation)

Thurston Motor Lines, Inc. 257 NLRB No. 172
(telling Ees that it would be futile for them to chose U, violative)

Caterpillar Tractor Company 257 NLRB No. 029
(E's statement that he *did not think anyone had any more job security than...they ever had* before U, not unlawful, where such statement was expression of opinion)

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising 257 NLRB No. 022

Polk Bros. Concrete Products 256 NLRB No. 128
(E said *he would not sign a damn contract*)

The Swingline Company; Spotnails, Inc. 256 NLRB No. 119

M. A. Harrison Manufacturing Company, Inc. 256 NLRB No. 071
(telling Ees U cannot win and that they might as well give up, violative)

Evans Brothers Barber & Beauty Salons, Inc. 256 NLRB No. 023
(telling Ee that U could not help Ees to improve economic interest, violative)

Evans Brothers Barber & Beauty Salons, Inc. 256 NLRB No. 023
(telling Ee that U could not do Ees any good because E could not afford it, violative)

Mark Lines, Inc. 255 NLRB No. 191
(violation where a few days before election E informed Ees of futility of electing U and that U would preclude employment of retirees and part-time

5006-5053—Cont.

drivers, and would impair seniority at this facility as compared to another facility)

Firmat Manufacturing Corp. **255 NLRB No. 153**
(statements reflecting futility of selecting bargaining representative, violative)

Southern Moldings, Inc. **255 NLRB No. 115**
(speeches which were intended to, and did impress upon Ees futility of selecting U and clearly conveyed to Ees impression that Us inevitably bring uncompetitiveness, strikes, and eventually plant closure, violative)

Custom Trim Products **255 NLRB No. 096**
(sending letter to all Ees during critical period conveying to them that it would be futile to select U, violative)

Elk Brand Manufacturing Company **253 NLRB No. 132**
(E's statement that threatened plant closure if Ees selected U did not also amount to expression that selection of U would be futile gesture)

GE's Trucking, Inc. **252 NLRB No. 131**
(E, operating trucking company engaged solely in distributing another E's product, who stated to his own Ee that distributor would fire them all if they started U, unlawful either as threat of discharge or as statement that selection of U would be futile; distributor was in position to affect E's business for better or for worse, and Ee might reasonably assume that E would know, better than Ee, what action their mutual livelihood would take in event of unionization)

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(letter gives guarantee that U will never get signed contract and other themes indicate futility)

B. E. & K., Inc. **252 NLRB No. 036**
(alleged statement by E to Ees that E would not negotiate with U as to any wage increases, herein asserted to be a threat of futility, not unlawful, where Ees' testimony to that effect constituted a conclusion of what E had said rather than an accurate recollection of what had been said, and E's denial of making statement was credited)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(supervisor's statement that *there was no way E would sign contract with* U, unlawful)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(violation where E threatened Ees that their support of Us would be futile since E would never sign contract and would terminate or permanently replace any Ees who went on strike for contract)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(president's statement that if company became unionized Ees would be on strike for so long they would lose interest and find other jobs, unlawful)

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**
(E's statement that Ees at nonU plant would receive all benefits that Ees at U plant would receive, violative as itindicated that U representation would be futile because it would not result in improvement of working conditions)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E threat made in meeting with U business agent and overheard by Ee to effect that Ees could join U but U would have to work them, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(statement that E would not sign contract that would improve wages or working conditions and that it might take up to three years to get contract signed, that no benefits could be obtained w/o E agreeing and E would close plant before it agreed, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(informing Ee who had been soliciting for U that if U came in company *would buy out committee and she would be hurting,* unlawful threat)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(E's statements that it would never capitulate to U's representative status and that Ee would only lose because U dues would make his salary lower, violative)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(speech stating that E was determined to oppose U and will not bargain for more favorable working conditions, leading Ees to understand that selecting U would be futile, unlawful)

Thermo King Corporation **247 NLRB No. 048**
(preelection speech to Ees in which E stated *you will gain absolutely nothing* by U representation, not unlawful, where speech was compilation of factual material in combination with review of organizing campaign, E outlined benefits already enjoyed by Ees which, if traded for U representation, will only bring Ees anger, misery, and frustration and presented economic problems which could arise if E could not meet U demands, thereby merely engaging in speculation concerning possible consequences beyond E's control)

Lacks Industries, Inc. **JD-346-82**
(E's statement to Ee, allegedly indicating futility in selecting U as Ee representative, not unlawful, where it constituted part of E's campaign rhetoric and E did not suggest that he will engage in any illegal activity to prevent U from organizing Ees or to prevent Ees from choosing U as their representative; it is not illegal for E to express his opposition to U)

Gary Concrete Products, Inc. **JD-(ATL)-65-82**
(statement by E that there would be no change if U came in, violative as it suggests futility of U efforts)

U. S. Gypsum Company **JD-(ATL)-28-82**

Ellis Hospital **JD-164-82**
(letter to Ees allegedly containing anticipatory refusal to bargain with U, not unlawful, where letter referred to management rights clause contained in Ee handbook, rights and responsibilities cited in handbook were substantially same as might reasonably be expected in any bargaining agreement, and statement in letter did not suggest to Ees futility of selecting U as their representative)

Berco Industries, Inc. **JD-56-82**
(E president's telling Ees that U could not give them more money if he decided not to pay it or to save their jobs if he decided to let them go, violative)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**
(threat to refuse to negotiate or sign a contract with any U selected by Ees, unlawful and objectionable)

Scoggin, Inc. **JD-433-81**
(allegation in complaint that E's president informed Ee he would not abide by outcome of election dismissed since statement of E's president that *he wasn't going to accept contract* and *was not going to give U any trouble, but he would not accept contract either,* not unlawful as statement that is ambiguous and cannot be equated to E would challenge election process or U right to represent Ees)

Scoggin, Inc. **JD-433-81**
(E's president's statement that electing U would be futile because he would not bargain with intent to reach agreement or enter into agreement, unlawful)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**
(E's posting notice stating that if Ees did not join certain U, which E would join, Ees could strike for rest of their lives held violative, since E's notice suggested futility of selecting petioning U)

New Mayo, Inc., d/b/a Mayo Products Company **JD-(ATL)-18-81**
(telling Ees that they were not going to get as much as they expected because of their U activities, violative, where such statement could be interpreted that E would reduce Ee benefits in retaliation against their U activities; moreover, this statement could be interpreted that Ees could not reasonably expect to attain their goals through U activity)

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**
(E's response to Ees' questions that, if Ees voted in U, E must negotiate in good faith but did not have to sign contract if unable to agree to its terms, not coercive and not unlawful or statement that electing U would be futile since E would not negotiate contract, as alleged, but rather was correct statement of E's legal obligation)

Giuliani Apparel Corp. **JD-162-80**
(E president's statement to Ees that he didn't think U would do Ees any good, that nobody would shove contract down his throat, and that he was only boss, not unlawful, where E president expressed willingness to sign contract with U and his remarks about benefit to Ees of contract reflected expression of opinion about how little benefit this would be to Ees rather than message of futility)

N.L.R.B. v. Permanent Label Corporation **657 F.2d 512 (C.A. 3, 1981)**
(E's vice-president informing Ees that U could not deliver on promises and would just take their dues, that only company could give them job security, that unionized plants sometimes became uncompetitive and found it difficult to stay in business)

K & K Gourmet Meats, Inc. v. N.L.R.B. **640 F.2d 460 (C.A. 3, 1981)**
(E's comments to Ee that U would be blocked are not violative as this statement is not coercive in character and falls w/i Section 8(c) protection which allows for exchange of information between U and management)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. **691 F.2d 1133 (C.A. 4, Sept. 20, 1982)**
(where Ee expressed her dissatisfaction with contract covering unionized Ees at another plant and plant manager responded that *that contract was first thing E's lawyers would insist on if U won election,* response violated Act as this is coercive statement, especially where made to one who saw no benefit in contract)

5006-5053—Cont.

Pease Company v. N.L.R.B. **666 F.2d 1036 (C.A. 6, Dec. 1981)**

(ct held where there was no background of anti-U animus by E, isolated remark by E's representative that in a couple more months he would not have to hear any grievances was ambiguous and therefore Bd finding 8(a)(1) violation was not supported by substantial evidence)

N.L.R.B. v. Naum Brothers, Inc. **637 F.2d 589 (C.A. 6, Mar 17, 1981)**

(substantial evidence supported Bd's finding that E had indicated to Ees that unionization would be futile and might lean to closure of store)

5006-5055 Employees will have to bargain from scratch if union is selected

Belcher Towing Company **265 NLRB No. 159**

(while E may properly point out hazards of bargaining process to Ees and may lawfully inform Ees prior to election that bargaining may start from *scratch* or *zero*, E's handbill threatening bargaining from *ground zero* and statements aobut *hard bargaining* held not mere expressions of opinion as to normal and natural hazards of bargaining; rather, Ees were left with impression that E would see to it that Ees lost rather than gained benefits if they voted for U, and that they would lose existing benefits for less certain, U-proposed benefits)

Economy Fire and Casualty Co. **264 NLRB No. 003**

Zero Corporation, Zero East Division **262 NLRB No. 064**

(E's statement to U adherent that they would have to bargain from scratch if U came in violative, notwithstanding the two had been close friends for 8 to 10 years)

Progressive Supermarkets, Inc. **259 NLRB No. 074**

Best Products Co., Inc. **259 NLRB No. 016**

Clements Wire & Manufacturing Company, Inc. **257 NLRB No. 075**

(informing Ees that when negotiations began they would start with clean sheet of paper and Ees could no longer be guaranteed wages they were now getting, violative)

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**

(supervisor's remarks during break, in response to Ee's question, that when a U comes in you bargain from minimum wage up and there are no benefits until contract signed, violative as remarks were threat of loss of existing benefits)

Conagra, Inc. **248 NLRB No. 085**

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**

(telling Ees that they *probably* would not get raise if U won because all raises would then be subject to negotiation, held not violative, citing *Strumpf Motor Company*, 208 NLRB 431, 432 (1974))

Gerber Scientific Instrument Company, Inc., A Wholly Owned Subsidiary of Gerber Scientific, Inc. **JD-188-82**

(*E may inform Ees of realities of collective bargaining which include possibility that U, in order to secure other benefits might trade away some existing benefits. It may not, however, lead Ees to believe that E through predetermined regressive bargaining position will require U to give up existing benefits. Conduct and statements having effect of warning that E will begin negotiations from stratch clearly violate this rule*)

U. S. Gypsum Company **JD-(ATL)-28-82**

Ellis Hospital **JD-164-82**

(supervisor's statement allegedly informing Ees that, in event Ees selected U, Ees would lose all existing benefits and that bargaining would be from *scratch* or *zero*, not unlawful, where supervisor did not use the alleged expressions but merely stated that, in event of collective bargaining, Ees could gain benefits, lose benefits, or they could remain the same)

Valleydale Packers, Inc. **JD-(SF)-81-81**

(E who conducted active anti-U campaign did not violate Act where its speeches contained statements that, all existing benefits are on table and wages and benefits could go up or down as this is not threat to withdraw benefits)

National King Coal, Inc. **JD-(SF)-34-81**

(E which posted copy of Bd decision containing statement that *bargaining starts with blank piece of paper and could result in loss of existing benefits* did not violate Act as this is accurate description of one possible consequence of lawful collective bargaining)

Datagraphix, Inc. **JD-(SF)-344-80**

(supervisor's comment to Ees that Ees were free to choose whether or not they desired to be represented by U, but if U were selected it was possible that as result of negotiations, Ees could lose or gain benefits since in negotiating Ees started from *ground zero*, not violative)

Liberty Vinyl Corporation **JD-(SF)-308-80**

(pamphlet distributed by labor consultant during U campaign stating that negotiations start from scratch held not violative, as it is truthful and unobjectionable for E to point out that contract negotiations involve tradeoffs and no benefits are exempt from bargaining process that E must engage in good faith)

South Suburban Hospital **JD-(SF)-278-80**

(in noncoercive manner and circumstances E can state that all benefits and wages will be renegotiated if U wins; not quite same as *bargain from scratch*)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**

(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, not unlawful, since it was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

TRW-United Greenfield Division v. N.L.R.B. **637 F.2d 410 (C.A. 5, 1981)**

(statement by high ranking official in Ee meeting that *we bargain from scratch*, along with reference to *blank sheet of paper* and *bargaining could go on for months*, held violative as implied threat that E would adopt regressive bargaining posture designed to force reduction in existing benefits, and other ULPs were committed)

TRW-United Greenfield Division v. N.L.R.B. **637 F.2d 410 (C.A. 5, 1981)**

(supervisor's reference to *blank-piece-of-paper* during informal discussions two days before election held implied threat of regressive bargaining posture if U won as they were reiterations of threats implied in earlier and similar statements by high Company official)

5006-5058 Statements concerning bargaining position

Van Dorn Plastic Machinery Co., Division of Van Dorn Company **265 NLRB No. 036**

(foreman telling EU negotiating committeeman that E's president would never recognize U, violative)

Rexall Corporation **265 NLRB No. 015**

(supervisor's statement to Ees that benefit some Ees that benefit some Ees enjoyed of being able to leave 5 minutes early to catch bus would become negotiable if U came in not violative as it was accurate statement that hours of work would become negotiable if U won election)

Economy Fire and Casualty Co. **264 NLRB No. 003**

(warning that all benefits could be taken away except those management decided to keep held threat that E would adopt bargaining stance to ensure that collective bargaining could not result in any increased benefits and would or could probably result in decreased benefits)

St. Francis Hospital **263 NLRB No. 109**

(E's statement to Ees at Ee meeting, to effect that Ees cannot count on having better benefits—and Ees shouldn't be fooled by fact that U can help Ees, not violative, since statement was found to constitute permissable electioneering; although E implied bargaining would take *anywhere up to several years*, he did not also imply that E would engage in bad-faith bargaining)

E. I. Dupont De Nemours **263 NLRB No. 015**

(informing Ees that if U were selected E would negotiate with U by listening to U's proposals and then making single final overall counterproposal package which U could accept, but if U did not, strike would result, unlawful, since Ees could reasonably conclude that Ees would end up with no better terms and conditions of employment than if they had no representation and thus it was futile to select U to represent them)

E. I. Dupont De Nemours **263 NLRB No. 015**

(informing Ees that E instead of bargaining by give and take of offers and counter offers would make its best offer, unlawful, since could reasonably be understood to predict E would adopt take it or leave it position by making only one offer and not deviating from that proposal)

E. I. Dupont De Nemours **263 NLRB No. 015**

(supervisor informing Ees that *He didn't see that company would give any more than they were giving regardless of whether we went U or not*, unlawful)

Bedford Farmers Cooperative **259 NLRB No. 165**

(manager's remark, during time E was bargaining with U, that *it would be hard to ever get a contract agreed on because Board of Directors couldn't agree on contract*, not violative, since manager did not suggest bargaining would be futile but that it would be difficult)

Gossen Company, a Division of the United States Gypsum Company **254 NLRB No. 041**

Armour Oil Company **253 NLRB No. 148**

(terminal manager's remarks to three Ees that there would be no work w/o contract, not violative since words were equivocal and by themselves insufficient to support finding that alleged *lockout* was used by E to support its bargaining position for new contract; when statement made, E had every reason to believe U would strike at end of day when present contract terminated)

Talbert Manufacturing, Inc. **250 NLRB No. 026**

(violation where E informed an Ee that it was determined not to have U in the plant and intended to stall negotiations)

5006-5058—Cont.

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**

(statement that E would not give unionized Ees more benefits than unrecognized Ees violative as it showed E had no intention of bargaining with U and would violate Section 8(a)(5))

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**

(E threat to move business or to file bankruptcy rather than to pay U scale or benefits, unlawful)

Conagra, Inc. **248 NLRB No. 085**

(statement that E would not sign contract that would improve wages or working conditions and that it might take up to three years to get contract signed, that no benefits could be obtained w/o E agreeing and E would close plant before it agreed, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**

(misrepresentation of the nature of E-U negotiations by asserting that only issue separating parties was open shop issue, unlawful)

Gerber Scientific Instrument Company, Inc., A Wholly Owned Subsidiary of Gerber Scientific, Inc. **JD-188-82**

(E may inform Ees of realities of collective bargaining which include possibility that U, in order to secure other benefits might trade away some existing benefits. It may not, however, lead Ees to believe that E through predetermined regressive bargaining position will require U to give up existing benefits. Conduct and statements having effect of warning that E will begin negotiations from stratch clearly violate this rule)

Scoggin, Inc. **JD-433-81**

(allegation in complaint that E's president informed Ee he would not abide by outcome of election dismissed since statement of E's president that *he wasn't going to accept contract* and *was not going to give U any trouble, but he would not accept contract either*, not unlawful as statement that is ambiguous and cannot be equated to E would challenge election process or U right to represent Ees)

Scoggin, Inc. **JD-433-81**

(E's president's statement that electing U would be futile because he would not bargain with intent to reach agreement or enter into agreement, unlawful)

Liberty Vinyl Corporation **JD-(SF)-268-80**

(pamphlet stating that present salaries, benefits and working conditions are up for grabs and subject to negotiations held not violative where labor relations consultant who distributed them made spoken remarks which dissipated misapprehension about status of existing benefits and wages if U got in)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**

(plant manager's statement to U officials that contract negotiated with U negotiating committee, having outsiders from E's other plants participating, would be less favorable to plant Ees than one negotiated with only local U members, unlawful; Bd's findings that manager made statement in order to discourage multiplant bargaining are based on credibility findings which are peculiarly w/i province of Bd and are therefore entitled to acceptance on review, and Bd properly considered probability that manager's comments would have prticularly chilling effect on U officials)

5006-5059 Informing employee that protected activity was reason for denial or offer of employment

Central Transport, Inc. **253 NLRB No. 130**

(statements by E's vice-president to applicant who had been involved in intra-U rivalry that if after applicant was hired local U requested applicant's discharge E's owner would direct vice-president to discharge applicant, not unlawful, since no threat made and statements were in response to applicant's negative attitude; vice-president had earlier suggested applicant commence working while member of another local; further, applicant refused vice-president's offer to be calm and give it a try made after allegedly improper remarks)

Central Transport, Inc. **247 NLRB No. 198**

(E's statements during initial employment interview that E maintained policy of not hiring Ees with history of employment with organized Es, violative)

Sahara Packing Company **JD-(SF)-95-82**

5006-5060 No benefits from, or need for, union

Hutchison-Hayes International, Inc. **264 NLRB No. 168**

(telling Ees they *could do a lot better* if they dealt directly with E instead of going through U, violative)

Knogo Corporation **262 NLRB No. 171**

(speech informing Ees they did not need U to receive improvements in job benefits and if it were not for U campaign they would be receiving increased benefits put onus on U for delay and violated Act)

Modern Manufacturing Company, Inc. **261 NLRB No. 078**

(statement of E's president at company meeting that as much, if not more, could be accomplished w/o U, unlawful since it implied that E might grant benefits if Ees voted against U)

Holland American Wafer Company **260 NLRB No. 061**

(telling Ees that they should talk to E's president about what they wanted because U couldn't get anything for them so they should not wait for U, held violative as these statements tend to discourage U support, invite direct bargaining and portray U as futile)

Morco, Inc. d/b/a Towne Plaza Hotel **258 NLRB No. 016**

(E telling Ees that raise came from E and not from U, violative)

American Telecommunications Corporation, Electromechanical Division **249 NLRB No. 149**

(E's statement that Ees at nonU plant would receive all benefits that Ees at U plant would receive, violative as itindicated that U representstion would be futile because it would not result in improvement of working conditions)

Conagra, Inc. **248 NLRB No. 085**

(statement that E offers same benefits as U *for nothing*, violative)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**

(no violation, where in response to Ee's inquiry as to basis for E's statements in support of its decertification ptn E's personnel director informed Ee U was not reputable and asked Ee *why Ees needed U when E gave them benefits anyway* since Ee initiated conversation and question was rhetorical)

Thermo King Corporation **247 NLRB No. 048**

(preelection speech to Ees in which E stated *you will gain absolutely nothing* by U representation, not unlawful, where speech was compilation of factual material in combination with review of organizing campaign, E outlined benefits already enjoyed by Ees which, if traded for U representation, will only bring Ees anger, misery, and frustration and presented economic problems which could arise if E could not meet U demands, thereby merely engaging in speculation concerning possible consequences beyond E's control)

Southern Farmers Association **JD-47-82**

(supervisor telling Ees prior to election that he could do better job than U was promise of benefit)

Cashmere Lumber Company **JD-(SF)-93-80**

(although supervisor's conduct would have been unlawful in organizational setting, his asking Ee why he sought to involve official of parent organization in U's problems at plant, accompanied by statements that Ees did not need U as long as he held his management job and that he would *take care of Ees*, not unlawful, notwithstanding supervisor's *take-care-of* statement since, in context of settled bargaining relationship with U, there was nothing in supervisor's remarks or surrounding circumstances from which Ee could have perceived a threat or promise)

N.L.R.B. v. Permanent Label Corporation **657 F.2d 512 (C.A. 3, 1981)**

(E's vice-president informing Ees that U could not deliver on promises and would just take their dues, that only company could give them job security, that unionized plants sometimes became uncompetitive and found it difficult to stay in business)

N.L.R.B. v. Permanent Label Corporation **657 F.2d 512 (C.A. 3, 1981)**

(asking Ees why they thought they needed U and what problems or grievances they had about conditions in plant, and stating belief E could solve problems w/i year w/o U)

5006-5062 Informing employees that protected activity was reason for cancellation of plant expansion plans

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**

(Bd held supervisor's stating to Ee that, in his opinion, E had planned to open new weaving process in named town, but *because of what had happened, they didn't think that they would* held unlawful and declined to consider opinion nature of supervisor's statement or his status as low-level supervisor to be conclusive, since Ees can reasonably assume that supervisor is privy to decisions of E's management, supervisor's comment *because of what has happened* can be reasonably construed as referring to U election or campaign, and the remark was made in course of extensive unlawful activity by E)

5006-5063 Advantages to be gained from not having union

St. Francis Hospital **263 NLRB No. 109**

(E's statement concerning its labor relations advisor (Modern Management Inc., a/k/a 2M in E's anti-U campaign) over whom Ees felt *really under duress* that *If U wins, 2M stays. If U doesn't win, 2M goes* held violative, since in event of U victory, management would continue to keep them (Ees) *under duress*)

Zero Corporation, Zero East Division **262 NLRB No. 064**

(E who told Ees what benefits were instituted at its other plant immediately after U lost election there violated Act)

5006-5063—Cont.

Martin-Brower Company **261 NLRB No. 111**

(statements that if U lost election laid off Ees would return to work and transferred work brought back, violative)

Management Training Corporation (Formerly Thiokol Corporation) **261 NLRB No. 013**

(where E had policy of promoting Ees as vacancies occurred and of granting annual merit increases, its withholding of these promotions and benefits combined with statements that if U lost election they would be granted immediately, but if U won they would be deferred indefinitely, violated Act)

Weirton Steel, Division of National Steel Corporation **259 NLRB No. 091**

(E's spokesman telling U negotiators they could have stock plan if they forgot about U, violative where statement was made to dissuade Ees from supporting U)

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 065**

Monterey Drilling Company **258 NLRB No. 074**

(statements by supervisors that U representation would mean cut in pay, not unlawful where it was highly unlikely that any Ee would ascribe comment in this regard to anything other than reference to difference in pay and subsistence being paid by E and that required under existing U contracts)

Mark Twain Marine Industries, Inc. **254 NLRB No. 144**

(violation where E's attorney told assembled Ees that they would have more benefits, wages, and rights w/o U by dealing with E on *one to one* basis)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**

(telling Ees that they *probably* would not get raise if U won because all raises would then be subject to negotiation, held not violative, citing *Strumpf Motor Company,* 208 NLRB 431, 432 (1974))

Keister Coal Company, Inc. **247 NLRB No. 049**

(supervisors' statements to Ees during U campaign that *we just better leave well enough alone* and promise of *big bonus and improved working conditions* made in conjunction with interrogations as to what Ees knew about U, held violative, since statements promised Ees improvements conditioned upon their abandonment of support of U)

Keister Coal Company, Inc. **247 NLRB No. 049**

(promise to Ee during U campaign of promotion to foreman's job if Ee would abandon his U activity held violative)

Gerber Scientific Instrument Company, Inc., A Wholly Owned Subsidiary of Gerber Scientific, Inc. **JD-188-82**

(violation where E's flyer asked *If teamsters get in, will Ees lose any of their existing benefits?* and answered *If U gets in then all fringe benefits and wages are subject to negotiation. There is no guarantee that existing benefits will remain same.* and informing Ees in answer to question *why E does not want U* that restrictions of U contract would make things more difficult and E believed in dealing on individual rather than collective basis in view of other parts of flyer which contained threat against retention of current Ee benefits and misstatement of Ee rights)

Johns-Manville Sales Corporation **JD-412-81**

(statement to Ees that they would be better off dealing directly with plant manager, rather than through U)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**

(E's suggestion that Ee would be better off by not joining U constitutes interference with Ee's freedom of choice for or against unionization and is unlawful)

5006-5068 Detrimental results of unionization

Tra-Mar Communications, Inc. **265 NLRB No. 089**

(E's statement that ——*any privileges that you have now are definitely going to be taken away if the U is voted (in)* held violative, since remark constituted threat of more onerous working conditions and loss of privileges if Ees were to select U as their representative)

RAHCO, Inc. **265 NLRB No. 030**

Schnadig Corporation **265 NLRB No. 020**

(violation, where E's chairman of board informed Ees he had purchased plant as non-U and expected it to stay that way, that he was in business to stay, hopefully at present location, but if not there, somewhere else, and needed Ees to help make it profitable, that Ees were entitled to do as they saw fit, but he did not believe U was good for future and being intelligent people Ees should not believe U's snow job, since reference to plant closing not based on objective facts supporting demonstrable probable consequences beyond his control, and supervisors had previously threatened plant closure)

Rexall Corporation **265 NLRB No. 015**

(supervisor who spoke to Ees prior to election and described his experiences as unit Ee under U did not violate Act where his description was truthful, he accurately described specific provisions in labor agreement under which some of E's Ees worked, and repeatedly stressed to Ees that he was not telling them changes would occur but that they could occur; thus, there was no threat of reprisal)

Rexall Corporation **265 NLRB No. 015**

(supervisor's statement to Ees that benefit some Ees that benefit some Ees enjoyed of being able to leave 5 minutes early to catch bus would become negotiable if U came in not violative as it was accurate statement that hours of work would become negotiable if U won election)

Daniel Construction Company, A Division of Daniel International Corporation **264 NLRB No. 079**

(E's response, to Ee asking if customers would cancel contracts with E if U came in, that *if E was no longer competative, they would cancel contract* held not violative even in absence of explanation as to various ways E would become noncompetitive, since answer was merely plain statement of fact and not prediction, and no threat of reprisals if U came in; therefore, statement was protected by Section 8(c) of Act)

Larid Printing, Inc. **264 NLRB No. 040**

(stating to assembled Ees that U would probably make him cut back on help because everybody would have specific job title and if U came in medical unsurance would be cancelled, unlawful)

Cardio Data Systems Corp. **264 NLRB No. 011**

(statement to Ee that prior warning given to Ee for unauthorized use of E's copying machine should be taken as a threat, unlawful, where statement was intended to show Ee what it would be like if Ees were represented by U)

Roper Corporation **263 NLRB No. 151**

(telling Ees that by bringing in U they had lost benefits they might otherwise have had, violative)

St. Francis Hospital **263 NLRB No. 109**

(E's statement concerning its labor relations advisor (Modern Management Inc., a/k/a 2M in E's anti-U campaign) over whom Ees felt *really under duress* that *If U wins, 2M stays. If U doesn't win, 2M goes* held violative, since in event of U victory, management would continue to keep them (Ees) *under duress*)

E. I. Dupont De Nemours **263 NLRB No. 015**

(supervisor asking Ee if Ee would strike should U come in and in same conversation stating that if U came in and strike resulted there would be loss of jobs, unlawful)

Frank J. Schroeder d/b/a National Apartment Leasing Company **263 NLRB No. 003**

(telling Ee that E would fold and everyone would lose their jobs if U's organizing efforts succeeded, violative; such remarks may reasonably be said to interfere with free exercise of Ee rights under Act and neither speaker's intent nor successful effect of remarks on Ee is material)

Oklahoma City Collection District of Browning-Ferris, Inc. **263 NLRB No. 012**

(E's statement to Ees that strikers in other companies had lost jobs violative as creating impression that such adverse consequences would be direct result of unionization)

R. L. White Company, Inc. **262 NLRB No. 069**

(supervisor's statement to Ee that if there was strike he would have to participate, violative)

Zero Corporation, Zero East Division **262 NLRB No. 064**

(E's general manager's remarks that U would be detriment to Ees aspiring for better working conditions and would result in loss of business for E, violative)

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**

(vice-president's remark to Ees, in response to Ee question whether U would be help to E, made in context of E's numerous ULPs during U campaign, that his prior job was *best he had ever had — but company went broke after U came in...* held violative as implied threat to Ees that U victory in election would result in loss of jobs)

Marion Rohr Corporation **261 NLRB No. 138**

(telling Ees that if U came in their work week would be reduced because U's contract prohibits longer work week, not unlawful, because it pertains to possible action by U rather than by E)

Marion Rohr Corporation **261 NLRB No. 138**

(telling Ees that if U came in there would be layoffs caused by U-imposed rigid classifications of employment operations, not unlawful, because it pertains to possible action by U rather than E)

Marion Rohr Corporation **261 NLRB No. 138**

(telling Ees that if U came in U would prevent hiring of 16-and 17-year-old Ees, not unlawful, because it pertains to possible action by U rather than E)

Gauley Industries, Inc. **260 NLRB No. 189**

(manager's statement in reference to layoffs *—that he knew that they were coming, but the U had speeded them up,* held violative)

B. E. & K., Inc. **260 NLRB No. 081**

(E's statement that no U contractor had even bid on job and that U was pricing itself out of work violative)

5006-5065—Cont.

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**
(E's making clear, by letter and speech to its assembled Ees *that their choice is simply between no U* or strikes, violence, layoffs and related adverse consequences held violative in context of E's intense anti-U campaign and accompanying acts of discrimination and coercion)

Amoco Fabrics Co., Patchogue-Plymouth Division/ Nashville Mills **260 NLRB No. 038**
(E's communication to Ees that negotiations with U might result in reduction in wages or benefits due to give and take of collective-bargaining not violative)

Gould, Inc. **260 NLRB No. 002**
(telling Ees that wages would be frozen during negotiations which could take year held unlawful threat because it threatened loss of present benefit of elegibility for merit increases)

High Energy Corporation **259 NLRB No. 097**
(supervisor's statement to Ee that Ees were foolish to bring U in plant that, if U came in, it would definitely make things worse instead of better, not unlawful, since statement was merely an expression of sentiment, unaccompanied by interrogation, threats of reprisal or promises of benefit)

Best Products Co., Inc. **259 NLRB No. 016**
(E's comments to Ees that if U were voted in Ees might lose some benefits to make up for any wage increases they gained not violative as this is explanation of bargaining process)

Browning-Ferris Industries, Chemical Services, Inc. **259 NLRB No. 009**
(E's statement that *if the union was here, there might not be any work* not unlawful where it was spontaneous response to Ee's joking statement about U rather than calculated attempt at intimidation and was isolated incident)

American Display Manufacturing Co., Inc. **259 NLRB No. 006**
(informing Ees that if U came in, made rediculous demands and caused strike, E might not be able to make timely deliveries and lose largest account and thereby result in possible loss of jobs, unlawful because U had not, as yet, made any demands)

Jackson Dairy Products Company **258 NLRB No. 172**
(statement that Ees' filing of election ptn with Bd would cost E money to hire an attorney which would otherwise be used as operating expenses, unlawful)

Truck Stations, Inc., d/b/a Woody's Truck Stops **258 NLRB No. 094**
(statements to Ees that if U won election shift hours would be reduced and pay consequently lowered, violated Act)

Mark Lines, Inc. **255 NLRB No. 191**
(violation where a few days before election E informed Ees of futility of selecting U and that U would preclude employment of retirees and part-time drivers, and would impair seniority at this facility as compared to another facility)

Associated Milk Producers, Inc. **255 NLRB No. 104**
(telling Ee that E *could bust your back in your retirement and could cut us back to 40 hrs/week and minimum wage, violative)*

Foundation of California State University, Sacramento **255 NLRB No. 029**
(E, which was non-profit organization, informing Ees after U had made demand for recognition that U's salary demands would cause E to *lose control of its revenues and make the foundation go broke*)

Association of Apartment Owners of The Whaler on Kaanapali Beach **255 NLRB No. 010**
(E's statements in Ee meeting that if U came in wage rates would be set by U-master agreement not violative where upon questioning by Ees, E agreed that wages would be negotiable, thus neutralizing potentially violative statement)

Gossen Company, a Division of the United States Gypsum Company **254 NLRB No. 041**

Intermountain Rural Electric Association **253 NLRB No. 164**
(violative where indicated in E's memoranda to its Ees after election that U's victory would cause economic detremant)

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(letters stating that U victory would destroy job security, result in strikes and job loss blinded with statements that rejection of U would remove all obstacles to job security and harmonious and beneficial employment relations, violative)

Behring International, Inc. **252 NLRB No. 055**
(E, through Ees acting as its agents at Ee meeting, violated 8(a)(1) by making it clear to Ees that they would be better off w/o U)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's statements that Ee should consider fact U might negotiate restrictions on right to employ retired Ees, not unlawful)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(president's statement that if company became unionized Ees would be on strike for so long they would lose interest and find other jobs, unlawful)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Lyman Steel Company **249 NLRB No. 040**
(warning Ees, prior to rerun election, that if U was successful in organizing Ees and if they went on strike and no agreement reached on contract E *could get rid of (them) and bring in a whole crew,* held violative)

Lyman Steel Company **249 NLRB No. 040**
(assertion by E that if U represented Ees, E would be unable to make Ee transfers from one department to another and *we would have to lay you off,* held violative)

Permanent Label Corporation **248 NLRB No. 021**
(E's statement that if U came in he was not going to work as hard for the business violative)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(E's statements that it would never capitulate to U's representative status and that Ee would only lose because U dues would make his salary lower, violative)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(manager telling Ees that, *if U should get in,* they would be subject to various consequences, causing them to lose (work) hours, held violative)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's telling Ee that he knew E was cutting hours of Ees so they would be unable to support their families, would *have to quit and the union thing would go down the drain,* violative)

Tartan Marine Company **247 NLRB No. 073**
(supervisor showing Ee clipping about discharge of individual for not attending U meetings on Sundays, and informing Ee that Ee and other Ees could be laid off before less capable Ees if U came in, unlawful, absent evidence U advocated seniority over capability)

Keister Coal Company, Inc. **247 NLRB No. 049**
(E's speech to assembly of all his Ees during U campaign that *unionizing this company at this time will create a hardship that will have an effect on all of us* held violative, since it constituted threat of economic adversity in event Ees joined or supported U)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(threatening Ees, that if U came in, U would cause commission of acts of violence, against which E could provide only partial protection, unlawful)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(asking U supporter how she would feed her children on meager weekly strike benefits should U come into plant, unlawful, since it was part of pattern by management to impress Ees that if U came in a strike detrimental to their interests would inevitably occur)

Louis Gallet, Inc. **247 NLRB No. 013**
(violation, where E informed Ees in letter prior to election that if Ees selected U as representative E would have to spend time fighting U rather than obtaining orders and remaining competitive in industry, and consequently plant would close, at no point suggesting possibility of collective bargaining)

Louis Gallet, Inc. **247 NLRB No. 013**
(violation, where E in series of letters prior to election informed Ees that if they voted for U they would be *subjected to strikes and tactics that have faced other companies organized by U* leading Ees to believe that their choice was between no U and strike)

Gerber Scientific Instrument Company, Inc., A Wholly Owned Subsidiary of Gerber Scientific, Inc. **JD-188-82**
(E may inform Ees of realities of collective bargaining which include possibility that U, in order to secure other benefits might trade away some existing benefits. It may not, however, lead Ees to believe that E through predetermined regressive bargaining position will require U to give up existing benefits. Conduct and statements having effect of warning that E will begin negotiations from stratch clearly violate this rule)

Gerber Scientific Instrument Company, Inc., A Wholly Owned Subsidiary of Gerber Scientific, Inc. **JD-188-82**
(violation where E's flyer asked *If teamsters get in, will Ees lose any of their existing benefits?* and answered *If U gets in then all fringe benefits and wages are subject to negotiation. There is no guarantee that existing benefits will remain same.* and informing Ees in answer to question *why E does not want U* that restrictions of U contract would make things more difficult and E believed in dealing on individual rather than collective basis in view of other parts of flyer which contained threat against retention of current Ee benefits and misstatement of Ee rights)

U. S. Gypsum Company **JD-(ATL)-28-82**
(strikes and loss of jobs)

5006-5065—Cont.

Hamby Hardwood Lumber Co. JD-285-81
(remarks of speaker invited by E to address assembled Ees who informed Ees that he had closed firm because of U, and following which remarks E threatened to close plant if U came in, imputed to E and unlawful)

Tri-Supply Company of Beaumont, Inc. JD-(SF)-29-80
(supervisor's telling Ee, *In fact, E would go out of business if they had a union,* and if *...the union was voted in, that the mill would have to be shut down about a week to have negotiations,* violative, since remarks imply that E would unilaterally choose to close down its plant during negotiations)

Tri-Supply Company of Beaumont, Inc. JD-(SF)-29-80
(telling Ees that if U won election their affairs would then be in U's hands and they would no longer have right to speak for themselves in matters pertaining to their employment, violative)

Tri-Supply Company of Beaumont, Inc. JD-(SF)-29-80
(violation where E told Ees, in effect, that considerations over working conditions would become *a mechanical thing* if U won election and that E would no longer be able to guarantee Ees 40-hours a week, but only what was available)

Tri-Supply Company of Beaumont, Inc. JD-(SF)-29-80
(violation where E told Ees that its business was predicated on continuation of service or production and that during contract negotiation E would have no production and hence business would stop)

Tri-Supply Company of Beaumont, Inc. JD-(SF)-29-80
(telling Ees that with U they would no longer have informal atmosphere, that they would lose their freedom, and that decisions affecting their job would be made by others, violative)

Tri-Supply Company of Beaumont, Inc. JD-(SF)-29-80
(E's statement that if U came in *people would be in for a rude awakening and things would get tough around here,* violative)

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)
(violation, where E made speech two days before election in which stated U would cause loss of business and strike, since no basis for prediction)

N.L.R.B. v. Garry Manufacturing Company 630 F.2d 934 (C.A. 3, 1980)
(ct found substantial evidence to support Bd's finding of violation, where E's campaign speech and literature communicated to Ees message that unionization would threaten continued employment, job security, liberal overtime and future benefits)

Universal Security Instruments, Inc. v. N.L.R.B. 649 F.2d 247 (C.A. 4, May 1981)
(statement to Ee that if Ees attempted to gain U representation at new facility, working conditions would deteriorate to level at old plant, violative, where it was undisputed that conditions at old plant were inefficient, cold in winter, hot in summer, and overcrowded)

J. P. Stevens & Co., Inc. v. N.L.R.B. 638 F.2d 676 (C.A. 4, 1980)
(ct deferred to Bd's expertise in finding posted notice stating that signing U card can have *serious consequences* unlawfully coercive especially in context of E's history of misconduct; moreover, notice was posted only day after known U activist disappeared from plant)

Florida Steel Corporation v. N.L.R.B. 648 F.2d 233 (C.A. 5, June 1981)
(violation since E misstated law in that it implied it might lawfully withhold customary periodic increases, and other benefits that would otherwise be granted where E informed Ees via videotape that at one of E's unionized plants Ees did not receive wage increase during months of negotiations since E required to bargain before granting wage increases based on annual wage survey whereas during same period Ees at E's non-U plant had received increase, and only after U voted out after negotiations did not result in contract did Ees receive wage increase)

TRW-United Greenfield Division v. N.L.R.B. 637 F.2d 410 (C.A. 5, 1981)
(telling Ee that another plant had closed because U demanded excessive wages and benefits and if similar demands were made E could close and write off tax loss held unlawful explicit threat by linking U with excessive wage demands)

TRW-United Greenfield Division v. N.L.R.B. 637 F.2d 410 (C.A. 5, 1981)
(sending Ees letter that another plant where *U took money from Ees' paychecks* had been closed permanently for economic reasons violative as it implied similar action might be taken in retaliation if U wins)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. 585 F.2d 752 (C.A. 5)
(threat of loss of jobs if U came in, violative)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. 585 F.2d 752 (C.A. 5)
(informing Ee that if plant closed when U came in, E would have difficulty in getting another job with non-U E, violative)

A To Z Portion Meats, Inc. v. N.L.R.B. 643 F.2d 390 (C.A. 6, Mar. 18, 1981)
(E's comment that for Ees to get a U in was to cut their own throats, unlawful)

N.L.R.B. v. Nunn Brothers, Inc. 637 F.2d 589 (C.A. 6, Mar 17, 1981)
(substantial evidence supported Bd's finding that E had indicated to Ees that unionization would be futile and might lead to closure of store)

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)
(*whether or not threats of plant closure are threats or predictions of economic consequences of U organization which fall outside of ambit of SEction 8(a)(1) turn on nature of E's statement. E's prediction must be carefully phrased on basis of objective facts to convey demonstrably probable consequences beyond his control or management decision already arrived at. If there is any implication that E may take action solely on his own initiative for reasons unrelated to economic necessity statement is threat of retaliation.*)

N.L.R.B. v. Colony Printing and Labeling, Inc. 651 F.2d 502 (C.A. 7, June 1981)
(E informing Ees that signing U cards meant giving up *right to talk to us about your hours, your work, your working concitions; your pay and everything else concerning your future and continued employment,* unlawful since Ees may still present grievances directly to E so long as U representative is given opportunity to be present)

N.L.R.B. v. Mark I Tune-Up Centers, Inc. 691 F.2d 415 (C.A. 8, Oct. 1982)
(statements at pre-election meeting that unionization might cause E to close some of its shops, eliminate shop privileges and impose more onerous working conditions violative where no objective basis for E's predictions)

Gorman Machine Corporation 257 NLRB No. 010
(E's posting notice to Ees which stated in part that *some persons are not pulling their weight,* not unlawful intimidation of Ees where notice merely expressed E's position that production per Ee had decreased and that any increase in wages was dependent on increase in Ee productivity; notice contained no threats of retaliation or other dire consequences as result of U campaign)

5006-5067 Inevitability of strikes upon advent of union

Air Products and Chemicals, Inc. 263 NLRB No. 048
(statement to Ees that they would have to strike to get $9 per hour wage rate which had been used as example in U campaign literature violative)

Grove Valve and Regulator Company 262 NLRB No. 035
(statements made by E in speeches to Ees prior to election which emphasized inevitability of strikes, threatened loss of strikers jobs and plant closure violative especially in light of fact that they were made in context of other violative conduct)

Sterling Sugars, Inc. 261 NLRB No. 071
(E official's threat that selection of U would result in or cause strikes at its company, violative)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility 260 NLRB No. 073
(E's making clear, by letter and speech to its assembled Ees *that their choice is simply between no U* or strikes, violence, layoffs and related adverse consequences held violative in context of E's intense anti-U campaign and accompanying acts of discrimination and coercion)

Progressive Supermarkets, Inc. 259 NLRB No. 074
(E's repeated references to posibility of strikes and fact that economic strikers can be permanently replaced violative when considered in context of E's other campaign statements which were clear violations of Act)

Progressive Supermarkets, Inc. 259 NLRB No. 074
(where E's campaign speeches contained constant references to U's own anti-U campaign where it had forced strike and permanently replaced strikers, these references found violative as *not so subtle threat* that E would also force strike resulting in permanent replacement of strikers)

Best Products Co., Inc. 259 NLRB No. 016
(statements that if U was voted in strike would be inevitable and strikers would lose their jobs violative)

American Display Manufacturing Co., Inc. 259 NLRB No. 006
(informing Ees that if U came in, made rediculous demands and caused strike, E might not be able to make timely deliveries and lose largest account and thereby result in possible loss of jobs, unlawful because U had not, as yet, made any demands)

General Electric Company 258 NLRB No. 092
(supervisor's statement that if U came in it would mean Ee would be giving up his rights to speak for himself, not unlawful, since statement of U's functions as collective bargaining representative rather than implied assertion that Ees would be denied access to management)

Gossen Company, a Division of the United States Gypsum Company 254 NLRB No. 041

Ducane Heating Corporation 254 NLRB No. 030
(continuously emphasizing during election campaign occurrence of strikes and strike violence if U wins election, violative)

5006-5067—Cont.

Centre Engineering, Inc. **253 NLRB No. 028**
(E's campaign linking U with strikers, futility of bargaining and its intent to make negotiations difficult violative)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(president's statement that if company became unionized Ees would be on strike for so long they would lose interest and find other jobs, unlawful)

Fotomat Corporation **248 NLRB No. 150**

Conagra, Inc. **248 NLRB No. 085**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(speech stating that strike with its *trouble and tension* is inevitable and will be unsuccessful because of E's resistance to collective bargaining and that, as a result, strikers will suffer hardship and possibly lose thier jobs, unlawful)

Louis Gallet, Inc. **247 NLRB No. 013**
(violation, where E in series of letters prior to election informed Ees that if they voted for U they would be *subjected to strikes and tactics that have faced other companies organized by U* leading Ees to believe that their choice was between no U and strike)

Lauridsen Foods, Inc. **JD-36-81**

Liberty Vinyl Corporation **JD-(SF)-248-80**

Like Corporation **JD-(SF)-69-80**
(legitimate economic prediction that there could possibly be strike if U came in not violative)

5006-5075 Remove union insignia

The Moore Company, Inc., Div. of Essco Corp. **264 NLRB No. 159**
(supervisor informing Ees that U adherents were jeopardizing their jobs along with jobs of all other Ees by wearing U shirts, hats, and insignia, unlawful)

Tressler Lutheran Home for Children t/a Frostburg Village of Allegany County Nursing Home **263 NLRB No. 042**

E. I. Dupont De Nemours **263 NLRB No. 015**
(supervisor asking black Ee who was wearing U insignia why Ee was getting so involved with U, if any one was presuring him to join U and in same conversation indicating to Ee that E would be making more black supervisors but that Ee should not wear pro-U insignia and to continue to do so would result in his not being considered for supervisor position, unlawful)

E. I. Dupont De Nemours **263 NLRB No. 015**
(violation, where Ee's supervisor gave Ee who was wearing U buttons permission to go into another area of plant but requested that Ee remove buttons before going, since no considerations of safety or interference with production which might justify managerial interference with, or limitations on exercise of protected rights)

Intermedics, Inc., et al. **262 NLRB No. 178**
(supervisor's directive to Ee to remove U sticker from his tool box because he *didn't want to receive lot of harassment and static and pressure from higher-ups* violative, since such conduct inhibited permissible U activity)

Howard Johnson Motor Lodge **261 NLRB No. 123**
(ordering Ees at motel to remove U buttons, unlawful, notwithstanding contention justified since not acceptable part of uniform and might be regarded adversely by guests; *exercise by Ees of their Section 7 rights under Act does not turn on pleasure or displeasure of E's customers*)

Schwan's Sales Enterprises, Inc. **257 NLRB No. 165**
(requesting that Ee remove U cap from head and subsequently grabbing cap off Ee's head, violative)

Dilene Answering Service, Inc. **257 NLRB No. 024**
(violation where E's president reminded Ee that he had power to fire her for infraction of rules and then told her to remove her U button)

Harrison Steel Castings Company **262 NLRB No. 059**
(in response to inquiry of Ee as to what Ees who had change of heart about U should do, president of E said they should remove their U insignias and turn it into their supervizors, violative, since suggestion by president plainly implied that those wearing U buttons had cause for alarm)

The Swingline Company; Spotnails, Inc. **256 NLRB No. 119**
(low level supervisor's statement to Ee that she should throw her U teeshirt in garbage, violative)

C. E. Wilkinson & Sons, Inc. **255 NLRB No. 176**
(ordering Ee to remove badge reading *organized*, violative where E failed to prove safety considerations or other special circumstances posed by wearing of U buttons)

Overnite Transportation Company **254 NLRB No. 011**
(asking U adherent to do E *a personal favor* by not continuing to wear U T-shirt, violative, where Ee could reasonably believe his failure to obey E would result in some kind of discipline)

Certain-Teed Insulation Company **251 NLRB No. 288**
(telling Ees that high level supervisor was *disappointed* in them for wearing caps and buttons with U insignia, violative, since such action implies that management wants Ees to cease wearing U insignia)

Carbonex Coal Company **248 NLRB No. 107**

Permanent Label Corporation **248 NLRB No. 021**

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(ordering waitress to remove U button while whe was waiting on customers in E's restaurant and sending her home when she refused, violative, notwithstanding fact button was of size and design to detract from uniform and bore feminist statement that might offend some customers, in view of E's other ULPs and fact E had previously taken actions motivated by Ee's U activities to induce her either to quit or to change ways)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(supervisor requesting Ee to remove arm band with U insignia, not unlawful, nor was Ee's leaving work rather than remove it unlawful suspension, since E's prohibition against arm band was not discriminatory particularly in hospital setting where arm band superimposed on uniform was highly obtrusive)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(supervisor threatening Ees with discharge if they continued to wear U buttons, not unlawful, where E had no proclivity towards ULPs, E promptly informed supervisors that Ees were free to wear U buttons, specifically advised Ees threatened that threats were not position of E and that they were free to wear buttons, and posted notice to that effect on bulletin board)

N.L.R.B. v. Chem Fab Corporation **691 F.2d 1252 (C.A. 8, Nov. 1982)**
(ct held that substantial evidence in record as whole supports Bd's finding that, notwithstanding other evidence which tended to impeach credited testimony, E unlawfully ordered U adherent to turn sweatshirt with U insignia inside out)

5006-5076 Informing employee that his position or catagory did not permit him to participate in union activities

Peavey Company **249 NLRB No. 110**
(E's vice president informing Ee that Ee was confidential Ee and could not participate in U activities, unlawful, notwithstanding contention vice president honestly believed Ee to be confidential Ee as E cannot restrict protected activities of *confidential*)

5006-5077 Informing employees that employer would not comply with bargaining agreement

Vincent Brass & Aluminum Co. **264 NLRB No. 070**
(E's vice-president referring to grievances regarding job bidding and stating *he was tired of cherry picketing and nit-picking*, that he *had skilled people and would put them where he wanted* contrary to bargaining agreement, since *down-bidding ruining company* because of expense of training, and subsequently stating there would be no job-bidding at all, unlawful)

5006-5080 Expression of opposition to union or collective bargaining

Operating Engineers, Local 400 **265 NLRB No. 168**
(threatening to bargain in bad faith with any such chosen collective bargaining representative of Ees, violative)

Rockland Lake Manor, Inc. **263 NLRB No. 142**
(telling Ees it would no longer deal with U, offering to recognize new U or grievance committee or make individual contracts, violative)

Convair Corporation **261 NLRB No. 178**
(supervisor's statements to Ees that there would be no election because E did not want election to be held or U to represent Ees, unlawful, since, in view of E's numerous ULPs, supervisor's statements clearly imparted to Ees E's total control over their terms and conditions of employment; and imparted to Ees total futility of proceeding in exercise of their statutory rights whose scope, if any, would be determined by E)

Overnite Transportation Company **261 NLRB No. 093**
(telling Ee that he would be wise not to bring up the U subject at that time but postpone unionizing efforts *a couple years or so from now*, violative)

Sterling Sugars, Inc. **261 NLRB No. 071**
(E official's statement that he would do everything in his power to keep U out, violative since it created impression that E would do anything legal or otherwise to keep U out)

Broadway Catering Corp. d/b/a Studio 54 **260 NLRB No. 166**
(telling U adherent E would do whatever he could do to prevent unionization among Ees, unlawful)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**
(letter to unit Ees from E's vice president making clear E's opposition to U and instructing Ees *do not sign a U card — under any circumstances — you don't know what it's going to cost you in the future*, held violative)

5006-5080—Cont.

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**
(E's statement to Ees that he would pay $100,000 fine before he would let U in, unlawful)

Bedford Farmers Cooperative **259 NLRB No. 165**
(manager's warning Ee to —*stay away from the U* coupled with remark that he (manager) was acting to defeat U (at same time E was bargaining with U) held violative, since manager was using his position as supervisor to restrain Ee from supporting U)

Caterpillar Tractor Company **257 NLRB No. 029**
(supervisor's remark about running *department like he wanted*, not unlawful, where remark was in reference to his supervisory role and not related to U's function)

Samuel J. Wade, an Individual d/b/a Major Cab Company **255 NLRB No. 181**
(statement that E would not have U and would not discuss possible benefits involving unionization, violative)

Thomas Industries, Inc. **255 NLRB No. 094**
(E's statement *We do not want U here, and we think it would be in your best interests if there is no U here,* not unlawful, where only unlawful conduct in which E had engaged at time statement was made was unlawful reprimand given two months previously; nor did statement's timing in relation to E's unlawful polling of Ees make it coercive)

Douglas & Lomason Company **253 NLRB No. 039**
(informing Ees of its intent to rid itself of U, unlawful)

Douglas & Lomason Company **253 NLRB No. 039**
(informing Ees of existence of ptn to oust U, unlawful)

Maywood, Inc. **251 NLRB No. 139**
(violation where supervisor told newly-hired Ee, while showing her where time clock was, *This department is not for union. We do not sign cards for the union*)

Climate Control Corporation **251 NLRB No. 102**
(threatening to extend negotiations and engage in appeals in order to defeat or delay bargaining with U, violative)

Streamway Division of The Scott & Fetzer Co. **249 NLRB No. 054**
(E's statement to Ee indicating that E would rather not recognize and bargain with U held unlawful expression of U animus)

C & G Coal Corporation **247 NLRB No. 179**
(telling Ee who asked if he could join U to —*go on and not cause any more trouble*, held violative)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(*put a stop to this U business*)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(statement to Ee that Ees would have to go on strike to get U in at plant, unlawful as threat of reprisal, since statement was not based on objective fact and was obviously injected to raise fears of reprisal)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(statement to Ees that U activity interfered with managerial perogatives, unlawful)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(E's alleged statement to Ee prior to election that E would decline to enter into contract with U held not unlawful and not interference, where E had stated that, if U won, E would bargain with it because he was not opposed to unionization of plant, but he cautioned that he could not afford U's economic demands which would affect his corporate solvency)

Big Star #159 **JD-375-82**
(stating during employment interview that E was non-U and E would like to keep it that way, not unlawful, where E's expression of preference, absent any additional remark, did not give statement a coercive character)

Transportation Manpower Services of Ohio, Inc. **JD-(SF)-192-82**
(E's telling prospective Ees that it is non-U and does not want U, violative)

Lacks Industries, Inc. **JD-346-83**
(E's telling Ee not to harass fellow Ees and stating that there was no U in plant and there never would be, not unlawful, where it appeared Ee had harassed a fellow Ee about his disinterest in U, and E's further statement was apparently intended to discredit letter circulated by U representative misrepresenting that Bd had ordered E to bargain with U)

Gerber Scientific Instrument Company, Inc., A Wholly Owned Subsidiary of Gerber Scientific, Inc. **JD-188-82**
(violation where E's flyer asked *If teamsters get in, will Ees lose any of their existing benefits?* and answered *If U gets in then all fringe benefits and wages are subject to negotiation. There is no guarantee that existing benefits will remain same.* and informing Ees in answer to question *why E does not want U* that restrictions of U contract would make things more difficult and E believed in dealing on individual rather than collective basis in view of other parts of flyer which contained threat against retention of current Ee benefits and misstatement of Ee rights)

U. S. Gypsum Company **JD-(ATL)-39-82**

Ren Corp. **JD-577-81**
(telling Ee that he would kill anyone who tried to bring U in, violative)

Lauridsen Foods, Inc. **JD-36-81**
(foreman's statement to Ees that plant manager would never sign U contract, violative)

Signode Corporation **JD-161-80**
(posting notice and letters to Ees as to why they should not sign U authorization cards not violative as failing w/i purview of views, argument, or opn; moreover documents contained no threats or promises)

J. P. Stevens & Co., Inc. v. N.L.R.B. **638 F.2d 676 (C.A. 4, 1980)**
(ct modified Bd finding Section 8(a)(1) violation in E's comment to Ee that company did not need U and any more U cards to include additional violation of calling Ee's attention to unlawful notice posted by E to dissuade solicitation of U cards during course of conversation)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(supervisor's telling Ees a week before election that E president had said that he would not sign contract with U and would *prefer to sell the company before signing any contract,* violative)

Nebraska Bulk Transport, Inc. v. N.L.R.B. **608 F.2d 311 (C.A. 8, 1979)**
(threatening Ees that E would refuse to bargain with U selected by Ees as bargaining representative)

N.L.R.B. v. Steven Davis and Michael Provenzano, d/b/a Carlton's Market **642 F.2d 350 (C.A. 9, Apr 20, 1981)**
(statements to Ees that E was trying to keep the U out, that E did not want any discussion of U organization in the store or anyone in the store who was for the U, unlawful)

Karl Kallmann, d/b/a Love's Barbeque Restaurant, No. 62 v. N.L.R.B. **640 F.2d 1094 (C.A. 9, 1981)**
(statement that E would hire particular Ee under same conditions as she had previously worked but E's operation would not be U, violative, where reasonable inference was that E's operation would remain non-U in future)

5006-5085 Give false information to Union

C. R. Adams Trucking, Inc., and Michael Cates **262 NLRB No. 067**
(telling Ees that they must join U but to falsify applications by telling U that they were owner-operators so that E would not have to pay health and welfare benefits, violative since Ees would be deprived of certain U benefits)

5006-5090 Preference for or opposition to one of competing unions or preference for another union

Save-It Discount Foods, Inc. **263 NLRB No. 097**
(where E had signed contract with prematurely recognized U containing U security clause and then informed job applicant that she could not keep her other part time job because she could not belong to two Us at once and to quit telling them she had better job, violated Act as such conduct, especially since it was made in presence of other Ees conveyed message that her employment was contingent on her giving up one U membership and joining favored U)

Banner Tire Company **260 NLRB No. 096**
(E's statements during job interview that Ee must join Teamsters and would have no trouble transferring his membership from IAM violative as implied threat that he would not be hired if he did not do so, where as here Teamsters had no statutory or contractual right to represent him)

NAB Construction Corporation **258 NLRB No. 090**
(where 2 Us were competing, E's threat that if particular local won it would subcontract out unit work violated Act)

NAB Construction Corporation **258 NLRB No. 090**
(E who told Ees he wanted them to vote for one of two competing U's, asked one Ee to ask other Ees to vote for particular U, threatened Ees with discharge if supported wrong U and promised permanent employment for supporting favored U violated Act)

Raley's, Inc. **256 NLRB No. 155**
(E may lawfully state its preference between competing U's in R election but here where E accorded encumbent U privileges and favored treatment to detriment of petitioning U it violated Act)

The Swingline Company; Spotnails, Inc. **256 NLRB No. 119**
(supervisor's statement that Ees should support one of two competing U's because if wrong one won election they would be laid off, violative, as this threat of reprisal places statement beyond free speech protection of Sec. 8(c))

Fenestral, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

Lyman Steel Company **249 NLRB No. 040**
(offering money to two Ees for them to coerce one Ee into withholding his support from petitioner held violative)

5006-5090—Cont.

Lyman Steel Company 249 NLRB No. 040
(suggesting to two ees that they rid E of two supporters of petioning U, held violative)

Carbonex Coal Company 248 NLRB No. 107
(E solicitation of Ee to talk to fellow Ees about forming *company U* violative)

Sav-On Drugs, Inc. JD-(SF)-214-81
(statements to Ees and applicants for employment that they would have to join (particular) U as condition of employment and posting of letter threatening Ees that they would not be scheduled for work unless they joined U, held violative)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. JD-(NY)-79-81
(E's posting notice stating that if Ees did not join certain U, which E would join, Ees could strike for rest of their lives held violative, since E's notice suggested futility of selecting petioning U)

National King Coal, Inc. JD-(SF)-24-81

5006-5092 Disclosure of card signers' identity to employer

Walter Carpet Mills, Inc. 259 NLRB No. 096
(E's statement that Ees could not rely on assurances that names of those who signed U authorization cards would remain confidential if litigation ensued, not violative, since not depicted as w/i control of E)

Arrow Automotive Industries, Inc. 256 NLRB No. 152
(E's statements to Ees that those who signed U authorization cards could be required to appear in ct to testify about them violative as it lets Ees know that names of U adherents could be ascertained and reprisals taken)

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(E's warning Ees that it might learn identity of card signers in Bd or ct proceeding, coming in midst of U's card signing efforts, unlawful, since statement carried obvious implication that harm or retaliation would result from disclosure of identity of card signers to E)

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(E's speech stating to Ees that E would learn at trial identity of U card signers, unlawful, where it had same impact as earlier speech inhibiting actual card signings themselves and also tended to interfere with Bd processes because it inhibited Ees from testifying freely about their protected activity)

Koh-I-Nor Rapidograph, Inc. JD-(NY)-76-80
(E's statement to Ees that U authorization cards might not be kept confidential not violative where E did not threaten Ees that there would be reprisals against Ees who signed cards)

N.L.R.B. v. Colony Printing and Labeling, Inc. 651 F.2d 502 (C.A. 7, June 1981)
(E informing Ees that in many instances, contrary to assurances, signed U cards are disclosed to E by either U or NLRB, and to be careful about what they signed, unlawful, when taken as whole, where other parts of same letter in which statement made were held violative; nor was E responding to any U initiated claim)

5006-5095 Inhibiting utilization of grievance machinery

General Electric Company 264 NLRB No. 126
(statements to Ees during U campaign that selection of U would mean loss of communication with managements on subjects not covenred by U's grievance procedure are violative as threat and misrepresentation of Sec. 9(a) rights)

Cooper-Jarrett, Inc. 260 NLRB No. 159
(threatening to retaliate against Ee for filing grievances against E, unlawful)

Huntington Rubber Company, Division of New Idria, Inc. 260 NLRB No. 133
(telling Ees that if U came in they would no longer have direct access to management violative)

Champion Parts Rebuilders, Inc., Northeast Division 260 NLRB No. 098
(warning issued to U steward for minor infraction violative where done in retaliation for stewards filing grievance over foreman's performing bargaining unit work)

Gould, Inc. 260 NLRB No. 002
(threatening, before election, to eliminate E's *open door* policy for discussion of complaints and grievance, violative because it penalizes Ees for exercise of statutory rights, as Sec. 9(a) guarantees Ees right to bring problems directly to E as long as U agent has right to be present and adjustment is not contrary to contract. E was not discribing typical grievance procedure but was threatening total cessation of all contacts between management and Ees)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(plant manager's telling Ees they had no formal grievance procedure after contract containing such procedure had expired held violative, since E was required to process grievances in accordance with provisions of expired contract absent impasse on that subject)

Mark Twain Marine Industries, Inc. 254 NLRB No. 144
(indicating displeasure with Ees for going to U with their complaints, violative)

Laredo Packing Company 254 NLRB No. 001
(supervisor informing Ee that grievance Ee had filed was w/o merit and threatening Ee with discharge or other employment problems if he did not go to U and withdraw grievance, violative)

Southern California Gas Company 251 NLRB NO. 127
(E's speech to Ees that before presenting grievances to U representatives they must go to their supervisors violative)

Southwestern Bell Telephone Company 251 NLRB No. 062
(no violation, where at meeting of all supervisors and U stewards E made statements to the effect that stewards should deter or dissuade Ees from filing nonmeritorious or nuisance grievances and at no point stated that E would not accept grievances of any nature, nor threatened stewards with reprisals should they not heed his instructions)

Southwestern Bell Telephone Company 251 NLRB No. 062
(no violation, where E did not threaten Ee with *problems* of undisclosed nature in retaliation for Ee's implicit announcement that he intended to file grievance concerning disagreement he had with E; rather, E's reference to problems concerned Ee's propensity to disrupt work of other Ees, and E in no manner implied that problems would result from Ee's utilization of grievance procedure)

Conagra, Inc. 248 NLRB No. 085
(statement that E would not talk to individual Ees but only to shop stewards about grievances, unlawful as threat of more difficult working conditions)

St. Regis Paper Company 247 NLRB No. 105
(statements linking loss of work and overtime to U's pursuit of grievance under contract held violative, since statements tended to create chilling effect on Ees' rights to file or process grievances)

United States Postal Service JD-224-81
(warning to U steward that he should mind his own business, violative where warning was directed at steward's action of bringing Ee complaints)

United States Postal Service JD-224-81
(station superintendant's announcement that his evaluation of U steward, if he gave him one, would be unfavorable, violative where it was designed to impress upon steward that station superintendent was dissatisfied with his conduct in pressing grievances)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass JD-482-80
(statement to Ee who had filed grievance that she was nothing but a damn agitator and troublemaker, violative)

Albertson's Inc. JD-(SF)-194-80
(no violation, where E opined that Ee should have discussed problem with supervisor before filing grievance in view of long employment relationship and no reprimand or coercion on Ee)

5006-5096 Futile to seek Board's processes

Acme Motors, Inc., t/a Acme Datsun 263 NLRB No. 077
(informing Ees that it would be futile for them to select U and/or seek to use Bd processes or seek its protection, violative)

5006-5099 Other

Hudson Oxygen Therapy Sales Company 264 NLRB No. 004
(E's linking of Ee's disciplinary write-up to her support of U, conveying to Ee that U would be powerless to assist her since U would be kept out for extended period due to company appeals, and intimating that new manager was brought in to remedy problems which led to U in the first place, unlawful)

7 Up Bottling Company 261 NLRB No. 128
(making statements to Ee who had filed charge with Bd which conveyed notion that E would persist in its unlawful conduct toward him and that his efforts to obtain redress through Bd would be fruitless, unlawful)

5006-6700 Method employed in making statement

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(issuing mailgram to Ees, which was related to scheduled U meeting in another city, advising them not to leave their duty assignment area w/o E's express approval, unlawful, where E had never before instituted rules by mailgram)

Durango Boot, a Division of U.S. Industries, Inc. 247 NLRB No. 046
(singling out U adherent who had refused to attend meetings in E's office at which E read other U adherents their rights under E's rules concerning U's campaign, and doing so at Ee's work station instead, unlawful, since difference in locations of occurrence is immaterial and Ee could not avoid substance of E's statements)

5006-6710 Using supervisor's office

5006-6710—Cont.

Wometco Coca-Cola Bottling Company of Nashville, Inc. **255 NLRB No. 069**

(violation, where upon receiving mailgram identifying Ees as volunteer U organizers, E called them to office and held special meetings with each Ee individually at which he informed them it was illegal to sign or solicit U cards on company time or property, or to distribute U literature on company property)

Warehouse Groceries Management, Inc. **254 NLRB No. 021**

(unlawful solicitation of grievances where Ee who shortly before this conversation admitted signing U authorization card was called into supervisor's office and asked about any unfairness that was going on; this was deviation from E's past practice of talking with Ees on casual basis while walking through store)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**

(E's method of singling out identified U supporters from midst of their coworkers to attend series of special, private meetings with management officials in their offices, considered locus of managerial authority, and there to be read their rights under E's rules concerning U's campaign, unlawful)

N.L.R.B. v. Amber Delivery Service, Inc. **651 F.2d 57 (C.A. 1, June 1981)**

(questioning of known U supporter by company president, in his office with supervisor present, on same day that Ees held meeting in midst of U organizing campaign violative)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. **691 F.2d 1133 (C.A. 4, Sept. 20, 1982)**

(questioning Ee in supervisor's office as to whether she had signed U card violative, notwithstanding Ee was not reluctant to discuss matter with E as tendency of E's conduct rather than its actual effect is dispositive)

TRW-United Greenfield Division v. N.L.R.B. **637 F.2d 410 (C.A. 5, 1981)**

(safety director asking Ee in his private office what Ees thought of him and what Ee thought of U violative as it was potentially harmful to Ees in terms of potential retaliation, no valid purpose for such inquiry given to Ee and no assurance there would be no retaliation)

N.L.R.B. v. Rich's Precision Foundry, Inc. **667 F.2d 613 (C.A. 7, Dec. 1981)**

(questioning Ee with which he ordinarily would have no contact by plant manager in his own office about U activities of another Ee held coercive interrogation)

5006-6720 Using individuals as conduits

Air Products and Chemicals, Inc. **265 NLRB No. 045**

(E who solicited Ee to dissuade other Ees from supporting U violated Act)

Limestone Apparel Corp. **255 NLRB No. 101**

(E's solicitation of Ee to cease asking other Ees to sign U card, violative)

Lyman Steel Company **249 NLRB No. 040**

(offering money to two Ees for them to coerce one Ee into withholding his support from petitioner held violative)

Lyman Steel Company **249 NLRB No. 040**

(suggesting to two ees that they rid E of two supporters of petioning U, held violative)

Permanent Label Corporation **248 NLRB No. 021**

(E who asks Ees to tell other Ees to vote against U violates Act)

5006-6730 Bulletin board

Wometco Coca-Cola Bottling Company of Nashville, Inc. **255 NLRB No. 069**

(E posting warning on bulletin board that signing any document for U would cause U to repeat unethical conduct of forging Ees' signatures on other documents, unlawful)

5006-6733 Addressing assembled employees

St. Francis Hospital **263 NLRB No. 109**

(E's statement to Ees at Ee meeting, to effect that Ees cannot count on having better benefits—and Ees shouldn't be fooled by fact that U can help Ees, not violative, since statement was found to constitute permissable electioneering; although E implied bargaining would take *anywhere up to several years*, he did not also imply that E would engage in bad-faith bargaining)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**

(E's making clear, by letter and speech to its assembled Ees *that their choice is simply between no U or strikes, violence, layoffs and related adverse consequences* held violative in context of E's intense anti-U campaign and accompanying acts of discrimination and coercion)

Hook Manufacturing Company **254 NLRB No. [illegible]**

(E who made speech to assembled Ees remonstrating them for participation in strike and warning them that any further misconduct would not be tolerated, violated Act as misconduct of strikers was not established and speech was reprimand for engaging in lawful strike)

The Krebs School Foundation, Inc. **251 NLRB No. 187**

(E's solicitation of Ee views in meetings with Ees re terms and conditions of employment by E's personnel subcommittee, unlawful where E established subcommittee and met with Ees to counter U's organizational campaign and to wean Ees away from U by resolving some of their grievances)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**

(holding some members of U committee up to ridicule and scorn in front of assembled Ees and referring to them as *jokers and clowns* violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**

(announcement by manager to assembled Ees that he did not want them to discuss U, held violative)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 138**

(supervisor meeting with Ees as group and explaining why E could not afford dental insurance and discussing E's improved health benefits, unlawful, where meeting was merely extension of unlawful survey E conducted earlier to solicit grievances and undermine U)

Kelster Coal Company, Inc. **247 NLRB No. 049**

(E's speech to assembly of all his Ees during U campaign that *unionizing this company at this time will create a hardship that will have an effect on all of us* held violative, since it constituted threat of economic adversity in event Ees joined or supported U)

U. S. Gypsum Company **JD-(ATL)-28-82**

5006-6767 Pamphlets, circulars, and printed material

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**

(E's letter to Ees falsely claiming that business was down held violative, since letter was implied threat that unionization could tip scales against (E's) survival; letter failed to reveal work was transferred elsewhere)

Simpson Electric Company, a Division of American Gauge and Machine Company **249 NLRB No. 024**

(unlike past practice of leaving *house* organ at different places around plant, issue before election which contained announcement of wage and benefit increases were handed out to individual Ees)

5006-6767-6700 Newspapers

AMPAC, a subsidiary of Kane-Miller Corp. **259 NLRB No. 151**

(*help wanted* ads placed by E in local newspaper seeking replacements for striking Ees, not violative, since strike was not ULP strike and E did not threaten to deprive ULP strikers of their rights)

5006-6783 Conversation among supervisors

Thermo King Corporation **247 NLRB No. 048**

(remark by one supervisor to another, overheard by known active U adherent in production department, that if situation wasn't corrected *all hell was going to break loose*, not unlawful, where Ee mistakenly or otherwise converted remark to his own use by interpreting statement to mean that Ee would catch hell until supervisor found opportunity to discharge him)

5006-8333 Absence of discrimination or threat rebuts coercion

Rexall Corporation **265 NLRB No. 015**

(supervisor who spoke to Ees prior to election and described his experiences as unit Ee under U did not violate Act where his description was truthful, he accurately described specific provisions in labor agreement under which some of E's Ees worked, and repeatedly stressed to Ees that he was not telling them changes would occur but that they could occur; thus, there was no threat of reprisal)

St. Francis Hospital **263 NLRB No. 109**

(supervisor saying, in response to Ee's refusal to talk to supervisor because Ee was too busy when requested, *okay just wait until you want to talk to me about something*, held not violative, since statement, standing alone was too nebulous to constitute unlawful threat of reprisal; no evidence linking supervisor's statement to any job action supervisor might take against Ee)

St. Francis Hospital **263 NLRB No. 109**

(supervisor's *angry look*, when Ee refused supervisor's request that Ee read aloud from E's anti-U campaign letter, not violative, absent any evidence that supervisor disciplined, attempted to discipline, or threatened or coerced Ee in any way for refusing to read aloud)

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**

(E's campaign message informing Ees that strikes weren't always successful not violative; message found to be permissable free speech)

La Nueva Dodge, Inc. **251 NLRB No. 001**

(not violative where E's new car sales manager asked Ee who was long time friend of his if he knew anything about U, to which Ee replied *just rumors*)

La Nueva Dodge, Inc. **251 NLRB No. 001**

(service manager's statement that his job was fine *until this U thing came up* and asked former Ee *but you don't know anything about that do you*, not unlawful)

5006-8333—Cont.

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(E's misstatement that Ees would be required to join U and pay dues if U won election held interference but not 8(a)(1) violation absent threat to Ee rights)

Tartan Marine Company **247 NLRB No. 073**
(supervisor asking Ee if Ee had a U card for him to sign, unlawful, notwithstanding question was asked in joking manner, in view of E's hostility to U)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**
(E's phone call to laid off discriminatee telling him *don't walk the picket line,* not violative, since nothing in statement constituted express or veiled threat of reprisal)

5006-8367 Noncoercive circumstances

St. Francis Hospital **263 NLRB No. 109**
(E statements, which individually were unobjectionable are not objectionable by virtue of their repetition)

St. Francis Hospital **263 NLRB No. 109**
(supervisor's *angry look,* when Ee refused supervisor's request that Ee read aloud from E's anti-U campiagn letter, not violative, absent any evidence that supervisor disciplined, attempted to discipline, or threatened or coerced Ee in any way for refusing to read aloud)

Gauley Industries, Inc. **260 NLRB No. 189**
(E's president's reference to fact that his family would fight Ees to the end, and his opn that their (Ees') U activity would fail to succeed, not violative when considered independently of president's threat of plant closure)

Timberline Energy Corporation **258 NLRB No. 037**
(E's response to auto carvan of laid-off Ees by returning their remark, *stick it..* and accompanying gesture showed anti U animus but was not unlawful interference)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(where Ee freely expressed opposition to U, E's statement to her that if she felt that way she should tell her friends not violative as it contained neither threat nor promise)

Foodway of Odessa, Inc. **JD-(SF)-30-81**
(statement by E's president to Ee, advising her of U's ptn for election and E's desire to have election conducted under Act, telling her that she could be approached to sign card and asking her to *please make sure that you know what you are signing before you sign it,* not violative where E's president did not make any threats of reprisal, or promises of benefit to Ee and did not question her about her U feelings or whether she had been engaged in U activities)

5009 CIVIL SUIT OR CRIMINAL COURT ACTION AGAINST EES OR THREATS THEREOF

Kay Fries, Inc. **265 NLRB No. 132**
(advising and warning Ee that his grievance relating to sanitation and safe health procedures was uncalled for and threatening to give it to company physician to institute legal action against him for filing grievance for questioned sanitary practices of physician violative)

CNA Financial Corporation **264 NLRB No. 080**
(E's filing lawsuit concerning use of E's registered logo on letter to Ees signed by *U organizing committee* and use of its files to obtain mailing list which resulted in awarding of damages against defendants and inj against its use of logo, not unlawful)

Wayne Foods, Inc. d/b/a Clara's Restaurant **263 NLRB No. 005**
(threatening to sue Ee if she filed charges with Bd, violative)

Cutting, Inc. **255 NLRB No. 076**
(threatening Ees with legal proceedings for engaging in lawful strike and picketing, unlawful)

Pabst Brewing Company **254 NLRB No. 058**
(E's questioning Ees and threatening them with lawsuits concerning their witnessing individual Ee's grievance held violative)

Centre Engineering, Inc. **253 NLRB No. 028**
(threats to prosecute Ees because they published list of E's customers, violative since it is tactic calculated to restrain Ees in their exercise of protected rights)

North State Supply Co., Inc. **247 NLRB No. 181**
(E's threat to countersue Ee who had filed charges with Bd, violative as it was claculated to intimidate Ees in exercise of their right to file charges under Act)

Metro-Young Construction Company, A Division of Olson Construction Co., Inc. **JD-(SF)-12-82**
(filing action in U.S. District Court joining discharged Ee as respondent along with U and seeking order to compel arbitration of Ee's discharge as provided for in collective bargaining agreement, violative, as Ee has Sec. 7 right to seek vindication of his discharge with NLRB; E's lawsuit was coercive under Sec. 8(a)(1) and discriminatory under Sec. 8(a)(4) as Bd does not defer under *Collyer* charges filed under Sec. 8(a)(1) and (3))

The Perlman-Rocque Company **JD-513-81**
(E's official threatening to sue Ee if Ee had not told truth in his affidavit to Bd, unlawful, notwithstanding threat to do what he had right to do and that false statement to investigating agency would sustain civil suit for libel as Ee was threatened because he exercised his Sec. 7 right)

McMillan Cartage, Inc. **JD-(ATL)-48-81**
(violation for threatening to institute lawsuit against Ee in retaliation for concerted activity of showing other Ees E's proposed letter agreement which E wanted to substitute for association contract)

Whitehall Packing Company, Inc. **JD-14-81**
(public policy considerations that dictate free access to Bd's processes under 8(a)(4) in case of individuals apply with equal force in case of labor organizations, which statement, however, does not mean that in filing civil suit against labor organization for filing ULP charges against E, E violates Sec. 8(a)(4); such holding would do violence to definition of such terms as *discharge, otherwise discriminate,* and *employee* which are part of Sec. 8(a)(4); rather, in filing such civil suit E interferes with, restrain, and coerces Ees in exercise of their Sec. 7 rights)

Whitehall Packing Company, Inc. **JD-14-81**
(Bd has long held that filing of civil suit cannot be found to be ULP and, consequently, all civil suits brought by Es against labor organizations for filing ULP charges are not violative of 8(a)(1); however, a civil action brought in furtherance of an unlawful objective is unlawful)

Whitehall Packing Company, Inc. **JD-14-81**
(E's filing of civil suit against U for filing ULP charges against E violative of 8(a)(1), but not 8(a)(4), where E's civil suit had unlawful objective as evidenced by fact that E presented no evidence to show reasonable basis for initiating suit, E offered no explanation for timing of suit in relation to filing of U's charge and adjournment of ULP hearing, allegations in ULP charge and complaint did not advert to matters forming gravamen of E's suit, and E's pre-trial attempts to obtain writings from U officials produced earlier in other proceedings suggested intent to harass)

Perry Plaza, Inc. **JD-(SF)-367-80**
(E who sought TRO against U's picketing did not violate Act under *Clyde Taylor* doctrine where it acted in good faith belief that pickets were encroaching on its private property rights)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **612 F.2d 162 (C.A. 6)**
(threat to prosecute Ee for distributing U literature on company premises, unlawful)

Associated General Contractors of North Dakota (a non-profit corporation) v. N.L.R.B. **637 F.2d 556 (C.A. 8, 1980)**
(multi-E association's filing lawsuit in state ct to enforce terms of no-conflicting agreements clauses, not unlawful, where filing lawsuit was not tactic designed to interfere with exercise of rights guaranteed by Act; no violation found regardless of legality of underlying contractual claim so ct in agreement with Bd found it unnecessary to reach question of whether or not no-conflicting agreements clauses themselves were unlawful)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. **660 F.2d 1335 (C.A. 9, Nov 1981)**
(E bringing civil suit against picketing Ees alleging picketers had engaged in mass picketing, blocked public access to restaurant and created threat to public safety, unlawful, notwithstanding ct issued TRO, since suit prompted by improper motive and brought in bad faith to retaliate against strikers, inasmuch as E lacked reasonable basis for suit where at no time did picketers number more than nine, and they demonstrated peacefully on sidewalk and in view of threats to picketers and in context of other ULPs)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. **660 F.2d 1335 (C.A. 9, Nov 1981)**
(chilling effect of state lawsuit upon activity protected by Act is multiplied when state action seeks large damages)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. **660 F.2d 1335 (C.A. 9, Nov 1981)**
(E's institution of libel suit against strikers, who had filed ULP charges, alleging false and misleading statements about E in leaflets distributed by picketers, unlawful, notwithstanding E may have believed leaflets falsely characterized NLRB proceedings, where leaflets were ambiguous and absent evidence picketers made statements with reckless disregard for truth or falsity of statements)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. **660 F.2d 1335 (C.A. 9, Nov 1981)**
(*it is clear that mere filing of lawsuit can restrain exercise of Section 7 rights. Before condemming a lawsuit as ULP, however, Bd must be careful to make accomodation of between rights of all persons to seek resolution of legal claims in ct and rights of Es under Act;* therefore, filing suit in good faith and not in furtherance of unlawful objective is not violative)

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Bill Johnson's Restaurants, Inc. v. N.L.R.B. 660 F.2d 1335 (C.A. 9, Nov 1981)

(fact that C on its face was subject to state ct jurisdiction not enough to avoid finding that lawsuit lacks reasonable basis, which, in turn, is some evidence that it was filed for improper purpose)

George A. Angle v. N.L.R.B. 683 F.2d 1296 (C.A. 10, July 1982)

(Bd's holding unlawful E's filing of malicious prosecution suit against Ee for his part in causing Bd's civil contempt suit against E, sustained since Bd will infer unlawful objective where there is no reasonable basis for E's filing civil action against Ee unless Ee has lost protection of Act by intentionally filing false charges and fabricating evidence; Ee's efforts on reinstatement to fabricate evidence of E's noncompliance with ct's order to support a complaint of constructive discharge did not mean Ee had lost protection of Act at time E filed suit or retroactively excuse E)

5012 COMPANY RULES PROHIBITING OR LIMITING UNION OR OTHER CONCERTED ACTIVITIES

5012-0100 Generally

Allied Stores Of N.Y., Inc., d/b/a Gertz 262 NLRB No. 119

(where E had run out of supply of Ee handbook that contained unlawful no-solicitation rule and all 4 of ex-Ees who testified had never seen handbook and rule was never verbally explained to them; therefore, no violation as rule was not *maintained*)

5012-0133 Balancing of interests required

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)

(elements of Section 8(a)(1) violation are determined by reference to objective test; it is not necessary to show that particular Ees actually felt coerced, or that E intended to produce impermissible effect; rather only need show that E's actions would tend to coerce reasonable Ee; however, E can defend on grounds of business justification and then there is violation only when Sec. 7 rights outweighs business justification for E's actions)

5012-0133-1100 Exercise of employees' rights under Act on company premises protected, even if that necessitates balancing of interests with property rights of employer

Texas Instruments Incorporated 247 NLRB No. 037

(prior D/O in instant proceeding affirmed by Bd on remand from ct of appeals; in its supplemental decision, Bd determined issue of validity of application of E's dissemination of classified material rule which adversly affected Ees *Sec. 7 rights* against *business justification for E's rule*)

Texas Instruments Incorporated 247 NLRB No. 037

(E's rule requiring discharge of any Ee who disclosed classified materials to unauthorized persons held invalid as it was applied to Ees distributing leaflets containing *-strictly private* area wage surveys of E and its competitors, since Ees were engaged in protected concerted activity; Ees were encouraging collective action to improve wages; none of E's reasons for rule qualified as sufficient business justification to validate rule as applied in instant case)

Allied Supermarkets, Inc. JD-601-81

(E in bankruptcy, by preventing Ee from posting on bulletin board and distributing intra U election campaign material in cafeteria during non-work time and in non-work area violated Act as right to run in intra U election is protected and U has no power to waive these rights in contract, which, in effect U did by agreeing to overly broad no-solicitation no-distribution clause)

Texas Instruments Incorporated v. N.L.R.B. 599 F.2d 1067 (C.A. 1, 1979)

(threshold question where discharge was pursuant to rule prohibiting dissemination of E's strictly private material (classified wage survey data) is whether rule was prohibited by Act; invalid rule cannot support discharge even if E's only motivation in enforcing rule is not anti-U; only if rule is determined to be valid under Act, would Bd assess motive)

Montgomery Ward & Company, Inc. v. N.L.R.B. 692 F.2d 1115 (C.A. 7, Nov. 1982)

(substantial evidence supported Bd's finding that no-solicitation rule was invalid as applied to off-duty Ees meeting non-Ee organizers in restaurant open to public, albeit on E's premises, when restaurant was being used non-disruptively and in manner consistent with its normal use; Bd's contention that *Babcock & Wilcox* does not apply where access to E's premises is open to public and E's argument that Bd may not undertake to balance interests unless there is preliminary findings of inaccessibility to U rejected)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. 600 F.2d 132 (C.A. 8, 1979)

(even where special circumstances exist rebutting presumption of invalidity of facially overbroad no distribution rule, Ees' interest in distributing material must then be balanced against E's interest in controlling such distribution)

5012-0133-1600 Rule may be justified by need to maintain security

Amron Automotive Centers, A Division of The Kelly-Springfield Tire Co.; F. W. Woolworth Company d/b/a Woolco Division, Joint Employers 265 NLRB No. 088

(prohibiting nonEe access to Ees' lounges in shopping center store for organizational purposes, not unlawful, notwithstanding U's inability to reach Ees with its message since lounges were located in *security* area which only bonded persons might enter)

Texas Instruments Incorporated 247 NLRB No. 037

(prior D/O in instant proceeding affirmed by Bd on remand from ct of appeals; in its supplemental decision, Bd determined issue of validity of application of E's dissemination of classified material rule which adversly affected Ees *Sec. 7 rights* against *business justification for E's rule*)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)

5012-0133-2200 Purpose of employer in establishing and applying rules and prohibitions controlling

Stauffer Chemical Company 262 NLRB No. 179

(E's maintaining rule prohibiting Ees (environmental engineers) from contacting government agencies (poluting authorities of EPA) *directly* for information relating to occupational health and safety standards regarding removal of organic waste from effluent water held not violative, since rule was valid on its face and E demonstrated legitimate and substantial business justification for its rule; Ees used such information for interpreting EPA regulations for E's Environmental control Department; rule (in issue) operated to establish orderly way of obtaining work-related information)

Amoco Fabrics Co., Patchogue-Plymouth Division/ Nashville Mills 260 NLRB No. 033

(Ees Section 7 right to distribute U literature inside E's plant is balanced against E's effecient operation of plant so that where Ee interfered with plant production, E's written warning not violative)

MGM Grand-Reno, Inc. 249 NLRB No. 153

(E's announcing rule, during U campaign, prohibiting maintenance engineers from walking together, even to and from same job, held violative, since rule was designed to limit Ees' discussion of U and appeared to have no reasonable business justification)

5012-0133-2230 Antiunion purpose renders rules and prohibitions illegal

Village IX, Inc. d/b/a Shenanigans 264 NLRB No. 122

(no-distribution rule which prohibited distribution of literature of any type which was promulgated in midst of U campaign and was first announced to leading U adherent violative where purpose was to curb Ee exercise of Sec. 7 rights rather than accomplish legitimate objective)

Dutch Boy, Inc., Glow-Lite Division 262 NLRB No. 001

(although *no-talking, no fraternization rule,* was not applicable during Ees' break, lunch, and quitting times therefore valid on its face, such rule was violative where E promulgated and applied rule after commencement of U campaign; rule was designed to interfere with Ees' right to self-organization)

Custom Trim Products 255 NLRB No. 096

(amending rules in Ees handbook to prohibit solicitation in any form and to prohibit Ees from *attempting to persuade fellow Ees to follow a course of action contrary to the interest of the company,* violative)

John Cuneo, Inc. 253 NLRB No. 110

(E's promulgation of rule prohibiting its Ees from engaging in discussion regarding U at any time held violative)

D & D Supermarket, Inc. JD-292-82

(facially valid no-solicitation, no-distribution rule posted w/i week after R ptn filed by U but two months after legitimate business reason for rule occurred held violative, since rule was not promulgated *in furtherance of an E's legitimate interest of serving production, order, and discipline, but specifically for the purpose of defeating U organization*)

5012-0133-2275 Application of prohibition not necessary to finding of violation

Birmingham Ornamental Iron Company v. N.L.R.B. 615 F.2d 661 (C.A. 5) (1980)

(overlybroad no-solicitation rule violative notwithstanding no Ee ever complained about rule)

5012-0133-1300 Lack of reason for rule indicates invalidity

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital 255 NLRB No. 045

(only areas in which Ee solicitation must be permitted, at instant hospital which has no large area for Ees, are relatively small (Ee) *breakrooms,* since they do present viable, albeit limited, channel of communication by Ees for organizational purposes)

Conagra, Inc. 248 NLRB No. 065

(supervisor informing Ee *If you are looking for higher wages you will have to look somewhere else. We won't have you talking U on job* unlawful, since could reasonably be interpreted as prohibition against soliciting at all times includ-

5012-0133-3300—Cont.

ing nonworking time and no evidence restriction was justified by need to maintain discipline and production)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(notice posted near Ee timeclock by E, prior to election, stating that *I will not stand for this second party, (U), to be mentioned or talked about w/i the store* held violative where there was no showing that this prohibition against U talk was warranted by valid business considerations)

Manifold Services, Inc. **JD-734-80**
(telling Ees that they may not discuss U activity during work hours held violative, absent evidence to justify such rule)

5012-0133-4400 Reasonableness of rule for maintaining order and discipline legalizing factor

Soule Glass and Glazing Co., et al. v. N.L.R.B. **657 F.2d 1055 (C.A. 1, May 1981)**

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(even where special circumstances exist rebutting presumption of invalidity of facially overbroad no distribution rule, Ees' interest in distributing material must then be balanced against E's interest in controlling such distribution)

5012-0133-5900 Ambiguity in rule construed against promulgator

Foley-Wismer & Becker, A Joint Venture **263 NLRB No. 107**
(orally promulgated rule which was never reduced to writing was unlawfully ambiguous and broad where Ees differed as to whether it prohibited discussing U during *working time, working hours,* or in *work situations*)

Gould, Inc. **260 NLRB No. 002**
(posted rule that prohibited *any type of solicitation w/i the physical location of plant, or on company time... restrictions prohibit sale of raffle tickets, chances, athletic pools, or any type of personal business transaction not authorized by management,* held violative as ambiguous and was therefore construed against E. E was more lax in enforcing rule against personal non-U solicitation than in its enforcement relating to U solicitation)

T.R.W. Bearings Division, A Division of T.R.W., Inc. **257 NLRB No. 047**
(Bd sees no inherent meaningful distinction between terms *working hours* and *working time* when used in no-solicitation rule; both terms are, w/o further clarification, ambiguous, and risk of such ambiguity must be borne by promulgator of rule; to avoid misinterpretation E need only incorporate in rule itself a clear statement that rule's restriction on organizational activity does not apply during break periods and mealtimes, or other specified periods during workday when Ees are properly not engaged in performing their work tasks (Essex International, overruled))

Limestone Apparel Corp. **255 NLRB No. 101**
(prohibiting soliciting on our *company time* is violative because term is ambiguous as such term is susceptible to interpretation that solicitation and U activities would be prohibited during all paid time including nonworking time such as breaks and lunch periods)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital **255 NLRB No. 045**
(E hospital's no-solicitation rule, prohibiting solicitation in *immediate patient care areas,* which was made clear to be in halls and corridors, lobby and waiting room, and nurses stations of small one-story facility, held to be reasonably specific and not ambiguous)

Sani-Serv, Division of Catalox Corporation **252 NLRB No. 186**
(rule prohibiting solicitation during regularly scheduled working time held violative; modifying phrase *regularly scheduled* exacerbates the ambiguity of *working time*)

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(maintenance of rule which prohibits vending, soliciting, or collecting contributions for any purpose whatsoever on Company time and premises unless authorized by E held violative as it is ambiguous because it may include nonwork time in nonworking areas)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(ambigious *no solicitation rule* presumptively invalid absent showing that E's rule was necessary to maintain production or discipline as risk of ambiguity must be held against promulgator)

National Electric Coil, A Division of McGraw Edison Company **JD-235-81**

5012-0133-8300 Presumptions may be used in determining validity of rule

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(rule which refers to *working hours* rather than to *working time* is overly broad and presumptively invalid)

5012-0167 Validity of prohibition presumed where limited to working time

Daniel Construction Company, A Division of Daniel International Corporation **264 NLRB No. 079**
(rules prohibiting solicitation during *work time* or *working time,* w/o further clarification, are, like rules prohibiting such activity during *working hours,* presumptively invalid)

Interstate Security Services, Inc. **263 NLRB No. 002**
(rule which prohibited Ees from discussing U matters while they were on duty violative as overbroad where Ees were considered to be *on duty* from time they clock in until they clock out, there are no breaks or rest periods, they eat lunch while working, and E has no objection to their discussing social matters while they worked so long as it didn't interfere with their work)

T.R.W. Bearings Division, A Division of T.R.W., Inc. **257 NLRB No. 047**
(rule prohibiting solicitation or distribution of literature during *working hours,* unlawful, where presumptive invalidity of rule was not rebutted by E's publications of presumptively valid rule prohibiting solicitation during *working time;* no meaningful distinction exists between *working hours* and *working time,* since both terms are ambiguous, and risk of ambiguity must be borne by rule promulgator; hence, rules prohibiting solicitation during *work time* or *working time,* are, like rules prohibiting such activity during *working hours* presumptively invalid (Essex Internat'l, overruled))

Debarnardi Brothers, Inc. **JD-(SF)-286-82**

Ryland Building Systems, A Division of The Ryland Group, Inc. **JD-282-82**
(promulgating and maintaining rules prohibiting solicitation and distribution activities on *company time* and during *working hours,* violative where presumption of invalidity of rules stood unrebutted in absence of evidence that affected Ees were advised that rules would not apply during breaktime and other nonwork periods)

United States Postal Service **JD-(SF)-273-79**
(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time,* w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

Central Freight Lines, Inc. v. N.L.R.B. **653 F.2d 1023 (C.A. 5, Aug 1981)**
(E's no-solicitation rule held valid on its face where it was restricted to work areas and work time; fact that rule was announced coincidentally with U organizational effort did not alone taint its adoption with discriminatory purpose because if such rules are to be established, time of organizational effort is logical time for their announcement)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(E's new rule proscribing distribution and solicitation during working time in plant w/o prior approval of plant manager held lawful despite replacing unlawful overbroad *no-distribution* rule in Ee handbook, since no one paid much attention to old rule and there was no evidence either old or new rule had been selectively applied or enforced; non-U solicitation had been approved but U had never asked permission to solicit)

American Safety Equipment Corporation v. N.L.R.B. **643 F.2d 693 (C.A. 10, Mar. 1981)**
(Bd decision setting aside election set aside where basis for decision was two rules in Ee handbook prohibiting solicitation and distribution during *working hours;* E rebutted *presumed* interference with Ee rights as it produced evidence showing: 1) Ees were told lunch time and break time were their own; 2) Ees were aware rules only applied to working time; 3) Ees openly engaged in U activity during non working time and were not disciplined and 4) rules consistently properly applied by E)

5012-0175 Per se violation in application or dissemination of discriminatorily promulgated plant rule

Village IX, Inc. d/b/a Shenanigans **264 NLRB No. 122**
(no-distribution rule which prohibited distribution of literature of any type which was promulgated in midst of U campaign and was first announced to leading U adherent violative where purpose was to curb Ee exercise of Sec. 7 rights rather than accomplish legitimate objective)

General Electric Company **264 NLRB No. 126**
(violation notwithstanding rule was never enforced)

Zero Corporation, Zero East Division **262 NLRB No. 064**
(rule which prohibits all solicitation unless approved by management, violative, absent legitimate business reasons)

Shultz Foods Company, Inc. **260 NLRB No. 162**
(warning letter to U adherent prohibiting adherent from distributing U literature on *company time* violative as overly broad restriction; moreover, fact that warning letter was not posted as general no-solicitation rule for all

5012-0175—Cont.

Ees does not preclude finding of violation; also fact that Ee did not read letter prior to his violative discharge is immaterial)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital **255 NLRB No. 045**
(no-solicitation rule not discriminatorily enforced where record shows that E did as much as was reasonably necessary to uniformly enforce rule prohibiting solicitation by Ees)

Ashley Warp Knitting, Inc. d/b/a Jefferson Apparel Company **248 NLRB No. 084**
(written warning issued as enforcement of unlawful no-solicitation rule, unlawful)

Charleston Area Medical Center, Inc. **JD-405-82**
(although E had maintained violative no-solicitation rule, where rule was corrected 1 year prior to U campaign, and in any event was never enforced, then there is no current violation)

N.L.R.B. v. Rich's Precision Foundry, Inc. **667 F.2d 613 (C.A. 7, Dec. 1981)**

5012-1700 Extension of prohibition against union activities to employees' own time on premises

5012-1701 Generally

J. E. Steigerwald Co., Inc. **263 NLRB No. 068**
(telling Ee not to talk about U on the job violative as overly broad restriction on solicitation)

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(maintenance of rule which prohibits vending, soliciting, or collecting contributions for any purpose whatsoever on Company time and premises unless authorized by E held violative as it is ambiguous because it may include nonwork time in nonworking areas)

Manifold Services, Inc. **JD-734-80**
(telling Ees that they may not discuss U activity during work hours held violative, absent evidence to justify such rule)

5012-1701-5000 Employee access to premises

A. W. Schlesinger Geriatric Center, Inc. **263 NLRB No. 158**
(E promulgation and maintenance of overly broad rule prohibiting access to E's property such as parking lots to off-duty Ees, violative)

Amoco Fabrics Co., Patchogue-Plymouth Division/ Nashville Mills **260 NLRB No. 038**
(refusing Ees access to plant premises and precluding them from distributing U literature at gate outside plant violative)

5012-1725 Prohibition of distribution of literature during employees' own time on company premises

Enterprise Products Company **265 NLRB No. 083**
(in finding maintenance of rule prohibiting dissemination of all information relating to E unlawful, ALJ relied on fact that no special circumstances justified such overly-broad restriction on Ees' freedom to communicate with one another with prospective representative or with Bd; E's claim that rule was published well in advance of U activity, that rule was disseminated to all of its facilities rather than only that involved herein, and that some Ees were unaware of rule is facetious since E used violation of rule as basis for discharge of Ees suspected of giving information to Bd and U in ULP proceeding herein)

St. Joseph's Hospital **263 NLRB No. 050**
(on Bd remand in light of NLRB v. Baptist Hospital, 442 US 773, rule which forbade U solicitation in working areas which are not patient care areas at times when both Ees were not suppose to be working, violative)

Timberline Energy Corporation **258 NLRB No. 037**
(rule imposed in new manual issued after U activity began which prohibits loitering, visiting and solicitation of U membership on company time, violative)

5012-1725-0100 Generally

Robertshaw Controls Company **263 NLRB No. 128**
(no-solicitation rule which was not limited to worktime presumptively invalid as is no distribution rule not limited to work areas; moreover, R/O is appropriate notwithstanding E changed the rules where he made no announcements to Ees of any change and did not assure Ees that in future he would not interfere with their Sec. 7 rights; additionally, fact that former rules have not been enforced for substantial period of time does not remove necessity for such order)

Roadway Express, Inc. **260 NLRB No. 078**
(no-distribution no-solicitation rule stating that *distribution and/or posting of non-authorized, non-company literature or possession of same on company property is strictly forbidden* held unlawful as too overly broad)

Ahrens Aircraft, Inc. **259 NLRB No. 112**
(rule prohibiting distribution of any printed material to Ees without prior company authorization is illegal on its face)

Marathon Letourneau Company, Longview Division **256 NLRB No. 054**
(Bd did not adopt ALJ's finding that E's maintenance of no-solicitation and no-distribution rule w/o delineating or explicating a special purpose for such rules was unlawful, where facial validity of rules was not raised in complaint nor put in issue at hearing, and consequently E was denied opportunity fully to litigate issue of rules' validity and to present evidence justifying them, if necessary)

Steinerfilm, Inc. **255 NLRB No. 017**
(promulgating no solicitation or distribution rule which prohibited such activity on company premises, violative where Ees were not advised of typographical error which omitted words *company time* or that rule would not be enforced as written)

IPCO Hospital Supply Corporation, Cheshire Labs Division **255 NLRB No. 116**
(publishing rule which prohibits solicitation or distribution of literature w/o written authorization of supervisor, violative)

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**

National Southwire Aluminum **247 NLRB No. 175**
(E's statements to U adherent to *get rid of U literature* and *clean up U literature* do not rise to level of promulgation against distribution of literature but does interfere with Ee rights to distribute literature)

Packless Metal Hose, Inc. d/b/a Packless Industries **JD-(SF)-98-81**
(warning issued to Ee for distributing U literature in violation of E's unlawful no solicitation rule violative)

N.L.R.B. v. Steinerfilm, Inc. **669 F.2d 845 (C.A. 1, Feb. 1982)**
(overly broad rule prohibiting solicitation or distribution on company property presumptively invalid)

Motor Inn of Perrysburg, Inc. d/b/a Holiday Inn of Perrysburg v. N.L.R.B. **647 F.2d 692 (C.A. 6, May 1981)**
(E's promulgation of overly broad no-solicitation and no distribution rule, not violative where rule was never enforced and evidence showed that Ees freely exercised their solicitation and distribution rights; mere enactment of overly broad rules was not violation of Act under facts of this case)

N.L.R.B. v. General Thermodynamics, Inc. **670 F.2d 719 (C.A. 7, Feb. 1982)**
(Bd's order requiring E not to display (overbroad) rules against solicitation and distribution enforced notwithstanding rules, which were posted on plant bulletin boards, were withdrawn before they were to technically become effective; there was no effective communication of the change of (E's) policy to the Ees which would guard against the chilling effect resulting from the overbroad rules)

5012-1725-0150 Presumptively invalid broad rule banning distribution may be justified by special circumstances

Industry Products Company **251 NLRB No. 183**
(rule prohibiting distribution of printed material w/o management approval held overly broad and unlawfully restrict lawful U activities of Ees)

Great Lakes Steel, Division of National Steel Corporation v. N.L.R.B. **625 F.2d 131 (C.A. 6, July 1980)**
(ct upheld Bd finding that E promulgated overly broad rule restricting Ee distribution of literature; Bd's conclusion supported by substantial evidence that E did not show why broad rule was needed to maintain discipline)

5012-1725-1100 Plant premises

Schnadig Corporation **265 NLRB No. 020**
(E's maintenance of rule which prohibited distribution of literature of any kind on company premises or company time w/o specific prior permission of general manager, unlawful, notwithstanding rule not generally enforced, since overly broad rule inasmuch as approval of general manager required for distribution, and E did not inform Ees rule was resinded)

Grumman Flxible Corporation **264 NLRB No. 034**
(rule prohibiting any and all distribution at any time without specific authority of management, violative)

Comet Corporation **261 NLRB No. 188**
(publishing overborad rule in Ee handbook prohibiting *soliciting or distribution of literature on Company premises w/o specific company authorization*, unlawful, notwithstanding lack of actual enforcement as it is restrictive of Ee rights to engage in organizational activities during nonwork time on E's premises)

Dairy Farm Flight Services, Inc. **258 NLRB No. 031**
(where E had discharged 2 supervisors for engaging in U activity and then in speech to Ees stated that supervisors were discharged because they *allowed* distribution of U cards in plant, E's speech violated Act as it constitutes threat to Ees that they too will be discharged if they distribute U cards in plant)

5012-1725-1100—Cont.

Lucky Stores, Inc. 258 NLRB No. 179
(maintaining and enforcing overbroad no-distribution rule which prohibited distribution of U literature on company premises, unlawful)

Wometco Coca-Cola Bottling Company of Nashville, Inc. 258 NLRB No. 069
(informing Ee that Ees who signed U cards on company property or company time could be discharged, unlawful)

General Thermodynamics, Inc. 253 NLRB No. 021
(posting of facially overly broad no solicitation-no distribution rules prohibiting solicitation on *company time* and distribution on company premises w/o permission of management, unlawful, notwithstanding rule never implemented and was removed prior to its effective date where Ees never informed of E's decision not to implement rules)

Central Freight Lines, Inc. 250 NLRB No. 063

Petty Bee, Inc. 249 NLRB No. 125
(requiring E's permission to pass out U literature on company property held impermissibly broad no-distribution rule)

MGM Grand-Reno, Inc. 249 NLRB No. 153
(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

Irwin County Electric Membership Cooperative 247 NLRB No. 195
(E's prohibiting solicitation or distribution of literature, pamphlets, or handouts on its premises, unlawful, since no distinction made between working and nonworking time and working and nonworking areas)

European Parts Exchange, Inc. JD-170-82
(directing Ee who had been soliciting Ees to sign cards in parking lot during lunch and break time to refrain from distributing U cards during working hours or on company property, unlawful)

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)
(prohibiting Ee from passing out U cards or literature while on company property, unlawful)

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)
(informing Ee who was distributing U information leaflets in parking lot to Ees as they arrived for work shifts, that Ee would be subject to disciplinary action if he continued to distribute information, violative, where E distributed only in non-work area during off duty time)

N.L.R.B. v. Arrow Molded Plastics, Inc. 653 F.2d 280 (C.A. 6, July 1981)
(E's prohibiting distribution of U literature on its premises, unlawful)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. 600 F.2d 132 (C.A. 8, 1979)
(maintaining and enforcing rule which forbids distribution of any written or printed matter on company property w/o company permission, unlawful, notwithstanding E's contention rule justified by special circumstance of racial tension, where few actual disciplinary incidents occurred and literature distributed was not cause of incidents)

5012-1725-1133 Working areas

Vanity Fair Mills, Inc. JD-(ATL)-35-82
(E's promulgating rule which stated *any solicitation of Ees or distribution of materials to Ees by non-Ees in plant or on company property is prohibited. Solicitation in plant or on company property by Ees on their working time is prohibited. Distribution of materials in plant or on company property by Ee on working time or in work area is prohibited* unlawful, in view of earlier Bd decision which held use of *working hours* or *working time* w/o further clarification, ambiguous and rule presumptively invalid and E did not overcome presumption)

Beth Israel Hospital JD-587-81
(banning solicitation and distribution on Ees' nonwork time in basement corridors adjacent to service areas, violative, where there is little traffic by patients or professional staff and no emergency storage)

Beth Israel Hospital JD-587-81
(banning solicitation and distribution on Ees' nonwork time in corridors connecting cafeteria, gift shop, and cashier's office, violative, where these corridors are used predominately by Ees on way to lunch or breaks in cafeteria and not used for storage of emergency equipment)

Beth Israel Hospital JD-587-81
(banning solicitation and distribution on Ees' nonwork time in elevators used by Ees and not used by emergency teams, violative, where these elevators appear to belong in category of non-patient-access areas which E had opened up for Ee solicitation and distribution)

Beth Israel Hospital JD-587-81
(no solicitation/distribution rule banning such activities during nonwork time justified for stairways are areas of direct patient care and are passageways for emergency teams; moreover, there is reasonable assumption that stairway are escape routes in event of fire)

Boniface Group Homes, Inc. JD-162-81
(no-distribution rule held invalid where it was not limited to working time in working and nonworking areas or nonworking time in working areas, and permitted distribution only with permission of management)

5012-1725-1167 Nonworking area

Enterprise Products Company 265 NLRB No. 083
(maintenance of rule stating that *there will be no information given to anyone... in regard to company business such as revenue, inventory... and so forth* held unlawful, even though not phrased in standard no-solicitation/no-distribution language, since rule prohibits dissemination of all information related to E, including matters relating to Ees' working conditions w/o limiting its applicability to work time or work areas; and phrase *and so forth* is ambiguous and must be construed as being applicable to Ee working conditions, and risk of ambiguity must be held against promulgator and not Ees)

Enterprise Products Company 265 NLRB No. 083
(in finding E's rule prohibiting dissemination of all information related to company unlawful, ALJ relied on fact that only stated exception to rule *by instruction* from E clearly required E's permission as prerequisite to divulging any information covered by rule; and any rule that requires Ees to secure permission as precondition for engaging in protected concerted activities on Ees' free time and in non-work areas is unlawful)

Schnadig Corporation 265 NLRB No. 020
(violation, where supervisor instructed Ee to cease distributing U literature outside time clock door entrance and move at least 18 feet from plant, and did not retract order when informed his action was violation of federal law particularly where at time E was passing out anti-U literature in working area on working time)

Harper-Grace Hospitals, Inc. 264 NLRB No. 009
(maintenance and enforcement of overly broad rule prhibiting Ees from soliciting or distributing literature on nonwork time in nonwork areas, unlawful where no direct effect on patient care or patients was shown; contention that by acceding to contract allowing use of U bulletin board U waived Ees' right to solicit or distribute on hospital premises, rejected since E and U could not lawfully prohibit Ees from distributing anti-U literature at hospital entrance)

A. W. Schlesinger Geriatric Center, Inc. 263 NLRB No. 138
(no-distribution rule prohibiting distribution of U literature on E's property, violative)

Plymouth Locomotive Works, Inc. 261 NLRB No. 087
(rules prohibiting distribution on E's premises at any time and in any area, and fules prohibiting distribution on company premises w/o proper authorization, unlawfully broad, since they included non-work time and non-work areas)

Douglas Aircraft Company, Component of McDonnell Douglas Corporation 260 NLRB No. 180
(former contract's provision prohibiting distribution of any literature on *company time* and current contract's prohibition against distribution *on company premises* w/o prior authorization from E held overly broad in that former contract's rule unlawfully restricted distribution during nonworking time, and current contract's rule unlawfully restricts distribution on company premises, not only on nonworking time but also in nonwork areas)

United Technologies Corporation 260 NLRB No. 196
(rule prohibiting all distribution of unauthorized material on company property, unlawfully broad)

Williams Litho Service, Inc. 260 NLRB No. 101
(telling Ees that there would be no more gathering in small groups talking about U business and no passing out U literature on company time and/or property with threat of discharge for violation thereof, violative, where such oral no solicitation/distribution rule was overly broad and thus unlawful)

The Celotex Corporation 259 NLRB No. 159

G. H. Bass & Co. 258 NLRB No. 036
(reprimanding Ee for distribution of pro-U letter in production area during lunch break in alleged violation of rule prohibiting distribution in work areas, unlawful, where production shut down for lunch break and all Ees off clock since in these circumstances production area at lunch break becomes non-working area, and absent resulting litter problem or impact on production)

Arkansas-Best Freight System, Inc. 257 NLRB No. 063
(promulgating, maintaining and enforcing rule or policy which prohibits Ees from posting or distributing U campaign literature in nonworking areas and from campaigning on nonworking time, violative)

Harrison Steel Castings Company 262 NLRB No. 059
(rule restricting access of non-duty Ees valid only if (1) limits access solely with respect to interior of plant and other working areas; (2) is clearly disseminated to all Ees; and (3) applies to off duty Ees seeking access to plant for any reason and not just to those Ees engaging in U activity. Finally except where justified by business reasons, rule which denies off duty Ees entry to parking lots, gates, and other outside non-working areas will be found invalid)

5012-1725-1167—Cont.

K & S Circuits, Inc. **255 NLRB No. 163**
(maintenance of overly-broad no-distribution rule requiring E's permission violative, notwithstanding that rule was promulgated before Sec. 10(b) limitations period)

Mini-Industries, Inc. **255 NLRB No. 123**
(promulgating and maintaining rule prohibiting Ees from engaging in oral solicitation on behalf of U or distribution of U material in nonworking locations of plant during nonworking time, violative)

Custom Trim Products **255 NLRB No. 096**
(posted rule prohibiting distribution *in any area at any time,* albeit for only 7 days during critical period before correcting rule to apply to *any work area,* violative, where manner in which rule was corrected was insufficient to apprise Ees of its repudiation and despite lack of evidence showing rule was ever implemented)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**

Lummus Industries, Inc. **254 NLRB No. 079**
(rule prohibiting selling, soliciting or collecting contributions for any purpose unless authorized by Personnel Department violative as too broad because it covered nonworking time and areas; furthermore it would barr required Ee to obtain permission of E before engaging in protected concerted activities)

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**
(Ee cafeteria limited to Ees and physicians and not open to public or patients)

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(E's promulgation of rule which prohibited *bringing on company property any newspapers, magazines, pictures pamphlets; books, drawings or other materials,* unlawful, where prohibition not limited to work areas)

Certain-Teed Insulation Company **251 NLRB No. 200**
(promulgation of overly broad no solicitation/no distribution rule, violative, absent evidence of business necessity for such rule)

Clinton Inn **249 NLRB No. 022**
(no-solicitation, no-distribution rule held unlawfully broad where it failed to distinguish between working and non-working areas)

Fluid Packaging Company, Inc. **247 NLRB No. 196**
(prohibition of Ees' distribution of U literature in plant lobby, a nonworking area, unlawful)

Beaco Merchandising Corp. **JD-(SF)-238-82**
(rule against distribution of U literature on store premises at any time, unlawful)

Brunswick Corporation **JD-21-82**
(reprimanding and suspending U adherent for distributing literature pertaining to terms and conditions of employment, on non-working time and in non-working areas, violative)

Johns-Manville Sales Corporation **JD-412-81**
(refusing to allow Ees to distribute U literature in nonwork areas (near entrance to plant parking lot) during nonwork time)

Ford Motor Company, Automotive Division, Twin Cities Plant **JD-57-81**
(forbidding distribution of U caucus literature during nonworking time in nonworking areas, unlawful)

Hayes International Corporation **JD-(ATL)-29-81**
(maintenance of rule prohibiting distribution of written matter on company premises at any time w/o specific authorization, unlawful since it prohibited Ees from distributing U literature in nonworking areas during nonworking time)

N.L.R.B. v. Permanent Label Corporation **657 F.2d 512 (C.A. 3, 1981)**
(informing Ee who was distributing U information leaflets in parking lot to Ees as they arrived for work shifts, that Ee would be subject to disciplinary action if he continued to distribute information, violative, where E distributed only in non-work area during off duty time)

J. P. Stevens & Co., Inc. v. N.L.R.B. **668 F.2d 767 (C.A. 4, Jan. 1982)**
(interference with distribution of organizational literature on election eve and day by preventing distributing Ees from entering plant's nonworking areas and calling police to remove them, unlawful, notwithstanding Ee's claim that such distribution would now be permitted under new policy promulgated pursuant to ct order)

The Timken Company v. N.L.R.B. **644 F.2d 886(T) (C.A. 6, Jan 8, 1981)**
(substantial evidence did not support Bd's finding that E impliedly prohibited distribution of U literature in non-work areas w/i plant)

Local 175, Automobile Workers, (UAW) v. N.L.R.B. **645 F.2d 1151 (C.A.D.C. Mar 1981)**
(E's refusal to permit U to distribute leaflets concerning U endorsed candidates for public offices in nonworking areas of plant during nonworking time, not unlawful, since insufficient relationship to Ees' interests to come w/i guarantee of Section 7 mutual aid and protection where principal thrust of leaflet was to induce Ees to vote for specific candidates, not to educate them on political issues relevant to their employment condition)

5012-1725-1172 Mixed use area

N.L.R.B. v. Transcon Lines **599 F.2d 719 (C.A. 8, 1979)**
(E did not sustain burden of proving that distribution occurred in work area or during work time where it took place in mixed use area used by E's drivers for lounging, recreation, and waiting, as well as for receiving dispatches and completing documents; proof as to whether Ees were on working or nonworking time at precise moment of distribution is not required since E permitted use of area for solicitation at U election time w/o regard to whether Ees were relaxing or filling out a form at the time)

5012-1725-1183 Public Areas

Harrison Steel Castings Company **262 NLRB No. 059**
(rule restricting access of non-duty Ees valid only if (1) limits access solely with respect to interior of plant and other working areas; (2) is clearly disseminated to all Ees; and (3) applies to off duty Ees seeking access to plant for any reason and not just to those Ees engaging in U activity. Finally except where justified by business reasons, rule which denies off duty Ees entry to parking lots, gates, and other outside non-working areas will be found invalid)

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**
(nurses lounge open to public)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(where E told Ee to stop distributing U literature outside Ee entrance but then apologized and let practice resume it did not violative Act)

5012-1725-1191 Existence of litter

G. H. Bass & Co. **258 NLRB No. 036**
(reprimanding Ee for distribution of pro-U letter in production area during lunch break in alleged violation of rule prohibiting distribution in work areas, unlawful, where production shut down for lunch break and all Ees off clock since in these circumstances production area at lunch break becomes non-working area, and absent resulting litter problem or impact on production)

Southern Moldings, Inc. **255 NLRB No. 115**
(few fallen handbills not sufficient to warrant E's interference)

5012-1725-1700 Working time

Schnadig Corporation **265 NLRB No. 020**
(E's maintenance of rule which prohibited distribution of literature of any kind on company premises or company time w/o specific prior permission of general manager, unlawful, notwithstanding rule not generally enforced, since overly broad rule inasmuch as approval of general manager required for distribution, and E did not inform Ees rule was resinded)

Documation, Inc. **263 NLRB No. 052**
(although E's rule prohibited solicitation and distribution during working time only, E applied rule in overly-broad, unlawful manner where it prohibited solicitation during breaktime and after work)

G. H. Bass & Co. **258 NLRB No. 036**
(reprimanding Ee for distribution of pro-U letter in production area during lunch break in alleged violation of rule prohibiting distribution in work areas, unlawful, where production shut down for lunch break and all Ees off clock since in these circumstances production area at lunch break becomes non-working area, and absent resulting litter problem or impact on production)

T.R.W. Bearings Division, A Division of T.R.W., Inc. **257 NLRB No. 047**
(rule prohibiting solicitation or distribution of literature during *working hours,* unlawful, where presumptive invalidity of rule was not rebutted by E's publications of presumptively valid rule prohibiting solicitation during *working time;* no meaningful distinction exists between *working hours* and *working time,* since both terms are ambiguous, and risk of ambiguity must be borne by rule promulgator; hence, rules prohibiting solicitation during *work time* or *working time,* are, like rules prohibiting such activity during *working hours* presumptively invalid (Essex Internat'l, overruled))

Baruch Brothers, Inc., A Wholly Owned Subsidiary of Thrifty Corporation **257 NLRB No. 003**
(maintaining rule that prohibited distribution or solicitation of any kind on company time, and reprimanding and threatening discipline for infractions, unlawful; rule, as written, and as interpreted by E as applying to working hours, was presumptively overbroad and ambiguous showing no intent to not cover break time, etc., was not justified by disciplinary or production needs, and was discriminatorily applied to protected activity during U organization campaign)

Pyromatics, Inc. **251 NLRB No. 141**
(maintenance and enforcement of no-solicitation, no distribution rule, unlawful, since it was overly broad in that its *working hours* prescription was

5012-1725-1700—Cont.

presumptively invalid, E presented no evidence to rebut presumption of invalidity, and rule was otherwise invalid under any of the views expressed in Essex International, 211 NLRB 749)

Rich's Precision Foundry, Inc. 250 NLRB No. 173

(rule prohibiting distribution of literature or soliciting during working hours, unlawfully broad)

Magnesium Casting Company, Inc. 250 NLRB No. 107

(forbidding *all solicitation and distribution during Ee's working time* held overly broad and invalid, since rule could be interpreted by Ees as forbidding solicitation or distribution by any Ee while any Ee was working and, in view of E's around-the-clock operation, rule could be construed as forbidding solicitation of all Ees and distribution of all U literature during any Ees working time and in non-working areas)

Ryland Building Systems, A Division of The Ryland Group, Inc. JD-252-82

(promulgating and maintaining rules prohibiting solicitation and distribution activities on *company time* and during *working hours,* violative where presumption of invalidity of rules stood unrebutted in absence of evidence that affected Ees were advised that rules would not apply during breaktime and other nonwork periods)

Vanity Fair Mills, Inc. JD-(ATL)-28-82

(E's promulgating rule which stated *any solicitation of Ees or distribution of materials to Ees by non-Ees in plant or on company property is prohibited. Solicitation in plant or on company property by Ees on their working time is prohibited. Distribution of materials in plant or on company property by Ee on working time or in work area is prohibited* unlawful, in view of earlier Bd decision which held use of *working hours* or *working time* w/o further clarification, ambiguous and rule presumptively invalid and E did not overcome presumption)

European Parts Exchange, Inc. JD-170-82

(directing Ee who had been soliciting Ees to sign cards in parking lot during lunch and break time to refrain from distributing U cards during working hours or on company property, unlawful)

Formaloy Corp. JD-(ATL)-87-81

(E's rule prohibiting solicitation w/o management permission and distributing written or printed matter on company premises during regular working hours held violative, since rule was overbroad allowing for no exceptions during nonwork time on E's premises; E demonstrated no business justification for imposition of such rules)

Boniface Group Homes, Inc. JD-162-81

(no-distribution rule held invalid where it was not limited to working time in working and nonworking areas or nonworking time in working areas, and permitted distribution only with permission of management)

Carlina Knitting Co., Inc., et al. JD-321-80

(prohibition of distribution of leaflets prior to working time on E's property, held unlawful)

5012-1725-1900 Mixed working and nonworking time

N.L.R.B. v. Transcon Lines 599 F.2d 719 (C.A. 5, 1979)

(E did not sustain burden of proving that distribution occurred in work area or during work time where it took place in mixed use area used by E's drivers for lounging, recreation, and waiting, as well as for receiving dispatches and completing documents; proof as to whether Ees were on working or nonworking time at precise moment of distribution is not required since E permitted use of area for solicitation at U election time w/o regard to whether Ees were relaxing or filling out a form at the time)

5012-1725-2000 Nonworking time

Woodview Rehabilitation Center 265 NLRB No. 122

(new no-distribution rule prohibiting Ees from distributing *written literature of any kind* in immediate patient care areas and *any other work area,* even during nonwork time, violative)

Enterprise Products Company 265 NLRB No. 083

(maintenance of rule stating that *there will be no information given to anyone... in regard to company business such as revenue, inventory... and so forth* held unlawful, even though not phrased in standard no-solicitation/no-distribution language, since rule prohibits dissemination of all information related to E, including matters relating to Ees' working conditions w/o limiting its applicability to work time or work areas; and phrase *and so forth* is ambiguous and must be construed as being applicable to Ee working conditions, and risk of ambiguity must be held against promulgator and not Ees)

Enterprise Products Company 265 NLRB No. 083

(in finding E's rule prohibiting dissemination of all information related to company unlawful, ALJ relied on fact that only stated exception to rule *by instruction* from E clearly required E's permission as prerequisite to divulging any information covered by rule; and any rule that requires Ees to secure permission as precondition for engaging in protected concerted activities on Ees' free time and in non-work areas is unlawful)

Arpro Company M/V Arctic Producer 265 NLRB No. 048

(rule prohibiting distribution of U literature by Ees on nonworking time in nonworking areas of ship w/o prior permission from ship superintendent, unlawful)

United Parcel Service, Inc. 261 NLRB No. 134

(supervisor informing Ee that he would rather Ee not distribute leaflets for dissident U group during Ee's nonworking time, unlawful)

Plymouth Locomotive Works, Inc. 261 NLRB No. 067

(rule prohibiting distribution on company hours, unlawfully broad since it could be interpreted to include non-working hours)

Douglas Aircraft Company, Component of McDonnell Douglas Corporation 260 NLRB No. 180

(former contract's provision prohibiting distribution of any literature on *company time* and current contract's prohibition against distribution *on company premises* w/o prior authorization from E held overly broad in that former contract's rule unlawfully restricted distribution during nonworking time, and current contract's rule unlawfully restricts distribution on company premises, not only on nonworking time but also in nonwork areas)

Arkansas-Best Freight System, Inc. 257 NLRB No. 063

(promulgating, maintaining and enforcing rule or policy which prohibits Ees from posting or distributing U campaign literature in nonworking areas and from campaigning on nonworking time, violative)

Harrison Steel Castings Company 262 NLRB No. 059

(rule restricting access of non-duty Ees valid only if (1) limits access solely with respect to interior of plant and other working areas; (2) is clearly disseminated to all Ees; and (3) applies to off duty Ees seeking access to plant for any reason and not just to those Ees engaging in U activity. Finally except where justified by business reasons, rule which denies off duty Ees entry to parking lots, gates, and other outside non-working areas will be found invalid)

Mark Twain Marine Industries, Inc. 254 NLRB No. 144

(rule prohibiting solicitation on company property, violative as impermissably broad, in absence of explanation to Ees as to their rights to discuss or distribute U material during nonwork periods)

Bexco Merchandising Corp. JD-(SF)-228-82

(rule against distribution of U literature on store premises at any time, unlawful)

Brunswick Corporation JD-21-82

(reprimanding and suspending U adherent for distributing literature pertaining to terms and conditions of employment, on non-working time and in non-working areas, violative)

Ford Motor Company, Automotive Division, Twin Cities Plant JD-57-81

(forbidding distribution of U caucus literature during nonworking time in nonworking areas, unlawful)

5012-1725-2200 Parking lots

Cardio Data Systems Corp. 264 NLRB No. 011

(informing Ee, engaged in U solicitation, not to report for work 20 or 30 minutes early and not to be seen in E's parking lot before and after quiting work held unlawful exclusion prohibited by Bd)

A. W. Schlesinger Geriatric Center, Inc. 263 NLRB No. 158

(E promulgation and maintenance of overly broad rule prohibiting access to E's property such as parking lots to off-duty Ees, violative)

Harrison Steel Castings Company 262 NLRB No. 059

(rule restricting access of non-duty Ees valid only if (1) limits access solely with respect to interior of plant and other working areas; (2) is clearly disseminated to all Ees; and (3) applies to off duty Ees seeking access to plant for any reason and not just to those Ees engaging in U activity. Finally except where justified by business reasons, rule which denies off duty Ees entry to parking lots, gates, and other outside non-working areas will be found invalid)

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)

(informing Ee who was distributing U information leaflets in parking lot to Ees as they arrived for work shifts, that Ee would be subject to disciplinary action if he continued to distribute information, violative, where E distributed only in non-work area during off duty time)

5012-1725-3300 Roadways

Permanent Label Corporation 248 NLRB No. 021

5012-1725-5500 Invalidity of rule where not necessary in interest of efficiency, discipline, or security

American Cast Iron Pipe Company, a corporation v. N.L.R.B. 600 F.2d 132 (C.A. 5, 1979)

(maintaining and enforcing rule which forbids distribution of any written or printed matter on company property w/o company permission, unlawful, notwithstanding E's contention rule justified by special circumstances of racial tension, where few actual disciplinary incidents occurred and literature distributed was not cause of incidents)

5012-1725-7100 Alternative means of communication

Belcher Towing Company 256 NLRB No. 099

(E's refusing access to its boats to U organizers for purpose of soliciting support for U held violative, since record as whole clearly established that Us did *not* have *reasonable* alternative means of access to E's Ees regardless of whether evidence was presented by GC, charging parties, or respondent; compare *Sabine Towing & Transportation Company, Inc. v. N.L.R.B.*, 599 F.2d 663 (1979))

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(propriety of access as organizational tool and propriety of U access as remedial measure are 2 separate questions involving different considerations; former need finding that U unable to reach Ees through other channels of communication; as to latter, critical inquiry is whether E conduct is of such nature that access is needed to offset harmful effects that have been produced by such conduct)

5012-1725-8800 Invalidity presumed in absence of showing of necessity to maintain production or discipline

Enterprise Products Company 265 NLRB No. 083

MGM Grand-Reno, Inc. 249 NLRB No. 153

(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

N.L.R.B. v. Lummus Industries, Inc. 679 F.2d 229 (C.A. 11, June 1982)

5012-1737 Prohibiting solicitation during employee's own time on employer's premises

Enterprise Products Company 265 NLRB No. 083

(in finding maintenance of rule prohibiting dissemination of all information relating to E unlawful, ALJ relied on fact that no special circumstances justified such overly-broad restriction on Ees' freedom to communicate with one another with prospective representative or with Bd; E's claim that rule was published well in advance of U activity, that rule was disseminated to all of its facilities rather than only that involved herein, and that some Ees were unaware of rule is facetious since E used violation of rule as basis for discharge of Ees suspected of giving information to Bd and U in ULP proceeding herein)

Styrest Nursing Home JD-(ATL)-95-82

(nursing home maintaining rule which stated *no one is permitted to approach Ees or residents with view towards canvassing, soliciting or selling articles of any kind*, unlawful, since not limited to working time of Ees, notwithstanding E's contention rule was directed at sale of articles by outside salesmen, since rule's language not limited to sale of articles by outside salesmen; nor was violation fully remedied by recision of rule and replacement with modified rule which limited prohibition to solicitation on working time in view of confusion generated by rule among Ees)

5012-1737-0100 Generally

Robertshaw Controls Company 263 NLRB No. 128

(no-solicitation rule which was not limited to worktime presumptively invalid as is no distribution rule not limited to work areas; moreover, R/O is appropriate notwithstanding E changed the rules where he made no announcements to Ees of any change and did not assure Ees that in future he would not interfere with their Sec. 7 rights; additionally, fact that former rules have not been enforced for substantial period of time does not remove necessity for such order)

J. E. Steigerwald Co., Inc. 263 NLRB No. 068

(telling Ee not to talk about U on the job violative as overly broad restriction on solicitation)

Roadway Express, Inc. 260 NLRB No. 078

(no-distribution no-solicitation rule stating that *distribution and/or posting of non-authorized, non-company literature or possession of same on company property is strictly forbidden* held unlawful as too overly broad)

Presbyterian/St. Luke's Medical Center 258 NLRB No. 021

(hospital maintaining and enforcing rule prohibiting solicitation during *duty time*, not unlawful since reference to on-duty time was neither overbroad nor fatally ambiguous; however, rule's admonition that E *not tolerate* activity *disruptive of the atmosphere of patient care*, violative as ambiguous, overbroad and invalid where such rule had chilling effect on Ees' exercise of Sec. 7 rights)

Montgomery Ward & Company, Inc. 256 NLRB No. 134

(written rule prohibiting all U solicitation on E's store premises, including store's public restaurants, violative as impermissibly broad rule)

Marathon LeTourneau Company, Longview Division 256 NLRB No. 054

(Bd did not adopt ALJ's finding that E's maintenance of no-solicitation and no-distribution rule w/o delineating or explicating a special purpose for such rules was unlawful, where facial validity of rules was not raised in complaint nor put in issue at hearing, and consequently E was denied opportunity fully to litigate issue of rules' validity and to present evidence justifying them, if necessary)

Firmat Manufacturing Corp. 255 NLRB No. 153

(rule against solicitation which prohibited Ee from talking to Ees in shop, violative absent special circumstances making rule necessary)

Steinerfilm, Inc. 255 NLRB No. 017

(promulgating no solicitation or distribution rule which prohibited such activity on company premises, violative where Ees were not advised of typographical error which omitted words *company time* or that rule would not be enforced as written)

Custom Trim Products 255 NLRB No. 096

(amending rules in Ees handbook to prohibit solicitation in any form and to prohibit Ees from *attempting to persuade fellow Ees to follow a course of action contrary to the interest of the company*, violative)

Mark Twain Marine Industries, Inc. 254 NLRB No. 144

(rule prohibiting solicitation on company property, violative as impermissibly broad, in absence of explanation to Ees as to their rights to discuss or distribute U material during nonwork periods)

Birmingham Ornamental Iron Company v. N.L.R.B. 615 F.2d 661 (C.A. 5) (1980)

(overlybroad no-solicitation rule violative notwithstanding no Ee ever complained about rule)

Motor Inn of Perrysburg, Inc. d/b/a Holiday Inn of Perrysburg v. N.L.R.B. 647 F.2d 692 (C.A. 6, May 1981)

(E's promulgation of overly broad no-solicitation and no distribution rule, not violative where rule was never enforced and evidence showed that Ees freely exercised their solicitation and distribution rights; mere enactment of overly broad rules was not violation of Act under facts of this case)

N.L.R.B. v. Publishers Printing Company, Inc. 625 F.2d 746 (C.A. 6, 1980)

(rule allowing no solicitation of any kind, unlawful where it was adopted during U campaign; obviously it was directed at U card solicitation)

5012-1737-0183 Presumptively invalid broad rule banning solicitation may be justified by special circumstances

Sahara-Reno Corporation, d/b/a Sahara Reno 262 NLRB No. 095

(rule prohibiting solicitation in any working area for any purpose on company time, unlawful where E showed no special justification for rule)

Presbyterian/St. Luke's Medical Center 258 NLRB No. 021

(hospital maintaining and enforcing rule prohibiting solicitation during nonwork time in patient care and public areas which are exemplified in rule as including *reception areas, hallways, stairways, coffee shop and the like*, violative, where rule was presumptively invalid as overbroad, and E did not profer evidence to justify rule's imposition into *coffee shop and the like*)

Ed Chandler Ford, Inc. 254 NLRB No. 082

(announcing and implementing rule which prohibits Ees from engaging in U activity or otherwise talking about U during nonworking time in nonpublic areas of E's automobile dealership, unlawful; record failed to show that impermissibly broad rule was necessary to maintain plant discipline or production, or that intent was communicated to Ees to permit U activity on Ees' own time in nonpublic areas)

Industry Products Company 251 NLRB No. 183

(rule prohibiting solicitation, collection of contributions or distribution of literature of any discription held overly broad and unlawfully restrict lawful U activities of Ees)

James F. Stanford, Inc. d/b/a Ace Machine Co. 249 NLRB No. 073

(ambigious *no solicitation rule* presumptively invalid absent showing that E's rule was necessary to maintain production or discipline as risk of ambiguity must be held against promulgator)

5012-1737-2000 Solicitation on plant premises

Read Memorial Hospital 265 NLRB No. 105

(promulgating and maintaining overly broad no-solicitation rule prohibiting such on *hospital time and premises*, violative, where rule could be reasonably interpreted as prohibiting U solicitation at any time on hospital premises)

Schnadig Corporation 265 NLRB No. 020

(maintenance of rule which prohibited solicitation of any kind during working hours or collecting contributions for any purpose on company premises or company time w/o specific prior approval of general manager, unlawful, since overly broad where E did not clairfy that prohibition did not apply to lunch and break times, notwithstanding E only enforced rule with regard to actual working time, inasmuch as more existence of overly broad rule interferes with Ees' Section 7 rights and E was carrying on anti-U campaign during work time)

Grumman Flxible Corporation 264 NLRB No. 034

(rule prohibiting any and all unauthorized soliciting for any purpose whatsoever on Company's premises, violative)

Peerless Plating Company, Inc. 263 NLRB No. 143

(rule against unauthorized soliciting or collecting of contributions for any purpose, unlawfully broad where no reason was cited therefor)

5012-1737-2000—Cont.

Comet Corporation **261 NLRB No. 188**
(publishing overborad rule in Ee handbook prohibiting *soliciting or distribution of literature on Company premises w/o specific company authorization,* unlawful, notwithstanding lack of actual enforcement as it is restrictive of Ee rights to engage in organizational activities during nonwork time on E's premises)

United Supermarkets, Inc. **261 NLRB No. 179**
(supervisor's statements that Ee was not to talk to U people on company time, that Ee's coffee breaks were paid for by E and therefore it is company time, and that anyone seen talking to U representative is grounds for immediate termination held to constitute announcement of clearly overbroad and invalid no-solicitation rule)

Valley Plaza, Inc. d/b/a Captain Nemo's **258 NLRB No. 076**
(no-solicitation rule violative where first sentence of rule prohibited Ee solicitation on nonworking time and second sentence did not state what if any right Ee supporter of U would have under rule to solicit another Ee on nonworking time and therefore, rule was capable of being interpreted as restricting Ees' rights under Act to engage in U solicitation during their nonworking time; inasmuch as posting itself of such rule was sufficient promulgation to constitute violation, admitted maintenance of rule was violative)

Timberline Energy Corporation **258 NLRB No. 037**
(rule imposed in new manual issued after U activity began which prohibits loitering, visiting and solicitation of U membership on company time, violative)

Can-Tex Industries, Division of Harsco Corporation **256 NLRB No. 143**

Marathon Letourneau Company, Longview Division **256 NLRB No. 054**
(reprimanding U adherent assertedly for violating no-solicitation rule by soliciting in work area, unlawful, where one purported transgression occurred in rest room and at time difficult to identify as work time and another occurred in salvage yard where instance of any occurrence of solicitation was open to question; solicitations sponsored by factions other than U factions were allowed and were participated in by supervisors; and there was lack of complete investigation by E before issuance of reprimand)

Mini-Industries, Inc. **255 NLRB No. 123**
(promulgating and maintaining rule prohibiting Ees from engaging in oral solicitation on behalf of U or distribution of U material in nonworking locations of plant during nonworking time, violative)

Wometco Coca-Cola Bottling Company of Nashville, Inc. **255 NLRB No. 069**
(informing Ee that Ees who signed U cards on company property or company time could be discharged, unlawful)

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**
(no-solicitation rule prohibiting solicitation anywhere on premises w/o distinguishing between working and nonworking time, unlawful)

Palby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(E's attempting to stop Ee from talking to other Ees concerning U's demand for recognition, violative where Ee's conduct took place during lunchtime and E had no rules regarding solicitation and distribution)

Maywood, Inc. **251 NLRB No. 139**
(barring off-duty Ees from plant premises, violative, where such Ees were in effect seeking access to cafeteria, a non-work area, for purpose of soliciting for U, and had no intention of *wandering about the plant* as E contended, and there was no rule limiting access to plant or rule which met standards defined in *Tri-County Medical Center, Inc.*, 222 NLRB 1089)

Central Freight Lines, Inc. **250 NLRB No. 063**

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(E's prohibiting solicitation or distribution of literature, pamphlets, or handouts on its premises, unlawful, since no distinction made between working and nonworking time and working and nonworking areas)

Styrest Nursing Home **JD-(ATL)-95-82**
(nursing home maintaining rule which stated *no one is permitted to approach Ees or residents with view towards canvassing, soliciting or selling articles of any kind,* unlawful, since not limited to working time of Ees, notwithstanding E's contention rule was directed at sale of articles by outside salesmen, since rule's language not limited to sale of articles by outside salesmen; nor was violation fully remedied by recission of rule and replacement with modified rule which limited prohibition to solicitation on working time in view of confusion generated by rule among Ees)

Besco Merchandising Corp. **JD-(SF)-238-82**
(rule prohibiting Ees from talking with *union organizers* on company premises and *organizing . . . at work* unlawfully broad)

Vanity Fair Mills, Inc. **JD-(ATL)-35-82**
(E's promulgating rule which stated *any solicitation of Ees or distribution of materials to Ees by non-Ees in plant or on company property is prohibited. Solicitation in plant or on company property by Ees on their working time is prohibited. Distribution of materials in plant or on company property by Ee on working time or in work area is prohibited* unlawful, in view of earlier Bd decision which held use of *working hours* or *working time* w/o further clarification, ambiguous and rule presumptively invalid and E did not overcome presumption)

Suburpia Submarine Sandwich Shoppes **JD-260-81**
(promulgating and maintaining rule which prohibited *vending, soliciting, or collecting matter of any description on Company's premises w/o management approval,* violative since rule was overbroad and would interfere with Ees' right to self organization or to ptn for redres of unsatisfactory wages, hours or terms and conditions of employment)

Carlina Knitting Co., Inc., et al. **JD-321-80**
(posting sign on factory door stating *no soliciting in the factory,* held unlawful)

Lester Industries, Inc. **JD-97-80**
(violation where E posted and maintained no-solicitation rule which prohibited soliciting U membership and support during non-working time at plant; subsequent posting of lawful change in rule did not remedy lingering effect of longstanding, invalid rule)

Signode Corporation **JD-161-80**
(counselling Ee against passing U card to another Ee on company time unlawful, where both Ees were on nonwork time)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(violation, where E maintained overly broad and improper rule prohibiting U solicitation on the premises)

N.L.R.B. v. Permanent Label Corporation **657 F.2d 512 (C.A. 3, 1981)**
(prohibiting Ee from passing out U cards or literature while on company property, unlawful)

5012-1737-2600 Permission of employer not required

Schnadig Corporation **265 NLRB No. 020**
(maintenance of rule which prohibited solicitation of any kind during working hours or collecting contributions for any purpose on company premises or company time w/o specific prior approval of general manager, unlawful, since overly broad where E did not clairfy that prohibition did not apply to lunch and break times, notwithstanding E only enforced rule with regard to actual working time, inasmuch as more existence of overly broad rule interferes with Ees' Section 7 rights and E was carrying on anti-U campaign during work time)

Comet Corporation **261 NLRB No. 188**
(publishing overborad rule in Ee handbook prohibiting *soliciting or distribution of literature on Company premises w/o specific company authorization,* unlawful, notwithstanding lack of actual enforcement as it is restrictive of Ee rights to engage in organizational activities during nonwork time on E's premises)

Traverse City Osteopathic Hospital **250 NLRB No 147**
(prohibiting Ees from soliciting for U w/o approval by E, violative)

IPCO Hospital Supply Corporation, Cheshire Labs Division **255 NLRB No. 116**
(publishing rule which prohibits solicitation or distribution of literature w/o written authorization of supervisor, violative)

Lummus Industries, Inc. **254 NLRB No. 079**
(rule prohibiting selling, soliciting or collecting contributions for any purpose unless authorized by Personnel Department violative as too broad because it covered nonworking time and areas; furthermore it would barr required Ee to obtain permission of E before engaging in protected concerted activities)

5012-1737-3300 Working areas

E. I. Dupont De Nemours **263 NLRB No. 015**
(informing Ee he could not solicit Ees to sign U cards on official company time, except before and after shift break, in cafeteria during lunch period, in halls and passageways, in restrooms or official break areas such as coke zone or rap shack, unlawful, since rule ambiguous inasmuch as could lead Ees to think they could not solicit except in particular areas named and use of words *official company time* could lead Ees to think solicitation prohibited any time during shift)

Midwest Electric Manufacturing Corporation **260 NLRB No. 032**
(posted rule prohibiting solicitation *in working areas during working hours* and orally communicated to Ees held presumptively invalid and unlawful, since Ee failed to rebut presumption; moreover, rule was also overly broad and thus presumptively unlawful under Bd's previously applicable law)

Eastern Maine Medical Center **253 NLRB No. 024**
(hospital's no-solicitation rule, unlawful, since overlybroad on its face and as applied to prohibit solicitation in hospital lobby at issue herein; rule is overly broad as promulgated, because it does not conform to Bd's requirement that E's ban on Ee solicitation on nonwork time is limited to immediate patient care areas and it is therefore presumptively invalid; and E has not established that U solicitation in working areas of hospital which are not immediate patient care areas would either disrupt patient care or disturb patients)

5012-1737-3300—Cont.

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

Permanent Label Corporation **248 NLRB No. 021**
(solicitation process includes distributing U card, signing by Ee and return of card to solicitor, therefore rule banning such activity during nonwork time in work areas is overly broad)

Lemon Electric Corporation **247 NLRB No. 203**
(maintaining rule which prohibited solicitation at any time in work areas, unlawful)

Beth Israel Hospital **JD-587-81**
(banning solicitation and distribution on Ees' nonwork time in basement corridors adjacent to service areas, violative, where there is little traffic by patients or professional staff and no emergency storage)

Beth Israel Hospital **JD-587-81**
(banning solicitation and distribution on Ees' nonwork time in corridors connecting cafeteria, gift shop, and cashier's office, violative, where these corridors are used predominately by Ees on way to lunch or breaks in cafeteria and not used for storage of emergency equipment)

Beth Israel Hospital **JD-587-81**
(banning solicitation and distribution on Ees' nonwork time in elevators used by Ees and not used by emergency teams, violative, where these elevators appear to belong in category of non-patient-access areas which E had opened up for Ee solicitation and distribution)

Beth Israel Hospital **JD-587-81**
(no solicitation/distribution rule banning such activities during nonwork time justified for stairways are areas of direct patient care and are passageways for emergency teams; moreover, there is reasonable assumption that stairway are escape routes in event of fire)

*National Electric Coil, A Division of McGraw
Edison Company* **JD-235-81**
(rule prohibiting solicitation during solicitor's work time or in work areas where any Ees are at work, unlawful, as unduly broad; since implication is that solicitation is precluded in areas where neither is precluded in areas where neither solicitor nor solicited Ee is on working time, but other Ees not parties to the conversation are working)

5012-1737-4000 Working time of employees soliciting

*Wometco Coca-Cola Bottling Company of Nashville,
Inc.* **255 NLRB No. 069**
(informing Ee he would be discharged if he carried on U organizing in company plant *on company time*, unlawful because such prohibition would appear to include breaktime and other periods when they are not expected to be working)

*Wometco Coca-Cola Bottling Company of Nashville,
Inc.* **255 NLRB No. 069**
(maintaining rule forbidding solicitation for U during working time or *while on the clock* while permitting solicitation for other purposes, unlawful)

*Clinton Corn Processing Company, A Division of
Standard Brands Inc.* **253 NLRB No. 084**
(E's promulgation of no-solicitation rule which prohibited solicitation during *working hours* rather than *working time* w/o clearly communicating to Ees its intent to permit solicitation during break times, unlawful)

General Thermodynamics, Inc. **253 NLRE No. 021**
(posting of facially overly broad no solicitation-no distribution rules prohibiting solicitation on *company time* and distribution on company premises w/o permission of management, unlawful, notwithstanding rule never implemented and was removed prior to its effective date where Ees never informed of E's decision not to implement rules)

Blue Bird Body Company **251 NLRB No. 196**
(E's condoning Ee committee's circulating anti-U ptn on Ees' working time while informing U adherents that they had no right to engage in solicitation on Ees' working time, violative, since Ee applied its *no solicitation policy* in discriminatory manner)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(forbidding *all solicitation and distribution during Ee's working time* held overly broad and invalid, since rule could be interpreted by Ees as forbidding solicitation or distribution by any Ee while any Ee was working and, in view of E's around-the-clock operation, rule could be construed as forbidding solicitation of all Ees and distribution of all U literature during any Ees working time and in non-working areas)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge for allegedly soliciting signing of U cards on company time, unlawful, where E had no written rules forbidding or restricting solicitations on company premises, there was no interference with production, E allowed solicitation for other purposes, and particularly absent proof solicitation took place on work time as distinguished from company time)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

Custom Coating & Laminating Corporation **249 NLRB No. 117**
(threatening Ee with discharge if he continued to speak with other Ees during work time violative where Ee's job required him to speak to other Ees and Ee was well known U adherent)

Lyman Steel Company **249 NLRB No. 040**
(two overly broad no-solicitation rules held *prima facie* invalid where E failed to show that it affirmatively communicated to its Ees, or demonstrated by application of rules, that Ees were free to engage in solicitation during breaktime or other periods when they were not actually working)

Colonial Stores Incorporated **248 NLRB No. 147**
(where Ee solicited fellow Ee's signature to ptn during working time on selling flour, E's warning Ee to cease interrupting her fellow Ees' work in process of petitioning, not violative, even though the petitioning activity itself was protected; contrary to GC's contention, E did not thereby unlawfully promulgate overly broad no-solicitation rule)

Conagra, Inc. **248 NLRB No. 085**
(supervisor informing Ee *If you are looking for higher wages you will have to look somewhere else. We won't have you talking U on job* unlawful, since could reasonably be interpreted as prohibition against soliciting at all times including nonworking time and no evidence restriction was justified by need to maintain discipline and production)

*John Rooney, David Hinman and Beverly Foster, d/
b/a Rooney's At The Mart* **247 NLRB No. 125**
(E's owner instructing Ee who was soliciting in customer area of restaurant not to solicit *on my time* where Ee was on own time but Ee *she* was soliciting was on work time, unlawful, since prohibition could reasonably have been construed to apply even during breaks for which Ees paid and prohibition not limited to customer areas)

*Notre Dame Hills Medical Services, Inc., d/b/a
Notre Dame Hills Convalescent Center* **247 NLRB No. 126**
(violation where E issued rules of conduct prohibiting solicitation during working hours w/o approval of the facility's administrator)

Tartan Marine Company **247 NLRB No. 073**
(supervisor informing Ee who had solicited another Ee to sign U card during break time that he *should take care of this after work* and when Ee attempted to assert his right to solicit during break time replying *company pays you for breaks,* violative)

*Lee Simmons and Beverly McKinstry Simmons, a
Partnership, d/b/a Elmendorf & Fort
Richardson Barber Concessions* **247 NLRB No. 093**
(E who restricted Ees use of telephone after U organizing activities began violated Act because rule was overbroad as it applied to working and nonworking time and was intended to ban use of telephone for any organizing activities)

Vanity Fair Mills, Inc. **JD-(ATL)-35-82**
(E's promulgating rule which stated *any solicitation of Ees or distribution of materials to Ees by non-Ees in plant or on company property is prohibited. Solicitation in plant or on company property by Ees on their working time is prohibited. Distribution of materials in plant or on company property by Ee on working time or in work area is prohibited* unlawful, in view of earlier Bd decision which held use of *working hours* or *working time* w/o further clarification, anbiguous and rule presumptively invalid and E did not overcome presumption)

Vanity Fair Mills, Inc. **JD-(ATL)-35-82**
(E's manager informing chairman of U's grievance committee and representative of U of E's neutrality in election campaign and instructing them not to solicit votes on company time during working hours, not unlawful, where manager added what they did on break or lunch time was their own business)

Transitank Car Corporation **JD-(ATL)-8-82**
(prohibiting handing out of U stickers found unlawful porhibition of solicitation where not limited to nonworking areas and times)

5012-1737-5000 Working hours, work time or company time

Woodview Rehabilitation Center **265 NLRB No. 122**
(promulgation and maintenance of rule banning solicitation on *working time,* violative, since rule was presumptively invalid)

Standard Motor Products, Inc. **265 NLRB No. 068**
(maintenance of rule prohibiting Ees from engaging *in any nonjob related activities during working hours,* not unlawful, where E rebutted presumption of invalidity of no-solicitation rule arising by virtue of reference to *working hours* by presenting uncontradicted evidence that rule was not strictly enforced and that it was E's practice to explain to new Ees that breaks were their own time to do what they wanted during breaks and lunch periods;

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and there was no evidence rule was applied to restrict solicitation to times other than when Ees were working)

Schnadig Corporation **265 NLRB No. 020**
(maintenance of rule which prohibited solicitation of any kind during working hours or collecting contributions for any purpose on company premises or company time w/o specific prior approval of general manager, unlawful, since overly broad where E did not clairfy that prohibition did not apply to lunch and break times, notwithstanding E only enforced rule with regard to actual working time, inasmuch as mere existence of overly broad rule interferes with Ees' Section 7 rights and E was carrying on anti-U campaign during work time)

De Queen General Hospital **264 NLRB No. 069**
(rule prohibiting Ees from engaging in any type of activity other than *assigned duties*, violative)

Daniel Construction Company, A Division of Daniel International Corporation **264 NLRB No. 079**
(rules prohibiting solicitation during *work time* or *working time*, w/o further clarification, are, like rules prohibiting such activity during *working hours*, presumptively invalid)

Kirkhill Rubber Company **263 NLRB No. 113**
(issuing written reprimand to Ee for *solicitation for U purposes on company time and property*, violative)

Foley-Wismer & Becker, A Joint Venture **263 NLRB No. 107**
(orally promulgated rule which was never reduced to writing was unlawfully ambiguous and broad where Ees differed as to whether it prohibited discussing U during *working time*, *working hours*, or in *work situations*)

Documation, Inc. **263 NLRB No. 052**
(although E's rule prohibited solicitation and distribution during working time only, E applied rule in overly-broad, unlawful manner where it prohibited solicitation during breaktime and after work)

Tressler Lutheran Home for Children t/a Frostburg Village of Allegany County Nursing Home **263 NLRB No. 042**
(nursing home administrator's complaining to Ees, *inter alia*, of U stickers and literature being posted all over home and stating that he did not want U discussed in building or on company time, violative)

Intermedics, Inc., et al. **262 NLRB No. 178**
(no-solicitation/no-distribution rule conceded by E to be invalid and rule prohibiting solicitation *on working time*, contained in Ee handbook, violative since *working time* rule was inconsistent with invalid rule, and thus created ambiguity which reasonably tended to inhibit permissible solicitations by Ees who would be uncertain which rule would be enforced)

Sahara-Reno Corporation, d/b/a Sahara Reno **262 NLRB No. 095**
(rule prohibiting solicitation in any working area for any purpose on company time, unlawful where E showed no special justification for rule)

U. S. Electrical Motors, A Division of Emerson Electric Co. **261 NLRB No. 184**
(allegation that invalid oral no-solicitation rule was promulgated when supervisor told Ee that he hoped Ee would not be doing anything involving U on company time, dismissed, notwithstanding supervisor's use of ambiguous term, *company time*, since rule as posted was valid and any ambiguity in oral rule was clarified w/i relatively short time by supervisor's superior telling Ee that he could not solicit on company time but that *his break periods were his own time to do as he pleased*.)

Professional Air Traffic Controllers Organization **261 NLRB No. 132**
(rule prohibiting circulation of U materials during working hours was overly broad where E had no policy with respect to distribution of anything, including literature, and Ees sold raffle tickets, football pools and Tupperware)

Midwest Electric Manufacturing Corporation **260 NLRB No. 032**
(posted rule prohibiting solicitation *in working areas during working hours* and orally communicated to Ees held presumptively invalid and unlawful, since Ee failed to rebut presumption; moreover, rule was also overly broad and thus presumptively unlawful under Bd's previously applicable law)

United Technologies Corporation **260 NLRB No. 008**
(E's maintenance and enforcement of rule prohibiting Ee solicitation during all paid nonworking time, unlawful, since it is facially invalid inasmuch as it prohibits U solicitation during *working hours*, and E admitted rule applies to authorized break periods for which Ees are paid; moreover, in view of SCt's decision in *Magnavox*, ban on solicitation was not rendered lawful by U contract provision waiving Ees' right to engage in solicitation)

Presbyterian/St. Luke's Medical Center **258 NLRB No. 021**
(hospital maintaining and enforcing rule prohibiting solicitation during *duty time*, not unlawful since reference to on-duty time was neither overbroad nor fatally ambiguous; however, rule's admonition that E *not tolerate* activity *disruptive of the atmosphere of patient care*, violative as ambiguous, overbroad and invalid where such rule had chilling effect on Ees' exercise of Sec. 7 rights)

McKesson Drug Company **257 NLRB No. 084**
(threatening Ee with discharge for soliciting Ee signatures on representation ptn during company time, violative as rule is overly broad)

T.R.W. Bearings Division, A Division of T.R.W., Inc. **257 NLRB No. 047**
(rule prohibiting solicitation or distribution of literature during *working hours*, unlawful, where presumptive invalidity of rule was not rebutted by E's publications of presumptively valid rule prohibiting solicitation during *working time*; no meaningful distinction exists between *working hours* and *working time*, since both terms are ambiguous, and risk of ambiguity must be borne by rule promulgator; hence, rules prohibiting solicitation during *work time* or *working time*, are, like rules prohibiting such activity during *working hours* presumptively invalid (Essex Internat'l, overruled))

Borun Brothers, Inc., A Wholly Owned Subsidiary of Thrifty Corporation **257 NLRB No. 003**
(maintaining rule that prohibited distribution or solicitation of any kind on company time, and reprimanding and threatening discipline for infractions, unlawful; rule, as written, and as interpreted by E as applying to working hours, was presumptively overbroad and ambiguous showing no intent to not cover break time, etc., was not justified by disciplinary or production needs, and was discriminatorily applied to protected activity during U organization campaign)

Limestone Apparel Corp. **255 NLRB No. 101**
(prohibiting soliciting on our *company time* is violative because term is ambiguous as such term is susceptible to interpretation that solicitation and U activities would be prohibited during all paid time including nonworking time such as breaks and lunch periods)

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(E's promulgation of no-solicitation rule which prohibited solicitation during *working hours* rather than *working time* w/o clearly communicating to Ees its intent to permit solicitation during break times, unlawful)

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(rule which refers to *working hours* rather than to *working time* is overly broad and presumptively invalid)

Omark-RCBS, A Division of Omark Industries **253 NLRB No. 069**
(both Ees' handbook and E's application of its no solicitation rule which prevented Ees from soliciting on behalf of U during working hours, violative)

Sani-Serv, Division of Catalox Corporation **252 NLRB No. 186**
(rule prohibiting solicitation during regularly scheduled working time held violative; modifying phrase *regularly scheduled* exacerbates the ambiguity of *working time*)

Gibbs Die Casting Aluminum Corporation **JD-267-82**

Ryland Building Systems, A Division of The Ryland Group, Inc. **JD-232-82**
(promulgating and maintaining rules prohibiting solicitation and distribution activities on *company time* and during *working hours*, violative where presumption of invalidity of rules stood unrebutted in absence of evidence that affected Ees were advised that rules would not apply during breaktime and other nonwork periods)

Red Roof Inns III Co., Inc. **JD-142-82**
(no solicitation rule and its alleged modification unlawful, where they failed to indicate clearly to Ees that they may engage in protected activity during periods of workday when they are properly not engaged in performing their work tasks; rule, accompanied by written threat of warning or discharge for violations of rule, constituted kind of proscription which tends to have chilling effect on exercise of Sec. 7 rights, regardless of whether E had occasion to invoke or enforce rule)

Eckerd Drugs of Florida, Inc. **JD-70-82**
(maintaining and enforcing no-solicitation rule which prohibited solicitation during working time, violative)

Franklin Art Glass Studios, Inc. **JD-93-82**
(no-solicitation rule prohibiting solicitation during working time violative; E did not clearly indicate to Ees that they may engage in protected activities during periods of work day when they are not properly engaged in performing their tasks, e.g., during mealtime or breaktimes)

Formaloy Corp. **JD-(ATL)-87-81**
(E's rule prohibiting solicitation w/o management permission and distributing written or printed matter on company premises during regular working hours held violative, since rule was overbroad allowing for no exceptions during nonwork time on E's premises; E demonstrated no business justification for imposition of such rules)

Boniface Group Homes, Inc. **JD-162-81**
(no-solicitation rule held invalid where it was not confined to working time, and permitted solicitation only with permission of management)

5012-1737-5000—Cont.

American Safety Equipment Corporation v. N.L.R.B. **643 F.2d 693 (C.A. 10, Mar. 1981)**

(Bd decision setting aside election set aside where basis for decision was two rules in Ee handbook prohibiting solicitation and distribution during *working hours*; E rebutted *presumed* interference with Ee rights as it produced evidence showing: 1) Ees were told lunch time and break time were their own; 2) Ees were aware rules only applied to working time; 3) Ees openly engaged in U activity during non working time and were not disciplined and 4) rules consistently properly applied by E)

5012-1737-6000 Working time of employees solicited

Model A and Model T Motor Car Reproduction Corporation **259 NLRB No. 077**

(maintenance of broad no-solicitation rule, violative, where, notwithstanding fact that E rescinded rule and promulgated new rule prohibiting solicitation during *working time*, U organizing campaign had existed several months prior to recision of old rule, E never explicitly repudiated invalid rule, and there was no evidence that Ees were aware that invalid rule had been changed)

General Thermodynamics, Inc. **253 NLRB No. 021**

(posting of facially overly broad no solicitation-no distribution rules prohibiting solicitation on *company time* and distribution on company premises w/o permission of management, unlawful, notwithstanding rule never implemented and was removed prior to its effective date where Ees never informed of E's decision not to implement rules)

Blue Bird Body Company **251 NLRB No. 196**

(E's condoning Ee committee's circulating anti-U ptn on Ees' working time while informing U adherents that they had no right to engage in solicitation on Ees' working time, violative, since Ee applied its *no solicitation policy* in discriminatory manner)

Magnesium Casting Company, Inc. **250 NLRB No. 107**

(forbidding *all solicitation and distribution during Ee's working time* held overly broad and invalid, since rule could be interpreted by Ees as forbidding solicitation or distribution by any Ee while any Ee was working and, in view of E's around-the-clock operation, rule could be construed as forbidding solicitation of all Ees and distribution of all U literature during any Ees working time and in non-working areas)

Pilgrim Life Insurance Company **249 NLRB No. 140**

(discharge for allegedly soliciting signing of U cards on company time, unlawful, where E had no written rules forbidding or restricting solicitations on company premises, there was no interference with production, E allowed solicitation for other purposes, and particularly absent proof solicitation took place on work time as distinguished from company time)

MGM Grand-Reno, Inc. **249 NLRB No. 153**

(maintenance of overly broad *invalid no-solicitation rule* and *valid no-solicitation rule* for about one month after inception of U campaign held violative where maintenance of both rules created ambiguity, since rules could be read together to give impression that all solicitation and distribution was prohibited at all times on company property)

Conagra, Inc. **248 NLRB No. 085**

(supervisor informing Ee *If you are looking for higher wages you will have to look somewhere else. We won't have you talking U on job* unlawful, since could reasonably be interpreted as prohibition against soliciting at all times including nonworking time and no evidence restriction was justified by need to maintain discipline and production)

Permanent Label Corporation **248 NLRB No. 021**

(E's statement that no solicitation rule covered *company time* violative where it expressly covered break time or lunch time)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 135**

(E's owner instructing Ee who was soliciting in customer area of restaurant not to solicit *on any time* where Ee was on own time but Ee she was soliciting was on work time, unlawful, since prohibition could reasonably have been construed to apply even during breaks for which Ees paid and prohibition not limited to customer areas)

Tarhen Marine Company **247 NLRB No. 073**

(supervisor informing Ee who had solicited another Ee to sign U card during break time that he *should take care of this after work* and when Ee attempted to assert his right to solicit during break time replying *company pays you for breaks*, violative)

Sprout Nursing Home **JD-(ATL)-95-82**

(nursing home maintaining rule which stated *no one is permitted to approach Ees or residents with view towards canvassing, soliciting or selling articles of any kind*, unlawful, since not limited to working time of Ees, notwithstanding E's contention rule was directed at sale of articles by outside salesmen, since rule's language not limited to sale of articles by outside salesmen; nor was violation fully remedied by recission of rule and replacement with modified rule which limited prohibition to solicitation on working time in view of confusion generated by rule among Ees)

Vanity Fair Mills, Inc. **JD-(ATL)-35-82**

(E's promulgating rule which stated *any solicitation of Ees or distribution of materials to Ees by non-Ees in plant or on company property is prohibited. Solicitation in plant or on company property by Ees on their working time is prohibited. Distribution of materials in plant or on company property by Ee on working time or in work area is prohibited* unlawful, in view of earlier Bd decision which held use of *working hours* or *working time* w/o further clarification, ambiguous and rule presumptively invalid and E did not overcome presumption)

Vanity Fair Mills, Inc. **JD-(ATL)-35-82**

(E's manager informing chairman of U's grievance committee and representative of U of E's neutrality in election campaign and instructing them not to solicit votes on company time during working hours, not unlawful, where manager added what they did on break or lunch time was their own business)

Eckerd Drugs of Florida, Inc. **JD-70-82**

(telling Ee she was not allowed to sign U card on company time or premises, violative)

Transitank Car Corporation **JD-(ATL)-8-82**

(prohibiting handing out of U stickers found unlawful porhibition of solicitation where not limited to nonworking areas and times)

Pioneer Finishing Corporation v. N.L.R.B. **667 F.2d 199 (C.A. 1, Nov. 1981)**

(Ee who distributed protected leaflets to Ees who were working engaged in protected activity for where distribution during working time is not specifically prohibited, distribution is protected as long as it doesn't interfere with production)

N.L.R.B. v. John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **677 F.2d 44 (C.A. 9, Feb. 1982)**

(E who issued written reprimand to U adherent for soliciting other Ees while they were on duty did not violate Act as admonition applied to solicitation during periods when she or other Ees were actually on duty; fact that warning issued at outset of U organizational campaign addressed to prime U adherent, not controlling where evidence showed solicitation created disturbance and it was first time occurence, and Bd has held that promulgation of rule to U adherent although not ideal is not ULP)

5012-1737-6700 Nonworking areas

Ameron Automotive Centers, A Division of The Kelly-Springfield Tire Co.; F. W. Woolworth Company d/b/a Woolco Division, Joint Employers **265 NLRB No. 058**

(*NO SOLICITING* sign constituted unlawfully broad written no-solicitation rule applicable to Ees, since it prohibited solicitation at all times in all areas even non-customer trafficked areas during non-working time when store was closed to customers)

Harper-Grace Hospitals, Inc. **264 NLRB No. 089**

(maintenance and enforcement of overly broad rule prhibiting Ees from soliciting or distributing literature on nonwork time in nonwork areas, unlawful where no direct effect on patient care or patients was shown; contention that by acceding to contract allowing use of U bulletin board U waived Ees' right to solicit or distribute on hospital premises, rejected since E and U could not lawfully prohibit Ees from distributing anti-U literature at hospital entrance)

E. I. Dupont De Nemours **263 NLRB No. 015**

(informing Ee who was soliciting Ee to sign U card in break area that *it was against company policy to sign up Ees for U on plant property* and then escorting Ee to office while informing him incident would be written up for his file, unlawful)

E. I. Dupont De Nemours **263 NLRB No. 015**

(informing Ee he could not solicit Ees to sign U cards on official company time, except before and after shift break, in cafeteria during lunch period, in halls and passageways, in restrooms or official break areas such as coke zone or rap shack, unlawful, since rule ambiguous inasmuch as could lead Ees to think they could not solicit except in particular areas named and use of words *official company time* could lead Ees to think solicitation prohibited any time during shift)

R. L. White Company, Inc. **262 NLRB No. 049**

(threatening Ee with discipline if he was caught soliciting in Ee parking lot on his lunch hour violative)

Williams Litho Service, Inc. **260 NLRB No. 101**

(telling Ees that there would be no more gathering in small groups talking about U business and no passing out U literature on company time and/or property with threat of discharge for violation thereof, violative, where such oral no solicitation/distribution rule was overly broad and thus unlawful)

St. Mary's Home, Inc. t/a St. Mary's Infant Home **258 NLRB No. 134**

(promulgating and maintaining no-solicitation rule barring U solicitation in non-patient care areas on Ees' own time, unlawful)

5012-1737-6700—Cont.

Harrison Steel Castings Company **262 NLRB No. 059**

(rule restricting access of non-duty Ees valid only if (1) limits access solely with respect to interior of plant and other working areas; (2) is clearly disseminated to all Ees; and (3) applies to off duty Ees seeking access to plant for any reason and not just to those Ees engaging in U activity. Finally except where justified by business reasons, rule which denies off duty Ees entry to parking lots, gates, and other outside non-working areas will be found invalid)

Lummus Industries, Inc. **254 NLRB No. 079**

(rule prohibiting selling, soliciting or collecting contributions for any purpose unless authorized by Personnel Department violative as too broad because it covered nonworking time and areas; furthermore it would barr required Ee to obtain permission of E before engaging in protected concerted activities)

Clark Manor Nursing Home Corp. **254 NLRB No. 054**

(nursing home's rule stating in part that no solicitation of any type will be allowed on premises held invalid, as it ostensibly extends to non-patient care portions of institution)

Maywood, Inc. **251 NLRB No. 139**

(barring off-duty Ees from plant premises, violative, where such Ees were in effect seeking access to cafeteria, a non-work area, for purpose of soliciting for U, and had no intention of *wandering about the plant* as E-contended, and there was no rule limiting access to plant or rule which met standards defined in *Tri-County Medical Center, Inc.*, 222 NLRB 1089)

Certain-Teed Insulation Company **251 NLRB No. 208**

(promulgation of overly broad no solicitation/no distribution rule, violative, absent evidence of business necessity for such rule)

Baylor University Medical Center **247 NLRB No. 178**

(on remand from Supreme Court for reconsideration in light of its *Beth Israel Hospital* decision, Bd affirmed prior decision that hospital's rule against solicitation and distribution in its cafeteria violated 8(a)(1) in view of cafeteria's appropriateness for U solicitation due to impracticality of reaching Ees elsewhere and E's failing to show that total prohibition of U solicitation in cafeteria was necessary or that U solicitation destroyed tranquil atmosphere necessary for patient care or was more upsetting than other conversation)

Baylor University Medical Center **247 NLRB No. 178**

(on remand from Supreme Court for reconsideration in light of its *Beth Israel Hospital* decision, Bd affirmed prior decision that hospital's rule against U solicitation and distribution in vending machine areas violated 8(a)(1), since patients' occasional use of vending machines fell far short of establishing area as one of immediate patient care)

Besco Merchandising Corp. **JD-(SF)-238-82**

(rule prohibiting Ees from talking with *union organizers* on company premises and *organizing . . . at work* unlawfully broad)

Transitank Car Corporation **JD-(ATL)-8-82**

(prohibiting handing out of U stickers found unlawful porhibition of solicitation where not limited to nonworking areas and times)

Hayes International Corporation **JD-(ATL)-29-81**

(maintenance of rule prohibiting solicitation outside Ees' own departmental area at any time w/o specific written authorization unlawful, since it prohibited Ees from soliciting fellow Ee participation in U activities during nonworking time)

Eastern Maine Medical Center v. N.L.R.B. **658 F.2d 1 (C.A. 1, 1981)**

(hospital's no-solicitation rule invalid where it permitted solicitation only during breaks but no other nonworking time, and only in break areas, not even areas of hospital not involved with patient care and E showed no justification by need to prevent either disruption of patient care or disturbance of patients)

Baylor University Medical Center v. N.L.R.B. **662 F.2d 56 (C.A.D.C., Aug. 1981)**

(ct rejected Bd's ruling that vending areas were not immediate patient care areas and remanded case to Bd with instruction to consider whether evidence submitted by E is sufficient to overcome *St. John's* presumption; as it now stands in record-showing location of vending areas as *off corridors* and indicating they are regularly used by patients and their visitors--suggests that ban during daytime hours would probably be permissible)

Baylor University Medical Center v. N.L.R.B. **662 F.2d 56 (C.A.D.C., Aug. 1981)**

(record did not support Bd's total invalidation of E's solicitation ban in its cafeteria and vending areas; ct's disapproval of Bd's method of dealing with evidence that (1) approximately 40% of cafeteria's patrons were non-Ees, and (2) exterior grounds of hospital complex are convenient place for solicitation and are widely used by Ees, required remand to Bd)

5012-1737-7300 Public Areas

Harrison Steel Castings Company **262 NLRB No. 059**

(rule restricting access of non-duty Ees valid only if (1) limits access solely with respect to interior of plant and other working areas; (2) is clearly disseminated to all Ees; and (3) applies to off duty Ees seeking access to plant for any reason and not just to those Ees engaging in U activity. Finally except where justified by business reasons, rule which denies off duty Ees entry to parking lots, gates, and other outside non-working areas will be found invalid)

Montgomery Ward & Company, Inc. **256 NLRB No. 134**

(discriminatorily maintaining and enforcing rule against solicitation by non-Ees in public cafeteria in E's store, violative, where purpose of rule was to discriminate against *solicitation* of non-cafeteria Ees by U organizers; *solicitation* was part of orderly, discreet conversation by appointment with willing Ee patrons over tables where they were eating during their unpaid lunch periods)

Eastern Maine Medical Center **253 NLRB No. 024**

(E's interference with off-duty Ees engaged in solicitation in hospital's waiting-room lobby used primarily by general public, unlawful, notwithstanding E's contention that anxious members of patient's family using lobby deserve greater protection than general public; SCt's concern for patient welfare does not compel conclusion that similar protection from solicitation be afforded members of public who are not themselves patients; and, in view of delivery of health care services at hospital as that may involve lobby, solicitation therein will not adversely affect patient care or disturb patients)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**

(E's owner instructing Ee who was soliciting in customer area of restaurant not to solicit *on my time* where Ee was on own time but Ee she was soliciting was on work time, unlawful, since prohibition could reasonably have been construed to apply even during breaks for which Ees paid and prohibition not limited to customer areas)

Eastern Maine Medical Center v. N.L.R.B. **658 F.2d 1 (C.A. 1, 1981)**

(expulsion of off-duty nurses for violation of rule against soliciting in second floor lobby of hospital, which was not patient care area, unlawful where hospital failed to justify its ban on soliciting there *as necessary to avoid disruption of health-care operations or disturbance of patients*)

Montgomery Ward & Company, Inc. v. N.L.R.B. **692 F.2d 1115 (C.A. 7, Nov. 1982)**

(substantial evidence supported Bd's finding that E discriminatorily enforced no-solicitation rule to bar access to non-Ee U organizers where E interfered with private conversation in restaurant open to public between off-duty Ees and organizers because organizers were soliciting U membership; E had never approached any other group in restaurant to enforce rule, had posted rule only several days after incident even though rule ostensibly had been in effect for several years, had tolerated other types of solicitation and expelled organizers from private sidewalk outside E's facility although permitted by rule)

Montgomery Ward & Company, Inc. v. N.L.R.B. **692 F.2d 1115 (C.A. 7, Nov. 1982)**

(substantial evidence supported Bd's finding that no-solicitation rule was invalid as applied to off-duty Ees meeting non-Ee organizers in restaurant open to public, albeit on E's premises, when restaurant was being used nondisruptively and in manner consistent with its normal use; Bd's contention that *Babcock & Wilcox* does not apply where access to E's premises is open to public and E's argument that Bd may not undertake to balance interests unless there is preliminary findings of inaccessibility to U rejected)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**

(Bd's orders that Es must c/d from *maintaining any rule or regulation prohibiting its Ees from soliciting on its premises after their shifts have been completed unless such prohibition is demonstrably necessary to maintain production, discipline or security* overly broad; since Es could prohibit Ees from soliciting during nonworking hours in public areas of their premises, Bd's order modified to read that Es must c/d from *maintaining any rule or regulation prohibiting its Ees from soliciting on its premises during nonworking hours in nonpublic areas of its premises*)

5012-1750 Rest periods not working time

Documation, Inc. **263 NLRB No. 082**

(although E's rule prohibited solicitation and distribution during working time only, E applied rule in overly-broad, unlawful manner where it prohibited solicitation during breaktime and after work)

E. I. Dupont De Nemours **263 NLRB No. 018**

(informing Ee he could not solicit Ees to sign U cards on official company time, except before and after shift break, in cafeteria during lunch period, in halls and passageways, in restrooms or official break areas such as coke zone or rap shack, unlawful, since rule ambiguous inasmuch as could lead Ees to think they could not solicit except in particular areas named and use of words *official company time* could lead Ees to think solicitation prohibited any time during shift)

Huntington Rubber Company, Division of New Idr[illegible] **260 NLRB No. 120**

(E's [illegible]tion of rule which prohibited all discussion of U in E's restroom violative of Sec. 8(a)(1) and issuing warning to Ee who violated rule also violative)

5012-1750—Cont.

T.R.W. Bearings Division, A Division of T.R.W., Inc. **257 NLRB No. 047**
(Bd sees no inherent meaningful distinction between terms *working hours* and *working time* when used in no-solicitation rule; both terms are, w/o further clarification, ambiguous, and risk of such ambiguity must be borne by promulgator of rule; to avoid misinterpretation E need only incorporate in rule itself a clear statement that rule's restriction on organizational activity does not apply during break periods and mealtimes, or other specified periods during workday when Ees are properly not engaged in performing their work tasks (Essex International, overruled))

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(E's promulgation of no-solicitation rule which prohibited solicitation during *working hours* rather than *working time* w/o clearly communicating to Ees its intent to permit solicitation during break times, unlawful)

P. A. Incorporated **248 NLRB No. 077**
(rule prohibiting solicitation during break time, unlawful)

National Vendors, a Division of UMC Industries, Inc. **630 F.2d 1265 (C.A. 8, 1980)**
(E's banning chief steward, who was also member of contract negotiating committee, from holding *anymore meetings in company cafeteria*, not violative, where E's prohibition was directed solely to chief steward's practice of holding structured, semi-formal, large group meetings during short breaks at cafeteria that is open to all Ees, including supervisory and non-unit personnel; such meetings were disruptive)

5012-1775 Valid where necessary interest of safety and efficiency

Clark Manor Nursing Home Corp. **254 NLRB No. 054**
(nursing home's maintaining and enforcing rule which prohibited solicitation by off-duty Ees on outside, non-working areas of its premises, unlawful where not justified by business reasons)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(notice posted near Ee timeclock by E, prior to election, stating that *I will not stand for this second party, (U), to be mentioned or talked about w/i the store* held violative where there was no showing that this prohibition against U talk was warranted by valid business considerations)

D & D Supermarket, Inc. **JD-292-82**
(facially valid no-solicitation, no-distribution rule posted w/i week after R ptn filed by U but two months after legitimate business reason for rule occurred held violative, since rule was not promulgated *in furtherance of an E's legitimate interest of serving production, order, and discipline, but specifically for the purpose of defeating U organization*)

Talbot - General Wire Products **JD-(SF)-364-80**
(no violation by republication of rule prohibiting solicitation in *work areas* during *work time*, since it was not motivated by intent to interfere with Ees' organizing activity but rather by justified concern for maintaining safety and avoiding disruption at the facility)

N.L.R.B. v. Clark Manor Nursing Home Corp. **671 F.2d 657 (C.A. 1, Feb. 1982)**
(no loitering rule which prohibited excessive conversation between Ees of different shifts, violative; E's contentions that it feared parking lot congestion and wished to avoid Ees being accused of theft or vandalism, rejected)

5012-2000 Discriminatory promulgation of rule

Woodview Rehabilitation Center **268 NLRB No. 122**
(promulgation and dissemination of rules limiting access to facility, solicitation and distribution of *materials* at facility by Ees, violative, where rules, even if lawful on their face, were invalid since they were promulgated in response to Ees engaging in U activities)

Hammary Manufacturing Corporation, A Division of U.S. Industries, Inc. **268 NLRB No. 007**
(original decision amended by striking language that no-solicitation rule was *invalid to extent it sets out annual campaign for United Way as 'sole exception' to rule's restriction on solicitation*; and that such *exception does nothing less than sanction rule's disparate application and is therefore unlawful*; E does not violate 8(a)(1) by permitting small number of *beneficent acts* as exception to rule, and, rather than finding exception for charities *per se* violative, Bd has evaluated incidents involved to determine whether unlawful discrimination occurred)

Hammary Manufacturing Corporation, A Division of U.S. Industries, Inc. **268 NLRB No. 007**
(Bd held E applied no-solicitation rule in unlawful manner where it permitted Ees during working time to sell numerous products, conduct raffle, and collect for flower fund, and itself sponsored annual United Way campaign, but prohibited Ees from engaging in U activities and discharged Ee for U solicitation; determination herein is not based on exception to rule's restriction with regard to annual United Way campaign, but rather on fact that E treated U activity in discriminatory manner)

Saint Vincent's Hospital **265 NLRB No. 006**
(E who clarified its lawful no-solicitation rule by giving specific instructions on its enforcement to its supervisors, violated Act where purpose of clarification was to provide E with basis for subsequent enforcement of rules against Ees who engaged in U solicitation)

Village IX, Inc. d/b/a Shenanigans **264 NLRB No. 122**
(no-distribution rule which prohibited distribution of literature of any type which was promulgated in midst of U campaign and was first announced to leading U adherent violative where purpose was to curb Ee exercise of Sec. 7 rights rather than accomplish legitimate objective)

Interstate Security Services, Inc. **263 NLRB No. 002**
(rule which prohibited Ees from discussing U matters while they were on duty violative as overbroad where Ees were considered to be *on duty* from time they clock in until they clock out, there are no breaks or rest periods, they eat lunch while working, and E has no objection to their discusing social matters while they worked as long as it didn't interfere with their work)

Technicolor Graphic Services, Inc., South Dakota Operations **262 NLRB No. 153**
(maintaining, interpreting, and enforcing work rule so as to preclude Ees from exercising their rights to protest working conditions w/o first exhausting intracompany channels, violative)

U. S. Electrical Motors, A Division of Emerson Electric Co. **261 NLRB No. 184**
(allegation that invalid oral no-solicitation rule was promulgated when supervisor told Ee that he hoped Ee would not be doing anything involving U on company time, dismissed, notwithstanding supervisor's use of ambiguous term, *company time*, since rule as posted was valid and any ambiguity in oral rule was clarified w/i relatively short time by supervisor's superior telling Ee that he could not solicit on company time but that *his break periods were his own time to do as he pleased.*)

Professional Air Traffic Controllers Organization **261 NLRB No. 132**
(violation where rule was promulgated during organization period and was designed to interfere with Ees' rights of self-organization)

Cadiz Convalescent Centers **258 NLRB No. 077**
(E did not violate Act when it replaced facially unlawful no solicitation rule with presumptively lawful rule notwithstanding this occurred at time of U's organizational campaign)

Hammary Manufacturing Corporation, A Division of U.S. Industries, Inc. **258 NLRB No. 182**
(no-solicitation rule unlawful to extent it sets out the annual campaign for the United Way as *the sole exception* to the rule's restrictions on solicitation)

St. Mary's Home, Inc. t/a St. Mary's Infant Home **258 NLRB No. 134**
(promulgating and maintaining no-solicitation rule barring U solicitation in non-patient care areas on Ees' own time, unlawful)

Palomar Transport, Inc. **256 NLRB No. 177**
(promulgation of rules requiring approval of postings on bulletin board in context of organizational campaign, violative)

Price's Pic-Pac Supermarkets, Inc. **256 NLRB No. 123**
(proscription of any talk by Ee about U unless he talked to E about it, unlawful in absence of valid solicitation rule)

Gulf Envelope Company **256 NLRB No. 058**
(E's promulgating rule which stated *Ees shall not gather in plant premises or conduct any personal business during working hours except by permission of management*, unlawful; notwithstanding rule did not facially impair rights of Ees to engage in protected activities or explicitly mention U activities since rule broad enough to *give some pause to prudent Ees wishing to engage in U activities*; E never gave any explanation of rule which removed coercion; and violation of rule formed basis for unlawful discharge)

Southern Moldings, Inc. **255 NLRB No. 115**
(telling Ees that solicitation and distribution of any kind are prohibited on E's property and time, violative where rule was announced to select U activists, timing of announcement was immediately after first U distribution, announcement was made by E's third-in-command and part-owner in individual interviews with Ees and incidents were noted in E's warning log)

Ashley Warp Knitting, Inc. d/b/a Jefferson Apparel Company **248 NLRB No. 084**
(promulgating rule prohibiting U activities on working time while permitting other types of solicitations or activities on working time, unlawful)

Hammond Plastic, Division of Carl Gordon Industries, Inc. **JD-883-81**
(instructing Ee not to discuss U during working time, unlawful where E permitted Ees to engage in non-work related discussions during work time)

N.L.R.B. v. Clark Manor Nursing Home Corp. **671 F.2d 657 (C.A. 1, Feb. 1982)**
(promulgation of no solicitation rule proscribing such activity only *in patient care or patient access areas*, violative, in view of timing of new rule, history of its application against only known U supporters, and E's encouragement of anti-U activities by Ees in disregard of rule)

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5012-2500—Cont.

Bandag, Incorporated v. N.L.R.B. 583 F.2d 765 (C.A. 5)
(E's new rule proscribing distribution and solicitation during working time in plant w/o prior approval of plant manager held lawful despite replacing unlawful overbroad *no-distribution* rule in Ee handbook, since no one paid much attention to old rule and there was no evidence either old or new rule had been selectively applied or enforced; non-U solicitation had been approved but U had never asked permission to solicit)

N.L.R.B. v. Naum Brothers, Inc. 637 F.2d 589 (C.A. 6, Mar 17, 1981)
(no-solicitation rule unlawfully prohibited solicitation on behalf of U, notwithstanding E's contention that everyone understood rule was aimed only at non-Ee solicitation, where signs prohibiting solicitation were posted after filing of ptn and removed after election, on at least one occasion prohibition was repeated in presence of an Ee, and there was no evidence suggesting limitation on applicability of rule)

Atlas Metal Parts Co., Inc. v. N.L.R.B. 660 F.2d 304 (C.A. 7, Sep. 1981)
(E's telling Ee to stop talking about U business on company time held promulgation of discriminatory rule and unlawful)

Road Sprinkler Fitters Local Union No. 669, etc. v. N.L.R.B. 681 F.2d 11 (C.A.D.C., June 1982)
(*no-U-talk* rule imposed on reinstated strikers violative)

5012-3300 Limitation of prohibition to union activities

Clark Manor Nursing Home Corp. 254 NLRB No. 054
(nursing home's imposition of new no-solicitation rule, applicable only to U solicitation at onset of U organization campaign and amidst abundance of evidence showing hostility by E's officials toward U, unlawful where prior no-solicitation rule was not enforced)

5012-3317 Nonunion solicitation and distribution permitted

Ameron Automotive Centers, A Division of The Kelly-Springfield Tire Co.; F. W. Woolworth Company d/b/a Woolco Division, Joint Employers 265 NLRB No. 058
(enforcement of ban on nonEe solicitation by prohibiting U but allowing other organizations and vendors to solicit Ees, unlawful)

Schnadig Corporation 265 NLRB No. 020
(violation, where supervisor instructed Ee to cease distributing U literature outside time clock door entrance and move at least 18 feet from plant, and did not retract order when informed his action was violation of federal law particularly where at time E was passing out anti-U literature in working area on working time)

Hammary Manufacturing Corporation, A Division of U.S. Industries, Inc. 265 NLRB No. 007
(original decision amended by striking language that no-solicitation rule was *invalid to extent it sets out annual campaign for United Way as 'sole exception' to rule's restriction on solicitation*; and that such *exception does nothing less than sanction rule's disparate application and is therefore unlawful*; E does not violate 8(a)(1) by permitting small number of *beneficent acts* as exception to rule, and, rather than finding exception for charities *per se* violative, Bd has evaluated incidents involved to determine whether unlawful discrimination occurred)

Hammary Manufacturing Corporation, A Division of U.S. Industries, Inc. 265 NLRB No. 007
(Bd held E applied no-solicitation rule in unlawful manner where it permitted Ees during working time to sell numerous products, conduct raffle, and collect for flower fund, and itself sponsored annual United Way campaign, but prohibited Ees from engaging in U activities and dishcarged Ee for U solicitation; determination herein is not based on exception to rule's restriction with regard to annual United Way campaign, but rather on fact that E treated U activity in discriminatory manner)

Saint Vincent's Hospital 265 NLRB No. 006
(enforcement of lawful no-solicitation rule in disparate manner violative; Ees were permitted to distribute wedding and shower invitations, solicit for flower funds, sell raffle tickets, candy, and solicit for United Appeal but not permitted to solicit on behalf of U)

Laird Printing, Inc. 264 NLRB No. 040
(violation, where one week before election E directed Ees not to talk about U on company time, although E allowed Ees to discuss other matters on company time)

Foley-Wismer & Becker, A Joint Venture 263 NLRB No. 107
(violation, where discussion of U was prohibited at times when workbench conversations, baby pools and sporting events pools were permitted)

Documation, Inc. 263 NLRB No. 052
(unlawful disparate enforcement of no solicitation/distribution rule where conversations in which one Ee solicited another Ee to sign U card resulted in discharge of soliciting Ee whereas other Ees were not even reprimanded for soliciting sales of tools and Tupperware)

Professional Air Traffic Controllers Organization 261 NLRB No. 132
(rule prohibiting circulation of U materials during working hours was overly broad where E had no policy with respect to distribution of anything, including literature, and Ees sold raffle tickets, football pools and Tupperware)

Gould, Inc. 260 NLRB No. 002
(posted rule that prohibited *any type of solicitation w/i the physical location of plant, or on company time... restrictions prohibit sale of raffle tickets, chances, athletic pools, or any type of personal business transaction not authorized by management,* held violative as ambiguous and was therefore construed against E. E was more lax in enforcing rule against personal non-U solicitation than in its enforcement relating to U solicitation)

Hammary Manufacturing Corporation, A Division of U.S. Industries, Inc. 258 NLRB No. 182
(disparate enforcement of no-solicitation rule by permitting non-U but not U solicitation, unlawful)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital 255 NLRB No. 045
(solicitation for benefit of hospital or for charity is recognized and permissable exemption from valid no-solicitation rule and does not constitute disparate application of rule barring outside solicitation and distribution by non-Ee organizers; such solicitation and distribution no ground for setting aside elections in units of hospital Ees)

Wometco Coca-Cola Bottling Company of Nashville, Inc. 255 NLRB No. 069
(maintaining rule forbidding solicitation for U during working time or *while on the clock* while permitting solicitation for other purposes, unlawful)

Friendly Ice Creame Corporation 254 NLRB No. 172
(E's issuing written warning to Ee who was soliciting signing of U authorization card on work time in violation of valid no-solicitation rule, unlawful, in view of E's selected enforcement of dormant rule and U animus where Ees had been allowed to talk among themselves during work time and warning was only disciplinary action ever taken regarding rule, E was not given opportunity to defend herself and solicitation for other purposes had been allowed)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(supervisor's statement to Ee not to talk about U during working hours, unlawful, where prohibition limited to U activity, and anti-U and non-U activities and solicitation were being carried on during working hours)

Pilgrim Life Insurance Company 249 NLRB No. 140
(discharge for allegedly soliciting signing of U cards on company time, unlawful, where E had no written rules forbidding or restricting solicitations on company premises, there was no interference with production, E allowed solicitation for other purposes, and particularly absent proof solicitation took place on work time as distinguished from company time)

Vanity Fair Mills, Inc. JD-(ATL)-35-82
(unlawful disparate enforcement of rule where E had knowledge of frequent solicitation for gifts to Ees on various occasions and sales of products by Ees during working time)

Datacomp Corporation, A Division of Herbick and Held Printing Company JD-594-80
(enforcement of no-solicitation rule as applied to distribution of U literature and authorization cards during work hours and in work areas, unlawful, where during same time period and with knowledge and participation of supervisors, solicitation for lotteries and charities during work hours and in work areas was permitted)

Belcher Towing Company v. N.L.R.B. 614 F.2d 88 (C.A. 5, Mar. 1980)
(Bd erred in holding that E's prohibiting access of U agents to its boat was discriminatory where E allowed other individuals access since no solicitation for no-U purposes or causes was allowed)

The Timken Company v. N.L.R.B. 644 F.2d 886(T) (C.A. 6, Jan 8, 1981)
(substantial evidence did not support Bd's finding that E unlawfully applied rule concerning solicitation and distribution against U activity and not against other distributions)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. 636 F.2d 1255 (C.A. 7, 1980)
(ct held that E's rule expressly prohibiting *solicitation of any kind*, although not discriminatory on its face, was unlawful where strictly enforced in regard to U activities but not where non-U, nonwork activities were concerned; furthermore, E's unequal enforcement of no solicitation rule invalidated such rule and enforcement of rule constituted separate and additional violation)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. 600 F.2d 132 (C.A. 8, 1979)
(violation, where E who maintained broad no-distribution rule allowed charity groups and political candidate to distribute on its premises; while granting permission to charity groups *is fairly innocuous* allowing distribution by political candidate while denying permission to U group E *is making availa-*

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ble to its Ees political views it favors while barring political views which it disagrees with)

5012-3322 Use of bulletin board

Tressler Lutheran Home for Children t/a Frostburg Village of Allegany County Nursing Home **263 NLRB No. 042**

(E's permitting posting of U-related material only upon its permission, violative)

Allied Stores Of N.Y., Inc., d/b/a Gertz **262 NLRB No. 119**

(there is no statutory rights for Ee or U to use E's bulletin boards or blackboards. Act's prohibitions come into play only where E otherwise assents to Ee access to bulletin board/blackboard but discriminatorily refuses to permit U or Ees to use such brands)

East Texas Motor Freight **262 NLRB No. 101**

(denying dissident U Ee right to post intra-U political literature on company bulletin board located in Ees' break room held violative where E permitted other Ees to use bulletin board for other than *official U business* but denied dissident U Ee right to advertise his U activity on board; E enforced otherwise legimate contractual limitation on use of bulletin board in disparate manner)

G. H. Bass & Co. **258 NLRB No. 036**

(having Ee followed by head of plant security who removed pro-U letters Ee was posting on bulletin boards in response to anti-U letter of E and giving Ee written reprimand with warning, unlawful, where Ees had been allowed to post other materials; E's contention that permission to post letter denied since it would generate controversy deemed pretextual in view of E's expressed U animus and fact letter not offensive, defamatory or opprobrious)

Arkansas-Best Freight System, Inc. **257 NLRB No. 063**

(maintaining and enforcing rule which prohibits Ees from posting U campaign literature on Ee bulletin board, violative)

Palomar Transport, Inc. **256 NLRB No. 177**

(promulgation of rules requiring approval of postings on bulletin board in context of organizational campaign, violative)

K-Mart Corporation **255 NLRB No. 112**

(removing U notices from bulletin board, violative, where E had no established policy restricting use only to *company-oriented things* in view of evidence that board was used for various items of personal nature as well)

Roy H. Park Broadcasting of Roanoke, Inc. **255 NLRB No. 036**

(denying Ees bulletin board privileges previously accorded them violative, where E gave no valid business justification for denial; prior to such denial, E and U were bargaining, *inter alia,* on subject of bulletin board use and U-related matter had been placed on bulletin board by Ees)

Lummus Industries, Inc. **254 NLRB No. 079**

(rule prohibiting posting or removing or distributing any material on official company bulletin boards or distributing written or printed matter w/o permission by Personnel Department, violative as E cannot require Ee to seek permission as precondition to engage in protected activities on Ee's free time)

Special Machine and Engineering, Inc. **247 NLRB No. 077**

(E's removal from bulletin board for union business of notice containing wage rate at another E's plant, and threatening of Ee with disciplinary action for further occurences, violative, since material conformed to standards of relevances to union business imposed by E)

Worth Engineering, Inc. **JD-295-80**

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. **636 F.2d 1255 (C.A. 7, 1980)**

(ct affirmed Bd finding E's instructions to Ee to remove U meeting notice unlawful where it discriminated against U notices only and did not apply to other nonwork related material)

ABF Freight System, Inc. v. N.L.R.B. **673 F.2d 228 (C.A. 8, Mar. 1982)**

(Bd's determination that E's adoption and enforcement of rules prohibiting solicitation and distribution of materials, in support of U, *at any time* on company premises and prohibiting use of previously available bulletin board upheld, since alternative means of Ee communication were inadequate and no showing of special circumstances for E's interference)

5012-3367 Limited to prounion activities

Saint Vincent's Hospital **265 NLRB No. 006**

(enforcement of lawful no-solicitation rule in disparate manner violative; Ees were permitted to distribute wedding and shower invitations, solicit for flower funds, sell raffle tickets, candy, and solicit for United Appeal but not permitted to solicit on behalf of U)

Green Country Casting Corporation **262 NLRB No. 010**

(prohibiting Ees to talk about U on company premises at any time, unlawful)

Professional Air Traffic Controllers Organization **261 NLRB No. 132**

(rule prohibiting circulation of U materials during working hours was overly broad where E had no policy with respect to distribution of anything, including literature, and Ees sold raffle tickets, football pools and Tupperware)

Borun Brothers, Inc., A Wholly Owned Subsidiary of Thrifty Corporation **257 NLRB No. 093**

(maintaining rule that prohibited distribution or solicitation of any kind on company time, and reprimanding and threatening discipline for infractions, unlawful; rule, as written, and as interpreted by E as applying to working hours, was presumptively overbroad and ambiguous showing no intent to not cover break time, etc., was not justified by disciplinary or production needs, and was discriminatorily applied to protected activity during U organization campaign)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**

(supervisor's statement to Ee not to talk about U during working hours, unlawful, where prohibition limited to U activity, and anti-U and non-U activities and solicitation were being carried on during working hours)

Ashley Warp Knitting, Inc. d/b/a Jefferson Apparel Company **248 NLRB No. 084**

(promulgating rule prohibiting U activities on working time while permitting other types of solicitations or activities on working time, unlawful)

Fluid Packaging Company, Inc. **247 NLRB No. 196**

(prohibiting Ees from talking about the U on production line and threatening them with discharge if they do so, unlawful where talk of U was only restriction on conversation)

Lawson Electric Corporation **247 NLRB No. 203**

(violation, where E enforced rule prohibiting solicitation at any time in work areas as to U but allowed anti-U Ees to ignore rule, and management agents solicited anti-U attitude not only in working areas, but during working time)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**

(notice posted near Ee timeclock by E, prior to election, stating that *I will not stand for this second party, (U), to be mentioned or talked about w/i the store* held violative where there was no showing that this prohibition against U talk was warranted by valid business considerations)

Signode Corporation **JD-161-80**

(enforcement of no-solicitation rule selectively and disparately against Ee engaging in U activity, unlawful)

Belcher Towing Company v. N.L.R.B. **614 F.2d 88 (C.A. 5, Mar. 1980)**

(validity of no-solicitation rule turns on balance of interests between property rights of E and organizational rights of Ees; rule that prohibites solicitation on company premises by non-Ee U organizers is ordinarily presumed valid and will be overturned only on showing either that rule discriminates against U by allowing other solicitation or that no reasonable alternative means of access to Ees existed)

Belcher Towing Company v. N.L.R.B. **614 F.2d 88 (C.A. 5, Mar. 1980)**

(Bd erred in holding that E's prohibiting access of U agents to its boat was discriminatory where E allowed other individuals access since no solicitation for no-U purposes or causes was allowed)

5012-5000 Prohibition against union activities enforced discriminatorily

5012-5001 Generally

A. W. Schlesinger Geriatric Center, Inc. **263 NLRB No. 158**

(where E health care center formed Ee committee to disseminate information about U to Ees prior to election, E prohibition of U literature on center's property and condonation of distribution of material by committee, violative as discriminatory enforcement of no-distribution rule)

East Texas Motor Freight **262 NLRB No. 101**

(denying dissident U Ee right to post intra-U political literature on company bulletin board located in Ees' break room held violative where E permitted other Ees to use bulletin board for other than *official U business* but denied dissident U Ee right to advertise his U activity on board; E enforced otherwise legimate contractual limitation on use of bulletin board in disparate manner)

Montgomery Ward & Company, Inc. **256 NLRB No. 134**

(discriminatorily maintaining and enforcing rule against solicitation by non-Ees in public cafeteria in E's store, violative, where purpose of rule was to discriminate against *solicitation* of non-cafeteria Ees by U organizers; *solicitation* was part of orderly, discreet conversation by appointment with willing Ee patrons over tables where they were eating during their unpaid lunch periods)

5012-5017 Employer antiunion campaign not also limited

R. L. White Company, Inc. **262 NLRB No. 069**

(E's distribution of anti-U material in working areas and solicitation of Ees to read material on working time violative where E strictly enforced its valid no solicitation rule against U material)

Zero Corporation, Zero East Division **262 NLRB No. 064**

Jensen Sound Laboratories **258 NLRB No. 181**

(E violated Act when it strictly enforced its rule against posting signs in plant against pro-U signs and allowed many anti-U signs to remain posted)

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Ducane Heating Corporation **254 NLRB No. 030**
(granting permission to anti-union Ees to solicit support while denying equal treatment to prounion Ees violative)

Reeves Rubber, Inc. **252 NLRB No. 026**
(disparate application of rule prohibiting solicitation or distribution of literature in plant on worktime by prohibiting pro-U activities and allowing anti-U ones, unlawful)

Blue Bird Body Company **251 NLRB No. 196**
(E's condoning Ee committee's circulating anti-U ptn on Ees' working time while informing U adherents that they had no right to engage in solicitation on Ees' working time, violative, since Ee applied its *no solicitation policy* in discriminatory manner)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's distribution of leaflet about U while Ees were working at their machines, and having Ee read it, held unlawful discriminatorily applied rule in face of overly broad no-solicitation, no-distribution rule applied to U)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(E who generally permitted Ees to talk while at work violated Act where on eve of election it prohibited pro-U Ee from talking to other Ees)

N.L.R.B. v. Clark Manor Nursing Home Corp. **671 F.2d 657 (C.A. 1, Feb. 1982)**
(promulgation of no solicitation rule proscribing such activity only *in patient care or patient access areas,* violative, in view of timing of new rule, history of its application against only known U supporters, and E's encouragement of anti-U activities by Ees in disregard of rule)

5012-5033 Availability to union of other facilities or means immaterial

Eastern Maine Medical Center **253 NLRB No. 024**
(assuming availability of additional hospital areas (cafeteria, timeclock and lounge areas, etc.) for solicitation of hospital Ees, Bd held hospital's ban on solicitation in waitingroom lobby used primarily by public was not justified)

5012-5039 Advising employees concerning cancellation of check-off authorization

Landmark International Trucks, Inc. **257 NLRB No. 170**
(E who sent letter to Ees with instructions on how to withdraw from U, revoke checkoff authorizations, and form letter and envelope, with which to do so, violated Act as E had no valid reason for obtaining information and result was coercive)

5012-5050 Discrimination between unions in permitting activity

Ralph Nenner, M.D., Louis Orens, M.D. et al., A
Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**
(where E overly restricted U solicitation and distribution and gave encouragement to committee formed under its sponsorship, it violated Act)

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**
(E's discharge of Ee for soliciting for one U while E arranged meetings at which another U's representatives could solicit Ees' membership, unlawful)

Lyman Steel Company **249 NLRB No. 040**
(blanket prohibition against any conversations in plant between Ees who supported disfavored U of E)

5012-5083 Impairment of union's ability to reach employees may indicate discrimination

St. Francis Hospital **263 NLRB No. 109**
(*equal access* remedy warranted in extraordinary cases only and in instant case conventional bargaining order was sufficient to remedy E's ULPs; no-solicitation, no-distribution rule not binding on Es and such rule may be lawfully used to limit access of non Ee organizers to Ees as long as it is applied in nondiscriminatory manner and U has other reasonable means of communication with Ees)

5012-5800 Bargaining agreement provisions limiting union activities

Pioneer Finishing Corporation v. N.L.R.B. **667 F.2d 199 (C.A. 1, Nov. 1981)**
(contract which contained specific limitations on access of U officials to E's premises to performance of specific duties, not including distribution of literature, and established bulletin board for posting official notices does not waive Ees' rights to circulate literature dealing with employment conditions)

5012-6700 Types of employee activities involved

5012-6706 Picketing

Valley Plaza, Inc. d/b/a Captain Nemo's **258 NLRB No. 076**
(requiring pickets to leave second-floor foyer in front of E's restaurant held not violative where GC did not attempt to make factual showing that pickets' presence in second-floor foyer was essential to their ability to communicate effectively with their intended audience)

5012-6712 Distribution of union literature

5012-6712-3300 By employees

Village IX, Inc. d/b/a Shenanigans **264 NLRB No. 123**
(E did not violate Act when it threatened non-Ee U organizers with arrest if they did not leave his parking lot where they were distributing U literature as organizers had already had many meetings with Ees and thus had adequate means of reaching Ees, but did violate Act when E threatened Ee also engaged in such distribution)

Village IX, Inc. d/b/a Shenanigans **264 NLRB No. 123**
(where Ee had been invited to party sponsored by E, E's threat to have Ee arrested for distributing U literature in parking lot violative where there was no showing that restriction was necessary to permit E to maintain production or discipline)

Gerald M. Martin and Kathleen R. Martin, a
Partnership Doing Business Under The Trade
Name and Style of Liberty Pavilion Nursing
Home **254 NLRB No. 169**
(preventing Ee from distributing U literature in nursing home parking lot during off-duty hours, violative)

Central Freight Lines, Inc. **250 NLRB No. 063**

Lone Star Tool Company **JD-319-82**
(personnel manager's request that Ee obtain his okay before distributing U material, unlawful)

Sea-Alaska Products, Inc. **JD-(SF)-138-82**
(requiring Ee to obtain prior permission from E before posting or circulating any written materials, violative)

J. P. Stevens & Co., Inc. v. N.L.R.B. **668 F.2d 767 (C.A. 4, Jan. 1982)**
(interference with distribution of organizational literature on election eve and day by preventing distributing Ees from entering plant's nonworking areas and calling police to remove them, unlawful, notwithstanding Ee's claim that such distribution would now be permitted under new policy promulgated pursuant to ct order)

5012-6712-5000 By discharges

Gerald M. Martin and Kathleen R. Martin, a
Partnership Doing Business Under The Trade
Name and Style of Liberty Pavilion Nursing
Home **254 NLRB No. 169**
(telling former Ees and U agent that they must leave private parking lot where they were distributing U literature or she would call police, not violative in absence of evidence that U did not leave alternative means of reaching Ees notwithstanding no sidewalk between parking lot and public street; furthermore, parking lot only used, apart from Ees and visitors, by persons picking up or discharging Ees or patients which did not convert private lot into public way)

5012-6712-6700 By nonemployee organizer

Village IX, Inc. d/b/a Shenanigans **264 NLRB No. 122**
(E did not violate Act when it threatened non-Ee U organizers with arrest if they did not leave his parking lot where they were distributing U literature as organizers had already had many meetings with Ees and thus had adequate means of reaching Ees, but did violate Act when E threatened Ee also engaged in such distribution)

G.T.A. Enterprises, Inc. d/b/a Restaurant Horikawa **260 NLRB No. 029**
(E who confiscated U literature from his Ees after they received it outside his premises from U organizers violated Act)

S. B. Thomas, Inc. **256 NLRB No. 132**
(no violation where E directed non-Ee organizers to cease distributing literature and to leave its facility since there was no showing that other means of communication were unavailable, and in fact, record indicated that one organizer considered area between E's fence and road adequate for distribution)

Belcher Towing Company v. N.L.R.B. **614 F.2d 88 (C.A. 5, Mar. 1980)**
(validity of no-solicitation rule turns on balance of interests between property rights of E and organizational rights of Ees; rule that prohibits solicitation on company premises by non-Ee U organizers is ordinarily presumed valid and will be overturned only on showing either that rule discriminates against U by allowing other solicitation or that no reasonable alternative means of access to Ees existed)

5012-6718 Talking about union activities

Larid Printing, Inc. **264 NLRB No. 040**
(violation, where one week before election E directed Ees not to talk about U on company time, although E allowed Ees to discuss other matters on company time)

John Cuneo, Inc. **253 NLRB No. 110**
(E's promulgation of rule prohibiting its Ees from engaging in discussion regarding U at any time held violative)

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Conagra, Inc. **248 NLRB No. 085**
(instructing Ee with regard to another Ee not to talk U with that Ee, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(instructing relief Ee who moved throughout plant not to talk U or *we'll put you on a job where you won't be moving around. But that's not a threat,* unlawful)

Conagra, Inc. **248 NLRB No. 085**
(instructing Ee not to leave department or discuss U with other Ees, unlawful, since overly broad prohibition)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(announcement by manager to assembled Ees that he did not want them to discuss U, held violative)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**
(notice posted near Ee timeclock by E, prior to election, stating that *I will not stand for this second party, (U), to be mentioned or talked about w/i the store* held violative where there was no showing that this prohibition against U talk was warranted by valid business considerations)

Tarrant Marine Company **247 NLRB No. 073**
(supervisor informing Ee who had solicited another Ee to sign U card during break time that he *should take care of this after work* and when Ee attempted to assert his right to solicit during break time replying *company pays you for breaks,* violative)

Lee Simmons and Beverly McKinstry Simmons, a Partnership, d/b/a Elmendorf & Fort Richardson Barber Concessions **247 NLRB No. 093**
(E who restricted Ees use of telephone after U organizing activities began violated Act because rule was overbroad as it applied to working and nonworking time and was intended to ban use of telephone for any organizing activities)

Debernardi Brothers, Inc. **JD-(SF)-286-82**

Oak Harbor Freight Lines, Inc. **JD-(SF)-211-82**
(posting rule prohibiting *U discussions on working hours,* violative)

N.L.R.B. v. Chem Fab Corporation **691 F.2d 1252 (C.A. 8, Nov. 1982)**
(substantial evidence in record as whole supported Bd findings that E unlawfully promulgated rule prohibiting Ees to discuss the U during working time)

MGM Grand Hotel-Reno, Inc. v. N.L.R.B. **653 F.2d 1322 (C.A. 9, Aug 1981)**
(E's maintaining rules prohibiting Ee communication, violative)

5012-6729 Posting notices on bulletin boards or other company property

Tressler Lutheran Home for Children t/a Frostburg Village of Allegany County Nursing Home **263 NLRB No. 042**
(nursing home administrator's complaining to Ees, *inter alia,* of U stickers and literature being posted all over home and stating that he did not want U discussed in building or on company time, violative)

A. A. Superior Ambulance Service **263 NLRB No. 069**
(E's promulgating or enforcing discriminatory no-posting rule prohibiting posting of U materials on company premises, violative)

Allied Stores Of N.Y., Inc., d/b/a Gertz **262 NLRB No. 119**
(there is no statutory rights for Ee or U to use E's bulletin boards or blackboards. Act's prohibitions come into paly only where E otherwise assents to Ee access to bulletin board/blackboard but discriminatorily refuses to permit U or Ees to use such brands)

East Texas Motor Freight **262 NLRB No. 101**
(denying dissident U Ee right to post intra-U political literature on company bulletin board located in Ees' break room held violative where E permitted other Ees to use bulletin board for other than *official U business* but denied dissident U Ee right to advertise his U activity on board; E enforced otherwise legimate contractual limitation on use of bulletin board in disparate manner)

Zero Corporation, Zero East Division **262 NLRB No. 064**
(actions of supervisor who threw U leaflets in trash, removed U sticker from Ees' work station, and removal from plant walls, violative because purpose was to discourage U activity)

G. H. Bass & Co. **258 NLRB No. 036**
(having Ee followed by head of plant security who removed pro-U letters Ee was posting on bulletin boards in response to anti-U letter of E and giving Ee written reprimand with warning, unlawful, where Ees had been allowed to post other materials; E's contention that permission to post letter denied since it would generate controversy deemed pretextual in view of E's expressed U animus and fact letter not offensive, defamatory or opprobrious)

Marathon Letourneau Company, Longview Division **258 NLRB No. 084**
(removal of U handbill, assertedly posted in violation of no-posting, no-distribution rule, from vending machine on plant premises, unlawful, where E failed to cite authority and to detail facts supporting E's asserted right to prohibit posting of pro-U literature on its premises, E allowed personal notices and campaign literature of E to be posted in non-work area of vending machine but disallowed same privilege to pro-U Ees for posting of U literature, and there was no evidence of special purpose requiring stringent rules against posting)

Lummus Industries, Inc. **254 NLRB No. 079**
(rule prohibiting posting or removing or distributing any material on official company bulletin boards or distributing written or printed matter w/o permission by Personnel Department, violative as E cannot require Ee to seek permission as precondition to engage in protected activities on Ee's free time)

Lacks Industries, Inc. **JD-346-82**
(alleged discriminatory application of E's rule prohibiting posting of material on E's bulletin boards w/o authorization, not unlawful, where testimony showed that U-related literature was removed from bulletin board while non-U material was allowed to remain, but there was no testimony to show that E did not give prior approval for posting of latter or that E had knowledge of unauthorized postings)

M. Livingston & Company d/b/a D.G. Hayes Wholesale Grocery Co. **JD-368-82**
(restricting use of E's bulletin board after U campaign began by refusing to permit posting of U notices while allowing posting of personal and other nonwork notices, unlawful)

5012-6735 Prohibition of solicitation and/or distribution of literature during employees' own time on company premises

Douglas Aircraft Company, Component of McDonnell Douglas Corporation **260 NLRB No. 180**
(refusal to permit Ee to distribute to Ees during nonwork time in nonwork area his open letter to E protesting E's new time restriction on Ees' use of plant vending machines, unlawful, where E was well aware that Ee wanted to pass out to fellow Ees letter which protested institution of restriction affecting, and of concern to, Ees; Ee, who had discussed matter with fellow Ees and had steward's approval, was ensuring that E and Ees were aware of extent of Ee dissatisfaction over restriction; and Bd has repeatedly held similar activity to be protected and concerted)

Graham Architectural Products Corporation **259 NLRB No. 153**
(prohibiting Ee from handbilling in parking lot held violative, notwithstanding Ee reached more Ees from outside lot and E permitted in-plant distribution on other occasions as Ees have right to solicit U support during nonworktime on their E's premises)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(ambigious *no solicitation rule* presumptively invalid absent showing that E's rule was necessary to maintain production or discipline as risk of ambiguity must be held against promulgator)

Aerosonic Corporation **JD-(Atl)-110-81**
(E pointing out its violative no-solicitation and no-distribution rule to Ee member of in-plant U organizing committee violated Act as this was warning and threat of retaliation if she engaged in such conduct without E's permission)

Formaloy Corp. **JD-(ATL)-87-81**
(E's rule prohibiting solicitation w/o management permission and distributing written or printed matter on company premises during regular working hours held violative, since rule was overbroad allowing for no exceptions during nonwork time on E's premises; E demonstrated no business justification for imposition of such rules)

Wolverine World Wide, Inc. **JD-185-80**
(E's rule which prohibited all distributing or soliciting on company property w/o authorization violative as overlybroad; moreover fact that E may not have disciplined any Ees for occasional solicitation for charitable causes does not remove rule from its presumed invalidity)

ABF Freight System, Inc. v. N.L.R.B. **673 F.2d 228 (C.A. 8, Mar. 1982)**
(Bd's determination that E's adoption and enforcement of rules prohibiting solicitation and distribution of materials, in support of U, *at any time* on company premises and prohibiting use of previously available bulletin board upheld, since alternative means of Ee communication were inadequate and no showing of special circumstances for E's interference)

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**
(no-solicitation rule overly broad where prohibition of solicitation on company premises applied equally to Ees' work time and their personal time)

American Safety Equipment Corporation v. N.L.R.B. **643 F.2d 693 (C.A. 10, Mar. 1981)**
(Bd decision setting aside election set aside where basis for decision was two rules in Ee handbook prohibiting solicitation and distribution during *working hours;* E rebutted *presumed* interference with Ee rights as it produced evidence showing: 1) Ees were told lunch time and break time were their own;

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2) Ees were aware rules only applied to working time; 3) Ees openly engaged in U activity during non working time and were not disciplined and 4) rules consistently properly applied by E)

5012-6737 Dissemination of information as to names, addresses, wages and phone numbers of employees

International Business Machines Corporation **265 NLRB No. 107**
(discharge of Ee for publishing E's confidential wage information which he had received annoymously, not unlawful, where E established legitimate business justification for its policy; E does not prohibit Ees from discussing own wages or attempting to determine what other Ees paid, rather has chosen not to inform Ees what it pays others; therefore, E treats as confidential information compiled for its internal use. Ee knew documents were confidential and was aware of prohibition against disseminating such material. Furthermore, under circumstance that info obtained, Ee couldn't believe possession authorized)

Conagra, Inc. **240 NLRB No. 085**
(prohibiting preparation of list of Ees from timecards for U's use and confiscating portion of list, unlawful)

Texas Instruments Incorporated **247 NLRB No. 037**
(E's rule requiring discharge of any Ee who disclosed classified materials to unauthorized persons held invalid as it was applied to Ees distributing leaflets containing –*strictly private* area wage surveys of E and its competitors, since Ees were engaged in protected concerted activity; Ees were encouraging collective action to improve wages; none of E's reasons for rule qualified as sufficient business justification to validate rule as applied in instant case)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(rule prohibiting Ees from discussing E's wage schedule with outsiders, unlawful; E's contention public knowledge of wage rates would assist competitors, rejected, where E in mounting its annual wage survey gave out its own data to competitors)

5012-6738 Distribution of literature pertaining to selection or rejection of U

F.W.I.L. Lundy Bros. Restaurant, Inc. **249 NLRB No. 057**
(permitting distribution of anti-U pamphlet among Ees during company time, violative, since pamphlet ratified implied threats of closure, loss of jobs and privileges)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**
(circulating anti-U ptn, violative)

Master Slack, Ltd. **JD-(ATL)-8-81**
(approving, condoning, supporting, and adopting Ee circulation and solicitation of signatures to decertification ptn during working time, and simultaneously prohibiting Ees from revoking their signatures to ptn on working time, violative)

5012-6750 Group presentation of grievances

Conrad & Sons Trucking, Inc. **JD-264-81**
(discharge of leader in presentation of Ee grievances regarding reduction in renumeration who had used obscene language towards supervisors, failed to properly complete on time required paper work; and refused to accept work assignment, unlawful, where discharge motivated by Ee's leadership in complaining about working conditions)

American Youth Soccer Organization **JD-(SF)-29-81**
(discharge of three Ees who presented grievances to management and E's board of directors, unlawful, since presentation of grievances protected where Ees acted concertedly, notwithstanding did not follow grievance procedure promulgated by E in Ee handbook, and in view of timing of discharges shortly after Ees sent copy of list of grievances to E's board of directors)

5012-6762 Meetings of employees

Best Products Co., Inc. **259 NLRB No. 016**
(dispersal of three Ees gathered outside E's store on gounds that were considered a *conspiracy* violative where Ees were on their own time and there was no showing of valid business justification)

Best Products Co., Inc. **259 NLRB No. 016**
(E who continually opened door to lunch room which Ees had closed so they could talk about U w/o being overheard violated Act)

National Vendors, a Division of UMC Industries, Inc. **630 F.2d 1265 (C.A. 8, 1980)**
(E's banning chief steward, who was also member of contract negotiating committee, from holding *anymore meetings in company cafeteria,* not violative, where E's prohibition was directed solely to chief steward's practice of holding structured, semi-formal, large group meetings during short breaks at cafeteria that is open to all Ees, including supervisory and non-unit personnel; such meetings were disruptive)

5012-6787 Wearing or otherwise displaying union insignia or signs

Saint Vincent's Hospital **265 NLRB No. 096**
(E's rule which prohibited wearing of any type of insignia violative as overly broad where it prohibited such insignia at all locations on E's property while Ees were on duty or in uniform; moreover remedy is necessary notwithstanding E revised rule to make it non violative at this does not constitute effective repudiation since rule was in effect over 2 years)

Saint Vincent's Hospital **265 NLRB No. 096**
(discipline of Ee for violating overly broad rule against wearing U insignia violative, notwithstanding no formal disciplinary action occurred, and Ee was merely instructed to remove pin while she was in patient care area)

The Moore Company, Inc., Div. of Easco Corp. **264 NLRB No. 159**
(supervisor informing Ees that U adherents were jeopardizing their jobs along with jobs of all other Ees by wearing U shirts, hats, and insignia, unlawful)

Pay 'N Save Corporation **247 NLRB No. 184**
(E's unwritten rule against wearing of political or controversial buttons, including U buttons, unlawful, where there was no valid business consideration or other special circumstance warranting forbidding of wearing of U buttons by store Ees on salesfloor)

Pay 'N Save Corporation **247 NLRB No. 184**
(E's enforcement of rule against wearing of buttons on store premises, unlawful, where E allowed Ees to wear various kinds of religious as well as other buttons but disparately enforced its button policy against Ees wearing U buttons)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(ordering waitress to remove U button while whe was waiting on customers in E's restaurant and sending her home when she refused, violative, notwithstanding fact button was of size and design to detract from uniform and bore feminist statement that might offend some customers, in view of E's other ULPs and fact E had previously taken actions motivated by Ee's U activities to induce her either to quit or to change ways)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**
(maintaining and enforcing rule prohibiting any form of solicitation between Ees during working hours, violative; here E prohibited Ee from wearing U button)

Vanity Fair Mills, Inc. **JD-(ATL)-35-82**
(E's personnel manager calling Ee to his office and asking if she was passing out U buttons during campaign and when she replied *yes* informing her that was *no, no* and interrogating Ee about being away from her work station, unlawful, notwithstanding pursuant to no solicitation rule presumptively valid at time, since reprimand based on U activity rather than being way from work station, neglecting work or interfering with work of other Ees)

N.L.R.B. v. Chem Fab Corporation **691 F.2d 1252 (C.A. 8, Nov. 1982)**
(ct held that substantial evidence in record as whole supports Bd's finding that, notwithstanding other evidence which tended to impeach credited testimony, E unlawfully ordered U adherent to turn sweatshirt with U insignia inside out)

Coors Container Company v. N.L.R.B. **628 F.2d 1283 (C.A.D.C.)**
(promulgation and enforcement of rule prohibiting display of signs or stickers urging boycott of E's product on E's property in work or nonwork areas, unlawful, where E failed to show special circumstances sufficient to justify rule; while E claimed rule was necessary to monitor internal security and to guard against incidents at plant gates; in instant case, boycott sign was displayed over mile from anywork facility, inside Ee's vehicle; and wording of sign was not so provocative as to remove protection of Act)

Coors Container Company v. N.L.R.B. **628 F.2d 1283 (C.A.D.C.)**
(promulgation and enforcement of rule prohibiting display of signs or stickers urging boycott of E's product on E's property in work or nonwork areas, unlawful, where display of sign by Ees was not indefensible inasmuch as sign did not disparage quality of E's product and its urgingof boycott in support of E's other stocking Ees was related tolabor disputes)

5012-6787-3300 May not be prohibited absent special circumstances

Burger King Corporation **245 NLRB No. 191**
(ordering Ee to remove U button she was wearing violative, notwithstanding she had direct and continuous contact with customers, since such contact did not constitute *special circumstances* which would justify prohibiting Ees with customer contact from wearing U button)

Nordstrom, Inc. **264 NLRB No. 098**
(promulgating and maintaining rule prohibiting selling floor Ees from wearing steward buttons on its sales floor, violative, since Ee right to wear U insignia outweighed E's competing interests of need to maintain uniform public image and avoidance of controversy)

5012-6787-3300—Cont.

Service Spring Company, A Division of Garlock, Inc., A Wholly-Owned Subsidiary of Colt Industries 263 NLRB No. 103

(telling Ees they could not wear U insignia violative and although E later told Ees they could wear such insignia, this retraction does not fully remedy ULP and remedial order appropriate)

Honda of America Mfg., Inc. 260 NLRB No. 097

(maintaining rule which required Ees to wear uniforms at all times while in plant during working time and prohibited Ees having on uniforms exposed items such as buttons, snaps, zippers, and buckles, violative, where rule was unlawfully broad and prohibited Ees from wearing U buttons and insignia)

Virginia Electric and Power Company 260 NLRB No. 050

(urging Ee not to wear U button in public lobby of E's facility, unlawful, since mere contact with customers is not basis for barring wearing of U buttons, and such restriction constitutes violation in absence of substantial evidence that button affected E's business or that prohibition was necessary to maintain Ee discipline; and there was no showing of any *special circumstances* that buttons in any way were provocative, detracted unreasonably from decorum of lobby, or caused dimination in E's business)

Firmat Manufacturing Corp. 255 NLRB No. 153

(telling Ees they could not wear U buttons, violative where E established no special circumstances)

Allen-Stone Boxes, Inc. 252 NLRB No. 171

(requiring Ee to remove U insignia he was wearing on his back while at work, violative)

Hon-Dee Pak, Inc. 249 NLRB No. 107

(violation where E maintained overly broad rule prohibiting Ees from wearing U buttons and insignia while at work)

Stockton Dodge, Inc. JD-(SF)-255-81

(refusal to allow Ees to wear caps with U insignia violative absent proof that E's concern with its public image warranted such prohibition)

5012-6787-6700 May be prohibited if tendency to disrupt production or discipline

Virginia Electric and Power Company 260 NLRB No. 050

(urging Ee not to wear U button in public lobby of E's facility, unlawful, since mere contact with customers is not basis for barring wearing of U buttons, and such restriction constitutes violation in absence of substantial evidence that button affected E's business or that prohibition was necessary to maintain Ee discipline; and there was no showing of any *special circumstances* that buttons in any way were provocative, detracted unreasonably from decorum of lobby, or caused dimination in E's business)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. 247 NLRB No. 135

(supervisor requesting Ee to remove arm band with U insignia, not unlawful, nor was Ee's leaving work rather than remove it unlawful suspension, since E's prohibition against arm band was not discriminatory particularly in hospital setting where arm band superimposed on uniform was highly obtrusive)

Pioneer Finishing Corporation v. N.L.R.B. 667 F.2d 199 (C.A. 1, Nov. 1981)

(Ee who distributed protected leaflets to Ees who were working engaged in protected activity for where distribution during working time is not specifically prohibited, distribution is protected as long as it doesn't interfere with production)

5012-6787-6900 Disparate treatment in display of insignia

Honda of America Mfg., Inc. 260 NLRB No. 097

(requiring U adherent to remove U hat pursuant to unlawful rule concerning the wearing of uniforms, violative, where E selectively and disparately enforced its uniform rule against Ee by requiring him to remove U hat which was similar in design to E's hat and was not shown to be provocative or offensive)

The Nestle Company 248 NLRB No. 106

(enforcing company rule prohibiting wearing jewelry and nonuniform clothing w/i E's production areas held violative where rule was not applied to non-U related jewelry and clothing worn by Ees not favoring U; rule was discriminatorily enforced)

N.L.R.B. v. John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart 677 F.2d 44 (C.A. 9, Feb. 1982)

(E violated Act by discriminatorily enforcing its *antibutton* policy against U adherent and not other types of buttons but Bd order barring any *antibutton* policy is overbroad and case remanded for modification of Bd order to prohibit only unreasonable restrictions on types of buttons or insignia which may be worn)

5012-6300 Access of nonemployee union agents denied or limited

Woodview Rehabilitation Center 265 NLRB No. 132

(promulgation of rules prohibiting solicitation, distribution or trespassing by non-Ees, not unlawful, where new rule only made long posted no-trespass rule more specific)

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 106

(denial of access to non-Ee U representatives and causing their arrest, made in furtherance of impermissible refusal to grant access, unlawful)

Vanity Fair Mills, Inc. JD-(ATL)-38-82

(E's promulgating rule which stated *any solicitation of Ees or distribution of materials to Ees by non-Ees in plant or on company property is prohibited. Solicitation in plant or on company property by Ees on their working time is prohibited. Distribution of materials in plant or on company property by Ee on working time or in work area is prohibited* unlawful, in view of earlier Bd decision which held use of *working hours* or *working time* w/o further clarification, anbiguous and rule presumptively invalid and E did not overcome presumption)

Vanity Fair Mills, Inc. JD-(ATL)-38-82

(E posting sign on outside of premises stating *any solicitation or distribution of any material on company property-commercial, political or otherwise is prohibited*, unlawful, although directed at non-Ees since tended to confuse Ees as to their solicitation and distribution rights on E's property)

5012-6301 Generally

Knogo Corporation 263 NLRB No. 171

(E who constructed barbed wire fence around its parking lot immediately after U requested recognition and bargaining so as to exclude U organizer who was formerly allowed access to parking lot, but continued to admit non-Ee food vendor violated Act)

Western Marine Electronics, Inc. 257 NLRB No. 057

(E's refusal to allow U representative to enter into machine shop to talk with Ees there in relation to grievance, unlawful, E's proffered reason that visitors could not be allowed in machine shop because of nature of work performed there, spurious, since U representative did not state it was necessary to visit machine shop to process grievance and was allowed to talk with Ees as requested at another location)

United States Steel Corporation 253 NLRB No. 083

(denying discharged Ee right to distribute his literature in his campaign for U office on company property, not unlawful where no showing was made either that nonEe lacked alternative means of communicating with Ees or that access to company property was so widespread that denial to him was disparate)

Giant Food, Inc. 252 NLRB No. 182

(instructing Ees to eject U representatives from stores by force violative as demonstration of extreme measures E will employ to defeat U and E's power over Ees employment)

Sabine Towing & Transportation Company, Inc. v. N.L.R.B. 599 F.2d 663 (C.A. 5, 1979)

(general rule is that E has right to bar non-Ee U organizers from his property; and to gain access, U has burden of showing that no other reasonable means of communicating its organizational message to Ees exist or that E's access rules discriminate against U solicitation)

Sabine Towing & Transportation Company, Inc. v. N.L.R.B. 599 F.2d 663 (C.A. 5, 1979)

(considerations of E's alleged U animus are irrelevant to determination of U's claim of denial to non-Ee U organizers of access to E's property)

N.L.R.B. v. Villa Avila, Palm Springs Sun Dial and Tom Sawyer Construction Co. 673 F.2d 281 (C.A. 9, Mar. 1982)

(with regard to right of U's agents to enter E's property, objective of Bd should be accommodation of U's rights to have their bargaining agreement enforced and E's property rights. Primary responsibility for accommodation is with Bd. In making accommodation cts and Bd have recognized distinction between activities conducted on premises by Ees and by non-Ees. When non-Ee U representatives seek to enter private property, Bd must consider not only strength of E's and Ee's rights and interests, but also whether U representative have reasonable alternatives to entry on to E's property

5012-6301-5000 Through other demands

Belcher Towing Company v. N.L.R.B. 614 F.2d 88 (C.A. 5, Mar. 1980)

(to sustain its burden of proving lack of alternative means of communication U need not have attempted communication by other means but show only that such attempts would have been unsuccessful under circumstances)

5012-6320 Distribution of literature or solicitation on company property may be prohibited where employees can reasonably be reached through other channels

St. Francis Hospital 263 NLRB No. 189

(*equal access* remedy warranted in extraordinary cases only and in instant case conventional bargaining order was sufficient to remedy E's ULPs; no-

5012-8320—Cont.

solicitation, no-distribution rule not binding on Es and such rule may be lawfully used to limit access of non Ee organizers to Ees as long as it is applied in nondiscriminatory manner and U has other reasonable means of communication with Ees)

S. B. Thomas, Inc. 256 NLRB No. 132

(no violation where E directed non-Ee organizers to cease distributing literature and to leave its facility since there was no showing that other means of communication were unavailable, and in fact, record indicated that one organizer considered area between E's fence and road adequate for distribution)

Texas Instruments Incorporated v. N.L.R.B. 599 F.2d 1067 (C.A. 1, 1979)

Husky Oil, N.P.R. Operations, Inc. v. N.L.R.B. 669 F.2d 643 (C.A. 10, Jan. 1982)

(U does not need to resort to unsatisfactory means of alternate communications before Bd can find that personal solicitation is only reasonable means of communicating with Ees)

5012-8320-5000 Adequacy of other channels of access

Gerald M. Martin and Kathleen R. Martin, a Partnership Doing Business Under The Trade Name and Style of Liberty Pavilion Nursing Home 254 NLRB No. 169

(telling former Ees and U agent that they must leave private parking lot where they were distributing U literature or she would call police, not violative in absence of evidence that U did not leave alternative means of reaching Ees notwithstanding no sidewalk between parking lot and public street; furthermore, parking lot only used, apart from Ees and visitors, by persons picking up or discharging Ees or patients which did not convert private lot into public way)

United States Steel Corporation 253 NLRB No. 083

(denying discharged Ee right to distribute his literature in his campaign for U office on company property, not unlawful where no showing was made either that nonEe lacked alternative means of communicating with Ees or that access to company property was so widespread that denial to him was disparate)

Hetzler Brothers Company v. N.L.R.B. 630 F.2d 1012 (C.A. 4, 1980)

(ct reversed Bd finding that E unlawfully denied U organizers access to store Ees since GC had not sustained his burden of proving that U had no other reasonable means of communicating with Ees; absent effort by U to communicate by other possibly available means, Bd could only infer inadequate access from physical evidence of structure and location of plant, working habits of Ees, and conduct of E)

Sabine Towing & Transportation Company, Inc. v. N.L.R.B. 599 F.2d 663 (C.A. 5, 1979)

(ct held that, where E denied non-Ee U organizers access to its vessels, U had burden of showing that no other reasonable means of communicating its organizational message to Ees existed, but U failed to do so; although Ees resided on vessels during tours of duty, organizers were able effectively to contact them when Ees went ashore at which time organizers had discussions with them at gates or docks, at bars and taverns, while providing them transportation, or in telephone conversations or home visits)

5012-8320-5001 Generally

Village IX, Inc. d/b/a Shenanigans 264 NLRB No. 122

(E did not violate Act when it threatened non-Ee U organizers with arrest if they did not leave his parking lot where they were distributing U literature as organizers had already had many meetings with Ees and thus had adequate means of reaching Ees, but did violate Act when E threatened Ee also engaged in such distribution)

Belcher Towing Company 256 NLRB No. 099

(E's refusing access to its boats to U organizers for purpose of soliciting support for U held violative, since record as whole clearly established that Us did *not* have *reasonable* alternative means of access to E's Ees regardless of whether evidence was presented by GC, charging parties, or respondent; compare *Sabine Towing & Transportation Company, Inc. v. N.L.R.B.*, 599 F.2d 663 (1979))

Perry Plaza, Inc. JD-(SF)-367-80

(right of strikers to picket on private property must be accomodated to E's private property rights and where no reasonable alternative exists for U to reach Ees other than by picketing on E's premises, E's property rights must yield to U's Section 7 rights, thus E's demands that pickets remove themselves from its property violative)

Belcher Towing Company v. N.L.R.B. 614 F.2d 88 (C.A. 5, Mar. 1980)

(validity of no-solicitation rule turns on balance of interests between property rights of E and organizational rights of Ees; rule that prohibites solicitation on company premises by non-Ee U organizers is ordinarily presumed valid and will be overturned only on showing either that rule discriminates against U by allowing other solicitation or that no reasonable alternative means of access to Ees existed)

Belcher Towing Company v. N.L.R.B. 614 F.2d 88 (C.A. 5, Mar. 1980)

(to sustain its burden of proving lack of alternative means of communication U need not have attempted communication by other means but show only that such attempts would have been unsuccessful under circumstances)

ABF Freight System, Inc. v. N.L.R.B. 673 F.2d 228 (C.A. 8, Mar. 1982)

(Bd's determination that E's adoption and enforcement of rules prohibiting solicitation and distribution of materials, in support of U, *at any time* on company premises and prohibiting use of previously available bulletin board upheld, since alternative means of Ee communication were inadequate and no showing of special circumstances for E's interference)

5012-8320-5011 Availability of employee identification

Ameron Automotive Centers, A Division of The Kelly-Springfield Tire Co.; F. W. Woolworth Company d/b/a Woolco Division, Joint Employers 265 NLRB No. 058

(U access to sidewalk adjacent to store in shopping center necessary to enable organizers to identify E's Ees who were required to wear no identifying clothing or badges when going to and from work and parked in parking places other than those specially designated for them)

5012-8320-5044 Proximity of employees' residences to plant

Ameron Automotive Centers, A Division of The Kelly-Springfield Tire Co.; F. W. Woolworth Company d/b/a Woolco Division, Joint Employers 265 NLRB No. 058

(alternative means of communicating U's message to Ees, inadequate where Ees were not proximate to E's store but widely dispersed w/i the commuting area, rendering contacts with individual Ees unfeasible and unduly expensive)

5012-8320-5055 Various publicity media

Ameron Automotive Centers, A Division of The Kelly-Springfield Tire Co.; F. W. Woolworth Company d/b/a Woolco Division, Joint Employers 265 NLRB No. 058

(newspaper advertising and handbilling, ineffective and cost of newspaper and other mass communication media, prohibitive and thus not adequate alternative means of communicating U's message to Ees)

5012-8320-5066 Telephone or home visits

Ameron Automotive Centers, A Division of The Kelly-Springfield Tire Co.; F. W. Woolworth Company d/b/a Woolco Division, Joint Employers 265 NLRB No. 058

(visits to Ees' homes not adequate alternative means for U to communicate its message to Ees where U was unable to ascertain their names and addresses)

5012-8340 Must be granted under reasonable regulations where necessary to realization of employees'right

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital 255 NLRB No. 045

(E hospital justified in banning solicitation in halls and corridors, lobbies, waiting rooms, and nurses stations, since prohibitions were presumptively valid in small facility which, from its inception, has been too small to accommodate all its medical needs and solicitation may be legimately prohibited in other areas if justified by hospital as necessary)

Villa Avila 253 NLRB No. 010

(General Contractor who posted no trespassing signs strictly limiting U business representatives' access to construction sites violated Act where communication between U, subcontractors and their Ees severely restricted; however, General Contractors can require U representatives to give him notice as precondition for access to job site)

Victor Martinov and Ed Hancock, d/b/a Southland Properties; and Julian Elliott Construction Co., Inc. JD-(SF)-166-81

(denying U representation access to jobsite for purpose of policing its contract with subcontractor Ees and discussing with Ee violation of work rules and safety procedures, violative where U observed from street that Ee's mode of work was unsafe)

Texas Instruments Incorporated v. N.L.R.B. 599 F.2d 1067 (C.A. 1, 1979)

Belcher Towing Company v. N.L.R.B. 614 F.2d 88 (C.A. 5, Mar. 1980)

(validity of no-solicitation rule turns on balance of interests between property rights of E and organizational rights of Ees; rule that prohibites solicitation on company premises by non-Ee U organizers is ordinarily presumed valid and will be overturned only on showing either that rule discriminates against U by allowing other solicitation or that no reasonable alternative means of access to Ees existed)

5012-8340—Cont.

N.L.R.B. v. Villa Avila, Palm Springs Sun Dial and Tom Sawyer Construction Co. **673 F.2d 281 (C.A. 9, Mar. 1982)**
(with regard to right of U's agents to enter E's property, objective of Bd should be accommodation of U's rights to have their bargaining agreement enforced and E's property rights. Primary responsibility for accommodation is with Bd. In making accommodation cts and Bd have recognized distinction between activities conducted on premises by Ees and by non-Ees. When non-Ee U representatives seek to enter private property, Bd must consider not only strength of E's and Ee's rights and interests, but also whether U representative have reasonable alternatives to entry on to E's property

N.L.R.B. v. Villa Avila, Palm Springs Sun Dial and Tom Sawyer Construction Co. **673 F.2d 281 (C.A. 9, Mar. 1982)**
(refusal of non-U contractors to allow U business agent to enter construction site under their control to conduct U business with Ees of subcontractors who have bargaining agreements with U, unlawful, since *subcontractors' Ees have statutory interest in general contractors allowing U agents reasonable access to jobsite. Compliance with many contract provisions can be effectively policed only on premises where agent may observe conditions during working hours*)

N.L.R.B. v. Villa Avila, Palm Springs Sun Dial and Tom Sawyer Construction Co. **673 F.2d 281 (C.A. 9, Mar. 1982)**
(general contractors ordered to allow U business agent access to job site to visit Ees of subcontractors; however, order also protects rights of property owner to be free of illegal or vexations incursions by persons with no legitimate business on their premises by allowing contractors to require any visitors to report to project office and state business and that in event of vandalism, illegal work stoppage or interference with work, owner or occupier may require visitor to be accompanied by its representative)

5012-8360 Prohibition unlawful where special circumstances of inaccessibility present

5012-8360-5000 On board ship

Arypro Company M/V Arctic Producer **265 NLRB No. 040**
(refusing to permit U representative access to E's ship overnight and freedom of curculation w/i the living and recreational areas of the ship constituted denial of reasonable U access to Ees to solicit their membership and votes in R election where only overnight visits, rather than 3-hour ones allowed by E, would afford optimal opportunity for free discussion and solicitation by U)

Sabine Towing and Transportation Co., Inc.>I18263 NLRB No. 019
(E's refusal to permit non-Ee U organizers to board its vessels, or provide non-Ee U organizers with information as to docking location and time for its vessels, not violative; parties were estopped from relitigating prior determination that E's seamen were reasonably accessible to non-Ee U organizers at locations away from E's premises)

Belcher Towing Company **236 NLRB No. 099**
(E's refusing access to its boats to U organizers for purpose of soliciting support for U held violative, since record as whole clearly established that Us did *not* have *reasonable* alternative means of access to E's Ees regardless of whether evidence was presented by GC, charging parties, or respondent; compare *Sabine Towing & Transportation Company, Inc. v. N.L.R.B.*, 599 F.2d 663 (1979))

Belcher Towing Company v. N.L.R.B. **614 F.2d 88 (C.A. 5, Mar. 1980)**
(Bd erred in holding that E's prohibiting access of U agents to its boat was discriminatory where E allowed other individuals access since no solicitation for no-U purposes or causes was allowed)

Sabine Towing & Transportation Company, Inc. v. N.L.R.B. **599 F.2d 663 (C.A. 5, 1979)**
(ct held that, where E denied non-Ee U organizers access to its vessels, U had burden of showing that no other reasonable means of communicating its organizational message to Ees existed, but U failed to do so; although Ees resided on vessels during tours of duty, organizers were able effectively to contact them when Ees went ashore at which time organizers had discussions with them at gates or docks, at bars and taverns, while providing them transportation, or in telephone conversations or home visits)

5012-8360-8300 Shopping center or mall

Ameron Automotive Centers, A Division of The Kelly-Springfield Tire Co.; F. W. Woolworth Company d/b/a Woolco Division, Joint Employers **265 NLRB No. 058**
(unlawfulness of banning nonEe solicitation in parking lot and on sidewalk adjacent to store in shopping center not *shopping center exception* to general rule that E may deny nonEe access to its property but example of promulgation of rule effectively precluding U from reaching Ees under *Babcock & Wilcox* where handbilling was ineffective, and widely dispersed Ees could not be visited at home or reached by burdensome and expensive mass media or distinguished from customers by U restricted to mall entrance)

5012-8360-8700 Petroleum exploration sites

Husky Oil, N.P.R. Operations, Inc. v. N.L.R.B. **669 F.2d 643 (C.A. 10, Jan. 1982)**

5012-8380 Solicitation or distribution in public areas

5012-8380-3300 Department stores

Ameron Automotive Centers, A Division of The Kelly-Springfield Tire Co.; F. W. Woolworth Company d/b/a Woolco Division, Joint Employers **265 NLRB No. 058**
(E may generally prohibit solicitation on its selling floor areas)

Montgomery Ward & Company, Inc. **265 NLRB No. 008**
(strikers engaging in consumer boycott handbilling outside entrances to store selling struck merchandise were engaging in protected activity where no effective alternate means of communication, and store violated Act by restricting handbilling to curb, driveway entrances or anywhere else off store property and thereby diluting protected rights of these strikers)

5012-8380-5000 Health care facilities

A. W. Schlesinger Geriatric Center, Inc. **263 NLRB No. 158**
(no-distribution rule prohibiting distribution of U literature on E's property, violative)

A. W. Schlesinger Geriatric Center, Inc. **263 NLRB No. 158**
(where E health care center formed Ee committee to disseminate information about U to Ees prior to election, E prohibition of U literature on center's property and condonation of distribution of material by committee, violative as discriminatory enforcement of no-distribution rule)

St. Joseph's Hospital **263 NLRB No. 020**
(no solicitation rule that forbids solicitation or distribution of any kind in corridors off patient rooms, in nursing stations and in elevators when they are being used for patient transport, valid)

Presbyterian/St. Luke's Medical Center **258 NLRB No. 021**
(hospital maintaining and enforcing rule prohibiting solicitation in broad range of areas, although justified in areas which are used by patients qua patients such as hallways, elevators and stairways utilized for movement of patients and emergency equipment, violative where prohibited areas used by patient, Ee and public alike such as main entrances, lounges, stairs and corridors in areas not dedicated to patient care)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital **255 NLRB No. 045**
(E hospital justified in banning solicitation in halls and corridors, lobbies, waiting rooms, and nurses stations, since prohibitions were presumptively valid in small facility which, from its inception, has been too small to accommodate all its medical needs and solicitation may be legimately prohibited in other areas if justified by hospital as necessary)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital **255 NLRB No. 045**
(only areas in which Ee solicitation must be permitted, at instant hospital which has no large area for Ees, are relatively small (Ee) *breakrooms*, since they do present viable, albeit limited, channel of communication by Ees for organizational purposes)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital **255 NLRB No. 045**
(banning solicitation in Ee breakroom held objectionable conduct, since breakroom was area in which solicitation must be permitted by E and not *de minimus* conduct; conduct warranted setting aside election)

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**
(nurses lounge open to public)

Beth Israel Hospital **JD-587-81**
(no solicitation/distribution rule banning such activities during Ees' nonwork time justified for inpatient-floor corridors where corridors are crowded with equipment essential to care of patients housed in rooms opening into them and heavy patient use of corridors is directly connected with their treatment)

Beth Israel Hospital **JD-587-81**
(no solicitation/distribution rule banning such activities during nonwork time justified for solaria areas located near patient rooms where solaria are designed and furnished for use of patients and their families, and patients frequent these areas in various stages of treatment or recovery)

Beth Israel Hospital **JD-587-81**
(no solicitation/distribution rule banning such activities during nonwork time justified for nurses stations where stations are communications centers of patient units as well as repository of current patient records and reference books and working staff and patient presence is practically continuous)

Beth Israel Hospital **JD-587-81**
(no solicitation/distribution rule banning such activities during nonwork time justified for nurses conference rooms where conference rooms are designat-

5012-8380-5000—Cont.

ed work areas and are used for wide range of staff work, and patient use for therapy and confort is encouraged)

Beth Israel Hospital **JD-587-81**

(no solicitation/distribution rule banning such activities during nonwork time justified for corridors and elevators connecting locations devoted to myraid of medical and service activities where these corridors and elevators are avenues of movement of patients, equipment, and staff, and are already so crowded by necessity that *any additional sources of disruption* such as U solicitation would interfere with patient care)

Beth Israel Hospital **JD-587-81**

(no solicitation/distribution rule banning such activities during nonwork time justified for main lobby and inpatient admitting lobby where lobbies are used by inpatient units and physicians for reporting results of operations to, and conferring with, patients' families; moreover, lobbies are not Ee-designated areas)

Beth Israel Hospital **JD-587-81**

(banning solicitation and distribution on Ees' nonwork time in gift shop, violative, notwithstanding E's contentions that shop is small, sometimes crowded, and *staffed and run by octogenarian women volunteers,* since these facts bear no significant relation to disturbance of patients, and most customers were Ees or visitors)

N.L.R.B. v. Los Angeles New Hospital **640 F.2d 1017 (C.A. 9, Mar 3, 1981)**

(supervisor's prohibiting Ee from reading U literature to other Ees in room adjacent to operating room, unlawful, since incident took place in non-immediate patient care area and did not disturb patients or patient care where room was used as Ee lounge, eating, drinking and social conversation took place in room, bulletin board was located in room, patients never entered area, and isolated incident insufficient to show that disruption of patient care would result from solicitation in lounge or justify failing to take less restrictive approach)

Baylor University Medical Center v. N.L.R.B. **662 F.2d 56 (C.A.D.C., Aug. 1981)**

(under Bd's *St. John's* presumption, solicitation ban outside of immediate patient care area should be upheld if hospital makes showing that ban is necessary to prevent disruption of patient care)

Baylor University Medical Center v. N.L.R.B. **662 F.2d 56 (C.A.D.C., Aug. 1981)**

(ct rejected Bd's ruling that vending areas were not immediate patient care areas and remanded case to Bd with instruction to consider whether evidence submitted by E is sufficient to overcome *St. John's* presumption: evidence as it now stands in record-showing location of vending areas as *off corridors* and indicating they are regularly used by patients and their visitors--suggests that ban during daytime hours would probably be permissible)

Baylor University Medical Center v. N.L.R.B. **662 F.2d 56 (C.A.D.C., Aug. 1981)**

(record did not support Bd's total invalidation of E's solicitation ban in its cafeteria and vending areas; ct's disapproval of Bd's method of dealing with evidence that (1) approximately 40% of cafeteria's patrons were non-Ees, and (2) exterior grounds of hospital complex are convenient place for solicitation and are widely used by Ees, required remand to Bd)

N.L.R.B. v. Baylor University Medical Center **439 U.S. 9 (SCt, 1980)**

(ct affirmed ruling that E could prohibit solicitation in hospital corridors, holding that corridors are entitled to same protection accorded other areas devoted essentially to patient care)

5012-8380-6700 Supermarkets

Perry Plaza, Inc. **JD-(SF)-367-80**

(right of strikers to picket on private property must be accomodated to E's private property rights and where no reasonable alternative exists for U to reach Ees other than by picketing on E's premises, E's property rights must yield to U's Section 7 rights, thus E's demands that pickets remove themselves from its property violative)

5012-8380-8300 Restaurants - motels

Ameron Automotive Centers, A Division of The Kelly-Springfield Tire Co.; F. W. Woolworth Company d/b/a Woolco Division, Joint Employers **265 NLRB No. 058**

(ban on nonEe solicitation in restaurants of store in shopping center as part of ban on nonEe solicitation on store's premises did not require *balancing test* under *Babcock & Wilcox,* since nonEe U solicitation in E's restaurant conducted in manner consistent with restaurant's purpose cannot be proscribed or U organizers lawfully prohibited from patronizing E's restaurants and meeting with its off-duty, nonrestaurant Ees)

Ameron Automotive Centers, A Division of The Kelly-Springfield Tire Co.; F. W. Woolworth Company d/b/a Woolco Division, Joint Employers **265 NLRB No. 058**

(E may generally prohibit solicitation of its restaurant Ees w/i the restaurant)

Seattle-First National Bank v. N.L.R.B. **651 F.2d 1272 (C.A. 9, Nov 1980)**

(E's threat to arrest economic strikers for picketing in foyer in front of restaurant located on 46th floor of office building violative; Section 7 rights and private property rights must be balanced and here U used only 2 pickets at a time and placing pickets in front of building would not reach restaurant customers as majority came from w/i building)

5012-8700 Access to plant while off-duty

Woodview Rehabilitation Center **268 NLRB No. 122**

(promulgation and maintenance of new no-access rule prohibiting Ee access to both interior of facility and *outside work areas* during off duty hours w/o prior E authorization found facially valid notwithstanding finding that rule's promulgation was unlawfully motivated)

A. W. Schlesinger Geriatric Center, Inc. **263 NLRB No. 158**

(E promulgation and maintenance of overly broad rule prohibiting access to E's property such as parking lots to off-duty Ees, violative)

E. I. Dupont De Nemours **263 NLRB No. 015**

(E promulgating and enforcing rule before election denying vacationing Ees access to plant except for purpose of voting, unlawful, since imposed for purpose of limiting Ee activities prior to election)

Comet Corporation **261 NLRB No. 188**

(E publishing authorized entry rule which limited access to E's premises with not only to interior and other working areas but proscribed entry of off duty Ees as to parking lots, gates and other non-working areas w/o business justification, thus tending to restrict all Ees in self-organizational activities in these areas when off duty)

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital **255 NLRB No. 045**

(E's *no-access* rule restricting off-duty Ees from remaining on hospital premises cannot be used to prohibit solicitation by off-duty Ees, since it did not prohibit access for *all* purposes; rule did not meet standard enunciated in *Tri-County Medical Center, Inc.,* 222 NLRB 1089 (1976))

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital **255 NLRB No. 048**

(banning solicitation in Ee breakroom held objectionable conduct, since breakroom was area in which solicitation must be permitted by E and not *de minimus* conduct; conduct warranted setting aside election)

Maywood, Inc. **251 NLRB No. 139**

(barring off-duty Ees from plant premises, violative, where such Ees were in effect seeking access to cafeteria, a non-work area, for purpose of soliciting for U, and had no intention of *wandering about the plant* as E contended, and there was no rule limiting access to plant or rule which met standards defined in *Tri-County Medical Center, Inc.,* 222 NLRB 1089)

Werth Engineering, Inc. **JD-295-80**

Cedarwood Care Center **JD-(SF)-315-79**

(E's posting of signs requiring Ees to punch time cards no more than seven minutes before or after their scheduled shift not unlawful limiting of access since for valid reason in view of requirement of Fair Labor Standards Act that Ees be paid for quarter hour as reflected by time cards)

Pioneer Finishing Corporation v. N.L.R.B. **667 F.2d 199 (C.A. 1, Nov. 1981)**

(off-duty Ee who entered E's premises to distribute protected literature does not automatically lose Act's protection; test is balance of Ee's Sec. 7 rights and E's private property rights, and here where E has no rule preventing access, E's activity protected)

5012-9100 Access of former or suspended employees denied or limited

Sedloff Publications, Inc. **265 NLRB No. 139**

(E posting notice that company policy prohibited former Ees on its property and requesting that former Ee to whom notice was directed to and who was U adherent leave premises when he visited E with U organizers for purpose of requesting return to work, unlawful, since motivated by desire to deny U adherent access to company premises where notice posted shortly after E became aware of his U activity and absent showing of ligitimate basis of concern regarding harm to its property by former Ee particularly where E later rehired him)

Model A and Model T Motor Car Reproduction Corporation **289 NLRB No. 077**

(telling suspended U adherents that they were not permitted to enter E's premises during length of their suspensions, or contact anyone in company w/o clearing it with personnel director, or not to handout any more printed literature, violative, where E did not demonstrate that it routinely limited access to company property to suspended Ees or that such restrictions were related to maintenance of production or discipline)

5012-9200 Access of striking employees to employer's property denied

5012-9200—Cont.

Montgomery Ward & Company, Inc. **265 NLRB No. 088**
(strikers engaging in consumer boycott handbilling outside entrances to store selling struck merchandise were engaging in protected activity where no effective alternate means of communication, and store violated Act by restricting handbilling to curb, driveway entrances or anywhere else off store property and thereby diluting protected rights of these strikers)

Illinois Valley Electric Cooperative, Inc. **JD-281-81**
(E's attempt to prevent striking Ees from working for other contractors on E's property, violative)

5012-9900 Other rules

Standard Motor Products, Inc. **265 NLRB No. 065**
(maintenance of rule prohibiting Ees from *making false, vicious, or malicious statements concerning an Ee, management, company or its works,* unlawful, since substantially similar rules have been held not simply presumptively unlawful, but violative *per se* because utterance of inadvertent or unknowingly false statements by Ees in context of concerted activity is protected under Act; moreover, rule is overly broad because it is applicable on its face not only to nonworking time, but also to statements made while off E's property)

House of Cycle, Inc., t/a Kay Motors **264 NLRB No. 137**
(establishing rule prohibiting salesmen from talking about the U on company time, violated 8(a)(3) and (1) where it was overly broad and discriminatorily and specifically aimed at U activities)

Documation, Inc. **263 NLRB No. 052**
(prohibiting Ees from talking to other Ees with whom they have no working relationship, unlawful where *other Ees* wear U T-shirts)

St. Joseph Hospital Corporation **260 NLRB No. 089**
(E held to have unlawfully maintained and to have given effect to work rule which prohibited, *inter alia,* utterance of inadvertent or unknowingly false statements which Bd has held protected w/i context of concerted activity; also rule was unlawful in that it was overly broad because it prohibited making of such statements during Ees' nonworking time and while off company property)

Sanitas Care, Inc. d/b/a Parkview Acres Convalescent Center **255 NLRB No. 149**
(telling Ees not to discuss U, violative)

Sani-Serv, Division of Catalox Corporation **252 NLRB No. 186**
(rule prohibiting encouraging of or participation in work slow down or work stoppage, violative as it prohibits even those protected by Section 7)

Tartan Marine Company **247 NLRB No. 073**
(warning Ees against talking while working, not violative, since *working time is for work* and particularly since warnings not a policy initiated during U's campaign)

International Business Systems, Inc. **247 NLRB No. 102**
(violation where after election in lithographic unit E told unit pressmen that there would be no talking among them; there was no persuasive evidence concerning necessity to prohibit pressmen from talking to each other)

Ford Motor Company, Automotive Division, Twin Cities Plant **JD-57-81**
(forbidding U caucus adherent to keep labor relations newsletter where it was visible to others although he and others had been permitted to keep other literature there, unlawful)

5018 PERMISSION TO USE COMPANY TIME AND PREMISES OR FACILITIES

5018-0100 Generally

5018-0150 Permission to use violation per se

Sav-On Drugs, Inc. **JD-(SF)-214-81**
(to favored U)

5018-2500 Use by employee group

Allen Brooks, d/b/a A.T. & K. Enterprises and Urban Enterprises **264 NLRB No. 164**
(E did not violate Act where it agreed to let Ees hold meeting at its office where it was unaware that purpose of meeting was to discuss U; also fact that supervisors distributed decertification ptn not violative as supervisors were U members, unit members and responsibility for such supervisor's conduct will not be imputed to E absent evidence that E encouraged, authorized or ratified such conduct)

5018-3300 Discriminatory denial of use

Methodist Hospital of Gary, Inc. **263 NLRB No. 054**
(E's refusing to permit use of its cafeteria during voters' non-working time for purpose of conducting U bargaining committee election open to all unit Ees, unlawful, where E permitted use of cafeteria for non-U activities unrelated to meals and absent evidence use of cafeteria would have caused delays to customers particularly Ees who had only half hour for lunch break, and previous U election held in cafeteria had gone smoothly; further, E's contention that permitting election would have exposed it to ULP charges, rejected)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(E hotel's telling Ees, some of whom were supervisors, not to re-enter hotels public premises, violative, since prohibition was consequence of Ees' having engaged in protected concerted activity, and also since there was no evidence that E had rule forbidding discharged Ees from entering its premises or evidence that discharged Ees who had not exercised Section 7 rights were ever denied entrance to hotel)

5018-6700 Solicitation, collection, circulation, etc., on company time and premises

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital **255 NLRB No. 048**
(only areas in which Ee solicitation must be permitted, at instant hospital which has no large area for Ees, are relatively small (Ee) *breakrooms,* since they do present viable, albeit limited, channel of communication by Ees for organizational purposes)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(preparation and circulation of anti-U ptn during working hours and soliciting Ees to sign same held violative)

Boniface Group Homes, Inc. **JD-162-81**
(no-distribution, no-solicitation rules invalid where they permitted solicitation and distribution only with permission of management)

Local 175, Automobile Workers, (UAW) v. N.L.R.B. **645 F.2d 1151 (C.A.D.C. Mar 1981)**
(E's refusal to permit U to distribute leaflets concerning U endorsed candidates for public offices in nonworking areas of plant during nonworking time, not unlawful, since insufficient relationship to Ees' interests to come w/i guarantee of Section 7 mutual aid and protection where principal thrust of leaflet was to induce Ees to vote for specific candidates, not to educate them on political issues relevant to their employment condition)

5024 SURVEILLANCE

Durango Boat, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(plant superintendent's temporary relocation of his desk to plant area during pendency of election, not unlawful, where superintendent was partially immobilized because of use of crutches due to physical infirmity, as result of relocation he was more accessible to Ees and to work in plant, and he thereby overcame effects of his physical handicap)

5024-0100 Generally

Knogo Corporation **265 NLRB No. 130**
(*Pinkerton guard's* hired by E to patrol plant premises during Ee strike threat, not violative, since there was no evidence that guards took photographs, made notes, or engaged in any other conduct other than patrolling plant premises for security purposes)

All-New Stamping Co. **JD-(SF)-247-81**
(E who questioned Ee about her relationship with another Ee and later told her he had found out that she and other Ee had *U relationship* did not violate Act as he gained knowledge of Section 7 activity during course of non Section 7 inquiry)

Belcher Towing Company v. N.L.R.B. **614 F.2d 88 (C.A. 5, Mar. 1980)**
(surveillance need not be known to Ees to be unlawful)

5024-0150 Coercive per se

Nabisco, Inc. **JD-(SF)-34-82**
(E's instituting surveillance program concerning its truck drivers, at instant facility, by outside security agency, not violative where, (1) E was experiencing difficulties with truck drivers, (2) E resorted to common method of surveillance to determine nature and scope of problems with drivers, and (3) E had no reason to believe that Ee (CP) would be among those drivers surveilled)

5024-0800 Demanding surrender of membership cards solicited by employee

Sheridan Drive Super Duper, Inc. d/b/a Tonawanda Super Duper **260 NLRB No. 102**
(asking Ee who was very active in U organizing campaign if she had any U cards containing names and addresses of Ees who had signed violative)

5024-1600 Following employees or organizers

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(E boarding bus in pursuit of organizer of U competing with U favored by E to observe him talking to Ees, violative)

5024-1600—Cont.

K-Mart Corporation **255 NLRB No. 112**
(following off-duty Ees, who were U adherents, throughout E's store and on one occasion, uninvitedly joining them during their breaktime to prevent them from discussing U, violative)

Womaco Coca-Cola Bottling Company of Nashville, Inc. **255 NLRB No. 069**
(no unlawful surviellance of routeman who encountered supervisors on route more frequently after E learned of U activity where routeman's U activity did not bring him into contract with large number of Ees, and in view of plausible explanation for presence of supervisors at locations where they encountered routeman)

Badische Corporation **254 NLRB No. 164**
(supervisors' taking breaks with U adherent not unlawful where supervisors had taken breaks with U adherent prior to his U activity and there was no evidence that supervisors had followed Ee to break room)

5024-2000 Searching employees, their work stations or lockers

Intermedics, Inc., et al. **262 NLRB No. 178**
(E's attempts to search Ees' purses held unlawful surveillance)

Russ Togs, Inc. **253 NLRB No. 099**
(searching of Ee who was going to U to complain about E's subcontractual wage rates in presence of other U-bound Ees, unlawful)

N.L.R.B. v. Rich's Precision Foundry, Inc. **667 F.2d 613 (C.A. 7, Dec. 1981)**
(search of Ees' lockers looking for U related document violative)

5024-2500 Urging employees to inform

Hillside Avenue Pharmacy, Inc. **265 NLRB No. 205**
(E's telling Ee to keep E informed about Ees' efforts to bring in U, unlawful)

Dunzansky-Goldberg Memorial Chapels, Inc. **264 NLRB No. 112**
(violation, where supervisor asked Ee when she was applicant and new Ee how she felt about Us, warned her that U adherents who were poor role models would try to recruit her into U and that she should let supervisor know if harassed in any way, informed her that owner was opposed to U, and advised her to stay out of U)

United Sanitation Services, Division of Sanitas Service Corp. **262 NLRB No. 173**
(E's distributing to all Ees invitation to report any instances where U organizers might put pressure upon them to join U, violative)

Granite City Journal, Inc. **262 NLRB No. 140**
(E's asking Ee to observe whether co-worker was making accurate work reports, unlawful, notwithstanding E's claim that he was simply responding, as any prudent business man would do, to information about co-worker's unprofessional conduct, where such Ee was principal U proponent, and E's requests for surveillance plainly were aimed at obtaining information which could be used to purge U proponent from Ees' ranks)

United Supermarkets, Inc. **261 NLRB No. 179**
(supervisor's soliciting Ee to attend U meeting and to report to supervisor activity at meeting, unlawful)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(telling Ee to advise E if Ee heard anyone discuss U competing with U favored by E, violative)

Emory Nursing Home, Inc. d/b/a Emory Convalescent Home **260 NLRB No. 071**
(solicitation of Ee to attend U meeting and report back, violative)

General Baptist Nursing Home, Inc. **259 NLRB No. 132**
(requesting Ees to assist E in finding some reason or pretext for discharging fellow Ee and to keep an eye on another fellow Ee, both of whom E believed to be supportive of U, unlawful)

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 065**
(manager's soliciting Ee, before U meeting, *to let her know what went on at the U meeting* held violative)

E. I. Dupont De Nemours & Company, Inc. **257 NLRB No. 033**
(asking Ee to keep E informed about what was going on in context of U meeting, violative)

Anja Engineering Corporation **256 NLRB No. 161**
(instructing Ees to report on U activity of U representatives or other Ees, violative)

Arrow Automotive Industries, Inc. **256 NLRB No. 152**
(instructing Ees to report identities of U card solicitors who approached them in any way that was offensive to them violative as this interferes with Ees protected rights to solicit cards)

Mark I Tune-Up Centers, Inc. **256 NLRB No. 138**
(E unlawfully coerced Ee to withdraw his support from U, to maintain surveillance of U activities, and to inform on U activities of his fellow Ees, by repeatedly quizzing Ee, who was concerned about his job if he supported U, about identity of U activists)

Metropolitan Life Insurance Company **256 NLRB No. 100**
(asking Ee to report conversations at her luncheon meeting with U officials, and asking Ee the next day about what transpired at such luncheon upon which Ee informed E exactly what was said by each Ee, violative)

Custom Trim Products **255 NLRB No. 096**
(soliciting Ees to report U activities of other Ees, violative)

General Electric Company **255 NLRB No. 092**
(E asking Ees to report U activity including harassment, pressure to sign cards, home visits, violence and destruction of property, unlawful, in that request too broad and vague since *pressure* and *harassment* could reasonably be interpreted as meaning whatever E or individual Ees thought they meant and company policy *not only tended to but did in fact impinge on Ees' lawful self-organizational rights*)

Guerdon Industries **255 NLRB No. 086**
(offering $100 reward for names of Ees posting U literature on company walls held unlawful inducement of Ees to inform on fellow Ees)

United Oil Manufacturing Co., Inc. **254 NLRB No. 179**
(instructing Ee to report on U activity of coworkers, violative)

Suburban Chevrolet, Inc. **254 NLRB No. 016**
(E's requesting Ee to attend U meeting to see what went on, violative)

Dillman Foods, Inc. **253 NLRB No. 114**
(violation where E explained to Ees his company policy that *he did not want U* and instructed Ees to report identity of U card solicitors *and he would take care of it accordingly*)

Smith Auto Service, Inc. **252 NLRB No. 068**
(violation where few days after U filed ptn E's president told U Ee if he should hear anything or know anything about U, he should tell E's president and E president would take care of him)

Red Food Store **252 NLRB No. 033**
(soliciting Ees to report activities of suspected U organizers, violative)

Maywood, Inc. **251 NLRB No. 139**
(soliciting Ee to observe and report to supervision the U activities of other Ees, violative)

W. F. Hall Printing Company **250 NLRB No. 122**
(mtn for summary judgment granted where it is admitted that E sent Ees letter, using language substantially same as that which has recently been found unlawful, requesting them to refuse to sign U authorization cards and also to report to E if any Ee harrassed them about signing U authorization cards)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president asking Ee to interrogate other Ees concerning U activities to ascertain if certain Ee had signed U card and Ee's subsequent interrogation of another Ee, unlawful, since Ee acting as non-supervisory agent of E)

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(violation where E's attorney asked Ee, closely allied with management, to obtain information concerning U activities from a discriminatee, and requested information was obtained and reported to E who committed ULPs based, in part, thereon)

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(where it was alleged that E violated 8(a)(3) by discharging Ee, E does not have burden of proving ignorance of Ee's U activity but, rather, it is GC who has burden of establishing E's knowledge of Ee's U activity)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(asking Ee to attend U meeting and report back what happened, unlawful)

St. Francis Hospital **249 NLRB No. 017**

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's asking Ee to let him know if he heard anything about Ee organizing campaign, violative)

Tartan Marine Company **247 NLRB No. 073**
(E posting notice requesting that Ees notify supervisors if any members of U organizing committee or anyone else attempted to *bother* Ees during working time about U, not unlawful; notwithstanding tone of notice, which also advised Ees against signing authorization cards and warned that members of U organizing committee would be held to full compliance with company rules, was hostile to U)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(asking Ee to report to E whether pro-U Ees were pressuring her to sign U card, unlawful)

J. H. Block & Co., Inc. **247 NLRB No. 041**
(notice E posted on company bulletin board prior to election which asked Ees to report to E if they were put under pressure to join U violative as it had potential effect of encouraging Ees to report to E identity of U card

5024-2500—Cont.

solicitors and also to discourage card solicitors in their protected organizational activities)

Styrest Nursing Home JD-(ATL)-95-82
(informing Ees that they had right not to allow U officials into their homes and to bring any such harassment to supervisors' attention, unlawful, since this had tendency to: 1) encourage Ees to report to E U supporters who harassed them in their homes on behalf of U, and 2) make U supporters decide whether solicitation of fellow Ees might be considered harassment and reported to E; nor was violation fully remedied by subsequent memorandum by E disavowing any intent to interfere with Ees' rights and requesting that Ees not report any harassment to E but to NLRB)

M. Livingston & Company d/b/a D.G. Hayes Wholesale Grocery Co. JD-398-82
(ordering Ee – who was briefly and for one time only acting as supervisor, but w/o having supervisory authority – to make list of Ees on his shift who were wearing U T-shirts, buttons and caps and to record what Ees were saying about U unlawfully created impression of surveillance and coerced Ees)

California Circuit Assembly/Anderson Circuits, Inc. JD-(SF)-71-82

Ron Simmons, d/b/a Bell Construction Co., Inc. JD-(SF)-296-81
(soliciting Ee to report to E concerning U activity of other Ees, violative)

Metropolitan Teletronic Corp. JD-(NY)-12-81
(E's president questioning Ees in group about who attended U meetings and asking Ee whether he was going to meetings and if he would report back on events of meeting, violative)

J. P. Stevens & Co., Inc. v. N.L.R.B. 638 F.2d 676 (C.A. 4, 1980)
(E's request that Ee report U activity, violative)

J. P. Stevens & Co., Inc. v. N.L.R.B. 638 F.2d 676 (C.A. 4, 1980)
(posting notice asking Ees to report *threats* by U activists, violative)

Rock Hill Telephone Company v. N.L.R.B. 605 F.2d 139 (C.A. 4, 1979)
(holding that supervisor requested Ee to furnish him with list of Ees who would vote for or against U, not supported by substantial evidence)

TRW-United Greenfield Division v. N.L.R.B. 637 F.2d 410 (C.A. 5, 1981)
(although unsuccessful, soliciting Ee to attend U meetings and report U activities to management, violative)

N.L.R.B. v. Colony Printing and Labeling, Inc. 651 F.2d 502 (C.A. 7, June 1981)
(E's urging Ees to report *anyone who tries to cause you any trouble at your work, or puts you under any kind of pressure to join U,* unlawful, since E failed to distinguish between coercive conduct and lawful organizing activity)

5024-3300 Photographing employees

Knogo Corporation 265 NLRB No. 130
(*Pinkerton guard's* hired by E to patrol plant premises during Ee strike threat, not violative, since there was no evidence that guards took photographs, made notes, or engaged in any other conduct other than patrolling plant premises for security purposes)

Daniel Construction Company, A Division of Daniel International Corporation 264 NLRB No. 079

Valley Plaza, Inc. d/b/a Captain Nemo's 258 NLRB No. 076
(photographing Ees engaged in peaceful, lawful picketing, violative where it tended to implant fear of future reprisals and constituted coercive surveillance)

C. E. Wilkinson & Sons, Inc. 255 NLRB No. 176
(photographing of pickets violative, notwithstanding U had reputation for violence where there was no actual violence or mass picketing)

Cutting, Inc. 255 NLRB No. 076
(photographing striking Ees while they were engaged in peaceful picketing held unlawful surveillance, since it was intended to intimidate pickets and make them fearful of reprisals for engaging in lawful strike and picketing)

John Cuneo, Inc. 253 NLRB No. 110
(picket line activities)

Mediterranean Diner, Inc., t/a Bay Diner 250 NLRB No. 029

ABL General Systems Corp. JD-(NY)-67-82
(photographing of lawful, peaceful picketing for no lawful purpose constituted unlawful surveillance)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. JD-(NY)-79-81
(violative where Ees' picketing was orderly and legal)

Funk Manufacturing Company, A Division of Cooper Industries, Inc. JD-(SF)-267-80
(taking pictures of Ees' handbilling violative, where no valid reason for photographs existed)

United States Steel Corporation v. N.L.R.B. 682 F.2d 98 (C.A. 3, June 1982)
(E's photographing Ees' demonstration, not unlawful surveillance under circumstances existing herein of amicable E-U relationship, peaceful, good humored demonstration with participants not shunning identification; E's prior photographing of 13 demonstrations in 8 years w/o resulting ULP allegations, and in absence of Ees' economic dependence on E, independent E ULPs, or potential for resulting labor unrest)

Motor Inn of Perrysburg, Inc. d/b/a Holiday Inn of Perrysburg v. N.L.R.B. 647 F.2d 692 (C.A. 6, May 1981)
(E's photographic surveillance of Ees engaged in picketing E on behalf of U, not violative where evidence in record suggested that surveillance was undertaken to support attempt to obtain injunction against unlawful picketing and ALJ found that surveillance was mainly directed against two Ees whose later terminations were upheld)

Karl Kallmann, d/b/a Love's Barbeque Restaurant, No. 62 v. N.L.R.B. 640 F.2d 1094 (C.A. 9, 1981)
(E's photographing former Ees of predecessor after they concluded picketing E's facility, violative)

5024-3500 Televising or videotaping employees

Intermedics, Inc., et al. 263 NLRB No. 170
(monitoring Ees' activities by means of TV camera held unlawful surveillance)

Conair Corporation 261 NLRB No. 178
(taking of video tapes of strikers on picket line, of Ees entering and leaving plant, and of trucks and automobiles in and around plant premises, unlawful, since there can be no instance, under the circumstances herein, where Ees who learn that their actions on picket line or on jobsite are being videotaped would not have impression that their activities were under surveillance)

5024-3700 Creating impression of surveillance

Donnelly Manufacturing Co. Division of Brockhouse Corp. 265 NLRB No. 196
(supervisor asking U adherent *if she thought U would get in,* unlawful, notwithstanding contention questioning not coercive where Ee openly supported U and unaccompanied by threat of reprisal or promise of benefit, since right of avowed U supporter to be free of coercion, interference or restraint no less than secret supporter, and threat of reprisal or promise of benefit not necessary for interrogation to be unlawful; further, questioning interferred with Ees' Section 7 rights since it sought to elicit information regarding strength of Ee support for U and lead Ees to believe U activities under surveillance)

Belcher Towing Company 265 NLRB No. 159
(supervisor's telling Ees, during U organizational campaign, that he had learned through *his sources of information,* that a certain Ee was U plant, unlawful)

Belcher Towing Company 265 NLRB No. 159
(supervisor's statement to Ee that supervisor was told that Ee was U plant, but that Ee should tell *nobody* because supervisor would lose his *source of information,* unlawful)

Belcher Towing Company 265 NLRB No. 159
(supervisor's statement to Ee that E would find out which Ees were pro-U, especially if Ee had signed U authorization card, that E had told supervisor E would have to examine every card for authenticity, and that E could look at Ee's card and verify signature, unlawful)

Halliburton Services (Coffeyville, Kansas), A Division of Halliburton Company 265 NLRB No. 144
(shop forman's standing in guard office watching Ees passing out U literature, violative)

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric 265 NLRB No. 293
(E held to have created impression of surveillance by stating to Ee that E had seen known U protagonist and Ee *talking to the other Ees,* and that E wanted such conversations stopped)

Hillside Avenue Pharmacy, Inc. 265 NLRB No. 205
(E's conduct in stating to E that E had learned Ee was going to vote for U, and correcting Ee when Ee denied he had signed U card, by telling Ee that he had in fact signed card, unlawful)

Howard Press, Inc. 265 NLRB No. 181
(telling Ees that other Ees had been active in prior U campaign)

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 106
(supervisor's telling Ee that he knew U proclivities of other Ees, unlawful, where supervisor left Ee with impression that U membership status of Ees was being kept under surveillance)

Enterprise Products Company 265 NLRB No. 083
(E's statement clearly implying that he was aware of who among Ees had already signed U authorization cards held unlawful interference and evidence of E's particular knowledge of identity of those who supported U at that time)

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Enterprise Products Company 265 NLRB No. 083
(E held to have unlawfully conveyed impression of surveillance in stating that company would know who signed cards, by naming first three Ees who had done so)

De Queen General Hospital 264 NLRB No. 069
(supervisor's informing U adherent that she, supervisor, had received word that U adherent was under close observation, violative)

De Queen General Hospital 264 NLRB No. 069
(informing Ee that her name had been mentioned at every supervisory meeting concerning U activities and as being associated with U, violative)

Laird Printing, Inc. 264 NLRB No. 040
(E's president informing Ee that he knew Ee was U's biggest supporter and that he had to watch what he said to Ee because anything he said *would go right back to U* and asking Ee *as key Ee, why do you want U anyway,* violative)

Danzansky-Goldberg Memorial Chapels, Inc. 264 NLRB No. 112
(no violation where prior to decertification election E's owner got into argument over medical coverage with Ee stormed out of room, and shouted *I'm getting tired of all this shit. Pretty soon it will be all over* since statement was ambiguous generalized prediction on outcome of election rather than assertion that he knew how each Ee was going to vote and majority was going to vote for U's ouster, was not addressed to Ees, and contained no reference to surveillance)

The Exchange Bank 264 NLRB No. 111
(E telling Ee that at least 10 people had told him that he had gotten *all this* started, and that she was trouble maker and instigator in bookkeeping department, and *it can't be allowed to go on* and then asking her why she wouldn't tear up ptn and telling her he would do whatever was necessary to see that bank ran smoothly, violative)

The Moore Company, Inc., Div. of Easco Corp. 264 NLRB No. 159
(where supervisor commented to Ee that he had seen Ee talking to another Ee and questioned Ee as to whether latter Ee had asked him to sign U authorization card; questioning regarding card solicitation unlawful but supervisor's comment that he saw two Ees talking, without more did not constitute unlawful surveillance)

Virginia Apparel Corporation 264 NLRB No. 030
(telling Ees that E knew what matters were discussed and which Ees were present at U meetings, violative)

Hudson Oxygen Therapy Sales Company 264 NLRB No. 004
(in determining whether E has created an impression of surveillance of Ees' U activities, Bd applies test as to whether Ees could reasonably assume from actions or comments of E that their U activities had been placed under surveillance)

Airborne Freight Corporation 263 NLRB No. 181
(where Ee had refused to tell E who had signed U authorization cards but was subsequently told by another Ee that supervisor had shown him E's list of U supporters, unlawful impression of surveillance was created, since first Ee would assume that supervisor's information had been obtained covertly)

Trexler Lutheran Home for Children t/a Frostburg Village of Allegany County Nursing Home 263 NLRB No. 042
(supervisor's stating to U adherent that she was aware of U organizing going on in her department, that she was aware that there had been U meeting prior night, and that she had lived long enough w/o U and was going to do so now, violative)

Acme Motors, Inc., t/a Acme Datsun 263 NLRB No. 077
(company owner's stating he had ways of finding out who started U because his brother was U president, violative)

A. A. Superior Ambulance Service 263 NLRB No. 069
(E's stating it had list of those Ees who had signed with U, violative)

Air Products and Chemicals, Inc. 263 NLRB No. 045
(E's statement to Ee that he had heard Ee was for U violative as form of unlawful interrogation not as creating impression of surveillance as it put Ee in position of having to admit or deny U involvement)

The Martin-Brower Company 263 NLRB No. 025
(distribution center manager's statement to (U adherents) that he already knew about *all your meetings* held violative)

Knogo Corporation 262 NLRB No. 171
(E who held Ee meeting and told Ees present that they had been chosen to attend based on their influence in shop and their strong *interest in the organizing activities* violated Act; notwithstanding such conduct was not alleged as violation in C where E's actions are uncontroverted and and closely relate to subject matter of C)

Granite City Journal, Inc. 262 NLRB No. 140
(E's mentioning to Ees that two *big wheels* were primarily responsible for promoting U, unlawful, even though E did not state whom he had in mind and assertedly could have legitimately obtained such information from supervisors who attended U meeting; E learned of U campaign from newspaper article and not from supervisors; and E's statement, made in connection with accounts opening up and jobs being available only to those who wanted to remain gave rise to implication in his reference to *big wheels* of threat of possible future retaliation)

Granite City Journal, Inc. 262 NLRB No. 140
(E's describing to Ee, during course of unlawful interrogation, what had occurred at U meeting that Ee had attended, unlawful)

Cherokee Culvert Company, Inc. 262 NLRB No. 108
(informing Ee that E had an even number of Ees for and against E and that with Ee's vote E could win election created unlawful impression of surveillance)

Wegner Distribution Services, Inc. d/b/a Distribution Services West 262 NLRB No. 096
(impression created when E informed Ee of number of Ees that had signed anti-U ptn)

Zero Corporation, Zero East Division 262 NLRB No. 064
(E's general manager's comment to U adherent made in their church parking lot that he was supprised that 2 of Ees were so prounion, violative, as creating impression of surveillance, notwithstanding comment made off worksite and was followed by remarks on unrelated matters)

Dutch Boy, Inc., Glow-Lite Division 262 NLRB No. 001
(*I hear you're the one pushing the U — and brought them in here —*)

Onan, a Division of Ona Corporation 261 NLRB No. 187
(open and admitted systematic surveillance of which Ees would vote for U and making of lists accordingly accompanied by threats, unlawful)

Conair Corporation 261 NLRB No. 178
(taking of video tapes of strikers on picket line, of Ees entering and leaving plant, and of trucks and automobiles in and around plant premises, unlawful, since there can be no instance, under the circumstances herein, where Ees who learn that their actions on picket line or on jobsite are being videotaped would not have impression that their activities were under surveillance)

Marion Rohr Corporation 261 NLRB No. 138
(plant manager's telling active U adherent that he knew that she had been at U meeting that day, violative)

Marion Rohr Corporation 261 NLRB No. 138
(telling Ees that U was around plant forcing Ees to sign cards, that he knew of 2 Ees who were soliciting signatures, of 12 Ees who were at U meeting and he knew date of next U meeting, violative)

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads 261 NLRB No. 130
(where Ee worked strictly on commission, new store managers statement to Ee that he fired one guy to keep 10 people happy, asking her whether she was *happy* and calling her one of U's biggest supporters held unlawful announcement of grant of benefit, coercive interrogation, Ee surveillance, and constitutes objectionable conduct)

Heads and Threads Company, a Division of MSL Industries, Inc. 261 NLRB No. 115
(supervisor's statement to Ee that latter was trying to get U in was not unlawful creation of impression of surveillance, but was unlawful threat of discharge when statement was completed with reminder of what happened after last attempt to get U in)

H. B. Zachry Company 261 NLRB No. 098
(pin-pointing identity of Ees who were named in U's telegram as organizers for U by reading their names to supervisors and management and by posting their names, unlawful)

Homemaker Shops, Inc. 261 NLRB No. 080
(supervisor's statement that he had been instructed to inform E's president of all Ee's calls relating to U created unlawful impression of surveillance)

Sterling Sugars, Inc. 261 NLRB No. 071
(E official's statement to Ee, *I heard you're fooling with bad company,* violative since comment concerned U and constituted impression of surveillance)

T.H.E. Co. d/b/a L. D. Brinkman Southeast 261 NLRB No. 025
(supervisor's telling Ee, *Good morning Jimmy Hoffa* violative, since he was directly stating that he recognized him as Teamster activist, same as Hoffa)

Gauley Industries, Inc. 260 NLRB No. 189
(E's statement that he knew all Ees had signed cards and that they met at *grill,* held violative)

Eau Claire Press Company 260 NLRB No. 148
(telling U adherent that E knew she was one behind U who started U activity, violative, where such statement created impression that Ees' U activities were under surveillance)

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car 260 NLRB No. 118
(one week after unlawful discharge telling dischargee that company knew who were pro-U Ees, violative)

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Advanced Mining Group, Div. of Republic Corp., Lucerne Facility 260 NLRB No. 073
(E's supervisors observed by Ees at site of U meeting; supervisors had expressed desire to find out who would be at meeting)

Gentile Pontiac 260 NLRB No. 086
(while conclusion is not warranted that E created impression of surveillance when he first told Ee that he had heard rumors Ees were interested in forming U since information apparently came to E fortuitously, E's subsequent remarks concerning such rumors created impression of surveillance where E stated that information came from *reliable source* and indicated that E's knowledge was no longer based on gossip but on purposeful scrutiny of Ees' U activities; such conduct, in context of other unlawful statements and Ees' circumspect U activity, unlawfully tends to inhibit such activity)

Beck Studios, Inc. 260 NLRB No. 044
(E's president asking Ee if he had signed authorization card and further stating that he thought other Ees had signed, violative)

Hochschild Kohn, Division of Supermarkets General Corporation 260 NLRB No. 025
(unprecedented buildup of store security personnel during critical period, their observation of Ees talking among themselves, taking notes, and interrogating Ees created impression of surveillance)

Midwest Electric Manufacturing Corporation 260 NLRB No. 032
(statement to Ee mentioning names of Ees who attended U meeting, unlawful)

Walter Carpet Mills, Inc. 259 NLRB No. 096
(impression created where supervisor informed Ee that *everyone told him Ee was working for U* but he was sure Ee *would not be so dumb*)

Brooks Shoe Manufacturing Company, Inc. 259 NLRB No. 071
(prefatory statements made by supervisor to Ees that *he heard U was trying to get in* and *I hear you are trying to get a U in* which occurred prior to violative interrogations are not violative in and of themselves as creating impression of surveillance since they were not construed by Ees as his having spied on them and did not occur after U meetings)

Puerto Rico Hotel Association 259 NLRB No. 058
(no impression created where supervisor informed Ee, correctly, that letter which Ee showed him was written by certain U official, in view of fact supervisor had been member of U council and thus knew writing style of official)

Fibracan Corp. 259 NLRB No. 014
(supervisor's statement to Ee that he knew about scheduled U meeting, who was behind meeting, and that he had list of Ees planning to attend meeting, held violative)

Best Products Co., Inc. 259 NLRB No. 016
(E who continually opened door to lunch room which Ees had closed so they could talk about U w/o being overheard violated Act)

Lord & Taylor, A Division of Associated Dry Goods Corp. 258 NLRB No. 082
(telling U adherent that E had asked if she was *into Us* during course of discussion about Ee's possible organizing activities, violative, where such question created impression that Ee's U sympathies and activities were under surveillance)

Valley Plaza, Inc. d/b/a Captain Nemo's 258 NLRB No. 076
(violation where E interrogated Ee as to who attended U party and who signed U authorization cards, thereby creating impression of surveillance)

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation 258 NLRB No. 142
(telephoning U adherent at home concerning Ees U meeting and reminding Ee about prior conversation regarding better benefits and stating *I don't know why you got this started*, violative, where conversation amounted to implied promise to improve benefits if Ee would reject U and created impression of surveillance by telling Ee that E knew who had gotten U started)

Hopcraft Art and Stained Glass Works, Inc. 258 NLRB No. 106
(asking Ee if U adherents had gone to U on E's time or on their own time unlawfully created impression of surveillance in light of E's known anti-U animus)

Greyhound Food Management, Inc. d/b/a Burger King 258 NLRB No. 178
(E's widespread inquiries into Ees' organizational activities, unlawful, since, as a kind of regular monitoring, E maintained a virtual surveillance of Ees' protected activities and, given closely-knit Ee community involved, thereby also conveyed impression of maintaining such surveillance)

Schwan's Sales Enterprises, Inc. 257 NLRB No. 149
(statement to Ee that Ee would be *swing* vote in election, violative, where such remark created impression that E had ascertained *swing* votes by investigation or surveillance)

Salem Paint, Inc. 257 NLRB No. 068
(E's remark concerning *free lunch* to Ees who had attended U meeting at diner insufficient to establish that E had *created an impression of surveillance to its employees*...)

Brodart, Inc. 257 NLRB No. 077
(E's assistant treasurer apprising Ees that he knew they were attending U meetings, violative)

Clements Wire & Manufacturing Company, Inc. 257 NLRB No. 075
(telling U adherent that E knew about her U activity, violative)

E. I. Dupont De Nemours & Company, Inc. 257 NLRB No. 033
(telling U adherent that E knew Ee had gone to U meeting and that all but four operators in work area had signed U authorization cards, violative)

Gorman Machine Corporation 257 NLRB No. 010
(foreman telling Ee that foreman knew how he had voted in election and implying to bookkeeper that he knew how another Ee voted in election, violative)

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising 257 NLRB No. 022
(where U had already made claim for representation based on signed authorization cards, E did not create impression of surveillance when he made statement that he knew Ees had turned in U cards)

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising 257 NLRB No. 022
(E created impression of surveillance when he accused 3 Ees of being responsible for bringing in U)

Arrow Automotive Industries, Inc. 256 NLRB No. 152
(supervisor's statement to Ee that he thought U had won two other Ees over violative as it created impression of surveillance of U activity)

S. B. Thomas, Inc. 256 NLRB No. 122
(photographing leafletting, violative)

Art Steel of California, Inc. 256 NLRB No. 140
(search of U activist's work area to find book that he had allegedly brought into E's plant ...*in order to get signatures to get U's assistant, business manager removed from office* held violative, since search revealed matter was of concern to E)

Metropolitan Life Insurance Company 256 NLRB No. 100
(stating to U adherent that E would be able to find out whether she signed U card, that E knew and/or had information that Ee had signed U card, and that E knew that a certain other Ee had instigated U, violative)

Fashionline Ltd. 256 NLRB No. 067
(impression created where one supervisor told Ee that boss had found out that Ees were getting into U and that Ee was handing out pamphlets and another supervisor told Ee that boss was going to fire everyone that had signed card and ones that were gossiping to U)

Marathon LeTourneau Company, Longview Division 256 NLRB No. 064
(supervisor's disclosure to new Ee that another Ee was U organization leader held not unlawful creation of impression of surveillance, where other Ee was well known U activist due to his notorious activity in behalf of U, lack of common knowledge of plant in new Ee did not change character of that which was common to Ees, and source could hardly be surveillance since what new Ee was told about identity of U activist was not something secretive from most but was well known to all)

Viracon, Inc. 256 NLRB No. 037
(violation where E called meeting at which E told Ees that some Ees were passing information to U, and that E did not know who these Ees were but that it could only guess)

Le Roy Fountains, Inc., and Hardwicke's Plum, Inc., A Joint Venture, d/b/a Maxwell's Plum 256 NLRB No. 036
(impression created when supervisor asked Ee if she knew Ees joined U)

Evans Brothers Barber & Beauty Salons, Inc. 256 NLRB No. 023
(asking Ee if she had attended U meeting preceding night and subsequently stating that E had seen Ee at meeting, violative)

Evans Brothers Barber & Beauty Salons, Inc. 256 NLRB No. 025
(telling Ee that E knew Ees had talked to U, violative)

Transportation Management Corp. 256 NLRB No. 025
(supervisor's statement to Ee that he had heard that another Ee had started U created impression of surveillance as it tended to impress on Ees that E maintains surveillance of Ees including Ee to whom statement was made)

Mark Lines, Inc. 255 NLRB No. 191
(where tapes recorded by Ees of U meeting on previous night were spontaneously turned over to E by such Ees, E's overt use of tapes by replaying them loud enough so Ees outside E's office and in adjacent areas could hear them, violative since E created impression that U activity was subject to surveillance)

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C. E. Wilkinson & Sons, Inc. 255 NLRB No. 176
(impression that U meetings were under surveillance created where supervisor asked Ee if he had gone to U meeting and did not volunteer source of his information concerning U meeting)

Firmat Manufacturing Corp. 255 NLRB No. 153
(E's telling Ees it knew of U meeting created unlawful impression of surveillance)

Lak, Inc. 255 NLRB No. 136
(E informing Ee that it heard she was Ee who had contacted U, unlawful)

K-Mart Corporation 255 NLRB No. 112
(following off-duty Ees, who were U adherents, throughout E's store and on one occasion, uninvitedly joining them during their breaktime to prevent them from discussing U, violative)

General Electric Company 255 NLRB No. 092
(E informing Ee *We know who is involved with U* unlawful)

Limestone Apparel Corp. 255 NLRB No. 101
(E's telling Ees that he knew that Ees held their first U meeting on previous night, violative)

Guerdon Industries 255 NLRB No. 086
(telling Ees that E knew identities of U supporters and intended to discharge them, violative)

Edgcomb Metals Co., One of The Williams Companies 254 NLRB No. 140
(informing U adherent that E had heard that Ee was organizing U drive among clerical Ees, violative)

Mark Twain Marine Industries, Inc. 254 NLRB No. 144
(telling U adherent that E had tapped his and other Ees' telephones, violative)

Overnite Transportation Company 254 NLRB No. 011
(stating to U adherent, *I hear you are involved with the U,* violative)

Overnite Transportation Company 254 NLRB No. 011
(violation where E stated to Ee who attended U meeting night before, *they won you over last night, didn't they?*)

Overnite Transportation Company 254 NLRB No. 011
(asking U adherent about his passing out U literature, violative)

Hasbro Industries, Inc. 254 NLRB No. 070
(E telling Ee that they knew how he had voted, unlawful)

Gossen Company, a Division of the United States Gypsum Company 254 NLRB No. 041
(impression not created by supervisor who was Ee's brother-in-law remarking to Ee *I hear you're organizing U* in view of close family relationship and fact supervisor and Ee often engaged in frank and candid discussions)

Gossen Company, a Division of the United States Gypsum Company 254 NLRB No. 041
(no violation, where supervisor who had seen Ee previous night at tavern where U organizing meeting was being held instead of Ee working as scheduled asked Ee *why Ee was well enough to go to U meeting, but too sick to come to work*)

Clark Manor Nursing Home Corp. 254 NLRB No. 054
(supervisor's informing Ee not only that E was aware of U meeting but that E was also aware of what went on and was said there, unlawful)

John Cuneo, Inc. 253 NLRB No. 110
(supervisor's telling Ees in his department that he had been requested to find out which of Ees in department had signed authorization cards)

Elk Brand Manufacturing Company 253 NLRB No. 132
(supervisor's statement that *he had his ways of knowing,* unlawful since this led Ee to believe U activities were under surveillance)

Justak Brothers and Company, Inc. 253 NLRB No. 146
(E president's telling Ee that supervisor had seen him passing out cards, unlawful)

Williamsport Plumbing and Heating Co., Inc. 253 NLRB No. 121

Dillman Foods, Inc. 253 NLRB No. 114
(violation where E stated to U adherent that he had *sources* informing him that Ee was *still going around behind (E's) back causing problems and still in active support of the Union*)

Crown Cork & Seal Company, Inc. 253 NLRB No. 035
(statement to U adherent that if he signed U card E would know about it, violative, since such remark created impression of surveillance)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(surveillance implied by supervisor's statement to Ee that another Ee was incompetent and needed U protection)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(supervisor asking Ee why Ee held U meeting in her home if Ee did not have anything to do with U, unlawful)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(impression created by supervisor's statement to Ee that Ee's good friend was trying to sway Ee's vote in favor of U)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(impression created by supervisor's statement to Ee that he knew E had been passing out U cards and that Ee was ring leader in movement for unionization)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(impression created by supervisor's statement to Ee that he did not like Ee's look at meeting when wage increases were announced because Ee was implying that U was responsible for increases)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(creatated where supervisor asked U adherent what she was talking about, and when she replied that she was talking to herself, stated that adherent had been doing more sound office lately than talking to herself)

Gladieux Food Service, Inc. 252 NLRB No. 106
(statement that E had heard that E voted for U in election, violative, since such statement created impression of E surveillance)

GE's Trucking, Inc. 252 NLRB No. 131
(E's conversation with leading U advocate, unlawful, where in context of other unlawful statements E stated that he had heard rumors of U activity, which was not matter of common knowledge, and thereby created impression of surveillance)

Atlas Metal Parts Co., Inc. 252 NLRB No. 029
(impression not created where supervisor asked picket *what picket was doing there because he felt there was U meeting* since there was no element of interference or coercion)

Polby Lingerie, Inc. and Argus Lingerie Corp. 252 NLRB No. 032
(impression not created by supervisor's informing group of Ees, as well as certain Ee individually, that somebody in the shop heard that *the Union was going to the people in the shop;* such information not directed to any Ee's organizing activities amounted to generalized statement to Ees)

Franklin Fouts, d/b/a B & F Cartage 251 NLRB No. 068
(terming U adherent *instigator* day after Ee attempted to get other Ees to sign U cards, violative as constituting impression of surveillance)

Nevada County Publishing Co., d/b/a The Union 251 NLRB No. 143
(asking questions which were couched in terms reasonably calculated to lead Ees to believe that their U activities were already known to E created unlawful impression of surveillance)

Blue Bird Body Company 251 NLRB No. 196
(Ee's announcing that another Ee had done *good job* for E when he reported to E what he had seen and heard at U meetings)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting 251 NLRB No. 037
(by telling Ee that E had knowledge of U meeting through his *connections*)

Rich's Precision Foundry, Inc. 250 NLRB No. 173
(statement, prior to unlawfully searching Ee's locker for U documents, that search was prompted by observation of another Ee reading a U paper conveyed unlawful impression of surveillance)

Charles Deen d/b/a Hopp Topp Mfg. Co. 250 NLRB No. 184
(E telling Ee that E had list of and knew who signed U cards, violative)

Charles Deen d/b/a Hopp Topp Mfg. Co. 250 NLRB No. 154
(telling Ee that E would know how Ees voted in election, violative)

Stanley M. Feil, Inc. 250 NLRB No. 065
(no violation, where during U campaign E searched Ees' purses and bags as Ees left its garment warehouse; contention search was to ascertain presence of U literature, rejected, since E had legitimate need for searches in order to minimize theft from warehouse and in view of previously existing rule stating bags were subject to search and there had been checks in past)

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(by telling Ees of E's awareness of scheduled U meeting and thereafter telling Ees of its knowledge of who had attended U meeting and what had been said)

Magnesium Casting Company, Inc. 250 NLRB No. 107
(statement that E knew Ee was going to U meetings because her car was seen at U meeting places, and E's statement that E had heard Ee had signed U card)

Magnesium Casting Company, Inc. 250 NLRB No. 107
(by stating to Ees at meetings that E would know who among its Ees had signed U cards)

Magnesium Casting Company, Inc. 250 NLRB No. 107
(by conspicuously surveilling passing out of U leaflets)

Central Freight Lines, Inc. 250 NLRB No. 063
(terminal manager's telling Ee, truckdriver, that his truck had been observed at U meeting)

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Central Freight Lines, Inc. **250 NLRB No. 062**
(terminal manager's telling hospitalized driver, when discussing U, that *I have ways of finding out things*)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president informing Ee that Ee was on his list of suspected U sympathizers and asserting he would not let any young girls take over and run his business, violative)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(impression created where supervisor informed Ee that E's president knew she had signed U card)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(impression created by E's president informing Ees during their termination interview that someone told him they had been soliciting U cards, unlawful)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(impression created where supervisor informed Ee that an Ee had already admitted signing U card and that another Ee knew something about U but was not saying anything)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president's attempt to create impression of surveillance by informing Ee that E was already aware of who U sympathizers were and specifically naming Ees, unlawful)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where E responded to inquiry about how E knew what was said at U meeting that E had people there who gave E information, thus giving impression of surveillance)

Patty Bee, Inc. **249 NLRB No. 125**

Sentry Investigation Corp. **249 NLRB No. 130**
(impression created by E's president accusing Ees of being instigators and ring leaders of campaign to change bargaining representative to U not desired by E)

Hedison Manufacturing Company **249 NLRB No. 096**
(no impression of surveillance created by supervisor's statement to Ees that he knew they were engaged in U activities where Ees were open in their support of U and E was well aware of their U adherence)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(telling Ees that E knew all Ees who had signed U authorization cards)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(morning after U's election of officers E stated *I know what is going on around here*——)

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**
(E president's statement to Ee that he had heard Ee was organizing U drive did not create impression of surveillance where Ee had previously complained to E president that other Ees were blaming her for starting U activity)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**
(impression created by statement to effect that E knew Ee was not involved with U)

Lyman Steel Company **249 NLRB No. 040**
(telling Ees that E *knew how everyone voted*)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(impression created where supervisor informed Ee that he understood there was to be U meeting that night)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(supervisor's telling Ee, *your buddy from the Union says hello,* violative, where the buddy referred to was individual who had made initial U contact)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(supervisor's statements that he knew Ee had signed Ees' complaint letter which was sent to E's president, not violative, in view of possibility that statements were made after copy of the letter was received from president's office)

Conagra, Inc. **248 NLRB No. 085**
(supervisor informing Ee that he thought he would attend U meeting, and when reminded he could not vote replying *Well, I could come and take names,* unlawful, notwithstanding contention supervisor joking and no Ee could take as serious threat; further, E's agents had previously committed numerous violations including supervisor involved)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. **248 NLRB No. 089**
(E vice-president's asking bargaining unit Ee if he was going to U meeting and then telling Ee that he had ways of finding out about U meeting, that he had latest information about U, and that he intended to ascertain which Ees were involved, violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 077**
(statement that head waiter knew of U meeting although he was not present at such meeting held violative)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(response to inquiry from Ee about how he knew about U, supervisor's reply of *I just know* implied that E's knowledge of U activity gained through surveillance)

Alumbaugh Coal Corporation **247 NLRB No. 112**
(E's statement that he had a list of yes votes and no votes created impression of surveillance and interfered with election)

Wolverine Worldwide, Inc. **247 NLRB No. 137**
(plant manager created impression of surveillance by driving by U sponsored picnic; although incident isolated found violative in context of other ULPs)

Tartan Marine Company **247 NLRB No. 073**
(impression not created by supervisor asking Ee if Ee knew of U meeting, who was there, who was trying to get people together, and where meeting was held, since supervisor informed Ee where and from whom he had heard about Ee and U)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**
(statements directed at Ees that E knew who among its Ees supported U, violative since such statements created impression of surveillance)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(advising Ee that E knew who was at meeting and the like, unlawful)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(E's statement regarding Ee's influence with other Ees did not create impression of surveillance where Ee could not have reasonably assumed, from statement that his U activities were under surveillance, since Ee's pro-U sympathies were matter of common knowledge and Ee was aware that his views were known to others)

Galax Apparel Corporation **247 NLRB No. 026**

Checker, Inc., d/b/a Checker Cab Company **247 NLRB No. 019**
(impression not created where supervisor informed Ees he had list of Ees supporting U since there was no indication list had been obtained by surveillance and Ees could not reasonably assume acquired by surviellance where supervisor identified source of list as pro-U Ee)

Eight In One Pet Products, Inc. **JD-(NY)-106-82**
(E's plant manager informing pro-U Ee that if she would not act as his spy at U meeting, someone else would give him information he sought, violative)

M. Livingston & Company d/b/a D.G. Hayes Wholesale Grocery Co. **JD-368-82**
(ordering Ee -- who was briefly and for one time only acting as supervisor, but w/o having supervisory authority -- to make list of Ees on his shift who were wearing U T-shirts, buttons and caps and to record what Ees were saying about U unlawfully created impression of surveillance and coerced Ees)

Medi-Mart, A Division of Stop & Shop Company, Inc. **JD-314-82**
(stating that 2 Ees who were only onew to wear U buttons and who were known to Ees and management alike as strong U supporters would be selected as U stewards does not create impression of surveillance)

Harvard Cooperative Society, Inc. **JD-246-82**
(supervisor's telling Ee that manager should be made aware that co-worker is talking to U guy found to have created impression of surveillance)

C. Cowles & Company **JD-(NY)-52-82**
(supervisor's telling Ees, after Bd election, that *I'm very suprised at you for voting for the U* held violative)

U. S. Reduction Company **JD-(ATL)-13-82**
(telling Ee right after election which U lost that she had better quit pushing U, that she was being watched and that she had better leave it alone or they were going to get her, created impression of surveillance)

European Parts Exchange, Inc. **JD-170-82**
(E informing Ee who had been soliciting Ees to sign U cards that E knew of his U activity, unlawful)

Ellis Hospital **JD-164-82**
(allegation that supervisor created impression of surveillance by telling Ee she had seen him the night before in hotel's parking lot and allegedly stating that she wondered if Ee had been at U meeting, dismissed, where supervisor merely mentioned to fellow Ee that she had seen him the night before in the parking lot which is not unreasonable nor does it presuppose an unlawful motive or require finding that supervisor was attempting to create impression of surveillance of Ees' U activity)

5024-3700—Cont.

Eudell Watts III, an individual, d/b/a Watts Transfer and Delivery Service, and Super-Rite Freightways, Inc. JD-110-82
(telling Ees of non U E of double breasted operation that he couldn't operate with U contract and had been *keeping eye on them,* violative)

Eudell Watts III, an individual, d/b/a Watts Transfer and Delivery Service, and Super-Rite Freightways, Inc. JD-110-82
(after Ee denied talking to U agent, telling Ees that people had called him to report that U agent stopped Ee and tried to talk to him, violative)

Chair Makers, Inc. JD-(SF)-6-82
(statement of plant manager telling assembled Ees that *I have heard the U is organizing* held not to give impression of surveillance, since statement did not reveal, by its terms, basis of manager's having *heard* of U organizing nor did it identify specific U activity or particular Ees involved in it)

Harvey & Madding, Inc., d/b/a Dublin Honda JD-(ATL)-97-81
(E's son's statement that his father knew of incidents of U activity)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. JD-(NY)-79-81
(none created when E mentioned that Ees attended U meeting where one of two foremen in E's small shop was invited to attend U meeting by shop's U adherents)

Transportation By La Mar, Inc. JD-279-81
(warning suspected U adherent not to attend U meeting held violative whee supervisor told Ee that E knew everyone who attended U meeting)

Brodart, Inc. JD-148-81
(violation, where E's assistant treasurer told U supporters that he knew they were attending U meetings and questioned Ees as to what went on at U meetings)

Ramada Inns, Inc. JD-208-81
(E's mere keeping list of Ees showing how management believes Ees will vote in election, not unlawful)

Safeway Stores, Inc. JD-(SF)-61-81
(manager's remark that he already knew how many Ees attended U meeting on previous day, held violative and objectionable)

Metropolitan Teletronic Corp. JD-(NY)-12-81
(impression created by E's president showing lists to Ees, coupled with his remarks that he knew some of Ees who had attended U meetings, and his explanations of various marks to names of Ees as designating characterizations of their U sympathies)

The Metalloy Corporation JD-23-81
(violation where E questioned Ee about his U activities and stated that E knew all about U meetings, who attended them, when they were held, and who had signed U cards)

F & W Oldsmobile, Inc. JD-755-80
(E's statements that it knew E had signed cards, unlawful)

General Dynamics, Electric Boat Division JD-681-80
(violation, where supervisor who was allegedly inebriated wandered into U meeting at clearly marked U hall; notwithstanding lack of intent to observe or report, or that attendance was not at behest of E and E reprimanded supervisor for his actions, since supervisor's conduct was not such as to lead Ees to believe supervisor was unaware of surroundings)

Datagraphix, Inc. JD-(SF)-344-80
(supervisor's stating to Ees that she had been reported to Industrial Relations for passing out Avon and U cards and that her activities in this respect had been subjected to supervisory scrutiny, and asking her to provide information concerning actions of her co-workers in distributing Avon and U cards constituted unlawful interrogation and created impression of unlawful surveillance)

Koh-I-Noor Rapidograph, Inc. JD-(NY)-76-80
(E did not create impression of surveillance in speech to Ees prior to planned U organization meeting where it let Ees know that it was aware of meeting, where subject of U meeting was common knowledge and Ees had widely discussed it, sometimes in presence of supervisors)

Clements Wire and Manufacturing Company, Inc. JD-320-80
(supervisor warning Ee that she was going to tell him about U and that he knew about her U activity, created impression of surveillance)

Palomar Transport, Inc. JD-(SF)-138-80
(E's informing U adherents of E's knowledge of U meeting and distribution of authorization cards created unlawful impression of surveillance)

Giallam Apparel Corp. JD-162-80
(statement that E had list of troublemakers in context of conversation about U created impression of surveillance)

N.L.R.B. v. Hasbro Industries, Inc. 672 F.2d 978 (C.A. 1, Feb. 1982)
(statement to known U adherent that E knew how he had voted but wouldn't hold that against him coupled with statement that speaker was out to get three Ees held unlawful, coercive threat suggesting that E was keeping track of U activity)

N.L.R.B. v. Keystone Pretzel Bakery, Inc. 674 F.2d 197 (C.A. 3, Apr. 1982)
(ct could not accept Bd's conclusion that company officer's jocular remark, *Here is your check, U steward* to Ee was coercive; ALJ, who heard and saw Ee testify that he considered exchange to be joke, was in far better position than Bd to evaluate incident; it was trivial matter and should not have been elevated to stature of ULP)

Burlington Industries, Inc. v. N.L.R.B. 680 F.2d 974 (C.A. 4, June 1982)
(ct found no creation of unlawful surveillance where supervisor denied telling Ee that he was being *watched* by management but ALJ found that warning was probably given because the two men were on *friendly terms*; ct found no basis in record to support conclusion that the men were friendly)

Jeffrey Manufacturing Division, Dresser Industries, Inc. v. N.L.R.B. 654 F.2d 944 (C.A. 4, 1981)
(violation)

J. P. Stevens & Co., Inc. v. N.L.R.B. 638 F.2d 676 (C.A. 4, 1980)
(supervisor's comment to U adherent concerning U cards observed in Ee's pocket, violative)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. 585 F.2d 752 (C.A. 5)
(informing Ee that tabulation was being kept of Ees as to whether they were for or against U)

N.L.R.B. v. Schwan's Sales Enterprises, Inc. 687 F.2d 163 (C.A. 6, Sept. 1982)
(single conversation, on day of election or immediately prior thereto, between supervisor and Ee, during which Ee unlawfully interrogated Ee, held to have unlawfully created impression of surveillance, notwithstanding E's claim that there was no intent to advise Ee that there had been surveillance, and that to so find was unreasonable)

N.L.R.B. v. Naum Brothers, Inc. 637 F.2d 589 (C.A. 6, Mar 17, 1981)
(substantial evidence supported Bd's finding that E created impression that Ees' U activities were being kept under surveillance)

Anserphone, Inc. v. N.L.R.B. 632 F.2d 4 (C.A. 6, 1980)
(no finding of unlawful creation of impression of surveillance of U activity where surveillance, if any, was limited to few off-handed statements made by a supervisor)

N.L.R.B. v. Jarva Incorporated 623 F.2d 483 (C.A. 6, 1980)
(supervisor predicting to Ee and to another Ee that because Ee was instigator of U that Ee would be head committeeman once U got in, not unlawful, since statements made jokingly and Ees stated they felt no coercion)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. 679 F.2d 673 (C.A. 7, May 1982)
(telling Ees that management knew *all about* U meeting)

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)
(impression created where E made it known to Ee that E was aware of Ees signing U aurhotization cards)

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)
(impression created where E made notes on list of Ees during interrogation)

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)
(impression created where suggested that certain Ees were instigators of U drive)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. 635 F.2d 1255 (C.A. 7, 1980)
(ct affirmed Bd finding that supervisor's statement to Ee that her name had been *dropped around* in connection with her U activities, coupled with supervisor's relocation of Ee's desk so it would be next to his own and Ee would have to share telephone with him for admitted reason of keeping tabs on Ee's U activities created impression of surveillance)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. 635 F.2d 1255 (C.A. 7, 1980)
(ct held contrary to Bd that supervisor's statement to Ee that she had heard that Ee had conducted U meeting in her home did not constitute impression of surveillance when put into context with rest of conversation)

Red Oaks Nursing Home, Inc. v. N.L.R.B. 633 F.2d 503 (C.A. 7, 1980)
(impression created where personnel director inquired about certain U activities of Ee and told her, *Well, we know about all Union meetings and the parties that have been going on...we know everything the union is doing. You girls don't have to keep hiding it from us*)

N.L.R.B. v. Chem Fab Corporation 691 F.2d 1252 (C.A. 8, Nov. 1982)
(ct held that substantial evidence in record as whole supported Bd's finding that Ees could reasonably assume that E had Ees' U activities under surveillance from statement made by E in speech to Ees to effect that E *found out everyone who had signed cards in favor of the U* during previous U election)

5024-3700—Cont.

N.L.R.B. v. Brewton Fashions, Inc., a Division of Judy Bond 682 F.2d 918 (C.A. 11, Aug. 1982)
(vice president's telling Ee that he heard that she was passing out *recipe cards* and that another E would testify in court to that fact held unlawful)

5024-3900 Surveillance of union organizers

Pace Motor Lines, Inc. 260 NLRB No. 189
(breaking into U adherent's automobile and removing blank U authorization cards, violative)

Dairy Farm Flight Services, Inc. 258 NLRB No. 031
(statement to Ees which indicated that E knew that some Ees had signed U authorization cards creates impression of surveillance and is violative)

Western Marine Electronics, Inc. 257 NLRB No. 057
(unlawful surveillance where E's president went to restaurant where Ee and U organizer were waiting to give Ees ride to U meeting, notwithstanding no direct evidence E's president overheard any remarks concerning ride to meeting, in view of E's unlawful interrogation to keep abreast of U matters, and E's president's walking to restaurant on crutches to obtain soft drink available at plant, remaining until Ee and U organizer left and his antagonistic remarks to U organizer indicative that E's president's purpose was surveillance rather than refreshment)

Micro Mail Corporation 257 NLRB No. 005
(night superintendent's conduct in removing signed U cards from Ee's jacket pocket and reading them individually, violative)

Palby Lingerie, Inc. and Argus Lingerie Corp. 252 NLRB No. 032
(no unlawful surveillance found, where family members of E were seen observing non-Ee U organizers *demonstrating* and soliciting Ees in front of plant; such evidence indicates no more than a brief inspection by E of open U activity in front of its property)

Maywood, Inc. 251 NLRB No. 139
(supervisor's saying to Ee who became member of in-plant committee for U, *I hear you have been making house calls,* violative where he knew Ee was active in U and he had idea that that was what the house calls were about)

Maywood, Inc. 251 NLRB No. 139
(supervisor's reading magazine at same table in cafeteria where U leaders sat, following three U activists into women's room and just standing there, and following three other U activists *all through the plant,* not unlawful surveillance of Ees' U activities, where U campaign was conducted openly in areas on E's premises in full view of management, and supervisor's duties required her to observe what was going on)

Lippincott Industries, Inc. 251 NLRB No. 034
(no unlawful surveillance of Ees' U activities where 2 supervisors observed U organizers participating in circulating and signing U authorization cards in company parking lot)

Taggarts International, Inc., d/b/a Taggarts Driving School JD-(NY)-62-81
(supervisor's going over to Ees in presence of U representative to see what was going on, not violative where supervisor was not aware that U representative was present and was acting w/i his area of supervisory responsibility)

Montgomery Ward & Company, Inc. v. N.L.R.B. 692 F.2d 1115 (C.A. 7, Nov. 1982)
(ct held E's interference with organizers who were meeting with off-duty personnel in restaurant on E's premises in nondisruptive fashion and by engaging in unreasonably close observation of these organizers as they finished their lunches violative; furthermore, E's threat of police action held unlawful)

Nebraska Bulk Transport, Inc. v. N.L.R.B. 608 F.2d 311 (C.A. 8, 1979)

5024-4100 Surveillance of union handbilling or picketing

Schnadig Corporation 265 NLRB No. 020
(supervisor's observation of Ees distributing U literature, not unlawful, where supervisors observing open distribution of both pro-U and anti-U literature outside plant w/o taking notes or making lists)

Reeves Southeastern Corporation 256 NLRB No. 090
(E violated Act when it stood beside Ees who were passing out U literature so its actions were meant to inhibit Ees)

Southern Moldings, Inc. 255 NLRB No. 115
(E's stationing supervisors outside Ees' entrance to inhibit them in distributing and receiving U literature, violative)

Southern Moldings, Inc. 255 NLRB No. 115
(no unlawful surveillance by presence of personnel manager and foreman in Ees' entrance area of plant during time that Ees were distributing U literature; foreman was there for only few minutes and had legitimate purpose and it was not unusual for personnel manager to be in that area)

Crown Cork & Seal Company, Inc. 253 NLRB No. 035
(merely observing leafletting in front of plant, not unlawful)

Crown Cork & Seal Company, Inc. 253 NLRB No. 035
(observing leafletting in front of plant and taking contemporaneous notes of such activity, violative)

Metal Industries, Inc. 251 NLRB No. 201
(presence of 3 management officials in Ees' parking lot during U's leafletting, not unlawful surveillance where officials regularly stationed themselves in parking lot at end of day to bid Ees good-bye and answer their questions; management may lawfully observe U's public leafletting, particularly on company premises, unless officials do something extraordinary; here only unusual action was one official's placing himself farther away from Ees than usual, thus having less impact)

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(although supervisor's conduct in observing pro-U Ees while they were distributing handbills on E's premises was not in itself unlawful, his conduct in writing what appeared to be their names on a pad was unlawful, since conduct created in Ees' minds impression that their names were being noted for future discrimination)

All-New Stamping Co. JD-(SF)-247-81
(supervisor who happened to see Ee circulating U ptn on company property did not violate Act absent proof that supervisor did anything out of the ordinary)

Road Sprinkler Fitters Local Union No. 669, etc. v. N.L.R.B. 681 F.2d 11 (C.A.D.C., June 1982)
(photographing peaceful picketing violative)

5024-4133 Photographing

Brunswick Hospital Center, Inc. 265 NLRB No. 112

Bethlehem Steel Corporation 262 NLRB No. 027
(photographing U adherent at plant while she was distributing U literature in parking lot and at plant gate, unlawful)

United States Steel Corporation 255 NLRB No. 164
(photographing Ees while picketing peacefully over inadequate facilities violative in absence of ligitimate justification such as knowledge participants would engage in violent or other illegal conduct; Bd has consistently rejected *anticipatory* defense whereby photographing of peaceful picketing is undertaken in event something might happen)

National Steel Products 252 NLRB No. 120

Excavation-Construction, Inc. 248 NLRB No. 081
(photographing of picketing Ees not violative where violence was occurring on picket line and E had reason to believe that U was engaging in impermissible strike conduct)

5024-4150 Note taking

Hochschild Kohn, Division of Supermarkets General Corporation 260 NLRB No. 025
(by security guard observing Ees meeting each other or U organizers outside in front of store, violative)

Crown Cork & Seal Company, Inc. 254 NLRB No. 174
(taking of notes by E representative while witnessing solicitation activities, which in turn was witnessed by Ees, violative where E offered no explaination for note taking)

Johns-Manville Sales Corporation JD-412-81

5024-4167 Observation by supervisors

Auther Briggs, Inc. 265 NLRB No. 035
(violation, where E's vice-president, on election day, came out of plant; and sat in caar which was five feet away from where U organizer was handing out U literature at plant entrance and remained an hour and a half during which time Ees entering plant spoke to U organizer, notwithstanding E's contention observation was for purpose of preventing further reported harassment of Ees by U where no verification of reported harassment, and inasmuch as close vantage point inhibited Ees' right to converse with U organizer)

Halo Lighting Division of McGraw Edison Company 259 NLRB No. 086
(mere presence of supervisors in company's parking lot held not to constitute unlawful surveillance of U activity, where E had reason to believe that there was a possibility of violence between competing U groups of Ees and, in fact, an altercation did occur requiring presence of police; and E has right to police anticipated violence on its property and a right to eject non-Ee U organizers from its parking lot)

Western Marine Electronics, Inc. 257 NLRB No. 057

Radische Corporation 254 NLRB No. 164
(observation of handbilling by E's production manager and supervisor, not violative where evidence was insufficient to establish any specific effort to observe handbilling)

5024-4167—Cont.

Rust Tags, Inc. **253 NLRB No. 099**
(supervisor's taking of notes as Ees punched out to go to U office to file grievances, unlawful)

Church's Fried Chicken, Inc. **JD-(SF)-301-79**
(actions of supervisor who barged into Ees' U meeting at hotel, demanded to know what had been discussed and provoked fight violative, notwithstanding E demoted supervisor and assigned him to remote area as this action was not enough to effectively repudiate supervisor's unlawful conduct)

5024-4500 Employee espionage

Nanticoke Homes, Inc. **261 NLRB No. 107**
(threat to terminate Ee spokesman unless he gave E information on U meeting, unlawful)

5024-5000 Professional espionage

ABC Liquors, Inc. **263 NLRB No. 174**
(hiring investigator to report on Ees' U activities as well as theft, unlawful)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor asking Ee if Ee had stated at U meeting that she had received only 1 merit raise while employed by E and upon Ee's denial she had made statement informed Ee several witnesses had heard her and that in effect Ee was saying that E was a terrible place to work and asked if Ee wanted U, unlawful)

5024-5300 Monitoring employees by interrogation

Air Products and Chemicals, Inc. **263 NLRB No. 045**
(E's statement to Ee that he had heard Ee was for U violative as form of unlawful interrogation not as creating impression of surveillance as it put Ee in position of having to admit or deny U involvement)

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(E's widespread inquiries into Ees' organizational activities, unlawful, since, as a kind of regular monitoring, E maintained a virtual surveillance of Ees' protected activities and, given closely-knit Ee community involved, thereby also conveyed impression of maintaining such surveillance)

5024-5400 Surveillance of employees at work

Belcher Towing Company **265 NLRB No. 159**
(E's conduct in obtaining and maintaining list of pro-U ees, covertly acquired by closely watching, inviting and listening to conversations of Ees, in context of vigorous anti-U campaign, held unlawful surveillance)

Knogo Corporation **265 NLRB No. 130**
(*Pinkerton guard's* hired by E to patrol plant premises during Ee strike threat, not violative, since there was no evidence that guards took photographs, made notes, or engaged in any other conduct other than patrolling plant premises for security purposes)

Intermedics, Inc., et al. **262 NLRB No. 178**

G.T.A. Enterprises, Inc. d/b/a Restaurant Horikawa **260 NLRB No. 029**
(Bd revised ALJ finding of violation based on E's unlawful surveillance of Ees where Bd found that finding based on *subjective impressions* of witnesses, not *objective observations*)

A.P.F. Electronics, Inc. **257 NLRB No. 068**
(following Ees to restroom when Ees were suspected of holding U meeting in restroom, unlawful, where E did not single out other private on-the-job conversations for censure)

Wometco Coca-Cola Bottling Company of Nashville, Inc. **255 NLRB No. 069**
(no unlawful surviellance of routeman who encountered supervisors on route more frequently after E learned of U activity where routeman's U activity did not bring him into contract with large number of Ees, and in view of plausible explanation for presence of supervisors at locations where they encountered routeman)

Central Freight Lines, Inc. **254 NLRB No. 157**
(placing truckdriver who was U adherent under surveillance during course of workday, not unlawful, where E had long standing policy of placing Ees under surveillance while they were performing on their routes for legitimate purposes of checking safety and job performance)

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(discharge for Ee's alleged disruptive behavior and generally *poor attitude* which caused supervisor to *watch* her, held violative where Ee's propensity to engage in protected concerted activity caught attention of E which was motivated to engage in *special surveillance* of Ee's work performance and to seize upon her first alleged transgression as pretext to terminate her)

Providence Hospital **251 NLRB No. 148**
(following U adherent while he performed his duties constituted unlawful surveillance where E's reason for conduct was not substantiated and E had previously solicited another Ee (outside Sec. 10(b) period) to report on Ees who attended U meetings and on their U activities)

Ben Franklin Division of City Products Corporation **251 NLRB No. 200**
(watching Ee at work and examining contents of his file folder containing work papers legitimate exercise of supervision and not surveillance)

Lyman Steel Company **249 NLRB No. 040**
(vice-president instructed by E *to contain (U adherent) to his welding department*)

Tarton Marine Company **247 NLRB No. 073**
(where entire work force visible to supervisors, no unlawful surveillance, absent evidence E watching Ees more closely during U campaign)

Service Spring Company A Division of Garlock, Inc. A Wholly-Owned Subsidiary of Colt Industries **JD-123-82**
(supervisor spending inordinate amount of time watching U adherent in reprisal for his U activities, or for purpose of obtaining pretextual grounds for disciplining Ee in reprisal for such U activities, violative)

Nabisco, Inc. **JD-(SF)-34-82**
(E's instituting surveillance program concerning its truck drivers, at instant facility, by outside security agency, not violative where, (1) E was experiencing difficulties with truck drivers, (2) E resorted to common method of surveillance to determine nature and scope of problems with drivers, and (3) E had no reason to believe that Ee (CP) would be among those drivers surveilled)

Ford Motor Company, Automotive Division, Twin Cities Plant **JD-57-81**
(observing one Ee closely because of his filing of grievance and another because of his U activity, unlawful)

The Babcock & Wilcox Company v. N.L.R.B. **683 F.2d 858 (C.A. 4, July 1982)**
(contrary to Bd, ct held E did not violate Act by instructing temporary supervisor in context of carrying out his duties to observe U adherent closely and remarking that company would be better off w/o him; ct found there was no substantial evidence to support Bd's conclusion that remarks were coercive toward temporary supervisor as an Ee, and noted that E should not be deterred from voicing his concerns to temporary supervisor by fear of committing ULP)

5024-5600 Surveillance of supervisors at work

International Union of Operating Engineers, Local Union No. 132, AFL-CIO **258 NLRB No. 060**
(E's causing typewriter ribbons of Ee's machine to be removed to spy on her U activities, violative)

5024-5700 Surveillance of employees in break area

Danzansky-Goldberg Memorial Chapels, Inc. **264 NLRB No. 112**
(planting microphone in Ees' lounge with intent to spy on Ees' U activities, unlawful, notwithstanding fact microphone did not work or that E's asserted purpose was to ascertain if Ees were violating contract by making calls to U and transacting U business, since *electronic eavesdropping in Ee lounge is sufficiently inimical to maintenance of Ees' Section 7 rights that it ought to take more than supervisor's after-the-fact statement to prove that E's motive for eavesdropping wholly lawful*)

Intermedics, Inc., et al. **262 NLRB No. 178**

5024-5800 Supervisors instructed to observe and report union activity or membership

Saint Vincent's Hospital **265 NLRB No. 006**

Howard Johnson Motor Lodge **261 NLRB No. 123**
(discharge of supervisor for refusal to engage in surveillance of Ees' U activity at request of E and specifically identify Ees who had attended U meeting, unlawful, notwithstanding E made demand on supervisor after supervisor voluntarily, attended U meeting, since E sought to compel supervisor to report on U activity of Ees, an ULP)

Crown Cork & Seal Company, Inc. **253 NLRB No. 035**
(requesting new plant manager to report *on the job* bothersome U activity, not unlawful where request was limited to such activity only during working time as opposed to general request)

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(directing supervisors to observe and report on Ees' U activities, not unlawful)

Methodist Hospital of Indiana, Inc. **JD-88-82**
(telling supervisors to ascertain and report names of U adherents and supervisors' compliance, violative)

Church's Fried Chicken, Inc. **JD-(SF)-301-79**
(E whose only retaliation against supervisor (who had engaged in unlawful surveillance and violence against Ees while attending U organizing meeting) was to demote him and assign him to a remote area violated Act as this did not effectively repudiate supervisor's actions)

5024-6000 Attendance at union meeting

5024-6000—Cont.

Knogo Corporation 262 NLRB No. 171
(E who deliberately attended U meeting held at bar near plant violated Act)

Knogo Corporation 262 NLRB No. 171
(presence of E's son, who was found agent, at bar at which U meeting was being held not violative where he had no knowledge of meeting, frequented that bar, was drawn into conversation with U leader and left after finishing his drink)

Zero Corporation, Zero East Division 262 NLRB No. 064
(E who told Ee he had seen her car parked outside building where U meeting was held, violated Act as he conveyed impression her U activities were under surveillance)

Midwest Motel Management Corp. of Birmingham 261 NLRB No. 100

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising 257 NLRB No. 032
(known supervisor's attendance at U meeting created impression of surveillance)

Stafford Construction Co. 250 NLRB No. 128
(statement that E would have observer at U meeting violative)

Church's Fried Chicken, Inc. JD-(SF)-301-79
(actions of supervisor who barged into Ees' U meeting at hotel, demanded to know what had been discussed and provoked fight violative, notwithstanding E demoted supervisor and assigned him to remote area as this action was not enough to effectively repudiate supervisor's unlawful conduct)

TRW-United Greenfield Division v. N.L.R.B. 637 F.2d 410 (C.A. 5, 1981)
(although unsuccessful, soliciting Ee to attend U meetings and report U activities to management, violative)

5024-6600 Observation or ascertainment of employees' meeting or place of meetings

Cumberland Farms Dairy of New York, Inc. 258 NLRB No. 120
(entering plant lunch room and adjacent diner and engaging in conversations with Ees held not unlawful surveillance where record showed that E frequented such areas and Ees made no effort to halt their discussions or conceal their gatherings)

Transportation Management Corporation 258 NLRB No. 061
(supervisor's inspecting cars in parking lot outside of hall where U organizing meeting was taking place violative)

General Electric Company 255 NLRB No. 092
(violation, where supervisor drove by hotel room where U meeting was being held, shook her finger through open door at Ees gathered in room, and circled by room again)

Clearwater Finishing Company, A Division of United Merchants and Manufacturers, Inc. 254 NLRB No. 155
(soliciting Ees to engage in surveillance of U meeting and promising reward to and actually rewarding an Ee in return for such surveillance, violative)

Elk Brand Manufacturing Company 253 NLRB No. 132
(while Ees' observations of E's president driving by U hall rendered his conduct suspect, that suspicion did not rise to level which would sustain GC's burden of proving surveillance of Ees' U activities)

Delta Faucet Company, a Division of Masco Corporation of Indiana 251 NLRB No. 071
(surveillance of U meetings of night shift Ees by night shift foreman, unlawful)

Stafford Construction Co. 250 NLRB No. 128
(statement that E would have observer at U meeting violative)

Patsy Bee, Inc. 249 NLRB No. 125

Custom Coating & Laminating Corporation 249 NLRB No. 117

Knapp Foods, Inc. d/b/a Hi-Lo Foods 247 NLRB No. 146
(violation where, soon after interrogating Ees as to whether scheduled informal gathering of Ees was in fact U meeting, supervisor momentarily visited local bar where the informal gathering was taking place)

Manifold Services, Inc. JD-734-80
(manager's distinctive automobile seen by U adherents in parking lot of pizzeria where they were meeting with U's business agent)

General Dynamics, Electric Boat Division JD-681-80
(violation, where inebriated supervisor who was allegedly inebriated wandered into U meeting at clearly marked U hall; notwithstanding lack of intent to observe or report, or that attendance was not at behest of E and E reprimanded supervisor for his actions, since supervisor's conduct was not such as to lead Ees to believe supervisor was unaware of surroundings)

Retailer's Coupon Redemption Co., Inc. JD-194-80
(violation where E's president and her family members, accompanied by certain supervisors, positioned themselves outside Ees' U organizational meeting room, where they were clearly able to note identities of Ees attending, who had to file past the president to enter the meeting room)

5024-6700 Observation or ascertainment of solicitation away from Employer's premises

United Services For The Handicapped 251 NLRB No. 117
(supervisor going to client to verify report that striking Ees were soliciting nonstriking Ees at client's premises, and to determine which strikers engaged in solicitation, violative)

5024-7100 Observation of employees meeting with union representatives

Arthur Briggs, Inc. 265 NLRB No. 036
(violation, where E's vice-president, on election day, came out of plant, and sat in car which was five feet away from where U organizer was handing out U literature at plant entrance and remained an hour and a half during which time Ees entering plant spoke to U organizer, notwithstanding E's contention observation was for purpose of preventing further reported harassment of Ees by U where no verification of reported harassment, and inasmuch as close vantage point inhibited Ees' right to converse with U organizer)

Intermedics, Inc., et al. 262 NLRB No. 178
(following Ee as she attempted to deliver authorization cards to U representative during lunch break held unlawful surveillance)

Knogo Corporation 262 NLRB No. 171
(E did not violate Act when it observed Ee talking to U organizer in plant parking lot as this conversation was conducted openly on E's own premises and U failed to prove that it had no other options in meeting with Ees)

Western Marine Electronics, Inc. 257 NLRB No. 087
(unlawful surveillance where E's president went to restaurant where Ee and U organizer were waiting to give Ees ride to U meeting, notwithstanding no direct evidence E's president overheard any remarks concerning ride to meeting, in view of E's unlawful interrogation to keep abreast of U matters, and E's president's walking to restaurant on crutches to obtain soft drink available at plant, remaining until Ee and U organizer left and his antagonistic remarks to U organizer indicative that E's president's purpose was surveillance rather than refreshment)

Montgomery Ward & Company, Inc. 256 NLRB No. 134
(violation where E engaged in surveillance of U organizers and Ees on lunch break in public cafeteria in E's store)

Metropolitan Life Insurance Company 256 NLRB No. 100
(asking Ee to report conversations at her luncheon meeting with U officials, and asking Ee the next day about what transpired at such luncheon upon which Ee informed E exactly what was said by each Ee, violative)

Friday Canning Corporation 255 NLRB No. 082
(crew leader's presence on two occasions in migrant workers' barracks when U organizer spoke to Ees with E's permission, violative where E purposely had him present, provided no other explanation, admitted that it told supervisor to keep E informed of organizing activities, and U had no alternative access to Ees)

Oakwood Manor, Inc., d/b/a Danville Nursing Home 254 NLRB No. 108
(supervisor's sitting in his car w/i one block of Ee's home while U meeting in progress, violative)

Woodland Molded Plastics Corp. 250 NLRB No. 020
(setting aside of election warranted where E's treasurer observed for 10-15 minutes activities between U organizers and Ees taking place on public property; notwithstanding his initial presence was for lawful purpose of keeping U organizers off E's property in response to reports U organizers on company property)

5024-7300 Compiling lists of union activists and sympathizers

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation 258 NLRB No. 142
(management personnel attending U meeting and checking off names on computer payroll printout lists of Ees attending U meeting, violative)

Methodist Hospital of Indiana, Inc. JD-85-82
(telling supervisors to ascertain and report names of U adherents and supervisors' compliance, violative)

Metropolitan Teletronic Corp. JD-(NY)-12-81
(telling Ees that an Ee had supplied E with list of Ees who had attended U meeting and showing them list, violative)

5024-7500 Warning employees that union activities were being spied on

A & T Manufacturing Company 265 NLRB No. 201

The Moore Company, Inc., Div. of Basco Corp. 264 NLRB No. 189
(where supervisor commented to Ee that he had seen Ee talking to another Ee and questioned Ee as to whether latter Ee had asked him to sign U authorization card; questioning regarding card solicitation unlawful but supervisor's comment that he saw two Ees talking, without more did not constitute unlawful surveillance)

5024-8300 Tape recording or listening device

5024-8300—Cont.

Danzansky-Goldberg Memorial Chapels, Inc. **264 NLRB No. 112**
(planting microphone in Ees' lounge with intent to spy on Ees' U activities, unlawful, notwithstanding fact microphone did not work or that E's asserted purpose was to ascertain if Ees were violating contract by making calls to U and transacting U business, since *electronic eavesdropping in Ee lounge is sufficiently inimical to maintenance of Ees' Section 7 rights that it ought to take more than supervisor's after-the-fact statement to prove that E's motive for eavesdropping wholly lawful*)

Mark Lines, Inc. **255 NLRB No. 191**
(Ees taping U meeting, not unlawful, where there was no evidence that Ees involved in taping acted as agents, supervisors, or representatives of E or that they acted under direction, authorization or request of E)

5024-9900 Other

Intermedics, Inc., et al. **262 NLRB No. 178**
(conspicuously observing Ees as they entered gates of E facility by stationing guards at such locations held unlawful surveillance)

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Dugdale General Hospital **253 NLRB No. 092**
(where E sponsored Ee committee, led meeting, conducted vote, counted ballots in secret, announcing that E's proposals were accepted, such activity constitutes surveillance and is violative)

5030 INTERROGATION CONCERNING UNION ATTITUDE, MEMBERSHIP, OR ACTIVITIES (See also 512- 5048)

Palomar Transport, Inc. **JD-(SF)-138-80**
(E's interrogation of U adherents as to their own and coworkers' sympathies, unlawful, where E failed to indicate that it had any legitimate purpose for questioning them and gave Ees no assurance against retaliation)

J.J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation v. N.L.R.B. **645 F.2d 148 (C.A. 2, Mar 21, 1981)**
(interrogation and solicitation of Ees was supported by substantial evidence and was unlawful)

5030-0100 Generally

Hillside Avenue Pharmacy, Inc. **265 NLRB No. 205**
(E's inquiry of U representative as to whether Ee had signed U card, not unlawful, since no Ees were present when inquiry was made)

Daniel Construction Company, A Division of Daniel International Corporation **264 NLRB No. 079**
(legality or illegality of statement is not measured by subjective reaction of listener, but by objective character of statement made in the circumstances)

Hedison Manufacturing Co. **260 NLRB No. 137**
(test of whether Ees were coerced by E's interrogation is not whether Ees were actually coerced but whether E's conduct could reasonably said to have *tendency* to interfere, restrain or coerce Ees in exercise of Sec. 7 rights)

Walter Carpet Mills, Inc. **259 NLRB No. 096**
(series of interviews held just prior to critical period with Ees regarding their job concerns not violative in their entirety since there were only two isolated violations involving unlawful interrogation which did not constitute pattern of illegal conduct in view of fact approximately 140 Ees interviewed)

Mark I Tune-Up Centers, Inc. **256 NLRB No. 138**
(interrogation by E relating to U activities contains potential danger of coercing Ees; and even when questions are not uttered in context of threats or promises, questions regarding U sympathy, affiliations, organization or activity have natural tendency to instill fear of discrimination in mind of Ees)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(questioning outspoken U supporters as to what they thought U could do for Ees, whether they would still *be union* if they had it to do over again, and whether they had had opportunity to sign ptn for new U election held unlawful, notwithstanding Ees were open and known U supporters and inquiries were unaccompanied by threats or promises; accordingly, Bd hereby overruled *Stumpf Motor Co. and B.F. Goodrich Footwear* to extent they hold that an E may lawfully initiate questioning about Ees' U sentiments where Ees are open and known U supporters and inquiries are unaccompanied by threats or promises)

Locke Industries, Inc. **JD-346-82**
(allegation that E coercively interrogated Ee dismissed where interrogation took place after Ee had resigned and was no longer an Ee)

Jeffrey Manufacturing Division, Dresser Industries, Inc. v. N.L.R.B. **654 F.2d 944 (C.A. 4, 1981)**
(E's allegations that its interrogations were not sufficiently coercive to be violative and that Bd must judge them according to *Bourne* criteria, rejected, 4th Circuit was not bound by Bourne test, Bd had discretion to ascertain coerciveness, and surrounding circumstances, including antiU animus, show Bd did not abuse discretion)

N.L.R.B. v. Robin American Corporation **654 F.2d 1022 (C.A. 5, 1981)**
(ct held that evidence amply supported the tendency of interrogations and threats during critical period to coerce)

N.L.R.B. v. Los Angeles New Hospital **640 F.2d 1017 (C.A. 9, Mar 3, 1981)**
(interrogation of Ees by E violates Section 8(a)(1) where that interrogation carries threat of reprisal against Ee or when it forms pattern of coercive conduct tending to inhibit exercise of Section 7 rights; test is whether, underall circumstances, interrogation reasonably tends to restrain or interfere with Ees in exercise of their protected rights)

N.L.R.B. v. Brewton Fashions, Inc., a Division of Judy Bond **682 F.2d 918 (C.A. 11, Aug. 1982)**
(proper evaluation of the evidence, however, requires more than merely examining a list of factors since intimidation may occur even if all factors cut in favor of the E)

5030-0125 Coercive circumstances

Quality Packaging, Inc. **265 NLRB No. 142**
(passing out peanut pins to Ees and supervisors on election day, held not coercive interrogation as pins, even if worn, did not purport to show U Ees' sympathies)

Knogo Corporation **265 NLRB No. 130**
(Ee allegedly being questioned by supervisor as to what Ee would do in event of strike (against E), not violative, since inquiry, if made, was not coupled with any coercive statement that any disciplinary action would follow)

Saint Vincent's Hospital **265 NLRB No. 006**
(questioning Ee in Ee's locker room about U literature she was carrying violative notwithstanding atmosphere was pleasant, questioning not part of any *systematic and intensive* interrogation and supervisor neither reprimanded nor scolded Ee, as this is conduct which interferes with Ee rights)

Daniel Construction Company, A Division of Daniel International Corporation **264 NLRB No. 079**
(test of whether an E's interrogation of an Ee violated Section 8(a)(1) is whether, under all the circumstances, the interrogation reasonably tends to restrain or interfere with Ees in the exercise of rights guaranteed them by the Act)

Fairleigh Dickinson University **264 NLRB No. 098**
(test for whether interrogation is coercive. It is well settled that test of interference, restraint, or coercion under Section 8(a)(1) does not turn on E's motive or whether coercion succeeded or failed. Test is whether E engaged in conduct which it could reasonably be said, tends to interfere with free exercise of Ees' rights under Act)

General Electric Company **264 NLRB No. 126**
(interrogation concerning U activity violative notwithstanding it was not accompanied by promises or threats)

Union Mining Company of Allegany County, Inc. **264 NLRB No. 052**
(asking Ee about his testimony at Bd hearing and accusing him of lying, unlawful)

Host Services, Inc. **263 NLRB No. 086**
(questioning Ees about their U sentiments violative, notwithstanding Ees openly supported U)

Oklahoma City Collection District of Browning-Ferris, Inc. **263 NLRB No. 012**
(interrogation of Ee concerning his U activity violative, notwithstanding Ee felt he had not been coerced)

Knogo Corporation **262 NLRB No. 171**
(E who asked Ee if he had signed U authorization card violated Act, notwithstanding Ee initiated conversation and E may not have been antagonistic in his questioning)

R. L. White Company, Inc. **262 NLRB No. 069**
(E's interogation of Ee concerning how he would vote in election violative, notwithstanding Ee stated he would vote for U and later went on strike as such statements are presumptively coercive)

Zero Corporation, Zero East Division **262 NLRB No. 044**
(E who asked Ee what he expected to get out of U violated Act as such porbing of Ees motives is coercive even absent threats of reprisal)

Howard Johnson Motor Lodge **261 NLRB No. 123**
(E's manager asking Ee what Ee thought of E's anti-U remarks at assembly of Ees, and how she thought representation election would turn out, not unlawful, since interrogation not of coercive character)

Hedison Manufacturing Co. **260 NLRB No. 137**
(E who published in newspaper and posted on plant bulletin board notice requesting Ees who were interviewed by or gave statements to Bd agents to identify themselves to E violated Act because written request that Ees who have cooperated with Bd investigation into E's alleged ULP's identify them-

5030-0125—Cont.

selves is coercive where E did not state purpose of request, no assurances against reprisal were given; such requests create fear that E may retaliate against Ees who gave statements)

Amoco Fabrics Co., Patchogue-Plymouth Division/ Nashville Mills 260 NLRB No. 098
(notwithstanding supervisor and Ee were good acquaintences, interrogation concerning U activity violative)

Holland American Wafer Company 260 NLRB No. 041
(asking Ee how many Ees had attended U meeting and comment, *Well, you were there,* held coercive notwithstanding fact that supervisor had *fairly open relationship* with Ee)

Graham Architectural Products Corporation 259 NLRB No. 153
(former supervisor asking U supporter what she thought U could get for her held violative notwithstanding question came up in personal conversation about Ee's baby and general discussion about U benefits and wages around country as such *friendly* interrogation is unlawful and Ee's former supervisor was still E's agent)

Graham Architectural Products Corporation 259 NLRB No. 153
(although supervisor assured Ee that nothing would happen to Ee if she answered questioned about how she felt about U, inquiry into Ee's views toward U held violative even in context of assurances against reprisals)

Graham Architectural Products Corporation 259 NLRB No. 153
(asking Ee whether she was *for the U* violative notwithstanding Ee replied she did not need to tell him but then answered, since here, supervisor, though conceding Ee did not need to answer *did not withdraw the question* and so silence could be construed as support for U)

Saint Luke's Hospital 258 NLRB No. 045
(supervisor's asking Ees why they wanted U and whether it was related to her supervisory activity violative, as E interference, restraint and coercion does not turn on motive but whether conduct may reasonably be said to interfere with free exercise of Ee rights)

Brockwood Furniture, Division of U.S. Industries 258 NLRB No. 028
(coercive impact of E's probing into Ee's U sentiments which was accompanied by threats of changes and comments indicating E's displeasure with Ee's U activities and that E was interrogating other Ees not diminished by fact that Ee being interrogated was known U supporter)

Colum Equipment, Inc. 257 NLRB No. 015
(interrogating U adherents, unlawful notwithstanding E did not accompany interrogation with threats or promises and did tell one U adherent that no Ee would lose his job because of U support; such interrogation is coercive though not in context of threats or promises and though Ees are openly pro-U; interrogation herein was against background of ULPs and was directed to Ees' own U activities rather than to activities generally, so that E appeared to seek information as basis for taking action against questioned Ees in particular)

Raley's, Inc. 256 NLRB No. 155
(supervisor's questioning of Ee concerning her U preference violative, notwithstanding there was no fear on part of Ee in responding to supervisor where there was no justification for inquiry or any assurances given that there would be no reprisals if she chose not to respond)

Harrison Steel Castings Company 262 NLRB No. 059
(notwithstanding inquiry by supervisor to Ee as to why he was wearing pencil holder with U logo was friendly in nature occurring in circumstances lacking any suggestion of harassment and Ee openly manifested support of U, Bd found violation as inquiries of this kind convey E's displeasure with Ee's U activity and coercive impact not diminished by Ee's open support of U or by absence of attendant threats)

Mark I Tune-Up Centers, Inc. 256 NLRB No. 138
(in order to fully evaluate interrogation's tendency to coerce, it is necessary to examine all of the surrounding circumstances; actual coercion is not necessary, but rather, true test is whether questioning tends to be coercive; and isolated interrogation, occuring in atmosphere free of coercive conduct, is not per se unlawful)

Swanson-Nunn Electric Company 256 NLRB No. 131
(questioning Ee concerning his U activity violative, notwithstanding it was done in *joking* manner)

The Swingline Company; Spotnails, Inc. 256 NLRB No. 119
(low level supervisor's questioning of Ee who had declared her U preference violative notwithstanding there were no threats of reprisals as it made Ee aware of her supervisor's position on U and possibility of dissuading Ee existed)

Transportation Management Corp. 256 NLRB No. 025
(supervisor's questioning co-worker about Ee's U interests coupled with threats of reprisals and statements creating the impression of surveillance were not casual, isolated, or friendly incidents and held coercive interrogations)

Complas Industries, Inc. 255 NLRB No. 186
(E's questioning of one Ee about another Ee's work performance and U activity, unlawful since it was neither isolated nor innocuous and did not meet *Johnnie's Poultry* standards, where Ee was questioned more than one time on same subject by high management official and was not assured against reprisals or informed that he was free to refuse to answer; neither *Johnnies Poultry* nor later cases have limited requirements of that case strictly to attorneys)

W. W. Grainger, Inc. 255 NLRB No. 145
(interrogation is coercive if it may have tendency to coerce Ee in free exercise of his rights and where E questioned allegedly violatively discharged Ee in his own home in amicable manner it nontheless violated Act)

Robert King d/b/a Regency At The Rodeway Inn 255 NLRB No. 133
(supervisor's questioning of Ee as to whether she knew who was passing around U ptn violative and not so *de minimis* as to require no remedial order notwithstanding U activity had ended by time of interrogation, E engaged in no other unlawful acts, statutory rights of only 1 Ee violated and that Ee did not communicate that fact to other Ees)

Gossen Company, a Division of the United States Gypsum Company 254 NLRB No. 041
(supervisor asking Ee *what Ee thought U could do for him*, unlawful, notwithstanding question unattended by threats of reprisal or promises of reward and fact Ee had already declared himself by wearing U button, since query conveyed E's displeasure and coercive impact not diminished by E's open U support or absence of threats and prior decisions to the contrary overruled)

Gossen Company, a Division of the United States Gypsum Company 254 NLRB No. 041
(supervisor asking Ee who was wearing U button *what button meant to Ee and why he was wearing it*, unlawful, notwithstanding question unaccompanied by threat or promise since conveyed E's displeasure and coercive impact not diminished by E's open U support or absence of attendant threats and prior decisions to the contrary overruled)

Shirt Shed, Inc. 252 NLRB No. 042
(interrogation of openly pro-U Ees concerning their U sympathies or reasons for supporting U violative; fact that questioning did not contain threats does not remove its coercive nature)

Westwood Import Company, Inc. 251 NLRB No. 162
(supervisor asking U steward who had been passing out information for U why she was *so much for U* after he had requested steward to cease distribution activities, unlawful, since supervisor was high-up in hierachy and questioning took place in his private office at a time when E was unlawfully refusing to bargain)

Weyerhaeuser Company 251 NLRB No. 097
(questioning Ee about wearing U button and *if it was going to feed him*, violative)

Lippincott Industries, Inc. 251 NLRB No. 034
(interrogation of 2 Ees, unlawful, since probing of views on Us, even addressed to Ees who have openly declared their prounion sympathies, is coercive)

Henry A. Young, d/b/a Columbia Engineers International 249 NLRB No. 144
(E at meeting he called after being notified U had claimed majority asking Ees how many of them had signed up with U, unlawful, in context of extreme animus displayed by E at meeting, notwithstanding Ees did not answer)

Sentry Investigation Corp. 249 NLRB No. 130
(E's president interrogating Ees as to whether they had signed card for U, who was ring leader of drive to change bargaining representative, and who had signed U cards, unlawful; notwithstanding contention Ees not coerced where no reason stated for questions and no assurances against reprisals given, one Ee questioned was threatened with reduction of and change in hours, and another Ee requested legal counsel to be present as subsequent interview with E's president)

National Southwire Aluminum 247 NLRB No. 175
(E's statements to Ee wearing U button that his U activities would have negative effect on his chances for job reassignment constitute threat but not interrogation as to his U sympathies)

Boyle-Midway, Inc., Division of American Home Products Corp. 247 NLRB No. 124
(systematic interrogation about U with individual Ees in locus of authority, violative, where purpose of questioning was not revealed and no assurance against reprisals were made)

Methodist Hospital of Indiana, Inc. JD-88-82
(asking Ee to wear *Happiness is No Union* button, unlawful notwithstanding Ee had option of not wearing it and refused to take button)

Adbill Management Corporation d/b/a Limetree Beach Hotel JD-61-82
(E's asking Ees to declare their feelings on appointment of particular Ee as U steward and telling Ees that E *would never have chosen* her to be shop steward, violative; E was intruding into enclave which was business of no one but the U)

5030-0125—Cont.

Formaloy Corp. JD-(ATL)-87-81
(interrogation of Ees concerning their U sympathies, etc., unlawful unless safeguards set out in *Johnnie's Poultry Co.* 146 NLRB 770 at page 775, have been met)

Mr. Herbert of California, Inc. JD-(SF)-83-81
(E's asking prospective supervisor *suppose there is a vote, How are you going to vote?*; not violative, since statements were too vague and ambiguous; statements reflected isolated interrogation conducted in noncoercive setting)

The Wackenhut Corporation JD-60-81
(supervisor violated Act when he asked Ee on several occasions *How is the U going* notwithstanding interrogation unaccompanied by any threat or warning)

Perry Plaza, Inc. JD-(SF)-367-80
(interrogation of Ees tending to be coercive is not cured by casual nature or friendly tone of conservation)

Datagraphix, Inc. JD-(SF)-344-80
(personnel administrator's suggestion to Ee during her preemployment interview that she avoid discussion of organizing effort then under way by claiming disinterest in process, unlawful where circumstances carried coercive implications beyond literal meaning of words used)

McLean Trucking Company JD-368-80
(manager's calling Ee into his office and privately questioning her because he had learned that Ees had signed U cards, violative where there was no evidence of any assurances against reprisals; in addition, private conference conducted in manager's office tended to contribute to coercive atmosphere)

Byrne Sand & Gravel Co., Inc. JD-314-80
(supervisor asking Ee *what's this I hear about U*, not unlawful, where isolated incident and absent U animus)

Palomar Transport, Inc. JD-(SF)-158-80
(E's interrogation of U adherents as to their own and coworkers' sympathies, unlawful, where E failed to indicate that it had any legitimate purpose for questioning them and gave Ees no assurance against retaliation)

Church's Fried Chichen, Inc. JD-(SF)-301-79
(questioning Ee about U's organizing effort by low level supervisor violative where E's higher-level management had clearly indicated their anti-U feelings and had discharged supervisor who had become involved in U activity)

N.L.R.B. v. Hasbro Industries, Inc. 672 F.2d 978 (C.A. 1, Feb. 1982)
(interrogation of low-level Ee, who spoke English with difficulty, by vice presidents in isolated setting as to why he wanted U, unlawfully coercive)

N.L.R.B. v. Amber Delivery Service, Inc. 651 F.2d 57 (C.A. 1, June 1981)
(questioning of known U supporter by company president, in his office with supervisor present, on same day that Ees held meeting in midst of U organizing campaign violative)

K & K Gourmet Meats, Inc. v. N.L.R.B. 640 F.2d 460 (C.A. 3, 1981)
(E who questioned Ee regarding her personal position on unionization did not violate Act where U had already informed E it represented majority of Ees, Ee was *good friend* of E and no coercive element was present)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. 691 F.2d 1133 (C.A. 4, Sept. 20, 1982)
(E who persistently questioned Ee as to whether she favored U, violated Act as this type of questioning has reasonable tendency to intimidate, notwithstanding Ee initiated conversation, unhesitatingly volunterred her pro-U sentiments and stuck by her position)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. 691 F.2d 1133 (C.A. 4, Sept. 20, 1982)
(questioning of Ee by supervisor occuring in locked office, and containing threats of plant closure violative)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. 691 F.2d 1133 (C.A. 4, Sept. 20, 1982)
(where E's attorney questioned about 70 Ees regarding their signing of U authorization cards and read statement to all but one Ee that Ee could refuse to cooperate and face no reprisals, it nevertheless violated Act as to that one Ee as Bd has ruled that failure to observe *Johnnie's Poultry* 146 NLRB 770, standards is a *per se* violation of Sec. 8(a)(1))

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. 691 F.2d 1133 (C.A. 4, Sept. 20, 1982)holding interview behind locked doors was coercive and under such circumstances even truthful comments by supervisor impermissible as tending coercively to discourage unionization)

Central Freight Lines, Inc. v. N.L.R.B. 666 F.2d 238 (C.A. 5, Jan. 1982)
(interrogation of two Ees improper since it reasonably tended to coerce Ees, in light of E's demonstrated antipathy to unionization and discharge, shortly after alleged interrogations, of both Ees which do not lend credence to E's portrayal of these incidents as harmless exchanges)

TRW-United Greenfield Division v. N.L.R.B. 637 F.2d 410 (C.A. 5, 1981)
(interrogation found coercive where E systematically tried to ascertain Ees' U sympathies, Ee was questioned in office of and by Safety and Training Director when Ee sought assistance on personal matter; Ee's evasive answer indicated fear of retaliation, E did not give purpose of questions and gave no assurance against retaliation)

TRW-United Greenfield Division v. N.L.R.B. 637 F.2d 410 (C.A. 5, 1981)
(interrogation of U adherent found coercive in view of E's opposition to U and systematic effort to ascertain U smypathies, Ee was questioned by and in office of high ranking official and refused to answer until assured of no reprisals, E sought specific responses, including possibly names of Ees who attended U meetings and lached valid purpose)

N.L.R.B. v. Streamway Division of The Scott & Fetzer Company 691 F.2d 288 (C.A. 6, Oct. 1982)
(asking Ees if they wished to join U because of their complaints, not unlawful in absence of evidence of actual or intended restraint; questioning of Ees by professional attitude survey company hired by E did not have probable effect of coercion and had actual effect testified to by Ees of relaxed atmosphere and air of confidentiality)

N.L.R.B. v. Jarva Incorporated 623 F.2d 483 (C.A. 6, 1980)
(supervisor predicting to Ee and to another Ee that because Ee was instigator of U that Ee would be head committeeman once U got in, not unlawful, since statements made jokingly and Ees stated they felt no coercion)

Sioux Products, Inc. v. N.L.R.B. 684 F.2d 1251 (C.A. 7, Aug. 1982)
(interrogation of Ees is not *per se* violative of Act. To fall w/i ambit of Sec. 8(a)(1), either words themselves or context in which they are used must suggest element of coercion or interference)

N.L.R.B. v. Rich's Precision Foundry, Inc. 667 F.2d 613 (C.A. 7, Dec. 1981)
(questioning Ee with which he ordinarily would have no contact by plant manager in his own office about U activities of another Ee held coercive interrogation)

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)
(*test if not whether Ee was actually coerced but whether questions tend to coerce*)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. 636 F.2d 1255 (C.A. 7, 1980)
(ct held contrary to Bd that supervisor's asking Ee in supervisor's office how she felt about U after stating that Us only sit on their butts, collect dues, and cause old people like Ee to lose their jobs did not amount to coercive interrogation where supervisor only conveyed her views of consequences of unionization and was making noncoercive prediction)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. 636 F.2d 1255 (C.A. 7, 1980)
(ct held contrary to Bd that supervisor's questioning Ee twice on how she felt about U did not constitute coercive interrogation where there was no implied or stated threat)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. 636 F.2d 1255 (C.A. 7, 1980)
(ct held contrary to Bd that supervisor's act of calling Ee to her office and telling him not to hand out U literature did not constitute act of coercive interrogation where Ee testified that supervisor never questioned Ee but only explained to him company policy regarding solicitation)

Pelton Casteel, Inc. v. N.L.R.B. 627 F.2d 23 (C.A. 7, 1980)
(foreman's actions of calling approximately fifty Ees to his office one at a time to explain significance of U cards held, contrary to Bd, not to constitute unlawful interrogations where thrust of interviews was to inform Ees that E was against unionization and record does not indicate that any Ee could reasonably have viewed interviews as coercive)

N.L.R.B. v. Mark I Tune-Up Centers, Inc. 691 F.2d 415 (C.A. 8, Oct. 1982)
(factors ct considers in determining whether coercive interrogation took place are: 1)history of E hostility, 2) nature of information sought, 3) identi-

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ty of questioner; 4) place and method of interrogation; and 5) truthfulness of reply)

Nebraska Bulk Transport, Inc. v. N.L.R.B. 608 F.2d 311 (C.A. 8, 1979)
(interrogation of Ee's wife regarding U activities of Ees, unlawful)

N.L.R.B. v. Brooks Cameras, Inc. 691 F.2d 912 (C.A. 9, Nov. 1982)
(E's interrogation of its Ees constitutes ULP when, under circumstances, it reasonably tends to restrain or interfere with Ee U activity)

N.L.R.B. v. Los Angeles New Hospital 640 F.2d 1017 (C.A. 9, Mar 3, 1981)
(E's president asking Ee if she knew anything about scheduled U meeting and to relay to him name of other Ees at meeting, subsequently requesting Ee not to go to U meeting and after meeting asking Ee if she signed U card, unlawful, where Ee not assured that no reprisal would be taken and it was not communicated whether there was valid purpose in asking question)

N.L.R.B. v. Los Angeles New Hospital 640 F.2d 1017 (C.A. 9, Mar 3, 1981)
(violation, where E's president asked Ee if she had attended U meeting and names of people at meeting, and Ee was subsequently asked by supervisor how she felt about U during interview in which she protested transfer since Ee was not assured no reprisals would be taken and it was not communicated whether there was valid purpose in asking question)

Clear Pine Mouldings, Inc. v. N.L.R.B. 632 F.2d 721 (C.A. 9, 1980)
(interrogation of Ees, assertedly to investigate unfavorable and untrue rumors concerning E's future course of conduct if U were defeated, violative, where Ees were not assured against reprisals or told why they were beng questioned; moreover, rumors were too speculative to be taken seriously)

N.L.R.B. v. Silver Spur Casino 623 F.2d 571 (C.A. 9, 1980)
(enforcement granted on Bd's determination that interrogation of Ee, unlawful, where totality of circumstances indicated animosity towards Ee for her U activity and threat of discharge for any *further* violation of E's no solicitation rule was made)

Butler-Johnson Corporation v. N.L.R.B. 608 F.2d 1303 (C.A. 9)
(no violation, where no evidence E authorized remarks of *low level supervisor*; further, where *low level supervisor* had voted in election and Ees knew that his anti-U bias was personal Ees did not have just cause to believe he had made threatening remarks on behalf of management)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. 676 F.2d 483 (C.A. 11, May 1982)
(Es are permitted to talk to their Ees and to question them about their U activities so long as conversation is not threatening or coercive in violation of Sec. 8(a)(1); in judging likely impact of such conversation, totality of circumstances surrounding conversation must be considered)

5030-0150 Coercive in light of other unfair labor practice

Like Corporation JD-(SF)-69-80
(interrogation concerning U sympathies violative notwithstanding accompanied by assurances against reprisal where also accompanied by offer of benefit)

N.L.R.B. v. Amber Delivery Service, Inc. 651 F.2d 57 (C.A. 1, June 1981)
(isolated, fleeting conversations between U adherents and company president regarding whether Ees could *help him out in any way* violative where they followed presidents receipt of U ptn were one-to-one encounters in small workforce)

5030-0175 Not coercive per se

Hackensack Hospital Association 264 NLRB No. 177
(supervisor who showed Ee piece of U literature, told him he picked it up near maintenance shop, and asked Ee if he had ever seen it did not violate Act, as this question w/o any other inquiry concerning Ee's U activity or membership and w/o evidence regarding time and circumstances of questioning is insufficient to show an unlawful purpose)

Mark I Tune-Up Centers, Inc. 256 NLRB No. 138
(in order to fully evaluate interrogation's tendency to coerce, it is necessary to examine all of the surrounding circumstances; actual coercion is not necessary, but rather, true test is whether questioning tends to be coercive; and isolated interrogation, occuring in atmosphere free of coercive conduct, is not per se unlawful)

John Cuneo, Inc. 253 NLRB No. 110
(mere asking experienced skilled Ee if he intended to attend Bd hearing, not violative where Ee's supervisory status was in question and Ee would probably be witness at Bd hearing)

Sweetheart Cup of Texas 251 NLRB No. 087
(supervisor's asking Ee single question of how he liked film on Teamsters U that E had shown at Ee meeting, not coercive)

James F. Stanford, Inc. d/b/a Ace Machine Co. 249 NLRB No. 079
(questioning applicant for supervisory position how he felt about U not violative, since such individuals must be treated as supervisors and not as Ees under Act notwithstanding he was subsequently hired as rank-and-file Ee)

Mr. Herbert of California, Inc. JD-(SF)-83-81
(informing *leadman* that his occupancy of prospective supervisory position would require him to resign from U and to forswear any U activity, not violative, since statement made in context of discussing managerial position with Ee)

Mr. Herbert of California, Inc. JD-(SF)-83-81
(E's asking prospective supervisor *suppose there is a vote. How are you going to vote?*; not violative, since statements were too vague and ambiguous; statements reflected isolated interrogation conducted in noncoercive setting)

Perry Plaza, Inc. JD-(SF)-367-80

Clements Wire and Manufacturing Company, Inc. JD-338-80
(supervisor's engaging in interrogation w/o giving Ees assurance against reprisals, unlawful)

Southwestern Bell Telephone Company JD-(SF)-304-79
(E's inquiries regarding possible violations of valid rule restricting access of U representatives to Ees who are working can be interpreted as involving an effort by E to ascertain facts to aid investigation into unauthorized visits of non-Ees; although U activity may have been the conduct that generated violations of valid plant rules, E will not be precluded from questioning Ees about violations of such rules or be barred from reminding Ees that they are not to engage in activity in disregard of rules)

Burns Electronic Security Services, Inc. v. N.L.R.B. 624 F.2d 403 (C.A. 2, 1980)
(Bd's finding that E's manager's inquiry among Ees as to who was filing charges in regard to change in job requirements was unlawful interrogation reversed since there was no finding by Bd or substantial evidence on record that statement was motivated by anti-U animus, that it was made in attempt to seek information upon which E would take action against pro-U Ees, or that it was made in coercive or hostile setting)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. 691 F.2d 1133 (C.A. 4, Sept. 20, 1982)
(E who granted Ee's request for time off and stated that he was granting her request because he knew she had not signed U card did not violate Act, because when Ee responded that she had signed U card, he still granted her time off, thus dispelling any threat of reprisal)

Sioux Products, Inc. v. N.L.R.B. 684 F.2d 1251 (C.A. 7, Aug. 1982)
(interrogation of Ees is not *per se* violative of Act. To fall w/i ambit of Sec. 8(a)(1), either words themselves or context in which they are used must suggest element of coercion or interference)

N.L.R.B. v. Circo Resorts, Inc., d/b/a Circus, Circus 646 F.2d 403 (C.A. 9, May 1981)
(while questioning Ees concerning U activities is not a per se violation of Sec. 8(a)(1), Bd determination that interrogation has been coercive is entitled to be upheld so long as there is substantial evidence to support it)

5030-2000 Questioning of applicants for employment

Grumman Flxible Corporation 264 NLRB No. 034
(question on employment application concerning prior workmen's compensation claims not violative as it is pertinent question bearing upon applicant's history of personal injury)

Ohio Brass Company 261 NLRB No. 018
(E's inquiry of applicant on its employment application form whether applicant had previously filed industrial or workers' compensation claim, not violative since E had legitimate and substantial business justification for its inquiry, i.e., health and safety of its work force)

Clear Pine Mouldings, Inc. v. N.L.R.B. 632 F.2d 721 (C.A. 9, 1980)
(ct held E violated Act where personnel manager urged prospective Ee not to join U; absence of threats does not alter conclusion)

5030-2050 Questioning applicants as to their union membership, adherence, or activities

Danzansky-Goldberg Memorial Chapels, Inc. 264 NLRB No. 112
(violation, where supervisor asked Ee when she was applicant and new Ee how she felt about Us, warned her that U adherents who were poor role models would try to recruit her into U and that she should let supervisor know if harassed in any way, informed her that owner was opposed to U, and advised her to stay out of U)

Semi-Alloys, Inc. 260 NLRB No. 127
(questioning job applicants about U sympathies during pre-polygraph-test interview, violative)

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A & A Ornamental Iron, Inc. 239 NLRB No. 138

(interrogating job applicant about his past U membership or affiliation, unlawful)

Cumberland Farms Dairy of New York, Inc. 258 NLRB No. 120

(asking applicant if he belonged to U and subsequently stating that *company frowns on Us*, violative)

Trans-State Lines, Inc. 256 NLRB No. 116

Quality Drywall Company, Inc. 254 NLRB No. 075

(questions concerning former U membership and U preference, in context of job application interviews, are inherently coercive w/o accompanying threats, and are therefore violative)

Eastern Maine Medical Center 253 NLRB No. 024

(interrogation of job applicants by high official of E in her office regarding their positions concerning U, which was not accompanied by assurance against reprisal, had no lawful purpose, and took place in atmosphere conducive to coercion, unlawful)

Smith Auto Service, Inc. 252 NLRB No. 068

(violation where at prehire interview E president asked prospective Ee if he liked U and did he have anything against U)

Henry A. Young, d/b/a Columbia Engineers International 249 NLRB No. 144

James F. Stanford, Inc. d/b/a Ace Machine Co. 249 NLRB No. 073

(questioning applicant for supervisory position how he felt about U not violative, since such individuals must be treated as supervisors and not as Ees under Act notwithstanding he was subsequently hired as rank-and-file Ee)

Lyman Steel Company 249 NLRB No. 040

Nice-Pak Products, Inc. 248 NLRB No. 173

Vantage Petroleum Corp. 247 NLRB No. 202

(E's inquiry as to whether individuals were interested in employment w/o U representation, not violative, where inquiry merely sought to see whether the individuals were interested in employment at E's stated terms and conditions or were insisting upon package deal)

All-New Stamping Co. JD-(SF)-247-81

(E's question to Ee, *why are you wearing that (U) button?* did not violate Act as it was informal question and there was no history of E hostility towards U)

Material Transportation, Co., Inc. JD-670-80

(utilizing and maintaining employment application forms which contained inquiry as to applicants' U affiliations, violative)

RMX, Inc. JD-583-80

(interrogating applicants for employment concerning their feelings toward Us, unlawful)

Sunnyvale Porsche Audi, Inc. JD-(SF)-9-80

(violation, where applicant was informed Ees had elected to go U, that there might be strike, and asked whether she would cross picket line)

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)

(violation, where E delved into strength of Ee's U sympathies)

Eastern Maine Medical Center v. N.L.R.B. 658 F.2d 1 (C.A. 1, 1981)

(interrogation of job applicants as to their opinion of Us during employment interview, in context of picketing of E by those holding jobs that applicants would hope to hold, unlawful where interviewer did nothing to diminish apprehension caused by her remarks, and E suggested no legitimate purpose for her queries)

Kenneth & Mary M. McGlaughlin, Co-Partners, d/b/a Hudson-High Super Duper v. N.L.R.B. 653 F.2d 673 (C.A. 4, July 1981)

(questioning job applicant about his U activities and refusing to hire him violative notwithstanding job opening did not turn out to exist)

N.L.R.B. v. Slotkowski Sausage Company 620 F.2d 642 (C.A. 7, 1980)

(in plant where 2 Us have outstanding contracts it is not illegal to ask applicant in pre-employment interview whether he belongs to U and if so which one)

N.L.R.B. v. Bighorn Beverage 614 F.2d 1238 (C.A. 9) (1980)

(where employment agency used application forms containing questions about applicant's U activities, E violated Act when it took no action to alleviate impression these forms made on applicants)

5030-3000 Questioning relatives of employees

Nebraska Bulk Transport, Inc. v. N.L.R.B. 608 F.2d 311 (C.A. 8, 1979)

(interrogation of Ee's wife regarding U activities of Ees, unlawful)

5030-4000 Questioning of employees

Capriccio's Restaurant, Inc. 249 NLRB No. 180

(violation where E asked Ee if he felt guilty for having caused E to discharge fellow Ee for engaging in U activities, which was followed by unlawful discharge of Ee when he disclaimed any guilt feelings)

N.L.R.B. v. Eastern Steel Company 671 F.2d 104 (C.A. 3, Feb. 1982)

(asking Ee about whether anyone from U had come around, unlawful)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. 672 F.2d 592 (C.A. 7, Feb. 1982)

(E's questions about U support, followed by ethnic slurs, inquiries into Ees' immigration status, ascriptions of canine ancestry and other expressions of anti-U animus, held unlawful interrogation)

N.L.R.B. v. Chatfield-Anderson Co., Inc., dba Truss-Span Co. 606 F.2d 266 (C.A. 9, 1979)

(interrogation about U activity coercive where supervisors asking questions gave no assurances against reprisals and E advanced no legitimate reasons for questioning)

5030-4010 Concerning employees' opinion of supervisor

Saint Luke's Hospital 258 NLRB No. 045

(supervisor's asking Ees why they wanted U and whether it was related to her supervisory activity violative, as E interference, restraint and coercion does not turn on motive but whether conduct may reasonably be said to interfere with free exercise of Ee rights)

TRW-United Greenfield Division v. N.L.R.B. 637 F.2d 410 (C.A. 5, 1981)

(safety director asking Ee in his private office what Ees thought of him and what Ee thought of U violative as it was potentially harmful to Ees in terms of potential retaliation, no valid purpose for such inquiry given to Ee and no assurance there would be no retaliation)

5030-4020 Concerning own union membership adherence or activities

Tokheim Corporation 265 NLRB No. 210

(supervisor's asking U adherent whether he went to U meeting of previous night and on a later occasion asking whether Ee had *another meeting* when Ee refused to work overtime, violative, notwithstanding Ee's open declaration concerning his U preferences)

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 106

(supervisor's interrogation of Ee about his U affiliation, unlawful, where supervisor, claiming he had taken over task of soliciting memberships for E's credit U, had asked Ee if he *belonges to the U,* meaning the credit U; such explanation by supervisor, who testified he never clarified to Ee that he was talking about credit union, was far-fetched, preposterous and comports with other efforts on his part while testifying to be misleading)

Saint Vincent's Hospital 265 NLRB No. 006

(questioning Ee in Ee's locker room about U literature she was carrying violative notwithstanding atmosphere was pleasant, questioning not part of any *systematic and intensive* interrogation and supervisor neither reprimanded nor scolded Ee, as this is conduct which interferes with Ee rights)

Larid Printing, Inc. 264 NLRB No. 040

(E's production manager asking Ee if Ee was for U and informing Ee *if U comes in it will kill us,* unlawful)

Washington Beef Producers, Inc. 264 NLRB No. 155

(asking Ee about whether authorization cards were being signed at E's facility, violative)

Virginia Apparel Corporation 264 NLRB No. 030

(asking Ee if E's personal financial status was any of her business held unlawful interrogation where E indicated that Ee had talked about it at U meeting)

Hudson Oxygen Therapy Sales Company 264 NLRB No. 004

(E's coercive declarative statements to U adherent, designed to call for responses from her relative to her U sympathies held to constitute a type of unlawful indirect interrogation)

Cardio Data Systems Corp. 264 NLRB No. 011

(posting of notice requiring Ees to add their names to any pro-U related notices posted on company bulletin board, unlawful, notwithstanding fact that notice did not use word *must* as an order requiring compliance, but only *requested* writer of notice to reveal name, since it was improper interference with, and inquiry into identity of pro-U activists)

Cardio Data Systems Corp. 264 NLRB No. 011

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Airborne Freight Corporation 263 NLRB No. 181

(asking Ee to disclose names of Ees who had signed U card, unlawful)

Jacobo Marti & Sons, Inc. 264 NLRB No. 097

(unlawful interrogation found where Ee, found general agent, asked Ee if he knew anything about solicitation of U cards and accused Ee of soliciting)

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Air Products and Chemicals, Inc. **263 NLRB No. 045**
(E's statement to Ee that he had heard Ee was for U violative as form of unlawful interrogation not as creating impression of surveillance as it put Ee in position of having to admit or deny U involvement)

E. I. Dupont De Nemours **263 NLRB No. 015**
(supervisor asking black Ee who was wearing U insignia why Ee was getting so involved with U, if any one was presuring him to join U and in same conversation indicating to Ee that E would be making more black supervisors but that Ee should not wear pro-U insignia and to continue to do so would result in his not being considered for supervisory position, unlawful)

E. I. Dupont De Nemours **263 NLRB No. 015**
(supervisor asking Ee why Ee was wearing tee shirt with insignia on it, unlawful)

E. I. Dupont De Nemours **263 NLRB No. 015**
(supervisor asking Ee if Ee would strike should U come in and in same conversation stating that if U came in and strike resulted there would be loss of jobs, unlawful)

United Sanitation Services, Division of Sanitas Service Corp. **262 NLRB No. 173**
(questioning Ee as to his attitude towards U, inquiring as to identity of just who favored U and/or attended U meetings, and giving instructions to spy on U activities of others and keep management informed, violative)

Granite City Journal, Inc. **262 NLRB No. 140**
(while E's questioning of Ee concerning her U sympathies might be considered so offhand as to be mere expression of curiousity, questioning held unlawful, in view of newness of Ee involved, timing of query just after U filed ptn, and fact that this was first in series of interrogations)

Granite City Journal, Inc. **262 NLRB No. 140**
(E's asking whether Ee had informed other Ees that fellow Ee was serving as E's spy, not unlawful, where E seemed more interested in finding out how he was regarded by Ees than by probing their U sentiments)

Wagner Distribution Services, Inc. d/b/a Distribution Services West **262 NLRB No. 096**
(circulation of anti-U ptn designed to provide evicence which E could use to support refusal to recognize U pending conducting of election rather than to test truth of claim of majority support of U, unlawful; further, entire process could not be characterized as involving *poll by secret ballot* and thus not privileged by *Struckness* criteria)

Wagner Distribution Services, Inc. d/b/a Distribution Services West **262 NLRB No. 096**
(asking Ee what she thought about U and to talk to other Ees about it and see what they thought, and inquiring aobut result of Ees inquiries, unlawful)

R. L. White Company, Inc. **262 NLRB No. 069**
(supervisor who asked Ee why she was not wearing company T-shirt, and therefore not announcing her preference against U, violated Act)

Zero Corporation, Zero East Division **262 NLRB No. 064**
(questioning Ee who has shown open support for U about his U activities violative)

Coil-Acc, Inc. **262 NLRB No. 012**
(E's polling its Ees regarding their U sympathies prior to election held violative where poll was not conducted with accompanying safeguards required by Bd; *See Struksnes Construction Co., Inc.,* 165 NLRB 1062, 1063 (1967))

Howard Johnson Motor Lodge **261 NLRB No. 123**
(asking supervisor if she had *heard any U talk,* what were Ees unhappy about, if she had attended U meeting or signed U card, not violative, since it is not unlawful for E to request or require such information from supervisor)

Howard Johnson Motor Lodge **261 NLRB No. 123**
(E's manager asking Ee what Ee thought of E's anti-U remarks at assembly of Ees, and how she thought representation election would turn out, not unlawful, since interrogation not of coercive character)

Eau Claire Press Company **260 NLRB No. 148**
(asking U adherent what she expected to get from U and what U had promised her, violative)

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car **260 NLRB No. 118**
(one week after unlawful discharge asking dischargee whether she had signed U card held violative)

Beck Studios, Inc. **260 NLRB No. 044**
(E's president asking Ee if he had signed authorization card and further stating that he thought other Ees had signed, violative)

Bedford Farmers Cooperative **259 NLRB No. 165**
(manager's questioning applicant for employment regarding Ee's knowledge of U and E's difficulties in their bargaining relationship held not violative, since question did not seek disclosure of Ee's or other Ees' U activity or sentiments)

Graham Architectural Products Corporation **259 NLRB No. 188**
(former supervisor asking U supporter what she thought U could get for her held violative notwithstanding question came up in personal conversation about Ee's baby and general discussion about U benefits and wages around country as such *friendly* interrogation is unlawful and Ee's former supervisor was still E's agent)

Graham Architectural Products Corporation **259 NLRB No. 183**
(although supervisor assured Ee that nothing would happen to Ee if she answered questioned about how she felt about U, inquiry into Ee's views toward U held violative even in context of assurances against reprisals)

Graham Architectural Products Corporation **259 NLRB No. 183**
(asking Ee whether she was *for the U* violative notwithstanding Ee replied she did not need to tell him but then answered, since here, supervisor, though conceding Ee did not need to answer *did not withdraw the question* and so silence could be construed as support for U)

Quick Find Co. **259 NLRB No. 144**
(asking non-unit Ee if *we were going to go through with this* (U) and whether Ee's hustand, found supervisor herein, intended to *go through with it,* violative as it inquired into future plans of Ees)

Delta Hosiery, Inc. **259 NLRB No. 139**
(unit Ee's poll of Ees about their U sympathies, violative, since such action was clearly viewed by Ees as act of management and management itself acquiesced in conduct)

Fieldcrest Mills, Inc. **259 NLRB No. 098**
(supervisor's statement to Ees who were wearing U buttons that he did not see why they wanted U; that pay was pretty good, not violative as attempt to indirectly ascertain U sentiments of Ee standing with him but mere expression of opinion)

Lake Development Management Co. **259 NLRB No. 069**
(violation, where E, by questioning Ee about his grievances, sought to determine his reasons for supporting U)

Faulkner Hospital **259 NLRB No. 052**
(quizzing Ee about ptn he was circulating and whether it *had something to do with the union,* unlawful)

Caffe Giovanni, Inc. d/b/a Giovanni's **259 NLRB No. 031**
(interrogating Ee regarding his U activities, unlawful, where Ee's testimony to that effect was credited and, other than a denial, E offered no explanation for its conduct)

Caffe Giovanni, Inc. d/b/a Giovanni's **259 NLRB No. 031**
(E's interrogation of Ee as to his U activities, accompanied by threats of unspecified harm if U won election, unlawful, where, although Ee may have taken E's remarks in jest, she was quite sincere, meant what she said, and understood seriousness of her remarks)

Versatile Services, Inc. **258 NLRB No. 109**
(E's interrogation of Ees as to why they had not joined U violative notwithstanding U-security clause present in collective bargaining agreement where 30 day time period in which to join U had not expired and State was right-to-work state)

St. John's Construction Corporation **258 NLRB No. 067**
(E's asking Ees whether they signed U membership cards and inquiring into Ee views concerning their support for either of the two Us seeking representation, violative)

Lord & Taylor, A Division of Associated Dry Goods Corp. **258 NLRB No. 082**
(asking U adherent what Us might be involved in her prospective organizing activity, violative)

Injected Rubber Products Corp. **258 NLRB No. 092**
(questioning of Ees reqarding their U views by leadmen imputed to E and unlawful, since leadmen held agents of E, notwithstanding not supervisor, since Ees could reasonably believe questioning was at direction of management where E had made it clear to Ees that leadmen were eyes of management for purpose of reporting to management, transmitted instructions and disciplinary notices, communicated with management if emergency during shifts where management not working and kept log book)

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation **288 NLRB No. 142**
(during course of U meeting, asking Ees why they were there, violative)

Hopcraft Art and Stained Glass Works, Inc. **258 NLRB No. 190**
(talking to Ee who with other Ees had meeting with U, upon receipt of letter from Bd concerning discharge of discriminatee and asking Ee *what took place down there at the U hall that I am being subpoenaed for this?* violative)

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(interrogations concerning Ees' organizational activities and sentiments toward U, unlawful, where interrogations were numerous rather than isolated, in most instances Ees had not initiated them, E had manifested anti-U animus, and E's characterization of *amicability* in interrogation incidents was

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not supported by record nor by defense to otherwise unlawful interrogations as matter of law)

Saint Luke's Hospital 258 NLRB No. 045
(supervisor's asking Ees why they wanted U and whether it was related to her supervisory activity violative, as E interference, restraint and coercion does not turn on motive but whether conduct may reasonably be said to interfere with free exercise of Ee rights)

Brookwood Furniture, Division of U.S. Industries 258 NLRB No. 028
(interrogation about U activities generally found interference, and interrogation specifically as to why Ee attended U meeting, whether Ees had any questions about E's anti-U speeches, and whether one Ee could change the mind of his wife who was on the in-plant organizing committee, unlawful and interference)

Gregory Chevrolet, Inc. 258 NLRB No. 034
(E's reading name of each Ee who signed card and looking at him, violative where meeting was held with U's permission and purpose was to satisfy E that Ees were not *conned* into signing cards and E's looking at each Ee was clearly designed to elicit response from Ees as to their U activities and sentiments)

Gregory Chevrolet, Inc. 258 NLRB No. 034
(E's reading name of each Ee who signed card, asking him why he signed card and why he wanted U, and what problems he had; violative as E may not probe into reasons for Ees' supporting U)

Presbyterian/St. Luke's Medical Center 258 NLRB No. 021

Schwan's Sales Enterprises, Inc. 257 NLRB No. 165
(election set aside and new election appropriate in view of small size of unit, closeness of first election and presence of other Ees when E grabbed U cap off Ee's head and issued threat of discharge if Ee continued to wear U cap)

Schwan's Sales Enterprises, Inc. 257 NLRB No. 165
(statement to Ee that Ee would be *swing* vote in election, violative, where such statement amounted to subtle interrogation by way of comment designed to elicit reply from Ee as to how he would vote)

15 East 40th Restaurant, Inc., d/b/a Sagapo Restaurant and Sagapo Restaurant, Inc., its agent 257 NLRB No. 156
(questioning Ee about whether he had signed U authorization card violative)

Maidsville Coal Co., Inc. 257 NLRB No. 148
(supervisor who had minimal contact with U and also friendly relationship with Ees still held agent of E and thus his enterrogation of Ees concerning U violative)

T.R.W. Bearings Division, A Division of T.R.W., Inc. 257 NLRB No. 047
(asking U adherent whether his request for shift change was type of U harassment, violative)

Caterpillar Tractor Company 257 NLRB No. 029
(asking Ees what they thought U was doing for them, violative)

Sioux Products, Inc. 257 NLRB No. 056
(asking Ee who he had voted for, company or U, violative)

Isadore Spiegel, an Individual t/a Spiegel Trucking Company; Spiegel Trucking Company, Inc.; I & L Trucking Company, Inc. 257 NLRB No. 020
(asking Ees about their U activities, violative)

Clements Wire & Manufacturing Company, Inc. 257 NLRB No. 075
(asking Ees about their sentiments and desires concerning U and how they intended to vote in upcoming election, violative)

E. I. Dupont De Nemours & Company, Inc. 257 NLRB No. 033
(questioning U adherent about his U activities and whether Ee was U organizer, violative)

E. I. Dupont De Nemours & Company, Inc. 257 NLRB No. 033
(during course of conversation about dental plans, E's remarking that with all benefits Ees had at company E did not see why Ees needed U, violative)

E. I. Dupont De Nemours & Company, Inc. 257 NLRB No. 033
(asking U adherent about U button he was wearing and why he supported U, violative)

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising 257 NLRB No. 022
(Ee who was found not to be supervisor but who interrogated Ees concerning their U activities did not cause E to violate Act where he was speaking for himself and was not agent of E)

Colson Equipment, Inc. 257 NLRB No. 015
(interrogating U adherents, unlawful notwithstanding E did not accompany interrogation with threats or promises and did tell one U adherent that no Ee would lose his job because of U support; such interrogation is coercive though not in context of threats or promises and though Ees are openly pro-U; interrogation herein was against background of ULPs and was directed to Ees' own U activities rather than to activities generally, so that E appeared to seek information as basis for taking action against questioned Ees in particular)

Raley's, Inc. 256 NLRB No. 136
(supervisor's questioning of Ee concerning her U preference violative, notwithstanding there was no fear on part of Ee in responding to supervisor where there was no justification for inquiry or any assurances given that there would be no reprisals if she chose not to respond)

Swanson-Nunn Electric Company 256 NLRB No. 131
(questioning Ee concerning his U activity violative, notwithstanding it was done in *joking* manner)

Polk Bros. Concrete Products 256 NLRB No. 128
(E who drew a line on floor and asked Ees who wanted to work to cross line violated Act for by not crossing line Ees would be identified as U supporters, making statement form of interrogation)

Metropolitan Life Insurance Company 256 NLRB No. 100
(asking Ee if she signed U card, if U asked her to sign U cards, and who attended U meeting and what was said there, violative)

Metropolitan Life Insurance Company 256 NLRB No. 100
(questioning Ee whether E could count on Ee's support in upcoming election, violative)

Evans Brothers Barber & Beauty Salons, Inc. 256 NLRB No. 023
(asking Ee if she had attended U meeting and who invited her, violative)

Mark Line, Inc. 255 NLRB No. 191
(questioning U adherent about U and specifically asking if Ee was *for the U,* violative)

Samuel J. Wade, an Individual d/b/a Major Cab Company 255 NLRB No. 181
(asking Ees whether or not they had started U activities, violative)

Sanitas Care, Inc. d/b/a Parkview Acres Convalescent Center 255 NLRB No. 169
(asking Ees whether they signed U authorization cards, violative)

Jax Mold & Machine, Inc. 255 NLRB No. 129
(asking Ee if he knew about decertification ptn and telling him that it would be advantageous for him to sign and those who didn't sign would be sorry)

K-Mart Corporation 255 NLRB No. 112
(interrogating Ee concerning her need for a *third party* to handle her complaints and expressing anti-U sentiments to her, violative)

Cutting, Inc. 255 NLRB No. 076
(E's mere response to Ee's comment about her support for U, *are you for the U?* held not to constitute unlawful interrogation)

Central Freight Lines, Inc. 255 NLRB No. 066
(asking Ee if he was U organizer, suggesting that he should think about his U role, asking what improvements U could bring, and warning him not to harass any Ees, violative)

Edgcomb Metals Co., One of The Williams Companies 254 NLRB No. 140
(inquiring into U adherent's U sentiments, violative)

Suburban Chevrolet, Inc. 254 NLRB No. 016
(sales manager's inquiry into Ee's feelings on U not unlawful, where question was not seeking of information as such, but simply threshhold establishment of Ee's position preliminary to further discussion which had no reasonable tendency to coerce Ee)

Overnite Transportation Company 254 NLRB No. 011
(asking if Ee had U card, violative)

Gossen Company, a Division of the United States Gypsum Company 254 NLRB No. 041
(supervisor asking Ee *what Ee thought U could do for him,* unlawful, notwithstanding question unattended by threats of reprisal or promises of reward and fact Ee had already declared himself by wearing U button, since query conveyed E's displeasure and coercive impact not diminished by E's open U support or absence of threats and prior decisions to the contrary overruled)

Gossen Company, a Division of the United States Gypsum Company 254 NLRB No. 041
(supervisor asking Ee who was wearing U button *what button meant to Ee and why he was wearing it,* unlawful, notwithstanding question unaccompanied by threat or promise since conveyed E's displeasure and coercive impact not diminished by E's open U support or absence of attendant threats and prior decisions to the contrary overruled)

Riley-Beaird, Inc. 253 NLRB No. 065
(inquiry as to basis for Ee's U sympathies, unlawfully coercive in that it required Ee to defend his statutorily protected beliefs)

Centre Engineering, Inc. 253 NLRB No. 028
(supervisors questioning of Ees concerning U activities violative, notwithstanding Ees had openly declared themselves U adherents)

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Weather Tamer, Inc. and Tuskegee Garment Corporation 253 NLRB No. 036
(asking Ee why she was not wearing U pin; violative)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(supervisor asking U adherent why she would permit disagreement with immediate supervisor to lap over into support of U, unlawful)

Pioneer Natural Gas Company 253 NLRB No. 003
(asking Ee if she was going to attend U meeting that night, violative)

Pioneer Natural Gas Company 253 NLRB No. 003
(asking Ee if she had filled out U card, violative)

Pioneer Natural Gas Company 253 NLRB No. 003
(labor attorney's asking Ee, who was not aware that attorney was retained by E when she telephoned him about *a work problem*, whether she had or was in U, not violative, since this would be logical question from any labor attorney in regard to Ees' work problems)

Allen-Stone Boxes, Inc. 252 NLRB No. 171
(asking Ee if he thought U would be good for company, violative)

Gladieux Food Services, Inc. 252 NLRB No. 106
(asking Ee for an opinion about probable outcome of election did not constitute unlawful interrogation, where it was not coupled with request for information concerning Ee's personal wishes for or against U)

B. K. Restaurants Olean, Inc., d/b/a Burger King Restaurant 252 NLRB No. 065
(asking Ee whether anyone had heard about U, and if Ee had heard anything about U, violative)

Americana Health Care Corporation of Ohio d/b/a Barberton Manor 252 NLRB No. 057
(questioning U supporters about their suspected U activities, violative)

B. E. & K., Inc. 252 NLRB No. 036
(E's preelection conduct in asking Ees how they were going to vote and why they felt they needed U, unlawful and interference, where there was no evidence that there existed, or that Ees were advised of, a legitimate need or purpose for such interrogation, or that Ees were given assurances of nonreprisals concerning such interrogation)

Red Food Store 252 NLRB No. 023
(asking Ees whether they signed U cards during meeting attended by all Ees in which E expressed its intent to prevent U organization, violative)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division 251 NLRB No. 156
(questioning outspoken U supporters as to what they thought U could do for Ees, whether they would still *be union* if they had it to do over again, and whether they had had opportunity to sign pts for new U election held unlawful, notwithstanding Ees were open and known U supporters and inquiries were unaccompanied by threats or promises; accordingly, Bd hereby overruled *Stumpf Motor Co. and B.F. Goodrich Footwear* to extent they hold that an E may lawfully initiate questioning about Ees' U sentiments where Ees are open and known U supporters and inquiries are unaccompanied by threats or promises)

Maremont Corporation, World Parts Division 251 NLRB No. 110
(supervisor's distributing pro-company hats with *vote no* buttons on them to Ees shortly before election, held an unlawful interrogation of Ees concerning their U membership, activities, and desires, and also an interference with election)

Certain-Teed Insulation Company 251 NLRB No. 200
(no violation where E sought out each Ee prior to election to *let them know we were at their disposal if they had any questions concerning the union*)

Westwood Import Company, Inc. 251 NLRB No. 142
(supervisor asking U steward who had been passing out information for U why she was *so much for U* after he had requested steward to cease distribution activities, unlawful, since supervisor was high-up in hierachy and questioning took place in his private office at a time when E was unlawfully refusing to bargain)

Weyerhaeuser Company 251 NLRB No. 097
(simple inquiry as to whether or not Ee had made up his mind about how he was going to vote in upcoming election, w/o more, not unlawful)

Weyerhaeuser Company 251 NLRB No. 097
(questioning Ee why he wanted U, violative)

Edgar L. Landen t/a Speed Mail Service 251 NLRB No. 060
(violation and interference by interrogation of Ee about her signing U card by nonsupervisory Ee whom Ees could reasonably believe to be speaking for management)

Lippincott Industries, Inc. 251 NLRB No. 096
(interrogation of 2 Ees, unlawful, since probing of views on Us, even addressed to Ees who have openly declared their prounion sympathies, is coercive)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting 251 NLRB No. 037
(coercively polling Ees concerning their U sympathies and activities, unlawful)

Kaufman DeDell Printing, Inc. 251 NLRB No. 002
(asking Ee why he joined U, unlawful)

General Thermo, Inc. 250 NLRB No. 158
(assistant plant manager's interrogation of Ee as to his U activities, unlawful, notwithstanding social nature of occasion in which interrogation took place)

Stanley M. Feil, Inc. 250 NLRB No. 045
(supervisor asking Ee what she thought of speech in opposition to U by E's president, unlawful, since question necessarily constituted attempt to ascertain Ee's feelings about U and had coercive effect where supervisor had previously interrogated Ee)

Pilgrim Life Insurance Company 249 NLRB No. 160
(supervisor instructing Ee to admit to E's president that she had signed U card and was conversant with U's organizing efforts, unlawful)

Pilgrim Life Insurance Company 249 NLRB No. 140
(E's president asking Ee to interrogate other Ees concerning U activities to ascertain if certain Ee had signed U card and Ee's subsequent interrogation of another Ee, unlawful, since Ee acting as non-supervisory agent of E)

Steiner-Liff Textile Products Company 249 NLRB No. 152
(request for Ees' *vote of confidence* at Ee meeting violative, since such vote could be expected to reveal dissatisfied Ees who would be most likely to support U organizational efforts)

Sentry Investigation Corp. 249 NLRB No. 130
(E's president interrogating Ees as to whether they had signed card for U, who was ring leader of drive to change bargaining representative, and who had signed U cards, unlawful; notwithstanding contention Ees not coerced where no reason stated for questions and no assurances against reprisals given, one Ee questioned was threatened with reduction of and change in hours, and another Ee requested legal counsel to be present at subsequent interview with E's president)

Han-Dee Pak, Inc. 249 NLRB No. 107

Sundberg Machine & Tool, Inc. 249 NLRB No. 076
(asking Ee whether he was the one who would like to put U in plant, unlawful, in view of fact that interrogator was Ee's superior and conversation occurred in shop and dealt with U activity)

Livingston Shipbuilding Company 249 NLRB No. 001
(investigatory interrogation of alleged threat of one Ee by another which arose out of circumstances surrounding U's organizing campaign, unlawful where E failed to observe necessary safeguards or assure Ees that participation in interrogation was on voluntary basis w/o prospect of reprisal)

DRW Corporation d/b/a Brothers Three Cabinets 248 NLRB No. 095
(questioning Ees about signing of U authorization cards violative absent assurances against reprisal and reasons for asking questions)

Conagra, Inc. 248 NLRB No. 085
(supervisor's response *just sign a U card* to remark of Ee that if she didn't hurry she (Ee) would be fired, not unlawful, since supervisor's reply not type of comment that would prompt response even though Ee replied she had signed card)

Permanent Label Corporation 248 NLRB No. 021
(E questioning of Ee regarding U organizational activity violative, notwithstanding it may have been done in friendly manner)

Permanent Label Corporation 248 NLRB No. 021
(questioning Ees as to why they wanted U violative notwithstanding Ees questioned had openly declared pro-U sympathies)

Pacesa, A Division of Fruehauf Corporation 247 NLRB No. 166
(on remand Bd adhered to finding of unlawful interrogations during critical period based on timing of interrogations and lack of evidence of valid purpose for questioning Ees on U sentiments)

The Saloon, Inc. 247 NLRB No. 156
(remark not in the form of an interrogation but of a character likely to elicit a response revealing Ee's feelings about U held to have had practical effect of an interrogation and was unlawful)

Boyle-Midway, Inc., Division of American Home Products Corp. 247 NLRB No. 124
(systematic interrogation about U with individual Ees in locus of authority, violative, where purpose of questioning was not revealed and no assurance against reprisals were made)

Tartan Marine Company 247 NLRB No. 073
(supervisor asking Ee if Ee had heard anything about anyone trying to organize U in plant and how Ee felt about it, unlawful)

Tartan Marine Company 247 NLRB No. 073
(supervisor asking Ee who was member of U organizing committee if he had heard anything about anyone trying to organize U in plant, and what Ee

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thought about it, and upon Ee replying he was undecided stating he hoped Ee was not making mistake, unlawful)

Tarten Marine Company 247 NLRB No. 073
(supervisor asking Ee if Ee had a U card for him to sign, unlawful, notwithstanding question was asked in joking manner, in view of E's hostility to U)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital 247 NLRB No. 074

Production Plated Plastics, Inc. 247 NLRB No. 076

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. 247 NLRB No. 090
(asking Ee if anyone was bothering him and if he was satisfied with job, violative since inquiry related to and concerned Ee's U activity)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South 247 NLRB No. 038
(asking if Ee had signed U card, how Ee had voted, and if Ee was *with* E, unlawful)

Galax Apparel Corporation 247 NLRB No. 026

Checker, Inc., d/b/a Checker Cab Company 247 NLRB No. 019
(interrogating Ees as to whether they would cross picket line, violative)

Carl Karcher Enterprises JD-(SF)-227-82
(interrogation of Ees about their U or protected activities may or may not amount to coercion, depending upon manner in which it is done and surrounding circumstances; objective test to be applied in determining whether questions are unlawfully coercive is whether conduct reasonably tends to interfere with free exercise of Ees' statutory rights)

Lion Trucking Corporation JD-(NY)-66-82
(E's manager asking Ees if they had signed authorization cards for U, violative, particularly where interrogation took place during meeting at which manager unlawfully solicited grievances, promised Ees hospitalization insurance, and conducted unlawful poll of Ees' U sentiment)

Vanity Fair Mills, Inc. JD-(ATL)-35-82
(E's personnel manager calling Ee to his office and asking if she was passing out U buttons during campaign and when she replied *yes* informing her that was *no, no* and interrogating Ee about being away from her work station, unlawful, notwithstanding pursuant to no solicitation rule presumptively valid at time, since reprimand based on U activity rather than being way from work station, neglecting work or interfering with work of other Ees)

J.A.G. Freight Systems, Inc. JD-(NY)-31-82
(E asking Ees at meeting w/o assurances against reprisals which of them wanted U, unlawful, whether or not meeting requested by Ees)

Eckerd Drugs of Florida, Inc. JD-70-82
(asking Ee if she had signed U card and why and telling her fact that she had signed card would be on her records and would follow her to any store of E that she might transfer to, violative)

Formaloy Corp. JD-(ATL)-87-81
(interrogation of Ees concerning their U sympathies, etc., unlawful unless safeguards set out in *Johnnie's Poultry Co.*, 146 NLRB 770 at page 775, have been met)

Bates & Cunningham, Inc. JD-589-81
(asking Ee if he could find out from his U *friend* what date election was to be held violative)

Hayes International Corporation JD-(ATL)-29-81
(interrogation of Ee as to whom she was calling and whether the call was a business call, found not unlawful interrogation about Ee's U activities as alleged where, Ee had increased number of personal calls she made during work notwithstanding E's rule prohibiting personal calls on its phones during work time)

Pamida Discount Store JD-(SF)-59-81
(asking Ee about his U activity, violative)

Mr. Herbert of California, Inc. JD-(SF)-83-81
(E's asking prospective supervisor *suppose there is a vote, How are you going to vote?*; not violative, since statements were too vague and ambiguous; statements reflected isolated interrogation conducted in noncoercive setting)

New Mayo, Inc., d/b/a Mayo Products Company JD-(ATL)-18-81
(asking U adherent whether initials on his T-shirt stood for university when E knew they stood for U, violative)

Falconer and Sons JD-(SF)-232-80
(E's asking Ee if the Ees talked about U during working hours and whether this Ee would participate in sickout, unlawful)

Clements Wire and Manufacturing Company, Inc. JD-338-80
(supervisor's engaging in interrogation w/o giving Ees assurance against reprisals, unlawful)

Malibu Grand Prix Corp. JD-(SF)-90-80
(questioning Ees shortly before unlawfully discharging them if they worked for E or for U's business agent, unlawful since question in juxtaposition with discharges may have conveyed notion that U aspect of their refusal to work overtime contributed to discharge decision)

Cashmere Lumber Company JD-(SF)-93-80
(although supervisor's conduct would have been unlawful in organizational setting, his asking Ee why he sought to involve official of parent organization in U's problems at plant, accompanied by statements that Ees did not need U as long as he held his management job and that he would *take care of Ees*, not unlawful, notwithstanding supervisor's *take-care-of* statement since, in context of settled bargaining relationship with U, there was nothing in supervisor's remarks or surrounding circumstances from which Ee could have perceived a threat or promise)

Grandee Beer Distributors, Inc. v. N.L.R.B. 630 F.2d 928 (C.A. 2, 1980)
(inquiry into Ees' pro-U sentiment and inquiry into reasons for that sentiment held coercive interrogation as supported by record evidence)

N.L.R.B. v. Eastern Steel Company 671 F.2d 104 (C.A. 3, Feb. 1982)
(interrogating Ees whether they had signed U authorization cards, unlawful)

K & K Gourmet Meats, Inc. v. N.L.R.B. 640 F.2d 460 (C.A. 3, 1981)
(E who questioned Ee regarding her personal position on unionization did not violate Act where U had already informed E it represented majority of Ees, Ee was *good friend* of E and no coercive element was present)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. 691 F.2d 1133 (C.A. 4, Sept. 20, 1982)
(questioning Ee in supervisor's office as to whether she had signed U card violative, notwithstanding Ee was not reluctent to discuss matter with E as tendency of E's conduct rather than its actual effect is dispositive)

Rock Hill Telephone Company v. N.L.R.B. 605 F.2d 139 (C.A. 4, 1979)

TRW, Incorporated v. N.L.R.B. 654 F.2d 307 (C.A. 5, 1981)
(where attorney for E interviewed Ee in company conference room about alleged improper U monetary reimbursement to Ees from U and then threatened Ee with subpoena after she refused to sign copy of her statement, E did not violate Act as interview was not coercive although behavior of attorney bordered on being unethical)

TRW-United Greenfield Division v. N.L.R.B. 637 F.2d 410 (C.A. 5, 1981)
(safety director asking Ee in his private office what Ees thought of him and what Ee thought of U violative as it was potentially harmful to Ees in terms of potential retaliation, no valid purpose for such inquiry given to Ee and no assurance there would be no retaliation)

N.L.R.B. v. Proler International Corporation 635 F.2d 351 (C.A. 5, 1981)
(E's personnel director asking Ees whether they were going to attend U meeting that day, and when an Ee answered she wasn't sure, stating that if Ee did attend she should not sign any papers because U would be lying, held not unlawful since w/i E's section 8(c) right to express opinion as no threat or promise of benefit made where question merely prefaced later remarks, occured at end of routine conversation was not aimed at determining if Ees supported U or part of larger unlawful campaign of interrogation)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. 585 F.2d 752 (C.A. 5)

N.L.R.B. v. Streamway Division of The Scott & Fetzer Company 691 F.2d 288 (C.A. 6, Oct. 1982)
(asking Ees if they wished to join U because of their complaints, not unlawful in absence of evidence of actual or intended restraint; questioning of Ees by professional attitude survey company hired by E did not have probable effect of coercion and had actual effect testified to by Ees of relaxed atmosphere and air of confidentiality)

N.L.R.B. v. Schwan's Sales Enterprises, Inc. 687 F.2d 163 (C.A. 6, Sept. 1982)
(single conversation, on day of election or immediately prior thereto, between supervisor and Ee involving interrogation of Ee concerning his U attitudes, and during which supervisor unlawfully created impression of surveillance, unlawful, notwithstanding E's claim that there was no intent to intimidate, and that to so find was unreasonable)

N.L.R.B. v. Gibraltar Industries, Inc. and Case, Inc. 655 F.2d 1091 (C.A. 6, July 1981)
(E's president's interrogation of Ees not violative, since his inquiries into individual Ee sentiment and opinion on subject of unionization were sporadic, occurred in general work area, and had no discernible effect on Ee actions or attitudes)

N.L.R.B. v. Naum Brothers, Inc. 637 F.2d 589 (C.A. 6, Mar 17, 1981)
(comments and questions of supervisors to Ees provided requisite support for Bd's finding of unlawful interrogation)

N.L.R.B. v. Jarva Incorporated 623 F.2d 483 (C.A. 6, 1980)
(supervisor predicting to Ee and to another Ee that because Ee was instigator of U that Ee would be head committeeman once U got in, not unlawful, since statements made jokingly and Ees stated they felt no coercion)

N.L.R.B. v. Franklin Property Company, Inc., d/b/a The Hilton Inn 617 F.2d 467 (C.A. 6, 1980)
(ct enforced Bd order where there was substantial evidence to support findings that E coercively interrogated and threatened Ees)

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Huron Cappsette, Inc. v. N.L.R.B. 615 F.2d 712 (C.A. 6) (1980)
(violation where shortly after U organizing campaign began, company officials coercively interrogated and threatened Ees as to consequences of bringing in U)

Sioux Products, Inc. v. N.L.R.B. 684 F.2d 1251 (C.A. 7, Aug. 1982)
(questioning of three Ees as to whether they would vote or had voted for U not violative where at least two of Ees were ardent U supporters experienced in U-R campaigns, and neither questioners identity (E's translator), nature of information sought nor particular Ee-E relationship involved indicate these Ees tended to be coerced by these statements; moreover, no evidence that other Ees may have overheard questioning)

N.L.R.B. v. Century Moving & Storage, Inc. 683 F.2d 1087 (C.A. 7, July 1982)
(interrogating Ees about U at meeting at which there was air of formality and putting them in position of having to explain reasons for supporting U, unlawful where E asserted no valid purpose for interrogation and gave no assurances against reprisal)

N.L.R.B. v. Lyon & Ryan Ford, Inc. 647 F.2d 745 (C.A. 7, Apr 1981)
(calling Ee into office and asking him what he thought about the U, violative)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. 636 F.2d 1255 (C.A. 7, 1980)
(ct held contrary to Bd that supervisor's asking Ee in supervisor's office how she felt about U after stating that Us only sit on their butts, collect dues, and cause old people like Ee to lose their jobs did not amount to coercive interrogation where supervisor only conveyed her views of consequences of unionization and was making noncoercive prediction)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. 636 F.2d 1255 (C.A. 7, 1980)
(ct held contrary to Bd that supervisor's questioning Ee twice on how she felt about U did not constitute coercive interrogation where there was no implied or stated threat)

Pelton Casteel, Inc. v. N.L.R.B. 627 F.2d 23 (C.A. 7, July 1980)
(ct denied enforcement where record did not indicate that interviews, although conducted individually in a management office, were viewed by Ees as coercive, and interviewer was not high ranking company official but foreman)

N.L.R.B. v. Aluminum Ceramics, Inc. 690 F.2d 136 (C.A. 8, Oct. 1982)

General Thermo, Inc. v. N.L.R.B. 664 F.2d 195 (C.A. 8, Nov. 1981)
(ct found assistant plant manager's questioning Ees about their U activities at company picnic, not unlawful, where such interrogation was isolated and casual, and took place in recreational atmosphere; moreover, no one gave evasive answers and this indicated lack of fear among Ees)

N.L.R.B. v. Westinghouse Electric Corporation 612 F.2d 1072 (C.A. 8)

N.L.R.B. v. Circo Resorts, Inc., d/b/a Circus, Circus 646 F.2d 403 (C.A. 9, May 1981)
(questioning Ees about their U membership followed by statements that E was afraid of what was happening at another E's unionized facility and that E did not want U at present time, unlawful)

N.L.R.B. v. Steven Davis and Michael Provenzano, d/b/a Carlton's Market 642 F.2d 350 (C.A. 9, Apr 20, 1981)
(coercive interrogation of Ees about U sympathies, unlawful)

N.L.R.B. v. The Saloon, Inc. 647 F.2d 171(T) (C.A. 9, Mar 1981)
(questioning U adherent's loyalty to E due to her support for U, violative)

N.L.R.B. v. Los Angeles New Hospital 640 F.2d 1017 (C.A. 9, Mar 3, 1981)
(E's president asking Ee if she knew anything about scheduled U meeting and to relay to him name of other Ees at meeting, subsequently requesting Ee not to go to U meeting and after meeting asking Ee if she signed U card, unlawful, where Ee not assured that no reprisal would be taken and it was not communicated whether there was valid purpose in asking question)

N.L.R.B. v. Baker Drainage, Inc. 609 F.2d 788(T) (C.A. 9, 1981)
(interrogating Ee regarding his U activities, violative)

N.L.R.B. v. Hanes Mold, Inc. 634 F.2d 628(T) (C.A. 9, 1980)
(unlawful)

Crown Container Company v. N.L.R.B. 628 F.2d 1283 (C.A.D.C.)
(inquiry by guard at plant gate of Ees displaying sign in their vehicle, urging boycott of E's product, whether they were sympathetic to striking Ees and stating that if they were they shouldn't be working for E, unlawful)

N.L.R.B. v. Brewton Fashions, Inc., a Division of Judy Bond 682 F.2d 918 (C.A. 11, Aug. 1982)
(vice president calling Ee to his office and asking if she was distributing *recipe cards* found coercive and threat of discharge where this was first time in 7 years on job that she was called to his office, purpose was to learn of distribution of U cards, and E confirmed her understanding that she could lose job for passing U cards during work time)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. 676 F.2d 483 (C.A. 11, May 1982)
(substantial evidence supported findings that asking Ee why she was not wearing U pin and whether she and her fellow Ees had signed U cards and asking another Ee to explain why she would vote for U and jeopardize other Ees' jobs violated Sec. 8(a)(1), in view of strong stance taken against U by E, plant shutdown in process at time of questioning, and actual content of conversations between E and Ees)

5030-4030 Solicitation of grievances

Schnadig Corporation 265 NLRB No. 020
(E's chairman of the board, following speech in which he made coercive threat to close plant, asking Ee at her work station *if there was anything he could do for her* and when Ee informed him that rubber matting would make standing more comfortable, chairman said *he would see what he could do*, unlawful, notwithstanding matting never provided)

De Queen General Hospital 264 NLRB No. 069
(E's attitude survey in midst of organizational campaign soliciting grievances from Ees and calling for suggestions on way in which grievances could be improved, not violative where E was not aware of campaign at time it administered survey)

General Electric Company 264 NLRB No. 126
(supervisor's questioning of Ees during U campaign as to whether they had particular problems amounts to solicitation of grievances and constitutes interference with election)

General Electric Company 264 NLRB No. 126
(explanation of E's grievance procedure given to Ees during U campaign is not solicitation of grievances and is not violative)

Butler Shoes New York, Inc. 263 NLRB No. 150
(E's speech to Ees prior to election which reminded Ees of its existing *open door policy* encouraging Ees to come to management with problems not violative as solicitation of grievances where E was announcing no new policy and did not imply that its response to grievances would change)

Wingas Company, Inc. 263 NLRB No. 021

Granite City Journal, Inc. 262 NLRB No. 140
(while under ordinary circumstances, E's statement to new Ees that his door is always open could be fairly innocuous, such statement herein held unlawful, where E did not customarily maintain an open door policy and, in view of entire thrust of E's statement and his future efforts to pry information from new Ees concerning U activity, his invitation was attempt to solicit complaints during U's organizing campaign and thereby to undermine U)

Howard Johnson Motor Lodge 261 NLRB No. 123
(asking supervisor if she had *heard any U talk*, what were Ees unhappy about, if she had attended U meeting or signed U card, not violative, since it is not unlawful for E to request or require such information from supervisor)

Penn Color, Inc. 261 NLRB No. 069
(soliciting Ee grievances to induce abandonment of pro-U activities, unlawful)

Randall E. Wheeler, Kevin E. Wheeler, and Edmund J. Wheeler, A General Partnership d/b/a Wheelco Co. 260 NLRB No. 109
(E who questioned Ee a few weeks prior to election about what he thought would benefit company did not mention U did not violate Act)

Gould, Inc. 260 NLRB No. 052
(no violation where E, during Ee meetings, asked generally for questions rather than complaints and in response to Ees' complaints, E stated that production manager would look into problem about materials which gave them production problems, and that E would look into production quotas, as E implied no promise of benefit and E could not ignore production problems where these had not been brought to his attention previously)

Caffe Giovanni, Inc. d/b/a Giovanni's 259 NLRB No. 031
(interrogation of Ees accompanied by solicitation of *gripes or complaints*, and requests that E be advised of any complaints or problems which Ees might have, unlawful)

Caffe Giovanni, Inc. d/b/a Giovanni's 259 NLRB No. 031
(essence of violation in soliciting grievances is not the solicitation itself, but rather the inference that E will correct the problems; such promise is implicit in the solicitation and need not be expressed)

5030-4030—Cont.

Greyhound Food Management, Inc. d/b/a Burger King 258 NLRB No. 178
(E's unprecedented inquiry into needs of Ees and solicitation of their problems, on a markedly more pervasive scale thean during periods prior to preelection period, unlawful, since E thereby solicited grievances from Ees and promised to resolve them in order to demonstrate that Ees had no need to resort to U organization)

Great Scot of Florida, Inc. 256 NLRB No. 126
(E asking Ee whether she or any Ee had any problems with company coupled with statement that Ees didn't need U, violative, notwithstanding that E had policy of encouraging Ees to bring their questions and dissatisfaction to management; however, there was no evidence that this policy included management's solicitation of grievances from Ees

Sanitas Care, Inc. d/b/a Parkview Acres Convalescent Center 255 NLRB No. 149
(soliciting grievances during organizational campaign, violative)

K-Mart Corporation 255 NLRB No. 112
(soliciting grievances from Ees, promising to remedy them, and actually remedying some of these complaints, violative)

General Electric Company 255 NLRB No. 092
(E's establishment and subsequent discontinuance of *sounding board* program upon U's filing of R ptn, unlawful, where purpose of program was to discourage support for U and discontinuance was in reprisal for Ee support of U; further, E's justification of discontinuance of program in order to avoid ULP charges, rejected, where program had been announced and implemented prior to filing of R ptn)

General Electric Company 255 NLRB No. 092
(E's conducting Ee attitude survey, unlawful, since for purpose of discouraging U support and where in light of subsequent promise to obtain concrete improvements constituted implied promise of redress of grievances)

Limestone Apparel Corp. 255 NLRB No. 101
(solicitation of grievances by E during U campaign, held violative)

Gossen Company, a Division of the United States Gypsum Company 254 NLRB No. 041
(E making inquiries during U campaign as to what could be done to improve plant operations, held not unlawful, since presumption of illegality rebutted where question was no more than had been past practice and absent explicit promises to correct inadequacies)

Russ Togs, Inc. 253 NLRB No. 099
(interrogation as to why Ee had not come to E rather than go to other Ees when Ee learned that he was supposed to be making more money, unlawful)

Riley-Beaird, Inc. 253 NLRB No. 085
(E unlawfully solicited and remedied Ee's grievance where, after seeing Ee pass out U literature, E asked Ee what was wrong, stated that he would try to solve Ee's problems, and thereafter remedied Ee's complaint about loss of overtime)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(supervisor's asking Ee what Ee's grievances were and suggesting that Ee take these grievances to higher management, unlawful solicitation of grievances with view towards adjustment)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(supervisor asking Ees at group meeting whether he had cleared up problems they had been having with supervisors constituted unlawful interrogation and adjustment of grievances)

Americana Health Care Corporation of Ohio d/b/a Barberton Manor 252 NLRB No. 087
(soliciting and remedying Ee grievances in attempt to deter U's organizational campaign, violative)

Chester Valley, Inc. 251 NLRB No. 191
(E's letter asking Ees to discuss problems and setting up of joint E-Ee committee, thereby soliciting grievances from Ees, unlawful)

Brooks Cameras, Inc. 250 NLRB No. 116
(questioning of Ee concerning what Ees wanted on day after U made its bargaining demand, unlawful)

Tennessee Cartage Co., Inc. 250 NLRB No. 015
(E's vice-president asking Ees, during period of U campaign, *what their problems were* and impliedly promising to remedy them held violative)

St. Francis Hospital 249 NLRB No. 017
(at E sponsored grievance meeting with Ees during critical period, E, in response to C, stating that he would *take a look and see what we can do* violated Act because he held out prospect of remedial action)

Conagra, Inc. 246 NLRB No. 088
(holding meetings during U campaign at which Ees were told by plant manager to bring any problems to him which they could not work out with their supervisors, unlawful, where meetings of this type were unusual)

Lesson Electric Corporation 247 NLRB No. 203
(E holding meetings with varying Ee representatives chosen at random, unlawful, since initiated during U campaign in order to solicit grievances)

Knapp Foods, Inc. d/b/a Hi-Lo Foods 247 NLRB No. 166
(violation where, in course of anti-U campaign meeting, E's attorney asked Ees to discuss their grips against E; the attorney was soliciting grievances and E did nothing to rebut presumption that it was promising to remedy such grievances)

Tartan Marine Company 247 NLRB No. 073
(supervisor asking Ee if she had signed U card, unlawful, where supervisor called Ee's attention to E's notice regarding withdrawal of U cards, and in context of E's hostility to U and supervisor's reiteration of hostility)

Houston County Electric Cooperative, Inc. 247 NLRB No. 087
(asking Ee during U campaign *what the problems were*, unlawful, absent any previous policy of periodically soliciting grievances; *such activity ... occuring in midst of U campaign inherently constitutes implied promise to remedy grievances and violates Section 8(a)(1)*)

Okeh Caterers, Inc. JD-(SF)-294-82
(E's asking Ee *what kind of complaints* Ees had about their work, not violative where Ee brought up subject of Ees' complaints, and E did not expressly or impliedly indicate to Ee that E would take any action to remedy Ees' complaints)

Lacks Industries, Inc. JD-346-82
(E's meetings with Ees during U organizational campaign for purpose of having gripe sessions, not unlawful, since E had an established pattern of soliciting grievances for some years prior to organizational campaign and was continuing such practice during campaign)

Lacks Industries, Inc. JD-346-82
(alleged unlawful attempt by supervisor to set up meetings to solicit grievances from Ees during U organizational campaign, not unlawful, where E's proposal did not go beyond lawful continuation of E's practice of soliciting Ees' grievances and problems; moreover, proposal was vague in that supervisor made no mention of whether he would be in attendance at meeting)

Lacks Industries, Inc. JD-346-82
(alleged unlawful solicitation of grievances by supervisor, not unlawful; where supervisor told Ee that he would like to know about Ees' problems but then added that he doubted he could do anything about problems and, therefore, there was neither an express nor implied promise to remedy any of them; supervisor's accompanying remark that things would be happening in about a month was so obscure and nonspecific, standing alone, as to bear no probative value)

Lacks Industries, Inc. JD-346-82
(although E's solicitation of grievances, during conversation with Ee may have been consistent with E's prior practice of soliciting grievances, such conduct held technical 8(a)(1) violation, since its reference point was U's organizational campaign which was context of entire conversation with Ee)

Lion Trucking Corporation JD-(NY)-56-82
(violation, where E's manager after learning Ees had signed U cards, asked Ees what their problems were and upon learning major reason for their interest in U was lack of hospitalization plan, promised Ees he would secure hospitalization and instructed Ees to withdraw to discuss whether they still wanted U; contention benefits not conditioned on rejection of U and because E's manager told Ees they were free to join U, rejected)

U. S. Reduction Company JD-(ATL)-13-82
(plant manager's solicitation of grievances and complaints, violative since his comments were sufficient to give rise to Ee anticipation of improved conditions of employment which might make U representation unnecessary)

Ellis Hospital JD-164-82
(E did not engage in unlawful conduct nor interfere with election by allegedly soliciting grievances and promising to redress them, where E told Ees of its economic problems and urged Ees to vote against U but did not ask Ees to tell him of their problems)

Lauridsen Foods, Inc. JD-36-81
(asking Ees if they *know of any problems in the plant,* violative)

Clements Wire and Manufacturing Company, Inc. JD-520-80
(plant manager's solicitation of grievances and his promises to resolve them, unlawful where they were attempt to persuade Ees to abandon U)

Palomar Transport, Inc. JD-(SF)-159-80
(solicitation of grievances unlawful, where solicitation was not shown to have been established practice and impliedly held promise of rectification, thereby obviating need for U representation)

Crown Central Petroleum Corporation JD-(SF)-139-80
(asking Ees to talk to management about their problems not violative notwithstanding statement made during U campaign where it was longstanding company policy for Ees to take their problems to their supervisors)

Broad Street Lincoln Mercury, Inc. JD-298-80
(soliciting grievances from Ees, violative)

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)
(asking Ees why they thought they needed U and what problems or grievances they had about conditions in plant, and stating belief E could solve problems w/i year w/o U)

5030-4030—Cont.

K & K Gourmet Meats, Inc. v. N.L.R.B. **640 F.2d 460 (C.A. 3, 1981)**
(solicitation of grievances is only violative when accompanied by either implied or express promise that grievance will be remedied, and here E made no specific promises, only willingness to listen and consider, general implied promise is insufficient to support Sec. 8(a)(1) violation)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(ct could not disregard finding of Bd that creation of telephone hot line was intended and understood to be solicitation of grievances and implied promise that those grievances would be remedied and was unlawful)

N.L.R.B. v. Arrow Molded Plastics, Inc. **653 F.2d 280 (C.A. 6, July 1981)**
(violation where E during preelection period hired personnel consultant who held meetings with Ees in recognition of fact *there was U knocking at door,* such meetings were unprecedented, it was suggested grievances would be resolved only if Ees rejected U representation, and E took steps to resolve grievances under questionable circumstances)

N.L.R.B. v. Naum Brothers, Inc. **637 F.2d 589 (C.A. 6, Mar 17, 1981)**

N.L.R.B. v. Berger Transfer & Storage Co. **678 F.2d 679 (C.A. 7, May 1982)**
(*E violates Section 8(a)(1) of Act by soliciting grievances when such solicitation is accompanied by express or implied promise of benefits specifically aimed at interfering with, restraining and coercing Ees in their organizational effort*)

N.L.R.B. v. Antonino Carilli, d/b/a Antonino's Restaurant **648 F.2d 1206 (C.A. 9, June 1981)**
(E asking Ee how important Ee's medical insurance was to Ee and whether she would be U member if she worked at E which offered medical and dental insurance benefits, or if E had better insurance programs, unlawful, since language used by E reasonably calculated to give Ee impression that E was considering instituting its own superior medical program if Ee would not support U, and in view of E's subsequent ULPs)

N.L.R.B. v. Haven Mold, Inc. **634 F.2d 635(T) (C.A. 9, 1980)**
(unlawful)

5030-4040 Concerning union membership, adherence or activities of others

Donnelly Manufacturing Co. Division of Brockhouse Corp. **265 NLRB No. 196**
(supervisor asking U adherent *if she thought U would get in,* unlawful, notwithstanding contention questioning not coercive where Ee openly supported U and unaccompanied by threat of reprisal or promise of benefit, since right of avowed U supporter to be free of coercion, interference or restraint no less than secret supporter, and threat of reprisal or promise of benefit not necessary for interrogation to be unlawful; further, questioning interferred with Ees' Section 7 rights since it sought to elicit information regarding strength of Ee support for U and lead Ees to believe U activities under surveillance)

Enterprise Products Company **265 NLRB No. 083**
(E's interrogation of Ee, following unlawful discharge of fellow Ee for U activity, concerning reaction of other Ees to such discharge, unlawful)

Enterprise Products Company **265 NLRB No. 083**
(inasmuch as Ee volunteered information to E that he had been requested to sign U authorization card, E's interrogation might be excusable but for fact that E persisted, in face of Ee's reluctance, in attempt to ascertain identity of solicitor)

Larid Printing, Inc. **264 NLRB No. 040**
(E's president asking Ee why Ee wanted U and stating Ee could not get raise or promotion because of presence of U, unlawful)

Washington Beef Producers, Inc. **264 NLRB No. 155**
(asking U adherents if they knew how U's organizers functioned, violative)

Cox Enterprises, Inc., d/b/a Atlanta Newspapers **264 NLRB No. 120**
(after Ee voluntarily told supervisor about strike rumor, interrogation by higher supervisor about source of rumor held violative, as interrogation involves U activities of other Ees)

The Moore Company, Inc., Div. of Essex Corp. **264 NLRB No. 159**
(where supervisor commented to Ee that he had seen Ee talking to another Ee and questioned Ee as to whether latter Ee had asked him to sign U authorization card; questioning regarding card solicitation unlawful but supervisor's comment that he saw two Ees talking, without more did not constitute unlawful surveillance)

E. I. Dupont De Nemours **263 NLRB No. 015**
(supervisor asking Ee who was known U supporter *how U campaign was* coming, unlawful, notwithstanding inquiry introductory and that supervisor motivated to initiate conversation by job related concern that Ee was being distracted by U talk at shift change breaks during which information and instructions need to be passed)

Frank J. Schreader d/b/a National Apartment Leasing Company **263 NLRB No. 080**
(questioning Ee concerning who else was involved in unionizing, violative)

United Sanitation Services, Division of Sanitas Service Corp. **262 NLRB No. 173**
(questioning Ee as to his attitude towards U, inquiring as to identity of just who favored U and/or attended U meetings, and giving instructions to spy on U activities of others and keep management informed, violative)

Wagner Distribution Services, Inc. d/b/a Distribution Services West **262 NLRB No. 096**
(asking Ee what she thought about U and to talk to other Ees about it and see what they thought, and inquiring acbut result of Ees inquiries, unlawful)

Marion Rohr Corporation **261 NLRB No. 138**
(violation where E interrogated Ee about U activities of other Ees and percentage of their membership in U)

Howard Johnson Motor Lodge **261 NLRB No. 123**
(asking supervisor if she had *heard any U talk,* what were Ees unhappy about, if she had attended U meeting or signed U card, not violative, since it is not unlawful for E to request or require such information from supervisor)

Penn Color, Inc. **261 NLRB No. 058**
(interrogating Ees as to how many Ees had signed U authorization cards, unlawful)

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car **260 NLRB No. 118**
(one week after unlawful discharging Ee, asking dischargee Ee to report about U activities of other Ees, violative)

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**
(asking EEs on separate occasions for names of people who organized U and also stating that whoever gave him the information would benefit, unlawful)

Bedford Farmers Cooperative **259 NLRB No. 165**
(manager's questioning applicant for employment regarding Ee's knowledge of U and E's difficulties in their bargaining relationship held not violative, since question did not seek disclosure of Ee's or other Ees' U activity or sentiments)

General Baptist Nursing Home, Inc. **259 NLRB No. 132**
(although E asked Ees to keep her advised of U organizational developments, it was insufficient to support finding of interrogation where Ees voluntarily gave E information about U activities of other Ees)

Brockwood Furniture, Division of U.S. Industries **258 NLRB No. 028**
(interrogation about U activities generally found interference, and interrogation specifically as to why Ee attended U meeting, whether Ees had any questions about E's anti-U speeches, and whether one Ee could change the mind of his wife who was on the in-plant organizing committee, unlawful and interference)

Mark I Tune-Up Centers, Inc. **256 NLRB No. 138**
(E unlawfully coerced Ee to withdraw his support from U, to maintain surveillance of U activities, and to inform on U activities of his fellow Ees, by repeatedly quizzing Ee, who was concerned about his job if he supported U, about identity of U activists)

Metropolitan Life Insurance Company **256 NLRB No. 100**
(asking Ee if she signed U card, if U asked her to sign U cards, and who attended U meeting and what was said there, violative)

Complas Industries, Inc. **255 NLRB No. 106**
(E's questioning of one Ee about another Ee's work performance and U activity, unlawful since it was neither isolated nor innocuous and did not meet *Johnnie's Poultry* standards, where Ee was questioned more than one time on same subject by high management official and was not assured against reprisals or informed that he was free to refuse to answer; neither *Johnnies Poultry* nor later cases have limited requirements of that case strictly to attorneys)

Boyer Ford Trucks, Inc. **254 NLRB No. 184**
(inquiries to Ee as to who was ringleader of U movement and if she was being pressured to go along with unionization, violative)

United Oil Manufacturing Co., Inc. **254 NLRB No. 179**
(questioning Ee about U activity of coworkers, violative)

Radische Corporation **254 NLRB No. 164**
(supervisor's questioning of Ee as to whether all Ees who had signed U card were wearing U stickers, violative; question was not privileged because of Ee's open U support nor was coercive impact of question diminished by absence of any attendant threats and, furthermore, question extended beyond Ee's U involvement and reflected effort to ascertain extent of U's support among other Ees)

Radische Corporation **254 NLRB No. 164**
(supervisor's questioning of Ee as to whether Ee was being *bothered on her job* by persons for or against U, not violative)

5030-4040—Cont.

K & K Transportation Corp., Inc. **254 NLRB No. 087**

Overnite Transportation Company **254 NLRB No. 011**
(asking Ee's assessment of attitude of other Ees towards U, violative)

Gossen Company, a Division of the United States Gypsum Company **254 NLRB No. 041**
(supervisor asking Ee one week prior to election how Ee thought election would turn out, not unlawful)

Gossen Company, a Division of the United States Gypsum Company **254 NLRB No. 041**
(supervisor asking Ee whether Ee thought U had chance to win election, lawful)

Tapco Products Company, Inc. **253 NLRB No. 145**
(asking Ee *if he knew anything about the U, who was trying to organize it, and if (he) was ... part of it,* violative)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor asking Ee why another Ee had become U supporter, unlawful)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(*—how many people in that department were for U?* violative)

Western Truck Services, Inc. **252 NLRB No. 096**
(asking Ee whether *we really need the U,* violative)

St. John Medical Center **252 NLRB No. 077**
(inquiry as to identity of instigator of U activity, violative)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(although Ee called E on telephone and brought up subject of U activity, E's subsequent interrogation over telephone, unlawful, where E went beyond legitimate inquiry by pressing Ee for names of Ees involved in U and by devoting most of long conversation to questions about U)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(E at meeting he called after being notified U had claimed majority asking Ees how many of them had signed up with U, unlawful, in context of extreme animus displayed by E at meeting, notwithstanding Ees did not answer)

Sentry Investigation Corp. **249 NLRB No. 130**
(E's president interrogating Ees as to whether they had signed card for U, who was ring leader of drive to change bargaining representative, and who had signed U cards, unlawful; notwithstanding contention Ees not coerced where no reason stated for questions and no assurances against reprisals given, one Ee questioned was threatened with reduction of and change in hours, and another Ee requested legal counsel to be present at subsequent interview with E's president)

Streamway Division of The Scott & Fetzer Co. **249 NLRB No. 054**
(questioning of Ees about need for U by member of firm employed by E to conduct attitude survey among Ees, unlawful, where questioning was not isolated matter or one impact of which would be lost upon Ees in view of formalization of Ee meetings with members of firm, coupled with instruction to Ees to attend meetings and voice their grievances and feelings)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(supervisor's asking Ee if she knew if there were any Ees that had been talking about U, unlawful, notwithstanding E's claim that no violation existed because conversation occurred in working area and not in private office, supervisor did not press inquiry, and occurrence was isolated incident)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(interrogation as to identity of persons making statements at U meeting, unlawful)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's asking Ee to let him know if he heard anything about Ee organizing campaign, violative)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's asking Ees who were ring leaders in U drive, how the vote was going, and how much U was going to ask for, violative)

Production Plated Plastics, Inc. **247 NLRB No. 076**

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(asking Ee if he knew which Ees signed U cards and if he had signed a card, violative)

Superior Cable Corporation **JD-222-82**
(such interrogation violative, notwithstanding it occurred at Ee's exit interview, two hours prior to his voluntary termination of employment)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**
(interrogating Ee as to whether her son, another Ee, had been attending U meetings, unlawful and objectionable)

Lauridsen Foods, Inc. **JD-56-81**
(interrogation of Ee on almost daily basis as to how things were going in organizing campaign, violative)

The Metalloy Corporation **JD-23-81**
(questioning Ee who inquired about possible employment for a friend as to such applicant's U membership at former job, his U desires and activities, violative)

General Dynamics, Electric Boat Division **JD-681-80**
(supervisor interrogating Ees concerning reported presence of supervisor at U meeting, not unlawful, where supervisor did not seek to extend inquiry of any Ee beyond confirmation of supervisor's attendance, inquiries were not at instigation of E and Ees were not likely to view information sought as being that upon which future action against them would be based)

Datagraphix, Inc. **JD-(SF)-344-80**
(supervisor's stating to Ees that she had been reported to Industrial Relations for passing out Avon and U cards and that her activities in this respect had been subjected to supervisory scrutiny, and asking her to provide information concerning actions of her co-workers in distributing Avon and U cards constituted unlawful interrogation and created impression of unlawful surveillance)

Palomar Transport, Inc. **JD-(SF)-158-80**
(E's interrogation of U adherents as to their own and coworkers' sympathies, unlawful, where E failed to indicate that it had any legitimate purpose for questioning them and gave Ees no assurance against retaliation)

Church's Fried Chicken, Inc. **JD-(SF)-301-79**
(questioning Ee about U's organizing effort by low level supervisor violative where E's higher-level management had clearly indicated their anti-U feelings and had discharged supervisor who had become involved in U activity)

TRW-United Greenfield Division v. N.L.R.B. **637 F.2d 410 (C.A. 5, 1981)**
(interrogation of U adherent found coercive in view of E's opposition to U and systematic effort to ascertain U smypathies, Ee was questioned by and in office of high ranking official and refused to answer until assured of no reprisals, E sought specific responses, including possibly names of Ees who attended U meetings and lacked valid purpose)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(interrogation of Ees as to whether they knew anything about Ees signing U cards, violative)

N.L.R.B. v. La-Z-Boy Tennessee **625 F.2d 20 (C.A. 6, June 1980)**
(interrogation of Ees concerning their U sympathies and activities, violative)

Nebraska Bulk Transport, inc. v. N.L.R.B. **608 F.2d 311 (C.A. 8, 1979)**

N.L.R.B. v. The Saloon, Inc. **647 F.2d 171(T) (C.A. 9, Mar 1981)**
(extensive questioning about scope of U health benefits, likely Ee reaction if comparable E program was provided or E became non-U shop, and attempting to solicit detailed information about identity of U activists and to gain knowledge of content of internal U deliberations, held unlawful)

N.L.R.B. v. Los Angeles New Hospital **640 F.2d 1017 (C.A. 9, Mar 3, 1981)**
(E's president asking Ee if she knew anything about scheduled U meeting and to relay to him name of other Ees at meeting, subsequently requesting Ee not to go to U meeting and after meeting asking Ee if she signed U card, unlawful, where Ee not assured that no reprisal would be taken and it was not communicated whether there was valid purpose in asking question)

N.L.R.B. v. Los Angeles New Hospital **640 F.2d 1017 (C.A. 9, Mar 3, 1981)**
(violation, where E's president asked Ee if she had attended U meeting and names of people at meeting, and Ee was subsequently asked by supervisor how she felt about U during interview in which she protested transfer since Ee was not assured no reprisals would be taken and it was not communicated whether there was valid purpose in asking question)

5030-4050 Concerning union benefits

Central Freight Lines, Inc. **258 NLRB No. 056**
(asking Ee if he was U organizer, suggesting that he should think about his U role, asking what improvements U could bring, and warning him not to harass any Ees, violative)

5030-4060 Concerning union meetings

Ray-Lee, A Division of Genuine Parts Company **265 NLRB No. 211**
(supervisor asking Ee how U meeting went and informing Ee materials necessary for his work would not be ordered until *U talk settled* violative)

Tokheim Corporation **265 NLRB No. 210**
(supervisor's asking U adherent whether he went to U meeting of previous night and on a later occasion asking whether Ee had *another meeting* when Ee refused to work overtime, violative, notwithstanding Ee's open declaration concerning his U preferences)

Washington Beef Producers, Inc. **264 NLRB No. 160**
(questioning U adherent about what Ees were in attendance at U meeting, violative)

5030-4060—Cont.

Virginia Apparel Corporation 264 NLRB No. 030
(asking Ee if E's personal financial status was any of her business held unlawful interrogation where E indicated that Ee had talked about it at U meeting)

Howard Johnson Motor Lodge 261 NLRB No. 123
(asking supervisor if she had *heard any U talk*, what were Ees unhappy about, if she had attended U meeting or signed U card, not violative, since it is not unlawful for E to request or require such information from supervisor)

Holland American Wafer Company 260 NLRB No. 041
(asking Ee how many Ees had attended U meeting and comment, *Well, you were there*, held coercive notwithstanding fact that supervisor had *fairly open relationship* with Ee)

Midwest Electric Manufacturing Corporation 260 NLRB No. 032
(E's questioning Ee on day of U meeting as to whether he was going to attend, unlawful, where E did not give any legitimate reason for interrogating Ee, did not provide any assurance that Ee or any other Ee would suffer no reprisal for their U activity, and had created impression of surveillance by comments to Ee about U meeting the next day)

Valley Plaza, Inc. d/b/a Captain Nemo's 258 NLRB No. 076
(violation where E interrogated Ee as to who attended U party and who signed U authorization cards, thereby creating impression of surveillance)

Mark I Tune-Up Centers, Inc. 256 NLRB No. 138
(E's asking Ee whether Ee was going to U meeting and stating that E would rather Ee did not go, unlawful where, while question appeared to be spontaneous and harmless, surrounding facts show that Ee's past experience with E forewarned him of E's U animosity, there is no basis for inferring that Ee could have perceived legitimate basis for question, there were no assurances that Ee's response would not lead to reprisal and Ee perceived question as frought with danger of coercion)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(supervisor asking Ee why Ee held U meeting in her home if Ee did not have anything to do with U, unlawful)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(supervisor asking Ee if Ee had stated at U meeting that she had received only 1 merit raise while employed by E and upon Ee's denial she had made statement informed Ee several witnesses had heard her and that in effect Ee was saying that E was a terrible place to work and asked if Ee wanted U, unlawful)

Pepsi-Cola Bottling Company of Mason City, Iowa 251 NLRB No. 028
(supervisor asking Ee whether new hire attended U meeting, unlawful)

Magnesium Casting Company, Inc. 250 NLRB No. 107
(E's interrogation of Ee as to whether she had attended U meeting, unlawful, in view of subsequent statements creating impression of surveillance and threatening Ee by claiming that U would cause loss of Ee's job)

Excavation-Construction, Inc. 248 NLRB No. 081
(supervisor's interrogation of Ees concerning prospective U meetings w/o assurances against reprisals violates Act)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. 248 NLRB No. 089
(E vice-president's asking bargaining unit Ee if he was going to U meeting and then telling Ee that he had ways of finding out about U meeting, that he had latest information about U, and that he intended to ascertain which Ees were involved, violative)

Brodart, Inc. JD-148-81
(violation, where E's assistant treasurer told U supporters that he knew they were attending U meetings and questioned Ees as to what went on at U meetings)

Metropolitan Teletronic Corp. JD-(NY)-12-81
(E's president questioning Ees in group about who attended U meetings and asking Ee whether he was going to meetings and if he would report back on events of meeting, violative)

General Dynamics, Electric Boat Division JD-681-80
(supervisor interrogating Ees concerning reported presence of supervisor at U meeting, not unlawful, where supervisor did not seek to extend inquiry of any Ee beyond confirmation of supervisor's attendance, inquiries were not at instigation of E and Ees were not likely to view information sought as being that upon which future action against them would be based)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. 629 F.2d 305 (C.A. 3, 1980)
(asking Ee if she knew purpose of scheduled U meeting, violative, given absence of any explanation by E of its interest and lack of assurances that E would not retaliate against Ee because of her U activities)

Excavation-Construction, Inc. v. N.L.R.B. 660 F.2d 1015 (C.A. 4, Oct. 1981)
(supervisor's asking Ee what the U is going to vote on held not violative where no intimidation or threat of reprisal, notwithstanding lack of assurance against reprisal)

Pioneer Natural Gas Company v. N.L.R.B. 662 F.2d 408 (C.A. 5, Nov. 1981)
(supervisor's asking Ee if she would attend U meeting was not per se violative, and interrogation held not unlawful where Delco-Remy criteria were not considered; supervisor's subsequent remarks negated implication of intended reprisal)

N.L.R.B. v. Los Angeles New Hospital 640 F.2d 1017 (C.A. 9, Mar 3, 1981)
(E's president asking Ee if she knew anything about scheduled U meeting and to relay to him name of other Ees at meeting, subsequently requesting Ee not to go to U meeting and after meeting asking Ee if she signed U card, unlawful, where Ee not assured that no reprisal would be taken and it was not communicated whether there was valid purpose in asking question)

N.L.R.B. v. Los Angeles New Hospital 640 F.2d 1017 (C.A. 9, Mar 3, 1981)
(violation, where E's president asked Ee if she had attended U meeting and names of people at meeting, and Ee was subsequently asked by supervisor how she felt about U during interview in which she protested transfer since Ee was not assured no reprisals would be taken and it was not communicated whether there was valid purpose in asking question)

5030-4070 Concerning employee group meetings

Mathews Ready Mix, Inc. 259 NLRB No. 092
(asking Ee to give written account of statements made at Ee meeting called to discuss wage demands for new contract held coercive interrogation)

Streamway Division of The Scott & Fetzer Co. 249 NLRB No. 054
(supervisor's *party* remark to Ee who had attended gathering at fellow Ee's home at which U representative was present, and his question as to who was there, not unlawful, where supervisor's remark was more of a salacious jibe than interrogation about suspected U activity, and there was no evidence that remark and question were oriented in U considerations)

5030-4080 Concerning other union activities

Van Dorn Plastic Machinery Co., Division of Van Dorn Company 265 NLRB No. 036
(interrogating Ee who E knew was U negotiating committeeman about upcoming strike vote and urging that Ees not support the vote, violative)

Enterprise Products Company 265 NLRB No. 083
(E's asking why Ee, to whom E had been good, had not come forward and told E about U activity held unlawful interrogation and implied threat, where implication that continuation of E's *being good to Ee* was conditioned upon his becoming an informer)

Enterprise Products Company 265 NLRB No. 083
(fact that E followed Ee home to pose question whether Ee knew anything about U held to remove interrogation from usual category of conduct and therefore unlawful)

E. I. Dupont De Nemours 263 NLRB No. 015
(supervisor asking Ee who was known U supporter *how U campaign was coming*, unlawful, notwithstanding inquiry introductory and that supervisor motivated to initiate conversation by job related concern that Ee was being distracted by U talk at shift change breaks during which information and instructions need to be passed)

Homemaker Shops, Inc. 261 NLRB No. 050
(store manager's interrogation of representative of E-dominated committee as to latter's knowledge of U activity and what store it might be coming from held unlawful rather than innocuous as found by ALJ)

Homemaker Shops, Inc. 261 NLRB No. 050
(store manager's interrogation of Ee who was representative of E-dominated committee as to whether she had met with U representative that day and what demands Ees were going to make, unlawful)

Genley Industries, Inc. 260 NLRB No. 189
(E's questioning Ee as to whether Ee was aware of *--anything about picketing or striking or anything at his plant the next morning* held violative, since inquiry was lacking in legitimate purpose and was calculated to discern Ee's knowledge of U activity and hence would tend to result in disclosure of his (Ee's) sentiment)

Bedford Farmers Cooperative 259 NLRB No. 165
(manager's questioning applicant for employment regarding Ee's knowledge of U and E's difficulties in their bargaining relationship held not violative, since question did not seek disclosure of Ee's or other Ees' U activity or sentiments)

Cumberland Farms Dairy of New York, Inc. 258 NLRB No. 120
(questioning Ees if there was effort to organize U in plant, violative)

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation 258 NLRB No. 143

Hopcraft Art and Stained Glass Works, Inc. 258 NLRB No. 190
(talking to Ee who with other Ees had meeting with U, upon receipt of letter from Bd concerning discharge of discriminatee and asking Ee what

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took place down there at the U hall that I am being subpoenaed for, this? violative)

Mini-Industries, Inc. **258 NLRB No. 123**
(questioning Ees regarding matters relating to U, violative where no assurances against reprisal were given Ees)

Jax Mold & Machine, Inc. **255 NLRB No. 129**
(supervisor's question, *Do you reckon we could have chance to get rid of U* held coercive, notwithstanding both may have been friends)

Cutting, Inc. **255 NLRB No. 076**
(questioning U committee member about forthcoming signing of contract, asking her how new agreement would affect Christmas Holiday plan, and if she would sign agreement, not unlawful)

United States Postal Service **252 NLRB No. 014**
(physician's remarks about U, made during physical examination of Ee, and his questioning of Ee as to why Ee wanted U representative with him at physical examination, not unlawful where, although physician was supervisor of nurses, he was not acting in supervisory capacity as to Ee being examined, and his question and remarks that Ee deserved discipline, which were due to his personal irritation, could neither be attributed to E nor reasonably be construed as threat of retaliation)

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(conversations of E's board member, father, with unit Ee, daughter, concerning current levels of U support, not violative, where no interference or coercion proved)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(supervisor instructing Ee to admit to E's president that she had signed U card and was conversant with U's organizing efforts, unlawful)

Tartan Marine Company **247 NLRB No. 073**
(supervisor asking Ee if Ees were paid $5 to sign U cards and inquiring if Ees knew it would cost $3 to get them back, violative)

Cashmere Lumber Company **JD-(SF)-93-80**
(although supervisor took Ee to lunch as a business propositon at least, in part, to delve into U situation at plant, and occurrence was not a chance or casual undertaking and came soon after supervisor tried to influence Ee's intra-U activities, supervisor's conduct held not unlawful since he neither said nor did anything from which a job-related threat or promise could be inferral)

Norym Company, Inc. **JD-847-79**
(asking Ee if she had heard any rumors of U activity, not unlawful, since isolated incident and at time of questioning there was no U activity at which questioning could be aimed; further, *it is questionable that asking Ee if she had heard any rumors of U activity, as opposed to asking if there was any U activity... is violation*)

N.L.R.B. v. Permanent Label Corporation **657 F.2d 512 (C.A. 3, 1981)**
(asking Ee who had given her U authorization card, unlawful)

J. P. Stevens & Co., Inc. v. N.L.R.B. **638 F.2d 676 (C.A. 4, 1980)**
(posting notice asking Ees to report *threats* by U activists, violative)

N.L.R.B. v. Proler International Corporation **635 F.2d 351 (C.A. 5, 1981)**
(interrogation of Ee concerning U's organizational activities and warning Ee that if any Ee induced other Ees to join U it might endanger their jobs, unlawful)

N.L.R.B. v. The Saloon, Inc. **647 F.2d 171(T) (C.A. 9, Mar 1981)**
(extensive questioning about scope of U health benefits, likely Ee reaction if comparable E program was provided or E became non-U shop, and attempting to solicit detailed information about identity of U activists and to gain knowledge of content of internal U deliberations, held unlawful)

5030-4080-5000 Whether employees will cross picket line in event of strike

5030-4080-5020 Accompanied by threats, promises or other coercive conduct

Mobile Home Estates, Inc. **259 NLRB No. 182**
(asking Ee if she would cross picket line in event of strike not (*per se*), but where questioning occurred in context of statement that E could afford better wages w/o U it became violative)

5030-4090 Concerning protected activities

Knogo Corporation **265 NLRB No. 130**
(Ee allegedly being questioned by supervisor as to what Ee would do in event of strike (against E), not violative, since inquiry, if made, was not coupled with any coercive statement that any disciplinary action would follow)

Ebb Tide Processing, Inc. **264 NLRB No. 100**
(interrogation as to Ee's participation in grievance, unlawful)

Ebb Tide Processing, Inc. **264 NLRB No. 100**
(asking Ee whether she had said anything to NLRB agent who was visiting E's premises, unlawful)

The Moore Company, Inc., Div. of Emco Corp. **264 NLRB No. 109**
(supervisor asking Ee if she had received subpoena for Bd hearing, unlawful, where questioning was not to assure Ee would testify if subpoenaed by Bd and to assist her in making whatever arrangements necessary for appearance, but to insure that E's witnesses were prepared and ready to testify, which is not type of business justification that would permit E to question Ees about protected activities)

Grumman Flexible Corporation **264 NLRB No. 054**
(question on employment application concerning prior workmen's compensation claims not violative as it is pertinent question bearing upon applicant's history of personal injury)

Alter Plastics Company, Inc. **262 NLRB No. 147**
(E's interrogation of Ee, not unlawful, even though it is reasonable to infer that E intended to obtain information about U, where E asked Ee, one of plant *snitches*, had she heard any rumors, and Ee, who had not heard anything about U, merely perceived question as meaningless general inquiry; as such, interrogation was sufficiently ambiguous so as to preclude finding that such clouded inquiry would necessarily have been perceived by Ee as coercive interrogation of U activities of fellow Ees)

Howard Johnson Motor Lodge **261 NLRB No. 123**
(E's regional representative asking weekend maintenance man at its motel, who was formerly desk clerk and had been managerial trainee, *as part management Ee* why he had *let this kind of unionizing activity occurrence happen and not let somebody know there was a problem* constituted *unlawful intrusion into Ees' protected concerted affairs and activities under Act*)

Howard Johnson Motor Lodge **261 NLRB No. 123**
(asking Ees if U dues had been deducted from their pay checks yet, unlawful)

Ohio Brass Company **261 NLRB No. 018**
(E's inquiry of applicant on its employment application form whether applicant had previously filed industrial or workers' compensation claim, not violative since E had legitimate and substantial business justification for its inquiry, i.e., health and safety of its work force)

Kyle & Stephen, Inc. **259 NLRB No. 087**
(asking Ees what they told representative of state department of labor in pursuing their wage claim under state law, violative)

Mathews Ready Mix, Inc. **259 NLRB No. 092**
(asking Ee for written statement that U activist told Ee that he was receiving lower salary than other Ees and should request raise, violative)

Saint Luke's Hospital **258 NLRB No. 046**
(asking health care Ee, who indicated that he would not cross picket line during anticipated strike, if he was *pressured* into that decision, violative as supervisor made no mention of whether pressure brought on Ee during working time)

Brookline Corporation d/b/a Hi Fi Buys **257 NLRB No. 166**

Eastern Steel Company **253 NLRB No. 163**
(asking Ee if anyone had came around from Labor Board and if Ee had filled out any cards, violative)

General Electric Company **253 NLRB No. 155**
(questioning Ees about another Ee's statement that if they had good U leadership like old John L., men would probably hit the bricks until things straightened out, violative as statement was protected and as it arose in otherwise protected discussion and was not incitement to engage in wildcat strike, E was not free to interrogate its Ees)

John Cuneo, Inc. **253 NLRB No. 110**
(mere asking experienced skilled Ee if he intended to attend Bd hearing, not violative where Ee's supervisory status was in question and Ee would probably be witness at Bd hearing)

Piezo Technology, Inc. **253 NLRB No. 122**
(question to Ee who was on U organizing committee as to why she thought company needed U, not unlawful, where question was asked in course of meeting between E and Ee which became discussion of pros and cons of unionization and interrogation was not meant other than as a rhetorical question)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's asking Ee why U was being formed, unlawful, in context of conversation where supervisor also made statements which created impression of surveillance)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's statement at group meeting that he had talked to various people to find out what was going on about U and was unable to do so and thus was calling meeting of Ees same questions, unlawful)

Sun Belt Linens, Inc., d/b/a South Texas Linen Service (Laundry and Dye House Workers, Local 281, a/w Teamsters) **250 NLRB No. 174**
(sales manager's questioning of Ee and his admonition to her that her walkout efforts were *not nice thing to do*, unlawful, since they were designed to coerce her to abandon her determination to walk out)

James E. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(asking Ees why they had not stopped Ee from filing certain papers with Bd)

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Pacific Coast International Meat Co. 248 NLRB No. 183
(interrogating Ees as to who was leader in lodging Cs about supervision, unlawful)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel 258 NLRB No. 113
(interrogating Ees as to whether they had signed letter and - if they had - why they had done so and whether they were aware that it suggested supervisor's discharge, violative, where interrogation constituted integral part of E's program, found unlawful herein, to discharge persons who signed the letter)

B. N. Beard Company 248 NLRB No. 016
(interrogating Ees as to whether they intended to strike, closely followed by threat to discharge them if they did so, unlawful)

Sherwood-Trimble Medical Building 247 NLRB No. 166
(interrogation of Ee concerning charges that Ee filed with Bd w/o complying with safeguards, unlawful)

Carl Karcher Enterprises JD-(SF)-227-82
(supervisor's interrogation concerning Ee's filing of OSHA charges, unlawful, notwithstanding that supervisor had low level managerial status, lacked authority to effectuate personnel or labor policies, and was on friendly terms with Ee, where inquiry was undertaken w/o any prompting from Ee and after E had received notice of ULP charges filed by Ee, and was serious inquiry at arm's length; while not taking place in any locus of authority and not overtly hostile or part of anti-U activity, questioning occurred in context of Ee's forcing E's hand in correcting unsafe conditions)

Carl Karcher Enterprises JD-(SF)-227-82
(supervisor's remarks designed to extract from Ee, who had filed C with State OSHA concerning unsafe conditions at E's facility, an admission which supervisor must have known was forthcoming concerning OSHA inspection which had been conducted at E's facility held unlawful interrogation, since OSHA inspection was not common, everyday event at E's facility, and E failed to offer any explanation for supervisor's need to lead Ee into an explanation of what Ee meant when he inquired if any inspectors had come from OSHA)

Rainbo Baking Company JD-(SF)-117-82
(questioning Ee as to why he had filed a grievance, unlawful)

Day-Met Union, Inc. JD-464-81
(supervisor interrogating Ee as to whether another Ee had telephoned, as he had instructed, agency regarding voting out U)

California Pacific National JD-(SF)-260-81
(questioning Ee about whether he had filed OSHA complaint violative)

Todd Pacific Shipyards Corporation JD-(SF)-99-81
(questioning and berating Ee about seeking U's help in obtaining an upgrading evaluation, unlawful)

Datacomp Corporation, A Division of Herbick and Held Printing Company JD-594-80
(E's limited interviews with alleged discriminatee's co-workers as to his charges of racial discrimination against E, overtime, disruptions and his work performance, not unlawful where investigation consisted of interviews with grieving Ee and co-Ees who presumably might have had relevant information, subject matter of interviews parallaled scope of claims, and conduct of investigation, when viewed objectively, was free of any suggestion of threat or intimidation)

Round Table Enterprises Inc. t/a Thrift T Mart JD-(NY)-62-80
(asking Ee about whether he had heard any U talk, violative)

Falconer and Sons JD-(SF)-232-80
(E's asking Ee if the Ees talked about U during working hours and whether this Ee would participate in sickout, unlawful)

Paschke Packing Company JD-(NY)-33-80
(interrogation of Ee as to why he had filed ULP charges against E and threats to make it rough for him, unlawful)

Roadway Express, Inc. JD-281-80
(superintendent questioning of Ee as to why Ee had called U business agent about allegedly unsafe truck and instructing Ee to call superintendent directly, lawful, where superintendent was giving instruction to newly assigned driver as to proper procedure to follow in event of breakdown and superintendent did not forbid Ees from discussing safety matters or complaints with U officials)

Melissa Marie Fashions, Inc. JD-177-80
(violation where in context of unlawful discharge of strikers, E questioned Ees about whether they had complained to Bd)

N.L.R.B. v. Donald E. Hernly, Inc. 613 F.2d 457 (C.A. 2) (1980)
(enforcement denied where ct adhered to standards set down in *Bourne* in regard to whether E's interrogation of Ee violated 8(a)(1) and found that record in proceedings lacked substantial evidence to support conclusions contrary to those of ALJ, or to support view that interrogation in any way interfered with Ee rights)

N.L.R.B. v. Laredo Coca Cola Bottling Company 613 F.2d 1338 (C.A. 5) (1980)
(company president's asking Ee, during pre-election E campaign meeting with Ees, if Ee had written anonymous letter criticizing E's general manager, violative)

N.L.R.B. v. Wilber Brothers Company, Inc. 652 F.2d 600 (C.A. 6, June 1981)
(asking Ees about charges filed with Bd, unlawful)

Coors Container Company v. N.L.R.B. 628 F.2d 1283 (C.A.D.C.)
(asking Ees during disciplinary hearing why they had displayed sign in their vehicle, urging boycott of E's product, unlawful, where hearing had a cross-examinatin atmosphere and E focused on possibility Ees were sympathetic to striking Ees)

5030-5000 Questioning of former employees

Mineola Ford Sales, Ltd. 258 NLRB No. 082
(E's request that discharged Ee submit detailed information to E each week concerning Ee's efforts to obtain interim employment and hours worked and amounts of earnings in such employment, not unlawful, since E was *interrogated* not about U or other concerted protected activities, but rather about matters of legitimate concern to E regarding its possible backpay liability; and lack of any obligation to comply on dischargee's part is not sufficient to make request for information unlawful; W. W. Granger, Inc., 255 NLRB No. 145, distg)

S. L. Industries Inc. and Extruded Products, Corp. 232 NLRB No. 151
(requiring discriminatees entitled to reinstatement to be interviewed before they were allowed to return to work held violative where such requirement had no legitimate business justification)

5030-6000 Verification of union representation status claims

Gregory Chevrolet, Inc. 258 NLRB No. 034
(E's reading name of each Ee who signed card and looking at him, violative where meeting was held with U's permission and purpose was to satisfy E that Ees were not *conned* into signing cards and E's looking at each Ee was clearly designed to elicit response from Ees as to their U activities and sentiments)

Gregory Chevrolet, Inc. 258 NLRB No. 034
(E's reading name of each Ee who signed card, asking him why he signed card and why he wanted U, and what problems he had, violative as E may not probe into reasons for Ees' supporting U)

5030-7000 Interrogation concerning employee or others involvement in Board's processes

The Moore Company, Inc., Div. of Easco Corp. 264 NLRB No. 159
(supervisor asking Ee if she had received subpoena for Bd hearing, unlawful, where questioning was not to assure Ee would testify if subpoenaed by Bd and to assist her in making whatever arrangements necessary for appearance, but to insure that E's witnesses were prepared and ready to testify, which is not type of business justification that would permit E to question Ees about protected activities)

Hedison Manufacturing Co. 260 NLRB No. 137
(E who published in newspaper and posted on plant bulletin board notice requesting Ees who were interviewed by or gave statements to Bd agents to identify themselves to E violated Act because written request that Ees who have cooperated with Bd investigation into E's alleged ULP's identify themselves is coercive where E did not state purpose of request, no assurances against reprisal were given; such requests create fear that E may retaliate against Ees who gave statements)

Quebecor Group, Inc. Philadelphia Journal Division 258 NLRB No. 125
(questioning Ee about his visit to NLRB)

Firmat Manufacturing Corp. 255 NLRB No. 183
(E's asking Ees whether they were aware that their names had been mentioned in ULP charge and whether they had given permission for use their names, violative)

Steinerfilm, Inc. 255 NLRB No. 017
(violation where E asked Ee whether he filed charge with Bd in regard to being forced into signing disciplinary warning, and then stated that Ee and other Ees could have been fired on an earlier occasion)

Gladieux Food Service, Inc. 252 NLRB No. 106
(questioning Ee as to how she intended to vote in coming election, violative, since such questioning tends to undermine principle of the secret ballot)

Billings Chrysler-Plymouth, Inc. 251 NLRB No. 089
(asking Ee if he intended to withdraw ULP charges he had filed violative)

Certain-Teed Insulation Company 251 NLRB No. 208
(asking Ee how *our team would vote in the election* and how Ee himself would vote, violative)

Certain-Teed Insulation Company 251 NLRB No. 208
(violation where at E's request, psychologist from E's management consulting firm interviewed Ees after election about *their feelings and perceptions in*

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relationship to the company and in the course of such interviews asked Ees how they voted in election)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(questioning Ee regarding investigation by Bd agent)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(E who asked Ee about identity of Ees who testified against E during investigation of charges violated Act)

The Nestle Company **248 NLRB No. 106**
(foreman's questioning U adherent, regarding Ee's testimony at Bd hearing held violative, since such interrogation interfered with Ee's right to participate in Bd processes, as well as the right to engage in U activity)

Universal Service Contractors **247 NLRB No. 097**
(supervisor's questioning Ee regarding affidavit he gave Bd agent violative)

Carl Karcher Enterprises **JD-(SF)-227-82**
(supervisor's inquiry whether Ee had gone *to the NLRB yet,* unlawful, where inquiry, coming in context of previous interrogation of Ee with respect to his resort to processes of State OSHA, and supervisor's earlier statement that Ee would not be in trouble if he had not gone to OSHA *and others* infused supervisor's comments with tendency reasonably to interfere with Ee's statutory rights)

Thurston Motor Lines, Inc. **JD-(ATL)-99-81**
(supervisor telling Ee that if he marked ballot *no* supervisor would mail ballot in, held coercive)

Albertson's Inc. **JD-(SF)-104-80**
(questioning Ee about Ee's participation in Bd investigation, unlawful, since E did not show that questioning was for legitimate purpose and there was no requisite showing of voluntariness to Ee's participation in questioning)

Albertson's Inc. **JD-(SF)-104-80**
(discipline of Ee for not meeting production quotas, not unlawful, notwithstanding fact that discipline followed closely in time unlawful interrogation of Ee; discipline was nothing more than routine and innocuous exercise of E's authority)

Burns Electronic Security Services, Inc. v. N.L.R.B. **634 F.2d 403 (C.A. 2, 1980)**
(Bd's finding that E's manager's inquiry among Ees as to who was filing charges in regard to change in job requirements was unlawful interrogation reversed since there was no finding by Bd or substantial evidence on record that statement was motivated by anti-U animus, that it was made in attempt to seek information upon which E would take action against pro-U Ees, or that it was made in coercive or hostile setting)

5030-8000 Permissible to elicit information necessary in preparation of trial or hearing

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**
(Ee's personal and subjective reaction to coercive conduct and charges pending are not legitimate or bona fide subject of an attorney's preparation for litigation)

Kyle & Stephen, Inc. **259 NLRB No. 087**
(E's attorney's asking Ee, in preparation for hearing in ULP case, if he knew whether fellow Ee had been fired or quit, violative, since attorney did not inform Ee that any statements he made would be voluntary and that no reprisals would be taken against him if he refused to answer questions)

Henry J. Kaiser Company **259 NLRB No. 001**
(interview of prospective Ee witnesses in preparation for defense in 8(a)(3) and 8(b)(1)(A) proceeding, conducted by attorneys for both U and E in presence of E's officials, unlawful, where Ees were not told prior to investigation that their participation in interview was voluntary and that they did not have to be present; fact that they were later advised, after they declined to cooperate with interviewers, that their silence would not be held against them did not relieve coerciveness of initial interview)

Henry J. Kaiser Company **259 NLRB No. 001**
(where U's and E's attorneys conducted interviews of prospective Ee witnesses in preparation for defense in ULP proceeding against both U and E, U's contention that a violation of *Johnnie's Poultry* may be found only against E, rejected, where coercive effect of interrogation w/o necessary precautions by law was evident from record)

Cook Paint and Varnish Company **258 NLRB No. 166**
(threatening U steward with discipline for refusing to submit to questioning and to submit written material kept in course of steward's representation of Ee in grievance/arbitration proceeding, unlawful, where steward's participation throughout grievance process was result of execution of duties as steward, questioning impinged upon protected activity of Ee and steward, and such conduct cast chilling effect over all Ees and stewards in disciplinary matters; however, Bd did not herein hold that all discussions between Ees and stewards are confidential and protected or that stewards are, in all instances, insulated from interrogation)

Hollander Home Fashion Corp. **258 NLRB No. 142**
(industrial relations consultant's interviewing of Ees as to circumstances attending their signing of U's authorization cards, conducted in preparation for E's defense of ULP charges by U, not unlawful, even though some Ees testified consultant identified himself as government agent, where witnesses' modest educational attainments and lack of sophistication about U matters made it difficult for them to understand consultant's explanation of his role; consultant observed Johnnie's Poultry standards; and none of the Ees felt coerced or believed they would suffer reprisals either for participating or withdrawing from interview)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(E violated 8(a)(1) as well as 8(a)(4) where E, in furtherance of its state civil suit against Ees, obtained alleged discriminatee's deposition concerning matters relating to E's defenses in pending Bd ULP proceeding and inquired of fellow Ee whether supervisor involved in alleged ULPs knew that Ees were trying to organize; since it could reasonably be expected that Ee would, as she did, tell alleged discriminatee of conversation with E, question had its nexus in taking of deposition resulting from filing of state proceeding which was also found unlawful herein)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(taking Ees' depositions in state civil lawsuit, filed by E against them for libel and wrongful interference, and involving questioning in depth regarding Ees' U activities, unlawful, where Ees were not deposed voluntarily, there were no assurances that reprisals would not be taken, questions far exceeded relevance to civil lawsuit, and purpose of questioning which was discovery of evidence for pending Bd hearing, was not conveyed to Ees)

Cashmere Lumber Company **JD-(SF)-93-80**
(supervisor's asking Ees for their signatures on ptn for purpose of supporting E's discharge of Ee which was subject of ULP allegation and grievance procedure not unlawful as *privileged investigative gesture,* since supervisor's conduct did not discourage Ees in exercise of their statutory right nor did it have such effect, and it was unlikely, particularly in view of supervisor's assurances against reprisal, that his presentation of ptn would have tended to impair Ees' ability to testify in any ensuing grievance or Bd proceeding)

Cook Paint and Varnish Company v. N.L.R.B. **648 F.2d 712 (D Ct D.C., Apr 1981)**
(Ee held not to have automatic right to refuse to respond to questions concerning a matter scheduled for arbitration, since possibility of 8(a)(1) violation would limit coercive conduct during interview; while some decisions establish that E-conducted investigatory interviews prior to disciplinary action do not violate 8(a)(1), others require disclosure of information in order to further the efficacy of the arbitral process, automatic right to refuse to respond would conflict with *Pacific Southwest* case in which Bd deferred to arbitral decision that E has enforceable right to conduct pre-arbitral interview)

Cook Paint and Varnish Company v. N.L.R.B. **648 F.2d 712 (D Ct D.C., Apr 1981)**
(ct remanded case for further proceedings as to whether U steward was entitled to special protection due to his status as U steward in regard to being compelled to answer questions at pre-arbitration interview concerning grievance of fellow Ee in which steward may have been initially responsible for processing grievance; altho ct recognized possible serious infringement on protected activity if representatives were required to submit to compulsory interviews, it indicated that *blanket rule* would be inappropriate)

5030-8001 Generally

CNA Financial Corporation **264 NLRB No. 080**

John Gear Chevrolet Co., Inc., d/b/a Parkwood Chevrolet **262 NLRB No. 034**
(E's counsel who interrogated Ees prior to hearing but did not assure Ees that no reprisals would be taken or that their participation was on voluntary basis violated Act)

Randall E. Wheeler, Kevin E. Wheeler, and Edmund J. Wheeler, A General Partnership d/b/a Wheeler Co. **260 NLRB No. 109**
(polling Ees concerning issues raised in complaint violative where E failed to tell Ees purpose; Ees were not assured no reprisals would take place; atmosphere was hostile to U; and exceeded necessities of legitimate purpose by prying into Ee's subjective state of mind)

G.T.A. Enterprises, Inc. d/b/a **Restaurant Horikawa** **260 NLRB No. 029**
(E who discussed discharge incident with other Ees did not violate Act as conversation was free of threats or promises and served legitimate business purpose)

W. W. Grainger, Inc. **255 NLRB No. 146**
(E who questioned discharged Ee who was seeking reinstatement in Bd proceeding about his U activity violated Act where it failed to observe *Johnnie's Poultry* safeguards; it is recognized that E's power to coerce a current or prospective Ee is greater than discharged Ee who may be reinstated, however this distinction does not justify diminution of *Johnnie's Poultry* safeguards)

W. W. Grainger, Inc. **255 NLRB No. 146**
(interrogation of former Ee who voluntarily quit concerning U activities without observing *Johnnie's Poultry* safeguards not violative of Act as danger of coercion is absent)

5030-8001—Cont.

Douglas & Lomason Company 253 NLRB No. 089

(allegation that attorney for E questioned Ee about her testimony w/o giving her necessary prerequisite admonitions and safeguards dismissed where Ee did not testify that attorney interrogated her, attorney twice told her that she was not required to talk with him, that nothing would happen to her employment if she did or did not testify)

Sedan Operators Cooperative, Inc., d/b/a Desoto Cab Company JD-(SF)-150-82

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. 691 F.2d 1133 (C.A. 4, Sept. 28, 1982)

(where E's attorney questioned about 70 Ees regarding their signing of U authorization cards and read statement to all but one Ee that Ee could refuse to cooperate and face no reprisals, it nevertheless violated Act as to that one Ee as Bd has ruled that failure to observe *Johnnie's Poultry* 146 NLRB 770, standards is a per se violation of Sec. 8(a)(1))

TRW, Incorporated v. N.L.R.B. 654 F.2d 307 (C.A. 5, 1981)

(where attorney for E interviewed Ee in company conference room about alleged improper U monetary reimbursement to Ees from U and then threatened Ee with subpoena after she refused to sign copy of her statement, E did not violate Act as interview was not coercive although behavior of attorney bordered on being unethical)

Amerphone, Inc. v. N.L.R.B. 632 F.2d 4 (C.A. 6, 1980)

(no evidence to support conclusion that interviewing few Ees by E's representatives prior to ULP hearing constituted coercive interrogation; it is well established that E is privileged to interview Ees for purpose of discovering facts relevant to issues raised in ULP case to aid in preparation of case)

W.W. Grainger, Inc. v. N.L.R.B. 677 F.2d 557 (C.A. 7, Apr. 1982)

(E's attorney and former supervisor of Ee attempting to interview Charging Party at his home after his discharge, not unlawful, notwithstanding interviewers gave no assurances against reprisal and Charging Party informed interviewers they would have to get permission of Bd's attorney to interview him; further, no *carrot* since Charging Party had been discharged and any reinstatement would be through action of Bd, he had no incentive to ingratiate himself with interviews and dischargee was not intimidated)

Cook Paint and Varnish Company v. N.L.R.B. 648 F.2d 712 (D Ct D.C., Apr 1981)

(enforcement denied Bd decision holding that E violated 8(a)(1) by seeking to compel Ees, at investigatory interview, to respond to questions raised by company counsel relating to U grievance scheduled for arbitration where Bd adopted what appears to be *per se* rule that E may never use threat of discipline to obtain information from an Ee concerning a matter set for arbitration)

Cook Paint and Varnish Company v. N.L.R.B. 648 F.2d 712 (D Ct D.C., Apr 1981)

(legality of pre-arbitration interviews held generally a contractual matter to be determined by the parties in establishing grievance-arbitration procedure, subject only to Act's normal restraints against coercive conduct)

5030-8028 Employees must be apprised of purpose

CNA Financial Corporation 264 NLRB No. 080

(violation, where E wrote letter to Ees disavowing any connection with letter to Ees from U, organizing committee on which E's logo had been used and asking Ees for information as to how U obtained names and addresses of Ees from E's files, and supervisor subsequently informed Ees E wanted to know who was responsible for obtaining mailing list and stated E intended to file suit over matter, notwithstanding contention interrogation for legitimate purpose of litigation, since no assurance given against reprisal)

Hedison Manufacturing Co. 260 NLRB No. 137

(E who published in newspaper and posted on plant bulletin board notice requesting Ees who were interviewed by or gave statements to Bd agents to identify themselves to E violated Act because written request that Ees who have cooperated with Bd investigation into E's alleged ULP's identify themselves is coercive where E did not state purpose of request, no assurances against reprisal were given; such requests create fear that E may retaliate against Ees who gave statements)

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. 257 NLRB No. 045

(contrary to ALJ who found that strict application of *Johnnie's Poultry* standards concerning alleged unlawful interrogation of Ee would appear to require finding a violation but dismissed the allegation because Ee was most likely informed about the content of E's interview from E's interviews with other Ees, and coercive impact of E's interrogation of Ee was therefore minimal, Bd held interrogation violative, since *Johnnie's Poultry* safeguards require that E not only explain the purpose of the questions but also assure the Ee *that no reprisal will take place and obtain his participation on a voluntary basis*)

W. W. Grainger, Inc. 255 NLRB No. 145

(*Johnnie's Poultry* imposes affirmative duty on E to extend safeguards and where E did not inform Ee that there would be no reprisals and purpose of questioning was to prepare E's defense to ULP charge, E violated Act)

Logan Coca Cola Bottling Company 259 NLRB No. 164

(interrogation of Ees by E's labor relations consultant violative where he neither advised them of purpose of questions nor indicated to them that participation was voluntary)

Bill Johnson's Restaurants, Inc. 249 NLRB No. 036

N.L.R.B. v. Jack August Enterprises, Inc. 583 F.2d 575 (C.A. 1)

(interrogating Ee concerning disclosures made to Bd agent during investigation of ULP charge, violative)

W.W. Grainger, Inc. v. N.L.R.B. 677 F.2d 557 (C.A. 7, Apr. 1982)

(failure of E's representatives to inform Charging Party of purpose of interview and assure him no reprisals would be taken did not render circumstances of interview coercive where interviewee refused to answer questions before there was time to give assurances against reprisal or explain purpose beyond obvious connection with case before Bd)

5030-8090 Assurances against reprisal

CNA Financial Corporation 264 NLRB No. 080

(violation, where E wrote letter to Ees disavowing any connection with letter to Ees from U, organizing committee on which E's logo had been used and asking Ees for information as to how U obtained names and addresses of Ees from E's files, and supervisor subsequently informed Ees E wanted to know who was responsible for obtaining mailing list and stated E intended to file suit over matter, notwithstanding contention interrogation for legitimate purpose of litigation, since no assurance given against reprisal)

5033 HARRASSMENT OF UNION ADHERENTS OR OTHER EMPLOYEES

5033-0100 Generally

General Telephone Company of Michigan 251 NLRB No. 099

(Bd looks to effect such conduct may reasonably tend to produce rather than subjective reaction that is actually engendered)

5033-3300 By employees

Caffe Giovanni, Inc. d/b/a Giovanni's 259 NLRB No. 031

(alleged condonation of Ee harassment of leading U adherents, not unlawful, where other than E's admitted knowledge of one harassment incident and awareness of Ee hostility toward U adherents after U's loss of election and belief its source was U campaign, there was no direct evidence to establish E's knowledge of acts of anti-U harassment; record does not permit inference to be drawn that E transmitted signal to anti-U Ees that harassment would be tolerated; and E's failure to stop harassment was not unlawful since investigation into matter may have resulted in unlawful interrogations)

General Telephone Company of Michigan 251 NLRB No. 099

(disciplining Ee for harassing two other Ees by various derogatory, threatening and vulgar remarks and spitting at one of them for their not having participated in strike held not violative where GC had not established that conduct was *prima facie* or, *in fact*, protected activity)

Henry A. Young, d/b/a Columbia Engineers International 249 NLRB No. 144

(discharge of Ee who was U organizer allegedly for Ee's safety in view of threats of violence made against him, completion of Ee's work assignment, Ee's lying to E about another Ee, and his *hassling* of other Ees, unlawful, where fears for his safety proved unjustified, Ee had seniority for retention of job, information concerning other Ee passed on not as facts but mere repetition of another Ee's statement, and fact Ee may be persona non grata among certain Ees because of his U activities no basis for discharge)

J. P. Stevens and Company, Inc. 247 NLRB No. 044

(telling Ee that if she signed U card *they would probably be on your back all the time* held unlawful threat of harassment)

5033-5000 By supervisors

Red Ball Motor Freight, Inc. 253 NLRB No. 111

(discharge for Ee's alleged *disruptive* behavior and generally *poor attitude* which caused supervisor to *watch* her, held violative where Ee's propensity to engage in protected concerted activity caught attention of E which was motivated to engage in *special surveillance* of Ee's work performance and to seize upon her first alleged transgression as pretext to terminate her)

Gordonsville Industries, Inc. 252 NLRB No. 084

(supervisor chiding active U solicitor for conduct tolerated by E prior to pre-election period held violative)

S. L. Industries Inc. and Extruded Products, Corp. 252 NLRB No. 151

(instructing Ees not to speak with reinstated Ee and to stay out of her department, held violative)

5033-5000—Cont.

Penny Company 260 NLRB No. 110
(supervisor harassing Ees by following them around, unlawful)

Custom Coating & Laminating Corporation 260 NLRB No. 117
(threatening Ee with discharge if he continued to speak with other Ees during work time violative where Ee's job required him to speak to other Ees and Ee was well known U adherent)

Pullman Trailmobile, A Division of Pullman Incorporated 260 NLRB No. 089
(foreman's action in throwing U grievance in trash container with comment, *this is what I think of your damn U unlawful*)

European Parts Exchange, Inc. JD-170-82
(supervisor sitting in chair of U adherent who acted as gate attendant throughout time Ees were entering, and interrupting and criticizing adherent's procedures, unlawful)

Tourism and Development Corporation d/b/a Newport Jai Alai JD-280-80
(conversation in which supervisor asked Ee why she was wearing U button because she had earlier expressed opposition to U and told Ee that she could do as she wished but that she was making ass out of him because he always stuck behind her and so did management, held not to constitute harassment)

Blaw-Knox Foundry & Mill Machinery Inc., Wheeling Works Division v. N.L.R.B. 646 F.2d 113 (C.A. 4, Apr 1981)
(where supervisor allegedly sexually harrassed Ee's cousin, Ee's action of protesting to supervisor not *concerted* activity but merely action of individual Ee who was neither attempting to enforce collective bargaining agreement nor acting on behalf of a group)

N.L.R.B. v. Downslope Industries, Inc., and Greenbrier Industries, Inc. 676 F.2d 1114 (C.A. 6, Apr. 1982)
(mass discharge of female Ees who refused to work until E listened to their complaints about sexual harassment by male supervisor, unlawful; *freedom from sexual harassment is a working condition which Ees may organize to protect*)

5033-7800 By employer's officer

Arcadia Foods, Inc. 254 NLRB No. 128
(E's president's vehicular assault on picketing Ee and president's subsequent threat to run over Ee held violative)

5033-8300 By employer

Huck Manufacturing Company 254 NLRB No. 088
(E's statement to returning strikers that he had challenged their right to receive food stamps while they were on strike violative as harassment)

O.K. Machine & Tool Corp. and Gyrotronics, Inc. 251 NLRB No. 020
(post-strike harassment and intimidation of striker by following them and keeping tighter control on their workplace movements, unlawful)

Charles Dunn d/b/a Hopp Topp Mfg. Co. 250 NLRB No. 154
(telling U adherent during U campaign that job he had anything to do with U, and if any tools were missing, U adherent would be accused of stealing because of U adherent's criminal record)

Bates & Cunningham, Inc. JD-509-81
(telling police officer who was investigating vandalism at E's premises that U adherents may have done it, violative where accusation made with no basis in fact but merely in retaliation)

Fremont Auto Center, Inc. d/b/a Fremont Mazda JD-(SF)-13-81
(causing state department of motor vehicles to initiate investigation of U adherent on false grounds, violative, where E not only wanted to use pretext of such state action to harass and ultimately discharge him but also wished to chill U activities of other Ees)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass JD-453-80
(harassment of Ee who was U official during discussion concerning when Ee would be paid, violative)

Nuckover Trailer Manufacturing Company JD-296-80
(E's report to sheriff and resultant investigation of Ee following his confrontation with supervisors at plant held not harassment or intimidation of Ee and not motivated by Ee's U activity but by Ee's characteristic traits of temper and belligerent conduct toward authority)

5036 CHANGES IN CONDITIONS OF EMPLOYMENT OR THREATS THEREOF

5036-0100 Generally

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(claim that improvements were made during U organizing campaign for legitimate business reasons such as fostering Ee productivity is no defense unless timing of announcement or implementation of improvements is explained)

5036-0117 Violation where action motivated in part by protected activity

Appalachian Power Company John E. Amos Plant 250 NLRB No. 090
(withdrawal, from some maintenance Ees, of permission to wash up five minutes before their usual quitting time held not violative of Section 8(a)(3), since evidence did not establish that foremen in cancelling washup privilege were motivated in whole or part by anti-U or retaliatory considerations)

Formaloy Corp. JD-(ATL)-07-81
(institution of talking and break rules which were more restrictive than rules which existed prior to U campaign held violative, since more restrictive rules were motivated by E's desire to discourage U activity)

U.S. Postal Service JD-(SF)-268-81
(evaluating Ee's application for position of postal inspector, violative where done partially on basis of his activities as U steward)

Vic Tanny International, Inc. v. N.L.R.B. 622 F.2d 237 (C.A. 6, 1980)
(discharge of Ees, unlawful, where motivated, at least, in part by their participation in walkout in protest against E's change in their duties, where E commented that Ees laid themselves open to discharge for walking off job, and termination reports indicate discharges were result of both insubordination and having walked off job which constituted protected concerted activity; E's contention that Ees' refusal to carry out E's specific orders was sole cause of discharge, rejected)

5036-0117-6667 Employer has burden to establish that disciplinary action would have occurred irrespective of protected activity

Cox Enterprises, Inc., d/b/a Atlanta Newspapers 264 NLRB No. 120
(discharging Ee allegedly for lying that she had not told supervisor about strike rumor held violative, where prior to this incident E had unlawfully questioned her about source of strike rumor and Bd found that she would not have been discharged but for her remark about strike rumor)

E. I. Dupont De Nemours 262 NLRB No. 123
(it is not sufficient to show valid reason existed for Ee's discharge under *Wright Line* decision; rather, respondent must demonstrate that same action would have taken place even in absence of protected activity)

Bronco Wine Company 256 NLRB No. 013
(discharge of Ee violated Section 8(a)(1) under *Wright Line* test where GC made *prima facie* case that Ee's protesting over working conditions with other Ees played role in E's decision to discharge and E did not prove that discharge would have occurred even in absence of protected conduct)

Red Ball Motor Freight, Inc. v. N.L.R.B. 660 F.2d 626 (C.A. 5, Nov. 1981)
(E's challenge to Bd's *Wright Line* shift of burden of proof, in mixed-cause discharges (i.e., at least partially based on protected conduct and also allegedly based on good cause), as improperly requiring an E to prove its innocence and as in derogation of right of management to discharge Ees for cause, rejected)

5036-0175 Employer's normal exercise of judgment in managing employees must be recognized

The Berry Schools v. N.L.R.B. 653 F.2d 966 (C.A. 5, Aug 1981)
(cts and Bd should be loathe to intrude into internal affairs of college or university, particularly in regard to its academic judgments, absent clear showing that ULP has occurred)

5036-0800 Timing

Aztec Manufacturing Company JD-(SF)-82-80
(E's elimination of shift and resultant termination of all shift Ees not violative, notwithstanding timing and abruptness of action, where E's decision was motivated by substantial business reasons and prior to any knowledge of Ees' organizational meeting of previous night)

Grandee Beer Distributors, Inc. v. N.L.R.B. 630 F.2d 928 (C.A. 2, 1980)
(threats to hire new Ees immediately after U representative requested recognition held violative where evidence on record supported conclusion that Ees could reasonably infer from timing that such threats were directed towards Ees' decision to join U)

Grandee Beer Distributors, Inc. v. N.L.R.B. 630 F.2d 928 (C.A. 2, 1980)
(threats to change job assignments of certain Ees immediately after U representatives requested recognition held violative where evidence on record supports conclusion that Ees could reasonably infer, due to timing, that threats were directed towards their decision to join U)

5036-0812 During pendency of Board proceeding

Delta Faucet Company, a Division of Masco Corporation of Indiana 251 NLRB No. 071
(suggesting to Ee that she could disregard Bd subpoena, encouraging her not to appear at Bd hearing and threatening her with reprisal unless she testified favorably to E, unlawful)

5036-0820 Before petition filed

5036-0820—Cont.

Mastell Trailer Corporation **258 NLRB No. 167**
(E who closed up shop and discharged all Ees as soon as it was informed of impending U demand for recognition violated Act)

Mastercraft Leather Manufacturing Company, Inc. **249 NLRB No. 065**
(E's statement to Ee, threatening to close shop if U came in, excluded from consideration as objectionable conduct since it occurred before filing of ptn)

5036-0825 During critical pre-election period

Garabo Lace Mills, Inc. **265 NLRB No. 044**
(institution of written warning system as response to U organizing campaign violative)

Schnadig Corporation **265 NLRB No. 020**
(supervisor informing Ee who was U organizer when Ee requested his annual raise that E couldn't give Ee raise right now before election, since U might view it as bribery, and that supervisor was uncertain as to when evaluation for raise was due, not unlawful, absent evidence E would have given Ee raise at that time in absence of U activity)

Grove Valve and Regulator Company **262 NLRB No. 035**
(statements made by E in speeches to Ees prior to election which emphasized inevitability of strikes, threatened loss of strikers jobs and plant closure violative especially in light of fact that they were made in context of other violative conduct)

General Battery Corporation **261 NLRB No. 043**
(substituting nonmeasured rate for incentive rate not unlawful, notwithstanding it was done shortly before scheduled rerun representation election, where it was based on business considerations; rate was applied to only small part of unit, was consistent with companywide practice in similar problem situations, approximated incentive rate in this and other departments, and Ees were told it was temporary and no mention was made of U)

Jaybil Steel Products, Inc.; etc. **258 NLRB No. 157**
(changing method of pay from piecework to hourly basis which resulted in substantial loss in pay to Ees, unlawful, where instituted w/o business purpose at beginning of week immediately following organizing campaign)

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division **257 NLRB No. 152**
(supervisor's statement to Ee before election that if E's janitors unionized they would *definitely go out the gate* held violative, since supervisor admitted that he openly related unionism to (Ees') job uncertainty)

General Electric Company **253 NLRB No. 092**
(E's establishment and subsequent discontinuance of *sounding board* program upon U's filing of R ptn, unlawful, where purpose of program was to discourage support for U and discontinuance was in reprisal for Ee support of U; further, E's justification of discontinuance of program in order to avoid ULP charges, rejected, where program had been announced and implemented prior to filing of R ptn)

Intermountain Rural Electric Association **253 NLRB No. 164**
(manager's telling Ee that E *had put a blanket on all raises...because of the filing* of election ptn by U held violative)

Blue Bird Body Company **251 NLRB No. 196**
(E's prepared anti U speech made to eligible voters prior to election, violative where E used symbol of living or dying *Bluebird* as reference to *company E* and such use was implied threat of plant closure or removal if Ees chose U to be their representative)

Blue Bird Body Company **251 NLRB No. 196**
(audio slide presentation to all eligible voters, violative where remarks of Ee participants in presentation impliedly threatened that U adherents would eventually be discharged for pretextual reasons)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(wage increase granted during critical preelection period, unlawful, where announcement was not made long before U's organizing campaign as claimed by E, and increase was not conferred consistent with past practice but was unprecedented for time of year it was granted)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Suburban Ford, Inc. **248 NLRB No. 081**
(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, [illegible] and destroy U's majority status)

Debernardi Brothers, Inc. **JD-(SF)-206-82**
(unlawful where E placed onus for its refusal to grant Ee wage increase on U's organizational activity and not on any expressed desire to avoid election interference)

Formaley Corp. **JD-(ATL)-87-81**
(institution of talking and break rules which were more restrictive than rules which existed prior to U campaign held violative, since more restrictive rules were motivated by E's desire to discourage U activity)

Hassly Hardwood Lumber Co. **JD-288-81**
(wage increases promised and granted after E obtained knowledge of U activity, unlawful, since E did not meet burden of showing raises were pursuant to either established pattern or other factors unrelated to U organization)

N.L.R.B. v. Robin American Corporation **654 F.2d 1022 (C.A. 5, 1981)**
(ct held that evidence amply supported the tendency of interrogations and threats during critical period to coerce)

N.L.R.B. v. Wilker Brothers Company, Inc. **682 F.2d 660 (C.A. 6, June 1981)**
(unannounced reduction in contributions to fund for Ees in need before election, not unlawful where Ees did not know until the hearing that contributions were reduced and therefore reduction was not timed to affect them regarding their U activities)

N.L.R.B. v. Franklin Property Company, Inc., d/b/a The Hilton Inn **617 F.2d 447 (C.A. 6, 1980)**
(ct enforced Bd order where there was substantial evidence to support findings that E coercively interrogated and threatened Ees)

5036-0850 After election while union objections or challenges are pending

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. **636 F.2d 1255 (C.A. 7, 1980)**
(ct held contrary to Bd that change in sick leave policy shortly after U victory in representation election was not unlawful, since timing alone did not justify conclusion that change was discriminatory, and record showed E's economic reason was to make department's policies on sick leave uniform with those of other departments)

5036-0875 After election before expiration of time for filing objections

J. C. Penney Company, Inc. **JD-697-80**
(threats to Ees that their working conditions would change for the worse immediately after E learned U had won election, violative)

5036-1700 Concessions limited to employees outside bargaining unit

Hemet Casting Company **260 NLRB No. 060**
(grant of benefits to nonbargaining unit Ees while excluding represented Ees, not violative where benefits were extended to nonunit Ees for sound and lawful business reasons, and E left open possibility of neogitating with U relative to extending benefits but U never requested bargaining)

L. M. Berry and Company **254 NLRB No. 093**
(withholding benefits from bargaining unit Ees on advice of counsel while granting benefits to non-organized Ees, and refusing to bargain with U, violative)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(E's announcing rule, during U campaign, prohibiting maintenance engineers from walking together, even to and from same job, held violative, since rule was designed to limit Ees' discussion of U and appeared to have no reasonable business justification)

5036-3300 Employer's knowledge of concerted nature of activity

Jim Causley Pontiac, Division Jim Causley, Inc. **263 NLRB No. 130**
(E held to have had knowledge of concerted nature of Ee's complaining about working conditions and filing complaint with state occupational health division where use of pronoun *we* in complaint form received by E indicated more than one complainant, complaint form identified specifically area of shop where two Ees worked, listed job descriptions of two nonmanagement Ees alleged to be exposed to hazardous conditions, and listed paint fumes as alleged hazard to which Ees were exposed)

The Berry Schools v. N.L.R.B. **653 F.2d 966 (C.A. 5, Aug 1981)**
(E's knowledge of Ee's protected activity and its biased attitude could not support finding of ULP; unlawful motivation can not be based solely on general bias or anti-U attitude of E, whether proved or conceded, but must be established by other facts in each individual case)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. **675 F.2d 126 (C.A. 6, Apr. 1982)**
(although affirming finding that discharged Ee's filing of MIOSHA complaint was protected concerted activity, ct for second time remanded case to Bd to determine whether E had *actual* knowledge of *concertedness* of Ee's actions where Bd on previous remand had relied on evidence already submitted and applied wrong standard in holding that it was sufficient if E *knew or should have known* that Ee's actions were concerted)

5036-3300—Cont.

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. 620 F.2d 122 (C.A. 6, 1980)
(ct agreed with Bd that E discharged Ee at least in part because of Ee's protected concerted activity but remanded for finding on issue of whether E knew that activity was concerted)

5036-3311 Wage review

Schnadig Corporation 265 NLRB No. 020
(supervisor informing Ee who was U organizer when Ee requested his annual raise that E couldn't give Ee raise right now before election, since U might view it as bribery, and that supervisor was uncertain as to when evaluation for raise was due, not unlawful, absent evidence E would have given Ee raise at that time in absence of U activity)

5036-5000 Employer's knowledge of protected activity

Jim Causley Pontiac, Division Jim Causley, Inc. 253 NLRB No. 101
(Ee who filed complaint with State Health Department engaged in protected concerted activity and E found to have knowledge of concerted nature of activity where E was aware State complaint form filled out with plural pronoun *we* where complaint form identified area of shop where discriminatee and other Ee worked, listed paint fumes as hazard and in past many Ees had complained to E about fumes and evidence that many Ees had discussed poor ventilation system, complaining to management)

Leisure Lodge Nursing Home 250 NLRB No. 134
(discharge of Ees who were attempting to redress grievances violative; moreover discharges would have been violative even if E merely thought they were trying to address grievances)

Hasmly Hardwood Lumber Co. JD-285-81
(wage increases promised and granted after E obtained knowledge of U activity, unlawful, since E did not meet burden of showing raises were pursuant to either established pattern or other factors unrelated to U organization)

Aero Warehouse, Inc. JD-(NY)-46-81
(layoff which coincided with U's demand for recognition and also with notification that E would not receive anticipated contract, not unlawful, in view of absence of U animus, notice of impending layoff to Ees prior to advent of U, and E's dire economic situation)

Aztec Manufacturing Company JD-(SF)-92-80
(E's elimination of shift and resultant termination of all shift Ees not violative, notwithstanding timing and abruptness of action, where E's decision was motivated by substantial business reasons and prior to any knowledge of Ees' organizational meeting of previous night)

N.L.R.B. v. Robin American Corporation 654 F.2d 1022 (C.A. 5, 1981)
(laying off Ee who was sister-in-law of prime U supporter, not unlawful; E's failure to deny alleged unlawful motive, the locale of small and informal plant, and in-law relationship with U adherent were not substantial evidence on which to base inference that company knew Ee was U supporter)

5036-6700 Forms of changes in conditions of employment

5036-6704 Wage or bonus withheld

Woonsocket Spinning Company 252 NLRB No. 163
(telling Ee he might have received bonus if he had not voted for U)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation 249 NLRB No. 126
(withholding scheduled pay increase w/o specific announcement because of Ees' U activities violative, notwithstanding Ees were unaware of denail of increase until E announced that it would grant increase; moreover, fact that E acted on advice of its attorney does not relieve it of liability)

National King Coal, Inc. JD-(SF)-24-81
(cancellation of production bonus because Ee threatened to file charge with Bd unless he was recipient, violative)

5036-6706 Changes in reprimand system

Gurabo Lace Mills, Inc. 265 NLRB No. 044
(institution of written warning system as response to U organizing campaign violative)

Staats and Staats, Inc. 254 NLRB No. 105
(promulgation of new work rule and reinstating previously unenforced rule concerning Ees working conditions w/o bargaining with U, Ees' majority representative, on day discriminatees returned to work, held violative, since rules imposed additional burden on Ees and timing left little doubt that event was part of E's response to its Ees U activity)

International Business Systems, Inc. 247 NLRB No. 102
(violation where after U organizational campaign E *instituted a procedure for issuing warning letters for work errors and violations of work rules*)

5036-6708 Denial of promotion

National Steel Products 252 NLRB No. 120

Coating Products, Inc. 251 NLRB No. 170
(refusal to promote Ee to leadman where he was already performing work until after U campaign violative)

United States Steel Corporation, Geneva Works JD-(SF)-123-81
(E's ceasing to consider using Ee as spell foreman for engaging in activity with other Ees to promote safety, violative)

The Berry Schools v. N.L.R.B. 653 F.2d 966 (C.A. 5, Oct. 1980)
(failure to promote associate professor to full professorship allegedly in retaliation for organizational activity held not unlawful where record did not support finding especially in light of several good justifications of college's decision not to promote Ee)

N.L.R.B. v. Ford Motor Company 683 F.2d 156 (C.A. 6, July 1982)
(refusal to promote Ees who had been recommended for promotion, unlawful, since for voicing their dissatisfaction with E's promotion policies, filing grievances and ULP charges, particularly in view of promotion of others with less seniority)

N.L.R.B. v. Arrow Molded Plastics, Inc. 653 F.2d 280 (C.A. 6, July 1981)

N.L.R.B. v. Arrow Molded Plastics, Inc. 653 F.2d 280 (C.A. 6, July 1981)

5036-6709 Reduction in wages or sales commissions

Danny's Foods, Inc. 260 NLRB No. 197
(E violated Act when it removed Ee from her substitute position as alternate receiver, a higher paying job, and used her solely as cashier because this was in retaliation for her having filed a grievance under the contract)

Mineola Ford Sales, Ltd. 258 NLRB No. 082
(E did not unlawfully deprive auto salesmen of commission wages because of their U activities or refusal to cross another unit's picket line, where there was no showing that action was taken in reprisal for, or in anyway related to, salesmen's U activities; instead, companywide changes in policy, affecting all salesmen alike, were instituted by E upon its purchase of auto dealership)

Talbert Manufacturing, Inc. 258 NLRB No. 103
(reinstating striking Ees at lower pay than those Ees who did not strike and received raises violative)

Jaybil Steel Products, Inc.; etc. 258 NLRB No. 157
(changing method of pay from piecework to hourly basis which resulted in substantial loss in pay to Ees, unlawful, where instituted w/o business purpose at beginning of week immediately following organizing campaign)

Floyd Monroe & Sons, Inc. JD-80-81
(discharge of school bus driver assertedly because she had been *troublemaker, agitator* and *bitch on wheels* held violative where Ee was discharged solely because she had urged her fellow Ees to engage in strike to protest announced wage cut)

N.L.R.B. v. Donald E. Hornly, Inc. 613 F.2d 407 (C.A. 2) (1980)
(enforcement denied where ct found that record of proceedings lacked substantial evidence to support conclusions contrary to ALJ; ct rejected argument that E's statements had *tendency in the totality of circumstances to intimidate* Ees or Ees feared that they would lose two hours *show up* pay or be laid off)

N.L.R.B. v. Truck Drivers Union Local 164, Teamsters 651 F.2d 455 (C.A. 6, June 1981)
(cutting salary of veteran office worker and discharging her and her daughter as part of its action to discourage U organization violative, notwithstanding U-E's claims of legitimate discharge, where ALJ characterized U-E's defenses as *shifting, unfounded, and frivolous*)

N.L.R.B. v. Maui Surf Hotel Company and ILWU Local 142 601 F.2d 603(T) (C.A. 9, 1979)
(Ee and U which enforced attendance at contractually mandated *work stop* meeting by requiring Ees who refused to attend meeting to sign out and lose 1 hour's pay violated Act because Ees who refused to sign out were threatened with disciplinary action)

5036-6710 Reduction or withdrawal of benefits

Admiral Merchants Motor Freight, Inc. 264 NLRB No. 012
(imposing on Ees, as condition of continued employment, their repudiation of certain contract wage benefits and enforcing that condition first with threatened employment loss and then layoff, violative)

Friday Canning Corporation 265 NLRB No. 062
(closing migrant workers' camp because Ees engaged in economic strike, violative, because this effectively severed indicia of continued employment (discharge) to which strikers are entitled; furthermore, location of barracks

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was away from production area and so their staying would not interfere with production process)

Riley-Beaird, Inc. 280 NLRB No. 088
(E's message to Ees that it had right to demand reduction of benefits at bargaining table held implied of threat to reduce benefits if Ees selected U)

N.L.R.B. v. Wilder Brothers Company, Inc. 653 F.2d 660 (C.A. 6, June 1981)
(unannounced reduction in contributions to fund for Ees in need before election, not unlawful where Ees did not know until the hearing that contributions were reduced and therefore reduction was not timed to affect them regarding their U activities)

N.L.R.B. v. Alumina Ceramics, Inc. 690 F.2d 136 (C.A. 8, Oct. 1982)
(E's discontinuance, during U campaign, of beer parties for Ees, not unlawful, absent evidence of any anti-U motivation for discontinuance; moreover, E could reasonably have thought that continuance of parties might be looked upon as effort to undercut U campaign)

5036-6711 Wage review

Champion Road Machinery International Corporation 264 NLRB No. 123
(supervisor's telling Ees that E could not grant early performance reviews because it would look like bribery due to Ees' U organizing campaign, unlawful)

Smith & Smith Aircraft Company 264 NLRB No. 073
(violation where E ceased its established wage increase policy during U campaign as E failed to inform Ees until approximately 2 months after time of postponement that sole reason for its action was to avoid appearance that it seeks to intervene in election. Explanation must be given at time of postponement and can only last for duration of campaign. Here there was delay in announcement and E informed Ees that program would not be reinstated until C against it of refusal to bargain, adjudicated; however, policy would be reinstated if Ees got rid of U, thus shifting onus on abandonment of wage policy on to U)

Gemco Company, a Division of the United States Gypsum Company 254 NLRB No. 041
(announcing that merit wages increases were frozen because of U organizing campaign, unlawful; since, although no regularity in merit increases after first 90 days of employment, merit review system as implemented became term and condition of employment and Ees had reasonable expectation merit raise system would continue where merit pay had assumed pattern based upon reward for good work)

N.L.R.B. v. Travis Meat and Seafood Company, Inc. 633 F.2d 233 (C.A. 6, June 1980)
(telling Ees that company was not free to grant wage increases during organizing drive, violative)

5036-6712 Denial of wage increase

Schnadig Corporation 265 NLRB No. 020
(supervisor informing Ee who was U organizer when Ee requested his annual raise that E couldn't give Ee raise right now before election, since U might view it as bribery, and that supervisor was uncertain as to when evaluation for raise was due, not unlawful, absent evidence E would have given Ee raise at that time in absence of U activity)

United Supermarkets, Inc. 261 NLRB No. 179
(E's alleged withholding of amount of promised wage increase, not unlawful, where Ee was not promised specific amount by supervisor in conversation with Ee since supervisor was merely speculating or conjecturing as to possible amount of increase)

Gould, Inc. 260 NLRB No. 062
(telling Ees that wages would be frozen during negotiations which could take year held unlawful threat because it threatened loss of present benefit of elegibility for merit increases)

Empire Pacific Industries, Inc. 257 NLRB No. 180
(E's grant of benefit to unrepresented Ees w/o granting it to represented Ees, not unlawful where E bargained with U about granting said benefit to Ees that U represented)

Welfare, Pension and Vacation Funds, Blasters, Drillrunners and Miners Union Local No. 29, etc. 256 NLRB No. 170
(denying Ees wage increase because of their participation in Workmen's Compensation hearing, unlawful)

Le Roy Fontaine, Inc., and Hardwicke's Place, Inc., A Joint Venture, d/b/a Maxwell's Place 256 NLRB No. 096
(telling Ee that Ees would not get raise in context of announcing to Ee that Ees would regret joining U, violative)

Associated Milk Producers, Inc. 255 NLRB No. 104
(withholding for 5 weeks, its system-wide wage increase because of U campaign and election, violative)

Clearwater Finishing Company, A Division of United Merchants and Manufacturers, Inc. 264 NLRB No. 158
(denial of pay raise to Ees represented by U while granting raise to unrepresented Ees, violative since represented Ees were thereby penalized for their selection of U)

Gemco Company, a Division of the United States Gypsum Company 254 NLRB No. 041
(announcing that merit wages increases were frozen because of U organizing campaign, unlawful; since, although no regularity in merit increases after first 90 days of employment, merit review system as implemented became term and condition of employment and Ees had reasonable expectation merit raise system would continue where merit pay had assumed pattern based upon reward for good work)

Intermountain Rural Electric Association 253 NLRB No. 164
(manager's telling Ee that E *had put a blanket on all raises because of the filing* of election pts by U held violative)

Northern Telecom, Inc. 260 NLRB No. 095
(denial of merit increase)

Western Care, Inc. d/b/a Western Care Nursing Home (United Food and Commercial Workers International Union, Local 684, AFL-CIO-CLC) 250 NLRB No. 084
(failure to give normal periodic increase after 3 months satisfactory service so as to give impression that it was U's fault, unlawful)

Boyle-Midway, Inc., Division of American Home Products Corp. 247 NLRB No. 124
(violation where E told Ees that there would be no raises granted because of *U activity*)

Tartan Marine Company 247 NLRB No. 070
(failure to grant wage increase to U adherent where 27 out of 33 Ees received increases, unlawful)

Debernardi Brothers, Inc. JD-(SF)-284-81
(unlawful where E placed onus for its refusal to grant Ee wage increase on U's organizational activity and not on any expressed desire to avoid election interference)

Normike Contractors, Inc. JD-(NY)-31-81
(refusal to grant wage increases violative where E was acting out of malice toward U and its Ees for their support of U and refusal was part of calculated effort by E to induce Ees to repudiate U)

N.L.R.B. v. Service Garage, Inc. 668 F.2d 247 (C.A. 6, Jan. 1982)
(E's affirmative reply when asked by Ee if U activity meant that there would be no wage increase, not substantial enough evidence to find unlawful withdrawal of promised wage increase because of U activities where there had been only a rumor of wage increase and no established policy of granting general pay increases)

5036-6713 Withholding of expected wage increase or benefit

Hutchison-Hayes International, Inc. 264 NLRB No. 168
(E's statement to Ees that if U hadn't reopened current contract for collective-bargaining negotiations, unit Ees would have received *a lot more* in terms of financial benefits, violative)

Hattig Sash and Door Company 263 NLRB No. 163
(where Ee was told at time of hire that he would receive wage increase in 30 days, failing to grant increase on grounds that U had come into picture, violative)

Electric Hose and Rubber Company 262 NLRB No. 014

Southern Moldings, Inc. 258 NLRB No. 113
(withholding scheduled wage increases during U organizational campaign, violative)

Chester Valley, Inc. 251 NLRB No. 190
(withholding of wage increase assertedly because of E's uncertainty about his legal position in face of U activity, not unlawful, where GC failed preponderantly to show that increase was withheld because of Ees' U activity and because of U's presence, rather than in order to give E reasonable time in which to consult with counsel which E did with reasonable promptness and then received counsel's advice w/i reasonable time, and acted with reasonable promptness on such advice)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation 249 NLRB No. 126
(withholding scheduled pay increase w/o specific announcement because of Ees' U activities violative, notwithstanding Ees were unaware of denial of increase until E announced that it would grant increase; moreover, fact that E acted on advice of its attorney does not relieve it of liability)

The Berry Schools v. N.L.R.B. 653 F.2d 966 (C.A. 5, Aug 1981)
(E granting substandard salary increase to Ee not violative where it could properly result from Ee's poor evaluation as compared with below average

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evaluations of [illegible] Ees and GC failed to show E's stated reasons for substandard increase were pretextual)

Simpson Electric Company, a Division of American Gage and Machine Company, Inc. v. N.L.R.B. 654 F.2d 15 (C.A. 7, July 1981)
(E's announcing pay increase or withholding one with intent to influence ongoing (U) organizing drive or R election, violative)

5036-6714 Change in absenteeism rule for reporting

Charge Card Association 247 NLRB No. 119
(institution of policy requiring doctor's note after 1-day absence violative where rule was instituted after Ees engaged in protected strike activity)

ABL General Systems Corp. JD-(NY)-67-82
(request for proof of doctor's visit as justification for lateness, not unlawful where Ee had lateness problem and other Ees were asked for similar proof)

5036-6715 Change in policy regarding observance of hours of work

H. B. Zachry Company 261 NLRB No. 098
(tightening of early quitting rules because of Ees' U activities, unlawful)

Highway Express, Inc. 255 NLRB No. 102
(on day after Ees signed cards, requiring Ees to punch in and out for lunch and also to record their work orders, not violative as Ees were earlier warned that they were not doing enough work and business was failing and was not more onerous work instituted in retailiation for U activities)

Banker's Graphics, Inc. JD-339-82
(docking Ees pay who returned late from lunch on day of U election violative, where no other Ees were ever docked for tardiness)

Comfort Health Corporation d/b/a Kendallville Nursing Home JD-329-80
(change in rules requiring written note of explanation for tardiness, unlawful, since resulted from E's efforts to discourage U membership or support)

5036-6716 Denial of leave

M K Laboratories, Inc. 261 NLRB No. 021
(refusing to permit Ees to attend unemployment compensation hearing involving fellow Ee and threatening them with discipline if they took time off, unlawful where there was no record evidence that E did in fact have legitimate business reason for denying Ees' request to attend the hearing, as contended)

Grief Brothers Corporation v. N.L.R.B. 635 F.2d 531 (C.A. 6, 1980)
(E's denial of unprecedented request for simultaneous leaves for Ees of all its 21 plants to attend meeting to prepare for future negotiations not violative, notwithstanding fact that E had granted individual requests for absences in past)

5036-6717 Deduction of union dues, fees or assessments

Brotherhood Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC v. N.L.R.B. 624 F.2d 819 (C.A. 8, 1980)
(checkoff of *assessments* though specifically permitted in bargaining agreement and had been done in past nevertheless held unlawful because checkoff authorization cards did not list *assessments* as item that could be checked off)

5036-6718 Discipline or warnings thereof

Kay Fries, Inc. 265 NLRB No. 132
(advising and warning Ee that his grievance relating to sanitation and safe health procedures was uncalled for and threatening to give it to company physician to institute legal action against him for filing grievance for questioned sanitary practices of physician violative)

Electric Hose and Rubber Company, A Division of Dayco Company 265 NLRB No. 100
(posting notice that listed pro-U Ees by name and stating that they would receive no preferential treatment over other Ees, and failure to comply with rules would result in disciplinary action, unlawful)

Consolidated Freightways Corporation of Delaware 264 NLRB No. 076
(reprimand for using abusive language to supervisor, violative, where such conduct was direct result of E's continuation of unlawful interview in violation of *Weingarten* rights)

Roadicar Corporation d/b/a Dollar Rent-A-Car of Las Vegas 264 NLRB No. 133
(giving oral and written warnings and then subsequently discharging Ee who had filed sex discrimination charge with state agency violative, where in view of E's desparate treatment of Ee, E's failure to show that it believed that Ee's conduct complained about by customers had occurred, timing of discipline and discharge, and E's admission that it linked Ee's poor attitude with filing of discrimination charge and that it had subjected her work to greater scrutiny because of charge)

Union Mining Company of Allegany County, Inc. 264 NLRB No. 062
(demoting Ee and giving him written disciplinary warning slip in retaliation for his testimony given at Bd hearing, unlawful)

Kirkhill Rubber Company 263 NLRB No. 113
(issuing written reprimand to Ee for *solicitation for U purposes on company time and property,* violative)

Service Spring Company, A Division of Garlock, Inc., A Wholly-Owned Subsidiary of Colt Industries 263 NLRB No. 103
(E whose new president implemented more rigid enforcement of discipline with respect to absenteeism and production mistakes coincident with U winning election did not violate Act where evidence established that policy was undertaken by E in attempt to improve production efficiency)

Technicolor Graphic Services, Inc., South Dakota Operations 262 NLRB No. 133
(issuing written warnings to and orally reprimanding committee members for sending letter alleging discriminatory treatment by Ees concerning Christmas parties and granting of time off on New Years Eve violative, notwithstanding absence of showing that actual events supported allegations of discrimination)

Dupont Puerto Rico, Inc. 262 NLRB No. 135
(placing Ee on disciplinary probation for making inquiry of warehouse manager with regard to denial of raise to fellow Ee because of his five absences and his inquiry as to E's personnel policy on sick leave, disability, and promotions, violative)

7 Up Bottling Company 261 NLRB No. 128
(E's issuance of written warning for Ee's use of its truck and for use of its time for personal business, violative of 8(a)(1) where E referred to its hard-hat rule at the time, since E had imposed rule on Ee because of his saying he might complain to OSHA, and E's reference to retaliatory rule showed warning was motivated by possibility of OSHA complaint)

7 Up Bottling Company 261 NLRB No. 128
(issuing *unexcused* absence slip, allegedly for failure to provide doctor's excuse although one had never before been required, violative of 8(a)(1) where E was influenced by E's prior mention of possibly complaining to OSHA)

7 Up Bottling Company 261 NLRB No. 128
(issuing disciplinary report based on Ee's alleged failure to abide by earlier warning, violative of 8(a)(1) since earlier warning had been violative of 8(a)(1) because E was influenced by possibility of Ee's making OSHA complaint)

New York University Medical Center 261 NLRB No. 118
(issuance of disciplinary warning letters to Ees for distributing literature accusing E of engaging in racist tactics, unlawful, since such distribution constituted protected concerted activity)

Champion Parts Rebuilders, Inc., Northeast Division 260 NLRB No. 098
(warning issued to U steward for minor infraction violative where done in retaliation for stewards filing grievance over foreman's performing bargaining unit work)

Colorado Forge Corporation 260 NLRB No. 004
(issuing warnings to Ees for work stoppage protesting unsafe working conditions, unlawful)

Illinois Bell Telephone Company 259 NLRB No. 167
(warning and suspending Ee who used vulgar term while discussing her grievance pertaining to evaluation criticizing amount of time away from workplace, violative, where Ee's discussion was concerted activity and grievance was a matter of mutual concern to other Ees)

Caffe Giovanni, Inc. d/b/a Giovanni's 259 NLRB No. 031
(warning letters, later rescinded, issued to U activists for interfering with E's meeting with Spanish-speaking Ees following raid of E's operation by immigration service, not unlawful, where U activists were neither invited nor had any statutory rights to be present, and if E intended to threaten Ees with further immigration service harassment because of U, which was mere speculation, U activists possessed ample opportunity to communicate with Ees involved at a later time)

Cook Paint and Varnish Company 258 NLRB No. 166
(threatening U steward with discipline for refusing to submit to questioning and to submit written material kept in course of steward's representation of Ee in grievance/arbitration proceeding, unlawful, where steward's participation throughout grievance process was result of execution of duties as steward, questioning impinged upon protected activity of Ee and steward, and such conduct cast chilling effect over all Ees and stewards in disciplinary matters; however, Bd did not herein hold that all discussions between Ees and stewards are confidential and protected or that stewards are, in all instances, insulated from interrogation)

Prentice-Hall, Inc. 258 NLRB No. 184
(warnings to Ee about recurrence of incidents involving her, unlawful where E failed to rebut GC's showing that incidents to which E referred included not only Ee's raising her voice to her supervisor but also Ee's concerted protected activity of complaining for Ee group about E's screening Ee phone calls-- which occasioned her raising her voice)

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Brockwood Furniture, Division of U.S. Industries **288 NLRB No. 026**
(reprimand for threatening to file grievance, unlawful)

Research Products/Blankenship Company **286 NLRB No. 088**
(issuing warning notices to Ees, and otherwise harassing Ees in reprisal for their U activity, violative)

Roadway Express, Inc. **287 NLRB No. 153**
(issuing warning letter to Ee who requested to see his personnel file to make sure previous erroneous warning letter had been removed despite being told by supervisor that letter had been removed from file, and threatening further discipline if Ee wasted management's time again, violative, where Ee was attempting to enforce contract right by pursuing grievance procedures w/i contractual ten-day limit)

Roadway Express, Inc. **287 NLRB No. 153**
(issuing warning letter to Ee who refused to drive truck he in good faith believed to be unsafe, violative, where, notwithstanding expert witnesses testifying to safety of truck, no evidence was given to show that Ee acted in bad faith and w/o sincere concern for his safety)

Roadway Express, Inc. **287 NLRB No. 153**
(issuing warning letter to Ee for using crude and insolent language to E during grievance related incident, not unlawful, where remarks were not made in context of heated discussion of merits of Ee's grievance and were unprovoked)

Roadway Express, Inc. **287 NLRB No. 153**
(issuing warning letter to Ees for insolent remarks to E and taking excessive breaks to use restroom, not unlawful, where there was no evidence that, contrary to contention, warnings were issued because Ee was U member or was scheduled to testify at Bd hearing)

United States Postal Service **286 NLRB No. 012**
(threat to discipline Ee for filing grievance, unlawful, where natural and foreseeable consequence of E's statement, asking Ee to sign statement acknowledging that E was recording his status as AWOL for being absent from work, would be to inhibit Ee from filing grievances in future; under the circumstances, statement was actual retaliation for Ee's filing of grievance inasmuch as E, after telling Ee he would not be disciplined, made statement about being AWOL after Ee had filed grievance)

Southern Moldings, Inc. **256 NLRB No. 113**
(foreman threatening Ees with disciplinary action if he saw them distributing, receiving or reading U literature or wearing U buttons, violative)

Thomas Industries, Inc. **255 NLRB No. 094**
(E's superintendent accusing Ee of harassing E and threatening to discipline her when she threatened to file grievance against him for refusing to accept her grievance against another Ee who allegedly attempted to provoke a fight on E's property, not unlawful, since activity regarding which she wished to file grievance not protected)

Thomas Industries, Inc. **255 NLRB No. 094**
(E's reprimanding vice-president of U for presenting too many petty grievances concerning wages and working conditions, unlawful)

Magnetics International, Inc. **254 NLRB No. 042**
(warning Ee, who filed Title VII lawsuit, for *excessive* absenteeism, violative, where, upon GC's successful *prima facie* case of wrongful motive, E failed to meet its burden to show that Ee would still be guilty of excessive absenteeism not counting absences due to lawsuit, since E presented no evidence as to either its criteria for determining when absences became *excessive* or as to how other Ees had been treated under the rule)

L. M. Berry and Company **254 NLRB No. 063**
(written reprimands to U adherent because of her U activities, including her testimony on behalf of U and her filing charges against E, violative)

Hacienda Hotel and Casino **254 NLRB No. 007**
(reprimand for violation of rule against Ees either individually or concertedly initially seeking recourse with respect to matters pertaining to wages, hours or working conditions through any means other than U, unlawful, since rule overbroad)

Plaza Technology, Inc. **253 NLRB No. 122**
(issuing verbal warning to U adherent for allegedly creating disturbance in hallway in course of informal meeting with E, violative, where there was no evidence that disturbance was caused in *a working area* where Ees were present)

Jackson's, Inc. d/b/a Piccadilly's **253 NLRB No. 082**
(implementation of warning system designed to coerce and restrain Ees in violation of their Sec. 7 rights)

United States Steel Corporation **253 NLRB No. 063**
(threat to send home Ee, who was away from his work station discussing possible OSHA violation, if he was ever caught reading OSHA booklet on company time, unlawfully broad, since company time includes nonworking as well as working time)

Republic Die and Tool Company **253 NLRB No. 092**
(issuing written warnings to Ee because he filed contractual grievance, violative)

United States Postal Service **251 NLRB No. 080**
(issuance of written warnings for alleged insubordinate conduct during and after informal grievance meeting, violative, where conduct was not *opprobious* or *extreme* and Ees' continued discussion of grievance following meeting was part of *res gestae* of grievance meeting which had no consequential disruptive effect since Ees did return to work in response to E's direct order)

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 080**
(issuance of an *only* warning to returning striker with the next incident subjecting him to immediate dismissal after a particular incident unlawful, where it was E's policy to give first or second warnings)

United States Postal Service **250 NLRB No. 156**
(issuing letter of warning to U steward for his conduct during grievance hearing unlawful)

United States Postal Service **250 NLRB No. 156**
(threatening U steward during grievance presentation with disciplinary action if he didn't shut up, unlawful)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(threatening attorney Ees with discipline for participating in clerical picket line, and entering notations in their personnel files that they had engaged in such activity, unlawful)

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 120**
(violation where E issued warning notice to Ee because of complaints to state and federal agencies)

Ashley Warp Knitting, Inc. d/b/a Jefferson Apparel Company **248 NLRB No. 094**
(written warning issued as enforcement of unlawful no-solicitation rule, unlawful)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 128**
(reprimanding Ee who had solicited another Ee who was on work time, unlawful, since was addressed only to prime U adherent and was intended more to impede her U activities than to maintain production and order in restaurant; further, reprimand was to enforce unlawful rule)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 128**
(issuing warning letter to U adherent regarding wearing dirty uniform and abuse of other Ees, unlawful, notwithstanding adherent's admitted grooming deficiencies, since warning motivated by her U activities, reporting of alleged violations by E to government agency, owner also threatened layoff and offered Ee adherent severance pay to induce her to seek other employment)

United Parcel Service **247 NLRB No. 134**
(warning for Ee's refusal to unlock icey trailer door because he considered conditions unsafe, violative)

United Parcel Service **247 NLRB No. 134**
(issuance of reprimands to individual Ee for disobeying orders not to talk at work, unlawful, as discriminatory change in working conditions were instigated because Ee filed grievance with U)

Fall River Savings Bank **247 NLRB No. 088**
(issuance of written warning to Ee for questioning supervisor about calling in Ees for Saturday work w/o following seniority, unlawful)

Rainbo Baking Company **JD-(SF)-117-82**
(written warnings issued to Ee because of his persistence in claiming overtime payment rather than for failing to follow E's rule that Ees obtain permission to work overtime, unlawful as shown by E's disparate application of rule)

Methadone Maintenance Health Program, Inc. **JD-173-82**
(placing Ee on probation and threatening him with possible further discipline to discourage his giving support to fellow Ee's claim before state agency, unlawful)

Brunswick Corporation **JD-21-82**
(reprimanding and suspending U adherent for distributing literature pertaining to terms and conditions of employment, on non-working time and in non-working areas, violative)

The Perlman-Rocque Company **JD-813-81**
(supervisor informing Ee who had filed grievances and charges with Bd that he would receive waring letter for tardiness due to business at NLRB office and that Ee's past record would justify letter unlawful, since E's policy required three incidents of tardiness before warning letter and supervisor was aware Ee's past record did not meet this requirement, and it was made clear that, while some excuses might be acceptable, being at NLRB was not among them)

The Perlman-Rocque Company **JD-813-81**
(warning Ee who had filed grievances and charges with Bd that he would be watched for tardiness, not unlawful, since was device to insure tardiness

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did not reoccur in view of importance of on the job presence of those in Ee's classification)

The Perlman-Rocque Company JD-513-81
(supervisor telling Ee who had filed grievances and charges with Bd that Ee should not listen to other Ees, that he should be careful and report to supervisor incidents or problems because he was Ee's superior, unlawful, where in context of conversation and preceding events, it could be construed by Ee as admonition not to go to Labor Bd with his problems)

Muncie Newspapers, Inc. JD-452-81
(warning former U president for not giving proper notification as required by rules that he would not show up for his shift, not unlawful, where warning pursuant to disciplinary system agreed to by E and U, former president knew prior to warning that he had broken rule, and absent evidence of discriminatory enforcement of rules)

United States Postal Service JD-234-81
(issuing written warnings to U steward in order to restrain him from processing grievances, violative)

Pennsylvania Association for Retarded Children and Adults JD-(SF)-269-80
(institution of written warning system in retaliation for filing of state back wage claims violative)

Pennsylvania Association for Retarded Children and Adults JD-(SF)-269-80
(violative written warning not effectively retracted where E posted letter which apologized for issuing warning w/o notifying Ee and discussing it with him; but did not disavow contents of warning letter)

E. I. Dupont De Nemours and Company JD-615-80
(written discipline for Ee criticizing performance of individual members on safety committee and his attempt to have committee poll Ees on question of committee's continuance as structured, violative, where Ee engaged in activity in behalf of his membership on Ees Council which constituted concerted protected activity)

United States Postal Service (Las Vegas, Nevada) JD-(SF)-214-80
(violation where E issued warning to Ee because he refused to participate in interview concerning blank spaces on his timecard w/o a representative)

Krafcor Corporation JD-289-80
(preelection speech threatening Ees with more severe discipline if they selected U as their representative, including examples referring to Ees in context of incidents for which they would be discharged, held unlawful and election set aside)

Four Rivers Coal Company JD-209-80
(violation where supervisor issued letter of reprimand to Ee who, as part of concerted Ee grievance on loss of wages, had voiced dissatisfaction with supervisor's adequacy)

Albertson's Inc. JD-(SF)-104-80
(discipline of Ee for not meeting production quotas, not unlawful, notwithstanding fact that discipline followed closely in time unlawful interrogation of Ee; discipline was nothing more than routine and innocuous exercise of E's authority)

Garden State Motors Co. JD-160-80
(imposition of disciplinary rules violative where rules were imposed in response to news of U's organizing efforts)

United States Postal Service JD-(SF)-273-79
(letter warning Ee of discipline for his irregular attendance held not to have been pretext to disguise E's unlawful conduct where other Ees received similar letter for their irregular attendance; letter was not arbitrary nor unrelated to E's ordinary business practices)

Burlington Industries, Inc. v. N.L.R.B. 680 F.2d 974 (C.A. 4, June 1982)
(admonishing Ee to stay out of inspection department, not unlawful in view of Ee's disciplinary record and complaints of his loitering there before U campaign began)

Newport News Shipbuilding and Dry Dock Company v. N.L.R.B. 631 F.2d 263 (C.A. 4, June 1980)
(reprimanding Ees and docking their pay for engaging in work stoppage of short duration, not unlawful, where contract contained no-strike provisions and situation did not come w/i exceptions created to such provisions; and, contrary to Bd, work stoppage did not involve protected meeting where information regarding concern of Ees was related to them)

N.L.R.B. v. Southwestern Bell Telephone Company 694 F.2d 974 (C.A. 5, Nov. 1982)
(ct held Bd's findings that E unlawfully attempted to discipline Ee who used intemperate language during dispute concerning overtime work assignments was supported by substantial evidence where it is well settled that intemperate remarks of participants during informal negotiations of this kind fall w/i ambit of protection of Act unless Ee's language is actually *indefensible* under the circumstances)

Thomas Industries, Inc. v. N.L.R.B. 687 F.2d 863 (C.A. 6, Sept. 1982)
(verbally reprimanding U steward for filing petty grievances, violative)

Weiss Industries, Inc. v. N.L.R.B. 633 F.2d 217(T) (C.A. 6, 1980)
(ct held substantial evidence supported Bd's finding that E violated Act by reprimanding and discharging Ee for her use of grievance procedure)

Goodyear Aerospace Corporation v. N.L.R.B. 629 F.2d 476 (C.A. 6, 1980)
(issuance of absentee warnings, unlawful)

Northern Telecom, Inc. v. N.L.R.B. 618 F.2d 421 (C.A. 6, 1980)
(discipline of four Ees and discharge of U activist in connection with all five Ees leaving work at approximately same time on Saturday morning, unlawful; it was company practice to let night shift Ees, like those involved here, leave work w/o specific permission of a supervisor when they had been called in for Saturday overtime work starting at 6:00 a.m. after working till midnight the preceding night)

N.L.R.B. v. Memphis Furniture Manufacturing Company 616 F.2d 964 (C.A. 6, 1980)
(issuing warning to active U supporter assertedly for leaving her station during working hours w/o permission, violative, where Ee had obtained permission from supervisor to leave her station)

N.L.R.B. v. Memphis Furniture Manufacturing Company 616 F.2d 964 (C.A. 6, 1980)
(violation where E issued warning to active U supporter allegedly for harassing other women)

N.L.R.B. v. United States Postal Service 689 F.2d 835 (C.A. 9, Oct. 1982)
(threat to discipline Ee for filing grievance, unlawful)

Caterpillar Tractor Co. v. N.L.R.B. 638 F.2d 140 (C.A. 9, 1981)
(E's issuance of warning to chief steward for his communication with Ees in department other than his own, violative since E's action was discriminatory application of plant rules that was motivated by Ee's status as chief steward)

5036-6719 Restriction to work area

Robert Bosch Corporation 256 NLRB No. 190
(assigning known U supporters to a separate room during E's delivery to other Ees of captive-audience speeches; unlawful)

Highland Foods, Inc. and Vicksdale Industrial Corporation 258 NLRB No. 146
(announcing isolation of Ee who was attempting to organize Ees, violative)

Ralph Nemer, M.D., Louis Owens, M.D. et al., A Partnership d/b/a Deepdale General Hospital 253 NLRB No. 093
(restricting U adherent to work unit violative where normal duties involved areas outside of unit)

Gerber Scientific Instrument Company, Inc., A Wholly Owned Subsidiary of Gerber Scientific, Inc. JD-188-82
(restriction of Ee's movements after he began proselytizing for U unlawful)

Highland Foods, Inc. and Vicksdale Industrial Corporation JD-364-80
(announced isolation of Ee who was attempting to organize Ees, violative)

N.L.R.B. v. Midland National Life Insurance Company 621 F.2d 901 (C.A. 8, 1980)
(restriction of Ee to her desk, after being reprimanded for engaging in U activities, until after election, and threat to discharge her if she left the immediate area, unlawful)

5036-6720 Discharge

Serendippity-Un-Ltd and Tigerrr, Inc. 263 NLRB No. 100
(discharge of Ees for walking out because of health and safety violations in plant and because of inadequate coverage of E's health insurance plan, unlawful, where Ees' action constituted concerted protected activity and, although E had not terminated Ees when they walked out, E left no room for doubt that they were terminated when, upon being asked to permit Ees to return to work, E took position Ees had *quit* and refused to permit them to return to work from economic strike)

Champion Parts Rebuilders, Inc., Northeast Division 260 NLRB No. 096
(issuance of warning for talking on job to U vice-president and another Ee violative notwithstanding they were talking for prolonged time and E had past practice of warnings for such conduct where E observed conversation for a time and never ordered Ees back to work but merely issued warning notices in retaliation for vice-president status and activities)

Oakwood Manor, Inc., d/b/a Danville Nursing Home 264 NLRB No. 100
(offering Ee alternative of quitting or being discharged for engaging in protected walkout, violative notwithstanding she signed resignation form)

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Penn Company 251 NLRB No. 080
(discharge of Ees for refusing to work overtime, as result of unilateral implementation of new disciplinary program with respect to overtime, unlawful, where there was no agreement, express or implied, that Ees who agreed to work overtime and did not do so, or that Ees who refused overtime, could be disciplined)

Penn Company 251 NLRB No. 080
(discharge of Ees for resisting forced overtime, an item of importance to all Ees' was reasonably calculated to impress on other Ees that Ee was determined to have its way on overtime equalization whether U agreed or not, thereby indicating to them that U representation was futile)

Hawthorne Mazda, Inc. 251 NLRB No. 038
(discharge of Ee engaged in protected concerted activity when terminated for criticism of management, unlawful, where criticism occurred in manager's office rather than on shop floor where it could have affected manager's status in eyes of other Ees; manager, in effect, converted meeting into informal grievance session; and Ee's remarks were not so indefensible as to render him unfit for further service nor were they made simply to ridicule or denigrate management but were offered in connection with new pay system to which Ees were objecting)

Giuliano Apparel Corp. JD-162-80
(discharge of Ee for fear that if Ee attempted to return to work, other Ees would think E was forcing her to return and would engage in work stoppage, unlawful)

F. W. Woolworth Co. v. N.L.R.B. 655 F.2d 151 (C.A. 8, 1981)
(ct affd Bd's findings that Ee's interrupting E's anti-U captive audience meeting with questions was not part of any plan to disrupt E's meeting and thus was concerted activity, and that discharging Ee for such interruptions was unlawful; Bd's balancing of Ee's *right* to engage in concerted activity against E's right to maintain order and respect held neither illogical nor arbitrary where Ee's conduct was not *egregious* or a challenge or threat to E's above-mentioned right)

5036-6720-0100 Generally

Hutchison-Hayes International, Inc. 264 NLRB No. 168
(telling Ees that now that contract had expired he could fire them all violative)

Miller Brewing Company 254 NLRB No. 026
(imposition of more severe discipline on U stewards than that imposed on rank-and-file Ees for participation in unprotected walkout, violative, where record showed that stewards were not at *fault* for walkout but attempted to persuade Ees to remain on job; *Indiana & Michigan Electric Company* characterization of *steward's greater responsibility and hence greater fault* inapplicable)

Pay-Wood Industries, Inc. 249 NLRB No. 056
(Ee held discharged where foreman informed Ee to *Go home, punch-out, that's it* after Ee complained about safety conditions and refused to work with allegedly unsafe machine; E's contention that Ee quit was pretext to conceal unlawful discharge)

N.L.R.B. v. St. Anne's Hospital 648 F.2d 67 (C.A. 1, May 1981)
(hospital's contention that Bd did not meet test set forth in N.L.R.B. v. Eastern Smelting in finding discharges of nurses at hospital unlawful, rejected, since question is not whether E had *good* reasons for discharge, but whether E diliberately put nurses in position where their asserted lack of training and concern for patients' welfare in operating room forced them to object to assignment to operating room duties)

5036-6720-0150 What constitutes discharge

Brunswick Hospital Center, Inc. 265 NLRB No. 112
(in determining whether or not E has discharged striker, test to be used is whether (E's) acts, reasonably led strikers to believe they were discharged; events must be viewed through striker's eyes and not as E would have viewed them)

Brunswick Hospital Center, Inc. 265 NLRB No. 112
(no discharge of strikers where, in instant case, there was absence of consistent pattern of including unrequested pay for accrued vacation, sick leave benefits and other benefits in checks payable to strikers to demonstrate they were discharged, nor did cancellation of health insurance benefits by E)

Fink Supply Corporation 249 NLRB No. 091
(no discharge of economic strikers proved where E told strikers' spokesman that it would have to act as though they were quitting and find replacements and – when spokesman denied Ees were quitting – asked what spokesman would call their action and what E was supposed to do; spokesman then volunteered that Ees would come in and clean out their desks which they did next day; E did not create ambiguous situation by wrongdoing, did not unequivocally refuse to permit strikers to return to work or make further inquiries into its intentions futile; and each party was equally able to rectify the uncertainty)

Ground Round Restaurant, A Division of Howard Johnson JD-(SF)-191-82
(E's ordering Ees who were engaged in sit in strike to leave premises and calling police, replacing them and refusing to reinstate them constituted unlawful discharge since Ees were engaged in protected activity and it was reasonable for Ees to believe they were discharged when they left premises)

Champion Plating Company JD-362-81
(telling Ee to leave)

Emblematic Jewellry Products of U.S.A., Inc. JD-814-79
(collecting timecards of Ees as they punched out prior to quitting time, held not discharge, particularly where E's owner asked Ees if they were quitting as they punched out and subsequently they were called and asked to return to work)

5036-6720-3500 For refusal to cross picket line at another employer's premises

Browning-Ferris Industries, Chemical Services, Inc. 259 NLRB No. 069
(E's replacing drivers for refusing to cross picket line at another E's plant, unlawful where E demonstrated no compelling business need for replacing them)

5036-6720-3700 For refusal to cross primary picket line at own employer's premises

Mt. Carmel Hospital 255 NLRB No. 110
(discharging LPN for engaging in sympathy strike in support of nurses' strike violative, as in dividual need not give 8(g) notice; discharge was effective on date Ee received letter rather than on date of strike)

Joseph Charles Tafarella A.K.A. Steve Rossi, and Total Productions Concepts, Inc. JD-(SF)-212-81
(discharge of U musicians for refusing to cross picket line of another U at hotel at which they were working)

N.L.R.B. v. Rainbow Tours, Inc., d/b/a Rainbow Coaches 628 F.2d 1257(T) (C.A. 9, 1980)
(discharge of strikers for refusing to cross picket line, violative where picketing was not unlawful, discharges were motivated by anti-U animus, and business preservation doctrine did not apply since E is only permitted to replace strikers not discharge them)

N.L.R.B. v. Gould, Inc., Switchgear Division 638 F.2d 159 (C.A. 10, 1980)
(discharging U officials for engaging in sympathy strike by refusing to cross own U's informational picket line directed against non-U contractor performing work on E's premises, violative where picketing lawful primary activity and support of picket line was protected concerted activity)

5036-6720-4300 Constructive discharge

Washington Cartage, Inc. 258 NLRB No. 093
(no unlawful constructive discharge of Ee who refused to drive tractor he in good faith considered to be unsafe, since his refusal to drive tractor did not constitute protected concerted activity where condition of the particular tractor was not matter of common concern and interest to the other drivers)

J. J. Security, Inc. 252 NLRB No. 180
(requiring Ees to sign resignation forms or else stop seeking improvements in their working conditions violative)

Montcorp (Formerly Seymour Packing Division of Seymour America, Inc.) 251 NLRB No. 047
(Ees who refused to work at reduced piecework rates constructively discharged and fact that they packed up their tools before they left not controlling)

Redlands Christian Migrant Association 250 NLRB No. 027
(violation by constructively discharging strikers where E gave them choice of either quitting or giving up strike and supporting strike leader who had just been discharged, and strikers got up and left with strike leader)

General Meats, Inc. 247 NLRB No. 133
(harassment and assignment to less desireable job of Ee who asked critical questions at E sponsored meeting called to discuss profit sharing plan, found violative and her subsequent quitting found constructive discharge)

Charge Card Association 247 NLRB No. 119
(striking Ees who refused to return to work because of E's violative conduct of placing them on probationary status found to have been constructively discharged)

N.L.R.B. v. Lloyd A. Fry Roofing Company, Inc. of Delaware 651 F.2d 442 (C.A. 6, June 1981)
(discharging Ee because he refused to sign statement putting him on probation held constructive discharge where statement suggested that Ee was guilty of its detailed provisions, including accident which E admitted was not Ee's fault)

5036-6720-4800 Managerial employee

Bentley Hedges Travel Service, Inc. 263 NLRB No. 184
(discharge of managerial Ee for his part in writing Ees' grievance letter, attendance at U meeting and signing of U authorization card, not unlawful,

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since managerial Ees are excluded from protection of Act and like supervisors may be disciplined for U or concerted activity)

Seven-Up Bottling of Phoenix, Inc. 263 NLRB No. 085
(discharge of managerial Ee who had tried to withdraw monies from pension fund not violative where Act's protection did not extend to him as managerial Ee. See *Parker Robb Chevrolet, Inc.* 262 NLRB No. 52)

5036-6720-8800 Strikers

Airport Parking Management 264 NLRB No. 002
(discharge of Ee, who was U steward and negotiating team member, for supporting strike, unlawful)

Keyway, A Division of Phase Inc. 263 NLRB No. 172
(discharge of Ees who collectively *walked out* (for approximately 3 hours) from facility, engaged in prevention and treatment of alchoholism, drug abuse and domestic violence, in protest of discharge of past clinical director, criticizing new director, and expressing concern over quality of treatment of E's clients, not violative, since record contained no evidence that identity and capability of director involved had direct impact on Ees' own job interests; *walk out* not protected activity, since it did not encompass protest by Ees over actual terms and conditions of their employment)

J. E. Steigerwald Co., Inc. 263 NLRB No. 068

Seyforth Roofing Company of Alabama, Inc. 263 NLRB No. 048
(E's statement that he would assume that strikers who did not report for work next morning had quit constituted unlawful discharge for engaging in protected strike)

Virginia Electric and Power Company 262 NLRB No. 144
(discharging only those wildcat strikers who exercised *leadership role* not violative although dominant factor in determining that role was membership or suspected membership on Ee committee which asked to meet E during strike, as such self-designated committee held out as representing all Ees was destructive of legal right and obligation of U to exclusively represent Ees)

Colorado Forge Corporation 260 NLRB No. 004
(discharge for work stoppage protesting dangerous working conditions, unlawful)

Lizz Uniform, Janesville Apparel Division 259 NLRB No. 142
(telling Ee that strikers were fired upon their refusal to return to work, unlawful (actual discharge not alleged))

San Diego County Association For The Retarded 259 NLRB No. 136
(discharge of Ees who sought to resolve their grievances through strike action rather then through E's established grievance procedure held unlawful, since Ees were engaged in strike for purpose of causing E to resolve their *work-related grievances* in manner satisfactory to Ees)

East Chicago Rehabilitation Center, Inc. 259 NLRB No. 138
(suspension and discharge of Ees for engaging in protected strike, violative)

J. W. Microelectronics Corporation 259 NLRB No. 050
(discharge for concerted protected work stoppage to protest discharge of fellow Ees, unlawful)

Baker Marine Corporation 258 NLRB No. 091
(no violation where E suspended and discharged Ees for refusing to work on legs being assembled for drilling rig in contravention of no-strike clause since, contrary to GC's contention that such work was *abnormally dangerous* w/i Sec. 502 of Act, conditions considered dangerous by Ees had been in existence w/o change for considerable period of time and had been previously accepted by Ees w/o complaint)

Tamara Foods, Inc. 258 NLRB No. 180
(discharge for striking in protest of ammonia fumes in work environment, not unlawful, notwithstanding striking Ees broke plant rule and disregarded E's alternative solution for such problems, since E had unilaterally imposed rule and solution upon Ees who were not represented and not covered by agreement containing no-strike clause; and fact that plant had been found not in violation of OSHA regulations did not render strike unprotected since NLRA rights are distinct from and not subordinate to OSHA provisions)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(discharge of reinstated economic strikers for their refusing to accept lesser jobs with E held violative as E deprived them of continued placement on preferential hiring list)

Con-Tex Industries, Division of Harsco Corporation 256 NLRB No. 143
(discharge of one Ee for belief he was involved in upcoming shutdown of plant by Ees and of other Ees for engaging in shutdown, unlawful where Ees were striking to present grievances; and shutting down plant equipment to prevent its being damaged did not change Ees' activity from protected to unprotected status)

Highland Plastics, Inc. 256 NLRB No. 038

Highland Plastics, Inc. 256 NLRB No. 038
(striking Ees found violatively discharged notwithstanding Ees were not present when other Ees were informed of discharge where it can be inferred that their fellow strikers informed them of their discharges)

Mariana Industries Corporation; et al. 255 NLRB No. 193
(blanket application of termination policy whereby E terminated ULP strikers upon information that they accepted employment with another E inherently destructive of Ee rights and violative)

Walker Die Casting, Inc. 255 NLRB No. 034
(discharging probationary Ees while on strike, violative)

Dimo Ambulette Service, Inc. 255 NLRB No. 082
(discharge of Ees who were striking in protest of illegal discharge of two other Ees, violative)

Oakwood Manor, Inc., d/b/a Danville Nursing Home 254 NLRB No. 108
(walkout by 5 aides in protest over assignment to fewer hours and accusations of vandalism of Ee's car held protected and discharge for walkout held violative; Ees did not lose protection by their failure to give 10 days notice required by 8(g) as no U called, instigated or promoted work stoppage)

Pacemaker Yacht Co., A Division of Mission Marine, Inc. 253 NLRB No. 095
(discharge and failure to reinstate Ees who struck E, contrary to contractual no-strike clause, to protest failure of U's health and welfare fund to fulfill its contractual medical insurance obligations held violative, since *no-strike* pledge relied upon by E did not constitute clear and unequivocal waiver of Ees' right to strike against actions of third party (*Fund*) which affected terms and conditions of employment)

Berger Transfer and Storage, Inc. 253 NLRB No. 082
(E who sent telegram to ULP strikers informing them of their discharges violated Act, notwithstanding 5 days later he sent another telegram rescinding discharges)

Inta-Roto, Inc. 252 NLRB No. 111
(E's notification to ULP strikers that they had been permanently replaced is illegal threat of permanent replacement)

Huron Dressed Beef, Inc. 252 NLRB No. 031
(discharge of Ees for acting as spokesmen for other Ees and for engaging in economic strike, unlawful)

Redlands Christian Migrant Association 250 NLRB No. 027
(discharge for inducing co-workers to join and for leading economic strike, unlawful)

Redlands Christian Migrant Association 250 NLRB No. 027
(violation by constructively discharging strikers where E gave them choice of either quitting or giving up strike and supporting strike leader who had just been discharged, and strikers got up and left with strike leader)

Villa Care, Inc., d/b/a Edmonds Villa Care Center 249 NLRB No. 098
(discharge and refusal to reinstate Ees unlawful, since Ees were economic strikers who were subject to permanent replacement but not to discharge)

A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A. J. Librera Disposal Service, Inc. 247 NLRB No. 118
(discharging Ees because they engaged in strike to protest wages, violative)

Ground Round Restaurant, A Division of Howard Johnson JD-(SF)-191-82
(E's ordering Ees who were engaged in sit in strike to leave premises and calling police, replacing them and refusing to reinstate them constituted unlawful discharge since Ees were engaged in protected activity and it was reasonable for Ees to believe they were discharged when they left premises)

Heritage Nursing & Convalescent Centers, Inc., d/b/a Georgian House Nursing Home JD-(SF)-26-82
(discharging nurse's aide Ees for concertedly striking in support of grievances concerning working conditions, violative; E's contention that Ees were discharged for patroling with picket sign accusing E of abusing patients rejected)

Geiger & Peters, Inc. JD-(SF)-248-81
(discharging sympathy strikers for refusing to cross another U's picket line at E's premises unlawful, since, notwithstanding E's good-faith belief to contrary, Ees' act was protected where picket line would not be unlawful w/i meaning of 8(b)(4)(D) and no JDP existed due to fact supervisor performed disputed work and dispute was therefore between E and picketing U rather than 2 Us)

Leydig Truck Sales, Inc. JD-226-81
(discharge of Ees for striking in protest of being compelled to work under bad weather conditions, violative)

Blackjack Coal Company, Inc. JD-33-81
(discharge of Ees for engaging in strike, unlawful)

B & F Turpen, Inc. JD-274-80
(discharge of economic strikers at beginning of strike violative where it took place before permanent replacements had been hired)

W S H Construction Company, Inc., J. B. Shannon and James A. Hurd, Equipment Rental Company JD-70-80
(E's telling economic strikers who had requested to return to work that they had been replaced and did not have a job, held not sufficient to sustain

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allegation of unlawful discharge; higher management of E never utilized discharge terminology, *Cf. Ridgeway Trucking Co.*, 243 NLRB No. 160)

Puerto Rico Food Products Corp., et al. v. N.L.R.B. 619 F.2d 153 (C.A. 1, 1980)
(Ees' strike over discharge of supervisor not protected activity where protest was not over actual conditions of employment of Ees; none of Ees who protested gave slightest indication that discharged supervisor's assistance to their unionization efforts motivated their protest)

Puerto Rico Food Products Corp., et al. v. N.L.R.B. 619 F.2d 153 (C.A. 1, 1980)
(ct held there was no substantial evidence to support Bd's finding of nexus between Ee protest over discharge of supervisor and Ees' legitimate interests)

Montefiore Hospital and Medical Center v. N.L.R.B 621 F.2d 510 (C.A. 2, 1980)
(discharged doctors who had struck w/o notice in sympathy with health care institution Ees denied backpay for period of discharge by ct which held their picket-line statements improper and, unlike their sympathy strike, unprotected)

Newport News Shipbuilding and Dry Dock Company v. N.L.R.B. 631 F.2d 263 (C.A. 4, June 1980)
(E's discharge of spokesman for Ees who engaged in work stoppage while merely disciplining latter, held not improper, where provisions of bargaining agreement permitted E to discharge all strikers had it so desired; E was entitled to treat spokesman as leader of unauthorized work stoppage and therefore discipline him to greater extent than other Ees)

Super Valu Xenia, a Division of Super Valu Stores, Inc. v. N.L.R.B. 627 F.2d 13 (C.A. 6, 1980)
(contrary to Bd, ct held discharge of two Ees under mistaken belief they had engaged in strike misconduct, not unlawful, since Ees had participated in illegal wildcat strike and record evidence does not substantially support conclusion that E condoned or otherwise forgave Ees for their illegal conduct)

N.L.R.B. v. Rainbow Tours, Inc., d/b/a Rainbow Coaches 628 F.2d 1357(T) (C.A. 9, 1980)
(discharge of strikers for refusing to cross picket line, violative where picketing was not unlawful, discharges were motivated by anti-U animus, and business preservation doctrine did not apply since E is only permitted to replace strikers not discharge them)

5036-6720-5800 For supervisor's engaging in union or protected activity

Humana of West Virginia, Inc. d/b/a Greenbrier Valley Hospital 265 NLRB No. 126
(suspension and discharge of individual found supervisor herein, not unlawful where, contrary to ALJ, Bd found that evidence showed that actions were taken, not because individual refused to commit ULPs, such as interrogating Ees, but were admittedly due to individual's U activities, including attendance at U meetings, and thus were not unlawful since *integral part* or *pattern of conduct* line of cases involving supervisors' U activities has been overruled)

Boro Management Corp. 263 NLRB No. 56
(discharge of supervisor for attempting, on his own behalf, to enforce terms of bargaining agreement through grievance procedure not violative for reasons fully set forth in Bd's recent decision in *Parker Rob Chevrolet, Inc.*)

Rain-Ware, Inc. 263 NLRB No. 008
(layoff of supervisor not violative, in view of Bd's recent decision in *Parker-Robb Chevrolet*, 262 NLRB No. 58, holding that Act does not extend to supervisors who are disciplined or discharged as result of their participation in U or concerted activity and in so doing overruling those cases which held that violation is established when discipline or dischrge of supervisor is an *integral part* of E's pattern of unlawful conduct directed against Ees)

Roma Baking Company 263 NLRB No. 076
(discharge of supervisor who was vigorous U supporter not violative as protection of Act does not extend to supervisors who are disciplined or discharged for participation in U or concerted activity; See, *Parker-Robb Chevrolet, Inc.* 262 NLRB No. 58)

Parker-Robb Chevrolet, Inc. 262 NLRB No. 058
(discharge of supervisor when he involved himself in Ees' organizational efforts by asking E for explanation of certain Ees' discharges, not unlawful, notwithstanding ALJ's reliance on *DRW Corp.* in finding discharge unlawful as part of E's *overall plan* to discourage Ees' support of U; *DRW Corp.*, and similar cases, holding discharge of supervisors unlawul where it is *integral part* or *pattern of conduct* aimed at coercing Ees in exercise of their statutory rights, overruled, since such cases misread intention of Congress when it excluded supervisors from from definition of Ee)

Parker-Robb Chevrolet, Inc. 262 NLRB No. 058
(secondary or incidental effect on Ees of discharge of supervisor for U or concerted activity is insufficient to warrant exception to general statutory exclusion of supervisors where discharge is because of such activity or because it is contemporaneous with unlawful discharge of Ees, or both; and it is irrelevant that E may have hoped or expected that termination of supervisor would cause Ees to reconsider or abandon U or concerted activity; but E's use of such discharge to threaten Ees may constitute 8(a)(1) violation on basis of such threat which, however, would not change character of discharge itself)

Parker-Robb Chevrolet, Inc. 262 NLRB No. 058
(rationale underlying novel factual situation in *Pioneer Drilling* has been unduly extended to situations in which the only common denominator was a *pattern of pervasive ULPs* and in applying Act's protection to supervisors who merely join with Ee protected activity and are then subjected to same unlawful discharge or discipline as Ees; such *integral part* or *pattern of conduct* line of cases disregards fact that Ees and not supervisors are protected in such situations, and results must be the same under Act whether supervisors engage in U activity by themselves or along with Ees)

Parker-Robb Chevrolet, Inc. 262 NLRB No. 058
(subjective test which Bd has followed at times in cases involving unlawful discharge of supervisor as *integral part* or *pattern of conduct* aimed at coercing Ees in exercise of their statutory rights is unworkable because ULPs may *irrevocably blur* distinction between E's right to prohibit supervisor from participating in U or concerted activity and E's *obligation* to permit exercise of Ees' statutory rights; moreover, subjective test is contrary to Bd's approach in analagous areas)

Big Star #189 JD-373-82
(discharging Ee, found supervisor herein, who played significant role in U's organizing campaign, not unlawful, where Ee was discharged solely for poor performance and there was no evidence that Ee's activities were known to E prior to termination; *Parker Robb* test applied to instant case in finding Ee's activities not protected)

Mason-Dixon Recycling Corp. JD-233-82
(no violation where individual was supervisor at time of alleged unlawful discharge and voluntarily quit supervisory job to avoid hassles of supervising Ees, absent evidence individual was promoted to supervisor to eliminate him from bargaining unit, of U animus, or of knowledge of individual's U activity; nor has individual subsequently applied for another job with E)

5036-6720-5900 Of supervisor as integral part of conduct aimed at discouraging exercise of Sec. 7 rights

Garabo Lace Mills, Inc. 263 NLRB No. 044
(issuance of warning to Ee found to be supervisor not violative of Sec. 8(a)(3) although in retaliation for engaging in U activities as supervisors are not protected under Act; warning also not violative under Sec. 8(a)(1) as Bd has disavowed *integral pattern of conduct rationale* as basis for finding violation of Sec. 8(a)(1). See *Chevrolet, Inc.* 262 NLRB No. 58 (1982))

Dominican Sisters of Ontario, Inc., d/b/a Holy Rosary Hospital 264 NLRB No. 138
(discharge of Ee who was head nurse and admitted supervisor on same occasion that E discharged five other nurses for conduct, found herein to be protected concerted activity, not unlawful, where facts did not warrant exception to general statutory exclusion of supervisors from protection of Act under criteria set forth in *Parker-Robb Chevrolet*)

H. H. Robertson Company 263 NLRB No. 173
(*E violates Section 8(a)(1) by discharging supervisor for providing information to Bd regarding ULPs since providing of such information assists Ees in obtaining vindication of their rights through Bd's processes*)

Master Food Services, Inc., Noah Robinson, and Al Williams d/b/a A & W Catering Co. 262 NLRB No. 105
(discharging statutory supervisor because he had signed card as did all other Ees who were also discharged, not violative notwithstanding discharge of supervisor is *part and parcel* of E's pattern of unlawful conduct directed against Ees)

Beech Branch Coal Company 260 NLRB No. 122
(discharge of supervisor for siding with Ees against management over new work hours imposed by management, not violative; no exceptions)

B. E. & K., Inc. 260 NLRB No. 081
(discharge of supervisory Ee rather than letting him return to rank-and-file position violative where Ee was U adherent and had only been promoted to supervisor 10 days earlier to remove him from protection of Act)

Cal-Walts, Inc. 258 NLRB No. 126
(termination of supervisor, not unlawful, since not for his refusal to unlawfully discharge Ees inasmuch as he did not perceive he was being ordered to commit unlawful act and did discharge Ees; nor was there pattern of unlawful conduct affecting Ees and supervisors alike where distinction between rights of Ees and supervisors can not be perceited by Ees as supervisor did not encourage or participate in same protected activity which caused unlawful discharge of Ees)

Madison Manufacturing Company 255 NLRB No. 094
(discharge of supervisor who objected to unlawful layoff of Ee, encouraged recall of Ee, and made proposals which would have obstructed E's illegal goals, not unlawful, since supervisor's actions did not constitute refusal to engage in ULPs and facts did not *fall strictly w/i Section 8(a)(1) violation for firing supervisor because he would not engage in ULPs*; notwithstanding E

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understood supervisor would not cooperate in its desire to rid itself of U adherents; however his discharge violative on theory it was integral part of scheme to discharge Ees in his department for their U activities)

Empire Gas, Inc. of Denver 264 NLRB No. 076
(discharge of supervisor, unlawful where he was discharged contemporaneously with Ees for participating with them in bringing concerted pressure upon E for favorable resolution of their complaint regarding futher bonus payments, and such discharge impacted directly upon statutorily protected rights of Ees)

Pennypower Shopping News, Inc. 253 NLRB No. 011
(supervisor included in reinstatement and backpay order, since E's conduct, including discharge of supervisor, was part of pattern of conduct aimed at coercing Ees in exercise of Sec. 7 rights)

DRW Corporation d/b/a Brothers Three Cabinets 248 NLRB No. 095
(vindication of Ees Section 7 rights is basis for reinstatement of violatively discharged supervisor not protecting supervisor for his engagement in U activity)

Tribal American Consulting Corporation JD-(SF)-314-80
(discharging supervisor because she refused to issue reprimands to U supporters for purpose of building record to justify discharge of U supporters, violative)

Belcher Towing Company v. N.L.R.B. 614 F.2d 88 (C.A. 5, Mar. 1980)
(E's discharge of ship's captain for refusal to enforce no solicitation rule requiring him to report all U activity on board his boat, unlawful, notwithstanding captain was supervisor since discharge motivated by his refusal to participate in unlawful surveillance)

N.L.R.B. v. Downslope Industries, Inc., and Greenbrier Industries, Inc. 676 F.2d 1114 (C.A. 6, Apr. 1982)
(discharge of supervisor who had complained of sexual harassment by another supervisor along with discharge of her supervisees who had been hired by supervisor and were either related to or friends of supervisor and who made similar complaints, unlawful, and supervisor ordered reinstated, since she was used as conduit to discharge her supervisees and squelch Section 7 activity or was an integral part of attempt by E to discourage exercise of Sec. 7 rights by Ees)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse 647 F.2d 905 (C.A. 9, June 1981)
(cts have found that Es violated 8(a)(1) by conduct toward supervisors and ordered reinstatement in 3 basic situations; first, discipline of supervisor for refusing to commit ULP; second, discipline of supervisor for testifying before Bd; and third, discharge of supervisor as pretext for terminating pro-U crew which he had hired as his own crew)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse 647 F.2d 905 (C.A. 9, June 1981)
(ct held that Bd applied wrong legal standard in holding that E violated 8(a)(1) by refusing to retain supervisor, and refused to order his reinstatement, since Congress had expressly chosen not to protect proU activities of supervisor and reinstating supervisor whenever discipline might have coercive effect on Ees would tend to override that will; coercive effect on Ees here could be eliminated by ordering reinstatement of Ees themselves)

5036-6720-6700 For supervisor's refusal to engage in illegal activities

Humana of West Virginia, Inc. d/b/a Greenbrier Valley Hospital 265 NLRB No. 126
(suspension and discharge of individual found supervisor herein, not unlawful where, contrary to ALJ, Bd found that evidence showed that actions were taken, not because individual refused to commit ULPs, such as interrogating Ees, but were admittedly due to individual's U activities, including attendance at U meetings, and thus were not unlawful since *integral part or pattern of conduct* line of cases involving supervisors' U activities has been overruled)

Earl Kuhns, d/b/a Frenchy's K & T and Earl's News Stand 263 NLRB No. 087
(discharge of supervisor because he failed to issue written disciplinary warnings to pro-U Ees so that E would be able to discharge them, violated Act as this interferes with rights of nonsupervisory Ees by permitting supervisors to respect statutory rights of Ees w/o fear of reprisal)

Parker-Robb Chevrolet, Inc. 262 NLRB No. 058
(in overruling *DRW Corp.* and similar cases and holding discharge of supervisors not unlawful, Bd nonetheless held such discharges may be unlawful when discharge is for testifying at Bd hearing or at contractual grievance proceeding, for refusing to commit ULPs, or for failing to prevent unionization, since impact on Ees' statutory rights, coupled with need to insure that even statutorily excluded Ees may not be coerced into violating law or discouraged from participating in Bd process or in grievance procedures, compels their protection despite statutory exclusion)

Howard Johnson Motor Lodge 251 NLRB No. 130
(discharge of supervisor for refusal to engage in surveillance of Ees' U activity at request of E and specifically identify Ees who had attended U meeting, unlawful, notwithstanding E made demand on supervisor after supervisor voluntarily, attended U meeting, since E sought to compel supervisor to report on U activity of Ees, an ULP)

World Evangelism, Inc. 261 NLRB No. 088
(discharge of supervisor because he was unable to control U activity of Ees not violative where record does not establish that E expected supervisor to use coercive or unlawful means to further E's position or that it suggested he engage in any ULPs)

Datagraphic, Inc. 259 NLRB No. 173
(discharging supervisor allegedly for, *inter alia,* not carrying out company policies, violative, where reason for discharge was his refusal to commit various ULPs)

Cal-Walts, Inc. 258 NLRB No. 126
(termination of supervisor, not unlawful, since not for his refusal to unlawfully discharge Ees inasmuch as he did not perceive he was being ordered to commit unlawful act and did discharge Ees; nor was there pattern of unlawful conduct affecting Ees and supervisors alike where distinction between rights of Ees and supervisors can not be perceived by Ees as supervisor did not encourage or participate in same protected activity which caused unlawful discharge of Ees)

Hedison Manufacturing Company 253 NLRB No. 054
(discharge of supervisor who objected to unlawful layoff of Es, encouraged recall of Es, and made proposals which would have obstructed E's illegal goals, not unlawful, since supervisor's actions did not constitute refusal to engage in ULPs and facts did not *fall strictly w/i Section 8(a)(1) violation for firing supervisor because he would not engage in ULPs,* notwithstanding E understood supervisor would not cooperate in its desire to rid itself of U adherents; however his discharge violative on theory it was integral part of scheme to discharge Ees in his department for their U activities)

World's Best Janitorial Services, Inc. JD-516-81
(violation, where E discharged supervisor in reprisal for her refusal to identify and weed out those Ees who had been active in seeking representation by U and who had engaged in concerted refusal to work)

Pass, Inc.; J. Pass Inc.; and Riverside Warehouse, Inc. JD-441-81

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse 647 F.2d 905 (C.A. 9, June 1981)
(cts have found that Es violated 8(a)(1) by conduct toward supervisors and ordered reinstatement in 3 basic situations; first, discipline of supervisor for refusing to commit ULP; second, discipline of supervisor for testifying before Bd; and third, discharge of supervisor as pretext for terminating pro-U crew which he had hired as his own crew)

5036-6720-7000 Mass discharge

N.L.R.B. v. Downslope Industries, Inc., and Greenbrier Industries, Inc. 676 F.2d 1114 (C.A. 6, Apr. 1982)
(mass discharge of female Ees who refused to work until E listened to their complaints about sexual harassment by male supervisor, unlawful; *freedom from sexual harassment is a working condition which Ees may organize to protect*)

N.L.R.B. v. Downslope Industries, Inc., and Greenbrier Industries, Inc. 676 F.2d 1114 (C.A. 6, Apr. 1982)
(Ee who participated in confrontation that lead to unlawful mass discharge, and reasonably considered himself discharged, entitled to reinstatement. In mass discharge, motive of E, not individual actions of Ee, is focus of inquiry and E's motive was to squelch protected activity and unlawful net spread to include Ee)

5036-6720-7200 Of supervisor for testifying at Board hearing or grievance proceeding

Parker-Robb Chevrolet, Inc. 262 NLRB No. 058
(in overruling *DRW Corp.* and similar cases and holding discharge of supervisors not unlawful, Bd nonetheless held such discharges may be unlawful when discharge is for testifying at Bd hearing or at contractual grievance proceeding, for refusing to commit ULPs, or for failing to prevent unionization, since impact on Ees' statutory rights, coupled with need to insure that even statutorily excluded Ees may not be coerced into violating law or discouraged from participating in Bd process or in grievance procedures, compels their protection despite statutory exclusion)

Tyler Business Services, Inc. v. N.L.R.B. 680 F.2d 338 (C.A. 4, June 1982)
(discharge of Ee because of his remarks to one of E's most important customers concerning unlawful discharge of part-time Ee and lack of insurance for part-time Ees, not unlawful, since evidence did not show discharge was for protected concerted activity where there was no showing that Ee's

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conduct was attempt to enforce bargaining agreement, to induce group action, or was undertaken on behalf of other Ees; and Ee was not enlisting customer's aid or sympathy on behalf of company's Ees; instead, Ee testified that he tried to keep his friendship with customer separate from his work)

5036-6720-7200 Protesting unsafe conditions

Daniel Construction Company **264 NLRB No. 104**
(discharge of Ee who refused to perform job task which he believed unsafe not violative as Ee was not engaged in protected activity; Ee was not contending that E was not following safety procedures and was not engaged in strike because he was trying to choose which job tasks he would perform)

American Freight System, Inc. **264 NLRB No. 018**
(discharge of driver for refusing to drive truck which he reasonably believed to be unsafe because of good faith belief that truck's tires were unsafe held violative, since driver's reasonable concern about safety of tires constituted attempt to enforce contract provisions reguarding Ee rights not to be compelled to operate unsafe equipment; thus, his conduct amounted to protected concerted activity)

Farmland Soy Pròcessing Company **263 NLRB No. 18**
(discharging Ee for not immediately signing orientation form for new Ees concerning safety conditions and procedures and asking for more time to read form, violative as this incident was pretext in ivew of E's later statement to dischargee's co-worker in which E admitted he was looking for way to discharge Ee, E told Ee in discharge interview that he had been *picking* on E, and this referred to Ee's many complaints about safety)

Florida Steel Corporation **262 NLRB No. 102**
(discharge of Ee who refused to drive truck not violative as he was discharged for refusal to perform assigned task; moreover, although he had reported to E that truck was unsafe and in need of repair, upon his reassignment to it two days later he made no attempt to ascertain if it had been repaired (which was normal policy) but merely refused to drive truck giving no explanation and was thus not engaged in protected activity)

Wagner-Smith Company **262 NLRB No. 130**
(discharge of 4 Ees for complaining about hazardous working conditions violative)

Comet Fast Freight, Inc. **262 NLRB No. 040**
(discharge of Ee for his refusal to drive truck he alleged was unsafe not violative as Ee was not engaged in concerted activity where he was only Ee who complained about truck's condition and testified that *I was looking out for myself, not the other drivers*; thus, while Ee's subjective lack of concern for his fellow Ees is not controlling, fact that other Ees did not share his concerns about truck shows he was acting alone)

Lafeyette Steel Erector, Inc. **260 NLRB No. 160**
(discharge of Ee who protested E's failure to provide Ees who worked high off ground with safety belts violated Act as Ee engaged in protected activity, notwithstanding Ee chose to protest by removing his shirt which was violation of E's rules)

Colorado Forge Corporation **260 NLRB No. 004**
(discharge for work stoppage protesting dangerous working conditions, unlawful)

Terras Coal Company, Inc. **259 NLRB No. 047**
(discharge of miners who had walked off job after E failed to comply with request that road into mine be repaired so that Ees could ride into mine in view of miners' fear that *scoop* being used to carry them into mine was unsafe and their concern about delay in carrying out injured Ee, and refusal to allow miners to work upon their return, unlawful, since miners' activities protected; E's contention miners voluntarily quit inasmuch as they were given reasonable alternative of walking in on paid time, rejected, since no requirement (that) Ees abjure colorable grievance merely *because E presents alternative, though arguably reasonable*)

Centrex Construction Company, Inc. **258 NLRB No. 148**
(no violation where Ee was discharged for spending excessive time at water cooler away from work rather than, as alleged, for making safety complaints)

Tamara Foods, Inc. **258 NLRB No. 180**
(discharge for striking in protest of ammonia fumes in work environment, not unlawful, notwithstanding striking Ees broke plant rule and disregarded E's alternative solution for such problems, since E had unilaterally imposed rule and solution upon Ees who were not represented and not covered by agreement containing no-strike clause; and fact that plant had been found not in violation of OSHA regulations did not render strike unprotected since NLRA rights are distinct from and not subordinate to OSHA provisions)

Trans Air Supply Company, Inc. **257 NLRB No. 023**
(violation, where E discharged leadman for persisting in arguing with plant superintendent, after he obeyed orders to return to work area, over need for fans to be turned on to clear smoke and fumes from work area)

City Disposal Systems, Inc. **256 NLRB No. 073**
(discharging driver for refusing to operate what Ee claimed to be unsafe vehicle, violative as he was asserting contract right based upon his honest belief that brakes were unsafe and E's failure to show Ee that his complaint was unfounded supports Ee's claim of unsound brakes, notwithstanding another Ee drove truck w/o incident)

Maryland Shipbuilding and Dry Dock Co. **256 NLRB No. 069**
(suspension of Ee for failing to complete sufficient portion of painting assignment, unlawful, since really for complaining about safety rules in bargaining contract with regard to working in remote areas and time spent on Ee's complaint was significant factor in E's decision to suspend Ee)

Zurn Industries, Inc. **255 NLRB No. 098**
(discharging Ees for ecomplaining about safety with respect to handrails at concrete pouring site, violative)

Babcock & Wilcox, B & W Construction Company **255 NLRB No. 069**
(no violation for discharging two Ees who refused to perform assertedly dangerous job in violation of *no stoppage of work* clause in contract and GC did not rely on Section 502; fact that Ees did not use word *refuse* is of no consequence nor fact that supervisor did not threaten Ees with discharge if they did not perform work)

Hamilton Die Cast Company, Inc. **254 NLRB No. 113**
(discharging 2 Ees on same day for taking leave w/o written notice held violative as other Ees have not been similarly terminated; E's motivation was to penalize them for concerted activities as one Ee filed OSHA charge and other Ee was U steward whose performance E was critical)

ITT Continental Baking Company American
Bakeries Company, Inc. **253 NLRB No. 140**
(Ees' discharge for walkout in protest over alleged unsafe working conditions not violative wherc contract contains unambiguous no-strike clause over such matters while attempt is being made to resolve issues through use of mandatory arbitration and grievance procedure)

Service Machine & Shipbuilding Corp. **253 NLRB No. 080**
(discharge of welders for refusing to work in the rain, unlawful; Ees' concern was about safety and health)

Irvin H. Whitehouse & Sons Company **252 NLRB No. 140**
(discharge of Ees who refused to work because of safety hazards violative where contract did not contain no-strike provision)

The Motor Convoy, Inc. **252 NLRB No. 175**

Pay-Wood Industries, Inc. **249 NLRB No. 086**
(discharge of Ee who alone complained about safety conditions and refused to operate allegedly unsafe machine, unlawful notwithstanding Ee did not invoke contractual grievance procedure)

Pay-Wood Industries, Inc. **249 NLRB No. 086**
(whether Ee's C about safe working conditions is real or imaginary, it is immaterial to the exercise of Ee's Section 7 rights to so complain)

Lyman Steel Company **249 NLRB No. 040**
(U adherent's quitting job, not only because E denied Ee's vacation request, but also because of E's implicit rejection of Ee's plea for security at his work station, held *constructive discharge*)

Corbin-Dykes Electric Company **JD-(SF)-208-82**
(refusing to rehire Ee and placing Ee on E's ineligible for rehire list because he complained about safety of wiring in transfer switch box, violative, since complaints constituted protected concerted activity where safe operation of switch box was matter of common concern to other Ees who were obliged to operate switch; and moreover, Ee's complaints were also based on what Ee perceived to be violation of collective bargaining agreement which did not require Ees to perform work not in conformity with National Electrical Code and therefore, Ee was acting on behalf of all unit Ees and was engaged in protected concerted activity)

Francrete Corporation **JD-(NY)-57-82**
(discharge of Ee for filing too many reports concerning unsafe vehicles violative as such conduct is protected concerted activity where other drivers had voiced similar concerns)

Timothy Kasmoch and David G. Kasmoch d/b/a
Warrendale Garage and Trucking **JD-174-82**
(discharge of truck driver because he refused to operate truck based on *his belief* that loaded truck would be overweight under laws of 2 states held violative, since such refusal is protected concerted activity; discharge had effect, intended or not, of serving as warning to other drivers that they were in danger of losing their jobs if they refused to violate state laws by operating overweight vehicles)

High Energy Corporation **JD-100-82**
(discharge of Ees who walked off job to protest unsafe working conditions violative as Ees engaged in protected activity and protection is not lost because Ees did not give prior notice, moreover, it is immaterial whether Ees were correct about the unsafe conditions)

Enerhaul, Inc. **JD-(ATL)-7-82**
(discharge of Ee who had engaged in protected activity regarding condition of his truck not violative where Ee would have been discharged regardless of his protected conduct for abusing truck assigned to him)

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Berkshire Cleanway Rubbish Removal, Inc. JD-336-81
(suspension and discharge of Ee because of his complaining about safety of E's trucks and refusing to drive them under unsafe and illegal conditions, violative where other Ees shared concerns and E was aware of common concern)

Johns-Manville, Private Carriage JD-(ATL)-59-81
(discharge not violative where Ee's protests concerning alleged unsafe conditions of front axle tires of truck, were not concerted activity since protests had no object to cause E to change its policies concerning criterion of safety for front tires which it had established but was *solely for Ee's own benefit*)

Alaga Whitfield Foods, Inc. JD-504-80
(discharge of Ee truckdrivers who refused to work because of violence occurring on highway in independent trucker's protest violative, as Ees' activity protected because of safety concerns)

Roadway Express, Inc. JD-281-80
(discharge of Ee for refusing to obey order, lawful, notwithstanding Ee's contention that he was discharged for making a safety complaint to Department of Transportation since there was no basis for concluding that E had any knowledge of Ee's compalaint)

Roadway Express, Inc. JD-281-80
(discharge of Ee for refusing to drive truck because of asserted safety defects, lawful, where Ee contrived defect which would serve to justify his action in refusing to drive truck)

S & H Fabricating and Engineering, Inc. JD-149-80
(discharge for Cs to management about safety of van Ee was assigned to drive, unlawful)

N.L.R.B. v. Service Machine & Shipbuilding Corp. 662 F.2d 1125 (C.A. 5, Dec 1981)
(discharge of welders for refusing to operate electrical equipment in the rain, unlawful, where they acted out of fear of electrical shock which was apparent to all persons involved; Ees did not lose right to protest dangers and discomforts inherent in emergency conditions by volunteering to work under such conditions; their agreement to work in conditions which, while perhaps unpleasant, were not hazardous, did not preclude their refusal to work when conditions worsened; nor was it relevant that Ees failed to state explicitly their fear of electrical shock before walking off job)

Brown & Root, Inc. v. N.L.R.B. 634 F.2d 816 (C.A. 5, 1980)
(discharge of two Ees who had refused to obey foreman's order to return to work which Ees had ceased when rain had begun to blow on electrical equipment with which they were working, unlawful, since protected refusal to work in perceived unsafe conditions and refusal concerted where two Ees acted in concert, notwithstanding remainder of Ees returned to work)

City Disposal Systems, Inc. v. N.L.R.B. 683 F.2d 1005 (C.A. 6, July 1982)
(discharge of Ee who refused to drive truck he believed to be unsafe not violative where Ee was not engaged in concerted activity as he was acting solely for himself, did not attempt to warn other Ees that truck was unsafe, did not seek assistance of U representative in effort to avoid driving truck, and only made isolated comment to E that E cared more about garbage than men)

Bay Wood Industries, Inc. v. N.L.R.B. 666 F.2d 1011 (C.A. 6, Dec. 1981)
(dismissal of Ee because he refused to operate saw unless guard was installed on saw to protect Ee's fingers not violative, since Ee's complaints and actions did not constitute *concerted activities*; Ee enlisted no other Ees in this dispute, nor did he file grievance nor did he attempt to represent any interests othr than his own; Ee's complaint did not meet test for *concerted* activities enunciated in *Aro, Inc. v. N.L.R.B.*, 596 F.2d 713 (1979))

N.L.R.B. v. Lloyd A. Fry Roofing Company, Inc. of Delaware 651 F.2d 442 (C.A. 6, June 1981)
(applying *Mt. Healthy* and *Wright Line* principles, discharge violative where E failed to demonstrate that it would not have discharged Ee who engaged in protected concerted activity to improve E's equipment so as to eliminate safety hazards *but for* that activity)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. 659 F.2d 830 (C.A. 7, Sept. 1981)
(where safety issue is one that must be submitted to binding arbitration, obligation not to strike over matter is considered to be coterminus and any stoppage violates implied no-strike clause unless safety hazzard suddenly arose and presented immediate threat; i.e., *Washington Aluminum* situation)

N.L.R.B. v. Tamara Foods, Inc. 692 F.2d 1171 (C.A. 8, Nov. 1982)
(Bd decision holding discharge of Ees for violating plant rule by walkout protesting unhealthy working conditions unlawful, affirmed)

Lee G. Kohls v. N.L.R.B. 629 F.2d 173 (C.A.D.C., 1980)
(discharge of Ee for refusing to drive assigned truck because *breaks were not good enough for me*, not unlawful, since protest and refusal not concerted and *Interboro Contractors* doctrine not applied, notwithstanding contention was Ee was asserting contractual right, where Ee was not asserting right on behalf of anyone other than himself nor speaking for others, no evidence Ee and U working in concert to assert contract, and fact Ee withdrew grievance filed on his behalf by U)

5036-6720-7500 For engaging in protected activity

Operating Engineers, Local 400 265 NLRB No. 168
(discharging Ee because he complained about wages, hours, and working conditions and his stated intention of filing an employment discrimination proceeding, violative)

Key Opportunities, Inc. 265 NLRB No. 170
(violation where E discharged *supervisors* and aides, found herein to be Ees w/i meaning of Act, because they engaged in protected concerted activity involving wages and working conditions, and engaged in protest over discharge of fellow *supervisor* which resulted from circumstances involving such concerns)

Good Samaritan Hospital & Health Center 265 NLRB No. 092
(discharge of two occupational therapists by coordinator of agency providing developmental therapy for learning disabled children, because therapists complained of coordinator's mismanagement of program and inappropriate treatment model to be used by agency held not violative, since therapists were in no way disturbed or troubled by any personal demands imposed on them by coordinator's policy decisions; welfare of children was therapists' concern; therapists criticisms and recommendations related to disputes outside objectives of mutual aid or protection provisions of NLRA)

Enterprise Products Company 265 NLRB No. 083
(discharge of Ees assertedly for violating rule prohibiting dissemination of company information by providing Ee, whose discharge was subject of ULP charge herein, with information regarding company's operations, unlawful, where maintenance of rule was found unlawful and action taken thereunder affecting terms of employment of those violating rule is unlawful also; Ees' disseminated information contained no trade or competitive secrets, was not confidential nor restricted, and was readily accessible to anyone and available from sources other than E's records; and E's labeling disclosure of information as theft did not excuse its own unlawful conduct)

Dunn Chevrolet, Inc. d/b/a All Star Chevrolet 265 NLRB No. 086
(E's discharge of newly hired Ee or, in the alternative, E's refusal to hire him as prospective Ee, unlawful, where E had knowledge of Ee's past involvement in U activities in his former employ and E's action was admittedly taken for such reason; moreover, even assuming direct evidence of discriminatory motive was absent, evidence also supports inference that E's action was based on discriminatory motive)

McLean Hospital, A Division of Massachusetts General Hospital 264 NLRB No. 068
(discharge not unlawful since it was not attributable to breach of Ee's *Weingarten* rights at investigatory interview, as contended, where Ee's request at first interview was not for participation of representative or witness on his behalf, but for postponement of interview so that he could secure legal advice of private counsel and at second interview he was offered opportunity to forego the interview entirely but offered to participate voluntarily)

Sherwood Ford, Inc. 264 NLRB No. 116
(discharging Ee, assertedly for telling office manager she was *tired of being lied to*, not violative where statement was part and parcel of Ee's protest on behalf of herself and other Ees over E's failure to pay holiday pay and Ee's language was not so inaccurate or offensive as to remove Act's protection)

Benjamin Electrical Engineering, Inc. 264 NLRB No. 139
(where Ee's complaint to E was alleged to have concerned unsafe working conditions but was found to have been directed toward enforcement of U contractual conditions on the job, discharging Ee for making complaint held not unlawful, notwithstanding content of complaint might have been found protected, since discharge was not for content of complaint but for insubordinate manner in making it)

Dominican Sisters of Ontario, Inc., d/b/a Holy Rosary Hospital 264 NLRB No. 158
(discharging all nurses on night shift in emergency department because they hired an attorney to pursue matter of Ees' expressed concern to E concerning number of registered nurses on duty during night shift in emergency room, violative, where such conduct constituted protected concerted activity)

Raddiour Corporation d/b/a Dollar Rent-A-Car of Las Vegas 264 NLRB No. 133
(giving oral and written warnings and then subsequently discharging Ee who had filed sex discrimination charge with state agency violative, where in view of E's desparate treatment of Ee, E's failure to show that it believed that Ee's conduct complained about by customers had occurred, timing of discipline and discharge, and E's admission that it linked Ee's poor attitude with filing of discrimination charge and that it had subjected her work to greater scrutiny because of charge)

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Searle Auto Glass, Inc. d/b/a Best Glass Company **264 NLRB No. 169**
(dishcarge of glazier unlawful, notwithstanding E's assertion that discharge was because of Ee's suspected activities in *skimming operation* and because he was engaged in glazing work in competition with E, since asserted reasons were found a sham herein and real reason was Ee's filing wage claim against E with state labor commission, in view of E's explanation to state labor department after Ee had filed for unemployment compensation that reason for discharge was Ee's filing of *unjustifiable* wage claim against E)

Enterprise Products, Inc. **264 NLRB No. 125**
(discharge of Ee because of his remarks in ans to E's announcement of proposed production incentive of free tickets to athletic and other events rather than wage increase, violative where Ee responded that he would be hard pressed to improve production if increased production would be rewarded as proposed by E; Ee's remarks constituted protected activity and were not, as contended, threat to slow down production)

Cox Enterprises, Inc., d/b/a Atlanta Newspapers **264 NLRB No. 120**
(discharging Ee for telling E about strike rumor violative notwithstanding she did not state that she supported rumored strike as Ee"speech to supervisor or another Ee must be protected because it is often essential means of achieving group goals)

Pacific Intermountain Express Co. **264 NLRB No. 047**
(although protected activity of filing OSHA complaints was motivating factor in discharge decision, E would have discharged Ee even if he had not filed those complaints, as Ee was insubordinate for brazenly refusing to cancel physical therapy appointment on company time as he had been directed to do so by his supervisor)

WNAC-TV Division, RKO General, Inc. **264 NLRB No. 031**
(no violation, where although GC had established prima facie case of discriminatory discharge of female news reporter for protected concerted activities of participating in staff meeting about Ees' ptn against TV station running story about a *stripper* and female Ees' luncheon meetings about overtime pay and negative portrayals of women, E showed that discharge was for her lack-luster performance as news reporter and would have occurred independently of any involvement in protected concerted activity)

Barry S. Salaf, M.D., A Professional Corporation,
d/b/a The Victoria Medical Group and The
West Jefferson Medical Group **264 NLRB No. 019**
(discharge of Ees who refused to work until management heard their grievances concerning, *inter alia* lack of (medical) supervision of their paramedical responsibilities held violative, since such lack was matter plainly affecting Ees' terms and conditions of employment and their insistance that they be heard was protected activity)

Peerless Plating Company, Inc. **263 NLRB No. 143**
(discharge for complaining that working hours set by E did not conform to contract, unlawful)

Multi-Amp Testing Services Corporation **263 NLRB No. 110**
(discharge of 2 Ees separately, each for violating E's rule against disclosing *internal affairs* to customers, not unlawful where rule itself was not unlawful or unlawfully promulgated, and GC failed to prove that discharge was due, as contended, to mistaken belief that Ees had acted in concert and that their activity was protected)

A. Duie Pyle, Inc. **263 NLRB No. 092**
(Bd has differentiated between those cases in which Ees have arguably exceeded bounds of lawful conduct during strike in *moment of animal exuberance* from those cases in which misconduct is so flagrant or egregious as to require subordination of Ees' protected rights in order to vindicate broader interests of society; thus, E is not entitled to discharge striker for engaging in threats unless they are accompanied by *physical acts or gestures* that would provide added emphasis or meaning to striker's words sufficient to warrant finding that striker should not be reinstated)

A. Duie Pyle, Inc. **263 NLRB No. 092**
(in finding that E unlawfully discharged striker assertedly for threatening nonstriking Ee employed at E's nearby nonstruck plant, Bd did not accept position that incident did not involve *animal exuberance* on ground threatened Ee was not striker replacement nor former striker who had abandoned strike; such facts are not significant since issue is not whether striker's remarks could be perceived as justified by prior events; in any event, it would be unrealistic to conclude dispute herein would not be extended to nearby facility and consequently, Bd is not faced with picketing of neutral E)

A. Duie Pyle, Inc. **263 NLRB No. 092**
(discharge of striker assertedly for picket line misconduct, unlawful, where striker threatened nonstriking Ee employed at E's nearby nonstruck facility, which was being picketed, with arson of Ee's home; such threat does not require different standard than other threats which unless accompanied by *physical acts or gestures* do not entitle E to discharge striker; nor does historical value of E's home required different result; consequently, striker's threat, while ill-considered and not to be condoned, was not sufficiently egregious to deny striker reinstatement)

A. Duie Pyle, Inc. **263 NLRB No. 092**
(in finding E unlawfully discharged striker assertedly for picket line misconduct involving striker's threat of arson to home of nonstriking Ee, Bd found it inconsequential to its decision that striker was not provoked into making threatening remarks; while provocation would be material to determining that there were mitigating circumstances to misconduct, issue herein is not mitigation or justification, but whether striker lost protection of Act during moment of misconduct which did not entail physical acts or gestures)

A. Duie Pyle, Inc. **263 NLRB No. 092**
(discharge of striker assertedly for assaulting supervisor with knife, unlawful, where ALJ discredited E's version of knife fight and specifically found that supervisor was in fact the aggressor and Bd agreed with ALJ that striker would not, but for the knife fight, have been discharged; and, even if striker used a knife, E had no honest belief striker had engaged in such physical misconduct as to lose protection of Act; and in any event, GC successfully carried burden of proving that striker did not, in fact, engage in disqualifying misconduct)

A. Duie Pyle, Inc. **263 NLRB No. 092**
(in case involving picket line misconduct as defense to striker's discharge allegedly violative of 8(a)(1), fact that there was substantial picket line misconduct by some strikers and dischargees' proximity thereto, does not impute culpability to any particular strikers unless they were identified as responsible; except in cases where E proved no honest belieft of striker misconduct, determination must be made whether (a) particular dischargee engaged in asserted misconduct; and (b), if so, whether conduct was sufficiently serious as to deny him continued protection of Act or was merely *trivial rough incident or moment of animal exuberance*)

L. A. Water Treatment, Division of Chromalloy
American Corporation **263 NLRB No. 032**
(E's discharge of Ee not violative, notwithstanding E's unlawful denial to him of representative at interview and GC's establishing make-whole remedy appropriate where GC did not establish that Ee was discharged for requesting U representative or for engaging in other protected activity)

Professional Porter & Window Cleaning Co.,
Division of Propoco, Inc. **263 NLRB No. 034**
(discharging Ee for writing letter to her former E concerning labor dispute over changed working conditions due to subcontracting of work violative as activity was protected and concerted and purpose was not to injure her E-subcontractor by impugning operation but to remedy problems in working conditions)

Parr Lance Ambulance Service **262 NLRB No. 161**
(discharge of ambulance driver violative where reason was his refusal to drive ambulance because certain safety equipment required by state law was missing)

E.I. Dupont De Nemours and Company, Inc. **262 NLRB No. 126**
(discharge of Ee for refusing to sign record, unlawful where his request for witness at interview had been denied and interview had been continued with demand that he sign record in violation of his *Weingarten* rights)

Avatar, Inc., d/b/a Downtowner Motor Inn **262 NLRB No. 131**
(discharge of Ee in reprisal for acting as leader and spokesperson in work stoppage protesting 1-day delay in issuing paychecks, unlawful where change affected 3 Ees and stoppage was protected notwithstanding it may have interfered with E's business)

The American Federation of State, County and
Municipal Employees **262 NLRB No. 121**
(discharging Ee for testifying in ct suit bought by former supervisor to vindicate her rights under settlement agreement, not unlawful, since Ee had engaged in no protected activity inasmuch as participation in strike protesting discharge of supervisor and testifying in suit were assisting former supervisor in personal plight, and it was not shown that supervisor's reinstatement as result of ct decision would affect working conditions)

W. C. Electrical Co., Inc. **262 NLRB No. 066**
(discharge of Ee for protesting discontinuance of E's practice of providing sick pay, violative since sick pay is term and condition of employment and Ee had obtained support of fellow Ees before speaking to E about sick leave policy; activity in protest of discontinued past practice involves matter of mutual concern to Ees and this common concern was not negated because it coincided with dischargee's individual sick pay concern)

Mann Equipment Company **262 NLRB No. 076**
(Ee held to have been unlawfully discharged, rather than to have quit, where E conceded Ee was competent worker, and timing of discharge day after Ee complained about wages and other terms and conditions of employment persuasively established that Ee was discharged because of engaging in such protected concerted activity, notwithstanding that E never told Ee *you are fired* or *you are discharged*, since such formal words are unnecessary in order to find that person was fired or discharged)

Mashkin Freight Lines, Inc. **261 NLRB No. 190**
(violation, where E discharged Ees with the belief that they concertedly feigned illness and that claimed inability to work was in fact concerted

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refusal to work in protest against working conditions or identity of bargaining agent)

New York University Medical Center 261 NLRB No. 119
(suspension of one Ee and discharge of another, assertedly for picketing private residence of management official, unlawful, where Ees' prior distribution of leaflets accusing E of engaging in racist tactics, herein held protected concerted activity, was motivating factor for E's conduct, and E failed to demonstrate that Ees would have been disciplined if only the picketing was involved)

General Motors Corporation, Assembly Division 261 NLRB No. 078
(discharge of Ee for leaving plant to consult physician when injured, after being denied permission by supervisor, unlawful, where contract provided that supervisor must grant request to visit physician under such circumstances; whether Ee had punched out before seeking permission, immaterial)

Calvin D. Johnson Nursing Home 261 NLRB No. 044
(while health care facilities have legitimate concerns with staffing and care of patients, nursing home Ees herein were ordered to leave by their supervisor, and their discharge allegedly for *desertion*, unlawful, in view of supervisor's prior threat of discharge, E's disinterest in any personal investigation of matter, and fact that E's personnel policy required written warning for first offense of leaving w/o permission; moreover, even if Ees were not fully justified in leaving, they would not have been discharged if they had not engaged in protected conduct of complaining about their supervisor)

T.H.E. Co. d/b/a L. D. Brinkman Southeast 261 NLRB No. 025
(threatening Ee with discharge for U activity violative, notwithstanding E's contention that Ee had *resigned* at time of threat, since Ee would have remained statutory Ee w/i meaning of Sec. 2(3) after alleged resignation)

George E. Mosher, Inc. 261 NLRB No. 016
(discharging Ee for pursuing grievance, violative)

Pace Motor Lines, Inc. 260 NLRB No. 189
(discharging Ee because he refused to operate unsafe vehicles, violative, where Ee's action was clearly part of group protest against unsafe equipment in light of fact that several Ees complained to E previously about unsafe equipment, discriminatee was involved in recent accident as result of faulty brakes, and Ees commenced strike to protest E's termination of discriminatee after he told Ees circumstances of his discharge)

Country Club of Little Rock 260 NLRB No. 151
(discharge of Ee for filing charge with EEOC against E and discussing that charge with news media violative, since Ee was engaged in protected concerted activity)

Phil Smidt & Son, Inc. 260 NLRB No. 090
(suspending and discharging Ee waitress for keeping track of customer seating, violative, since such conduct constituted concerted protected activity where it was in support of long standing Ee complaints and possible grievance concerning unfair customer assignments)

Hudson T. Marsden, A Sole Proprietorship 259 NLRB No. 128
(Ees who refused to work outside on rainy day and went home w/o informing E engaged in protected concerted activity and discharge violative)

Kyle & Stephen, Inc. 259 NLRB No. 097
(violation, where E discharged Ees for pursuing wage claim under state law and concertedly adhering to their claim)

Faulkner Hospital 259 NLRB No. 082
(discharging Ee employed as security guard for giving written statement to fellow Ee used in latter's grievance proceeding pertaining to his own discharge, unlawful; contention that letter compromised integrity of E's security system rejected in absence of evidence demonstrating manner in which it did so)

J. W. Microelectronics Corporation 259 NLRB No. 090
(discharge for concerted protected activity of instigating work stoppage in protest of Ees' problem of racial harassment, unlawful)

Fibracon Corp. 259 NLRB No. 014
(discharge of Ee because she walked out to protest another Ee's discharge, held violative)

Browning-Ferris Industries of Pennsylvania, Inc. 259 NLRB No. 021
(violation where E, an operator of refuse transfer site found herein joint E with trucking brokers terminated one trucking broker's contract for a truck and reduced another broker's contract for trucking services, since E's action resulted in discharge of three Ees who had spearheaded Ee drive for increased wages)

Webb Ford, Inc. 258 NLRB No. 063
(discharge for attempting to enforce contract, unlawful)

Cal-Walts, Inc. 258 NLRB No. 126
(E's layoff of Ees and hiring of new crew w/o affording Ees opportunity for recall, unlawful, since for Ees, both verbally and by engaging in work stoppage protesting paychecks not covered by funds; no economic justification, particularly in view of hiring new crew)

Litton Mellonics Systems Division, A Division of
Litton Systems, Inc. 258 NLRB No. 084
(telling Ee that her job would be in jeopardy if she continued to talk to other Ees and stir them up about their working conditions, violative)

Valley Plaza, Inc. d/b/a Captain Nemo's 258 NLRB No. 076
(discharge of Ees for concertedly staying off job in protest to change in working conditions, violative)

Brookline Corporation d/b/a Hi Fi Buys 257 NLRB No. 186
(discharge of Ees engaged in lawful concerted activities violative where E's district manager, in response to Ees' asking if they were discharged, said they were acting too much like a U instead of saying *no*)

Burnup & Sims, Inc. 256 NLRB No. 142
(discharge of Ees assertedly because they failed to report to work held violative where E had given Ees permission to be absent from work to consult with Bd, EEOC, attorney and labor U concerning Ees' job security and other work problems notwithstanding work was interrupted; E's motive irrelevant as reason for discharge was for engaging in protected concerted activities)

Con-Tex Industries, Division of Harsco Corporation 256 NLRB No. 143
(discharge of one Ee for belief he was involved in upcoming shutdown of plant by Ees and of other Ees for engaging in shutdown, unlawful where Ees were striking to present grievances; and shutting down plant equipment to prevent its being damaged did not change Ees' activity from protected to unprotected status)

Rose's Stores, Inc. 256 NLRB No. 076
(unprecedented mass discharge of five Ees, who protested Sunday work assignment, assertedly because of their *bad attitude* held violative, where assertion was not real reason for discharge and E's unexplained failure to warn those five long-term Ees that they were in danger of discharge did not represent E's normal pattern of operations)

Tyler Business Services, Inc. 256 NLRB No. 088
(discharge of Ee allegedly for spreading false rumors about personal lives of E's officials and also stating he believed E's failure to provide part-time Ees hospitalization benefits was unfair, unlawful, since Ee expressed concern on behalf of Ees other than himself and his remarks concerning personal lives of E's officials did not constitute conduct so outrageous as to render his protected activity unprotected where remark did not relate to E's product or operations, or constitute deliberate intent to impugne company)

A & D Davenport Transportation, Inc. and Sun-
Fair Special Service Transportation, A Division
of A & D Davenport Transportation, Inc. 256 NLRB No. 079
(discharge of Ees violative, where E's efforts to characterize Ees as having quit manifested an intent to retaliate against them for their indicated lack of satisfaction with working conditions coupled with anticipation by E that strike could possibly occur unless it moved to improve Ees' pay)

Bronco Wine Company 256 NLRB No. 013
(disciplinary warning issued to Ees who complained about lack of parts and materials violative as complaints related to terms and conditions of employment)

Fun Striders, Inc. 255 NLRB No. 183
(termination of Ees by barring their entry to plant and advising them that they had been permanently replaced, violative, where Ees had not engaged in work stoppage but temporarily left work stations in order to discuss increase in piecerate with E, and had not in fact been replaced)

Firmat Manufacturing Corp. 255 NLRB No. 150
(discharge of U card signer who was associated with E as an apprentice in educational program violative, notwithstanding he was not Ee w/i meaning of Sec. 2(3), since his discharge was integral part of pattern of conduct aimed at ridding shop of U adherents and penalizing Ees for their U activities)

Medic Ambulance Service, Inc. 255 NLRB No. 132
(discharge of Ee for informing E's customer of Ees' labor problems with E, violative)

K & E Bus Lines, Inc. 255 NLRB No. 137
(termination of Ee because he would not discuss Ee problems individually with management during U organizing campaign, unlawful)

SAS Ambulance Service, Inc., d/b/a Florida
Ambulance Service; et al. 255 NLRB No. 081
(discharge of Ees for distributing handbills violative, notwithstanding E's contention that handbills were defamatory)

Roy H. Park Broadcasting of Roanoke, Inc. 255 NLRB No. 036
(discharge of Ee assertedly for uttering obscenity at close of disciplinary interview during which E's manager refused Ee's request to have U representative present, violative; Ees outburst did not harm general discipline, it was triggered by manager's illegal threat of discharge to Ee, and language was not directed at manager personally but was descriptive of illegal conditions of interview and the discharge threat)

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Dimo Ambulette Service, Inc. **255 NLRB No. 082**
(discharge of Ee because of his protest over E's lunch policy and payroll policy with respect to lunch hours; violative)

Dimo Ambulette Service, Inc. **255 NLRB No. 082**
(discharging Ee at time he was protesting unlawful discharge of another Ee to E's manager, violative)

Robert Batchelor d/b/a Batchelor Electric Co., a sole proprietorship **254 NLRB No. 156**
(discharge of electrician assertedly because of tardiness and failure to follow orders held violative where there was no evidence that Ee failed to follow orders, no other Ee had ever been discharged for similar record of tardiness and reason for discharge was Ee's not working in protest of E's refusal to pay Ee at prevailing wage rate on government projects; protest viewed as concerted activity objective which was matter of common interest and concern to all Ees)

Quality Broadcasting Corp. of San Juan d/b/a WQBS--AM Radio Station La Gran Cadena **254 NLRB No. 118**
(Bd reaffirmed its previous D/O agreeing with ALJ that discharge of Ee was unlawful, notwithstanding E's assertion that reason for discharge was its dissatisfaction with Ee's work performance, where E's real motive for discharge was Ee's activities in connection with overtime pay claims; Bd held ALJ's method of analysis was sufficient to satisfy any of various causality tests that have been articulated as appropriate for this type of case)

Jimmy Kilgore Trucking Company **254 NLRB No. 112**
(discharge of Ees for engaging in protected activity of demanding increase in commission rate and expressing desire not to work following day because of unsafe conditions on job, unlawful, notwithstanding E's claim that Ees engaged in strike, where Ees were in nonwork status at time of discharge and were only threatening limited future strike action of not working following day if required to do so by E; and even if E's claim that he had not stated Ees were discharged were accepted, Ees would reasonably have so understood, which was confirmed by E's subsequent actions)

Jimmy Kilgore Trucking Company **254 NLRB No. 112**
(discharge of driver not employed by respondent E-trucking company but directly employed by another E under lease with E herein, unlawful, where driver was discharged for engaging in protected concerted activity with E's drivers in requesting raise in commissions; association of E and E of leased drivers was of an intimate business character, had mutually beneficial pattern, and there was clear community of interest; and, under day-to-day oral subcontract, E had substantial control over his own drivers and those leased to it)

Quality Drywall Company, Inc. **254 NLRB No. 075**
(discharge of ringleader of work stoppage, unlawful)

Justak Brothers and Company, Inc. **253 NLRB No. 146**
(supervisor's telling Ee that he was *on his way out* because he had been passing out U cards, held violative, notwithstanding complaint did not allege remarks constituted ULPs, since GC's brief so contended and matter was fully litigated)

Consolidated Freightways **253 NLRB No. 137**
(discharge of Ee who complained about and refused to operate tractor because he reasonably believed to do would be dangerous, unlawful)

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(discharge violative where E failed to meet its burden that absent Ee's protectd activities her discharge would have occurred)

John Wyke, Inc.; Comanco, Inc.; and John Construction, Inc. **253 NLRB No. 118**
(transfer and subsequent permanent layoff of Ee because of efforts on his behalf to obtain rate of pay specified in bargaining contract, violative)

Pennypower Shopping News, Inc. **253 NLRB No. 011**
(E's causing Ees reasonably to believe that they had been discharged, or that their continued employment status was questionable because of their strike activity, unlawful)

McLean Trucking Company **252 NLRB No. 104**
(discharge of Ee and subsequent conversion of discharge into suspension and written warning because he refused to drive tractor-trailer which he honestly and reasonably believed to be unsafe held unlawful, since refusal was right Ee was at liberty to exercise under contract even though at time of refusal he had not made any specific reference to contract)

Hotel & Restaurant Employees, Local 28 **252 NLRB No. 158**
(discharge of female Ee for filing sex discrimination complaint with California FEPC, though she acted alone in her charge, and for protesting at Ee meeting about discriminatory wage scale she was getting as compared to male business agents, which received support from other U members attending meeting, violative, since Ee's actions constituted protected concerted activity)

Quik-Pik Food Stores, Inc. **252 NLRB No. 076**
(discharge of Ee allegedly for 3 infractions of E's rules after Ee had played significant role in advancing Ee complaints with other Ees, unlawful where 1 of alleged infractions was pretextual and other 2 infractions took on significance only after Ee participated in advancement of Ee complaints)

Huron Dressed Beef, Inc. **252 NLRB No. 031**
(discharge of Ees for acting as spokesmen for other Ees and for engaging in economic strike, unlawful)

E. R. Carpenter Co. **252 NLRB No. 008**
(discharging Ees for refusing to work in toxic atmosphere in deteriorating moon suits, violative where Ees were concerned not only about unsanitary nature of the suits, but also about holes in suits and possibility that toxic fumes were passing through the holes; Ees had good-faith belief that their working conditions were dengerous and this alone rendered their refusal to work protected)

Alfa Leisure, Inc. **251 NLRB No. 088**
(discharge of Ee for rude conduct violative where conduct occurred in collective-bargaining setting and in fact occurred while Ee was a U representative and was present solely for purpose of bargaining)

Timet, A Division of Titanium Metals Corporation of America **251 NLRB No. 137**
(discharge of Ee who complained to supervisor about his raise and then circulated letter offering to represent Ees to management to obtain cost-of-living adjustment violative as Ee's action was intended to produce group activity and constituted concerted protected activity)

Pyromatics, Inc. **251 NLRB No. 141**
(discharge of Ee for circulating ptn to obtain time off from work during holiday season, unlawful, since Ee's conduct constituted protected concerted activity; assuming Ee's *quartz flu* statement (meaning Ees as a group would fake sickness so as not to report for work during holiday period) played role in E's decision to discharge Ee, E failed to demonstrate that it would have discharged Ee absent his circulation of ptn)

F. W. Woolworth Co. **251 NLRB No. 152**
(violation where E suspended, then discharged Ee allegedly for insubordination where Ee insisted on asking E question during E's captive audience anti-U propaganda speech in disobedience of E's gag on Ee participation; E had right to protest gag and did not engage in misconduct sufficient to remove protection of Act where he used no threats, profanity or inciteful language)

Kaufman DeDell Printing, Inc. **251 NLRB No. 082**
(statements to U adherent that he should take U or E and that U could not find him any jobs, unlawful threat of reprisal)

Sun Belt Linens, Inc., d/b/a South Texas Linen Service (Laundry and Dye House Workers, Local 281, a/w Teamsters) **250 NLRB No. 174**
(discharge of Ee for encouraging Ees during nonworking time to engage in walkout if they were required to work beyond 6 p.m. without being provided a meal unlawful)

Jurisearch, Inc. **250 NLRB No. 091**
(discharge of Ee for distributing letter to fellow Ees urging them to organize for improved wages and working conditions, unlawful)

Leisure Lodge Nursing Home **250 NLRB No. 134**
(discharge of Ees who were attempting to redress grievances violative; moreover discharges would have been violative even if E merely thought they were trying to address grievances)

Sullair P.T.O., Inc. **250 NLRB No. 104**
(discharge of Ee unlawful, notwithstanding E's contention that discharge was result of Ee's insubordination and abusive language directed at E's manager in Ee's protest of change in company policy affecting condition of employment, where Ee's language was generally directed toward company and not to E's manager and was type of language used commonly in Ee's shop)

Roadside Mining Corporation a/k/a Gex of Colorado, Inc. **250 NLRB No. 079**
(violation, where E threatened Ee with discharge if he posted notice about marathon sponsored by U)

Roadway Express, Inc. **250 NLRB No. 061**
(where some Ees had engaged in unauthorized work stoppage and U steward returned to E's facility after leaving work at end of his regular work day, E's discharging steward for purportedly participating in unauthorized work stoppage held violative notwithstanding E's assumed good-faith belief that steward had participated in work stoppage upon returning to facility; Ee, in his capacity as U steward,was engaged in efforts to end work stoppage when he was discharged)

Mediterranean Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(discharge of U adherent, unlawful, where for his defense of U in argument in view of E's hostility towards U and U activities)

Lutheran Social Service of Minnesota, Inc. **250 NLRB No. 018**
(discharge of Ees at center for disturbed and displaced youth for their *negativism* about management and its policies and programs, lawful, since Ees' griping not protected in view of lack of concertedness where no express confrontational action taken, and since such concerns regarding

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quality of program management's perrogative, and Ees' methods were excessive causing disruption and demoralizing residents and other Ees)

David D. Sutherland d/b/a Maaco Auto Painting and Body Work **249 NLRB No. 184**
(discharge of Ee who acted as spokesman to express dissatisfaction to E about Ees' wages and working conditions, unlawful, where discharge was motivated by *disturbance* created by Ee in registering such dissatisfaction)

Steiner-Liff Textile Products Company **249 NLRB No. 152**
(discharge of Ee assertedly for failing to properly perform in his *employee representative* status, violative)

Babcock & Wilcox Co. **249 NLRB No. 099**
(discharge of U president because of E's erroneous belief that, while engaged in protected activities associated with his office of U president, he had instigated wildcat strike and promoted it w/i U, unlawful; in view of such finding and since remedy would be same, Bd found it unnecessary to decide whether or not E also violated 8(a)(3))

J. N. Moser Trucking, Incorporated **249 NLRB No. 106**
(discharge of Ee for refusal to assist E in defeating claims made by Wage and Hour Division of U.S. Department of Labor, unlawful)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(violation where E warned Ees and threatened them with discharge for discussing wages with other Ees)

Fink Supply Corporation **249 NLRB No. 091**
(no discharge of economic strikers proved where E told strikers' spokesman that it would have to act as though they were quitting and find replacements and -- when spokesman denied Ees were quitting -- asked what spokesman would call their action and what E was supposed to do; spokesman then volunteered that Ees would come in and clean out their desks which they did next day; E did not create ambiguous situation by wrongdoing, did not unequivocally refuse to permit strikers to return to work or make further inquiries into its intentions futile; and each party was equally able to rectify the uncertainty)

Southwest Detroit Hospital **249 NLRB No. 071**
(discharge of licensed pratical nurse who informed supervisor he was concerned he had not been put in charge of shift and received premium charge pay provided for under contract and that he thought supervisors had made stupid decision by placing nursing technician in charge not unlawful, where discharge for his precipitous decision to leave subsequent meeting with supervisor and reusal to discuss matter further rather than for invoking terms of bargaining agreement)

Pacific Coast International Meat Co. **248 NLRB No. 183**
(discharge of Ee, unlawful, where for her leadership in lodging Cs concerning supervisor)

Colonial Stores Incorporated **248 NLRB No. 142**
(violation where Ee was discharged because she, with her husband's assistance, circulated ptn among Ees protesting E's alleged failure to abide by contract and U's purported failure to enforce contract, and because she displayed signs in her husband's car at E's parking lot protesting E's admitted failure to implement grievance settlement; Ee's protests were found herein to constitute protected concerted activities)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(discharge of Ees for drafting, mailing, and distributing letter which complained about manager's operation of hotel and which was signed by supervisors as well as other Ees and sent to E, violative since Ees' conduct constituted legitimate concerted activity w/i meaning of Sec. 7, and discharge of supervisory/managerial personnel for their participation was also violative because of natural tendency of these discharges to discourage Ees from excercising rights guaranteed them in Sec. 7)

Bide-A-Wee Home Association **248 NLRB No. 110**
(discharge of Ees who had struck in protest over discharge of supervisor, unlawful where discharge shortly after E had assured Ees that no one would be discharged made other Ees fear for their own job security; discharged supervisor had voiced Ees' objections to E about changes in their working conditions)

Firestone Steel Products Company, A Division of Firestone Tire and Rubber Company **248 NLRB No. 069**
(violation where 2 Ees were discharged for refusing to do assigned job, while asking -- in absence of U representation or enforceable grievance procedure -- to see management to complain about being assigned work outside their job classification, and then departing from plant as strikers to protest situation)

Hilton Hotels Corporation, d/b/a The O'Hare Hilton **248 NLRB No. 051**
(violation where U steward was discharged for fulfilling his express contractual responsibility by questioning E's change in practice in not serving unit member sandwich at end of 8-hour shift)

Allied Aviation Service Company of New Jersey, Inc. **248 NLRB No. 026**
(suspension and subsequent discharge of Ee, unlawful where E's actions were caused by Ee's protected activity of sending letters to E's customers regarding lack of safety in E's function of servicing commercial aircraft)

Permanent Label Corporation **248 NLRB No. 021**
(fact that E converted violative discharge to suspension w/o pay does not legalize discharge as discriminatory motive still exists)

Ontario Knife Company **247 NLRB No. 168**
(discharge and refusal to reinstate Ee assertedly for leaving plant w/o permission, unlawful, where walkout was preceded by grievance discussion and was result of protected activity; even if offensive and *off color* remarks by supervisor were proximate cause of Ee's walkout, supervisor's statements must be considered in context of entire conversation, which was clearly protected concerted activity)

Pioneer Finishing Corporation **247 NLRB No. 182**
(remark to Ee that if fellow Ee *went* for distributing leaflets critical of E's safety conditions, then Ee and another Ee *would be next* constituted unlawful threat of discharge)

United Parcel Service **247 NLRB No. 134**
(implied threat of discharge for filing grievance, violative)

First Termite Control Co., Inc. **247 NLRB No. 106**
(discharges for participation in work stoppage in protest of E's treatment of fellow Ee in regard to his pay, unlawful)

Fall River Savings Bank **247 NLRB No. 088**
(discharge of Ee for questioning supervisor about calling in Ees for Saturday work w/o following seniority and for showing other Ees written warning received as result of such questioning, unlawful)

A & R Window Cleaning & Janitorial Services, Inc. **247 NLRB No. 078**
(discharge of Ees who had engaged in work stoppage because of E's announcement that they would not be getting holiday pay for Thanksgiving because they had not been employed by E for 90 days, unlawful, notwithstanding bargaining agreement contained no-strike clause, where at time of work stoppage Ees were unaware of existence of bargaining agreement binding on them)

Yellow Freight System, Inc. **247 NLRB No. 028**
(no violation where driver refused or delayed work assignment and his termination -- whether it be deemed a quit or a discharge -- was based on E's legitimate interest in moving freight rather then, as contended, Ee's assertion of a contractual right)

Sneva's Rent-A-Car **JD-(SF)-283-82**
(discharging taxicab driver for his efforts to achieve deregulation of taxicab industry, unlawful where driver sought deregulation to improve conditions of employment by making safer cabs possible, eliminating discriminatory dispatching of drivers and removing power of one of joint Es to control conditions of employment that gave rise to contractual violations)

Progressive Driver Service, Inc. **JD-(ATL)-89-82**
(although drivers herein had been threatened with discharge for concerted protected demands regarding contractual wages, their discharge was not violative, since it was for falsifying log entries and trip reports so as to get paid twice for same hours of work and for violating federal limits on number of hours driven by drivers of federally regulated motor carriers)

Niagara Falls Sightseeing By Sheridan, Inc. **JD-447-82**
(discharge of Ee for filing application for unemployment compensation on basis of reduced hours of work to enhance his compensation and refusing to reinstate him, unlawful)

Morrison Construction Company **JD-328-82**
(no violation where Ees were discharged, not for complaining about the amounts withheld for income taxes from their paychecks, as alleged, but for violating rule that Ees not go to payroll office during working hours w/o permission from their supervisor)

Rainbo Baking Company **JD-(SF)-117-81**
(discharge for persistence in claiming overtime payment, unlawful)

Talley's Truck Line **JD-(SF)-113-81**
(E removing names of drivers from call list held unlawful discharges in view of timing after E obtained knowledge of U activity, lack of advance notice, fact some of those laid off had been assigned loads for the next workday and that E failed to give convincing reason that applied to all drivers)

Methadone Maintenance Health Program, Inc. **JD-173-81**
(discharge of one Ee for filing claim with state agency under state wage and hour laws in concert with second Ee, unlawful; and discharge of a third Ee for expressing intention of filing such a claim, also unlawful)

Southwest Jefferson Community Hospital, Inc., a corporation wholly owned by Humana of Kentucky, Inc. **JD-77-81**
(violation, where E hospital, through its executive director, suggested that nurse resign and threatened her with discharge if she either complained about working conditions or discussed her disciplinary interview with anyone)

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Nautilus-Virginia, Inc. JD-625-81
(terminating Ees who concertedly ceased work and walked off the job in protest of coworker's resignation over his proposed transfer, violative, where Ees had no intention of quitting their jobs by their actions)

Childers Manufacturing Company, Inc. JD-(SF)-11-82
(threat to discharge Ees if they engaged in protected activity of striking in support of their demand for wage increase, and their subsequent discharge for engaging in such strike, unlawful, where there was no basis for E's claim that she was unaware of purpose of strike nor her claim that Ees had announced intention to quit to work elsewhere at higher wages; Ees announcement was part of protected activity of persuading E to grant higher wages and not an announcement of resignation as was apparent from E's action in discharging Ees, which would have been unnecessary if Ees had quit)

Long Manufacturing Company JD-(SF)-298-81
(violation, where E discharged Ees because E had identified them as nucleus of resistance to its wage policies and to forestall possibility that they might be instrumental in any future U organizing attempts)

Linz Corporation JD-585-81
(discharging Ees for temporarily withholding their services until they were assured their paychecks were good, violative, since Ees were engaged in protected concerted activity where E had spotty record of untimely payment)

Mid-City Beverage Dist., Inc. JD-(SF)-233-81
(discharge of Ee unlawful where for activist role in effort to get high level management to investigate deterioration of working conditions resulting from abusive treatment by supervisor rather than as result of warnings where Ee cleared of alleged offenses and warnings issued to build case)

E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge JD-698-81
(violation, where waitresses who had requested meeting with management and stopped work to concertedly present complaints about harassment were told to return to work or leave; and after leaving were subsequently discharged, since concerted presentation of grievances protected, whether or not justified)

United States Postal Service JD-420-81
(discharge unlawful where it was found to be motivated by Ee's grieving failure to receive sick pay rather than her low production as contended by E)

James Kraus Contractor Company JD-(SF)-249-81
(discharge of flagger on highway paving project for assertedly complaining to state highway inspector about E's work break policy on a *need* basis, not unlawful, where E rebutted GC's *prima facie* case by showing Ee would have been discharged whether she had engaged in alleged concerted activity or not due to Ee's casual approach to her job which created unreasonable risk of accident)

Wal-Mart Stores, Inc. JD-(ATL)-88-81
(discharge of two Ees not violative, where discharges were not motivated by Ees' complaints to regional manager concerning methods employed by district manager in his handling of problems at store but rather were result of conclusion by management that Ees must be replaced to alleviate problems in merchandise office)

Conrad & Sons Trucking, Inc. JD-264-81
(discharge of leader in presentation of Ee grievances regarding reduction in remuneration who had used obscene language towards supervisors, failed to properly complete on time required paper work; and refused to accept work assignment, unlawful, where discharge motivated by Ee's leadership in complaining about working conditions)

Suburpia Submarine Sandwich Shoppes JD-260-81
(discharge of Ee for urging improvement in wages and working conditions and raising concerns about return of shop manager to shop, violative)

Teresa Coal Company, Inc. JD-322-81
(discharging and refusing to reinstate eight coal miners for withholding their services in support of their grievance, violative)

Gullett & Gould Ltd. JD-676-80
(discharging Ee for refusing to drive tractor-trailer into state in violation of state's length restrictions, violative)

Boro Buses Co. JD-490-80
(discharge of Ee for seeking assistance of United States Department of Labor, while attempting to pursue grievance concerning his seniority, violative)

Meat Cutters, Local 391 JD-(SF)-304-80
(discharge of Ees for filing grievance with E over Ee working conditions, unlawful)

Professional Ambulance Service of Middlesex JD-548-80
(discharging ambulance EMT attendant for attempting to induce other Ees to strike in support of demand for increased wages, violative, although Ee denied activity and believed that state's Abandonment Law prohibited strikes)

The Gilbert and Bennett Mfg. Co. JD-878-80
(suspension and discharge of Ee because of his complaints to E directly and through U about not receiving his overtime backpay under arbitrator's award violative)

Chipmore Manufacturing Co., Inc. JD-433-80
(discharge for refusing to work overtime unlawful, since discharges were connected with concerted protected activities in which both Ees had taken part, namely *sick out* in protest against making previously optional overtime mandatory, and with their U activities as well)

Cracker Barrel Old Country Store, Inc. JD-443-80
(discharge of Ee who was known to have joined with other Ees in writing letter to higher management complaining about working conditions, unlawful; to extent discharge was based on her refusal to break ranks with other Ees and deal separately with management, discharge was violative as management's attempt to undermine Ees' rights to act in concert)

Pinckle Packing Company JD-(NY)-33-80
(no violation by discharge of Ee (later reduced to suspension) where reason was found to be Ee's ruining company property rather than belief Ee would complain about supervisor's breach of contract by doing unit work; Ee had previously complained about such contract violations with impunity)

Royal Travel Corporation JD-306-80
(discharge of Ees because of their roles as spokespersons for Ee group which sought wage increase, unlawful; contentions discharges because of economic reasons or deficiencies of Ees, rejected)

McLean Trucking Company JD-340-80
(threatening Ee with discharge because she had signed U card, violative)

Hotel & Restaurant Employees and Bartenders Union Local 2 JD-(SF)-178-80
(discharge of Ee for participation and distribution of leaflet protesting discharge of fellow Ee violative; contention that Ee was discharged for disloyalty rejected)

Shuttle Motor Corporation JD-327-80
(discharge of Ee allegedly for inquiring of state agency regarding legality of *back stubbing* i.e. E refusing to pay for current work in order to recoup where Ee had been paid too much for previous work, not unlawful, since Ee's activity not concerted where *back-stubbing* not matter of common complaint; further, Ee called agency before any other adverse action taken against him and subsequent *back-stubbing* against him rectified)

Public Service Company of New Mexico JD-(SF)-157-80
(discharge of former U officer, not unlawful, where discharge not motivated by his U activities and was not for protected activity since his actions, statements and letters which precipitated discharge were not concerted nor for object of enforcing contract)

Four Rivers Coal Company JD-289-80
(discharge of Ee for promoting among Ees their right to cost of living increase and particularly an earlier clothing allowance, unlawful)

Malibu Grand Prix Corp. JD-(SF)-90-80
(discharges for concerted refusal to work overtime, unlawful)

Cashmere Lumber Company JD-(SF)-83-80
(supervisor's statement to U steward to the effect that if he performed his steward's duties with zeal considered excessive by supervisor, supervisor would make steward's job unpleasant and cause his eventual severance, unlawful)

Melissa Marie Fashions, Inc. JD-177-80
(where Ees had received and complained as a group about bad checks, and had asked E to pay them in cash in future, E's discharge of Ees who collectively walked out in protest against E's paying Ees in check rather than cash, violative)

Standard Bridge Corporation JD-174-80
(selecting Ees for termination rather than transfer because of their attempts to become U members, unlawful)

Batavia Nursing Convalescent Inn, Inc. JD-23-80
(discharge of Ee because she solicited Ees to see individual she considered to be *boss* rather going through regular channels regarding their complaints held violative, since Ee's conduct was protected activity and was not so flagrantly in derogation of E's *chain of command* or managerial authority as to loose protection of the Act notwithstanding *boss* had severed all official connections with E long before incident since subsequent conduct led Ee to believe he still exerted authority)

Roadway Express, Inc. JD-888-79
(written warning issued Ee for refusing to drive tractor which Ee believed to be unsafe, unlawful; Ee's refusal to drive tractor amounted to attempt to require E to adhere to safety provisions of bargaining agreement)

N.L.R.B. v. Sheraton Puerto Rico Corp., d/b/a Puerto Rico Sheraton Hotel 651 F.2d 49 (C.A. 1, June 1981)
(enforcement denied of Bd order in case involving discharge of supervisors and some Ees for writing letter to E's president criticizing general manager

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and requesting his removal from that position where there was not substantial evidence in record that such managerial protest concerned actual conditions of non-supervisory employment; ct noted that enforcement might have been granted if non-supervisory Ees had written letter, participated significantly in its drafting, or even had drafting taken place after consultation with them)

N.L.R.B. v. St. Anne's Hospital 648 F.2d 67 (C.A. 1, May 1981)
(discharge of operating room nurses, assertedly for refusing assignment in operating room, unlawful, where they were discharged for being very active in group protesting hospital's on-call policy, their records at hospital over long periods of time were exemplary, supervisors had told them explicitly that if they did not feel competent in performing assigned duties other arrangements would be made, and hospital's reliance on seriousness of nurses walking out of an operation ignores fact that nurses acted out of concern for patients)

Ontario Knife Company v. N.L.R.B. 637 F.2d 840 (C.A. 2, Dec. 1980)
(discharge and refusal to reinstate Ee who walked off job after protesting excessive assignment of certain work to night shift not violative, where although fellow worker shared objection thereby meeting the *mutual aid or protection* requirement of Sec. 7, fellow worker did not join Ee in walking off job and there was thus no *concerted activity*)

Misericordia Hospital Medical Center v. N.L.R.B. 623 F.2d 808 (C.A. 2, 1980)
(discharge of head nurse (not supervisor) at hospital for participating in preparation of report to accrediting authority cataloging alleged inadequacies of hospital, unlawful, since preparation of report and presentation to authority protected activity)

Tri-State Truck Service, Inc. v. N.L.R.B. 615 F.2d 65 (C.A. 3, 1980)
(Bd's finding that two Ees were unlawfully discharged for engaging in protected concerted activity reversed in absence of substantial evidence on record as whole that E knew of such concerted activity from telephone conversation with individual Ee who only asked about time and one-half for working on Saturday with no indication that subsequent decision of refusing to work was made on other than an individual basis; furthermore, E's knowledge that two discharged Ees lived together does not infer knowledge of concerted activity)

Krispy Kreme Doughnut Corp. v. N.L.R.B. 635 F.2d 304 (C.A. 4, 1980)
(discharge of Ee for refusing to forego workmen's compensation claim not unlawful, since Ee was not engaged in protected *concerted* activity; at most his action can be said to have been *for the benefit of other employees only in a theoretical sense*)

Scooba Manufacturing Company v. N.L.R.B. 694 F.2d 82 (C.A. 5, Dec. 1982)
(discharge of Ee for remark Ee made using the word *union* not unlawful, where remark was product of purely personal dispute with supervisor and not w/i protection of the Act)

Red Ball Motor Freight, Inc. v. N.L.R.B. 660 F.2d 626 (C.A. 5, Nov. 1981)
(discharge of Ee at close of work day, assertedly because she had been dilatory in commencing work at her desk that morning, violative where substantial evidence supported ALJ's findings that Ee's growing propensity to engage in protected concerted activities caught attention of E, which was then motivated to engage in special surveillance of Ee's work performance and to seize upon her first alleged transgression as pretext to terminate her)

N.L.R.B. v. Robin American Corporation 654 F.2d 1022 (C.A. 5, 1981)
(ct held that E did not rebut prima facie case that E closed department and discharged Ees for anti-U motives)

McLean Trucking Company v. N.L.R.B. 689 F.2d 605 (C.A. 6, Sept. 1982)
(ct held substantial evidence supported Bd's finding that drivers were unlawfully disciplined for engaging in protected and concerted activity when they refused to drive tractor-trailer they believed to be unsafe pursuant to U instructions invoking provision of collective bargaining agreement; E's reliance on *Jim Causley Pontiac*, 675 F.2d 125 (6th Cir. 1982), unwarranted where ct held, *inter alia*, that E knew that drivers made their complaints pursuant to U activity; ct also reaffirmed its rejection of *Interboro* doctrine)

N.L.R.B. v. Pyromatics, Inc. 677 F.2d 24 (C.A. 6, Apr. 1982)
(Bd's order enforced where substantial evidence supported its finding that principal reason or *dominant motive* for Ee's discharge was his circulating petition among Ees to obtain E's permission for Ees to take leave of absence between Christmas and New Year's Day)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. 675 F.2d 125 (C.A. 6, Apr. 1982)
(although affirming finding that discharged Ee's filing of MIOSHA complaint was protected concerted activity, ct for second time remanded case to Bd to determine whether E had *actual* knowledge of *concertedness* of Ee's actions where Bd on previous remand had relied on evidence already submitted and applied wrong standard in holding that it was sufficient if E *knew or should have known* that Ee's actions were concerted)

N.L.R.B. v. Truck Drivers Union Local 164, Teamsters 681 F.2d 456 (C.A. 6, June 1981)
(cutting salary of veteran office worker and discharging her and her daughter as part of its action to discourage U organization violative, notwithstanding U-E's claims of legitimate discharge, where ALJ characterized U-E's defenses as *shifting, unfounded, and frivolous*)

Supreme Optical Company, Inc. v. N.L.R.B. 628 F.2d 1262 (C.A. 6, 1980)
(discharging 5 Ees for attending unemployment compensation hearing at request of former Ee held violative)

Welco Industries, Inc. v. N.L.R.B. 633 F.2d 217(T) (C.A. 6, 1980)
(ct held substantial evidence supported Bd's finding that E violated Act by reprimanding and discharging Ee for her use of grievance procedure)

Vic Tanny International, Inc. v. N.L.R.B. 622 F.2d 237 (C.A. 6, 1980)
(discharge of Ees, unlawful, where motivated, at least, in part by their participation in walkout in protest against E's change in their duties, where E commented that Ees laid themselves open to discharge for walking off job, and termination reports indicate discharges were result of both insubordination and having walked off job which constituted protected concerted activity; E's contention that Ees' refusal to carry out E's specific orders was sole cause of discharge, rejected)

N.L.R.B. v. James R. McCaffrey and Edward A. Cook, d/b/a ABC Concrete Company 619 F.2d 620 (C.A. 6, 1980)
(discharge for requesting increase in salary and pay for overtime, unlawful)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. 620 F.2d 122 (C.A. 6, 1980)
(ct agreed with Bd that E discharged Ee at least in part because of Ee's protected concerted activity but remanded for finding on issue of whether E knew that activity was concerted)

Sullair P.T.O., Inc. v. N.L.R.B. 641 F.2d 500 (C.A. 7, Feb 19, 1981)
(discharging Ee for obscene language directed at management when he voiced concern about E's change in gasoline policy held not violative, as he had previously been warned about such behavior and complaint about gas policy was not even *motivating factor* in discharge)

N.L.R.B. v. Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union, Local 705, Teamsters 630 F.2d 505 (C.A. 7, 1980)
(dismissal of Ees who had complained about staff salaries not unlawful, in view of Ees' injection of salary complaints at stewards' meeting which included attendance by stewards not employed by E, admittedly improper use of company CB radio regarding complaints, presentation of wage complaint letters at civic luncheon, general and repeated refusal to follow established, proper and known procedures for presenting wage complaints, coupled with their prior poor work records for which they had been given prior warnings and a *second chance*)

Pelton Casteel, Inc. v. N.L.R.B. 627 F.2d 23 (C.A. 7, 1980)
(discharge of Ee who complained about rates paid on particular jobs and mandatory overtime, held, contrary to Bd, not unlawful, notwithstanding written warning concerning Ee's *conduct, attitude, attendance and work record* was issued in part on these complaints, where record evidence was insufficient to conclude that complaints about overtime were directed at inducing collective action or that any of Ee's complaints were more than individual gripes)

Pelton Casteel, Inc. v. N.L.R.B. 627 F.2d 23 (C.A. 7, July 1980)
(ct reversed Bd finding of unlawful discharge where record did not support conclusion that Ee's continuous complaints about job rates and mandatory overtime were more than individual gripes, and was only one of several items E considered in disciplining Ee for poor attitude)

Koch Supplies, Inc. v. N.L.R.B. 646 F.2d 1257 (C.A. 8, Apr 1981)
(discharge of Ee, assertedly because of Ee's complaints to E about E's promise of vacation benefits to new Ee, not violative where it was not shown that complaining Ee intended that her activities would relate to group action)

N.L.R.B. v. Hawthorne Mazda, Inc. 659 F.2d 1089(T) (C.A. 9, Aug 1981)
(discharging Ee who represented Ees at meeting with E to resolve work-related grievances, violative, where there was sufficient evidence in record to support Bd's finding that E realized that Ee was acting on behalf of his fellow Ees)

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N.L.R.B. v. Leavitt J. Cafer, Eunice Cafer, and Travelodge International, Inc., a partnership, d/b/a Marysville Travelodge **637 F.2d 1309 (C.A. 9, 1981)**
(violation where Ees were fired because they went together after work to lodge complaint about pay with *Labor Board*)

5036-6720-9000 Preventing employees from engaging in protected activity

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) **259 NLRB No. 037**
(discharge of supervisor for U related considerations held violative, since discharge caused interference with rights of other Ees)

Overnite Transportation Company **251 NLRB No. 140**
(discharge of Ee truckdriver and refusal to reinstate him assertedly because he refused to drive, unlawful where Ee was complaining with other Ees about threat to personal safety because of driving during strike; Ee was refusing to drive as part of concerted attempt, on behalf of both himself and other drivers, to have safer working conditions and Ee's discharge was to discourage Ee and other Ees from engaging in these activities)

General Thermo, Inc. **250 NLRB No. 108**
(threat that organizers of U could be fired, unlawful)

5036-6721 Initiation of new record-keeping procedures

Ivan-Ivan and Foodarama, Inc. d/b/a Foodarama **260 NLRB No. 046**
(during U campaign, E who announced and then implemented keeping files on Ees regarding tardiness, absenteeism, averages, shortages, complaints and returned sales slips in order to discourage Ee selection of bargaining representative, violated Act)

5036-6725 Downgrading or demotion

Union Mining Company of Allegany County, Inc. **264 NLRB No. 052**
(demoting Ee and giving him written disciplinary warning slip in retaliation for his testimony given at Bd hearing, unlawful)

7 Up Bottling Company **261 NLRB No. 128**
(replacing Ee's daytime delivery duties with demeaning nighttime chores violative of 8(a)(1) where due to E's fear Ee might complain to OSHA)

Welfare, Pension and Vacation Funds, Blasters, Drillrunners and Miners Union Local No. 29, etc. **256 NLRB No. 170**
(reduction in Ee's job responsibilities by refusing to allow her to deal directly with E's accountant or bank, distribute pension checks, answer E's office door or telephone, obtain association's signature on certain documents, or take care of E's petty cash, unlawful where motivated by Ee's participation in Workmen's Compensation hearing)

I. T. O. Corporation of Baltimore **258 NLRB No. 138**
(demotion of Ee, herein assumed to be supervisory, assertedly because of his failure to attend safety meeting, unlawful, where asserted reason was pretextual since Ee was not told, and did not know, about meeting which was held on his day off when E did not expect Ee to attend; true reason for demotion was Ee's participation in protected activity of picketing aimed, not at E, but at rectification of racially discriminatory personnel practices in city's harbor; and E's action coerced and restrained, and had chilling effect upon, rank-and-file Ees seeking to exercise similar rights)

U. S. Reduction Company **JD-(ATL)-13-82**
(violation, where E demoted Ee for her failure to prevent, and her participation in Ees' leaving their jobs to talk to plant manager regarding their complaints about working conditions)

Tribal Americans Consulting Corporation **JD-(SF)-314-80**
(demoting 2 employees for holding meetingswith other staff members and contacting U.S. funding agencies,violative)

Worth Engineering, Inc. **JD-298-80**

The Berry Schools v. N.L.R.B. **653 F.2d 966 (C.A. 5, Oct. 1980)**
(demotion of college department chairman from supervisory status allegedly for organizational activity held not ULP where Ee was unprotected by Act *as supervisor*)

5036-6726 Evaluation of work

Joshua's, Inc. d/b/a Fitzwilly's **253 NLRB No. 082**
(implementation of Ee evaluation system to be used in granting raises not violative despite E's other anti-U activities where, though plan did not cover entire work force, no evidence application based on illegal motive)

Planned Parenthood of Alameda and San Francisco Counties **JD-(SF)-294-80**
(threatening to give Ee *deficiency evaluation* unlawful where for exercising her protected right of refraining from attending meeting with management on her own time to discuss working conditions)

The Berry Schools v. N.L.R.B. **653 F.2d 966 (C.A. 5, Aug 1981)**
(E granting substandard salary increase to Ee not violative where it could properly result from Ee's poor evaluation as compared with below average evaluations of other Ees and GC failed to show E's stated reasons for substandard increase were pretextual)

5036-6727 Denial of holiday pay

Rockingham Machine-Lunex Company **255 NLRB No. 015**

5036-6728 Denial of sick pay or change in sick leave policy

Texaco, Inc. **260 NLRB No. 163**
(when during course of economic strike, E ceased paying accident and sick benefits to 3 Ees who had been out of work on authorized sick leave prior to inception of strike it violated Act where it had no knowledge that Ees supported strike and fact that they were U members and had supported strikes in past not enough to show they supported this strike)

Maywood, Inc. **251 NLRB No. 139**
(supervisor's requesting Ee who had signed U card to furnish doctor's release in order to receive sick leave pay, not violative, notwithstanding that prior to signing U card, Ee was given sick leave by supervisor w/o being asked for doctor's excuse; Ee handbook states that *sick leave must be supported by a doctor's statement*)

Wilson Trucking, Inc. **JD-119-82**
(telling Ee he could not come back to work w/o a doctor's certificate after an absence and commenting it was because of getting U in; held implied and unlawful threat of change in working conditions)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. **635 F.2d 1255 (C.A. 7, 1980)**
(ct held contrary to Bd that change in sick leave policy shortly after U victory in representation election was not unlawful, since timing alone did not justify conclusion that change was discriminatory, and record showed E's economic reason was to make department's policies on sick leave uniform with those of other departments)

5036-6729 Eviction from company houses

Friday Canning Corporation **255 NLRB No. 062**
(closing migrant workers' camp because Ees engaged in economic strike, violative, because this effectively severed indicia of continued employment (discharge) to which strikers are entitled; furthermore, location of barracks was away from production area and so their staying would not interfere with production process)

5036-6731 Handling of grievances

Northwestern Dodge, Inc. **259 NLRB No. 118**
(refusal to process grievances protesting layoffs of two Ees violative notwithstanding contract had expired)

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(refusal of E to process grievance over discharge of probationary Ee because of his absenteeism not violative, since probationary Ee had no rights to such proceeding and grievance was not presented in conformity with contract terms)

General Electric Company **255 NLRB No. 092**
(E's establishment and subsequent discontinuance of *sounding board* program upon U's filing of R ptn, unlawful, where purpose of program was to discourage support for U and discontinuance was in reprisal for Ee support of U; further, E's justification of discontinuance of program in order to avoid ULP charges, rejected, where program had been announced and implemented prior to filing of R ptn)

The Coca-Cola Company Foods Division **254 NLRB No. 099**
(forbidding Ee from discussing with other Ees his grievance meetings with management, his treatment by management and other terms and conditions of employment, violative)

American Motor Inns, d/b/a Holiday Inn No. 4 - Airport **JD-732-80**
(resolving Ees' grievance by removing and retiring supervisor, who was so unpopular among her supervisees that it was most drastic step E could take to curry favor with Ees and lure them away from U, violative)

American Motor Inns, d/b/a Holiday Inn No. 4 - Airport **JD-732-80**
(meeting with Ees at their request where they set forth their grievances not violative even though E knew that U had filed ptn since E only stated that he would check into grievances and the NLRB had placed restrictions on making any changes or promises which do not amount to implied promise of benefit if U was abandoned)

Planned Parenthood of Alameda and San Francisco Counties **JD-(SF)-294-80**
(E informing Ee that due to her filing charges with Bd it would not continue to process her grievances under its internal procedures, violative, notwithstanding its subsequent good faith effort to process grievances)

5036-6733 Illegal conditions on reinstatement

Talbert Manufacturing, Inc. **250 NLRB No. 105**
(reinstating striking Ees at lower pay than those Ees who did not strike and received raises violative)

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Talbert Manufacturing, Inc. **260 NLRB No. 163**
(where E permitted nonstriking Ees who were transferred to dayshift during strike to remain there, contrary to its prior policy forbidding shift changes, and denying returning strikers right to change shifts, it violated Act)

Charleston Nursing Center **257 NLRB No. 066**
(E's letter to replaced economic strikers requiring them to furnish current information about their interest in reinstatement or risk losing their reinstatement rights, violative since it constituted threat to cut off statutory reinstatement rights of economic strikers)

5036-6733-3300 Of strikers

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde **269 NLRB No. 073**
(requiring strikers to waive their rights before Bd and other agencies as condition to their return to work, violative)

Lincoln Hills Nursing Home, Inc.; et al. **257 NLRB No. 145**
(where vacation eligibility was computed upon one year's actual work rather then tenure of employment, E did not discriminatee against reinstated strikers when it denied them eligibility for vacations after substracting strike time from their employment records; moreover, finding of disparate treatment not warranted notwithstanding E sometimes allowed time lost due to sickness to be counted toward vacation eligibility)

Welker Die Casting, Inc. **268 NLRB No. 034**
(telling Ee who abandoned strike and returned to work that her seniority would start anew, violative)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(requiring discriminatees entitled to reinstatement to be interviewed before they were allowed to return to work held violative where such requirement had no legitimate business justification)

Huron Dressed Beef, Inc. **282 NLRB No. 031**
(refusal to reinstate economic strikers except as new hires with starting wages and w/o seniority and accured vacation, medical and other benefits, and hiring *permanent replacements* in place of those strikers who did not accept offer to return to work as new hires, violative)

Penn Company **281 NLRB No. 090**
(reinstatement of strikers to non-U plant under less favorable conditions than formerly, unlawful, where E considered that it was recalling them to non-unit jobs and failed to shown that changed circumstances prevented it from recalling them to their former jobs; fact that RD's intervening decision accreted them into existing unit did not change situation as it existed at time of their recall; moreover, by requiring them to accept employment at non-U plant, E gave them choice of abandoning U representation or refusing employment, thereby restraining and coercing them)

Harding Glass Industries **248 NLRB No. 091**
(offer of reinstatement to strikers by E who had unlawfully withdrawn from multiE bargaining, on terms inferior to those contained in newly negotiated contract with multiE Association that E bound to honor violative)

Road Sprinkler Fitters Local Union No. 669, etc. v. N.L.R.B. **681 F.2d 11 (C.A.D.C., June 1982)**
(*no-U-talk* rule imposed on reinstated strikers violative)

Road Sprinkler Fitters Local Union No. 669, etc. v. N.L.R.B. **681 F.2d 11 (C.A.D.C., June 1982)**
(imposing new more stringent tardiness rules on reinstated strikers, violative)

5036-6733-6700 Of other employees

Jaybill Steel Products, Inc.; etc. **238 NLRB No. 157**
(E's conditioning reinstatement of two unlawfully discharged U adherents upon relinquishment of right to support U in election, unlawful)

A & D Davenport Transportation, Inc. and Sun-Fair Special Service Transportation, A Division of A & D Davenport Transportation, Inc. **256 NLRB No. 079**
(violation by requiring Ees, as condition of employment or reemployment, to sign documents where Ees forego right to engage in walkouts or other protected concerted activities seeking to improve working conditions, apologize for doing so in past, and admit that dischargees had in fact resigned, thus leaving impression they were waiving any right to contend that they had been discharged for engaging in protected concerted activity)

Henry A. Young, d/b/a Columbia Engineers International **260 NLRB No. 144**
(after shutdown and resulting layoff following U's claim of majority, E's statement that if Ee wanted to work for E he would have to tear up his U card and during same interview unlawfully interrogated Ee)

Delco Air Conditioning Division, General Motors Corporation v. N.L.R.B. **649 F.2d 390 (C.A. 6, May 1981)**
(ct held that substantial evidence on record did not support Bd finding that E unlawfully conditioned Ee's reinstatement on his resignation as U committeeman where ALJ, although completely discrediting Ee's version of his initial discharge, credited Ee's uncorroborated testimony concerning E's alleged condition for Ee's reinstatement; furthermore, ct was unwilling to enforce backpay award upon uncorroborated testimony of Ee who would be beneficiary of reinstatement and backpay award)

5036-6736 Prohibiting solicitation and/or distribution of literature during employees own time on employer's premises

Schnadig Corporation **265 NLRB No. 020**
(maintenance of rule which prohibited solicitation of any kind during working hours or collecting contributions for any purpose on company premises or company time w/o specific prior approval of general manager, unlawful, since overly broad where E did not clairfy that prohibition did not apply to lunch and break times, notwithstanding E only enforced rule with regard to actual working time, inasmuch as more existence of overly broad rule interferes with Ees' Section 7 rights and E was carrying on anti-U campaign during work time)

Schnadig Corporation **265 NLRB No. 020**
(E's maintenance of rule which prohibited distribution of literature of any kind on company premises or company time w/o specific prior permission of general manager, unlawful, notwithstanding rule not generally enforced, since overly broad rule inasmuch as approval of general manager required for distribution, and E did not inform Ees rule was resinded)

Schnadig Corporation **265 NLRB No. 020**
(violation, where supervisor instructed Ee to cease distributing U literature outside time clock door entrance and move at least 18 feet from plant, and did not retract order when informed his action was violation of federal law particularly where at time E was passing out anti-U literature in working area on working time)

E. I. Dupont De Nemours **263 NLRB No. 015**
(informing Ee who was soliciting Ee to sign U card in break area that *it was against company policy to sign up Ees for U on plant property* and then escorting Ee to office while informing him incident would be written up for his file, unlawful)

United Parcel Service, Inc. **261 NLRB No. 134**
(supervisor informing Ee that he would rather Ee not distribute leaflets for dissident U group during Ee's nonworking time, unlawful)

Valley Plaza, Inc. d/b/a Captain Nemo's **258 NLRB No. 076**
(no-solicitation rule violative where first sentence of rule prohibited Ee solicitation on nonworking time and second sentence did not state what if any right Ee supporter of U would have under rule to solicit another Ee on nonworking time and therefore, rule was capable of being interpreted as restricting Ees' rights under Act to engage in U solicitation during their nonworking time; inasmuch as posting itself of such rule was sufficient promulgation to constitute violation, admitted maintenance of rule was violative)

G. H. Bass & Co. **258 NLRB No. 086**
(reprimanding Ee for distribution of pro-U letter in production area during lunch break in alleged violation of rule prohibiting distribution in work areas, unlawful, where production shut down for lunch break and all Ees off clock since in these circumstances production area at lunch break becomes non-working area, and absent resulting litter problem or impact on production)

Wometco Coca-Cola Bottling Company of Nashville, Inc. **255 NLRB No. 069**
(informing Ee that Ees who signed U cards on company property or company time could be discharged, unlawful)

Wometco Coca-Cola Bottling Company of Nashville, Inc. **255 NLRB No. 069**
(maintaining rule forbidding solicitation for U during working time or while *on the clock* while permitting solicitation for other purposes, unlawful)

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(warning Ee for failure to comply with unlawful overly broad no-solicitation rule which was not clarified to permit solicitation during break times and Ee had been soliciting only on his own time, violative)

General Thermodynamics, Inc. **253 NLRB No. 031**
(posting of facially overly broad no solicitation-no distribution rules prohibiting solicitation on *company time* and distribution on company premises w/o permission of management, unlawful, notwithstanding rule never implemented and was removed prior to its effective date where Ees never informed of E's decision not to implement rules)

Sun Belt Linens, Inc., d/b/a South Texas Linen Service (Laundry and Dye House Workers, Local 281, a/w Teamsters) **250 NLRB No. 174**
(rule on solicitation and distribution lawful since it was applied in such manner as to convey clear intent to permit solicitation or distribution during breaks and other periods when Ees were not at work)

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Pilgrim Life Insurance Company **240 NLRB No. 140**
(discharge for allegedly soliciting signing of U cards on company time, unlawful, where E had no written rules forbidding or restricting solicitations on company premises, there was no interference with production, E allowed solicitation for other purposes, and particularly absent proof solicitation took place on work time as distinguished from company time)

Conagra, Inc. **248 NLRB No. 086**
(informing Ee who had had argument with Ee who was wearing *Vote No* hat that she was not to talk U on company time and U literature was not to be passed out in plant, unlawful, since statement not limited to prohibition during work))

Conagra, Inc. **248 NLRB No. 085**
(instructing Ee not to leave department or discuss U with other Ees, unlawful, since overly broad prohibition)

Conagra, Inc. **248 NLRB No. 085**
(supervisor informing Ee *If you are looking for higher wages you will have to look somewhere else. We won't have you talking U on job* unlawful, since could reasonably be interpreted as prohibition against soliciting at all times including nonworking time and no evidence restriction was justified by need to maintain discipline and production)

Lemon Electric Corporation **247 NLRB No. 203**
(maintaining rule which prohibited solicitation at any time in work areas, unlawful)

Irwin County Electric Membership Cooperative **247 NLRB No. 196**
(E's prohibiting solicitation or distribution of literature, pamphlets, or handouts on its premises, unlawful, since no distinction made between working and nonworking time and working and nonworking areas)

Styrest Nursing Home **JD-(ATL)-95-82**
(nursing home maintaining rule which stated *no one is permitted to approach Ees or residents with view towards canvassing, soliciting or selling articles of any kind*, unlawful, since not limited to working time of Ees, notwithstanding E's contention rule was directed at sale of articles by outside salesmen, since rule's language not limited to sale of articles by outside salesmen; nor was violation fully remedied by recission of rule and replacement with modified rule which limited prohibition to solicitation on working time in view of confusion generated by rule among Ees)

Vanity Fair Mills, Inc. **JD-(ATL)-35-82**
(E's manager informing chairman of U's grievance committee and representative of U of E's neutrality in election campaign and instructing them not to solicit votes on company time during working hours, not unlawful, where manager added what they did on break or lunch time was their own business)

European Parts Exchange, Inc. **JD-170-82**
(directing Ee who had been soliciting Ees to sign cards in parking lot during lunch and break time to refrain from distributing U cards during working hours or on company property, unlawful)

N.L.R.B. v. Permanent Label Corporation **657 F.2d 512 (C.A. 3, 1981)**
(prohibiting Ee from passing out U cards or literature while on company property, unlawful)

N.L.R.B. v. Permanent Label Corporation **657 F.2d 512 (C.A. 3, 1981)**
(informing Ee who was distributing U information leaflets in parking lot to Ees as they arrived for work shifts, that Ee would be subject to disciplinary action if he continued to distribute information, violative, where E distributed only in non-work area during off duty time)

N.L.R.B. v. Arrow Molded Plastics, Inc. **653 F.2d 280 (C.A. 6, July 1981)**
(E's prohibiting distribution of U literature on its premises, unlawful)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(maintaining and enforcing rule which forbids distribution of any written or printed matter on company property w/o company permission, unlawful, notwithstanding E's contention rule justified by special circumstance of racial tension, where few actual disciplinary incidents occurred and literature distributed was not cause of incidents)

Fun Striders, Inc. v. N.L.R.B. **686 F.2d 716 (C.A. 9, 1981)**
(E's discharge of and refusal to reinstate Ees for distributing leaflets during unannounced Ee work stoppage, urging Ees to engage in violent struggle against management, not violative where E reasonably believed that this advocacy threatened to inject violent confrontation into plant)

5036-6737 Layoff

Enterprise Products Company **263 NLRB No. 083**
(E's response, during period of U activity among Ees, to inquiry by Ee in layoff status about job vacancy, that there would be no recall of Ees *until this mess is over*, unlawful, since E thereby indicated that laid off Ees would not be recalled until U activity had ceased)

Ebb Tide Processing, Inc. **264 NLRB No. 109**
(layoff of Ee by supervisor in retaliation against her because of her concerted protected activity of reporting his drunken, possibly amorous, confrontation with her, unlawful)

Alle Arecibo Corporation and Alle Industries Ltd. **264 NLRB No. 163**
(laying off Ees as consequence of E's carefully-timed, deliberate, and self-induced deprivation of work designed to provide E with excuse for closing plant simultaneously with expiration of U contract, violative since as result of scheme, Ees were in effect being locked out in order to bring pressure on them to abandon U)

Admiral Merchants Motor Freight, Inc. **264 NLRB No. 012**
(imposing on Ees, as condition of continued employment, their repudiation of certain contract wage benefits and enforcing that condition first with threatened employment loss and then layoff, violative)

IMCO/International Measurement & Control Company, Inc. **261 NLRB No. 180**
(closure of plant for afternoon with no pay to Ees because of Ees' complaints to health department regarding unsanitary conditions in plant due to presence of cats adopted by E, unlawful, where neither health department nor actual conditions required closure)

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant **261 NLRB No. 001**
(violations, where E following demanded by U for recognition called meeting of all Ees and interrogated Ees as to why they wanted U, promised to discuss benefits after Ees signed ptn against U, threatened to close restaurant if U came in, and w/i five days w/o warning to Ees closed restaurant for two and a half weeks which had never been previously closed)

Ogden & Moffett Company **254 NLRB No. 181**
(laying drivers off because they and their fellow Ees made complaints to state agency regarding overloaded or defective trailers and also because they refused to operate trailers they considered overloaded or defective, violative)

Lummus Industries, Inc. **254 NLRB No. 079**
(violation where discharge was based at least in part on prior warnings for violating unlawful no-distribution rule, notwithstanding Ee did not believe he was discharged under this rule and Ee circulated defamatory accusations of bribery and sellout to U)

R. E. & K., Inc. **252 NLRB No. 036**
(preelection layoff of foreman who was leader of new crew created by E so as to be able to transfer Ees to and from such crew and thereby enable E to rid itself of some known U adherents by eliminating entire crew, unlawful; E's defense on ground layoff was necessary because of *unexpected* need to curtail work because of delay in installing new equipment, rejected, in view of E's awareness of potential delay for sometime prior to layoffs)

Samco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 066**
(not unlawful where necessitated by economic conditions)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(selection of U adherent for economic layoff, unlawful, since motivated by adherent's U activities where previous unlawful warning letters were factor, E's owner had suggested to adherent she might be happier working elsewhere and offered her severance pay to seek other employment)

Aero Warehouse, Inc. **JD-(NY)-40-81**
(layoff which coincided with U's demand for recognition and also with notification that E would not receive anticipated contract, not unlawful, in view of absence of U animus, notice of impending layoff to Ees prior to advent of U, and E's dire economic situation)

Helgested Corporation **JD-643-80**
(layoff violative where reason for layoff was E's displeasure with Ees for having made and pressed claim for backpay at higher wage rate to which they believed they were entitled than what they had received for an already completed job)

Tri-Supply Company of Beaumont, Inc. **JD-(SF)-29-80**
(E's laying off pro-U Ees and shortly thereafter adopting policy of sending Ees home early when assigned production tasks were completed, rather than following pre-election traditional policy of *assuring* Ees *continuous full pay check*, violative)

N.L.R.B. v. Robin American Corporation **654 F.2d 1022 (C.A. 5, 1981)**
(ct held that evidence adequately supports that Ees were laid off because of their U membership and not for economic reasons)

N.L.R.B. v. Robin American Corporation **654 F.2d 1022 (C.A. 5, 1981)**
(laying off Ee who was sister-in-law of prime U supporter, not unlawful; E's failure to deny alleged unlawful motive, the locale of small and informal plant, and in-law relationship with U adherent were not substantial evidence on which to base inference that company knew Ee was U supporter)

Miami Springs Properties, Inc., and James H. Kinley and Associates, Joint Employers v. N.L.R.B. **663 F.2d 276 (C.A. 6, Aug 1981)**
(ct held substantial evidence supported Bd's finding that layoffs were ULPs and were not caused by E's troubled financial condition, where Bd relied on fact that layoffs were not announced and took place immediately after Ees engaged in protected activity of walking off job; Bd also relied on evidence

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of anti-U comments made by company president and disputed company's characterization of its finances at time of layoffs)

Blue Grass Provision Co., Inc. v. N.L.R.B. 636 F.2d 1127 (C.A. 6, 1980)
(E's unilaterally subcontracting its delivery operations and laying off Ees performing this work, unlawful, where U was not on notice E contemplated subcontracting and absent impasse, where U never understood E meant to subcontract operations upon expiration of contract and meetings between parties were preliminary sparring matches)

N.L.R.B. v. Rich's Precision Foundry, Inc. 667 F.2d 613 (C.A. 7, Dec. 1981)
(layoff of 2 Ees caused by reduction in work due to discriminatory dischrge of 2 other Ees violative as layoffs would not have occurred but for discriminatory action)

5036-6740 Rescheduling nonwork time

Madison Manufacturing Company 260 NLRB No. 076
(E violated Act when it unilaterally eliminated incentive payment of piece rate wages and also by unilaterally instituting new reporting time procedure for its Ees by making them leave cafeteria 5 minutes earlier)

European Parts Exchange, Inc. JD-170-82
(E changing times of U adherent's lunch and other breaks after he had passed out U authorization cards, so that he could no longer take breaks with other Ees, unlawful)

5036-6741 Less favorable treatment

Village IX, Inc. d/b/a Shenanigans 264 NLRB No. 122
(where E had policy of allowing friends and spouses of Ees to wait for them in restaurant until Ee come off duty, it violated Act when it refused to allow husband of principal U adherent, who had been subject of Bd settlement agreement over her U activities, to wait for her. Although spouse did engage in some U activity, it was never on restaurant premises and was only to assist his wife and he did not engage in any U activities independent of her; thus, spouse could not be treated as non-Ee U organizer)

Village IX, Inc. d/b/a Shenanigans 264 NLRB No. 122
(failure to timely mail invitation for E's anniversary party to U adherents, so that invitation arrived after party, violative as it was benefit granted to Ees)

K & S Circuits, Inc. 255 NLRB No. 163
(violation where E required U adherents, who had invoked Bd processes and were recalled pursuant to settlement agreement, to take math tests and fill out new applications)

Red Ball Motor Freight, Inc. 253 NLRB No. 111
(discharge violative where another Ee was disciplined with only 1-day suspension for concerted activity similar to that of discharged Ee)

Edgar L. Landen t/a Speed Mail Service 251 NLRB No. 064
(E's unexplained change w/o warning during U campaign of time of distribution of Ees' paychecks from Friday morning to Friday afternoon so that Ees could not cash them at noon held not *de minimis* or noncoercive; unlawful motive became unmistakably clear upon E's sudden resumption of its established practice of morning distribution after U lost election and it is unlikely Ees missed import of this *sudden* action)

Wilson Trucking, Inc. JD-119-82
(demand that truck drivers turn in their keys to E's facility, advance expense money and uniforms in retaliation for their organizing, unlawful)

5036-6742 *Break* policy

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant 259 NLRB No. 065
(changing hours of work by no longer paying Ees for breaktime after expiration of contract, violative)

Formaloy Corp. JD-(ATL)-87-81
(institution of talking and break rules which were more restrictive than rules which existed prior to U campaign held violative, since more restrictive rules were motivated by E's desire to discourage U activity)

5036-6743 Harsher working conditions or rules

South Nassau Communities Hospital 262 NLRB No. 146
(assignment of leading U proponent to more onerous work, unlawful, where assignment followed closely on heels of Ee's U activity one day earlier, and E failed to give valid, reasonable explanation, sufficient to rebut GS's *prima facie* case for unlawfulness of such assignment, since E presented no evidence that any senior Ee, other than E, even though not disadvantaged thereby, was assigned such work on daily basis with no promise of relief in foreseeable future)

South Nassau Communities Hospital 262 NLRB No. 146
(alleged imposition of more onerous working conditions on U activist by E's ceasing to speak to her, not unlawful, since allegation involved alleged inaction of an individual rather than commission of an overt act, thus involving state of mind of both parties toward their relationship; in any event, assuming condition complained of existed, it did not rise to level of more onerous working condition)

Jules V. Lane, D.D.S., P.C. 262 NLRB No. 013
(curtailment of smoking or eating in Ees' lounge and of making personal phone calls in retaliation for selecting U as representative, unlawful)

7 Up Bottling Company 261 NLRB No. 128
(requiring Ee to wear hard hat at all times when in warehouse in reaction to Ee's having raised idea of going to OSHA about working conditions, unlawful)

Howard Johnson Motor Lodge 261 NLRB No. 123
(E requiring Ees to keep log sheet of all work he performed, not unlawful, notwithstanding informed Ee requirement being imposed *since you have so much time to talk to new Ees about U and everything* where record of nonworking time or breaktime activities not required, Ee was free to conduct U activities in off-time and E had reason to suspect Ee was soliciting Ees on work time)

Heads and Threads Company, a Division of MSL Industries, Inc. 261 NLRB No. 115
(institution of requirement that Ee advise supervisor each time they intended to use bathroom, unlawful in context of antiU diatribe after U demand for recognition)

University Townhouses Cooperative 260 NLRB No. 187
(imposing harsher shop rules and practices during U organizing campaign, violative)

Kenco Plastics Company, Inc. 260 NLRB No. 194
(increasing frequency and duration of customary visits to production area of plant to observe Ees after U filed representation ptn, violative, in view of unprecedented nature of E's visits, absence of any legitimate explanation for these visits, and suspicious timing of their occurrence after filing election ptn)

United States Postal Service 258 NLRB No. 193
(refusing to allow U steward to leave his work area contrary to normal policy violative when in retaliation for steward's protected activity as shop steward)

A.P.F. Electronics, Inc. 257 NLRB No. 068
(threatening to discharge Ees who were leaders of Ees dissatisfied with E and U's representation, if they used bathroom facilities after accusing Ees of holding U meeting in mens' room)

Clements Wire & Manufacturing Company, Inc. 257 NLRB No. 075
(transferring Ee to more physically demanding job and one which was painful to Ee because Ee would not submit to E's interrogation concerning U, violative)

Clements Wire & Manufacturing Company, Inc. 257 NLRB No. 075
(increasing production rate of U adherent, violative)

Welfare, Pension and Vacation Funds, Blasters, Drillrunners and Miners Union Local No. 29, etc. 256 NLRB No. 170
(reducing Ees' employment benefits and making working conditions more onerous by failing to issue Ees new door keys and requiring them to take their vacations in July and August only because of their participation in Workmen's Compensation hearing, unlawful)

Continental Distributing Co., Inc. 256 NLRB No. 091
(reinstatement of discriminatee to more onerous job and prohibiting him from speaking to other Ees violative where reinstatement occurred after Ee filed charges with Bd to protest his unlawful discharge and allegations of stealing and drinking on job not supported by record)

K-Mart Corporation 255 NLRB No. 112
(placing locks on telephone after advent of U campaign, violative, since E's contention that excessive phone bills were caused by Ee personal calls was pretextual, in view of fact that large phone bills were product of long-distance business calls, E had received large bills several months prior to advent of U, and policy restricting personal calls was never enforced before this time)

Highway Express, Inc. 255 NLRB No. 102
(on day after Ees signed cards, requiring Ees to punch in and out for lunch and also to record their work orders, not violative as Ees were earlier warned that they were not doing enough work and business was failing and was not more onerous work instituted in retaliation for U activities)

Boyer Ford Trucks, Inc. 254 NLRB No. 104
(E's imposition of new regulation requiring regular punching in and out by salesmen in response to *new spirit of unionism exhibited by some members of sales department,* unlawful since new regulation was form of harassment imposed by E in reprisal for filing of *R* ptn)

Boyer Ford Trucks, Inc. 254 NLRB No. 104
(imposition of rule prhobiting Ees from using photocopy machine for company business, violative where rule was obviously imposed to retaliate against decision of salesmen in selecting U as their bargaining agent)

Stants and Stants, Inc. 254 NLRB No. 109
(promulgation of new work rule and reinstating previously unenforced rule concerning Ees working conditions w/o bargaining with U, Ees' majority

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representative, on day discriminatees returned to work, held violative, since rules imposed additional burden on Ees and timing left little doubt that event was part of E's response to its Ees U activity)

Hotel & Restaurant Employees, Local 28 **252 NLRB No. 158**
(changing reporting requirements of female Ee who filed sex discrimination complaint with California FEPC so she had to report to E's office three times every workday as opposed to reporting three times a week prior to filing her complaint, violative)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(after her reinstatement, Ee's being assigned full time to arduous machine work when she had shared time on machine with other Ees and being denied same lunch break given other Ees in department held violative, since inference was warranted that Ee was being made to suffer for her concerted action and U activities)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(violation where E enforced work rules more stringently to discourage U support)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(restriction of U activists to assigned areas, violative)

Billings Chrysler-Plymouth, Inc. **251 NLRB No. 089**
(economically motivated rule changes not violative notwithstanding instituted day after election which E contested)

Weyerhaeuser Company **251 NLRB No. 097**
(more stringent enforcement of rules against Ees for leaving work areas w/o permission as result of U campaign, violative)

Weyerhaeuser Company **251 NLRB No. 097**
(imposing new restriction on Ee smoking when work was caught up or when machines were down, violative)

Mediterranian Diner, Inc., t/a Bay Diner **250 NLRB No. 029**
(violation, where w/i 2 days after election E, who operated bar and restaurant, increased number of assigned tables to each waitress, prohibited smoking and talking even during breaks, required Ees to stand, changed dress code, and intensified checks on cleaning bar)

Pacific Coast International Meat Co. **248 NLRB No. 183**
(assignment of more arduous tasks to Ee, unlawful, where for leadership in lodging Cs regarding supervision)

Conagra, Inc. **248 NLRB No. 085**
(instructing Ee not to leave department or discuss U with other Ees, unlawful, since overly broad prohibition)

Leyendecker Paving, Inc. **247 NLRB No. 010**
(truckdriver's assignment to *different* job was not assignment of more onerous work where it was result of traffic accident and not U activities)

ABL General Systems Corp. **JD-(NY)-67-82**
(brief assignment of U supporter to more difficult job which she had done before, in order to get job out, not unlawful)

European Parts Exchange, Inc. **JD-170-82**
(informing Ee who had solicited Ees to sign U authorization cards, and who acted as gate attendant, that he was not allowed to talk to Ees as they entered or left plant, and posting sign on Ee's desk *No one is allowed to talk to guard*, unlawful)

Formaley Corp. **JD-(ATL)-87-81**
(institution of talking and break rules which were more restrictive than rules which existed prior to U campaign held violative, since more restrictive rules were motivated by E's desire to discourage U activity)

Johns-Manville Sales Corporation **JD-412-81**

Chipmore Manufacturing Co., Inc. **JD-432-80**
(imposing new and onerous work rules and enforcing shop rules previously enforced sporadically, if at all, held in reprisal for U activities of Ees)

5036-6744 Closer supervision

Dupont Puerto Rico, Inc. **262 NLRB No. 135**
(causing investigation of Ee concerning his inquiry of warehouse manager with regard to denial of raise to fellow Ee because of his five absences and his inquiry as to E's personnel policy on sick leave, disability, and promotions, violative)

Russ Togs, Inc. **253 NLRB No. 099**

Peavey Company **249 NLRB No. 110**
(supervisor harassing Ees by following them around, unlawful)

Tartan Marine Company **247 NLRB No. 073**
(where entire work force visible to supervisors, no unlawful surveillance, absent evidence E watching Ees more closely during U campaign)

ABL General Systems Corp. **JD-(NY)-67-82**
(increased presence of supervisor in production area, though coincidental with advent of U, not unlawful stricter supervision where justified by need to help Ees during period of high production)

European Parts Exchange, Inc. **JD-170-82**
(supervisor sitting in chair of U adherent who acted as gate attendant throughout time Ees were entering, and interrupting and criticizing adherent's procedures, unlawful)

Southern Farmers Association **JD-47-82**
(when low level supervisor told Ee that superintendent would be even tougher supervisor if U came in, was threatening Ees with closer supervision)

5036-6745 Lockouts

Century Moving & Storage, Inc. **251 NLRB No. 083**
(no *lock-out* where E, knowing that Ees would be attending U meeting before work usually started, moved up starting time of workday for that date, since E had valid business reason for doing so, had no knowledge when U meeting would end, and warehouse was locked because everyone was out on trucks working)

Harding Glass Industries **248 NLRB No. 091**
(refusal to reinstate ULP strikers after they requested reinstatement constitutes lockout)

5036-6746 Expulsion from plant

Like Corporation **JD-(SF)-69-80**
(denying Ee, suspected of starting 2 fires in E's plant; access to E's parking lot when he was not working not violative)

5036-6750 Withdraw, deny or delay privileges

Volkswagen of America, Inc. **261 NLRB No. 086**
(refusal to permit U and Ee subject to discipline, upon request, private consultation immediately prior to Ee's disciplinary interview, in accordance with established practice, violative)

Welfare, Pension and Vacation Funds, Blasters, Drillrunners and Miners Union Local No. 29, etc. **256 NLRB No. 170**
(reducing Ees' employment benefits and making working conditions more onerous by failing to issue Ees new door keys and requiring them to take their vacations in July and August only because of their participation in Workmen's Compensation hearing, unlawful)

K-Mart Corporation **255 NLRB No. 112**
(taking keys to office and personnel file away from U adherent, violative)

Association of Apartment Owners of The Whaler on Kaanapali Beach **255 NLRB No. 010**
(eliminating break time in retaliation for losing election)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern **254 NLRB No. 045**
(E's withdrawal of long-standing practice of allowing Ees to eat or take food home after work and refusing to allow Ees to remain on premises longer than 15 minutes after completion of their shifts in reprisal against Ees for their U activities, violative)

Allen-Stone Boxes, Inc. **252 NLRB No. 171**
(change in smoking rule violative, where purpose was to induce Ees not to support U)

Gordonsville, Industries, Inc. **252 NLRB No. 084**
(telling Ee, during U campaign, that if U came in she would not be able to come in and talk (to her supervisor), violative as threat of loss of benefits)

G. F. Business Equipment, Inc. **252 NLRB No. 123**
(enforcement of previously promulgated strict telephone call policy after beginning of U activity violative)

Elizabeth Motors, Inc. **252 NLRB No. 161**
(revoking Ees privilege of working on their own cars in E's shop and using telephone for personal calls)

United States Steel Corporation **JD-(ATL)-90-81**
(E's changing its practice of permitting Ees to swap shifts w/o permission or supervisory knowledge because Ees filed grievances pursuant to collective bargaining agreement, unlawful)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern **JD-(SF)-239-80**
(E's withdrawal of privileges, such as allowing Ees to remain on premises longer than 15 minutes after completion of their shifts and allowing Ees to take food home for consumption by others, from Ees who worked at restaurant unlawful where such actions taken by E were in reprisal against Ees for seeking U representation)

Montefiore Hospital and Medical Center v. N.L.R.B **621 F.2d 510 (C.A. 2, 1980)**
(health care institution's delay in granting permanent privileges to admit their patients to its clinic to doctors who had struck w/o notice in sympathy with institution's Ees, not unlawful in view of doctors' improper and unprotected picket-line conduct while on strike)

5036-6782 Relocating duty station

5036-6752—Cont.

Gordonsville, Industries, Inc. **282 NLRB No. 054**
(rearrangement of work location in order to restrain Ees' discussion of U, violative where idle talk (between Ees in various departments) had been tolerated by E prior to U campaign)

Pilgrim Life Insurance Company **260 NLRB No. 140**
(E's attempt to isolate U supporters by restricting movements of some Ees and relocating work station of another Ee, unlawful)

5036-6784 Refusal to employ or reemploy

Bechtel Power Corporation **264 NLRB No. 088**
(refusal to rehire Ee who, while acting in his capacity of U steward, threatened E with an unlawful work stoppage if E chose certain individual to become a supervisor, not unlawful, since Ee's threat was not protected by Act)

Bechtel Power Corporation **264 NLRB No. 088**
(refusal to rehire supervisor who quit over alleged unlawful appointment of job steward, not unlawful, since such protest was not protected activity; Bd would not find appointment which prompted supervisor to quit unlawful absent notice and litigation of issue)

Bechtel Power Corporation **264 NLRB No. 088**
(refusal to rehire Ee who, in concert with other Ees, quit job and immediately attempted to obtain paycheck, not unlawful, where demand for immediate receipt of paycheck held not to be protest involving terms and conditions of employment)

Carbonex Coal Company **262 NLRB No. 159**
(transferring unit work to new mine 5 miles away at time old one is struck in order to avoid bargaining with U and then hiring new Ees through unlawfully assisted U's hiring hall while refusing to hire striking Ees and those represented by certified striking U violates Act)

Davis and Burton Contractors, Inc. **261 NLRB No. 102**
(refusal to recall Ee after layoff, violative, since reason was Ee's walking off job and setting up *one-man* picket line, which was honored by other Ees, in protest of E's issuance to Ee payroll check which was dishonored by bank; although Ee's action violated no-strike clause of U contract, E had condoned Ee's action by settling dispute over paycheck and allowing Ee to return to work the next day and to continue work until layoff)

R. C. Lapeer Builders, Inc. **258 NLRB No. 165**
(refusal to reinstate sympathy strikers after un-conditional offer to return to work violative)

Missouri Towing & Barge, Inc. **257 NLRB No. 089**
(refusal to reinstate Ee for knowingly filing false workman's compensation claim, not violative)

Pettibone Corporation **255 NLRB No. 151**
(refusal to rehire Ees who had quit in protest over working conditions, violative; contention that E lacked knowledge that Ees wanted to return, rejected as ULP charge effectively informed E)

Pile Foundation Construction Company, Inc. **254 NLRB No. 177**
(refusing to recall Ees who had complained about contractual work-rule violations in regard to manning certain jobs, violative)

Maine Apple Growers, Inc. **254 NLRB No. 060**
(delaying recall, after election, of seasonal apple packers, who had requested raise in wages and had directed grievance letter to E's board of directors, assertedly because they were responsible for low production held violative where E's business justification for its action had not been established; E's unlawful statement to Ees that *agitation* had to cease coupled with its unexplained deviation from its normal method of disciplining overly talkative Ees established E's unlawful motive)

Universal City Studios, Inc. **253 NLRB No. 142**
(refusal to rehire Ee for second season of TV series because during first series Ee had talked to other Ees about working conditions and contacted U about supervisor changing his timecard, unlawful)

G and M Lath and Plaster Co., Inc. and Its Alter Ego, Central Texas Lath & Plastering Inc.; et al. **282 NLRB No. 137**
(corporation and its alter ego's refusal to retain Ees on project doing plaster work, violative where president of corporation decided to make project non-U after corporation left completion of project, because of financial problems, to alter ego under supervision of corporate president)

United Investment Corporation d/b/a Santa's Bakery **249 NLRB No. 190**
(refusal to rehire Ee upon his request because he filed claim for back overtime wages with state agency, unlawful; Ee's action was concerted as well as protected, and E knew it was concerted)

Saratoga County Economic Opportunity Council, Inc. **249 NLRB No. 074**
(refusing to consider E for full time position of senior bus driver and failure to appoint him to such position, violative where Ee was qualified for such position because he had been filling in as permanent substitute, and such discriminatory treatment was motivated by E's participation in protected concerted activity for mutual aid of all Ees which entailed sending letter critical of E's operations to federal agency which provided substantial part of E's funding)

Saratoga County Economic Opportunity Council, Inc. **249 NLRB No. 074**
(E's action of disqualifying Ee as substitute driver, violative where E was motivated by Ee's participation in protected concerted activity for mutual aid of all Ees which entailed sending letter critical of E's operations to federal agency which provided substantial part of E's funding)

Ontario Knife Company **247 NLRB No. 168**
(discharge and refusal to reinstate Ee assertedly for leaving plant w/o permission, unlawful, where walkout was preceded by grievance discussion and was result of protected activity; even if offensive and *off color* remarks by supervisor were proximate cause of Ee's walkout, supervisor's statements must be considered in context of entire conversation, which was clearly protected concerted activity)

A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A. J. Librera Disposal Service, Inc. **247 NLRB No. 118**
(E's refusal to hire Ees of predecessor E because they had engaged in strike against predecessor to protest wages violative)

A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A. J. Librera Disposal Service, Inc. **247 NLRB No. 118**
(E's refusal to hire Ees of E's predecessor because they sympathized with predecessor E's Ees who were engaging in strike to protest wages paid by predecessor E, violative)

Frank Briscoe Incorporated **247 NLRB No. 086**
(refusal to reemploy certain Ees laid off as a group because, after their lawful layoff, some of the Ees filed discrimination charges with EEOC, unlawful, since filing of such charges constituted protected concerted activity under Act, regardless of the merit of such charges)

Johns-Manville, Private Carriage **JD-(ATL)-89-81**
(refusal to rehire alleged discriminatee not violative where there was nothing in record to contradict credible testimony that it was E's policy not to rehire drivers who had been terminated for cause)

Teras Coal Company, Inc. **JD-322-81**
(discharging and refusing to reinstate eight coal miners for withholding their services in support of their grievance, violative)

Maryland Cup Corporation **JD-618-80**
(refusal to provide applicant for employment with application form because of U activities of applicant's relatives, unlawful)

B & F Turgeon, Inc. **JD-274-80**
(violatively discharged economic strikers who had made unconditional requests for reinstatement)

The Royal General Company **JD-17-80**
(E offering wage increases to select individuals to induce them to abandon their walkout and support for U representation while refusing to re-employ individual it considered instigator of walkout and instigator's brother)

Ontario Knife Company v. N.L.R.B. **637 F.2d 840 (C.A. 2, Dec. 1980)**
(discharge and refusal to reinstate Ee who walked off job after protesting excessive assignment of certain work to night shift not violative, where although fellow worker shared objection thereby meeting the *mutual aid or protection* requirement of Sec. 7, fellow worker did not join Ee in walking off job and there was thus no *concerted activity*)

N.L.R.B. v. Robin American Corporation **654 F.2d 1022 (C.A. 5, 1981)**
(refusal to reinstate striking Ees, violative, where strike was found ULP strike in view of fact that Ees struck in protest of unlawful lay-offs and discharges, unlawful closing of department, and unlawful threats and interrogations)

N.L.R.B. v. Savair Manufacturing Company **611 F.2d 169 (C.A. 6, 1979)**
(order based on 8(a)(1) violation enforced, since Bd entitled to conclude from testimony of company official that E refused to hire Ee in 1976 because he was *trouble* during Ees' walkout in 1969)

Laurie L. Abraham v. Graphic Arts International Union, AFL-CIO, CLC, et al. **592 F.2d 1189 (D Ct DC, 1980)**
(mtn for summary judgment against E dismissed where it was clear from record that no genuine issues as to facts material to resolution of instant action existed; ct not persuaded that plaintiff made *prima facie* case regarding E's discrimination against her for U activities by firing her and not granting her maternity leave)

Montefiore Hospital and Medical Center v. N.L.R.B **621 F.2d 510 (C.A. 2, 1980)**
(health care institution's denial of full-time positions to doctors because of their filing charges with Bd, unlawful)

5036-6762 Refusal to reinstate strikers

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5036-6762—Cont.

American Olean Tile company, Inc. **265 NLRB No. 206**

(violation, by denying vacancies of substantially equivalent pre-strike jobs to qualified senior economic strikers by giving inter-plant preference to strikers who abandoned strike or who made individual offers to return to work and were reinstated, albeit to positions not substantially equivalent to pre-strike positions, over the former for whom U made offer to return to work)

A. Duie Pyle, Inc. **263 NLRB No. 092**

(Bd has differentiated between those cases in which Ees have arguably exceeded bounds of lawful conduct during strike in *moment of animal exuberance* from those cases in which misconduct is so flagrant or egregious as to require subordination of Ees' protected rights in order to vindicate broader interests of society; thus, E is not entitled to discharge striker for engaging in threats unless they are accompanied by *physical acts or gestures* that would provide added emphasis or meaning to striker's words sufficient to warrant finding that striker should not be reinstated)

J. E. Steigerwald Co., Inc. **263 NLRB No. 068**

(informing laid-off Ee that E was not going to hire anyone because of pending ULP charges and was thus withdrawing its offer of re-employment violative)

Carbonex Coal Company **262 NLRB No. 159**

(E's refusal to rehire strikers rather than six new Ees it did hire violative and it is immaterial in this situation whether they were economic or ULP strikers as no new Ees had been hired at time strikers made unconditional offer to return to work)

San Diego County Association For The Retarded **259 NLRB No. 136**

(E's contention that strikers are barred from reinstatement because of their written appeal to parents of retarded students and public, for support concerning their efforts to resolve their grievances, rejected, since appeals by strikers to third parties for support concerning labor dispute issues with E do not deprive strikers of reinstatement rights)

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 095**

(discharge and failure to reinstate Ees who struck E, contrary to contractual no-strike clause, to protest failure of U's health and welfare fund to fulfill its contractual medical insurance obligations held violative, since *no-strike* pledge relied upon by E did not constitute clear and unequivocal waiver of Ees' right to strike against actions of third party (*Fund*) which affected terms and conditions of employment)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**

(denial of reinstatement to discriminatees whom E thought would most likely cause continued labor disturbances if reinstated, violative, since Ees' walkout was protected activity and E had no business justification to deny their reinstatement)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**

(forewoman's statement to Ee (striker) seeking reinstatement that Ee would have to wait until Bd ruled on charges Ees filed before she could give answer, violative, since statement conveyed that filing of charge had cut off further consideration of possibility of reinstatement)

Huron Dressed Beef, Inc. **252 NLRB No. 031**

(refusal to reinstate economic strikers except as new hires with starting wages and w/o seniority and accured vacation, medical and other benefits, and hiring *permanent replacements* in place of those strikers who did not accept offer to return to work as new hires, violative)

Fun Striders, Inc. **250 NLRB No. 087**

(refusal to reinstate strikers who had distributed protected, but nontheless, politically inflamatory materials, violative)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**

(discharge and refusal to reinstate Ees unlawful, since Ees were economic strikers who were subject to permanent replacement but not to discharge)

Jay-Em Corporation **JD-547-81**

(refusal to reinstate economic striker who had applied for and was qualified for position)

Illinois Valley Electric Cooperative, Inc. **JD-281-81**

(offering unit position to Ee of another company and thereby bypassing unreinstated economic strikers, violative)

Central Cadillac Company **JD-243-80**

(E's refusal to allow striking Ees to return to work w/o doctor's certificate, unlawful, notwithstanding E's contention that Ees made no valid unconditional offer to return to work, where strikers reported in body to E's premises at regular reporting time, most in work clothes; furthermore, medical certificate requirement instituted night before return and, subsequently, never enforced)

W S H Construction Company, Inc., J. B. Shannon and James A. Hurd, Equipment Rental Company **JD-70-80**

(refusal to reinstate economic strikers upon their request to return to work assertedly because *they had been replaced and did not have a job*, violative, where there was scant evidence proffered by E to show that it had promptly and validly employed new permanent Ees to replace strikers prior to the latters' request to return to work)

Miami Springs Properties, Inc., and James H. Kinley and Associates, Joint Employers v. N.L.R.B. **653 F.2d 276 (C.A. 6, Aug 1981)**

(ct held substantial evidence supported Bd's finding that layoffs were ULPs and were not caused by E's troubled financial condition, where Bd relied on fact that layoffs were not announced and took place immediately after Ees engaged in protected activity of walking off job; Bd also relied on evidence of anti-U comments made by company president and disputed company's characterization of its finances at time of layoffs)

5036-6764 Refusal to place strikers on preferential hiring list

Brinkerhoff Signal Drilling Co. **264 NLRB No. 049**

(E violated Sec. 8(a)(1) when it created impression that economic strikers who were seeking to return to work were not being granted their *Laidlaw* preference in employment over new applicants and also by requiring returning strikers to fill out same employment register that all job applicants signed)

Lincoln Hills Nursing Home, Inc.; et al. **257 NLRB No. 145**

(removal of economic striker's name from recall list violative)

5036-6766 Sale of business

K & K Transportation Corp., Inc. **262 NLRB No. 182**

(failure to reinstate ULP strikers husband and wife not violative, where E had sufficient basis to believe they had sabotaged E's trailer-truck causing serious damage to equipment and endangering safety of other motorists, and GC failed to prove that strikers were not in fact guilty of alleged misconduct; fact that misconduct occurred miles away from E's facility was apparently result of premeditated conduct engaged in far from picket line)

5036-6770 Partial or complete termination or liquidation of business

IMCO/International Measurement & Control Company, Inc. **261 NLRB No. 180**

(closure of plant for afternoon with no pay to Ees because of Ees' complaints to health department regarding unsanitary conditions in plant due to presence of cats adopted by E, unlawful, where neither health department nor actual conditions required closure)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**

(E threat to move business or to file bankruptcy rather than to pay U scale or benefits, unlawful)

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**

(E's sale of 2 of its 30 trucks 3 months after strike which had no effect on Ee's job did not violate Act)

Aztec Manufacturing Company **JD-(SF)-92-80**

(E's elimination of shift and resultant termination of all shift Ees not violative, notwithstanding timing and abruptness of action, where E's decision was motivated by substantial business reasons and prior to any knowledge of Ees' organizational meeting of previous night)

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 5, 1980)**

(E may shutdown entire business even if motivated by anti-U conduct but cannot close it temporarily and reopen in order to oust U)

5036-6773 Denial of retirement benefits

National King Coal, Inc. **JD-(SF)-24-81**

5036-6774 Change in method of compensation

General Battery Corporation **261 NLRB No. 043**

(substituting nonmeasured rate for incentive rate not unlawful, notwithstanding it was done shortly before scheduled rerun representation election, where it was based on business considerations; rate was applied to only small part of unit, was consistent with companywide practice in similar problem situations, approximated incentive rate in this and other departments, and Ees were told it was temporary and no mention was made of U)

Hudson Manufacturing Company **260 NLRB No. 076**

(E violated Act when it unilaterally eliminated incentive payment of piece rate wages and also by unilaterally instituting new reporting time procedure for its Ees by making them leave cafeteria 5 minutes earlier)

Jaybil Steel Products, Inc.; etc. **258 NLRB No. 157**

(changing method of pay from piecework to hourly basis which resulted in substantial loss in pay to Ees, unlawful, where instituted w/o business purpose at beginning of week immediately following organizing campaign)

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**

(revising incentive system by eliminating minor bonus hours so that favorable impact of decision was realized 4 days before election, violative as plan to change incentive program was in germinal form only prior to advent of U)

5036-6776 Institution of mandatory overtime

Illinois Bell Telephone Company **255 NLRB No. 063**

(E who disciplined shop steward and U vice president for posting notices informing Ees of their right to seek U representation if E requested Ees to work mandatory overtime violated Act; U was not advocating Ees to refuse to work overtime which could be unprotected partial strike but rather was engaging in protected activity of urging Ees to seek help through U)

5036-6777 Suspension

United States Postal Service **264 NLRB No. 091**

(suspension of Ee who persisted on several occasions to seek clarification of poorly-observed work rule, violative, where rule was incorporated into collective bargaining agreement and questioning such rule was protected concerted activity since it applied not only to Ee but to fellow Ees as well; Ee's conduct in shouting for steward to pursue her inquiry, although seen as rash and ill-mannered, was not so *offensive, defamatory or opprobrious as to remove her from the protection of the Act*)

7 Up Bottling Company **261 NLRB No. 128**

(suspension based on Ee's alleged failure to abide by earlier warning, violative of 8(a)(1), since earlier warning had been violative of 8(a)(1) because E was influenced by possibility of Ee's complaining to OSHA)

New York University Medical Center **261 NLRB No. 118**

(suspension of one Ee and discharge of another, assertedly for picketing private residence of management official, unlawful, where Ees' prior distribution of leaflets accusing E of engaging in racist tactics, herein held protected concerted activity, was motivating factor for E's conduct, and E failed to demonstrate that Ees would have been disciplined if only the picketing was involved)

Nanticoke Homes, Inc. **261 NLRB No. 107**

(suspending Ee spokesman for refusing to supply inofrmation on U meeting, unlawful)

Illinois Bell Telephone Company **259 NLRB No. 167**

(warning and suspending Ee who used vulgar term while discussing her grievance pertaining to evaluation criticizing amount of time away from workplace, violative, where Ee's discussion was concerted activity and grievance was a matter of mutual concern to other Ees)

East Chicago Rehabilitation Center, Inc. **259 NLRB No. 135**

(suspension and discharge of Ees for engaging in protected strike, violative)

Baker Marine Corporation **258 NLRB No. 091**

(no violation where E suspended and discharged Ees for refusing to work on legs being assembled for drilling rig in contravention of no-strike clause since, contrary to GC's contention that such work was *abnormally dangerous* w/i Sec. 502 of Act, conditions considered dangerous by Ees had been in existence w/o change for considerable period of time and had been previously accepted by Ees w/o complaint)

United States Postal Service **256 NLRB No. 012**

(suspension of Ee assertedly because of his insubordinate conduct during disciplinary interview herein found unlawful because Ee was denied his request to have U representative present during interview, violative, where Ee's conduct was product of such interview and may never have occurred if unlawful interview had not taken place; Kraft Foods, Inc., 251 NLRB No. 6, distinguished)

Atlas Minerals, Division of Atlas Corporation **256 NLRB No. 022**

(suspension of Ee assertedly because of safety infraction on job, unlawful, where GC made prima facie showing sufficient to support inference that Ee's protected conduct was motivating factor in decision to suspend Ee, and E then failed to meet its burden of demonstrating that suspension would have taken place even in absence of Ee's protected conduct)

McLean Trucking Company **252 NLRB No. 104**

(discharge of Ee and subsequent conversion of discharge into suspension and written warning because he refused to drive tractor-trailer which he honestly and reasonably believed to be unsafe held unlawful, since refusal was right Ee was at liberty to exercise under contract even though at time of refusal he had not made any specific reference to contract)

Greyhound Lines, Inc. **251 NLRB No. 167**

(suspension of drivers who prepared and issued press release announcing Ees' concerted adherence to speed limit resulting in slowdown in protest of E's conduct of labor relations, violative; contrary to contentions press release contained neither malicious falsehoods nor disparagement of quality of E's products or services)

F. W. Woolworth Co. **251 NLRB No. 152**

(violation where E suspended, then discharged Ee allegedly for insubordination where Ee insisted on asking E question during E's captive audience anti-U propaganda speech in disobedience of E's gag on Ee participation; E had right to protest gag and did not engage in misconduct sufficient to remove protection of Act where he used no threats, profanity or inciteful language)

Allied Aviation Service Company of New Jersey, Inc. **248 NLRB No. 026**

(suspension and subsequent discharge of Ee, unlawful where E's actions were caused by Ee's protected activity of sending letters to E's customers regarding lack of safety in E's function of servicing commercial aircraft)

Brunswick Corporation **JD-21-82**

(reprimanding and suspending U adherent for distributing literature pertaining to terms and conditions of employment, on non-working time and in non-working areas, violative)

Berkshire Cleanway Rubbish Removal, Inc. **JD-336-81**

(suspension and discharge of Ee because of his complaining about safety of E's trucks and refusing to drive them under unsafe and illegal conditions, violative where other Ees shared concerns and E was aware of common concern)

The Gilbert and Bennett Mfg. Co. **JD-578-80**

(threatening to discharge Ee if he made any more fuss to U about his overtime backpay under arbitrator's award, violative)

Peschke Packing Company **JD-(NY)-33-80**

(no violation where suspension was found to be for Ee's disregard of company policy by taking excessive time for relief breaks rather than for his complaint about supervisor's breach of contract by doing unit work)

N.L.R.B. v. St. Anne's Hospital **648 F.2d 67 (C.A. 1, May 1981)**

(suspension of nurse assertedly for bribery and extortion because she asked for time and one-half if she was called to work after her regular working hours, unlawful, where action was taken in retaliation for her participation in nurses' group protesting hospital's on-call policy, she did not ask to get paid for hours that she did not work, and asserted reason for suspension was a ridiculous accusation and reflected E's hostility against any member of protesting group)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**

(contention that Ees were properly suspended for refusing for safety reasons to perform job assignment, purportedly because their action was unprotected because it violated contract, rejected, since Ees had sincere belief that abnormally dangerous condition existed and their actions were both sincere and reasonable)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. **618 F.2d 1009 (C.A. 3, 1980)**

(suspension of Ees for refusing to perform job assignment for safety reasons, unlawful, since Ees' conduct was concerted, and not individual, action, it constituted protected activity, and E failed to present alleged violation of contract as affirmative defense)

N.L.R.B. v. Southwestern Bell Telephone Company **694 F.2d 974 (C.A. 5, Nov. 1982)**

(suspending Ee for alleged insubordination which occurred at disciplinary meeting concerning Ee's outbursts of day before during dispute over overtime work assignments, violative, where meeting was held to discipline Ee unlawfully for his conduct of previous day and clearly provoked outbursts that ostensibly justified suspension; doctrine of provoked insubordination applied)

McLean Trucking Company v. N.L.R.B. **689 F.2d 605 (C.A. 6, Sept. 1982)**

(ct held substantial evidence supported Bd's finding that drivers were unlawfully disciplined for engaging in protected and concerted activity when they refused to drive tractor-trailor they believed to be unsafe pursuant to U instructions invoking provision of collective bargaining agreement; E's reliance on *Jim Causley Pontiac*, 675 F.2d 125 (6th Cir. 1982), unwarranted where ct held, *inter alia*, that E knew that drivers made their complaints pursuant to U activity; ct also reaffirmed its rejection of *Interboro* doctrine)

N.L.R.B. v. United States Postal Service **689 F.2d 835 (C.A. 9, Oct. 1982)**

(enforcement denied since suspension was not unlawful where it was for insubordination in walking out of *discussion* which was not disciplinary, rather than for exercising *Weingarten* rights)

Caterpillar Tractor Co. v. N.L.R.B. **638 F.2d 140 (C.A. 9, 1981)**

(suspension of chief steward for assisting Ee with filing of her grievance, unlawful; chief steward's outburst of profanity did not provide good cause for suspension where such outburst was in response to supervisor's interference with filing of grievance)

5036-6779 Transfer of work elsewhere

Carbonex Coal Company **262 NLRB No. 159**

(transferring unit work to new mine 5 miles away at time old one is struck in order to avoid bargaining with U and then hiring new Ees through unlawfully assisted U's hiring hall while refusing to hire striking Ees and those represented by certified striking U violates Act)

Hall of Mississippi, Inc. **249 NLRB No. 119**

(telling Ees that they were being laid off because of their U activities and implying that E would transfer work from local plant to another plant, violative)

Heat Transfer Group, Gulf and Western Mfg. Co. **JD-381-82**

(E's repudiating agreement by announcing its intention to and by commencing to relocate portion of unit work to another location for performance by non-unit Ees represented by another U with contract providing for less costly wages and benefits held violative, as E's purpose was to evade

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obligations and to frustrate Ees' right to refuse to make mid-term concessions)

5036-6780 Disqualification of employment compensation

McLean Hospital, A Division of Massachusetts General Hospital **264 NLRB No. 068**
(where E's discharge of Ee was found lawful in ULP proceeding, E's communication of its lawful reasons to state unemployment agency for discharge did not violate 8(a)(1))

5036-6781 Loss of overtime work or pay

Electric Hose and Rubber Company **262 NLRB No. 014**
(elimination of overtime during U organizing campaign not violative where E introduced its projections of production needs upon which its decision was based but did not produce actual production records and GC did not prove that E, in fact, did not base its decision on these projections but acted out of U animous)

Sambo's Restaurants, Inc. **260 NLRB No. 054**
(denying Ees overtime work because they filed grievances)

Roadway Express, Inc. **257 NLRB No. 153**
(denial of overtime pay to Ee, who had filed charges against E, for time spent discussing his grievance after working hours, not unlawful, where E had no policy for such pay)

Caterpillar Tractor Company **257 NLRB No. 029**
(reduction of weekend overtime, not unlawful, where such reduction was result of creation of irregular shifts and there was no evidence that shifts were created for discriminatory reasons)

Worth Engineering, Inc. **JD-295-80**

5036-6782 Rescheduling of hours

Carbonex Coal Company **262 NLRB No. 159**
(change of shift schedule from 8 hours to 12 hours without notifying or consulting with U violative)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern **JD-(SF)-239-80**
(knowingly creating situation where E had Ees with idle time, and subsequently reducing work hours, unlawful where done out of antipathy toward U supporters)

5036-6783 Workload increased

Flair Molded Plastics, Inc. **JD-8-82**
(increasing throughput by speeding up machines not violative where for economic reasons and absence of discriminatory motive)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(increasing Ee production rates in reprisal for Ees' support and activities on behalf of U, unlawful)

N.L.R.B. v. Circo Resorts, Inc., d/b/a Circus, Circus **646 F.2d 403 (C.A. 9, May 1981)**
(E's statement made following unlawful discharge of Ees, who were active in obtaining signatures to U authorization cards, that more workers would not be employed until *this U thing was over*, thereby indicating that E would remain understaffed, unlawful)

5036-6784 Change in vacation policy

Northwestern Dodge, Inc. **258 NLRB No. 118**
(refusing laid off Ee accumulated vacation pay on anniversary date of his employment violative where terms of expired contract did not apply only to Ees working on anniversary date)

Lincoln Hills Nursing Home, Inc.; et al. **257 NLRB No. 145**
(where vacation eligibility was computed upon one year's actual work rather than tenure of employment, E did not discriminate against reinstated strikers when it denied them eligibility for vacations after subtracting strike time from their employment records; moreover, finding of disparate treatment not warranted notwithstanding E sometimes allowed time lost due to sickness to be counted toward vacation eligibility)

Larson Supply Co., Inc. **251 NLRB No. 175**
(withdrawing advance vacation privileges)

Streamway Division of The Scott & Fetzer Co. **249 NLRB No. 054**
(E's change in vacation policy advantageous to Ees, not unlawful, where GC's claimed *immediately favorable* nature of change was speculative, there was no evidence of E's knowledge of organizational attempt, change was not made with any purpose other than to remedy grievance, and there was no reason for concluding that change would interfere with unionization of E by Ees)

Wyman-Gordon Company v. N.L.R.B. **654 F.2d 134 (C.A. 1, 1981)**
(supervisor's statements to Ees, who had asked if they could change their vacation dates if the election was scheduled to be held at that time, which implied that it could be arranged if they planned to vote against U, violative)

5036-6785 Transfer to another job, shift or plant

Gurabo Lace Mills, Inc. **265 NLRB No. 044**

Electric Hose and Rubber Company **262 NLRB No. 014**
(informing Ee that his right to transfer to new facility was denied because of his U activities, violative)

7 Up Bottling Company **261 NLRB No. 128**
(replacing Ee's daytime delivery duties with demeaning nighttime chores violative of 8(a)(1) where due to E's fear Ee might complain to OSHA)

Western Marine Electronics, Inc. **257 NLRB No. 057**
(violation, where Ee transferred from machine shop to dusty, monotonous sanding job after he filed grievance contending he was in unit covered by bargaining agreement and was not receiving contract wage or benefits, and after meeting on his grievance Ee was told he was being transferred because of grievance)

Clements Wire & Manufacturing Company, Inc. **257 NLRB No. 075**
(transferring Ee to more physically demanding job and one which was painful to Ee because Ee would not submit to E's interrogation concerning U, violative)

John Wyke, Inc.; Comanco, Inc.; and Jobe Construction, Inc. **263 NLRB No. 118**
(transfer and subsequent permanent layoff of Ee because of efforts on his behalf to obtain rate of pay specified in bargaining contract, violative)

Russ Togs, Inc. **253 NLRB No. 099**
(transfer of grievants to other jobs with more arduous duties and closer supervision, unlawful)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(E's implementation of job rotation plan that was designed by E to transfer leading U adherent to another job that was less of his liking, unlawful)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(U council's threat to transfer Ee-staff member to different location in his assignment of servicing U locals, unlawful, where action was in retaliation for his protected U and concerted activities; action came on heels of unlawful suspension of Ees for attending U meeting and for soliciting aid outside of labor organization, and closely followed council's attempt to prevent second U meeting involving U's attorney called to address, amont other things, Ees' suspensions)

Suburban Ford, Inc. **248 NLRB No. 051**
(unprecedented reshuffling, prior to election, of automobile salesmen's jobs, transferring them from new to used cars sales or *vice versa* and replacing or augmenting salesmen with untrained novices with little or no qualifications unlawful, in view of salesmen's experience and expertise in jobs they held; E's actions were prejudicial to salesmen's earnings, based on commissions)

National Southwire Aluminum **247 NLRB No. 175**
(E who transferred Ees to different jobs in retaliation for Ees' U activities violated Act notwithstanding job assignments were less physically demanding and paid same salary)

Tribal American Consulting Corporation **JD-(SF)-314-80**
(transferring school bus driver in retaliation for his strike and other U activities, violative)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(transfer of Ee to more physically demanding job and one which was painful for her, because she would not submit to supervisor's interrogation about U, unlawful)

N.L.R.B. v. St. Anne's Hospital **640 F.2d 67 (C.A. 1, May 1981)**
(refusing to allow nurse to return to operating room duties to which she had been assigned prior to maternity leave, unlawful, where action was contrary to past policy and in retaliation against nurse with spotless 10-year record whose only fault was her active participation in nurses' protest against hospital's on-call policy)

5036-6786 Withholding vacation pay

Stokely-Van Camp, Inc. **259 NLRB No. 128**
(withholding and deferring vacation pay of striking Ees violative where contract entitled them to paid vacations on request and but for strike vacation would have been allowed; contention that Ees cannot be on vacation and strike at same time so that E may maximize number of Ees available for work during strike, rejected)

Gulf Envelope Company **256 NLRB No. 058**
(E's refusal to pay strikers accrued vacation pay pursuant to previous bargaining contract, unlawful; E's refusal not justified by its preference for individual requests rather than by U, or by busy administrative period at end of strike)

Rockingham Machine-Lunex Company **255 NLRB No. 015**
(E's refusal to pay strikers on strike on date it had been customary for E to pay vacation benefits to those on pay roll as of that date, unlawful, where

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striker's denied benefits had not informed E they would not be returning to work)

C. F. Martin & Co., Inc. 252 NLRB No. 167
(withholding accrued vacation benefits from striking Ees, violative)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(not granting vacation pay to ULP strikers who were unlawfully not recalled by eligibility date, though strike over, violative, as benefits vested on that date notwithstanding they had not been recalled)

Jacques Syl Knitwear, Inc. 247 NLRB No. 191
(denying accrued vacation pay to striking Ees, unlawful)

5036-6787 Use of blacklists

Dunmor Company d/b/a Madison South Convalescent Center 260 NLRB No. 106
(labelling Ee as *union agitator* in response to prospective E's reference check, violative)

Mount Desert Island Hospital 259 NLRB No. 080
(blacklisting Ees)

Cooley's, Inc. JD-71-82
(calling up Ee's new E and discrediting Ee after Ee had filed charges with Bd, violative)

5036-6788 Denial of paid vacation

Lincoln Hills Nursing Home, Inc.; et al. 257 NLRB No. 148
(where vacation eligibility was computed upon one year's actual work rather then tenure of employment, E did not discriminatee against reinstated strikers when it denied them eligibility for vacations after substracting strike time from their employment records; moreover, finding of disparate treatment not warranted notwithstanding E sometimes allowed time lost due to sickness to be counted toward vacation eligibility)

Climate Control Corporation 251 NLRB No. 102
(denying vacation benefits in retaliation for U activity, instigation of ULP charge, and providing evidence to Bd, violative)

Transitank Car Corporation JD-(ATL)-8-82
(denial of promised vacation in reprisal for participation in U campaign, unlawful)

5036-6789 Reduction in work or hours

United Supermarkets, Inc. 261 NLRB No. 179
(E's reduction of Ee's working hours, unlawful, where E had knowledge of Ee's strong U activities; contrary to longer hours worked by other Ees in same job category, Ee was singled out for reduction because of his support of U)

7 Up Bottling Company 261 NLRB No. 128
(directive that Ee work strict 40-hour week, i.e. w/o overtime, issued in part because of Ee's mention of possibility of complaining to OSHA, violative of 8(a)(1))

American Interstate Freight Lines 258 NLRB No. 131
(refusing assignment of work to Ee on many occassion becacse he went to U concerning his employment complaints, including contract provision that called for guaranteed work week, violative)

K & E Bus Lines, Inc. 255 NLRB No. 137
(reducing Ees' assignments which resulted in diminished earnings for Ees, unlawful)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern 254 NLRB No. 048
(reducing number of hours Ees were scheduled to work because they had *too much idle time for hostility,* i.e., in which to vent their differences over U, violative; fact the Ees had idle time was directly related to E's earlier decision to hire additional Ees to offset influence of U sympathizers and to lend support to Ees opposed to U representation)

Berger Transfer and Storage, Inc. 253 NLRB No. 082
(E violated Act where rehired striker changed from guaranteed 40 hours week and placed on seniority list which caused him to work less than 40 hours)

Behring International, Inc. 252 NLRB No. 085
(E unlawfully deliberately reduced work available to its warehouse Ees in preelection period by diverting freight and using contract labor in order to discourage Ees from supporting U)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern JD-(SF)-239-80
(knowingly creating situation where E had Ees with idle time, and subsequently reducing work hours, unlawful where done out of antipathy toward U supporters)

5036-6790 Denial of or change in insurance coverage

Texaco, Inc. 259 NLRB No. 170
(coercion of Ees to refrain from declaring their position on strike by terminating their sick leave benefits while they were medically excused from work, unlawful)

Richland Co. & Assoc., Division of McDonald Construction, Inc. 256 NLRB No. 026
(threat to bill and actually billing Ees for insurance premiums prior to election, unlawful, since conduct was attempt to coerce Ees into abandoning U)

J. J. Cassone Bakery, Inc. 247 NLRB No. 032
(E's preelection change in Ees' life insurance coverage held not unlawful and not interference, since E was not statutorily obligated to stay or abandon implementation of new beneficial insurance program based on sound business considerations simply because election had been scheduled to take place some 6 months in the future, and implementation of plan was not achieved until shortly before election because of administrative bungling)

5036-6791 Discrimination against supervisors

Brookline Corporation d/b/a Hi Fi Buys 257 NLRB No. 166
(finding that store manager was supervisor sufficient to support dismissal of portion of complaint relating to her discharge)

Comfort Health Corporation d/b/c Kendallville Nursing Home JD-329-80
(*discharge of supervisor solely for that supervisor's own U activities does not contravene...Act*)

The Berry Schools v. N.L.R.B. 653 F.2d 966 (C.A. 5, Oct. 1980)
(demotion of college department chairman from supervisory status allegedly for organizational activity held not ULP where Ee was unprotected by Act as *supervisor*)

5036-6792 Requiring sick leave authorization

Roma Baking Company 263 NLRB No. 004
(statement that Ees would have to go to baker's school if U came in violative as threat of reprisal as it reasonably creates impression that more stringent qualifications would be imposed for job retention)

South Nassau Communities Hospital 262 NLRB No. 146
(E's requiring U activist to produce doctor's note after taking a day of sick leave, unlawful, where Ees not involved in U activity had been orally counseled about absenteeism and given fair warning of consequences, which was not done in U activist's case; and latter was never told, throughout all the years of her employment, that E was dissatisfied with her attendance, and even her performance appraisal form indicated *good* attendance)

5036-6793 Change in work rules

K & E Bus Lines, Inc. 255 NLRB No. 137
(violation, where E promulgated unlawful no congregating rule in handbook)

Staats and Staats, Inc. 254 NLRB No. 108
(promulgation of new work rule and reinstating previously unenforced rule concerning Ees working conditions w/o bargaining with U, Ees' majority representative, on day discriminatees returned to work, held violative, since rules imposed additional burden on Ees and timing left little doubt that event was part of E's reponse to its Ees U activity)

Pilgrim Life Insurance Company 249 NLRB No. 140
(E's attempt to isolate U supporters by restricting movements of some Ees and relocating work station of another Ee, unlawful)

Kreton Char-Broil, Inc., d/b/a Coram Pond Diner 248 NLRB No. 182
(violation, where E changed its lenient work rules to forbid Ees who were demanding improved terms of employment to talk to customers or other Ees)

Tartan Marine Company 247 NLRB No. 073
(warning Ees against talking while working, not violative, since *working time is for work* and particularly since warnings not a policy initiated during U's campaign)

Mother Federal Credit Union JD-(SF)-8-80
(disparately enforcing work rule only against Ees engaged in U activity)

5036-6796 Change in loan policy

St. Francis Hospital 249 NLRB No. 017

5036-6798 Change in lunch and/or break period practices

Larsen Supply Co., Inc. 251 NLRB No. 175
(E violated Act where prior to election which U won, Ees were allowed to take their lunch breaks whenevers it was convivient but afterwards required them to take it at specified time in retaliation for U vote and w/o E bargaining with U)

Battery Bill, Inc. 249 NLRB No. 030

Conagra, Inc. 248 NLRB No. 068
(threat to eliminate bathroom breaks in bargaining if U came in, unlawful)

5036-7800 Affirmative defenses to charges of changes in conditions of employment

5036-7500—Cont.

C. R. Adams Trucking, Inc., and Michael Cates 262 NLRB No. 067
(discharging Ees for not complying with E's request that they falsify U membership applications by stating that they are in dependent contractors, so E would not have to pay to U health and welfare benefit payments, violative)

5036-7525 Business management considerations

Operating Engineers and Participating Employers Pre-Apprentice, Apprentice and Journeymen Affirmative Action Training Fund For Hawaii and Operating Engineers Joint Apprenticeship Committee For Hawaii 265 NLRB No. 131
(discharge of Ees of U apprentice training fund lawful, where made in interest of efficiency of operation in accord with staffing study and not motivated by attempts of these Ees to obtain enforcement of manning ratios in apprentice program they administered; and where decision to discharge was not made by or influenced by individual who had made unlawful threat of discharge to these Ees for cooperating with government agencies against him)

Rose's Stores, Inc. 256 NLRB No. 076
(unprecedented mass discharge of five Ees, who protested Sunday work assignment, assertedly because of their *bad attitude* held violative, where assertion was not real reason for discharge and E's unexplained failure to warn those five long-term Ees that they were in danger of discharge did not represent E's normal pattern of operations)

Maine Apple Growers, Inc. 254 NLRB No. 060
(delaying recall, after election, of seasonal apple packers, who had requested raise in wages and had directed grievance letter to E's board of directors, assertedly because they were responsible for low production held violative where E's business justification for its action had not been established; E's unlawful statement to Ees that *agitation* had to cease coupled with its unexplained deviation from its normal method of disciplining overly talkative Ees established E's unlawful motive)

S. L. Industries Inc. and Extruded Products, Corp. 252 NLRB No. 151
(requiring discriminatees entitled to reinstatement to be interviewed before they were allowed to return to work held violative where such requirement had no legitimate business justification)

Amber Delivery Service, Inc. 250 NLRB No. 016
(institution of changes in methods of operation designed to change Ees' status to that of independent contractors, violative)

J. N. Moser Trucking, Incorporated 249 NLRB No. 106
(E's defense that reason for discharge of Ee truckdriver was Ee's damaging engine rejected, notwithstanding fact that damage gave E cause to discharge Ee, since real reason for discharge was Ee's refusal to assist E in defeating claims made by Wage and Hour Division of U.S. Department of Labor)

Flair Molded Plastics, Inc. JD-8-82
(increasing throughput by speeding up machines not violative where for economic reasons and absence of discriminatory motive)

Aero Warehouse, Inc. JD-(NY)-48-81
(layoff which coincided with U's demand for recognition and also with notification that E would not receive anticipated contract, not unlawful, in view of absence of U animus, notice of impending layoff to Ees prior to advent of U, and E's dire economic situation)

Aztec Manufacturing Company JD-(SF)-92-80
(E's elimination of shift and resultant termination of all shift Ees not violative, notwithstanding timing and abruptness of action, where E's decision was motivated by substantial business reasons and prior to any knowledge of Ees' organizational meeting of previous night)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)
(elements of Section 8(a)(1) violation are determined by reference to objective test; it is not necessary to show that particular Ees actually felt coerced, or that E intended to produce impermissible effect; rather only need show that E's actions would tend to coerce reasonable Ee; however, E can defend on grounds of business justification and then there is violation only when Sec. 7 rights outweighs business justification for E's actions)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)
(E may lawfully treat differently U and non-U Ees in different bargaining units, where legitimate business justification is shown for such action, and absent bad faith or anti-U motive)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. 636 F.2d 1255 (C.A. 7, 1980)
(ct held contrary to Bd that change in sick leave policy shortly after U victory in representation election was not unlawful, since timing alone did not justify conclusion that change was discriminatory, and record showed E's economic reason was to make department's policies on sick leave uniform with those of other departments)

5036-7550 Good-faith belief that employee misconduct justified change

Jacques Syl Knitwear, Inc. 247 NLRB No. 191
(discharge of and refusal to reinstate strikers for allegedly violently assaulting fellow Ee during strike, not lawful, where Ee alleged to have been assaulted had swung her pocketbook at strikers and in fact assault as alleged had not taken place; notwithstanding dischargees found guilty of alleged assault in municipal ct)

5036-7550-3000 May be defense

Good Samaritan Hospital & Health Center 265 NLRB No. 092
(discharge of two occupational therapists by coordinator of agency providing developmental therapy for learning disabled children, because therapists complained of coordinator's mismanagement of program and inappropriate treatment model to be used by agency held not violative, since therapists were in no way disturbed or troubled by any personal demands imposed on them by coordinator's policy decisions; welfare of children was therapists' concern; therapists criticisms and recommendations related to disputes outside objectives of mutual aid or protection provisions of NLRA)

K & K Transportation Corp., Inc. 262 NLRB No. 182
(failure to reinstate ULP strikers husband and wife not violative, where E had sufficient basis to believe they had sabotaged E's trailer-truck causing serious damage to equipment and endangering safety of other motorists, and GC failed to prove that strikers were not in fact guilty of alleged misconduct; fact that misconduct occurred miles away from E's facility was apparently result of premeditated conduct engaged in far from picket line)

N.L.R.B. v. Fixtures Manufacturing Corporation 669 F.2d 547 (C.A. 8, Jan. 1982)
(ct rejects Bd's theory that *Ee's wrongdoing, however serious, is automatically immunized from results of polygraph test given for impermissible reason,* i.e., Ee was ordered to take test on day E received written report of his U activity)

Montgomery Ward & Co., Inc. v. N.L.R.B. 664 F.2d 1095 (C.A. 8, Nov. 1981)
(*make whole* relief, including back pay and reinstatement, *improper* where Ees were discharged for admittedly stealing goods from E and not for requesting U assistance at investigatory interview; Section 10(c) of Act, precludes back pay order and reinstatement under such circumstances)

5036-7550-5000 No defense if activity protected

Maryland Shipbuilding and Dry Dock Co. 256 NLRB No. 069
(suspension of Ee for failing to complete sufficient portion of painting assignment, unlawful, since really for complaining about safety rules in bargaining contract with regard to working in remote areas and time spent on Ee's complaint was significant factor in E's decision to suspend Ee)

5036-7550-6700 No defense if conduct did not in fact occur

General Telephone Company of Michigan 251 NLRB No. 099
(E's disciplining Ees for alleged misconduct during strike, violative, where E failed to detail in record activity for which each striker was accused; E's *honest belief* that misconduct had occurred required some specifity in record linking particular Ees to particular allegations of misconduct in order to satisfy E's burden of proof)

Roadway Express, Inc. 250 NLRB No. 061
(where some Ees had engaged in unauthorized work stoppage and U steward returned to E's facility after leaving work at end of his regular work day, E's discharging steward for purportedly participating in unauthorized work stoppage held violative notwithstanding E's assumed good-faith belief that steward had participated in work stoppage upon returning to facility; Ee, in his capacity as U steward,was engaged in efforts to end work stoppage when he was discharged)

Babcock & Wilcox Co. 249 NLRB No. 099
(discharge of U president because of E's erroneous belief that, while engaged in protected activities associated with his office of U president, he had instigated wildcat strike and promoted it w/i U, unlawful; in view of such finding and since remedy would be same, Bd found it unnecessary to decide whether or not E also violated 8(a)(3))

5036-8300 Threats of changes in conditions of employment

Marine Optical, Inc. 255 NLRB No. 158
(advising Ees, prior to transferring operations to new location, that E would not recognize U or apply existing contract at new location, and that wages, hours, and benefits at new location would be different from those in effect at old location, unlawful)

N.L.R.B. v. United Optical Workers Union Local 408, Electrical Workers (Marine Optical, Inc.) 671 F.2d 11 (C.A. 1, Feb. 1982)
(E's statements to Ees which made it clear that the U contract would end upon relocation of operations and that E intended to change conditions of employment held violative, where statements, following E's withdrawal of recognition from and refusal to bargain with U, could reasonably be interpreted by Ees as a message that U membership would be futile)

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N.L.R.B. v. Chatfield-Anderson Co., Inc., dba Truss-Span Co. **606 F.2d 266 (C.A. 9, 1979)**
(notwithstanding ct affirming Bd's finding of violations, ct stated that threats were generally mild and company issued disclaimers which tended to dissipate coercive impact; furthermore, statements made by low-level supervisors are more likely to express individual views and less likely to influence Ee's decision than statements by high-level officials which bears the imprint of company policy)

5036-8301 Generally

Parker-Robb Chevrolet, Inc. **262 NLRB No. 058**
(although discharge of supervisor may be lawful, E's use of such discharge to threaten Ees may constitute 8(a)(1) violation on basis of such threat)

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**
(in finding 8(a)(1) violations, ALJ considered fact that E's statements were part of overall pattern of conduct aimed at coercing Ees in exercise of their statutory rights and that E had the power to hire and fire Ees; moreover, E never gave assurances against reprisal and, in some cases, did make threats of reprisal)

TRW, Incorporated v. N.L.R.B. **654 F.2d 307 (C.A. 5, 1981)**
(supervisor's statements to Ee that *we ain't going to negotiate with* U and that he was better *U ouster* than another management Ee are abrasive and hostile but do not rise to level of threats or reprisal against Ee for engaging in U activities, but were mere *puffing boasts and expressions of opinion*)

Seligman and Associates, Inc. v. N.L.R.B. **639 F.2d 307 (C.A. 6, 1981)**
(Bd's finding of supervisor's unlawful threats to Ees supported by substantial evidence; it is irrelevant that supervisor was friendly with Ees she spoke to and that she eventually married one of them)

N.L.R.B. v. Franklin Property Company, Inc., d/b/a The Hilton Inn **617 F.2d 447 (C.A. 6, 1980)**
(ct enforced Bd order where there was substantial evidence to support findings that E coercively interrogated and threatened Ees)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. **679 F.2d 673 (C.A. 7, May 1982)**
(threatening Ees with retaliation for engaging in concerted activities, violative even if Ees have not attempted or even contemplated exercising their Section 7 rights)

5036-8302 Nonspecific threat of reprisal

Allied Industrial Workers of America, AFL-CIO, Region 8 **265 NLRB No. 077**
(statement by regional director of E, a U, to one of its regional representatives that he would retaliate against the regional representatives for *getting together against him* and filing joint grievance unlawful, since statement was likely to convey to the regional representative to whom it was made, one of the grievance participants, threat as to such protected activity)

Daniel Construction Company, A Division of Daniel International Corporation **264 NLRB No. 079**
(foreman's remarking to Ees that *it would be to our best interest that we would not get a U--and we should try to get our signed U card back*--- held violative, since Ees would reasonably have had tendency to cause them to consider possible perils of not attempting to retrieve U cards)

Economy Fire and Casualty Co. **264 NLRB No. 003**
(statement that no one knows what will happen because there's never been a union in E's offices before in response to question whether E will move if U wins held thinly veiled threat of retaliation even though it was qualified by statement that it would not be in E's best interest to move)

St. Francis Hospital **263 NLRB No. 109**
(supervisor saying, in response to Ee's refusal to talk to supervisor because Ee was too busy when requested, *okay just wait until you want to talk to me about something,* held not violative, since statement, standing alone was too nebulous to constitute unlawful threat of reprisal; no evidence linking supervisor's statement to any job action supervisor might take against Ee)

Atlas Railroad Construction Co. **262 NLRB No. 186**
(E official's statement to U steward during argument about show up pay that U steward thought he had power because they were on coal mine job but that he, E official, would show him *who had the power,* violative since statement was threat of reprisals against U steward for demanding that E comply with terms of bargaining agreement)

Granite City Journal, Inc. **262 NLRB No. 140**
(E official's anti-U statements to Ee, stating he knew where Ee was vis-a-vis U, accusing Us of having outlived their purpose and being communistic, and implying that he was fearful of losing his job and that he would do whatever was necessary to save his career, while accusing Ee of participating in conduct which was ruining his life, not unlawful, since official's assumption that he knew where Ee stood in regard to U was more rhetorical than informational as alleged, and there was no threat of unspecified reprisals)

Carruthers Ready Mix, Inc. **262 NLRB No. 090**
(suggesting to striker on first day of strike in presence of other striking Ees that U supporters would not be tolerated at E's plant, unlawful)

Onan, a Division of One Corporation **261 NLRB No. 187**
(where supervisor asked why Ee wore U cap and Ee replied it was to keep the sun off, supervisor's statement that that had better be the only reason constituted unlawful threat of unspecified reprisal)

Sterling Sugars, Inc. **261 NLRB No. 071**
(threatening Ee with unspecified reprisals and discharge if he testified against E, violative since it was clear attempt to interfere with Bd's processes)

G.T.A. Enterprises, Inc. d/b/a Restaurant Horikawa **260 NLRB No. 029**
(E's statement to U adherent that he had *means of getting even* violative)

Quick Find Co. **259 NLRB No. 144**
(asking non-unit Ee *well, what can they do now?* held unlawful threat in context, as it followed Ee's statement that her husband, found supervisor herein, would be subject to discharge if they abandoned U)

Caffe Giovanni, Inc. d/b/a Giovanni's **259 NLRB No. 031**
(threatening reprisals against *Mexicans* because of their support for U, unlawful, where Ee's testimony to that effect was credited and, other than a denial, E offered no explanation for its conduct)

Caffe Giovanni, Inc. d/b/a Giovanni's **259 NLRB No. 031**
(E's interrogation of Ee as to his U activities, accompanied by threats of unspecified harm if U won election, unlawful, where, although Ee may have taken E's remarks in jest, she was quite sincere, meant what she said, and understood seriousness of her remarks)

Arnold Ready Mix Corporation **259 NLRB No. 026**
(violation where E threatened Ees with reprisals, including bad work assignment and bad references because they filed grievances protesting E's use of relatives while other U members were on layoff)

Saint Luke's Hospital **258 NLRB No. 045**
(department head's calling Ees to office, warning them to *think twice* about what they were getting into before getting involved with U because E would never recognize U, held unlawful threat of reprisal and futility of organizing efforts, notwithstanding personal and friendly nature of conversation)

Brockwood Furniture, Division of U.S. Industries **258 NLRB No. 028**
(statements to Ees that they would get in trouble by supporting U and by being on U organizing committee, that leadman could not afford to vote for U, and that Ee seeking higher wages for another Ee should change his negative attitude held interference and violative of 8(a)(1))

Thurston Motor Lines, Inc. **257 NLRB No. 171**
(after Bd agent announced that U had won election, E's statement, *You all lied to me. You all will take it as the chips fall* held thinly veiled threat of reprisal)

Clements Wire & Manufacturing Company, Inc. **257 NLRB No. 075**
(telling Ees if U came in a lot would be taken away from them, violative)

E. I. Dupont De Nemours & Company, Inc. **257 NLRB No. 033**
(telling Ee to *lay low on U matters* since he had been written up for unsatisfactory performance, violative, where such statement constituted threat of unspecified reprisals)

E. I. Dupont De Nemours & Company, Inc. **257 NLRB No. 033**
(telling U adherent that he was discussed at meeting of supervisors and considered threat because of his U activities and his filing workmen's compensation claim, violative)

Harrison Steel Castings Company **262 NLRB No. 059**
(in response to inquiry of Ee as to what Ees who had change of heart about U should do, president of E said they should remove their U insignias and turn it into their supervisors, violative, since suggestion by president plainly implied that those wearing U buttons had cause for alarm)

M. A. Harrison Manufacturing Company, Inc. **256 NLRB No. 071**
(threatening returning strikers with reprisals, violative)

Air Transit, Inc. **256 NLRB No. 044**
(threatening Ees that they would need U if they continued their organizing effort on behalf of U, unlawful)

Le Roy Fantasies, Inc., and Hardwicke's Plum, Inc., A Joint Venture, d/b/a Maxwell's Plum **256 NLRB No. 036**
(telling Ees that they would regret joining U, violative)

Transportation Management Corp. **256 NLRB No. 025**
(supervisor's statement to one Ee that he had heard that another Ee had started U, was two-faced, and he would get even held threat of reprisal)

Transportation Management Corp. **256 NLRB No. 025**
(after learning from Ee that another Ee was interested in U, supervisor's telling first Ee that he would remember those U activities next time latter Ee asked for such favors as leaving early to work at state fair in summer or parking personal truck in supervisor's driveway held implied threat of reprisal)

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Mark Lines, Inc. **255 NLRB No. 191**
(telling Ee who had been elected to Ee committee which was support arm of U's organizational effort that *now you're on the committee, you are walking on thin ice,* violative)

Pettibone Corporation **255 NLRB No. 151**
(threatening Ees that their discussion of working conditions with supervisor and request for pay raise would go against them in their pay reviews and *there is the door* and they were free to leave, held violative)

K-Mart Corporation **255 NLRB No. 112**
(telling Ee that if U came in, *the company only had to give what they wanted or they could even take away,* violative)

Boyer Ford Trucks, Inc. **254 NLRB No. 184**
(E's threats of loss of employment or other detriment made to unrepresented Ees who refused to sign individual agreements containing pay plan, not unlawful since such threats were not aimed at chilling U or concerted activities but at inducing individual assent to individual agreements)

Borman's, Inc. **254 NLRB No. 130**
(threatening Ees with discipline for wearing T-shirts with Company name and words, *I'm tired of bustin my ass,* violation)

The Coca-Cola Company Foods Division **254 NLRB No. 099**
(threatening Ee with reprisals if he discussed with other Ees his grievance meetings with management, his treatment by management and other terms and conditions of employment, violative)

Overnite Transportation Company **254 NLRB No. 011**
(telling Ee that coworker had been fired because of his U activity and several other Ees were scheduled to be fired for same reason, violative)

Gossen Company, a Division of the United States
Gypsum Company **254 NLRB No. 041**
(supervisor's remarking to U adherent who was complaining about denial of her request for return to former classification *what do you expect when you buck the system,* not unlawful, where supervisor was brother-in-law and there existed close family relationship with frequent candid discussions)

Piezo Technology, Inc. **253 NLRB No. 122**
(reading prepared speech to Ees that E could find out who signed U cards if U showed E cards as indication of majority status, violative, where such subtle warning had chilling effect on Ee Section 7 rights)

Dillman Foods, Inc. **253 NLRB No. 114**
(violation where E explained to Ees his company policy that *he did not want U* and instructed Ees to report identity of U card solicitors *and he would take care of it accordingly*)

Woonsocket Spinning Company **252 NLRB No. 163**
(threatening Ee members of U negotiating committee who reported E's poor labor relations policies to Ees violative)

United States Postal Service **252 NLRB No. 014**
(physician's remarks about U, made during physical examination of Ee, and his questioning of Ee as to why Ee wanted U representative with him at physical examination, not unlawful where, although physician was supervisor of nurses, he was not acting in supervisory capacity as to Ee being examined, and his question and remarks that Ee deserved discipline, which were due to his personal irritation, could neither be attributed to E nor reasonably be construed as threat of retaliation)

Certain-Teed Insulation Company **251 NLRB No. 208**
(statement made during unlawful interrogation prior to election that if U comes in *there might be a job slowdown, expansion might be slower, advancement might not be as fast,* etcetera, violative, where statement transcends mere opinion to constitute threat of adverse consequences if U selected)

Dennis G. Maietta and Frank M. Maietta t/a
Maietta Contracting **251 NLRB No. 037**
(threatening Ees if they did not sign document which favored E by stating that Ee was satisfied with E's working conditions and did not want U, unlawful)

Sun Belt Linens, Inc., d/b/a South Texas Linen
Service (Laundry and Dye House Workers,
Local 281, a/w Teamsters) **250 NLRB No. 174**
(sales manager's questioning of Ee and his admonition to her that her walkout efforts were *not nice thing to do,* unlawful, since they were designed to coerce her to abandon her determination to walk out)

Clark Equipment Company **250 NLRB No. 178**
(telling Ees it would be *hell* to work there if they voted for U, violative)

Clark Equipment Company **250 NLRB No. 178**
(telling Ees that they stick their necks out by wearing U badges, violative)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(statement informing Ee that E was calling all Ees to warn them that if they attended U meeting *they would be in trouble,* unlawful)

Magnesium Casting Company, Inc. **250 NLRB No. 137**
(threat that Ee should look after his job because he had a family, unlawful, in view of E's statement that U should not get in for betterment of Company)

Hall of Mississippi, Inc. **249 NLRB No. 119**
(remarks that Ees were making big mistake in supporting U and were going to learn hard way, violative)

Han-Dee Pak, Inc. **249 NLRB No. 107**
(threatening trouble to Ees who signed U cards, violative)

Capriccio's Restaurant, Inc. **249 NLRB No. 100**
(E unlawfully threatened Ees with reprisals for engaging in U activities by telling them that, after it made telephone call out-of-town, it would make everybody involved with U disappear)

Lyman Steel Company **249 NLRB No. 040**
(pressing Ee to sign statement that he had received U authorization card from U advocate during working hours, violative, since activity, in anti-U context, suggested E planned reprisals for Ees who supported petitioner)

St. Francis Hospital **249 NLRB No. 017**
(statement that Ee would be punished *to the maximum* if she was ever caught with U materials violative)

Permanent Label Corporation **248 NLRB No. 021**
(threats of discipline directed toward 3 most active U supporters during meeting of supervisors violative where E had contrived, flimsy basis for believing Ees to be supervisors)

International Medication Systems, Ltd. **247 NLRB No. 190**
(remark *What if you get put in jail?* to Ee who had executed affidavits relating to investigation and trial of Bd proceeding, unlawful, where, in context in which it was said, it may reasonably be construed as threat of reprisal for being involved with U)

Mid-East Consolidation Warehouse, A Division of
Ethan Allen, Inc. **247 NLRB No. 090**
(suggestion to Ee that he should try to talk Ees out of supporting U and that *last time this happened about the union, you know, the company wouldn't put up with that* constituted threat that company would retaliate against Ees for their U activities)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(statement to Ee that Ees would have to go on strike to get U in at plant, unlawful as threat of reprisal, since statement was not based on objective fact and was obviously injected to raise fears of reprisal)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland
North and Bucyrus Foodland South **247 NLRB No. 038**
(unlawful threat of disparate treatment by statement to U adherent that if he were caught sitting or laughing in back room, *you're dead*)

Thermo King Corporation **247 NLRB No. 048**
(supervisor's statement to Ee that he would be cutting his throat if he voted for U, unlawful, since it constituted threat of economic and other reprisals for voting for U)

Oak Harbor Freight Lines, Inc. **JD-(SF)-211-82**
(supervisor's remarking to Ee that he would *be sorry* if he persisted in his efforts to stop supervisor from doing unit work, violative)

Harvard Cooperative Society, Inc. **JD-246-82**
(after Ee had inquired about opening as manager, E's question of how could he aspire to that position with pro-U feelings, violative as threat of reprisal and his U advocacy would be weighed in considering him and U membership was in compatable with promotion)

Eckerd Drugs of Florida, Inc. **JD-70-82**
(asking Ee if she had signed U card and why and telling her fact that she had signed card would be on her records and would follow her to any store of E that she might transfer to, violative)

United States Steel Corporation **JD-(ATL)-90-81**
(threatening retaliation for Ee's filing of grievances over supervisors performing Ees' work, unlawful)

Ford Motor Company, Automotive Division, Twin
Cities Plant **JD-57-81**
(threatening Ees with discipline and reprisals for filing grievances, unlawful)

American Interstate Freight Lines **JD-117-81**
(warning Ee with reprisal if he sought Us help, violative)

Convenience Store Distributing Company, a
Partnership of Marsh Supermarkets, Inc. and
King Kwix Minit Market, Inc. **JD-745-80**
(informing Ee that only bad people needed Us violative, since statement could reasonably cause Ee to believe that E was threatening some sort of disciplinary action against such bad Ees who supported U)

Lucky Lion Edgewater, Inc. d/b/a Lucky Lion **JD-(SF)-348-80**
(E's failure to produce documentation, solely w/i its control, to support claim of its financial difficulties, required drawing of adverse inference; accordingly, supervisor's statements, regarding impact of successful organizing campaign upon Ees, were not shown to be related to economic necessities and were not reasonable predictions but threats of retaliation)

5036-8302—Cont.

U. S. Postal Service JD-(SF)-242-80

(supervisor held not to have threatened to retaliate against Ee because of U steward's insistence on investigating incident involving supervisor and Ee, or to have retaliated against attempts of U steward to investigate incident by issuing Ee a letter of warning, where Ee engaged in conduct which E reasonably viewed as insubordinate and supervisor immediately reported incident to his superiors at which time decision was made to discipline Ee, and such decision was reached several hours prior to steward's arrival at the scene)

Paschke Packing Company JD-(NY)-33-80

(interrogation of Ee as to why he had filed ULP charges against E and threats to make it rough for him, unlawful)

Giuliem Apparel Corp. JD-162-80

(E president's statement to Ee that heads would roll if he found out who was behind U, unlawful)

Garden State Motors Co. JD-160-80

Roadway Express, Inc. JD-868-79

(no violation by E's statement that disciplinary action would result from senior Ee's refusal to carry out assignment because of availability of junior men when he was told that assignment was according to past practice and that grievance procedures were available for his protests)

E. W. Saybolt & Company, Inc. JD-06-80

(E's statement upon being told that Ee had been subpoenaed to testify in this proceeding that he was sure Ee would do the right thing held not to constitute threat of reprisal for testifying in Bd proceeding)

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)

(advising non-supervisory Ees it was unlawful for them to engage in U activities since they were considered to be supervisors and E had right to take action against them if they engaged in U activity)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. 691 F.2d 1133 (C.A. 4, Sept. 20, 1982)

(when U adherent told E that U would challenge results of election in ct and E replied, you are getting in deeper and deeper, it violated Act, as such conduct is calculated to make Ee fearful of E's reaction to her U activity)

J. P. Stevens & Co., Inc. v. N.L.R.B. 638 F.2d 676 (C.A. 4, 1980)

(ct deferred to Bd's expertise in finding posted notice stating that signing U card can have *serious consequences* unlawfully coercive especially in context of E's history of misconduct; moreover, notice was posted only day after known U activist disappeared from plant)

Rock Hill Telephone Company v. N.L.R.B. 605 F.2d 139 (C.A. 4, 1979)

Berman's, Inc. v. N.L.R.B. 676 F.2d 1138 (C.A. 6, May 1982)

(threatening Ees with discipline for wearing T-shirts with slogan *I'm tired of bustin' my ass* not violative, since no evidence supported Bd's finding that wearing of T-shirt constituted exercise of any right protected under NLRA)

N.L.R.B. v. Fisher Cheese Company 642 F.2d 452(T) (C.A. 6, Dec 29, 1980)

(ct denied enforcement of Bd's order finding that certain statements made by E during U organizing campaign constituted veiled threat of economic retaliation, since law of this circuit is clearly contrary to that relied upon by Bd as authority to issue order)

Red Oaks Nursing Home, Inc. v. N.L.R.B. 633 F.2d 503 (C.A. 7, 1980)

(personnel director's telling Ee that if Union came in he was *going to make it hard for you girls,* violative)

5036-8303 Discipline or warnings thereof

The Exchange Bank 264 NLRB No. 111

(E telling Ee that at least 10 people had told him that he had gotten *all this* started, and that she was trouble maker and instigator in bookkeeping department, and *it can't be allowed to go on* and then asking her why she wouldn't tear up pin and telling her he would do whatever was necessary to see that bank ran smoothly, violative)

Vincent Brass & Aluminum Co. 264 NLRB No. 070

(E's superintendent informing U steward that he was *tired of all the grievances and nit picking* and threatening to start writing Ees up for overstaying breaks or lunch period, unlawful)

U. S. Electrical Motors, A Division of Emerson Electric Co. 261 NLRB No. 184

(threat to discipline U adherent if any additional Ee complaints were received regarding U adherent's U solicitations, unlawful in that it conditioned U adherent's protected activity on receptiveness of his fellow Ees)

M K Laboratories, Inc. 261 NLRB No. 021

(refusing to permit Ees to attend unemployment compensation hearing involving fellow Ee and threatening them with discipline if they took time off, unlawful where there was no record evidence that E did in fact have legitimate business reason for denying Ees' request to attend the hearing, as contended)

Saint Luke's Hospital 238 NLRB No. 048

(asking Ee what he thought about U organizing efforts of health care Ees, how he felt about U, and warning Ee that he would have to take responsibility if he honored picket line during anticipated strike held unlawful threat of disciplinary action)

Chromalloy American Corporation-Liberty Radiator Division JD-(SF)-303-82

(threatening to give Ee a warning for violating plant rule against gambling if Ee filed grievance, unlawful)

Ford Motor Company, Automotive Division, Twin Cities Plant JD-57-81

(threatening Ees with discipline and reprisals for filing grievances, unlawful)

Ford Motor Company, Automotive Division, Twin Cities Plant JD-57-81

(threatening to send Ee home if he requested U committeeman's presence during investigatory hearing which might result in discipline, unlawful)

Ford Motor Company, Automotive Division, Twin Cities Plant JD-57-81

(threatening to discipline Ees if they discussed their common concerns about working conditions and what to do about them, unlawful)

N.L.R.B. v. Alumina Ceramics, Inc. 690 F.2d 136 (C.A. 8, Oct. 1982)

(threatening Ee with discipline in order to discourage his U activities, unlawful)

5036-8304 Abolishing striker's jobs

Lyman Steel Company 249 NLRB No. 040

(warning Ees, prior to rerun election, that if U was successful in organizing Ees and if they went on strike and no agreement reached on contract E *could get rid of (them) and bring in a whole crew,* held violative)

Fotomat Corporation 248 NLRB No. 150

5036-8306 Report employees to authorities

G.T.A. Enterprises, Inc. d/b/a **Restaurant Horikawa** 260 NLRB No. 029

(threat to have Japanese Ee who was U adherent deported violative)

Viracon, Inc. 256 NLRB No. 037

(approaching number of Ees of Mexican descent concerning possibility that they might be reported to Immigration Service should U be successful, violative)

5036-8308 Blacklist

Alpha Cellulose Corporation 265 NLRB No. 010

(statements in E's letters to Ees that they would be unable to find employment with area employers after being replaced in strike held not predictions of consequences of unionization, but unlawful, where statements were not-so-subtle threat that Ees who engaged in protected activities would be blacklisted by E and would, for discriminatory reasons, be denied employment by other Es, since E's letters made no mention of unemployment in area nor spoke to general problems of unemployed persons gaining employment and, instead, suggested that replaced striker would not be hired by other Ees, thereby impressing upon Ees folly and futility of electing U)

Alpha Cellulose Corporation 265 NLRB No. 010

(unlike cases in which evidence was insufficient to establish that E remarks about Ees finding other employment after being replaced in strike constituted threats to blacklist Ees on account of their protected activities, E's statements herein, when viewed in overall context and E's strong anti-U message, and coupled with its threats of permanent replacement, constituted unlawful implied threat to blacklist Ees for their protected activities)

Larid Printing, Inc. 264 NLRB No. 040

(informing Ee he was making big mistake in bringing U in, if U came in and shop closed down Ee was going to have bad name in industry, and if U came in E would have to get very technical, and everything would have to be done by book, unlawful)

Valley Plaza, Inc. d/b/a Captain Nemo's 258 NLRB No. 076

Boyer Ford Trucks, Inc. 254 NLRB No. 184

(statement to Ee that if she went along with unionization effort, she would be blackballed for employment with every other dealership, violative)

Boyer Ford Trucks, Inc. 254 NLRB No. 184

(statement to Ee that if she did not want to be blackballed for going along with unionization, she should go to E's office and make him pledge of *loyalty,* violative)

Suburban Chevrolet, Inc. 254 NLRB No. 016

(general manager's statement to Ee that if he had his money up, he *would close this place up and tell world what 11 guys did to him* not unlawful threat to blacklist Ees because of their U activities)

Gordonsville Industries, Inc. 252 NLRB No. 054

(supervisor's statement that E was maintaining *a little black book* on Ees which would prevent them from obtaining other jobs, violative)

5036-8308—Cont.

B. E. & K., Inc. **253 NLRB No. 036**
(injection of idea of blacklist into E's preelection remarks by stating that other Es put Ees' names on it if they were affiliated with or voting for U held threat of loss of job opportunity with E and with other Es and, as such, interference with election; effect of E's disavowal that it would consider it as not intended as a true disavowal)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(E's statement to Ee that discharged Ee was on blacklist and would not be able to find employment in area violative as threat to Ee that similar fate could befall him if he was fired for U activity)

Galax Apparel Corporation **247 NLRB No. 026**

Hammond Plastic, Division of Carl Gordon Industries, Inc. **JD-583-81**
(threatening to blackball Ees in reprisal for U activities, unlawful)

Sea-Alaska Products, Inc. **JD-(SF)-130-82**
(threatening Ees that if Ees were found out to be for U, they would be fired or *blackballed,* violative)

Illinois Valley Electric Cooperative, Inc. **JD-251-81**
(E's attempt to prevent striking Ees from working for other contractors on E's property, violative)

American Navigation Co. **JD-(SF)-296-80**
(threatening to call Es in area to prevent Ee from obtaining future employment because of his U activities, violative)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(informing Ee that if plant closed when U came in, E would have difficulty in getting another job with non-U E, violative)

5036-8310 Denial of reemployment or reinstatement

Brunswick Hospital Center, Inc. **265 NLRB No. 112**
(threat made by E to guard that two striking nurses were troublemakers and no matter what outcome of strike would be, they would not be employed again by E held violative, notwithstanding threat was made to *guard* not member of unit of nurses; *guards* not supervisors as defined in Act and customary exclusionary language in Act does not presume guards are supervisors; both guards and nurses had Ee status, therefore threat was coercive)

Admiral Merchants Motor Freight, Inc. **265 NLRB No. 016**
(supervisor's threat not to recall Ee unless he waived his contractual benefits, unlawful)

Atlas Railroad Construction Co. **262 NLRB No. 156**
(telling Ee that E would not hire other Ee because of his actions while serving as U steward on previous job, violative)

Carruthers Ready Mix, Inc. **262 NLRB No. 090**
(threatening Ee that he would not be recalled because of his participation in strike, unlawful notwithstanding remark was not alleged as violation and alleged speaker denied making it, since issue was fully litigated, and speaker's testimony was not credited)

Amoco Fabrics Co., Patchogue-Plymouth Division/ Nashville Mills **260 NLRB No. 038**
(threat that if U came in would no longer be able to take grievances directly to supervisor violative)

Red Food Store **252 NLRB No. 023**
(statement that E would not hire anyone who had worked at unionized store constituted unlawful threat)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where E misstated law on strikers' rights by declaring that it had no duty to rehire Ees who were replaced during strike and thus threatened Ees with future permanent loss of employment if they engaged in economic strike)

Butterfield Homes, Inc. **JD-(SF)-101-82**
(telling Ee that an applicant had been denied employment because of his past activities on behalf of a U, violative)

Vinci Investment Co., d/b/a Pacific Honda **JD-(SF)-56-81**
(telling applicants that they would not be hired if they supported U, violative)

U. S. Oil & Refining Company **JD-(SF)-116-80**
(no violation by informing U president that U's interpretation of seniority provisions of bargaining agreement would have adverse effect on summer employment for sons and daughters of E's Ees)

5036-8311 Suspension

Inland Steel Company **264 NLRB No. 015**
(E's discharge of Ee for refusal to cross picket line at E's premises resulting from strike against contractor performing work there and whose Ees were represented by local U other than local representing E's Ees, violative, notwithstanding no-strike provision in agreement between E and U, since agreement did not encompass sympathy strikes; right to participate in sympathy strike not otherwise waived, and picketing not in violation of Section 8(b)(4))

Huck Manufacturing Company **264 NLRB No. 088**
(where E in discussion with Ee originally stated that he could permanently replace all striking Ees and then retracted statement and stated correctly that striking Ees would be eligible for reinstatement as their replacements left his employ did not violate Act as his explanation was not in error nor coercive)

Intermountain Rural Electric Association **253 NLRB No. 164**
(manager's remark to U adherent that he had been thinking of suspending her and that she would *probably be fired* if she failed to report for work despite having doctor's note to take leave, violative, since remark was motivated by adherent's U activities)

Weyerhaeuser Company **251 NLRB No. 097**
(comment to Ee in reference to his giving advice to fellow Ee concerning U and wage claim which was coupled with reference to suspended Ee, violative, where it could reasonably be construed as threat of suspension)

Good Samaritan Nursing Home, Inc. **250 NLRB No. 030**
(violation where supervisor informed Ee that she could either talk to him w/o another Ee being present as witness at Ee interview, or consider herself suspended)

Consolidated Edison Company of New York, Inc. **JD-(NY)-70-82**
(threatening suspension if two Ees exercised their right to file grievances under contract, not unlawful, where Ees had in past utilized grievance machinery in bad faith to harass E and supplant their own terms and conditions of employment for those established through bargaining process)

The Gilbert and Bennett Mfg. Co. **JD-578-80**
(suspension and discharge of Ee because of his complaints to E directly and through U about not receiving his overtime backpay under arbitrator's award violative)

5036-8312 Discharge or layoff

Belcher Towing Company **265 NLRB No. 159**
(supervisor's threat that E could find reason to fire an Ee, if it wanted to, made in response to Ee's statement that if E thought Ee was U plant *they say you could get fired,* unlawful)

Belcher Towing Company **265 NLRB No. 159**
(supervisor's threat to Ee that one of the few ways to save his job was to apologize to E for signing U card and to promise to vote for company, unlawful)

Belcher Towing Company **265 NLRB No. 159**
(supervisor's threat to Ee that, if E wanted to, it could find reason to fire Ee because he had signed U card, unlawful)

Fuqua Continental Corp.; Elite Services, Inc. **265 NLRB No. 165**
(E's soliciting and directing Ee to sign card for favored U, and threatening him with discharge if he refused to do so and with reprisals if he supported rival U, unlawful)

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric **265 NLRB No. 203**
(E's conduct held unlawful where, during conversation with Ee-U adherent, E implicitly threatened Ee with discharge by making thinly veiled allusions to discharge on previous day of another U protagonist and then stating that E *didn't want any trouble in the shop* and that if Ee thought *he could do better that he could go elsewhere;* such invitation to quit is coercive and threatening because it conveys to Ees clear message that support for U and continued employment are not compatible)

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric **265 NLRB No. 203**
(contention that E threatened Ee with discharge if he caused any trouble in shop because of his participation in pro-U conversations, rejected, since E's conversational references to possible *trouble* cannot be considered threats of discharge)

Elias Mallouk Realty Corp. **265 NLRB No. 156**
(E asserting it was not able to meet U's wage demands, that it had overbundance of personnel and warning Ees against supporting incumbent U held veiled and implied threat of discharge and economic reprisal; and *no less effective because implied*)

Operating Engineers and Participating Employees Pre-Apprentice, Apprentice and Journeymen Affirmative Action Training Fund For Hawaii and Operating Engineers Joint Apprenticeship Committee For Hawaii **265 NLRB No. 131**
(U apprentice training fund administrator threatening to discharge Ees, unlawful, where for complaining to and cooperating with government agencies concerning U shakedown of contractors)

5036-8312—Cont.

Allied Industrial Workers of America, AFL-CIO, Region 8 **265 NLRB No. 077**
(statement by regional director of E, a U, to one of its regional representatives that another regional representative should keep his nose out of office clericals strike or he would be fired, unlawful, since at least regional representative to whom statement was made was restrained or coerced as to such protected conduct)

Allied Industrial Workers of America, AFL-CIO, Region 8 **265 NLRB No. 077**
(threat by regional director of E, a U, to discharge regional representative for entering regional office w/o permission, not unlawful where prohibiting regional representative from entering w/o permission was found not unlawful herein)

Allied Industrial Workers of America, AFL-CIO, Region 8 **265 NLRB No. 077**
(threat by regional director of E, a U, to discharge U regional representative for filing charges against him, not unlawful since regional director referred, not to filing of ULP charges with Bd, but to filing of internal charges with E to cause impeachment of regional director, which, as Ee activities to cause change in management, were unprotected)

Dunn Chevrolet, Inc. d/b/a All Star Chevrolet **265 NLRB No. 005**
(E's threat to newly hired Ee that he could not work for E because of his past involvement in U activities in his former employ, unlawful)

Gayston Corporation **265 NLRB No. 001**
(threatening discharge of Ee because of Ee's seeking assistance of OSHA, unlawful)

London Chop House, Inc. **264 NLRB No. 083**
(threat to discharge, and discharge of bargaining committee member for distributing document informing fellow Ees, w/o authorization from committee, U, or E, about health care and other issues contained in proposed contract subject to Ee ratification, unlawful, since Act's protection is not lost because Ee opposed U while holding official position in U; Ee, who believed that distribution would result in rejection of contract, engaged in protected activity of opposing U which was *concerted* even though E acted alone; and fact that E initially supported, but later opposed, ratification is irrelevant and was not ethically and morally reprehensible)

Interior Alterations, Inc. **264 NLRB No. 093**
(threatening to discharge Ees for protesting assignment of contractual unit work to nonunit Ees and for seeking to implement terms of contract, violative)

House of Cycle, Inc., t/a Kay Motors **264 NLRB No. 137**
(E's threat to discharge car salesman if he were convicted of drunken driving, not unlawful where threat was part of E's lawful crackdown on salesmen's driving E's demonstration cars after drinking, and had legitimate business objective)

The Rosicrucian Press, Ltd. **264 NLRB No. 170**
(violation, where Ee asked supervisor if supervisor thought Ee's job was in jeopardy because Ee had complained to U about working with another Ee and supervisor replied *Let's put it this way, you did jeopardize your job by going over our heads*)

Vincent Brass & Aluminum Co. **264 NLRB No. 070**
(E's superintendent threatening to layoff whole shift because of exercise of their contractual right to bid on jobs, unlawful)

Admiral Merchants Motor Freight, Inc. **264 NLRB No. 012**
(imposing on Ees, as condition of continued employment, their repudiation of certain contract wage benefits and enforcing that condition first with threatened employment loss and then layoff, violative)

Airport Parking Management **264 NLRB No. 002**
(threat to discharge Ees if they went on strike, unlawful)

Cardio Data Systems Corp. **264 NLRB No. 011**
(threat to discharge Ee if she continued her solicitation in favor of U on her own time on/or off company premises, unlawful, where E told Ee not to report for work 20 or 30 minutes early and not to be seen in E's parking lot, nor to leave late after quiting work)

Economy Fire and Casualty Co. **264 NLRB No. 003**
(telling Ees that Ees who signed U cards could lose their jobs if U did not come in held unlawful threat notwithstanding use of word *could*)

Service Spring Company, A Division of Garlock, Inc., A Wholly-Owned Subsidiary of Colt Industries **263 NLRB No. 103**
(statement made to Ee after U won election that *U would cost people jobs* violative as threat)

Host Services, Inc. **263 NLRB No. 086**
(threat to discharge Ees if they engaged in economic strike violative)

Ram Construction Company, Inc. **263 NLRB No. 031**
(E's president's suggestion to Ee, during argument, that it might be better for everyone if he would seek other employment, violative, notwithstanding fact that president's words may have been spoken in anger, since suggestion constituted implied threat of discharge for filing grievance)

L. A. Water Treatment, Division of Chromalloy American Corporation **263 NLRB No. 022**
(threatening to discharge Ees if they did not withdraw decertification ptn, violative)

Granite City Journal, Inc. **262 NLRB No. 140**
(E's remarks to Ees upon advent of U that only people who would continue with E were those who wished to work there, coupled with allusions to several large accounts opening up, unlawful, where remarks were neither ambiguous nor lost upon Ees who understood E's message to be that those who supported U would be terminated)

South Nassau Communities Hospital **262 NLRB No. 146**
(E's remarks to Ees that U adherent was discharged for engaging in solicitation against E policy, and that E will do everything in its power to keep U out held follow-up to unlawful discharge and unlawful threat regarding any efforts Ees might engage in to seek U representation)

R. L. White Company, Inc. **262 NLRB No. 069**
(strikers would be discharged)

C. R. Adams Trucking, Inc., and Michael Cates **262 NLRB No. 067**
(telling Ees that they must join U prior to 30-day grace period, or they will be discharged, violative)

C. R. Adams Trucking, Inc., and Michael Cates **262 NLRB No. 067**
(threatening Ees with discharge if they failed to falsify applications for U membership by stating that they were owner-operators so that E could avoid paying for health and welfare benefits, violative)

Onan, a Division of Ona Corporation **261 NLRB No. 187**
(supervisor's statement that he would always remember that Ee had U hat and T-shirt on found unlawful threat of discharge or reprisal)

United Supermarkets, Inc. **261 NLRB No. 179**
(supervisor's telling U adherent that *we fired your friend,* that even U supporters would be expected to toe the line, that supervisor knew discharged Ee had been attending U meetings as well as talking to other Ees, and that *you can see what happened to her* held unlawful thinly veiled threat that same would happen to other U adherents)

Conair Corporation **261 NLRB No. 178**
(E's mailgram to ULP strikers, stating that unless they report for work by specified date, they will be deemed to have voluntarily quit their jobs, unlawful, since E thereby explicitly threatened strikers with discharge if they continued to exercise their protected concerted right to engage in strike protesting E's ULPs)

Conair Corporation **261 NLRB No. 178**
(E's statement to Ees at mass meeting during organizational campaign that if E presented its wage package deal and Ees did not like it *the door would be open* held not implied threat of discharge; in context of E's entire speech what was meant and actually conveyed with reference to *open door policy* for Ee talks with E)

Conair Corporation **261 NLRB No. 178**
(letter sent to all Ees engaged in ULP strike, which rescinded prior mailgram unlawfully threatening Ees with discharge for continuing strike, unlawful, since letter constituted express or implied threat of discharge where it offered reinstatement to strikers' former jobs, or substantially equivalent positions *if* they unconditionally accepted E's offer to return to work then and there, and E considered Ees who did not return to work as having quit; rescission of mailgram was ineffective since letter herein posed same threat)

Conair Corporation **261 NLRB No. 178**
(E's letter to ULP striker, advising that E had notified insurance company carrying Ee's medical and life insurance policies that Ee was no longer working for Ee, which resulted in insurance company's notice to Ee that his insurance coverage was terminated because he had left job, unlawful, since, in view of E's unlawful conduct, including numerous oral and written threats of discharge, letter constituted implied threat of discharge)

Conair Corporation **261 NLRB No. 178**
(signs posted by E outside plant during ULP strike informing public and Ees that Ees were not on strike, unlawful, since signs constituted implied threat of discharge, in view of E's numerous threats of plant closure and discharge; moreover, signs also warned nonstriking Ees that no valid strike existed and that they had better continue working on penalty of losing their jobs; and E's admission that it knew statement on signs was false reinforces conclusion herein)

Conair Corporation **261 NLRB No. 178**
(threats by E to close business and discharge or lay off Ees because of U activity are most egregious form of interference with free exercise of Ee rights)

Marion Rohr Corporation **261 NLRB No. 138**
(E warning Ee of prospect of layoffs and plant shutdown by citing another E as example and necessary linkage and causation between unionization and E going out of business)

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Marion Rohr Corporation **261 NLRB No. 138**
(telling Ees that if U came in there would be layoffs caused by U-imposed rigid classifications of employment operations, not unlawful, because it pertains to possible action by U rather than E)

Marion Rohr Corporation **261 NLRB No. 138**
(telling Ees that those who signed cards would not be fired, but that card distributors would be fired eventually, violative)

Heads and Threads Company, a Division of MSL Industries, Inc. **261 NLRB No. 115**
(supervisor's statement to Ee that latter was trying to get U in was not unlawful creation of impression of surveillance, but was unlawful threat of discharge when statement was completed with reminder of what happened after last attempt to get U in)

St. Alphonsus Hospital **261 NLRB No. 091**
(E's telling Ees that it intended to discharge another Ee because he had voted in representational election, violative)

Sterling Sugars, Inc. **261 NLRB No. 071**
(threatening Ee with unspecified reprisals and discharge if he testified against E, violative since it was clear attempt to interfere with Bd's processes)

Penn Color, Inc. **261 NLRB No. 058**
(threatening to discharge Ees in retaliation for their pro-U activities, unlawful)

Calvin D. Johnson Nursing Home **261 NLRB No. 044**
(supervisor's statement that other Ees had been discharged for making complaint to management about his treatment of them held implied threat of discharge if Ees should engage in such conduct which Bd has consistently held to constitute protected concerted activity)

United Technologies Corporation **260 NLRB No. 196**
(threatening to discharge Ees for distributing U literature and ordering them to cease doing so while attempting to enforce unlawful distribution rule, violative)

Cooper-Jarrett, Inc. **260 NLRB No. 159**
(E's abusive remarks to U steward held unlawful veiled and implied threats of discharge, where steward was singled out for criticism because of his failure to support E's proposed Ee reinvestment program; to find no violation because E did not specifically refer to steward's U activity would merely reward wrongdoer for being circumspect; while never explicitly threatening discharge, E expressed wish that steward did not work for him or that he could be fired; and such remarks, in light of later statements to Ees about ousting steward, interfered with steward's right to hold U office)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(telling Ees that they could lose their jobs if they failed to sign authorization cards for U favored by E, violative)

Gould, Inc. **260 NLRB No. 002**
(before election but after U began organizing, telling Ee that if U were in plant that E would have laid her off and not transferred her held unlawful implied threat that E would make less effort to preserve employment during slack periods if Ees were represented by U)

Peabody Coal Company **259 NLRB No. 183**
(threatening Ees with loss of seniority and/or loss of employment, violative)

Lake Development Management Co. **259 NLRB No. 069**
(E's threat to discharge Ees for U activity during discussion with Ee concerning U meeting, violative notwithstanding E's contention that threat was effectively retracted, since E's subsequent statement to Ees that they could attend U meetings w/o fear of termination was not effective repudiation of E's unlawful conduct, where E's statement did not disavow E's threat as unlawful, disavow E's other contemporaneous unlawful conduct, or give assurances to Ees that E in future would not interfere with Sec. 7 rights)

Cole Bros. Bakery, Inc. **259 NLRB No. 101**
(telling Ee engaged in economic strike that he was *through* if he did not return to work and abandon strike, violative)

Faulkner Hospital **259 NLRB No. 052**
(threat by company vice-president to discharge the Ee who was circulating pta to reinstate Ee discharged for supporting another's Ee's grievance, unlawful)

Lord & Taylor, A Division of Associated Dry Goods Corp. **258 NLRB No. 082**
(manager's asking U adherent in course of conversation about her orgnizing activity, *What if they fire you?* held violative, where such question constitutes implied threat of discharge if Ee engaged in U activity)

Cumberland Farms Dairy of New York, Inc. **258 NLRB No. 120**
(telling Ees that they would be discharged if they formed U or protested terms and conditions of employment, violative)

Cumberland Farms Dairy of New York, Inc. **258 NLRB No. 120**
(telling Ees that they would be fired if they testified in proceeding on behalf of fellow Ee who was discriminatorily discharged, violative)

Tamara Foods, Inc. **258 NLRB No. 180**
(threat of discharge if Ees left work in protest of unhealthy working conditions, unlawful)

Cato Oil & Grease Company, Inc. **258 NLRB No. 153**
(supervisor's statement that Ees *who mixed around with U would lose thier jobs* violative)

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation **258 NLRB No. 142**

St. Mary's Home, Inc. t/a St. Mary's Infant Home **258 NLRB No. 134**
(threatening Ees that they would be replaced if they did not cooperate with solicitation of grievances, while qcr was pending, unlawful)

Jaybil Steel Products, Inc.; etc. **258 NLRB No. 157**
(E's owner asking Ee who was testifying at Bd hearing *who is going to support your mother when you don't have a job* unlawful, since reference to continued employment where not coupled with reference to Ee's taking time off from work that day)

Scoobs Manufacturing Company **258 NLRB No. 038**
(E's vice president's statement to Ee that she had fired herself because of threatened resort to U, violative since assertion of unlawful reason for discharge constitutes unquestionable threat to all other Ees that any inclination toward U activity on their part would result in similar discrimination against them)

Dairy Farm Flight Services, Inc. **258 NLRB No. 031**
(where E had discharged 2 supervisors for engaging in U activity and then in speech to Ees stated that supervisors were discharged because they *allowed* distribution of U cards in plant, E's speech violated Act as it constitutes threat to Ees that they too will be discharged if they distribute U cards in plant)

Presbyterian/St. Luke's Medical Center **258 NLRB No. 021**
(remarks to Ee in regard to necessity of playing by E's rules and mentioning terminated U adherent's errors in having U meetings, violative)

Thurston Motor Lines, Inc. **257 NLRB No. 172**
(warning Ees that their jobs were in jeopardy if they selected U, violative)

Schwan's Sales Enterprises, Inc. **257 NLRB No. 165**
(asking U adherent *what are you trying to do, get yourself fired?* after grabbing U cap off Ee's head, violative, where such remark was clear threat of discharge if Ee continued to wear U cap)

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division **257 NLRB No. 152**
(supervisor's statement to Ee before election that if E's janitors unionized they would *definitely go out the gate* held violative, since supervisor admitted that he openly related unionism to (Ees') job uncertainty)

A.P.F. Electronics, Inc. **257 NLRB No. 068**
(berating Ee for contacting U representative regarding making and receiving phone calls on job and threatening increased supervision and discharge because of Ee's protected action, unlawful)

T.R.W. Bearings Division, A Division of T.R.W., Inc. **257 NLRB No. 047**
(advising U adherent that he would be fired if he had damaged tool box or if damage was attributable to U activity, violative)

Sioux Products, Inc. **257 NLRB No. 056**
(threatening Ees with loss of jobs and with possible difficulties with immigration authorities if U won election, violative)

Dilene Answering Service, Inc. **257 NLRB No. 024**
(violation where E's president reminded Ee that he had power to fire her for infraction of rules and then told her to remove her U button)

Gocat, Inc. **257 NLRB No. 030**
(threatening Ee with loss of job if he engaged in conversations about U with other Ees, violative)

Isadore Spiegel, an Individual t/a Spiegel Trucking Company; Spiegel Trucking Company, Inc.; I & L Trucking Company, Inc. **257 NLRB No. 020**
(threatening Ees with discharge if they continued their walkout over Ee grievances, violative, where such walkout was protected concerted activity)

Clements Wire & Manufacturing Company, Inc. **257 NLRB No. 075**
(telling Ees that if they supported U Ees would be laid off w/o pay, violative)

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising **257 NLRB No. 022**
(E who told U business representative in presence of Ee that another Ee would be discharged because of his support of U violated Act as statement constitutes unlawful threat of reprisal against Ee)

Colson Equipment, Inc. **257 NLRB No. 015**
(supervisor's statement that he would not turn in Ee's authorization card, because if he did Ee would be fired held implied threat of discharge for U activities)

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Con-Tex Industries, Division of Harsco Corporation **256 NLRB No. 143**
(posting of notice that Ees had been discharged for engaging in shutdown and that Ees who did not cease from cessation of work would be considered quits and subsequent recurrence of shutdown could result in discharge, unlawful where shutdown was concerted protected activity)

United States Postal Service **256 NLRB No. 121**
(supervisor's statement to U steward that heavy grievance activity was going to lead to *corrective activity* and *dismissal* or *removal*, violative, where such statement contained clear threat of retaliation against Ees if they persisted in filing grievances with frequency that was unacceptable to management)

Metropolitan Life Insurance Company **256 NLRB No. 100**
(telling Ee that if she didn't tell E if she signed U card, Ee would never write another stick of business and E would bury her, violative)

Reeves Southeastern Corporation **256 NLRB No. 090**
(E's threat that Ees who accepted U literature would be discharged violative)

Deauville Hotel **256 NLRB No. 078**
(threatening Ee with discharge if he continued to complain to other Ees about working conditions, violative)

Marathon Letourneau Company, Longview Division **256 NLRB No. 054**
(statement to new Ee that another Ee who was active for U would be terminated, unlawful, since message to Ee was that if he did what U adherent was doing his job would not last, threat was more impressionable on Ee on his first day of employment, and context of conversation showed anti-unionism as company policy)

Atlas Minerals, Division of Atlas Corporation **256 NLRB No. 022**
(*off the record* remarks at new Ee training session by instructor, herein found agent of E, threatening Ees with layoff if they utilized federal agency involved in regulation of Ee working conditions, unlawful)

Samuel J. Wade, an Individual d/b/a Major Cab Company **255 NLRB No. 181**
(stating that E had already fired one U adherent and threatened to fire another Ee if Ee continued U activity against E's wishes, violative)

Samuel J. Wade, an Individual d/b/a Major Cab Company **255 NLRB No. 181**
(telling Ee that he would be fired because he had been fraternizing with U adherents and engaging in U activity, violative)

K & S Circuits, Inc. **255 NLRB No. 163**
(telling Ee that E knew identity of U adherents and that they would be terminated, violative)

Sanitas Cura, Inc. d/b/a Parkview Acres Convalescent Center **255 NLRB No. 149**
(warning U adherent not *to get involved with any of the U activities* and if she did she could *get into a lot of trouble* and *probably lose your job*, violative)

Pettibone Corporation **255 NLRB No. 151**
(threatening Ees that their discussion of working conditions with supervisor and request for pay raise would go against them in their pay reviews and *there is the door* and they were free to leave, held violative)

Medic Ambulance Service, Inc. **255 NLRB No. 132**
(threatening Ees with discharge if Ees *parked* their ambulances in protest of certain conditions of employment such as wages, transfers, and workmen's compensation, violative, irregardless whether E actually carried threat out)

K & E Bus Lines, Inc. **255 NLRB No. 137**
(threatening to discharge Ees if they spoke with or were seen associating with discriminatees, unlawful, absent evidence such acts would interference with scheduled duties)

Southern Moldings, Inc. **255 NLRB No. 115**
(E's directing Ees to cease distributing U literature in nonwork area on nonwork time and threatening them with discharge if they continued to do so, violative)

Steinerfilm, Inc. **255 NLRB No. 017**
(asking U adherent to quit violative, where requests in essence were thinly veiled threats of discharge for engaging in protected activity)

Steinerfilm, Inc. **255 NLRB No. 017**
(violation where E asked Ee whether he filed charge with Bd in regard to being forced into signing disciplinary warning, and then stated that Ee and other Ees could have been fired on an earlier occasion)

Custom Trim Products **255 NLRB No. 096**
(supervisor's stating to Ees that E should get rid of leading U advocate, violative)

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. **255 NLRB No. 098**
(warning to Ee that he should stop complaining about his wages if he wanted to keep working for E violative, notwithstanding that Ee's claim of entitlement to higher wages appears to have been w/o merit)

Zurn Industries, Inc. **255 NLRB No. 088**
(telling Ees that he was tired of hearing about safety, talk to steward about it, and anyone who did not like that procedure had checks waiting for him in office, violative)

Guerdon Industries **255 NLRB No. 086**
(telling Ees that E knew identities of U supporters and intended to discharge them, violative)

Cutting, Inc. **255 NLRB No. 076**
(E unlawfully threatened Ee with discharge by stating that E was going to fire Ee as soon as E *can sneak it past the NLRB*)

Wometco Coca-Cola Bottling Company of Nashville, Inc. **255 NLRB No. 069**
(informing Ee he would be discharged if he carried on U organizing in company plant *on company time*, unlawful because such prohibition would appear to include breaktime and other periods when they are not expected to be working)

Wometco Coca-Cola Bottling Company of Nashville, Inc. **255 NLRB No. 069**
(calling U adherent back-stabber and troublemaker, informing adherent nobody liked him; accusing him of bad attitude, and asking him if he was ready to resign, constituted threat to discharge for U activity, not withstanding U no mentioned)

Friday Canning Corporation **255 NLRB No. 052**
(threatening Ees with discharge because they refused to return to work unless E would give them 30 cents per hour wage increase rather than 30 cents per hour bonus, violative)

SAS Ambulance Service, Inc., d/b/a Florida Ambulance Service; et al. **255 NLRB No. 031**
(requiring Ees to cease their U activities and threatening Ees with discharge if they did not stop, violative)

United Plastic, Inc. **255 NLRB No. 026**
(E's warning to Ee that another Ee had been fired for attempting to organize U, violative)

Best Distributing Co., Inc. **255 NLRB No. 024**
(supervisor's statement to Ee upon Ee's filling out initiation papers at U hall, that he had just signed his death warrant—that chances were that he would not have a job the following Monday, violative)

Glover Bottled Gas Corp. **255 NLRB No. 011**
(threat to discharge any Ees who did not cross picket line, unlawful, where Ees were properly engaged in sympathy strike on behalf of fellow U members striking another E for whom E was performing struck work, resulting in picketing of E by Ees of struck E)

Boyer Ford Trucks, Inc. **254 NLRB No. 184**
(E's threats of loss of employment or other detriment made to unrepresented Ees who refused to sign individual agreements containing pay plan, not unlawful since such threats were not aimed at chilling U or concerted activities but at inducing individual assent to individual agreements)

Ogden & Moffett Company **254 NLRB No. 181**
(telling Ees that fellow drivers were laid off because Ees had complained to state agency about safety conditions and because Ees had refused to operate trailers they considered unsafe, violative)

Pile Foundation Construction Company, Inc. **254 NLRB No. 177**
(threatening Ees with discharge if they complained about violations of bargaining agreement in regard to manning job crews, violative)

Staats and Staats, Inc. **254 NLRB No. 105**
(rather than customary practice of transfering Ees from machine to machine when work was scarce)

K & K Transportation Corp., Inc. **254 NLRB No. 087**
(threatening Ees with discharge for refusal to cross picket line)

Overnite Transportation Company **254 NLRB No. 011**
(stating in speech prior to election that some Ees would *automatically* lose their jobs if U won, vilative)

Consolidated Freightways **253 NLRB No. 137**
(supervisor's telling Ee there was nothing he could do about Ee's complaint that tractor was unsafe and that Ee either take the unit as it was or E would accept his voluntary resignation held unlawful threat of discharge)

Central Transport, Inc. **253 NLRB No. 120**
(statements by E's vice-president to applicant who had been involved in intra-U rivalry that if after applicant was hired local U requested applicant's discharge E's owner would direct vice-president to discharge applicant, not unlawful, since no threat made and statements were in response to applicant's negative attitude; vice-president had earlier suggested applicant commence working while member of another local; further, applicant refused vice-president's offer to be calm and give it a try made after allegedly improper remarks)

Williamsport Plumbing and Heating Co., Inc. **253 NLRB No. 121**
(threatening Ees with discharge if they supported U, unlawful)

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Dillman Foods, Inc. 253 NLRB No. 114
(statement at Ee meeting that U would *ruin* E and would cause him to pay such high pay scale that E would have to lay off Ees, violative)

Service Machine & Shipbuilding Corp. 253 NLRB No. 088
(threatening welders with discharge for refusing to work in the rain, unlawful; Ees' concern was about safety and health)

Rose M. Alexander d/b/a A & B Janitorial Service 253 NLRB No. 064
(threat to execute contract with favored U whether or not Ees wanted it to represent them and to discharge Ees who did not join it w/i 30 days, unlawful)

Crown Cork & Seal Company, Inc. 253 NLRB No. 035
(remark during speech to Ees about U adherent's activities in plant looking like he was running for U president and subsequent statement directly to U adherent that his *time was limited* constituted unlawful threat of discharge)

Weather Tamer, Inc. and Tuskegee Garment Corporation 253 NLRB No. 036
(telling Ees that U could jeopardize their employment and outcome will affect their future as Ee, violative)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(supervisor informing Ee he felt sorry for her and asked what Ee would do if office closed down as result of unionization, unlawful)

Stewart-Warner Corporation 253 NLRB No. 016
(foreman's threat to discharge Ee because of his participation in U activity violative, not withstanding foreman and Ee were friends as impact of statement is probably greater in view of source)

Pennypower Shopping News, Inc. 253 NLRB No. 011
(E's causing Ees reasonably to believe that they had been discharged, or that their continued employment status was questionable because of their strike activity, unlawful)

O. B. Williams Company 252 NLRB No. 146
(soliciting withdrawal of charges filed by Ees with State Human Rights Department and threatening job security of Ee if he didn't withdraw charge, unlawful)

Smith Auto Service, Inc. 252 NLRB No. 068
(violation where E president told prospective Ee that E president would *clean house* at shop)

GE's Trucking, Inc. 252 NLRB No. 131
(E's reply to leading U advocate, who had stated that if there were no wage raise Ees would have to start U, that if they did so they would all be fired, unlawful, as clear threat of reprisal)

GE's Trucking, Inc. 252 NLRB No. 131
(E, operating trucking company engaged solely in distributing another E's product, who stated to his own Ee that distributor would fire them all if they started U, unlawful either as threat of discharge or as statement that selection of U would be futile; distributor was in position to affect E's business for better or for worse, and Ee might reasonably assume that E would know, better than Ee, what action their mutual livelihood would take in event of unionization)

Polly Lingerie, Inc. and Argus Lingerie Corp. 252 NLRB No. 032
(telling Ees that it they didn't like E's keeping U out of plant, they could leave, violative)

Huron Dressed Beef, Inc. 252 NLRB No. 031
(E's threat to fire economic strikers for striking , unlawful)

Dooley Equipment Corporation 252 NLRB No. 020
(threatening Ee with discharge if he continued to support U or vote in upcoming election, violative)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division 251 NLRB No. 156
(supervisor's warning Ee in reference to another Ee's discharge that it could have been her and that she should not display her U support to management, violative)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division 251 NLRB No. 156
(supervisor's telling two Ees he had warning for them, adding that he had just come from supervisor's meeting in which names were mentioned, and that if *they* could get rid of certain people they would counteract U, violative, notwithstanding supervisor may have considered one of Ees as a friend)

Maywood, Inc. 251 NLRB No. 139
(E president's stating in presence and to hearing of Ees that he would terminate U supporters one at a time, violative)

Maywood, Inc. 251 NLRB No. 139
(threatening to find excuse to terminate Ee for engaging in U activity, violative)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors 251 NLRB No. 151
(supervisor telling Ee if he *wanted to keep working to stick with* E, unlawful since it amounted to both threat of discharge for supporting U and promise of benefit for opposing U)

Ben Franklin Division of City Products Corporation 251 NLRB No. 200
(where E coupled threat to discharge Ee for absenteeism with his U activity, violative, notwithstanding Ee's later discharge for absenteeism found lawful)

Furr's Cafeterias, Inc. 251 NLRB No. 125
(threatening to select rehired strikers for layoff first in event of future layoff because Ees participated in ULP strike, violative)

Blue Bird Body Company 251 NLRB No. 196
(audio slide presentation to all eligible voters, violative where remarks of Ee participants in presentation impliedly threatened that U adherents would eventually be discharged for pretextual reasons)

Chester Valley, Inc. 251 NLRB No. 190
(telling Ees that, if U came in, E would not keep part-time Ees around and that E might be unable to *afford* part-timers as steady Ees because most Us have set hours, unlawful)

Chester Valley, Inc. 251 NLRB No. 190
(contention that E's oral comments as to eliminating part-time Ees or their flexible work hours were not unlawful because Ees who heard remarks were not themselves part-time Ees, rejected, since it is reasonable to infer that E's remarks were passed along to part-time Ees, as they actually were; assuming that E did not thereby intend to threaten Ees and that Ees were not in fact coerced, such assumptions would not render threats herein lawful)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. 251 NLRB No. 179
(violation where E threatened Ees that their support of Us would be futile since E would never sign contract and would terminate or permanently replace any Ees who went on strike for contract)

Weyerhaeuser Company 251 NLRB No. 097
(invitation to U adherents to quit or find employment elsewhere constituted implied threat of discharge)

Weyerhaeuser Company 251 NLRB No. 097
(expressing belief that Ee would not *endure* U campaign constituted implied threat of discharge)

Edgar L. Landen t/a Speed Mail Service 251 NLRB No. 064
(violation and interference by threat by nonsupervisory Ee whom Ees could reasonably believe to be speaking for E that Ees would lose their jobs or that E would close down company if U won election)

Ford Motor Company 251 NLRB No. 066
(supervisor's warning that Ees could end up getting fired for pressing their complaint against E's promotional policies, unlawful)

Stafford Construction Co. 250 NLRB No. 128
(E's statement that if Ees joined or wanted to organize U they would be replaced violative)

Ben J. Mauro d/b/a Warehouse Food Distributing Company 250 NLRB No. 177
(threat to rearrange Ee's work schedule so as to conflict with her personal responsibilities and thus force her to quit her job made in context of conversation about recent discharges and U activities held unlawful threat of discharge if Ee engaged in U activities)

Clark Equipment Company 250 NLRB No. 178
(telling Ees company was going to get rid of U *pushers*, violative)

Charles Dean d/b/a Hopp Topp Mfg. Co. 250 NLRB No. 154
(foreman's threatening Ees that E would discharge Ees who voted for U held violative)

Magnesium Casting Company, Inc. 250 NLRB No. 107
(E's threat to Ee that if U came in Ee would be first U would let go because she would be absent a lot and U was very strict, unlawful, since E thereby coerced Ee in her U adherence by unsubstantiated charge that U would cause loss of her job if it represented Ees)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home 249 NLRB No. 162
(violation and interference where E misstated law on strikers' rights by declaring that it had no duty to rehire Ees who were replaced during strike and thus threatened Ees with future permanent loss of employment if they engaged in economic strike)

Steiner-Liff Textile Products Company 249 NLRB No. 152
(remark that one way to get rid of U or take care of big U vote was to layoff night shift because it was 100 percent behind U, violative)

Steiner-Liff Textile Products Company 249 NLRB No. 152
(E's statement, in context of conversation in which Ee complained about unfairness of his discharge, that company would rather pay few thousand dollars than see U get in, violative)

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Patsy Bee, Inc. **249 NLRB No. 125**
(Bd held, contrary to ALJ, that E's threatening plant closure and job loss was unlawful, and not protected by 8(c) by virtue of E's president's predictions based on his subjective belief that unionization would cause it to suffer severe economic hardships leading to the threatened results)

Sentry Investigation Corp. **249 NLRB No. 130**
(violation of Section 8(a)(1) where E failed to disavow threats of shop steward that if Ees changed bargaining representative they would lose their jobs to members of new representative with more seniority)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(threat of layoff absent objective facts that such adverse consequence of unionization was inevitable violative)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(telling Ees that replacements for their positions had been hired and that E would not sign U contract constitutes threat of discharge)

Raimund Corssen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(threatening economic strikers with job loss for not abandoning strike, unlawful)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**
(violation, where Ees who were reluntant to sign membership and checkoff authorization cards for U w/o knowing more about organization and w/o seeing collective bargaining agreement which purportedly existed between U and E were threatened with loss of job or other reprisals by agents of U and E if they did not sign cards where U did not represent majority)

Lyman Steel Company **249 NLRB No. 040**
(warning Ees, prior to rerun election, that if U was successful in organizing Ees and if they went on strike and no agreement reached on contract E *could get rid of (them) and bring in a whole crew,* held violative)

Lyman Steel Company **249 NLRB No. 040**
(assertion by E that if U represented Ees, E would be unable to make Ee transfers from one department to another and *we would have to lay you off,* held violative)

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(E's statement to Ee, who was demanding minimum pay for Ees and other improvements in terms and conditions of employment, that she should get another job if she did not like the way E was running its business, violative)

Kreten Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(violation, where E stated during meeting with Ees that certain Ees who were demanding improvement in terms of employment were troublemakers and thereby threatened their job security as undesirable Ees)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(supervisor's statement that *he could hire twenty men to come in there and knock the work out that was in the yard and lay everybody off,* violative, where statement followed unlawful interrogation of Ees as to how they were going to vote in election)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(violation where supervisor informed Ees that E's president had said that if Ees voted in U, he would close down and all would be out of job)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(supervisor's telling Ee that he would *personally* fire her if she had signed certain complaint letter, violative)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**
(where Ees and supervisors were discharged for participating in writing and distribution of Ees' letter which complained about general manager's operation of E's hotel and suggested manager's discharge, manager's memorandum *to all employees* warning that fate of supervisors would befall Ees if they engaged in similar complaint in future, violative)

Baine Service Systems, Inc. **248 NLRB No. 087**
(Ee's would be discharged if they refused to sign checkoff authorization cards in favor of illegally recognized U)

Baine Service Systems, Inc. **248 NLRB No. 087**
(E's statement that Ees must become members of illegally recognized U to keep their jobs violated Act)

Vogt-Conant Co. **248 NLRB No. 027**
(supervisor's telling Ee that E would get rid of Ee if he did not *shut his mouth* about E's elimination of certain contractual overtime payments, violative)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(forbidding Ee, under threat of termination, from discussing with his fellow Ees contents of meeting with management in which Ee had spoken about or questioned matters of health benefits, pension rights, and wage increases for himself and other Ees, violative)

B. N. Beard Company **248 NLRB No. 016**
(interrogating Ees as to whether they intended to strike, closely followed by threat to discharge them if they did so, unlawful)

Servomation Corporation **248 NLRB No. 014**
(telling Ee not to file a grievance with U over alleged safety matter because it could possibly result in Ee's discharge, unlawful)

General Rental Co. d/b/a Avis Rent–A–Car **247 NLRB No. 188**
(supervisor's telling U supporter in gathering after election, *you're on your way out,* violative, since statement constituted implied threat of discharge)

Fluid Packaging Company, Inc. **247 NLRB No. 196**
(prohibiting Ees from talking about the U on production line and threatening them with discharge if they do so, unlawful where talk on U was only restriction on conversation)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(E's statement that he wished to hire new Ees made w/o explanation during period of U activity is veiled threat of discharge as it indicates that E intends to replace some or all existing Ees because of their U activity)

Earl Kuhns d/b/a Frenchy's K & T and E[illegible]'s News Stand **247 NLRB No. 167**
(threat to hire new Ees violative because threat construed to discharge strikers)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(threat to lay off Ees if E did not get open shop proviso in contract or if U representative filed grievance)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(statement to proU Ee that if he wanted to come back, he could but that the future of the plant was coming to an end, that since he had good job, E recommended that he not leave it to return to E, held merely realistic warning rather than statement that Ee had no future with E)

The Saloon, Inc. **247 NLRB No. 156**
(comment to Ee that she could be replaced, made in context of her reluctance to disavow U and to embrace E's new health care program, unlawful, even though E may have been joking when remark was made)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(supervisor's telling Ee that if Ees did not vote against U in election, the facility would become unionized which would hurt Ees' chances of wage increase, their job security, and possibility for improvement in working conditions, violative; statement constituted threat of loss of employment and loss of wage increase, and of more onerous working conditions)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(threat to discharge part-time Ees under 18, Ees who had signed U cards, and Ees who were just a little late if they supported U or U won, unlawful)

Universal Service Contractors **247 NLRB No. 097**
(threatening striking Ees with discharge if they did not return to work violative)

Tartan Marine Company **247 NLRB No. 073**
(supervisor showing Ee clipping about discharge of individual for not attending U meetings on Sundays, and informing Ee that Ee and other Ees could be laid off before less capable Ees if U came in, unlawful, absent evidence U advocated seniority over capability)

Anco Insulations, Inc. **247 NLRB No. 081**
(threat by contractor to discharge Ee because he had registered complaint over safety of insulating work being done on furnace installation by another contractor at construction project held violative since such complaint constituted protected concerted activity)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(E's statement to Ee that *if the drivers mess around with a union, we'll all be out of a job,* violative)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(stating to Ee, in response to her statement of U support, that E's warehouse was full of E's finished product, unlawful, notwithstanding E's attempt to repudiate initial statement, where E's statement was well understood code for economic troubles meaning layoff of Ees and implied that U activity could result in plant closure or layoff)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(supervisor's remark that U supporter would be first to go if anything happened, unlawful, in view of supervisor's attempt to get Ee to renounce U)

Keimer Coal Company, Inc. **247 NLRB No. 049**

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(telling job applicant that a few Ees would be leaving implying post-election discharge of U adherents, unlawful)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**
(soliciting Ee to quit job because of U activity, unlawful)

5036-8312—Cont.

Thermo King Corporation **247 NLRB No. 048**
(baseball poster, displayed by E during election campaign, bearing slogan *You only get one strike and you are out. And that's the way it is with the Union* held not to constitute threat of discharge, since factual representations that when Ees engage in strike they are not receiving pay, and they are walking or out on picket line, are permitted as expressions of free speech)

Gelax Apparel Corporation **247 NLRB No. 026**

Progressive Driver Service, Inc. **JD-(ATL)-89-82**
(where Ees had stated that if they did not get a definite answer as to how the contractual pay provisions were to be interpreted they would file federal lawsuit against E and U for failure to honor contract, E's threatening to discharge them if they continued to pursue the contract matter and did not forget the lawsuit, violative)

ITT McDonnel and Miller, A Unit of Fluid Handling Division of International Telephone and Telegraph Corp. **JD-337-82**
(threat of discharge and suspension of Ee when he interfered with supervisor's removal of grievances which Ee had posted on E's bulletin board, made available to U under contract, not unlawful, where Ee's conduct was unprotected because not reasonably related to enforcement of contract right nor otherwise reasonable; there was no hostility toward U, grievances, or bargaining; threat was made when Ee physically impeded supervisor from leaving bulletin board area; and supervisor's remark cannot be construed as threat to discharge Ee for exercising percieved contract right)

All-Type Welding & Boiler Repair Co., Inc. **JD-(NY)-78-82**
(threat of discharge designed to cause Ee to drop his protests about E's failure to pay contractually agreed upon wage increase, unlawful)

Chateau Vegas **JD-(SF)-132-82**
(telling Ees that if they joined picket line, they would lose their employment with E, violative)

Sanders Bus Line, Inc. **JD-(SF)-120-82**
(E informing ULP strikers that if they did not report to work prior to being replaced they would be terminated, unlawful)

Sanders Bus Line, Inc. **JD-(SF)-120-82**
(threat to replace Ee who was on leave of absence if she did not cut short her leave and report to work during ULP strike, unlawful)

European Parts Exchange, Inc. **JD-170-82**
(threatening Ee with discharge if he did not return signed U authorization card which E had solicited to signer, unlawful)

Overnite Transportation Company **JD-179-82**
(threatening to discharge Ee for wearing U insignia, unlawful)

T. Marshall Corp., T/A Cliffside Health Care Center **JD-(NY)-29-82**
(threatening Ees with discharge for engaging in economic strike, unlawful)

Childers Manufacturing Company, Inc. **JD-(SF)-11-82**
(threat to discharge Ees if they engaged in protected activity of striking in support of their demand for wage increase, and their subsequent discharge for engaging in such strike, unlawful, where there was no basis for E's claim that she was unaware of purpose of strike nor her claim that Ees had announced intention to quit to work elsewhere at higher wages; Ees' announcement was part of protected activity of persuading E to grant higher wages and not an announcement of resignation as was apparent from E's action in discharging Ees, which would have been unnecessary if Ees had quit

Kimberly-Clark Corporation **JD-(SF)-291-81**
(threats of E's assistant superintendent to U officials and in presence of other Ees to ascertain way of getting rid of Ee who was continually filing grievances and to discharge Ee who grieved matter, unlawful, notwithstanding disavowals and assurances of E's employee relations manager and plant manager)

Sav-On Drugs, Inc. **JD-(SF)-214-81**
(statements to Ees and applicants for employment that they would have to join (particular) U as condition of employment and posting of letter threatening Ees that they would not be scheduled for work unless they joined U, held violative)

E. M. J. Corporation **JD-(ATL)-68-81**
(threatening to lay off everyone and hire nonU Ees, violative)

Joseph Charles Tafarella A.K.A. Steve Rossi, and Total Productions Concepts, Inc. **JD-(SF)-212-81**
(E threatening to discharge musicians who were members of U if they refused to cross picket line of another U at hotel at which they were playing and stating he would not hire U members since not reliable, violative)

Ford Motor Company, Automotive Division, Twin Cities Plant **JD-57-81**
(threatening to discharge Ees for talking to U committeeman, unlawful)

New Mayo, Inc., d/b/a Mayo Products Company **JD-(ATL)-18-81**
(telling U adherent that U would not make any difference to him because he would not be there much longer, violative)

Domicile Manor, Inc. McCormick Health Centers, Inc. **JD-(SF)-82-81**
(labor foreman's telling Ee that pressing demands for readjustments in overtime compensation consistent with bargaining contract would hurt him because E would get rid of him, violative)

Lauridsen Foods, Inc. **JD-36-81**
(statement that *union people don't last long in non-Union shop*, violative)

Lauridsen Foods, Inc. **JD-36-81**
(threatening discharge if Ees refused to remove U insignia, violative)

Lauridsen Foods, Inc. **JD-36-81**
(threat of discharge for giving information to press and state agency concerning health and safety problems, violative)

Blackjack Coal Company, Inc. **JD-33-81**
(threatening Ees with discharge if they engaged in strike, unlawful)

Fremont Auto Center, Inc. d/b/a Fremont Mazda **JD-(SF)-13-81**
(threatening U adherents with discharge if they did not submit to false credit check, violative)

Helgesteel Corporation **JD-643-80**
(threat that Ees would not have job to come back to if they pursued their claim for backpay at higher wage rate than they had received for an already completed job, violative)

Catalytic, Inc. **JD-(SF)-345-80**
(telling Ee that if any more grievances were filed, he would *run the bunch of them down the hall,* violative)

The Pacific Telephone and Telegraph Company **JD-(SF)-322-80**
(supervisor's response to U steward presenting grievances that he was a troublemaker and troublemakers would not get far in the company held unlawful threat to job tenure or chances for advancement)

Maryland Cup Corporation **JD-618-80**
(advising U adherent that it would not be unwise for him to resign from his employment if the U lost a scheduled election, unlawful as E acquiescence in pressure by some Ees to penalize another Ee for his U or concerted activities)

Hughes-Bechtol, Inc. **JD-556-80**
(foreman's warning to Ee who complained about plumbers doing laborers' work that he should watch his step, violative, where such comment was clear threat that Ee's job was in jeopardy if he persisted with his protected concerted activities)

Chipmore Manufacturing Co., Inc. **JD-432-80**
(violation by threat that U activitist would be fired if he continued to hang around with other company Ees or if he got caught in the tool room–in violation of a rule that was enforced sporadically until U campaign)

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**
(E's statement that he was dissatisfied with condition of warehouse and that if Ees did not work together, he would find people who would, not unlawful threat of discharge, as contended, where there was no reference to U and U supporters were not singled out)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L. A. Inhalation Therapy Services **JD-(SF)-225-80**
(telling Ees that they must forswear their U membership or allegiance as condition of keeping their jobs, unlawful)

Consumer Enterprises, Inc. **JD-342-80**
(supervisor's statement to Ee that he knew Ee was pushing for U and to be careful because *they could kick you out* held violative)

Magic Mountain Corporation **JD-337-80**
(supervisor's statement that Ee should drop his U activity or else lose his job, unlawful)

Coastal Volkswagen, Audi **JD-(SF)-144-80**

U. S. Oil & Refining Company **JD-(SF)-116-80**
(informing Ee that another Ee might have to be laid off if U pressed claim for revision of his seniority status, unlawful)

Standard Bridge Corporation **JD-174-80**
(threatening Ees with discharge if they did not refrain from seeking membership in U, unlawful)

Liko Corporation **JD-(SF)-69-80**
(warning that Mexican nationals would be sent back to Mexico if U came in is implied threat of discharge)

T.V. Dispatch, Inc. **JD-143-80**
(requiring Ees to apologize for having participated in grievance meeting in order to retain their jobs)

5036-8312—Cont.

N.L.R.B. v. Concord Furniture Industries, Inc., d/b/a Bradford Furniture Company **675 F.2d 426 (C.A. 1, Mar. 1982)**

(supervisor stating that Ee might be discharged because of U activity and that Ee and another Ee would be reinstated *as soon as this U thing goes through,* violative, since sufficiently coercive in context)

N.L.R.B. v. Clark Manor Nursing Home Corp. **671 F.2d 657 (C.A. 1, Feb. 1982)**

(E's statement that it was going to *get rid of the troublemakers,* violative)

N.L.R.B. v. Sheraton Puerto Rico Corp., d/b/a Puerto Rico Sheraton Hotel **651 F.2d 49 (C.A. 1, June 1981)**

(general manager's memorandum to Ees warning them that fate of supervisors who were discharged because they wrote E criticizing general manager's operation of E's hotel and suggesting his removal from that position would befall Ees if they engaged in similar complaints in future held not violative where general manager's post-discharge memo only suggested that he was faced with a *revolt of the managers* and was not generalized threat against non-supervisory Ee protests)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**

(telling Ees that leader of Ee organizational activities would be terminated *when the time was right,* or w/i 90 days waiting period following U election)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**

(threats to hire new Ees immediately after U representative requested recognition held violative where evidence on record supported conclusion that Ees could reasonably infer from timing that such threats were directed towards Ees' decision to join U)

N.L.R.B. v. Donald E. Hernly, Inc. **613 F.2d 457 (C.A. 2) (1980)**

(enforcement denied where ct found that record of proceedings lacked substantial evidence to support conclusions contrary to ALJ; ct rejected argument that E's statements had *tendency in the totality of circumstances to intimidate* Ees or Ees feared that they would lose two hours *show up* pay or be laid off)

Central Freight Lines, Inc. v. N.L.R.B. **666 F.2d 238 (C.A. 5, Jan. 1982)**

(supervisor's remarks that if E were unionized, full-time Ees might be part-timers or jobless supported inference of unlawful threat of reduced work or discharge, where Ee who testified regarding remarks was sure that statements were made but unsure in what connection they were made)

N.L.R.B. v. Proler International Corporation **635 F.2d 351 (C.A. 5, 1981)**

(interrogation of Ee concerning U's organizational activities and warning Ee that if any Ee induced other Ees to join U it might endanger their jobs, unlawful)

N.L.R.B. v. Proler International Corporation **635 F.2d 351 (C.A. 5, 1981)**

(E's personnel officer advising Ee who had filed charges against E that whether or not charges were sustained, Ee would lose his job)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**

(threat of loss of jobs if U came in, violative)

Miami Springs Properties, Inc., and James H. Kinley and Associates, Joint Employers v. N.L.R.B. **653 F.2d 276 (C.A, 6, Aug 1981)**

(threat of layoff, unlawful)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. **636 F.2d 1255 (C.A. 7, 1980)**

(supervisor's statement to Ee that she had nothing to worry about if she was not engaged in U activities constituted implied threat to the effect that Ee would have something to worry about if she did engage in such activities; inference is permissible from supervisor's failure to testify that his honest testimony would either have been damaging to case of E in some way or that it would not substantially have differed from Ee's testimony about this incident)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. **636 F.2d 1255 (C.A. 7, 1980)**

(warning Ee not to pass out U leaflets and to keep his nose clean because there were supervisors around who wanted him fired, violative, where such statements interfered with Ee's protected activities and constituted threat of reprisal for such U activities)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. **636 F.2d 1255 (C.A. 7, 1980)**

(giving Ees list of dischargeable offenses and suggesting that E would resort to pretextual excuses for discharge, such as abusive language on part of Ees, violative)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. **636 F.2d 1255 (C.A. 7, 1980)**

(supervisor's act of congratulating Ee for being on *hit list* and then agreeing with Ee that E would try to discharge all Ees on such U list, violative)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. **636 F.2d 1255 (C.A. 7, 1980)**

(telling U adherent that her job was at stake, violative)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. **636 F.2d 1255 (C.A. 7, 1980)**

(ct overruled Bd's finding of unlawful threat based on Ee's testimony alleging that supervisor told her to be careful about her U activities because E intended to get rid of every Ee on U list; Ee's testimony was incomplete, self-serving, and none of Ee's allegations were mentioned in sworn affidavit Ee gave to Bd; furthermore, supervisor's testimony that members of management uttered anti-U statements in meetings with Ees was also discredited where record indicated that such testimony was refuted by 15 other witnesses and that he was biased for being fired after only 3 months in E's employment)

N.L.R.B. v. Campbell 66 Express, Inc. **609 F.2d 312 (C.A. 7, 1979)**

(supervisor's statement that Ee should come to him before going to U, not violative in view of lack of substantial evidence of prior threat of discharge or layoff)

N.L.R.B. v. Tamara Foods, Inc. **692 F.2d 1171 (C.A. 8, Nov. 1982)**

(Bd decision holding that threat of discharge for striking in protest against unhealthy working conditions was unlawful, affirmed)

N.L.R.B. v. Chem Fab Corporation **691 F.2d 1252 (C.A. 8, Nov. 1982)**

(ct held that GC sustained burden of proving interference outlined in *NLRB v. Link-Belt Co.,* 311 U.S. 584, in regard to statements made in joking manner which, unlike *General Thermo* relied on by E, specifically reminded Ees of layoff involved in prior U activity and occurred in work place, not in recreational atmosphere of picnic)

N.L.R.B. v. Midland National Life Insurance Company **621 F.2d 901 (C.A. 8, 1980)**

(restriction of Ee to her desk, after being reprimanded for engaging in U activities, until after election, and threat to discharge her if she left that immediate area, unlawful)

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**

(ct upheld violation where E threatened Ees with discharge if they followed fellow Ee's example of passing out authorization cards)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. **660 F.2d 1335 (C.A. 9, Nov 1981)**

(violation, where supervisor, after informing Ee he had to fire U adherent who had been antagonizing other Ees, asking Ee whether any other Ees had been contracted by adherent, and subsequently asked Ee if any other Ees had been talking about U; *taken together these two conversations clearly implied that (Ee) involved in unionization would be fired*)

N.L.R.B. v. Steven Davis and Michael Provenzano, d/b/a Carlton's Market **642 F.2d 350 (C.A. 9, Apr 20, 1981)**

(threat to get Ee discharged from any future job because of U activities and threats to discharge Ees if U organized the store, unlawful)

N.L.R.B. v. The Saloon, Inc. **647 F.2d 171(T) (C.A. 9, Mar 1981)**

(implying to Ee that another Ee might be dismissed if she did not repudiate U benefit program, violative)

N.L.R.B. v. Bolsa Drainage, Inc. **639 F.2d 789(T) (C.A. 9, 1981)**

(threatening discharge and physical violence if Ees persisted in concerted efforts to secure pay raises, violative)

N.L.R.B. v. Chatfield-Anderson Co., Inc., dba Truss-Span Co. **606 F.2d 266 (C.A. 9, 1979)**

N.L.R.B. v. Flite Chief, Inc.; et al. **566 F.2d 1182 (C.A. 9, 1979)**

(threat to discharge Ees who associated with a U adherent, unlawful)

5036-8312-5000 Directed at supervisors

B. E. & K., Inc. **252 NLRB No. 036**

(allegation that supervisors were discharged because of their U activity or beliefs, dismissed; although finding of unlawful discharge would be warranted were they not supervisors, they do not come w/i protection of 8(a)(3), and facts concerning their discharge do not show restraint and coercion of Ees w/i meaning of 8(a)(1))

5036-8314 Changes in absenteeism rule

Foundation of California State University, Sacramento **255 NLRB No. 029**

(informing Ees that if U came in requirement of note from doctor where two or more days of sick leave were taken would be enforced, unlawful)

5036-8318 Handling of grievances

Woodview Rehabilitation Center **265 NLRB No. 122**

(violation where E made speech to Ees in which it threatened that they would lose benefits, would no longer be able to resolve their grievances by going to E if they selected U to represent them, and threatened that selection of U would be futile since E, not U, would decide on manpower requirements and timing of pay raises)

5036-8318—Cont.

Onan, a Division of Onan Corporation **261 NLRB No. 187**
(threat of loss of Ees' right to present grievances or problems directly to management and requirement that Ees go through U if U selected, unlawful)

Gould, Inc. **260 NLRB No. 002**
(threatening, before election, to eliminate E's *open door* policy for discussion of complaints and grievance, violative because it penalizes Ees for exercise of statutory rights, as Sec. 9(a) guarantees Ees right to bring problems directly to E as long as U agent has right to be present and adjustment is not contrary to contract. E was not discribing typical grievance procedure but was threatening total cessation of all contacts between management and Ees)

G. F. Business Equipment, Inc. **252 NLRB No. 123**
(loss of access to management to present grievances)

5036-8320 Increase in production

United Supermarkets, Inc. **261 NLRB No. 179**
(threats to increase production requirements and to reduce working hours of certain Ees, assertedly for purpose of reducing labor costs, unlawful, since threats were made because of Ees' U activities)

5036-8321 Loans

Madani Brothers, Inc. **255 NLRB No. 126**
(eliminate loans to Ees)

5036-8322 Less favorable treatment

Ram Construction Company, Inc. **263 NLRB No. 031**
(E's telling Ee that unless written complaint was withdrawn he would no longer receive preferential treatment and would be treated as *U radical,* violative)

Arnold Ready Mix Corporation **259 NLRB No. 026**
(violation where E threatenes Ees with reprisals, including bad work assignment and bad references because they filed grievances protesting E's use of relatives while other U members were on layoff)

General Electric Company **255 NLRB No. 092**
(threatening strict enforcement of length of breaks if U came in, unlawful)

Intermountain Rural Electric Association **253 NLRB No. 164**
(manager's remark to U adherent that he had been thinking of suspending her and that she would *probably be fired* if she failed to report for work despite having doctor's note to take leave, violative, since remark was motivated by adherent's U activities)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(violation where supervisor told Ees that if things didn't go the way Ees hoped with regard to U campaign, he was going to cut out extended breaks and talking, and Ees were in effect going to work harder)

Chester Valley, Inc. **251 NLRB No. 190**
(E's statement that if U came in he might change part-time Ees' hours which had been accomodated to their school sports activities, unlawful)

Chester Valley, Inc. **251 NLRB No. 190**
(E's letter to all Ees stating that U might bargain away flexibility in work hours for *something more favorable to them,* and that E's existing practice was much easier than trying to find flexibility provision in U contract, unlawful)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(general foreman threatening Ees that if they chose U as their representative, E would do away with procedural safeguards in Ee handbook)

Perco Industries, Inc. **JD-56-82**
(telling Ees clock-out rules will be enforced more strictly because they chose U, violative)

The Gilbert and Bennett Mfg. Co. **JD-578-80**
(statement to coworker of Ee who was entitled to backpay pursuant to arbitration award that if Ee did not stop asking about overtime backpay E would punish Ee more severely for safety violations than previously, violative)

5036-8327 Loss of opportunities for advancement

Nissan Motor Corporation in U.S.A. **263 NLRB No.**
(statement that Ee would not be considered for promotion because of U's organizing campaign violative)

Nissan Motor Corporation in U.S.A. **263 NLRB No. 083**
(statement that Ee would not be considered for promotion because of U's organizing campaign violative)

Management Training Corporation (Formerly Thiokol Corporation) **261 NLRB No. 013**
(where E had policy of promoting Ees as vacancies occurred and of granting annual merit increases, its withholding of these promotions and benefits combined with statements that if U lost election they would be granted immediately, but if U won they would be deferred indefinitely, violated Act)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's statement that he could no longer support Ee's application for management position because of Ee's U activities unlawful, notwithstanding supervisor's later repudiation of remarks)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor expressing desire to see Ee in management position, but at same time informing Ee that if Ee aspired to management position Ee had better change her ways, unlawful)

Ford Motor Company **251 NLRB No. 066**
(supervisor's statement to Ees who filed grievances, contemplated civil suits and filed ULP charges over E's promotional policies *are not looked upon favorably* and would not be promoted, unlawful)

National Southwire Aluminum **247 NLRB No. 173**
(E's statements to Ee wearing U button that his U activities would have negative effect on his chances for job reassignment constitute threat but not interrogation as to his U sympathies)

TRW-United Greenfield Division v. N.L.R.B. **637 F.2d 410 (C.A. 5, 1981)**
(telling Ee that it would like him on Company side and he *had the ability to go places* along with coercive interrogation held threat of loss of promotion if Ee supported U)

5036-8328 Oppose employee's unemployment compensation claim

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(E's president informing U officer that had been filing grievances that *if she didn't give him a hassle* he would let her sign up for unemployment insurance compensation unlawful threat to oppose her receipt of unemployment compensation if she invoked contractual grievance procedure)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's telling Ee that U campaign leader would lose his profit sharing benefit on account of unionization of plant, violative)

5036-8329 Loss of benefits

Belcher Towing Company **265 NLRB No. 159**
(maintenance and distribution of eligibility standard for Ee benefits, including thrift and Ees' stock option plan, unlawful, where Ees were told that they would not be eligible for, and owuld be excluded therefrom, if they were covered by a bargaining agreement)

Belcher Towing Company **265 NLRB No. 159**
(E's explanation at Ee meetings of Ee eligibility for E's existing benefit plans, unlawful, where explanation left Ees with impression that plans would be forfeited if Ees voted for U, and E's comments that plans were bargainable did not dispel such impression; at least one Ee understood E to say that federal government would not permit Ees to have benefit plans if U came in; E also made point that its subsidiaries' Ees, covered by bargaining agreement, did not participate in its plans, and stated E would take *hard stance* against being a pushover)

Belcher Towing Company **265 NLRB No. 159**
(supervisor's remark at Ee meeting, called to discuss Ee benefits, although made *playfully,* that E was hard bargainer, unlawful, where Ees were seriously concerned about possible loss of benefit plans and, while supervisor may have intended remark as jest, it was not so received by Ees)

Woodview Rehabilitation Center **265 NLRB No. 122**
(violation where E made speech to Ees in which it threatened that they would lose benefits, would no longer be able to resolve their grievances by going to E if they selected U to represent them, and threatened that selection of U would be futile since E, not U, would decide on manpower requirements and timing of pay raises)

Cardio Data Systems Corp. **264 NLRB No. 011**
(posting of memorandum stating that a U deprives Ees of right to settle problems or complaints directly with E w/o interference by U, unlawful, since statement is contrary to statutory protection available to Ees under Sec. 9(a), as well as E's admitted practice of allowing Ees direct access to management to discuss complaints and, consequently, statement threatened to deprive Ees of existing benefit should they select U as their representative)

Cardio Data Systems Corp. **264 NLRB No. 011**
(posting of statement made by general manager of company constituting single E with E herein, and attributable to latter, that E's practice of promoting Ees from w/i would end with U representation, unlawful, since statement's threat to withdraw existing benefit was not rooted simply in what had occurred at another location with manager's prior E but related to what was possible or impossible in a *U organization* and, as such, amounted to an unlawful threat)

Economy Fire and Casualty Co. **264 NLRB No. 003**
(telling Ees that if U came in they would then have to go through U steward with problems held threat of loss of benefits as it refers to Ee's management)

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Economy Fire and Casualty Co. 264 NLRB No. 003
(warning that all benefits could be taken away except those management decided to keep held threat that E would adopt bargaining stance to ensure that collective bargaining could not result in any increased benefits and would or could probably result in decreased benefits)

Zero Corporation, Zero East Division 262 NLRB No. 064
(E's general manager's remarks that U would be detriment to Ees aspiring for better working conditions and would result in loss of business for E, violative)

Plymouth Locomotive Works, Inc. 261 NLRB No. 087
(threat that unless U withdrew charges it had filed, E would withdraw economic benefits it had granted and require Ees to pay back amount of increases they had received, unlawful)

Progressive Supermarkets, Inc. 259 NLRB No. 074

Pantex Towing Corporation 258 NLRB No. 113
(E's threatening tugboat's crew with discontinuance in operations and thus their employment, as well as outright loss of substantial benefits-bed and board-violative where it was threat of penalty or consequence should Ees exercise their rights under Act to vote for U)

Sioux Products, Inc. 257 NLRB No. 056
(telling Ees that if U won election they would lose benefits and completely lose profit-sharing, violative)

Pace Oldsmobile, Inc. 256 NLRB No. 111
(threatening to cause loss of pension and profit sharing benefits if U selected as representative of Ees, unlawful)

Richland Co. & Assoc., Division of McDonald Construction, Inc. 256 NLRB No. 026
(threat to discontinue paying Ee insurance premiums for which Ees would probably be billed if U won election, but that they would not have to pay if U lost, unlawful)

K-Mart Corporation 255 NLRB No. 112
(telling Ee that if U came in, *the company only had to give what they wanted or they could even take away,* violative)

Pine Valley Meats, Inc. 255 NLRB No. 061
(telling Ees that monies which U victory would require E to spend on attorney's fees for contract negotiations would otherwise be theirs if U were not selected, violative)

Boyer Ford Trucks, Inc. 254 NLRB No. 184
(statement to Ees that, if U won, Ees would no longer be covered by terms of existing welfare and pension plan, violative)

Badische Corporation 254 NLRB No. 164

Pickering & Co., Inc. 254 NLRB No. 137
(threat to Ees of loss of benefits if they selected U as representative violative, notwithstanding it was made by low level supervisor)

Hasbro Industries, Inc. 254 NLRB No. 070
(E's sending two letters to homes of unit Ees which, in effect, equated selection of U with loss of existing benefits, unlawful)

Hasbro Industries, Inc. 254 NLRB No. 070
(E's campaign letter to Ees which pointed out what might result if strike ensued such as lost wages, loss of company-paid benefits and possible permanent replacement, not unlawful)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern 254 NLRB No. 045
(E's communication to Ees that they would *absolutely* lose all direct access to management if they chose to be represented by U and that E *would be legally obligated to deal solely through U* was erroneous statement of Ees' Sec. 9(a) rights and unlawful threat of loss of benefits)

Gordonsville, Industries, Inc. 252 NLRB No. 054
(telling Ee, during U campaign, that if U came in she would not be able to come in and talk (to her supervisor), violative as threat of loss of benefits)

Taylor-Dunn Manufacturing Company 252 NLRB No. 118
(supervisor's remarks during break, in response to Ee's question, that when a U comes in you bargain from minimum wage up and there are no benefits until contract signed, violative as remarks were threat of loss of existing benefits)

Behring International, Inc. 252 NLRB No. 055
(plant manager's statement to Ee that, if Ees voted for U, he would probably handle negotiations and that there was a good chance that Ees would then lose their stock option plan, profit-sharing and pension benefits, unlawful, notwithstanding that E's comment was recognized as insubstantial by Ee whose response was in nature of protest which did not reduce significance of E's threat)

Maywood, Inc. 251 NLRB No. 139
(supervisor's statement that if Ees got U in *all benefits including profit sharring and incentive would be dropped* and Ees would be *dropped back to the minimum wage,* violative)

Climate Control Corporation 251 NLRB No. 102
(posting notice threatening Ees with loss of existing benefits if U were voted in, violative)

Chester Valley, Inc. 251 NLRB No. 190
(statement that U might *force* E to discontinue existing benefits of discount on gasoline and auto repair work, uniforms, and liberal breaktimes, unlawful)

Chester Valley, Inc. 251 NLRB No. 190
(contention that E's oral comments as to eliminating part-time Ees or their flexible work hours were not unlawful because Ees who heard remarks were not themselves part-time Ees, rejected, since it is reasonable to infer that E's remarks were passed along to part-time Ees, as they actually were; assuming that E did not thereby intend to threaten Ees and that Ees were not in fact coerced, such assumptions would not render threats herein lawful)

Chester Valley, Inc. 251 NLRB No. 190
(telling Ee that benefits which Ee wanted U to obtain for Ees were too expensive for E's gasoline station and E would turn it into self-service station if he had to, not unlawful, since remarks dealt with an economical means of accomodating two objectively demonstrable circumstances, namely, specific proposed U demands and gasoline station's financial condition)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. 251 NLRB No. 179
(telling Ees that they could lose both their profit-sharing and pension benefits if U came in, violative)

Weyerhaeuser Company 251 NLRB No. 097
(comment that Ees might lose benefits in response to Ee's statement that U Ees would get *so much an hour,* not unlawful, where conversation was related to E's letter to Ees outlining *give-and-take* of bargaining process)

Stanley M. Feil, Inc. 250 NLRB No. 065
(E's statements that Ee should consider fact U might negotiate restrictions on right to employ retired Ees, not unlawful)

American Telecommunications Corporation, Electromechanical Division 249 NLRB No. 149
(statement that Ees at plant which had voted for U were being denied benefits that non-unionized Ees were granted violative as threat of reprisals)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home 249 NLRB No. 162
(statement implying that Ees would lose insurance coverage paid for by E if U were certified, unlawful and interference)

MGM Grand-Reno, Inc. 249 NLRB No. 153
(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Fotomat Corporation 248 NLRB No. 150

American Sunroof Corporation; et al. 248 NLRB No. 038
(threat that Ees would not be eligible for new pension plan if U prevailed, unlawful)

American Sunroof Corporation; et al. 248 NLRB No. 038
(informing Ees that eligibility in pension plan was limited to nonbargaining unit Ees, unlawful)

Conagra, Inc. 248 NLRB No. 085
(threatening to eliminate pension plan if U came in, unlawful)

Sambo's Restaurant, Inc. 247 NLRB No. 122
(statement to waitress performing nonwaitress tasks that if she were represented by U she could not do this type of work constituted unlawful threat of loss of existing benefit)

J. H. Block & Co., Inc. 247 NLRB No. 041
(loss of vacation pay and Christmas bonus if U was selected)

Lacks Industries, Inc. JD-346-82
(alleged unlawful threat of loss of benefits, made by E during U organizational campaign, not unlawful, where E was trying to communicate to Ees that collective bargaining could result in lessening of current wages and benefits, and comments, unaccompanied by threats, were protected by 8(c) proviso)

Sea-Alaska Products, Inc. JD-(SF)-138-82
(loss of free lodging and board)

Translatank Car Corporation JD-(ATL)-8-83
(threat of loss of work gloves and tools if U came in, unlawful)

New Mayo, Inc., d/b/a Mayo Products Company JD-(ATL)-10-81
(telling Ees that they were not going to get as much as they expected because of their U activities, violative, where such statement could be interpreted that E would reduce Ee benefits in retaliation against their U activities; moreover, this statement could be interpreted that Ees could not reasonably expect to attain their goals through U activity)

5036-8329—Cont.

Vinci Investment Co., d/b/a Pacific Honda JD-(SF)-56-81
(telling Ee that Ees not in U would receive better benefits than Ees in U and telling another Ee that Ees in U would not receive certain benefits, violative)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass JD-452-80
(violation where E announced to Ees intention to repudiate provisions of contract which relate to hospitalization insurance premium)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation JD-(SF)-140-80
(E's statements to effect that bargaining was two way street and benefits could be decreased, remain same, or be increased, not unlawful, since it was explanation of how contract arrived at and legitimate message that Ees might wind up with less benefits after unionization, rather than threat of economic reprisal that Ees would automatically lose benefits by voting for U)

Hart Ski Mfg. Co., Inc. JD-11-80
(E's owner threatening not to sign contract negotiated with Ee committee unless ULP charges and ptn withdrawn, stating ptn had been filed by outside U and there was no purpose in ptn since Ees had approved contract between E and committee, unlawful)

N.L.R.B. v. Hasbro Industries, Inc. 672 F.2d 978 (C.A. 1, Feb. 1982)
(E's letter implying retaliation against unionization by withdrawal of benefits, unlawful)

N.L.R.B. v. Laredo Coca Cola Bottling Company 613 F.2d 1338 (C.A. 5) (1980)
(E president stating to Ees during pre-election E's *captive-audience meeting* that there would be no Christmas bonus that year, that the funds that would otherwise be used to pay Christmas bonuses would be used to pay his attorney's expenses in opposing U, and that other benefits were to be terminated, violative)

N.L.R.B. v. Wilker Brothers Company, Inc. 682 F.2d 660 (C.A. 6, June 1981)
(unannounced reduction in contributions to fund for Ees in need before election, not unlawful where Ees did not know until the hearing that contributions were reduced and therefore reduction was not timed to affect them regarding their U activities)

N.L.R.B. v. Mark I Tune-Up Centers, Inc. 691 F.2d 415 (C.A. 8, Oct. 1982)
(threat of loss of benefits made at election and heard by Ee who had not yet voted violative)

L'Eggs Products, Inc. v. N.L.R.B. 619 F.2d 1337 (C.A. 9, 1980)
(statements by supervisors that if U came in Ees could lose benefits violative, notwithstanding qualifying words such as *possibility, might or probably* were used as benefits referred to were controlled by E)

5036-8333 Loss of overtime work

Autoprod, Inc. 265 NLRB No. 042
(telling Ees that overtime work was too expensive because E had to pay into U funds held threat of loss of overtime and side jobs if U won second decertification election)

Grane Trucking Company 261 NLRB No. 059
(E's threat to U adherent truck driver that it would pull him off run with consequent loss of overtime pay, violative where made in reprisal for his activity of trying to persuade another E to join U)

Sambo's Restaurants, Inc. 260 NLRB No. 054
(threatening Ees with loss of overtime work if they filed grievances violative)

Truck Stations, Inc., d/b/a Woody's Truck Stops 258 NLRB No. 094
(statements to Ees that if U won election shift hours would be reduced and pay consequently lowered, violated Act)

Walter Jack and Dixie A. Macy d/b/a 7-Eleven Food Store 257 NLRB No. 035
(threat to reduce one Ee's hours and add those hours to another Ee's schedule in order to persuade the latter Ee to withdraw his support of U, unlawful)

Fluid Packaging Company, Inc. 247 NLRB No. 196
(supervisor's statement, *if you're going to work overtime, you're not to talk U,* held unlawful threat)

Sea-Alaska Products, Inc. JD-(SF)-134-82

5036-8334 Loss of jobs

Alpha Cellulose Corporation 265 NLRB No. 010
(E's letter indicating to Ees not only that, if they struck, they could be permanently replaced, as is permitted, but that they could lose their jobs as result of striking held unlawful and interference with election, since such clear threats to sever employment relationships in event Ees engage in economic strike amount to unlawful threats of job loss)

Alpha Cellulose Corporation 265 NLRB No. 010
(E's letter to Ees held unlawful and basis for valid objection to election, where letter, when read in light of E's prior letter to Ees found unlawful herein because it stated that Ees could lose their jobs as result of engaging in economic strike, confirmed to Ees that an exercise of their right to strike would, as a matter of course, lead to permanent loss of their jobs and accompanying benefits)

M & G Convoy, Inc. 260 NLRB No. 145
(threatening Ees that he would not transfer them to new facility after he closed existing facility because they actively enforced contract terms)

Daniel Construction Company, A Division of Daniel International Corporation 257 NLRB No. 176
(threatening Ees with loss of future employment if they selected U by telling them E would not get contract for job since builder decided to build job *open shop,* violative)

Samuel J. Wade, an Individual d/b/a Major Cab Company 255 NLRB No. 181
(E's telling U adherent that E would remove his radio from his cab because of his U activities, violative)

B. E. & K., Inc. 252 NLRB No. 036
(E's preelection response to Ees complaints about wages that they did not have to stay, that *it could be a lot worse* because they could be getting nothing, and that if they did not like state's low pay scales they could get out of state held unlawful implied threat of loss of jobs and interference with election)

B. E. & K., Inc. 252 NLRB No. 036
(injection of idea of blacklist into E's preelection remarks by stating that other Es put Ees' names on it if they were affiliated with or voting for U held threat of loss of job opportunity with E and with other Es and, as such, interference with election; effect of E's disavowal that it would consider it as not intended as a true disavowal)

American Interstate Freight Lines JD-117-81
(threat to deprive Ee of employment if he did not drop NLRB charge and wage-claim grievance, violative)

5036-8335 Harsher working conditions

Tra-Mar Communications, Inc. 265 NLRB No. 089
(E's statement that ——*any privileges that you have now are definitely going to be taken away if the U is voted (in)* held violative, since remark constituted threat of more onerous working conditions and loss of privileges if Ees were to select U as their representative)

Larid Printing, Inc. 264 NLRB No. 040
(informing Ee he was making big mistake in bringing U in, if U came in and shop closed down Ee was going to have bad name in industry, and if U came in E would have to get very technical, and everything would have to be done by book, unlawful)

Larid Printing, Inc. 264 NLRB No. 040
(E's president informing Ee he was *going to get him* for trying to *shut down company* that Ee was *sneaky bastard* and if Ee made any mistakes on job there would be no one to protect him, unlawful)

South Nassau Communities Hospital 262 NLRB No. 146
(supervisor's telling Ees at regular departmental meeting, in response to Ee's question, what existed at another E's facility as result of bargaining with U held not unlawful threat of imposing more onerous working conditions, since supervisor was merely conveying to Ees a bit of knowledge he acquired while employed elsewhere and was trying to be responsive to question in the process)

Onan, a Division of Ona Corporation 261 NLRB No. 187
(threat to restrict movement around plant if U came in, unlawful)

Marion Rohr Corporation 261 NLRB No. 138
(telling Ees that if U came in he would begin timing Ees' stay in bathroom, violative)

Herider Farms, Inc. 261 NLRB No. 113
(threatening to transfer Ees to less desirable jobs because of their apparent involvement in U's organizing campaign, violative)

Inland Steel Company 259 NLRB No. 024
(supervisor's statement to Ee about manner in which Ee's department could be operated if some of the Ees in department continued to press grievance regarding their claim that a supervisor had wrongfully deprived them of wages by performing unit work held unlawful threat, since spervisor, as general foreman, had authority to impose strictures to make it more difficult for all Ees in the department because a few of them had filed a grievance)

Dimensions in Metal, Inc. 258 NLRB No. 078
(E's executive vice-president's threat to be on other side of fence working against Ees if U were in plant, violative since it was at least implied threat of less desirable working conditions if Ees selected U)

Colson Equipment, Inc. 257 NLRB No. 015
(supervisor's remark that E would *crack down* on safety rules if U were successful, unlawful)

5036-8335—Cont.

Evans Brothers Barber & Beauty Salons, Inc. **256 NLRB No. 023**
(violation where E told Ees that if they selected U they would have to work by U rules which would make Ees stay in the shop and sign in and out when leaving)

Atlas Minerals, Division of Atlas Corporation **256 NLRB No. 022**
(statement to Ees that safety discipline would be tightened up, made after safety inspection by federal agency which found Ee safety violations, not unlawful threat to Ees because they had invoked processes of safety law, where Ees' failure to follow safety rules gave E plausible and not improper reason for imposing stern conditions and was not in retaliation for inspection; E had regularly threatened Ees with safety violation write-ups in order to induce safer conduct; and E's suspicion of Ee concert in causing inspection was unproven and remote)

Mark Lines, Inc. **258 NLRB No. 191**
(telling Ee drivers that once U was voted in Ees would be required to return their buses to specific garage each evening instead of taking buses home or to rented space near their homes as arranged by E in past, violative)

Sanitas Cura, Inc. d/b/a Parkview Acres Convalescent Center **255 NLRB No. 149**
(telling Ee that E would make it *tougher* on Ees because of U organizational campaign, violative)

SAS Ambulance Service, Inc., d/b/a Florida Ambulance Service; et al. **255 NLRB No. 031**
(E's threatening members of U organizing committee that working conditions could be worse with U, and that E could require them to stay in their ambulances 24 hours a day rather than in office, violative)

Badische Corporation **254 NLRB No. 164**

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's statement that if U came in things would change drastically, limitations would be placed on breaks, Ees would not be allowed to chit-chat, and office atmosphere would be much stricter)

Certain-Teed Insulation Company **251 NLRB No. 208**
(advising U's observer and president-elect of local that E would be more stringent in enforcement of break periods after election, violative, absent evidence that Ees in fact were abusing break periods in any way)

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(E's threats to take away Ee breaks unlawful, where made in retaliation against Ees' U organizing activities and Es advanced no legitimate business reasons to justify threats)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(threat that Ees would be on timeclock if U prevailed, unlawful)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(supervisor's telling Ee that if plant *went U,* he would have to take driver's test, violative)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(supervisor's telling Ee that if Ees did not vote against U in election, the facility would become unionized which would hurt Ees' chances of wage increase, their job security, and possibility for improvement in working conditions, violative; statement constituted threat of loss of employment and loss of wage increase, and of more onerous working conditions)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E's statement that if Ee went to a U lawyer, as she claimed she would, that it would be made so hard for her she would have to quit, unlawful, even though E's statement was perceived as a joke by Ee, since statement amounted to threat of reprisal and, in context of E's other ULPs, could not be dismissed as isolated or not being implemented because statement was made in joking manner)

Tilden Rack and Basket Corporation **JD-(NY)-2-82**
(telling U adherent that E was going to have to crack down and enforce plant rules more strictly, violative)

Ford Motor Company, Automotive Division, Twin Cities Plant **JD-57-81**
(threatening Ee with imposition of higher working standards because he had filed a grievance, unlawful)

J. C. Penney Company, Inc. **JD-697-80**
(threats to Ees that their working conditions would change for the worse immediately after E learned U had won election, violative)

John Skura, William Donofrio and Margaret Dubas t/a Boulevard Associates d/b/a Sheraton Inn **JD-386-80**
(threatening Ee with more stringent inspection of her work in order to establish a reason for her discharge because of her U activities, violative)

N.L.R.B. v. Eastern Steel Company **671 F.2d 104 (C.A. 3, Feb. 1982)**
(E's threats to Ees that if U came in *the place wouldn't be as lax as it is,* unlawful)

Chef's Pantry, Inc. v. N.L.R.B. **654 F.2d 458 (C.A. 6, 1981)**
(violation where E during critical period had promised and granted benefits, had solicited and adjusted grievances, and had threatened its Ees with imposition of more onerous working conditions)

Huron Copymatic, Inc. v. N.L.R.B. **615 F.2d 712 (C.A. 6) (1980)**
(violation where shortly after U organizing campaign began, company officials coercively interrogated and threatened Ees as to consequences of bringing in U)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. **679 F.2d 673 (C.A. 7, May 1982)**
(supervisor saying that he would make working conditions *very hard* violative)

N.L.R.B. v. Mark I Tune-Up Centers, Inc. **691 F.2d 415 (C.A. 8, Oct. 1982)**
(statements at pre-election meeting that unionization might cause E to close some of its shops, eliminate shop privileges and impose more onerous working conditions violative where no objective basis for E's predictions)

N.L.R.B. v. Chatfield-Anderson Co., Inc., dba Truss-Span Co. **606 F.2d 266 (C.A. 9, 1979)**

5036-8337 Loss of seniority

Conair Corporation **261 NLRB No. 178**
(statements to ULP strikers reporting for work at end of strike as being *new* or *former* Ees, unlawful, since statements implied that strikers would lose their seniority rights and other benefits if and when they were reinstated)

Heads and Threads Company, a Division of MSL Industries, Inc. **261 NLRB No. 115**

Peabody Coal Company **259 NLRB No. 183**
(threatening Ees with loss of seniority and/or loss of employment, violative)

K & E Bus Lines, Inc. **255 NLRB No. 137**
(suspension of seniority as means of assigning routes to Ees who were school bus drivers, unlawful)

5036-8338 Rescheduling of working hours

Foundation of California State University, Sacramento **255 NLRB No. 029**
(threatening that if U came in Ees would have to work certain set hours w/o exception and no alternative arrangements would be permitted, unlawful)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(where during U campaign, E changed start of work week for 3rd shift from Monday to Sunday night as Ees had previously requested violated Act)

Medi-Mart, A Division of Stop & Shop Company, Inc. **JD-314-82**
(explaining possibilities resulting from negotiations, that, if U came in, part-time student Ees would have harder time getting time off and less scheduling flexibility, held threat of loss of benefits where only one U contract stated that schedules could be changed only in emergency and contracts did not require 15-hour week but only that Ees be offered 15 hours)

5036-8339 Loss of access to management

T. L. C. Lines, Inc. **265 NLRB No. 150**
(threatening to no longer discuss pay raises with Ees if U were selected, violative)

General Electric Company **264 NLRB No. 126**

Cardio Data Systems Corp. **264 NLRB No. 011**
(posting of memorandum stating that a U deprives Ees of right to settle problems or complaints directly with E w/o interference by U, unlawful, since statement is contrary to statutory protection available to Ees under Sec. 9(a), as well as E's admitted practice of allowing Ees direct access to management to discuss complaints and, consequently, statement threatened to deprive Ees of existing benefit should they select U as their representative)

Economy Fire and Casualty Co. **264 NLRB No. 003**
(telling Ees that if U came in they would then have to go through U steward with problems held threat of loss of benefits as it refers to Ee's management)

Huntington Rubber Company, Division of New Idria, Inc. **260 NLRB No. 133**
(telling Ees that if U came in they would no longer have direct access to management violative)

Amoco Fabrics Co., Patchogue-Plymouth Division/ Nashville Mills **260 NLRB No. 038**
(threat that if U came in would no longer be able to take grievances directly to supervisor violative)

Jensen Sound Laboratories **258 NLRB No. 181**
(memo to Ees stating that if U were selected Ees would lose all rights to speak to management concerning wages, benefits etc. except through U is violative of Act as threat of loss of benefits)

5036-8339—Cont.

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. **257 NLRB No. 045**

General Electric Company **255 NLRB No. 092**
(supervisor's statement that if U came in it would mean Ee would be giving up his rights to speak for himself, not unlawful, since statement of U's functions as collective bargaining representative rather than implied assertion that Ees would be denied access to management)

Limestone Apparel Corp. **255 NLRB No. 101**
(if Ees select U, they gave up right to come to E and present their own grievances held violative)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern **254 NLRB No. 045**
(E's communication to Ees that they would *absolutely* lose all direct access to management if they chose to be represented by U and that E *would be legally obligated to deal solely through U* was erroneous statement of Ees' Sec. 9(a) rights and unlawful threat of loss of benefits)

Conagra, Inc. **248 NLRB No. 085**
(statement that E would not talk to individual Ees but only to shop stewards about grievances, unlawful as threat of more difficult working conditions)

Johns-Manville Sales Corporation **JD-412-81**
(statement to Ees that they would be better off dealing directly with plant manager, rather than through U)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern **JD-(SF)-239-80**
(threatening Ees with loss of access to management if U became Ees' representative, unlawful, where E conveyed message to Ees by letter on day before election that if U represented Ees, Ees could not deal directly with E and E would be legally obligated to deal solely through U regarding all aspects of Ees' terms of employment; E thereby misstated Ees' statutory rights under Sec. 9(a))

N.L.R.B. v. Colony Printing and Labeling, Inc. **651 F.2d 502 (C.A. 7, June 1981)**
(E informing Ees that signing U cards meant giving up *right to talk to us about your hours, your work, your working conditions, your pay and everything else concerning your future and continued employment*, unlawful since Ees may still present grievances directly to E so long as U representative is given opportunity to be present)

5036-8341 Withdrawal of privileges

Marion Rohr Corporation **261 NLRB No. 138**
(telling Ees that if U came in he would no longer permit simultaneous vacations of husbands and wives, violative)

Foundation of California State University, Sacramento **255 NLRB No. 029**
(threatening that if U came in Ees would have to work certain set hours w/o exception and no alternative arrangements would be permitted, unlawful)

Foundation of California State University, Sacramento **255 NLRB No. 029**
(threatening that if U came in Ees would be docked if late rather than allowed to make up time, unlawful)

Sunco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(E's threats to take away Ee breaks unlawful, where made in retaliation against Ees' U organizing activities and Es advanced no legitimate business reasons to justify threats)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(informing Ees that personal leave for doctor and dental appointments would no longer prevail if U was elected, unlawful)

Lecks Industries, Inc. **JD-346-82**
(supervisor's statement to Ees that as result of U organization Ees would not be able to come to supervisors and talk to them as they had in the past because U would be Ees' exclusive representative, not unlawful, since statement was not a threat but simply campaign rhetoric and an opinionated prediction on part of supervisor as to impact of U organization which would result in a change in communication between supervisors and Ees)

United States Steel Corporation **JD-(ATL)-90-81**
(E's threatening to change its practice of permitting Ees to swap shifts w/o permission because of Ees' filing of grievances, unlawful)

N.L.R.B. v. Mark I Tune-Up Centers, Inc. **691 F.2d 415 (C.A. 8, Oct. 1982)**
(statements at pre-election meeting that unionization might cause E to close some of its shops, eliminate shop privileges and impose more onerous working conditions violative where no objective basis for E's predictions)

5036-8342 Downgrading, or demotion

T. L. C. Lines, Inc. **265 NLRB No. 150**
(threatening to reclassify mechanics as apprentices if they selected U, violative)

Gentile Pontiac **260 NLRB No. 086**
(while E may freely express dislike for U w/o violating Act, E's statement concerning demotion of chief U organizer with advent of U, unlawful)

Channel Island Development Corp., d/b/a The Lobster Trap & Casa Sirena Marina Hotel **259 NLRB No. 160**

Atlas Metal Parts Co., Inc. v. N.L.R.B. **660 F.2d 304 (C.A. 7, Sep. 1981)**
(threat to give Ee dirty or bad-rated jobs if he did not stop filing grievances, unlawful)

5036-8343 Denial of vacation benefits or change in policy

Marion Rohr Corporation **261 NLRB No. 138**
(telling Ees that if U came in he would no longer permit simultaneous vacations of husbands and wives, violative)

Climate Control Corporation **251 NLRB No. 102**
(threatening Ees with denial of vacation benefits because of U, violative)

5036-8344 Closer supervision

A.P.F. Electronics, Inc. **257 NLRB No. 068**
(berating Ee for contacting U representative regarding making and receiving phone calls on job and threatening increased supervision and discharge because of Ee's protected action, unlawful)

5036-8345 Withholding of promotion

Champion Road Machinery International Corporation **264 NLRB No. 123**
(threatening delays in reviews and promotions if Ees selected U, unlawful)

Larid Printing, Inc. **264 NLRB No. 040**
(E's president asking Ee why Ee wanted U and stating Ee could not get raise or promotion because of presence of U, unlawful)

Cardio Data Systems Corp. **264 NLRB No. 011**
(posting of statement made by general manager of company constituting single E with E herein, and attributable to latter, that E's practice of promoting Ees from w/i would end with U representation, unlawful, since statement's threat to withdraw existing benefit was not rooted simply in what had occurred at another location with manager's prior E but related to what was possible or impossible in a *U organization* and, as such, amounted to an unlawful threat)

E. I. Dupont De Nemours **263 NLRB No. 015**
(supervisor asking black Ee who was wearing U insignia why Ee was getting so involved with U, if any one was presuring him to join U and in same conversation indicating to Ee that E would be making more black supervisors but that Ee should not wear pro-U insignia and to continue to do so would result in his not being considered for supervisor position, unlawful)

Onan, a Division of Ona Corporation **261 NLRB No. 187**
(threats of loss of promotion for wearing U cap and paraphenalia, unlawful)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's statement that he could no longer support Ee's application for management position because of Ee's U activities unlawful, notwithstanding supervisor's later repudiation of remarks)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor expressing desire to see Ee in management position, but at same time informing Ee that if Ee aspired to management position Ee had better change her ways, unlawful)

The Pacific Telephone and Telegraph Company **JD-(SF)-322-80**
(supervisor's response to U steward presenting grievances that he was a troublemaker and troublemakers would not get far in the company held unlawful threat to job tenure or chances for advancement)

5036-8346 Eliminate bidding on jobs

Vincent Brass & Aluminum Co. **264 NLRB No. 070**
(E's vice-president referring to grievances regarding job bidding and stating *he was tired of cherry picketing and nit-picking*, that he *had skilled people and would put them where he wanted* contrary to bargaining agreement, since *down-bidding ruining company* because of expense of training, and subsequently stating there would be no job-bidding at all, unlawful)

5036-8347 Loss of profit sharing

Onan, a Division of Ona Corporation **261 NLRB No. 187**
(threat of loss of profit-sharing benefits and savings plan to which E contributed if Ees selected U, unlawful)

Conair Corporation **261 NLRB No. 178**
(E's conduct in stamping *Statements of Account* distributed to Ees enrolled in profit sharing plan with phrase *For Non-U Ees Only* or with notation *U members are not entitled to profit sharing plan* held *per se* violation, since it clearly constituted threat that Ees would lose their right to participate in profit sharing plan if U came in)

Conair Corporation **261 NLRB No. 178**
(E's use of campaign literature referring to E's profit sharing plan as being only for non-U Ees, unlawful)

5036-8347—Cont.

Hands and Threads Company, a Division of MSL Industries, Inc. 261 NLRB No. 115

Thurston Motor Lines, Inc. 257 NLRB No. 172
(warning Ees that they would lose their profit-sharing plan if they selected U, violative)

Sioux Products, Inc. 257 NLRB No. 056
(telling Ees that if U won election they would lose benefits and completely lose profit-sharing, violative)

Pace Oldsmobile, Inc. 256 NLRB No. 111
(threatening to cause loss of pension and profit sharing benefits if U selected as representative of Ees, unlawful)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. 251 NLRB No. 179
(telling Ees that they could lose both their profit-sharing and pension benefits if U came in, violative)

Molerway Freight Lines, Inc. JD-(SF)-193-82
(E informing Ees it had instituted profit sharing plan from which U members would be excluded, unlawful)

Sea-Alaska Products, Inc. JD-(SF)-139-82

Harvey & Madding, Inc., d/b/a Dublin Honda JD-(ATL)-97-81
(E's discussing with Ees, week after R ptn filed, Ees' status under E's existing profit sharing plan held violative as veiled threat to Ees of loss of benefits if U selected in election)

5036-8348 No wage increase

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 106
(allegation that Ees were told that they would be denied wage increases because of U, dismissed, since GC failed to prove allegation, where E denied making statement, and GC failed to elicit testimony of two Ees present when statement was assertedly made to testifying Ee, and it is reasonable to infer that they would not have corroborated latter's testimony)

Larid Printing, Inc. 264 NLRB No. 040
(E's president informing Ee he had intended to give Ee night work differential, but could not because of U campaign, unlawful)

Larid Printing, Inc. 264 NLRB No. 040
(E's president asking Ee why Ee wanted U and stating Ee could not get raise or promotion because of presence of U, unlawful)

R. L. White Company, Inc. 262 NLRB No. 069
(supervisor's statement to Ee that if U came in *everything would be frozen* not violative threat of loss of benefits but statement of legal effect of selecting bargaining representatives)

Management Training Corporation (Formerly Thiokol Corporation) 261 NLRB No. 013
(where E had policy of promoting Ees as vacancies occurred and of granting annual merit increases, its withholding of these promotions and benefits combined with statements that if U lost election they would be granted immediately, but if U won they would be deferred indefinitely, violated Act)

Emory Nursing Home, Inc. d/b/a Emory Convalescent Home 260 NLRB No. 071
(suggesting to Ee that any wage increase she and other Ees were *set* to receive would be eliminated by necessity for hiring lawyer to negotiate with U, violative)

Quick Find Co. 259 NLRB No. 144
(after questioning Ees about their U activities, telling them that they *were booked for raise* violative, as it implied that benefits would be withheld because of U activity)

Daniel Construction Company, A Division of Daniel International Corporation 257 NLRB No. 176
(telling Ees that if U was voted in, E would no longer be free to grant wage increases w/o first negotiating with U for such wage increases, not violative since this was no more than exposition of one aspect of E's legal bargaining obligation)

Clements Wire & Manufacturing Company, Inc. 257 NLRB No. 075
(telling Ees that if E encountered too much difficulty with U regularly scheduled raise would be canceled, violative)

Sanitas Cura, Inc. d/b/a Parkview Acres Convalescent Center 255 NLRB No. 149
(telling adherent that attempt to secure U representation *might mess up the raise* Ees were expected to receive pursuant to mandatory increase in federal minimum wage, violative)

SAS Ambulance Service, Inc., d/b/a Florida Ambulance Service; et al. 255 NLRB No. 031
(threatening Ees with loss of pay increases because of their U activities, violative)

Dillman Foods, Inc. 253 NLRB No. 114
(statement that because of U campaign E would withhold previously scheduled seniority raises, violative)

I/O Optics Limited, U.S.A. 251 NLRB No. 037
(exhibiting to group of Ees, paper containing names of Ees scheduled to receive pay raises, unlawful since it amounted to implied threat that continued U activities would result in loss of scheduled pay raises)

St. Francis Hospital 249 NLRB No. 017
(no raise until U activities cease)

Hinky Dinky Super Markets, Inc. 247 NLRB No. 169
(telling Ees that they *probably* would not get raise if U won because all raises would then be subject to negotiation, held not violative, citing *Strumpf Motor Company*, 208 NLRB 431, 432 (1974))

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center 247 NLRB No. 126
(supervisor's telling Ee that if Ees did not vote against U in election, the facility would become unionized which would hurt Ees' chances of wage increase, their job security, and possibility for improvement in working conditions, violative; statement constituted threat of loss of employment and loss of wage increase, and of more onerous working conditions)

Ellis Hospital JD-164-82
(letter informing Ees that in event they selected U they would not receive regularly scheduled wage increase held unlawful threat and interference with election where annual wage increase was established working condition, notwithstanding that precise amount for the year had not yet been set)

Pascack Valley Hospital Association JD-(NY)-85-81
(threatening Ee with loss of future raises because of his activities on behalf of U, violative)

Penz Tool and Manufacturing Co., Inc. JD-644-80
(implied threat that potential raises were adversely affected by fact that ULP charges had been filed with Bd, unlawful where such conduct clearly had tendency to direct anger of Ees at ones they might believe caused such problem and to inhibit such Ees from exercising their own protected concerted rights)

Round Table Enterprises Inc. t/a Thrift T Mart JD-(NY)-62-80
(statement to Ee that another Ee would not get raise because *he's starting trouble around here, with this union,* violative)

The Marley Heat Transfer Company JD-(SF)-263-80
(no violation where E who recently purchased plant promised that new wages and benefits package would take effect on certain date but before election told Ees that if U won, E would negotiate with U concerning wages and benefits, where E's package was *discretionary* and amount had not been determined before advent of U or election)

Werth Engineering, Inc. JD-295-80
(where E had no established practice of granting wage increase its refusal to grant promised raise not violative where because of U activity taking place to grant it would be violative)

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)
(violation, where E impliedly blamed U for E's decision to withhold wage increases)

Air Express International Corporation v. N.L.R.B. 659 F.2d 610 (C.A. 5, Oct. 1981)
(threatening to withhold raises from some Ees while promising raises to others, violative where purpose was to discourage U activity and to weaken pro-U majority)

Florida Steel Corporation v. N.L.R.B. 648 F.2d 233 (C.A. 5, June 1981)
(violation since E misstated law in that it implied it might lawfully withhold customary periodic increases, and other benefits that would otherwise be granted where E informed Ees via videotape that at one of E's unionized plants Ees did not receive wage increase during months of negotiations since E required to bargain before granting wage increases based on annual wage survey whereas during same period Ees at E's non-U plant had received increase, and only after U voted out after negotiations did not result in contract did Ees receive wage increase)

N.L.R.B. v. Midland National Life Insurance Company 621 F.2d 901 (C.A. 8, 1980)
(threatening Ees with loss of salary increases and other benefits, unlawful)

N.L.R.B. v. Chatfield-Anderson Co., Inc., dba Truss-Span Co. 606 F.2d 266 (C.A. 9, 1979)
(loss or delay in planned raises or bonuses)

5036-8349 Financial loss

American Display Manufacturing Co., Inc. 259 NLRB No. 006
(informing Ees that if U came in, made rediculous demands and caused strike, E might not be able to make timely deliveries and lose largest account and thereby result in possible loss of jobs, unlawful because U had not, as yet, made any demands)

Palby Lingerie, Inc. and Argus Lingerie Corp. 252 NLRB No. 032
(violation where E made reference to strike in the event of U coming with consequence of loss of pay to Ees)

5036-8349—Cont.

Alenco, A Division of Redman Building Products, Inc. **251 NLRB No. 067**
(personnel director's remark that U *was going to have to wind up going to Board to get* requested wage information concerning asserted unilateral reduction in pay rates of certain Ees, and that it could take years not violative, since remark was no more than statement reflecting U's legal right to avail itself of Bd's processes to obtain requested information)

Stanley M. Fell, Inc. **250 NLRB No. 065**
(E's statements that Ee should consider fact U might negotiate restrictions on right to employ retired Ees, not unlawful)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(E's response that Ee *got the picture* when asked by Ee if it meant Ees' paychecks after E had stated that he would not take matter of Ees' U activities lightly, unlawful)

5036-8350 Reduction in pay

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads **261 NLRB No. 130**
(E's statement that he knew for fact that there was no guarantee of higher commission rates or drawer rates with U contract and in some instances rates had gone down was not threat to lower wages in reprisal for U activity because it was truthful or at least noncoercive expression of E's views and E attributed lower rates to product of bargaining rather than advent of U)

Halo Lighting Division of McGraw Edison Company **259 NLRB No. 086**
(threatening Ees that they would have to start at bottom of Federal wage rates if Ees did not vote for incumbent U, unlawful)

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**

Dura-Vent Corporation **257 NLRB No. 083**
(violation where E threatened Ees with wage reductions unless they accepted different positions which required them to abandon positon w/i unit, U membership and rights of Ees generally under Act)

Clements Wire & Manufacturing Company, Inc. **257 NLRB No. 075**
(telling Ees that if U came in they would be making less money, violative)

Association of Apartment Owners of The Whaler on Kaanapali Beach **255 NLRB No. 010**
(E's statements in Ee meeting that if U come in wage rates would be set by U-master agreement not violative where upon questioning by Ees, E agreed that wages would be negotiable, thus neutralizing potentially violative statement)

Raimund Cornsen Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(threat of lower classifications and thus of lower wages with U, unlawful)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(threat to reduce waitresses' wages if Ees supported U, unlawful)

Sneva's Rent-A-Car **JD-(SF)-283-82**
(statement that E guaranteed that unlawfully discharged taxicab driver would not make any money if he returned to work constituted unlawful threat of loss of wages because of Ee's earlier protected activities)

Ford Motor Company, Automotive Division, Twin Cities Plant **JD-57-81**
(threatening to eliminate premium pay from job if Ee grieved about being transferred from that job, unlawful)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(threat to reduce all wages to minimum wage if U won election, unlawful)

5036-8353 Change in method of compensation

Martin-Brower Company **261 NLRB No. 111**
(threat to cancel certain routes if Ee's selected U violative)

5036-8354 Reduction in work or in number of employees on job

Ray-Loc, A Division of Genuine Parts Company **265 NLRB No. 211**
(supervisor asking Ee how U meeting went and informing Ee materials necessary for his work would not be ordered until *U talk settled* violative)

Larid Printing, Inc. **264 NLRB No. 040**
(stating to assembled Ees that U would probably make him cut back on help because everybody would have specific job title and if U came in medical unsurance would be cancelled, unlawful)

Granite City Journal, Inc. **262 NLRB No. 140**
(E's statements to recently hired and therefore most vulnerable Ees that E was overstaffed and plans to acquire another enterprise had to be shelved because of U's advent, unlawful, since E thereby conveyed threat of lost employment or work opportunities because of U; E's comment was not straightforward announcement of business decision because it was not reasoned prediction based on objective facts demonstrating probable consequences outside E's control; and it was not free speech protected by 8(c) but unadorned warning of adverse consequences designed to discourage Ees' U activity)

United Supermarkets, Inc. **261 NLRB No. 179**
(threats to increase production requirements and to reduce working hours of certain Ees, assertedly for purpose of reducing labor costs, unlawful, since threats were made because of Ees' U activities)

Marion Rohr Corporation **261 NLRB No. 138**
(telling Ees that if U came in their work week would be reduced because U's contract prohibits longer work week, not unlawful, because it pertains to possible action by U rather than by E)

Broadway Catering Corp. d/b/a Studio 54 **260 NLRB No. 166**
(telling U adherent he would be denied additional work if he continued his U activities, unlawful)

Halo Lighting Division of McGraw Edison Company **259 NLRB No. 086**
(E's prediction that, if E lost incumbent U's label as result of U's loss of impending election, U members would refuse to install E's product with resultant loss of business and jobs, unlawful, where E's evidence showed that refusal of U members to handle E's product occurred at point too remote in time to support E's stated belief; and, while E's further evidence indicated E's belief in advantages of having U contract, it did not show that U members as a group would not handle E's product, or that U would unlawfully induce its members to do so)

Cumberland Farms Dairy of New York, Inc. **258 NLRB No. 120**
(statement that Ees would suffer reduction in number of days they worked if they complained about overly-long hours, violative)

Truck Stations, Inc., d/b/a Woody's Truck Stops **258 NLRB No. 094**
(statements to Ees that if U won election shift hours would be reduced and pay consequently lowered, violated Act)

Great Scot of Florida, Inc. **256 NLRB No. 126**
(statement that if U voted in Ees' working hours would be cut, violative)

Richland Co. & Assoc., Division of McDonald Construction, Inc. **256 NLRB No. 026**
(statement to Ees that E was delaying bidding on new work until after election, unlawful, since it was transparent warning that E was already in process of implementing his prior threat to close if U won election, as well as effort to coerce Ees into voting against U; E's contention that statement was not unlawful because he had made decision to close U before U organization began and was therefore simply informing Ees of previous management decision, rejected)

Pacific Intermountain Express **250 NLRB No. 180**
(violation where E removed customer accounts from Ee and told other Ees that it had done so because of customer's demand that U sales representatives not service them)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(threatening to cut Ees' hours from 40 to 20 per week because of prospective unionization of warehouse, violative)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(violation, where during pre-election period supervisor told Ee that E was *screwing* Ees but it could not be proved, and that Ees' hours would stay cut until U matter was cleared up)

Sullivan Transfer Co. **247 NLRB No. 117**
(E's statement to Ee that if he continued to be represented by U it would result in significant reduction in number of hours worked violated Act)

Locks Industries, Inc. **JD-346-82**
(E's statements to Ee during U organizational campaign that E's plant could end up same way as another E's plant with workforce half of what it was, not unlawful, where statements reflected facts involving other Es in allied industries and in same area and therefore was statement of opinion as to possible consequences of unionization based upon economic factors in area and, as such, was protected by 8(c) proviso)

Convenience Stores Distributing Company, a Partnership of Marsh Supermarkets, Inc. and King Kwix Minit Market, Inc. **JD-745-80**
(supervisor's telling Ee drivers that there was possibility that E distributor would get contract from chain of stores, but that store chain did not like Us and if U was successful at E's premises then E would not get contract, violative)

N.L.R.B. v. Chester Valley, Inc. **652 F.2d 263 (C.A. 2, June 1981)**
(warning that if unionization occurred, E's main facility might become self-service, flexible work hours might be bargained away, and E might not be able to afford part-time Ees, violative as veiled threats of reprisal for pro-U votes; in most instances E failed to attribute possible unfavorable changes to any costs which would result from U representation)

N.L.R.B. v. Eastern Steel Company **671 F.2d 104 (C.A. 3, Feb. 1982)**
(E's threat to Ees that practice of assigning Ees to whatever work was available would cease and that they would work fewer hours, unlawful)

5036-8354—Cont.

Central Freight Lines, Inc. v. N.L.R.B. **666 F.2d 238 (C.A. 5, Jan. 1982)**

(supervisor's remarks that if E were unionized, full-time Ees might be part-timers or jobless supported inference of unlawful threat of reduced work or discharge, where Ee who testified regarding remarks was sure that statements were made but unsure in what connection they were made)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. **672 F.2d 592 (C.A. 7, Feb. 1982)**

(E's statements implying that *yes* vote would result in little work held threat as it was warning of adverse economic impact w/o objective basis for Ees to believe that predicted result was not caused solely at E's initiative)

N.L.R.B. v. Steven Davis and Michael Provenzano, d/b/a Carlton's Market **642 F.2d 350 (C.A. 9, Apr 20, 1981)**

(threat of reduction in hours if U organized the store unlawful)

5036-8355 Issuing warnings

South Nassau Communities Hospital **262 NLRB No. 146**

(warning letters issued to U activists for infraction of E rule by overextending their lunch breaks, unlawful, notwithstand that similar punishment was given to Ees not actively supporting U, where extension of lunch break was common practice engaged in by supervisors and Ees, of which E was well aware; and, as shown by E's remarks in answer to Ee's inquiry about her similar situation, discipline of Ees herein was directly related to their U activities)

South Nassau Communities Hospital **262 NLRB No. 146**

(supervisor's remarks to Ee who was not U supporter, after supervisor had issued warning letters to U activists assertedly for breaching E rule, that Ee, who had similarly breached rule, was *doing a fine job* and was *not involved in anything*, and that management was *looking at certain people* held to lead to conclusion that E's issuance of warning letters unlawfully coerced and was in retaliation against U activists)

Mark I Tune-Up Centers, Inc. **256 NLRB No. 138**

(in context of threat to close plant of E engaged in automotive repairs, statement that Ees would no longer be able to purchase materials at cost nor use E's utilities, tools, and facilities, unlawful, since statement, indicating that E can be strict and tough, and that E's rules might be enforced more strictly, was threat to change to more onerous working conditions)

Herman Brothers, Inc. **252 NLRB No. 121**

(supervisor informing Ee who had been given permission to take off next day that if Ee, who opposed ratification of proposed contract, went to U hall next day Ee would be given warning letter for excessive absenteeism, unlawful, since supervisor never denied Ee had previously been given permission to take day off and E's concern was that reason Ee wanted to be off was to attend tally of mail ballot on contract ratification)

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**

(warning Ees that if they honored picket line of U representing other Ees at E's plant they would be in violation of no-strike clause and would be charged with unexcused absences, unlawful, since there was no waiver by terms of contract or on basis of bargaining history of Ee's right to engage in sympathy strike or to refuse to cross picket lines of another U)

5036-8357 Stricter enforcement of rules

Larid Printing, Inc. **264 NLRB No. 040**

(informing Ee he was making big mistake in bringing U in, if U came in and shop closed down Ee was going to have bad name in industry, and if U came in E would have to get very technical, and everything would have to be done by book, unlawful)

Vincent Brass & Aluminum Co. **264 NLRB No. 070**

(E's superintendent informing U steward that he was *tired of all the grievances and nit picking* and threatening to start writing Ees up for overstaying breaks or lunch period, unlawful)

Hudson Oxygen Therapy Sales Company **264 NLRB No. 004**

(E's implying to Ee complaining about disciplinary write-up for infraction of work rule that, as in the past, E would continue to protect Ee's interests in the future, which was accompanied by inarticulated further premise that, if Ee continued her support for U, further discipline would be imposed, unlawful)

Cardio Data Systems Corp. **264 NLRB No. 011**

(posting of statement clearly implying that consequence of selecting U to represent Ees would lead to further erosion of favorable informal atmosphere of employment, unlawful; even though statement asserted this *could* be the result, entirety of statement clearly threatened Ees with more stringent rules and procedures should they organize)

South Nassau Communities Hospital **262 NLRB No. 146**

(E's advising Ees of possibility of stricter enforcement of company rules and working conditions once U represented Ees, unlawful, where E sized upon opportunity at regularly scheduled business meeting to discourage U activity, and such remarks fell outside protection of 8(c))

Midwest Motel Management Corp. of Birmingham **261 NLRB No. 100**

(stricter enforcement of E's work rules if Ee's supported U)

High Energy Corporation **259 NLRB No. 097**

(E's threat to Ees that, if they selected U, more stringent work rules would be implemented by restricting coffee and food breaks, unlawful)

K & E Bus Lines, Inc. **258 NLRB No. 137**

(E announcing to Ees who were school bus drivers that forthwith E would follow school bus driving manual)

General Electric Company **255 NLRB No. 092**

(threatening strict enforcement of length of breaks if U came in, unlawful)

Foundation of California State University, Sacramento **255 NLRB No. 029**

(threatening that if U came in Ees would have to work certain set hours w/o exception and no alternative arrangements would be permitted, unlawful)

Foundation of California State University, Sacramento **255 NLRB No. 029**

(threatening that if U came in Ees would be docked if late rather than allowed to make up time, unlawful)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**

(E's statement that work rules, especially in regard to punctuality would be tightened up in event of unionization, unlawful)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**

(supervisor's statement that if U came in things would change drastically, limitations would be placed on breaks, Ees would not be allowed to chit-chat, and office atmosphere would be much stricter)

GE's Trucking, Inc. **252 NLRB No. 131**

(E's statement that presence of U would require more stringent application of work rules presently enforced leniently held unlawful threat of reprisal)

5036-8358 Refusal to reinstate strikers

Brinkerhoff Signal Drilling Co. **264 NLRB No. 049**

(E violated Sec. 8(a)(1) when it created impression that economic strikers who were seeking to return to work were not being granted their *Laidlaw* preference in employment over new applicants and also by requiring returning strikers to fill out same employment register that all job applicants signed)

Brinkerhoff Signal Drilling Co. **264 NLRB No. 049**

R. L. White Company, Inc. **262 NLRB No. 069**

(strikers would be discharged)

Charleston Nursing Center **257 NLRB No. 066**

(E's letter to replaced economic strikers requiring them to furnish current information about their interest in reinstatement or risk losing their reinstatement rights, violative since it constituted threat to cut off statutory reinstatement rights of economic strikers)

Rockingham Machine-Lunex Company **255 NLRB No. 015**

(E informing Ees that if they went on strike and E would assume they no longer wanted their jobs, unlawful for strikers are still Ees)

Huck Manufacturing Company **254 NLRB No. 088**

(E's statement to returning strikers that if they struck again they would be permanently replaced violative as it made no distinction between economic strikers and ULP strikers)

Huck Manufacturing Company **254 NLRB No. 088**

(where E in discussion with Ee originally stated that he could permanently replace all striking Ees and then retracted statement and stated correctly that striking Ees would be eligible for reinstatement as their replacements left his employ did not violate Act as his explanation was not in error nor coercive)

Peat Manufacturing Company **251 NLRB No. 153**

(telling economic strikers that *they were not going to get their jobs back*, violative, since they were entitled their jobs once strike had ended, they applied for reinstatement and openings for which they were qualified became available)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**

(violation where, after Ees went on strike to protest E's ULP, E was accurately quoted in newspaper as having said that Ees hired to replace strikers were permanent and that E planned to replace all strikers, E's comments constituted threats not to reinstate ULP strikers)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**

(violation where E threatened with discharge, and delayed reinstatements of, several Ees who were engaged in ULP strike)

5036-8359 Refusal to recall laid off employees

Hart Ski Mfg. Co., Inc. **JD-11-80**

(violation, where E's owner, at least indirectly, threatened that laid off Ees would not be recalled until contract offered by E had been accepted by stating he had to have some basic understanding of where Ees were going and whether they would accept management's proposal before company could start calling laid off Ees back to work)

5036-8360 Installation of time clocks

5036-8360—Cont.

Como Fabricating & Engineering Company 263 NLRB No. 132
(threat to not recall laid-off Ee if he sided with U, unlawful)

Progressive Supermarkets, Inc. 259 NLRB No. 074
(if U won election)

Foundation of California State University, Sacramento 255 NLRB No. 029
(threatening that if U came in time clocks would be installed, unlawful)

5036-8366 Shut down or removal of plant to new location

Enterprise Products Company 265 NLRB No. 083
(directing senior Ee to carry threat to other Ees that E would close plant rather than accept U, unlawful)

Admiral Merchants Motor Freight, Inc. 265 NLRB No. 016
(E's president's threat to close plant if Ees did not accede to his plan to reduce debt to pension and health and welfare funds, as ordered by ct, by giving up some of their contractual benefits, unlawful)

Penn Color, Inc. 261 NLRB No. 058
(threatening to relocate plant because of Ees' U activities, unlawful)

Bai Research Corporation 257 NLRB No. 127
(threatening to move to new location and bringing in police to instill in Ees' minds that E was serious about move, violative)

Colson Equipment, Inc. 257 NLRB No. 015
(supervisor's remark that E had choice of closing up and moving, unlawful, since the remark when made under circumstances herein could only be construed as threat to take such action because of U activities, and such threats, which are not based on objective facts, constitute violations; moreover, supervisor did not cite any economic justification to support his statement, and his remarks, as a supervisor, could be construed as representing E's position)

Viracon, Inc. 256 NLRB No. 037
(sending all Ees letter stating that had Ees been represented by U earlier, plant would already have been closed and suggesting in letter that, should plant be closed, E would simply move to another location, but that some Ees would remain unemployed, violative)

Steinerfilm, Inc. 255 NLRB No. 017
(threat to move plant and that Ees would lose jobs if U came, violative)

Monterey Drilling Company 255 NLRB No. 074
(E's threat that E would move and none of present Ees would move with E if Ees selected U, violative)

Riley-Beaird, Inc. 253 NLRB No. 085
(E's unrelenting message to Ees, through speeches, slides, and posters, constituted implied threat to Ees that selection of U would result in plant closure, where E's campaign theme was inevitability of bargaining table disagreement, resultant strike and ready alternative of plant closure and removal)

Kaufman DeDell Printing, Inc. 251 NLRB No. 002
(threat to move machinery out of building if it was necessary for everyone to join U, unlawful)

Owen Lee Floor Service, Inc. 250 NLRB No. 070
(threat of E's vice-president to set up another company elsewhere to avoid bargaining with U, unlawful)

Han-Dee Pak, Inc. 249 NLRB No. 107

Material Transportation, Co., Inc. JD-670-80
(threatening Ees that if they selected U to represent them, its contract to haul coal would not be renewed and E would shut its doors, violative)

Dean Products, Inc. and American Metals Corp. v. N.L.R.B. 613 F.2d 162 (C.A. 6)
(threat immediately before U election of closing plant and moving its production to another plant, violative)

5036-8368 Reorganization of method of doing business

Chester Valley, Inc. 251 NLRb No. 190
(telling Ees that, because of costs that could occur if U came in, E would have to cut corners somewhere and possibly this would be done by turning E's gasoline station into self-service facility, unlawful)

Owen Lee Floor Service, Inc. 250 NLRB No. 070
(threat of E's vice-president to set up another company elsewhere to avoid bargaining with U, unlawful)

5036-8370 Replacement of strikers

Grove Valve and Regulator Company 262 NLRB No. 035
(E who conducted extensive search for job applicants during U campaign and then gave large group of applicants tour of plant explaining to Ees that these people would be their replacements in event of strike violated Act as this conduct created fear in Ees that if they selected U strike was inevitable and they would be immediately and permanently replaced)

Grove Valve and Regulator Company 262 NLRB No. 035
(memo distributed by E to its salaried personnel during course of U campaign which assured them of their safety and continued production if a strike should occur at plant, violated Act for it created impression that strike was certainty and economic strikers would be immediately replaced)

Cooperativa De Credito Y Ahorro Vegabajena 261 NLRB No. 161
(threat that ULP strikers would be replaced if they did not go back to work by certain date, violative)

Heads and Threads Company, a Division of MSL Industries, Inc. 261 NLRB No. 115

Best Products Co., Inc. 259 NLRB No. 016
(statements that if U was voted in strike would be inevitable and strikers would lose their jobs violative)

Gulf Envelope Company 256 NLRB No. 058
(E informing strikers that if they did not return to work by certain date their jobs would be permanently filled and their employment terminated, unlawful, since not legitimate prediction of economic consequences, but coercion, in view of use of word terminated which could be logically understood to mean fired; further, informing strikers that they may be placed on preferential hiring list to be discontinued after one year and that even if they were reinstated it would be w/o seniority except for benefits, unlawful, and not mooted, notwithstanding no strikers ever placed on such list)

Rockingham Machine-Lunex Company 255 NLRB No. 015
(E informing Ees that if they went on strike and E would assume they no longer wanted their jobs, unlawful for strikers are still Ees)

Piezo Technology, Inc. 253 NLRB No. 122
(reading prepared speech to Ees that if Ees engaged in economic strike and were replaced, Ees will lose their Ee status, violative)

Berger Transfer and Storage, Inc. 253 NLRB No. 002
(E telling strikers if they did not report to work in half hour they would be terminated and their insurance cancelled, violative, as it is threat of reprisal for engaging in protected activity)

Huron Dressed Beef, Inc. 252 NLRB No. 031
(refusal to reinstate economic strikers except as new hires with starting wages and w/o seniority and accured vacation, medical and other benefits, and hiring *permanent replacements* in place of those strikers who did not accept offer to return to work as new hires, violative)

Sanders Bus Line, Inc. JD-(SF)-120-82
(E informing ULP strikers that if they did not report to work prior to being replaced they would be terminated, unlawful)

Sanders Bus Line, Inc. JD-(SF)-120-82
(threat to replace Ee who was on leave of absence if she did not cut short her leave and report to work during ULP strike, unlawful)

Vinci Investment Co., d/b/a Pacific Honda JD-(SF)-56-81
(letter to Ees stating that when strikers were permanently replaced they lost their jobs, violative, where such misstatement had coercive impact)

K-P Graphics, Inc. d/b/a Impression Northwest JD-(SF)-187-80
(E's issuing letter to strikers informing them that if they did not return to work on particular day, they would be permanently replaced, and, if hired later, would be as new Ee held violative, since action interfered with Ees' rights)

Mather Federal Credit Union JD-(SF)-8-80
(telling ULP strikers that they were permanently replaced)

N.L.R.B. v. Hasbro Industries, Inc. 672 F.2d 978 (C.A. 1, Feb. 1982)
(E's letter conveying message that there would be a strike and proU Ees would be replaced, unlawful)

5036-8370-5000 Prior to strike

Eagle Comtronics, Inc. 263 NLRB No. 070
(merely informing Ees that in case of an economic strike, strikers could be replaced by applicants whose names were on file w/o delineating their specific rights as economic strikers, not unlawful, since E need not detail *Laidlaw* protections of strikers so long as E does not threaten to deprive Ees of *Laidlaw* rights)

Progressive Supermarkets, Inc. 259 NLRB No. 074
(E's repeated references to posibility of strikes and fact that economic strikers can be permanently replaced violative when considered in context of E's other campaign statements which were clear violations of Act)

Progressive Supermarkets, Inc. 259 NLRB No. 074
(where E's campaign speeches contained constant references to U's own anti-U campaign where it had forced strike and permanently replaced strikers, these references found violative as *not so subtle threat* that E would also force strike resulting in permanent replacement of strikers)

5036-8375 Sale of business

Allen-Stone Boxes, Inc. 252 NLRB No. 171
(reporting to Ees prospect of sale of business, merger of operations, or jobbing out of work if U came in, violative)

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Head Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. **248 NLRB No. 089**
(E vice-president's unequivocally stating to Ee that *if the Union got in—he would sell the equipment and all of us drivers would be without a job,* violative)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(threats to discriminatee and other Ees that it would be discriminatee's fault if E had to sell business and Ees lost their jobs because of discriminate's resort to Bd processes, unlawful)

5036-8379 Shutdown or liquidation of business

Donnelly Manufacturing Co. Division of Brockhouse Corp. **265 NLRB No. 196**
(manager stating to Ees that E's president couldn't stand for U coming in and would have to close business, unlawful threat of plant closing, notwithstanding jesting manner, since did not predicate statement on economic basis or give any supporting figures for conclusion)

De Queen General Hospital **264 NLRB No. 069**
(E's placing advertisement in local newspaper admonishing hospital Ees to vote against U, and informing Ees that doctors might be obligated to take their patients elsewhere if hospital was unionized and patient care suffers, violative)

Larid Printing, Inc. **264 NLRB No. 040**
(E's production manager asking Ee if Ee was for U and informing Ee *if U comes in it will kill us,* unlawful)

Vincent Brass & Aluminum Co. **264 NLRB No. 070**
(E's superintendent informing U steward that E's vice-president was tired of grievances pertaining to job bidding, and of U problems, and was going to close plant, unlawful)

L. A. Water Treatment, Division of Chromalloy American Corporation **263 NLRB No. 022**
(threatening to close plant if Ees decertified incumbent U or selected labor organization other than incumbent as their bargaining representative, violative)

R. L. White Company, Inc. **262 NLRB No. 069**
(supervisor's threat of plant closure violative notwithstanding prefaced by statement *in my opinion*)

Grove Valve and Regulator Company **262 NLRB No. 035**
(statements made by E in speeches to Ees prior to election which emphasized inevitability of strikes, threatened loss of strikers jobs and plant closure violative especially in light of fact that they were made in context of other violative conduct)

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**
(vice-president's remark to Ees, in response to Ee question whether U would be help to E, made in context of E's numerous ULPs during U campaign, that his prior job was *best he had ever had — but company went broke after U came in..* held violative as implied threat to Ees that U victory in election would result in loss of jobs)

Conair Corporation **261 NLRB No. 178**
(signs in plant's rest rooms threatening plant closure, not unlawful, in absence of evidence that E was responsible for the posting or was aware of the signs' existence)

Conair Corporation **261 NLRB No. 178**
(even assuming E could not be found to have initiated, promoted, aided, or participated in distribution of *raffle tickets* for *all expense paid trip to E's new facilities in Hong Kong,* and for signs appearing in plant stating *Vote No or Move to Hong Kong* and similar signs, *raffle tickets* and signs appearing 2 weeks before election held unlawful threats of plant closure, since E was aware of such activity and had duty to unequivocally disavow any responsibility for such material, but E failed to do so even though it had ample time)

Conair Corporation **261 NLRB No. 178**
(E's preelection remarks to Ees at mass meeting, and distribution of leaflet, referring to high unemployment rate in State and corresponding loss of U membership throughout country, and statement that no company can possibly give what U promises and *still stay in this competitive business* held unlawful implied threat of plant closure)

Conair Corporation **261 NLRB No. 178**
(threats by E to close business and discharge or lay off Ees because of U activity are most egregious form of interference with free exercise of Ee rights)

Marion Rohr Corporation **261 NLRB No. 138**
(E warning Ee of prospect of layoffs and plant shutdown by citing another E as example and necessary linkage and causation between unionization and E going out of business)

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant **261 NLRB No. 051**
(violations, where E following demanded by U for recognition called meeting of all Ees and interrogated Ees as to why they wanted U, promised to discuss benefits after Ees signed ptn against U, threatened to close restaurant if U came in, and w/i five days w/o warning to Ees closed restaurant for two and a half weeks which had never been previously closed)

Fred Lewis Carpets, Inc. **260 NLRB No. 108**
(stating to Ees that E would go bankrupt if forced to pay U wages and benefits, violative, where E never offered any supporting figures or other evidence to base its predictions and such prediction of bankruptcy constituted veiled threat to close business if Ees selected U)

High Energy Corporation **259 NLRB No. 097**
(manager's statement concerning possibility of plant closure in event of unionization, unlawful, since it constituted a threat of retaliation rather than a prediction, where E introduced no evidence that his statements were based on fact or that eventuality of plant closure was a demonstrable probable consequence of such fact; and chairman of E's board of directors subsequently pointed up inaccuracy of manager's remarks by assuring Ees that plant would not be closed in event of unionization)

Air-Vac Industries, Inc., Leeward Constructors, Inc., Air-Vac Environmental Limited **259 NLRB No. 051**
(E's statement to Ees that if he had to pay contractual benefits and wage increases as provided in supplemental agreement, E will have to close its doors, give up municipal work and Ees would lose their jobs held violative)

St. John's Construction Corporation **258 NLRB No. 067**
(E's telling Ees that, faced with U organization, it had options of closing its doors, subcontracting, or going out of business, violative)

Dimensions in Metal, Inc. **258 NLRB No. 078**
(threatening to close plant before letting U in, violative)

Cumberland Farms Dairy of New York, Inc. **258 NLRB No. 120**
(statement that E would close plant rather than tolerate U, violative)

Marhoefer Baking Company, Inc. **258 NLRB No. 071**
(threatening to discontinue operation if Ees chose to be represented by U, violative)

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation **258 NLRB No. 142**

Hopcroft Art and Stained Glass Works, Inc. **258 NLRB No. 190**

Pantex Towing Corporation **258 NLRB No. 113**
(E's threatening tugboat's crew with discontinuance in operations and thus their employment, as well as outright loss of substantial benefits-bed and board-violative where it was threat of penalty or consequence should Ees exercise their rights under Act to vote for U)

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(threat of closing E's facility)

Timberline Energy Corporation **258 NLRB No. 037**
(telling U agent that he would not recognize U and would move operation out of state before allowing U in, violative)

George W. Kugler, Inc. **258 NLRB No. 007**
(threatening to close terminal where Ee was employed if he won reinstatement through grievance proceeding, unlawful)

Micro Metl Corporation **257 NLRB No. 005**
(night superintendent's comment that he believed E would close plant if U were selected as bargaining representative, violative)

Clements Wire & Manufacturing Company, Inc. **257 NLRB No. 075**
(telling Ees that if they could not work out their problems then outsiders would come in and plant would close down, violative)

Mark I Tune-Up Centers, Inc. **256 NLRB No. 130**
(E representative's threat of closure of U's facility, unlawful where, although E has right to present its views concerning U and pending election, Ees were aware of E's considerable U animus, representative failed to show that predictions were based on objective facts which would demonstrate probable consequences beyond its control; and, although representative was sincere, his predictions were based more on his anti-U bias than on facts required of business realities)

Great Scot of Florida, Inc. **256 NLRB No. 126**
(E's campaign literature and speech to Ees that stores that were U were being closed and Ees were out of jobs, both nationwide and locally, and noting success of non-U operations, violative as implicit threat that E may or may not take action solely on his own initiative for reasons unrelated to economic necessities; statements do not contain management decision already arrived at to close plant in event of unionism, but contained threats to make decision after Ees had voted in election)

M. A. Harrison Manufacturing Company, Inc. **256 NLRB No. 071**
(stating that no U was going to tell E what to do and threatening plant closure, violative)

Precision Graphics, Inc. **256 NLRB No. 087**
(E's threat of plant closure during critical preelection period and following shortly after U received majority designation, and announced in order to discourage Ees from supporting U, unlawful)

Precision Graphics, Inc. **256 NLRB No. 087**
(E's posted notice to Ees allegedly repudiating prior threat of plant closure held to have no legal effect where, although there was adequate publication,

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notice was not unambiguous nor free from same proscribed conduct as prior closure announcement; notice was not timely, having been delayed for month so that Ees could ponder impact of earlier threat; it admitted no wrongdoing and gave no assurance of no future interference with Ees' statutory rights by such coercive conduct; and, since Gissel bargaining order is warranted, E's repudiation could not effectuate what Bd remedy could not do)

Samuel J. Wade, an Individual d/b/a Major Cab Company **255 NLRB No. 181**
(statement that there would be no U at company and E would close up his business before he would have U, violative)

Mini-Industries, Inc. **255 NLRB No. 123**
(threatening Ee with plant closure upon advent of U, violative)

Southern Moldings, Inc. **255 NLRB No. 115**
(speeches which were intended to, and did impress upon Ees futility of selecting U and clearly conveyed to Ees impression that Us inevitably bring uncompetitiveness, strikes, and eventually plant closure, violative)

Custom Trim Products **255 NLRB No. 096**
(threat of plant closure if U came in, violative)

Foundation of California State University, Sacramento **255 NLRB No. 029**
(E, which was non-profit organization, informing Ees after U had made demand for recognition that U's salary demands would cause E to *lose control of its revenues and make the foundation go broke*)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**
(supervisors' pre-election statements to Ees to effect that *if U got in*, E's sole customer for steel cans *would switch to less costly aluminum cans and (E) would be forced to shut down* held violative, since E had not met its burden of providing objective factual basis for statements because it does not necessarily follow that a U election victory per se would increase E's labor costs disproportionately to customer's willingness to pay)

Edgcomb Metals Co., One of The Williams Companies **254 NLRB No. 140**
(Bd overruled ALJ's finding of unlawful threat of plant closure where U president's testimony relied on by ALJ was of doubtful value in establishing particulars of alleged incident and not sufficient to sustain violation)

Pickering & Co., Inc. **254 NLRB No. 137**
(E did not repudiate supervisor's unlawful threat to close plant if U won election where in nonviolative speech expressing its opposition to U, E did say that it intended to continue operation of plant regardless of outcome of election but no reference was made to supervisor's speech and for repudiation to be effective it must be timely, unambiguous, and adequately publized)

Suburban Chevrolet, Inc. **254 NLRB No. 016**
(statement by co-owner of E to Ee that if U came in and tried to tell him how to run his business, he would put padlock on door and close place, violative)

Suburban Chevrolet, Inc. **254 NLRB No. 016**
(E's statements that it would close its business if U came in, not unlawful where Ees overheard statements directed to unidentified individuals)

Warehouse Groceries Management, Inc. **254 NLRB No. 021**
(in pre-election speech, threatening to close if U ever engages in strike, violative as E did not refer to objective facts, such as economic necessity, which would cause store to close, and thus, statement constitutes threat of retaliation for engaging in strike)

Alco Venetian Blind Co., Inc. **253 NLRB No. 161**
(telling U representative in presence of Ees that he would close doors first rather than recognize U, violative)

Elk Brand Manufacturing Company **253 NLRB No. 132**

Williamsport Plumbing and Heating Co., Inc. **253 NLRB No. 121**
(threatening Ees with closure of its shop or business if they selected U, unlawful)

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 036**
(telling Ees that by having U, cost of coats would be so high that nobody would buy them and there would be no point in making them, violative)

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 036**
(telling Ees that predecessor company went out of business because of U, violative as it was analogy as to what would happen if U won)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor informing Ee he felt sorry for her and asked what Ee would do if office closed down as result of unionization, unlawful)

Polly Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 052**
(violation where E told Ee that all U wanted was to take $10 a month from the workers, and before he got U, he would prefer to close up shop)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(violation where supervisor warned Ees that if U got in E would probably sell out to another company and that it wouldn't do Ees any good if U got in because plant manager had guaranteed supervisors at meeting that if U got in E would refuse to negotiate U contract)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(declare bankruptcy)

Edgar L. Landen t/a Speed Mail Service **251 NLRB No. 064**
(violation and interference by threat by nonsupervisory Ee whom Ees could reasonably believe to be speaking for E that Ees would lose their jobs or that E would close down company if U won election)

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**
(E's threat to close plant if Ees failed in attempt to decertify U, unlawful)

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(threat of E's vice-president to set up another company elsewhere to avoid bargaining with U, unlawful)

Patsy Bee, Inc. **249 NLRB No. 125**
(Bd held, contrary to ALJ, that E's threatening plant closure and job loss was unlawful, and not protected by 8(c) by virtue of E's president's predictions based on his subjective belief that unionization would cause it to suffer severe economic hardships leading to the threatened results)

Sentry Investigation Corp. **249 NLRB No. 130**
(E's president threatening closure of plant if Ees changed bargaining representative since E could not meet wages and benefits in U's agreements with large companies, unlawful, where he made no reference to availability of collective bargaining since E could not be compelled to agree to terms it could not economically meet)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(violation where E's agent, relayed to Ees that E president stated that *he was going to close the place down* if U was voted in)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(threat to close plant if U representative filed grievance or if E did not get open shop)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(statement to assembled Ees that E was closing plant amounted to unlawful announcement of economic reprisal for support of U's bargaining position, particularly absent explanation of economic basis for E's decision)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(threatening that plant would close down if U's campaign were successful, violative)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital **247 NLRB No. 074**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(stating to Ee, in response to her statement of U support, that E's warehouse was full of E's finished product, unlawful, notwithstanding E's attempt to repudiate initial statement, where E's statement was well understood code for economic troubles meaning layoff of Ees and implied that U activity could result in plant closure or layoff)

C-F Air Freight, Inc. **247 NLRB No. 060**
(E's statements threatening to close plant, unlawful, where statements conveyed impression that decision to close plant would be made after Ees selected U as representative, E's stated economic reasons as basis of lawful prediction relative to plant closing remarks were spurious, at time statements were made Ees had not even approached U and E was not confronted with contract demands, and continuation of E's facility for over 7 years of financial losses does not support claim that E's statements were merely predictions)

Thermo King Corporation **247 NLRB No. 048**
(E's speech to Ees in which he assertedly deviated from written speech and made extemporaneous statements threatening Ees with plant closure and loss of jobs if U won election, not unlawful, where Ees' testimony containing discrepancies and showing inability to remember substance of speech, was discredited, and only 2 out of over 500 Ees testified regarding anti-U deviations which at least a few other Ees might also have recalled)

Thermo King Corporation **247 NLRB No. 048**
(E's preelection letter published in monthly newsletter assertedly threatening Ees with plant closure if U won election, not unlawful, where letter did not contain such threat and was merely summary of recent events with concluding comments that until outcome of election was known, it would be difficult for E to project plant production for near future since he did not know what changes would occur with unionization and invited Ees to consider for themselves consequences of unionization)

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J. J. Cassone Bakery, Inc. 247 NLRB No. 032
(E's truthful representation to Ee prior to election that E had acquired some machinery from defunct operations which had failed because of economic hardships that had befallen such enterprises due to excessive U bargaining demands held not unlawful threat to close plant and not interference)

Galax Apparel Corporation 247 NLRB No. 026

Louis Gallet, Inc. 247 NLRB No. 013
(violation, where E informed Ees in letter prior to election that if Ees selected U as representative E would have to spend time fighting U rather than obtaining orders and remaining competitive in industry, and consequently plant would close, at no point suggesting possibility of collective bargaining)

Lion Trucking Corporation JD-(NY)-66-82
(statement of E's manager with respect to U that E *couldn't afford it – business was not that great*, not violative, since statement w/o any other threats is vague, inconclusive, and remote from actual threat of closure, or indeed any prediction business would close)

Sea-Alaska Products, Inc. JD-(SF)-138-82
(threatening to close down operations and reopen under different name as non-U shop, violative)

Traub's Market, Inc. JD-286-82
(E's remark at negotiating session with Ees' independent U that E would close store if national U came in, not violative since remark was made as prediction of economic consequences; bargaining session centered on economic condition of store which was losing money, and there was no U campaign or any threats of same, national U was far from being in picture, and Ees were represented by a U)

Ellis Hospital JD-164-82
(doctors' letter to hospital Ees giving their negative opinion of U, thereby implying that selection of U would lead to closure of hospital, not unlawful nor interference with election, where letter presented doctors' general opposition to Us in health care institutions and to U herein in particular, and concluded that U would be of no help in solving hospital's financial problems; unlawful statements by other management member did not vitiate otherwise permissible communication herein, and letter amounted neither to substantial misrepresentation nor threat of closure)

Ellis Hospital JD-164-82
(E did not interfere with election nor unlawfully threaten Ees with closure of its facility in order to influence Ees to vote against U, where statement regarding posibility of closure if certain Ees struck related to different group of Ees than those involved in organizational campaign, and due to E's adverse financial situation at the time, such statement was not an unreasonable prediction)

Ellis Hospital JD-164-82
(doctor's statement to hospital Ee that in his opinion all service Us were the same and U would close the hospital, not unlawful, since statement was not clear threat of economic reprisal but an expression of opinion)

Ellis Hospital JD-164-82
(doctor's statement to hospital Ee that, if hospital's finances got worse, doctor's department at hospital might close and that in his opinion U would not help hospital's finances, not unlawful, since statement did not amount to threat of reprisal but rather was an expression of opinion)

Hamly Hardwood Lumber Co. JD-285-81
(remarks of speaker invited by E to address assembled Ees who informed Ees that he had closed firm because of U, and following which remarks E threatened to close plant if U came in, imputed to E and unlawful)

New Mayo, Inc., d/b/a Mayo Products Company JD-(ATL)-18-81
(telling Ee that E would close down plant if U won, violative)

RMX, Inc. JD-593-80
(threat of plant closure if Ees selected U, unlawful)

Round Table Enterprises Inc. t/a Thrift T Mart JD-(NY)-62-80
(supervisor's advising Ee not to pass out any U cards because E would close store and E's telling Ee that *if union does come into store, I will close it*, violative)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass JD-452-80
(comment that E would close plant if U failed to agree on E's position on insurance rate increase and its position on reduction of work force, not unlawful, where E clearly indicated during negotiations that it was in bad financial condition and offered to show corporate books to verify claim)

Neckover Trailer Manufacturing Company JD-256-80
(supervisor's statement to Ee that he thought E would close plant if U came in, not unlawful, where statement was in response to Ee's request for his opn on advent of U into plant, and was not coercive nor threatening but constituted everyday dialogue between Ee and supervisor as to pros and cons of unionism)

Like Corporation JD-(SF)-69-80
(warning that all of E's management personnel would quit if U came in, violative as threat that plant would shut down if U came in)

The Fort Miller Company, Inc. (Local 294, Teamsters) JD-141-80
(supervisor's stating on election day that *after today probably everybody will be standing in the unemployment line*, or that *after today probably none of us will be working here any more*, held not threat of plant closure because of Ee U activity; at most, the statement constituted prediction or warning of unemployment w/o regard to outcome of election)

The Fort Miller Company, Inc. (Local 294, Teamsters) JD-141-80
(supervisor's stating, in answer to Ee's question as to what would happen if U won election, that *whatever way it goes, we'll all be out of work*, that they would both be out of a job, that *it would all be over with*, or that *whatever way it goes it will all be over with*, held not threat of discharge or plant closure if U won election; at most the statement indicated either that there would be more loss of jobs regardless to outcome of election, or that campaign would be over once election took place)

Tri-Supply Company of Beaumont, Inc. JD-(SF)-20-80
(supervisor's telling Ee, *In fact, E would go out of business if they had a union*, and if *...the union was voted in, that the mill would have to be shut down about a week to have negotiations*, violative, since remarks imply that E would unilaterally choose to close down its plant during negotiations)

Hart Ski Mfg. Co., Inc. JD-11-80
(foreman's statement that E would close plant if Ees supported outside U rather than supporting Ee committee and accepting E's contract proposals made to committee and directly to Ees, unlawful, notwithstanding contention statements were casual and that E quickly disavowed them and foreman was demoted, since there was neither plantwide repudiation nor cessation of conduct afterwards)

Cardinal Heating and Cooling, Inc. JD-835-79
(it may be assumed that threat of plant closure, though made to only one Ee, will be communicated to others in small unit of Ees)

N.L.R.B. v. Steinerfilm, Inc. 669 F.2d 845 (C.A. 1, Feb. 1982)

N.L.R.B. v. Jack August Enterprises, Inc. 583 F.2d 575 (C.A. 1)
(E's telling Ees that i's restaurant would have to close if it became unionized, violative)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. 617 F.2d 977 (C.A. 3, 1980)
(E's notices, letters to Ees, and meetings with Ees at non-U plant regarding closing of E's nearby U plant held to convey unlawful implied threats where Ees' understanding of Ee's message was that closing of U plant was result of its unprofitability, that U victory in election at their plant would make it unprofitable leading to same result, and E's arguments regarding leaking of information about closing of plant did not justify its actions)

TRW-United Greenfield Division v. N.L.R.B. 637 F.2d 410 (C.A. 5, 1981)
(telling Ee that another plant had closed because U demanded excessive wages and benefits and if similar demands were made E could close and write off tax loss held unlawful explicit threat by linking U with excessive wage demands)

TRW-United Greenfield Division v. N.L.R.B. 637 F.2d 410 (C.A. 5, 1981)
(sending Ees letter that another plant where *U took money from Ees' paychecks* had been closed permanently for economic reasons violative as it implied similar action might be taken in retaliation if U wins)

Chromalloy Mining and Minerals Alaska Division, Chromalloy American Corporation v. N.L.R.B. 620 F.2d 1120 (C.A. 5, 1980)
(pre-election statements threatening plant shutdown if U won election w/o comments about profitability or business necessity, except to one Ee, unlawful)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. 585 F.2d 752 (C.A. 5)
(threat to close plant because Ees were stabbing E in back by their U activists)

N.L.R.B. v. ComGeneral Corporation 684 F.2d 367 (C.A. 6, July 1982)
(threat to close plant if U came in, violative)

Charge Card Association v. N.L.R.B. 653 F.2d 272 (C.A. 6, July 1981)
(supervisor's statement that E would *fold* if U came in violative where not based on demonstrable probable consequences beyond his control)

Miami Springs Properties, Inc., and James H. Kinley and Associates, Joint Employers v. N.L.R.B. 653 F.2d 276 (C.A. 6, Aug 1981)

[illegible], Inc. v. N.L.R.B. 619 F.2d 712 (C.A. 6) (1980)
(violation where shortly after U organizing campaign began, company officials coercively interrogated and threatened Ees as to consequences of bringing in U)

5036-8379—Cont.

Patsy Bee, Inc. v. N.L.R.B. 654 F.2d 515 (C.A. 8, 1981)
(ct held, contrary to Bd, that E's statements that unionization would result in plant closure were free speech protected under Sec. 8(c), rather than unlawful threat, where evidence showed them to be predictions of probable consequences beyond E's personal control based on objective facts of key customers' antiU policies, E's poor financial health, and similar situations observed at other plants and statements contained no threats or antiU comments)

N.L.R.B. v. Hanna Mold, Inc. 634 F.2d 630(T) (C.A. 9, 1980)
(unlawful)

N.L.R.B. v. Chatfield-Anderson Co., Inc., dba Truss-Span Co. 606 F.2d 266 (C.A. 9, 1979)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. 676 F.2d 483 (C.A. 11, May 1982)
(statements couched in terms of E's opinion of deleterious effects U would have on competitive position of plant, violative where they were not *carefully phrased on basis of objective fact* and clear implication was that Ees' continued employment and plant's reopening were contingent upon vote against U; E's assurance to Ees that outcome of election would not determine future of plant could not remove threatening import of E's other messages)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. 676 F.2d 483 (C.A. 11, May 1982)
(violation, where supervisor told Ee that E official had closed other plant because its Ees had voted for U and that if Ees supported U, Ee's plant would also be closed)

The Wackenhut Corporation v. N.L.R.B. 666 F.2d 464 (C.A. 11, Jan. 1982)
(Ee's statement to Ees, prior to election, that similar E was no longer in business because it was unionized held violative and election set aside, since statement implied similar E out of business in retaliation for Ees voting for U and that instant E would do same thing)

5036-8380 Closure of department, facility, etc.

Ray-Lec, A Division of Genuine Parts Company 265 NLRB No. 211
(supervisor asking Ee how U meeting went and informing Ee materials necessary for his work would not be ordered until *U talk settled* violative)

Ray-Lec, A Division of Genuine Parts Company 265 NLRB No. 211
(violation where supervisor informed Ee who had previously been unlawfully interrogated regarding U activities and informed by another supervisor that materials needed for Ees work would not be ordered because of U activities, that E would not be ordering any more of the necessary materials *until this dark cloud that was over us was gone*; contention that incident isolated and de minimus rejected)

Schnadig Corporation 265 NLRB No. 020
(violation, where E's chairman of board informed Ees he had purchased plant as non-U and expected it to stay that way, that he was in business to stay, hopefully at present location, but if not there, somewhere else, and needed Ees to help make it profitable, that Ees were entitled to do as they saw fit, but he did not believe U was good for future and being intelligent people Ees should not believe U's snow job, since reference to plant closing not based on objective facts supporting demonstrable probable consequences beyond his control, and supervisors had previously threatened plant closure)

Marion Rohr Corporation 261 NLRB No. 138
(telling Ees twice that E could close doors and contract work, violative)

Hasbro Industries, Inc. 254 NLRB No. 070
(department manager's telling Ee that E would never let another U in — that they would farm work out or barring that would close department down for a year and take business loss and reopen after a year, violative)

Warehouse Groceries Management, Inc. 254 NLRB No. 021
(telling Ees that store would not close did not cure various threats of closure where E distributed pamphlet with photo of 2 stores and stated that the U was in both these stores and they are now closed)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(violation, where supervisor stated, in reply to question as to whether U coming in would cause closing of credit facility of retail store chain, that it would take only two days to transfer accounts to another location)

Behring International, Inc. 252 NLRB No. 055
(E, through Ees acting as its agents, unlawfully threatened Ees during Ee meeting by stating that Ees' warehouse work would be subcontracted or E's operation would be closed if election was conducted and U would be voted in)

Behring International, Inc. 252 NLRB No. 055
(E, through Ees acting as its agents, unlawfully threatened Ees during Ee meeting by stating that Ees' warehouse work would be subcontracted or E's operation would be closed if election was conducted and U would be voted in)

Clements Wire and Manufacturing Company, Inc. JD-330-80
(supervisor's statement that if Ees came in one day and did not have work that they would be sent home for a few days w/o pay, unlawful as threat to Ees that if they supported U there might not be any work and Ees would be laid off w/o pay)

N.L.R.B. v. Hasbro Industries, Inc. 672 F.2d 978 (C.A. 1, Feb. 1982)
(department manager's statement to Ee that E would never let another U in, but instead would farm work out or else close department, take a business loss and reopen after a year, unlawful)

Motor Inn of Perrysburg, Inc. d/b/a Holiday Inn of Perrysburg v. N.L.R.B. 647 F.2d 692 (C.A. 6, May 1981)
(threat to terminate restaurant operation rather than bargain with U, not violative, since evidence disclosed that any such threat was made only to former Ees and did not suggest threat was to be recommunicated to then current Ees)

5036-8381 Transfer to another job or shift

Magnesium Casting Company 259 NLRB No. 064
(telling Ee to keep a low profile about his U activities when the Ee was seeking a transfer, unlawful)

United States Postal Service 256 NLRB No. 012
(supervisor's placement at Ee's work place of list of vacancies at E's other locations, and his statement to another supervisor that he hoped Ee would transfer held not to constitute unlawful encouragement of Ee to transfer)

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(U council's threat to transfer Ee-staff member to different location in his assignment of servicing U locals, unlawful, where action was in retaliation for his protected U and concerted activities; action came on heels of unlawful suspension of Ees for attending U meeting and for soliciting aid outside of labor organization, and closely followed council's attempt to prevent second U meeting involving U's attorney called to address, among other things, Ees' suspensions)

Conagra, Inc. 248 NLRB No. 085
(instructing relief Ee who moved throughout plant not to talk U or *we'll put you on a job where you won't be moving around. But that's not a threat,* unlawful)

Sea-Alaska Products, Inc. JD-(SF)-138-82
(threatening to transfer all anti-U Ees to salaried positions outside of unit if U wins election, violative)

United States Steel Corporation, Geneva Works JD-(SF)-122-81
(supervisor's remarks conveying message that Ees who pursued safety concerns would be considered by E as having hassled their superior and would be reassigned other work, violative)

Grandee Beer Distributors, Inc. v. N.L.R.B. 630 F.2d 928 (C.A. 2, 1980)
(threats to change job assignments of certain Ees immediately after U representatives requested recognition held violative where evidence on record supports conclusion that Ees could reasonably infer, due to timing, that threats were directed towards their decision to join U)

5036-8383 Transfer to less desirable job

Petroleum Helicopters, Inc. 263 NLRB No. 009
(threat to transfer and transfer of Ee, who was member of U's board of directors and activities coordinator, to more distant location violative where Ee was informed by E that he was being transferred because he was a disruptive influence and later denial of retransfer because he was *still being punished* also violative)

Ford Motor Company, Automotive Division, Twin Cities Plant JD-57-81
(threatening to transfer Ee to more difficult job if he continued to be *troublemaker,* unlawful)

5036-8384 Subcontracting

St. John's Construction Corporation 258 NLRB No. 067
(E's telling Ees that, faced with U organization, it had options of closing its doors, subcontracting, or going out of business, violative)

Allen-Stone Boxes, Inc. 252 NLRB No. 171
(reporting to Ees prospect of sale of business, merger of operations, or jobbing out of work if U came in, violative)

St. Francis Hospital 249 NLRB No. 017

Clements Wire and Manufacturing Company, Inc. JD-330-80
(supervisor's statement that if Ees came in one day and did not have work that they would be sent home for a few days w/o pay, unlawful as threat to Ees that if they supported U there might not be any work and Ees would be laid off w/o pay)

5036-8387 Transfer of work elsewhere

5036-8387—Cont.

Van Dorn Plastic Machinery Co., Division of Van Dorn Company **265 NLRB No. 036**
(foreman's statement to U negotiating committeeman that it would be useless to go out on strike, since E would build machines in another plant, violative)

Glengarry Contracting Industries, Inc. **258 NLRB No. 136**
(threatening Ees with replacement by subcontractors, unlawful)

Kawasaki Motors Corporation, U.S.A. **257 NLRB No. 069**
(threats of transfer of work to Japan if Ees selected U, unlawful)

Guerdon Industries **255 NLRB No. 086**
(telling Ees that he did not have to keep plant open but could divert orders to another plant, violative)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(violation, where supervisor stated, in reply to question as to whether U coming in would cause closing of credit facility of retail store chain, that it would take only two days to transfer accounts to another location)

5036-8383 Discontinuation of plans for plant expansion

Fisher-Haynes Corporation of Georgia **262 NLRB No. 155**
(E's threatening to discontinue its plans for plant expansion in reprisal for Ees involvement in U activities, violative)

5036-8391 Implied or veiled threats

Belcher Towing Company **265 NLRB No. 159**
(supervisor's implied threat of reprisal against all Ees by telling them not to sign U authorization cards and, if they had signed cards, to do their best to get them back, unlawful, in view of specific unlawful threats of discharge found herein)

Belcher Towing Company **265 NLRB No. 159**
(supervisor's implied threats to Ee, in context of specific unlawful threats found herein, and supervisor's statement that E could look at Ee's U authorization card to verify his signature, and that supervisor could tell E how Ees voted, unlawful)

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric **265 NLRB No. 203**
(E's conduct held unlawful where, during conversation with Ee-U adherent, E implicitly threatened Ee with discharge by making thinly veiled allusions to discharge on previous day of another U protagonist and then stating that E *didn't want any trouble in the shop* and that if Ee thought *he could do better that he could go elsewhere*; such invitation to quit is coercive and threatening because it conveys to Ees clear message that support for U and continued employment are not compatible)

Elias Mallouk Realty Corp. **265 NLRB No. 156**
(E asserting it was not able to meet U's wage demands, that it had overbundance of personnel and warning Ees against supporting incumbent U held veiled and implied threat of discharge and economic reprisal; and *no less effective because implied*)

Enterprise Products Company **265 NLRB No. 083**
(E's asking why Ee, to whom E had been good, had not come forward and told E about U activity held unlawful interrogation and implied threat, where implication that continuation of E's *being good to Ee* was conditioned upon his becoming an informer)

Enterprise Products Company **265 NLRB No. 083**
(although inquiries about Ees' dissatisfactions are not unlawful standing alone, they become unlawful when done in context of U organizing campaign of which E has knowledge, and are accompanied by assurances that rectification of problems is under consideration; E's conduct thereby becomes unlawful interference by solicitation of grievances and conveys implied promise to better working conditions in order to remove any reason for U representation; and the same is true where information concerning plans to improve working conditions is accompanied by threat to drop such plans if Ees persist in their U activity)

Larid Printing, Inc. **264 NLRB No. 040**
(E's president informing Ee he was *going to get him* for trying to *shut down company* that Ee was *sneaky bastard* and if Ee made any mistakes on job there would be no one to protect him, unlawful)

E. I. Dupont De Nemours **263 NLRB No. 015**
(supervisor asking U proponent if he had U buttons in bag on his desk and informing him *I hope you are not passing out U buttons you could get into trouble for passing these out*, unlawful)

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**
(vice-president's remark to Ees, in response to Ee question whether U would be help to E, made in context of E's numerous ULPs during U campaign, that his prior job was *best he had ever had — but company went broke after U came in...* held violative as implied threat to Ees that U victory in election would result in loss of jobs)

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**
(E's letter to Ees falsely claiming that business was down held violative, since letter was implied threat that unionization could tip scales against (E's) survival; letter failed to reveal work was transferred elsewhere)

United Supermarkets, Inc. **261 NLRB No. 179**
(supervisor's telling U adherent that *we fired your friend*, that even U supporters would be expected to toe the line, that supervisor knew discharged Ee had been attending U meetings as well as talking to other Ees, and that *you can see what happened to her* held unlawful thinly veiled threat that same would happen to other U adherents)

Conair Corporation **261 NLRB No. 178**
(E's letter to ULP striker, advising that E had notified insurance company carrying Ee's medical and life insurance policies that Ee was no longer working for Ee, which resulted in insurance company's notice to Ee that his insurance coverage was terminated because he had left job, unlawful, since, in view of E's unlawful conduct, including numerous oral and written threats of discharge, letter constituted implied threat of discharge)

Conair Corporation **261 NLRB No. 178**
(supervisors' statements during interrogation about Ees' U sympathies or signing of authorization card, that Ees either *watch out* or be careful if Ee had signed card, unlawful, since statements constituted implied threats of reprisal should Ees engage in any U activity or support)

Marion Rohr Corporation **261 NLRB No. 126**
(telling Ee who was hired on temporary basis that she would be *very temporary* if E heard anything about her being involved with U, violative)

Calvin D. Johnson Nursing Home **261 NLRB No. 044**
(supervisor's statement that other Ees had been discharged for making complaint to management about his treatment of them held implied threat of discharge if Ees should engage in such conduct which Bd has consistently held to constitute protected concerted activity)

Cooper-Jarrett, Inc. **260 NLRB No. 159**
(E's abusive remarks to U steward held unlawful veiled and implied threats of discharge, where steward was singled out for criticism because of his failure to support E's proposed Ee reinvestment program; to find no violation because E did not specifically refer to steward's U activity would merely reward wrongdoer for being circumspect; while never explicitly threatening discharge, E expressed wish that steward did not work for him or that he could be fired; and such remarks, in light of later statements to Ees about ousting steward, interfered with steward's right to hold U office)

Fred Lewis Carpets, Inc. **260 NLRB No. 108**
(stating to Ees that E would go bankrupt if forced to pay U wages and benefits, violative, where E never offered any supporting figures or other evidence to base its predictions and such prediction of bankruptcy constituted veiled threat to close business if Ees selected U)

Gentile Pontiac **260 NLRB No. 086**
(E's statement to Ee, who was chief U organizer, that he hoped Ee had put aside talk about U, that U shop would not be good for him, and that it would be in his best interests to forget about it held unlawful thinly-veiled threat, since it was hardly necessary for E to be more precise, where E initiated contact with Ee, there had been no previous discussion between E and Ee, and supervisor had recently warned Ee about possible adverse consequences of continued U activity)

Gould, Inc. **260 NLRB No. 002**
(before election but after U began organizing, telling Ee that if U were in plant that E would have laid her off and not transferred her held unlawful implied threat that E would make less effort to preserve employment during slack periods if Ees were represented by U)

Mathews Ready Mix, Inc. **259 NLRB No. 092**
(telling Ees that E denied overtime to U activists, transferred him to another facility and disparately refused to permit him to work overtime to compensate him for travel expenses held unlawful coercive threat to other Ees should they also wish to make *union troubles*)

Model A and Model T Motor Car Reproduction Corporation **259 NLRB No. 077**
(where E, in response to question by Ee, told Ees that if plant was closed and relocated, U organizers would not be hired, violative as veiled threat of reprisals against Ees for their U activity)

Mineola Ford Sales, Ltd. **258 NLRB No. 052**
(manager's reference to Ee's *association with the U* in reply to Ee's query as to what E had against him held unlawful veiled threat of reprisal, since manager's statement clearly indicated that Ee was in disfavor with management because of his U stewardship and other U activities, and that management would *hold it against* him)

St. Mary's Home, Inc. t/a St. Mary's Infant Home **258 NLRB No. 134**
(telling Ee that authorization cards would be turned over to management, unlawful)

Pantex Towing Corporation **258 NLRB No. 113**
(command by E that Ees not talk to U, violative since it amounted to thinly veiled threat of unexplicated but inherently implied reprisal for protected communications w/o limitation as to time or place)

Automotive Armature Co., Inc. **256 NLRB No. 043**
(supervisor's saying that he liked Ee and *hated to see him lose his job*)

5036-8391—Cont.

Overnite Transportation Company **254 NLRB No. 011**
(statement that former Ees who supported U in earlier campaign were discharged, violative)

Warehouse Groceries Management, Inc. **254 NLRB No. 021**
(telling Ee that its company didn't intend to have U and they had closed stores because of this problem violative as implied threat to close)

Centre Engineering, Inc. **253 NLRB No. 028**
(E's statements that selection of U as bargaining representative would result in same end as another E (where many jobs were lost) violative as implied threat)

B, E & K., Inc. **252 NLRB No. 036**
(E's preelection response to Ees complaints about wages that they did not have to stay, that *it could be a lot worse* because they could be getting nothing, and that if they did not like state's low pay scales they could get out of state held unlawful implied threat of loss of jobs and interference with election)

Maywood, Inc. **251 NLRB No. 135**
(violation where supervisor asked active U advocate, who complained to supervisor about E policies with respect to Ees, if she was so unhappy with E, why didn't she quit, adding *why don't you just hit the timeclock right now?*)

Blue Bird Body Company **251 NLRB No. 196**
(E's prepared anti U speech made to eligible voters prior to election, violative where E used symbol of living or dying *Bluebird* as reference to *company E* and such use was implied threat of plant closure or removal if Ees chose U to be their representative)

Blue Bird Body Company **251 NLRB No. 196**
(audio slide presentation to all eligible voters, violative where remarks of Ee participants in presentation impliedly threatened that U adherents would eventually be discharged for pretextual reasons)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(E's statement to Ee that he was creating a *hell of an image... and not helping yourself* by filing charges with Bd and grievance under contract, and that Ee should drop his charges with Bd, and that he could not win and was hurting himself in E's eyes, unlawful)

Good Samaritan Nursing Home, Inc. **250 NLRB No. 030**
(threatening Ee with charge of insubordination if she refused to participate in Ee interview w/o another Ee being present as witness, violative)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(E's president informing Ee that Ee was on his list of suspected U sympathizers and asserting he would not let any young girls take over and run his business, violative)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(supervisor informing black Ee that white Ees were trying to pin responsibility for U effort on her in order to save their own jobs, unlawful)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(supervisor's statement to Ee that her daughter was being trained to do work Ee was performing, unlawful)

Custom Coating & Laminating Corporation **249 NLRB No. 117**
(E who told Ees that he might attend U meeting violated Act)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(telling Ee that if he wanted to work only Monday through Friday and not on Saturdays he would have to find employment at U shop held violative as veiled threat that shop would never have U agreement)

Smedberg Machine & Tool, Inc. **249 NLRB No. 076**
(remark to Ees expressing hope that they were not involved with U, unlawful, where remark was made by one with authority of supervisor and, following as it did by one day layoff of prime U promoter, it conveyed to Ees that same could happen to them if they were involved)

Pacific Coast International Meat Co. **248 NLRB No. 183**
(supervisor informing Ee that from now on she would have to do exactly as he ordered, unlawful, where in reprisal for her leadership in lodging C regarding his supervision)

Fluid Packaging Company, Inc. **247 NLRB No. 196**
(threat of trouble for mechanics if U got in, because *they evaluate the mechanics* held barely concealed threat of retaliation in form of more stringent evaluations)

C & G Coal Corporation **247 NLRB No. 179**
(telling Ee who asked if he could join U to *—go on and not cause any more trouble,* held violative)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(E's statement that he wished to hire new Ees made w/o explanation during period of U activity is veiled threat of discharge as it indicates that E intends to replace some or all existing Ees because of their U activity)

Torrens Marine Company **247 NLRB No. 073**
(supervisor asking Ee who was member of U organizing committee if he had heard anything about anyone trying to organize U in plant, and what Ee thought about it, and upon Ee replying he was undecided stating he hoped Ee was not making mistake, unlawful)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(statement to Ees, who had voiced complaints about paucity of mentioned raise and E's broken promises concerning merit increases, that Ees should get out if they did not like what they were receiving, violative)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(veiled threat that facility would close if organizational drive continued, unlawful)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(statement that if U were voted down things would go on as before held thinly veiled threat that Ees would risk reprisals or detrimental changes if they selected U)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(orientation statement including reference to *serious harm* that might befall Ees if they chose U, unlawful, in view of E's other ULPs, history of anti-U activity, and fact statement was primarily read to new Ees by personnel official in his office which was setting conducive to coercion)

Lacks Industries, Inc. **JD-346-82**
(E's statement to Ee that *if you don't like it here, you can go down the street,* not unlawful, since E is w/i bounds of legality in expressing that dissatified Ees can seek employment elsewhere, and there was no express or implied threat to terminate or to take any disciplinary action against Ee)

Wilson Trucking, Inc. **JD-119-82**
(telling Ee he could not come back to work w/o a doctor's certificate after an absence and commenting it was because of getting U in; held implied and unlawful threat of change in working conditions)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**
(impliedly threatening reprisals by requesting Ee to tell her son, also an Ee, *what could happen* because of his attending U meetings, unlawful and objectionable)

Brueckner Sand & Gravel, Inc. **JD-(SF)-312-81**
(discussion by E's officials in front of Ee of plan whereby another Ee would be discharged for U activity, violative)

Harvey & Madding, Inc., d/b/a Dublin Honda **JD-(ATL)-97-81**
(E's discussing with Ees, week after R ptn filed, Ees' status under E's existing profit sharing plan held violative as veiled threat to Ees of loss of benefits if U selected in election)

Muncie Newspapers, Inc. **JD-482-81**
(supervisor exclaiming about former U president who had not given proper notification that he would not show up for his shift *I've got him now,* not unlawful as implied threats of reprisal to Ees who heard remark, where during three organizational campaigns there had been no U animus or ULP charges against E, E had signed enlightened bargaining agreement and Ees who heard remark knew former U president had violated rule)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**
(E's phone call to laid off discriminatee telling him *don't walk the picket line,* not violative, since nothing in statement constituted express or veiled threat of reprisal)

Lauridsen Foods, Inc. **JD-36-81**
(foreman's statement that *somebody in plant is giving out names, dates, and places of people who are getting sick and where they were working at time .... we can and will find out who is doing this,* violative)

N.L.R.B. v. Chester Valley, Inc. **652 F.2d 263 (C.A. 2, June 1981)**
(stating that physical examinations might result from unionization, violative where physical exams were only required in U contracts at request of E; ALJ could reasonably conclude that such references were veiled threats that examinations might be required by E if U won election)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(drawing line between prediction and implied threat is often one of great difficulty, and possibility that statement contains implied threat must be viewed from Ees' point of view; for that reason Bd expertise is particularly relevant to determination of whether latent threat lies hidden in E's words, while ct's scope of review is limited to inquiry whether Bd's determination is reasonable and supported by substantial evidence)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E's notices, letters to Ees, and meetings with Ees at non-U plant regarding closing of E's nearby U plant held to convey unlawful implied threats where Ees' understanding of Ee's message was that closing of U plant was result of its unprofitability, that U victory in election at their plant would make it unprofitable leading to same result, and E's arguments regarding leaking of information about closing of plant did not justify its actions)

5036-8391—Cont.

J. P. Stevens & Co., Inc. v. N.L.R.B. 638 F.2d 676 (C.A. 4, 1980)
(ct upheld Bd finding that in light of E's history of Ee coercion, E's speech to assembled Ees which concluded with remark, *now it is for you to decide whether (publication of U cards) gives you any concern or not,* contained implied threats of retaliation violative of Act)

Pioneer Natural Gas Company v. N.L.R.B. 662 F.2d 408 (C.A. 5, Nov. 1981)
(supervisor's statement that E would know who filled out a U card after Ee had declined to tell him whether she had done so not unlawful as veiled threat of reprisal, where Ee did not testify that she took the remark that way, and record shows no active opposition to U by E)

Florida Steel Corporation v. N.L.R.B. 648 F.2d 233 (C.A. 5, June 1981)
(violation, where E informed Ees via videotape that Ees who had signed attendance register at U meeting had ended up unwittingly on U organizing committee implying that U had misused names of Ees despite fact Bd had held no misuse had occured, and admonished Ees *Don't sign card, attendance record or anything unless you know what it means and what effect it would have on you, your job, and your relationship with company,* since these constituted threats inasmuch as Ees might reasonably conclude that signing U card or attendance roster at U could have adverse effect upon job status)

Nebraska Bulk Transport, Inc. v. N.L.R.B. 608 F.2d 311 (C.A. 8, 1979)
(in light of specific dialogue between E and Ees about selling business if U voted in, letter with vague language concerning closure sent to each Ee several days before election, violative, where work force could understand letter as threatening retaliation)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. 660 F.2d 1335 (C.A. 9, Nov 1981)
(threat to picketers to get even with them, unlawful)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. 660 F.2d 1335 (C.A. 9, Nov 1981)
(E's president informing picketer that she would hate to see picketer get hurt *by all this,* unlawful)

N.L.R.B. v. Marine World USA 611 F.2d 1274 (C.A. 9, Jan. 1980)
(ct found that statements distributed in letters to Ees by E before election, though critical of U, did not on their face threaten reprisals or force or promise benefits depending on outcome of election; however, ct remanded to Bd issues of freedom of speech in context of labor relations under Sec. 8(c), general hostility in past association with U, and intended and understood message of E's memoranda with respect to whether they contained implied threats or promises)

N.L.R.B. v. Chatfield-Anderson Co., Inc., dba Truss-Span Co. 606 F.2d 266 (C.A. 9, 1979)
(violation where individuals in position to present company policy to Ees indicated that unionization might result in plant closure, layoffs, loss or delay of planned raises and bonuses, and in harder working conditions; E's representations were not legitimate opinions on consequences of unionization which had some reasonable basis in fact, but were veiled threats of retaliation)

5036-8395 Limitation on or withholding of bonus or pay raise

Gayston Corporation 265 NLRB No. 001
(threat to rescind bonus if U succeeded in its charge to Bd that E's unilateral grant of bonus was ULP)

Gould, Inc. 260 NLRB No. 002
(telling Ee that she had been denied merit increase because of U, violative where Ee had been promised increase before she came to Bd hearing and was observed there by management)

I/O Optics Limited, U.S.A. 251 NLRB No. 037
(exhibiting to group of Ees, paper containing names of Ees scheduled to receive pay raises, unlawful since it amounted to implied threat that continued U activities would result in loss of scheduled pay raises)

P. A. Incorporated 248 NLRB No. 077
(threatening to withdraw announcement wage increases if Ees continued to fight for U, violative)

J. H. Block & Co., Inc. 247 NLRB No. 041
(loss of vacation pay and Christmas bonus if U was selected)

Sea-Alaska Products, Inc. JD-(SF)-120-82
(loss of bonuses)

Air Express International Corporation v. N.L.R.B. 659 F.2d 610 (C.A. 5, Oct. 1981)
(threatening to withhold raises from some Ees while promising raises to others, violative where purpose was to discourage U activity and to weaken pro-U majority)

N.L.R.B. v. Laredo Coca Cola Bottling Company 613 F.2d 1338 (C.A. 5) (1980)
(E president stating to Ees during pre-election E's *captive-audience meeting* that there would be no Christmas bonus that year, that the funds that would otherwise be used to pay Christmas bonuses would be used to pay his attorney's expenses in opposing U, and that other benefits were to be terminated, violative)

5036-8399 Other

Van Dorn Plastic Machinery Co., Division of Van Dorn Company 265 NLRB No. 036
(E's president's statement that E would not bargain with U until federal courts had determined whether election was fair, violative where U was validly certified)

Federal Management Co., Inc. 264 NLRB No. 023
(E's statement that he was going to begin to keep file on Ees to use against them, unlawful, where it was made in reprisal for Ees' vote to be represented by U; contrary to ALJ's dismissal of such allegation because GC had not established that statement had been made w/i 6 months of filing of charge, Bd held that, since E did not raise 10(b) issue in its pleadings or at hearing, E had waived affirmative 10(b) defense, and that ALJ's action of raising issue *sua sponte* was in error)

Marion Rohr Corporation 261 NLRB No. 138
(telling Ees that if U came in U would prevent hiring of 16-and 17-year-old Ees, not unlawful, because it pertains to possible action by U rather than E)

Gentile Pontiac 260 NLRB No. 056
(while E may freely express dislike for U w/o violating Act, E's statements concerning abolition of past practices in event U won election, unlawful)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(E's statement to U member that various Es in the area had been calling him and asking who the U organizers were, followed by statement that she would never get another job, unlawful)

Greyhound Food Management, Inc. d/b/a Burger King 258 NLRB No. 178
(threat of loss of favorable job classification)

Richland Co. & Assoc., Division of McDonald Construction, Inc. 256 NLRB No. 026
(threat to bill and actually billing Ees for insurance premiums prior to election, unlawful, since conduct was attempt to coerce Ees into abandoning U)

Eastern Steel Company 253 NLRB No. 163
(telling Ees that if they chose U representation, E would not pay Xmas bonuses or provide medical insurance or pension plan)

Ross M. Alexander d/b/a A & B Janitorial Service 253 NLRB No. 064
(threat to execute contract with favored U whether or not Ees wanted it to represent them and to discharge Ees who did not join it w/i 30 days, unlawful)

Chester Valley, Inc. 251 NLRB No. 190
(telling Ee that U might require physical examination and that Ee might have trouble passing because of poor eyesight, and telling all Ees that U contract might require physical examination and E was sure some Ees, because of physical defects, would not be able to pass, unlawful)

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. 250 NLRB No. 131
(threatening to discharge replacement Ees if they failed to decertify U, unlawful)

Carl Karcher Enterprises JD-(SF)-227-82
(supervisor's remarks to Ee who had filed C with State OSHA concerning unsafe conditions at E's facility, unlawful, where remarks contained clear admonition on part of supervisor to subordinate Ee that latter's troubles with E were directly related to Ee's resort to OSHA processes)

Tops Industries, d/b/a Tops Market JD-(SF)-53-82
(threat that sale of plant would terminate further possibility of unionization of E's Ees, unlawful and objectionable)

N.L.R.B. v. Eastern Steel Company 671 F.2d 104 (C.A. 3, Feb. 1982)
(E's threats to Ees that if U came in they would no longer receive Christmas bonus or be covered under medical insurance plans, and that E would not be responsible for anyone's pensions, unlawful)

5042 FORMS OF BENEFITS IN CONDITIONS OF EMPLOYMENT, OR PROMISES THEREOF

5042-0100 Generally

Mark I Tune-Up Centers, Inc. 256 NLRB No. 128
(granting of benefits during election campaign is not per se unlawful where E can show that its actions were governed by factors other than pending election; such burden can be met by E by showing that benefits which were granted were part of already established company policy and E did not deviate from such policy upon advent of U; and E who is confronted by U campaign should decide whether to grant or withhold benefits as if U were not in the picture)

5042-0100—Cont.

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's agreement to *look into* installation of soft drink vending machine, not unlawful, since no definite promise and drinks had previously been available from refrigerator)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(claim that improvements were made during U campaign in order to make benefits consistent with those elsewhere in E's operations is no defense unless benefits are already existing or E had made a final decision to put benefits into effect regardless of U campaign)

National King Coal, Inc. **JD-(SF)-24-81**
(promise of benefit to affect election is unlawful but refusal to deliver on it is not separate violation)

5042-0116 Coercive impact of benefits to dissuade employees from unionization

Gordonsville, Industries, Inc. **252 NLRB No. 054**

St. Francis Hospital **249 NLRB No. 017**
(working conditions would improve if U lost election)

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating **247 NLRB No. 099**
(raises given to remaining Ees 1 day after unlawful discharges of 4 U supporters violative as given for purpose of discouraging U activity)

Simpson Electric Company, a Division of American Gage and Machine Company, Inc. v. N.L.R.B. **654 F.2d 15 (C.A. 7, July 1981)**
(E's announcing pay increase or withholding one with intent to influence ongoing (U) organizing drive or R election, violative)

5042-0133 Timing

Fisher-Haynes Corporation of Georgia **262 NLRB No. 155**
(E's grant of wage increase coming quickly after E learned of Ees' interest in U representation, violative where it was calculated to quell dissatisfaction emerging from grievance over wages which had prompted Ees to seek U representation in first place)

5042-0133-1100 During union organizing period

Washington Beef Producers, Inc. **264 NLRB No. 155**
(introducing insurance plan for Ees promptly after advent of organizing efforts, violative)

Knogo Corporation **262 NLRB No. 171**
(E's granting of new economic benefits in form of paid sick leave, bereavement leave, jury duty pay and an extra paid holiday during U's organizing campaign violative where E failed to meet burden of sustaining its economic defense that benefits would have been granted if U was not involved in organizing Es)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**
(sudden increase in wages and benefits and promised benefits held violative as attempt to deter Ees' support of U)

Maidsville Coal Co., Inc. **257 NLRB No. 148**
(announcing wage increase)

Swanson-Nunn Electric Company **256 NLRB No. 131**
(E who paid for Ee to take Dale Carnegie course during U campaign did not violate Act as it had provided such training for Ees in the past)

K & E Bus Lines, Inc. **255 NLRB No. 137**
(E's announcement of profit sharing plan, implementation of sick leave and reimbursement for physical examination, unlawful in view of timing shortly after commencement of U activity and fact announced at captive audience meeting at which detrimental effects of unionization were emphasized)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(GC's contention that E wide wage increase instituted at time of peak of U activity was unlawful, rejected, where U activity was taking place at only small part of E's enterprises)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(during U campaign, offering U sympathizer promotion to dissuade Ees from organizing U, held violative)

Don Pizzolato, Inc. **249 NLRB No. 136**
(paying Ee money owed to him from prior underpayment for job performed not violative where valid debt existed prior to election campaign)

Peavey Company **249 NLRB No. 110**
(E changing policy on day after it learned of organizing campaign to allow Ees to see their personnel files, unlawful)

Peavey Company **249 NLRB No. 110**
(granting higher than average wage increase after U organizing drive had begun, not unlawful, where announcement of wage review policy predated U activities and fact that increase larger than usual caused by 17 month lapse since full year's raise)

K & B Mounting, Inc. **248 NLRB No. 071**
(E's promise of new benefits and later grant of promised benefits, violative in view of timing of both announcement and establishment of the benefits soon after U's demand for bargaining)

Greenwood Milk Products Cooperative **JD-458-82**
(wage increase granted 1 day prior to E's receipt of U's demand for recognition not violative where increase had been planned for 2 weeks and E had no knowledge of U activity)

Ellis Hospital **JD-164-82**
(allegation that promotion of individual to manager resolved a grievance and Ees had thereby been granted a benefit, not unlawful, where individual was promoted in order to resolve situation of having two managers in same department which in E's judgment was bad idea and as things developed his judgment was vindicated thus he changed to one manager; fact that Ees unanimously wanted some solution to the problem does not mean E granted them an unlawful benefit; even during course of organizational campaign E has right to operate its business)

N.L.R.B. v. Steinerfilm, Inc. **669 F.2d 845 (C.A. 1, Feb. 1982)**
(unscheduled wage increase granted by E day after U meeting not violative where it had been under active consideration for 1 month prior to announcement, 3rd such increase in 18 months and announcement was distributed along with new Ee handbook which had been in preparation for several months)

Simpson Electric Company, a Division of American Gage and Machine Company, Inc. v. N.L.R.B. **654 F.2d 15 (C.A. 7, July 1981)**
(E's announcing pay increase or withholding one with intent to influence ongoing (U) organizing drive or R election, violative)

Simpson Electric Company, a Division of American Gage and Machine Company, Inc. v. N.L.R.B. **654 F.2d 15 (C.A. 7, July 1981)**
(grant of regular benefits prior to rerun election, not exceeding rate of inflation, and w/o special propoganda, not violative, since grant viewed as neutral act; regardless of any mere time relation to (U's) organizing campaign, as long as inflation continues, routine unexploited wage and benefit increases w/i rate of inflation, as in instant case, viewed for 8(a)(1) purposes as same as no action in condition of stable currency value)

MGM Grand Hotel-Reno, Inc. v. N.L.R.B. **653 F.2d 1322 (C.A. 9, Aug 1981)**
(pre-election wage increase not unlawful where increase resulted from corporate-wide decision which was implemented in normal business fashion; increase was based on comprehensive study of E's wage rates and compensation policies that were instituted many months before election)

5042-0133-1300 During critical preelection period

Air Products and Chemicals, Inc. **263 NLRB No. 045**
(E who offered Ee protection from U if he withdrew his support for U did not violate Act in light of fact that Ee was subject of mysterious assault after prior U campaign)

Grove Valve and Regulator Company **262 NLRB No. 035**
(E who held *Ee appreciation day* on day prior to election and conducted raffle with lavish prizes for all unit Ees, announcing winners on day of election violated Act)

Conair Corporation **261 NLRB No. 178**
(granting of benefits to Ees, unlawful, where benefits were granted w/i few months after E had expressly promised to adjust Ee grievances pertaining to some of the benefits granted and in response to U's organizational campaign, such benefits were granted during particularly crucial period encompassing strike and post-strike preelection period and were made in fulfillment of E's unlawful promises to adjust Ees' grievances to reward those who had rejected U and to induce Ees who desired U representation to renounce U)

Consolidation Coal Company **260 NLRB No. 063**
(E's investment plan which limited participation to non-U Ees *per se* violative; and E's publicizing this provision immediately before election also violative)

Gould, Inc. **260 NLRB No. 002**
(combined children's Christmas party and family open house held unlawful grant of benefits, where such party was first social event unrelated to retirement or other Ee achievements in which E paid full cost and decision for party was made after E knew election would be held)

Raley's, Inc. **256 NLRB No. 155**
(granting of increased health and welfare benefits during U campaign not violative where done to make Ees in two different states equal; however, wording of announcement which implied that it was as result of one of two competing U's efforts violative as attempt to influence Ees to support that U)

Viracon, Inc. **256 NLRB No. 037**
(giving gifts to 2 Ees about week prior to election, violative)

5042-0133-1300—Cont.

Hasbro Industries, Inc. **254 NLRB No. 070**
(granting wage increases to 3 of 15 unit Ees just prior to election, unlawful where two of increases were granted prematurely while third was overdue)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(announcement of E sponsored profit-sharing retirement plan on day before election violative, notwithstanding plan was agreed upon earlier since plan required IRS approval and until such approval received E's conduct amounts to bestowal of nonexisting benefit)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(E's announcement, prior to election, to Ees that it was forming Ee grievance committee to handle Ee problems held violative of Section 8(a)(1) but not Section 8(a)(2) since no such committee was actually formed)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(E's letter to Ees, before election, pleading with them to vote *no* in election and to give E a year to prove himself held violative, since latter statement conveyed promise to be responsive to Ee needs)

Chester Valley, Inc. **251 NLRB No. 190**
(retroactivity of wage increase held lawful since it was disassociated from election campaign, where E's letter to Ees stated that increase would be retroactive because Ees should not be made to suffer by reason of R ptn whose filing had been reason for Ees' failure to receive increase by prior date, and E's explanation was plausible and was probative evidence of E's motive)

Don Pizzolato, Inc. **249 NLRB No. 136**
(E who purchased lunch for Ee prior to election violated Act where meals not ordinarily provided and no compelling need to provide meal existed)

St. Francis Hospital **249 NLRB No. 017**
(promise of benefits explicitly or implicitly contingent upon election outcome violative)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(granting Ee pay raise w/i day of election for good job performance when she was entitled to it, expected it and requested it, not unlawful)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(announcement and grant of pension plan day before election not violative, where plan was conceived prior to U campaign, completion of plan was not accelerated in response to coming election, and announcement of plan was made in normal course of business)

Connecticut Foundry Company **247 NLRB No. 145**
(increase granted immediately prior to election while Ees were on strike violative)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(wage and meal allowance increases during critical pre-election period, unlawful where granted in response to U campaign)

J. H. Block & Co., Inc. **247 NLRB No. 041**
(E who revoked written warning to Ee 1 week prior to election with purpose of causing Ees to reject U as their bargaining representative violated Act)

Jules V. Lane, P.C. d/b/a American Dental Centers **JD-(NY)-110-82**
(announcing preexisting benefits to its Ees during U campaign not violative even if Ees not aware of these benefits as to prevent this would deprive E of legitimate campaign strategy. However, E must be legally committed to these benefits and not be able to discontinue them. Furthermore, E can not hubsand benefits until right before election and spring them on Ees in manner calculated to influence their choice)

Harvey & Madding, Inc., d/b/a Dublin Honda **JD-(ATL)-97-81**
(E's phone call to Ee prior to election asking if they couldn't work something out before election)

Manifold Services, Inc. **JD-734-80**

Lika Corporation **JD-(SF)-69-80**
(quarterly bonus not violative where consistent with past practice notwithstanding it was given 2 weeks prior to election)

N.L.R.B. v. Hasbro Industries, Inc. **672 F.2d 978 (C.A. 1, Feb. 1982)**
(wage increases 2 weeks before election not unlawful where E showed they were granted according to predetermined schedule)

Simpson Electric Company, a Division of American Gage and Machine Company, Inc. v. N.L.R.B. **654 F.2d 15 (C.A. 7, July 1981)**
(E's announcing pay increase or withholding one with intent to influence ongoing (U) organizing drive or R election, violative)

Simpson Electric Company, a Division of American Gage and Machine Company, Inc. v. N.L.R.B. **654 F.2d 15 (C.A. 7, July 1981)**
(grant of regular benefits prior to rerun election, not exceeding rate of inflation, and w/o special propoganda, not violative, since grant viewed as neutral act; regardless of any mere time relation to (U's) organizing campaign, as long as inflation continues, routine unexploited wage and benefit increases w/i rate of inflation, as in instant case, viewed for 8(a)(1) purposes as same as no action in condition of stable currency value)

5042-0133-2500 After election while objections or challenges are pending

Electric Hose and Rubber Company **262 NLRB No. 014**
(increasing insurance benefits while objections pending, violative)

Hasbro Industries, Inc. **254 NLRB No. 070**
(granting unit Ees annual wage increases far eclipsing those in previous years, and substantially higher than those granted to similarly situated hourly paid Ees outside unit while objections to election were pending, unlawful)

Gordonsville, Industries, Inc. **252 NLRB No. 054**

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(promise to parttime Ees made while objections to election were pending that they would be eligible for holiday and vacation benefits violative as reward to Ees for rejecting U and attempt to influence them if second election necessary)

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(25 cent across-the-board increase given to all Ees shortly after election, not just those who were entitled to it due to raising of statutory minimum wage, violative as reward to Ees for having rejected U and also attempt to influence results if second election were ordered)

N.L.R.B. v. Travis Meat and Seafood Company, Inc. **653 F.2d 233 (C.A. 6, June 1980)**
(distributing post-election letter stating that wages and benefits would continue to be withheld until U withdrew election objections, violative)

5042-0133-5000 Formulated prior to union's request for recognition

Peavey Company **249 NLRB No. 110**
(granting higher than average wage increase after U organizing drive had begun, not unlawful, where announcement of wage review policy predated U activities and fact that increase larger than usual caused by 17 month lapse since full year's raise)

5042-0133-7500 Formulated after union's request for recognition

J.A.G. Freight Systems, Inc. **JD-(NY)-31-82**
(wage increase unlawful, where Ees had unsuccessfully sought increase for seven months, yet given w/i few days after intervention of U)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(promises and grant of wage increases and health plan, although not expressly made dependent upon Ees' rejection of U, held violative where evidence in record supported conclusion that offers of such benefits indicated coercive purpose since they were made after U's request for recognition)

5042-0133-8000 Prior to decertification election

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(telling Ees prior to decertification election that if there was no U E could be more lenient with apprentices who failed test, rather than having to comply with procedures dictated by U)

Dow Chemical Company, Texas Division v. N.L.R.B. **660 F.2d 637 (C.A. 5, Nov 1981)**
ct held pre-election statements and questions of E to U members were protected speech under the Act where statements prior to decertification election were not promises but truthful or accurate observation of fact w/i bounds of legitimate electioneering or expressions of opinion by supervisors)

5042-0133-9000 After certification of election

N.L.R.B. v. Allen's I.G.A. Foodliner **651 F.2d 438 (C.A. 6, May 1981)**
(E's sponsoring and participating in circulation of ptn among Ees withdrawing support from U and unilaterally announcing improved benefits after U won second election held violative as attempt to undermine U)

5042-0167 Practice of similar changes

Swanson-Nunn Electric Company **256 NLRB No. 131**
(E who paid for Ee to take Dale Carnegie course during U campaign did not violate Act as it had provided such training for Ees in the past)

Luk, Inc. **255 NLRB No. 136**
(violation, where E announced it was granting benefits in consideration of Ees' complaints, urged that Ees refrain from joining U, and announced wage increases which were not in conformity with past practice)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(granting of wage increases, after ULP complaint set for hearing, not unlawful, notwithstanding lack of precise consistency in time between prior increase and fact increases granted because of increase in minimum wage and to compensate for inflation)

Permanent Label Corporation **246 NLRB No. 021**
(bonus given to all Ees prior to election violative where past practice had been that only Ees who had been employed over 1 year received bonus)

5042-0167—Cont.

Tarian Marine Company **247 NLRB No. 073**
(granting of wage increases after E learned of U campaign, not unlawful, where E had consistent policy of granting wage increases notwithstanding somewhat larger number of Ees received them than usual for period)

5042-0183 Solicitiation of grievances implied promises benefits by correction

Windsor Industries, Inc. **265 NLRB No. 145**
(E's repeatedly telling Ees that it would *look into* various benefits requested and complaints expressed by its Ees, violative notwithstanding E's *no promise statements* where E's actions suggested to Ees that its listening to their gripes was not w/o purpose; E announced open door policy for discussion of Ees' problems, and added that he didn't want third party to come between us)

Enterprise Products Company **265 NLRB No. 083**
(although inquiries about Ees' dissatisfactions are not unlawful standing alone, they become unlawful when done in context of U organizing campaign of which E has knowledge, and are accompanied by assurances that rectification of problems is under consideration; E's conduct thereby becomes unlawful interference by solicitation of grievances and conveys implied promise to better working conditions in order to remove any reason for U representation; and the same is true where information concerning plans to improve working conditions is accompanied by threat to drop such plans if Ees persist in their U activity)

Schnadig Corporation **265 NLRB No. 020**
(E's chairman of the board, following speech in which he made coercive threat to close plant, asking Ee at her work station *if there was anything he could do for her* and when Ee informed him that rubber matting would make standing more comfortable, chairman said *he would see what he could do,* unlawful, notwithstanding matting never provided)

The Martin-Brower Company **263 NLRB No. 025**
(violative)

Electric Hose and Rubber Company **262 NLRB No. 014**

Gould, Inc. **260 NLRB No. 002**
(no violation where E, during Ee meetings, asked generally for questions rather than complaints and in response to Ees' complaints, E stated that production manager would look into problem about materials which gave them production problems, and that E would look into production quotas, as E implied no promise of benefit and E could not ignore production problems where these had not been brought to his attention previously)

Quick Find Co. **259 NLRB No. 144**
(telling non-unit Ee that he *couldn't see why guys wouldn't come and talk to him first, and...see if they couldn't come up with something* held unlawful solicitation of grievances and implied grievances would be remedied if U was abandoned)

Lake Development Management Co. **259 NLRB No. 069**
(questioning Ee by E's president regarding Ee's grievances did not constitute unlawful solicitation of grievances since solicitation of grievances raises rebuttable inference that E is promising to correct inequities it discovers as result of its inquiries; here inference of such promise was rebutted where, after Ee told E's president that he was unhappy with his salary increase, she told him that maintenance manager gave salary increase and that, if that were the decision, she would stand behind it, thus negating any possible infefence of promise to cure Ee's grievances)

High Energy Corporation **259 NLRB No. 097**
(setting up suggestion box for Ees to submit their problems, ideas, and complaints, unlawful, since implicit in establishment of suggestion box was the promise that suggestions or complaints placed w/i would be acted on or remedied)

Presbyterian/St. Luke's Medical Center **258 NLRB No. 021**
(polling Ees in regard to their grievances and creating impression that such grievances would be satisfied, violative)

Thurston Motor Lines, Inc. **257 NLRB No. 171**
(violation where top executive travelled 540 miles to hear Ees' complaints for two hours at meeting that he called and said that he had come to help straighten out problems)

Luk, Inc. **255 NLRB No. 136**
(violation, where E announced it was granting benefits in consideration of Ees' complaints, urged that Ees refrain from joining U, and announced wage increases which were not in conformity with past practice)

Madani Brothers, Inc. **255 NLRB No. 126**
(E who asked Ees for list of grievances and demands at meeting where it acknowledged U's request for recognition violated Act absent any *no promise statements*)

Associated Milk Producers, Inc. **255 NLRB No. 104**
(soliciting grievances of Ees and creating impression that grievances would be resolved, violative)

Associated Milk Producers, Inc. **255 NLRB No. 104**
(asking Ee if he knew what the location needed, violative)

General Electric Company **258 NLRB No. 092**
(E's conducting Ee attitude survey, unlawful, since for purpose of discouraging U support and where in light of subsequent promise to obtain concrete improvements constituted implied promise of redress of grievances)

Limestone Apparel Corp. **255 NLRB No. 101**
(solicitation of grievances by E during U campaign, held violative)

Cutting, Inc. **255 NLRB No. 076**
(preelection solicitation of grievances from U adherent, unlawful, since solicitation carried inference that E was thereby implicitly promising to correct inequities it discovered as result of its inquiries, and E failed to carry burden of rebutting such inference whose validity was demonstrated by E's remedying of one of E's grievances, although such demonstration was not necessary for finding violation)

Edgcomb Metals Co., One of The Williams Companies **254 NLRB No. 140**
(asking U adherent why she wanted U, what her complaints were, and promising to look into her complaints, violative)

Warehouse Groceries Management, Inc. **254 NLRB No. 021**
(unlawful solicitation of grievances where Ee who shortly before this conversation admitted signing U authorization card was called into supervisor's office and asked about any unfairness that was going on; this was deviation from E's past practice of talking with Ees on casual basis while walking through store)

Gossen Company, a Division of the United States Gypsum Company **254 NLRB No. 041**
(E making inquiries during U campaign as to what could be done to improve plant operations, held not unlawful, since presumption of illegality rebutted where question was no more than had been past practice and absent explicit promises to correct inadequacies)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**

Chester Valley, Inc. **251 NLRB No. 190**
(E's speech to Ees, as a whole, including reference to *open door,* unlawful, since, unlike case in which E did not promise to redress grievances but merely indicated that it would follow its previously established policies, E herein had never told Ees about any *open door* policy it may have had and indicated that in future E would regard Ees' requests more favorably than in past)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(although E made no specific promises to Ees, E held to have unlawfully solicited Ee grievances and impliedly promised to rectify them in order to discourage U activities)

Certain-Teed Insulation Company **251 NLRB No. 208**
(violation where there was implied promises to remedy grievances solicited during management consultant interviews with individual Ees)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(E's vice-president asking Ees, during period of U campaign, *what their problems were* and impliedly promising to remedy them held violative)

St. Francis Hospital **249 NLRB No. 017**

Permanent Label Corporation **248 NLRB No. 021**
(E's recitation of *no promises* formula or statement that it was precluded from making commitments, does not cancel inferences that grievances solicited in pre-election context would be corrected)

General Rental Co. d/b/a Avis Rent–A–Car **247 NLRB No. 188**
(violation where E interrogated Ees and remedied identified grievances)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(violation where, in course of anti-U campaign meeting, E's attorney asked Ees to discuss their grips against E; the attorney was soliciting grievances and E did nothing to rebut presumption that it was promising to remedy such grievances)

CTS Keene, Inc. **247 NLRB No. 141**
(no unlawful solicitation of grievances with implied promise to remedy them where supervisor who had initiated conversation with U adherent by asking how things were going, suggested adherent discuss her complaints regarding job bidding procedures with her immediate supervisor during scheduled job review, since not implied promise to remedy where Ee had received no satisfactory result from prior discussion with same supervisor)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(E conducting survey among Ees represented by U regarding their feelings about working conditions and supervision, unlawful, where E's purpose was to learn what complaints might have caused renewed U activity and where, questioning *would lead Ees to believe E was inviting direct dealing thus suggesting that U support and activities were unnecessary*)

Houston County Electric Cooperative, Inc. **247 NLRB No. 087**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(speech stating that conditions could *be improved and corrected* by *pulling together,* thereby implying that rejection of U would result in improvements,

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coupled with subsequent solicitation and offer to remedy grievances, held unlawful promise of benefits for rejecting U)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(violation, where E solicited complaints and grievances and implicitly promised their correction not solely for legitimate business reasons, but rather to convince Ees that grievances could be resolved w/o U)

J. H. Black & Co., Inc. **247 NLRB No. 041**

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(telling Ees that if they did not tell E what was wrong in plant, E could not correct it; and invitation to Ees to discuss their problems, made in context of E's anti-U speech at meeting with Ees, unlawful)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(solicitation of grievance itself is not coercive, but promise to correct grievance or a concurrent interrogation or polling about U sympathies is unlawful; solicitation of grievances merely raises inference that E is making such a promise)

Chef's Pantry, Inc. **247 NLRB No. 018**
(violation where at preelection meetings E impliedly promised and then granted benefits by soliciting presentation of, and adjusting, grievances in effort to discourage U support)

Floyd Monroe & Sons, Inc. **JD-50-81**
(supervisor telling Ees that they were not to discuss their *problems* among themselves but were to take them only to supervisors held violative, since instruction prevented Ees from discussing matters concerning their wages, hours or other conditions of employment among themselves)

Convenience Stores Distributing Company, a Partnership of Marsh Supermarkets, Inc. and King Kwix Minit Market, Inc. **JD-745-80**
(E's solicitation of grievances and complaints directed to questions concerning why Ees wanted U and what could E do to get Ees to back away from U, violative where solicitation was made in context of unlawful interrogation and unlawful threats of disciplinary action as well as plant closure which reflected pattern of conduct aimed at deterring Ees from engaging in U activities)

Liberty Vinyl Corporation **JD-(SF)-268-80**
(soliciting grievances at meetings during U campaign with labor relations consultant and interpretor not violative, where consultant gave general disclaimer that he had no power to correct grievances but would pass them to management and E, who had held previous meetings where Ees were invited to discuss problems and make recommendations, did not deviate from past practices)

Falconer and Sons **JD-(SF)-232-80**

Werth Engineering, Inc. **JD-295-80**

Palomar Transport, Inc. **JD-(SF)-158-80**
(solicitation of grievances unlawful, where solicitation was not shown to have been established practice and impliedly held promise of rectification, thereby obviating need for U representation)

N.L.R.B. v. Chester Valley, Inc. **652 F.2d 263 (C.A. 2, June 1981)**
(E's sending letter to all Ees stating that meeting would be held to discuss *problems* and to see if labor and management could *work together on rectifying these problems* possibly through formation of *joint E/Ee committee*, violative of 8(a)(1), notwithstanding E's defense that it had independently corrected its error by cancelling meeting and sending letters to Ees informing them of their rights under NLRA, since Bd is still entitled to enforcement of its orders despite corrective actions taken by offending parties)

K & K Gourmet Meats, Inc. v. N.L.R.B. **640 F.2d 460 (C.A. 3, 1981)**
(solicitation of grievances is only violative when accompanied by either implied or express promise that grievance will be remedied, and here E made no specific promises, only willingness to listen and consider, general implied promise is insufficient to support Sec. 8(a)(1) violation)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(ct could not disregard finding of Bd that creation of telephone hot line was intended and understood to be solicitation of grievances and implied promise that those grievances would be remedied and was unlawful)

Chef's Pantry, Inc. v. N.L.R.B. **654 F.2d 458 (C.A. 6, 1981)**
(violation where E during critical period had promised and granted benefits, had solicited and adjusted grievances, and had threatened its Ees with imposition of more onerous working conditions)

N.L.R.B. v. Arrow Molded Plastics, Inc. **653 F.2d 280 (C.A. 6, July 1981)**
(violation where E during preelection period hired personnel consultant who held meetings with Ees in recognition of fact *there was U knocking at door*, such meetings were unprecedented, it was suggested grievances would be resolved only if Ees rejected U representation, and E took steps to resolve grievances under questionable circumstances)

N.L.R.B. v. Berger Transfer & Storage Co. **678 F.2d 679 (C.A. 7, May 1982)**
(*E violates Section 8(a)(1) of Act by soliciting grievances when such solicitation is accompanied by express or implied promise of benefits specifically aimed at interfering with, restraining and coercing Ees in their organizational effort*)

5042-3300 Forms of benefits

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(wage increase granted during pendency of R ptn to segment of Ee complement held violative where E failed to overcome *strong presumption of (its) illegality*)

5042-3310 Paid holiday or other holiday arrangements

Knogo Corporation **262 NLRB No. 171**
(E's granting of new economic benefits in form of paid sick leave, bereavement leave, jury duty pay and an extra paid holiday during U's organizing campaign violative where E failed to meet burden of sustaining its economic defense that benefits would have been granted if U was not involved in organizing Es)

G.T.A. Enterprises, Inc. d/b/a **Restaurant Horikawa** **260 NLRB No. 029**
(granting Ees extra time off on holiday during U organizing campaign violative notwithstanding time off was without pay since it may reasonably be considered to have been perceived as benefit by Ees)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(granting Friday, July 5, as paid holiday prior to election, not unlawful, where E had established policy to grant additional paid holiday when normal holiday fell on a Tuesday or a Thursday)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(E's invitation to all Ees and their families to outing for which E paid admission fees and provided free lunches was benefit with intended effect of influencing votes in violation of 8(a)(1))

N.L.R.B. v. Wilker Brothers Company, Inc. **652 F.2d 660 (C.A. 6, June 1981)**
(announcement of two new holidays shortly after telegram from U was received and posted, unlawful)

N.L.R.B. v. Swedish Hospital Medical Center **619 F.2d 33 (C.A. 9, 1980)**
(E's grant of one day vacations to nonstrikers and not to strikers upheld by ct as interference with Ees' right to strike and independent 8(a)(1) violation w/o passing on validity of Bd's findings of 8(a)(3) and (5) violations thereby; ct found grant not so insignificant as not to affect Ees' participation in future strikes and any justification, even if legitimate, would be insufficient to outweight Ees' interest in uninhibited strike activity

5042-3315 Reduction of workweek

Williams Litho Service, Inc. **260 NLRB No. 101**
(offering modified workweek and overtime plan at regular Ee meeting and granting such benefits during organizing campaign, not unlawful, where, notwithstanding suspicious timing, meeting was fully consistent with E's past practice and there was no evidence of any causal connection between U's nascent organizational effort and Ee meeting or any of the subjects discussed in that meeting)

5042-3320 Insurance

Washington Beef Producers, Inc. **264 NLRB No. 155**
(introducing insurance plan for Ees promptly after advent of organizing efforts, violative)

Electric Hose and Rubber Company **262 NLRB No. 014**
(E's modification of its Ees' medical insurance program which occured before election ptn filed not violative of Sec. 8(a)(1) because not alleged as ULP in C but arose only in context of an objection to election and thus was not litigated as ULP. E presented no evidence regarding its action and thus allegation was never fully litigated)

Electric Hose and Rubber Company **262 NLRB No. 014**
(increasing insurance benefits while objections pending, violative)

Clements Wire & Manufacturing Company, Inc. **257 NLRB No. 078**
(promising and granting increased life insurance coverage two weeks before U election, violative)

Pace Oldsmobile, Inc. **256 NLRB No. 111**
(grant of health insurance coverage for not supporting U, unlawful)

Raley's, Inc. **256 NLRB No. 155**
(granting of increased health and welfare benefits during U campaign not violative where done to make Ees in two different states equal; however, wording of announcement which implied that it was as result of one of two competing U's efforts violative as attempt to influence Ees to support that U)

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Richland Co. & Assoc., Division of McDonald Construction, Inc. **256 NLRB No. 026**
(preelection promise to Ees of maternity insurance which was to take effect after election, and grant of such benefit after U lost election, unlawful)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(instituting hospitalization insurance, unlawful, since for purpose of interfering with U activity where Ees were still wearing U buttons and E referred to fact U campaign was *apparently* over and not to assertion that campaign was over)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(institution of medical insurance program planned prior to beginning of U activity and not instituted until 6 months after it began not violative where it was instituted for all unit and nonunit Ees as well as supervisors w/o any mention of U activity)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(E's preelection change in Ees' life insurance coverage held not unlawful and not interference, since E was not statutorily obligated to stay or abandon implementation of new beneficial insurance program based on sound business considerations simply because election had been scheduled to take place some 6 months in the future, and implementation of plan was not achieved until shortly before election because of administrative bungling)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(granting $20,000 life insurance policies to Ees 7 days before election, unlawful where granting of policies was done in effort to persuade Ees not to support U)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(promises and grant of wage increases and health plan, although not expressly made dependent upon Ees' rejection of U, held violative where evidence in record supported conclusion that offers of such benefits indicated coercive purpose since they were made after U's request for recognition)

Pedro's Inc., d/b/a Pedro's Restaurant v. N.L.R.B. **652 F.2d 1005 (C.A.D.C., Apr 1981)**
(E's institution of health insurance plan during campaign, not violative where preparations for implementation of plan were begun well in advance of U campaign and plan was implemented in normal course of business)

5042-3330 Retirement benefits

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(announcement of E sponsored profit-sharing retirement plan on day before election violative, notwithstanding plan was agreed upon earlier since plan required IRS approval and until such approval received E's conduct amounts to bestowal of nonexisting benefit)

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters)8250 NLRB No. 1339(implementation and announcement of improved retirement plan held not unlawful or objectionable conduct where plan was developed and adopted prior to beginning of U activities with timing of its announcement determined by economic, not U-related matters)

5042-3335 Improvement of plant facility

Conair Corporation **261 NLRB No. 178**
(promising and then granting of benefits to Ees during U organizational campaign, unlawful, where they consisted of enlargement of plant cafeteria and introduction of hot food and cafeteria style services therein, providing additional drinking fountain near production area and gloves for assembly line work, implementing system allocating Ee parking spaces on basis of seniority, and improving safety procedures in plant)

Clements Wire & Manufacturing Company, Inc. **257 NLRB No. 075**
(announcement of new lunch room and plans for improved food service prior to election, violative)

Clements Wire & Manufacturing Company, Inc. **257 NLRB No. 075**
(increasing building security by hiring guard and installing additional flood lights, not unlawful, where such action was in response to Ee's letter requesting proper security measures to reduce acts of theft and vandalism)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's improvement of lighting in its warehouse, not unlawful, where it had been working on improvement prior to onset of U activity)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(timing of announcement and granting of expended break time and improvements in plant lunchroom facilities, unlawful, where E failed to adequately explain timing of changes in midst of U campaign after receipt of grievances on matters which E solicited unlawfully for purpose of responding to U campaign)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(construction during U campaign of nursing station providing improvod medical treatment at plant, not unlawful, since legitimate business reason existed for improvement where there were no complaints from Ees about lack of nursing station, timing was compatible with construction of other stations in E's operations and corporate-wide concern over Ee health problems, and its impact and relationship with U campaign was minimal)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(announcement of addition of lunch room and plans for improved food service for Ees prior to election, unlawful where calculated to dissuade Ees from voting for U)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(E's making improvements in restroom facilities, unlawful where made solely to persuade Ees to vote against U in upcoming election)

N.L.R.B. v. Arrow Molded Plastics, Inc. **653 F.2d 280 (C.A. 6, July 1981)**
(redecorating of lunch room and installation of new applicances unlawful, where promised during campaign, materials for redecorating displayed prior to election and work done after defeat of U in election)

N.L.R.B. v. Arrow Molded Plastics, Inc. **653 F.2d 280 (C.A. 6, July 1981)**
(redecorating of lunch room and installation of new appliances unlawful, where promised during campaign, materials for redecorating displayed prior to election and work done after defeat of U in election)

5042-3340 Promotion

United Oil Manufacturing Co., Inc. **254 NLRB No. 179**
(promising and granting wage increases and promoting Ees prior to election, violative)

Edgcomb Metals Co., One of The Williams Companies **254 NLRB No. 140**
(introducing job bidding procedure for office clericals during unionization campaign, violative)

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**
(transfer of anti-U Ee to better position where she lacked knowledge of requirements for job and E did not follow its own posting policy, violative)

5042-3345 Coffee break

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(timing of announcement and granting of expanded break time and improvements in plant lunchroom facilities, unlawful, where E failed to adequately explain timing of changes in midst of U campaign after receipt of grievances on matters which E solicited unlawfully for purpose of responding to U campaign)

5042-3346 Free meals

G.T.A. Enterprises, Inc. d/b/a **Restaurant Horikawa** **260 NLRB No. 029**
(E who held luncheon meetings and paid for meals served at meetings violated Act where meetings were held at same time U had called organizing meetings and were designed to retard U's communication with Ees)

Don Pizzolato, Inc. **249 NLRB No. 136**
(E who purchased lunch for Ee prior to election violated Act where meals not ordinarily provided and no compelling need to provide meal existed)

5042-3350 Bonus

Quick Find Co. **259 NLRB No. 144**
(after telling Ee that he could not give bonus *because the NLRB will be on my ass*, granting bonus with comment, *I still don't know how you'r going to go.* i.e.; vote, violative as example of *first inside velvet glove* and related to vote in upcoming election)

Quick Find Co. **259 NLRB No. 144**
(no violation by failure to grant bonuses during critical period where in prior years bonuses had been granted twice yearly but E had not paid bonus in past year, and E's explanation, *because the NLRB will be on my ass* was realistic judgment if E granted nonscheduled benefit prior to election)

Mark I Tune-Up Centers, Inc. **256 NLRB No. 138**
(bonus given to Ee, unlawful, where bonus was not only unscheduled but also unprecedented, and Ee was puzzled by grant of bonus since he felt his work had not changed in either quantity or quality, which leads to conclusion that E was attempting to influence Ee's vote in coming election)

Mark I Tune-Up Centers, Inc. **256 NLRB No. 138**
(alleged monetary incentive given to Ee to forego U activity in form of largest bonus ever received by any Ee and purchase of Ee's share of E's stock in greater amount than E had decided to purchase from individual shareholders, not unlawful, where Ee had no knowledge as to largest bonus paid to any Ee all Ees received bonus calculated by same formula, and there was no evidence that Ee's bonus reflected *pay-off* or favoritism; purchase of more than usual shares from Ee was of no significance since Ee was not paid larger amount per sahre which would have reflected disparate treatment)

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**
(bonus paid nonstrikers only, unlawful)

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Carbonex Coal Company 248 NLRB No. 107
(promise to Ees of tonnage bonus if U was defeated)

Permanent Label Corporation 248 NLRB No. 021
(bonus given to all Ees prior to election violative where past practice had been that only Ees who had been employed over 1 year received bonus)

Harvard Cooperative Society, Inc. JD-246-82
(giving Ee incentive bonus check with query whether he knew that E would not have such program with U because Us don't like management to be on good terms with Ees, violative because it implied there would be no sales incentive bonus if U won and further implied reprisal for U affection and discouraged U activity)

Carbon Specialties, Inc. JD-510-80
(promising and giving Ees money bonus and a loan of money to one of them as inducement to defect from U, violative)

Lika Corporation JD-(SF)-69-80
(quarterly bonus not violative where consistent with past practice notwithstanding it was given 2 weeks prior to election)

United Dairy Farmers Cooperative Association v. N.L.R.B. 633 F.2d 1054 (C.A. 3, 1980)
(distribution of Christmas bonus, unlawful where bonuses given to Ees who were to vote in election were two times greater than those paid to other Ees and distribution of Christmas bonus was w/o precedent in E's 8-year history)

J. P. Stevens & Co., Inc. v. N.L.R.B. 668 F.2d 767 (C.A. 4, Jan. 1982)
(announcement, eight days before election, of cash bonus to supplement unemployment benefits of Ees laid off week before new law providing greater benefits came into effect, unlawful)

N.L.R.B. v. Rich's Precision Foundry, Inc. 667 F.2d 613 (C.A. 7, Dec. 1981)
(change of bonus from gift item such as turkey to 50 dollars cash during U campaign violative)

5042-3360 Profit sharing plan

Computer Sciences Corporation Applied Technology Division, Huntsville Center 258 NLRB No. 085
(stock purchase plan set forth in Ee handbook violated Act where it limited plan to those Ees who were not U members or not members of bargaining unit)

Gordonsville, Industries, Inc. 252 NLRB No. 054
(announcement of E sponsored profit-sharing retirement plan on day before election violative, notwithstanding plan was agreed upon earlier since plan required IRS approval and until such approval received E's conduct amounts to bestowal of nonexisting benefit)

5042-3365 Sick leave

Humana of West Virginia, Inc. d/b/a Greenbrier Valley Hospital 265 NLRB No. 126
(announcement during preelection period of improved sick pay benefits by E, one of many hospitals operated nationwide by a corporation, not violative since benefits were decided on before onset of Ees' organizing activities and were incidental to nationwide policy change)

Knogo Corporation 262 NLRB No. 171
(E's granting of new economic benefits in form of paid sick leave, bereavement leave, jury duty pay and an extra paid holiday during U's organizing campaign violative where E failed to meet burden of sustaining its economic defense that benefits would have been granted if U was not involved in organizing Es)

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital 253 NLRB No. 092
(reinstatement of prior sick leave policy which allowed Ees to be paid for unused leave violative where done in response to Ees displeasive over discontinuance of policy and in face of U activity)

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home 249 NLRB No. 162
(reinstatement of more favorable sick leave policy to induce Ees to withdraw support from U constituted interference and violation)

5042-3368 Loans

Carbon Specialties, Inc. JD-510-80
(promising and giving Ees money bonus and a loan of money to one of them as inducement to defect from U, violative)

N.L.R.B. v. Alumina Ceramics, Inc. 690 F.2d 136 (C.A. 8, Oct. 1982)
(cosigning loan for Ee in order to discourage his U activities, unlawful)

5042-3370 Increased holiday and vacation benefits

Washington Beef Producers, Inc. 264 NLRB No. 155
(announcing grant of Good Friday as paid holiday during organizing campaign, violative)

Lake Development Management Co. 259 NLRB No. 069
(violation, where E issued notice announcing and granting Ees improved vacation benefits shortly before election)

Western Care, Inc. d/b/a Western Care Nursing Home (United Food and Commercial Workers International Union, Local 684, AFL-CIO-CLC) 250 NLRB No. 084
(grant of Ee's claim for holiday pay while stating that Ee was ineligible to receive it and thus effectively bribing Ee to vote against U, unlawful)

American Telecommunications Corporation, Electromechanical Division 249 NLRB No. 149
(informing Ees at non-U plant that they received 2 more paid holidays than Ees at U plant violative as it indicatedthat Ees who chose U R do not receive any additional benefits than would otherwise be granted to Ees in normal course of E's business)

5042-3375 Elimination of adverse working conditions

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. 250 NLRB No. 131
(promising and granting improved working conditions to anti-U adherent, unlawful)

Clements Wire and Manufacturing Company, Inc. JD-339-80
(announcement of addition of lunch room and plans for improved food service for Ees prior to election, unlawful where calculated to dissuade Ees from voting for U)

Clements Wire and Manufacturing Company, Inc. JD-338-80
(announcement of plans to revise plant rules and regulations for Ees during peak of U organizational campaign, unlawful where made solely to dissuade Ees from supporting U)

5042-3378 Elimination of unpopular practices

Alco Venetian Blind Co., Inc. 253 NLRB No. 161
(change from written to oral production count not violative where written count was not onerous and such change is insignificant and was made for reasons of efficiency)

The Krebs School Foundation, Inc. 251 NLRB No. 187
(school's change in employment contract renewal policy from notification by mail to individual interviews at which time teachers were informed that their contracts would or would not be renewed for purpose of calming faculty so they would not feel need for U, violative)

Nice-Pak Products, Inc. 248 NLRB No. 173
(where during U campaign, E changed start of work week for 3rd shift from Monday to Sunday night as Ees had previously requested violated Act)

Clements Wire and Manufacturing Company, Inc. JD-338-80
(announcement of plans to revise plant rules and regulations for Ees during peak of U organizational campaign, unlawful where made solely to dissuade Ees from supporting U)

5042-3379 Redress of grievances

Windsor Industries, Inc. 269 NLRB No. 148
(E's repeatedly telling Ees that it would *look into* various benefits requested and complaints expressed by its Ees, violative notwithstanding E's *no promises* statements where E's actions suggested to Ees that its listening to their gripes was not w/o purpose; E announced open door policy for discussion of Ees' problems, and added that he didn't want third party to come between us)

Holland American Wafer Company 260 NLRB No. 041
(telling Ees that they should talk to E's president about what they wanted because U couldn't get anything for them so they should not wait for U, held violative as these statements tend to discourage U support, invite direct bargaining and portray U as futile)

Fuelgas Company, Inc. 259 NLRB No. 104
(implementing wage increases pursuant to Ee complaints and grievances after U won election)

K-Mart Corporation 255 NLRB No. 112
(soliciting grievances from Ees, promising to remedy them, and actually remedying some of these complaints, violative)

General Electric Company 255 NLRB No. 092
(E's conducting Ee attitude survey, unlawful, since for purpose of discouraging U support and where in light of subsequent promise to obtain concrete improvements constituted implied promise of redress of grievances)

Sweats and Stains, Inc. 254 NLRB No. 105
(remarks of E, made during U's organizing campaign, that included: (1) invitation for Ees to submit their grievances to E (2) announcement of new vacation policy, and (3) suggestion that Ee press U to withdraw its R ptn,

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held violative in view of their timing in midst of U's organizing campaign and close upon E's manifestations of U animus as found in instant decision)

Omark-RCBS, A Division of Omark Industries 252 NLRB No. 089
(E's statements requesting Ees to deal directly with management, asking for complaints or gripes and requesting opportunity to resolve problems, held violative since they constituted clear attempt to dissuade Ees from supporting U by soliciting grievances and holding out possibility of more favorable treatment)

S. L. Industries Inc. and Extruded Products, Corp. 252 NLRB No. 151
(E's announcement, prior to election, to Ees that it was forming Ee grievance committee to handle Ee problems held violative of Section 8(a)(1) but not Section 8(a)(2) since no such committee was actually formed)

Americana Health Care Corporation of Ohio d/b/a Barberton Manor 252 NLRB No. 057
(soliciting and remedying Ee grievances in attempt to deter U's organizational campaign, violative)

Behring International, Inc. 252 NLRB No. 055
(E's recognition of grievance committee, formed at Ee meeting which certain Ees conducted as agents of E, held unlawful job benefit given before election to encourage Ees to abandon support for U and to seek redress of their job-related problems through alternative thus provided)

St. Francis Hospital 249 NLRB No. 017

Ball Industries, Inc. JD-679-82
(adjustment of U adherents' grievance regarding payment for overtime, unlawful, since E was prompted to make adjustment because of Ee's U activity rather than concern for fairness, where members of management took unusual personal interest in resolving C)

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)
(E violates Section 8(a)(1) of Act by soliciting grievances when such solicitation is accompanied by express or implied promise of benefits specifically aimed at interfering with, restraining and coercing Ees in their organizational effort)

5042-3380 Wage increase

Belcher Towing Company 265 NLRB No. 159
(announcement and granting of wage increase during U organizational campaign, unlawful, since it was intended to, and did, interfere with, restrain and coerce Ees in exercise of their statutory rights, in view of absence of sound and believable business reasons for such action, and extraordinary lengths taken by E to defeat U, including surveillance, threats, and some instances of discrimination against Ees because of their U activity)

Humana of West Virginia, Inc. d/b/a Greenbrier Valley Hospital 265 NLRB No. 126
(allegation that wage increase was granted during preelection period to discourage U support, dismissed notwithstanding suspicious timing of increase since increase would have been granted earlier had wage forms not been mislaid; moreover, not all recipients were U proponents)

Butler Shoes New York, Inc. 263 NLRB No. 150
(wage increase granted after election which E won not violative where E was complying with preexisting procedures and commitments)

St. Francis Hospital 263 NLRB No. 109
(granting 10% wage increase during U campaign and after U had filed R ptn held violative where, in past years, Ees had only received raises of six or seven percent; E did not present adequate business justification for its larger than normal wage increases)

Fisher-Haynes Corporation of Georgia 262 NLRB No. 155
(E's grant of wage increase coming quickly after E learned of Ees' interest in U representation, violative where it was calculated to quell dissatisfaction emerging from grievance over wages which had prompted Ees to seek U representation in first place)

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant 261 NLRB No. 051
(granting of wage increases to cooks by E who operated restaurant with intent to discourage cooks' adherence to U after U had demanded recognition, unlawful)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility 260 NLRB No. 073
(sudden increase in wages and benefits and promised benefits held violative as attempt to deter Ees' support of U)

Hochschild Kohn, Division of Supermarkets General Corporation 260 NLRB No. 025
(awarding merit pay increases right after organizational campaign started, violative where E rarely did this in past)

Colorado Forge Corporation 260 NLRB No. 004
(granting of pay raise violative, in view of E's unlawful solicitation of grievances just two weeks before, its implied promise to adjust grievances, its questionnaire to Ees specifically referring to wage increase and its ongoing campaign of threats; such conduct has natural consequence of interfering with Ees' Sec. 7 rights)

Valley Plaza, Inc. d/b/a Captain Nemo's 258 NLRB No. 076
(soliciting and remedying Ee grievances, making implied promise to remedy other grievances by announcing new open door policy, and announcing wage increases, all in order to undermine support for U, violative)

Leisure Time Tours, Inc. 258 NLRB No. 128
(granting wage increase, violative where increase was made to undermine U's organizing drive)

Pantex Towing Corporation 258 NLRB No. 113
(sudden granting of wage increase, violative where motivated by U's organizational efforts)

Morco, Inc. d/b/a Towne Plaza Hotel 258 NLRB No. 016
(giving Ees wage increase shortly after receiving U's wage demands and w/o submitting any counter proposal, violative where raise was calculated by E to denigrate U in eyes of Ees and to induce them to lessen their support for U)

Presbyterian/St. Luke's Medical Center 258 NLRB No. 021
(questioning Ees in course of taking poll in regard to wages, hours, and fringe benefits, and granting changes in wages and fringe benefits based on survey, not unlawful, where prior to U organizing campaign E had informed Ees that impending merger with another facility would result in wage-scale consolidation and new fringe benefits and survey was logical method by which Ees could choose from among various wages and fringe benefits already in existence at newly merged facilities)

Maidsville Coal Co., Inc. 257 NLRB No. 148
(announcing wage increase)

Mark I Tune-Up Centers, Inc. 256 NLRB No. 138
(conversion of past bonus and wage plan to straight hourly wage, even if considered as wage increase, not unlawful, where E proceeded to revise hourly wage before it was aware of U activity, ultimate revision was part of already established policy which was not affected by advent of U, and E announced change in normal course of business)

[illegible]chland Co. & Assoc., Division of McDonald Construction, Inc. 256 NLRB No. 026
(delay of promised wage increase until it was granted after election, unlawful, since delay was intended to impress upon Ees the source from which their benefits flowed)

Jax Mold & Machine, Inc. 255 NLRB No. 129
(telling Ee that he had to fight U to get Ee ten cents per hour wage increase, violative as it had effect of discouraging U support and was intended to influence Ees against U)

Steinerfilm, Inc. 255 NLRB No. 017
(granting Ees wage increase, violative, where such wage increase was granted day after initial U meeting to discuss wages and new wage schedule was not published as part of revised Ee handbook which contradicts E's contention that increase was considered for several months)

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. 255 NLRB No. 098
(unilateral grant of additional 10 cents per hour to Ee who was dissatisfied with assignment to night shift violative, where it was granted simultaneously with E's receipt of U's demand letter and notice that election petition had been filed)

Gasko & Meyer, Inc. 255 NLRB No. 095
(telling Ee he was receiving pay raise in order to dissuade him from supporting U, violative)

Pine Valley Meats, Inc. 255 NLRB No. 061
(E's grant to key Ees of wage increases prior to election vilativé, notwithstanding Ees' threats to quit unless they received more money, E's specific disclaimer of any intention to bribe Ees for their support, and E's request to these Ees not to tell other Ees; defense that Ees testified that they did not consider additional earnings as bribes and were not influenced by them rejected, since finding of restraint or coercion does not depend on Ees' subjective impressions but rather on whether E's conduct *reasonably tends to interfere with the free exercise of employee rights*)

United Oil Manufacturing Co., Inc. 254 NLRB No. 179
(promising and granting wage increases and promoting Ees prior to election, violative)

Edgcomb Metals Co., One of The Williams Companies 254 NLRB No. 140
(grant of wage increases, not unlawful, where decision for such increases was made before advent of U)

Hasbro Industries, Inc. 254 NLRB No. 070
(granting wage increases to 3 of 15 unit Ees just prior to election, unlawful where two of increases were granted prematurely while third was overdue)

Hasbro Industries, Inc. 254 NLRB No. 070
(granting unit Ees annual wage increases far eclipsing those in previous years, and substantially higher than those granted to similarly situated hourly paid Ees outside unit while objections to election were pending, unlawful)

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Alco Venetian Blind Co., Inc. 253 NLRB No. 161
(no violation where E regularly granted wage increases in July, increases were not disproportionally larger than prior years, they were given after strike when all U activities had ceased and E committed no unlawful acts during past strike period)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(E's granting of wage increases two days after U demanded recognition, unlawful, notwithstanding E's contention that increases were instituted in order to make E's pay scale competive with other E's since E had opportunity to put increases into effect before U campaign)

Gordonsville, Industries, Inc. 252 NLRB No. 054

Chester Valley, Inc. 251 NLRB No. 190
(retroactivity of wage increase held lawful since it was disassociated from election campaign, where E's letter to Ees stated that increase would be retroactive because Ees should not be made to suffer by reason of R ptn whose filing had been reason for Ees' failure to receive increase by prior date, and E's explanation was plausible and was probative evidence of E's motive)

Chester Valley, Inc. 251 NLRB No. 190
(when wage increase is granted during election campaign, Bd regards increase as calculated to influence outcome of election and therefore unlawful, unless E sustains burden of showing that timing of increase was governed by factors other than pendency of election)

Chester Valley, Inc. 251 NLRB No. 190
(pre-election granting of wage increases which were appreciably larger than those granted in previous years, unlawful, where E failed to sustain burden of showing that as to Ees receiving more than statutory minimum wage, size of increases was governed by other than pendency of election)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. 251 NLRB No. 179
(granting general wage increase to all unit Ees timed for receipt immediately preceding voting period, violative)

Delta Faucet Company, a Division of Masco Corporation of Indiana 251 NLRB No. 071
(GC's contention that E wide wage increase instituted at time of peak of U activity was unlawful, rejected, where U activity was taking place at only small part of E's enterprises)

Kaufman DeDell Printing, Inc. 251 NLRB No. 002
(wage increase given U adherent to induce him to refrain from U activities, unlawful)

Stanley M. Feil, Inc. 250 NLRB No. 065
(granting of wage increases, after ULP complaint set for hearing, not unlawful, notwithstanding lack of precise consistency in time between prior increase and fact increases granted because of increase in minimum wage and to compensate for inflation)

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters) 250 NLRB No. 133
(ten-percent wage increase, which was not provided for and not outgrowth of wage survey initiated before U activities began but was granted after U activities began and one week before election, violative and objectionable conduct)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. 250 NLRB No. 042
(wage increase granted during critical preelection period, unlawful, where announcement was not made long before U's organizing campaign as claimed by E, and increase was not conferred consistent with past practice but was unprecedented for time of year it was granted)

Charles Batchelder Company, Inc. 250 NLRB No. 009
(across-the-board wage increase given after U activity began violative where immediately prior to start of U campaign E announced that increase was to be deferred for 3 months)

Marcus J. Lawrence Memorial Hospital 249 NLRB No. 090
(25 cent across-the-board increase given to all Ees shortly after election, not just those who were entitled to it due to raising of statutory minimum wage, violative as reward to Ees for having rejected U and also attempt to influence results if second election were ordered)

Lyman Steel Company 249 NLRB No. 040
(promising Ees wage increase if they withheld their support from Us, held violative)

Simpson Electric Company, a Division of American Gauge and Machine Company 249 NLRB No. 024
(election set aside and third election directed, where E made unlawful wage and benefit increases in order to undermine U's organizational campaign during critical period)

American Sunroof Corporation; et al. 248 NLRB No. 038
(granting Ee pay raise w/i day of election for good job performance when she was entitled to it, expected it and requested it, not unlawful)

Connecticut Foundry Company 247 NLRB No. 165
(increase granted immediately prior to election while Ees were on strike violative)

Grandee Beer Distributors, Inc. 247 NLRB No. 163
(announcing and granting wage increase coinciding with U activity violative in absence of evidence that it was granted pursuant to regular pattern or for legitimate business reason)

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating 247 NLRB No. 099
(raises given to remaining Ees 1 day after unlawful discharges of 4 U supporters violative as given for purpose of discouraging U activity)

Tartan Marine Company 247 NLRB No. 073
(granting of wage increases after E learned of U campaign, not unlawful, where E had consistent policy of granting wage increases notwithstanding somewhat larger number of Ees received them than usual for period)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. 247 NLRB No. 090

Keister Coal Company, Inc. 247 NLRB No. 049
(E's granting inordinately large wage increase in face of U organizing activity held violative when compared to wage increases granted prior to advent of U)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South 247 NLRB No. 038
(across-the-board wage increase to influence Ees to vote against U, unlawful)

J. J. Cassone Bakery, Inc. 247 NLRB No. 032
(increase in excess of amounts required by newly announced federal minimum wage rate, not unlawful and not interference with election, where in accordance with E's prior bookkeeping procedures E essayed to pay wage increase in increments of 25 cents in order to simplify its payroll calculations, increases were not announced or paid prior to election, and there was otherwise no evidence that E had object of influencing Ees in their choice of representative)

Greenwood Milk Products Cooperative JD-458-82
(wage increase granted 1 day prior to E's receipt of U's demand for recognition not violative where increase had been planned for 2 weeks and E had no knowledge of U activity)

Methadone Maintenance Health Program, Inc. JD-173-82
(granting immediate pay raise and promising future wage increase to induce Ee not to proceed with claim he had filed with state agency and induce him to abandon his support for fellow Ee who had also filed such claim, unlawful)

J.A.G. Freight Systems, Inc. JD-(NY)-31-82
(wage increase unlawful, where Ees had unsuccessfully sought increase for seven months, yet given w/i few days after intervention of U)

Haemly Hardwood Lumber Co. JD-285-81
(wage increases promised and granted after E obtained knowledge of U activity, unlawful, since E did not meet burden of showing raises were pursuant to either established pattern or other factors unrelated to U organization)

Guardian Industries Distribution Center, Inc. JD-(NY)-45-80
(promise and grant of wage increases, not unlawful in view of E's practice of annual wage increases and no independent evidence to establish unlawf
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Guardian Industries Distribution Center, Inc. JD-(NY)-45-80
(E's response to Ees' questions that, if Ees voted in U, E must negotiate in good faith but did not have to sign contract if unable to agree to its

Byrne Sand & Gravel Co., Inc. JD-314-80
(no violation, where E when asked about attitude towards unionization replied he would pay U rate if he had a lot of U work, and when asked what E would do for Ees if they didn't go U, replied he couldn't promise Ees anymore than when hired but hoped that eventually they would get higher rate paid to Ees doing similiar work at another facility)

N.L.R.B. v. Steinerfilm, Inc. 669 F.2d 845 (C.A. 1, Feb. 1982)
(unscheduled wage increase granted by E day after U meeting not violative where it had been under active consideration for 1 month prior to announcement, 3rd such increase in 18 months and announcement was distributed along with new Ee handbook which had been in preparation for several months)

N.L.R.B. v. Hasbro Industries, Inc. 672 F.2d 978 (C.A. 1, Feb. 1982)
(amount of post-election wage increase showed that it was unlawfully intended to erode support for U where unit Ees were given larger amount than nonunit Ees and larger amount than they had received the previous year)

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Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(timing of wage increase is relevant factor in determining whether E's action violative)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(E's granting wage increase to non-striking Ees, unlawful, in view of timing where granted on first day of strike, and fact that amount was greater than increases previously given, notwithstanding increase was granted to non-unit Ees of different corporation from E of Ees on strike where corporations held single E)

N.L.R.B. v. Chester Valley, Inc. **652 F.2d 263 (C.A. 2, June 1981)**
(holding that E violated 8(a)(1) by granting large wage increases did not stand where evidence introduced by GC was insufficient and consumer price index rose at substantially greater rate in year of wage increases in question)

N.L.R.B. v. Charles Batchelder Company, Inc. **646 F.2d 33 (C.A. 2, Mar 1981)**
(granting Ees accelerated wage increase to discourage U activity, violative)

J.J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation v. N.L.R.B. **645 F.2d 148 (C.A. 2, Mar 21, 1981)**
(announcement and granting of wage increase three weeks before election, unlawful, even though E's initial decision to raise wages was made before U's organizational drive began and was perfectly legitimate)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(promises and grant of wage increases and health plan, although not expressly made dependent upon Ees' rejection of U, held violative where evidence in record supported conclusion that offers of such benefits indicated coercive purpose since they were made after U's request for recognition)

N.L.R.B. v. Arrow Molded Plastics, Inc. **653 F.2d 280 (C.A. 6, July 1981)**
(making granting of wage increase to raise scale to level of E competitors expressly contingent upon U defeat, unlawful)

N.L.R.B. v. Axton Candy and Tobacco Company **645 F.2d 555 (C.A. 6, Apr 8, 1981)**
(E's granting of unscheduled wage increases and making changes in wage structure after it had notice of U activity, unlawful)

Simpson Electric Company, a Division of American Gage and Machine Company, Inc. v. N.L.R.B. **654 F.2d 15 (C.A. 7, July 1981)**
(it is necessary to look to evidence *as a whole* to determine whether wage increase is ULP)

Simpson Electric Company, a Division of American Gage and Machine Company, Inc. v. N.L.R.B. **654 F.2d 15 (C.A. 7, July 1981)**
(grant of regular benefits prior to rerun election, not exceeding rate of inflation, and w/o special propoganda, not violative, since grant viewed as neutral act; regardless of any mere time relation to (U's) organizing campaign, as long as inflation continues, routine unexploited wage and benefit increases w/i rate of inflation, as in instant case, viewed for 8(a)(1) purposes as same as no action in condition of stable currency value)

MGM Grand Hotel-Reno, Inc. v. N.L.R.B. **653 F.2d 1322 (C.A. 9, Aug 1981)**
(pre-election wage increase not unlawful where increase resulted from corporate-wide decision which was implemented in normal business fashion; increase was based on comprehensive study of E's wage rates and compensation policies that were instituted many months before election)

5042-3385 Cessation of checkoff of union dues

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 065**
(E may unilaterally discontinue (dues) checkoff following expiration of collective bargaining agreement between E and U)

5042-3390 Increase in working hours

Salem Paint, Inc. **257 NLRB No. 050**
(offer to allow Ee to work extra week in return for Ee's agreement not to vote in U election, violative)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(promise of full-time employment to part-time Es during U campaign not violative where Es had been promised such employment prior to U campaign)

Fort Wayne Newspapers, Inc. **247 NLRB No. 089**
(promising Ee extra hours of work if he signed anti-U pin, unlawful)

5042-3391 Job postings

Conair Corporation **261 NLRB No. 178**
(implementing job bid system during organizational campaign, unlawful)

Omark-RCBS, A Division of Omark Industries **232 NLRB No. 089**
(E's implementation of job bidding w/o central posting site in as yet uncompleted lunchroom was unlawful acceleration of conferring extremely important benefit for purpose of interfering with U organizing campaign notwithstanding said benefit agreed to prior to any U activity)

5042-3394 Parties, etc

Gould, Inc. **260 NLRB No. 002**
(combined children's Christmas party and family open house held unlawful grant of benefits, where such party was first social event unrelated to retirement or other Ee achievements in which E paid full cost and decision for party was made after E knew election would be held)

N.L.R.B. v. Delchamps, Inc. **653 F.2d 225 (C.A. 5, Aug 1981)**
(while E may exclude U supporters from meetings during working hours at which E expressed its opposition to U, and E's conduct in providing free meals to Ees during nonworking hours at campaign meetings does not *per se* constitute interference with election, combination of those 2 tactics, to which is added payment of wages to some, but not all, of its Ees for attendance at meetings during their scheduled off-hours constitutes violation of Act)

5042-3397 Overtime payments

Williams Litho Service, Inc. **260 NLRB No. 101**
(offering modified workweek and overtime plan at regular Ee meeting and granting such benefits during organizing campaign, not unlawful, where, notwithstanding suspicious timing, meeting was fully consistent with E's past practice and there was no evidence of any causal connection between U's nascent organizational effort and Ee meeting or any of the subjects discussed in that meeting)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(payment for performing overtime side work to discourage U support, unlawful)

5042-3399 Miscellaneous benefits

Humana of West Virginia, Inc. d/b/a Greenbrier Valley Hospital **265 NLRB No. 126**
(allegation that hospital staff was increased during preelection period to discourage U support, dismissed since there were a great many patients in the hospital during that period)

Hillside Avenue Pharmacy, Inc. **265 NLRB No. 205**
(E's granting Ee purchasing discounts in excess of normal discounts, while urging Ee to reject U, unlawful)

Airborne Freight Corporation **263 NLRB No. 181**
(violation where Ee who had requested and been denied backup assistance at time when his workload was heavy was granted backup assistance when his workload was not heavy but U campaign was going on)

Knogo Corporation **262 NLRB No. 171**
(E's granting of new economic benefits in form of paid sick leave, bereavement leave, jury duty pay and an extra paid holiday during U's organizing campaign violative where E failed to meet burden of sustaining its economic defense that benefits would have been granted if U was not involved in organizing Es)

R. L. White Company, Inc. **262 NLRB No. 0[illegible]9**
(although manner of E's distribution of pro-E T-shirts was violative, T-shirts themselves are not unlawful grant of benefit but merely distribution of inexpensive pieces of campaign propaganda)

Grove Valve and Regulator Company **262 NLRB No. 035**
(E who held *Ee appreciation day* on day prior to election and conducted raffle with lavish prizes for all unit Ees, announcing winners on day of election violated Act)

Conair Corporation **261 NLRB No. 178**
(implementing standards during organizational campaign, for Ee wages and system of supervisor performance ratings, unlawful)

Conair Corporation **261 NLRB No. 178**
(instituting during organizational campaign Ee *social clubs* for Ee participation in bowling, skating, and baseball, and also periodic E newsletter and Ee informational meetings with E's officials, and hiring bilingual RN and personnel director to resolve non-English speaking Ees' problems and complaints, unlaful)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**
(sudden increase in wages and benefits and promised benefits held violative as attempt to deter Ees' support of U)

Halo Lighting Division of McGraw Edison Company **259 NLRB No. 086**
(E's cancellation of preelection company picnic, unlawful, since, while E was justified in canceling picnic, E unjustifiably placed blame for cancellation on U it opposed, particularly on its non-Ee organizers who E had no reason to believe planned to attend picnic; instead, information received by

5042-3399—Cont.

E pertained only to possibility of Ee organizers causing confrontations, not to persons *not invited to our picnic*, as stated in announcement of cancellation, thereby placing blame for loss of benefit on disfavored U w/o any basis in fact)

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(Valentine's Day gift to Ees shortly before election of free flowers and box of candy, as well as free cake for Ee's birthday, unlawful, where E failed to show that such gifts were pursuant to specific company policies, plans, or decisions antedating pre-election period but designedly free from improper vote influencing intent and, instead, merely asserted that it was customary to observe holiday themes and gave no explanation for birthday gift to Ee)

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(refurbishing of Ee lockers and distribution to Ees of paid-for tickets to athletic contests, not unlawful, where repair of lockers was discussed prior to critical election period with parts necessary for repairs being delivered during such period; and ticket distribution coincided with games' customary seasons)

Presbyterian/St. Luke's Medical Center **258 NLRB No. 021**
(questioning Ees in course of taking poll in regard to wages, hours, and fringe benefits, and granting changes in wages and fringe benefits based on survey, not unlawful, where prior to U organizing campaign E had informed Ees that impending merger with another facility would result in wage-scale consolidation and new fringe benefits and survey was logical method by which Ees could choose from among various wages and fringe benefits already in existence at newly merged facilities)

Daniel Construction Company, A Division of Daniel International Corporation **257 NLRB No. 176**
(granting wage increases, changes in wage system, and new benefits during U organizing effort, not violative where benefits were undertaken in normal course of E's business operations, and would have taken place regardless of U organizing effort among unit of field engineers)

Mark I Tune-Up Centers, Inc. **256 NLRB No. 138**
(alleged monetary incentive given to Ee to forego U activity in form of largest bonus ever received by any Ee and purchase of Ee's share of E's stock in greater amount than E had decided to purchase from individual shareholders, not unlawful, where Ee had no knowledge as to largest bonus paid to any Ee all Ees received bonus calculated by same formula, and there was no evidence that Ee's bonus reflected *pay-off* or favoritism; purchase of more than usual shares from Ee was of no significance since Ee was not paid larger amount per share which would have reflected disparate treatment)

Swanson-Nunn Electric Company **256 NLRB No. 131**
(E who paid for Ee to take Dale Carnegie course during U campaign did not violate Act as it had provided such training for Ees in the past)

Firmat Manufacturing Corp. **255 NLRB No. 153**
(E's granting benefits after it became aware of Ees' U activities and thereafter promising additional benefits, violative)

Western Truck Services, Inc. **252 NLRB No. 096**
(promising Ees contract which *might contain better benefits* in order to undermine U's status, violative)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(E's agreement to *look into* installation of soft drink vending machine, not unlawful, since no definite promise and drinks had previously been available from refrigerator)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(reinstitution of policy of keeping soft drinks in refrigerator and installation of drink vending machine which was not used by Ees, not unlawful granting of benefits, since minimal difference whether drinks obtained from machine or refrigerator and drinks had been for sale from refrigerator previously)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(public announcement for first time, following U initiation campaign, that legal services of company officials was available for Ees' legal problems, unlawful)

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation and interference where after U campaign began and right before election E introduced beneficial uniform purchase plan suggested by Ees year before)

Don Pizzaiolo, Inc. **249 NLRB No. 136**
(paying Ee money owed to him from prior underpayment for job performed not violative where valid debt existed prior to election campaign)

Hudson Manufacturing Company **249 NLRB No. 096**
(granting of week's wages to Ees, 2 weeks before election, for time they were snowbound at E's plant because of great snowstorm, not unlawful, where GC failed to prove that E was attempting to buy election and was not motivated to *do good* because of the emergency; however, granting of benefits w/o consulting U, unlawful, since change in terms and conditions of employment, even for the better, is subject of bargaining)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(announcing, presenting or dirtributing Ee handbooks for salaried Ees for purpose of disuading Ees from supporting or voting for U, unlawful)

J. H. Black & Co., Inc. **247 NLRB No. 041**
(E's announcement to Ees that it had discharged both plant and production managers not violative absent evidence to show that they had mistreated Ees or how their discharges would benefit Ees)

Lone Star Tool Company **JD-319-82**
(offer and grant of two weeks severance pay plus vacation pay to U adherent, who had given two weeks notice, in order to get him off the premises, unlawful)

Ellis Hospital **JD-164-82**
(allegation that promotion of individual to manager resolved a grievance and Ees had thereby been granted a benefit, not unlawful, where individual was promoted in order to resolve situation of having two managers in same department which in E's judgment was bad idea and as things developed his judgment was vindicated thus he changed to one manager; fact that Ees unanimously wanted some solution to the problem does not mean E granted them an unlawful benefit; even during course of organizational campaign E has right to operate its business)

Transitank Car Corporation **JD-(ATL)-8-82**
(grant of new tool boxes and tools and air conditioning for Ees' breakroom to prevent unionization, and in response to Ee grievances, unlawful)

Haessly Hardwood Lumber Co. **JD-288-81**
(E giving Ees free work gloves after receipt of ULP charge and ptn unlawful, notwithstanding E had promised to consider matter previously, since E motivated by charge and ptn in view of its knowledge of U presence, U animus and other ULPs)

Coastal Volkswagen, Audi **JD-(SF)-144-80**
(promise to release Ee from responsibility for automobile damage if he would sign contract promiring to cease U activity, violative)

N.L.R.B. v. Arrow Molded Plastics, Inc. **653 F.2d 280 (C.A. 6, July 1981)**
(granting reimbursement for tuition for courses unrelated to work unlawful, where prior policy had required courses be work related)

N.L.R.B. v. Wilker Brothers Company, Inc. **652 F.2d 660 (C.A. 6, June 1981)**
(announcement after advent of U that E was going to lower prices on vending machines ten cents and would pay the difference, unlawful)

Donn Products, Inc. and American Metals Corp. v. N.L.R.B. **613 F.2d 162 (C.A. 6)**
(promises of unilateral grant of binding arbitration as final stage of grievance procedure and of *preferred loan* plan immediately before U election, unlawful)

Peavey Company v. N.L.R.B. **648 F.2d 460 (C.A. 7, May 1981)**
(E who announced after U began organizing thet Ees could see their personnel files violated Act)

5042-6700 Promises or offers of benefits

Belcher Towing Company **265 NLRB No. 159**
(supervisor's statement to Ee construed as unlawful promise of benefit, where supervisor's statement that company *will do anything for you*, following Ee's statement that U had nothing for him)

Mark I Tune-Up Centers, Inc. **256 NLRB No. 138**
(E's agreement to pay for required uniforms for Ees, not unlawful, where E agreed to do so for reasons unrelated to U activity and announced change in normal course of business)

Central Freight Lines, Inc. v. N.L.R.B. **666 F.2d 238 (C.A. 5, Jan. 1982)**
(promise of benefits during U campaign, unlawful)

Dow Chemical Company, Texas Division v. N.L.R.B. **660 F.2d 637 (C.A. 5, Nov 1981)**
ct held pre-election statements and questions of E to U members were protected speech under the Act where statements prior to decertification election were not promises but truthful or accurate observation of fact w/i bounds of legitimate electioneering or expressions of opinion by supervisors)

5042-6701 Generally

The Dow Chemical Company, Texas Division **280 NLRB No. 102**

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 036**
(statement that E had done things in past incorrectly but would correct them in future, implying benefits, unlawful)

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Perry Plaza, Inc. JD-(SF)-367-80

N.L.R.B. v. Allen's I.G.A. Foodliner 651 F.2d 438 (C.A. 6, May 1981)

(E's sponsoring and participating in circulation of ptn among Ees withdrawing support from U and unilaterally announcing improved benefits after U won second election held violative as attempt to undermine U)

5042-6702 Nonspecific promise of benefit

Fisher-Haynes Corporation of Georgia 262 NLRB No. 155

(plant manager's assuring Ees of even greater benefits than those previously granted if they turned to him instead of U, violative)

Kesler Corporation, d/b/a Kesler Brass Company 262 NLRB No. 023

(promising Ee benefits if he would dissaffiliate from U, violative)

Penn Color, Inc. 261 NLRB No. 058

(where Ee remarked to fellow Ee, in presence of supervisor, asking latter Ee to sign anti-U ptn and stating that improved benefits and better pay would be obtained by all Ees when *trouble* was over, Bd held supervisor's own inquiry as to what fellow Ee's *problem* was and what imporved benefits he wanted unlawful, since supervisor thereby sought to induce Ee to sign anti-U ptn and promised better benefits and pay as reward for discontinuing U activity)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040

(asking EEs on separate occasions for names of people who organized U and also stating that whoever gave him the information would benefit, unlawful)

American Geri-Care, Inc. 258 NLRB No. 147

(promising Ees good contract if they voted for management, violative)

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation 258 NLRB No. 142

(telephoning U adherent at home concerning Ees U meeting and reminding Ee about prior conversation regarding better benefits and stating *I don't know why you got this started,* violative, where conversation amounted to implied promise to improve benefits if Ee would reject U and created impression of surveillance by telling Ee that E knew who had gotten U started)

Gregory Chevrolet, Inc. 258 NLRB No. 034

(telling Ees that *things could change* in response to Ees' presentation of problems at meeting held with U's permission so that E could satisfy himself that Ees were not *conned* into signing cards, violative)

Metropolitan Life Insurance Company 256 NLRB No. 100

(telling Ee in course of discussion about regaining Ee's training allowance that E could help her and that no one else, especially the U, could assist her, and that Ee would make it if she stuck with E not with the U, violative)

Pine Valley Meats, Inc. 255 NLRB No. 061

(promise of increased benefits if Ees rejected U, violative)

Pine Valley Meats, Inc. 255 NLRB No. 061

(telling Ees that monies which U victory would require E to spend on attorney's fees for contract negotiations would otherwise be theirs if U were not selected, violative)

Boyer Ford Trucks, Inc. 254 NLRB No. 184

(statement to Ee that *if this thing doesn't go down* there will be plenty of business for everyone, violative since it was aimed at inducing Ee to reject unionization)

Williamsport Plumbing and Heating Co., Inc. 253 NLRB No. 121

(promising Ee with improved benefits and higher pay if said Ee and other Ees did not support or select U, unlawful)

S. L. Industries Inc. and Extruded Products, Corp. 252 NLRB No. 151

(E's letter to Ees, before election, pleading with them to vote *no* in election and to give E a year to prove himself held violative, since latter statement conveyed promise to be responsive to Ee needs)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors 251 NLRB No. 151

(supervisor telling Ee if he *wanted to keep working to stick with* E, unlawful since it amounted to both threat of discharge for supporting U and promise of benefit for opposing U)

Vantage Petroleum Corp. 247 NLRB No. 203

(E's inquiry as to whether individuals were interested in employment w/o U representation, not violative, where inquiry merely sought to see whether the individuals were interested in employment at E's stated terms and conditions or were insisting upon package deal)

J. P. Stevens and Company, Inc. 247 NLRB No. 044

(speech stating that conditions could *be improved and corrected* by *pulling together,* thereby implying that rejection of U would result in improvements, coupled with subsequent solicitation and offer to remedy grievances, held unlawful promise of benefits for rejecting U)

C-F Air Freight, Inc. 247 NLRB No. 060

(notwithstanding merit to E's claim that its statements were privileged as lawful predictions, E's reference to improved working conditions at Ee meeting constituted unlawful implied promise of benefit, where E's statements, although not unlawful standing alone, contained implication that Ees' forbearance in organizing efforts would result in improved working conditions such as promotions)

Ellis Hospital JD-164-82

(E's statement in pre-election letter to Ees that U's organizational campaign was caused in part at least by certain problems which E sought to resolve hopefully w/o having to bargain with U, unlawful and interference with election, since E thereby clearly promised to improve terms and conditions of employment)

Harvey & Madding, Inc., d/b/a Dublin Honda JD-(ATL)-97-81

(E's phone call to Ee prior to election asking if they couldn't work something out before election)

Bill Fox Chevrolet, Inc. JD-767-80

(E president's promise to Ees of increased wages and benefits if Ees would act swiftly to get U out, violative)

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)

(where supervisor stated that if Ees dropped U there would be changes and, in response to Ee's question about what specific change Ee might expect if that happened, stated that he could make no specific promise or say there would be a raise, ct deferred to Bd's finding of violation and held statement was unlawful implied, general promise to remedy Ee grievances or provide other benefits if U were abandoned)

5042-6703 Implied promises

Zero Corporation, Zero East Division 262 NLRB No. 064

(E who posted poster showing benefits its Ees at its other plant received after they rejected U violated Act as this is implied promise of benefits to Ees at this plant)

Grove Valve and Regulator Company 262 NLRB No. 035

(announcement during U campaign by E of appointment of new industrial relations manager listing his qualifications not violative as promise of benefit absent evidence circumstances would differ from those under prior industrial relations manager)

Datagraphic, Inc. 259 NLRB No. 173

(violation where E impliedly promised Ees that if they voted against U E's president would bequeath shares of company to Ees upon his death)

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant 259 NLRB No. 065

(manager's remarks to Ee that *if you do not vote for your contract in December, we can get you more money,* held violative, since implied promise of higher wages)

United States Postal Service 253 NLRB No. 158

(issuance of certificate of excellence awards to clerical Ees based in part upon fact that they had not filed any grievance or complaints during period covered by award, unlawful, notwithstanding E's relaince on first amendment and Sec. 8(c), and immediate posting of ameliorative notice as defenses; by granting commendation to clerical Ees, E impliedly promised similar benefit to other Ees for not filing grievances or complaints; Sec. 8(c) by its terms, excludes such statements granting or promising benefits; also, E's ameliorative notice failed to meet criteria for removing liability for unlawful conduct)

Chester Valley, Inc. 251 NLRB No. 190

(asking Ees whether *more benefits, wages or whatever* would take to keep U out, unlawful)

St. Francis Hospital 249 NLRB No. 017

(promise of benefits explicitly or implicitly contingent upon election outcome violative)

C-F Air Freight, Inc. 247 NLRB No. 060

(notwithstanding merit to E's claim that its statements were privileged as lawful predictions, E's reference to improved working conditions at Ee meeting constituted unlawful implied promise of benefit, where E's statements, although not unlawful standing alone, contained implication that Ees' forbearance in organizing efforts would result in improved working conditions such as promotions)

Chef's Pantry, Inc. 247 NLRB No. 018

(violation where at preelection meetings E impliedly promised and then granted benefits by soliciting presentation of, and adjusting, grievances in effort to discourage U support)

Locke Industries, Inc. JD-346-82

(alleged unlawful solicitation of grievances by supervisor, not unlawful; where supervisor told Ee that he would like to know about Ees' problems but then added that he doubted he could do anything about problems and, therefore, there was neither an express nor implied promise to remedy any of them; supervisor's accompanying remark that things would be happening in about a month was so obscure and nonspecific, standing alone, as to bear no probative value)

5042-6703—Cont.

Tri-Supply Company of Beaumont, Inc. JD-(SF)-29-80

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)

(where supervisor stated that if Ees dropped U there would be changes and, in response to Ee's question about what specific change Ee might expect if that happened, stated that he could make no specific promise or say there would be a raise, ct deferred to Bd's finding of violation and held statement was unlawful implied, general promise to remedy Ee grievances or provide other benefits if U were abandoned)

5042-6705 Setting initial terms of employment

N.L.R.B. v. Marine World USA 611 F.2d 1274 (C.A. 9, Jan. 1980)

(ct found that statements distributed in letters to Ees by E before election, though critical of U, did not on their face threaten reprisals or force or promise benefits depending on outcome of elction; however, ct remanded to Bd issues of freedom of speech in context of labor relations under Sec. 8(c), general hostility in past association with U, and intended and understood message of E's memoranda with respect to whether they contained implied threats or promises)

5042-6710 Improved working conditions

De Queen General Hospital 264 NLRB No. 069

(promising Ees better working conditions if they would drop their objections to conduct of election and if they would not file objections to conduct of election, violative)

A. A. Superior Ambulance Service 263 NLRB No. 069

(promising Ees choice of assignments, partners, and location of work if they did not engage in U activities, violative)

Huntington Rubber Company, Division of New Idria, Inc. 260 NLRB No. 133

(E's announcement of new safety program in which it would provide Ees with safety glasses and shoes violative where announced in context of anti-U presentation and was attempt to dissuade Ees from supporting U)

Quick Find Co. 259 NLRB No. 144

(violation where manager, after soliciting grievances, told Ees that he would improve employment conditions if they would withdraw their support of U before election)

Clements Wire & Manufacturing Company, Inc. 257 NLRB No. 075

(announcement of E's plans at peak of U campaign, to revise rules and regulations of company, violative)

Guerdon Industries 255 NLRB No. 096

(promising lighter work loads through hiring of additional personnel, violative)

Armour Oil Company 253 NLRB No. 148

(acting terminal manager's promise to drivers that E would give them more work and better trucks to drive provided U designate business agent other than individual presently representing Ees held violative, since promise was calculated to coerce Ees' choice of bargaining agent and had effect of weakening authority of U as bargaining agent; promise was direct dealing with Ees in derogation of U's status as bargaining representative)

The Dow Chemical Company, Texas Division 250 NLRB No. 103

(E holding meeting prior to decertification election at which slides were shown contrasting benefits currently received by unrepresented Ees of E, and which Ees would receive should U lose election, with benefits received by Ees represented by U, not unlawful, since not promise of benefits, where E merely furnished details inasmuch as its practices known; further, U was stressing protections it offered and Section 9(c) permits E to clearly portray its practices with regard to unrepresented Ees)

Peavey Company 249 NLRB No. 110

(violation, where E's vice president informed Ee that he had not been aware of bad working conditions that Ees had opened his eyes and he was glad of this and was going to see that things got better, as it is promise of improved working conditions)

Keister Coal Company, Inc. 247 NLRB No. 049

(supervisors' statements to Ees during U campaign that *we just better leave well enough alone* and promise of *big bonus and improved working conditions* made in conjunction with interrogations as to what Ees knew about U, held violative, since statements promised Ees improvements conditioned upon their abandonment of support of U)

Madison Newspapers, Inc. JD-157-82

(informing Ees that they would receive more favorable working conditions if they dealt with E on individual basis, unlawful)

5042-6712 Training employees for better job

Swanson-Nunn Electric Company 256 NLRB No. 131

(E who paid for Ee to take Dale Carnegie course during U campaign did not violate Act as it had provided such training for Ees in the past)

Swanson-Nunn Electric Company 256 NLRB No. 131

(giving Ees information about apprenticeship program during U campaign not violative where it was not w/i E's control to get Ees into program and Ees were aware of this)

5042-6715 Promotion

Schnadig Corporation 265 NLRB No. 020

(promising principal U organizer promotion to foreman if he would *take off U hat* and help defeat U, unlawful)

Airborne Freight Corporation 263 NLRB No. 181

(promise to U adherents of promotions to supervisory positions to remove them from voting list, unlawful)

A. A. Superior Ambulance Service 263 NLRB No. 069

(promising Ees supervisory positions if they did not engage in U activities, violative)

Bodolay Packaging Machinery, Inc. 263 NLRB No. 038

(telling Ee he would have to abandon U if he desired promotion to supervisor violative)

E. I. Dupont De Nemours 263 NLRB No. 015

(supervisor asking black Ee who was wearing U insignia why Ee was getting so involved with U, if any one was presuring him to join U and in same conversation indicating to Ee that E would be making more black supervicors but that Ee should not wear pro-U insignia and to continue to do sc would result in his not being considered for supervisor position, unlawful)

E. I. Dupont De Nemours 263 NLRB No. 015

(supervisor informing Ee wearing tee shirt with U insignia *If you hadn't been wearing all of this tee shirt and stuff you would have been supervisory material,* unlawful)

Fisher-Haynes Corporation of Georgia 262 NLRB No. 155

(plant manager's promising that he would promote Ee and give her pay raise if she refrained from supporting U, violative)

Penn Color, Inc. 261 NLRB No. 058

(promising promotions to Ees to induce abandonment of U activities, unlawful)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility 260 NLRB No. 073

(promotion to temporary supervisor because of Ee's efforts to oppose U while withholding promotion because of Ee's known U activities held violative)

St. John's Construction Corporation 258 NLRB No. 067

(promising Ees increased medical benefits, job advancement opportunities and opportunities to make more money, violative)

Metropolitan Life Insurance Company 256 NLRB No. 100

(promising Ee a promotion if Ee would show his loyalty by voting against U in election, violative)

Montgomery Ward & Co., Inc. 253 NLRB No. 023

(supervisor expressing desire to see Ee in management position, but at same time informing Ee that if Ee aspired to management position Ee had better change her ways, unlawful)

Industry Products Company 251 NLRB No. 183

(promise of promotion to supervisor to dissuade Ee from engaging in U activities, unlawful)

Pacific Intermountain Express 250 NLRB No. 180

(E's telling Ee that many supervisory jobs *were cropping up all the time* while soliciting his help in defeating the U unlawfully implied that Ee could expect a better job if he did not support U)

Tennessee Cartage Co., Inc. 250 NLRB No. 015

(offering Ee promotion to dissuade Ees from organizing U, unlawful)

Tennessee Cartage Co., Inc. 250 NLRB No. 015

(during U campaign, offering U sympathizer promotion to dissuade Ees from organizing U, held violative)

Hospitality Motor Inn, Inc. 249 NLRB No. 148

(promotion of *housekeeper* who was U adherent to *assistant executive housekeeper* a few days before election and where position of a second assistant executive housekeeper had not existed before, violative, since purpose of promotion was to curtail her U activities)

P. A. Incorporated 248 NLRB No. 077

(promising Ee promotion and pay raise if he would get out of U, violative)

C-F Air Freight, Inc. 247 NLRB No. 060

(notwithstanding merit to E's claim that its statements were privileged as lawful predictions, E's reference to improved working conditions at Ee meeting constituted unlawful implied promise of benefit, where E's statements, although not unlawful standing alone, contained implication that Ees' forbearance in organizing efforts would result in improved working conditions such as promotions)

5042-6715—Cont.

Keister Coal Company, Inc. **247 NLRB No. 049**
(promise to Ee during U campaign of promotion to foreman's job if Ee would abandon his U activity held violative)

Metropolitan Teletronic Corp. **JD-(NY)-12-81**
(promising Ee promotion if she caused charges before Bd to be withdrawn violative)

N.L.R.B. v. Wilker Brothers Company, Inc. **652 F.2d 000 (C.A. 6, June 1981)**
(offer of different job that Ee wanted in exchange for helping to find *termites* in the plant, unlawful)

N.L.R.B. v. Max Factor and Company **640 F.2d 197 (C.A. 9, 1980)**
(offering U steward management position and tuition payments for law school in order to remove her from position as U steward violative)

5042-6720 Job protection

Peabody Coal Company **259 NLRB No. 180**
(promising favorable consideration on company jobs for Ees who signed a letter requesting that negotiations cease, unlawful)

Catalina Yachts **250 NLRB No. 048**
(promise that if E voted for E, it would see that he got his job back should he run afoul of immigration authorities)

Mr. Herbert of California, Inc. **JD-(SF)-83-81**
(offering position in shipping department at lower hourly rate to head cutter in cutting room, not violative, since offer made in effort to provide Ee with opportunity to avoid frequent layoffs in cutting room; E's *Union* references were not contextual part of discussion about Ee taking shipping room job)

Chromalloy Mining and Minerals Alaska Division, Chromalloy American Corporation v. N.L.R.B. **620 F.2d 1120 (C.A. 5, 1980)**
(election-eve promise of advanced training in operation of newly purchased machine in increasingly mechanized plant with decreasing manpower needs, unlawful as Ee could be expected to believe that training would help him to stay on job)

5042-6722 Superseniority

Chrysler Corporation-Amplex Division of Chrysler Corporation **JD252-81**
(superseniority clause valid where U adduced substantial justification for awarding superseniority to officers (of U) by showing that in their respective capacities as members of (U) Executive Board they were involved in effective representation of unit Ees at plant level in matters affecting administration of collective-bargaining agreement)

5042-6735 Transfer

Williams and Lane, Inc. **254 NLRB No. 074**
(E who required Ees to resign from U before he would transfer them to new non-U facility violated Act)

Mr. Herbert of California, Inc. **JD-(SF)-83-81**
(offering position in shipping department at lower hourly rate to head cutter in cutting room, not violative, since offer made in effort to provide Ee with opportunity to avoid frequent layoffs in cutting room; E's *Union* references were not contextual part of discussion about Ee taking shipping room job)

5042-6739 Credit union

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company **256 NLRB No. 080**
(posted notice intimating that voting no in regard to U representation was key to obtaining credit union requested by Ees, unlawful)

5042-6740 Profit-sharing plan

B & B Gallo Pest Control Services, Inc. **265 NLRB No. 075**
(E's statement to supervisor and Ee who was hired with understanding that he would be made supervisor at some future date that it *hoped* one day to have profit sharing plan, not unlawful, where such musings did not amount to promises and other Ees did not hear of E's hopes for profit sharing plan)

Sioux Products, Inc. **257 NLRB No. 086**
(promising retention of profit-sharing and two salary increases per year if Ees voted against U, violative)

Pace Oldsmobile, Inc. **256 NLRB No. 111**
(E's reference to profit-sharing plan while promising benefits, not unlawful since plan existed before advent of U activities)

Pace Oldsmobile, Inc. **256 NLRB No. 111**
(promise of early entry into pension and profit sharing plan for not supporting U, unlawful)

K & E Bus Lines, Inc. **255 NLRB No. 137**
(E's announcement of profit sharing plan, implementation of sick leave and reimbursement for physical examination, unlawful in view of timing shortly after commencement of U activity and fact announced at captive audience meeting at which detrimental effects of unionization were emphasized)

Banker's Graphics, Inc. **JD-339-82**
(offering Ee, during U campaign, individual employment contract which contained profit sharing and grievance procedure clause which were not already existing conditions violated Act)

J. P. Stevens & Co., Inc. v. N.L.R.B. **668 F.2d 767 (C.A. 4, Jan. 1982)**
(announcement of profit-sharing benefit changes one month before election, unlawful)

5042-6742 Premium pay plan

Raimund Corman Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(implied promise of piecework as incentive method of payment to increase earnings during pre-election period, unlawful)

5042-6745 Pension plan

Pace Oldsmobile, Inc. **256 NLRB No. 111**
(promise of early entry into pension and profit sharing plan for not supporting U, unlawful)

Chester Valley, Inc. **251 NLRB No. 190**
(statement to Ee that he would be *way ahead* if payments which U wanted for pension plan were made into company-maintained profit-sharing plan, unlawful)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(violation where supervisor told Ees, in context of discussion about disadvantages of U, that E was *working on a retirement plan*)

American Sunroof Corporation; et al. **248 NLRB No. 098**
(announcement and grant of pension plan day before election not violative, where plan was conceived prior to U campaign, completion of plan was not accelerated in response to coming election, and announcement of plan was made in normal course of business)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(announcement of pension plan, contemplated since 2 months before start of U organizing campaign but announced after campaign had begun, unlawful, in absence of proof justifying E's reference to introduction of plan as part of its preelection campaign)

5042-6750 Insurance benefits

House of Cycle, Inc., t/a Key Motors **264 NLRB No. 137**
(E's announcing that it was attempting to obtain *improved* medical and dental benefits for its salesmen after U requested recognition violated 8(a)(1), but not 8(a)(3) where improved benefits were not implemented)

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads **261 NLRB No. 130**
(granting Ees dental plan 16 days before election, violative where motivation was to head of U drive at store involved in instant case and at another chain in area that was part of same holding company)

Penn Color, Inc. **261 NLRB No. 058**
(granting substantial increase in insurance benefits in order to restrain and coerce Ees in their pro-U activities, unlawful)

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**
(E's statement to Ees that he knew they were on his side and that they could work together, followed by statement that E would pay monthly insurance premium which up till then Ees had been expected to pay, unlawful; even though benefit was not expressly made dependent upon Ees' rejection of U, E's offer indicated a coercive purpose and intent to undermine support for U in subsequent election)

G.T.A. Enterprises, Inc. d/b/a **Restaurant Horikawa** **260 NLRB No. 039**
(promise of dental insurance made during U campaign violative)

St. John's Construction Corporation **258 NLRB No. 067**
(promising Ees increased medical benefits, job advancement opportunities and opportunities to make more money, violative)

Clements Wire & Manufacturing Company, Inc. **257 NLRB No. 075**
(promising and granting increased life insurance coverage two weeks before U election, violative)

Pace Oldsmobile, Inc. **256 NLRB No. 111**
(promising to provide Ee with fully funded insurance in order to induce Ees to withhold support for U, unlawful)

Richland Co. & Assoc., Division of McDonald Construction, Inc. **256 NLRB No. 026**
(preelection promise to Ees of maternity insurance which was to take effect after election, and grant of such benefit after U lost election, unlawful)

Highland Foods, Inc. and Vicksburg Industrial Corporation **255 NLRB No. 146**
(promising to improve medical insurance in order to induce Ees to refrain from U activity, violative)

Limestone Apparel Corp. **255 NLRB No. 101**
(pay part of cost of hospitalization plan after U started its organizing activities)

5042-6750—Cont.

K & K Transportation Corp., Inc. 254 NLRB No. 067
(promising Ees dental coverage to persuade Ees to withdraw support from U violative)

Smith Auto Service, Inc. 252 NLRB No. 069
(violation where E president promised Ees benefits including *raises*, better medical plan, and installation of time clock if Ees rejected U)

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(notice announcing that E intended to improve existing insurance program, posted during U organizing campaign, not unlawful, where notice stated that new plan was to be effective companywide; unlike other benefits found to be violations, insurance plan was not subject of discussions during meetings or solicitation of grievances; no election was scheduled or even petitioned for; and there was no indication that there would be any better time for announcing companywide improvement)

Lion Trucking Corporation JD-(NY)-66-82
(violation, where E's manager after learning Ees had signed U cards, asked Ees what their problems were and upon learning major reason for their interest in U was lack of hospitalization plan, promised Ees he would secure hospitalization and instructed Ees to withdraw to discuss whether they still wanted U; contention benefits not conditioned on rejection of U and because E's manager told Ees they were free to join U, rejected)

Highland Foods, Inc. and Vicksida Industrial Corporation JD-364-80
(promise to improve medical insurance to induce Ees from engaging in U activity, violative)

Guardian Industries Distribution Center, Inc. JD-(NY)-45-80
(promise and grant of increased medical coverage, not unlawful in view of no independent evidence of unlawful motivation and no findings of other ULPs)

Lika Corporation JD-(SF)-69-80
(statement that E had been working for months to get Ees health insurance not violative as no defenite statement as to when Ees would get insurance was made and E had been looking into insurance prior to advent of U campaign)

Grandee Beer Distributors, Inc. v. N.L.R.B. 630 F.2d 928 (C.A. 2, 1980)
(promises and grant of wage increases and health plan, although not expressly made dependent upon Ees' rejection of U, held violative where evidence in record supported conclusion that offers of such benefits indicated coercive purpose since they were made after U's request for recognition)

Dean Products, Inc. and American Metals Corp. v. N.L.R.B. 613 F.2d 162 (C.A. 6)
(promise to look into dental insurance program immediately before U election, unlawful)

N.L.R.B. v. Antonino Carilli, d/b/a Antonininos's Restaurant 648 F.2d 1206 (C.A. 9, June 1981)
(E asking Ee how important Ee's medical insurance was to Ee and whether she would be U member if she worked at E which offered medical and dental insurance benefits, or if E had better insurance programs, unlawful, since language used by E reasonably calculated to give Ee impression that E was considering instituting its own superior medical program if Ee would not support U, and in view of E's subsequent ULPs)

N.L.R.B. v. Antonino Carilli, d/b/a Antonininos's Restaurant 648 F.2d 1206 (C.A. 9, June 1981)
(E's statement to Ees that E was non-U and Ees could leave if they wanted to work for unionized E and informing Ee that she could withdraw from U by resigning or ceasing to pay U dues, unlawful, notwithstanding contention statements were in reality innocent and helpful responses to Ees' questions)

Pedro's Inc., d/b/a Pedro's Restaurant v. N.L.R.B. 652 F.2d 1005 (C.A.D.C., Apr 1981)
(informing Ees of progress made in securing health insurance coverage, not violative where plans for such insurance coverage were in progress before U campaign commenced)

5042-6755 Overtime

Pace Oldsmobile, Inc. 256 NLRB No. 111
(promise of overtime for not supporting U, unlawful)

5042-6765 Party

Viracon, Inc. 256 NLRB No. 037
(E's announcement to Ees, one week prior to ULP hearing, that it was organizing softball team and instituting company picnic, violative)

Stanley M. Feil, Inc. 250 NLRB No. 065
(E's promise of victory celebration after election, not unlawful, since such remarks did not reveal promise of significant benefit that would have had more than minimal impact upon Ees' exercise of Section 7 rights)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center 247 NLRB No. 126
(violation where E offered Ees free Christmas party in order to dissuade them from activities on behalf of U)

5042-6768 Free meals

Electric Hose and Rubber Company 262 NLRB No. 014
(E who promised Ees free cup of coffee if they could get their authorization cards back violated Act and fact that reward is very small immaterial)

5042-6770 Retirement fund

Neely's Car Clinic 249 NLRB No. 080
(promise of specific type of retirement plan if Ees did not belong to U, violative)

5042-6773 Privileges

Peavey Company v. N.L.R.B. 648 F.2d 460 (C.A. 7, May 1981)
(E who announced after U began organizing that Ees could see their personnel files violated Act)

5042-6775 Bonus

P. A. Incorporated 248 NLRB No. 077
(promising to give Ees bonuses if plant were non-U, violative)

Keister Coal Company, Inc. 247 NLRB No. 049
(supervisors' statements to Ees during U campaign that *we just better leave well enough alone* and promise of *big bonus and improved working conditions* made in conjunction with interrogations as to what Ees knew about U, held violative, since statements promised Ees improvements conditioned upon their abandonment of support of U)

Transportation Manpower Services of Ohio, Inc. JD-(SF)-192-82
(telling prospective Ees that bonus would be paid if there was smooth takeover by successor E w/o strike, violative)

Carbon Specialties, Inc. JD-510-80
(promising and giving Ees money bonus and a loan of money to one of them as inducement to defect from U, violative)

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)
(paying bonuses to all Ees one week prior to election, unlawful, where contrary to previous policy of paying bonuses only to Ees who had been employed by E over a year)

Dean Products, Inc. and American Metals Corp. v. N.L.R.B. 613 F.2d 162 (C.A. 6)
(promise of plant-wide bonus systems immediately before U election, unlawful)

5042-6778 Achievement awards, production incentive systems, etc.

Cardio Data Systems Corp. 264 NLRB No. 011
(E's promise to improve production incentive system, unlawful, since promise was expressly conditioned on Ee's rejection of U; absent evidence to show that Ees were informed that such reevaluation had been scheduled by E, it is unlawful for E to condition such benefit on Ees' rejection of U; and E's testimony that incentive system had been established 3 years before, and had been reevaluated twice since then, was insufficient to establish that Ees would have currently anticipated reevaluation absent notice thereof)

Cardio Data Systems Corp. 264 NLRB No. 011
(in dismissing allegation that E unlawfully promised to improve production incentive system, ALJ incorrectly framed issue as being whether E's subsequent revision of incentive system was lawful, since legality of E's promise is an issue independent of legality of E's subsequent conduct not here in dispute)

5042-6779 Tuition payment

Lika Corporation JD-(SF)-69-80

N.L.R.B. v. Max Factor and Company 640 F.2d 197 (C.A. 9, 1980)
(offering U steward management position and tuition payments for law school in order to remove her from position as U steward violative)

5042-6780 Wage increase

Martin City Ready Mix 264 NLRB No. 066
(promising wage increase *if we could get rid of this mess*, violative as *mess* clearly referred to U and not layoff)

Carbonex Coal Company 262 NLRB No. 159
(unilateral grant of wage increase violative and fact that Ees had not had wage increase for more than one year is not compelling business justification)

Fisher-Haynes Corporation of Georgia 262 NLRB No. 153
(plant manager's promising that he would promote Ee and give her pay raise if she refrained from supporting U, violative)

5042-6780—Cont.

Zero Corporation, Zero East Division **262 NLRB No. 064**

Conair Corporation **261 NLRB No. 178**
(telling Ees during organizational campaign that E could not offer previously promised wage increase or *anything else* until labor problems were resolved and that, while E could do nothing about promised wage increase and other benefits at that time, E would rectify such matters after labor trouble was over, unlawful)

Herider Farms, Inc. **261 NLRB No. 113**
(promising wage increase if Ees would forsake U, violative)

Penn Color, Inc. **261 NLRB No. 058**
(where Ee remarked to fellow Ee, in presence of supervisor, asking latter Ee to sign anti-U ptn and stating that improved benefits and better pay would be obtained by all Ees when *trouble* was over, Bd held supervisor's own inquiry as to what fellow Ee's *problem* was and what imporved benefits he wanted unlawful, since supervisor thereby sought to induce Ee to sign anti-U ptn and promised better benefits and pay as reward for discontinuing U activity)

Management Training Corporation (Formerly Thiokol Corporation) **261 NLRB No. 013**
(where, shortly before election, E, in response to Ee's complaint about poor wages, made statement about proposed 8 percent increase violated Act, especially where it indicated that increase was dependent upon rejection of U)

Fieldcrest Mills, Inc. **259 NLRB No. 098**
(E's announcement, during U campaign, that Ee would receive pay raise and improved group insurance not violative where benefits were given company wide to let Ees *catch up* to those Ees at unionized plants)

Fuelgas Company, Inc. **259 NLRB No. 104**
(conditioning pay increase on Ees requesting return of their signed U authorization cards)

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 065**
(manager's remarks to Ee that *if you do not vote for your contract in December, we can get you more money,* held violative, since implied promise of higher wages)

The Ithaca Journal-News, Inc. **259 NLRB No. 060**
(violation, where E told two Ees on separate occasions that they would receive wage increases if U were decertified)

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation **258 NLRB No. 142**
(promising across the board pay increase, violative)

Sioux Products, Inc. **257 NLRB No. 056**
(promising retention of profit-sharing and two salary increases per year if Ees voted against U, violative)

Anju Engineering Corporation **256 NLRB No. 161**
(E's explaining existence of lawfully granted benefits of wage increases to Ees who were unaware of them held not unlawful promise of wage increases as alleged)

Luk, Inc. **255 NLRB No. 136**
(violation, where E announced it was granting benefits in consideration of Ees' complaints, urged that Ees refrain from joining U, and announced wage increases which were not in conformity with past practice)

Jax Mold & Machine, Inc. **255 NLRB No. 129**
(promising Ees wage increases to vote against U strike, violative)

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. **255 NLRB No. 098**
(assistant general manager's telling Ees that he would try to correct their complaints about wages and would see if he could get them wage increases, not violative where there was no evidence that these promises were made with purpose of discouraging Ees from engaging in protected activity or for anti-U reasons)

United Oil Manufacturing Co., Inc. **254 NLRB No. 179**
(promising and granting wage increases and promoting Ees prior to election, violative)

Badische Corporation **254 NLRB No. 164**
(supervisor's reference to Ee being pleased with upcoming wage increase, violative where statement followed their conversation regarding Ee's support of U and unlikelihood that he would change his position in view of *how company had done* him in past)

Warehouse Groceries Management, Inc. **254 NLRB No. 021**
(telling Ee *maybe when this is all over everyone will get raise found not ambiguous as remark made right after coercive speech in anti-U meeting)*

Pandair Freight, Inc. **253 NLRB No. 134**

Williamsport Plumbing and Heating Co., Inc. **253 NLRB No. 121**
(promising Ee with improved benefits and higher pay if said Ee and other Ees did not support or select U, unlawful)

Smith Auto Service, Inc. **252 NLRB No. 088**
(violation where E president promised Ees benefits including raises, better medical plan, and installation of time clock if Ees rejected U)

Century Moving & Storage, Inc. **251 NLRB No. 083**
(formal promise to grant specific wage increase to avoid unionization, violative, notwithstanding that prior to organizing campaign E made vague promise of wage increase)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(promise of economic benefits and resolution of Ees' complaints to encourage Ees to refrain or withdraw their support from Us, violative)

Patsy Bee, Inc. **249 NLRB No. 125**
(no violation by denial of alleged scheduled wage increase where evidence did not establish existence of either authorizative promise of wage increases to specific Ees at specific times or failure to abide by established practice; inference that some Ees were frustrated insufficient to establish U-related improper motivation)

Purvey Company **249 NLRB No. 110**
(granting higher than average wage increase after U organizing drive had begun, not unlawful, where announcement of wage review policy predated U activities and fact that increase larger than usual caused by 17 month lapse since full year's raise)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(E's granting of wage increases shortly after U's second filing of R petn, not unlawful, notwithstanding E's previous ULPs including unlawful layoff and financial losses where increase decided on and announced to Ees prior to knowledge of renewed U activity and antedated second ptn by almost two months coinciding with improvement of E's financial condition)

Excavation-Construction, Inc. **248 NLRB No. 061**
(E which offered increased wages to picketing Ees if they returned to work violated Act)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(offering strikers wage increases to induce them to return to work, unlawful)

General Rental Co. d/b/a Avis Rent–A–Car **247 NLRB No. 188**

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(promise of 15-cent wage increase every 6 months if their bargaining representative agreed to open shop proviso, unlawful)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(E's sending Ees letter advising them of wage increase and enclosing a $10 bill in order to dissuade them from activities on behalf of U, violative)

Durango Boot, a Division of U.S. Industries, Inc. **247 NLRB No. 046**
(E's preelection promise to grant pay raises or implying that they possibly would be given after election, unlawful, where E's conduct tended to impress upon Ees that they did not need U to receive pay raise, and statement that wages, which might be granted later on, could not be considered while election was pending, had foreseeable effect of placing onus for such delay on U)

Hammond Plastic, Division of Carl Gordon Industries, Inc. **JD-583-81**
(telling Ee that if he could stop the U he would get his job back with more money, unlawful)

Bill Fox Chevrolet, Inc. **JD-767-80**
(E president's promise to Ees of increased wages and benefits if Ees would act swiftly to get U out, violative)

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**
(promise and grant of wage increases, not unlawful in view of E's practice of annual wage increases and no independent evidence to establish unlawful motivation therefor)

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(no unlawful promise of benefit where E asked Ee who had informed E she would look for new job if she wasn't granted needed wage increase to not leave w/o giving E opportunity to make offer, and where E subsequently informed Ee requested raise was too high and did not make counter offer)

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(E informing Ee on advice of counsel he could not give Ee wage increase in view of U activity, not unlawful, since recission was correction of error in offering unlawful increase)

N.L.R.B. v. Hasbro Industries, Inc. **672 F.2d 978 (C.A. 1, Feb. 1982)**
(wage increases 2 weeks before election not unlawful where E showed they were granted according to predetermined schedule)

Grandee Beer Distributors, Inc. v. N.L.R.B. **630 F.2d 928 (C.A. 2, 1980)**
(promises and grant of wage increases and health plan, although not expressly made dependent upon Ees' rejection of U, held violative where evidence in record supported conclusion that offers of such benefits indicated coercive purpose since they were made after U's request for recognition)

5042-6780—Cont.

Goodyear Aerospace Corporation v. N.L.R.B. **623 F.2d 476 (C.A. 6, 1980)**
(announcement of wage increase to discourage U activity, unlawful)

N.L.R.B. v. Century Moving & Storage, Inc. **683 F.2d 1087 (C.A. 7, July 1982)**
(violation where, E who had previously made vague promise of wage increase, now made definite and specific promise thereof in response to threat of, and in attempt to avoid, unionization)

Simpson Electric Company, a Division of American Gage and Machine Company, Inc. v. N.L.R.B. **654 F.2d 15 (C.A. 7, July 1981)**
(E's announcing pay increase or withholding one with intent to influence ongoing (U) organizing drive or R election, violative)

Simpson Electric Company, a Division of American Gage and Machine Company, Inc. v. N.L.R.B. **654 F.2d 15 (C.A. 7, July 1981)**
(it is necessary to look to evidence *as a whole* to determine whether wage increase is ULP)

N.L.R.B. v. Steven Davis and Michael Provenzano, d/b/a Carlton's Market **642 F.2d 350 (C.A. 9, Apr 20, 1981)**

5042-6784 Sick leave pay

K & E Bus Lines, Inc. **255 NLRB No. 137**
(E's announcement of profit sharing plan, implementation of sick leave and reimbursement for physical examination, unlawful in view of timing shortly after commencement of U activity and fact announced at captive audience meeting at which detrimental effects of unionization were emphasized)

5042-6785 Loans

Like Corporation **JD-(SF)-69-80**

5042-6787 Paid holiday

Gasko & Meyer, Inc. **258 NLRB No. 095**
(promise of five paid holidays if Ees would abandon their picket line and U activity, violative)

Cutting, Inc. **255 NLRB No. 076**
(stating to U committee member, after asking her about forthcoming signing of contract and how it would affect Christmas Holiday pay, that members of negotiating committee and U did not want to pay for holiday but that E was going to give Ees holiday pay anyway held not unlawful promise of increased benefits to induce Ees to abandon membership in U, where E did not indicate that holiday pay was offered as inducement not to sign contract)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(promise to parttime Ees made while objections to election were pending that they would be eligible for holiday and vacation benefits violative as reward to Ees for rejecting U and attempt to influence them if second election necessary)

5042-6788 Vacations

Staats and Staats, Inc. **254 NLRB No. 105**
(remarks of E, made during U's organizing campaign, that included; (1) invitation for Ees to submit their grievances to E (2) announcement of new vacation policy, and (3) suggestion that Ee press U to withdraw its R ptn, held violative in view of their timing in midst of U's organizing campaign and close upon E's manifestations of U animus as found in instant decision)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(promise to parttime Ees made while objections to election were pending that they would be eligible for holiday and vacation benefits violative as reward to Ees for rejecting U and attempt to influence them if second election necessary)

Alumbaugh Coal Corporation **247 NLRB No. 112**

5042-6792 Resolution of employee friction with supervisor

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor asking Ees at group meeting whether he had cleared up problems they had been having with supervisors constituted unlawful interrogation and adjustment of grievances)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's inquiry as to how U adherent was currently getting along with supervisor, unlawful, since it was attempt to adjust long standing grievance hard on U's demand for recognition)

5042-6796 Plant improvements

Conair Corporation **261 NLRB No. 178**
(promising that plant security guard's negative attitude towards Ees would be changed for better, cafeteria would be enlarged for serving hot food, new water fountain would be installed in closer proximity to work place, bilingual person would be hired for solving non-English speaking Ees' problems, unlawful)

Clements Wire & Manufacturing Company, Inc. **257 NLRB No. 078**
(promising additional and improved parking facilities prior to election, violative)

Clements Wire & Manufacturing Company, Inc. **257 NLRB No. 078**
(cleaning up restrooms and keeping them well supplied with necessary materials ten days prior to U election, violative)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(announcement of proposed new parking lot made during U campaign, unlawful, where E failed to establish legitimate business reason for announcement and, although new parking lot had been finally decided upon, nothing was done until parking lot problem was brought to E's attention in unlawful grievance solicitation meetings)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(promise of additional and improved parking facilities, unlawful where made solely to persuade employees to abandon U and to vote against U in upcoming election)

5042-6797 Offering employee sale of stock or other interest in business

Datagraphic, Inc. **259 NLRB No. 173**
(violation where E impliedly promised Ees that if they voted against U E's president would bequeath shares of company to Ees upon his death)

Williamsport Plumbing and Heating Co., Inc. **253 NLRB No. 121**
(promising Ee an interest in E's business if Ee abandoned his support for U, unlawful)

5042-6799 Redress of grievances

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant **261 NLRB No. 051**

Litton Mellonics Systems Division, A Division of Litton Systems, Inc. **258 NLRB No. 084**
(telling Ees that management would be more sensitive and responsive to Ee dissatisfaction in future, violative, where such conduct amounted to implied promise of benefit)

Valley Plaza, Inc. d/b/a Captain Nemo's **258 NLRB No. 076**
(soliciting and remedying Ee grievances, making implied promise to remedy other grievances by announcing new open door policy, and announcing wage increases, all in order to undermine support for U, violative)

Gregory Chevrolet, Inc. **258 NLRB No. 034**
(telling Ees that *things could change* in response to Ees' presentation of problems at meeting held with U's permission so that E could satisfy himself that Ees were not *conned* into signing cards, violative)

K-Mart Corporation **255 NLRB No. 112**
(soliciting grievances from Ees, promising to remedy them, and actually remedying some of these complaints, violative)

Limestone Apparel Corp. **255 NLRB No. 101**
(solicitation of grievances by E during U campaign, held violative)

Gowen Company, a Division of the United States Gypsum Company **254 NLRB No. 041**
(E making inquiries during U campaign as to what could be done to improve plant operations, held not unlawful, since presumption of illegality rebutted where question was no more than had been past practice and absent explicit promises to correct inadequacies)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor asking Ee what Ee's grievances were and suggesting that Ee take these grievances to higher management, unlawful solicitation of grievances with view toward adjustment)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor asking Ees at group meeting whether he had cleared up problems they had been having with supervisors constituted unlawful interrogation and adjustment of grievances)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(supervisor's inquiry as to how U adherent was currently getting along with supervisor, unlawful, since it was attempt to adjust long standing grievance hard on U's demand for recognition)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(promise of economic benefits and resolution of Ees' complaints to encourage Ees to refrain or withdraw their support from Us, violative)

Certain-Teed Insulation Company **251 NLRB No. 208**
(violation where there was implied promises to remedy grievances solicited during management consultant interviews with individual Ees)

United States Steel Corporation **250 NLRB No. 059**
(E agreeing to post job only on condition that grievance protesting failure to post job be withdrawn, unlawful; particularly where job was subsequently posted w/o withdrawing of grievance after firing of grievance committeeman)

General Rental Co. d/b/a Avis Rent-A-Car **267 NLRB No. 188**
(violation where E interrogated Ees and remedied identified grievances)

5042-6798—Cont.

Houston County Electric Cooperative, Inc. **247 NLRB No. 087**
(asking Ee during U campaign *what the problems were*, unlawful, absent any previous policy of periodically soliciting grievances; *such activity ... occuring in midst of U campaign inherently constitutes implied promise to remedy grievances and violates Section 8(a)(1)*)

Banker's Graphics, Inc. **JD-339-82**
(offering Ee, during U campaign, individual employment contract which contained profit sharing and grievance procedure clause which were not already existing conditions violated Act)

Lion Trucking Corporation **JD-(NY)-66-82**
(violation, where E's manager after learning Ees had signed U cards, asked Ees what their problems were and upon learning major reason for their interest in U was lack of hospitalization plan, promised Ees he would secure hospitalization and instructed Ees to withdraw to discuss whether they still wanted U; contention benefits not conditioned on rejection of U and because E's manager told Ees they were free to join U, rejected)

Ellis Hospital **JD-164-82**
(E unlawfully impliedly promised to redress grievances if its hospital Ees would not select U as their representative, where doctor stated that he knew a lot of problems at hospital were E's fault and group of doctors were going to do something about that, and stated that *there will be changes made* which necessarily had same effect as unlawful promises made by E to change working conditions)

Ellis Hospital **JD-164-82**
(E unlawfully impliedly promised to redress grievances where management official stated that E did not want to bargain with a third party but that *they had become sensitive to the needs of the people*)

Safeway Stores, Inc. **JD-(SF)-61-81**
(solicitation of Ee grievances prior to election and no solicitation prior to U campaign held violative)

N.L.R.B. v. Cable Vision, Inc. **660 F.2d 1 (C.A. 1, Sept. 1981)**
(where supervisor stated that if Ees dropped U there would be changes and, in response to Ee's question about what specific change Ee might expect if that happened, stated that he could make no specific promise or say there would be a raise, ct deferred to Bd's finding of violation and held statement was unlawful implied, general promise to remedy Ee grievances or provide other benefits if U were abandoned)

N.L.R.B. v. Cable Vision, Inc. **660 F.2d 1 (C.A. 1, Sept. 1981)**
(violation, where Ee drew Ee out about his grievances and implied that they might be resolved if there was no U)

N.L.R.B. v. Chester Valley, Inc. **652 F.2d 263 (C.A. 2, June 1981)**
(E's solicitation of grievances and promise to remedy those grievances violative of 8(a)(1) notwithstanding E's contention that it was merely stating and reconfirming long standing *open door* policy, where no such prior practice existed)

N.L.R.B. v. Chester Valley, Inc. **652 F.2d 263 (C.A. 2, June 1981)**
(E's sending letter to all Ees stating that meeting would be held to discuss *problems* and to see if labor and management could *work together on rectifying these problems* possibly through formation of *joint E/Ee committee*, violative of 8(a)(1), notwithstanding E's defense that it had independently corrected its error by cancelling meeting and sending letters to Ees informing them of their rights under NLRA, since Bd is still entitled to enforcement of its orders despite corrective actions taken by offending parties)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(ct could not disregard finding of Bd that creation of telephone hot line was intended and understood to be solicitation of grievances and implied promise that those grievances would be remedied and was unlawful)

N.L.R.B. v. Arrow Molded Plastics, Inc. **653 F.2d 280 (C.A. 6, July 1981)**
(promising installation of box so that Ees' suggestions could be answered, unlawful)

N.L.R.B. v. Arrow Molded Plastics, Inc. **653 F.2d 280 (C.A. 6, July 1981)**
(violation where E during preelection period hired personnel consultant who held meetings with Ees in recognition of fact *there was U knocking at door*, such meetings were unprecedented, it was suggested grievances would be resolved only if Ees rejected U representation, and E took steps to resolve grievances under questionable circumstances)

5042-6799 Other promises

Air Products and Chemicals, Inc. **263 NLRB No. 068**
(E who offered Ee protection from U if he withdrew his support for U did not violate Act in light of fact that Ee was subject of mysterious assault after prior U campaign)

Comair Corporation **261 NLRB No. 178**
(promising and then granting of benefits to Ees during U organizational campaign, unlawful, where they consisted of enlargement of plant cafeteria and introduction of hot food and cafeteria style services therein, providing additional drinking fountain near production area and gloves for assembly line work, implementing system allocating Ee parking spaces on basis of seniority, and improving safety procedures in plant)

Penn Color, Inc. **261 NLRB No. 058**
(threatening to utilize mistakes in work performance as pretext for discharging pro-U Ees, unlawful)

Jo-Wex Sportswear, Ltd. and Iris Sportswear, Inc. **260 NLRB No. 172**
(promising benefits to Ees and urging them to select favored U as their representative while offering to pay half of their U dues, unlawful)

Jo-Wex Sportswear, Ltd. and Iris Sportswear, Inc. **260 NLRB No. 172**
(offering money and promising medical benefits to Ee when Ee stated he would vote for E, unlawful)

Fashiontime Ltd. **256 NLRB No. 067**
(promising Ees aid in arranging residency papers in order to induce or cause Ees to reject U and to refrain from activities on behalf of U, violative)

C. E. Wilkinson & Sons, Inc. **255 NLRB No. 176**
(promise of lunchroom, company gas station, retirement plan, overtime, and negotiation of wage increases for purpose of discouraging U activities, violative)

Firmat Manufacturing Corp. **255 NLRB No. 153**
(E's granting benefits after it became aware of Ees' U activities and thereafter promising additional benefits, violative)

K & E Bus Lines, Inc. **255 NLRB No. 137**
(E's announcement of profit sharing plan, implementation of sick leave and reimbursement for physical examination, unlawful in view of timing shortly after commencement of U activity and fact announced at captive audience meeting at which detrimental effects of unionization were emphasized)

Alco Venetian Blind Co., Inc. **253 NLRB No. 161**
(telling Ees that although he could not make promises there would be a lot of changes when U is gone, violative)

Alfa Leisure, Inc. **251 NLRB No. 088**
(promising Ee letter guaranteeing job for Ee's brother in order for brother to be eligible for parole if Ee withdrew charges pending before Bd, violative)

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(telling Ees prior to decertification election that if there was no U E could be more lenient with apprentices who failed test, rather than having to comply with procedures dictated by U)

Peavey Company **249 NLRB No. 110**
(E changing policy on day after it learned of organizing campaign to allow Ees to see their personnel files, unlawful)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(where Ee had accumulated enough points for lateness warning under E's disciplinary system and supervisor offered to try to help Ee out she violated Act where offer of benefit was based on Ee's professed opposition to U)

United States Postal Service **JD-224-81**
(station superintendent's explanation to U steward of how to get good evaluation, violative since it amounted to solicitation of steward to forswear vigorous representation of unit Ees and implied promise of favorable evaluation in return)

5042-8300 Offer to pay union's fine or union dues

Clyde Jensen & Shirley Jensen A Partnership d/b/a
Linda Vista Market **JD-(SF)-232-82**
(E who stated he would pay 400 dollars U initiation fee (which U would waive if Ees joined U at time store was organized) violated Act, even though Ee's realized that E would not actually pay fee but would reward them for withdrawing support from U)

5042-8800 Offer of money

Indian Head Lubricants, Inc. **261 NLRB No. 003**
(offering Ees money if they would vote against U violative)

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

Notre Dame Hills Medical Services, Inc., d/b/a
Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(E's sending Ees letter advising them of wage increase and enclosing a $10 bill in order to dissuade them from activities on behalf of U, violative)

5042-8500—Cont.

Clyde Jensen & Shirley Jensen A Partnership d/b/a Linda Vista Market JD-(SF)-232-82

(offer to pay Ee amount she had been docked from her previous paycheck because she had accepted bad check violative where purpose was to induce Ee to withdraw her U support)

Transportation Manpower Services of Ohio, Inc. JD-(SF)-192-82

(paying money to prospective Ee and offering to bear cost of weekend trip to dissuade U activities, violative)

5045 EMPLOYER-SPONSORED MEETINGS WITH EMPLOYEES

Banner Tire Company 260 NLRB No. 096

(E violated Act when it summoned Ee to meeting with U representative of U E wished Ee to join notwithstanding job covered by contract with another U and then remained present while U agent solicited Ee's membership)

G.T.A. Enterprises, Inc. d/b/a Restaurant Horikawa 260 NLRB No. 029

(E who held luncheon meetings and paid for meals served at meetings violated Act where meetings were held at same time U had called organizing meetings and were designed to retard U's communication with Ees)

Great Dane Trailers Indiana, Inc. 252 NLRB No. 015

(E may exclude known U adherents from Ee meetings held to present E's opposition to U, notwithstanding has committed other 8(a)(1) violation and gives no explanation to Ees as to reason for their exclusion)

The Krebs School Foundation, Inc. 251 NLRB No. 187

(E's solicitation of Ee views in meetings with Ees re terms and conditions of employment by E's personnel subcommittee, unlawful where E established subcommittee and met with Ees to counter U's organizational campaign and to wean Ees away from U by resolving some of their grievances)

St. Francis Hospital 249 NLRB No. 017

(holding meetings so that Ees could air their grievances during U campaign and holding election to select representative to meet with management)

Werth Engineering, Inc. JD-295-80

N.L.R.B. v. Delchamps, Inc. 653 F.2d 225 (C.A. 5, Aug 1981)

(while E may exclude U supporters from meetings during working hours at which E expressed its opposition to U, and E's conduct in providing free meals to Ees during nonworking hours at campaign meetings does not *per se* constitute interference with election, combination of those 2 tactics, to which is added payment of wages to some, but not all, of its Ees for attendance at meetings during their scheduled off-hours constitutes violation of Act)

5048 EMPLOYER-SPONSORED POLLS, ELECTIONS, ETC.

Borun Brothers, Inc., A Wholly Owned Subsidiary of Thrifty Corporation 257 NLRB No. 003

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South 247 NLRB No. 038

(polling Ees as to how they were going to vote and revealing results in way Ees could reasonably be expected to hear them, unlawful)

5048-0100 Generally

Hutchison-Hayes International, Inc. 264 NLRB No. 168

(Bd will not rely on poll sponsored by E which was conducted at time when Bd election would be precluded; e.g., U enjoyed majority status)

N.L.R.B. v. Transportation Management Corporation 686 F.2d 63 (C.A. 1, Aug. 1982)

(ct held Bd properly found that written poll to determine whether Ees would waive strike for short period was unlawful where Bd's conclusion that poll was coercive and interfered to improper extent with Ee rights was adequately supported; not only were no guarantees or explanations for poll given to assure Ees that their rights would be respected but also actual reprisals were promised and instituted against Ees who did not sign poll)

Thomas Industries, Inc. v. N.L.R.B. 687 F.2d 863 (C.A. 6, Sept. 1982)

(polls to test Ees' U sentiments are justified only if E has substantial, objective basis for doubting in good faith U's majority status even if that basis is insufficient in itself to justify withdrawal)

5048-0140 Not unlawful per se

Grove Valve and Regulator Company 262 NLRB No. 035

(Ee opinion survey framed so as to solicit Ee grievances not violative where: it specifically stated it was not promising any changes in wages, benefits or working conditions; E had conducted such surveys in past; moreover, fact that it occured during U campaign does not of itself establish unlawful motivation)

5048-0160 Safeguards for polls to ascertain majority in respect to request to recognize

Thomas Industries, Inc. v. N.L.R.B. 687 F.2d 863 (C.A. 6, Sept. 1982)

5048-0160-0100 Generally

Eagle Comtronics, Inc. 263 NLRB No. 070

(Bd agreed with ALJ's conclusion that E's conduct of mock election after U withdrew its ptn for election violated Act under *Struksnes* standards; however, Bd disagreed with ALJ's conclusion that E did not create coercive atmosphere, where E had committed several ULPs prior to the mock election, and some of its supervisory and managerial personnel were present during much of the voting)

English Brothers Pattern and Foundry 253 NLRB No. 067

(E which polled Ees w/o observing *Struksnes* guidelines violated Act)

Lion Trucking Corporation JD-(NY)-66-82

5048-0160-1700 Purpose to determine truth of union's claim of majority

Thomas Industries, Inc. 255 NLRB No. 094

Alco Venetian Blind Co., Inc. 253 NLRB No. 161

(although not conducted by *strucknes* standards, polling in presence of U representative not unlawful because Ees were determined to strike if recognition was not granted immediately and U's tender of cards under such circumstances could reasonably be calculated to cause E to ask Ees if they wanted U representation)

Thomas Industries, Inc. v. N.L.R.B. 687 F.2d 863 (C.A. 6, Sept. 1982)

(although polls are not favored because of their potential for disrupting bargaining process, they are useful for sincere E who is faced with substantial objective evidence of loss of support and they will be closely scrutinized for fair voting procedures and absence of coercive atmosphere)

Thomas Industries, Inc. v. N.L.R.B. 687 F.2d 863 (C.A. 6, Sept. 1982)

(polls to test Ees' U sentiments are justified only if E has substantial, objective basis for doubting in good faith U's majority status even if that basis is insufficient in itself to justify withdrawal)

N.L.R.B. v. English Brothers Pattern and Foundry 679 F.2d 787 (C.A. 9, June 1982)

(E who conducted polls among its Ees both collectively and individually after U demanded bargaining, bound by affirmative results of polls and subsequent refusal to bargain violative)

5048-0160-1800 Purpose to solicit grievances about working conditions

Presbyterian/St. Luke's Medical Center 258 NLRB No. 021

(polling Ees in regard to their grievances and creating impression that such grievances would be satisfied, violative)

General Electric Company 255 NLRB No. 092

(E's conducting Ee attitude survey, unlawful, since for purpose of discouraging U support and where in light of subsequent promise to obtain concrete improvements constituted implied promise of redress of grievances)

Gordonsville, Industries, Inc. 252 NLRB No. 054

(E's alleged confidential survey of its Ees conducted during U campaign which survey contained several open-ended questions concerning Ees' attitudes to which responses could and did reveal U sentiments of Ees as well as requiring Ees to write in their age, sex, department and length of service with E held violative where survey generated responses from Ees regarding their U sentiments, lacked necessary confidentiality and assurances against reprisal and was conducted in context of other ULPs)

Gordonsville, Industries, Inc. 252 NLRB No. 054

(E's survey, conducted during U campaign, of Ee attitude towards their working conditions held violative since intent of survey was to elicit and repair Ee grievances; E had never previously conducted such survey nor had it established any systematic procedure for receiving and analyzing Ee complaints; effect of survey was to impliedly promise to rectify Ee grievances and erode Ee support for U)

5048-0160-3300 Purpose communicated to employees

Thomas Industries, Inc. 255 NLRB No. 094

DRW Corporation d/b/a Brothers Three Cabinets 248 NLRB No. 096

(questioning Ees about signing of U authorization cards violative absent assurances against reprisal and reasons for asking questions)

The Workshop, Inc. JD-230-80

(polling Ees w/o prior objective basis for doubting U's majority status or observation of Struksnes safeguards, unlawful)

5048-0160-5900 Assurances against reprisal given

Robert E. Johnson and Geneva H. Johnson, a Partnership, d/b/a Jolie Bain Company 265 NLRB No. 141

(polling Ees w/o assurances against reprisal, violative)

5048-0160-5000—Cont.

Thomas Industries, Inc. **255 NLRB No. 094**

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**

(questioning Ees about signing of U authorization cards violative absent assurances against reprisal and reasons for asking questions)

The Workshop, Inc. **JD-230-80**

(polling Ees w/o prior objective basis for doubting U's majority status or observation of Strukness safeguards, unlawful)

5048-0160-6700 Poll by secret ballot

Thomas Industries, Inc. **255 NLRB No. 094**

The Workshop, Inc. **JD-230-80**

(polling Ees w/o prior objective basis for doubting U's majority status or observation of Strukness safeguards, unlawful)

N.L.R.B. v. Agricom Oilseeds, Inc. **639 F.2d 789(T) (C.A. 9, 1981)**

(violative where voting not by secret ballot and no assurances against reprisal were given)

5048-0160-8300 Employer has not engaged in ULP's or otherwise created coercive atmosphere

Rockland Lake Manor, Inc. **263 NLRB No. 142**

(calling Ee to manager's office, telling him to vote by secret ballot whether he wanted U to continue to represent him, leaving him alone in office to vote and place ballot in sealed box held unlawful polling where safeguards required by Bd not followed and in atmosphere permeated by E's coercive speeches and interrogations and purpose of poll was not to determine U's strength among Ees but as another device to procure U's demise and to confirm success of E's contemporaneous campaign of interference in order to separate Ees from their bargaining agent)

Eagle Comtronics, Inc. **263 NLRB No. 070**

(Bd agreed with ALJ's conclusion that E's conduct of mock election after U withdrew its ptn for election violated Act under *Struksnes* standards; however, Bd disagreed with ALJ's conclusion that E did not create coercive atmosphere, where E had committed several ULPs prior to the mock election, and some of its supervisory and managerial personnel were present during much of the voting)

Hassett Maintenance Corporation **260 NLRB No. 135**

(E poll violative notwithstanding letter sent to Ees indicated purpose of poll was to determine truth of U's claim of majority status, participation was voluntary, would not effect relationship with E, no reprisals and secret ballot was used because E had engaged in ULPs and created coercive atmosphere)

Thomas Industries, Inc. **255 NLRB No. 094**

(E's statement *We do not want U here, and we think it would be in your best interests if there is no U here*, not unlawful, where only unlawful conduct in which E had engaged at time statement was made was unlawful reprimand given two months previously; nor did statement's timing in relation to E's unlawful polling of Ees make it coercive)

Thomas Industries, Inc. v. N.L.R.B. **687 F.2d 863 (C.A. 6, Sept. 1982)**

(*captive audience* speech given before poll did not prejudice poll where Bd found that it was not ULP and it primarily told Ees purpose of poll; further, U president also spoke to Ees)

Thomas Industries, Inc. v. N.L.R.B. **687 F.2d 863 (C.A. 6, Sept. 1982)**

(polling found noncoercive where *captive audience* speech was found not ULP, only one ULP was found and it was too remote in time to create coercive atmosphere)

5048-0180 Unlawful in light of other circumstances

Jaybil Steel Products, Inc.; etc. **258 NLRB No. 157**

(asking Ees if they signed U cards, unlawful, where unaccompanied by requisite safeguards, took place before demand for bargaining and was accompanied by other coercive statements)

Thomas Industries, Inc. **255 NLRB No. 094**

(polling of Ees regarding whether they wished to continue to be represented by U, unlawful, since neither minority number of expressions of dissatisfaction with U, decline in U dues check-off authorizations, nor resignations of U officers and members, provided requisite basis for doubting U's majority required for polling where U's majority required for polling where U was certified and bargaining agreement in effect)

Gordonsville, Industries, Inc. **252 NLRB No. 054**

(E's alleged confidential survey of its Ees conducted during U campaign which survey contained several open-ended questions concerning Ees' attitudes to which responses could and did reveal U sentiments of Ees as well as requiring Ees to write in their age, sex, department and length of service with E held violative where survey generated responses from Ees regarding their U sentiments, lacked necessary confidentiality and assurances against reprisal and was conducted in context of other ULPs)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**

(questioning of Ees about U activities and their desires for representation by highest ranking member of management, with no valid purpose communicated to Ees, prefaced by expressions of hostility to U accompanied by other violative conduct violates Act)

5048-3300 Method employed

5048-3320 Elections

Eagle Comtronics, Inc. **263 NLRB No. 070**

(Bd agreed with ALJ's conclusion that E's conduct of mock election after U withdrew its ptn for election violated Act under *Struksnes* standards; however, Bd disagreed with ALJ's conclusion that E did not create coercive atmosphere, where E had committed several ULPs prior to the mock election, and some of its supervisory and managerial personnel were present during much of the voting)

5048-3340 Petitions, cards, etc., distributed for signature

R. L. White Company, Inc. **262 NLRB No. 069**

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**

(asking Ees to sign anti-U ptn and to accept *vote no* buttons was, in effect, *polling* Ees about their U sentiments)

5048-3360 Polling or surveying employees

Mingtree Restaurant, Inc. d/b/a Forbidden City Restaurant **265 NLRB No. 052**

(poll conducted for E by accounting firm for E after expiration of contract which showed lack of Ee support for recognized U, unlawful, notwithstanding properly conducted w/i guidelines of *Struckness Construction Co.*, where E did not have sufficient objective considerations upon which to base a reasonable doubt of U's majority status prior to conducting poll)

Rockland Lake Manor, Inc. **263 NLRB No. 142**

(calling Ee to manager's office, telling him to vote by secret ballot whether he wanted U to continue to represent him, leaving him alone in office to vote and place ballot in sealed box held unlawful polling where safeguards required by Bd not followed and in atmosphere permeated by E's coercive speeches and interrogations and purpose of poll was not to determine U's strength among Ees but as another device to procure U's demise and to confirm success of E's contemporaneous campaign of interference in order to separate Ees from their bargaining agent)

Nissan Motor Corporation in U.S.A. **263 NLRB No.**

(where election ptn filed in midst of E survey about working conditions, no violation where E never led Ees to believe that necessary changes disclosed by survey and interview process would only be forthcoming if Ees rejected U)

Nissan Motor Corporation in U.S.A. **263 NLRB No. 083**

(where election ptn filed in midst of E survey about working conditions, no violation where E never led Ees to believe that necessary changes disclosed by survey and interview process would only be forthcoming if Ees rejected U)

Wagner Distribution Services, Inc. d/b/a Distribution Services West **262 NLRB No. 096**

(circulation of anti-U ptn designed to provide evidence which E could use to support refusal to recognize U pending conducting of election rather than to test truth of claim of majority support of U, unlawful; further, entire process could not be characterized as involving *poll by secret ballot* and thus not privileged by *Struckness* criteria)

Grove Valve and Regulator Company **262 NLRB No. 035**

(Ee opinion survey framed so as to solicit Ee grievances not violative where: it specifically stated it was not promising any changes in wages, benefits or working conditions; E had conducted such surveys in past; moreover, fact that it occared during U campaign does not of itself establish unlawful motivation)

Coll-Ace, Inc. **262 NLRB No. 012**

(E's polling its Ees regarding their U sympathies prior to election held violative where poll was not conducted with accompanying safeguards required by Bd; *See Struksnes Construction Co., Inc.*, 165 NLRB 1062, 1063 (1967))

Jaybil Steel Products, Inc.; etc. **258 NLRB No. 157**

(asking Ees if they signed U cards, unlawful, where unaccompanied by requisite safeguards, took place before demand for bargaining and was accompanied by other coercive statements)

Presbyterian/St. Luke's Medical Center **258 NLRB No. 021**

(questioning Ees in course of taking poll in regard to wages, hours, and fringe benefits, and granting changes in wages and fringe benefits based on survey, not unlawful, where prior to U organizing campaign E had informed Ees that impending merger with another facility would result in wage-scale consolidation and new fringe benefits and survey was logical method by which Ees could choose from among various wages and fringe benefits already in existence at newly merged facilities)

5048-3360—Cont.

Price's Pic-Pac Supermarkets, Inc. 256 NLRB No. 123
(polling Ees by individually asking them if they still wanted the U, unlawful)

Great Western Coca Cola Bottling Company, d/b/a
Houston Coca Cola Bottling Company 256 NLRB No. 090
(polling Ees by offering them *Vote no* buttons and observing who accepted or rejected them, unlawful)

Thomas Industries, Inc. 255 NLRB No. 094
(polling of Ees regarding whether they wished to continue to be represented by U, unlawful, since neither minority number of expressions of dissatisfaction with U, decline in U dues check-off authorizations, nor resignations of U officers and members, provided requisite basis for doubting U's majority required for polling where U's majority required for polling where U was certified and bargaining agreement in effect)

English Brothers Pattern and Foundry 253 NLRB No. 067
(E which polled Ees w/o observing *Struksnes* guidelines violated Act)

Ben Franklin Division of City Products Corporation 251 NLRB No. 200
(conducting written opinion survey among *all* Ees during course of U campaign, violative, since survey undertaken to erode Ee support for U, notwithstanding E had practice of orally polling *random* sample of Ees at its new operations, where these Ees never surveyed before, and, after survey completed, several Ee complaints were remedied)

Dennis G. Maietta and Frank M. Maietta t/a
Maietta Contracting 251 NLRB No. 027
(coercively polling Ees concerning their U sympathies and activities, unlawful)

Lion Trucking Corporation JD-(NY)-66-82
(violation, where E's manager made out ballots which called for name, date, and had space to indicate Yes or No for U, since ballots were not secret, purpose of poll was not to determine if U had majority since E had already seen U authorization cards, and E committed other ULPs during meeting at which ballots were distributed)

Aeronnic Corporation JD-(Atl)-110-81
(E who conducted *vote* among night shift Ees to ascertain U sentiments without proper safeguards violated Act)

Boniface Group Homes, Inc. JD-162-81
(surveying Ees as to why they signed U authorization cards, unlawful)

5048-3380 Strike poll

N.L.R.B. v. Transportation Management
Corporation 686 F.2d 63 (C.A. 1, Aug. 1982)
(notwithstanding E's contention that it was entitled, for planning purposes, to ask for information requested of Ees in strike poll because of importance of its business-transporting handicapped children to and from school-and because of ct order mandating that it provide regular service, ct held Bd properly found E's actions violative, in view of absences of assurances of no reprisals, wording of poll, lack of firm strike date, and later statements of supervisors)

5048-5800 Objective basis for doubting union's majority

Hutchison-Hayes International, Inc. 264 NLRB No. 168
(before E can poll Ees about their desire for continued U representation, it must demonstrate it has objective basis for doubting U's majority status)

The Workshop, Inc. JD-230-80
(polling Ees w/o prior objective basis for doubting U's majority status or observation of Struksness safeguards, unlawful)

Thomas Industries, Inc. v. N.L.R.B. 687 F.2d 863 (C.A. 6, Sept. 1982)
(ct rejected Bd's position that evidence of U rejection by over 50% of Ees must be shown to support objective basis and held that poll may be conducted if E has substantial objective evidence of large or rapid loss of U support)

Thomas Industries, Inc. v. N.L.R.B. 687 F.2d 863 (C.A. 6, Sept. 1982)
(rapid or large decline in dues checkoff (from 63% to 31% in period of 10 months), negative comments about U by 1/3 Ees, resignations by Ees, U vice president and 5 other officials was substantial objective evidence of loss of U support in 102 Ee unit)

5048-6700 Responsibility of employer shown by

5048-6720 Preparation or furnishing of forms or equipment by employer

Eagle Comtronics, Inc. 263 NLRB No. 070
(E's responsibility for mock election shown by E's providing voting place, time to vote, *Excelsior* list and even copies of Bd's sample ballot, use of which in a mock election Bd does not condone)

Lion Trucking Corporation JD-(NY)-66-82
(violation, where E's manager made out ballots which called for name, date, and had space to indicate Yes or No for U, since ballots were not secret, purpose of poll was not to determine if U had majority since E had already seen U authorization cards, and E committed other ULPs during meeting at which ballots were distributed)

5048-6740 Supervisors' participation in distribution or collection

Wagner Distribution Services, Inc. d/b/a
Distribution Services West 262 NLRB No. 096
(circulation of anti-U pin designed to provide evidence which E could use to support refusal to recognize U pending conducting of election rather than to test truth of claim of majority support of U, unlawful; further, entire process could not be characterized as involving *poll by secret ballot* and thus not privileged by *Strucknes* criteria)

5048-6780 Timing of employer canvass

5048-6780-1300 During organization campaign

Gordonsville, Industries, Inc. 252 NLRB No. 054
(E's survey, conducted during U campaign, of Ee attitude towards their working conditions held violative since intent of survey was to elicit and repair Ee grievances; E had never previously conducted such survey nor had it established any systematic procedure for receiving and analyzing Ee complaints; effect of survey was to impliedly promise to rectify Ee grievances and erode Ee support for U)

5048-6780-2300 After bargaining request received

Gordonsville, Industries, Inc. 252 NLRB No. 054
(E's alleged confidential survey of its Ees conducted during U campaign which survey contained several open-ended questions concerning Ees' attitudes to which responses could and did reveal U sentiments of Ees as well as requiring Ees to write in their age, sex, department and length of service with E held violative where survey generated responses from Ees regarding their U sentiments, lacked necessary confidentiality and assurances against reprisal and was conducted in context of other ULPs)

Lion Trucking Corporation JD-(NY)-66-82
(violation, where E's manager made out ballots which called for name, date, and had space to indicate Yes or No for U, since ballots were not secret, purpose of poll was not to determine if U had majority since E had already seen U authorization cards, and E committed other ULPs during meeting at which ballots were distributed)

5049 ACTIONS BASED UPON SEX CONSIDERATIONS

WNAC-TV Division, RKO General, Inc. 264 NLRB No. 031
(no violation, where although GC had established prima facie case of discriminatory discharge of female news reporter for protected concerted activities of participating in staff meeting about Ees' ptn against TV station running story about a *stripper* and female Ees' luncheon meetings about overtime pay and negative portrayals of women, E showed that discharge was for her lack-luster performance as news reporter and would have occurred independently of any involvement in protected concerted activity)

5051 ACTIONS BASED UPON RACIAL OR OTHER MINORITY GROUP CONSIDERATIONS

5051-3300 Indicia of discriminatory actions

Raddicar Corporation d/b/a Dollar Rent-A-Car of
Las Vegas 264 NLRB No. 133
(E's shifting grounds for discipline indicates discriminatory intent)

Transcon Lines 259 NLRB No. 166
(discharge of Ee in accordance with E's rules for having preventable accident, not violative, notwithstanding accident brought to E's attention while investigating EEOC complaint filed by another discharged Ee as rule had been strictly enforced in past and was not invoked to provide cover for discharge in EEOC complaint)

5051-6700 Forms of actions

Douglas & Lomason Company 253 NLRB No. 039
(informing Ees that majority of U's membership is Black, thus appealing to Ees' prejudices or fears in order to undermine U, unlawful)

5051-6733 Promotion

Honeywell, Inc. 250 NLRB No. 019
(suspension of Ee who wrote statements on E's wall accusing supervisors of racial discrimination, unlawful, where discipline for public airing of his greivance concerning discrimination rather than pursuant to rule against defacing property)

5054 AVOIDANCE OR ABANDONMENT OF RESORT TO ACT URGED OR REQUIRED BY EMPLOYER

5054-[illegible] Conditioning benefits or discipline on employees not appealing to government agencies

Universal Service Contractors 267 NLRB No. 097
(asking Ee to withdraw his compensation claims against it which had been filed with State not violative, where E had properly paid Ee, there was no evidence of discrimination against Ee and E explained to Ee that all Ees in his situation were paid same wage)

5054-1200 Conditioning benefits or discipline on employees not filing grievances

George E. Masker, Inc. 261 NLRB No. 016
(telling Ee that if he pursued his grievance against E his job would not be guaranteed, violative)

American Interstate Freight Lines 258 NLRB No. 131
(E telling Ee not to go to U about fact E was not allowing Ee to work and at least implied that if he sought U help he would get work only after filing grievance and winning violative)

Laredo Packing Company 254 NLRB No. 001
(supervisor informing Ee that grievance Ee had filed was w/o merit and threatening Ee with discharge or other employment problems if he did not go to U and withdraw grievance, violative)

Formsley Corp. JD-(ATL)-87-81

5054-1300 Conditioning reinstatement on employee's not presenting grievances

Hacienda Hotel and Casino 254 NLRB No. 007
(violation, where E offered to recall laid off Ee only if Ee would drop grievances and instructed Ee not to contact U)

5054-2500 Conditioning bargaining on withdrawal of charges

Winger Company, Inc. 263 NLRB No. 021
(E who would only agree to provide U with requested bargaining information if it withdrew pending ULP charges violated Act)

5054-3700 Conditioning benefits on withdrawal of charges

Jay-Em Corporation JD-547-81
(conditioning Ee receiving his profit sharing payment on removing his name from charge filed with Bd violative)

N.L.R.B. v. Travis Meat and Seafood Company, Inc. 653 F.2d 233 (C.A. 6, June 1980)
(distributing post-election letter stating that wages and benefits would continue to be withheld until U withdrew election objections, violative)

5054-6300 Conditioning continued employment on refraining from engaging in union activities

Alle Arecibo Corporation and Alle Industries Ltd. 264 NLRB No. 163
(telling Ees that plant would reopen w/o U but with direct payment of medical and other benefits by E, violative where she was in effect offering them employment at future time conditioned upon their willingness to abandon U)

Mueller Insulation Co. and The Mueller Company of Missouri, Inc., Successor Employer and/or Alter Ego 263 NLRB No. 095
(telling Ees that they must choose to work non-U only if they stayed with new company, violative)

Comgeneral Corporation 251 NLRB No. 069

Post Manufacturing Company 251 NLRB No. 153
(telling economic strikers that *they were not going to get their jobs back,* violative, since they were entitled their jobs once strike had ended, they applied for reinstatement and openings for which they were qualified became available)

Sumco Manufacturing Co., Inc. Summit Grinding Company 251 NLRB No. 046
(supervisor threatening Ees with discharge if they did not keep out of U, or if they did not bring to her U material received in mail, unlawful)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L. A. Inhalation Therapy Services JD-(SF)-225-80
(telling Ees that they must forswear their U membership or allegiance as condition of keeping their jobs, unlawful)

5054-[illegible] Conditioning employment on promise not to engage in protected activities

Acme Motors, Inc., t/a Acme Datsun 263 NLRB No. 077
(telling Ee that if he came back to work for E, it would be on condition that if there were U election, Ee would have to vote against U, violative)

J. J. Security, Inc. 252 NLRB No. 180
(Bd affirmed ALJ's finding a violation since letters sent to constructive dischargees were not valid offers of reinstatement because conditioned on Ees foregoing their Sec. 7 rights where contrary to E's contention, interpretation by ALJ of phrase in letters *consistent with our discussion of August 17* regarding Ees abandoning wage demand, was reasonable under the circumstances, and where E drafted letter containing questionalbe phrase and was liable to various interpretations including one which deemed it to be invalid offer containing illegal condition)

J. J. Security, Inc. 252 NLRB No. 180
(letters sent to constructively discharged Ees stating that they could return to work if they gave up their demands for improved working conditions violative)

T.V. Dispatch, Inc. JD-142-80
(requiring Ees to apologize for having participated in grievance meeting in order to retain their jobs)

5054-7500 Conditioning employment on withdrawal of charges

Sedloff Publications, Inc. 265 NLRB No. 139
(informing strikers that it might be possible to work out solution to strikers' complaints if strikers dropped U came back to work, but that their return to work depended on dropping U, abandoning strike and withdrawing ULP charges, unlawful)

J. E. Steigerwald Co., Inc. 263 NLRB No. 068
(informing laid-off Ee that E was not going to hire anyone because of pending ULP charges and was thus withdrawing its offer of re-employment violative)

American Interstate Freight Lines 258 NLRB No. 131
(threat of discharge if Ee filed appeal to RD's dismissal of his charge, violative)

Pilgrim Life Insurance Company 249 NLRB No. 140
(E's president's offer to U adherent at time of her discharge that he would permit her to return to work if she would abandon her support for U effort and refrain from filing ULP charge, violative)

Hadley Fruit Orchards, Inc. JD-(SF)-121-82
(threatening not to recall laid off Ees so long as charges involving them were pending with Bd, unlawful)

5060 AVOIDANCE OR REPUDIATION OF UNION URGED OR REQUIRED BY EMPLOYER

Gentile Pontiac 260 NLRB No. 056
(E's comments to Ees, stating he knew they were interested in a U and then encouraging them to contact another U's representative whom he endorsed, held unlawful inducement of Ees to abandon U of their own choosing)

5060-0800 Inducing abandonment of strike

Sedloff Publications, Inc. 265 NLRB No. 139
(informing strikers that it might be possible to work out solution to strikers' complaints if strikers dropped U came back to work, but that their return to work depended on dropping U, abandoning strike and withdrawing ULP charges, unlawful)

Conair Corporation 261 NLRB No. 178
(urging Ees, either arriving for work or to join ULP strike picket line, to report for work because E needed them, otherwise they would lose their jobs, unlawful, since solicitation of Ees to abandon ULP strike constitutes unlawful interference in right of Ees to engage in protected concerted activity; moreover, where E's solicitation is accompanied by other 8(a)(1) conduct, such solicitation constitutes unlawful interference)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. 260 NLRB No. 087
(promising ULP striker that E would obtain work for her at another company if she would abandon picket line, violative)

Randall, Burkart/Randall, Division of Textron, Inc. 257 NLRB No. 001
(no violation where E's personnel manager at request of striker went to house of striker to have striker sign list of those desiring to return to work; however, violation, where personnel manager at suggestion of striker proceeded to go across street to house of another striker and ask him to sign list)

Gulf Envelope Company 256 NLRB No. 058
(E informing strikers that if they did not return to work by certain date their jobs would be permanently filled and their employment terminated, unlawful, since not legitimate prediction of economic consequences, but coercion, in view of use of word terminated which could be logically understood to mean fired; further, informing strikers that they may be placed on preferential hiring list to be discontinued after one year and that even if they were reinstated it would be w/o seniority except for benefits, unlawful, and not mooted, notwithstanding no strikers ever placed on such list)

Marlene Industries Corporation, et al. 255 NLRB No. 192
(E's letters sent to Ees upon their joining ULP strike directing them to return to work by specified deadline or they would be replaced, violative as solicitation of strikers to abandon strike)

5060-0800—Cont.

Walker Die Casting, Inc. **255 NLRB No. 034**
(offering striking Ees higher wages violative as it was inducement to abandon strike)

Walker Die Casting, Inc. **255 NLRB No. 034**
(instituting minimum wage rates higher than offered U, violative as U did not waive its bargaining rights over minimum rates by permitting rates above contract rate during prior contract term)

Camay Drilling Company **254 NLRB No. 019**
(E's soliciting of striking Ee to abandon ULP strike and threat to discharge him if he did not do so violative)

Camay Drilling Company **254 NLRB No. 019**
(E who sent letter to ULP strikers, urging them to cross picket line violated Act where this was followed by similar request and threat of discharge for noncompliance for one Ee)

Excavation-Construction, Inc. **248 NLRB No. 081**
(E which offered increased wages to picketing Ees if they returned to work violated Act)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(offering strikers wage increases to induce them to return to work, unlawful)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**
(E's phone call to laid off discriminatee telling him *don't walk the picket line*, not violative, since nothing in statement constituted express or veiled threat of reprisal)

The Royal General Company **JD-17-80**
(E offering wage increases to select individuals to induce them to abandon their walkout and support for U representation while refusing to re-employ individual it considered instigator of walkout and instigator's brother)

N.L.R.B. v. Robin American Corporation **654 F.2d 1022 (C.A. 5, 1981)**
(soliciting striking Ees to abandon strike with personal offer to return to work, violative)

5060-1000 Inducing abandonment of union by lockout

Alle Arecibo Corporation and Alle Industries Ltd. **264 NLRB No. 163**
(laying off Ees as consequence of E's carefully-timed, deliberate, and self-induced deprivation of work designed to provide E with excuse for closing plant simultaneously with expiration of U contract, violative since as result of scheme, Ees were in effect being locked out in order to bring pressure on them to abandon U)

5060-1600 Abandonment of incumbent union for membership in rival union

Banner Tire Company **260 NLRB No. 096**
(E violated Act when it summoned Ee to meeting, with U representative of U E wished Ee to join notwithstanding job covered by contract with another U and then remained present while U agent solicited Ee's membership)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**
(E's posting notice stating that if Ees did not join certain U, which E would join, Ees could strike for rest of their lives held violative, since E's notice suggested futility of selecting petioning U)

5060-2000 Abandonment of outside union

Laredo Packing Company **254 NLRB No. 001**
(E's personnel director suggesting to Ee that Ees replace U and U's secretary treasurer with Ee committee headed by Ee and promising Ee more hours of work, unlawful)

N.L.R.B. v. Arrow Molded Plastics, Inc. **653 F.2d 280 (C.A. 6, July 1981)**
(offering shift representation system as substitute for U representation, unlawful)

5060-2500 Assistance in effecting resignation

Mark Twain Marine Industries, Inc. **254 NLRB No. 144**
(providing envelopes and postage to Ees in order to send letter of resignation to U, violative)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequently encouraging and assisting Ees to withdraw from Teamsters local, violative)

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**
(advising strikers they would have to resign from U in order to return to work typing letters of resignation, furnishing postage and mailing letters, prior to bargaining session at which E withdrew recognition, unlawful)

5060-3300 Inducing abandonment of union by granting benefits or making concessions

Caffe Giovanni, Inc. d/b/a Giovanni's **259 NLRB No. 031**
(offer of raise and permanent employment to temporary Ee in order to induce him not to support U, unlawful, even though offers were not genuine)

Stanley M. Fell, Inc. **250 NLRB No. 068**
(insituting hospitalization insurance, unlawful, since for purpose of interferring with U activity where Ees were still wearing U buttons and E referred to fact U campaign was *apparently* over and not to assertion that campaign was over)

Amber Delivery Service, Inc. **250 NLRB No. 016**
(E's suggestion that U ptn be withdrawn in exchange for his agreeing to consider Ees demands violative)

American Motor Inns, d/b/a Holiday Inn No. 4 - Airport **JD-732-80**
(resolving Ees' grievance by removing and retiring supervisor, who was so unpopular among her supervisees that it was most drastic step E could take to curry favor with Ees and lure them away from U, violative)

Highland Foods, Inc. and Vickelda Industrial Corporation **JD-364-80**
(E's agreement to proposal for election of a grievance committee violative, where E was impelled be desire to induce Ees to forsake U in exchange for improved working conditions)

5060-3350 Offer of concessions

Sadloff Publications, Inc. **265 NLRB No. 139**
(informing strikers that it might be possible to work out solution to strikers' complaints if strikers dropped U came back to work, but that their return to work depended on dropping U, abandoning strike and withdrawing ULP charges, unlawful)

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant **261 NLRB No. 051**

Broadway Catering Corp. d/b/a Studio 54 **260 NLRB No. 166**
(promising U adherents more money if they refrained from U activity, unlawful)

Maywood, Inc. **251 NLRB No. 139**
(supervisor's telling Ee that onerous assignment imposed upon her was result of her U activity and that she might be relieved of the assignment if she revoked her U card and ceased associating with U advocates, violative)

Maywood, Inc. **251 NLRB No. 139**
(where E had induced Ee to revoke her authorization card, supervisors' summoning Ee to office for purpose of assisting another Ee to revoke her U card, violative, as, in context, supervisor conveyed impression of further inducement and approval of revocation)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(offering Ees benefits if they negotiate directly with E and withdraw support from U violative)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(E's leaflet and speech campaign drove home message of better future benefits in exchange for U's defeat and were unlawful implied promises of benefits)

5060-3350-5000 Where initiative is employee's

American Motor Inns, d/b/a Holiday Inn No. 4 - Airport **JD-732-80**
(meeting with Ees at their request where they set forth their grievances not violative even though E knew that U had filed ptn since E only stated that he would check into grievances and the NLRB had placed restrictions on making any changes or promises which do not amount to implied promise of benefit if U was abandoned)

5060-4100 Benefits conditioned on abandonment of union

Belcher Towing Company **265 NLRB No. 159**
(maintenance and distribution of eligibility standard for Ee benefits, including thrift and Ees' stock option plan, unlawful, where Ees were told that they would not be eligible for, and owuld be excluded therefrom, if they were covered by a bargaining agreement)

Hands and Threads Company, a Division of MSL Industries, Inc. **261 NLRB No. 113**
(offers of promotion and transfer, on condition of Ee's abandoning U, unlawful)

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant **261 NLRB No. 051**
(violations, where E following demanded by U for recognition called meeting of all Ees and interrogated Ees as to why they wanted U, promised to discuss benefits after Ees signed ptn against U, threatened to close restaurant if U came in, and w/i five days w/o warning to Ees closed restaurant for two and a half weeks which had never been previously closed)

5060-4100—Cont.

University Townhouse Cooperative 260 NLRB No. 187
(encouraging Ees to abandon U activities in exchange for rescission of harsher work rules, violative)

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant 259 NLRB No. 065
(manager's remarks to Ee that *if you do not vote for your contract in December, we can get you more money* held violative, since implied promise of higher wages)

Williams and Lane, Inc. 254 NLRB No. 074
(E who required Ees to resign from U before he would transfer them to new non-U facility violated Act)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors 251 NLRB No. 151
(supervisor telling Ee if he *wanted to keep working to stick with* E, unlawful since it amounted to both threat of discharge for supporting U and promise of benefit for opposing U)

Tennessee Cartage Co., Inc. 250 NLRB No. 015
(offering Ee promotion to dissuade Ees from organizing U, unlawful)

Amber Delivery Service, Inc. 250 NLRB No. 016
(E's suggestion that U ptn be withdrawn in exchange for his agreeing to consider Ees demands violative)

MGM Grand-Reno, Inc. 249 NLRB No. 153
(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Cable Vision, Inc. 249 NLRB No. 062
(conditioning benefits on abandonment of U, unlawful)

Lyman Steel Company 249 NLRB No. 040
(promising Ees wage increase if they withheld their support from Us, held violative)

St. Francis Hospital 249 NLRB No. 017
(working conditions would improve if U lost election)

Fort Wayne Newspapers, Inc. 247 NLRB No. 085
(promising Ee extra hours of work if he signed anti-U ptn, unlawful)

Keister Coal Company, Inc. 247 NLRB No. 049
(E's granting inordinately large wage increase in face of U organizing activity held violative when compared to wage increases granted prior to advent of U)

Keister Coal Company, Inc. 247 NLRB No. 049
(supervisors' statements to Ees during U campaign that *we just better leave well enough alone* and promise of *big bonus and improved working conditions* made in conjunction with interrogations as to what Ees knew about U, held violative, since statements promised Ees improvements conditioned upon their abandonment of support of U)

Keister Coal Company, Inc. 247 NLRB No. 049
(promise to Ee during U campaign of promotion to foreman's job if Ee would abandon his U activity held violative)

Maleraey Freight Lines, Inc. JD-(SF)-193-82
(E informing Ees it had instituted profit sharing plan from which U members would be excluded, unlawful)

Croley Coal Corporation JD-285-82
(successor E's statement to Ees that he would operate facility non-U and they must abandon U to continue employment, violative)

Westerman, Inc. JD-196-82
(promising to intercede for Ee to secure his recall on conditions he not engage in U activity, violative)

Lauridsen Foods, Inc. JD-36-81
(E's promise to Ees that certain work rules, wage rates, and fringe benefits would be implemented if Ees rejected U, violative)

The Royal General Company JD-17-80
(E offering wage increases to select individuals to induce them to abandon their walkout and support for U representation while refusing to re-employ individual it considered instigator of walkout and instigator's brother)

Clearwater Finishing Company, a Division of United Merchants and Manufacturers, Inc. v. N.L.R.B. 670 F.2d 464 (C.A. 4, Feb. 1982)
(ct held that ALJ's credibility determinations were supported by substantial evidence and from such credited statements it was reasonable to infer that E was attempting to induce U to abandon backhelp by offering greater benefits to unit already represented by U; same evidence supports Bd's findings that these statements constituted bad faith bargaining)

N.L.R.B. v. Arrow Molded Plastics, Inc. 653 F.2d 280 (C.A. 6, July 1981)
(making granting of wage increase to raise scale to level of E competitors expressly contingent upon U defeat, unlawful)

N.L.R.B. v. Antonino Carilli, d/b/a Antoninaino's Restaurant 648 F.2d 1206 (C.A. 9, June 1981)
(E asking Ee how important Ee's medical insurance was to Ee and whether she would be U member if she worked at E which offered medical and dental insurance benefits, or if E had better insurance programs, unlawful, since language used by E reasonably calculated to give Ee impression that E was considering instituting its own superior medical program if Ee would not support U, and in view of E's subsequent ULPs)

5060-4400 Benefits conditioned on not joining strike

Consolidation Coal Company 260 NLRB No. 063
(E's investment plan which limited participation to non-U Ees *per se* violative; and E's publicizing this provision immediately before election also violative)

Quick Find Co. 259 NLRB No. 144
(violation where manager, after soliciting grievances, told Ees that he would improve employment conditions if they would withdraw their support of U before election)

5060-5000 Reemployment conditioned on abandonment of union

Flex Plastics, Inc. 262 NLRB No. 078
(supervisor stating to returning laid off Ee that there would be no U and no U talk and asking Ee is she was willing to work under those conditions, violative, as unduly limiting Ee U activity and conditioning employment upon agreement to refrain from such activity)

Nanticoke Homes, Inc. 261 NLRB No. 107

Jaybil Steel Products, Inc.; etc. 258 NLRB No. 157
(E's conditioning reinstatement of two unlawfully discharged U adherents upon relinquishment of right to support U in election, unlawful)

Mark Twain Marine Industries, Inc. 254 NLRB No. 144
(telling striking Ee that he could return to work when he resigned from U, violative)

Camay Drilling Company 254 NLRB No. 019
(E's soliciting of striking Ee to abandon ULP strike and threat to discharge him if he did not do so violative)

Rich's Precision Foundry, Inc. 250 NLRB No. 173
(solicitation of unlawfully discharged Ee to ask for his job back and tell other Ees that U was no good held unlawful solicitation to engage in antiU activity and conditioning of reemployment on acceptance of unlawful request)

Pilgrim Life Insurance Company 249 NLRB No. 140
(E's president's offer to U adherent at time of her discharge that he would permit her to return to work if she would abandon her support for U effort and refrain from filing ULP charge, violative)

Henry A. Young, d/b/a Columbia Engineers International 249 NLRB No. 144
(after shutdown and resulting layoff following U's claim of majority, E's statement that if Ee wanted to work for E he would have to tear up his U card and during same interview unlawfully interrogated Ee)

Fort Wayne Newspapers, Inc. 247 NLRB No. 085

Westerman, Inc. JD-196-82
(promising to intercede for Ee in securing his recall to work if he avoided U activity, unlawful)

Miami Springs Properties, Inc., and James H. Kinley and Associates, Joint Employers v. N.L.R.B. 653 F.2d 276 (C.A. 6, Aug 1981)
(promise to rehire Ees if they withdrew support for U, unlawful)

N.L.R.B. v. Rich's Precision Foundry, Inc. 667 F.2d 613 (C.A. 7, Dec. 1981)

N.L.R.B. v. Mar-Len Cabinets, Inc. 659 F.2d 995 (C.A. 9, Oct. 1981)
(advising strikers they would have to resign from U in order to return to work typing letters of resignation, furnishing postage and mailing letters, prior to bargaining session at which E withdrew recognition, unlawful)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse 647 F.2d 905 (C.A. 9, June 1981)
(E held to have unlawfully conditioned Ee's retention of employment on resignation from U where E made statements to that effect, lent his car to Ee to deliver resignation letter, told Ee he would not hire picketers, and circulated resignation ptn among Ees he had threatened with discharge if they struck)

5060-5200 Employment conditioned on applicant's lack of union sentiments

5060-5200—Cont.

Stafford Construction Co. 250 NLRB No. 120
(telling prospective Ees that employment was conditioned on withdrawal from U)

5060-6300 Direct solicitation of grievances

Daniel Construction Company, A Division of Daniel International Corporation 264 NLRB No. 079

Documation, Inc. 263 NLRB No. 052
(consultant's introducing himself as having been hired to find out problems which caused people to join U and stating that he would see what he could do about them constituted unlawful solicitation of grievances with implied promise to remedy them)

Cherokee Culvert Company, Inc. 262 NLRB No. 108
(solicitation of greivances w/o accompanying promise, either actual or implied, to remedy them, not unlawful)

Comair Corporation 261 NLRB No. 178
(solicitation of grievances from Ees, accompanied by indication that E would satisfy their demands, unlawful; essence of such violation is not solicitation of grievances itself but, rather, the promise to correct them, either express or implied, from the solicitation)

Comair Corporation 261 NLRB No. 178
(even assuming E had not expressly or impliedly promised to correct Ees' grievances after E solicited same unusual manner of conduct of meetings at which E engaged in such conduct and its actions therein, would have constituted a violation)

Modern Manufacturing Company, Inc. 261 NLRB No. 078

Colorado Forge Corporation 260 NLRB No. 004
(E's direct solicitation of grievances by conversations with Ees and by passing out questionaries which specifically asked Ees what their work shop problems were and what changes they desired, violative)

Progressive Supermarkets, Inc. 259 NLRB No. 074
(promise of monthly meetings to discuss office problems)

Valley Plaza, Inc. d/b/a Captain Nemo's 258 NLRB No. 076
(soliciting and remedying Ee grievances, making implied promise to remedy other grievances by announcing new open door policy, and announcing wage increases, all in order to undermine support for U, violative)

Markoefer Baking Company, Inc. 258 NLRB No. 071
(soliciting Ee grievance and proposing E-Ee committee to resolve their grievances in place of U, violative)

St. Mary's Home, Inc. t/a St. Mary's Infant Home 258 NLRB No. 134
(solicitation of grievances with promise of benefits as result, and threat of reprisal if Ees did not cooperate while qcr was pending, unlawful)

Jaybil Steel Products, Inc.; etc. 258 NLRB No. 157
(promising Ees *if you guys will go with me, and not sign U card, I will take care of you guys in the future*, asking supervisor to negotiate with Ees to see what they wanted, and if they would sign against U, which supervisor did, and directly asking Ee if he would like to negotiate directly with E, unlawful)

Clements Wire & Manufacturing Company, Inc. 257 NLRB No. 075
(violation where E suggested formation of committee to meet with E to try to work problems out and that each department would be allowed to select representatives who would present individual grievances to E for resolution)

Clements Wire & Manufacturing Company, Inc. 257 NLRB No. 075
(soliciting Ee grievances concerning existing work production rates and promising to reevaluate production rates, violative)

Viracon, Inc. 256 NLRB No. 037
(soliciting grievances from Ees and suggesting at meeting with Ees that if they did not have U E would put people in plant to whom Ees might take any problems, violative)

Kevah Konner, Inc. 256 NLRB No. 008
(urging Ees to present their grievances directly to E and abandon U, unlawful)

Firmat Manufacturing Corp. 255 NLRB No. 153
(E's owner and president telling Ees that he would hold quarterly meetings during which they could present complaints or grievances to him and later suggesting that Ees select two-man delegation to speak to him concerning their problems, violative)

General Electric Company 255 NLRB No. 092
(E's establishment and subsequent discontinuance of *sounding board* program upon U's filing of R ptn, unlawful, where purpose of program was to discourage support for U and discontinuance was in reprisal for Ee support of U; further, E's justification of discontinuance of program in order to avoid ULP charges, rejected, where program had been announced and implemented prior to filing of R ptn)

Limestone Apparel Corp. 255 NLRB No. 101
(solicitation of grievances by E during U campaign, held violative)

Gaske & Meyer, Inc. 255 NLRB No. 095
(E's asking Ee *if there anything I can do for you* after inquiring what U was offering, violative)

Stouts and Stouts, Inc. 254 NLRB No. 160
(remarks of E, made during U's organizing campaign, that included; (1) invitation for Ees to submit their grievances to E (2) announcement of new vacation policy, and (3) suggestion that Ee press U to withdraw its R ptn, held violative in view of their timing in midst of U's organizing campaign and close upon E's manifestations of U animus as found in instant decision)

Igloo Corporation 254 NLRB No. 078
(where E advised Ees that they could discuss their problems individually with supervisors or managers because of its *open door* policy, such appeal by E who has not previously had practice of soliciting Ee complaints but announces and institutes policy of this nature in response to organizational campaign held violative)

Riley-Beaird, Inc. 253 NLRB No. 086
(E unlawfully solicited and remedied Ee's grievance where, after seeing Ee pass out U literature, E asked Ee what was wrong, stated that he would try to solve Ee's problems, and thereafter remedied Ee's complaint about loss of overtime)

Berger Transfer and Storage, Inc. 253 NLRB No. 002
(E's request to Ee that he set up meeting of company officials and strike leaders constitutes solicitation of grievances and violates Act)

Allen-Stone Boxes, Inc. 252 NLRB No. 171
(soliciting Ee grievances in manner and under circumstances implying that Ees did not need U, violative)

Omark-RCBS, A Division of Omark Industries 252 NLRB No. 089
(E's statements requesting Ees to deal directly with management, asking for complaints or gripes and requesting opportunity to resolve problems, held violative since they constituted clear attempt to dissuade Ees from supporting U by soliciting grievances and holding out possibility of more favorable treatment)

Gordonsville, Industries, Inc. 252 NLRB No. 054
(E's survey, conducted during U campaign, of Ee attitude towards their working conditions held violative since intent of survey was to elicit and repair Ee grievances; E had never previously conducted such survey nor had it established any systematic procedure for receiving and analyzing Ee complaints; effect of survey was to impliedly promise to rectify Ee grievances and erode Ee support for U)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division 251 NLRB No. 156
(where supervisor asked Ee why he was supporting U instead of e and Ee replied that it was because he wanted to work day rather than rotating shift, supervisor's telling Ee *that he would go upstairs and see what he could find out and do about it*, violative)

The Krebs School Foundation, Inc. 251 NLRB No. 187
(E's solicitation of Ee views in meetings with Ees re terms and conditions of employment by E's personnel subcommittee, unlawful where E established subcommittee and met with Ees to counter U's organizational campaign and to wean Ees away from U by *resolving some of their grievances*)

Chester Valley, Inc. 251 NLRB No. 190
(speech to Ees in which E stated that he would rather deal with Ees than with U and that, if that were done, something could have been worked out, that he had *open door* policy, and that whatever Ees could get through U they could get from him, unlawful, since E thereby solicited grievances and promised to remedy them)

Certain-Teed Insulation Company 251 NLRB No. 208
(violation where psychologist from E's management consulting firm interviewed Ees about their *perceptions* about E and to *find out what was wrong*)

Ben J. Mauro d/b/a Warehouse Food Distributing Company 250 NLRB No. 177
(violation where E solicited Ee grievances in order to dissuade Ees from supporting U)

Burgess Mining & Construction Corp. 250 NLRB No. 033
(supervisor suggesting to Ee that Ee could better resolve problem by talking to E's chairman of the board alone and w/o presence of his U representative, unlawful, since suggestion discourages resort to collective bargaining process and interferes with right to be represented)

Edward A. Utlaut Foundation, Inc. d/b/a EdwardA. Utlaut Memorial Hospital and Fair Oaks Nursing Home 249 NLRB No. 142
(violation and interference where before election E directly solicited grievancesto solve the *problem* and issued questionnaire to Ees about supervision andE's policy and, while objections were pending, service director suggested and encouraged and supervisor renewed and offered to help effectuate Ees' election of representatives to present their grievances to E)

Steiner-Liff Textile Products Company 249 NLRB No. 153
(solicitating grievances at Ee meetings and promising to correct them, violative)

5060-6300—Cont.

Patsy Bee, Inc. **249 NLRB No. 125**

Kantor Pepsi-Cola Bottling Co. of Beloit, Wisconsin **248 NLRB No. 012**
(solicitation of grievances from Ee and promise of benefits, unlawful, notwithstanding E's asserted reasons for promising benefits; Bd found that E's unexpressed thoughts or belief that *good things* might be in the offing because of potential merger with another E had no bearing on issue of whether his expressed statements had tendency to interfere)

CTS Keene, Inc. **247 NLRB No. 141**
(no unlawful solicitation of grievances with implied promise to remedy them where supervisor who had initiated conversation with U adherent by asking how things were going, suggested adherent discuss her complaints regarding job bidding procedures with her immediate supervisor during scheduled job review, since not implied promise to remedy where Ee had received no satisfactory result from prior discussion with same supervisor)

Alumbaugh Coal Corporation **247 NLRB No. 112**

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(E conducting survey among Ees represented by U regarding their feelings about working conditions and supervision, unlawful, where E's purpose was to learn what complaints might have caused renewed U activity and where, questioning *would lead Ees to believe E was inviting direct dealing thus suggesting that U support and activities were unnecessary*)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(supervisor meeting with Ees as group and explaining why E could not afford dental insurance and discussing E's improved health benefits, unlawful, where meeting was merely extension of unlawful survey E conducted earlier to solicit grievances and undermine U)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South **247 NLRB No. 038**

Ellis Hospital **JD-164-82**
(alleged solicitation of grievance from Ee by supervisor and implied promise to redress it, not unlawful nor interference with election, where supervisor had stated to Ee that his door was open to Ee anytime Ee wanted to talk to him, supervisor credibly testified that such was always the case, and even Ee's testimony did not make out a case of solicitation of grievances and promise to redress them)

Southwest Jefferson Community Hospital, Inc., a corporation wholly owned by Humana of Kentucky, Inc. **JD-77-82**
(violation, where E solicited grievances from U adherent in order to discourage her support of U)

Tops Industries, d/b/a Tops Market **JD-(SF)-53-82**
(ordering U activist to knock off all activities of stirring people up, and conditioning his continued employment on his doing so, unlawful and objectionable)

SPS, Inc. **JD-68-82**
(soliciting complaints of known U leaders and implying complaints would be resolved if they withdraw support of U and deferred NLRB election, violative)

Ford Motor Company, Automotive Division, Twin Cities Plant **JD-57-81**
(telling Ees to bring their problems to supervisors or the *right people* before taking them to U caucus or U committeeman, unlawful)

Boniface Group Homes, Inc. **JD-162-81**
(violation, where E solicited and impliedly promised to remedy Ee grievances in response to Ees' organizational efforts by announcing implementation of suggestion box)

Floyd Monroe & Sons, Inc. **JD-50-81**
(supervisor telling Ees that they were not to discuss their *problems* among themselves but were to take them only to supervisors held violative, since instruction prevented Ees from discussing matters concerning their wages, hours or other conditions of employment among themselves)

Safeway Stores, Inc. **JD-(SF)-61-81**
(solicitation of Ee grievances prior to election and no solicitation prior to U campaign held violative)

WWNT, Womanco Blonder Tongue Broadcasting Corporation **JD-(NY)-63-80**
(soliciting Ees' grievances at Ee meeting violative, where purpose was to interfere with U's organizational plans)

Liberty Vinyl Corporation **JD-(SF)-288-80**
(soliciting grievances at meetings during U campaign with labor relations consultant and interpretor not violative, where consultant gave general disclaimer that he had no power to correct grievances but would pass them to management and E, who had held previous meetings where Ees were invited to discuss problems and make recommendations, did not deviate from past practices)

Clements Wire and Manufacturing Company, Inc. **JD-308-80**
(plant manager's solicitation of grievances and his promises to resolve them, unlawful where they were attempt to persuade Ees to abandon U)

Interplastic Corporation **JD-74-80**

Union Carbide Corporation **JD-(SF)-13-80**

N.L.R.B. v. Chester Valley, Inc. **652 F.2d 263 (C.A. 2, June 1981)**
(E's solicitation of grievances and promise to remedy those grievances violative of 8(a)(1) notwithstanding E's contention that it was merely stating and reconfirming long standing *open door* policy, where no such prior practice existed)

N.L.R.B. v. Permanent Label Corporation **657 F.2d 512 (C.A. 3, 1981)**
(asking Ees why they thought they needed U and what problems or grievances they had about conditions in plant, and stating belief E could solve problems w/i year w/o U)

Jeffrey Manufacturing Division, Dresser Industries, Inc. v. N.L.R.B. **654 F.2d 944 (C.A. 4, 1981)**
(violation)

N.L.R.B. v. Arrow Molded Plastics, Inc. **653 F.2d 280 (C.A. 6, July 1981)**
(violation where E during preelection period hired personnel consultant who held meetings with Ees in recognition of fact *there was U knocking at door*, such meetings were unprecedented, it was suggested grievances would be resolved only if Ees rejected U representation, and E took steps to resolve grievances under questionable circumstances)

N.L.R.B. v. Hanna Mold, Inc. **634 F.2d 635(T) (C.A. 9, 1980)**
(unlawful)

5060-6900 Solicitation of expression of opposition to union

A. W. Schlesinger Geriatric Center, Inc. **263 NLRB No. 156**
(encouraging formation of anti-U committee, violative)

Vincent Et Vincent of Allentown Mall, Inc. **259 NLRB No. 113**
(violation where E remarked to Ee that since she had been in business a long time and knew that a U could not help Ees she should discourage the *young girls* from joining U)

Viracon, Inc. **256 NLRB No. 037**
(solicitation of Ees to campaign against U, violative)

Garrett Railroad Car & Equipment, Inc. **255 NLRB No. 087**
(inducing and aiding Ees to circulate anti-U ptn, violative)

Walker Die Casting, Inc. **255 NLRB No. 034**
(inviting striking Ee to return to work and telling him that E would like to get rid of U and some Ees in U and suggesting another U and that E would like to run for at least one year w/o U violative)

Thurston Motor Lines, Inc. **255 NLRB No. 019**
(E did not violate Act when it asked Ee to relate story of his relatives' troubles with U to other Ees when request phrased that if Ees *came to him with questions...would he explain it to them* as E was not directing Ee to speak against U)

Hydro Conduit Corporation **254 NLRB No. 048**
(circulation of anti-U ptn signed by 34 out of 38 Ees in unit and withdrawal of recognition of U based on ptn, not unlawful, since not attributable to E even if individual who circulated ptn held supervisor where individual was member of U and bargaining unit, was acting in concert with fellow Ees and not as representative of management in circulating ptn)

Pandair Freight, Inc. **253 NLRB No. 134**
(E's solicitation from Ee of written expression of abondonment of U adherence as well as promise that Ee will encourage other Ees to refrain from U support, unlawful)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(E's letter to Ees, before election, pleading with them to vote *no* in election and to give E a year to prove himself held violative, since latter statement conveyed promise to be responsive to Ee needs)

Charles Dean d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 184**
(telling Ee that Ee had better talk to his brother, fellow Ee, and get him to vote no in election or brother would not be working there any longer, violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(preparation and circulation of anti-U ptn during working hours and soliciting Ees to sign same held violative)

Union Carbide Corporation **JD-(SF)-13-80**
(E's urging two Ees to talk to *the other guys* about the U situation, unlawful)

5060-7000 Solicitation of repudiation of union

Sedloff Publications, Inc. **260 NLRB No. 139**
(informing strikers that it might be possible to work out solution to strikers' complaints if strikers dropped U came back to work, but that their return to

5060-7500—Cont.

work depended on dropping U, abandoning strike and withdrawing ULP charges, unlawful)

Texaco Inc. **264 NLRB No. 151**
(E's proposing, drafting and typing Ees' ptn to withdraw from U and cancel checkoff authorizations and memorandum to terminate contract with U, allowing Ees to solicit and sign ptn during working time and providing supervisory assistance in making ptn available to potential signers constituted unlawful encouragement of and assistance to Ees in circulation of ptn to withdraw from U)

Paul Distributing Co., Inc. **264 NLRB No. 179**
(allegation that E requested Ee to contact U and inform it Ees had changed their minds and no longer wanted U representation, although not alleged in C, sufficiently related to subject matter of complaint and uncontrovertedly testified to at hearing to support finding that E solicited Ees to abandon U)

Hardwick Company, Inc. **263 NLRB No. 47**
(soliciting Ees to withdraw their support of U as means of saving their employment, violative)

Zero Corporation, Zero East Division **262 NLRB No. 064**
(directing U adherent to speak to Ees on plant intercom and recant statements he had made describing benefits at E's other plant which he had done to correct E's false description, coercive)

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant **261 NLRB No. 051**
(violations, where E following demanded by U for recognition called meeting of all Ees and interrogated Ees as to why they wanted U, promised to discuss benefits after Ees signed ptn against U, threatened to close restaurant if U came in, and w/i five days w/o warning to Ees closed restaurant for two and a half weeks which had never been previously closed)

Billion Motors, Inc., d/b/a Billion Oldsmobile-Toyota **260 NLRB No. 099**
(E's suggestions to Ees that they cease paying dues, abandon U, and bargain directly with him, unlawful)

Peabody Coal Company **259 NLRB No. 183**
(soliciting Ees to withdraw their support of U and offering use of company typewriter to type an affidavit to that effect, violative)

Rai Research Corporation **257 NLRB No. 127**
(urging Ees to sign ptns indicating opposition to U held violative; though conduct not specifically alleged in complaint it was fully litigated)

Walter Jack and Dixie A. Macy d/b/a 7-Eleven Food Store **257 NLRB No. 035**
(preparation and circulation among Ees a ptn to withdraw support from U, unlawful)

Polk Bros. Concrete Products **256 NLRB No. 128**
(E violated Act where its plant manager first initiated U activity w/o knowledge of E and then solicited Ees to sign ptn disavowing interest in U especially where E had expressed its opposition to U, notwithstanding plant manager acted contrary to E's specific instructions not to involve himself with ptn; moreover, Ee's thought supervisor was speaking for E; therefore, R/O proper remedy)

Fashiontime Ltd. **256 NLRB No. 067**
(promising Ees aid in arranging residency papers in order to induce or cause Ees to reject U and to refrain from activities on behalf of U, violative)

Mark Twain Marine Industries, Inc. **254 NLRB No. 144**
(distribution to Ees of circular advocating that Ees abandon U representation to save expense of dues and to protect their rights, violative)

Staats and Staats, Inc. **254 NLRB No. 105**
(remarks of E, made during U's organizing campaign, that included; (1) invitation for Ees to submit their grievances to E (2) announcement of new vacation policy, and (3) suggestion that Ee press U to withdraw its R ptn, held violative in view of their timing in midst of U's organizing campaign and close upon E's manifestations of U animus as found in instant decision)

Hydro Conduit Corporation **254 NLRB No. 048**
(circulation of anti-U ptn signed by 34 out of 38 Ees in unit and withdrawal of recognition of U based on ptn, not unlawful, since not attributable to E even if individual who circulated ptn held supervisor where individual was member of U and bargaining unit, was acting in concert with fellow Ees and not as representative of management in circulating ptn)

Behring International, Inc. **252 NLRB No. 085**
(E, through Ees acting as its agents, unlawfully solicited Ees to sign document requesting withdrawal of U ptn)

Weyerhaeuser Company **251 NLRB No. 097**
(soliciting Ee who was considered leader of minority Ees to talk *his people* out of supporting U, violative)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(soliciting Ee not to be U adherent because of E's past and perhaps future generous leave policy)

The Davis Company **249 NLRB No. 068**
(supervisors' contacting individually those Ees thought most susceptible to pressure and advising them of their right to revoke dues-checkoff authorizations held, in context of other ULPs designed to discourage U support, not merely advising Ees of their rights but was unlawfully soliciting them to withdraw from U and revoke checkoff authorizations)

Cable Vision, Inc. **249 NLRB No. 062**
(solicitation of Ee to abandon U, unlawful)

Lyman Steel Company **249 NLRB No. 040**
(offering money to two Ees for them to coerce one Ee into withholding his support from petitioner held violative)

Lyman Steel Company **249 NLRB No. 040**
(suggesting to two ees that they rid E of two supporters of petioning U, held violative)

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

Sambo's Restaurant, Inc. **247 NLRB No. 123**
(solicitation of Ees' signatures on ptn repudiating U, unlawful; E's Ees who signed ptn did so in presence of notary public who witnessed their signatures)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(supervisor's stating to U supporter that he did not want any part of U and wished he could change Ee's mind, and that he expected Ee to do his job and expected no trouble from him, not unlawful)

Hammond Plastic, Division of Carl Gordon Industries, Inc. **JD-[illegible]-81**
(initiating and encouraging ptn seeking withdrawal from U, unlawful)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequently encouraging and assisting Ees to withdraw from Teamsters local, violative)

5060-7550 Decertification petition

Alle Arecibo Corporation and Alle Industries Ltd. **264 NLRB No. 163**
(E's presenting Ees with ptn to decertify U and asking them to sign it, violative)

Rockland Lake Manor, Inc. **263 NLRB No. 142**
(inducing and aiding Ees to prepare, sign and file decertification ptn, violative)

Wagner Distribution Services, Inc. d/b/a Distribution Services West **262 NLRB No. 096**
(E soliciting Ees to sign anti-U ptn that was submitted as decertification ptn and got her Ees to circulate ptn unlawful)

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 065**
(manager's falsly signing unit Ee's name, while in presence of another Ee, on showing of interest statement supporting decertification ptn)

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 068**
(manager's unlawful statements to Ees together with supervisor paying for phone call to Bd and his providing postage for decertification ptn held violative since conduct constituted unlawful assistance and encouragement in filing decertification ptn for Ees)

Marriott In-Flite Service, A Division of Marriott Corporation **258 NLRB No. 099**
(E holding meetings on work time at which supervisors spoke in favor of decertification in midst of negotiations for new contract, distributing booklets regarding decertification procedure, and suggesting actual language for decertification ptns, unlawful, notwithstanding supervisors not involved in solicitation of actual ptns and none were solicited on working time, since E planted idea of decertification and led Ees to believe E was sponsoring decertification effort while at same time making clear bargaining was over)

Jax Mold & Machine, Inc. **255 NLRB No. 129**
(asking Ee if he knew about decertification ptn and telling him that it would be advantageous for him to sign and those who didn't sign would be sorry)

Humana Corp. d/b/a Sunrise Hospital Medical Center **254 NLRB No. 176**

Conway Drilling Company **254 NLRB No. 019**
(encouraging Ees to decertify their collective-bargaining representative and bargain directly with E)

Times-Herald, Inc. **253 NLRB No. 066**
(no violation when, in response to question asked by supervisory member of unit, E told him there was way Ees could end strike and referred him to Regional Office of Bd from which he thereafter received decertification ptn which he filed; there was no evidence that any Ee reasonably believed

5060-7550—Cont.

supervisor was acting on behalf of management, and GC failed to present any evidence relating to circumstances in which the solicitations for decertification of U were made)

Ledford Construction Company, Inc. 261 NLRB No. 193

(circulating decertification ptn in presence of E's president gave rise to inference that E supported ptn)

Campo Slacks, Inc. and J & E Sportswear, Inc. 260 NLRB No. 087

(soliciting Ee to initiate decertification ptn, unlawful)

Talbert Manufacturing, Inc. 250 NLRB No. 026

(violation where E suggested to member of U negotiating committee that the Ees wait and file decertification ptn and then form their own Ee committee to bargain with E)

Nordstrom, Inc. JD-(SF)-143-82

(supervisor who drove Ee 30 miles to Bd office so that she could file decertification ptn violated Act)

Day-Mar Union, Inc. JD-464-81

(violation, where supervisor, unsolicited, informed Ee that U could be voted out through recourse to certain agency, presumably NLRB office, instructing Ee to call purported number of agency, persisted in matter by interrogating another Ee as to whether Ee had followed his instructions regarding calling agency, and when informed number was no longer in service, ascertained correct number, and ordered Ee on work time and premises to give correct number to Ee he had instructed to call)

Master Slack, Ltd. JD-(ATL)-8-81

(approving, condoning, supporting, and adopting Ee circulation and solicitation of signatures to decertification ptn during working time, and simultaneously prohibiting Ees from revoking their signatures to ptn on working time, violative)

Bill Fox Chevrolet, Inc. JD-767-80

(E president's efforts to initiate decertification ptn among Ees, violative)

N.L.R.B. v. Proler International Corporation 635 F.2d 351 (C.A. 5, 1981)

(violation where individual who wore supervisor's hard hat and was thought to be supervisor by at least one Ee invited Ees to luncheons at resturants away from plant at which Ees were urged to sign decertification ptn and E paid for luncheons, provided transportation to resturant and Ees were paid for time spent)

N.L.R.B. v. Alkon's I.G.A. Foodliner 651 F.2d 438 (C.A. 6, May 1981)

(E's sponsoring and participating in circulation of ptn among Ees withdrawing support from U and unilaterally announcing improved benefits after U won second election held violative as attempt to undermine U)

N.L.R.B. v. Maywood Plant of Grede Plastics 628 F.2d 1 (C.A.D.C.)

(E who had engaged in decertification campaign held not entitled to benefit of rule that filing of decertification may be by itself, a valid excuse for not bargaining with incumbent representative (provided that U's loss of majority status is not attributable to E's ULPs) but must also show some objective evidence of loss of majority status)

5060-7875 Deauthorization petition

Comay Drilling Company 254 NLRB No. 019

(encouraging circulation of petition to secure U-shop deauthorization election)

[illegible] Solicitation of resignation from union

Gayston Corporation 265 NLRB No. 001

(encouraging Ees to withdraw from U and to encourage other Ees to do so, distributing U withdrawal forms to Ees, assisting them in preparing them, and expressing gratitude for their doing so, unlawful)

Colorado Forge Corporation 260 NLRB No. 084

(requesting Ees that they withdraw or resign from U, violative)

Landmark International Trucks, Inc. 257 NLRB No. 170

(E who sent letter to Ees with instructions on how to withdraw from U, revoke checkoff authorizations, and form letter and envelope, with which to do so, violated Act as E had no valid reason for obtaining information and result was coercive)

Williams and Lane, Inc. 264 NLRB No. 074

(E who required Ees to resign from U before he would transfer them to new non-U facility violated Act)

N.L.R.B. v. Antonino Carilli, d/b/a Antonino's Restaurant 646 F.2d 1306 (C.A. 9, June 1981)

(E's statement to Ees that E was non-U and Ees could leave if they wanted to work for unionized E and informing Ee that she could withdraw from U by resigning or ceasing to pay U dues, unlawful, notwithstanding contention statements were in reality innocent and helpful responses to Ees' questions)

[illegible] Advising Ees not to sign authorization cards

Florida Steel Corporation v. N.L.R.B. 648 F.2d 233 (C.A. 5, June 1981)

(violation, where E informed Ees via videotape that Ees who had signed attendance register at U meeting had ended up unwittingly on U organizing committee implying that U had misused names of Ees despite fact Bd had held no misuse had occured, and admonished Ees *Don't sign card, attendance record or anything unless you know what it means and what effect it would have on you, your job, and your relationship with company*, since these constituted threats inasmuch as Ees might reasonably conclude that signing U card or attendance roster at U could have adverse effect upon job status)

5060-8700 Solicitation of revocation of dues checkoff authorizations

Gayston Corporation 265 NLRB No. 001

(causing information and materials to be delivered to Ees for purpose of their withdrawing dues checkoff authorizations, unlawful)

Texaco Inc. 264 NLRB No. 151

(E's proposing, drafting and typing Ees' ptn to withdraw from U and cancel checkoff authorizations and memorandum to terminate contract with U, allowing Ees to solicit and sign ptn during working time and providing supervisory assistance in making ptn available to potential signers constituted unlawful encouragement of and assistance to Ees in circulation of ptn to withdraw from U)

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant 259 NLRB No. 068

Landmark International Trucks, Inc. 257 NLRB No. 170

(E who sent letter to Ees with instructions on how to withdraw from U, revoke checkoff authorizations, and form letter and envelope, with which to do so, violated Act as E had no valid reason for obtaining information and result was coercive)

The Davis Company 249 NLRB No. 068

(supervisors' contacting individually those Ees thought most susceptible to pressure and advising them of their right to revoke dues-checkoff authorizations held, in context of other ULPs designed to discourage U support, not merely advising Ees of their rights but was unlawfully soliciting them to withdraw from U and revoke checkoff authorizations)

5060-8900 Solicitation of employee grievance or bargaining committee

American Display Manufacturing Co., Inc. 259 NLRB No. 006

(violation, where E suggested formation of committee of Ees to bargain directly with E rather than U representation)

Marhoefer Baking Company, Inc. 258 NLRB No. 071

(soliciting Ee grievance and proposing E-Ee committee to resolve their grievances in place of U, violative)

Timberline Energy Corporation 258 NLRB No. 037

(suggesting that Ees form company U and promised and paid immediate wage increase, violative)

General Electric Company 255 NLRB No. 092

(E's establishment and subsequent discontinuance of *sounding board* program upon U's filing of R ptn, unlawful, where purpose of program was to discourage support for U and discontinuance was in reprisal for Ee support of U; further, E's justification of discontinuance of program in order to avoid ULP charges, rejected, where program had been announced and implemented prior to filing of R ptn)

Mark Twain Marine Industries, Inc. 254 NLRB No. 144

(urging Ees to join concertedly to bargain rather through recognized exclusive bargaining representative, violative)

Mark Twain Marine Industries, Inc. 254 NLRB No. 144

(fostering creation of executive Ee committee to supplant U, violative)

Laredo Packing Company 254 NLRB No. 001

(E's personnel director suggesting to Ee that Ees replace U and U's secretary treasurer with Ee committee headed by Ee and promising Ee more hours of work, unlawful)

S. L. Industries Inc. and Extruded Products, Corp. 252 NLRB No. 151

(E's announcement, prior to election, to Ees that it was forming Ee grievance committee to handle Ee problems held violative of Section 8(a)(1) but not Section 8(a)(2) since no such committee was actually formed)

Weyerhaeuser Company 251 NLRB No. 097

(remarks calculated to encourage formation or use of Ees committee to deal with Ee problems as alternative to U, violative)

Talbert Manufacturing, Inc. 250 NLRB No. 026

(violation where E suggested to member of U negotiating committee that the Ees wait and file decertification ptn and then form their own Ee committee to bargain with E)

5060-8900—Cont.

Highland Foods, Inc. and Vickbilt Industrial Corporation JD-364-80
(E's agreement to proposal for election of a grievance committee violative, where E was impelled be desire to induce Ees to forsake U in exchange for improved working conditions)

Aeroglastics, Inc. v. N.L.R.B. 610 F.2d 455 (C.A. 6, 1980)
(suggestion to Ee to form in-house committee, violative, where made in effort to undermine U's organizational campaign)

Aeroglastics, Inc. v. N.L.R.B. 610 F.2d 455 (C.A. 6, 1979)
(suggestion to Ee to form in-house committee, violative, where made in effort to undermine U's organizational campaign)

5060-9100 Solicitation of withdrawal of union designation cards

Master Food Services, Inc., Noah Robinson, and Al Williams d/b/a A & W Catering Co. 263 NLRB No. 105
(E asking Ees if they knew any way to get union cards back, violative)

Pace Motor Lines, Inc. 260 NLRB No. 189
(violation where E coercively interrogated and threatened Ee and then subsequently prepared basic format for pts to be prepared and circulated by Ee whereby Ees disavowed their previously executed U designations)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division 251 NLRB No. 156
(violation where E repeatedly distributed withdrawal information to Ees in manner which allowed supervisor to observe which Ees elected to pick up the distributions)

Magnesium Casting Company, Inc. 250 NLRB No. 107
(statement to Ee not to sign paper for U and that E was going to get a lawyer to take papers back, unlawful, since Ee was thereby coerced not to sign U card with threat of legal action if he did)

Alumbaugh Coal Corporation 247 NLRB No. 112

Tartan Marine Company 247 NLRB No. 073
(E's posting notice informing Ees they *had an absolute and moral right to cancel their U cards and have them returned* and that if they desired to get their cards back, they should write letter to U with a copy to Bd asking that their cards be cancelled and returned to them and providing Us and Bd's addresses, not unlawful, where Ees had requested information; however, supervisor calling Ee's attention to notice, after Ee expressed desire to attend company meetings, violative)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South 247 NLRB No. 038

European Parts Exchange, Inc. JD-170-82
(threatening Ee with discharge if he did not return signed U authorization card which E had solicited to signer, unlawful)

J. P. Stevens & Co., Inc. v. N.L.R.B. 668 F.2d 767 (C.A. 4, Jan. 1982)
(attempts to encourage Ee repudiation of their authorization cards in testimony before Bd, unlawful)

L'Eggs Products, Inc. v. N.L.R.B. 619 F.2d 1337 (C.A. 9, 1980)

5062 REFUSAL TO RECOGNIZE AND/OR BARGAIN

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation 264 NLRB No. 063
(continuing to recognize Ees' former U which lost election as representative of commissary Ees despite Bd's certification of new U as exclusive bargaining representative of those Ees, violative)

Carbonex Coal Company 262 NLRB No. 189
(transferring operations to new mine 5 miles away without notifying U so that they could bargain over effects of transfer violative)

Southwest Security Equipment Corporation 263 NLRB No. 079
(E violated Act when it unilaterally discontinued abiding by hiring hall provisions of contract, making required contributions to fringe benefit trust funds, and failed to participate in contractual grievance and arbitration procedure)

Hemet Casting Company 260 NLRB No. 069
(grant of benefits to nonbargaining unit Ees while excluding represented Ees, not violative where benefits were extended to nonunit Ees for sound and lawful business reasons, and E left open possibility of negotiating with U relative to extending benefits but U never requested bargaining)

Lexington Cartage Company, Inc. 259 NLRB No. 088
(pts signed by all members of unit stating that they wished to renounce U not unusual circumstance that would justify E's refusal to bargain during certification year; further, pts signed after E's discharge of leading U adherent and where E had made no counterproposals to U contract proposals during two and a half months and several bargaining sessions)

Carlson Roofing Co., Inc. 258 NLRB No. 067
(where E is member of E association which had collective bargaining agreement with U, E not bound by contract as E never signed written consent required by E-association bylaws to bind E to that contract, never paid Ees contract wages, or checked off dues on their behalf, notwithstanding E did recruit 2 Ees to join U and paid their initiation fee, 3 months dues, and made health, welfare and pension fund contributions for them; furthermore, manner in which memberships were obtained precludes reliance upon them as evidence of U's majority)

Island Typographers, Inc. 252 NLRB No. 060
(E's unilateral action of terminating hot-type method of production and laying of its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

Amber Delivery Service, Inc. 250 NLRB No. 016
(institution of changes in methods of operation designed to change Ees' status to that of independent contractors, violative)

J. M. Tanaka Construction, Inc. 249 NLRB No. 023
(alter ego's refusal to bargain with certified U violative)

Maywood Do-Nut Co., Inc. 248 NLRB No. 080
(E engaging through its representatives in dilatory and surface bargaining, utilizing negotiators who did not have authority to consummate agreement w/o approval of E's president, and E's president failure to agree to terms and conditions negotiated by E's representative with U, violative)

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. 248 NLRB No. 039
(E's sale of 2 of its 30 trucks 3 months after strike which had no effect on Ee's job did not violate Act)

Cabinet Shop & Supply Co., Inc. JD-(SF)-262-82
(where successor-E never notified its Ees that it would establish initial terms and conditions of employment different from those of predecessor, its contributions to trust funds became established term or condition of employment and cessation of its contributions violated Act)

Motor Inn of Perrysburg, Inc. d/b/a Holiday Inn of Perrysburg v. N.L.R.B. 647 F.2d 692 (C.A. 6, May 1981)
(threat to terminate restaurant operation rather than bargain with U, not violative, since evidence disclosed that any such threat was made only to former Ees and did not suggest threat was to be recommunicated to then current Ees)

J. M. Tanaka Construction, Inc. v. N.L.R.B. 675 F.2d 1029 (C.A. 9, Apr. 1982)
(alter ego's unilateral withdrawal of recognition and repudiation of collective bargaining agreement, violative)

N.L.R.B. v. St. Anne's Hospital 648 F.2d 67 (C.A. 1, May 1981)
(supervisor's veiled threats to probationary operating room technician, who was member of nurses' group protesting hospital's on-call policy, that probation evaluation form meant that at end of probationary period supervisor could end probation, extend it, or recommend dismissal, unlawful)

5066 GOING OVER HEADS OF REPRESENTATIVES

5066-1400 Changes in terms of employment made unilaterally or by negotiations with co-union

Kango Corporation 265 NLRB No. 130
(concerning wage rates, hours, paid holidays, layoffs and recall of laid-off Ees, violative)

John Gear Chevrolet Co., Inc., d/b/a Parkwood Chevrolet 262 NLRB No. 034
(E who dealt directly with Ees about modification of contract terms relating to layoffs violated Act; this midterm modification also violative)

Anchortank, Inc. v. N.L.R.B. 618 F.2d 1153 (C.A. 5, 1980)
(E who refused to bargain by making unilateral changes in mandatory subjects *on ground that election is invalid does so at his own risk, and if election challenge proves fruitless, order by Bd based on refusal to bargain will be enforced*)

5066-1450 Unilateral withdrawal of concessions

Southside Electric Cooperative, Inc. JD-868-79
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

5066-1460 Wage increases

Southside Electric Cooperative, Inc. JD-868-79
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)
(E's granting wage increase to non-striking Ees, unlawful, in view of timing where granted on first day of strike, and fact that amount was greater than

5066-1480—Cont.

increases previously given, notwithstanding increase was granted to non-unit Ees of different corporation from E of Ees on strike where corporations held single E)

5066-2900 Dealing with individial strikers regarding reinstatement

Normike Contractors, Inc. **JD-(NY)-31-81**
(E's approaching ULP strikers and asking them to return to work w/o intent to bargain with U, violative since it was attempt to bypass U and deal directly with Ees)

5066-4200 Dealing with minority unions

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **264 NLRB No. 063**
(continuing to recognize Ees' former U which lost election as representative of commissary Ees despite Bd's certification of new U as exclusive bargaining representative of those Ees, violative)

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **264 NLRB No. 063**
(entering into and applying collective bargaining agreement, which contained U-security provision with Ees' former U which had lost election, and by enforcing that U-security provision, violative)

5066-5600 Direct appeal to strikers

Sadloff Publications, Inc. **265 NLRB No. 139**
(informing strikers that it might be possible to work out solution to strikers' complaints if strikers dropped U came back to work, but that their return to work depended on dropping U, abandoning strike and withdrawing ULP charges, unlawful)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(no violation where in reply to Ee's question as to *how long strike would last* E replied Ees *could come back to work anytime* and he *had police protection for strikers*)

Excavation-Construction, Inc. **248 NLRB No. 081**
(E which offered increased wages to picketing Ees if they returned to work violated Act)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(offering strikers wage increases to induce them to return to work, unlawful)

5066-6300 Denying plant access to union

Western Marine Electronics, Inc. **257 NLRB No. 057**
(E's refusal to allow U representative to enter into machine shop to talk with Ees there in relation to grievance, unlawful, E's proffered reason that visitors could not be allowed in machine shop because of nature of work performed there, spurious, since U representative did not state it was necessary to visit machine shop to process grievance and was allowed to talk with Ees as requested at another location)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(denial of access by U representatives to E's premises as provided in agreement unlawful)

N.L.R.B. v. Campo Slacks, Inc., and J & E Sportswear, Inc. **659 F.2d 1069(T) (C.A. 3, May 1981)**
(no error in Bd's finding that Es refused U representative access to plants in derogation of bargaining agreement)

5066-7000 Undermining authority of representatives

Camay Drilling Company **254 NLRB No. 019**
(E who sent letter to ULP strikers stating that it would never settle with U unless U withdrew its fines on Ees who crossed picket line violated Act as E may not communicate with Ees on issue which is internal U affair while it is engaged in ULPs, letter is attempt to undercut U's status)

5066-7020 Bargaining directly with employees

Autoprod, Inc. **268 NLRB No. 042**
(prior to decertification election, holding dinner meetings in small groups at which E discussed U pension and welfare plans and presented other plans to Ees, violative as it amounted to direct dealing with Ees and bypassing U)

John Geer Chevrolet Co., Inc., d/b/a Parkwood Chevrolet **262 NLRB No. 034**
(E who dealt directly with Ees about modification of contract terms relating to layoffs violated Act; this midterm modification also violative)

Eastern Food Service, Inc. d/b/a Stewart Sandwich Service **260 NLRB No. 103**
(asking Ee what his grievances were after U had been recognized, violative)

Holland American Wafer Company **260 NLRB No. 041**
(telling Ees that they should talk to E's president about what they wanted because U couldn't get anything for them so they should not wait for U, held violative as these statements tend to discourage U support, invite direct bargaining and portray U is futile)

Air-Vac Industries, Inc., Leeward Constructors, Inc., Air-Vac Environmental Limited **259 NLRB No. 051**
(E's promise to provide Ees hospital benefits himself rather than benefits provided by agreement with U held violative, since action was direct dealing with Ees)

American Display Manufacturing Co., Inc. **259 NLRB No. 006**
(violation, where E suggested formation of committee of Ees to bargain directly with E rather than U representation)

J. D. Candler Roofing Company, Inc. **258 NLRB No. 083**
(after E's purported withdrawal from U, individual bargaining with unit members, violative)

Highland Plastics, Inc. **256 NLRB No. 028**
(E who met with Ees' at their request to continue bargaining which had begun prior to strike and prior to advent of U did not violate Act even though he offered them 10 cents an hour raise as U, by being aware of this meeting and making no effort to stop it, acquiesced in E's bargaining)

Pacific Intercom Co. **255 NLRB No. 061**
(violation, where E, which had had succession of previous agreements with U entered into 8(f) agreement with U which matured into full bargaining relationship when majority of Ees in unit joined U, embarked on long journey of unlawful conduct aimed at deceiving U and depriving Ees of fruits of collective bargaining by entering into private arrangement with Ees to pay them less than contractual wage rate, and avoided use of U hiring hall; contention that majority of Ees were coerced by E to join U and E paid U dues, rejected, as such conduct 8(a)(2) violation; therefore E estopped from asserting its own unlawful conduct as defense to U's majority status)

Dimo Ambulette Service, Inc. **255 NLRB No. 002**
(E's conducting meeting during which it listened to Ee proposals concerning working conditions and instituted seniority system at time when U had already advised E that it represented majority of Ees, unlawful)

K & K Transportation Corp., Inc. **254 NLRB No. 087**
(E who suggested Ees should meet with him to work out problems, bypassing U violated Act)

Huck Manufacturing Company **254 NLRB No. 068**
(E who presented his position on check-off authorizations directly to assembled returning strikers violated Act where no U officials were present)

Camay Drilling Company **254 NLRB No. 019**
(encouraging Ees to decertify their collective-bargaining representative and bargain directly with E)

Armour Oil Company **253 NLRB No. 148**
(acting terminal manager's promise to drivers that E would give them more work and better trucks to drive provided U designate business agent other than individual presently representing Ees held violative, since promise was calculated to coerce Ees' choice of bargaining agent and had effect of weakening authority of U as bargaining agent; promise was direct dealing with Ees in derogation of U's status as bargaining representative)

Ely's Foods Inc., d/b/a Scotto's I.G.A. **249 NLRB No. 132**
(offering Ees benefits if they negotiate directly with E and withdraw support from U violative)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(E conducting survey among Ees represented by U regarding their feelings about working conditions and supervision, unlawful, where E's purpose was to learn what complaints might have caused renewed U activity and where, questioning *would lead Ees to believe E was inviting direct dealing thus suggesting that U support and activities were unnecessary*)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**
(statement to Ees that if Ees did not agree to pay increase in insurance he would close plant, violative)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E bypassing Ee committee and presenting contract proposals directly to Ees and asking Ees to accept or reject proposals and upon rejection presenting second proposal directly to Ees)

5066-7037 Solicitation and inducement of employees to accept offer

Camay Drilling Company **254 NLRB No. 019**
(aiding Ees in the preparation and circulation of petitions requesting U to consider E's last wage offer and using petitions as basis for filing ULP charge)

Top Manufacturing Company, Inc. **249 NLRB No. 085**
(E's negotiating settlement of grievance directly with Ee w/o affording U opportunity to be present, unlawful; E's contention U's failure to reply to prior settlement offer constituted waiver of bargaining rights, rejected)

5066-7080 Offering employees better terms than offered to union

5066-7050—Cont.

Walker Die Casting, Inc. **255 NLRB No. 034**
(offering striking Ees higher wages violative as it was inducement to abandon strike)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ct enforced Bd order finding that E had unlawfully interfered with Ees' rights to engage in protected strike by telling non-U Ee of E that striking Ees had been offered better insurance, wages, and retirement benefits if they would get out of U)

5066-7075 Interference with grievance settlement

Top Manufacturing Company, Inc. **249 NLRB No. 055**
(E's negotiating settlement of grievance directly with Ee w/o affording U opportunity to be present, unlawful; E's contention U's failure to reply to prior settlement offer constituted waiver of bargaining rights, rejected)

5066-7077 Failure to checkoff and remit dues and fees

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 065**
(E may unilaterally discontinue (dues) checkoff following expiration of collective bargaining agreement between E and U)

5072 INTERFERENCE WITH UNION OR COLLECTIVE ACTIVITIES

5072-0200 Interference with access to union

Arpro Company M/V Arctic Producer **265 NLRB No. 040**
(E's statement which in effect notified Ees that the U would be denied reasonable access to Ees living on the ship and that a U organizer might be subject to arrest if he attempted to board the ship, unlawful)

The Rosicrucian Press, Ltd. **264 NLRB No. 170**
(violation, where Ee asked supervisor if supervisor thought Ee's job was in jeopardy because Ee had complained to U about working with another Ee and supervisor replied *Let's put it this way, you did jeopardize your job by going over our heads*)

The Rosicrucian Press, Ltd. **264 NLRB No. 170**
(violation, where supervisor informed Ees in presence of Ee who had complained to U about working with another Ee that he *did not like them goint to U about matter and would not put up with it*)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(admonishing Ees not to speak with representative of U competing with incumbent U, violative)

Holiday Inn of Santa Maria **259 NLRB No. 089**
(instructing Ees not to go to U concerning work-related problems until after they had discussed problem with management, and inferring that their jobs would be jeopardized if they did not do so, violative)

Pantex Towing Corporation **258 NLRB No. 113**
(command by E that Ees not talk to U, violative since it amounted to thinly veiled threat of unexplicated but inherently implied reprisal for protected communications w/o limitation as to time or place)

SAS Ambulance Service, Inc., d/b/a Florida Ambulance Service, et al. **255 NLRB No. 031**
(E's imposition of rules designed to limit Ees' U and concerted activities by prohibiting Ees from contacting Us or other outside agencies and by prohibiting visitors in offices, violative)

Charles Deen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(prohibiting Ees from entering into work room of U activist held violative)

Tri-State Carpenters & Joiners District Council **250 NLRB No. 125**
(reprimanding and threatening Ee with discipline for seeking advice of and consulting with U representative violative)

Ford Motor Company, Automotive Division, Twin Cities Plant **JD-57-81**
(telling Ees not to associate with U committeeman or U caucus, unlawful)

American Interstate Freight Lines **JD-117-81**
(telling Ee not to go to U over employment dispute, violative)

Todd Pacific Shipyards Corporation **JD-(SF)-59-81**
(questioning and berating Ee about seeking U's help in obtaining an upgrading evaluation, unlawful)

Standard Bridge Corporation **JD-174-80**
(ordering Ees to secret themselves from U's business representative at E's jobsite to prevent Ees' attempts to become U members or to engage in U activities which did not interfere with their job duties, unlawful)

5072-0400 Ordering union representative out of plant or off jobsite

Williams and Lane, Inc. **254 NLRB No. 074**
(E who told Ee to eject any U representative who came to plant and sought to make contact with Ees violated Act)

Villa Avila **253 NLRB No. 010**
(E-who evicted U representatives from job site, threatened them with arrest, blocked egress from site violated Act where U representatives were performing legitimate duties on job site)

Giant Food, Inc. **252 NLRB No. 182**
(instructing Ees to eject U representatives from stores by force violative as demonstration of extreme measures E will employ to defeat U and E's power over Ees employment)

Victor Martinov and Ed Hancock, d/b/a Southland Properties; and Julian Elliott Construction Co., Inc. **JD-(SF)-166-81**
(denying U representation access to jobsite for purpose of policing its contract with subcontractor Ees and discussing with Ee violation of work rules and safety procedures, violative where U observed from street that Ee's mode of work was unsafe)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(before R election is held, E may nondiscriminatorily exclude from his property U representative who is to represent Ee in an interview; this result would obtain even if Ee's request was concerted activity)

5072-0500 Disclosure of employees who signed cards

Belcher Towing Company **265 NLRB No. 159**
(E's statement to Ees that it had right to ptn Bd to examine authorization cards and that *normally* cards would be verified by Bd agent and E, unlawful; E thereby planted in Ees' minds that their cards possibly would be seen by E; in bitterly contested proceeding herein, it was, or should have been, known to E's experienced labor personnel and counsel that there was no likelihood Bd would permit any E representative to see cards except for due process purposes, a situation that was avoided by U's withdrawal of 8(a)(5) charges)

Huntington Rubber Company, Division of New Idria, Inc. **260 NLRB No. 133**
(E violated Act when during Ee meeting he displayed sample U authorization card and stated that if U obtained signed cards from over 50% of Ees it would lay them out on E's desk as this conveys threat to Ees that identities of those who signed authorization cards would be revealed to E, followed by appropriate reprisals)

Huntington Rubber Company, Division of New Idria, Inc. **260 NLRB No. 133**
(E memorandum which stated that signed U authorization cards may be counted by Bd at public hearing did not violate Act as it contained no statements indicating that E would gain possession of cards or learn identities of card signers)

5072-0600 Supervisor solicitation of signatures on antiunion petition

Allen Brooks, d/b/a A.T. & K. Enterprises and Urban Enterprises **264 NLRB No. 164**
(E did not violate Act where it agreed to let Ees hold meeting at its office where it was unaware that purpose of meeting was to discuss U; also fact that supervisors distributed decertification ptn not violative as supervisors were U members, unit members and responsibility for such supervisor's conduct will not be imputed to E absent evidence that E encouraged, authorized or ratified such conduct)

Robertshaw Controls Company **263 NLRB No. 128**
(where supervisors were part of bargaining unit but Ees did not feel they were acting on behalf of management, their solicitation of Ees by circulating decertification petition is not attributable to E and thus not violative)

Antonopoulos, Incorporated d/b/a Roger's of Santa Clara **261 NLRB No. 060**
(supervisory Ee who distributed anti-U petition found to be acting on behalf of management, not Ees and her conduct violative especially where distribution accompanied by remark *that she like her job*)

Antonopoulos, Incorporated d/b/a Roger's of Santa Clara **261 NLRB No. 060**
(owner of company who solicited signature on anti-U petition violated Act)

Penn Color, Inc. **261 NLRB No. 098**
(where Ee remarked to fellow Ee, in presence of supervisor, asking latter Ee to sign anti-U ptn and stating that improved benefits and better pay would be obtained by all Ees when *trouble* was over, Bd held supervisor's own inquiry as to what fellow Ee's *problem* was and what imporved benefits he wanted unlawful, since supervisor thereby sought to induce Ee to sign anti-U ptn and promised better benefits and pay as reward for discontinuing U activity)

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant **261 NLRB No. 081**

Hydro Conduit Corporation **254 NLRB No. 048**
(circulation of anti-U ptn signed by 34 out of 38 Ees in unit and withdrawal of recognition of U based on ptn, not unlawful, since not attributable to E even if individual who circulated ptn held supervisor where individual was

5072-0600—Cont.

member of U and bargaining unit, was acting in concert with fellow Ees and not as representative of management in circulating ptn)

Douglas & Lomason Company 253 NLRB No. 039
(although it was not certain that it was supervisor who posted anti-U petition, there was sufficient circumstantial evidence to make that likely; his failure to rebut that necessary inference was persuasive to find violation)

Clyde Jensen & Shirley Jensen A Partnership d/b/a
Linda Vista Market JD-(SF)-232-82

5072-0700 Destruction of signed authorization cards

WWHT, Wometco Blonder Tongue Broadcasting
Corporation JD-(NY)-63-80
(destruction of signed authorization cards by supervisor who was repository for cards not violative where 90% of Ees indicated they wanted supervisor to destroy cards because they were disenchanted with U; act of destroying cards was not to benefit E but to protect the card signers)

5072-0800 Bribery

Nanticoke Homes, Inc. 261 NLRB No. 107
(attempt to bribe Ee spokesman in return for information regarding Ees' protected or U activitiy, unlawful)

Indian Head Lubricants, Inc. 261 NLRB No. 003
(offering Ees money if they would vote against U violative)

Gawley Industries, Inc. 260 NLRB No. 189
(giving $200 to Ee and telling him to give it to U representative and to tell him that when this blows over they'll be $300 more, violative)

Ruth's IGA Foodliner, Inc. 259 NLRB No. 015
(E bribed Ee to vote against U by giving Ee promissory note)

Humana Corp. d/b/a Sunrise Hospital Medical
Center 254 NLRB No. 176
(soliciting Ees to give false testimony before Bd concerning deauthorization ptn)

5072-0900 Removal of employees from bargaining unit

John R. Harland Company of Puerto Rico, Inc. 263 NLRB No. 187
(discharging principal U protagonist 2 days after election ptn was filed for refusing to accept position as supervisor on another shift, violative notwithstanding lack of direct unequivocal evidence of E knowledge of his U, activity as such reason was sham and it was incomprehensible that Ee capable of promotion to supervisor would be discharged for refusing such position; furthermore, supervisory deficiency not thereafter corrected)

5072-1000 Directing employees not to pay dues

Puerto Rico Hotel Association 259 NLRB No. 058
(supervisor's informing Ees who were musicians that they should not pay working dues to U, unlawful)

5072-1100 Influencing strike vote or action

Jax Mold & Machine, Inc. 255 NLRB No. 129
(promising Ees wage increases to vote against U strike, violative)

Hack Manufacturing Company 254 NLRB No. 088
(E's statement to returning strikers that if they struck again they would be permanently replaced violative as it made no distinction between economic strikers and ULP strikers)

Hack Manufacturing Company 254 NLRB No. 088
(E's statement to returning strikers that he had challenged their right to receive food stamps while they were on strike violative as harassment)

Armour Oil Company 253 NLRB No. 148
(terminal manager's remarks to three Ees that there would be no work w/o contract, not violative since words were equivocal and by themselves insufficient to support finding that alleged *lockout* was used by E to support its bargaining position for new contract; when statement made, E had every reason to believe U would strike at end of day when present contract terminated)

5072-1200 Requesting wage increases

Timet, A Division of Titanium Metals Corporation
of America 251 NLRB No. 137
(discharge of Ee who complained to supervisor about his raise and then circulated letter offering to represent Ees to management to obtain cost-of-living adjustment violative as Ee's action was intended to produce group activity and constituted concerted protected activity)

5072-1300 Refusing to hire applicants because of prior union adherence or activity

Storm Sons Construction Co., Inc. 260 NLRB No. 173
(E's refusal to hire U members violative, notwithstanding there may not have been any positions open as question of job availability is relevant only with respect to backpay obligation)

Civic Center Cleaning Co., Inc. 282 NLRB No. 110
(violation where E stated to Ee that Ees who were troublemakers and who had filed ULP charges with Bd would not be hired)

Ahmebala Forge, A Division of ABS Industries, Inc. JD-388-80
(industrial relations manager informing Ee that he would not have been hired if E had known he was son of U president, unlawful)

Monongahela Steel Corporation JD-392-80
(successor's refusal to hire applicant because while employed by predecessor he was leader of concerted group activity designed to establish level of wages and benefits and nature of working conditions under which they would be employed when successor took over, unlawful)

5072-1400 Solicitation of dues checkoff authorizations

Sanford Home For Adults 253 NLRB No. 153
(E violated Act where it threatened Ees with discharge if they did not sign U authorization cards)

5072-1500 Solicitation of opposition to union

Milton J. Garon and Richard B. Bergman d/b/a
Autoglass and Upholstery Co. 264 NLRB No. 022
(soliciting Ee to discourage other Ees' U activities, unlawful)

Wagner Distribution Services, Inc. d/b/a
Distribution Services West 262 NLRB No. 096
(E soliciting Ees to sign anti-U ptn that was submitted as decertification ptn and got her Ees to circulate ptn unlawful)

G & H Products, Inc. 261 NLRB No. 047
(E's questions to probationary Ee as to whether he would join striking Ees after his probationary period was over, and statements to him that he could only be dues paying U member rather than enthusiastic member violative)

Jackson Dairy Products Company 258 NLRB No, 172
(asking Ee to talk U down until at least four months later when E might be able to help Ees out some, unlawful)

Pine Valley Meats, Inc. 255 NLRB No. 061
(E's telling Ees that it could not tell them what to do when asked if they may be permitted to circulate anti-U ptn and subsequently thanking Ees who signed such ptn for their support, not unlawful)

Walker Die Casting, Inc. 255 NLRB No. 034
(inviting striking Ee to return to work and telling him that E would like to get rid of U and some Ees in U and suggesting another U and that E would like to run for at least one year w/o U violative)

Camay Drilling Company 254 NLRB No. 019
(encouraging Ees to decertify their collective-bargaining representative and bargain directly with E)

Camay Drilling Company 254 NLRB No. 019
(aiding Ees in the preparation and circulation of petitions requesting U to consider E's last wage offer and using petitions as basis for filing ULP charge)

Western Truck Services, Inc. 252 NLRB No. 096
(sponsoring and circulating petition to undermine U's representative status, violative)

Amber Delivery Service, Inc. 250 NLRB No. 016
(soliciting Ees to influence other drivers to support E rather than U)

Pilgrim Life Insurance Company 249 NLRB No. 140
(E's president informing Ee she did not have to sign U card if she did not want, unlawful)

Heatilator Fireplace, Division of Vega Industries,
Inc. 249 NLRB No. 047
(telling Ees not to attend U meetings, encourage U representation, or sign U cards, unlawful)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 057
(preparation and circulation of anti-U ptn during working hours and soliciting Ees to sign same held violative)

Tartan Marine Company 247 NLRB No. 073
(supervisor requesting that Ee inform other Ees about bad points of unionization especially seniority policy which E alleged could adversely effect Ees)

Fort Wayne Newspapers, Inc. 247 NLRB No. 085

Galax Apparel Corporation 247 NLRB No. 026
(directing Ees to discourage other Ees from supporting U, violative)

Hammond Plastic, Division of Carl Gordon
Industries, Inc. JD-883-81
(asking Ee to stop the U after reminding him that Ees had gotten everything they had wanted, unlawful)

Gary Concrete Products, Inc. JD-(ATL)-65-82
(supervisor who distributed one anti-U T-shirt to Ee who may have asked for shirt did not violate Act as this does not establish general pattern of supervisory involvement in soliciting Ees to wear T-shirt)

5072-1500—Cont.

Berco Industries, Inc. **JD-56-82**
(plant manager's soliciting Ee to talk to fellow Ee and tell him why U was *no good,* violative)

Mother Federal Credit Union **JD-(SF)-8-80**

Central Freight Lines, Inc. v. N.L.R.B. **653 F.2d 1023 (C.A. 5, Aug 1981)**
(E's instructing Ee to refrain from participating in U activities and *to remain neutral,* violative)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(E's suggestion that Ee would be better off by not joining U constitutes interference with Ee's freedom of choice for or against unionization and is unlawful)

5072-1600 Solicitation of revocation of authorization cards

Robert E. Johnson and Geneva H. Johnson, a Partnership, d/b/a Jolie Belts Company **265 NLRB No. 141**
(instructing Ees to stay away from U representative or give false information about their Ee status and to destroy their U authorization cards or retrieve them and resign their U membership, violative)

Paul Distributing Co., Inc. **264 NLRB No. 179**
(allegation that E requested Ee to contact U and inform it Ees had changed their minds and no longer wanted U representation, although not alleged in C, sufficiently related to subject matter of complaint and uncontrovertedly testified to at hearing to support finding that E solicited Ees to abandon U)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(after shutdown and resulting layoff following U's claim of majority, E's statement that if Ee wanted to work for E he would have to tear up his U card and during same interview unlawfully interrogated Ee)

Norncike Contractors, Inc. **JD-(NY)-51-81**
(E's transporting Ees to Bd's offices to assist them to reclaim their authorization cards, violative regardless of whether Ees requested advice and/or assistance from E)

5072-1700 Solicitation of revocation of dues checkoff authorizations

The Davis Company **249 NLRB No. 068**
(under circumstances herein, assistance to Ees in withdrawing their dues checkoff authorizations, unlawful)

5072-1900 Use of polygraph test

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

N.L.R.B. v. Fixtures Manufacturing Corporation **669 F.2d 547 (C.A. 8, Jan. 1982)**
(ct rejects Bd's theory that *Ee's wrongdoing, however serious, is automatically immunized from results of polygraph test given for impermissible reason,* i.e., Ee was ordered to take test on day E received written report of his U activity)

N.L.R.B. v. Fixtures Manufacturing Corporation **669 F.2d 547 (C.A. 8, Jan. 1982)**
(Bd properly rejected as contrived, E's timing of polygraph test, i.e. Ee spilled ink on another's book, where additional reason was investigation of thefts which had ceased two weeks earlier)

5072-2000 Prohibiting employee's discussion about wages or other conditions of employment, or about union

Donnelly Manufacturing Co. Division of Brockhouse Corp. **265 NLRB No. 196**
(threat to discharge U adherents because of their discussion of amount of their pay raises with other Ees, unlawful)

Donnelly Manufacturing Co. Division of Brockhouse Corp. **265 NLRB No. 196**
(prohibiting talking about Ee wage increases with other Ees unlawful)

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company **265 NLRB No. 106**
(instructing Ee not to speak about U while on the job, not unlawful, where E was motivated to act on basis of coworker's complaint and E had warned Ee against distribution on work time)

International Business Machines Corporation **265 NLRB No. 107**
(discharge of Ee for publishing E's confidential wage information which he had received annoymously, not unlawful, where E established legitimate business justification for its policy; E does not prohibit Ees from discussing own wages or attempting to determine what other Ees paid, rather has chosen not to inform Ees what it pays others; therefore, E treats as confidential information compiled for its internal use. Ee knew documents were confidential and was aware of prohibition against disseminating such material. Furthermore, under circumstance that info obtained, Ee couldn't believe possession authorized)

Scott Glass Products, Inc. **261 NLRB No. 129**
(institution of rule against discussing pay raise which had been announced at extraordinary meeting called after E received U's demand for recognition, unlawful)

Herider Farms, Inc. **261 NLRB No. 113**
(seeking to prevent discussion of U on break time and warning that organizing attempts would be futile, violative)

Overnite Transportation Company **261 NLRB No. 093**
(telling Ee that E was angry about distribution of U cards and not to discuss Us with other Ees, violative)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(telling Ees not to talk about any U, violative)

Morco, Inc. d/b/a Towne Plaza Hotel **258 NLRB No. 016**
(announcing rule prohibiting Ees from discussing U affairs during company time, violative)

McLean Trucking Company **257 NLRB No. 179**
(terminal manager telling Ees not to go to Ee, who had lodged several complaints with E concerning Ees' working conditions, but if they wanted their problems solved, they should come to either him or their steward, violative)

Gorman Machine Corporation **257 NLRB No. 010**
(reprimanding Ee for talking to fellow Ee on behalf of U, violative)

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising **257 NLRB No. 022**
(telling Ees they had no right to know wages of similarly employed Ees violative)

Robert Bosch Corporation **256 NLRB No. 158**
(informing Ees that E's rules prohibited them from discussing U during company time, unlawful)

Samuel J. Wade, an Individual d/b/a Major Cab Company **255 NLRB No. 181**
(accusing cab driver who was U adherent of flagging down other cab drivers in order to talk to them about the U, violative)

Koch Supplies, Inc. **249 NLRB No. 160**
(discharge of Ee who complained to management about superior terms of employment given to new Ee violative where Ee had discussed subject with other Ees, mentioned to E that its action was detrimental to Ee morale and was thus not aimed at solving personal problem but included welfare of others)

D & D Supermarket, Inc. **JD-292-82**
(by warning Ee not to talk to other Ees about working conditions, E effectively precluded Ee from engaging in concerted activity and thereby violated Act)

Harvard Cooperative Society, Inc. **JD-246-82**
(asking Ees not to agitate for U because he would have plenty of opportunity to air his opinions in Ee meetings, violative as restraint on Sec. 7 rights)

Grand Champion Meat Co., Ltd., Division of B-Tex Packing Co., Inc. **JD-87-82**
(forbidding Ee to speak about U matters in circumstances in which Ees were otherwise permitted to converse on other subjects, violative)

New York State United Teachers **JD-(NY)-83-81**
(reprimand of Ee who had filed grievance regarding Ees' job assignments which was then in arbitration for telling delegates of affiliated organizations of E about arbitration case and which E did not want divulged, violative, since Ee's remarks concerned grievance, did not disparage his E nor reach level of impropriety or disloyalty to E which would result in remarks losing its protected nature)

Floyd Monroe & Sons, Inc. **JD-80-81**
(supervisor telling Ees that they were not to discuss their *problems* among themselves but were to take them only to supervisors held violative, since instruction prevented Ees from discussing matters concerning their wages, hours or other conditions of employment among themselves)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(rule prohibiting Ees from discussing E's wage schedule with outsiders, unlawful; E's contention public knowledge of wage rates would assist competitors, rejected, where E in mounting its annual wage survey gave out its own data to competitors)

N.L.R.B. v. Eastern Steel Company **671 F.2d 104 (C.A. 3, Feb. 1982)**
(forbidding Ees to talk about U until *after* election, unlawful)

Atlas Metal Parts Co., Inc. v. N.L.R.B. **660 F.2d 304 (C.A. 7, Sep. 1981)**
(E's telling Ee to stop talking about U business on company time held promulgation of discriminatory rule and unlawful)

5072-2000—Cont.

N.L.R.B. v. Chem Fab Corporation — **691 F.2d 1252 (C.A. 8, Nov. 1982)**

(substantial evidence in record as whole supported Bd findings that E unlawfully promulgated rule prohibiting Ees to discuss the U during working time)

5072-2200 Interference with right to refrain from union activities

A & T Manufacturing Company — **265 NLRB No. 201**

(refusal to permit former U steward to accompany Ee to interview which resulted in Ee being interviewed about decline in his production violative of Section 8(a)(1) since Ee denied opportunity to have fellow Ee present during course of interview which could reasonably lead to discipline and in view of continued interview of Ee after request, notwithstanding Ees of E were unrepresented; however, no violation of Section 8(a)(5) since E had lawfully withdrawn recognition from U)

C. R. Adams Trucking, Inc., and Michael Cates — **262 NLRB No. 067**

(telling Ees that they must join U prior to 30-day grace period, or they will be discharged, violative)

Versatile Services, Inc. — **258 NLRB No. 109**

(threatening Ees with and then discharging them for refusal to join U violative notwithstanding U security in collective-bargaining agreement where 30 day period had not yet expired; they had not been informed of their obligations under provision or given a reasonable time to comply with provision)

United States Postal Service — **258 NLRB No. 193**

(violation where supervisor threatened U steward with disciplinary action for refusing to attend meeting unless informed in advance of purpose, since meeting did not concern supervisor-Ee relationship which existed between them as supervisor was addressing Ee in his U steward capacity and by threatening Ee in connection with his performance as U steward interfered with his Sec. 7 rights to engage or not engage in U activities as steward)

New York Laboratory Supply Company, Inc. — **JD-416-81**

(E which maintained agreement with U that provided that the agreement applied only to members of U, and that Ees who are U members will receive different wages than Ees who are not U members violated Act as this encouraged membership in U and interfered with Ees Sec. 7 rights)

N.L.R.B. v. Maui Surf Hotel Company and ILWU Local 142 — **601 F.2d 603(T) (C.A. 9, 1979)**

(Ee and U which enforced attendance at contractually mandated *work stop* meeting by requiring Ees who refused to attend meeting to sign out and lose 1 hour's pay violated Act because Ees who refused to sign out were threatened with disciplinary action)

5072-2300 Interference with employees' right to bargain through representatives of their own choosing

Bedford Farmers Cooperative — **259 NLRB No. 165**

(manager's warning Ee to —*stay away from the U* coupled with remark that he (manager) was acting to defeat U (at same time E was bargaining with U) held violative, since manager was using his position as supervisor to restrain Ee from supporting U)

The Maumee Stone Company, Union Quarry Division — **259 NLRB No. 150**

(E's refusal to permit U steward to participate in bargaining negotiations, violative, notwithstanding he was not Ee when he was asked to leave negotiation session, since he had been chosen, as U steward, to represent Ees in bargaining)

Mark Twain Marine Industries, Inc. — **254 NLRB No. 144**

(violation where E's attorney told Ees to take their problems to company vice-president or their foreman rather than U)

Laredo Packing Company — **254 NLRB No. 001**

(E's personnel director suggesting to Ee that Ees replace U and U's secretary treasurer with Ee committee headed by Ee and promising Ee more hours of work, unlawful)

Armour Oil Company — **253 NLRB No. 148**

(acting terminal manager's promise to drivers that E would give them more work and better trucks to drive provided U designate business agent other than individual presently representing Ees held violative, since promise was calculated to coerce Ees' choice of bargaining agent and had effect of weakening authority of U as bargaining agent; promise was direct dealing with Ees in derogation of U's status as bargaining representative)

Classic Truck Rental Corp. — **251 NLRB No. 056**

(solicitation by Ee asking Ees to sign ptn to get rid of incumbent shop steward and elect new steward, not unlawful, even though Ee solicited Ees in office in which E was present, since there was no evidence that E was aware of what was going on, E's implication in attempt to get rid of steward would not be assumed merely because E was present, E otherwise did not indicate involvement, and there was no evidence Ee was acting as E agent)

Skycap Services, Inc., d/b/a Reed's Baggage Security Service — **JD-(SF)-309-80**

(refusal to bargain with certified U, violative, where E was not free to terminate bargaining process merely because it had assertedly received information suggesting erosion of Ee support for U)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. — **658 F.2d 968 (C.A. 4, Sept. 1981)**

(plant manager's statement to U officials that contract negotiated with U negotiating committee, having outsiders from E's other plants participating, would be less favorable to plant Ees than one negotiated with only local U members, unlawful; Bd's findings that manager made statement in order to discourage multiplant bargaining are based on credibility findings which are peculiarly w/i province of Bd and are therefore entitled to acceptance on review, and Bd properly considered probability that manager's comments would have prticularly chilling effect on U officials)

5072-2400 Interference with employee's right to representation during meetings with employer

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company — **265 NLRB No. 189**

(Bd applied *Illinois Bell Telephone* standard for determining whether reinstatement and backpay were appropriate remedies for discharge following Weingarten violation as here – namely that where GC has shown that Ee was disciplined or discharged for conduct which was subject of unlawful investigatory interview, burden shifts to E to show that its decision to discipline or discharge was not based on information obtained at the interview; Bd found that discharge was not based on such information and only c/d order appropriate)

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company — **265 NLRB No. 189**

(denying Ee's request that U representative or fellow Ee be present at investigatory interview which Ee reasonably believe might result in disciplinary action, violative)

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company — **265 NLRB No. 189**

(contention that discharge following *Weingarten* violation herein was governed by case wherein Ee was disciplined for not satisfactorily explaining alleged misconduct, rejected since Ee here was discharged for cause, and information obtained during investigatory interview did not add to what E already knew)

Tokheim Corporation — **265 NLRB No. 210**

(denying Ee any representation at discharge meeting when Ee asked for *witness*, not unlawful, where sole purpose of meeting was to inform Ee of her discharge and discussion which ensued after Ee was informed of discharge was insufficient to convert meeting into interview requiring *Weingarten* protections regardless of whether Ee merely requested *witness* as distinguished from a *representative*)

Van Dorn Plastic Machinery Co., Division of Van Dorn Company — **265 NLRB No. 036**

(no *Weingarten* violation where E initiated investigatory interview and informed Ee of interim suspension, thus putting him on notice of forthcoming disciplinary action, and Ee requested presence of representative, which E denied, and suggested alternative discipline, which E rejected, reiterating that Ee would be suspended for period yet to be determined; thus Ee did not request representation until after he was informed of suspension)

Bridgeport Hospital — **265 NLRB No. 054**

(E lawfully issued warning notices to security guards solely for walking out of meeting on instructions of U representative because E denied Ees request to have steward present at meeting to discuss vandalism on E's property and suspicions that guard themselves might be involved in such incidents; though walkout was concerted, Ees had been assured meeting was not disciplinary investigation, and thus, walkout not protected because not done to protest term or condition of employment)

Northwest Engineering Company — **265 NLRB No. 026**

(E did not violate Act when it denied request of Ee to have U representative present during lunchroom meeting of group of Ees, purpose of which was to review work rules; *Weingarten* rights do not attach when purpose of meeting is not investigatory and here no questions were asked and no discipline meted out; and fact that meeting may have been prompted by Ee misconduct does not establish that it was investigatory or disciplinary. *Weingarten* not concerned with punishments for future offenses but relates to past conduct for which Ees fear current sanctions)

Consolidated Freightways Corporation of Delaware — **264 NLRB No. 076**

(conducting investigatory interview of Ee who was only steward at E's facility after Ee validly requested U representation, violative, where, notwithstanding fact that there was no other U representative readily available, E failed to meet legal obligation to stay interview or to offer Ee meeting w/o steward or no meeting at all)

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McLean Hospital, A Division of Massachusetts General Hospital **264 NLRB No. 068**
(no violation of Ee's *Weingarten* rights at investigatory interview where Ee's request at first interview was not for participation of witness or representative on his behalf, but for postponement of interview so that he could secure legal advice of privat counsel, and at second interview he was offered opportunity to forego the interview entirely but offered to participate voluntarily)

Southwestern Bell Telephone Company **264 NLRB No. 067**
(E request to proceed with investigative interview with Ee in face of U representative's request for delay in order to have pre-interview conference with Ee, not unlawful, where GC did not prove that E denied Ee right to U representation by barring his representatives from meeting with him before investigative interview began)

Southwestern Bell Telephone Company **264 NLRB No. 067**
(E telling U representative to stop attempting to answer questions directed at Ee during investigative interview, not unlawful, where E's directive was aimed only at maintaining sufficient order in meeting so that it could proceed courteously and w/o chancing a disruption of its purpose)

Bodolay Packaging Machinery, Inc. **263 NLRB No. 038**
(E violated Act where it denied Ee's request for representation at an interview which Ee believed would lead to discipline, compelled Ee to attend interview w/o representation, and issued oral written warning as result of interview)

L. A. Water Treatment, Division of Chromalloy American Corporation **263 NLRB No. 022**
(E's denial of Ee's request for presence of former U steward at disciplinary interview, violative where no other U representative or steward was available at time of interview, E made no attempt to locate steward and did not offer to delay interview until steward could be located, contract did not require presence of U representative at interviews, and E and U had reached no oral understanding establishing procedure for representation at interviews)

L. A. Water Treatment, Division of Chromalloy American Corporation **263 NLRB No. 022**
(E's discharge of Ee not violative, notwithstanding E's unlawful denial to him of representative at interview and GC's establishing make-whole remedy appropriate where GC did not establish that Ee was discharged for requesting U representative or for engaging in other protected activity)

E. I. Dupont De Nemours **263 NLRB No. 015**
(denial of Ee's request for witness at meeting with supervisor and with E's industrial relations counsel, unlawful, where Ee had reason to believe meetings would involve discipline, and notwithstanding no U was in picture representing Ees)

Interstate Security Services, Inc. **263 NLRB No. 002**
(where interview was such that Ee could reasonably believe it result in disciplinary action against him, he has the right to request representation at that meeting, notwithstanding E is non-U facility; thus his refusal to participate in meeting is protected and his discharge for such refusal violative)

E.I. Dupont De Nemours and Company, Inc. **262 NLRB No. 126**
(denying Ee's request for witness at interview which Ee reasonably believed might result in disciplinary action and thereafter requiring him to sign interview record which might result in further discipline and also undermine his position in proceeding to determine propriety of discipline imposed on him, unlawful; request for witness was sufficient to constitute request for representation under *Weingarten* and doctrine applies to unrepresented, as well as represented, Ees)

E. I. Dupont De Nemours **262 NLRB No. 123**
(refusing Ee's request to permit fellow worker to accompany him to interview with supervisor violative, since Ee had grounds to believe that matter to be discussed at interview concerning his posting of material on bulletin board might result in disciplinary action against him)

Pacific Telephone and Telegraph Company **262 NLRB No. 125**
(refusing to permit Ees to consult with their U representatives prior to the subject investigatory interviews, unlawful)

Pacific Telephone and Telegraph Company 262 NLRB No. 127
(E violated Act when it refused to inform two Ees or their U representative of the nature of the matter which was being investigated and on which they were to have an interview with E; this follows Bd's finding in *Climax Molybdenum Company* 227 NLRB 1189, which held that Ees have Sec. 7 right to consult with their U representative before any interview to which *Weingarten* rights attach and for consultation to be meaningful, Ees must be informed of nature of misconduct and a *general statement as to the subject matter of the interview . . . will suffice*)

Pacific Telephone and Telegraph Company **262 NLRB No. 127**
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Materials Research Corporation **262 NLRB No. 122**
(in absence of U representation, conducting investigatory interviews with Ee after refusing his request that co-worker assist him held violative as unrepresented Ees have same *Weingarten* rights as represented Ees)

Materials Research Corporation **262 NLRB No. 122**
(interview is for investigatory purposes where E elicits information which provides further basis for any discipline meted out notwithstanding E may have already made up its mind to discipline Ee)

Salt River Valley Water Users' Association **262 NLRB No. 129**
(E who denied Ee's request for U representative at disciplinary meeting and then discharged him for refusing to answer questions at interview violated Act because Ee was engaged in protected concerted activity when he refused to participate in interview (no interview held to have occurred) w/o presence of U representative and discharge was for this refusal not for underlying misconduct)

Gulf States **261 NLRB No. 119**
(denial of U representative at meeting to inform Ee of previously made decision to discipline him, violative, where E's additional conduct at meeting of delving into Ee's justification for his actions and, in effect, sought further facts in support of its actions against Ee removed meeting from narrow holding of *Baton Rouge Water Works Co.*, 246 NLRB 995, and, accordingly, a right to U representation attached)

Volkswagen of America, Inc. **261 NLRB No. 036**
(refusal to permit U and Ee subject to discipline, upon request, private consultation immediately prior to Ee's disciplinary interview, in accordance with established practice, violative)

ITT Lighting Fixtures, Division of ITT Corporation **261 NLRB No. 034**
(under *Weingarten*, if Ee refuses interview (with E) w/o representative, E is free to proceed as it chooses as long as it does not base discipline on (Ee's) refusal)

ITT Lighting Fixtures, Division of ITT Corporation **261 NLRB No. 034**
(meeting of supervisors and Ee held *investigatory* and not disciplinary where Ee was questioned about his conduct and suspension was announced at second meeting; assuming that only 1 meeting was held and E made up its mind beforehand to discipline Ee, questioning Ee for some 10 to 15 minutes about this conduct went beyond limits prescribed by Bd for disciplinary interview in seeking facts or evidence to support disciplinary action; therefore, Ee requesting representation during meeting, which was denied, was exercising his Weingarten rights under Sec. 7)

United Technologies Corporation **260 NLRB No. 196**
(by denying Ees assistance of U representative and allowing latter to be only a non-participating observor in interviews which Ees reasonably believed might result in disciplinary action, unlawful)

St. Francis Hotel **260 NLRB No. 174**
(where E and U had entered into settlement agreement guaranteeing Ees *Weingarten* rights, E did not engage in post settlement violation when it issued memorandum to supervisors which set forth their obligation under settlement agreement to include giving Ee opportunity to have U representative present at disciplinary meeting, setting forth role of shopsteward as observer, assisting Ee to answer questions but who was not allowed to speak for Ee; although memorandum is ambiguous it was never communicated to Ees, no Ees were aware of its existence there is no evidence that Ees could have been misled by memorandum to forego their *Weingarten rights*)

United States Postal Service **260 NLRB No. 030**
(requiring Ee to take part in an investigatory interview where Ee had reasonable grounds to believe that matter to be discussed might result in her being subject of disciplinary action and failing to honor her request to have U representative present, violative)

E. I. Du Pont De Nemours and Company **259 NLRB No. 161**
(E violated Act when he refused Ees request to have U steward present at investigory interview, an interview he reasonably feared prospect of discipline)

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(*Weingarten* rights not available to Ee being reprimanded for tardiness where Ee waived such rights by saying *I'm late again* then said *I know I'm wrong* and waived his right to a witness (to reprimand) when supervisor offered it: Ee's disclosure was not result of any E questioning; furthermore E had made up its mind already to issue reprimand when Ee told to sign written reprimand)

Taracorp Industries, A Division of Taracorp, Inc. **257 NLRB No. 049**
(rejecting Ee's request to have U agent present during investigatory interview, violative)

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Sun Petroleum Products Company, A Division of Sun Oil Company of Pennsylvania **257 NLRB No. 048**
(indefinite suspension of Ee who refused to work overtime not violative notwithstanding Ee requested presence of witness at interview called to discuss his refusal and E refused, because although *Weingarten* rights would normally attach where as here the Ee did not know what the motive of interview was, in this instance no meeting took place and E conducted an independent investigation of Ee's case, making its decision based on results of that investigation which is its right under *Weingarten*)

Sun Petroleum Products Company, A Division of Sun Oil Company of Pennsylvania **257 NLRB No. 048**
(by going from plant floor to supervisor's office but not entering office for investigatory meeting, Ee did not lose his *Weingarten* rights)

Colgate-Palmolive Company **257 NLRB No. 028**
(refusal to permit Ees to consult with their U representative prior to investigatory interviews which they reasonably believed would result in disciplinary action, unlawful)

United States Postal Service **256 NLRB No. 012**
(denial of Ee's request for U representation at disciplinary interview, unlawful, where there was no waiver of U representation consonant with Bd standards for waiver of Ee's Weingarten rights; even if contract could be interpreted as waiving Ee's rights of U representation, it was not clear that waiver would apply herein since contract waiver was ambiguous; moreover, E had reasonable fear of discipline in view of prior similar situation, and E not only denied request but also failed to offer Ee option of continuing interview unaccompanied by U representative or having no interview at all)

Price Pfister, A Division of Norris Industries **256 NLRB No. 021**
(E's refusal to allow Ee to have U representative present at meeting to inform her of suspension violative where although E had made decision to suspend Ee prior to meeting it began meeting with question creating investigatory meeting)

Roy H. Park Broadcasting of Roanoke, Inc. **255 NLRB No. 036**

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**
(disciplinary interview held prior to other meetings with E violative, but later meetings which were confined to announcement and issuance of previously decided disciplinary actions only, not violative)

Mark Twain Marine Industries, Inc. **254 NLRB No. 144**
(no violation where E asked Ees to meet with him after work to discuss unspecified problems, there was no indication that reprimand or punishment was contemplated and E dropped matter after Ees refused to meet with him unless U representative was present)

United States Postal Service **254 NLRB No. 050**
(violation of *Weingarten* rights where E directed requested U representative to remain silent during investigatory interview)

Montgomery Ward & Co., Inc. **254 NLRB No. 102**
(E who held investigatory meeting with Ees and refused to allow them to have U representative present while he questioned them regarding stolen merchandise and case violated Act; moreover, waiver Ees signed at beginning of interview, agreeing to be interviewed and acknowledging that they were free to leave at anytime does not constitute waiver of *Weingarten* rights where request for U representation made subsequent to signing)

Montgomery Ward & Co., Inc. **254 NLRB No. 102**
(no violation despite investigatory nature of interview where Ee did not request presence of U representative at interview)

Prudential Insurance Company of America **254 NLRB No. 020**
(after accusing Ee of insubordination and asking for resignation, violation by denying representation, and by deliberately and forcefully blocking door so Ee could not leave)

Pacific Gas & Electric Company **253 NLRB No. 154**
(E's denial of Ee's request for U representative at investigatory interview, not unlawful, where Ee refused assistance of on-site steward and insisted on presence of off-site steward who was not readily available because he was at distant location)

Appalachian Power Company, John E. Amos Plant **253 NLRB No. 135**
(in *Weingarten* SCt endorsed Bd's view that *Ee* must request representation)

Appalachian Power Company, John E. Amos Plant **253 NLRB No. 135**
(denial of Ee's request for presence of U steward at disciplinary interview with maintenance superintendent not violative where Ee's call to U steward prior to interview was not effective invocation of Ee's *Weingarten* rights, since maintenance superintendent was not *privy* to call to U steward; therefore, request not directed to official who is in position to grant or deny request)

Stewart-Warner Corporation **253 NLRB No. 016**
(*Weingarten* rights do not attach to meeting between supervisor and Ee intended to clarify Ee's duties or to set forth plant safety rules with no disciplinary overtones)

Penn-Dixie Steel Corporation, Joliet Bar Mill Division **253 NLRB No. 012**
(requiring Ee to participate in interview conducted by detective agency to determine use of drugs in plant held violative, where Ee's request for U representation during interview were not granted and Ee signed confession of misconduct and resignation)

Kahn's and Company, Division of Consolidated Food Co. **253 NLRB No. 004**
(denial of Ee's request for U Representative during investigative interview in which he was discharged, violative; discharge itself is not independent violation of 8(a)(1) where it is unrelated to exercise of *Weingarten* rights)

United States Postal Service **252 NLRB No. 014**
(E's refusal to allow, upon Ee's request, Ee's U representative to accompany Ee during *fitness for duty* examination, not unlawful since examinations were not part of disciplinary procedure and not w/i purview of *Weingarten* where, although examinations were prompted by problems with personnel and might result in recommendations as to Ees' future work assignments, they were not meant to form basis for disciplinary action and did not include investigatory questions or envision E-Ee confrontation)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(denying Ee's request for representation at meeting which he reasonably believed would result, and which resulted, in disciplinary action against him, not violative where, unlike E in *Baton Rouge Water Works Company*, E herein did not reach final, binding decision concerning specific discipline prior to meeting with Ee, nor did it merely inform Ee of any decision; in fact, E changed originally announced discipline from discharge to written reprimand upon investigating the matter further and asking Ee questions about his alleged misconduct)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(violation, where Ee reasonably anticipated his meeting with E to result, in disciplinary action against him, E held the meeting with Ee w/o granting Ee's request for representation, and E actually imposed discipline at such meeting)

General Motors Corporation **251 NLRB No. 121**
(E proceeding with interview after Ee requested U representation interfered with Ee's *Weingarten* rights; no voluntary waiver of these rights occurred where Ee was constrained to respond to E's inquiries)

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company **251 NLRB No. 122**
(no violation of Ee's right to have representative at interviews with E concerning Ee's suspension and then discharge for excessive tardiness where purpose of interviews was to announce and implement previously determined disciplinary action; E had decided respectively to suspend and to discharge Ee before meetings, on basis of facts which it had obtained w/o talking to Ee; see *Baton Rouge Water Works* 246 NLRB No. 161 (1979))

Roadway Express, Inc. **251 NLRB No. 138**
(supervisor's refusing Ee's request for U representation during interview regarding Ee's suspension for violating E's rule concerning coffee breaks while driving truck held violative, since interview was disciplinary rather than investigative; disciplinary action had to be taken if violation of E's rule had in fact occurred)

Amoco Texas Refining Company **251 NLRB No. 202**
(deferral to arbitrator's decision that Ee was obligated to obey supervisor's order to step aside for private conversation between themselves w/o U steward even though supervisor did not answer Ee's question of whether conversation would involve discipline since award not repugnant to Act)

Kraft Foods, Inc. **251 NLRB No. 006**
(effectively depriving Ee, who was involved in forklift accident and fight with another Ee, of his right to U representation at investigatory interview which Ee reasonably believed might result in disciplinary action unless U representative was present, violative)

Texaco, Inc. **251 NLRB No. 063**
(E who instructed U representative that he must remain silent during interview of Ee relating to his possible misconduct on job violated Act as *Weingarten* right to representation includes not only presence of representative but also active assistance where confrontation threatens Ee's job security)

Texaco, Inc. **251 NLRB No. 063**
(E who required U representative to remain silent during meeting with Ee held solely for purpose of informing him of 3-day suspension did not violate Act as E is not statutorily obligated to furnish representation at such interview and thus fact that representative was required to remain silent irrelevant)

Southwestern Bell Telephone Company **251 NLRB No. 061**
(E who insisted that U steward remain silent during investigatory interview violated Act as mere presence of steward while Ee was being interrogated about alleged theft of company property is insufficient to alter imbalance which SCt sought to alleviate in its *Weingarten* decision)

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Southwestern Bell Telephone Company **251 NLRB No. 061**
(denying Ee presence of U steward at meeting between E and Ee not violative where sole purpose of meeting was to inform Ee of her discharge as *Weingarten* does not apply to meetings held for such purposes)

Illinois Bell Telephone Company **251 NLRB No. 128**
(Ee entitled to have any Ee present with her at disciplinary meeting with E and E's refusal to allow anyone but Ee with official U status be present, violative)

Southern Bell Telephone and Telegraph **251 NLRB No. 159**
(refusal of Ee's request for U representative to be present at investigatory meeting made when Ee became aware that meeting might *result in disciplinary action* against her, and imposition of discipline for conduct which was subject of interview, violative)

Coyne Cylinder Company **251 NLRB No. 198**
(E's interview or Ee violated Ee's *Weingarten* rights where, prior to interview, no final decision had been made whether to discharge Ee for smoking marijuana during his lunch breaks and E denied Ee's request made during interview to have U representative present during remainder of interview)

Coyne Cylinder Company **251 NLRB No. 198**
(*Weingarten* rights do not extend to allowing Ee to produce witnesses on his behalf)

Coyne Cylinder Company **251 NLRB No. 198**
(where other Ees were discharged for same offense charging party accused of, he had reasonable basis to believe discipline was in offing when called for interview)

Ohio Masonic Home **251 NLRB No. 059**
(upper echelon supervisor's interview with Ee after denying her request that fellow Ee attend interview, unlawful, where interview was not simply to inform Ee of, or to impose, previously determined discipline, and, at time of interview, supervisor's authorization to suspend Ee was not tantamount to final, binding decision to do so since supervisor could have decided not to impose suspension; during interview supervisor interrogated Ee regarding complaints received from Ee's supervisor, and Ee was informed of suspension only after she had explained circumstances surrounding complaints)

Ohio Masonic Home **251 NLRB No. 059**
(where GC shows that E conducted unlawful interview with Ee who was subsequently disciplimed for conduct which was subject of interview, burden of going forward with evidence shifts to E to show that decision to discipline Ee was not based upon information obtained at interview)

Southwestern Bell Telephone Company **251 NLRB No. 062**
(no violation where, during investigatory interview of Ee, E did not, as claimed by Ee, instruct Ee's U representative to remain silent and simply take notes; instead, U representative participated in meeting and inquired into matters under discussion)

Southwestern Bell Telephone Company **251 NLRB No. 062**
(Bd disavowed ALJ's gratuitous comments regarding right of E to limit participation of U representative at an investigatory interview of Ee)

Southwestern Bell Telephone Company **251 NLRB No. 062**
(E's conducting interviews with Ees who, although advised by E to obtain U representation had fellow Ees serve as their representative, not unlawful, where sole purpose of meetings was to inform Ees of, and to act upon, previously made disciplinary decision, since Ee does not have Sec. 7 right to U representation at meeting with E held for such purpose)

Southwestern Bell Telephone Company **251 NLRB No. 062**
(no violation, where, at meeting with E, Ee was advised that E believed a prior incident involving Ee bordered on insubordination and that E wanted to ascertain reason for Ee's attitude toward him; Ee acknowledged that she was repeatedly assured that no disciplinary action against her was contemplated and that she therefore was not entitled to U representation; consequently, it was unreasonable for Ee to fear disciplinary action in face of repeated assurances to the contrary, and there was no reason for Ee to disbelieve such representations)

Prudential Insurance Company of America **251 NLRB No. 213**
(where E conducted investigatory interview with *disciplinary* overtones and denied Ee's request for U representative to be present and failed to offer Ee options of continuing interview w/o U representative or discontinuing interview, it violated Act; no management right to secure information from Ee absent requested U representative during investigatory interview with disciplinary overtones)

United Telephone Company of Florida **251 NLRB No. 101**
(suspension of Ee for refusing to further participate in interview, not violative, since Ee had no reasonable grounds for believing interview would result in disciplinary action where interview was pursuant to counseling procedures, the non-disciplinary nature of which Ee was aware, and Ee did not request U representation at outset of interview)

United Telephone Company of Florida **251 NLRB No. 101**
(*test for determining whether Ee reasonably believes interview might reasonably result in disciplinary action is measured by objective standards under all circumstances of the case rather than by Ees subjective motivations*)

United States Postal Service **251 NLRB No. 088**
(E meeting with grievant w/o U representative, not unlawful, where U contractually waived any mandatory right to be present during first step grievance meetings and where E merely restated contract to Ee w/o discussing merits of grievance or dissuading Ee from filing formal grievance)

Hotel St. Moritz, Inc. **251 NLRB No. 015**
(no violation by E's questioning delegate status of former elected U delegate who appeared at E's meeting with another Ee at latter's request, since E's questioning was not in bad faith where the testimony of many witnesses showed considerable confusion as to whether former delegate retained his status)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(denial of U representation in meetings with E, when requested by Ee, unlawful, where E, by seeking additional information bearing on Ee's conduct, went beyond act of imposing discipline and, instead, was continuing on substantive basis, its investigation of Ee's overall conduct and, under such circumstances, Ee was entitled to representation)

Burgess Mining & Construction Corp. **250 NLRB No. 033**
(supervisor suggesting to Ee that Ee could better resolve problem by talking to E's chairman of the board alone and w/o presence of his U representative, unlawful, since suggestion discourages resort to collective bargaining process and interferes with right to be represented)

Good Samaritan Nursing Home, Inc. **250 NLRB No. 030**
(requiring Ee to participate in Ee interview w/o representation, violative where Ee, who reasonably anticipated disciplinary action, had asked that another Ee be permitted to attend the meeting with her to act as witness)

Good Samaritan Nursing Home, Inc. **250 NLRB No. 030**
(threatening Ee with charge of insubordination if she refused to participate in Ee interview w/o another Ee being present as witness, violative)

Good Samaritan Nursing Home, Inc. **250 NLRB No. 030**
(right to representation even though only fellow Ee and even though U not yet certified or certification being challenged)

Sentry Investigation Corp. **249 NLRB No. 120**
(*Ees have no statutorily protected right to be represented by outside counsel in investigatory or disciplinary interviews requested by their E; representation of Ee by his personal attorney is not equivalent of U representation w/i meaning of NLRB v. Weingarten; nor does representation of by his personal attorney constitute concerted activity w/i purview of Act as construed in Glomac Plastics*)

Airco Alloys, a Division of Airco, Inc. **249 NLRB No. 081**
(announcement of *final decision* to discharge probationary Ee did not entitle him to *Weingarten* rights)

Levingston Shipbuilding Company **249 NLRB No. 061**
(E's investigatory interview of Ee w/o affording Ee representation held not unlawful, since Ee's statements regarding representation referred to legal representation by a lawyer in ct, and were not a request for representation at the interview itself)

Kohl's Food Company **249 NLRB No. 013**
(no violation where although Ee reasonably feared that interview with personnel director might result in disciplinary action, she did not ask that U representative be present)

First National Supermarkets, Inc. d/b/a Pick-N-Pay Supermarkets, Inc. **247 NLRB No. 162**
(where Ee did not request U representation at disciplinary meeting no *Weingarten* violation exists; moreover, fact that discipline was justified is not determinative)

Texaco Inc. **247 NLRB No. 086**
(E's denying Ee's request for U representation at his disciplinary interview, not violative, since sole purpose of the interview was to inform Ee of disciplinary action, and of final decision to impose discipline which had been reached prior to interview and was based upon facts and evidence which E had obtained prior to the interview; See *Baton Rouge Water Works Co. 246 NLRB No. 161*)

Delta Lines, Inc. **JD-(SF)-279-82**
(requiring Ees to attend counselling sessions concerning their unsatisfactory work not violative, since at outset of each counselling session, Ees were specifically told they would not need U R because no disciplinary action was intended, and Ees had no reasonable grounds for believing counselling would result in disciplinary action; moreover there was no evidence that counselling sessions were designed to elicit information which might reasonably result in Ees being disciplined)

Gary Concrete Products, Inc. **JD-(ATL)-68-82**
(unsatisfactory Ees who were discharged prior to their request for witness were not deprived of *Weingarten* rights and E did not violate Act)

Michigan Gas Utilities Company **JD-269-82**
(deferral to arbitration decision of charge that alleged Ee was denied representation at interview with E where arbitrator explicitly considered whether E violated Ee's *Weingarten* rights but found Ee not entitled to representation, though he requested it, since interview involved only giving instructions and correction of work techniques)

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Rainbo Baking Company JD-(SF)-117-82

Continental Air Transport Co., Inc. JD-128-82
(E's refusal of Ee's request for U representation at interviews, unlawful, absent evidence decision to discharge had previously been made, where Ee reasonably feared interview would result in discharge in view of recent discharges by supervisor who had ordered interview, fact he had left work early previous day, presence of E's paper work on supervisor's desk, and fact supervisor said nothing until personnel manager arrived; further, after Ee requested U representation supervisor refused w/o informing Ee he was free to end interview)

Service Spring Company A Division of Garlock, Inc.
A Wholly-Owned Subsidiary of Colt Industries JD-123-82
(*counseling* was part of disciplinary procedure as results placed in personnel file and meeting was investigaroty in nature even if purpose is to rationalize E's decision to discipline; therefore, when Ee requested *witness*, request was denied, and meeting held *Weingarten* violation occurred because Weingarten rights are derived principally from Sec. 7 right of mutual aid and is not dependent on representational rights under Sec. 8(a)(5))

Brookwood Furniture, Division of U.S. Industries JD-(Atl)-4-82
(Ee's *Weingarten* rights not violated notwithstanding E denied Ee's request for U representative to be present at meeting where sole purpose of meeting was to inform Ee that note detailing problems with quality of his work was being placed in his personnel file)

Memorial Hospital of Gardena JD-(SF)-16-82
(violation where supervisor denied Ee's repeated requests for U representation during his interrogation of her alleged faulty work performance, where Ee reasonably believed interview might result in her being disciplined)

Ford Motor Company JD-418-81
(E's denial of unrepresented Ee's request for private attorney during alleged investigatory interviews not violative since lawyer's duty would be exclusive and personal to Ee)

Detroit Edison Company JD-400-81
(E's interrogation of Ee at interview concerning theft of E's property in absence of U representative not violative of Ee's *Weingarten* rights, where Ee, in face of his knowledge of his rights, failed to simply request presence of U or termination of interview)

The House of The Good Samaritan and The
Samaritan Keep Nursing Home, Inc. JD-223-81
(E's interrogation and interview of Ee while denying her presence of U representative at investigatory interview which she had reason to believe could lead to disciplinary action against her, and then threatening to send her home w/o pay because she had requested presence of her U representative, violative)

Ford Motor Company, Automotive Division, Twin
Cities Plant JD-57-81
(threatening to send Ee home if he requested U committeeman's presence during investigatory hearing which might result in discipline, unlawful)

U. S. Postal Service JD-(SF)-90-81
(refusing to permit Ee, upon request, to have U representative present during investigatory interview (with E) which Ee reasonably believed might result in disciplinary action and actually suspending Ee, violative)

General Telephone Company of Indiana, Inc. JD-90-81
(refusing Ee's request for representative at interview, not unlawful, where interview was neither investigatory nor disciplinary interview but was counseling session for purpose of remedying Ee's work deficiencies)

Perdue Farms, Inc. JD-569-80
(denial of Ee's request for witness at disciplinary meeting, not unlawful, since final, binding decision to impose suspension had already been made as evidenced by written disciplinary notice signed at time Ee requested witness)

Fedmart Stores, Inc. JD-(SF)-280-80
(no finding that E violated Act by depriving Ee of right to U representation during investigation regarding cash shortages where Ee failed to make request specific enough to be regarded as request for U representation w/i meaning of *Weingarten*)

Peschke Packing Company JD-(NY)-53-80
(violation where on two occasions E proceeded to interview Ee after ignoring latter's request for U representation made by Ee in reasonable belief that he was to be disciplined; no violation, however, where when Ee requested U steward's presence, E terminated interview, then recalled Ee after 5 minutes and informed him of discipline to be imposed)

United States Postal Service (Las Vegas, Nevada) JD-(SF)-214-80
(violation where E issued warning to Ee because he refused to participate in interview concerning blank spaces on his timecard w/o a representative)

Wolverine World Wide, Inc. JD-188-80
(discipline and ultimate discharge of Ee for her refusal to leave her work station w/o being accompanied by Ee representative to attend meeting with supervisor which she believed could result in imposition of discipline not violative for Ee has no protected right to refuse to go to office and can be lawfully disciplined for such refusal; See *Roadway Express* 246 NLRB No. 180 overruling *Glomac Plastics* 234 NLRB 1309)

Wolverine World Wide, Inc. JD-188-80
(Ee's rights were not violated where she was denied presence of Ee representative at interview with E as sole purpose was to inform her that decision had already been made to discharge her; See *Baton Rouge* 246 NLRB No. 161)

Roadway Express, Inc. JD-848-79
(no violation by refusal to allow Ee to have U steward present at interview which he reasonably feared might result in his being disciplined where E only summoned Ee to office to inform him that he was *getting a letter* but did not question him or engage in a dialogue or interchange)

Vulcan Fuel Corporation JD-842-79
(denial of Ee's request for U representation at interview in which Ee reasonably feared imposition of discipline, violative, eventhough no disciplinary action was taken against Ee at interview; if steward is absent, E must accept some delay in disciplinary process)

Vulcan Fuel Corporation JD-842-79
(once E is put on notice of invocation of *Weingarten* protections, if E expressly assures Ee that no discipline will result, and no discipline in fact occurs, E is under no obligation to furnish representation)

Southwestern Bell Telephone Company v. N.L.R.B. 667 F.2d 470 (C.A. 5, Feb. 1982)
(investigatory interview conducted with requested U representative not violative notwithstanding E told U representative not to answer any questions but to let Ee answer and Ee confessed to theft of E's property despite fact that U representative had instructed him prior to interview not to answer questions because E's conduct did not interfere with U representative's ability to clarify facts or bring additional facts to E's attention after Ee finished speaking)

Prudential Insurance Company of America v.
N.L.R.B. 661 F.2d 398 (C.A. 5, Nov. 1981)
(insurance company denying U representation to its agent at meeting initiated by supervisor and manager to discuss discrepancies in agent's records which made it impossible to determine current status of policies not unlawful, notwithstanding Weingarten criteria was met where agent questioned for five minutes and thus reasonably *feared* disciplinary action, since right to U representation effectively waived by bargaining agreement)

Lennox Industries, Inc. v. N.L.R.B. 637 F.2d 340 (C.A. 5, 1981)
(denial of U representation to Ee during interview where Ee was asked questions about his poor work performance and confrontation with supervisor, unlawful, since investigatory interview in which risk of discipline reasonably inhered; contention Ee did not properly request representation, rejected, where Ee had requested U representation during confrontation with supervisor which immediately pr[illegible]ed interview in official's office, since his request need not be repeated [illegible]ng interview where supervisor to whom request had been made was present at interview and confrontation and interview deemed *single integrated episode*)

Good Hope Refineries, Inc. v. N.L.R.B. 620 F.2d 57 (C.A. 5, 1980)
(violation where personnel manager required Ee to participate in absence-counseling interview w/o U representation, since personnel manager had authority to approve absence and unapproved absence could result in discipline)

Anchortank, Inc. v. N.L.R.B. 618 F.2d 1153 (C.A. 5, 1980)
(before R election is held, E may nondiscriminatorily exclude from his property U representative who is to represent Ee in an interview; this result would obtain even if Ee's request was concerted activity)

Anchortank, Inc. v. N.L.R.B. 618 F.2d 1153 (C.A. 5, 1980)
(E's property rights must yield to Ee's request for U representation when U has been certified or voluntarily recognized as bargaining agent; at interview U representative is better able to fulfill *Weingarten* functions than is another Ee)

Anchortank, Inc. v. N.L.R.B. 618 F.2d 1153 (C.A. 5, 1980)
(compelling Ee to attend investigatory interview, which Ee reasonably believed might result in disciplinary action, when his request for U R has been denied, held violative)

Anchortank, Inc. v. N.L.R.B. 618 F.2d 1153 (C.A. 5, 1980)
(*Weingarten* protection applies to both *investigatory* and *disciplinary* interviews save only those conducted for exclusive purpose of notifying Ee of previously determined disciplinary action)

Anchortank, Inc. v. N.L.R.B. 618 F.2d 1153 (C.A. 5, 1980)
(Section 7 does not grant Ee right to representation at interview conducted *solely* to inform Ee of, and acting upon, predetermined disciplinary decision)

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N.L.R.B. v. Kahn's and Company, Division of Consolidated Food Company **694 F.2d 1070 (C.A. 6, Dec. 1982)**
(E's refusing Ee's request to have U steward present when he was interviewed concerning his overstaying his allotted time in restroom, which triggered his discharge, violative)

General Motors Corporation v. N.L.R.B. **674 F.2d 576 (C.A. 6, Apr. 1982)**
(E's ignoring Ee's request for U representation at third investigatory interview with E (though no request was made at first two interviews) concerning report of Ee's presence at nearby bowling alley during working hours held violative and Bd's c/d order enforced, since Ee had right to U representation under SCt's decision in *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975) and once request made Ee has absolute right to U representative and such right is not waived by answering questions of E who ignores request)

Spartan Stores, Inc. v. N.L.R.B. **628 F.2d 953 (C.A. 6, 1980)**
(Bd finding that Ee was discharged for refusing to participate in interview he reasonably believed could result in disciplinary action w/o U representation reversed, since substantial evidence did not support Bd's application of *Weingarten* doctrine where Ee had no reasonable grounds to believe that interview might result in his discipline after E gave assurances that it would not, and concomitantly, Ee's action of getting steward himself, contrary to established policy that supervisor would summon steward upon Ee's request and orders of supervisors, does not imply possible disciplinary action)

Super Valu Xenia, a Division of Super Valu Stores, Inc. v. N.L.R.B. **627 F.2d 13 (C.A. 6, 1980)**
(ct held contrary to Bd that Ee during disciplinary interview waived any right to U representation when Ee decided to proceed with meeting w/o U stewards present)

N.L.R.B. v. Illinois Bell Telephone Company **674 F.2d 618 (C.A. 7, Mar. 1982)**
(Ee found not to have waived her right to have U representative present at investigatory interview, where after being informed U steward that she requested was not on premises she was not informed that she might terminate interview or suspend it until U officer could be present)

N.L.R.B. v. Illinois Bell Telephone Company **674 F.2d 618 (C.A. 7, Mar. 1982)**
(Ee who asked E at outset of investigatory interview, *should I have someone in here with me, someone from the U* found to have sufficiently direct request for U representation and E's denial violative)

N.L.R.B. v. Illinois Bell Telephone Company **674 F.2d 618 (C.A. 7, Mar. 1982)**
(U representative Ee requests need not be U steward or officer)

Montgomery Ward & Co., Inc. v. N.L.R.B. **664 F.2d 1095 (C.A. 8, Nov. 1981)**
(*make whole* relief, including back pay and reinstatement, *improper* where Ees were discharged for admittedly stealing goods from E and not for requesting U assistance at investigatory interview; Section 10(c) of Act, precludes back pay order and reinstatement under such circumstances)

N.L.R.B. v. Potter Electric Signal Company **600 F.2d 120 (C.A. 8, 1980)**
(requiring two Ees to attend investigatory interviews w/o presence of their U steward, violative; one Ee had requested supervisor to have shop steward accompany her to interview, and the other had called for the steward who responded to her call but was ordered back to work by plant manager)

N.L.R.B. v. United States Postal Service **689 F.2d 835 (C.A. 9, Oct. 1982)**
(Ee's *Weingarten* rights not violated since he had no reasonable expectation of being disciplined during *discussion*, which, according to contract, was not disciplinary)

N.L.R.B. v. Texaco, Inc. **659 F.2d 124 (C.A. 9, 1981)**
(E's contention that even if interview of Ee was investigatory, reprimand should remain in Ee's record because decision to discipline was made before interview and did not in fact rest to any degree on interview itself, rejected in view of findings of Bd majority as to continuing investigation)

N.L.R.B. v. Texaco, Inc. **659 F.2d 124 (C.A. 9, 1981)**
(E's refusal to permit representative to speak, and relegating him to role of passive observer, violative since E did not afford Ee representation to which he was entitled)

N.L.R.B. v. Southern Bell Telephone and Telegraph **676 F.2d 499 (C.A. 11, May 1982)**
(E who violated Act by refusing Ee's request for U representative at disciplinary meeting not required to expunge record of 2 week suspension which followed interview nor pay backpay, because, here, disciplinary action lawful as not result of any information obtained at interview but of information E had prior to interview and no animus exhibited against Ee for invoking her *Weingarten* rights)

5072-2500 Sponsorship of inside union

Rockland Lake Manor, Inc. **263 NLRB No. 142**
(telling Ees it would no longer deal with U, offering to recognize new U or grievance committee or make individual contracts, violative)

Randall E. Wheeler, Kevin E. Wheeler, and Edmund J. Wheeler, A General Partnership d/b/a Wheeler Co. **260 NLRB No. 109**
(E violated Act when it suggested, prior to election that Ees abandon U and form Ee committee for purpose of bargaining, and after U lost election encouraged Ees to continue with committee, instructed them to draw up contract proposal and said he was willing to bargain with them concerning terms and conditions of employment as this constitutes unlawful interference in formation and administration of labor organization)

High Energy Corporation **259 NLRB No. 097**
(supervisor's suggestion to Ee that Ees should form a company U with E's help, unlawful)

American Display Manufacturing Co., Inc. **259 NLRB No. 066**
(violation, where E suggested formation of committee of Ees to bargain directly with E rather than U representation)

Laredo Packing Company **254 NLRB No. 001**
(E's personnel director suggesting to Ee that Ees replace U and U's secretary treasurer with Ee committee headed by Ee and promising Ee more hours of work, unlawful)

Carbonex Coal Company **248 NLRB No. 107**
(E solicitation of Ee to talk to fellow Ees about forming *company U* violative)

5072-2600 Interference with employees' right to selection own representative

Fugazy Continental Corp.; Elite Services, Inc. **263 NLRB No. 165**
(E's soliciting and directing Ee to sign card for favored U, and threatening him with discharge if he refused to do so and with reprisals if he supported rival U, unlawful)

University Townhouses Cooperative **260 NLRB No. 107**
(encouraging Ees to abandon U activities in exchange for rescission of harsher work rules, violative)

Cooper-Jarrett, Inc. **260 NLRB No. 159**
(E's abusive and disparaging remarks to Ees about U steward stating that they should replace him as such by voting him out of office because he was no good for company and was breaking E, unlawful, since E could hardly have been more explicit in calling upon Ees to oust steward out of his office)

Sheridan Drive Super Duper, Inc. d/b/a Tonawanda Super Duper **260 NLRB No. 102**
(E who told stock boys they were not to sign U cards violated Act as he was instructing them not to engage in protected activity)

King Trucking Company **259 NLRB No. 079**
(supervisor's assaulting Ee in context of, and related to, Ee's unlawful discharge and because of his U activity held violative)

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 065**
(manager's telling Ees that: she didn't want Ees to be talking over telephones about U; she didn't want Ees to call one another; nor did she want 1st-shift Ees to be talking to 2nd-shift Ees; all violative, since requests constituted prohibition against Ees exercise of their statutory rights on nonworking time)

McKesson Drug Company **257 NLRB No. 084**
(where E consolidated 3 facilities into one facility at new location and different Us had represented 2 of the facilities, E's recognition of and contracting with one of above Us covering consolidated facility before facility opened, violative where U did not represent majority of Ees at new facility notwithstanding only 1 U requested recognition at new site)

Metropolitan Life Insurance Company **256 NLRB No. 100**
(ordering Ee not to sign U card, violative)

Limestone Apparel Corp. **255 NLRB No. 101**
(E's solicitation of Ee to cease asking other Ees to sign U card, violative)

Best Distributing Co., Inc. **255 NLRB No. 034**
(telling Ees that they were required to notify E before they joined U, violative)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**
(supervisors' pre-election statements to Ees to effect that *if U got in*, E's sole *customer for steel cans would switch to less costly aluminum cans and (E) would be forced to shut down* held violative, since E had not met its burden of providing objective factual basis for statements because it does not necessarily follow that a U election victory per se would increase E's labor costs disproportionately to customer's willingness to pay)

Steam and Steam, Inc. **254 NLRB No. 108**
(remarks of E, made during U's organizing campaign, that included; (1) invitation for Ees to submit their grievances to E (2) announcement of new vacation policy, and (3) suggestion that Ee press U to withdraw its R pts,

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held violative in view of their timing in midst of U's organizing campaign and close upon E's manifestations of U animus as found in instant decision)

Duane Heating Corporation **284 NLRB No. 090**
(conduct which does not interfere with conduct of election *a fortiori,* would not constitute violation of Sec. 8(a)(1))

Armour Oil Company **283 NLRB No. 148**
(acting terminal manager's promise to drivers that E would give them more work and better trucks to drive provided U designate business agent other than individual presently representing Ees held violative, since promise was calculated to coerce Ees' choice of bargaining agent and had effect of weakening authority of U as bargaining agent; promise was direct dealing with Ees in derogation of U's status as bargaining representative)

Tom's Ford, Inc. **283 NLRB No. 120**
(E's ordering U representative out of shop and causing him to be removed by police from shop floor in presence of Ees held to constitute unlawful interference with Ees' right to select representatives for bargaining and presenting grievances where U representative had contractual right to investigate grievances and was investigating complaint that E was discriminating against U members in breach of contract by granting preferential treatment to nonmembers)

United States Steel Corporation **283 NLRB No. 083**
(discharge for repeated refusal to meet with supervisor, found not in derogation of *Weingarten* rights, notwithstanding Ee's request for presence of U representative at meeting with supervisor, since E does not have to assure Ee of U representative's presence at meeting to induce Ee to leave plant floor, and Ee acts at own peril if he declines to do so)

Omark-RCBS, A Division of Omark Industries **282 NLRB No. 089**
(E's statements requesting Ees to deal directly with management, asking for complaints or gripes and requesting opportunity to resolve problems, held violative since they constituted clear attempt to dissuade Ees from supporting U by soliciting grievances and holding out possibility of more favorable treatment)

Servair, Inc. and Servair Maintenance, Inc. **282 NLRB No. 093**
(where U represented group of 30-35 Ees employed by E, group of 36 newly hired Ees not accretion as it is unlawful to *accrete* large group to small group; moreover, E failed to disclose to new Ees that contractual benefits they would receive, new janitor Ees would receive different wage rates than those provided for in contract and E solicited U membership cards from new Ees; thus by unlawfully assisting and recognizing U E violated Sections 8(a)(1) and (2) and by requiring new Ees to join U violated Section 8(a)(3))

S. L. Industries Inc. and Extruded Products, Corp. **282 NLRB No. 131**
(E's letter to Ees, before election, pleading with them to vote *no* in election and *to* give E a year to prove himself held violative, since latter statement conveyed promise to be responsive to Ee needs)

Mark J. Lasch d/b/a Mark J. Lasch Electrical Contractors **281 NLRB No. 151**
(supervisor telling Ee if he *wanted to keep working to stick with* E, unlawful since it amounted to both threat of discharge for supporting U and promise of benefit for opposing U)

General Thermo, Inc. **250 NLRB No. 198**
(threat that organizers of U could be fired, unlawful)

Charles Dean d/b/a Happy Tapp Mfg. Co. **250 NLRB No. 154**
(telling U adherent during U campaign that job he had anything to do with U, and if any tools were missing, U adherent would be accused of stealing because of U adherent's criminal record)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Lyman Steel Company **249 NLRB No. 040**
(offering money to two Ees for them to coerce one Ee into withholding his support from petitioner held violative)

Lyman Steel Company **249 NLRB No. 040**
(suggesting to two ees that they rid E of two supporters of petitioning U, held violative)

Lyman Steel Company **249 NLRB No. 040**
(blanket prohibition against any conversations in plant between Ees who supported disfavored U of E)

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

Lyman Steel Company **249 NLRB No. 040**
(pressing Ee to sign statement that he had received U authorization card from U advocate during working hours, violative, since activity, in anti-U context, suggested E planned reprisals for Ees who supported petitioner)

Nino-Pak Products, Inc. **248 NLRB No. 173**
(E who generally permitted Ees to talk while at work violated Act where on eve of election it prohibited pro-U Ee from talking to other Ees)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 097**
(announcement by manager to assembled Ees that he did not want them to discuss U, held violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 097**
(permitting distribution of anti-U pamphlet among Ees during company time, violative, since pamphlet ratified implied threats of closure, loss of jobs and privileges)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(forbidding Ee from seeking U assistance in his drive for improvement of wages, pensions, and health benefits, violative)

Suburban Ford, Inc. **248 NLRB No. 081**
(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

Permanent Label Corporation **248 NLRB No. 021**
(E who asks Ees to tell other Ees to vote against U violates Act)

Sav-On Drugs, Inc. **JD-(SF)-214-81**
(threats of loss of employment if Ees did not join particular U are ULPs sufficient to taint particular U's claimed majority status on basis of signed authorization cards)

Sav-On Drugs, Inc. **JD-(SF)-214-81**
(statements to Ees and applicants for employment that they would have to join (particular) U as condition of employment and posting of letter threatening Ees that they would not be scheduled for work unless they joined U, held violative)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**
(E's posting notice stating that if Ees did not join certain U, which E would join, Ees could strike for rest of their lives held violative, since E's notice suggested futility of selecting petioning U)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L. A. Inhalation Therapy Services **JD-(SF)-238-80**
(telling Ees that they must forswear their U membership or allegiance as condition of keeping their jobs, unlawful)

R.E. Peterson Products, Inc., and Will Products, Inc. **JD-288-80**
(calling suspected U adherent derogatory names prior to election, violative, since action discouraged Ee participation in U activities)

Standard Bridge Corporation **JD-174-80**
(accusing Ee of stirring up trouble by his attempts to obtain U membership and thus causing his own termination and other Ees' transfer, violative)

N.L.R.B. v. American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. **670 F.2d 1236 (C.A. 1, Feb. 1982)**
(use of U adherent as translator for anti-U speech by E not violative where translating just ministerial function, part of Ee's daily responsibilities and group that needed translation was small so easy for Ee to convey true feelings)

St. Regis Paper Company v. N.L.R.B. **620 F.2d 487 (C.A. 6, 1980)**
(discharge and failure to reinstate Ees who struck E during critical period to gain recognition for U, rival of petitioner, not unlawful, since if E, during pendency of election proceedings, had recognized rival U as bargaining agent, it would have been guilty of interference with Bd's election procedures as well as ULP in violation of Section 8(a)(1) of Act)

5072-2700 Interference with employee's performance of duties as union representative

Key Prim, Inc. **265 NLRB No. 132**
(E's refusal to permit grievance chairman access to premises to attend grievance meeting, violative)

Cooper-Jarrett, Inc. **260 NLRB No. 159**
(E's abusive remarks to U steward held unlawful veiled and implied threats of discharge, where steward was singled out for criticism because of his failure to support E's proposed Ee reinvestment program; to find no violation because E did not specifically refer to steward's U activity would merely reward wrongdoer for being circumspect; while never explicitly threatening discharge, E expressed wish that steward did not work for him or that he could be fired; and such remarks, in light of later statements to Ees about ousting steward, interfered with steward's right to hold U office)

Cooper-Jarrett, Inc. **260 NLRB No. 159**
(while finding that E's abusive and disparaging remarks to U steward constituted unlawful threat of discharge and interference with his statutory right to hold U office, Bd held such remarks did not verbally abuse steward

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because he presented grievances pursuant to bargaining agreement, since there was no evidence to link E's comments with steward's grievance-processing function)

Champion Parts Rebuilders, Inc., Northeast Division 260 NLRB No. 098

(refusing to continue to let U officials use in-plant telephone system for official business and also discontinuing letting U stewards give documents to supervisors who, in turn, would photocopy Ees' doctor's excuses violative of Sec. 8(a)(3) where part of other anti-U conduct and no business justification existed; moreover, change in steward's role in obtaining photocopy of excuses by only letting Ee give it directly to supervisor, thus, bypassing steward, violated Section 8(a)(5))

Consolidated Freightways Corporation of Delaware 257 NLRB No. 177

(threat to discharge U steward because he bypassed E's chain-of-command and met with high management official violative, notwithstanding management was not aware of subjects discussed at meeting)

Consolidated Freightways Corporation of Delaware 257 NLRB No. 177

(issuing warning letter to U-steward for spending too much work time on handling Ee grievances violative where contract provided U-steward with *reasonable* time and 1 hour per day not unreasonable considering large number of Ees)

Laredo Packing Company 254 NLRB No. 001

(reprimand of U steward who interjected himself in dispute between foreman and Ee who was objecting to being transfered because of work performance by instructing Ee to stop arguing and accept reassignment, unlawful, since steward did not interfere with Ee's work or operation of plant and steward in his official capacity attempted to assist foreman)

Tom's Ford, Inc. 253 NLRB No. 125

(E's ordering U representative out of shop and causing him to be removed by police from shop floor in presence of Ees held to constitute unlawful interference with Ees' right to select representatives for bargaining and presenting grievances where U representative had contractual right to investigate grievances and was investigating complaint that E was discriminating against U members in breach of contract by granting preferential treatment to nonmembers)

L. E. Solomon, Inc. 253 NLRB No. 063

(E who ordered U's shop steward to remove notebook, in which he kept information pertaining to U business, from its premises, violated Act)

United States Postal Service 252 NLRB No. 083

(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would be futile and neither refusal to work nor disruption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

Woonsocket Spinning Company 252 NLRB No. 165

(threatening Ee members of U negotiating committee who reported E's poor labor relations policies to Ees violative)

O. B. Williams Company 252 NLRB No. 146

(supervisor directing U steward to intervene with Ees to obtain withdrawal of charges filed by Ees with State Human Rights Department, unlawful)

P. J. Gear & Sons, Inc. 252 NLRB No. 028

(threat to discharge U steward after he expressed intention to report E's abbrogation of collective-bargaining agreement to U violative)

Alfa Leisure, Inc. 251 NLRB No. 088

(discharge of Ee for rude conduct violative where conduct occurred in collective-bargaining setting and in fact occurred while Ee was a U representative and was present solely for purpose of bargaining)

Hotel St. Moritz, Inc. 251 NLRB No. 015

(no violation by E's questioning delegate status of former elected U delegate who appeared at E's meeting with another Ee at latter's request, since E's questioning was not in bad faith where the testimony of many witnesses showed considerable confusion as to whether former delegate retained his status)

Swift and Company 250 NLRB No. 182

(supervisor's telling steward that fellow steward was *skating on thin ice* and *wouldn't last long* because she had filed grievance against supervisor held violative)

United States Postal Service 250 NLRB No. 186

(issuing letter of warning to U steward for his conduct during grievance hearing unlawful)

United States Postal Service 250 NLRB No. 186

(threatening U steward during grievance presentation with disciplinary action if he didn't shut up, unlawful)

United States Postal Service 250 NLRB No. 082

(suspending U steward for uttering obscenity toward supervisor in course of discussing possible grievance on behalf of unit Ee, unlawful)

New Process Gear, Division of Chrysler Corporation 249 NLRB No. 118

(foremen's instructing argumentative U steward to leave work area, not violative where steward was not threatened with disciplinary action upon failing to leave area and continued to act as U representative w/o any interference)

Pullman Trailmobile, A Division of Pullman Incorporated 249 NLRB No. 090

(transfer of U steward to another job because of his conduct in filing grievances, unlawful)

United States Postal Service JD-420-81

(telling steward that Ee had no right to see him about sick-pay grievance and that he as steward had no right to grieve her failure to receive sick-pay, unlawful)

United States Postal Service JD-224-81

(warning to U steward that he should mind his own business, violative where warning was directed at steward's action of bringing Ee complaints)

United States Postal Service JD-224-81

(station superintendent's announcement that his evaluation of U steward, if he gave him one, would be unfavorable, violative where it was designed to impress upon steward that station superintendent was dissatisfied with his conduct in pressing grievances)

U. S. Postal Service JD-(SF)-242-80

(supervisor held not to have threatened to retaliate against Ee because of U steward's insistence on investigating incident involving supervisor and Ee, or to have retaliated against attempts of U steward to investigate incident by issuing Ee a letter of warning, where Ee engaged in conduct which E reasonably viewed as insubordinate and supervisor immediately reported incident to his superiors at which time decision was made to discipline Ee, and such decision was reached several hours prior to steward's arrival at the scene)

L. R. Bob Spillers Painting Co. JD-(SF)-169-80

(E's attempt to have U business agent remove Ee as U steward not violative where request averted to U representative who had authority to appoint stewards, no Ees were present and no threats were given)

Cashmere Lumber Company JD-(SF)-93-80

(supervisor's statement to U steward to the effect that if he performed his steward's duties with zeal considered excessive by supervisor, supervisor would make steward's job unpleasant and cause his eventual severance, unlawful)

Good Hope Refineries, Inc. v. N.L.R.B. 620 F.2d 57 (C.A. 5, 1980)

(violation where E threatened U steward with possible discipline if he insisted on providing assistance to Ee during absence-counseling session, an investigatory interview)

Caterpillar Tractor Co. v. N.L.R.B. 638 F.2d 140 (C.A. 9, 1981)

(E's issuance of warning to chief steward for his communication with Ees in department other than his own, violative since E's action was discriminatory application of plant rules that was motivated by Ee's status as chief steward)

Caterpillar Tractor Co. v. N.L.R.B. 638 F.2d 140 (C.A. 9, 1981)

(suspension of chief steward for assisting Ee with filing of her grievance, unlawful; chief steward's outburst of profanity did not provide good cause for suspension where such outburst was in response to supervisor's interference with filing of grievance)

N.L.R.B. v. Max Factor and Company 640 F.2d 197 (C.A. 9, 1980)

(discharge of U steward who vigorously processed grievances, violative, notwithstanding she spent more than 50 percent of work time doing so (much more than other stewards) and at meeting with E where he issued disciplinary warning to her for not working enough she responded with profane language, because excessive time spent on nonproduction activities and conduct at meeting were not so indefensible as to cause her to forfeit protection of Act)

N.L.R.B. v. Max Factor and Company 640 F.2d 197 (C.A. 9, 1980)

(offering U steward management position and tuition payments for law school in order to remove her from position as U steward violative)

5072-2800 Abetting activities of employees opposed to union

American Display Manufacturing Co., Inc. 259 NLRB No. 084

(no violations, where at meeting at which E's owner prefaced his anti-U speech by stating he did not wish to get into discussion with Ees one Ee momentarily ignored injunction not to talk and made anti-U remark but U adherent who tried to speak was told to be quiet)

Gary Concrete Products, Inc. JD-(ATL)-65-81

(supervisor who distributed one anti-U T-shirt to Ee who may have asked for shirt did not violate Act as this does not establish general pattern of supervisory involvement in soliciting Ees to wear T-shirt)

5072-2900 Excluding union members from savings and stock ownership plan

5072-2900—Cont.

Consolidation Coal Company **260 NLRB No. 065**
(E's investment plan which limited participation to non-U Ees *per se* violative; and E's publicizing this provision immediately before election also violative)

Computer Sciences Corporation Applied Technology Division, Huntsville Center **258 NLRB No. 068**
(stock purchase plan set forth in Ee handbook violated Act where it limited plan to those Ees who were not U members or not members of bargaining unit)

5072-3000 Soliciting employees to cross picket line

G & H Products, Inc. **261 NLRB No. 047**
(E's questions to probationary Ee as to whether he would join striking Ees after his probationary period was over, and statements to him that he could only be dues paying U member rather than enthusiastic member violative)

Walter Die Casting, Inc. **255 NLRB No. 034**
(inviting striking Ee to return to work and telling him that E would like to get rid of U and some Ees in U and suggesting another U and that E would like to run for at least one year w/o U violative)

E & E Transportation Corp., Inc. **254 NLRB No. 087**
(threatening Ees with discharge for refusal to cross picket line)

Canney Drilling Company **254 NLRB No. 019**
(E's soliciting of striking Ee to abandon ULP strike and threat to discharge him if he did not do so violative)

Canney Drilling Company **254 NLRB No. 019**
(E who sent letter to ULP strikers, urging them to cross picket line violated Act where this was followed by similar request and threat of discharge for noncompliance for one Ee)

Atlas Metal Parts Co., Inc. **262 NLRB No. 029**
(no violation where in reply to Ee's question as to *how long strike would last* E replied Ees *could come back to work anytime* and he *had police protection for strikers*)

Crestline Memorial Hospital Association, Inc. **260 NLRB No. 028**
(threatening non-unit Ees with loss of jobs if they refused to cross picket line, violative)

Erie Haven, Inc. **JD-194-82**
(suspension of Ee, truckdriver, for refusing to cross informational picket line at construction site held violative, since Ee was exercising concerted right protected by Act)

Childers Manufacturing Company, Inc. **JD-(SF)-11-82**
(offering more money to strikers, whom E considered good workers, if they did not participate in strike with other Ees to protest E's failure to grant wage increase, unlawful; E's solicitation of Ees *constituted an integral part of a pattern of overall illegal opposition to purposes of Act*)

Sunnyvale Porsche Audi, Inc. **JD-(SF)-9-83**
(violation, where applicant was informed Ees had elected to go U, that there might be strike, and asked whether she would cross picket line)

5072-3100 Rewarding nonstrikers

Huck Manufacturing Company **256 NLRB No. 088**
(increasing wages of nonstriking Ees w/o communicating in advance with U)

S & W Motor Lines, Inc. v. N.L.R.B. **621 F.2d 598 (C.A. 4, 1980)**
(payment of bonus to non-striking over-the-road drivers, unlawful)

Huck Manufacturing Company v. N.L.R.B. **693 F.2d 1176 (C.A. 5, Dec. 1982)**
(where ALJ had found E's reference in speech to extra payments retroactively granted to nonstrikers for work done day before strike -- but not payments themselves -- coercive and ct held that speech would not support a violation, ct held that Bd reasonably could have found tendency to coerce workers not to strike and concluded 8(a)(1) was violated derivatively since payments were properly held to discriminate against strikers in violation of 8(a)(3))

Huck Manufacturing Company v. N.L.R.B. **693 F.2d 1176 (C.A. 5, Dec. 1982)**
(E's retroactive extra payments to nonstrikers for working during strike, not unlawful; coercive effect on strikers was outweighed by legitimate business necessity where nonstrikers proposed extra payments and were granted them to soothe their anger over harassment during strike and induce them to continue production, which they had ceased in protest against reinstatement of strikers)

5072-3300 Interference with testimony of Board witnesses

Humana Corp. d/b/a Sunrise Hospital Medical Center **254 NLRB No. 176**
(soliciting Ees to give false testimony before Bd concerning deauthorization ptn)

Gordonsville Industries, Inc. **262 NLRB No. 054**
(E's letter to all Ees implying that their signing of authorization cards was for election only, violative, since letter, which asked about their being possible witnesses at hearing, was attempt to influence Ees' testimony at hearing on objections)

Ledford Construction Company, Inc. **261 NLRB No. 191**
(suspending Ees who testified against E at Bd hearing while permitting Ees who testified favorably to work)

The Nestle Company **260 NLRB No. 106**
(foreman's questioning U adherent, regarding Ee's testimony at Bd hearing held violative, since such interrogation interfered with Ee's right to participate in Bd processes, as well as the right to engage in U activity)

5072-3400 Inference with decertification activity

Autoprod, Inc. **265 NLRB No. 043**
(prior to decertification election, holding dinner meetings in small groups at which E discussed U pension and welfare plans and presented other plans to Ees, violative as it amounted to direct dealing with Ees and bypassing U)

5072-3600 Prohibiting employee from discussing grievance

St. John's Regional Health Center **JD-(SF)-255-83**
(E's statement to Ee made after it gave her 5-day suspension that it would be *dangerous to try to muster support and have calls made to administration* violative as Ees have right to seek support from others and such threat interferes with that right)

St. John's Regional Health Center **JD-(SF)-255-83**
(written reprimand which stated that U Ee would be suspended if she discussed reprimand with anyone is violative as Ee has right to seek aid and support of fellow Ees)

5072-3800 Distribution of pro-company buttons, etc.

R. L. White Company, Inc. **262 NLRB No. 069**
(distributing T-shirts in each department in sufficient numbers so that each Ee could get one and encouraging Ees to wear pro E T-shirts violative)

Onan, a Division of Onan Corporation **261 NLRB No. 187**
(soliciting Ee to wear *no* button, accompanied by threats for wearing U cap, unlawful)

Reeves Rubber, Inc. **252 NLRB No. 026**
(violations by E's request that Ees wear anti-U badges, insignia and clothing stencilled with anti-U slogans; its participation through its supervisory personnel in stencilling of clothing and distribution of anti-U badges and insignia; and its placing Ees in position of appearing pro-U if they refrained from wearing the above insignia and stencilling)

Great Dane Trailers Indiana, Inc. **252 NLRB No. 015**

Bell Industries, Inc. **JD-479-82**
(asking Ee repeatedly why he did not take advantage of availability of E furnished T-shirts with anti-U message to wear something more comfortable than too warm flannel shirt, unlawful, since coercive regardless of motivation)

5072-3900 Interference with handbilling and other union activities

Montgomery Ward & Company, Inc. **265 NLRB No. 088**
(strikers engaging in consumer boycott handbilling outside entrances to store selling struck merchandise were engaging in protected activity where no effective alternate means of communication, and store violated Act by restricting handbilling to curb, driveway entrances or anywhere else off store property and thereby diluting protected rights of these strikers)

Montgomery Ward & Company, Inc. **262 NLRB No. 009**
(when U had primary dispute with manufacturer and manufacturer's Ees were engaged in Sec. 7 right of handbilling to persuade consumers to boycott manufacturer's products, respondent E which sold those products, by not permitting the handbilling to take place on its premises violated 8(a)(1), notwithstanding his property rights, since effectiveness of handbilling depends on its location and Ees had no effective alternative means of reaching the public)

Rivider Farms, Inc. **261 NLRB No. 113**
(prohibiting access to outside non-working areas of plant premises by off-duty Ees engaged in distribution of U literature, violative)

Pace Motor Lines, Inc. **260 NLRB No. 180**
(spraying mace on U representatives who were attempting to handbill and solicit Ee support, violative)

Amoco Fabrics Co., Patchogue-Plymouth Division/ Nashville Mills **260 NLRB No. 036**
(refusing Ees access to plant premises and precluding them from distributing U literature at gate outside plant violative)

Virginia Electric and Power Company **260 NLRB No. 080**
(alleged restriction of U activities on Ees' breaktime, not unlawful, where Ees thereafter continued their activities during such period; it is evident that Ees ordered not to do so would not, as here, completely and continuously ignore E's direction, if such issued, nor would E, in such case, so indifferently pay no attention at all to a total disregard of its directives)

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SAS Ambulance Service, Inc., d/b/a Florida Ambulance Service; et al. 285 NLRB No. 031
(discharge of Ees for distributing handbills violative, notwithstanding E's contention that handbills were defamatory)

White Carriage Corp. JD-(NY)-79-82
(removing U literature from car windshields of Ees, unlawful)

Gary Concrete Products, Inc. JD-(ATL)-65-82
(where Ee was distributing U literature from back of truck and foreman pulled him off truck, and made him stop, E violated Act)

Liba Corporation JD-(SF)-69-80
(removing U leaflets from automobiles in E-parking lot and throwing them away)

N.L.R.B. v. First National Bank of Pueblo 623 F.2d 686 (C.A. 10, 1980)
(E's alleged interference with U handing out flyers on public sidewalk while not blocking entrance to E's premises, not unlawful, notwithstanding flyers also given to customers, where objections to election withdrawn, incident brief and isolated, U not precluded from distributing leaflets to all Ees, and absent intimidation of Ees)

9072-4000 Solicitation of statements from employees

Washington Beef Producers, Inc. 264 NLRB No. 155
(soliciting and finally coercing Ee to sign false statement saying that U representative threatened to kill him if he did not vote for U and subsequently filing ULP charge against U regarding statement, violative)

Zero Corporation, Zero East Division 262 NLRB No. 064
(directing U adherent to speak to Ees on plant intercom and recant statements he had made describing benefits at E's other plant which he had done to correct E's false description, coercive)

Saint Luke's Hospital 238 NLRB No. 045
(asking health care Ee, who indicated that he would not cross picket line during anticipated strike, if he was *pressured* into that decision, violative as supervisor made no mention of whether pressure brought on Ee during working time)

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. 235 NLRB No. 098
(E's request for Ee to advise Ees of E's sentiments about U and ultimately to act as his interpreter, violative where Ee was faced with inevitable dilemma of acceding to E's request or refusal to do so; latter alternative might require E to reveal pro-U sentiment while former tended to inhibit his freedom of expression guaranteed by Section 7)

Reeves Rubber, Inc. 252 NLRB No. 026
(violations by E's request that Ees wear anti-U badges, insignia and clothing stencilled with anti-U slogans; its participation through its supervisory personnel in stencilling of clothing and distribution of anti-U badges and insignia; and its placing Ees in position of appearing pro-U if they refrained from wearing the above insignia and stencilling)

Dennis G. Maiotta and Frank M. Maiotta t/a Maiotta Contracting 251 NLRB No. 027
(threatening Ees if they did not sign document which favored E by stating that Ee was satisfied with E's working conditions and did not want U, unlawful)

Rich's Precision Foundry, Inc. 230 NLRB No. 173
(solicitation of unlawfully discharged Ee to ask for his job back and tell other Ees that U was no good held unlawful solicitation to engage in antiU activity and conditioning of reemployment on acceptance of unlawful request)

Mediterranean Diner, Inc., t/a Bay Diner 230 NLRB No. 039
(E preparing and circulating among Ees pts for purpose of defense in ULP proceeding stating that there had been no changes in rules and regulations at E, unlawful, where E failed to meet requirements for negating coercive effect)

Fort Wayne Newspapers, Inc. 247 NLRB No. 085

Normike Contractors, Inc. JD-(NY)-51-81
(soliciting Ees to sign statement concerning meeting Ees had with U president, violative where letter was anti-U in character in that it sought to place president of U in bad light)

9072-6000 Right to remove personally owned tools

Kaiser Steel Corporation 239 NLRB No. 085
(refusing to permit striking Ees to remove their personally owned tools from plant during strike held violative of Sections 7 and 13 where non striking Ees were permitted to remove tools, as use of such economic weapon frustrated strikers' ability to find other employment during strike)

9072-6300 Distribution of favored union's literature

Jo-Wez Sportswear, Ltd. and Iris Sportswear, Inc. 260 NLRB No. 172
(distribution to Ees of favored U's literature containing lists of U benefits available to Ees, unlawful)

9072-6600 Right to file grievances

The Rosicrucian Press, Ltd. 264 NLRB No. 170
(violation, where Ee asked supervisor if supervisor thought Ee's job was in jeopardy because Ee had complained to U about working with another Ee and supervisor replied *Let's put it this way, you did jeopardize your job by going over our heads*)

The Rosicrucian Press, Ltd. 264 NLRB No. 170
(violation, where supervisor informed Ees in presence of Ee who had complained to U about working with another Ee that he *did not like them goint to U about matter and would not put up with it*)

Vincent Brass & Aluminum Co. 264 NLRB No. 070
(E's superintendent informing U steward that E's vice-president was tired of grievances pertaining to job bidding, and of U problems, and was going to close plant, unlawful)

Ram Construction Company, Inc. 263 NLRB No. 031
(E's president telling Ee that he would have fired him had he known about earlier grievance, violative)

Midwest Alloys, Inc. 261 NLRB No. 160
(threatening transfer to less desirable job, shutdown of shop and other reprisals because of Ee's grievances and attempting to enlist aid of another Ee in efforts to stop his grieving, unlawful)

George E. Mosher, Inc. 261 NLRB No. 016
(telling Ee that if he pursued his grievance against E his job would not be guaranteed, violative)

Danny's Foods, Inc. 260 NLRB No. 197
(E violated Act when it removed Ee from her substitute position as alternate receiver, a higher paying job, and used her solely as cashier because this was in retaliation for her having filed a grievance under the contract)

Cooper-Jarrett, Inc. 260 NLRB No. 159
(threatening to retaliate against Ee for filing grievances against E, unlawful)

Sambo's Restaurants, Inc. 260 NLRB No. 054
(threatening Ees with loss of overtime work if they filed grievances violative)

Sambo's Restaurants, Inc. 260 NLRB No. 054
(denying Ees overtime work because they filed grievances)

Boston Mutual Life Insurance Company 259 NLRB No. 172
(E's threat to discharge U steward if he continued filing grievances, violative)

San Diego County Association For The Retarded 259 NLRB No. 136
(discharge of Ees who sought to resolve their grievances through strike action rather than through E's established grievance procedure held unlawful, since Ees were engaged in strike for purpose of causing E to resolve *their work-related grievances* in manner satisfactory to Ees)

American Interstate Freight Lines 258 NLRB No. 131
(E telling Ee not to go to U about fact E was not allowing Ee to work and at least implied that if he sought U help he would get work only after filing grievance and winning violative)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(plant manager's telling Ees they had no formal grievance procedure after contract containing such procedure had expired held violative, since E was required to process grievences in accordance with provisions of expired contract absent impasse on that subject)

Western Marine Electronics, Inc. 257 NLRB No. 087
(violation, where Ee transferred from machine shop to dusty, monotonous sanding job after he filed grievance contending he was in unit covered by bargaining agreement and was not receiving contract wage or benefits, and after meeting on his grievance Ee was told he was being transferred because of grievance)

General Fabrication Corporation 257 NLRB No. 012
(refusing to assign assemblers to general labor work because U filed grievance concerning hourly rate to be paid assemblers who performed such work, violative)

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising 257 NLRB No. 074
(discharge of Ee who had taken active roll in presenting common grievances of Ees, checked out U rates of pay and argued with E to obtain such rates for Ees violative as Ee was engaged in protected concerted activity)

Maryland Shipbuilding and Dry Dock Co. 256 NLRB No. 069
(suspension of Ee for failing to complete sufficient portion of painting assignment, unlawful, since really for complaining about safety rules in bargaining contract with regard to working in remote areas and time spent on Ee's complaint was significant factor in E's decision to suspend Ee)

Evans Brothers Barber & Beauty Salons, Inc. 256 NLRB No. 023
(asking Ees if they had any gripes about management, violative)

United States Postal Service 256 NLRB No. 012
(denial of Ees' requests for consultation with steward to file grievances on ground U had withdrawn recognition of steward at Ee's place of work, unlawful, in view of supervisors' previous grievance meetings with steward

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when they knew steward was not designated by U, disagreement over grievance matters between supervisor and Ees immediately proceding denial of access, E's practice of not limiting steward representation to particular location, fact that E had reason to believe steward's designation by U to another location was inadvertent error, and supervisor's denial of access 5 days after E received U's corrected steward list)

United States Postal Service **256 NLRB No. 012**
(threat to discipline Ee for filing grievance, unlawful, where natural and foreseeable consequence of E's statement, asking Ee to sign statement acknowledging that E was recording his status as AWOL for being absent from work, would be to inhibit Ee from filing grievances in future; under the circumstances, statement was actual retaliation for Ee's filing of grievance inasmuch as E, after telling Ee he would not be disciplined, made statement about being AWOL after Ee had filed grievance)

Limestone Apparel Corp. **255 NLRB No. 101**
(solicitation of grievances by E during U campaign, held violative)

Thomas Industries, Inc. **255 NLRB No. 094**
(E's superintendant accusing Ee of harassing E and threatening to discipline her when she threatened to file grievance against him for refusing to accept her grievance against another Ee who allegedly attempted to provoke a fight on E's property, not unlawful, since activity regarding which she wished to file grievance not protected)

Thomas Industries, Inc. **255 NLRB No. 094**
(E's reprimanding vice-president of U for presenting too many petty grievances concerning wages and working conditions, unlawful)

Maine Apple Growers, Inc. **254 NLRB No. 080**
(delaying recall, after election, of seasonal apple packers, who had requested raise in wages and had directed grievance letter to E's board of directors, assertedly because they were responsible for low production held violative where E's business justification for its action had not been established; E's unlawful statement to Ees that *agitation* had to cease coupled with its unexplained deviation from its normal method of disciplining overly talkative Ees established E's unlawful motive)

Hacienda Hotel and Casino **254 NLRB No. 007**
(reprimand for violation of rule against Ees either individually or concertedly initially seeking recourse with respect to matters pertaining to wages, hours or working conditions through any means other than U, unlawful, since rule overbroad)

Hacienda Hotel and Casino **254 NLRB No. 007**
(violation, where E offered to recall laid off Ee only if Ee would drop grievances and instructed Ee not to contact U)

Laredo Packing Company **254 NLRB No. 001**
(supervisor informing Ee that grievance Ee had filed was w/o merit and threatening Ee with discharge or other employment problems if he did not go to U and withdraw grievance, violative)

Quik-Pik Food Stores, Inc. **252 NLRB No. 076**
(discharge of Ee allegedly for 3 infractions of E's rules after Ee had played significant role in advancing Ee complaints with other Ees, unlawful where 1 of alleged infractions was pretextual and other 2 infractions took on significance only after Ee participated in advancement of Ee complaints)

High Performance Tube, Inc. **251 NLRB No. 181**
(discharge of Ee for reading aloud list of grievances to assembled Ees violative)

Ford Motor Company **251 NLRB No. 066**
(supervisor's statement to Ees who filed grievances, contemplated civil suits and filed ULP charges over E's promotional policies *are not looked upon favorably* and would not be promoted, unlawful)

United States Postal Service **251 NLRB No. 033**
(E meeting with grievant w/o U representative, not unlawful, where U contractually waived any mandatory right to be present during first step grievance meetings and where E merely restated contract to Ee w/o discussing merits of grievance or dissuading Ee from filing formal grievance)

Swift and Company **250 NLRB No. 152**
(supervisor's telling steward that fellow steward was *skating on thin ice* and *wouldn't last long* because she had filed grievance against supervisor held violative)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(threatening Ees with reprisals for engaging in protected activity of filing charges with Bd and grievance under contract, unlawful)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 087**
(E's president informing U officer that had been filing grievances that *if she didn't give him a hassle* he would let her sign up for unemployment insurance compensation unlawful threat to oppose her receipt of unemployment compensation if she invoked contractual grievance procedure)

United States Steel Corporation **250 NLRB No. 089**
(E agreeing to post job only on condition that grievance protesting failure to post job be withdrawn, unlawful; particularly where job was subsequently posted w/o withdrawing of grievance after firing of grievance committeeman)

Trojan Transportation, Inc. **249 NLRB No. 084**
(discharge of Ees as reprisal for contractual grievance activities, unlawful)

Borden Inc. Foods Division, Drake Bakeries **248 NLRB No. 162**
(issuance warning to Ee who had previously filed charges with Bd for *continual pattern of confrontations with management and supervisors*, unlawful, where based on personnel data sheet, noting Ee's threat during grievance meeting to go to NLRB)

Servomation Corporation **248 NLRB No. 014**
(telling Ee not to file a grievance with U over alleged safety matter because it could possibly result in Ee's discharge, unlawful)

Lane Trenching, Inc. **247 NLRB No. 183**
(threat to discharge Ee if he continued to make contractual overtime claims held violative, since Ee has statutorily protected right to seek to enforce contract)

St. Regis Paper Company **247 NLRB No. 108**
(statements linking loss of work and overtime to U's pursuit of grievance under contract held violative, since statements tended to create chilling effect on Ees' rights to file or process grievances)

Chromalloy American Corporation-Liberty Radiator Division **JD-(SF)-308-82**
(threatening to give Ee a warning for violating plant rule against gambling if Ee filed grievance, unlawful)

Philips Industries, Inc. Lau Division **JD-424-82**
(refusal to reinstate laid off Ee to former position because he filed grievance under collective-bargaining agreement violative)

Consolidated Edison Company of New York, Inc. **JD-(NY)-70-82**
(threatening suspension if two Ees exercised their right to file grievances under contract, not unlawful, where Ees had in past utilized grievance machinery in bad faith to harass E and supplant their own terms and conditions of employment for those established through bargaining process)

Avis-Rent-A-Car Systems, Inc. **JD-62-82**
(Ee who files grievance either on his own behalf or behalf of fellow Ees is engaged in protected concerted activity, notwithstanding there may be no merit to grievance, therefore discharge of suspended Ee who came on E's property, to file grievance over suspension violative)

The Perlman-Rocque Company **JD-513-81**
(failure to comply with grievance award violative since it penalizes Ees for use of grievance system)

Kimberly-Clark Corporation **JD-(SF)-291-81**
(threats of E's assistant superintendent to U officials and in presence of other Ees to ascertain way of getting rid of Ee who was continually filing grievances and to discharge Ee who grieved matter, unlawful, notwithstanding disavowals and assurances of E's employee relations manager and plant manager)

California Pacific National **JD-(SF)-260-81**
(threatening Ees with loss of benefits if they file grievance)

United States Postal Service **JD-420-81**
(denying Ee right to see U steward about sick-pay grievance, unlawful)

Edmamae Brewer d/b/a Kalama Cafe **JD-(SF)-244-81**
(threatening to fire daughter and sister of Ee if such Ee continued to process grievance she had filed with U, violative)

Ford Motor Company, Automotive Division, Twin Cities Plant **JD-57-81**
(refusal to sign grievance where signature was necessary for operation of grievance procedure, unlawful)

Home Life Insurance Company of America **JD-111-81**
(discharge of probationary Ee for filing grievance violative, notwithstanding Ee had no standing by virture of terms of collective-bargaining agreement to file grievance during his probationary period)

American Youth Soccer Organization **JD-(SF)-29-81**
(discharge of three Ees who presented grievances to management and E's board of directors, unlawful, since presentation of grievances protected where Ees acted concertedly, notwithstanding did not follow grievance procedure promulgated by E in Ee handbook, and in view of timing of discharges shortly after Ees sent copy of list of grievances to E's board of directors)

Catalytic, Inc. **JD-(SF)-345-80**
(telling Ee that if any more grievances were filed, he would *run the bunch of them down the hall*, violative)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(discharge of Ee because she solicited Ees to see individual she considered to be *boss* rather going through regular channels regarding their complaints held violative, since Ee's conduct was protected activity and was not so flagrantly in derogation of E's *chain of command* or managerial authority as to loose protection of the Act notwithstanding *boss* had severed all official

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connections with E long before incident since subsequent conduct led Ee to believe he still exerted authority)

United States Postal Service **JD-(SF)-273-79**
(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time,* w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

Ad Art, Inc. v. N.L.R.B. **645 F.2d 669 (C.A. 9, Dec 9, 1980)**
(Bd's decision that discharge was unlawful because it was motivated *in large measure* or *in large part* by Ee's protected activity of filing grievances held not abuse of discretion; contention that E objected not to Ee's filing grievances but to his processing his own grievances rejected, where record showed that Ee typically processed grievances through steward)

N.L.R.B. v. United States Postal Service **689 F.2d 835 (C.A. 9, Oct. 1982)**
(denying Ees access to their shop steward for consultation over filing grievances, unlawful)

N.L.R.B. v. United States Postal Service **689 F.2d 835 (C.A. 9, Oct. 1982)**
(threat to discipline Ee for filing grievance, unlawful)

N.L.R.B. v. Mr. A's Restaurant **647 F.2d 171(T) (C.A. 9, Mar 1981)**
(unlawful to discharge Ee for filing grievance since filing of grievance protected under Act)

Caterpillar Tractor Co. v. N.L.R.B. **638 F.2d 140 (C.A. 9, 1981)**
(suspension of chief steward for assisting Ee with filing of her grievance, unlawful; chief steward's outburst of profanity did not provide good cause for suspension where such outburst was in response to supervisor's interference with filing of grievance)

5072-5550 Refusal to talk with employees except on individual basis

The Exchange Bank **264 NLRB No. 111**
(E's refusal to meet with Ees as group and his insistence upon talking with them on individual basis only, if they wished to learn anything about their wage demands, violative)

Charleston Nursing Center **257 NLRB No. 066**
(E's refusal to meet with Ees as group for presentation of grievances not violative since there was no collective-bargaining agreement with exclusive bargaining representative requiring E to meet with Ees and E did not absolutely refuse to meet with Ees as group, but merely refused to meet with Ees as group at that time because of prior commitment)

5072-5600 Discip[illegible] employee for conduct during grievance mee[illegible]

The Rosicrucian Press, Ltd. **264 NLRB No. 170**
(discharge of Ee unlawful, where for repeatedly complaining to U about working with another Ee in another department several hours a week who had serious body odor problem, rather than for insubordination for refusing to work with other Ee; Ee's statement in informal grievance meeting that she would not work with other Ee not insubordination since such postering not unusual in grievance meetings, Ee never actually refused assignment, and Ee had right to pursue grievance; further, E admitted Ee's work satisfactory)

Southwestern Bell Telephone Company **260 NLRB No. 036**
(action of U steward protesting E's practice of *red lining* Ees who had refused to work overtime protected, and stewards outburst during confrontation with E does not make him lose Act's protection, thus E's warning steward and later suspending him for 4 hours for his outburst violative)

Consolidated Freightways Corporation of Delaware **257 NLRB No. 177**
(threat to discharge U steward because he bypassed E's chain-of-command and met with high management official violative, notwithstanding management was not aware of subjects discussed at meeting)

Pettibone Corporation **265 NLRB No. 151**
(threatening Ees that their discussion of working conditions with supervisor and request for pay raise would go against them in their pay reviews and *there is the door* and they were free to leave, held violative)

United States Postal Service **252 NLRB No. 083**
(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would be futile and neither refusal to work nor distuption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

High Performance Tube, Inc. **251 NLRB No. 181**
(discharge of Ee for reading aloud list of grievances to assembled Ees violative)

United States Postal Service **260 NLRB No. 136**
(issuing letter of warning to U steward for his conduct during grievance hearing unlawful)

Borden Inc. Foods Division, Drake Bakeries **248 NLRB No. 162**
(issuance warning to Ee who had previously filed charges with Bd for *continual pattern of confrontations with management and supervisors,* unlawful, where based on personnel data sheet, noting Ee's threat during grievance meeting to go to NLRB)

Hansen Rubber Company **JD-290-82**
(discharge of Ee for uttering obscenity during course of meeting with E dealing with contract provision concerning pay for negotiating sessions violative as Ee was engaged in protected concerted activity and his conduct was not so egregious to remove it from protection of Act where it was uttered in heat of an argument)

United States Postal Service v. N.L.R.B. **652 F.2d 409 (C.A. 5, July 1981)**
(Act's protection of E's conduct during grievance meeting does not necessarily terminate instant E ends discussion. Bd may extend protection to cooling off period of brief duration at termination of grievance meetings, since protection of Ees' participation in grievance meetings would be seriously threatened if E could at any emotional or argumentative point during meeting call immediate halt to operation of Act. Appropriateness and duration of cooling off period will depend on facts of each case and determination left to Bd's discretion)

N.L.R.B. v. Max Factor and Company **640 F.2d 197 (C.A. 9, 1980)**
(discharge of U steward who vigorously processed grievances, violative, notwithstanding she spent more than 50 percent of work time doing so (much more than other stewards) and at meeting with E where he issued disciplinary warning to her for not working enough she responded with profane language, because excessive time spent on nonproduction activities and conduct at meeting were not so indefensible as to cause her to forfeit protection of Act)

5072-5700 Interference with arbitration proceeding

Autoprod, Inc. **265 NLRB No. 042**
(advising Ees that they need not comply with subpoena to appear at arbitration hearing, violative)

5072-5800 Interference with representation on grievance committee

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 089**
(statement by E that U steward was troublemaker and E was having problems in department which could reasonably be interpreted by U officials to mean that E's problem was overzealous steward who filed too many grievances and solution to problem was transfer of steward, unlawful)

Western Die Casting Company **JD-(SF)-96-82**
(E's contention that U waived right to represent unit Ees in processing grievance because 2 members of 4 person *in-plant grievance committee* who attempted to present grievances were no longer Ees of E, rejected, since neither U's contract provisions with E nor its constitution, considered either separately or together, merited inference that U clearly and unmistakably waived Ees' statutory right to select their own grievance processors)

United States Postal Service v. N.L.R.B. **652 F.2d 409 (C.A. 5, July 1981)**
(issuing warning letter to U officers for refusing to return to work after supervisor ended grievance meeting in office, and instead officers following supervisors out onto work area and continuing to argue loudly, unlawful, since period brief and no disruption among other Ees; Act's protection of Ees' conduct during grievance meeting does not necessarily terminate instant E ends discussion; Bd may extend protection to brief cooling off period at termination of grievance meetings)

General Motors Corp. v. N.L.R.B. **616 F.2d 967 (C.A. 6, 1980)**
(Bd's holding that E's suspension of U district committeeman for his use of grievance procedure was violative is supported by substantial evidence, notwithstanding contention committeeman abused grievance procedure by taking too much time discussing grievance with grievant and refusing to comply with request that he submit this dispute on abuse of procedure to grievance procedure)

5072-6300 Interference with employees' free access to Board

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 048**
(threat to discharge Ee *who went to that damn labor Bd,* violative)

American Interstate Freight Lines **258 NLRB No. 131**
(threat of discharge if Ee filed appeal to RD's dismissal of his charge, violative)

Southern Newspapers, Inc., d/b/a The Baytown Sun **255 NLRB No. 022**
(E's threat during negotiations that if U filed charges with Bd or in cis and recovered backpay award, such award would be subtracted from E's cur-

5072-6300—Cont.

standing wage proposal, unlawful, since effect of threat was to put pressure on U because of U's resort to Bd processes)

Mark Twain Marine Industries, Inc. 284 NLRB No. 144
(advising Ees that by selecting U to represent them they had given up rights to utilize Bd processes, violative)

Roberts Oldsmobile, Inc. 282 NLRB No. 085
(E's proposed strike settlement agreement held not violative notwithstanding that proposed settlement offer included provision for withdrawal of all *unfair labor practices pending as a result of the strike,* where the provision could not reasonably have been construed by Ees as restriction on their right to avail themselves of Bd's processes; Ees knew, as did E, that they were engaged in economic tug of war and none of Ees could reasonably expect reprisals based on charges having been filed and not withdrawn)

Alfa Leisure, Inc. 281 NLRB No. 088
(promising Ee letter guaranteeing job for Ee's brother in order for brother to be eligible for parole if Ee withdrew charges pending before Bd, violative)

Borden Inc. Foods Division, Drake Bakeries 266 NLRB No. 142
(issuance warning to Ee who had previously filed charges with Bd for *continual pattern of confrontations with management and supervisors,* unlawful, where based on personnel data sheet, noting Ee's threat during grievance meeting to go to NLRB)

The Perlman-Rocque Company JD-513-81
(supervisor informing Ee who had filed grievances and charges with Bd that he would receive waring letter for tardiness due to business at NLRB office and that Ee's past record would justify letter unlawful, since E's policy required three incidents of tardiness before warning letter and supervisor was aware Ee's past record did not meet this requirement, and it was made clear that, while some excuses might be acceptable, being at NLRB was not among them)

Garden State Motors Co. JD-160-80
(telephoning Ee after E received notice of filing of charge by Ee violative where done for purpose of extorting from Ee agreement to drop charge)

5072-6800 Right to file charges with Board or other governmental agency

Art Steel of California, Inc. 256 NLRB No. 140
(issuing warning notice to U adherent assertedly for leaving his department and going into another department w/o permission and —*talking to a government person*— in violation of E's rule, held violative, since Ee was involved in taking inventory and was not assigned to particular department, but instead, had to go from department to department; warning notice was given Ee after Ee had spoken to Bd agent investigating ULP charges against E)

Continental Distributing Co., Inc. 256 NLRB No. 091
(discharge of Ee after he made inquiries about joining and attempted to join U, and called Bd to find out how to join U, violative where E's allegations about Ee's stealing goods from E not supported by evidence)

Consolidated Aluminum Corporation 256 NLRB No. 003
(telling another Ee that E was exploring possibility of filing charges against U president because he filed ULP charge against E, violative because it interfered with Ee's right to file and press charges before Bd)

Consolidated Aluminum Corporation 256 NLRB No. 003
(warning U president that E might file charges against him if he did not discuss matters with E before filing ULP charges, violative because it interfered with Ee's right to file and press charges before Bd)

Glover Bottled Gas Corp. 275 NLRB No. 011
(E violated 8(a)(1), but not 8(a)(4) by threatening to give Ee an unfavorable reference, when needed, in retaliation for filing charges with Bd)

O. B. Williams Company 252 NLRB No. 146
(soliciting withdrawal of charges filed by Ees with State Human Rights Department and threatening job security of Ee if he didn't withdraw charge, unlawful)

James F. Stanford, Inc. d/b/a Ace Machine Co. 249 NLRB No. 073
(asking Ees why they had not stopped Ee from filing certain papers with Bd)

St. Regis Paper Company 247 NLRB No. 105
(statements to Eq; that filing ULP charges against E could lead to plant closure held violative)

Charleston Area Medical Center, Inc. JD-468-82
(refusal to process Ee grievance because Ee had also filed charge with Bd over same issue not violative where it was E's established policy and there is no evidence of discrimination)

Robbins Tire and Rubber Co. JD-(ATL)-23-82
(no violation, since Ee discharged for poor work rather than for filing workmans compensation claim where E was following up complaints from customers regarding quality, Ee acknowledged he made mistakes, Ee had filed previous workmen's compensation claims and had never been disciplined for so doing, another Ee had filed more workmen's compensation claims and was still employed by E, and decision on whether or not workmen's compensation claim was paid was left to insurance carrier)

The Perlman-Rocque Company JD-513-81
(warning Ee who had filed grievances and charges with Bd that he would be watched for tardiness, not unlawful, since was device to insure tardiness did not reoccur in view of importance of on the job presence of those in Ee's classification)

National King Coal, Inc. JD-(SF)-24-81
(cancellation of production bonus because Ee threatened to file charge with Bd unless he was recipient, violative)

Planned Parenthood of Alameda and San Francisco Counties JD-(SF)-294-80
(E informing Ee that due to her filing charges with Bd it would not continue to process her grievances under its internal procedures, violative, notwithstanding its subsequent good faith effort to process grievances)

Shuttle Motor Corporation JD-327-80
(discharge of Ee allegedly for inquiring of state agency regarding legality of *back stubbing* i.e. E refusing to pay for current work in order to recoup where Ee had been paid too much for previous work, not unlawful, since Ee's activity not concerted where *back-stubbing* not matter of common complaint; further, Ee called agency before any other adverse action taken against him and subsequent *back-stubbing* against him rectified)

Hart Ski Mfg. Co., Inc. JD-11-80
(E's owner threatening not to sign contract negotiated with Ee committee unless ULP charges and ptn withdrawn, stating ptn had been filed by outside U and there was no purpose in ptn since Ees had approved contract between E and committee, unlawful)

Frank Briscoe Inc. v. N.L.R.B. 637 F.2d 946 (C.A. 3, 1981)
(laid off Ees who filed charges with EEOC involved in protected concerted activity and refusal to reinstate while charges pending violative)

N.L.R.B. v. Proler International Corporation 635 F.2d 351 (C.A. 5, 1981)
(E's personnel officer advising Ee who had filed charges against E that whether or not charges were sustained, Ee would lose his job)

N.L.R.B. v. Travis Meat and Seafood Company, Inc. 633 F.2d 233 (C.A. 6, June 1980)
(distributing post-election letter stating that wages and benefits would continue to be withheld until U withdrew election objections, violative)

5072-7700 Restraining union or other concerted activities on company time or premises

Cardio Data Systems Corp. 264 NLRB No. 011
(posting of notice requiring Ees to add their names to any pro-U related notices posted on company bulletin board, unlawful, notwithstanding fact that notice did not use word *must* as an order requiring compliance, but only *requested* writer of notice to reveal name, since it was improper interference with, and inquiry into identity of pro-U activists)

Glover Bottled Gas Corp. 275 NLRB No. 011
(threat to discharge any Ees who did not cross picket line, unlawful, where Ees were properly engaged in sympathy strike on behalf of fellow U members striking another E for whom E was performing struck work, resulting in picketing of E by Ees of struck E)

Eastern Steel Company 283 NLRB No. 163
(telling Ees not to talk about U until after election, violative)

Villa Avila 283 NLRB No. 010
(E-who evicted U representatives from job site, threatened them with arrest, blocked egress from site violated Act where U representatives were performing legitimate duties on job site)

Sumco Manufacturing Co., Inc. Summit Grinding Company 281 NLRB No. 046
(supervisor threatening Ees with discharge if they did not keep out of U, or if they did not bring to her U material received in mail, unlawful)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting 281 NLRB No. 037
(telling Ees not to engage in any discussions about U and that U was *dead and over,* unlawful)

Custom Coating & Laminating Corporation 249 NLRB No. 117
(threatening Ee with discharge if he continued to speak with other Ees during work time violative where Ee's job required him to speak to other Ees and Ee was well known U adherent)

N.L.R.B. v. Friendly Ice Cream Corporation 677 F.2d 170 (C.A. 1, May 1982)
(ct denied Bd's ptn for enforcement of its order finding E guilty of violating Secs. 8(a)(1), 8(a)(3) and 8(a)(4) of Act by giving allegedly retaliatory and discriminatory written warning to Ee for violating no-solicitation rule where Bd's decision specifically rested upon its conclusion that E had disabled itself from enforcing rule by reason of having tolerated breaches in past that did not relate to unionization and fact was that in two years rule was observed every day but two)

5072-7700—Cont.

N.L.R.B. v. St. Anne's Hospital **648 F.2d 67 (C.A. 1, May 1981)**
(prohibiting members of nurses' group, protesting hospital's on-call policy, from talking at work, unlawful)

5072-7750 Distribution of union literature or cards

Hackensack Hospital Association **264 NLRB No. 177**
(E's statement that if he caught Ees distributing U literature, *heads would roll,* violative)

Village IX, Inc. d/b/a Shenanigans **264 NLRB No. 122**
(E's removal of U literature lawfully placed on Ees' cars in E's parking lot violative)

Robertshaw Controls Company **263 NLRB No. 128**
(threatening Ee with discharge for handing U leaflet to another Ee in work area but prior to start of shift violative where although E had imposed new valid no-distribution rule, no evidence was presented to determine when rule went into effect in relation to incident)

Kirkhill Rubber Company **263 NLRB No. 113**
(issuing written reprimand to Ee for *solicitation for U purposes on company time and property,* violative)

Herider Farms, Inc. **261 NLRB No. 113**
(prohibiting access to outside non-working areas of plant premises by off-duty Ees engaged in distribution of U literature, violative)

Roadway Express, Inc. **260 NLRB No. 078**
(E's removal of U material posted on bulletin board and removal of U literature in dispatch room, unlawful, where Ee's action in posting and in leaving literature in dispatch room constituted protected concerted activity to show fellow Ees that E's use of production cards affecting working conditions at another facility of E was being protested by U at that facility)

G. H. Bass & Co. **258 NLRB No. 036**
(reprimanding Ee for distribution of pro-U letter in production area during lunch break in alleged violation of rule prohibiting distribution in work areas, unlawful, where production shut down for lunch break and all Ees off clock since in these circumstances production area at lunch break becomes non-working area, and absent resulting litter problem or impact on production)

Arkansas-Best Freight System, Inc. **257 NLRB No. 063**
(removing campaign literature from table in drivers' room, violative)

Reeves Southeastern Corporation **256 NLRB No. 090**
(discharge of Ee for passing out U authorization cards violative)

Reeves Southeastern Corporation **256 NLRB No. 090**
(E's threat that Ees who accepted U literature would be discharged violative)

Wometco Coca-Cola Bottling Company of Nashville, Inc. **255 NLRB No. 069**
(informing Ee he would be discharged if he carried on U organizing in company plant *on company time,* unlawful because such prohibition would appear to include breaktime and other periods when they are not expected to be working)

Wometco Coca-Cola Bottling Company of Nashville, Inc. **255 NLRB No. 069**
(violation, where upon receiving mailgram identifying Ees as volunteer U organizers, E called them to office and held special meetings with each Ee individually at which he informed them it was illegal to sign or solicit U cards on company time or property, or to distribute U literature on company property)

Gerald M. Martin and Kathleen R. Martin, a Partnership Doing Business Under The Trade Name and Style of Liberty Pavilion Nursing Home **254 NLRB No. 169**
(telling former Ees and U agent that they must leave private parking lot where they were distributing U literature or she would call police, not violative in absence of evidence that U did not leave alternative means of reaching Ees notwithstanding no sidewalk between parking lot and public street; furthermore, parking lot only used, apart from Ees and visitors, by persons picking up or discharging Ees or patients which did not convert private lot into public way)

Friendly Ice Cream Corporation **254 NLRB No. 172**
(E's issuing written warning to Ee who was soliciting signing of U authorization card on work time in violation of valid no-solicitation rule, unlawful, in view of E's selected enforcement of dormant rule and U animus where Ees had been allowed to talk among themselves during work time and warning was only disciplinary action ever taken regarding rule, E was not given opportunity to defend herself and solicitation for other purposes had been allowed)

Stewart-Warner Corporation **253 NLRB No. 016**

Conagra, Inc. **248 NLRB No. 085**
(informing Ee who had had argument with Ee who was wearing *Vote No* hat that she was not to talk U on company time and U literature was not to be passed out in plant, unlawful, since statement not limited to prohibition during work))

Permanent Label Corporation **248 NLRB No. 021**
(solicitation process includes distributing U card, signing by Ee and return of card to solicitor, therefore rule banning such activity during nonwork time in work areas is overly broad)

National Southwire Aluminum **247 NLRB No. 175**
(E's statements to U adherent to *get rid of U literature* and *clean up U literature* do not rise to level of promulgation against distribution of literature but does interfere with Ee rights to distribute literature)

CTS Keene, Inc. **247 NLRB No. 141**
(warning U adherent to observe E's no solicitation rule, unlawful, where given w/o any apparent basis)

Tartan Marine Company **247 NLRB No. 073**
(supervisor informing Ee who had solicited another Ee to sign U card during break time that he *should take care of this after work* and when Ee attempted to assert his right to solicit during break time replying *company pays you for breaks,* violative)

J. H. Block & Co., Inc. **247 NLRB No. 041**
(notice E posted on company bulletin board prior to election which asked Ees to report to E if they were put under pressure to join U violative as it had potential effect of encouraging Ees to report to E identity of U card solicitors and also to discourage card solicitors in their protected organizational activities)

Puckless Metal Hose, Inc. d/b/a Puckless Industries **JD-(SF)-90-81**
(warning issued to Ee for distributing U literature in violation of E's unlawful no solicitation rule violative)

Magic Mountain Corporation **JD-337-80**
(supervisor's statement that Ee should drop his U activity or else lose his job, unlawful)

Crown Dielectric Industries, Inc. d/b/a Crown Auto Top Manufacturing **JD-93-80**
(E's statement to Ee that she would not have been recalled after her discharge if he had not learned that she did not give another Ee U card, violative)

Pioneer Finishing Corporation v. N.L.R.B. **667 F.2d 199 (C.A. 1, Nov. 1981)**
(contract which contained specific limitations on access of U officials to E's premises to performance of specific duties, not including distribution of literature, and established bulletin board for posting official notices does not waive Ees' rights to circulate literature dealing with employment conditions)

Pioneer Finishing Corporation v. N.L.R.B. **667 F.2d 199 (C.A. 1, Nov. 1981)**
(off-duty Ee who entered E's premises to distribute protected literature does not automatically lose Act's protection; test is balance of Ee's Sec. 7 rights and E's private property rights, and here where E has no rule preventing access, E's activity protected)

N.L.R.B. v. Brewton Fashions, Inc., a Division of Judy Bond **682 F.2d 918 (C.A. 11, Aug. 1982)**
(vice president calling Ee to his office and asking if she was distributing *recipe cards* found coercive and threat of discharge where this was first time in 7 years on job that she was called to his office, purpose was to learn of distribution of U cards, and E confirmed her understanding that she could lose job for passing U cards during work time)

5072-7775 Wearing of or display of union insignia or other materials

Halliburton Services (Coffeyville, Kansas), A Division of Halliburton Company **265 NLRB No. 144**
(restricting display of U insignia in work areas violative, where E permitted other nonwork related materials to be publicly posted, e.g., calendars and pin-ups, violative)

Halliburton Services (Coffeyville, Kansas), A Division of Halliburton Company **265 NLRB No. 144**
(supervisor's removal of U insignia displayed on Ee's personal tool box, violative where E permitted other nonwork related materials to be posted publicly, e.g., calendars and pin-ups)

Nordstrom, Inc. **264 NLRB No. 095**
(telling Ee to remove U steward pin, violative where pin was small, tasteful and inconspicuous, and would not unreasonably interfere with E's operations)

General Electric Company **264 NLRB No. 126**
(where Ee displayed large pro-U sign on his tool box, and supervisor suggested he lock it in his locker over the weekend for safekeeping, no violation for when Ee reaffixed sign nothing was said or done to Ee)

5072-7775—Cont.

The Moore Company, Inc., Div. of Esses Corp. **264 NLRB No. 159**
(supervisor informing Ees that U adherents were jeopardizing their jobs along with jobs of all other Ees by wearing U shirts, hats, and insignia, unlawful)

E. I. Dupont De Nemours **263 NLRB No. 015**
(supervisor asking black Ee who was wearing U insignia why Ee was getting so involved with U, if any one was presuring him to join U and in same conversation indicating to Ee that E would be making more black supervisors but that Ee should not wear pro-U insignia and to continue to do so would result in his not being considered for supervisor position, unlawful)

E. I. Dupont De Nemours **263 NLRB No. 015**
(violation, where Ee's supervisor gave Ee who was wearing U buttons permission to go into another area of plant but requested that Ee remove buttons before going, since no considerations of safety or interference with production which might justify managerial interference with, or limitations on exercise of protected rights)

E. I. Dupont De Nemours **263 NLRB No. 015**
(supervisor asking Ee why Ee was wearing tee shirt with insignia on it, unlawful)

E. I. Dupont De Nemours **263 NLRB No. 015**
(supervisor informing Ee wearing tee shirt with U insignia *If you hadn't been wearing all of this tee shirt and stuff you would have been supervisory material*, unlawful)

E. I. Dupont De Nemours **263 NLRB No. 015**
(supervisor asking U proponent if he had U buttons in bag on his desk and informing him *I hope you are not passing out U buttons you could get into trouble for passing these out*, unlawful)

Midstate Telephone Company **262 NLRB No. 167**
(prohibiting Ees from wearing T-shirts on which appeared facsimile of E's logo depicting logo as cracked and displaying accompanying slogan, *I survived Midstate strike of 1971-1975-1979*, violative where T-shirts worn by Ees were clearly directed at promoting solidarity by publicizing that Ees had *survived* recent prolonged 5-month strike and there were no *special circumstances* which would warrant deviation from general rule protecting right of Ees to wear insignia at work pertaining to Us or working conditions)

Zero Corporation, Zero East Division **262 NLRB No. 064**

Holladay Park Hospital **262 NLRB No. 026**
(prohibiting nursing Ees at hospital from wearing yellow ribbons as U insignia on their uniforms at work, violative)

Conair Corporation **261 NLRB No. 178**
(causing Ees to remove and discontinue wearing U campaign badges containing words *Vote Union*, unlawful)

Electric Hose and Rubber Company **262 NLRB No. 014**
(E's removal of U sticker from Ee's machine violative)

Howard Johnson Motor Lodge **261 NLRB No. 123**
(ordering Ees at motel to remove U buttons, unlawful, notwithstanding contention justified since not acceptable part of uniform and might be regarded adversely by guests; *exercise by Ees of their Section 7 rights under Act does not turn on pleasure or displeasure of E's customers*)

Inland Steel Company **257 NLRB No. 013**
(wearing T-shirt with vulgar slogan (*INLAND SUCKS*) that rediculed E, protected, where no management official said anything to E about T-shirt or even saw him wearing it during working hours no less told Ee to take it off)

Harrison Steel Castings Company **262 NLRB No. 089**
(notwithstanding inquiry by supervisor to Ee as to why he was wearing pencil holder with U logo was friendly in nature occurring in circumstances lacking any suggestion of harassment and Ee openly manifested support of U, Bd found violation as inquiries of this kind convey E's displeasure with Ee's U activity and coercive impact not diminished by Ee's open support of U or by absence of attendant threats)

Firmat Manufacturing Corp. **255 NLRB No. 153**
(telling Ees they could not wear U buttons, violative where E established no special circumstances)

Borman's, Inc. **254 NLRB No. 130**
(asking Ees to remove, or turn inside out, T-shirts with Company name and words *I's tired of bustin my ass*, violative as purpose of shirts was to publicize grievance, did not interfere with order and discipline; it villified no company official and language used is not so obscence as to be objectionable)

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(removing U authorization card which Ee taped to his locker, violative where E permitted non-U material to remain)

B. E. & K., Inc. **252 NLRB No. 036**
(supervisor's preelection statement to Ees that wearing of U stickers revealed belligerency, unlawful and interference, where supervisor had previously threatened Ees with discharge for distributing stickers)

Reeves Rubber, Inc. **252 NLRB No. 026**
(E's threatening job interest or tenure of Ees because they wear U buttons insignia, unlawful)

Stafford Construction Co. **260 NLRB No. 128**

Roadside Mining Corporation a/k/a Gas of Colorado, Inc. **260 NLRB No. 079**
(violation by instructing Ee to remove U sticker posted on his locker)

The Nestle Company **248 NLRB No. 106**
(enforcing company rule prohibiting wearing jewelry and nonuniform clothing w/i E's production areas held violative where rule was not applied to non-U related jewelry and clothing worn by Ees not favoring U; rule was discriminatorily enforced)

Fluid Packaging Company, Inc. **247 NLRB No. 196**
(request that Ee remove 10-by-16 inch *vote yes* sign from her back for safety's sake since it was causing distraction among Ees on lines, not unlawful; E did not interfere with Ees' wearing of *Yes* and *No* buttons)

Pay 'N Save Corporation **247 NLRB No. 184**
(E's unwritten rule against wearing of political or controversial buttons, including U buttons, unlawful, where there was no valid business consideration or other special circumstance warranting forbidding of wearing of U buttons by store Ees on salesfloor)

Pay 'N Save Corporation **247 NLRB No. 184**
(E's enforcement of rule against wearing of buttons on store premises, unlawful, where E allowed Ees to wear various kinds of religious as well as other buttons but disparately enforced its button policy against Ees wearing U buttons)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 123**
(ordering waitress to remove U button while whe was waiting on customers in E's restaurant and sending her home when she refused, violative, notwithstanding fact button was of size and design to detract from uniform and bore feminist statement that might offend some customers, in view of E's other ULPs and fact E had previously taken actions motivated by Ee's U activities to induce her either to quit or to change ways)

Lecks Industries, Inc. **JD-346-82**
(supervisor's asking Ee if she was going to continue to wear her U button, accompanied by statement asking Ee to give him half a chance, not unlawful, since, in context of conversation, supervisor was merely continuing E's effort to seek out Ees' problems and was asking them to work with management in an effort to give management a chance to do so)

Wheeler Printing, Inc. **JD-(SF)82-82**
(E violated Act by requiring removal of U button from area which was frequently used for posting notices)

Vanity Fair Mills, Inc. **JD-(ATL)-38-82**
(E's personnel manager calling Ee to his office and asking if she was passing out U buttons during campaign and when she replied *yes* informing her that was *no, no* and interrogating Ee about being away from her work station, unlawful, notwithstanding pursuant to no solicitation rule presumptively valid at time, since reprimand based on U activity rather than being way from work station, neglecting work or interfering with work of other Ees)

Methodist Hospital of Indiana, Inc. **JD-88-82**
(asking Ee to wear *Happiness is No Union* button, unlawful notwithstanding Ee had option of not wearing it and refused to take button)

Stockton Dodge, Inc. **JD-(SF)-235-81**
(refusal to allow Ees to wear caps with U insignia violative absent proof that E's concern with its public image warranted such prohibition)

Stockton Dodge, Inc. **JD-(SF)-235-81**
(threat of retaliation for wearing hats with U insignia violative)

Lauridsen Foods, Inc. **JD-36-81**
(threatening discharge if Ees refused to remove U insignia, violative)

CRC Pipeline Equipment, a Division of Crutcher Resources Corporation **JD-(SF)-140-80**
(supervisor threatening Ees with discharge if they continued to wear U buttons, not unlawful, where E had no proclivity towards ULPs, E promptly informed supervisors that Ees were free to wear U buttons, specifically advised Ees threatened that threats were not position of E and that they were free to wear buttons, and posted notice to that effect on bulletin board)

N.L.R.B. v. Schwan's Sales Enterprises, Inc. **687 F.2d 163 (C.A. 6, Sept. 1982)**
(supervisor's ordering Ee to remove cap bearing U insignia, unlawful, notwithstanding that following day supervisor revoked the order and Ee was permitted to display U insignia, where at least 2 other Ees in E's quite small work force, with 10 Ees voting in election, overheard supervisor's order, and there was no publication of revocation of order and no attempt to let other Ees know that order had been revoked)

Borman's, Inc. v. N.L.R.B. **676 F.2d 1138 (C.A. 6, May 1982)**
(E's forbidding Ees from advertising grievance by *wearing a shirt with the slogan 'I'm tired of bustin' my ass'* not violative, since E's conduct was isolated and no substantial evidence supported Bd's finding that wearing of T-shirt constituted exercise of any right protected under NLRA)

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Hadley Fruit Orchards, Inc. **JD-(SF)-121-82**
(order for Ee to remove his U insignia, until day of election, unlawful)

Pay'N Save Corporation v. N.L.R.B. **641 F.2d 697 (C.A. 9, Mar 9, 1981)**
(maintaining and disparately applying unwritten rule against wearing political or controversial buttons, including U buttons, violative, since E did not meet its burden of establishing that such policy was justified by *special considerations*)

5072-7780 Posting notices

Roadway Express, Inc. **260 NLRB No. 078**
(E's removal of U material posted on bulletin board and removal of U literature in dispatch room, unlawful, where Ee's action in posting and in leaving literature in dispatch room constituted protected concerted activity to show fellow Ees that E's use of production cards affecting working conditions at another facility of E was being protested by U at that facility)

G. H. Bass & Co. **258 NLRB No. 036**
(having Ee followed by head of plant security who removed pro-U letters Ee was posting on bulletin boards in response to anti-U letter of E and giving Ee written reprimand with warning, unlawful, where Ees had been allowed to post other materials; E's contention that permission to post letter denied since it would generate controversy deemed pretextual in view of E's expressed U animus and fact letter not offensive, defamatory or opprobrious)

5072-7787 Other restraints

Cardio Data Systems Corp. **264 NLRB No. 011**
(maintaining rule before election prohibiting Ees from discussing their individual rates of pay with any other Ees, and providing for termination in case of violation of rule, unlawful)

Raley's, Inc. **256 NLRB No. 155**
(store manager's warning Ee that her employment would be in jeopardy if she talked with U representatives on company time violative especially where he let representative of competing U speak to Ees for two hours on company time)

Automotive Armature Co., Inc. **256 NLRB No. 043**
(E's forbidding Ees from talking about engaging in strike or work stoppage held violative)

Wometco Coca-Cola Bottling Company of Nashville, Inc. **255 NLRB No. 069**
(E posting warning on bulletin board that signing any document for U would cause U to repeat unethical conduct of forging Ees' signatures on other documents, unlawful)

SAS Ambulance Service, Inc., d/b/a Florida Ambulance Service; et al. **255 NLRB No. 031**
(E's imposition of rules designed to limit Ees' U and concerted activities by prohibiting Ees from contacting Us or other outside agencies and by prohibiting visitors in offices, violative)

Photo-Sonics, Inc.; et al. **254 NLRB No. 069**
(E's denying Ees use of its telephone because E thought Ees might call U, violative)

Stewart-Warner Corporation **253 NLRB No. 016**
(informing Ee that she was not allowed to talk to other Ees about U or their pay or vacations while at work, violative)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(instructing Ees not to speak with reinstated Ee and to stay out of her department, held violative)

Syracuse Dy-Dee Diaper Service **251 NLRB No. 135**
(E's telling Ee he did not want to hear anything more about U, violative)

Rich's Precision Foundry, Inc. **250 NLRB No. 173**
(E's searching Ee's locker for U documents, unlawful)

Charles Dean d/b/a Happ Tapp Mfg. Co. **250 NLRB No. 184**
(prohibiting Ees from entering into work room of U activist held violative)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(E's announcing rule, during U campaign, prohibiting maintenance engineers from walking together, even to and from same job, held violative, since rule was designed to limit Ees' discussion of U and appeared to have no reasonable business justification)

Kraton Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 132**
(violation where, in response to Ee's demand for improved working conditions, E told Ee that she should keep her mouth shut and not start trouble)

Conagra, Inc. **248 NLRB No. 085**
(instructing Ee with regard to another Ee not to talk U with that Ee, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(instructing relief Ee who moved throughout plant not to talk U or *we'll put you on a job where you won't be moving around. But that's not a threat,* unlawful)

Conagra, Inc. **248 NLRB No. 085**
(prohibiting preparation of list of Ees from timecards for U's use and confiscating portion of list, unlawful)

Ellis Hospital **JD-164-83**
(supervisor held not to have unlawfully directed Ees to report their contacts with U where he was responding to legitimate concern on part of Ees about U's contacting them at home, and he did not solicit Ees to report invasion of privacy)

Pamida Discount Store **JD-(SF)-89-81**
(telling Ees that they could not engage in U activities until bargaining agreement was signed, violative)

Pamida Discount Store **JD-(SF)-89-81**
(telling Ees not to talk U in E's facility, violative)

Fremont Auto Center, Inc. d/b/a Fremont Mazda **JD-(SF)-13-81**
(causing state department of motor vehicles to initiate investigation of U adherent on false grounds, violative, where E not only wanted to use pretext of such state action to harass and ultimately discharge him but also wished to chill U activities of other Ees)

Roadway Express, Inc. **JD-281-80**
(superintendent questioning of Ee as to why Ee had called U business agent about allegedly unsafe truck and instructing Ee to call superintendent directly, lawful, where superintendent was giving instruction to newly assigned driver as to proper procedure to follow in event of breakdown and superintendent did not forbid Ees from discussing safety matters or complaints with U officials)

United States Postal Service **JD-(SF)-273-79**
(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time,* w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

Hadley Fruit Orchards, Inc. **JD-(SF)-121-82**
(personnel director's advising Ee that state of friendship could not exist between them after he provided her with a pen indicating his support for U, unlawful)

N.L.R.B. v. Los Angeles New Hospital **640 F.2d 1017 (C.A. 9, Mar 3, 1981)**
(supervisor's prohibiting Ee from reading U literature to other Ees in room adjacent to operating room, unlawful, since incident took place in nonimmediate patient care area and did not disturb patients or patient care where room was used as Ee lounge, eating, drinking and social conversation took place in room, bulletin board was located in room, patients never entered area, and isolated incident insufficient to show that disruption of patient care would result from solicitation in lounge or justify failing to take less restrictive approach)

5072-8000 Confiscating union literature, etc.

Intermedics, Inc., et al. **262 NLRB No. 178**
(security guard's confiscating handbills from Ees as they were entering plant violative, notwithstanding E's contention that this was result of misunderstanding, where Ees were never advised that handbills had been confiscated by mistake, nor were they told that E would permit Ees to bring such literature into plant; moreover, confiscation of such literature was consistent with E's unlawful no-distribution rule)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(taking leaflets of U competing with incumbent U from Ees and tearing them up, violative)

Amaco Fabrics Co., Patchogue-Plymouth Division/ Nashville Mills **260 NLRB No. 038**
(confiscating petition protesting discharge of Ee and asking Ees who was circulating it and who had signed it violative)

G.T.A. Enterprises, Inc. d/b/a Restaurant Horikawa **260 NLRB No. 029**
(E who confiscated U literature from his Ees after they received it outside his premises from U organizers violated Act)

General Electric Company **255 NLRB No. 092**
(supervisor removing U handbill from Ee's pocket, throwing it on floor and instructing Ee to pick it up, unlawful, notwithstanding supervisor's subsequent apology and contention action was in jest)

Photo-Sonics, Inc.; et al. **254 NLRB No. 069**
(E's confiscation of U literature from E's tool cabinet, violative)

Clinton Inn **249 NLRB No. 022**
(confiscating U cards from Ees and removing U leaflets from cars in Ees' parking lot, unlawful)

Conagra, Inc. **248 NLRB No. 085**
(prohibiting preparation of list of Ees from timecards for U's use and confiscating portion of list, unlawful)

International Maintenance Systems Group, Inc. **JD-(NY)-109-81**
(confiscation of tainted authorization cards not violative)

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Southland Knitwear, Inc. and Metropolitan Industries, Inc. **JD-510-81**
(taking leaflets of U competing with incumbent U from Ees and tearing them up, violative)

Ford Motor Company, Automotive Division, Twin Cities Plant **JD-87-81**
(confiscating material which E believed to be connected with U caucus, which it opposed, unlawful)

Lika Corporation **JD-(SF)-69-80**
(removing U leaflets from automobiles in E-parking lot and throwing them away)

5072-8300 Interference with union or employee meetings

Electric Hose and Rubber Company, A Division of Dayco Company **262 NLRB No. 100**
(violation, where in reply to Ee asking supervisor if he should attend U meeting, supervisor advised Ee to be careful if he attended meeting since supervisor would have to inform personnel department and subsequently informing Ee that personnel department had given him third degree)

Methodist Hospital of Gary, Inc. **263 NLRB No. 084**
(E's refusing to permit use of its cafeteria during voters' non-working time for purpose of conducting U bargaining committee election open to all unit Ees, unlawful, where E permitted use of cafeteria for non-U activities unrelated to meals and absent evidence use of cafeteria would have caused delays to customers particularly Ees who had only half hour for lunch break, and previous U election held in cafeteria had gone smoothly; further, E's contention that permitting election would have exposed it to ULP charges, rejected)

G.T.A. Enterprises, Inc. d/b/a **Restaurant Horikawa** **260 NLRB No. 029**
(E who held luncheon meetings and paid for meals served at meetings violated Act where meetings were held at same time U had called organizing meetings and were designed to retard U's communication with Ees)

Marco Polo Resort Motel **257 NLRB No. 158**
(E's manager interrupting meeting held on E's premises with its permission to order non-U unit Ees to leave meeting, unlawful, notwithstanding E had only granted permission for meeting limited to U members, since purpose of meeting was internal U matter of electing U steward, and absent showing by E that attendance of non-U Ees adversely affected operations or that it had reason to believe operations might be affected by attendance of those Ees; once E granted U right to hold meeting on its premises, Ees' right to have meeting conducted free of interference outweighed E's interest in insuring strict adherence to limits of permission it had granted)

Herman Brothers, Inc. **252 NLRB No. 121**
(supervisor informing Ee who had been given permission to take off next day that if Ee, who opposed ratification of proposed contract, went to U hall next day Ee would be given warning letter for excessive absenteeism, unlawful, since supervisor never denied Ee had previously been given permission to take day off and E's concern was that reason Ee wanted to be off was to attend tally of mail ballot on contract ratification)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(issuing mailgram to Ees, which was related to scheduled U meeting in another city, advising them not to leave their duty assignment area w/o E's express approval, unlawful, where E had never before instituted rules by mailgram)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(contention that U council's suspension of Ee-staff members on ground that, by holding U meeting at parent organizations facility, they engaged in disloyal act, rejected, since Sec. 7 of Act is broad enough to encompass Ees' decision to choose, free of E interference, sites of their U meeting)

Heatilator Fireplace, Division of Vega Industries, Inc. **249 NLRB No. 047**
(telling Ees not to attend U meetings, encourage U representation, or sign U cards, unlawful)

Bremer Property Management Corporation **JD-(SF)-90-81**
(violation, where E informed Ee who had acted as spokesman for Ees who deserved to bring concerns to attention of E, that Ees were not to have anymore meetings, and that Ee would be fired if Ees held anymore meetings, and upon being informed Ees intended to have another meeting, fired Ee)

E. I. Dupont De Nemours and Company **JD-615-80**
(violation where E stated that safety program was management responsibility which precluded Ee participation or criticism contrary to program's structure)

Grief Brothers Corporation v. N.L.R.B. **616 F.2d 831 (C.A. 6, 1980)**
(E's denial of unprecedented request for simultaneous leaves for Ees of all its 11 plants to attend meeting to prepare for future negotiations not violative, notwithstanding fact that E had granted individual requests for absences in past)

5072-8400 Interference with union contacting employees off employer's premises

Hackensack Hospital Association **264 NLRB No. 177**
(telling Ees not to accept U literature from U organizer who was standing on public sidewalk outside hospital where Ees worked violative)

5072-8500 Interference with strike or picketing

J. E. Steigerwald Co., Inc. **263 NLRB No. 068**
(threat to Ees that people wearing picket signs would be discharged violative)

Valley Plaza, Inc. d/b/a Captain Nemo's **258 NLRB No. 076**
(requiring pickets to leave second-floor foyer in front of E's restaurant held not violative where GC did not attempt to make factual showing that pickets' presence in second-floor foyer was essential to their ability to communicate effectively with their intended audience)

Friday Canning Corporation **255 NLRB No. 052**
(threatening Ees with discharge because they refused to return to work unless E would give them 30 cents per hour wage increase rather than 30 cents per hour bonus, violative)

Friday Canning Corporation **255 NLRB No. 052**
(closing migrant workers' camp because Ees engaged in economic strike, violative, because this effectively severed indicia of continued employment (discharge) to which strikers are entitled; furthermore, location of barracks was away from production area and so their staying would not interfere with production process)

Walker Die Casting, Inc. **255 NLRB No. 034**
(removing picket signs, violative)

Camay Drilling Company **254 NLRB No. 019**
(E's soliciting of striking Ee to abandon ULP strike and threat to discharge him if he did not do so violative)

Inta-Roto, Inc. **252 NLRB No. 111**
(where Ees engaged in economic strike, E's termination of collective-bargaining agreement violative)

Inta-Roto, Inc. **252 NLRB No. 111**
(E's notification to ULP strikers that they had been permanently replaced is illegal threat of permanent replacement)

Crestline Memorial Hospital Association, Inc. **250 NLRB No. 028**
(threatening non-unit Ees with loss of jobs if they refused to cross picket line, violative)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 190**
(threatening attorney Ees with discipline for participating in clerical picket line, and entering notations in their personnel files that they had engaged in such activity, unlawful)

Excavation-Construction, Inc. **248 NLRB No. 081**
(E which offered increased wages to picketing Ees if they returned to work violated Act)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**
(E's phone call to laid off discriminatee telling him *don't walk the picket line*, not violative, since nothing in statement constituted express or veiled threat of reprisal)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(throwing of picket signs into street, soliciting strikers to return to work with promises of wage increases, assaulting strikers and attempting to incite fight at strike locations by two supervisors, unlawful, but since acts isolated and counterproductive did not support issuance of R/O)

Giant Food Markets, Inc. and S. S. Kresge Company v. N.L.R.B. **633 F.2d 18 (C.A. 6, 1980)**
(remand for evidence on effect of relocating, pursuant to TRO, area standards pickets from private property near store entrance to public area across parking lot at entrance to 2-store shopping center and to determine, (1) whether picketing at store entrance is protected, and (2) whether E's peaceful demand that pickets leave, violated 8(a)(1))

Seattle-First National Bank v. N.L.R.B. **651 F.2d 1272 (C.A. 9, Nov 1980)**
(E's threat to arrest economic strikers for picketing in foyer in front of restaurant located on 46th floor of office building violative; Section 7 rights and private property rights must be balanced and here U used only 2 pickets at a time and placing pickets in front of building would not reach restaurant customers as majority came from w/i building)

5072-8600 Retaliation for engaging in union or other protected activity

Allied Industrial Workers of America, AFL-CIO, Region 8 **265 NLRB No. 077**
(no violation where regional director of E, a U, prohibited regional representative from entering regional office w/o permission, notwithstanding re-

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gional director had previously unlawfully threatened regional represenative because of latter's protected activities; Bd found regional director would have made the prohibition regardless of regional representative's protected activities, in view of no direct expression of animus, and the director's suspicions of representative regarding items missing from the office safe)

Transport Service Co. **263 NLRB No. 125**
(discharge of Ee who refused to drive truck which was overweight and in violation of state law (though w/i *tolerances* allowed by states and therefore exempt from criminal prosecution), violative, as Ee was engaged in protected concerted activity when he refused to drive; refusals to violative state law are presumptively protected concerted actively; moreover, inquires into private motivations for asserting such reasons is limited to whether it was asserted in good faith or maliciously)

Steak and Ale Restaurant, Sharonville **263 NLRB No. 014**
(discharge of Ees who engaged in protected concerted activity of protesting E's tip policy, lack of bus boy assistance and changes in health care programs, violative)

R. L. White Company, Inc. **262 NLRB No. 069**
(disciplining Ee for allegedly discussing U with Ee who was working, violative)

Convair Corporation **261 NLRB No. 178**
(where, upon ULP strikers' return to work pursuant to E's offer of substantially equivalent work at same rate of pay they received prior to strike, E offered them jobs on assembly line instead of their former service jobs, and Ees refused such jobs, E's request that they sign statements to that effect, unlawful)

Marion Rohr Corporation **261 NLRB No. 138**
(telling Ees that U voted in it could not prevent him from timing bathroom visits, violative)

Marion Rohr Corporation **261 NLRB No. 138**
(discharge of Ee because she had U card in her possession during nonwork-time, violative)

Marion Rohr Corporation **261 NLRB No. 138**
(discharge for having U card placed in her possession during nonwork time, violative)

G & H Products, Inc. **261 NLRB No. 047**
(discharge of probationary Ee in anticipation that he would join striking Ees at end of probationary period violative, as it was effectivated to discourage U activity in general)

M & G Convoy, Inc. **260 NLRB No. 145**
(threatening Ees that he would not transfer them to new facility after he closed existing facility because they actively enforced contract terms)

Banner Tire Company **260 NLRB No. 096**
(E who advised Ee he was going to be laid off and his job eliminated because his U had requested that he be paid according to U contract violated Act)

G.T.A. Enterprises, Inc. d/b/a **Restaurant Horikawa** **260 NLRB No. 029**
(Ee who engaged in non-violent concerted activity of joining in with 30 other non-Ee demonstrators and boisterously marching through E's restaurant during crowded dinner hour not protected where such conduct was disruptive of E's business and transgressed boundaries by which even non-violent conduct protesting E's ULP's is deemed protected by Act; therefore, discharge not violative)

Quick Find Co. **259 NLRB No. 144**
(after questioning Ees about their U activities, telling them that they were *booked for raise* violative, as it implied that benefits would be withheld because of U activity)

Hudson T. Marsden, A Sole Proprietorship **259 NLRB No. 118**
(Ees who refused to work outside on rainy day and went home w/o informing E engaged in protected concerted activity and discharge violative)

Talbert Manufacturing, Inc. **258 NLRB No. 103**
(reinstating striking Ees at lower pay than those Ees who did not strike and received raises violative)

Talbert Manufacturing, Inc. **258 NLRB No. 103**
(where E permitted nonstriking Ees who were transferred to dayshift during strike to remain there, contrary to its prior policy forbidding shift changes, and denying returning strikers right to change shifts, it violated Act)

Truck Stations, Inc., d/b/a Woody's Truck Stops **258 NLRB No. 094**
(where E issued warning to two Ees, one U member and one not and told non-U member that only reason she received warning was to avoid appearance of harrassing U member, statement violated Act as it could be construed as evidence of E's willingness to retaliate against Ees for their U activities and also to engage in subterfuge to avoid legal scrutiny of its actions)

R. C. Lapeer Builders, Inc. **258 NLRB No. 165**
(refusal to reinstate sympathy strikers after un-conditional offer to return to work violative)

L & M Radiation, Inc. **259 NLRB No. 020**
(layoff of Ees who had been very active in protesting about poor working conditions to management violative)

Smithfield Packing Co. **258 NLRB No. 022**
(discharge of Ees who refused to work overtime more than the 8 hours E had predicted they would work violative as Ees were engaged in protected concerted activity as previous unannounced concerted refusal to work overtime prompted by dissatisfaction with E's overtime policies was *presumptively concerted activity*; moreover, their refusal to work does not lose its protected status because it took place during overtime hours and was not previously announced)

Continental Distributing Co., Inc. **256 NLRB No. 091**
(discharge of Ee after he made inquiries about joining and attempted to join U, and called Bd to find out how to join U, violative where E's allegations about Ee's stealing goods from E not supported by evidence)

Rose's Stores, Inc. **256 NLRB No. 076**
(unprecedented mass discharge of five Ees, who protested Sunday work assignment, assertedly because of their *bad attitude* held violative, where assertion was not real reason for discharge and E's unexplained failure to warn those five long-term Ees that they were in danger of discharge did not represent E's normal pattern of operations)

Town & Country LP Gas Service Co. **255 NLRB No. 144**
(E's demand that Ee, who had successfully prosecuted grievance against E for earlier discharge, pay for taking E's pickup truck home at night violative, where Ees regularly drove truck home, this use was known to E, and he neither disciplined nor demanded payment from other Ees)

Vore Cinema Corp. **254 NLRB No. 167**
(E's statement to Ee that she was permanently replaced because U had refused to give in to E's bargaining position, violative)

Robert Batchelor d/b/a Batchelor Electric Co., a sole proprietorship **254 NLRB No. 156**
(discharge of electrician assertedly because of tardiness and failure to follow orders held violative where there was no evidence that Ee failed to follow orders, no other Ee had ever been discharged for similar record of tardiness and reason for discharge was Ee's not working in protest of E's refusal to pay Ee at prevailing wage rate on government projects; protest viewed as concerted activity objective which was matter of common interest and concern to all Ees)

Newport News Shipbuilding & Dry Dock Company **254 NLRB No. 043**
(discharge of Ee after his election to U office and increased activity regarding safety conditions violative)

Maine Apple Growers, Inc. **254 NLRB No. 060**
(delaying recall, after election, of seasonal apple packers, who had requested raise in wages and had directed grievance letter to E's board of directors, assertedly because they were responsible for low production held violative where E's business justification for its action had not been established; E's unlawful statement to Ees that *agitation* had to cease coupled with its unexplained deviation from its normal method of disciplining overly talkative Ees established E's unlawful motive)

Intermountain Rural Electric Association **253 NLRB No. 164**
(reprimand of Ee E knew was *strong* U adherent, for entering engineering director's office on another Ee's behalf and proposing attempt be made to reach E's operations manager to clarify other Ee's job status held violative, since U adherent joined other Ee *for purpose—of mutual aid or protection*)

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(discharge violative where another Ee was disciplined with only 1-day suspension for concerted activity similar to that of discharged Ee)

Red Ball Motor Freight, Inc. **253 NLRB No. 111**
(discharge for Ee's alleged disruptive behavior and generally *poor attitude* which caused supervisor to *watch* her, held violative where Ee's propensity to engage in protected concerted activity caught attention of E which was motivated to engage in *special surveillance* of Ee's work performance and to seize upon her first alleged transgression as pretext to terminate her)

Wyman-Gordon Company **252 NLRB No. 168**
(discharge of U adherent for failing to notify E that he did not attend classes for which he was subsequently paid, violative, where E's record keeping difficult to understand, Ee offered to return unearned money to E which offer refused and anti-U attitude of E)

Woonsocket Spinning Company **252 NLRB No. 163**
(telling Ee he might have received bonus if he had not voted for U)

zabeth Motors, Inc. **252 NLRB No. 161**
(revoking Ees privilege of working on their own cars in E's shop and using telephone for personal calls)

J. J. Security, Inc. **252 NLRB No. 180**
(requiring Ees to sign resignation forms or else stop seeking improvements in their working conditions violative)

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S. L. Industries Inc. and Extruded Products, Corp. 253 NLRB No. 151
(requiring discriminatees entitled to reinstatement to be interviewed before they were allowed to return to work held violative where such requirement had no legitimate business justification)

S. L. Industries Inc. and Extruded Products, Corp. 253 NLRB No. 151
(after her reinstatement, Ee's being assigned full time to arduous machine work when she had shared time on machine with other Ees and being denied same lunch break given other Ees in department held violative, since inference was warranted that Ee was being made to suffer for her concerted action and U activities)

S. L. Industries Inc. and Extruded Products, Corp. 253 NLRB No. 151
(instructing Ees not to speak with reinstated Ee and to stay out of her department, held violative)

Albertsons, Inc. 252 NLRB NO. 081
(discharge of Ee for insistence on break periods provided for in collective-bargaining agreement violative)

United Services For The Handicapped 251 NLRB No. 117
(issuing reprimand and threatening to discharge Ee for not following grievance procedure, when he complained to *CETA* official that he, as recalled discriminatee, was working only two or three hours per day while newly hired drivers under *CETA* were working full time held violative, since Ee's activities in protesting his part-time status were protected activity)

Montoney (Formerly Seymour Packing Division of Seymour America, Inc.) 251 NLRB No. 047
(refusing to allow to return to work Ees who had walked off job to protest reduction in piecework rate violative and in effect constructive discharge)

Universal Service Contractors 247 NLRB No. 097
(threatening striking Ees with discharge if they did not return to work violative)

Bucyrus-Erie Company 247 NLRB No. 059
(discharge of probationary Ee violative where E asserted reason for discharge was crack in weld Ee had completed but no other Ee had ever been discharged for that reason and true motive for discharge was Ee's protesting unsafe working conditions, a protected concerted activity)

Bates & Cunningham, Inc. JD-589-81
(telling police officer who was investigating vandalism at E's premises that U adherents may have done it, violative where accusation made with no basis in fact but surely in retaliation)

Brodart, Inc. JD-148-81
(supervisor who threatened to discharge Ees for complaining about hazardous working conditions, a protected activity violated Act notwithstanding he had no authority to implement threat as Ees may not have been aware that he lacked authority)

New York State United Teachers JD-(NY)-83-81
(reprimand of Ee who had filed grievance regarding Ees' job assignments which was then in arbitration for telling delegates of affiliated organizations of E about arbitration case and which E did not want divulged, violative, since Ee's remarks concerned grievance, did not disparage his E nor reach level of impropriety or disloyalty to E which would result in remarks losing its protected nature)

Peninsula Association for Retarded Children and Adults JD-(SF)-269-80
(institution of written warning system in retaliation for filing of state back wage claims violative)

Monongahela Steel Corporation JD-392-80
(successor's refusal to hire applicant because while employed by predecessor he was leader of concerted group activity designed to establish level of wages and benefits and nature of working conditions under which they would be employed when successor took over, unlawful)

Dooley Equipment Corporation JD-218-80
(threatened discharge for voting in election)

The Berry Schools v. N.L.R.B. 653 F.2d 966 (C.A. 5, Oct. 1980)
(failure to promote associate professor to full professorship allegedly in retaliation for organizational activity held not unlawful where record did not support finding especially in light of several good justifications of college's decision not to promote Ee)

Carlson Roofing Co., Inc. v. N.L.R.B. 637 F.2d 77 (C.A. 7, 1980)
(in discussion with E Ees voicing their opposition in orderly fashion to E's interpretation of contract provision that Ees had to work alone on jobs and no Ee flatly refused to work alone, held protected concerted activity)

N.L.R.B. v. Greyhound Lines, Inc. 660 F.2d 354 (C.A. 8, Sep 1981)
(suspension of two Ees because they issued press release announcing intent of drivers to strictly obey speed limit over holiday weekend violative as Ees were engaged in protected activity where release related to ongoing labor dispute over 55 mph requirement, did not disparage E's reputation, and was not maliciously motivated)

Albertson's, Inc. v. N.L.R.B. 661 F.2d 930(T) (C.A. 9, Sep. 1981)
(discharge of Ee allegedly for engaging in protected activity of seeking enforcement of contract as to break periods, not unlawful, where evidence showed that Ee would have been fired for incompetence despite any U activity, and there was substantial doubt that alleged *U activity* was in fact more than Ee's pursuance of her own complaint of discontent)

N.L.R.B. v. W. Carter Maxwell, dba Pioneer Concrete Co. 657 F.2d 690 (C.A. 9, 1981)
(discharge of Ee for attempting to enforce overtime provisions of collective-bargaining agreement violative)

5072-8800 Supervisors' participation in intra-union activities

EMR Photoelectric, A Division of Sangamo Weston Inc. 251 NLRB No. 234
(fact that assertedly supervisory Ees signed ptn to E to recognize U held, in circumstances of case, not to have tainted ptn nor unduly influenced Ees who signed it)

5072-9200 Interference with intra-union activities

East Texas Motor Freight 262 NLRB No. 101
(letter to dissident U Ee warning him of discipline connected with E's disparate enforcement of contractual limitation on use of bulleting board)

Camay Drilling Company 254 NLRB No. 019
(E who sent letter to ULP strikers stating that it would never settle with U unless U withdrew its fines on Ees who crossed picket line violated Act as E may not communicate with Ees on issue which is internal U affair while it is engaged in ULPs, letter is attempt to undercut U's status)

Welfare and Pension Funds, Blasters, Drillrunners and Miners Union Local No. 29 and Their Trustees Louis Sanzo, Amadio A. Petito, Paul Crowley, and Theodore King 251 NLRB No. 165
(Ee of U pension fund involved in protected intra-U activity when he protested to President of U.S. about loss of U jobs, how members were referred to jobs, sought reelection as secretary-treasurer of U; discharge for such activity violative)

Adbill Management Corporation d/b/a Limetree Beach Hotel JD-61-82
(E's asking Ees to declare their feelings on appointment of particular Ee as U steward and telling Ees that E *would never have chosen* her to be shop steward, violative; E was intruding into enclave which was business of no one but the U)

5072-9900 Interference with or attempt to influence intra-U election

Botany 500, A Division of Rapid-American Menswear, Inc. 251 NLRB No. 075
(E's statement to Ee who, during her campaign for U office distributed leaflet depicting E and U official in caricature with arms linked, that E could sue Ee for slander, not unlawful, where E's remark was not critical of leaflet's political message nor related to Ee's intra-U activities, but rather was directed to misspelling of his name and portrayal of him in caricature)

Botany 500, A Division of Rapid-American Menswear, Inc. 251 NLRB No. 075
(E's statement to Ee, engaged in campaign for U office, ordering her back to her work area and stating he ought to have her locked up for damage she had already done, not unlawful, where E made no specific reference to Ee's electioneering, there was no evidence establishing that E knew Ee was campaigning, and there is no showing that Ee had campaign material in her possession at that time)

5078 INTERFERENCE WITH ELECTION OR REPRESENTATION PROCEEDINGS OF BOARD

5078-2000 Assistance to one of competing unions

St. Regis Paper Company v. N.L.R.B. 623 F.2d 487 (C.A. 6, 1980)
(discharge and failure to reinstate Ees who struck E during critical period to gain recognition for U, rival of petitioner, not unlawful, since if E, during pendency of election proceedings, had recognized rival U as bargaining agent, it would have been guilty of interference with Bd's election procedures as well as ULP in violation of Section 8(a)(1) of Act)

5078-3000 Midwest piping doctrine

RCA del Caribe, Inc. 262 NLRB No. 116
(*Shea Chemical* 121 NLRB 1027, which required E to withdraw from bargaining with incumbent U after ptn had been filed by outside U overruled; E neutrality is best preserved by continued bargaining with incumbent, thus E will not violate Sec. 8(a)(2) by postpetition negotiation or execution of contract with incumbent U and will not violate Sec. 8(a)(3) even if it contains U-security clause; however, if contract is executed and incumbent loses election, contract with incumbent will be null and void)

5078-6000 Efforts to influence result

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads **261 NLRB No. 130**
(where Ees are paid on commission basis, telling Ees before election that it had solved overstaffing problem by firing Ee, violation as it was grant of benefit by enlarged commission earning opportunities)

Mark I Tune-Up Centers, Inc. **256 NLRB No. 138**
(bonus given to Ee, unlawful, where bonus was not only unscheduled but also unprecedented, and Ee was puzzled by grant of bonus since he felt his work had not changed in either quantity or quality, which leads to conclusion that E was attempting to influence Ee's vote in coming election)

Duane Heating Corporation **254 NLRB No. 030**
(conduct which does not interfere with conduct of election *a fortiori*, would not constitute violation of Sec. 8(a)(1))

Catalina Yachts **250 NLRB No. 048**
(distributing *Vote No* buttons and T-shirts as well to Ees, unlawful since Ees were forced to manifest their choices and the shirts were of value to Ees and intended to influence their votes; inducement of Ee to wear *Vote No* button, unlawful for same reasons)

United Maintenance Company, Inc. **JD-(SF)-169-82**
(telling Ee that if E decided to vote in U election, he should vote no, violative)

Brueckner Sand & Gravel, Inc. **JD-(SF)-312/81**
(posting of notice suggesting and encouraging Ees to seek recall vote from Bd *after* U won election, violative)

5078-6020 Concessions to influence vote

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads **261 NLRB No. 130**
(granting Ees dental plan 16 days before election, violative where motivation was to head of U drive at store involved in instant case and at another chain in area that was part of same holding company)

Quick Find Co. **259 NLRB No. 144**
(after telling Ee that he could not give bonus *because the NLRB will be on my ass*, granting bonus with comment, *I still don't know how you're going to go*, i.e.; vote, violative as example of *first inside velvet glove* and related to vote in upcoming election)

Fieldcrest Mills, Inc. **259 NLRB No. 096**
(E's announcement, during U campaign, that Ee would receive pay raise and improved group insurance not violative where benefits were given company wide to let Ees *catch up* to those Ees at unionized plants)

Duane Heating Corporation **254 NLRB No. 030**
(excusing Ees from work rest of day after voting violative as economic benefit and creating belief that E was source of all largesse)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 087**
(bus service provided by E to its Ees week *before* election and continued only until after election found objectionable, since conduct provided preelection benefit and limited ability of U to communicate with Ees)

Permanent Label Corporation **248 NLRB No. 021**
(bonus given to all Ees prior to election violative where past practice had been that only Ees who had been employed over 1 year received bonus)

Connecticut Foundry Company **247 NLRB No. 145**
(increase granted immediately prior to election while Ees were on strike violative)

J. H. Block & Co., Inc. **247 NLRB No. 041**
(E who revoked written warning to Ee 1 week prior to election with purpose of causing Ees to reject U as their bargaining representative violated Act)

J. J. Cassone Bakery, Inc. **247 NLRB No. 032**
(increase in excess of amounts required by newly announced federal minimum wage rate, not unlawful and not interference with election, where in accordance with E's prior bookkeeping procedures E essayed to pay wage increase in increments of 25 cents in order to simplify its payroll calculations, increases were not announced or paid prior to election, and there was otherwise no evidence that E had object of influencing Ees in their choice of representative)

Chef's Pantry, Inc. **247 NLRB No. 018**
(instituting new educational program before election, unlawful)

John V. Lane, P.C. d/b/a American Dental Centers **JD-(NY)-110-82**
(announcing preexisting benefits to its Ees during U campaign not violative even if Ees not aware of these benefits as to prevent this would deprive E of legitimate campaign strategy. However, E must be legally committed to those benefits and not be able to discontinue them. Furthermore, E can not husband benefits until right before election and spring them on Ees in manner calculated to influence their choice)

5078-6025 Withholding benefits to influence vote

Walker Die Casting, Inc. **255 NLRB No. 084**
(telling strikers that he would not be hiring again until after U election, violative)

Chef's Pantry, Inc. **247 NLRB No. 018**
(discriminatorily denying benefits of newly-instituted educational program to leader of organizing campaign, unlawful)

Chef's Pantry, Inc. **247 NLRB No. 018**
(revising long-standing policy prohibiting beards, and shortly before election permitting Ees to grow beards, unlawful)

The Morley Boat Transfer Company **JD-(SF)-243-80**
(no violation where E who recently purchased plant promised that new wages and benefits package would take effect on certain date but before election told Ees that if U won, E would negotiate with U concerning wages and benefits, where E's package was *discretionary* and amount had not been determined before advent of U or election)

N.L.R.B. v. Travis Meat and Seafood Company, Inc. **683 F.2d 233 (C.A. 6, June 1980)**
(telling Ees that company was not free to grant wage increases during organizing drive, violative)

Simpson Electric Company, a Division of American Gage and Machine Company, Inc. v. N.L.R.B. **654 F.2d 15 (C.A. 7, July 1981)**
(E's announcing pay increase or withholding one with intent to influence ongoing (U) organizing drive or R election, violative)

5078-6030 Concessions to have employee refrain from voting

Quick Find Co. **259 NLRB No. 144**
(violation where manager, after soliciting grievances, told Ees that he would improve employment conditions if they would withdraw their support of U before election)

5078-6035 Accelerating effective date of wage increase

General Rental Co. d/b/a Avis Rent–A–Car **247 NLRB No. 188**
(violation where E accelerated announcement and effective date of wage increase and added benefits in order to influence Ees during election campaign)

5078-6040 Electioneering

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads **261 NLRB No. 130**
(asking Ee whether he has read company campaign literature and insisting that he read it, violative and objectionable conduct)

5078-6050 Promise of or grant of benefit

Huntington Rubber Company, Division of New Idria, Inc. **260 NLRB No. 133**
(E's announcement of new safety program in which it would provide Ees with safety glasses and shoes violative where announced in context of anti-U presentation and was attempt to dissuade Ees from supporting U)

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**
(E's statement to Ees that he knew they were on his side and that they could work together, followed by statement that E would pay monthly insurance premium which up till then Ees had been expected to pay, unlawful; even though benefit was not expressly made dependent upon Ees' rejection of U, E's offer indicated a coercive purpose and intent to undermine support for U in subsequent election)

Richland Co. & Assoc., Division of McDonald Construction, Inc. **256 NLRB No. 026**
(preelection promise to Ees of maternity insurance which was to take effect after election, and grant of such benefit after U lost election, unlawful)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(E's letter to Ees, before election, pleading with them to vote *no* in election and to give E a year to prove himself held violative, since latter statement conveyed promise to be responsive to Ee needs)

Century Moving & Storage, Inc. **251 NLRB No. 083**
(formal promise to grant specific wage increase to avoid unionization, violative, notwithstanding that prior to organizing campaign E made vague promise of wage increase)

Lyman Steel Company **249 NLRB No. 090**
(promising Ees wage increase if they withheld their support from Us, held violative)

St. Francis Hospital **249 NLRB No. 017**
(working conditions would improve if U lost election)

Carbonex Coal Company **248 NLRB No. 107**
(promise to Ees of tonnage bonus if U was defeated)

Chef's Pantry, Inc. **247 NLRB No. 018**
(violation where at preelection meetings E impliedly promised and then granted benefits by soliciting presentation of, and adjusting, grievances in effort to discourage U support)

Harvard Cooperative Society, Inc. **JD-246-82**
(extending sales incentive bonus program to Ees other than managers after knowledge of U campaign and repeating program with payoffs shortly

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before election violative, as timing payoffs in second program shortly before election was attributed only to E's intent to influence election)

Chef's Pantry, Inc. v. N.L.R.B. 684 F.2d 498 (C.A. 6, 1981)
(violation where E during critical period had promised and granted benefits, had solicited and adjusted grievances, and had threatened its Ees with imposition of more onerous working conditions)

Simpson Electric Company, a Division of American Gage and Machine Company, Inc. v. N.L.R.B. 654 F.2d 15 (C.A. 7, July 1981)
(E's announcing pay increase or withholding one with intent to influence ongoing (U) organizing drive or R election, violative)

Faith Garment Company, Division of Dunhall Pharmaceutical, Inc. v. N.L.R.B. 630 F.2d 630 (C.A. 8, 1980)
(notwithstanding decision to grant pension benefits was made prior to onset of organizational campaign, announcement of pension plan and presentation to Ees of misprinted certificates w/o comment on error during anti-U speech day before election held violative where these facts provide substantial support for Bd's finding that purpose of announcement was to cause Ees to reject U)

The Wackenhut Corporation v. N.L.R.B. 666 F.2d 464 (C.A. 11, Jan. 1982)
(letter and leaflets distributed by E to its Ees, two weeks before election, announcing *a better medical plan* for Ees at increased cost to be absorbed by E, held violative and election set aside, since E may not grant new benefits on change existing conditions of employment during election campaign for purpose of influencing Ees' choice in election)

5078-4055 Threats

Belcher Towing Company 265 NLRB No. 139
(supervisor's statement to Ee that Ee could save his job by telling E that Ee was going to vote for company instead of U, unlawful)

Alpha Cellulose Corporation 265 NLRB No. 010
(E's letter indicating to Ees not only that, if they struck, they could be permanently replaced, as is permitted, but that they could lose their jobs as result of striking held unlawful and interference with election, since such clear threats to sever employment relationships in event Ees engage in economic strike amount to unlawful threats of job loss)

Alpha Cellulose Corporation 265 NLRB No. 010
(E's letter to Ees held unlawful and basis for valid objection to election, where letter, when read in light of E's prior letter to Ees found unlawful herein because it stated that Ees could lose their jobs as result of engaging in economic strike, confirmed to Ees that an exercise of their right to strike would, as a matter of course, lead to permanent loss of their jobs and accompanying benefits)

Air Transit, Inc. 256 NLRB No. 064
(threatening Ees because they gave testimony at hearing in Bd R proceeding, unlawful)

M & G Fleet Service, Inc. JD-(ATL)-60-82
(telling Ee that he was going to have *bad luck* and be out of job if U won and that company president would shoot him if he talked about U at E's other facility violative in view of E's coercive interrogation of Ees and threats of plant closure, no bargaining or signing of contract and it conveyed impression of surveillance)

5078-4060 Expression of antagonism against petitioning union

N.L.R.B. v. Marine World USA 611 F.2d 1274 (C.A. 9, Jan. 1980)
(ct found that statements distributed in letters to Ees by E before election, though critical of U, did not on their face threaten reprisals or force or promise benefits depending on outcome of election; however, ct remanded to Bd issues of freedom of speech in context of labor relations under Sec. 8(c), general hostility in past association with U, and intended and understood message of E's memoranda with respect to whether they contained implied threats or promises)

5078-4070 Hiring or retaining antiunion employees

Airborne Freight Corporation 263 NLRB No. 181
(violation where E packed unit with Ees opposed to U immediately after U demanded recognition based on card majority as shown by wife of E's regional manager soliciting new hires at sports club because E *wanted somebody part-time to vote against the union* and her husband hiring inexperienced women thus solicited)

ABC Liquors, Inc. 263 NLRB No. 174
(hiring Ee so that he would be eligible to vote against U in election)

Trend Construction Corporation and General Electric Corporation, Individually and as Joint Employers 263 NLRB No. 044
(violation, where E paid travel expenses for individuals to come from distant state and hired them for construction job in preference to applicants from area, thus doubling size of unit where that quantity of Ees not needed for job and individuals hired unable to perform simplest tasks of craft for which hired, in order to pack unit and thwart obtaining U representation)

Suburban Ford, Inc. 248 NLRB No. 061
(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

5078-4080 Changes in conditions of employment or threats thereof or statements made in connection with election

Gurabo Lace Mills, Inc. 265 NLRB No. 044
(E who issued warnings to two Ees two days after it received notice R hearing would be held found to have violated Act in as much as warnings were issued in retaliation for U activities; however, no evidence that warnings, standing alone, were issued for purpose of influencing outcome of hearing; therefore, R-hearing not tainted and evidence of supervisory status of Ee adduced at hearing considered along with evidence presented at ULP hearing for determination of supervisory status in second hearing)

Life Savers, Inc. 264 NLRB No. 162
(letter to Ees stating that if Ees elected U it could jeopardize *continued effectiveness of our plant* and Ees' *jobs and livelihoods could be affected,* violative where E did not show that such prediction was based on objective facts)

Washington Beef Producers, Inc. 264 NLRB No. 155
(violation where E told Ees during meeting that if E lost election E would tie up results for one or more years and cause wages and benefits to be frozen for that period)

Conair Corporation 261 NLRB No. 178
(even assuming E could not be found to have initiated, promoted, aided, or participated in distribution of *raffle tickets* for *all expense paid trip to E's new facilities in Hong Kong,* and for signs appearing in plant stating *Vote No or Move to Hong Kong* and similar signs, *raffle tickets* and signs appearing 2 weeks before election held unlawful threats of plant closure, since E was aware of such activity and had duty to unequivocally disavow any responsibility for such material, but E failed to do so even though it had ample time)

Conair Corporation 261 NLRB No. 178
(E's preelection remarks to Ees at mass meeting, and distribution of leaflet, referring to high unemployment rate in State and corresponding loss of U membership throughout country, and statement that no company can possibly give what U promises and *still stay in this competitive business* held unlawful implied threat of plant closure)

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads 261 NLRB No. 130
(discharging experienced clothing salesman who signed U card, discussed U with other Ees and had been steward at prior E violative where several shortcomings alleged at hearing were not stated at exist interview)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(E's statement to Ees on different occasions that, if he were able to remove 50 percent of U supporters, he would be able to win election, unlawful; such statement was highly persuasive of E's unlawful motive in refusing to recognize and bargain with U and in discharging or failing to retain certain U Ees who had been employed by predecessor E)

Gould, Inc. 260 NLRB No. 002
(threatening, before election, to eliminate E's *open door* policy for discussion of complaints and grievance, violative because it penalizes Ees for exercise of statutory rights, as Sec. 9(a) guarantees Ees right to bring problems directly to E as long as U agent has right to be present and adjustment is not contrary to contract. E was not discribing typical grievance procedure but was threatening total cessation of all contacts between management and Ees)

Halo Lighting Division of McGraw Edison Company 259 NLRB No. 006
(supervisor's preelection threat that, if E lost incumbent U's label as result of U's loss of election, E would have to lay off half of the Ees, and lay off some of the supervisors and reduce salaries, unlawful)

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division 257 NLRB No. 153
(supervisor's statement to Ee before election that if E's janitors unionized they would *definitely go out the gate* held violative, since supervisor admitted that he openly related unionism to (Ees') job uncertainty)

Richland Co. & Assoc., Division of McDonald Construction, Inc. 256 NLRB No. 026
(threat to discontinue paying Ee insurance premiums for which Ees would probably be billed if U won election, but that they would not have to pay if U lost, unlawful)

Crown Cork & Seal Company, Inc. 255 NLRB No. 064
(supervisors' pre-election statements to Ees to effect that *if U got in,* E's sole customer for steel cans *would switch to less costly aluminum cans and (E) would be forced to shut down* held violative, since E had not met its burden of

5078-4080—Cont.

providing objective factual basis for statements because it does not necessarily follow that a U election victory per se would increase E's labor costs disproportionately to customer's willingness to pay)

Propellex Corporation, a Subsidiary of Essex Cryogenics Industries, Inc. 254 NLRB No. 037

(election set aside and second election ordered, where prior to first election, E threatened Ees with loss of wages and overtime compensation, with loss of insurance, seniority, and vacation benefits, and with imposition of more onerous working conditions in event that Ees selected U as their bargaining agent)

Blue Bird Body Company 261 NLRB No. 196

(E's prepared anti U speech made to eligible voters prior to election, violative where E used symbol of living or dying *Bluebird* as reference to *company E* and such use was implied threat of plant closure or removal if Ees chose U to be their representative)

Charles Deem d/b/a Hopp Tapp Mfg. Co. 250 NLRB No. 154

(foreman's threatening Ees that E would discharge Ees who voted for U held violative)

Charles Deem d/b/a Hopp Tapp Mfg. Co. 250 NLRB No. 154

(telling Ee that Ee had better talk to his brother, fellow Ee, and get him to vote no in election or brother would not be working there any longer, violative)

MGM Grand-Reno, Inc. 249 NLRB No. 153

(supervisor's statement to U advocate that he should not expect E to continue its practice of accomodating Ees, who also wanted to attend school, in event U was voted in, held violative, since statement suggested reprisals in form of denial of existing benefits in response to Ees' decision to select U)

Lyman Steel Company 249 NLRB No. 040

(telling Ee that E intended to fire U activist if E lost R election)

Lyman Steel Company 249 NLRB No. 040

(warning Ees, prior to rerun election, that if U was successful in organizing Ees and if they went on strike and no agreement reached on contract E *could get rid of (them) and bring in a whole crew,* held violative)

Lyman Steel Company 249 NLRB No. 040

(assertion by E that if U represented Ees, E would be unable to make Ee transfers from one department to another and *we would have to lay you off,* held violative)

J. H. Black & Co., Inc. 247 NLRB No. 041

(E who revoked written warning to Ee 1 week prior to election with purpose of causing Ees to reject U as their bargaining representative violated Act)

J. H. Black & Co., Inc. 247 NLRB No. 041

(E's announcement to Ees that it had discharged both plant and production managers not violative absent evidence to show that they had mistreated Ees or how their discharges would benefit Ees)

Ellis Hospital JD-164-82

(informing Ees that in event they selected U they would be unable to meet directly with management to talk about grievances and other matters, unlawful and interference with election; while E may explain that U will be participant in E-Ee relations generally, E cannot threaten to cut off unilaterally permissible direct dealing with Ees for selecting U)

Ellis Hospital JD-164-82

(E did not interfere with election nor unlawfully threaten Ees with closure of its facility in order to influence Ees to vote against U, where statement regarding posibility of closure if certain Ees struck related to different group of Ees than those involved in organizational campaign, and due to E's adverse financial situation at the time, such statement was not an unreasonable prediction)

Dooley Equipment Corporation JD-215-80

(threatened discharge for voting in election)

N.L.R.B. v. Gibraltar Industries, Inc. and Case, Inc. 653 F.2d 1091 (C.A. 6, July 1981)

(preelection speeches to E's Ees by another E at their E's request, and well-known to Ees as one of their E's principal customers, violative where such E's comments carried veiled but strong threat of serious economic repercussions if U won election and were based on unwarranted hypothetical assumptions; and his statements as to effect of U's bargaining demands on his own plant tended to characterise unionization at Ees' own plant as threat to their E's business, and in turn, to Ees' own livelihoods)

5078-4085 Inducing fraudulent vote

Indian Head Lubricants, Inc. 261 NLRB No. 003

(offering Ees money if they would vote against U violative)

Ed Chandler Ford, Inc. 254 NLRB No. 082

(willfully placing name of Ee, who was not eligible to vote, on voter eligibility list furnished Bd, unlawful, in view of E's hostility to U and knowledge that Ee intended to vote against U representation)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. JD-(NY)-79-81

(E's submitting voting eligibility list, in connection with election, containing name of person who was never employed by E held violative, since conduct was attempt to *fix* election in favor of E and as such was deliberate abuse of Bd's processes)

5078-4090 Misrepresentations

Alpha Cellulose Corporation 265 NLRB No. 010

(E's letter to Ees declaring that wages and benefits would be frozen during contract negotiations held unlawful and interference with election, since E thereby misinformed Ees by stating that negotiations prevented wage increases and implied that rejection of U would free E to grant raises and other benefits, thereby leading Ees to conclude that penalty was attached to exercise of their rights in choosing U; E has general duty to proceed as it would have in absence of U and, even during negotiations, E may lawfully implement benefits which have become conditions of employment by virtue of prior commitment or practice)

5078-7000 Refusal to furnish Excelsior list

St. Francis Hospital 249 NLRB No. 017

(where excelsior list provided by E contained some incorrect and misleading information; such as, surnames and first and middle initials and E failed to inform R/O of corrected addresses, no violation as no evidence that E intended to willfully frustrate Bd processes; however, if facts revealed such willfulness violation could be found)

5078-8000 Restraining employees from voting

Walker Die Casting, Inc. 255 NLRB No. 034

(telling strikers that he would not be hiring again until after U election, violative)

Mastercraft Leather Manufacturing Company, Inc. 249 NLRB No. 065

(statement by E president to U organizer, asking her whether she wanted to stay home on day of election and telling her she should do so if she desired, unlawful)

American Sunroof Corporation; et al. 248 NLRB No. 038

(interfering with Ee's right to vote in U election by questioning her eligibility while expressing opinion that she should not vote or that it would look bad for other departments or Ees for her to vote, unlawful)

New World's Restaurant d/b/a Sunbird Restaurant JD-(SF)-288-82

(violation, where E attempted to prevent discriminatees from voting in election by ordering them to leave restaurant and calling police to arrest them if they refused to leave)

United Maintenance Company, Inc. JD-(SF)-169-82

(telling Ee not to vote in U election, violative)

5078-8100 Curtailing employee's union activities by promotion to supervisor

Hospitality Motor Inn, Inc. 249 NLRB No. 145

(promotion of *housekeeper* who was U adherent to *assistant executive housekeeper* a few days before election and where position of a second assistant executive housekeeper had not existed before, violative, since purpose of promotion was to curtail her U activities)

5078-8800 Questioning employees on how they or their fellow employees would vote

Halliburton Services (Coffeyville, Kansas), A Division of Halliburton Company 268 NLRB No. 144

(supervisor's asking Ee how *The girls* are going to vote, violative)

Conair Corporation 261 NLRB No. 178

(questioning Ees on day of election on whether they had voted or not, unlawful, where E offered no legitimate reason for interrogation and no legitimate purpose existed other than to coerce Ees into renouncing U; E gave no assurances against reprisals; and at least one interrogation of Ee was conducted in department manager's office constituting the *locus of managerial authority*)

Emerson G. M. Diesel, Inc. 258 NLRB No. 168

(demanding that Ees state whether they planned to vote for U and later attempting to verify their intentions, unlawful)

Thurston Motor Lines, Inc. JD-(ATL)-99-81

(supervisor telling Ee that if he marked ballot *no* supervisor would mail ballot in, held coercive)

5078-9000 Questioning employees on how they voted

Conair Corporation 261 NLRB No. 178

(supervisor's questioning Ees on day of election whether or not they had voted in election, unlawful, when considered in light of E's other coercive conduct; and in view of supervisor's known opposition to U and her high-level supervisory status, her action could well be interpreted by Ees as an edict by E to vote against U)

5078-9000—Cont.

Catalina Yachts 260 NLRB No. 049
(distributing *Vote No* buttons and T-shirts as well to Ees, unlawful since Ees were forced to manifest their choices and the shirts were of value to Ees and intended to influence their votes; inducement of Ee to wear *Vote No* button, unlawful for same reasons)

Connecticut Foundry Company 247 NLRB No. 145
(E who asked returned striker if he had voted for U when Ee asked for raise violated Act)

5078-9300 Rewarding employees for union's defeat in election

M & G Fleet Service, Inc. JD-(ATL)-60-82
(telling Ees that they might get increased pay if U lost election, violative)

United Maintenance Company, Inc. JD-(SF)-169-82
(post-election promise to give raise to Ee because U lost election violative as it is unlawful to reward Ees for rejecting U representation)

5078-9900 Other

Belcher Towing Company 265 NLRB No. 159
(supervisor's implied threats to Ee, in context of specific unlawful threats found herein, and supervisor's statement that E could look at Ee's U authorization card to verify his signature, and that supervisor could tell E how Ee voted, unlawful)

Hillside Avenue Pharmacy, Inc. 265 NLRB No. 205
(E's conduct in extracting from Ee a promise to vote against U, unlawful)

Ellis Hospital JD-164-82
(E's letter directing its Ees to report their contacts with U during its organizational campaign, unlawful and interference with election, where E's claim that soliciting Ees to report any invasion of their privacy was lawful was too broad and could reasonably cover mere attempts by pro-U Ees to contact other Ees at their homes, which is contemplated by requiring E to furnish names and addresses of Ees eligible to vote under *Excelsior* rule)

Ellis Hospital JD-164-82
(E's distribution of literature indicating to Ees that it would be virtually impossible to decertify U and that fine could be imposed for attempting to do so, not unlawful and not interference with election, where E correctly paraphrased U's constitution)

5081 INTERFERENCE WITH BOARD PROCEEDINGS

Cortez Corporation JD-436-80
(Ee utilization of Bd's remedial processes is protected by Sec. 7 of Act, and there should be as great a freedom to ask Bd for relief as there is to petition any other department of government for redress of grievances; moreover, protection of Act is not limited to only meritorious pleas to Bd)

5081-1700 Interference with Board investigation

Morton Rosen, Selma Rosen and Sanford Rosen t/a
Sylvan Manor Health Care Center 264 NLRB No. 170
(notice posted by E stating that it knew that some Ees had received phone calls from persons stating they were from Bd asking them about work, that these calls were false and that Ees should hang up on caller and notify E, violative, notwithstanding there is no evidence it interfered with investigation since E knew that charge had been filed with Bd)

Hadison Manufacturing Co. 260 NLRB No. 137
(E who published in newspaper and posted on plant bulletin board notice requesting Ees who were interviewed by or gave statements to Bd agents to identify themselves to E violated Act because written request that Ees who have cooperated with Bd investigation into E's alleged ULP's identify themselves is coercive where E did not state purpose of request, no assurances against reprisal were given; such requests create fear that E may retaliate against Ees who gave statements)

St. Mary's Home, Inc. t/a St. Mary's Infant Home 258 NLRB No. 134
(discouraging Ees from giving affidavits to Bd investigators by telling them they would probably have to testify in court, unlawful)

Art Steel of California, Inc. 256 NLRB No. 140
(issuing warning notice to U adherent assertedly for leaving his department and going into another department w/o permission and —*talking to a government person*— in violation of E's rule, held violative, since Ee was involved in taking inventory and was not assigned to particular department, but instead, had to go from department to department; warning notice was given Ee after Ee had spoken to Bd agent investigating ULP charges against E)

SAS Ambulance Service, Inc., d/b/a Florida
Ambulance Service; et al. 255 NLRB No. 031
(threatening Ee with lawsuit because of his cooperation with Bd, violative)

Bechtel Power Corporation 248 NLRB No. 166
(E's insistence that supervisor who had filed charges with Bd could talk to Bd agent only in presence of company attorney, violative, since presence of company attorney would inhibit supervisor in giving information regarding charges filed in aid of all Ees)

Four Rivers Coal Company JD-289-80
(violation where E warned and instructed Ee not to sign statements for GC then investigating and prosecuting ULP case and requested a copy of any statement signed by such Ee)

Albertson's Inc. JD-(SF)-104-80
(questioning Ee about Ee's participation in Bd investigation, unlawful, since E did not show that questioning was for legitimate purpose and there was no requisite showing of voluntariness to Ee's participation in questioning)

N.L.R.B. v. Garry Manufacturing Company 630 F.2d 934 (C.A. 3, 1980)
(ct reversed Bd's finding that E's notice to Ees after U had lost election and after Bd's complaint against E had issued advising them they were not obligated to talk to Bd agent or sign anything, and that agent only wanted Ees' signatures to force E to recognize U was unlawful, especially because subsequent notice cured any coercive effect in first notice by stating Ees were free to talk to agent and that technically agent was assisting Bd attorney who would be presenting the case and would not actually be working for U)

Air Express International Corporation v. N.L.R.B. 659 F.2d 610 (C.A. 5, Oct. 1981)

(warning of *harassment* from Bd agents, violative)

5081-3300 Interference with testimony of Board witness

Washington Beef Producers, Inc. 264 NLRB No. 158
(violation where E discussed with Ees who were subpoenaed by Bd about enforceability of subpoenas and then voiced to Ees how *decision of whether or not to go was theirs)*

Sterling Sugars, Inc. 261 NLRB No. 071
(threatening Ee with unspecified reprisals and discharge if he testified against E, violative since it was clear attempt to interfere with Bd's processes)

Amoco Fabrics Co., Patchogue-Plymouth Division/
Nashville Mills 260 NLRB No. 036
(E who informed Ee she did not have to comply with Bd subpoena, and that she was free to decide herself whether to go to hearing violated Act)

Litton Mellonics Systems Division, A Division of
Litton Systems, Inc. 258 NLRB No. 004
(E's advice to individuals not to comply with Bd subpoenas, not unlawful, where E correctly believed subpoenas were invalid because they were blank and not accompanied by witness or mileage fees; moreover, E intended to quash subpoenas, high level management officials and direct supervisors were going to testify, and E advised individuals to remain near telephones in case ALJ did not grant mtn to quash and wanted them present at hearing)

Cumberland Farms Dairy of New York, Inc. 258 NLRB No. 120
(telling Ees that they would be fired if they testified in proceeding on behalf of fellow Ee who was discriminatorily discharged, violative)

St. Mary's Home, Inc. t/a St. Mary's Infant Home 258 NLRB No. 134
(discouraging Ees from testifying in support of ULP charges by telling them they would have *knots in their stomachs as consequence of the grilling of lawyers*, unlawful)

Jaybil Steel Products, Inc.; etc. 258 NLRB No. 157
(E's owner asking Ee who was testifying at Bd hearing *who is going to support your mother when you don't have a job* unlawful, since reference to continued employment where not coupled with reference to Ee's taking time off from work that day)

Consolidated Aluminum Corporation 258 NLRB No. 033
(E's refusal to compensate Ee for wages lost while testifying in his capacity as U officer in Bd case to which E was not party, not unlawful, absent express contractual commitment and where not in retaliation for U activity or testifying; fact E had previously paid compensation to same officer in similar situation as result of grievance settlement did not establish precedent or law of the shop, nor did contract provision providing for compensation for loss due to jury duty or as witness subpoenaed by ct of law require payment)

Consolidated Aluminum Corporation 258 NLRB No. 033
(E's refusal to pay witness fees to compensate for lost wages to Ees subpoenaed for Bd hearing by oppositions not unlawful)

Building Material & Dump Truck Drivers, Local
Union No. 420, Teamsters (Leonard
Worthington, an Individual) 257 NLRB No. 161
(discharge of Ee for not first consulting with E's counsel before giving sworn statement to Bd agent during investigation of charge against Ee's E violative since E never had rule requiring Ee to so consult)

Humana Corp. d/b/a Sunrise Hospital Medical
Center 256 NLRB No. 176
(soliciting Ees to give false testimony before Bd concerning deauthorization pm)

5081-3300—Cont.

Rolligon Corporation **254 NLRB No. 004**
(E's comments to Ees seeking time off to attend Bd hearing pursuant to Bd subpenas distributed by U, informing them that subpenas were invalid because they were not accompanied by witness and mileage fees and that Ees were free to dishonor them, not unlawful, where subpenas were defective on their face because not accompanied by such fees and, therefore, E's comments were accurate description of Ees' privilege not to comply with them, and E clearly informed Ees that they were free to honor subpenas and that no action would be taken against any Ee who chose to do so)

Post Manufacturing Company **251 NLRB No. 153**
(no violation where in response to subpoenaed witness's question as to what could be done to her if she did not appear at hearing, E's lawyer said nothing much unless Bd sought enforcement, since attorney under no obligation to affirmatively advise witness of her obligation to honor subpoena in absence of question regarding whether to appear or not)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(suggesting to Ee that she could disregard Bd subpoena, encouraging her not to appear at Bd hearing and threatening her with reprisal unless she testified favorably to E, unlawful)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's suggestion to Ee, when Ee produced subpoena requiring his presence at Bd hearing, that Ee remember that E had told Ee *to tell the guys to stay at the machines,* held violative of 8(a)(1) but not 8(a)(4), since E thereby restrained and coerced Ee in exercise of protected right and obligation to give testimony under Act)

Rawhide Mining Corporation a/k/a Gex of Colorado, Inc. **250 NLRB No. 079**
(violation where, when Ee mentioned that he had been subpoenaed and intended to try to stay close to what his affidavit to NLRB officer said when he testified, E's agent asked to see his affidavit; assurance that production of affidavit was voluntary did not exculpate request)

Sly's Foods Inc., d/b/a Scotty's I.G.A. **249 NLRB No. 132**
(questioning Ee regarding investigation by Bd agent)

The Nestle Company **248 NLRB No. 106**
(foreman's questioning U adherent, regarding Ee's testimony at Bd hearing held violative, since such interrogation interfered with Ee's right to participate in Bd processes, as well as the right to engage in U activity)

Coastline Coal Corporation **247 NLRB No. 100**
(telling Ee that he would be reinstated if he withdrew his charge against E and that he should not testify against E in Bd hearing, unlawful)

Tarpon Marine Company **247 NLRB No. 073**
(asking Ee who was expected to be subpoened to testify at Bd hearing *if she had received a paper about going to ct* and that if it came by registered mail she did not have to pick it up at the post office and nothing could be done about it if she did not pick it up)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(refusal to permit subpoenaed Ee to attend Bd hearing, violative)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E's speech stating to Ees that it would learn at trial identity of Ees who made allegedly false accusations against E, unlawful, since it tended to create fear of retaliation in minds of Ees who identified themselves in such manner, and E thereby inhibited vindication of their statutory rights by their testimony at Bd hearing)

Hammond Plastic, Division of Carl Gordon Industries, Inc. **JD-583-81**
(instructing Ee not to attend NLRB representation hearing or to attend and give false testimony, unlawful)

Dubuque Packing Company **JD-290-82**
(threatening Ee with reprisal for testifying in Federal District at 10(j) proceeding violative)

Four Rivers Coal Company **JD-289-80**
(violation where E warned and instructed Ee not to sign statements for GC then investigating and prosecuting ULP case and requested a copy of any statement signed by such Ee)

World Wide Press, Inc. **JD-(SF)-12-80**
(harassment of Ee about testimony adverse to E that she had given at prior Bd hearing, unlawful)

Air Express International Corporation v. N.L.R.B. **659 F.2d 610 (C.A. 5, Oct. 1981)**
(soliciting Ees not to testify before Bd, violative)

5081-4300 Interference with Board-ordered remedies

Thermo Transport, Inc. **JD-804-80**
(private agreement between E and two of summarily-found discriminatees whereby, in lieu of backpay possibly due them by virtue of E's ULPs, discriminatees agreed to become equal partners with stock ownership in new E aided corporation held violative, since agreement interfered with application of Bd's remedies, which are provided as public right)

5081-4600 Soliciting employee's testimony at Board proceeding

Madison Manufacturing Co. **260 NLRB No. 137**
(E who published in newspaper and posted on plant bulletin board notice requesting Ees who were interviewed by or gave statements to Bd agents to identify themselves to E violated Act because written request that Ees who have cooperated with Bd investigation into E's alleged ULP's identify themselves is coercive where E did not state purpose of request, no assurances against reprisal were given; such requests create fear that E may retaliate against Ees who gave statements)

Viracon, Inc. **256 NLRB No. 037**
(soliciting Ees to testify on E's behalf at impending ULP hearing, violative)

5081-6700 Requesting copies of employees' statement to Board

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**
(E's request that Ees request from NLRB and furnish E copies of statements Ees had given to NLRB, not unlawful, in view of circumstances since no coercion where prior to request Ees were called individually to personnel office for meeting with E's attorney and personnel manager, told attendance was voluntary, purpose of questioning was to prepare for Bd hearing on objections to election, no conditions attached to talking with E, no promises given or threats made, and Ees asked if they had objection to NLRB giving E's lawyer copy of affidavit prior to hearing)

N.L.R.B. v. W. Carter Maxwell, dba Pioneer Concrete Co. **637 F.2d 698 (C.A. 9, 1981)**
(E who requested Ee to obtain copy of his affidavit from Bd violated Section 8(a)(1) *per se* where he did not assure Ee that no reprisals would be taken against him, and did not show that requested statement was needed for trial preparation)

5081-7000 Interference with access to Bd processes

Salem Transportation Co., Inc. **252 NLRB No. 155**
(telling Ee that he was harassing E by filing charges with governmental agencies, including NLRB, violative)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(threatening Ees with reprisals for engaging in protected activity of filing charges with Bd and grievance under contract, unlawful)

Cortez Corporation **JD-426-80**
(interrogating Ee concerning ULP charge he had filed against E with Bd, and threatening Ee with physical harm and referring to Ee in racially derogatory manner because he had done so, unlawful)

N.L.R.B. v. Donald E. Hernly, Inc. **613 F.2d 457 (C.A. 7) (1980)**
(enforcement denied where ct adhered to standards set down in *Bourne* in regard to whether E's interrogation of Ee violated 8(a)(1) and found that record in proceedings lacked substantial evidence to support conclusions contrary to those of ALJ, or to support view that interrogation in any way interfered with Ee rights)

5081-7800 Abuse or misuse of Board processes

Washington Beef Producers, Inc. **264 NLRB No. 155**
(soliciting and finally coercing Ee to sign false statement saying that U representative threatened to kill him if he did not vote for U and subsequently filing ULP charge against U regarding statement, violative)

Save-It Discount Foods, Inc. **263 NLRB No. 097**
(when GC filed cross-exception to part of ALJ order, and Respondent filed document labeled *answering brief* which was not response to GC cross-exception but was instead reply to GC's answering brief to Respondent's exceptions, this is abuse of Bd's processes which limit parties to one brief in support of, and one brief in opposition to, each set of exceptions and cross-exceptions)

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 065**
(manager's falsely signing unit Ee's name, while in presence of another Ee, on showing of interest statement supporting decertification ptn)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**
(E's submitting voting eligibility list, in connection with election, containing name of person who was never employed by E held violative, since conduct was attempt to *fix* election in favor of E and as such was deliberate abuse of Bd's processes)

5081-8700 Inducement of withdrawal of charges

American Interstate Freight Lines **256 NLRB No. 131**
(threat of discharge if Ee filed appeal to RD's dismissal of his charge, violative)

Shirt Shed, Inc. **252 NLRB No. 042**
(threat to discipline Ee if she did not withdraw charges filed with Bd by U on her behalf violative)

5081-8700—Cont.

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**

(E's statement to Ee that he was creating a *hell of an image... and not helping yourself* by filing charges with Bd and grievance under contract, and that Ee should drop his charges with Bd, and that he could not win and was hurting himself in E's eyes, unlawful)

Coastline Coal Corporation **247 NLRB No. 100**

(telling Ee that he would be reinstated if he withdrew his charge against E and that he should not testify against E in Bd hearing, unlawful)

Hart Ski Mfg. Co., Inc. **JD-11-80**

(E's owner threatening not to sign contract negotiated with Ee committee unless ULP charges and ptn withdrawn, stating ptn had been filed by outside U and there was no purpose in ptn since Ees had approved contract between E and committee, unlawful)

5082 ACTIONS AGAINST SUPERVISOR

Serendippity-Un-Ltd and Tigerrr, Inc. **263 NLRB No. 100**

(in light of Bd's *Parker-Robb Chevrolet* decision issued subsequent to issuance of ALJ's decision, Bd reversed ALJ's finding that discharge of supervisor for participating in strike in protest over working conditions at E's plant violated 8(a)(1), since in *Parker-Robb* Bd held that discharge of supervisors for participating in U or concerted activity is not unlawful)

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**

(if Ee were found supervisory, as claimed by E, her discharge in mistaken belief that she was engaged in protected activity of organizing walkout in protest over working conditions, would be unlawful, since E engaged in misconduct against Ees and supervisors alike in order to undermine U)

Sheraton Puerto Rico Corp. d/b/a Puerto Rico Sheraton Hotel **248 NLRB No. 113**

(discharge of Ees for drafting, mailing, and distributing letter which complained about manager's operation of hotel and which was signed by supervisors as well as other Ees and sent to E, violative since Ees' conduct constituted legitimate concerted activity w/i meaning of Sec. 7, and discharge of supervisory/managerial personnel for their participation was also violative because of natural tendency of these discharges to discourage Ees from exercising rights guaranteed them in Sec. 7)

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 095**

(vindication of Ees Section 7 rights is basis for reinstatement of violatively discharged supervisor not protecting supervisor for his engagement in U activity)

Childers Manufacturing Company, Inc. **JD-(SF)-11-82**

(discharge of Ee claimed by E to be supervisor, unlawful, where Ee in fact was not supervisor at time of discharge and E, having burden of proving that Ee was supervisory, did not produce sufficient evidence to do so; although Ee had been granted a supervisory job title, that would not suffice, in itself, to establish supervisory status of Ee; and Ee's issuance of single warning notice to an Ee was no more than isolated, sporadic incident not, of itself, sufficient to establish supervisory authority)

American Motor Inns, d/b/a Holiday Inn No. 4 - Airport **JD-732-80**

(resolving Ees' grievance by removing and retiring supervisor, who was so unpopular among her supervisees that it was most drastic step E could take to curry favor with Ees and lure them away from U, violative)

N.L.R.B. v. Sheraton Puerto Rico Corp., d/b/a Puerto Rico Sheraton Hotel **651 F.2d 49 (C.A. 1, June 1981)**

(enforcement denied of Bd order in case involving discharge of supervisors and some Ees for writing letter to E's president criticizing general manager and requesting his removal from that position where there was not substantial evidence in record that such managerial protest concerned actual conditions of non-supervisory employment; ct noted that enforcement might have been granted if non-supervisory Ees had written letter, participated significantly in its drafting, or even had drafting taken place after consultation with them)

5082-2500 For activities inconsistent with status as supervisor

Times Herald Printing Company **252 NLRB No. 043**

(discharge of supervisory Ees for engaging in U activities not violative where discharges in no way affected other Ees' rights)

Comfort Health Corporation d/b/a Kendallville Nursing Home **JD-329-80**

(*discharge of supervisor solely for that supervisor's own U activities does not contravene...Act*)

The Berry Schools v. N.L.R.B. **653 F.2d 966 (C.A. 5, Oct. 1980)**

(demotion of college department chairman from supervisory status allegedly for organizational activity held not ULP where Ee was unprotected by Act as *supervisor*)

Belcher Towing Company v. N.L.R.B. **614 F.2d 88 (C.A. 5, Mar. 1980)**

(E's discharge of ship's captain for refusal to enforce no solicitation rule requiring him to report all U activity on board his boat, unlawful, notwithstanding captain was supervisor since discharge motivated by his refusal to participate in unlawful surveillance)

5082-5000 For testimony adverse to employer

Alfred M. Lewis, Inc. **250 NLRB No. 068**

(at grievance hearing)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse **647 F.2d 905 (C.A. 9, June 1981)**

(cts have found that Es violated 8(a)(1) by conduct toward supervisors and ordered reinstatement in 3 basic situations; first, discipline of supervisor for refusing to commit ULP; second, discipline of supervisor for testifying before Bd; and third, discharge of supervisor as pretext for terminating pro-U crew which he had hired as his own crew)

5084 ASSISTANCE TO UNIONS

5084-0100 Generally

Argano Electric Corp. **248 NLRB No. 049**

(E's recognizing and contracting with U which picketed E at construction site at time when E and another U were bound by current contract which E refused to honor held *violative of Sections 8(a)(2), (3), (5) and (1) of Act*)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**

(E's posting notice stating that if Ees did not join certain U, which E would join, Ees could strike for rest of their lives held violative, since E's notice suggested futility of selecting petioning U)

5084-2500 Assistance where 8(a)(2) not found

Herman Brothers, Inc. **264 NLRB No. 064**

(E violated Act where it supervisors routinely told Ees to sign dues-checkoff authorizations cards or face threat of withheld assignments)

5084-2567 Inside or favored union

Servair, Inc. and Servair Maintenance, Inc. **252 NLRB No. 093**

(where U represented group of 30-35 Ees employed by E, group of 36 newly hired Ees not accretion as it is unlawful to *accrete* large group to small group; moreover, E failed to disclose to new Ees that contractual benefits they would receive, new janitor Ees would receive different wage rates than those provided for in contract and E solicited U membership cards from new Ees; thus by unlawfully assisting and recognizing U E violated Sections 8(a)(1) and (2) and by requiring new Ees to join U violated Section 8(a)(3))

United States Postal Service **248 NLRB No. 097**

(postal service's conduct permitting outside U's representative, during new Ee orientation sessions, to make purportedly misleading or disparaging remarks about incumbent U's exclusive bargaining status, not unlawful; statements were not attributable to postal service and it made effort to dispel possible misunderstandings on part of new Ees, provided incumbent U opportunity to respond to reval U's remarks, and informed Us of consequences of iterating possibly disrespectful or misleading remarks)

Sav-On Drugs, Inc. **JD-(SF)-214-81**

5084-5000 Forms of assistance

C. Solari & Sons, Inc. **264 NLRB No. 053**

(E violated Act when it continued to deduct U dues under merged U's checkoff clause after merger and Ees had signed valid revocations of their dues authorization cards)

5084-5033 Contract with assisted union

Save-It Discount Foods, Inc. **263 NLRB No. 097**

(E who applied and enforced collective-bargaining agreement including provisions providing for U-security clause, dues checkoff and insurance, to Ees of new store which was found not to be accretion to unit consisting of E's other four stores violated Act; moreover, U which accepted all of foregoing also violated Act)

Carbonex Coal Company **262 NLRB No. 159**

(E who recognized U and signed collective bargaining agreement prior to hiring of any Ees violated Act as mining does not fall w/i construction industry proviso)

General Instrument Corporation, Amtote Systems Division **262 NLRB No. 149**

(E who opened two new operations and extended U contract to cover these operations violated Act where units were not accretions and E provided U with room to meet Ees, paid Ees for time spent at meeting, solicited newly hired Ees to sign U dues checkoff authorization, withheld dues even without valid checkoff authorizations and applied U-security provisions of its existing contract; moreover, by acquiescing in above conduct and by accepting

5084-5033—Cont.

recognition and extending dues and U-security provisions of contract to Ees at new operations U also violated Act)

Servair, Inc. and Servair Maintenance, Inc. **252 NLRB No. 093**
(where U represented group of 30-35 Ees employed by E, group of 36 newly hired Ees not accretion as it is unlawful to *accrete* large group to small group; moreover, E failed to disclose to new Ees that contractual benefits they would receive, new janitor Ees would receive different wage rates than those provided for in contract and E solicited U membership cards from new Ees; thus by unlawfully assisting and recognizing U E violated Sections 8(a)(1) and (2) and by requiring new Ees to join U violated Section 8(a)(3))

Stroehmann Brothers Company **252 NLRB No. 139**
(new owner of business entering into contract and honoring same with U purporting to cover unit of shipping Ees historically represented by another U, violative)

Campus Housekeeping, Inc. **252 NLRB No. 072**
(U and E violated Act when they signed renewal contract which contained U security clause after U had lost its majority and E had knowledge of this)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**

Baine Service Systems, Inc. **248 NLRB No. 087**
(Ee's would be discharged if they refused to sign checkoff authorization cards in favor of illegally recognized U)

Baine Service Systems, Inc. **248 NLRB No. 087**
(E's statement that Ees must become members of illeg lly recognized U to keep their jobs violated Act)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

5084-5050 Exclusive recognition of minority union

Stroehmann Brothers Company **252 NLRB No. 139**
(new owner's recognizing U as representative of shipping Ees who historically were in unit of another U, violative, where U did not represent uncoerced majority of shipping Ees)

Alfred Satin d/b/a Hillcrest Nursing Home (Local 875, Teamsters) **251 NLRB No. 014**

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(no violation where E discussed with Ees their joining U after they expressed their positive feelings about U to him as E's conduct amounts to permissible cooperation)

5084-5050-3300 Good faith as to majority status immaterial

McKesson Drug Company **257 NLRB No. 054**

First National Maintenance Corporation **254 NLRB No. 028**

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

5084-5050-6700 Subsequent acquisition of majority status immaterial

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

5084-5067 Inducement of employees to join union

Herman Brothers, Inc. **264 NLRB No. 064**
(E violated Act where it supervisors routinely told Ees to sign dues-checkoff authorizations cards or face threat of withheld assignments)

General Instrument Corporation, Amtote Systems Division **262 NLRB No. 149**
(E who opened two new operations and extended U contract to cover these operations violated Act where units were not accretions and E provided U with room to meet Ees, paid Ees for time spent at meeting, solicited newly hired Ees to sign U dues checkoff authorization, withheld dues even without valid checkoff authorizations and applied U-security provisions of its existing contract; moreover, by acquiescing in above conduct and by accepting recognition and extending dues and U-security provisions of contract to Ees at new operations U also violated Act)

Banner Tire Company **260 NLRB No. 096**
(E's statements during job interview that Ee must join Teamsters and would have no trouble transferring his membership from IAM violative as implied threat that he would not be hired if he did not do so, where as here Teamsters had no statutory or contractual right to represent him)

Sav-On Drugs, Inc. **JD-(SF)-214-81**
(threats of loss of employment if Ees did not join particular U are ULPs sufficient to taint particular U's claimed majority status on basis of signed authorization cards)

Sav-On Drugs, Inc. **JD-(SF)-214-81**
(statements to Ees and applicants for employment that they would have to join (particular) U as condition of employment and posting of letter threatening Ees that they would not be scheduled for work unless they joined U, held violative)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E offering wage increases during negotiations with Ee committee, unlawful, since made to discourage support for outside U in view of E's haste in presenting proposals after obtaining knowledge of outside U's organizing efforts)

Cardinal Heating and Cooling, Inc. **JD-838-79**
(E's alleged promise to obtain U membership cards to permit Ees to work unmolested on U jobs, not unlawful, where evidence showed that Ees did not reasonably believe that E proposed to foist U membership on them; although E initiated possibility of obtaining spurious U affiliation, Ees on own initiative sought genuine representation)

5084-5075 Permitting union control over hiring and employment

Carbonex Coal Company **262 NLRB No. 189**
(E who signed contract containing U security clause and hiring hall provisions prior to hiring any Ees and then refused to employ any applicants who had not been referred through hiring hall, violated Act)

Cowlitz Studd Company **JD-(SF)-141-80**
(U's action in seeking removal of new Ee not violative where Ee was hired in abbrogation of collective-bargaining agreement which required vacant positions to be filled by seniority unless outside applicant highly qualified; U was fulfilling its duty to represent its constituency)

5084-5083 Solicitation of employees

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(soliciting and forcing Ees to sign authorization cards for U favored by E, violative)

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(no violation where E discussed with Ees their joining U after they expressed their positive feelings about U to him as E's conduct amounts to permissible cooperation)

5084-7580 Midwest Piping doctrine

RCA del Caribe, Inc. **262 NLRB No. 116**
(*Shea Chemical* 121 NLRB 1027, which required E to withdraw from bargaining with incumbent U after ptn had been filed by outside U overruled; E neutrality is best preserved by continued bargaining with incumbent, thus E will not violate Sec. 8(a)(2) by postpetition negotiation or execution of contract with incumbent U and will not violate Sec. 8(a)(3) even if it contains U-security clause; however, if contract is executed and incumbent loses election, contract with incumbent will be null and void)

N.L.R.B. v. Newport Div. of Wintex Knitting Mills, Inc. **610 F.2d 430 (C.A. 6, 1979)**
(where 2 competing U's had filed ULP charges against E, Bd postponed election until resolution of charges and while charges pending 1 U maintained active campaign and acquired majority of signed authorization cards while other U ceased organizing efforts, Bd's finding that qcr existed and E violated Act overruled for if 1 of 2 rival U's has demonstrated majority status w/o help from E, Bd's orders against E finding ULP on basis of such recognition and entering into bargaining agreement will be denied)

N.L.R.B. v. Newport Div. of Wintex Knitting Mi lls, Inc. **610 F.2d 430 (C.A. 6, 1979)**
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5090 CONTRACTS

5090-0800 Affirmative defenses

5090-0850 Contract provision

Irvin H. Whitehouse & Sons Company 252 NLRB No. 140
(discharge of Ees who refused to work because of safety hazards violative where contract did not contain no-strike provision)

Tower Hotel Company, d/b/a Holiday Inn Riverfront 250 NLRB No. 090
(discharge of Ee because he failed to meet age requirements of U's apprenticeship program not violative where insufficient evidence exists to establish that contract provision is illegal)

Pioneer Finishing Corporation v. N.L.R.B. 667 F.2d 199 (C.A. 1, Nov. 1981)
(where contract contained prohibitions against U officials distributing literature on E's premises, and official is also Ee, it will not be assumed that such Ee has waived any of his rights unless he has done so specifically or unless his activities are distructive to collective bargaining process)

Carlson Roofing Co., Inc. v. N.L.R.B. 627 F.2d 77 (C.A. 7, 1980)
(in discussion with E Ees voicing their opposition in orderly fashion to E's interpretation of contract provision that Ees had to work alone on jobs and no Ee flatly refused to work alone, held protected concerted activity)

Roadway Express JD-(ATL)-25-81
(discharge not violative where Ee would have been discharged in accordance with contract even in absence of any protected conduct with respect to filing of grievances or workmen's compensation claim)

5090-7800 Union-security agreements

C. Solari & Sons, Inc. 264 NLRB No. 053
(E violated Act when it continued to deduct U dues under merged U's checkoff clause after merger and Ees had signed valid revocations of their dues authorization cards)

5090-7825 Execution or maintenance of invalid agreement

Sanford Home For Adults 253 NLRB No. 153
(E who entered into contract containing U security clause with U which did not represent uncoerced majority of its Ees, and enforced that clause violated Act)

Gold Standard Enterprises, Inc., et al. 249 NLRB No. 046
(enforcement of agreement with security clause where U did not have majority, unlawful)

5090-8750 Discriminatory maintenance of contract clause

Computer Sciences Corporation Applied Technology Division, Huntsville Center 258 NLRB No. 085
(stock purchase plan set forth in Ee handbook violated Act where it limited plan to those Ees who were not U members or not members of bargaining unit)

New York Laboratory Supply Company, Inc. JD-416-81
(E which maintained agreement with U that provided that the agreement applied only to members of U, and that Ees who are U members will receive different wages than Ees who are not U members violated Act as this encouraged membership in U and interfered with Ees Sec. 7 rights)

N.L.R.B. v. Maui Surf Hotel Company and ILWU Local 142 601 F.2d 603(T) (C.A. 9, 1979)
(Ee and U which enforced attendance at contractually mandated work stop meeting by requiring Ees who refused to attend meeting to sign out and lose 1 hour's pay violated Act because Ees who refused to sign out were threatened with disciplinary action)

Teamsters Local 20 v. N.L.R.B. 610 F.2d 991 (C.A.D.C.)
(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

5090-8780 Superseniority

McQuay-Norris, Inc. 258 NLRB No. 191
(E and U violated Act by maintaining and enforcing superseniority clause which caused retention of Ee-U officials (trustee and guide) above other Ees with more seniority where U officials duties concerned organizational and internal functions of U and not contractual matters pertaining to bargaining and grievances)

Teamsters Local 20 v. N.L.R.B. 610 F.2d 991 (C.A.D.C.)
(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

5096 VIOLENCE AND THREATS THEREOF

5096-1400 Arrests and roundups instigated or assisted by employer

Bates & Cunningham, Inc. JD-580-81
(telling police officer who was investigating vandalism at E's premises that U adherents may have done it, violative where accusation made with no basis in fact but surely in retaliation)

5096-2100 Arrest

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 186
(denial of access to non-Ee U representatives and causing their arrest, made in furtherance of impermissible refusal to grant access, unlawful)

Argo Company M/V Arctic Producer 265 NLRB No. 040
(E's statement which in effect notified Ees that the U would be denied reasonable access to Ees living on the ship and that a U organizer might be subject to arrest if he attempted to board the ship, unlawful)

Hudson Oxygen Therapy Sales Company 264 NLRB No. 084
(violation, where guard hired by E from security firm, arrested, handcuffed, and took into custody Ee engaged in election day campaigning for crossing over line onto E's plant premises, since guard was agent of E, and spectacle of pro-U Ee being thus restrained by openly pro-company security guard in presence of other Ees who had not yet voted coerced Ees in exercise of their statutory rights and had chilling effect on pro-U Ees who would shortly be voting in election)

Montgomery Ward & Co., Inc. 263 NLRB No. 017
(E's causing arrest and removal of non-Ee U representatives from its public snackbar, violative where they were not attempting to use snackbar inconsistent with its purpose, and move of one representative to table adjacent to his in response to questions by Ee was in no sense *table hopping* or solicitation of Ees table by table)

Carither's Stores, Inc. 262 NLRB No. 178
(arrest of U agent who was picketing E's store during economic strike, not violative, where E police acted on their own in making arrest and since for abuse of E's Ees and customers, rather than for interference with protected activity of Ees, in view of complaints regarding harrassment by agent and threats of violent retaliation against agent, and visible agitation of elderly customers)

Sahara-Reno Corporation, d/b/a Sahara Reno 262 NLRB No. 095
(threatening Ee with arrest if he engaged in U activities on company property, violative)

Joyhill Steel Products, Inc.; etc. 258 NLRB No. 177
(calling police to plant who informed U adherent E wanted him out of shop and arrested, but although he was not going to be arrested, he had to leave and also sending home six days later w/o explanation, unlawful, since Ee was working at time w/o incident, no work related justification given)

Montgomery Ward & Company, Inc. 256 NLRB No. 134
(threatening to call police and have U organizers removed from public cafeteria in E's store if they did not leave voluntarily, violative, where U organizers were meeting with willing Ee patrons by appointment during their lunch break and in orderly, discreet fashion)

Pine Valley Meats, Inc. 255 NLRB No. 061
(threatening U adherent with arrest if he was in plant on off-duty hours following his attempt to distribute authorization cards in plant after his workday had finished, violative)

Clark Manor Nursing Home Corp. 254 NLRB No. 056
(E's causing arrest of Ees for passing out U handbills on E's parking lot and trespassing, unlawful)

Villa Avila 253 NLRB No. 018
(E-who evicted U representatives from job site, threatened them with arrest, blocked egress from site violated Act where U representatives were performing legitimate duties on job site)

Charles Dean d/b/a Happ Topp Mfg. Co. 250 NLRB No. 184
(telling U adherent during U campaign that job he had anything to do with U, and if any tools were missing, U adherent would be accused of stealing because of U adherent's criminal record)

Schlegel Oklahoma, Inc. 250 NLRB No. 012
(threatening arrest of Ees for handbilling Ees on public thoroughfare adjacent to plant entrance, unlawful)

Montgomery Ward & Company, Inc. v. N.L.R.B. 692 F.2d 1115 (C.A. 7, Nov. 1982)
(ct held E's interference with organizers who were meeting with off-duty personnel in restaurant on E's premises in nondisruptive fashion and by engaging in unreasonably close observation of these organizers as they fa-

5096-2100—Cont.

ished their lunches violative; furthermore, E's threat of police action held unlawful)

N.L.R.B. v. Alumina Ceramics, Inc. **690 F.2d 136 (C.A. 8, Oct. 1982)**
(causing arrest of Ee as result of E's reporting to police that drunk Ee was sent home and was driving truck, not unlawful; although, if truly concerned about E's driving while intoxicated, E would have arranged for his transportation home rather than for his arrest, there was no evidence that report to police was motivated by any anti-U animus)

Seattle-First National Bank v. N.L.R.B. **681 F.2d 1272 (C.A. 9, Nov 1980)**
(E's threat to arrest economic strikers for picketing in foyer in front of restaurant located on 46th floor of office building violative; Section 7 rights and private property rights must be balanced and here U used only 2 pickets at a time and placing pickets in front of building would not reach restaurant customers as majority came from w/i building)

N.L.R.B. v. Schlegel Oklahoma, Inc. **644 F.2d 842 (C.A. 10, Mar 13, 1981)**
(threatening Ee with arrest for handbilling on public thoroughfare in front of plant by stating that he was going to call police and *have us moved* violative, as statement was made for purpose of discouraging handbilling; statement *have us moved* did not negate any possibility of arrest)

5096-2800 Assault on, and abuse of, pickets

Pace Motor Lines, Inc. **260 NLRB No. 189**
(E's driving truck over picketing Ee in presence of other striking Ees, violative)

Highland Plastics, Inc. **256 NLRB No. 028**
(striking pickets with van)

Arcadia Foods, Inc. **254 NLRB No. 128**
(E's president's vehicular assault on picketing Ee and president's subsequent threat to run over Ee held violative)

Berger Transfer and Storage, Inc. **253 NLRB No. 002**
(E who drove truck through picket line so recklessly that two pickets were hit violated Act)

Excavation-Construction, Inc. **248 NLRB No. 081**
(where pickets belligerently prevented E from driving its truck through picket line, E's physical retaliation against pickets not violation of Act)

B. N. Beard Company **248 NLRB No. 016**
(threatening picket with vehicular assault by driving vehicle close to him at excessive speed, unlawful)

Seale Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(throwing of picket signs into street, soliciting strikers to return to work with promises of wage increases, assaulting strikers and attempting to incite fight at strike locations by two supervisors, unlawful, but since acts isolated and counterproductive did not support issuance of *B/O*)

N.L.R.B. v. Berger Transfer & Storage Co. **678 F.2d 679 (C.A. 7, May 1982)**
(E manager driving truck through picket line striking pickets, violative, where assaults connected with Ees' U activities)

5096-7000 Inflicting, or inciting infliction of, violence on union adherents

King Trucking Company **259 NLRB No. 079**
(supervisor's assaulting Ee in context of, and related to, Ee's unlawful discharge and because of his U activity held violative)

5096-7400 Assault on employees

G.T.A. Enterprises, Inc. d/b/a Restaurant Horikawa **260 NLRB No. 029**

Hammond Plastic, Division of Carl Gordon Industries, Inc. **JD-583-81**
(hitting Ee in head with baseball bat because of Ee's U activities, unlawful)

5096-8000 Assault on union representative or threat thereof

Village IX, Inc. d/b/a Shenanigans **264 NLRB No. 122**
(E who pushed down non-Ee U organizer in parking lot after he refused to leave property violated Act as this conduct forcibly demonstrates E's opposition to U and its effect is to restrain Ees in exercise of their rights)

Pace Motor Lines, Inc. **260 NLRB No. 189**
(spraying mace on U representatives who were attempting to handbill and solicit Ee support, violative)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(violation, where guard hired by E during strike cursed U representatives who were in car on public street in front of E's premises, shouting *we don't want to see you any more*, and pounded on representatives' car in presence of strikers)

Graves Trucking, Inc. v. N.L.R.B. **692 F.2d 470 (C.A. 7, Nov. 1982)**
(In affirming Bd finding the E was responsible for physical assault by supervisor on U steward who was engaged in protected concerted activity since incident pertained to matters w/i responsibilities E had conferred on supervisor, ct concluded that E's single expression of disapproval after the fact did not suffice as a repudiation where such disapproval was not made known to all Ees affected and, in any event, was accompanied and followed by reiteration of supervisor's authority)

5096-8400 Threats of bodily harm

Winer Motors, Inc. **265 NLRB No. 165**

Danish Creamery Association **265 NLRB No. 084**
(threatening bodily harm because Ee questioned E's right under the contract to request doctor's note for sick leave, unlawful)

James Fuqua, Wilson Daniel, Dominic Guida and Gary Cicci, a California Partnership, d/b/a The Black Kettle, Ltd., d/b/a The Drying Shed **263 NLRB No. 57**
(implying that Ees would be threatened or physically harassed because of their U activities, violative)

Hands and Threads Company, a Division of MSL Industries, Inc. **261 NLRB No. 113**

Broadway Catering Corp. d/b/a Studio 54 **260 NLRB No. 166**
(threatening U adherents with physical violence because of their U activities, unlawful)

Hochschild Kohn, Division of Supermarkets General Corporation **260 NLRB No. 035**
(supervisor, who retaliated against U adherent who had complained to management about supervisor's anti-U attitude, by following adherent in her car too closely and at dangerously high speed violated Act)

Walter Jack and Dixie A. Macy d/b/a 7-Eleven Food Store **257 NLRB No. 035**
(threat to take care of U instigator, made to customer in presence of Ee, unlawful)

Walter Jack and Dixie A. Macy d/b/a 7-Eleven Food Store **257 NLRB No. 095**
(threat of bodily harm to Ee's wife because E believed she and her father had conspired to bring in U, unlawful)

Price's Pic-Pac Supermarkets, Inc. **256 NLRB No. 123**
(threatening Ee with physical attack if he continued to talk about the U, unlawful)

M. A. Harrison Manufacturing Company, Inc. **256 NLRB No. 071**
(threatening to inflict bodily injury upon strikers, violative)

Highland Plastics, Inc. **256 NLRB No. 028**
(carrying gun out to peaceful picketline, violative)

Jax Mold & Machine, Inc. **255 NLRB No. 129**
(supervisor's asking Ee if he wanted to bring his gun to work and help protect Ees who wanted to cross picket line or if Ees wanted to go out with him and whip U people, violative)

Jax Mold & Machine, Inc. **255 NLRB No. 129**
(telling Ee *It looks like I'm going to have to shoot some of U instigators before Friday,* held coercive as it was said in anger)

Arcadia Foods, Inc. **254 NLRB No. 128**
(E's president's vehicular assault on picketing Ee and president's subsequent threat to run over Ee held violative)

Overnite Transportation Company **251 NLRB No. 140**
(discharge of Ee truckdriver and refusal to reinstate him assertedly because he refused to drive, unlawful where Ee was complaining with other Ees about threat to personal safety because of driving during strike; Ee was refusing to drive as part of concerted attempt, on behalf of both himself and other drivers, to have safer working conditions and Ee's discharge was to discourage Ee and other Ees from engaging in these activities)

McLane/Western, Inc. **251 NLRB No. 185**
(E's remark that he wanted to punch Ee in the nose for initiating U campaign violative where remark could reasonably be construed by Ee and fellow Ees as threat rather than as joke that E alleged it was meant to be)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(violation where E threatened to inflict physical injury on Ee because of his filing charge with Bd and telephoning state department of human rights in response to E's refusal to make Ee an apprentice printer and pay him the contractual wage rate)

Tennessee Cartage Co., Inc. **250 NLRB No. 018**
(supervisor's firing pistol in air while conversing with Ee on picket line, unlawful)

B. N. Beard Company **248 NLRB No. 016**
(E's statement to picketing Ee that E would kill him if E found him anywhere around plant, not unlawful, since it was incredible that E literally

5096-8400—Cont.

intended to do so; however, such statement is not to be equated to lawful Ee picketing conduct)

United Maintenance Company, Inc. JD-(SF)-169-82
(manager's warning Ee that if identity of U adherents was discovered, he . . . *would burn us with green wood*, violative)

National King Coal, Inc. JD-(SF)-24-81

Metropolitan Teletronic Corp. JD-(NY)-12-81
(E's president's remarks to Ee that unless she caused charges before Bd to be withdrawn, that they would end up in knives and that he would kill her, violative)

Lauridsen Foods, Inc. JD-36-81
(threatening physical assault on Ee because of his U activities, violative)

N.L.R.B. v. Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant 646 F.2d 706 (C.A. 1, Apr 1981)
(threatening U adherent that if he persisted in his U activity, E would *break his legs*, violative)

TRW, Incorporated v. N.L.R.B. 654 F.2d 307 (C.A. 5, 1981)
(supervisor's statements to Ee that he *needed to get some U hospitalization insurance* because he *was going to lose an arm or a leg* not violative where part of chain of continuing hostility between involved parties)

N.L.R.B. v. M. A. Harrison Manufacturing Company, Inc. 682 F.2d 580 (C.A. 6, June 1982)
(supervisor's threatening striking Ees and damaging their property violative; E did not seek to sanction or penalize supervisor in any way)

N.L.R.B. v. Bolas Drainage, Inc. 639 F.2d 789(T) (C.A. 9, 1981)
(threatening discharge and physical violence if Ees persisted in concerted efforts to secure pay raises, violative)

5096-8500 Damage to property

Pace Motor Lines, Inc. 260 NLRB No. 189
(E's backing truck into picketing Ee's automobile, violative)

M. A. Harrison Manufacturing Company, Inc. 256 NLRB No. 071
(damaging striking Ees' property, violative)

N.L.R.B. v. M. A. Harrison Manufacturing Company, Inc. 682 F.2d 580 (C.A. 6, June 1982)
(supervisor's threatening striking Ees and damaging their property violative; E did not seek to sanction or penalize supervisor in any way)

5098 CONDUCT OF EMPLOYER OTHER THAN IMMEDIATE EMPLOYER OF EMPLOYEES

Cardio Data Systems Corp. 264 NLRB No. 011
(posting of statement made by general manager of company constituting single E with E herein, and attributable to latter, that E's practice of promoting Ees from w/i would end with U representation, unlawful, since statement's threat to withdraw existing benefit was not rooted simply in what had occurred at another location with manager's prior E but related to what was possible or impossible in a *U organization* and, as such, amounted to an unlawful threat)

Southland Corporation JD-341-82
(refusal to hire applicant who had taken grievance to arbitration on prior job not violative where E based decision on arbitrator's findings, supplied by former E in response to reference request, that discharge was lawfully based on poor attendance and emotional instability)

7500 AFFIRMATIVE DEFENSES TO CHARGES OF INTERFERENCE, RESTRAINT, OR COERCION

7525 NON-COERCIVE NATURE OF MISCONDUCT

Zero Corporation, Zero East Division 262 NLRB No. 064
(E's statement to U adherent that they would have to bargain from scratch if U came in violative, notwithstanding the two had been close friends for 8 to 10 years)

The Celotex Corporation 259 NLRB No. 159
(threat by supervisor to Ee who opposed U during critical period that if U won, E would go by book, violative, because such threat might inhibit Ee from changing his mind about U)

The Swingline Company, Spotnails, Inc. 256 NLRB No. 119
(low level supervisor's questioning of Ee who had declared her U preference violative notwithstanding there were no threats of reprisals as it made Ee aware of her supervisor's position on U and possibility of discarding Ee existed)

Jax Mold & Machine, Inc. 255 NLRB No. 129
(supervisor's question, *Do you reckon we could have chance to get rid of U* held coercive, notwithstanding both may have been friends)

Pine Valley Meats, Inc. 255 NLRB No. 061
(E's grant to key Ees of wage increases prior to election vilative, notwithstanding Ees' threats to quit unless they received more money, E's specific disclaimer of any intention to bribe Ees for their support, and E's request to these Ees not to tell other Ees; defense that Ees testified that they did not consider additional earnings as bribes and were not influenced by them rejected, since finding of restraint or coercion does not depend on Ees' subjective impressions but rather on whether E's conduct *reasonably tends to interfere with the free exercise of employee rights*)

Chester Valley, Inc. 251 NLRB No. 190
(contention that E's oral comments as to eliminating part-time Ees or their flexible work hours were not unlawful because Ees who heard remarks were not themselves part-time Ees, rejected, since it is reasonable to infer that E's remarks were passed along to part-time Ees, as they actually were; assuming that E did not thereby intend to threaten Ees and that Ees were not in fact coerced, such assumptions would not render threats herein lawful)

EMR Photoelectric, A Division of Sangamo Weston Inc. 251 NLRB No. 214
(although some Ees testified that they did not feel personally threatened by E's remarks against unionization, ALJ held focus of inquiry is not subjective reaction of Ee to electioneering but upon reasonable tendency of actions involved to interfere with Ees' rights)

General Therma, Inc. 250 NLRB No. 158
(assistant plant manager's interrogation of Ee as to his U activities, unlawful, notwithstanding social nature of occasion in which interrogation took place)

New Process Gear, Division of Chrysler Corporation 249 NLRB No. 158
(foremen's instructing argumentative U steward to leave work area, not violative where steward was not threatened with disciplinary action upon failing to leave area and continued to act as U representative w/o any interference)

New Process Gear, Division of Chrysler Corporation 249 NLRB No. 158
(foremen's instructing argumentative U steward to leave work area, not violative where steward was not threatened with disciplinary action upon failing to leave area and continued to act as U representative w/o any interference)

New Process Gear, Division of Chrysler Corporation 249 NLRB No. 158
(payroll supervisor's response to U steward's request for his paycheck, to effect that —*you're always in trouble*, not violative, since it was passing remark by payroll supervisor, as contrasted with supervisor in area policed by U steward, and as such was not threat)

Worth Engineering, Inc. JD-295-80
(questioning of Ee by E about his U activities is inherently coercive and fact that supervisor and Ee are personal friends is immaterial)

Flexsteel Industries, Inc. JD-(SF)-274-79
(supervisor's friendly warnings to Ees about foremen being instructed to be on lookout for Ees distributing U literature, not unlawful)

Motor Inn of Perrysburg, Inc. d/b/a Holiday Inn of Perrysburg v. N.L.R.B. 647 F.2d 692 (C.A. 6, May 1981)
(E's promulgation of overly broad no-solicitation and no distribution rule, not violative where rule was never enforced and evidence showed that Ees freely exercised their solicitation and distribution rights; mere enactment of overly broad rules was not violation of Act under facts of this case)

Motor Inn of Perrysburg, Inc. d/b/a Holiday Inn of Perrysburg v. N.L.R.B. 647 F.2d 692 (C.A. 6, May 1981)
(E's photographic surveillance of Ees engaged in picketing E on behalf of U, not violative where evidence in record suggested that surveillance was undertaken to support attempt to obtain injunction against unlawful picketing and ALJ found that surveillance was mainly directed against two Ees whose later terminations were upheld)

N.L.R.B. v. Jarva Incorporated 628 F.2d 483 (C.A. 6, 1980)
(supervisor predicting to Ee and to another Ee that because Ee was instigator of U that Ee would be head committeeman once U got in, not unlawful, since statements made jokingly and Ees stated they felt no coercion)

N.L.R.B. v. General Thermodynamics, Inc. 670 F.2d 719 (C.A. 7, Feb. 1982)
(Bd's order requiring E not to display (overbroad) rules against solicitation and distribution enforced notwithstanding rules, which were posted on plant bulletin boards, were withdrawn before they were to technically become effective; there was no effective communication of the change of (E's) policy to the Ees which would guard against the chilling effect resulting from the overbroad rules)

7530 MISINTERPRETATION OF LAW

7530—Cont.

McAllen Coca-Cola Bottling Company, Inc. 258 NLRB No. 185

(preelection threats to Ees that economic strikers may be permanently replaced and *lose their jobs* violative)

7550 MISCONDUCT OF EMPLOYEE

Allied Industrial Workers of America, AFL-CIO, Region 8 265 NLRB No. 077

(no violation where regional director of E, a U, prohibited regional representative from entering regional office w/o permission, notwithstanding regional director had previously unlawfully threatened regional representative because of latter's protected activities; Bd found regional director would have made the prohibition regardless of regional representative's protected activities, in view of no direct expression of animus, and the director's suspicions of representative regarding items missing from the office safe)

A. Dale Pyle, Inc. 263 NLRB No. 092

(discharge of striker assertedly for picket line misconduct, unlawful, where striker threatened nonstriking Ee employed at E's nearby nonstruck facility, which was being picketed, with arson of Ee's home; such threat does not require different standard than other threats which unless accompanied by *physical acts or gestures* do not entitle E to discharge striker; nor does historical value of E's home required different result; consequently, striker's threat, while ill-considered and not to be condoned, was not sufficiently egregious to deny striker reinstatement)

A. Dale Pyle, Inc. 263 NLRB No. 092

(discharge of striker assertedly for assaulting supervisor with knife, unlawful, where ALJ discredited E's version of knife fight and specifically found that supervisor was in fact the aggressor and Bd agreed with ALJ that striker would not, but for the knife fight, have been discharged; and, even if striker used a knife, E had no honest belief striker had engaged in such physical misconduct as to lose protection of Act; and in any event, GC successfully carried burden of proving that striker did not, in fact, engage in disqualifying misconduct)

Morrison Construction Company JD-328-83

(no violation where Ees were discharged, not for complaining about the amounts withheld for income taxes from their paychecks, as alleged, but for violating rule that Ees not go to payroll office during working hours w/o permission from their supervisor)

7550-0100 Generally

Tyler Business Services, Inc. 256 NLRB No. 088

(discharge of Ee allegedly for spreading false rumors about personal lives of E's officials and also stating he believed E's failure to provide part-time Ees hospitalization benefits was unfair, unlawful, since Ee expressed concern on behalf of Ees other than himself and his remarks concerning personal lives of E's officials did not constitute conduct so outrageous as to render his protected activity unprotected where remark did not relate to E's product or operations, or constitute deliberate intent to impugne company)

7550-0125 Condonation vitiates defense

Davis and Burton Contractors, Inc. 261 NLRB No. 102

(refusal to recall Ee after layoff, violative, since reason was Ee's walking off job and setting up *one-man* picket line, which was honored by other Ees, in protest of E's issuance to Ee payroll check which was dishonored by bank; although Ee's action violated no-strike clause of U contract, E had condoned Ee's action by settling dispute over paycheck and allowing Ee to return to work the next day and to continue work until layoff)

Martin K. Eby Construction Co., Inc. 250 NLRB No. 149

(E's remarks blaming Ee for strike violative, since E had condoned Ee's conduct where, assuming Ee was responsible for work stoppage and work stoppage was violative of no-strike clause as contended, E had allowed Ee to return to work and Ee worked for several weeks)

Brunswick Corporation JD-680-80

(Ees' discharge not violative, where GC failed to sustain burden of providing that E had condoned, as asserted, Ees' unlawful work stoppage)

Cracker Barrel Old Country Store, Inc. JD-443-80

(defense of long break periods and criticism of management rejected, where management had condoned them prior to alleged unlawful discharge herein)

Owens-Corning Power and Process, a Division of Owens-Corning Fiberglas, Inc. JD-(SF)-288-80

(where Ees engaged in economic strike which was initially rendered unprotected by breach of no-strike clause, E's later condonation of strike by reinstatement of strikers and its agreement that *the slate would be wiped clean* estopped it from asserting unlawful nature of strike)

Super Valu Xenia, a Division of Super Valu Stores, Inc. v. N.L.R.B. 627 F.2d 13 (C.A. 6, 1980)

(contrary to Bd, ct held discharge of two Ees under mistaken belief they had engaged in strike misconduct, not unlawful, since Ees had participated in illegal wildcat strike and record evidence does not substantially support conclusion that E condoned or otherwise forgave Ees for their illegal conduct)

7550-0133 Lawful discipline or admonition

Woodruff & Sons, Inc. 265 NLRB No. 043

(discharge of Ee truck driver who had previously complained of paycheck shortage and filed assault charge against supervisor, not unlawful, where decision to discharge Ee was made immediately after Ee caused major damage to his truck for second time that month; overwhelming evidence established E's reliance on legitimate reason for discharge as well as lack of evidence of animus, suspicious timing, or disparate treatment; furthermore, Ee forfeited Act's protection by opprobrious manner in which he pressed his paycheck complaint)

House of Cycle, Inc., t/a Kay Motors 264 NLRB No. 137

(E's threat to discharge car salesmen if he were convicted of drunken driving, not unlawful where threat was part of E's lawful crackdown on salesmen's driving E's demonstration cars after drinking, and had legitimate business objective)

South Nassau Communities Hospital 263 NLRB No. 146

(written warning notice issued to hospital Ee for having received reagent having shorter shelf life than that required by hospital, not unlawful; even though Ee herself had brought matter to E's attention, it did not excuse her initial act of acceptance, and other Ees similarly situated had been equally reprimanded; fact that E chose to by-pass first step of its disciplinary policy and proceed with second step merely emphasized gravity with which E viewed such transgression)

E. I. Dupont De Nemours 262 NLRB No. 123

(discharge violative, notwithstanding contention that reason was insubordination, since any *insubordination* on part of Ee was restricted to his asserting his *Weingarten* right by insisting on having an Ee of his choice present at his interview with E)

United States Postal Service 258 NLRB No. 193

(threatening U steward with discipline if he did not return to his work station not violative as steward was not engaged in protected activity at time)

Lucky Stores, Inc. 255 NLRB No. 179

(warning of disciplinary action if Ee continued to obstruct other Ees' work routines, while distributing literature for his campaign for shop steward, not unlawful)

General Telephone Company of Michigan 251 NLRB No. 090

(E's suspension of Ee for striking security guard and trespassing on company property during course of strike held not violative where GC failed to establish either that conduct did not occur or that alleged conduct was protected activity)

Wayne County Neighborhood Legal Services, Inc. 249 NLRB No. 180

(defense by E, operating legal services as contractor of federal agency, on ground that statute establishing agency forbade Ee conduct for which they were allegedly unlawfully disciplined, rejected; enabling statute is construed to refer to NLRA, to have recognized its provisions, and to have incorporated various interpretations and applications of Sec.7)

Progressive Driver Service, Inc. JD-(ATL)-89-83

(although drivers herein had been threatened with discharge for concerted protected demands regarding contractual wages, their discharge was not violative, since it was for falsifying log entries and trip reports so as to get paid twice for same hours of work and for violating federal limits on number of hours driven by drivers of federally regulated motor carriers)

Enerhaul, Inc. JD-(ATL)-7-82

(discharge of Ee who had engaged in protected activity regarding condition of his truck not violative where Ee would have been discharged regardless of his protected conduct for abusing truck assigned to him)

James Kraus Contractor Company JD-(SF)-240-81

(discharge of flagger on highway paving project for assertedly complaining to state highway inspector about E's work break policy on a *need* basis, not unlawful, where E rebutted GC's *prima facie* case by showing Ee would have been discharged whether she had engaged in alleged concerted activity or not due to Ee's casual approach to her job which created unreasonable risk of accident)

Wise Machine Co., Inc. JD-389-81

(discharge of U adherent allegedly because Ee pursued claim for workmen's compensation benefits, not violative where no Ee ever had been disciplined by E for filing any claim whether for workmen's compensation, unemployment compensation or accident and sickness benefits; sole reason for Ee's discharge was his *actually* having worked for another E while off on disability claim)

Like Corporation JD-(SF)-69-80

(denying Ee, suspected of starting 2 fires in E's plant, access to E's parking lot when he was not working not violative)

Con-Tex Industries, A Division of Harvco Corporation v. N.L.R.B. 683 F.2d 1183 (C.A. 8, July 1982)

(E did not violate Act when it discharged 13 Ees who shut off their extrusion machines and left work to protest their dissatisfaction with wages

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and holidays because Ees' action caused E to lose two days' production and Ees could have walked off job w/o shutting off machines as machines could run w/o supervision w/o damage; thus Ees did more than stop work-they interfered with company property and was usurpation of E's option of continuing production; thus Ees were engaged in unprotected activity)

7550-0140 Disloyalty of employee

Pyromatics, Inc. 261 NLRB No. 141
(Ee's circulation of ptn to obtain time off during holiday season did not justify discharge on ground of *disloyalty* based on Ee's continued activity after E had explained that production requirements would not permit time off, and on Ee's statement that Ees, as group, would fake sickness so as not to report for work during holiday period; statement was not reason for discharge and, while Ee's desire for time off may have demonstrated bad judgment, it gave E only the right to refuse time off, not to discharge Ee for his protected concerted activity)

Hargrove Division of Dyck Security Service, Inc. JD-321-82
(discharge unlawful where it was disparately harsh discipline and would not have been meted out for reasons given by E had Ee not engaged in concerted protected activities of informing manager about Ees' ptn concerning working conditions and proposed meeting with E's client about the ptn; these activities did not lose protection because of involvement with client)

Planned Parenthood of Alameda and San Francisco Counties JD-(SF)-294-80
(informing Ee she was to be put on probation for failing to *voice her concerns in constructive manner* where she failed to attend meeting with management on her own time to discuss working conditions, and had allegedly made statements regarding incompetency of management to third parties, unlawful, since refraining from exercising her Section 7 right to attend meeting, protected; further, E lacked sufficient evidence of Ee's criticism to third parties on which to base honest belief of misconduct required for punitive action; fact probation never put into effect did not nullify unlawful threat to discipline)

Hotel & Restaurant Employees and Bartenders Union Local 2 JD-(SF)-178-80
(discharge of Ee for participation and distribution of leaflet protesting discharge of fellow Ee violative; contention that Ee was discharged for disloyalty rejected)

N.L.R.B. v. Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union, Local 705, Teamsters 630 F.2d 505 (C.A. 7, 1980)
(dismissal of Ees who had complained about staff salaries not unlawful, in view of Ees' injection of salary complaints at stewards' meeting which included attendance by stewards not employed by E, admittedly improper use of company CB radio regarding complaints, presentation of wage complaint letters at civic luncheon, general and repeated refusal to follow established, proper and known procedures for presenting wage complaints, coupled with their prior poor work records for which they had been given prior warnings and a *second chance*)

7550-0150 Good-faith belief as to misconduct may be defense

K & K Transportation Corp., Inc. 262 NLRB No. 182
(failure to reinstate ULP strikers husband and wife not violative, where E had sufficient basis to believe they had sabotaged E's trailer-truck causing serious damage to equipment and endangering safety of other motorists, and GC failed to prove that strikers were not in fact guilty of alleged misconduct; fact that misconduct occurred miles away from E's facility was apparently result of premeditated conduct engaged in far from picket line)

General Telephone Company of Michigan 261 NLRB No. 099
(E's disciplining Ees for alleged misconduct during strike, violative, where E failed to detail in record activity for which each striker was accused; E's *honest belief* that misconduct had occurred required some specifity in record linking particular Ees to particular allegations of misconduct in order to satisfy E's burden of proof)

N.L.R.B. v. E-Systems, Inc., ECI Division 642 NLRB No. 118 (C.A. 5, Apr 4, 1981)
(where no proof that striking Ee engaged in picket line misconduct which would bar reinstatement, he must be included on preferential hiring list; E violated Sec. 8(a)(1) by discharging him notwithstanding E had good faith belief that Ee had engaged in such conduct which would warrant his discharge)

7550-0170 Mistaken belief as to misconduct no defense if conduct in fact did not occur

Georgia Kraft Company, Woodkraft Division 258 NLRB No. 121
(regardless of E's motivation)

Stewart-Warner Corporation 253 NLRB No. 016

Huron Dressed Beef, Inc. 262 NLRB No. 001

Babcock & Wilcox Co. 249 NLRB No. 009
(discharge of U president because of E's erroneous belief that, while engaged in protected activities associated with his office of U president, he had instigated wildcat strike and promoted it w/i U, unlawful; in view of such finding and since remedy would be same, Bd found it unnecessary to decide whether or not E also violated 8(a)(3))

Geiger & Peters, Inc. JD-(SF)-246-81
(discharging sympathy strikers for refusing to cross another U's picket line at E's premises unlawful, since, notwithstanding E's good-faith belief to contrary, Ees' act was protected where picket line would not be unlawful w/i meaning of 8(b)(4)(D) and no JDP existed due to fact supervisor performed disputed work and dispute was therefore between E and picketing U rather than 2 Us)

Perry Cap & Set Screw Company JD-671-80
(suspension of U committeeman allegedly for walking off job because management failed to meet with him and other Ees, violative, where Ee tried to arrange meeting between Ees and management about working conditions and he had informed his supervisors of medical appointment and would not work that day of meeting)

7550-2500 Undermining or circumventing grievance procedure

United States Postal Service 250 NLRB No. 156
(U steward's action in refusing to leave office of E's station manager at grievance proceeding after manager cut off U steward's presentation, did not justify E's disciplinary action against him)

Charleston Area Medical Center, Inc. JD-606-82
(refusal to process Ee grievance because Ee had also filed charge with Bd over same issue not violative where it was E's established policy and there is no evidence of discrimination)

New York State United Teachers JD-(NY)-83-81
(reprimand of Ee who had filed grievance regarding Ees' job assignments which was then in arbitration for telling delegates of affiliated organizations of E about arbitration case and which E did not want divulged, violative, since Ee's remarks concerned grievance, did not disparage his E nor reach level of impropriety or disloyalty to E which would result in remarks losing its protected nature)

7550-3700 Violence or threats thereof

Amcar, Division of ACF Industries, Inc. JD-205-81
(discharging 2 Ees for assaulting supervisor away from plant, not violative, notwithstanding finding of not guilty verdict in trial on criminal assault complaint)

Fun Striders, Inc. v. N.L.R.B. 686 F.2d 716 (C.A. 9, 1981)
(E's discharge of and refusal to reinstate Ees for distributing leaflets during unannounced Ee work stoppage, urging Ees to engage in violent struggle against management, not violative where E reasonably believed that this advocacy threatened to inject violent confrontation into plant)

7550-5000 Insubordination

Good Samaritan Hospital & Health Center 265 NLRB No. 082
(discharge of two occupational therapists by coordinator of agency providing developmental therapy for learning disabled children, because therapists complained of coordinator's mismanagement of program and inappropriate treatment model to be used by agency held not violative, since therapists were in no way disturbed or troubled by any personal demands imposed on them by coordinator's policy decisions; welfare of children was therapists' concern; therapists criticisms and recommendations related to disputes outside objectives of mutual aid or protection provisions of NLRA)

Woodruff & Sons, Inc. 265 NLRB No. 049
(discharge of Ee truck driver who had previously complained of paycheck shortage and filed assault charge against supervisor, not unlawful, where decision to discharge Ee was made immediately after Ee caused major damage to his truck for second time that month; overwhelming evidence established E's reliance on legitimate reason for discharge as well as lack of evidence of animus, suspicious timing, or disparate treatment; furthermore, Ee forfeited Act's protection by opprobrious manner in which he pressed his paycheck complaint)

Northwest Engineering Company 265 NLRB No. 036
(suspension of Ee for insubordination by using vulgarity to supervisor at meeting called by Ee to discuss work rules not violative where E did not violate Act by having Ees attend meeting as this was not type of meeting to which *Weingarten* rights attach, notwithstanding insubordinate Ee had been singled out as one guilty of rule infractions because no discipline was intended for this conduct and thus presence of U representative unnecessary)

Benjamin Electrical Engineering, Inc. 264 NLRB No. 139
(where Ee's complaint to E was alleged to have concerned unsafe working conditions but was found to have been directed toward enforcement of U contractual conditions on the job, discharging Ee for making complaint held not unlawful, notwithstanding content of complaint might have been found protected, since discharge was not for content of complaint but for insubordinate manner in making it)

Cox Enterprises, Inc., d/b/a Atlanta Newspapers 264 NLRB No. 120
(discharging Ee allegedly for lying that she had not told supervisor about strike rumor held violative, where prior to this incident E had unlawfully

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questioned her about source of strike rumor and Bd found that she would not have been discharged but for her remark about strike rumor)

Pacific Intermountain Express Co. **264 NLRB No. 047**
(although protected activity of filing OSHA complaints was motivating factor in discharge decision, E would have discharged Ee even if he had not filed those complaints, as Ee was insubordinate for brazenly refusing to cancel physical therapy appointment on company time as he had been directed to do so by his supervisor)

American Steel Works **263 NLRB No. 108**
(suspending for insubordination U safety officer for leaving work station to approach OSHA inspection team and for ignoring for only few minutes order to return to work held violative as such insubordination in context of protected activity cannot justify disciplinary action)

General Motors Corporation, Assembly Division **261 NLRB No. 075**
(discharge of Ee for leaving plant to consult physician when injured, after being denied permission by supervisor, unlawful, where contract provided that supervisor must grant request to visit physician under such circumstances; whether Ee had punched out before seeking permission, immaterial)

Fibracan Corp. **259 NLRB No. 014**
(discharge of Ee who, with other Ees, walked off job in protest over termination of shift supervisor, because Ee used profane and abusive language to plant manager, held not violative where profanity was directed at manager prior to walkout and again at interview to discuss Ee's continued employment; repeated and blatant use of profanity in reply to manager's statement of its objectivity amounted to insubordination)

Fibracan Corp. **259 NLRB No. 014**
(discharge of Ee, who refused to scrape floor when requested not violative where she was discharged solely because of her insubordination rather than any U activity and it was part of her job)

Trans Air Supply Company, Inc. **257 NLRB No. 023**
(Ee's use of profane epithet during argument over working conditions found not insubordinate and held protected as Ee's use of profane epithet occurred after discharge and supervisor had earlier referred to Ee with variation of same epithet)

United States Postal Service **252 NLRB No. 003**
(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would be futile and neither refusal to work nor distuption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

Sullair P.T.O., Inc. **250 NLRB No. 104**
(discharge of Ee unlawful, notwithstanding E's contention that discharge was result of Ee's insubordination and abusive language directed at E's manager in Ee's protest of change in company policy affecting condition of employment, where Ee's language was generally directed toward company and not to E's manager and was type of language used commonly in Ee's shop)

United States Postal Service **250 NLRB No. 002**
(suspending U steward for uttering obecenity toward supervisor in course of discussing possible grievance on behalf of unit Ee, unlawful)

Southwest Detroit Hospital **249 NLRB No. 071**
(discharge of licensed pratical nurse who informed supervisor he was concerned he had not been put in charge of shift and received premium charge pay provided for under contract and that he thought supervisors had made stupid decision by placing nursing technician in charge not unlawful, where discharge for his precipitous decision to leave subsequent meeting with supervisor and reusal to discuss matter further rather than for invoking terms of bargaining agreement)

Hansen Rubber Company **JD-290-82**
(discharge of Ee for uttering obsenity during course of meeting with E dealing with contract provision concerning pay for negotiating sessions violative as Ee was engaged in protected concerted activity and his conduct was not so egregious to remove it from protection of Act where it was uttered in heat of an argument)

The Ohio Casualty Insurance Co. **JD-292-81**
(discharge of Ee who protested work assignment in loud, vulgar language not violative notwithstanding she was communicating with other Ees as this is *mere griping* which Act does not protect)

The Learning Castle, Inc. **JD-669-80**
(discharge of 2 Ees who refused to perform driving part of their job assignments not violative as this was true reason, not fact that Ees had telephoned insurance agent and State agency asking questions concerning driving on job)

Wilson Foods Corporation **JD-(SF)-272-80**
(suspending U president for replying *None of your goddam business* to supervisor who asked why he was on plant floor after shift and ordered him to *get the hell out* held violative, where swearing was common, language was part of *res gestae* of protected activity, Ee was gathering job data for International and E had refused data to U and Ee)

Roadway Express, Inc. **JD-281-80**
(discharge of Ee for refusing to obey order, lawful, notwithstanding Ee's contention that he was discharged for making a safety complaint to Department of Transportation since there was no basis for concluding that E had any knowledge of Ee's compalaint)

Best Foods CPC Company **JD-148-80**
(no violation where Ee was suspended w/o pay for her refusal to report to supervisor's office in connection with her alleged failure to punch out in violation of company rule)

N.L.R.B. v. Southwestern Bell Telephone Company **694 F.2d 974 (C.A. 5, Nov. 1982)**
(suspending Ee for alleged insubordination which occurred at disciplinary meeting concerning Ee's outbursts of day before during dispute over overtime work assignments, violative, where meeting was held to discipline Ee unlawfully for his conduct of previous day and clearly provoked outbursts that ostensibly justified suspension; doctrine of provoked insubordination applied)

Sullair P.T.O., Inc. v. N.L.R.B. **641 F.2d 500 (C.A. 7, Feb 19, 1981)**
(discharging Ee for obscene language directed at management when he voiced concern about E's change in gasoline policy held not violative, as he had previously been warned about such behavior and complaint about gas policy was not even *motivating factor* in discharge)

N.L.R.B. v. Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union, Local 705, Teamsters **630 F.2d 505 (C.A. 7, 1980)**
(dismissal of Ees who had complained about staff salaries not unlawful, in view of Ees' injection of salary complaints at stewards' meeting which included attendance by stewards not employed by E, admittedly improper use of company CB radio regarding complaints, presentation of wage complaint letters at civic luncheon, general and repeated refusal to follow established, proper and known procedures for presenting wage complaints, coupled with their prior poor work records for which they had been given prior warnings and a *second chance*)

N.L.R.B. v. Max Factor and Company **640 F.2d 197 (C.A. 9, 1980)**
(discharge of U steward who vigorously processed grievances, violative, notwithstanding she spent more than 50 percent of work time doing so (much more than other stewards) and at meeting with E where he issued disciplinary warning to her for not working enough she responded with profane language, because excessive time spent on nonproduction activities and conduct at meeting were not so indefensible as to cause her to forfeit protection of Act)

7550-6000 Breach of employer's rules

International Business Machines Corporation **265 NLRB No. 107**
(discharge of Ee for publishing E's confidential wage information which he had received annoymously, not unlawful, where E established legitimate business justification for its policy; E does not prohibit Ees from discussing own wages or attempting to determine what other Ees paid, rather has chosen not to inform Ees what it pays others; therefore, E treats as confidential information compiled for its internal use. Ee knew documents were confidential and was aware of prohibition against disseminating such material. Furthermore, under circumstance that info obtained, Ee couldn't believe possession authorized)

Stauffer Chemical Company **262 NLRB No. 179**
(E's maintaining rule prohibiting Ees (environmental engineers) from contacting government agencies (poluting authorities of EPA) *directly* for information relating to occupational health and safety standards regarding removal of organic waste from effluent water held not violative, since rule was valid on its face and E demonstrated legitimate and substantial business justification for its rule; Ees used such information for interpreting EPA regulations for E's Environmental control Department; rule (in issue) operated to establish orderly way of obtaining work-related information)

Dupont Puerto Rico, Inc. **262 NLRB No. 135**
(discharging Ee because of his violation of E's no-sleeping-on-the-job rule while on probation unlawfully imposed for making inquiry of warehouse manager with regard to denial of raise to fellow Ee because of his five absences and his inquiry as to E's personnel policy on sick leave, disability, and promotions, violative)

Transcon Lines **259 NLRB No. 166**
(discharge of Ee in accordance with E's rules for having preventable accident, not violative, notwithstanding accident brought to E's attention while investigating EEOC complaint filed by another discharged Ee as rule had been strictly enforced in past and was not invoked to provide cover for discharge in EEOC complaint)

Le Mouns, Inc. **259 NLRB No. 007**
(discharging Ees for breaking rule which made them subject to discharge for not calling in w/i first hour of workday about lateness or absence, not

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unlawful where publication of rule was not unlawful unilateral change, as alleged, but publication of prior practice, and discharge pursuant to published rule was continuation of prior practice)

Central Freight Lines, Inc. 264 NLRB No. 100
(discharge of U adherent for failure to report accident as required by E's rules not violative)

CTS Keene, Inc. 247 NLRB No. 141
(warning U adherent to observe E's no solicitation rule, unlawful, where given w/o any apparent basis)

New York Telephone Company JD-(NY)-76-82
(discipline of U steward for using his desk phone for U business not violative where no one was supposed to use office phones for personal or U business and there was phone available in Ee lounge which steward could use on his break or lunch time)

American Freight System, Inc. JD-481-81
(issuance of warning letter to Ee (who had long history of filing grievances) documenting his absences and stating that any further absences would result in discharge not violative notwithstanding prior to receipt of letter Ee had asked for and been refused permission to take time off to attend upcoming U meeting and subsequent discharge of Ee was found to be violative)

Wilson Foods Corporation JD-(SF)-272-80
(after E refused to supply data on job classification, brackets assigned to jobs, and wages to U president per request by International, his speaking with Ees on plant floor to obtain data, after end of shift, held protected, notwithstanding he violated plant rule by not securing foreman's permission to talk on plant floor)

Professional Job Counselors, Inc. d/b/a Bernard Haldane Associates, Inc. JD-(SF)-246-80
(discharge of Ee not violative where, contrary to contention, reason was not Ee's complaints about E's compensation system but was, rather, E's refusal to handle clients according to E's established counselling procedures)

United States Postal Service JD-(SF)-273-79
(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time,* w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

Texas Instruments Inc. v. N.L.R.B. 637 F.2d 822 (C.A. 1, 1981)
(discharge of U adherents for violation of E's valid security rule not violative where: Ees published E's confidential wage survey report which Ees had obtained outside of normal course of employment (each page of report was stamped strictly private), Ee manual set forth E's rule against disclosure of confidential information; moreover, Ees' organizing activity not dependent on access to confidential information)

7550-7080 Offensive personal behavior

United States Postal Service 264 NLRB No. 091
(suspension of Ee who persisted on several occasions to seek clarification of poorly-observed work rule, violative, where rule was incorporated into collective bargaining agreement and questioning such rule was protected concerted activity since it applied not only to Ee but to fellow Ees as well; Ee's conduct in shouting for steward to pursue her inquiry, although seen as rash and ill-mannered, was not so *offensive, defamatory or opprobrious as to remove her from the protection of the Act*)

N.L.R.B. v. Southwestern Bell Telephone Company 694 F.2d 974 (C.A. 5, Nov. 1982)
(ct held Bd's findings that E unlawfully attempted to discipline Ee who used intemperate language during dispute concerning overtime work assignments was supported by substantial evidence where it is well settled that intemperate remarks of participants during informal negotiations of this kind fall w/i ambit of protection of Act unless Ee's language is actually *indefensible* under the circumstances)

N.L.R.B. v. Southwestern Bell Telephone Company 694 F.2d 974 (C.A. 5, Nov. 1982)
(in enforcing Bd order concerning unlawful discipline of Ee for alleged insubordinate remarks during dispute concerning overtime work assignments where Ee's conduct was found herein not to be so *indefensible under the circumstances* as to deprive him of protection under Act, ct rejected E's contentions that *indefensible* test did not apply because Ee's remarkds constituted *personal abuse,* that this test did not cover negotiations in open work area, and discussion between E and Ee was not real negotiations because it was conducted *outside formal grievance channels*)

7550-7900 Strike misconduct

Styrest Nursing Home JD-(ATL)-98-82
(E warning striker because of its good faith belief that striker had repeatedly flashed his vehicle lights from high beam to low beam while following E's truck, lawful, in view of danger caused by actions)

Styrest Nursing Home JD-(ATL)-98-82
(warning striker based on his alleged placing nail on ground, unlawful, since insufficient evidence to establish E's good faith belief in striker's misconduct where E failed to produce or explain its failure to produce either nail which it alleged striker had placed on ground or guard who allegedly found nail)

Styrest Nursing Home JD-(ATL)-98-82
(striker opening drain on trailer carrying oil leaving only dust cap as protection which might cause hot oil to spill on remover of dust cover sufficient misconduct to justify suspension of striker)

Styrest Nursing Home JD-(ATL)-98-82
(suspension of striker for damaging winter front and bug screen of truck, unlawful, since E had honest belief that striker was responsible for damage, notwithstanding striker's statement that he only unsnapped two snaps on canvas winter front which held it to bug screen, in view of photograph of truck showing extensive damage, there was no reason to believe E was responsible for aggravation of damage between time striker admittedly touched it and when photograph taken and GC failed to prove striker's innocence)

K & K Transportation Corp., Inc. 262 NLRB No. 182
(failure to reinstate ULP strikers husband and wife not violative, where E had sufficient basis to believe they had sabotaged E's trailer-truck causing serious damage to equipment and endangering safety of other motorists, and GC failed to prove that strikers were not in fact guilty of alleged misconduct; fact that misconduct occurred miles away from E's facility was apparently result of premeditated conduct engaged in far from picket line)

Can-Tex Industries, Division of Harsco Corporation 256 NLRB No. 143
(discharge of one Ee for belief he was involved in upcoming shutdown of plant by Ees and of other Ees for engaging in shutdown, unlawful where Ees were striking to present grievances; and shutting down plant equipment to prevent its being damaged did not change Ees' activity from protected to unprotected status)

Fun Striders, Inc. 250 NLRB No. 087
(refusal to reinstate strikers who had distributed protected, but nontheless, politically inflamatory materials, violative)

Excavation-Construction, Inc. 248 NLRB No. 061
(where pickets belligerently prevented E from driving its truck through picket line, E's physical retaliation against pickets not violation of Act)

Unit Rig & Equipment Company JD-229-82
(no violation where E refused to reinstate striker who threw nails on E's driveway)

Unit Rig & Equipment Company JD-229-82
(no violation where E refused to reinstate striker who punctured tire of truck leaving E)

Unit Rig & Equipment Company JD-229-82
(throwing beer bottles on E's parking lot, committing physical assault on nonstriker and threatening nonstriker with bodily harm justified E's refusal to reinstate striker)

Triple A Machine Shop, Inc. JD-(SF)-220-80
(discharge of 3 striking Ees not violative where they engaged in life threatening picket line violence; fact that other nonstrikers engaged in some violence and were not discharged is not inconsistent where their behavior did not reach same level of violence)

Super Valu Xenia, a Division of Super Valu Stores, Inc. v. N.L.R.B. 627 F.2d 13 (C.A. 6, 1980)
(contrary to Bd, ct held discharge of two Ees under mistaken belief they had engaged in strike misconduct, not unlawful, since Ees had participated in illegal wildcat strike and record evidence does not substantially support conclusion that E condoned or otherwise forgave Ees for their illegal conduct)

7550-8700 Breach of no-strike clause or threat thereof

Bechtel Power Corporation 264 NLRB No. 098
(refusal to rehire Ee who, while acting in his capacity of U steward, threatened E with an unlawful work stoppage if E chose certain individual to become a supervisor, not unlawful, since Ee's threat was not protected by Act)

General Electric Company 258 NLRB No. 155
(questioning Ees about another Ee's statement that if they had good U leadership like old John L., men would probably hit the bricks until things straightened out, violative as statement was protected and as it arose in otherwise protected discussion and was not incitement to engage in wildcat strike, E was not free to interrogate its Ees)

ITT Continental Baking Company American Bakeries Company, Inc. 253 NLRB No. 149
(Ees' discharge for walkout in protest over alleged unsafe working conditions not violative where contract contains unambiguous no-strike clause over such matters while attempt is being made to resolve issues through use of mandatory arbitration and grievance procedure)

Irvin H. Whitehouse & Sons Company 253 NLRB No. 149
(discharge of Ees who refused to work because of safety hazards violative where contract did not contain no-strike provision)

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A & R Window Cleaning & Janitorial Services, Inc. 247 NLRB No. 078
(discharge of Ees who had engaged in work stoppage because of E's announcement that they would not be getting holiday pay for Thanksgiving because they had not been employed by E for 90 days, unlawful, notwithstanding bargaining agreement contained no-strike clause, where at time of work stoppage Ees were unaware of existence of bargaining agreement binding on them)

N.L.R.B. v. Maryland Shipbuilding and Drydock Company 683 F.2d 109 (C.A. 4, July 1982)
(Ee who stopped work for one-half hour to pursue grievance over work assignment which he believed violated safety provision of collective bargaining agreement was not engaged in protected activity where contract prohibited any work stoppage and established three step procedure for resolution of grievances; moreover, situation did not rise to level of *abnormally dangerous* which would protect stoppage in face of no-strike clause; thus suspension of Ee for work stoppage not violative)

Super Valu Xenia, a Division of Super Valu Stores, Inc. v. N.L.R.B. 627 F.2d 13 (C.A. 6, 1980)
(contrary to Bd, ct held discharge of two Ees under mistaken belief they had engaged in strike misconduct, not unlawful, since Ees had participated in illegal wildcat strike and record evidence does not substantially support conclusion that E condoned or otherwise forgave Ees for their illegal conduct)

7567 VOLUNTARY QUIT

Bechtel Power Corporation 264 NLRB No. 058
(refusal to rehire Ee who, in concert with other Ees, quit job and immediately attempted to obtain paycheck, not unlawful, where demand for immediate receipt of paycheck held not to be protest involving terms and conditions of employment)

Serendippity-Un-Ltd and Tigerrr, Inc. 263 NLRB No. 100
(E's defense that Ees who walked out to protest working conditions *quit*, rejected, where at the time Ees did not manifest desire to permanently sever their employment, never threatened to quit, did not remove their tools in face of E's imploring them to remain in employment, and there was no ambiguity created by walkout; rather, E was clearly retaliating against entire group for engaging in concerted protected activity, and E's payroll records concerning walkout did not record *quit*)

R. L. White Company, Inc. 262 NLRB No. 069
(Ee who was on sick leave at time strike began and never returned to work found to be striker where she had informed one Ee she intended to honor picket line and participated in picket line activities, notwithstanding she never attempted to inform E that she would not be returning to work because she was honoring picket line)

King Trucking Company 259 NLRB No. 079
(*I'm kind of in a way sorry I quit*)

Teresa Coal Company, Inc. 259 NLRB No. 067
(discharge of miners who had walked off job after E failed to comply with request that road into mine be repaired so that Ees could ride into mine in view of miners' fear that *scoop* being used to carry them into mine was unsafe and their concern about delay in carrying out injured Ee, and refusal to allow miners to work upon their return, unlawful, since miners' activities protected; E's contention miners voluntarily quit inasmuch as they were given reasonable alternative of walking in on paid time, rejected, since no requirement (that) Ees abjure colorable grievance merely *because E presents alternative, though arguably reasonable*)

Brookline Corporation d/b/a Hi Fi Buys 257 NLRB No. 166
(pre-planned agreement to quit if certain Ee was terminated)

True Drilling Company 257 NLRB No. 072
(permanently replacing and refusing to reinstate Ees who walked off job, stating they did not want to work on oil rig with Ee who was allegedly intoxicated, not unlawful, since Ees voluntarily quit; intoxicated Ee did not meet *objective* test of abnormally hazardous condition w/i Section 502, where only danger cited was that intoxicated Ee might fall from board above platform onto Ees where Ee did not wear hard hat, worked in that position only for short time and would be strapped to board)

Oakwood Manor, Inc., d/b/a Danville Nursing Home 254 NLRB No. 108
(offering Ee alternative of quiting or being discharged for engaging in protected walkout, violative notwithstanding she signed resignation form)

Yellow Freight System, Inc. 247 NLRB No. 028
(no violation where driver refused or delayed work assignment and his termination -- whether it be deemed a quit or a discharge -- was based on E's legitimate interest in moving freight rather than, as contended, Ee's assertion of a contractual right)

Gar-Wood Detroit Truck Equipment Company JD-747-79
(Ee voluntarily quit when he refused job assignment well w/i his capability, stating he was going to punch out, and subsequently punched out, walked off job and premises, notwithstanding he had been informed by E that if he punched he would be considered as quitting his job)

N.L.R.B. v. Downslope Industries, Inc., and Greenbriar Industries, Inc. 676 F.2d 1114 (C.A. 6, Apr. 1982)
(female Ees who had complained about sexual advances of male supervisors were discharged, rather than quit, when they left plant after being told by E to work for offending supervisor or *hit the clock*; test of whether Ee was discharged depends on reasonable inferences that Ees could draw from language used by E. *Taking all circumstances into account it is clear that Ees reasonably inferred that E had no intention of addressing their complaints and was firing them*)

7575 MISCONDUCT OF UNION

Carither's Stores, Inc. 262 NLRB No. 175
(arrest of U agent who was picketing E's store during economic strike, not violative, where E police acted on their own in making arrest and since for abuse of E's Ees and customers, rather than for interference with protected activity of Ees, in view of complaints regarding harrassment by agent and threats of violent retaliation against agent, and visible agitation of elderly customers)

Louis Trauth, Inc. JD-369-82
(no violation where E threatened to sue U for interference with its business where U went to ex-customer in course of processing grievances and told ex-customer that if he ever wanted to become customer of E again to contact deliveryman rather than sales department)

7580 FAILURE TO APPLY FOR REINSTATEMENT

Bodolay Packaging Machinery, Inc. 263 NLRB No. 039
(E's obligation to reinstate discriminatee not extinguished by Ee's failure to respond to registered letter mailed to him offering reinstatement where evidence showed Ee never received letter)

Central Cadillac Company JD-345-80
(E's refusal to allow striking Ees to return to work w/o doctor's certificate, unlawful, notwithstanding E's contention that Ees made no valid unconditional offer to return to work, where strikers reported in body to E's premises at regular reporting time, most in work clothes; furthermore, medical certificate requirement instituted night before return and, subsequently, never enforced)

7587 WAIVER OF RIGHT UNDER COLLECTIVE-BARGAINING AGREEMENT

Inland Steel Company 264 NLRB No. 015
(no waiver of right to participate in sympathy strike by prior failure to contend broad no-strike provision did not encompass sympathy strikes, notwithstanding prior to refusal herein no member of U with which E had agreement had refused to cross picket line established by Ees of another E on E's premises during 35 year bargaining relationship, nor had U ever contended it had right to engage in sympathy strikes or urged its members to do so as past failure by U to assert statutory right does not stop subsequent assertion of that right)

Inland Steel Company 264 NLRB No. 015
(E's discharge of Ee for refusal to cross picket line *at* E's premises resulting from strike against contractor performing work there and whose Ees were represented by local U other than local representing E's Ees, violative, notwithstanding no-strike provision in agreement between E and U, since agreement did not encompass sympathy strikes; right to participate in sympathy strike not otherwise waived, and picketing not in violation of Section 8(b)(4))

United Technologies Corporation 260 NLRB No. 088
(E's maintenance and enforcement of rule prohibiting Ee solicitation during all paid nonworking time, unlawful, since it is facially invalid inasmuch as it prohibits U solicitation during *working hours*, and E admitted rule applies to authorized break periods for which Ees are paid; moreover, in view of SCt's decision in *Magnavox*, ban on solicitation was not rendered lawful by U contract provision waiving Ees' right to engage in solicitation)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(*Weingarten* rights not available to Ee being reprimanded for tardiness where Ee waived such rights by saying *I'm late again* then said *I know I'm wrong* and waived his right to a witness (to reprimand) when supervisor offered it: Ee's disclosure was not result of any E questioning; furthermore E had made up its mind already to issue reprimand when Ee told to sign written reprimand)

United States Postal Service 256 NLRB No. 012
(denial of Ee's request for U representation at disciplinary interview, unlawful, where there was no waiver of U representation consonant with Bd standards for waiver of Ee's Weingarten rights; even if contract could be interpreted as waiving Ee's rights of U representation, it was not clear that

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7587—Cont.

waiver would apply herein since contract waiver was ambiguous; moreover, E had reasonable fear of discipline in view of prior similar situation, and E not only denied request but also failed to offer Ee option of continuing interview unaccompanied by U representative or having no interview at all)

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 095**
(discharge and failure to reinstate Ees who struck E, contrary to contractual no-strike clause, to protest failure of U's health and welfare fund to fulfill its contractual medical insurance obligations held violative, since *no-strike* pledge relied upon by E did not constitute clear and unequivocal waiver of Ees' right to strike against actions of third party (*Fund*) which affected terms and conditions of employment)

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 095**
(U cannot waive Ees' right to strike over issue of medical payments from U fund to insurance carrier by *ad hoc* statements of purported intent of collective bargaining agreement in view of essentially conflicting interests of U and Ees regarding Fund)

Prudential Insurance Company of America **251 NLRB No. 213**
(where contract provision which waived unit Ees right to *Weingarten* representation had been in contract since 19 years prior to that decision and U has consistently taken position that it was not waiving its rights, provision is not waiver of those rights)

Allied Supermarkets, Inc. **JD-601-81**
(E in bankruptcy, by preventing Ee from posting on bulletin board and distributing intra U election campaign material in cafeteria during non-work time and in non-work area violated Act as right to run in intra U election is protected and U has no power to waive these rights in contract, which, in effect U did by agreeing to overly broad no-solicitation no-distribution clause)

Pioneer Finishing Corporation v. N.L.R.B. **667 F.2d 199 (C.A. 1, Nov. 1981)**
(where contract contained prohibitions against U officials distributing literature on E's premises, and official is also Ee, it will not be assumed that such Ee has waived any of his rights unless he has done so specifically or unless his activities are distructive to collective bargaining process)

Prudential Insurance Company of America v. N.L.R.B. **661 F.2d 398 (C.A. 5, Nov. 1981)**
(right to U representation at investigatory interview effectively waived in agreement between insurance company and U by provision *neither U nor its members shall interfere with right of E to interview any agent with respect to any phase of his work w/o grievance committee being present* notwithstanding contention that waiver not clear and unmistakable, since it referred to grievance committee rather than U representative, right not focused on during negotiations, and provision predated Weingarten, where E had recognized grievance committee as essentially same as U representative)

Prudential Insurance Company of America v. N.L.R.B. **661 F.2d 398 (C.A. 5, Nov. 1981)**
(since right to U representation at investigatory interview only inheres at Ee's request, Ee's silence can be effective waiver of right)

N.L.R.B. v. Container Corporation of America **649 F.2d 1213 (C.A. 6, May 1981)**
(no waiver of U's right to post notices related to U business, namely, grievance procedure and U vice president's perception of E's attitude, where much earlier, by mutual agreement, parties agreed to eliminate bulletin board as battleground since that agreement was made during contract negotiations and was limited to those negotiations only)

N.L.R.B. v. Gould, Inc., Switchgear Division **638 F.2d 159 (C.A. 10, 1980)**
(sympathy strike is not prohibited by no-strike clause where clause is tied to grievance procedure and dispute underlying sympathy strike is not subject to grievance-arbitration machinery of contract; strike was spontaneous action to honor own U's informational picket line at own E's premises)

7599 OTHER

Cook Paint and Varnish Company **258 NLRB No. 166**
(where E unlawfully questioned and threatened U steward for not submitting information concerning consultations with Ee about his grievance, Bd rejected E's defense that, pursuant to bargaining obligation of Sec. 8(d), steward was obligated to turn over documents in his possession relating to grievance, obtained in course of representing Ee; no case supports proposition that notes kept by steward representing Ees are subject to requirements of supplying relevant information; and, even if information was relevant to bargaining and E was entitled to it, Act provides appropriate mechanism for E to assert its rights, but E rejected such course)

518 EMPLOYER DOMINATION, ASSISTANCE OR SUPPORT OF LABOR ORGANIZATION

0100 GENERALLY

Wisconsin Beef Industries, Inc. 249 NLRB No. 034

(vice of dominated labor organization is that E can discourage collective bargaining by holding organization out to his Ees as an instrument for that purpose which they can adhere to w/o incurring his disfavor; in effect the dominated labor organization discourages genuine collective bargaining by giving Ees only semblance of collective bargaining strength while ultimate control is still maintained by E)

0120 EMPLOYER'S OBLIGATION OF NEUTRALITY TOWARDS EMPLOYEE'S ORGANIZATIONAL ACTIVITIES (See also 518-4040-6701-3300)

Elias Mallouk Realty Corp. 265 NLRB No. 156

(Bd has long held that not all E assistance to a U may be sufficient to hold E in violation of Act. Thus, there have been cases where U's use of company time and property, provided by E, did not establish per se ULP. In finding such violation SCt has observed that there must be inference that E's assistance denied Ees their right to complete and unhampered freedom in choosing a bargaining representative w/o regard to their E's wishes. Each case must be judged according to its own particular facts)

Abraham Grossman d/b/a Bruckner Nursing Home 262 NLRB No. 115

(Bd will no longer find Sec. 8(a)(2) violations in rival U, initial organizing situations when an E recognizes U which alone represents uncoerced, unassisted majority, before valid ptn for election has been filed with Bd; however, once notified of valid ptn, E must refrain from recognizing any of rival Us)

Ralph Nanner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital 253 NLRB No. 092

(where E overly restricted U solicitation and distribution and gave encouragement to committee formed under its sponsorship, it violated Act)

0160 RELEVANCY OF EMPLOYER'S MOTIVATION

St. Joseph's Hospital 254 NLRB No. 077

(E under duty to protest composition of negotiating committee and refuse to deal with it after individual who was member of U negotiating committee had been held supervisor by RD, notwithstanding E was not responsible for individual's presence on committee, no apparent conflict of interest or communication with management)

2000 FORMS OF DOMINATION AND INTERFERENCE

2001 GENERALLY

South Nassau Communities Hospital 247 NLRB No. 067

(Act forbids E interference with formation of labor organization whether that interference be *benevolent or malevolent*)

2001-1400 Actual domination must be shown

Vinyl-Fab Industries, Inc. 265 NLRB No. 133

(no violation where record did not demonstrate E dominated, controlled, or rendered unlawful aid, assistance and support to E's Ee group)

2001-2500 Totality of employer's conduct considered

Homemaker Shops, Inc. 261 NLRB No. 050

(E held to have unlawfully dominated and assisted U which lacked officers, charter, bylaws, dues or rules other than those in its contract with E, had its election procedures overseen by E, met with E when E scheduled meetings, did not bargain with E at arms-length, had its pre-negotiation facilities provided by E, and had its members' wages and travel expenses paid by E, and even received offer of use of E's attorney)

Crown Cork & Seal Company, Inc. 255 NLRB No. 004

Hart Ski Mfg. Co., Inc. JD-11-80

(domination rather than assistance where Ee committee's formation and continued existence was suggested, encouraged and inspired by management, contract proposals unilaterally prepared by E, committee did not meet or act except when E called meetings, meetings were held on E's premises on paid worktime with supervisors present, E controlled voting by procedure providing ballots, counting votes and providing place for balloting, there were no bylaws and no assets)

Classic Industries, Inc. v. N.L.R.B. 667 F.2d 205 (C.A. 1, Dec. 1981)

(domination found where E formed *Shop Committee* called for and conducted meetings, offered use of its lawyer, helped committee get on NLRB ballot, actively campaigned against U and for committee, discriminated in favor of committee in matters regarding Ee discipline and grievances; moreover fact that committee actually won some concessions from E during bargaining not controlling where 8(a)(2) already filed and E trying to create impression that committee independent)

2001-3300 Requires active management participation and control

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) 259 NLRB No. 037

(unaffiliated U of clerical Ees employed by local of Teamsters' U not assisted by E (local U of Teamsters) where no one in authority in Teamsters U in any way assisted in formation of unaffiliated U or suggested that it be formed; nonsupervisory office manager initiated formation of unaffiliated U of clerks)

Deister Concentrator Company, Inc. 253 NLRB No. 040

(where Ees formed shop committee circulated ptn asking for bonus to be reinstated w/o E's knowledge or consent; no attempt to bypass)

2017 EMPLOYER PARTICIPATION IN FORMATION OR INITIATION OF LABOR ORGANIZATION

2017-0100 Generally

Homemaker Shops, Inc. 261 NLRB No. 050

(E's activity in formation of labor organization not prerequisite to finding of domination in administration of labor organization)

2017-1400 Initial suggestion or instigation by employer

Flex Plastics, Inc. 262 NLRB No. 078

(E recognizing shop committee as bargaining representative while incumbent U enjoyed rebuttable presumption of majority status which E did not rebut, violative; furthermore, shop committee's ptn for E recognition came about as result of speech given by E's labor consultant to Ees which undermined incumbent's status and suggested that Ees organize among themselves to bargain with E w/o U)

Comet Corporation 261 NLRB No. 188

(initiating, forming, sponsoring and promoting shop committee unlawful)

Randall E. Wheeler, Kevin E. Wheeler, and Edmund J. Wheeler, A General Partnership d/b/a Wheelco Co. 260 NLRB No. 109

(E violated Act when it suggested, prior to election that Ees abandon U and form Ee committee for purpose of bargaining, and after U lost election encouraged Ees to continue with committee, instructed them to draw up contract proposal and said he was willing to bargain with them concerning terms and conditions of employment as this constitutes unlawful interference in formation and administration of labor organization)

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) 259 NLRB No. 037

(unaffiliated U of clerical Ees employed by local of Teamsters' U not assisted by E (local U of Teamsters) where no one in authority in Teamsters U in any way assisted in formation of unaffiliated U or suggested that it be formed; nonsupervisory office manager initiated formation of unaffiliated U of clerks)

2017-1400—Cont.

K & E Bus Lines, Inc. 255 NLRB No. 137
(E's suggesting in lieu of U organization, Ee grievance committee which did meet with E and present grievances, negotiating with committee, and offering to pay for lawyer to assist in formation of committee)

Walker Die Casting, Inc. 255 NLRB No. 034
(establishing, recognizing and bargaining with Ee committee at time E obligated to bargain with U, violative)

Classic Industries, Inc. 254 NLRB No. 149
(E who initiated and encouraged formation of Ee committee, assisted with election of members of committee, negotiated with committee, granted changes in some conditions of employment, provided for committee to receive receipts from vending machines in lieu of its collecting dues, and executed contract with committee after election tainted by ULPs violated Act)

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital 253 NLRB No. 092
(where E helped originate Ee committee, aided it, participated in its activities through management and supervisors, exercised control over activities, conducted election, it violated Act)

S. L. Industries Inc. and Extruded Products, Corp. 252 NLRB No. 151
(E's announcement, prior to election, to Ees that it was forming Ee grievance committee to handle Ee problems held violative of Section 8(a)(1) but not Section 8(a)(2) since no such committee was actually formed)

Coating Products, Inc. 251 NLRB No. 170
(telling Ees to establish *Ee committee* and bargaining directly with committee on company time during U campaign violative)

Streamway Division of The Scott & Fetzer Co. 249 NLRB No. 054
(E who initiated in-plant Ee committee plan, held to have unlawfully dominated and interfered with formation of Ee committee, constituting a labor organization, and contributed financial and other support to it by conducting elections for Ee representatives on committee on working time, and ballots were prepared, distributed, and counted presumably with assistance of *senior Ees* having supervisory status)

South Nassau Communities Hospital 247 NLRB No. 067
(E's suggesting to Ees, and formation of, Nursing Advisory Committee during U organizing campaign held unlawful, since committee was found to have been labor organization notwithstanding it collected no dues and received no income from either E or any other source)

Formalay Corp. JD-(ATL)-87-81
(formation of standing committee comprised of Ees selected by management and dominated by E to resolve Ee problems held violative)

Hart Ski Mfg. Co., Inc. JD-11-80

Classic Industries, Inc. v. N.L.R.B. 667 F.2d 205 (C.A. 1, Dec. 1981)

N.L.R.B. v. Streamway Division of The Scott & Fetzer Company 691 F.2d 288 (C.A. 6, Oct. 1982)
(no unlawful domination of labor organization why E's establishing and structuring Ee committee, since committee was not labor organization where its purpose was allowing Ees to communicate with E about working conditions rather than dealing with E about them)

N.L.R.B. v. Metropolitan Alloys Corporation 624 F.2d 743 (C.A. 6, 1980)
(violation where E introduced collective-bargaining agreement at office party, announced formation of U-like committee, conducted election for committee members, and then for 2 years ignored existence, only to reactivate it when U expressed interest in organizing its Ees, as *committee* was company-created sham; disestablishment proper remedy)

2017-2800 Direct participation of employer

Streamway Division of The Scott & Fetzer Co. 249 NLRB No. 054
(E who initiated in-plant Ee committee plan, held to have unlawfully dominated and interfered with formation of Ee committee, constituting a labor organization, and contributed financial and other support to it by conducting elections for Ee representatives on committee on working time, and ballots were prepared, distributed, and counted presumably with assistance of *senior Ees* having supervisory status)

Classic Industries, Inc. v. N.L.R.B. 667 F.2d 205 (C.A. 1, Dec. 1981)

N.L.R.B. v. Streamway Division of The Scott & Fetzer Company 691 F.2d 288 (C.A. 6, Oct. 1982)
(no unlawful domination of labor organization by E's establishing and structuring Ee committee, since committee was not labor organization where its purpose was allowing Ees to communicate with E about working conditions rather than dealing with E about them)

2017-2850 Supervisor's participation or assistance in campaigning and soliciting for union

Raley's, Inc. 256 NLRB No. 158
(store manager's warning Ee that her employment would be in jeopardy if she talked with U representatives on company time violative especially where he let representative of competing U speak to Ees for two hours on company time)

Sanford Home For Adults 253 NLRB No. 153
(E violated Act where it threatened Ees with discharge if they did not sign U authorization cards)

Dubuque Packing Company JD-250-82
(E violated Act where, prior to opening of plant it gave Ees U authorization cards to sign; U violated Act by accepting E's assistance)

2017-5600 Attendance at organizing meetings of employer's supervisors and agents

Comet Corporation 261 NLRB No. 188

Hart Ski Mfg. Co., Inc. JD-11-80

2017-7000 Assistance with and participation in initial election

Classic Industries, Inc. 254 NLRB No. 149
(E who initiated and encouraged formation of Ee committee, assisted with election of members of committee, negotiated with committee, granted changes in some conditions of employment, provided for committee to receive receipts from vending machines in lieu of its collecting dues, and executed contract with committee after election tainted by ULPs violated Act)

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital 253 NLRB No. 092
(where E helped originate Ee committee, aided it, participated in its activities through management and supervisors, exercised control over activities, conducted election, it violated Act)

Hart Ski Mfg. Co., Inc. JD-11-80
(E's establishment of voting eligibility requirement, furnishing of ballots, assistance of supervisor in checking names off voting list and counting ballots indicative of E domination)

Classic Industries, Inc. v. N.L.R.B. 667 F.2d 205 (C.A. 1, Dec. 1981)

N.L.R.B. v. Metropolitan Alloys Corporation 624 F.2d 743 (C.A. 6, 1980)
(violation where E introduced collective-bargaining agreement at office party, announced formation of U-like committee, conducted election for committee members, and then for 2 years ignored existence, only to reactivate it when U expressed interest in organizing its Ees, as *committee* was company-created sham; disestablishment proper remedy)

2017-8400 Purpose of establishment of labor organization to forestall outside union

K & E Bus Lines, Inc. 255 NLRB No. 137
(E's suggesting in lieu of U organization, Ee grievance committee which did meet with E and present grievances, negotiating with committee, and offering to pay for lawyer to assist in formation of committee)

Classic Industries, Inc. 254 NLRB No. 149
(E who initiated and encouraged formation of Ee committee, assisted with election of members of committee, negotiated with committee, granted changes in some conditions of employment, provided for committee to receive receipts from vending machines in lieu of its collecting dues, and executed contract with committee after election tainted by ULPs violated Act)

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital 253 NLRB No. 092
(where E helped originate Ee committee, aided it, participated in its activities through management and supervisors, exercised control over activities, conducted election, it violated Act)

Classic Industries, Inc. v. N.L.R.B. 667 F.2d 205 (C.A. 1, Dec. 1981)

N.L.R.B. v. Metropolitan Alloys Corporation 624 F.2d 743 (C.A. 6, 1980)
(violation where E introduced collective-bargaining agreement at office party, announced formation of U-like committee, conducted election for committee members, and then for 2 years ignored existence, only to reactivate it when U expressed interest in organizing its Ees, as *committee* was company-created sham; disestablishment proper remedy)

2017-9600 Purpose of bringing in outside labor organizations to forestall incumbent union

Flex Plastics, Inc. 262 NLRB No. 078
(E recognizing shop committee as bargaining representative while incumbent U enjoyed rebuttable presumption of majority status which E did not rebut, violative; furthermore, shop committee's ptn for E recognition came about as result of speech given by E's labor consultant to Ees which undermined incumbent's status and suggested that Ees organize among themselves to bargain with E w/o U)

2033 EMPLOYER'S RELATION TO OFFICERS, PROMOTERS, AND AGENTS OF UNION

2033-6000 Grant of superseniority to union promoters and agents

Chrysler Corporation-Amplex Division of Chrysler Corporation JD252-81
(superseniority clause valid where U adduced substantial justification for awarding superseniority to officers (of U) by showing that in their respective capacities as members of (U) Executive Board they were involved in effective representation of unit Ees at plant level in matters affecting administration of collective-bargaining agreement)

2033-8000 Union offices held by employer's agents

2033-8067 Supervisors

Ditzler Mechanical Contractors, Inc. 259 NLRB No. 084
(where U president was *high level* supervisor for E, E violated Act as his dual roles interfere with Ees free exercise of Sec. 7 rights)

2050 TIME OF ORGANIZATION

2050-6700 Concurrent with or immediately after organizational drive of outside union

Randall E. Wheeler, Kevin E. Wheeler, and Edmund J. Wheeler, A General Partnership d/b/a Wheelco Co. 260 NLRB No. 109
(E violated Act when it suggested, prior to election that Ees abandon U and form Ee committee for purpose of bargaining, and after U lost election encouraged Ees to continue with committee, instructed them to draw up contract proposal and said he was willing to bargain with them concerning terms and conditions of employment as this constitutes unlawful interference in formation and administration of labor organization)

Classic Industries, Inc. 254 NLRB No. 149

Ralph Nenner, M.D., Lewis Orens, M.D. et al., A Partnership d/b/a Dugdale General Hospital 253 NLRB No. 092
(where E helped originate Ee committee, aided it, participated in its activities through management and supervisors, exercised control over activities, conducted election, it violated Act)

Formaloy Corp. JD-(ATL)-87-81
(formation of standing committee comprised of Ees selected by management and dominated by E to resolve Ee problems held violative)

Hart Ski Mfg. Co., Inc. JD-11-80
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

2050-8300 While rival petition pending

Crown Cork & Seal Company, Inc. 255 NLRB No. 004

2067 STRUCTURE AND BEHAVIOR OF ORGANIZATION

2067-0700 Bargaining

2067-0750 Absence of effort to bargain

Homemaker Shops, Inc. 261 NLRB No. 050

2067-1400 Lack of constitution and bylaws

Hart Ski Mfg. Co., Inc. JD-11-80

Classic Industries, Inc. v. N.L.R.B. 667 F.2d 205 (C.A. 1, Dec. 1981)

2067-2800 Dues

2067-2833 No provision for

Homemaker Shops, Inc. 261 NLRB No. 050

Classic Industries, Inc. 254 NLRB No. 149
(E who initiated and encouraged formation of Ee committee, assisted with election of members of committee, negotiated with committee, granted changes in some conditions of employment, provided for committee to receive receipts from vending machines in lieu of its collecting dues, and executed contract with committee after election tainted by ULPs violated Act)

South Nassau Communities Hospital 247 NLRB No. 067
(E's suggesting to Ees, and formation of, Nursing Advisory Committee during U organizing campaign held unlawful, since committee was found to have been labor organization notwithstanding it collected no dues and received no income from either E or any other source)

Hart Ski Mfg. Co., Inc. JD-11-80

Classic Industries, Inc. v. N.L.R.B. 667 F.2d 205 (C.A. 1, Dec. 1981)

2067-3500 Election procedure

Streamway Division of The Scott & Fetzer Co. 249 NLRB No. 054
(E who initiated in-plant Ee committee plan, held to have unlawfully dominated and interfered with formation of Ee committee, constituting a labor organization, and contributed financial and other support to it by conducting elections for Ee representatives on committee on working time, and ballots were prepared, distributed, and counted presumably with assistance of *senior Ees* having supervisory status)

Hart Ski Mfg. Co., Inc. JD-11-80
(E's establishment of voting eligibility requirement, furnishing of ballots, assistance of supervisor in checking names off voting list and counting ballots indicative of E domination)

2067-4900 Grievance procedure

S. L. Industries Inc. and Extruded Products, Corp. 252 NLRB No. 151
(E's announcement, prior to election, to Ees that it was forming Ee grievance committee to handle Ee problems held violative of Section 8(a)(1) but not Section 8(a)(2) since no such committee was actually formed)

2067-5600 Inactivity of organization

N.L.R.B. v. Metropolitan Alloys Corporation 624 F.2d 743 (C.A. 6, 1980)
(violation where E introduced collective-bargaining agreement at office party, announced formation of U-like committee, conducted election for committee members, and then for 2 years ignored existence, only to reactivate it when U expressed interest in organizing its Ees, as *committee* was company-created sham; disestablishment proper remedy)

2067-7700 Nonparticipation of membership

Homemaker Shops, Inc. 261 NLRB No. 050

2083 ADMINISTRATION OF ORGANIZATION

2083-3300 Dictation or guidance by employer

Southland Knitwear, Inc. and Metropolitan Industries, Inc. 260 NLRB No. 087
(taking leaflets of U competing with incumbent U from Ees and tearing them up, violative)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. 260 NLRB No. 087
(admonishing Ees not to speak with representative of U competing with incumbent U, violative)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. 260 NLRB No. 087
(telling Ees that representative of U competing with incumbent U was from Mafia, violative)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. JD-510-81
(taking leaflets of U competing with incumbent U from Ees and tearing them up, violative)

2083-3367 Legal advice furnished by employer

Homemaker Shops, Inc. 261 NLRB No. 050

2083-5000 Interference without domination

South Nassau Communities Hospital 247 NLRB No. 067
(Act forbids E interference with formation of labor organization whether that interference be *benevolent or malevolent*)

2083-6700 Meetings

2083-6750 Called and attended by employer's representatives

Homemaker Shops, Inc. 261 NLRB No. 050

Wisconsin Beef Industries, Inc. 249 NLRB No. 034
(domination of Ee Committee where E's owner sat behind desk at meetings, initiated topics for discussion, and Ees felt E controlled committee)

Formaloy Corp. JD-(ATL)-87-81
(formation of standing committee comprised of Ees selected by management and dominated by E to resolve Ee problems held violative)

Hart Ski Mfg. Co., Inc. JD-11-80
(fact Ee committee never met on own initiative, meetings were always held on paid work time on E's property with supervisors present are indicative of domination)

2083-8300 Employer voice in affairs of employee committee

Wisconsin Beef Industries, Inc. 249 NLRB No. 034
(domination of Ee Committee where E's owner sat behind desk at meetings, initiated topics for discussion, and Ees felt E controlled committee)

4000 FORMS OF ASSISTANCE AND SUPPORT

4001 GENERALLY

Siro Security Service, Inc. **247 NLRB No. 157**

(in assessing impact of E assistance to U, totality of circumstances must be considered in determining whether E's conduct was sufficiently pervasive to taint U's majority status. These circumstances include improper conduct of E both before and after recognition and execution of collective bargaining agreement)

4010 SUGGESTION OF FORMATION OR INITIATION OF UNION

C. E. Wilkinson & Sons, Inc. **255 NLRB No. 176**

(giving card to Ees or suggesting that they form committees to deal with E, and recognizing and bargaining with Ee committees as exclusive bargaining representatives of its Ees, violative)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

(violation where, pending outcome of E's objections to election of U, E provided forum, facilities, advice and suggestions which resulted in creation of Ee grievance committee and election of its representatives using work time and E's premises)

South Nassau Communities Hospital **247 NLRB No. 067**

(E's suggesting to Ees, and formation of, Nursing Advisory Committee during U organizing campaign held unlawful, since committee was found to have been labor organization notwithstanding it collected no dues and received no income from either E or any other source)

Formaloy Corp. **JD-(ATL)-87-81**

(formation of standing committee comprised of Ees selected by management and dominated by E to resolve Ee problems held violative)

4020 PERMITTING USE OF COMPANY TIME, PREMISES OR FACILITIES

4020-0100 Generally

Elias Mallouk Realty Corp. **265 NLRB No. 156**

(Bd has long held that not all E assistance to a U may be sufficient to hold E in violation of Act. Thus, there have been cases where U's use of company time and property, provided by E, did not establish per se ULP. In finding such violation SCt has observed that there must be inference that E's assistance denied Ees their right to complete and unhampered freedom in choosing a bargaining representative w/o regard to their E's wishes. Each case must be judged according to its own particular facts)

4020-0133 Contrasting treatment of competing unions

Halo Lighting Division of McGraw Edison Company **259 NLRB No. 086**

(permitting incumbent U's officials, during U campaign, to enter plant and investigate grievance problems, while denying access to officials of rival U in election, not unlawful, since incumbent U's officials' failure, while exercising U's contractual rights, to refrain from campaigning during plant visits, did not, on balance between lawful and unlawful assistance, rise to level of unlawful assistance in context of E's affirmative attempts to restrict such activities and in absence of policy to permit campaigning by incumbent U while denying such permission to rival U)

Raley's, Inc. **256 NLRB No. 155**

(store manager's warning Ee that her employment would be in jeopardy if she talked with U representatives on company time violative especially where he let representative of competing U speak to Ees for two hours on company time)

Raley's, Inc. **256 NLRB No. 155**

(threatening Ees with discharge or discipline for talking with representatives of U, while granting Ees extended lunch hours and unscheduled coffee breaks to talk to representatives of favored U, letting favored U representative campaign in stores, violates Act as managers supported U in seeking Ee support)

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**

(E's grant of access to its premises for organizational purposes to favored U while denying access to rival U, violative)

Lyman Steel Company **249 NLRB No. 040**

(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

Dubuque Packing Company **JD-280-82**

(E who afforded opportunity to U it favored to address Ees on company time while refusing to have any dealings with another U which had expressed interest in representing Ees violated Act; moreover, U which accepted assistance and coerced Ees into signing cards and stated that U already represented them violated Act)

4020-1700 Dues collection

General Instrument Corporation, Amtote Systems Division **262 NLRB No. 149**

(E who opened two new operations and extended U contract to cover these operations violated Act where units were not accretions and E provided U with room to meet Ees, paid Ees for time spent at meeting, solicited newly hired Ees to sign U dues checkoff authorization, withheld dues even without valid checkoff authorizations and applied U-security provisions of its existing contract; moreover, by acquiescing in above conduct and by accepting recognition and extending dues and U-security provisions of contract to Ees at new operations U also violated Act)

World Wide Press, Inc. **JD-(SF)-12-80**

(calling Ee at home to solicit payment of assisted U's dues under threat that he should look for employment elsewhere if he did not pay them, unlawful)

4020-5000 Facilities

Homemaker Shops, Inc. **261 NLRB No. 080**

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**

(violation where, pending outcome of E's objections to election of U, E provided forum, facilities, advice and suggestions which resulted in creation of Ee grievance committee and election of its representatives using work time and E's premises)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**

Sav-On Drugs, Inc. **JD-(SF)-214-81**

(E setting aside special areas w/i store for local U representative to obtain membership applications from Ees at new stores, telling these Ees to cooperate with U; that they were already covered by agreement and that recognition was extended w/o need for vote, violative)

4020-5020 Bulletin boards

Raley's, Inc. **256 NLRB No. 155**

(removal of one U's literature from bulletin board while permitting literature of competing U to remain on board violated Act)

World Wide Press, Inc. **JD-(SF)-12-80**

(permitting Ees to post notices calling for payment of assisted U's dues, unlawful)

4020-5030 Signs on premises

Save-It Discount Foods, Inc. **263 NLRB No. 097**

(E who permitted U which it had prematurely recognized to post sign at its store stating that U represented Ees at that store violated Act for effect of sign would be to perpetuate unlawful recognition and discourage Ees and applicants for employment at that store from joining or supporting another labor organization)

4020-5060 Clerical, telephone, and other facilities

Comet Corporation **261 NLRB No. 188**

(typing and posting minutes)

Signode Corporation **JD-161-80**

(providing free use of clerical assistance and plant equipment to labor organization substantially controlled by and financially dependent on E, unlawful)

4020-6700 Meetings

Elias Mallouk Realty Corp. **265 NLRB No. 156**

(violation, where E, after refusing to bargain in good faith with incumbent U, appealed to Ees to convert to another U at meeting arranted by its Ee-agent which was held on E's time and premises, and at which meeting were also present E's attorney who promised legal aid, and advised Ees to get rid of U, and officers of U favored by E who presented arguments in favor of converting to that U; these unlawful acts of assistance tainted favored U's later card solicitation and bargaining demand and made it impossible to raise qcr)

General Instrument Corporation, Amtote Systems Division **262 NLRB No. 149**

(E who opened two new operations and extended U contract to cover these operations violated Act where units were not accretions and E provided U with room to meet Ees, paid Ees for time spent at meeting, solicited newly hired Ees to sign U dues checkoff authorization, withheld dues even without valid checkoff authorizations and applied U-security provisions of its existing contract; moreover, by acquiescing in above conduct and by accepting recognition and extending dues and U-security provisions of contract to Ees at new operations U also violated Act)

Hollander Home Fashion Corp. **255 NLRB No. 142**

(although permission to U to address Ees on company time is not per se unlawful, E's permitting U to meet with Ees on company premises during working hours, unlawful, even though contract authorized such meeting, where contract was invalid because executed with unlawfully assisted minority U)

4020-6700—Cont.

Child Day Care Center, Verona, Virginia and
Baltimore Regional Joint Board, Amalgamated
Clothing and Textile Workers Union Health
and Welfare Fund **252 NLRB No. 164**
(allowing U to use premises for meetings during which Ees were paid)

Coating Products, Inc. **251 NLRB No. 170**
(telling Ees to establish *Ee committee* and bargaining directly with committee on company time during U campaign violative)

Dubuque Packing Company **JD-250-82**
(E who afforded opportunity to U it favored to address Ees on company time while refusing to have any dealings with another U which had expressed interest in representing Ees violated Act; moreover, U which accepted assistance and coerced Ees into signing cards and stated that U already represented them violated Act)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(fact Ee committee never met on own initiative, meetings were always held on paid work time on E's property with supervisors present are indicative of domination)

4020-6750 Shutdown to permit attendance

Comet Corporation **261 NLRB No. 188**
(permitting assembly of all Ees on company time and premises)

4020-8300 Organizational activities

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(violation where E's attorney solicited Ees to sign authorization cards and to enlist support of other Ees for one of two Us conducting organizing campaign; attorney represented and was found to be agent for both favored U and E)

4020-8333 Meetings

Allen Brooks, d/b/a A.T. & K. Enterprises and
Urban Enterprises **264 NLRB No. 164**
(E did not violate Act where it agreed to let Ees hold meeting at its office where it was unaware that purpose of meeting was to discuss U; also fact that supervisors distributed decertification ptn not violative as supervisors were U members, unit members and responsibility for such supervisor's conduct will not be imputed to E absent evidence that E encouraged, authorized or ratified such conduct)

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**
(E's arrangement of meetings at which non-Ee representatives of favored U solicited all Ees, unlawful)

4020-8367 Solicitation

Elias Mallouk Realty Corp. **265 NLRB No. 156**
(violation, where E, after refusing to bargain in good faith with incumbent U, appealed to Ees to convert to another U at meeting arranted by its Ee-agent which was held on E's time and premises, and at which meeting were also present E's attorney who promised legal aid, and advised Ees to get rid of U, and officers of U favored by E who presented arguments in favor of converting to that U; these unlawful acts of assistance tainted favored U's later card solicitation and bargaining demand and made it impossible to raise qcr)

Ford Brothers, Inc. **263 NLRB No. 011**
(E's requesting Ees to execute authorization cards accepting local U as their representative for purpose of collective bargaining, and acting as conduit for transmittal of executed authorization cards to local U, violative)

Southland Knitwear, Inc. and Metropolitan
Industries, Inc. **260 NLRB No. 087**
(soliciting and forcing Ees to sign authorization cards for U favored by E, violative)

Southland Knitwear, Inc. and Metropolitan
Industries, Inc. **260 NLRB No. 087**
(telling Ees that they could lose their jobs if they failed to sign authorization cards for U favored by E, violative)

The Mead Corporation **256 NLRB No. 108**
(violation where U accepted unlawful assistance from E of unlimited access to plant, made misleading and threatening statements to Ees that if card signed Ees would be guaranteed job but if not signed no promise could be made to coerce card signatures on which recognition was based, and executed contract on same day E extended recognition ot forestall organizing by U which represented Ees of predecessor E)

Hollander Home Fashion Corp. **255 NLRB No. 142**
(E's extensive involvement in solicitation of authorization cards for favored U, accompanied by promise of wage raise and by precipitous recognition of U, unlawful)

Rosa M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**
(E's arrangement of meetings at which non-Ee representatives of favored U solicited all Ees, unlawful)

Fenestrol, Inc., A Subsidiary of Yonkers Plate Glass
Co. **251 NLRB No. 113**

P. C. Foods, Inc., d/b/a Price Crusher Food
Warehouse **249 NLRB No. 060**
(E's assistance to favored U by soliciting authorization cards on its behalf from its Ees, violative)

Siro Security Service, Inc. **247 NLRB No. 157**
(threatening Ees with discharge for not signing U application and checkoff cards where U did not have majority and prior to 30 days grace period)

Dubuque Packing Company **JD-250-82**
(E violated Act where, prior to opening of plant it gave Ees U authorization cards to sign; U violated Act by accepting E's assistance)

Knit Tuck Welt Ltd. **JD-(NY)-42-81**
(making premises available to favored U for organizational purposes in contrast to discharging Ees for supporting other U, unlawful)

Venture Stores, Inc. **JD-81-80**
(E's soliciting its Ees to join U and permitting U to solicit U membership while applicants were seeking employment with E and on E's premises, violative)

Industrial, Technical and Professional Employees
Division, National Maritime Union of
America, AFL-CIO v. N.L.R.B. **683 F.2d 305 (C.A. 9, July 1982)**
(ct held clearly substantial evidence supported Bd's factual findings of unlawful E assistance to U where Bd found that U representatives, in soliciting U authorization cards, were provided with virtually unlimited access to E's facilities and had complete freedom to conduct organizing activities during working hours with full cooperation of E's supervisors)

4030 FINANCIAL SUPPORT

4030-0100 Generally

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**

4330-6125 Receipt from vending machines

Classic Industries, Inc. **254 NLRB No. 149**
(E who initiated and encouraged formation of Ee committee, assisted with election of members of committee, negotiated with committee, granted changes in some conditions of employment, provided for committee to receive receipts from vending machines in lieu of its collecting dues, and executed contract with committee after election tainted by ULPs violated Act)

4030-1400 Checkoff

Siro Security Service, Inc. **247 NLRB No. 157**
(threatening Ees with discharge for not signing U application and checkoff cards where U did not have majority and prior to 30 days grace period)

4030-1408 Deducting union dues without employee's checkoff authorizations

C. Solari & Sons, Inc. **264 NLRB No. 053**
(E violated Act when it continued to deduct U dues under merged U's checkoff clause after merger and Ees had signed valid revocations of their dues authorization cards)

General Instrument Corporation, Amtote Systems
Division **262 NLRB No. 149**
(notwithstanding presence of valid dues checkoff and U-security clause, U and E violated Act where E deducted dues and fees from Ees who had not signed check-off authorization and U accepted fees for first 45 days of employment when Ees had no obligation to honor checkoff and U security provisions)

Mashkin Freight Lines, Inc. **261 NLRB No. 193**

Southland Knitwear, Inc. and Metropolitan
Industries, Inc. **260 NLRB No. 087**
(deducting dues from Ees' paychecks w/o obtaining authorization from Ees to make such deductions, violative)

Yalec Mold & Die Co., Inc. **256 NLRB No. 058**
(deduction of dues for incumbent U pursuant to checkoff authorizations under contract with incumbent containing U security clause after contract had expired when outside U had filed petition for election, not unlawful where Ees had not revoked checkoff authorizations)

Edward L. Nezelek, Inc. **262 NLRB No. 070**
(E's deduction of dues w/o Ee's executing checkoff authorization and U's acceptance of dues for nonmembers w/o authorization violative)

Seaport Manor, Inc. and Martin Rosenberg, Baruch
Mappa, and Emil Klein, a Partnership, d/b/a
Seaport Manor Home For Adults **248 NLRB No. 120**
(violation where E deducted U dues w/o authorization from Ees and paid monies in nature of dues to U on Ees' behalf w/o deducting these sums from

4030-1408—Cont.

their wages or otherwise collecting those monies from authorizated peyroll deductions)

Siro Security Service, Inc. **247 NLRB No. 157**

Honeywell, Inc. - Tampa Operations **JD-116-81**
(deducting U dues from wages of Ees who had effectively resigned from U during hiatus period between contracts, violative)

4030-1433 Refusing permission to withdraw authorizations

C. Solari & Sons, Inc. **264 NLRB No. 053**
(E violated Act when it continued to deduct U dues under merged U's checkoff clause after merger and Ees had signed valid revocations of their dues authorization cards)

United States Postal Service **248 NLRB No. 002**
(E and U's maintaining check-off agreement whose revocation terms were changed after enactment date of Postal Reorganization Act from 6-month period to 1-year period of revocability, and refusing therefor to permit revocation of Ees' checkoff authorizations, not violative since, according to Bd's interpretation of exception to NLRA embodied in Section 1205(b) of PRA, Congress intended to permit changes in check-off revocation period so long as they complied with limitation set forth in last sentence of Section 1205(b))

4030-1467 Soliciting dues deduction authorizations

American Pacific Concrete Pipe Company, Inc. **262 NLRB No. 139**
(E violates Act when it encouraged its Ees to support its preferred U by providing dues-checkoff and authorization cards to Ees, and also by signing collective-bargaining agreement without U at time when it was required to bargain with another U)

General Instrument Corporation, Amtote Systems Division **262 NLRB No. 149**
(where valid u-security clause existed, E did not violate Act by giving U membership forms and dues authorization forms along with other pre-employment forms to new Ees absent evidence of coercive conduct)

Sanford Home For Adults **253 NLRB No. 153**
(E violated Act where it threatened Ees with discharge if they did not sign U authorization cards)

Stroehmann Brothers Company **252 NLRB No. 139**
(telling Ees that they had to join U and ratifying similar statements made by U agents when they distributed membership applications and dues-checkoff authorizations, violative)

Siro Security Service, Inc. **247 NLRB No. 157**
(where minority U)

4030-1483 Implementation of without authorizations

General Instrument Corporation, Amtote Systems Division **262 NLRB No. 149**
(notwithstanding presence of valid dues checkoff and U-security clause, U and E violated Act where E deducted dues and fees from Ees who had not signed check-off authorization and U accepted fees for first 45 days of employment when Ees had no obligation to honor checkoff and U security provisions)

4030-1485 Honoring dues checkoff authorizations for minority union

Rose M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**

Siro Security Service, Inc. **247 NLRB No. 157**

4030-3500 Donation of blank authorization cards

General Instrument Corporation, Amtote Systems Division **262 NLRB No. 149**
(where valid u-security clause existed, E did not violate Act by giving U membership forms and dues authorization forms along with other pre-employment forms to new Ees absent evidence of coercive conduct)

4030-5600 Payment or granting of leave for time spent on union business

Yama Industries, Inc., California Division **264 NLRB No. 161**
(E continuing to grant Ee leave of absence to conduct business for local U after it had unlawfully withdrawn recognition from Ees local and its International who were joint representatives and recognized local which was now affiliated with another International as sole representative of Ees)

Comet Corporation **261 NLRB No. 188**
(payment of wages to members of committee for attending meetings and R and ULP hearing before Bd, held unlawful assistance)

Homemaker Shops, Inc. **261 NLRB No. 050**

Marhoefer Baking Company, Inc. **258 NLRB No. 071**
(E's inducing Ees to form E-Ee committee and management agents meeting twice with Ees so chosen during E-paid time, and discoursing on variety of straight conditions of employment with them, violative)

Child Day Care Center, Verona, Virginia and Baltimore Regional Joint Board, Amalgamated Clothing and Textile Workers Union Health and Welfare Fund **252 NLRB No. 164**
(allowing U to use premises for meetings during which Ees were paid)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(violation where, pending outcome of E's objections to election of U, E provided forum, facilities, advice and suggestions which resulted in creation of Ee grievance committee and election of its representatives using work time and E's premises)

Streamway Division of The Scott & Fetzer Co. **249 NLRB No. 054**
(E who initiated in-plant Ee committee plan, held to have unlawfully dominated and interfered with formation of Ee committee, constituting a labor organization, and contributed financial and other support to it by conducting elections for Ee representatives on committee on working time, and ballots were prepared, distributed, and counted presumably with assistance of *senior Ees* having supervisory status)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(Ees paid for attendance at U meetings)

Signode Corporation **JD-161-80**
(paying representatives of labor organization subject to substantial control by E for hours spent on organization's business, unlawful)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(paying members of Ee committee wages for time spent in bargaining sessions indicative of domination)

4030-9000 Other monetary contributions

Jackson Engineering Co. **265 NLRB No. 173**
(E's concealed cash payments, involving large sums of money, made to U officials, representing 10-percent kickback from all business referred to E by U, unlawful, since there was no disagreement that such payments made to *labor organization* constitute violations of 8(a)(1) and (2), and 8(b)(1)(A); while Act does not regulate individuals acting in private capacity, conduct of officials can properly be imputed to U since they acted as agents of U and not as individuals engaged in *individual frolic* or *personal adventure*)

4040 RECOGNITION AND EXECUTION OF CONTRACT

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. **683 F.2d 305 (C.A. 9, July 1982)**
(ct held clearly substantial evidence supported Bd's factual findings of unlawful E assistance to U where Bd found that E, upon being presented by U with authorization cards representing majority of Ees, immediately recognized U as sole bargaining agent of Ees w/o verifying cards and then executed bargaining agreement with U containing checkoff provision and later entered into *memorandum of understanding* that expanded agreement to include all fulltime Ees)

4040-0100 Generally

Herman Brothers, Inc. **264 NLRB No. 064**
(test for determining whether recognition has been lawfully extended is: 1) at time of recognition job or job classifications designated for operation must be substantially filled (30 % of its Ee complement in 50% of its job classifications) and 2) operation must be in normal production)

Herman Brothers, Inc. **264 NLRB No. 064**
(in deciding whether recognition has been improperly extended, Bd is attempting to protect rights of Ees who *are* working as well as those of future Ees)

C. E. Wilkinson & Sons, Inc. **255 NLRB No. 176**
(giving card to Ees or suggesting that they form committees to deal with E, and recognizing and bargaining with Ee committees as exclusive bargaining representatives of its Ees, violative)

Dubuque Packing Company **JD-250-82**
(entering into contract with unlawfully recognized U violative; U's entering into and maintaining agreement also violative)

4040-0147 Presumption of majority status at time of execution

Type Rite Ribbon Mfg. Co., Inc. **264 NLRB No. 087**
(negotiating and entering into renewal contract with incumbent U, violative, where E knew that U did not represent majority of Ees covered by contract in view of statement signed by two-thirds of unit Ees whereby they expressly disavowed incumbent U; such statement overcame presumption of majority status arising out of U's certification)

Bill's Cabinet Shop **251 NLRB No. 212**
(successor E's signing bargaining agreement with predecessor's U, not violative even if unit Ees had told E that they did not want to *be in the Union,*

4040-0167—Cont.

where E hired the only two Ees in unit when E took over business, and one Ee remained U member and the other an applicant for U membership on critical dates; moreover, contract was signed as normal transaction by U and by E, free of duress or misrepresentation)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**
(presumption overcome where credited unrebutted testimony of majority of Ees was that they had never heard of U prior to appearance of U's agent at E's premises demanding that Ees sign checkoff authorization cards)

4040-1700 Premature when number of employees not representative complement

Ford Brothers, Inc. **263 NLRB No. 011**
(E's entering into bargaining agreement with local U in which E recognized local U as exclusive bargaining representative, prior to time that representative Ee complement had been employed at E facility, and prior to time that any Ee at such facility had executed authorization card for local U, violative)

Safeway Stores, Inc. **236 NLRB No. 146**
(entering into prehire agreement with U representing Ees in bakery sales unit and prematurely recognizing that U as bargaining representative of delicatessen Ees, violative since delicatessen Ees were not lawful accretion to bakery sales unit)

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**
(E's recognition and contracting with favored U at time when U did not represent uncoerced majority of its Ees and E did not employ representative segment of its ultimate Ee compliment, violative)

4040-1716 In absence of employees

Carbonex Coal Company **262 NLRB No. 159**
(E who recognized U and signed collective bargaining agreement prior to hiring of any Ees violated Act as mining does not fall w/i construction industry proviso)

Special Service Delivery, Inc. **259 NLRB No. 134**
(violation, where E recognized U and executed bargaining agreement with it at time when E had no Ees, and maintained agreement after Ees were hired)

4040-1733 Expanding unit

Herman Brothers, Inc. **264 NLRB No. 064**
(where E recognized U and signed contract containing U security provision, on basis of 4 signed authorization cards out of contemplated unit of 7, it did not violate ACt, moreover, fact that unit eventually expanded to 14 or 16 does not warrant different conclusion as this increase was not anticipated by E. U also did not violate Act by entering into contract)

R. J. E. Leasing Corp. **262 NLRB No. 049**
(E's execution of recognition agreement with minority U, unlawful, where E engaged in restraint, favoritism, coercion or interference when it recognized U with only 2 of 5 Ees having executed authorization cards; subsequent expansion of Ee complement took place w/i approximately 3 weeks of recognition and there was no lengthy period of time during which Ees would be w/o representation; and existence of arm's length bargaining herein was questionable)

Baine Service Systems, Inc. **248 NLRB No. 087**
(U and E by executing contract when both parties knew that size of unit was going to increase violated Act)

N.L.R.B. v. Hudson River Aggregates, Inc. **639 F.2d 865 (C.A. 2, 1981)**
(violation, where E recognized and signed contract containing security clause with U representing sincle plantwise unit of Ees consisting of 4 Ees one week before hiring 29 Ees, 27 of whom had worked for E's predecessor in 3 separate units and been represented by three separate locals who had made representative claims and E had not yet employed representative complement)

4040-2100 Coerced majority representative

Elias Mallouk Realty Corp. **265 NLRB No. 156**
(E's granting recognition to another U and negotiating contract with it after contract with incumbent U had expired, unlawful, in view of E's unlawful refusal to bargain with incumbent U and unlawful assistance to favored U and absent objective considerations to rebut U's presumption of continuing majoirty status)

Hillside Bus Corp. **262 NLRB No. 152**
(entering into bargaining agreement with U for which authorization cards were solicited by supervisor)

The Mead Corporation **256 NLRB No. 108**
(violation where U accepted unlawful assistance from E of unlimited access to plant, made misleading and threatening statements to Ees that if card signed Ees would be guaranteed job but if not signed no promise could be made to coerce card signatures on which recognition was based, and executed contract on same day E extended recognition to forestall organizing by U which represented Ees of predecessor E)

Hollander Home Fashion Corp. **255 NLRB No. 142**
(E's recognition of U and execution of U contract, unlawful, where U did not represent uncoerced Ee majority since Spanish-speaking Ees herein, who had no prior experience with Us or collective bargaining and could not read U authorization cards which were in English, found cards totally unintelligible and, consequently, did not knowingly designate U as their representative and, instead, signed cards in order to obtain promised wage increase)

Ross M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**
(recognition and signing of contract with U which did not have an uncoerced majority, unlawful; E had arranged for U to solicit authorization cards at meeting of its Ees and for E's representatives to witness Ees' signing of the cards)

Siro Security Service, Inc. **247 NLRB No. 157**
(E's recognition by signing contract with security clause with U, unlawful, since it failed to rebut GC's prima facie case of lack of majority and in view of totality of circumstances where recognition was hasty w/o adequate card check, E assisted U in obtaining authorization and checkoff cards by threatening discharge of Ees if they did not sign, and deducted U dues w/o authorization)

Dubuque Packing Company **JD-250-82**
(recognition of U based on tainted authorization cards violative; moreover, U which accepted recognition also violated Act)

Sav-On Drugs, Inc. **JD-(SF)-214-81**

Knit Tuck Welt Ltd. **JD-(NY)-42-81**
(recognizing and signing contract with favored U which did not represent an uncoerced majority where other U had substantial representation claim, unlawful)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

4040-2500 Inappropriate unit

Abraham Grossman d/b/a Bruckner Nursing Home **262 NLRB No. 115**
(Bd will no longer find Sec. 8(a)(2) violations in rival U, initial organizing situations when an E recognizes U which alone represents uncoerced, unassisted majority, before valid ptn for election has been filed with Bd; however, once notified of valid ptn, E must refrain from recognizing any of rival Us)

4040-3900 Where bargaining representative is disqualified

Kaplan, Sicking, Hessen, Sugarman, Rosenthal & Zientz (Office and Professional Employees, Local No. 128) **250 NLRB No. 065**
(where U retained labor law firm as its counsel and agent in labor and other legal matters, labor law firm's recognizing and bargaining with U as bargaining representative of law firm's Ees, violative, since U is incapable of approaching *the bargaining table with the single-minded purpose of protecting and advancing the interests of the employees who have selected it as their bargaining agent.* Cf. Bauch and Lomb Optical Co., 108 NLRB 1555)

4040-4100 Where another union certified

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **264 NLRB No. 062**
(continuing to recognize Ees' former U which lost election as representative of commissary Ees despite Bd's certification of new U as exclusive bargaining representative of those Ees, violative)

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **264 NLRB No. 063**
(entering into and applying collective bargaining agreement, which contained U-security provision with Ees' former U which had lost election, and by enforcing that U-security provision, violative)

Yates Industries, Inc., California Division **264 NLRB No. 161**
(E entering into new agreement with recognition of new local as sole representative during existing terms of contract, violative, where international (the certified representative) and local (U that executed contract) were joint representatives, notwithstanding local disaffiliated itself from international since international never relinquished its status, no amendment made to certification, no schism, old local not defunct; therefore contract act as bar to attempt midterm modification of bargaining representative in contract)

Flex Plastics, Inc. **262 NLRB No. 078**

4040-4200 Where another union recognized

Elias Mallouk Realty Corp. **265 NLRB No. 156**
(E's granting recognition to another U and negotiating contract with it after contract with incumbent U had expired, unlawful, in view of E's unlawful

4040-4200—Cont.

refusal to bargain with incumbent U and unlawful assistance to favored U and absent objective considerations to rebut U's presumption of continuing majoirty status)

The Arundel Corporation 253 NLRB No. 059
(E's refusal of charging U's request to recognize it as representative of portion of unit at new operation at which E had assertedly precipitously recognized another U, not unlawful, where there was no unlawful intent, no logical basis exists for assuming that matter was rigged so as to exclude charging U since only 2 or 3 of 15 Ees would have been represented by it, and there was no contention raised based on Midwest Piping doctrine or on recognition of contracting U before E had representative complement in its employ)

Andersen Sand & Gravel Company JD-655-80
(E which was engaged in manufacture of prefabricated structual concrete signing contract with Laborers in regard to representation of Ees in new wet concrete operation, unlawful, since E had obligation to bargain with Teamsters where Ees in new operation part of existing unit represented by Teamsters; inasmuch as work was performed in same plant with same tools, basically same wages, under same general supervision and working conditions; nor was operation result of establishment of new division where operation neither physically nor functionally distinct, and E's proposal for new division during bargaining had been withdrawn)

N.L.R.B. v. Hudson River Aggregates, Inc. 639 F.2d 865 (C.A. 2, 1981)
(violation, where E recognized and signed contract containing security clause with U representing single plantwise unit of Ees consisting of 4 Ees one week before hiring 29 Ees, 27 of whom had worked for E's predecessor in 3 separate units and been represented by three separate locals who had made representative claims and E had not yet employed representative complement)

4040-4300 Where employer had 8(f) prehire contract with another union

Pacific Erectors, Inc. 256 NLRB No. 066
(violation, where contractor discharged Ironworker Ees, and rather than resolve dispute signed contract with Sheet Metal Workers over protest of Ironworkers, since E had short form contract with Iron Workers who had majority on job, notwithstanding Ironworker Ees walked off job, or that short form contract stated dispute provisions of master agreement were not binding; E's action could not be justified by existence of any jurisdictional dispute nor could Sheet Metal Workers contract be considered pre-hire contract under construction industry proviso for job herein where job between 34 to 40 percent complete when signed)

4040-4300 Where employer has valid contract with another union

Yates Industries, Inc., California Division 264 NLRB No. 161
(E entering into new agreement with recognition of new local as sole representative during existing terms of contract, violative, where international (the certified representative) and local (U that executed contract) were joint representatives, notwithstanding local disaffiliated itself from international since international never relinquished its status, no amendment made to certification, no schism, old local not defunct; therefore contract act as bar to attempt midterm modification of bargaining representative in contract)

American Pacific Concrete Pipe Company, Inc. 262 NLRB No. 139
(E violated Act when it encouraged its Ees to support its preferred U by providing dues-checkoff and authorization cards to Ees, and also by signing collective-bargaining agreement with that U at time when it was required to bargain with another U)

Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions 259 NLRB No. 019
(violation where E recognized and executed contract with favored U to represent new Ees at new location and subsequently granted said U access to new plant in face of demand for recognition from U representing unit Ees at old facility who were discriminatorily denied transfers to new location)

Pacific Erectors, Inc. 256 NLRB No. 066
(violation, where contractor discharged Ironworker Ees, and rather than resolve dispute signed contract with Sheet Metal Workers over protest of Ironworkers, since E had short form contract with Iron Workers who had majority on job, notwithstanding Ironworker Ees walked off job, or that short form contract stated dispute provisions of master agreement were not binding; E's action could not be justified by existence of any jurisdictional dispute nor could Sheet Metal Workers contract be considered pre-hire contract under construction industry proviso for job herein where job between 34 to 40 percent complete when signed)

Argano Electric Corp. 248 NLRB No. 049
(E's recognizing and contracting with U which picketed E at construction site at time when E and another U were bound by current contract which E refused to honor held violative of *Sections 8(a)(2), (3), (5) and (1) of Act*)

4040-5000 Exclusive recognition of minority representative (see also 512-5084)

Type Rite Ribbon Mfg. Co., Inc. 264 NLRB No. 087
(negotiating and entering into renewal contract with incumbent U, violative, where E knew that U did not represent majority of Ees covered by contract in view of statement signed by two-thirds of unit Ees whereby they expressly disavowed incumbent U; such statement overcame presumption of majority status arising out of U's certification)

Regency Gardens Company 263 NLRB No. 164
(execution and maintenance of U security agreement not unlawful, where U official, after being told orally by majority of unit Ees that they wanted *to be with* U, informed E that U represented Ee majority, whereupon E recognized U as Ee representative, and both then agreed to be covered by existing master agreement containing U security provision; since there is no requirement that U must have, and show to E, majority of signed cards before U may be lawfully recognized, GC failed to prove that U did not represent Ee majority on date E recognized U)

Abraham Grossman d/b/a Bruckner Nursing Home 262 NLRB No. 115
(Bd held that though E will no longer automatically violate Sec. 8(2) by recognizing one of several rival Us prior to filing of election ptn, E still cannot recognize U that does not have majority Ee support, and to do so violates Sec. 8(a)(2))

R. J. E. Leasing Corp. 262 NLRB No. 049
(execution of recognition agreement, unlawful, where at the time U did not represent uncoerced majority and E did not employ substantially representative complement of anticipated Ees; only 2 of 5 Ees had executed authorization cards and, even assuming all 5 Ees had signed cards, they were not substantially representative of E's anticipated work force since, when contract was executed about a month later, E's complement exceeded 150 Ees and there were at most only 2 of 7 Ee contract classifications in existence; moreover, at time of recognition E was not engaged in normal operations due to plant renovations)

R. J. E. Leasing Corp. 262 NLRB No. 049
(execution of recognition agreement with minority U, unlawful, notwithstanding absence of U-security provision, since very existence of agreement with minority U, although not enforced, is sufficient to find violation inasmuch as recognition agreement could be used as bar to prevent another U from representing Ees and, therefore, is not w/o coercive effect; and assuming valid authorization cards were secured prior to subsequent execution of contract, this would not cure earlier illegal conduct)

R. J. E. Leasing Corp. 262 NLRB No. 049
(pre-hire agreement entered into with minority U and covering one of E's facilities, unlawful, where agreement was negotated in less than 2 days w/o Ee participation or consultation and prior to existence of facilitiy involved herein, and agreement was thereafter applied when facility became operational; and while pre-hire agreements have been permitted in construction industry and in some situations involving accretions, neither of such circumstances existed herein)

Comet Corporation 261 NLRB No. 188
(recognizing and bargaining with shop and safety committee regarding wages, hours and terms of employment where committee had not demonstrated that it represented uncoerced majority of Ees and had not requested recognition, unlawful)

McKesson Drug Company 257 NLRB No. 054
(where E consolidated 3 facilities into one facility at new location and different Us had represented 2 of the facilities, E's recognition of and contracting with one of above Us covering consolidated facility before facility opened, violative where U did not represent majority of Ees at new facility notwithstanding only 1 U requested recognition at new site)

Whitehall Packing Company, Inc. and W.P.C., Ltd. 257 NLRB No. 043
(where E unlawfully refused to bargain with one U over effects of transfer of operations and recognized another U at new location before it became operational it violated Act notwithstanding that substantial majority of new Ees were members of recognized U as it is not possible to discern whether representative complement of Ees from first plant would have elected to transfer if given option)

Pacific Erectors, Inc. 256 NLRB No. 066
(violation, where contractor discharged Ironworker Ees, and rather than resolve dispute signed contract with Sheet Metal Workers over protest of Ironworkers, since E had short form contract with Iron Workers who had majority on job, notwithstanding Ironworker Ees walked off job, or that short form contract stated dispute provisions of master agreement were not binding; E's action could not be justified by existence of any jurisdictional dispute nor could Sheet Metal Workers contract be considered pre-hire contract under construction industry proviso for job herein where job between 34 to 40 percent complete when signed)

Sanford Home For Adults 253 NLRB No. 153
(E who recognized U as exclusive bargaining representative of its Ees at time when U did not represent valid majority of Ees violated Act)

4040-5000—Cont.

Strochmann Brothers Company **252 NLRB No. 139**
(new owner's recognizing U as representative of shipping Ees who historically were in unit of another U, violative, where U did not represent uncoerced majority of shipping Ees)

Strochmann Brothers Company **252 NLRB No. 139**
(new owner of business entering into contract and honoring same with U purporting to cover unit of shipping Ees historically represented by another U, violative)

Alfred Satin d/b/a Hillcrest Nursing Home (Local 875, Teamsters) **251 NLRB No. 014**

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(no violation where E discussed with Ees their joining U after they expressed their positive feelings about U to him as E's conduct amounts to permissible cooperation)

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**
(E's recognition and contracting with favored U at time when U did not represent uncoerced majority of its Ees and E did not employ representative segment of its ultimate Ee compliment, violative)

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 016**

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(violation by E and favored U where E recognized and executed agreement with such U when U did not represent majority of E's Ees)

Venture Stores, Inc. **JD-81-80**

N.L.R.B. v. Unit Train Coal Sales, Inc. **636 F.2d 1121 (C.A. 6, 1980)**
(E's recognition of U not violative since U was validly designated as majority representative of the six unit Ees, of whom five had signed authorization cards for the U, nowithstanding contention that two of such five Ees had signed cards for another U while employed by E's predecessor, where dual card signers implicitly demonstrated repudiation of first cards by individually participating along with other members of unit in negotiating and signing agreement between E and U)

4040-5025 Good-faith belief as to majority status immaterial

McKesson Drug Company **257 NLRB No. 054**

First National Maintenance Corporation **254 NLRB No. 028**

Siro Security Service, Inc. **247 NLRB No. 157**

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

4040-5050 Subsequent acquisition of majority status immaterial

Elias Mallouk Realty Corp. **265 NLRB No. 156**
(violation, where E, after refusing to bargain in good faith with incumbent U, appealed to Ees to convert to another U at meeting arranted by its Ee-agent which was held on E's time and premises, and at which meeting were also present E's attorney who promised legal aid, and advised Ees to get rid of U, and officers of U favored by E who presented arguments in favor of converting to that U; these unlawful acts of assistance tainted favored U's later card solicitation and bargaining demand and made it impossible to raise qcr)

R. J. E. Leasing Corp. **262 NLRB No. 049**
(authorization card majority obtained prior to execution of contract does not validate earlier illegal recognition which taints all that follows, and subsequent majority status at time of execution of contract is immaterial)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's recognition of and negotiating agreement with Ee committee, unlawful, since committee at time of recognition did not represent uncoerced majority of Ees, notwithstanding E's good faith belief committee represented majority and Ees' subsequent vote to be represented by committee, where E made no attempt to ascertain if committee represented majority, E was aware of campaign of outside U, and no evidence committee would have been formed w/o E's suggestion)

4040-5088 Where another union certified as representative of unit found appropriate

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **264 NLRB No. 063**
(continuing to recognize Ees' former U which lost election as representative of commissary Ees despite Bd's certification of new U as exclusive bargaining representative of those Ees, violative)

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **264 NLRB No. 063**
(entering into and applying collective bargaining agreement, which contained U-security provision with Ees' former U which had lost election, and by enforcing that U-security provision, violative)

N.L.R.B. v. Carpenters' District Council of Greater St. Louis, AFL-CIO **622 F.2d 381 (C.A. 8, 1980)**
(violation where E negotiated and antered into separate agreement with its own Ees after stating it would not sign U's new contract negotiated by U with multi-E association from which E had untimely withdrawn)

4040-6700 During existence of real question of representation (midwest piping doctrine, see also 512-5084)

4040-6701 Generally

Lutheran Hospital of Maryland, Inc. **265 NLRB No. 149**
(signing of contract by E and incumbent U not violative, notwithstanding GC's contention that question concerning representation existed, since, in *RCA del Caribe, Inc.*, Bd recently reexamined law applicable to situations where incumbent U is challenged by *outside* U and held that raising of question concerning representation will no longer require or permit an E to withdraw from bargaining, nor will an E be privileged to refuse to execute a contract with incumbent U; thus by executing contract, E did not violate 8(a)(2) and it necessarily follows that incumbent U did not violate 8(b)(1)(A))

4040-6701-3300 Employer obligation of neutrality

RCA del Caribe, Inc. **262 NLRB No. 116**
(*Shea Chemical* 121 NLRB 1027, which required E to withdraw from bargaining with incumbent U after ptn had been filed by outside U overruled; E neutrality is best preserved by continued bargaining with incumbent, thus E will not violate Sec. 8(a)(2) by postpetition negotiation or execution of contract with incumbent U and will not violate Sec. 8(a)(3) even if it contains U-security clause; however, if contract is executed and incumbent loses election, contract with incumbent will be null and void)

Abraham Grossman d/b/a Bruckner Nursing Home **262 NLRB No. 115**
(Bd will no longer find Sec. 8(a)(2) violations in rival U, initial organizing situations when an E recognizes U which alone represents uncoerced, unassisted majority, before valid ptn for election has been filed with Bd; however, once notified of valid ptn, E must refrain from recognizing any of rival Us)

Abraham Grossman d/b/a Bruckner Nursing Home **262 NLRB No. 115**
(duty of strict E neutrality and necessity for Bd conducted election attaches only when properly supported ptn has been filed by 1 or more of competing Us; where no ptn has been filed, E free to grant recognition to labor organization with uncoerced majority, so long as it does not render assistance which would otherwise violate Sec. 8(a)(2) of Act)

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

Queen City Paving Co., Inc. **JD-(SF)-156-80**

4040-6701-6700 Question of representation for resolution by Board

N.L.R.B. v. Newport Div. of Wintex Knitting Mills, Inc. **610 F.2d 430 (C.A. 6, 1979)**
(where 2 competing U's had filed ULP charges against E, Bd postponed election until resolution of charges and while charges pending 1 U maintained active campaign and acquired majority of signed authorization cards while other U ceased organizing efforts, Bd's finding that qcr existed and E violated Act overruled for if 1 of 2 rival U's has demonstrated majority status w/o help from E, Bd's orders against E finding ULP on basis of such recognition and entering into bargaining agreement will be denied)

N.L.R.B. v. Newport Div. of Wintex Knitting Mi lls, Inc. **610 F.2d 430 (C.A. 6, 1979)**
(where 2 competing U's had filed ULp charges against E, Bd postponed election until resolution of charges and while charges pending (U maintained active campaign and acquired majority of signed authorization cards while other U ceased organizing efforts) Bd's finding that qcr existed and E violated Act overruled for if 1 of 2 rival U's has demonstrated majority status w/o help from E, Bd's order against E finding ULP on basis of such recognition and entering into bargaining agreement will be denied)

4040-6733 What creates real question of representation

4040-6733-3300 Colorable claim of competing union

Signal Transformer Co., Inc. **265 NLRB No. 033**
(E's recognition of U while incumbent U had not abandoned its claim to represent E's Ees notwithstanding its loss of majority status and while R ptn filed by U with which it had recognized was pending, unlawful, pending resolution of qcr)

4040-6733-3300—Cont.

New-Stan Dyeing and Finishing Co., Inc. 263 NLRB No. 140

(E's recognizing U which had represented predecessor E's Ees and entering into contract containing U security clause with such U before hiring any Ees, not unlawful since E was successor to prior E and intended to and did hire all of prior E's Ees; although successor discussed hiring a third company's Ees with U which represented them, since it did not hire them, there was no qcr or conflicting claims of two Us representing potential Ees of E found successor herein)

RCA del Caribe, Inc. 262 NLRB No. 115

(*Shea Chemical* 121 NLRB 1027, which required E to withdraw from bargaining with incumbent U after ptn had been filed by outside U overruled; E neutrality is best preserved by continued bargaining with incumbent, thus E will not violate Sec. 8(a)(2) by postpetition negotiation or execution of contract with incumbent U and will not violate Sec. 8(a)(3) even if it contains U-security clause; however, if contract is executed and incumbent loses election, contract with incumbent will be null and void)

Abraham Grossman d/b/a Bruckner Nursing Home 262 NLRB No. 115

(duty of strict E neutrality and necessity for Bd conducted election attaches only when properly supported ptn has been filed by 1 or more of competing Us; where no ptn has been filed, E free to grant recognition to labor organization with uncoerced majority, so long as it does not render assistance which would otherwise violate Sec. 8(a)(2) of Act)

Knit Tuck Welt Ltd. JD-(NY)-42-81

(recognizing and signing contract with favored U which did not represent an uncoerced majority where other U had substantial representation claim, unlawful)

N.L.R.B. v. Newport Div. of Wintex Knitting Mills, Inc. 610 F.2d 430 (C.A. 6, 1980)

(where 2 competing U's had filed ULP charges against E, Bd postponed election until resolution of charges and while charges pending 1 U maintained active campaign and acquired majority of signed authorization cards while other U ceased organizing efforts Bd's finding that qcr existed and E violated Act overruled for if 1 of 2 rival U's has demonstrated majority status w/o help from E, Bd's orders against E finding ULP on basis of such recognition and entering into bargaining agreement will be denied)

N.L.R.B. v. Newport Div. of Wintex Knitting Mills, Inc. 610 F.2d 430 (C.A. 6, 1979)

(where 2 competing U's had filed ULp charges against E, Bd postponed election until resolution of charges and while charges pending (U maintained active campaign and acquired majority of signed authorization cards while other U ceased organizing efforts) Bd's finding that qc existed and E violated Act overruled for if 1 of 2 rival U's has demonstrated majority status w/o help from E, Bd's order against E finding ULP on basis of such recognition and entering into bargaining agreement will be denied)

4040-6733-6700 Pendency of petition under section 9

Signal Transformer Co., Inc. 265 NLRB No. 033

(E's recognition of U while incumbent U had not abandoned its claim to represent E's Ees notwithstanding its loss of majority status and while R ptn filed by U with which it had recognized was pending, unlawful, pending resolution of qcr)

RCA del Caribe, Inc. 262 NLRB No. 116

(*Shea Chemical* 121 NLRB 1027, which required E to withdraw from bargaining with incumbent U after ptn had been filed by outside U overruled; E neutrality is best preserved by continued bargaining with incumbent, thus E will not violate Sec. 8(a)(2) by postpetition negotiation or execution of contract with incumbent U and will not violate Sec. 8(a)(3) even if it contains U-security clause; however, if contract is executed and incumbent loses election, contract with incumbent will be null and void)

Abraham Grossman d/b/a Bruckner Nursing Home 262 NLRB No. 115

(duty of strict E neutrality and necessity for Bd conducted election attaches only when properly supported ptn has been filed by 1 or more of competing Us; where no ptn has been filed, E free to grant recognition to labor organization with uncoerced majority, so long as it does not render assistance which would otherwise violate Sec. 8(a)(2) of Act)

Queen City Paving Co., Inc. JD-(SF)-156-80

(E and Us violated Act by entering into, maintaining, and enforcing collective bargaining agreements covering bargaining units since qcr existed where petitions had been filed, elections held, and objections to election and challenged ballots were under Bd consideration; Sec. 8(f) was no defense because of existence of qcr)

4040-6767 Continued recognition of incumbent pending resolution of question

4040-6767-5000 For purposes of negotiation of renewal of contract

RCA del Caribe, Inc. 262 NLRB No. 116

(*Shea Chemical* 121 NLRB 1027, which required E to withdraw from bargaining with incumbent U after ptn had been filed by outside U overruled; E neutrality is best preserved by continued bargaining with incumbent, thus E will not violate Sec. 8(a)(2) by postpetition negotiation or execution of contract with incumbent U and will not violate Sec. 8(a)(3) even if it contains U-security clause; however, if contract is executed and incumbent loses election, contract with incumbent will be null and void)

4040-7500 During insulated period of contract

4040-7501 Generally

Yates Industries, Inc., California Division 264 NLRB No. 161

(E entering into new agreement with recognition of new local as sole representative during existing terms of contract, violative, where international (the certified representative) and local (U that executed contract) were joint representatives, notwithstanding local disaffiliated itself from international since international never relinquished its status, no amendment made to certification, no schism, old local not defunct; therefore contract act as bar to attempt midterm modification of bargaining representative in contract)

4040-7567 With minority union

First National Maintenance Corporation 254 NLRB No. 028

(recognition of U and entering into collective bargaining agreement with U, which, on date of execution of contract, did not in fact represent majority of E's Ees and this was known by both parties, held violative as to both E and U)

4040-7567-3300 Where employer does not have knowledge of loss of majority

Clark Equipment Company 249 NLRB No. 094

(no violation of 8(a)(2) by E or 8(b)(1)(A) by incumbent U where they negotiated and executed new contract when incumbent no longer represented majority of E's Ees, since E lacked requisite knowledge of incumbent U's loss of majority support; dissidents' committee and its leader withheld from E during insulated period the very evidence that would have required E to cease negotiating with incumbent U)

4040-7567-6700 Where employer has knowledge of loss of majority

Campus Housekeeping, Inc. 252 NLRB No. 072

(U and E violated Act when they signed renewal contract which contained U security clause after U had lost its majority and E had knowledge of this)

4040-8300 Extension of contract to additional groups of employees

The Mead Corporation 256 NLRB No. 108

(since original contract extending recognition to U was unlawful because of E assistance furnished U, memorandum of understanding signed when production started at plant which purported to expand original contract to include P&M Ees recently hired was likewise, invalid)

4040-8325 Where employees are represented by another union

Sun-Maid Growers of California v. N.L.R.B. 618 F.2d 56 (C.A. 9, 1980)

(treating newly hired electricians as accretion to machinists unit violative as new Ees denied opportunity to choose their bargaining representative)

4040-8367 Where question of representation exists

General Instrument Corporation, Amtote Systems Division 262 NLRB No. 149

(E who opened two new operations and extended U contract to cover these operations violated Act where units were not accretions and E provided U with room to meet Ees, paid Ees for time spent at meeting, solicited newly hired Ees to sign U dues checkoff authorization, withheld dues even without valid checkoff authorizations and applied U-security provisions of its existing contract; moreover, by acquiescing in above conduct and by accepting recognition and extending dues and U-security provisions of contract to Ees at new operations U also violated Act)

King Radio Corporation 257 NLRB No. 070

(E which granted U recognition, w/o proof of majority status for P&M Ees at one of its plants not covered by previously negotiated contract for its other plant violated Act where plant was not accretion to first bargaining unit; accretion not found for following reasons: (1) plant was in operation prior to time E recognized U at other plant, and (2) unit always excluded from coverage because U did not present proof of card majority)

4050 UNION SECURITY AND PREFERENCE AGREEMENTS

4050-3300 Agreements legal on their face with assisted unions

4050-3325 In contract with favored union

Save-It Discount Foods, Inc. 263 NLRB No. 097

(E who applied and enforced collective-bargaining agreement including provisions providing for U-security clause, dues checkoff and insurance, to Ees of new store which was found not to be accretion to unit consisting of E's other four stores violated Act; moreover, U which accepted all of foregoing also violated Act)

4050-3325—Cont.

Southland Knitwear, Inc. and Metropolitan Industries, Inc. 260 NLRB No. 087
(enforcing long dormant contract executed between E and favored U three years earlier in order to keep competing U from organizing its Ees, violative)

Ross M. Alexander d/b/a A & B Janitorial Service 253 NLRB No. 064
(incorporation in agreement with illegally assisted U a U-security clause requiring membership in such U as condition of continued employment, unlawful)

4050-3350 In contract with minority union

Type Rite Ribbon Mfg. Co., Inc. 264 NLRB No. 087
(violation where E deducted U dues and initiation fees pursuant to renewal contract which it entered into with knowledge that U did not represent majority of Ees covered by contract)

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation 264 NLRB No. 063
(entering into and applying collective bargaining agreement, which contained U-security provision with Ees' former U which had lost election, and by enforcing that U-security provision, violative)

Carbonex Coal Company 262 NLRB No. 159
(E who signed contract containing U security clause and hiring hall provisions prior to hiring any Ees and then refused to employ any applicants who had not been referred through hiring hall, violated Act)

R. J. E. Leasing Corp. 262 NLRB No. 049
(E unlawfully supported and assisted U by entering into and maintaining pre-hire agreement with minority U, containing U-security provision requiring membership as condition of employment and deduction of dues, fees, and assessments, and by deducting such monies)

McKesson Drug Company 257 NLRB No. 054
(maintaining U security clause in contract with minority U violative)

Hollander Home Fashion Corp. 255 NLRB No. 142
(enforcement of terms of contract, executed with unlawfully assisted minority U, by maintaining U security clause and automatically deducting dues for remittance to U, unlawful)

Sanford Home For Adults 253 NLRB No. 153
(E who entered into contract containing U security clause with U which did not represent uncoerced majority of its Ees, and enforced that clause violated Act)

Siro Security Service, Inc. 247 NLRB No. 157
(E's recognition by signing contract with security clause with U, unlawful, since it failed to rebut GC's prima facie case of lack of majority and in view of totality of circumstances where recognition was hasty w/o adequate card check, E assisted U in obtaining authorization and checkoff cards by threatening discharge of Ees if they did not sign, and deducted U dues w/o authorization)

Venture Stores, Inc. JD-81-80

N.L.R.B. v. Sanford Home For Adults 669 F.2d 35 (C.A. 2, Dec. 1981)

4050-3375 Union membership requirements

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. 679 F.2d 673 (C.A. 7, May 1982)
(furthermore, even if recognized U has majority support Ees are only required to satisfy financial obligations of U membership and do not need to accept full U membership as condition of employment)

4050-3375-2000 Execution of

RCA del Caribe, Inc. 262 NLRB No. 116
(*Shea Chemical* 121 NLRB 1027, which required E to withdraw from bargaining with incumbent U after ptn had been filed by outside U overruled; E neutrality is best preserved by continued bargaining with incumbent, thus E will not violate Sec. 8(a)(2) by postpetition negotiation or execution of contract with incumbent U and will not violate Sec. 8(a)(3) even if it contains U-security clause; however, if contract is executed and incumbent loses election, contract with incumbent will be null and void)

4050-3375-4000 Maintenance of

Servair, Inc. and Servair Maintenance, Inc. 252 NLRB No. 093
(where U represented group of 30-35 Ees employed by *E*, group of 36 newly hired Ees not accretion as it is unlawful to *accrete* large group to small group; moreover, E failed to disclose to new Ees that contractual benefits they would receive, new janitor Ees would receive different wage rates than those provided for in contract and E solicited U membership cards from new Ees; thus by unlawfully assisting and recognizing U E violated Sections 8(a)(1) and (2) and by requiring new Ees to join U violated Section 8(a)(3))

4050-3375-6000 Preferential hiring or referral provision

Carbonex Coal Company 262 NLRB No. 159
(E who signed contract containing U security clause and hiring hall provisions prior to hiring any Ees and then refused to employ any applicants who had not been referred through hiring hall, violated Act)

4050-6700 Illegal union security agreements

4050-6750 Failure to provide 30-day period

4050-6750-6700 From execution of agreement

Visu-Craft By H.B.S., Inc. JD-887-79
(threatening Ee with discharge if he refused to sign checkoff authorization and U membership application violative, where U security clause unlawful because no grace period provided for unit members working at time contract executed; moreover, even if security clause had been valid, lack of *voluntariness* in signing checkoff authorizations made threat unlawful because Ee has right to decide how he will pay dues)

4060 PARTICIPATION OF SUPERVISORS IN AFFAIRS OF LABOR ORGANIZATION

4060-0100 Generally

St. Joseph's Hospital 254 NLRB No. 077
(RD's determination of supervisory status became immediately operative w/o affirmance by Bd; Hence, after RD's decision issued, continued participation of individuals held supervisors as members of negotiating committee and their participation in U contract ratification/strike vote, unlawful)

Dravo Corporation and J. D. Posillico Corp. 248 NLRB No. 094
(in refusing to adopt ALJ's interpretation of Bd's decision in *Nassau and Suffolk Contractors Assoc., Inc.*, 118 NLRB 174, Bd pointed out that *Nassau* does not limit a finding of divided loyalty to the steward-supervisor's membership on U negotiating committee)

4060-1600 Solicitation of union membership and support

R. J. E. Leasing Corp. 262 NLRB No. 049
(suspicions raised by alleged solicitation by supervisors of signed authorization cards from prospective Ees in pre-employment interviews held insufficient to warrant inference that E thereby assisted U where, unlike cases involving direct solicitation of several Ees by supervisors, solicitation of Ee groups by U representatives in supervisors' presence, or supervisors' discharge threats for failing to sign, there was only one situation herein involving direct evidence of solicitation in pre-employment interviews from which GC sought to establish that over 100 cards were secured in same fashion, but such sweeping generalization is not warranted)

Knit Tuck Welt Ltd. JD-(NY)-42-81
(supervisor's solicitation of Ees to sign authorization cards for favored U and promise of benefits for signing, unlawful)

Cashmere Lumber Company JD-(SF)-93-80
(supervisor's request that Ee support incumbent U officials in upcoming U election, made half-year before election, and unaccompanied by any kinds of threats or promises held not to violate 8(a)(2) nor 8(a)(1))

4060-1633 With acquiescence of employer

Hillside Bus Corp. 262 NLRB No. 152
(supervisor soliciting Ees to sign authorization cards for U favored by E, unlawful)

Russ Togs, Inc. 253 NLRB No. 099
(E's permitting supervisor to serve concurrently as shop steward where responsibilities of these positions were in conflict, unlawful; when two Ees grieved about E's underpayment of contractual wage raises and urged other Ees to grieve and stage protest slowdown about underpayment, supervisor-steward reported grievants' effort to promote a slowdown to E in his capacity as supervisor but did nothing in his capacity as steward about the grievance or E's underpayment)

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. 251 NLRB No. 113

Gold Standard Enterprises, Inc., et al. 249 NLRB No. 046
(violation, where Ees who were reluctant to sign membership and checkoff authorization cards for U w/o knowing more about organization and w/o seeing collective bargaining agreement which purportedly existed between U and E were threatened with loss of job or other reprisals by agents of U and E if they did not sign cards where U did not represent majority)

Sav-On Drugs, Inc. JD-(SF)-214-81
(E setting aside special areas w/i store for local U representative to obtain membership applications from Ees at new stores, telling these Ees to cooperate with U; that they were already covered by agreement and that recognition was extended w/o need for vote, violative)

4060-1633—Cont.

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. 683 F.2d 305 (C.A. 9, July 1982)
(ct held clearly substantial evidence supported Bd's factual findings of unlawful E assistance to U where Bd found that U representatives, in soliciting U authorization cards, were provided with virtually unlimited access to E's facilities and had complete freedom to conduct organizing activities during working hours with full cooperation of E's supervisors)

4060-1667 Contrary to employer's known opposition to union

Smithtown General Hospital JD-752-80
(violation where supervisors signed cards and encouraged Ees to sign cards for job security and hospital administrator then encouraged Ees to rescind cards with promises of job security)

4060-2500 Voting in intra-union election

St. Joseph's Hospital 254 NLRB No. 077
(participation of individuals in U contract ratification strike vote who had been held supervisors and excluded from unit by RD, unlawful, notwithstanding supervisors did not attempt to influence Ees' votes or that one vote resulted in rejection of contract and supervisors' votes were not determinative in vote where contract ratified)

4060-5000 Serves as officer, or in other official capacity

Ditzler Mechanical Contractors, Inc. 259 NLRB No. 084
(where U president was *high level* supervisor for E, E violated Act as his dual roles interfere with Ees free exercise of Sec. 7 rights)

Central States, Southeast and Southwest Areas Pension Fund d/b/a Three Hundred South Grand Company 257 NLRB No. 178
(violation, where E permitted supervisor to handle grievances of members of U in which supervisor held positions of president and member of executive board)

Russ Togs, Inc. 253 NLRB No. 099
(E's permitting supervisor to serve concurrently as shop steward where responsibilities of these positions were in conflict, unlawful; when two Ees grieved about E's underpayment of contractual wage rates and urged other Ees to grieve and stage protest slowdown about underpayment, supervisor-steward reported grievants' effort to promote a slowdown to E in his capacity as supervisor but did nothing in his capacity as steward about the grievance or E's underpayment)

O. B. Williams Company 252 NLRB No. 146
(E unlawfully interfered in administration of U by permitting supervisor to hold U office and by supervisor's direction of U steward to intercede on behalf of E)

Child Day Care Center, Verona, Virginia and Baltimore Regional Joint Board, Amalgamated Clothing and Textile Workers Union Health and Welfare Fund 252 NLRB No. 164
(E's recognition of U, unlawful where 1 individual carried dual role as one of E's trustees and as business agent of U)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)
(E's dealing with supervisor as president of U, unlawful)

4060-6700 Membership on negotiating committee

St. Joseph's Hospital 254 NLRB No. 077
(low level supervisor's continued participation in bargaining negotiations as member of U negotiating committee after she had been held supervisor by RD, unlawful, notwithstanding E not responsible for her presence on committee and no apparent actual conflict of interest or communication with management during negotiations)

St. Joseph's Hospital 254 NLRB No. 077
(E under duty to protest composition of negotiating committee and refuse to deal with it after individual who was member of U negotiating committee had been held supervisor by RD, notwithstanding E was not responsible for individual's presence on committee, no apparent conflict of interest or communication with management)

Drave Corporation and J. D. Pezzillico Corp. 248 NLRB No. 094
(in refusing to adopt ALJ's interpretation of Bd's decision in *Nassau and Suffolk Contractors Assn., Inc.*, 118 NLRB 174, Bd pointed out that *Nassau* does not limit a finding of divided loyalty to the steward-supervisor's membership on U negotiating committee)

4060-6200 Participation in union meetings

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. 251 NLRB No. 113

4060-6700 Participation in Board proceeding

Classic Industries, Inc. 254 NLRB No. 149
(encouraging and helping Ee committee to intervene in Bd representation election violative)

4070 DECLARATIONS OF UNION PREFERENCE

4070-2500 Favoring one faction of incumbent union over another faction

Howland Hook Marine Terminal Corporation 263 NLRB No. 040
(designation of agent of Ees' collective bargaining representative (appointment of interim steward) is purely internal U affair and resolution of dispute regarding who would be interim steward rested with U and not Bd; *Section 8(a)(5) of Act* not applicable to internal U dispute concerning who had authority to conduct business of local U and E not required to determine which of 2 representatives was the validly designated one)

4070-3300 Favoring outside union over incumbent

Elias Mallouk Realty Corp. 265 NLRB No. 156
(violation, where E, after refusing to bargain in good faith with incumbent U, appealed to Ees to convert to another U at meeting arranted by its Ee-agent which was held on E's time and premises, and at which meeting were also present E's attorney who promised legal aid, and advised Ees to get rid of U, and officers of U favored by E who presented arguments in favor of converting to that U; these unlawful acts of assistance tainted favored U's later card solicitation and bargaining demand and made it impossible to raise qcr)

4070-5000 Favoring one outside union over others

Hillside Bus Corp. 262 NLRB No. 152
(E's owner asking Ee to sign authorization card for U which owner favored and informing Ee if Ee did not sign card *You can't work for me*)

NAB Construction Corporation 258 NLRB No. 090
(where 2 Us were competing, E's threat that if particular local won it would subcontract out unit work violated Act)

NAB Construction Corporation 258 NLRB No. 090
(E who told Ees he wanted them to vote for one of two competing U's, asked one Ee to ask other Ees to vote for particular U, threatened Ees with discharge if supported wrong U and promised permanent employment for supporting favored U violated Act)

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. 251 NLRB No. 113

Dubuque Packing Company JD-250-82
(E who afforded opportunity to U it favored to address Ees on company time while refusing to have any dealings with another U which had expressed interest in representing Ees violated Act; moreover, U which accepted assistance and coerced Ees into signing cards and stated that U already represented them violated Act)

4070-6700 Favoring incumbent over outside union

McKesson Drug Company 257 NLRB No. 084
(violation, where though U never represented uncoerced majority, E made Ees at new facility accessible to U and then joining U in their exhortation to Ees to sign membership cards under threat of discharge as conduct rendered aid to U)

Raley's, Inc. 256 NLRB No. 155
(E may lawfully state its preference between competing U's in R election but here where E accorded encumbent U privileges and favored treatment to detriment of petitioning U it violated Act)

Yaloz Mold & Die Co., Inc. 256 NLRB No. 006
(statements that Ees were to report on any Ee speaking about petitioner and that any Ee voting for petitioner rather than for incumbent U would be discharged, unlawful)

4080 CHANGES IN TERMS OF EMPLOYMENT, OR PROMISES OR THREATS THEREOF, TO ASSIST LABOR ORGANIZATION

Cas Walker's Cash Stores Inc. 249 NLRB No. 041
(promise to restore hours of work, previously taken away to punish Ees for support of disfavored U, unlawful where promise was made to gain support for U favored by E)

4080-6200 Promise of benefits

Mego Corp. and Samet and Wells, Inc. 254 NLRB No. 031
(promising and granting benefits to Ees to induce them to refrain from joining U competing with U desired by E, violative)

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. 251 NLRB No. 113

Cas Walker's Cash Stores Inc. 249 NLRB No. 041
(promises of overtime work if Ees signed authorization cards of assisted U, unlawful)

4080-[illegible] Threat that proposed merger will not take place

4080-6500—Cont.

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E threatening that scheduled merger between it and another company would not take place if E's proposed contract with Ee committee were not ratified or if Ee voted to be represented by outside U, unlawful)

4080-7500 Threats of shutdown

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

4090 DISCRIMINATION IN EMPLOYMENT, OR THREATS THEREOF, TO ASSIST LABOR ORGANIZATION

4090-1400 Discharge, layoff, suspension, or refusal to hire for not supporting favored union

Ford Brothers, Inc. **263 NLRB No. 011**
(E's impliedly threatening Ee with discharge unless Ee executed authorization card accepting local U as his representative for purpose of collective bargaining by stating E would not allow non-U Ees to jeopardize E facility, violative)

Hillside Bus Corp. **262 NLRB No. 152**
(E's owner asking Ee to sign authorization card for U which owner favored and informing Ee if Ee did not sign card *You can't work for me*)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(laying Ee, and mother and daughter of Ee off because they rejected U favored by E and supported competing U, violative)

McKesson Drug Company **257 NLRB No. 054**
(violation, where though U never represented uncoerced majority, E made Ees at new facility accessible to U and then joining U in their exhortation to Ees to sign membership cards under threat of discharge as conduct rendered aid to U)

Yaloz Mold & Die Co., Inc. **256 NLRB No. 006**
(hiring Ees who were for incumbent U to assist incumbent and defeat petitioner in Bd election violated Act and interfered with election)

Mego Corp. and Samet and Wells, Inc. **254 NLRB No. 031**
(telling Ees they had join or pay dues to unlawfully recognized U in order to retain their employment, violative)

Corrugated Structures, Inc. **252 NLRB No. 079**
(discharge of Ee for complaining to U concerning reduction in pay and discharge of 2 Ees because of their membership in such U, unlawful where such conduct was designed to and tended to encourage membership in favored U and to discourage membership in other U)

Fenetrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(threats of discharge if Ees did not sign authorization cards, of assisted U, unlawful)

Siro Security Service, Inc. **247 NLRB No. 157**
(discharge of Ee unlawful since for his opposition to U as bargaining representative, objection to deduction of U dues w/o his consent, and filing charges with Bd rather than for his tardiness particularly in view of his prior excellent record and recommendation)

Sav-On Drugs, Inc. **JD-(SF)-214-81**
(statements to Ees and applicants for employment that they would have to join (particular) U as condition of employment and posting of letter threatening Ees that they would not be scheduled for work unless they joined U, held violative)

World Wide Press, Inc. **JD-(SF)-12-80**
(calling Ee at home to solicit payment of assisted U's dues under threat that he should look for employment elsewhere if he did not pay them, unlawful)

N.L.R.B. v. Hudson River Aggregates, Inc. **639 F.2d 865 (C.A. 2, 1981)**
(threatening Ees with discharge if they did not complete U membership applications and dues checkoff authorizations for U which E had prematurely recognized and which was legitimate representative of Ees, unlawful)

4090-2800 Discharge or layoff or suspension for supporting rival union

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(laying Ee, and mother and daughter of Ee off because they rejected U favored by E and supported competing U, violative)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(laying Ees off and subcontracting work out, violative, where such action was intended to stop competing U from organizing Ees and in retaliation for Ees support for that U and rejection of U favored by E)

4090-3700 Discharge or layoff for refusal to sign checkoff authorization

Visu-Craft By H.B.S., Inc. **JD-887-79**
(threatening Ee with discharge if he refused to sign checkoff authorization and U membership application violative, where U security clause unlawful because no grace period provided for unit members working at time contract executed; moreover, even if security clause had been valid, lack of *voluntariness* in signing checkoff authorizations made threat unlawful because Ee has right to decide how he will pay dues)

4090-4200 Preferential hiring of union adherents

The Mead Corporation **256 NLRB No. 108**
(violation where U accepted unlawful assistance from E of unlimited access to plant, made misleading and threatening statements to Ees that if card signed Ees would be guaranteed job but if not signed no promise could be made to coerce card signatures on which recognition was based, and executed contract on same day E extended recognition ot forestall organizing by U which represented Ees of predecessor E)

4090-9100 Veiled threats

Mego Corp. and Samet and Wells, Inc. **254 NLRB No. 031**
(warning Ees not to join or assist competing U, violative)

Lyman Steel Company **249 NLRB No. 040**
(offer of money to pro-U Ee *if he would stay with the Company* and implied threat of punishment if Ee supported petitioner rather than intervening U held violative where action was designed to coerce Ee to assist Intervenor rather than petitioning U)

4090-9900 Other

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(E boarding bus in pursuit of organizer of U competing with U favored by E to observe him talking to Ees, violative)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(telling Ees not to talk about any U, violative)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(telling Ee to advise E if Ee heard anyone discuss U competing with U favored by E, violative)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(E boarding bus in pursuit of organizer of U competing with U favored by E to observe him talking to Ees, violative)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(telling Ees not to talk about any U, violative)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(telling Ee to advise E if Ee heard anyone discuss U competing with U favored by E, violative)

Southland Knitwear, Inc. and Metropolitan IndusInc. **JD-510-81**
(E boarding bus in pursuit of organizer of U compet U favored by E to observe him talking to Ees, violative)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **JD-510-81**
(E boarding bus in pursuit of organizer of U competing with U favored by E to observe him talking to Ees, violative)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **JD-510-81**
(telling Ees not to talk about any U, violative)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **JD-510-81**
(telling Ee to advise E if Ee heard anyone discuss U competing with U favored by E, violative)

6000 STATUS OF SUCCESSOR TO DOMINATED OR ASSISTED LABOR ORGANIZATION

8000 AFFIRMATIVE DEFENSES

R. J. E. Leasing Corp. **262 NLRB No. 049**
(E's execution of pre-hire agreement with minority U not barred from consideration by Sec. 10(b); while actual date of its execution was not disclosed by evidence, Ees first became aware w/i 10(b) period that agreement was in effect; 6-month limitation does not begin to run until party affected by ULP is on actual or constructive notice of events giving rise to charges, thus estopping wrongdoer engaged in fraudulent concealment of wrongful conduct from using such concealment to permit 10(b) defense)

8000—Cont.

First National Maintenance Corporation **254 NLRB No. 028**

8050 COMPLIANCE WITH CONTRACT

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**

(discharge of Ee because he failed to meet age requirements of U's apprenticeship program not violative where insufficient evidence exists to establish that contract provision is illegal)

524 EMPLOYER DISCRIMINATION IN EMPLOYMENT

0100 GENERALLY

0117 SCOPE OF PROSCRIPTION

0117-2500 Act does not touch normal exercise of the right of the employer to select its employees or to discharge them

Classic Truck Rental Corp. 251 NLRB No. 056
(E's filing of notice of arbitration concerning its intention to discharge Ee because of his inefficiencies as Ee, not unlawful, where E's grounds for discharge were valid; Ee does not insulate himself from discharge for cause simply by virtue of fact that he had engaged in protected activity; misconduct which would justify discharge, absent any protected activity, will also justify discharge despite protected activity)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)
(*purpose of section 10(c) is to make it abundantly clear that Bd is not to interfere with exercise by Es of their traditional right to discharge Ees for adequate cause*)

Texas Instruments Incorporated v. N.L.R.B. 599 F.2d 1067 (C.A. 1, 1979)
(E's asserted defense of business justification to discharge pursuant to valid rule is to be weighed *with some delicacy and deference*; Bd may not substitute its business judgment for E's, rather there must be weighing of relative strengths of good and bad motivations, not to determine how Bd would have behaved under similar circumstances, but to determine what in fact motivated E)

Behring International, Inc. v. N.L.R.B. 675 F.2d 83 (C.A. 3, Apr. 1982)

0117-6200 Section 8(a)(3) not utilized for implementation or section 10(k) determination

Sullivan Transfer Co. 247 NLRB No. 117
(where actions of all parties are part of acute, bona fide jurisdictional dispute, E does not violate Sec. 8(a)(3) by choosing one group of Ees over another)

0117-8700 Prohibition not limited to discrimination against bare union membership but includes participation in union activities

St. Francis Hospital 263 NLRB No. 109
(refusing to pay registration fees and grant time off to two Ees to attend U-sponsored seminar held violative, since E, in past years, allowed Ees to attend U-sponsored seminars when there was no U activity among its Ees; E's motivation, regardless of whether Ee-applicants for seminar were pro-U or anti-U, was to take away benefits because of Ees' exercise of their Section 7 rights)

0133 INDIVIDUALS AFFECTED

0133-1200 Innocent bystanders

O'Dovero Construction, Inc. 264 NLRB No. 101
(layoff of Ee who was not U adherent to cover up unlawfulness of layoff of U adherents and motivated by E's desire to reach and layoff steward who, pursuant to agreement, had to be laid off last)

Hedison Manufacturing Company 249 NLRB No. 096
(laid off Ees who were not affirmatively shown to be U supporters held discriminated against as if they had been U supporters, where they were caught up in their fellow Ees' U adherence and were victims of E's effort to crush U)

N.L.R.B. v. Rich's Precision Foundry, Inc. 667 F.2d 613 (C.A. 7, Dec. 1981)
(layoff of 2 Ees caused by reduction in work due to discriminatory discharge of 2 other Ees violative as layoffs would not have occurred but for discriminatory action)

0133-1600 Nonunit employees

Sealy Mattress Company of Michigan, Inc. 262 NLRB No. 011
(discharge of Ee for joining U violative notwithstanding he may not have been properly part of unit he sought to join since his efforts were protected activity against which E could not lawfully retaliate)

G & H Products, Inc. 261 NLRB No. 047
(discharge of non-unit clerical Ee who refused to perform struck plant work though she had performed such work prior to refusal and there was no-strike provision in contract violative, as clerical Ees are protected from crossing picket lines or refusing to perform struck work when they profess willingness to perform regular clerical chores)

0133-2500 Nonunion employees

New York Laboratory Supply Company, Inc. JD-416-81
(E which maintained agreement with U that provided that the agreement applied only to members of U, and that Ees who are U members will receive different wages than Ees who are not U members violated Act as this encouraged membership in U and interfered with Ees Sec. 7 rights)

0133-3100 Union employees

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse 667 F.2d 955 (C.A. 9, June 1981)
(E's refusal to retain Ees because they were U members and E wanted to avoid incurring duty to bargain with their U, unlawful; E let entire engineering staff go although he needed at least one experienced engineer to correct malfunction in air-conditioning system)

0133-5000 Relative of active union members

Firmat Manufacturing Corp. 255 NLRB No. 153
(discharge of confidential Ee allegedly for leaking information, violative where real reason was her husband's U activities)

Crown Cork & Seal Company, Inc. 255 NLRB No. 004
(failure to consider leading U advocate's wife's application for employment held violative, since inference was reasonable that she was not considered because of E's posture of hostility towards applicant's husband's U and protected concerted activities)

Motor Freight Express, Inc. JD-531-80
(E's refusal to continue to hire casual employee, brother of active U steward, violative where motivated by relationship to steward)

Ashtabula Forge, A Division of ABS Industries, Inc. JD-388-80
(E's discharge of Ee and subsequent refusal to reinstate him because his father was U president, unlawful)

The Royal General Company JD-17-80
(discharge of Ee because he was brother of U adherent, unlawful)

0133-6300 Employees anticipating change in status or tenure

Wright Plastic Products, Inc. 247 NLRB No. 151
(discharge for discriminatory reasons prior to time resignation effective, violative)

0133-7900 Applicants for employment

A & A Ornamental Iron, Inc. 259 NLRB No. 136
(refusing to hire job applicant because of his past or present U membership or affiliation, unlawful)

Crown Cork & Seal Company, Inc. 255 NLRB No. 004
(failure to consider leading U advocate's wife's application for employment held violative, since inference was reasonable that she was not considered because of E's posture of hostility towards applicant's husband's U and protected concerted activities)

Finger Lakes Plumbing & Heating Co., Inc. 253 NLRB NO. 049
(E's conditioning employment on acceptance of wages and conditions of employment substantially inferior to those in expired U contract, unlawful)

Wyman-Gordon Company 252 NLRB No. 168

Martin K. Eby Construction Co., Inc. 250 NLRB No. 149
(where E refused to rehire millwright because of his activities as U steward, other millwrights lost work as consequence of E's discrimination and they

0133-7500—Cont.

too were discriminatees; millwrights would have performed work assigned to ironworkers but for E discrimination against steward)

Central Transport, Inc. 247 NLRB No. 198
(refusal to hire applicant because he previously worked for organized E, violative)

Kenneth and Mary M. McGlaughlin, Copartners, d/b/a Hudson-High Super Duper 247 NLRB No. 199
(refusal to hire qualified job applicant because he was on strike at store where held part time job held violative where applicant's overall qualifications for position were unchallenged by E)

Southland Corporation JD-341-82
(refusal to hire applicant who had taken grievance to arbitration on prior job not violative where E based decision on arbitrator's findings, supplied by former E in response to reference request, that discharge was lawfully based on poor attendance and emotional instability)

Kenneth and Mary M. McGlaughlin, Co-Partners, d/b/a Hudson-High Super Duper v. N.L.R.B. questioning job applicant about his U activities and refusing to hire him violative notwithstanding job opening did not turn out to exist)

Ernestine Bentley, Bonnie Collins, Ben Hall and Vera Hall v. N.L.R.B. 653 F.2d 243 (C.A. 6, 1981)
(although Bd found that three sisters had been discriminated against by E by its refusal to hire them because of their father's reputation as an active U supporter, substantial evidence supported conclusion that ULPs occurred more than 6 months before charges were filed, and were therefore barred by Sec. 10(b))

0133-7600 Probationary employee

G & H Products, Inc. 261 NLRB No. 047
(discharge of probationary Ee in anticipation that he would join striking Ees at end of probationary period violative, as it was effectiveated to discourage U activity in general)

Home Life Insurance Company of America JD-111-81
(discharge of probationary Ee for filing grievance violative, notwithstanding Ee had no standing by virture of terms of collective-bargaining agreement to file grievance during his probationary period)

Kansas City Power & Light Company v. N.L.R.B. 641 F.2d 553 (C.A. 8, Feb 4, 1981)
(termination ofprobationary Ees who had not completed six months continuous service required to become regular Ees prior to their participation in protected economic strike and reinstating them as new hires, unlawful, in view of discouraging effect on concerted activities; further, E's contentions that action justified by business consideration of requirement that six months probationary period be continuous and compelled by bargaining agreement, rejected, since probationary policy unwritten and flexible, waiver of probationary Ees' right to strike was not explicit and in view of meager bargaining history)

0133-8700 Supervisory employees

Garaho Lace Mills, Inc. 265 NLRB No. 044
(issuance of warning to Ee found to be supervisor not violative of Sec. 8(a)(3) although in retaliation for engaging in U activities as supervisors are not protected under Act; warning also not violative under Sec. 8(a)(1) as Bd has disavowed *integral pattern of conduct rationale* as basis for finding violation of Sec. 8(a)(1). See *Chevrolet, Inc.* 262 NLRB No. 38 (1982))

Sahara-Reno Corporation, d/b/a Sahara Reno 262 NLRB No. 095
(supervisors not protected by Act even if laid off for U or concerted activity as integral part of E's pattern of ULPs)

B. E. & K., Inc. 260 NLRB No. 081
(discharge of supervisory Ee rather then letting him return to rank-and-file position violative where Ee was U adherent and had only been promoted to supervisor 10 days earlier to remove him from protection of Act)

Hi-Craft Clothing Co. v. N.L.R.B. 660 F.2d 910 (C.A. 3, Oct. 1981)
(discharge of supervisor for threatening to go to Bd because he had not received E's promised bonus, not unlawful; legislative and decisional law show that Bd's assumption of jurisdiction should be rejected; Bd was not applying broad statutory terms but was construing its own authority, and its interpretation of statute was not longstanding but of recent origin; and only supervisor's personal greivance and not rank-and-file Ees' interests were involved; consequently, Bd's lack of jurisdiction ended its power and, since it cannot manufacture its own jurisdiction, Bd, a fortiori, certainly cannot do so)

0133-8725 Not protected from discharge because of union membership or activity

St. Jude Industrial Park Board 265 NLRB No. 087

Master Food Services, Inc., Noah Robinson, and Al Williams d/b/a A & W Catering Co. 262 NLRB No. 185
(discharging statutory supervisor because he had signed card as did all other Ees who were also discharged, not violative notwithstanding discharge of supervisor is *part and parcel* of E's pattern of unlawful conduct directed against Ees)

United Supermarkets, Inc. 261 NLRB No. 179
(discharge of pro-U supervisor for threatening Ee with discharge after U got in, occurring in conjunction with supervisor's solicitation of Ee to sign U card, not unlawful, since E had no alternative but to discharge supervisor for such conduct, and it is irrelevant that supervisor had no authority over threatened Ee or that he was in no position to implement threat, nor is it relevant that E wanted to get rid of supervisor, as the least an E can expect from a supervisor is neutrality in a U election)

Times Herald Printing Company 252 NLRB No. 043
(discharge of supervisory Ees for engaging in U activities not violative where discharges in no way affected other Ees' rights)

N.L.R.B. v. Southern Plasma Corp. 626 F.2d 1287 (C.A. 5, 1980)
(supervisors discharged for organizational activity not entitled to reinstatement, although it has been ordered where discharge had tendency to interfere with Sec. 7 rights of protected Ees)

0133-8750 Applicant for supervisory position

James F. Stanford, Inc. d/b/a Ace Machine Co. 249 NLRB No. 073
(questioning applicant for supervisory position how he felt about U not violative, since such individuals must be treated as supervisors and not as Ees under Act notwithstanding he was subsequently hired as rank-and-file Ee)

N.L.R.B. v. R & R Theatre Company, Inc. 636 F.2d 149 (C.A. 6, 1980)
(refusal to hire applicant for *projectionist-manager* position, only position available, because applicant was member of U, not violative, since record indicated position was supervisory, and therefore, not protected under *Labor Management Relations Act*)

0133-8775 Prospective supervisor

Mr. Herbert of California, Inc. JD-(SF)-83-81
(informing *leadman* that his occupancy of prospective supervisory position would require him to resign from U and to forswear any U activity, not violative, since statement made in context of discussing managerial position with Ee)

0133-9300 Foreign nationals and illegal aliens

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. 672 F.2d 592 (C.A. 7, Feb. 1982)
(E's letter to INS held constructive discharge as this letter was motivated by anti-U animus and was proximate cause of Ees' leaving U.S.)

0150 WHAT CONSTITUTES DISCRIMINATION

0150-2500 Differentiation between employees

N.L.R.B. v. Delchamps, Inc. 653 F.2d 225 (C.A. 5, Aug 1981)
(while E may exclude U supporters from meetings during working hours at which E expressed its opposition to U, and E's conduct in providing free meals to Ees during nonworking hours at campaign meetings does not *per se* constitute interference with election, combination of those 2 tactics, to which is added payment of wages to some, but not all, of its Ees for attendance at meetings during their scheduled off-hours constitutes violation of Act)

0150-2575 Discrimination based upon holding union office

Hamilton Die Cast Company, Inc. 254 NLRB No. 113
(discharging 2 Ees on same day for taking leave w/o written notice held violative as other Ees have not been similarly terminated; E's motivation was to penalize them for concerted activities as one Ee filed OSHA charge and other Ee was U steward whose performance E was critical)

Miller Brewing Company 254 NLRB No. 024
(imposition of more severe discipline on U stewards than that imposed on rank-and-file Ees for participation in unprotected walkout, violative, where record showed that stewards were not at *fault* for walkout but attempted to persuade Ees to remain on job; *Indiana & Michigan Electric Company* characterization of steward's *greater responsibility and hence greater fault* inapplicable)

South Central Bell Telephone Company 254 NLRB No. 032
(imposing longer suspensions on U stewards, who participated in sickout in violation of no-strike clause, than on other Ees who also participated held violative, since there was no evidence to indicate that U stewards engaged in activities different from those engaged in by other Ees such as urging support of or seeking to induce Ees to participate in work stoppage)

0150-2575—Cont.

United States Postal Service **252 NLRB No. 083**
(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would be futile and neither refusal to work nor distuption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

Shelby Processing Company, A Whooly Owned Subsidiary of Fasano Industries **JD-191-82**
(successor E, who (using majority of predecessor's Ees) made same ultimate product as did predecessor albeit using changed processing (fresh apples rather than frozen) and packaging procedures, violated Act by refusing to hire and recall those Ees (of predecessor E) who were officials of incumbent U; credible evidence in record did not show legitimate and lawful considerations for successor E's determination or that such action would have taken place in absence of Ees' protected activity)

Westinghouse Electric Corporation **JD-(ATL)-40-81**
(suspension of U officials for non-compliance with violatively promulgated *illness* rule violative where rule only applied to these officials)

N.L.R.B. v. South Central Bell Telephone Company **688 F.2d 345 (C.A. 5, Oct. 1982)**
(membership as used in Section 8(a)(3) refers not only to Ees basic decision whether to join U but also his decision as to level of his participation in U and U activities)

N.L.R.B. v. South Central Bell Telephone Company **688 F.2d 345 (C.A. 5, Oct. 1982)**
(suspension of U stewards for mere participation in strike and/or for not taking affirmative steps to end strike in violation of no-strike agreement for longer period than supensions of other participants in strike, unlawful, absent affirmative contractual waiver of U officers' rights and/or breach of contractually imposed affirmative duties)

Ervin Stewczaga and Gerald Treichel v. N.L.R.B. **686 F.2d 962 (C.A.D.C., Aug. 1982)**
(discharge of U stewards rather than less severe discipline imposed on rank and file Ees for participation in unprotected walkout, violative, where stewards were not leaders of strike nor was there reasonable basis for E to believe they were leaders, and bargaining agreement imposed no special duty on stewards in connection with forbidden work stoppage; further, not clear that arbitrator's decision upholding discharges based on contract interpretation of required higher duty of stewards)

0150-2587 Discrimination based upon racial or other minority group considerations

Steelworkers v. Weber, et al. **443 U.S. 193 (June 1979)**
(Title VII does not prohibit race conscious affirmative action plans; private E and U voluntarily agreed upon affirmative action plan that accorded preference to Black trainees in order to eliminate conspicuous racial imbalance segregated job categories upheld)

Pioneer Natural Gas Company **253 NLRB No. 003**
(discharge of Ee because she insisted that black coworker go to supervisor to complain about racially derogatory remark by another Ee, violative, since her action constituted protected concerted activity)

0150-5000 Change in terms or conditions of employment

Tru-Mar Communications, Inc. **265 NLRB No. 089**
(E's propogating oral and written work rules, after election of U, prohibiting smoking, personal telephone calls and reception of visitors on company premises, etc. which rules were more arduous and onerous than work rules in effect before advent of U held violative, since rules were propogated solely in retaliation for Ees' voting for U)

House of Cycle, Inc., t/a Kay Motors **264 NLRB No. 137**
(new rule prohibiting new car salesmen from soliciting used car customers, unlawful where latter salesman had been hired to *pack bargaining unit* and undermine U support rather than for legtimate business purposes)

General Warehouse Corp. **247 NLRB No. 142**
(assignment of more onerous and undesirable work to leader of Ee movement rejecting E's request for Ees' waiver of cost of living increase held violative)

Production Plated Plastics, Inc. **247 NLRB No. 076**
(institution of new restroom use policy in pro-U department requiring Ees to sign out in order to use restroom and providing disciplinary action if Ees signed out more than five times each week, violative, where inference of unlawful motivation was supported by E's knowledge that department was markedly pro-U and E failed to substantiate defense of business justification of improving sagging production)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. **643 F.2d 687 (C.A. 10, Mar 2, 1981)**
(lapse of time between E's knowledge of Ee's U activities and Ee's change in duties and discharge did not negate inference of E's anti-U motivation, since supervisor's harassment of Ee (U adherent) originated during, and continued throughout, unionization period)

0150-7500 Lack of change which would otherwise have occurred in terms and conditions

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**
(promotion to temporary supervisor because of Ee's efforts to oppose U while withholding promotion because of Ee's known U activities held violative)

Service Garage, Inc. **247 NLRB No. 115**
(denial of announced wage increase because of Ees' U activities violative; moreover, fact that no past practice existed for granting wage increases immaterial)

0167 REQUIREMENT OF ENCOURAGEMENT OR DISCOURAGEMENT OF UNION MEMBERSHIP

0167-0500 Only Encouragement or Discouragement Resulting From Discrimination Prohibited

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(Bd has burden of proving that discharge was motivated by anti-U animus)

0167-1000 Affirmative Showing of Prohibited Motive Required

Empire Pacific Industries, Inc. **257 NLRB No. 180**
(withholding change in wages from represented Ees that was provided to unrepresented Ees, not unlawful in absence of proof of discriminatory motive; no evidence was offered to prove E's discriminatory motive either independently or in refutation of parties' stipulation that E's witnesses would testify that withholding was not designed to encourage represented Ees to reject U or support decertification)

Patby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(Bd held Ee was not discriminatorily laid off, where although she had signed U authorization card on second day of employment, there was no evidence that E had any knowledge of her signing such card prior to layoff, at end of second day of work Ee expressed clear lack of desire to perform work she had been assigned, and she failed to appear for work at scheduled time on third day; fact that E offered no explanation for her layoff is not probative of discriminatory motive under the circumstances)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(threshold question where discharge was pursuant to rule prohibiting dissemination of E's strictly private material (classified wage survey data) is whether rule was prohibited by Act; invalid rule cannot support discharge even if E's only motivation in enforcing rule is not anti-U; only if rule is determined to be valid under Act, would Bd assess motive)

N.L.R.B. v. Burns Motor Freight, Inc. **635 NLRB No. 312 (C.A. 4, 1980)**
(even when there is evidence of anti-U animus, Bd must still show discharges were improperly motivated, and when cause for discharge exists, Bd must show an affirmative and persuasive reason why E rejected good cause and chose a bad one)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(if Bd makes finding of discriminatory discharge, ct must enforce finding if reasonable person might have concluded from entire record that improper motive moved E to discharge Ee; but if ct decides that reasonable person could only have either concluded that proper motives moved E to discharge or been unable to conclude whether proper or improper motives moved E, ct must refuse to enforce Bd's finding of discriminatory discharge)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. **636 F.2d 1255 (C.A. 7, 1980)**
(ct rejected, as being unreasonable and not based on substantial evidence, Bd's conclusion that E's economic justification for discharges was sham; furthermore, Sec. 8(a)(1) violations alone are legally insufficient to show Bd met its burden of proof that Ees were discharged because of U activity)

Fun Striders, Inc. v. N.L.R.B. **658 F.2d 716 (C.A. 9, 1981)**
(although anti-U motive is required in Sec. 8(a)(3) violations, it is not essential element of Sec. 8(a)(1) violations; nonetheless, motive is relevant)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**
(unlawful motivation is not lightly to be inferred and *mere suspicions of unlawful motivation are not sufficient to constitute substantial evidence*)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**
(although conversation between supervisor and Ee in which supervisor told Ee that E closed other plant because its Ees had voted for U and that if Ees supported U, Ee's plant would also be closed violated Sec. 8(a)(1), that conversation and letter from E advising Ees of scheduled election at plant, stating that E is opposed to U, and asking Ees to consider pros and cons of

0167-1000—Cont.

U representation before signing authorization cards were insufficient to establish motive to chill unionism in violation of Sec. 8(a)(3))

0167-1017 Violation where action motivated in part by objective of encouragement or discouragement

Tru-Mar Communications, Inc. **265 NLRB No. 089**
(discharge of principal U adherent, after election where U certified as bargaining representative, for having used profanity towards E, held violative, since prior to discharge of Ee no other Ee had ever been disciplined or discharged for use of profanities, use of profanity common, and E presented no evidence to indicate such conduct had not been previously condoned; E did not meet burden of showing Ee's discharge for using profanity would have occurred in absence of Ee's U activities; *Fibracan Corp.*, 259 NLRB 161 (1981) inapplicable in instant case)

RAHCO, Inc. **265 NLRB No. 036**
(E's changing Ees' work week from four 10-hour days to five 8-hour days w/o notifying U held unlawful, since E was motivated by desire to punish its Ees because they voted for U to represent them and E did not afford U opportunity to bargain over action)

F.M.L. Supply, Inc. **258 NLRB No. 083**
(discharge of U Ee because Ee refused to accept change in his pay rate, which had been accepted by non-U Ees, and discussing U with non U Ees held violative, since E was motivated by Ee's discusions of U and Ee's refusal to abide by changed working conditions was causing unrest among non-U Ees; Ee was accused of *destroying* E)

Royal Development Company, Limited **257 NLRB No. 149**
(Bd found no need to decide here whether *Wright Line* test of dual-motivation discharges was appropriate for analyzing 8(a)(4) cases, since, although ALJ used *Wright Line* causation test in analyzing motivation for both 8(a)(3) and 8(a)(4) complaint allegations herein, there was no proof that E relied on any legitimate reason for its refusal to employ charging party)

Golden Beverage of San Antonio, Inc. **256 NLRB No. 081**
(subsequent to issuance of ALJ Decision, Bd declared in *Wright Line*, 251 NLRB No. 150, that it was abondoning use of *in part* language; analysis requires determination of *prima facie* case and whether E has affirmative defense that action would have occurred absent protected activities)

Gulf Envelope Company **256 NLRB No. 058**
(where Respondent's motivations are mixed, Bd had held that legal effect of conduct is same as though illegal reason for its action was only operative reason; violation of Act is established where despite valid reason for discharge evidence shows that E has resorted to that reason as basis for buliding case against Ee due to his U activities)

John Canes, Inc. **253 NLRB No. 110**
(warning two Ees, who returned to work after recognition strike, that they should not be late again and that they would be discharged if they were late in future held violative, since progressive disciplinary system relating to Ees' tardiness was instituted to discourage membership in U)

Herman Brothers, Inc. **252 NLRB No. 121**
(E's unlawful reasons for action must be *motivating factor* in its decision rather than constituting only part of reason; GC must make *prima facie* showing to support inference that protected conduct was motivating factor... once this is established, burden shifts to E to demonstrate same action would have taken place absent protected conduct)

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(where E had cause to fire Ee but did not do so until day after Ee attended U meeting, E violated Act as purpose was to discourage U membership)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(withdrawal, from some maintenance Ees, of permission to wash up five minutes before their usual quitting time held not violative of Section 8(a)(3), since evidence did not establish that foremen in cancelling washup privilege were motivated in whole or part by anti-U or retaliatory considerations)

Irwin County Electric Membership Cooperative **247 NLRB No. 195**

Power Service Co., T and T Truck and Trailer Leasing, Inc., Night Hawk Motor Transportation, Inc., and York Motor Transport, Inc. **JD-161-82**
(discharge and layoff of U activist truck drivers because discharged Ee *abandoned employment* when he refused to drive unrepaired truck and other driver was laid off for *lack of work* held violative, since respondents did not show that Ees would have been discharged or laid off even if they had not been U activists or U sympathizers; no attempt made to recall discharged Ee after truck was repaired and 2 or 3 new drivers given opportunity to drive for Es before attempting to recall laid off Ee)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. **691 F.2d 1133 (C.A. 4, Sept. 20, 1982)**
(valid disciplinary rule does not constitute ULP absent *affirmative and persuasive* showing that enforcement was motivated by desire to discourage U activity rather than by supportable cause)

N.L.R.B. v. Fixtures Manufacturing Corporation **669 F.2d 547 (C.A. 8, Jan. 1982)**
(Wright Line rule found *analytically sound* and as there is *reasonable basis in law* for rule it may be applied, as it protects rights of Ees while preserving E's rights to discharge Ee for valid cause)

N.L.R.B. v. Wismer and Becker Contracting Engineers, and Electrical Workers Local Union 497 **684 F.2d 731(T) (C.A. 9, June 1981)**
(*Section* 8(a)(1), 8(a)(2), 8(b)(1)(A) and 8(b)(2) are violated only when actor's *true purpose* in discriminating was to encourage or discourage U membership; intent must be proved specifically unless actor's conduct implied prohibited motive)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse **647 F.2d 905 (C.A. 9, June 1981)**
(*Wright Line* rule found consistent both with legislative history showing intent to require E to reveal that Ee was discharged for cause and with reality of E's having best access to proof of motivation; also it strikes acceptable balance between protecting Ees' rights and preserving E's rights to discharge Ees for valid business reasons)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(If discharge is motivated by both legitimate business consideration and protected U activity, improper motive must be shown to be dominant one for discharge to be violative)

N.L.R.B. v. Wilhow Corporation, d/b/a Town and Country Supermarkets **666 F.2d 1294 (C.A. 10, Dec. 1981)**

0167-1033 Prohibited motive inferable from conduct Inherently destructive of employee rights

American Olean Tile company, Inc. **265 NLRB No. 206**
(E's granting preference to transfer to substantially equivalent positions to less senior Ee strikers who abandoned strike or who made individual offers to return at end of strike over senior Ee-strikers on whose behalf U made unconditional offer to return to work, was inherently destructive of rights of senior strikers and unlawful w/o proof of U animus)

Inland Steel Company **263 NLRB No. 147**
(no *per se* illegality in commencing investigation of Ee who came to E's attention by engaging in U and other protected activities, nor does discharge resulting from such investigation fall w/i *inherently destructive* acts even w/o proof of specific discriminatory intent)

The General Tire & Rubber Company **262 NLRB No. 166**
(discharging probationary Ees who honored strike and thereafter refusing to reinstate them, violative; E terminated only those probationary Ees who honored strike which was inherently destructive of Ee rights under Act)

Walter B. Cooke, Inc. **262 NLRB No. 074**
(layoff of Ees and subcontracting of their work not unlawful conduct inherently destructive of Ees' rights, where business no longer was sufficient for full-time Ees, E could subcontract work more economically by the job, E lacked sufficient control of subcontractor's operations to be found joint E, and there was no evidence of U animus)

M K Laboratories, Inc. **261 NLRB No. 021**
(denying Ees permission to attend discharged U steward's unemployment compensation hearing, coupled with threat of discipline for attending hearing found violative of 8(a)(1) herein held relevant for imputing U animus to E)

Mobile Home Estates, Inc. **259 NLRB No. 182**
(denying reinstatement to probationary Ees after end of economic strike, violative where E has shown no legitimate and substantial business justification and Ees were never told prior to strike that their work was unsatisfactory; such denial is so inherently destructive of Ee rights that evidence of specific anti-U motivation was not needed)

Island Typographers, Inc. **252 NLRB No. 003**
(E's unilateral action of terminating hot-type method of production and laying of its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

Henry Vogt Machine Company **251 NLRB No. 040**
(withdrawal of cafeteria privileges after Ees chose U representative found inherently discriminatory since it contained clear and dramatic message for Ees who had chosen representation and for the remaining unrepresented Ees)

Freezer Queen Foods, Inc. **249 NLRB No. 045**
(E assigning new hire dates upon recall to probationary Ees among strikers causing them to lose credit towards completion of probationary period for time employed prior to strike unlawful, notwithstanding no U animus or intent to discriminate, since action was inherently destructive of Ees' rights; E's contention that since contract required 60 consecutive days probation it

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was not possible to achieve its purpose by tolling probationary period during strike, rejected)

Dixie Machine Rebuilders Inc. 348 NLRB No. 115
(penalizing Ee because U was actively organizing or was successful in Bd election is inherently distructive of important Ee rights and thus requires no proof of anti-U motivation)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)
(applies only to challenge to overall policy of E rather than to individual discharge)

Texas Instruments Incorporated v. N.L.R.B. 599 F.2d 1067 (C.A. 1, 1979)
(enforcing rule that could apply to those not engaging in protected activity as well as to Ee organizers could not be held to be *inherently destructive*)

Vesuvius Crucible Company v. N.L.R.B. 668 F.2d 162 (C.A. 3, Nov. 1981)
(conduct (of E) is *inherently destructive* if it *carries with it unavoidable consequences which E not only forsaw but which he must have intended;* such conduct is *that which creates visible and continuing obstacles to future exercise of Ee rights*)

Vesuvius Crucible Company v. N.L.R.B. 668 F.2d 162 (C.A. 3, Nov. 1981)
(refusal to pay strikers accrued vacation pay pursuant to expired contract not violative, as E had good faith belief that entitlement to and amount of vacation pay was to be determined under new collective bargaining contract if and when contract executed. Such conduct, unlike offering non-strikers benefits, or threatening strikers with loss of benefits if they did not return to work, is not inherently destructive of Ee rights so as to obviate need to show prohibited motive; furthermore, here E's good faith belief does not show anti-U motivation on part of E)

Baltimore Rebuilders, Inc. v. N.L.R.B. 611 F.2d 1372 (C.A. 4)
(proof of subjective motive can, in limited situations, be made out from conduct itself)

Electric Machinery Company v. N.L.R.B. 653 F.2d 958 (C.A. 5, Aug 1981)
(conduct that *directly and unambiguously penalizes or deters protected activity* such as; discharging Ees for participation in U activities, granting superseniority to strike breakers or intention to operate *open shop* must be shown by GC before necessity to prove U animus is eliminated under *Great Dane Trailers* 388 U.S. 26 (1967))

N.L.R.B. v. Haberman Construction Company 618 F.2d 288 (C.A. 5, 1980)
(conduct held inherently destructive where E unilaterally ceased contributing to benefit funds and thus jeopardized U's position as bargaining agent and directly and unambiguously deterred protected activity)

C. H. Heist Corporation v. N.L.R.B. 657 F.2d 178 (C.A. 7, 1981)
(discharge of Ee solely because he was U steward and as such had participated in U strike where contract prohibited strikes and defined his duties as seeing to it that contract was complied with, held *inherently destructive* of his right to hold U office and unlawful; Ee had attempted throughout strike to persuade Ees to stop strike and, inabsence of contractual clause requiring him to cross picket line, had no *higher responsibility* to do so and would have been taking steps suicidal to his U stewardship and his capacity to enforce any provision of contract)

Kansas City Power & Light Company v. N.L.R.B. 641 F.2d 553 (C.A. 8, Feb 4, 1981)

N.L.R.B. v. American Postal Workers Union 618 F.2d 1249 (C.A. 8, 1980)

0167-1033-5000 Notwithstanding conduct motivated by substantial business justification

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(discipline decision in *dual motive* case involves: (1) legitimate business reason, and (2) E's reaction to its Ees' engaging in U or other protected activities)

Carlson Roofing Co., Inc. v. N.L.R.B. 627 F.2d 77 (C.A. 7, 1980)
(where E for substantial business justification layed off Ees engaged in protected activity, incumbent on GC to present evidence of antiunion motivation)

N.L.R.B. v. Local 19, Hotel, Motel, Restaurant Employees and Bartenders Union, AFL-CIO 628 F.2d 1357(T) (C.A. 9, 1980)
(where ALJ's decision to reject E's business justification reason for E's layoff not supported by substantial evidence and record contains no direct evidence of anti-U animous layoff's not violative)

0167-1067 Motive Must be proved where adverse effect of conduct comparatively slight and employer has proved substantial business justification

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(discipline decision in *dual motive* case involves: (1) legitimate business reason, and (2) E's reaction to its Ees' engaging in U or other protected activities)

Burgess Mining & Construction Corp. 250 NLRB No. 033
(layoff of Ee, lawful, notwithstanding GC's contention that E laid off Ee because he had filed grievances, where there was no substantial evidence establishing animosity toward grievance procedure and against those who would invoke it and there was no disparate treatment demonstrating unlawful motivation)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 1, Sep. 1981)
(E's discharging U advocate assertedly for violating E's rule against falsifying inspection reports, violative where apparent insignificance of rule along with E's history of treating rule as unimportant support inference that something more was involved than just breach of rule)

Vesuvius Crucible Company v. N.L.R.B. 668 F.2d 162 (C.A. 3, Nov. 1981)

Baltimore Rebuilders, Inc. v. N.L.R.B. 611 F.2d 1372 (C.A. 4)
(where impact on protected rights is slight or indirect, or where it may be explained by reference to other lawful considerations, it is prima facie lawful, and an affirmative showing of improper motivation must be made)

Carpenters, Local # 308 v. N.L.R.B. 690 F.2d 661 (C.A. 8, July 1982)

Kansas City Power & Light Company v. N.L.R.B. 641 F.2d 553 (C.A. 8, Feb 4, 1981)

N.L.R.B. v. American Postal Workers Union 618 F.2d 1249 (C.A. 8, 1980)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)
(burden (of proof) to establish that primary motivation for E's replacing sympathy striker was to penalize Ee for engaging in protected activity shifts to GC once E had demonstrated legitimate business reason for replacing Ee)

0167-3000 Intent need not be shown where encouragement or discouragement foreseeable consequence

Vesuvius Crucible Company v. N.L.R.B. 668 F.2d 162 (C.A. 3, Nov. 1981)
(conduct (of E) is *inherently destructive* if it *carries with it unavoidable consequences which E not only forsaw but which he must have intended;* such conduct is *that which creates visible and continuing obstacles to future exercise of Ee rights*)

0167-5000 Discrimination must be based on union animus or protected activity

Stokely-Van Camp, Inc. 259 NLRB No. 128
(anti U motivation established where supervisor told Ee that it was U's fault that Ee did not receive vacation pay to which he was entitled by placing onus on U for withholding of vacation benefits, E clearly demonstrated that its action taken in retaliation against U and to attempt to discourage Ees from striking)

The Evening News Association 258 NLRB No. 020
(in absence of evidence of animus or hostility towards Ee based upon Ee's U activity, discriminatory motive may not be inferred)

Albertsons, Inc. 253 NLRB NO. 081
(Section 8(a)(1) discharge of Ee for insisting on break periods provided for in collective-bargaining agreement not violative of Sec. 8(a)(3) where no evidence that discharge was motivated by Ee's U membership or activities in support of U)

Ferrum Industries, Inc. Textol Systems, Inc. JD-(NY)-89-81
(no prima facie case in view of E's lack of knowledge of U activity, absence of U animus and valid reason for discharge, i.e., Ee-E heated discussion about wage increase and E's conclusion that Ee would not be satisfied with granted 50 cent raise)

New York Laboratory Supply Company, Inc. JD-416-81
(E which maintained agreement with U that provided that the agreement applied only to members of U, and that Ees who are U members will receive different wages than Ees who are not U members violated Act as this encouraged membership in U and interfered with Ees Sec. 7 rights)

Gould Incorporated v. N.L.R.B. 612 F.2d 728 (C.A. 3)
(fact discharge of U steward was affected or motivated in part because he had filed charges with Bd and other government agencies falls short of holding that he was discharged because of these activities; *where Ee's discharge is prompted by concurrent reasons, some permissible and some not, in order to support ruling of ULP Bd must find permissible reason proffered by E is merely pretext and that in fact Ee was disciplined because of anti-U sentiment*)

0167-5000—Cont.

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 5, 1980)**
(finding of violation in refusal to rehire discharged Ee depends on assessment of E's motives at time of refusal and must be for different reasons than for discharge if discharge occurred outside 10(b) period)

N.L.R.B. v. Brooks Cameron, Inc. **691 F.2d 912 (C.A. 9, Nov. 1982)**
(when discharge motivated by both legitimate business and anti-U animus, or when business reasons may be pretext for termination motivated by hostility toward U, ULP may be found only if anti-U animus was moving cause of discharge. Bd must make showing that U activity was motivating factor; then burden shifts to E to establish that terminations would have occured absent protected U activity)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(burden (of proof) to establish that primary motivation for E's replacing sympathy striker was to penalize Ee for engaging in protected activity shifts to GC once E had demonstrated legitimate business reason for replacing Ee)

N.L.R.B. v. Adams Delivery Service, Inc. **623 F.2d 96 (C.A. 9, July 1980)**
(Bd has burden of proving that moving cause for discharge was anti-U animus)

0167-8000 Same principles apply to encouragement and discouragement

N.L.R.B. v. Wismer and Becker Contracting Engineers, and Electrical Workers Local Union 497 **654 F.2d 731(T) (C.A. 9, June 1981)**
(*Section* 8(a)(1), 8(a)(2), 8(b)(1)(A) and 8(b)(2) are violated only when actor's *true purpose* in discriminating was to encourage or discourage U membership; intent must be proved specifically unless actor's conduct implied prohibited motive)

0167-9000 True purpose or real motive is test

Modern Manufacturing Company, Inc. **261 NLRB No. 078**
(where ALJ had found that E's defenses to discharges, layoffs, and refusal to rehire were pretexts, Bd concluded he clearly deemed such actions were wholly motivated by Ees' U activities notwithstanding his use of qualifying language in describing motivation, and Bd thus found that E's actions would not have occurred in absence of Ees' U activities)

Heartland Food Warehouse, Division of Purity Supreme Supermarkets **256 NLRB No. 145**
(test in cases alleging violation of Section 8(a)(3) of Act where lawful as well as unlawful motive may exist for discharge, requires GC to make prima facie showing that Ees' protected activities motivated E's decision to discharge them. If the GC is successful, burden of proof is then shifted to E to show by preponderance of evidence that discharges would have occured even in absence of Ees' protected activities)

Gulf Envelope Company **256 NLRB No. 058**
(where Respondent's motivations are mixed, Bd had held that legal effect of conduct is same as though illegal reason for its action was only operative reason; violation of Act is established where despite valid reason for discharge evidence shows that E has resorted to that reason as basis for building case against Ee due to his U activities)

Boyer Ford Trucks, Inc. **254 NLRB No. 184**
(Ee's discharge, violative where E's motive for discharge was Ee's U and concerted protected activities and E's reasons for discharge were mere afterthoughts advanced to conceal discriminatory motive)

Concord Furniture Industries, Inc., d/b/a Bradford Furniture Company **254 NLRB No. 109**
(on reconsideration, Bd applied *dual motivation* theory and reaffirmed violation finding; although this is pretext case, layoffs were violative under any analysis in view of E's knowledge of Ees' U activities, U animus, timing w/i 3 weeks of R ptn filing, and E's false reason that both were least senior Ees)

Newport News Shipbuilding & Dry Dock Company **254 NLRB No. 043**
(Bd took official notice of E's previous violations of Act as evidence of E's animosity toward U herein)

Joshua's, Inc. d/b/a Fitzwilly's **253 NLRB No. 082**
(ALJ's finding of violations upheld where GC made showing that E's actions were motivated by anti-U considerations and E failed to demonstrate that it would have taken same action even in absence of its opposition to U as required under *Wright Line* 251 NLRB No. 150 (1980) test)

Herman Brothers, Inc. **253 NLRB No. 121**
(E's unlawful reasons for action must be *motivating factor* in its decision rather than constituting only part of reason; GC must make *prima facie* showing to support inference that protected conduct was motivating factor... once this is established, burden shifts to E to demonstrate same action would have taken place absent protected conduct)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(test of *causation* for cases alleging violations of Section *8(a)(3)* of act found through analysis akin to that of SCt in *Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977)*)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(discipline decision in *dual motive* case involves: (1) legitimate business reason, and (2) E's reaction to its Ees' engaging in U or other protected activities)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(under *dominant motive* test it is GC who in addition to establishing *prima facie* showing of unlawful motive, is further required to rebut E's asserted defense by showing that discharge would not have taken place in absence of Ees' protected activities)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(causation test to be followed in all cases alleging violations of Sec. 8(a)(3) or Sec. 8(a)(1) turning on E motivation: (1) GC required to make out *prima facie* showing sufficient to support inference that protected activity was a *motivating factor* in E's decision; and after this is established, (2) burden shifts to E to demonstrate that same action would have taken place in absence of protected conduct)

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(question of motivation where alleged unlawful discharge involved is to be resolved by determination based on consideration and weighing of all relevant evidence and not one to be answered by crediting or discrediting E's professed reason for discharge)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 036**
(Bd is not compelled to accept stated reason for which Ee was discharged when there is reasonable cause to believe ground put forward by E was not true one and real reason was E's dissatisfaction with Ee's U activity)

Westinghouse Electric Corporation **JD-(ATL)-88-81**
(refusal to rehire former U steward, who had held highest labor grade position at E's plant because he was hazard to himself and those around him, he had refused to work overtime and did not like overtime, held violative where E did not demonstrate refusal to rehire and would have taken place even in absence of Ee's protected conduct; real motivation shown by unlawful interrogation of another Ee and comment that *things would be quieter w/o him)*

Westinghouse Electric Corporation **JD-(ATL)-88-81**
(in *Royal Development Company, Ltd.*, 257 NLRB No. 149 (1981), Bd did not preclude analyzing 8(a)(4) cases under *Wright Line* test of dual motivation)

Westinghouse Electric Corporation **JD-(ATL)-88-81**
(discharge of Ee, U president, for varied reasons all of which proved invalid, held violative, since E did not demonstrate that same action would have taken place even in absence of protected conduct; real reason was E's attempt to rid itself of *thorn in (its) side.*, namely, U president)

Tourism and Development Corporation d/b/a Newport Jai Alai **JD-280-80**
(E's refusal to reemploy Ee, lawful, notwithstanding E's knowledge of Ee's U activity, where Ee had been insubordinate and E had changed Ee's work schedule after U election, action it was not required to take, thus belying any animus against Ee because of her U activity)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(in given discharge case it must be decided whether E acted because of Ee's U affiliation, or whether he acted because of some factor unrelated to Ee's U status)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(burden of persuasion with respect to ultimate question of determining causal link between bad motive and the discharge remains always with GC)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(Act is violated only when E with anti-U animus discharges Ee he would not have fired *but for* Ee's U activity)

N.L.R.B. v. Charles Batchelder Company, Inc. **646 F.2d 33 (C.A. 2, Mar 1981)**
(ct will not engage in *but for* analysis where Bd found that impermissible ground was only basis for discharge and refusal to rehire; ct will look for substantial evidence to support pretext finding)

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(E can best show improper motives did not move it to discharge Ee by adducing proof that other Ees were discharged for same reason that Ee was discharged, where there is no suggestion that other Ees were discharged for improper motive)

0167-9000—Cont.

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**

(if Bd makes finding of discriminatory discharge, ct must enforce finding if reasonable person might have concluded from entire record that improper motive moved E to discharge Ee; but if ct decides that reasonable person could only have either concluded that proper motives moved E to discharge or been unable to conclude whether proper or improper motives moved E, ct must refuse to enforce Bd's finding of discriminatory discharge)

N.L.R.B. v. Fixtures Manufacturing Corporation **669 F.2d 547 (C.A. 8, Jan. 1982)**

(Wright Line rule found *analytically sound* and as there is *reasonable basis in law* for rule it may be applied, as it protects rights of Ees while preserving E's rights to discharge Ee for valid cause)

N.L.R.B. v. Brooks Cameras, Inc. **691 F.2d 912 (C.A. 9, Nov. 1982)**

(when discharge motivated by both legitimate business and anti-U animus, or when business reasons may be pretext for termination motivated by hostility toward U, ULP may be found only if anti-U animus was moving cause of discharge. Bd must make showing that U activity was motivating factor; then burden shifts to E to establish that terminations would have occured absent protected U activity)

Lippincott Industries, Inc. v. N.L.R.B. **661 F.2d 112 (C.A. 9, Oct 1981)**

(Bd's finding of violative discharge upheld where Bd found that Ee was discharged because of her U activity and chilling effect of that discharge on other Ees; fact that Bd did not explicitly state what test it employed in finding violation not controlling)

N.L.R.B. v. Wismer and Becker Contracting Engineers, and Electrical Workers Local Union 497 **654 F.2d 731(T) (C.A. 9, June 1981)**

(*Section* 8(a)(1), 8(a)(2), 8(b)(1)(A) and 8(b)(2) are violated only when actor's *true purpose* in discriminating was to encourage or discourage U membership; intent must be proved specifically unless actor's conduct implied prohibited motive)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

(E's statement to supervisor that he should find out who had been talking about U and get rid of her proof that motivation was illegal and fact that discriminatee was poor Ee irrelevant)

0183 ADEQUACY OF EVIDENCE TO ENCOURAGE OR DISCOURAGE UNION MEMBERSHIP

0183-0100 Generally

Stokely-Van Camp, Inc. **259 NLRB No. 128**

(anti U motivation established where supervisor told Ee that it was U's fault that Ee did not receive vacation pay to which he was entitled by placing onus on U for withholding of vacation benefits, E clearly demonstrated that its action taken in retaliation against U and to attempt to discourage Ees from striking)

The Evening News Association **258 NLRB No. 020**

(termination of technologically displaced telephone operator, U activist, subsequent to alleged refusal to transfer her to another clerical position w/i E's organization not violative where Ee refused to accept other clerical jobs offered by E; GC did not sustain burden of proving discrimination, since events relied on were outside 10(b) limitation period, and were subject to several inferrences none of which constituted ULP nor amplified character of any later conduct of E)

Building Material & Dump Truck Drivers, Local Union NO. 420, Teamsters (Leonard Worthington, an Individual) **257 NLRB No. 161**

(Bd upheld ALJ's finding of ULP notwithstanding ALJ failed to articulate his analyses of E's motivation in terms of *Wright Line* where his findings satisfied analytical objectives)

N.L.R.B. v. Burns Motor Freight, Inc. **635 NLRB No. 312 (C.A. 4, 1980)**

(under burden-shifting test Bd recently adopted for dual motivation cases in its *Wright Line* decision, E has demonstrated that its actions would have been the same in discharging Ee for cause even in absence of Ee's protected conduct)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**

(unlawful motivation is not lightly to be inferred and *mere suspicions of unlawful motivation are not sufficient to constitute substantial evidence*)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**

(finding of unlawful motivation cannot be based solely on anti-U stance of E)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**

(anti-U motivation not established by fact that layoffs coincided with U activity where closing was for valid economic reasons; *given economic necessity which existed in case sub judice, it was management's function to decide at what point slowdown became sufficiently protracted to require decrease in personnel*)

0183-3300 Burden of coming forward

N.L.R.B. v. Gorman Machine Corporation **682 F.2d 11 (C.A. 1, July 1982)**

(remand for reconsideration in light of burdens of proof announced in NLRB v. Wright Line, 662 F.2d 899 held unnecessary because Bd did not rely on burdens of proof but found reason for discharge was pretext)

N.L.R.B. v. Gorman Machine Corporation **remand for reconsideration in light of burdens of proof announced in NLRB v. Wright Line, 662 F.2d 899 held unnecessary because Bd did not rely on burdens of proof but found reason for discharge was pretext)**

0183-3333 Burden of showing discriminatory motive on General Counsel

Styrest Nursing Home **JD-(ATL)-95-82**

(warning and suspension notices for strike misconduct issued to Ees who were stipulated to have participated in strike proved GC's prima facie case; need not include showing of explicit motivation to punish strikers for participating in strike)

RAHCO, Inc. **265 NLRB No. 030**

(Bd affirmed ALJ's findings of ULPs where GC's *prima facie* showing was sufficient to support inference that protected conduct was *motivating factor* in E's decision and E failed to show seme decision to change Ees conditions of employment would have occurred even in absence of protected conduct)

Wolf Street Supermarkets, Inc. d/b/a Jim's Big M; and Big M Supermarkets, Inc. **264 NLRB No. 150**

(GC did not provide sufficient evidence to find *prima facie* case that E refused to hire Ees of former owner of store out of U animous where conclusion could also be derived from evidence that he refused to hire them because of their status as former Ees of an unsuccessful business)

Hillside Bus Corp. **262 NLRB No. 152**

(*To establish violation of Section 8(a)(3) it is incumbent on GC to adduce evidence supporting contention that Ee was unlawfully discharged. Should prima facie case of unlawful discharge be shown, burden of persuasion shifts to respondent to establish lawful reason for discharge. However, in assessing whether prima facie case has been presented, ALJ must view GC's evidence in isolation, apart from respondent's proferred defense. It is only after GC's prima facie requirement has been met that ALJ must consider respondent's defense*)

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**

(GC met burden by citing timing of layoff, E's proven deep hostility to U, and E's knowledge of U campaign at time of layoff)

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**

(shifting and contradictory explanations offerred by E for transfer of work strengthens inference of discrimination and reprisal)

Laran Hotel Corp. d/b/a Hotel Lafayette **261 NLRB No. 163**

(violation, where E failed to rebut GC's *prima facie* case of discriminatory discharge)

Townsend and Bottum, Inc. **259 NLRB No. 027**

(where motivation for discharge is at issue GC must make a *prima facie* showing that protected activity was motivating factor in E's decision to discharge, and E then has burden of showing that Ees would have been discharged absent that protected activity)

Golden Beverage of San Antonio, Inc. **256 NLRB No. 081**

(subsequent to issuance of ALJ Decision, Bd declared in *Wright Line*, 251 NLRB No. 150, that it was abondoning use of *in part* language; analysis requires determination of *prima facie* case and whether E has affirmative defense that action would have occurred absent protected activities)

Golden Beverage of San Antonio, Inc. **256 NLRB No. 081**

(*prima facie* case was established by E's knowledge that Ees had signed cards, its expresion of anti-U animus, 8(a)(1) violations, and timing of discharged after E learned that 2/3 Ees supported U)

Mini-Industries, Inc. **255 NLRB No. 123**

(discharging all Ees in midst of U campaign and rehiring only certain former Ees on or after plant reopened, not unlawful, notwithstanding E's undisputed anti-U animus and suspicious timing of discharges, where GC did not meet initial burden of making *prima facie* showing to support inference that U activity was a motivating factor, in view of record evidence that showed reason for E's actions was its deteriorating financial condition which was

0183-3333—Cont.

consistent with decisions made and production standards set prior to E's awareness of U campaign)

Doug Hartley, Inc. **255 NLRB No. 097**
(*GC must make prima facie showing sufficient to support inference that protected conduct was motivating factor in E's decision; once this is established burden will shift to E to demonstrate that same action would have taken place even in absence of protected conduct*)

Bay State Gas Company **255 NLRB No. 099**
(discharge of Ee who had filed charge with Bd not violative where discharge took place 1 month after charge withdrawn, discharged for excessive absenteeism and GC failed to establish *prima facie* case that Ee was discharged for protected activity)

Webb-Centric Construction **254 NLRB No. 159**
(*under test articulated in Wright Line* GC is required to make prima facie showing sufficient to support inference that protected conduct was motivating factor in E's action... once such a prima facie case is established, burden is shifted to E to demonstrate that same action would have taken place even in absence of protected conduct. This shifting of burdens does not shift ultimate burden of GC to establish ULP by preponderance of evidence)

McCormick & Co., Inc., Grocery Products Division **254 NLRB No. 111**
(disciplining and reducing economic striker's seniority, not unlawful, where Bd overruled ALJ and found that disciplining Ee was not strike-related or that E had any anti-U animus; GC failed to carry his burden of establishing *prima facie* case of discrimination)

Russ Togs, Inc. **253 NLRB No. 099**
(GC made *prima facie* case of E's unlawful motivation by showing E's harassment of grievants, E's statement that grievant should have spoken to E rather than other Ees about its underpayment of contractual wages, and E's surveillance of those other Ees going to file wage grievances)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(causation test to be followed in all cases alleging violations of Sec. 8(a)(3) or Sec. 8(a)(1) turning on E motivation: (1) GC required to make out *prima facie* showing sufficient to support inference that protected activity was a *motivating factor* in E's decision; and after this is established, (2) burden shifts to E to demonstrate that same action would have taken place in absence of protected conduct)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(changing location, during U campaign, of coffeebreaks from Ees' cafeteria to E's maintenance department in order to more closely observe Ees, not violative where record contained insufficient evidence to show E's motives were for purpose proscribed by Act)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(burden of persuasion with respect to ultimate question of determining causal link between bad motive and the discharge remains always with GC)

Electric Machinery Company v. N.L.R.B. **653 F.2d 958 (C.A. 5, Aug 1981)**
(GC has burden of establishing that E's conduct was so egregious as to be *inherently destructive of important Ee rights* or that E acted with intent to discourage U membership)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(when E shows legitimate reason for discharge of Ee, burden shifts to GC to prove improper motive moved E to discharge Ee)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(fact that GC bears burden of persuading Bd improper motive moved E to discharge Ee means that Bd must find against GC if its collective mind is equipoise on question whether discharge stemmed from proper or improper motive)

N.L.R.B. v. Consolidated Freightways Corporation of Delaware **651 F.2d 436 (C.A. 6, Mar 1981)**

N.L.R.B. v. Alumina Ceramics, Inc. **690 F.2d 136 (C.A. 8, Oct. 1982)**

Anja Engineering Corporation v. N.L.R.B. **685 F.2d 292 (C.A. 9, Aug. 1982)**
(enforcement denied, since Bd's finding that GC had established *prima facie* case of wrongful discharge failed due to lack of substantial record evidence of E's knowledge of Ees' views on U representation at time of discharge)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse **647 F.2d 905 (C.A. 9, June 1981)**
(GC carried burden of showing under *Wright Line* that E's anti-U animus motivated his decision not to retain engineers by introducing credible testimony that E intended to fire enough Ees to avoid duty to bargain, by showing that E had stated that hotel would be nonU and he was letting all engineers go, and by failing to discuss employment with any engineers despite his need for an engineer to correct malfunctioning system)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. **643 F.2d 687 (C.A. 10, Mar 2, 1981)**
(in establishing that Ee's duties were changed and he was discharged in violation of *Section* 8(a)(1) and (3), Bd bears burden of proving that these actions were unlawfully motivated, and this burden must be met by substantial evidence)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**
(regardless of who has burden of going forward with evidence, GC must prove by substantial evidence in record as whole that U animus actuated plant closing)

0183-3333-3300 When employer's conduct causes comparatively slight harm to employee rights and E raises defense of business justification

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(under *dominant motive* test it is GC who in addition to establiching *prima facie* showing of unlawful motive, is further required to rebut E's asserted defense by showing that discharge would not have taken place in absence of Ees' protected activities)

N.L.R.B. v. National Car Rental System, Inc. **672 F.2d 1182 (C.A. 3, Feb. 1982)**

Carlson Roofing Co., Inc. v. N.L.R.B. **627 F.2d 77 (C.A. 7, 1980)**
(where E for substantial business justification layed off Ees engaged in protected activity, incumbent on GC to present evidence of antiunion motivation)

Randall, Division of Textron, Inc. v. N.L.R.B. **687 F.2d 1240 (C.A. 8, Sept. 1982)**
(where E failed to offer strikers reinstatement as vacancies arose, finding of anti-U motivation unnecessary as harm to strikers is relatively great and no business justification shown by E)

0183-3333-6700 No burden where employer conduct inherently destructive of employer rights

Giddings & Lewis, Inc. **255 NLRP No. 093**
(instituting policy of recalling laid-off Ees ahead of unreinstated economic strikers w/o regard to circumstances involved, violative, where such policy amounted to unlawful grant of superseniority to nonstrikers and replacements; furthermore, such policy was inherently discriminatory absent any legitimate business justification since it gives preference to laid-off Ees over unreinstated strikers in filling job vacancies unrelated to layoffs where qualifications or abilities of Ees were deemed relatively equal by E)

Island Typographers, Inc. **252 NLRB No. 003**
(E's unilateral action of terminating hot-type method of production and laying of its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(discharge of Ee, in and of itself, not normally inherently destructive act which would obviate requirement for showing improper motive)

N.L.R.B. v. National Car Rental System, Inc. **672 F.2d 1182 (C.A. 3, Feb. 1982)**

Vesuvius Crucible Company v. N.L.R.B. **668 F.2d 162 (C.A. 3, Nov. 1981)**

Electric Machinery Company v. N.L.R.B. **653 F.2d 958 (C.A. 5, Aug 1981)**
(conduct that *directly and unambiguously penalizes or deters protected activity* such as; discharging Ees for participation in U activities, granting superseniority to strike breakers or intention to operate *open shop* must be shown by GC before necessity to prove U animus is eliminated under *Great Dane Trailers* 388 U.S. 26 (1967))

N.L.R.B. v. Borg Warner Corporation; et al. **660 F.2d 324 (C.A. 6, Oct. 1981)**
(termination of Ees as result of transferring operations from unionized subsidiary to nonunionized subsidiary, violative, where E wished to hold wages paid to Ees at non-unionized subsidiary to levels below those then paid to unionized Ees; such refusal to transfer unionized Ees to other subsidiary w/o prior negotiations held inherently destructive of Ee rights)

N.L.R.B. v. Borg Warner Corporation; et al. **663 F.2d 666 (C.A. 6, Oct. 1981)**
(termination of Ees as result of transferring operations from unionized subsidiary to nonunionized subsidiary, violative, where E wished to hold wages paid to Ees at non-unionized subsidiary to levels below those then paid to unionized Ees; such refusal to transfer unionized Ees to another subsidiary w/o prior negotiations held inherently destructive of Ee rights)

0183-3333-6700—Cont.

Randall, Division of Textron, Inc. v. N.L.R.B. **687 F.2d 1240 (C.A. 8, Sept. 1982)**
(E's policy of offering special-rated jobs to unreinstated strikers only if none of permanent strike replacements were qualified for and wanted jobs, violative as these job openings were vacancies and required posting under expired contract; effect was to make it less likely that strikers would be reinstated to higher-paying positions and amounted to preference to those who did not strike; such preference was inherently distructive of Ee right eliminating necessity of proving discriminatory motivation of E)

0183-3367 Prima facie case places burden of coming forward on employer

Kay Fries, Inc. **265 NLRB No. 132**
(violation where E failed to rebut GC's *prima facie* case of unlawful discharge motivated by Ee's aggressive U grievance filing, his angered protest of E's enforcement of proof of death rule regarding funeral leave and his threat to go to Bd if he did not receive pay for death leave; E's contended reasons for discharge-foul, obscene, abusive and threatening language to-E held pretextual)

Windsor Industries, Inc. **265 NLRB No. 145**
(violation, where E failed to rebut GC's *prima facie* showing that Ees' U activities were motivating factors in E's decision to lay them off)

Tra-Mar Communications, Inc. **265 NLRB No. 089**
(discharge of principal U adherent, after election where U certified as bargaining representative, for having used profanity towards E, held violative, since prior to discharge of Ee no other Ee had ever been disciplined or discharged for use of profanities, use of profanity common, and E presented no evidence to indicate such conduct had not been previously condoned; E did not meet burden of showing Ee's discharge for using profanity would have occurred in absence of Ee's U activities; *Fibracan Corp.*, 259 NLRB 161 (1981) inapplicable in instant case)

Appleway Chevrolet, Inc. **265 NLRB No. 025**
(discharge of U adherent violative, notwithstanding E had legitimate reason for discharge (i.e. Ees' disparagement of E) where preponderance of evidence shows Ee was terminated for his U activity and another Ee also made disparaging remarks about E and he was not discharged; thus E failed to prove that Ee would have been discharged in absence of U activities)

Mills Patrol Service, Inc. **264 NLRB No. 065**
(discharging valuable Ee immediately after he asked E about obtaining sick benefits, medical coverage and U representation held *prima facie* showing that E was motivated by desire to discourage U activities)

Cardio Data Systems Corp. **264 NLRB No. 011**
(Bd disavowed ALJ's statement that *Wright Line* decision applies only to discharge cases, and that, therefore, E had no burden to prove why it refused to give part-time Ee a full-time job)

Division of Plessey Materials Corporation, Plessey Micro Science, A Wholly Owned Subsidiary of Plessey Inc. **263 NLRB No. 182**
(no violation where E effectively rebutted GC's *prima facie* case that night shift was eliminated in response to U organizing; proof of engineering turnover, inexperience and opposition to night work dealing with new process, was conclusive that decision was made for nondiscriminatory reasons)

Host Services, Inc. **263 NLRB No. 086**
(notwithstanding GC presented *prima facie* case of unlawful motive in Ee discharge, Bd noted that case was weak one and that E had met its burden of persuasion, proving that it would have discharged him in absence of protected conduct where Ee's conduct-cursing supervisor-provided legitimate grounds for discharge and GC did not prove that other Ees were not discharged for similar misconduct and therefore E did not engage in disparate treatment)

Trexler Lutheran Home for Children t/a Frostburg Village of Allegany County Nursing Home **263 NLRB No. 042**
(discharges of U adherents violative since GC made *prima facie showing sufficient to support inference that protected conduct was motivating factor in E's decision and E did not demonstrate that its discharge of any of discriminatees would have taken place in absence of protected conduct*)

L. A. Water Treatment, Division of Chromalloy American Corporation **263 NLRB No. 022**
(discharge of U activist violative, where E failed to rebut GC's *prima facie* showing that he was discharged because of his activities in support of decertification ptn)

Knogo Corporation **262 NLRB No. 171**
(discharge of active U adherent for failing to get permission before leaving work early due to illness, violative where G.C. presented *prima facie* case of unlawful motivation and E offered no evidence to prove that other Ees who failed to obtain permission were similarly discharged and that Ee would have been discharged absent his U activities)

Hillside Bus Corp. **262 NLRB No. 152**
(*To establish violation of Section 8(a)(3) it is incumbent on GC to adduce evidence supporting contention that Ee was unlawfully discharged. Should prima facie case of unlawful discharge be shown, burden of persuasion shifts to respondent to establish lawful reason for discharge. However, in assessing whether prima facie case has been presented, ALJ must view GC's evidence in isolation, apart from respondent's proferred defense. It is only after GC's prima facie requirement has been met that ALJ must consider respondent's defense*)

East Texas Motor Freight **262 NLRB No. 101**
(discharge not violative where, notwithstanding GC made *prima facie* showing that E had unlawful motive for discharging Ee, E proved Ee would have been discharged because of long history of Ee's problems of discussions with other Ees while Ee was working, even in absence of Ee's protected activity; Ee was issued numerous lawful warnings concerning violation of E's lawful policy on solicitation in work areas on E's time)

Sahara-Reno Corporation, d/b/a Sahara Reno **262 NLRB No. 095**
(*prima facie* showing of discrimination by E's closing of gambling casino coffee shop and resultant layoff of its Ees upon decision made after U campaign began, and disparate selection for layoff of such Ees from other food service Ees who had not participated in U activities, not rebutted under *Wright Line*, where although E may have had justification to restructure its food service operations, it was not established that coffee shop would have been closed absent its Ees' U activities)

Sahara-Reno Corporation, d/b/a Sahara Reno **262 NLRB No. 095**
(admission by supervisor that he could not help laid off-Ee because of latter's involvement with U was prima facie showing of unlawfully motivated layoff under *Wright Line* and was not rebutted by E's claim that laid off-Ee was least senior Ee, where such would be true only if Ee's prior service were not considered, and E failed to show that its policy was to not consider prior service in determining seniority)

Sahara-Reno Corporation, d/b/a Sahara Reno **262 NLRB No. 095**
(as required by *Wright Line* analysis, GC made prima facie showing of unlawful motivation for layoff of Ee where E showed antiU animus and awareness of laid-off Ee's U activity by enforcing unlawful no-solicitation rule against him, and showing was not rebutted by E's claim of Ee's poor performance where E had tolerated his work and granted him wage increase a week before layoff)

Bethlehem Steel Corporation **262 NLRB No. 027**
(once GC has established *prima facie case w/i teachings of Wright Line that motivating factor for discharge was to discourage U activities, burden will shift to E to demonstrate that same action would have taken place even in absence of protected activity*)

Coil-Acc, Inc. **262 NLRB No. 012**
(notwithstanding Ee's overt involvement with U and E's unlawful threats and interrogations which supported finding of GC's *prima facie* case of discriminatory discharge, discharge was not violative where E justified discharge on ground that Ee was responsible for series of mishaps when driving truck for E; E would have discharged Ee even if Ee had not engaged in U activities)

Blue Arrow, Inc., a Subsidiary of Kysor Industrial Corporation **261 NLRB No. 135**
(violation where E failed to rebut GC's *prima facie* case that E's real motive in discharging U steward was his U activity)

Grane Trucking Company **261 NLRB No. 059**
(violation, where E failed to rebut GC's *prima facie* case showing that U adherent truckdriver's protected concerted activity was *motivating factor* in E's decision to remove him from run and thereby cause him loss of overtime compensation)

T.H.E. Co. d/b/a L. D. Brinkman Southeast **261 NLRB No. 025**
(violation, where E failed to rebut GC's *prima facie* case of discriminatory discharges)

Danmor Company d/b/a Madison South Convalescent Center **260 NLRB No. 106**
(violation, where E failed to rebut GC's *prima facie* showing that E, by not filling vacant positions for licensed practical nurses (LPNs) and not hiring LPNs, was motivated by desire to discourage membership in U and to erode bargaining unit)

Bedford Farmers Cooperative **259 NLRB No. 165**
(discharge of U activist violative notwithstanding it occurred shortly after E and Ee engaged in argument in front of customers as no prior warning given; several weeks earlier E unlawfully warned activist about his U activities and E's desire to get rid of U. E did not establish that discharge would have taken place even in absence of Ee's protected activities)

Associated Milk Producers, Inc. **259 NLRB No. 131**
(E knowledge of discharged Ee's protected activity and E animus toward U, taken together, are sufficient to establish *prima facie* case that E was discharged in retaliation for U activity)

Magnesium Casting Company **259 NLRB No. 054**
(E rebutted prima facie case of discriminatory layoff of U activist by showing that E had granted his request for transfer notwithstanding Ee's known U activities and that E used customary procedures in selecting 33 Ees for

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layoff for economic reasons, choosing alleged discriminatee as least senior Ee on his shift and E did not replace him with new hire)

Parker Hannifin Corporation **259 NLRB No. 023**

(discharge of U activist not violative where E rebutted GC's *prima facie* case of discrimination; Ee was warned, and then discharged, not because of her U activities, but because of her consistent refusal to stay at her work area and do her job and her defiance of instructions of her supervisors to return to work)

Townsend and Bottum, Inc. **259 NLRB No. 027**

(where motivation for discharge is at issue GC must make a *prima facie* showing that protected activity was motivating factor in E's decision to discharge, and E then has burden of showing that Ees would have been discharged absent that protected activity)

R. P. Scherer (Southeast) Corporation **258 NLRB No. 051**

(Bd upheld ALJ's finding of violation notwithstanding ALJ did not apply precise *Wright Line* analysis where findings were sufficient to prove *prima facie* case against E and E did not rebut this finding)

Dimensions in Metal, Inc. **258 NLRB No. 078**

(violation, where GC made *prima facie* showing that Ees' U activities were motivating factors in E's decision to discharge them and E failed to demonstrate that it would have taken same action against him if they had not engaged in U activities)

C. W. Sweeney & Co. **258 NLRB No. 096**

(discharge of U steward for excessive absenteeism violative where GC established *prima facie* case showing that discharge was motivated by E's antagonism toward her U activities and E failed to rebut this by showing that Ee would have been discharged notwithstanding her U activities; moreover, incident immediately preceding her discharge when she protested E's request that she leave work on grounds that contract did not require her to do so was protected and her conduct was not so outrageous (no disruption of production or any Ee heard her remarks) as to remove her from protection of Act)

Litton Mellonics Systems Division, A Division of Litton Systems, Inc. **258 NLRB No. 084**

(transferring operations allegedly to avoid unionization, not unlawful, where E rebutted GC's prima facie case by showing that E's actions were motivated by legitimate business reasons and that E would have taken such actions even absent Ees' protected activities)

Valley Plaza, Inc. d/b/a Captain Nemo's **258 NLRB No. 076**

(violation, where GC made *prima facie* showing that Ee's U activity was motivating factor in E's decision to discharge him and E failed to demonstrate that it would have taken same action against him had he not engaged in U activity)

Leisure Time Tours, Inc. **258 NLRB No. 128**

(discharge of U adherent violative where GC established that U adherent's activities on behalf of grievance committee and his suspected involvement in U were motivating factors in E's decision to terminate him and E failed to meet its burden of demonstrating that same action would have taken place even in absence of protected conduct)

Jackson Dairy Products Company **258 NLRB No. 172**

(E failed to prove he would have discharged disabled Ee due to his disability but for Ee's known U organizing leadership where E gave inconsistent and conflicting reasons for discharge)

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation **258 NLRB No. 142**

(Bd, contrary to ALJ, refused to assume from U's failure to list dischargee among other alleged discriminatory discharges in its election objections or in original charge that this Ee's discharge did not play role in undermining or dissipation of U's majority status and it subsequent loss of election; E did not meet its burden to show that Ee's termination one day after intensively surveilled U meeting which Ee attended was not widely known fact of significance to unit Ees)

Sav-On Drugs, Inc. **258 NLRB No. 194**

(E's contention that pharmacy manager mishandled incident with potential drug abuser-customer and was insubordinate to his superior in discussing incident failed to rebut prima facie case of discrimination where his contentions were not supported by evidence)

Scenic Manufacturing Company **258 NLRB No. 038**

(discharge of Ee violative where E failed to rebut GC's *prima facie* case that Ee was discharged because of her reference to U which E's vice president considered to be threat since it was *his damn plant and I run it any damn way I want*)

George W. Kugler, Inc. **258 NLRB No. 007**

(E's alleged economic justification for layoffs failed to overcome GC's prima facie showing of discriminatory motive for layoffs where E instituted layoffs immediately upon reinstatement of an Ee after his successful exercise of grievance procedure)

Royal Development Company, Limited **257 NLRB No. 149**

(Bd found no need to decide here whether *Wright Line* test of dual-motivation discharge was appropriate for analyzing 8(a)(4) cases, since, although ALJ used *Wright Line* causation test in analyzing motivation for both 8(a)(3) and 8(a)(4) complaint allegations herein, there was no proof that E relied on any legitimate reason for its refusal to employ charging party)

Royal Development Company, Limited **257 NLRB No. 146**

(where GC made *prima facie* demonstration of discriminatory motivation by showing that E had admitted refusing to hire previously employed Ee for new opening because of his filing of grievances and ULP charge, E failed to meet its burden of showing that it would have acted thus even w/o Ees' filing of grievances and charges where E belatedly contended that Ee was incompetent and vacillated between that and other alleged causes)

Inland Steel Company **257 NLRB No. 013**

(E must demonstrate that same action would have taken place in the absence of protected conduct and E bears burden of explaining its motivation; ALJ can not meet burden of E by supplying explanation which E himself did not advance)

Anja Engineering Corporation **256 NLRB No. 161**

(E failed to rebut *prima facie* case of unlawful motivation in discharge of U activist; technical breach of unwritten rule on medical leave, extensions of which were routinely given, not justification for automatic termination on election day of excellent Ee known by E to be extremely ill)

Pace Oldsmobile, Inc. **256 NLRB No. 111**

(E failed to prove layoff was motivated by economic reasons, notwithstanding its showing of economic justification, where department manager admitted to his assistant that Ee was selected for layoff because he was U instigator)

Heartland Food Warehouse, Division of Purity Supreme Supermarkets **256 NLRB No. 145**

(test in cases alleging violation of Section 8(a)(3) of Act where lawful as well as unlawful motive may exist for discharge, requires GC to make prima facie showing that Ees' protected activities motivated E's decision to discharge them. If the GC is successful, burden of proof is then shifted to E to show by preponderance of evidence that discharges would have occured even in absence of Ees' protected activities)

Southern Alleghenies Disposal Services, Inc. **256 NLRB No. 135**

(violation, where E failed to rebut GC's *prima facie* case of unlawful motivation for layoffs and to demonstrate that it would have taken same action against Ees in absence of their U activities)

Vee Cee Provisions, Inc. **256 NLRB No. 125**

(violation, where E failed to rebut GC's *prima facie* case of discriminatory layoff)

Golden Beverage of San Antonio, Inc. **256 NLRB No. 081**

(subsequent to issuance of ALJ Decision, Bd declared in *Wright Line*, 251 NLRB No. 150, that it was abondoning use of *in part* language; analysis requires determination of *prima facie* case and whether E has affirmative defense that action would have occurred absent protected activities)

Together We Stand Women's Guild Day Care Center **256 NLRB No. 064**

(demotion of Ee violative since E did not rebut GC's *prima facie* case of discrimination)

Wean United, Inc. **255 NLRB No. 134**

(Bd adopted ALJ's finding that E failed to demonstrate that it would not have rehired Ee even absent his protected concerted activity; in so doing, Bd additionally relied on fact that, despite E's assertion that it rehired another Ee because he was a *better* Ee, it was clear that E found other Ee was better because he was not a *troublemaker*, i.e., one who too vigorously engaged in protected concerted activity)

Modesti Brothers, Inc. **255 NLRB No. 126**

(layoffs of Ees after advent of U campaign violative where E did not meet *Wright Line* test and was unable to prove Ees would have been laid off even in absence of their activities on behalf of U)

Steinerfilm, Inc. **255 NLRB No. 017**

(discharge of U adherent, violative, since E did not rebut GC's *prima facie* case of discriminatory discharge where record showed that E's proffered justification for such discharge was pretextual)

Doug Hartley, Inc. **255 NLRB No. 097**

(GC must make prima facie showing sufficient to support inference that protected conduct was motivating factor in E's decision; once this is established burden will shift to E to demonstrate that same action would have taken place even in absence of protected conduct)

Limestone Apparel Corp. **255 NLRB No. 101**

(finding of *pretext* necessarily means that reasons advanced by E either did not exist or were not in fact relied upon, thereby leaving in tact inference of wrongful motive established by GC)

Guardian Industries **255 NLRB No. 096**

(although ALJ heard case before *Wright Line* decision, that analysis was appropriate [illegible] decision herein as it clarified and articulated the analysis to be used in cases turning on E motivation and was not new analysis)

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Gesko & Meyer, Inc. 255 NLRB No. 095
(discharge of striker violative since E did not rebut GC's prima facie case of discriminatory discharge where it was shown that E's justification for such discharge was pretextual)

Webb-Centric Construction 254 NLRB No. 159
(*under test articulated in Wright Line* GC is required to make prima facie showing sufficient to support inference that protected conduct was motivating factor in E's action... once such a prima facie case is established, burden is shifted to E to demonstrate that same action would have taken place even in absence of protected conduct. This shifting of burdens does not shift ultimate burden of GC to establish ULP by preponderance of evidence)

General Motors Corporation 254 NLRB No. 148
(violation where GC made *prima facie* showing that protected conduct was motivating factor in E's decision to administer disciplinary action it took and E did not meet burden of demonstrating that same disciplinary action would have taken place even in absence of protected conduct)

Mark Twain Marine Industries, Inc. 254 NLRB No. 144
(transfer of U adherent not unlawful, where E rebutted *prima facie* case of discrimination by demonstrating that transfer was to separate U adherent from another Ee in order to alleviate their combined efforts to hassle a third Ee)

Kleinert's, Inc. 254 NLRB No. 107
(discharge of Ee, whose substantial U and other protected concerted activity was known to E, for Ee's alleged failure to give notice of absence due to illness as well as his failure to bring doctor's slip, violative where, contrary to E's contentions, E had no daily call-in requirement at time of discharge, Ee gave E requisite advance notice of intent to be absent, E had no fixed requirement for furnishing doctor's excuse as evidence of illness, and no time limit for furnishing such slip on return to work; E knew Ee's absence was due to illness, and such knowledge was normally a significant factor in determining whether to excuse absence w/o doctor's excuse)

The Board of Trustees of City Hospital, Inc. 254 NLRB No. 097
(discharge unlawful where GC made *prima facie* showing that Ee's protected activity was motivating factor in E's decision to discharge her and E did not establish affirmative defense nor did E carry out its burden of showing that its action concerning Ee would have been the same even in absence of protected conduct)

Overnite Transportation Company 254 NLRB No. 011

Clark Manor Nursing Home Corp. 254 NLRB No. 054
(discharge of U adherent, assertedly for his disruptive and offensive behavior, unlawful where GC made *prima facie* showing that Ee's U activity was motivating factor in E's decision to discharge him and E failed to demonstrate that it would have taken same action against him had he not engaged in U activities)

Doral Building Services, Inc. 254 NLRB No. 023

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(under *dominant motive* test it is GC who in addition to establishing *prima facie* showing of unlawful motive, is further required to rebut E's asserted defense by showing that discharge would not have taken place in absence of Ees' protected activities)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(causation test to be followed in all cases alleging violations of Sec. 8(a)(3) or Sec. 8(a)(1) turning on E motivation: (1) GC required to make out *prima facie* showing sufficient to support inference that protected activity was a *motivating factor* in E's decision; and after this is established, (2) burden shifts to E to demonstrate that same action would have taken place in absence of protected conduct)

East Wind Enterprises 250 NLRB No. 101
(burden on E to show layoff was motivated by business considerations where GC had established *prima facie* case of unlawful layoff)

*Pre-Fab Transit Company and Tractor and Trailer
Leasing Co., Inc.* JD-353-82
(discharge of U adherent, violative where E did not rebut GC's *prima facie* case of discrimination against him)

C. Cowles & Company JD-(NY)-52-82
(layoff of active U protaganist because of downturn in sales of automotive parts manufacturer, not violative, since Ee was least senior in E's department being cut back because of depressed sales in automotive industry and E's usual custom was to use departmental seniority w/o *bumping* other Ees; E satisfied burden of proving lawful justificatiion for discharge)

U. S. Reduction Company JD-(ATL)-13-82
(issuance of warning to and demotion of U adherent, violative where GC's *prima facie* case of discrimination was not rebutted by E)

*Furriers Joint Council of New York, UFCW
International Union, AFL-CIO* JD-(NY)-24-82
(changing of U steward's work location to less desirable place in office, not violative where E rebutted GC's *prima facie* case of discrimination by showing that it would have transferred Ee even in absence of her actions as member of U bargaining committee)

*Furriers Joint Council of New York, UFCW
International Union, AFL-CIO* JD-(NY)-24-82
(forcing U steward to take vacation on certain day, not violative where E rebutted GC's *prima facie* case of discrimination by showing that she would have taken vacation at same approximate time even in absence of her actions on behalf of U)

Elder Moving & Storage Company, Inc. JD-129-82
(violation, where GC made *prima facie* showing that Ee's discharge was discriminatorily motivated, and E failed to meet burden of showing that Ee would have been discharged even if he had not engaged in U activity)

Berco Industries, Inc. JD-56-82
(violation, where E failed to rebut GC's *prima facie* case of discriminatory layoff)

Franklin Art Glass Studios, Inc. JD-93-82
(issuance of warning letter to Ee with regard to his absenteeism not violative, since warning letter would have been issued to Ee even if he had nothing to do with U)

Ron Simmons, d/b/a Bell Construction Co., Inc. JD-(SF)-296-81
(discharge of U adherent, violative since E did not rebut GC's *prima facie* showing of discriminatory discharge)

U.S. Postal Service JD-(SF)-269-81
(E's refusal to hire U steward as postal inspector, not violative, notwithstanding factors related to Ee's protected activities were considered by E, where E demonstrated that even absent those impermissable considerations, E's unfavorable action would have been the same)

Innovative Chemical Corporation JD-109-81
(discharge of U adherent violative, since E failed to rebut GC's *prima facie* case which established intense anti-U animus on part of E as being motivating factor for Ee's discharge)

E. M. J. Corporation JD-(ATL)-68-81
(layoff and failure to recall U steward, violative where GC's *prima facie* case of discrimination was not rebutted by E)

Packer Plastics, Inc. JD-(SF)-160-81
(E met burden of showing that Ee would have been terminated even in absence of his U activity where E showed that Ee not only started and left work early contrary to instructions but did so w/o notification, permission, or excuse; moreover he misled E into thinking he had not clocked in early and failed to service important customer by leaving early)

*Foote Mineral Company, Ferroalloys Division,
Graham Plant* JD-268-81
(E showed it would have fired Ee notwithstanding her U activities and filing of complaints with state human rights commission and Bd, where E eliminated switchboard which Ee operated to rid itself of unsatisfactory and troublesome Ee)

American Interstate Freight Lines JD-117-81
(violation, where GC made *prima facie* showing that motivating factor in E's decision to deny him work was his going to U concerning his employment complaints, filing grievances, and endeavoring to enforce collective bargaining agreement; and E failed to demonstrate that it would have denied Ee work had he not engaged in protected activity)

American Interstate Freight Lines JD-117-81
(violation where GC made *prima facie* showing that motivating factors in E's decision to discharge Ee were Ee's taking his grievance to grievance board and endeavoring to enforce work-guarantee provisions in agreement, and his appealing dismissal of his ULP charge; and E failed to demonstrate that it would have discharged Ee in absence of protected activity)

Surgery Center of Sacramento JD-(SF)-93-81
(discharge of U adherents violative, since *motivating factor* in their discharge and in one dischargee's subsequently limited utilization was inferred to be discriminatory and E did not meet its shifted burden of demonstrating that same action would have taken place even in absence of protected conduct)

National King Coal, Inc. JD-(SF)-24-81
(E did not meet *Wright Line* test where it failed to prove that terminated Ees would have been dismissed in absence of protected conduct)

*Domicile Manor, Inc. McCormick Health Centers,
Inc.* JD-(SF)-82-81
(discharge of Ee, violative since E did not rebut GC's prima facie case of discriminatory discharge where it was shown that E's asserted reasons for discharge were pretextual)

E.T.V.B., Inc. JD-(SF)-83-81
(E failed to show that U leader would have been discharged absent his U activity, in view of haste of discharge and infirm reasons advanced by E)

Metropolitan Teletronic Corp. JD-(NY)-12-81
(E's imposition of less favorable conditions on Ees by revoking previously available privilege of entering plant at 8:00 a.m. and remaining inside premises until they commenced work, violative since reason was to discourage Ees' activities on behalf of U; E failed to rebut GC's *prima facie* case of discrimination)

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Metropolitan Telctronic Corp. JD-(NY)-12-81

(E's refusal to reinstate leading U advocate, following her leave of absence, unlawful; E failed to rebut GC's *prima facie* case of discrimination)

Roger Harmon Motors, Inc. JD-(SF)-7-81

(discharge of U adherents, violative, where GC's *prima facie* case of discrimination was not rebutted by E's pretextual economic justifications)

American Federation of State, County and Municipal Employees Council 79; etc. JD-(ATL)-28-80

(where GC established *prima facie* case of discriminatory discharge, Es failed to carry burden of rebutting GC's case, where Es simply seized upon variety of pretexts, most of them stale, in order to give air of legitimacy to their illegal conduct)

Boston Mutual Life Insurance Company v. N.L.R.B. 692 F.2d 169 (C.A. 1, Oct. 1982)

N.L.R.B. v. Transportation Management Corp. 674 F.2d 130 (C.A. 1, Apr. 1982)

(ct remanded case to Bd for reconsideration under *Wright Line* standard where Bd based finding of violation on E's failure of *overcoming* GC's prima facie case; ct has upheld Bd's imposing burden of neutralizing GC's prima facie case on E but to impose a greater burden is outside Bd's authority)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)

(in given discharge case it must be decided whether E acted because of Ee's U affiliation, or whether he acted because of some factor unrelated to Ee's U status)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)

(E in section 8(a)(3) discharge case has no more than limited duty of producing evidence to balance, not to outweigh, evidence produced by GC; E has burden of going forward to meet prima facie case, but not burden of persuasion on ultimate issue of existence of violation; i.e., that there would be no discharge but for E's protected activity)

N.L.R.B. v. Amber Delivery Service, Inc. 651 F.2d 57 (C.A. 1, June 1981)

(E who suspended Ees for taking too long coffee break violated Act where GC made prima facie case that Ees were disciplined for their U activity and E could not rebut presumption because when incident occurred it made no attempt to reprimand Ees, but was more concerned with documenting delay)

N.L.R.B. v. Amber Delivery Service, Inc. 651 F.2d 57 (C.A. 1, June 1981)

(after GC establishes *prima facie* case burden shifts to E to come forward with enough evidence to convince trier of fact that, under the circumstances, there is no longer preponderance of evidence establishing violation)

N.L.R.B. v. Blackstone Company, Inc. 685 F.2d 102 (C.A. 3, Aug. 1982)

(where Bd found violation relying on *Wright Line* stating that E did not sustain burden of proof to show that Ee would have been discharged absent of his having engaged in protected activity after GC showed discriminatory motivation; remanded to Bd for reconsideration under Circuit's decision in *Behring International* No. 81-1937, which holds once GC has established prima facie case of discriminatory discharge, E should rebut this with evidence of legitimate business reason for its action but ultimate burden of proof does not shift from GC to E and E doesn't need to show lack of impermissible motive)

Behring International, Inc. v. N.L.R.B. 675 F.2d 83 (C.A. 3, Apr. 1982)

(Bd's *Wright Line* test represents substantial improvement over its prior practice and, except for its shifting burden of persuasion, meets with ct's approval; once GC has established *prima facie* case of discriminatory discharge, E should rebut this with evidence of legitimate business reason for its action; ultimate burden of proof does not shift from GC and does not devolve upon E at any stage)

Behring International, Inc. v. N.L.R.B. 675 F.2d 83 (C.A. 3, Apr. 1982)

(case remanded to Bd for reconsideration in light of ct's opn that Bd misallocated burden of proof; Bd held that E failed to substantiate its economic defense because it could not justify timing of discharges; relevance of that observation was not clear from Bd's decision since lay-offs occurred soon after election and, therefore, could not have affected it; E did articulate legitimate business reason for discharges, and GC did not prove that E's real motive was anti-U animus)

N.L.R.B. v. Robin American Corporation 654 F.2d 1022 (C.A. 5, 1981)

(ct held that E did not rebut prima facie case that E closed department and discharged Ees for anti-U motives)

Republic Die and Tool Company v. N.L.R.B. 680 F.2d 463 (C.A. 6, June 1982)

(*Wright Line* need not be applied where ALJ found no legitimate reasons for Ees discharge and E was retaliating against Ee for filing grievance)

Borel Restaurant Corporation, d/b/a Rusty Scupper Restaurants v. N.L.R.B. 676 F.2d 190 (C.A. 6, Apr. 1982)

(discharge of U organizer, assertedly for violation of no-drinking rule, violative, where record clearly established that E failed to carry burden of demonstrating that discharge would have occurred in absence of Ee's U activity)

N.L.R.B. v. Gibraltar Industries, Inc. and Case, Inc. 653 F.2d 1091 (C.A. 6, July 1981)

(prima facie case of unlawful discriminatory discharge proved where complaints about Ee's work began to materialize only after she continued to express her support for U in upcoming election which was further followed by series of warnings, suspension and discharge; ALJ properly determined that there was insufficient evidence of legitimate motivation for discharge)

Charge Card Association v. N.L.R.B. 653 F.2d 272 (C.A. 6, July 1981)

(GC did not make out prima facie case that E unlawfully suspended Ees for walkout protesting working conditions since Ees called E and falsely stated they were sick. In view of high absenteeism that day, E had right to demand Ees support their assertion of illness even if E suspected Ees were protesting working conditions. Had Ees said they were going to be absent in protest of working conditions, different result would obtain)

N.L.R.B. v. Consolidated Freightways Corporation of Delaware 651 F.2d 436 (C.A. 6, Mar 1981)

N.L.R.B. v. Webb Ford, Inc. 689 F.2d 733 (C.A. 7, Sept. 1982)

(ALJ erred when he imposed on E burden of demonstrating that decision to discharge Ees would have been same in absence of protected conduct, as this places burden of persuasion on E; E need only neutralize prima facie case by asserting legitimate reason for discharges; then burden of demonstrating by preponderance of evidence that reason is pretextual remains with Bd)

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)

(If a causal relationship between discharge and protected activity is established, E is responsible under Act unless he sustains burden of proof. Furthermore, E's explanation need not be accepted if there is a reasonable basis for believing explanation is pretext for retaliatory action)

Peavey Company v. N.L.R.B. 648 F.2d 460 (C.A. 7, May 1981)

(discharge not violative where E proved Ee would have been discharged for cause notwithstanding she engaged in U activity especially in light of fact that she went to U after she received earlier disciplinary warnings)

N.L.R.B. v. Brooks Cameras, Inc. 691 F.2d 912 (C.A. 9, Nov. 1982)

(when discharge motivated by both legitimate business and anti-U animus, or when business reasons may be pretext for termination motivated by hostility toward U, ULP may be found only if anti-U animus was moving cause of discharge. Bd must make showing that U activity was motivating factor; then burden shifts to E to establish that terminations would have occured absent protected U activity)

Doug Hartley, Inc. v. N.L.R.B. 669 F.2d 579 (C.A. 9, Feb. 1982)

(discharge of crew not unlawful, where reasons were insubordination and incompetence and discharge would have occurred regardless of fact that majority of crew had signed U authorization cards)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse 647 F.2d 905 (C.A. 9, June 1981)

(E failed to meet his burden under *Wright Line* where he contended that he decided not to employ engineers because of their poor work attitude, added that they were overpaid and unnecessary, and told one of them that he could not hire him because of *technicalities*; E's case was weakened by asserted justifications that were shifting and unreliable)

N.L.R.B. v. International Medication Systems, Ltd. 640 F.2d 1110 (C.A. 9, Apr 2, 1981)

(when motives are mixed *improper motive must be shown to be dominant one L'eggs Products, Inc. v. NLRB* 619 F.2d. 1337; this test adopted by Bd in *Wright Line* 250 NLRB No. 150)

0183-6700 Sufficiency of evidence

United Broadcasting Company of New Hampshire, INc. d/b/a WMUR–TV 253 NLRB No. 103

(discharge allegedly for protected activity not unlawful, since GC failed to make *prima facie* showing sufficient to support inference that Ee's protected activity was motivating factor for discharge; only evidence in regard to Ee's protected activity is that he had at one time been employed at unionized operation, and there is no showing of E hostility or animus toward U)

0183-6701 Generally

0183-6701—Cont.

Cutting, Inc. **255 NLRB No. 076**
(if record sustains allegations of unlawful discrimination against discharged Ees, their testimony is not a sine qua non for relief under Act)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(if Bd makes finding of discriminatory discharge, ct must enforce finding if reasonable person might have concluded from entire record that improper motive moved E to discharge Ee; but if ct decides that reasonable person could only have either concluded that proper motives moved E to discharge or been unable to conclude whether proper or improper motives moved E, ct must refuse to enforce Bd's finding of discriminatory discharge)

N.L.R.B. v. Alumina Ceramics, Inc. **690 F.2d 136 (C.A. 8, Oct. 1982)**
(under standards to be followed by Bd in discharge cases involving evidence of both U and non-U motivation for discharge, GC has burden of proving that, but for U activities or membership, Ee would not have been discharged, and such burden can be satisfied by direct or circumstantial evidence; and Bd is permitted to draw reasonable inferences and choose between conflicting views of evidence, but it cannot rely on suspicion, surmise, implication, or plainly incredible evidence)

0183-6712 Circumstantial evidence

Marathon Letourneau Company, Longview Division **256 NLRB No. 054**
(while knowledge of U activity is not to be lightly enferred, direct evidence of knowledge corroborated by credible witnesses is not required to show knowledge, since circumstantial evidence may supply the predicate for finding knowledge)

0183-6712-2500 Direct evidence rarely obtainable and not essential

Townsend and Bottum, Inc. **259 NLRB No. 027**
(direct evidence of discriminatory motivation is not necessary to support a finding of discrimination, and such intent may be inferred from record as a whole)

Charles Doen d/b/a Hopp Topp Mfg. Co. **250 NLRB No. 154**
(direct evidence of discriminatory motivation may be inferred from record as whole; economic justification no defense to discriminatory discharges or lay offs if selection of those Ees effected was because of their U activities)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**

Irwin County Electric Membership Cooperative **247 NLRB No. 195**
(direct evidence of discriminatory motivation is not necessary to support finding of discrimination and such intent may be inferred from record as a whole)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(E's knowledge of Ees' U activities and sympathies may be inferred from circumstantial evidence and may be just as reliable as direct evidence)

N.L.R.B. v. Proler International Corporation **635 F.2d 351 (C.A. 5, 1981)**

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(State of mind of E officials who make decision to discharge Ee reflects motive for discharge; GC will rarely be able to produce direct evidence of official's state of mind and therefore GC can only produce circumstantial evidence from which Bd can infer finding of improper motive)

N.L.R.B. v. Wilhow Corporation, d/b/a Town and Country Supermarkets **666 F.2d 1294 (C.A. 10, Dec. 1981)**
(to prove knowledge of U activity Bd did not need to prove *beyond a reasonable doubt* that E was aware of Ee's involvement where record allows fair inference of discriminatory motivation. Circumstantial evidence of E's knowledge and motive sufficient to prove Sec. 8(a)(3) violation)

0183-6725 Inference of discrimination

Larid Printing, Inc. **264 NLRB No. 040**
(where E presented evidence that discharge of Ee was for excessive absences and lateness, particularly in view of fact Ee's U activities limited to signing authorization card, its defense was accepted, but adverse inference, drawn from E's refusal to present time cards of other Ees which might show that Ees with equally bad attendance records not discharged, did not aid GC since adverse inference may not be used as substitute for affirmative evidence in establishing prima facie case; therefore no link to show that discharge was for U activities)

Aker Plastics Company, Inc. **262 NLRB No. 147**
(inference of unlawful motivation can be raised if proffered reason for discharge is found to be false)

Townsend and Bottum, Inc. **259 NLRB No. 027**
(direct evidence of discriminatory motivation is not necessary to support a finding of discrimination, and such intent may be inferred from record as a whole)

The Evening News Association **258 NLRB No. 020**
(in absence of evidence of animus or hostility towards Ee based upon Ee's U activity, discriminatory motive may not be inferred)

Stewart-Warner Corporation **253 NLRB No. 016**
(unlawful motive may be inferred from falsity of stated motive; however, such inference is justified only where motive sought to be concealed by false reasons is unlawful)

Nevada County Publishing Co., d/b/a The Union **251 NLRB No. 143**
(inference of discriminatory motive warranted where E would not reinstate Ee allegedly because E would no longer get along with Ee after Ee threatened ct action against E and, when considering how valuable Ee was to E, E would not so summarily have allowed Ee to leave had it not been for certain knowledge that E had of his very recent U activities)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(inference of discriminatory motive for Ees' discharges warranted in view of closer scrutiny of Ees' work performance which followed closely in time on advent of Ees' U activities and resulted in sudden and constant criticism of their work, numerous threats of discharge, and close timing of discharges in relationship to Ees' U activities)

The Halloran House **249 NLRB No. 113**
(discharge violative, where E had knowledge of Ee's U activity, acted immediately against Ee w/o warning, and failed to provide any plausible explanation for its conduct; under circumstances, it was proper to infer that E's motive was discriminatory)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(trier of fact may infer motive from total circumstances; if he finds stated motive for discharge is false, he can infer motive is unlawful where surrounding facts tend to reinforce such inference)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(fact that GC bears burden of persuading Bd improper motive moved E to discharge Ee means that Bd must find against GC if its collective mind is equipoise on question whether discharge stemmed from proper or improper motive)

0183-6750 Insignificance of discriminatee in union evidence of lack of prohibited motive

Larid Printing, Inc. **264 NLRB No. 040**
(where E presented evidence that discharge of Ee was for excessive absences and lateness, particularly in view of fact Ee's U activities limited to signing authorization card, its defense was accepted, but adverse inference, drawn from E's refusal to present time cards of other Ees which might show that Ees with equally bad attendance records not discharged, did not aid GC since adverse inference may not be used as substitute for affirmative evidence in establishing prima facie case; therefore no link to show that discharge was for U activities)

Service Garage, Inc. **247 NLRB No. 115**
(layoff of Ee in small unit where all Ees had signed U authorization cards violative, where E's U animus inferred from having unlawfully denied wage increase and timing of layoff, as layoff of any 1 Ee at time of U activity would have chilling effect on U activity of remaining Ees; notwithstanding laid off Ee was not U activist)

0183-6775 Union activities of employee plus discharge or discipline do not alone make out a case of prohibited discrimination

Standard Motor Products, Inc. **265 NLRB No. 068**
(in finding discharge of Ee not unlawful, consideration was given to fact that E was not unhappy to be rid of Ee because of his prior U activity; fact that Ee is *persona non grata* does not *per se* establish that discharge was discriminatory where Ee gives valid independent reason for discharge by engaging in conduct for which he would have been discharged anyway; and, here, Ee committed dischargeable offense under E's rules, no ameliorating or mitigating circumstances existed, there was no evidence of disparate application of rule, and Ee had been warned about offensive conduct involved herein)

East Texas Motor Freight **262 NLRB No. 101**
(discharge not violative where, notwithstanding GC made *prima facie* showing that E had unlawful motive for discharging Ee, E proved Ee would have been discharged because of long history of Ee's problems of discussions with other Ees while Ee was working, even in absence of Ee's protected activity; Ee was issued numerous lawful warnings concerning violation of E's lawful policy on solicitation in work areas on E's time)

Allied Eastern States Maintenance Corporation, A Wholly-Owned Subsidiary of Allied Maintenance Corporation **261 NLRB No. 167**
(discharge not violative, since E, by preponderance of evidence met burden of demonstrating that Ee would have been discharged even in absence of protected conduct of advising Ees as to their U rights)

Fibracan Corp. **259 NLRB No. 014**
(discharge of leading U supporter because plant manager believed she was responsible for malfunctions and breakdowns of production machinery not violative, since, facts of case failed to establish hostility or opposition to U

0183-6775—Cont.

strong enough to conclude that E was willing to violate law by discharging Ee to keep U out of plant)

Gulf Envelope Company **256 NLRB No. 058**
(*while discipline may be extreme it does not follow ascribed reason for discharge is pretextual*)

Muncie Newspapers, Inc. **JD-482-81**

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**
(fact discharge of U steward was affected or motivated in part because he had filed charges with Bd and other government agencies falls short of holding that he was discharged because of these activities; *where Ee's discharge is prompted by concurrent reasons, some permissible and some not, in order to support ruling of ULP Bd must find permissible reason proferred by E is merely pretext and that in fact Ee was disciplined because of anti-U sentiment*)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**
(mere U membership or concerted activity does not insulate Ee from being disciplined for just cause, and when E has come forward with evidence of legitimate and substantial business justification for disciplining Ee, burden is on Bd not simply to declare disciplinary action pretextual because there is some evidence of improper motive, but to find *an affirmative and persuasive reason why E rejected the good cause and chose a bad one;* in carrying such burden, Bd must produce substantial evidence of anti-U motivation)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(discharge of Ee, not unlawful, notwithstanding E's knowledge that Ee had filed grievance seeking higher wages prior to discharge, where Ee had falsified time card, breach of E's rules for which E had never used any penalty less severe than discharge, and had done unsatisfactory work)

0183-6787 While activity no bar to discharge for legitimate reasons, it may disclose union animus when reasons given do not ring true

Gulf Envelope Company **256 NLRB No. 058**
(where Respondent's motivations are mixed, Bd had held that legal effect of conduct is same as though illegal reason for its action was only operative reason; violation of Act is established where despite valid reason for discharge evidence shows that E has resorted to that reason as basis for building case against Ee due to his U activities)

Dixie Machine Rebuilders Inc. **248 NLRB No. 116**

Westinghouse Electric Corporation **JD-(ATL)-88-81**
(discharge of Ee, U president, for varied reasons all of which proved invalid, held violative, since E did not demonstrate that same action would have taken place even in absence of protected conduct; real reason was E's attempt to rid itself of *thorn in (its) side.*, namely, U president)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(*but for* standard requires determination by Bd, based on all evidence, that, wholly apart from alleged illegal motive, E would (or would not) have discharged Ee for conduct ascribed to him by E)

0183-6789 Lack of employer's specific knowledge of individual employees and differences in union activity between individual employees immaterial

Hillside Bus Corp. **262 NLRB No. 132**
(discharge of Ee who refused to sign authorization card for U favored by E, not unlawful, notwithstanding E's unlawful threat to discharge Ee if he did not sign card, as other Ees also threatened but were not subsequently discharged, in view of fact refusal to sign card only protected activity of Ee known to E, and absent evidence E had knowledge of Ee's support for another U; further, E has met burden of showing it would have discharged Ee absent protected activity in view of limited nature of only protected activity of which E was aware and prior warnings and complaints regarding Ee's performance)

La Habra Dodge, Inc. **251 NLRB No. 001**
(discharge of Ee mechanic at automobile dealer for doing faulty work, not unlawful, where E had no knowledge of Ee's U activities)

Service Garage, Inc. **247 NLRB No. 115**
(layoff of Ee in small unit where all Ees had signed U authorization cards violative, where E's U animus inferred from having unlawfully denied wage increase and timing of layoff, as layoff of any 1 Ee at time of U activity would have chilling effect on U activity of remaining Ees; notwithstanding laid off Ee was not U activist)

Wright Plastic Products, Inc. **247 NLRB No. 101**
(discharge of Ees who signed U authorization cards violative and lack of specific evidence of E's knowledge of individual Ees or difference in U activity between individual Ees is immaterial where discharges occurred because of E's desire to frustrate and dissipate Ee support of U)

N.L.R.B. v. Willow Corporation, d/b/a Town and Country Supermarkets **666 F.2d 1294 (C.A. 10, Dec. 1981)**
(to prove knowledge of U activity Bd did not need to prove *beyond a reasonable doubt* that E was aware of Ee's involvement where record allows fair inference of discriminatory motivation. Circumstantial evidence of E's knowledge and motive sufficient to prove Sec. 8(a)(3) violation)

1700 UNION OR OTHER PROTECTED UNION ACTIVITY OF DISCRIMINATEE

1701 GENERALLY

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**
(Bd held it was not necessary for ALJ to detail at length either the U activity of any particular discriminatee or E's knowledge of discriminatee's personal involvement in U activity, where all Ees were U members; E, who was successor E, desired a turnover of staff consisting of predecessor's Ees it initially hired as it considered such staff pro-U and wished to dissipate strength of pro-U sentiment; E took numerous adverse actions with that object in mind and such actions were part of pattern to reduce U support)

1717 ACTIVE PARTICIPATION IN UNION ACTIVITIES

1717-0100 Generally

N.L.R.B. v. South Central Bell Telephone Company **688 F.2d 345 (C.A. 5, Oct. 1982)**
(*membership as used in Section 8(a)(3) refers not only to Ees basic decision whether to join U but also his decision as to level of his participation in U and U activities*)

1717-1000 Officers or leaders in union affairs

Champion Parts Rebuilders, Inc., Northeast Division **260 NLRB No. 098**
(issuance of warning for talking on job to U vice-president and another Ee violative notwithstanding thay were talking for prolonged time and E had past practice of warnings for such conduct where E observed conversation for a time and never ordered Ees back to work but merely issued warning notices in retaliation for vice-president status and activities)

Newport News Shipbuilding & Dry Dock Company **234 NLRB No. 043**
(discharge of Ee after his election to U office and increased activity regarding safety conditions violative)

Metropolitan Edison Company **252 NLRB No. 147**
(disciplining U officers more severely than other Ees for participating in sympathy strike in violation of no-strike clause, violative)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(reassignment of U officer from machine operation where her work and performance were satisfactory, to bench work which was distasteful to her, held violative, where purposes was to discourage Ee so she would quit)

Westinghouse Electric Corporation **JD-(ATL)-88-81**
(discharge of Ee, U president, for varied reasons all of which proved invalid, held violative, since E did not demonstrate that same action would have taken place even in absence of protected conduct; real reason was E's attempt to rid itself of *thorn in (its) side.*, namely, U president)

Public Service Company of New Mexico **JD-(SF)-157-80**
(discharge of former U officer, not unlawful, where discharge not motivated by his U activities and was not for protected activity since his actions, statements and letters which precipitated discharge were not concerted nor for object of enforcing contract)

N.L.R.B. v. Triangle Sheet Metal Works, Inc. **607 F.2d 998(T) (C.A. 2, 1979)**
(layoff of valuable Ee who was campaign manager for candidate for U president whom E opposed violative notwithstanding economic necessity for layoff since Ee's name not on original layoff list but his name was substituted thereon by president)

Metropolitan Edison Company v. N.L.R.B. **663 F.2d 478 (C.A. 3, Nov. 1981)**
(ct enforced Bd order where E disciplined U officers more harshly than other Ees who participated in illegal work stoppage since (1) agreement did not expressly impose duty on U officers to attempt to halt illegal work stoppage, and (2) ct is not bound by two previous arbitral interpretations of no-strike clause placing greater responsibilities on U officials to take affirmative steps to end illegal work stoppage; furthermore, substantial evidence supports Bd finding that U officers were not leaders of strike)

N.L.R.B. v. Armour-Dial, Inc. **638 F.2d 51 (C.A. 8, 1981)**
(suspension of 3 members of U executive committee who refused to unload truck of company which U had requested E to c/d/b not violative as their actions violated Section 8(b)(4) and their contract; committee members were disciplined not because of their illegal activities)

1717-1900 Conspicuous in unionizing effort

1717-1900—Cont.

Tre-Mar Communications, Inc. **265 NLRB No. 089**
(E, who had demonstrated anti-U animus prior to U, issuing letter to leading U adherent which warned her that if she continued to disregard E's (unlawful) work rules, she would be summarily discharged held violative where letter could only be explaned as retaliatory and discriminatory measure against Ee as leading U adherent)

E. R. Carpenter Co. **260 NLRB No. 091**
(E's failure to recall laid off U adherent during general recall not violative where E followed routine recall procedures and Ee was not home to receive phone call requesting return to work; moreover, fact that Ee was one of best workers not relevant where past work performance had no bearing upon order of recall)

Transportation Management Corporation **258 NLRB No. 061**
(refusal to hire known U organizers for summer months and also for refusal to continue their regular employment in fall)

The Swingline Company; Speedmails, Inc. **256 NLRB No. 119**
(discharge of very active U adherent not violative where E proved cause for discharge was Ee's continual lateness and absenteeism, moreover, E was very lenient with U campaigners regarding pro-U activities on work time)

Wyman-Gordon Company **252 NLRB No. 168**
(discharge of U adherent for failing to notify E that he did not attend classes for which he was subsequently paid, violative, where E's record keeping difficult to understand, Ee offered to return unearned money to E which offer refused and anti-U attitude of E)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(failure to promote leading U proponent known to E and advising him he was not eligible for promotion until he became more versatile in his work held violative where E assigned Ee only one type of work (welding) and two full time Ees were needed to perform work which discriminatee had performed with only part-time assistance)

1717-2400 Grievance protest or acting as grievance committeeman

Rickel Home Centers, Division of Supermarkets General Corporation **262 NLRB No. 93**
(discharge of U steward who was attempting to press grievance, not unlawful, where steward refused to discuss grievance with immediate supervisor as provided in grievance procedure, and instead of obeying order to return to work by supervisor upon steward's refusal to discuss grievance with him, left area to discuss with overall supervisor and vented intense anger in abusive language)

Volkswagen of America, Inc. **261 NLRB No. 036**
(violation, where Ee was discharged because of his status as U committeeman, and discharge was not justified by E's mistaken belief that U committeeman had actively encouraged Ees to participate in illegal walkout where he had merely apprised them of dangerous situation developing outside the plant, thus enabling them to assess situation facing them at end of work day while he himself stayed on the job; rather than being encouraged to leave, Ees also remained on the job)

Consolidated Freightways Corporation of Delaware **257 NLRB No. 177**
(issuing warning letter to U-steward for spending too much work time on handling Ee grievances violative where contract provided U-steward with *reasonable* time and 1 hour per day not unreasonable considering large number of Ees)

Dravo Corporation, Engineering Works Division **255 NLRB No. 078**
(where E had policy of assigning disabled Ees to light duty, its refusal to recall grievance committee Chairman to such work violative when in retaliation for his active pursuit of his duties)

Ford Motor Company **251 NLRB No. 066**
(denial of promotions for Ees to available supervisory positions where they had filed grievance, contemplated further legal action and filed charge with Bd, unlawful)

Pullman Trailmobile, A Division of Pullman Incorporated **249 NLRB No. 059**
(transfer of U steward to another job because of his conduct in filing grievances, unlawful)

General Motors Corp. v. N.L.R.B. **616 F.2d 967 (C.A. 6, 1980)**
(Bd's holding that E's suspension of U district committeeman for his use of grievance procedure was violative is supported by substantial evidence, notwithstanding contention committeeman abused grievance procedure by taking too much time discussing grievance with grievant and refusing to comply with request that he submit this dispute on abuse of procedure to grievance procedure)

N.L.R.B. v. Pacific Coast Utilities Service, Inc. **638 F.2d 73 (C.A. 9, Apr. 1980)**
(shop steward's advising Ees not to sign warning slips presented by another company's foreman until he could discuss the matter with his supervisor held protected, and discharge therefor unlawful)

1717-3300 Demanding compliance with bargaining contract

O'Dovero Construction, Inc. **264 NLRB No. 101**
(layoff and failure to recall Ees who were members of craft U, unlawful, where motivated by Ees, complaining to management and U about E's failure to abide by contract in regard to coffee breaks, overtime pay and increased payrate prescribed therein, and performance of their work by members of another U, rather than for business reasons, in view of amount of work to be done and hiring of other Ees during layoff, and absent evidence laid off Ees less efficient than other Ees)

Vincent Brass & Aluminum Co. **264 NLRB No. 070**
(layoff and refusal to reinstate Ees, unlawful, since for assertion of their contractual right to job bidding procedure rather than for economic reasons, in view of E's U animus established by other violations and where layoffs occurred while orders increasing and overtime worked by other Ees during layoff, notwithstanding layoff in accord with contract and fact those laid off included Ees who had not attempted to assert their rights under contract)

Drury Construction Co. **260 NLRB No. 093**
(layoff and failure to recall Ee who tried to get E to comply with collective bargaining agreement requiring it to assign certain work to Ee members of Teamsters violative)

W.J. Lewis Corp.—W. Lewis—J. Lewis, a Partnership **257 NLRB No. 076**
(discharge of unreferred Ees whom E had hired directly, rather than through exclusive hiring hall of U, at below contract rate when one of the Ees sought U's assistance in obtaining contract rate; unlawful)

Western Marine Electronics, Inc. **257 NLRB No. 057**
(discharge of Ee who had joined U and filed grievance contending he was covered by bargaining contract and was not receiving contract wage or benefits, unlawful, since motivated by hostility towards Ee and unionization in non-U sector of plant, in view of E's other ULP's including transfer of Ee, recent good evaluation of Ee, and suddeness of discharge while Ee's assignment incomplete and prior to end of pay period)

Harper & Arterburn Co., Inc. **255 NLRB No. 105**
(discharge of Ee who enlisted aid of U to get steward appointed for job violative)

Sullivan Transfer Co. **247 NLRB No. 117**
(E's change in method of assigning work which resulted in constructive discharge of Ee violative where motivation was U's demand for compliance with wage provisions of contract and not presence of jurisdictional dispute)

Stearns-Roger, Inc. **JD-10-81**
(layoff of qualified pipefitter assertedly because his production was low held violative where other pipefitters were hired from U hall one week after Ee was laid off and precipitating cause of layoff was Ee's complaint that lifting of iron grates was being done by pipefitters rather than ironworkers which work Ee, and others considered to be w/i jurisdiction of ironworkers)

1717-3400 Participation in contract negotiations

Northwestern Dodge, Inc. **258 NLRB No. 118**
(layoff of two salesmen not violative notwithstanding one of them active participant on U negotiating team and engaged in verbal altercation with E about negotiations where economic reasons for layoffs were substantiated, Ees were never replaced, and E followed terms of expired contract by selecting two least senior and productive Ees for layoff)

1717-3600 Participation in sympathy strike

St. Regis Paper Company **253 NLRB No. 162**
(suspension or discharge of sympathy strikers for refusing to cross picket line at own E's premises in violation of no-strike clause not unlawful, where overall bargaining history pointed decisively to conscious waiver of right to engage in sympathy strikes during contract period)

1717-5700 Participation in Board proceeding

Reeves Southeastern Corporation **256 NLRB No. 090**
(discharge of Ee for testifying against E at Bd hearing violative)

Ledford Construction Company, Inc. **251 NLRB No. 193**
(suspending Ees who testified against E at Bd hearing while permitting Ees who testified favorably to work)

Don Pizzolato, Inc. **249 NLRB No. 136**
(discharge for participation in conference on representation ptn held at Bd office violative)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(violations where E transferred U adherents who had testified at Bd hearing to store in less desireable location, reduced their working hours to times when they could not use public transportation, added onerous janitorial duties and then discharged them)

1717-7100 Distribution

G. H. Bass & Co. **258 NLRB No. 036**
(having Ee followed by head of plant security who removed pro-U letters Ee was posting on bulletin boards in response to anti-U letter of E and giving Ee written reprimand with warning, unlawful, where Ees had been

1717-7100—Cont.

allowed to post other materials; E's contention that permission to post letter denied since it would generate controversy deemed pretextual in view of E's expressed U animus and fact letter not offensive, defamatory or opprobrious)

G. H. Bass & Co. **258 NLRB No. 036**
(reprimanding Ee for distribution of pro-U letter in production area during lunch break in alleged violation of rule prohibiting distribution in work areas, unlawful, where production shut down for lunch break and all Ees off clock since in these circumstances production area at lunch break becomes non-working area, and absent resulting litter problem or impact on production)

Reeves Southeastern Corporation **256 NLRB No. 090**
(discharge of Ee for passing out U authorization cards violative)

Guardian Industries **255 NLRB No. 086**
(laying off two of four Ees in department violative, as decision to reduce department size was contemporaneous with Ee's request to post U poster on bulletin board)

Texas Instruments Inc. v. N.L.R.B. **637 F.2d 822 (C.A. 1, 1981)**
(discharge of U adherents for violation of E's valid security rule not violative where: Ees published E's confidential wage survey report which Ees had obtained outside of normal course of employment (each page of report was stamped strictly private), Ee manual set forth E's rule against disclosure of confidential information; moreover, Ees' organizing activity not dependent on access to confidential information)

1717-7200 Solicitation

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(warning Ee for failure to comply with unlawful overly broad no-solicitation rule which was not clarified to permit solicitation during break times and Ee had been soliciting only on his own time, violative)

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**
(ct upheld Bd's determination that Ee was unlawfully discharged specifically for passing out authorization cards and not because Ee breached company's no-solicitation rule; furthermore, instances of solicitation for non-U purposes proscribed by rule were tolerated at plant)

1717-7600 Strike leadership

1717-7625 Leadership in spontaneous work stoppage

Richmond Tank Car Company **264 NLRB No. 025**
(discharging U steward alone of 40 Ees who walked out to protest inadequate protection against runaway freight cars and toxic fumes because he *induced* walkout through his *leadership position in the Union*, unlawful notwithstanding no-strike clause, since walkout in good faith because of abnormally dangerous working conditions by express terms of Sec. 502 does not constitute a strike and discipline for violating no-strike clause violated 8(a)(3) where imposed on a leader because of his U status as steward)

Consolidation Coal Company **263 NLRB No. 188**
(discharging U officers because they participated in unauthorized work stoppage with other rank-and-file Ees based on their status as U officers, violative)

American Steel Works **263 NLRB No. 108**
(where ALJ found that prior U activity; such as, filing grievances, and filing charge with Bd was cause of Ee's discharge and that absent that activity he would not have been discharged for leading wildcat strike, Bd found that discharge was improperly motivated under *Wright Line*)

Guy F. Atkinson Company and Wright-Schuchart-Harbor, A Joint Venture **251 NLRB No. 043**
(discharge and refusal to reemploy U steward for causing walkout in violation of no-strike clause, not unlawful)

N.L.R.B. v. Armour-Dial, Inc. **638 F.2d 51 (C.A. 8, 1981)**
(suspension of 3 members of U executive committee who refused to unload truck of company which U had requested E to c/d/b not violative as their actions violated Section 8(b)(4) and their contract; committee members were disciplined not because of their illegal activities)

Ervin Szewczuga and Gerald Treichel v. N.L.R.B. **686 F.2d 962 (C.A.D.C., Aug. 1982)**
(discharge of U stewards rather than less severe discipline imposed on rank and file Ees for participation in unprotected walkout, violative, where stewards were not leaders of strike nor was there reasonable basis for E to believe they were leaders, and bargaining agreement imposed no special duty on stewards in connection with forbidden work stoppage; further, not clear that arbitrator's decision upholding discharges based on contract interpretation of required higher duty of stewards)

1717-7680 Non-ULP strike

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 039**
(E who told striking Ees that it was firing them, handed out *final paychecks* in middle of pay period and ordered them off premises because they were no longer Ees, violated Act; notwithstanding Ees later met with E, terminated strike and returned to work)

1717-8100 Refusal to assist company or favored union

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for numerous deficiencies where deficiencies were longstanding and discharge took place notwithstanding E's continuing need for Ees with gun permit)

1717-9800 Union stewardship

Haco Engineering Company **265 NLRB No. 002**
(refusal to hire former Ee because of his activity as U steward, violative)

O'Dovero Construction, Inc. **264 NLRB No. 101**
(layoff of Ee who was not U adherent to cover up unlawfulness of layoff of U adherents and motivated by E's desire to reach and layoff steward who, pursuant to agreement, had to be laid off last)

Rickel Home Centers, Division of Supermarkets General Corporation **262 NLRB No. 93**
(discharge of U steward who was attempting to press grievance, not unlawful, where steward refused to discuss grievance with immediate supervisor as provided in grievance procedure, and instead of obeying order to return to work by supervisor upon steward's refusal to discuss grievance with him, left area to discuss with overall supervisor and vented intense anger in abusive language)

Artley Incorporated **260 NLRB No. 107**
(U steward who asserted good faith claim for premium pay under contract provision did not forfeit protection of Act when claim turned out not to be covered by contract and discharge violative)

Champion Parts Rebuilders, Inc., Northeast Division **260 NLRB No. 098**
(issuance of warning to U steward for use of profane language violative where issued in retaliation for having filed grievance over supervisor's alleged opening of U mail)

Clarklift of St. Louis, Inc. **259 NLRB No. 002**
(discharge of U steward for instructing Ees to falsify work tickets and using his office as steward to gain special favors for himself not violative where sole cause for discharge was unprotected activity of steward)

Consolidated Freightways Corporation of Delaware **257 NLRB No. 177**
(issuing warning letter to U-steward for spending too much work time on handling Ee grievances violative where contract provided U-steward with *reasonable* time and 1 hour per day not unreasonable considering large number of Ees)

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising **257 NLRB No. 022**
(discharge of Ee for volunteering to be U steward violative)

Hamilton Die Cast Company, Inc. **254 NLRB No. 113**
(discharging 2 Ees on same day for taking leave w/o written notice held violative as other Ees have not been similarly terminated; E's motivation was to penalize them for concerted activities as one Ee filed OSHA charge and other Ee was U steward whose performance E was critical)

Miller Brewing Company **254 NLRB No. 024**
(imposition of more severe discipline on U stewards than that imposed on rank-and-file Ees for participation in unprotected walkout, violative, where record showed that stewards were not at *fault* for walkout but attempted to persuade Ees to remain on job; *Indiana & Michigan Electric Company* characterization of steward's *greater responsiblity and hence greater fault* inapplicable)

South Central Bell Telephone Company **254 NLRB No. 032**
(imposing longer suspensions on U stewards, who participated in sickout in violation of no-strike clause, than on other Ees who also participated held violative, since there was no evidence to indicate that U stewards engaged in activities different from those engaged in by other Ees such as urging support of or seeking to induce Ees to participate in work stoppage)

United States Postal Service **252 NLRB No. 063**
(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would

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be futile and neither refusal to work nor distuption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

Hammermill Paper Company 252 NLRB No. 172
(discharge of Ee for participation in unprotected work stoppage solely because of his position as U steward, violative)

Castle-Pierce Printing Company, Inc. 251 NLRB No. 172
(refusal of E to reinstate discharged U steward because of his total course of serious strike misconduct after U terminated its strike and offered unconditionally to return strikers to work including 5 other discharged strikers, not unlawful notwithstanding contention that he was singled out from among other Ees who also engaged in strike misconduct because of his U activities, where he committed far more frequent acts of misconduct and far more serious acts of misconduct than did other strikers)

Guy F. Atkinson Company and Wright-Schuchart-Harbor, A Joint Venture 251 NLRB No. 043
(discharge and refusal to reemploy U steward for causing walkout in violation of no-strike clause, not unlawful)

C. H. Heist Corporation 250 NLRB No. 185
(discharge of only U steward out of 25 Ees who engaged in work stoppage in violation of *no-strike* clause, unlawful, since discharge based on his being U official and not for his role in strike where steward was reluctant participant, not leader, in strike, counseled against strike and urged Ees to return to work though he did transmit messages to strikers from U)

McLean Trucking Company JD-460-81
(refusing clerical unit Ees' U steward access to E's private offices to investigate grievance not violative where steward was provided with information he sought or was (credibly) told information would be provided on (his) request)

L. R. Bob *Spillers Painting Co.* JD-(SF)-169-80
(discharge of Ee for vigorous pursual of duties as U steward violative)

Newspaper Printing Corporation JD-203-80
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation JD-203-80
(suspension of steward for making changes in schedule sheet unlawful, since steward was performing customary duty in enforcing contract, and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Hammermill Paper Company v. N.L.R.B. 658 F.2d 155 (C.A. 3, 1981)
(E's discharging U steward with clean work record for participation in refusal to perform assigned task rather than merely suspending him as it did other Ees involved who also had clean work records, unlawful since E may not single out for harsher punishment U officials who merely participate in illegal strike where bargaining agreement did not impose explicit duty on U officers and stewards to end any illegal work stoppage, and further, Ee was not serving as steward at time of work stoppage)

Gould Incorporated v. N.L.R.B. 612 F.2d 728 (C.A. 3)
(E's singling out U steward for discharge for participation in work stoppage in violation of no strike clause and in contravention of his obligation as U officer to take steps to terminate work stoppage, not unlawful, since E entitled to take into considereation U official's greater responsibility, and hence greater fault, where basis for discharge was duty imposed by his office and not office as such; fact contract provision regarding obligation of U officers did not provide for discharge did not render discharge unlawful)

N.L.R.B. v. South Central Bell Telephone Company 688 F.2d 345 (C.A. 5, Oct. 1982)
(suspension of U stewards for mere participation in strike and/or for not taking affirmative steps to end strike in violation of no-strike agreement for longer period than supensions of other participants in strike, unlawful, absent affirmative contractual waiver of U officers' rights and/or breach of contractually imposed affirmative duties)

N.L.R.B. v. Max Factor and Company 640 F.2d 197 (C.A. 9, 1980)
(discharge of U steward who vigorously processed grievances, violative, notwithstanding she spent more than 50 percent of work time doing so (much more than other stewards) and at meeting with E where he issued disciplinary warning to her for not working enough she responded with profane language, because excessive time spent on nonproduction activities and conduct at meeting were not so indefensible as to cause her to forfeit protection of Act)

Ervin Szewczuga and Gerald Treichel v. N.L.R.B. 686 F.2d 962 (C.A.D.C., Aug. 1982)
(discharge of U stewards rather than less severe discipline imposed on rank and file Ees for participation in unprotected walkout, violative, where stewards were not leaders of strike nor was there reasonable basis for E to believe they were leaders, and bargaining agreement imposed no special duty on stewards in connection with forbidden work stoppage; further, not clear that arbitrator's decision upholding discharges based on contract interpretation of required higher duty of stewards)

1733 OPPOSITION TO BARGAINING REPRESENTATIVE

Dining and Kitchen Administration, d/b/a DAKA 257 NLRB No. 046
(terminating contract with joint E who operated cafeteria violative, where action was taken because U refused to agree to exclude students, residents of E's facility who worked in cafeteria, from certified unit, Ees voted for U and E only hired 1 Ee from unit when it took over cafeteria operation itself gave rise to inference that real reason for terminating contract was that E did not want to inherit joint E's bargaining obligation)

Herman Brothers, Inc. v. N.L.R.B. 658 F.2d 201 (C.A. 3, 1981)
(discharge of Ee who had actively sought defeat of proposed contract which both E and U desired violative where Ee was ostensibly discharged for his failure to call in after excused absence when he had never been required to do so prior to this, which was only 3 days after defeat of proposed contract)

1783 KNOWLEDGE OF EMPLOYER AS TO DISCRIMINATEE'S UNION ACTIVITY

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric 265 NLRB No. 203
(E held to have been put on notice prior to effecting allegedly unlawful discharges herein, by means of telephone conversation with Bd agent, that ptn had been filed by U claiming to represent its Ees, notwithstanding E's professed failure to recall such conversation, since it strains credulity that E, as generally knowledgeable, effective, and far from naive businessman, could not recall whether Bd agent had explained Bd procedures, had asked E regarding willingness to agree to election, had mentioned U's name, or whether Bd agent's notation of date of conversation was correct)

Lee Industries 261 NLRB No. 166
(E's refusal to reinstate dischargee after U failed to assist her in filing grievance over her discharge because she was not U member not violative, where there was no basis for imputing to E knowledge of Ee's anti-U stance)

Nanticoke Homes, Inc. 261 NLRB No. 107
(direct knowledge shown by E's possession of map directing Ees to U meeting and his questions of and statements to Ees regarding U and U activities)

Go-Lightly Footwear, Inc. 251 NLRB No. 008
(E held to have knowledge of Ees' protected activity in view of his admissions in affidavit that he discharged Ees after he was told about their picketing and their leaving w/o punching out; moreover, Ees described their activities to supervisor before they were fired, and supervisor knew about discharged Ee's picketing and saw other fellow Ees leave plant together)

1783-0100 Generally

Hillside Bus Corp. 262 NLRB No. 152
(discharge of Ee who refused to sign authorization card for U favored by E, not unlawful, notwithstanding E's unlawful threat to discharge Ee if he did not sign card, as other Ees also threatened but were not subsequently discharged, in view of fact refusal to sign card only protected activity of Ee known to E, and absent evidence E had knowledge of Ee's support for another U; further, E has met burden of showing it would have discharged Ee absent protected activity in view of limited nature of only protected activity of which E was aware and prior warnings and complaints regarding Ee's performance)

United Supermarkets, Inc. 261 NLRB No. 179
(knowledge of Ee's U activity by any supervisor or management official, although not directly involved in subsequent action affecting Ee's job, may be imputed to supervisors who were so inovlved)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(Bd held it was not necessary for ALJ to detail at length either the U activity of any particular discriminatee or E's knowledge of discriminatee's personal involvement in U activity, where all Ees were U members; E, who was successor E, desired a turnover of staff consisting of predecessor's Ees it initially hired as it considered such staff pro-U and wished to dissipate strength of pro-U sentiment; E took numerous adverse actions with that object in mind and such actions were part of pattern to reduce U support)

Heatilator Fireplace, Division of Vega Industries, Inc. 249 NLRB No. 047
(where it was alleged that E violated 8(a)(3) by discharging Ee, E does not have burden of proving ignorance of Ee's U activity but, rather, it is GC who has burden of establishing E's knowledge of Ee's U activity)

1783-0150 Employer chargeable with supervisor's knowledge

Magic Mountain Corporation JD-337-80
(general manager who discharged Ee charged with knowledge of Ee's U activity where supervisor's knowledge was imputed to general manager and

1783-0150—Cont.

inference was warranted that E knew of Ee's U activity where small work force was generally involved in Ee's U solicitation)

Arco Chemical Company, A Division of Atlantic Richfield Company **JD-(SF)-174-80**
(although E's foreman declared, while a witness, that Ee had conceded some U connection, such declaration was vague as Ee having reported merely that he had called U; upon such limited record, foreman's newly-acquired information's legal imputation to managerial supervisors would not suffice to charge E with knowledge that Ee had become U adherent)

Neckover Trailer Manufacturing Company **JD-256-80**
(under peculiar circumstances of case, knowledge of Ees' U activity not imputed through their supervisors, who themselves were engaged in U activity, for anti-U purposes)

Pioneer Natural Gas Company v. N.L.R.B. **662 F.2d 408 (C.A. 5, Nov. 1981)**
(reprimands not violative where supervisors making reprimand decision were not shown to be aware of or have been told about reprimandees' U activities; in establishing knowledge element, Bd may not simply *impute* knowledge of low-level supervisors to decision-making supervisors)

1783-2900 Effect of absence of

Schwan's Sales Enterprises, Inc. **257 NLRB No. 165**
(discharge of U adherent, not unlawful, where E had no knowledge of Ee's U activity at time of discharge and discharged Ee after his insubordinate outburst)

Heartland Food Warehouse, Division of Purity Supreme Supermarkets **256 NLRB No. 145**
(discharge of U adherents who had been leaders in presenting grievances unlawful, notwithstanding E's lack of specific knowledge of adherents' U activities, economic justification for layoff of two Ees and E's contention that selection of adherents was for lawful reasons, since selection of adherents for discharge would not have occured absent their protected activities, where E was aware of Ee discontent and possibility of unionization and following discharge of adherents E transferred less experienced Ees to replace adherents; furthermore E departed from its normal layoff pollicy)

Service Garage, Inc. **247 NLRB No. 115**
(layoff of Ee in small unit where all Ees had signed U authorization cards violative, where E's U animus inferred from having unlawfully denied wage increase and timing of layoff, as layoff of any 1 Ee at time of U activity would have chilling effect on U activity of remaining Ees; notwithstanding laid off Ee was not U activist)

Hassly Hardwood Lumber Co. **JD-285-81**
(layoffs of U adherents not unlawful, notwithstanding layoffs closely followed U meeting, absent E's knowledge of U activity and where justified by business considerations in view of order cancellations and declining sales)

Pioneer Natural Gas Company v. N.L.R.B. **662 F.2d 408 (C.A. 5, Nov. 1981)**
(discharge of U adherent not unlawful where ct found that supervisor making discharge decision did not know about dischargee's U activity)

1783-2550 Sustained as defense

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric **265 NLRB No. 203**
(presumption of due receipt by E of law firm's letter on behalf of U claiming majority representation of Ees, as basis for E's knowledge of Ees' U activities, held overcome, where E denied receipt of law firm's letter, and GC's proffered testimony that E, through one of its Ees, received letter from U, rather than from its law firm, did not warrant determination that law firm's letter had been delivered to E, in view of Ee's significantly restricted opportunity to discern whether rome particular letter from U or its law firm had really been delivered)

Sadloff Publications, Inc. **265 NLRB No. 139**

Complas Industries, Inc. **255 NLRB No. 186**
(discharge of U organizer, not unlawful where he was not good Ee, and E's knowledge of his U activities was not proved)

Simpson Steel Fabricators & Erectors, Inc. **249 NLRB No. 164**
(layoff not unlawful absent evidence of E's knowledge of U organization activity, where layoff due to sharp drop in orders and Ees who were laid off not qualified to perform available work)

Norym Company, Inc. **JD-847-79**
(discharge of Ees, not unlawful, since for excessive restroom breaks rather than for any protected activity where supervisor who discharged Ees had no knowledge of their prior U activities which has taken place over six months previously, and breaks were not for purpose of discussing U nor any other protected activity)

Anja Engineering Corporation v. N.L.R.B. **685 F.2d 292 (C.A. 9, Aug. 1982)**
(enforcement denied, since Bd's finding that GC had established *prima facie* case of wrongful discharge failed due to lack of substantial record evidence of E's knowledge of Ees' views on U representation at time of discharge)

1783-5000 Belief that discriminatee engaged in union activity, where activity not proved

1783-5050 Sufficient to find discrimination

United Supermarkets, Inc. **261 NLRB No. 179**
(E had knowledge of Ee's pro-U sentiments where, upon being asked by one supervisor if Ee was for U, Ee answered affirmatively; and it is not necessary to show by direct evidence that supervisors who participated in discharge knew of Ee's U activity where, as here, it was shown that one supervisor knew of her U sentiments and practically all supervisors engaged in widespread ULPs)

1783-7500 Inferable

A To Z Portion Meats, Inc. v. N.L.R.B. **643 F.2d 390 (C.A. 6, Mar. 18, 1981)**
(ct found Bd's inference of E's prior knowledge of Ee's U activity based solely on ALJ's not crediting E's stated reasons for discharging U activist not supported by substantial evidence)

A To Z Portion Meats, Inc. v. N.L.R.B. **643 F.2d 390 (C.A. 6, Mar. 18, 1981)**
(ct did not sustain Bd's finding of unlawful discharge where it found Bd's inference of E's knowledge of dischargee's U activity based solely on disbelief of E's stated reasons for discharge tantamount to compelling E to disprove prior knowledge)

1783-7533 From circumstances

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric **265 NLRB No. 203**
(E held to have had knowledge of U activity prior to effecting allegedly discriminatory discharges, where E's Ee complement was small, Ees discussed U while at work in E's physically circumscribed facility, E personally observed one alleged discriminatee in conversation about U meeting with another Ee during which authorization cards were passed from one Ee to the other and, w/i days of such occurrences, U protagonist who had hosted U meeting in his home was singled out for discharge)

Enterprise Products Company **265 NLRB No. 083**
(knowledge of discharged Ee's U activity inferred from fact that Ee was prime mover in contacting U, actively solicited U authorization cards, and was conspicuously active at Ee gathering in full view of E in recruiting Ees to go to U meeting; moreover, E made statement indicating that he knew identity of Ees who had signed U cards; fact that incident designated as cause for discharge had been excused before E gained knoweldge of U activity strongly indicates that the only intervening factor for reversal of E's decision was Ee's U activity)

RAHCO, Inc. **265 NLRB No. 030**
(in view of unlawful layoff of group of Ees, not necessary for GC to establish that E knew of U activities on part of each laid off Ee)

Aker Plastics Company, Inc. **262 NLRB No. 147**
(E held to have had prior knowledge of Ee's U activity where Ee was outspoken critic of working conditions, foremen engaged in practice of reporting such conduct to E, Ees quickly reported to foreman Ee's attempt to distribute U cards, supervisor hired from outside became aware of Ee's reputation as critic of working conditions soon after his appointment as supervisor, superintendent attempted to obtain information as to *rumors* in plant which was in *commotion* over Ee's organizing efforts, and other supervisors as well as other persons could reasonably be expected to have reported rumors of U activity)

C-E Cast Equipment-Furnace Systems, A Division of Combustion Engineering, Inc. **260 NLRB No. 065**
(although E had no direct knowledge of Ees' U activity, such knowledge was properly inferred based upon E's agreement to meet with Ees to discuss shop problems, E's threats to fire Ees and close facility in event of unionization, likelihood that E's wife told him of her knowledge that Ees had voted to bring in U, and fact that Ees' protected activities could not have escaped E in view of small Ee complement)

Marathon Letourneau Company, Longview Division **256 NLRB No. 054**
(while knowledge of U activity is not to be lightly enferred, direct evidence of knowledge corroborated by credible witnesses is not required to show knowledge, since circumstantial evidence may supply the predicate for finding knowledge)

Five Star Air Freight Corporation **255 NLRB No. 046**
(in absence of direct proof, there was reason to believe that E was aware of Ees' U activity, in view of small size of E's facility and fact that Ees' conversations occurred at times and in places which were likely to have been observed by or reported to supervisory personnel)

Five Star Air Freight Corporation **255 NLRB No. 046**
(inference that E was aware of Ees' U activity supported by fact that Ees were only ones identified as U spokesmen)

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Eastern Steel Company 253 NLRB No. 163
(knowledge inferred from plant of 7 people and 3-man unit, E admitted he was interested in what was going on and interrogated entire unit about card-signers identify, U letter stated that 2 Ees had signed cards and E's son worked with Ees)

Franklin Foods, d/b/a B & F Cartage 251 NLRB No. 068
(successor E's refusal to employ predecessors Ees who were U adherents, violative; predecessors knowledge of such Ees' U sentiments was imputed to successor where anti-U reasons for predecessor's leaving business was clearly made known to successor)

Reinauer Fuel Transportation Corporation 251 NLRB No. 210
(knowledge of Ee's U activity was established by fellow Ee's report that all Ees had signed U authorization cards and by E's presence when informer was given card by discriminatee)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. 250 NLRB No. 042
(knowledge inferred from relatively small number of Ees involved, occurrence of substantial U activity during working hours, and supervisors' practice of frequently talking to Ees and having coffee breaks with them)

Steiner-Liff Textile Products Company 249 NLRB No. 152
(where E was aware of *unrest* among Ees and that it involved U activity)

Smedberg Machine & Tool, Inc. 249 NLRB No. 076
(knowledge inferable from unlawful interrogation prior to layoff, post layoff threats of reprisal and plant closure, situs of Ee activities in workplace, small size of work force and shop, and occasional luncheon conversations of E with Ees)

Pioneer Natural Gas Company v. N.L.R.B. 662 F.2d 408 (C.A. 5, Nov. 1981)
(reprimands not violative since surrounding circumstances did not support inference that decision-making supervisors were aware of reprimandees' U activities where E's asserted cause for reprimands occurred before even low-level supervisors knew of reprimandees' U activities, and low-level supervisor's statement to reprimandee that reprimand might have something to do with his U activities was merely suggesting possible explanation)

Alumbaugh Coal Corporation v. N.L.R.B. 635 F.2d 1380 (C.A. 8, 1980)
(while small plant doctrine will not in itself support inference of E's knowledge of U activity, which inference Bd had relied on herein, ct held Bd's finding of such knowledge could be reasonably inferred from circumstances which showed that initiator of organizational efforts was discharged shortly after such effort began, accompanied by E's commission of ULPs soon thereafter; Ee was competent Ee with good work record and was discharged as *last man hired* when retained fellow Ee was in that category; and instead of recalling Ee, E hired new Ees)

Marcel Schurman Co., Inc. v. N.L.R.B. 620 F.2d 310(T) (C.A. 9, 1980)
(supervisor's statement to Ee after Ee's discharge, *maybe you (were) fired because you joined the union*, held insufficient basis from which to infer that discharge was in response to Ee's U activities, where supervisor did not participate in decision to discharge Ee and supervisors who decided to terminate Ee did not know of his U activities; supervisor's knowledge cannot, w/o more, be imputed to those supervisors who made decision to discharge Ee)

1783-7567 From smallness of plant

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric 265 NLRB No. 203
(E held to have had knowledge of U activity prior to effecting allegedly discriminatory discharges, where E's Ee complement was small, Ees discussed U while at work in E's physically circumscribed facility, E personally observed one alleged discriminatee in conversation about U meeting with another Ee during which authorization cards were passed from one Ee to the other and, w/i days of such occurrences, U protagonist who had hosted U meeting in his home was singled out for discharge)

Enterprise Products Company 265 NLRB No. 083
(small plant doctrine held applicable at E's facility having total employment of 47 Ees)

Standard Motor Products, Inc. 265 NLRB No. 068
(E had no knowledge of dischargee's U activities on basis of small plant doctrine, since small size of plant does not warrant finding of knowledge of U activities of specific Ees absent supporting evidence showing that U activities were carried out in such manner or at such time as to compel finding that, in normal course of events, E must have noticed them; and, here, there was no such showing)

Dutch Boy, Inc., Glow-Lite Division 263 NLRB No. 081
(*small plant doctrine* inapplicable to instant E's plant where approximately 300 Ees were employed)

Modern Manufacturing Company, Inc. 261 NLRB No. 078

Emory Nursing Home, Inc. d/b/a Emory Convalescent Home 260 NLRB No. 071
(in accepting ALJ's finding that Ee's discharge was discriminatory, Bd relied on fact that Ee had openly engaged in U activities on premises and distributed U cards to people on break and as they entered building; in conjunction with *small plant* doctrine, Bd inferred E had knowledge of Ee's U activities)

Firmat Manufacturing Corp. 255 NLRB No. 153
(small plant doctrine invoked in situation of merely sixteen Ees)

W. W. Grainger, Inc. 255 NLRB No. 145
(although plant involved is small enough for *small-plant doctrine* to apply, Ee's U activity was of such limited nature that inference cannot be drawn that E's management was aware of it)

Five Star Air Freight Corporation 255 NLRB No. 066
(in absence of direct proof, there was reason to believe that E was aware of Ees' U activity, in view of small size of E's facility and fact that Ees' conversations occurred at times and in places which were likely to have been observed by or reported to supervisory personnel)

Eastern Steel Company 253 NLRB No. 163
(knowledge inferred from plant with 7 people and unit of 3 Ees)

John Cuneo, Inc. 253 NLRB No. 110
(not unreasonable to infer that other Ees were aware of E's unlawful conduct against their coworkers-discharges and delay in reinstatement of strikers-in view of small size of unit and severity of discriminatory practices)

Syracuse Dy-Dee Diaper Service 251 NLRB No. 135
(discharge of U adherents, violative, where E's knowledge of Ees passing out U cards and holding U meetings was inferred from small size of plant, reasons asserted for discharges were pretextual, and timing of discharges occurred w/i two weeks of organizational campaign)

Bacchus Wine Cooperative, Inc., and Bacchus Wine International 251 NLRB No. 207
(E's knowledge inferred from small size of Ee complement and E's warehouse with opportunities to overhear Ee conversations in context of antiU animus and ULPs)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. 250 NLRB No. 042
(10 to 12 and 4 to 5 Ees employed respectively by each of two Ees constituting single integrated enterprise and/or joint E)

Smedberg Machine & Tool, Inc. 249 NLRB No. 076

DRW Corporation d/b/a Brothers Three Cabinets 248 NLRB No. 093
(fact that Ees attempted to conceal U activity from E does not eliminate weight to be accorded smallness of plant)

K & B Mounting, Inc. 248 NLRB No. 071
(inference concerning E's knowledge of Ee's U activities, not warranted where, although number of Ees in plant was about 20, Ees involved in organizing campaign attempted to keep their U activities secret even to point of not talking to other Ees whose loyalties were questionable, and there was no evidence that Ee involved herein did otherwise or that supervisory personnel were present during his U activities)

Custom Wood Interiors, Inc. 248 NLRB No. 023

Florida Cities Water Company 247 NLRB No. 111

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating 247 NLRB No. 099

Hersh's Orchard Inn, Inc. JD-447-81
(small plant rule was inapplicable where no Ee who testified was aware of U activities until after Ee was discharged, and all U activities were carried on away from restaurant)

Ferrum Industries, Inc. Textol Systems, Inc. JD-(NY)-89-81
(small plant doctrine found not applicable notwithstanding there were only 15 production Ees of which 3 were relatives of owners where Ees conducted organizing campaign in selective and secretive manner)

Hassly Hardwood Lumber Co. JD-388-81
(inference of E knowledge not drawn on basis of small plant doctrine, notwithstanding work force of only 30-35 Ees, where Ees took care to conceal their U activities, and absent evidence such activities were ever carried out at E's facilities in such a manner that E would normally have become aware of them)

Magic Mountain Corporation JD-337-80
(general manager who discharged Ee charged with knowledge of Ee's U activity where supervisor's knowledge was imputed to general manager and inference was warranted that E knew of Ee's U activity where small work force was generally involved in Ee's U solicitation)

P.M.S. West, Inc. JD-(SF)-47-80
(small plant doctrine standing alone does not impute knowledge of U activity to E; there must be some direct evidence to support inference)

1783-7567—Cont.

N.L.R.B. v. American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. 670 F.2d 1236 (C.A. 1, Feb. 1982)
(possibility of observation may be sufficient provided there is other, *affirmative evidence indicating that E in fact knew*)

N.L.R.B. v. Midland Ross, Inc. 644 F.2d 886(T) (C.A. 6, Jan 8, 1981)
(fact that plant had small work force of 3 Ees, Ee statement that U was needed here, and shortly thereafter U's demand for recognition helped sustain inference of E's knowledge that Ee was U activist and along with timing of discharge immediately after E stated that Ee was needed at work defeated E's defense of lack of work)

Alumbaugh Coal Corporation v. N.L.R.B. 635 F.2d 1380 (C.A. 8, 1980)
(while small plant doctrine will not in itself support inference of E's knowledge of U activity and does not permit finding that E had knowledge of U activities of specific Ees, doctrine may be material only if other evidence exists indicating a likelihood of such knowledge)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. 660 F.2d 1335 (C.A. 9, Nov 1981)
(knowledge inferred in where only 40 waitresses in close family managed restaurant and efforts at secrecy minimal)

3300 DISCRIMINATION FOR FILING CHARGES OR GIVING TESTIMONY

3301 GENERALLY

Cartex Corporation JD-436-80
(Ee utilization of Bd's remedial processes is protected by Sec. 7 of Act, and there should be as great a freedom to ask Bd for relief as there is to petition any other department of government for redress of grievances; moreover, protection of Act is not limited to only meritorious pleas to Bd)

3301-8000 Scope of proscription

Hi-Craft Clothing Co. 251 NLRB No. 173
(as to its application to supervisors)

Clark & Hinojosa, Attorneys at Law, A Professional Corporation 247 NLRB No. 089
(complainants who *mistakenly* seek to invoke Bd processes considered w/i Sec. 8(a)(4)'s protective reach)

Westinghouse Electric Corporation JD-(ATL)-88-81
(in *Royal Development Company, Ltd.*, 257 NLRB No. 149 (1981), Bd did not preclude analyzing 8(a)(4) cases under *Wright Line* test of dual motivation)

3325 EMPLOYEE ACTIVITY PROTECTED

Alabama By-Products Corporation JD-(ATL)-49-82
(E's filing suit in district ct against Ee and U alleging willful breach of settlement agreement to penalize Ee for participating in charge U had filed on his behalf with Bd and to discourage Ees from seeking access to Bd's processes, unlawful)

3325-1400 Filing charges or petition

Key Prim, Inc. 265 NLRB No. 132
(violation where E failed to rebut GC's *prima facie* case of unlawful discharge motivated by Ee's aggressive U grievance filing, his angered protest of E's enforcement of proof of death rule regarding funeral leave and his threat to go to Bd if he did not receive pay for death leave; E's contended reasons for discharge-foul, obscene, abusive and threatening language to-E held pretextual)

Humana of West Virginia, Inc. d/b/a Greenbrier Valley Hospital 265 NLRB No. 126
(discharge of individual found supervisor herein, not unlawful where Bd found, contrary to ALJ, that it was not due to U's filing charge on behalf of individual, since discharge was decided on by E before E became aware charge had been filed, and E welcomed filing of charge as means of showing that individual was statutory supervisor rather than Ee)

Read Memorial Hospital 265 NLRB No. 105
(requesting state licensing agency to inquire into Ee's professional behavior because she filed ULP charges with Bd, violative)

Allied Industrial Workers of America, AFL-CIO, Region 8 265 NLRB No. 077
(no violation where regional director of E, a U, sent warning letter to its regional representative requesting explanation of his interference in the affairs of a local to which he was not assigned, since Bd found that warning letter was not in retaliation for his filing ULP charge and for his other protected activities but was, rather in response to complaints from officers of the local concerning his interference)

Allied Industrial Workers of America, AFL-CIO, Region 8 265 NLRB No. 077
(no violation where regional director of E, a U, sent letter to regional representative stating that his failure to pass out organizational material provided by E could have been reason it lost an election, since Bd found that letter was not in retaliation for regional representative's filing ULP charge and for his other protected activities but was merely a reminder to use organizational materials provided by E in future campaigns)

McLean Hospital, A Division of Massachusetts General Hospital 264 NLRB No. 068
(no violation where suspension and discharge were not because dischargee had filed charges with Bd as alleged but because he failed to respond adequately to E's legitimate questions about his unauthorized entry with unidentified person into E's hospital's psychiatric unit contrary to rules against access by off-duty Ees and unauthorized entry by non-Ees; fact dischargee was accompanied by Bd attorney investigating his charge did not make entry protected or give him right to disregard rules)

Village IX, Inc. d/b/a Shenanigans 264 NLRB No. 121
(where E had policy of allowing friends and spouses of Ees to wait for them in restaurant until Ee come off duty, it violated Act when it refused to allow husband of principal U adherent, who had been subject of Bd settlement agreement over her U activities, to wait for her. Although spouse did engage in some U activity, it was never on restaurant premises and was only to assist his wife and he did not engage in any U activities independent of her; thus, spouse could not be treated as non-Ee U organizer)

H. H. Robertson Company 263 NLRB No. 173
(E's acceding to U pressure and informing supervisor who was U vice-president and outspoken advocate of change in U administration and participated in filing of charges with NLRB and wrote *U interference* on discharge slips of Ees who had been discharged as result of U pressure, that supervisor would have to take position in gang outside U's jurisdiction, and when supervisor refused, discharged him, held unlawful, since offer of transfer constructive discharge since would have meant demotion, reduced wages and benefits and additional expenses resulting from working further from home and E motivated by supervisors participating in filing charges)

United Parcel Service, Inc. 261 NLRB No. 134
(discharge of drivers preceded by extraordinary surveillance, unlawful, where real reasons were for filing charges with Bd in prior case, U adherence, distribution of materials for dissident branch of U rather than for overstaying breaks on road and thereby failing to meet schedules, and for falsifying logs)

7 Up Bottling Company 261 NLRB No. 128
(directive that Ee work strict 40-hour work (i.e., w/o overtime) issued in response to his filing charge with Bd, unlawful)

7 Up Bottling Company 261 NLRB No. 128
(issuing *unexcused* absence slip, allegedly for failure to provide doctor's excuse although one had never before been required, violative of 8(a)(4) where E was influenced by Ee's filing of charge with Bd)

7 Up Bottling Company 261 NLRB No. 128
(disciplinary report based on Ee's alleged failure to comply with earlier unlawful warning, violative of 8(a)(4), since E was motivated by Ee's having filed charges with Bd)

7 Up Bottling Company 261 NLRB No. 128
(suspension based on Ee's alleged failure to comply with earlier, unlawful warning, violative of 8(a)(4) where E was motivated by Ee's having filed charge with Bd)

7 Up Bottling Company 261 NLRB No. 128
(replacing Ee's daytime delivery duties with demeaning nighttime chores, violative of 8(a)(4) where due to his having filed charge with Bd)

Electron Tube Division of Litton Systems, Inc. 260 NLRB No. 149
(GC's argument that E retaliated against Ee by firing him after learning that his charge had been dismissed by Regional Counsel, and that E's retaliation violated Sec. 8(a)(4) because it was in response to filing of charge, rejected, where Ee created situation that gave rise to his discharge by claiming and accepting payment for sick leave used for personal business)

The Oakland Press Co., A Wholly-Owned Subsidiary of Capital Cities Communications, Inc. 260 NLRB No. 126
(discharge of Ee assertedly for abuse of sick leave privilege and dishonesty in connection with it not violative, since it was not invoked, as contended, as pretext because Ee had used part of sick leave day to file charge with Bd, where E had not tolerated Ee dishonesty in past, and has discharged Ees found engaging in it, including first offenders)

Overseas Motors, Inc. 260 NLRB No. 108
(threatening to discharge Ee if he filed charge with Bd and first suspending him and then discharging him after he filed charges violative notwithstanding original reason Ee wished to file charge involved denial of wage increase and concerned only himself and was not concerted activity)

St. Joseph Hospital Corporation 260 NLRB No. 089
(E's refusal to process, pursuant to contract's grievance-arbitration provision, Ee's grievance concerning her suspension, assertedly for filing charge with Bd, not unlawful, where in refusing to do so E was merely enforcing contract provision barring any further processing once grievant elects to pursue any legal or statutory remedy that might be available to resolve

3325-1400—Cont.

grievance; such provision, which seeks to prevent duplicative adjudication by election of remedies, is not impermissible especially where limitation being imposed is a contractual rather than a legal or statutory right)

United States Postal Service **260 NLRB No. 009**
(discharge of mail carrier, U adherent, who filed ULP charges against E with Bd, for failure to deliver postage due letters, loss of registered mail, and poor work held not violative absent evidence of anti-U motivation, or any evidence of disparate treatment)

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde **259 NLRB No. 073**
(violation, where E revoked agreement condoning misconduct of Ee and discharged him because he had testified at Bd hearing contrary to interests of E and had filed new charge with Bd complaining of further misconduct by E)

NAB Construction Corporation **258 NLRB No. 090**
(suspension of Ee who refused to withdraw charge filed with Bd violative)

American Interstate Freight Lines **258 NLRB No. 131**
(threat of discharge if Ee filed appeal to RD's dismissal of his charge, violative)

Transportation Management Corporation **258 NLRB No. 061**

Roadway Express, Inc. **257 NLRB No. 153**
(denial of overtime pay to Ee, who had filed charges against E, for time spent discussing his grievance after working hours, not unlawful, where E had no policy for such pay)

Roadway Express, Inc. **257 NLRB No. 153**
(suspension and subsequent discharge of Ee who had filed charges with Bd because he refused several times to operate different forklifts he said were unsafe, not unlawful, where Ee did not act in good faith and was not solely concerned for his own safety when he challenged safety of forklifts he was assigned to operate)

Royal Development Company, Limited **257 NLRB No. 149**
(refusal to hire previously employed Ee for new opening because of his filing of ULP charge, unlawful)

Welfare, Pension and Vacation Funds, Blasters, Drillrunners and Miners Union Local No. 29, etc. **256 NLRB No. 170**
(reduction of Ees' job responsibilities by refusing to allow them to call U members about jobs, deal directly with E's accountant or bank, distribute pension checks, answer office door or telephone, get association's signature on certain documents, make out forms for members, send letters under own signatures to late-paying Es' and take care of petty cash fund, unlawful where motivated by Ees' testifying against E at workmen's compensation hearing, participating in Bd investigation, testifying at Bd hearing and filing ULP charge)

Welfare, Pension and Vacation Funds, Blasters, Drillrunners and Miners Union Local No. 29, etc. **256 NLRB No. 170**
(reducing Ees' employment benefits, and making their working conditions more onerous by failing to issue Ees keys to office, denying them $25 a week pay raises, requiring them to take vacations in July and August only, closing kitchen facilities, and denying sick leave benefits, and eliminating paid coffee breaks and paid check cashing time because Ees participated in Workmen's Compensation hearing, participated in Bd investigation, testified at Bd hearing, and filed ULP charges, unlawful)

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company **256 NLRB No. 080**
(discharge for filing charge with Bd, unlawful)

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company **256 NLRB No. 080**
(discharge of Ee for trying to get people to testify for daughter who had been fired and had filed a charge with Bd, unlawful)

K & S Circuits, Inc. **255 NLRB No. 163**
(violation where E isolated U adherents from other Ees by creating new shift for them after they returned to work pursuant to settlement agreement which was result of Ees invocation of Bd processes)

K & S Circuits, Inc. **255 NLRB No. 163**
(violation where E compelled U adherents, who had invoked Bd processes, to stand at their workplace on newly-created shift instead of using stools as Ees did on regular shifts)

K & S Circuits, Inc. **255 NLRB No. 163**
(violation where E subjected U adherents, who had invoked Bd processes to new system of written warning notices)

K & S Circuits, Inc. **255 NLRB No. 163**
(violation where E changed work assignments of U adherents, who had invoked Bd's processes, to jobs they had never done before)

K & S Circuits, Inc. **255 NLRB No. 163**
(laying Ees off who had signed authorization cards and invoked Bd's processes violative, where E refused to allow Ees to finish work days; other Ees were invariably permitted to finish 40-hour week)

K & S Circuits, Inc. **255 NLRB No. 163**
(violation where E required U adherents, who had invoked Bd processes and were recalled pursuant to settlement agreement, to take math tests and fill out new applications)

Firmat Manufacturing Corp. **255 NLRB No. 153**
(E's cutting leading U activist's overtime immediately following receipt of his first ULP charge, violative)

Firmat Manufacturing Corp. **255 NLRB No. 153**
(discharge of Ee assertedly for threatening shop foreman, violative where real reason was Ee's leading role in organizing U and filing ULP charges)

Firmat Manufacturing Corp. **255 NLRB No. 153**
(discharge of student apprentice who had been told he would be getting permanent job and raise in pay and had received good evaluation, violative where he was discharged for U activities and for being named in filing of charge)

Firmat Manufacturing Corp. **255 NLRB No. 153**
(discharge of Ee, assertedly because he threatened life of E's president and owner, violative where real reasons were Ee's U activities and having been mentioned in charge)

Firmat Manufacturing Corp. **255 NLRB No. 153**
(denying Ee extended vacation because his name appeared in ULP charge, violative)

Town & Country LP Gas Service Co. **255 NLRB No. 144**
(discharge of Ee allegedly for lack of work, violative, where E's asserted economic reason for discharge was pretextual, in view of record evidence showing no decline in E's sales and pattern of retaliation against Ee for his filing charges with Bd and successfully prosecuting grievance)

K & E Bus Lines, Inc. **255 NLRB No. 137**
(termination of Ee who filed charge, unlawful, in view of E's open and evident U animus and hostility)

Steinerfilm, Inc. **255 NLRB No. 017**
(issuing written warning and discharging U adherent, violative, where real reasons for such discipline were Ee's U activities, his leadership in pressing Ees' grievances, and his filing charge with Bd)

Bay State Gas Company **255 NLRB No. 099**
(discharge of Ee who had filed charge with Bd not violative where discharge took place 1 month after charge withdrawn, discharged for excessive absenteeism and GC failed to establish *prima facie* case that Ee was discharged for protected activity)

International Union of Operating Engineers, Local Union No. 132, AFL-CIO **255 NLRB No. 060**
(E's suspension of Ee for filing charges with Bd, violative)

Roy H. Park Broadcasting of Roanoke, Inc. **255 NLRB No. 036**
(discharge of Ee violative where motivated by resentment at Bd charges filed by Ee)

Glover Bottled Gas Corp. **255 NLRB No. 011**
(E violated 8(a)(1), but not 8(a)(4) by threatening to give Ee an unfavorable reference, when needed, in retaliation for filing charges with Bd)

L. M. Berry and Company **254 NLRB No. 083**
(written reprimands to U adherent because of her U activities, including her testimony on behalf of U and her filing charges against E, violative)

Interlake, Inc. **253 NLRB No. 076**
(three-day suspension of Ee for leaving plant w/o permission for purpose of filing ULP charge with Bd held violative where E has consistently permitted other Ees to leave work on U business during regular working hours w/o disciplinary action)

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(while finding it unnecessary to pass on 8(a)(4) portion of complaint on basis of which ALJ found that U steward's suspension and discharge violated 8(a)(4); as well as 8(a)(3), Bd found that E interfered with statutorily protected right to file charges and present testimony to Bd by giving unexcused absences to Ees, who gave last minute notice from work, after E learned that they went to Bd's Regional Office)

Salem Transportation Co., Inc. **252 NLRB No. 155**
(allegation of 8(a)(4) based on suspension of Ee dismissed, where such suspension was for poor record and not for filing charge with Bd, as alleged)

Civic Center Cleaning Co., Inc. **252 NLRB No. 110**
(failing to employ Ee because he had filed ULP charges against previous E and U, violative)

Shirt Shed, Inc. **252 NLRB No. 043**
(threat to discipline Ee if she did not withdraw charges filed with Bd by U on her behalf violative)

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Climate Control Corporation 251 NLRB No. 102
(denying vacation benefits in retaliation for U activity, instigation of ULP charge, and providing evidence to Bd, violative)

Classic Truck Rental Corp. 251 NLRB No. 056
(suspension of U adherent who had filed charges with Bd, not unlawful, in view of Ee's *stealing time* by wasting time on job and continuing disregard for company rules despite several warnings, thereby prompting E to file notice of intent to arbitrate disciplinary action against Ee because of his inefficiencies as Ee and then suspending Ee after receiving arbitrator's advice to do so)

Classic Truck Rental Corp. 251 NLRB No. 056
(E's filing of notice of arbitration with regard to its intention to discharge Ee because of his inefficiencies as Ee, not unlawful, since E's action was not prompted by Ee's U activities or filing of charges with Bd, where Ee's misconduct on job and disregard for company rules justified E's action)

Ford Motor Company 251 NLRB No. 066
(harassment of Ee and reprimand of him in retaliation for filing ULP charge, unlawful)

Ford Motor Company 251 NLRB No. 066
(denial of promotions for Ees to available supervisory positions where they had filed grievance, contemplated further legal action and filed charge with Bd, unlawful)

Ford Motor Company 251 NLRB No. 066
(E's refusal to promote Ees unlawful where refusal was attempt to punish them for pursuing grievance and filing ULP charge and they were highly qualified, experienced and recommended for promotion)

Delta Faucet Company, a Division of Masco Corporation of Indiana 251 NLRB No. 071
(refusal to grant Ee one day of leave and warning and suspending him as result of such refusal, unlawful where disciplinary measures were taken by E in retaliation for filing charge with Bd)

Kaufman DeDell Printing, Inc. 251 NLRB No. 002
(discharge for filing charges with Bd, unlawful)

Austell Box Board Corporation 249 NLRB No. 044
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

Vulcan-Hart Corporation (St. Louis Division) 248 NLRB No. 145
(plant manager's statement to U vice-president in presence of Ees, that *there would be no meetings in (plant) lunchroom because U had filed charges against him* held violative, since statement was *not merely threat* but actual revocation of permission to use lunchroom; notwithstanding alleged violation was couched in terms of threat, issue of use of lunchroom was presented and litigated as *actual revocation*)

Norman Mamikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW 248 NLRB No. 155
(abrupt refusal to allow newscaster to leave on long scheduled vacation which had been approved by her immediate supervisor well in advance, assertedly because of E's lack of funds and/or because E was unhappy with Ee's replacements, violative, where Ee had filed charges and testified against E in prior Bd proceeding; E's defenses were shifting and inconsistent leading to inference of real reason for E's action)

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappo, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults 248 NLRB No. 120
(violation where Ee was laid off for registering complaint with Division of Human Resources and for filing deauthorization ptn with Bd)

Medical Mutual of Cleveland, Inc. 248 NLRB No. 074
(although Ee was legitimately on probation for low production, his discharge was unlawful where termination occurred two days after ULP complaint had issued on Ee's charge and after she refused to assent to E's request for postponement of hearing on her cause)

Hilton Hotels Corporation, d/b/a The O'Hare Hilton 246 NLRB No. 031
(discharge of U steward for filing charges with the Bd against E, unlawful)

Sonoma Community Press d/b/a News Herald 247 NLRB No. 148
(discharge not unlawful, where it was established that Ee was discharged for work-related and incompatibility reasons, and decision to discharge Ee was made prior to and not because of Ee's participation in Bd proceedings)

Phillips Industries, Inc. Lau Division JD-426-82
(E's withholding of tuition payment for job related courses Ee was taking in retaliation for Ee's having filed charge with Bd violative)

Lorard Industries, Limited JD-293-81

Southwest Jefferson Community Hospital, Inc., a corporation wholly owned by Humana of Kentucky, Inc. JD-77-82

Transitank Car Corporation JD-(ATL)-8-82
(discharge of reinstated U adherent for U activities and for filing charges with Bd, unlawful notwithstanding assertion that discharge was for breach of drinking rule where dischargee was treated more harshly than other Ees who also breached E's drinking rule)

The Mining Journal JD-4-82
(suspension of U steward, unlawful where it was motivated by her filing of charge against E with Bd rather than as alleged for attending to personal business (by looking at her copy of U contract for personal reasons) on worktime)

Roland & Roland, Inc. JD-640-81
(denying Ee catchup wage increase because of his U activities and participation in and support of ULP proceeding unlawful)

Roland & Roland, Inc. JD-640-81
(notifications to Ee of his improper attire found mere supervisory instructions rather than unlawful warning reprimands due to Ee's U activities and filing of ULP charge)

Roland & Roland, Inc. JD-640-81
(suspension and subsequent discharge of Ee for filing ULP charge, unlawful)

Dravo-Groves Company JD-(ATL)-93-81
(complaint that Ee had been discharged by E a second time because he had filed charge with Bd after first discharge, dismissed in view of testimony of coworkers and supervisors that his work was inadequate and testimony of coworkers that he admitted not applying himself to his work)

American Interstate Freight Lines JD-117-81
(violation where GC made *prima facie* showing that motivating factors in E's decision to discharge Ee were Ee's taking his grievance to grievance board and endeavoring to enforce work-guarantee provisions in agreement, and his appealing dismissal of his ULP charge; and E failed to demonstrate that it would have discharged Ee in absence of protected activity)

National King Coal, Inc. JD-(SF)-24-81
(cancellation of production bonus because Ee threatened to file charge with Bd unless he was recipient, violative)

Metropolitan Teletronic Corp. JD-(NY)-12-81
(conditioning Ee's reinstatement upon her withdrawing of charges before Bd and failing to reinstate her until she agreed to cause charges to be withdrawn, violative)

Planned Parenthood of Alameda and San Francisco Counties JD-(SF)-294-80
(E informing Ee that due to her filing charges with Bd it would not continue to process her grievances under its internal procedures, violative, notwithstanding its subsequent good faith effort to process grievances)

Henry Warshaw and Chester Latra, A Co-Partnership d/b/a Normandie Bar and Grill JD-551-80
(violation where E reduced Ee's work schedule because she had filed charge with Bd)

Clements Wire and Manufacturing Company, Inc. JD-338-80
(E's refusal to reinstate leading U adherent, unlawful where she gave testimony at Bd proceeding and her name appeared on charges which E was aware of prior to date on which she was refused reinstatement)

Hotel & Restaurant Employees and Bartenders Union Local 2 JD-(SF)-178-80
(discharge of Ee for advising other Ees of their right to file charges against U, violative)

Magic Mountain Corporation JD-337-80
(former ski patrol member constructively discharged where he clocked out upon his refusal to continue working in sewage bins, which job was assigned to him due to E's animus towards him for his U activity and filing charge with Bd)

Montefiore Hospital and Medical Center v. N.L.R.B 621 F.2d 510 (C.A. 2, 1980)
(health care institution's denial of full-time positions to doctors because of their filing charges with Bd, unlawful)

Gould Incorporated v. N.L.R.B. 612 F.2d 728 (C.A. 3)
(discharge of U steward who filed charges with Bd and other government agencies not unlawful where for violation of his contractual duty as U officer to take steps to terminate work stoppage)

The United Credit Bureau of America, Inc. v. N.L.R.B. 643 F.2d 1017 (C.A. 4, Mar. 1981)
(E's filing civil action against Ee in retaliation for filing ULP charge, violative as Act require complete protection for Ees who in good faith file charges or testify)

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J. P. Stevens & Co., Inc. v. N.L.R.B. **638 F.2d 676 (C.A. 4, 1980)**
(discharge of U adherent, violative, where E was aware that Ee filed complaints with Bd, threatened to file further complaints, and participated in Bd investigation)

McLean Trucking Company v. N.L.R.B. **626 F.2d 1168 (C.A. 4, 1980)**
(E's call in system which had previously preferred relatives of its Ees and was later based upon seniority, allegedly because Ee filed charges with Bd against E, changed to merit system, not unlawful, where casuals had no contractual right to be called in to work at all or in any particular priority)

N.L.R.B. v. M & B Contracting Corporation **653 F.2d 245 (C.A. 6, July 1981)**
(discharge of Ee who had circulated ptn for U and filed charge with NLRB, unlawful, where for U activity and invoking Bd processes rather than for insubordination in bringing E's broken truck back to E's headquarters w/o proper authorization where Ee had tried to obtain authorization from proper party, and unauthorized individual who told him to bring truck in was not reprimanded)

N.L.R.B. v. Town & Country LP Gas Service Company **687 F.2d 187 (C.A. 7, Aug. 1982)**

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(E's early issuance of oral and written warnings to discriminatee reinstated pursuant to Bd order following his initiation of Bd proceedings, unlawful; he alone was carefully supervised and given written, as well as oral, warnings for poor production; he was also assigned to job he was not accustomed to doing and reassigned to it even after accident to his hand impaired his ability to do it)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(writing up for slow production of discriminatee reinstated, pursuant to Bd order following his initiation of Bd proceedings, unlawful when no other E had been assigned to job he was assigned to for long time and discriminatee had just returned to work after being out with injured hand and had given E doctor's report stating that he had not fully recovered use of hand required in doing that job)

Nacker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(assignment of discriminatee reinstated pursuant to Bd order after his initiation of Bd proceedings to job performance of which might expose him to further injury of his injured hand with ultimatum of doing it or going home with result that discriminatee went home held to constitute unlawful suspension when other jobs which would not expose him to injury were available for assignment)

N.L.R.B. v. Senftner Volkswagen Corporation **681 F.2d 557 (C.A. 8, July 1982)**
(withdrawing reemployment offer to Ee on layoff because Ee filed ULP charge, violative in view of timing and false explanations that business was slow and that president lacked authority to offer reinstatement)

N.L.R.B. v. Vulcan-Hart Corporation, (St. Louis Division) **642 F.2d 255 (C.A. 8, Mar 9, 1981)**
(E's general manager's termination of right of Ees to hold U meetings in lunchroom, violative where termination resulted from his anger at filing of charge by U)

3325-2100 Consulting with Board agent

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **265 NLRB No. 161**
(discharging Ee 2 weeks after he met with Bd agent violative; contention that he was discharged for not notifying E for absence from work; rejected where absence was due to bad sunburn and E did not return Ee's phone calls regarding absence)

Welfare, Pension and Vacation Funds, Blasters, Drillrunners and Miners Union Local No. 29, etc. **256 NLRB No. 170**
(reduction of Ees' job responsibilities by refusing to allow them to call U members about jobs, deal directly with E's accountant or bank, distribute pension checks, answer office door or telephone, get association's signature on certain documents, make out forms for members, send letters under own signatures to late-paying Es' and take care of petty cash fund, unlawful where motivated by Ees' testifying against E at workmen's compensation hearing, participating in Bd investigation, testifying at Bd hearing and filing ULP charge)

Welfare, Pension and Vacation Funds, Blasters, Drillrunners and Miners Union Local No. 29, etc. **256 NLRB No. 170**
(reducing Ees' employment benefits, and making their working conditions more onerous by failing to issue Ees keys to office, denying them $25 a week pay raises, requiring them to take vacations in July and August only, closing kitchen facilities, and denying sick leave benefits, and eliminating paid coffee breaks and paid check cashing time because Ees participated in Workmen's Compensation hearing, participated in Bd investigation, testified at Bd hearing, and filed ULP charges, unlawful)

Art Steel of California, Inc. **256 NLRB No. 140**
(issuing warning notice to U adherent assertedly for leaving his department and going into another department w/o permission and —*talking to a government person*— in violation of E's rule, held violative, since Ee was involved in taking inventory and was not assigned to particular department, but instead, had to go from department to department; warning notice was given Ee after Ee had spoken to Bd agent investigating ULP charges against E)

Continental Distributing Co., Inc. **256 NLRB No. 091**
(discharge of Ee after he made inquiries about joining and attempted to join U, and called Bd to find out how to join U, violative where E's allegations about Ee's stealing goods from E not supported by evidence)

Albany Steel and Brass Corporation **JD-237-80**
(discharge of admittedly *very knowledgeable Ee* assertedly because of his absenteeism and for his job deficiencies held violative where E terminated Ee forty minutes after being notified that Ee intended to seek assistance from Bd concerning his pension dispute with E; discharge was precipitous and in middle of pay period)

N.L.R.B. v. Permanent Label Corporation **657 F.2d 512 (C.A. 3, 1981)**
(refusing to allow Ees who notified E one half hour before start of shift that they would be 5-10 minutes late because of attendance at Bd hearing to work their shifts that day, unlawful, since in retaliation for assistance to U)

3325-2800 Announced intent to file charges

Overseas Motors, Inc. **260 NLRB No. 108**
(threatening to discharge Ee if he filed charge with Bd and first suspending him and then discharging him after he filed charges violative notwithstanding original reason Ee wished to file charge involved denial of wage increase and concerned only himself and was not concerted activity)

Hi-Craft Clothing Co. **251 NLRB No. 173**
(discharge of supervisor for threatening that he was going to file charges with NLRB because E had not given him promised bonus, violative, as E's action became known to other Ees and coerced them in exercise of their rights; moreover fact that supervisors grievance was not covered under Act immaterial, since it is Bd's function, not E's to decide whether individual is covered by Act or claim has merit)

Borden Inc. Foods Division, Drake Bakeries **248 NLRB No. 162**
(issuance warning to Ee who had previously filed charges with Bd for *continual pattern of confrontations with management and supervisors*, unlawful, where based on personnel data sheet, noting Ee's threat during grievance meeting to go to NLRB)

Clark & Hinojosa, Attorneys at Law, A Professional Corporation **247 NLRB No. 089**
(refusal to pay benefits to discharged Ee, to whom E promised one-half month's salary as post-termination pay, held violative inasmuch as E treated Ee differently than other discharged Ees because of Ee's expressed intent to seek redress from Bd)

Retail Delivery Service, Inc., and Robert A. Baime, Esq. **JD-486-80**
(discharge of Ee because he told E he intended to complain to and seek aid of U and Bd in his dispute with E, violative)

Shuttle Motor Corporation **JD-327-80**
(discharge of Ee who informed E he had contacted *labor board* after he had made inquiries of state agency regarding legality of *back stubbing*, not unlawful, absent evidence E believed C was to NLRB rather than to state agency or that Ee had filed or was about to file charge with NLRB; further, there was no history of U activity at E)

Hi-Craft Clothing Co. v. N.L.R.B. **660 F.2d 910 (C.A. 3, Oct. 1981)**
(discharge of supervisor for threatening to go to Bd because he had not received E's promised bonus, not unlawful; legislative and decisional law show that Bd's assumption of jurisdiction should be rejected; Bd was not applying broad statutory terms but was construing its own authority, and its interpretation of statute was not longstanding but of recent origin; and only supervisor's personal greivance and not rank-and-file Ees' interests were involved; consequently, Bd's lack of jurisdiction ended its power and, since ct cannot manufacture its own jurisdiction, Bd, a fortiori, certainly cannot do so)

J. P. Stevens & Co., Inc. v. N.L.R.B. **638 F.2d 676 (C.A. 4, 1980)**
(discharge of U adherent, violative, where E was aware that Ee filed complaints with Bd, threatened to file further complaints, and participated in Bd investigation)

3325-4200 Giving testimony at Bd or other proceeding

Enterprise Products Company **265 NLRB No. 083**
(discharge of Ees assertedly for violating rule, herein found unlawful, prohibiting dissemination of company information by providing Ee, whose discharge was subject of ULP charge herein, with information regarding company's operations, unlawful, in view of disparity of treatment and severity of discipline, E's U animus and knowledge of Ees' U activity and knowledge that information was obtained in course of concerted and U activity, that it

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was obtained for purpose of prosecuting instant case, and that Ees had or would testify in proceedings herein)

Enterprise Products Company **263 NLRB No. 083**
(discharge of Ees assertedly for violating unlawful rule, prohibiting dissemination of company information by providing Ee, whose discharge was subject of ULP charge herein, with information regarding company's operations, unlawful, even if rule was found not unlawful, where E knew that disclosure assertedly constituting misconduct occurred during U activity yet E presented no evidence that it, in good faith, believed that Ees engaged in breach of rule nor evidence upon which it based belief that Ees were involved other than that obtained in instant proceeding as to their participation therein; and Ees did not in fact commit suspected offense)

American Steel Works **263 NLRB No. 108**
(Bd found discharge violative under *Wright Line* test in view of ALJ's finding that Ee's protected activities was a motivating factor for discharge and that Ee would not have been discharged but for his prior past election including filing of grievances, charge with Bd, and complaint with OSHA)

Tressler Lutheran Home for Children t/a Frostburg Village of Allegany County Nursing Home **263 NLRB No. 042**
(discharge of Ee for testifying at Bd proceeding, violative)

Tressler Lutheran Home for Children t/a Frostburg Village of Allegany County Nursing Home **263 NLRB No. 042**
(suspending Ee for testifying at Bd proceeding, violative)

U. S. Electrical Motors, A Division of Emerson Electric Co. **261 NLRB No. 184**
(where E had policy that Ees would not receive holiday pay if they did not work on day before and day after a holiday, and Ee asked if he would receive holiday pay for Memorial Day if he attended Bd hearing on day after Memorial Day, supervisor's statement in reply that he might not receive it, not unlawful since some supervisory personnel were not familiar with holiday pay policy or aware that Bd-issued subpoena constituted excuse for not being present day after holiday)

Howard Johnson Motor Lodge **261 NLRB No. 123**
(discharge of supervisor not violative of Section 8(a)(4) absent link with Ee's testimony before Bd one month earlier. Further, finding of violation would not alter remedy since discharge had been found violative of Section 8(a)(1) where proximate cause of discharge was Ee's refusal to disclose identities of Ees at U meeting)

Modern Manufacturing Company, Inc. **261 NLRB No. 078**
(discharge for U activities and testifying on behalf of U at representative election hearing, unlawful)

Alcar Industries, Inc. **260 NLRB No. 094**
(discharge of most active U supporter who assisted U as election observer and testified at Bd hearing, not unlawful, where there was ample cause for discharge in that E believed that E had twice lied in same month when he called in sick in order to attend to personal business; no threats were made by E at time of election when tension existed at plant; and if E had wished to use any pretext that readily came to hand, it could have relied on first instance of E's abuse of sick leave)

Riley-Beaird, Inc. **259 NLRB No. 180**
(establishing closer supervision and stricter enforcement of plant rules against U adherents who had testified at Bd proceeding, violative)

Riley-Beaird, Inc. **259 NLRB No. 180**
(suspending and subsequently discharging U adherent who had testified at Bd proceeding, violative)

Riley-Beaird, Inc. **259 NLRB No. 180**
(transferring U adherents who had testified at Bd proceeding to different jobs, violative)

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde **259 NLRB No. 073**
(violation, where E denied Ee leave w/o pay because Ee testified at Bd hearing)

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde **259 NLRB No. 073**
(issuance of warning to Ee violative where warning flowed from E's resentment at Ee for his prior testimony before Bd)

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde **259 NLRB No. 073**
(violation, where E changed Ee's shift and days off to retaliate against his testimony at Bd hearing and his elevation to acting presidency of U)

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde **259 NLRB No. 073**
(violation, where E revoked agreement condoning misconduct of Ee and discharged him because he had testified at Bd hearing contrary to interests of E and had filed new charge with Bd complaining of further misconduct by E)

American Geri-Care, Inc. **258 NLRB No. 147**
(issuing written warning for lateness to U adherent who had appeared at Bd hearing, violative where Ee had been given verbal permission for lateness and Ee had never been issued warning in past for being late)

American Geri-Care, Inc. **258 NLRB No. 147**
(refusal to grant U adherent leave two days after Ee appeared at Bd hearing, violative)

American Geri-Care, Inc. **258 NLRB No. 147**
(requesting doctor's note from U adherent who had appeared at Bd hearing, not unlawful, where E had rule which clearly stated that anyone who is ill a day prior to day off must submit such note before restarting duty)

American Geri-Care, Inc. **258 NLRB No. 147**
(discharging U adherent who had appeared at Bd hearing for allegedly leaving sick patient in her care, violative since E's reason for discharge was pretext where Ee actually gave proper care to patient and was subsequently given permission to leave to attend ill mother)

Consolidated Aluminum Corporation **258 NLRB No. 033**
(E's refusal to compensate Ee for wages lost while testifying in his capacity as U officer in Bd case to which E was not party, not unlawful, absent express contractual commitment and where not in retaliation for U activity or testifying; fact E had previously paid compensation to same officer in similar situation as result of grievance settlement did not establish precedent or law of the shop, nor did contract provision providing for compensation for loss due to jury duty or as witness subpoenaed by ct of law require payment)

Consolidated Aluminum Corporation **258 NLRB No. 033**
(E's refusal to pay witness fees to compensate for lost wages to Ees subpoenaed for Bd hearing by oppositions not unlawful)

Clements Wire & Manufacturing Company, Inc. **257 NLRB No. 075**
(discharging and refusing to reinstate leading U adherent because Ee invoked Bd processes, violative)

Welfare, Pension and Vacation Funds, Blasters, Drillrunners and Miners Union Local No. 29, etc. **256 NLRB No. 170**
(reduction of Ees' job responsibilities by refusing to allow them to call U members about jobs, deal directly with E's accountant or bank, distribute pension checks, answer office door or telephone, get association's signature on certain documents, make out forms for members, send letters under own signatures to late-paying Es' and take care of petty cash fund, unlawful where motivated by Ees' testifying against E at workmen's compensation hearing, participating in Bd investigation, testifying at Bd hearing and filing ULP charge)

Welfare, Pension and Vacation Funds, Blasters, Drillrunners and Miners Union Local No. 29, etc. **256 NLRB No. 170**
(reducing Ees' employment benefits, and making their working conditions more onerous by failing to issue Ees keys to office, denying them $25 a week pay raises, requiring them to take vacations in July and August only, closing kitchen facilities, and denying sick leave benefits, and eliminating paid coffee breaks and paid check cashing time because Ees participated in Workmen's Compensation hearing, participated in Bd investigation, testified at Bd hearing, and filed ULP charges, unlawful)

Reeves Southeastern Corporation **256 NLRB No. 090**
(discharge of Ee for testifying against E at Bd hearing violative)

Hollander Home Fashion Corp. **255 NLRB No. 142**
(disciplinary written notices given Ees who testified in government's behalf at preliminary inj proceedings, unlawful, notwithstanding contention that Ees failed to provide adequate notice, leaving E shorthanded in emergency, and that issue is moot because reprimands were withdrawn from company's files, where notices were not based on failure to give prior notice but for leaving; E failed to protest Ees' departure; other Ees who could have helped in emergency were released; reprimands were excessive for Ees with good work records; and abandonment of unlawful conduct does not make issue moot)

L. M. Berry and Company **254 NLRB No. 003**
(written reprimands to U adherent because of her U activities, including her testimony on behalf of U and her filing charges against E, violative)

Fundacion Educativa Ana G. Mendez, Inc. d/b/a Colegio Universitario Del Turabo **251 NLRB No. 203**
(no violation, where instructor at university was denied professional tenure, not because of his involvement with U or because he gave testimony under Act and/or participated in Bd proceedings, but because he failed to satisfy reasonable, non-discriminatory university requirements for attaining professional tenure)

Ledford Construction Company, Inc. **251 NLRB No. 193**
(suspending Ees who testified against E at Bd hearing while permitting Ees who testified favorably to work)

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The Krebs School Foundation, Inc. **261 NLRB No. 187**
(allegation that E violated Act by discharging Ee, in part because she had filed charges and given testimony under Act, dismissed where evidence of unlawful motivation consisted primarily of testimony that E told her that E could have cried when E heard Ees testify with misinformation about E)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's suggestion to Ee, when Ee produced subpoena requiring his presence at Bd hearing, that Ee remember that E had told Ee *to tell the guys to stay at the machines,* held violative of 8(a)(1) but not 8(a)(4), since E thereby restrained and coerced Ee in exercise of protected right and obligation to give testimony under Act)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(discharge of Ee on very day he testified in Bd hearing, assertedly because of damaged grease seal, held violative since Ee showed it was impossible to determine who was responsible for damaged seal and notwithstanding that discharge was withdrawn, E's actions delivered message to its Ees that they may not testify with impunity against E in Bd proceeding)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(discharge of Ee on very day he testified in Bd hearing, assertedly because of damaged grease seal, held violative since Ee showed it was impossible to determine who was responsible for damaged seal and notwithstanding that discharge was withdrawn, E's actions delivered message to its Ees that they may not testify with impunity against E in Bd proceeding)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, fromhis desired second shift to less desirable day shift held violative where trans fer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, from his desired second shift to less desirable day shift held violative where transfer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(E violated 8(a)(1) as well as 8(a)(4) where E, in furtherance of its state civil suit against Ees, obtained alleged discriminatee's deposition concerning matters relating to E's defenses in pending Bd ULP proceeding and inquired of fellow Ee whether supervisor involved in alleged ULPs knew that Ees were trying to organize; since it could reasonably be expected that Ee would, as she did, tell alleged discriminatee of conversation with E, question had its nexus in taking of deposition resulting from filing of state proceeding which was also found unlawful herein)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(violations where E transferred U adherents who had testified at Bd hearing to store in less desireable location, reduced their working hours to times when they could not use public transportation, added onerous janitorial duties and then discharged them)

Sonoma Community Press d/b/a News Herald **247 NLRB No. 148**
(discharge not unlawful, where it was established that Ee was discharged for work-related and incompatibility reasons, and decision to discharge Ee was made prior to and not because of Ee's participation in Bd proceedings)

George Bush, George Phillip Bush, and Larry Bush, A Partnership, d/b/a Creamline Dairy Farms **JD-449-82**
(laying off U adherent and subsequently discharging him two days after he gave testimony adverse to E's interest at Bd hearing, violative)

George Bush, George Phillip Bush, and Larry Bush, A Partnership, d/b/a Creamline Dairy Farms **JD-449-82**
(violation where E discharged Ee who charged E with giving false testimony under oath at Bd hearing and led E to believe that he would testify in manner consistent with this accusation when hearing resumed)

Westinghouse Electric Corporation **JD-(ATL)-88-81**
(in *Royal Development Company, Ltd.*, 257 NLRB No. 149 (1981), Bd did not preclude analyzing 8(a)(4) cases under *Wright Line* test of dual motivation)

Scoggin, Inc. **JD-433-81**
(E's reduction in work week of U adherents who had testified at Bd hearing from 40 to 20 hours, not unlawful, notwithstanding E's other ULPs, since for business reasons, where E was in dire financial situation to point of using monies withheld for payroll taxes for capital and E's president taking out personal loan when taxes due; further, Ees were not replaced)

Howard Johnson Company, d/b/a Howard Johnson distribution Center **JD-(SF)-12-81**
(refusing to pay Ee regular wages for time he lost from work to testify at Bd hearing pursuant to subpoena issued by GC, not unlawful, where, notwithstanding E's policy of paying Ees who are absent from work due to jury duty or because of a death in the family, Ee witness was compensated for his time by GC, and additional compensation from E would in effect require litigent to subsidize its opponent)

Lauridsen Foods, Inc. **JD-36-81**
(discharge of U adherents for testifying at R case hearing and for their U activities, unlawful)

Bill Fox Chevrolet, Inc. **JD-767-80**
(E's deliberately depriving Ee of work, resulting in sharp dip in Ee's earnings for 2-week period, violative since reasons for E's action were Ee's show of U loyalty, his protected activities on behalf of U, and because he gave testimony to Bd)

Clements Wire and Manufacturing Company, Inc. **JD-330-80**
(E's refusal to reinstate leading U adherent, unlawful where she gave testimony at Bd proceeding and her name appeared on charges which E was aware of prior to date on which she was refused reinstatement)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for making changes in schedule sheet unlawful, since steward was performing customary duty in enforcing contract, and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

World Wide Press, Inc. **JD-(SF)-12-80**
(discharge, assertedly because of poor work performance, of Ee who had given testimony in Bd proceeding and who supported U disfavored by E, unlawful, where Ee's job mistakes were not known to E at time of discharge, Ee had never been told that her work was unsatisfactory, and E harbored desire to retaliate against Ee for testimony in Bd proceeding)

N.L.R.B. v. Friendly Ice Cream Corporation **677 F.2d 170 (C.A. 1, May 1982)**
(ct denied Bd's ptn for enforcement of its order finding E guilty of violating Secs. 8(a)(1), 8(a)(3) and 8(a)(4) of Act by giving allegedly retaliatory and discriminatory written warning to Ee for violating no-solicitation rule where Bd's decision specifically rested upon its conclusion that E had disabled itself from enforcing rule by reason of having tolerated breaches in past that did not relate to unionization and fact was that in two years rule was observed every day but two)

N.L.R.B. v. Joseph, d/b/a Meat Packers International **605 F.2d 466 (C.A. 9, 1979)**
(discharge of Ee, who had testified at prior Bd proceedings, in order to make room for one reinstated disciminatee not violative where Ee was least competent of workers available; management was entitled to make such selection in order to comply with order of ALJ)

3325-4500 Attending Board proceeding

St. Jude Industrial Park Board **265 NLRB No. 087**
(proximity between discharge and Ee attendance at Bd hearing, w/o more, is insufficient evidence to warrant finding of Section 8(a)(4) violation)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(disciplinary warnings issued to Ees because they attended Bd hearing held unlawful disparate treatment, where E routinely gave Ees permission to leave plant during working hours to go to ct or to attend to personal business, such permission was never denied, and Ees were not warned or disciplined for requesting such permission or for leaving under such circumstances; Bd found it unnecessary to rely on Earinghouse Imports, 227 NLRB No. 1107)

Permanent Label Corporation **248 NLRB No. 021**

Newspaper Printing Corporation **JD-203-80**
(discharge of Ee allegedly for attending Bd hearing instead of getting bed rest for fatigue resulting from working and then filing workman's compensation claim, unlawful, since no evidence Ee ever filed claim and also in view of timing, E's knowledge of Ee's U activities and baselessness of E's asserted reason)

N.L.R.B. v. Permanent Label Corporation **657 F.2d 512 (C.A. 3, 1981)**
(refusing to allow Ees who notified E one half hour before start of shift that they would be 5-10 minutes late because of attendance at Bd hearing to work their shifts that day, unlawful, since in retaliation for assistance to U)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had

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volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

3325-7000 Giving statement to Board agent

Airborne Freight Corporation **263 NLRB No. 181**
(discharge of likely U supporter in upcoming election for giving affidavit to Bd agent, unlawful)

H. H. Robertson Company **263 NLRB No. 173**
(E's acceding to U pressure and informing supervisor who was U vice-president and outspoken advocate of change in U administration and participated in filing of charges with NLRB and wrote *U interference* on discharge slips of Ees who had been discharged as result of U pressure, that supervisor would have to take position in gang outside U's jurisdiction, and when supervisor refused, discharged him, held unlawful, since offer of transfer constructive discharge since would have meant demotion, reduced wages and benefits and additional expenses resulting from working further from home and E motivated by supervisors participating in filing charges)

Building Material & Dump Truck Drivers, Local Union No. 420, Teamsters (Leonard Worthington, an Individual) **257 NLRB No. 161**
(discharge of Ee for not first consulting with E's counsel before giving sworn statement to Bd agent during investigation of charge against Ee's E violative since E never had rule requiring Ee to so consult)

C. E. Wilkinson & Sons, Inc. **255 NLRB No. 176**
(surveillance by supervisors of Ee who was at U hall for purpose of giving testimony to Bd agent, violative)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**

Climate Control Corporation **251 NLRB No. 102**
(denying vacation benefits in retaliation for U activity, instigation of ULP charge, and providing evidence to Bd, violative)

Triangle Pacific **JD-(ATL)-22-80**
(discharge, not unlawful where it was not for attempt to give evidence to Bd, as alleged, but for failure to deliver a load and unauthorized hauling of passengers in violation of company rules)

J. P. Stevens & Co., Inc. v. N.L.R.B. **638 F.2d 676 (C.A. 4, 1980)**
(discharge of U adherent, violative, where E was aware that Ee filed complaints with Bd, threatened to file further complaints, and participated in Bd investigation)

3325-9200 Cooperating with and assisting Board in its proceedings

Don Pizzolato, Inc. **249 NLRB No. 136**
(discharge for participation in conference on representation ptn held at Bd office violative)

3350 FORMS OF DISCRIMINATION (SEE ALSO 524-5000)

3350-3100 Denial of vacation or overtime pay

Stokely-Van Camp, Inc. **259 NLRB No. 128**
(withholding and deferring vacation pay of striking Ees violative where contract entitled them to paid vacations on request and but for strike vacation would have been allowed; contention that Ees cannot be on vacation and strike at same time so that E may maximize number of Ees available for work during strike, rejected)

Roadway Express, Inc. **257 NLRB No. 153**
(denial of overtime pay to Ee, who had filed charges against E, for time spent discussing his grievance after working hours, not unlawful, where E had no policy for such pay)

World Wide Press, Inc. **JD-(SF)-12-80**
(refusal to give vacation pay to Ee, witness against E in prior Bd proceeding, unless she agreed in writing to return it in event Bd should determine that there was no valid contract between E and assisted U, unlawful)

3350-3300 Denial of bonus

National King Coal, Inc. **JD-(SF)-24-81**
(cancellation of production bonus because Ee threatened to file charge with Bd unless he was recipient, violative)

3350-5000 Conditioning employment upon withdrawal of charges

Metropolitan Teletronic Corp. **JD-(NY)-12-81**
(conditioning Ee's reinstatement upon her withdrawing of charges before Bd and failing to reinstate her until she agreed to cause charges to be withdrawn, violative)

3350-5600 Issuance of warning or reprimand

Allied Industrial Workers of America, AFL-CIO, Region 8 **265 NLRB No. 077**
(no violation where regional director of E, a U, sent warning letter to its regional representative requesting explanation of his interference in the affairs of a local to which he was not assigned, since Bd found that warning letter was not in retaliation for his filing ULP charge and for his other protected activities but was, rather in response to complaints from officers of the local concerning his interference)

Allied Industrial Workers of America, AFL-CIO, Region 8 **265 NLRB No. 077**
(no violation where regional director of E, a U, sent letter to regional representative stating that his failure to pass out organizational material provided by E could have been reason it lost an election, since Bd found that letter was not in retaliation for regional representative's filing ULP charge and for his other protected activities but was merely a reminder to use organizational materials provided by E in future campaigns)

South Nassau Communities Hospital **262 NLRB No. 146**
(warning letters issued to U activists for infraction of E rule by overextending their lunch breaks, unlawful, notwithstand that similar punishment was given to Ees not actively supporting U, where extension of lunch break was common practice engaged in by supervisors and Ees, of which E was well aware; and, as shown by E's remarks in answer to Ee's inquiry about her similar situation, discipline of Ees herein was directly related to their U activities)

7 Up Bottling Company **261 NLRB No. 128**
(issuing *unexcused* absence slip, allegedly for failure to provide doctor's excuse although one had never before been required, violative of 8(a)(4) where E was influenced by Ee's filing of charge with Bd)

7 Up Bottling Company **261 NLRB No. 128**
(disciplinary report based on Ee's alleged failure to comply with earlier unlawful warning, violative of 8(a)(4), since E was motivated by Ee's having filed charges with Bd)

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde **259 NLRB No. 073**
(issuance of warning to Ee violative where warning flowed from E's resentment at Ee for his prior testimony before Bd)

American Geri-Care, Inc. **258 NLRB No. 147**
(issuing written warning for lateness to U adherent who had appeared at Bd hearing, violative where Ee had been given verbal permission for lateness and Ee had never been issued warning in past for being late)

Roadway Express, Inc. **257 NLRB No. 153**
(issuing warning letter to Ees for insolent remarks to E and taking excessive breaks to use restroom, not unlawful, where there was no evidence that, contrary to contention, warnings were issued because Ee was U member or was scheduled to testify at Bd hearing)

K & S Circuits, Inc. **255 NLRB No. 163**
(violation where E subjected U adherents, who had invoked Bd processes to new system of written warning notices)

Hollander Home Fashion Corp. **255 NLRB No. 142**
(disciplinary written notices given Ees who testified in government's behalf at preliminary inj proceedings, unlawful, notwithstanding contention that Ees failed to provide adequate notice, leaving E shorthanded in emergency, and that issue is moot because reprimands were withdrawn from company's files, where notices were not based on failure to give prior notice but for leaving; E failed to protest Ees' departure; other Ees who could have helped in emergency were released; reprimands were excessive for Ees with good work records; and abandonment of unlawful conduct does not make issue moot)

Steinerfilm, Inc. **255 NLRB No. 017**
(issuing written warning and discharging U adherent, violative, where real reasons for such discipline were Ee's U activities, his leadership in pressing Ees' grievances, and his filing charge with Bd)

L. M. Berry and Company **254 NLRB No. 003**
(written reprimands to U adherent because of her U activities, including her testimony on behalf of U and her filing charges against E, violative)

Ford Motor Company **251 NLRB No. 066**
(harassment of Ee and reprimand of him in retaliation for filing ULP charge, unlawful)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(refusal to grant Ee one day of leave and warning and suspending him as result of such refusal, unlawful where disciplinary measures were taken by E in retaliation for filing charge with Bd)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(E's threat that Ees would be severely punished if they left to attend Bd hearing on U's election ptn, and subsequent issuance of disciplinary warnings to Ees because they attended hearing, unlawful)

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J. P. Stevens and Company, Inc. 247 NLRB No. 044

(warnings issued during U campaign to known leading U activists and other pro-U Ees, unlawful, where E's reasons for warnings were unpersuasive, warnings were prompted by minor and insignificant matters which would not ordinarily result in discipline and were issued to build record against Ees to support discharge on pretext, and other Ees engaged in similar conduct were not disciplined)

Southwest Jefferson Community Hospital, Inc., a corporation wholly owned by Humana of Kentucky, Inc. JD-77-82

N.L.R.B. v. Friendly Ice Cream Corporation 677 F.2d 170 (C.A. 1, May 1982)

(ct denied Bd's ptn for enforcement of its order finding E guilty of violating Secs. 8(a)(1), 8(a)(3) and 8(a)(4) of Act by giving allegedly retaliatory and discriminatory written warning to Ee for violating no-solicitation rule where Bd's decision specifically rested upon its conclusion that E had disabled itself from enforcing rule by reason of having tolerated breaches in past that did not relate to unionization and fact was that in two years rule was observed every day but two)

N.L.R.B. v. Ford Motor Company 683 F.2d 156 (C.A. 6, July 1982)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. 672 F.2d 592 (C.A. 7, Feb. 1982)

(threatening remarks and written reprimands shortly after Ee indicated intent to file additional charges with Bd violative, in view of anti-U animus and timing of reprimand soon after Ee filed charge; fact that Ee had not received reprimand in 11 years tenure and reprimand was over minor work dispute indicates pretext)

Nacker Packing Company v. N.L.R.B. 615 F.2d 456 (C.A. 7) (1980)

(E's early issuance of oral and written warnings to discriminatee reinstated pursuant to Bd order following his initiation of Bd proceedings, unlawful; he alone was carefully supervised and given written, as well as oral, warnings for poor production; he was also assigned to job he was not accustomed to doing and reassigned to it even after accident to his hand impaired his ability to do it)

Nacker Packing Company v. N.L.R.B. 615 F.2d 456 (C.A. 7) (1980)

(writing up for slow production of discriminatee reinstated, pursuant to Bd order following his initiation of Bd proceedings, unlawful when no other E had been assigned to job he was assigned to for long time and discriminatee had just returned to work after being out with injured hand and had given E doctor's report stating that he had not fully recovered use of hand required in doing that job)

3350-5800 Threat of reprisal

Consolidated Aluminum Corporation 256 NLRB No. 053

(telling another Ee that E was exploring possibility of filing charges against U president because he filed ULP charge against E, violative because it interfered with Ee's right to file and press charges before Bd)

Consolidated Aluminum Corporation 256 NLRB No. 053

(warning U president that E might file charges against him if he did not discuss matters with E before filing ULP charges, violative because it interfered with Ee's right to file and press charges before Bd)

Shirt Shed, Inc. 252 NLRB No. 042

(threat to discipline Ee if she did not withdraw charges filed with Bd by U on her behalf violative)

Bill Johnson's Restaurants, Inc. 249 NLRB No. 026

(E's threat to bring reprisals against Ee, clearly engaged in protected activities, which included filing of charge with Bd, unlawful)

Bill Johnson's Restaurants, Inc. 249 NLRB No. 026

(E's veiled threat to husband of Ee, both of whom picketed E, with respect to losing new home husband had just bought and that E would hate them to *get hurt by all this,* unlawful, where such statements presaged E's later action of filing of civil suit against Ees, and established that true purpose behind law suit was to punish picketers for engaging in protected concerted activity and to prevent them from further asserting such rights)

3350-6000 Layoff

K & S Circuits, Inc. 255 NLRB No. 163

(laying Ees off who had signed authorization cards and invoked Bd's processes violative, where E refused to allow Ees to finish work days; other Ees were invariably permitted to finish 40-hour week)

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults 248 NLRB No. 120

(violation where Ee was laid off for registering complaint with Division of Human Resources and for filing deauthorization ptn with Bd)

George Bush, George Phillip Bush, and Larry Bush, A Partnership, d/b/a Creamline Dairy Farms JD-440-82

(laying off U adherent and subsequently discharging him two days after he gave testimony adverse to E's interest at Bd hearing, violative)

Lorord Industries, Limited JD-293-82

3350-6200 Discharge or threat thereof

Kay Fries, Inc. 265 NLRB No. 132

(violation where E failed to rebut GC's *prima facie* case of unlawful discharge motivated by Ee's aggressive U grievance filing, his angered protest of E's enforcement of proof of death rule regarding funeral leave and his threat to go to Bd if he did not receive pay for death leave; E's contended reasons for discharge-foul, obscene, abusive and threatening language to-E held pretextual)

Humana of West Virginia, Inc. d/b/a Greenbrier Valley Hospital 265 NLRB No. 126

(discharge of individual found supervisor herein, not unlawful where Bd found, contrary to ALJ, that it was not due to U's filing charge on behalf of individual, since discharge was decided on by E before E became aware charge had been filed, and E welcomed filing of charge as means of showing that individual was statutory supervisor rather than Ee)

St. Jude Industrial Park Board 265 NLRB No. 087

(proximity between discharge and Ee attendance at Bd hearing, w/o more, is insufficient evidence to warrant finding of Section 8(a)(4) violation)

Enterprise Products Company 265 NLRB No. 083

(discharge of Ees assertedly for violating rule, herein found unlawful, prohibiting dissemination of company information by providing Ee, whose discharge was subject of ULP charge herein, with information regarding company's operations, unlawful, in view of disparity of treatment and severity of discipline, E's U animus and knowledge of Ees' U activity and knowledge that information was obtained in course of concerted and U activity, that it was obtained for purpose of prosecuting instant case, and that Ees had or would testify in proceedings herein)

Enterprise Products Company 265 NLRB No. 083

(discharge of Ees assertedly for violating unlawful rule, prohibiting dissemination of company information by providing Ee, whose discharge was subject of ULP charge herein, with information regarding company's operations, unlawful, even if rule was found not unlawful, where E knew that disclosure assertedly constituting misconduct occurred during U activity yet E presented no evidence that it, in good faith, believed that Ees engaged in breach of rule nor evidence upon which it based belief that Ees were involved other than that obtained in instant proceeding as to their participation therein; and Ees did not in fact commit suspected offense)

McLean Hospital, A Division of Massachusetts General Hospital 264 NLRB No. 068

(no violation where suspension and discharge were not because dischargee had filed charges with Bd as alleged but because he failed to respond adequately to E's legitimate questions about his unauthorized entry with unidentified person into E's hospital's psychiatric unit contrary to rules against access by off-duty Ees and unauthorized entry by non-Ees; fact dischargee was accompanied by Bd attorney investigating his charge did not make entry protected or give him right to disregard rules)

Airborne Freight Corporation 263 NLRB No. 181

(discharge of likely U supporter in upcoming election for giving affidavit to Bd agent, unlawful)

Trasler Lutheran Home for Children t/a Frostburg Village of Allegany County Nursing Home 263 NLRB No. 042

(discharge of Ee for testifying at Bd proceeding, violative)

Modern Manufacturing Company, Inc. 261 NLRB No. 078

(discharge for U activities and testifying on behalf of U at representative election hearing, unlawful)

Electron Tube Division of Litton Systems, Inc. 260 NLRB No. 149

(GC's argument that E retaliated against Ee by firing him after learning that his charge had been dismissed by Regional Counsel, and that E's retaliation violated Sec. 8(a)(4) because it was in response to filing of charge, rejected, where Ee created situation that gave rise to his discharge by claiming and accepting payment for sick leave used for personal business)

The Oakland Press Co., A Wholly-Owned Subsidiary of Capital Cities Communications, Inc. 260 NLRB No. 126

(discharge of Ee assertedly for abuse of sick leave privilege and dishonesty in connection with it not violative, since it was not invoked, as contended, as pretext because Ee had used part of sick leave day to file charge with Bd, where E had not tolerated Ee dishonesty in past, and has discharged Ees found engaging in it, including first offenders)

Overseas Motors, Inc. 260 NLRB No. 108

Alcar Industries, Inc. 260 NLRB No. 094

(discharge of most active U supporter who assisted U as election observer and testified at Bd hearing, not unlawful, where there was ample cause for discharge in that E believed that E had twice lied in same month when he called in sick in order to attend to personal business; no threats were made by E at time of election when tension existed at plant; and if E had wished to use any pretext that readily came to hand, it could have relied on first instance of E's abuse of sick leave)

3350-6200—Cont.

Riley-Beaird, Inc. 259 NLRB No. 180
(suspending and subsequently discharging U adherent who had testified at Bd proceeding, violative)

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde 259 NLRB No. 073
(violation, where E revoked agreement condoning misconduct of Ee and discharged him because he had testified at Bd hearing contrary to interests of E and had filed new charge with Bd complaining of further misconduct by E)

American Geri-Care, Inc. 258 NLRB No. 147
(discharging U adherent who had appeared at Bd hearing for allegedly leaving sick patient in her care, violative since E's reason for discharge was pretext where Ee actually gave proper care to patient and was subsequently given permission to leave to attend ill mother)

Transportation Management Corporation 258 NLRB No. 061

Building Material & Dump Truck Drivers, Local Union No. 420, Teamsters (Leonard Worthington, an Individual) 257 NLRB No. 161
(discharge of Ee for not first consulting with E's counsel before giving sworn statement to Bd agent during investigation of charge against Ee's E violative since E never had rule requiring Ee to so consult)

Roadway Express, Inc. 257 NLRB No. 153
(suspension and subsequent discharge of Ee who had filed charges with Bd because he refused several times to operate different forklifts he said were unsafe, not unlawful, where Ee did not act in good faith and was not solely concerned for his own safety when he challenged safety of forklifts he was assigned to operate)

Clements Wire & Manufacturing Company, Inc. 257 NLRB No. 075
(discharging and refusing to reinstate leading U adherent because Ee invoked Bd processes, violative)

Reeves Southeastern Corporation 256 NLRB No. 090
(discharge of Ee for testifying against E at Bd hearing violative)

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company 256 NLRB No. 080
(discharge for filing charge with Bd, unlawful)

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company 256 NLRB No. 080
(discharge of Ee for trying to get people to testify for daughter who had been fired and had filed a charge with Bd, unlawful)

Marathon Letourneau Company, Longview Division 256 NLRB No. 054
(discharge of Ee, not unlawful, where it was unnecessary to consider cause for discharge since E did not have knowledge of Ee's very weak U activity and, absent finding of discriminatory motivation, discharge stands; there was no evidence from which illegal motive for discharge could be inferred; and even if Ee engaged in sufficient U activity, he also engaged in conduct warranting discharge which cannot be held unlawful simply on basis of some U activity)

Marathon Letourneau Company, Longview Division 256 NLRB No. 054
(E's contention that where Ee has engaged in conduct for which he would have been fired in any event, there is no room for discrimination to play a part, rejected, since firing of Ee can be discriminatory in such a case inasmuch as E might pass over in another instance conduct warranting discharge)

Firmat Manufacturing Corp. 255 NLRB No. 153
(discharge of Ee assertedly for threatening shop foreman, violative where real reason was Ee's leading role in organizing U and filing ULP charges)

Firmat Manufacturing Corp. 255 NLRB No. 153
(discharge of student apprentice who had been told he would be getting permanent job and raise in pay and had received good evaluation, violative where he was discharged for U activities and for being named in filing of charge)

Firmat Manufacturing Corp. 255 NLRB No. 153
(discharge of Ee, assertedly because he threatened life of E's president and owner, violative where real reasons were Ee's U activities and having been mentioned in charge)

Town & Country LP Gas Service Co. 255 NLRB No. 144
(discharge of Ee allegedly for lack of work, violative, where E's asserted economic reason for discharge was pretextual, in view of record evidence showing no decline in E's sales and pattern of retaliation against Ee for his filing charges with Bd and successfully prosecuting grievance)

K & E Bus Lines, Inc. 255 NLRB No. 137
(termination of Ee who filed charge, unlawful, in view of E's open and evident U animus and hostility)

Steinerfilm, Inc. 255 NLRB No. 017
(issuing written warning and discharging U adherent, violative, where real reasons for such discipline were Ee's U activities, his leadership in pressing Ees' grievances, and his filing charge with Bd)

Bay State Gas Company 255 NLRB No. 069
(discharge of Ee who had filed charge with Bd not violative where discharge took place 1 month after charge withdrawn, discharged for excessive absenteeism and GC failed to establish *prima facie* case that Ee was discharged for protected activity)

Roy H. Park Broadcasting of Roanoke, Inc. 255 NLRB No. 036
(discharge of Ee violative where motivated by resentment at Bd charges filed by Ee)

Glover Bottled Gas Corp. 255 NLRB No. 011
(probationary Ee held not unlawfully discharged for lack of U membership where E's letter to Bd agent, regarding instant case and infelicitously equating probationary status with lack of U membership, was not related to such status but used common parlance to describe Ee as being terminated during his probationary period while not yet having protection of *just cause* provision of contract)

Crown Cork & Seal Company, Inc. 255 NLRB No. 004

Hi-Craft Clothing Co. 251 NLRB No. 173
(discharge of supervisor for threatening that he was going to file charges with NLRB because E had not given him promised bonus, violative, as E's action became known to other Ees and coerced them in exercise of their rights; moreover fact that supervisors grievance was not covered under Act immaterial, since it is Bd's function, not E's to decide whether individual is covered by Act or claim has merit)

The Kroka School Foundation, Inc. 251 NLRB No. 187
(allegation that E violated Act by discharging Ee, in part because she had filed charges and given testimony under Act, dismissed where evidence of unlawful motivation consisted primarily of testimony that E told her that E could have cried when E heard Ees testify with misinformation about E)

Kaufman DeDell Printing, Inc. 251 NLRB No. 002
(discharge for filing charges with Bd, unlawful)

New Process Gear, Division of Chrysler Corporation 249 NLRB No. 158
(discharge of Ee on very day he testified in Bd hearing, assertedly because of damaged grease seal, held violative since Ee showed it was impossible to determine who was responsible for damaged seal and notwithstanding that discharge was withdrawn, E's actions delivered message to its Ees that they may not testify with impunity against E in Bd proceeding)

Don Pizzolato, Inc. 249 NLRB No. 136
(discharge for participation in conference on representation ptn held at Bd office violative)

Austell Box Board Corporation 249 NLRB No. 044
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW 248 NLRB No. 155
(abrupt refusal to allow newscaster to leave on long scheduled vacation which had been approved by her immediate supervisor well in advance, assertedly because of E's lack of funds and/or because E was unhappy with Ee's replacements, violative, where Ee had filed charges and testified against E in prior Bd proceeding; E's defenses were shifting and inconsistent leading to inference of real reason for E's action)

Medical Mutual of Cleveland, Inc. 248 NLRB No. 074
(although Ee was legitimately on probation for low production, his discharge was unlawful where termination occurred two days after ULP complaint had issued on Ee's charge and after she refused to assent to E's request for postponement of hearing on her cause)

Hilton Hotels Corporation, d/b/a The O'Hare Hilton 248 NLRB No. 031
(discharge of U steward for filing charges with the Bd against E, unlawful)

Sonoma Community Press d/b/a News Herald 247 NLRB No. 148
(discharge not unlawful, where it was established that Ee was discharged for work-related and incompatibility reasons, and decision to discharge Ee was made prior to and not because of Ee's participation in Bd proceedings)

George Bush, George Phillip Bush, and Larry Bush, A Partnership, d/b/a Creamline Dairy Farms JD-449-82
(laying off U adherent and subsequently discharging him two days after he gave testimony adverse to E's interest at Bd hearing, violative)

George Bush, George Phillip Bush, and Larry Bush, A Partnership, d/b/a Creamline Dairy Farms JD-449-82
(violation where E discharged Ee who charged E with giving false testimony under oath at Bd hearing and led E to believe that he would testify in manner consistent with this accusation when hearing resumed)

3350-6200—Cont.

[illegible] Car Corporation JD-(ATL)-8-82
(discharge of reinstated U adherent for U activities and for filing charges with Bd, unlawful notwithstanding assertion that discharge was for breach of drinking rule where dischargee was treated more harshly than other Ees who also breached E's drinking rule)

Roland & Roland, Inc. JD-640-81
(suspension and subsequent discharge of Ee for filing ULP charge, unlawful)

Drave-Groves Company JD-(ATL)-93-81
(complaint that Ee had been discharged by E a second time because he had filed charge with Bd after first discharge, dismissed in view of testimony of coworkers and supervisors that his work was inadequate and testimony of coworkers that he admitted not applying himself to his work)

American Interstate Freight Lines JD-117-81
(violation where GC made *prima facie* showing that motivating factors in E's decision to discharge Ee were Ee's taking his grievance to grievance board and endeavoring to enforce work-guarantee provisions in agreement, and his appealing dismissal of his ULP charge; and E failed to demonstrate that it would have discharged Ee in absence of protected activity)

Lauridsen Foods, Inc. JD-36-81
(discharge of U adherents for testifying at R case hearing and for their U activities, unlawful)

Sprinkmann Sons Corporation of Illinois JD-763-80
(discharge of Ee allegedly because he filed charges with Bd, not unlawful, since, while receipt by company at home office of charge was as matter of law notice to company, it does not follow that, because it had such knowledge, it therefore discharged Ee inasmuch as general foreman at separately located construction site creditably testified that at time of discharging Ee, he knew nothing of charge being filed)

Triangle Pacific JD-(ATL)-22-80
(discharge, not unlawful where it was not for attempt to give evidence to Bd, as alleged, but for failure to deliver a load and unauthorized hauling of passengers in violation of company rules)

Hotel & Restaurant Employees and Bartenders Union Local 2 JD-(SF)-178-80
(discharge of Ee for advising other Ees of their right to file charges against U, violative)

Magic Mountain Corporation JD-337-80
(former ski patrol member constructively discharged where he clocked out upon his refusal to continue working in sewage bins, which job was assigned to him due to E's animus towards him for his U activity and filing charge with Bd)

Newspaper Printing Corporation JD-203-80
(discharge of Ee allegedly for attending Bd hearing instead of getting bed rest for fatigue resulting from working and then filing workman's compensation claim, unlawful, since no evidence Ee ever filed claim and also in view of timing, E's knowledge of Ee's U activities and baselessness of E's asserted reason)

World Wide Press, Inc. JD-(SF)-12-80
(discharge, assertedly because of poor work performance, of Ee who had given testimony in Bd proceeding and who supported U disfavored by E, unlawful, where Ee's job mistakes were not known to E at time of discharge, Ee had never been told that her work was unsatisfactory, and E harbored desire to retaliate against Ee for testimony in Bd proceeding)

J. P. Stevens & Co., Inc. v. N.L.R.B. 638 F.2d 676 (C.A. 4, 1980)
(discharge of U adherent, violative, where E was aware that Ee filed complaints with Bd, threatened to file further complaints, and participated in Bd investigation)

N.L.R.B. v. M & B Contracting Corporation 653 F.2d 245 (C.A. 6, July 1981)
(discharge of Ee who had circulated ptn for U and filed charge with NLRB, unlawful, where for U activity and invoking Bd processes rather than for insubordination in bringing E's broken truck back to E's headquarters w/o proper authorization where Ee had tried to obtain authorization from proper party, and unauthorized individual who told him to bring truck in was not reprimanded)

N.L.R.B. v. Town & Country LP Gas Service Company 687 F.2d 187 (C.A. 7, Aug. 1982)

N.L.R.B. v. Schaffner Volkswagen Corporation 681 F.2d 597 (C.A. 8, July 1982)
(withdrawing reemployment offer to Ee on layoff because Ee filed ULP charge, violative in view of timing and false explanations that business was slow and that president lacked authority to offer reinstatement)

N.L.R.B. v. Joseph, d/b/a Meat Packers International 605 F.2d 466 (C.A. 9, 1979)
(discharge of Ee, who had testified at prior Bd proceedings, in order to make room for one reinstated discriminatee not violative where Ee was least competent of workers available; management was entitled to make such selection in order to comply with order of ALJ)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. 600 F.2d 930 (C.A.D.C., 1979)
(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

3350-6300 Constructive discharge

Heck's Properties, Incorporated, Engineering Division and/or Mountaineer Investment Co., Inc. 264 NLRB No. 071
(Ee's quitting after his reinstatement pursuant to settlement agreement when E refused to continue its prior policy of furnishing free lodging for nonresident Ees when utlized on non-U jobs beyond commuting distance from their homes held unlawful constructive discharge since E's action had intent of frustrating settlement agreement so as to discourage Ees from seeking redress under Act)

3350-6500 Demotion

7 Up Bottling Company 261 NLRB No. 128
(replacing Ee's daytime delivery duties with demeaning nighttime chores, violative of 8(a)(4) where due to his having filed charge with Bd)

3350-6600 Denial of promotion

Fundacion Educativa Ana G. Mendez, Inc. d/b/a Colegio Universitario Del Turabo 251 NLRB No. 203
(no violation, where instructor at university was denied professional tenure, not because of his involvement with U or because he gave testimony under Act and/or participated in Bd proceedings, but because he failed to satisfy reasonable, non-discriminatory university requirements for attaining professional tenure)

N.L.R.B. v. Ford Motor Company 683 F.2d 156 (C.A. 6, July 1982)
(refusal to promote Ees who had been recommended for promotion, unlawful, since for voicing their dissatisfaction with E's promotion policies, filing grievances and ULP charges, particularly in view of promotion of others with less seniority)

3350-7500 Failure to pay for time lost from work or mandated witness fees

U. S. Electrical Motors, A Division of Emerson Electric Co. 261 NLRB No. 184
(where E had policy that Ees would not receive holiday pay if they did not work on day before and day after a holiday, and Ee asked if he would receive holiday pay for Memorial Day if he attended Bd hearing on day after Memorial Day, supervisor's statement in reply that he might not receive it, not unlawful since some supervisory personnel were not familiar with holiday pay policy or aware that Bd-issued subpoena constituted excuse for not being present day after holiday)

Consolidated Aluminum Corporation 238 NLRB No. 033
(E's refusal to compensate Ee for wages lost while testifying in his capacity as U officer in Bd case to which E was not party, not unlawful, absent express contractual commitment and where not in retaliation for U activity or testifying; fact E had previously paid compensation to same officer in similar situation as result of grievance settlement did not establish precedent or law of the shop, nor did contract provision providing for compensation for loss due to jury duty or as witness subpoenaed by ct of law require payment)

Consolidated Aluminum Corporation 286 NLRB No. 053
(refusal to pay Ee pursuant to contract difference in amount of day's wages and witness fee collected from GC for testifying under subpoena not violative because E is not discriminating in respect to employment relationship by not paying Ee called as witness against it or if he paid Ee called by E more; on other hand, apart from matter of payment of witness fees and/or amount thereof, where opposing witness are denied benefit of turn or condition of employment which E's witnesses receive; E would be obstructing Bd process)

Howard Johnson Company, d/b/a Howard Johnson distribution Center JD-(SF)-12-81
(refusing to pay Ee regular wages for time he lost from work to testify at Bd hearing pursuant to subpoena issued by GC, not unlawful, where, notwithstanding E's policy of paying Ees who are absent from work due to jury duty or because of a death in the family, Ee witness was compensated for his time by GC, and additional compensation from E would in effect require litigant to subsidize its opponent)

3350-7500—Cont.

N.L.R.B. v. Permanent Label Corporation **657 F.2d 512 (C.A. 3, 1981)**
(refusing to allow Ees who notified E one half hour before start of shift that they would be 5-10 minutes late because of attendance at Bd hearing to work their shifts that day, unlawful, since in retaliation for assistance to U)

3350-7700 Suspension

McLean Hospital, A Division of Massachusetts General Hospital **264 NLRB No. 068**
(no violation where suspension and discharge were not because dischargee had filed charges with Bd as alleged but because he failed to respond adequately to E's legitimate questions about his unauthorized entry with unidentified person into E's hospital's psychiatric unit contrary to rules against access by off-duty Ees and unauthorized entry by non-Ees; fact dischargee was accompanied by Bd attorney investigating his charge did not make entry protected or give him right to disregard rules)

Transler Lutheran Home for Children t/a Frostburg Village of Allegany County Nursing Home **263 NLRB No. 042**
(suspending Ee for testifying at Bd proceeding, violative)

7 Up Bottling Company **261 NLRB No. 128**
(suspension based on Ee's alleged failure to comply with earlier, unlawful warning, violative of 8(a)(4) where E was motivated by Ee's having filed charge with Bd)

Overseas Motors, Inc. **260 NLRB No. 105**

NAB Construction Corporation **258 NLRB No. 090**
(suspension of Ee who refused to withdraw charge filed with Bd violative)

Marathon Letourneau Company, Longview Division **256 NLRB No. 054**
(suspension of known U adherent assertedly for violating rule on reporting in for absences, not unlawful, where Ee's intent was to report absences at his convenience w/o regard for rules; Ee's reliance on laxity in enforcement of rules was not supported by record; even assuming such laxity, an Ee would be held to higher degree of responsibility than that shown by Ee, and Ee's failure to report in prevailed in face of prior discipline for identical infraction)

International Union of Operating Engineers, Local Union No. 132, AFL-CIO **255 NLRB No. 060**
(E's suspension of Ee for filing charges with Bd, violative)

Interlake, Inc. **253 NLRB No. 076**
(three-day suspension of Ee for leaving plant w/o permission for purpose of filing ULP charge with Bd held violative where E has consistently permitted other Ees to leave work on U business during regular working hours w/o disciplinary action)

Salem Transportation Co., Inc. **252 NLRB No. 155**
(allegation of 8(a)(4) based on suspension of Ee dismissed, where such suspension was for poor record and not for filing charge with Bd, as alleged)

Ledford Construction Company, Inc. **251 NLRB No. 193**
(suspending Ees who testified against E at Bd hearing while permitting Ees who testified favorably to work)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**

Austell Box Board Corporation **249 NLRB No. 044**
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

Permanent Label Corporation **248 NLRB No. 021**

The Mining Journal **JD-4-82**
(suspension of U steward, unlawful where it was motivated by her filing of charge against E with Bd rather than as alleged for attending to personal business (by looking at her copy of U contract for personal reasons) on worktime)

Roland & Roland, Inc. **JD-640-81**
(suspension and subsequent discharge of Ee for filing ULP charge, unlawful)

N.L.R.B. v. Permanent Label Corporation **657 F.2d 512 (C.A. 3, 1981)**
(refusing to allow Ees who notified E one half hour before start of shift that they would be 5-10 minutes late because of attendance at Bd hearing to work their shifts that day, unlawful, since in retaliation for assistance to U)

Nacher Packing Company v. N.L.R.B. **615 F.2d 406 (C.A. 7) (1980)**
(assignment of discriminatee reinstated pursuant to Bd order after his initiation of Bd proceedings to job performance of which might expose him to further injury of his injured hand with ultimatum of doing it or going home with result that discriminatee went home held to constitute unlawful suspension when other jobs which would not expose him to injury were available for assignment)

3350-8100 Transfer to another job

Riley-Beaird, Inc. **259 NLRB No. 138**
(transferring U adherents who had testified at Bd proceeding to different jobs, violative)

K & S Circuits, Inc. **258 NLRB No. 142**
(violation where E changed work assignments of U adherents, who had invoked Bd's processes, to jobs they had never done before)

3350-8500 Filing lawsuit

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(E's state civil lawsuit against alleged discriminatee, who had filed ULP charge against Ee, and against other Ees, unlawful, where lawsuit was attempt to penalize discriminatee for having filed charges with Bd and other Ees for assisting alleged discriminatee in her protest of ULP committed against her; E's lawsuit placed Ees on notice that by filing charges with Bd or making public a dispute with E, Ee subjects himself to possibility of concomitant expenses and possibility of reimbursement to Ee for legal fees and damages)

Alabama By-Products Corporation **JD-(ATL)-49-82**
(E's filing suit in district ct against Ee and U alleging willful breach of settlement agreement to penalize Ee for participating in charge U had filed on his behalf with Bd and to discourage Ees from seeking access to Bd's processes, unlawful)

Metro-Young Construction Company, A Division of Olson Construction Co., Inc. **JD-(SF)-12-82**
(filing action in U.S. District Court joining discharged Ee as respondent along with U and seeking order to compel arbitration of Ee's discharge as provided for in collective bargaining agreement, violative, as Ee has Sec. 7 right to seek vindication of his discharge with NLRB; E's lawsuit was coercive under Sec. 8(a)(1) and discriminatory under Sec. 8(a)(4) as Bd does not defer under *Collyer* charges filed under Sec. 8(a)(1) and (3))

Whitehall Packing Company, Inc. **JD-14-81**
(public policy considerations that dictate free access to Bd's processes under 8(a)(4) in case of individuals apply with equal force in case of labor organizations, which statement, however, does not mean that in filing civil suit against labor organization for filing ULP charges against E, E violates Sec. 8(a)(4); such holding would do violence to definition of such terms as *discharge, otherwise discriminate,* and *employee* which are part of Sec. 8(a)(4); rather, in filing such civil suit E interferes with, restrain, and coerces Ees in exercise of their Sec. 7 rights)

Whitehall Packing Company, Inc. **JD-14-81**
(E's filing of civil suit against U for filing ULP charges against E violative of 8(a)(1), but not 8(a)(4), where E's civil suit had unlawful objective as evidenced by fact that E presented no evidence to show reasonable basis for initiating suit, E offered no explanation for timing of suit in relation to filing of U's charge and adjournment of ULP hearing, allegations in ULP charge and complaint did not advert to matters forming gravamen of E's suit, and E's pre-trial attempts to obtain writings from U officials produced earlier in other proceedings suggested intent to harass)

The United Credit Bureau of America, Inc. v. N.L.R.B. **643 F.2d 1017 (C.A. 4, Mar. 1981)**
(E's filing civil action against Ee in retaliation for filing ULP charge, violative as Act require complete protection for Ees who in good faith file charges or testify)

3350-8600 Threatening to depose and deposing employee-defendants in civil law suit

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(threatening to, and deposing Ees in state civil proceeding, brought against Ees by E for libel and wrongful interference, regarding Ees' U activities relevant to pending Bd proceeding, unlawful; Bd's stricter discovery procedures pre-empt state's looser standard, federal interest underlying Bd's discovery rule is much greater than that underlying state rule, and danger of interference with Bd's administration of Act by failing to limit state ct discovery procedures is much greate than potential for interference with state proceedings)

3350-8700 Altering conditions of employment

Village IX, Inc. d/b/a Shenanigans **264 NLRB No. 122**
(where E had policy of allowing friends and spouses of Ees to wait for them in restaurant until Ee come off duty, it violated Act when it refused to allow husband of principal U adherent, who had been subject of Bd settlement agreement over her U activities, to wait for her. Although spouse did engage in some U activity, it was never on restaurant premises and was only to assist his wife and he did not engage in any U activities independent of her; thus, spouse could not be treated as non-Ee U organizer)

7 Up Bottling Company **261 NLRB No. 128**
(directive that Ee work strict 40-hour work (i.e., w/o overtime) issued in response to his filing charge with Bd, unlawful)

3350-8700—Cont.

Riley-Beaird, Inc. **259 NLRB No. 180**
(establishing closer supervision and stricter enforcement of plant rules against U adherents who had testified at Bd proceeding, violative)

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde **259 NLRB No. 073**
(violation, where E changed Ee's shift and days off to retaliate against his testimony at Bd hearing and his elevation to acting presidency of U)

Inland Steel Company **259 NLRB No. 024**
(harsh discriminatory treatment of Ee in assigning him tedious and unpleasant menial work for insisting on pressing grievance and expressing determination to distribute U literature on plant premises, not violative of Sec. 8(a)(4), where superintendent's remarks to Ee contained no reference to Ee's participation in prior Bd proceeding nor were any such references made in any other supervisor's remarks to Ee; rather, all of superintendent's remarks focused upon limitations on Ee's right to distribute U literature on plant premises and to talk about U during working hours at plant)

Welfare, Pension and Vacation Funds, Blasters, Drillrunners and Miners Union Local No. 29, etc. **256 NLRB No. 170**
(reduction of Ees' job responsibilities by refusing to allow them to call U members about jobs, deal directly with E's accountant or bank, distribute pension checks, answer office door or telephone, get association's signature on certain documents, make out forms for members, send letters under own signatures to late-paying Es' and take care of petty cash fund, unlawful where motivated by Ees' testifying against E at workmen's compensation hearing, participating in Bd investigation, testifying at Bd hearing and filing ULP charge)

Welfare, Pension and Vacation Funds, Blasters, Drillrunners and Miners Union Local No. 29, etc. **256 NLRB No. 170**
(reducing Ees' employment benefits, and making their working conditions more onerous by failing to issue Ees keys to office, denying them $25 a week pay raises, requiring them to take vacations in July and August only, closing kitchen facilities, and denying sick leave benefits, and eliminating paid coffee breaks and paid check cashing time because Ees participated in Workmen's Compensation hearing, participated in Bd investigation, testified at Bd hearing, and filed ULP charges, unlawful)

Continental Distributing Co., Inc. **256 NLRB No. 091**
(reinstatement of discriminatee to more onerous job and prohibiting him from speaking to other Ees violative where reinstatement occurred after Ee filed charges with Bd to protest his unlawful discharge and allegations of stealing and drinking on job not supported by record)

K & S Circuits, Inc. **255 NLRB No. 163**
(violation where E compelled U adherents, who had invoked Bd processes, to stand at their workplace on newly-created shift instead of using stools as Ees did on regular shifts)

K & S Circuits, Inc. **255 NLRB No. 163**
(violation where E required U adherents, who had invoked Bd processes and were recalled pursuant to settlement agreement, to take math tests and fill out new applications)

Firmat Manufacturing Corp. **255 NLRB No. 153**
(E's cutting leading U activist's overtime immediately following receipt of his first ULP charge, violative)

Firmat Manufacturing Corp. **255 NLRB No. 153**
(denying Ee extended vacation because his name appeared in ULP charge, violative)

Climate Control Corporation **251 NLRB No. 102**
(denying vacation benefits in retaliation for U activity, instigation of ULP charge, and providing evidence to Bd, violative)

Ford Motor Company **251 NLRB No. 066**
(E's refusal to promote Ees unlawful where refusal was attempt to punish them for pursuing grievance and filing ULP charge and they were highly qualified, experienced and recommended for promotion)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 188**
(transfer of Ee, who was witness in Bd hearing, fromhis desired second shift to less desirable day shift held violative where trans fer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

Vulcan-Hart Corporation (St. Louis Division) **248 NLRB No. 145**
(plant manager's statement to U vice-president in presence of Ees, that *there would be no meetings in (plant) lunchroom because U had filed charges against him* held violative, since statement was *not merely threat* but actual revocation of permission to use lunchroom; notwithstanding alleged violation was couched in terms of threat, issue of use of lunchroom was presented and litigated as *actual revocation*)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(violations where E transferred U adherents who had testified at Bd hearing to store in less desireable location, reduced their working hours to times when they could not use public transportation, added onerous janitorial duties and then discharged them)

Phillips Industries, Inc. Lau Division **JD-424-82**
(E's withholding of tuition payment for job related courses Ee was taking in retaliation for Ee's having filed charge with Bd violative)

Bill Fox Chevrolet, Inc. **JD-767-80**
(E's deliberately depriving Ee of work, resulting in sharp dip in Ee's earnings for 2-week period, violative since reasons for E's action were Ee's show of U loyalty, his protected activities on behalf of U, and because he gave testimony to Bd)

Henry Warshaw and Chester Latra, A Co-Partnership d/b/a Normandie Bar and Grill **JD-551-80**
(violation where E reduced Ee's work schedule because she had filed charge with Bd)

N.L.R.B. v. Vulcan-Hart Corporation, (St. Louis Division) **642 F.2d 255 (C.A. 8, Mar 9, 1981)**
(E's general manager's termination of right of Ees to hold U meetings in lunchroom, violative where termination resulted from his anger at filing of charge by U)

3350-8900 Denial of leave

American Geri-Care, Inc. **259 NLRB No. 147**
(refusal to grant U adherent leave two days after Ee appeared at Bd hearing, violative)

3350-9200 Requesting state licencing agency to check employee's professional behavior

Road Memorial Hospital **265 NLRB No. 105**
(requesting state licencing agency to inquire into Ee's professional behavior because she filed ULP charges with Bd, violative)

3350-9400 Refusal to employ, reemploye or recall from layoff

Royal Development Company, Limited **257 NLRB No. 149**
(refusal to hire previously employed Ee for new opening because of his filing of ULP charge, unlawful)

Semetner Volkswagen Corporation **257 NLRB No. 038**
(violation, where E withdrew offer to rehire supervisor as Ee because U filed ULP charges 2 weeks earlier alleging violation by E's refusal to hire him as Ee)

Clements Wire & Manufacturing Company, Inc. **257 NLRB No. 075**
(discharging and refusing to reinstate leading U adherent because Ee invoked Bd processes, violative)

Civic Center Cleaning Co., Inc. **252 NLRB No. 110**
(failing to employ Ee because he had filed ULP charges against previous E and U, violative)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(refusal to rehire unlawfully discharged U adherent, unlawful, where he made application for work at plant after discharge, and supervisor made it clear to him that he was not rehired because of his U activities and because ULP charges had been filed on his behalf)

Metropolitan Teletronic Corp. **JD-(NY)-12-81**
(conditioning Ee's reinstatement upon her withdrawing of charges before Bd and failing to reinstate her until she agreed to cause charges to be withdrawn, violative)

Planned Parenthood of Alameda and San Francisco Counties **JD-(SF)-294-80**
(refusing to hire Ee for hourly paid position where E had decided to eliminate salaried position held by Ee for business reasons and hire only on hourly basis, but had not hired replacement for Ee prior to time Ee had indicated willingness to take hourly paid position, and Ee had had no meaningful opportunity to submit application, unlawful, since refusal really for Ees' filing charges with NLRB)

Clements Wire and Manufacturing Company, Inc. **JD-338-80**
(E's refusal to reinstate leading U adherent, unlawful where she gave testimony at Bd proceeding and her name appeared on charges which E was aware of prior to date on which she was refused reinstatement)

Montefiore Hospital and Medical Center v. N.L.R.B **621 F.2d 510 (C.A. 2, 1980)**
(health care institution's denial of full-time positions to doctors because of their filing charges with Bd, unlawful)

McLean Trucking Company v. N.L.R.B. **626 F.2d 1168 (C.A. 4, 1980)**
(E's call in system which had previously preferred relatives of its Ees and was later based upon seniority, allegedly because Ee filed charges with Bd against E, changed to merit system, not unlawful, where casuals had no contractual right to be called in to work at all or in any particular priority)

3350-9500 Isolation from other employees

K & S Circuits, Inc. **255 NLRB No. 163**

(violation where E isolated U adherents from other Ees by creating new shift for them after they returned to work pursuant to settlement agreement which was result of Ees invocation of Bd processes)

3350-9600 Opposing claim filed with other governmental agency

Haring Meats, Inc. **JD-181-81**

(opposing Ee's unemployment compensation claim because he filed ULP charge, violative)

3350-9700 Surveillance

C. E. Wilkinson & Sons, Inc. **255 NLRB No. 176**

(surveillance by supervisors of Ee who was at U hall for purpose of giving testimony to Bd agent, violative)

Ford Motor Company **251 NLRB No. 066**

3350-9800 Assault, abuse or harassment

American Geri-Care, Inc. **258 NLRB No. 147**

(requesting doctor's note from U adherent who had appeared at Bd hearing, not unlawful, where E had rule which clearly stated that anyone who is ill a day prior to day off must submit such note before restarting duty)

5000 FORMS OF DISCRIMINATION

5007 EMPLOYMENT REFERENCE

John Grissom, Mikos Doka-Suna, David Springer,
and Richard Baker, A General Partnership d/
b/a Natural Heating Systems **252 NLRB No. 152**

(denial of reference because Ee was attempting to organize Ees on behalf of one U while E was attempting to work out an arrangement with another U, violative)

5009 REQUIRING PHYSICAL, PSYCHOLOGICAL OR OTHER EXAMINATIONS

Southern California Gas Company **251 NLRB NO. 127**

(discharge of Ee who refused to see E's doctor violative where no other Ee was ever terminated for such refusal and discharge occurred less than 2 weeks after Ee was threatened with termination for complaining to U about working conditions)

K & S Circuits, Inc. **255 NLRB No. 163**

(violation where E required U adherents, who had invoked Bd processes and were recalled pursuant to settlement agreement, to take math tests and fill out new applications)

5010 ISSUANCE OF WARNING OR REPRIMAND LETTERS

Spring Valley Foods, Inc. **265 NLRB No. 182**

(warning unlawful where it was issued to Ee because of his U activities rather than for insubordination when Ee told his wife not to pay attention to supervisor as alleged, since Ee and supervisor had often teased each other about their wives, and E siezed on this occasion to issue warning to Ee)

Belcher Towing Company **265 NLRB No. 159**

(issuance of warning letter to Ee assertedly for use of unauthorized color in painting his workplace, unlawful, where Ee, who acted as U observer and was otherwise ardent and active U supporter, was disciplined w/o opportunity to rebut charges, and E seized upon paint incident as pretext to punish Ee because of his U activities and to make it clear to him and others so inclined that advocacy of U would meet with same or similar treatment)

Winer Motors, Inc. **265 NLRB No. 185**

(unilateral implementation of written warning system with its discriminatory application against pro-U Es, violative)

Allied Industrial Workers of America, AFL-CIO,
Region 8 **265 NLRB No. 077**

(no violation where regional director of E, a U, sent warning letter to its regional representative requesting explanation of his interference in the affairs of a local to which he was not assigned, since Bd found that warning letter was not in retaliation for his filing ULP charge and for his other protected activities but was, rather in response to complaints from officers of the local concerning his interference)

Allied Industrial Workers of America, AFL-CIO,
Region 8 **265 NLRB No. 077**

(no violation where regional director of E, a U, sent letter to regional representative stating that his failure to pass out organizational material provided by E could have been reason it lost an election, since Bd found that letter was not in retaliation for regional representative's filing ULP charge and for his other protected activities but was merely a reminder to use organizational materials provided by E in future campaigns)

Cardio Data Systems Corp. **264 NLRB No. 011**

(issuance of warning notice to Ee for unauthorized use of E's copying machine, unlawful, where ALJ found E violated 8(a)(1) when E told Ee a month later that such warning should be taken as a threat and that it was intended to show Ee what it would be like if Ees were represented by U; E's claim that warning was lawfully issued due to Ee's violation of unwritten company policy, rejected *and*, under the circumstances, E's admission regarding motive for warning was true reflection for motive underlying the warning)

South Nassau Communities Hospital **262 NLRB No. 146**

(warning letters issued to U activists for infraction of E rule by overextending their lunch breaks, unlawful, notwithstand that similar punishment was given to Ees not actively supporting U, where extension of lunch break was common practice engaged in by supervisors and Ees, of which E was well aware; and, as shown by E's remarks in answer to Ee's inquiry about her similar situation, discipline of Ees herein was directly related to their U activities)

East Texas Motor Freight **262 NLRB No. 101**

(warning letters and counselling various Ees for actions contrary to E's work rules and policies not violative where other Ees were warned and counselled for same offenses which were work related, were not discriminatory and did not involve Ees' protected activity)

7 Up Bottling Company **261 NLRB No. 128**

(E's issuance of written warning to U activist for use of its truck and for use of its time for personal business, violative of 8(a)(3) where E showed anti-U motivation by referring to activist as source of its U problems)

7 Up Bottling Company **261 NLRB No. 128**

(disciplinary report based on Ee's alleged failure to comply with earlier warning, violative of 8(a)(3), since earlier warning had been motivated by Ee's being believed to be the source of E's U problems and had violated 8(a)(3))

Kenco Plastics Company, Inc. **260 NLRB No. 194**

(issuing written warning to U adherent for loitering around plant at time when E had observed Ee during unprecedented increase of visits to production area after U had filed representation ptn, violative, in view of E's knowledge of Ee's U activity, its expression of U animus, the precipitous timing of warning, and contrast between warning and E's previous apparent satisfaction with Ee's work)

United Technologies Corporation **260 NLRB No. 196**

(issuance of reports to enforce unlawful no-distribution rule, unlawful)

Huntington Rubber Company, Division of New
Idria, Inc. **260 NLRB No. 133**

(warning letters issued to 3 U adherents, 2 of whom E had no knowledge of their U activity not violative where Ees had been harassing another Ee and E had legitimate reason to issue warning)

R. G. Barry Corporation **260 NLRB No. 023**

(issuance of written warnings of suspension or termination to Ees for engaging in U solicitation during working time, unlawful, where warnings were contrary to E's progressive disciplinary system which was complied with in case of anti-U activities by other Ees and constituted a more severe reprimand than that given anti-U Ees; E did not possess good faith belief that Ees engaged in more serious misconduct than soliciting; and there was no reference to serious misconduct in warnings, no meaningful investigation, and no counseling of Ees required by E's personnel policies)

Inland Steel Company **259 NLRB No. 024**

(issuance of disciplinary letters to Ee and loss of couple of days' pay for refusing to perform job assignment, unlawful, where actions were taken to punish Ee for insisting on pressing grievance and expressing determination to distribute U literature on plant premises; prior to Ee's refusal, Ee was selected to perform tedious and unpleasant menial job for unusually long period of 5-1/2 months, at same time E attempted to isolate Ee while so engaged, and E thereby calculated to deprive Ee of job satisfaction and to provoke him into refusing a work assignment which Ee finally did)

Webb Ford, Inc. **258 NLRB No. 062**

(issuance of warnings because Ees filed grievances, unlawful)

Dimensions in Metal, Inc. **258 NLRB No. 078**

(inserting reprimands in files of U adherents, assertedly for unauthorized absences, violative where reprimands were given for purpose of building case for their subsequent discriminatory discharge)

Arrow Automotive Industries **258 NLRB No. 116**

(issuance of warning notices to and suspension and discharge of Ee allegedly for failure to communicate schedule delays, unlawful, where E never mentioned said failure to communicate until it found U literature in Ee's truck and admonished him about it)

Arrow Automotive Industries **258 NLRB No. 116**

(issuance of written warnings about attendance and time spent off job, unlawful where purpose was to prevent Ee from attending U meeting and passing out U authorization cards at work)

Prentice-Hall, Inc. **258 NLRB No. 184**

(E's warnings to U activist, unlawful where E failed to rebut evidence that E stated that Ee's attitude had created tension for six months, the same period of time that U campaign had lasted, that E's statement that *these*

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incidents must stop included reference to wearing of U buttons such as Ee wore, and that Ee was termed agitator by one supervisor)

Sav-On Drugs, Inc. **258 NLRB No. 194**
(issuing warning letter to Ee in retaliation for his U activities, unlawful)

Brockwood Furniture, Division of U.S. Industries **258 NLRB No. 028**
(reprimands of U activist, unlawful where reprimands came after U won election and were unprecedented in Ee's work history, and E failed to investigate mitigating factors)

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. **257 NLRB No. 045**
(warnings unlawful where based on Ee's infraction of discriminatorily enforced *unauthorized absence* rule)

Borun Brothers, Inc., A Wholly Owned Subsidiary of Thrifty Corporation **257 NLRB No. 003**
(issuance of written warnings in attempt to enforce invalid no-soliciation no-distribution rule, unlawful)

K-Mart Corporation **255 NLRB No. 112**
(issuing warning to U adherent for not timely notifying personnel manager of absence, violative, where reason for warning was pretextual)

K-Mart Corporation **255 NLRB No. 112**
(writing up interview with U adherent about wearing *unsafe* shoes to work w/o written excuse from doctor about Ee's severe foot problems and placing such record into E's personnel file, violative, where Ee had previously been told that doctor's excuse would not matter, and such write-up, contrary to E's contention, constituted disciplinary warning)

Cutting, Inc. **255 NLRB No. 076**
(giving U supporter unwarranted written warning about being absent from work when she had been given permission for absence, unlawful)

Intermountain Rural Electric Association **253 NLRB No. 164**
(written reprimand of Ee whom E knew was *strong* U adherent, for assisting another Ee concerning other Ee's job status held violative, since reprimand was in recrimination for U adherent's U activity although it was triggered by Ee's activity in aid of another Ee)

Pioneer Natural Gas Company **253 NLRB No. 003**
(issuing written reprimands because of U activities, violative)

Reeves Rubber, Inc. **252 NLRB No. 026**
(issuance of warning notice threatening termination for pro-U solicitation in work area on work time while permitting anti-U solicitation under same circumstances, unlawful)

Alfa Leisure, Inc. **251 NLRB No. 088**
(issuance of warning notices to and suspension of Ee not violative where reason was Ee's lateness in returning from lunch after celebrating U victory in election for which he had been an observer, and for his insubordinate attitude)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(E giving Ee written warning and 3 day suspension in reprisal for his leading role in U organizational campaign, unlawful; E's contention that Ee produced less than other department Ees was pretext for warning and suspension)

United States Postal Service **251 NLRB No. 033**
(issuance of written warnings for alleged insubordinate conduct during and after informal grievance meeting, violative, where conduct was not *opprobious* or *extreme* and Ees' continued discussion of grievance following meeting was part of *res gestae* of grievance meeting which had no consequential disruptive effect since Ees did return to work in response to direct order)

Bechtel Incorporated **248 NLRB No. 158**
(E's issuance of warning slips for Ees' quitting early and subsequent discharge for their refusing to sign warning slips, not unlawful since discipline was for Ees' insubordinate refusal to obey supervisor's direct order to comply with work rules while eschewing available contractual grievance process)

Production Plated Plastics, Inc. **247 NLRB No. 076**
(giving Ee reprimands and subsequent suspension for allegedly abusing restroom policy unilaterally instituted, violative)

Chromalloy American Corporation-Liberty Radiator Division **JD-(SF)-303-82**
(supervisor's issuance of written warning for violation of plant rule against gambling unlawful, where plant rule had never been enforced and supervisor admittedly believed Ee was strike instigator and wanted to get rid of him and had threatened to issue warning in retaliation for Ee's filing of a grievance)

United States Postal Service **JD-(SF)-101-82**
(E's issuing counselling letter to U vice president for inquiring of administrator outside chain of command about E's policies to determine whether fellow Ee had grounds for grievance, unlawful where vice president's conduct was consistent with his past practice and not specifically or inferentially prohibited by contract or otherwise, and chain of command rule was not shown to apply to his conduct or to justifiably be applied to concerted protected activity because of business considerations)

Oak Harbor Freight Lines, Inc. **JD-(SF)-211-82**
(issuing disciplinary letters to and imposing suspension on Ee, violative where Ee had instigated efforts to stop supervisor from doing unit work)

New York State United Teachers **JD-(NY)-83-81**
(reprimand of Ee who had filed grievance regarding Ees' job assignments which was then in arbitration for telling delegates of affiliated organizations of E about arbitration case and which E did not want divulged, violative, since Ee's remarks concerned grievance, did not disparage his E nor reach level of impropriety or disloyalty to E which would result in remarks losing its protected nature)

Ford Motor Company, Automotive Division, Twin Cities Plant **JD-57-81**
(issuing reprimand and warning to U caucus adherent because of her protests against one Ee's turning other Ees in and her association with U caucus, unlawful)

Ford Motor Company, Automotive Division, Twin Cities Plant **JD-57-81**
(issuing reprimands and warnings to Ee and placing warning in his file because he kept log of foremen doing U work, filed foreman-working grievances, and urged other Ees to do the same, unlawful)

U. S. Postal Service **JD-(SF)-242-80**
(supervisor held not to have threatened to retaliate against Ee because of U steward's insistence on investigating incident involving supervisor and Ee, or to have retaliated against attempts of U steward to investigate incident by issuing Ee a letter of warning, where Ee engaged in conduct which E reasonably viewed as insubordinate and supervisor immediately reported incident to his superiors at which time decision was made to discipline Ee, and such decision was reached several hours prior to steward's arrival at the scene)

Arvin Industries, Inc. **JD-381-80**
(issuance of written reprimands to Ees who attended U council meeting to discuss coordinated bargaining and to other Ees who attended U financial school after E had refused their request to be absent w/o pay violative, notwithstanding E's claim that such leave was not included in contractual leave provisions, since motivating reason for denying request was E's opposition to principle of coordinated bargaining; E had routinely granted leave for Ees to attend variety of U-related matters, and denying leave for Ees to attend financial school was to *shore up a defense*)

J. P. Stevens & Co., Inc. v. N.L.R.B. **638 F.2d 676 (C.A. 4, 1980)**
(issuing written warning to U adherent, violative; this was first written warning he had received for unsatisfactory work in his fifteen year career barely a week after announcing his support of U in presence of plant manager)

J. P. Stevens & Co., Inc. v. N.L.R.B. **638 F.2d 676 (C.A. 4, 1980)**
(although ct held record did not support Bd finding that two written warnings issued to U adherent unlawful, two other written warnings held unlawful since record supported discriminatory motivation in that E issued immediate warnings to U adherent for harassing fellow Ees while only giving anti-U Ee verbal warning for threatening and physically assaulting U adherent)

Pioneer Natural Gas Company v. N.L.R.B. **662 F.2d 408 (C.A. 5, Nov. 1981)**
(reprimands not unlawful where decision-making supervisor had no knowledge of reprimandees' U activities)

Necker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(E's early issuance of oral and written warnings to discriminatee reinstated pursuant to Bd order following his initiation of Bd proceedings, unlawful; he alone was carefully supervised and given written, as well as oral, warnings for poor production; he was also assigned to job he was not accustomed to doing and reassigned to it even after accident to his hand impaired his ability to do it)

Necker Packing Company v. N.L.R.B. **615 F.2d 456 (C.A. 7) (1980)**
(writing up for slow production of discriminatee reinstated, pursuant to Bd order following his initiation of Bd proceedings, unlawful when no other E had been assigned to job he was assigned to for long time and discriminatee had just returned to work after being out with injured hand and had given E doctor's report stating that he had not fully recovered use of hand required in doing that job)

Coors Container Company v. N.L.R.B. **628 F.2d 1283 (C.A.D.C.)**
(reprimding Ee for engaging in protected activity of displaying sign urging boycott of E's product, unlawful; E's claim that *verbal warning* given Ee was not a *written reprimand* under its discipline and discharge policy, rejected)

5012 REFUSAL TO EMPLOY OR REEMPLOY

R & S Transport, Inc. **258 NLRB No. 069**
(E's refusal to hire individuals based on adverse information obtained from individual's former E, not unlawful, where evaluations were not motivated

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by any U or protected activity on part of individuals, nor was E aware of any U activity on part of individuals known to E)

5012-0100 Generally

Whitehall Packing Company, Inc. and W.P.C., Ltd. **237 NLRB No. 843**
(refusal to offer employment to and employ Ees at plant closed by lockout at new alter-ego operation violative where E failed to bargain with U over its decision to close first operation and open second as both actions together create inference that E's actions were clculated to discourage U membership)

5012-3000 After discharge, layoff, or suspension

American Pacific Concrete Pipe Company, Inc. **262 NLRB No. 139**
(E who established *alter ego* in order to avoid its bargaining obligation and refused to recall laid-off Ees as required under collective-bargaining agreement with U violated Act)

Lee Industries **261 NLRB No. 166**
(E's refusal to reinstate dischargee after U failed to assist her in filing grievance over her discharge because she was not U member not violative, where there was no basis for imputing to E knowledge of Ee's anti-U stance)

Earle Industries, Inc. **260 NLRB No. 163**
(E's failure to reinstate U adherents who were temporarily laid off prior to first election for lack of work and failure to meet E's production standards, and then, prior to second election, conversion of such layoffs to permanent layoffs held violative where Ees were not advised of E's production standards and other Ees, who did not meet standards were retained in their jobs; customarily, Ees temporarily laid off for lack of work could expect to have been recalled when work picked up)

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(denial of reemployment to two Ees pursuant to U's unconditional offer to return to work which it made on their behalf, violative, notwithstanding Ees had been lawfully laid off and then terminated, where both Ees were denied reemployment because they had engaged in picketing and other strike-related activities)

Stafford Construction Co. **250 NLRB No. 128**
(refusal to reemploy U adherent because of his U activities violative)

B. N. Beard Company **248 NLRB No. 016**
(alleged breach of agreement to reinstate lawfully discharged Ee, not unlawful, where E's representative involved did not have either actual or apparent authority to bind E to such statement, and U also doubted representative's authority)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(refusal to rehire unlawfully discharged U adherents, unlawful, where numerous terminated Ees were rehired, there were numerous job vacancies and new hires during period in question, and E had no policy of automatically refusing to rehire discharged Ees)

Phillips Industries, Inc. Lee Division **JD-424-82**
(refusal to reinstate laid off Ee to former position because he filed grievance under collective-bargaining agreement violative)

Alpha Beta Company **JD-201-82**
(E's refusal to hire at one of its facilities truck driver who had been terminated, rehired and quit at another of E's facilities, lawful, notwithstanding contention refusal due to driver's U membership, where E showed he would have refused to hire Ee even absent his U membership, in view of his driving accident record, damage to goods and equipment, and poor attendance record when formerly employed by E)

Alpha Beta Company **JD-201-82**
(E's refusal to hire at one of its facilities Ees who had been laid off or formerly employed at another of its facilities at time when it was hiring at that facility, unlawful, since refusal due to *Ees'* U membership)

Westinghouse Electric Corporation **JD-(ATL)-88-81**
(refusal to rehire former U steward, who had held highest labor grade position at E's plant because he was hazard to himself and those around him, he had refused to work overtime and *did* not like overtime, held violative where E did not demonstrate refusal to rehire and would have taken place even in absence of Ee's protected conduct; real motivation shown by unlawful interrogation of another Ee and comment that *things would be quieter w/o him)*

A & B Janitorial Service, Inc. **JD-(SF)-169-81**
(E's refusal to rehire Ee who was illegal alien, unlawful, notwithstanding contention employment of illegal alien would be illegal, since Bd has authority to order reinstatement of illegal aliens and E motivated by Ee's grieving discharge, and would not have reached same decision absent protected conduct in view of fact E had knowingly hired illegal aliens in past and had never exhibited concern with compliance with law as could have been shown by demanding green card rather than relying on assertion of applicant)

N.L.R.B. v. Burns Motor Freight, Inc. **635 NL[illegible] 312 (C.A. 6, 1980)**
(E's suspension of Ee, engaged in U activities, for receiving speeding ticket driving E's vehicle and subsequent decision not to recall Ee, not unlawful, where after suspension E confirmed its information regarding Ee's speeding violations and learned E's motor vehicle record was encumbered with points as a result, which let insurer to take the position that Ee was virtually uninsurable; Bd must affirmatively show why E rejected good cause for discharge and chose a bad one, but it failed to do so herein)

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(although striking Ees who were terminated before effective date of health care amendments and were not entitled to reinstatement as returning Ees with right of restoration of seniority and other rights and privileges arising from former relationship, ct held that E discriminated against such Ees, who had made application for new employment with E after effective date of health care amendments, by refusing to hire the former Ees because of their prior concerted U activity)

Alumbaugh Coal Corporation v. N.L.R.B. **635 F.2d 1380 (C.A. 8, 1980)**
(ALJ who, as trier of fact, may choose between conflicting views of evidence, properly found w/o merit E's business justification for making new hires instead of recalling unlawfully discharged Ee, purportedly because of E's policy not to reassign personnel from one job classification to another)

5012-3500 After leave of absence

Advanced Mining Group, Div. of Republic Corp.,
Lucerne Facility **260 NLRB No. 073**
(known U protagonist)

Furr's Cafeterias, Inc. **231 NLRB No. 125**
(refusal to reinstate U adherent at conclusion of ULP strike after she had been on leave due to illness and hospitalization violative, where E was aware of Ee's participation in strike, and untimeliness of Ee's notification to E of her continued interest in job as E's reason for failure to reinstate was pretextual)

Chromalloy American Corporation-Liberty Radiator
Division **JD-(SF)-308-82**
(violation where, although E had reinstated non-ULP striker to his former position as dispatcher after he returned from the strike, it refused to reinstate him to that position again after he stayed out from work 5-6 weeks on disability on doctor's orders, hired a replacement dispatcher 3 days before his return, offered him only a driver's position on return and failed to prove that it would have taken these actions had its supervisor not been hostile due to his belief that the striker had instigated the strike)

5012-3800 After filing of grievance

Royal Development Company, Limited **257 NLRB No. 149**
(refusal to hire previously employed Ee for new opening because of his filing of grievances and ULP charge, unlawful)

Valley Cabinet & Mfg., Inc. **253 NLRB No. 098**
(refusal to consider reemployment for Ee discharged at U's request for nonpayment of dues violative where E acted in retaliation for grievances Ee had filed before her discharge)

A & B Janitorial Service, Inc. **JD-(SF)-169-81**
(E's refusal to rehire Ee who was illegal alien, unlawful, notwithstanding contention employment of illegal alien would be illegal, since Bd has authority to order reinstatement of illegal aliens and E motivated by Ee's grieving discharge, and would not have reached same decision absent protected conduct in view of fact E had knowingly hired illegal aliens in past and had never exhibited concern with compliance with law as could have been shown by demanding green card rather than relying on assertion of applicant)

Albertson's Inc. **JD-(SF)-104-80**
(no violation, where E would have faced problems trying at another store to hire Ee who had filed grievance, because of E's full work force)

5012-3900 After voluntary quit

Inland Steel Company **257 NLRB No. 013**
(refusal to hire violative, where E gave false reason and during Ee's prior employment E exhibited hostility to ee's participation in protected activity)

Charles Batchelder Company, Inc. **250 NLRB No. 089**
(E violated Act where reason for denial of reemployment after voluntary quit, pretextual, and Ees' U activity real cause)

Tarmac Marine Company **247 NLRB No. 073**
(refusal to rehire U adherent who had resigned twice, violative, since reason for refusal to rehire was Ee's U adherence, where E had promulgated no policy against rehire of Ees who had resigned twice, and in view of E's other unlawful conduct)

Alpha Beta Company **JD-201-82**
(E's refusal to hire at one of its facilities truck driver who had been terminated, rehired and quit at another of E's facilities, lawful, notwithstanding contention refusal due to driver's U membership, where E showed he would have refused to hire Ee even absent his U membership, in view of his

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driving accident record, damage to goods and equipment, and poor attendance record when formerly employed by E)

L & N Custom Design, Inc. JD-(SF)-50-82
(supervisor's failure to rehire Ee who had voluntarily quit because of pregnancy, held not due to her prior U activities (as allegedly had been stated to her by supervisor) where alleged unlawful motivation was refuted by fact that E had previously reemployed Ee after her U activity)

Ferry Cap & Set Screw Company JD-671-80
(refusal to rehire or recall Ee who, after being unlawfully suspended for walking off his job, voluntarily quit, not violative, where there was no direct evidence that Ee was refused rehire for discriminatory reasons; refusal to rehire Ee was based in large part upon fact that Ee had walked out immediately after giving his 2-week notice of quitting)

N.L.R.B. v. Charles Batchelder Company, Inc. 646 F.2d 33 (C.A. 2, Mar 1981)
(where U activist quit in protest over discharge of another U activist, refusal to rehire was not violative as his quit was serious breach of his employment obligation in that E was left with only one of three furnaces attended)

5012-4000 Discriminatory hiring practice (See also Union Security Requirements 524-5090)

Dunmor Company d/b/a Madison South Convalescent Center 260 NLRB No. 106
(violation, where E attempted to dissipate unit or undermine U's majority by failing to fill vacant positions in unit)

Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions 259 NLRB No. 019
(hiring Ees for new plant after unit Ees rejected proposed contract rather than moving unit Ees from closed facility to new location as previously intended, violative)

Henry A. Young, d/b/a Columbia Engineers International 249 NLRB No. 144
(E's refusal to hire individual, unlawful, since rejection based on fact he was U apprentice that U's business agent had requested E hire; contention that E did not discriminate because 10 days later he hired another Ee with same name, rejected, in view of E questioning latter individual before hiring and ascertaining he was not U member is evidence that E knew hired Ee was not same individual business agent requested)

Central Transport, Inc. 247 NLRB No. 198
(refusal to hire applicant because he previously worked for organized E, violative)

Galax Apparel Corporation 247 NLRB No. 026
(refusal to rehire Ees, violative, where E was prepared to rehire Ees as its records indicated, but retracted employment offer after receipt of U telegram informing E of organizing campaign and that members of Ees' family were part of U organizing committee)

Corbin-Dykes Electric Company JD-(SF)-208-82
(refusing to rehire Ee and placing Ee on E's ineligible for rehire list because he complained about safety of wiring in transfer switch box, violative, since complaints constituted protected concerted activity where safe operation of switch box was matter of common concern to other Ees who were obliged to operate switch; and moreover, Ee's complaints were also based on what Ee perceived to be violation of collective bargaining agreement which did not require Ees to perform work not in conformity with National Electrical Code and therefore, Ee was acting on behalf of all unit Ees and was engaged in protected concerted activity)

Ryder Truck Lines, Inc. JD-(ATL)-36-82
(violation, where E refused to hire Ee as casual Ee because he was not current in his dues payments to U)

5012-5000 To avoid bargaining obligation

J. E. Steigerwald Co., Inc. 263 NLRB No. 068
(using subcontractor rather than recalling picketers for available work so as not to deal with U, violative)

American Pacific Concrete Pipe Company, Inc. 262 NLRB No. 139
(E who established *alter ego* in order to avoid its bargaining obligation and refused to recall laid-off Ees as required under collective-bargaining agreement with U violated Act)

M & G Convoy, Inc. 260 NLRB No. 145
(failing and refusing to transfer to new facility any former Ees of closed facility, violative as decision accomplished no legitimate business goal because it required hiring inexperienced Ees who required 3 weeks training and was motivated by E's expressed desire to keep new facility *pure* of U Ees at closed facility whom E viewed as *troublemakers* because they actively enforced contract terms)

Ah Cha Company 259 NLRB No. 025
(refusal to hire Ees of predecessor E after transfer of lease violative where sole reason for refusal was Ees membership in U which had represented them prior to transfer of lease; moreover where this refusal diluted U's majority and E refused to bargain with it E also violated Sec. 8(a)(5))

Servair, Inc. and Servair Maintenance, Inc. 252 NLRB No. 098
(winning contractor's refusal to hire losing contractor's Ees who are members of one U and constitute separate bargaining unit from E's other Ees because they refused to join U representing extant unit violative)

G and M Lath and Plaster Co., Inc. and Its Alter Ego, Central Texas Lath & Plastering Inc.; et al. 282 NLRB No. 137
(corporation and its alter ego's refusal to retain Ees on project doing plaster work, violative where president of corporation decided to make project non-U after corporation left completion of project, because of financial problems, to alter ego under supervision of corporate president)

Marvin J. Schiff Trust R-501, Marvin J. Schiff, Trustee, d/b/a Nevada Palace Casino & Motor Inn JD-(SF)-277-81
(terminating Ee, member of U, because E was *a non-U hotel* or that E was *under new management, non-U house,* held violative)

N.L.R.B. v. Hudson River Aggregates, Inc. 639 F.2d 865 (C.A. 2, 1981)
(successor E's refusal to hire Ees of predecessor who were members of local U with which predecessor E had contract, and who would have composed majority of Ees in unit represented by local at time bargaining obligation arose, unlawful, since refusal for purpose of avoiding recognition and bargaining)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse 647 F.2d 905 (C.A. 9, June 1981)
(E's refusal to retain Ees because they were U members and E wanted to avoid incurring duty to bargain with their U, unlawful; E let entire engineering staff go although he needed at least one experienced engineer to correct malfunction in air-conditioning system)

5012-7000 Because of known union activities

Haco Engineering Company 265 NLRB No. 002
(refusal to hire former Ee because of his activity as U steward, violative)

Central Storage and Transfer Co. of Harrisburg 263 NLRB No. 089
(E's refusal to hire former Ee because it was aware that discriminatee was member of *Teamsters for a Democratic U* a reform group w/i U and opposed E's training program, length of workday and notion of giving up negotiated benefits if necessary to sustain economically troubled company, violative, as this refusal based on his expression of protected U-related matters including advocating strict adherence to Master Freight Agreement)

Atlas Railroad Construction Co. 262 NLRB No. 156
(refusal to reemploy Ee because of his prior activities as U steward, violative)

H. B. Zachry Company 261 NLRB No. 098
(refusal to rehire laid-off Ee who had been told by foreman to show up and he would be hired, unlawful where admitted reason was that Ee had signed U card)

H. B. Zachry Company 261 NLRB No. 098
(refusal to employ applicant because of his close relationship to U activists, including a brother, on job site, unlawful)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility 260 NLRB No. 073
(removal of 6 *temporary* Ees from *regular part-time Ee list* because they were not available for work on specified day, violative where reason for such action was based on fact that two of *temporaries* attended final U meeting before election)

Transportation Management Corporation 258 NLRB No. 061
(refusal to hire known U organizers for summer months and also for refusal to continue their regular employment in fall)

Sunstar Volkswagen Corporation 257 NLRB No. 038
(where U steward was appointed supervisor with promise that he would be transferred to Ee status if he didn't like new job, E's refusal to rehire him as Ee held violative as apparent reason was Ee's potential for strengthening U's status as representative of rank-and-file Ees)

Marlene Industries Corporation; et al. 255 NLRB No. 192
(refusal to hire Ee because she had engaged in picketing activity violative whether or not she was incumbent Ee)

Pine Valley Meats, Inc. 255 NLRB No. 061
(refusal to rehire U adherent, violative)

Wyman-Gordon Company 252 NLRB No. 160

Franklin Fouts, d/b/a B & F Cartage 251 NLRB No. 068
(successor E's refusal to employ predecessors Ees who were U adherents, violative; predecessors knowledge of such Ees' U sentiments was imputed to successor where anti-U reasons for predecessor's leaving business was clearly made known to successor)

Cedar Coal Company 251 NLRB No. 081
(refusal to rehire former Ee who had been militant U supporter, violative, where refusal based on E's *fear* that E would cause *trouble* for it)

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Stafford Construction Co. **260 NLRB No. 128**

Kenneth and Mary M. McGloughlin, Copartners, d/ b/a Hudson-High Super Duper **247 NLRB No. 199**
(refusal to hire qualified job applicant because he was on strike at store where held part time job held violative where applicant's overall qualifications for position were unchallenged by E)

Tartan Marine Company **247 NLRB No. 073**
(refusal to rehire U adherent who had resigned twice, violative, since reason for refusal to rehire was Ee's U adherence, where E had promulgated no policy against rehire of Ees who had resigned twice, and in view of E's other unlawful conduct)

Avon Mirror & Distributing Co. **247 NLRB No. 033**
(E who refused to hire former U organizer because of his background violated Act)

Alpha Beta Company **JD-201-82**
(E's refusal to hire at one of its facilities truck driver who had been terminated, rehired and quit at another of E's facilities, lawful, notwithstanding contention refusal due to driver's U membership, where E showed he would have refused to hire Ee even absent his U membership, in view of his driving accident record, damage to goods and equipment, and poor attendance record when formerly employed by E)

Alpha Beta Company **JD-201-82**
(E's refusal to hire at one of its facilities Ees who had been laid off or formerly employed at another of its facilities at time when it was hiring at that facility, unlawful, since refusal due to Ees' U membership)

Transportation Manpower Services of Ohio, Inc. **JD-(SF)-192-82**
(successor E's refusal to hire Ees of predecessor for anti-U reasons, violative)

Carbin-Dykes Electric Company **JD-(SF)-208-82**
(refusing to rehire Ee and placing Ee on E's ineligible rehire list because he previously visited jobsite in presence of U official, violative)

Southland Corporation **JD-341-82**
(refusal to hire applicant who had taken grievance to arbitration on prior job not violative where E based decision on arbitrator's findings, supplied by former E in response to reference request, that discharge was lawfully based on poor attendance and emotional instability)

Butterfield Homes, Inc. **JD-(SF)-181-82**
(denying applicant employment because of his past activities on behalf of a U, violative)

Sahara Packing Company **JD-(SF)-95-82**
(E violated Act by withdrawing offer and refusing to hire applicant who had been member of U on his previous job)

Shelby Processing Company, A Wholly Owned Subsidiary of Fusano Industries **JD-191-82**
(successor E, who (using majority of predecessor's Ees) made same ultimate product as did predecessor albeit using changed processing (fresh apples rather than frozen) and packaging procedures, violated Act by refusing to hire and recall those Ees (of predecessor E) who were officials of incumbent U; credible evidence in record did not show legitimate and lawful considerations for successor E's determination or that such action would have taken place in absence of Ees' protected activity)

Don Dzekciorius, Stan Dzek, and Al Dzekciorius d/ b/a Multi Purpose Coatings Company **JD-636-81**
(E's refusal to hire Ee, assertedly because he was poor worker and inexperienced, violative, where real reason was because he had frequently made his attitude of strict adherence to U contract well known by repeated refusals to work for E under non-U conditions)

U.S. Postal Service **JD-(SF)-268-81**
(E's refusal to hire U steward as postal inspector, not violative, notwithstanding factors related to Ee's protected activities were considered by E, where E demonstrated that even absent those impermissible considerations, E's unfavorable action would have been the same)

Trapier Bros., Inc. **-(SF)-274-80**
(failure to hire applicant not violative where it was not, as contended, because of his membership in or support of U, but rather because of his proclivity for starting fights with his fellow workers)

Elco Electric, Inc. **JD-530-80**
(violation where E refused to hire applicant because of his filing grievance alleging U contract infraction by E on prior job rather than, as contended, because of his tardiness or poor productivity during prior employment with E)

Tourism and Development Corporation d/b/a Newport Jai Alai **JD-260-80**
(E's refusal to reemploy Ee, lawful, notwithstanding E's knowledge of Ee's U activity, where Ee had been insubordinate and E had changed Ee's work schedule after U election, action it was not required to take, thus belying any animus against Ee because of her U activity)

Beech Aircraft Corporation **JD-612-79**
(no violation where E refused to hire applicant not because, as contended, she had joined strike against previous E but because of her adverse medical history)

Reed Equipment, Inc. **JD-616-79**
(no violation where E refused to hire 15 applicants not because, as asserted, it was impelled by knowledge that they were members of U and it's desire to avoid dealing with such U, but rather because none met E's established qualifications or standards)

Wyman-Gordon Company v. N.L.R.B. **654 F.2d 134 (C.A. 1, 1981)**

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 8, 1980)**
(finding of violation in refusal to rehire discharged Ee depends on assessment of E's motives at time of refusal and must be for different reasons than for discharge if discharge occurred outside 10(b) period)

Kenneth & Mary M. McGlaughlin, Co-Partners, d/ b/a Hudson-High Super Duper v. N.L.R.B. **652 F.2d 673 (C.A. 6, July 1981)**
(questioning job applicant about his U activities and refusing to hire him violative notwithstanding job opening did not turn out to exist)

N.L.R.B. v. La-Z-Boy Tennessee **623 F.2d 30 (C.A. 6, June 1980)**

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(although striking Ees who were terminated before effective date of health care amendments and were not entitled to reinstatement as returning Ees with right of restoration of seniority and other rights and privileges arising from former relationship, ct held that E discriminated against such Ees, who had made application for new employment with E after effective date of health care amendments, by refusing to hire the former Ees because of their prior concerted U activity)

N.L.R.B. v. Pfizer, Inc. **629 F.2d 1272 (C.A. 7, 1980)**
(E's refusal to hire laborer for vacant position where reference check disclosed former E found him to be trouble maker, mentioned his U activities and stated would not rehire Ee not violative where evidence to support finding of E's U animous based on inferences and not supported by substantial evidence)

Karl Kallmann, d/b/a Love's Barbeque Restaurant, No. 62 v. N.L.R.B. **640 F.2d 1094 (C.A. 9, 1981)**
(successor E's refusal to hire former Ees because of their U affiliation, violative)

Osteopathic Hospital Founders Association, d/b/a Oklahoma Osteopathic Hospital v. N.L.R.B. **618 F.2d 633 (C.A. 10, 1980)**
(when plant director offered two U members jobs shortly after interview and subsequently, upon discovering that they were U members, informed them that he would not know whether he could hire them but would contact them that evening after he had discussed their application with chief engineer, plant director's failure to call U members thereafter regarding employment at E, violative)

5012-7050 Of relatives

Delta Hosiery, Inc. **259 NLRB No. 139**
(E's failure to hire sister of Ee after telling her the day before that her sister was hired and should report for work violative, since E's reason for change of position was Ee's possible support of U as indicated in her answer to E's poll on the subject and E's concern over U's professed majority status and its request for recognition)

Motor Freight Express, Inc. **JD-531-80**
(E's refusal to continue to hire casual employee, brother of active U steward, violative where motivated by relationship to steward)

5012-7600 Refusal to hire predecessor's employees

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal **260 NLRB No. 111**
(violation where E, found successor herein, terminated and refused to accept employment applications from or to rehire all represented Ees of predecessor E while retaining unrepresented Ees)

Premium Foods, Inc. **260 NLRB No. 092**
(successor E's exclusion of predecessor's Ees from its work force, not unlawful, where successor E selected personnel which it believed would work in harmony to achieve efficiency and good customer relations so that success of new venture would be enhanced and threat of financial loss minimized; E excluded Ees not because of their U or concerted activity but because it felt they would hinder rather than contribute to its objectives; and E, therefore, sustained burden of showing that exclusion would have occurred even if Ees had never engaged in U or concerted activities)

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**
(where successor E operating nursing home interviewed but never hired nurse who was U member employed by predecessor, E held to have unlawfully failed to hire Ee because it sought to get rid of all U supporters as soon as possible; E's asserted reason for not retaining Ee, on ground that she had abused patients, held pretextual since, during approximately 3 years that

5012-7600—Cont.

nurse had worked for predecessor, there was no convincing proof that she was unsatisfactory Ee)

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**
(failure of successor E operating nursing home to hire Ees who were U members employed by predecessor E, assertedly because E was overstaffed and Ees lived too far away from work and had no telephones, unlawful, since E's purpose was to undermine U; at the time E could not know that he would be overstaffed, other Ees lived farther away from work, and there was no showing why telephone issue suddenly became a problem; moreover, E was required to negotiate with U on which Ees, if any, should be laid off)

Vantage Petroleum Corp. **247 NLRB No. 202**
(where E obtained state contract to operate gas stations previously managed by two companies and decided, before being approached by station attendants then working at the gas stations, that it would hire its own Ees complements rather than Ees then working at gas stations and that it would pay Ees according to its own wage structure starting from minimum wage, E's subsequent failure to hire former Ees of its predecessor gas companies who were represented by U, not violative, since E was not successor E to any of the gas companies and its actions did not result from U animus)

Croley Coal Corporation **JD-285-82**
(refusing to employ predecessor's Ees because they refused to abandon their U membership violative)

John Campbell t/d/b/a Chef John's Restaurant **JD-49-81**
(refusing to hire predecessor's Ees who picketed facility on behalf of U, violative)

5012-7700 Refusal to hire because of union opposition

Berry-Mahurin Construction, Inc. **258 NLRB No. 171**
(refusal of E who had relied on U's referrals for Ees to hire qualified individual whom U had refused to refer because individual was not member of Local U and sought job directly with E rather than through U, unlawful)

Central Transport, Inc. **253 NLRB No. 130**
(no unlawful constructive refusal to hire where E's vice-president stated to applicant who had been involved in intra-U rivalry that if after applicant was hired U requested applicant's discharge E's owner would direct vice-president to discharge applicant since vice-president did not intend to cause applicant to cease seeking employment but was merely speaking realistically and was trying to help applicant solve problem with U)

Carpenters, Local # 308 v. N.L.R.B. **690 F.2d 661 (C.A. 8, July 1982)**
(Bd's holding that E instructing applicant who was unlawfully refused referral by local U because of non-membership in local to *straighten out problem with U and then come back*, unlawful where supported by substantial evidence, since Bd's interpretation of statement as conditioning hiring on resolution of dispute was reasonable and thus acquiescence in local's unlawful refusal to refer, particularly where E knew U unlawfully used dues authorization forms as referral slips)

5012-7900 Refusal to hire because of lack of union membership

C. B. Display Service, Inc. **260 NLRB No. 140**
(E which refused to hire former U member because U refused to refer him from exclusive hiring hall violated Act where U's refusal to refer was unlawful since no U-security clause and E knew reason for refusal to refer was lack of U membership)

Berry-Mahurin Construction, Inc. **258 NLRB No. 171**
(refusal of E who had relied on U's referrals for Ees to hire qualified individual whom U had refused to refer because individual was not member of Local U and sought job directly with E rather than through U, unlawful)

Carpenters, Local # 308 v. N.L.R.B. **690 F.2d 661 (C.A. 8, July 1982)**
(Bd's holding that E instructing applicant who was unlawfully refused referral by local U because of non-membership in local to *straighten out problem with U and then come back*, unlawful where supported by substantial evidence, since Bd's interpretation of statement as conditioning hiring on resolution of dispute was reasonable and thus acquiescence in local's unlawful refusal to refer, particularly where E knew U unlawfully used dues authorization forms as referral slips)

5012-8000 Use of application form requiring disclosure of union membership

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(where employment agency used application forms containing questions about applicant's U activities, E violated Act when it took no action to alleviate impression these forms made on applicants)

5017 Imposition of illegal conditions of employment (See also 524-5090)

Jaybil Steel Products, Inc.; etc. **258 NLRB No. 157**
(E's conditioning reinstatement of two unlawfully discharged U adherents upon relinquishment of right to support U in election, unlawful)

5017-1400 Abandonment of concerted activities

Conair Corporation **261 NLRB No. 178**
(even if language of E's mailgram to strikers found violative of 8(a)(3) and (1), had created an ambiguity regarding strikers' employment status, burden of results of ambiguity must fall on E; from perspective of striking Ees, mailgram conveyed message that, if Ees did not abandon strike and report for work by specified date, they would no longer be in E's employ)

Conair Corporation **261 NLRB No. 178**
(E's mailgram to striking Ees held unlawful attempt to break ULP strike by conditioning strikers continued employment upon their abandonment of strike, and mailgram unlawfully discharged strikers, in view of clear language of mailgram, E's subsequent conduct when it admitted that it deemed strikers to have quit their jobs upon their failure to report for work in response to mailgram, E's subsequent letter to strikers offering them reinstatement *if* they unconditionally abandoned strike immediately, and E's telling Ees upon their return to work that they were new hires and writing *new hires* on their time cards)

5017-2800 Abandonment of union activities or membership

Stafford Construction Co. **250 NLRB No. 120**

Alabama By-Products Corporation **JD-(ATL)-49-82**
(requiring U representative for grievances to resign from committee and agree to accept no U position except recording secretary as price for reducing discharge to suspension, unlawful)

N.L.R.B. v. St. Regis Paper Company **674 F.2d 104 (C.A. 1, Mar. 1982)**
(coercing U member at non-U facility into resigning from U in order to avoid transfer to facility covered under collective bargaining agreement, violative)

5017-3500 Prematurely recognized union

Baine Service Systems, Inc. **248 NLRB No. 087**
(unlawfully executed contract because it covered inappropriate unit and contained U-security clause)

5017-4200 Requiring union membership in favored organization

Servair, Inc. and Servair Maintenance, Inc. **252 NLRB No. 093**
(winning contractor's refusal to hire losing contractor's Ees who are members of one U and constitute separate bargaining unit from E's other Ees because they refused to join U representing extant unit violative)

Knit Tuck Welt Ltd. **JD-(NY)-42-81**
(requiring Ees to join and maintain membership in favored U as condition of continued employment, unlawful)

5017-4500 Acceptance of wages and conditions of employment less than those provided for in contract

Finger Lakes Plumbing & Heating Co., Inc. **253 NLRB NO. 049**
(E's conditioning employment on acceptance of wages and conditions of employment substantially inferior to those in expired U contract, unlawful)

5020 HARASSMENT OF UNION ADHERENTS

5020-3300 By employees

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 037**
(discharge of U committeemen because other Ees would not work with them, violative)

5020-6000 By employer

Ebb Tide Processing, Inc. **264 NLRB No. 100**
(where Ee had transferred to avoid supervisor's retaliation for Ee's complaints that supervisor disregarded seniority in selecting Ees for layoffs and recalls, supervisor's having Ee reassigned to his department briefly each day to be his *washer woman* as part of campaign of harrassment against her, unlawful)

E. I. Dupont De Nemours **263 NLRB No. 015**
(forcing Ee to work harder and take fewer breaks than other Ees, and issuing Ee trumped up reprimands, unlawful, since for Ee's U adherance)

G.T.A. Enterprises, Inc. d/b/a Restaurant Horikawa **260 NLRB No. 029**
(assault and battery committed on Ee because of his remarks concerning U violative)

Intermountain Rural Electric Association **253 NLRB No. 164**
(suspension and discharge of U adherent assertedly because she was absent from work w/o authorization and for her *insubordination* held violative where Ee's U sympathies were source of discomfort to manager who felt Ee's duties as his secretary were incompatible with her having U representation and E was intent upon building case against Ee; she was considered by manager to be *very productive and valuable Ee*)

Fremont Auto Center, Inc. d/b/a Fremont Mazda **JD-(SF)-13-81**
(forcing U adherents to submit to false credit checks, violative, where E's intention was to harass Ees to provoke them to quit)

5023 IMPOSITION OF DISCRIMINATORY WORKING CONDITIONS

5023-1200 Less desirable job or work shifts

Dannenely-Goldberg Memorial Chapels, Inc. 264 NLRB No. 112

(funeral home instructing Ees to clean chapel on day after election, not unlawful, since not in retaliation for their votes, where chapel was dirty and needed cleaning and no services scheduled)

7 Up Bottling Company 261 NLRB No. 128

(replacing U activist's daytime delivery duties with demeaning nighttime chores resulting in his isolation from other Ees whom E did not want him to influence, violative of 8(a)(3) where due to his U activities)

St. Alphonsus Hospital 261 NLRB No. 091

(reassigning U adherent from weekend to weekday day shift because of his U activities and because he voted in representational election, violative)

Caffe Giovanni, Inc. d/b/a Giovanni's 259 NLRB No. 031

(alleged assignment of waiter at E's restaurant to less desirable work stations because of his U activities, not unlawful, where Ee was often assigned to more desirable waiter stations, and after U lost election, such assignments were most lucrative with tips being equal to, if not greater than, at comparable time period during preceding year)

Inland Steel Company 259 NLRB No. 024

(treatment of Ee for insisting on pressing grievance and expressing determination to distribute U literature on plant premises, unlawful, where selection of Ee to perform tedious and unpleasant menial job for unusually long period of 5-1/2 months, including other similar jobs, and attempt to isolate Ee while so engaged, was claculated to deprive him of job satisfaction and to provoke him into refusing a work assignment, which Ee finally did, resulting in issuance of disciplinary letters and loss of pay)

Leisure Time Tours, Inc. 258 NLRB No. 128

(assignment of U adherent to less desirable work, occurring w/o regard to seniority and contrary to E's past practice, and w/o explanation by E as to why it chose to make this assignment at that time, held violative, since assignment was made in retaliation for Ee's having engaged in U activities and in order to create setting for his eventual discharge)

Sunise Care, Inc. d/b/a Parkview Acres Convalescent Center 255 NLRB No. 149

(requiring one of most active U adherents to work less desirable shift than she had previously worked, violative)

Association of Apartment Owners of The Whaler on Kaanapali Beach 255 NLRB No. 010

(E who assigned U adherent maintenance work rather than his usual repair work, reduced his hours more than Ee desired to be reduced, conditioned his employment on hourly pay cut constructively discharged Ee)

Republic Die and Tool Company 252 NLRB No. 092

(assigning U adherent to spotting press work, admittedly the most undesirable work of diemaker, violative)

Maywood, Inc. 251 NLRB No. 139

(E's assigning Ee to full-time duty on chopsaw and preventing him from performing leadperson function's because of his U activities and sympathies, violative)

James F. Stanford, Inc. d/b/a Ace Machine Co. 249 NLRB No. 073

(reassignment of U officer from machine operation where her work and performance were satisfactory, to bench work which was distasteful to her, held violative, where purpose was to discourage Ee so she would quit)

Cable Vision, Inc. 249 NLRB No. 062

(assignment to stand-by position of known U activist hired as installer with understanding that as installer he would not have to work standby position held unlawful as discriminatory assignment and constructive discharge where E knew that assignment would interfere with Ee's outside work and E quit as result

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 087

(suddenly transferring waiter and U organizer from his first choice station to another station for no reason and w/i 5 days after headwaiter learned of Ee's attending U meeting held violative)

Earl Kahne d/b/a Pransky's E & T and Earl's News Stand 247 NLRB No. 167

(violations where E transferred U adherents who had testified at Bd hearing to store in less desirable location, reduced their working hours to times when they could not use public transportation, added onerous janitorial duties and then discharged them)

General Warehouse Corp. 247 NLRB No. 142

(assignment of more onerous and undesirable work to leader of Ee movement rejecting E's request for Ees' waiver of cost of living increase held violative)

General Meats, Inc. 247 NLRB No. 153

(harassment and assignment to less desirable job of Ee who asked critical questions at E sponsored meeting called to discuss profit sharing plan, found violative and her subsequent quitting found constructive discharge)

Bell Industries, Inc. JD-479-81

(discontinuing U adherent's sharing of truckdriving duties with E's regular truckdriver after driver's return following illness and assigning adherent to packing orders, unlawful, in view of E's U animus and fact change made w/i few days after receiving R ptn, particularly where a few days prior to receiving ptn E had informed Ees that rotation of driving between them would continue)

Oak Harbor Freight Lines, Inc. JD-(SF)-211-82

(reassigning Ee driver to less desirable route, violative where Ee had instigated efforts to stop supervisor from doing unit work)

Ford Motor Company, Automotive Division, Twin Cities Plant JD-57-81

(disqualifying Ee for certain positions and transferring him to lower-paying jobs, more difficult job, odd jobs and labor pool jobs because he kept log of foremen doing U work, filed foreman-working grievances, and urged other Ees to do the same, violative)

Penz Tool and Manufacturing Co., Inc. JD-644-80

(transfer of U adherent to less desirable job, not unlawful where transfer was based upon economic considerations and attempt to cut back in areas of employment where possible)

Grandee Beer Distributors, Inc. v. N.L.R.B. 630 F.2d 928 (C.A. 2, 1980)

(removal of U adherent from driving assignment after U representatives communicated desire for recognition held violative where timing and circumstances supported finding that action was retribution for Ees U activities)

5023-1900 Closer supervision

Jaybil Steel Products, Inc.; etc. 258 NLRB No. 157

(E's unlawfully increased work surveillance and supervision shortly after U card signing, where supervisor whose duties previously had taken him over wider area tended to remain in work area of U adherents; kept close watch, and particularly if any Ee stopped, telling them to get back to work and not to leave area)

Intermountain Rural Electric Association 253 NLRB No. 164

(suspension and discharge of U adherent assertedly because she was absent from work w/o authorization and for her *insubordination* held violative where Ee's U sympathies were source of discomfort to manager who felt Ee's duties as his secretary were incompatable with her having U representation and E was intent upon building case against Ee; she was considered by manager to be *very productive and valuable Ee*)

MGM Grand-Reno, Inc. 249 NLRB No. 153

(changing location, during U campaign, of coffeebreaks from Ees' cafeteria to E's maintenance department in order to more closely observe Ees, not violative where record contained insufficient evidence to show E's motives were for purpose proscribed by Act)

General Meats, Inc. 247 NLRB No. 153

(having special sign-in-out sheet whenever Ee left for nonwork purposes)

Oscar Roberts Company JD-334-82

(Ee hired just to watch discriminatee at work and report his observations to management)

5023-3300 More onerous conditions

T. L. C. Lines, Inc. 265 NLRB No. 150

(imposing more onerous working conditions by no longer allowing Ees to clean up and put away their tools before end of shift to discourage U support, violative)

Tru-Mar Communications, Inc. 265 NLRB No. 009

(E's propogating oral and written work rules, after election of U, prohibiting smoking, personal telephone calls and reception of visitors on company premises, etc. which rules were more arduous and onerous than work rules in effect before advent of U held violative, since rules were propogated solely in retaliation for Ees' voting for U)

Gayston Corporation 265 NLRB No. 001

(assignment of known U activist to what to her constituted more onerous work in that it caused her to break out in a rash and resulted in her taking a forced leave of absence, unlawful)

Ford Paint and Varnish Company 264 NLRB No. 156

(transferring U adherent to dirty, more arduous position violative)

Service Spring Company, A Division of Garlock, Inc., A Wholly-Owned Subsidiary of Colt Industries 263 NLRB No. 183

(E whose new president implemented more rigid enforcement of discipline with respect to absenteeism and production mistakes coincident with U winning election did not violate Act where evidence established that policy was undertaken by E in attempt to improve production efficiency)

7 Up Bottling Company 261 NLRB No. 128

(requiring U activist to wear hard hat at all times when in warehouse, unlawful where it was motivated by his U activities)

5023-3300—Cont.

Heads and Threads Company, a Division of MSL Industries, Inc. 261 NLRB No. 115
(institution of requirement that Ee advise supervisor each time they intended to use bathroom, unlawful in context of antiU diatribe after U demand for recognition)

Amoco Fabrics Co., Patchogue-Plymouth Division/ Nashville Mills 260 NLRB No. 038
(taking away helper who assisted Ee when required)

F.M.L. Supply, Inc. 258 NLRB No. 083
(U Ees who quit their employment, in response to E's announcement that E was going *non U* and E asking Ees how they felt about it, held to have been constructively discharged, since E's conduct in support of statement were onerous changes in Ees' working conditions; E hired non U Ees to do work of U Ees and told Ees to *give up U or give up work*)

Metropolitan Life Insurance Company 258 NLRB No. 008
(imposing onerous and undesirable working conditions on Ee because of his activities as U steward, unlawful)

Kenosh Konner, Inc. 256 NLRB No. 008
(requiring truck department Ees all of whom had signed U cards and taken part in strike to use only front door of department when leaving and to refrain from leaving premises at any time during working hours, violative)

Firmat Manufacturing Corp. 255 NLRB No. 153
(cutting Ee's overtime and changing his work hours so as to impose more arduous working conditions upon him immediately after his U activity, violative)

Cutting, Inc. 255 NLRB No. 076
(E's conduct in assigning more arduous job tasks in retaliation against Ees because of their support of U, unlawful)

Crown Cork & Seal Company, Inc. 255 NLRB No. 004
(leading U advocate being assigned to undesireable night shift, his demotion, disciplinary reprimands and eventual discharge held unlawful where valid grounds for E's actions were frequently false or exaggerated, adverse action against Ee occurred when Ee became in-plant spokesman for U and Ee who opposed advocate's election to U office was more tenderly treated for his acts of misconduct)

Overnite Transportation Company 254 NLRB No. 011
(instructing dispatcher to assign more onerous work to suspected U adherent, violative)

Omark-RCBS, A Division of Omark Industries 252 NLRB No. 089

Maywood, Inc. 251 NLRB No. 139
(violation where supervisor prohibited Ees of certain department from using restrooms between breaks w/o prior permission or doctor's certificate, and from smoking in their cars with windows rolled down, because of known U activities of large majority department)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand 247 NLRB No. 167
(violations where E transferred U adherents who had testified at Bd hearing to store in less desireable location, reduced their working hours to times when they could not use public transportation, added onerous janitorial duties and then discharged them)

Sherwood-Trimble Medical Building 247 NLRB No. 160
(requiring U adherent to take breaks only at scheduled time, to record what she did in short segments, and restricting U adherent to her desk and extending restriction to others to disguise motivation, unlawful)

Wilson Foods Corporation JD-(SF)-292-80
(directing pump operator to squeegee out railroad tank cars allegedly for his refusal to withdraw several grievances, not unlawful, where evidence showed that it was standard requirement for Ees working as pump operators to use squeegees if vacuum pump did not completely empty car of its contents)

N.L.R.B. v. La-Z-Boy Tennessee 623 F.2d 20 (C.A. 6, June 1980)

5023-4100 Restrictions on coffee breaks

Association of Apartment Owners of The Whaler on Kaanapali Beach 255 NLRB No. 010
(eliminating break time in retaliation for losing election)

5023-5000 Production quotas

Service Spring Company A Division of Garlock, Inc. A Wholly-Owned Subsidiary of Colt Industries JD-123-82
(imposing production standards on U activist that it did not impose on other Ees, violative)

5023-6700 Allotment of work

Standard Motor Products, Inc. 265 NLRB No. 060
(alleged assignment of more onerous work to active U adherent, not unlawful, since E rebutted GC's *prima facie* case based on timing of assignment, arduous nature of work assigned, and E's U animus, where record showed that job assignments were not more onerous, and Ee raised no objection thereto; moreover, work assigned was reasonably necessary to be performed, and similar work was assigned to other Ees)

Ford Paint and Varnish Company 264 NLRB No. 156
(removal of U adherent from job which has resulted in his earning several hours overtime per week violative)

E. I. Dupont De Nemours 263 NLRB No. 015
(forcing Ee to work harder and take fewer breaks than other Ees, and issuing Ee trumped up reprimands, unlawful, since for Ee's U adherance)

Palomar Transport, Inc. 256 NLRB No. 177
(reducing number of field trips and charter trips of U adherents, violative)

5023-9700 Restriction of employees' movement in plant

Harrison Steel Castings Company 262 NLRB No. 059
(restricting U activist to remain in crane during downtime while other crane operators were only restricted to remain nearby, violative)

General Motors Corporation 254 NLRB No. 148
(E's issuing special instruction to Ee to remove him away from assembly line during break times to dicourage Ee from soliciting and encouraging involvement of other Ees in matter of line speed, violative)

Gibbs Die Casting Aluminum Corporation JD-267-82
(restricting U adherent's access to plant premises by prohibiting his presence after end of shift, violative)

The Mining Journal JD-4-82
(restricting Ee from entering office and talking with other Ees and from even mailing a letter, unlawful where restrictions were imposed because of Ee's diligence and effectiveness as U steward in insisting on compliance with U contract and working on grievances, rather than, as contended, because of excessive movement and conversations)

5026 DISCRIMINATION IN TRAINING OPPORTUNITIES

St. Francis Hospital 263 NLRB No. 109
(refusing to pay registration fees and grant time off to two Ees to attend U-sponsored seminar held violative, since E, in past years, allowed Ees to attend U-sponsored seminars when there was no U activity among its Ees; E's motivation, regardless of whether Ee-applicants for seminar were pro-U or anti-U, was to take away benefits because of Ees' exercise of their Section 7 rights)

5029 ACTIONS AFFECTING EMPLOYMENT CONDITIONS

5029-0100 Generally

Finger Lakes Plumbing & Heating Co., Inc. 253 NLRB NO. 049
(unilateral changes in wages, terms, benefits and condition of employment, unlawful because of E's desire to go *non-union* and its discrimination against those seeking and those obtaining employment thereafter)

5029-1200 Renumeration and benefits

House of Cycle, Inc., t/a Kay Motors 264 NLRB No. 137
(E's announcing that it was attempting to obtain *improved* medical and dental benefits for its salesmen after U requested recognition violated 8(a)(1), but not 8(a)(3) where improved benefits were not implemented)

5029-1211 change in pay day or hour

Edgar L. Landen t/a Speed Mail Service 251 NLRB No. 064
(E's unexplained change w/o warning during U campaign of time of distribution of Ees' paychecks from Friday morning to Friday afternoon so that Ees could not cash them at noon held not *de minimis* or noncoercive; unlawful motive became unmistakably clear upon E's sudden resumption of its established practice of morning distribution after U lost election and it is unlikely Ees missed import of this *sudden* action)

5029-1212 Withholding of paychecks

Harvey & Madding, Inc., d/b/a Dublin Honda JD-(ATL)-97-81
(delaying and withdrawing salesmen's *draw* checks after election won by U held violative, since E displayed strong anti-U animus prior to election and deviated from normal and established pay practice after salesmen selected U)

5029-1218 Failure to implement arbitration award

Autoprod, Inc. 265 NLRB No. 042
(refusing to pay entire amount of retroactive wage increases mandated by arbitration award to Ees who were active in U, violative)

5029-1225 Delay, denial, or withholding of wage increase

Schnadig Corporation 265 NLRB No. 020
(denying Ee anticipated annual wage increase because of his U activity, and informing Ee when Ee inquired about increase after election that increase could not be granted until U certified, unlawful)

5029-1225—Cont.

Nissan Motor Corporation in U.S.A. 263 NLRB No.
(E did not violate Act by withholding regularly scheduled benefits from Ees following election of U under unusual circumstances of this case where: there were no Sec. 8(a)(5) allegations, parties engaged in collective bargaining negotiations with no showing by GC that parties did not negotiate on wages, and absence of evidence that E withheld wage increases to undermine support for U or made comments implying that U or Ees selection of U was cause for withholding)

Nissan Motor Corporation in U.S.A. 263 NLRB No. 083
(E did not violate Act by withholding regularly scheduled benefits from Ees following election of U under unusual circumstances of this case where: there were no Sec. 8(a)(5) allegations, parties engaged in collective bargaining negotiations with no showing by GC that parties did not negotiate on wages, and absence of evidence that E withheld wage increases to undermine support for U or made comments implying that U or Ees selection of U was cause for withholding)

Management Training Corporation (Formerly Thiokol Corporation) 261 NLRB No. 013
(where E had policy of promoting Ees as vacancies occurred and of granting annual merit increases, its withholding of these promotions and benefits combined with statements that if U lost election they would be granted immediately, but if U won they would be deferred indefinitely, violated Act)

Huntington Rubber Company, Division of New Idria, Inc. 260 NLRB No. 133
(E's failure to grant Ee maximum allowable annual wage increase violative where Ee had been engaged in protected activity, E had issued 1 lawful reprimand and 1 unlawful reprimand to her and denial of increase based on her ostensibly poor attitude as all her other ratings were excellent and in past she had gotten full raise notwithstanding being rated less than excellent in attitude)

Progressive Supermarkets, Inc. 259 NLRB No. 074
(E who postponed scheduled payraise for Ees during critical period and placed onus on U violated Act)

The Ithaca Journal-News, Inc. 259 NLRB No. 060
(E's discontinuing merit increases for Ees during negotiations with U, not violative where E had no merit increase program that it was bound to continue during negotiations and two statements found to violate Sec. 8(a)(1) were insufficient to show U animus in light of U's position, manifested in exchange of correspondence initiated by U, that it was precluded by law from granting merit increases because of its bargaining obligations)

Empire Pacific Industries, Inc. 257 NLRB No. 180
(withholding change in wages from represented Ees that was provided to unrepresented Ees, not unlawful in absence of proof of discriminatory motive; no evidence was offered to prove E's discriminatory motive either independently or in refutation of parties' stipulation that E's witnesses would testify that withholding was not designed to encourage represented Ees to reject U or support decertification)

Palomar Transport, Inc. 256 NLRB No. 177
(delaying, until of after election, implementation of incentive plan and daily rates for route drivers violative where in prior years E implemented these changes soon after school year began)

Fry Foods, Inc. 256 NLRB No. 031
(failing to grant known U adherents pay raises, violative)

South Shore Hospital 256 NLRB No. 001
(withholding from unit Ees wage and benefits increases granted to non unit Ees, violative where Bd of Trustees authorized equivalent benefits for both groups before bargaining began and E called to unit Ees' attention to advantages gained by non unit Ees while at same time persisting in making wage offer below that offered non-unit Ees)

Firmat Manufacturing Corp. 255 NLRB No. 183
(denial of wage increase to leading U activist, violative)

Jax Mold & Machine, Inc. 255 NLRB No. 129
(withholding wage increase, violative because when hired Ee was promised increase every 90 days, E blamed U and stated that it was not afraid of NLRB)

Associated Milk Producers, Inc. 255 NLRB No. 104
(withholding systemwide wage increase from Ees involved in organizational campaign, violative)

Associated Milk Producers, Inc. 255 NLRB No. 104
(withholding for 3 weeks, its system-wide wage increase because of U campaign and election, violative)

Warehouse Groceries Management, Inc. 254 NLRB No. 021
(telling Ee that she would have been highest paid cashier if it wasn't for this U business, violative)

Eastern Maine Medical Center 253 NLRB No. 024
(withholding of annual general wage increase from unit Ees during bargaining with U, unlawful, where E's official testified that w/o presence of U E would have granted increases, practice of granting increases was sufficiently established so as to constitute condition of employment, E never specifically proposed withheld increases as a bargaining proposal, E's conduct precluded unit Ees from ever recouping through bargaining by U losses E had imposed on them for selecting it, and E's motive was to discourage U activities as evidenced by its anti-U hostility)

Eastern Maine Medical Center 253 NLRB No. 024
(fact that E withheld wage increases from unit Ees during bargaining negotiations with U on advice of counsel held insignificant in determining that E's conduct was unlawful)

Republic Die and Tool Company 252 NLRB No. 092
(establishment of hourly wage rate at contractual minimum when U adherent became a journeyman, violative)

Republic Die and Tool Company 252 NLRB No. 092
(refusal to grant U adherent general wage adjustment, violative)

United Services For The Handicapped 251 NLRB No. 117

Northern Telecom, Inc. 250 NLRB No. 085
(denial of merit increase)

Howard Johnson Company, d/b/a Howard Johnson Distribution Center 250 NLRB No. 071
(withholding wage increase from Ees who had chosen U held violative where Ees would have been granted raises under E's usual business practice; E intended to punish Ees because they voted for U)

Olympic Medical Corporation 250 NLRB No. 011
(withholding periodic as well as retroactive wage increase, for purpose of inducing Ees to vote against U, violative)

Olympic Medical Corporation 250 NLRB No. 011
(withholding wage increase and instituting change in wage policies retroactively, violative in view of absence of business justification and presence of other ULP)

Conagra, Inc. 248 NLRB No. 085
(failure to grant wage increase during U campaign, not unlawful, where due to failure of personnel manager to make wage survey; notwithstanding statements of E that denial of increase was due to U campaign)

Service Garage, Inc. 247 NLRB No. 118
(denial of announced wage increase because of Ees' U activities violative; moreover, fact that no past practice existed for granting wage increases immaterial)

Tartan Marine Company 247 NLRB No. 073
(failure to grant wage increase to U adherent where 27 out of 33 Ees received increases, unlawful)

Hobart Mailing Service, Inc. JD-484-82
(E's departure from its past practice of conducting wage reviews each year and its withholding of any wage increase violative, where E placed onus on U in explaining to Ees that reason was because U and labor relations put a freeze on everything until election was over)

Brueckner Sand & Gravel, Inc. JD-(SF)-312-81
(withholding wage increases from Ees because of their U activities, violative)

Robert Bosch Corporation JD-220-81
(E's refusal to credit strike time as time worked for purpose of granting step progression increases and delayed such increases for period of time commensurate with strike did not violate Act as E handled laid-off Ees and those absent for other reasons in same manner and there was no showing of anti-U animous)

Howard Johnson Company, d/b/a Howard Johnson distribution Center JD-(SF)-12-81
(refusing to grant annual wage increase because Ees chose U but which E would have granted during normal course of business, violative)

Chipmore Manufacturing Co., Inc. JD-432-80
(violation where wage increase was rescinded because of U campaign)

Guardian Industries Distribution Center, Inc. JD-(NY)-45-80
(statement that because of U's organization campaign, including pts for election, E could not at that time grant wage increase requested by Ee, not unlawful where no wage increase had been promised or scheduled at time statement was made)

Southside Electric Cooperative, Inc. JD-800-79
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

Eastern Maine Medical Center v. N.L.R.B. 658 F.2d 1 (C.A. 1, 1981)
(withholding wage increases for unit Ees while granting it for other Ees, unlawful where granting increases for all Ees had been standard practice before advent of U; contention that withholding was legitimate economic bargaining tactic, rejected since during negotiations E's obligation under *Katz* is to maintain the dynamic status quo)

South Shore Hospital v. N.L.R.B. 630 F.2d 40 (C.A. 1, 1980)
(E's refusal to make proposed wage increases for represented Ees in its final offer retroactive so as to equal wage increases already granted its unrepre-

5029-1225—Cont.

sented Ees, unlawful where its stated business reasons that it would be disadvantageous for it to do so resulted from its own unlawful bargaining strategy)

J.J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation v. N.L.R.B. **645 F.2d 148 (C.A. 2, Mar 21, 1981)**
(withholding of wage increase in face of U campaign, decided upon prior to and independently of any U activity, not unlawful, where withholding did not have an anti-U purpose or effect in view of Ees' lack of knowledge of E's decision to increase wages and then to withhold it, E's inability to predict whether implementation of previously adopted raise would be lawful, its reliance on good faith advice of counsel, and its pains to refrain from capitalizing on, and U's failure to complain about, the withholding)

The Catholic Medical Center of Brooklyn and Queens, Inc., et al. v. N.L.R.B. **620 F.2d 20 (C.A. 2, 1980)**
(E's 3-week suspension of salary review w/o consulting with U, unlawful and though inconsequential, it was distinguishable from violations where Bd applied *de minimis* doctrine)

N.L.R.B. v. Howard Johnson Company d/b/a Howard Johnson Distribution Center **637 F.2d 373 (C.A. 5, 1981)**
(ct enforced Bd order which found E had violated Act by refusing to follow its established practice of granting annual wage increases to Ees because they unanimously selected U)

Republic Die and Tool Company v. N.L.R.B. **680 F.2d 463 (C.A. 6, June 1982)**

5029-1226 Evaluation of work

T. L. C. Lines, Inc. **265 NLRB No. 150**
(reevaluating mechanic who was U adherent and placing him in lower classification, violative)

Joshua's, Inc. d/b/a Fitzwilly's **253 NLRB No. 082**
(implementation of Ee evaluation system to be used in granting raises not violative despite E's other anti-U activities where, though plan did not cover entire work force, no evidence application based on illegal motive)

5029-1227 Failure to make evaluation for wage increase

Gassen Company, a Division of the United States Gypsum Company **254 NLRB No. 041**
(announcing that merit wages increases were frozen because of U organizing campaign, unlawful; since, although no regularity in merit increases after first 90 days of employment, merit review system as implemented became term and condition of employment and Ees had reasonable expectation merit raise system would continue where merit pay had assumed pattern based upon reward for good work)

5029-1231 Granting of wage increase

Documation, Inc. **263 NLRB No. 052**
(disparately low wage increase because of Ee's U activities, unlawful)

Viracon, Inc. **256 NLRB No. 037**
(E's suspension of wage reviews for 2 weeks with subsequent reviewing of Ees and granting of wage increases, not violative notwithstanding grants were made in midst of organizational campaign, where grants were consistent with E's wage plan both in amount of increase and timing and reasonably would have been granted whether election were held after or before actual date of election)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(GC's contention that E wide wage increase instituted at time of peak of U activity was unlawful, rejected, where U activity was taking place at only small part of E's enterprises)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(payment to Ees at higher wage rate than rate negotiated, unlawful)

Hammond Plastic, Division of Carl Gordon Industries, Inc. **JD-083-81**
(grant of wage increase and issuance of paid up annuity certificates as quid pro quo for withdrawal of representation ptn, unlawful)

Bates & Cunningham, Inc. **JD-589-81**
(granting U adherents lower wage increases than anti U Ees)

Southside Electric Cooperative, Inc. **JD-808-79**
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

Hack Manufacturing Company v. N.L.R.B. **693 F.2d 1176 (C.A. 5, Dec. 1982)**
(E's retroactively granting extra payments to nonstrikers for work done day before strike, violative, since grant discriminated among Ees solely on basis of U activities, and E failed to meet burden of showing other motivation; its proffered justification of business necessity did not apply here)

N.L.R.B. v. Circo Resorts, Inc., d/b/a Circus, Circus **646 F.2d 403 (C.A. 9, May 1981)**
(wage increases granted prior to election, not unlawful, where action was taken when Ees discovered disparity in their wages and protested strongly, and E was faced with dilemma of choosing between meeting protests or risk losing Ees at time when they were badly needed)

N.L.R.B. v. Circo Resorts, Inc., d/b/a Circus, Circus **646 F.2d 403 (C.A. 9, May 1981)**
(while wage increases granted prior to election generally carry a presumption of illegal motive, E is entitled to justify timing of increase and, under unusual circumstances herein involving E's dilemma of choosing between Ees' protests over disparity in their wages or risk losing Ees when they were badly needed, Bd should have considered justifications offered and should not have based finding of violation solely upon timing of increase)

5029-1236 Delay in benefit coverage

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**
(requiring former strikers to wait 90 days after reinstatement for resumption of health insurance coverage, unlawful, notwithstanding pursuant to provisions of pre-existing health plan regarding E coverage for Es who had ceased active work and E's contention that in view of administration of plan by third party it had no right to unilaterally change provisions, since no business justification and inherently destructive even absent U animus)

5029-1237 Denial of termination benefits

Clark & Hinojosa, Attorneys at Law, A Professional Corporation **247 NLRB No. 089**
(refusal to pay benefits to discharged Ee, to whom E promised one-half month's salary as post-termination pay, held violative inasmuch as E treated Ee differently than other discharged Ees because of Ee's expressed intent to seek redress from Bd)

5029-1259 Discriminatory maintenance of contract clause

Best Distributing Co., Inc. **255 NLRB No. 024**
(failure of E to apply terms of collective-bargaining agreement to Ees with respect to wages, benefits, and terms and conditions of employment, solely because they were not members of U, violative)

Classic Truck Rental Corp. **251 NLRB No. 084**
(refusal by E and U to permit drivers' helpers to become U members or to apply to them terms and conditions contained in drivers' contract, not unlawful, where U did not represent helpers or anyone else described in contract's boiler-plate preamble, helpers were outside unit and therefore U had no obligation to represent them nor any obligation to insist that E extend contract provisions to them; similarly, E had no obligation to extend contract's wage scale or other benefits to helpers or any other Ees outside unit)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(refusal to pay nonU Ees contractual wage and accord them contractual benefits to which they were entitled as members of bargaining unit covered by contract, unlawful)

5029-1275 Reduction

Knogo Corporation **265 NLRB No. 130**
(demotion and reduction in salary of U adherent not violative where such actions were taken because of Ee's poor work record and not because Ee engaged in U activities)

Inland Steel Company **259 NLRB No. 024**
(deduction of 30 minutes' pay from wages of Ees who left work area before termination of shift to wash up as they had customarily done, unlawful, since such action was taken because of E's hostility toward pending grievance being pressed by some of the Ees)

Inland Steel Company **259 NLRB No. 024**
(issuance of disciplinary letters to Ee and loss of couple of days' pay for refusing to perform job assignment, unlawful, where actions were taken to punish Ee for insisting on pressing grievance and expressing determination to distribute U literature on plant premises; prior to Ee's refusal, Ee was selected to perform tedious and unpleasant menial job for unusually long period of 5-1/2 months, at same time E attempted to isolate Ee while so engaged, and E thereby calculated to deprive Ee of job satisfaction and to provoke him into refusing a work assignment which Ee finally did)

Jaybil Steel Products, Inc.; etc. **258 NLRB No. 157**
(changing method of pay from piecework to hourly basis which resulted in substantial loss in pay to Ees, unlawful, where instituted w/o business purpose at beginning of week immediately following organizing campaign)

Association of Apartment Owners of The Whaler on Kaanapali Beach **258 NLRB No. 010**
(E who assigned U adherent maintenance work rather than his usual repair work, reduced his hours more than Ee desired to be reduced, conditioned his employment on hourly pay cut constructively discharged Ee)

5029-1275—Cont.

Albion Corporation d/b/a Brooks, Inc. 251 NLRB No. 104
(on ct remand, Bd affirmed ALJ's conclusion that E's treatment of new non-U Ees hired to replace strikers who had refused E's offer of reinstatement was neither discriminatory nor anti-U, where E applied to new Ees wage provisions of existing contract; E's failure to reduce their wages, while having U agree to reduction in wages because of E's precarious financial situation, was justified by fact that exclusion of new Ees from contract's fringe benefits gave strikers compensation at higher rate than new Ees when hourly fringe benefits rates are combined with hourly contract rates)

Han-Dee Pak, Inc. 249 NLRB No. 107
(notwithstanding Ees subsequent unlawful discharge, E's action of reclassifying Ee at lesser salary not unlawful absent evidence of discriminatory motivation and connection between wage reduction and Ee's U activities)

International Business Systems, Inc. 247 NLRB No. 102
(violation where E reduced Christmas bonus by half because of Ees' U activity and not because available cash was insufficient, as asserted)

Ford Motor Company, Automotive Division, Twin Cities Plant JD-57-81
(docking Ee's pay for keeping log of U work done by foremen, and filing grievances about such work and E's retaliation against him for filing grievances, violative)

Bill Fox Chevrolet, Inc. JD-767-80
(E's deliberately depriving Ee of work, resulting in sharp dip in Ee's earnings for 2-week period, violative since reasons for E's action were Ee's show of U loyalty, his protected activities on behalf of U, and because he gave testimony to Bd)

5029-1279 Denial of holiday pay

The Sherwin-Williams Company 260 NLRB No. 185
(withholding from Ee accrued holiday pay because fellow Ees had engaged in strike, violative)

Great Scot of Florida, Inc. 256 NLRB No. 126
(sending letter to Ees thanking them for voting against U and announcing that it was granting nonmeat department Ees time-and-one-half for work performed on Sunday and certain holidays and that it was recommencing program of merit wage increases but not granting such benefits to meat department Ees because of NLRB, violative, notwithstanding E's contention that it was following advice of attorneys and that it subsequently admitted this error to Ees and granted same benefits to meat department Ees effective retroactively back to same date used for other Ees)

Five Star Air Freight Corporation 255 NLRB No. 046
(denying reinstated U advocate holiday leave pay and suspending her for three days w/o pay assertedly because she had typed letter announcing impending U meeting on company typewriter during working hours held violative where record established that other Ees made frequent use of company equipment w/o rebuke)

Lyman Steel Company 249 NLRB No. 040
(withholding holiday pay from U adherent who had switched his allegiance from favored U to petitioner held violative where E had threatened Ee with punishment for supporting petitioner)

5029-1280 Denial of overtime pay

Grane Trucking Company 261 NLRB No. 009
(violation, where E failed to rebut GC's *prima facie* case showing that U adherent truckdriver's protected concerted activity was *motivating factor* in E's decision to remove him from run and thereby cause him loss of overtime compensation)

Radman Construction Company, Inc. JD-(SF)-105-80
(discharge of Ee who sought to implement contractual benefits regarding overtime pay violative irrespective of whether asserted claims are found meritorious)

Excavation-Construction, Inc. v. N.L.R.B. 660 F.2d 1015 (C.A. 4, Oct. 1981)
(discharging Ees for concertedly refusing to work specific job on Saturday because it did not pay time and half held not violative where Ees knew that E would pay only straight time and rule that Saturday work was voluntary but if Ee signed up for that day must work on any job assigned by E and penalty for not working was discharge. Claim that Ees were engaged in 1 day strike rejected, since Ees only refused to work that specific job that day and not other jobs which was equivalent to Ees seeking to work under terms prescribed by them which is not protected activity)

5029-1283 Denial of vacation Pay

Fugazy Continental Corp.; Elite Services, Inc. 265 NLRB No. 165
(E, together with purchaser of part of E's operations, herein found *alter ego* of E, violated 8(a)(3), where E contravened its own avowed and established policy regarding vacation pay and denied such pay to discriminatorily discharged Ees; vacation pay policy had been carried out in practice until sham purchase transaction herein led to discriminatory discharge of Ees, and denial of vacation pay was part and parcel of E's illegal anti-U campaign and attempt to punish Ees for successfully supporting U)

Laredo Coca Cola Bottling Company 253 NLRB No. [illegible]
(denial of vacation benefits to reinstated ULP strikers not violative since requiring E to compensate Ees for their strike time would force E to finance strike and E was correctly implementing bargaining agreement by denying vacation benefits to Ees)

S. W. Hart & Company, Pty. Ltd., d/b/a Solahart of Fresno 256 NLRB No. 193
(ceasing to provide such benefits as vacation pay as part of plan to break up unit and thwart Ees' desire for U representation, unlawful)

Ace Beverage Company, et al. 253 NLRB No. 124
(denial to reinstated economic strikers of pro rata vacation benefits for time worked prior to strike, not unlawful, where strikers were absent, by reason of strike, for more than 7 weeks during calendar year and had not worked 45 weeks necessary for accruing benefits as required by contract, nor were strikers eligible under contract's pro rata benefits provision which was limited to Ees who quit, retired, or surrendered their seniority; to find violation herein would give U through ULP proceeding what it sought, but could not achieve, through good faith negotiations)

Ace Beverage Company, et al. 253 NLRB No. 124
(contention that since contract did not expressly deny pro rata vacation benefits to strikers, Es could not lawfully deny such benefits to reinstated strikers while granting benefits to other Ees eligible under contract, and thereby E, in effect, penalized strikers, rejected, where contract provided for narrow pro rata exceptions for Ees who quit or retired, and U acquiesced in such result after failing during negotiations to prevail in its demand for pro rata benefits for all Ees)

Climate Control Corporation 251 NLRB No. 102
(denying vacation benefits in retaliation for U activity, instigation of ULP charge, and providing evidence to Bd, violative)

World Wide Press, Inc. JD-(SF)-12-80
(refusal to give vacation pay to Ee, witness against E in prior Bd proceeding, unless she agreed in writing to return it in event Bd should determine that there was no valid contract between E and assisted U, unlawful)

5029-1294 Sick pay; denial, withholding, or change in practice or policy

Texaco, Inc. 260 NLRB No. 165
(when during course of economic strike, E ceased paying accident and sick benefits to 3 Ees who had been out of work on authorized sick leave prior to inception of strike it violated Act where it had no knowledge that Ees supported strike and fact that they were U members and had supported strikes in past not enough to show they supported this strike)

Virginia Electric and Power Company 260 NLRB No. 050
(announcement of new sick leave policy to all Ees, applicable not only to represented but also unrepresented Ees, allegedly unlawful because it affected represented Ees who sought to replace incumbent U with outside U, not unlawful, where E had legitimate business explanation for making change and, in view of large number of Ees affected by change and relatively small number of outside U activists, it does not appear that E, in order to discourage latter group, would do injury to great number of Ees affected by change)

Texaco, Inc. 259 NLRB No. 170
(coercion of Ees to refrain from declaring their position on strike by terminating their sick leave benefits while they were medically excused from work, unlawful)

Texaco Oil Company 259 NLRB No. 063
(E's discontinuance of contractual accident and sick benefits to Ees who were sick or disabled by other than industrial injuries at onset of strike and were unable to work during strike and did not affirmatively declare their support for strike, unlawful, since Ees had Section 7 right to refrain from declaring their position on strike while medically excluded, and for E to be justified in terminating disability benefits to those Ees unable to work it must show Ees have affirmatively supported strike; E's contentions of waiver and failure of Ees to keep E informed as to status of their disability, rejected)

Texaco Oil Company 259 NLRB No. 062
(visit of Ee who had been on sick leave prior to strike to site of picketing w/o getting out of car did not establish support of strike that would justify termination of accident and sick benefits to Ee, since for E to justify termination of any disability benefits to Ees who are unable to work at start of strike it must show it has acquired information that Ee whose benefits were terminated had affirmatively shown support of strike)

Texaco Oil Company 259 NLRB No. 065
(whether date Ee, who was on sick leave at onset of strike and unable to work during strike, began to picket should be determinative of when he was able to return to work, thus ending his entitlement to sick benefits, or if he was medically able to return to work earlier, left to compliance stage)

Walter Motor Truck Company 256 NLRB No. 166
(E's stopping payment of sick leave benefits to Ees who were on sick leave immediately when other Ees went out on strike, unlawful, since E failed to show that it had obtained knowledge that Ees on sick leave had acted in any

5029-1284—Cont.

way to show public support of the strike and that it had stopped payment of sick pay benefits because of such conduct)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. 636 F.2d 1255 (C.A. 7, 1980)
(ct held contrary to Bd that change in sick leave policy shortly after U victory in representation election was not unlawful, since timing alone did not justify conclusion that change was discriminatory, and record showed E's economic reason was to make department's policies on sick leave uniform with those of other departments)

5029-1285 Withholding guaranteed workweek pay

American Interstate Freight Lines 258 NLRB No. 121
(refusing assignment of work to Ee on many occasion because he went to U concerning his employment complaints, including contract provision that called for guaranteed work week, violative)

5029-1287 Change in basis of payment

S. W. Hart & Company, Pty. Ltd., d/b/a Solahart of Fresno 258 NLRB No. 192
(changing from hourly to piecerate method of paying unit Ees as part of plan to dissipate unit by making Ees independent contractors and thwart Ees' desire for U representation, unlawful)

Joybil Steel Products, Inc.; etc. 258 NLRB No. 187
(changing method of pay from piecework to hourly basis which resulted in substantial loss in pay to Ees, unlawful, where instituted w/o business purpose at beginning of week immediately following organizing campaign)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Harvey & Madding, Inc., d/b/a Dublin Honda JD-(ATL)-97-81
(delaying and withdrawing salesmen's *draw* checks after election won by U held violative, since E displayed strong anti-U animus prior to election and deviated from normal and established pay practice after salesmen selected U)

Excavation-Construction, Inc. v. N.L.R.B. 660 F.2d 1015 (C.A. 4, Oct. 1981)
(discharging Ees for concertedly refusing to work specific job on Saturday because it did not pay time and half held not violative where Ees knew that E would pay only straight time and rule that Saturday work was voluntary but if Ee signed up for that day must work on any job assigned by E and penalty for not working was discharge. Claim that Ees were engaged in 1 day strike rejected, since Ees only refused to work that specific job that day and not other jobs which was equivalent to Ees seeking to work under terms prescribed by them which is not protected activity)

5029-2500 Hours

5029-2525 Change in work schedule

RAHCO, Inc. 265 NLRB No. 030
(E's changing Ees' work week from four 10-hour days to five 8-hour days w/o notifying U held unlawful, since E was motivated by desire to punish its Ees because they voted for U to represent them and E did not afford U opportunity to bargain over action)

Heads and Threads Company, a Division of MSL Industries, Inc. 261 NLRB No. 115
(institution of new rule requiring Ee to begin work upon punching in, unlawful in context of antiU diatribes after U demand for recognition)

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car 260 NLRB No. 119
(transferring Ees from day to night shifts w/i one week after demand for recognition, violative)

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde 259 NLRB No. 073
(violation, where E changed Ee's shift and days off to retaliate against his testimony at Bd hearing and his elevation to acting presidency of U)

Inland Steel Company 259 NLRB No. 034
(reduction of lunch period from 30 to 20 minutes and elimination of wash-up time at end of shift, unlawful, where such strictures were imposed because of E's hostility toward pending grievance being pursued by a few Ees, and changes were made a few days after E had unlawfully threatened to make it more difficult for Ees if grievance continued to be pressed)

15 East 40th Restaurant, Inc., d/b/a Sagapo Restaurant and Sagapo Restaurant, Inc., its agent 257 NLRB No. 156
(transfer of U adherent from night shift to less desirable day shift and then discharging him violative)

Harrison Steel Castings Company 262 NLRB No. 069
(establishing night shift for department and transferring Ee to work alone on shift immediately after discovering her U activities violative where E operated only day shift for 17 years)

Together We Stand Women's Guild Day Care Center 256 NLRB No. 060
(announcing and implementing changes in schedules and work rules, violative where changes were made in retaliation against Ees for engaging in U activity)

Firmat Manufacturing Corp. 255 NLRB No. 189
(cutting Ee's overtime and changing his work hours so as to impose more arduous working conditions upon him immediately after his U activity, violative)

Crown Cork & Seal Company, Inc. 255 NLRB No. 004
(leading U advocate being assigned to undesirable night shift, his demotion, disciplinary reprimands and eventual discharge held unlawful where valid grounds for E's actions were frequently false or exaggerated, adverse action against Ee occurred when Ee became in-plant spokesman for U and Ee who opposed advocate's election to U office was more tenderly treated for his acts of misconduct)

Clark Manor Nursing Home Corp. 254 NLRB No. 084
(work schedule changes of two Ees, unlawful where motive was to avoid future problems in arranging or rearranging schedules if U was certified)

St. John Medical Center 253 NLRB No. 077
(change in work schedule which became permanent after Ee became leading U adherent, not unlawful where her change in schedule was economically justified)

Marriott In-Flight Services a Division of Marriott Corporation 249 NLRB No. 072
(requiring Ee believed to be U leader to return directly after lunch to airfield where he had no duties between 1:30 and 4:30 rather than to work in flight kitchen violative, since change in schedule was designed to keep him from having contact with Ees in flight kitchen)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand 247 NLRB No. 167
(violations where E transferred U adherents who had testified at Bd hearing to store in less desireable location, reduced their working hours to times when they could not use public transportation, added onerous janitorial duties and then discharged them)

Sturdi-Craft, Inc. JD-(SF)-188-82
(institution of 10-hour work shifts in retaliation for Ees' U activities violative)

United States Postal Service JD-140-81
(changing starting time of work shift, not unlawful, where E wished to alleviate overtime problem which was source of recent grievances and there was no proof that E's actions were in retaliation of Ees' protected activity)

Retailer's Coupon Redemption Co., Inc. JD-194-80
(violation where E discontinued flexible work hours of U leaders, and sympathizers, while permitting other Ees to continue working flexible hours)

Southwest Research Institute JD-(SF)-276-79
(discontinuation of practice of accommodating work schedules of U adherents to their school schedules in accordance with its educational advancement program, unlawful)

N.L.R.B. v. American Postal Workers Union 618 F.2d 1249 (C.A. 8, 1980)
(E acceding to U's termination of temporary shift assignment, not unlawful, notwithstanding termination violative of 8(b)(1)(A) and 8(b)(2) where E's action was not based on discriminatory motive, but rather on business justification of fear of legal or economic action; further, E did not know U had breached duty of fair R)

5029-2550 Reduction

Robert E. Johnson and Geneva H. Johnson, a Partnership, d/b/a Jolie Bolts Company 269 NLRB No. 141
(reducting Ee's hours of work after unlawfully threatening to do so because of his signing of U authorization card and dues-deduction card, violative since E presented no explanation for the reduction; mere fact that Ee was not shown to have worked fewer hours than other Ees did not rebut GC's *prima facie* case)

Hillside Avenue Pharmacy, Inc. 265 NLRB No. 205
(E's reduction of Ee's work hours after election, unlawful, since E did so to discourage support for U, where E summarily reduced Ee's hours w/o giving Ee any reason therefor, which suggests that reason was not economic; E offered no explanation at hearing why he could accomodate E's request before election for more hours and why he could no longer do so after election; and GC's *prima facie* case of violation was not rebutted by E who failed to demonstrate that hours would have been reduced notwithstanding evidence of unlawful motivation)

7 Up Bottling Company 261 NLRB No. 128
(taking away certain delivery routes from Ee in reaction to his U activities resulting in reduction of his hours of overtime work, unlawful)

7 Up Bottling Company 261 NLRB No. 128
(directive that U activist work strict 40-hour week, i.e., w/o overtime, issued because of his U activities, violative of 8(a)(3))

5029-2550—Cont.

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car 260 NLRB No. 118
(reducing working hours of Ees w/i one week of U's demand for recognition, violative)

G.T.A. Enterprises, Inc. d/b/a Restaurant [illegible] 260 NLRB No. 029
(reduction in hours of waitress who let customers leave before they paid their bill not violative especially when incident before E was aware of Ees U activities)

International Union of Operating Engineers, Local Union No. 132, AFL-CIO 258 NLRB No. 060
(E's reduction in Ee's workweek in retaliation for her attempt to collect U service fee from temporary Ee and thereby enforce existing collective bargaining agreement, violative)

Association of Apartment Owners of The Whaler on Kaanapali Beach 258 NLRB No. 010
(E who assigned U adherent maintenance work rather than his usual repair work, reduced his hours more than Ee desired to be reduced, conditioned his employment on hourly pay cut constructively discharged Ee)

Oakwood Manor, Inc., d/b/a Danville Nursing Home 254 NLRB No. 108
(after U activity began, E, by assigning less hours of work to U adherent than to less senior Ees, violated Act notwithstanding U adherent's hours worked was not less than before U activity commenced)

Clark Manor Nursing Home Corp. 254 NLRB No. 054
(reduction of Ee's work hours in retaliation for U activity, violative)

Berger Transfer and Storage, Inc. 253 NLRB No. 092
(E violated Act where rehired striker changed from guaranteed 40 hours week and placed on seniority list which caused him to work less than 40 hours)

Century Moving & Storage, Inc. 251 NLRB No. 083
(reducing work of two U adherents assertedly because of business decline held violative where E effectuated his prediction that if he were compelled to accede to U economic demands he would be compelled to assign work to himself and another Ee and thus reduce work of least senior Ees)

O.K. Machine & Tool Corp. and Gyrotronics, Inc. 251 NLRB No. 030
(exclusion of strikers from overtime work, unlawful)

Cas Walker's Cash Stores Inc. 249 NLRB No. 041
(reduction of hours to punish Ees for known support of one of two Us conducting organizing campaign where E favored and supported rival U, unlawful)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand 247 NLRB No. 167
(where E reduced hours of 3 Ees out of work force of 25 for discriminatory reasons, this does not support finding that E reduced hours of all Ees; moreover, violations as to 3 Ees remedied by separate allegation in complaint)

Hinky Dinky Super Markets, Inc. 247 NLRB No. 169
(reduction of hours of leading U advocate, part time Ee with good employment record, in order to give less senior Ee *a few hours* held violative where E's action against seniority was contrary to its usual practice and was taken against Ee to *straighten him up*)

Knapp Foods, Inc. d/b/a Hi-Lo Foods 247 NLRB No. 146
(reducing hours immediately following U bargaining demand and *until the union matter cleared up*, violative, since the changes were instituted in response to Ees' U activity)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South 247 NLRB No. 038
(reduction in two Ees' scheduled hours for U activities and for appearing in U's behalf at hearing, respectively, unlawful; fact one Ee increased hours actually worked by own efforts, no defense)

Bates & Cunningham, Inc. JD-590-81

Scoggin's, Inc. JD-433-81
(E's reduction in work week of U adherents who had testified at Bd hearing from 40 to 20 hours, not unlawful, notwithstanding E's other ULPs, since for business reasons, where E was in dire financial situation to point of using monies withheld for payroll taxes for capital and E's president taking out personal loan when taxes due; further, Ees were not replaced)

Material Transportation, Co., Inc. JD-470-80
(reducing Ees' work hours because of their U activities, violative)

Wilson Foods Corporation JD-(SF)-202-80
(changing starting time for Ee for allegedly refusing to withdraw several grievances, not unlawful, where grievant was not only Ee put on later starting time and change in mode of delivery of product from use of railroad to use of trucks made it unnecessary for Ee to report to work early; no evidence cast doubt of E's decision to effect small financial saving by cutting hour off combined shifts of Ees involved)

N.L.R.B. v. Jack August Enterprises, Inc. 583 F.2d 575 (C.A. 1)
(violation, where E changed work schedule and reduced work hours of U activists)

Massey Stores, Inc., d/b/a Kermit Super Valu v. N.L.R.B. 631 F.2d 328 (C.A. 4, Oct. 1980)
(reduction of hours of Ee, unlawful, since for U activity where Ee had previously been coercively interrogated, manager informed Ee hours were reduced because cashiers had *turned against him*, and reduction took place shortly after Ee signed authorization card)

N.L.R.B. v. Hinky Dinky Super Markets 636 F.2d 231 (C.A. 8, 1980)
(reducing Ee's working hours because of his participation in U activity, violative)

N.L.R.B. v. Maui Surf Hotel Company and ILWU Local 142 601 F.2d 603(T) (C.A. 9, 1979)
(where all non-essential Ees were required by contract to either sign out or attend *work stop* meeting, no discrimination as all Ees, including ones who protested were treated same way)

5029-3700 Bonuses

5029-3733 Discrimination in regard to

Deister Concentrator Company, Inc. 253 NLRB No. 040
(failure to grant accrued bonus to unrecalled economic strikers violative)

Florida Steel Corporation 249 NLRB No. 018
(E's denying accumulation of *time bank* credits to Ees who served on U negotiating committee for time they spent in negotiations which were held during working hours not violative, where attendance at bargaining negotiations did not fall w/i exceptions set forth to E's requirements that Ees were required to be present for all regularly scheduled hours during workweek in order to accrue time bank credit, absence to participate in bargaining was voluntary since E offered to meet outside working hours, and there was contention of discriminatory motivation in denial of credit)

5029-3767 Withholding of

Southern States Distribution, Inc. 264 NLRB No. 001
(E's discontinuance of its practice of giving Ees Christmas bonus and Thanksgiving turkeys not violative of Section 8(a)(3) since not in retaliation for Ee support of U absent U animus and in view of E's substantial losses due to Ee theft of its property)

Woonsocket Spinning Company 252 NLRB No. 163
(deprivation of Christmas bonus where E announced it intended to give one, granting bonus to salaried Ees, refusing to inform U basis on which bonus computed for salaried Ees and threats that Ees had lost bonus because they supported U violative)

Harowe Servo Controls, Inc. 250 NLRB No. 128
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Talbert Manufacturing, Inc. 250 NLRB No. 026
(violation where E discontinued Ee bonus payments and thereafter refused to pay Ees the bonus which had accrued prior to discontinuation in reprisal for Ees' voting for U)

Eight In One Pet Products, Inc. JD-(NY)-106-82
(no violation where E past practice was that of changing year end bonuses (turkeys, later on gift certificates, and finally paying for Christmas party))

5029-4300 Vacation pay, policy or practice

South Nassau Communities Hospital 262 NLRB No. 146
(E's denial of one day of vacation to U proponent, unlawful, where Ee was permitted to take full complement of vacation days during each of 2 years w/o having to pay back one extra vacation day she had taken in year prior to those 2 years, and E deducted such extra day from Ee's requested vacation period after she became U activist; E's contention that Ees' accrued vacation days are not checked until they seek clarification or sever employment, both of which Ee did, rejected, since normal practice was to check records regarding vacation entitlement)

Zero Corporation, Zero East Division 262 NLRB No. 064
(denial of change in vacation dates to leading U supporter, violative, where in past changes was made on request)

Quick Find Co. 262 NLRB No. 065
(E who denied 3 Ees their vacation pay did not violate Act where E had policy which required Ees to have worked 93% of work year before they were entitled to vacation pay and these 3 Ees had all worked less than 93% of year even giving them full credit for unlawful 7 week lay-off which occurred during work year)

Georgia Kraft Company, Woodkraft Division 258 NLRB No. 121
(failure to pay accrued vacation pay to strikers who had satisfied requisites for vacation pay under expired contract, violative)

5029-4300—Cont.

Firmat Manufacturing Corp. 255 NLRB No. 153
(denying Ee extended vacation because his name appeared in ULP charge, violative)

Overnite Transportation Company 254 NLRB No. 011
(denial of vacation pay to U adherent, violative)

S. L. Industries Inc. and Extruded Products, Corp. 252 NLRB No. 151
(to Ee entitled to reinstatement where, but for E's unlawful refusal to reinstate her, she would have been eligible to receive here vacation pay)

Larsen Supply Co., Inc. 251 NLRB No. 175
(withdrawing advance vacation privileges)

General Time Corporation, Westclox Military Products Division 249 NLRB No. 178
(E's failure to pay accrued vacation pay to striking Ees violative where no business justification existed)

Borden, Inc., Borden Chemical Division 248 NLRB No. 069
(on ct remand, Bd held E's rejection of U's request at outset of strike to pay accrued vacation benefits to qualified Ees, unlawful; E showed its motive by stating that it would not pay vacation pay to strikers, and evidence of past practice indicated that purpose of contractual limitations on vacation pay were for purpose of assuring that time off was taken instead of being foregone for extra pay)

N.L.R.B. v. Borden, Inc., Borden Chemical Division 645 F.2d 87 (C.A. 1, Mar 31, 1981)
(E unlawfully delayed vacation pay to strikers notwithstanding E's justification that Ees had no qualifying *vacation* under bargaining agreement because they were on strike during period for which they requested vacation pay and strike did not constitute vacation; however, this contention was undercut by E's past indifference as to nature of *vacations* so long as Ees left work and did not claim double pay and, further contention that vacation payment at later date on ground that *contractual vacation period* had passed rejected, since this fact could not convert *strike* into *vacation*)

Vesuvius Crucible Company v. N.L.R.B. 668 F.2d 162 (C.A. 3, Nov. 1981)
(refusal to pay strikers accrued vacation pay pursuant to expired contract not violative, as E had good faith belief that entitlement to and amount of vacation pay was to be determined under new collective bargaining contract if and when contract executed. Such conduct, unlike offering non-strikers benefits, or threatening strikers with loss of benefits if they did not return to work, is not inherently destructive of Ee rights so as to obviate need to show prohibited motive; furthermore, here E's good faith belief does not show anti-U motivation on part of E)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. 658 F.2d 968 (C.A. 4, Sept. 1981)
(E's denial of vacation leave to Ees assertedly because Ees failed to give advance notice as required by E's policy, unlawful, where E's action was taken to prevent Ees from participating in U negotiations at E's other plants; E's leave policy was unfamiliar to one of the Ees herein and was not applied to other Ees requesting leave for same day which was known to E as day on which negotiations elsewhere were scheduled; other Ee had been told by his supervisor a week earlier that time of his notice would be sufficient, and Ee's absence would not have disrupted E's work schedule)

N.L.R.B. v. General Time Corporation, Westclox Military Products Division 697 F.2d 271 (C.A. 7, June 1981)
(failure to distribute accrued vacation benefits to strikers at customary time when plant closed for vacation and subsequently postponing payment to strikers, unlawful, notwithstanding E's contention that contract had expired; so no vacation currently specified, and its new porposals would have changed vacation period and pay. Pay due under old contract, and accrued benefits paid on certain date under past practice may not be conditioned on new contract; further , E's refusal discriminatory where all Ees had same vacation, thus shutdown of plant for vacation not bargained for item)

Vesuvius Crucible Company 252 NLRB No. 179
(refusal to pay economic strikers vacation pay accrued under expired contract, violative, fact contract limited vacation pay, computed on prior year's earnings, to its term did not free E from responsibility of paying these vacation benefits because they vested in Ees during term of contract and do not divest on expiration)

5029-4500 Withdrawal of privileges

Tra-Mar Communications, Inc. 265 NLRB No. 089
(E's propogating oral and written work rules, after election of U, prohibiting smoking, personal telephone calls and reception of visitors on company premises, etc. which rules were more arduous and onerous than work rules in effect before advent of U held violative, since rules were propogated solely in retaliation for Ees' voting for U)

Fairleigh Dickinson University 264 NLRB No. 098
(E withdrawing recognition from representative for its clerical and technical workers and barring its representatives from further participation on official university committees in retaliation against outside U's organizing campaign of these workers with assistance from representative violative, contention that representative was *dominated* organization, and therefore, E's action proper, rejected, in view of long time representative functioned; and E attempted to provide substitute organization; E may not exculpate itself for its violations on ground that its conduct was attempt to cure established pattern of conduct violative of Act)

Champion Parts Rebuilders, Inc., Northeast Division 260 NLRB No. 090
(refusing to continue to let U officials use in-plant telephone system for official business and also discontinuing letting U stewards give documents to supervisors who, in turn, would photocopy Ees' doctor's excuses violative of Sec. 8(a)(3) where part of other anti-U conduct and no business justification existed; moreover, change in steward's role in obtaining photocopy of excuses by only letting Ee give it directly to supervisor, thus, bypassing steward, violated Section 8(a)(5))

Association of Apartment Owners of The Whaler on Kaanapali Beach 255 NLRB No. 010
(eliminating break time in retaliation for losing election)

Larsen Supply Co., Inc. 251 NLRB No. 175
(E violated Act where prior to election which U won, Ees were allowed to take their lunch breaks whenevers it was convienent but afterwards required them to take it at specified time in retaliation for U vote and w/o E bargaining with U)

Henry Vogt Machine Company 251 NLRB No. 040
(withdrawal of cafeteria privileges after Ees chose U representative found inherently discriminatory since it contained clear and dramatic message for Ees who had chosen representation and for the remaining unrepresented Ees)

Hall of Mississippi, Inc. 249 NLRB No. 119
(singling out 2 members of U organizing committee for admonition against using telephone for personal business, violative where there was no evidence to show that any problem existed which warranted issuance of warning)

Brueckner Sand & Gravel, Inc. JD-(SF)-312/81
(termination of drivers' fishing privileges on company property after U won election, violative where it was for discriminatory purpose and w/o notice to U)

United States Steel Corporation JD-(ATL)-96-81
(E's changing its practice of permitting Ees to swap shifts w/o permission or supervisory knowledge because Ees filed grievances pursuant to collective bargaining agreement, unlawful)

N.L.R.B. v. Sacramento Clinical Laboratory, Inc. 623 F.2d 110 (C.A. 9, July 1980)
(violation where Ee was hired with promise that she would be allowed to take off from work to attend trade fairs if a suitable replacement could be found, and was allowed to so take off prior to U campaign but was denied day off admittedly after E discovered she was proU)

5029-5000 Change in business methods or operations

United Dairy Farmers Cooperative Association v. N.L.R.B. 633 F.2d 1054 (C.A. 3, 1980)
(conversion of Ees to independent contractor status and firing those Ees who refused to accept this status violative; there was substantial evidence to support Bd's finding that forced conversion and firing were motivated by intent to avoid unionization)

5029-5037 Transfer of unit work

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting 265 NLRB No. 161
(reducing operations by selling some trucks, subcontracting, and transferring work formerly performed by discriminatee to other Ees w/o bargaining in order to avoid recalling discriminatee, violative)

Milwaukee Spring Division of Illinois Coil Spring Company 265 NLRB No. 028
(E's decision to relocate work from U to non-U plant, to layoff Ees as consequence during term of agreement solely because of higher labor costs, absent U's consent, is midterm repudiation of agreement in violation of Sec. 8(d), Sec. 8(a)(1), (3), (5); moreover, U did not waive right to bargain notwithstanding managements rights clause; such clause reserves for E right to decide whether and how products will be manufactured; it does not grant E right to transfer its operation. Thus, absent explicit language, U has not waived its right to object to E's decision)

Carbonex Coal Company 262 NLRB No. 159
(transferring unit work to new mine 5 miles away at time old one is struck in order to avoid bargaining with U and then hiring new Ees through unlawfully assisted U's hiring hall while refusing to hire striking Ees and those represented by certified striking U violates Act)

5029-5037—Cont.

Martin-Brower Company 261 NLRB No. 111

Lion Uniform, Janesville Apparel Division 259 NLRB No. 142

(unilateral removal of operations to newly purchased facility, not unlawful, where move was temporary and necessitated by business reasons brought on by Ees' strike; E engaged in good faith bargaining after U's certification, reinstated strikers at end of strike, and continuously told U that it would provide work for Ees at old facility; moreover, its prior threat to close plant and cancel expansion was never implemented, and its move came when its continued viability was endangered)

Emerson G. M. Diesel, Inc. 258 NLRB No. 168

(transfer of work and layoff of Ees occasioned by Ees' selection of U, violative)

Glengarry Contracting Industries, Inc. 258 NLRB No. 156

(transfer of certain manufacturing equipment and operations unlawful, where motivated by Ees' U activities)

Lee Norse Company, a Subsidiary of Ingersoll Rand Company 247 NLRB No. 098

(refusal to transfer unit Ees to new location, not violative, since change in original bargaining unit was so fundamental and diverse that new location was not integral part of existing unit at original location)

St. Regis Paper Company 247 NLRB No. 105

(transferring work from one of E's plants to another of E's plants in another city to eliminate overtime, subject of an Ees' grievance, held violative, since grievance was protected activity)

J. H. Black & Co., Inc. 247 NLRB No. 041

(transfer of work from group of U adherents violative when done in retaliation for their U activities; fact that group, to whom work was transferred, was also active in U does not preclude finding)

Heat Transfer Group, Gulf and Western Mfg. Co. JD-381-82

(E's repudiating agreement by announcing its intention to and by commencing to relocate portion of unit work to another location for performance by non-unit Ees represented by another U with contract providing for less costly wages and benefits held violative, as E's purpose was to evade obligations and to frustrate Ees' right to refuse to make mid-term concessions)

5029-5050 Subcontracting

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting 265 NLRB No. 161

(reducing operations by selling some trucks, subcontracting, and transferring work formerly performed by discriminatees to other Ees w/o bargaining in order to avoid recalling discriminatee, violative)

Walter B. Cooke, Inc. 262 NLRB No. 074

(layoff of Ees and subcontracting of their work not unlawful conduct inherently destructive of Ees' rights, where business no longer was sufficient for full-time Ees, E could subcontract work more economically by the job, E lacked sufficient control of subcontractor's operations to be found joint E, and there was no evidence of U animus)

St. John's Construction Corporation 258 NLRB No. 067

(terminating insulation and trucking business, selling trucks to former foremen as *subcontractors* and contracting out its service operations, violative, where such action was sham device in attempt to avoid possibility of dealing with U)

S. W. Hart & Company, Pty. Ltd., d/b/a Solahart of Fresno 258 NLRB No. 192

(subcontracting work of unit Ees in order to break up unit and thwart Ees' desire for U representation, unlawful)

Behring International, Inc. 252 NLRB No. 088

(E unlawfully laid off its warehouse Ees and subcontracted its warehouse work where E's actions occurred shortly after unlawful threats and grants of benefits in response to U organizing campaign; Ees had been praised recently for quality of their work; Ees who attempted to forestall election were retained at higher rates of pay following subcontracting, while Ees who had not opposed U were laid off; and E can point to no contemporaneous event which might have motivated layoffs)

Tennessee Cartage Co., Inc. 250 NLRB No. 015

(terminating work of truckdrivers and warehousemen during period of U campaign and using Ees of *Rent-A-Driver* service for such work held violative where action taken to avoid U at E)

SFS Painting and Drywall, Inc.; James Seach d/b/a J. Seach Painting and Drywall 249 NLRB No. 069

(unionized corporation's layoff of its Ees and subcontracting of their work to its nonU *alter ego* sole proprietorship, unlawful)

Carbonex Coal Company 248 NLRB No. 187

(E's subcontracting of 100 percent of its hauling operation which resulted in layoff of 2 Ees, violative)

C-F Air Freight, Inc. 247 NLRB No. 60

(closing of facility and subcontracting of Ee's work, unlawful, where E's defense that financial losses at facility necessitated such action, unlawful; it was fallacious to say, on one hand, that facility was such an economic disaster as to require its closing and, on the other hand, to subcontract its work; subcontractor did not prevent E from suffering financial losses; there was no diminution of work after subcontractor began performing it; and subcontractor's work force was substantially the same)

Atlas Inc. JD-890-79

(violation where, in order to avoid dealing with U, E laid off unit Ees, ceased operations, closed shop, refused to reinstate Ees, and subcontracted unit work and transferred all physical assets to another corporation, and the corporation, found herein to be successor to and *alter ego* of E, refused to reinstate E's Ees and subcontracted work formerly performed by some of E's Ees)

Nebraska Bulk Transport, Inc. v. N.L.R.B. 608 F.2d 311 (C.A. 8, 1979)

(unilateral changes in work assignments of unit Ees and subcontracting portion of unit work)

N.L.R.B. v. R & H Masonry Supply, Inc. 627 F.2d 1013 (C.A. 9, Sept. 1980)

(E's sale of its trucks, discharge of drivers and contracting out of hauling after drivers signed U cards, unlawful)

5029-5051 Refusing new orders

Union Oil Company of California, Polymer PLant 258 NLRB No. 188

(changing shifts of Ees who supported U)

5029-5075 Partial closing of business

Monongahela Steel Company and Youngstown Steel Corporation 265 NLRB No. 031

(E's closing plant which, if permitted to survive, would have been integrated arm of E, and terminating plant's Ees held discriminatorily motivated, in view of E's threats to close rather than tolerate U, admission that labor problems caused closure, and choice of using its capital, which was sufficient to continue to operate plant, to discharge plant's liabilities because Ees had selected U)

United Supermarkets, Inc. 261 NLRB No. 179

(termination of U adherent employed in bakery operation at E's store upon closure of such operation, and refusal of Ee's request for transfer to similar operation at another store, not unlawful, where closure was unrelated to any U activity; no jobs were available at store to which she desired to be transferred and it was against company policy to have relatives working together which would have resulted from Ee's transfer)

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. 248 NLRB No. 039

(E's sale of 2 of its 30 trucks 3 months after strike which had no effect on Ee's job did not violate Act)

Pre-Fab Transit Company and Tractor and Trailer Leasing Co., Inc. JD-353-82

(E's elimination of *short haul* operation resulting in termination of Ees and then bargaining individually with Ees, resulting in destruction of unit, violative)

N.L.R.B. v. Southern Plasma Corp. 626 F.2d 1287 (C.A. 5, 1980)

(E's closing of part of business rather than deal with U and reopening department with new Ees violative at time of reopening as ct treated closing of 1 of 2 departments as temporary shutdown of total operation since closing of department not doncto dampen unionism in other department)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. 676 F.2d 483 (C.A. 11, May 1982)

(*Darlington* establishes that *partial closing is ULP under Sec. 8(a)(3) if motivated by purpose to chill unionism in any of remaining plants of single E and if E may reasonably have foreseen that such closing would likely have that effect;* E action must be accompanied by specific motive to chill unionism at other plants, *E action which has foreseeable consequence of discouraging concerted activities generally does not amount to violation of Sec. 8(a)(3))*

5029-5077 Discontinuance of shift

Division of Plessey Materials Corporation, Plessey Micro Science, A Wholly Owned Subsidiary of Plessey Inc. 263 NLRB No. 183

(no violation where E effectively rebutted GC's *prima facie* case that night shift was eliminated in response to U organizing; proof of engineering turnover, inexperience and opposition to night work dealing with new process, was conclusive that decision was made for nondiscriminatory reasons)

5029-5087 Reorganization of work system

The Martin-Brower Company 263 NLRB No. 035

(requiring Ees to fill out new forms when they picked orders rather than continuing use of more familiar form not violative where use of new forms was operating policy of E's main customer, and instructions to use that form were issued for purpose of conforming with that policy and *to get a better handle on the time situation*)

5029-5087—Cont.

The Evening News Association **258 NLRB No. 020**
(termination of technologically displaced telephone operator, U activist, subsequent to alleged refusal to transfer her to another clerical position w/i E's organization not violative where Ee refused to accept other clerical jobs offered by E; GC did not sustain burden of proving discrimination, since events relied on were outside 10(b) limitation period, and were subject to several inferrences none of which constituted ULP nor amplified character of any later conduct of E)

Jensen's Motorcycle, Inc. d/b/a Honda of San Diego **254 NLRB No. 165**
(E's institution of new system having two grades of mechanics *A & B* rather than one grade *A* which resulted in layoff of 6 *A* mechanics violative where instituted in response to Ees' U activities)

Amber Delivery Service, Inc. **250 NLRB No. 016**
(institution of changes in methods of operation designed to change Ees' status to that of independent contractors, violative)

Suburban Ford, Inc. **248 NLRB No. 051**
(unprecedented reshuffling, prior to election, of automobile salesmen's jobs, transferring them from new to used cars sales or *vice versa* and replacing or augmenting salesmen with untrained novices with little or no qualifications unlawful, in view of salesmen's experience and expertise in jobs they held; E's actions were prejudicial to salesmen's earnings, based on commissions)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(posting notices, immediately following U bargaining demand, that Ee drivers were not to punch in until their trucks were full loaded, and, upon returning from a run, were forbidden from punching in until their trucks had been re-loaded, violative; radical change in past practice was announced in response to Ees' U activity)

N.L.R.B. v. Amber Delivery Service, Inc. **651 F.2d 57 (C.A. 1, June 1981)**
(where E attempted to convert his Ees to independent contractors by increasing drivers discretion over daily routines it violated Act as changes were motivated by E's desire to thwart driver's organizational efforts)

5029-6200 Discontinuance of employee benefits

5029-6201 Generally

Association of Apartment Owners of The Whaler on Kaanapali Beach **255 NLRB No. 010**
(discontinuance of withholding and keeping monies used for Ee *Fun Fund* from Ees paychecks violative as it was job-related benefit and it occurred day after U won election)

5029-6206 Free uniforms

S. W. Hart & Company, Pty. Ltd., d/b/a Solahart of Fresno **258 NLRB No. 192**
(ceasing to provide such benefits as free uniforms as part of plan to break up unit and thwart Ees' desire for U representation, unlawful)

5029-6211 Free tools

S. W. Hart & Company, Pty. Ltd., d/b/a Solahart of Fresno **258 NLRB No. 192**
(requiring Ees to provide their own tools instead of having them provided by E as part of plan to break up unit and thwart Ees' desire for U representation, unlawful)

5029-6212 Free food

Indian Head Lubricants, Inc. **261 NLRB No. 003**
(withdrawal of free coffee during U organizing campaign)

5029-6213 Use of subsidized cafeteria

Henry Vogt Machine Company **251 NLRB No. 040**
(abrupt unilateral withdrawal of privilege of using E-subsidized cafeteria after Ees chose U representation, unlawful)

5029-6233 Payments to welfare and retirement fund

Texaco, Inc. **260 NLRB No. 165**
(when during course of economic strike, E ceased paying accident and sick benefits to 3 Ees who had been out of work on authorized sick leave prior to inception of strike it violated Act where it had no knowledge that Ees supported strike and fact that they were U members and had supported strikes in past not enough to show they supported this strike)

5029-6241 Paid meal period

Cardinal Heating and Cooling, Inc. **JD-838-79**
(violation where E after unsuccessful U election required Ees to work outdoors in extremely cold weather, broadened previously existing restrictions on moonlighting, prohibited Ees' stopping to purchase food en route to their morning assignments, required medical certificates for non-job-related disability, required immediate repayment of outstanding loan from Ee, and rescinded Ee's privilege of using company truck on nonworking time)

5029-6267 Profit-sharing plan, withholding of

Weirton Steel, Division of National Steel Corporation **239 NLRB No. 091**
(depriving Ees of stock investment plan, violative where it was calculated discrimination in employment as coercive tactic to discourage U activities)

Motorway Freight Lines, Inc. **JD-(SF)-193-82**
(E's instituting profit sharing plan which excluded Ees *covered by collective bargaining agreement*, not unlawful, since plan was contract between E and carrier, E's Ees were not organized nor was there any contract between E and any U, and absent evidence any person would be discriminated against under plan)

Weirton Steel, Division of National Steel Corporation v. N.L.R.B. **689 F.2d 504 (C.A. 4, Sept. 1982)**
(enforcement denied, since Bd's determination that E had refused to grant salaried Ees SIP (stock option) benefit after unionization in violation of 8(a)(3) was error, where it was based on erroneous finding that E had refused to bargain about SIP in violation of 8(a)(5))

5029-6268 Employee grievance committee

General Electric Company **255 NLRB No. 092**
(E's establishment and subsequent discontinuance of *sounding board* program upon U's filing of R ptn, unlawful, where purpose of program was to discourage support for U and discontinuance was in reprisal for Ee support of U; further, E's justification of discontinuance of program in order to avoid ULP charges, rejected, where program had been announced and implemented prior to filing of R ptn)

5029-6272 Company transportation and/or parking space

Penz Tool and Manufacturing Co., Inc. **JD-644-80**
(removal of reserved parking space from U adherent, unlawful, in view of E's knowledge of Ee's U activities and E's hostility toward Ee exercise of protected rights after the filing of ULP charges against E)

5029-6274 Disability benefits

Styrest Nursing Home **JD-(ATL)-95-82**
(termination of disability benefits to Ee who was ill at onset of strike, unlawful, notwithstanding provision in benefit plan that stated *if benefits are being paid prior to strike or layoff, such benefits will cease for duration of strike or layoff. No benefits will be paid during time you are on strike or layoff,* since Ee was not withholding services and thus not on strike, and these were accrued benefits as result of past work; Bd also ordered that benefits should not cease when Ee affirmatively supported strike date when disability was ended or benefits exhausted)

The Sherwin-Williams Company **260 NLRB No. 185**
(withholding disability benefits to Ees who were physically unable to work on and after date of strike violative; E immediately terminated benefits upon commencement of strike when it had no knowledge as to whether disabled Ees ratified or actively supported strike)

Texaco, Inc. **260 NLRB No. 165**
(when during course of economic strike, E ceased paying accident and sick benefits to 3 Ees who had been out of work on authorized sick leave prior to inception of strike it violated Act where it had no knowledge that Ees supported strike and fact that they were U members and had supported strikes in past not enough to show they supported this strike)

Texaco Oil Company **259 NLRB No. 062**
(E's discontinuance of contractual accident and sick benefits to Ees who were sick or disabled by other than industrial injuries at onset of strike and were unable to work during strike and did not affirmatively declare their support for strike, unlawful, since Ees had Section 7 right to refrain from declaring their position on strike while medically excluded, and for E to be justified in terminating disability benefits to those Ees unable to work it must show Ees have affirmatively supported strike; E's contentions of waiver and failure of Ees to keep E informed as to status of their disability, rejected)

Texaco Oil Company **259 NLRB No. 062**
(visit of Ee who had been on sick leave prior to strike to site of picketing w/o getting out of car did not establish support of strike that would justify termination of accident and sick benefits to Ee, since for E to justify termination of any disability benefits to Ees who are unable to work at start of strike it must show it has acquired information that Ee whose benefits were terminated had affirmatively shown support of strike)

Texaco Oil Company **259 NLRB No. 062**
(whether date Ee, who was on sick leave at onset of strike and unable to work during strike, began to picket should be determinative of when he was able to return to work, thus ending his entitlement to sick benefits, or if he was medically able to return to work earlier, left to compliance stage)

5029-6275 Payment of insurance premiums

Marlene Industries Corporation; et al. **288 NLRB No. 192**
(denial of health insurance coverage and other substantial rights to which ULP strikers were entitled for full reinstatement, violative)

5029-6276 Payment of witness fees

5029-6276—Cont.

Consolidated Aluminum Corporation 258 NLRB No. 033

(E's refusal to compensate Ee for wages lost while testifying in his capacity as U officer in Bd case to which E was not party, not unlawful, absent express contractual commitment and where not in retaliation for U activity or testifying; fact E had previously paid compensation to same officer in similar situation as result of grievance settlement did not establish precedent or law of the shop, nor did contract provision providing for compensation for loss due to jury duty or as witness subpoenaed by ct of law require payment)

Consolidated Aluminum Corporation 258 NLRB No. 033

(E's refusal to pay witness fees to compensate for lost wages to Ees subpoenaed for Bd hearing by oppositions not unlawful)

Consolidated Aluminum Corporation 258 NLRB No. 033

(E's refusal to pay witness fees to compensate for lost wages to Ees subpoenaed for Bd hearing by oppositions not unlawful)

5029-6280 Requiring sick leave authorization

South Nassau Communities Hospital 262 NLRB No. 146

(E's requiring U activist to produce doctor's note after taking a day of sick leave, unlawful, where Ees not involved in U activity had been orally counseled about absenteeism and given fair warning of consequences, which was not done in U activist's case; and latter was never told, throughout all the years of her employment, that E was dissatisfied with her attendance, and even her performance appraisal form indicated *good* attendance)

5029-6281 Per diem and travel expenses

Midstate Telephone Company 262 NLRB No. 167

(E's refusal to pay to Ee U negotiating committee members per diem and travel expenses in accordance with past practice and supplementary agreement for negotiating sessions which occurred after U went out on strike, violative since, by discontinuing those benefits, E was in effect penalizing Ees for going out on strike, thereby discouraging future strikes and its action was inherently destructive of Sec. 7 rights)

5029-6286 Mileage allowance for use of personal automobile)

The Ithaca Journal-News, Inc. 259 NLRB No. 060

(E's not granting newsroom Ees who had selected U same increases in their mileage allowance for use of their personal automobiles that it granted to Ees in its advertising department, not violative where E had no *established past practice* of granting newsroom same mileage allowance it granted to advertising department)

5029-6287 Disadvantageous change in conditions connected with job

House of Cycle, Inc., t/a Key Motors 264 NLRB No. 137

(establishing rule prohibiting salesmen from talking about the U on company time, violated 8(a)(3) and (1) where it was overly broad and discriminatorily and specifically aimed at U activities)

Pace Motor Lines, Inc. 260 NLRB No. 189

(promulgating rule forbidding use by drivers of CB equipment in trucks at inception of U's campaign allegedly for reason that Ees' conversations on CB radios exposed E to fines by State police for excessive weight, violative, where real reason was to discourage U activities on part of drivers)

Magnesium Casting Company, Inc. 250 NLRB No. 107

(supevisor's change in attitude toward Ee after latter became known as U adherent, resulting in Ee's loss of overtime work and less remunerative work during his regular shift, unlawful)

Hall of Mississippi, Inc. 249 NLRB No. 119

(assignment of Ee to department where she was alone with no work, violative, where assignment was motivated by Ee's U activities and in order to isolate her from other Ees)

Hall of Mississippi, Inc. 249 NLRB No. 119

(assignment of U adherents to take inventory in isolated room, violative, where E's motive was to isolate U supporters from other Ees)

Southwest Jefferson Community Hospital, Inc., a corporation wholly owned by Humana of Kentucky, Inc. JD-77-82

(E hospital's decision not to use U adherent as charge nurse, whenever possible, violative)

Bates & Cunningham, Inc. JD-589-81

(moving work station to cold drafty location in reprisal for Ee's U activities)

The Perlman-Rocque Company JD-613-81

(promulgating and distributing rules changing working conditions of Ees who had filed grievances, not unlawful, where rules promulgated several months after filing of grievances, there were business reasons for changes, such as growth of business which made written procedures appropriate, and procedures were not specifically prepared for Ees who had filed grievances)

Cardinal Heating and Cooling, Inc. JD-628-79

(violation where E after unsuccessful U election required Ees to work outdoors in extremely cold weather, broadened previously existing restrictions on moonlighting, prohibited Ees' stopping to purchase food en route to their morning assignments, required medical certificates for non-job-related disability, required immediate repayment of outstanding loan from Ee, and rescinded Ee's privilege of using company truck on nonworking time)

N.L.R.B. v. American Postal Workers Union 618 F.2d 1249 (C.A. 8, 1980)

(E acceding to U's termination of temporary shift assignment, not unlawful, notwithstanding termination violative of 8(b)(1)(A) and 8(b)(2) where E's action was not based on discriminatory motive, but rather on business justification of fear of legal or economic action; further, E did not know U had breached duty of fair R)

5029-6293 Use of company car or facilities

House of Cycle, Inc., t/a Key Motors 264 NLRB No. 137

(enforcing stricter rule regarding condition of E's demonstration cars used by salesmen, after U requested recognition, unlawful)

S. W. Hart & Company, Pty, Ltd., d/b/a Solahart of Fresno 258 NLRB No. 192

(requiring unit Ees to provide own trucks and material as part of plan to break up unit and thwart Ees' desire for U representation, unlawful)

Hayes International Corporation JD-(ATL)-29-81

(prohibition against Ee's use of E's typewriters for personal business during working hours not unlawful, since rule was based solely on need for productivity and was in no way motivated by Ee's activities on behalf of U)

Cardinal Heating and Cooling, Inc. JD-628-79

(violation where E after unsuccessful U election required Ees to work outdoors in extremely cold weather, broadened previously existing restrictions on moonlighting, prohibited Ees' stopping to purchase food en route to their morning assignments, required medical certificates for non-job-related disability, required immediate repayment of outstanding loan from Ee, and rescinded Ee's privilege of using company truck on nonworking time)

5029-6300 Loan policy

Larid Printing, Inc. 264 NLRB No. 040

(E's president informing Ees immediate repayment of loans was required since E *couldn't have money out because of U*, unlawful where loans only made to Ees and thus benefit of employment)

Mosey Stores, Inc., d/b/a Kermit Super Valu v. N.L.R.B. 631 F.2d 328 (C.A. 4, Oct. 1980)

(E's demanding repayment of loan to Ee, unlawful, since for U activity where E's manager stated Ee *had turned against him* and no attempt to collect was made until Ee appeared on picket line)

5029-6300 Privileges

Kevah Konner, Inc. 256 NLRB No. 008

(discriminatorily restricting U activist's use of telephone for personal calls, unlawful)

Hayes International Corporation JD-(ATL)-25-81

(stricter enforcement of existing rule restricting use of E's telephone for personal calls following U activist's use of phone for personal calls, not unlawful where activist had abused privilege by making excessive personal calls)

Material Transportation, Co., Inc. JD-470-80

(restricting Ees to use of their break periods to drink coffee and soft drinks instead of while working as previously allowed violative, where reason was to discourage U membership and activities)

5029-6800 Participation in discriminatory administration of insurance, pension, and other benefit plans

Bayer Ford Trucks, Inc. 254 NLRB No. 186

(E's participation in fringe benefit program which excluded from eligibility Ees who elected to be represented by U, violative)

B. G. Costich & Sons, Inc., et al. v. N.L.R.B. 613 F.2d 450 (C.A. 2) (1980)

(Es' contributions to pension fund on behalf of casual Ees who were U members but not on behalf of non-U casual Ees, not unlawful; even if improper motive were found, no 8(a)(3) violation could be made out since only such discrimination as encourages or discourages U membership is prohibited whereas, in instant case, benefit to U members would not induce non-U Ees to join U inasmuch as E's conduct had no immediately realizable impact on rights of such Ees who never held reasonable expectation of receiving benefits afforded only to U Ees)

5029-7000 Discipline

Robert Bosch Corporation 256 NLRB No. 150

(assessing early and late charges against Ee when he clocked in late and left early in order to attend to his duties as a U observer to the election, unlawful)

Marathon Letourneau Company, Longview Division 256 NLRB No. 056

(E's method of maintaining Ee information records documenting infractions of E's rules and supervisory counseling in regard thereto, not unlawful, where records were not surreptitiously maintained in order to have ready

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documentation to justify an adverse action against Ees, especially against U adherents; disclosure to Ee of information in record depended upon supervisor's personal approach to discipline and, although disclosure and acknowledgment by Ee might have been better practice, nothing in Act makes such practice mandatory nor proscribes E's codification of Ees' infractions)

John Cuneo, Inc. 253 NLRB No. 110
(warning two Ees, who returned to work after recognition strike, that they should not be late again and that they would be discharged if they were late in future held violative, since progressive disciplinary system relating to Ees' tardiness was instituted to discourage membership in U)

Metropolitan Edison Company 252 NLRB No. 147
(disciplining U officers more severely than other Ees for participating in sympathy strike in violation of no-strike clause, violative)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(discipline decision in *dual motive* case involves: (1) legitimate business reason, and (2) E's reaction to its Ees' engaging in U or other protected activities)

Weyerhaeuser Company 251 NLRB No. 097
(warning and suspension of U adherent for returning late from his break and eating at his work station, not unlawful, where E issued warnings long prior to U campaign and there was no conclusive evidence showing that such discipline was related to any *crack down* on Ees as result of U campaign)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(warning given to Ee over lateness, not violative, where alleged hostility against Ee arose from incident too remote in time (2 months) to have been significant factor)

AMCAR Division, ACF Industries, Incorporated 247 NLRB No. 138
(charging Ees with unexcused absences because of their refusal to cross picket line of U representing other Ees at E's plant, unlawful, where E was aware that Ees were engaged in honoring picket line and that its practice of charging Ees with unexcused absences was being challenged as unlawful before Bd)

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(dismissals and other disciplinary action taken against U supporters for various asserted reasons, not unlawful, where Ees' U activities were slight and took place long before events leading to disciplinary action occurred, and E's treatment of Ees was in accordance with its policy and was not unreasonable in the circumstances)

Metropolitan Edison Company v. N.L.R.B. 663 F.2d 478 (C.A. 3, Nov. 1981)
(ct enforced Bd order where E disciplined U officers more harshly than other Ees who participated in illegal work stoppage since (1) agreement did not expressly impose duty on U officers to attempt to halt illegal work stoppage, and (2) ct is not bound by two previous arbitral interpretations of no-strike clause placing greater responsibilities on U officials to take affirmative steps to end illegal work stoppage; furthermore, substantial evidence supports Bd finding that U officers were not leaders of strike)

Northern Telecom, Inc. v. N.L.R.B. 618 F.2d 421 (C.A. 6, 1980)
(discipline of four Ees and discharge of U activist in connection with all five Ees leaving work at approximately same time on Saturday morning, unlawful; it was company practice to let night shift Ees, like those involved here, leave work w/o specific permission of a supervisor when they had been called in for Saturday overtime work starting at 6:00 a.m. after working till midnight the preceding night)

Amcar Division, ACF Industries Inc. v. N.L.R.B. 641 F.2d 561 (C.A. 8, Feb 9, 1981)
(warning Ees that they would be charged with unexcused absences if they engaged in sympathy strike and subsequently using absences occurring during period picket line was maintained in disciplining Ees, not unlawful, where Ees had waived their right to engage in sympathy strike in view of broad no strike clause, E's Absence Control Porgram, bargaining history, and fact that Ees were put on notice of such consequences by printed notice that was approved by U's chief negotiator and counsel)

5029-7525 Placing employee on probation

Sav-On Drugs, Inc. 258 NLRB No. 194
(placing Ee on probation in retaliation for his U activities, unlawful)

5029-7533 Reprimand or warning

Saint Vincent's Hospital 265 NLRB No. 006
(discipline of Ee pursuant to valid no-solicitation rule violative where rule is selectively applied to prohibit U activities)

Hudson Oxygen Therapy Sales Company 264 NLRB No. 024
(although active U supporter violated company rule regarding distribution of U T-shirts on work time and was untruthful in her testimony regarding such incident, E held to have violated Act by orally warning and documenting warning for such conduct, since treatment of Ee was completely disparate inasmuch as other Ees distributing company T-shirts at work time were not disciplined)

Trexler Lutheran Home for Children t/a Frostburg Village of Allegany County Nursing Home 263 NLRB No. 043
(warning Ee for violating E's unlawful no-posting rule, violative)

Dimensions in Metal, Inc. 258 NLRB No. 078
(inserting reprimands in files of U adherents, assertedly for unauthorized absences, violative where reprimands were given for purpose of building case for their subsequent discriminatory discharge)

Presbyterian/St. Luke's Medical Center 258 NLRB No. 021
(reprimands based on invalid no-solicitation rule, violative)

Roadway Express, Inc. 257 NLRB No. 153
(issuing warning letter to Ees for insolent remarks to E and taking excessive breaks to use restroom, not unlawful, where there was no evidence that, contrary to contention, warnings were issued because Ee was U member or was scheduled to testify at Bd hearing)

Sioux Products, Inc. 257 NLRB No. 056
(reprimanding and discharging U adherent, violative)

E. I. Dupont De Nemours & Company, Inc. 257 NLRB No. 033
(issuing warning notice to U adherent and thereafter placing him on probation because he willfully refused to sign revisions on job cycle check lists to signify he had read them not unlawful)

General Electric Company 256 NLRB No. 092
(counseling Ee for allegedly harassing another Ee with U talk, unlawful, since Ee reprimand was based on report that did not indicate that Ee was engaged in other than lawful activity)

Florida Tile Company, Division of Sikes Corporation 255 NLRB No. 009
(written reprimands to and discharge of U adherent violative, where one reprimand was issued to her for using profanity but none were issued to other Ees using profanity in same incident which involved U adherent's solicitation of authorization cards; and two other reprimands were issued to her for pretextual reasons to make total of three to justify, under E's rules, her automatic discharge)

General Motors Corporation 254 NLRB No. 148
(E's issuance of reprimand pursuant to enforcement of previously issued unlawful special instruction removing Ee from assembly line, unlawful)

L. M. Berry and Company 254 NLRB No. 003
(oral reprimand to U adherent concerning unusually large number of closings in short period in regard to E's business of selling telephone directory advertising, not unlawful where E was properly concerned with apparent superficial sales contacts by Ee)

Joshua's, Inc. d/b/a Fitzwilly's 253 NLRB No. 082
(implementation of warning system designed to coerce and restrain Ees in violation of their Sec. 7 rights)

McLean Trucking Company 252 NLRB No. 104
(discharge of Ee and subsequent conversion of discharge to suspension and written warning for Ee's refusal to drive tractor-trailer violative, where Ee had good faith and reasonable belief that vehicle was unsafe, and E's adverse action was taken because Ee acted in reliance on U contract in concert with U officials)

United States Steel Corporation 252 NLRB No. 178
(violation where Ee was suspended and reprimanded for inquiring whether he would get contractual move-up pay for driving tractor, a task normally performed by another Ee at higher rate)

Republic Die and Tool Company 252 NLRB No. 092
(issuing written warnings to Ee because he filed contractual grievance, violative)

United Parcel Service, Inc. 252 NLRB No. 145
(E's issuing warning to Ee and later discharging Ee for allegedly overstaying breaks and falsifying timecards, violative where E was motivated by unlawful reasons to find *good cause* to discharge Ee because of his activities in connection with PROD and Ussurge, as well as his participation in class action suit against E)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division 251 NLRB No. 156
(issuance of written reprimand to U adherent for being out of position violative, in view of lack of evidence that other Ees had received write-ups for being out of position)

Certain-Teed Insulation Company 251 NLRB No. 208
(verbal warnings to U representative for alleged poor performance and being away from assigned work place, following his presentation of grievance, violative, where Ee was not reprimanded at time alleged infractions occurred, thus indicating that incidents were not considered significant by management, and there was no evidence of verbal warnings for similar offenses)

Certain-Teed Insulation Company 251 NLRB No. 208
(written warning to Ee who was picketing E's premises wearing sandwich board sign stating E was unfair to its Ees for entering unauthorized area of plant while on his way to restroom, violative, where E has no rule that

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prohibits Ees from going in plant to use restroom when they are not scheduled to work)

Weyerhaeuser Company 251 NLRB No. 097
(warning Ees during U campaign about being away from work stations based on more stringent enforcement of rules, violative)

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 053
(E's system of written warnings issued to ex-strikers, implemented until there were no longer any ex-strikers on payroll, unlawful, where E's action was result of change in warning procedure calculated to harass and provide grounds for discharging ex-strikers who were recipients of unprecedently large number and discrepant proportion of warnings)

IML Freight, Inc. 249 NLRB No. 111
(warning Ee for refusing work assignment, not unlawful, where GC failed to establish that warning was motivated by Ee's report to health authorities; Ee did not assert illness until after refusing to do cleanup job)

IML Freight, Inc. 249 NLRB No. 111
(warning letter to U stewards for participating in inpromptu meeting during work time to discuss grievance, not unlawful, where warning dealt solely with group meeting during work time in violation of contract and not about grievance being discussed of which E had no knowledge)

Borden Inc. Foods Division, Drake Bakeries 248 NLRB No. 162
(issuance warning to Ee who had previously filed charges with Bd for *continual pattern of confrontations with management and supervisors,* unlawful, where based on personnel data sheet, noting Ee's threat during grievance meeting to go to NLRB)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital 247 NLRB No. 074
(issuance of warnings to U activist, unlawful in view of unreasonable and implausible explanation by E)

Suburban Motor Freight, Inc. 247 NLRB No. 002
(reprimand and discipline of Ee on two separate occasions held not unlawfully motivated by desire to retaliate against Ee for his efforts through U on behalf of fellow Ee, where reliability of Ee's recollection of events was suspect, valid basis for reprimands existed, and circumstances upon which reprimands and discharges were based did not support conclusion that they were based on unlawful reasons)

Franklin Art Glass Studios, Inc. JD-93-82
(issuance of warning letter to Ee with regard to his absenteeism not violative, since warning letter would have been issued to Ee even if he had nothing to do with U)

Ford Motor Company, Automotive Division, Twin Cities Plant JD-57-81
(issuing reprimands and warnings to Ee and placing warning in his file because he kept log of foremen doing U work, filed foreman-working grievances, and urged other Ees to do the same, unlawful)

Maremont Corporation JD-(ATL)-16-80
(issuing written warning to U adherent for allegedly *loafing* and unauthorized use of xerox machine, violative, where no evidence was offered that Ee neglected his work and record showed other instances of Ee use of xerox machine w/o disciplinary action)

Hunter Fan and Ventilating Company JD-525-80
(discipline of Ee not violative, where she was not singled out for disciplinary action because she filed a grievance as contended, but because she had violated company rules concerning which she had been previously cautioned)

Better-Bilt Aluminum Products Co., Inc. JD-228-80
(issuing warnings to U activist to correct her unsatisfactory work and taking prolonged breaks or *more serious action will be taken* held violative where supervisor had advised Ee that E was going to get rid of Ee because of her U activity and reasons for warnings smacked of pretense)

N.L.R.B. v. Friendly Ice Cream Corporation 677 F.2d 170 (C.A. 1, May 1982)
(ct denied Bd's ptn for enforcement of its order finding E guilty of violating Secs. 8(a)(1), 8(a)(3) and 8(a)(4) of Act by giving allegedly retaliatory and discriminatory written warning to Ee for violating no-solicitation rule where Bd's decision specifically rested upon its conclusion that E had disabled itself from enforcing rule by reason of having tolerated breaches in past that did not relate to unionization and fact was that in two years rule was observed every day but two)

N.L.R.B. v. Garry Manufacturing Company 630 F.2d 934 (C.A. 3, 1980)
(substantial evidence supported finding that issuance of written reprimands where oral reprimands were customarily issued in the first instance and where all but one who received written reprimands were U activists, was unlawful)

McLean Trucking Company v. N.L.R.B. 689 F.2d 605 (C.A. 6, Sept. 1982)
(ct held substantial evidence supported Bd's finding that drivers were unlawfully disciplined for engaging in protected and concerted activity when they refused to drive tractor-trailor they believed to be unsafe pursuant to U instructions invoking provision of collective bargaining agreement; E's reliance on *Jim Causley Pontiac,* 675 F.2d 125 (6th Cir. 1982), unwarranted where ct held, *inter alia,* that E knew that drivers made their complaints pursuant to U activity; ct also reaffirmed its rejection of *Interboro* doctrine)

N.L.R.B. v. United Parcel Service, Inc. 677 F.2d 421 (C.A. 6, May 1982)
(issuing final warning and then discharging Ee, assertedly because of repeated violations of E's rules with respect to overextension of permissible breaks by Ee, violative where substantial evidence supported finding of Bd that excessive surveillance of Ee and decision to discharge him were in retaliation for his U activities)

Clear Pine Mouldings, Inc. v. N.L.R.B. 632 F.2d 721 (C.A. 9, 1980)
(violation where Ee was reprimanded, not as alleged because of her U activities during working hours, and harassment of other Ees, but because of her status as a leading U activist)

N.L.R.B. v. Silver Spur Casino 623 F.2d 571 (C.A. 9, 1980)
(ct enforced Bd's finding that Ee was reprimanded by E because he was suspected of engaging in U activities and E sought to deter him from such activities)

5029-8100 Assignment of work; withdrawals of, additions to, etc.

Belcher Towing Company 265 NLRB No. 129
(E's failure to assign diving work to crew member on E's tug boats, unlawful, where crew member, who was active U adherent, had performed diving work for E on number of occasions, but after E acquired knowledge of his U activities, crew member was not used for diving work for 3 months; fact that E subsequently assigned him diving job following filing of charges herein did not mitigate prior discrimination)

Danzansky-Goldberg Memorial Chapels, Inc. 264 NLRB No. 112
(funeral home instructing Ees to clean chapel on day after election, not unlawful, since not in retaliation for their votes, where chapel was dirty and needed cleaning and no services scheduled)

Midstate Telephone Company 262 NLRB No. 167
(refusing to permit Ees to perform scheduled work because they reported to work wearing T-shirts on which appeared facsimile of E's logo depicting logo as cracked and displaying accompanying slogan, *I survived Midstate strike of 1971-1975-1979,* violative where T-shirts worn by Ees were clearly directed at promoting solidarity by publicizing that Ees had *survived* recent prolonged 5-month strike and there were no *special circumstances* which would warrant deviation from general rule protecting right of Ees to wear insignia at work pertaining to Us or working conditions)

7 Up Bottling Company 261 NLRB No. 128
(refusing to assign lucrative route to U activist and assigning it to less senior Ee who disavowed U instead, unlawful where E explained that he did not want activist *in contact with* other routemen and *affecting their attitudes* and used double rating standard adverse to activist)

Denny's Foods, Inc. 260 NLRB No. 197
(E violated Act when it removed Ee from her substitute position as alternate receiver, a higher paying job, and used her solely as cashier because this was in retaliation for her having filed a grievance under the contract)

American Interstate Freight Lines 258 NLRB No. 131
(refusing assignment of work to Ee on many occassion because he went to U concerning his employment complaints, including contract provision that called for guaranteed work week, violative)

American Interstate Freight Lines JD-117-81
(violation, where GC made *prima facie* showing that motivating factor in E's decision to deny him work was his going to U concerning his employment complaints, filing grievences, and endeavoring to enforce collective bargaining agreement; and E failed to demonstrate that it would have denied Ee work had he not engaged in protected activity)

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)
(E did not overcome prima facie case of alleged unlawful assignment of Ee to standby duty for emergency service where Ees previously assigned such duty had more training than Ee; Ee was first one assigned standby duty after technological changes, claimed by E to make emergency repairs easier to carry out, occurred; E was unable to make more complex emergency repairs; *strike replacement workers* were not placed on standby roster until after Ee had been placed there; and during strike E did not use any Ees in Ee's job classification for emergency work)

5029-8700 Refusal to grant leave

S. L. Industries Inc. and Extruded Products, Corp. 262 NLRB No. 151
(denying reinstated Ee extended leave of absence and terminating her at time other Ees had been granted extended leaves of absence held violative)

5029-8900 Transfer or refusal of transfer

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Gerabo Lace Mills, Inc. 265 NLRB No. 044

Ford Paint and Varnish Company 264 NLRB No. 156
(removal of U adherent from job which has resulted in his earning several hours overtime per week violative)

Ford Paint and Varnish Company 264 NLRB No. 156
(transferring U adherent to dirty, more arduous position violative)

Ford Brothers, Inc. 263 NLRB No. 011
(E's transfer of Ees to new facility in such manner as to attempt to place them under jurisdiction of U other than that of their exclusive bargaining representative so as to evade contractual obligations, violative)

Petroleum Helicopters, Inc. 263 NLRB No. 009
(threat to transfer and transfer of Ee, who was member of U's board of directors and activities coordinator, to more distant location violative where Ee was informed by E that he was being transferred because he was a disruptive influence and later denial of retransfer because he was *still being punished* also violative)

Carbonex Coal Company 262 NLRB No. 159
(transferring unit work to new mine 5 miles away at time old one is struck in order to avoid bargaining with U and then hiring new Ees through unlawfully assisted U's hiring hall while refusing to hire striking Ees and those represented by certified striking U violates Act)

United Supermarkets, Inc. 261 NLRB No. 179
(termination of U adherent employed in bakery operation at E's store upon closure of such operation, and refusal of Ee's request for transfer to similar operation at another store, not unlawful, where closure was unrelated to any U activity; no jobs were available at store to which she desired to be transferred and it was against company policy to have relatives working together which would have resulted from Ee's transfer)

ITT Lighting Fixtures, Division of ITT Corporation 261 NLRB No. 034
(transfer of pro U activist from her position of group leader at E's main warehouse to smaller warehouse 8 miles distant from main warehouse, where, some 4 months later, she was promoted to supervisor at small warehouse held violative, since group leader was not supervisor as defined in Act, at time of transfer which concededly made to curb group leader's pro U activities)

M & G Convoy, Inc. 260 NLRB No. 145
(failing and refusing to transfer to new facility any former Ees of closed facility, violative as decision accomplished no legitimate business goal because it required hiring inexperienced Ees who required 3 weeks training and was motivated by E's expressed desire to keep new facility *pure* of U Ees at closed facility whom E viewed as *troublemakers* because they actively enforced contract terms)

Mathews Ready Mix, Inc. 259 NLRB No. 092
(transferring Ee to headquarters facility, 70 miles distant; violative where E told Ees that transfer was for making *union troubles* and to make an example of him)

Sav-On Drugs, Inc. 258 NLRB No. 194
(transferring Ee to another store in retaliation for his U activities, unlawful)

S. W. Hart & Company, Pty. Ltd., d/b/a Solahart of Fresno 258 NLRB No. 192
(transferring some Ees to another facility as part of plan to break up unit and thwart Ees' desire for U representation, unlawful)

The Evening News Association 258 NLRB No. 020
(termination of technologically displaced telephone operator, U activist, subsequent to alleged refusal to transfer her to another clerical position w/i E's organization not violative where Ee refused to accept other clerical jobs offered by E; GC did not sustain burden of proving discrimination, since events relied on were outside 10(b) limitation period, and were subject to several inferrences none of which constituted ULP nor amplified character of any later conduct of E)

Cecil Walker Machinery Co. 257 NLRB No. 081
(transfer of Ee from truck to warehouse assertedly because E was concerned that Ee's attitude would have adverse effect on customer relations violative where there were no customer complaints about Ee and Ee was transfered for speaking out at U meeting)

Brodart, Inc. 257 NLRB No. 077
(transfer of Ee from payroll office to tax department for attending U meetings, violative)

Raley's, Inc. 256 NLRB No. 155
(transfer of vociferous U adherent from one store to another not violative where Ee had dispute with another U adherent over their preferences for different Us and purpose of transfer was to restore harmony; moreover after transfer Ee learned new skill and received merit increase)

St. Regis Paper Company 255 NLRB No. 072
(on reconsideration in light of *Wright Line*, 251 NLRB No. 150, Bd reaffirms finding of unlawful transfer of two Ees to another facility, as E admitted that Ees were selected because they were U members and absence of reference to any temporary need for these Ees at this facility)

J. C. Penney Company 252 NLRB No. 047
(refusal to transfer U-represented floor sales department Ees to new catalog sales department, violative, where E rejected such Ees applications for transfer to avoid having U adherents w/i its complement of catalog sales Ees)

Atlas Metal Parts Co., Inc. 252 NLRB No. 029
(E's refusal to accede to request of former U president upon his return from strike to different shift, not unlawful, where refusal was because of need for close supervision in view of Ee's previous serious threat during strike upon life of non-striker)

Atlas Metal Parts Co., Inc. 252 NLRB No. 029
(refusal to accede to request of Ee who had been member of U's negotiating committee for transfer to truck driving job, unlawful, notwithstanding E's contention that closer supervision needed than would be possible on outside job in view of ee's alleged strike misconduct)

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(U council's transfer of Ee-staff members to different locations in their assignments of servicing U locals held not motivated by legitimate business considerations, where Ees were experienced lobbyists for council in state legislature in their original assignments; Ees were not given notice of intent to transfer them; only after council had taken issue with Ees' attendance at U meeting and after their return from unlawful suspension were transfers announced; and only Ees herein were singled out from among other Ees E intended to reassign)

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(alleged complaints regarding servicing of locals against Ee-staff members of U council by rank-and-file members held not reason for discriminatory transfer of staff members, where council administrator never counseled one member concerning alleged servicing complaints nor tell him that such complaints were reason for transfer and, in discussing transfer with another member involved in transfer, administrator did not mention alleged servicing complaints as reason for transfer; in stead, administration had commended latter Ee on his work in his area)

Hedison Manufacturing Company 249 NLRB No. 096
(E's conduct in imposing conditions on transfer to other departments of press department Ees selected for layoff, whereby Ees would be permanently transferred, would forfeit seniority, and receive reduction in pay, unlawful, where such action was not in accord with E's past practice, E displayed pervasive U animus and had special awareness of U activity in press department, imposition of conditions was not based on economic considerations but on combating Ees' U activity, and E did not treat similarly situated Ees in another department in same manner)

Hedison Manufacturing Company 249 NLRB No. 096
(E's asserted reasons for imposing allegedly discriminatory conditions on transfer of Ees to other departments in lieu of laying them off, rejected, where there was no evidence to justify E's refusal, purportedly because of retraining expenses, to allow transferred Ees to return to their department when work became available; E's explanation for reducing transferees' wages was unconvincing since transferees, experienced in other work in plant, were to be paid as newly-hired Ees; and E did not impose any conditions on similar transfers involving Ees in another department)

Detroit Diesel Allison Division, General Motors Corporation 249 NLRB No. 089
(U's filing of grievance assertedly in order to cause transfer of Ee and his politically allied fellow Ee out of their department because Ee intended to run for election against incumbent U officer, and E's implementation of sustained grievance, not unlawful, where incumbent officer successfully handled financially rewarding grievance for Ee, thereby mitigating any inference of animosity on part of incumbent towards Ee; grievance was arguable and not unmeritorious; Ees' transfer resulted from drop in production; and Ees were not harmed by temporary transfer or inhibited in running for U office)

Pullman Trailmobile, A Division of Pullman Incorporated 249 NLRB No. 089
(transfer of U steward to another job because of his conduct in filing grievances, unlawful)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand 247 NLRB No. 167
(violations where E transferred U adherents who had testified at Bd hearing to store in less desireable location, reduced their working hours to times when they could not use public transportation, added onerous janitorial duties and then discharged them)

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(denial of U adherent's request for transfer to another job, unlawful, where E kept Ee in job, which was beyond his capabilities, until such time as it could discharge him for low production, and finding herein is supported by discriminatory treatment of Ee upon his request for reemployment after his discharge)

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Rainbo Baking Company **JD-(SF)-117-82**
(transferring Ee from one location to another location because Ee filed grievances with U, unlawful)

Bozzuto's Flour Foods **JD-599-81**
(violation where, notwithstanding Ee's protest, E transferred her from one store to another because she had used her U representative to complain about her work schedule)

Arco Chemical Company, A Division of Atlantic Richfield Company **JD-(SF)-174-80**
(temporary transfer of Ee to another of E's locations because Ee was uniquely qualified to perform project, because Ee was more readily available for temporary assignment, and because Ee would have less travel time to new location, not unlawful, notwithstanding GC's contention that E transferred Ee to neutralize his continued activity on U's behalf)

Georgetown Steel Corporation **JD-819-79**
(transfer of truck drivers into labor pool at lower pay held not unlawful since transfer was for economic reasons and not for Ees' U activities whereby they invoked U assistance to get them reinstated to their former jobs; E advanced plausible explanation for cost cutting in trucking department, there was no evidence that E had grudge against Ees or any U animus; instead E had good working relationship with U, and many Ees complained directly to U about E w/o refusals)

N.L.R.B. v. National Car Rental System, Inc. **673 F.2d 1182 (C.A. 3, Feb. 1982)**
(refusal to transfer U members to new facility after closing old operation, unlawful, since there was substantial evidence of U animus, where E planned from the start, and did not change its plan, to make new operation non-U; and after sale of most of old operation's accounts to purchaser became likely, E flatly refused to consider transfer of unionized Ees; E's defenses on ground that it believed purchaser would hire all of its Ees and that it had harmonious relationship with U entire time it operated old facility, rejected)

N.L.R.B. v. Chem Fab Corporation **691 F.2d 1252 (C.A. 8, Nov. 1982)**
(ct upheld Bd's finding that E unlawfully transferred Ee from day to night shift because he engaged in protected activity based on inference that legitimate business reasons did not motivate transfer because E did not replace Ee after he was terminated)

N.L.R.B. v. Big Bear Supermarkets #3 and its alter ego Richard Hemus **640 F.2d 924 (C.A. 9, Apr 8, 1980)**
(transfer of unit Ees from one of E's stores which he franchised to individual with whom E constituted a single E, unlawful, where there was requisite proof of anti-U animus since E franchised store for purpose of evading its bargaining obligations with Us and transfer formed integral part of scheme to transform store into a non-U shop)

5029-9200 Denying use of tools of trade

Sprinkmann Sons Corporation of Illinois **JD-763-80**
(E and U held not to have violated Act by E's alleged failure to assign, at U's behest, non-U Ees working as journeyman's helpers to jobs requiring use of tools of trade, where E eliminated U steward from job for protesting use of tools by non-U Ees, non-U Ees either used tools or did not request assignment to work requiring their use, contract did not provide that helpers be assigned use of tools nor was it U policy that non-U men should not work with tools, and E determined which Ees would use tools on basis of efficiency and increased production)

5029-9400 Refusal to grant overtime

A & T Manufacturing Company **265 NLRB No. 201**
(E's institution of night shift with shift differential and hiring temporary Ees for shift rather than permitting Ees to perform additional work at overtime rates, not violative of Section 8(a)(3), nor was unilateral implementation violative of Section 8(a)(5) where E had lawfully withdrawn recognition from U)

Mathews Readymix, Inc. **259 NLRB No. 092**
(denying Ee opportunity to work overtime before and after unlawfully transferring him to another facility held violative)

Henry J. Kaiser Company **259 NLRB No. 061**
(crew foreman's maintenance of overtime list containing only names of U members and excluding U members of another local on traveler status, and his practice of giving overtime work to various individual U members asking for overtime work, held to constitute unlawful discrimination against U traveler)

Henry J. Kaiser Company **259 NLRB No. 061**
(construction company's alleged unlawful denial of overtime work to U members, as opposed to U members of other locals in traveler status, not unlawful, where power company for which construction company was performing work assigned overtime work, and construction company made assignments only when power company authorized it; and method of distributing overtime to Ees was not inherently destructive of Ees' statutory rights; instead, method of doing so sought to protect principle of equitable distribution of overtime)

German Machine Corporation **257 NLRB No. 010**
(E's abrupt termination of overtime work immediately after U won election, violative where such termination of overtime was obviously in retaliation against Ees, majority of whom had voted in favor of U)

German Machine Corporation **257 NLRB No. 010**
(elimination of overtime for assembly Ees, not violative where Ees who were assigned overtime, unlike assembly Ees, were familiar with work to be done and no assembly Ee had been previously informed that he would be working on date in question; E demonstrated that same action would have occurred even in absence of Ees' U activities)

Marathon Letourneau Company, Longview Division **256 NLRB No. 054**
(denial of overtime to U adherent, unlawful, notwithstanding E's contention that its action was governed by its rules and was management prerogative, where contradictions of E's voluntary overtime policy as to Ee were not explained; application of such policy in Ee's case was modified; and in absence of evidence establishing any personal reason for denying overtime, inference is that denial was motivated by impermissible reasons directly related to Ee's U activities)

Firmat Manufacturing Corp. **255 NLRB No. 153**
(cutting Ee's overtime and changing his work hours so as to impose more arduous working conditions upon him immediately after his U activity, violative)

International Union of Operating Engineers, Local Union No. 132, AFL-CIO **255 NLRB No. 060**

United Oil Manufacturing Co., Inc. **254 NLRB No. 179**
(denying reinstated ULP strikers overtime benefits they had enjoyed prior to strike, violative)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(supervisor's change in attitude toward Ee after latter became known as U adherent, resulting in Ee's loss of overtime work and less remunerative work during his regular shift, unlawful)

Lyman Steel Company **249 NLRB No. 040**
(depriving U advocate of overtime assertedly because his machine had suffered oil leak held violative where other machine operators had suffered oil leaks earlier w/o repercussions from E)

Sprinkmann Sons Corporation of Illinois **JD-763-80**
(E and U held not to have violated Act by E's alleged denial of overtime to non-U Ees at U's behest, where E apportioned overtime based on production ability of E, neither contract nor U's by-laws required that U members be awarded overtime before non-U Ees, contract did not provide that overtime be awarded on basis of seniority, no pattern of discrimination in overtime against non-U Ees was apparent from work records, and one instance of excess in overtime by U member over non-U Ee was due to special circumstances)

Standard Plumbing and Sewer Cleaning, East Side Sewer and Drain Cleaning, and All City Plumbing, a Joint Venture, and Con-Co Plumbing, Inc. **JD-664-80**
(denying Ee overtime work after joining U and subsequent layoff violative where E produced no evidence to support claim of slack work and E maintained same number of Ees)

Penz Tool and Manufacturing Co., Inc. **JD-644-80**

5029-9500 Discontinuance or reduction of washup time

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(withdrawal, from some maintenance Ees, of permission to wash up five minutes before their usual quitting time held not violative of Section 8(a)(3), since evidence did not establish that foremen in cancelling washup privilege were motivated in whole or part by anti-U or retaliatory considerations)

5029-9600 Requiring use of timeclock

Indian Head Lubricants, Inc. **261 NLRB No. 003**

Kevah Konner, Inc. **256 NLRB No. 000**
(telling U activist that he had to punch the time clock instead of keeping his own time sheet when other Ees in like situation did not have to do so, unlawful)

Weyerhaeuser Company **251 NLRB No. 097**
(installation and required utilization of timeclock, not unlawful, where such change was based on desire of Ees initially expressed prior to U campaign and later voted on by Ees)

5029-9700 Change in job duties

House of Cycle, Inc., t/a Key Motors **264 NLRB No. 137**
(instituting rule requiring car salesmen to accompany customers on demo rides in retaliation for their U activities, unlawful)

5029-9700—Cont.

Danzansky-Goldberg Memorial Chapels, Inc. 264 NLRB No. 112

Amoco Fabrics Co., Patchogue-Plymouth Division/ Nashville Mills 260 NLRB No. 036
(changing work assignment of U adherent by removing him from position of substitute lead operator which was higher paying job, violative)

Virginia Electric and Power Company 260 NLRB No. 050
(removal of Ee from desired job assignment assertedly because of her U activities, not unlawful, where complaint contained no allegation of any wrongdoing regarding Ee, GC conceded in his belated contention concerning discriminatory motive that there was little direct evidence to support it and had stipulated that alleged sexual harassment had *nothing to do with this case*)

Together We Stand Women's Guild Day Care Center 256 NLRB No. 064
(announcing and implementing changes in schedules and work rules, violative where changes were made in retaliation against Ees for engaging in U activity)

International Union of Operating Engineers, Local Union No. 132, AFL-CIO 255 NLRB No. 060

Bell Industries, Inc. JD-479-82
(discontinuing U adherent's sharing of truckdriving duties with E's regular truckdriver after driver's return following illness and assigning adherent to packing orders, unlawful, in view of E's U animus and fact change made w/i few days after receiving R ptn, particularly where a few days prior to receiving ptn E had informed Ees that rotation of driving between them would continue)

N.L.R.B. v. Tid-Bit Products Company, et al. 620 F.2d 581 (C.A. 6, 1980)
(reassignment and subsequent layoff of Ee, unlawful, where at U meeting Ee asked whether contract provisions calling for overtime equalization pay by departments or classifications applied to her lab job, and action taken against Ee occurred because she raised such issue which offended chief steward whose roommate was Ee's coworker in lab and was beneficiary of favorable discrimination by receiving overtime pay under same conditions that overtime pay was denied to Ee)

5029-9900 Other

Acme Motors, Inc., t/a Acme Datsun 263 NLRB No. 077
(billing Ee for nonexistent or minor damage to his demonstrator automobile in retaliation for his U activity, violative)

5030 DUES CHECKOFF REVOCATIONS

C. Salari & Sons, Inc. 264 NLRB No. 053
(where dues checkoff authorization card contained language *to be renewed each year,* this provides for revocability w/i a year as required by Section 302(c)(4) of Act; thus these dues checkoff authorization cards continue in effect until specifically revoked)

Hudson Chemical Company 258 NLRB No. 009
(E's cessation of checking off U dues after expiration of U security agreement not violative, since agreement had expired; *Section* 302(c)(4) of LMRA provides that life of checkoff authorization shall not be irrevocable for one year or termination date of applicable bargaining agreement, whichever occurs sooner)

Kenneth & Mary M. McGlaughlin, Co-Partners, d/b/a Hudson-High Super Duper v. N.L.R.B. 652 F.2d 678 (C.A. 6, July 1981)
(questioning job applicant about his U activities and refusing to hire him violative notwithstanding job opening did not turn out to exist)

5034 ACTIONS AFFECTING SENIORITY

5034-3300 Reduction of, or failure to grant seniority

Sedloff Publications, Inc. 265 NLRB No. 139
(E formalizing previously unwritten seniority roster, and continary to prior policy, taking into consideration breaks in service when setting seniority dates, unlawful, since related to and prompted by Us organizing campaign inasmuch as written list made up because list might be useful in negotiating contract if U became bargaining representative and implementation was to detriment of some Ees as it resulted in their loss of hours)

Maywood, Inc. 231 NLRB No. 139
(stripping Ee of his leadperson duties because of his U activities violative)

5034-6700 Discriminatory seniority policy

Complete Auto Transit 257 NLRB No. 088
(violation, where E assigned position of rail lead man to U steward as result of superseniority not limited to layoff and recall, w/o adequate justification and denied position to Ee who had expressed preference for position which he was entitled to by natural seniority as against U steward)

Giddings & Lewis, Inc. 255 NLRB No. 093
(instituting policy of recalling laid-off Ees ahead of unreinstated economic strikers w/o regard to circumstances involved, violative, where such policy amounted to unlawful grant of superseniority to crossovers and replacements; furthermore, such policy was inherently discriminatory absent any legitimate business justification since it gives preference to laid-off Ees over unreinstated strikers in filling job vacancies unrelated to layoffs where qualifications or abilities of Ees were deemed relatively equal by E)

General Grocer Company JD-891-82
(E's and U's action in changing system by which truckdrivers bid, on basis of seniority, for assignments to E's city run deliveries, not unlawful, since U's conduct, following its acquiescence to E's desire to change bidding system for economic reasons, was neither arbitrary, capricious, nor in bad faith, inasmuch as U justifiably viewed its position as effort, under agreement with E, to regain lost rights of its old members as opposed to rights of its members who had transferred from sister local)

Giddings & Lewis, Inc. v. N.L.R.B. 675 F.2d 926 (C.A. 7, Apr. 1982)
(promulgating rules providing that members of existing work force made up of permanent replacements will be recalled in order of seniority in event of layoff even before unreinstated economic strikers, not unlawful, where such system assures replacements *permanent* status to which they are entitled under *Mackay* and, contrary to Bd finding, system does not discriminate between strikers and non-strikers nor does it deny unreinstated strikers right to reinstatement should vacancies occur in work force)

5034-6740 Strike seniority

Vulcan-Hart Corporation (St. Louis Division) 262 NLRB No. 017
(denial of accrued seniority to returning strikers because they engaged in protected strike activity, violative)

George Banta Company, Inc. Banta Division 256 NLRB No. 055
(denying seniority and benefits of seniority for purposes of job assignment and computation of rates of pay to striking Ees, violative)

5034-6750 Superseniority

McQuay-Norris, Inc. 258 NLRB No. 191
(E and U violated Act by maintaining and enforcing superseniority clause which caused retention of Ee-U officials (trustee and guide) above other Ees with more seniority where U officials duties concerned organizational and internal functions of U and not contractual matters pertaining to bargaining and grievances)

George Banta Company, Inc. Banta Division 256 NLRB No. 055
(violation where E granted preferential reinstatement rights and preferential seniority rights to jobs and rates of pay to Ees who abandoned strike before strike ended)

Sheaffer Eaton Division of Textron, Inc. 251 NLRB No. 141
(following election, E's granting U steward top seniority in permanent job classification pursuant to contract's superseniority provisions which specifically apply to *bump/layoff* status found not violative, although it resulted in his transfer from lower paying job at which he had been working while in *bump/layoff* status and bumping Ee whom he replaced who had greater job seniority into lower paying job)

N.L.R.B. v. Stanley H. Egan and Donald R. Egan 658 F.2d 746 (C.A. 10, Aug 1980)
(application of contractual superseniority provision to U trustee and U guard for purpose of layoff and recall held violative, as these duties do not contribute in any meaningful way to implementation of collective bargaining agreement)

Teamsters Local 20 v. N.L.R.B. 610 F.2d 991 (C.A.D.C.)
(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

George Banta Company, Inc., Banta Division v. N.L.R.B. 686 F.2d 10 (C.A.D.C., Aug. 1982)
(granting preferential reinstatement and seniority rights to Ees who abandoned strike before it ended and crossed over picket line, violative notwithstanding E's contentions that its preferential reinstatement systems (PRS) gave Ees no *prospective* benefits and that PRS was justified by E's needs; ALJ correctly found that *Management could have achieved essentially same business objectives w/o drawing line of demarcation between crossovers and returning strikers* and whether benefit is current or prospective, relevant question is whether E has illegally burdened statutory right to strike)

5040 REFUSAL TO PROMOTE

Cardio Data Systems Corp. 264 NLRB No. 011
(refusing to make most active U adherent, employed part-time, into full-time Ee, not unlawful, where GC failed, by preponderance of evidence, to prove that E harbored pervasive animosity against Ee because of her U activities, and for that reason discriminated against her by ignoring her desire for full-time work; even if one supervisor expressed view that E deemed it inadvis-

5040—Cont.

sible, during pendency of U campaign, to favor Ee with upward discrimination, no finding of violation would be made, since such action by E could be found to have bought Ee away from her U resolve)

Kesler Corporation, d/b/a Kesler Brass Company **263 NLRB No. 023**
(denying Ee assignment to position of acting assistant foreman and refusing him promotion to position of permanent assistant foreman because of his support of U, violative)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**
(promotion to temporary supervisor because of Ee's efforts to oppose U while withholding promotion because of Ee's known U activities held violative)

Virginia Electric and Power Company **260 NLRB No. 050**
(refusal to promote active U organizer, unlawful, where she was not promoted in part because of her U activities which constituted *prima facie* evidence of unlawful discrimination, and E did not offer any convincing evidence that refusal would have occurred absent her U activities; fact that another U supporter was promoted to job in question did not rebut *prima facie* showing, since discriminatee was primary and active U organizer, while promoted Ee's U activity was minimal, and E need not discriminate against all U activists or supporters before GC can establish discriminatory intent)

National Steel Products **252 NLRB No. 120**

Coating Products, Inc. **251 NLRB No. 170**
(refusal to promote Ee to leadman where he was already performing work until after U campaign violative)

Ford Motor Company **251 NLRB No. 066**
(E's refusal to promote Ees unlawful where refusal was attempt to punish them for pursuing grievance and filing ULP charge and they were highly qualified, experienced and recommended for promotion)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(failure to promote leading U proponent known to E and advising him he was not eligible for promotion until he became more versatile in his work held violative where E assigned Ee only one type of work (welding) and two full time Ees were needed to perform work which discriminatee had performed with only part-time assistance)

N.L.R.B. v. Ford Motor Company **683 F.2d 156 (C.A. 6, July 1982)**
(refusal to promote Ees who had been recommended for promotion, unlawful, since for voicing their dissatisfaction with E's promotion policies, filing grievances and ULP charges, particularly in view of promotion of others with less seniority)

Osteopathic Hospital Founders Association, d/b/a Oklahoma Osteopathic Hospital v. N.L.R.B. **618 F.2d 633 (C.A. 10, 1980)**
(violation where E refused to promote U activist *as long as she was engaged in organizational activities for the Union*)

5050 Demotion

The Martin-Brower Company **263 NLRB No. 025**
(violative where asserted grounds for action was theft of E's property but real reason was Ee's U activity)

Plymouth Locomotive Works, Inc. **261 NLRB No. 087**
(demoting U organizer and president whose job had been unilaterally eliminated and refusing him opportunity to bump less senior Ees holding jobs he was qualified to fill, unlawful)

TRW-United Greenfield Division **260 NLRB No. 013**
(demotion of Ee who engaged in U activity violative; subsequent discharge also violative where Ee was discharged for using profane language when he protested unlawful demotion as supervisor humiliated Ee and by his conduct provoked Ee)

Sav-On Drugs, Inc. **258 NLRB No. 194**
(demoting Ee in retaliation for his U activities, unlawful)

Crown Cork & Seal Company, Inc. **255 NLRB No. 064**
(leading U advocate being assigned to undesireable night shift, his demotion, disciplinary reprimands and eventual discharge held unlawful where valid grounds for E's actions were frequently false or exaggerated, adverse action against Ee occurred when Ee became in-plant spokesman for U and Ee who opposed advocate's election to U office was more tenderly treated for his acts of misconduct)

Hall of Mississippi, Inc. **249 NLRB No. 119**
(demotion of leadperson because of his U activities and as part of E's efforts to chill U activity in plant, violative)

Production Plated Plastics, Inc. **247 NLRB No. 076**
(although record did not show that Ee with less seniority than discriminatee remained in department, Bd found demotion unlawful where timing of demotion, following interrogation about Ee's pro-U sentiments, coupled with E's failure to introduce evidence to negate inference of unlawful motivation, supported such finding)

N.L.R.B. v. Berger Transfer & Storage Co. **678 F.2d 679 (C.A. 7, May 1982)**
(demotion unlawful where for U adherence rather than for customer complaints)

5053 Transfer

Ebb Tide Processing, Inc. **264 NLRB No. 180**
(causing Ee to transfer to avoid supervisor's retaliation for her complaints about his disregarding seniority in selecting Ees for layoffs and recalls found constructive transfer and unlawful)

International Business Systems, Inc. **247 NLRB No. 182**
(E's listing Ee, who was known to be active U supporter, in nonlithographic department should it be determined that lithographic unit petitioned for was appropriate, not violative of Sec. 8(a)(3), nor change of job duties for discriminatory reasons, even if Ee's U activity might have affected E's determination as to which department to place him)

Ford Motor Company, Automotive Division, Twin Cities Plant **JD-57-81**
(disqualifying Ee for certain positions and transferring him to lower-paying jobs, more difficult job, odd jobs and labor pool jobs because he kept log of foremen doing U work, filed foreman-working grievances, and urged other Ees to do the same, violative)

N.L.R.B. v. St. Regis Paper Company **674 F.2d 104 (C.A. 1, Mar. 1982)**
(choosing U members for transfer from non-U facility to facility covered under collective bargaining agreement, violative)

5056 Lockout

5056-0100 Generally

5056-0150 Not unlawful per se

Whitehall Packing Company, Inc. and W.P.C., Ltd. **257 NLRB No. 063**
(Ees were locked-out and not constructively discharged where plant remained intact and could have resumed operations at any time; moreover, E did not hire any replacements for plant)

5056-0175 Employer's motivation or intention

Dimo Ambulette Service, Inc. **255 NLRB No. 082**
(E's lockout of its Ees because they joined U and because of visit of U representative, violative)

Century Moving & Storage, Inc. **251 NLRB No. 083**
(no *lock-out* where E, knowing that Ees would be attending U meeting before work usually started, moved up starting time of workday for that date, since E had valid business reason for doing so, had no knowledge when U meeting would end, and warehouse was locked because everyone was out on trucks working)

Iowa Parcel Service, Inc. and Iowa Express Distribution, Inc. **JD-238-82**
(lockout to force U to agree to unscheduled mid-term modification or termination of contract and to hurt Ees, unlawful)

5056-2200 In support of [illegible] bargaining position

Iowa Parcel Service, Inc. and Io[illegible] Express Distribution, Inc. **JD-238-82**
(lockout to force U to agree to unscheduled mid-term modification or termination of contract and to hurt Ees, unlawful)

5056-3800 Retaliatory and to avoid bargaining

Dimo Ambulette Service, Inc. **255 NLRB No. 082**
(E's lockout of its Ees because they joined U and because of visit of U representative, violative)

5056-6400 For signing application for union membership

Wilson Trucking, Inc. **JD-119-82**
(locking Ees out of facility on day after E received U's letter stating that majority of Ees had designated U their collective bargaining agent together with confiscating Ees' keys to facility and expense money the day before held unlawful discharge)

5056-7000 Lockout to meet strike threat may be lawful

Armour Oil Company **253 NLRB No. 148**
(transfer of 10 of 12 trucks normally housed at one of E's terminals to another of E's terminals in same state not *lockout* in violation of contractual —*no lockout* provision and not violative of Act where record established E had sound economic reason for transfer and had good reason to believe U would strike on expiration of pending contract and that vandalism which had occurred during strike at one of E's other terminals would be repeated; record did not establish that any Ee lost work because of transfer of trucks)

5056-8000 Shutdown or discontinuance of plant or department may be lockout

5056-8500—Cont.

Whitehall Packing Company, Inc. and W.P.C., Ltd. **257 NLRB No. 043**

(Ees were locked-out and not constructively discharged where plant remained intact and could have resumed operations at any time; moreover, E did not hire any replacements for plant)

5059 SHUTDOWN OR TERMINATION OF OPERATIONS

Sahara-Reno Corporation, d/b/a Sahara Reno **263 NLRB No. 095**

(*prima facie* showing of discrimination by E's closing of gambling casino coffee shop and resultant layoff of its Ees upon decision made after U campaign began, and disparate selection for layoff of such Ees from other food service Ees who had not participated in U activities, not rebutted under *Wright Line*, where although E may have had justification to restructure its food service operations, it was not established that coffee shop would have been closed absent its Ees' U activities)

Rebel Coal Company, Inc. **259 NLRB No. 033**

(closing of auto repair shop and resulting layoff of Ees, assertedly for economic reasons, violative, since E showed no good cause for closing shop and Ees would not have been discharged, despite possible overall company financial problems, except for their pro-U activities)

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division **257 NLRB No. 152**

(contractor, engaged in providing maintenance and construction services for facility of petro-chemical industry, who terminated its custodial business entirely and laid off its entire janitorial work force w/o consulting with certified U representing custodial Ees, not in violation of Act where marginal profitability of janitorial division had turned into loss; E's actions were founded upon substantial economic factors rather than being motivated by unlawful considerations)

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 036**

(layoff all but skeleton force one week after Bd agent scheduled pre-election hearing and closing plant after E lost election violative, in view of timing, E's vigorous campaign, economic issues were raised only after U won election and dissatisfaction with work quality was voiced only after U appeared)

Armored Transport, Inc. **252 NLRB No. 061**

(shutdown of E's operation which resulted in layoff of all its Ees violative where E was retaliating for Ees actions of trying to form U)

Franklin Fouts, d/b/a B & F Cartage **251 NLRB No. 068**

(termination of business, not unlawful, under *Darlington* doctrine since E terminated all operations, even though admittedly motivated by U animus, and ceased to exist except for moneys owed to it)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**

(shut down of job for remainder of day following E's vehemently stated opposition to U after U claimed majority, where there was no explanation of necessity for shutdown, unlawful; neither E's asserted ignorance of law nor fact all Ees included in shut down sustained as defenses)

C-F Air Freight, Inc. **247 NLRB No. 060**

(closing of facility and subcontracting of Ee's work, unlawful, where E's defense that financial losses at facility necessitated such action, unlawful; it was fallacious to say, on one hand, that facility was such an economic disaster as to require its closing and, on the other hand, to subcontract its work; subcontractor did not prevent E from suffering financial losses; there was no diminution of work after subcontractor began performing it; and subcontractor's work force was substantially the same)

Iowa Parcel Service, Inc. and Iowa Express Distribution, Inc. **JD-238-82**

(allegations of ULPs by company and its owner on and after date company went out of business, dismissed, notwithstanding technical admission of allegations where respondents failed to answer)

Atlas Inc. **JD-890-79**

(violation where, in order to avoid dealing with U, E laid off unit Ees, ceased operations, closed shop, refused to reinstate Ees, and subcontracted unit work and transferred all physical assets to another corporation, and the corporation, found herein to be successor to and *alter ego* of E, refused to reinstate E's Ees and subcontracted work formerly performed by some of E's Ees)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**

(E has absolute right under Act to liquidate his entire business for whatever reasons he chooses, even if his motivation is vindictiveness toward U; partial closing motivated by anti-U purposes is also not ULP unless runaway shop is involved or E uses closing to chill unionism in his other businesses)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**

(runaway shop exists when E, in retaliation against U activity, transfers work from closed facility to another plant or opens new plant to replace closed plant; if no transfer of work has taken place or if there is transfer of work but decision to transfer is made for business reasons unrelated to U activity at closed plant, then there has been no ULP)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**

(anti-U motivation not established by fact that layoffs coincided with U activity where closing was for valid economic reasons; *given economic necessity which existed in case sub judice, it was management's function to decide at what point slowdown became sufficiently protracted to require decrease in personnel*)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**

(valid economic decision to close plant may amount to Sec. 8(a)(3) violation if E uses plant shutdown to inhibit U activity at other plants)

5059-3300 Partial termination

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **265 NLRB No. 161**

(reducing operations by selling some trucks, subcontracting, and transferring work formerly performed by discriminatee to other Ees w/o bargaining in order to avoid recalling discriminatee, violative)

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant **261 NLRB No. 051**

(violations, where E following demanded by U for recognition called meeting of all Ees and interrogated Ees as to why they wanted U, promised to discuss benefits after Ees signed pts against U, threatened to close restaurant if U came in, and w/i five days w/o warning to Ees closed restaurant for two and a half weeks which had never been previously closed)

Le Roy Fantasies, Inc., and Hardwicke's Plum, Inc., A Joint Venture, d/b/a Maxwell's Plum **256 NLRB No. 036**

(E's shutdown of its laundry operation with attendant dismissal of its Ee complement in laundry, violative notwithstanding fact that mechanical and other deficiencies might well have warranted temporary shutdown, where shutdown was accelerated because of advent of U activity)

N.L.R.B. v. R & H Masonry Supply, Inc. **627 F.2d 1013 (C.A. 9, Sept. 1980)**

(E's sale of its trucks, discharge of drivers and contracting out of hauling after drivers signed U cards, unlawful)

5060 RELOCATION OF OPERATIONS

Milwaukee Spring Division of Illinois Coil Spring Company **265 NLRB No. 028**

(E's decision to relocate work from U to non-U plant, to layoff Ees as consequence during term of agreement solely because of higher labor costs, absent U's consent, is midterm repudiation of agreement in violation of Sec. 8(d), Sec. 8(a)(1), (3), (5); moreover, U did not waive right to bargain notwithstanding managements rights clause; such clause reserves for E right to decide whether and how products will be manufactured; it does not grant E right to transfer its operation. Thus, absent explicit language, U has not waived its right to object to E's decision)

Carbonex Coal Company **262 NLRB No. 199**

(transferring unit work to new mine 3 miles away at time old one is struck in order to avoid bargaining with U and then hiring new Ees through unlawfully assisted U's hiring hall while refusing to hire striking Ees and those represented by certified striking U violates Act)

Litton Mellonics Systems Division, A Division of Litton Systems, Inc. **258 NLRB No. 084**

(transferring operations allegedly to avoid unionization, not unlawful, where E rebutted GC's prima facie case by showing that E's actions were motivated by legitimate business reasons and that E would have taken such actions even absent Ees' protected activities)

National Car Rental System, Inc. **252 NLRB No. 027**

(systematic exclusion of E's garage Ees and mechanics at its closed truck rental facility for consideration for employment at E's relocated facility, violative where E had voiced desire w/i ranks of management to have nonU operation at relocated site)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 153**

(transfer of Ees from E to E's alter ego, unlawful, since E's purpose for transfer was to avoid its collective bargaining obligation to Ees represented by U)

5060—Cont.

Lee Norse Company, a Subsidiary of Ingersoll Rand Company **247 NLRB No. [illegible]**
(refusal to transfer unit Ees to new location, not violative, since change in original bargaining unit was so fundamental and diverse that new location was not integral part of existing unit at original location)

5062 SUSPENSION

Belcher Towing Company **265 NLRB No. 109**
(suspension of Ee assertedly for workplace deficiencies, unlawful, where Ee, who acted as U observer and was otherwise ardent and active U supporter, was disciplined w/o opportunity to rebut charges and asserted deficiencies did not involve any serious expenditures by E; co-worker, who was equally responsible for workplace, was not suspended; and E seized upon workplace deficiencies as pretext to punish Ee because of his U activities and to make it clear to him and others so inclined that advocacy of U would meet with same or similar treatment)

Newport News Shipbuilding & Dry Dock Company **265 NLRB No. 104**
(striker shouting over loudspeaker from across street from picketing that he was playing music for pickets, not scabs, calling police in strike area *fucking pigs*, and resisting arrest, insufficient misconduct to justify suspension and subsequent discharge of striker, since use of obscene language not accompanied by threats of force or violence, talk did not incite pickets; nor did brief scuffle with police either by itself or in combination with his use of loudspeaker justify striker's discharge)

7 Up Bottling Company **261 NLRB No. 128**
(suspension based on Ee's alleged failure to comply with earlier warning, violative of 8(a)(3), since earlier warning had been violative of 8(a)(3) where motivated by E's feeling that Ee was source of his U problems)

United Technologies Corporation **260 NLRB No. 196**
(suspension to enforce unlawful no-distribution rule, unlawful)

United Technologies Corporation **260 NLRB No. 196**
(suspending Ees for refusing to answer question when they were interrogated after being denied assistance of U representatives where they believed interrogation might result in disciplinary action, unlawful)

St. Joseph Hospital Corporation **260 NLRB No. 089**
(Ee's suspension for violating no-strike clause by leading mass picketing demonstration in support of another U's organizational efforts at E's facility and for having violated E's rule prohibiting Ees from making vicious, false or malicious statements about E's Ees, not unlawful, where, although GC established *prima facie* case by showing that Ee's statements were protected and Bd found they were motivating factor in suspension, E met burden of establishing that Ee would have been disciplined for unlawful picketing, even absent her protected activity, since E's main concern related solely to illegal nature of demonstration)

St. Joseph Hospital Corporation **260 NLRB No. 089**
(in finding Ee's suspension for violating no-strike clause by organizing mass picketing demonstration in support of another U's organizational efforts at E's facility, not unlawful, even though Ee's allegedly false statements in U newspaper constituted protected concerted activity and were motivating factor in Ee's suspension, Bd held significant factor in finding no violation was that while E, in warning Ee of illegal nature of demonstration, made no mention of Ee's false statements nor warned her that statements might be contrary E's work rules; moreover, E was not disciplined until after she participated in unlawful picketing)

St. Joseph Hospital Corporation **260 NLRB No. 089**
(in finding Ee's suspension for violating no-strike clause by organizing mass picketing demonstration in support of another U's organizational efforts at E's facility, not unlawful, even though Ee's allegedly false statements in U newspaper constituted protected concerted activity and were motivating factor in Ee's suspension, Bd held fact that other Ees were not disciplined for taking part in unlawful picketing did not cast doubt on Bd's finding of no violation since suspended Ee, unlike other Ees, had been instrumental in organizing the picketing)

Model A and Model T Motor Car Reproduction Corporation **259 NLRB No. 077**
(suspending U adherents for distributing U pamphlets because they violated invalid no-distribution rule, violative)

Arrow Automotive Industries **258 NLRB No. 116**
(issuance of warning notices to and suspension and discharge of Ee allegedly for failure to communicate schedule delays, unlawful, where E never mentioned said failure to communicate until it found U literature in Ee's truck and admonished him about it)

Arrow Automotive Industries **258 NLRB No. 116**
(suspension of Ee for alleged refusal to work overtime unlawful, since true motivating factor for suspension was Ee's known and admitted U support, where period of overtime involved was about 1-1/2 hours, E had no written policy regarding overtime, and over proceeding period of many months Ee had displayed no proclivity towards avoiding overtime)

United States Postal Service **256 NLRB No. 121**
(supervisor's suspension of U steward assertedly because of bad attendance record, violative, where decision to suspend steward coincided with his filing grievance against supervisor)

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company **256 NLRB No. [illegible]**
(E's requiring that its drivers take polygraph test about missing vending machine keys discovered in their trucks, suspending those who refuse, and discharging those who failed test repeatedly held not unlawful retaliation for U organizing activity, in view of prior policy of administering polygraph tests, nondiscriminatory application of test-taking requirement, and fact that vending machines appeared to have been robbed by use of keys)

Container Corporation of America **255 NLRB No. 104**
(suspension of U steward for refusing to obey orders to return to work after general supervisor terminated grievance meeting, not unlawful, since general supervisor had acted in accordance with contractual grievance procedure in terminating grievance meeting and had not acted precipitously or in reprisal for steward's belligerent conduct or interfered with his protected participation in grievance meeting)

Cutting, Inc. **255 NLRB No. 076**
(summary suspension, one week after election won by U, of U observer at election and Ee who had spoken in support of U, unlawful, where E, w/o any investigation, seized on untrue information from Ee-informant that she had been threatened by one of discriminatees, as pretext for suspensions)

Central Freight Lines, Inc. **255 NLRB No. 066**
(during hiatus in trial, suspending prominent proU Ee for two instances of talking and wasting time, violative as E did not admonish other Ees talking and Bd chairman's involvement indicated special consideration and delicate handling)

Glover Bottled Gas Corp. **255 NLRB No. 011**
(suspension of Ees for refusing to cross picket line established at their own E's premises by fellow U members of struck E, unlawful, where E, by performing struck work for benefit of struck E, lost its neutrality and allied itself with latter E, thereby becoming subject to lawful picketing by its Ees in furtherance of their sympathy strike; Ees' right to engage in strike was not waived by contract since its general language prohibiting strikes and lockouts was qualified by language specifically preserving Ees' right to refuse to cross picket line at their own place of employment)

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(suspension of U steward allegedly for insubordination in refusing, at E's request, to return copy of written disciplinary warning issued to him allegedly for bypassing first step of grievance procedure, unlawful, where there was longstanding controversy between E and U overapplication of contract, E exhibited animosity toward steward and his U activities, and grievance in question dealt with E's refusal to excuse steward and fellow Ee when they absented themselves from work, after giving notice to E, to go to Bd's office to give evidence, which constituted protected activity)

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(suspension of U steward allegedly for insubordination in refusing, at E's request, to return copy of disciplinary warning issued to him allegedly for bypassing first step of grievance procedure, unlawful, where grievance dealt with E's refusal to excuse steward and fellow Ee when they absented themselves, after giving notice to E, to go to Bd's office to give evidence; E's decision not to excuse absence was discriminatory and inherently destructive of statutory rights, and their being at Bd office was *but for* cause, not only in their being unexcused but also in steward's activities to remedy claimed injustices)

McLean Trucking Company **252 NLRB No. 104**
(discharge of Ee and subsequent conversion of discharge to suspension and written warning for Ee's refusal to drive tractor-trailer violative, where Ee had good faith and reasonable belief that vehicle was unsafe, and E's adverse action was taken because Ee acted in reliance on U contract in concert with U officials)

United States Steel Corporation **252 NLRB No. 178**
(violation where Ee was suspended and reprimanded for inquiring whether he would get contractual move-up pay for driving tractor, a task normally performed by another Ee at higher rate)

Pittsburgh Press Company **252 NLRB No. 075**
(suspension of U organizer, unlawful notwithstanding E's allegation that he was suspended for threatening Ee in context of U organizing activities and offering to falsify medical certificate for her)

Alfa Leisure, Inc. **251 NLRB No. [illegible]**
(issuance of warning notices to and suspension of Ee not violative where reason was Ee's lateness in returning from lunch after celebrating U victory in election for which he had been an observer, and for his insubordinate attitude)

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Weyerhaeuser Company 251 NLRB No. 097
(warning and suspension of U adherent for returning late from his break and eating at his work station, not unlawful, where E issued warnings long prior to U campaign and there was no conclusive evidence showing that such discipline was related to any *crack down* on Ees as result of U campaign)

Savannah Wholesale Company 251 NLRB No. 087
(suspension of known U adherent for unwarranted complaint against supervisor and for improper procedures in taking delivery of assertedly damaged merchandise, unlawful, where it was not shown that E had unusual policy of punishing Ees because their grievance against supervisor was not meritorious, Ee's testimony that merchandise was not damaged was credited, and E adduced no evidence of business motivation for its sudden decision to enforce work rules more stringently following U's victory in election)

Classic Truck Rental Corp. 251 NLRB No. 086
(suspension of U adherent who had filed charges with Bd, not unlawful, in view of Ee's *stealing time* by wasting time on job and continuing disregard for company rules despite several warnings, thereby prompting E to file notice of intent to arbitrate disciplinary action against Ee because of his inefficiencies as Ee and then suspending Ee after receiving arbitrator's advice to do so)

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(suspension of Ees by administrator of U council on ground that meeting called by Ees' U and held at parent organization's facility violated council's policy curtailing Ees' contacts with such organization, unlawful, where administrator knew that meeting was called for purpose of addressing fellow Ee's discharge, which was protected activity; unlawful motivation was shown by attempt, following suspensions, to prevent Ees from meeting with their attorney; and administrator's concern about U meeting included Ees' *taking issue* with his disciplining of Ees and soliciting aid from other sources)

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(contention that U council's suspension of Ee-staff members on ground that, by holding U meeting at parent organizations facility, they engaged in disloyal act, rejected, since Sec. 7 of Act is broad enough to encompass Ees' decision to choose, free of E interference, situs of their U meeting)

Magnesium Casting Company, Inc. 250 NLRB No. 107
(suspension of known U adherents who left work contrary to revised notice of vacation schedule, unlawful, where other Ees similarly absent were not warned or disciplined for their infraction of E's orders)

Magnesium Casting Company, Inc. 250 NLRB No. 107
(suspension of known U adherents for absence from their work area, unlawful, where they were absent no longer than 10 minutes during their break period, their casual greeting of other Ees in another department did not constitute a work interruption, and no other Ee had been disciplined for asserted reason)

Magnesium Casting Company, Inc. 250 NLRB No. 107
(suspension of Ee for engaging in *horse play* with air hose, which was potentially dangerous to fellow Ee, not unlawful, where E investigated incident, thereupon reduced discharge to suspension, and exercised reasonable exercise of its business judgment in maintaining proper discipline with due regard for safety of its Ees)

Caterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) 250 NLRB No. 089
(suspension of Ees for 60 days for participation in ULP strike, violative)

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 053
(suspension of formerly striking Ee assertedly because of damage to E's rental vehicle due to Ee's improper checking out of equipment before delivery to customer, unlawful, in view of E's animus toward ex-strikers, timing of suspension to Ee's activities as steward, absence of evidence of negligence on Ee's part and of precedent for punishment herein, E's predisposition to be punitive, and E's failure to place in evidence any written statement attributable to customer)

New Process Gear, Division of Chrysler Corporation 249 NLRB No. 158
(suspension of U steward for making attacks on foreman and use of obnoxious obscenities while processing (Ee) grievances held not violative, since remarks were carried to point of insubordination and steward, by his continuing actions, interfered with foreman's job performance)

The Davis Company 249 NLRB No. 068
(suspension of U stewards for filing OSHA C and *too many nuisance grievances*, unlawful)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 087
(suspending two waiters, principal U organizers, w/i 5 days after learning of their U activity, for no reason during busiest day of week, violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 087
(suspension of U committeeman for allegedly stealing customer receipts, violative, when made w/o prior warning and Ee told that *you have a lawyer* referring to U's counsel)

Pay 'N Save Corporation 247 NLRB No. 184
(suspension and discharge of Ees for wearing U buttons on their store jackets, unlawful, since right to wear buttons is legitimate form of U activity, and there was no valid business consideration or other special circumstance warranting forbidding of wearing of U buttons by store Ees on salesfloor)

CTS Keene, Inc. 247 NLRB No. 141
(suspension of U adherent allegedly for disrupting production by talking about U to other Ees who, on their own volition, ceased work to listen, unlawful since suspension for U activity, where Ees ordinarily permitted to converse while working, other Ees involved not disciplined, adherent not given chance to defend herself; and suspension based on warnings which deviated from E's usual procedure)

Production Plated Plastics, Inc. 247 NLRB No. 076
(giving Ee reprimands and subsequent suspension for allegedly abusing restroom policy unilaterally instituted, violative)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. 247 NLRB No. 090
(suspension of driver, who had been involved in several accidents, held in reprisal for his U activities where other drivers had more serious accidents and were not disciplined, suspension closely followed Ee's request to attend Bd hearing and was in middle of number of discriminatory discharges, and latest accident was seized upon to disguise E's real motive in suspending Ee)

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(suspension of U adherent assertedly because he did not bring proper tool to work, unlawful, where incident was contrived to punish Ee for his recent U activity in order to provide record of unsatisfactory performance preparatory to Ee's discharge)

Oak Harbor Freight Lines, Inc. JD-(SF)-211-82
(issuing disciplinary letters to and imposing suspension on Ee, violative where Ee had instigated efforts to stop supervisor from doing unit work)

ITT McDonnel and Miller, A Unit of Fluid Handling Division of International Telephone and Telegraph Corp. JD-387-82
(threat of discharge and suspension of Ee when he interfered with supervisor's removal of grievances which Ee had posted on E's bulletin board, made available to U under contract, not unlawful, where Ee's conduct was unprotected because not reasonably related to enforcement of contract right nor otherwise reasonable; there was no hostility toward U, grievances, or bargaining; threat was made when Ee physically impeded supervisor from leaving bulletin board area; and supervisor's remark cannot be construed as threat to discharge Ee for exercising percieved contract right)

Alabama By-Products Corporation JD-(ATL)-49-82
(suspending Ee for challenging E representative's veracity at grievance meeting, unlawful, since Ee's activity was protected where he was acting as U representative and could only assure fair resolution of another Ee's grievance by such challenge, and his action was not so flagrant as to lose protection of the Act)

* *Illinois Bell Telephone Company* JD-178-82
(suspension assessed against Ees who had engaged in work stoppage in response to disciplinary suspension of fellow Ee, not violative where strike was in violation of no-strike clause and was not initiated nor authorized by contracting U; strike was unprotected activity for which E was entitled to institute discipline of participating Ees)

Westinghouse Electric Corporation JD-(ATL)-40-81
(suspension of U officials for non-compliance with violatively promulgated *illness* rule violative where rule only applied to these officials)

Ford Motor Company, Automotive Division, Twin Cities Plant JD-87-81
(suspending Ee for keeping log of U work done by foremen, and filing grievances about such work and E's retaliation against him for filing grievances, violative)

Salem Gravure Division of World Color Press, Inc. JD-152-81
(suspension and reprimand of U shop steward for use of obscenity towards supervisor when supervisor handed him as U representative copy of notice relating to strict enforcement of E's rules towards Ees, not unlawful where U requested that it be given all notices that E made applicable to its Ees, and E voluntarily complied with request; U representative is not thereby authorized to spout every kind of obscenity which comes to mind and then request and obtain protection of Act)

Aydin Corporation, Vector Division JD-828-80
(no violation for suspending U officer for going to another work area where she was told not to go and for refusing to see supervisor about pay check error w/o written note or U witness present to hear grant of permission to go as Ee cannot set conditions to compliance with order from supervisor)

Taylor Implement Division, Pittsburgh Forgings Company JD-474-80
(Ee's suspension and discharge violative where reason was not, as contended, his parking his automobile in unauthorized location but was, rather, his active participation in U's second effort to represent Ees after an election loss)

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Lester Industries, Inc. JD-97-80
(suspension of chief U protagonist purportedly for threatening anti-U fellow Ee, unlawful, where E seized upon anti-U Ee's belated, implausible account of purported threat as pretext for suspension of Ee for engaging in U organizing and protected concerted activity)

Vass Steel Corporation JD-216-80
(E delaying reinstatement of economic striker by suspending him beginning on date on which he would have returned to work with other strikers, not unlawful, where for throwing rock at truck entering E's property during strike)

Newspaper Printing Corporation JD-203-80
(suspension of U adherent who, as result of sloppy compressed appearance of vacation sign up sheet, mistakenly thought he was to be on vacation and failed to report to work, where after error was discovered supervisor could have requested him to work and did not, there was interferance with production, and in view of e's ongoing dispute with U regarding steward's scheduling authority and triviality of error)

Newspaper Printing Corporation JD-203-80
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation JD-203-80
(suspension of steward for making changes in schedule sheet unlawful, since steward was performing customary duty in enforcing contract, and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Wheeling-Pittsburgh Steel Corp. v. N.L.R.B. 618 F.2d 1009 (C.A. 3, 1980)
(suspension of Ees for refusing to perform job assignment for safety reasons, not unlawful, where ALJ's finding to the contrary lacked factual basis, and there was no contention that suspensions were so *inherently destructive of Ee interests* that anti-U motive is irrelevant)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. 658 F.2d 968 (C.A. 4, Sept. 1981)
(E's suspension of Ee assertedly because of his deliberate insubordination in twice absenting himself from work w/o leave, unlawful, where E denied leave in order to prevent Ee from participating in U's attempt at coordinated bargaining at another plant, discipline was disparately applied in Ee's own case, and E evidenced overall hostility to coordinated bargaining attempt; moreover reason for suspension was question of fact which was to be decided by Bd)

N.L.R.B. v. Burns Motor Freight, Inc. 635 NLRB No. 312 (C.A. 4, 1980)
(E's suspension of Ee, engaged in U activities, for receiving speeding ticket driving E's vehicle and subsequent decision not to recall Ee, not unlawful, where after suspension E confirmed its information regarding Ee's speeding violations and learned E's motor vehicle record was encumbered with *points* as a result, which led insurer to take the position that Ee was virtually uninsurable; Bd must affirmatively show why E rejected good cause for discharge and chose a bad one, but it failed to do so herein)

McLean Trucking Company v. N.L.R.B. 689 F.2d 605 (C.A. 6, Sept. 1982)
(ct held substantial evidence supported Bd's finding that drivers were unlawfully disciplined for engaging in protected and concerted activity when they refused to drive tractor-trailor they believed to be unsafe pursuant to U instructions invoking provision of collective bargaining agreement; E's reliance on *Jim Causley Pontiac*, 675 F.2d 125 (6th Cir. 1982), unwarranted where ct held, *inter alia*, that E knew that drivers made their complaints pursuant to U activity; ct also reaffirmed its rejection of *Interboro* doctrine)

Nacker Packing Company v. N.L.R.B. 615 F.2d 456 (C.A. 7) (1980)
(assignment of discriminatee reinstated pursuant to Bd order after his initiation of Bd proceedings to job performance which might expose him to further injury of his injured hand with ultimatum of doing it or going home with result that discriminatee went home held to constitute unlawful suspension when other jobs which would not expose him to injury were available for assignment)

John H. Fournelle v. N.L.R.B. 670 F.2d 331 (C.A.D.C., Feb. 1982)
(no violation by suspending U committeeman along with other Ees for breach of no-strike agreement, since, notwithstanding committeeman left premises to go to dentist, before doing so he joined strikers at U hall and gave TV interview in support of strike, thus violating contractual clause which precluded encouraging and sanctioning strike; ct rejected contentions that ALJ did not base finding on above-mentioned clause and that justifying suspension on basis of said clause constituted impermissible waiver of Sec. 7 rights)

5064 NONRENEWAL OF EMPLOYMENT CONTRACT

5064-5080 For union or other protected activity

The Ballet Foundation of Milwaukee, Inc. JD-319-82
(refusal to rehire principal dancer, member of U team negotiating with E for contract, for coming ballet season, assertedly because his technical ability was not as strong as needed, held violative where E's artistic director was shown to be unhappy with manner in which Ee carried out his representative functions)

5067 LAYOFF

Townsend and Bottom, Inc. 259 NLRB No. 027
(layoff of non-U Canadian Ees, not unlawful, where E explained reason they were no longer employed was because their visas were expiring and would have required them to be laid off anyway, and E thereby met its burden by showing it would have taken the same action against them even absent nonmembership in U or absent preference for U members)

Townsend and Bottom, Inc. 259 NLRB No. 027
(layoff not unlawful, since only 7 Ees were involved and, unlike other layoffs which included only nonmembers of U and were found discriminatory, layoff herein included 3 U members, and hence GC failed to establish *prima facie* showing that selection of Ees for layoff was discriminatorily motivated)

Classic Truck Rental Corp. 251 NLRB No. 086
(assuming that evidence reflected that co-E of E in joint E relationship laid off Ee because of his suspension by E, layoff not unlawful, since Ee's suspension by E was for legitimate reasons, and Ee's work with co-E was adjunct or extension of work with E, and when E suspended Ee, he did so from both jobs)

Noryan Company, Inc. JD-847-79
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

5067-0100 Generally

Trend Construction Corporation and General Electric Corporation, Individually and as Joint Employers 263 NLRB No. 044
(layoffs lawful where E had hired excess Ees to pack unit with anti-U Ees to thwart U representation but election had been indefinitely postponed; furthermore, E experienced slowdown because noncompletion of other work)

Wehrenberg Theatres, Inc. d/b/a Melba Theatre and Skyvue Drive-In 260 NLRB No. 081
(contention that Ee was laid off rather than discharged, rejected where E sent letter referring to separation and stating, *I can't make any sort of commitment to you as to hiring* after outdoor theatre was closed for season, as discharge was implied in word, *separation* and also saying *...in wish job could have lasted longer* all of which *would logically lead a prudent person to believe his tenure has been terminated*)

Townsend and Bottom, Inc. 259 NLRB No. 027
(fact layoffs may be economically justified is no defense if selection of laid off Ees is for discriminatory reasons)

Hudson Manufacturing Company 260 NLRB No. 096
(laid off Ees who were not affirmatively shown to be U supporters held discriminated against as if they had been U supporters, where they were caught up in their fellow Ees' U adherence and were victims of E's effort to crush U)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. 585 F.2d 752 (C.A. 5)
(layoffs not unlawful where E had incurred substantial losses and facility had been listed for sale before onset of U activity; and site of new operation was not ready for use at time of closing)

5067-0500 For not being union member

Townsend and Bottom, Inc. 259 NLRB No. 027
(Ees laid off because of nonmembership in U and in order to give preference to U members, unlawful, where large number of Ees laid off were non-U Ees or members of other locals while no members of U were included in layoffs; pattern of layoffs was consistent with foreman's statement that non-U Ees would be laid off first; superintendent's layoff list reflected U status of Ees selected for layoff; and E proferred no evidence to establish specific reasons for selecting Ees for layoff)

Sprinkmann Sons Corporation of Illinois JD-763-80
(neither E nor U held to have violated Act by lay off of non-U Ee, where E creditably testified that no U representative talked with him as to who should, and who should not, be laid off; E cut Ee complement by 40% after

5067-0500—Cont.

completing, in major part, biggest and most complex part of construction job; and E kept U Ees on job because they were better suited than non-U Ee to complete final work on job)

5067-1200 For union or other protected activity

A & T Manufacturing Company **265 NLRB No. 201**
(layoff of U adherents because of E's concern about the economy and lack of work caused by alleged loss of principal customer, held violative where E's concern with the economy had apparently been no more than academic until inception of U activity; principal customer was not lost, it was not paying (E) according to schedule (customer's account was 90 days past due). U activity was *straw that broke the camel's back* rather than principal customer's delinquency)

Enterprise Products Company **265 NLRB No. 083**
(layoff of Ees assertedly for economic reasons, unlawful, where reason for action was to retaliate against Ees for their U activity; E's haste in concluding, upon learning of U activity and while investigating its impact upon its other facilities and in sending its refusal of recognition to U, all w/i same day, that immediate layoff was necessary w/o any supporting business reports or even inquiry at other sources, clearly indicated causal relationship and illegal motivation of layoffs)

Enterprise Products Company **265 NLRB No. 083**
(additional layoff of Ees, following prior layoff assertedly for economic reasons but found in retaliation for Ees' U activity, held unlawful, where E effected layoff w/o any studies or evaluation of business conditions and, instead, used fictional formula created from its own guesses; and claim that decision to layoff was based on giving remaining Ees living wage was belied by fact that no consideration of Ees' earnings was claimed at time of decision nor any consideration given to partial study that was being worked up)

Enterprise Products Company **265 NLRB No. 083**
(E's announcement of change of temporary layoff to permanent layoff status, unlawful, where E unlawfully stated that layoffs were intended to last *until this mess is over,* thereby indicating that laid off Ees would not be recalled until U activity had ceased; and some time between layoffs and preelection announcement of change in nature of layoffs, E became aware of voting rights of Ees in temporary layoff status)

Schnadig Corporation **265 NLRB No. 020**
(violation, where pursuant to layoff for economic reasons Ee laid off U adherents out of seniority order and rather than recalling adherents hired other Ees)

Ebb Tide Processing, Inc. **264 NLRB No. 100**
(violation where Ee was laid off because supervisor permanently transferred her to department whose Ees were being laid off to retaliate for her complaints of his disregarding seniority in selecting Ees for layoff and filing grievance about him; moreover Ee was entitled to transfer rather than layoff under contract)

Vincent Brass & Aluminum Co. **264 NLRB No. 070**
(layoff and refusal to reinstate Ees, unlawful, since for assertion of their contractual right to job bidding procedure rather than for economic reasons, in view of E's U animus established by other violations and where layoffs occurred while orders increasing and overtime worked by other Ees during layoff, notwithstanding layoff in accord with contract and fact those laid off included Ees who had not attempted to assert their rights under contract)

Progressive Building Methods, Inc. **263 NLRB No. 133**
(layoff of Ee because he filed grievance with U, unlawful)

Sahara-Reno Corporation, d/b/a Sahara Reno **262 NLRB No. 096**
(*prima facie* showing of discrimination by E's closing of gambling casino coffee shop and resultant layoff of its Ees upon decision made after U campaign began, and disparate selection for layoff of such Ees from other food service Ees who had not participated in U activities, not rebutted under *Wright Line,* where although E may have had justification to restructure its food service operations, it was not established that coffee shop would have been closed absent its Ees' U activities)

Sahara-Reno Corporation, d/b/a Sahara Reno **262 NLRB No. 095**
(admission by supervisor that he could not help laid off-Ee because of latter's involvement with U was prima facie showing of unlawfully motivated layoff under *Wright Line* and was not rebutted by E's claim that laid off-Ee was least senior Ee, where such would be true only if Ee's prior service were not considered, and E failed to show that its policy was to not consider prior service in determining seniority)

Sahara-Reno Corporation, d/b/a Sahara Reno **262 NLRB No. 095**
(as required by *Wright Line* analysis, GC made prima facie showing of unlawful motivation for layoff of Ee where E showed antiU animus and awareness of laid-off Ee's U activity by enforcing unlawful no-solicitation rule against him, and showing was not rebutted by E's claim of Ee's poor performance where E had tolerated his work and granted him wage increase a week before layoff)

Sahara-Reno Corporation, d/b/a Sahara Reno **262 NLRB No. 096**
(layoff of sous chefs at gambling casino not unlawful since their supervisory status, although not directly raised as an issue, was shown by record evidence of their authority to give time off and enforce no-solicitation rule, and supervisors who are disciplined or discharged for U or concerted activity are not protected even if their layoff was an integral part of E's pattern of ULPs)

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**
(layoff of U adherents two days after E learned large extent of Ees' U activity held violative absent legitimate justification for E's action)

Newtocks Homes, Inc. **261 NLRB No. 107**
(layoff of Ees for protected work stoppage and U membership, unlawful)

S.M.C. Rest. Corp. d/b/a Polatti's Restaurant **261 NLRB No. 081**

Drury Construction Co. **260 NLRB No. 090**
(layoff and failure to recall Ee who tried to get E to comply with collective bargaining agreement requiring it to assign certain work to Ee members of Teamsters violative)

Baich Pontiac Buick, Inc. **260 NLRB No. 062**
(layoff, for seeking to unionize, of 8 out of 10 Ees only hours after election which U won, unlawful notwithstanding E's poor financial condition, where layoff was not consonant with E's past practice and not according to his financial advisers' recommendations)

Friederich Truck Service, Inc. and FTL, Inc. **259 NLRB No. 053**
(laying off and refusing to reinstate Ees because of their refusal to acquiesce in E's proposed unilateral change in contract terms, unlawful)

Quick Find Co. **259 NLRB No. 144**
(violation where E laid off 5 Ees during critical period while storage space was available and delayed recall after new storage space became available where E had allowed inventory to reach higher levels before instituting short work weeks, but no layoffs)

Gerson Electric Construction Company **259 NLRB No. 088**
(layoff of steward allegedly unlawful because motivated by his protected activity of seeking to enforce contract provision concerning starting time on construction job, not unlawful, where E's action was motivated by business considerations relating to problems on job; there was no doubt about E's good faith efforts to transfer all laid off Ees to other positions; and it is impossible to conclude that E would jeopardize its relations with construction ownere and with U simply because steward raised complaints about starting time previously approved by U itself)

Rebel Coal Company, Inc. **259 NLRB No. 033**
(closing of auto repair shop and resulting layoff of Ees, assertedly for economic reasons, violative, since E showed no good cause for closing shop and Ees would not have been discharged, despite possible overall company financial problems, except for their pro-U activities)

Glengarry Contracting Industries, Inc. **258 NLRB No. 156**
(layoffs to stop U activities and dissipate unit, unlawful; some layoffs resulted from E's unlawfully transferring part of unit Ees' work elsewhere because of U activities)

Timberline Energy Corporation **258 NLRB No. 037**
(violation where layoffs were not for economic reasons but after E had knowledge of U activity and on same day that Ees met with U agent; past layoffs were never at this time of year)

Anjo Engineering Corporation **256 NLRB No. 161**
(layoff of U activists whose work was transferred unlawful, where such Ees asked to be considered for work which E had available and which Ees were qualified to perform)

C. E. Wilkinson & Sons, Inc. **255 NLRB No. 176**
(layoff of Ee, assertedly because of decline in business, violative, where Ee was laid off 2 days after E engaged in surveillance of him at U hall, E had knowledge of its Ees' U activities and had demonstrated U animus)

K & E Bus Lines, Inc. **255 NLRB No. 137**
(E's putting Ees on unwanted leaves of absence in order to ascertain who was behind *the problem* i.e. U organizing campaign, unlawful)

Guardian Industries **255 NLRB No. 086**
(laying off two of four Ees in department violative, as decision to reduce department size was contemporaneous with Ee's request to post U poster on bulletin board)

The Bond Press, Inc. **254 NLRB No. 182**
(E's layoff of U adherents violative, in view of E's knowledge of Ees' U activity through their participation in negotiating sessions and their persistent plant searches for use of U label, fact that layoffs eliminated all U influence in E's operations, timing of layoffs, E's exaggeration of Ees' lack of skills and versatility, and E's sudden intolerance of Ees' tardiness and absenteeism while tolerating similar behavior of other Ees)

General Motors Corporation **254 NLRB No. 148**
(E's disciplinary 1-1/2 day layoff of Ee, violative where motivated by unlawful instruction to him not to take breaktime on assembly line)

Concord Furniture Industries, Inc., d/b/a Bradford Furniture Company **254 NLRB No. 109**
(on reconsideration, Bd applied *dual motivation* theory and reaffirmed violation finding; although this is pretext case, layoffs were violative under any

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analysis in view of E's knowledge of Ees' U activities, U animus, timing w/i 3 weeks of R ptn filing, and E's false reason that both were least senior Ees)

Quality Drywall Company, Inc. 254 NLRB No. 078
(layoff unlawful where reason was attempt to subvert U's apparently successful organizing campaign and to impede picketing on project jobsite)

Armored Transport, Inc. 252 NLRB No. 061
(shutdown of E's operation which resulted in layoff of all its Ees violative where E was retaliating for Ees actions of trying to form U)

Behring International, Inc. 252 NLRB No. 088
(E unlawfully laid off its warehouse Ees and subcontracted its warehouse work where E's actions occurred shortly after unlawful threats and grants of benefits in response to U organizing campaign; Ees had been praised recently for quality of their work; Ees who attempted to forestall election were retained at higher rates of pay following subcontracting, while Ees who had not opposed U were laid off; and E can point to no contemporaneous event which might have motivated layoffs)

B. E. & K., Inc. 252 NLRB No. 036
(preelection layoff of members of new crew created by E so as to be able to transfer Ees to and from such crew and thereby enable E to rid itself of some known U adherents by eliminating entire crew, unlawful; E's defense on ground layyoff was necessary because of *unexpected* need to curtail work because of delay in installing new equipment, rejected, in view of E's awareness of potential delay for sometime prior to layoffs)

Polly Lingerie, Inc. and Argus Lingerie Corp. 252 NLRB No. 032
(Bd held Ee was not discriminatorily laid off, where although she had signed U authorization card on second day of employment, there was no evidence that E had any knowledge of her signing such card prior to layoff, at end of second day of work Ee expressed clear lack of desire to perform work she had been assigned, and she failed to appear for work at scheduled time on third day; fact that E offered no explanation for her layoff is not probative of discriminatory motive under the circumstances)

Rich's Precision Foundry, Inc. 250 NLRB No. 173
(layoff of helpers, unlawful since it was necessitated by discriminatory discharge of U leaders they helped)

Cumberland Farms Dairy, Inc. 250 NLRB No. 140
(violation where E discharged one U activist, laid off another and constructively discharged three more by revoking their reinstatements because of their U activities; E had stated that one activist was being discharged for starting the U in the warehouse)

Campo Slacks, Inc. and J & E Sportswear, Inc. 250 NLRB No. 057
(permanent layoff of U adherent in contrast to brief layoffs of coworkers, unlawful, in view of E's U animus and lack of business justification)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. 250 NLRB No. 042
(layoff of Ees assertedly because they devoted too much time in repairing E's vehicle as result of which customer was not serviced, unlawful, where Ees were known active U supporters, they had attended U meeting shortly before layoff, and E had profound U animus)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. 250 NLRB No. 042
(layoff of Ees assertedly because E lost contract with major customer, unlawful, where E failed to explain circumstances involved and to mention layoffs or any likelihood of loss of contract to Ees prior to layoff, and supervisors admitted to Ees that E would rather close operation than deal with U)

Henry A. Young, d/b/a Columbia Engineers International 249 NLRB No. 144
(shut down of job for remainder of day following E's vehemently stated opposition to U after U claimed majority, where there was no explanation of necessity for shutdown, unlawful; neither E's asserted ignorance of law nor fact all Ees included in shut down sustained as defenses)

Capriccios Restaurant, Inc. 249 NLRB No. 150
(layoff of known U adherent, assertedly because of seasonal decline in business and lack of work, unlawful, where E's U animus was evidenced by statement that it was against U, E engaged in coercive unlawful conduct before layoff, Ee was E's most senior Ee and had never been laid off during previous slow seasons, and, unlike other Ees selected for layoff, Ee was not asked by E about his slow season plans)

Capriccios Restaurant, Inc. 249 NLRB No. 100
(layoff of Ee, assertedly because of lack of work, unlawful, where E now gives another reason for discharge relating to declining business, and E did not explain why it did not lay off Ees with less working tenure)

Sandberg Machine & Tool, Inc. 249 NLRB No. 076
(layoff of Ee, unlawful, in view of its timing in relation to Ee's protected activities and to work week and pay period, unlawful interrogation prior to layoff, and implied threats of reprisals and plant closure made following layoff)

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults 248 NLRB No. 120
(layoff of shop steward for supporting rival of U which represented E's Ees and for having complained to U.S. Dept. of Labor about E's wage practices, violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 087
(layoff of dishwasher, U solicitor of Spanish-speaking Ees, assertedly because *business was really falling off drastically*, violative, since layoff occurred soon after E learned of Ee's U activity; layoff actually was discriminatory discharge since E had no intention to recall Ee)

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(permanent layoff of U adherent, unlawful, where layoff was effected in complete disregard of E's layoff, seniority, and bumping policies; despite job vacancies and new hires, Ee was never recalled to fill vacancies or other jobs which he could handle; and E treated Ee differently than other laid off Ees by contesting Ee's unemployment compensation)

Schneider, Inc. 247 NLRB No. 071
(layoff of Ee for activities whereby he persistently attempted to obtain U membership for other nonmember Ees and himself, unlawful)

Eastern Engineering & Elevator Co., Inc. 247 NLRB No. 004
(in overruling ALJ's credibility findings, Bd found based on reasonable inferences from record as a whole that E unlawfully laid off experienced Ee before new Ees in retaliation for Ee's filing internal U charges against fellow Ee and that E's reasons for Ee's layoff were pretexual)

Leland Detroit Mfg. Co. JD-459-82
(laying off and not recalling chief steward when other Ees were recalled although he was able to do the work they did, unlawful where it was prompted by his U activity as chief U spokesman who pressured E to negotiate and advised Ees of their rights)

All-Type Welding & Boiler Repair Co., Inc. JD-(NY)-78-82
(discharge of Ee for urging nonmembers to join U and for protesting E's failure to pay contractually agreed upon pay raises, unlawful; contention that Bd sould defer to *settlement* of Ee's grievance over discharge, rejected where it encompassed only payment of one week's earnings, was never reduced to writing, was based on E's version of reason for discharge, and never agreed to by Ee)

Lovard Industries, Limited JD-293-82
(post-election layoff of U adherents not violative where GC conceded that evidence of discrimination was not too clear and E's evidence of lawful economic causes preponderated over that of GC)

C. Cowles & Company JD-(NY)-52-82
(layoff of active U protaganist because of downturn in sales of automotive parts manufacturer, not violative, since Ee was least senior in E's department being cut back because of depressed sales in automotive industry and E's usual custom was to use departmental seniority w/o *bumping* other Ees; E satisfied burden of proving lawful justificatiion for discharge)

Power Service Co., T and T Truck and Trailer Leasing, Inc., Night Hawk Motor Transportation, Inc., and York Motor Transport, Inc. JD-161-82
(discharge and layoff of U activist truck drivers because discharged Ee *abandoned employment* when he refused to drive unrepaired truck and other driver was laid off for *lack of work* held violative, since respondents did not show that Ees would have been discharged or laid off even if they had not been U activists or U sympathizers; no attempt made to recall discharged Ee after truck was repaired and 2 or 3 new drivers given opportunity to drive for Es before attempting to recall laid off Ee)

E. M. J. Corporation JD-(ATL)-68-81
(layoff and failure to recall U steward, violative where GC's *prima facie* case of discrimination was not rebutted by E)

Ele Corporation JD-(SF)-191-81
(layoff of Ee violative notwithstanding layoff justified by business conditions where selection of Ee for layoff was motivated by his protected activity)

Hasely Hardwood Lumber Co. JD-205-81
(layoffs of U adherents not unlawful, notwithstanding layoffs closely followed U meeting, absent E's knowledge of U activity and where justified by business considerations in view of order cancellations and declining sales)

Roach Manufacturing Corporation JD-15-81
(layoff of Ees including U organizer and U partisans as well as nonU supporters, violative; E's contention that layoffs were for economic reasons rejected, as E recalled 1 Ee next day and work of other laid off Ees assigned to night shift, an unusual practice; furthermore, layoff of nonU supporters also done to give color of legitimacy to E's action)

Stearns-Roger, Inc. JD-10-81
(layoff of qualified pipefitter assertedly because his production was low held violative where other pipefitters were hired from U hall one week after Ee was laid off and precipitating cause of layoff was Ee's complaint that lifting

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of iron grates was being done by pipefitters rather than ironworkers which work Ee, and others considered to be w/i jurisdiction of ironworkers)

Material Transportation, Co., Inc. JD-670-80
(layoff of group of Ees because of their U activities, violative)

Wire Products Co., Inc. JD-537-80
(layoff violative where E though Ee instigated *union talk*)

Vulcan Fuel Corporation JD-842-79
(laying off two Ees with least seniority, violative, where economic reasons were found pretextual since lay-offs occurred, contrary to past practice, on eve of busy season; further, E saw one Ee as source of trouble where second to least seniority, proclaimed himself elevated to steward; inference drawn that Ee with least seniority was laid off to get rid of self-proclaimed steward)

Eastern Engineering & Elevator Co., Inc. v. N.L.R.B. 637 F.2d 191 (C.A. 3, 1980)
(layoff of Ee assertedly because he was not performing his duties adequately, not unlawful, where Bd's finding that Ee was laid off because he filed an internal U charge against fellow Ee was not supported by substantial evidence inasmuch as Bd's conclusion was improperly based on testimonial evidence not credited by ALJ)

N.L.R.B. v. Service Garage, Inc. 668 F.2d 249 (C.A. 6, Jan. 1982)
(layoff of U adherent allegedly in expectation of diminution of repair work when E eliminated outside repair work, not unlawful notwithstanding repair work did not diminish and E recalled laid-off Ee, since E's business justification was not contradicted, laid-off Ee was junior Ee and not leading U activist, and there was no showing of U animus)

N.L.R.B. v. Century Moving & Storage, Inc. 683 F.2d 1087 (C.A. 7, July 1982)
(violation where day after second U meeting and immediately after U demanded recognition, E laid off two U adherents in fulfillment of E's prediction that if U came in he would have to do more driving himself and layoff Ees)

Hadley Fruit Orchards, Inc. JD-(SF)-121-82
(layoff in retaliation for Ee's having voted for U in election after being allowed to transfer as inducement to win her vote, unlawful)

5067-1900 For grievance participation or activity

Ebb Tide Processing, Inc. 264 NLRB No. 100
(violation where Ee was laid off because supervisor permanently transferred her to department whose Ees were being laid off to retaliate for her complaints of his disregarding seniority in selecting Ees for layoff and filing grievance about him; moreover Ee was entitled to transfer rather than layoff under contract)

O'Dovero Construction, Inc. 264 NLRB No. 101
(layoff and failure to recall Ees who were members of craft U, unlawful, where motivated by Ees, complaining to management and U about E's failure to abide by contract in regard to coffee breaks, overtime pay and increased payrate prescribed therein, and performance of their work by members of another U, rather than for business reasons, in view of amount of work to be done and hiring of other Ees during layoff, and absent evidence laid off Ees less efficient than other Ees)

Champion Parts Rebuilders, Inc., Northeast Division 260 NLRB No. 061
(layoff of Ees in retaliation for U's pressing of legitimate complaint under contract, violative)

George W. Kugler, Inc. 256 NLRB No. 007
(layoff of seven Ees in retaliation for Ee's winning reinstatement through grievance procedure, unlawful)

General Fabrication Corporation 257 NLRB No. 012
(laying off one assembler and requiring another one to move to and bump someone from another shift in retaliation for U's filing grievance concerning hourly rate to be paid assemblers who performed general labor work, violative)

Town & Country LP Gas Service Co. 255 NLRB No. 144
(repeatedly laying Ee off after his successful prosecution of grievance concerning earlier discharge, violative, where E's business justification was found to be pretextual)

Russ Togs, Inc. 253 NLRB No. 099
(layoff of Ees for protected activity of grieving and urging other Ees to grieve over E's failure to pay contractual wage rates, unlawful)

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults 248 NLRB No. 120
(layoff of shop steward for supporting rival of U which represented E's Ees and for having complained to U.S. Dept. of Labor about E's wage practices, violative)

N.L.R.B. v. Tid-Bit Products Company, et al. 620 F.2d 981 (C.A. 6, 1980)
(acceding to U's demand that E post Ee's job for bids, with clearly foreseeable result that she would be laid off because of initiating grievance proceedings, unlawful)

N.L.R.B. v. Tid-Bit Products Company, et al. 620 F.2d 981 (C.A. 6, 1980)
(reassignment and subsequent layoff of Ee, unlawful, where at U meeting Ee asked whether contract provisions calling for overtime equalization pay by departments or classifications applied to her lab job, and action taken against Ee occurred because she raised such issue which offended chief steward whose roommate was Ee's coworker in lab and was beneficiary of favorable discrimination by receiving overtime pay under same conditions that overtime pay was denied to Ee)

General Motors Corp. v. N.L.R.B. 616 F.2d 967 (C.A. 6, 1980)
(Bd's holding that E's suspension of U district committeeman for his use of grievance procedure was violative is supported by substantial evidence, notwithstanding contention committeeman abused grievance procedure by taking too much time discussing grievance with grievant and refusing to comply with request that he submit this dispute on abuse of procedure to grievance procedure)

5067-2800 To avoid dealing with union

Walter B. Cooke, Inc. 262 NLRB No. 074
(layoff of Ees and subcontracting of their work not unlawful conduct inherently destructive of Ees' rights, where business no longer was sufficient for full-time Ees, E could subcontract work more economically by the job, E lacked sufficient control of subcontractor's operations to be found joint E, and there was no evidence of U animus)

Weather Tamer, Inc. and Tuskegee Garment Corporation 253 NLRB No. 036
(layoff all but skeleton force one week after Bd agent scheduled pre-election hearing and closing plant after E lost election violative, in view of timing, E's vigorous campaign, economic issues were raised only after U won election and dissatisfaction with work quality was voiced only after U appeared)

Armored Transport, Inc. 252 NLRB No. 061
(shutdown of E's operation which resulted in layoff off all its Ees violative where E was retaliating for Ees actions of trying to form U)

Behring International, Inc. 252 NLRB No. 085
(E's economic defense to layoff of warehouse Ees on ground that subcontracting its warehouse labor ultimately could be financially beneficial, rejected, where E was motivated , at least in part, by desire to reduce possibility of another U election in future)

Wisconsin Beef Industries, Inc. 249 NLRB No. 034
(layoffs by E engaged in packing and wholesale distribution of meat allegedly because of shortage of meat, unlawful; since motivated by antagonism to U where it took place four days after U filed R ptn; subsequent recall of Ees was based on amount of adherence which was designed to scare Ees and exclude U sympathizers)

SPS Painting and Drywall, Inc.; James Sasch d/b/a J. Sasch Painting and Drywall 249 NLRB No. 009
(unionized corporation's layoff of its Ees and subcontracting of their work to its nonU *alter ego* sole proprietorship, unlawful)

Service Garage, Inc. 247 NLRB No. 118
(layoff of Ee in small unit where all Ees had signed U authorization cards violative, where E's U animus inferred from having unlawfully denied wage increase and timing of layoff, as layoff of any 1 Ee at time of U activity would have chilling effect on U activity of remaining Ees; notwithstanding laid off Ee was not U activist)

Atlan Inc. JD-890-79
(violation where, in order to avoid dealing with U, E laid off unit Ees, ceased operations, closed shop, refused to reinstate Ees, and subcontracted unit work and transferred all physical assets to another corporation, and the corporation, found herein to be successor to and *alter ego* of E, refused to reinstate E's Ees and subcontracted work formerly performed by some of E's Ees)

5067-3700 Discrimination in selection in economic lay-off

International Computaprint Corp. 261 NLRB No. 099
(concentration of selection for layoff on second shift, where E lost government contract, lawful, notwithstanding fact U activity centored on second shift, since second shift smaller, subject to limited supervision on regular basis by single individual, and in terms of unit costs less productive since second shift Ees were paid on parity with first shift Ees while working half hour less each day)

International Computaprint Corp. 261 NLRB No. 099
(selection of Ee for layoff where E lost government contract, lawful, where Ee had received formal reprimand for leaving work w/o notifying supervisor and was on 30 day warning period when laid off and E retained Ee who had engaged in same U activity)

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International Computaprint Corp. **261 NLRB No. 099**
(selection of Ee for layoff where E lost government contracts, lawful, in view of her excessive absenteeism record; notwithstanding Ee was among those Ees initially contacted by U, solicited signatures on U authorization cards and had recently been given above average wage increase)

International Computaprint Corp. **261 NLRB No. 099**
(layoff of Ee where E lost government contract, not unlawful, since Ee had volunteered for lay off, notwithstanding E had prepared termination slip on Ee, where Ee had also prepared termination on Ee it retained)

International Computaprint Corp. **261 NLRB No. 099**
(selection of second shift Ee for layoff where E lost government contract, lawful, where selection of second shift Ees for layoff justified by business considerations and Ee had volunteered for second shift for personal reasons and her work could readily be absorbed by first shift)

Comet Corporation **261 NLRB No. 186**
(layoff of welders who were U adherents when contracts cancelled, unlawful, in view of E's retention of less experienced Ees, fact E cut too deeply into personnel even for revised production schedule, and where contrary to its past policy substituted maintenance foreman for welder)

Holland American Wafer Company **260 NLRB No. 041**
(delaying U activist's recall from or avoiding layoff status by refusing to permit him to use plantwide seniority, and bump into another classification, violative where E's published seniority provisions provided for plant-wide rather than department seniority)

Midwest Electric Manufacturing Corporation **260 NLRB No. 032**
(layoff of Ee, not unlawful, where layoff was economically motivated, E followed established seniority policy, Ee was one of two most junior Ees at time of layoff and one Ee junior to him was laid off at same time as he, there was no recall of any Ee junior to Ee before he was recalled, he engaged in limited U activity of signing authorization card and attending one U meeting, and no other Ee who attended meeting was alleged to have been unlawfully selected for layoff)

Townsend and Bottum, Inc. **259 NLRB No. 027**
(Ees laid off because of nonmembership in U and in order to give preference to U members, unlawful, where large number of Ees laid off were non-U Ees or members of other locals while no members of U were included in layoffs; pattern of layoffs was consistent with foreman's statement that non-U Ees would be laid off first; superintendent's layoff list reflected U status of Ees selected for layoff; and E proferred no evidence to establish specific reasons for selecting Ees for layoff)

American Display Manufacturing Co., Inc. **259 NLRB No. 006**
(permanent layoffs of extra Ees hired to deal with additional work associated with particular order which was deferred, not unlawful, notwithstanding occured shortly after ptn for election filed at time E was contracting out work since for business reasons, E had prior policy of contracting out work, selection made on basis of seniority except in case of Ee who had indicated her intention to quit where selection made to permit retention of Ee who would otherwise been laid off)

Northwestern Dodge, Inc. **258 NLRB No. 118**
(layoff of two salesmen not violative notwithstanding one of them active participant on U negotiating team and engaged in verbal altercation with E about negotiations where economic reasons for layoffs were substantiated, Ees were never replaced, and E followed terms of expired contract by selecting two least senior and productive Ees for layoff)

Pace Oldsmobile, Inc. **256 NLRB No. 111**
(E failed to prove layoff was motivated by economic reasons, notwithstanding its showing of economic justification, where department manager admitted to his assistant that Ee was selected for layoff because he was U instigator)

K & S Circuits, Inc. **255 NLRB No. 163**
(laying Ees off who had signed authorization cards and invoked Bd's processes violative, where E refused to allow Ees to finish work days; other Ees were invariably permitted to finish 40-hour week)

Suburban Chevrolet, Inc. **254 NLRB No. 016**
(layoff of Ee allegedly for economic reasons, unlawful where E selected U adherent for layoff instead of Ee with less seniority)

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 066**
(selection of Ees for economic layoff, unlawful where Ees were selected out of seniority, supervisor and general foreman told Ees that U supporters would not be called back to work and that reason for layoff was to get rid of people who were trying to organize U, E hired new Ees before offering Ees on layoff opportunity to be employed, Ees recalled were as new Ees w/o their prior benefits and for probationary period, and E hired new Ees while Ees were still on layoff)

K & B Mounting, Inc. **248 NLRB No. 071**
(violation where, although E's decision to layoff six Ees was economically motivated, three Ees were discriminatorily selected by E in determining which Ees should be laid off)

Custom Wood Interiors, Inc. **248 NLRB No. 021**
(discharge of leading Ee bargaining negotiator unlawful where, contrary to past practice, president identified and personally selected Ee for layoff rather than selecting production classification which was overstaffed and leaving selection of Ees to supervisor; alleged reason of objectionable smoking habits of Ee rejected as E has tolerated Ee's smoking habits for years)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 128**
(selection of U adherent for economic layoff, unlawful, since motivated by adherent's U activities where previous unlawful warning letters were factor, E's owner had suggested to adherent she might be happier working elsewhere and offered her severance pay to seek other employment)

N.L.R.B. v. Triangle Sheet Metal Works, Inc. **607 F.2d 990(T) (C.A. 2, 1979)**
(layoff of valuable Ee who was campaign manager for candidate for U president whom E opposed violative notwithstanding economic necessity for layoff since Ee's name not on original layoff list but his name was substituted thereon by president)

5067-6200 Consequence of employer's unlawful transfer of work

Martin-Brower Company **261 NLRB No. 111**

Emerson G. M. Diesel, Inc. **258 NLRB No. 168**
(transfer of work and layoff of Ees occasioned by Ees' selection of U, violative)

St. Regis Paper Company **247 NLRB No. 185**
(violative)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**
(layoff of Ees at company covered by contract rather than those Ees that E thought were not covered at another company following shift of work from one company to other unlawful, where both companies constituted single E and Ees of both companies constituted single appropriate unit)

5067-6700 Consequence of employer's unlawful reduction of business

A & T Manufacturing Company **268 NLRB No. 281**
(E failure to submit successful bid for work and consequently laying off Ees because of lack of work, not unlawful, where number of Ees laid off was reasonably related to amount of work lost and absent evidence of unlawful motivation)

N.L.R.B. v. Rich's Precision Foundry, Inc. **667 F.2d 613 (C.A. 7, Dec. 1981)**
(layoff of 2 Ees caused by reduction in work due to discriminatory discharge of 2 other Ees violative as layoffs would not have occurred but for discriminatory action)

5067-8700 To discourage support for disfavored union

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 097**
(laying Ee, and mother and daughter of Ee off because they rejected U favored by E and supported competing U, violative)

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappa, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults **248 NLRB No. 129**
(layoff of shop steward for supporting rival of U which represented E's Ees and for having complained to U.S. Dept. of Labor about E's wage practices, violative)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(layoff of Ees, unlawful, notwithstanding contention layoff due to problems with production process, as layoffs took place w/o regard to seniority after Ees had rejected E's contract proposals to Ee committee and E gained knowledge of Ees' support of outside U, production problems had existed for some weeks prior to layoffs and E hired new Ees during period; further, Ees were recalled day after committee signed contract with E)

5073 Discharge

5073-0100 Generally

Marathon LeTourneau Company, Longview Division **256 NLRB No. 099**
(E's contention that where Ee has engaged in conduct for which he would have been fired in any event, there is no room for discrimination to play a part, rejected, since firing of Ee can be discriminatory in such a case inasmuch as E might pass over in another instance conduct warranting discharge)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 1, Sep. 1981)**
(E in section 8(a)(3) discharge case has no more than limited duty of producing evidence to balance, not to outweigh, evidence produced by GC, E has burden of going forward to meet prima facie case, but not burden of

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persuasion on ultimate issue of existence of violation; i.e., *that* there would be no discharge but for E's protected activity)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. **636 F.2d 1255 (C.A. 7, 1980)**
(ct rejected, as being unreasonable and not based on substantial evidence, Bd's conclusion that E's economic justification for discharges was sham; furthermore, Sec. 8(a)(1) violations alone are legally insufficient to show Bd met its burden of proof that Ees were discharged because of U activity)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse **647 F.2d 905 (C.A. 9, June 1981)**
(*Wright Line* rule found consistent both with legislative history showing intent to require E to reveal that Ee was discharged for cause and with reality of E's having best access to proof of motivation; also it strikes acceptable balance between protecting Ees' rights and preserving E's rights to discharge Ees for valid business reasons)

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**
(proper test in determining whether discharge of Ee is ULP is whether anti-U animus was moving cause, and not whether discharge is only partially motivated by anti-U animus; to give rise to ULP *but-for* cause of discharge is required)

5073-1100 What constitutes discharge

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**
(Ees who concertedly went out on strike in protest of discharge of U adherent and in protest over meeting in which E laid down working conditions to be followed on job held not to have been discharged, where none of the Ees stated that they had quit and were not told at any time that they were terminated, and E believed Ees quit when they walked out w/o any prior notice and, upon their return, E made conciliatory moves and stated that things would change)

Wilson Trucking, Inc. **JD-119-82**
(locking Ees out of facility on day after E received U's letter stating that majority of Ees had designated U their collective bargaining agent together with confiscating Ees' keys to facility and expense money the day before held unlawful discharge)

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. **No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)**
(E's statement to strikers such as *this is your last chance,* if you don't come back, you're out, you're fired, and I don't want any of you guys in here, together with letter informing strikers that permanent replacements had been hired, indicated to Ees that they had, in fact, been discharged; Ee is deemed to have been discharged if E's actions would reasonably lead Ee to such conclusion (civil contempt proceeding))

5073-1101 Generally

Brunswick Hospital Center, Inc. **265 NLRB No. 112**
(in determining whether or not E has discharged striker, test to be used is whether (E's) acts, reasonably led strikers to believe they were discharged; events must be viewed through striker's eyes and not as E would have viewed them)

Brunswick Hospital Center, Inc. **265 NLRB No. 112**
(no discharge of strikers where, in instant case, there was absence of consistent pattern of including unrequested pay for accrued vacation, sick leave benefits and other benefits in checks payable to strikers to demonstrate they were discharged, nor did cancellation of health insuance benefits by E)

Wehrenberg Theatres, Inc. d/b/a Melba Theatre and Skyvue Drive-In **260 NLRB No. 001**
(contention that Ee was laid off rather than discharged, rejected where E sent letter referring to separation and stating, *I can't make any sort of commitment to you as to hiring* after outdoor theatre was closed for season, as discharge was implied in word, *separation* and also saying *...in wish job could have lasted longer* all of which *would logically lead a prudent person to believe his tenure has been terminated*)

American Display Manufacturing Co., Inc. **259 NLRB No. 006**
(fact laid off Ees offered reinstatement to diminish possible financial liability does not negate finding that layoffs were permanent in accordance with E policy)

Famous Supply Company, Inc. **254 NLRB No. 091**
(paycheck covering all hours worked enclosed with letter to economic striking Ees that E expected them at work on Friday, usual payday, held reasonably construed by Ees as discharge if they failed to return since check was not sent in normal course of business)

Sentry Investigation Corp. **249 NLRB No. 130**
(Ee discharged rather than quit or suspended where he was asked to turn in his badge, gun and uniform, and E never notified Ee he was suspended but only raised possibility of suspension in brief to Bd; *there may be discharge even in absence of words; where such can be reasonably inferred from circumstances*)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(layoff of dishwasher, U solicitor of Spanish-speaking Ees, assertedly because *business was really falling off drastically,* violative, since layoff occurred soon after E learned of Ee's U activity; layoff actually was discriminatory discharge since E had no intention to recall Ee)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. **660 F.2d 1335 (C.A. 9, Nov 1981)**
(discharge rather voluntary quit where Ees as they walked out told manager they objected to discharge of U adherent and treatment of Ees and were told to pick up their checks next day)

5073-1114 Constructive discharge

A & T Manufacturing Company **265 NLRB No. 201**
(2 elements must be proven to established *constructive discharge* 1) burdens imposed on Ee must cause, and be intended to cause, change in his working conditions so difficult or unpleasant as to force him to resign; and 2) it must be shown that those burdens were imposed because of Ee's U activities)

A & T Manufacturing Company **265 NLRB No. 201**
(no constructive discharge where Ee who was U steward and was unlawfully denied right to assist another Ee during disciplinary interview, quit, because Ee who quits in protest over ULP is not deemed to have been constructively discharged. Further, representation rights accrue to Ee who is subjected to investigatory interview, not to individual who would be his representative; therefore, no illegal action directed against steward)

Redlands Construction Co., Inc., and Felix Construction Co. **265 NLRB No. 079**
(E's giving Ees no choice but to quit or accept non-U conditions held unlawful constructive discharge)

Washington Beef Producers, Inc. **264 NLRB No. 155**
(violation where U adherent was forced to quit after being constantly harassed by supervisor)

H. H. Robertson Company **263 NLRB No. 173**
(E's acceding to U pressure and informing supervisor who was U vice-president and outspoken advocate of change in U administration and participated in filing of charges with NLRB and wrote *U interference* on discharge slips of Ees who had been discharged as result of U pressure, that supervisor would have to take position in gang outside U's jurisdiction, and when supervisor refused, discharged him, held unlawful, since offer of transfer constructive discharge since would have meant demotion, reduced wages and benefits and additional expenses resulting from working further from home and E motivated by supervisors participating in filing charges)

Campbell-Harris Electric, Inc. and Campbell Electric, Inc. **263 NLRB No. 167**
(offer by sole proprietorship, found *alter ego* of former partnership, to employ former Ees of partnership on an open shop basis, violative, where such offer and Ees' subsequent refusal constituted constructive discharge)

Remodeling By Oltmanns, Inc. **263 NLRB No. 169**
(unlawful constructive discharge where strikers upon returning to work at E, which although not member of multiE association had abided by associations contract with U and had paid U wages and benefits, quit when told by E it was in process of withdrawing from U, was joining non-U E association and that if strikers returned to work they would be paid less than U wage scale and would not receive U benefits)

Remodeling By Oltmanns, Inc. **263 NLRB No. 169**
(unlawful constructive discharge of striker who quit when informed by other Ees that E which previously had memorandum agreement with U and had paid U wages and benefits, was withdrawing from U and was joining non-U E association and if strikers returned to work they would be paid less than U wage scale and would not receive U benefits; unnecessary for constructive discharge that striker be directly confronted by E and further E meant its terms to be transmitted to striker)

Documation, Inc. **263 NLRB No. 052**
(precipitately transferring U adherent who was admittedly excellent Ee to work under supervisor whom E knew he could not work with constituted constructive discharge)

The Martin-Brower Company **263 NLRB No. 025**
(voluntary resignation held to have been unlawful discharge where U adherent resigned in order to obtain good reference from E rather than be discharged on grounds of suspected theft as asserted by E)

Granite City Journal, Inc. **262 NLRB No. 140**
(Ee's quitting of her job held to constitute unlawful constructive discharge where she was subjected to almost daily pressures by E concerning her own U sympathies and with entreaties for her to spy on her co-workers; after a time, Ee reasonably could infer from E's comments to her that he had become suspicious of her own U predilections and was conditioning her continued employment on her willingness to spy on her fellow Ees' U activities; and choice E thus offered was sufficiently intolerable to cause Ee to resign which may be viewed as protesting against E's unlawful conduct)

Wolff & Munier, Inc. **262 NLRB No. 045**
(assuming arguendo, that Ees quit, rather than being discharged, E's conditioning their employment upon their abandoning Sec. 7 rights to engage in U activities was equivalent to discharging them outright for U activity)

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Fred Lewis Carpets, Inc. 260 NLRB No. 190
(forcing U adherents to quit by making them believe by various unlawful remarks that they would not be welcome as Ees if they continued to support U, violative, where, notwithstanding E's offering Ees their former jobs back, such remarks were not withdrawn and remained conditions for reinstatement and continued employment)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(U member who stopped working because work was too heavy for her held to have been constructively discharged in violation of Act where E demonstrated anti-U motivation, particularly in statements, found unlawful herein, which E made to Ee; and the intolerable conditions consisted of the heavy work which Ee was unable to do and which no women had been asked to do before)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(Ee who quit because she could not work newly offered shift due to young child at home held constructively discharged in violation of Act where E sought to replace Ee so that there would be one less U supporter in bargaining unit, E's offer of different shift with 50 percent less worktime was no offer at all; while E has no duty to accomodate special personal needs of Ees, E's motivation was clearly expressed by statements he made to Ee and by intolerable conditions he created in order to force Ee to quit)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(U member who quit because she refused to accept changes made by E, who was engaged in conduct to undermine U, in her working conditions involving change in shifts, reduced number of work days, and work in another city held constructively discharged in violation of Act for refusing to accept unilateral change in her working conditions)

G.T.A. Enterprises, Inc. d/b/a **Restaurant Horikawa** 260 NLRB No. 029
(Ee who was leader of U campaign not constructively discharged when he resigned 2 weeks after election where reason behind resignation was loss of election by U and not E's harassment of Ee as harassment, though unlawful; was not so egregious as to cause him to quit and also lengthy hiatus between end of harassment campaign and resignation)

General Baptist Nursing Home, Inc. 259 NLRB No. 132
(changing working schedule of known U adherent which affected her car pool and possibly her ability to get any transportation to work, as result of which she resigned, held to constitute unlawful constructive discharge)

Holiday Inn of Santa Maria 259 NLRB No. 089
(inducing Ee to resign by substantially reducing his hourly wage rate because he consulted with U concerning dispute over amount of overtime compensation due him, violative)

La Mousse, Inc. 259 NLRB No. 007
(E's calling immigration service to conduct raid to investigate which Ees were undocumented aliens 2 days before election held unlawful constructive discharge of illegal alien Ees because they supported U)

F.M.L. Supply, Inc. 258 NLRB No. 083
(U Ees who quit their employment, in response to E's announcement that E was going *non U* and E asking Ees how they felt about it, held to have been constructively discharged, since E's conduct in support of statement were onerous changes in Ees' working conditions; E hired non U Ees to do work of U Ees and told Ees to *give up U or give up work*)

J. D. Candler Roofing Company, Inc. 258 NLRB No. 053
(constructive discharge where Ees left their employ because E was changing its status to non-U, and Ees would not have been able to maintain their U membership and continue to work for it)

Maidsville Coal Co., Inc. 257 NLRB No. 148
(Ee who quit after being continually harrassed about his U activities and then physically threatened about them to point that he became physically ill constructively discharged)

Whitehall Packing Company, Inc. and W.P.C., Ltd. 257 NLRB No. 043
(Ees were locked-out and not constructively discharged where plant remained intact and could have resumed operations at any time; moreover, E did not hire any replacements for plant)

Hayden Electric, Inc. 256 NLRB No. 194
(E's failing to offer reinstatement to Ees at correct rate of pay and making clear that it had no intention to offer reinstatement to any of its Ees at correct rates constituted unlawful constructive discharge)

S. Freedman Electric, Inc. 256 NLRB No. 068
(Ees who quit after E informed them that it was going *non-U* would not bargain with U, would discontinue contributions to pension plan, change overtime pay plan, advertised for non-U Ees, were constructively discharged)

Jack Thompson Oldsmobile, Inc. 256 NLRB No. 034
(Ee's quit held constructive discharge where he was faced with alternative of quitting or accepting enforcement of unlawful unilateral change)

K & S Circuits, Inc. 255 NLRB No. 163
(forcing reinstated U adherents to resign by subjecting them to onerous working conditions, violative, where Ees were assigned to newly-formed third shift, isolated from other Ees, required to file as new applicants for work, made to work w/o stools at their workplace, subjected to newly-installed written warning system, lost overtime hours, and had their regular hours reduced; furthermore, one Ee was ridiculed for inability to perform unfamiliar job functions and other Ee was interrogated about U matters)

K & S Circuits, Inc. 255 NLRB No. 163
(no violation where, although U adherent quit job primarily because of his personal dislike for E and secondarily because E unlawfully assigned Ee to new shift, he worked new shift for two days and quit w/o giving reason)

K & S Circuits, Inc. 255 NLRB No. 163
(U adherent's quitting upon E's request for physician's excuse after he left work ill and brought up possibility of noxious effect of chemicals being used upon himself, not unlawful, where E's requirement of physician's clearance was neither illogical nor unreasonable)

K & E Bus Lines, Inc. 255 NLRB No. 127
(refusal to accept less desireable and less frequent employment where change in status due to U adherence)

Jax Mold & Machine, Inc. 255 NLRB No. 129
(transferring Ee to shift that E knew was unacceptable held constructive discharge in view of timing, various reasons given for transfer and strong anti U animus)

K-Mart Corporation 255 NLRB No. 112
(violation where leading U adherent was pressured into quitting by E's continuous harassment such as following her and other Ees around store even on nonworking time, prohibiting Ee from freely leaving office and unlawfully issuing pretextual disciplinary warnings)

Association of Apartment Owners of The Whaler on Kaanapali Beach 255 NLRB No. 019
(E who assigned U adherent maintenance work rather than his usual repair work, reduced his hours more than Ee desired to be reduced, conditioned his employment on hourly pay cut constructively discharged Ee)

Newport News Shipbuilding & Dry Dock Co. 253 NLRB No. 072
(Ee found to have quit rather than have been constructively discharged for U activity where after period of light duty due to injury, she was transferred back to her own more onorous position; Ee was fully healed, other Ees performed same work, and Ee had originally asked to be placed in that position)

Polly Lingerie, Inc. and Argus Lingerie Corp. 252 NLRB No. 033
(outspoken U supporter held constructively discharged where she quit her employment after E's owner, who had demonstrated U animus, subjected her to continued harassment, including giving her peculiar assignment, guarding her at work urging her to leave, telling her E would never fire her, and admonishing another Ee to listen to what was said, so that E would have a witness of whatever was going to happen)

Maywood, Inc. 251 NLRB No. 139
(violation where E cancelled U advocate's status as leadperson trainee, ended his chances of wage increases or advancement, cursed him, revoked his promised wedding leave, and invited him to quit if he did not like it)

Maywood, Inc. 251 NLRB No. 139
(no constructive discharge where Ee who reported herself absent because she was ill with stomach cramps and did not return to work or call in again, was terminated 8 days after date on which she reported sick; plant rule provided for termination after 3 consecutive days' absence w/o reporting in)

Maywood, Inc. 251 NLRB No. 139
(violation where E, in retaliation against Ee for engaging in U activities, transferred her to more onerous job of working on core tables all day long in expectation that she would quit, and she quit when she *couldn't handle it because it was too hard*)

Coating Products, Inc. 251 NLRB No. 170
(transfer of U adherent to less desireable job on night shift which E knew he could not take because Ee already worked at another night job, violative)

Meatcorp (Formerly Seymour Packing Division of Seymour America, Inc.) 251 NLRB No. 047
(refusing to allow to return to work Ees who had walked off job to protest reduction in piecework rate violative and in effect constructive discharge)

La Habra Dodge, Inc. 251 NLRB No. 081
(held voluntary quit and not constructive discharge notwithstanding painter's helper in accordance with industry custom assumed he too was terminated when E discriminatorily discharged painter with whom he worked as E never discharged helper and E was his E and not painter)

Flippo's and Company, Presnell & Stowe Tank Company, Presnell & Stowe Welding Company, Inc. 250 NLRB No. 148
(E's offer of janitor's job or nothing to U adherent-welder upon latter's refusal to sign application containing non-competition clause when company was sold held constructive discharge and unlawful, E inquired into U adherent's U membership and later said he knew that latter had called the U but was not going to discharge him because E knew that he would go to Labor Bd)

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Logan Coca Cola Bottling Company 250 NLRB No. 164
(E's insistance that U adherent with back injury had quit his job rejected and held constructive discharge where Ee was injured on job, notified E, saw physician and received workman's compensation)

Cumberland Farms Dairy, Inc. 250 NLRB No. 140
(violation where E discharged one U activist, laid off another and constructively discharged three more by revoking their reinstatements because of their U activities; E had stated that one activist was being discharged for starting the U in the warehouse)

Magnesium Casting Company, Inc. 250 NLRB No. 107
(unlawful constructive discharge not established in absence of intolerable working conditions and unlawful motive where, although Ee may have been given less overtime and less desirable work, her personal problems triggered her sudden decision to quit)

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 083
(Ee's quiting held unlawful constructive discharge where E induced Ee to quit because of her striking and U activity subsequent to her reinstatement; harassment, vandalism, and obscenities inflicted upon Ee had management sanction and were meant to punish Ee for striking and other U activity and were so offensive and recurring as to make Ee's work situation intolerable)

Henry A. Young, d/b/a Columbia Engineers International 249 NLRB No. 144
(violation, where E's owner vehemently denounced U after U claimed majority and then shut down job, informed Ees that anyone who wanted to stay with him could contact him that night and at same meeting asked which Ees had signed cards for U, since Ees reasonably lead to believe that they were faced with choice between continued employment w/o U or no employment at all)

Don Pizzolato, Inc. 249 NLRB No. 136
(Ee offered reinstatement after discriminatory layoff to inferior position constructively discharged)

Bell of Mississippi, Inc. 249 NLRB No. 119
(violation where E provoked U adherent to quit by assigning her to department where she was isolated from other Ees and kept idle for lack of work)

Cable Vision, Inc. 249 NLRB No. 063
(assignment to stand-by position of known U activist hired as installer with understanding that as installer he would not have to work standby position held unlawful as discriminatory assignment and constructive discharge where E knew that assignment would interfere with Ee's outside work and E quit as result

Lyman Steel Company 249 NLRB No. 040
(U adherent's quitting job, not only because E denied Ee's vacation request, but also because of E's implicit rejection of Ee's plea for security at his work station, held *constructive discharge*)

R. N. Beard Company 248 NLRB No. 016
(constructive discharge of Ee to whom E offered wage rate lower than that provided for in U contract, unlawful, where Ee quit rather than relinquish statutory right to be paid in accordance with contract; fact that Ee intended to leave E's employment in future is no defense where decision to quit was hastened by his being compelled to accept lower wage rate contrary to his statutory right)

General Meats, Inc. 247 NLRB No. 153
(harassment and assignment to less desirable job of Ee who asked critical questions at E sponsored meeting called to discuss profit sharing plan, found violative and her subsequent quitting found constructive discharge)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. 247 NLRB No. 136
(Ee's resignation resulting from E's refusal to reduce Ee's hours to accomodate his school schedule contending there were no part-time positions available and citing Ee's absenteeism record constituted unlawful constructive discharge where E's actual reason was Ee's recent support of U)

Sullivan Transfer Co. 247 NLRB No. 117
(E's change in method of assigning work which resulted in constructive discharge of Ee violative where motivation was U's demand for compliance with wage provisions of contract and not presence of jurisdictional dispute)

Leyendecker Paving, Inc. 247 NLRB No. 019
(absent evidence that Ee had specific function in E's employ, assignment to different work because of which Ee quit did not constitute unlawful constructive discharge, where assignment was not caused by Ee's U activities of which E had no knowledge)

McCormick-Boyett Plumbing Company JD-(ATL)-93-81
(unlawful constructive discharge where Ee, who was being paid U wage scale and benefits under multi-E bargaining agreement, stated he had no choice but to leave E upon being informed, after E's untimely withdrawal for multi-E bargaining, that E would have to run non-U shop because it had to cut down on wages in order to show profit, and that Ee would have to take considerable wage cut)

Medi-Mart, A Division of Stop & Shop Company, Inc. JD-314-81
(scheduling part-time student Ee and U sympathizer to work two consecutive Saturdays and forcing her to choose between quitting and cheerleading held not constructive discharge as he was short-handed and needed her those days)

Haym Salomon Home For The Aged, et al., d/b/a Lawton Life Extension Organization JD-(NY)-78-81
(forcing long-term Ees to file applications as new Ees, thereby affecting seniority and other terms of employment, constituted unlawful constructive discharge)

Scoggin, Inc. JD-433-81
(E's reduction in work week of U adherent who testified in Bd hearing thus causing adherent to leave employ of E, not unlawful constructive discharge, since reason for reduction in hours was financial situation of E rather than U activity)

North Oak Chrysler Plymouth 283-81
(E's repeatedly telling U adherent that E did not intend to have U and that if U were brought in, E would make life miserable for Ees and either replace or discharge them, and thereafter subjecting Ee to less desirable work assignments which caused him to leave, violative)

McMillan Cartage, Inc. JD-(ATL)-48-81
(telling Ee that if he wishes to work he must work under E's letter agreement rather than U's association contract held constructive discharge)

District 30, United Mine Workers of America (Beth-Elkhorn Corporation) JD-19-81
(U held to have caused constructive discharge, in violation of Sec. 8(a)(3), of nonmember of U because of unbearable pressure he experienced, where he knew he was reason for work stoppage, was verbally and physically abused at U hall, received threatening phone calls, was told by U officers that he had taken U member's job and other Ees would not work with him and that he might as well quit, and E finally invited him to do so)

Magic Mountain Corporation JD-337-80
(former ski patrol member constructively discharged where he clocked out upon his refusal to continue working in sewage bins, which job was assigned to him due to E's animus towards him for his U activity and filing charge with Bd)

K-P Graphics, Inc. d/b/a Impression Northwest JD-(SF)-187-80
(strikers who failed to return to their jobs by deadline set by E and who were replaced by E held to have been *constructively* discharged)

Albertson's Inc. JD-(SF)-104-80
(no constructive discharge, in the absence of an alleged calculated plan of harassment to cause Ee to quit)

Newspaper Printing Corporation JD-283-80
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)
(Ee's resignation held unlawful constructive discharge where Ee, who was off-hour musician, resigned upon being assigned standby duty for emergency services and there was significant improper motivation for such assignment in view of prior nonassignment of Ees having limited technical abilities such as Ee's; E's knowledge that Ee's musician's job and standby duty were incompatible; Ee's important status in U and strike activities; assignment 3 days after strike ended; and E's U animus; and E thereupon failed to meet burden of proving that it had a good reason, sufficient in itself, to make the assignment)

Electric Machinery Company v. N.L.R.B. 653 F.2d 958 (C.A. 5, Aug 1981)
(Ees who quit their employment after first bargaining session and following E's proposals for new contract, were not constructively discharged, since they were informed by their own U officers to remain on job even if U and E had not yet arrived at agreement for new contract when current contract expired; U and E were still negotiating; facts did not support inference that E acted with anti-U animus)

N.L.R.B. v. Haberman Construction Company 641 F.2d 351 (C.A. 5, Apr. 1981)
(Ees who resigned in response to E's decision to go *open shop* and to cease payment of contractual benefits held constructively discharged; while it is unnecessary to decide whether cessation of benefit payments alone creates *intolerable conditions* sufficient for such finding, *open shop* announcement forced Ees to choose between quitting or continuing in face of E's unlawful repudiation of its bargaining obligations; quitting in such circumstances constitutes constructive discharge and, since E's conduct was inherently destructive of important Ee rights, no *proof* of anti-U motivation was required)

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N.L.R.B. v. Haberman Construction Company 641 F.2d 351 (C.A. 5, Apr. 1981)

(E's contention that constructive discharges as result of Ees' resignations due to E's unlawful conduct should not be found unlawful because U contract contained grievance procedure, rejected, since contractual remedy does not deprive Bd of jurisdiction to condemn conduct which constitutes ULP)

N.L.R.B. v. Haberman Construction Company 641 F.2d 351 (C.A. 5, Apr. 1981)

(E's contention that constructive discharges as result of Ees' resignations due to E's unlawful conduct should not be found unlawful on ground Ees should have remained on job to *mitigate* E's liability, rejected, inasmuch as such argument is completely frivolous since it is totally at war with constructive discharge doctrine; E may not impose intolerable conditions in his work place and expect his Ees to remain and acquiesce)

N.L.R.B. v. Ridgeway Trucking Company 622 F.2d 122 (C.A. 5, 1980)

(based on test of whether Ees could reasonably infer from E's language that they were discharged, ct found that Ees were constructively and unlawfully discharged for protected strike where they indicated that they believed they were discharged by requesting their paychecks, removing their belonging from E's trucks and going to an attorney; if E had believed they were quitting, he reasonably should have asked about their intentions)

N.L.R.B. v. Haberman Construction Company 618 F.2d 288 (C.A. 5, 1980)

(constructive discharge by E's creation of intolerable working conditions when it ceased paying contractual benefits; conduct was inherently destructive of Ee rights)

Motor Inn of Perrysburg, Inc. d/b/a Holiday Inn of Perrysburg v. N.L.R.B. 647 F.2d 692 (C.A. 6, May 1981)

(E's imposition, after U had lost two certification elections, of so-called *captain system* and *revised captain system* which changed working conditions and method of compensating waiters and waitresses, not violative where new systems, although unpopular with some Ees, were no basis for constructive discharge, and were imposed equally upon all Ees, not only U sympathizers; E's motive was to increase sale of food and lack of discrimination detracted from E's anti-U animus)

Jack Thompson Oldsmobile, Inc. v. N.L.R.B. 684 F.2d 458 (C.A. 7, July 1982)

(establishing constructive discharge requires E's challenged conduct to be so intolerable that Ee is forced to quit and that the conduct be undertaken with intent to encourage or discourage U membership)

Jack Thompson Oldsmobile, Inc. v. N.L.R.B. 684 F.2d 458 (C.A. 7, July 1982)

(since E's rule requiring 50% reduction in salesmen's commission for failure to *turnover* purchaser to E's business manager for dealer financing and insurance was not sustained as unlawful, same result was reached regarding conclusion that the rule constituted so intolerable a working condition that it forced salesmen to resign)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. 672 F.2d 592 (C.A. 7, Feb. 1982)

(E's letter to INS held constructive discharge as this letter was motivated by anti-U animus and was proximate cause of Ees' leaving U.S.)

Western Pacific Roofing Corporation v. N.L.R.B. 669 F.2d 1352 (C.A. 9, Feb. 1982)

(Ees who, because they wanted to remain in U, quit when E-member of association unlawfully refused to be bound by contract negotiated by association with U held constructively discharged in violation of Act)

N.L.R.B. v. Tricor Products, Inc., and/or C & J Pattern Co. 636 F.2d 266 (C.A. 10, 1980)

(evidence supported Bd's finding of constructive discharge where Ee, upon return to work after a vacation, learned that new company, found herein *alter ego* of former company which it had absorbed, would not only be non-U but also would not pay U benefits contrary to owner's earlier promises; rather than work under such conditions, Ee quit)

Cartwright Hardware Company, Inc. v. N.L.R.B. 600 F.2d 268 (C.A. 10, 1979)

(constructive discharge under Act *comprehends at least two distinct elements: (1) E's motivation to discourage U activity or membership; and (2) Ee's resignation prompted by E-created intolerable conditions*; thus, forcing Ees to choose between working w/o rights guaranteed by Act or quit where E had unlawfully refused to bargain has been held unlawful constructive discharge since there is nexus between E's ULPs and Ees resignations)

Cartwright Hardware Company, Inc. v. N.L.R.B. 600 F.2d 268 (C.A. 10, 1979)

(ct held no unlawful constructive discharge where Ees who were U members quit, not because E imposed intolerable conditions but because they believed they could not under, U by-laws, work in open shop w/o sacrificing their U membership, where E did not know of bylaw provision and its allowing U shop provision to lapse was not motivated by U animus but by desire to hire more competent Ees than hiring hall had provided)

5073-1117 Discharge for cause

Pacific Telephone and Telegraph Company 262 NLRB No. 12

(discharge not unlawful where it was based on information other than that obtained during unlawful interview, namely misuse of company equipment and time, which was subject of interview but known to E before interview)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040

(discharge of U member who argued with E in loud and disruptive voice about her refusal to participate in E's insurance program and also protested E's failure to provide paycheck stub with salary deductions listed, not unlawful, since essential element of unlawful motivation was not present; Ee's actions subsequent to discharge of demanding her final paycheck and engaging in conduct so as to make E believe he was physically threatened indicate that she had greater responsibility for the incident; moreover, Ee was engaged in individual rather than concerted action)

Fibracon Corp. 259 NLRB No. 014

(discharge of leading U supporter because plant manager believed she was responsible for malfunctions and breakdowns of production machinery not violative, since, facts of case failed to establish hostility or opposition to U strong enough to conclude that E was willing to violate law by discharging Ee to keep U out of plant)

Henry J. Kaiser Company 259 NLRB No. 001

(discharge of Ee assertedly for being out of his work area and for nonproductivity held *not* unlawful, even though Ee had engaged in protected concerted activity, where Ee's claim that he had to use toilet facility because of diarrhea was rejected where Ee admitted his need was not imminent; he had ample time to take care of his needs before then; and his testimony was untrustworthy leading to conclusion that pique about overtime work, not physical illness, caused his unprotected action in refusing to work and defying foreman's instructions to go to work)

Brilliant Electric Signs, Inc. 258 NLRB No. 018

(discharge of Ee, U member, by his supervisor for not paying his U dues and who thought Ee, recuperating from work accident, had quit held violative where there was no basis to assume Ee's status had changed and no evidence that Ee had quit his employment with E)

Rose's Stores, Inc. 256 NLRB No. 076

(mere presence of possible valid reason (*bad attitude*) for discipline does not insulate discharge (*for protected activity*) if those reasons were not, in fact, reasons for discharge)

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company 256 NLRB No. 080

(E's requiring that its drivers take polygraph test about missing vending machine keys discovered in their trucks, suspending those who refused, and discharging those who failed test repeatedly held not unlawful retaliation for U organizing activity, in view of prior policy of administering polygraph tests, nondiscriminatory application of test-taking requirement, and fact that vending machines appeared to have been robbed by use of keys)

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company 256 NLRB No. 080

(discharge of U activist for hitting supervisor not unlawful, notwithstanding some provocation for dischargee's action)

K & S Circuits, Inc. 255 NLRB No. 163

(discharging U adherent for scrapping 8 boards in one work period, not unlawful, where there was no evidence that any other Ee had scrapped as many boards at one time and was not disciplined)

Stewart Granite Enterprises 255 NLRB No. 091

(discharge of U adherent, not violative where Ee's discharge was solely *for cause w/i* meaning of Sec. 10(c))

Five Star Air Freight Corporation 255 NLRB No. 066

(discharge of U advocates assertedly because one was unmarried woman and other was most undesirable Ee who did mediocre work in E's accounts receivable department, held violative, since *unmarried woman* argument was unjustified and other Ee had received very good to outstanding performance rating from her supervisor; defenses were contrived and incredible)

E.T.O. Corporation of Americana 254 NLRB No. 018

(discharge of guard, U adherent, because he was *not on his post* and was insubordinate to (assistant chief of security), not violative where guard's testimony that he was away (from his post) for 15-20 minutes could be considered excessive by E and record disclosed two prior incidents of discipline of Ees for leaving their post w/o permission)

Piezo Technology, Inc. 250 NLRB No. 122

(discharge of Ee not unlawful, notwithstanding his wearing of U button and U advocacy, where he had solicited on company time and had created two rather serious disturbances, in addition to threaten a fellow Ee)

Pork King Company, Inc. 252 NLRB No. 004

(E's discharge of driver of delivery truck, not unlawful where discharge was for abandoning E's truck at unauthorized stop and leaving keys on seat so as to permit theft of valuable quantity of E's products, rather than for actively processing Ee grievances against E as U shop steward: E's decision to follow driver, which resulted in his discovery of driver's abandoning truck,

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was due to legitimate concern about driver's work habits in light of his earlier record)

Wright Line, A Division of Wright Line, Inc. **231 NLRB No. 180**
(discharge, soon after U election, of known U advocate whom supervisors considered to be admirable Ee, assertedly for violating plant rule against *knowingly altering, or falsifying time cards and reports, as well as payroll records* violative where E had displayed considerable animus towards Ee it considered to be *U kingpin;* E never previously discharged any Ee for similar violation except two Ees found guilty of embezzlement and forgery respectively)

Blue Bird Body Company **231 NLRB No. 196**
(discharge of active U adherent for *goofing off* not violative where GC failed to prove by preponderance of evidence that discharge was motivated in whole or part by Ee's U activity)

Bullock's **231 NLRB No. 082**
(discharge of Ee assertedly for demoralizing E's personnel by having copies of performance reviews in her possession and discussing them with fellow Ees, not unlawful, where dischargee surreptitiously and wrongfully obtained and copied fellow Ee's review, disseminated reviews' contents to another Ee, advising latter that her review was unfavorable in comparison with others, and dischargee's remarks leading Ee to believe that her job could be in a precarious position support conclusion that dischargee's conduct had disruptive and demoralizing effect on E's personnel)

Hotel St. Moritz, Inc. **231 NLRB No. 015**
(no violation where E filed charges seeking discharge of hotel housemen's U delegate because of his threats and derogatory remarks to E when latter questioned his delegate status at E's meeting with lobby porter concerning porter's changing from membership in his own U to membership in delegate's U; accepting, *arguendo,* E's obligation to recognize and deal with delegate as representative of porter, who belonged to another U, delegate's actions were nevertheless so opprobrious as to render his conduct unprotected)

Magnesium Casting Company, Inc. **230 NLRB No. 107**
(physical assault upon supervisor held cause for discharge, where discharge was immediate and spontaneous reaction to attack, a normal reaction of supevisor with such authority, regardless of aggressor's U sympathies)

Central Freight Lines, Inc. **230 NLRB No. 063**
(discharge of truckdriver, prominent supporter of U, allegedly because he had too many accidents held violative where other Ees with poor driving records were transferred to work on loading dock rather than being discharged)

Neptune Waterbeds, Inc. **249 NLRB No. 168**
(no violation where active U adherent was discharged for solicitation on E's time, violence toward other Ees, and lateness; although other Ees' work records showed deficiencies, no other Ee was shown to have work-related problems in as many areas as dischargee)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(discharge of U advocate for falsifying work order 4 days prior to his termination, not violative notwithstanding Ee was discharged on same day he solicited for U; no evidence in record that anyone responsible for Ee's discharge knew that he engaged in U activity)

Raimund Corsun Co., Inc. d/b/a Rayser Co. **249 NLRB No. 078**
(no violation by discharge of two U adherents in pre-election period where discharge of one was for charging parts and labor on E's credit far in excess of amounts usually permitted and then failing to pay for them, and discharge of the other was for overordering parts for E and for covering up first Ee's overextension of credit)

Marriott In-Flight Services a Division of Marriott Corporation **249 NLRB No. 072**
(discharge of known U adherent for refusals to work overtime, insubordination, and delaying flight, not unlawful in light of cumulative infractions and progressive discipline)

Schwebel Baking Company **249 NLRB No. 005**
(termination of U steward held lawful for refusal of proper order to return to work during walkout over firing of fellow worker, rather than for his handling of discharged fellow worker's grievance as alleged)

Schwebel Baking Company **249 NLRB No. 005**
(discharge of U steward held lawful for assault on company official, rather than, as alleged, for carrying out his duties as U steward)

Bechtel Incorporated **248 NLRB No. 158**
(E's issuance of warning slips for Ees' quitting early and subsequent discharge for their refusing to sign warning slips, not unlawful since discipline was for Ees' insubordinate refusal to obey supervisor's direct order to comply with work rules while eschewing available contractual grievance process)

Landmark Beef Processors, Inc. **248 NLRB No. 041**
(discharge of lead person, who was U advocate, for single unexcused absence held not violative where E had demonstrated no anti-U animus and Ee held position of some responsibility for which she received higher pay than others)

North Cambria Fuel Company, Inc. **247 NLRB No. 176**
(termination of striking Ees for serious misconduct, not unlawful, where E reasonably believed that strikers were guilty of improper conduct in view of their gathering outside E's gates in contempt of ct injunction, damage done to suppliers' trucks by rocks thrown by Ees and subsequent guilty pleas in ct to charge of disorderly conduct)

International Medication Systems, Ltd. **247 NLRB No. 190**
(discharge held for cause where Ee was not exemplary Ee even though timing of discharge, one month after Ee testified adversely to E in Bd proceeding, may appear suspicious; mere suspicion cannot substitute for ULP)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(dismissals and other disciplinary action taken against U supporters for various asserted reasons, not unlawful, where Ees' U activities were slight and took place long before events leading to disciplinary action occurred, and E's treatment of Ees was in accordance with its policy and was not unreasonable in the circumstances)

Krister Coal Company, Inc. **247 NLRB No. 049**
(discharge of oiler, alleged U adherent, for failing to properly oil machinery and malingering on job not violative where Ee's only U activity was singing a U song and Ee's predecessor in job was discharged for identical reasons)

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(reprimand and discipline of Ee on two separate occasions held not unlawfully motivated by desire to retaliate against Ee for his efforts through U on behalf of fellow Ee, where reliability of Ee's recollection of events was suspect, valid basis for reprimands existed, and circumstances upon which reprimands and discharges were based did not support conclusion that they were based on unlawful reasons)

Ryland Building Systems, A Division of The Ryland Group, Inc. **JD-282-82**
(discharge of Ee not violative, notwithstanding his U activities, E's knowledge of same, timing of discharge, and E's anti-U animus, where precipitating cause of discharge was fact that two of Ee's fellow workers sought transfers out of shipping department because he and another Ee were not carrying share of that department's workload)

Power Contractors, Ltd. **JD-(SF)-109-82**
(discharge of all U electricians comprising work force at jobsite and replacing them with work force drawn from non-U phase of operations, not violative where U electricians engaged in tacit refusal to work at rate and proficiency commanded by their craft status; to counter this impermissible conduct, E acted defensively to achieve work force necessary to meet approaching deadlines and demands of job)

U. S. Gypsum Company **JD-(ATL)-28-82**
(discharge of leading U advocate assertedly because Ee lacked skills and ability to perform his work and required constant supervision, violative where discharge followed shortly after manager's unlawful anti-U speech; Ee was not given disciplinary warning before discharge as was E's custom; other Ees who had received disciplinary warnings were not discharged; and E's records showed that Ee was performing well and had been granted wage raises for his work)

Flambeau Micro Company **JD-30-82**
(discharge of Ee not unlawful where he was fired mainly, if not entirely, for threatening jobs of all Ees if he did not get 100% cooperation from them in signing U cards; other factors such as his poor work performance and his sexual harassment of co-worker may have played minor role, but fact that he was seeking to unionize E was not even a minor factor)

Modular Designs, Inc. **JD-(SF)-271-81**
(no violation where new manager's course of conduct involving oral and written reprimands which eventually lead to discharges was motivated by desire to improve efficiency and started when he obtained authority to run plant at least a month prior to U organizing campaign)

Packer Plastics, Inc. **JD-(SF)-168-81**
(E met burden of showing that Ee would have been terminated even in absence of his U activity where E showed that Ee not only started and left work early contrary to instructions but did so w/o notification, permission, or excuse; moreover he misled E into thinking he had not clocked in early and failed to service important customer by leaving early)

Hayes International Corporation **JD-(ATL)-39-81**
(discharge of U activist, not unlawful where Ee had been warned about possibility of discharge for refusing to obey supervisory instructions but continued to be insubordinate)

Sprinkmann Sons Corporation of Illinois **JD-763-80**
(discharge of non-U Ee held, not unlawful, notwithstanding U member, hired after non-U Ee started work, was retained, where at non-U Ee's request, E had given him a 10-day vacation instead of discharge slip Ee asked for; thereafter, due to unexpected decrease in number of journeymen on job, E did not need as many helpers such as non-U Ee for job, E made

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selection for termination on basis of job needs, and E had extended no favoritism to Ees because of U membership as evidenced by earlier lay off of two U members)

Browning-Ferris Industries of Ohio and Michigan, Inc. JD-(SF)-313-80
(discharge of U steward and other Ee not unlawful, notwithstanding fact that U steward was in process of attempting to secure paycheck for other Ee at time of discharges, where Ees invited E outside to fight, repeatedly threatened to beat him up and persisted in obscene threats and gestures)

Nashover Trailer Manufacturing Company JD-286-80
(discharge for cause in view of Ee's attempted fraud of work time; blatant infraction of rule regarding Ees' use of scrap metal, both as it related to use of material for own purposes and taking of material from plant; and Ee's threats against supervisors)

Cedarwood Care Center JD-(SF)-315-79
(walking off job w/o complying with order to report to supervisor proper grounds for discharge)

N.L.R.B. v. Cumberland Farms Dairy, Inc. 674 F.2d 943 (C.A. 1, Mar. 1982)
(discharge of U activist for fighting with supervisor, not unlawful)

N.L.R.B. v. Cumberland Farms Dairy, Inc. 674 F.2d 943 (C.A. 1, Mar. 1982)
(where director of E, w/o investigating reason for discharges of U activists reinstated them and then changed his mind and terminated them after finding out that they had been discharged as result of fight with supervisors, Bd's finding that second termination was due to anti-U animus held not supported by evidence, since supervisors objected to reinstatement on basis of legitimate hostility toward Ees, and director decided not to overrule them)

N.L.R.B. v. Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant 646 F.2d 706 (C.A. 1, Apr 1981)
(discharge of two U adherents assertedly for low productivity violative, where although plans had been made to fire some Ees for inefficiency, E failed to substantiate claim that U adherents herein fell into that category; and E had warned these Ees about their U activity two days before their discharge)

North Cambria Fuel Company, Inc. v. N.L.R.B. 645 F.2d 177 (C.A. 3, Apr 10, 1981)
(discharging striking Ee for alleged involvement in rock-throwing incident which damaged truck, violative, where Bd found that Ee had left scene prior to incident)

Burlington Industries, Inc. v. N.L.R.B. 680 F.2d 974 (C.A. 4, June 1982)
(discharge not unlawful where during U campaign Ee, who had been warned to stay out of other departments, made trip through another department which was not work related, was given 4th reprimand in year, and was discharged pursuant to E's policy)

N.L.R.B. v. Wilker Brothers Company, Inc. 652 F.2d 640 (C.A. 6, June 1981)
(discharge of Ee not for U activities, but for not being very good worker and always being reprimanded, including being written up in three reports w/i 2 weeks of discharge date)

N.L.R.B. v. Allen's I.G.A. Foodliner 651 F.2d 436 (C.A. 6, May 1981)
(discharge of leading U advocate, whom supervisor said was *good* and *dependable* worker for 8 years prior to U campaign, assertedly because of *business retrenchment* and Ee's poor performance held violative, since Ee was never recalled when subsequent increase in (E's) business necessitated hiring several new Ees and only w/i year prior to discharge did E find fault with Ee)

N.L.R.B. v. Campbell 66 Express, Inc. 609 F.2d 312 (C.A. 7, 1979)
(Ee's discharge not violative since there was *more than convincing* evidence that E had good reason to discharge him, and there was no substantial evidence of anti-U animus)

Golden Day Schools, Inc. v. N.L.R.B. 644 F.2d 834 (C.A. 9, May 8, 1981)
(discharge of U advocates assertedly for disparaging E, inducing parents to withdraw their children from E's day-care center and unsatisfactorily performing their work, violative where discharge followed immediately upon U organizing activity and E's anti-U bias was amply supported by record; false assertions of lawful purpose support inference that declarant's motive was unlawful)

5073-1120 Eviction from work by fellow employees

5073-1120-0000 *Acquiescence by employer*

F.W.I.L. Lundy Bros. Restaurant, Inc. 260 NLRB No. 097
(discharge of U committeeman because other Ees would not work with them, violative)

5073-1142 Impression of discharge conveyed to employee and acquiesced in by employer equivalent to discharge

Lucid Printing, Inc. 264 NLRB No. 099
(unlawful discharge where E's production manager informed U adherent who had been ordered to work night shift that he had quit when Ee handed production manager letter stating he had been hired for day work and requesting that E find another Ee to work night shift)

Famous Supply Company, Inc. 256 NLRB No. [illegible]
(paycheck covering all hours worked enclosed with letter to economic striking Ees that E expected them at work on Friday, usual payday, held reasonably construed by Ees as discharge if they failed to return since check was not sent in normal course of business)

Nevada County Publishing Co., d/b/a The Union 251 NLRB No. 140
(nonsupervisory assistant foreman held to have been unlawfully discharged, where, after he indicated he wanted to step down as assistant foreman, E paid Ee on next day for his accrued vacation pay, as well as his regular pay, but made no allowance for severance pay and Ee was under impression he had been fired)

Sentry Investigation Corp. 249 NLRB No. 120
(Ee discharged rather than quit or suspended where he was asked to turn in his badge, gun and uniform, and E never notified Ee he was suspended but only raised possibility of suspension in brief to Bd; *there may be discharge even in absence of words; where such can be reasonably inferred from circumstances*)

5073-1156 Notice of termination to unreplaced economic strikers

Sadloff Publications, Inc. 265 NLRB No. 120
(no unlawful coercion or discharge of strikers where they were notified by letters that they had been permanently replaced, notwithstanding contention replacements had not been hired when letters mailed, since replacements had received commitments of hire or had been hired when letters received by strikers)

N.L.R.B. v. Proler International Corporation 635 F.2d 351 (C.A. 5, 1981)
(no discharge where E's vice-president informed Ees who had walked off job to protest working conditions that Ees would lose their jobs unless they returned to work by a certain time absent evidence E or Ees considered Ees discharged, no final checks or termination notices sent)

5073-1162 Notice of termination to employees in layoff status

Earle Industries, Inc. 260 NLRB No. 163
(E's failure to reinstate U adherents who were temporarily laid off prior to first election for lack of work and failure to meet E's production standards, and then, prior to second election, conversion of such layoffs to permanent layoffs held violative where Ees were not advised of E's production standards and other Ees, who did not meet standards were retained in their jobs; customarily, Ees temporarily laid off for lack of work could expect to have been recalled when work picked up)

5073-1164 Notice of replacement to ULP strikes

Cooperativa De Credito Y Ahorro Vegabajeña 261 NLRB No. 161
(E's discharge of *all* ULP strikers held violative, since *all* strikers were terminated *prior* to being replaced)

Inta-Roto, Inc. 252 NLRB No. 111
(ULP strikers who were unlawfully notified that they had been permanently replaced found not violatively discharged because despite this notification, no evidence to show that request for reinstatement would be *utterly futile* and Ee required to request to be reinstated)

K-P Graphics, Inc. d/b/a Impression Northwest JD-(SF)-167-80
(strikers who failed to return to their jobs by deadline set by E and who were replaced by E held to have been *constructively discharged*)

N.L.R.B. v. Lyon & Ryan Ford, Inc. 647 F.2d 745 (C.A. 7, Apr 1981)
(E unlawfully discharged ULP strikers when it sent them letters indicating they would not be recalled)

5073-1166 Refusal to permit rescission of resignation

General Baptist Nursing Home, Inc. 259 NLRB No. 122
(refusing to permit U adherent to withdraw her resignation from work, herein found to constitute unlawful constructive discharge, unlawful, where E refused retraction of resignation on ground that Ee quit, and treatment afforded Ee contrasted starkly with treatment of another Ee who was taken back after leaving employment)

5073-1170 Pretext

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric 265 NLRB No. 280
(discharge of known U adherents assertedly for number of reasons variously applicable to each one (work attitude, tardiness, customer complaints, unsa-

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thorized purchases, deficient work performance, business retrenchment) held unlawful, since E's multiple reasons were not true ones and its real motivation was Ees' U activities; record warrants conclusion that E was attempting to substitute *good reasons* for *real reasons*; and E's citation of multiple reasons to justify dismissals reflected E's determination to marshal congeries of pretexts whereby patently unlawful motive might be concealed)

Hudson Oxygen Therapy Sales Company 264 NLRB No. 084
(overreaction by E in disciplining Ee for violating work rule, even if valid, especially when rule had not been evenly enforced or necessary to maintain production standards, supports inference that Ee's violation of rule has been seized upon as pretext, and is supported only by invidious and discriminatory motive)

English Coal Company, Inc. 263 NLRB No. 165
(discharge of Ee violative where E believed Ee was participating in protected concerted activities inasmuch as E was required to rehire Ee on preferential basis pursuant to formal settlement agreement in earlier ULP case; contention that Ee was discharged because of his inability to operate loader rejected as pretextual)

Import Body Shop, Inc. 263 NLRB No. 150
(discharge of Ee because of his refusal to relinquish his reliance upon U as his bargaining agent, and his refusal to work upon E's terms during time when U still was representative of shop's Ees violative, notwithstanding E's claim that it discharged him for intentionally damaging hood hinges of automobile he was repairing, where such reliance was pretext designed to allow E to escape consequences of its prior unlawful discharge)

United Plastics, Inc. 261 NLRB No. 181
(upon reconsideration *sua sponte* before commencing enforcement proceedings, Bd again found violation where E's president discharged Ee upon being told that Ee had not done his work and that, when asked why by a fellow Ee, dischargee had mentioned that he had a U card or was member of U; Bd found one instance of Ee's failure to complete a work assignment was pretext put forth by E to justify discharge in view of E's president's repeated and vehement statements to dischargee and other Ee about dischargee's U involvement, and his other anti-U statements)

United Supermarkets, Inc. 261 NLRB No. 179
(ALJ's statement that by Bd's decision in *Wright Line Bd has obviated the 'perceivable significance' between pretext and dual motive cases* held overly broad; see *Limestone Apparel Corp.*, 255 NLRB No. 101)

University Townhouses Cooperative 260 NLRB No. 187
(discharge of active U adherents allegedly for drinking beer on job and allowing an unauthorized person in shop, violative, where reasons for discharges were pretextual in light of E's condoning drinking on numerous occasions before and after U campaign, rule against unauthorized personnel in shop was virtually never enforced and former summer Ee who was in shop to inquire about future summer employment could hardly be deemed an *unauthorized person*)

Kenco Plastics Company, Inc. 260 NLRB No. 194
(terminating U adherent for use of obscenity during preelection campaign period, violative, where, contrary to E's progressive disciplinary system, E had seized incident as pretext to discharge Ee after one warning)

Bark Studios, Inc. 260 NLRB No. 044
(discharge of U adherent violative where E's asserted reason for *lay off* was entirely pretextual and Ee was discharged in retaliation for his U activities and also for purpose of conveying chilling message to other Ees who had voted for U)

Magnesium Casting Company 259 NLRB No. 064
(E's economic reasons for layoff not pretextual where reasons existed in fact and were relied upon by E who established need for layoff in department where charging party was least senior and least experienced Ee)

American Geri-Care, Inc. 258 NLRB No. 147
(discharging U adherent who had appeared at Bd hearing for allegedly leaving sick patient in her care, violative since E's reason for discharge was pretext where Ee actually gave proper care to patient and was subsequently given permission to leave to attend ill mother)

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation 258 NLRB No. 143
(rescinding agreement to permit U adherent to continue to work after Ee renounced his intention to quit, violative, where E seized upon Ee's renounced intention as pretext to discharge him after his attendance at U meeting had been observed by at least two management officials)

Thurston Motor Lines, Inc. 257 NLRB No. 171
(discharge allegedly for lack of work, violative where E looked around for troublemaker after U filed election pin and E selected Ee because he was concurrently working part-time for U firm)

Grosse Company, Inc. 256 NLRB No. 103
(discharge of active U steward, violative, where E's contention that Ee was discharged for absenteeism was pretext)

Gulf Envelope Company 256 NLRB No. 098
(*while discipline may be extreme it does not follow asserted reason for discharge is pretextual*)

Castle Instant Maintenance/Maid, Inc. 256 NLRB No. 069
(ALJ application of *Wright Line* test to pretext case though unnecessary, did not alter correct result)

Town & Country LP Gas Service Co. 255 NLRB No. 144
(discharge of Ee allegedly for lack of work, violative, where E's asserted economic reason for discharge was pretextual, in view of record evidence showing no decline in E's sales and pattern *of* retaliation against Ee for his filing charges with Bd and successfully prosecuting grievance)

K & E Bus Lines, Inc. 255 NLRB No. 137
(discharge of U adherent who was school bus driver for congregating with other drivers during standby time and leaving bus while children in it, unlawful, where Ees had never previously been disciplined for congregating during standby time and two other adherents discharged that day; fact there were children on bus did not change nature of incident so as to require such severe penalty)

United Plastic, Inc. 255 NLRB No. 026
(discharge of Ee violative where, in light of E's strong U animus, its singular concern with Ee's U remark at time of discharge, and its shifting and inconsistent reasons for Ee's discharge, motivation for discharge was E's perception of Ee's U participation and asserted reasons were merely pretextual)

Iglue Corporation 254 NLRB No. 078
(E's assigned reasons for discharge of two Ees were so unpersuasive, unreasonable and unnatural and so far removed from any justifiability in terms of past practice that they mandated conclusion that they were pretextual; such considerations coupled with E's knowledge of Ees' U activity and their relationship to U organizer warrant further finding that the two Ees were discharged in violation of Act)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 087
(discharge of U advocate-waiter, who had served as interpreter for U organizing committee assertedly for error in his sign-in time on time sheet, violative, where time sheet was closely monitored by headwaiter and testimony of headwaiter and manager to effect they had no knowledge of U waiter's U activity, was discredited)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 087
(discharge of well known U adherent assertedly because he used profanity against restaurant hostess after he broke E's rule regarding seating customers held violative where reasons for discharge were fabricated and shifting)

Production Plated Plastics, Inc. 247 NLRB No. 076
(discharge of U adherent for pretextual reason of Ee using restrooms prior to his break, violative, where Ee had never been disciplined previously for using restrooms during working time, and record showed that fellow Ee had been given at least six warnings for same conduct w/o having been discharged)

Keister Coal Company, Inc. 247 NLRB No. 069
(discharge of U adherents allegedly because E was overstaffed and Ees were unqualified for their jobs held violative where record showed one of discriminatees held miner's card from State and E hired replacements for discriminatees who would have to be trained and schooled at E's expense)

Golan Apparel Corporation 247 NLRB No. 026
(discharge of Ee, unlawful, where E suspected Ee of being U adherent because of her association with other known U adherents, and E's excuse for discharge of low production was pretextual)

N.L.R.B. v. Clark Manor Nursing Home Corp. 671 F.2d 657 (C.A. 1, Feb. 1982)
(Bd's finding that U adherent was unlawfully discharged supported by substantial evidence where two prior oral warnings were given several weeks after causative incidents and contrary to E's past practice, and last warning for insubordination which resulted in Ee's discharge was held pretextual in view of complaining supervisor's lack of recall of essential details of incident)

N.L.R.B. v. Charles Batchelder Company, Inc. 646 F.2d 33 (C.A. 2, Mar 1981)
(when E's asserted justification is sham in that purported rule or circumstance advanced by E *did not exist, or was not, in fact, relied upon*, the reason advanced by E may be termed pretextual)

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)
(discharge of Ees, unlawful, notwithstanding E's contention discharges were for excessive absenteeism and that it was unaware of U activity at time of discharges, since reasons given are pretexts in view of timing, knowledge of U activities, and U animus)

Gould Incorporated v. N.L.R.B. 612 F.2d 728 (C.A. 3)
(fact discharge of U steward was affected or motivated in part because he had filed charges with Bd and other government agencies falls short of holding that he was discharged because of these activities; *where Ee's discharge is prompted by concurrent reasons, some permissible and some not, in order to support ruling of ULP Bd must find permissible reason proferred by E is merely pretext and that in fact Ee was disciplined because of anti-U sentiment*)

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Jeffrey Manufacturing Division, Dresser Industries, Inc. v. N.L.R.B. **654 F.2d 944 (C.A. 4, 1981)**
(E's rationale for discharge of key U organizer held pretext, in light of Ee's history of high production, summary procedure used to dismiss him, lack of conclusive evidence that he knew he had been reported three times and had been given final warning, and differing explanations given for his discharge)

Banding, Incorporated v. N.L.R.B. **583 F.2d 768 (C.A. 8)**
(illegality of discharge of leading U advocate assertedly because of his refusal to obey order to assist with heavy unloading work upheld where substantial evidence justified Bd's conclusion that asserted reason for discharge was pretextual; discharge was mixed motive firing; E's anti-U animus and other anti-U actions justified Bd's conclusion)

N.L.R.B. v. Berger Transfer & Storage Co. **678 F.2d 679 (C.A. 7, May 1982)**
(*If a causal relationship between discharge and protected activity is established, E is responsible under Act unless he sustains burden of proof. Furthermore, E's explanation need not be accepted if there is a reasonable basis for believing explanation is pretext for retaliatory action*)

N.L.R.B. v. Chem Fab Corporation **691 F.2d 1252 (C.A. 8, Nov. 1982)**
(ct held that Bd had sufficient grounds to conclude that E's asserted reason for discharge, discriminatee's alleged refusal to perform work when called upon to do so, was a pretext due to timing of discharge, E's anti-U comments, and E's knowledge of Ee's willingness to do milling job indicating E's unlawful motivation)

N.L.R.B. v. Chem Fab Corporation **691 F.2d 1252 (C.A. 8, Nov. 1982)**
(ct held that Bd reasonably concluded that alleged harrassment and insubordination incidents as reasons for discharging U adherent were pretextual)

5073-1184 Transfer to subcontractor

Liberty Homes, Inc. **257 NLRB No. 169**
(E contracting out over-the-road delivery of its mobile homes and discharging drivers who performed delivery, not unlawful, notwithstanding subcontracting implemented after U had demanded recognition, where E had begun exploration of subcontracting and reached decision to subcontract prior to Ees seeking U representation and in view of E's financial losses and large capital outlay which would be required for desired replacement of inefficient gasoline powered tractors with diesel tractors)

Tennessee Cartage Co., Inc. **250 NLRB No. 015**
(terminating work of truckdrivers and warehousemen during period of U campaign and using Ees of *Rent-A-Driver* service for such work held violative where action taken to avoid U at E)

5073-1200 For engaging in protected activity

Spring Valley Foods, Inc. **265 NLRB No. 182**
(discharge unlawful, since it was not for horseplay with fellow Ee as alleged but for U activities, where horseplay was condoned and participated in by management, and dischargee was *vociferous* supporter of U discharged day before election)

Fugazy Continental Corp.; Elite Services, Inc. **265 NLRB No. 165**
(E, together with purchaser of part of E's operations, held to have violated 8(a)(3), where purchaser was *alter ego* of E who engaged in sham purchase transaction herein in order to avoid its statutory obligations and to thwart Ees' successful organizational efforts, and discharge of Ees and refusal to reinstate them pursuant to such sham transaction was designed to retaliate against Ees for their U activities)

Hillside Avenue Pharmacy, Inc. **265 NLRB No. 205**
(discharge of Ee who initiated U's drive at E's facility and who E claimed had quit, unlawful, where E specifically asked Ee whether he had signed U card when U's representative visited E's place of business; E thereafter committed series of ULPs; and 2 weeks after U demanded recognition, Ee was terminated 2 hours before end of his workday; moreover, E told one Ee that *vengeful* person was trying to bring U in and E had placed want ad in newspaper for filling E's position)

London Chop House, Inc. **264 NLRB No. 085**
(threat to discharge, and discharge of bargaining committee member for distributing document informing fellow Ees, w/o authorization from committee, U, or E, about health care and other issues contained in proposed contract subject to Ee ratification, unlawful, since Act's protection is not lost because Ee opposed U while holding official position in U; Ee, who believed that distribution would result in rejection of contract, engaged in protected activity of opposing U which was *concerted* even though E acted alone; and fact that E initially supported, but later opposed, ratification is irrelevant and was not ethically and morally reprehensible)

Interior Alterations, Inc. **264 NLRB No. 098**
(discharging Ees for protesting assignment of contractual unit work to non-unit Ees, violative)

De Queen General Hospital **264 NLRB No. 069**
(E's treating U adherent's request for part-time work as resignation and terminating her employment, violative where decision was made in retaliation for Ee's support of U)

Washington Beef Producers, Inc. **264 NLRB No. 188**
(discharging Ee who attempted to cause a walk out over refusal to process frozen beef, violative, where processing frozen beef is considered unsafe and therefore, instigating protest over such work is protected concerted activity)

Union Mining Company of Allegany County, Inc. **264 NLRB No. 082**
(discharging Ee for filing grievances with U and voicing complaints about contract violations regarding work assignments and overtime, unlawful)

Milton J. Garon and Richard B. Bergman d/b/a Autoglass and Upholstery Co. **264 NLRB No. 122**
(discharge of Ee who arranged for Ees meeting with U, unlawful)

English Coal Company, Inc. **263 NLRB No. 168**
(discharge of Ee violative where E believed Ee was participating in protected concerted activities inasmuch as E was required to rehire Ee on preferential basis pursuant to formal settlement agreement in earlier ULP case; contention that Ee was discharged because of his inability to operate loader rejected as pretextual)

Campbell-Harris Electric, Inc. and Campbell Electric, Inc. **263 NLRB No. 167**
(discharge of U adherent, who is son of shareholders of 50-percent of closely held corporation, not unlawful, notwithstanding reason for discharge was to avoid bargaining obligation, since employed son is excluded under Sec. 2(3) from status of *employee* as an *individual employed by his parent or spouse* and therefore not protected by Act)

Inland Steel Company **263 NLRB No. 147**
(no *per se* illegality in commencing investigation of Ee who came to E's attention by engaging in U and other protected activities, nor does discharge resulting from such investigation fall w/i *inherently destructive* acts even w/o proof of specific discriminatory intent)

Conn Fabricating & Engineering Company **263 NLRB No. 122**
(discharge of president and shop steward of independent U for U activities of seeking contractual changes, signing representation pts for national U, filing grievances with E and charge with Bd, and appearing against E at workmen's compensation hearing, unlawful)

American Steel Works **263 NLRB No. 188**
(where ALJ found that prior U activity; such as, filing grievances, and filing charge with Bd was cause of Ee's discharge and that absent that activity he would not have been discharged for leading wildcat strike, Bd found that discharge was improperly motivated under *Wright Line*)

Mueller Insulation Co. and The Mueller Company of Missouri, Inc., Successor Employer and/or Alter Ego **263 NLRB No. 095**
(discharging Ee with history of lateness 3-4 days each week violative, where he had done *extremely good* work for 8 years, E gave no warning, did not inquire reason for lateness that morning and Ee had agressively enforced bargaining agreement for 3 months)

Babcock & Wilcox Company d/b/a B & W Construction Company **263 NLRB No. 061**
(violation, where Ee was discharged because, in course of his attempt to implement bargaining agreement, he expressed intent to file intra-U charges against his foreman for violating agreement)

South Nassau Communities Hospital **262 NLRB No. 146**
(discharge of U adherent assertedly for violating valid no-solicitation rule, unlawful, where Ee's protected activity of soliciting U cards occurred in non-work area on non-work time; E offered no explanation for its instantaneous action against Ee w/o ever giving Ee opportunity to be heard; on prior occasions when Ee had engaged in conduct worthy of discharge, Ee was only reprimanded after consultation; and violation existed even though Ee's U activity was limited to only one incident)

Aher Plastics Company, Inc. **262 NLRB No. 147**
(unlawful discharge assertedly because of Ee's concerted activities not inferred where E was aware of such activities but neither expressed concern over them nor acted precipitately upon learning of such conduct as he did after learning of Ee's U card solicitations; while displeased with Ee's defacement with derogatory comments of announcement of Christmas party which Ees criticized because given in lieu of bonus, E did not discharge Ee for criticism of party or for any of her other complaints; moreover, Ee's comments on announcement did not constitute part of *res gestae* of protected activities)

C. R. Adams Trucking, Inc., and Michael Cates **262 NLRB No. 067**
(discharging Ees for not complying with E's request that they falsify U membership applications by stating that they are in dependent contractors, so E would not have to pay to U health and welfare benefit payments, violative)

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Sealy Mattress Company of Michigan, Inc. 262 NLRB No. 011
(discharge of Ee for joining U violative notwithstanding he may not have been properly part of unit he sought to join since his efforts were protected activity against which E could not lawfully retaliate)

Eight-Gard Corporation 261 NLRB No. 177
(violation, where E discharged Ees for actual or suspected U activity and in attempt to prevent pro-U majority among members of unit sought to be represented by U)

IMCO/International Measurement & Control Company, Inc. 261 NLRB No. 180
(discharge of Ees who supported U in organizing effort and signed U cards, unlawful, particularly in view of E's expressed U animus as evidenced by giving of bonus/raise after U withdrawal of R ptn and use of unlawful shutdown as excuse for discharges and layoffs)

Mashkin Freight Lines, Inc. 261 NLRB No. 193
(discharge of Ee violative where E would not have discharged him but for his participation in Ee group and U that opposed E's proposals and actions regarding changes in working conditions)

Consir Corporation 261 NLRB No. 178
(discharge of ULP strikers who had previously been reinstated assertedly because they failed to return to work w/o proper notice to E after being granted legitimate leaves of absences, unlawful, where there were repeated instances of granting extended leaves for illness or other reasons to Ees who did not support U and had no difficulty in returning to work at conclusion of their approved leaves and, consequently, E's failure to accord same treatment to ULP strikers constituted disparate treatment and compels conclusion that E did so because of their support of U)

Cooperativa De Credito Y Ahorro Vegabajena 261 NLRB No. 161
(picketing by asking credit U members to withdraw money from Credit-U-E is simply asking them to c/d/b with E which is protected activity)

White Coffee Corporation 261 NLRB No. 149
(discharge unlawful where supervisor, on being asked, told U activist that he was discharged because of his fooling around in the back area, which was where Ee had distributed U cards and solicited signatures on them)

St. Alphonsus Hospital 261 NLRB No. 091
(discharge of U adherent because E thought Ee had disregarded its instruction not to support U and because he had disregarded its instruction not to vote in representational election, violative)

Volkswagen of America, Inc. 261 NLRB No. 036
(violation, where Ee was discharged because of his status as U committeeman, and discharge was not justified by E's mistaken belief that U committeemen had actively encouraged Ees to participate in illegal walkout where he had merely apprised them of dangerous situation developing outside the plant, thus enabling them to assess situation facing them at end of work day while he himself stayed on the job; rather than being encouraged to leave, Ees also remained on the job)

M K Laboratories, Inc. 261 NLRB No. 021
(discharge, allegedly for absenteeism, unlawful where E applied vague and imprecise absenteeism rule disparately to most active U steward at time of his newly increased authority and showed U animus by not letting other Ees attend steward's unemployment compensation hearing after said discharge)

General Indicator Corporation, Rodco Division 260 NLRB No. 179
(discharge of Ee for soliciting Ees to have U steward replaced, violative)

Broadway Catering Corp. d/b/a Studio 54 260 NLRB No. 166
(discharge of U adherent, unlawful, where one of E's stated reasons for discharge was that he had heard *Ee* was also working at another establishment similar to E's at which Ee was engaged in U activities, and among many 8(a)(1) violations committed by E were some threats of discrimination made directly to Ee herein)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(discharge of U member on day after E was mistakenly informed that she told Ees to walk out in protest over working conditions, unlawful, where E, who was engaged in conduct to undermine U, never asked Ee what she had told Ees; moreover, if Ee had tried to organize walkout, it would have constituted protected concerted activity, and discharge in mistaken belief that Ee was engaged in such activity is unlawful)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(discharge of U member by E who was engaged in conduct to undermine U unlawful, where E, assertedly having heard that she did not want to work, asked her to work only as a one-day replacement for another Ee, and when Ee accepted to come to work only if she could return to her job, E refused to allow her to do so; and there was no evidence to support E's belief that Ee did not want to work)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(discharge of U member after she told E she would not be able to perform additional tasks which E had assigned her and still perform her principal job, unlawful, since E, who was engaged in conduct to undermine U, discharged Ee for refusing to accept a unilateral change in working conditions concerning which E was obligated to bargain; moreover, E's expressed desire for efficiency was pretextual)

Beck Studios, Inc. 260 NLRB No. 044
(discharge of U adherent violative where E's asserted reason for *lay off* was entirely pretextual and Ee was discharged in retaliation for his U activities and also for purpose of conveying chilling message to other Ees who had voted for U)

District #1, Pacific Coast District, Marine Engineers Beneficial Association 259 NLRB No. 169
(discharge of Ee, assertedly for unsatisfactory work violative, since real reason was her attempt to unionize E's staff, particularly in view of E's direct statements to her when she was discharged concerning her attempt to organize Ees, and absence of prior complaints to her about her work)

AMPAC, a subsidiary of Kane-Miller Corp. 259 NLRB No. 181
(discharge of striker who merely disconnected air hose (which only took few seconds to reconnect)from tractor to trailer on truck entering E's plant held violative, since incident not significant enough to justify discharge)

Harbison-Walker Refractories Division of Dresser Industries, Inc. 259 NLRB No. 130
(discharging Ee for informing coworkers that he felt a grievance should be filed over foreman's work assignments, unlawful)

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde 259 NLRB No. 073
(discharge of Ee, assertedly for insubordination, violative where Ee was discharged for invoking grievance procedure and for complaining about casino operations to gambling inspector)

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) 259 NLRB No. 037
(discharge of office manager by U's Secretary-Treasurer because office manager favored another candidate for U office of Secretary-Treasurer and was instrumental in writing letter to U attorney in attempt to preserve jobs of office staff held violative because activities office manager undertook, in conjunction with other Ees, related to wages, hours, terms and conditions of employment and discharge was in derogation of office manager's right to form and support clerical Ee U)

Caffe Giovanni, Inc. d/b/a Giovanni's 259 NLRB No. 031
(discharge of Ee, who had previously been offered permanent employment and a raise, only after E became aware of Ee's picketing, not unlawful, notwithstanding fabricated nature of E's defenses, timing of discharge, and Ee's knowledge of Ee's picketing activities, where Ee was discharged in normal course of his temporary employment on a summer vacation relief basis; and, while offer of permanent employment and raise may have constituted unlawful inducement to forego supporting U, such was not intended as a genuine offer)

The Long Island Radio Company d/b/a All Shores Radio Corp. JD-(NY)-71-81
(discharge of U adherents, not unlawful, where discharges were result of E's desire, upon acquisition of radio station, to improve performance, ratings, and competitive position in industry by course of conduct which included review and consideration of staff replacements, changes in music format opposed by these Ees, and initiating regular critiques of each Ees' performance)

Webb Ford, Inc. 258 NLRB No. 062
(discharge of U activists for filing grievances, unlawful)

Cumberland Farms Dairy of New York, Inc. 258 NLRB No. 120
(discharge of Ee who was most vocal and persistent advocate of Ees' interests at time when E believed Ee was on verge of forming U, violative)

Valley Plaza, Inc. d/b/a Captain Nemo's 258 NLRB No. 076
(discharge of U adherents for purpose of undercutting U organizing drive, violative)

Leisure Time Tours, Inc. 258 NLRB No. 138
(discharge of U adherent violative where GC established that U adherent's activities on behalf of grievance committee and his suspected involvement in U were motivating factors in E's decision to terminate him and E failed to meet its burden of demonstrating that same action would have taken place even in absence of protected conduct)

Arrow Automotive Industries 258 NLRB No. 116
(issuance of warning notices to and suspension and discharge of Ee allegedly for failure to communicate schedule delays, unlawful, where E never mentioned said failure to communicate until it found U literature in Ee's truck and admonished him about it)

Pantex Towing Corporation 258 NLRB No. 113
(discharge of Ee held for engaging in U activities and not as contended for dereliction of duty)

A-W Washington Service Station, Inc. 258 NLRB No. 014
(discharge of Ee violative where it was ordered in phone call from main office when that office called supervisor to ask about omission in employment application of new hire and was told that Ee was on leave to negotiate for U in regard to Ee's former place of employment)

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McLean Trucking Company 257 NLRB No. 179
(discharge of Ee because of his complaints about conditions covered by collective bargaining agreement, violative)

Greyhound Lines, Inc. 257 NLRB No. 065
(discharge of Ee for physically writing dictated letter from U to E concerning alleged harassment of Ees, violative)

Salem Paint, Inc. 257 NLRB No. 050
(terminating Ees so they would not be able to vote in U election, violative)

Brodart, Inc. 257 NLRB No. 077
(E's termination of Ee for attending U meetings, violative)

Sioux Products, Inc. 257 NLRB No. 096
(reprimanding and discharging U adherent, violative)

Boren Brothers, Inc., A Wholly Owned Subsidiary of Thrifty Corporation 257 NLRB No. 063
(discharge for distributing U sign-up cards in violation of no-solicitation no-distribution rule, unlawful where rule was discriminatorily enforced and was itself unlawful)

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising 257 NLRB No. 022
(discharge of Ee who had taken active roll in presenting common grievances of Ees, checked out U rates of pay and argued with E to obtain such rates for Ees violative as Ee was engaged in protected concerted activity)

Anjo Engineering Corporation 256 NLRB No. 161
(termination of known U activist allegedly for violating unwritten rule that indefinite medical leaves, such as she was given, were granted for only 3 months and if overstayed resulted in automatic termination, unlawful where there was no evidence that rule was clearly established or uniformly enforced, and E, who routinely gave extensions of medical leave freely, terminated excellent Ee, known to be extremely ill, for technical breach on election day, 11 days after she allegedly should have returned to work)

Mark I Tune-Up Centers, Inc. 256 NLRB No. 138
(discharge assertedly because Ee, originally hired to fill job of another Ee who was scheduled to be terminated, was not needed because E decided to retain other Ee, unlawful, where Ee, who had been terminated earlier for his U activities, was rehired only after he assured E that his attitude had changed; on another occasion, Ee was again rehired after telling E he was happy to leave his last job because it was U shop; E was informed that Ee was U organizer; and E failed to hire Ee when Ee whose job he was supposed to fill was terminated and when another vacancy occurred)

Turner Tool And Joint Rebuilders Corporation 256 NLRB No. 101
(asserted reason for discharge of U activist held pretext where Ee was discharged for being away from work area at time another supervisor had given permission to leave for purpose of making phone call and at time of discharge reference was made to previous day and Ee's talking about U then)

Town & Country LP Gas Service Co. 255 NLRB No. 144
(discharge of Ee allegedly for lack of work, violative, where E's asserted economic reason for discharge was pretextual, in view of record evidence showing no decline in E's sales and pattern of retaliation against Ee for his filing charges with Bd and successfully prosecuting grievance)

Fruehauf Corporation 255 NLRB No. 125
(discharge of U steward not violative, where reason was her irregular attendance and not because of her U position or activities, as contended, in view of absence of U animus on part of E)

Steinerfilm, Inc. 255 NLRB No. 017
(discharge of U adherent, violative, since E did not rebut GC's *prima facie* case of discriminatory discharge where record showed that E's proffered justification for such discharge was pretextual)

Harper & Arterburn Co., Inc. 255 NLRB No. 105
(discharge of Ee unlawful, notwithstanding E's contention that reason for discharge was Ee's alleged disruption of other Ees' work where real reason was Ee's enlisting U's assistance in appointment of steward and talking about U on job)

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. 255 NLRB No. 090
(discharge of U adherents unlawful, where E had knowledge of Ees' U activities and harbored animus toward U and toward concerted activities of its Ees; E's affirmative defense of business considerations in terminating Ees w/o merit, and its claimed reasons pretexts to mask E's unlawful motive)

Florida Tile Company, Division of Sikes Corporation 255 NLRB No. 089
(written reprimands to and discharge of U adherent violative, where one reprimand was issued to her for using profanity but none were issued to other Ees using profanity in same incident which involved U adherent's solicitation of authorization cards; and two other reprimands were issued to her for pretextual reasons to make total of three to justify, under E's rules, her automatic discharge)

SAS Ambulance Service, Inc., d/b/a Florida Ambulance Service; et al. 255 NLRB No. 081
(discharge of Ees for distributing handbills violative, notwithstanding E's contention that handbills were defamatory)

Walther Die Casting, Inc. 255 NLRB No. 086
(discharging striker who had been reinstated with loss of seniority violative as true reason was U activity)

United Plastic, Inc. 255 NLRB No. 036
(discharge of Ee violative where, in light of E's strong U animus, its singular concern with Ee's U remark at time of discharge, and its shifting and inconsistent reasons for Ee's discharge, motivation for discharge was E's perception of Ee's U participation and asserted reasons were merely pretextual)

Glover Bottled Gas Corp. 255 NLRB No. 011
(supervisor's discharge of probationary Ee, assertedly for poor work performance, unlawful, where E's refusal to cross picket line in furtherance of sympathy strike directed at Ee's E was motivating factor as evidenced by supervisor's admission to other Ees that he was directed by E to fire Ee because of his refusal; contention that other probationary Ees who did not cross picket line were not fired, rejected, where they had worked part of the time during picketing or had worked in E's yard w/o taking trucks out)

Dimo Ambulette Service, Inc. 255 NLRB No. 082
(discharge of Ee ambulette driver violative, notwithstanding E's contention that it discharged Ee because of customer complaint, where real reason for discharge was his circulation of pts for U)

Dimo Ambulette Service, Inc. 255 NLRB No. 082
(discharge of Ees, for protesting discharge of another Ee who had been unlawfully discharged for circulating U pts, violative)

Pile Foundation Construction Company, Inc. 254 NLRB No. 177
(refusing to recall Ees who had complained about contractual work-rule violations in regard to manning certain jobs, violative)

Kleinert's, Inc. 254 NLRB No. 197
(discharge of Ee, whose substantial U and other protected concerted activity was known to E, for Ee's alleged failure to give notice of absence due to illness as well as his failure to bring doctor's slip, violative where, contrary to E's contentions, E had no daily call-in requirement at time of discharge, Ee gave E requisite advance notice of intent to be absent, E had no fixed requirement for furnishing doctor's excuse as evidence of illness, and no time limit for furnishing such slip on return to work; E knew Ee's absence was due to illness, and such knowledge was normally a significant factor in determining whether to excuse absence w/o doctor's excuse)

Magnetics International, Inc. 254 NLRB No. 062
(suspension and discharge of U steward because of activities in administering grievance provisions of bargaining agreement, violative; *Wright Line* cited, 231 NLRB No. 150)

Mayo Corp. and Sonnet and Wells, Inc. 254 NLRB No. 031
(discharging striking Ees because they engaged in protected economic strike and because they refused to join favored U, violative)

Lou Awald Chevrolet, Inc. 253 NLRB No. 113
(discharge unlawful where date of discharge was accelerated because of U activist's attempt to organize Ees; although activist was next in line for termination due to E's declining sales, timing of sudden and immediate discharge indicated E's frustration with Ee's U activities)

Sav-On Drugs, Inc. 253 NLRB No. 065
(E's discharge of pharmacy managers for activities on behalf of guild, unlawful, notwithstanding RD's findings in underlying R case that pharmacy managers were supervisors and guild was not labor organization; E's contention that it was entitled to rely on RD's decision as defense because there was no request for stay of RD's order and because RD's decision could be relied on until reversed, rejected)

Ross M. Alexander d/b/a A & B Janitorial Service 253 NLRB No. 066
(discharge for soliciting in violation of E's invalid no-solicitation rule, unlawful)

OMC Stern Drive, A Division of Outboard Marine Corporation 253 NLRB No. 063
(discharge of unlawfully suspended steward allegedly for insubordination in refusing to leave plant at E's request upon his suspension, unlawful; although steward was insubordinate in refusing to leave, his insubordination was not so flagrant and was not sufficient, in circumstances of E's scheming to get rid of steward and rejection of conciliatory opportunity in favor of having steward arrested and removed by police, to forfeit Act's protection)

Semeric Corporation 253 NLRB No. 063
(terminating one Ee by eliminating his shift and transferring another Ee and subsequently promoting him to supervisory status, violative, where both were U adherents seeking representation election for unit comprising of only themselves)

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Pioneer Natural Gas Company 253 NLRB No. 080
(discharge of Ee because she insisted that black coworker go to supervisor to complain about racially derogatory remark by another Ee, violative, since her action constituted protected concerted activity)

John Grissom, Mihai Duba-Suna, David Springer, and Richard Baker, A General Partnership d/b/a Natural Heating Systems 252 NLRB No. 182
(discharge of Ee unlawful, where E resented Ee's interference with E's negotiations with one U by attempting to organize Ees on behalf of another U, and E considered such conduct rankest form of disloyalty which E believed fully justified Ee's termination)

McLean Trucking Company 253 NLRB No. 104
(discharge of Ee and subsequent conversion of discharge to suspension and written warning for Ee's refusal to drive tractor-trailer violative, where Ee had good faith and reasonable belief that vehicle was unsafe, and E's adverse action was taken because Ee acted in reliance on U contract in concert with U officials)

Hammermill Paper Company 253 NLRB No. 173
(discharge of Ee for participation in unprotected work stoppage solely because of his position as U steward, violative)

Republic Die and Tool Company 252 NLRB No. 093
(violation when E discharged Ee because he filed contractual grievance over prior discharge which had resulted in arbitration award granting him reinstatement with substantial backpay)

Corrugated Structures, Inc. 252 NLRB No. 079
(discharge of Ee for complaining to U about reduction in pay, violative)

Americana Health Care Corporation of Ohio d/b/a Barberton Manor 252 NLRB No. 067
(summary discharge of nursing aide violative, where reason was her U activities, and not, as contended, her patient abuse)

Palby Lingerie, Inc. and Argus Lingerie Corp. 252 NLRB No. 032
(discharge of leading U adherent for giving out pamphlets to Ees during lunchtime, violative even if she was *paid staff worker of the Union, who obtained employment in order to assist in organization*; being a paid staff worker of U does not denigrate from Ee's status as such)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division 251 NLRB No. 196
(discharge of U activist assertedly for talking U on her break while Ee was working violative where U activist did not interfere with her own or other Ee's work)

Maywood, Inc. 251 NLRB No. 139
(violation where E assigned U card signer to work full time on core table, refused thereafter to revoke the assignment, and finally discharged Ee; true motive was to get rid of a leader in campaign to organize plant)

Syracuse Dy-Dee Diaper Service 251 NLRB No. 135
(discharge of U adherents, violative, where E's knowledge of Ees passing out U cards and holding U meetings was inferred from small size of plant, reasons asserted for discharges were pretextual, and timing of discharges occurred w/i two weeks of organizational campaign)

Port Jefferson Nursing Home and Health Related Facility 251 NLRB No. 092
(U's demand for and E's carrying out discharge of Ees who had resigned from U and were attempting to decertify U and replace it with another U, violative, since U's demand was erroneously based on U-security provision and inasmuch as there was no valid basis for discharge request, demand for and discharge of Ees was in retaliation for Ees' exercising their Sec. 7 right to displace incumbent with another U)

McLane/Western, Inc. 251 NLRB No. 185
(violation and interference where E was discharged, allegedly for breach of no-stealing rule by eating one cracker from damaged, unsalvageable carton, since E applied the rule in retaliation for Ee's suspected U support and as warning to other Ees)

Reinauer Fuel Transportation Corporation 251 NLRB No. 210
(discharge held solely for Ee's U activities and refusal to work overtime held to play no role in the discharge; no Ee had ever been disciplined for refusal to work overtime, Ee did not state at any time that he would no longer work overtime, and there was no conclusive evidence Ee had refused to work overtime as alleged)

Dennis G. Malatto and Frank M. Malatto t/a Malatto Contracting 251 NLRB No. 027
(discharge of U adherents, unlawful, where, even though their conduct was not exemplary, no one had previously been fired during entire year preceding U campaign, E's 8(a)(1) conduct had purpose of depleting U's ranks in order to rid itself of U, E seized upon supervisor's complaints about laid off Ees' work to discharge them because of their U activities, and firing of last U adherent completed E's prophecy that U's campaign would be finished)

Kaufman DeDell Printing, Inc. 251 NLRB No. 068
(violation where Ee was discharged for turning to U for help to obtain higher pay he thought he was entitled to be paid)

Martin K. Eby Construction Co., Inc. 250 NLRB No. 140
(discharge and failure to reinstate Ee because of his activities as U steward violative)

Alfred M. Lewis, Inc. 250 NLRB No. 183
(Bd held that Ee's discharge, allegedly for his *bad attitude* and low production, was instead *solely* a result of E's unlawful production quota and disciplinary systems, since Ee's attitude toward E's unlawful production quotas caused his low production, and his attitude had developed, as reaction to E's counseling implemented as part of unlawful disciplinary system; Ee had refused counseling, as was his right, and his failure to accept it was not legitimate basis for discharge)

Ben J. Mauro d/b/a Warehouse Food Distributing Company 250 NLRB No. 177
(discharge of Ee for stating at U meeting that county was very organized and that people would honor picket line outside E's store, unlawful)

Cumberland Farms Dairy, Inc. 250 NLRB No. 180
(violation where E discharged one U activist, laid off another and constructively discharged three more by revoking their reinstatements because of their U activities; E had stated that one activist was being discharged for starting the U in the warehouse)

Stanley M. Feil, Inc. 250 NLRB No. 065
(discharge of U adherent for refusing to allow her purse to be searched by supervisor, rather than by security guard, upon leaving Es warehouse, not violative, absent discriminatory motivation; fact E's vice-president offered to reemploy adherent and then withdrew offer not evidence of discriminatory motivation where withdrawal because vice-president felt personally insulted)

Coronet Instructional Media, A Division of Esquire, Inc. (Warehouse, Mail Order, Office Technical and Professional Employees Union, Local 743, Teamsters) 250 NLRB No. 133
(violation where group leader was discharged one hour after presenting his supervisor with U literature, and reasons for discharge given by E were shifting and pretextual)

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(discharge of Ee to whom E attributed offensive conduct leading to his discharge, unlawful, where Ee had been object of extensive ULPs by E which coincided with similar ULPs directed against fellow Ees, and discharge of Ee was merely culmination of efforts to mute Ees who, by their protected activities, were source of irritation to E, and E failed to proffer convincing reasons for discharge; while Ee's pre-discharge conduct is not condoned, E will not be allowed to rely on such conduct since, but for E's ULPs, it would not have occurred)

Brooks Cameras, Inc. 250 NLRB No. 116
(violation where 3 days after U's demand for recognition, E discharged 7 Ees, the 7th being one of most competent and the principal U activist; E showed discriminatory motivation by retaining less competent Ees, by the timing and impact of discharges on organized Ees and inconsistent explanations)

Clayton Construction Corporation 250 NLRB No. 121
(violation by discharge of U steward for protesting work assignment as contrary to contract)

E. A. Nord Company 250 NLRB No. 068
(discharge of Ee because of his expressed intent to file contractual grievance unlawful, conduct was concerted since it could establish precedent for other Ees)

Mediterranian Diner, Inc., t/a Bay Diner 250 NLRB No. 029
(discharge of U adherent, unlawful, where for his defense of U in argument in view of E's hostility towards U and U activities)

Pilgrim Life Insurance Company 249 NLRB No. 140
(discharge for allegedly soliciting signing of U cards on company time, unlawful, where E had no written rules forbidding or restricting solicitations on company premises, there was no interference with production, E allowed solicitation for other purposes, and particularly absent proof solicitation took place on work time as distinguished from company time)

The Halloran House 249 NLRB No. 113
(discharge violative, where E had knowledge of Ee's U activity, acted immediately against Ee w/o warning, and failed to provide any plausible explanation for its conduct; under circumstances, it was proper to infer that E's motive was discriminatory)

Hall of Mississippi, Inc. 249 NLRB No. 119
(discharge of U supporter and member of U organizing committee assertedly for his misconduct, violative where misconduct was provoked by E and was not so serious as to warrant denial of reinstatement)

Capriccios Restaurant, Inc. 249 NLRB No. 100
(discharge of Ee, assertedly because of seasonal decline in business and lack of work, unlawful, where E manifested animus towards unionization of Ees, E admitted to Ee that he was being discharged because he signed U card, and E had learned of Ee's U activity through widespread coercive interrogation of Ees)

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Eldorado Manufacturing Corporation **240 NLRB No. 088**
(U's conduct in causing discharge of Ees, and E's discharge of Ees at U's request, unlawful, where U steward in requesting discharges was motivated by harassment flowing from Ees' continual accusation of steward's failure to adequately perform his steward's duties, their insistence on prompt grievance meetings, and attempt to unseat him as steward; moreover, even if no intraunion retaliation motivated steward in demanding discharges, but only that personal harassment was no longer bearable, U's demands for discharges would nevertheless be unlawful)

Clinton Inn **240 NLRB No. 022**
(discharge motivated by Ee's U activities rather than his alleged unsatisfactory performance, in view of inconsistencies in E's *business reasons* for discharge and fact that discharge occurred 3 days after supervisor admittedly saw Ee sign U authorization card and that E exhibited strong animus toward U and its adherents)

Kroton Char-Broil, Inc., d/b/a Coram Pond Diner **248 NLRB No. 152**
(violation where Ees who were outspoken in their demand for higher pay and better conditions of employment, were replaced while on authorized sick leave and were subsequently denied reemployment; E was motivated not by business necessity but rather by Ees' protected activities)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**
(discharge of 4 out of 10 Ees in unit, violative, in view of timing of discharge soon after supervisor became aware of R ptn; the abruptness of discharge in middle of workshift, and accompanying ULPs)

K & B Mounting, Inc. **248 NLRB No. 071**
(violation where E discharged Ee because of its belief that she had engaged in U activities)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(discharging Ee assertedly for his tardiness, absenteeism, and unreasonable demand for individual contract, violative, when E had rejected Ee's demands for improvements of wages, pensions and health benefits, had forbidden him to involve other Ees or to seek U assistance in regard to his demands, and discharged Ee only when he insisted that he would pursue the course of concerted action he had outlined contrary to E's order)

Hilton Hotels Corporation, d/b/a The O'Hare Hilton **248 NLRB No. 031**
(discharge of U steward for questioning E's change in practice by denying unit member sandwich at end of 8-hour shift held discrimination against steward (as well as other Ees) to chill protected U organizational activity)

B. N. Beard Company **248 NLRB No. 016**
(constructive discharge of Ee to whom E offered wage rate lower than that provided for in U contract, unlawful, where Ee quit rather than relinquish statutory right to be paid in accordance with contract; fact that Ee intended to leave E's employment in future is no defense where decision to quit was hastened by his being compelled to accept lower wage rate contrary to his statutory right)

Lemon Electric Corporation **247 NLRB No. 203**
(discharge of Ee lawful, since for his refusal to obey safety rule which required tying long hair up and back to prevent it from being caught in machinery, where Ee was not outstanding U activist and other Ees had been warned for refusal to abide by same rule)

Pay 'N Save Corporation **247 NLRB No. 184**
(suspension and discharge of Ees for wearing U buttons on their store jackets, unlawful, since right to wear buttons is legitimate form of U activity, and there was no valid business consideration or other special circumstance warranting forbidding of wearing of U buttons by store Ees on salesfloor)

The Saloon, Inc. **247 NLRB No. 156**
(discharge of Ee, unlawful, in view of its timing close to Ee's emergence as U proponent, E's resolve to rid itself of U, Ee's strong skills in his job, and implausibility of E's witnesses concerning timing of discharge, of decision to give Ee raise, and of hire of his replacement)

Bio-Medical Applications of New Orleans, Inc., d/b/a Greater New Orleans Artificial Kidney Center **247 NLRB No. 136**
(discharge of economic strikers for persisting in striking in support of their bargaining agent, unlawful)

Anco Insulations, Inc. **247 NLRB No. 081**
(discharge of insulation installer because he had left his work area to observe insulating work being done by another contractor in nearby furnaces because of possible jurisdictional work question, not violative notwithstanding Ee told to check up on this matter by U, where other Ees had been discharged for leaving their work areas and there was no need for installer to inquire into any work jurisdictional question)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(even assuming E had business reason for reduction of truck routes, selection of drivers to be terminated violative, where each discharged driver was U supporter, E knew drivers were U adherents and discharges were not in accordance with seniority)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(discharge of known U adherents for various asserted reasons, unlawful, where Ees were experienced and had good work records, discharges occurred shortly after Ees engaged in open U activity, Ees were treated in disparate manner inasmuch as other Ees were not disciplined for same conduct, and asserted reasons for discharges were pretexts with real reason being Ees' U activities)

Blaw-Knox Foundry & Mill Machinery **247 NLRB No. 36**
(discharge of probationary Ee for protected concerted activity of joining coworker in her complaint concerning offensive touching of her person by supervisor, unlawful)

Texas Instruments Incorporated **247 NLRB No. 037**
(discharges based on E's invalidly applied dissemination of classified material rule, violative, since Ees were penalized for asserting their statutory rights by publishing confidential area wage survey; application of rule interfered with those rights and tended to inhibit Ees' protected activity)

Plaza Bay Enterprises, Inc. **JD-(SF)-273-82**
(discharge of Ee assertedly for punching out another Ee's timecard unlawful, where immediately upon being advised that Ee had attended U meeting the day before and also that she was *instigator of the U*, E directed her discharge, and to legitimaze such discharge directed discharge of the Ee whose timecard was punched out)

Hammond Plastic, Division of Carl Gordon Industries, Inc. **JD-583-81**
(discharge of U activist, unlawful where after advent of U, E accepted his resignation and ignored withdrawal of his resignation notice many weeks before)

Solid Rock Transit Mix **JD-(SF)-234-82**
(violation where antiU E, who had reneged on promises of how much he would pay Ees, discharged known U organizers upon learning that they were recording hours worked on time cards to prove their 70-80 hour workweeks)

Natico, Inc. **JD-271-82**
(discharges of part-time Ee upon belief or fear that Ee might obtain all benefits or rights to full employment if he obtained U membership, violative)

Wayne & Co. Installers **JD-(SF)-170-82**
(discharge of U job steward assertedly because he was unsatisfactory Ee violative, since motivating factor was found to be his protected concerted activities in complaining about violations of bargaining agreement; E failed to demonstrate that it would have taken same action against Ee in absence of his protected activities;

Rainbo Baking Company **JD-(SF)-117-82**
(discharge for exercising Weingarten rights, unlawful)

Kasler Corporation, Continental Heller Corp., and Fruin-Colnon Corp., A Joint Venture **JD-(SF)-118-82**
(violation where Ee was discharged for raising jurisdictional dispute issue with U steward of another trade)

Tops Industries, d/b/a Tops Market **JD-(SF)-83-82**
(discharge of Ee because of his U support and expressed unwillingness to forego continued activities on U's behalf, when ordered to do so, unlawful)

Metro-Young Construction Company, A Division of Olson Construction Co., Inc. **JD-(SF)-13-82**
(discharging Ee from one jobsite and limiting duration of his employment at different jobsite by discharging him again held violative as reason for discharge was Ee's filing of U grievance involving rain gear two years earlier)

Exhibition, Inc. **JD-543-81**
(discharging Ee for fulfilling his duties as U steward by reporting to U that E had Ees work overtime w/o U approval in violation of contract and had instructed him as keeper of U stamp to stamp non-U work with U label)

Marvin J. Schiff Trust R-101, Marvin J. Schiff, Trustee, d/b/a Nevada Palace Casino & Motor Inn **JD-(SF)-277-81**
(terminating Ee, member of U, because E was *a non-U hotel* or that E was *under new management, non-U house,* held violative)

Ednamae Brewer d/b/a Kalama Cafe **JD-(SF)-264-81**
(discharge of Ee because she had filed grievance with U, violative)

Whitney Investments, Inc., a subsidiary of Whitney Fidalgo Seafoods, Inc. **JD-240-81**
(discharging and refusing to reinstate Ee because he filed grievance pursuant to collective bargaining agreement, violative)

Fleet Carrier Corporation **JD-372-81**
(discharge of U adherent, assertedly for dishonesty, violative where Ee was discharged for his U activities)

North Oak Chrysler Plymouth **382-81**
(discharge of U adherent assertedly for insubordination, poor attitude, etc., violative, where Ee was discharged only because E wished to use Ee as example to other Ees of what would happen to anyone who remained steadfast in their support of and activities on behalf of U)

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Bredart, Inc. JD-148-81
(termination of Ee, solely for attending U meetings, violative)

Bredart, Inc. JD-148-81
(transfer of Ee, solely for attending U meetings, violative)

Normike Contractors, Inc. JD-(NY)-51-81
(closing plant one hour earlier than usual and docking one hour's pay of Ees because of U organizing campaign and E's desire to get even with its Ees for joining U constituted unlawful discharge)

Todd Pacific Shipyards Corporation JD-(SF)-99-81
(discharge for seeking U's help in obtaining an upgrading evaluation, a contractual benefit, unlawful)

Lauridsen Foods, Inc. JD-36-81
(discharge of U adherents because of their open and very active support for U, unlawful)

Liberty Parking, Inc. JD-4-81
(discharge of Ee who attended grievance proceeding for fellow Ee, not unlawful, where E denied Ee permission to be absent after being informed that Ee had not contribution to make at grievance hearing, and Ee left job anyway leaving it understaffed; contrary to contention Ee's shop steward candidacy was not factor in his discharge)

Goodyear Tire & Rubber Company JD-620-80
(termination of Ee after being admonished to curtail his open association with U organizers at plant, violative)

Evans Plumbing Company JD-(ATL)-15-80
(discharge of Ees who questioned E about his failure to send payments to U's vacation fund as required in contract, violative)

Browning-Ferris Industries of Ohio and Michigan, Inc. JD-(SF)-313-80
(discharge of U steward and other Ee not unlawful, notwithstanding fact that U steward was in process of attempting to secure paycheck for other Ee at time of discharges, where Ees invited E outside to fight, repeatedly threatened to beat him up and persisted in obscene threats and gestures)

Taylor Implement Division, Pittsburgh Forgings Company JD-474-80
(Ee's suspension and discharge violative where reason was not, as contended, his parking his automobile in unauthorized location but was, rather, his active participation in U's second effort to represent Ees after an election loss)

Round Table Enterprises Inc. t/a Thrift T Mart JD-(NY)-62-80
(discharge of U activist violative, in view of supervisor's statement to another Ee that *now we would have no more worries about the union*)

J. Teixeira Construction, Inc. JD-(SF)-265-80
(discharge of Ee who protested E's failure to pay him for *stand by* time as provided under contract, violative)

Chipmore Manufacturing Co., Inc. JD-432-80
(discharge for refusing to work overtime unlawful, since discharges were connected with concerted protected activities in which both Ees had taken part, namely *sick out* in protest against making previously optional overtime mandatory, and with their U activities as well)

Falconer and Sons JD-(SF)-232-80
(discharge and refusal to rehire Ee because he refused to comply with E's condition that he resign his position as shop steward and because of his activities as shop steward, unlawful)

Ancher Contracting Corp. JD-231-80
(discharge of Ee who had filed grievances, unlawful, since for his protected activity rather than for alleged taking of unauthorized vacation or poor work where vacation authorized and in view of shifting reasons)

Public Service Company of New Mexico JD-(SF)-187-80
(discharge of former U officer, not unlawful, where discharge not motivated by his U activities and was not for protected activity since his actions, statements and letters which precipitated discharge were not concerted nor for object of enforcing contract)

U. S. Oil & Refining Company JD-(SF)-116-80
(discharging Ee in retaliation for U's pressing a claim for a change in his seniority status under bargaining agreement, unlawful)

Malibu Grand Prix Corp. JD-(SF)-90-80
(discharges for U-instigated concerted refusal to work overtime, unlawful)

Newspaper Printing Corporation JD-202-80
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation JD-203-80
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

World Wide Press, Inc. JD-(SF)-12-80
(discharge, assertedly because of poor work performance, of Ee who had given testimony in Bd proceeding and who supported U disfavored by E, unlawful, where Ee's job mistakes were not known to E at time of discharge, Ee had never been told that her work was unsatisfactory, and E harbored desire to retaliate against Ee for testimony in Bd proceeding)

Sunnyvale Porsche Audi, Inc. JD-(SF)-9-80
(discharge of car salesman who was U adherent allegedly for failing to obtain signature of E's manager on car lease agreement, unlawful, in view of E's U animus, adherent had prior to his U activities delivered leased cars w/o signature by manager w/o being disciplined and no other salesman had ever been warned or disciplined for delivering car w/o prior signature of manager)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection JD-(SF)-310-79
(discharge unlawful where E was more concerned with Ee's involvement and leadership potential in U organizing effort than with trivial incidents asserted by E as cause for discharge)

N.L.R.B. v. Concord Furniture Industries, Inc., d/b/a Bradford Furniture Company 675 F.2d 426 (C.A. 1, Mar. 1982)
(discharge of two U adherents unlawful since for U activity rather than on basis of seniority, notwithstanding one adherent was lowest in seniority, where E failed to calculate seniority of other adherent and supervisor had stated that they had been discharged for U activity)

N.L.R.B. v. Cumberland Farms Dairy, Inc. 674 F.2d 963 (C.A. 1, Mar. 1982)
(discharge of Ee who had signed U authorization card and been specifically warned by supervisor to give up U affiliation, unlawful where probative evidence specifically rebutted Ee's defenses to discharge and reasons therefor)

N.L.R.B. v. Cumberland Farms Dairy, Inc. 674 F.2d 963 (C.A. 1, Mar. 1982)
(discharge unlawful where motive was admitted to have been Ees trying to start a U)

N.L.R.B. v. Clark Manor Nursing Home Corp. 671 F.2d 657 (C.A. 1, Feb. 1982)
(Bd's finding that U adherent was unlawfully discharged supported by substantial evidence where two prior oral warnings were given several weeks after causative incidents and contrary to E's past practice, and last warning for insubordination which resulted in Ee's discharge was held pretextual in view of complaining supervisor's lack of recall of essential details of incident)

N.L.R.B. v. Savin Business Machines Corporation 649 F.2d 89 (C.A. 1, May 1981)
(finding that allegedly insubordinate Ee would not have been discharged *but for* his U activities, affirmed where E had never disciplined Ee for other alleged past offenses or placed reprimand in his file notwithstanding its policy of providing documentation in support of its position in case of charges of discrimination)

N.L.R.B. v. Jack August Enterprises, Inc. 583 F.2d 575 (C.A. 1)
(discharge of Ee organizer for U assertedly because business was slow, violative, where shortly after the discharge E fired another Ee, not involved in U activity, to cover up termination of U organizer, and subsequently hired additional four Ees w/o recalling any of the discharged Ees)

N.L.R.B. v. Porta Systems Corporation 625 F.2d 399 (C.A. 2, 1980)
(discharge of U adherents under newly promulgated 10% absenteeism rule, unlawful notwithstanding discharge of nonadherents also, in view of abruptness and timing of discharges during U campaign, disparate application of rule to U adherents, and lack of prior warnings)

N.L.R.B. v. Eastern Steel Company 671 F.2d 104 (C.A. 3, Feb. 1982)
(discharge of Ees because E knew or suspected that they had signed U authorization cards and discharges had purpose of destroying U's majority in unit, unlawful)

N.L.R.B. v. Campo Slacks, Inc., and J & E Sportswear, Inc. 659 F.2d 1069(T) (C.A. 3, May 1981)
(no error in Bd's determination that Ee was discharged because of anti-U animus rather than, as contended, on basis of her lack of seniority)

The Babcock & Wilcox Company v. N.L.R.B. 680 F.2d 808 (C.A. 4, July 1982)
(ct found there was substantial evidence to support Bd's finding that gauge throwing incident was not, as alleged, reason for discharge of Ee whose pro-

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U sentiments were well known among his superiors, and that his discharge was discriminatory)

Jeffrey Manufacturing Division, Dresser Industries, Inc. v. N.L.R.B. 654 F.2d 944 (C.A. 4, 1981)
(discharge of key U organizer unlawful, in view of E's anti-U animus and its knowledge of dischargee's involvement in organizing the U)

J. P. Stevens & Co., Inc. v. N.L.R.B. 638 F.2d 676 (C.A. 4, 1980)
(ct rejected E's contention that U adherent voluntarily quit since record supported Bd finding of unlawful discharge where E drew up papers stating that U adherent voluntarily quit over his protests to contrary less than a week after Ee had been involved in altercation with anti-U Ee)

Paramount Mining Corporation v. N.L.R.B. 631 F.2d 346 (C.A. 4, Oct. 1980)
(no violation where U supporter was discharged for making vulgar threats and shaking or patting the head of fellow Ee in effort to persuade him to sign U card)

American Thread Company v. N.L.R.B. 631 F.2d 316 (C.A. 4, Sept. 1980)
(discharge of known U advocate assertedly because he urinated outside the plant, but on the premises, in violation of E's *indecent conduct* rule, violative, in view of E's lack of concern when similar use was made of plant area in the past and E's failure to discharge or otherwise discipline two other Ees who were guilty of *indecent conduct* involving incident herein)

N.L.R.B. v. Southern Plasma Corp. 626 F.2d 1287 (C.A. 5, 1980)
(discharge of Ee for conduct at E-Ee meeting violative as Ees were discussing employment terms with E)

N.L.R.B. v. Florida Tile Company, Division of Sikes Corporation 691 F.2d 34 (C.A. 6, Nov. 1982)
(ct held Bd's finding that E unlawfully discharged U adherent was supported by substantial evidence on record considered as whole)

McLean Trucking Company v. N.L.R.B. 689 F.2d 605 (C.A. 6, Sept. 1982)
(ct held substantial evidence supported Bd's finding that drivers were unlawfully disciplined for engaging in protected and concerted activity when they refused to drive tractor-trailer they believed to be unsafe pursuant to U instructions invoking provision of collective bargaining agreement; E's reliance on *Jim Causley Pontiac*, 675 F.2d 125 (6th Cir. 1982), unwarranted where ct held, *inter alia*, that E knew that drivers made their complaints pursuant to U activity; ct also reaffirmed its rejection of *Interboro* doctrine)

United Services For The Handicapped v. N.L.R.B. 678 F.2d 661 (C.A. 6, May 1982)
(discharge of Ee assertedly for job related reasons, unlawful, where Bd found that Ee was dismissed because of his U activities, and Bd's finding was supported by timing of discharge, together with discharge of other Ees for U activities)

N.L.R.B. v. United Parcel Service, Inc. 677 F.2d 421 (C.A. 6, May 1982)
(issuing final warning and then discharging Ee, assertedly because of repeated violations of E's rules with respect to overextension of permissible breaks by Ee, violative where substantial evidence supported finding of Bd that excessive surveillance of Ee and decision to discharge him were in retaliation for his U activities)

N.L.R.B. v. Tri-State Carpenters & Joiners District Council 661 F.2d 585 (C.A. 6, Oct 1981)
(Bd's order which found that E violated Act by discharging Ee was supported by substantial evidence as she was engaged in U and other concerted, protected activities)

Miami Springs Properties, Inc., and James H. Kinley and Associates, Joint Employers v. N.L.R.B. 653 F.2d 276 (C.A. 6, Aug 1981)
(discharge of Ees for protected, concerted activity and refusal to reinstate them, unlawful)

The Timken Company v. N.L.R.B. 644 F.2d 900(T) (C.A. 6, Jan 8, 1981)
(violation where Ee was discharged for his U activities and not because of his absence from work as alleged)

Grief Brothers Corporation v. N.L.R.B. 635 F.2d 551 (C.A. 6, 1980)
(discharge of Ee for absenting himself from work to attend U meeting not violative, where he did so in face of denial of his request for leave and warning that his absence from work would result in disciplinary measures)

Accurplastics, Inc. v. N.L.R.B. 632 F.2d 4 (C.A. 6, 1980)
(discharge of Ee violative, where despite her conflicts with fellow workers and fact that she was subject to discharge for long period prior to actual discharge, circumstances support conclusion that timing of her discharge was more a result of her U activity than her work performance)

Great Lakes Steel, Division of National Steel Corporation v. N.L.R.B. 625 F.2d 131 (C.A. 6, July 1980)
(ct upheld Bd finding that Ee's possession of pamphlet critical of E's ambulance policy with intent to distribute among other Ees was protected activity and subsequent discharge for such Ee activity violative as supported by substantial evidence on record)

N.L.R.B. v. Publishers Printing Company, Inc. 625 F.2d 746 (C.A. 6, 1980)
(discharge for soliciting U cards, unlawful)

N.L.R.B. v. Publishers Printing Company, Inc. 625 F.2d 746 (C.A. 6, 1980)
(discharge allegedly for dual employment unlawful where dual employment had been knowingly tolerated until dischargee became involved in U activities)

Northern Telecom, Inc. v. N.L.R.B. 618 F.2d 421 (C.A. 6, 1980)
(discipline of four Ees and discharge of U activist in connection with all five Ees leaving work at approximately same time on Saturday morning, unlawful; it was company practice to let night shift Ees, like those involved here, leave work w/o specific permission of a supervisor when they had been called in for Saturday overtime work starting at 6:00 a.m. after working till midnight the preceding night)

N.L.R.B. v. Memphis Furniture Manufacturing Company 616 F.2d 964 (C.A. 6, 1980)
(discharging shipping clerk because of his U association and because he had filed ULP charge against E for E's interrogating him about his conversation with U representatives, violative since, contrary to E's contention, substantial evidence supports Bd's finding that shipping clerk was nonsupervisory Ee)

Haven Coppetts, Inc. v. N.L.R.B. 605 F.2d 712 (C.A. 6) (1980)
(violation in view of evidence that termination of Ee was prompted by anti-U reasons, rather than valid considerations as E contended)

Edward Kopack, Sr. and Edward Kopack, Jr. v. N.L.R.B. 668 F.2d 946 (C.A. 7, Jan. 1982)
(Bd's finding that discharge was not unlawful held proper where Bd concluded that evidence was insufficient to hold that E unlawfully retaliated against dischargee because of his son's protected activity; there was sufficient support in record for Bd's conclusion; and ct found logic in Bd's reasoning that discharge in large measure turned on legality of son's discharge which Bd found not unlawful)

N.L.R.B. v. Mutual Maintenance Service Co., Inc. 632 F.2d 33 (C.A. 7, 1980)
(although ct affirmed Bd's finding that U adherent was discharged because of his U activities, ct denied portion of Bd order concerning reinstatement of Ee where Ee defrauded federal government and former E of unemployment compensation benefits, notwithstanding that current E was aware and even encouraged this Ee to work for E under alias while collecting unemployment compensation)

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. 623 F.2d 1170 (C.A. 7, 1980)
(discharge of chief steward, a militant member of U negotiating committee, assertedly because of his instigation of and participation in *illegal work stoppage* and his picket line misconduct, violative, where about six weeks prior to steward's discharge E forgave any wrongdoing in steward's behavior and there was no evidence that steward committed strike misconduct)

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. 623 F.2d 1173 (C.A. 7, 1980)
(discharge of zealous supporter of picketing activities, four days after settlement of the strike, assertedly because of her leading *illegal work stoppage* and participating *in picket line misconduct*, violative in view of evidence that Ee did not engage in significant strike misconduct and that E condoned Ee's pre-strike activities about six weeks prior to her discharge)

N.L.R.B. v. Clayton Construction Corporation 632 F.2d 6 (C.A. 8, June 1980)
(discharge of U steward for protesting E's assignment of work to certain Ees in violation of its agreement with U, violative)

N.L.R.B. v. Hinky Dinky Super Markets 626 F.2d 231 (C.A. 8, 1980)
(discharge of Ee because of his participation in U activities, violative)

Nebraska Bulk Transport, Inc. v. N.L.R.B. 608 F.2d 311 (C.A. 8, 1979)

N.L.R.B. v. East Wind Enterprises 664 F.2d 754 (C.A. 9, Dec. 1980)
(discharge for U activities, unlawful)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse 647 F.2d 905 (C.A. 9, June 1981)
(E's refusal to retain Ees because they were U members and E wanted to avoid incurring duty to bargain with their U, unlawful; E let entire engineering staff go although he needed at least one experienced engineer to correct malfunction in air-conditioning system)

N.L.R.B. v. Steven Davis and Michael Provenzano, d/b/a Carlton's Market 642 F.2d 350 (C.A. 9, Apr 28, 1981)
(discharge of signers of U authorization cards shortly after signing, unlawful)

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N.L.R.B. v. The Saloon, Inc. 647 F.2d 171(T) (C.A. 9, Mar 1981)
(discharging U adherent violative, where record demonstrated unlawful motivation in view of seven weeks delay between incident which was alleged as basis for firing and firing itself, giving of substantial raise to Ee after time of incident alleged to be basis of firing, and proximity of firing of Ee to his verbal support of U at Ee-E meeting and his subsequent U organizing activities)

Pay'N Save Corporation v. N.L.R.B. 641 F.2d 697 (C.A. 9, Mar 5, 1981)
(suspending and discharging U adherents for wearing U buttons, violative, where E's policy of prohibiting Ees from wearing political campaign buttons was unlawfully broadened to include all *controversial* buttons in direct response to U activity)

N.L.R.B. v. Boise Drainage, Inc. 639 F.2d 789(T) (C.A. 9, 1981)
(facts provided substantial support for Bd's finding that Ees were not engaged in economic strike and its conclusion that they were not subject to replacement, but instead had been discharged for their U activities)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. 620 F.2d 720 (C.A. 9, 1980)
(violation where moving cause for discharge of instructor was his remarks to student group regarding ongoing labor dispute rather than for disparagement of E, as alleged)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. 620 F.2d 720 (C.A. 9, 1980)
(violation where moving cause for discharge of instructor was continuation of their U activities following faculty strike rather than under-enrolled classes, as alleged)

N.L.R.B. v. Pacific Coast Utilities Service, Inc. 638 F.2d 73 (C.A. 9, Apr. 1980)
(shop steward's advising Ees not to sign warning slips presented by another company's foreman until he could discuss the matter with his supervisor held protected, and discharge therefor unlawful)

N.L.R.B. v. Flite Chief, Inc.; et al. 566 F.2d 1182 (C.A. 9, 1979)
(discharge for U sympathies, unlawful)

Coors Container Company v. N.L.R.B. 628 F.2d 1283 (C.A.D.C.)
(discharge of Ee for engaging in protected activity of displaying sign urging boycott of E's product, unlawful; E's contention that activity was unprotected because it was motivated by fear of picketing strikers rathr than by commitment to making *common cause* with them rejected; even if fear played a part in decision to display sign, it was not the sole motivating factor since Ees were also motivated by desire to encourage strikers)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. 615 F.2d 1289 (C.A. 10, 1980)
(discharge of U members to prevent economic loss by turning project into nonU job and avoid paying U wage scale and benefits, unlawful)

5073-2400 For refusing, to join or support favored union

Hillside Bus Corp. 262 NLRB No. 152
(discharge of Ee who refused to sign authorization card for U favored by E, not unlawful, notwithstanding E's unlawful threat to discharge Ee if he did not sign card, as other Ees also threatened but were not subsequently discharged, in view of fact refusal to sign card only protected activity of Ee known to E, and absent evidence E had knowledge of Ee's support for another U; further, E has met burden of showing it would have discharged Ee absent protected activity in view of limited nature of only protected activity of which E was aware and prior warnings and complaints regarding Ee's performance)

Versatile Services, Inc. 258 NLRB No. 109
(threatening Ees with and then discharging them for refusal to join U violative notwithstanding U security in collective-bargaining agreement where 30 day period had not yet expired; they had not been informed of their obligations under provision or given a reasonable time to comply with provision)

Mayo Corp. and Samet and Wells, Inc. 254 NLRB No. 031
(discharging striking Ees because they engaged in protected economic strike and because they refused to join favored U, violative)

Sentry Investigation Corp. 249 NLRB No. 120
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

Sentry Investigation Corp. 249 NLRB No. 120
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for numerous deficiencies where deficiencies were longstanding and discharge took place notwithstanding E's continuing need for Ees with gun permit)

Siro Security Service, Inc. 247 NLRB No. 187

5073-2800 For refusal to do *struck* work

G & H Products, Inc. 261 NLRB No. 047
(discharge of non-unit clerical Ee who refused to perform struck plant work though she had performed such work prior to refusal and there was no-strike provision in contract violative, as clerical Ees are protected from crossing picket lines or refusing to perform struck work when they profess willingness to perform regular clerical chores)

5073-3000 For not renouncing union membership or not engaging in antiunion activities

Mueller Insulation Co. and The Mueller Company of Missouri, Inc., Successor Employer and/or Alter Ego 263 NLRB No. 096
(constructive discharge found where E told Ees that he could not afford U and that Ees could apply for job with new company which would be non-U; Ees asked for one day to consider and did not return to work until U agent negotiated their return)

R. P. Scherer (Southeast) Corporation 256 NLRB No. 081
(discharge of Ee for threatening supervisor violative, where supervisor informed E that Ee had threatened him but actually supervisor had threatened Ee and true reason for threat was Ee's U activity)

F.M.L. Supply, Inc. 258 NLRB No. 083
(discharge of U Ee because Ee refused to accept change in his pay rate, which had been accepted by non-U Ees, and discussing U with non U Ees held violative, since E was motivated by Ee's discussions of U and Ee's refusal to abide by changed working conditions was causing unrest among non-U Ees; Ee was accused of *destroying* E)

J. D. Candler Roofing Company, Inc. 258 NLRB No. 055
(terminating Ee because of his U membership, violative)

Harrison Steel Castings Company 262 NLRB No. 059
(percipitous discharge of 2 Ees w/o any investigation of their side who were not included in unit being organized for not attending anti U rally, violative)

Marvin J. Schiff Trust R-501, Marvin J. Schiff, Trustee, d/b/a Nevada Palace Casino & Motor Inn JD-(SF)-277-81
(successor E who on taking over bankrupt property and who was under obligation to recognize U but refused to do so and discharged Ees who informed E they were *U* violated Act because E's purpose behind discharges was to be non U)

5073-3300 For striking or during strike

Richmond Tank Car Company 264 NLRB No. 025
(discharging U steward alone of 40 Ees who walked out to protest inadequate protection against runaway freight cars and toxic fumes because he *induced* walkout through his *leadership position in the Union,* unlawful notwithstanding no-strike clause, since walkout in good faith because of abnormally dangerous working conditions by express terms of Sec. 502 does not constitute a strike and discipline for violating no-strike clause violated 8(a)(3) where imposed on a leader because of his U status as steward)

Consolidation Coal Company 263 NLRB No. 188
(discharging U officers because they participated in unauthorized work stoppage with other rank-and-file Ees based on their status as U officers, violative)

Beverly Enterprises, Inc. t/a Cumberland Nursing & Convalescent Center 263 NLRB No. 061
(discharge and refusal to reinstate picket who defended herself against attack by Ee who, after driving through picket line to parking lot, returned to picket line to seek satisfaction because of names she had been called by pickets and struck out at first picket she reached, resulting in hair pulling and brief scuffle, unlawful, since incident trivial, isolated, and no injury resulted; E may not rely on picket's past record when E considered it only when U came on scene)

Conair Corporation 261 NLRB No. 178
(E's mailgram to striking Ees held unlawful attempt to break ULP strike by conditioning strikers continued employment upon their abandonment of strike, and mailgram unlawfully discharged strikers, in view of clear language of mailgram, E's subsequent conduct when it admitted that it deemed strikers to have quit their jobs upon their failure to report for work in response to mailgram, E's subsequent letter to strikers offering them reinstatement *if* they unconditionally abandoned strike immediately, and E's telling Ees upon their return to work that they were new hires and writing *new hires* on their time cards)

Parkview Nursing Center II Corp. 260 NLRB No. 037
(E's discharge of ULP strikers, unconditionally offering to return to work, allegedly for violating company rule for failure to notify E that they were not reporting for work on first day of strike, unlawful, where E had

5073-3300—Cont.

received prior written notice of U's intent to strike made in compliance with Act's requirements, U identified itself on picket line as striking against E, and E's reasons for discharging strikers was mere pretext to mask its intention of discharging them for engaging in protected concerted activity)

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde 259 NLRB No. 073
(discharge of striking Ees, violative where strike was in protest against substantial ULPs by E)

B. N. Beard Company 248 NLRB No. 016
(discharge of ULP strikers as of time they went out on strike, unlawful, where E did not offer any of striking Ees reinstatement; in fact, E told Ees that they would be discharged and not reinstated if they struck and later told newsman strikers were discharged and, in combination with these actions, E changed locks on plant's doors, requested return of Ees' keys, and withdrew recognition from Us representing Ees)

Sanders Bus Line, Inc. JD-(SF)-120-82
(discharge of drivers, who were ULP strikers, unlawful, E's contention discharge was for driving vehicles to E's yard and leaving keys inside vehicles prior to going on strike held pretextual)

Triple A Machine Shop, Inc. JD-(SF)-220-80
(discharge of 3 striking Ees not violative where they engaged in life threatening picket line violence; fact that other nonstrikers engaged in some violence and were not discharged is not inconsistent where their behavior did not reach same level of violence)

Hammermill Paper Company v. N.L.R.B. 658 F.2d 155 (C.A. 3, 1981)
(E's discharging U steward with clean work record for participation in refusal to perform assigned task rather than merely suspending him as it did other Ees involved who also had clean work records, unlawful since E may not single out for harsher punishment U officials who merely participate in illegal strike where bargaining agreement did not impose explicit duty on U officers and stewards to end any illegal work stoppage, and further, Ee was not serving as steward at time of work stoppage)

The Dow Chemical Company v. N.L.R.B. 636 F.2d 1352 (C.A. 3, 1980)
(E's termination of strikers who walked out in protest over E's unilateral change in work schedule, in breach of contract's no-strike clause, not unlawful, where Boys Markets injunctive relief was not available to E because arbitration provision was not coextensive with no-strike clause, E resorted to operating plant with new Ees and rule protecting illegally striking Ees' employment status would effectively prevent E's resort to new hires, and SCt in its Mastro Plastic decision expressly acknowledged that U members violating no-strike clause lose their Ee status)

Gould Incorporated v. N.L.R.B. 612 F.2d 728 (C.A. 3)
(E's singling out U steward for discharge for participation in work stoppage in violation of no strike clause and in contravention of his obligation as U officer to take steps to terminate work stoppage, not unlawful, since E entitled to take into consideration U official's greater responsibility, and hence greater fault, where basis for discharge was duty imposed by his office and not office as such; fact contract provision regarding obligation of U officers did not provide for discharge did not render discharge unlawful)

N.L.R.B. v. Iowa Beef Processors, Inc. 675 F.2d 1004 (C.A. 8, Apr. 1982)
(Ees who merely attended demonstrations during strike at which violent and destructive acts occurred type which had been found violative of Section 8(b)(1)(A) by Bd and against repetition of which ct had issued inj did not participate in misconduct warranting their discharge; E's contention discharge justified by Ees participation in crowd activity designed to block access to E's plant in violation of inj, rejected, since scope of Act's protection not defined by scope of inj)

5073-3325 Non-ULP strike

Sedloff Publications, Inc. 263 NLRB No. 139
(no unlawful termination or failure to recall economic striker where she was sent letter stating she was replaced which she received several days later, and since her departure, her part time, 1 day a week job has been performed by several other Ees)

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. 248 NLRB No. 039
(E who told striking Ees that it was firing them, handed out *final paychecks* in middle of pay period and ordered them off premises because they were no longer Ees, violated Act; notwithstanding Ees later met with E, terminated strike and returned to work)

5073-3325-0000 Strikers may not be discharged prior to replacement

Sedloff Publications, Inc. 263 NLRB No. 139
(no unlawful coercion or discharge of strikers where they were notified by letters that they had been permanently replaced, notwithstanding contention replacements had not been hired when letters mailed, since replacements had received commitments of hire or had been hired when letters received by strikers)

J. E. Steigerwald Co., Inc. 263 NLRB No. 069
(discharging picketers by replacing them after they offered to return to work violative)

Jimmy Kilgore Trucking Company 254 NLRB No. 112
(discharge of economic strikers prior to time when their jobs are filled, unlawful; moreover, subsequent engagement in continued concerted strike or picketing activity is neither inconsistent nor incompatible with finding of earlier unlawful discharge of Ees for refusing to work)

Scioto Coca-Cola Bottling Company 251 NLRB No. 108

N.L.R.B. v. Mars Sales & Equipment Co. 626 F.2d 567 (C.A. 7, 1980)
(economic striker whose job has not been permanently promised to replacement at time striking Ee is discharged is entitled to reinstatement; determination of whether job has been permanently promised is question of fact for ct review to see if it is supported by substantial evidence)

5073-3350 Pursuant to no-strike agreement

Servair, Inc. 265 NLRB No. 014
(an ordinary no-strike clause does not constitute legitimate, substantial business reason that justifies discharge of Ees who strike in response to serious ULPs; therefore discharge of 19 strikers who were protesting discriminatory discharge of Ee violative)

Lincoln Technical Institute, Inc. 256 NLRB No. 061
(discharge of strikers not violative where collective bargaining agreement contained no-strike clause and strike was not ULP strike because suspensions strikers were protesting were not ULPs)

Lincoln Technical Institute, Inc. 256 NLRB No. 031
(discharge of Ees who supported non ULP strike in contravention of no-strike clause in collective-bargaining agreement not violative, notwithstanding they did not participate in strike)

C. H. Heist Corporation 250 NLRB No. 108
(discharge of only U steward out of 25 Ees who engaged in work stoppage in violation of *no-strike* clause, unlawful, since discharge based on his being U official and not for his role in strike where steward was reluctant participant, not leader, in strike, counseled against strike and urged Ees to return to work though he did transmit messages to strikers from U)

Pacemaker Yacht Company, A Division of Mission Marine, Inc. v. N.L.R.B. 663 F.2d 455 (C.A. 3, Oct. 1981)
(no reinstatement of strikers though engaged in protected activity where bargaining agreement contained 2 no-strike clauses: (1) for arbitrable issues, and (2) for nonarbitrable issues as Ees unmistakeably waived their right to strike under agreement notwithstanding nonarbitrable issue which percipitated strike was not enumerated during negotiations as being covered by latter clause)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. 659 F.2d 830 (C.A. 7, Sept. 1981)
(where safety issue is one that must be submitted to binding arbitration, obligation not to strike over matter is considered to be coterminus and any stoppage violates implied no-strike clause unless safety hazzard suddenly arose and presented immediate threat; i.e., *Washington Aluminum* situation)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. 659 F.2d 830 (C.A. 7, Sept. 1981)
(2 requisites required for finding no-strike obligation; (1) contract imposes upon both parties duties of submitting to final and binding arbitration; and (2) matter is one which it has been agreed to will be covered by compulsory terminal arbitration)

Ervin Szewczuga and Gerald Treichel v. N.L.R.B. 686 F.2d 962 (C.A.D.C., Aug. 1982)
(discharge of U stewards rather than less severe discipline imposed on rank and file Ees for participation in unprotected walkout, violative, where stewards were not leaders of strike nor was there reasonable basis for E to believe they were leaders, and bargaining agreement imposed no special duty on stewards in connection with forbidden work stoppage; further, not clear that arbitrator's decision upholding discharges based on contract interpretation of required higher duty of stewards)

5073-3367 Economic strike

The General Tire & Rubber Company 262 NLRB No. 166
(discharging probationary Ees who honored strike and thereafter refusing to reinstate them, violative; E terminated only those probationary Ees who honored strike which was inherently destructive of Ee rights under Act)

Carruthers Ready Mix, Inc. 262 NLRB No. 090

Vulcan-Hart Corporation (St. Louis Division) 262 NLRB No. 087

AMPAC, a subsidiary of Kane-Miller Corp. 259 NLRB No. 181
(discharge of economic strikers improper, since they did not in fact engage in strike misconduct for which they were terminated)

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Highland Plastics, Inc. **286 NLRB No. 028**

Highland Plastics, Inc. **286 NLRB No. 028**
(striking Ees found violatively discharged notwithstanding Ees were not present when other Ees were informed of discharge where it can be inferred that their fellow strikers informed them of their discharges)

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**
(discharge of economic strikers prior to replacement, unlawful)

Raimund Corsun Co., Inc. d/b/a Rayser Co. **249 NLRB No. 078**
(discharge of economic strikers for not abandoning strike, unlawful)

Excavation-Construction, Inc. **248 NLRB No. 061**
(discharge of Ees who participated in 1-day work stoppage in support of U's bargaining position violated Act as this is strike and not *intermittent work stoppage* which would be unprotected)

Sahara Tahoe Corporation d/b/a Sahara Tahoe Hotel **JD-(SF)-269-82**
(discharge of and refusal to reinstate striker, unlawful since his possession of concealed billy club on picket line was not misconduct so violent or serious as to justify refusal to reinstate him where there was no evidence of agressive conduct against nonstrikers, public or peace officer; as sole early morning picket he probably carried it as defensive weapon, as he testified, and there was no evidence that he knew he should not have it; he did not resist confiscation of club or arrest and would not have been arrested but for his refusal to tell the sheriff his age)

Quaker Rubber Company, Division of Minnesota Rubber Company **JD-407-80**
(discharge of economic strikers, unlawful; no evidence of alleged strike misconduct)

K-P Graphics, Inc. d/b/a Impressions Northwest **JD-(SF)-187-80**
(E's issuing letter to strikers informing them that if they did not return to work on particular day, they would be permanently replaced, and, if hired later, would be as new Ee held violative, since action interfered with Ees' rights)

N.L.R.B. v. Gulf States United Telephone Company **694 F.2d 92 (C.A. 5, Dec. 1982)**
(ct held Bd's finding that Ee was unlawfully discharged for participating in protected strike activity, and not as contended for shoddy work, was supported by substantial evidence where Ee actively participated in strike activity, was only probationary Ee in this office discharged during strike, had been discharged twice w/o prior warnings about quality of work, had received no additional training upon rehire although ostensibly earlier discharge was for inadequate work performance, was discharged about five weeks after rehiring based on customer complaint, and customer could not identify Ee when asked by ALJ)

Kansas City Power & Light Company v. N.L.R.B. **641 F.2d 553 (C.A. 8, Feb 4, 1981)**
(termination ofprobationary Ees who had not completed six months continuous service required to become regular Ees prior to their participation in protected economic strike and reinstating them as new hires, unlawful, in view of discouraging effect on concerted activities; further, E's contentions that action justified by business consideration of requirement that six months probationary period be continuous and compelled by bargaining agreement, rejected, since probationary policy unwritten and flexible, waiver of probationary Ees' right to strike was not explicit and in view of meager bargaining history)

5073-3378 ULP strike

Newport News Shipbuilding & Dry Dock Company **265 NLRB No. 104**
(strike misconduct of strikers held insufficient to bar their reinstatement notwithstanding contention E should not be required to reinstate strikers since they had been convicted of misdemeanors and engaged in at least one of the following: implied or stated threats of physical contact with nonstriker, actual physical contact with nonstriker, caused or attempted to cause property damage, or has directly interfered with police officers attempting to maintain public order)

Cooperativa De Credito Y Ahorro Vegabajena **261 NLRB No. 161**
(discharge of strike replacement because she later joined strike, violative)

White Coffee Corporation **261 NLRB No. 149**
(E's refusal to allow Ee to return to work found discharge and unlawful, notwithstanding E's letter to Ee stating that he had not reported for work and was being replaced, where Ee's supervisor told him twice that he could not return to work because he had picketed (in ULP strike))

Twin County Trucking, Inc. **259 NLRB No. 078**
(discharge of ULP strikers for striking, unlawful)

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(termination of ULP strikers who took temporary, part-time, short-term, nonsatisfactory, or not substantially equivalent employment with other Es, violative)

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(terminating ULP strikers for taking employment elsewhere, violative)

Mark Twain Marine Industries, Inc. **254 NLRB No. 166**
(discharging Ees by informing strikers that they had been removed from payroll and replaced, violative, when in fact they had not been replaced)

Sav-On Drugs, Inc. **253 NLRB No. 048**
(discharge of Ees striking in protest of illegal termination of 2 fellow Ees because of their U activities, violative)

Berger Transfer and Storage, Inc. **253 NLRB No. 062**
(E who sent telegram to ULP strikers informing them of their discharges violated Act, notwithstanding 5 days later he sent another telegram rescinding discharges)

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**
(violation where, pursuant to request of U to enforce U-security clause, E discharged for nonpayment of dues and initiation fees to U Ees who were not in bargaining unit represented by U and thus not covered by E's contract with U; E's purpose was to encourage membership in this U and discourage membership in another U which had demanded recognition as representative of these Ees)

Caterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) **250 NLRB No. 089**
(discharge of Ees for participation in lawful strike violative)

Bide-A-Wee Home Association **248 NLRB No. 110**
(discharge of Ees engaged in protected strike which E termed U-called illegal strike, unlawful)

Anderson Sand & Gravel Company **JD-658-80**
(discharge of strikers, unlawful, since work stoppage protected ULP strike; E's contention unprotected since in contravention of no-strike agreement, rejected, where asserted no-strike agreement was in contract which expired by its own terms)

Arland R. Wells, Jr., d/b/a Sirimel Plumbing Company **JD-636-79**
(discharge of Ees for concerted refusal to work until E responded to Ees' demand for recognition of their chosen bargaining representative, unlawful)

N.L.R.B. v. Berger Transfer & Storage Co. **678 F.2d 679 (C.A. 7, May 1982)**
(layoff of Ees because of U organizational drive, notwithstanding where work available, unlawful)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. **660 F.2d 1335 (C.A. 9, Nov 1981)**
(firing of strikers unlawful since they had walked out in protest and joined in picketing over discharge of U adherent and working conditions notwithstanding at time of walkout some Ees gave other reasons and did not present specific demands at time)

5073-3387 Sympathy strike

Famous Supply Company, Inc. **254 NLRB No. 091**
(discharging economic striking Ees when they refused to cross picket line in sympathy with strikers of E's other two facilities, violative, and E must offer reinstatement, not Ee request reinstatement)

St. Regis Paper Company **253 NLRB No. 162**
(suspension or discharge of sympathy strikers for refusing to cross picket line at own E's premises in violation of no-strike clause not unlawful, where overall bargaining history pointed decisively to conscious waiver of right to engage in sympathy strikes during contract period)

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(discharge of 4 Ees and disciplinary suspensions of 20 others, for excessive unexcused absences, unlawful, where in each instance unexcused absences charged included days when Ees refused to, cross picket line of U representing other Ees at plant)

Pudd, Inc. d/b/a Truckee Meadows Construction Co. **JD-(SF)-308-81**
(discharge of Ee who refused to cross picket line at another E's where he was to make delivery violative)

Joseph Charles Tafarella A.K.A. Steve Rossi, and Total Productions Concepts, Inc. **JD-(SF)-212-81**
(discharge of U musicians for refusing to cross picket line of another U at hotel at which they were working)

5073-4300 For not signing union dues checkoff authorization

Herman Brothers, Inc. **264 NLRB No. 064**
(denial of dispatch to Ee who had not joined U as required by U-security clause and not signed dues-checkoff autorization card violative as Ees are entitled to notice of deficiencies and must be given opportunity to correct them before they are subject to discharge; furthermore, U security clause did not provide any penalties for not joining U)

Siro Security Service, Inc. **247 NLRB No. 157**
(discharge of Ee unlawful since for his opposition to U as bargaining representative, objection to deduction of U dues w/o his consent, and filing charges with Bd rather than for his tardiness particularly in view of his prior excellent record and recommendation)

5073-4300—Cont.

Vim-Craft By H.B.S., Inc. JD-887-79
(discharge of Ee employed at effective date of contract pursuant to security clause which did not provide grace period before persons already employed by E at effective date could be compelled to join U, unlawful)

5073-4700 For refusing to accept onerous working conditions

F.M.I. Supply, Inc. 258 NLRB No. 063
(discharge of U Ee because Ee refused to accept change in his pay rate, which had been accepted by non-U Ees, and discussing U with non U Ees held violative, since E was motivated by Ee's discussions of U and Ee's refusal to abide by changed working conditions was causing unrest among non-U Ees; Ee was accused of *destroying* E)

W.J. Lewis Corp.—W. Lewis—J. Lewis, a Partnership 257 NLRB No. 076
(discharge of unreferred Ees whom E had hired directly, rather than through exclusive hiring hall of U, at below contract rate when one of the Ees sought U's assistance in obtaining contract rate; unlawful)

Western Marine Electronics, Inc. 257 NLRB No. 057
(discharge of Ee who had joined U and filed grievance contending he was covered by bargaining contract and was not receiving contract wage or benefits, unlawful, since motivated by hostility towards Ee and unionization in non-U sector of plant, in view of E's other ULP's including transfer of Ee, recent good evaluation of Ee, and suddenness of discharge while Ee's assignment incomplete and prior to end of pay period)

McMillan Cartage, Inc. JD-(ATL)-44-81
(after Ees refused to sign E's proposed contract, telling Ees that there was no work under U contract held unlawful discharge)

5073-5000 For refusing to accept transfer to a different job

Danville Steel 256 NLRB No. 078
(discharge of Ee who walked off job to join picket line immediately after execution of contract with no strike clause, violative, where Bd has allowed such conduct in similar case in order to have period of time for *air to clear*)

5073-5200 Per se violation in application of discriminatorily promulgated plant rule

Foley-Wismer & Becker, A Joint Venture 263 NLRB No. 107
(warning and discharge for violating unlawful rule against discussing U, unlawful)

Newspaper Printing Corporation JD-203-80
(violation, where supervisor refused to grant Ee's request that he be rotated during shift to different machines because he was taking medication that might make him drowsy and endanger himself and others and subsequently terminated Ee pursuant to unlawful unilaterally instituted rule that prohibited rotation during shift)

Texas Instruments Incorporated v. N.L.R.B. 599 F.2d 1067 (C.A. 1, 1979)
(E's asserted defense of business justification to discharge pursuant to valid rule is to be weighed with *some delicacy and deference*, Bd may not substitute its business judgment for E's, rather there must be weighing of relative strengths of good and bad motivations, not to determine how Bd would have behaved under similar circumstances, but to determine what in fact motivated E)

5073-5300 For refusing to work assigned hours

Harrison Steel Castings Company 262 NLRB No. 089
(discharging Ee after she was unlawfully transferred to night shift and after experiencing problems with work wrote E that she requested transfer to old shift, another job, or termination, and E terminated her, violative)

Castle-Pierce Printing Company, Inc. 251 NLRB No. 172
(E's discharging Ees for refusing to work overtime, not unlawful, notwithstanding fact that U objected to absence rule, where E's institution of absence rule was found to be lawful)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. 247 NLRB No. 136
(Ee's resignation resulting from E's refusal to reduce Ee's hours to accomodate his school schedule contending there were no part-time positions available and citing Ee's absenteeism record constituted unlawful constructive discharge where E's actual reason was Ee's recent support of U)

5073-5400 For refusal to accept unlawful conditions

Owen Lee Floor Service, Inc. 250 NLRB No. 070
(termination of Ees who refused to accept E's unlawfully unilaterally imposed conditions of employment, violative)

J. Teixeira Construction, Inc. JD-(SF)-268-80
(discharge of Ee who protested E's failure to pay him for *stand by* time as provided under contract, violative)

5073-6300 Familial relationship to union activist, office holder, steward, etc.

Firmat Manufacturing Corp. 258 NLRB No. 103
(discharge of confidential Ee allegedly for leaking information, violative where real reason was her husband's U activities)

Akstabola Forge, A Division of ABS Industries, Inc. JD-388-80
(E's discharge of Ee and subsequent refusal to reinstate him because his father was U president, unlawful)

The Royal General Company JD-17-80
(discharge of Ee because he was brother of U adherent, unlawful)

5073-6600 Mass discharge

Cooperativa De Credito Y Ahorro Vegabajena 261 NLRB No. 161
(E's discharge of *all* ULP strikers held violative, since *all* strikers were terminated *prior* to being replaced)

Doug Hartley, Inc. 258 NLRB No. 097
(mass discharge of unit members of window and door installation crew which worked under supervision of Ee who had special incentive arrangement with E, unlawful, since E failed to overcome GC's prima facie case of unlawful motivation where discharge was 4 days after majority signed authorization cards, notwithstanding crew's unacceptable work and failure to work on weekend, where E rehired crew members for jobs outside unit; nor did cancellation of agreement by crew's leader justify discharge absent agreement that crew went if leader left)

Comgeneral Corporation 251 NLRB No. 069
(mass discharge unlawful in view of timing immediately after upsurge of U activity, animus, and flimsy excuse, together with clear admissions of wrongdoing by supervisors who administered the ULPs)

Hayes Salomon Home For The Aged, et al., d/b/a Lawson Life Extension Organization JD-(NY)-78-81
(mass discharge of U supporters allegedly for lack of professionalism, poor work performance, and incompetence, just hours after E sent U telegram withdrawing recognition, unlawful)

N.L.R.B. v. ComGeneral Corporation 684 F.2d 367 (C.A. 6, July 1982)
(ct concluded that under either dominant motive test or shifting burden test, substantial evidence supported Bd's decision that reason for discharge of 10 Ees was to punish them for their U activities)

Doug Hartley, Inc. v. N.L.R.B. 669 F.2d 579 (C.A. 9, Feb. 1982)
(discharge of crew not unlawful, where reasons were insubordination and incompetence and discharge would have occurred regardless of fact that majority of crew had signed U authorization cards)

5073-6800 To prevent employees from voting in election

World's Best Janitorial Services, Inc. JD-231-82
(supporters of disfavored U)

R.E. Peterson Products, Inc., and Will Products, Inc. JD-205-80
(discharge of U adherent, driver-warehouseman, assertedly because E could not insure its vehicles if Ee, with poor accident record, continued to drive for E held violative where Ee's termination was accelerated to prevent Ee from voting in impending R election)

5073-7100 Pursuant to unlawful no-solicitation rule

Hammary Manufacturing Corporation, A Division of U.S. Industries, Inc. 258 NLRB No. 183

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart 247 NLRB No. 125
(reprimanding Ee who had solicited another Ee who was on work time, unlawful, since was addressed only to prime U adherent and was intended more to impede her U activities than to maintain production and order in restaurant; further, reprimand was to enforce unlawful rule)

5073-7200 To avoid dealing with union

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal 265 NLRB No. 121
(violation where E, found successor herein, terminated and refused to accept employment applications from or to rehire all represented Ees of predecessor E while retaining unrepresented Ees)

Mueller Insulation Co. and The Mueller Company of Missouri, Inc., Successor Employer and/or Alter Ego 263 NLRB No. 096
(discharging and not reinstating U Ees because 2 of 5 U Ees said that they did not want to work with non-U Ees violative where real reason was that E wished to avoid U taint)

Master Food Services, Inc., Noah Robinson, and Al Williams d/b/a A & W Catering Co. 262 NLRB No. 188
(discharging all Ees violative where E told them they had signed themselves out of job by signing U cards)

5073-7200—Cont.

Liberty Homes, Inc. 257 NLRB No. 169

(E contracting out over-the-road delivery of its mobile homes and discharging drivers who performed delivery, not unlawful, notwithstanding subcontracting implemented after U had demanded recognition, where E had begun exploration of subcontracting and reached decision to subcontract prior to Ees seeking U representation and in view of E's financial losses and large capital outlay which would be required for desired replacement of inefficient gasoline powered tractors with diesel tractors)

Doug Hartley, Inc. 255 NLRB No. 097

(mass discharge of unit members of window and door installation crew which worked under supervision of Ee who had special incentive arrangement with E, unlawful, since E failed to overcome GC's prima facie case of unlawful motivation where discharge was 4 days after majority signed authorization cards, notwithstanding crew's unacceptable work and failure to work on weekend, where E rehired crew members for jobs outside unit; nor did cancellation of agreement by crew's leader justify discharge absent agreement that crew went if leader left)

National Car Rental System, Inc. 252 NLRB No. 027

(systematic exclusion of E's garage Ees and mechanics at its closed truck rental facility for consideration for employment at E's relocated facility, violative where E had voiced desire w/i ranks of management to have nonU operation at relocated site)

Island Typographers, Inc. 252 NLRB No. 003

(E's unilateral action of terminating hot-type method of production and laying of its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

Tennessee Cartage Co., Inc. 250 NLRB No. 015

(terminating work of truckdrivers and warehousemen during period of U campaign and using Ees of *Rent-A-Driver* service for such work held violative where action taken to avoid U at E)

Atlas Inc. JD-690-79

(violation where, in order to avoid dealing with U, E laid off unit Ees, ceased operations, closed shop, refused to reinstate Ees, and subcontracted unit work and transferred all physical assets to another corporation, and the corporation, found herein to be successor to and *alter ego* of E, refused to reinstate E's Ees and subcontracted work formerly performed by some of E's Ees)

N.L.R.B. v. R & H Masonry Supply, Inc. 627 F.2d 1013 (C.A. 9, Sept. 1980)

(E's sale of its trucks, discharge of drivers and contracting out of hauling after drivers signed U cards, unlawful)

N.L.R.B. v. R & H Masonry Supply, Inc. 627 F.2d 1013 (C.A. 9, Sept. 1980)

(discharge of all but one Ee in unit and elevating remaining Ee to *managerial* position, in order to aovid dealing with U, unlawful)

5073-7300 To legitimatize unlawful discharge of other employee(s)

Plaza Bay Enterprises, Inc. JD-(SF)-273-82

5073-7700 Pursuant to illegal union-security agreement

Gold Standard Enterprises, Inc., et al. 249 NLRB No. 046

(violation, where Ees who were reluntant to sign membership and checkoff authorization cards for U w/o knowing more about organization and w/o seeing collective bargaining agreement which purportedly existed between U and E were threatened with loss of job or other reprisals by agents of U and E if they did not sign cards where U did not represent majority)

Visa-Craft By H.B.S., Inc. JD-887-79

(discharge of Ee employed at effective date of contract pursuant to security clause which did not provide grace period before persons already employed by E at effective date could be compelled to join U, unlawful)

5073-8000 Pursuant to union demand because of employees opposition to union officer

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. 251 NLRB No. 032

(U causing discharge of Ee who had previously worked 1 day for E as *fill in* not violative where U and E had hiring arrangement which only involved permanent Ees and 1 day's employment did not qualify Ee for continued employment with E)

5073-8200 Pursuant to union demand because employee-member did not comply with union rules

Glass Container Corporation JD-872-81

(discharge violative where Ee who was demoted from supervisor and returned to status of nonsupervisory Ee was discharged at U's request because she had not obtained U withdrawal card when she became supervisor as provided for in contract; therefore, discharged based on considerations of U status)

5073-8300 Pursuant to union demand because of employees lack of union membership

Versatile Services, Inc. 258 NLRB No. 189

(threatening Ees with and then discharging them for refusal to join U violative notwithstanding U security in collective-bargaining agreement where 30 day period had not yet expired; they had not been informed of their obligations under provision or given a reasonable time to comply with provision)

Port Jefferson Nursing Home and Health Related Facility 251 NLRB No. 092

(U's demand for and E's carrying out discharge of Ees who had resigned from U and were attempting to decertify U and replace it with another U, violative, since U's demand was erroneously based on U-security provision and inasmuch as there was no valid basis for discharge request, demand for and discharge of Ees was in retaliation for Ees' exercising their Sec. 7 right to displace incumbent with another U)

Standard Bridge Corporation JD-174-80

(U's and E's conduct violative, where U threatened to picket E's jobsite in attempt to cause and caused E to discharge Ees because they were not members of U notwithstanding that U had denied Ees membership and refused to provide them opportunity to tender dues and initiation fees pursuant to lawful U security agreement)

5073-8500 Pursuant to union demand because of employees intra-union troublemaking

H. H. Robertson Company 263 NLRB No. 173

(violation, where E condoned and participated in discrimination by U, with which it had exclusive hiring hall agreement, against Ees associated with U dissident by discharging Ees contrary to its usual seniority policy, since E knew its own termination procedure was not being followed and *when E delegates hiring to U by utilizing Ee referral system to obtain Ees, it is responsible if U operates system in discriminatory manner even w/o such knowledge by E*)

5073-8600 Pursuant to Union demand because of employee's dues delinquency

Big Rivers Electric Corporation 260 NLRB No. 059

(E's suspension of Ee for three days after receipt of notice from U that she be discharged for violation of U-security clause not violative where E could have terminated her but merely gave her an extended 3-day grace period in which she was to meet her obligation)

Valley Cabinet & Mfg., Inc. 253 NLRB No. 008

(where E discharged Ee pursuant to U's request because she was 6 months behind in payment of dues it did not violate Act because although U had failed to give Ee adequate notice of or opportunity to pay her arrearages E had no knowledge of this and Ee did not protest discharge to E)

Yellow Cab Company of Philadelphia (Debtor in Possession) JD-247-81

(discharging Ees pursuant to U's request, violative where E had reasonable grounds for believing that U did not give Ees adequate and correct notice of their dues obligations and reasonable opportunity to comply with those obligations; and two of the discharged Ees had met their dues obligations)

5073-8700 To discourage support for disfavored union

New-Stan Dyeing and Finishing Co., Inc. 263 NLRB No. 140

(discharge of Ees for signing and distributing cards of U which had charged E with 8(a)(2) violation, unlawful)

Sentry Investigation Corp. 249 NLRB No. 130

(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

Suburban Ford, Inc. 248 NLRB No. 051

(discharge of U adherent salesman for *disloyalty* because he tried to explain why he loaned demonstrator to customer, held violative where Ee was experienced salesman with unexceptionable performance record and E was attempting to harass Ee and cool ardor of all Ees for U representation)

5073-9200 As result of discriminatory enforcement of rule

A & T Manufacturing Company 265 NLRB No. 201

(discharge of active U supporter for his failure to call in when absent and insubordination (calling supervisor a *brown nose* –) held violative, since, although Ee's violation of absentee rule was valid reason to discharge Ee, credited testimony was clear that E had decided to discharge Ee *before* Ee's absences)

5073-9300 As result of plant relocation

5073-9300—Cont.

Air Express International Corporation v. N.L.R.B. 659 F.2d 610 (C.A. 5, Oct. 1981)
(after merging with and moving operations to newly acquired facility, discharging and failing to transfer Ees held violative where only pro-U Ees were discharged, and in other merged facilities no full time Ees were discharged)

N.L.R.B. v. Borg Warner Corporation; et al. 660 F.2d 326 (C.A. 6, Oct. 1981)
(termination of Ees as result of transferring operations from unionized subsidiary to nonunionized subsidiary, violative, where E wished to hold wages paid to Ees at non-unionized subsidiary to levels below those then paid to unionized Ees; such refusal to transfer unionized Ees to other subsidiary w/o prior negotiations held inherently destructive of Ee rights)

N.L.R.B. v. Borg Warner Corporation; et al. 663 F.2d 666 (C.A. 6, Oct. 1981)
(termination of Ees as result of transferring operations from unionized subsidiary to nonunionized subsidiary, violative, where E wished to hold wages paid to Ees at non-unionized subsidiary to levels below those then paid to unionized Ees; such refusal to transfer unionized Ees to another subsidiary w/o prior negotiations held inherently destructive of Ee rights)

5073-9400 New job standard

N.L.R.B. v. Brewton Fashions, Inc., a Division of Judy Bond 682 F.2d 918 (C.A. 11, Aug. 1982)
(required Ees to push heavy carts w/o help)

5073-9500 As result of change in reprimand procedure

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. 237 NLRB No. 045
(discharge unlawful where it would not have occurred but for warnings given for infraction of rule discriminatorily against U adherent and only during U campaigns)

5073-9600 As result of change in operations

Island Typographers, Inc. 252 NLRB No. 003
(E's unilateral action of terminating hot-type method of production and laying of its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

5073-9700 Resulting from reassignment of work due to jurisdictional dispute

Sullivan Transfer Co. 247 NLRB No. 117
(E's change in method of assigning work which resulted in constructive discharge of Ee violative where motivation was U's demand for compliance with wage provisions of contract and not presence of jurisdictional dispute)

5075 PREFERENTIAL REINSTATEMENT

American Olean Tile company, Inc. 265 NLRB No. 206
(violation, by denying vacancies of substantially equivalent pre-strike jobs to qualified senior economic strikers by giving inter-plant preference to strikers who abandoned strike or who made individual offers to return to work and were reinstated, albeit to positions not substantially equivalent to pre-strike positions, over the former for whom U made offer to return to work)

George Banta Company, Inc. Banta Division 256 NLRB No. 055
(violation where E granted preferential reinstatement rights and preferential seniority rights to jobs and rates of pay to Ees who abandoned strike before strike ended)

George Banta Company, Inc., Banta Division v. N.L.R.B. 686 F.2d 10 (C.A.D.C., Aug. 1982)
(granting preferential reinstatement and seniority rights to Ees who abandoned strike before it ended and crossed over picket line, violative notwithstanding E's contentions that its preferential reinstatement systems (PRS) gave Ees no *prospective* benefits and that PRS was justified by E's needs; ALJ correctly found that *Management could have achieved essentially same business objectives w/o drawing line of demarcation between crossovers and returning strikers* and whether benefit is current or prospective, relevant question is whether E has illegally burdened statutory right to strike)

5077 REFUSAL TO PLACE DISCRIMINATEES ON PREFERENTIAL HIRING LIST

Brinkerhoff Signal Drilling Co. 264 NLRB No. 049
(E violated Sec. 8(a)(1) when it created impression that economic strikers who were seeking to return to work were not being granted their *Laidlaw* preference in employment over new applicants and also by requiring returning strikers to fill out same employment register that all job applicants signed)

Brinkerhoff Signal Drilling Co. 264 NLRB No. 049
(where Ees were on inactive status due to E layoffs at time strike began, they must have engaged in overt conduct during strike which would give E reasonable notice of strike support before they need be placed on preferential hiring list)

5079 REFUSAL TO REINSTATE

5079-0100 Generally

Carbonex Coal Company 262 NLRB No. 139
(E's refusal to rehire strikers rather than six new Ees it did hire violative and it is immaterial in this situation whether they were economic or ULP strikers as no new Ees had been hired at time strikers made unconditional offer to return to work)

Flatiron Paving Company d/b/a Flatiron Materials Company 259 NLRB No. 080
(where Ee had been discriminated against on 2 occasions valid offer of reinstatement must include reassurance that no further discrimination would occur)

Tri-State Warehouse & Distributing, Inc. and Public Warehousing Corp. JD-261-80

5079-1400 Following lay-off

Enterprise Products Company 265 NLRB No. 063
(failure and refusal to recall senior Ee in layoff status, unlawful, where reason for failure to recall Ee was revealed in E's preelection speech when he stated that he understood that only Ees employed on election day could vote and stated his intent that votes of those in layoff status should not be counted and would be challenged)

Brinkerhoff Signal Drilling Co. 264 NLRB No. 049
(Ees who were on layoff status at time strike commenced found strikers where E routinely reemployed laid-off Ees, and when after strike began E offered them reemployment which they declined in support of U's strike)

Coil-Acc, Inc. 262 NLRB No. 012
(layoff and refusal to reinstate U adherent assertedly for lack of work held violative where E had plentiful supply of raw materials and there was no evidence E's inventories were excessive; day after U adherent was terminated, he was replaced by new Ee who performed same work as U adherent)

Drury Construction Co. 260 NLRB No. 098
(layoff and failure to recall Ee who tried to get E to comply with collective bargaining agreement requiring it to assign certain work to Ee members of Teamsters violative)

NAB Construction Corporation 258 NLRB No. 090
(refusal to reinstate U supporter after layoff violative where E was aware of Ees' U allegiance and had previously threatened him with fact that he would not be rehired because he supported wrong U)

Wean United, Inc. 258 NLRB No. 134
(Bd adopted ALJ's finding that E failed to demonstrate that it would not have rehired Ee even absent his protected concerted activity; in so doing, Bd additionally relied on fact that, despite E's assertion that it rehired another Ee because he was a *better* Ee, it was clear that E found other Ee was better because he was not a *troublemaker*, i.e., one who too vigorously engaged in protected concerted activity)

Seaport Manor, Inc. and Martin Rosenberg, Baruch Mappe, and Emil Klein, a Partnership, d/b/a Seaport Manor Home For Adults 268 NLRB No. 139
(reinstatement of discriminatorily laid-off Ee to night shift when he had formerly worked on day shift, unlawful)

Noryen Company, Inc. JD-047-79
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

Chromalloy Mining and Minerals Alaska Division, Chromalloy American Corporation v. N.L.R.B. 620 F.2d 1120 (C.A. 8, 1980)
(violation where antiU E failed to rehire laid-off leading U supporter because of U activities rather than for not completing job assignment as alleged; E had decided previously that it could not afford to bring back Ees who were *in on* U and had thus hired two new Ees while failing to recall proU Ee)

N.L.R.B. v. Senftner Volkswagen Corporation 681 F.2d 557 (C.A. 8, July 1982)
(refusal to rehire U activist on layoff violative where president asked if he would rejoin U if he went back to work and told him that if he did U would be twice as strong; furthermore, E did not establish claims of poor work habits or that his inability to get along with people interfered with job proficiency)

5079-1450 Contrary to customary practice

5079-1450—Cont.

Earle Industries, Inc. 260 NLRB No. 163
(E's failure to reinstate U adherents who were temporarily laid off prior to first election for lack of work and failure to meet E's production standards, and then, prior to second election, conversion of such layoffs to permanent layoffs held violative where Ees were not advised of E's production standards and other Ees, who did not meet standards were retained in their jobs; customarily, Ees temporarily laid off for lack of work could expect to have been recalled when work picked up)

E. R. Carpenter Co. 260 NLRB No. 091
(E's failure to recall laid off U adherent during general recall not violative where E followed routine recall procedures and Ee was not home to receive phone call requesting return to work; moreover, fact that Ee was one of best workers not relevant where past work performance had no bearing upon order of recall)

Advanced Mining Group, Div. of Republic Corp., Lacorne Facility 260 NLRB No. 073
(known U protagonist)

Bedford Farmers Cooperative 259 NLRB No. 165
(E's failure to recall certain previously laid off Ees and unilaterally, w/o notice to or consulting with U, hiring new Ees not violative where record contained no evidence that failing to recall laid off Ees was change in E's past practice, much less unlawful unilateral change)

5079-2000 Non-ULP strikers

Randall, Burkart/Randall, Division of Textron, Inc. 257 NLRB No. 001
(violation, where E labeled status of Ees who had either been discharged or voluntarily quit as on *leave of absence* in order to give false impression they were not new Ees when recalled by E and so did not need to recall unreinstated strikers)

Randall, Burkart/Randall, Division of Textron, Inc. 257 NLRB No. 001
(E's transfer of security guards hired after strike began to production jobs rather than recalling strikers for those positions, unlawful, absent substantial business justification, where E had not hired permanent replacements for production jobs)

Giddings & Lewis, Inc. 255 NLRB No. 093
(instituting policy of recalling laid-off Ees ahead of unreinstated economic strikers w/o regard to circumstances involved, violative, where such policy amounted to unlawful grant of superseniority to nonstrikers and replacements; furthermore, such policy was inherently discriminatory absent any legitimate business justification since it gives preference to laid-off Ees over unreinstated strikers in filling job vacancies unrelated to layoffs where qualifications or abilities of Ees were deemed relatively equal by E)

Cutting, Inc. 255 NLRB No. 076
(E's refusal to reinstate economic strikers after they made unconditional offers to return to work, unlawful, where E falsely claimed that it had already permanently replaced all strikers and then belatedly hired new Ees who were promised permanent status; and E failed to meet burden of proof that his action was due to legitimate and substantial business justification)

Cutting, Inc. 255 NLRB No. 076
(failure to reinstate U supporter engaged in economic strike, unlawful, where striker was not permanently replaced and was never offered proper reinstatement to her former position after her unconditional offer to return to work; and it would have been futile for her to have applied again for reinstatement in view of her subsequent termination which E attempted to justify by fabricated testimony)

W. G. Best Homes Corporation 253 NLRB No. 123
(no obligation to reinstate Ees who participated in economic strike and were subsequently terminated when E subcontracted their work for economic reasons, since strike not converted into ULP strike by E's failure to bargain prior to subcontracting as U never requested bargaining on issue)

Pepsi-Cola Bottling Company of Mason City, Iowa 251 NLRB No. 028
(refusal to reinstate 2 economic strikers immediately, unlawful, where unconditional offer to return to work was made on their behalf and E failed to meet its burden of justification for its failure to offer one Ee employment or for delay in reinstating other Ee)

Pepsi-Cola Bottling Company of Mason City, Iowa 251 NLRB No. 028
(E's failure to offer position to former economic striker, unlawful, where E filled position with nonstriker after unconditional offer to return to work made on behalf of strikers)

C-F Air Freight, Inc. 247 NLRB No. 060
(failure to recall strikers to work assertedly because of financial losses at E's facility, unlawful, where E unlawfully threatened to close plant, contention that decision to do so was made before U activity began was patent contrivance, E made statement to Ees that if they unionized E *would padlock door* and expressed antagonism toward U, and disparate nonclosure of another facility was based on lack of U activity threat)

Sunnyland Foods, Inc. JD-(ATL)-36-80
(E's failure to consider striker for reinstatement after he withdrew his profit-sharing account, violative)

Sunnyland Foods, Inc. JD-(ATL)-36-80
(E's failure to recall striker, violative where E hired new Ees after striker placed herself on *any job* list and there was no evidence that striker was unqualified for positions in which new Ees were hired)

N.L.R.B. v. W. C. McQuaide, Inc. 617 F.2d 349 (C.A. 3, 1980)
(E's defense to its failure to offer reinstatement to economic strikers on ground that it was having trouble returning to full operations in wake of strike and caused delay in its ability to offer reinstatement, rejected, since merits of E's justification had previously been decided by Bd and ct against E)

N.L.R.B. v. W. C. McQuaide, Inc. 617 F.2d 349 (C.A. 3, 1980)
(E's contention that it should be obligated to offer reinstatement only to those economic strikers who responded to its letter regarding reinstatement, rejected, where U's offer to return to work was bona fide and unconditional, E had no substantial business justification for failing to reinstate strikers, E's letter merely inquired into strikers' interest in future job openings and, consequently, strikers were under no obligation to respond to E's letter)

N.L.R.B. v. W. C. McQuaide, Inc. 617 F.2d 349 (C.A. 3, 1980)
(economic striker does not waive his right to be offered reinstatement due to his failure to respond to E's letter which did not offer reinstatement but merely inquired into strikers' interest in future job openings)

Giddings & Lewis, Inc. v. N.L.R.B. 675 F.2d 926 (C.A. 7, Apr. 1982)
(promulgating rules providing that members of existing work force made up of permanent replacements will be recalled in order of seniority in event of layoff even before unreinstated economic strikers, not unlawful, where such system assures replacements *permanent* status to which they are entitled under *Mackay* and, contrary to Bd finding, system does not discriminate between strikers and non-strikers nor does it deny unreinstated strikers right to reinstatement should vacancies occur in work force)

Randall, Division of Textron, Inc. v. N.L.R.B. 687 F.2d 1240 (C.A. 8, Sept. 1982)
(recall of permanent replacements from alleged leave of absence instead of reinstating economic strikers, violative because none of departures was originally placed on official leave of absence and retroactive grant of such leave cannot be permitted to avoid reinstating strikers)

5079-2001 Generally

Famous Supply Company, Inc. 254 NLRB No. 091
(discharging economic striking Ees when they refused to cross picket line in sympathy with strikers of E's other two facilities, violative, and E must offer reinstatement, not Ee request reinstatement)

N.L.R.B. v. Iowa Beef Processors, Inc. 675 F.2d 1004 (C.A. 8, Apr. 1982)
(Ees who merely attended demonstrations during strike at which violent and destructive acts occurred type which had been found violative of Section 8(b)(1)(A) by Bd and against repetition of which ct had issued inj did not participate in misconduct warranting their discharge; E's contention discharge justified by Ees participation in crowd activity designed to block access to E's plant in violation of inj, rejected, since scope of Act's protection not defined by scope of inj)

5079-2013 Where replaced

Sedloff Publications, Inc. 260 NLRB No. 139
(no unlawful termination or failure to recall economic striker where she was sent letter stating she was replaced which she received several days later, and since her departure, her part time, 1 day a week job has been performed by several other Ees)

Daniel Construction Company, A Division of Daniel International Corporation 264 NLRB No. 079
(Ee's right to reinstatement to his job preserved by Ee's statement that, he *would be back* in response to supervisor's asking *would he (Ee) be back to work Monday* therefore, Ee had right to work over replacement hired after Ee said he would be back to work though he reported late that day)

Brinkerhoff Signal Drilling Co. 264 NLRB No. 049

Mid-County Transit Mix, Inc. 264 NLRB No. 107
(E's failure to reinstate striker when opening occurred after striker's unconditional offer to return to work, unlawful, since E failed to establish business justification for failure to reinstate, or that striker had obtained equivalent employment elsewhere and where striker had decided to get out of business he had started during strike, and had never informed E he wished to continue venture; further, it is E's responsibility to ascertain availability of striker, nor is it defense to E's backpay liability that it sent letter to striker inquiring if still interested in job)

Mid-County Transit Mix, Inc. 264 NLRB No. 107
(E's failure to reinstate, w/o any business justification striker when replacement left after striker had unconditionally offered to return to work, unlaw-

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5079-2813—Cont.

ful, where E reinstated other strikers with less seniority and strikers who made later offers to return to work, nor did fact striker had taken another job justify E's failure to reinstate him since unlikely striker would have preferred other job inasmuch as he had less seniority at that job than had with E)

Mid-County Transit Mix, Inc. **264 NLRB No. 107**
(E's failure to reinstate striker when replacement left after striker made unconditional offer to return to work, unlawful, where E had reinstated another striker with les seniority who made offer to return to work simultaneously, and absent evidence striker had abandoned his job or acquired equivalent employment elsewhere; striker's failure to respond to E's letter inquiring about his present interest in job, which was not valid offer of reinstatement, did not relieve E of obligation to offer him reinstatement)

J. E. Steigerwald Co., Inc. **263 NLRB No. 068**
(refusal to reinstate striker to former position at time when no replacements who were capable of performing his work had been hired violative)

Overhead Door Corporation (Todco Division) **261 NLRB No. 094**
(failure to recall strikers, not unlawful where replacements had been hired in November and December prior to receipt in January of strikers' unconditional offer to return to work; Bd inferred on basis of record that undated letter and letter dated in January, which contained said offers, were received by E in January, since GC had stated in opening statement that both letters were sent in January and GC's mtn that transcript be corrected to show receipt of undated letter in January was unopposed)

Overhead Door Corporation (Todco Division) **261 NLRB No. 094**
(initial failure to reinstate economic striker justified where position was open only occasionally, but later failure to reinstate him when vacancy in position existed and was filled by promoting strike replacement, unlawful)

Overhead Door Corporation (Todco Division) **261 NLRB No. 094**
(no violation by transferring guards to production jobs instead of reinstating economic strikers where guards had originally been hired as permanent replacements in production jobs before strikers offered to return to work, were temporarily transferred to jobs as guards, then returned to their original production jobs)

Consolidated Dress Carriers, Inc., et al. **259 NLRB No. 083**
(E who refuses to reinstate economic strikers who make unconditional offers to return to work has burden of proving that strikers have been permanently replaced; burden not met where payroll records indicated E had work available for all striking Ees, no evidence of hiring of permanent replacements, or of decline in business or elimination of jobs)

Waveline, Inc. **258 NLRB No. 087**
(refusal to reinstate probationary Ees who engaged in economic strike, violative, where Bd rejected E's contention that Ees who had not completed probationary term *ipso facto* do not have same rights to reinstatement after economic strikes as regular Ees; here in refusing to reinstate probationary Ees, E deviated from normal practice of allowing such Ees to complete their probationary terms before deciding whether to retain them)

Lincoln Hills Nursing Home, Inc.; et al. **257 NLRB No. 145**
(hiring new Ees as aides at time when all striker-aides not reinstated violative)

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**
(E's failure to reinstate strikers where it temporarily transferred Ee from one department to another for short period of time to work on similar machine to satisfy production requirements, not unlawful; GC's contention that two vacancies created for which unreinstated strikers should have been recalled i.e. vacancy which gave rise to transfer and vacancy created by departure of Ee to department where production was requested, rejected, in view of E's past practice regarding transfers which were dictated by its production system)

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**
(violation, where unreinstated strikers denied opportunity to bid for special rated jobs and E filled such jobs by first offering them to Ees on existing payroll rather than to qualified strikers awaiting reinstatement)

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**
(no violation where E permanently transferred production workers w/i plant to another classification rather than recalling unreinstated economic strikers where no discriminatory motive present, E showed substantial and legitimate business reasons for doing so, and E did not agree to apply, nor was any strike settlement agreement executed calling for, application of recalls from layoffs provision of expired contract)

IPCO Hospital Supply Corporation, Cheshire Lake Division **255 NLRB No. 116**
(refusing to offer immediate reinstatement to economic strikers after U offered their unconditional return to work, not violative as case was heard with understanding that some replacements were hired and E had no notice that number of available jobs was in issue; attorney's affidavit was admitted to establish that no jobs were then available)

Giddings & Lewis, Inc. **255 NLRB No. [illegible]**
(E's recall policy affording seniority preference for job vacancies to Ees who had been laid off over unreinstated (economic) strikers held violative, since policy constituted illegal grant of superseniority; policy was inherently discriminatory; E advanced no legitimate business justification in support of its policy; *Bancroft Cap Company*, 245 NLRB No. 86 (1979), *distinguished to cover relatively short term layoffs*)

Home Insulation Service, A Division of Sunstate Wholesalers **255 NLRB No. 050**
(E's refusal to reinstate strikers unlawful where U and strikers made unconditional offer to return to work on behalf of strikers prior to hiring of replacements, notwithstanding subsequent offers to return to work which were arguably conditioned on reinstatement of Ees whose lawful discharges precipitated strike; uncertainty resolved against E where it did not seek clarification of allegedly ambiguous offers)

Home Insulation Service, A Division of Sunstate Wholesalers **255 NLRB No. 050**
(striker replacement applicants who have accepted offers of employment but who have not yet reported for work are considered striker replacements since applicants obtain such status upon their acceptance of employment)

Murphy Bonded Warehouse, Inc. **254 NLRB No. 170**
(E's refusal to reinstate participants in lawful economic strike, unlawful, where contract had been agreed upon where accepted E's final proposal and offered return to work of strikers, but E falsely claimed it had hired permanent replacements)

John Cuneo, Inc. **253 NLRB No. 110**
(upon their unconditional offer to return to work, economic strikers are entitled to immediate reinstatement to their former positions, or, if those positions have been filled by permanent replacements, to full reinstatement upon departure of their replacements, unless E can show legitimate and substantial business reasons for not reinstating the Ees)

Associated Grocers **253 NLRB No. 005**
(no conversion of economic strike to ULP strike where ULPs committed by E did not prolong strike)

Associated Grocers **253 NLRB No. 005**
(temporary strike replacements' status converted to permanent status when E communicated such change to replacements who then acknowledged such change in writing; however, as to Ees hired thereafter as temporary and received no assurance that their employment was permanent regardless of intention of E, they retained their temporary status)

Roberts Oldsmobile, Inc. **252 NLRB No. 035**
(failure to reinstate economic strikers upon their offer to return to work, not violative where striking Ees' offer to return to work was conditioned on reinstatement of certain Ee and discharge of strikers' replacements, and U's offer on behalf of strikers to return to work was premised upon E's agreeing to $200 weekly floating guarantee)

Scioto Coca-Cola Bottling Company **251 NLRB No, 105**
(discharge of economic strikers prior to replacement, unlawful)

Owen Joint Corporation **248 NLRB No. 076**
(violation where E refused to reinstate economic strikers, as their jobs for which they were qualified became available, following their unconditional offer to return to work)

Vinci Investment Co., d/b/a Pacific Honda **JD-(SF)-56-81**
(refusal to reinstate strikers who had been replaced not unlawful, where E's conduct was not so serious as to convert strike over wages and U security into ULP strike entitling strikers to immediate reinstatement)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(refusal to reinstate strikers who were held economic strikers, since strike not converted to ULP strike, where strikers had been permanently replaced and E stated it would reinstate strikers when openings occured)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**
(existence of bona fide replacements for economic strikers did not justify E's failure to offer strikers positions available, since economic striker is entitled to reinstatement if and when a job for which he is qualified becomes available; fact that his old job is occupied is no excuse for refusing to make reinstatement offer)

N.L.R.B. v. W. C. McQuaide, Inc. **617 F.2d 349 (C.A. 3, 1980)**
(E was obligated to offer reinstatement to economic strikers where E failed to carry burden of showing that legitimate and substantial business reasons, including their replacement, justified its refusal to do so)

Atlas Metal Parts Co., Inc. v. N.L.R.B. **660 F.2d 304 (C.A. 7, Sep. 1981)**
(ct found E's failure to reinstate replaced strikers not unlawful where it found E had not bargained in bad faith, and strikers were therefore non-UPL rather than ULP strikers)

5079-2813—Cont.

Randall, Division of Textron, Inc. v. N.L.R.B. **687 F.2d 1240 (C.A. 8, Sept. 1982)**
(E's policy of offering special-rated jobs to unreinstated strikers only if none of permanent strike replacements were qualified for and wanted jobs, violative as these job openings were vacancies and required posting under expired contract; effect was to make it less likely that strikers would be reinstated to higher-paying positions and amounted to preference to those who did not strike; such preference was inherently distructive of Ee right eliminating necessity of proving discriminatory motivation of E)

Randall, Division of Textron, Inc. v. N.L.R.B. **687 F.2d 1240 (C.A. 8, Sept. 1982)**
(filling temporary job with strike replacements who had quit held not violative as temporary job was not vacancy to which striker should have been reinstated)

N.L.R.B. v. Vitronic Division of Penn Corporation **630 F.2d 561 (C.A. 8, 1979)**
(E's refusal to retain replaced economic strikers on preferential hiring list and reinstate where former strikers had failed to comply with its requirement stated on initial request for reinstatement form sent to strikers that strikers renew their continued interest in reinstatement after six months, unlawful, since burden of notifying former strikers and verifying their continuing interest in reinstatement placed on E who may at most require former strikers, in response to appropriate notice, to indicate whether they continue to desire reinstatment)

Zapex Corporation and BDM Services Company v. N.L.R.B. **621 F.2d 328 (C.A. 9, 1980)**

5079-2819 To former or substantially equivalent position

American Olean Tile company, Inc. **265 NLRB No. 206**
(violation, by denying vacancies of substantially equivalent pre-strike jobs to qualified senior economic strikers by giving inter-plant preference to strikers who abandoned strike or who made individual offers to return to work and were reinstated, albeit to positions not substantially equivalent to pre-strike positions, over the former for whom U made offer to return to work)

Forester Beverage Corporation **265 NLRB No. 035**
(qualified unreinstated striker is entitled to offer of reinstatement to newly created position resulting from expansion of unit; thus where E retained two permanent replacements and reinstated two strikers it essentially expanded size of unit and its failure to offer newly created positons (which were substantially equivalent to those strikers occupied before strike) to strikers awaiting reinstatement before placing in those positions new Ees hired after striker's unconditional offer to return to work violative)

J. E. Steigerwald Co., Inc. **263 NLRB No. 068**
(reinstating striking Ee to position as laborer rather than his former position of laying tile, violative)

Green Country Casting Corporation **262 NLRB No. 010**

Mobile Home Estates, Inc. **259 NLRB No. 182**
(denying reinstatement to probationary Ees after end of economic strike, violative where E has shown no legitimate and substantial business justification and Ees were never told prior to strike that their work was unsatisfactory; such denial is so inherently destructive of Ee rights that evidence of specific anti-U motivation was not needed)

Waveline, Inc. **258 NLRB No. 087**
(refusal to reinstate probationary Ees who engaged in economic strike, violative, where Bd rejected E's contention that Ees who had not completed probationary term *ipso facto* do not have same rights to reinstatement after economic strikes as regular Ees; here in refusing to reinstate probationary Ees, E deviated from normal practice of allowing such Ees to complete their probationary terms before deciding whether to retain them)

Deauville Hotel **256 NLRB No. 078**
(reinstating striker to job other than job he had always held at lower rate of pay with little or no seniority, violative)

Reid J. Cavanaugh, Sole Proprietor **255 NLRB No. 020**
(refusal to reinstate economic striker violative where, after striker had made unconditional offer to return to work, E hired non-striker to position involving work substantially equivalent to work striker had performed prior to strike)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(discriminatee, who was refused reinstatement, not obliged to inquire whether or not offer (to return to work) was to reinstate him to his former position)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(where subject of returning to work is put as question to Ee and not as offer, burden is not on discriminatee to inquire whether or not offer was to reinstate him to his former position inasmuch as offer does not constitute unconditional offer of reinstatement)

Routh Packing Company, Inc. **247 NLRB No. 083**
(lesser jobs filled by temporary and seasonal workers held not substantially equivalent to strikers' former jobs so that failure to offer them to strikers not violative)

Jay-Em Corporation **JD-847-81**
(refusal to reinstate economic striker who had applied for and was qualified for position)

Sunnyland Foods, Inc. **JD-(ATL)-36-80**
(striker recall system not unlawful, where there was no insistence by E on system, U raised no objections to it, those strikers who were reinstated to positions other than their pre-strike positions were subsequently offered their pre-strike positions when they became available, and great majority of strikers were reinstated w/o significant difficulty through recall procedure)

Graphic Components, Inc. **JD-377-80**
(refusal to reinstate economic striker, not unlawful, where striker would have been able to fill only temporary job that was not substantially equivalent to job striker previously held)

Atlas Metal Parts Co., Inc. v. N.L.R.B. **660 F.2d 304 (C.A. 7, Sep. 1981)**
(failure to return non-ULP striker to same position after strike, not unlawful since changed business conditions eliminated need for Ee working fulltime in that position)

Atlas Metal Parts Co., Inc. v. N.L.R.B. **660 F.2d 304 (C.A. 7, Sep. 1981)**
(failure to offer job to non-ULP striker better than poor job he had been given on reinstatement when better job opened up, not unlawful, since E knew that job similar to that which Ee had held before strike and to which he wished to return would soon be opening up, and exercised its business judgment accordingly and subsequently placed Ee in such job)

5079-2825 Except as new employees

Denzil S. Alkire, a Sole Proprietorship; et al. **259 NLRB No. 174**
(where sole proprietorship dissolved its company during strike and formed new corporate entity, found its alter ego herein, which was subsequently leased by another E, all three Es held liable for unlawful acts of formed corporate entity and lessee E in requiring striking Ees to file new job applications as condition of employment, since newly-formed corporate entity and lessee E were found joint Es and each was found alter ego of original proprietorship)

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**
(refusal of E, which had instituted fixed shifts to allow reinstated strikers to use their seniority to transfer to prefered shifts, as provided in terminated bargaining agreement, unlawful, notwithstanding contention no violation in view of lack of agreement regarding seniority and absent U animus, since change in policy regarding shift preference based on seniority had destructive impact on strike and U activity since it operated to discreiminate between strikers and nonstrikers and no overriding business justification for continuing fixed shifts)

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**
(requiring former strikers to wait 90 days after reinstatement for resumption of health insurance coverage, unlawful, notwithstanding pursuant to provisions of pre-existing health plan regarding E coverage for Es who had ceased active work and E's contention that in view of adminictration of plan by third party it had no right to unilaterally change provisions, since no business justification and inherently destructive even absent U animus)

Freezer Queen Foods, Inc. **249 NLRB No. 045**
(E assigning new hire dates upon recall to probationary Ees among strikers causing them to lose credit towards completion of probationary period for time employed prior to strike unlawful, notwithstanding no U animus or intent to discriminate, since action was inherently destructive of Ees' rights; E's contention that since contract required 60 consecutive days probation it was not possible to achieve its purpose by tolling probationary period during strike, rejected)

Service Garage, Inc. **247 NLRB No. 115**

K-P Graphics, Inc. d/b/a Impression Northwest **JD-(SF)-187-80**
(E's issuing letter to strikers informing them that if they did not return to work on particular day, they would be permanently replaced, and, if hired later, would be as new Ee held violative, since action interfered with Ees' rights)

Randall, Division of Textron, Inc. v. N.L.R.B. **687 F.2d 1240 (C.A. 8, Sept. 1982)**
(treating returning strikers as new Ees for purposes of department and shift assignments, violative; contention that E can unilaterally cease abiding by provision in expired contract rejected and, while adverse effect on Ee rights may have been comparatively slight, E did not demonstrate business purpose for action)

5079-2825—Cont.

Randall, Division of Textron, Inc. v. N.L.R.B. 687 F.2d 1240 (C.A. 8, Sept. 1982)

(treating returning strikers as new Ees for insurance purposes wherein no coverage for first 60 days, not violative as insurance contract did not permit their coverage w/o new waiting period; therefore, E had legitimate and nondiscriminatory business reason)

Kansas City Power & Light Company v. N.L.R.B. 641 F.2d 553 (C.A. 8, Feb 4, 1981)

(termination ofprobationary Ees who had not completed six months continuous service required to become regular Ees prior to their participation in protected economic strike and reinstating them as new hires, unlawful, in view of discouraging effect on concerted activities; further, E's contentions that action justified by business consideration of requirement that six months probationary period be continuous and compelled by bargaining agreement, rejected, since probationary policy unwritten and flexible, waiver of probationary Ees' right to strike was not explicit and in view of meager bargaining history)

5079-2828 Job absentees during strike

United Aircraft Corporation (Pratt and Witney Division) 247 NLRB No. 174

(E's reinstatement of nonstriking Ees who were absent from work during part or all of economic strike period, and failure to offer such jobs to strikers awaiting reinstatement, held, lawful, where E offered reinstatement only to absentee individuals who supplied satisfactory proof that their absence was due to factors which would have been acceptable to E prior to strike and, hence, there was no evidence that E extended unlawful preference to individuals in the group as compared to strikers)

5079-2831 Unconditional offer to return to work

Brinkerhoff Signal Drilling Co. 264 NLRB No. 049

Mid-County Transit Mix, Inc. 264 NLRB No. 107

(offer to return to work which is conditioned on removing cause of strike, not unconditional offer)

Mid-County Transit Mix, Inc. 264 NLRB No. 107

(no valid offer to return to work on behalf of all strikers by former U steward since steward not designated as representative of strikers where Ees had withdrawn from U for which had been steward and former steward at time of alleged offer was not acting as steward for any U's nor had strikers requested that former steward speak for them)

Mid-County Transit Mix, Inc. 264 NLRB No. 107

(offer not unconditional where strikers' offer to return to work was clearly stated to be in order *to facilitate negotiations*)

Mid-County Transit Mix, Inc. 264 NLRB No. 107

(E's failure to reinstate striker when opening occurred after striker's unconditional offer to return to work, unlawful, since E failed to establish business justification for failure to reinstate, or that striker had obtained equivalent employment elsewhere and where striker had decided to get out of business he had started during strike, and had never informed E he wished to continue venture; further, it is E's responsibility to ascertain availability of striker, nor is it defense to E's backpay liability that it sent letter to striker inquiring if still interested in job)

Mid-County Transit Mix, Inc. 264 NLRB No. 107

(E's failure to reinstate, w/o any business justification striker when replacement left after striker had unconditionally offered to return to work, unlawful, where E reinstated other strikers with less seniority and strikers who made later offers to return to work, nor did fact striker had taken another job justify E's failure to reinstate him since unlikely striker would have preferred other job inasmuch as he had less seniority at that job than had with E)

Mid-County Transit Mix, Inc. 264 NLRB No. 107

(E's failure to reinstate striker when replacement left after striker made unconditional offer to return to work, unlawful, where E had reinstated another striker with les seniority who made offer to return to work simultaneously, and absent evidence striker had abandoned his job or acquired equivalent employment elsewhere; striker's failure to respond to E's letter inquiring about his present interest in job, which was not valid offer of reinstatement, did not relieve E of obligation to offer him reinstatement)

Continental Industries, Inc. 264 NLRB No. 017

(unconditional offers to return to work from strike can be worded in many different ways, and no specific words are required to make an offer unconditional; an application for reinstatement will not be treated as conditional unless an Ee, or his agent, has given E reason to conclude that any offer of equivalent employment would be rejected)

Continental Industries, Inc. 264 NLRB No. 017

(E's contention that letter, brought by striking Ee to plant, containing unconditional offer to return to work on behalf of all Ees, was meaningless because it had not come through mail from U, rejected; whether letter came through mail or was personally delivered by striking Ee, it was indisputably a communication from bargaining agent selected by Ees, and was, on its face, unconditional offer to return to work)

Continental Industries, Inc. 264 NLRB No. 017

(although U's offer to return to work which was presented to E by striking Ee was, on its face, unconditional offer to return to work on behalf of all Ees, E held not to have unlawfully refused to reinstate Ee delivering letter, where Ee excepted himself from offer in letter and conditioned his own response upon assignment of job he held before strike as leadman of crew, a job that was filled, rather than any substantially equivalent employment)

Continental Industries, Inc. 264 NLRB No. 017

(E's failure to recall striking Ee upon whose behalf unconditional offer to return to work was made, unlawful, where E told Ee that he wanted to see if Ees senior to her wished to return to work before he reinstated her, and it was thereafter that E made commitments for other strikers, having less seniority than Ee, to return to work; and E failed to meet burden of proof that it had no need for Ee in preference to junior Ees, and such burden was not relieved because, as E claimed, U did nothing to assist in devising fair method as to which Ees were to be given first preference for vacancies)

Continental Industries, Inc. 264 NLRB No. 017

(while striking Ee's application for specific job that was filled, rather than for any substantially equivalent employment, was conditional, E unlawfully failed to reinstate Ee upon subsequent receipt of unconditional offer, which included Ee, where E transferred presently employed worker to fill vacant job, which Ee herein was qualified to fill, instead of offering such job to Ee)

Presto Casting Company 262 NLRB No. 047

(refusal to reinstate economic strikers, violative; while not specifically alleged in complaint, matter was litigated at hearing and E failed to show why strikers could not be immediately reinstated)

Overhead Door Corporation (Todco Division) 261 NLRB No. 094

(failure to recall strikers, not unlawful where replacements had been hired in November and December prior to receipt in January of strikers' unconditional offer to return to work; Bd inferred on basis of record that undated letter and letter dated in January, which contained said offers, were received by E in January, since GC had stated in opening statement that both letters were sent in January and GC's mtn that transcript be corrected to show receipt of undated letter in January was unopposed)

Overhead Door Corporation (Todco Division) 261 NLRB No. 094

(E held not to have unlawfully failed to reinstate replaced economic striker where striker's position had been filled with replacement and, when E offered striker another position he did not respond to E's offer for 2 months during which time E hired additional Ees; Bd found that striker's offer to return was negated by his failure to respond to E's job offer and was not reinstated until he did respond)

Denzil S. Alkire, a Sole Proprietorship; et al. 259 NLRB No. 174

(formal written applications for employment from economic strikers considered equivalent to unconditional offers to return to work)

Denzil S. Alkire, a Sole Proprietorship; et al. 259 NLRB No. 174

(U representative's asking E if it intended to employ two economic strikers who had not submitted applications for employment constituted a showing that these two Ees were interested in returning to work and satisfied requirement of unconditional offers to return to work)

Consolidated Dress Carriers, Inc., et al. 259 NLRB No. 083

(unconditional offer to return to work where U representative said to E *there's men outside. They want to go back to work. Would you put them back to work* and stated later he wanted to put strikers back to work and U had authorization cards from 65 out of 66 strikers)

Consolidated Dress Carriers, Inc., et al. 259 NLRB No. 083

(unconditional offer to return to work where strikers went to plant and stated they were coming back to work)

Consolidated Dress Carriers, Inc., et al. 259 NLRB No. 083

(unconditional offer to return to work where U representative asked E why *don't you put workers back to work* and offer not conditioned on increased wages or other improvements in working conditions nor on reinstatement of all strikers; notwithstanding Ees' revocation of membership in U which had made offer on their behalf where revocation not conveyed to U nor had U abandoned striking Ees prior to offer)

Consolidated Dress Carriers, Inc., et al. 259 NLRB No. 083

(*where striking Ees have signed U authorization cards, and joined in strike under U supervision, general agency is created which empowers U through its representatives to offer to return to work on behalf of all striking Ees w/o obtaining specific authorization from Ees to do so*)

Consolidated Dress Carriers, Inc., et al. 259 NLRB No. 083

(E's refusal to reinstate economic strikers unlawful where unconditional offers to return to work had been made both by strikers themselves and by U's which represented them, and absent evidence strikers had been replaced or jobs abolished)

Lincoln Hills Nursing Home, Inc.; et al. 257 NLRB No. 148

(failure to recall Ee to former position violative, not withstanding Ee had made statement that she was *not really interested* when this statement had been made at time when no job offered to her)

5079-2831—Cont.

Highland Plastics, Inc. **256 NLRB No. 028**

(mailing letter to striking Ees stating that their jobs were *at this time available...that effective immediately, we will begin to hire permanent replacements...* not valid offer of reinstatement since strikers not afforded reasonable time to consider E's offer)

Kevah Konner, Inc. **256 NLRB No. 068**

(refusing to reinstate or recall economic striker who had applied unconditionally to return to work when opening in his classification occurred and hiring new Ees instead, unlawful)

Home Insulation Service, A Division of Sunstate Wholesalers **255 NLRB No. 050**

(E's refusal to reinstate strikers unlawful where U and strikers made unconditional offer to return to work on behalf of strikers prior to hiring of replacements, notwithstanding subsequent offers to return to work which were arguably conditioned on reinstatement of Ees whose lawful discharges precipitated strike; uncertainty resolved against E where it did not seek clarification of allegedly ambiguous offers)

Kuno Steel Products Corp. etc. **252 NLRB No. 127**

(Es failed to rebut GC's *prima facie* case establishing that Es did not meet their obligation to reinstate economic and unfair labor practice strikers to conditions current at time of strike by showing substantial business justification and thereby violated Act)

Roberts Oldsmobile, Inc. **252 NLRB No. 035**

(failure to reinstate economic strikers upon their offer to return to work, not violative where striking Ees' offer to return to work was conditioned on reinstatement of certain Ee and discharge of strikers' replacements, and U's offer on behalf of strikers to return to work was premised upon E's agreeing to $200 weekly floating guarantee)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**

(discriminatee, who was refused reinstatement, not obliged to inquire whether or not offer (to return to work) was to reinstate him to his former position)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**

(five day delay in returning either ULP or economic strikers to work after E had accepted their unconditional offer to return to work held not violative in view of fact that all strikers, in instant case, were duly returned to work)

Owen Joint Corporation **248 NLRB No. 076**

(violation where E refused to reinstate economic strikers, as their jobs for which they were qualified became available, following their unconditional offer to return to work)

Routh Packing Company, Inc. **247 NLRB No. 053**

(refusal to reinstate economic strikers unconditionally offering to return to work, unlawful)

Madison Newspapers, Inc. **JD-157-82**

(failing to recall 3 striking journeymen from preferential hire list and hiring 3 apprentices, instead, unlawful)

Illinois Valley Electric Cooperative, Inc. **JD-281-81**

(refusal to reinstate economic stikers, violative where strikers were not permanently replaced nor were strikers denied reinstatement on basis of legitimate and substantial business justifications)

Sunnyland Foods, Inc. **JD-(ATL)-36-80**

(E's continued hiring of new Ees before date at which all strikers had not been recalled and at which time unreinstated strikers sought recall to *any job* they could do, violative where E showed no legitimate business justification)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**

(U request for strikers to return to work held unconditional, notwithstanding name of one Ee who was disqualified by strike misconduct for reinstatement appeared on list, since at no time did U ever state that no striker would return to work unless all listed in offer were returned; nor could such implication be drawn from U's letter protesting E's desire to conduct interviews before deciding whether or not to reinstate them)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**

(burden on E for showing that offer to return was not unconditional)

5079-2837 Under terms of strike settlement agreement

Carruthers Ready Mix, Inc. **262 NLRB No. 090**

(failure to recall economic strikers pursuant to strike settlement agreement as vacancies occurred instead of hiring inexperienced new Ees, unlawful)

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**

(In view of ct remand, Bd applied law as it stood before Bd Fleetwood and Laidlaw decisions issued, and affirmed its original decision that E's overall administration of strike settlement agreements with Us was lawful where agreements granted economic strikers greater reinstatement rights than those ordinarily accorded strikers under then-existing and applicable labor laws, and terms of agreement did not *discriminatorily* affect one group or classification of former strikers as opposed to other strikers or to nonstriking Ees)

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**

(contrary to E's contention that any breaches by it of strike settlement agreements with Us were nothing more than violations of U's private contract rights, Bd held such breaches were w/i cognizance of Act and must be remedied in the public interest; accordingly, since E's violations of agreements denied reinstatement of economic strikers who had done no more than engage in protected concerted activity, E's conduct was unlawfully discriminatory)

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**

(E held to have unlawfully breached terms of strike settlement agreements by promoting junior active Ees when senior former strikers were awaiting reinstatement to those jobs, and by personnel adjustments involving certain types of job transfers)

United Aircraft Corporation (Pratt and Witney Division) **247 NLRB No. 174**

(E's reinstatement of nonstriking Ees who were absent from work during part or all of economic strike period, and failure to offer such jobs to strikers awaiting reinstatement, held, lawful, where E offered reinstatement only to absentee individuals who supplied satisfactory proof that their absence was due to factors which would have been acceptable to E prior to strike and, hence, there was no evidence that E extended unlawful preference to individuals in the group as compared to strikers)

5079-2850 Failure to honor promise to reinstate replaced strikers as vacancies occur

Carruthers Ready Mix, Inc. **262 NLRB No. 090**

(failure to recall economic strikers pursuant to strike settlement agreement as vacancies occurred instead of hiring inexperienced new Ees, unlawful)

Nelson Filter, A Division of Nelson Industries, Inc. **256 NLRB No. 131**

(hiring new Ees instead of reinstating strikers according to settlement agreement, violative, where strikers' right to reinstatement, contrary to E's contention, was not effected by passage of time, by decertification of U that had represented them, or by fact that some former strikers had not returned E's questionnaire regarding their desire to return to work)

N.L.R.B. v. Aluminum Cruiser, Inc. **620 F.2d 116 (C.A. 6, 1980)**

(refusal to reinstate any of five economic strikers on preferential hiring list to available position, not violative since none of the strikers were qualified to assume the position)

Randall, Division of Textron, Inc. v. N.L.R.B. **687 F.2d 1240 (C.A. 8, Sept. 1982)**

(E's policy of offering special-rated jobs to unreinstated strikers only if none of permanent strike replacements were qualified for and wanted jobs, violative as these job openings were vacancies and required posting under expired contract; effect was to make it less likely that strikers would be reinstated to higher-paying positions and amounted to preference to those who did not strike; such preference was inherently distructive of Ee right eliminating necessity of proving discriminatory motivation of E)

5079-2874 Not unlawful if legitimate and substantial business justification

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**

(failure to reinstate economic strikers, not unlawful, where E had built up and had on hand substantial inventory in anticipation of strike at termination of bargaining agreement)

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**

(no violation where E permanently transferred production workers w/i plant to another classification rather than recalling unreinstated economic strikers where no discriminatory motive present, E showed substantial and legitimate business reasons for doing so, and E did not agree to apply, nor was any strike settlement agreement executed calling for, application of recalls from layoffs provision of expired contract)

Copeland Corporation **JD-81-81**

(E did not violate Act when it refused to reinstate economic striker at end of strike where it had reduced number of positions striker could fill and as soon as position did become available did reinstate him; E had no obligation to layoff Ee to make room for striker merely because he had more seniority than Ee who had not gone out on strike)

Randall, Division of Textron, Inc. v. N.L.R.B. **687 F.2d 1240 (C.A. 8, Sept. 1982)**

(transfer of security guards into production jobs because E didn't need them after strike, violative because they were hired as temporaries. E's asserted *good faith* in hiring them and not wishing to terminate them does not constitute business reason for transferring them into available production positions instead of reinstating strikers)

5079-2875 Not unlawful absent discriminatory motivation

J. E. Steigerwald Co., Inc. 263 NLRB No. 068
(refusal to recall picketers to available work because they had engaged in protected strike activity violative)

Mobile Home Estates, Inc. 259 NLRB No. 182
(denying reinstatement to probationary Ees after end of economic strike, violative where E has shown no legitimate and substantial business justification and Ees were never told prior to strike that their work was unsatisfactory; such denial is so inherently destructive of Ee rights that evidence of specific anti-U motivation was not needed)

Randall, Burkart/Randall, Division of Textron, Inc. 257 NLRB No. 001
(refusal of E, which had instituted fixed shifts to allow reinstated strikers to use their seniority to transfer to prefered shifts, as provided in terminated bargaining agreement, unlawful, notwithstanding contention no violation in view of lack of agreement regarding seniority and absent U animus, since change in policy regarding shift preference based on seniority had destructive impact on strike and U activity since it operated to discreiminate between strikers and nonstrikers and no overriding business justification for continuing fixed shifts)

Randall, Burkart/Randall, Division of Textron, Inc. 257 NLRB No. 001
(no violation where E permanently transferred production workers w/i plant to another classification rather than recalling unreinstated economic strikers where no discriminatory motive present, E showed substantial and legitimate business reasons for doing so, and E did not agree to apply, nor was any strike settlement agreement executed calling for, application of recalls from layoffs provision of expired contract)

Associated Grocers 253 NLRB No. 005

Bio-Medical Applications of New Orleans, Inc., d/b/a Greater New Orleans Artificial Kidney Center 247 NLRB No. 136
(E's contentions in defense of its failure to reinstate discharged strikers that it was economically justified and operated normally w/o them found contradicted by significant increase in costs for overtime paid remaining Ees and hiring of nonunit Ees whose primary function was same as that of strikers)

Sunnyland Foods, Inc. JD-(ATL)-36-80
(E's refusal to consider striker for reinstatement, not unlawful where Ee had other employment and her name was not included in list of Ees desiring reinstatement after strike)

Sunnyland Foods, Inc. JD-(ATL)-36-80
(no violation where Ee received job offer in department other than his prestrike department but he insisted on his old job; no new hires went into his old job, or subsequently into his old department after he broadened his reinstatement request to include any job in same department; at time of hearing Ee was awaiting reinstatement pursuant to last request)

Sunnyland Foods, Inc. JD-(ATL)-36-80
(recall rights not violated, where no new Ees were hired during time Ee was on *same job* list and E made reasonably attempt to recall him soon after he appeared on *any job* list)

Ferry Cap & Set Screw Company JD-671-80
(refusal to rehire or recall Ee who, after being unlawfully suspended for walking off his job, voluntarily quit, not violative, where there was no direct evidence that Ee was refused rehire for discriminatory reasons; refusal to rehire Ee was based in large part upon fact that Ee had walked out immediately after giving his 2-week notice of quitting)

5079-2881 Disqualified by strike misconduct

Authur Briggs, Inc. 265 NLRB No. 038
(striker temporarily blocking passage into plant by E's owner who was attempting to assist Ee in crossing picket line by striker spreading his jacket and forcing supervisor to reach around him, raising arm, and verbal confrontation with owner, not sufficient misconduct to justify refusal to reinstate, particularly in view of E's condonation when he subsequently offered to allow striker to return to work if he would get rid of U)

Authur Briggs, Inc. 265 NLRB No. 038
(striker jamming locks of E's plant so that E's owner was unable to enter and services of locksmith were required, held misconduct that justified refusal to reinstate)

Catalytic, Inc. 264 NLRB No. 154
(refusal to reinstate economic striker for strike-related behavior violative although striking Ee made profane, vulgar phone call to wife of non-striking Ee, this single, brief, anonymous phone call contained no threats and does not rise to level of misconduct so violent or serious as to render him unfit for futher service)

Catalytic, Inc. 264 NLRB No. 154
(refusal to reinstate economic striker who allegedly threw rocks at nonstrikers cars violative where striker, in fact, did not throw any objects at nonstrikers and only raised his hand in protest, conduct not serious enough to warrant discharge)

Schreiber Manufacturing Co., Inc. 262 NLRB No. 134
(discharging economic strikers for throwing missiles in direction of office entrance on final day of strike, violative where no showing of what object was thrown, at what and how hard it was thrown, lack of physical damage, and recovery of only one items, i.e., ball bearing from area which was not attributable to Ee did not amount to strike misconduct of a *serious* nature)

AMPAC, a subsidiary of Kane-Miller Corp. 259 NLRB No. 151
(discharge of economic strikers improper, since they did not in fact engage in strike misconduct for which they were terminated)

AMPAC, a subsidiary of Kane-Miller Corp. 259 NLRB No. 151
(hitting non-striking Ee outside plant)

AMPAC, a subsidiary of Kane-Miller Corp. 259 NLRB No. 151
(punching passenger in car and trying to pull him out amounts to serious strike misconduct)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(strikers, in drunken state and in presence of non-striker's wife and daughter, said non-striking Ee was *screwing them out of their—damn money* and that they would *take care* of non-striking Ee if he returned to work; action of strikers was isolated incident of verbal abuse; remarks were ambiguous and unaccompanied by violence or physical gestures)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(discharge of strikers for calling industrial relations manager *f— bitch* when she crossed picket line and on other occasions, not violative, since conduct, although insulting and abusive was not accompanied by violence and was not sufficiently egregious to warrant discipline)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(strikers' stopping only 2 trucks, while on picket line, out of 125 vehicles entering and leaving E's plant daily, held insufficient to prove *blocking* of access to plant or to establish *mass* picketing)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(throwing rock at, and hitting, supervisor's car as he was leaving E's plant grounds for discharge)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(striker's clenching his fist and pointing gun at plant manager)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(threatening statements made to *other* Ees rather than to supervisors themselves not grounds for discharge)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(insulting and abusive remarks about supervisor made to other Ees but w/i hearing of supervisor)

IPCO Hospital Supply Corporation, Cheshire Labs Division 255 NLRB No. 116
(strikers who showed up at ball game held away from plant during nonwork time, carried on in obscene manner and on having ball park after being told to do so threw nails on roadway, not entitled to reinstatement because of strike misconduct)

Arcadia Foods, Inc. 254 NLRB No. 128
(refusal to reinstate ULP striker who had served prison term for manslaughter and who allegedly had threatened nonstriking Ee, violative, where nonstriker did not work in vicinity of striker; E knew that apology had been effected between striker and nonstriker and there was no apparent reason for residuary bad blood between them; misconduct of striker not so violent or serious as to render him unfit for employment)

Castle-Pierce Printing Company, Inc. 251 NLRB No. 172
(refusal of E to reinstate discharged U steward because of his total course of serious strike misconduct after U terminated its strike and offered unconditionally to return strikers to work including 5 other discharged strikers, not unlawful notwithstanding contention that he was singled out from among other Ees who also engaged in strike misconduct because of his U activities, where he committed far more frequent acts of misconduct and far more serious acts of misconduct than did other strikers)

Midwest Solvents, Inc. 251 NLRB No. 171
(refusal to reinstate three economic strikers allegedly for egregious strike misconduct violative, where first striker's isolated threat to customer making deliveries to *blow up, or burn up* his combine w/o attempt to interfere with deliveries held type of minor misconduct Congress contemplated in providing right to strike; second striker's isolated mild intimidation of strike breaker to *watch* himself, that *some of the boys might get rowdy* held impulsive trivial misdeed; and third striker's parking his car in authorized parking place where it inconvenienced customer did not warrant job loss)

Flatiron Paving Company d/b/a Flatiron Materials Company 250 NLRB No. 080
(although Ee may actually have engaged in misconduct he or she may not be denied reinstatement absent showing that misconduct was so violent or of such serious nature as to render Ee unfit for future service)

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Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(mere verbal abuse, unaccompanied by any physical actions or gestures that add meaning to words, does not arise to level justifying disqualification from reinstatement)

Sahara Tahoe Corporation d/b/a Sahara Tahoe Hotel **JD-(SF)-269-82**
(discharge of and refusal to reinstate striker, unlawful since his possession of concealed billy club on picket line was not misconduct so violent or serious as to justify refusal to reinstate him where there was no evidence of agressive conduct against nonstrikers, public or peace officer; as sole early morning picket he probably carried it as defensive weapon, as he testified, and there was no evidence that he knew he should not have it; he did not resist confiscation of club or arrest and would not have been arrested but for his refusal to tell the sheriff his age)

Unit Rig & Equipment Company **JD-229-82**
(no violation where E refused to reinstate striker who threw nails on E's driveway)

Unit Rig & Equipment Company **JD-229-82**
(no violation where E refused to reinstate striker who punctured tire of truck leaving E)

Unit Rig & Equipment Company **JD-229-82**
(throwing beer bottles on E's parking lot, committing physical assault on nonstriker and threatening nonstriker with bodily harm justified E's refusal to reinstate striker)

Unit Rig & Equipment Company **JD-229-82**
(damaging nonstriker's vehicle as he passed through picket line justified E's refusal to reinstate striker)

Triple A Machine Shop, Inc. **JD-(SF)-220-80**

Star Meat Company v. N.L.R.B. **640 F.2d 13 (C.A. 6, 1980)**
(E's failure to reinstate economic striker who had grabbed replacement Ee and pushed him backward to prevent him from going to work, unlawful where his actions were limited in time and did not produce violent retaliation by other Ees, and he had limited language ability and stated that he was ignorant of Act's provisions not allowing him to physically restrain nonstriking Ees)

5079-2900 Preconditions to reinstatement

Giddings & Lewis, Inc. **264 NLRB No. 078**
(terminating recall rights of economic strikers by E's six-month renewal notification requirement by which Ees were obligated to notify E of their interest to remain on preferential hire list, violative, where such requirement was inherently destructive of Ee reinstatement rights under *Laidlaw* and E gave no sufficient business justification to shift such burden of notification to Ees as prerequisite to preserve statutory recall rights; remedy not barred by Sec. 10(b) of Act)

Presto Casting Company **262 NLRB No. 047**
(requiring that economic strikers sign company-prepared request for reinstatement as condition of reinstatement, violative)

Green Country Casting Corporation **262 NLRB No. 010**
(failure to recall economic strikers because of their striking and filing workmen's compensation claims, unlawful; contention that E doubted their physical fitness for work, rejected where, notwithstanding their claims were filed for pre-strike injuries, all claimants but one were performing their regular duties when strike began, but E disregarded their medical releases, held them to discriminatorily rigorous fitness standard, and refused to hire them until they dropped their claims)

Convair Corporation **261 NLRB No. 178**
(requiring returning ULP strikers to report either to personnel department or to plant cafeteria to fill out insurance and tax forms, unlawful, since E thereby placed further conditions on reinstatement of strikers)

Channel Island Development Corp., d/b/a The Lobster Trap & Casa Sirena Marina Hotel **259 NLRB No. 160**
(conditioning reinstatement of unlawfully discharged Ees on their refraining from any effort to secure U representation, unlawful)

Jaybil Steel Products, Inc.; etc. **258 NLRB No. 157**
(E's conditioning reinstatement of two unlawfully discharged U adherents upon relinquishment of right to support U in election, unlawful)

Roberts Oldsmobile, Inc. **252 NLRB No. 035**
(E's proposed strike settlement agreement not violative of 8(a)(3) nor 8(a)(5) notwithstanding that the proposal included provision for withdrawal of ULP charges pending as result of the strike, where contrary to GC's contention there is no evidence that E established, as unyielding term of reinstatement of strikers, that ULP charges be withdrawn by U or that E insisted on such withdrawals as condition precedent to resumption of bargaining)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(discriminatee, who was refused reinstatement, not obliged to inquire whether or not offer (to return to work) was to reinstate him to his former position)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 128**
(violation, where E, in recalling U adherent, warned her regarding deficiencies in grooming, abuse of other Ees, and customer complaints, since motivated by U activities and decision influenced by prior unlawful warning letters)

The Ballet Foundation of Milwaukee, Inc. **JD-219-82**
(offer of reemployment to principal dancer for coming season at salary which was less than salary he received from E during past season, not valid offer of reinstatement, since offer, in effect, required Ee to take demotion; Ee's refusal to accept offer cannot be deemed willful loss of employment)

Sunnyland Foods, Inc. **JD-(ATL)-36-80**
(E's failure to consider Ee for reinstatement, violative, notwithstanding fact that Ee's withholding of her services during strike was coextensive with her maternity leave and she failed to give notice to E at conclusion of her leave period that she was supporting strike since her Ee status and her obligation to report at conclusion of specified period was no different from that of any *active* Ee who joins strike w/o specifically advising E of reason for absence from work)

N.L.R.B. v. Senftner Volkswagen Corporation **681 F.2d 557 (C.A. 8, July 1982)**
(refusal to rehire U activist on layoff violative where president asked if he would rejoin U if he went back to work and told him that if he did U would be twice as strong; furthermore, E did not establish claims of poor work habits or that his inability to get along with people interfered with job proficiency)

N.L.R.B. v. Vitronic Division of Penn Corporation **630 F.2d 561 (C.A. 8, 1979)**
(E's refusal to retain replaced economic strikers on preferential hiring list and reinstate where former strikers had failed to comply with its requirement stated on initial request for reinstatement form sent to strikers that strikers renew their continued interest in reinstatement after six months, unlawful, since burden of notifying former strikers and verifying their continuing interest in reinstatement placed on E who may at most require former strikers, in response to appropriate notice, to indicate whether they continue to desire reinstatment)

Routh Packing Company, Inc. **247 NLRB No. 053**
(no duty to reinstate Ee not shown to have made unconditional offer to return to work)

5079-4200 ULP strikers

Pace Motor Lines, Inc. **260 NLRB No. 189**
(violation where E rejected applications for employment of ULP strikers w/o legitimate and substantial business reasons)

Arcadia Foods, Inc. **254 NLRB No. 128**
(failure to return ULP strikers to jobs to which they were entitled, violative, notwithstanding pay was same at both jobs)

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that refusal to reinstate strikers during negotiations except on condition that U agree to contract acceptable to E was not justified by its precarious financial situation; while E's economic situation may have justified its proposing reduction in wages, it was not established that economic necessity justified its refusal to reinstate strikers except on its own terms; E's position that to reinstate strikers at higher rates was unrealistic was w/o merit, since mutually acceptable agreement may have been reached if E had met its statutory obligation)

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that refusal to reinstate strikers during negotiations except on condition that U agree to contract acceptable to E was not justified by its precarious financial situation; while E could avoid such a situation by discharging strikers and replacing them with individuals willing to work at lesser rates, such conduct would constitute a unilateral action frustrating negotiations and an evasion of duty to bargain on questions which are subject to compulsary bargaining)

Pease Company **251 NLRB No. 080**
(reinstatement of ULP strikers to E's non-U plant at lower wage, with different duties, and further commuting distance, unlawful, where E's failure to fully reinstate them was motivated by desire to deny them U representation)

Burns Motor Freight, Inc. **250 NLRB No. 048**
(failure to reinstate ULP striker, unlawful, where job available for which he was qualified and other strikers with less seniority recalled)

N.L.R.B. v. James R. McCaffrey and Edward A. Cook, d/b/a ABC Concrete Company **619 F.2d 620 (C.A. 6, 1980)**
(violation where E refused to reinstate Ees discharged unlawfully for protected concerted activity who subsequently engaged in ULP strike because of discharges)

N.L.R.B. v. Berger Transfer & Storage Co. **678 F.2d 679 (C.A. 7, May 1982)**
(termination of ULP strikers who had been threatened with discharge during strike for recognition upon their failure to report to work in response to E's

5079-4200—Cont.

request held unlawful discharge rather than voluntary quit in view of total atmosphere of hostility engendered by E's ULPs)

5079-4201 Generally

Connecticut Distributors, Inc. **255 NLRB No. 170**
(casual Ee who did not report for work during strike and who was not for or against strike, held ULP striker as he was in fact striking whether or not he supported U as he has Sec. 7 right to engage in or refrain from engaging in protected activity)

Into-Roto, Inc. **252 NLRB No. 111**
(ULP strikers who were unlawfully notified that they had been permently replaced found not violatively discharged because despite this notification, no evidence to show that request for reinstatement would be *utterly futile* and Ee required to request to be reinstated)

5079-4217 Where replaced

Airport Parking Management **264 NLRB No. 002**
(refusal to reinstate ULP strikers upon unconditional offer to return notwithstanding they had been replaced to work, unlawful; contention that parties should defer to strike settlement agreement rejected, since it would extinguish strikers' rights, and settlement agreement did not constitute waiver of those rights)

Consair Corporation **261 NLRB No. 178**
(E unlawfully discriminated against ULP strikers by continuing to employ replacement Ees 5 days after strikers unconditionally offered to return to work until date on which each striker resumed employment; 5-day period is reasonable period of time in which to effect orderly reinstatement of ULP strikers and to accord some consideration to replacement of Ees who must be terminated, and administrative difficulties are no basis for delay beyond 5-day period)

Heads and Threads Company, a Division of MSL Industries, Inc. **261 NLRB No. 115**
(failure to terminate strike replacements and reinstate ULP strikers, on unconditional offer to return to work, unlawful)

Parkview Nursing Center II Corp. **260 NLRB No. 037**
(E's contention that there was no unconditional offer to return to work because U's business agent who made offer did not talk to certain strikers who wanted to return to their same positions, rejected; business agent was given ample opportunity to request reinstatement for all ULP strikers and, as such, they were immediately entitled to get back their jobs or substantially equivalent employment; and burden is on E to offer reinstatement to ULP strikers, notwithstanding that it might have to terminate striker replacements to make room for returning strikers)

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) **259 NLRB No. 037**

Ricks Construction Company, Inc. **259 NLRB No. 043**
(refusal to reinstate replaced ULP strikers upon their unconditional application, unlawful, notwithstanding no discriminatory intent, since such treatment of ULP strikers inherently discriminatory, and absent evidence work unvailable or that strikers casual Ees)

International Business Systems, Inc. **258 NLRB No. 017**
(E's refusal to reinstate strikers upon strikers' unconditional offer to return to work, unlawful, notwithstanding E's contention strikers replaced since strikers held ULP strikers)

Gulf Envelope Company **256 NLRB No. 058**
(E's refusal to discharge strike replacements in order to reinstate ULP strikers to same or substantially equivalent jobs upon strikers' unconditional request for reinstatement, unlawful)

Shaw Industries, Inc., a Division of Crystal Springs Shirt Corp.; et al. **255 NLRB No. 117**
(refusal to reinstate Ees who had engaged in ULP strike upon unconditional offer to return to work, violative)

Home Insulation Service, A Division of Sunstate Wholesalers **253 NLRB No. 080**
(striker replacement applicants who have accepted offers of employment but who have not yet reported for work are considered striker replacements since applicants obtain such status upon their acceptance of employment)

John Cuneo, Inc. **253 NLRB No. 110**

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(E's failure to terminate replacements and reinstate ULP strikers upon their unconditional request for reinstatement, unlawful, notwithstanding at time of request for reinstatement E believed strikers were economic strikers)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(upon unconditional offer to return to work, ULP strikers are entitled to immediate reinstatement to their former jobs or if such jobs no longer exist to substantially equivalent positions; further, burden is upon E to offer immediate and unconditional reinstatement, even if striker replacements must be terminated to make room for returning strikers)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(permanently replacing and refusing to reinstate ULP strikers, unlawful)

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(failure to reinstate striker assertedly because no work was available held violative where E's *alter ego* (reactivated to avoid U) had available work; *alter ego* had crew of nine Ees doing unit work after strike had ceased)

N.L.R.B. v. Shaw Industries, Inc., A Division of Crystal Springs Shirt Corp.; etc. **671 F.2d 1377(T) (C.A. 5, Mar. 1982)**
(Ees who did not respond to E's letter which was mere invitation to apply for work rather than unconditional offer to return did not waive right to reinstatement because their response would have been futile as those who responded were merely placed on preferential hiring list since their jobs had been filled by strike replacements)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(where U struck principally over E's unlawful unilateral discriminatory changes, replaced striking Ees held entitled to reinstatement even if alleged ULP was only one of many causes of the strike)

5079-4233 Rehired as new employees

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(rehiring of ULP strikers only as new Ees, violative and operated to prolong ULP strike)

Mark Twain Marine Industries, Inc. **254 NLRB No. 144**
(requiring replaced ULP strikers to complete new job application forms before being reconsidered for reinstatement, violative)

Safeway Trails, Inc. **JD-462-82**
(letter from E to discriminatee (striker) that he would be *considered* for reinstatement, not valid offer, since it did no more than inform discriminatee that he would be *considered* for rehire)

Weather Tec Corporation v. N.L.R.B. **626 F.2d 868(T) (C.A. 9, 1980)**
(E's offer to reinstate ULP strikers who applied for new employment held violative)

5079-4250 Unconditional offer to return to work

The Exchange Bank **264 NLRB No. 111**
(violation where E refused to reinstate Ees who walked off their jobs in protest over discharge of other Ees, despite their unconditional offers to return to work)

Cooperative De Credito Y Ahorro Vegabajena **261 NLRB No. 161**
(back pay not tolled where tentative settlement agreement conditioned strikers' reinstatement on their accepting *other* terms of settlement agreement; thus, it was conditional, rather than unconditional, offer of reinstatement)

Parkview Nursing Center II Corp. **260 NLRB No. 037**
(E's contention that there was no unconditional offer to return to work because U's business agent who made offer did not talk to certain strikers who wanted to return to their same positions, rejected; business agent was given ample opportunity to request reinstatement for all ULP strikers and, as such, they were immediately entitled to get back their jobs or substantially equivalent employment; and burden is on E to offer reinstatement to ULP strikers, notwithstanding that it might have to terminate striker replacements to make room for returning strikers)

Twin County Trucking, Inc. **259 NLRB No. 070**

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) **259 NLRB No. 037**

Newtown Corporation **258 NLRB No. 068**
(refusing to rehire ULP strikers upon their unconditional offer to return to work, violative, where, contrary to E's contention, there was no evidence that Ees engaged in picket-line misconduct)

International Business Systems, Inc. **258 NLRB No. 017**
(E's refusal to reinstate strikers upon strikers' unconditional offer to return to work, unlawful, notwithstanding E's contention strikers replaced since strikers held ULP strikers)

Research Products/Blankenship Company **258 NLRB No. 083**
(E's failure and refusal to reinstate ULP strikers upon their application, discharging if necessary any strike replacements, violative)

Marlene Industries Corporation; et al. **255 NLRB No. 193**
(violation, where E substantially failed to offer or grant valid, bona fide, and full reinstatement to strikers upon their unconditional applications; to have made valid and good-faith offer, it was incumbent upon E clearly and specifically to disabuse strikers of effects of its past unlawful rejection of its reinstatement obligations, and to provide strikers with effective assurance that there would be no reprisals for their having engaged in strike)

Marlene Industries Corporation; et al. **255 NLRB No. 193**
(U's outstanding application on behalf of strikers to return to work was withdrawn only for period commencing with U's letter to E stating that certain ULP strikers withdrew their prior unconditional applications and decided to continue to strike and ending with U's letter to E that strikers expected to report to work)

5079-4250—Cont.

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(individual who was laid off for lack of work and would be considered for rehire, held Ee in layoff status when she joined picket line and was therefore entitled to reinstatement upon U's unconditional application made on her behalf)

Limestone Apparel Corp. **255 NLRB No. 101**
(failure to reinstate ULP strikers who made unconditional offer to return to work and whose actions during strike were demonstrations of animal exuberance (lying down in front of truck or standing in front of truck) violative, since there was no violence, damage to persons or property, or actual or implied threats of harm in Ees' strike behavior)

Home Insulation Service, A Division of Sunstate Wholesalers **255 NLRB No. 050**
(where reinstatement offers are made regarding *all striking Ees,* or *the members,* and similar collective designations or lists of Ees, Bd does not infer that reinstatement of one is conditional on reinstatement of all)

Mark Twain Marine Industries, Inc. **254 NLRB No. 144**
(failure to reinstate ULP strikers after U representatives met with some members of E committee to reach agreement to settle strike and return strikers back to work, violative, where U efforts constituted unconditional to return to work despite fact that E did not have full committee to negotiate such settlement since *someone had to run the plant*)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(five day delay in returning either ULP or economic strikers to work after E had accepted their unconditional offer to return to work held not violative in view of fact that all strikers, in instant case, were duly returned to work)

Bide-A-Wee Home Association **240 NLRB No. 110**
(violation by refusal to reinstate strikers who were discharged while engaged in protected strike and subsequently replaced, upon their appearance at E's facility and announcement that they were ready to work)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(offer by U on behalf of all ULP strikers sufficient)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(once offer made to return to work by strikers, burden shifts to E to reinstate them)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(refusal to reinstate replaced ULP strikers after they made unconditional offer to return to work, unlawful)

Circle X Corporation **JD-(SF)-222-80**
(refusal to reinstate U campaign leader and member of negotiating committee to former job upon unconditional offer to return towork after ULP strike and offering her only more onerous position, instead, unlawful)

Lucy's, Inc. **JD-832-79**
(E's refusal to reinstate ULP strikers unlawful, where strikers had made unconditional offer to return to work)

N.L.R.B. v. Shaw Industries, Inc., A Division of Crystal Springs Shirt Corp.; etc. **671 F.2d 1377(T) (C.A. 5, Mar. 1982)**
(refusal to reinstate sympathy strikers who held status of ULP strikers, violative, where E's letter offering return to work was mere invitation to apply for work and thus did not discharge E's obligation to make unconditional offer and in fact those Ees who did respond to offer were place on preferential hiring list rather than obtaining immediate reinstatement)

N.L.R.B. v. Shaw Industries, Inc., A Division of Crystal Springs Shirt Corp.; etc. **671 F.2d 1377(T) (C.A. 5, Mar. 1982)**
(Ees who did not respond to E's letter which was mere invitation to apply for work rather than unconditional offer to return did not waive right to reinstatement because their response would have been futile as those who responded were merely placed on preferential hiring list since their jobs had been filled by strike replacements)

Weather Tec Corporation v. N.L.R.B. **626 F.2d 868(T) (C.A. 9, 1980)**
(E's failure to reinstate economic strikers despite availability of jobs converted strike to ULP strike, strikers thereby became discriminatees and E's failure to einstate them violated Act)

5079-4267 Strike prolonged by ULP, employer's right to choose his employees

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(rehiring of ULP strikers only as new Ees, violative and operated to prolong ULP strike)

Connecticut Distributors, Inc. **258 NLRB No. 170**

5079-4283 Disqualified by strike misconduct

Beverly Enterprises, Inc. t/a Cumberland Nursing & Convalescent Center **263 NLRB No. 061**
(discharge and refusal to reinstate picket who defended herself against attack by Ee who, after driving through picket line to parking lot, returned to picket line to seek satisfaction because of names she had been called by pickets and struck out at first picket she reached, resulting in hair pulling and brief scuffle, unlawful, since incident trivial, isolated, and no injury resulted; E may not rely on picket's past record when E considered it only when U came on scene)

Conair Corporation **261 NLRB No. 178**
(even if it is assumed that ULP striker, who was arrested on picket line on charge of resisting arrest and later pleaded guilty to loitering in violation of ordinance, did in fact *loiter* or *resist arrest,* it would not cause him to forfeit his right to reinstatement, since misconduct which does not seriously damage property, intimidate nonstrikers, or prevent them from entering E's property does not warrant discharge)

Heads and Threads Company, a Division of MSL Industries, Inc. **261 NLRB No. 115**
(striker's unprovoked throwing of bottle at guard and guard dog, breaking of truck window, and menacing of guard with meat cleaver found not self defense and thus disqualified striker for reinstatement)

Laredo Coca Cola Bottling Company **258 NLRB No. 069**
(E's refusal to reinstate ULP strikers not violative where strikers had engaged in threats and actual acts of violence)

Connecticut Distributors, Inc. **258 NLRB No. 170**
(ULP striker who threw rock through non-striking Ees windshild and later hit Ee disqualified for reinstatement)

Limestone Apparel Corp. **255 NLRB No. 101**
(failure to reinstate ULP strikers who made unconditional offer to return to work and whose actions during strike were demonstrations of animal exuberance (lying down in front of truck or standing in front of truck) violative, since there was no violence, damage to persons or property, or actual or implied threats of harm in Ees' strike behavior)

Mark Twain Marine Industries, Inc. **254 NLRB No. 144**
(refusal to reinstate ULP striker after unconditional offer to return to work, violative, where contrary to Es contention, Ee's picket line misconduct, such as carrying stick, throwing snow balls, shouting obscenities at Ees who crossed picket line and striking two or more vehicles as they entered E's facility, was not sufficiently egregious in character to strip Ee of protection of Act)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to offer reinstatement to ULP strikers, notwithstanding there was some violence on picket line, violative, where no showing that they engaged in unprotected activity warranting their termination)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(where Ee's picket line misconduct insufficient to justify discharge, E's refusal to reinstate ULP strikers, violative)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to reinstate not unlawful where E did not condone picket line misconduct and misconduct of such nature as to remove perpetrators from protection of Act)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(involvement in exchange of words and threats with nonstriker not bar to reinstatement and backpay where nonstrikers were agressors and strikers act was in self defense, further, incident too minor to bar reinstatement on backpay where no blows struck, and no damage to property or person)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(ULP striker spitting at foreman and using profane language towards superintendent not sufficient misconduct to bar reinstatement, particulary since ULP striker)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(ULP striker striking side of non-striking Ee's car as non-striking Ee passing through gate of E's plant)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(discharge of and refusal to reinstate strikers for allegedly violently assaulting fellow Ee during strike, not lawful, where Ee alleged to have been assaulted had swung her pocketbook at strikers and in fact assault as alleged had not taken place; notwithstanding dischargees found guilty of alleged assault in municipal ct)

G. J. Aigner Company **JD-(ATL)-63-82**
(refusal to reinstate ULP strikers, unlawful; none of various incidences of strike misconduct attributed to strikers above level of *mere animal exuberance*)

Glydon's, Inc. **JD-(SF)-142-81**
(failure to reinstate wrongfully discharged Ee who captained strike during which rocks and bottles were hurled into E's parking lot, E's operations

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manager was spat upon and obscenities yelled at him, and strike captain was arrested and booked by police, not violative since Ee was involved in sufficiently serious misconduct warranting denial of his reinstatement)

Vass Steel Corporation **JD-216-80**
(E delaying reinstatement of economic striker by suspending him beginning on date on which he would have returned to work with other strikers, not unlawful, where for throwing rock at truck entering E's property during strike)

5079-4291 Availability for work

Hooks and Threads Company, a Division of MSL Industries, Inc. **261 NLRB No. 113**
(ULP striker found not to have quit as claimed by E but to have stated he would take another job if he could find it; his failure to take issue with E's self-serving letter confirming his alleged quit found proper since he was subsequently seen picketing by E, and was obviously available for work, making E's refusal to reinstate him on application unlawful)

Connecticut Distributors, Inc. **256 NLRB No. 170**
(refusal to reinstate casual Ee after ULP strike violative notwithstanding Ee made no contact with E during strike where standard practice was for Ee to show up for work on his days off from his main job and his nonappearance was result of his refusal to cross picket line)

Birmingham Ornamental Iron Company **251 NLRB No. 115**
(termination of ULP striker pursuant to three-day absence rule, not unlawful, where striker travelled for several days making no effort to contact E or U to ascertain if his employment in which he claimed to retain continued interest was still subject to strike; although E has initial duty to notify ULP striker of date upon which he should return to work, under these circumstances some responsibility remains with Ee)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(requiring ULP strikers to fill out availability for work forms as precondition to reinstatement violative)

5079-4500 Following discharge

Fugazy Continental Corp.; Elite Services, Inc. **265 NLRB No. 165**
(E, together with purchaser of part of E's operations, held to have violated 8(a)(3), where purchaser was *alter ego* of E who engaged in sham purchase transaction herein in order to avoid its statutory obligations and to thwart Ees' successful organizational efforts, and discharge of Ees and refusal to reinstate them pursuant to such sham transaction was designed to retaliate against Ees for their U activities)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **265 NLRB No. 161**
(failure to reinstate discriminatees, violative where lack of work was result of unlawful reduction of operations by selling several trucks in order to avoid recalling discriminatees and by unlawful subcontracting)

Cimpi Transporation Company **256 NLRB No. 173**
(reinstatement of discriminatee, because he had violations on his driver's license, prior felony conviction which was unrevealed on his job application, and caused security problems for U.S. Postal Service with which E had contracted, not barred, since E was aware of Ee's misconduct and had not disciplined or discharged Ee on such grounds; Ee had been declared good Ee before discharge and problems with Postal Service had been resolved before discharge)

Valley Cabinet & Mfg., Inc. **253 NLRB No. 068**
(E's refusal to reinstate Ee discharged at U's request for nonpayment of dues not violative where U's request for termination had not been rescinded and E had no knowledge that U's original request was violative)

P. J. Gear & Sons, Inc. **252 NLRB No. 028**

Guy F. Atkinson Company and Wright-Schuchart-Harbor, A Joint Venture **251 NLRB No. 043**
(discharge and refusal to reemploy U steward for causing walkout in violation of no-strike clause, not unlawful)

Martin K. Eby Construction Co., Inc. **250 NLRB No. 149**
(discharge and failure to reinstate Ee because of his activities as U steward violative)

Kenkin Charter Service, Inc. **250 NLRB No. 117**
(discriminatee who was driver not reinstated since E's insurance carrier subsequent to discharge excluded from liability coverage any vehicle driven by discriminatee)

Routh Packing Company, Inc. **247 NLRB No. 053**
(no duty to reinstate picketer who was former Ee and considered himself on furlough but was not Ee when strike began)

Sea-Land Service, Inc. **JD-(SF)-271-82**
(refusal to settle grievance and reinstate grievant discharged for cause not discriminatorily motivated by grievant's choice of representative, as alleged, where E had stated intent to contest grievance and not reinstate grievant several times before knowing who representative was; E's questioning representative's ability and right to represent grievant did not warrant inference its decision to contest grievance was discriminatorily motivated)

Miami Springs Properties, Inc., and James H. Kinley and Associates, Joint Employers v. N.L.R.B. **653 F.2d 276 (C.A. 6, Aug 1981)**
(discharge of Ees for protected, concerted activity and refusal to reinstate them, unlawful)

Golden Day Schools, Inc. v. N.L.R.B. **644 F.2d 834 (C.A. 9, May 8, 1981)**
(discriminatees' asserted misconduct did not bar their reinstatement with backpay where E's violations were egregious; and Ees' conduct was not of quality or extent that might reasonably be thought to threaten future amicable relations between E and Ees; E *acted with flagrant disregard for its Ees' rights under Act* refusal (by Bd) to reinstate discriminatee would put premium on E's misconduct)

Western Clinical Laboratory, Inc. v. N.L.R.B. **633 F.2d 225(T) (C.A. 9, 1980)**
(substantial evidence supported Bd's finding that Ee was competent medical technologist and entitled to reinstatement)

5079-4900 Strikers in unprotected strike

St. Regis Paper Company v. N.L.R.B. **623 F.2d 487 (C.A. 6, 1980)**
(discharge and failure to reinstate Ees who struck E during critical period to gain recognition for U, rival of petitioner, not unlawful, since if E, during pendency of election proceedings, had recognized rival U as bargaining agent, it would have been guilty of interference with Bd's election procedures as well as ULP in violation of Section 8(a)(1) of Act)

Caterpillar Tractor Co. v. N.L.R.B. **638 F.2d 140 (C.A. 7, Sept. 1981)**
(discharge of Ees who participated in strike not unlawful since strike unprotected, notwithstanding contention strike ULP strike and no waiver, where contract provided there would be no strikes until grievance procedure exhausted and grievance on underlying dispute was pending; nor was E's unlawful unilateral changes regarding transfers *serious* labor dispute w/i *Mastro Plastics* so as to preclude waiver of right to strike regarding ULP)

5079-8400 Following temporary shutdown

Dravo Corporation, Engineering Works Division **255 NLRB No. 078**
(where E had policy of assigning disabled Ees to light duty, its refusal to recall grievance committee Chairman to such work violative when in retaliation for his active pursuit of his duties)

5079-8600 Following quit

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(E violated Act where reason for denial of reemployment after voluntary quit, pretextual, and Ees' U activity real cause)

Ferry Cap & Set Screw Company **JD-671-80**
(refusal to rehire or recall Ee who, after being unlawfully suspended for walking off his job, voluntarily quit, not violative, where there was no direct evidence that Ee was refused rehire for discriminatory reasons; refusal to rehire Ee was based in large part upon fact that Ee had walked out immediately after giving his 2-week notice of quitting)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(violation where E threatened with discharge, and delayed reinstatements of, several Ees who were engaged in ULP strike)

5080 RECLASSIFICATION OF EMPLOYEES

The Lutheran Home of Kendallville, Indiana, A Division of Lutheran Homes, Inc. **264 NLRB No. 076**
(creation of new supervisory positions which would have removed 7 out of 57 Ees from bargaining unit not violative absent proof of E intent to sap U's strength, especially where E did not require that the unit Ees become supervisors and loss of 7 unit Ees would not weaken U, or reduce its effectiveness in advent of strike)

Clark Manor Nursing Home Corp. **254 NLRB No. 084**
(changing Ee's status from full-time to part-time Ee with consequent loss of benefits, unlawful since motivation for action was Ee's activities on behalf of U)

5084 FAILURE TO OR DELAY IN RECALL

5084-3300 Laid-off employee

A & T Manufacturing Company **265 NLRB No. 201**
(no unlawful discrimination in selection of Ees for recall absent evidence E used any criteria other than experience, ability, attendance, and disciplinary record; further, E recalled U supporters)

Schnadig Corporation **265 NLRB No. 030**
(violation, where pursuant to layoff for economic reasons Ee laid off U adherents out of seniority order and rather than recalling adherents hired other Ees)

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Brinkerhoff Signal Drilling Co. **264 NLRB No. 049**
(Ee who was on layoff status at time strike began and never responded to E's offer to return to work during strike and found other equal employment held not to be striking Ee entitled to preferential treatment)

Earle Industries, Inc. **260 NLRB No. 163**
(E's failure to reinstate U adherents who were temporarily laid off prior to first election for lack of work and failure to meet E's production standards, and then, prior to second election, conversion of such layoffs to permanent layoffs held violative where Ees were not advised of E's production standards and other Ees, who did not meet standards were retained in their jobs; customarily, Ees temporarily laid off for lack of work could expect to have been recalled when work picked up)

Holland American Wafer Company **260 NLRB No. 041**
(delaying U activist's recall from or avoiding layoff status by refusing to permit him to use plantwide seniority, and bump into another classification, violative where E's published seniority provisions provided for plant-wide rather than department seniority)

Belford Farmers Cooperative **259 NLRB No. 168**
(E's failure to recall certain previously laid off Ees and unilaterally, w/o notice to or consulting with U, hiring new Ees not violative where record contained no evidence that failing to recall laid off Ees was change in E's past practice, much less unlawful unilateral change)

Quick Find Co. **259 NLRB No. 144**
(violation where E laid off 5 Ees during critical period while storage space was available and delayed recall after new storage space became available where E had allowed inventory to reach higher levels before instituting short work weeks, but no layoffs)

Timberline Energy Corporation **258 NLRB No. 037**
(refusal to recall Ees active in U organizing violative where E, during cross, examined each file and could not give reason for selecting most Ees for layoff)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(recall on basis of U adherence after layoff which was motivated by E's antagonism to U campaign, unlawful)

Narym Company, Inc. **JD-847-79**
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

5084-5000 Replaced economic strikers when replacement leaves

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**
(failure to reinstate economic strikers, not unlawful, where E had built up and had on hand substantial inventory in anticipation of strike at termination of bargaining agreement)

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**
(violation, where E labeled status of Ees who had either been discharged or voluntarily quit as on *leave of absence* in order to give false impression they were not new Ees when recalled by E and so did not need to recall unreinstated strikers)

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**
(no violation where E premanently transferred production workers w/i plant to another classification rather than recalling unreinstated economic strikers where no discriminatory motive present, E showed substantial and legitimate business reasons for doing so, and E did not agree to apply, nor was any strike settlement agreement executed calling for, application of recalls from layoffs provision of expired contract)

Giddings & Lewis, Inc. **255 NLRB No. 093**
(E's recall policy affording seniority preference for job vacancies to Ees who had been laid off over unreinstated (economic) strikers held violative, since policy constituted illegal grant of superseniority; policy was inherently discriminatory; E advanced no legitimate business justification in support of its policy; *Bancroft Cap Company*, 245 NLRB No. 86 (1979), *distinguished to cover relatively short term layoffs*)

John Cuneo, Inc. **253 NLRB No. 110**
(upon their unconditional offer to return to work, economic strikers are entitled to immediate reinstatement to their former positions, or, if those positions have been filled by permanent replacements, to full reinstatement upon departure of their replacements, unless E can show legitimate and substantial business reasons for not reinstating the Ees)

Giddings & Lewis, Inc. v. N.L.R.B. **675 F.2d 926 (C.A. 7, Apr. 1982)**
(promulgating rules providing that members of existing work force made up of permanent replacements will be recalled in order of seniority in event of layoff even before unreinstated economic strikers, not unlawful, where such system assures replacements *permanent* status to which they are entitled under *Mackay* and, contrary to Bd finding, system does not discriminate between strikers and non-strikers nor does it deny unreinstated strikers right to reinstatement should *vacancies* occur in work force)

Randall, Division of Textron, Inc. v. N.L.R.B. **687 F.2d 1240 (C.A. 8, Sept. 1982)**
(recall of permanent replacements from alleged leave of absence instead of reinstating economic strikers, violative because none of departures was originally placed on official leave of absence and retroactive grant of such leave cannot be permitted to avoid reinstating strikers)

Randall, Division of Textron, Inc. v. N.L.R.B. **687 F.2d 1240 (C.A. 8, Sept. 1982)**
(transfer of security guards into production jobs because E didn't need them after strike, violative because they were hired as temporaries. E's asserted *good faith* in hiring them and not wishing to terminate them does not constitute business reason for transferring them into available production positions instead of reinstating strikers)

5084-6700 Economic strikes

Giddings & Lewis, Inc. **264 NLRB No. 078**
(terminating recall rights of economic strikers by E's six-month renewal notification requirement by which Ees were obligated to notify E of their interest to remain on preferential hire list, violative, where such requirement was inherently destructive of Ee reinstatement rights under *Laidlaw* and E gave no sufficient business justification to shift such burden of notification to Ees as prerequisite to preserve statutory recall rights; remedy not barred by Sec. 10(b) of Act)

Brinkerhoff Signal Drilling Co. **264 NLRB No. 049**

J. E. Steigerwald Co., Inc. **263 NLRB No. 068**
(refusal to recall picketers to available work because they had engaged in protected strike activity violative)

J. E. Steigerwald Co., Inc. **263 NLRB No. 068**
(using subcontractor rather than recalling picketers for available work so as not to deal with U, violative)

Lincoln Hills Nursing Home, Inc.; et al. **257 NLRB No. 145**
(hiring new Ees as aides at time when all striker-aides not reinstated violative)

Lincoln Hills Nursing Home, Inc.; et al. **257 NLRB No. 145**
(transfer of Ee to vacancy rather than recalling striker who had formerly held position violative)

Lincoln Hills Nursing Home, Inc.; et al. **257 NLRB No. 145**
(removal of economic strikers name from recall list violative)

Lincoln Hills Nursing Home, Inc.; et al. **257 NLRB No. 145**
(E who hired new Ee before recalling striking Ees violated Act as this action delayed their reinstatement)

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**
(E's failure to reinstate strikers where it temporarily transferred Ee from one department to another for short period of time to work on similar machine to satisfy production requirements, not unlawful; GC's contention that two vacancies created for which unreinstated strikers should have been recalled i.e. vacancy which gave rise to transfer and vacancy created by departure of Ee to department where production was requested, rejected, in view of E's past practice regarding transfers which were dictated by its production system)

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**
(E's transfer of security guards hired after strike began to production jobs rather than recalling strikers for those positions, unlawful, abent substantial business justification, where E had not hired permanent replacements for production jobs)

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**
(no violation where E premanently transferred production workers w/i plant to another classification rather than recalling unreinstated economic strikers where no discriminatory motive present, E showed substantial and legitimate business reasons for doing so, and E did not agree to apply, nor was any strike settlement agreement executed calling for, application of recalls from layoffs provision of expired contract)

Giddings & Lewis, Inc. **255 NLRB No. 093**

Kuno Steel Products Corp. etc. **252 NLRB No. 127**
(E's defense to its refusal to offer strikers reinstatement is that U's offer to return to work is untimely, is without merit where unremedied ULPs committed by Es prolonged strike; U was involved in protracted Bd proceeding and offer to return to work made just over a month after ct decision)

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(refusal to reinstate 2 economic strikers immediately, unlawful, where unconditional offer to return to work was made on their behalf and E failed to

5084-6700—Cont.

meet its burden of justification for its failure to offer one Ee employment or for delay in reinstating other Ee)

Copeland Corporation JD-51-81
(E did not violate Act when it refused to reinstate economic striker at end of strike where it had reduced number of positions striker could fill and as soon as position did become available did reinstate him; E had no obligation to layoff Ee to make room for striker merely because he had more seniority than Ee who had not gone out on strike)

Vone Steel Corporation JD-216-80
(E delaying reinstatement of economic striker by suspending him beginning on date on which he would have returned to work with other strikers, not unlawful, where for throwing rock at truck entering E's property during strike)

N.L.R.B. v. Aluminum Cruiser, Inc. 620 F.2d 116 (C.A. 6, 1980)
(refusal to reinstate any of five economic strikers on preferential hiring list to available position, not violative since none of the strikers were qualified to assume the position)

Randall, Division of Textron, Inc. v. N.L.R.B. 687 F.2d 1240 (C.A. 8, Sept. 1982)
(E's policy of offering special-rated jobs to unreinstated strikers only if none of permanent strike replacements were qualified for and wanted jobs, violative as these job openings were vacancies and required posting under expired contract; effect was to make it less likely that strikers would be reinstated to higher-paying positions and amounted to preference to those who did not strike; such preference was inherently distructive of Ee right eliminating necessity of proving discriminatory motivation of E)

5084-7500 ULP strikers

Gulf Envelope Company 256 NLRB No. 058
(E's refusal to discharge strike replacements in order to reinstate ULP strikers to same or substantially equivalent jobs upon strikers' unconditional request for reinstatement, unlawful)

Atlas Metal Parts Co., Inc. 252 NLRB No. 029
(E's failure to terminate replacements and reinstate ULP strikers upon their unconditional request for reinstatement, unlawful, notwithstanding at time of request for reinstatement E believed strikers were economic strikers)

Atlas Metal Parts Co., Inc. 252 NLRB No. 029
(upon unconditional offer to return to work, ULP strikers are entitled to immediate reinstatement to their former jobs or if such jobs no longer exist to substantially equivalent positions; further, burden is upon E to offer immediate and unconditional reinstatement, even if striker replacements must be terminated to make room for returning strikers)

Atlas Metal Parts Co., Inc. 252 NLRB No. 029
(E's delay in reinstating striker who had been on U's negotiating committee after end of strike and upon recall assigning him to lesser paying job, unlawful, absent proof job had been abolished by subcontracting during strike; further, any subcontracting was accomplished w/o bargaining with U and hence violative of Section 8(a)(5))

Burns Motor Freight, Inc. 250 NLRB No. 045
(E's failure to reinstate ULP striker, not unlawful, where neither striker's former position nor substantially equivalent position available, and no contention E discriminatorily abolished striker's job)

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)
(termination of ULP strikers who had been threatened with discharge during strike for recognition upon their failure to report to work in response to E's request held unlawful discharge rather than voluntary quit in view of total atmosphere of hostility engendered by E's ULPs)

5084-8700 Economic strikers

Randall, Burkart/Randall, Division of Textron, Inc. 257 NLRB No. 001
(violation, where unreinstated strikers denied opportunity to bid for special rated jobs and E filled such jobs by first offering them to Ees on existing payroll rather than to qualified strikers awaiting reinstatement)

Randall, Burkart/Randall, Division of Textron, Inc. 257 NLRB No. 001
(failure to reinstate economic strikers, not unlawful, where E had built up and had on hand substantial inventory in anticipation of strike at termination of bargaining agreement)

Randall, Division of Textron, Inc. v. N.L.R.B. 687 F.2d 1240 (C.A. 8, Sept. 1982)
(filling temporary job with strike replacements who had quit held not violative as temporary job was not vacancy to which striker should have been reinstated)

5090 UNION SECURITY REQUIREMENTS

5090-0100 Generally

Musicians Union Local 47, etc. (American Broadcasting Company, etc.) 255 NLRB No.
(nothing in Act or its legislative history indicates that U-shop provisions in Sec. 8(a)(3) and 8(b)(2) were designed to give Es and Us license to use various discriminatory devices, short of discharge, to require Ees to join or maintain their U membership)

Albion Corporation d/b/a Brooks, Inc. 251 NLRB No. 104
(no authority exists for proposition that E, in compliance with U security provision, has statutory duty, absent valid request, to notify U when new unit Ees are either hired or when they complete their initial 30 days of employment)

5090-1700 Scope of proviso

5090-1725 Discrimination for noncompliance with equal membership requirements prohibited (Proviso A)

5090-1725-5000 Tender of dues and fees not required

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. 679 F.2d 673 (C.A. 7, May 1982)
(furthermore, even if recognized U has majority support Ees are only required to satisfy financial obligations of U membership and do not need to accept full U membership as condition of employment)

5090-1775 Proviso available only to compel tender of dues and fees

5090-1775-0100 Generally

Big Rivers Electric Corporation 260 NLRB No. 059
(E's suspension of Ee for three days after receipt of notice from U that she be discharged for violation of U-security clause not violative where E could have terminated her but merely gave her an extended 3-day grace period in which she was to meet her obligation)

5090-1775-8800 Time of tender

Big Rivers Electric Corporation 260 NLRB No. 059
(E's refusal to accept Ee's tender of delinquent dues not violative where Ee had already missed deadline and discharge process had been completed day before tender of dues)

5090-3300 Types of union-security provisions or practices

5090-3380 Effect under 14(b) of state regulation of membership requirements

C. B. Display Serice, Inc. 260 NLRB No. 140

Plumbers, Local Unions Nos. 141, 229, 681 and 706 (International Paper Company, Southern Kraft Division) 252 NLRB No. 181
(R fee clause requiring Ees who are not U members to pay pro rata service fee at rate less than monthly dues, though permissible under 8(a)(3) is violative of state laws enacted pursuant to Sec. 14(b) and cannot be enforced through invocation of N.L.R.B.)

Plumbers, Local Unions Nos. 141, 229, 681, and 706 v. N.L.R.B. 675 F.2d 1257 (C.A.D.C., Apr. 1982)
(while representation Ees for non-U Ees permissible under Section 8(a)(3) proviso, such fees are violative in right-to-work states under Section 14(b))

5090-5000 Prerequisites for validity of union-security requirements

5090-5030 Appropriate unit considerations

Andersen Sand & Gravel Company JD-655-80
(E which was engaged in manufacture of prefabricated structual concrete signing contract with Laborers in regard to representation of Ees in new wet concrete operation, unlawful, since E had obligation to bargain with Teamsters where Ees in new operation part of existing unit represented by Teamsters; inasmuch as work was performed in same plant with same tools, basically same wages, under same general supervision and working conditions; nor was operation result of establishment of new division where operation neither physically nor functionally distinct, and E's proposal for new division during bargaining had been withdrawn)

N.L.R.B. v. Hudson River Aggregates, Inc. 639 F.2d 865 (C.A. 2, 1981)
(violation, where E recognized and signed contract containing security clauses with U representing single plantwise unit of Ees consisting of 4 Ees one week before hiring 29 Ees, 27 of whom had worked for E's predecessor in 3 separate units and been represented by three separate locals who had made representative claims and E had not yet employed representative complement)

5090-5033 Majority status of contracting union at time of execution

5090-5033—Cont.

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **264 NLRB No. 063**
(entering into and applying collective bargaining agreement, which contained U-security provision with Ees' former U which had lost election, and by enforcing that U-security provision, violative)

Regency Gardens Company **263 NLRB No. 164**
(execution and maintenance of U security agreement not unlawful, where U official, after being told orally by majority of unit Ees that they wanted *to be with* U, informed E that U represented Ee majority, whereupon E recognized U as Ee representative, and both then agreed to be covered by existing master agreement containing U security provision; since there is no requirement that U must have, and show to E, majority of signed cards before U may be lawfully recognized, GC failed to prove that U did not represent Ee majority on date E recognized U)

RCA del Caribe, Inc. **262 NLRB No. 116**
(*Shea Chemical* 121 NLRB 1027, which required E to withdraw from bargaining with incumbent U after ptn had been filed by outside U overruled; E neutrality is best preserved by continued bargaining with incumbent, thus E will not violate Sec. 8(a)(2) by postpetition negotiation or execution of contract with incumbent U and will not violate Sec. 8(a)(3) even if it contains U-security clause; however, if contract is executed and incumbent loses election, contract with incumbent will be null and void)

Mego Corp. and Samet and Wells, Inc. **254 NLRB No. 031**
(recognizing and executing contract with U for Ees at new plant when said U did not represent majority of Ees, violative)

Sanford Home For Adults **253 NLRB No. 153**
(E who entered into contract containing U security clause with U which did not represent uncoerced majority of its Ees, and enforced that clause violated Act)

Campus Housekeeping, Inc. **252 NLRB No. 072**
(U and E violated Act when they signed renewal contract which contained U security clause after U had lost its majority and E had knowledge of this)

Alfred Satin d/b/a Hillcrest Nursing Home (Local 875, Teamsters) **251 NLRB No. 014**
(where E recognized minority U and executed contract containing U security clause it violated Act as existence of such provision discriminatorily encourages Ees to join minority U)

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**
(execution of contract containing U-security clause when U did not represent uncoerced majority of Ees, violative, notwithstanding subsequent deletion of such clause)

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**
(E and assisted U's inclusion of U security provision in their agreement, not unlawful, notwithstanding agreement itself was unlawful because U lacked majority status at time of execution, where there was no proof that the provision was ever enforced or any Ee discriminated against by its application)

Sav-On Drugs, Inc. **JD-(SF)-214-81**
(E setting aside special areas w/i store for local U representative to obtain membership applications from Ees at new stores, telling these Ees to cooperate with U; that they were already covered by agreement and that recognition was extended w/o need for vote, violative)

Venture Stores, Inc. **JD-81-80**
(execution of contract containing U-security clause with assisted minority U and deduction of dues pursuant thereto, unlawful)

N.L.R.B. v. Hudson River Aggregates, Inc. **639 F.2d 865 (C.A. 2, 1981)**
(violation, where E recognized and signed contract containing security clause with U representing single plant-wise unit of Ees consisting of 4 Ees one week before hiring 29 Ees, 27 of whom had worked for E's predecessor in 3 separate units and been represented by three separate locals who had made representative claims and E had not yet employed representative complement)

5090-6700 Execution or maintenance of invalid union-security agreement

5090-6710 Contract providing for discharge for reasons other than nonpayment of dues and initiation fees

Glass Container Corporation **JD-572-81**
(discharge violative where Ee who was demoted from supervisor and returned to status of nonsupervisory Ee was discharged at U's request because she had not obtained U withdrawal card when she became supervisor as provided for in contract; therefore, discharged based on considerations of U status)

5090-6720 Contract with assisted union

Save-It Discount Foods, Inc. **263 NLRB No. 097**
(E who applied and enforced collective-bargaining agreement including provisions providing for U-security clause, dues checkoff and insurance, to Ees of new store which was found not to be accretion to unit consisting of E's other four stores violated Act; moreover, U which accepted all of foregoing also violated Act)

Carbonex Coal Company **262 NLRB No. 159**
(E who signed contract containing U security clause and hiring hall provisions prior to hiring any Ees and then refused to employ any applicants who had not been referred through hiring hall, violated Act)

General Instrument Corporation, Amtote Systems Division **262 NLRB No. 149**
(E who opened two new operations and extended U contract to cover these operations violated Act where units were not accretions and E provided U with room to meet Ees, paid Ees for time spent at meeting, solicited newly hired Ees to sign U dues checkoff authorization, withheld dues even without valid checkoff authorizations and applied U-security provisions of its existing contract; moreover, by acquiescing in above conduct and by accepting recognition and extending dues and U-security provisions of contract to Ees at new operations U also violated Act)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(enforcing long dormant contract executed between E and favored U three years earlier in order to keep competing U from organizing its Ees, violative)

McKesson Drug Company **257 NLRB No. 054**
(maintaining U security clause in contract with minority U violative)

Hollander Home Fashion Corp. **255 NLRB No. 142**
(enforcement of terms of contract, executed with unlawfully assisted minority U, by maintaining U security clause and automatically deducting dues for remittance to U, unlawful)

Servair, Inc. and Servair Maintenance, Inc. **252 NLRB No. 093**
(where U represented group of 30-35 Ees employed by E, group of 36 newly hired Ees not accretion as it is unlawful to *accrete* large group to small group; moreover, E failed to disclose to new Ees that contractual benefits they would receive, new janitor Ees would receive different wage rates than those provided for in contract and E solicited U membership cards from new Ees; thus by unlawfully assisting and recognizing U E violated Sections 8(a)(1) and (2) and by requiring new Ees to join U violated Section 8(a)(3))

Gold Standard Enterprises, Inc., et al. **249 NLRB No. 046**

Baine Service Systems, Inc. **248 NLRB No. 087**
(unlawfully executed contract because it covered inappropriate unit and contained U-security clause)

Sav-On Drugs, Inc. **JD-(SF)-214-81**
(E setting aside special areas w/i store for local U representative to obtain membership applications from Ees at new stores, telling these Ees to cooperate with U; that they were already covered by agreement and that recognition was extended w/o need for vote, violative)

Venture Stores, Inc. **JD-81-80**
(execution of contract containing U-security clause with assisted minority U and deduction of dues pursuant thereto, unlawful)

5090-6722 While question of representation pending

Signal Transformer Co., Inc. **265 NLRB No. 033**
(E's recognition of U while incumbent U had not abandoned its claim to represent E's Ees notwithstanding its loss of majority status and while R ptn filed by U with which it had recognized was pending, unlawful, pending resolution of qcr)

5090-6725 Members only contracts

New York Laboratory Supply Company, Inc. **JD-416-81**
(E which maintained agreement with U that provided that the agreement applied only to members of U, and that Ees who are U members will receive different wages than Ees who are not U members violated Act as this encouraged membership in U and interfered with Ees Sec. 7 rights)

5090-6750 Failure to provide 30-day grace period

Versatile Services, Inc. **258 NLRB No. 109**
(threatening Ees with and then discharging them for refusal to join U violative notwithstanding U security in collective-bargaining agreement where 30 day period had not yet expired; they had not been informed of their obligations under provision or given a reasonable time to comply with provision)

Visu-Craft By H.B.S., Inc. **JD-887-79**
(threatening Ee with discharge if he refused to sign checkoff authorization and U membership application violative, where U security clause unlawful because no grace period provided for unit members working at time contract executed; moreover, even if security clause had been valid, lack of *voluntariness* in signing checkoff authorizations made threat unlawful because Ee has right to decide how he will pay dues)

5090-8300 Illegal enforcement of valid union- security agreement

5090-8307 Extension of contract to nonconsenting employees

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**
(violation where E applied contract with U security clause covering bargaining unit of P&M workers -- all female -- to male set-up workers -- who were like tool-and-die, rather than P&M, workers -- to encourage male Ees' membership in U representing female Ees and discourage their membership in other U which had demanded recognition as male Ees' representative)

5090-8314 Discharge for reasons other than nonpayment of fees and dues

Versatile Services, Inc. **258 NLRB No. 109**
(threatening Ees with and then discharging them for refusal to join U violative notwithstanding U security in collective-bargaining agreement where 30 day period had not yet expired; they had not been informed of their obligations under provision or given a reasonable time to comply with provision)

5090-8317 Discharge for nonpayment of dues

Western Publishing Co., Inc. **263 NLRB No. 145**
(discharge of Ee for failure to meet dues obligations, violative in view of E's failure to investigate circumstances surrounding U's request for discharge before honoring it)

Yellow Cab Company of Philadelphia (Debtor in Possession) **JD-247-81**
(discharging Ees pursuant to U's request, violative where E had reasonable grounds for believing that U did not give Ees adequate and correct notice of their dues obligations and reasonable opportunity to comply with those obligations; and two of the discharged Ees had met their dues obligations)

5090-8328 Hiring procedure resulting in exacting union payments within 30-day grace period

General Instrument Corporation, Amtote Systems Division **262 NLRB No. 149**
(where valid u-securityclause existed, E did not violate Act by giving U membership forms and dues authorization forms along with other pre-employment forms to new Ees absent evidence of coercive conduct)

5090-8342 Knowledge of employer that proviso (A) and (B) requirements not met

C. B. Display Serice, Inc. **260 NLRB No. 140**
(E which refused to hire former U member because U refused to refer him from exclusive hiring hall violated Act where U's refusal to refer was unlawful since no U-security clause and E knew reason for refusal to refer was lack of U membership)

5090-8350 Unauthorized deduction of union dues

Southland Knitwear, Inc. and Metropolitan Industries, Inc. **260 NLRB No. 087**
(deducting dues from Ees' paychecks w/o obtaining authorization from Ees to make such deductions, violative)

Yalor Mold & Die Co., Inc. **256 NLRB No. 006**
(deduction of dues for incumbent U pursuant to checkoff authorizations under contract with incumbent containing U security clause after contract had expired when outside U had filed petition for election, not unlawful where Ees had not revoked checkoff authorizations)

American Nurses' Association **250 NLRB No. 175**
(parties did not intend to allow for escape period during interim between agreements, where all dues checkoff authorizations were executed subsequent to effective date of contract)

Sira Security Service, Inc. **247 NLRB No. 157**

Honeywell, Inc. - Tampa Operations **JD-116-81**
(deducting U dues from wages of Ees who had effectively resigned from U during hiatus period between contracts, violative)

5090-8350-5000 After revocation

C. Solari & Sons, Inc. **264 NLRB No. 053**
(E violated Act when it continued to deduct U dues under merged U's checkoff clause after merger and Ees had signed valid revocations of their dues authorization cards)

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(E's continuing to remit dues to U pursuant to checkoff agreement, unlawful, where Ees had revoked checkoff authorizations via letters notwithstanding bargaining agreement required revocations to be on form provided by U; particularly where forms were only available at U headquarters which was inconveniently located and prior to revocation activity Ees were not informed regarding procedures to follow to obtain forms)

Peninsula Shipbuilders' Association v. N.L.R.B. **663 F.2d 488 (C.A. 4, Sep. 1981)**
(ct enforced Bd order holding E and incumbent U jointly and severally liable to reimburse Ees who had effectively revoked their check-off authorizations although on non-U forms in contravention of provision in extended bargaining agreement, where substantial evidence showed that such provision which required use of U revocation forms was facially invalid under LMRA Sec. 302(c)(4) and revocation procedure as actually enforced was ULP, in view of Ees' lack of easy, general access to U forms, Ees were not sufficiently informed about revocation requirement, and Ees had to appear personally at U hall to sign forms)

5090-8366 Applicability to after-acquired locations

Sav-On Drugs, Inc. **JD-(SF)-214-81**
(E setting aside special areas w/i store for local U representative to obtain membership applications from Ees at new stores, telling these Ees to cooperate with U; that they were already covered by agreement and that recognition was extended w/o need for vote, violative)

5090-8396 Union membership terminated without discriminatee receiving adequate notice and opportunity to comply

Harsh Investment Corporation d/b/a The Claremont Resort Hotel and Tennis Club **260 NLRB No. 034**
(E who discharged Ee after receiving notice from U that he had lost his U membership for nonpayment of U dues violative where Ee had paid his back dues and informed E of this and E made no effort to ascertain if this was correct before it discharged him)

5096 HIRING, CLEARANCE AND REFERRAL AGREEMENTS AND PRACTICES

5096-0100 Generally

5096-0114 Not illegal absent actual discrimination

Bechtel Power Corporation **248 NLRB No. 166**
(absent any recall rights and statistical analysis of actual recall of laid-off Ees showing discrimination towards swing shift Ees, either individually or as group, GC failed to sustain burden proving such discrimination by U hiring hall practices, and thus by E)

5096-2500 Types of agreements and practices

5096-2584 Delegation to union of employment control

5096-2584-5000 Appointment of stewards

Howland Hook Marine Terminal Corporation **263 NLRB No. 066**
(designation of agent of Ees' collective bargaining representative (appointment of interim steward) is purely internal U affair and resolution of dispute, regarding who would be interim steward rested with U and not Bd; *Section 8(a)(5) of Act* not applicable to internal U dispute concerning who had authority to conduct business of local U and E not required to determine which of 2 representatives was the validly designated one)

5096-2584-8000 Employer's responsibility for union's actions

Q.V.L. Construction, Inc. **260 NLRB No. 139**
(E's telling individual to apply for job through referral system run by U, which subsequently discriminated against him because he was not U member violative, and E held jointly and severally liable with U for discriminatory operation of referral system; U held primarily, and E secondarily liable for any backpay due individual because of discriminatory operation of referral hall, since even if E had investigated U's operation of referral system, it would not have discovered discrimination against Ee)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(where E delegates hiring to U under U referral system it is responsible if U operates system discriminatorily, even if E has no knowledge of U's discrimination, and thus U and E are normally jointly and severally liable for any back pay due, but here where even if E had investigated it would have been unable to discover discriminatory practices of U, U will be held primarily liable and E secondarily liable)

5096-5000 Execution and maintenance of invalid agreements and practices

Colonial Baking Company of Springfield **264 NLRB No. 072**
(E's and U's maintaining and giving effect to bargaining agreement which conditioned hire and tenure of Ee upon membership in or clearance by U, violative)

5096-7500 Illegal enforcement of valid agreements

5096-7525 Discriminatory operation of hiring hall

C. B. Display Serice, Inc. **260 NLRB No. 140**
(E which refused to hire former U member because U refused to refer him from exclusive hiring hall violated Act where U's refusal to refer was unlawful since no U-security clause and E knew reason for refusal to refer was lack of U membership)

5096-7525—Cont.

Painters' Local No. 64, etc. (Marine Industries Northwest, Inc.) **JD-(SF)21-81**

(craft U's refusal to issue a job dispatch to female applicant already hired by E, and E's termination of applicant because of U's refusal, not unlawful, since U would not have dispatched any job applicant in classification other than journeyman, in view of custom and practice of dispatching only journeyman painters, U's offer to dispatch applicant as such but E ommitted to make such request, U's legitimate desire to maintain its practice of dispatching only journeymen, and fact that no causal relationship to applicant's sex or nonmembership in U existed)

5096-7550 Discriminatory seniority practices

United States Postal Service **254 NLRB No. 010**

(E's acquiescence in U's appointment of various Ees as U stewards by improperly invoking provisions of contract to favor junior over senior Ees in regard to involuntary transfers, not unlawful, where E was not in position to question U's unlawful motives in appointing stewards)

5096-7562 Employer's knowledge of discrimination by union

United States Postal Service **254 NLRB No. 010**

(E's acquiescence in U's appointment of various Ees as U stewards by improperly invoking provisions of contract to favor junior over senior Ees in regard to involuntary transfers, not unlawful, where E was not in position to question U's unlawful motives in appointing stewards)

6700 INDICIA OF INTENT TO ENCOURAGE OR DISCOURAGE UNION MEMBERSHIP

6703 ACTION BY EMPLOYER AGAINST SELF-INTEREST

M & G Convoy, Inc. **260 NLRB No. 145**

(failing and refusing to transfer to new facility any former Ees of closed facility, violative as decision accomplished no legitimate business goal because it required hiring inexperienced Ees who required 3 weeks training and was motivated by E's expressed desire to keep new facility *pure* of U Ees at closed facility whom E viewed as *troublemakers* because they actively enforced contract terms)

6705 ADVANCE INDICATION OF INTENTION TO DISCHARGE

Classic Truck Rental Corp. **251 NLRB No. 056**

(E's filing of notice of arbitration with regard to its intention to discharge Ee because of his inefficiencies as Ee, not unlawful, since E's action was not prompted by Ee's U activities or filing of charges with Bd, where Ee's misconduct on job and disregard for company rules justified E's action)

Classic Truck Rental Corp. **251 NLRB No. 056**

(E's filing of notice of arbitration concerning its intention to discharge Ee because of his inefficiencies as Ee, not unlawful, where E's grounds for discharge were valid; Ee does not insulate himself from discharge for cause simply by virtue of fact that he had engaged in protected activity; misconduct which would justify discharge, absent any protected activity, will also justify discharge despite protected activity)

6708 ANTIUNION ATTITUDE OF EMPLOYER

Eastern Steel Company **253 NLRB No. 163**

(animus shown by E's threats to stop Xmas bonuses, withdraw pension and insurance benefits, to be less lax, by identifying Ee who probally started U and calling him no-ggod bum and stating U men are usually low-life)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse **647 F.2d 905 (C.A. 9, June 1981)**

(GC carried burden of showing under *Wright Line* that E's anti-U animus motivated his decision not to retain engineers by introducing credible testimony that E intended to fire enough Ees to avoid duty to bargain, by showing that E had stated that hotel would be nonU and he was letting all engineers go, and by failing to discuss employment with any engineers despite his need for an engineer to correct malfunctioning system)

6708-0100 Generally

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric **265 NLRB No. 203**

(Bd has considered E comments regarding Ee's purportedly *poor attitude* as patently euphemistic references to Ee's presumptive or known pro-U activities; absent particularized specification by E persuasively supportive of its judgment with respect to Ee's attitude, such comment by E may reasonably be considered calculated to convey E's displeasure with respect to Ee's U activities)

Hudson Oxygen Therapy Sales Company **264 NLRB No. 004**

(overreaction by E in diciplining Ee for violating work rule, even if valid, especially when rule had not been evenly enforced or necessary to maintain production standards, supports inference that Ee's violation of rule has been seized upon as pretext, and is supported only by invidious and discriminatory motive)

Stokely-Van Camp, Inc. **259 NLRB No. 128**

(anti U motivation established where supervisor told Ee that it was U's fault that Ee did not receive vacation pay to which he was entitled by placing onus on U for withholding of vacation benefits, E clearly demonstrated that its action taken in retaliation against U and to attempt to discourage Ees from striking)

The Martin-Brower Company v. N.L.R.B. **623 F.2d 1161 (C.A. 6, 1980)**

(supervisors' favorable action in behalf of dischargee, despite their knowledge of his U activity, demonstrated lack of anti-U animus)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. **672 F.2d 592 (C.A. 7, Feb. 1982)**

(various sorts of unlawful conduct both before and after election reflects anti-U animus)

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**

(proper test in determining whether discharge of Ee is ULP is whether anti-U animus was moving cause, and not whether discharge is only partially motivated by anti-U animus; to give rise to ULP *but-for* cause of discharge is required)

6708-0150 Antiunion background alone insufficient to sustain finding of discrimination

McLean Trucking Company v. N.L.R.B. **626 F.2d 1168 (C.A. 4, 1980)**

(superintendent threatening jobs of casual Ees unless one casual worker dissuaded another casual from presenting charges to Bd and urging another casual to discourage same Ee from pursuing charges against E before Bd, not unlawful, where casual workers lost nothing through appeals of superintendent and continued working)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**

(finding of unlawful motivation cannot be based solely on anti-U stance of E)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**

(anti-U motivation not established by fact that layoffs coincided with U activity where closing was for valid economic reasons; *given economic necessity which existed in case sub judice, it was management's function to decide at what point slowdown became sufficiently protracted to require decrease in personnel*)*

6708-3700 Antiunion conduct found in prior Board decisions

Jacobo Marti & Sons, Inc. **264 NLRB No. 007**

(Bd found U animus in instant case relying on finding of U animus in earlier case that was based on threat to close plant if Ees obtained U representation, and by promising increased wages and better working conditions if they did not support U)

Newport News Shipbuilding & Dry Dock Company **254 NLRB No. 043**

Marriott Corporation **251 NLRB No. 180**

(prior Bd decision holding that E's *In-Flight Services Division* had violated Secs. 8(a)(1) and (3) of Act at E's Tampa facility not taken into account in instant case, since: (a) issue of E's motive was not litigated; (b) acts in issue occurred in Tampa, not San Juan; (c) even in Tampa, E did not demonstrate *general disregard for its Ees' rights*)

6708-5000 Antiunion conduct and remarks subsequent to discrimination

Cardio Data Systems Corp. **264 NLRB No. 011**

(issuance of warning notice to Ee for unauthorized use of E's copying machine, unlawful, where ALJ found E violated 8(a)(1) when E told Ee a month later that such warning should be taken as a threat and that it was intended to show Ee what it would be like if Ees were represented by U; E's claim that warning was lawfully issued due to Ee's violation of unwritten company policy, rejected *and,* under the circumstances, E's admission regarding motive for warning was true reflection for motive underlying the warning)

South Nassau Communities Hospital **262 NLRB No. 146**

(supervisor's remarks to Ee who was not U supporter, after supervisor had issued warning letters to U activists assertedly for breaching E rule, that Ee, who had similarly breached rule, was *doing a fine job* and was *not involved in anything,* and that management was *looking at certain people* held to lead to conclusion that E's issuance of warning letters unlawfully coerced and was in retaliation against U activists)

Timberline Energy Corporation **288 NLRB No. 037**

(E's response to auto carvan of laid-off Ees by returning their remark, *stick it...* and accompanying gesture showed anti U animus but was not unlawful interference)

6708-5000—Cont.

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(discharge of Ees assertedly because of their absences immediately prior to and after vacation period, unlawful, where real motive for discharge was revealed through E's comments to one of the Ees that *all this* would not have happened if Ees had not tried to get U in plant)

6708-5600 Antiunion conduct and remarks at time of discrimination

Wayne Construction, Inc. **250 NLRB No. 082**
(termination of truck driver, active U adherent with allegedly poor driving record, who walked off job after E's project superintendent *admittedly* told Ee that he would close down job before going U and said that Ee was *through for good, we've got ways of taking care of things like this,* and admitted driving record of Ee was used as pretense to discharge Ee, held violative)

Golden Day Schools, Inc. v. N.L.R.B. **644 F.2d 834 (C.A. 9, May 8, 1981)**
(discharge of U advocates assertedly for disparaging E, inducing parents to withdraw their children from E's day-care center and unsatisfactorily performing their work, violative where discharge followed immediately upon U organizing activity and E's anti-U bias was amplysupported by record; false assertions of lawful purpose support inference that declarant's motive was unlawful)otive was unlawful)

6708-6200 Antiunion conduct and remarks prior to discrimination

Tra-Mar Communications, Inc. **265 NLRB No. 089**
(E, who had demonstrated anti-U animus prior to U, issuing letter to leading U adherent which warned her that if she continued to disregard E's (unlawful) work rules, she would be summarily discharged held violative where letter could only be explened as retaliatory and discriminatory measure against Ee as leading U adherent)

Brooks Cameras, Inc. **250 NLRB No. 116**
(E showed antiU animus by interrogating Ee as to U leadership and organization among Ees for whom U had demanded recognition, accelerating RIF among them and choosing U activists for RIF, and discharging Ee who threatened to organize another group of Ees)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(discharge of Ee after store he was responsible for was burglarized violative where E had interrogated Ee about signing U card, indicated its intention to use pretexts to fire U activists, was aware that Ee had signed card, assigned Ee additional work, made no attempt to investigate circumstances surrounding burglary and additionally had not fired another Ee for similar negligence which led to major theft)

U. S. Gypsum Company **JD-(ATL)-28-82**
(discharge of leading U advocate assertedly because Ee lacked skills and ability to perform his work and required constant supervision, violative where discharge followed shortly after manager's unlawful anti-U speech; Ee was not given disciplinary warning before discharge as was E's custom; other Ees who had received disciplinary warnings were not discharged; and E's records showed that Ee was performing well and had been granted wage raises for his work)

Power Service Co., T and T Truck and Trailer Leasing, Inc., Night Hawk Motor Transportation, Inc., and Vork Motor Transport, Inc. **JD-161-82**
(discharge and layoff of U activist truck drivers because discharged Ee *abandoned employment* when he refused to drive unrepaired truck and other driver was laid off for *lack of work* held violative, since respondents did not show that Ees would have been discharged or laid off even if they had not been U activists or U sympathizers; no attempt made to recall discharged Ee after truck was repaired and 2 or 3 new drivers given opportunity to drive for Es before attempting to recall laid off Ee)

N.L.R.B. v. Spielberg Manufacturing Company **673 F.2d 244 (C.A. 8, Mar. 1962)**
(discharg for tardiness of key organizer in election U lost almost one year earlier in which E expressed intent to resist afterwards any further U activity violative, where shortly before discharge Ee told vice president that dissatisfaction with new controller's efforts to correct attendance problems might generate renewed U organizational effort, controller told her he would *build case of absenteeism and discharge her unless her attitude improved,* and supervisor told her she had been discharged for U activity)

N.L.R.B. v. Heatilator Fireplace, Division of Vega Industries, Inc. **646 F.2d 1210 (C.A. 8, Apr 1981)**
(E showed anti U animus by testimony that it made many attempts to discourage U activity by attempting to dissuade Ees from attending U meetings and signing cards, by coercive interrogation and unlawful espionage)

6710 CONTRASTING TREATMENT

United States Gypsum Company **259 NLRB No. 148**
(in showing disparate treatment GC need not show identical situation with diametrically opposite result; rather only need show pattern of treatment by E in handling similar type incident)

Kansas City Power & Light Company v. N.L.R.B. **641 F.2d 553 (C.A. 8, Feb 4, 1981)**
(*a practice applied uniformly to all Ees may be discriminatory and violate the Act just as a discriminatory practice may be held to be perfectly innocuous*)

6710-2500 Of discriminatee and other employees

Knogo Corporation **265 NLRB No. 130**
(harsher discipline to pro-U employees)

Autoprod, Inc. **265 NLRB No. 042**
(refusing to pay entire amount of retroactive wage increases mandated by arbitration award to Ees who were active in U, violative)

Appleway Chevrolet, Inc. **265 NLRB No. 025**
(discharge of U adherent violative, notwithstanding E had legitimate reason for discharge (i.e. Ees' disparagement of E) where preponderance of evidence shows Ee was terminated for his U activity and another Ee also made disparaging remarks about E and he was not discharged; thus E failed to prove that Ee would have been discharged in absence of U activities)

Village IX, Inc. d/b/a Shenanigans **264 NLRB No. 122**
(where E had policy of allowing friends and spouses of Ees to wait for them in restaurant until Ee come off duty, it violated Act when it refused to allow husband of principal U adherent, who had been subject of Bd settlement agreement over her U activities, to wait for her. Although spouse did engage in some U activity, it was never on restaurant premises and was only to assist his wife and he did not engage in any U activities independent of her; thus, spouse could not be treated as non-Ee U organizer)

Village IX, Inc. d/b/a Shenanigans **264 NLRB No. 122**
(failure to timely mail invitation for E's anniversary party to U adherents, so that invitation arrived after party, violative as it was benefit granted to Ees)

The Moore Company, Inc., Div. of Easco Corp. **264 NLRB No. 159**
(discharge of Ee for refusing to work mandatory overtime, unlawful, since E motivated by U aminus where E knew of Ee's U sympathies and had committed other ULPs, Ee attempted to get substitute; was never warned she would be discharged if she did not work and no written policy dictating discharge; further, another Ee had refused to work overtime and was not discharged, and fact other Ee obtained substitute did not alter nature of her refusal)

Huttig Sash and Door Company **263 NLRB No. 163**
(violation for discharging initiator of U drive for delivering mudstained products and insubordination by not completing delivery, in view of timing soon after election, his assistant carried product through mud and was not disciplined, supervisor was unable to complete deliver for same reason next day and was not disciplined)

E. I. Dupont De Nemours **263 NLRB No. 015**
(forcing Ee to work harder and take fewer breaks than other Ees, and issuing Ee trumped up reprimands, unlawful, since for Ee's U adherance)

Roma Baking Company **263 NLRB No. 094**
(layoffs of two U adherents allegedly because they were legally under age to operate machinery they were operating violative where third underage Ee was merely transferred to position which did not require operating of machinery)

Arthur H. Fulton, Inc. **262 NLRB No. 134**
(discharge violative where Ee was subjected to disparate treatment as of 46 reasons asserted for discharge were common to undischarged drivers; another, failure to turn in logs for one month was suspect in view of E's policy of withholding pay when logs were overdue; and failure to report accident promptly was excuse as it was broken mirror which occured when vehicle was parked and unattended which Ee did not consider to be an accident)

Arthur H. Fulton, Inc. **262 NLRB No. 134**
(discharge violative where Ee was subjected to disparate treatment as of 46 reasons asserted for discharge were common to undischarged drivers; another, failure to turn in logs for one month was suspect in view of E's policy of withholding pay when logs were overdue; and failure to report accident promptly was excuse as it was broken mirror which occured when vehicle was parked and unattended which Ee did not consider to be an accident)

East Texas Motor Freight **262 NLRB No. 101**
(warning letters and counselling various Ees for actions contrary to E's work rules and policies not violative where other Ees were warned and counselled for same offenses which were work related, were not discriminatory and did not involve Ees' protected activity)

Foothills Care Center, Inc. **261 NLRB No. 082**
(discharge of U adherent for leaving nursing shift violative, where Ee left for personal emergency only after diligently attempting to obtain coverage and E had granted other Ees permission to leave in similar circumstances)

6710-2500—Cont.

M K Laboratories, Inc. **261 NLRB No. 021**
(discipline found disparate where active U steward was only Ee discharged for absenteeism alone)

Webb Ford, Inc. **258 NLRB No. 062**
(violation where E disparately issued warnings to U activists and used said warnings as basis for disparately discharging them alone where other Ees had similar records but had not received warnings, and, if they had received warnings, had not been discharged)

Wisdom Industries, Inc. **257 NLRB No. 164**
(discharge of principal U advocate and Ees' chief contact with U, driver of E's tractor-trailer, assertedly because *he had too many costly accidents* held violative where prior history of E's treatment of Ees involved in more than one costly vehicular accident showed that no Ee was ever fired for having such accidents)

Harrison Steel Castings Company **262 NLRB No. 059**
(restricting U activist to remain in crane during downtime while other crane operators were only restricted to remain nearby, violative)

Monroe Medi-Trans, Inc. **256 NLRB No. 107**
(discharge of U activist, unlawful notwithstanding E's contention that it had policy of discharging Ees after three infractions of its rules, since E's testimony showed variations in applications of the alleged policy and failed to show Ees knew of the policy)

Transportation Management Corp. **256 NLRB No. 025**
(discharging Ee for leaving keys on school bus parked in garage in violation of company policy, held pretext as E made decision to discharge before learning that Ee left his keys that day and it was common practice for drivers to leave keys on bus)

Five Star Air Freight Corporation **255 NLRB No. 046**
(E's *initial denial* of vacation leave to reinstated U activist stemming from unlawful motive held violative although E subsequently reversed its decision; E's rule concerning vacation leave had been bent on more than one occasion)

Five Star Air Freight Corporation **255 NLRB No. 046**
(denying reinstated U advocate holiday leave pay and suspending her for three days w/o pay assertedly because she had typed letter announcing impending U meeting on company typewriter during working hours held violative where record established that other Ees made frequent use of company equipment w/o rebuke)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**
(leading U advocate being assigned to undesireable night shift, his demotion, disciplinary reprimands and eventual discharge held unlawful where valid grounds for E's actions were frequently false or exaggerated, adverse action against Ee occurred when Ee became in-plant spokesman for U and Ee who opposed advocate's election to U office was more tenderly treated for his acts of misconduct)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**
(discharge of U activist for taking his lunchbreak when scheduled rather than to remain in his work area until malfunctioning press was repaired as instructed, held violative where Ee had compelling medical reason for disregarding instruction and other Ees who had left their work stations w/o permission were not similary disciplined)

*Gemco Company, a Division of the United States
Gypsum Company* **254 NLRB No. 041**
(discharge for alleged violation of safety rules where Ees engaged in horseplay, unlawful, since in retaliation for Ee changing his mind about voting against U where no other Ees had not been discharged for recent violations of safety rules)

Bethlehem Steel Corporation **252 NLRB No. 138**
(where Ees participated in work stoppage in violation of no-strike provision of contract and E disciplined U official with 10 day suspension and all others with 5 day suspension it violated Act as his punishment based on his position in U)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(denying reinstated Ee extended leave of absence and terminating her at time other Ees had been granted extended leaves of absence held violative)

Great Dane Trailers Indiana, Inc. **252 NLRB No. 015**

*PPG Industries, Inc., Lexington Plant, Fiber Glass
Division* **251 NLRB No. 156**
(discharge of known U supporter for sleeping on worktime, not violative notwithstanding contention that E reprimanded rather than discharged one other Ee for sleeping on worktime, where E terminated 34 Ees in past 10 years for sleeping on job, and sleeping on job was against company policy; moreover, U supporter who had not asked for permission as requested by E to take his break in a work area was discovered sleeping in secluded area of plant 10 minutes after break was scheduled to end, and had to be awakened by supervisor)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(discharge, soon after U election, of known U advocate whom supervisors considered to be admirable Ee, assertedly for violating plant rule against *knowingly altering, or falsifying time cards and reports, as well as payroll records* violative where E had displayed considerable animus towards Ee it considered to be *U kingpin;* E never previously discharged any Ee for similar violation except two Ees found guilty of embezzlement and forgery respectively)

Southern California Gas Company **251 NLRB NO. 127**
(discharge of Ee who refused to see E's doctor violative where no other Ee was ever terminated for such refusal and discharge occurred less than 2 weeks after Ee was threatened with termination for complaining to U about working conditions)

Swift and Company **250 NLRB No. 152**
(discharge of U steward, who prior to stewardship was considered *excellent* Ee, assertedly because he disregarded E's rule concerning unexcused absences held violative where rule had been disobeyed by other Ees w/o E taking any disciplinary action of E failed to investigate defense to discharge that answering machine which received absentee reports had malfunctioned)

Keeshin Charter Service, Inc. **250 NLRB No. 117**
(alleged rear end collision pretext for summary suspension of and subsequent denial of work to driver where E had no policy of automatic suspension for rear end collisions, action taken w/o discussion of facts and other Ees involved in accidents not suspended)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 087**
(permanent layoff of U adherent in contrast to brief layoffs of coworkers, unlawful, in view of E's U animus and lack of business justification)

Central Freight Lines, Inc. **250 NLRB No. 063**
(discharge of truckdriver, prominent supporter of U, allegedly because he had too many accidents held violative where other Ees with poor driving records were transferred to work on loading dock rather than being discharged)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge of suspected U smypathizer allegedly for poor attendance, unlawful, since discharge for U activities where she had never been warned regarding attendance and her record was not materially different from Ees retained)

Neptune Waterbeds, Inc. **249 NLRB No. 168**
(no violation where active U adherent was discharged for solicitation on E's time, violence toward other Ees, and lateness; although other Ees' work records showed deficiencies, no other Ee was shown to have work-related problems in as many areas as dischargee)

Hedison Manufacturing Company **249 NLRB No. 056**
(allegedly discriminatory conditions imposed on transfer of Ees from their department, which was U stronghold, to other departments in lieu of laying them off, were not imposed on similar transfers of Ees from another department)

Lyman Steel Company **249 NLRB No. 040**
(depriving U advocate of overtime assertedly because his machine had suffered oil leak held violative where other machine operators had suffered oil leaks earlier w/o repercussions from E)

Lyman Steel Company **249 NLRB No. 040**
(discharge of U advocate assertedly because his machine had suffered oil leak held violative where other Ees were not punished for same offense and disparate treatment followed E's threat of reprisal for Ee's U activity)

*Earl Kuhns d/b/a Frenchy's K & T and Earl's
News Stand* **247 NLRB No. 167**
(discharge of Ee after store he was responsible for was burglarized violative where E had interrogated Ee about signing U card, indicated its intention to use pretexts to fire U activists, was aware that Ee had signed card, assigned Ee additional work, made no attempt to investigate circumstances surrounding burglary and additionally had not fired another Ee for similar negligence which led to major theft)

General Meats, Inc. **247 NLRB No. 153**
(having special sign-in-out sheet whenever Ee left for nonwork purposes)

Wolverine Worldwide, Inc. **247 NLRB No. 137**
(disparate administration of disciplinary system where merely arbitrary and not caused by Ees U activities or sympathies, not violative and Ee discharges due to disparate actions also not violative)

Florida Cities Water Company **247 NLRB No. 111**
(where there were 2 probationary Ees who were both U adherents and only 1 was discharged, this does not preclude, under the circumstances, Bd's finding that discharge of one such Ee was violative)

*Clark & Hinojosa, Attorneys at Law, A Professional
Corporation* **247 NLRB No. 069**
(refusal to pay benefits to discharged Ee, to whom E promised one-half month's salary as post-termination pay, held violative inasmuch as E treated Ee differently than other discharged Ees because of Ee's expressed intent to seek redress from Bd)

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Tartan Marine Company 247 NLRB No. 073
(failure to grant wage increase to U adherent where 27 out of 33 Ees received increases, unlawful)

Anco Insulations, Inc. 247 NLRB No. 081
(discharge of insulation installer because he had left his work area to observe insulating work being done by another contractor in nearby furnaces because of possible jurisdictional work question, not violative notwithstanding Ee told to check up on this matter by U, where other Ees had been discharged for leaving their work areas and there was no need for installer to inquire into any work jurisdictional question)

U. S. Gypsum Company JD-(ATL)-28-82
(discharge of leading U advocate assertedly because Ee lacked skills and ability to perform his work and required constant supervision, violative where discharge followed shortly after manager's unlawful anti-U speech; Ee was not given disciplinary warning before discharge as was E's custom; other Ees who had received disciplinary warnings were not discharged; and E's records showed that Ee was performing well and had been granted wage raises for his work)

Michael Bahm Jr., d/b/a M & M Bahm and Associates JD-638-81
(discharge of painter, leading U advocate, because of his chronic tardiness, erratic performance, complaining, attitude and insubordination held violative where tardiness was general problem, and Ee was singled out for discharge; there was no evidence that other reasons for discharge were significant influence upon E in discharging Ee; in discharging Ee, E said *this talk of U is the last straw*)

Brockway Glass Company, Inc. JD-(SF)-117-81
(discharge of probationary Ee, hired to do carton assembling, assertedly for complaining about this being assigned to janitorial work, for *going to the U*, and refusing to perform assigned janitorial work, held unlawful, where other unsatisfactory probationary Ees were granted extensions of their probation when their work was unsatisfactory, there was no credible evidence to support finding that Ee refused to do assigned work or was *insubordinate*, and Ee had statutory right to engage in U activities)

National King Coal, Inc. JD-(SF)-24-81
(discharge of U adherent for absenteeism violative where other Ees with poorer attendance records than discriminatee were not discharged)

Triple A Machine Shop, Inc. JD-(SF)-220-80
(discharge of 3 striking Ees not violative where they engaged in life threatening picket line violence; fact that other nonstrikers engaged in some violence and were not discharged is not inconsistent where their behavior did not reach same level of violence)

American Metal Processing Company JD-159-80
(discharge of known U organizer allegedly for sleeping on job, unlawful since, under ordinary circumstances, this was not dischargeable offense and a few days later another Ee was caught sleeping while still on the clock, and nothing happened to him)

Public Service Planning and Analysis Corporation, d/b/a Airport Connection JD-(SF)-310-79
(asserted incidents of misconduct on part of Ees held no defense justifying their discharge where other Ees were routinely *guilty of* similar infractions w/o being disciplined or discharged therefor)

United States Postal Service JD-(SF)-273-79
(letter warning Ee of discipline for his irregular attendance held not to have been pretext to disguise E's unlawful conduct where other Ees received similar letter for their irregular attendance; letter was not arbitrary nor unrelated to E's ordinary business practices)

Hammermill Paper Company v. N.L.R.B. 658 F.2d 155 (C.A. 3, 1981)
(E's discharging U steward with clean work record for participation in refusal to perform assigned task rather than merely suspending him as it did other Ees involved who also had clean work records, unlawful since E may not single out for harsher punishment U officials who merely participate in illegal strike where bargaining agreement did not impose explicit duty on U officers and stewards to end any illegal work stoppage, and further, Ee was not serving as steward at time of work stoppage)

American Thread Company v. N.L.R.B. 631 F.2d 316 (C.A. 4, Sept. 1980)
(discharge of known U advocate assertedly because he urinated outside the plant, but on the premises, in violation of E's *indecent conduct* rule, violative, in view of E's lack of concern when similar use was made of plant area in the past and E's failure to discharge or otherwise discipline two other Ees who were guilty of *indecent conduct* involving incident herein)

Central Freight Lines, Inc. v. N.L.R.B. 666 F.2d 238 (C.A. 5, Jan. 1982)
(discharge of U activists, assertedly for faulty work, unlawful, in view of E's history, if not policy, of suffering these experienced Ees' minor infractions – until the U ferment began; by contrast less outspoken Ees with comparably blemished records remained on payroll)

Air Express International Corporation v. N.L.R.B. 659 F.2d 610 (C.A. 5, Oct. 1981)
(after merging with and moving operations to newly acquired facility, discharging and failing to transfer Ees held violative where only pro-U Ees were discharged, and in other merged facilities no full time Ees were discharged)

McDonnell Douglas Corporation v. N.L.R.B. 655 F.2d 932 (C.A. 9, 1981)
(discharge of transport pilot, leading U advocate, assertedly because he had blown out two vacuum pumps during flight subsequent to his U organizing efforts held violative, since Ee was regarded as competent pilot by fellow pilots and his immediate supervisor, other pilots who were guilty of same or worse conduct were not fired)

N.L.R.B. v. Brewton Fashions, Inc., a Division of Judy Bond 682 F.2d 918 (C.A. 11, Aug. 1982)
(Bd's finding that two women who were discharged for refusing to push heavy cart were treated differently from others who also refused held supported by substantial evidence on record as whole but not bey everything in record and court will not displace Bd's choice)

John H. Fournelle v. N.L.R.B. 670 F.2d 331 (C.A.D.C., Feb. 1982)
(E's selective suspension of U committeeman, not unlawful, since parties to contract may legitimately agree that U officials may be selectively punished for breach of no-strike clause, permanent arbitrator had authoritatively interpreted contract as imposing special duties on U officials, and that interpretation had value of precedent and was thereafter included in contract)

6710-5600 Of union and nonunion employees

Peabody Coal Company 265 NLRB No. 013
(withholding benefits from U Ees because they chose U while granting them to nonU Ees, unlawful)

Danzansky-Goldberg Memorial Chapels, Inc. 264 NLRB No. 112
(E continuing to allow anti-U Ee to use areas other than Ee lounge to relax after informing Ees at meeting and issuing memorandum stating only Ee lounge would be used to lounge, not unlawful, where memorandum precipitated by anti-U Ee falling asleep in public area, pro-U Ees preferred not to have anti-U Ee in lounge-which was known to management, and no Ee, either pro or anti-U, has been disciplined for using areas other than lounge for relaxation since issuance of memo)

Townsend and Bottum, Inc. 259 NLRB No. 027
(layoff not unlawful, since only 7 Ees were involved and, unlike other layoffs which included only nonmembers of U and were found discriminatory, layoff herein included 3 U members, and hence GC failed to establish *prima facie* showing that selection of Ees for layoff was discriminatorily motivated)

Best Distributing Co., Inc. 258 NLRB No. 024
(failure of E to apply terms of collective-bargaining agreement to Ees with respect to wages, benefits, and terms and conditions of employment, solely because they were not members of U, violative)

Staats and Staats, Inc. 254 NLRB No. 108
(discharge of three U adherents assertedly because they left their work stations and engaged in altercation with anti-U sympathizer, held violative where anti-U Ee had no legitimate business at site of encounter nor was anti-U Ee discharged for fighting or leaving his work station)

Reeves Rubber, Inc. 252 NLRB No. 026
(issuance of warning notice threatening termination for pro-U solicitation in work area on work time while permitting anti-U solicitation under same circumstances, unlawful)

Lee Norse Company, a Subsidiary of Ingersoll Rand Company 247 NLRB No. 090
(where E's relocation of plant was based on legitimate economic reasons and E was under no legal duty to transfer unit Ees to new location, E's failure to transfer unit Ees while transfering non-unit Ees, not violative, notwithstanding that E did not offer legitimate business reasons for its disparate treatment of unit and not-unit Ees; GC did not claim that disparate treatment was illegally motivated, and it is presumed that an action was taken for lawful reasons, absent evidence of illegality)

Motorway Freight Lines, Inc. JD-(SF)-193-82
(E's instituting profit sharing plan which excluded Ees *covered by collective bargaining agreement*, not unlawful, since plan was contract between E and carrier, E's Ees were not organized nor was there any contract between E and any U, and absent evidence any person would be discriminated against under plan)

Retailer's Coupon Redemption Co., Inc. JD-194-80
(violation where E discontinued flexible work hours of U leaders, and sympathizers, while permitting other Ees to continue working flexible hours)

6710-5000—Cont.

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)
(E may lawfully treat differently U and non-U Ees in different bargaining units, where legitimate business justification is shown for such action, and absent bad faith or anti-U motive)

B. G. Costich & Sons, Inc., et al. v. N.L.R.B. 613 F.2d 450 (C.A. 2) (1980)
(Es' contributions to pension fund on behalf of casual Ees who were U members but not on behalf of non-U casual Ees, not unlawful; even if improper motive were found, no 8(a)(3) violation could be made out since only such discrimination as encourages or discourages U membership is prohibited whereas, in instant case, benefit to U members would not induce non-U Ees to join U inasmuch as E's conduct had no immediately realizable impact on rights of such Ees who never held reasonable expectation of receiving benefits afforded only to U Ees)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. 691 F.2d 1133 (C.A. 4, Sept. 28, 1982)
(discharge of U adherent for receiving 4 warnings pursuant to E's disciplinary policy violative where 3 warnings were in themselves violations and 4th warning was given to him but not to non-U Ee who was guilty of same misconduct)

Motor Inn of Perrysburg, Inc. d/b/a Holiday Inn of Perrysburg v. N.L.R.B. 647 F.2d 692 (C.A. 6, May 1981)
(E's imposition, after U had lost two certification elections, of so-called *captain system* and *revised captain system* which changed working conditions and method of compensating waiters and waitresses, not violative where new *systems*, although unpopular with some Ees, were no basis for constructive discharge, and were imposed equally upon all Ees, not only U sympathizers; E's motive was to increase sale of food and lack of discrimination detracted from E's anti-U animus)

6710-7800 Of striking and nonstriking employees

Kaiser Steel Corporation 259 NLRB No. 085
(refusing to permit striking Ees to remove their personally owned tools from plant during strike held violative of Sections 7 and 13 where non striking Ees were permitted to remove tools, as use of such economic weapon frustrated strikers' ability to find other employment during strike)

Talbert Manufacturing, Inc. 258 NLRB No. 103
(reinstating striking Ees at lower pay than those Ees who did not strike and received raises violative)

Talbert Manufacturing, Inc. 258 NLRB No. 103
(where E permitted nonstriking Ees who were transferred to dayshift during strike to remain there, contrary to its prior policy forbidding shift changes, and denying returning strikers right to change shifts, it violated Act)

Lincoln Hills Nursing Home, Inc.; et al. 257 NLRB No. 145
(transfer of Ee to vacancy rather than recalling striker who had formerly held position violative)

Deister Concentrator Company, Inc. 253 NLRB No. 040
(failure to grant accrued bonus to unrecalled economic strikers violative)

Associated Grocers 253 NLRB No. 005
(notwithstanding substantial strike violence, requirement that economic strikers, as precondition to reinstatement, must take polygraph test, violative, where most questions asked involved employment relationship (stealing, slowdowns, etc.) and were required only of strikers for which E furnished no justification; thus, strikers had to prove their innocence of both strike-related and nonstrike related misconduct)

General Time Corporation, Westclox Military Products Division 249 NLRB No. 178
(E's failure to pay accrued vacation pay to striking Ees violative where no business justification existed)

N.L.R.B. v. General Time Corporation, Westclox Military Products Division 657 F.2d 271 (C.A. 7, June 1981)
(failure to distribute accrued vacation benefits to strikers at customary time when plant closed for vacation and subsequently postponing payment to strikers, unlawful, notwithstanding E's contention that contract had expired; so no vacation currently specified, and its new porposals would have changed vacation period and pay. Pay due under old contract, and accrued benefits paid on certain date under past practice may not be conditioned on new contract; further , E's refusal discriminatory where all Ees had same vacation, thus shutdown of plant for vacation not bargained for item)

Kansas City Power & Light Company v. N.L.R.B. 641 F.2d 553 (C.A. 8, Feb 4, 1981)
(fact that E stigmatizes striking Ees while leaving nonstriking Ees untouched may be an indication of E's hostility toward U, but such disparity of treatment is not necessary to find a section 8(a)(3) and (1) violation..(where) all Ees went on strike E could not have discriminated against striking Ees and in favor of nonstriking Ees..where all Ees engage in concerted activity, requisite disparity is between treatment of all Ees before and after concerted activity)

6710-8700 Of steward and other strikers or employees

South Central Bell Telephone Company 254 NLRB No. 032
(imposing longer suspensions on U stewards, who participated in sickout in violation of no-strike clause, than on other Ees who also participated held violative, since there was no evidence to indicate that U stewards engaged in activities different from those engaged in by other Ees such as urging support of or seeking to induce Ees to participate in work stoppage)

N.L.R.B. v. South Central Bell Telephone Company 688 F.2d 345 (C.A. 5, Oct. 1982)
(suspension of U stewards for mere participation in strike and/or for not taking affirmative steps to end strike in violation of no-strike agreement for longer period than supensions of other participants in strike, unlawful, absent affirmative contractual waiver of U officers' rights and/or breach of contractually imposed affirmative duties)

6713 DELAY IN DISCIPLINARY ACTION

Overhead Door Corporation (Todco Division) 261 NLRB No. 094
(discharge assertedly for strike misconduct, lawful where, contrary to complaint allegations, misconduct was found to have occurred; ALJ's reliance on delay in discharge to find discharge unlawful, unwarranted; complaint alleged nonoccurrence of misconduct rather than delay in discharge, neither party addressed delay issue, and record was silent as to reason for delay)

6713-3300 After knowledge of facts relied upon to justify discipline

A & T Manufacturing Company 265 NLRB No. 201
(acting on alleged reason for discharge 27 days after incident occurred held pretext)

Pilgrim Life Insurance Company 249 NLRB No. 140
(discharges unlawful since for U activities rather than for lack of business in view of E's U animus and ULPs and where it failed to act when surplus of Ees arose but acted only after it acquired knowledge of U organizing campaign, and, after discharges, hired new Ees)

Transportation By La Mar, Inc. JD-279-81
(discharge of U adherent, bus driver, assertedly because he had no school bus driver's permit from state held violaive where E had retained Ee on payroll for at least 5 months after learning Ee had no permit, retained Ee on payroll after E learned Ee could not timely obtain such permit and then discharged Ee after he received his permit and had conversed with suspected U activist)

N.L.R.B. v. Amber Delivery Service, Inc. 651 F.2d 57 (C.A. 1, June 1981)
(E who suspended Ees for taking too long coffee break violated Act where GC made prima facie case that Ees were disciplined for their U activity and E could not rebut presumption because when incident occurred it made no attempt to reprimand Ees, but was more concerned with documenting delay)

6713-6700 After knowledge of offense relied upon to justify discipline

Fixtures Manufacturing Corporation 251 NLRB No. 107
(where E had cause to fire Ee but did not do so until day after Ee attended U meeting, E violated Act as purpose was to discourage U membership)

Sentry Investigation Corp. 249 NLRB No. 130
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for numerous deficiencies where deficiencies were longstanding and discharge took place notwithstanding E's continuing need for Ees with gun permit)

Irwin County Electric Membership Cooperative 247 NLRB No. 195
(discharge by utility company of Ee allegedly for criticizing company in violation of rule for showing favoritism in restoring service w/o payment to those customers on whose behalf members of its board intervened, unlawful, since discharge was for Ee's U activities in view of E's U animus, prior threats of discharge or suspension for U activity, precipitousness of discharge, delay in discharging after Ee's criticism of it, and fact no other Ees had been discharged for voicing criticism)

6715 DEPARTURE FROM ESTABLISHED PROCEDURES AND STANDARDS

6715-0100 Generally

St. Francis Hospital 263 NLRB No. 109
(refusing to pay registration fees and grant time off to two Ees to attend U-sponsored seminar held violative, since E, in past years, allowed Ees to attend U-sponsored seminars when there was no U activity among its Ees; E's motivation, regardless of whether Ee-applicants for seminar were pro-U or anti-U, was to take away benefits because of Ees' exercise of their Section 7 rights)

Herman Brothers, Inc. v. N.L.R.B. 658 F.2d 201 (C.A. 3, 1981)
(discharge of Ee who had actively sought defeat of proposed contract which both E and U desired violative where Ee was ostensibly discharged for his

6715-0100—Cont.

failure to call in after excused absence when he had never been required to do so prior to this, which was only 3 days after defeat of proposed contract)

6715-0600 Periodic wage review

Smith & Smith Aircraft Company **264 NLRB No. 073**

(violation where E ceased its established wage increase policy during U campaign as E failed to inform Ees until approximately 2 months after time of postponement that sole reason for its action was to avoid appearance that it seeks to intervene in election. Explanation must be given at time of postponement and can only last for duration of campaign. Here there was delay in announcement and E informed Ees that program would not be reinstated until C against it of refusal to bargain, adjudicated; however, policy would be reinstated if Ees got rid of U, thus shifting onus on abandonment of wage policy on to U)

Howard Johnson Company, d/b/a Howard Johnson Distribution Center **250 NLRB No. 071**

(withholding wage increase from Ees who had chosen U held violative where Ees would have been granted raises under E's usual business practice; E intended to punish Ees because they voted for U)

Hobart Mailing Service, Inc. **JD-484-82**

(E's departure from its past practice of conducting wage reviews each year and its withholding of any wage increase violative, where E placed onus on U in explaining to Ees that reason was because U and labor relations put a freeze on everything until election was over)

6715-1600 Job posting

Ralph Nenner, M.D., Louis Orens, M.D. et al., A Partnership d/b/a Deepdale General Hospital **253 NLRB No. 092**

(transfer of anti-U Ee to better position where she lacked knowledge of requirements for job and E did not follow its own posting policy, violative)

6715-2000 Discharge procedure

Wehrenberg Theatres, Inc. d/b/a Melba Theatre and Skyvue Drive-In **260 NLRB No. 001**

(discharge of Ee who signed U card at request of supervisor allegedly because he closed one theatre for winter and, therefore, needed to reduce staff, violative where E traditionally employed 3 during winter and discharge left him with only 2 Ees; E had not discharged anyone in 18 years, and Ee was hired as replacement for another)

Brockwood Furniture, Division of U.S. Industries **258 NLRB No. 028**

(discharges of U activists, unlawful where E departed from discharge policy)

Gordonsville, Industries, Inc. **252 NLRB No. 054**

(discharge of valuable Ee, *front-line U adherent*, assertedly for removing anti-U posters from wall and *shaking* Ee who placed such posters held violative where E failed to investigate Ee's actions, contrary to E's usual practice)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**

(discharge of leading U advocate assertedly because of his insubordination when he showed his displeasure over learning his hours had been reduced by exhibiting nonverbal show of temper, held violative, since he was good Ee fired w/o warning, his show of temper was not serious and E, upon learning of Ee's U activity, suggested Ee seek other work)

U. S. Gypsum Company **JD-(ATL)-28-82**

(discharge of leading U advocate assertedly because Ee lacked skills and ability to perform his work and required constant supervision, violative where discharge followed shortly after manager's unlawful anti-U speech; Ee was not given disciplinary warning before discharge as was E's custom; other Ees who had received disciplinary warnings were not discharged; and E's records showed that Ee was performing well and had been granted wage raises for his work)

Brockway Glass Company, Inc. **JD-(SF)-117-81**

(discharge of probationary Ee, hired to do carton assembling, assertedly for complaining about this being assigned to janitorial work, for *going to the U,* and refusing to perform assigned janitorial work, held unlawful, where other unsatisfactory probationary Ees were granted extensions of their probation when their work was unsatisfactory, there was no credible evidence to support finding that Ee refused to do assigned work or was *insubordinate,* and Ee had statutory right to engage in U activities)

N.L.R.B. v. Brooks Cameras, Inc. **691 F.2d 912 (C.A. 9, Nov. 1982)**

(termination of Ees, unlawful, since for U activity, notwithstanding E had decided on staff reductions for economic reasons prior to knowledge of U activity; where after U's demand for recognition, E increased number of Ees to be laid off in department for which U sought recognition, made selection on basis of seniority rather than on basis of work performance as in other departments in order to reach U adherent, contrary to usual custom termination forms contained no indication of Ees' eligibility for rehire, and terminations were w/o advance warning)

6715-2800 Layoff procedure

Holland American Wafer Company **260 NLRB No. 041**

(delaying U activist's recall from or avoiding layoff status by refusing to permit him to use plantwide seniority, and bump into another classification, violative where E's published seniority provisions provided for plant-wide rather than department seniority)

Heartland Food Warehouse, Division of Purity Supreme Supermarkets **256 NLRB No. 148**

(discharge of U adherents who had been leaders in presenting grievances unlawful, notwithstanding E's lack of specific knowledge of adherents' U activities, economic justification for layoff of two Ees and E's contention that selection of adherents was for lawful reasons, since selection of adherents for discharge would not have occured absent their protected activities, where E was aware of Ee discontent and possibility of unionization and following discharge of adherents E transferred less experienced Ees to replace adherents; furthermore E departed from its normal layoff policy)

Sunco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**

(selection of Ees for economic layoff, unlawful where Ees were selected out of seniority, supervisor and general foreman told Ees that U supporters would not be called back to work and that reason for layoff was to get rid of people who were trying to organize U, E hired new Ees before offering Ees on layoff opportunity to be employed, Ees recalled were as new Ees w/o their prior benefits and for probationary period, and E hired new Ees while Ees were still on layoff)

N.L.R.B. v. Brooks Cameras, Inc. **691 F.2d 912 (C.A. 9, Nov. 1982)**

(termination of Ees, unlawful, since for U activity, notwithstanding E had decided on staff reductions for economic reasons prior to knowledge of U activity; where after U's demand for recognition, E increased number of Ees to be laid off in department for which U sought recognition, made selection on basis of seniority rather than on basis of work performance as in other departments in order to reach U adherent, contrary to usual custom termination forms contained no indication of Ees' eligibility for rehire, and terminations were w/o advance warning)

6715-3000 Disciplinary policy

Quality Packaging, Inc. **265 NLRB No. 142**

(issuing verbal warning to U activist for talking to Ee at another plant, issuing written warning next day restraining her from going to other plant, violative in view of E's animus and policy of giving written warnings only if Ee fails to correct conduct after verbal warning)

RAHCO, Inc. **265 NLRB No. 080**

Daniel Construction Company, A Division of Daniel International Corporation **264 NLPB No. 079**

(reprimanding U adherent for leaving his department and talking to other Ees held violative where reprimand was given as *final warning* notice, departing from E's usual policy concerning discharge after three written warnings; other Ees continually talked to each other outside department w/o reprimand)

Virginia Apparel Corporation **264 NLRB No. 030**

(discharging U activist for allegedly wasting time and showing contempt for supervisors held pretext where E demonstrated vindictiveness by publicly and loudly humiliating Ee by discharging her on work floor in presence of other Ees, did not consult with immediate supervisor before discharging her, and E did not discharge, suspend or warn other Ees for poor performance or work habits even in flagrant cases)

Colorado Forge Corporation **260 NLRB No. 096**

(written warnings for absences, unlawful where they were contrary to E's usual practice and resulted from Ees' attendance at U meeting which was known to E)

South Central Bell Telephone Company **254 NLRB No. 032**

(imposing longer suspensions on U stewards, who participated in sickout in violation of no-strike clause, than on other Ees who also participated held violative, since there was no evidence to indicate that U stewards engaged in activities different from those engaged in by other Ees such as urging support of or seeking to induce Ees to participate in work stoppage)

Keshin Charter Service, Inc. **230 NLRB No. 117**

(alleged rear end collision pretext for summary suspension of and subsequent denial of work to driver where E had no policy of automatic suspension for rear end collisions, action taken w/o discussion of facts and other Ees involved in accidents not suspended)

Central Freight Lines, Inc. **250 NLRB No. 069**

(discharge of truckdriver, prominent supporter of U, allegedly because he had too many accidents held violative where other Ees with poor driving records were transferred to work on loading dock rather than being discharged)

CTS Keene, Inc. **247 NLRB No. 141**

(suspension of U adherent allegedly for disrupting production by talking about U to other Ees who, on their own volition, ceased work to listen, unlawful since suspension for U activity, where Ees ordinarily permitted to converse while working, other Ees involved not disciplined, adherent not given chance to defend herself; and suspension based on warnings which deviated from E's usual procedure)

6715-3000—Cont.

N.L.R.B. v. Garry Manufacturing Company 630 F.2d 934 (C.A. 3, 1980)
(substantial evidence supported finding that issuance of written reprimands where oral reprimands were customarily issued in the first instance and where all but one who received written reprimands were U activists, was unlawful)

Northern Telecom, Inc. v. N.L.R.B. 618 F.2d 421 (C.A. 6, 1980)
(discipline of four Ees and discharge of U activist in connection with all five Ees leaving work at approximately same time on Saturday morning, unlawful; it was company practice to let night shift Ees, like those involved here, leave work w/o specific permission of a supervisor when they had been called in for Saturday overtime work starting at 6:00 a.m. after working till midnight the preceding night)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. 679 F.2d 673 (C.A. 7, May 1982)
(disciplinary warning notices issued by E to Ee (U *ringleader*) because of Ee's lateness, held violative where notices did not begin until commencement of U campaign; Ee had frequently been late prior to U campaign and had received no such notices)

Peavey Company v. N.L.R.B. 648 F.2d 460 (C.A. 7, May 1981)
(E's tolerating Ee's misconduct does not extinguish E's right to discipline Ee whose conduct continues to worsen)

N.L.R.B. v. Heatilator Fireplace, Division of Vega Industries, Inc. 646 F.2d 1210 (C.A. 8, Apr 1981)
(although absenteeism was problem, Ee was unlawfully discharged day after he attended U meeting of which company had advanced knowledge and asked 2 Ees not to attend, wives of 2 supervisors attended meeting, meeting was discussed at plant on next day, and E did not follow new policy of warnings and discharges for absences)

6715-4000 Enforcement of plant rules

CTS Keene, Inc. 247 NLRB No. 141
(suspension of U adherent allegedly for disrupting production by talking about U to other Ees who, on their own volition, ceased work to listen, unlawful since suspension for U activity, where Ees ordinarily permitted to converse while working, other Ees involved not disciplined, adherent not given chance to defend herself; and suspension based on warnings which deviated from E's usual procedure)

Westinghouse Electric Corporation JD-(ATL)-88-81
(discharge of Ee, U's financial secretary, assertedly because Ee had driven forklift at speed in excess of that permitted, damaged E's machinery and had record of habitual tardiness held violative since other Ees were not disciplined for same conduct; all discipline issued for damage to E's property occurred after Ee was discharged; E did not demonstrate same action would have taken place absent protected conduct)

Sunnyvale Porshe Audi, Inc. JD-(SF)-9-80
(discharge of car salesman who was U adherent allegedly for failing to obtain signature of E's manager on car lease agreement, unlawful, in view of E's U animus, adherent had prior to his U activities delivered leased cars w/o signature by manager w/o being disciplined and no other salesman had ever been warned or disciplined for delivering car w/o prior signature of manager)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. 691 F.2d 1133 (C.A. 4, Sept. 20, 1982)
(where E enforced its unauthorized absence rule more entensively during U campaign than at other times, it violated Act notwithstanding it was enforced against pro-and anti-U Ees equally as such balket enforceemnt would have been most effective means of discouraging unionization)

6715-4025 Imposition of more stringent rules

Tre-Mar Communications, Inc. 265 NLRB No. 089
(E's propogating oral and written work rules, after election of U, prohibiting smoking, personal telephone calls and reception of visitors on company premises, etc. which rules were more arduous and onerous than work rules in effect before advent of U held violative, since rules were propogated solely in retaliation for Ees' voting for U)

House of Cycle, Inc., t/a Kay Motors 264 NLRB No. 137
(E's imposing new rules that prohibited salemen from using their demonstration cars after drinking any liquor and restricted use of general manager's office to cross from one showroom to another after U requested recognition, not unlawful where rules had legitimate business objectives of minimizing hazardous operation of company owned vehicles and curtailing unnecessary traffic through general manager's office)

Hudson Oxygen Therapy Sales Company 264 NLRB No. 004
(issuing and posting on bulletin boards, after U won election, of rule authorizing safety committee to issue warnings to fellow Ees for infractions of safety rules, not unlawful, where committee existed and was described in Ee handbook before U campaign began, and change in enforcement of rule imposing new penalties was mere change in form rather than substance and was such minuscule part of committee's function as to preclude finding of retaliation against Ees' U activities; while questionably post-election timing was present, other circumstances combined to outweigh inference of discriminatory conduct or intent)

Service Spring Company, A Division of Garlock, Inc., A Wholly-Owned Subsidiary of Colt Industries 263 NLRB No. 103
(E whose new president implemented more rigid enforcement of discipline with respect to absenteeism and production mistakes coincident with U winning election did not violate Act where evidence established that policy was undertaken by E in attempt to improve production efficiency)

Service Spring Company, A Division of Garlock, Inc., A Wholly-Owned Subsidiary of Colt Industries 263 NLRB No. 103
(discipline of Ee during U campaign pursuant to new stricter Ee rules not violative where rules themselves found not to be violative)

John Cuneo, Inc. 253 NLRB No. 110
(warning two Ees, who returned to work after recognition strike, that they should not be late again and that they would be discharged if they were late in future held violative, since progressive disciplinary system relating to Ees' tardiness was instituted to discourage membership in U)

Hall of Mississippi, Inc. 240 NLRB No. 119
(announcing strict adherence to company rules concerning break periods, violative, where such announcement represented change in existing practice and more stringent enforcement of company rules because of Ees' U activities)

6715-5000 Layoff or discharge during slack period

Comet Corporation 261 NLRB No. 188
(layoff of welders who were U adherents when contracts cancelled, unlawful, in view of E's retention of less experienced Ees, fact E cut too deeply into personnel even for revised production schedule, and where contrary to its past policy substituted maintenance foreman for welder)

Quick Find Co. 259 NLRB No. 144
(violation where E laid off 5 Ees during critical period while storage space was available and delayed recall after new storage space became available where E had allowed inventory to reach higher levels before instituting short work weeks, but no layoffs)

Hedison Manufacturing Company 249 NLRB No. 096
(defense to unlawful imposition of restrictive conditions on transfer of Ees to other departments in lieu of layoffs on ground that E had no obligation to offer Ees transfers and could have laid them off w/o offering them alternative employment, rejected, where E had, as past practice, always offered Ees transfer, as alternative to layoff, free of conditions imposed on Ees herein)

Custom Wood Interiors, Inc. 248 NLRB No. 023
(discharge of leading Ee bargaining negotiator unlawful where, contrary to past practice, president identified and personally selected Ee for layoff rather than selecting production classification which was overstaffed and leaving selection of Ees to supervisor; alleged reason of *objectionable* smoking habits of Ee rejected as E has tolerated Ee's smoking habits for years)

6715-5500 Allotment of work

Hinky Dinky Super Markets, Inc. 247 NLRB No. 169
(reduction of hours of leading U advocate, part time Ee with good employment record, in order to give less senior Ee *a few hours* held violative where E's action against seniority was contrary to its usual practice and was taken against Ee to *straighten him up*)

6715-6000 Leave practice

Central Freight Lines, Inc. 255 NLRB No. 056
(discharge of known U adherent not violative in absence of disparate treatment; fact that E's policy on absenteeism was not uniform did not lead to inference that discharge was for U activity since no one with more absenteeism had been retained, nor fact that E ignored its recently enacted absenteeism procedure can be ascribed to anti U reasons since E has never utilized this procedure for any of its Ees)

Five Star Air Freight Corporation 255 NLRB No. 046
(E's *initial denial* of vacation leave to reinstated U activist stemming from unlawful motive held violative although E subsequently reversed its decision; E's rule concerning vacation leave had been bent on more than one occasion)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital 247 NLRB No. 074
(requiring U adherent to secure doctor's certificate in order to return to work after one day's absence, violative, where certificates were never required in past and obviously E instigated such policy because of Ee's U activities)

6715-6050 Payment of witness fees

6715-6050—Cont.

Consolidated Aluminum Corporation **258 NLRB No. 033**
(notwithstanding E's previous payment pursuant to grievance settlement of compensation for wages lost while testifying at Bd hearing, E's subsequent refusal to pay compensation in similar circumstances not unlawful, absent express contractual commitment and where not in retaliation for U activity or testifying; contract provision stating circumstances in which grievance settlement shall not be deemed precedent did not manifest intent that all other grievance resolutions were to become precedent)

6715-7080 Recall after layoff

Quality Packaging, Inc. **265 NLRB No. 142**
(failing to recall Ees by seniority after economic layoff, violative, where no specific reason was given, more senior Ees brought U in, and basis for this recall; namely, attitude and work performance had not been used before)

Bedford Farmers Cooperative **259 NLRB No. 165**
(E's failure to recall certain previously laid off Ees and unilaterally, w/o notice to or consulting with U, hiring new Ees not violative where record contained no evidence that failing to recall laid off Ees was change in E's past practice, much less unlawful unilateral change)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(recall on basis of U adherence after layoff which was motivated by E's antagonism to U campaign, unlawful)

6715-8000 Reemployment after sick leave

Advanced Mining Group, Div. of Republic Corp.,
Lucerne Facility **260 NLRB No. 073**
(known U protagonist)

Dravo Corporation, Engineering Works Division **255 NLRB No. 078**
(where E had policy of assigning disabled Ees to light duty, its refusal to recall grievance committee Chairman to such work violative when in retaliation for his active pursuit of his duties)

6715-9000 Reporting requirement in case of illness

Champion Parts Rebuilders, Inc., Northeast
Division **260 NLRB No. 098**
(discharge of U adherent for failing to call in sick violative where Ee did call in and was back at work before more than 3 day time limit had expired and no Ee was ever disciplined who was not absent *for more than* 3 consecutive work days without calling in)

6718 DIFFICULTY IN SECURING EQUALLY EXPERIENCED REPLACEMENTS

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for numerous deficiencies where deficiencies were longstanding and discharge took place notwithstanding E's continuing need for Ees with gun permit)

6720 DISCRIMINATION AGAINST MEMBERS OF OTHER THAN FAVORED UNION

Banner Tire Company **260 NLRB No. 096**
(discharge of Ee who had refused to quit U he had membership in and join U E preferred violative)

N.L.R.B. v. Paris Systems Corporation **625 F.2d 399 (C.A. 2, 1980)**
(absenteeism rule disparately applied to U adherents)

6723 DISCRIMINATORY TREATMENT OF OTHER EMPLOYEES

Danmar Company d/b/a Madison South
Convalescent Center **260 NLRB No. 106**
(discharge of Ees, assertedly for their inability to cooperate with fellow Ees, violative where real reason was effort to mask illegal discharges of two other Ees for their U activities)

Great Scot of Florida, Inc. **256 NLRB No. 126**
(sending letter to Ees thanking them for voting against U and announcing that it was granting nonmeat department Ees time-and-one-half for work performed on Sunday and certain holidays and that it was recommencing program of merit wage increases but not granting such benefits to meat department Ees because of NLRB, violative, notwithstanding E's contention that it was following advice of attorneys and that it subsequently admitted this error to Ees and granted same benefits to meat department Ees effective retroactively back to same date used for other Ees)

N.L.R.B. v. Rich's Precision Foundry, Inc. **667 F.2d 613 (C.A. 7, Dec. 1981)**
(layoff of 2 Ees caused by reduction in work due to discriminatory discharge of 2 other Ees violative as layoffs would not have occurred but for discriminatory action)

6725 DISPROPORTIONATE NUMBER OF UNION'S MEMBERS IN GROUP DISCRIMINATED AGAINST

6725-2500 Discriminatory basis for reinstating strikers

Associated Grocers **253 NLRB No. [illegible]**
(notwithstanding substantial strike violence, requirement that economic strikers, as precondition to reinstatement, must take polygraph test, violative, where most questions asked involved employment relationship (stealing, slowdowns, etc.) and were required only of strikers for which E furnished no justification; thus, strikers had to prove their innocence of both strike-related and nonstrike related misconduct)

6725-5000 Only union members discharged

Island Typographers, Inc. **252 NLRB No. [illegible]**
(E's unilateral action of terminating hot-type method of production and laying of its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

6725-7500 Unit (departmental or plantwide) in which disproportion is significant

Jacobo Marti & Sons, Inc. **264 NLRB No. [illegible]**
(illegal motivation inferred from permanent layoff that affected almost exclusively U adherents)

Hedison Manufacturing Company **249 NLRB No. 096**
(layoff of 21 Ees 19 of whom had signed U cards indicated high probability that layoff was discriminatorily motivated)

6728 EXONERATION OF EMPLOYEE FROM CHARGES ALLEGED AS REASON FOR DISCHARGE

United Parcel Service, Inc. **261 NLRB No. 134**
(reliance on earlier disciplinary letter issued to discriminatee as basis for later discipline of Ee is proof of E's unlawful motivation, as Bd had found in prior case that discipline which resulted in this letter being issued was unlawful)

Anchor Contracting Corp. **JD-231-80**
(discharge of Ee who had filed grievances, unlawful, since for his protected activity rather than for alleged taking of unauthorized vacation or poor work where vacation authorized and in view of shifting reasons)

6730 FAILURE TO DISCIPLINE SAME EMPLOYEE FOR EARLIER CONDUCT OF SAME CHARACTER AS THAT RELIED ON

Spring Valley Foods, Inc. **265 NLRB No. 182**

Keahin Charter Service, Inc. **250 NLRB No. 117**
(discharge of Ee unlawful since for his U activities, rather than for suspension of necessary driver's license, where E had accomodated Ee during prior similar problem by giving him inside work and assisting him in obtaining hardship license; subsequent refusal of E's insurance carrier to issue liability coverage for vehicle driven by Ee did not justify discharge since not true at time of discharge)

Peavey Company **249 NLRB No. 110**
(discharge of Ee unlawful in view of E's U animus and where motivated by Ee's protected activities as E had tolerated Ee's poor job performance for over 18 months until Ee instituted inquires into Ees' work grievances)

DRW Corporation d/b/a Brothers Three Cabinets **248 NLRB No. 055**

The Royal General Company **JD-17-80**
(discharge of U adherent unlawful since for U activities rather than for absenteeism where E had condoned his absenteeism until he actively engaged in U activities)

Sunnyvale Porsche Audi, Inc. **JD-(SF)-9-80**
(discharge of car salesman who was U adherent allegedly for failing to obtain signature of E's manager on car lease agreement, unlawful, in view of E's U animus, adherent had prior to his U activities delivered leased cars w/o signature by manager w/o being disciplined and no other salesman had ever been warned or disciplined for delivering car w/o prior signature of manager)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. **679 F.2d 673 (C.A. 7, May 1982)**
(disciplinary warning notices issued by E to Ee (U *ringleader*) because of Ee's lateness, held violative where notices did not begin until commencement of U campaign; Ee had frequently been late prior to U campaign and had received no such notices)

6730—Cont.

Purvey Company v. N.L.R.B. **648 F.2d 460 (C.A. 7, May 1981)**
(E's tolerating Ee's misconduct does not extinguish E's right to discipline Ee whose conduct continues to worsen)

6733 FAILURE TO GIVE BOARD EXPLANATION FOR DISCHARGE

Gentile Pontiac **260 NLRB No. 056**
(discharge of chief U organizer assertedly to make way for E returning from disability leave whom Ee herein had replaced, unlawful, in view of abruptness and timing of discharge, absence of explanation for summary termination a week before replaced Ee's scheduled return, and failure to give reason why Ee could not complete workweek)

Austell Box Board Corporation **249 NLRB No. 044**
(E's suspension and discharge of *Ee* violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

6735 FAILURE TO TELL EMPLOYEE AT TIME OF DISCHARGE REASON THEREFOR

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(alleged complaints regarding servicing of locals against Ee-staff members of U council by rank-and-file members held not reason for discriminatory transfer of staff members, where council administrator never counseled one member concerning alleged servicing complaints nor tell him that such complaints were reason for transfer and, in discussing transfer with another member involved in transfer, administrator did not mention alleged servicing complaints as reason for transfer; in stead, administration had commended latter Ee on his work in his area)

Sentry Investigation Corp. **249 NLRB No. 130**
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(E's defense of economic necessity for layoff or discharge of Ees rejected as pretextual, where E failed to submit any documentary evidence of alleged adverse business conditions claimed as reason for its action; and, although E asserted it had decided to lay off Ees several weeks prior to date layoffs were effected, E did not mention such decision or alleged underlying business conditions to Ees until date of their termination)

6738 FAILURE TO WARN EMPLOYEE PRIOR TO DISCIPLINE

Transportation Management Corp. **256 NLRB No. 025**
(discharging Ee stopping briefly at home en route to garage at end of work day, violative, as E did not confront him with evidence, warn him with evidence, warn him of possible disciplinary action, or follow its regular practice of three written warnings before discharge)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge of suspected U smypathizer allegedly for poor attendance, unlawful, since discharge for U activities where she had never been warned regarding attendance and her record was not materially different from Ees retained)

6740 FALSE EXPLANATION INDICATES ANTIUNION MOTIVE

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**
(shifting and contradictory explanations offerred by E for transfer of work strengthens inference of discrimination and reprisal)

Stewart-Warner Corporation **253 NLRB No. 016**
(unlawful motive may be inferred from falsity of stated motive; however, such inference is justified only where motive sought to be concealed by false reasons is unlawful)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(when asserted reasons for discharge fail to withstand examination, inference can be drawn that there is an unlawful reason, which E seeks to conceal, for discharge)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(where asserted motive for discharge is false, trier of fact can infer that there is an unlawful motive which E desires to conceal)

Apollo Clothes, Inc. **JD-286-82**
(shifting explanations for Ee's discharge, resting on self-serving inaccurate and inconsistent testimony, are evidence that E seeks to conceal true reasons for discharge because true reasons or causes (protesting *homework* and pursuing duties as U steward) are improper)

6740-5000 Pretext

Pay 'N Save Foods, Inc. **257 NLRB No. 162**
(circumstances, including timing of discharges upon E's learning of Ees' U activity and false explanation for discharges, size of plant, and fact Ees not circumspect in their discussions of U warrant inference that E's reference to Ees' attitude, as grounds for action, was allusion to their U sympathies)

Senetner Volkswagen Corporation **257 NLRB No. 038**
(E's asserted reasons for refusing to reemploy former supervisor as Ee were found *afterthoughts*, and hence, pretextual)

Transportation Management Corp. **256 NLRB No. 025**
(discharging Ee for leaving keys on school bus parked in garage in violation of company policy, held pretext as E made decision to discharge before learning that Ee left his keys that day and it was common practice for drivers to leave keys on bus)

Limestone Apparel Corp. **255 NLRB No. 101**
(finding of *pretext* necessarily means that reasons advanced by E either did not exist or were not in fact relied upon, thereby leaving in tact inference of wrongful motive established by GC)

Concord Furniture Industries, Inc., d/b/a Bradford Furniture Company **254 NLRB No. 109**
(on reconsideration, Bd applied *dual motivation* theory and reaffirmed violation finding; although this is pretext case, layoffs were violative under any analysis in view of E's knowledge of Ees' U activities, U animus, timing w/i 3 weeks of R ptn filing, and E's false reason that both were least senior Ees)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(pretext is when E asserts what appears to be legitimate business reasons for its actions, but on examination of the evidence reveals, however, that purported rule or circumstance advanced by E did not exist or was not relied upon by E)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge of U adherent held unlawful where personnel record of adherent stated he was discharged for distributing literature on company time and E testified she was discharged for allowing unreasonable backlog in her work to accumulate since where shifting explanations offered for discharge of known U adherent Bd is justified in concluding neither reason is real reason and discharge was discriminatorily motivated)

Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW **248 NLRB No. 155**
(severe reaction and total intransigency to alleged problem (leaving on long scheduled vacation) which at best was precipitated by E's own management is clear evidence of pretext)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of well known U adherent assertedly because he used profanity against restaurant hostess after he broke E's rule regarding seating customers held violative where reasons for discharge were fabricated and shifting)

Custom Wood Interiors, Inc. **248 NLRB No. 023**
(discharge of leading Ee bargaining negotiator unlawful where, contrary to past practice, president identified and personally selected Ee for layoff rather than selecting production classification which was overstaffed and leaving selection of Ees to supervisor; alleged reason of *objectionable* smoking habits of Ee rejected as E has tolerated Ee's smoking habits for years)

Hinky Dinky Super Markets, Inc. **247 NLRB No. 169**

General Warehouse Corp. **247 NLRB No. 142**
(discharge of vociferous leader of Ees opposed to waiving E's cost of living increase, assertedly because of his absenteeism, held violative where discharge came on heels of Ees' rejection of E's attempts to avoid cost of living increase, followed by E's changing its check cashing policy and eliminating rotating Ees for work they considered undesirable)

Service Garage, Inc. **247 NLRB No. 115**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(where reasons advanced by E for personnel actions are not persuasive, protected or U activity may well disclose real motive behind E's actions and show that reasons are pretextual)

Westinghouse Electric Corporation **JD-(ATL)-88-81**
(discharge of Ee, U president, for varied reasons all of which proved invalid, held violative, since E did not demonstrate that same action would have taken place even in absence of protected conduct; real reason was E's attempt to rid itself of *thorn in (its) side.*, namely, U president)

Better-Bilt Aluminum Products Co., Inc. **JD-228-80**
(issuing warnings to U activist to correct her unsatisfactory work and taking prolonged breaks *or more serious action will be taken* held violative where supervisor had advised Ee that E was going to get rid of *Ee* because of her U activity and reasons for warnings smacked of pretense)

6740-5000—Cont.

N.L.R.B. v. Charles Batchelder Company, Inc. 646 F.2d 33 (C.A. 2, Mar 1981)

(when E's asserted justification is sham in that purported rule or circumstances advanced by E *did not exist, or was not, in fact, relied upon,* the reason advanced by E may be termed pretextual)

Gould Incorporated v. N.L.R.B. 612 F.2d 728 (C.A. 3)

(fact discharge of U steward was affected or motivated in part because he had filed charges with Bd and other government agencies falls short of holding that he was discharged because of these activities; *where Ee's discharge is prompted by concurrent reasons, some permissible and some not, in order to support ruling of ULP Bd must find permissible reason proferred by E is merely pretext and that in fact Ee was disciplined because of anti-U sentiment*)

TRW, Incorporated v. N.L.R.B. 654 F.2d 307 (C.A. 5, 1981)

(very nature of *pretext* is false or sham reason. When E advances legitimate reason for discharge which is not shown to be untrue, case must be considered as *dual-motive* case)

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)

(*If a causal relationship between discharge and protected activity is established, E is responsible under Act unless he sustains burden of proof. Furthermore, E's explanation need not be accepted if there is a reasonable basis for believing explanation is pretext for retaliatory action*)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. 672 F.2d 592 (C.A. 7, Feb. 1982)

(threatening remarks and written reprimands shortly after Ee indicated intent to file additional charges with Bd violative, in view of anti-U animus and timing of reprimand soon after Ee filed charge; fact that Ee had not received reprimand in 11 years tenure and reprimand was over minor work dispute indicates pretext)

Peavey Company v. N.L.R.B. 648 F.2d 460 (C.A. 7, May 1981)

(pretext found to exist when purported rule or circumstance advanced by E did not exist, or was not, in fact relied upon)

6740-5050 Raised for first time at Board hearing

Sentry Investigation Corp. 249 NLRB No. 130

(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

6743 GOOD EMPLOYMENT RECORD OF DISCRIMINATEE

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072

(alleged complaints regarding servicing of locals against Ee-staff members of U council by rank-and-file members held not reason for discriminatory transfer of staff members, where council administrator never counseled one member concerning alleged servicing complaints nor tell him that such complaints were reason for transfer and, in discussing transfer with another member involved in transfer, administrator did not mention alleged servicing complaints as reason for transfer; in stead, administration had commended latter Ee on his work in his area)

Harvey's Wagon Wheel, Inc. v. N.L.R.B. 550 F.2d 1139 (C.A. 9, 1980)

6743-0900 Absence of complaints

Sentry Investigation Corp. 249 NLRB No. 130

(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

Suburban Ford, Inc. 248 NLRB No. 051

Mansfield Services, Inc. JD-734-80

(discharge of U adherent assertedly for *poor work habits* held violative where no evidence that Ee, prior to election, was thought to have *bad work habits;* Ee was precipitately discharged following trivial incident concerning assignment of work orders)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. 660 F.2d 1335 (C.A. 9, Nov 1981)

(discharge of waitress who was U adherent allegedly for violation of restaurant rules, unlawful since for U activity where she was senior waitress, worked desireable shift was one of two out of forty waitresses in E's employ who had received bonus, and had not been previously reprimanded; other waitresses who violated rules were only reprimanded)

6743-3600 Award for merit and ability

Bill Johnson's Restaurants, Inc. v. N.L.R.B. 660 F.2d 1335 (C.A. 9, Nov 1981)

(discharge of waitress who was U adherent allegedly for violation of restaurant rules, unlawful since for U activity where she was senior waitress, worked desireable shift was one of two out of forty waitresses in E's employ who had received bonus, and had not been previously reprimanded; other waitresses who violated rules were only reprimanded)

6743-4500 Favorable comment

6743-4533 By supervisors

Mueller Insulation Co. and The Mueller Company of Missouri, Inc., Successor Employer and/or Alter Ego 263 NLRB No. 093

(discharging Ee with history of lateness 3-4 days each week violative, where he had done *extremely good* work for 8 years, E gave no warning, did not inquire reason for lateness that morning and Ee had agresively enforced bargaining agreement for 3 months)

Western Marine Electronics, Inc. 257 NLRB No. 057

(discharge of Ee who had joined U and filed grievance contending he was covered by bargaining contract and was not receiving contract wage or benefits, unlawful, since motivated by hostility towards Ee and unionization in non-U sector of plant, in view of E's other ULP's including transfer of Ee, recent good evaluation of Ee, and suddeness of discharge while Ee's assignment incomplete and prior to end of pay period)

Cimpi Transporation Company 256 NLRB No. 173

(reinstatement of discriminatee, because he had violations on his driver's license, prior felony conviction which was unrevealed on his job application, and caused security problems for U.S. Postal Service with which E had contracted, not barred, since E was aware of Ee's misconduct and had not disciplined or discharged Ee on such grounds; Ee had been declared good Ee before discharge and problems with Postal Service had been resolved before discharge)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150

(discharge, soon after U election, of known U advocate whom supervison considered to be admirable Ee, assertedly for violating plant rule against *knowingly altering, or falsifying time cards and reports, as well as payroll records* violative where E had displayed considerable animus towards Ee it considered to be *U kingpin;* E never previously discharged any Ee for similar violation except two Ees found guilty of embezzlement and forgery respectively)

Lane Trenching, Inc. 247 NLRB No. 183

(discharge of admittedly *good* Ee assertedly for incompetence and insubordination held violative where Ee had attempted to assert contractural overtime claims, his work was satisfactory, he was never warned or disciplined during his employment, and E's excuse that truck which Ee drove was broken down was frame up to lay groundwork for discharge of Ee)

Siro Security Service, Inc. 247 NLRB No. 157

(discharge of Ee unlawful since for his opposition to U as bargaining representative, objection to deduction of U dues w/o his consent, and filing charges with Bd rather than for his tardiness particularly in view of his prior excellent record and recommendation)

Transportation By La Mar, Inc. JD-379-81

(discharge of U adherent, bus driver, assertedly because Ee, w/o permission, took day off to be with his hospitalized daughter held violative where Ee had only 1 day off in prior year, was never admonished for absenteeism, and E relied on Ee to relieve sick drivers or to run charters)

N.L.R.B. v. Allen's I.G.A. Foodliner 651 F.2d 430 (C.A. 6, May 1981)

(discharge of leading U advocate, whom supervisor said was *good and dependable* worker for 8 years prior to U campaign, assertedly because of *business retrenchment* and Ee's poor performance held violative, since Ee was never recalled when subsequent increase in (E's) business necessitated hiring several new Ees and only w/i year prior to discharge did E find fault with Ee)

McDonnell Douglas Corporation v. N.L.R.B. 655 F.2d 932 (C.A. 9, 1981)

(discharge of transport pilot, leading U advocate, assertedly because he had blown out two vacuum pumps during flight subsequent to his U organizing efforts held violative, since Ee was regarded as competent pilot by fellow pilots and his immediate supervisor, other pilots who were guilty of same or worse conduct were not fired)

6743-4567 By fellow employees

McDonnell Douglas Corporation v. N.L.R.B. 655 F.2d 932 (C.A. 9, 1981)

(discharge of transport pilot, leading U advocate, assertedly because he had blown out two vacuum pumps during flight subsequent to his U organizing efforts held violative, since Ee was regarded as competent pilot by fellow

6743-4567—Cont.

pilots and his immediate supervisor, other pilots who were guilty of same or worse conduct were not fired)

6743-6600 High rating or classification

Westinghouse Electric Corporation **JD-(ATL)-88-81**
(refusal to rehire former U steward, who had held highest labor grade position at E's plant because he was hazard to himself and those around him, he had refused to work overtime and did not like overtime, held violative where E did not demonstrate refusal to rehire and would have taken place even in absence of Ee's protected conduct; real motivation shown by unlawful interrogation of another Ee and comment that *things would be quieter w/o him)*

6743-8100 Promotions and wage increases or promises thereof

U. S. Gypsum Company **JD-(ATL)-28-82**
(discharge of leading U advocate assertedly because Ee lacked skills and ability to perform his work and required constant supervision, violative where discharge followed shortly after manager's unlawful anti-U speech; Ee was not given disciplinary warning before discharge as was E's custom; other Ees who had received disciplinary warnings were not discharged; and E's records showed that Ee was performing well and had been granted wage raises for his work)

6745 INVESTIGATION OF EMPLOYEE'S CONDUCT

Thurston Motor Lines, Inc. **263 NLRB No. 154**
(discharging one of key U organizers 2 weeks before election assertedly for chipping brick from customer's loading dock held pretext as safety supervisor reported that no damage occurred, customer's E and Ee both laughed about incident at time and E never sought Ee's version of *accident*)

Beverly Enterprises, Inc. t/a Cumberland Nursing & Convalescent Center **263 NLRB No. 061**
(failure to investigate Ee's side of incident before discharging her)

E. I. Dupont De Nemours **263 NLRB No. 015**
(discharge of active U supporter, lawful, where he was discharged for not performing work, falsifying production records, and giving false information when confronted by supervisor, since he would have been discharged even absent protected activity and notwithstanding protected activity prompted supervisor to scrutinize work and reports, results of which lead to discharge, inference is not warranted that Ee would have been discharged if less than dischargable offense had been uncovered and where other Ees had been discharged for similar offenses)

United Supermarkets, Inc. **261 NLRB No. 179**
(discharge of store Ee who was U adherent assertedly for being rude to customer at check-out resulting in customer's rescission of his purchases, unlawful, where customer complaints about Ees were rather common, other Ees had not been fired because of such conduct; and E reacted to incident and made decision to discharge Ee w/o any further investigation of incident or w/o obtaining Ee's version)

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**
(discharge of U member on day after E was mistakenly informed that she told Ees to walk out in protest over working conditions, unlawful, where E, who was engaged in conduct to undermine U, never asked Ee what she had told Ees; moreover, if Ee had tried to organize walkout, it would have constituted protected concerted activity, and discharge in mistaken belief that Ee was engaged in such activity is unlawful)

Harrison Steel Castings Company **262 NLRB No. 050**
(percipitous discharge of 2 Ees w/o any investigation of their side who were not included in unit being organized for not attending anti U rally, violative)

Cutting, Inc. **255 NLRB No. 076**
(E failed to investigate information, herein found untrue, obtained from Ee-informant that she had been threatened by discriminatee, which E used as pretext in suspending discriminatee)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(discharge of valuable Ee, *front-line U adherent,* assertedly for removing anti-U posters from wall and *shaking* Ee who placed such posters held violative where E failed to investigate Ee's actions, contrary to E's usual practice)

Pittsburgh Press Company **252 NLRB No. 075**
(lack of more thorough investigation, including failure to get Ee's version of facts regarding incident leading to his suspension, indicated discriminatory basis for suspension of Ee)

Fixture Manufacturing Corporation **251 NLRB No. 107**
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

Swift and Company **250 NLRB No. 153**
(discharge of U steward, who prior to stewardship was considered *excellent* Ee, assertedly because he disregarded E's rule concerning unexcused absences held violative where rule had been disobeyed by other Ees w/o E taking any disciplinary action of E failed to investigate defense to discharge that answering machine which received absentee reports had malfunctioned)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(E's willingness to rely, w/o question or further investigation, on unsubstantiated alleged incidents which E proffered as reasons for discharge, draws into question E's asserted reasons for discharge)

Keshin Charter Service, Inc. **250 NLRB No. 117**
(alleged rear end collision pretext for summary suspension of and subsequent denial of work to driver where E had no policy of automatic suspension for rear end collisions, action taken w/o discussion of facts and other Ees involved in accidents not suspended)

J. P. Stevens & Co., Inc. v. N.L.R.B. **638 F.2d 676 (C.A. 4, 1980)**
(although ct held record did not support Bd finding that two written warnings issued to U adherent unlawful, two other written warnings held unlawful since record supported discriminatory motivation in that E issued immediate warnings to U adherent for harassing fellow Ees while only giving anti-U Ee verbal warning for threatening and physically assaulting U adherent)

N.L.R.B. v. M & B Contracting Corporation **653 F.2d 245 (C.A. 6, July 1981)**
(discharge of U adherent unlawful since for U activity rather than for drinking while operating E's trucks in view of lack of investigation by E of alleged drinking and other Section 8(a)(1) violations by E)

6750 OFFER OF REINSTATEMENT ILLEGALLY CONDITIONED

Conair Corporation **261 NLRB No. 178**
(E's condition that employment applications be prepared and filed by returning ULP strikers as *new* or *former Ees* as prerequisite to reinstatement, unlawful, since main reason for E's action was one of retaliation against strikers for supporting U)

6750-2500 Surrender of previous rights and privileges

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**
(refusal of E, which had instituted fixed shifts to allow reinstated strikers to use their seniority to transfer to prefered shifts, as provided in terminated bargaining agreement, unlawful, notwithstanding contention no violation in view of lack of agreement regarding seniority and absent U animus, since change in policy regarding shift preference based on seniority had destructive impact on strike and U activity since it operated to discreiminate between strikers and nonstrikers and no overriding business justification for continuing fixed shifts)

Randall, Division of Textron, Inc. v. N.L.R.B. **687 F.2d 1240 (C.A. 8, Sept. 1982)**
(E's policy of offering special-rated jobs to unreinstated strikers only if none of permanent strike replacements were qualified for and wanted jobs, violative as these job openings were vacancies and required posting under expired contract; effect was to make it less likely that strikers would be reinstated to higher-paying positions and amounted to preference to those who did not strike; such preference was inherently distructive of Ee right eliminating necessity of proving discriminatory motivation of E)

6750-2600 Taking polygraph test

Associated Grocers **253 NLRB No. 005**
(notwithstanding substantial strike violence, requirement that economic strikers, as precondition to reinstatement, must take polygraph test, violative, where most questions asked involved employment relationship (stealing, slowdowns, etc.) and were required only of strikers for which E furnished no justification; thus, strikers had to prove their innocence of both strike-related and nonstrike related misconduct)

6750-3800 Refrain from Union activities

Volcan-Hart Corporation (St. Louis Division) **262 NLRB No. 017**
(offering to reinstate discharged striker upon condition that he resign from U office and agree not to run for office during following three-year period, unlawful; contrary to ALJ, Bd found E engaged in egregious conduct fit for redress)

Sycon Corporation **258 NLRB No. 154**
(conditioning reinstatement of terminated Ee on his signing agreement not to serve as chairman or committeeman of U at E's plant, violative; even assuming as E contended that U had collaberated with E or initiated agreement restricting Ee's U activities, E still would have violated Ee's Sec. 7 rights)

Acme Apparel, Inc. and Harry A. Meyer, an Individual **JD-(SF)-91-81**
(after unlawfully discharging Ee because she solicited members for U, but then further checking with Ees who told E he was wrong, telling discriminatee *Well if you didn't invite them to I.L.G.W.U., I apologize. Please go back to*

6750-3800—Cont.

work at your machine, use of word *if* conditioned reinstatement in that Ee would have to refrain from U solicitation)

6750-7800 Requiring physical exam

A-1 Building Materials 256 NLRB No. 114
(conditioning discriminatee's reinstatement on doctor's verification of ability to perform work held not valid offer where initial offer was made when E believed that Ee would reject offer contained no such requirement)

6750-9000 Conditioned on resignation of union steward

Associated Truck Lines, Inc. v. N.L.R.B. 644 F.2d 884(T) (C.A. 6, Jan 9, 1981)

6753 OFFER OF REINSTATEMENT SUBSEQUENT TO FILING OF CHARGES

Flatiron Paving Company d/b/a Flatiron Materials Company 250 NLRB No. 080
(original rejection of unconditional request for reinstatement with *No, we don't have a job for you,* but then after ULP charge filed E informed Ee that it had *a position available* and inquired *whether he wanted to return to work,* violative as offer vague and not tendered in good faith)

6758 CHANGE OF PRIOR ATTITUDE TOWARD EMPLOYEE

Swift and Company 250 NLRB No. 152
(discharge of U steward, who prior to stewardship was considered *excellent* Ee, assertedly because he disregarded E's rule concerning unexcused absences held violative where rule had been disobeyed by other Ees w/o E taking any disciplinary action of E failed to investigate defense to discharge that answering machine which received absentee reports had malfunctioned)

Keshin Charter Service, Inc. 250 NLRB No. 117
(discharge of Ee unlawful since for his U activities, rather than for suspension of necessary driver's license, where E had accomodated Ee during prior similar problem by giving him inside work and assisting him in obtaining hardship license; subsequent refusal of E's insurance carrier to issue liability coverage for vehicle driven by Ee did not justify discharge since not true at time of discharge)

6760 PRIOR QUESTIONING OR WARNING

6760-1400 Questioning employee concerning union

Fixtures Manufacturing Corporation 251 NLRB No. 107
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

6760-3600 Threats of discharge or layoff, etc.

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors 251 NLRB No. 151
(inference of discriminatory motive for Ees' discharges warranted in view of closer scrutiny of Ees' work performance which followed closely in time on advent of Ees' U activities and resulted in sudden and constant criticism of their work, numerous threats of discharge, and close timing of discharges in relationship to Ees' U activities)

Irwin County Electric Membership Cooperative 247 NLRB No. 195
(discharge by utility company of Ee allegedly for criticizing company in violation of rule for showing favoritism in restoring service w/o payment to those customers on whose behalf members of its board intervened, unlawful, since discharge was for Ee's U activities in view of E's U animus, prior threats of discharge or suspension for U activity, precipitousness of discharge, delay in discharging after Ee's criticism of it, and fact no other Ees had been discharged for voicing criticism)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart 247 NLRB No. 125
(issuing warning letter to U adherent regarding wearing dirty uniform and abuse of other Ees, unlawful, notwithstanding adherent's admitted grooming deficiencies, since warning motivated by her U activities, reporting of alleged violations by E to government agency, owner also threatened layoff and offered Ee adherent severance pay to induce her to seek other employment)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart 247 NLRB No. 125
(violation, where E, in recalling U adherent, warned her regarding deficiencies in grooming, abuse of other Ees, and customer complaints, since motivated by U activities and decision influenced by prior unlawful warning letters)

6763 PRIOR SURVEILLANCE

United Parcel Service, Inc. 261 NLRB No. 134
(discharge of drivers preceded by extraordinary surveillance, unlawful, where real reasons were for filing charges with Bd in prior case, U adherence, distribution of materials for dissident branch of U rather than for overstaying breaks on road and thereby failing to meet schedules, and for falsifying logs)

6765 REINSTATEMENT AFTER DISCHARGE

Campbell-Harris Electric, Inc. and Campbell Electric, Inc. 263 NLRB No. 167
(where son of principal stockholders of former entity had not lost employment as an *employee* as result of ULP or as result of labor dispute, new E entity, found *alter ego,* had no obligation to offer Ee reinstatement)

Allied Eastern States Maintenance Corporation, A Wholly-Owned Subsidiary of Allied Maintenance Corporation 261 NLRB No. 167
(fact that unlawfully discharged Ee was subsequently re-hired 4 months later and after charges filed, not conclusive proof of E's unlawful motivation)

6765-5000 As new employee

Sumco Manufacturing Co., Inc. Summit Grinding Company 251 NLRB No. 046

6768 REPLACEMENT OF DISCRIMINATEE

6768-1400 Additions to staff from which discriminatee was laid off for alleged lack of work

O'Dovero Construction, Inc. 264 NLRB No. 101
(layoff and failure to recall Ees who were members of craft U, unlawful, where motivated by Ees, complaining to management and U about E's failure to abide by contract in regard to coffee breaks, overtime pay and increased payrate prescribed therein, and performance of their work by members of another U, rather than for business reasons, in view of amount of work to be done and hiring of other Ees during layoff, and absent evidence laid off Ees less efficient than other Ees)

Van-Note Harvey Associates and Nassau Surveying 247 NLRB NO. 139
(failure to reinstate striker assertedly because no work was available held violative where E's *alter ego* (reactivated to avoid U) had available work; *alter ego* had crew of nine Ees doing unit work after strike had ceased)

Norym Company, Inc. JD-847-79
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

6768-2800 After layoff for slack

Pilgrim Life Insurance Company 249 NLRB No. 140
(discharges unlawful since for U activities rather than for lack of business in view of E's U animus and ULPs and where it failed to act when surplus of Ees arose but acted only after it acquired knowledge of U organizing campaign, and, after discharges, hired new Ees)

6768-4200 By inexperienced person

Daniel Construction Company, A Division of Daniel International Corporation 264 NLRB No. 079
(discharge of two long-term Ees, who were U adherents, because of E's planned redistribution of their functions held violative where they were only Ees E was able to identify from enlarged photograph of Ees who attended U sponsored rally and those two were immediately replaced by other Ees with little or no experience at work they assumed)

6768-5600 By new man

Coil-Acc, Inc. 262 NLRB No. 012
(layoff and refusal to reinstate U adherent assertedly for lack of work held violative where E had plentiful supply of raw materials and there was no evidence E's inventories were excessive; day after U adherent was terminated, he was replaced by new Ee who performed same work as U adherent)

H. B. Zachry Company 261 NLRB No. 098
(replacement of U activist allegedly riffed because of economic difficulties with higher paid new hire showed discriminatory motive for rif)

Norym Company, Inc. JD-847-79
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

6770 INABILITY OF EMPLOYER TO KEEP UP PRODUCTION AFTER LAYOFF

6770—Cont.

Vincent Brass & Aluminum Co. **264 NLRB No. 070**

(layoff and refusal to reinstate Ees, unlawful, since for assertion of their contractual right to job bidding procedure rather than for economic reasons, in view of E's U animus established by other violations and where layoffs occurred while orders increasing and overtime worked by other Ees during layoff, notwithstanding layoff in accord with contract and fact those laid off included Ees who had not attempted to assert their rights under contract)

Roach Manufacturing Corporation **JD-15-81**

(layoff of Ees including U organizer and U partisans as well as nonU supporters, violative; E's contention that layoffs were for economic reasons rejected, as E recalled 1 Ee next day and work of other laid off Ees assigned to night shift, an unusual practice; furthermore, layoff of nonU supporters also done to give color of legitimacy to E's action)

N.L.R.B. v. Rich's Precision Foundry, Inc. **667 F.2d 613 (C.A. 7, Dec. 1981)**

(layoff of 2 Ees caused by reduction in work due to discriminatory discharge of 2 other Ees violative as layoffs would not have occurred but for discriminatory action)

6773 SHORTAGE OF LABOR AT TIME OF LAYOFF

O'Dovero Construction, Inc. **264 NLRB No. 101**

(layoff and failure to recall Ees who were members of craft U, unlawful, where motivated by Ees, complaining to management and U about E's failure to abide by contract in regard to coffee breaks, overtime pay and increased payrate prescribed therein, and performance of their work by members of another U, rather than for business reasons, in view of amount of work to be done and hiring of other Ees during layoff, and absent evidence laid off Ees less efficient than other Ees)

6775 RETENTION OF LESS QUALIFIED EMPLOYEE AT TIME OF LAYOFF

Heartland Food Warehouse, Division of Purity Supreme Supermarkets **256 NLRB No. 145**

(discharge of U adherents who had been leaders in presenting grievances unlawful, notwithstanding E's lack of specific knowledge of adherents' U activities, economic justification for layoff of two Ees and E's contention that selection of adherents was for lawful reasons, since selection of adherents for discharge would not have occured absent their protected activities, where E was aware of Ee discontent and possibility of unionization and following discharge of adherents E transferred less experienced Ees to replace adherents; furthermore E departed from its normal layoff pollicy)

Capriccios Restaurant, Inc. **249 NLRB No. 100**

(layoff of Ee, assertedly because of lack of work, unlawful, where E now gives another reason for discharge relating to declining business, and E did not explain why it did not lay off Ees with less working tenure)

6780 RETENTION OR REINSTATEMENT OF OTHER EMPLOYEE GUILTY OF SAME OFFENSE

Roma Baking Company **263 NLRB No. 004**

(layoffs of two U adherents allegedly because they were legally under age to operate machinery they were operating violative where third underage Ee was merely transferred to position which did not require operating of machinery)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. **660 F.2d 1335 (C.A. 9, Nov 1981)**

(discharge of waitress who was U adherent allegedly for violation of restaurant rules, unlawful since for U activity where she was senior waitress, worked desireable shift was one of two out of forty waitresses in E's employ who had received bonus, and had not been previously reprimanded; other waitresses who violated rules were only reprimanded)

6783 DISREGARD OF SENIORITY

American Olean Tile company, Inc. **265 NLRB No. 206**

(violation, by denying vacancies of substantially equivalent pre-strike jobs to qualified senior economic strikers by giving inter-plant preference to strikers who abandoned strike or who made individual offers to return to work and were reinstated, albeit to positions not substantially equivalent to pre-strike positions, over the former for whom U made offer to return to work)

Schnadig Corporation **265 NLRB No. 020**

(violation, where pursuant to layoff for economic reasons Ee laid off U adherents out of seniority order and rather than recalling adherents hired other Ees)

Mid-County Transit Mix, Inc. **264 NLRB No. 107**

(E's failure to reinstate, w/o any business justification striker when replacement left after striker had unconditionally offered to return to work, unlawful, where E reinstated other strikers with less seniority and strikers who made later offers to return to work, nor did fact striker had taken another job justify E's failure to reinstate him since unlikely striker would have preferred other job inasmuch as he had less seniority at that job than had with E)

Documation, Inc. **263 NLRB No. 052**

(E's failure to utilize seniority as basis for selecting Ees for layoff not evidence of discriminatory motive where there was uncontradicted testimony that E has not and does not utilize seniority as basis for selecting Ees for layoff)

Comet Corporation **261 NLRB No. 188**

(layoff of welders who were U adherents when contracts cancelled, unlawful, in view of E's retention of less experienced Ees, fact E cut too deeply into personnel even for revised production schedule, and where contrary to its past policy substituted maintenance foreman for welder)

Randall, Burkart/Randall, Division of Textron, Inc. **257 NLRB No. 001**

(refusal of E, which had instituted fixed shifts to allow reinstated strikers to use their seniority to transfer to prefered shifts, as provided in terminated bargaining agreement, unlawful, notwithstanding contention no violation in view of lack of agreement regarding seniority and absent U animus, since change in policy regarding shift preference based on seniority had destructive impact on strike and U activity since it operated to discreiminate between strikers and nonstrikers and no overriding business justification for continuing fixed shifts)

Burns Motor Freight, Inc. **250 NLRB No. 048**

(failure to reinstate ULP striker, unlawful, where job available for which he was qualified and other strikers with less seniority recalled)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**

(transfer of Ee, who was witness in Bd hearing, fromhis desired second shift to less desirable day shift held violative where trans fer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

Gerber Scientific Instrument Company, Inc., A Wholly Owned Subsidiary of Gerber Scientific, Inc. **JD-188-82**

(layoff of U adherent not unlawful in view of cancelled orders and since E properly used as seniority basis rehire date where adherent had previously left E's employment voluntarily)

Palau Corporation **JD-(SF)-28-82**

(inference, that foreman's action against Ees was motivated by his animus towards Ees, bolstered by foreman's disregard of seniority provision under contract)

N.L.R.B. v. Porta Systems Corporation **625 F.2d 399 (C.A. 2, 1980)**

6785 LACK OF APPARENT REASON OR ADEQUATE EXPLANATION FOR ACTION

Brilliant Electric Signs, Inc. **258 NLRB No. 018**

(discharge of Ee, U member, by his supervisor for not paying his U dues and who thought Ee, recuperating from work accident, had quit held violative where there was no basis to assume Ee's status had changed and no evidence that Ee had quit his employment with E)

Newspaper Printing Corporation **JD-203-80**

(suspension of U adherent who, as result of sloppy compressed appearance of vacation sign up sheet, mistakenly thought he was to be on vacation and failed to report to work, where after error was discovered supervisor could have requested him to work and did not, there was interferance with production, and in view of e's ongoing dispute with U regarding steward's scheduling authority and triviality of error)

United Dairy Farmers Cooperative Association v. N.L.R.B. **633 F.2d 1054 (C.A. 3, 1980)**

(ct affd Bd's finding that Ee was fired for his U activities; ct's conclusion rested on evidence of anti-U animus in dismissal just prior to filing of election ptn and patent implausibility of alternative rationales proffered by E)

6788 SHIFT OF GROUND IN EXPLAINING EMPLOYER'S ACTION

McLean Trucking Company **261 NLRB No. 112**

(where E offered different reasons for Ees discharge at grievance proceeding and Bd hearing, such shifting of defenses indicates that Ee was unlawfully discharged)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**

(an unfavorable inference can be drawn from an E's shifting explanations for its treatment of an Ee)

6788—Cont.

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(inference drawn that Ee was discharged for U activity where E offered a myriad of reasons which E did not consistently maintain throughout hearing; rather, E vocillated over reasons underlying its discharge decision)

Roadside Mining Corporation a/k/a Gex of Colorado, Inc. 250 NLRB No. 079
(violation by discharge of U *pusher* where E vacillated between two asserted separate reasons for discharge-Ee's absenteeism and his lying about seriousness of his father's illness as reason for his absence; E called management meeting upon U *pusher's* return to work before knowing he had lied about his father's being hospitalized, then relied upon the lie as the reason for discharge notwithstanding lenient policy about excusing absences)

Capriccios Restaurant, Inc. 249 NLRB No. 100
(layoff of Ee, assertedly because of lack of work, unlawful, where E now gives another reason for discharge relating to declining business, and E did not explain why it did not lay off Ees with less working tenure)

Austell Box Board Corporation 249 NLRB No. 044
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant 248 NLRB No. 037
(discharge of two Ees two days after manager learned they were leading contenders for vacant (U) steward's job, allegedly because of their poor workmanship, tardiness and absenteeism held violative where Ees' time cards and register tapes were not offered into evidence; management's reasons for firing Ees were shifting, belated and unsubstantiated)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townhouse 647 F.2d 905 (C.A. 9, June 1981)
(E failed to meet his burden under *Wright Line* where he contended that he decided not to employ engineers because of their poor work attitude, added that they were overpaid and unnecessary, and told one of them that he could not hire him because of *technicalities*; E's case was weakened by asserted justifications that were shifting and unreliable)

6788-5000 Conflicting reasons or inconsistent theories

Russ Togs, Inc. 253 NLRB No. 099
(defenses found shifting where E first contended that layoff was due to lack of work, then to laid-off Ees' intimidation of co-worker, than to their alleged promotion of a slowdown)

Swift and Company 250 NLRB No. 152

Brooks Cameras, Inc. 250 NLRB No. 116
(violation where 3 days after U's demand for recognition, E discharged 7 Ees, the 7th being one of most competent and the principal U activist; E showed discriminatory motivation by retaining less competent Ees, by the timing and impact of discharges on organized Ees and inconsistent explanations)

Pilgrim Life Insurance Company 249 NLRB No. 140
(discharge of U adherent held unlawful where personnel record of adherent stated he was discharged for distributing literature on company time and E testified she was discharged for allowing unreasonable backlog in her work to accumulate since where shifting explanations offered for discharge of known U adherent Bd is justified in concluding neither reason is real reason and discharge was discriminatorily motivated)

Sentry Investigation Corp. 249 NLRB No. 130
(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

James F. Stanford, Inc. d/b/a Ace Machine Co. 249 NLRB No. 073

Norman Mennikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW 248 NLRB No. 155
(abrupt refusal to allow newscaster to leave on long scheduled vacation which had been approved by her immediate supervisor well in advance, assertedly because of E's lack of funds and/or because E was unhappy with Ee's replacements, violative, where Ee had filed charges and testified against E in prior Bd proceeding; E's defenses were shifting and inconsistent leading to inference of real reason for E's action)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 057
(discharge of well known U adherent assertedly because he used profanity against restaurant hostess after he broke E's rule regarding seating customers held violative where reasons for discharge were fabricated and shifting)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 057
(discharge of bartender-U adherent, assertedly for being away from his work, using customers', rather than Ees', restroom and not being properly attired held violative where shifting reasons were adopted by E to conceal discriminatory motive)

Apollo Clothes, Inc. JD-296-82
(shifting explanations for Ee's discharge, resting on self-serving inaccurate and inconsistent testimony, are evidence that E seeks to conceal true reasons for discharge because true reasons or causes (protesting *homework* and pursuing duties as U steward) are improper)

Anchor Contracting Corp. JD-231-80
(discharge of Ee who had filed grievances, unlawful, since for his protected activity rather than for alleged taking of unauthorized vacation or poor work where vacation authorized and in view of shifting reasons)

6790 STATEMENT MADE BY EMPLOYER CONCERNING DISCHARGE

Brooks Brothers, a Division of Garfinckel, Brooks Brothers, Miller & Rhoads 261 NLRB No. 130
(discharging experienced clothing salesman who signed U card, discussed U with other Ees and had been steward at prior E violative where several shortcomings alleged at hearing were not stated at exist interview)

6790-3300 After discharge

United Supermarkets, Inc. 261 NLRB No. 179
(Ee's U activity was motivating factor for her discharge where, subsequent to discharge assertedly for tardiness and long coffee breaks, supervisors made statements to the effect that E was looking for reason to get rid of Ee because she was a U supporter and that, while Ee was dishcarged primarily because of tardiness, another reason was because E had known Ee had talked to another Ee about U)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. 250 NLRB No. 043
(E's statements to Ees that real reason for layoffs and department shutdown was because E could not afford to pay U wages and that E could not operate under U)

Southwest Detroit Hospital 249 NLRB No. 071
(fact that supervisor failed to state succintly proximate cause of discharge does not allow for invocation of *pretext* or *shifting reasons* theory against E)

6790-6700 Prior to or at time of discharge

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 083
(discharge of formerly striking Ee assertedly for threatening violence against E's wife and house, unlawful, where Ee's denial of threat was credited, prior to discharge E made statement that he would have gotten rid of Ee but for U, and E exhibited virulent hostility toward ex-strikers generally)

6793 TIMING OF DISCRIMINATORY ACTION

Harper and Arterburn Co., Inc. v. N.L.R.B. 692 F.2d 402 (C.A. 6, June 1982)
(timing alone is not sufficient evidence upon which to sustain ULP since fact that Ee was dismissed shortly after complaining about absence of U steward could not, by itself, erase just cause which otherwise existed for discharge)

N.L.R.B. v. Naum Brothers, Inc. 637 F.2d 589 (C.A. 6, Mar 17, 1981)

Harvey's Wagon Wheel, Inc. v. N.L.R.B. 550 F.2d 1139 (C.A. 9, 1980)

6793-1100 After employee questioned employer about benefits

Grocery Carts, Inc. 264 NLRB No. 140
(discharging Ee for unsatisfactory work one month after she asked general manager whether U would work, not violative as there was no evidence of U animus nor does question indicate Ee or any other Ee interested in or active on behalf of U)

General Meats, Inc. 247 NLRB No. 153
(harassment and assignment to less desireable job of Ee who asked critical questions at E sponsored meeting called to discuss profit sharing plan, found violative and her subsequent quitting found constructive discharge)

J. Teixeira Construction, Inc. JD-(SF)-265-80
(discharge of Ee who protested E's failure to pay him for *stand by* time as provided under contract, violative)

N.L.R.B. v. Southern Plasma Corp. 626 F.2d 1287 (C.A. 5, 1980)
(discharge of Ee for conduct at E-Ee meeting violative as Ees were discussing employment terms with E)

6793-1200 After employer gained knowledge of union activity

A & T Manufacturing Company 265 NLRB No. 201
(layoff of U adherents because of E's concern about the economy and lack of work caused by alleged loss of principal customer, held violative where E's concern with the economy had apparently been no more than academic until inception of U activity; principal customer was not lost, it was not

6793-1200—Cont.

paying (E) according to schedule (customer's account was 90 days past due). U activity was *straw that broke the camel's back* rather than principal customer's delinquency)

Safety-Kleen Corporation **265 NLRB No. 011**
(discharge of one of E's best salesman assertedly for *falsification* of records showing services performed as of certain time, which in fact, had not then been performed, held violative where Ee was discharged 1 day after E learned Ee was U adherent; several of Ee's improprieties were rejected by E himself as reason to terminate Ee; there was no evidence that Ee's actions harmed E or benefited Ee, and Ee had at time he turned in report informed supervisor that work had not been performed w/o reaction from supervisor)

South Nassau Communities Hospital **262 NLRB No. 146**
(discharge assertedly for cause of Ee whose U activities had become known to E a few days earlier considered most convincing in finding discharge unlawful)

Coil-Acc, Inc. **262 NLRB No. 012**
(sudden termination of U adherent w/i two days of U's request for recognition w/o notice and before end of his work week together with E's interrogation of, and threats to, its Ees warranted inference of discriminatory motive)

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**
(layoff of U adherents two days after E learned large extent of Ees' U activity held violative absent legitimate justification for E's action)

Caffe Giovanni, Inc. d/b/a Giovanni's **259 NLRB No. 031**
(discharge of Ee, who had previously been offered permanent employment and a raise, only after E became aware of Ee's picketing, not unlawful, notwithstanding fabricated nature of E's defenses, timing of discharge, and Ee's knowledge of Ee's picketing activities, where Ee was discharged in normal course of his temporary employment on a summer vacation relief basis; and, while offer of permanent employment and raise may have constituted unlawful inducement to forego supporting U, such was not intended as a genuine offer)

A-W Washington Service Station, Inc. **258 NLRB No. 014**
(discharge of Ee violative where it was ordered in phone call from main office when that office called supervisor to ask about omission in employment application of new hire and was told that Ee was on leave to negotiate for U in regard to Ee's former place of employment)

Pay 'N Save Foods, Inc. **257 NLRB No. 162**
(circumstances, including timing of discharges upon E's learning of Ees' U activity and false explanation for discharges, size of plant, and fact Ees not circumspect in their discussions of U warrant inference that E's reference to Ees' attitude, as grounds for action, was allusion to their U sympathies)

Limestone Apparel Corp. **255 NLRB No. 101**
(timing of discharge is persuasive evidence as to E's motivation)

Nevada County Publishing Co., d/b/a The Union **251 NLRB No. 143**
(inference of discriminatory motive warranted where E would not reinstate Ee allegedly because E would no longer get along with Ee after Ee threatened ct action against E and, when considering how valuable Ee was to E, E would not so summarily have allowed Ee to leave had it not been for certain knowledge that E had of his very recent U activities)

Nevada County Publishing Co., d/b/a The Union **251 NLRB No. 143**
(close timing of Ee's discharge and his engagement in U activities as well as unlawful interrogation of Ee supported finding that E unlawfully discharged Ee)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**
(inference of discriminatory motive for Ees' discharges warranted in view of closer scrutiny of Ees' work performance which followed closely in time on advent of Ees' U activities and resulted in sudden and constant criticism of their work, numerous threats of discharge, and close timing of discharges in relationship to Ees' U activities)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharges unlawful since for U activities rather than for lack of business in view of E's U animus and ULPs and where it failed to act when surplus of Ees arose but acted only after it acquired knowledge of U organizing campaign, and, after discharges, hired new Ees)

MGM Grand-Reno, Inc. **249 NLRB No. 153**
(failure to promote leading U proponent known to E and advising him he was not eligible for promotion until he became more versatile in his work held violative where E assigned Ee only one type of work (welding) and two full time Ees were needed to perform work which discriminatee had performed with only part-time assistance)

Hadison Manufacturing Company **249 NLRB No. 096**
(final decision arrived at to lay off Ees)

The Halloran House **249 NLRB No. 113**
(discharge violative, where E had knowledge of Ee's U activity, acted immediately against Ee w/o warning, and failed to provide any plausible explanation for its conduct; under circumstances, it was proper to infer that E's motive was discriminatory)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(reassignment of U officer from machine operation where her work and performance were satisfactory, to bench work which was distasteful to her, held violative, where purposes was to discourage Ee so she would quit)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(discharge of Ee w/i very short time E knew Ee was U officer held violative where E's reasons for discharging Ee were shifting and somewhat contradictory)

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**
(discharge of Ee unlawful since motivated by E's belief that she was sponsoring U activity rather than for lack of sales in view of discharge soon after U demanded recognition, notwithstanding Ee might have been discharged for cause at later date)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suddenly transferring waiter and U organizer from his first choice station to another station for no reason and w/i 5 days after headwaiter learned of Ee's attending U meeting held violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(suspending two waiters, principal U organizers, w/i 5 days after learning of their U activity, for no reason during busiest day of week, violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(layoff of dishwasher, U solicitor of Spanish-speaking Ees, assertedly because *business was really falling off drastically*, violative, since layoff occurred soon after E learned of Ee's U activity; layoff actually was discriminatory discharge since E had no intention to recall Ee)

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(discharge of two Ees two days after manager learned they were leading contenders for vacant (U) steward's job, allegedly because of their poor workmanship, tardiness and absenteeism held violative where Ees' time cards and register tapes were not offered into evidence; management's reasons for firing Ees were shifting, belated and unsubstantiated)

Kenneth and Mary M. McGlaughlin, Copartners, d/b/a Hudson-High Super Duper **247 NLRB No. 199**
(refusal to hire qualified job applicant because he was on strike at store where held part time job held violative where applicant's overall qualifications for position were unchallenged by E)

American Petrofina Company of Texas **247 NLRB No. 015**
(Fact almost year had passed between U activity of alleged discriminatee and his discharge did not preclude finding of violation since *mere passage of time does not gainsay discriminatory intent*)

U. S. Gypsum Company **JD-(ATL)-28-82**
(discharge of leading U advocate assertedly because Ee lacked skills and ability to perform his work and required constant supervision, violative where discharge followed shortly after manager's unlawful anti-U speech; Ee was not given disciplinary warning before discharge as was E's custom; other Ees who had received disciplinary warnings were not discharged; and E's records showed that Ee was performing well and had been granted wage raises for his work)

Westinghouse Electric Corporation **JD-(ATL)-88-81**
(discharge of Ee, U's financial secretary, assertedly because Ee had driven forklift at speed in excess of that permitted, damaged E's machinery and had record of habitual tardiness held violative since other Ees were not disciplined for same conduct; all discipline issued for damage to E's property occurred after Ee was discharged; E did not demonstrate same action would have taken place absent protected conduct)

Normike Contractors, Inc. **JD-(NY)-51-81**
(where E tolerated Ee's absences by rehiring him and rewarding him with wage increases, discharge of said Ee at time when U activity becomes known warrants inference that Ee's U activities rather than his attendance motivated discharge)

Central Freight Lines, Inc. v. N.L.R.B. **666 F.2d 238 (C.A. 5, Jan. 1982)**
(discharge of U activists, assertedly for faulty work, unlawful, in view of E's history, if not policy, of suffering these experienced Ees' minor infractions -- until the U ferment began; by contrast less outspoken Ees with comparably blemished records remained on payroll)

Anserphone, Inc. v. N.L.R.B. **632 F.2d 4 (C.A. 6, 1980)**
(discharge of Ee violative, where despite her conflicts with fellow workers and fact that she was subject to discharge for long period prior to actual discharge, circumstances support conclusion that timing of her discharge was more a result of her U activity than her work performance)

N.L.R.B. v. Fixtures Manufacturing Corporation **669 F.2d 547 (C.A. 8, Jan. 1982)**
(discharging U activist one day after E received written report of U activity, 2 days after Ee became actively involved and 4 days after E received polygraph report which showed Ee refused to cooperate in investigation of thefts is substantial evidence that Ee was discharged for U activity rather than polygraph report)

6793-1200—Cont.

N.L.R.B. v. Circo Resorts, Inc., d/b/a Circus, Circus 646 F.2d 403 (C.A. 9, May 1981)

(discharge of Ees active in obtaining signatures to U authorization cards, unlawful, notwithstanding E's contention that discharges were for economic reasons, where discharges were followed by E's statements that Ees had been too obvious in their U activities and that more workers would not be employed until *this U thing was over*)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. 643 F.2d 687 (C.A. 10, Mar 2, 1981)

(lapse of time between E's knowledge of Ee's U activities and Ee's change in duties and discharge did not negate inference of E's anti-U motivation, since supervisor's harassment of Ee (U adherent) originated during, and continued throughout, unionization period)

6793-1300 After union complained on behalf of employee

O'Devero Construction, Inc. 264 NLRB No. 101

(layoff and failure to recall Ees who were members of craft U, unlawful, where motivated by Ees, complaining to management and U about E's failure to abide by contract in regard to coffee breaks, overtime pay and increased payrate prescribed therein, and performance of their work by members of another U, rather than for business reasons, in view of amount of work to be done and hiring of other Ees during layoff, and absent evidence laid off Ees less efficient than other Ees)

Champion Parts Rebuilders, Inc., Northeast Divison 260 NLRB No. 061

(layoff of Ees in retaliation for U's pressing of legitimate complaint under contract, violative)

6793-2500 Coincidence with critical period in union movement

6793-2511 At height of union membership or organizational drive

Fairleigh Dickinson University 264 NLRB No. 098

(E withdrawing recognition from representative for its clerical and technical workers and barring its representatives from further participation on official university committees in retaliation against outside U's organizing campaign of these workers with assistance from representative violative, contention that representative was *dominated* organization, and therefore, E's action proper, rejected, in view of long time representative functioned; and E attempted to provide substitute organization; E may not exculpate itself for its violations on ground that its conduct was attempt to *cure* established pattern of conduct violative of Act)

Jacobo Marti & Sons, Inc. 264 NLRB No. 007

(illegal motivation inferred from timing of E's conduct in discharging 2 Ees one day after they were interrogated about their U activities, and discharging third Ee two weeks after he had requested Ee-agent of E to sign U authorization card)

Dutch Boy, Inc., Glow-Lite Division 262 NLRB No. 001

(layoff of U adherents two days after E learned large extent of Ees' U activity held violative absent legitimate justification for E's action)

Doug Hartley, Inc. 255 NLRB No. 097

(mass discharge of unit members of window and door installation crew which worked under supervision of Ee who had special incentive arrangement with E, unlawful, since E failed to overcome GC's prima facie case of unlawful motivation where discharge was 4 days after majority signed authorization cards, notwithstanding crew's unacceptable work and failure to work on weekend, where E rehired crew members for jobs outside unit; nor did cancellation of agreement by crew's leader justify discharge absent agreement that crew went if leader left)

Crown Cork & Seal Company, Inc. 255 NLRB No. 004

(leading U advocate being assigned to undesireable night shift, his demotion, disciplinary reprimands and eventual discharge held unlawful where valid grounds for E's actions were frequently false or exaggerated, adverse action against Ee occurred when Ee became in-plant spokesman for U and Ee who opposed advocate's election to U office was more tenderly treated for his acts of misconduct)

Lou Awald Chevrolet, Inc. 253 NLRB No. 113

(discharge unlawful where date of discharge was accelerated because of U activist's attempt to organize Ees; although activist was next in line for termination due to E's declining sales, timing of sudden and immediate discharge indicated E's frustration with Ee's U activities)

MGM Grand-Reno, Inc. 249 NLRB No. 153

(changing location, during U campaign, of coffeebreaks from Ees' cafeteria to E's maintenance department in order to more closely observe Ees, not violative where record contained insufficient evidence to show E's motives were for purpose proscribed by Act)

N.L.R.B. v. Porta Systems Corporation 625 F.2d 399 (C.A. 2, 1980)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. 643 F.2d 687 (C.A. 10, Mar 2, 1981)

(lapse of time between E's knowledge of Ee's U activities and Ee's change in duties and discharge did not negate inference of E's anti-U motivation, since supervisor's harassment of Ee (U adherent) originated during, and continued throughout, unionization period)

6793-2517 Following demand for recognition

Coll-Acc, Inc. 262 NLRB No. 012

(sudden termination of U adherent w/i two days of U's request for recognition w/o notice and before end of his work week together with E's interrogation of, and threats to, its Ees warranted inference of discriminatory motive)

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car 260 NLRB No. 118

(during the week following, U's demand for recognition, Ee was discharged, two Ees were transferred to night shift, one Ee had hours reduced and monetary rewards and bonuses were withheld)

Mastell Trailer Corporation 258 NLRB No. 167

(E who closed up shop and discharged all Ees as soon as it was informed of impending U demand for recognition violated Act)

Liberty Homes, Inc. 257 NLRB No. 169

(E contracting out over-the-road delivery of its mobile homes and discharging drivers who performed delivery, not unlawful, notwithstanding subcontracting implemented after U had demanded recognition, where E had begun exploration of subcontracting and reached decision to subcontract prior to Ees seeking U representation and in view of E's financial losses and large capital outlay which would be required for desired replacement of inefficient gasoline powered tractors with diesel tractors)

C. E. Wilkinson & Sons, Inc. 255 NLRB No. 176

(discharge of U activist assertedly because he was under doctor's restrictions from lifting heavy weight and such restriction prevented him from properly performing his work, violative where discharge occurred on day after U demanded recognition, E had demonstrated U animus, and E had knowledge of Ee's U activities)

C. E. Wilkinson & Sons, Inc. 255 NLRB No. 176

(discharge of Ee, assertedly because he was not learning his machinist job fast enough, violative where discharge occurred on day after U demanded recognition, E had demonstrated U animus, and E had knowledge of Ee's U activities)

Brooks Cameras, Inc. 250 NLRB No. 116

(violation where 3 days after U's demand for recognition, E discharged 7 Ees, the 7th being one of most competent and the principal U activist; E showed discriminatory motivation by retaining less competent Ees, by the timing and impact of discharges on organized Ees and inconsistent explanations)

Grandee Beer Distributors, Inc. v. N.L.R.B. 630 F.2d 928 (C.A. 2, 1980)

(removal of U adherent from driving assignment after U representatives communicated desire for recognition held violative where timing and circumstances supported finding that action was retribution for Ees U activities)

N.L.R.B. v. Brooks Cameras, Inc. 691 F.2d 912 (C.A. 9, Nov. 1982)

(termination of Ees, unlawful, since for U activity, notwithstanding E had decided on staff reductions for economic reasons prior to knowledge of U activity; where after U's demand for recognition, E increased number of Ees to be laid off in department for which U sought recognition, made selection on basis of seniority rather than on basis of work performance as in other departments in order to reach U adherent, contrary to usual custom termination forms contained no indication of Ees' eligibility for rehire, and terminations were w/o advance warning)

6793-2533 Following election of union

Tru-Mar Communications, Inc. 265 NLRB No. 089

(E's propogating oral and written work rules, after election of U, prohibiting smoking, personal telephone calls and reception of visitors on company premises, etc. which rules were more arduous and onerous than work rules in effect before advent of U held violative, since rules were propogated solely in retaliation for Ees' voting for U)

RAHCO, Inc. 265 NLRB No. 039

(E's changing Ees' work week from four 10-hour days to five 8-hour days w/o notifying U held unlawful, since E was motivated by desire to punish its Ees because they voted for U to represent them and E did not afford U opportunity to bargain over action)

6793-2533—Cont.

RAHCO, Inc. **265 NLRB No. 030**

Huttig Sash and Door Company **263 NLRB No. 163**

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**

(discharge, soon after U election, of known U advocate whom supervisors considered to be admirable Ee, assertedly for violating plant rule against *knowingly altering, or falsifying time cards and reports, as well as payroll records* violative where E had displayed considerable animus towards Ee it considered to be *U kingpin;* E never previously discharged any Ee for similar violation except two Ees found guilty of embezzlement and forgery respectively)

Harowe Servo Controls, Inc. **250 NLRB No. 120**

(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Howard Johnson Company, d/b/a Howard Johnson Distribution Center **250 NLRB No. 071**

(withholding wage increase from Ees who had chosen U held violative where Ees would have been granted raises under E's usual business practice; E intended to punish Ees because they voted for U)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**

(discharge of E's senior, most trusted Ee, immediately after E learned U won election violative where E had previously interrogated Ee and learned that he had voted for U)

6793-2555 Following union organizational meeting

Hassly Hardwood Lumber Co. **JD-285-81**

(layoffs of U adherents not unlawful, notwithstanding layoffs closely followed U meeting, absent E's knowledge of U activity and where justified by business considerations in view of order cancellations and declining sales)

Golden Day Schools, Inc. v. N.L.R.B. **644 F.2d 834 (C.A. 9, May 8, 1981)**

(discharge of U advocates assertedly for disparaging E, inducing parents to withdraw their children from E's day-care center and unsatisfactorily performing their work, violative where discharge followed immediately upon U organizing activity and E's anti-U bias was amplysupported by record; false assertions of lawful purpose support inference that declarant's motive was unlawful)otive was unlawful)

6793-2566 Following unsuccessful election

Mark I Tune-Up Centers, Inc. **256 NLRB No. 138**

(post-election discharge assertedly because of Ee's poor attitude toward supervisors and fellow Ees, unlawful, where GC established prima facie case that Ee's U activity was motivating factor for discharge in view of E's knowledge of Ee's U activity, threats made to Ee and other Ees, and unlawful grant of bonus to Ee; and E failed to rebut GC's case in view of fact that E either ignored or condoned Ee's misconduct and failed to discipline him and, instead, promoted him and gave him bonus, and the only visible change in Ee's conduct was his U activity)

Motor Inn of Perrysburg, Inc. d/b/a Holiday Inn of Perrysburg v. N.L.R.B. **647 F.2d 692 (C.A. 6, May 1981)**

(E's imposition, after U had lost two certification elections, of so-called *captain system* and *revised captain system* which changed working conditions and method of compensating waiters and waitresses, not violative where new *systems,* although unpopular with some Ees, were no basis for constructive discharge, and were imposed equally upon all Ees, not only U sympathizers; E's motive was to increase sale of food and lack of discrimination detracted from E's anti-U animus)

6793-2588 Imminence of representation election

Anju Engineering Corporation **256 NLRB No. 161**

(termination of known U activist allegedly for violating unwritten rule that indefinite medical leaves, such as she was given, were granted for only 3 months and if overstayed resulted in automatic termination, unlawful where there was no evidence that rule was clearly established or uniformly enforced, and E, who routinely gave extensions of medical leave freely, terminated excellent Ee, known to be extremely ill, for technical breach on election day, 11 days after she allegedly should have returned to work)

Sameric Corporation **253 NLRB No. 043**

(terminating one Ee by eliminating his shift and transferring another Ee and subsequently promoting him to supervisory status, violative, where both were U adherents seeking representation election for unit comprising of only themselves)

Suburban Ford, Inc. **248 NLRB No. 051**

(unprecedented reshuffling, prior to election, of automobile salesmen's jobs, transferring them from new to used cars sales or *vice versa* and replacing or augmenting salesmen with untrained novices with little or no qualifications unlawful, in view of salesmen's experience and expertise in jobs they held; E's actions were prejudicial to salesmen's earnings, based on commissions)

Southern Farmers Association **JD-47-82**

(discharging Ee minutes before election, violative where E's reason, smoking in no-smoking area, was found pretextual)

R.E. Peterson Products, Inc., and Will Products, Inc. **JD-285-80**

(discharge of U adherent, driver-warehouseman, assertedly because E could not insure its vehicles if Ee, with poor accident record, continued to drive for E held violative where Ee's termination was accelerated to prevent Ee from voting in impending R election)

St. Regis Paper Company v. N.L.R.B. **623 F.2d 487 (C.A. 6, 1980)**

(discharge and failure to reinstate Ees who struck E during critical period to gain recognition for U, rival of petitioner, not unlawful, since if E, during pendency of election proceedings, had recognized rival U as bargaining agent, it would have been guilty of interference with Bd's election procedures as well as ULP in violation of Section 8(a)(1) of Act)

N.L.R.B. v. Circo Resorts, Inc., d/b/a Circus, Circus **646 F.2d 403 (C.A. 9, May 1981)**

(while wage increases granted prior to election generally carry a presumption of illegal motive, E is entitled to justify timing of increase and, under unusual circumstances herein involving E's dilemma of choosing between Ees' protests over disparity in their wages or risk losing Ees when they were badly needed, Bd should have considered justifications offered and should not have based finding of violation solely upon timing of increase)

6793-5000 Coincidence with other unfair labor practices

Laredo Packing Company **254 NLRB No. 001**

(suspension of U adherent who threw supervisor's hard hat into trash can for *disorderly conduct* and *discourtesy to supervisor* violative, since reason was U activity, in view of E's attempt to replace U with Ee committee, and further Ee thought hat belonged to another Ee rather than supervisor inasmuch as hat was color of hats worn by Ees rather than color of hats worn by supervisors)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors **251 NLRB No. 151**

(inference of discriminatory motive for Ees' discharges warranted in view of closer scrutiny of Ees' work performance which followed closely in time on advent of Ees' U activities and resulted in sudden and constant criticism of their work, numerous threats of discharge, and close timing of discharges in relationship to Ees' U activities)

6793-5040 Discharge of other employees for union activity

Sentry Investigation Corp. **249 NLRB No. 130**

(discharge of Ee unlawful since for his support for drive to change bargaining representative to U not desired by E rather than for his insistence on having his lawyer present at interview regarding theft of company car where E had embarked on course of conduct aimed at dissuading Ees from changing bargaining representative which included previous unlawful termination, failed to give Ee explanation for discharge at time and then at hearing and in brief suggesting Ee was suspended or quit in addition to intimating he was discharged because of insistence on presence of lawyer)

6793-5060 Interrogation

Jones Ceilings, Inc. **263 NLRB No. 053**

(timing of discharge 2 days after dischargee's conversation concerning U with E's president who solicited his grievance was sufficiently coincidental for GC to arguably make out a *prima facie* case that dischargee's protected activity was a motivating factor in discharge but insufficient to establish that discharge was discriminatorily motivated where E did not need or subsequently use 3 drivers, and dischargee was least senior driver)

Fixtures Manufacturing Corporation **251 NLRB No. 107**

(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

6793-7500 Following conspicuous union activity of discriminatees

M K Laboratories, Inc. **261 NLRB No. 021**

(unlawful motive shown by timing of discharge of most active U steward who was discharged right before succeeding to position of enhanced authority over grievances and contract enforcement)

6793-7512 Active solicitation for union

IMCO/International Measurement & Control Company, Inc. **261 NLRB No. 180**

(discharge of Ees who supported U in organizing effort and signed U cards, unlawful, particularly in view of E's expressed U animus as evidenced by giving of bonus/raise after U withdrawal of R ptn and use of unlawful shutdown as excuse for discharges and layoffs)

6793-7512—Cont.

Wayne Construction, Inc. 259 NLRB No. 082
(termination of truck driver, active U adherent with allegedly poor driving record, who walked off job after E's project superintendent *admittedly* told Ee that he would close down job before going U and said that Ee was *through for good, we've got ways of taking care of things like this,* and admitted driving record of Ee was used as pretense to discharge Ee, held violative)

Builders Distributors Sand and Gravel, Inc. 257 NLRB No. 053
(discharge of key U activist, in E's desire to reduce hours to cut expenses, assertedly because of Ee's poor attitude towards his work, his lateness and improper care of E's equipment held violative where E's records during this critical period showed Ees' hours were increasing rather than decreasing and 1 day after Ee was discharged E hired another experienced driver at same rate of pay as U activist)

Builders Distributors Sand and Gravel, Inc. 257 NLRB No. 053
(discharge of U activist, during economic downtown in E's business, assertedly for lack of work held violative where, during this critical period, E increased rather than decreased Ees' hours and only 7 days before U activist was discharged, E hired new driver after using activist on intermittent basis)

N.L.R.B. v. Allen's I.G.A. Foodliner 651 F.2d 438 (C.A. 6, May 1981)
(discharge of leading U advocate, whom supervisor said was *good* and *dependable* worker for 8 years prior to U campaign, assertedly because of *business retrenchment* and Ee's poor performance held violative, since Ee was never recalled when subsequent increase in (E's) business neccesitated hiring several new Ees and only w/i year prior to discharge did E find fault with Ee)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. 679 F.2d 673 (C.A. 7, May 1982)
(disciplinary warning notices issued by E to Ee (U *ringleader*) because of Ee's lateness, held violative where notices did not begin until commencement of U campaign; Ee had frequently been late prior to U campaign and had received no such notices)

6793-7519 Sponsoring or circulating petition regarding union

North State Supply Co., Inc. 247 NLRB No. 181
(discharge of Ee immediately after he embarked on U organizational campaign violative)

N.L.R.B. v. M & B Contracting Corporation 653 F.2d 245 (C.A. 6, July 1981)
(discharge of Ee who had circulated ptn for U and filed charge with NLRB, unlawful, where for U activity and invoking Bd processes rather than for insubordination in bringing E's broken truck back to E's headquarters w/o proper authorization where Ee had tried to obtain authorization from proper party, and unauthorized individual who told him to bring truck in was not reprimanded)

6793-7531 Participation in prior ULP proceeding

Newspaper Printing Corporation JD-203-80
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation JD-203-80
(suspension of steward for making changes in schedule sheet unlawful, since steward was performing customary duty in enforcing contract, and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

Newspaper Printing Corporation JD-203-80
(discharge of Ee allegedly for attending Bd hearing instead of getting bed rest for fatigue resulting from working and then filing workman's compensation claim, unlawful, since no evidence Ee ever filed claim and also in view of timing, E's knowledge of Ee's U activities and baselessness of E's asserted reason)

6793-7535 Wearing union insignia or button

Quality Packaging, Inc. 265 NLRB No. 142
(discharging new Ee, assertedly for opening packages with her teeth, violative where other Ees did this; furthermore, she spoke out against *open shop* at E meeting, was asked her name when she wore U button on election day and was discharged same day)

6793-7537 Attendance at union meeting

Daniel Construction Company, A Division of Daniel International Corporation 264 NLRB No. 079
(discharge of two long-term Ees, who were U adherents, because of E's planned redistribution of their functions held violative where they were only Ees E was able to identify from enlarged photograph of Ees who attended U sponsored rally and those two were immediately replaced by other Ees with little or no experience at work they assumed)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility 260 NLRB No. 073
(removal of 6 *temporary* Ees from *regular part-time Ee list* because they were not available for work on specified day, violative where reason for such action was based on fact that two of *temporaries* attended final U meeting before election)

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(transfer of Ee-staff members by U council to different locations in their assignment of servicing U locals, unlawful, where action was in retaliation for their protected U and concerted activities; action came on heels of unlawful suspension of Ees for attending U meeting and for soliciting aid outside of labor organization, and closely followed council's attempt to prevent second U meeting involving U's attorney called to address, among other things, Ees' suspensions)

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(discharge followed Ee's participation in U meetings called to consider E's disciplining of Ees and which E tried to prevent Ees from attending)

6793-7550 Membership on bargaining committee

The Ballet Foundation of Milwaukee, Inc. JD-319-82
(refusal to rehire principal dancer, member of U team negotiating with E for contract, for coming ballet season, assertedly because his technical ability was not as strong as needed, held violative where E's artistic director was shown to be unhappy with manner in which Ee carried out his representative functions)

6793-7562 Following bargaining efforts

Humes Electric, Inc. 263 NLRB No. 159
(joint meeting between U and management at worksite)

6793-7563 Processing of grievances

Artley Incorporated 260 NLRB No. 107
(U steward who asserted good faith claim for premium pay under contract provision did not forfeit protection of Act when claim turned out not to be covered by contract and discharge violative)

Container Corporation of America 255 NLRB No. 184
(suspension of U steward for refusing to obey orders to return to work after general supervisor terminated grievance meeting, not unlawful, since general supervisor had acted in accordance with contractual grievance procedure in terminating grievance meeting and had not acted precipitously or in reprisal for steward's belligerent conduct or interfered with his protected participation in grievance meeting)

United States Postal Service 252 NLRB No. 083
(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would be futile and neither refusal to work nor distuption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

Swift and Company 250 NLRB No. 182
(discharge of U steward, who prior to stewardship was considered *excellent* Ee, assertedly because he disregarded E's rule concerning unexcused absences held violative where rule had been disobeyed by other Ees w/o E taking any disciplinary action of E failed to investigate defense to discharge that answering machine which received absentee reports had malfunctioned)

United States Steel Corporation 230 NLRB No. 069

United States Postal Service 250 NLRB No. 083
(suspending U steward for uttering obscenity toward supervisor in course of discussing possible grievance on behalf of unit Ee, unlawful)

Peavey Company 249 NLRB No. 110
(discharge of Ee unlawful in view of E's U animus and where motivated by Ee's protected activities as E had tolerated Ee's poor job performance for over 18 months until Ee instituted inquires into Ees' work grievances)

Hanson Rubber Company JD-290-82
(discharge of Ee for uttering obsenity during course of meeting with E dealing with contract provision concerning pay for negotiating sessions violative as Ee was engaged in protected concerted activity and his conduct was not so egregious to remove it from protection of Act where it was uttered in heat of an argument)

McLean Trucking Company JD-460-81
(refusing clerical unit Ees' U steward access to E's private offices to investigate grievence not violative where steward was provided with information he sought or was (credibly) told information would be provided on (his) request)

Gould Incorporated v. N.L.R.B. 612 F.2d 728 (C.A. 3
(E's singling out U steward for discharge for participation in work stoppage in violation of no strike clause and in contravention of his obligation as U officer to take steps to terminate work stoppage, not unlawful, since E entitled to take into consideration U official's greater responsibility, and

6793-7563—Cont.

hence greater fault, where basis for discharge was duty imposed by his office and not office as such; fact contract provision regarding obligation of U officers did not provide for discharge did not render discharge unlawful)

6793-7578 Leadership in union movement

GB's Trucking, Inc. **252 NLRB No. 131**
(timing of termination held significant where Ee, who was leading U advocate, was terminated 8 days after conversation with E during which Ee expressed dissatisfaction with his employment and preference for U and E made a number of anti-U statements; E's reference to such prior conversation at time of discharge indicated his true motivation)

Public Service Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(discharge of Ee after he showed that he seriously intended to pursue what had earlier been a less-than-consistent interest in achieving collective representation for Ees which threatened to lead to breakdown of *family* relationship which E tried to maintain among its Ees)

N.L.R.B. v. Allen's I.G.A. Foodliner **651 F.2d 438 (C.A. 6, May 1981)**
(discharge of leading U advocate, whom supervisor said was *good* and *dependable* worker for 8 years prior to U campaign, assertedly because of *business retrenchment* and Ee's poor performance held violative, since Ee was never recalled when subsequent increase in (E's) business necessitated hiring several new Ees and only w/i year prior to discharge did E find fault with Ee)

6793-7581 Filing grievance

The Rosicrucian Press, Ltd. **264 NLRB No. 170**
(discharge of Ee unlawful, where for repeatedly complaining to U about working with another Ee in another department several hours a week who had serious body odor problem, rather than for insubordination for refusing to work with other Ee; Ee's statement in informal grievance meeting that she would not work with other Ee not insubordination since such postering not unusual in grievance meetings, Ee never actually refused assignment, and Ee had right to pursue grievance; further, E admitted Ee's work satisfactory)

United Parcel Service, Inc. **263 NLRB No. 063**
(discharge of truck driver lawful, since was for taking extended and unauthorized breaks, falsifying records required by E and government, idling tractor for long periods, rather than for filing grievances where Ee not militant U supporter and other Ees disciplined for similar offenses, and discharge would have taken place absent protected activity)

Denny's Foods, Inc. **260 NLRB No. 197**
(E violated Act when it removed Ee from her substitute position as alternate receiver, a higher paying job, and used her solely as cashier because this was in retaliation for her having filed a grievance under the contract)

Champion Parts Rebuilders, Inc., Northeast Division **260 NLRB No. 098**
(issuance of warning to U steward for use of profane language violative where issued in retaliation for having filed grievance over supervisor's alleged opening of U mail)

American Interstate Freight Lines **258 NLRB No. 131**
(refusing assignment of work to Ee on many occasion because he went to U concerning his employment complaints, including contract provision that called for guaranteed work week, violative)

Ran Tags, Inc. **253 NLRB No. 099**
(where pattern of harrassment against two discriminatees did not begin until after E learned they were urging other Ees to grieve about E's underpayment of contractual wage rate and where the two Ees were not laid off until after E raised wages to level agreed upon in contract)

Valley Cabinet & Mfg., Inc. **253 NLRB No. 088**

Burgess Mining & Construction Corp. **250 NLRB No. 033**
(layoff of Ee, lawful, notwithstanding GC's contention that E laid off Ee because he had filed grievances, where there was no substantial evidence establishing animosity toward grievance procedure and against those who would invoke it and there was no disparate treatment demonstrating unlawful motivation)

Moro-Young Construction Company, A Division of Olsen Construction Co., Inc. **JD-(SF)-12-82**
(discharging Ee from one jobsite and limiting duration of his employment at different jobsite by discharging him again held violative as reason for discharge was Ee's filing of U grievance involving rain gear two years earlier)

Home Life Insurance Company of America **JD-111-81**
(discharge of probationary Ee for filing grievance violative, notwithstanding Ee had no standing by virtue of terms of collective-bargaining agreement to file grievance during his probationary period)

J. Tolative Construction, Inc. **JD-(SF)-265-80**
(discharge of Ee who protested E's failure to pay him for *stand by* time as provided under contract, violative)

Anchor Contracting Corp. **JD-231-80**
(discharge of Ee who had filed grievances, unlawful, since for his protected activity rather than for alleged taking of unauthorized vacation or poor work where vacation authorized and in view of shifting reasons)

N.L.R.B. v. Eaton Corporation **623 F.2d 479 (C.A. 6, 1980)**
(discharge of Ee unlawful since for filing grievance rather than for failure to give proper notice of absence in view of evidence Ee told fellow Ee he would be absent and information was passed along to foreman)

N.L.R.B. v. Mr. A's Restaurant **647 F.2d 171(T) (C.A. 9, Mar 1981)**
(unlawful to discharge Ee for filing grievance since filing of grievance protected under Act)

6793-7589 Acting as union election observer

N.L.R.B. v. First National Bank of Pueblo **623 F.2d 686 (C.A. 10, 1980)**
(discharge of Ee not unlawful, since for unauthorized absence rather than for acting as U observor at election and attending U meetings, where Ee had received pay raise before and after election, and Ee had not asked for time off but simply informed supervisor she was taking day off)

6795 UNUSUAL SURROUNDING CIRCUMSTANCES

6795-1500 Formality and summary nature of dismissal

Traverse City Osteopathic Hospital **260 NLRB No 147**
(violation where no credible evidence that leading Ee organizer refused direct work order, supervisor was aware of Ee's U activities and discharge was effectuated in summary fashion w/o talking to her or making any investigation)

Gentile Pontiac **260 NLRB No. 056**
(discharge of chief U organizer assertedly to make way for E returning from disability leave whom Ee herein had replaced, unlawful, in view of abruptness and timing of discharge, absence of explanation for summary termination a week before replaced Ee's scheduled return, and failure to give reason why Ee could not complete workweek)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(discharge occurred only 7 days after Ee had returned to work following his unlawful suspension)

6795-4000 Failure to consult supervisor regarding discharge

Virginia Apparel Corporation **264 NLRB No. 030**
(discharging U activist for allegedly wasting time and showing contempt for supervisors held pretext where E demonstrated vindictiveness by publicly and loudly humiliating Ee by discharging her on work floor in presence of other Ees, did not consult with immediate supervisor before discharging her, and E did not discharge, suspend or warn other Ees for poor performance or work habits even in flagrant cases)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **260 NLRB No. 048**

6795-5000 Refusal to reinstate employee who allegedly quit

United Supermarkets, Inc. **261 NLRB No. 179**
(E was under no obligation to rehire Ee upon withdrawal of her notice to quit, where E denied Ee's rescision of her resignation because E had made decision to close its store's bakery section in which Ee was employed)

6795-7000 Severe penalty for trivial offense

Thurston Motor Lines, Inc. **263 NLRB No. 154**
(discharging one of key U organizers 2 weeks before election assertedly for chipping brick from customer's loading dock held pretext as safety supervisor reported that no damage occurred, customer's E and Ee both laughed about incident at time and E never sought Ee's version of *accident*)

Gulf Envelope Company **256 NLRB No. 068**
(*while discipline may be extreme it does not follow ascribed reason for discharge is pretextual*)

Luk, Inc. **255 NLRB No. 136**

Industrial Label Corporation **JD-(SF)-127-81**
(discharge of Ee who solicited for U lawful, where for lying; contention E's defense not sufficient to overcome GC's prima facie case in view of fact discharge harsh penalty for offense, rejected; where stated in E's policy manual dishonesty grounds for automatic dismissal, E had not condoned similar behavior previously, E consistently relied on same grounds as reason for dismissal, and no prevasive U animus; where unlawful motive not proven, Bd will not substitute its judgment for E's even if E's decision seems unreasonable)

Gladwin Corporation **JD-568-80**
(sudden layoff of U activist assertedly for violation of E's rule restricting carrying and consumption of alcoholic beverages oncompany premises held violative where Ee was seen drinking beer on his own time on E's parking lot, an admitted borderline violation, which behavior was treated w/same severity as obvious case of intoxication 12 years previously)

6795-7000—Cont.

Newspaper Printing Corporation JD-203-80
(suspension of U adherent who, as result of sloppy compressed appearance of vacation sign up sheet, mistakenly thought he was to be on vacation and failed to report to work, where after error was discovered supervisor could have requested him to work and did not, there was interferance with production, and in view of e's ongoing dispute with U regarding steward's scheduling authority and triviality of error)

6795-8000 Suddenness of employer's decision

Mills Patrol Service, Inc. 264 NLRB No. 065
(discharging valuable Ee immediately after he asked E about obtaining sick benefits, medical coverage and U representation held *prima facie* showing that E was motivated by desire to discourage U activities)

Mueller Insulation Co. and The Mueller Company of Missouri, Inc., Successor Employer and/or Alter Ego 263 NLRB No. 095

Jacobo Marti & Sons, Inc. 264 NLRB No. 007
(illegal motivation inferred from timing of E's conduct in discharging 2 Ees one day after they were interrogated about their U activities, and discharging third Ee two weeks after he had requested Ee-agent of E to sign U authorization card)

Cera International Corporation 262 NLRB No. 071
(discharging Ee, who had distributed cards, peremptorily in middle of pay period violative where plant manager admitted quality of Ee's work was good and that no Ee in stable workforce had been discharged for 9 months)

Coil-Aer, Inc. 262 NLRB No. 012
(sudden termination of U adherent w/i two days of U's request for recognition w/o notice and before end of his work week together with E's interrogation of, and threats to, its Ees warranted inference of discriminatory motive)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division 260 NLRB No. 048

A-W Washington Service Station, Inc. 258 NLRB No. 014
(discharge of Ee violative where it was ordered in phone call from main office when that office called supervisor to ask about omission in employment application of new hire and was told that Ee was on leave to negotiate for U in regard to Ee's former place of employment)

Western Marine Electronics, Inc. 257 NLRB No. 057
(discharge of Ee who had joined U and filed grievance contending he was covered by bargaining contract and was not receiving contract wage or benefits, unlawful, since motivated by hostility towards Ee and unionization in non-U sector of plant, in view of E's other ULP's including transfer of Ee, recent good evaluation of Ee, and suddeness of discharge while Ee's assignment incomplete and prior to end of pay period)

Harrison Steel Castings Company 262 NLRB No. 059
(percipitous discharge of 2 Ees w/o any investigation of their side who were not included in unit being organized for not attending anti U rally, violative)

Five Star Air Freight Corporation 255 NLRB No. 046
(discharge)

Elizabeth Motors, Inc. 253 NLRB No. 161

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(for Ee's first violation)

The Halloran House 249 NLRB No. 113
(discharge violative, where E had knowledge of Ee's U activity, acted immediately against Ee w/o warning, and failed to provide any plausible explanation for its conduct; under circumstances, it was proper to infer that E's motive was discriminatory)

Norman Mauerhoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW 248 NLRB No. 155
(severe reaction and total intransigency to alleged problem (leaving on long scheduled vacation) which at best was precipitated by E's own management is clear evidence of pretext)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 057
(suddenly transferring waiter and U organizer from his first choice station to another station for no reason and w/i 5 days after headwaiter learned of Ee's attending U meeting held violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 057
(suspending two waiters, principal U organizers, w/i 5 days after learning of their U activity, for no reason during busiest day of week, violative)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 057
(suspension of U committeeman for allegedly stealing customer receipts, violative, when made w/o prior warning and Ee told that *you have a lawyer* referring to U's counsel)

Irwin County Electric Membership Cooperative 247 NLRB No. 195
(discharge by utility company of Ee allegedly for criticizing company in violation of rule for showing favoritism in restoring service w/o payment to those customers on whose behalf members of its board intervened, unlawful, since discharge was for Ee's U activities in view of E's U animus, plus threats of discharge or suspension for U activity, precipitousness of discharge, delay in discharging after Ee's criticism of it, and fact no other Ee had been discharged for voicing criticism)

Hinky Dinky Super Markets, Inc. 247 NLRB No. 169
(discharge of leading U advocate assertedly because of his insubordination when he showed his displeasure over learning his hours had been reduced by exhibiting nonverbal show of temper, held violative, since he was good Ee fired w/o warning, his show of temper was not serious and E, upon learning of Ee's U activity, suggested Ee seek other work)

K.T.V.B., Inc. JD-(SF)-53-81
(E failed to show that U leader would have been discharged absent his U activity, in view of haste of discharge and inferm reasons advanced by E)

Gladwin Corporation JD-568-80
(sudden layoff of U activist assertedly for violation of E's rule restricting carrying and consumption of alcoholic beverages oncompany premises held violative where Ee was seen drinking beer on his own time on E's parking lot, an admitted borderline violation, which behavior was treated w/same severity as obvious case of intoxication 12 years previously)

Albany Steel and Brass Corporation JD-227-80
(discharge of admittedly *very knowledgeable Ee* assertedly because of his absenteeism and for his job deficiencies held violative where E terminated Ee forty minutes after being notified that Ee intended to seek assistance from Bd concerning his pension dispute with E; discharge was precipitous and in middle of pay period)

N.L.R.B. v. Brooks Cameras, Inc. 691 F.2d 912 (C.A. 9, Nov. 1982)
(termination of Ees, unlawful, since for U activity, notwithstanding E had decided on staff reductions for economic reasons prior to knowledge of U activity; where after U's demand for recognition, E increased number of Ees to be laid off in department for which U sought recognition, made selection on basis of seniority rather than on basis of work performance as in other departments in order to reach U adherent, contrary to usual custom termination forms contained no indication of Ees' eligibility for rehire, and terminations were w/o advance warning)

6795-9000 Transfer of department to new plant without offer of transfer to employee

N.L.R.B. v. Borg Warner Corporation, et al. 660 F.2d 324 (C.A. 6, Oct. 1981)
(termination of Ees as result of transferring operations from unionized subsidiary to nonunionized subsidiary, violative, where E wished to hold wages paid to Ees at non-unionized subsidiary to levels below those then paid to unionized Ees; such refusal to transfer unionized Ees to other subsidiary w/o prior negotiations held inherently destructive of Ee rights)

8300 AFFIRMATIVE DEFENSES TO CHARGES OF DISCRIMINATION

8301 GENERALLY

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(treating E's plea of *legitimate business reason* for discipline as affirmative defense was consistent with Bd's method of deciding cases involving violation of Section *8(a)(3)*)

8301-2000 Act does not interfere with normal rights of employer to select employees or discharge them

Former Beverage Corporation 265 NLRB No. 035
(E did not violate Act by failing to discharge its permanent replacements when it reinstated striking Ees as there is not duty to discharge permanent replacements when reinstating economic strikers)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 1, Sep. 1981)
(*purpose of* section 10(c) *is to make it abundantly clear that Bd is not to interfere with exercise by Es of their traditional right to discharge Ees for adequate cause*)

8301-4000 Act permits discharge for any reason other than union activity

Blue Bird Body Company 251 NLRB No. 196
(discharge of active U adherent for *goofing off* not violative where GC failed to prove by preponderance of evidence that discharge was motivated in whole or part by Ee's U activity)

Liberty Parking, Inc. JD-4-81
(discharge of Ee who attended grievance proceeding for fellow Ee, not unlawful, where E denied Ee permission to be absent after being informed that Ee had not contribution to make at grievance hearing, and Ee left job anyway leaving it understaffed; contrary to contention Ee's shop steward candidacy was not factor in his discharge)

8301-4000—Cont.

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)
(in given discharge case it must be decided whether E acted because of Ee's U affiliation, or whether he acted because of some factor unrelated to Ee's U status)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)
(Act is violated only when E with anti-U animus discharges Ee he would not have fired *but for* Ee's U activity)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. 600 F.2d 930 (C.A.D.C., 1979)
(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

8301-4033 Employer's mistaken belief as to existence of valid cause precludes discharge being violation of Act

Ferry Cap & Set Screw Company JD-671-80
(suspension of U committeeman allegedly for walking off job because management failed to meet with him and other Ees, violative, where Ee tried to arrange meeting between Ees and management about working conditions and he had informed his supervisors of medical appointment and would not work that day of meeting)

8301-4067 Employer's mistaken belief as to protected nature of activity immaterial

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(discharge of U member on day after E was mistakenly informed that she told Ees to walk out in protest over working conditions, unlawful, where E, who was engaged in conduct to undermine U, never asked Ee what she had told Ees; moreover, if Ee had tried to organize walkout, it would have constituted protected concerted activity, and discharge in mistaken belief that Ee was engaged in such activity is unlawful)

8301-6000 Mixed motives; other grounds immaterial if encouragement or discouragement was also purpose

United Supermarkets, Inc. 261 NLRB No. 179
(ALJ's statement that by Bd's decision in *Wright Line Bd has obviated the 'perceivable significance' between pretext and dual motive cases* held overly broad; see *Limestone Apparel Corp.*, 255 NLRB No. 101)

Royal Development Company, Limited 257 NLRB No. 149
(Bd found no need to decide here whether *Wright Line* test of dual-motivation discharges was appropriate for analyzing 8(a)(4) cases, since, although ALJ used *Wright Line* causation test in analyzing motivation for both 8(a)(3) and 8(a)(4) complaint allegations herein, there was no proof that E relied on any legitimate reason for its refusal to employ charging party)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(discipline decision in *dual motive* case involves: (1) legitimate business reason, and (2) E's reaction to its Ees' engaging in U or other protected activities)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(difference between *dual motive* case and *pretext* case is that in latter case E's affirmative defense of business justification is wholly w/o merit)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(*Mt. Healthy*, 429 U.S. 274 (1977), procedure accomodates legitimate competing interests inherent in dual motivation cases, while at same time serving to effectuate policies and objectives of Section *8(a)(3)* of Act)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(causation test to be followed in all cases alleging violations of Sec. 8(a)(3) or Sec. 8(a)(1) turning on E motivation: (1) GC required to make out *prima facie* showing sufficient to support inference that protected activity was a *motivating factor* in E's decision; and after this is established, (2) burden shifts to E to demonstrate that same action would have taken place in absence of protected conduct)

Alfred M. Lewis, Inc. 258 NLRB No. 183
(Bd held that Ee's discharge, allegedly for his *bad attitude* and low production, was instead *solely* a result of E's unlawful production quota and disciplinary systems, since Ee's attitude toward E's unlawful production quotas caused his low production, and his attitude had developed, as reaction to E's counseling implemented as part of unlawful disciplinary system; Ee had refused counseling, as was his right, and his failure to accept it was not legitimate basis for discharge)

Charles Dean d/b/a Hopp Topp Mfg. Co. 250 NLRB No. 154
(direct evidence of discriminatory motivation may be inferred from record as whole; economic justification no defense to discriminatory discharges or lay offs if selection of those Ees effected was because of their U activities)

Bill Johnson's Restaurants, Inc. 249 NLRB No. 026
(discharge motivated only in part by anti-U discrimination is illegal)

Digital Paging Systems of Toledo, Inc. 248 NLRB No. 015
(discharge of Ee unlawful since motivated by E's belief that she was sponsoring U activity rather than for lack of sales in view of discharge soon after U demanded recognition, notwithstanding Ee might have been discharged for cause at later date)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)
(result of *partial motivation* test was to immunize U activists against legitimate discipline for genuine offenses, and to deprive Es of freedom to apply their own rules uniformly to all their Ees)

Behring International, Inc. v. N.L.R.B. 675 F.2d 83 (C.A. 3, Apr. 1982)
(ct here noted another ct's observation that in pretext case, the asserted business reason is discredited leaving only impermissible reason, while in mixed motive case the relative causative force of E's reasons is compared against impermissible reason to determine whether latter is moving cause; *Lippincott Industries, Inc. v. N.L.R.B.* 661 F.2d 112, cited)

Behring International, Inc. v. N.L.R.B. 675 F.2d 83 (C.A. 3, Apr. 1982)
(*Wright Line but for* test satisfies ct's requirement that Bd seek *real motive* or *real cause* for Ee's discharge)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. 658 F.2d 968 (C.A. 4, Sept. 1981)
(mere U membership or concerted activity does not insulate Ee from being disciplined for just cause, and when E has come forward with evidence of legitimate and substantial business justification for disciplining Ee, burden is on Bd not simply to declare disciplinary action pretextual because there is some evidence of improper motive, but to find *an affirmative and persuasive reason why E rejected the good cause and chose a bad one;* in carrying such burden, Bd must produce substantial evidence of anti-U motivation)

McLean Trucking Company v. N.L.R.B. 626 F.2d 1168 (C.A. 4, 1980)
(where valid reason to discharge Ee exists, it is not sufficient in order to establish violation *for Bd to declare that reasons were pretextual* but *burden which is on Bd is not simply to discover some evidence of improper motive, but to find affirmative reason why E rejected good cause and chose bad one and to present substantial basis of believable evidence pointing toward unlawful one)*

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)
(fact that GC bears burden of persuading Bd improper motive moved E to discharge Ee means that Bd must find against GC if its collective mind is equipoise on question whether discharge stemmed from proper or improper motive)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)
(if Bd makes finding of discriminatory discharge, ct must enforce finding if reasonable person might have concluded from entire record that improper motive moved E to discharge Ee; but if ct decides that reasonable person could only have either concluded that proper motives moved E to discharge or been unable to conclude whether proper or improper motives moved E, ct must refuse to enforce Bd's finding of discriminatory discharge)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)
(E can best show improper motives did not move it to discharge Ee by adducing proof that other Ees were discharged for same reason that Ee was discharged, where there is no suggestion that other Ees were discharged for improper motive)

Bandag, Incorporated v. N.L.R.B. 583 F.2d 765 (C.A. 5)
(illegality of discharge of leading U advocate assertedly because of his refusal to obey order to assist with heavy unloading work upheld where substantial evidence justified Bd's conclusion that asserted reason for discharge was pretextual; discharge was mixed motive firing; E's anti-U animus and other anti-U actions justified Bd's conclusion)

N.L.R.B. v. Consolidated Freightways Corporation of Delaware 651 F.2d 436 (C.A. 6, Mar 1981)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse 647 F.2d 905 (C.A. 9, June 1981)
(*Wright Line* rule found consistent both with legislative history showing intent to require E to reveal that Ee was discharged for cause and with reality of [illegible] having best access to proof of motivation; also it strikes acceptable [illegible]ance between protecting Ees' rights and preserving E's rights to discharge Ees for valid business reasons)

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L'Eggs Products, Inc. v. N.L.R.B. 619 F.2d 1337 (C.A. 9, 1980)
(if discharge is motivated by both legitimate business consideration and protected U activity, improper motive must be shown to be dominant one for discharge to be violative)

N.L.R.B. v. First National Bank of Pueblo 623 F.2d 686 (C.A. 10, 1980)
(once E comes forward with legitimate motive for dismissal, burden that discharge was unlawfully motivated, or improper notice contributed to discharge, on Bd; burden of establishing discharge was unlawfully motivated must be met by substantial evidence)

8301-6020 Valid cause for discrimination no defense

Rose's Stores, Inc. 256 NLRB No. 076
(mere presence of possible valid reason (*bad attitude*) for discipline does not insulate discharge (*for protected activity*) if those reasons were not, in fact, reasons for discharge)

Herman Brothers, Inc. 252 NLRB No. 121
(E's unlawful reasons for action must be *motivating factor* in its decision rather than constituting only part of reason; GC must make *prima facie* showing to support inference that protected conduct was motivating factor... once this is established, burden shifts to E to demonstrate same action would have taken place absent protected conduct)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(discipline decision in *dual motive* case involves: (1) legitimate business reason, and (2) E's reaction to its Ees' engaging in U or other protected activities)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(causation test to be followed in all cases alleging violations of Sec. 8(a)(3) or Sec. 8(a)(1) turning on E motivation: (1) GC required to make out *prima facie* showing sufficient to support inference that protected activity was a *motivating factor* in E's decision; and after this is established, (2) burden shifts to E to demonstrate that same action would have taken place in absence of protected conduct)

Fixtures Manufacturing Corporation 251 NLRB No. 107
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

RMX, Inc. JD-383-80
(termination of Ee unlawful, notwithstanding E had legitimate cause to discharge Ee for his insubordination, where Ee would not have been discharged absent his U activity)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)
(E in section 8(a)(3) discharge case has no more than limited duty of producing evidence to balance, not to outweigh, evidence produced by GC; E has burden of going forward to meet prima facie case, but not burden of persuasion on ultimate issue of existence of violation; i.e., that there would be no discharge but for E's protected activity)

8301-6025 8(a)(3) not sustained where lawful and illegal motive may be equally inferred

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(test of causation for cases alleging violations of Section *8(a)(3)* of act found through analysis akin to that of SCt in *Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977)*)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(causation test to be followed in all cases alleging violations of Sec. 8(a)(3) or Sec. 8(a)(1) turning on E motivation: (1) GC required to make out *prima facie* showing sufficient to support inference that protected activity was a *motivating factor* in E's decision; and after this is established, (2) burden shifts to E to demonstrate that same action would have taken place in absence of protected conduct)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)
(result of *partial motivation* test was to immunize U activists against legitimate discipline for genuine offenses, and to deprive Es of freedom to apply their own rules uniformly to all their Ees)

McLean Trucking Company v. N.L.R.B. 626 F.2d 1168 (C.A. 4, 1980)
(where valid reason to discharge Ee exists, it is not sufficient in order to establish violation *for Bd to declare that reasons were pretextual but burden which is on Bd is not simply to discover some evidence of improper motive, but to find affirmative reason why E rejected good cause and chose bad one and to present substantial basis of believable evidence pointing toward unlawful one)*

8301-6027 Inference of discrimination not overcome

RAHCO, Inc. 265 NLRB No. 030
(Bd affirmed ALJ's findings of ULPs where GC's *prima facie* showing was sufficient to support inference that protected conduct was *motivating factor* in E's decision and E failed to show same decision to change Ees conditions of employment would have occurred even in absence of protected conduct)

Allied Eastern States Maintenance Corporation, A Wholly-Owned Subsidiary of Allied Maintenance Corporation 261 NLRB No. 107
(fact that unlawfully discharged Ee was subsequently re-hired 4 months later and after charges filed, not conclusive proof of E's unlawful motivation)

Five Star Air Freight Corporation 255 NLRB No. 066
(discharge of U advocates assertedly because one was unmarried woman and other was most undesirable Ee who did mediocre work in E's accounts receivable department, held violative, since *unmarried woman* argument was unjustified and other Ee had received very good to outstanding performance rating from her supervisor; defenses were contrived and incredible)

8304 DISCRIMINATEE'S ACCEPTANCE OF OTHER EMPLOYMENT PRIOR TO TIME FOR RECALL

Waveline, Inc. 259 NLRB No. 087
(economic striker did not abandon his job with struck E by taking temporary job with another E during strike; moreover, Ee was discharged by other E before strike ended and Ee subsequently informed E of his interest in returning to work)

8305 NO VACANCY

Overhead Door Corporation (Todco Division) 261 NLRB No. 094
(initial failure to reinstate economic striker justified where position was open only occasionally, but later failure to reinstate him when vacancy in position existed and was filled by promoting strike replacement, unlawful)

Overhead Door Corporation (Todco Division) 261 NLRB No. 094
(no violation by transferring guards to production jobs instead of reinstating economic strikers where guards had originally been hired as permanent replacements in production jobs before strikers offered to return to work, were temporarily transferred to jobs as guards, then returned to their original production jobs)

Randall, Division of Textron, Inc. v. N.L.R.B. 687 F.2d 1240 (C.A. 8, Sept. 1982)
(E's policy of offering special-rated jobs to unreinstated strikers only if none of permanent strike replacements were qualified for and wanted jobs, violative as these job openings were vacancies and required posting under expired contract; effect was to make it less likely that strikers would be reinstated to higher-paying positions and amounted to preference to those who did not strike; such preference was inherently distructive of Ee rights eliminating necessity of proving discriminatory motivation of E)

Randall, Division of Textron, Inc. v. N.L.R.B. 687 F.2d 1240 (C.A. 8, Sept. 1982)
(recall of permanent replacements from alleged leave of absence instead of reinstating economic strikers, violative because none of departures was originally placed on official leave of absence and retroactive grant of such leave cannot be permitted to avoid reinstating strikers)

Randall, Division of Textron, Inc. v. N.L.R.B. 687 F.2d 1240 (C.A. 8, Sept. 1982)
(filling temporary job with strike replacements who had quit held not violative as temporary job was not vacancy to which striker should have been reinstated)

Randall, Division of Textron, Inc. v. N.L.R.B. 687 F.2d 1240 (C.A. 8, Sept. 1982)
(transfer of security guards into production jobs because E didn't need them after strike, violative because they were hired as temporaries. E's asserted *good faith* in hiring them and not wishing to terminate them does not constitute business reason for transferring them into available production positions instead of reinstating strikers)

Randall, Division of Textron, Inc. v. N.L.R.B. 687 F.2d 1240 (C.A. 8, Sept. 1982)
(where E failed to offer strikers reinstatement as vacancies arose, finding of anti-U motivation unnecessary as harm to strikers is relatively great and no business justification shown by E)

Randall, Division of Textron, Inc. v. N.L.R.B. 687 F.2d 1240 (C.A. 8, Sept. 1982)
(layoff of permanent replacement who had been given definite expectation of recall did not create vacancy notwithstanding striker had greater seniority than replacement)

8307 BUSINESS MANAGEMENT CONSIDERATIONS

House of Cycle, Inc., t/a Key Motors 264 NLRB No. 137
(E's imposing new rules that prohibited salesmen from using their demonstration cars after drinking any liquor and restricted use of general manager's office to cross from one showroom to another after U requested recognition, not unlawful where rules had legitimate business objectives of minimizing

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hazardous operation of company owned vehicles and curtailing unnecessary traffic through general manager's office)

Tempglass, Inc. JD-80-82
(no violation where, layoff of 20% of work force was because of 20% decrease in orders and in anticipation of recession rather than because of Ees' U activities)

8307-0100 Generally

Townsend and Bottum, Inc. 259 NLRB No. 027
(fact layoffs may be economically justified is no defense if selection of laid off Ees is for discriminatory reasons)

Miami Foundry Corporation 252 NLRB No. 002
(termination of Ees, not unlawful, where not motivated by anti-U animus but by legitimate financial considerations)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(treating E's plea of *legitimate business reason* for discipline as affirmative defense was consistent with Bd's method of deciding cases involving violation of Section *8(a)(3)*)

East Wind Enterprises 250 NLRB No. 101
(burden on E to show layoff was motivated by business considerations where GC had established *prima facie* case of unlawful layoff)

Safety Line, Inc. 250 NLRB No. 075
(discharge of U adherent working only part-time not violative where he was given choice of working full time to fulfill E's need for greater production or being discharged, and he did not choose to work full time)

Texas Instruments Incorporated v. N.L.R.B. 599 F.2d 1067 (C.A. 1, 1979)
(E's asserted defense of business justification to discharge pursuant to valid rule is to be weighed *with some delicacy and deference*; Bd may not substitute its business judgment for E's, rather there must be weighing of relative strengths of good and bad motivations, not to determine how Bd would have behaved under similar circumstances, but to determine what in fact motivated E)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. 636 F.2d 1255 (C.A. 7, 1980)
(ct held contrary to Bd that change in sick leave policy shortly after U victory in representation election was not unlawful, since timing alone did not justify conclusion that change was discriminatory, and record showed E's economic reason was to make department's policies on sick leave uniform with those of other departments)

8307-0150 Economic necessity does not justify ULP

Milwaukee Spring Division of Illinois Coil Spring Company 265 NLRB No. 028
(E's decision to relocate work from U to non-U plant, to layoff Ees as consequence during term of agreement solely because of higher labor costs, absent U's consent, is midterm repudiation of agreement in violation of Sec. 8(d), Sec. 8(a)(1), (3), (5); moreover, U did not waive right to bargain notwithstanding managements rights clause; such clause reserves for E right to decide whether and how products will be manufactured; it does not grant E right to transfer its operation. Thus, absent explicit language, U has not waived its right to object to E's decision)

Albion Corporation d/b/a Brooks, Inc. 251 NLRB No. 104
(on ct remand, Bd affirmed ALJ's conclusion that refusal to reinstate strikers during negotiations except on condition that U agree to contract acceptable to E was not justified by its precarious financial situation; while E's economic situation may have justified its proposing reduction in wages, it was not established that economic necessity justified its refusal to reinstate strikers except on its own terms; E's position that to reinstate strikers at higher rates was unrealistic was w/o merit, since mutually acceptable agreement may have been reached if E had met its statutory obligation)

Albion Corporation d/b/a Brooks, Inc. 251 NLRB No. 104
(on ct remand, Bd affirmed ALJ's conclusion that refusal to reinstate strikers during negotiations except on condition that U agree to contract acceptable to E was not justified by its precarious financial situation; while E could avoid such a situation by discharging strikers and replacing them with individuals willing to work at lesser rates, such conduct would constitute a unilateral action frustrating negotiations and an evasion of duty to bargain on questions which are subject to compulsary bargaining)

Charles Dean d/b/a Hopp Topp Mfg. Co. 250 NLRB No. 154
(direct evidence of discriminatory motivation may be inferred from record as whole; economic justification no defense to discriminatory discharges or lay offs if selection of those Ees effected was because of their U activities)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. 660 F.2d 1335 (C.A. 9, Nov 1981)
(*under section 8(a)(3) test is whether U activity was moving cause behind Ee's discharge; E may not use business reason as pretext for discharge which is motivated by anti-U animus. Bd need not credit E's selfserving statement that Ee was discharged for cause*)

8307-1300 Subcontracting

Liberty Homes, Inc. 257 NLRB No. 169
(E contracting out over-the-road delivery of its mobile homes and discharging drivers who performed delivery, not unlawful, notwithstanding subcontracting implemented after U had demanded recognition, where E had begun exploration of subcontracting and reached decision to subcontract prior to Ees seeking U representation and in view of E's financial losses and large capital outlay which would be required for desired replacement of inefficient gasoline powered tractors with diesel tractors)

8307-1400 Change to independent contractor system

Amber Delivery Service, Inc. 250 NLRB No. 016
(institution of changes in methods of operation designed to change Ees' status to that of independent contractors, violative)

8307-2200 Reorganization

Daniel Construction Company, A Division of Daniel International Corporation 264 NLRB No. 079
(discharge of two long-term Ees, who were U adherents, because of E's planned redistribution of their functions held violative where they were only Ees E was able to identify from enlarged photograph of Ees who attended U sponsored rally and those two were immediately replaced by other Ees with little or no experience at work they assumed)

Union Packing Co. 260 NLRB No. 064
(temporary transfers of Ees, not unlawful since they were not motivated by Ees' minimal U activities, as alleged, but by business considerations where unanticipated absence of one experienced Ee resulted in chain of temporary transfers throughout plant)

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(U council's transfer of Ee-staff members to different locations in their assignments of servicing U locals held not motivated by legitimate business considerations, where Ees were experienced lobbyists for council in state legislature in their original assignments; Ees were not given notice of intent to transfer them; only after council had taken issue with Ees' attendance at U meeting and after their return from unlawful suspension were transfers announced; and only Ees herein were singled out from among other Ees E intended to reassign)

8307-2800 Discontinuance of department, operation, or shift for economic reasons

Division of Plessey Materials Corporation, Plessey Micro Science, A Wholly Owned Subsidiary of Plessey Inc. 263 NLRB No. 182
(no violation where E effectively rebutted GC's *prima facie* case that night shift was eliminated in response to U organizing; proof of engineering turnover, inexperience and opposition to night work dealing with new process, was conclusive that decision was made for nondiscriminatory reasons)

Wehrenberg Theatres, Inc. d/b/a Melba Theatre and Skyvue Drive-In 260 NLRB No. 001
(discharge of Ee who signed U card at request of supervisor allegedly because he closed one theatre for winter and, therefore, needed to reduce staff, biolative where E traditionally employed 3 during winter and discharge left him with only 2 Ees; E had not discharged anyone in 18 years, and Ee was hired as replacement for another)

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division 257 NLRB No. 192
(contractor, engaged in providing maintenance and construction services for facility of petro-chemical industry, who terminated its custodial business entirely and laid off its entire janitorial work force w/o consulting with certified U representing custodial Ees, not in violation of Act where marginal profitability of janitorial division had turned into loss; E's actions were founded upon substantial economic factors rather than being motivated by unlawful considerations)

Wilson Foods Corporation JD-(SF)-292-80
(changing starting time for Ee for allegedly refusing to withdraw several grievances, not unlawful, where grievant was not only Ee put on later starting time and change in mode of delivery of product from use of railroad to use of trucks made it unnecessary for Ee to report to work early; no evidence cast doubt of E's decision to effect small financial saving by cutting hour off combined shifts of Ees involved)

8307-2850 Not real reason

Behring International, Inc. 252 NLRB No. 055
(E's economic defense to layoff of warehouse Ees on ground that subcontracting its warehouse labor ultimately could be financially beneficial, rejected, where E was motivated , at least in part, by desire to reduce possibility of another U election in future)

8307-3800 Efficiency drive

The Long Island Radio Company d/b/a All Shores Radio Corp. JD-(NY)-71-81
(discharge of U adherents, not unlawful, where discharges were result of E's desire, upon acquisition of radio station, to improve performance, ratings,

8307-3500—Cont.

and competitive position in industry by course of conduct which included review and consideration of staff replacements, changes in music format opposed by these Ees, and initiating regular critiques of each Ees' performance)

Modular Designs, Inc. **JD-(SF)-271-81**
(no violation where new manager's course of conduct involving oral and written reprimands which eventually lead to discharges was motivated by desire to improve efficiency and started when he obtained authority to run plant at least a month prior to U organizing campaign)

8307-3550 Not real reason

Maywood, Inc. **251 NLRB No. 139**
(transfer of U leader to less desirable job assertedly in the interest of increasing production, violative where her pre-transfer job was reassigned to less-experienced person, E was hostile toward U adherents, and the transfer came about the next working day after she testified for U in RC-case)

8307-3700 Avoidance of travel pay

Heck's Properties, Incorporated, Engineering Division and/or Mountaineer Investment Co., Inc. **264 NLRB No. 071**
(Ee's quitting after his reinstatement pursuant to settlement agreement when E refused to continue its prior policy of furnishing free lodging for non-resident Ees when utlized on non-U jobs beyond commuting distance from their homes held unlawful constructive discharge since E's action had intent of frustrating settlement agreement so as to discourage Ees from seeking redress under Act)

8307-4200 Poor productivity

Knogo Corporation **265 NLRB No. 130**
(demotion and reduction in salary of U adherent not violative where such actions were taken because of Ee's poor work record and not because Ee engaged in U activities)

Henry J. Kaiser Company **259 NLRB No. 001**
(discharge of Ee assertedly for being out of his work area and for nonproductivity held not unlawful, even though Ee had engaged in protected concerted activity, where Ee's claim that he had to use toilet facility because of diarrhea was rejected where Ee admitted his need was not imminent; he had ample time to take care of his needs before then; and his testimony was untrustworthy leading to conclusion that pique about overtime work, not physical illness, caused his unprotected action in refusing to work and defying foreman's instructions to go to work)

Streamway Division of The Scott & Fetzer Co. **249 NLRB No. 054**
(discharge of Ee assertedly for poor productivity and Ee's statement vowing not to meet production standard, not unlawful, absent evidence of E's knowledge of, or animus against Ee's U activity; moreover, no basis exists for concluding that reason given at time of discharge was not sole motivating cause for discharge)

N.L.R.B. v. Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **646 F.2d 706 (C.A. 1, Apr 1981)**
(discharge of two U adherents assertedly for low productivity violative, where although plans had been made to fire some Ees for inefficiency, E failed to substantiate claim that U adherents herein fell into that category; and E had warned these Ees about their U activity two days before their discharge)

8307-4250 Not real reason

Humes Electric, Inc. **263 NLRB No. 159**
(dischafge of lineman, U steward, assertedly for his *lack of production* and *attitude* held violative where E's decision to terminate lineman was grounded in Ee's participation in joint meeting of U and management wherein Ee sought larger crews to install utility poles over rugged terrain of jobsite contrary to E's economic interest; E did not establish Ee would have been discharged absent Ee's participation in joint meeting)

Delta Faucet Company, a Division of Masco Corporation of Indiana **251 NLRB No. 071**
(E giving Ee written warning and 3 day suspension in reprisal for his leading role in U organizational campaign, unlawful; E's contention that Ee produced less than other department Ees was pretext for warning and suspension)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

Stearns-Roger, Inc. **JD-10-81**
(layoff of qualified pipefitter assertedly because his production was low held violative where other pipefitters were hired from U hall one week after Ee was laid off and precipitating cause of layoff was Ee's complaint that lifting of iron grates was being done by pipefitters rather than ironworkers which work Ee, and others considered to be w/i jurisdiction of ironworkers)

Garden State Motors Co. **JD-160-80**

8307-4800 Suitability of probationary employee

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 111**
(refusal of E to process grievance over discharge of probationary Ee because of his absenteeism not violative, since probationary Ee had no rights to such proceeding and grievance was not presented in conformity with contract terms)

Glover Bottled Gas Corp. **255 NLRB No. 011**
(probationary Ee held not unlawfully discharged for lack of U membership where E's letter to Bd agent, regarding instant case and infelicitously equating probationary status with lack of U membership, was not related to such status but used common parlance to describe Ee as being terminated during his probationary period while not yet having protection of *just cause* provision of contract)

Kansas City Power & Light Company v. N.L.R.B. **641 F.2d 553 (C.A. 8, Feb 4, 1981)**
(termination ofprobationary Ees who had not completed six months continuous service required to become regular Ees prior to their participation in protected economic strike and reinstating them as new hires, unlawful, in view of discouraging effect on concerted activities; further, E's contentions that action justified by business consideration of requirement that six months probationary period be continuous and compelled by bargaining agreement, rejected, since probationary policy unwritten and flexible, waiver of probationary Ees' right to strike was not explicit and in view of meager bargaining history)

8307-4900 Shortage of essential materials

8307-4950 Not real reason

GE's Trucking, Inc. **252 NLRB No. 131**
(termination of Ee allegedly because of decline in quantity of product E was carrying, and Ee's failure to follow E's trucking delivery rules, unlawful in view of E's admitted laxity in enforcing rules, lapses by other Ees, and E's U animus; selection for termination for valid economic reasons of Ee can only be explained as motivated by E's concern that Ee's influence as leading U advocate would lead to unionization)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(layoffs by E engaged in packing and wholesale distribution of meat allegedly because of shortage of meat, unlawful; since motivated by antagonism to U where it took place four days after U filed R ptn; subsequent recall of Ees was based on amount of adherence which was designed to scare Ees and exclude U sympathizers)

8307-5200 Overstaffing

Albertson's Inc. **JD-(SF)-104-80**
(no violation, where E would have faced problems trying at another store to hire Ee who had filed grievance, because of E's full work force)

8307-7700 Shutdown because of operational difficulties

8307-7750 Not real reason

Smedberg Machine & Tool, Inc. **249 NLRB No. 076**
(layoff of Ee assertedly because of breakdown and shutdown of machine Ee principally operated, unlawful, where Ee did not spend significantly greater amount of time on affected machine than on others, machine was not shutdown prior to or at time of layoff and, following layoff, it was operated off and on until taken out of service 3 or 4 months later)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(layoff of Ees, unlawful, notwithstanding contention layoff due to problems with production process, as layoffs took place w/o regard to seniority after Ees had rejected E's contract proposals to Ee committee and E gained knowledge of Ees' support of outside U, production problems had existed for some weeks prior to layoffs and E hired new Ees during period; further, Ees were recalled day after committee signed contract with E)

8307-8000 Absorption or elimination of work duties

Conagra, Inc. **248 NLRB No. 085**
(elimination of U adherent's job as *bathroom relief*, not unlawful, where necessity for position was eliminated by remodeling, adherent was offered another job by E but rather than bump incumbent took voluntary layoff and went on unemployment compensation, and upon expiration of unemployment benefits returned to work in another position)

8307-8400 Slack work or other economic necessity

Service Spring Company, A Division of Garlock, Inc., A Wholly-Owned Subsidiary of Colt Industries **263 NLRB No. 103**
(E whose new president implemented more rigid enforcement of discipline with respect to absenteeism and production mistakes coincident with U winning election did not violate Act where evidence established that policy was undertaken by E in attempt to improve production efficiency)

Jo-Wex Sportswear, Ltd. and Iris Sportswear, Inc. **260 NLRB No. 172**
(layoff of U supporters, assertedly for economic reasons, not discriminatory, where E rebutted E's *prima facie* case by producing evidence showing that number of other Ees had also been laid off at same time which was E's slow

8307-8400—Cont.

season as evidenced by large drop in volume of sales; and GC, who did not produce any sales figures for previous years to show that E seized upon normal fall off in business to lay off U supporters, failed to show that E's proffered reason was pretextual)

Gentile Pontiac **260 NLRB No. 056**
(discharge of chief U organizer who assertedly was selected for discharge because there was insufficient work for all Ees, unlawful, where E, who claimed during hearing that it could produce records showing insufficient work for Ees, failed to do so, thereby giving rise to inference that such records would not have substantiated E's claim)

Midwest Electric Manufacturing Corporation **260 NLRB No. 032**
(layoff of Ee, not unlawful, where layoff was economically motivated, E followed established seniority policy, Ee was one of two most junior Ees at time of layoff and one Ee jurnior to him was laid off at same time as he, there was no recall of any Ee junior to Ee before he was recalled, he engaged in limited U activity of signing authorization card and attending one U meeting, and no other Ee who attended meeting was alleged to have been unlawfully selected for layoff)

Mineola Ford Sales, Ltd. **258 NLRB No. 052**
(discharge of Ee assertedly because of Ee's uncooperative attitude and low sales performance, and E's heavy losses and requirement to reduce overhead, not unlawful, where E was aware of Ee's U activities for many months prior to his discharge; Ee's activities as shop steward were minimal; no adverse action was taken against Ee for refusing to cross another unit's picket line, and even if GC had made prima facie showing that protected activity was motivating factor, discharge would have taken place, even in absence of protected conduct, because of Ee's attitude and E's economic status)

Vee Cee Provisions, Inc. **256 NLRB No. 125**
(discharge of Ee, allegedly because of E's economic problems, violative where real reason was that he sought assistance from U in pressing wage claims)

Kuno Steel Products Corp. etc. **252 NLRB No. 127**
(Es failed to rebut GC's *prima facie* case establishing that Es did not meet their obligation to reinstate economic and unfair labor practice strikers to conditions current at time of strike by showing substantial business justification and thereby violated Act)

Petroleum Electronics, Inc. and/or Cook
Enterprises, Inc. **250 NLRB No. 042**
(layoff of Ees assertedly because E lost contract with major customer, unlawful, where E failed to explain circumstances involved and to mention layoffs or any likelihood of loss of contract to Ees prior to layoff, and supervisors admitted to Ees that E would rather close operation than deal with U)

Convenience Stores Distributing Company, a
Partnership of Marsh Supermarkets, Inc. and
King Kwix Minit Market, Inc. **JD-745-80**
(discharge of Ee not violative, notwithstanding GC's contention that Ee was terminated because she or her husband were associated with U, where Ee's job was eliminated for economic reasons in connection with E's overall plan to reduce cost)

8307-8433 Not real reason

A & T Manufacturing Company **265 NLRB No. 201**
(layoff of U adherents because of E's concern about the economy and lack of work caused by alleged loss of principal customer, held violative where E's concern with the economy had apparently been no more than academic until inception of U activity; principal customer was not lost, it was not paying (E) according to schedule (customer's account was 90 days past due). U activity was *straw that broke the camel's back* rather than principal customer's delinquency)

Dennis G. Maietta and Frank M. Maietta t/a
Maietta Contracting **265 NLRB No. 161**
(failure to reinstate discriminatees, violative where lack of work was result of unlawful reduction of operations by selling several trucks in order to avoid recalling discriminatees and by unlawful subcontracting)

Enterprise Products Company **265 NLRB No. 083**
(layoff of Ees assertedly for economic reasons, unlawful, where reason for action was to retaliate against Ees for their U activity; E's haste in concluding, upon learning of U activity and while investigating its impact upon its other facilities and in sending its refusal of recognition to U, all w/i same day, that immediate layoff was necessary w/o any supporting business reports or even inquiry at other sources, clearly indicated causal relationship and illegal motivation of layoffs)

Enterprise Products Company **265 NLRB No. 083**
(additional layoff of Ees, following prior layoff assertedly for economic reasons but found in retaliation for Ees' U activity, held unlawful, where E effected layoff w/o any studies or evaluation of business conditions and, instead, used fictional formula created from its own guesses; and claim that decision to layoff was based on giving remaining Ees living wage was belied by fact that no consideration of Ees' earnings was claimed at time of decision nor any consideration given to partial study that was being worked up)

O'Dovero Construction, Inc. **264 NLRB No. 101**
(layoff and failure to recall Ees who were members of craft U, unlawful, where motivated by Ees, complaining to management and U about E's failure to abide by contract in regard to coffee breaks, overtime pay and increased payrate prescribed therein, and performance of their work by members of another U, rather than for business reasons, in view of amount of work to be done and hiring of other Ees during layoff, and absent evidence laid off Ees less efficient than other Ees)

Martin City Ready Mix **264 NLRB No. 066**
(violation as layoffs were not for economic reasons where 60-75% of orders were called in on day of delivery, E failed to document claim, no warning that layoff was imminent, and Ee hired one month earlier was told to expect 30-40 hour work week)

Vincent Brass & Aluminum Co. **264 NLRB No. 070**
(layoff and refusal to reinstate Ees, unlawful, since for assertion of their contractual right to job bidding procedure rather than for economic reasons, in view of E's U animus established by other violations and where layoffs occurred while orders increasing and overtime worked by other Ees during layoff, notwithstanding layoff in accord with contract and fact those laid off included Ees who had not attempted to assert their rights under contract)

Coil-Acc, Inc. **262 NLRB No. 012**
(layoff and refusal to reinstate U adherent assertedly for lack of work held violative where E had plentiful supply of raw materials and there was no evidence E's inventories were excessive; day after U adherent was terminated, he was replaced by new Ee who performed same work as U adherent)

Parker-Robb Chevrolet, Inc. **262 NLRB No. 058**
(discharge of salesmen at auto dealership, assertedly for economic reasons, unlawful, where amount of sales per person over period of time preceding discharges was not greater than at time discharges occurred, as claimed by E; E testified he had prior belief sales would increase in month discharges occurred and, in anticipation thereof, E expanded its sales force prior to discharges; and recent hires with no sales record were retained while senior Ees with average or above average production records were laid off)

Indian Head Lubricants, Inc. **261 NLRB No. 003**
(E who laid off U adherent claiming economic necessity and when business improved failed to recall him, violated Act where shortly after layoff it created new position of warehouse manager, bringing Ee complement up to 2 Ees, same as before layoff, thus creating inference that layoff and failure to recall were motivated by U animus)

Timberline Energy Corporation **258 NLRB No. 037**
(violation where layoffs were not for economic reasons but after E had knowledge of U activity and on same day that Ees met with U agent; past layoffs were never at this time of year)

Timberline Energy Corporation **258 NLRB No. 037**
(layoffs at first of month were not due to business decline, where decline began only at end of month, inventory was 10 times greater than preceding year and during preceding 5 months, E's sales were higher than preceding year)

Thurston Motor Lines, Inc. **257 NLRB No. 171**
(discharge allegedly for lack of work, violative where E looked around for troublemaker after U filed election ptn and E selected Ee because he was consurrently working part-time for U firm)

Builders Distributors Sand and Gravel, Inc. **257 NLRB No. 053**
(discharge of key U activist, in E's desire to reduce hours to cut expenses, assertedly because of Ee's poor attitude towards his work, his lateness and improper care of E's equipment held violative where E's records during this critical period showed Ees' hours were increasing rather than decreasing and 1 day after Ee was discharged E hired another experienced driver at same rate of pay as U activist)

Builders Distributors Sand and Gravel, Inc. **257 NLRB No. 053**
(discharge of U activist, during economic downtown in E's business, assertedly for lack of work held violative where, during this critical period, E increased rather than decreased Ees' hours and only 7 days before U activist was discharged, E hired new driver after using activist on intermittent basis)

Gorman Machine Corporation **257 NLRB No. 010**
(discharge of leading U advocate, allegedly for excessive talking, lack of work for him to perform, and unsuitable work, violative in light of pretextual nature of E's asserted reasons for discharge)

Welfare, Pension and Vacation Funds, Blasters,
Drillrunners and Miners Union Local No. 29,
etc. **256 NLRB No. 170**
(E's contention that it discharged bookkeepers and contracted out their work to reduce administrative expenses because it lost insurance coverage rejected, where E found another carrier long before discharges and presented no evidence of insurance or economic problems after finding other carrier)

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C. E. Wilkinson & Sons, Inc. **255 NLRB No. 176**
(discharge of Ee, assertedly because of decline in business and customer complaints about his work, violative where Ee was discharged 2 days after refusing E's request that he withdraw his U authorization card, E had knowledge of Ee's U activities and had demonstrated U animus)

Discatron Equipment Inc., d/b/a Xenon **250 NLRB No. 024**
(where only one Ee out of 60 was terminated)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharges unlawful since for U activities rather than for lack of business in view of E's U animus and ULPs and where it failed to act when surplus of Ees arose but acted only after it acquired knowledge of U organizing campaign, and, after discharges, hired new Ees)

Hedison Manufacturing Company **249 NLRB No. 096**
(asserted seasonal decline rejected as reason for layoffs where assertion was merely an after-thought and was not basis for layoffs where E failed to prove any business consideration for layoffs as indicated by almost total absence of records to support E's position)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(E's defense of economic necessity for layoff or discharge of Ees rejected as pretextual, where E failed to submit any documentary evidence of alleged adverse business conditions claimed as reason for its action; and, although E asserted it had decided to lay off Ees several weeks prior to date layoffs were effected, E did not mention such decision or alleged underlying business conditions to Ees until date of their termination)

Smedberg Machine & Tool, Inc. **249 NLRB No. 076**
(discharge of Ee assertedly because of lack of work, unlawful, where, at time of layoff, Ee had not run out of work and was laid off w/o advance notice in the middle of a job before end of work week and pay period, no documentation substantiated E's position, and supoenad records indicated no downturn of business at time of layoff)

Wisconsin Beef Industries, Inc. **249 NLRB No. 034**
(layoffs by E engaged in packing and wholesale distribution of meat allegedly because of shortage of meat, unlawful; since motivated by antagonism to U where it took place four days after U filed R ptn; subsequent recall of Ees was based on amount of adherence which was designed to scare Ees and exclude U sympathizers)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(layoff of dishwasher, U solicitor of Spanish-speaking Ees, assertedly because *business was really falling off drastically*, violative, since layoff occurred soon after E learned of Ee's U activity; layoff actually was discriminatory discharge since E had no intention to recall Ee)

Suburban Ford, Inc. **248 NLRB No. 051**
(E's *economic defense of business decline* rejected where chose not to introduce into evidence documentation of its annual reports, profits and loss figures etc. or any data for comparative purposes regarding personnel and income levels; failure to introduce such evidence justified inference that it would not support or assist contentions of party who originated them)

Bio-Medical Applications of New Orleans, Inc., d/b/a Greater New Orleans Artificial Kidney Center **247 NLRB No. 136**
(E's contentions in defense of its failure to reinstate discharged strikers that it was economically justified and operated normally w/o them found contradicted by significant increase in costs for overtime paid remaining Ees and hiring of nonunit Ees whose primary function was same as that of strikers)

International Business Systems, Inc. **247 NLRB No. 102**
(violation where E reduced Christmas bonus by half because of Ees' U activity and not because available cash was insufficient, as asserted)

C-F Air Freight, Inc. **247 NLRB No. 060**
(failure to recall strikers to work assertedly because of financial losses at E's facility, unlawful, where E unlawfully threatened to close plant, contention that decision to do so was made before U activity began was patent contrivance, E made statement to Ees that if they unionized E *would padlock door* and expressed antagonism toward U, and disparate nonclosure of another facility was based on lack of U activity threat)

Power Service Co., T and T Truck and Trailer Leasing, Inc., Night Hawk Motor Transportation, Inc., and York Motor Transport, Inc. **JD-161-82**
(discharge and layoff of U activist truck drivers because discharged Ee *abandoned employment* when he refused to drive unrepaired truck and other driver was laid off for *lack of work* held violative, since respondents did not show that Ees would have been discharged or laid off even if they had not been U activists or U sympathizers; no attempt made to recall discharged Ee after truck was repaired and 2 or 3 new drivers given opportunity to drive for Es before attempting to recall laid off Ee)

AVJ Graphics, Inc., d/b/a Manhattan Graphic Productions **JD-(NY)-2-81**

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(business was slow)

N.L.R.B. v. Allen's I.G.A. Foodliner **631 F.2d 430 (C.A. 6, May 1981)**
(discharge of leading U advocate, whom supervisor said was *good and dependable* worker for 8 years prior to U campaign, assertedly because of *business retrenchment* and Ee's poor performance held violative, since Ee was never recalled when subsequent increase in (E's) business necessitated hiring several new Ees and only w/i year prior to discharge did E find fault with Ee)

N.L.R.B. v. Midland Ross, Inc. **644 F.2d 606(T) (C.A. 6, Jan 8, 1981)**
(discharge violative where E discharged Ee for lack of work immediately after supervisor stated that Ee was needed at work and had completed mortgage information form stating that his probability of continued employment was good)

Alumbaugh Coal Corporation v. N.L.R.B. **635 F.2d 1380 (C.A. 8, 1980)**
(discharge of known Ee-initiator of organizational effort purportedly because of lack of work, unlawful, where Ee was discharged shortly after such effort began, accompanied by E's commission of ULPs soon thereafter; Ee was competent Ee with good work record and was discharged as *last man hired* when retained fellow Ee was in that category; and instead hired new Ees)

N.L.R.B. v. Brooks Cameras, Inc. **691 F.2d 912 (C.A. 9, Nov. 1982)**
(termination of Ees, unlawful, since for U activity, notwithstanding E had decided on staff reductions for economic reasons prior to knowledge of U activity; where after U's demand for recognition, E increased number of Ees to be laid off in department for which U sought recognition, made selection on basis of seniority rather than on basis of work performance as in other departments in order to reach U adherent, contrary to usual custom termination forms contained no indication of Ees' eligibility for rehire, and terminations were w/o advance warning)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**
(violation where moving cause for discharge of instructor was continuation of their U activities following faculty strike rather than under-enrolled classes, as alleged)

8307-8450 Adequately established

A & T Manufacturing Company **265 NLRB No. 201**
(E failure to submit successful bid for work and consequently laying off Ees because of lack of work, not unlawful, where number of Ees laid off was reasonably related to amount of work lost and absent evidence of unlawful motivation)

Champion Road Machinery International Corporation **264 NLRB No. 123**
(action by E's banker precipitated discharge)

Trend Construction Corporation and General Electric Corporation, Individually and as Joint Employees **263 NLRB No. 044**
(layoffs lawful where E had hired excess Ees to pack unit with anti-U Ees to thwart U representation but election had been indefinitely postponed; furthermore, E experienced slowdown because noncompletion of other work)

Colorado Forge Corporation **260 NLRB No. 004**
(layoffs not violative where they were motivated by economic necessity rather than U's organizational demands, as contended)

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division **257 NLRB No. 157**
(contractor, engaged in providing maintenance and construction services for facility of petro-chemical industry, who terminated its custodial business entirely and laid off its entire janitorial work force w/o consulting with certified U representing custodial Ees, not in violation of Act where marginal profitability of janitorial division had turned into loss; E's actions were founded upon substantial economic factors rather than being motivated by unlawful considerations)

Mini-Industries, Inc. **255 NLRB No. 123**
(discharging all Ees in midst of U campaign and rehiring only certain former Ees on or after plant reopened, not unlawful, notwithstanding E's undisputed anti-U animus and suspicious timing of discharges, where GC did not meet initial burden of making *prima facie* showing to support inference that U activity was a motivating factor, in view of record evidence that showed reason for E's actions was its deteriorating financial condition which was consistent with decisions made and production standards set prior to E's awareness of U campaign)

Highway Express, Inc. **255 NLRB No. 102**
(discharging Ees day after U lost election not violative, as E had lost business and one week earlier had discharged half Ees of another unit for same reason, yet their U did not file charge)

Simpson Steel Fabricators & Erectors, Inc. **249 NLRB No. 164**
(layoff not unlawful absent evidence of E's knowledge of U organization activity, where layoff due to sharp drop in orders and Ees who were laid off not qualified to perform available work)

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B. N. Beard Company **248 NLRB No. 016**

(discharge of truckdriver for quitting work early w/o permission, not unlawful, where Ee did so knowing that E was under pressure for economic reasons to have as much hauling work done as possible on day Ee left early)

Lovard Industries, Limited **JD-293-82**

(post-election layoff of U adherents not violative where GC conceded that evidence of discrimination was not too clear and E's evidence of lawful economic causes preponderated over that of GC)

Scoggin, Inc. **JD-433-81**

(E's reduction in work week of U adherents who had testified at Bd hearing from 40 to 20 hours, not unlawful, notwithstanding E's other ULPs, since for business reasons, where E was in dire financial situation to point of using monies withheld for payroll taxes for capital and E's president taking out personal loan when taxes due; further, Ees were not replaced)

Mendon Pipeline, Inc. **JD-422-81**

(no violations where Ees were laid off, selected for layoff, and not recalled because of sound economic reasons rather than for contractual and statutory wage claims and request for water on jobsite as alleged)

Hassly Hardwood Lumber Co. **JD-205-81**

(layoffs of U adherents not unlawful, notwithstanding layoffs closely followed U meeting, absent E's knowledge of U activity and where justified by business considerations in view of order cancellations and declining sales)

Wunderwear, Inc. **JD-(NY)-6480**

(after contract was cancelled, layoff of Ees who worked primarily on that contract, not violative)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**

(layoffs not unlawful where E had incurred substantial losses and facility had been listed for sale before onset of U activity; and site of new operation was not ready for use at time of closing)

Motor Inn of Perrysburg, Inc. d/b/a Holiday Inn of Perrysburg v. N.L.R.B. **647 F.2d 692 (C.A. 6, May 1981)**

(E's imposition, after U had lost two certification elections, of so-called *captain system* and *revised captain system* which changed working conditions and method of compensating waiters and waitresses, not violative where new *systems*, although unpopular with some Ees, were no basis for constructive discharge, and were imposed equally upon all Ees, not only U sympathizers; E's motive was to increase sale of food and lack of discrimination detracted from E's anti-U animus)

8307-8467 Reasonable basis for selecting those to be laid off first, recalled first or discharged

A & T Manufacturing Company **265 NLRB No. 201**

(no unlawful discrimination in selection of Ees for recall absent evidence E used any criteria other than experience, ability, attendance, and disciplinary record; further, E recalled U supporters)

International Computaprint Corp. **261 NLRB No. 099**

(concentration of selection for layoff on second shift, where E lost government contract, lawful, notwithstanding fact U activity centered on second shift, since second shift smaller, subject to limited supervision on regular basis by single individual, and in terms of unit costs less productive since second shift Ees were paid on parity with first shift Ees while working half hour less each day)

American Display Manufacturing Co., Inc. **259 NLRB No. 006**

(permanent layoffs of extra Ees hired to deal with additional work associated with particular order which was deferred, not unlawful, notwithstanding occured shortly after ptn for election filed at time E was contracting out work since for business reasons, E had prior policy of contracting out work, selection made on basis of seniority except in case of Ee who had indicated her intention to quit where selection made to permit retention of Ee who would otherwise been laid off)

John Cuneo, Inc. **253 NLRB No. 110**

(upon their unconditional offer to return to work, economic strikers are entitled to immediate reinstatement to their former positions, or, if those positions have been filled by permanent replacements, to full reinstatement upon departure of their replacements, unless E can show legitimate and substantial business reasons for not reinstating the Ees)

C. Cowles & Company **JD-(NY)-52-82**

(layoff of active U protaganist because of downturn in sales of automotive parts manufacturer, not violative, since Ee was least senior in E's department being cut back because of depressed sales in automotive industry and E's usual custom was to use departmental seniority w/o *bumping* other Ees; E satisfied burden of proving lawful justificatiion for discharge)

Tempglass, Inc. **JD-80-82**

(method of selecting Ees for layoff based on attendance and productivity not unlawfully discriminatory)

Mendon Pipeline, Inc. **JD-422-81**

(no violations where Ees were laid off, selected for layoff, and not recalled because of sound economic reasons rather than for contractual and statutory wage claims and request for water on jobsite as alleged)

8307-8800 Completion of work for which employees hired

Wehrenberg Theatres, Inc. d/b/a Melba Theatre and Skyvue Drive-In **260 NLRB No. 001**

(discharge of Ee who signed U card at request of supervisor allegedly because he closed one theatre for winter and, therefore, needed to reduce staff, biolative where E traditionally employed 3 during winter and discharge left him with only 2 Ees; E had not discharged anyone in 18 years, and Ee was hired as replacement for another)

8307-9100 Transfer of department to new plant

M & G Convoy, Inc. **260 NLRB No. 145**

(failing and refusing to transfer to new facility any former Ees of closed facility, violative as decision accomplished no legitimate business goal because it required hiring inexperienced Ees who required 3 weeks training and was motivated by E's expressed desire to keep new facility *pure* of U Ees at closed facility whom E viewed as *troublemakers* because they actively enforced contract terms)

Universal Security Instruments, Inc. **250 NLRB No. 092**

(discharge of Ees because of their refusal to accept transfer to E's new plant not violative where no evidence that discharges were based on any discriminatory motives, or refusal of Ees to transfer because of change in conditions of employment or absence of U at new plant, notwithstanding the transfers of willing Ees were violative because E failed to bargain with U)

8307-9600 Likelihood of claims against employer

American Display Manufacturing Co., Inc. **259 NLRB No. 006**

(fact laid off Ees offered reinstatement to diminish possible financial liability does not negate finding that layoffs were permanent in accordance with E policy)

8311 BUSINESS DISRUPTION

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**

(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

8311-3300 Refusal of other employees to work with discriminatee

N.L.R.B. v. Eldorado Manufacturing Corporation and United Steelworkers of America, AFL-CIO **660 F.2d 1207 (C.A. 7, Sep. 1981)**

(in finding that E was justified in discharging Ees for engaging in serious and disruptive conduct at E's operation as result of intra-U dispute, ct stated fact that E once tolerated Ees' blatant misconduct does not mean E must tolerate such conduct forever; there must be room in law for right of E somewhere, sometime, at some stage, to free itself of continuing unproductive, internal, and improper harassment)

8314 EMPLOYER POLICY AGAINST HIRING

8314-2500 Discharged employee

Alumbaugh Coal Corporation v. N.L.R.B. **635 F.2d 1380 (C.A. 8, 1980)**

(ALJ who, as trier of fact, may choose between conflicting views of evidence, properly found w/o merit E's business justification for making new hires instead of recalling unlawfully discharged Ee, purportedly because of E's policy not to reassign personnel from one job classification to another)

8318 EMPLOYER POLICY AGAINST HIRING FORMER EMPLOYEES

Tartan Marine Company **247 NLRB No. 073**

(refusal to rehire U adherent who had resigned twice, violative, since reason for refusal to rehire was Ee's U adherence, where E had promulgated no policy against rehire of Ees who had resigned twice, and in view of E's other unlawful conduct)

8320 ALTERNATIVES TO ACTION WOULD VIOLATE OTHER NLRB SECTIONS OR OTHER STATUTES

Fairleigh Dickinson University **264 NLRB No. 098**

(E withdrawing recognition from representative for its clerical and technical workers and barring its representatives from further participation on official university committees in retaliation against outside U's organizing campaign of these workers with assistance from representative violative, contention that representative was *dominated* organization, and therefore, E's action proper, rejected, in view of long time representative functioned; and E attempted to provide substitute organization; E may not exculpate itself for

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its violations on ground that its conduct was attempt to *cure* established pattern of conduct violative of Act)

N.L.R.B. v. Howard Johnson Company d/b/a Howard Johnson Distribution Center 637 F.2d 373 (C.A. 5, 1981)
(E's contention that it withheld regularly scheduled wage increase because it feared ULP charge if it granted raises, rejected since contention ignores well-settled principle that E runs risk of violating Act when it unilaterally *changes* terms of employment)

St. Regis Paper Company v. N.L.R.B. 623 F.2d 487 (C.A. 6, 1980)
(discharge and failure to reinstate Ees who struck E during critical period to gain recognition for U, rival of petitioner, not unlawful, since if E, during pendency of election proceedings, had recognized rival U as bargaining agent, it would have been guilty of interference with Bd's election procedures as well as ULP in violation of Section 8(a)(1) of Act)

8322 CONTRACT PROVISION

Geary Motor Sales, d/b/a Geary Ford 261 NLRB No. 168
(discharge of Ee for joining U, unlawful notwithstanding management's apparently good faith, albeit mistaken, belief that Ee's joining U while continuing to perform duties for which she was hired would cause E to violate contract)

Cowlitz Studd Company JD-(SF)-141-80
(U's action in seeking removal of new Ee not violative where Ee was hired in abbrogation of collective-bargaining agreement which required vacant positions to be filled by seniority unless outside applicant highly qualified; U was fulfilling its duty to represent its constituency)

8322-2000 Discriminatory enforcement of provisions

Tower Hotel Company, d/b/a Holiday Inn Riverfront 250 NLRB No. 010
(discharge of Ee because he failed to meet age requirements of U's apprenticeship program not violative where insufficient evidence exists to establish that contract provision is illegal)

N.L.R.B. v. Maui Surf Hotel Company and ILWU Local 142 601 F.2d 603(T) (C.A. 9, 1979)
(where all non-essential Ees were required by contract to either sign out or attend *work stop* meeting, no discrimination as all Ees, including ones who protested were treated same way)

8322-3000 Superseniority

N.L.R.B. v. Stanley H. Egan and Donald R. Egan 658 F.2d 746 (C.A. 10, Aug 1980)
(application of contractual superseniority provision to U trustee and U guard for purpose of layoff and recall held violative, as these duties do not contribute in any meaningful way to implementation of collective bargaining agreement)

8322-5000 Union security or checkoff

Big Rivers Electric Corporation 260 NLRB No. 059
(E's refusal to accept Ee's tender of delinquent dues not violative where Ee had already missed deadline and discharge process had been completed day before tender of dues)

Newport News Shipbuilding and Dry Dock Company 253 NLRB No. 096
(E's continuing to remit dues to U pursuant to checkoff agreement, unlawful, where Ees had revoked checkoff authorizations via letters notwithstanding bargaining agreement required revocations to be on form provided by U; particularly where forms were only available at U headquarters which was inconveniently located and prior to revocation activity Ees were not informed regarding procedures to follow to obtain forms)

Glass Container Corporation JD-572-81
(discharge violative where Ee who was demoted from supervisor and returned to status of nonsupervisory Ee was discharged at U's request because she had not obtained U withdrawal card when she became supervisor as provided for in contract; therefore, discharged based on considerations of U status)

Peninsula Shipbuilders' Association v. N.L.R.B. 663 F.2d 488 (C.A. 4, Sep. 1981)
(ct enforced Bd order holding E and incumbent U jointly and severally liable to reimburse Ees who had effectively revoked their check-off authorizations although on non-U forms in contravention of provision in extended bargaining agreement, where substantial evidence showed that such provision which required use of U revocation forms was facially invalid under LMRA Sec. 302(c)(4) and revocation procedure as actually enforced was ULP, in view of Ees' lack of easy, general access to U forms, Ees were not sufficiently informed about revocation requirement, and Ees had to appear personally at U hall to sign forms)

8322-8000 No-strike agreement

Servair, Inc. 268 NLRB No. 014
(an ordinary no-strike clause does not constitute legitimate, substantial business reason that justifies discharge of Ees who strike in response to serious ULPs; therefore discharge of 19 strikers who were protesting discriminatory discharge of Ee violative)

Richmond Tank Car Company 264 NLRB No. 025
(discharging U steward alone of 40 Ees who walked out to protest inadequate protection against runaway freight cars and toxic fumes because he *induced* walkout through his *leadership position in the Union,* unlawful notwithstanding no-strike clause, since walkout in good faith because of abnormally dangerous working conditions by express terms of Sec. 502 does not constitute a strike and discipline for violating no-strike clause violated 8(a)(3) where imposed on a leader because of his U status as steward)

Consolidation Coal Company 263 NLRB No. 188
(discharging U officers because they participated in unauthorized work stoppage with other rank-and-file Ees based on their status as U officers, violative)

Metropolitan Edison Company 252 NLRB No. 147
(disciplining U officers more severely than other Ees for participating in sympathy strike in violation of no-strike clause, violative)

Andersen Sand & Gravel Company JD-655-80
(discharge of strikers, unlawful, since work stoppage protected ULP strike; E's contention unprotected since in contravention of no-strike agreement, rejected, where asserted no-strike agreement was in contract which expired by its own terms)

Metropolitan Edison Company v. N.L.R.B. 663 F.2d 478 (C.A. 3, Nov. 1981)
(ct enforced Bd order where E disciplined U officers more harshly than other Ees who participated in illegal work stoppage since (1) agreement did not expressly impose duty on U officers to attempt to halt illegal work stoppage, and (2) ct is not bound by two previous arbitral interpretations of no-strike clause placing greater responsibilities on U officials to take affirmative steps to end illegal work stoppage; furthermore, substantial evidence supports Bd finding that U officers were not leaders of strike)

Pacemaker Yacht Company, A Division of Mission Marine, Inc. v. N.L.R.B. 663 F.2d 455 (C.A. 3, Oct. 1981)
(where bargaining agreement contained 2 no-strike clauses: (1) for arbitrable issues, and (2) for nonarbitrable issues, Ees unmistakeably waived their right to strike notwithstanding nonarbitrable issue which percipitated strike was not enumerated during negotiations as being covered by latter clause)

The Dow Chemical Company v. N.L.R.B. 636 F.2d 1352 (C.A. 3, 1980)
(E's termination of strikers who walked out in protest over E's unilateral change in work schedule, in breach of contract's no-strike clause, not unlawful, where Boys Markets injunctive relief was not available to E because arbitration provision was not coextensive with no-strike clause, E resorted to operating plant with new Ees and rule protecting illegally striking Ees' employment status would effectively prevent E's resort to new hires, and SCt in its Mastro Plastic decision expressly acknowledged that U members violating no-strike clause lose their Ee status)

N.L.R.B. v. South Central Bell Telephone Company 688 F.2d 345 (C.A. 5, Oct. 1982)
(suspension of U stewards for mere participation in strike and/or for not taking affirmative steps to end strike in violation of no-strike agreement for longer period than supensions of other participants in strike, unlawful, absent affirmative contractual waiver of U officers' rights and/or breach of contractually imposed affirmative duties)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. 659 F.2d 830 (C.A. 7, Sept. 1981)
(where safety issue is one that must be submitted to binding arbitration, obligation not to strike over matter is considered to be coterminus and any stoppage violates implied no-strike clause unless safety hazzard suddenly arose and presented immediate threat; i.e., *Washington Aluminum* situation)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. 659 F.2d 830 (C.A. 7, Sept. 1981)
(2 requisites required for finding no-strike obligation; (1) contract imposes upon both parties duties of submitting to final and binding arbitration; and (2) matter is one which it has been agreed to will be covered by compulsory terminal arbitration)

Caterpillar Tractor Co. v. N.L.R.B. 638 F.2d 140 (C.A. 7, Sept. 1981)
(strike protesting E's unlawful discontinuance of allowing Ees to request transfers which involved demotions, not ULP strike, since contract waived right to strike where underlying dispute being processed through grievance procedure and herein grievance pending; further, unlawful unilateral change was not *serious* labor dispute (destructive of foundation on which bargaining must rest) w/i *Mastro Plastics* so as to preclude waiver of right to strike regarding ULP since E in good faith relied on management rights clause, and U neither called nor ratified strike)

8326 DELAY IN DISCHARGE AFTER KNOWLEDGE OF UNION ACTIVITY CARRIED ON BY EMPLOYEE NO DEFENSE

American Petrofina Company of Texas **247 NLRB No. 015**
(Fact almost year had passed between U activity of alleged discriminatee and his discharge did not preclude finding of violation since *mere passage of time does not gainsay discriminatory intent*)

N.L.R.B. v. Spielberg Manufacturing Company **673 F.2d 244 (C.A. 8, Mar. 1982)**
(discharg for tardiness of key organizer in election U lost almost one year earlier in which E expressed intent to resist afterwards any further U activity violative, where shortly before discharge Ee told vice president that dissatisfaction with new controller's efforts to correct attendance problems might generate renewed U organizational effort, controller told her he would *build case of absenteeism and discharge her unless her attitude improved,* and supervisor told her she had been discharged for U activity)

Metro-Young Construction Company, A Division of Olson Construction Co., Inc. **JD-(SF)-12-82**
(discharging Ee from one jobsite and limiting duration of his employment at different jobsite by discharging him again held violative as reason for discharge was Ee's filing of U grievance involving rain gear two years earlier)

8329 FAILURE OF EMPLOYEE TO APPLY FOR REINSTATEMENT

Bedelay Packaging Machinery, Inc. **263 NLRB No. 038**
(E's obligation to reinstate discriminatee not extinguished by Ee's failure to respond to registered letter mailed to him offering reinstatement where evidence showed Ee never received letter)

8329-0600 Unconditional application

Mid-County Transit Mix, Inc. **264 NLRB No. 107**
(offer to return to work which is conditioned on removing cause of strike, not unconditional offer)

Mid-County Transit Mix, Inc. **264 NLRB No. 107**
(no valid offer to return to work on behalf of all strikers by former U steward since steward not designated as representative of strikers where Ees had withdrawn from U for which had been steward and former steward at time of alleged offer was not acting as steward for any U's nor had strikers requested that former steward speak for them)

Mid-County Transit Mix, Inc. **264 NLRB No. 107**
(offer not unconditional where strikers' offer to return to work was clearly stated to be in order *to facilitate negotiations*)

Consolidated Dress Carriers, Inc., et al. **259 NLRB No. 083**
(unconditional offer to return to work where strikers went to plant and stated they were coming back to work)

Owen Joint Corporation **248 NLRB No. 076**
(returning strikers' actions and statements, held to be broad enough to constitute unconditional offers, where they came to shop superintendent's office and one of them told superintendent, *I'm ready to go back to work,* while another asked him *for my timecard and my job* and, upon learning that they were replaced, another striker asked superintendent, *when a job came open, would he give me a call*)

8329-0900 Timeliness of application

Kuno Steel Products Corp. etc. **252 NLRB No. 127**
(E's defense to its refusal to offer strikers reinstatement is that U's offer to return to work is untimely, is without merit where unremedied ULPs committed by Es prolonged strike; U was involved in protracted Bd proceeding and offer to return to work made just over a month after ct decision)

8329-1200 After non-ULP strike or layoff

Chromalloy Mining and Minerals Alaska Division, Chromalloy American Corporation v. N.L.R.B. **620 F.2d 1120 (C.A. 5, 1980)**
(no violation by failure to recall U adherent absent proof that such Ee ever expressed desire to be rehired or that E had affirmative policy of rehiring Ees)

N.L.R.B. v. Vitronic Division of Penn Corporation **630 F.2d 561 (C.A. 8, 1979)**
(E's refusal to retain replaced economic strikers on preferential hiring list and reinstate where former strikers had failed to comply with its requirement stated on initial request for reinstatement form sent to strikers that strikers renew their continued interest in reinstatement after six months, unlawful, since burden of notifying former strikers and verifying their continuing interest in reinstatement placed on E who may at most require former strikers, in response to appropriate notice, to indicate whether they continue to desire reinstatment)

8329-3000 Mass application sufficient

Consolidated Dress Carriers, Inc., et al. **259 NLRB No. 083**
(unconditional offer to return to work where U representative said to E *there's men outside. They want to go back to work. Would you put them back to work* and stated later he wanted to put strikers back to work and U had authorization cards from 65 out of 66 strikers)

Consolidated Dress Carriers, Inc., et al. **259 NLRB No. 083**
(unconditional offer to return to work where U representative asked E *why don't you put workers back to work* and offer not conditioned on increased wages or other improvements in working conditions nor on reinstatement of all strikers; notwithstanding Ees' revocation of membership in U which had made offer on their behalf where revocation not conveyed to U nor had U abandoned striking Ees prior to offer)

8329-6000 No defense where employee unlawfully discharged striker

King Trucking Company **259 NLRB No. 079**
(E did not fulfill his obligation to offer reinstatement to unlawfully discharged Ee by requesting another Ee to tell dischargee that he was not fired and should return to work)

Garrett Railroad Car & Equipment, Inc. v. N.L.R.B. **683 F.2d 731 (C.A. 3, June 1982)**
(where E unlawfally discharged striker and did not show that Ee was unwilling to return to work or that he would have refused offer of reinstatement as required by *Abilities and Goodwill* 241 NLRB 27 which shifted burden of proof to wrongdoer, backpay was awarded to date of ULP discharge rather than end of strike)

8329-6200 No defense when application would have been useless

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**

8329-7500 No defense where illegally conditioned

Don Pizzolato, Inc. **249 NLRB No. 136**
(where Ee did not return application form to former E, this was not considered rejection of valid offer of reinstatement as application clearly indicated interview was needed and was conditional offer)

8338 FALSIFICATION OF JOB APPLICATION

South Nassau Communities Hospital **262 NLRB No. 146**
(discharge of Ee assertedly for falsifying employment application, not unlawful, where E met burden that discharge would have occurred even in absence of Ee's protected activities by showing discharge of 2 other Ees for same reason, which GC was unable to rebut with any evidence; and while E discriminated against other Ees for their U activity, discharge herein is not assessed in that light)

Service Garage, Inc. **256 NLRB No. 153**
(although Bd disagreed with ALJ's finding that unlawfully discharged Ee admitted lying about his age at initial hearing for fear of losing current job was sufficiently egregious to amount to abuse of Bd procedures and to warrant forfeiture of Ee's right to reinstatement and limitation of bockpay; Bd, however, held that Ee's original falsification of same critical information on employment application barred his entitlement to reinstatement and any backpay where E proved that it would not have hired Ee but for its reliance on application information whose falsity was discovered subsequent to Ee's unlawful discharge)

8347 FAILURE TO APPLY FOR JOB

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 083**
(discharge of formerly striking Ee purportedly for taking E's money for personal use, unlawful, where discharge was in retribution for Ee's striking as evidenced by E's animus toward ex-strikers and resolve to discharge them, misleading nature of termination notice implying that money was taken in clandestine manner, and fact that Ee acted with consent of immediate supervisor and had returned money w/i agreed upon time and before being confronted by E about what he had done)

8351 MISCONDUCT OF EMPLOYEE

Bedford Farmers Cooperative **259 NLRB No. 165**
(discharge of U activist violative notwithstanding it occurred shortly after E and Ee engaged in argument in front of customers as no prior warning given; several weeks earlier E unlawfully warned activist about his U activities and E's desire to get rid of U. E did not establish that discharge would have taken place even in absence of Ee's protected activities)

8351-0100 Generally

E. I. Dupont De Nemours **263 NLRB No. 015**
(discharge of U adherent for pushing supervisor in chest with hand, unlawful, since conduct was not so unreasonable in relation to E's provocative harassment as to justify discharge, where Ee neither fought with nor slapped supervisor, and *moderate, almost reflexive action* was result of campaign of unlawful intimidation and harassment by supervisor for U activities, which included forcing adherent to work harder and take fewer breaks than other Ees, and trumped up reprimands)

8351-0100—Cont.

Artley Incorporated 260 NLRB No. 107

(U steward who asserted good faith claim for premium pay under contract provision did not forfeit protection of Act when claim turned out not to be covered by contract and discharge violative)

General Telephone Company of Michigan 261 NLRB No. 099

(E's disciplining Ees for alleged misconduct during strike, violative, where E failed to detail in record activity for which each striker was accused; E's *honest belief* that misconduct had occurred required some specifity in record linking particular Ees to particular allegations of misconduct in order to satisfy E's burden of proof)

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072

(E cannot provoke an Ee to point where Ee commits an indiscretion, and then rely on this to terminate the employment of Ee)

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072

(E will not be allowed to rely on Ee's offensive conduct as basis for discharging Ee since, but for E's ULPs, conduct attributed to Ee and relied on by E for discharge, would not have occurred)

8351-0114 Condonation vitiates defense

Tra-Mar Communications, Inc. 265 NLRB No. 089

(discharge of principal U adherent, after election where U certified as bargaining representative, for having used profanity towards E, held violative, since prior to discharge of Ee no other Ee had ever been disciplined or discharged for use of profanities, use of profanity common, and E presented no evidence to indicate such conduct had not been previously condoned; E did not meet burden of showing Ee's discharge for using profanity would have occurred in absence of Ee's U activities; *Fibracan Corp.*, 259 NLRB 161 (1981) inapplicable in instant case)

Allied Eastern States Maintenance Corporation, A Wholly-Owned Subsidiary of Allied Maintenance Corporation 261 NLRB No. 167

(fact that unlawfully discharged Ee was subsequently re-hired 4 months later and after charges filed, not conclusive proof of E's unlawful motivation)

Convair Corporation 261 NLRB No. 178

(even if E honestly believed that ULP strikers were guilty of picket line misconduct, its conduct in sending mailgrams offering them reinstatement might well constitute condonation of strikers' actions)

Overhead Door Corporation (Todco Division) 261 NLRB No. 094

(where E had stated at hearing that it had reinstated striker discharged for strike misconduct to minimize backpay liability and would discharge him again after hearing if original discharge were found lawful, and ALJ declared that reinstatement constituted condonation, Bd did not rule on issue of condonation in view of its policy not to prejudge factual or legal issues)

Harowe Servo Controls, Inc. 250 NLRB No. 120

(E did not condone picket line misconduct where it consistently warned strikers about their conduct, obtained temporary injunction against strike, and discussed with U disciplining 12 strikers for their misconduct notwithstanding notice to strikers that all would be reinstated)

Transportation By La Mar, Inc. JD-279-81

(discharge of U adherent, bus driver, assertedly because he had no school bus driver's permit from state held violaive where E had retained Ee on payroll for at least 5 months after learning Ee had no permit, retained Ee on payroll after E learned Ee could not timely obtain such permit and then discharged Ee after he received his permit and had conversed with suspected U activist)

The Royal General Company JD-17-80

(discharge of U adherent unlawful since for U activities rather than for absenteeism where E had condoned his absenteeism until he actively engagd in U activities)

N.L.R.B. v. Cumberland Farms Dairy, Inc. 674 F.2d 943 (C.A. 1, Mar. 1982)

(condonation theory not applicable to E's revocation of reinstatement of discharged U activists upon discovering that they were discharged as result of fight with supervisors; to hold otherwise would seriously interfere with E's right to govern his own business)

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. 623 F.2d 1173 (C.A. 7, 1980)

(where E, after promptly imposing sanctions on Ee at time of alleged misconduct, specifically informed U that no further discipline would be imposed on Ee for his behavior that 1 day, ct held such statement demonstrates that E had condoned Ee's alleged misconduct)

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. 623 F.2d 1173 (C.A. 7, 1980)

(where following Ee's alleged strike misconduct E specifically informed Ee that she was being given 2-day suspension w/o pay and then scheduled her to return to work and carried her w/o comment on its Ee roster, ct held such actions on part of E are sufficient to show condonation for Ee's alleged strike misconduct)

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. 623 F.2d 1173 (C.A. 7, 1980)

(Bd not precluded by Section 8(g) from finding condonation for Ees' alleged strike misconduct, where Ees' actions neither involved type of massive U activity contemplated by 8(g) nor implicate concerns about endangering health of patients Congress intended to voice thereby)

8351-0128 Good-faith belief as to misconduct may be defense

Styrest Nursing Home JD-(ATL)-98-82

(direct evidence that Ee committed acts constituting alleged misconduct not necessary in order to establish E's honest belief Ee committed acts; circumstantial evidence sufficient, and absent any proof by GC that punishment could be ascribed to motives other than alleged misconduct, E's motive held not to be unlawful and discipline lawful where misconduct (dropping nails against 2 trucks and damaging 1 tire) sufficient to warrant discipline imposed)

Schreiber Manufacturing Co., Inc. 262 NLRB No. 154

Convair Corporation 261 NLRB No. 178

(E's honest belief, albeit mistaken, that strikers have engaged in misconduct during strike provides adequate defense to charge of discrimination in refusing to reinstate such Ees unless GC affirmatively proves that alleged conduct did not occur; and, although Ee may actually have engaged in misconduct, such Ee may not be denied reinstatement absent showing that misconduct was so violent or of such a serious nature as to render Ee unfit for future service)

North Cambria Fuel Company, Inc. 247 NLRB No. 176

(termination of striking Ees for serious misconduct, not unlawful, where E reasonably believed that strikers were guilty of improper conduct in view of their gathering outside E's gates in contempt of ct injunction, damage done to suppliers' trucks by rocks thrown by Ees and subsequent guilty pleas in ct to charge of disorderly conduct)

Page Airways of Michigan, Inc. JD-862-79

(no violation where E discharged Ee in good faith belief that he was guilty of serious strike misconduct justifying discharge and GC has not shown that such misconduct did not, in fact, occur)

North Cambria Fuel Company, Inc. v. N.L.R.B. 645 F.2d 177 (C.A. 3, Apr 18, 1981)

(discharging strikers who threw rocks damaging truck, not unlawful, since such conduct amounted to serious strike misconduct because it created substantial risk of bodily injury and caused property damage)

8351-0142 Mistaken belief as to misconduct no defense if conduct did not in fact occur

Niagara University 264 NLRB No. 183

(refusal to reinstate economic striker, unlawful where he was only permanently non-probationary Ee not reinstated and did not engage in conduct mistakenly attributed to him which might have removed him from protection of Act)

Convair Corporation 261 NLRB No. 178

(E's honest belief, albeit mistaken, that strikers have engaged in misconduct during strike provides adequate defense to charge of discrimination in refusing to reinstate such Ees unless GC affirmatively proves that alleged conduct did not occur; and, although Ee may actually have engaged in misconduct, such Ee may not be denied reinstatement absent showing that misconduct was so violent or of such a serious nature as to render Ee unfit for future service)

Volkswagen of America, Inc. 261 NLRB No. 606

(violation, where Ee was discharged because of his status as U committeeman, and discharge was not justified by E's mistaken belief that U committeeman had actively encouraged Ees to participate in illegal walkout where he had merely apprised them of dangerous situation developing outside the plant, thus enabling them to assess situation facing them at end of work day while he himself stayed on the job; rather than being encouraged to leave, Ees also remained on the job)

Giant Food, Inc. 282 NLRB No. 183

(Ee who urged another Ee to aid U by supporting its objections to election involved in protected activity not harrassment and discharge violative; moreover, E's belief that had Ee engaged in misconduct does not justify discharge where in fact he had not engaged in such misconduct)

Carolina Yachts 280 NLRB No. 048

(violation by discharge of U activist for urging two Ees to vote for U; dischargee was engaging in protected activity, notwithstanding E may have believed he had threatened fellow Ees with being reported to immigration services, as asserted)

Page Airways of Michigan, Inc. JD-862-79

(no violation where E discharged Ee in good faith belief that he was guilty of serious strike misconduct justifying discharge and GC has not shown that such misconduct did not, in fact, occur)

8351-0156 Waiver vitiates defense

8351-0184—Cont.

Pacemaker Yacht Company, A Division of Mission Marine, Inc. v. N.L.R.B. **663 F.2d 455 (C.A. 3, Oct. 1981)**

(no reinstatement of strikers though engaged in protected activity where bargaining agreement contained 2 no-strike clauses: (1) for arbitrable issues, and (2) for nonarbitrable issues as Ees unmistakeably waived their right to strike under agreement notwithstanding nonarbitrable issue which percipitated strike was not enumerated during negotiations as being covered by latter clause)

8351-1200 Breach of no-strike agreement

Richmond Tank Car Company **264 NLRB No. 025**

(discharging U steward alone of 40 Ees who walked out to protest inadequate protection against runaway freight cars and toxic fumes because he *induced* walkout through his *leadership position in the Union,* unlawful notwithstanding no-strike clause, since walkout in good faith because of abnormally dangerous working conditions by express terms of Sec. 502 does not constitute a strike and discipline for violating no-strike clause violated 8(a)(3) where imposed on a leader because of his U status as steward)

Consolidation Coal Company **263 NLRB No. 188**

(discharging U officers because they participated in unauthorized work stoppage with other rank-and-file Ees based on their status as U officers, violative)

Volkswagen of America, Inc. **261 NLRB No. 036**

(violation, where Ee was discharged because of his status as U committeeman, and discharge was not justified by E's mistaken belief that U committeeman had actively encouraged Ees to participate in illegal walkout where he had merely apprised them of dangerous situation developing outside the plant, thus enabling them to assess situation facing them at end of work day while he himself stayed on the job; rather than being encouraged to leave, Ees also remained on the job)

South Central Bell Telephone Company **254 NLRB No. 032**

(imposing longer suspensions on U stewards, who participated in sickout in violation of no-strike clause, than on other Ees who also participated held violative, since there was no evidence to indicate that U stewards engaged in activities different from those engaged in by other Ees such as urging support of or seeking to induce Ees to participate in work stoppage)

Sav-On Drugs, Inc. **253 NLRB No. 045**

(strike protesting unlawful discharges held not in contravention of no-strike agreement which was limited to matters subject to resolution by grievance procedures, since dischargees were not covered by contract and grievance procedures therefore applied neither to the discharges nor the strike itself)

Bethlehem Steel Corporation **252 NLRB No. 138**

(where Ees participated in work stoppage in violation of no-strike provision of contract and E disciplined U official with 10 day suspension and all others with 5 day suspension it violated Act as his punishment based on his position in U)

Hammermill Paper Company **252 NLRB No. 172**

(discharge of Ee for participation in unprotected work stoppage solely because of his position as U steward, violative)

Metropolitan Edison Company **252 NLRB No. 147**

(disciplining U officers more severely than other Ees for participating in sympathy strike in violation of no-strike clause, violative)

Guy F. Atkinson Company and Wright-Schuchart-Harbor, A Joint Venture **251 NLRB No. 043**

(discharge and refusal to reemploy U steward for causing walkout in violation of no-strike clause, not unlawful)

C. H. Heist Corporation **250 NLRB No. 185**

(discharge of only U steward out of 25 Ees who engaged in work stoppage in violation of *no-strike* clause, unlawful, since discharge based on his being U official and not for his role in strike where steward was reluctant participant, not leader, in strike, counseled against strike and urged Ees to return to work though he did transmit messages to strikers from U)

Illinois Bell Telephone Company **JD-178-82**

(suspension assessed against Ees who had engaged in work stoppage in response to disciplinary suspension of fellow Ee, not violative where strike was in violation of no-strike clause and was not initiated nor authorized by contracting U; strike was unprotected activity for which E was entitled to institute discipline of participating Ees)

Anderson Sand & Gravel Company **JD-658-80**

(discharge of strikers, unlawful, since work stoppage protected ULP strike; E's contention unprotected since in contravention of no-strike agreement, rejected, where asserted no-strike agreement was in contract which expired by its own terms)

Metropolitan Edison Company v. N.L.R.B. **663 F.2d 478 (C.A. 3, Nov. 1981)**

(ct enforced Bd order where E disciplined U officers more harshly than other Ees who participated in illegal work stoppage since (1) agreement did not expressly impose duty on U officers to attempt to halt illegal work stoppage, and (2) ct is not bound by two previous arbitral interpretations of no-strike clause placing greater responcibilities on U officials to take affirmative steps to end illegal work stoppage; furthermore, substantial evidence supports Bd finding that U officers were not leaders of strike)

Pacemaker Yacht Company, A Division of Mission Marine, Inc. v. N.L.R.B. **663 F.2d 455 (C.A. 3, Oct. 1981)**

(no reinstatement of strikers though engaged in protected activity where bargaining agreement contained 2 no-strike clauses: (1) for arbitrable issues, and (2) for nonarbitrable issues as Ees unmistakeably waived their right to strike under agreement notwithstanding nonarbitrable issue which percipitated strike was not enumerated during negotiations as being covered by latter clause)

Hammermill Paper Company v. N.L.R.B. **658 F.2d 155 (C.A. 3, 1981)**

(E's discharging U steward with clean work record for participation in refusal to perform assigned task rather than merely suspending him as it did other Ees involved who also had clean work records, unlawful since E may not single out for harsher punishment U officials who merely participate in illegal strike where bargaining agreement did not impose explicit duty on U officers and stewards to end any illegal work stoppage, and further, Ee was not serving as steward at time of work stoppage)

Gould Incorporated v. N.L.R.B. **612 F.2d 728 (C.A. 3)**

(E's singling out U steward for discharge for participation in work stoppage in violation of no strike clause and in contravention of his obligation as U officer to take steps to terminate work stoppage, not unlawful, since E entitled to take into consideration U official's greater responsibility, and hence greater fault, where basis for discharge was duty imposed by his office and not office as such; fact contract provision regarding obligation of U officers did not provide for discharge did not render discharge unlawful)

N.L.R.B. v. South Central Bell Telephone Company **688 F.2d 345 (C.A. 5, Oct. 1982)**

(suspension of U stewards for mere participation in strike and/or for not taking affirmative steps to end strike in violation of no-strike agreement for longer period than supensions of other participants in strike, unlawful, absent affirmative contractual waiver of U officers' rights and/or breach of contractually imposed affirmative duties)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. **659 F.2d 830 (C.A. 7, Sept. 1981)**

(where safety issue is one that must be submitted to binding arbitration, obligation not to strike over matter is considered to be coterminus and any stoppage violates implied no-strike clause unless safety hazzard suddenly arose and presented immediate threat; i.e., *Washington Aluminum* situation)

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(2 requisites required for finding no-strike obligation; (1) contract imposes upon both parties duties of submitting to final and binding arbitration; and (2) matter is one which it has been agreed to will be covered by compulsory terminal arbitration)

Caterpillar Tractor Co. v. N.L.R.B. **638 F.2d 140 (C.A. 7, Sept. 1980)**

(discharge of Ees who participated in strike not unlawful since strike unprotected, notwithstanding contention strike ULP strike and no waiver, where contract provided there would be no strikes until grievance procedure exhausted and grievance on underlying dispute was pending; nor was E's unlawful unilateral changes regarding transfers *serious* labor dispute w/i *Master Plastics* so as to preclude waiver of right to strike regarding ULP)

John H. Fournelle v. N.L.R.B. **670 F.2d 331 (C.A.D.C., Feb. 1982)**

(no violation by suspending U committeeman along with other Ees for breach of no-strike agreement, since, notwithstanding committeeman left premises to go to dentist, before doing so he joined strikers at U hall and gave TV interview in support of strike, thus violating contractual clause which precluded encouragng and sanctioning strike; ct rejected contentions that ALJ did not base finding on above-mentioned clause and that justifying suspension on basis of said clause constituted impermissible waiver of Sec. 7 rights)

8351-1900 Breach of company rules

East Texas Motor Freight **262 NLRB No. 101**

(discharge not violative where, notwithstanding GC made *prima facie* showing that E had unlawful motive for discharging Ee, E proved Ee would have been discharged because of long history of Ee's problems of discussions with other Ees while Ee was working, even in absence of Ee's protected activity; Ee was issued numerous lawful warnings concerning violation of E's lawful policy on solicitation in work areas on E's time)

8351-1500—Cont.

East Texas Motor Freight **262 NLRB No. 101**
(warning letters and counselling various Ees for actions contrary to E's work rules and policies not violative where other Ees were warned and counselled for same offenses which were work related, were not discriminatory and did not involve Ees' protected activity)

Lacks Industries, Inc. **JD-346-82**
(discharge of Ee for violating rule prohibiting removal of company property w/o authorization, not unlawful, where prior to U campaign at least one other Ee was discharged for violating rule, E fully investigated incident involving Ee prior to his termination, and Ee was aware of Ee's prior U affiliation when he was hired)

United States Postal Service **JD-(SF)-273-79**
(supervisor's attempt to enforce lawful rule proscribing Ees talking *U business on company time*, w/o permission of supervisor held not violative, since attempt did not unlawfully interfere with Ees' protected rights notwithstanding U steward was talking to Ee about grievance)

Charge Card Association v. N.L.R.B. **653 F.2d 272 (C.A. 6, July 1981)**
(GC did not make out prima facie case that E unlawfully suspended Ees for walkout protesting working conditions since Ees called E and falsely stated they were sick. In view of high absenteeism that day, E had right to demand Ees support their assertion of illness even if E suspected Ees were protesting working conditions. Had Ees said they were going to be absent in protest of working conditions, different result would obtain)

N.L.R.B. v. Westinghouse Electric Corporation **412 F.2d 1072 (C.A. 8)**
(ct upheld Bd's determination that Ee was unlawfully discharged specifically for passing out authorization cards and not because Ee breached company's no-solicitation rule; furthermore, instances of solicitation for non-U purposes proscribed by rule were tolerated at plant)

8351-1580 Not real reason

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(discharge, soon after U election, of known U advocate whom supervisors considered to be admirable Ee, assertedly for violating plant rule against *knowingly altering, or falsifying time cards and reports, as well as payroll records* violative where E had displayed considerable animus towards Ee it considered to be *U kingpin;* E never previously discharged any Ee for similar violation except two Ees found guilty of embezzlement and forgery respectively)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(discharging leading U in-house organizer shortly before Bd-conducted election, assertedly because he violated no-solicitation rule, violative, since E did not have valid no-solicitation rule, but conjured up a no-solicitation rule for purpose of terminating U organizer)

Plaza Bay Enterprises, Inc. **JD-(SF)-273-82**
(discharge of Ee assertedly for punching out another Ee's timecard unlawful, where immediately upon being advised that Ee had attended U meeting the day before and also that she was *instigator of the U,* E directed her discharge, and to legitimaze such discharge directed discharge of the Ee whose timecard was punched out)

8351-3100 Illegal strike or interference with operations

Charge Card Association v. N.L.R.B. **653 F.2d 272 (C.A. 6, July 1981)**
(GC did not make out prima facie case that E unlawfully suspended Ees for walkout protesting working conditions since Ees called E and falsely stated they were sick. In view of high absenteeism that day, E had right to demand Ees support their assertion of illness even if E suspected Ees were protesting working conditions. Had Ees said they were going to be absent in protest of working conditions, different result would obtain)

N.L.R.B. v. Armour-Dial, Inc. **638 F.2d 51 (C.A. 8, 1981)**
(suspension of 3 members of U executive committee who refused to unload truck of company which U had requested E to c/d/b not violative as their actions violated Section 8(b)(4) and their contract; committee members were disciplined not because of their illegal activities)

8351-3700 Obtaining information from employer's private files

Texas Instruments Inc. v. N.L.R.B. **637 F.2d 822 (C.A. 1, 1981)**
(discharge of U adherents for violation of E's valid security rule not violative where: Ees published E's confidential wage survey report which Ees had obtained outside of normal course of employment (each page of report was stamped strictly private), Ee manual set forth E's rule against disclosure of confidential information; moreover, Ees' organizing activity not dependent on access to confidential information)

8351-4300 Intermittent, recurrent, or partial strike

Lake Development Management Co. **259 NLRB No. 089**
(discharging Ees for refusing to accept overtime assignments in form of beeper duty, not violative where beeper duty was mandatory in past, on day of Ees' refusal E fully apprised Ees that it was mandatory and, furthermore, there was no allegation or evidence that imposition of beeper duty was for discriminatory reasons, it was not shown that Ees were selected for beeper duty on discriminatory basis, and that Ees intended their refusal to accept beeper duty to be on continuing basis)

Excavation-Construction, Inc. v. N.L.R.B. **640 F.2d 1015 (C.A. 4, Oct. 1981)**
(discharging Ees for concertedly refusing to work specific job on Saturday because it did not pay time and half held not violative where Ees knew that E would pay only straight time and rule that Saturday work was voluntary but if Ee signed up for that day must work on any job assigned by E and penalty for not working was discharge. Claim that Ees were engaged in 1 day strike rejected, since Ees only refused to work that specific job that day and not other jobs which was equivalent to Ees seeking to work under terms prescribed by them which is not protected activity)

8351-4900 Refusal to perform assigned duties

The Rosicrucian Press, Ltd. **264 NLRB No. 170**
(discharge of Ee unlawful, where for repeatedly complaining to U about working with another Ee in another department several hours a week who had serious body odor problem, rather than for insubordination for refusing to work with other Ee; Ee's statement in informal grievance meeting that she would not work with other Ee not insubordination since such posturing not unusual in grievance meetings, Ee never actually refused assignment, and Ee had right to pursue grievance; further, E admitted Ee's work satisfactory)

Excavation-Construction, Inc. v. N.L.R.B. **640 F.2d 1015 (C.A. 4, Oct. 1981)**
(discharging Ees for concertedly refusing to work specific job on Saturday because it did not pay time and half held not violative where Ees knew that E would pay only straight time and rule that Saturday work was voluntary but if Ee signed up for that day must work on any job assigned by E and penalty for not working was discharge. Claim that Ees were engaged in 1 day strike rejected, since Ees only refused to work that specific job that day and not other jobs which was equivalent to Ees seeking to work under terms prescribed by them which is not protected activity)

N.L.R.B. v. Armour-Dial, Inc. **638 F.2d 51 (C.A. 8, 1981)**
(suspension of 3 members of U executive committee who refused to unload truck of company which U had requested E to c/d/b not violative as their actions violated Section 8(b)(4) and their contract; committee members were disciplined not because of their illegal activities)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(discharge of 13 of 16 unit Ees for leaving work during working hours, contrary to express orders from E, to attend *en masse* R hearing, not unlawful, notwithstanding Ees agreed to makeup time lost since E had volunteered to permit one Ee to attend hearing in representative capacity and permitting essentially entire production force to defy E's instructions would disrupt E's productive ability; E's rights in instant case were paramount to Ees' rights; discrimination not in issue)

8351-5800 Strike in violation of 8(g) notice requirements

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(striking Ees were not required to comply with 10-day notice requirement of Sec. 8(g) since strike was already in progress on effective date of health care amendments and absent proof of specific individual misconduct E may not deprive a protected Ee of any rights under Act)

8351-6200 Strike misconduct

Atlas Metal Parts Co., Inc. **252 NLRB No. 69**
(picket line activity is generally protected, and the duty of going forward with evidence of conduct which would remove mantle of statutory protection is upon Respondent if, upon such alleged misconduct, it bases its post-strike employment decisions)

North Cambria Fuel Company, Inc. v. N.L.R.B. **645 F.2d 177 (C.A. 3, Apr 10, 1981)**
(discharging striking Ee for alleged involvement in rock-throwing incident which damaged truck, violative, where Bd found that Ee had left scene prior to incident)

North Cambria Fuel Company, Inc. v. N.L.R.B. **645 F.2d 177 (C.A. 3, Apr 10, 1981)**
(discharging strikers who threw rocks damaging truck, not unlawful, since such conduct amounted to serious strike misconduct because it created substantial risk of bodily injury and caused property damage)

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(striking Ees were not required to comply with 10-day notice requirement of Sec. 8(g) since strike was already in progress on effective date of health care amendments and absent proof of specific individual misconduct E may not deprive a protected Ee of any rights under Act)

8351-6201 Generally

8351-6201—Cont.

Syrest Nursing Home JD-(ATL)-95-82

(direct evidence that Ee committed acts constituting alleged misconduct not necessary in order to establish E's honest belief Ee committed acts; circumstantial evidence sufficient, and absent any proof by GC that punishment could be ascribed to motives other than alleged misconduct, E's motive held not to be unlawful and discipline lawful where misconduct (dropping nails against 2 trucks and damaging 1 tire) sufficient to warrant discipline imposed)

Conair Corporation 261 NLRB No. 178

(E's honest belief, albeit mistaken, that strikers have engaged in misconduct during strike provides adequate defense to charge of discrimination in refusing to reinstate such Ees unless GC affirmatively proves that alleged conduct did not occur; and, although Ee may actually have engaged in misconduct, such Ee may not be denied reinstatement absent showing that misconduct was so violent or of such a serious nature as to render Ee unfit for future service)

Pace Oldsmobile, Inc. 256 NLRB No. 111

(denial of reinstatement to ULP strikers for alleged misconduct, unlawful where E failed to carry burden on this issue)

8351-6233 Not real reason

Garrett Railroad Car & Equipment, Inc. 258 NLRB No. 087

(discharging striker because he threw rock, violative, where nonstrikers were also involved in rock throwing and not discharged)

Jacques Syl Knitwear, Inc. 247 NLRB No. 191

(discharge of and refusal to reinstate strikers for allegedly violently assaulting fellow Ee during strike, not lawful, where Ee alleged to have been assaulted had swung her pocketbook at strikers and in fact assault as alleged had not taken place; notwithstanding dischargees found guilty of alleged assault in municipal ct)

N.L.R.B. v. Iowa Beef Processors, Inc. 675 F.2d 1004 (C.A. 8, Apr. 1982)

(Ees who merely attended demonstrations during strike at which violent and destructive acts occurred type which had been found violative of Section 8(b)(1)(A) by Bd and against repetition of which ct had issued inj did not participate in misconduct warranting their discharge; E's contention discharge justified by Ees participation in crowd activity designed to block access to E's plant in violation of inj, rejected, since scope of Act's protection not defined by scope of inj)

8351-6290 Insufficient to justify discharge or other discipline

Hotel Holiday Inn De Isla Verde 265 NLRB No. 192

(discharge of economic striker for alleged misconduct on picket line involving offensive language, not violative since Bd has consistently held that use of such language on picket line by economic strikers is not sufficient justification for discharge)

Hotel Holiday Inn De Isla Verde 265 NLRB No. 192

(discharge of economic striker, violative notwithstanding striker had in his possession ice pick at time of arrest away from picket line)

Syrest Nursing Home JD-(ATL)-95-82

(warning striker based on his alleged placing nail on ground, unlawful, since insufficient evidence to establish E's good faith belief in striker's misconduct where E failed to produce or explain its failure to produce either nail which it alleged striker had placed on ground or guard who allegedly found nail)

Syrest Nursing Home JD-(ATL)-95-82

(suspension of striker for damaging winter front and bug screen of truck, unlawful, since E had honest belief that striker was responsible for damage, notwithstanding striker's statement that he only unsnapped two snaps on canvas winter front which held it to bug screen, in view of photograph of truck showing extensive damage, there was no reason to believe E was responsible for aggravation of damage between time striker admittedly touched it and when photograph taken and GC failed to prove striker's innocence)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(strike misconduct of strikers held insufficient to bar their reinstatement notwithstanding contention E should not be required to reinstate strikers since they had been convicted of misdemeanors and engaged in at least one of the following: implied or stated threats of physical contact with nonstriker, actual physical contact with nonstriker, caused or attempted to cause property damage, or has directly interfered with police officers attempting to maintain public order)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(striker deliberately walking into Ee who was trying to cross picket line insufficient misconduct to justify his suspension and subsequent termination, absent evidence non-striking Ee was injured or prevented from proceeding toward his destination, or bumping of Ee was accompanied by threats to remain away from E's premises, notwithstanding striker was arrested, police found marijuana on his person and striker cursed police)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(striker informing non-striking Ee *smile so I can take that shit off your teeth* insufficient this conduct to justify striker's termination, since no physical abuse nor was non-striking Ee progress impeded)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(striker cursing non-striking Ee and yelling in non-striking Ee's ear insufficient misconduct to justify striker's suspension and subsequent termination absent proof of damage to non-striking Ee's ear)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(striker calling non-striking Ee *scab* and brushing him with elbow, insufficient misconduct to justify termination of striker)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(striker shouldering w/o words worker crossing picket line insufficient misconduct to justify termination of striker, where no injury nor was non-striker diverted from intended path)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(striker threatening to beat up Ee crossing picket line when Ee left that night insufficient misconduct to justify suspension and later discharge of striker, absent evidence striker had commited any violence on non-striking Ees but merely issued threat of deferred physical harm conditioned on finding victim later)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(picketing with sheathed hunting knife on his belt, part of time exposed and part of time covered by jacket but at no time calling attention to knife, held insufficient evidence of misconduct to justify his termination)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(striker throwing 1 tack among quantity of tacks into street in front of entrance to plant and being arrested for violation of state right to worklaw, insufficient misconduct to justify strikers termination where tack caused no damage)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(striker bumping non-striking Ee leaving work insufficient misconduct to justify suspension and later discharge of striker absent evidence non-striking Ee injured)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(striker calling non-striking Ee *scab* and informing him his *shit faced wife was scab too*, and obstructing entrance of vehicle, insufficient misconduct to justify discharge of striker, notwithstanding striker convicted of breach of peace)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(striker blocking passage of non-striking Ee and informing him *you ain't shit* and resisting arrest, insufficient misconduct to justify discharge of striker since non-striker was not detered from proceeding, language was not accompanied by any threat of physical injury, and resisting arrest occured away from picket line, and did not involve non-strikers; scuffle with police in isolation or together with verbal abuse of non-striker did not warrant termination)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(striker blocking ingress and egress of non-strikers at gate of plant insufficient misconduct to justify suspension and subsequent discharge of striker where E based discharge on memo which failed to disclose how long striker had blocked entrance (it was approximately 5 minutes duration) since Bd has recognized that pickets who interfere with ingress or egress of nonstrikers for few minutes do not by such conduct alone, remove themselves from Act's protection)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(striker pushing over motorcycle which caused two other motorcycles to topple over insufficient misconduct to justify suspension and later discharge of striker since single isolated incident w/o resulting damage)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(striker throwing roofing nails on road entering E's premises through gate sufficient misconduct to justify discharge of striker; however discharge could not be based on presence of switchblade knife in striker's pocket which was discovered upon his arrest since striker did not brandish or display knife)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(discharge of striker who blocked egress of vehicle from plant through several light changes depriving driver of two opportunities to make left turn and consequently was arrested and convicted for violation os state right to work law, unlawful, since memo on which decision to discharge based did not provide basis for honest belief striker had engaged in sufficiently serious misconduct to justify discharge where memo gave no details of conduct on which charge and conviction based)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104

(striker calling non-striking Ee scab, threatening Ee if he didn't join strike, waving fist, and spitting at automobile of non-striking Ee not sufficient misconduct to justify discharge of striker)

8351-6250—Cont.

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104
(where E only has report of conviction w/o facts supporting that conviction so that E can determine whether striker's misconduct was trivial or so serious as to impair his value as Ee, E can not deprive striker of reinstatement)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104
(striker shouting over loudspeaker from across street from picketing that he was playing music for pickets, not scabs, calling police in strike area *fucking pigs*, and resisting arrest, insufficient misconduct to justify suspension and subsequent discharge of striker, since use of obscene language not accompanied by threats of force or violence, talk did not incite pickets; nor did brief scuffle with police either by itself or in combination with his use of loudspeaker justify striker's discharge)

Newport News Shipbuilding & Dry Dock Company 265 NLRB N . 104
(striker blocking progress of 2 vehicles attempting to leave E's premises and beating on window of vehicle yelling *scab*, and scuffling with police at site of picketing, insufficient misconduct to justify suspension and subsequent discharge of striker, since no threats of violence, nor injury caused, nor damage to vehicles and scuffles with police were of brief duration)

Newport News Shipbuilding & Dry Dock Company 265 NLRB No. 104
(striker blocking entrance of non-striking Ee into work and calling non-striking Ee obscene name insufficient misconduct to justify suspension and subsequent discharge of striker since single isolated incident and striker did not threaten non-striker with harm)

Authur Briggs, Inc. 265 NLRB No. 038
(striker temporarily blocking passage into plant by E's owner who was attempting to assist Ee in crossing picket line by striker spreading his jacket and forcing supervisor to reach around him, raising arm, and verbal confrontation with owner, not sufficient misconduct to justify refusal to reinstate, particularly in view of E's condonation when he subsequently offered to allow striker to return to work if he would get rid of U)

Catalytic, Inc. 264 NLRB No. 154
(refusal to reinstate economic striker for strike-related behavior violative although striking Ee made profane, vulgar phone call to wife of non-striking Ee, this single, brief, anonymous phone call contained no threats and does not rise to level of misconduct so violent or serious as to render him unfit for futher service)

Catalytic, Inc. 264 NLRB No. 154
(refusal to reinstate economic striker who allegedly threw rocks at non-strikers cars violative where striker, in fact, did not throw any objects at nonstrikers and only raised his hand in protest, conduct not serious enough to warrant discharge)

Schreiber Manufacturing Co., Inc. 262 NLRB No. 154
(discharging economic strikers for throwing missiles in direction of office entrance on final day of strike, violative where no showing of what object was thrown, at what and how hard it was thrown, lack of physical damage, and recovery of only one items, i.e., ball bearing from area which was not attributable to Ee did not amount to strike misconduct of a *serious* nature)

Overhead Door Corporation (Todco Division) 261 NLRB No. 094
(discharge for alleged strike misconduct, unlawful where Ee's only misconduct was to be nearby holding picket sign when nonstriker's truck was damaged by others)

AMPAC, a subsidiary of Kane-Miller Corp. 259 NLRB No. 151
(discharge of striker who merely disconnected air hose (which only took few seconds to reconnect)from tractor to trailer on truck entering E's plant held violative, since incident not significant enough to justify discharge)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(strikers, in drunken state and in presence of non-striker's wife and daughter, said non-striking Ee was *screwing them out of their—damn money* and that they would *take care* of non-striking Ee if he returned to work; action of strikers was isolated incident of verbal abuse; remarks were ambiguous and unaccompanied by violence or physical gestures)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(discharge of strikers for calling industrial relations manager *f— bitch* when she crossed picket line and on other occasions, not violative, since conduct, although insulting and abusive was not accompanied by violence and was not sufficiently egregious to warrant discipline)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(strikers' stopping only 2 trucks, while on picket line, out of 125 vehicles entering and leaving E's plant daily, held insufficient to prove *blocking* of access to plant or to establish *mass* picketing)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(picketing with motorcycle chain in hand and no evidence of threat to anyone but E's security dogs)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(planned, but unexecuted slowdown)

Chevron U.S.A., Inc. 256 NLRB No. 100
(suspension of striker who jumped on hood of car leaving E's premises which was driven by one of E's gate guards and refused to alite from hood until car was involved in rear-end collision not justified by alleged misconduct absent evidence vision of driver was imparied for any great distance and since isolated incident with no resulting bodily injury or property damage)

Iowa Beef Processors, Inc. 255 NLRB No. 177
(discharge of striker violative where E claimed Ee unfit for further service due to his involvement in alteration at another job he had during strike, but where no physical injuries occurred; no criminal charges filed and long delay existed between incident which allegedly caused discharge and discharge itself; moreover, discharge occurred on same day as other unlawful discharges)

Limestone Apparel Corp. 255 NLRB No. 101
(failure to reinstate ULP strikers who made unconditional offer to return to work and whose actions during strike were demonstrations of animal exuberance (lying down is front of truck or standing in front of truck) violative, since there was no violence, damage to persons or property, or actual or implied threats of harm in Ees' strike behavior)

Garrett Railroad Car & Equipment, Inc. 255 NLRB No. 087
(discharge of striker who allegedly drove his motorcycle around vehicles driven by management personnel so as to impede and interfere with safe use of highway violative, where evidence was infufficient to establish that striker's conduct endangered safety of vehicles' occupants since he did not attempt to drive vehicles off road, albeit he verbally insulted and abused the drivers; verbal abuse and offensive language did not turn striker's driving tactics into hazardous conduct)

Arcadia Foods, Inc. 254 NLRB No. 128
(refusal to reinstate ULP striker who had served prison term for manslaughter and who allegedly had threatened nonstriking Ee, violative, where nonstriker did not work in vicinity of striker; E knew that apology had been effected between striker and nonstriker and there was no apparent reason for residuary bad blood between them; misconduct of striker not so violent or serious as to render him unfit for employment)

Midwest Solvents, Inc. 251 NLRB No. 171
(refusal to reinstate three economic strikers allegedly for egregious strike misconduct violative, where first striker's isolated threat to customer making deliveries to *blow up, or burn up* his combine w/o attempt to interfere with deliveries held type of minor misconduct Congress contemplated in providing right to strike; second striker's isolated mild intimidation of strike breaker to *watch* himself, that *some of the boys might get rowdy* held impulsive trivial misdeed; and third striker's parking his car in authorized parking place where it inconvenienced customer did not warrant job loss)

Furr's Cafeterias, Inc. 251 NLRB No. 125
(refusal to reinstate ULP strikers, violative, where their alleged misconduct of making statements critical of E's sanitary conditions at food preparation facilities and of temporarily blocking path of customers were so infrequent and isolated as to not lose protection of Act)

Flatiron Paving Company d/b/a Flatiron Materials Company 250 NLRB No. [illegible]
(although Ee may actually have engaged in misconduct he or she may not be denied reinstatement absent showing that misconduct was so violent or of such serious nature as to render Ee unfit for future service)

Flatiron Paving Company d/b/a Flatiron Materials Company 250 NLRB No. [illegible]
(mere verbal abuse, unaccompanied by any physical actions or gestures that add meaning to words, does not arise to level justifying disqualification from reinstatement)

Owens Joint Corporation 248 NLRB No. 076
(returning striker's action of jumping and lying flat out on automobile hood of non-striking Ee when the latter was attempting to cross picket line, not sufficiently serious to justify denial of reinstatement)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock 248 NLRB No. 075
(involvement in exchange of words and threats with nonstriker not bar to reinstatement and backpay where nonstrikers were agressors and strikers act was in self defense, further, incident too minor to bar reinstatement or backpay where no blows struck, and no damage to property or person)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock 248 NLRB No. 075
(striker following car of non-striker insufficient to bar reinstatement and backpay where no threats made nor was there any attempt to run striker off road and non-striker not followed home)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock 248 NLRB No. 075
(striking auto of non-striking Ee with picket sign impulsive trivial incident which did not bar reinstatement)

§351-6250—Cont.

Matlock Truck Body & Trailer Corp., and Its Agent Ray L. Matlock **248 NLRB No. 075**
(ULP striker spitting at foreman and using profane language towards superintendent not sufficient misconduct to bar reinstatement, particulary since ULP striker)

Matlock Truck Body & Trailer Corp., and Its Agent Ray L. Matlock **248 NLRB No. 075**
(ULP striker striking side of non-striking Ee's car as non-striking Ee passing through gate of E's plant)

Sahara Tahoe Corporation d/b/a Sahara Tahoe Hotel **JD-(SF)-269-82**
(discharge of and refusal to reinstate striker, unlawful since his possession of concealed billy club on picket line was not misconduct so violent or serious as to justify refusal to reinstate him where there was no evidence of agressive conduct against nonstrikers, public or peace officer; as sole early morning picket he probably carried it as defensive weapon, as he testified, and there was no evidence that he knew he should not have it; he did not resist confiscation of club or arrest and would not have been arrested but for his refusal to tell the sheriff his age)

Sahara Tahoe Corporation d/b/a Sahara Tahoe Hotel **JD-(SF)-269-82**
(striker's alleged threat of physical harm to non-striking Ee held not sufficiently serious to justify E's failure to reinstate striker, where evidence failed to show that striker made any gesture or other move which would lead one to think he was going to carry out threat)

Page Airways of Michigan, Inc. **JD-862-79**
(no violation where E discharged Ee in good faith belief that he was guilty of serious strike misconduct justifying discharge and GC has not shown that such misconduct did not, in fact, occur)

N.L.R.B. v. E-Systems, Inc., ECI Division **642 NLRD No. 118 (C.A. 5, Apr 4, 1981)**
(where striking Ee accidently scratched car of nonstriking Ee, E's refusal to reinstate violative as E lacked good cause for denying reinstatement)

Star Meat Company v. N.L.R.B. **640 F.2d 13 (C.A. 6, 1980)**
(E's failure to reinstate economic striker who had grabbed replacement Ee and pushed him backward to prevent him from going to work, unlawful where his actions were limited in time and did not produce violent retaliation by other Ees, and he had limited language ability and stated that he was ignorant of Act's provisions not allowing him to physically restrain nonstriking Ees)

N.L.R.B. v. Iowa Beef Processors, Inc. **675 F.2d 1004 (C.A. 8, Apr. 1982)**
(Ees who merely attended demonstrations during strike at which violent and destructive acts occurred type which had been found violative of Section 8(b)(1)(A) by Bd and against repetition of which ct had issued inj did not participate in misconduct warranting their discharge; E's contention discharge justified by Ees participation in crowd activity designed to block access to E's plant in violation of inj, rejected, since scope of Act's protection not defined by scope of inj)

§351-6253 Sufficient to justify discharge or other discipline

Hotel Holiday Inn De Isla Verde **265 NLRB No. 192**
(discharge of economic striker for throwing rocks, not violative)

Styrest Nursing Home **JD-(ATL)-95-82**
(E warning striker because of its good faith belief that striker had repeatedly flashed his vehicle lights from high beam to low beam while following E's truck, lawful, in view of danger caused by actions)

Styrest Nursing Home **JD-(ATL)-95-82**
(striker opening drain on trailer carrying oil leaving only dust cap as protection which might cause hot oil to spill on remover of dust cover sufficient misconduct to justify suspension of striker)

Newport News Shipbuilding & Dry Dock Company **265 NLRB No. 104**
(striker pulling up to truck of non-striking Ee and displaying firearm sufficiently serious misconduct to justify termination of striker)

Newport News Shipbuilding & Dry Dock Company **265 NLRB No. 104**
(striker threatening to sleep with wife of non-striking Ee insufficient misconduct to justify discharge to justify discharge of striker, absent evidence striker made any effort to carry out threat)

Newport News Shipbuilding & Dry Dock Company **265 NLRB No. 104**
(throwing bobjacks on roadway in front of plant which were major source of damage to tires on cars driven by nonstriking Ees held serious misconduct sufficient to justify termination)

Newport News Shipbuilding & Dry Dock Company **265 NLRB No. 104**
(striker throwing roofing nails on road entering E's premises through gate sufficient misconduct to justify discharge of striker; however discharge could not be based on presence of switchblade knife in striker's pocket which was discovered upon his arrest since striker did not brandish or display knife)

Newport News Shipbuilding & Dry Dock Company **265 NLRB No. 104**
(striker deliberately inflicting damage on automobiles of two non-striking Ees sufficient misconduct to justify striker's discharge notwithstanding striker made restitution to owners of cars)

Author Briggs, Inc. **265 NLRB No. 038**
(striker jamming locks of E's plant so that E's owner was unable to enter and services of locksmith were required, held misconduct that justified refusal to reinstate)

Overhead Door Corporation (Todco Division) **261 NLRB No. 094**
(discharge assertedly for strike misconduct, lawful where, contrary to complaint allegations, misconduct was found to have occurred; ALJ's reliance on delay in discharge to find discharge unlawful, unwarranted; complaint alleged nonoccurrence of misconduct rather than delay in discharge, neither party addressed delay issue, and record was silent as to reason for delay)

AMPAC, a subsidiary of Kane-Miller Corp. **259 NLRB No. 151**
(hitting non-striking Ee outside plant)

AMPAC, a subsidiary of Kane-Miller Corp. **259 NLRB No. 151**
(punching passenger in car and trying to pull him out amounts to serious strike misconduct)

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(throwing rock at, and hitting, supervisor's car as he was leaving E's plant grounds for discharge)

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(striker's clenching his fist and pointing gun at plant manager)

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(threatening statements made to *other* Ees rather than to supervisors themselves not grounds for discharge)

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(insulting and abusive remarks about supervisor made to other Ees but w/i hearing of supervisor)

IPCO Hospital Supply Corporation, Cheshire Labs Division **255 NLRB No. 116**
(strikers who showed up at ball game held away from plant during nonwork time, carried on in obscene manner and on having ball park after being told to do so threw nails on roadway, not entitled to reinstatement because of strike misconduct)

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(refusal of E to reinstate discharged U steward because of his total course of serious strike misconduct after U terminated its strike and offered unconditionally to return strikers to work including 5 other discharged strikers, not unlawful notwithstanding contention that he was singled out from among other Ees who also engaged in strike misconduct because of his U activities, where he committed far more frequent acts of misconduct and far more serious acts of misconduct than did other strikers)

General Telephone Company of Michigan **251 NLRB No. 099**
(E's suspension of Ee for striking security guard and trespassing on company property during course of strike held not violative where GC failed to establish either that conduct did not occur or that alleged conduct was protected activity)

Sahara Tahoe Corporation d/b/a Sahara Tahoe Hotel **JD-(SF)-269-82**
(picketing striker's vile, profane and obscene remarks directed at vacationers and guests at E's hotel, effort to picke a fight with some of them and unprovoked physical assault on others found sufficiently serious to justify denial of reinstatement to striker)

Temp Tech Industries, Inc. **JD-288-82**
(discharge of striker not violative, where there was no showing that motivation was anything other than striker's flagrant and egregious picket line misconduct)

Glyden's, Inc. **JD-(SF)-142-81**
(failure to reinstate wrongfully discharged Ee who captained strike during which rocks and bottles were hurled into E's parking lot, E's operations manager was spat upon and obscenities yelled at him, and strike captain was arrested and booked by police, not violative since Ee was involved in sufficiently serious misconduct warranting denial of his reinstatement)

Presbyterian-University Hospital **JD-123-81**
(discharge of and refusal to reinstate striker justified by his breaking windshield and wiper blades of delivery truck, blocking egress of supply truck, and threatening nonstriking Ees with physical violence)

Triple A Machine Shop, Inc. **JD-(SF)-220-80**
(discharge of 3 striking Ees not violative where they engaged in life threatening picket line violence; fact that other nonstrikers engaged in some violence and were not discharged is not inconsistent where their behavior did not reach same level of violence)

Quaker Rubber Company, Division of Minnesota Rubber Company **JD-607-80**
(Ees' acts of violence and specific threats of bodily harm during economic strike justified their discharges)

8351-6255—Cont.

Horner-Waldorf Corporation, A Division of Champion International Corporation JD-(SF)-106-80
(discharge of six Ees, not unlawful, where all six Ees engaged in picket line misconduct)

Vass Steel Corporation JD-216-80
(E delaying reinstatement of economic striker by suspending him beginning on date on which he would have returned to work with other strikers, not unlawful, where for throwing rock at truck entering E's property during strike)

Garrett Railroad Car & Equipment, Inc. v. N.L.R.B. 683 F.2d 731 (C.A. 3, June 1982)
(where strike replacement and 2 strikers engaged in rock throwing during strike, discharging only one striker who was on bargaining committee, not violative where E lacked knowledge of misconduct of strike replacements and failure to discharge other striker was inadvertent)

Chevron U.S.A. Inc. v. N.L.R.B. 672 F.2d 359 (C.A. 3, Mar. 1982)
(10-day disciplinary suspension of returning striking Ee not violative where Ee had jumped on hood of nonstriker's car and pounded on windshield as driver attempted to drive down public road and Ee remained on hood for 1.3 miles, as this conduct is unprotected for following reasons: activity occurred away from picket line; misconduct was prolonged in duration and consisted of physical act which could have resulted in serious injury; objective standard used to determine whether conduct serious enough to allow E to impose sanction)

N.L.R.B. v. E-Systems, Inc., ECI Division 642 NLRB No. 118 (C.A. 5, Apr 4, 1981)
(striking Ee who impulsively bent car antenna of one of E's vendors not engaged in conduct which would warrant protection of Act and E's refusal to reinstate not violative)

N.L.R.B. v. E-Systems, Inc., ECI Division 643 NLRB No. 118 (C.A. 5, Apr 4, 1981)
(striking Ee who blocked passage of Ees going to and from work and who struck one Ee engaged in conduct not protected by Act and E's refusal to reinstate not violative)

'Totes' Incorporated v. N.L.R.B. 688 F.2d 26 (C.A. 6, Sept. 1982)
(enforcement of Bd's backpay order to striker, denied and E found justified in suspending him for six weeks since striker's physical violence removed him from protection of the Act where his participation in throwing at least one of three lit firecrackers at convoy of cars carrying non-striking Ees at midnight was clearly calculated to instill fear in Ees)

8351-6267 Misconduct of other striker no defense

Triple A Machine Shop, Inc. JD-(SF)-220-80
(discharge of 3 striking Ees not violative where they engaged in life threatening picket line violence; fact that other nonstrikers engaged in some violence and were not discharged is not inconsistent where their behavior did not reach same level of violence)

8351-6900 Strike unprotected

Bethlehem Steel Corporation 262 NLRB No. 138
(where Ees engaged in unprotected work stoppage in violation of no strike provision of contract, Ee who left work for different reason but later joined strikers in their activity found striker also)

Illinois Bell Telephone Company JD-178-82
(suspension assessed against Ees who had engaged in work stoppage in response to disciplinary suspension of fellow Ee, not violative where strike was in violation of no-strike clause and was not initiated nor authorized by contracting U; strike was unprotected activity for which E was entitled to institute discipline of participating Ees)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. 659 F.2d 830 (C.A. 7, Sept. 1981)
(where safety issue is one that must be submitted to binding arbitration, obligation not to strike over matter is considered to be coterminous and any stoppage violates implied no-strike clause unless safety hazard suddenly arose and presented immediate threat; i.e., *Washington Aluminum* situation)

Caterpillar Tractor Co. v. N.L.R.B. 658 F.2d 140 (C.A. 7, Sept. 1981)
(discharge of Ees who participated in strike not unlawful since strike unprotected, notwithstanding contention strike ULP strike and no waiver, where contract provided there would be no strikes until grievance procedure exhausted and grievance on underlying dispute was pending; nor was E's unlawful unilateral changes regarding transfers serious labor dispute w/i *Mastro Plastics* so as to preclude waiver of right to strike regarding ULP)

Ervin Stevenage and Gerald Treichel v. N.L.R.B. 686 F.2d 962 (C.A.D.C., Aug. 1982)
(discharge of U stewards rather than less severe discipline imposed on rank and file Ees for participation in unprotected walkout, violative, where stewards were not leaders of strike nor was there reasonable basis for E to believe they were leaders, and bargaining agreement imposed no special duty on stewards in connection with forbidden work stoppage; further, not clear that arbitrator's decision upholding discharges based on contract interpretation of required higher duty of stewards)

John H. Fournelle v. N.L.R.B. 670 F.2d 331 (C.A.D.C., Feb. 1982)
(no violation by suspending U committeeman along with other Ees for breach of no-strike agreement, since, notwithstanding committeeman left premises to go to dentist, before doing so he joined strikers at U hall and gave TV interview in support of strike, thus violating contractual clause which precluded encouraging and sanctioning strike; ct rejected contention that ALJ did not base finding on above-mentioned clause and that justifying suspension on basis of said clause constituted impermissible waiver of Sec. 7 rights)

8355 NONUNION EMPLOYEE SIMULTANEOUSLY DISCHARGED, LAID OFF OR OTHERWISE DISCIPLINED

Knogo Corporation 265 NLRB No. 19
(harsher discipline to pro-U employees)

Vincent Brass & Aluminum Co. 264 NLRB No. 07
(layoff and refusal to reinstate Ees, unlawful, since for assertion of their contractual right to job bidding procedure rather than for economic reasons, in view of E's U animus established by other violations and where layoffs occurred while orders increasing and overtime worked by other Ees during layoff, notwithstanding layoff in accord with contract and fact those laid off included Ees who had not attempted to assert their rights under contract)

Roach Manufacturing Corporation JD-15-81
(layoff of Ees including U organizer and U partisans as well as nonU supporters, violative; E's contention that layoffs were for economic reasons rejected, as E recalled 1 Ee next day and work of other laid off Ees assigned to night shift, an unusual practice; furthermore, layoff of nonU supporters also done to give color of legitimacy to E's action)

N.L.R.B. v. Jack August Enterprises, Inc. 683 F.2d 575 (C.A. 1
(discharge of Ee organizer for U assertedly because business was slow, violative, where shortly after the discharge E fired another Ee, not involved in U activity, to cover up termination of U organizer, and subsequently hired additional four Ees w/o recalling any of the discharged Ees)

8356 OTHER UNION ADHERENTS NOT DISCHARGED

Wayne Construction, Inc. 259 NLRB No. 08
(*discriminatory motive, otherwise established, is not disproved by E's proof that it did not weed out all U adherents*)

8363 PENDENCY OF PETITION FOR ELECTION

RCA del Caribe, Inc. 262 NLRB No. 11
(*Shea Chemical* 121 NLRB 1027, which required E to withdraw from bargaining with incumbent U after ptn had been filed by outside U overruled; E neutrality is best preserved by continued bargaining with incumbent, thus E will not violate Sec. 8(a)(2) by postpetition negotiation or execution of contract with incumbent U and will not violate Sec. 8(a)(3) even if it contains U-security clause; however, if contract is executed and incumbent loses election, contract with incumbent will be null and void)

8365 REINSTATEMENT OR OFFER OF REINSTATEMENT

Lion Uniform, Janesville Apparel Division 259 NLRB No. 14
(E's offer of reinstatement to striking Ees held proper, where they were all offered reinstatement to substantially equivalent working conditions to those existing before Ees struck; although type of work performed upon reinstatement was not the same as that performed before strike began because latter work had been removed to another facility, work at facility herein was subject to fewer layoffs and irregularity than that performed at other facility, it involved substantially same production skills as before, and other products had been previously produced at facility herein)

[illegible] Insulation Service, A Division of [illegible] Wholesalers 255 NLRB No. 0
(whether E had made sufficient offer of reinstatement of strikers left to compliance stage)

[illegible] Insulation Service, A Division of [illegible] Wholesalers 255 NLRB No. 0
(where reinstatement offers are made regarding *all striking Ees*, or the *members*, and similar collective designations or lists of Ees, Bd does not infer that reinstatement of one is conditional on reinstatement of all)

8365—Cont.

Home Insulation Service, A Division of Sunstate Wholesalers 256 NLRB No. 050

(*in determining whether E has made proper offer of reinstatement discriminatee must have been granted reasonable period of time to consider whether to accept such offer, length of which depends on factual circumstances of each case*)

California Pacific Signs, Inc. JD-(ATL)-76-81

(E who in good faith mails *bona fide* offer of reinstatement to discriminatorily discharged Ee at Ee's last known address is relieved of further backpay liability whether or not offer is received by addressee)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. 672 F.2d 592 (C.A. 7, Feb. 1982)

(letters offering reinstatement to constructively discharged illegal aliens on condition that reemployment would not subject E to any violation of immigration laws were unconditional offers of reinstatement and Ees must fulfill legal requirements for re-employment)

8365-0100 Generally

Forester Beverage Corporation 265 NLRB No. 035

(qualified unreinstated striker is entitled to offer of reinstatement to newly created position resulting from expansion of unit; thus where E retained two permanent replacements and reinstated two strikers it essentially expanded size of unit and its failure to offer newly created positons (which were substantially equivalent to those strikers occupied before strike) to strikers awaiting reinstatement before placing in those positions new Ees hired after striker's unconditional offer to return to work violative)

Conair Corporation 261 NLRB No. 178

(in order to comply with principle that ULP strikers upon their unconditional application to return to work are entitled to reinstatement to former or substantially equivalent positions, E must present probative evidence showing good-faith effort to communicate such offer of reinstatement to Ee and must show that he has taken all measures reasonably available to him to make known to striker that he is being invited to reutn to work; and Ee is entitled to reasonable period of time in which to consider reinstatement offer)

8365-1300 No obligation to reinstate absent indication of employees' wish to return

Mid-County Transit Mix, Inc. 264 NLRB No. 107

(E's failure to reinstate, w/o any business justification striker when replacement left after striker had unconditionally offered to return to work, unlawful, where E reinstated other strikers with less seniority and strikers who made later offers to return to work, nor did fact striker had taken another job justify E's failure to reinstate him since unlikely striker would have preferred other job inasmuch as he had less seniority at that job than had with E)

Lincoln Hills Nursing Home, Inc.; et al. 257 NLRB No. 145

(failure to recall Ee to former position violative, not withstanding Ee had made statement that she was *not really interested* when this statement had been made at time when no job offered to her)

8365-2000 No obligation to reinstate if for sufficient, legitimate, and substantial business reasons

Flatiron Paving Company d/b/a Flatiron Materials Company 250 NLRB No. 080

(burden on E to establish that it had sufficient, legitimate, and substantial business reasons for refusing to take back economic striker)

Graphic Components, Inc. JD-377-80

(no obligation of reinstatement of non-ULP striker if E decides not to fill position)

8365-2500 Offer not made in good faith no defense

Flatiron Paving Company d/b/a Flatiron Materials Company 250 NLRB No. 080

(original rejection of unconditional request for reinstatement with *No, we don't have a job for you*, but then after ULP charge filed E informed Ee that it had *a position available* and inquired *whether he wanted to return to work*, violative as offer vague and not tendered in good faith)

8365-3000 Conditions attached to offer

Mid-County Transit Mix, Inc. 264 NLRB No. 107

(no valid offer to return to work on behalf of all strikers by former U steward since steward not designated as representative of strikers where Ees had withdrawn from U for which had been steward and former steward at time of alleged offer was not acting as steward for any U's nor had strikers requested that former steward speak for them)

Mid-County Transit Mix, Inc. 264 NLRB No. 107

(offer not unconditional where strikers' offer to return to work was clearly stated to be in order *to facilitate negotiations*)

Southland Knitwear, Inc. and Metropolitan Industries, Inc. 260 NLRB No. 087

(sending telegram urging ULP striker to come back to work *immediately* or be replaced constituted offer conditioned upon acceptance and return w/i unreasonably short period of time and therefore not unconditional)

Joyhill Steel Products, Inc.; etc. 258 NLRB No. 157

(E's conditioning reinstatement of two unlawfully discharged U adherents upon relinquishment of right to support U in election, unlawful)

A–1 Building Materials 256 NLRB No. 114

(conditioning discriminatee's reinstatement on doctor's verification of ability to perform work held not valid offer where initial offer was made when E believed that Ee would reject offer contained no such requirement)

K & E Bus Lines, Inc. 255 NLRB No. 137

(no unequivocal and unconditional offer of reinstatement notwithstanding E had announced at meeting that Ees who had been discharged could return to work, where E subsequently told Ee he would call Ee *if everything cooled down*)

Associated Grocers 253 NLRB No. 005

(notwithstanding substantial strike violence, requirement that economic strikers, as precondition to reinstatement, must take polygraph test, violative, where most questions asked involved employment relationship (stealing, slowdowns, etc.) and were required only of strikers for which E furnished no justification; thus, strikers had to prove their innocence of both strike-related and nonstrike related misconduct)

Harowe Servo Controls, Inc. 250 NLRB No. 120

(requiring ULP strikers to fill out availability for work forms as precondition to reinstatement violative)

8365-3300 Reinstatement to position not substantially same no defense

Conair Corporation 261 NLRB No. 178

(E's offer to returning ULP strikers of jobs on assembly line instead of reinstatement to their former service jobs held not offer of substantially equivalent employment and unlawful, even though E offered to pay Ees same salary as they had previously received, since assembly line and service jobs are different, with latter being more desirable job, and Ees are usually transferred from assembly service department and not the reverse)

K & E Bus Lines, Inc. 255 NLRB No. 137

(defense rejected since offer was for desireable and less frequent employment)

Lion Uniform, Janesville Apparel Division 247 NLRB No. 123

(settlement agreement which did not require E to resume its original operation at plant not approved by Bd where replacement operation only provided Ees with seasonal work and was thus not substantially equivalent)

Graphic Components, Inc. JD-377-80

(where only part time or temporary positions available, E does not need to offer these positions to returning non-ULP strikers as positions not considered *substantially equivalent*)

8365-4000 Offer of reinstatement but with different terms of employment

Forester Beverage Corporation 265 NLRB No. 035

(offers of reinstatement to economic strikers not valid where offers were to positions much less desireable than those strikers' left)

Randall, Burkart/Randall, Division of Textron, Inc. 257 NLRB No. 001

(requiring former strikers to wait 90 days after reinstatement for resumption of health insurance coverage, unlawful, notwithstanding pursuant to provisions of pre-existing health plan regarding E coverage for Es who had ceased active work and E's contention that in view of administration of plan by third party it had no right to unilaterally change provisions, since no business justification and inherently destructive even absent U animus)

The Ballet Foundation of Milwaukee, Inc. JD-219-82

(offer of reemployment to principal dancer for coming season at salary which was less than salary he received from E during past season, not valid offer of reinstatement, since offer, in effect, required Ee to take demotion; Ee's refusal to accept offer cannot be deemed willful loss of employment)

Randall, Division of Textron, Inc. v. N.L.R.B. 687 F.2d 1240 (C.A. 8, Sept. 1982)

(treating returning strikers as new Ees for purposes of department and shift assignments, violative; contention that E can unilaterally cease abiding by provision in expired contract rejected and, while adverse effect on Ee rights may have been comparatively slight, E did not demonstrate business purpose for action)

Randall, Division of Textron, Inc. v. N.L.R.B. 687 F.2d 1240 (C.A. 8, Sept. 1982)

(treating returning strikers as new Ees for purposes of department and shift assignments, violative; contention that E can unilaterally cease abiding by provision in expired contract rejected and, while adverse effect on Ee rights

8365-4000—Cont.

may have been comparatively slight, E did not demonstrate business purpose for action)

Randall, Division of Textron, Inc. v. N.L.R.B. **687 F.2d 1240 (C.A. 8, Sept. 1982)**
(treating returning strikers as new Ees for insurance purposes wherein no coverage for first 60 days, not violative as insurance contract did not permit their coverage w/o new waiting period; therefore, E had legitimate and non-discriminatory business reason)

8365-5000 Offer of reemployment as new employee no defense

Conair Corporation **261 NLRB No. 178**
(placement of words *new hire* on timecards of reinstated ULP strikers and change of original dates of hire to date of reinstatement following strike, unlawful, since E thereby apparently rehired strikers w/o their accrued seniority rights)

Frozen Queen Foods, Inc. **249 NLRB No. 045**
(E assigning new hire dates upon recall to probationary Ees among strikers causing them to lose credit towards completion of probationary period for time employed prior to strike unlawful, notwithstanding no U animus or intent to discriminate, since action was inherently destructive of Ees' rights; E's contention that since contract required 60 consecutive days probation it was not possible to achieve its purpose by tolling probationary period during strike, rejected)

8365-6300 No valid offer made

American Olean Tile company, Inc. **265 NLRB No. 206**
(offering reinstatement to job at plant 20 miles from where returning economic strikers formerly worked not offer of substantially equivalent position)

Forester Beverage Corporation **265 NLRB No. 035**
(E who offered economic striker reinstatement but only gave him 24 hours to consider offer did not validly offer striker reinstatement)

Mid-County Transit Mix, Inc. **264 NLRB No. 107**
(E's failure to reinstate striker when opening occurred after striker's unconditional offer to return to work, unlawful, since E failed to establish business justification for failure to reinstate, or that striker had obtained equivalent employment elsewhere and where striker had decided to get out of business he had started during strike, and had never informed E he wished to continue venture; further, it is E's responsibility to ascertain availability of striker, nor is it defense to E's backpay liability that it sent letter to striker inquiring if still interested in job)

Mid-County Transit Mix, Inc. **264 NLRB No. 107**
(E's telephone call to striker to report to work next morning at 6 a.m. not valid offer of reinstatement since did not allow reasonable period of time to consider whether to return)

King Trucking Company **259 NLRB No. 079**
(E did not fulfill his obligation to offer reinstatement to unlawfully discharged Ee by requesting another Ee to tell dischargee that he was not fired and should return to work)

Consolidated Dress Carriers, Inc., et al. **259 NLRB No. 083**
(offer of reinstatement which required economic strikers to report to work immediately on day following mailgram containing offer sent, not valid offer since did not constitute reasonable notice or allow reasonable time for striking Ees to consider whether to accept offer, further insufficient evidence that offers received)

K & E Bus Lines, Inc. **255 NLRB No. 137**
(no unequivocal and unconditional offer of reinstatement notwithstanding E had announced at meeting that Ees who had been discharged could return to work, where E subsequently told Ee he would call Ee *if everything cooled down*)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(where Ee had been discriminated against on 2 occasions valid offer of reinstatement must include reassurance that no further discrimination would occur)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(where subject of returning to work is put as question to Ee and not as offer, burden is not on discriminatee to inquire whether or not offer was to reinstate him to his former position inasmuch as offer does not constitute unconditional offer of reinstatement)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**
(original rejection of unconditional request for reinstatement with *No, we don't have a job for you*, but then after ULP charge filed E informed Ee that it had *a position available* and inquired *whether he wanted to return to work*, violative as offer vague and not tendered in good faith)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(offer of reinstatement communicated to discriminatee's roommate not valid offer)

Safeway Trails, Inc. **JD-[illegible]**
(letter from E to discriminatee (striker) that he would be *considered* for reinstatement, not valid offer, since it did no more than inform discriminatee that he would be *considered* for rehire)

Newspaper Printing Corporation **JD-283-80**
(E's offer of reinstatement conditioned on admission of U error and Ees' waiver of backpay not effective to toll backpay; nor is Bd bound by waiver of backpay made by Ee in order to regain job)

N.L.R.B. v. Shaw Industries, Inc., A Division of Crystal Springs Shirt Corp.; etc. **671 F.2d 1377(T) (C.A. 5, Mar. 1982)**
(refusal to reinstate sympathy strikers who held status of ULP strikers, violative, where E's letter offering return to work was mere invitation to apply for work and thus did not discharge E's obligation to make unconditional offer and in fact those Ees who did respond to offer were place on preferential hiring list rather than obtaining immediate reinstatement)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. **672 F.2d 592 (C.A. 7, Feb. 1982)**
(offers of reinstatement to constructively discharged illegal aliens written in English and mailed to last known Mexican address were inadequate because delivery was not verified and Ees' native language was Spanish; new offers will terminate back pay accrual)

8365-7500 Subsequent reinstatement no defense

Allied Eastern States Maintenance Corporation, A Wholly-Owned Subsidiary of Allied Maintenance Corporation **261 NLRB No. 167**
(fact that unlawfully discharged Ee was subsequently re-hired 4 months later and after charges filed, not conclusive proof of E's unlawful motivation)

8372 REPLACEMENT

8372-0100 Generally

Associated Grocers **253 NLRB No. [illegible]**
(temporary strike replacements' status converted to permanent status when E communicated such change to replacements who then acknowledged such change in writing; however, as to Ees hired thereafter as temporary and received no assurance that their employment was permanent regardless of intention of E, they retained their temporary status)

8372-5000 Non-ULP strikers may be replaced

AMPAC, a subsidiary of Kane-Miller Corp. **259 NLRB No. 151**
(*help wanted* ads placed by E in local newspaper seeking replacements for striking Ees, not violative, since strike was not ULP strike and E did not threaten to deprive ULP strikers of their rights)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jan 1981)**
(when refusal to cross stranger picket line results in only partial work stoppage, E must demonstrate legitimate business reason for replacing Ee)

Zapex Corporation and BDM Services Company v. N.L.R.B. **621 F.2d 328 (C.A. 9, 1980)**

8372-5033 Replacement no defense where discriminatory

Consolidated Dress Carriers, Inc., et al. **259 NLRB No. 083**
(E who refuses to reinstate economic strikers who make unconditional offers to return to work has burden of proving that strikers have been permanently replaced; burden not met where payroll records indicated E had work available for all striking Ees, no evidence of hiring of permanent replacements, or of decline in business or elimination of jobs)

8372-7500 ULP strikers may not be permanently replaced

Parkview Nursing Center II Corp. **260 NLRB No. 037**
(E's failure to terminate ULP striker replacements, unlawful where E had to terminate them in order to make room for strikers)

AMPAC, a subsidiary of Kane-Miller Corp. **259 NLRB No. 151**
(*help wanted* ads placed by E in local newspaper seeking replacements for striking Ees, not violative, since strike was not ULP strike and E did not threaten to deprive ULP strikers of their rights)

Gulf Envelope Company **256 NLRB No. 058**
(E's refusal to discharge strike replacements in order to reinstate ULP strikers to same or substantially equivalent jobs upon strikers' unconditional request for reinstatement, unlawful)

Atlas Metal Parts Co., Inc. **252 NLRB No. 039**
(*upon unconditional offer to return to work, ULP strikers are entitled to immediate reinstatement to their former jobs or if such jobs no longer exist to substantially equivlanet positions; further, burden is upon E to offer immediate and unconditional reinstatement, even if striker replacements must be terminated to make room for returning strikers*)

8372-7500—Cont.

Jacques Syl Knitwear, Inc. 247 NLRB No. 191
(permanently replacing and refusing to reinstate ULP strikers, unlawful)

Sanders Bus Line, Inc. JD-(SF)-120-82

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)

8376 RETENTION OR REEMPLOYMENT OF UNION MEMBERS

Charles Batchelder Company, Inc. 250 NLRB No. 009
(E violated Act where reason for denial of reemployment after voluntary quit, pretextual, and Ees' U activity real cause)

N.L.R.B. v. Charles Batchelder Company, Inc. 646 F.2d 33 (C.A. 2, Mar 1981)
(where U activist quit in protest over discharge of another U activist, refusal to rehire was not violative as his quit was serious breach of his employment obligation in that E was left with only one of three furnaces attended)

8380 SENIORITY

Concord Furniture Industries, Inc., d/b/a Bradford Furniture Company 254 NLRB No. 109
(on reconsideration, Bd applied *dual motivation* theory and reaffirmed violation finding; although this is pretext case, layoffs were violative under any analysis in view of E's knowledge of Ees' U activities, U animus, timing w/i 3 weeks of R ptn filing, and E's false reason that both were least senior Ees)

C. Cowles & Company JD-(NY)-52-82
(layoff of active U protaganist because of downturn in sales of automotive parts manufacturer, not violative, since Ee was least senior in E's department being cut back because of depressed sales in automotive industry and E's usual custom was to use departmental seniority w/o *bumping* other Ees; E satisfied burden of proving lawful justificatiion for discharge)

Gerber Scientific Instrument Company, Inc., A Wholly Owned Subsidiary of Gerber Scientific, Inc. JD-188-82
(layoff of U adherent not unlawful in view of cancelled orders and since E properly used as seniority basis rehire date where adherent had previously left E's employment voluntarily)

Noryen Company, Inc. JD-847-79
(selection of Ees for layoff out of seniority and refusal to reinstate them by E who manufactured knit shirts, not unlawful, where selection was for poor attendance record and due to anticipated move from area, and there had been no U activity on part of Ees during 10(b) period; nor was hiring of new Ees subsequent to lay off indicative of unlawful motive where E had, meanwhile, installed new type of machine requiring different skills to operate)

N.L.R.B. v. Concord Furniture Industries, Inc., d/b/a Bradford Furniture Company 675 F.2d 426 (C.A. 1, Mar. 1982)
(discharge of two U adherents unlawful since for U activity rather than on basis of seniority, notwithstanding one adherent was lowest in seniority, where E failed to calculate seniority of other adherent and supervisor had stated that they had been discharged for U activity)

N.L.R.B. v. Campo Slacks, Inc., and J & E Sportswear, Inc. 659 F.2d 1069(T) (C.A. 3, May 1981)
(no error in Bd's determination that Ee was discharged because of anti-U animus rather than, as contended, on basis of her lack of seniority)

8384 UNION OR OTHER CONCERTED ACTIVITY, NO DEFENSE

Robert Bosch Corporation JD-220-81
(E's refusal to credit strike time as time worked for purpose of granting step progression increases and delayed such increases for period of time commensurate with strike did not violate Act as E handled laid-off Ees and those absent for other reasons in same manner and there was no showing of anti-U animous)

N.L.R.B. v. Fixtures Manufacturing Corporation 669 F.2d 547 (C.A. 8, Jan. 1982)
(ct rejects Bd's theory that *Ee's wrongdoing, however serious, is automatically immunized from results of polygraph test given for impermissible reason*, i.e., Ee was ordered to take test on day E received written report of his U activity)

8384-3300 Employer may discipline employee for union activities during work hours

Tartan Marine Company 247 NLRB No. 073
(E posting notice requesting that Ees notify supervisors if any members of U organizing committee or anyone else attempted to *bother* Ees during working time about U, not unlawful; notwithstanding tone of notice, which also advised Ees against signing authorization cards and warned that members of U organizing committee would be held to full compliance with company rules, was hostile to U)

Tartan Marine Company 247 NLRB No. 073
(warning Ees against talking while working, not violative, since *working time is for work* and particularly since warnings not a policy initiated during U's campaign)

8384-6700 Illegal objective invalidates discipline

N.L.R.B. v. Fixtures Manufacturing Corporation 669 F.2d 547 (C.A. 8, Jan. 1982)
(remand for Bd finding whether or not it agrees with ALJ that polygraph test implicated Ee in thefts and he would have been discharged in absence of U activity, as meaning of written report of test is unclear)

8384-8300 Particular activities

8384-8337 Display or wearing of union insignia

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. 247 NLRB No. 135
(supervisor requesting Ee to remove arm band with U insignia, not unlawful, nor was Ee's leaving work rather than remove it unlawful suspension, since E's prohibition against arm band was not discriminatory particularly in hospital setting where arm band superimposed on uniform was highly obtrusive)

8384-8375 Refusal to cross picket line

Joseph Charles Tafarella A.K.A. Steve Rossi, and Total Productions Concepts, Inc. JD-(SF)-212-81
(discharge of U musicians for refusing to cross picket line of another U at hotel at which they were working)

8387 UNSATISFACTORY BEHAVIOR OF EMPLOYEE

8387-0300 Absence from work or lateness

Halliburton Services (Coffeyville, Kansas), A Division of Halliburton Company 265 NLRB No. 144

A & T Manufacturing Company 265 NLRB No. 201
(no violation where probationary Ee was discharged after being twice warned about his attendance problem and being denied pay raise prior to start of *any* U activity)

Larid Printing, Inc. 264 NLRB No. 040
(discharge not violative since for excessive lateness and absences, rather than for U activity, particularly where Ee's only U activity was to sign authorization card)

Talbert Manufacturing, Inc. 264 NLRB No. 138
(discharge of laborer, reinstated former striker, after numerous questionable absences and repeated violations of E's call-in policies not violative, since other Ees who were not discharged had numerous absences, but no one's exceeded that of discharged laborer; no evidence that E condoned similar behavior on part of any other Ee; laborer given ample warning informally and in writing E demonstrated Ee would have been discharged in absence of protected activity on his part overcoming GC's *prima facie* case)

Grumman Flxible Corporation 264 NLRB No. 034
(no violation for discharging probationary Ee for poor attendance record (tardy or absent 11 days during his 31 days of employment) as it was in accord with past practice; contention that discharge was motivated by Ee's intention to file workman's compensation claim, rejected)

Federal Management Co., Inc. 264 NLRB No. 023
(discharge of Ee, who was leading U activist, assertedly for unexcused absence from work for short period of time during working day, not unlawful, notwithstanding E's hostility to U, where there was no question that Ee had violated well understood rule; only a week before discharge E had spoken to Ee about similar episode; evidence of anti-U animus shows only statements by E shortly before and after election with last statement being made approximately 5 months before discharge; and evidence in support of finding unlawful discharge was insufficient to warrant conclusion that Ee was discharged because of U activities)

International Computaprint Corp. 261 NLRB No. 099
(selection of Ee for layoff where E lost government contracts, lawful, in view of her excessive absenteeism record; notwithstanding Ee was among those Ees initially contacted by U, solicited signatures on U authorization cards and had recently been given above average wage increase)

Mobile Home Estates, Inc. 259 NLRB No. 102
(U activist had received many written warnings during 90-day period)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(discharge of probationary Ee, U adherent, for absenteeism, not violative)

Micro Mell Corporation 257 NLRB No. 005
(discharge of Ee, assertedly for his U activities, not violative where real reason for discharge was Ee's excessive absenteeism)

8387-0300—Cont.

German Machine Corporation **257 NLRB No. 010**
(discharge of Ee, not violative where Ee engaged in no U activities in proximity to his discharge and E's decision to terminate him was motivated only by his absences due to alcoholism)

The Swingline Company, Spotnails, Inc. **256 NLRB No. 119**
(discharge of very active U adherent not violative where E proved cause for discharge was Ee's continual lateness and absenteeism, moreover, E was very lenient with U campaigners regarding pro-U activities on work time)

Fruehauf Corporation **255 NLRB No. 125**
(discharge of U steward not violative, where reason was her irregular attendance and not because of her U position or activities, as contended, in view of absence of U animus on part of E)

Central Freight Lines, Inc. **255 NLRB No. 056**
(discharge of known U adherent not violative in absence of disparate treatment; fact that E's policy on absenteeism was not uniform did not lead to inference that discharge was for U activity since no one with more absenteeism had been retained, nor fact that E ignored its recently enacted absenteeism procedure can be ascribed to anti U reasons since E has never utilized this procedure for any of its Ees)

Alfa Leisure, Inc. **251 NLRB No. 088**
(issuance of warning notices to and suspension of Ee not violative where reason was Ee's lateness in returning from lunch after celebrating U victory in election for which he had been an observer, and for his insubordinate attitude)

Ben Franklin Division of City Products Corporation **251 NLRB No. 200**

Sumco Manufacturing Co., Inc. Summit Grinding Company **251 NLRB No. 046**
(discharge of Ee for absenteeism not unlawful, notwithstanding fact that Ee was active U organizer, where her final warning on absenteeism preceded any alleged U activity)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(warning given to Ee over lateness, not violative, where alleged hostility against Ee arose from incident too remote in time (2 months) to have been significant factor)

Western Care, Inc. d/b/a Western Care Nursing Home (United Food and Commercial Workers International Union, Local 684, AFL-CIO-CLC) **250 NLRB No. 084**
(discharges in drive to correct absenteeism, not unlawful, where U activity of alleged discriminatees was small, some dischargees were not alleged to be discriminatees, corrective action had been planned prior to U campaign, and E did not fire known U activist when presented the opportunity to do so)

Charles Batchelder Company, Inc. **250 NLRB No. 009**

Streamway Division of The Scott & Fetzer Co. **249 NLRB No. 054**
(discharge assertedly for excessive absenteeism, not unlawful, where E had no knowledge of, or animus toward Ee's U activity; E had evidence that Ee, who was chronically absent and repeatedly forewarned, had taken river boat cruise while he was supposed to be incapacitated; and such absence, whether caused by injury or irresponsibility, brought Ee's absenteeism record to point of being excessive)

Landmark Beef Processors, Inc. **248 NLRB No. 041**
(discharge of lead person, who was U advocate, for single unexcused absence held not violative where E had demonstrated no anti-U animus and Ee held position of some resfonsibility for which she received higher pay than others)

Alpha Beta Company **JD-201-82**

Courier Life Publications, Inc. **JD-89-82**
(discharge of U adherents not unlawful where they failed to maintain regular work schedules)

United Parcel Service, Inc. **JD-644-81**
(discharge not unlawful where it was not, as alleged, for aiding in writing and distributing an article in U newsletter criticizing E's management, but was pursuant to E's disciplinary policy regarding *stealing time* by overextending lunch period, which policy was not disparately applied herein)

Muncie Newspapers, Inc. **JD-452-81**
(warning former U president for not giving proper notification as required by rules that he would not show up for his shift, not unlawful, where warning pursuant to disciplinary system agreed to by E and U, former president knew prior to warning that he had broken rule, and absent evidence of discriminatory enforcement of rules)

Aluminum Cruisers, Inc. **JD-497-80**
(discharge of U adherent not violative where it was not, as contended, for protected activities but was for excessive absenteeism)

Arco Chemical Company, A Division of Atlantic Richfield Company **JD-(SF)-174-80**
(discharge of Ee for absenteeism not unlawful, notwithstanding GC's contention that absenteeism was E's pretext for discharge and real reason was Ee's U activity)

Coastal Volkswagen, Audi **JD-(SF)-104-80**
(discharge of U activist because of repeated unexcused absences, not violative, notwithstanding that E's earlier warning letter to him for absences violated 8(a)(3); it was not incumbent upon E thereafter to ignore unexcused absences)

Charge Card Association v. N.L.R.B. **653 F.2d 272 (C.A. 6, July 1981)**
(GC did not make out prima facie case that E unlawfully suspended Ees for walkout protesting working conditions since Ees called E and falsely stated they were sick. In view of high absenteeism that day, E had right to demand Ees support their assertion of illness even if E suspected Ees were protesting working conditions. Had Ees said they were going to be absent in protest of working conditions, different result would obtain)

Delco Air Conditioning Division, General Motors Corporation v. N.L.R.B. **649 F.2d 390 (C.A. 6, May 1981)**
(discharge of U committeeman for leving plant w/o signing out in violation of company rules, not unlawful; substantial evidence on record did not support Bd finding of unlawful discharge in light of Ee's bad employment record which included absenteeism, tardiness, and falsification of travel card, and in light of fact that five other Ees, one of whom was U committeeman, had been discharged in past for engaging in similar fraudulent acts)

Grief Brothers Corporation v. N.L.R.B. **635 F.2d 531 (C.A. 6, 1980)**
(discharge of Ee for absenting himself from work to attend U meeting not violative, where he did so in face of denial of his request for leave and warning that his absence from work would result in disciplinary measures)

N.L.R.B. v. First National Bank of Pueblo **623 F.2d 686 (C.A. 10, 1980)**
(discharge of Ee not unlawful, since for unauthorized absence rather than for acting as U observor at election and attending U meetings, where Ee had received pay raise before and after election, and Ee had not asked for time off but simply informed supervisor she was taking day off)

8387-0350 Not real reason

A & T Manufacturing Company **265 NLRB No. 201**
(discharge of active U supporter for his failure to call in when absent and insubordination (calling supervisor a *brown nose* –) held violative, since, although Ee's violation of absentee rule was valid reason to discharge Ee, credited testimony was clear that E had decided to discharge Ee *before* Ee's absences)

Daniel Construction Company, A Division of Daniel International Corporation **264 NLRB No. 079**
(layoff of U adherent, who was third most senior Ee on project, because he had *worst absentee record..... of the crane operators,* held violative, since reason was relatively slight for long-time Ee with nearly 12 years' experience)

Ford Paint and Varnish Company **264 NLRB No. 156**

Mueller Insulation Co. and The Mueller Company of Missouri, Inc., Successor Employer and/or Alter Ego **263 NLRB No. 095**
(discharging Ee with history of lateness 3-4 days each week violative, where he had done *extremely good* work for 8 years, E gave no warning, did not inquire reason for lateness that morning and Ee had agressively enforced bargaining agreement for 3 months)

United Supermarkets, Inc. **261 NLRB No. 179**
(discharge of known U adherent shortly after her transfer to one of E's other stores, assertedly for tardiness and long coffee breaks, unlawful, where Ee was admittedly good Ee with whom E had no problems prior to transfer; while claiming Ee had been tardy for a week before discharge, E said nothing to her about it until day of discharge; that day was to be Ee's last day at store as she had already been directed to report for work at another store; and supervisors' comments subsequent to discharge disclosed that Ee's U activity was motivating factor)

Universal Veneer Mill Corp. **261 NLRB No. 110**
(discharge of U adherent, assertedly for unexcused absences in violation of E rules, and refusal to reinstate him, violative where real reason was his U activities)

Dimensions in Metal, Inc. **258 NLRB No. 078**
(discharge of U adherent assertedly for unauthorized absence from work, violative)

C. W. Sweeney & Co. **258 NLRB No. 096**
(discharge of U steward for excessive absenteeism violative where GC established *prima facie* case showing that discharge was motivated by E's antagonism toward her U activities and E failed to rebut this by showing that Ee would have been discharged notwithstanding her U activities; moreover, incident immediately preceding her discharge when she protested E's request that she leave work on grounds that contract did not require her to do so was protected and her conduct was not so outrageous (no disruption of production or any Ee heard her remarks) as to remove her from protection of Act)

8387-0350—Cont.

Builders Distributors Sand and Gravel, Inc. **257 NLRB No. 053**
(discharge of key U activist, in E's desire to reduce hours to cut expenses, assertedly because of Ee's poor attitude towards his work, his lateness and improper care of E's equipment held violative where E's records during this critical period showed Ees' hours were increasing rather than decreasing and 1 day after Ee was discharged E hired another experienced driver at same rate of pay as U activist)

Granam Company, Inc. **256 NLRB No. 103**
(discharge of active U steward, violative, where E's contention that Ee was discharged for absenteeism was pretext)

Marathon Letourneau Company, Longview Division **256 NLRB No. 054**
(discharge of U adherents assertedly for excessive absences and tardiness effecting production, unlawful, where old absenteeism rule was not enforced until after U activity began, new rule was not communicated to Ees and was not implemented in other departments, practice under new rule was one of tolerance rather than discipline at least for Ees other than discriminatees, method by which Ees were determined to be tardy was inconsistent, and if production were factor, new rule would not have been limited to department herein and would have been communicated to Ees needing to improve their punctuality and productivity)

Marathon Letourneau Company, Longview Division **256 NLRB No. 054**
(suspension of known U adherent assertedly for violating rule on reporting in for absences, not unlawful, where Ee's intent was to report absences at his convenience w/o regard for rules; Ee's reliance on laxity in enforcement of rules was not supported by record; even assuming such laxity, an Ee would be held to higher degree of responsibility than that shown by Ee; and Ee's failure to report in prevailed in face of prior discipline for identical infraction)

Guardon Industries **255 NLRB No. 086**
(discharging Ee for lateness violative as discharge was made for lateness on day following anti U speech and appeal for greater work from Ees, and before U activity Ee had been late w/o calling in, and Ee had understanding with his supervisor about lateness because he had no car)

Guardon Industries **255 NLRB No. 086**
(discharging Ee for lateness, violative, as previously Ee had been discharged for absenteeism and rehired because he was good worker; E's refusal to rehire him found evidence of anti U animus in his discharge)

Central Freight Lines, Inc. **255 NLRB No. 056**
(discharge of known U adherent not violative where Ee was confronted by two supervisors about pro-U stence; earlier E unlawfully discharged two Ees; E examined Ee's file, to find *enough absenteeism and tardiness to justify discharge*; and one Ee with more absences and another Ee with more tardiness were not discharged)

Justak Brothers and Company, Inc. **253 NLRB No. 146**
(discharge of U adherents for alleged lateness after having been *beeped*, unlawful)

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**
(discharge assertedly for absenteeism and tardiness, violative where he had long history of such behavior yet was rehired after leave of absence, and recent warning of discharge if late again was issued soon after he was prevented from distributing U leaflets and became member of U steering committee)

Herman Brothers, Inc. **252 NLRB No. 121**
(discharge of driver, unlawful, where motivating factor in action was his circulating letter opposing provision in proposed bargaining agreement which would substitute mileage for number of hours worked as basis for computing drivers wages, rather than for three consecutive days failing to report his availability for work while awaiting call from dispatcher)

Maywood, Inc. **251 NLRB No. 139**
(poor attendance)

Logan Coca Cola Bottling Company **250 NLRB No. 164**

Swift and Company **250 NLRB No. 152**
(discharge of U steward, who prior to stewardship was considered *excellent* Ee, assertedly because he disregarded E's rule concerning unexcused absences held violative where rule had been disobeyed by other Ees w/o E taking any disciplinary action of E failed to investigate defense to discharge that answering machine which received absentee reports had malfunctioned)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(unilateral reduction in length of grace period for lateness and disciplining Ee because her late arrival was outside protection of more stringent grace period but w/i original grace period guideline, violative)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(discharge of Ee assertedly for absenteeism, unlawful, where real reason was E's desire to rid itself of Ee primarily responsible for bringing U into plant and to let his discharge, publicly announced, serve as dramatic example to other Ees of what they could expect if they supported U)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(discharge of Ees assertedly because of their absences immediately prior to and after vacation period, unlawful, where real motive for discharge was revealed through E's comments to one of the Ees that *all this* would not have happened if Ees had not tried to get U in plant)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**
(discharge of formerly striking Ee assertedly for reporting to work 5 minutes late, unlawful, where E exhibited animus toward ex-strikers, pettiness of asserted reason for discharge demonstrated reason was pretextuous, and E betrayed intention to retain Ee only temporarily after her reinstatement)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(discharge of suspected U smypathizer allegedly for poor attendance, unlawful, since discharge for U activities where she had never been warned regarding attendance and her record was not materially different from Ees retained)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(discharging Ee assertedly for his tardiness, absenteeism, and unreasonable demand for individual contract, violative, when E had rejected Ee's demands for improvements of wages, pensions and health benefits, had forbidden him to involve other Ees or to seek U assistance in regard to his demands, and discharged Ee only when he insisted that he would pursue the course of concerted action he had outlined contrary to E's order)

Pizza Pizzaz, Inc., d/b/a Jacob Wirth Restaurant **248 NLRB No. 037**
(discharge of two Ees two days after manager learned they were leading contenders for vacant (U) steward's job, allegedly because of their poor workmanship, tardiness and absenteeism held violative where Ees' time cards and register tapes were not offered into evidence; management's reasons for firing Ees were shifting, belated and unsubstantiated)

Siro Security Service, Inc. **247 NLRB No. 137**
(discharge of Ee unlawful since for his opposition to U as bargaining representative, objection to deduction of U dues w/o his consent, and filing charges with Bd rather than for his tardiness particularly in view of his prior excellent record and recommendation)

General Warehouse Corp. **247 NLRB No. 142**
(discharge of vociferous leader of Ees opposed to waiving E's cost of living increase, assertedly because of his absenteeism, held violative where discharge came on heels of Ees' rejection of E's attempts to avoid cost of living increase, followed by E's changing its check cashing policy and eliminating rotating Ees for work they considered undesirable)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E tolerated habitual tardiness for a long time but then imposed crackdown on tardiness after onset of U)

Michael Behm Jr., d/b/a M & M Behm and Associates **JD-638-81**
(discharge of painter, leading U advocate, because of his chronic tardiness, erratic performance, complaining, attitude and insubordination held violative where tardiness was general problem, and Ee was singled out for discharge; there was no evidence that other reasons for discharge were significant influence upon E in discharging Ee; in discharging Ee, E said *this talk of U is the last straw*)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**
(discharge of U adherent assertedly for being late one day violative where evidence established it was first time Ee was late and other Ees who had been late in past were neither discharged, suspended, or otherwise disciplined)

Transportation By La Mar, Inc. **JD-279-81**
(discharge of U adherent, bus driver, assertedly because Ee, w/o permission, took day off to be with his hospitalized daughter held violative where Ee had only 1 day off in prior year, was never admonished for absenteeism, and E relied on Ee to relieve sick drivers or to run charters)

Normike Contractors, Inc. **JD-(NY)-51-81**
(where E tolerated Ee's absences by rehiring him and rewarding him with wage increases, discharge of said Ee at time when U activity becomes known warrants inference that Ee's U activities rather than his attendance motivated discharge)

National King Coal, Inc. **JD-(SF)-24-81**
(discharge of U adherent for absenteeism violative where other Ees with poorer attendance records than discriminatee were not discharged)

Elco Electric, Inc. **JD-520-80**
(violation where E refused to hire applicant because of his filing grievance alleging U contract infraction by E on prior job rather than, as contended, because of his tardiness or poor productivity during prior employment with E)

Newspaper Printing Corporation **JD-203-80**
(suspension of U adherent who, as result of sloppy compressed appearance of vacation sign up sheet, mistakenly thought he was to be on vacation and failed to report to work, where after error was discovered supervisor could have requested him to work and did not, there was no interferance with production, and in view of E's ongoing dispute with U regarding steward's scheduling authority and triviality of error)

8387-0350—Cont.

The Royal General Company **JD-17-80**
(discharge of U adherent unlawful since for U activities rather than for absenteeism where E had condoned his absenteeism until he actively engagd in U activities)

Public Service Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(purported incidents of tardiness on Ee's part no defense to his unlawful discharge where such incidents occurred 1 or more months prior to discharge, and other Ees were routinely *guilty* of similar infractions w/o being disciplined or discharged)

Herman Brothers, Inc. v. N.L.R.B. **658 F.2d 201 (C.A. 3, 1981)**
(discharge of Ee who had actively sought defeat of proposed contract which both E and U desired violative where Ee was ostensibly discharged for his failure to call in after excused absence when he had never been required to do so prior to this, which was only 3 days after defeat of proposed contract)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**
(E's suspension of Ee assertedly because of his deliberate insubordination in twice absenting himself from work w/o leave, unlawful, where E denied leave in order to prevent Ee from participating in U's attempt at coordinated bargaining at another plant, discipline was disparately applied in Ee's own case, and E evidenced overall hostility to coordinated bargaining attempt; moreover reason for suspension was question of fact which was to be decided by Bd)

N.L.R.B. v. Charles H. McCauley Associates, Inc. **687 F.2d 685 (C.A. 5, 1981)**
(discharge of Ee who had engaged in protected concerted activity and who had a bad record for tardiness and had been warned about it, unlawful, where E tolerated Ee's attendance problems and had never considered them serious enough to warrant an official reprimand; at previous salary review, although tardiness was discussed, Ee was given a raise; tardiness was not mentioned at time Ee was discharged; and Bd properly concluded that Ee's attendance problems were neither sole reason nor any significant part of reason for discharge)

The Timken Company v. N.L.R.B. **644 F.2d 886(T) (C.A. 6, Jan 8, 1981)**
(violation where Ee was discharged for his U activities and not because of his absence from work as alleged)

N.L.R.B. v. Eaton Corporation **623 F.2d 479 (C.A. 6, 1980)**
(discharge of Ee unlawful since for filing grievance rather than for failure to give proper notice of absence in view of evidence Ee told fellow Ee he would be absent and information was passed along to foreman)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. **679 F.2d 673 (C.A. 7, May 1982)**
(disciplinary warning notices issued by E to Ee (U *ringleader*) because of Ee's lateness, held violative where notices did not begin until commencement of U campaign; Ee had frequently been late prior to U campaign and had received no such notices)

N.L.R.B. v. Spielberg Manufacturing Company **673 F.2d 244 (C.A. 8, Mar. 1982)**
(discharg for tardiness of key organizer in election U lost almost one year earlier in which E expressed intent to resist afterwards any further U activity violative, where shortly before discharge Ee told vice president that dissatisfaction with new controller's efforts to correct attendance problems might generate renewed U organizational effort, controller told her he would *build case of absenteeism and discharge her unless her attitude improved,* and supervisor told her she had been discharged for U activity)

N.L.R.B. v. Heatilator Fireplace, Division of Vega Industries, Inc. **646 F.2d 1210 (C.A. 8, Apr 1981)**
(although absenteeism was problem, Ee was unlawfully discharged day after he attended U meeting of which company had advanced knowledge and asked 2 Ees not to attend, wives of 2 supervisors attended meeting, meeting was discussed at plant on next day, and E did not follow new policy of warnings and discharges for absences)

8387-0400 Abuse of sick leave

Belcher Towing Company **265 NLRB No. 159**
(discharge of known U adherent for failing to comply with E's policy requiring Ees on paid sick leave to report for light duty, if possible, not unlawful, where in the professional opinion of doctor treating dischargee, he was fit for light duty during relevant period; dischargee's own testimony revealed he was able to perform minor duties for himself; and E was entitled to enforce its normal work rules against all Ees, including most active U adherent; and fact that E was happy to rid itself of active U adherent did not make discharge discriminatory)

N.L.R.B. v. Permanent Label Corporation **687 F.2d 812 (C.A. 3, 1981)**
(discharge of Ees, unlawful, notwithstanding E's contention discharges were for excessive absenteeism and that it was unaware of U activity at time of discharges, since reasons given are pretexts in view of timing, knowledge of U activities, and U animus)

8387-0450 Not real reason

7 Up Bottling Company **261 NLRB No. 128**
(issuing *unexcused* absence slip, allegedly for failure to provide doctor's excuse although one had never before been required, in retribution for U activities, violative of 8(a)(3))

Mark I Tune-Up Centers, Inc. **256 NLRB No. 128**
(discharge assertedly because Ee did not return to work from extended sick leave on specified date, unlawful, where Ee, who had good work record, followed E's sick leave procedure by forwarding doctor's medical reports to E; E, while calsiming nonreceipt of reports, made no effort to find out why Ee failed to report for work; and only other possible reason for discharge, after E had received doctor's letter clarifying matter, was E's demonstrated U animus)

Clark Manor Nursing Home Corp. **254 NLRB No. 084**
(requiring Ee to produce doctor's certificate for absence as pretext so that E could get rid of Ee, unlawful where real reason for requiring certificate was Ee's activities on behalf of U)

8387-0500 Accidents

Coil-Acc, Inc. **262 NLRB No. 012**
(notwithstanding Ee's overt involvement with U and E's unlawful threats and interrogations which supported finding of GC's *prima facie* case of discriminatory discharge, discharge was not violative where E justified discharge on ground that Ee was responsible for series of mishaps when driving truck for E; E would have discharged Ee even if Ee had not engaged in U activities)

K & B Mounting, Inc. **248 NLRB No. 071**
(no violation where U activist who had accident on icy road was laid off until *Spring* because she *can't handle this kind of driving in the winter*)

Alpha Beta Company **JD-281-82**

Central Freight Lines, Inc. v. N.L.R.B. **653 F.2d 1023 (C.A. 5, Aug 1981)**
(discharge of driver, a leader in U's organizational effort, not violative where discharge was pursuant to E's policy of discharging drivers after three chargeable accidents in 12 months)

The Martin-Brower Company v. N.L.R.B. **623 F.2d 1161 (C.A. 6, 1980)**
(discharge of U adherent not violative, where he was discharged for third *preventable* accident)

8387-0550 Not real reason

Thurston Motor Lines, Inc. **263 NLRB No. 154**
(discharging one of key U organizers 2 weeks before election assertedly for chipping brick from customer's loading dock held pretext as safety supervisor reported that no damage occurred, customer's E and Ee both laughed about incident at time and E never sought Ee's version of *accident*)

Arthur H. Fulton, Inc. **262 NLRB No. 134**
(discharge violative where Ee was subjected to disparate treatment as of 46 reasons asserted for discharge were common to undischarged drivers; another, failure to turn in logs for one month was suspect in view of E's policy of withholding pay when logs were overdue; and failure to report accident promptly was excuse as it was broken mirror which occured when vehicle was parked and unattended which Ee did not consider to be an accident)

Wisdom Industries, Inc. **257 NLRB No. 164**
(discharge of principal U advocate and Ees' chief contact with U, driver of E's tractor-trailer, assertedly because *he had too many costly accidents* held violative where prior history of E's treatment of Ees involved in more than one costly vehicular accident showed that no Ee was ever fired for having such accidents)

Central Freight Lines, Inc. **250 NLRB No. 063**
(discharge of truckdriver, prominent supporter of U, allegedly because he had too many accidents held violative where other Ees with poor driving records were transferred to work on loading dock rather than being discharged)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(suspension of driver, who had been involved in several accidents, held in reprisal for his U activities where other drivers had more serious accidents and were not disciplined, suspension closely followed Ee's request to attend Bd hearing and was in middle of number of discriminatory discharges, and latest accident was seized upon to disguise E's real motive in suspending Ee)

United Dairy Farmers Cooperative Association v. N.L.R.B. **633 F.2d 1054 (C.A. 3, 1980)**

8387-0600 Overstaying vacation or leave

8387-0650 Not real reason

Logan Coca Cola Bottling Company **250 NLRB No. 144**
(unauthorized vacation)

8387-0700 Slowdown

8387-0700—Cont.

NAB Construction Corporation 258 NLRB No. 090
(discharge of Ee who engaged in slowdown to try to convince E to pay him more money not violative)

Power Contractors, Ltd. JD-(SF)-109-82
(discharge of all U electricians comprising work force at jobsite and replacing them with work force drawn from non-U phase of operations, not violative where U electricians engaged in tacit refusal to work at rate and proficiency commanded by their craft status; to counter this impermissible conduct, E acted defensively to achieve work force necessary to meet approaching deadlines and demands of job)

Valley Forge Flag Company JD-757-80

8387-0800 Accumulated objections or complaints regarding employee

Richdel, Inc. 265 NLRB No. 064
(discharge of Ee, not violative, notwithstanding supervisor's comment to other Ee that he *could get fired* for U organizing, where reason for discharge was Ee's violation of work rules)

Courier Life Publications, Inc. JD-08-82
(discharge of U adherent reporter not unlawful, where he consistently failed to conform to editor's requirements for conduct of reporters)

8387-1200 Arrest or conviction

Howard Press, Inc. 265 NLRB No. 181

Interstate Paper Supply Company, Inc. 251 NLRB NO. 109
(discharge of Ee who was criminally convicted of harassment as result of his picket line conduct directed at E's president, not unlawful; there is a difference between threats and aggresive gestures between strikers and nonstrikers, and threats of violence against owner himself; moreover, there should be a measure of mutual respect between Bd and local cts, and it cannot be said that E seized upon conviction to give vent to anti-U animus in view of its reconciliation with Ee)

Ansaphone, Inc. v. N.L.R.B. 632 F.2d 4 (C.A. 6, 1980)
(discharge of Ee violative, where despite her conflicts with fellow workers and fact that she was subject to discharge for long period prior to actual discharge, circumstances support conclusion that timing of her discharge was more a result of her U activity than her work performance)

8387-1300 Assault on fellow employee

Neptune Waterbeds, Inc. 249 NLRB No. 168

Paramount Mining Corporation v. N.L.R.B. 631 F.2d 346 (C.A. 4, Oct. 1980)
(no violation where U supporter was discharged for making volgar threats and shaking or patting the head of fellow Ee in effort to persuade him to sign U card)

8387-1350 Not real reason

Beverly Enterprises, Inc. t/a Cumberland Nursing & Convalescent Center 263 NLRB No. 061
(discharge and refusal to reinstate picket who defended herself against attack by Ee who, after driving through picket line to parking lot, returned to picket line to seek satisfaction because of names she had been called by pickets and struck out at first picket she reached, resulting in hair pulling and brief scuffle, unlawful, since incident trivial, isolated, and no injury resulted; E may not rely on picket's past record when E considered it only when U came on scene)

Steets and Steets, Inc. 254 NLRB No. 105
(discharge of three U adherents assertedly because they left their work stations and engaged in altercation with anti-U sympathizer, held violative where anti-U Ee had no legitimate business at site of encounter nor was anti-U Ee discharged for fighting or leaving his work station)

Jacques Syl Knitwear, Inc. 247 NLRB No. 191
(discharge of and refusal to reinstate strikers for allegedly violently assaulting fellow Ee during strike, not lawful, where Ee alleged to have been assaulted had swung her pocketbook at strikers and in fact assault as alleged had not taken place; notwithstanding dischargees found guilty of alleged assault in municipal ct)

8387-1500 Coercion and intimidation of other employees

Charles Batchelder Company, Inc. 250 NLRB No. 009

Flambeau Micro Company JD-38-82
(discharge of Ee not unlawful where he was fired mainly, if not entirely, for threatening jobs of all Ees if he did not get 100% cooperation from them in signing U cards; other factors such as his poor work performance and his sexual harassment of co-worker may have played minor role, but fact that he was seeking to unionize E was not even a minor factor)

Albertsons, Inc. - Southco Division JD-(SF)-244-80
(discharge of U adherent, not unlawful where for threatening to throw egg on other Ee's car)

N.L.R.B. v. Charles Batchelder Company, Inc. 646 F.2d 33 (C.A. 2, Mar 1981)
(no violation, where Ee was discharged for threatening violence to another Ee)

8387-1550 Not real reason

Cutting, Inc. 255 NLRB No. 076
(suspension of U supporters based on untrue information from Ee-informant, that she had been threatened by one of the discriminatees, used as pretext for suspension)

Henry A. Young, d/b/a Columbia Engineers International 249 NLRB No. 144
(discharge of Ee who was U organizer allegedly for Ee's safety in view of threats of violence made against him, completion of Ee's work assignment, Ee's lying to E about another Ee, and his *hassling* of other Ees, unlawful, where fears for his safety proved unjustified, Ee had seniority for retention of job, information concerning other Ee passed on not as facts but mere repetition of another Ee's statement, and fact Ee may be persona non grata among certain Ees because of his U activities no basis for discharge)

J. P. Stevens & Co., Inc. v. N.L.R.B. 638 F.2d 676 (C.A. 4, 1980)
(although ct held record did not support Bd finding that two written warnings issued to U adherent unlawful, two other written warnings held unlawful since record supported discriminatory motivation in that E issued immediate warnings to U adherent for harassing fellow Ees while only giving anti-U Ee verbal warning for threatening and physically assaulting U adherent)

Clear Pine Mouldings, Inc. v. N.L.R.B. 632 F.2d 721 (C.A. 9, 1980)
(violation where Ee was reprimanded, not as alleged because of her U activities during working hours, and harassment of other Ees, but because of her status as a leading U activist)

8387-1600 Disparaging fellow employees

8387-1650 Not real reason

Beverly Enterprises, Inc. t/a Cumberland Nursing & Convalescent Center 263 NLRB No. 061
(warning Ee at nursing home who was former striker against using word *scab* to describe other Ees and discussing U with patient, unlawful, since use of word *scab* in context of labor dispute protected activity; E was mistaken as to any conversation with patient, and particularly in view of E's prior statements that E knew Ee had been one of the instigators in getting U into nursing home and if Ee was caught doing anything in connection with U she would be asked to leave)

The Martin-Brower Company 263 NLRB No. 025

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(discharge of Ee involved in protected activity, assertedly for making disparaging remarks regarding fellow Ees, and for failing to demonstrate initiative and follow instructions, unlawful, in view of E's pattern of unlawful conduct, prior discriminatory treatment of Ees, and timing and precipitate manner of discharge)

8387-1800 Damage to goods and machinery because of carelessness

Halliburton Services (Coffeyville, Kansas), A Division of Halliburton Company 265 NLRB No. 144
(discharging U activist for throwing down his respirator in anger and breaking it after being told that his lunch breaks and other breaks were being rescheduled)

Fieldcrest Mills, Inc. 264 NLRB No. 086
(discharge of U adherent who received three written reprimands for damaging rugs in 6 months pursuant to E procedure not violative where no evidence that other Ees who caused damage were treated differently)

Coil-Acc, Inc. 262 NLRB No. 012
(notwithstanding Ee's overt involvement with U and E's unlawful threats and interrogations which supported finding of GC's *prima facie* case of discriminatory discharge, discharge was not violative where E justified discharge on ground that Ee was responsible for series of mishaps when driving truck for E; E would have discharged Ee even if Ee had not engaged in U activities)

Fuelgas Company, Inc. 259 NLRB No. 104

Arnold Ready Mix Corporation 259 NLRB No. 026

Debarnardi Brothers, Inc. JD-(SF)-286-82
(discharge of Ee not violative where GC failed to establish that E discharged Ee for protected rights under the Act; Ee was discharged for reasons arising out of what was perceived to be threat to damage E's equipment and because of excellent Ee's announced change in his work habits because of his failure to receive pay raise)

Alpha Beta Company JD-301-83

8387-1880 Not real reason

8387-1850—Cont.

Builders Distributors Sand and Gravel, Inc. 237 NLRB No. 083
(discharge of key U activist, in E's desire to reduce hours to cut expenses, assertedly because of Ee's poor attitude towards his work, his lateness and improper care of E's equipment held violative where E's records during this critical period showed Ees' hours were increasing rather than decreasing and 1 day after Ee was discharged E hired another experienced driver at same rate of pay as U activist)

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 083
(suspension of formerly striking Ee assertedly because of damage to E's rental vehicle due to Ee's improper checking out of equipment before delivery to customer, unlawful, in view of E's animus toward ex-strikers, timing of suspension to Ee's activities as steward, absence of evidence of negligence on Ee's part and of precedent for punishment herein, E's predisposition to be punitive, and E's failure to place in evidence any written statement attributable to customer)

C & G Coal Corporation 247 NLRB No. 179
(discharge of reinstated Ee assertedly for damaging truck door after arbitrator found Ee's initial discharge to have been defective, held violative where Ee had asked E if he could join U and E replied that *he started out with a four Ee U and that's just the way it was going to be*)

Westinghouse Electric Corporation JD-(ATL)-88-81
(discharge of Ee, U's financial secretary, assertedly because Ee had driven forklift at speed in excess of that permitted, damaged E's machinery and had record of habitual tardiness held violative since other Ees were not disciplined for same conduct; all discipline issued for damage to E's property occurred after Ee was discharged; E did not demonstrate same action would have taken place absent protected conduct)

Westinghouse Electric Corporation JD-(ATL)-88-81
(3 day suspension of Ee, U president, violative where conduct of Ee neither constituted willful violations of E's safety rule, nor did E establish habitual carelessness or recklessness on part of Ee)

N.L.R.B. v. Proler International Corporation 635 F.2d 351 (C.A. 5, 1981)
(sufficient circumstantial evidence to sustain Bd's finding that E's proffered reason for discharge of driver, i.e. that he drove truck with flat tire, was pretextual, whee Ee had participated in strike and had been reinstated only week prior to discharge, E's vice-president had seen E holding U handbill, tire was not damaged, and Ee was told he was *seen by wrong man*)

McDonnell Douglas Corporation v. N.L.R.B. 655 F.2d 932 (C.A. 9, 1981)
(discharge of transport pilot, leading U advocate, assertedly because he had blown out two vacuum pumps during flight subsequent to his U organizing efforts held violative, since Ee was regarded as competent pilot by fellow pilots and his immediate supervisor, other pilots who were guilty of same or worse conduct were not fired)

8387-2000 Discourtesy to patrons

8387-2050 Not real reason

United Supermarkets, Inc. 261 NLRB No. 179
(discharge of store Ee who was U adherent assertedly for being rude to customer at check-out resulting in customer's rescission of his purchases, unlawful, where customer complaints about Ees were rather common, other Ees had not been fired because of such conduct; and E reacted to incident and made decision to discharge Ee w/o any further investigation of incident or w/o obtaining Ee's version)

Kroton Char-Broil, Inc., d/b/a Coram Pond Diner 248 NLRB No. 152
(violation, where Ee who was demanding that E pay its Ees their minimum legal wage and improve other terms and conditions of employment, was discharged assertedly because she antagonized customers by refusing to serve them)

General Rental Co. d/b/a Avis Rent–A–Car 247 NLRB No. 188
(violation where soon after election E discharged U campaign organizer assertedly because E had received letter from customer complaining that U supporter kept the customer waiting while U supporter drank coffee)

8387-2200 Customer complaints about work

Arnold Ready Mix Corporation 259 NLRB No. 026

8387-2250 Not Real Reason

Cecil Walker Machinery Co. 257 NLRB No. 061
(transfer of Ee from truck to warehouse assertedly because E was concerned that Ee's attitude would have adverse effect on customer relations violative where there were no customer complaints about Ee and Ee was transfered for speaking out at U meeting)

C. E. Wilkinson & Sons, Inc. 255 NLRB No. 176
(discharge of Ee, assertedly because of decline in business and customer complaints about his work, violative where Ee was discharged 2 days after refusing E's request that he withdraw his U authorization card, E had knowledge of Ee's U activities and had demonstrated U animus)

Doug Hartley, Inc. 256 NLRB No. 097
(mass discharge of unit members of window and door installation crew which worked under supervision of Ee who had special incentive arrangement with E, unlawful, since E failed to overcome GC's prima facie case of unlawful motivation where discharge was 4 days after majority signed authorization cards, notwithstanding crew's unacceptable work and failure to work on weekend, where E rehired crew members for jobs outside unit; nor did cancellation of agreement by crew's leader justify discharge absent agreement that crew went if leader left)

Dimo Ambulette Service, Inc. 255 NLRB No. 002
(discharge of Ee ambulette driver violative, notwithstanding E's contention that it discharged Ee because of customer complaint, where real reason for discharge was his circulation of ptn for U)

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 083
(discharge of formerly striking Ee assertedly for servicing customer improperly, unlawful, where customer was brought in as ringer by E to provoke and discredit Ee and create pretext for discharge)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart 247 NLRB No. 128
(violation, where E, in recalling U adherent, warned her regarding deficiencies in grooming, abuse of other Ees, and customer complaints, since motivated by U activities and decision influenced by prior unlawful warning letters)

Transportation By La Mar, Inc. JD-279-81
(discharge of U adherent allegedly because of complaints from customers of E held violative where E failed to testify as to complaints and failed to produce at hearing letters of complaint from *somebody...over at the University* (customer of E))

8387-2300 Dishonesty

Alcar Industries, Inc. 260 NLRB No. 094
(discharge of most active U supporter who assisted U as election observer and testified at Bd hearing, not unlawful, where there was ample cause for discharge in that E believed that E had twice lied in same month when he called in sick in order to attend to personal business; no threats were made by E at time of election when tension existed at plant; and if E had wished to use any pretext that readily came to hand, it could have relied on first instance of E's abuse of sick leave)

Truck Stations, Inc., d/b/a Woody's Truck Stops 258 NLRB No. 094
(discharge of two Ees who did repair work for E's customers during working hours and kept the money received for themselves).

Wyman-Gordon Company 252 NLRB No. 168
(discharge of U adherent for failing to notify E that he did not attend classes for which he was subsequently paid, violative, where E's record keeping difficult to understand, Ee offered to return unearned money to E which offer refused and anti-U attitude of E)

Industrial Label Corporation JD-(SF)-127-81
(discharge of Ee who solicited for U lawful, where for lying; contention E's defense not sufficient to overcome GC's prima facie case in view of fact discharge harsh penalty for offense, rejected; where stated in E's policy manual dishonesty grounds for automatic dismissal, E had not condoned similar behavior previously, E consistently relied on same grounds as reason for dismissal, and no prevasive U animus; where unlawful motive not proven, Bd will not substitute its judgment for E's even if E's decision seems unreasonable)

Shuttle Motor Corporation JD-327-80
(discharge of mechanic, not unlawful, where for general poor work record and specifically for submitting false warranty claim in order to avoid dispute with customer and be paid by manufacturer for labor; rather than for inquiring of state agency regarding legality of threatened *back-stubbing*, or as result of E's belief Ee had or was about to invoke NLRB processes)

Neuhover Trailer Manufacturing Company JD-256-80
(Ee's attempted fraud of work time)

Wyman-Gordon Company v. N.L.R.B. 654 F.2d 134 (C.A. 1, 1981)
(E rebutted prima facie case and proved Ee discharged for accepting payments for classes he did not attend)

Charge Card Association v. N.L.R.B. 653 F.2d 272 (C.A. 6, July 1981)
(GC did not make out prima facie case that E unlawfully suspended Ees for walkout protesting working conditions since Ees called E and falsely stated they were sick. In view of high absenteeism that day, E had right to demand Ees support their assertion of illness even if E suspected Ees were protesting working conditions. Had Ees said they were going to be absent in protest of working conditions, different result would obtain)

8387-2350 Not real reason

Industrial Label Corporation 261 NLRB No. 038
(defense to prima facie case of discriminatory discharge that it was pursuant to E's policy on dishonesty and prior warning given Ee about lying, rejected where, although dischargee had lied to fellow Ee about work-related matter, he had done so in order to comply with E's directive to avoid arguing with such Ee, and he had told E the truth about the matter; moreover, E failed to

8387-2350—Cont.

show that its policy or warning was intended to reach lies to fellow Ees that did not adversely affect management)

15 East 48th Restaurant, Inc., d/b/a Sagapo Restaurant and Sagapo Restaurant, Inc., its agent **257 NLRB No. 156**
(discharge of U adherent ostensibly for shortage in cash register violative where Ee had been short in his daily register many times, and never even received warning and discharge occured 2 days after he signed U card)

Continental Distributing Co., Inc. **256 NLRB No. 091**
(discharge of Ee after he made inquiries about joining and attempted to join U, and called Bd to find out how to join U, violative where E's allegations about Ee's stealing goods from E not supported by evidence)

Fleet Carrier Corporation **JD-372-81**
(discharge of U adherent, assertedly for dishonesty, violative where Ee was discharged for his U activities)

8387-2500 Disloyalty

8387-2550 Not real reason

Five Star Air Freight Corporation **255 NLRB No. 046**
(denying reinstated U advocate holiday leave pay and suspending her for three days w/o pay assertedly because she had typed letter announcing impending U meeting on company typewriter during working hours held violative where record established that other Ees made frequent use of company equipment w/o rebuke)

Anstell Box Board Corporation **249 NLRB No. 044**
(E's suspension and discharge of Ee violative, where explanation advanced by E was pretextual and real reason was Ee's stated intention to complain to Bd about allegedly discriminatory treatment, in view of shifting reasons proferred by E, weakness of work deficiencies cited against Ee for which he was not disciplined at time of occurence and their remoteness in time, and fact that E's decision to suspend Ee came immediately after he threatened to go to the Bd)

Suburban Ford, Inc. **248 NLRB No. 051**
(discharge of U adherent salesman for *disloyalty* because he tried to explain why he loaned demonstrator to customer, held violative where Ee was experienced salesman with unexceptionable performance record and E was attempting to harass Ee and cool ardor of all Ees for U representation)

Golden Day Schools, Inc. v. N.L.R.B. **644 F.2d 834 (C.A. 9, May 8, 1981)**
(discharge of U advocates assertedly for disparaging E, inducing parents to withdraw their children from E's day-care center and unsatisfactorily performing their work, violative where discharge followed immediately upon U organizing activity and E's anti-U bias was amplysupported by record; false assertions of lawful purpose support inference that declarant's motive was unlawful)otive was unlawful)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**
(violation where moving cause for discharge of instructor was his remarks to student group regarding ongoing labor dispute rather than for disparagement of E, as alleged)

8387-2600 Violation of confidentiality

Grocery Carts, Inc. **264 NLRB No. 140**
(discharging leading U adherent because she was caught in unauthorized examination of document containing confidential information about another Ee which she surreptitiously obtained from store manager's desk, not violative notwithstanding Ees had access to desk to obtain supplies)

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(discharge of Ee not violative where for disclosure of confidential wage information rather than for attending U meeting)

High Performance Tube, Inc. **251 NLRB No. 181**
(discriminatorily discharged Ee denied reinstatement and backpay where took photographs of E's machines on which patents were pending and also of blueprints in E's office which he had entered w/o permission when at time Ee committed above acts he was on probation for copying list of E's competitor's engineers, backpay entitlement ends as of date E could have lawfully discharged him for above misconduct)

Bullock's **251 NLRB No. 082**
(discharge of Ee assertedly for demoralizing E's personnel by having copies of performance reviews in her possession and discussing them with fellow Ees, not unlawful, where dischargee surreptitiously and wrongfully obtained and copied fellow Ee's review, disseminated reviews' contents to another Ee, advising latter that her review was unfavorable in comparison with others, and dischargee's remarks leading Ee to believe that her job could be in a precarious position support conclusion that dischargee's conduct had disruptive and demoralizing effect on E's personnel)

Texas Instruments Inc. v. N.L.R.B. **637 F.2d 822 (C.A. 1, 1981)**
(discharge of U adherents for violation of E's valid security rule not violative where Ees published E's confidential wage survey report which Ees had obtained outside of normal course of employment (each page of report was stamped strictly private), Ee manual set forth E's rule against disclosure of confidential information; moreover, Ees' organizing activity not dependent on access to confidential information)

8387-2650 Not real reason

Firmat Manufacturing Corp. **255 NLRB No. 183**
(discharge of confidential Ee allegedly for leaking information, violative where real reason was her husband's U activities)

Air Express International Corporation v. N.L.R.B. **659 F.2d 610 (C.A. 8, Oct. 1981)**
(discharging district manager's former confidential secretary held violative where all confidential duties were withdrawn on day ptn was filed and her position thus was admittedly not confidential, and asserted grounds of incompetence and slow business were pretextual where real reasons were that E suspected her of supporting U and being source of salary leaks)

8387-2800 Dissension with other employees

Tri-City Electric Company, Inc. **264 NLRB No. 182**
(discharge of *traveler*, assertedly at request of local U, not violative notwithstanding Ees had problems with *traveler* that created dissension and local U caused E to demote *traveler* prior to discharge, where problems which Ees had with *traveler* were not associated with his status as *traveler*, E did not let him go because of his status as *traveler* but as part of reduction in force and demotion occurred outside 10(b) period and was neither alleged in C nor did ALJ find it to be violation)

Giant Food, Inc. **252 NLRB No. 182**
(Ee who urged another Ee to aid U by supporting its objections to election involved in protected activity not harrassment and discharge violative; moreover, E's belief that had Ee engaged in misconduct does not justify discharge where in fact he had not engaged in such misconduct)

Albertsons, Inc. - Southco Division **JD-(SF)-244-80**
(discharge of U adherent, not unlawful where for threatening to throw egg on other Ee's car)

Albertsons, Inc. - Southco Division **JD-(SF)-344-80**
(discharge of Ee not unlawful, where discharged for making false statement to another Ee that other Ee was going to lose her job, with intention of upsetting her coworker and disrupting E's operation)

8387-2850 Not real reason

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(discharge of Ee who was U organizer allegedly for Ee's safety in view of threats of violence made against him, completion of Ee's work assignment, Ee's lying to E about another Ee, and his *hassling* of other Ees, unlawful, where fears for his safety proved unjustified, Ee had seniority for retention of job, information concerning other Ee passed on not as facts but mere repetition of another Ee's statement, and fact Ee may be persona non grata among certain Ees because of his U activities no basis for discharge)

8387-3000 Drunkenness

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising **257 NLRB No. 022**
(discharge of U adherent who came to work drunk not violative where E first ordered Ee to take day off, Ee insisted upon remaining and then he was discharged)

Greentree Furniture Rental Corporation **JD-(SF)-383-80**
(discharge of high producing furniture salesman with proU background because he had misappropriated company funds not violative where record proved Ee had withheld company funds to obtain higher commission rate, had committed three prior infractions of rule against intoxication which resulted in two written and one oral reprimand by store manager, and had falsified his employment application)

8387-3050 Not real reason

United Dairy Farmers Cooperative Association v. N.L.R.B. **633 F.2d 1054 (C.A. 3, 1980)**

N.L.R.B. v. M & B Contracting Corporation **653 F.2d 245 (C.A. 6, July 1981)**
(discharge of U adherent unlawful since for U activity rather than for drinking while operating E's trucks in view of lack of investigation by E of alleged drinking and other Section 8(a)(1) violations by E)

8387-3200 Falsification of production or timecard

Kaiser Aluminum & Chemical Corporation **255 NLRB No. 076**
(no violation for disciplining U representative for filing false statement of time worked, where Ee accepted E's position in grievance settlement that he *banked* or falsified records and ALJ separately found that false report was not mistake, and E had announced that he would strictly enforce rules to stop practice)

8387-3200—Cont.

Electron Tube Division of Litton Systems, Inc. 260 NLRB No. 140

(discharge of Ee for falsifying time card not unlawful, where he would have been fired for his actions in any event, regardless of his U activity)

Clarklift of St. Louis, Inc. 259 NLRB No. 002

(discharge of U steward for instructing Ees to falsify work tickets and using his office as steward to gain special favors for himself not violative where sole cause for discharge was unprotected activity of steward)

Prentice-Hall, Inc. 258 NLRB No. 184

(discharge of Ee for breaking E's rule against one Ee's punching out another Ee's timecard, not unlawful, where Ee was relatively inactive U supporter, Ee was defiant, and other more active U supporters escaped discipline)

Sturm, Ruger & Company, Inc. JD-418-81

(where Ee is paid on piece-work basis, discharging Ee for recording falsely on his job card amount of work performed, not violative)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 8, 1980)

(discharge of Ee, not unlawful, notwithstanding E's knowledge that Ee had filed grievance seeking higher wages prior to discharge, where Ee had falsified time card, breach of E's rules for which E had never used any penalty less severe than discharge, and had done unsatisfactory work)

8387-3250 Not real reason

Magnesium Casting Company, Inc. 250 NLRB No. 107

(discharge of known U adherent assertedly for cheating on his production count, unlawful in view of Ee's hostility to U, uncertain nature of evidence that Ee had cheated, minimal amount involved, failure to follow standard warning policy, Ee's record as top operator, fact that no operator had been discharged for such offense over 10 year period, and summary nature of discharge)

Grimes Manufacturing, Division of Midland-Ross, Inc. 250 NLRB No. 041

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 087

(discharge of U advocate-waiter, who had served as interpreter for U organizing committee assertedly for error in his sign-in time on time sheet, violative, where time sheet was closely monitored by headwaiter and testimony of headwaiter and manager to effect they had no knowledge of U waiter's U activity, was discredited)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand 247 NLRB No. 167

(reinstatement of discriminatorily discharged Ee ordered notwithstanding Ee guilty of falsifying time card as E had no knowledge of Ee's action until after discharge and no evidence presented to prove that Ee would have been discharged for this action)

8387-3300 False statement regarding employer's business

8387-3350 Not real reason

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)

(demotion unlawful where for U adherence rather than for customer complaints)

8387-3400 Falsification of insurance claim

8387-3450 Not real reason

Newspaper Printing Corporation JD-285-80

(discharge of Ee allegedly for attending Bd hearing instead of getting bed rest for fatigue resulting from working and then filing workman's compensation claim, unlawful, since no evidence Ee ever filed claim and also in view of timing, E's knowledge of Ee's U activities and baselessness of E's asserted reason)

8387-3500 Falsification or alteration of employer's records

United Parcel Service, Inc. 263 NLRB No. 063

(discharge of truck driver lawful, since was for taking extended and unauthorized breaks, falsifying records required by E and government, idling tractor for long periods, rather than for filing grievances where Ee not militant U supporter and other Ees disciplined for similar offenses, and discharge would have taken place absent protected activity)

E. I. Dupont De Nemours 263 NLRB No. 015

(discharge of active U supporter, lawful, where he was discharged for not performing work, falsifying production records, and giving false information when confronted by supervisor, since he would have been discharged even absent protected activity and notwithstanding protected activity prompted supervisor to scrutinize work and reports, results of which lead to discharge, inference is not warranted that Ee would have been discharged if less than dischargeable offense had been uncovered and where other Ees had been discharged for similar offenses)

Pacific Intermountain Express 250 NLRB No. 180

(discharge of 3 sales representatives who were U supporters assertedly for stealing company time, refusal to cooperate in an investigation, and suspected falsification of company records, not unlawful where, on reliable information as to one representative's on-job drinking habit, E had him followed 5 days, discovered that he and the 2 other representatives met 3 days for 2 hours at coffee shop but covered up fact on their work and expense reports, E promptly questioned the three Ees and discharged them when 2 refused to answer and 1 answered untruthfully)

MGM Grand-Reno, Inc. 249 NLRB No. 158

(discharge of U advocate for falsifying work order 4 days prior to his termination, not violative notwithstanding Ee was discharged on same day he solicited for U; no evidence in record that anyone responsible for Ee's discharge knew that he engaged in U activity)

8387-3550 Not Real Reason

Safety-Kleen Corporation 266 NLRB No. 012

(discharge of one of E's best salesman assertedly for *falsification* of records showing services performed as of certain time, which in fact, had not then been performed, held violative where Ee was discharged 1 day after E learned Ee was U adherent; several of Ee's improprieties were rejected by E himself as reason to terminate *Ee*; there was no evidence that Ee's actions harmed E or benefited Ee, and Ee had at time he turned in report informed supervisor that work had not been performed w/o reaction from supervisor)

United Parcel Service, Inc. 261 NLRB No. 134

(discharge of drivers preceded by extraordinary surveillance, unlawful, where real reasons were for filing charges with Bd in prior case, U adherence, distribution of materials for dissident branch of U rather than for overstaying breaks on road and thereby failing to meet schedules, and for falsifying logs)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 1, Sep. 1981)

(E's discharging U advocate assertedly for violating E's rule against falsifying inspection reports, violative where apparent insignificance of rule along with E's history of treating rule as unimportant support inference that something more was involved than just breach of rule)

8387-3600 Making embarrassing or harmful statements about employer

8387-3650 Not real reason

Irwin County Electric Membership Cooperative 247 NLRB No. 198

(discharge by utility company of Ee allegedly for criticizing company in violation of rule for showing favoritism in restoring service w/o payment to those customers on whose behalf members of its board intervened, unlawful, since discharge was for Ee's U activities in view of E's U animus, prior threats of discharge or suspension for U activity, precipitousness of discharge, delay in discharging after Ee's criticism of it, and fact no other Ee had been discharged for voicing criticism)

8387-3700 Falsification of employment application

South Nassau Communities Hospital 262 NLRB No. 146

(discharge of Ee assertedly for falsifying employment application, not unlawful, where E met burden that discharge would have occurred even in absence of Ee's protected activities by showing discharge of 2 other Ees for same reason, which GC was unable to rebut with any evidence; and while E discriminated against other Ees for their U activity, discharge herein is not assessed in that light)

Tube Turns, A Division of Chemetron Corp. 260 NLRB No. 062

Service Garage, Inc. 256 NLRB No. 183

(although Bd disagreed with ALJ's finding that unlawfully discharged Ee admitted lying about his age at initial hearing for fear of losing current job was sufficiently egregious to amount to abuse of Bd procedures and to warrant forfeiture of Ee's right to reinstatement and limitation of backpay, Bd, however, held that Ee's original falsification of same critical information on employment application barred his entitlement to reinstatement and any backpay where E proved that it would not have hired Ee but for its reliance on application information whose falsity was discovered subsequent to Ee's unlawful discharge)

Grantree Furniture Rental Corporation JD-(SF)-308-80

(discharge of high producing furniture salesman with proU background because he had misappropriated company funds not violative where record proved Ee had withheld company funds to obtain higher commission rate, had committed three prior infractions of rule against intoxication which resulted in two written and one oral reprimand by store manager, and had falsified his employment application)

8387-3750 Not real reason

Chapel Transportation Company 256 NLRB No. 170

(reinstatement of discriminatee, because he had violations on his driver's license, prior felony conviction which was unrevealed on his job application, and caused security problems for U.S. Postal Service with which E had contracted, not barred, since E was aware of Ee's misconduct and had not disciplined or discharged Ee on such grounds; Ee had been declared good

§387-3750—Cont.

Ee before discharge and problems with Postal Service had been resolved before discharge)

§387-3800 Going into other departments

Amoco Fabrics Co., Patchogue-Plymouth Division/ Nashville Mills **260 NLRB No. 038**

Apco Insulations, Inc. **247 NLRB No. 081**
(discharge of insulation installer because he had left his work area to observe insulating work being done by another contractor in nearby furnaces because of possible jurisdictional work question, not violative notwithstanding Ee told to check up on this matter by U, where other Ees had been discharged for leaving their work areas and there was no need for installer to inquire into any work jurisdictional question)

Apollo Corporation, Vector Division **JD-528-80**
(no violation for suspending U officer for going to another work area when she was told not to go)

§387-3850 Not real reason

Daniel Construction Company, A Division of Daniel International Corporation **264 NLRB No. 079**
(reprimanding U adherent for leaving his department and talking to other Ees held violative where reprimand was given as *final* warning notice, departing from E's usual policy concerning discharge after three written warnings; other Ees continually talked to each other outside department w/o reprimand)

Art Steel of California, Inc. **256 NLRB No. 140**
(issuing warning notice to U adherent assertedly for leaving his department and going into another department w/o permission and *—talking to a government person—* in violation of E's rule, held violative, since Ee was involved in taking inventory and was not assigned to particular department, but instead, had to go from department to department; warning notice was given Ee after Ee had spoken to Bd agent investigating ULP charges against E)

Magnesium Casting Company, Inc. **250 NLRB No. 107**
(suspension of known U adherents for absence from their work area, unlawful, where they were absent no longer than 10 minutes during their break period, their casual greeting of other Ees in another department did not constitute a work interruption, and no other Ee had been disciplined for asserted reason)

§387-4000 Hostility or bad attitude toward employer

Dobernuell Brothers, Inc. **JD-(SF)-286-82**
(discharge of Ee not violative where GC failed to establish that E discharged Ee for protected rights under the Act; Ee was discharged for reasons arising out of what was perceived to be threat to damage E's equipment and because of excellent Ee's announced change in his work habits because of his failure to receive pay raise)

Pavco Industries, Inc. Trutel Systems, Inc. **JD-(NY)-89-81**
(no prima facie case in view of E's lack of knowledge of U activity, absence of U animus and valid reason for discharge, i.e., Ee-E heated discussion about wage increase and E's conclusion that Ee would not be satisfied with granted 30 cent raise)

Public Service Company of New Mexico **JD-(SF)-157-80**
(discharge of former U officer, not unlawful, where discharge not motivated by his U activities and was not for protected activity since his actions, statements and letters which precipitated discharge were not concerted nor for object of enforcing contract)

N.L.R.B. v. Cumberland Farms Dairy, Inc. **674 F.2d 943 (C.A. 1, Mar. 1982)**
(discharge of U activist driver for not immediately going out on his route after co-worker's fight with supervisor, not unlawful)

§387-4050 Not real reason

Stone Electric, Inc. **263 NLRB No. 159**
(discharge of lineman, U steward, assertedly for his *lack of production* and *attitude* held violative where E's decision to terminate lineman was grounded in Ee's participation in joint meeting of U and management wherein Ee sought larger crews to install utility poles over rugged terrain of jobsite contrary to E's economic interest; E did not establish Ee would have been discharged absent Ee's participation in joint meeting)

Pay 'N Save Foods, Inc. **257 NLRB No. 162**
(circumstances, including timing of discharges upon E's learning of Ees' U activity and false explanation for discharges, size of plant, and fact Ees not circumspect in their discussions of U warrant inference that E's reference to Ees' attitude, as grounds for action, was allusion to their U sympathies)

Builders Distributors Sand and Gravel, Inc. **257 NLRB No. 053**
(discharge of key U activist, in E's desire to reduce hours to cut expenses, assertedly because of Ee's poor attitude towards his work, his lateness and improper care of E's equipment held violative where E's records during this critical period showed Ees' hours were increasing rather than decreasing and 1 day after Ee was discharged E hired another experienced driver at same rate of pay as U activist)

Spielberg Mfg. Co. **256 NLRB No. 197**

§387-4300 Hot-headed, surly, and ill-tempered

W. W. Grainger, Inc. **255 NLRB No. 148**

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(discharge not violative where for temper outbursts about which Ee had been warned earlier; further, weight must be given to ALJ's conclusion there was no discriminatory motive for discharge)

§387-4350 Not real reason

Laredo Packing Company **254 NLRB No. 001**
(suspension of U adherent who threw supervisor's hard hat into trash can for *disorderly conduct* and *discourtesy to supervisor* violative, since reason was U activity, in view of E's attempt to replace U with Ee committee, and further Ee thought hat belonged to another Ee rather than supervisor inasmuch as hat was color of hats worn by Ees rather than color of hats worn by supervisors)

Michael Bohm Jr., d/b/a M & M Bohm and Associates **JD-638-81**
(discharge of painter, leading U advocate, because of his chronic tardiness, erratic performance, complaining, attitude and insubordination held violative where tardiness was general problem, and Ee was singled out for discharge; there was no evidence that other reasons for discharge were significant influence upon E in discharging Ee; in discharging Ee, E said *this talk of U is the last straw*)

§387-4400 Improper attire or appearance at work

Caterpillar Tractor Company **257 NLRB No. 029**
(suspending Ee, who had testified in Bd proceeding, for failing to get haircut not unlawful, where such discipline was not unprecedented and evidence showed that Ee's hair was in fact too long for employment standards)

§387-4450 Not real reason

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of bartender-U adherent, assertedly for being away from his work, using customers', rather than Ees', restroom and not being properly attired held violative where shifting reasons were adopted by E to conceal discriminatory motive)

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **247 NLRB No. 125**
(issuing warning letter to U adherent regarding wearing dirty uniform and abuse of other Ees, unlawful, notwithstanding adherent's admitted grooming deficiencies, since warning motivated by her U activities, reporting of alleged violations by E to government agency, owner also threatened layoff and offered Ee adherent severance pay to induce her to seek other employment)

§387-4500 Inefficiency

Thurston Motor Lines, Inc. **255 NLRB No. 019**
(discharged for failure to achieve reasonable production level)

§387-4550 Not real reason

United Supermarkets, Inc. **261 NLRB No. 179**
(discharge of known U adherent during reduction in force assertedly because, notwithstanding his greater seniority, he was less efficient, unlawful, where it was not until E learned of Ee's support for U that it could no longer tolerate his inefficiency; moreover, Ee refused supervisor's request to report to supervisor activity at U meeting)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(violation where Ee was terminated assertedly because his efficiency and performance deteriorated)

U. S. Gypsum Company **JD-(ATL)-28-82**
(discharge of leading U advocate assertedly because Ee lacked skills and ability to perform his work and required constant supervision, violative where discharge followed shortly after manager's unlawful anti-U speech; Ee was not given disciplinary warning before discharge as was E's custom; other Ees who had received disciplinary warnings were not discharged; and E's records showed that Ee was performing well and had been granted wage raises for his work)

Elco Electric, Inc. **JD-820-80**
(violation where E refused to hire applicant because of his filing grievance alleging U contract infraction by E on prior job rather than, as contended, because of his tardiness or poor productivity during prior employment with E)

§387-4600 Malingering

Keister Coal Company, Inc. **247 NLRB No. 049**
(discharge of oiler, alleged U adherent, for failing to properly oil machinery and malingering on job not violative where Ee's only U activity was singing a U song and Ee's predecessor in job was discharged for identical reasons)

8387-4650 Not real reason

U. S. Gypsum Company JD-(ATL)-28-82
(discharge of leading U advocate assertedly because Ee lacked skills and ability to perform his work and required constant supervision, violative where discharge followed shortly after manager's unlawful anti-U speech; Ee was not given disciplinary warning before discharge as was E's custom; other Ees who had received disciplinary warnings were not discharged; and E's records showed that Ee was performing well and had been granted wage raises for his work)

8387-4700 Violating specific instructions concerning work

Armored Transport of Nevada, Inc. 265 NLRB No. 209
(discharging Ee for unjustly implicating another Ee of wrongdoing rather than owning up to Ee's own error, not violative)

Grocery Carts, Inc. 264 NLRB No. 140
(discharging Ee for being cold and indifferent to customer not violative where rule requires greeting customers or making eye contact, and she had previously been warned)

Henry J. Kaiser Company 259 NLRB No. 001
(discharge of Ee assertedly for being out of his work area and for nonproductivity held not unlawful, even though Ee had engaged in protected concerted activity, where Ee's claim that he had to use toilet facility because of diarrhea was rejected where Ee admitted his need was not imminent; he had ample time to take care of his needs before then; and his testimony was untrustworthy leading to conclusion that pique about overtime work, not physical illness, caused his unprotected action in refusing to work and defying foreman's instructions to go to work)

Consolidated Freightways Corporation of Delaware 257 NLRB No. 177
(discharge of Ee for taking extended breaks and insubordination to E not violative notwithstanding Ee was strong U-steward where E met *Wright Line* test and proved dismissal was precipitated and motivated by Ee's misconduct)

Thom Brown Shoes, Inc. 257 NLRB No. 027

Central Freight Lines, Inc. 254 NLRB No. 180
(discharge of U adherent for failure to report accident as required by E's rules not violative)

The Wackenhut Corporation JD-60-81
(notwithstanding E's U animous, U adherent lawfully discharged for insubordinate acts by failing to follow his E's rules and contacting, on his own, company whose site he was assigned to guard, rather than his superiors)

8387-4750 Not real reason

Parker-Robb Chevrolet, Inc. 262 NLRB No. 058
(discharge of salesman at auto dealership after U demanded recognition, assertedly for failing to follow company policy requiring referral of customers to sales manager before allowing customers to leave dealership, unlawful, where referral was not mandatory but discretionary on part of salesmen, no one had ever been discharged for similar conduct, E's testimony concerning prior warning to salesman was inconsistent and salesman testified he had not received such warning, E conducted no investigation of salesman's conduct prior to dismissal nor sought an explanation from him, and E engaged in various other ULPs only days before discharge)

Together We Stand Women's Guild Day Care Center 256 NLRB No. 064
(discharge of assistant teacher, allegedly for leaving child alone by himself in breach of E's rules, violative where real reason was his U activities, membership and support)

Crown Cork & Seal Company, Inc. 255 NLRB No. 004
(discharge of U activist for taking his lunchbreak when scheduled rather than to remain in his work area until malfunctioning press was repaired as instructed, held violative where Ee had compelling medical reason for disregarding instruction and other Ees who had left their work stations w/o permission were not similary disciplined)

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(discharge of Ee involved in protected activity, assertedly for making disparaging remarks regarding fellow Ees, and for failing to demonstrate initiative and follow instructions, unlawful, in view of E's pattern of unlawful conduct, prior, discriminatory treatment of Ees, and timing and precipitate manner of discharge)

Peavey Company 249 NLRB No. 110
(discharge of Ee unlawful in view of E's U animus and where motivated by Ee's protected activities as E had tolerated Ee's poor job performance for over 18 months until Ee instituted inquires into Ees' work grievances)

Bill Johnson's Restaurants, Inc. 249 NLRB No. 026
(discharge of waitress, assertedly for refusing to abide by restaurant rules, engaging in gum chewing, and using business phone for personal calls, unlawful, where surrounding facts preponderated in favor of finding that E, in effecting discharge, was motivated by knowledge that discriminatee was U adherent and that E's reasons for discharge were false)

8387-4800 Insubordination

A & T Manufacturing Company 265 NLRB No. [illegible]
(discharge of active U supporter for his failure to call in when absent and insubordination (calling supervisor a *brown nose* –) held violative, since, although Ee's violation of absentee rule was valid reason to discharge Ee, credited testimony was clear that E had decided to discharge Ee *before* Ee's absences)

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 186
(allegation that active U adherent was assigned a more onerous task and was subsequently discharged for insubordination in refusing to perform such task, dismissed, where evidence was insufficient to show that job assignment was discriminatorily motivated or that it was unreasonably onerous)

Bridgeport Hospital 265 NLRB No. 054
(E lawfully issued warning notices to security guards solely for walking out of meeting on instructions of U representative because E denied Ees request to have steward present at meeting to discuss vandalism on E's property and suspicions that guard themselves might be involved in such incidents; though walkout was concerted, Ees had been assured meeting was not disciplinary investigation, and thus, walkout not protected because not done to protest term or condition of employment)

McLean Hospital, A Division of Massachusetts General Hospital 264 NLRB No. 088
(no violation where suspension and discharge were not because dischargee had filed charges with Bd as alleged but because he failed to respond adequately to E's legitimate questions about his unauthorized entry with unidentified person into E's hospital's psychiatric unit contrary to rules against access by off-duty Ees and unauthorized entry by non-Ees; fact dischargee was accompanied by Bd attorney investigating his charge did not make entry protected or give him right to disregard rules)

Federal Management Co., Inc. 264 NLRB No. 023
(discharge of Ee, who was leading U activist, assertedly for disrespectful behavior toward supervisor and for insubordination, not unlawful, notwithstanding E's hostility to U, where E had cause to conclude that Ee had refused to perform work assignment ordered by supervisor; Ee's disrespectful language directed toward supervisor was clear violation of E's instruction to treat supervisor with respect; and difference in treatment of Ee from treatment of other Ees does not lead to conclusion that Ee would not have been discharged absent his U activities)

John R. Harland Company of Puerto Rico, Inc. 263 NLRB No. 187
(no violation where Ee was insubordinate in protesting assignment to clean presses, part of his assigned duties as pressman, on two consecutive days when he had not operated presses and said that next week he would be told to clean them again and he would not clean them, as there was no basis in which to infer E knowledge that he had signed card)

Rickel Home Centers, Division of Supermarkets General Corporation 263 NLRB No. 98
(discharge of U steward who was attempting to press grievance, not unlawful, where steward refused to discuss grievance with immediate supervisor as provided in grievance procedure, and instead of obeying order to return to work by supervisor upon steward's refusal to discuss grievance with him, left area to discuss with overall supervisor and vented intense anger in abusive language)

Parker Hannifin Corporation 259 NLRB No. 033
(discharge of U activist not violative where E rebutted GC's *prima facie* case of discrimination; Ee was warned, and then discharged, not because of her U activities, but because of her consistent refusal to stay at her work area and do her job and her defiance of instructions of her supervisors to return to work)

Caffe Giovanni, Inc. d/b/a Giovanni's 259 NLRB No. 031
(discharge of U-activist waiter in E's restaurant for refusing to work following altercation between fellow U supporter and anti-U Ee resulting in former's departure, not unlawful, where, regardless of dischargee's protected activities, he would have been terminated for insubordination, since E justifiably concluded that shortage of waiters at the time required dischargee to work remainder of shift which latter must have realized, E undoubtedly assumed fellow Ee's leaving was cause of dischargee's conduct, and, while discharge seems to be extreme penalty, it does not make ascribed reason pretextual)

Schwan's Sales Enterprises, Inc. 257 NLRB No. 165
(discharge of U adherent, not unlawful, where E had no knowledge of Ee's U activity at time of discharge and discharged Ee after his insubordinate outburst)

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising 257 NLRB No. 022
(discharge of U adherent who came to work drunk not violative where E first ordered Ee to take day off, Ee insisted upon remaining and then he was discharged)

Container Corporation of America 258 NLRB No. 184
(suspension of U steward for refusing to obey orders to return to work after general supervisor terminated grievance meeting, not unlawful, since general

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supervisor had acted in accordance with contractual grievance procedure in terminating grievance meeting and had not acted precipitously or in reprisal for steward's belligerent conduct or interfered with his protected participation in grievance meeting)

IPCO Hospital Supply Corporation, Cheshire Labs Division **295 NLRB No. 116**
(discharging Ees for sitting in cafeteria and refusing to leave plant, not violative)

Badische Corporation **254 NLRB No. 164**
(discharge of U adherent not unlawful, where reason was his insubordination in refusing to return E's booklet despite his knowledge that failure to return it could result in disciplinary action against him)

I.T.O. Corporation of Ameriport **254 NLRB No. 018**
(discharge of guard, U adherent, because he was *not on his post* and was insubordinate to-(assistant chief of security), not violative where guard's testimony that he was away (from his post) for 15-20 minutes could be considered excessive by E and record disclosed two prior incidents of discipline of Ees for leaving their post w/o permission)

United States Steel Corporation **253 NLRB No. 083**
(suspension and subsequent discharge of Ee for refusing to meet with supervisor, not unlawful, since Ee was guilty of insubordination)

General Thermodynamics, Inc. **253 NLRB No. 021**

Wilson Freight Company **252 NLRB No. 128**

Blue Bird Body Company **251 NLRB No. 196**
(discharge of active U adherent for *goofing off* not violative where GC failed to prove by preponderance of evidence that discharge was motivated in whole or part by Ee's U activity)

Amber Delivery Service, Inc. **250 NLRB No. 016**
(refusal to perform required task)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(suspension of U steward for making attacks on foreman and use of obnoxious obscenities while processing (Ee) grievances held not violative, since remarks were carried to point of insubordination and steward, by his continuing actions, interfered with foreman's job performance)

IML Freight, Inc. **249 NLRB No. 111**
(E's threat of termination to U steward, not unlawful, where U steward refused to return to work after discussion about grievance)

Bechtel Incorporated **248 NLRB No. 158**
(E's issuance of warning slips for Ees' quitting early and subsequent discharge for their refusing to sign warning slips, not unlawful since discipline was for Ees' insubordinate refusal to obey supervisor's direct order to comply with work rules while eschewing available contractual grievance process)

Lemon Electric Corporation **247 NLRB No. 203**
(discharge of Ee lawful, since for his refusal to obey safety rule which required tying long hair up and back to prevent it from being caught in machinery, where Ee was not outstanding U activist and other Ees had been warned for refusal to abide by same rule)

Tartan Marine Company **247 NLRB No. 073**
(discharge of U adherent, not violative, where adherent had long history of reprimands before and after his involvement with U activity and discharge was precipitated by his failure to pay close attention to delicate job, responding sarcastically to supervisor when warned and stopping work to write note, notwithstanding note was in connection with Ee's announced intention to file ULP charges)

Roadway Express, Inc. **JD-(SF)-258-82**
(discharge of U steward, assertedly for insubordination, who was engaged in protected activity of asserting his interpretation of U contract to supervisor, not unlawful, since steward's opprobrious conduct removed him from protection of Act, where he implicitly threatened supervisor, w/i hearing of other Ees, to resolve differences by private violent confrontation and did so w/o sufficient provocation from supervisor in refusing steward's demands who unjustifiably overreacted to such refusal; *animal exuberance* or *impulsive behavior* did not excuse steward's conduct under circumstances herein and in view of E's right to maintain order)

Hayes International Corporation **JD-(ATL)-29-81**
(discharge of U activist, not unlawful where Ee had been warned about possibility of discharge for refusing to obey supervisory instructions but continued to be insubordinate)

Mohr's Telephone Secretarial Service **JD-(SF)-43-81**
(discharge of Ee for refusal to obey E's instruction to leave production floor and go to back office, w/o assurance that her request for witness would be honored, not unlawful; E's reasons for seeking to counsel Ee was based on legitimate business considerations)

Huron Cement Division, National Gypsum Company **JD-770-80**
(suspension of Ee not unlawful, since for cause rather than for presenting grievance, where after being reprimanded for absenteeism Ee threatened to file grievance over supervisors doing unit work, repeatedly called supervisor approbrious term in abusive and hostile fashion in front of other Ees and refusing direct order to leave premises thereby losing protection of Section 7)

Aydin Corporation, Vector Division **JD-526-80**
(no violation for suspending U officer for going to another work area where she was told not to go and for refusing to see supervisor about pay check error w/o written note or U witness present to hear grant of permission to go as Ee cannot set conditions to compliance with order from supervisor)

Aydin Corporation, Vector Division **JD-528-80**
(no violation for suspending U officer for going to another work area when she was told not to go)

Datacomp Corporation, A Division of Herbick and Held Printing Company **JD-594-80**
(Ee's warning, suspension, and discharge not unlawful, notwithstanding fact that Ee was initially engaged in protected activity of charging E with racial discrimination where Ee lost protection of Act by opprobrius and insubordinate manner in which he pursued activity)

Industrial Chemical Corporation **JD-473-80**
(discharge of leading U supporter assertedly for insubordination, not unlawful, where Ee refused to obey instructions of his supervisor to perform work directly affecting vital operation of plant, there was no evidence of disparate treatment, and E had been insubordinate on several prior occasions)

Tourism and Development Corporation d/b/a Newport Jai Alai **JD-290-80**
(E's refusal to reemploy Ee, lawful, notwithstanding E's knowledge of Ee's U activity, where Ee had been insubordinate and E had changed Ee's work schedule after U election, action it was not required to take, thus belying any animus against Ee because of her U activity)

Public Service Company of New Mexico **JD-(SF)-187-80**
(discharge of former U officer, not unlawful, where discharge not motivated by his U activities and was not for protected activity since his actions, statements and letters which precipitated discharge were not concerted nor for object of enforcing contract)

Signode Corporation **JD-161-80**
(discharge for public racially offensive insubordination toward supervisor, not unlawful)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(no violation, where E was discharged for insubordination and not because of her support of U)

Nacker Packing Company v. N.L.R.B. **615 F.2d 486 (C.A. 7) (1980)**
(one-week and part-day suspension of discriminatee reinstated pursuant to Bd order after his initiating Bd proceedings not unlawful where suspensions were due to discriminatee's failure to follow E's instructions, substandard production, and unresponsive attitude)

N.L.R.B. v. Alumina Ceramics, Inc. **690 F.2d 136 (C.A. 8, Oct. 1982)**
(discharge of Ee, not unlawful, since Ee would have been discharged for insubordination even if not a U member; although Ee's reporting to work intoxicated or *hung over* and talking back to foreman alone might not be grounds for discharge since such practices were condoned by E, Ee disobeyed clear order to go home and instead attempted to do his work endangering himself and fellow Ees, and such conduct was too flagrant to ignore; moreover, although known U member, E was not particularly active, and E had promoted and given wage increases to other U adherents)

§387-4950 Not real reason

The Rosicrucian Press, Ltd. **264 NLRB No. 179**
(discharge of Ee unlawful, where for repeatedly complaining to U about working with another Ee in another department several hours a week who had serious body odor problem, rather than for insubordination for refusing to work with other Ee; Ee's statement in informal grievance meeting that she would not work with other Ee not insubordination since such postering not unusual in grievance meetings, Ee never actually refused assignment, and Ee had right to pursue grievance; further, E admitted Ee's work satisfactory)

Huttig Sash and Door Company **263 NLRB No. 163**
(violation for discharging initiator of U drive for delivering mudstained products and insubordination by not completing delivery, in view of timing soon after election, his assistant carried product through mud and was not disciplined, supervisor was unable to complete deliver for same reason next day and was not disciplined)

Aher Plastics Company, Inc. **263 NLRB No. 147**
(E's discharge of U proponent, assertedly for insubordination as result of Ee's offensive conduct directed at E's substitution of Christmas party for bonus, unlawful, where E did not maintain formal or informal work conduct policy, there were no past discharges because of Ee insubordination or misconduct, and E's tolerance of Ee's alleged misconduct, as shown by Ee's acceptance of Ee's apology, was in accord with E's past practice of prefer-

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ring retention of good workers over inconvenience of obtaining and training a replacement)

Traverse City Osteopathic Hospital 260 NLRB No 147
(violation where no credible evidence that leading Ee organizer refused direct work order, supervisor was aware of Ee's U activities and discharge was effectuated in summary fashion w/o talking to her or making any investigation)

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde 259 NLRB No. 073
(discharge of Ee, assertedly for insubordination, violative where Ee was discharged for invoking grievance procedure and for complaining about casino operations to gambling inspector)

T.R.W. Bearings Division, A Division of T.R.W., Inc. 257 NLRB No. 047
(discharge of U activist assertedly for insubordination as result of his being uncooperative and engaging in harassment of management, unlawful, since reasons advanced were pretextual where E did not apply its progressive disciplinary procedures and did not follow applicable rules, and E enforced its rules on selective basis as evidenced by E's treatment of admittedly lukewarm U adherent whose discipline for infraction of company rules could hardly be considered a penalty)

Marlene Industries Corporation; et al. 255 NLRB No. 192
(discharge of Ees, allegedly for insubordination, violative where discharge was for Ees' strong expression in heat of controversy of their common concern and position identical with that of earlier discharged Ee in protesting changed working conditions)

Firmat Manufacturing Corp. 255 NLRB No. 153
(discharge of Ee allegedly for refusing to obey order, violative where real reason was Ee's U activities)

Laredo Packing Company 254 NLRB No. 001
(suspension of U adherent who threw supervisor's hard hat into trash can for *disorderly conduct and discourtesy to supervisor* violative, since reason was U activity, in view of E's attempt to replace U with Ee committee, and further Ee thought hat belonged to another Ee rather than supervisor inasmuch as hat was color of hats worn by Ees rather than color of hats worn by supervisors)

Intermountain Rural Electric Association 253 NLRB No. 164
(suspension and discharge of U adherent assertedly because she was absent from work w/o authorization and for her *insubordination* held violative where Ee's U sympathies were source of discomfort to manager who felt Ee's duties as his secretary were incompatable with her having U representation and E was intent upon building case against Ee; she was considered by manager to be *very productive and valuable Ee*)

United States Postal Service 252 NLRB No. 083
(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would be futile and neither refusal to work nor distuption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

St. Francis Hospital 252 NLRB No. 174

Clayton Construction Corporation 250 NLRB No. 121
(U steward's assertion that E's work assignment was contrary to contract and demand that it be rescinded found not insubordination meriting discharge)

Bill Johnson's Restaurants, Inc. 249 NLRB No. 026
(discharge of waitress, assertedly for insubordination, unlawful, where surrounding facts preponderated in favor of finding that E, in effecting discharge, was motivated by knowledge that discriminatee was U adherent and that E's reasons for discharge were false)

Lone Trenching, Inc. 247 NLRB No. 183
(discharge of admittedly good Ee assertedly for incompetence and insubordination held violative where Ee had attempted to assert contractural overtime claims, his work was satisfactory, he was never warned or disciplined during his employment, and E's excuse that truck which Ee drove was broken down was frame up to lay groundwork for discharge of Ee)

Hinky Dinky Super Markets, Inc. 247 NLRB No. 169
(discharge of leading U advocate assertedly because of his insubordination when he showed his displeasure over learning his hours had been reduced by exhibiting nonverbal show of temper, held violative, since he was good Ee fired w/o warning, his show of temper was not serious and E, upon learning of Ee's U activity, suggested Ee seek other work)

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(refusing to follow work instructions)

Michael Bohm Jr., d/b/a M & M Bohm and Associates JD-630-81
(discharge of painter, leading U advocate, because of his chronic tardiness, erratic performance, complaining, attitude and insubordination held violative where tardiness was general problem, and Ee was singled out for discharge; there was no evidence that other reasons for discharge were significant influence upon E in discharging Ee; in discharging Ee, E said *this talk of U is the last straw*)

Brockway Glass Company, Inc. JD-(SF)-117-81
(discharge of probationary Ee, hired to do carton assembling, assertedly for complaining about this being assigned to janitorial work, for going to the U, and refusing to perform assigned janitorial work, held unlawful, where other unsatisfactory probationary Ees were granted extensions of their probation when their work was unsatisfactory, there was no credible evidence to support finding that Ee refused to do assigned work or was insubordinate, and Ee had statutory right to engage in U activities)

RMX, Inc. JD-583-80
(termination of Ee unlawful, notwithstanding E had legitimate cause to discharge Ee for his insubordination, where Ee would not have been discharged absent his U activity)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern JD-(SF)-220-80

N.L.R.B. v. Savin Business Machines Corporation 649 F.2d 89 (C.A. 1, May 1981)
(finding that allegedly insubordinate Ee would not have been discharged but *for* his U activities, affirmed where E had never disciplined Ee for other alleged past offenses or placed reprimand in his file notwithstanding its policy of providing documentation in support of its position in case of charges of discrimination)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. 658 F.2d 968 (C.A. 4, Sept. 1981)
(E's suspension of Ee assertedly because of his deliberate insubordination in twice absenting himself from work w/o leave, unlawful, where E denied leave in order to prevent Ee from participating in U's attempt at coordinated bargaining at another plant, discipline was disparately applied in Ee's own case, and E evidenced overall hostility to coordinated bargaining attempt; moreover reason for suspension was question of fact which was to be decided by Bd)

N.L.R.B. v. M & B Contracting Corporation 653 F.2d 245 (C.A. 6, July 1981)
(discharge of Ee who had circulated ptn for U and filed charge with NLRB, unlawful, where for U activity and invoking Bd processes rather than for insubordination in bringing E's broken truck back to E's headquarters w/o proper authorization where Ee had tried to obtain authorization from proper party, and unauthorized individual who told him to bring truck in was not reprimanded)

N.L.R.B. v. Clayton Construction Corporation 652 F.2d 6 (C.A. 8, June 1981)
(U steward's inquiry into circumstances of work assignment does not constitute insubordination meriting discharge)

Golden Day Schools, Inc. v. N.L.R.B. 644 F.2d 834 (C.A. 9, May 8, 1981)
(discharge of U advocates assertedly for disparaging E, inducing parents to withdraw their children from E's day-care center and unsatisfactorily performing their work, violative where discharge followed immediately upon U organizing activity and E's anti-U bias was amplysupported by record; false assertions of lawful purpose support inference that declarant's motive was unlawful)otive was unlawful)

8387-4900 Emotional outburst

Butler-Johnson Corporation v. N.L.R.B. 608 F.2d 1303 (C.A. 9)
(discharge not violative where for temper outbursts about which Ee had been warned earlier; further, weight must be given to ALJ's conclusion there was no discriminatory motive for discharge)

8387-5000 Interference with other employees

Datamax Corporation, A Division of Herblick and H & A Printing Company JD-594-80
(Ee's warning, suspension, and discharge not unlawful, notwithstanding fact that Ee was initially engaged in protected activity of charging E with racial discrimination where Ee lost protection of Act by opprobrious and insubordinate manner in which he pursued activity)

Albertsons, Inc. - Southco Division JD-(SF)-344-80
(discharge of Ee not unlawful, where discharged for making false statement to another Ee that other Ee was going to lose her job, with intention of upsetting her coworker and disrupting E's operation)

Harper and Arterburn Co., Inc. v. N.L.R.B. 693 F.2d 482 (C.A. 6, June 1982)
(discharge of Ee, allegedly because he requested that U steward be placed on company jobsite, not unlawful, where Ee was difficult worker whose complaints and demands disrupted other Ees, and even U steward who was appointed to that position as result of one of Ee's requests, complained to management about Ee's inability to work with others; moreover, fact that Ee was dismissed shortly after complaining about absence of U steward

8387-5000—Cont.

cannot, by itself, erase just cause which otherwise existed for his firing since timing alone is not sufficient to sustain ULP charge)

8387-5080 Not real reason

Harper & Arterburn Co., Inc. **255 NLRB No. 105**
(discharge of Ee unlawful, notwithstanding E's contention that reason for discharge was Ee's alleged disruption of other Ees' work where real reason was Ee's enlisting U's assistance in appointment of steward and talking about U on job)

Elk Brand Manufacturing Company **253 NLRB No. 132**
(discharge of leading U advocate allegedly for threatening another Ee, violative where she had engaged in no misconduct and E seized upon alleged threat to other Ee as pretext to hide its real and unlawful motivation)

Maywood, Inc. **251 NLRB No. 139**
(visiting with other Ees and keeping them from doing their work)

Henry A. Young, d/b/a Columbia Engineers International **249 NLRB No. 144**
(discharge of Ee who was U organizer allegedly for Ee's safety in view of threats of violence made against him, completion of Ee's work assignment, Ee's lying to E about another Ee, and his *hassling* of other Ees, unlawful, where fears for his safety proved unjustified, Ee had seniority for retention of job, information concerning other Ee passed on not as facts but mere repetition of another Ee's statement, and fact Ee may be persona non grata among certain Ees because of his U activities no basis for discharge)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(incident was a minor one not warranting discharge)

8387-5300 Leaving early

International Computaprint Corp. **261 NLRB No. 099**
(selection of Ee for layoff where E lost government contract, lawful, where Ee had received formal reprimand for leaving work w/o notifying supervisor and was on 30 day warning period when laid off and E retained Ee who had engaged in same U activity)

B. N. Beard Company **248 NLRB No. 016**
(discharge of truckdriver for quitting work early w/o permission, not unlawful, where Ee did so knowing that E was under pressure for economic reasons to have as much hauling work done as possible on day Ee left early)

American Freight System, Inc. **JD-481-81**
(issuance of warning letter to Ee (who had long history of filing grievances) documenting his absences and stating that any further absences would result in discharge not violative notwithstanding prior to receipt of letter Ee had asked for and been refused permission to take time off to attend upcoming U meeting and subsequent discharge of Ee was found not to be violative)

Cedarwood Care Center **JD-(SF)-315-79**
(walking off job w/o complying with order to report to supervisor proper grounds for discharge)

8387-5380 Not real reason

Knego Corporation **262 NLRB No. 171**
(discharge of active U adherent for failing to get permission before leaving work early due to illness, violative where G.C. presented *prima facie* case of unlawful motivation and E offered no evidence to prove that other Ees who failed to obtain permission were similarly discharged and that Ee would have been discharged absent his U activities)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(discharging card signer shortly before Bd-conducted election assertedly because of his early departure, violative in view of E's delay in discharging him, fact that on several occassions prior to his discharge Ee was unlawfully interrogated, and fact that E threatened that plant would shut down if U's campaign were successful)

8387-5500 Loafing

Marathon Letourneau Company, Longview Division **256 NLRB No. 054**
(discharges assertedly for wasting production time by failing to start working soon enough after shift started, unlawful, where accumulation of discipline points necessary to support discharge under E's rule was whatever E's preference was at the time; rule and its application showed disparate treatment of discriminatees; discharges were not automatic consequences of events as claimed by E; and E tolerated one discriminatee's prior habits over period of time but then discharge Ee shortly after he displayed U button)

Classic Truck Rental Corp. **251 NLRB No. 056**
(suspension of U adherent who had filed charges with Bd, not unlawful, in view of Ee's *stealing time* by wasting time on job and continuing disregard for company rules despite several warnings, thereby prompting E to file notice of intent to arbitrate disciplinary action against Ee because of his inefficiencies as Ee and then suspending Ee after receiving arbitrator's advice to do so)

Pacific Intermountain Express **250 NLRB No. 180**
(discharge of 3 sales representatives who were U supporters assertedly for stealing company time, refusal to cooperate in an investigation, and suspected falsification of company records, not unlawful where, on reliable information as to one representative's on-job drinking habit, E had him followed 5 days, discovered that he and the 2 other representatives met 3 days for 2 hours at coffee shop but covered up fact on their work and expense reports; E promptly questioned the three Ees and discharged them when 2 refused to answer and 1 answered untruthfully)

8387-5580 Not real reason

U. S. Gypsum Company **JD-(ATL)-28-82**
(discharge of leading U advocate assertedly because Ee lacked skills and ability to perform his work and required constant supervision, violative where discharge followed shortly after manager's unlawful anti-U speech; Ee was not given disciplinary warning before discharge as was E's custom; other Ees who had received disciplinary warnings were not discharged; and E's records showed that Ee was performing well and had been granted wage raises for his work)

Better-Bilt Aluminum Products Co., Inc. **JD-223-80**
(issuing warnings to U activist to correct her unsatisfactory work and taking prolonged breaks or *more serious action will be taken* held violative where supervisor had advised Ee that E was going to get rid of Ee because of her U activity and reasons for warnings smacked of pretense)

8387-5600 Loss or theft of employer's property

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company **256 NLRB No. 080**
(E's requiring that its drivers take polygraph test about missing vending machine keys discovered in their trucks, suspending those who refused, and discharging those who failed test repeatedly held not unlawful retaliation for U organizing activity, in view of prior policy of administering polygraph tests, nondiscriminatory application of test-taking requirement, and fact that vending machines appeared to have been robbed by use of keys)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**

General Electric Company **253 NLRB No. 156**
(discharging Ee because company believed that he had knowledge of thefts of company property by other Ees, not violative)

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(subjecting Ee to polygraph test because of his U activities and then discharging him after discovering from test that he was involved in theft of E's property violative because discharge direct product of unlawfully motivated test)

Southwestern Bell Telephone Company **251 NLRB No. 061**
(reinstate discharged Ee where information leading to discharge obtained during interview at which Ee was unlawfully denied his *Weingarten* rights; notwithstanding Ee confessed to theft of company property during interview as E relied solely on confession in making his decision)

Ben J. Mauro d/b/a Warehouse Food Distributing Company **250 NLRB No. 177**
(discharge of Ee, whose U activities were not remarkable, for failure to check on all items being taken out of store by fellow Ee resulting in loss to E found reasonable basis for E's belief in Ee's complicity with fellow Ee's theft or at least that she had been negligent)

Blue Goose Growers, Inc. d/b/a Yuma Citrus Company **JD-(SF)-290-81**
(discharging Ee for insisting on taking lunch break at specified time, not unlawful where doing so would have caused damage to fruit left in processing tank at processing plant and resulted in unnecessary loss to fruit grower or E-packer)

Grantree Furniture Rental Corporation **JD-(SF)-383-80**
(discharge of high producing furniture salesman with proU background because he had misappropriated company funds not violative where record proved Ee had withheld company funds to obtain higher commission rate, had committed three prior infractions of rule against intoxication which resulted in two written and one oral reprimand by store manager, and had falsified his employment application)

Neckover Trailer Manufacturing Company **JD-256-80**
(blatant infraction of rule regarding use of scrap metal by Ees both as it related to use of material for own purposes and taking of material from plant)

8387-5680 Not real reason

The Martin-Brower Company **263 NLRB No. 025**

Thurston Motor Lines **258 NLRB No. 048**
(discharge of U adherent, assertedly for removing tractor from E's premises w/o permission, violative where real reason for discharge was his U activities)

Blackstone Company, Inc. **250 NLRB No. 124**

McLane/Western, Inc. **251 NLRB No. 185**
(violation and interference where E was discharged, allegedly for breach of no-stealing rule by eating one cracker from damaged, unsalvageable carton,

8387-5850—Cont.

since E applied the rule in retaliation for Ee's suspected U support and as warning to other Ees)

N.L.R.B. v. Fixtures Manufacturing Corporation **669 F.2d 547 (C.A. 8, Jan. 1982)**
(discharging U activist one day after E received written report of U activity, 2 days after Ee became actively involved and 4 days after E received polygraph report which showed Ee refused to cooperate in investigation of thefts is substantial evidence that Ee was discharged for U activity rather than polygraph report)

8387-6000 Neglect of work

E. I. Dupont De Nemours **263 NLRB No. 015**
(discharge of active U supporter, lawful, where he was discharged for not performing work, falsifying production records, and giving false information when confronted by supervisor, since he would have been discharged even absent protected activity and notwithstanding protected activity prompted supervisor to scrutinize work and reports, results of which lead to discharge, inference is not warranted that Ee would have been discharged if less than dischargable offense had been uncovered and where other Ees had been discharged for similar offenses)

Interstate Security Services, Inc. **262 NLRB No. 002**
(discharge of Ee who was active in U activities and was guard at power plant, for being away from her post w/o permission not violative where she had also engaged in other unsatisfactory behavior)

United States Postal Service **260 NLRB No. 009**
(discharge of mail carrier, U adherent, who filed ULP charges against E with Bd, for failure to deliver postage due letters, loss of registered mail, and poor work held not violative absent evidence of anti-U motivation, or any evidence of disparate treatment)

I.T.O. Corporation of Ameriport **254 NLRB No. 018**
(discharge of guard, U adherent, because he was *not on his post* and was insubordinate to (assistant chief of security), not violative where guard's testimony that he was away (from his post) for 15-20 minutes could be considered excessive by E and record disclosed two prior incidents of discipline of Ees for leaving their post w/o permission)

Logan Coca Cola Bottling Company **250 NLRB No. 164**

Schwebel Baking Company **249 NLRB No. 005**
(termination of U steward held lawful for refusal of proper order to return to work during walkout over firing of fellow worker, rather than for his handling of discharged fellow worker's grievance as alleged)

Anaconda Ericsson Inc. **JD-720-80**
(3-day disciplinary suspension during contract negotiations of Ee-member of negotiating committee for *leaving his position* before being replaced at time Ee was needed to assist in completing expiramental operation for E, held not violative, since Ee's disregard of (his) responsibility required discipline and Ee's known (U) activities were no factor in E's decision to suspend Ee)

Naryon Company, Inc. **JD-847-79**
(discharge of Ees, not unlawful, since for excessive restroom breaks rather then for any protected activity where supervisor who discharged Ees had no knowledge of their prior U activities which has taken place over six months previously, and breaks were not for purpose of discussing U nor any other protected activity)

8387-6050 Not real reason

United Plastics, Inc. **261 NLRB No. 181**
(upon reconsideration *sua sponte* before commending enforcement proceedings, Bd again found violation where E's president discharged Ee upon being told that Ee had not done his work and that, when asked why by a fellow Ee, dischargee had mentioned that he had a U card or was member of U; Bd found one instance of Ee's failure to complete a work assignment was pretext put forth by E to justify discharge in view of E's president's repeated and vehement statements to dischargee and other Ee about dischargee's U involvement, and his other anti-U statements)

Penn Color, Inc. **261 NLRB No. 088**
(discharge of Ee assertedly for neglecting to properly perform cleaning task on job, unlawful, where Ee was leading U advocate known by E to have solicited U authorization cards; Ee was threatened with discharge shortly before his termination; other Ees who neglected to properly perform similar work had not been discharged; and inasmuch as E's stated motive was found to be false, it gives rise to inference that E desired to conceal unlawful motivation)

Transportation Management Corp. **256 NLRB No. 028**
(discharging Ee stopping briefly at home en route to garage at end of work day, violative, as E did not confront him with evidence, warn him with evidence, warn him of possible disciplinary action, or follow its regular practice of three written warnings before discharge)

Transportation Management Corp. **256 NLRB No. 025**
(discharging Ee for taking unauthorized coffee breaks, violative as breaks were normal practice among drivers and were tollerated unless job performance was affected)

E & E Bus Lines, Inc. **255 NLRB No. 137**
(discharge of U adherent who was shool bus driver for congregating with other drivers during standby time and leaving bus while children in it, unlawful, where Ees had never previously been disciplined for congregating during standby time and two other adherents discharged that day; fact there were children on bus did not change nature of incident so as to require such severe penalty)

Steets and Steets, Inc. **254 NLRB No. 185**
(discharge of three U adherents assertedly because they left their work stations and engaged in altercation with anti-U sympathizer, held violative where anti-U Ee had no legitimate business at site of encounter nor was anti-U Ee discharged for fighting or leaving his work station)

Chicago Daily Defender **JD-186-82**
(discharge of newspaper reporter assertedly for *failure to be responsive to all assignments made by editors* held violative where less than 30 days earlier he was characterized as strongest reporter on staff and discharge followed Ee's leadership in Ee meeting and letter to editor asking for wage increases and other benefits)

U. S. Gypsum Company **JD-(ATL)-28-82**
(discharge of leading U advocate assertedly because Ee lacked skills and ability to perform his work and required constant supervision, violative where discharge followed shortly after manager's unlawful anti-U speech; Ee was not given disciplinary warning before discharge as was E's custom; other Ees who had received disciplinary warnings were not discharged; and E's records showed that Ee was performing well and had been granted wage raises for his work)

Power Service Co., T and T Truck and Trailer Leasing, Inc., Night Hawk Motor Transportation, Inc., and York Motor Transport, Inc. **JD-161-82**
(discharge and layoff of U activist truck drivers because discharged Ee *abandoned employment* when he refused to drive unrepaired truck and other driver was laid off for *lack of work* held violative, since respondents did not show that Ees would have been discharged or laid off even if they had not been U activists or U sympathizers; no attempt made to recall discharged Ee after truck was repaired and 2 or 3 new drivers given opportunity to drive for Es before attempting to recall laid off Ee)

Manifold Services, Inc. **JD-734-80**
(discharge of U adherent assertedly for *poor work habits* held violative where no evidence that Ee, prior to election, was thought to have *bad work habits*; Ee was precipitately discharged following trivial incident concerning assignment of work orders)

L. R. Bob Spillers Painting Co. **JD-(SF)-169-80**
(discharge of Ee for vigorous pursual of duties as U steward violative)

Public Services Planning and Analysis Corporation, d/b/a Airport Connection **JD-(SF)-310-79**
(discharge of driver purportedly for leaving his bus unattended during working hours, unlawful, where alleged conduct occurred at least 1 or more months prior to discharge, and other Ees were routinely *guilty* of similar infractions w/o being disciplined or discharged therefor)

N.L.R.B. v. Amber Delivery Service, Inc. **651 F.2d 57 (C.A. 1, June 1981)**
(E who suspended Ees for taking too long coffee break violated Act where GC made prima facie case that Ees were disciplined for their U activity and E could not rebut presumption because when incident occurred it made no attempt to reprimand Ees, but was more concerned with documenting delay)

N.L.R.B. v. Max Factor and Company **640 F.2d 197 (C.A. 9, 1980)**
(discharge of U steward who vigorously processed grievances, violative, notwithstanding she spent more than 50 percent of work time doing so (much more than other stewards) and at meeting with E where he issued disciplinary warning to her for not working enough she responded with profane language, because excessive time spent on nonproduction activities and conduct at meeting were not so indefensible as to cause her to forfeit protection of Act)

N.L.R.B. v. Max Factor and Company **640 F.2d 197 (C.A. 9, 1980)**
(discharge of U steward who vigorously processed grievances, violative, notwithstanding she spent more than 50 percent of work time doing so (much more than other stewards) and at meeting with E where he issued disciplinary warning to her for not working enough she responded with profane language, because excessive time spent on nonproduction activities and conduct at meeting were not so indefensible as to cause her to forfeit protection of Act)

8387-6300 Negligence

Arthur H. Fulton, Inc. **262 NLRB No. 134**
(discharge of Ee who had distributed cards and attended U meeting held not violative as real reason was damage to tractor engine which could only have been caused by negligent driving)

8387-6300—Cont.

Gerald M. Martin and Kathleen R. Martin, a Partnership Doing Business Under The Trade Name and Style of Liberty Pavilion Nursing Home **254 NLRB No. 169**
(no violation in discharge of leading U adherents where Ees were negligent toward patient which resulted in her sustaining serious injury)

Pork King Company, Inc. **252 NLRB No. 004**
(E's discharge of driver of delivery truck, not unlawful where discharge was for abandoning E's truck at unauthorized stop and leaving keys on seat so as to permit theft of valuable quantity of E's products, rather than for actively processing Ee grievances against E as U shop steward; E's decision to follow driver, which resulted in his discovery of driver's abandoning truck, was due to legitimate concern about driver's work habits in light of his earlier record)

Ben J. Mauro d/b/a Warehouse Food Distributing Company **250 NLRB No. 177**
(discharge of Ee, where U activities were not remarkable, for failure to check on all items being taken out of store by fellow Ee resulting in loss to E found reasonable basis for E's belief in Ee's complicity with fellow Ee's theft or at least that she had been negligent)

Tartan Marine Company **247 NLRB No. 073**
(discharge of U adherent, not violative, where adherent had long history of reprimands before and after his involvement with U activity and discharge was precipitated by his failure to pay close attention to delicate job, responding sarcastically to supervisor when warned and stopping work to write note, notwithstanding note was in connection with Ee's announced intention to file ULP charges)

Keister Coal Company, Inc. **247 NLRB No. 049**
(discharge of oiler, alleged U adherent, for failing to properly oil machinery and malingering on job not violative where Ee's only U activity was singing a U song and Ee's predecessor in job was discharged for identical reasons)

8387-6380 Not real reason

South Nassau Communities Hospital **262 NLRB No. 146**
(discharge of E assertedly for negligent work, unlawful, where Ee was competent Ee for 5 years who had never been disciplined and whose U activities had become known to Ee a few days before discharge, timing of which was most convincing; and E's immediate action against Ee w/o oral or written reprimand gives rise to inference that E was discriminatorily motivated in terminating Ee)

K & E Bus Lines, Inc. **255 NLRB No. 137**
(discharge of U adherent who was school bus driver for congregating with other drivers during standby time and leaving bus while children in it, unlawful, where Ees had never previously been disciplined for congregating during standby time and two other adherents discharged that day; fact there were children on bus did not change nature of incident so as to require such severe penalty)

Central Freight Lines, Inc. **255 NLRB No. 056**
(discharge of prominent U adherent allegedly for unsafe driving practices, including leaving scene of accident, violative in view of U animus, E was engaged in purge of pro-U ees, E's policy of discharge after minor accidents was discretionary, and E did not learn that Ee had left scene of accident until after discharge decision was made)

Lyman Steel Company **249 NLRB No. 040**
(discharge of U advocate assertedly because his machine had suffered oil leak held violative where other Ees were not punished for same offense and disparate treatment followed E's threat of reprisal for Ee's U activity)

8387-6400 Unwarranted complaints against supervisory personnel

8387-6480 Not real reason

Savannah Wholesale Company **251 NLRB No. 087**
(suspension of known U adherent for unwarranted complaint against supervisor and for improper procedures in taking delivery of assertedly damaged merchandise, unlawful, where it was not shown that E had unusual policy of punishing Ees because their grievance against supervisor was not meritorious, Ee's testimony that merchandise was not damaged was credited, and E adduced no evidence of business motivation for its sudden decision to enforce work rules more stringently following U's victory in election)

8387-6500 Use of obscenity or profanity or engaging in other indecent conduct

St. Rita's Medical Center **261 NLRB No. 057**
(suspension warranted where prompted by Ee's improper conduct and of cursing and otherwise being abusive to supervisor and not by her U activities)

Fibracon Corp. **259 NLRB No. 014**
(discharge of Ee who, with other Ees, walked off job in protest over termination of shift supervisor, because Ee used profane and abusive language to plant manager, held not violative where profanity was directed at manager prior to walkout and again at interview to discuss Ee's continued employment; repeated and blatant use of profanity in reply to manager's statement of its objectivity amounted to insubordination) ation)

Robert Bosch Corporation **256 NLRB No. 188**
(discharge of male U adherent for physical abuse of female coworker, not unlawful)

Hotel St. Moritz, Inc. **251 NLRB No. 015**
(no violation where E filed charges seeking discharge of hotel housemen's U delegate because of his threats and derogatory remarks to E when latter questioned his delegate status at E's meeting with lobby porter concerning porter's changing from membership in his own U to membership in delegate's U; accepting, *arguendo*, E's obligation to recognize and deal with delegate as representative of porter, who belonged to another U, delegate's actions were nevertheless so opprobrious as to render his conduct unprotected)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(suspension of U steward for making attacks on foreman and use of obnoxious obscenities while processing (Ee) grievances held not violative, since remarks were carried to point of insubordination and steward, by his continuing actions, intefered with foreman's job performance)

Browning-Ferris Industries of Ohio and Michigan, Inc. **JD-(SF)-313-80**
(discharge of U steward and other Ee not unlawful, notwithstanding fact that U steward was in process of attempting to secure paycheck for other Ee at time of discharges, where Ees invited E outside to fight, repeatedly threatened to beat him up and persisted in obscene threats and gestures)

Coastal Volkswagen, Audi **JD-(SF)-144-80**
(no violation where Ee who had felony record was fired not when E first learned of his U activity, but only after E learned of his personal conduct involving incident of heated and profane argument about burglary of which Ee was a strong suspect)

N.L.R.B. v. Clark Manor Nursing Home Corp. **671 F.2d 657 (C.A. 1, Feb. 1982)**
(discharge of U adherent who struck out with obscene, cutting, and insulting phrases at those Ees he thought had had a hand in defeating U in election, not unlawful)

8387-6580 Not real reason

Traverse City Osteopathic Hospital **260 NLRB No 147**
(discharging Ee for profane outburst in cafeteria of hospital held violative where Ee was discussing formation of U with other Ees and was provoked by another Ee, use of profanity was tolerated and outburst was made during nonworking time outside of patient care area, few non Ee visitors were in cafeteria and only one Ee complained to E)

Art Steel of California, Inc. **256 NLRB No. 140**
(discharge of U activist assertedly for saying *bad words* to female Ee held violative, since U activist was not confronted by female Ee personally or at trial; E's evidence did not rebut GC's *prima facie* case of discrimination with regard to termination of U activist)

Oakwood Manor, Inc., d/b/a Danville Nursing Home **254 NLRB No. 108**
(discharging Ee for using profanity with supervisor violative, where Ee had previously used profanity in her presence, it was not heard by patients, supervisor used profanity and another Ee used profanity in talking with supervisor and was not reprimanded)

I/O Optics Limited, U.S.A. **251 NLRB No. 037**

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(vulgar language used by Ee toward his supervisor found to be pretextual reason for discharge where such language had been used in past with no discipline being imposed and Ee was actively engaged in U solicitation)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E attempted to magnify common use of profanity in plant into dischargeable offense)

Wilson Foods Corporation **JD-(SF)-272-80**
(suspending U president for replying *None of your goddam business* to supervisor who asked why he was on plant floor after shift and ordered him to *get the hell out* held violative, where swearing was common, language was part of *res gestae* of protected activity, Ee was gathering job data for International and E had refused data to U and Ee)

Coors Container Company v. N.L.R.B. **628 F.2d 1283 (C.A.D.C.)**
(discharge of Ee assertedly for useof vulgar language during confrontation with guards at plant gate over Ee's display in his vehicle of sign urging boycott ofE's product, unlawful; although Ee's conduct was vulgar and not to be condoned, it was an example of *impulsive behavior* for wich some leeway is permitted under Ee's right to engagein concerted activity; moreover there was no other instance ofdischarge of Ee for use of vulgar language alone)

8387-6700 Refusal to accept job assignment or promotion

Church's Fried Chicken, Inc. **JD-(SF)-301-79**

Excavation-Construction, Inc. v. N.L.R.B. **660 F.2d 1015 (C.A. 4, Oct. 1981)**

(discharging Ees for concertedly refusing to work specific job on Saturday because it did not pay time and half held not violative where Ees knew that E would pay only straight time and rule that Saturday work was voluntary but if Ee signed up for that day must work on any job assigned by E and penalty for not working was discharge. Claim that Ees were engaged in 1 day strike rejected, since Ees only refused to work that specific job that day and not other jobs which was equivalent to Ees seeking to work under terms prescribed by them which is not protected activity)

8387-6750 Not real reason

H. B. Zachry Company **261 NLRB No. 098**

(contention that U activist was discharged for refusal to work on skyclimber, rejected where Ee was justifiably concerned with safety of equipment)

15 East 48th Restaurant, Inc., d/b/a Sagapo Restaurant and Sagapo Restaurant, Inc., its agent **257 NLRB No. 156**

(discharge of Ee for failure to comply with transfer to day shift violative where transfer itself was motivated by anti U animous and was violative)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(E attempted to magnify simple complaint about a job assignment into a refusal to perform the job)

Manifold Services, Inc. **JD-734-80**

(discharge of U adherent assertedly for *poor work habits* held violative where no evidence that Ee, prior to election, was thought to have *bad work habits*; Ee was precipitately discharged following trivial incident concerning assignment of work orders)

N.L.R.B. v. Brewton Fashions, Inc., a Division of Judy Bond **682 F.2d 918 (C.A. 11, Aug. 1982)**

(discharging two women for refusing to push heavy cart separately violative, in view of timing with E's awareness that they were actively involved with U, they had been reprimanded for refusal three months earlier, and they believed they would be physically injured by pushing it alone)

8387-6800 Refusal to work overtime

Peppin Fresh Pies, Inc. **256 NLRB No. 051**

(discharging Ees not violative)

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**

(E's discharging Ees for refusing to work overtime, not unlawful, notwithstanding fact that U objected to absence rule, where E's institution of absence rule was found to be lawful)

8387-6850 Not real reason

The Moore Company, Inc., Div. of Emco Corp. **264 NLRB No. 159**

(discharge of Ee for refusing to work mandatory overtime, unlawful, since E motivated by U animus where E knew of Ee's U sympathies and had committed other ULPs, Ee attempted to get substitute, was never warned she would be discharged if she did not work and no written policy dictating discharge; further, another Ee had refused to work overtime and was not discharged, and fact other Ee obtained substitute did not alter nature of her refusal)

United States Gypsum Company **259 NLRB No. 145**

(discharging U leader for refusing to work overtime, violative where E has no fixed policy regarding degree of discipline for violating mandatory overtime rule, no Ee had ever been discharged for violating rule, E did not follow its procedures in arriving at its decision to discharge, i.e. investigate incident, review personnel file; furthermore, Ee had 7 years of skilled experience and E was overly hostile to U)

Arrow Automotive Industries **258 NLRB No. 116**

(suspension of Ee for alleged refusal to work overtime unlawful, since true motivating factor for suspension was Ee's known and admitted U support, where period of overtime involved was about 1-1/2 hours, E had no written policy regarding overtime, and over proceeding period of many months Ee had displayed no proclivity towards avoiding overtime)

Doug Hartley, Inc. **285 NLRB No. 097**

(mass discharge of unit members of window and door installation crew which worked under supervision of Ee who had special incentive arrangement with E, unlawful, since E failed to overcome GC's prima facie case of unlawful motivation where discharge was 4 days after majority signed authorization cards, notwithstanding crew's unacceptable work and failure to work on weekend, where E rehired crew members for jobs outside unit; nor did cancellation of agreement by crew's leader justify discharge absent agreement that crew went if leader left)

Reinauer Fuel Transportation Corporation **281 NLRB No. 210**

(discharge held solely for Ee's U activities and refusal to work overtime held to play no role in the discharge; no Ee had ever been disciplined for refusal to work overtime, Ee did not state at any time that he would no longer work overtime, and there was no conclusive evidence Ee had refused to work overtime as alleged)

Westinghouse Electric Corporation **JD-(ATL)-88-81**

(refusal to rehire former U steward, who had held highest labor grade position at E's plant because he was hazard to himself and those around him, he had refused to work overtime and did not like overtime, held violative where E did not demonstrate refusal to rehire and would have taken place even in absence of Ee's protected conduct; real motivation shown by unlawful interrogation of another Ee and comment that *things would be quieter w/o him)*

8387-6900 Poor attitude at work

8387-6950 Not real reason

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric **265 NLRB No. 201**

(Bd has considered E comments regarding Ee's purportedly *poor attitude* as patently euphemistic references to Ee's presumptive or known pro-U activities; absent particularized specification by E persuasively supportive of its judgment with respect to Ee's attitude, such comment by E may reasonably be considered calculated to convey E's displeasure with respect to Ee's U activities)

Mark I Tune-Up Centers, Inc. **256 NLRB No. 138**

(post-election discharge assertedly because of Ee's poor attitude toward supervisors and fellow Ees, unlawful, where GC established prima facie case that Ee's U activity was motivating factor for discharge in view of E's knowledge of Ee's U activity, threats made to Ee and other Ees, and unlawful grant of bonus to Ee; and E failed to rebut GC's case in view of fact that E either ignored or condoned Ee's misconduct and failed to discipline him and, instead, promoted him and gave him bonus, and the only visible change in Ee's conduct was his U activity)

8387-7000 Profanity or abusive language used against supervisor

Federal Management Co., Inc. **264 NLRB No. 023**

(discharge of Ee, who was leading U activist, assertedly for disrespectful behavior toward supervisor and for insubordination, not unlawful, notwithstanding E's hostility to U, where E had cause to conclude that Ee had refused to perform work assignment ordered by supervisor; Ee's disrespectful language directed toward supervisor was clear violation of E's instruction to treat supervisor with respect; and difference in treatment of Ee from treatment of other Ees does not lead to conclusion that Ee would not have been discharged absent his U activities)

Host Services, Inc. **263 NLRB No. 086**

(notwithstanding GC presented *prima facie* case of unlawful motive in Ee discharge, Bd noted that case was weak one and that E had met its burden of persuasion, proving that it would have discharged him in absence of protected conduct where Ee's conduct-cursing supervisor-provided legitimate grounds for discharge and GC did not prove that other Ees were not discharged for similar misconduct and therefore E did not engage in disparate treatment)

Rickel Home Centers, Division of Supermarkets General Corporation **262 NLRB No. 93**

(discharge of U steward who was attempting to press grievance, not unlawful, where steward refused to discuss grievance with immediate supervisor as provided in grievance procedure, and instead of obeying order to return to work by supervisor upon steward's refusal to discuss grievance with him, left area to discuss with overall supervisor and vented intense anger in abusive language)

Lehner Corporation **260 NLRB No. 020**

General Thermodynamics, Inc. **253 NLRB No. 021**

Clark Equipment Company **280 NLRB No. 170**

(no violation by suspension of leader of U organizing campaign for calling supervisor bastard and threatening to whip him if he caught him on the street; contention rejected that action was protected because it occurred during E's anti-U meeting)

Medi-Mart, A Division of Stop & Shop Company, Inc. **JD-314-82**

(discharging U observer for swearing at supervisor not violative where he had received written warning two months earlier for swearing)

Salem Gravure Division of World Color Press, Inc. **JD-152-81**

(suspension and reprimand of U shop steward for use of obscenity towards supervisor when supervisor handed him as U representative copy of notice relating to strict enforcement of E's rules towards Ees, not unlawful where U requested that it be given all notices that E made applicable to its Ees, and E voluntarily complied with request; U representative is not thereby authorized to spout every kind of obscenity which comes to mind and then request and obtain protection of Act)

8387-7000—Cont.

Huron Cement Division, National Gypsum Company **JD-770-80**
(suspension of Ee not unlawful, since for cause rather than for presenting grievance, where after being reprimanded for absenteeism Ee threatened to file grievance over supervisors doing unit work, repeatedly called supervisor approbrious term in abusive and hostile fashion in front of other Ees and refusing direct order to leave premises thereby losing protection of Section 7)

8387-7050 Not real reason

Tra-Mar Communications, Inc. **265 NLRB No. 089**
(discharge of principal U adherent, after election where U certified as bargaining representative, for having used profanity towards E, held violative, since prior to discharge of Ee no other Ee had ever been disciplined or discharged for use of profanities, use of profanity common, and E presented no evidence to indicate such conduct had not been previously condoned; E did not meet burden of showing Ee's discharge for using profanity would have occurred in absence of Ee's U activities; *Fibracan Corp.*, 259 NLRB 161 (1981) inapplicable in instant case)

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant **261 NLRB No. 051**
(discharge of waiter, unlawful where for U adherence rather than for alleged assault on woman general manager of restaurant)

TRW-United Greenfield Division **260 NLRB No. 013**
(demotion of Ee who engaged in U activity violative; subsequent discharge also violative where Ee was discharged for using profane language when he protested unlawful demotion as supervisor humiliated Ee and by his conduct provoked Ee)

Bedford Farmers Cooperative **259 NLRB No. 165**
(discharge of U activist violative notwithstanding it occurred shortly after E and Ee engaged in argument in front of customers as no prior warning given; several weeks earlier E unlawfully warned activist about his U activities and E's desire to get rid of U. E did not establish that discharge would have taken place even in absence of Ee's protected activities)

United States Postal Service **250 NLRB No. 002**
(suspending U steward for uttering obscenity toward supervisor in course of discussing possible grievance on behalf of unit Ee, unlawful)

F.W.I.L. Lundy Bros. Restaurant, Inc. **248 NLRB No. 057**
(discharge of well known U adherent assertedly because he used profanity against restaurant hostess after he broke E's rule regarding seating customers held violative where reasons for discharge were fabricated and shifting)

Hansen Rubber Company **JD-290-82**
(discharge of Ee for uttering obscenity during course of meeting with E dealing with contract provision concerning pay for negotiating sessions violative as Ee was engaged in protected concerted activity and his conduct was not so egregious to remove it from protection of Act where it was uttered in heat of an argument)

8387-7100 Harassing, threatening, etc. of supervisors

Ameco Fabrics Co., Patchogue-Plymouth Division/ Nashville Mills **260 NLRB No. 038**

United States Postal Service **260 NLRB No. 009**
(discharge of mail carrier, U adherent, because postmaster could have reasonably believed Ee was about to attack him during emotional meeting concerning Ee's work assignment, not violative absent anti-U motivation, and any evidence of disparate treatment)

United Parcel Service, Inc. **260 NLRB No. 007**

Thermo King Corporation **247 NLRB No. 048**
(discharge of known active U adherent for using abusive language towards supervisor and threatening him with physical violence, not unlawful, where plant rule prohibited threatening and abusive language, language used was unusual occurrence in plant and, even if it were commonplace, context in which it was used neutralized any commonplace meaning it might have had, Ee continually repeated threat, and decision to discharge was reached only after careful consideration and investigation of incident)

Ohio Ferro - Alloys Corporation **JD-246-81**
(discharging U steward for inflicting savage beating on supervisor not violative where beating was sole motivation for discharge)

Amcar, Division of ACF Industries, Inc. **JD-206-81**
(discharging 2 Ees for assaulting supervisor away from plant not violative, notwithstanding finding of not guilty verdict in trial on criminal assault complaint)

The Pacific Telephone and Telegraph Company **JD-(SF)-322-80**
(discharge of U steward, not unlawful, notwithstanding evidence of supervisor's ill will toward him for presenting grievances, where steward's subsequent threat to have supervisor's throat cut was found sole reason for discharge)

8387-7150 Not real reason

R. P. Scherer (Southeast) Corporation **258 NLRB No. 081**
(discharge of Ee for threatening supervisor violative, where supervisor informed E that Ee had threatened him but actually supervisor had threatened Ee and true reason for threat was Ee's U activity)

Laredo Packing Company **254 NLRB No. 001**
(suspension of U adherent who threw supervisor's hard hat into trash can for *disorderly conduct* and *discourtesy to supervisor* violative, since reason was U activity, in view of E's attempt to replace U with Ee committee, and further Ee thought hat belonged to another Ee rather than supervisor inasmuch as hat was color of hats worn by Ees rather than color of hats worn by supervisors)

8387-7400 Refusal to work assigned hours

Liberty Men's Formals, Inc. **258 NLRB No. 179**
(E's discharge of Ee for refusal to work 40-hour week she was hired for not violative notwithstanding she had been involved in protected concerted activity where E met its burden and proved that it would have fired her absent her protected activity)

8387-7450 Not real reason

Doug Hartley, Inc. **255 NLRB No. 097**
(mass discharge of unit members of window and door installation crew which worked under supervision of Ee who had special incentive arrangement with E, unlawful, since E failed to overcome GC's prima facie case of unlawful motivation where discharge was 4 days after majority signed authorization cards, notwithstanding crew's unacceptable work and failure to work on weekend, where E rehired crew members for jobs outside unit; nor did cancellation of agreement by crew's leader justify discharge absent agreement that crew went if leader left)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. **247 NLRB No. 135**
(Ee's resignation resulting from E's refusal to reduce Ee's hours to accomodate his school schedule contending there were no part-time positions available and citing Ee's absenteeism record constituted unlawful constructive discharge where E's actual reason was Ee's recent support of U)

Newspaper Printing Corporation **JD-203-80**
(suspension of steward for allegedly permitting Ee to sign up for vacation during week E had designated as unavailable for vacation and upon his reinstatement failing to offer him backpay and assigning him to double shifts where there were others with less seniority not so assigned resulting in his quitting, unlawful, absent evidence steward had told Ee to take week off and in view of steward's testimony for GC in prior ULP hearing and E's ongoing dispute with U regarding steward's scheduling authority)

8387-7500 Sales record low

Mineola Ford Sales, Ltd. **258 NLRB No. 052**
(discharge of Ee assertedly because of Ee's uncooperative attitude and low sales performance, and E's heavy losses and requirement to reduce overhead, not unlawful, where E was aware of Ee's U activities for many months prior to his discharge; Ee's activities as shop steward were minimal; no adverse action was taken against Ee for refusing to cross another unit's picket line; and even if GC had made prima facie showing that protected activity was motivating factor, discharge would have taken place, even in absence of protected conduct, because of Ee's attitude and E's economic status)

8387-7550 Not real reason

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**
(discharge of Ee unlawful since motivated by E's belief that she was sponsoring U activity rather than for lack of sales in view of discharge soon after U demanded recognition, notwithstanding Ee might have been discharged for cause at later date)

8387-7800 Sleeping on job

Caterpillar Tractor Company **257 NLRB No. 029**
(discharging U adherent not unlawful where reason was his sleeping while on duty as security guard)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **251 NLRB No. 156**
(discharge of known U supporter for sleeping on worktime, not violative notwithstanding contention that E reprimanded rather than discharged one other Ee for sleeping on worktime, where E terminated 34 Ees in past 10 years for sleeping on job, and sleeping on job was against company policy; moreover, U supporter who had not asked for permission as required by E to take his break in a work area was discovered sleeping in secluded area of plant 10 minutes after his break was scheduled to end, and had to be awakened by supervisor)

Savannah Wholesale Company **251 NLRB No. 087**
(discharge of Ee assertedly for sleeping on job, not unlawful, even taking into consideration fact that Ee brought U into plant, E had knowledge of his U activity, and discharge occurred in same month that first U meetings were held for Ees; sleeping on job was actual cause of discharge, and there was

8387-7800—Cont.

no evidence of condonation or evidence that other Ees were permitted to engage in such activity)

Sweetheart Cup of Texas **251 NLRB No. 057**

8387-7850 Not real reason

American Metal Processing Company **JD-199-80**
(discharge of known U organizer allegedly for sleeping on job, unlawful since, under ordinary circumstances, this was not dischargeable offense and a few days later another Ee was caught sleeping while still on the clock, and nothing happened to him)

8387-8000 Smoking

Tartan Marine Company **247 NLRB No. 073**
(discharge of U adherent, not violative, where adherent had long history of reprimands before and after his involvement with U activity and discharge was precipitated by his failure to pay close attention to delicate job, responding sarcastically to supervisor when warned and stopping work to write note, notwithstanding note was in connection with Ee's announced intention to file ULP charges)

Arthur N. Stephenson v. N.L.R.B. **614 F.2d 1210 (C.A. 9) (1980)**
(Ee was discharged for smoking on job and not because of U activity, where Ee had once been previously warned about smoking w/i work area, he admitted he was smoking near solvent container, an Ee had previously been burned by solvent coming into contact with hot engine, and E had been warned by fire officials regarding smoking in work area; moreover, there was no prior history of trouble between E and U)

8387-8050 Not real reason

Custom Wood Interiors, Inc. **248 NLRB No. 023**
(discharge of leading Ee bargaining negotiator unlawful where, contrary to past practice, president identified and personally selected Ee for layoff rather than selecting production classification which was overstaffed and leaving selection of Ees to supervisor; alleged reason of *objectionable* smoking habits of Ee rejected as E has tolerated Ee's smoking habits for years)

8387-8100 Use of narcotics and drugs

Howard Press, Inc. **265 NLRB No. 181**

8387-8150 Not real reason

The Martin-Brower Company **263 NLRB No. 025**

8387-8300 Talking during working hours

Sambo's Restaurants, Inc. **260 NLRB No. 054**

8387-8350 Not real reason

Daniel Construction Company, A Division of
Daniel International Corporation **264 NLRB No. 079**
(reprimanding U adherent for leaving his department and talking to other Ees held violative where reprimand was given as *final warning* notice, departing from E's usual policy concerning discharge after three written warnings; other Ees continually talked to each other outside department w/o reprimand)

German Machine Corporation **257 NLRB No. 010**
(discharge of leading U advocate, allegedly for excessive talking, lack of work for him to perform, and unsuitable work, violative in light of pretextual nature of E's asserted reasons for discharge)

8387-8500 Troublemakers and agitators

Lakewood Mechanical Contractors, Inc. **260 NLRB No. 024**
(discharging or failing to rehire Ee not violative, where E told Ee that he would not be employed unless requested by foreman on particular project as Ee had long history of inability to get along with supervisors)

Albertsons, Inc. - Southco Division **JD-(SF)-244-80**
(discharge of U adherent, not unlawful where for threatening to throw egg on other Ee's car)

Albertsons, Inc. - Southco Division **JD-(SF)-344-80**
(discharge of Ee not unlawful, where discharged for making false statement to another Ee that other Ee was going to lose her job, with intention of upsetting her coworker and disrupting E's operation)

8387-8550 Not real reason

The Rosicrucian Press, Ltd. **264 NLRB No. 170**
(discharge of Ee unlawful, where for repeatedly complaining to U about working with another Ee in another department several hours a week who had serious body odor problem, rather than for insubordination for refusing to work with other Ee; Ee's statement in informal grievance meeting that she would not work with other Ee not insubordination since such posturing not unusual in grievance meetings, Ee never actually refused assignment, and Ee had right to pursue grievance; further, E admitted Ee's work satisfactory)

Beverly Enterprises, Inc. t/a Cumberland Nursing &
Convalescent Center **263 NLRB No. 061**
(warning Ee at nursing home who was former striker against using word *scab* to describe other Ees and discussing U with patient, unlawful, since use of word *scab* in context of labor dispute protected activity; E was mistaken as to any conversation with patient, and particularly in view of E's prior statements that E knew Ee had been one of the instigators in getting U into nursing home and if Ee was caught doing anything in connection with U she would be asked to leave)

Clark Manor Nursing Home Corp. **254 NLRB No. 084**
(discharge of U adherent, assertedly for his disruptive and offensive behavior, unlawful where GC made *prima facie* showing that Ee's U activity was motivating factor in E's decision to discharge him and E failed to demonstrate that it would have taken same action against him had he not engaged in U activities)

Levi Strauss & Company **JD-188-80**

8387-8800 Uncooperativeness

McLean Hospital, A Division of Massachusetts
General Hospital **264 NLRB No. 068**
(no violation where suspension and discharge were not because dischargee had filed charges with Bd as alleged but because he failed to respond adequately to E's legitimate questions about his unauthorized entry with unidentified person into E's hospital's psychiatric unit contrary to rules against access by off-duty Ees and unauthorized entry by non-Ees; fact dischargee was accompanied by Bd attorney investigating his charge did not make entry protected or give him right to disregard rules)

Mineola Ford Sales, Ltd. **258 NLRB No. 082**
(discharge of Ee assertedly because of Ee's uncooperative attitude and low sales performance, and E's heavy losses and requirement to reduce overhead, not unlawful, where E was aware of Ee's U activities for many months prior to his discharge; Ee's activities as shop steward were minimal; no adverse action was taken against Ee for refusing to cross another unit's picket line; and even if GC had made prima facie showing that protected activity was motivating factor, discharge would have taken place, even in absence of protected conduct, because of Ee's attitude and E's economic status)

Great Western Coca Cola Bottling Company, d/b/a
Houston Coca Cola Bottling Company **256 NLRB No. 080**
(E's requiring that its drivers take polygraph test about missing vending machine keys discovered in their trucks, suspending those who refused, and discharging those who failed test repeatedly held not unlawful retaliation for U organizing activity, in view of prior policy of administering polygraph tests, nondiscriminatory application of test-taking requirement, and fact that vending machines appeared to have been robbed by use of keys)

Pacific Intermountain Express **250 NLRB No. 180**
(discharge of 3 sales representatives who were U supporters assertedly for stealing company time, refusal to cooperate in an investigation, and suspected falsification of company records, not unlawful where, on reliable information as to one representative's on-job drinking habit, E had him followed 5 days, discovered that he and the 2 other representatives met 3 days for 2 hours at coffee shop but covered up fact on their work and expense reports; E promptly ques[illegible] the three Ees and discharged them when 2 refused to answer and 1 ans[illegible]ed untruthfully)

N.L.R.B. v. Fixtures Manufacturing Corporation **669 F.2d 547 (C.A. 8, Jan. 1982)**
(discharging U activist one day after E received written report of U activity, 2 days after Ee became actively involved and 4 days after E received polygraph report which showed Ee refused to cooperate in investigation of thefts is substantial evidence that Ee was discharged for U activity rather than polygraph report)

8387-8850 Not real reason

15 East 48th Restaurant, Inc., d/b/a Sagapo
Restaurant and Sagapo Restaurant, Inc., its
agent **257 NLRB No. 136**
(discharge of Ee for failure to comply with transfer to day shift violative where transfer itself was motivated by anti U animous and was violative)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(illegality of discharge of leading U advocate assertedly because of his refusal to obey order to assist with heavy unloading work upheld where substantial evidence justified Bd's conclusion that asserted reason for discharge was pretextual; discharge was mixed motive firing; E's anti-U animus and other anti-U actions justified Bd's conclusion)

8387-9000 Union or other concerted activity no defense

Five Star Air Freight Corporation **255 NLRB No. 046**
(denying reinstated U advocate holiday leave pay and suspending her for three days w/o pay assertedly because she had typed letter announcing impending U meeting on company typewriter during working hours held violative where record established that other Ees made frequent use of company equipment w/o rebuke)

8387-9000—Cont.

United States Postal Service **252 NLRB No. 083**

(U steward's suspension after attempting to perform her duties as steward, unlawful where she was engaged in protected activity, notwithstanding she did not seek permission of supervisor as required under contract and refused to obey several direct orders to return to work as supervisor was bent on preventing steward from performing her official duties so any request would be futile and neither refusal to work nor distuption of work production and her conduct did not exceed *acceptable bounds* to lose protection of Act)

Tartan Marine Company **247 NLRB No. 073**

(discharge of U adherent, not violative, where adherent had long history of reprimands before and after his involvement with U activity and discharge was precipitated by his failure to pay close attention to delicate job, responding sarcastically to supervisor when warned and stopping work to write note, notwithstanding note was in connection with Ee's announced intention to file ULP charges)

Grief Brothers Corporation v. N.L.R.B. **635 F.2d 531 (C.A. 6, 1980)**

(discharge of Ee for absenting himself from work to attend U meeting not violative, where he did so in face of denial of his request for leave and warning that his absence from work would result in disciplinary measures)

8387-9200 Unauthorized behavior on job

Central Freight Lines, Inc. **254 NLRB No. 157**

(discharge of U adherent for *stealing time* during lunch and breaks, not unlawful, where, notwithstanding Ee's unblemished past record and receipt of several safety awards, record showed that E had consistently terminated other Ees in past for same offense)

J. J. Security, Inc. **252 NLRB No. 180**

(refusal to reinstate unlawfully discharged Ee not violative where Ee engaged in conduct on E's premises in violation of E's rules)

8387-9300 Unsatisfactory work

Halliburton Services (Coffeyville, Kansas), A
Division of Halliburton Company **265 NLRB No. 144**

Decoration, Inc. **263 NLRB No. 052**

(*prima facie* case of discriminatory layoff not estalbished where there was evidence of job deficiencies of laid-off senior Ees but not of Ees retained, and seniority was not shown to be a basis for selection for layoff by E previously)

Onan, a Division of Onan Corporation **261 NLRB No. 187**

(Bd held that Ee's job performance after returning to work from sick leave had been poor and was basis for discharge; moreover any adverse inference of unlawful motivation arising from E's assignment of arduous task to Ee upon his return was overcome by fact that Ee had not engaged in U activities since year before and that U had not campeigned at plant until after Ee was discharged)

G.T.A. Enterprises, Inc. d/b/a **Restaurant Horikawa** **260 NLRB No. 029**

(reduction in hours of waitress who let customers leave before they paid their bill not violative especially when incident before E was aware of Ees U activities)

United States Postal Service **260 NLRB No. 009**

(discharge of mail carrier, U adherent, who filed ULP charges against E with Bd, for failure to deliver postage due letters, loss of registered mail, and poor work held not violative absent evidence of anti-U motivation, or any evidence of disparate treatment)

Complas Industries, Inc. **255 NLRB No. 186**

(discharge of U organizer, not unlawful where he was not good Ee, and E's knowledge of his U activities was not proved)

Monterey Drilling Company **255 NLRB No. 074**

(discharge of two Ees assertedly for unsatisfactory work, not violative where evidence was insufficient to establish that they were discharged for any other reason)

Taylor-Dunn Manufacturing Company **252 NLRB No. 118**

(discharge of leadman not violative where he had received three written warnings of deficiencies in job performance and had been offered another job in unit)

Classic Truck Rental Corp. **251 NLRB No. 056**

(E's filing of notice of arbitration with regard to its intention to discharge Ee because of his inefficiencies as Ee, not unlawful, since E's action was not prompted by Ee's U activities or filing of charges with Bd, where Ee's misconduct on job and disregard for company rules justified E's action)

La Habra Dodge, Inc. **251 NLRB No. 001**

(discharge of Ee mechanic at automobile dealer for doing faulty work, not unlawful, where E had no knowledge of Ee's U activities)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 053**

(discharge of formerly striking Ee assertedly for failing to detect errors in vehicular rental contracts made by other ex-strikers, unlawful, where there was no evidence that Ee exercised less scrutiny in reviewing work of ex-strikers than nonstrikers, and Ee's even-handedness is apparent from long period of time it took E to build case against her)

Courier Life Publications, Inc. **JD-[illegible]**

(no violation, where U adherent reporters were discharged for decline in their production)

Herb's Orchard Inn, Inc. **JD-647-81**

(discharge not violative where E had received customer complaints and E's knowledge of E's U activities was not proved)

State Farm Mutual Automobile Insurance Company
and State Farm Fire and Casualty Company **JD-176-80**

(discharge of U adherent, not unlawful, where Ee repeatedly showed poor judgment in preparing estimates for automobile repair claims)

N.L.R.B. v. Wilker Brothers Company, Inc. **652 F.2d 660 (C.A. 6, June 1981)**

(discharge of Ee not for U activities, but for not being very good worker and always being reprimanded, including being written up in three reports w/i 2 weeks of discharge date)

N.L.R.B. v. Axton Candy and Tobacco Company **645 F.2d 555 (C.A. 6, Apr 8, 1981)**

(discharge of Ee not unlawful since not supported by substantial evidence where there had been complaints about work of Ee for several months and supervisor informed E's president that he no longer wished Ee to work under him)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

(discharge of U adherent who was poor Ee not violative where E had decided to discharge Ee before it had any knowledge of U activity)

8387-9350 Not real reason

Quality Packaging, Inc. **265 NLRB No. 142**

(discharging new Ee, assertedly for opening packages with her teeth, violative where other Ees did this; furthermore, she spoke out against *open shop* at E meeting, was asked her name when she wore U button on election day and was discharged same day)

Quality Packaging, Inc. **265 NLRB No. 142**

(discharging probationary Ee because her machines were always breaking down, violative where Ees are not responsible for machines and she was told that she was permanent Ee, as motivating factor for discharge was U activity at E meeting where she questioned E's vice president that he would bargain in good faith)

Belcher Towing Company **265 NLRB No. 139**

(suspension of Ee assertedly for workplace deficiencies, unlawful, where Ee, who acted as U observer and was otherwise ardent and active U supporter, was disciplined w/o opportunity to rebut charges and asserted deficiencies did not involve any serious expenditures by E; co-worker, who was equally responsible for workplace, was not suspended; and E seized upon workplace deficiencies as pretext to punish Ee because of his U activities and to make it clear to him and others so inclined that advocacy of U would meet with same or similar treatment)

Gentile Pontiac **260 NLRB No. 056**

(discharge of chief U organizer, who assertedly was selected for discharge because he was less skilled and productive than other Ees, unlawful, where Ee was employed in his job category over lengthy period of time, Ee's previous E's job reference to E contained no negative comments about Ee's job performance, and if E was concerned with productivity, which depended on type of work performed, E could have shifted Ee to other work)

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**

(where successor E operating nursing home interviewed but never hired nurse who was U member employed by predecessor, E held to have unlawfully failed to hire Ee because it sought to get rid of all U supporters as soon as possible; E's asserted reason for not retaining Ee, on ground that she had abused patients, held pretextual since, during approximately 3 years that nurse had worked for predecessor, there was no convincing proof that she was unsatisfactory Ee)

PPG Industries, Inc., Lexington Plant, Fiber Glass
Division **260 NLRB No. 048**

(discharging U activist assertedly for poor performance, violative where Ee had 5 years service, other Ees with poor performance records were not discharged, Ee had recently been praised over public address system for superior performance, and discharge decision followed and was occasioned by Ee's signature on and distribution of handbill about U's local activities)

Loy Food Stores, Inc. d/b/a Ken's IGA **259 NLRB No. 035**

(discharge of two Ees assertedly for failure of one to re-mark unidentified off-sale items at E's store and the other for his failure to rotate outdated dairy products, violative where they were discharged because of their known or suspected U sympathies and activities)

Union Oil Company of California, Polymer PLant **258 NLRB No. 100**

Pentax Towing Corporation **258 NLRB No. 113**

(discharge of Ee held for engaging in U activities and not as contended for dereliction of duty)

8387-9350—Cont.

Gorman Machine Corporation **257 NLRB No. 010**
(discharge of leading U advocate, allegedly for excessive talking, lack of work for him to perform, and unsuitable work, violative in light of pretextual nature of E's asserted reasons for discharge)

Fashiontime Ltd. **256 NLRB No. 067**
(discharge of Ee, allegedly because here work was very slow and she earned too much money, violative where real reason was her U activities)

Castle Instant Maintenance/Maid, Inc. **256 NLRB No. 039**
(discharge of leading U advocate assertedly because he was unable to perform his assigned maintenance work according to GSA standards, held violative where preponderance of credible evidence showed that Ee was terminated for *moving the U* in his leading role in U's organizing effort)

C. E. Wilkinson & Sons, Inc. **255 NLRB No. 176**
(discharge of Ee, assertedly because he was not learning his machinist job fast enough, violative where discharge occurred on day after U demanded recognition, E had demonstrated U animus, and E had knowledge of Ee's U activities)

Doug Hartley, Inc. **255 NLRB No. 097**
(mass discharge of unit members of window and door installation crew which worked under supervision of Ee who had special incentive arrangement with E, unlawful, since E failed to overcome GC's prima facie case of unlawful motivation where discharge was 4 days after majority signed authorization cards, notwithstanding crew's unacceptable work and failure to work on weekend, where E rehired crew members for jobs outside unit; nor did cancellation of agreement by crew's leader justify discharge absent agreement that crew went if leader left)

Central Freight Lines, Inc. **255 NLRB No. 056**
(discharging Ee, allegedly for accumulation of poor driving performance factors including *popping* clutch, violative as Ee had 10-year award for safety, personnel director made special trip to facility to authorize discharge which was made day after Ee was observed with U materials)

Five Star Air Freight Corporation **255 NLRB No. 046**
(discharge of U advocates assertedly because one was unmarried woman and other was most undesirable Ee who did mediocre work in E's accounts receivable department, held violative, since *unmarried woman* argument was unjustified and other Ee had received very good to outstanding performance rating from her supervisor; defenses were contrived and incredible)

Best Distributing Co., Inc. **255 NLRB No. 024**
(discharge of Ee violative, notwithstanding E's contention that it discharged him for unsatisfactory work, where real reason was because he joined U)

Glover Bottled Gas Corp. **255 NLRB No. 011**
(supervisor's discharge of probationary Ee, assertedly for poor work performance, unlawful, where E's refusal to cross picket line in furtherance of sympathy strike directed at Ee's E was motivating factor as evidenced by supervisor's admission to other Ees that he was directed by E to fire Ee because of his refusal; contention that other probationary Ees who did not cross picket line were not fired, rejected, where they had worked part of the time during picketing or had worked in E's yard w/o taking trucks out)

GE's Trucking, Inc. **252 NLRB No. 131**
(termination of Ee allegedly because of decline in quantity of product E was carrying, and Ee's failure to follow E's trucking delivery rules, unlawful in view of E's admitted laxity in enforcing rules, lapses by other Ees, and E's U animus; selection for termination for valid economic reasons of Ee can only be explained as motivated by E's concern that Ee's influence as leading U advocate would lead to unionization)

Savannah Wholesale Company **251 NLRB No. 087**
(suspension of known U adherent for unwarranted complaint against supervisor and for improper procedures in taking delivery of assertedly damaged merchandise, unlawful, where it was not shown that E had unusual policy of punishing Ees because their grievance against supervisor was not meritorious, Ee's testimony that merchandise was not damaged was credited, and E adduced no evidence of business motivation for its sudden decision to enforce work rules more stringently following U's victory in election)

Petroleum Electronics, Inc. and/or Cook Enterprises, Inc. **250 NLRB No. 042**
(layoff of Ees assertedly because they devoted too much time in repairing E's vehicle as result of which customer was not serviced, unlawful, where Ees were known active U supporters, they had attended U meeting shortly before layoff, and E had profound U animus)

Purvey Company **249 NLRB No. 110**
(discharge of Ee unlawful in view of E's U animus and where motivated by Ee's protected activities as E had tolerated Ee's poor job performance for over 18 months until Ee instituted inquires into Ees' work grievances)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(discharge of Ee w/i very short time E knew Ee was U officer held violative where E's reasons for discharging Ee were shifting and somewhat contradictory)

Notre Dame Hills Medical Services, Inc., d/b/a Notre Dame Hills Convalescent Center **247 NLRB No. 126**
(violation where Ee was terminated assertedly because his efficiency and performance deteriorated)

J. P. Stevens and Company, Inc. **247 NLRB No. 064**
(Ee's mistakes on job were isolated, and similar mistakes were not subject of warnings or discharge and were not uncommon at plant)

The Ballet Foundation of Milwaukee, Inc. **JD-219-82**
(refusal to rehire principal dancer, member of U team negotiating with E for contract, for coming ballet season, assertedly because his technical ability was not as strong as needed, held violative where E's artistic director was shown to be unhappy with manner in which Ee carried out his representative functions)

U. S. Gypsum Company **JD-(ATL)-20-81**
(discharge of leading U advocate assertedly because Ee lacked skills and ability to perform his work and required constant supervision, violative where discharge followed shortly after manager's unlawful anti-U speech; Ee was not given disciplinary warning before discharge as was E's custom; other Ees who had received disciplinary warnings were not discharged; and E's records showed that Ee was performing well and had been granted wage raises for his work)

Don Dzakciorius, Stan Dzak, and Al Dzakciorius d/b/a Multi Purpose Coatings Company **JD-636-81**
(E's refusal to hire Ee, assertedly because he was poor worker and inexperienced, violative, where real reason was because he had frequently made his attitude of strict adherence to U contract well known by repeated refusals to work for E under non-U conditions)

Westinghouse Electric Corporation **JD-(ATL)-80-81**
(refusal to rehire former U steward, who had held highest labor grade position at E's plant because he was hazard to himself and those around him, he had refused to work overtime and did not like overtime, held violative where E did not demonstrate refusal to rehire and would have taken place even in absence of Ee's protected conduct; real motivation shown by unlawful interrogation of another Ee and comment that *things would be quieter w/o him)*

Better-Bilt Aluminum Products Co., Inc. **JD-228-80**
(issuing warnings to U activist to correct her unsatisfactory work and taking prolonged breaks or *more serious action will be taken* held violative where supervisor had advised Ee that E was going to get rid of Ee because of her U activity and reasons for warnings smacked of pretense)

World Wide Press, Inc. **JD-(SF)-12-80**
(discharge, assertedly because of poor work performance, of Ee who had given testimony in Bd proceeding and who supported U disfavored by E, unlawful, where Ee's job mistakes were not known to E at time of discharge, Ee had never been told that her work was unsatisfactory, and E harbored desire to retaliate against Ee for testimony in Bd proceeding)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(Ee's performance and attitude)

Eastern Engineering & Elevator Co., Inc. v. N.L.R.B. **637 F.2d 191 (C.A. 3, 1980)**
(layoff of Ee assertedly because he was not performing his duties adequately, not unlawful, where Bd's finding that Ee was laid off because he filed an internal U charge against fellow Ee was not supported by substantial evidence inasmuch as Bd's conclusion was improperly based on testimonial evidence not credited by ALJ)

J. P. Stevens & Co., Inc. v. N.L.R.B. **638 F.2d 676 (C.A. 4, 1980)**
(issuing written warning to U adherent, violative; this was first written warning he had received for unsatisfactory work in his fifteen year career barely a week after announcing his support of U in presence of plant manager)

Air Express International Corporation v. N.L.R.B. **659 F.2d 610 (C.A. 8, Oct. 1981)**
(discharging district manager's former confidential secretary held violative where all confidential duties were withdrawn on day pin was filed and her position thus was admittedly not confidential, and asserted grounds of incompetence and slow business were pretextual where real reasons were that E suspected her of supporting U and being source of salary leaks)

Golden Day Schools, Inc. v. N.L.R.B. **644 F.2d 834 (C.A. 9, May 8, 1981)**
(discharge of U advocates assertedly for disparaging E, inducing parents to withdraw their children from E's day-care center and unsatisfactorily performing their work, violative where discharge followed immediately upon U organizing activity and E's anti-U bias was amplysupported by record; false assertions of lawful purpose support inference that declarant's motive was unlawful)otive was unlawful)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(E's statement to supervisor that he should find out who had been talking about U and get rid of her proof that motivation was illegal and fact that discriminatee was poor Ee irrelevant)

8387-9600 Violence or threat thereof

La Mouse, Inc. 259 NLRB No. 007
(discharge of legal alien Ee, assertedly because E suspected she supported U, not unlawful where reason for discharge was Ee's threat to get E for calling the immigration service which resulted in a raid 2 days before scheduled representation election and voluntary deportation of illegal aliens who were U supporters)

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company 256 NLRB No. 080
(discharge of U activist for hitting supervisor not unlawful, notwithstanding some provocation for dischargee's action)

Clark Equipment Company 250 NLRB No. 178
(no violation by suspension of leader of U organizing campaign for calling supervisor bastard and threatening to whip him if he caught him on the street; contention rejected that action was protected because it occurred during E's anti-U meeting)

Clark Equipment Company 250 NLRB No. 178
(no violation by discharge of leader of U organizing campaign for so recklessly driving truck that he struck a plant security officer and later threatened to *get him*)

Magnesium Casting Company, Inc. 250 NLRB No. 107
(physical assault upon supervisor held cause for discharge, where discharge was immediate and spontaneous reaction to attack, a normal reaction of supervisor with such authority, regardless of aggressor's U sympathies)

Schwebel Baking Company 249 NLRB No. 005
(discharge of U steward held lawful for assault on company official, rather than, as alleged, for carrying out his duties as U steward)

Thermo King Corporation 247 NLRB No. 048
(discharge of known active U adherent for using abusive language towards supervisor and threatening him with physical violence, not unlawful, where plant rule prohibited threatening and abusive language, language used was unusual occurrence in plant and, even if it were commonplace, context in which it was used neutralized any commonplace meaning it might have had, Ee continually repeated threat, and decision to discharge was reached only after careful consideration and investigation of incident)

Routh Packing Company, Inc. 247 NLRB No. 083
(requirement of reinstatement held precluded by picketer's threats of bodily harm to nonstriker's wife and participation in threats to nonstriker)

A & M Insulation Co. JD-335-81
(discharge of U steward not violative where E's general foreman discharged Ee only after Ee assaulted him)

Ohio Ferro - Alloys Corporation JD-245-81
(discharging U steward for inflicting savage beating on supervisor not violative where beating was sole motivation for discharge)

Amcar, Division of ACF Industries, Inc. JD-205-81
(discharging 2 Ees for assaulting supervisor away from plant not violative, notwithstanding finding of not guilty verdict in trial on criminal assault complaint)

Browning-Ferris Industries of Ohio and Michigan, Inc. JD-(SF)-313-80
(discharge of U steward and other Ee not unlawful, notwithstanding fact that U steward was in process of attempting to secure paycheck for other Ee at time of discharges, where Ees invited E outside to fight, repeatedly threatened to beat him up and persisted in obscene threats and gestures)

Neckover Trailer Manufacturing Company JD-256-80
(threats against supervisors)

N.L.R.B. v. Cumberland Farms Dairy, Inc. 674 F.2d 943 (C.A. 1, Mar. 1982)
(discharge of U activist for fighting with supervisor, not unlawful)

N.L.R.B. v. Charles Batchelder Company, Inc. 646 F.2d 33 (C.A. 2, Mar 1981)
(no violation, where Ee was discharged for threatening violence to another Ee)

N.L.R.B. v. Consolidated Freightways Corporation of Delaware 651 F.2d 436 (C.A. 6, Mar 1981)
(E's refusal to hire former president of local U who had threatened to break E's manager's arms and legs and informing applicant who was later hired that it did not hire U president because of his protected activities, not unlawful, notwithstanding existence of mixed motive for refusal to hire, absent evidence threats were pretext for refusal to hire or that explanation for refusal interfered with Ee's rights under Act)

8387-9680 Not real reason

E. I. Dupont De Nemours 263 NLRB No. 015
(discharge of U adherent for pushing supervisor in chest with hand, unlawful, since conduct was not so unreasonable in relation to E's provocative harassment as to justify discharge, where Ee neither fought with nor slapped supervisor, and *moderate, almost reflexive action* was result of campaign of unlawful intimidation and harassment by supervisor for U activities, which included forcing adherent to work harder and take fewer breaks than other Ees, and trumped up reprimands)

S.M.C. Rest. Corp. d/b/a Polenti's Restaurant 261 NLRB No. 081
(discharge of waiter, unlawful where for U adherence rather than for alleged assault on women general manager of restaurant)

Firmat Manufacturing Corp. 255 NLRB No. 183
(discharge of Ee assertedly for threatening shop foreman, violative where real reason was Ee's leading role in organizing U and filing ULP charges)

Firmat Manufacturing Corp. 255 NLRB No. 183
(discharge of Ee, assertedly because he threatened life of E's president and owner, violative where real reasons were Ee's U activities and having been mentioned in charge)

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 083
(discharge of formerly striking Ee after engaging in fight with nonstriker, unlawful, where fight had been arranged by E as device to purge Ee, in view of E's animus toward ex-strikers and general predisposition to discharge them, E's encouragement of conduct to provoke Ee into violent conduct, and haste with which Ee was fired while nonstriker was not even warned about his part in fight))

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 083
(discharge of formerly striking Ee assertedly for threatening violence against E's wife and house, unlawful, where Ee's denial of threat was credited, prior to discharge E made statement that he would have gotten rid of Ee but for U, and E exhibited virulent hostility toward ex-strikers generally)

Henry A. Young, d/b/a Columbia Engineers International 249 NLRB No. 144
(discharge of Ee who was U organizer allegedly for Ee's safety in view of threats of violence made against him, completion of Ee's work assignment, Ee's lying to E about another Ee, and his *hassling* of other Ees, unlawful, where fears for his safety proved unjustified, Ee had seniority for retention of job, information concerning other Ee passed on not as facts but mere repetition of another Ee's statement, and fact Ee may be persona non grata among certain Ees because of his U activities no basis for discharge)

Lester Industries, Inc. JD-97-80
(suspension of *chief* U protagonist purportedly for threatening anti-U fellow Ee, unlawful, where E seized upon anti-U Ee's belated, implausible account of purported threat as pretext for suspension of Ee for engaging in U organizing and protected concerted activity)

8387-9700 Illegal activity

High Performance Tube, Inc. 251 NLRB No. 181
(discriminatorily discharged Ee denied reinstatement and backpay where took photographs of E's machines on which patents were pending and also of blueprints in E's office which he had entered w/o permission when at time Ee committed above acts he was on probation for copying list of E's competitor's engineers, backpay entitlement ends as of date E could have lawfully discharged him for above misconduct)

Courier Life Publications, Inc. JD-88-81
(discharge of U adherent not unlawful where E had reasonable cause to believe that he was implicated in burglary)

8387-9800 Sabotage

Arthur Briggs, Inc. 265 NLRB No. 008
(striker jamming locks of E's plant so that E's owner was unable to enter and services of locksmith were required, held misconduct that justified refusal to reinstate)

Fibracan Corp. 259 NLRB No. 014
(discharge of leading U supporter because plant manager believed she was responsible for malfunctions and breakdowns of production machinery not violative, since, facts of case failed to establish hostility or opposition to U strong enough to conclude that E was willing to violate law by discharging Ee to keep U out of plant)

AAR Technical Service Center 269 NLRB No. 176

8387-9880 Not real reason

Borco Industries, Inc. JD-94-82
(discharge of Ee, assertedly for sabotage, violative where real reason was Ee's U activity)

8387-9900 Other

Belcher Towing Company 265 NLRB No. 159
(issuance of warning letter to Ee assertedly for use of unauthorized color in painting his workplace, unlawful, where Ee, who acted as U observer and was otherwise ardent and active U supporter, was disciplined w/o opportunity to rebut charges, and E seized upon paint incident as pretext to punish Ee because of his U activities and to make it clear to him and others so inclined that advocacy of U would meet with same or similar treatment)

8387-9900—Cont.

Onan, a Division of Onan Corporation 261 NLRB No. 187
(discharge of U adherent not unlawful where reason was his sexual harassment of female Ees rather than his U activities)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(failure of successor E operating nursing home to hire Ees who were U members employed by predecessor E, assertedly because E was overstaffed and Ees lived too far away from work and had no telephones, unlawful, since E's purpose was to undermine U; at the time E could not know that he would be overstaffed, other Ees lived farther away from work, and there was no showing why telephone issue suddenly became a problem; moreover, E was required to negotiate with U on which Ees, if any, should be laid off)

High Energy Corporation 259 NLRB No. 097
(permanent layoff of known principal U activist assertedly for attending to personal business away from plant while on company time, unlawful, in view of E's hostility to U expressed through various ULPs, some of which were directed at discriminatee, timing of layoff just 4 days before election in context of previous toleration of his prolonged errands; layoff, w/o prior warning, which did not conform to E's published system of progressive discipline; and discriminatee's usefulness to E as skilled maintenance Ee)

Louisiana Council No. 17, AFSCME, AFL-CIO 258 NLRB No. 072
(Ee's conduct consisting of what E termed use of abusive language, total attitude, and improper performance of work duties held not to justify discharge, where E, through its ULPs, made Ee's working conditions burdensome and then relied on Ee's response to justify discharge, and Ee's conduct was not so unreasonable in relation to E's provocative ULPs; E will not be allowed to transfer onus for discharge to Ee, for to do so would permit E to benefit from its wrongdoing)

Magnesium Casting Company, Inc. 250 NLRB No. 107
(suspension of Ee for engaging in *horse play* with air hose, which was potentially dangerous to fellow Ee, not unlawful, where E investigated incident, thereupon reduced discharge to suspension, and exercised reasonable exercise of its business judgment in maintaining proper discipline with due regard for safety of its Ees)

Courier Life Publications, Inc. JD-88-82
(discharge of U adherent reporter not unlawful, where she did not wish to limit her reportorial functions to one of E's five newspapers and thus to local area of an individual newspaper)

Eastern Steel Company 253 NLRB No. 163
(discharging Ee on grounds he was looking for another job and E did not want Ee who would not be permanent, violative as E knew months earlier he was looking for another job and real reason was Ee's U activities)

8390 UNSATISFACTORY QUALIFICATIONS OR CHARACTERISTICS

8390-1700 Disease and physical incapacity

8390-1750 Not real reason

Amoco Fabrics Co., Patchogue-Plymouth Division/ Nashville Mills 260 NLRB No. 038
(after first imposing unlawful onerous working conditions and then forcing U adherent to take leave of absence because she was unable to perform work, violative)

C. E. Wilkinson & Sons, Inc. 258 NLRB No. 176
(discharge of U activist assertedly because he was under doctor's restrictions from lifting heavy weight and such restriction prevented him from properly performing his work, violative where discharge occurred on day after U demanded recognition, E had demonstrated U animus, and E had knowledge of Ee's U activities)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division 261 NLRB No. 156
(where known U activist with chronic back problems was limited by doctors to doing *lighter lifting with no lifting above her head,* E's discharging her assertedly *because she is unable to perform her job due to personal physical reasons,* violative; E had granted leaves of absence to other Ees with medical problem w/o discharging them)

Rex Corp. JD-077-81
(contention that Ee had continued memory loss and work performance was dangerous to self and others rejected as contradicted by expert medical testimony and fact that discharge conversation was related to economic conditions and that Ee was unproductive due to earlier accident)

8390-3300 Failure to qualify for bond or insurance

Butler-Johnson Corporation v. N.L.R.B. 608 F.2d 1303 (C.A. 9)
(Bd's finding that discharge of Ee violative not supported by substantial evidence where his driving record resulted in problem in insuring him; further, ALJ's finding that there was insufficient evidence of discriminatory motive entitled to weight)

8390-3350 Not real reason

Golden Beverage of San Antonio, Inc. 256 NLRB No. 0
(E's defense that drivers were discharged not for U activities but because insurance carrier, after requesting their motor vehicle records, excluded them from coverage, rejected where they were still covered 1-2 weeks after discharge, E was short of drivers, E did not try as it had before for another Ee to get insurance company to change its mind and E was not consistent in selecting Ees to have their driving records checked by insurance company)

Kenbin Charter Service, Inc. 250 NLRB No. 117
(discharge of Ee unlawful since for his U activities, rather than for suspension of necessary driver's license, where E had accomodated Ee during prior similar problem by giving him inside work and assisting him in obtaining hardship license; subsequent refusal of E's insurance carrier to issue liability coverage for vehicle driven by Ee did not justify discharge since not true at time of discharge)

R.E. Peterson Products, Inc., and Will Products, Inc. JD-280-80
(discharge of U adherent, driver-warehouseman, assertedly because E could not insure its vehicles if Ee, with poor accident record, continued to drive for E held violative where Ee's termination was accelerated to prevent Ee from voting in impending R election)

N.L.R.B. v. Laredo Packing Company 625 F.2d 593 (C.A. 5, 1980)

8390-5000 Incompetence

John Geer Chevrolet Co., Inc., d/b/a Parkwood Chevrolet 263 NLRB No. 184

Hadco Aluminum & Metal Corp. JD-146-82
(discharge of Ee not violative, notwithstanding Ee's strong U support, E's strong anti-U feelings, and timing of discharge 11 days after U's demand for recognition, since Ee was discharged solely because he was no longer able to perform his work and represented a financial drain on the company)

8390-5050 Not real reason

Lane Trenching, Inc. 247 NLRB No. 185
(discharge of admittedly *good* Ee assertedly for incompetence and insubordination held violative where Ee had attempted to assert contractural overtime claims, his work was satisfactory, he was never warned or disciplined during his employment, and E's excuse that truck which Ee drove was broken down was frame up to lay groundwork for discharge of Ee)

8390-7500 Failure to qualify due to government regulation

8390-7550 Not real reason

United Sanitation Services, Division of Sanitas Service Corp. 262 NLRB No. 175
(discharge of truckdriver, assertedly because his chauffeur's license had been suspended, violative where real reason was Ee's U activities)

Together We Stand Women's Guild Day Care Center 256 NLRB No. 064
(discharge of Ee, allegedly because audit conducted by U.S. Department of Agriculture revealed her deficiencies, violative where real reason was her U membership, support and sympathies)

Logan Coca Cola Bottling Company 250 NLRB No. 164
(Ee underage to be employed in hazardous occupation)

Kenbin Charter Service, Inc. 250 NLRB No. 117
(discharge of Ee unlawful since for his U activities, rather than for suspension of necessary driver's license, where E had accomodated Ee during prior similar problem by giving him inside work and assisting him in obtaining hardship license; subsequent refusal of E's insurance carrier to issue liability coverage for vehicle driven by Ee did not justify discharge since not true at time of discharge)

Transportation By La Mar, Inc. JD-619-81
(discharge of U adherent, bus driver, assertedly because he had no school bus driver's permit from state held violaive where E had retained Ee on payroll for at least 5 months after learning Ee had no permit, retained Ee on payroll after E learned Ee could not timely obtain such permit and then discharged Ee after he received his permit and had conversed with suspected U activist)

8390-7900 Illegal alien status

8390-7950 Not real reason

A & B Janitorial Service, Inc. JD-(SF)-160-81
(E's refusal to rehire Ee who was illegal alien, unlawful, notwithstanding contention employment of illegal alien would be illegal, since Bd has authority to order *reinstatement* of illegal aliens and E motivated by Ee's grieving discharge, and would not have reached same decision absent protected conduct in view of fact E had knowingly hired illegal aliens in past and had never exhibited concern with compliance with law as could have been shown by demanding green card rather than relying on assertion of applicant)

8390-8100 Alien employee's expiring visa

8390-8100—Cont.

Townsend and Bottum, Inc. 259 NLRB No. 077
(layoff of non-U Canadian Ees, not unlawful, where E explained reason they were no longer employed was because their visas were expiring and would have required them to be laid off anyway, and E thereby met its burden by showing it would have taken the same action against them even absent nonmembership in U or absent preference for U members)

[illegible] Prison or arrest record

[illegible] Not Real Reason

Campi Transportation Company 256 NLRB No. 173
(reinstatement of discriminatee, because he had violations on his driver's license, prior felony conviction which was unrevealed on his job application, and caused security problems for U.S. Postal Service with which E had contracted, not barred, since E was aware of Ee's misconduct and had not disciplined or discharged Ee on such grounds; Ee had been declared good Ee before discharge and problems with Postal Service had been resolved before discharge)

[illegible] Lack of proper credentials for job

[illegible] Not real reason

C & D Transfer 256 NLRB No. 080
(discharge of U adherents allegedly because they did not have class 3 drivers' licenses, violative, where record showed that E had always been indifferent to whether Ees had class 3 driver's licenses)

8393 VIOLATION OF RULES AND STANDARDS

Classic Truck Rental Corp. 251 NLRB No. 056
(suspension of U adherent who had filed charges with Bd, not unlawful, in view of Ee's *stealing time* by wasting time on job and continuing disregard for company rules despite several warnings, thereby prompting E to file notice of intent to arbitrate disciplinary action against Ee because of his inefficiencies as Ee and then suspending Ee after receiving arbitrator's advice to do so)

Louisiana Council No. 17, AFSCME, AFL-CIO 250 NLRB No. 072
(suspension of Ees by administrator of U council on ground that meeting called by Ees' U and held at parent organization's facility violated council's policy curtailing Ees' contacts with such organization, unlawful, where administrator knew that meeting was called for purpose of addressing fellow Ee's discharge, which was protected activity; unlawful motivation was shown by attempt, following suspensions, to prevent Ees from meeting with their attorney; and administrator's concern about U meeting included Ees' *taking issue* with his disciplining of Ees and soliciting aid from other sources)

8393-0100 Generally

8393-0111 Conduct not within scope of rule

East Texas Motor Freight 262 NLRB No. 101
(warning letters and counselling various Ees for actions contrary to E's work rules and policies not violative where other Ees were warned and counselled for same offenses which were work related, were not discriminatory and did not involve Ees' protected activity)

8393-0122 Existence of rule not established

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(discharge of U members after they called in sick on a Saturday, unlawful, where E, who was engaged in conduct to undermine U, stated to one of them that he would not tolerate any Ee calling in sick on a Saturday; however, Ees were not told of E's alleged sick leave policy prior to their discharge and such policy did not exist under predecessor E for whom Ees and had worked; moreover, it was very doubtful that E's policy on sick leave was bona fide)

8393-0133 Not real reason

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(discharge of U members after they called in sick on a Saturday, unlawful, where E, who was engaged in conduct to undermine U, stated to one of them that he would not tolerate any Ee calling in sick on a Saturday; however, Ees were not told of E's alleged sick leave policy prior to their discharge and such policy did not exist under predecessor E for whom Ees and had worked; moreover, it was very doubtful that E's policy on sick leave was bona fide)

8393-0144 Rule commonly violated and not similarly punished

Transportation Management Corp. 256 NLRB No. 025
(discharging Ee for leaving keys on school bus parked in garage in violation of company policy, held pretext as E made decision to discharge before learning that Ee left his keys that day and it was common practice for drivers to leave keys on bus)

Five Star Air Freight Corporation 255 NLRB No. 046
(E's *initial denial* of vacation leave to reinstated U activist stemming from unlawful motive held violative although E subsequently reversed its decision; E's rule concerning vacation leave had been bent on more than one occasion)

American Thread Company v. N.L.R.B. 631 F.2d 316 (C.A. 4, Sept. 1980)
(discharge of known U advocate assertedly because he urinated outside the plant, but on the premises, in violation of E's *indecent conduct* rule, violative, in view of E's lack of concern when similar use was made of plant area in the past and E's failure to discharge or otherwise discipline two other Ees who were guilty of *indecent conduct* involving incident herein)

8393-0155 Rule discriminatorily or arbitrarily applied

Hudson Oxygen Therapy Sales Company 264 NLRB No. 000
(overreaction by E in diciplining Ee for violating work rule, even if valid, especially when rule had not been evenly enforced or necessary to maintain production standards, supports inference that Ee's violation of rule has been seized upon as pretext, and is supported only by invidious and discriminatory motive)

Fieldcrest Mills, Inc. 259 NLRB No. 090

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. 257 NLRB No. 045
(rigid enforcement of rule against unauthorized absence from work area or plant during U campaign only, unlawful)

Monroe Medi-Trans, Inc. 256 NLRB No. 107
(discharge of U activist, unlawful notwithstanding E's contention that it had policy of discharging Ees after three infractions of its rules, since E's testimony showed variations in applications of the alleged policy and failed to show Ees knew of the policy)

Gladwin Corporation JD-565-80
(sudden layoff of U activist assertedly for violation of E's rule restricting carrying and consumption of alcoholic beverages oncompany premises held violative where Ee was seen drinking beer on his own time on E's parking lot, an admitted borderline violation, which behavior was treated w/same severity as obvious case of intoxication 12 years previously)

8393-0166 Rule invalid

Enterprise Products Company 265 NLRB No. 083
(discharge of Ees assertedly for violating unlawful rule, prohibiting dissemination of company information by providing Ee, whose discharge was subject of ULP charge herein, with information regarding company's operations, unlawful, even if rule was found not unlawful, where E knew that disclosure assertedly constituting misconduct occurred during U activity yet E presented no evidence that it, in good faith, believed that Ees engaged in breach of rule nor evidence upon which it based belief that Ees were involved other than that obtained in instant proceeding as to their participation therein; and Ees did not in fact commit suspected offense)

Newspaper Printing Corporation JD-380-80
(violation, where supervisor refused to grant Ee's request that he be rotated during shift to different machines because he was taking medication that might make him drowsy and endanger himself and others and subsequently terminated Ee pursuant to unlawful unilaterally instituted rule that prohibited rotation during shift)

Great Lakes Steel, Division of National Steel Corporation v. N.L.R.B. 625 F.2d 131 (C.A. 6, July 1980)
(ct upheld Bd finding that Ee's possession of pamphlet critical of E's ambulance policy with intent to distribute among other Ees was protected activity and subsequent discharge for such Ee activity violative as supported by substantial evidence on record)

8393-0177 Rule not communicated to employees

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(discharge of U members after they called in sick on a Saturday, unlawful, where E, who was engaged in conduct to undermine U, stated to one of them that he would not tolerate any Ee calling in sick on a Saturday; however, Ees were not told of E's alleged sick leave policy prior to their discharge and such policy did not exist under predecessor E for whom Ees and had worked; moreover, it was very doubtful that E's policy on sick leave was bona fide)

8393-0188 Rule not enforced

Chromalloy American Corporation-Liberty Radiator Division JD-(SF)-383-82
(supervisor's issuance of written warning for violation of plant rule against gambling unlawful, where plant rule had never been enforced and supervisor admittedly believed Ee was strike instigator and wanted to get rid of him and had threatened to issue warning in retaliation for Ee's filing of a grievance)

8393-2000 Discipline always meted out for breach of rule

East Texas Motor Freight 262 NLRB No. 101
(warning letters and counselling various Ees for actions contrary to E's work rules and policies not violative where other Ees were warned and counselled for same offenses which were work related, were not discriminatory and did not involve Ees' protected activity)

8393-2500—Cont.

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)

(discharge of Ee, not unlawful, notwithstanding E's knowledge that Ee had filed grievance seeking higher wages prior to discharge, where Ee had falsified time card, breach of E's rules for which E had never used any penalty less severe than discharge, and had done unsatisfactory work)

8393-5000 Types of rules

8393-5007 Prohibition against interfering with production

United States Steel Corporation 253 NLRB No. 083

(reassignment of Ee who refused to repair crane w/o *safety man* held not due to his filing charges or protected activity as contended but to his impeding work in violation of the contract with his demands and causing work stoppage)

8393-5013 Prohibiting unauthorized presence in work area

Schreiber Manufacturing Co., Inc. 263 NLRB No. 154

(discharging pro-U Ee for violating rule *disturbing other Ees on their jobs, so as to disrupt production* by entering plant on off-duty hours, not violative where Ee had received 2 prior warnings for violating rule)

Ajello Corporation, Vector Division JD-638-80

(no violation for suspending U officer for going to another work area when she was told not to go)

Wilson Foods Corporation JD-(SF)-272-80

(after E refused to supply data on job classification, brackets assigned to jobs, and wages to U president per request by International, his speaking with Ees on plant floor to obtain data, after end of shift, held protected, notwithstanding he violated plant rule by not securing foreman's permission to talk on plant floor)

8393-5018 No smoking, no eating, etc.

Southern Farmers Association JD-47-82

(discharging Ee minutes before election, violative where E's reason, smoking in no-smoking area, was found pretextual)

8393-5027 No-solicitation and/or no-distribution and/or no-access rule

Enterprise Products Company 265 NLRB No. 083

(discharge of Ees assertedly for violating rule, herein found unlawful, prohibiting dissemination of company information by providing Ee, whose discharge was subject of ULP charge herein, with information regarding company's operations, unlawful, in view of disparity of treatment and severity of discipline, E's U animus and knowledge of Ees' U activity and knowledge that information was obtained in course of concerted and U activity, that it was obtained for purpose of prosecuting instant case, and that Ees had or would testify in proceedings herein)

Hudson Oxygen Therapy Sales Company 264 NLRB No. 004

(promulgation and posting of no-solicitation/no-distribution rules, which prohibited Ees during entire work day to engage in such activities unlawful where rules were invalid because they did not clearly indicate that Ees may engage in protected activity during periods of work day when they are properly not engaged in performing their work tasks, and rules were issued next work day after U won election thereby, in absence of explanation for issuance of rules to coincide with U activities, giving rise to inference that rules were discriminatorily motivated in retaliation for Ees' U activities)

Hudson Oxygen Therapy Sales Company 264 NLRB No. 004

(E's no-access rule denying off-duty Ees access to *any of plant's facilities, including plant lunchroom,* invalid and unlawful, since no business reasons were advanced to justify no-access policy to parking lots, gates, lunchrooms, and other nonworking areas, and was issued in retaliation for Ees' support of U)

South Nassau Communities Hospital 262 NLRB No. 146

(discharge of U adherent assertedly for violating valid no-solicitation rule, unlawful, where Ee's protected activity of soliciting U cards occurred in non-work area on non-work time; E offered no explanation for its instantaneous action against Ee w/o ever giving Ee opportunity to be heard; on prior occasions when Ee had engaged in conduct worthy of discharge, Ee was only reprimanded after consultation; and violation existed even though Ee's U activity was limited to only one incident)

Allied Stores Of N.Y., Inc., d/b/a Gertz 262 NLRB No. 129

(issuing written reprimand to Ee for posting U notice violative where Ees were permitted to post personal messages)

Cadiz Convalescent Centers 258 NLRB No. 077

Clinton Corn Processing Company, A Division of Standard Brands Inc. 253 NLRB No. 084

(warning Ee for failure to comply with unlawful overly broad no-solicitation rule which was not clarified to permit solicitation during break times and Ee had been soliciting only on his own time, violative)

Centre Engineering, Inc. 253 NLRB No. 038

(suspension of Ee for distributing U literature in work area during working time not violative)

Neptune Waterbeds, Inc. 249 NLRB No. 163

(discharge of U adherent not unlawful where he was shown to have many work-related problems including solicitation in working areas of plant in violation of no-solicitation rule)

Great Lakes Steel, Division of National Steel Corporation v. N.L.R.B. 625 F.2d 131 (C.A. 6, July 1980)

(ct upheld Bd finding that Ee's possession of pamphlet critical of E's ambulance policy with intent to distribute among other Ees was protected activity and subsequent discharge for such Ee activity violative as supported by substantial evidence on record)

N.L.R.B. v. Westinghouse Electric Corporation 612 F.2d 1072 (C.A. 8)

(ct upheld Bd's determination that Ee was unlawfully discharged specifically for passing out authorization cards and not because Ee breached company's no-solicitation rule; furthermore, instances of solicitation for non-U purpose proscribed by rule were tolerated at plant)

8393-5030 Confidentiality

Texas Instruments Incorporated 247 NLRB No. 037

(discharges based on E's invalidly applied dissemination of classified material rule, violative, since Ees were penalized for asserting their statutory rights by publishing confidential area wage survey; application of rule interfered with those rights and tended to inhibit Ees' protected activity)

Texas Instruments Inc. v. N.L.R.B. 637 F.2d 822 (C.A. 1, 1981)

(discharge of U adherents for violation of E's valid security rule not violative where: Ees published E's confidential wage survey report which Ees had obtained outside of normal course of employment (each page of report was stamped strictly private), Ee manual set forth E's rule against disclosure of confidential information; moreover, Ees' organizing activity not dependent on access to confidential information)

8393-5031 Lunch period rules

South Nassau Communities Hospital 262 NLRB No. 146

(warning letters issued to U activists for infraction of E rule by overextending their lunch breaks, unlawful, notwithstand that similar punishment was given to Ees not actively supporting U, where extension of lunch break was common practice engaged in by supervisors and Ees, of which E was well aware; and, as shown by E's remarks in answer to Ee's inquiry about her similar situation, discipline of Ees herein was directly related to their U activities)

8393-5045 Reporting absences

A & T Manufacturing Company 265 NLRB No. 288

(discharge of active U supporter for his failure to call in when absent and insubordination (calling supervisor a *brown nose* –) held violative, since, although Ee's violation of absentee rule was valid reason to discharge Ee, credited testimony was clear that E had decided to discharge Ee *before* Ee's absences)

Beverly Enterprises, Inc. t/a Cumberland Nursing & Convalescent Center 263 NLRB No. 068

(discharge of former striker who had been reinstated but failed to report to work on date she was to report or notify E of intended absence, but instead reported on following day and contended she misunderstood date she was to report, lawful, where in fact was told and understood date she was to report, E had rule requiring reporting intended absences and other Ees had been discharged for failure to comply)

Eaton Corporation 262 NLRB No. 038

(discharge of U adherent for ignoring 3-day call in rule when he was ill, not unlawful)

Howard Johnson Motor Lodge 261 NLRB No. 123

(reprimanding Ee for not calling in to notify E he would not be in to work, not unlawful, absent nexus to U activity of Ee, or evidence of disparity)

Parkview Nursing Center II Corp. 260 NLRB No. 087

(E's discharge of ULP strikers, unconditionally offering to return to work, allegedly for violating company rule for failure to notify E that they were not reporting for work on first day of strike, unlawful, where E had received prior written notice of U's intent to strike made in compliance with Act's requirements, U identified itself on picket line as striking against E, and E's reasons for discharging strikers was mere pretext to mask its intention of discharging them for engaging in protected concerted activity)

Sherman Brothers, Inc. 262 NLRB No. 131

(discharge of driver, unlawful, where motivating factor in action was his circulating letter opposing provision in proposed bargaining agreement which would substitute mileage for number of hours worked as basis for computing drivers wages, rather than for three consecutive days failing to report his availability for work while awaiting call from dispatcher)

Bill Johnson's Restaurants, Inc. 249 NLRB No. 026

(discharge of waitress, assertedly for failure to call in on disignated day off, unlawful, where surrounding facts preponderated in favor of finding that E, in effecting discharge, was motivated by knowledge that discriminatee was U adherent and that E's reasons for discharge were false)

8393-5045—Cont.

Delco Air Conditioning Division, General Motors Corporation v. N.L.R.B. 649 F.2d 390 (C.A. 6, May 1981)
(discharge of U committeeman for leving plant w/o signing out in violation of company rules, not unlawful; substantial evidence on record did not support Bd finding of unlawful discharge in light of Ee's bad employment record which included absenteeism, tardiness, and falsification of travel card, and in light of fact that five other Ees, one of whom was U committeeman, had been discharged in past for engaging in similar fraudulent acts)

N.L.R.B. v. Eaton Corporation 623 F.2d 479 (C.A. 6, 1980)
(discharge of Ee unlawful since for filing grievance rather than for failure to give proper notice of absence in view of evidence Ee told fellow Ee he would be absent and information was passed along to foreman)

8393-5047 Leave of absence rules

Five Star Air Freight Corporation 256 NLRB No. 046
(E's *initial denial* of vacation leave to reinstated U activist stemming from unlawful motive held violative although E subsequently reversed its decision; E's rule concerning vacation leave had been bent on more than one occasion)

Hamilton Die Cast Company, Inc. 254 NLRB No. 113
(discharging 2 Ees on same day for taking leave w/o written notice held violative as other Ees have not been similarly terminated; E's motivation was to penalize them for concerted activities as one Ee filed OSHA charge and other Ee was U steward whose performance E was critical)

Hamilton Die Cast Company, Inc. 254 NLRB No. 113
(discharging 2 Ees on same day for taking leave w/o written notice held violative as other Ees have not been similarly terminated; E's motivation was to penalize them for concerted activities as one Ee filed OSHA charge and other Ee was U steward whose performance E was critical)

N.L.R.B. v. First National Bank of Pueblo 623 F.2d 686 (C.A. 10, 1980)
(discharge of Ee not unlawful, since for unauthorized absence rather than for acting as U observor at election and attending U meetings, where Ee had received pay raise before and after election, and Ee had not asked for time off but simply informed supervisor she was taking day off)

8393-5048 Break time or use of restroom

Standard Motor Products, Inc. 265 NLRB No. 068
(discharge of Ee assertedly for taking an unauthorized break, unlawful, since E failed to rebut GC's *prima facie* case that E was discharged for U activity, in view of E's knowledge of such activity, timing of discharge w/i week of acquisition of such knowledge, and absence of valid justification, coupled with E's admitted opposition to Ee organization; taking of improper break was flimsy excuse and impugns asserted basis for discharge, gravity of punishment greatly outweighed offense, and there was disparate treatment of Ee when compared to reprimand issued to another Ee for same offense)

United Parcel Service, Inc. 263 NLRB No. 063
(discharge of truck driver lawful, since was for taking extended and unauthorized breaks, falsifying records required by E and government, idling tractor for long periods, rather than for filing grievances where Ee not militant U supporter and other Ees disciplined for similar offenses, and discharge would have taken place absent protected activity)

United Parcel Service, Inc. 261 NLRB No. 134
(discharge of drivers preceded by extraordinary surveillance, unlawful, where real reasons were for filing charges with Bd in prior case, U adherence, distribution of materials for dissident branch of U rather than for overstaying breaks on road and thereby failing to meet schedules, and for falsifying logs)

Huntington Rubber Company, Division of New Idria, Inc. 260 NLRB No. 133
(E's imposition of rule which prohibited all discussion of U in E's restroom violative of Sec. 8(a)(1) and issuing warning to Ee who violated rule also violative)

Lincoln Technical Institute, Inc. 256 NLRB No. 032
(temporary suspensions not violative where Ees did in fact break E rule and leave premises during *floating* time)

Transportation Management Corp. 256 NLRB No. 025
(discharging Ee for taking unauthorized coffee breaks, violative as breaks were normal practice among drivers and were tollerated unless job performance was affected)

Norge Company, Inc. JD-647-79
(discharge of Ees, not unlawful, since for excessive restroom breaks rather than for any protected activity where supervisor who discharged Ees had no knowledge of their prior U activities which has taken place over six months previously, and breaks were not for purpose of discussing U nor any other protected activity)

8393-5050 Safety Rules

Hudson Oxygen Therapy Sales Company 264 NLRB No. 090
(issuing and posting on bulletin boards, after U won election, of rule authorizing safety committee to issue warnings to fellow Ees for infractions of safety rules, not unlawful, where committee existed and was described in Ee handbook before U campaign began, and change in enforcement of rule imposing new penalties was mere change in form rather than substance and was such minuscule part of committee's function as to preclude finding of retaliation against Ees' U activities; while questionably post-election timing was present, other circumstances combined to outweigh inference of discriminatory conduct or intent)

H. B. Zachry Company 261 NLRB No. 098
(contention that U activist was discharged was discharged for breach of safety rules, rejected where another Ee had merely been warned for same breach, and no Ee had been discharged in the past for same reason)

Amoco Fabrics Co., Patchogue-Plymouth Division/ Nashville Mills 260 NLRB No. 038
(discharge for failure to wear safety goggles while using air hose not violative as such conduct was proscribed by company rules as well as OSHA)

K & E Bus Lines, Inc. 255 NLRB No. 137
(discharge of U adherent who was shcool bus driver for congregating with other drivers during standby time and leaving bus while children in it, unlawful, where Ees had never previously been disciplined for congregating during standby time and two other adherents discharged that day; fact there were children on bus did not change nature of incident so as to require such severe penalty)

Gemco Company, a Division of the United States Gypsum Company 254 NLRB No. 041
(discharge for alleged violation of safety rules where Ees engaged in horseplay, unlawful, since in retaliation for Ee changing his mind about voting against U where no other Ees had not been discharged for recent violations of safety rules)

Vogt-Conant Co. 258 NLRB No. 027
(discharge of truckdriver who was guilty of numerous incidents of improper and unsafe driving during his period of employment, not violative, notwithstanding that previously Ee was threatened with discharge if he persisted complaining about E's elimination of certain contractual overtime payments; E had in past discharged other Ees for unsafe driving, E bore no animus against complaining Ees generally, and Ee ceased his protests 3 weeks before his discharge and gave E no further cause for concern)

Lemco Electric Corporation 257 NLRB No. 203
(discharge of Ee lawful, since for his refusal to obey safety rule which required tying long hair up and back to prevent it from being caught in machinery, where Ee was not outstanding U activist and other Ees had been warned for refusal to abide by same rule)

Westinghouse Electric Corporation JD-(ATL)-60-81
(3 day suspension of Ee, U president, violative where conduct of Ee neither constituted willful violations of E's safety rule, nor did E establish habitual carelessness or recklessness on part of Ee)

Hayes International Corporation JD-(ATL)-29-81
(application of rule against wearing of open-toed footwear by U activist not unlawful, since application was not disparate, was for reason of safety, and took place after election and not in context of U activities)

The Martin-Brower Company v. N.L.R.B. 623 F.2d 1161 (C.A. 6, 1980)
(discharge of U adherent not violative, where he was discharged for third *preventable accident*)

Edward Kopack, Sr. and Edward Kopack, Jr. v. N.L.R.B. 668 F.2d 946 (C.A. 7, Jan. 1982)
(discharge of truck driver employed by E performing contractual services for another company held not unlawful where Bd's inference that discharge was not for protected activity was supported by evidence that dischargee violated contracting company's traffic regulations by engaging in dangerous driving, contracting company expressed increasing dissatisfaction with dischargee's driving, and there was possibility that company would cancel E's contract as a result)

8393-5054 Rule against leaving machine or work area

American Steel Works 263 NLRB No. 100
(suspending for insubordination U safety officer for leaving work station to approach OSHA inspection team and for ignoring for only few minutes order to return to work held violative as such insubordination in context of protected activity cannot justify disciplinary action)

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. 257 NLRB No. 048
(rigid enforcement of rule against unauthorized absence from work area or plant during U campaign only, unlawful)

K & E Bus Lines, Inc. 255 NLRB No. 137
(discharge of U adherent who was shcool bus driver for congregating with other drivers during standby time and leaving bus while children in it, unlawful, where Ees had never previously been disciplined for congregating during standby time and two other adherents discharged that day; fact there were children on bus did not change nature of incident so as to require such severe penalty)

8393-5054—Cont.

I.T.O. Corporation of Ameriport 264 NLRB No. 018
(discharge of guard, U adherent, because he was not on his post and was insubordinate to (assistant chief of security), not violative where guard's testimony that he was away (from his post) for 15-20 minutes could be considered excessive by E and record disclosed two prior incidents of discipline of Ees for leaving their post w/o permission)

Anaconda Ericsson Inc. JD-720-80
(3-day disciplinary suspension during contract negotiations of Ee-member of negotiating committee for *leaving his position* before being replaced at time Ee was needed to assist in completing expiremental operation for E, held not violative, since Ee's disregard of (his) responsibility required discipline and Ee's known (U) activities were no factor in E's decision to suspend Ee)

8393-5060 Rule regarding searching employees property

Stanley M. Feil, Inc. 260 NLRB No. 068
(discharge of U adherent for refusing to allow her purse to be searched by supervisor, rather than by security guard, upon leaving Es warehouse, not violative, absent discriminatory motivation; fact E's vice-president offered to reemploy adherent and then withdrew offer not evidence of discriminatory motivation where withdrawal because vice-president felt personally insulted)

8393-5061 Rule against destruction of property

Halliburton Services (Coffeyville, Kansas), A Division of Halliburton Company 265 NLRB No. 144
(discharging U activist for throwing down his respirator in anger and breaking it after being told that his lunch breaks and other breaks were being rescheduled)

8393-5062 Rule against leaving work without permission

Levi Strauss & Company JD-139-80

8393-5065 Rule concerning employees' personal use of company material

Neckover Trailer Manufacturing Company JD-284-80
(blatant infraction of rule regarding use of scrap metal by Ees both as it related to use of material for own purposes and taking of material from plant)

8393-5067 Rule against leaving before quitting time

Westinghouse Electric Corporation JD-(ATL)-40-81
(U steward's refusal to work overtime in order to attend U meeting concerted activity notwithstanding Ee acted alone where E had contractual obligation to honor steward's request to leave job for U business)

8393-5070 Rule against drinking of alcoholic beverages on job

Evans Brothers Barber & Beauty Salons, Inc. 256 NLRB No. 023
(discharge of U adherent not unlawful, where Ee drank beer after E terminated practice of drinking beer in shop during business hours and after Ee had been personally warned that such activity would lead to termination)

Gladwin Corporation JD-565-80
(sudden layoff of U activist assertedly for violation of E's rule restricting carrying and consumption of alcoholic beverages oncompany premises held violative where Ee was seen drinking beer on his own time on E's parking lot, an admitted borderline violation, which behavior was treated w/same severity as obvious case of intoxication 12 years previously)

8393-5072 Rule against wearing union insignia

John Rooney, David Hisman and Beverly Foster, d/b/a Rooney's At The Mart 247 NLRB No. 125
(ordering waitress to remove U button while she was waiting on customers in E's restaurant and sending her home when she refused, violative, notwithstanding fact button was of size and design to detract from uniform and bore feminist statement that might offend some customers, in view of E's other ULPs and fact E had previously taken actions motivated by Ee's U activities to induce her either to quit or to change ways)

8393-5083 Rule concerning work assignments

Newspaper Printing Corporation JD-283-80
(violation, where supervisor refused to grant Ee's request that he be rotated during shift to different machines because he was taking medication that might make him drowsy and endanger himself and others and subsequently terminated Ee pursuant to unlawful unilaterally instituted rule that prohibited rotation during shift)

Excavation-Construction, Inc. v. N.L.R.B. 660 F.2d 1015 (C.A. 4, Oct. 1981)
(discharging Ees for concertedly refusing to work specific job on Saturday because it did not pay time and half held not violative where Ees knew that E would pay only straight time and rule that Saturday work was voluntary but if Ee signed up for that day must work on any job assigned by E and penalty for not working was discharge. Claim that Ees were engaged in 1 day strike rejected, since Ees only refused to work that specific job that day and not other jobs which was equivalent to Ees seeking to work under terms prescribed by them which is not protected activity)

8393-5084 Rule against fighting

Danish Creamery Association 265 NLRB No. 004
(discharge pursuant to company rule because Ee was engaged in fight with another Ee, not unlawful)

Danish Creamery Association 265 NLRB No. 004
(discharge pursuant to company rule because Ee was engaged in fight with another Ee, not unlawful)

8393-5085 Rule against personal conversations during working time

East Texas Motor Freight 262 NLRB No. 101
(discharge not violative where, notwithstanding GC made *prima facie* showing that E had unlawful motive for discharging Ee, E proved Ee would have been discharged because of long history of Ee's problems of discussions with other Ees while Ee was working, even in absence of Ee's protected activity; Ee was issued numerous lawful warnings concerning violation of E's lawful policy on solicitation in work areas on E's time)

Champion Parts Rebuilders, Inc., Northeast Division 260 NLRB No. 098
(issuance of warning for talking on job to U vice-president and another Ee violative notwithstanding they were talking for prolonged time and E had past practice of warnings for such conduct where E observed conversation for a time and never ordered Ees back to work but merely issued warning notices in retaliation for vice-president status and activities)

Central Freight Lines, Inc. 255 NLRB No. 056
(during hiatus in trial, suspending prominent proU Ee for two instances of talking and wasting time, violative as E did not admonish other Ees talking and Bd chairman's involvement indicated special consideration and delicate handling)

Tartan Marine Company 247 NLRB No. 073
(warning Ees against talking while working, not violative, since *working time is for work* and particularly since warnings not a policy initiated during U's campaign)

Wilson Foods Corporation JD-(SF)-272-80
(after E refused to supply data on job classification, brackets assigned to jobs, and wages to U president per request by International, his speaking with Ees on plant floor to obtain data, after end of shift, held protected, notwithstanding he violated plant rule by not securing foreman's permission to talk on plant floor)

8393-5086 Rule against use of profanity or improper behavior

Standard Motor Products, Inc. 265 NLRB No. 068
(discharge of active U adherent assertedly for violating plant rule against spitting on floor, not unlawful, since E rebutted GC's *prima facie* case based on knowledge of Ee's U activity and absence of prior discharges for infraction of rule, where record showed that Ee's action was dischargable offense under rule of which Ee was aware; and there was sensitivity on E's part to Ee's offense committed in open defiance; moreover, no mitigating circumstances existed nor was there evidence of disparate application of rule, and Ee had previously been warned about such conduct)

Richmond Tank Car Company 264 NLRB No. 025
(profanity in violation of plant rule which was provoked by E's unresponsiveness to Ees' well founded concerns about safety conditions and which were kind of language commonly heard in industrial workplace was not so egregious or flagrant as to remove protection of the Act or so violent or serious as to render Ee uttering it unfit for service and justify discharge)

Thermo King Corporation 247 NLRB No. 048
(discharge of known active U adherent for using abusive language towards supervisor and threatening him with physical violence, not unlawful, where plant rule prohibited threatening and abusive language, language used was unusual occurrence in plant and, even if it were commonplace, context in which it was used neutralized any commonplace meaning it might have had, Ee continually repeated threat, and decision to discharge was reached only after careful consideration and investigation of incident)

8393-5088 Rules concerning company vehicles or equipment

United Parcel Service, Inc. 263 NLRB No. 060
(discharge of truck driver lawful, since was for taking extended and unauthorized breaks, falsifying records required by E and government, idling tractor for long periods, rather than for filing grievances where Ee not militant U supporter and other Ees disciplined for similar offenses, and discharge would have taken place absent protected activity)

Transportation Management Corp. 256 NLRB No. 025
(discharging Ee for leaving keys on school bus parked in garage in violation of company policy, held pretext as E made decision to discharge before learning that Ee left his keys that day and it was common practice for drivers to leave keys on bus)

K & E Bus Lines, Inc. 255 NLRB No. 137
(discharge of U adherent who was school bus driver for congregating with other drivers during standby time and leaving bus while children in it,

8393-5088—Cont.

unlawful, where Ees had never previously been disciplined for congregating during standby time and two other adherents discharged that day; fact there were children on bus did not change nature of incident so as to require such severe penalty)

Associated Milk Producers, Inc. 255 NLRB No. 104

(discharging Ee for removing equipment from damaged truck, violative as E's true reason was to punish Ee for his U activities and to influence other Ees to vote against U)

Five Star Air Freight Corporation 255 NLRB No. 046

(denying reinstated U advocate holiday leave pay and suspending her for three days w/o pay assertedly because she had typed letter announcing impending U meeting on company typewriter during working hours held violative where record established that other Ees made frequent use of company equipment w/o rebuke)

Thomas & Howard Company of Ashevills, Inc. JD-622-81

(discharging principal U organizer for failing to report that he caused damage to trailer and denying that he was involved in accident held not violative, where E's investigation showed that Ee had such accident and discharge was in accord with past practices)

N.L.R.B. v. M & B Contracting Corporation 653 F.2d 245 (C.A. 6, July 1981)

(discharge of U adherent unlawful since for U activity rather than for drinking while operating E's trucks in view of lack of investigation by E of alleged drinking and other Section 8(a)(1) violations by E)

N.L.R.B. v. M & B Contracting Corporation 653 F.2d 245 (C.A. 6, July 1981)

(discharge of Ee who had circulated ptn for U and filed charge with NLRB, unlawful, where for U activity and invoking Bd processes rather than for insubordination in bringing E's broken truck back to E's headquarters w/o proper authorization where Ee had tried to obtain authorization from proper party, and unauthorized individual who told him to bring truck in was not reprimanded)

8393-5090 Speed regulations

Arthur H. Fulton, Inc. 262 NLRB No. 134

(discharge of Ee who had distributed cards and attended U meeting held not violative as real reason was damage to tractor engine which could only have been caused by negligent driving)

Thurston Motor Lines, Inc. 257 NLRB No. 171

(discharging Ee, assertedly for violating rule mandating discharge for driving over 65 mph, violative where Ees had no knowledge of such rule, and E threatened reprisal ten days earlier, when U won election)

8396 VOLUNTARY QUIT OR LAYOFF

Hillside Avenue Pharmacy, Inc. 265 NLRB No. 205

(discharge of Ee who initiated U's drive at E's facility and who E claimed had quit, unlawful, where E specifically asked Ee whether he had signed U card when U's representative visited E's place of business; E thereafter committed series of ULPs; and 2 weeks after U demanded recognition, Ee was terminated 2 hours before end of his workday; moreover, E told one Ee that *vengeful* person was trying to bring U in and E had placed want ad in newspaper for filling E's position)

Larid Printing, Inc. 264 NLRB No. 040

(unlawful discharge where E's production manager informed U adherent who had been ordered to work night shift that he had quit when Ee handed production manager letter stating he had been hired for day work and requesting that E find another Ee to work night shift)

Remodeling By Oltmanns, Inc. 263 NLRB No. 169

(unlawful constructive discharge where strikers upon returning to work at E, which although not member of multiE association had abided by associations contract with U and had paid U wages and benefits, quit when told by E it was in process of withdrawing from U, was joining non-U E association and that if strikers returned to work they would be paid less than U wage scale and would not receive U benefits)

Remodeling By Oltmanns, Inc. 263 NLRB No. 169

(unlawful constructive discharge of striker who quit when informed by other Ees that E which previously had memorandum agreement with U and had paid U wages and benefits, was withdrawing from U and was joining non-U E association and if strikers returned to work they would be paid less than U wage scale and would not receive U benefits; unnecessary for constructive discharge that striker be directly confronted by E and further E meant its terms to be transmitted to striker)

The Martin-Brower Company 263 NLRB No. 025

(voluntary resignation held to have been unlawful discharge where U adherent resigned in order to obtain good reference from E rather than be discharged on grounds of suspected theft as asserted by E)

International Computaprint Corp. 261 NLRB No. 099

(layoff of Ee where E lost government contract, not unlawful, since Ee had volunteered for lay off, notwithstanding E had prepared termination slip on Ee, where Ee had also prepared termination on Ee it retained)

Heads and Threads Company, a Division of MSL Industries, Inc. 261 NLRB No. 115

(ULP striker found not to have quit as claimed by E but to have stated he would take another job if he could find it; his failure to take issue with E's self-serving letter confirming his alleged quit found proper since he was subsequently seen picketing by E, and was obviously available for work, making E's refusal to reinstate him on application unlawful)

Union Packing Co. 260 NLRB No. 064

(no unlawful discharge for U activities, as alleged, but voluntary quit where Ee, whose U activities were little more than minimal, mistakenly perceived his job transfers as reprisal for his U activities, complianed to E that his last job was too hard and that E was firing him, and left plant in spite of E's assurances that he was not fired)

Downtown Ford Sales 260 NLRB No. 051

G.T.A. Enterprises, Inc. d/b/a **Restaurant Horikawa** 260 NLRB No. 029

(Ee who was leader of U campaign not constructively discharged when he resigned 2 weeks after election where reason behind resignation was loss of election by U and not E's harassment of Ee as harassment, though unlawful; was not so egregious as to cause him to quit and also lengthy hiatus between end of harassment campaign and resignation)

King Trucking Company 259 NLRB No. 079

(*I'm kind of in a way sorry I quit*)

King Trucking Company 259 NLRB No. 079

(irregular fill-in Ee who would contact E when he wanted work was not discharged but voluntarily discontinued his established employment arrangement since he has not bothered to contact E further)

Caffe Giovanni, Inc. d/b/a Giovanni's 259 NLRB No. 031

(rather than quiting, Ee was discharged by E who loosely utilized term *quit* to place onus for result of conduct leading to termination of Ee's employment on Ee rather than on E; E was discharged for refusing to work and did not quit merely because he had a *choice* of working or not working; and while Ee may have engaged in conduct warranting discharge, his actions did not evidence any intent to sever his employment relationship with E)

Brilliant Electric Signs, Inc. 298 NLRB No. 018

(discharge of Ee, U member, by his supervisor for not paying his U dues and who thought Ee, recuperating from work accident, had quit held violative where there was no basis to assume Ee's status had changed and no evidence that Ee had quit his employment with E)

Lucky Stores, Inc. 258 NLRB No. 179

(discharge of Ee who had complained about application of seniority principles not unlawful where he recklessly abandoned job w/o requesting leave of absence or stating how long he would be gone)

Genko & Meyer, Inc. 255 NLRB No. 098

(E entitled to construe Ee's absence as voluntary quit where after strike Ee returned to work, thereafter failed to appear and was given full further opportunity and invitation by E to confirm his desire for continued employment but Ee failed to do so, told E to *suit himself*, hung up phone and continued to absent himself from job)

Newport News Shipbuilding & Dry Dock Co. 253 NLRB No. 072

(Ee found to have quit rather than have been constructively discharged for U activity where after period of light duty due to injury, she was transferred back to her own more onorous position; Ee was fully healed, other Ees performed same work, and Ee had originally asked to be placed in that position)

Herman Brothers, Inc. 252 NLRB No. 121

(driver not deemed to have voluntarily quit pursuant to rule that would consider drivers as having quit where they failed to report their availability for work for three days, but rather discharged, since motivating factor in E's action was driver's circulating letter opposing provision in proposed bargaining contract which would substitute mileage for number of hours worked as basis for computing drivers' wages)

La Habra Dodge, Inc. 251 NLRB No. 001

(held voluntary quit and not constructive discharge notwithstanding painter's helper in accordance with industry custom assumed he too was terminated when E discriminatorily discharged painter with whom he worked as E never discharged helper and E was his E and not painter)

Logan Coca Cola Bottling Company 250 NLRB No. 164

(E's insistance that U adherent with back injury had quit his job rejected and held constructive discharge where Ee was injured on job, notified E, saw physician and received workman's compensation)

Charles Deen d/b/a Hopp Topp Mfg. Co. 250 NLRB No. 154

(defense that Ee (U card signer) *quit* rather than was discharged for U activity, rejected where E not allowed to return to work from being off sick after E knew Ee was U adherent)

Sentry Investigation Corp. 249 NLRB No. 130

(Ee discharged rather than quit or suspended where he was asked to turn in his badge, gun and uniform, and E never notified Ee he was suspended but only raised possibility of suspension in brief to Bd; *there may be discharge*

8396—Cont.

even in absence of words; where such can be reasonably inferred from circumstances)

Conagra, Inc. **248 NLRB No. 085**

(elimination of U adherent's job as *bathroom relief*, not unlawful, where necessity for position was eliminated by remodeling, adherent was offered another job by E but rather, than bump incumbent took voluntary layoff and went on unemployment compensation, and upon expiration of unemployment benefits returned to work in another position)

Mason-Dixon Recycling Corp. **JD-083-82**

(no violation where individual was supervisor at time of alleged unlawful discharge and voluntarily quit supervisory job to avoid hassles of supervising Ees, absent evidence individual was promoted to supervisor to eliminate him from bargaining unit, of U animus, or of knowledge of individual's U activity; nor has individual subsequently applied for another job with E)

Ferry Cap & Set Screw Company **JD-671-80**

(refusal to rehire or recall Ee who, after being unlawfully suspended for walking off his job, voluntarily quit, not violative, where there was no direct evidence that Ee was refused rehire for discriminatory reasons; refusal to rehire Ee was based in large part upon fact that Ee had walked out immediately after giving his 2-week notice of quitting)

N.L.R.B. v. Cumberland Farms Dairy, Inc. **674 F.2d 943 (C.A. 1, Mar. 1982)**

(no violation where U activist voluntarily quit in protest against discharge of his brother for cause)

N.L.R.B. v. Charles Batchelder Company, Inc. **646 F.2d 33 (C.A. 2, Mar 1981)**

(where U activist quit in protest over discharge of another U activist, refusal to rehire was not violative as his quit was serious breach of his employment obligation in that E was left with only one of three furnaces attended)

Electric Machinery Company v. N.L.R.B. **653 F.2d 958 (C.A. 8, Aug 1981)**

(Ees who *quit* their employment after first bargaining session and following E's proposals for new contract, were not constructively discharged, since they were informed by their own U officers to remain on job even if U and E had not yet arrived at agreement for new contract when current contract expired; U and E were still negotiating; facts did not support inference that E acted with anti-U animus)

N.L.R.B. v. Berger Transfer & Storage Co. **678 F.2d 679 (C.A. 7, May 1982)**

(termination of ULP strikers who had been threatened with discharge during strike for recognition upon their failure to report to work in response to E's request held unlawful discharge rather than voluntary quit in view of total atmosphere of hostility engendered by E's ULPs)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. **660 F.2d 1335 (C.A. 9, Nov 1981)**

(discharge rather voluntary quit where Ees as they walked out told manager they objected to discharge of U adherent and treatment of Ees and were told to pick up their checks next day)

Cartwright Hardware Company, Inc. v. N.L.R.B. **600 F.2d 268 (C.A. 10, 1979)**

(ct held no unlawful constructive discharge where Ees who were U members quit, not because E imposed intolerable conditions but because they believed they could not under, U by-laws, work in open shop w/o sacrificing their U membership, where E did not know of bylaw provision and in allowing U shop provision to lapse was not motivated by U animus but by desire to hire more competent Ees than hiring hall had provided)

8398 STRIKE SETTLEMENT AGREEMENT

Airport Parking Management **264 NLRB No. 082**

(contention that parties should defer to strike settlement agreement that ULP strikers and unlawfully discharged Ee be reinstated according to seniority as jobs filled by replacements became available rejected, where ULP nature of strike and its effect on reinstatement had not been discussed, agreement did not include usual Bd remedy of reinstatement and backpay, U and Ees did not know of separate unconditional offer by three Ees to return to work prior to U's offer for all strikers)

8399 GRIEVANCE/ARBITRATION PROCEEDINGS AND/OR AWARD

Metro-Young Construction Company, A Division of Olson Construction Co., Inc. **JD-(SF)-12-83**

(filing action in U.S. District Court joining discharged Ee as respondent along with U and seeking order to compel arbitration of Ee's discharge as provided for in collective bargaining agreement, violative, as Ee has Sec. 7 right to seek vindication of his discharge with NLRB; E's lawsuit was coercive under Sec. 8(a)(1) and discriminatory under Sec. 8(a)(4) as Bd does not defer under *Collyer* charges filed under Sec. 8(a)(1) and (3))

The Perlman-Rocque Company **JD-513-81**

(supervisor telling Ee who had filed grievances and charges with Bd that Ee should not listen to other Ees, that he should be careful and report to supervisor incidents or problems because he was Ee's superior, unlawful, where in context of conversation and preceding events, it could be construed by Ee as admonition not to go to Labor Bd with his problems)

Newspaper Printing Corporation **JD-283-80**

(while failure to arbitrate discharge violative of 8(a)(5), ALJ refused to rule on whether discharge itself violative of 8(a)(3) where GC failed to allege discharge violation of Act and GC's position that parties should be required, as remedy for 8(a)(5) violation to go to arbitration concerning discharge)

Vesuvius Crucible Company v. N.L.R.B. **668 F.2d 162 (C.A. 3, Nov. 1981)**

(whether Bd correct in refusing to defer to arbitration question of E's refusal to grant accrued vacation pay under expired contract, *mooted*, since parties informed ct that accrued vacation benefits for time period in question eventually were awarded under new contract; no arbitrable dispute remained)

530 EMPLOYER OBLIGATION TO BARGAIN

0100 GENERALLY

0167 APPROPRIATENESS OF UNIT AS PREREQUISITE

The Medical Center at Bowling Green **261 NLRB No. 120**
(contention that E was not obligated to bargain because unit placement of certain Ees was unresolved, rejected since neither basic appropriateness of the certified unit was affected nor parties obligation to bargain with respect to that unit)

Broadway Catering Corp. d/b/a Studio 54 **260 NLRB No. 166**
(refusal to bargain allegation dismissed where requested unit of *stagehands* at E's public dance hall was inappropriate because of unique nature of E's business which set it apart from cases involving traditional stage shows in which Bd has found stagehand unit appropriate)

Al Bryant, Inc., Harrisburg Drywall and Construction Corporation, and Al Bryant Associates, Inc. **260 NLRB No. 010**
(Ees of U and non U firms, found single E herein; constitute appropriate unit in view of identical subcontracting services provided in construction industry, Ees perform similar work and possess common skills, centralized management, supervision and labor relations policies, and high incidence of temporary Ee interchange)

Malcolm Boring Co., Inc. R. C. Malcolm and Bruce C. Malcolm **259 NLRB No. 081**
(refusal of construction equipment company to honor construction company's contract with U, not unlawful notwithstanding companies were found double-breasted operation of single E herein, where construction equipment Ees were found to comprise separate unit from construction Ees' unit and not to be covered by latter's contract)

N.T. Enloe Memorial Hospital **250 NLRB No. 078**
(withdrawal of recognition and refusal to bargain because of doubt as to appropriateness of bargaining representative violative where in fact association was appropriate organization for collective bargaining)

A-1 Fire Protection, Inc., and Corcoran Automatic Sprinklers, Inc. **250 NLRB No. 034**
(E's refusal to extend collective-bargaining agreement which describes scope of unit represented by U to Ees in its non-U company not violative as parties voluntarily entered into agreement with full knowledge of double breasted operation of E; therefore use of *clear and unmistakable waiver* standard is not applicable as parties never intended to include Ees of non-U company in bargaining unit)

United Oil Manufacturing Co., Inc. v. N.L.R.B. **672 F.2d 1208 (C.A. 3, Feb. 1982)**
(fact that E rejected the U's demand for recognition at time when it had no knowledge that unit sought was inappropriate did not affect finding violation where subsequent ptn described unit differently)

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. **676 F.2d 826**
(Bd could reasonably have concluded that agreement between U and double breasted E's U company weighed substantially in favor of appropriateness of bargaining unit limited to U company Ees; if U had no independent statutory right to represent Ees of E's non-U company, Bd was correct that it need not inquire into whether U has waived such right)

2000 CONDITIONS PRECEDENT TO OBLIGATION TO BARGAIN

2025 REQUEST FOR RECOGNITION AND BARGAINING

2025-0100 Generally

2025-0167 Bargaining demands not waived by filing petition

Ja-Wex Sportswear, Ltd. and Iris Sportswear, Inc. **260 NLRB No. 172**
(no violation, where no evidence was offered to show that U ever requested E to bargain; fact that U filed R ptn did not relieve it of obligation to make such request inasmuch as Bd has held that mere filing of ptn does not constitute requisite demand to establish a violation of 8(a)(5))

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**
(filing of representation ptn is not proper demand for recognition or bargaining)

2025-0183 Request not necessary where futile

Fairleigh Dickinson University **253 NLRB No. 143**

Sunnyland Refining Company, Inc. (International Brotherhood of Boilermakers, Shipbuilders, Forgers and Helpers, AFL-CIO) **250 NLRB No. 146**
(once U requests bargaining and an E states it is refusing to bargain in order to test the certification, it is futile and unnecessary for U to continue to request bargaining)

2025-0190 Failure to request

Honda of America Mfg., Inc. **259 NLRB No. 023**
(in view of E's anticipatory repudiation of its bargaining obligation, absence of allegation in C that U made formal request on E to meet with it for purposes of bargaining, immaterial)

Injected Rubber Products Corp. **258 NLRB No. 092**
(no request necessary once election held since it is election, not U's demand for bargaining, that creates E's obligation to bargain prior to making unilateral changes)

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(E did not violate Act by refusing to bargain where U never made proper demand for bargaining in an appropriate unit)

2025-3300 Elements of request

2025-3317 Implied request to bargain

2025-3317-2800 Demand for recognition

Cell-Ace, Inc. **263 NLRB No. 012**
(failure to recognize and bargain with U violative where E had duty to recognize U as of date U requested recognition; 100 percent of E's Ees had executed valid authorization cards)

2025-3317-8700 Request for information

Grand Islander Health Care Center, Inc. **256 NLRB No. 109**
(request on E to furnish U with information in order that it could prepare for contract negotiations is tantamount to request for bargaining)

2025-3367 Must request appropriate unit

Enterprise Products Company **265 NLRB No. 003**
(demand for recognition held not defective since addition of classification, not mentioned in U's demand, in stipulated unit does not establish that initial unit request was inappropriate, nor was addition of 3 individuals a substantial variance from bargaining request)

Home Insulation Service, A Division of Sunstate Wholesalers **255 NLRB No. 060**
(E's refusal to recognize and bargain with U, not unlawful, where U demanded recognition for production and maintenance Ees at single branch of E's operations rather than for production and maintenance Ees at all 8 branches of E's business which Bd found to be the appropriate unit)

2025-3383 Must specify unit sought

Lacks Industries, Inc. **JD-346-83**
(U's demand for bargaining in *appropriate bargaining unit* held not necessarily fatal because it did not set forth description of unit; Bd has held that a claim to represent *Ees* was sufficient; moreover, appropriate unit was subsequently determined)

2025-8000 Forms of request

2025-5000—Cont.

Jensen's Motorcycle, Inc. d/b/a Honda of San Diego 284 NLRB No. 165
(E's refusal to accept registered letter from U which it knew contained U's statement that it represented majority of Ees and requested bargaining violated Act as refusal of acceptance amounted to refusal to bargain)

Montgomery Ward & Co., Inc. 283 NLRB No. 023
(demand for recognition made where U representative informed E U represented majority of Ees and proffered recognition agreement and demand letter, notwithstanding E refused to read documents, since their import was clear)

Magnesium Casting Company, Inc. 250 NLRB No. 107
(U's demand for recognition held inadequate where it was made vocally through bull horn during course of rally in front of E's premises, and it was not established that responsible officials of E were aware of demand)

2025-6700 Continuing request

Aircraft Magnesium, A Division of Grico Corporation 265 NLRB No. 172
(request for bargaining is continuous and need not be repeated)

Enterprise Products Company 265 NLRB No. 083
(Sec. 8(a)(5) charge not barred because filed more than 6 months after initial request to bargain was made, where U's demand was continuing one in view of U's actions in diligently pursuing R proceeding and in pressing ULP charges)

Iowa Electric Light & Power Company 264 NLRB No. 021
(explicit refusal to bargain—made in order to test (U's) certification—is considered continuing refusal to bargain)

Southern Newspapers, Inc., d/b/a The Baytown Sun 255 NLRB No. 022
(E's refusal to bargain concerning E's unilateral change in Ees' shift hours, unlawful, where U's request was made w/i 10(b) period and, even though shift change occurred outside 10(b) period, such request revived E's original unlawful refusal to bargain concerning shift change)

Dardanell Enterprises, Inc. 259 NLRB No. 050
(Bd treats request as continuing, at least for period of certification year further explicit refusal to bargain made in order to test certification will be considered as continuing refusal to bargain)

2025-6800 Absence of request

Hirsch Casting Company 260 NLRB No. 060
(after E granted benefits to nonbargaining Ees and U was aware of this fact, it is U's responsibility to request that E bargain with it relative to benefits given to nonunit Ees)

Southern Newspapers, Inc., d/b/a The Baytown Sun 255 NLRB No. 022
(U's assertedly oral request to bargain during negotiating session concerning E's unilateral shift change held not to constitute proper request to bargain, where questions by U representative during session were ambiguous and were not directed toward bargaining; and, in any event, GC did not establish date of alleged conversation and finding cannot be made that date was not outside 10(b) period)

2050 Majority status of representative

Parkview Nursing Center II Corp. 260 NLRB No. 037
(since certification year would begin to run from date of ct of appeals' decision sustaining Bd's holding that E unlawfully refused to bargain, there was consequently an irrebuttable presumption that U enjoyed majority status for period of one year from date of ct's decision; moreover, U continued to enjoy majority status after end of such one-year period because of E's ULPs found herein)

2050-1200 Majority status as prerequisite

Abraham Grossman d/b/a Bruckner Nursing Home 262 NLRB No. 115
(duty of strict E neutrality and necessarily for Bd conducted election attaches only when properly supported pts has been filed by 1 or more of competing Us; where no pts has been filed, E free to grant recognition to labor organization with uncoerced majority, so long as it does not render assistance which would otherwise violate Sec. 8(a)(2) of Act)

Phelps Cement Products, Inc. 257 NLRB No. 004
(withdrawing recognition from and refusing to bargain with U which had authorization cards from majority of Ees in appropriate unit held violative where credited testimony demonstrated E had recognized U for agreed upon unit)

Le Roy Fountains, Inc., and Hardwicke's Plum, Inc., A Joint Venture, d/b/a Maxwell's Plum 256 NLRB No. 006
(refusal to recognize and bargain with U as majority representative of laundry Ees violative, notwithstanding E's contention that its bargaining agreement with another U constituted contract bar to U's claim, in view of facts which reflected that it was not w/i contemplation of E and other U that their bargaining agreement should apply to laundry Ees)

Warehouse Groceries Management, Inc. 254 NLRB No. 021
(no violation where U lacked majority status at time it requested bargaining and demand was not continuing demand)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers 251 NLRB No. 087
(E held obligated to recognize and bargain with U for prospective as well as current jobsites, since (a) E's Ees had tendered their designation cards w/i determinative payroll period, and (b) U had signed authorization cards from majority in unit of E's permanent Ees when it demanded recognition, so that contract was not 8(f) prehire contract valid only for current jobsites as E contended)

2050-1800 Determination of status

United Supermarkets, Inc. 261 NLRB No. 179
(GC's request for application of adverse inference doctrine on ground that payroll records, which E failed to produce pursuant to GC's subpoena enforcement of which was not sought by GC, would have been adverse to E and would have established that U had majority status, denied; no case authority exists for applying adverse inference doctrine to determine U's majority; burden of proof is upon GC to establish by affirmative probative evidence that U had majority; and potential of thrusting minority representation upon Ees is too great when done so by application of adverse inference doctrine)

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. 255 NLRB No. 090
(Ees whose terminations were discriminatory included in calculation of total unit composition and their cards counted in calculation of majority)

English Brothers Pattern and Foundry 253 NLRB No. 087
(where U made demand for recognition and E polled Ees, discovering majority support for U, never indicated any doubt as to majority status, never asked for election, it is bound by results of poll and failure to bargain violative)

Construction Erectors, Inc. 252 NLRB No. 045
(Bd held U achieved majority status under 9(a) in stable unit at time of execution of multisite contract, where payroll charts established a permanent complement of at least six unit ironworkers, U dispatched through its hiring hall at least a majority of E's ironworkers, such referrals switched from one project to another, and U-security provisions applied to all unit Ees' thus stable work force on date off execution of contrract was distinguishable from those hired by a construction industry E on project-by-project schedule with no personnel carryover)

Saks & Company d/b/a Saks Fifth Avenue 247 NLRB No. 128
(fitters not counted for purpose of determining if E which was alleged successor had hired majority of Ees in alterations unit at alleged predecessor E since fitters had been historically excluded from alterations unit at alleged predecessor)

Royce Lindsay d/b/a Royce Lindsay Plumbing, Heating, and Refrigeration Supply Company, etc. JD-(SF)-3-83
(where owner of individual proprietorship formed new business entities to replace individual proprietorship which had E-association agreement with U and thereby unlawfully sought to avoid ramification of U contract in order to compete with non-U companies, U's majority status in historically appropriate unit was presumed to continue since there was no showing that unit had changed)

2050-5000 Exclusive power of Board to determine

2050-5067 May be determined in ULP proceeding

Coll-Acc, Inc. 262 NLRB No. 013
(failure to recognize and bargain with U violative where E had duty to recognize U as of date U requested recognition; 100 percent of E's Ees had executed valid authorization cards)

2075 PROOF OF DESIGNATION

2075-0100 Generally

Carlina Knitting Co., Inc., et al. JD-321-80
(card signed after demand not to be counted)

2075-0167 Membership in union

Swanson-Nunn Electric Company 256 NLRB No. 131
(membership cards of Ees who signed them and who paid U dues and initiation fees valid and counted to show majority support; willingness of Ees to become members makes their adherence to U more binding)

2075-0175 Testimony of employees or union representative

Tarran Marine Company 247 NLRB No. 053
(lost card not counted since w/o card it cannot be determined if individual authorized U to represent him on any of the critical dates litigated)

2075-0700 Authorization cards

2075-0701 Generally

2075-6701—Cont.

United Supermarkets, Inc. **261 NLRB No. 179**
(dispute over inclusion of certain Ee category in unit for purposes of determining U's card majority resolved by structuring unit in manner most favorable to GC by including in unit only 7 disputed Ees who had signed authorization cards, rather than all 32 disputed Ees who E claimed should be included; nevertheless, U was still found not to have a card majority)

Carlina Knitting Co., Inc., et al. **JD-321-80**
(card of Ee sent to seek employment with E in effort to organize plant should be counted and she should be included in unit, where there was no evidence that she took job solely to organize, that her job was only temporary or that she was not bona fide full-time Ee; she had same duties, worked same hours and earned same rate of pay as any other unit Ee)

2075-6717 Form of card

2075-6717-3300 Single purpose designation of representatives

Washington Beef Producers, Inc. **264 NLRB No. 155**
(refusing to recognize and bargain with U which achieved card majority violative, where, contrary to E's contention, contested cards were valid since U representative told Ees that cards were intended for collective bargaining which did not undercut pure phraseology on face of cards)

Professional Air Traffic Controllers Organization **261 NLRB No. 132**
(cards were valid where Ees were told that cards would be used by U to seek recognition)

Justak Brothers and Company, Inc. **253 NLRB No. 146**
(card counted, notwithstanding Ee's testimony that it was not his understanding that card was to apply for U membership, where solicitor's statement to Ee was not representation that election was card's sole purpose)

Tartan Marine Company **247 NLRB No. 073**
(unambiguous single purpose cards counted where signers were told signing would result in election or one purpose of card was to obtain election, but cards not counted where signers told only purpose of card was to obtain election, or that Ee had to sign card in order to vote in election)

2075-6717-6700 Dual purpose designation of representative and to obtain election

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**
(authorization cards signed by Ees allegedly because of misrepresentations by U solicitors that purpose of card was *to get an election* held to have been valid for purposes of determining U's majority status, since Ees voluntarily signed cards, understood that cards were in support of U, and language on cards was unambiguous)

2075-6733 Proof of validity

2075-6733-2000 Method of authentication

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(secondary evidence is sufficient to establish identity of card signer and his/her act of signing card; witness providing such secondary evidence need not have actually seen Ee sign card so long as he can identify the card as having been executed by signatory Ee)

2075-6733-2014 Testimony of solicitor

Justak Brothers and Company, Inc. **253 NLRB No. 146**
(notwithstanding fact that 2 cards were destroyed by card solicitor after he was discharged, cards were counted on basis of testimony of solicitor)

Gordonsville, Industries, Inc. **252 NLRB No. 054**

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(where signer identified card and signature, fact that solicitor did not witness his signature does not invalidate card)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(although solicitor did not witness signing of Ee's card, solicitor's testimony that Ee delivered completed card to him indicates that Ee designated U)

Gary Concrete Products, Inc. **JD-(ATL)-65-82**

Burlington Industries, Inc. v. N.L.R.B. **680 F.2d 974 (C.A. 4, June 1982)**
(cards necessary for card majority found improperly solicited and not counted where solicitor, according to his own testimony, represented to Ees that cards would be used solely to obtain election)

2075-6733-2028 Testimony of signer

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(authorization card held valid even though Ee could not recall when he signed card and even volunteered that date was on a day different from date appearing on card; this did nothing to in any way change plain statement on card showing date prior to date of recognition request)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(*convoluted* testimony of U card signer as to when card was signed did not impugn authenticity of card where there was no showing by E that signature was induced by misrepresentation or coercion or other fraudulent methods)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(card counted which did not bear signer's signature, but rather her name printed, when submitted, where U later obtained her signature on another card and Ee testified and identified original card as hers)

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(validity upheld where Ee testified to signing and returning card to U, notwithstanding U either never received it or misplaced it)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(where Ee identified card and signature fact that signature printed rather than written in script does not invalidate card)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 007**
(where signer identified card and signature, fact that solicitor did not witness his signature does not invalidate card)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(Ee's card which was lost counted as valid designation of U when he testified he signed card and his name appeared on E's list of U supporters who had identified themselves as such to E; testimony of Ee is itself probative of U's majority status in circumstances where card has been misplaced)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(where Ee had signed second card after U's demand for recognition, his first card signed prior to U's demand counted as valid designation of U, even though such card was lost, where E testified that he signed card before demand date and his testimony was corroborated by other evidence)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(although misdated, card held valid where Ee credibly testified she signed card well before date of U's demand for recognition, and signer's name appeared on E's list of U supporters dated prior to U's demand)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(card questioned as to whether it was signed before U's demand for recognition not counted in view of signer's inconsistent testimony, fact that he did not know date, and GC's failure to call signer to elucidate matter)

Gary Concrete Products, Inc. **JD-(ATL)-65-82**
(for cards to be considered valid it is not necessary for signee to identify signature where they are identified by other individuals who either witnessed signing or received cards from purported signer)

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**
(Ee's signature found valid where, although Ee could not read the card, he testified that his brother-in-law, a card signer himself, read his card to him and that he signed it)

Jeffrey Manufacturing Division, Dresser Industries, Inc. v. N.L.R.B. **654 F.2d 944 (C.A. 4, 1981)**
(contention that cards were invalid because Ees did not realize that they were signing dual purpose cards rejected, since language of card was unambiguous, and most Ees testified that they had read cards before signing)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**
(-Ee's thoughts (or afterthoughts) as to why (she) signed a U card, and what (she) thought that card meant, cannot negative the overt action of having signed card designating U as bargaining agent)

2075-6733-2042 Affidavit of signer

Justak Brothers and Company, Inc. v. N.L.R.B. **664 F.2d 1074 (C.A. 7, Nov. 1981)**
(where signatures on W-4 form and authorization card different, Ee's affidavit explaining that he had authorized another Ee to sign his authorization card admissible since E was informed that affidavit would be used as soon as GC learned Ee would be unavailable to testify)

2075-6733-2056 Testimony of witness to signing

Onan, a Division of Onan Corporation **261 NLRB No. 187**
(testimony of alleged witness to signing of card rendered incredible by discrepancy between testimony and witness' own affidavit, necessity of relying on leading questions for authentication, and fact that signer of card was not called as witness)

Amber Delivery Service, Inc. **230 NLRB No. 016**

Gary Concrete Products, Inc. **JD-(ATL)-65-82**

J.A.G. Freight Systems, Inc. **JD-(NY)-31-82**
(witnesses to signing of cards competent to testify as to authenticity of cards)

Guardian Industries Distribution Center, Inc. **JD-(NY)-45-80**
(U authorization cards found valid where two card signers did not testify but U representative testified that he gave them U cards, and observed them read and sign these cards; authorization cards may be authenticate by the person who solicited its signer and observed him sign it)

2075-6733-2070 **Signature comparisons**

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(contention that handwriting expert's authentication of authorization card was invalid because he had no exemplar of Ee's signature in form it appeared on card with initial for first name, rejected, since expert used excellent exemplar in form of affidavit signed by Ee with first name spelled out, and expert testified he had sufficient points of similarity between signature on card and exemplar to satisfy him signature on card was genuine)

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(fact that handwriting expert did not authenticate authorization card authenticated by Ee who signed it, thereby making his expertise suspect, does not affect reliability of his judgment regarding card in question and all other cards, since handwriting analysis efforts devoted to studying 37 cards are not necessarily open to question because expert was not shown to be infallible in 100% of all specimens studied, and it was to expert's credit professionally that he manifested objectivity rather then biased rigidity in face of E's strongly suggestive examination into card in question)

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(E's contention that handwriting expert was *impeached* because he did not authenticate Ee's signature on authorization card which Ee later authenticated, rejected, since expert had been given wrong exemplar for analysis and he correctly stated that signatures were not authentic)

Gordonsville, Industries, Inc. **252 NLRB No. 084**
(U authorization cards with signatures on *W-4* forms)

Permanent Label Corporation **248 NLRB No. 021**
(signature comparisons done by handwriting expert proper method of authenticating cards)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(card questioned as to date because assertedly bearing handwriting style of date different from that of telephone number on card held valid since writing sample taken at trial showed no significant difference from that of date on card)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(even though Ee's testimony and comparison of his signature on W-4 form as well as other documents left considerable doubt as to who signed card, card held valid where Ee's U activity and presence of his name on E's list of U supporters is *convincing* and *reliable* evidence of Ee's designation of U)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(card held invalid where there was some discrepancy between signature on Ee's card and her W-4 form, Ee's name did not appear on E's list of U supporters, and there was no other corroborating testimony from Ee)

Consumer Enterprises, Inc. **JD-342-80**
(card not counted where signature on card and signatures on W-2 form and payroll checks showed total lack of similarity)

2075-6733-2084 Due course delivery of card to union

Marcus J. Lawrence Memorial Hospital **249 NLRB No. 090**
(notwithstanding Ee denies mailing card, validity upheld where U in possession and pretrial affidavit contains admission that Ee mailed card)

2075-6733-4000 **Adequacy of card on its face**

2075-6733-4017 Unsigned or missigned cards

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(E's contention that authorization cards were invalid either because of being filled in with pencil, indications of erasure attempts, or signatures improperly placed on card and not signed in normal uncramped fashion on signature line, rejected; cards in question were either authenticated by signer, signature was not contested by signer when called as E witness, and signature was authenticated by handwriting expert)

Pilgrim Life Insurance Company **249 NLRB No. 140**
(card counted which did not bear signer's signature, but rather her name printed, when submitted, where U later obtained her signature on another card and Ee testified and identified original card as hers)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 097**
(where Ee identified card and signature fact that signature printed rather than written in script does not invalidate card)

2075-6733-4033 Alterations

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(E's contention that authorization cards were invalid either because of being filled in with pencil, indications of erasure attempts, or signatures improperly placed on card and not signed in normal uncramped fashion on signature line, rejected; cards in question were either authenticated by signer, signature was not contested by signer when called as E witness, and signature was authenticated by handwriting expert)

2075-6733-4080 Undated or misdated cards

Zero Corporation, Zero East Division **262 NLRB No. 064**
(E waived its right to contest authenticity of cards which, may have been dated at different times than they were signed, where it did not object to admission of cards into evidence during hearing but raised objections to authenticity in brief to ALJ)

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(undated authorization card probably signed when bulk of cards were executed and received by Regional Office whose date stamp showed that latest date would be date of U's recognition demand, invalid, since date stamp did not indicate that card was not stale, and such limited factual question cannot be resolved by unsupported inference rather than by testimony of signer or recipient of card, evidence of which was lacking herein)

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(contention that Ee's authorization card was not valid because it contained no exact date, rejected, since card showed month and year for applicable period with some what uncertain figure for the day)

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(authorization card held valid even though Ee could not recall when he signed card and even volunteered that date was on a day different from date appearing on card; this did nothing to in any way change plain statement on card showing date prior to date of recognition request)

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. **257 NLRB No. 045**
(correction of misdated card's date found not to destroy card's validity)

Montgomery Ward & Co., Inc. **253 NLRB No. 020**
(*fact card undated does not destroy its validity. Collateral evidence may be relied upon to establish when undated card was signed and such evidence may include officially noticed Regional Office time and date stamps if card was submitted to Bd in support of R ptn*)

Jeffrey Manufacturing Division, Dresser Industries, Inc. **248 NLRB No. 097**
(card dated 1 day earlier than its actual execution found valid where otherwise properly authenticated as such minor variances do not affect validity of card)

Alumbaugh Coal Corporation **247 NLRB No. 112**
(card dated one month after date when U was alleged to have had majority status shown to have been misdated one month later than date when actually signed)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(although misdated, card held valid where Ee credibly testified she signed card well before date of U's demand for recognition, and signer's name appeared on E's list of U supporters dated prior to U's demand)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(card questioned as to date because assertedly bearing handwriting style of date different from that of telephone number on card held valid since writing sample taken at trial showed no significant difference from that of date on card)

2075-6733-4099 Cards dated subsequent to date of request

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(authorization card held not invalid even though it showed signing date 2 days after Regional Office date-stamped its receipt; in deciding whether bargaining order based upon 8(a)(1) violations should be issued, it is irrelevant whether or not a demand was even made, it is common experience for Ees to misdate card, and month and year appearing on card coincided with month and year appearing on all cards)

Gordonsville, Industries, Inc. **252 NLRB No. 084**
(Regional Office's stamped date of receipt on reverse side of U authorization cards w/o more, establishes that card was signed prior to date indicated by stamp)

Gordonsville, Industries, Inc. **252 NLRB No. 084**
(U authorization card signed on date subsequent to GC's self-imposed termination date)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(card questioned as to whether it was signed before U's demand for recognition not counted in view of signer's inconsistent testimony, fact that he did not know date, and GC's failure to call signer to elucidate matter)

2075-6733-4067 Language of card

Schnadig Corporation **265 NLRB No. 080**
(authorization cards held valid where Ees told purpose of card signature solicitation was to get election since Ees were not told obtaining election was only purpose of card signature solicitation, and unambiguous language of card authorized U as Ee's bargaining representative)

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Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(where purpose of card is set forth on its face in unambiguous language, Bd will not in absence of misrepresentation inquire into subjective motives of signer to determine signer's intent; statements made to signers by solicitors that purpose of card is to get election, or that it is for U to come in, did not constitute misrepresentations since one purpose for which card may be used is to support R pts; only where there is deliberate effort on part of card solicitor to induce prospective signer to ignore express language of card and by telling him sole purpose of card is to get election should card be invalidated)

Tartan Marine Company **247 NLRB No. 073**
(unambiguous single purpose cards counted where signers were told signing would result in election or one purpose of card was to obtain election, but cards not counted where signers told only purpose of card was to obtain election, or that Ee had to sign card in order to vote in election)

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(cards which clearly and concisely stated that signer wanted U, held valid)

J.A.G. Freight Systems, Inc. **JD-(NY)-31-82**
(signed authorization cards held valid, where cards contained words *application for membership* in large letters at top and in smaller letter statement that signatory voluntarily designates U as his/her representative for bargaining and solicitor said it was application for membership in Masonic lodge, absent evidence Ee incapable of reading card or was mislead as to what he/she was joining; since Ees will be bound by clear language of card, unless it can be shown that solicitor clearly sought to have individual executing card disregard clear language of card)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(authorization cards which clearly and unequivocally on their face authorized U to represent Ees not invalidated by U's representative's explanation of Bd's requirements for election, nor would his informing Ees that he could not file pts w/o signatures of 80% of Ees invalidated cards since he was merely stating his personal opinion or internal U rule designed to improve chance of success of campaign)

Jeffrey Manufacturing Division, Dresser Industries, Inc. v. N.L.R.B. **654 F.2d 944 (C.A. 4, 1981)**
(contention that cards were invalid because Ees did not realize that they were signing dual purpose cards rejected, since language of card was unambiguous, and most Ees testified that they had read cards before signing)

Montgomery Ward & Co., Inc. v. N.L.R.B. **668 F.2d 291 (C.A. 7, Dec. 1981)**
(U card which states on its face that signer authorizes U to represent Ee for collective bargaining purposes, and not merely to seek an election, will be counted unless E can show that unambiguous language on card has been *deliberately and clearly canceled by U adherent to direct signer to disregard and forget language above his signature;* ct will look to totality of circumstances surrounding card solicitation)

Justak Brothers and Company, Inc. v. N.L.R.B. **664 F.2d 1074 (C.A. 7, Nov. 1981)**
(where terms on card are unambiguous, it must be counted unless U adherent deliberately and clearly cancels meaning)

2075-6733-4083 **Other**

Ona, a Division of Ona Corporation **261 NLRB No. 187**
(numerous cards to which E objected because of testimony about manner of solicitation or authentication found valid where valid on their face, and no testimony was introduced to show that clear statement on card should be disregarded)

Ona, a Division of Ona Corporation **261 NLRB No. 187**
(card valid on its face held valid notwithstanding signer's testimony that she just took card to get solicitor off her back, since examination of signer's mental process in deciding to sign was deberred, and card was valid even in absence of evidence that signer read it)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(notwithstanding that departmental designation was erroneous, and there were unaccounted for erasures on card, U card was valid absent some contradictory evidence that Ee's card bore forged signature or that purpose of card was misrepresented)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(Regional Office's stamped date of receipt on reverse side of U authorization cards w/o more, establishes that card was signed prior to date indicated by stamp)

2075-6733-6000 **Failure to challenge after examination**

N.L.R.B. v. Lyon & Ryan Ford, Inc. **647 F.2d 745 (C.A. 7, Apr 1981)**
(E's request for *federal election after voluntarily recognizing U based on E's examination of authorization cards signed by majority of Ees and subsequently negotiating over terms of proposed contract, violative; contrary to E's contention, agreement was reached on appropriate bargaining unit where parties had agreed on definition of unit)*

2075-6733-9000 **Unrevoked authorizations**

Consumer Enterprises, Inc. **JD-342-80**
(card not revoked where Ee failed to notify U for revocation of card prior to U's request for recognition)

2075-6733-9050 **Employer engaged in ULPs**

Warehouse Groceries Management, Inc. **254 NLRB No. 021**
(Ee's attempt to revoke authorization card found ineffective since E was already engaged in coercive conduct designed to undermine U support which raises presumption that revocation resulted from E's unlawful conduct)

2075-6733-9500 **Untimely revocation/withdrawal of card**

Alumbaugh Coal Corporation **247 NLRB No. 112**
(Ees' request for revocation of his card dated day after U had majority status did not affect majority status on prior date)

2075-6767 Circumstances impeaching validity of cards

2075-6767-0100 **Generally**

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(revocations of authorization cards not recognized where occurred after E's program of ULPs began)

2075-6767-0150 **Testimony of employees as to subjective intent of own designation not admissible**

Schnadig Corporation **265 NLRB No. 020**
(E's contention that where Ees were of low educational level GC could not rely on presumption which normally flows from E's authenticated signature on card to establish clear intent of authorization, but rather GC has burden of proving that each Ee who executed card clearly understood significance of document and intended to authorize U to represent him, rejected)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(where purpose of card is set forth on its face in unambiguous language, Bd will not in absence of misrepresentation inquire into subjective motives of signer to determine signer's intent; statements made to signers by solicitors that purpose of card is to get election, or that it is for U to come in, did not constitute misrepresentations since one purpose for which card may be used is to support R pts; only where there is deliberate effort on part of card solicitor to induce prospective signer to ignore express language of card and by telling him sole purpose of card is to get election should card be invalidated)

Carlina Knitting Co., Inc., et al. **JD-331-80**
(subjective testimony adduced at hearing held unreliable and does not prove that Ees, when they signed card, did not want U, or that they were tricked into signing cards)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**
(*-Ee's thoughts (or afterthoughts) as to why (she) signed a U card, and what (she) thought that card meant, cannot negative the overt action of having signed card designating U as bargaining agent)*

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

2075-6767-0800 **Misrepresentation in solicitation**

Washington Beef Producers, Inc. **264 NLRB No. 155**
(refusing to recognize and bargain with U which achieved card majority violative, where, contrary to E's contention, contested cards were valid since U representative told Ees that cards were intended for collective bargaining which did not undercut pure phraseology on face of cards)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(notwithstanding that departmental designation was erroneous, and there were unaccounted for erasures on card, U card was valid absent some contradictory evidence that Ee's card bore forged signature or that purpose of card was misrepresented)

Gordonsville, Industries, Inc. **252 NLRB No. 054**
(*convoluted* testimony of U card signer as to when card was signed did not impugn authenticity of card where there was no showing by E that signature was induced by misrepresentation or coercion or other fraudulent methods)

N.L.R.B. v. Hitchiner Manufacturing Company **634 F.2d 1110 (C.A. 8, 1980)**
(validity of signed authorization cards upheld notwithstanding contention Ees advised that cards needed to secure election and, therefore, did not indicate support for U, since card stated that Ee authorizes U to represent him in collective bargaining and so card presumptively counts as indicating support of U absent misrepresentation to signer to disregard language above his signature)

2075-6767-0814 **For election only**

Windsor Industries, Inc. **265 NLRB No. 148**
(E's contention that Ees' cards should be invalidated because of alleged misrepresentation by U business representative rejected, since cards were signed before any alleged misrepresentation was made and Ees clearly expressed interest in U prior to U business representatives' comments about

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election, his comments did not negate clear and unambiguous statements on cards that signers authorize U to represent them, and he did not direct Ees to disregard clear language on cards, nor did he assure them that cards would be used for no purpose other than to get election)

Schnadig Corporation 266 NLRB No. 020

(authorization cards held valid where Ees told purpose of card signature solicitation was to get election since Ees were not told obtaining election was only purpose of card signature solicitation, and unambiguous language of card authorized U as Ee's bargaining representative)

Granite City Journal, Inc. 262 NLRB No. 140

(cards signed by Ees who claimed not to have read them before signing in belief or on assurance of U proponents that cards were to be used to seek election, not invalid, where U agent explained purpose of cards which were clear and unambiguous on their face; and Ees, whose work required degree of literateness, would not be likely to ignore or fail to appreciate content of cards they were signing)

Onan, a Division of Ona Corporation 261 NLRB No. 187

(solicitor's reference to possibility of election found by itself not to invalidate card)

Comet Corporation 261 NLRB No. 108

(E's contention cards invalid since Ee's believed signing cards only for purpose of obtaining election, rejected, where cards single purpose cards, unambiguously stating signer designated U as his/her bargaining representative; although solicitor may have stated to Ees in substance that cards would be used by U to support ptn for election, he said nothing that was calculated to direct Ees to disregard and forget equally clear language of cards, so as to deliberately or clearly cancel single purpose authorization support which U was seeking from them)

Penn Color, Inc. 261 NLRB No. 058

(Ees signing a simple and clear statement designating U as their *chosen representative* must be taken as meaning import of such language; it is only when later testimony convincingly proves Ee was told the only reason for signing card, despite what is written on it, is to bring about an election, that the card can be ignored in the majority count)

Stants and Stants, Inc. 254 NLRB No. 105

(Ees not told that this was *only* purpose of cards; cards were valid)

Ed Chandler Ford, Inc. 254 NLRB No. 062

(card valid, notwithstanding that month before being solicited, Ee was told by U representative that only purpose of cards was to get election and at hearing Ee testified that he did not read card given him prior to signing because it was unnecessary to do so as U representative had stated it was only for election, where circumstances surrounding actual solicitation of card revealed that no representations concerning card's use were made, Ee was told to read card and Ee's subjective intent in signing card w/o reading it is of no weight in determining purpose for which card was signed)

Montgomery Ward & Co., Inc. 253 NLRB No. 023

Stanley M. Feil, Inc. 250 NLRB No. 065

(card not counted where Ee informed it was to be used only to achieve election and that sole purpose of card was to get election; however, another card subsequently signed by same Ee counted where signed at time U officials present and no statements made that cards for sole purpose of obtaining election)

Amber Delivery Service, Inc. 250 NLRB No. 016

(statement that purpose of card is to make election possible is insufficient to render invalid unambiguously worded card)

Marcus J. Lawrence Memorial Hospital 249 NLRB No. 090

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. 248 NLRB No. 030

(where most of Ees who signed cards participated in picketing is manifestation of their support for U and refutes charge that U told them signing card was only for purpose of election)

Jeffrey Manufacturing Division, Dresser Industries, Inc. 248 NLRB No. 007

(where language on card is unambiguous and provides that signer authorizes U to represent him, fact that solicitor alluded to use of card in obtaining election not enough to impeach validity of card because Ees were in no way directed to disregard express language on cards or otherwise assured that cards would only be used for purpose of getting election)

Tarten Marine Company 247 NLRB No. 073

(unambiguous single purpose cards counted where signers were told signing would result in election or one purpose of card was to obtain election, but cards not counted where signers told only purpose of card was to obtain election, or that Ee had to sign card in order to vote in election)

Gary Concrete Products, Inc. JD-(ATL)-68-82

(cards are presumed valid absent specific evidence that signers were informed that sole purpose of cards was to get election)

Formaloy Corp. JD-(ATL)-67-81

(authorization card obtained because of solicitor's misrepresentation that card's purpose was only to obtain election, not counted in determining majority status of U)

J. P. Stevens & Co., Inc. JD-131-81

(Ee's testimony on cross-examination that he thought ptn for U recognition would be given to plant manager because that was the only way election would be held and that U solicitor told him that ptn would be used only for an election held not to have invalidated his signature, where on redirect examination he testified it was his understanding that ptn was to show that *workers wanted to be U*)

J. P. Stevens & Co., Inc. JD-131-81

(signature of Ees on ptn for U representation valid where they read ptn before signing it and did not recall any conversation about an election)

J. P. Stevens & Co., Inc. JD-131-81

(Ees' signatures on ptn for U representation valid where Ees either did not read ptn, only read it up to a point, or had it read aloud, but they know that they were signing ptn for U to represent Ees)

J. P. Stevens & Co., Inc. JD-131-81

(Ee's signature on ptn for U representation valid where, although on cross-examination he testified that U solicitor told him the only purpose of ptn was for an election, on redirect examination he testified that ptn was *for an election*, and that no one told him it was only for that purpose)

J. P. Stevens & Co., Inc. JD-131-81

(Ee's signature on ptn for U representation valid where he testified that he read ptn before signing it, that ptn was read aloud, and that U representative told assembled Ees that those who signed ptn agreed to have U as their representative)

J. P. Stevens & Co., Inc. JD-131-81

(Ee's signature on ptn for U representation valid where Ee testified that ptn was read to him, that an election was brought up, that U solicitor asked Ees to sign ptn if they wanted to have U represent them, and that, since he wanted U representation, he signed ptn)

J. P. Stevens & Co., Inc. JD-131-81

(Ee's signature on ptn for U representation valid where he testified that he read ptn before signing it, that ptn was to be shown to management, and that signers of ptn wanted to be represented by U)

Hart Ski Mfg. Co., Inc. JD-11-80

(authorization cards which clearly and unequivocally on their face authorized U to represent Ees not invalidated by U's representative's explanation of Bd's requirements for election, nor would his informing Ees that he could not file ptn w/o signatures of 80% of Ees invalidated cards since he was merely stating his personal opinion or internal U rule designed to improve chance of success of campaign)

N.L.R.B. v. Keystone Pretzel Bakery, Inc. 674 F.2d 197 (C.A. 3, Apr. 1982)

(substantial evidence supported ALJ's conclusion that cards were invalid, and Bd's determination to contrary could not stand, where U agent told Ees he solicited that purpose of card was to get federal election into plant for purpose of negotiating contract and Ees were unaware of any differences between what they were told and what was on card)

Montgomery Ward & Co., Inc. v. N.L.R.B. 668 F.2d 291 (C.A. 7, Dec. 1981)

(U card which states on its face that signer authorizes U to represent Ee for collective bargaining purposes, and not merely to seek an election, will be counted unless E can show that unambiguous language on card has been *deliberately and clearly canceled by U adherent to direct signer to disregard and forget language above his signature;* ct will look to totality of circumstances surrounding card solicitation)

L'Eggs Products, Inc. v. N.L.R.B. 619 F.2d 1337 (C.A. 9, 1980)

(U's statement that cards would be presented to E to show Ees wished to be represented by U and if majority of Ees signed cards, there would be an election not statement that card was to be used solely to get an election)

N.L.R.B. v. Willow Corporation, d/b/a Town and Country Supermarkets 666 F.2d 1294 (C.A. 10, Dec. 1981)

(cards valid where no evidence that Ees were told cards would be used *solely* to gain election)

2075-6767-0828 Dual purpose cards

Jeffrey Manufacturing Division, Dresser Industries, Inc. v. N.L.R.B. 654 F.2d 944 (C.A. 4, 1981)

(contention that cards were invalid because Ees did not realize that they were signing dual purpose cards rejected, since language of card was unambiguous, and most Ees testified that they had read cards before signing)

2075-6767-0842 Ambiguous statement

De Queen General Hospital 264 NLRB No. 069

(telling Ee that purpose of card was to find out more about U, not misrepresentation)

2075-6767-0842—Cont.

Comet Corporation 261 NLRB No. 188
(E's contention cards invalid since Ee's believed signing cards only for purpose of obtaining election, rejected, where cards single purpose cards, unambiguously stating signer designated U as his/her bargaining representative; although solicitor may have stated to Ees in substance that cards would be used by U to support ptn for election, he said nothing that was calculated to direct Ees to disregard and forget equally clear language of cards, so as to deliberately or clearly cancel single purpose authorization support which U was seeking from them)

Jeffrey Manufacturing Division, Dresser Industries, Inc. 248 NLRB No. 087
(statement to Ee that signing card did not mean he was joining U but just to get U representative to explain purpose of U at meeting not sufficient to cancel unambiguous language on card which Ee read)

N.L.R.B. v. Hitchiner Manufacturing Company 634 F.2d 1110 (C.A. 8, 1980)
(validity of signed authorization cards upheld notwithstanding contention Ees advised that cards needed to secure election and, therefore, did not indicate support for U, since card stated that Ee authorizes U to represent him in collective bargaining and so card presumptively counts as indicating support of U absent misrepresentation to signer to disregard language above his signature)

N.L.R.B. v. Steven Davis and Michael Provenzano, d/b/a Carlton's Market 642 F.2d 390 (C.A. 9, Apr 20, 1981)
(contention that purpose of authorization cards was misrepresented to signers, rejected, since cards were unambiguous and sufficient number were properly signed to obtain majority)

2075-6767-0886 Majority of employees already signed

Twin County Trucking, Inc. 259 NLRB No. 078
(solicitor's statement, *Everyone is going to sign* found expression of hope rather than misrepresentation of fact impeaching card's validity)

Ed Chandler Ford, Inc. 254 NLRB No. 082
(telling Ee that everyone else had already signed cards , insufficient to invalidate clear and unequivocal designation card signed by Ee)

Chester Valley, Inc. 251 NLRB No. 190
(card signed by Ee who was told that everybody else had signed cards and that Ee was last to sign, while in fact 28 or 29 of 32 Ees had signed card, held valid)

N.L.R.B. v. Sanford Home For Adults 669 F.2d 35 (C.A. 2, Dec. 1981)
(Bd did not err in finding that Ee's U membership card was invalid because he was coerced into signing card, where U organizer, temporarily employed by E, solicited Ee to become U member, and management official told Ee that everyone had joined U and that anyone else who had not signed would be *thrown out*)

2075-6767-0884 Other

Gardnerville, Industries, Inc. 262 NLRB No. 084
(*convoluted* testimony of U card signer as to when card was signed did not impugn authenticity of card where there was no showing by E that signature was induced by misrepresentation or coercion or other fraudulent methods)

I.A.G. Freight Systems, Inc. JD-(NY)-31-82
(signed authorization cards held valid, where cards contained words *application for membership* in large letters at top and in smaller letter statement that signatory voluntarily designates U as his/her representative for bargaining and solicitor said it was application for membership in Masonic lodge, absent evidence Ee incapable of reading card or was mislead as to what he/she was joining; since Ees will be bound by clear language of card, unless it can be shown that solicitor clearly sought to have individual executing card disregard clear language of card)

Consumer Enterprises, Inc. JD-342-80
(no misrepresentation where statements made by U representative did not contradict message of card; Ee was clearly told that purpose of card was for U to take up fight with management for salary benefits)

Mooney Stores, Inc., d/b/a Kermit Super Valu v. N.L.R.B. 631 F.2d 328 (C.A. 4, Oct. 1980)
(cards invalid where U organizer represented to Ees that contract covering E's other stores included after acquired clause which would apply to new store if majority of Ees at new store signed authorization cards and that Ees at new store would then be subject to security clause of contract, since organizer did more than explain consequences of unionization resulting in agreement containing security clause, and pursuant to district ct order parties had submitted question of whether contract covered Ees at new store to arbitrator who ruled that agreement not intended to apply to after acquired facilities)

2075-6767-1600 Coercion in solicitation

Gardnerville, Industries, Inc. 262 NLRB No. 084

N.L.R.B. v. Sanford Home For Adults 669 F.2d 35 (C.A. 2, Dec. 1981)
(Bd did not err in finding that Ee's U membership card was invalid because he was coerced into signing card, where U organizer, temporarily employed by E, solicited Ee to become U member, and management official told Ee that everyone had joined U and that anyone else who had not signed would be *thrown out*)

2075-6767-1617 Waiver of reduction of fees

Paul Distributing Co., Inc. 264 NLRB No. 179
(authorization card of Ee, who, even though went to U hall with objective of signing authorization card, but specifically asked U representative before he signed if his fee would be waived and on response by U representative that it would be waived for this group of Ees who came to U hall, singed, card held invalid as waiver was material factor in his decision to sign)

Chef's Pantry, Inc. 267 NLRB No. 018
where there is no prima facie showing of limited waiver of initiation fees, there is no requirement on GC to affirmatively prove universal waiver, before or after election)

Hart Ski Mfg. Co., Inc. JD-11-80
(U's accepting authorization cards during organizing campaign w/o requesting initiation fees and in one case w/o requiring monthly dues did not invalidate cards where such arrangements only temporary)

Hart Ski Mfg. Co., Inc. JD-11-80
(authorization cards not invalidated by statements that initiation fees would be $25 if card signed now but would be $50 if signed after U won election where statements were made by rank-and-file Ees absent evidence U initiated, adopted, condoned or was even aware of statements)

N.L.R.B. v. Mike Yurosek & Sons, Inc. 597 F.2d 661 (C.A. 9, 1979)
(statement that any reduction in initiation fees would be available to all those signing authorization cards prior to execution of contract, lawful)

N.L.R.B. v. Wilhow Corporation, d/b/a Town and Country Supermarkets 646 F.2d 1294 (C.A. 10, Dec. 1981)

2075-6767-1633 Threats of job loss or other reprisal

Sav-On Drugs, Inc. JD-(SF)-214-81
(threats of loss of employment if Ees did not join particular U are ULPs sufficient to taint particular U's claimed majority status on basis of signed authorization cards)

2075-6767-2300 Inducements or promises in solicitation

Windsor Industries, Inc. 265 NLRB No. 145
(E's contention that cards solicited by U business representative should be invalidated because of his alleged *misrepresentation as to benefits Ees would receive solely because U came in*, rejected because comments revealed no promise of gifts or benefits to be granted by U but merely explanation of what U representative felt would occur if plant became unionized and if contract was signed with E)

Lyman Steel Company 249 NLRB No. 040
(authorization cards of assisted U no basis for claiming majority support where cards solicited and obtained by management after certain inducements granted to solicited Ees)

N.L.R.B. v. Masonic Homes of California, Inc. 624 F.2d 89 (C.A. 9, July 1980)
(Ee's statement that U representative told her to sign authorization card right away because if she did she would not have to pay any initiation fee was prima facie proof of illegal fee waiver offer; E should have evidentiary hearing on issue)

2075-6767-3300 Capacity of signer

Schnadig Corporation 266 NLRB No. 030
(testimony of specialist in reading education as to level of difficulty of wording on authorization card, irrelevant, since *has no practical application insofar as predicting whether individual Ees during organizing campaign would understand, upon reading and signing card, that they were authorizing U to represent them*)

National King Coal, Inc. JD-(SF)-24-81
(card signed by Ee valid notwithstanding Ee was intoxicated when he signed where he had read and understood card prior to signing)

2075-6767-3317 Inability to read or write

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. 257 NLRB No. 045
(card valid notwithstanding Ee had his wife sign and complete it, since his effort to complete and return card indicated he knew what was being signed for him and intended that it be signed)

Jeffrey Manufacturing Division, Dresser Industries, Inc. 248 NLRB No. 087
(where wife of illiterate Ee read card to him and signed it upon his direction, card valid as purpose adequately communicated)

2075-6767-3317—Cont.

Gary Concrete Products, Inc. JD-(ATL)-49-82
(does not invalidate card when signer informed card was *to get a U*)

2075-6767-3300 Mental incapacity

Schnadig Corporation 265 NLRB No. 020
(E's contention that where Ees were of low educational level GC could not rely on presumption which normally flows from E's authenticated signature on card to establish clear intent of authorization, but rather GC has burden of proving that each Ee who executed card clearly understood significance of document and intended to authorize U to represent him, rejected)

2075-6767-4300 Solicitation by supervisors and/or management personnel

Granite City Journal, Inc. 262 NLRB No. 149
(cards signed by Ees in presence of supervisors, not invalid, since limited supervisory involvement in organizational activity is insufficient to vitiate validity of U's card majority unless there is a showing, not present herein, of substantial supervisory intervention designed to intimidate those who sign)

Parker-Robb Chevrolet, Inc. 262 NLRB No. 058
(contention that supervisors influenced majority of Ees to execute authorization cards in belief E favored their doing so, rejected, since supervisors were not instrumental in U's securing majority status but, rather, Ee was prime mover in U's successful organizational effort; moreover, supervisors' participation in U campaign was minimal and even negative, and Ees were openly advised at U meeting that supervisors were not eligible nor included w/i U's representational ambit)

Wehrenberg Theatres, Inc. d/b/a Mello Theatre and Skyvue Drive-In 260 NLRB No. 001
(supervisor's asking Ee to sign U card did not taint cards as supervisor and son also signed cards and Ees had no cause to believe that supervisor would retaliate; therefore Ees were not deprived of their free choice in selecting bargaining representative)

Le Mouse, Inc. 259 NLRB No. 097
(supervisor's passing out cards to Ees and telling them that new cards were needed because U's name on first set was not complete not sufficient involvement to invalidate authorization cards)

Fenton Towing Corporation 258 NLRB No. 113
(no merit to tainted cards argument where although supervisor was present at time Ees signed U cards and also signed card himself, there was no allegation or proof that he solicited Ees to sign cards or that Ees were coercively induced to designate U through fear of supervisory retaliation)

Lyman Steel Company 249 NLRB No. 040
(authorization cards of assisted U no basis for claiming majority support where cards solicited and obtained by management after certain inducements granted to solicited Ees)

J.J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation v. N.L.R.B. 645 F.2d 148 (C.A. 2, Mar 21, 1981)
(U's card majority held not tainted by supervisory solicitation where Bd's determination that experienced Ee involved did not possess supervisory indicia and its characterization of another Ee as a nonsupervisory leadman was a fair interpretation of facts; and Bd's findings with respect to supervisory determinations are entitled to *special weight* in light of its expertise in this area)

N.L.R.B. v. Wehrenberg Theatres, Inc., d/b/a Mello Theatre and Skyvue Drive-In 690 F.2d 159 (C.A. 8, Oct. 1982)
(supervisory support for U will invalidate U's majority only when supervisor's activities cause Ees to believe that they are acting on behalf of E and that E favors U or else lead Ees to support U because they fear future retaliation; here no showing that Ees believed supervisor was acting for E or that E favored U and no evidence that supervisor coerced or induced Ees to sign authorization cards)

2075-6767-6000 Multiple authorizations

N.L.R.B. v. Unit Train Coal Sales, Inc. 636 F.2d 1121 (C.A. 6, 1980)
(E's recognition of U not violative since U was validly designated as majority representative of the six unit Ees, of whom five had signed authorization cards for the U, nowithstanding contention that two of such five Ees had signed cards for another U while employed by E's predecessor, where dual card signers implicitly demonstrated repudiation of first cards by individually participating along with other members of unit in negotiating and signing agreement between E and U)

2075-6767-6600 Purported withdrawal of card

Marcus J. Lawrence Memorial Hospital 249 NLRB No. 069
(Ee's attempt to withdraw valid authorization card ineffective where revocation came after Ee attended meeting at which E made unlawful threats as E cannot derive benefit from its unlawful conduct)

2075-6767-7000 Nonmembership or nonpayment of dues and fees to designated union

N.L.R.B. v. Masonic Homes of California, Inc. 634 F.2d 98 (C.A. 9, July 1980)
(Ee's statement that U representative told her to sign authorization card right away because if she did she would not have to pay any initiation fee was prima facie proof of illegal fee waiver offer; E should have evidentiary hearing on issue)

2075-6775 Lost or misplaced cards

Tartan Marine Company 247 NLRB No. 070
(lost card not counted since w/o card it cannot be determined if individual authorized U to represent him on any of the critical dates litigated)

J. P. Stevens and Company, Inc. 247 NLRB No. 066
(Ee's card which was lost counted as valid designation of U when he testified he signed card and his name appeared on E's list of U supporters who had identified themselves as such to E; testimony of Ee is itself probative of U's majority status in circumstances where card has been misplaced)

J. P. Stevens and Company, Inc. 247 NLRB No. 066
(where Ee had signed second card after U's demand for recognition, his first card signed prior to U's demand counted as valid designation of U, even though such card was lost, where E testified that he signed card before demand date and his testimoney was corroborated by other evidence)

2075-6784 Designation of merged union

J. P. Stevens and Company, Inc. 247 NLRB No. 066
(consolidated U's use of authorization cards designating pre-merger U held not improper, where Ees were well-informed concerning merger and it must be inferred such fact was generally known among Ees, no card signers asked for return of their cards, Ees were not misled as to which U they wanted to represent them, and merger contemplated continuation of pre-merger U under new and different name)

2075-6785 Designation of international rather than local

CAM Industries, Inc. (Millmen-Industrial Carpenters Local 262) 251 NLRB No. 006
(E's refusal to bargain with U after card check established majority status violative notwithstanding authorization cards designated only International, for Bd has long held that such card serves as valid designation of affiliate when there was no confusion as to identity of potential representative in minds of signers)

N.L.R.B. v. Cam Industries, Inc. 666 F.2d 411 (C.A. 9, Jan. 1982)
(E's refusal to bargain with local U after third party verified U's majority status, from cards containing name only of International, violative, where local business manager solicited cards, Local was only appropriate representative and Ees did not intend other representation; rebuttable presumption allows affiliate to act when cards designate parent organization)

3000 EMPLOYER OBLIGATION TO RECOGNIZE ON REQUEST

3001 GENERALLY

Hart Ski Mfg. Co., Inc. JD-11-80
(E's refusal to bargain with U which had card majority, unlawful, notwithstanding E's contention cards tainted by U's alleged representation that sole purpose of cards was for election and U's offers of waiver or reduction of fees to Ees who signed cards before election)

3033 EMPLOYER RESPONSE TO REQUEST

The Exchange Bank 264 NLRB No. 111
(E's refusal to recognize and bargain with U at time when it knew U had support of majority of its Ees and in furtherance of its design to defeat Ees' organizational efforts, violative)

Iowa Electric Light & Power Company 264 NLRB No. 021
(explicit refusal to bargain—made in order to test (U's) certification—is considered continuing refusal to bargain)

Checker Cab Company of Virginia, Inc., d/b/a Axis Rent-A-Car 260 NLRB No. 115
(violation where E refused U's bargaining request in unit in which U represented majority and thereafter engaged in flagrant ULPs including discharges, transfers to night shift, reduced working hours, threat of plant closure, interrogation, creating impression of surveillance, withhold monetary prize awards and insurance sales commissions)

M. A. Harrison Manufacturing Company, Inc. 256 NLRB No. 071

Precision Graphics, Inc. 256 NLRB No. 067
(E's refusal to recognize U, unlawful, where E declined to do so after receiving request for recognition from U having card majority designation, and then commenced and continued its course of illegal conduct)

The Arundel Corporation 262 NLRB No. 069
(E's refusal of charging U's request to recognize it as representative of portion of unit at new operation at which E had assertedly precipitously recognized another U, not unlawful, where there was no unlawful intent, no

3033—Cont.

logical basis exists for assuming that matter was rigged so as to exclude charging U since only 2 or 3 of 15 Ees would have been represented by it, and there was no contention raised based on Midwest Piping doctrine or on recognition of contracting U before E had representative complement in its employ)

The Arundel Corporation 282 NLRB No. 009
(E's refusal of charging U's request to recognize it as representative of portion of unit at new operation at which E had recognized another U held not unlawful, where Ees sought by U were located substantial distance from other Ees covered by charging U's contract, they had no contact with such Ees, were employed in work situation in which their supervisor had considerable control over day-to-day personnel policies and employment, and they never expressed preference to be recognized by charging U rather than recognized U)

Massey Stores, Inc., d/b/a Kermit Super Valu v. N.L.R.B. 631 F.2d 336 (C.A. 4, Oct. 1980)
(E's refusal to recognize U on basis of card majority, not unlawful, since cards invalid where U organizer represented to Ees that contract covering E's other stores included after acquired clause which would apply to new store if majority of Ees at new store signed authorization cards and that Ees at new store would then be subject to security clause of contract, since organizer did more than explain consequences of unionization resulting in agreement containing security clause, and arbitrator ruled that contract did not apply to after acquired facilities)

3067 MAY DECLINE TO RECOGNIZE WITHOUT ELECTION

3067-1500 Unless right to election is waived

Lion Trucking Corporation JD-(NY)-66-82
(E's refusal to recognize U on showing of card majority, unlawful, where U's representative offered to show E's manager signed U autorization cards on condition E would recognize U if U's majority proven, and E's manager had agreed to recognize U if U's majority status proven by authorization cards)

3067-2000 Unless engaged in ULP precluding fair election

Schnadig Corporation 265 NLRB No. 020
(E's refusal to bargain with U that had care majority, notwithstanding E's asserted doubts about authenticity of authorization cards, unlawful, where E committed many and flagrant ULPs and any uncertainty E may have had about obligation to bargain after election was of its own making)

Arthur Briggs, Inc. 265 NLRB No. 038
(violation, where E refused to recognize U which had majority and subsequently committed various ULP's which resulted in election being set aside and issuance of bargaining order)

Larid Printing, Inc. 264 NLRB No. 049

Coil-Acc, Inc. 262 NLRB No. 012
(bargaining order, based on U's majority status as indicated by authorization cards, appropriate where E's ULPs tended to undermine U's majority strength and impede election process)

Scott Glass Products, Inc. 261 NLRB No. 129

Heads and Threads Company, a Division of MSL Industries, Inc. 261 NLRB No. 118

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant 261 NLRB No. 051
(violation, where E upon demand for recognition by U refused to recognize and bargain and commenced upon course of ULPs including unlawful interrogation, promises of benefits in return for signing anti-U pin, unilateral granting of wage increases, discontinuance of benefits, threat of closure, layoff and closure w/o warning to Ees, and discharge of U adherent)

Pennant Towing Corporation 259 NLRB No. 113
(E's conduct violated Sec. 8(a)(5) under *Gissel* and *Trading Port* since E engaged in misconduct violative not only of Sec. 8(a)(1) and (3), but also of Sec. 8(a)(5))

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. 257 NLRB No. 048

Pace Oldsmobile, Inc. 256 NLRB No. 111

Samuel J. Wade, an Individual d/b/a Major Cab Company 255 NLRB No. 191
(refusal to recognize and bargain with U as duly designated majority representative of Ees while simultaneously engaging in ULPs which serve to undermine U's majority status, violative)

Sunion Care, Inc. d/b/a Parkview Acres Convalescent Center 255 NLRB No. 149
(refusal to recognize and bargain with U upon request, violative, where E engaged in unlawful conduct that undermined U's majority status and subverted Bd's election process)

Embro Industries, Inc. 254 NLRB No. 070
(refusal to recognize and bargain with U, and thereafter engaging in unlawful conduct designed to erode Ee support for U, and thereby preventing holding of fair second election, unlawful)

Justak Brothers and Company, Inc. 253 NLRB No. 146
(E's refusal to recognize U upon demand, unlawful where U had achieved card majority)

Montgomery Ward & Co., Inc. 253 NLRB No. 023
(E's refusal to recognize and bargain with U which had card majority upon U's demand for recognition, unlawful, where refusal followed by commission of ULPs by E, particularly wage increases and attempts to redress greivances)

United Services For The Handicapped 251 NLRB No. 117
(U card majority rather than election provides more reliable test of Ees' R desires where E's ULPs precluded holding of fair election)

Brooks Cameras, Inc. 250 NLRB No. 116

Transitank Car Corporation JD-(ATL)-8-82

Guardian Industries Distribution Center, Inc. JD-(NY)-48-80
(no violation where E was found not to have committed ULPs alleged or other violations when it did not respond to U's demand for recognition)

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)
(E's refusal to bargain with U and instead engaging in ULPs which undermined U's majority)

N.L.R.B. v. Dadco Fashions, Inc. 632 F.2d 493 (C.A. 5, Dec. 1980)

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)
(when U requests recognition and bargaining from E which has been presented with cards showing majority support for U and E subsequently engages in ULPs which destroy laboratory conditions needed for fair election, E forfeits right to election and must bargain with U or violate Section 8(a)(5) of Act. Whether or not U maintains majority status is irrelevant to such a violation finding)

Robert J. Wilson, RD v. Liberty Homes, Inc. 664 F.2d 620 (C.A. 7, Oct. 1981)

N.L.R.B. v. Bolsa Drainage, Inc. 639 F.2d 788(T) (C.A. 9, 1981)

3067-3700 Where not engaged in ULP precluding fair election

Garvey & Co., Inc. 261 NLRB No. 074
(withholding of recognition of U with card majority, not violative where wage increase and discharges alleged as ULPs rendering fair election impossible were found to be economically motivated and not unlawful)

The Long Island Radio Company d/b/a All Shore Radio Corp. JD-(NY)-71-81

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. 600 F.2d 930 (C.A.D.C., 1979)
(no obligation on E to bargain where only ULP charge dismissed and no election held)

3067-5000 Unless having independent knowledge of union majority

Gregory Chevrolet, Inc. 258 NLRB No. 034
(where E examined cards indicating U majority and with U's consent held Ee meeting to satisfy himself that Ees had not been *conned* into signing cards, E's refusal to bargain w/o election held violative as E may not disclaim results of that meeting)

Phelps Cement Products, Inc. 257 NLRB No. 094
(withdrawing recognition from and refusing to bargain with U which had authorization cards from majority of Ees in appropriate unit held violative where credited testimony demonstrated E had recognized U for agreed upon unit)

English Brothers Pattern and Foundry 253 NLRB No. 087
(where U made demand for recognition and E polled Ees, discovering majority support for U, never indicated any doubt as to majority status, never asked for election, it is bound by results of poll and failure to bargain violative)

Lion Trucking Corporation JD-(NY)-66-82
(E's refusal to recognize U on showing of card majority, unlawful, where U's representative offered to show E's manager signed U autorization cards on condition E would recognize U if U's majority proven, and E's manager had agreed to recognize U if U's majority status proven by authorization cards)

J.A.G. Freight Systems, Inc. JD-(NY)-31-82
(E had obligation to bargain where E agreed to meet and bargain with U if U could substantiate its claims to majority status, U presented to E authorization cards from majority of Ees in unit and E admitted names on cards were those of its Ees, and absent evidence E questioned authenticity of cards

3067-5000—Cont.

during meeting, since although generally E does not have to accept any method other than election to determine majority status of U, when E agrees to alternative method for establishing U majority and U demonstrates it represents majority of Ees, bargaining obligation exists)

Hart Ski Mfg. Co., Inc. JD-11-80
(E's refusal to bargain with U which had card majority, unlawful, notwithstanding E's contention cards tainted by U's alleged representation that sole purpose of cards was for election and U's offers of waiver or reduction of fees to Ees who signed cards before election)

N.L.R.B. v. Lyon & Ryan Ford, Inc. 647 F.2d 745 (C.A. 7, Apr 1981)
(*E's request for federal election after voluntarily recognizing U based on E's examination of authorization cards signed by majority of Ees and subsequently negotiating over terms of proposed contract, violative; contrary to E's contention, agreement was reached on appropriate bargaining unit where parties had agreed on definition of unit*)

N.L.R.B. v. English Brothers Pattern and Foundry 679 F.2d 787 (C.A. 9, June 1982)
(E who conducted polls among its Ees both collectively and individually after U demanded bargaining, bound by affirmative results of polls and subsequent refusal to bargain violative)

4000 DURATION OF OBLIGATION TO RECOGNIZE AND BARGAIN

4020 CERTIFIED REPRESENTATIVE

4020-2000 Presumption of continued majority

J. M. Tanaka Construction, Inc. 249 NLRB No. 038
(alter ego's refusal to bargain with certified U violative)

4020-2033 Irrebuttably presumed for 1 year

Boston Insulated Wire & Cable Co. 266 NLRB No. 044
(contention that summary judgment finding that E's refusal to bargain violated Act should be denied on grounds that E has experienced substantial Ee turnover in period following election held w/o merit, since such turnover is not *special circumstance* warranting attack on conclusively presumed majority status U enjoys during certification year)

Parkview Nursing Center II Corp. 269 NLRB No. 007
(since certification year would begin to run from date of ct of appeals' decision sustaining Bd's holding that E unlawfully refused to bargain, there was consequently an irrebuttable presumption that U enjoyed majority status for period of one year from date of ct's decision; moreover, U continued to enjoy majority status after end of such one-year period because of E's ULPs found herein)

Marriott In-Flite Service, A Division of Marriott Corporation 258 NLRB No. 099

333 Typographers, Inc. d/b/a Ace Typographers and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions 252 NLRB No. 017
(mtn for summary judgment granted, notwithstanding E assertedly refused to bargain on ground that it had been informed by written ptn that U did not have Ee majority, where alleged ptn was submitted w/i decertification year w/i which certified U's majority is irrebutably presumed)

Presco, Inc. 250 NLRB No. 093

Maywood Do-Nut Co., Inc. 248 NLRB No. 080
(where the only arguable date when bargaining agreement allegedly was reached between E and U fell w/i first year since Bd certification of U, E's question as to whether or not U represented majority of Ees in appropriate unit held w/o merit; in first year after certification, there is irrebuttable presumption that U has majority in appropriate bargaining unit)

Skycap Services, Inc., d/b/a Reed's Baggage Security Service JD-(SF)-289-80
(refusal to bargain with certified U, violative, where E was not free to terminate bargaining process merely because it had assertedly received information suggesting erosion of Ee support for U)

4020-2033-2000 Absent unusual circumstances

Carter-Glogau Laboratories, Inc. 265 NLRB No. 017
(E's contention that its refusal to bargain with U, occurring less than 3 weeks after it was certified by Bd, was based on good-faith doubt of U's majority status based on change in Ee complement at that time held w/o merit since, absent unusual circumstances as here, U's majority status is irrebuttably and conclusively presumed to exist for 1 year following certification)

Carter-Glogau Laboratories, Inc. 265 NLRB No. 017
(contention that striker replacements and newly hired Ees comprise majority of bargaining unit and that strikers who supported U are minority held insufficient to establish that U lacked majority support and does not constitute unusual circumstances)

Silverman's Men's Wear, Inc. 263 NLRB No. 023
(Bd upheld ALJ's refusal to allow testimony to demonstrate post-election changes in bargaining unit on ground that any issue of change in unit was beyond scope of hearing; furthermore, absent special circumstances, there is irrebuttable presumption that majority status of certified U continues for 1 year from date of certification; as E's refusal to bargain occurred during certification year, presumption was clearly applicable; moreover, even if E's refusal to bargain had not occurred during certification year, factor of Ee turnover did not establish that U had lost majority status)

Lexington Cartage Company, Inc. 259 NLRB No. 088
(ptn signed by all members of unit stating that they wished to renounce U not unusual circumstance that would justify E's refusal to bargain during certification year; further, ptn signed after E's discharge of leading U adherent and where E had made no counterproposals to U contract proposals during two and a half months and several bargaining sessions)

Sunnyland Refining Company, Inc. (International Brotherhood of Boilermakers, Shipbuilders, Forgers and Helpers, AFL-CIO) 250 NLRB No. 146
(eight-month gap between dates of U's requests for bargaining does not constitute such unusual circumstances that would relieve E from obligation to bargain throughout certification year)

Air Express International Corporation v. N.L.R.B. 659 F.2d 610 (C.A. 5, Oct. 1981)
(restructuring district from single plant unit where U certified into 2 plant district to include plant in another state and having labor management policy formed to cover expanded district is not kind of change that amounts to *unusual circumstances* that would make certification invalid because it does not cover aggregate Ees in expanded district)

4020-2033-5000 Where certification enforced in ULP proceeding, year dates from time employer commences bargaining

Firestone Wire & Cable Co., A Division of Firestone Tire & Rubber Company 249 NLRB No. 040

Mid-America Media, Inc. 248 NLRB No. 168
(initial period of certification construed as beginning on date E commences to bargain with U as recognized bargaining representative in appropriate unit)

Whitney Museum of American Art 247 NLRB No. 082

4020-2067 Rebuttably presumed after 1 year

Dresser Industries, Inc. 264 NLRB No. 145
(overruling *Telautograph* rule, Bd held that mere filing of decertification ptn, like mere filing of rival U's ptn, would not require or permit E to withdraw from bargaining or executing contract with incumbent U, since such rule does not give due weight to incumbent U's continuing presumption of majority status and is not best way to achieve E neutrality in the election; E with good faith doubt based on objective evidence, e.g. decertification ptn supported by unit majority, may still withdraw; E's actions herein held not unlawful since E relied on then applicable Bd law of *Telautograph*)

Stratford Visiting Nurses Association 264 NLRB No. 136
(presumption of continuation of certified U's majority status upon expiration of its contract with E not rebutted by facts that: only 2 of 6 unit Ees were U members; only 2 of 6 unit Ees were on dues checkoff; and 2, or 3, of 6 unit Ees testified at Bd hearing that they did not want U to represent them as of refusal-to-bargain date. None of above facts established lack of majority support for U. As to last reason, none of Ees had communicated to U their desire not to be represented and such testimony is highly unreliable for it requests Ee to relate several months old uncommunicated states of mind, knowing that E's defense rests on reply)

Iowa Electric Light & Power Company 264 NLRB No. 038
(certified U's majority status *not* rebutted where E did not demonstrate that U no longer had majority or that its refusal to bargain was predicated on *good faith doubt based on objective considerations*)

Import Body Shop, Inc. 262 NLRB No. 150
(presumption of U's continued majority status following expiration of contract continues until it is rebutted)

Plymouth Locomotive Works, Inc. 261 NLRB No. 087
(defense that E withdrew recognition because certification year had expired and E allegedly believed U had lost its majority status because unit Ees did not support strike vote, rejected where E offered no evidence of lack of such support; moreover E had undermined U support with its ULPs)

Marriott In-Flite Service, A Division of Marriott Corporation 258 NLRB No. 099

Colson Equipment, Inc. 257 NLRB No. 019
(refusal to bargain with incumbent U unlawful since agreement was in effect and presumption of majority status was not rebutted, where E failed to show that U was unwilling or unable to represent Ees at time its status was called into question, and E's contention that U *abandoned* Ees was therefore rejected)

4020-2067—Cont.

Libbie Convalescent Center a/k/a Libbie Rehabilitation Center, Inc. **251 NLRB No. 116**
(withdrawal of recognition 7 days following end of certification year violative absent actual evidence that U no longer represented majority of Ees)

Schmutz Foundry and Machine Company **251 NLRB No. 197**
(presumption not rebutted that certified U's majority status continued after E reopened facility and resumed same operations with same Ees where closure was to get rid of U, was temporary, and amounted to lockout of strikers who had struck when no new contract was negotiated to replace expired one and were now offering to return to work; reopening was continuation of enterprise, and Ees, unit and Ees' represented remained the same)

Hospitality Motor Inn, Inc. (Hotel & Restaurant Employees & Bartenders Union, Local No. 235) **260 NLRB No. 188**
(where 43 Ees had voted against U, expression in discussions with E's supervisors little more than a year after election of dissatisfaction with U by 33 Ees who, according to some testimony, had always been opposed to U found not to rebut presumption of U's majority status or to constitute objective basis for good faith doubt of U's continued majority status)

Pennco, Inc. **250 NLRB No. 063**

P. A. Incorporated **248 NLRB No. 077**
(E's breaking off negotiations for new contract and withdrawing recognition of U allegedly on basis of U's loss of majority status, unlawful since E failed to rebut presumption of continued majority representation after 1 year of certification where its doubt of majority status was based on decertification ptn by bare majority which it had promoted by promise to pay higher wages w/o U)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**

N.L.R.B. v. Triplett Corporation **619 F.2d 586 (C.A. 6, 1980)**
(ct held E did not violate 8(a)(5) by withdrawing recognition from and refusing to bargain with certified U since E rebutted presumption of U's continued majority status by showing good faith doubt thereof where few eligible Ees became new members, grievances declined, and in one-week period one-sixth of unit Ees notified E that they were terminating membership and rescinding dues checkoff; Bd failed to distinguish or set forth acceptable reasons for not following this ct's decision in *Automated Business Systems*)

Colson Equipment, Inc. v. N.L.R.B. **673 F.2d 221 (C.A. 8, Mar. 1982)**
(E held precluded from raising good faith doubt of incumbent U's majority status where, although U was dormant for period of time, it had *resumed its role* by the time E questioned its status)

N.L.R.B. v. International Medication Systems, Ltd. **667 F.2d 1031(T) (C.A. 9, Dec. 1981)**
(E's refusal to continue bargaining violative where its evidence did not raise good faith reasonable doubt of U's majority support at time of its refusal)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(Es' contention that Bd demanded more evidence than required to rebut presumption of U's majority support rejected; substantial evidence on record supported Bd's decision and policies and goals of Act are best served by enforcement of Bd's orders on Es' refusal to bargain)

4020-6000 Certification by Board

Foodland, Inc., d/b/a Super H Discount **261 NLRB No. 143**
(refusal to bargain, unlawful; E's defenses had been litigated in representation proceedings and E's request for review of RD's decision was denied by Bd constituting affirmance of RD's actions and precluding relitigation herein)

Mammoth of California, Inc. **263 NLRB No. 144**
(parties herein entered into typical settlement agreement warranting application of Poole Foundry test of determining whether reasonable time has elapsed between execution of settlement agreement and refusal to bargain; under the circumstances, no reason exists for permitting E to bargain for undefined lesser period of time since to do so would allow E to take advantage of its own failure to carry out its statutory obligations, contrary to very reasons for establishment of rule that certification requires bargaining for at least 1 year)

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(E must engage in one full year of bargaining following U's certification, regardless of any change in U's majority status; purpose of such insulated period is to give bargaining time to produce results and to promote stability in industrial relations, and if E refuses to bargain in good faith during certification year, Bd has power to extend or renew certification as remedy for 8(a)(5) violation)

Mammoth of California, Inc. v. N.L.R.B. **673 F.2d 1091 (C.A. 9, Apr. 1982)**
(where E signed settlement agreement in April stating that it would bargain with U, certification year expired in June, Ees filed decertification ptn in July, and E withdrew recognition in August alleging it believed U had lost majority status based on said ptn, withdrawal was unlawful, since E by its settlement agreement had committed itself to bargaining for a reasonable period regardless of certification year and U's status and reasonable period extended 4 months)

4020-8000 Certification by other agency

Taylor Hospital **249 NLRB No. 091**
(refusal to bargain, unlawful where certification by state labor board met Bd's standards for granting comity and there was no newly discovered evidence presented or lack of due process or other grounds found for refusing comity, and long passage of time since certification due to E's exhausting its remedies, does not warrant relieving E of its bargaining obligation)

4025 REPRESENTATIVES UNDER CONTRACT

KCW Furniture Company, Inc. **247 NLRB No. 079**
(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

Marvin J. Schiff Trust R-501, Marvin J. Schiff, Trustee, d/b/a Nevada Palace Casino & Motor Inn **JD-(SF)-277-81**
(successor E must bargain with representative of his Ees regardless of *whether such representative status (was) originally evidenced by a Bd certification or by recognition and the existence of a collective bargaining contract*)

Cartwright Hardware Company, Inc. v. N.L.R.B. **600 F.2d 268 (C.A. 10, 1979)**
(E implicitly withdrew recognition from U by its unilateral dealings and refusal to bargain)

4025-2000 Majority status irrebuttably presumed during term of contract

Redlands Construction Co., Inc., and Fein Construction Co. **265 NLRB No. 079**
(U's failure to apply terms of bargaining agreement to E's unit Ees, violative since U enjoyed irrebuttable presumption of majority status for duration of applicable bargaining agreement)

Belder Electric Company **250 NLRB No. 188**
(where majority of unit Ees voted to replace incumbent U with another U and E continued to recognize incumbent U and honor dues-checkoff authorization it did not violate Act as E is required to continue to recognize U with which it has contract so long as contract bars representation ptn; duty to bargain is not affected by U's loss of majority status and here where E faced with two tenable claims of representative status it should not be forced to choose between competing groups)

Hageman Underground Construction; etc. **253 NLRB No. 087**
(non-U company found herein single E with company that executed 8(f) agreement held bound by agreement at all existing and future jobsites, where U at one time represented majority of Ees who constituted a permanent and stable group of backhoe operators and E did not generally hire on project-by-project basis; this established irrebuttable presumption of majority status during length of contract and whether U enjoyed such status at time E repudiated contract irrelevant)

Pearce Glass Company, Rolland Division **250 NLRB No. 144**
(E's elimination of incentive pay system before contract term expired, violative, as E is statutorily required to wait until contract expires to implement changes in working conditions; moreover, fact that U had been willing to listen to E's proposal does not constitute waiver of its rights under Sec. 8(d))

Petroleum Contractors, Inc. **250 NLRB No. 094**

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**

N.L.R.B. v. Quad C. Corporation & Associated General Contractors of California **639 F.2d 789(T) (C.A. 9, 1981)**
(ct affd Bd finding of unlawful withdrawal of recognition and refusal to bargain collectively over new contract covering recognized units of drywall installers)

Sun-Maid Growers of California v. N.L.R.B. **618 F.2d 56 (C.A. 9, 1980)**
(terminating 3 Ees who comprised portion of overall unit for which E occupied joint E status w/o giving U notice and opportunity to bargain)

4025-5000 After expiration of contract

Pioneer Beverage Corporation **265 NLRB No. 008**
(E violated Act when it granted unilateral wage increases, created new driver sales routes, altered existing routes, and abolished helper position for 4 of its 5 package sales delivery routes after expiration of contract covering unit which was subject of decertification ptn, because E engaged in other

4025-5000—Cont.

unlawful conduct prior to filing ptn. See Autoprod, Inc. 223 NLRB 773 (1976))

Stratford Visiting Nurses Association **264 NLRB No. 136**
(presumption of continuation of certified U's majority status upon expiration of its contract with E not rebutted by facts that: only 2 of 6 unit Ees were U members; only 2 of 6 unit Ees were on dues checkoff; and 2, or 3, of 6 unit Ees testified at Bd hearing that they did not want U to represent them as of refusal-to-bargain date. None of above facts established lack of majority support for U. As to last reason, none of Ees had communicated to U their desire not to be represented and such testimony is highly unreliable for it requests Ee to relate several months old uncommunicated states of mind, knowing that E's defense rests on reply)

Remodeling By Oltmanns, Inc. **263 NLRB No. 169**
(contractor's withdrawal of recognition from U after expiration of agreement with U to continue to maintain existing working conditions established by most recent contract between U and contractor's association of which it was not member, unlawful, notwithstanding no specific mention of recognition in agreement, where U had obtained majority in unit after having been recognized under Section 8(f) agreement, contractor never disavowed bargaining relationship, and continued to adhere to contractual terms)

Taurus Waste Disposal, Inc. **263 NLRB No. 028**

Wagner Distribution Services, Inc. d/b/a Distribution Services West **262 NLRB No. 096**
(E's burden for rebuttal of presumption of continued majority after expiration of contract heavy one. E must come forward with evidence of objective considerations which would justify its claim of doubt of majority. *It is insufficient that E merely intuits nonsupport and good faith doubt may not depend solely on unfounded speculation or subjective state of mind)*

Digmor Equipment and Engineering Company, Inc. **261 NLRB No. 176**
(where parties to bargaining agreement have agreed to subject certain matters to grievance and arbitration, parties duty to arbitrate survives termination of contract when dispute is over obligation arguably created by expired agreement)

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cumonics Component Plant **259 NLRB No. 068**
(rebuttably presumed)

The Sacramento Union **258 NLRB No. 141**
(E's duty to bargain not relieved by expiration of bargaining agreement. Although expiration of contract may permit E to negotiate new and different terms, it may not, absent impasse or waiver by U, unilaterally change established practices with respect to mandatory subject of bargaining even if these practices may have constituted deviation from letters of parties expired agreement)

Carmichael Construction Company **258 NLRB No. 032**
(withdrawing recognition and refusing to bargain, violative where E did not have good faith doubt of U's majority status)

Hudson Chemical Company **258 NLRB No. 009**
(Bd presumes existence of continued majority status (of U) during and beyond term of collective-bargaining agreement)

Hudson Chemical Company **258 NLRB No. 009**
(E's cessation of checking off U dues after expiration of U security agreement not violative, since agreement had expired; *Section* 302(c)(4) of LMRA provides that life of checkoff authorization shall not be irrevocable for one year or termination date of applicable bargaining agreement, whichever occurs sooner)

Westwood Import Company, Inc. **251 NLRB No. 162**
(after the expiration of valid collective bargaining agreement, U enjoys a rebuttable presumption that its majority representative status continues; such presumption may be effectively rebutted if E affirmatively establishes either (1) that at time of refusal to recognize U, U in fact no longer enjoyed majority support of unit Ees; or (2) that E's refusal was predicated on good faith doubt based on objective considerations; however, burden of rebutting presumption rests on party who would do so)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(where E had negotiated contract and it was automatically renewed, E's withdrawal of recognition and repudiation of contract's terms held unlawful for period after expiration of renewal period as well as period before expiration)

Petroleum Contractors, Inc. **250 NLRB No. 094**

Rose Watch Corp. **249 NLRB No. 036**
(refusal to recognize and bargain with certified U after expiration of contract, violative where E failed to rebut presumption or sustain good faith doubt of U's continued majority support following expiration of contract)

Strite-Anderson Mfg. **JD-178-81**
(E's admitted refusal to bargain, after contract expired, because of U's pending ULP charges, unlawful; no remedy ordered, however, since bargaining obligation had been rendered moot because U was no longer majority representative and to bargain with minority representative would have been unlawful)

The Workshop, Inc. **JD-230-81**
(E's failure to ans U's letter requesting meeting to negotiate new, modified contract, unlawful where presumption of majority status continued, and evidence did not support E's claim of doubt of U's majority status; E's poll of Ees was unlawful, decline in Ees' checkoff authorizations resulted from decline in unit size, Ees' decertification ptn was filed 3 month's after E's refusal to bargain, and failure to fill U office at E's facility did not support E's claim when Ees there were still represented by U)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(repudiation of contract unlawful, where 8(f) pre-hire agreement was transformed into bargaining agreement when U achieved majority status in relevant bargaining unit composed of Ees at E's two construction projects rather than on project by project basis, and rebuttable presumption of continuing majority status applied to unit notwithstanding potential change in its Ee composition and eventual relocation to other, future projects)

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**
(rebuttable presumption after expiration of contract)

N.L.R.B. v. The Saloon, Inc. **647 F.2d 171(T) (C.A. 9, Mar 1981)**
(withdrawing recognition upon expiration of contract, violative since bargaining relationship was presumed to continue where only 4 or 5 Ees out of unit of 40 or 50 Ees had misgivings relative to U representation)

4025-7500 Contract of predecessor employer

Zylan Pontiac **262 NLRB No. 037**

Patio Lodge, Inc., and Fountain Lodge, Inc. **JD-(ATL)-40-82**
(E obligated to bargain since it failed to rebut presumption of majority status by showing it has sufficient basis for good faith doubt of majority status notwithstanding its assertions of anti-U statement of Ee, decertification ptn, revocation of dues checkoff authorizations or change over in Ees)

4040 Voluntarily recognized representatives

J.A.G. Freight Systems, Inc. **JD-(NY)-31-82**
(E's refusal to bargain after its voluntary recognition of U based on demonstrated authorization card majority, unlawful, notwithstanding U had taken no action predicated on recognition)

J.A.G. Freight Systems, Inc. **JD-(NY)-31-82**
(E which has voluntarily recognized U based on card majority may not seek election)

4040-5000 Presumption of majority status

D'Angelo & Khan, Inc. **248 NLRB No. 062**
(where E entered into 8(f) prehire agreement with local when it first worked at jobsite w/i local's jurisdiction, its refusal to apply agreement to Ees at succeeding jobsite held not unlawful, since prehire agreement did not give rise to presumption of local's majority status at original jobsite; furthermore, regardless of local's majority status at original site, provisions of 8(a)(5) do not apply unless U can demonstrate its majority status at succeeding sites, record here showed Local did not have majority support at the succeeding site)

The Saloon, Inc. **247 NLRB No. 106**
(withdrawal of recognition upon expiration of contract, unlawful, where E failed to rebut contracting U's majority presumption by asserting that 10 percent of unit Ees lacked zeal for U, and by conclusionary observations to E by supervisor that *lot of* Ees did not care for U)

4040-5035 Voluntary recognition raises presumption of regularity that their representative had majority status

Construction Erectors, Inc. **265 NLRB No. 096**
(on remand from U.S. Court of Appeals, Bd found E's repudiation of collective bargaining agreement before its termination date, unlawful, since workforce in bargaining unit had become permanent and stable and U obtained majority support w/i unit of Ironworkers during period w/i effective term of applicable contract; E moved its Ees from job to job and did not regularly assign Ees to single jobs and then to no subsequent jobs; 10 of 15 Ees in core group were U members and worked 75% of total days on which Ironworkers were employed)

4040-5037 Contract creates irrebuttable presumption of continuing majority status of union

Westwood Import Company, Inc. **251 NLRB No. 162**

N.L.R.B. v. West Sand and Gravel Company **612 F.2d 1326 (C.A. 1)**
(enforcement of bargaining order denied where Bd's presumption of majority status was found to be unreasonable since clear and objective understanding of scope of bargaining unit or desire to engage in genuine collective bargaining was not evidenced in explicit agreement nor actual practice of E and Ees in past)

4040-5037—Cont.

Precision Striping, Inc. v. N.L.R.B. **642 F.2d 1144 (C.A. 9, Mar 23, 1981)**
(only a rebuttable presumption of U's majority status is created when majority of Ees have become members pursuant to a U security clause and it is irrational to hold that U membership obtained pursuant to a U security clause creates an irrebuttable presumption of majority, since U security clause operates to compel Ees to join U because U membership is price for obtaining a job, and it is well established that U membership is not always an accurate barometer of U support)

Osteopathic Hospital Founders Association, d/b/a Oklahoma Osteopathic Hospital v. N.L.R.B. **618 F.2d 633 (C.A. 10, 1980)**
(withdrawal of recognition from U two months before expiration of its one-year bargaining agreement, violative even if replacement of discharged unit Ees gave rise to E's asserted good faith doubt as to U's majority; incumbent U enjoys virtually irrebutable presumption of majority status as long as its bargaining agreement is entitled to *contract bar* protection)

4040-5037-5000 Contract of predecessor employer

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(presumption of continuing majority notwithstanding predecessor E's recognition of U was forty years ago and there has been no subsequent election or certification)

Pick-Mt Laurel Corporation v. N.L.R.B. **625 F.2d 476 (C.A. 3, 1980)**
(contention that presumption of continued majority status should not be applied because E was successor E and not E who originally accorded voluntary recognition to U, rejected; appearance of successor E cannot deprive U of its presumptive majority status, and successor E is not relieved from duty to bargain with U which had presumptive majority because of pending contract; however, successor E would not have obligation to bargain if it entertained good faith doubt of U's majority status)

4040-5042 Presumption resulting from long bargaining history

N.L.R.B. v. West Sand and Gravel Company **612 F.2d 1326 (C.A. 1)**
(enforcement of bargaining order denied where Bd's presumption of majority status was found to be unreasonable since clear and objective understanding of scope of bargaining unit or desire to engage in genuine collective bargaining was not evidenced in explicit agreement nor actual practice of E and Ees in past)

4040-5048 Presumption arising from dealing with union

F.M.L. Supply, Inc. **258 NLRB No. 083**
(notwithstanding that E did not have signed contract with U, E was estopped from denying it was bound by residential and commercial agreements between multiE group, of which E was not member, and U, since E held itself out to its Ees under U contract by hiring through U hiring hall and making payments into various U trust funds; E's conduct was consciously deceptive (to its Ees and U) over long period and manifest desire to take advantage of U's miscalculation concerning existence of contract)

4040-5050 Irrebuttably presumed for reasonable period

Eastern Food Service, Inc. d/b/a Stewart Sandwich Service **260 NLRB No. 103**
(withdrawal of recognition after E voluntarily recognized U based on its acceptance of authorization cards as determinative of Ees' desire to be represented by U, violative)

Cardox Division of Chemetron Corporation **258 NLRB No. 159**
(violation where E withdrew recognition and refused to bargain with voluntarily recognized representative. Reasonable period of time did not pass where U and E met only once during 3-1/2 months of recognition despite efforts by U to have more meetings. Furthermore, whether unit is appropriate or not is of no consequence where E voluntarily recognized bargaining representative of unit)

Landmark International Trucks, Inc. **257 NLRB No. 170**
(successor E who voluntarily recognized U and withdrew recognition 3 weeks later violated Act as it did not give reasonable time for bargaining to succeed)

Fertilizer Company of Texas, Inc. **254 NLRB No. 183**
(withdrawing recognition and polling Ees on their desire for continued recognition before reasonable time to allow for bargaining after voluntary recognition passed, violative absent showing that at time of recognition U lacked majority support of Ees)

J.A.G. Freight Systems, Inc. **JD-(NY)-31-82**

4040-5075 Rebuttably presumed after reasonable period

B & B Gallo Pest Control Services, Inc. **265 NLRB No. 075**
(refusal to negotiate successor contract, violative, where E did not have reasonable good faith doubt of U's continued majority status)

N.L.R.B. v. Antonino Carilli, d/b/a Antonininos's Restaurant **648 F.2d 1206 (C.A. 9, June 1981)**

4040-5080 Withdrawal from multiemployer bargaining unit

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(rebuttable presumption of majority U support survives Es' withdrawal from multi-E unit is grounded on policy determination by Bd that industrial peace is more like to be achieved by maintaining continuity in bargaining structure over enhancement of Ee free choice)

4050 SETTLEMENT AGREEMENT WITH BARGAINING PROVISION

WDIV Post-Newsweek Stations, Michigan, Inc. **254 NLRB No. 087**
(E's withdrawal of recognition and refusal to bargain with U, unlawful where compliance agreement between E and U had not expired and E was not free to entertain challenge to U's majority status)

Mammoth of California, Inc. **253 NLRB No. 144**
(E's contention that settlement agreement had reinstatement and backpay, rather than agreement to bargain, as quid pro quo for withdrawal of U's charges, rejected; support for E's contention would require going beyond 4 corners of settlement agreement which Bd does not attempt to do nor does it attempt to ferret out which of various concessions was real reason for settlement; to find merit in E's contention would fly in face of E's agreement to *comply with all the terms and provisions of notice* requiring bargaining upon request, and would allow E to renege on part of settlement agreement)

Mammoth of California, Inc. **253 NLRB No. 144**
(GC not required to introduce supporting evidence to confirm what is clear on face of settlement agreement which states that it *disposes of all allegations* in cases involved, including refusal to bargain allegations, and agreement also states that E will comply with all terms of notice which states that E, upon request, will bargain with U; moreover, agreement covered only Bd charges with no outside matters involved; consequently, E's agreement was part of quid pro quo for U's agreement to withdraw charges and constituted typical settlement agreement)

Mammoth of California, Inc. **253 NLRB No. 144**
(E's withdrawal of recognition from U during certification year, as extended, unlawful, where settlement agreement entered into by parties extended certification year, and as result of settlement agreement and E's commitment to bargain U withdrew its charges which had alleged, inter alia, a refusal to bargain; consequently, parties were entitled to and required to bargain for that portion of certification year to which U was entitled, free of any encumbrances)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(*despite clear loss of majority by U, E may be compelled to continue to bargain with U for reasonable period by virture of entry into Bd approved settlement agreement with U concerning previous ULP charges*)

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(E's contention that parties' settlement agreement neither manifested Bd determination that remedial action was necessary nor contained agreement to bargain and was exchange of contract terms having no effect on certification year, rejected, where part of agreement resolved some allegations in complaint)

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(if settlement agreement is valid, E must bargain in compliance with it for reasonable time w/o regard to whether U continues to have Ee majority)

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(notwithstanding E's claim of U's loss of majority, parties' settlement agreement entered into at time of hearing before ALJ and *surrounded by formalities* held to have extended certification year for reasonable period embracing time in which E engaged in unlawful refusal to bargain, and E's withdrawal of recognition during such period, unlawful; Bd properly characterized ALJ's action as *approval of the agreement,* which is required by Bd's R/R, and extent of Bd involvement manifested administrative determination that some remedial action was necessary to safeguard public interests)

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(parties' settlement agreement held to have extended certification year for reasonable period, embracing time in which E engaged in unlawful refusal to bargain, where Bd properly found that compelling consideration for U's withdrawal of charges against E was quid pro quo for E's concessions in agreement as well as its attendant commitment to bargain)

Mammoth of California, Inc. v. N.L.R.B. **673 F.2d 1091 (C.A. 9, Apr. 1982)**
(where E signed settlement agreement in April stating that it would bargain with U, certification year expired in June, Ees filed decertification ptn in July, and E withdrew recognition in August alleging it believed U had lost majority status based on said ptn, withdrawal was unlawful, since E by its settlement agreement had committed itself to bargaining for a reasonable period regardless of certification year and U's status and reasonable period extended 4 months)

4055 REPRESENTATIVE SUBJECT TO BARGAINING ORDER IN LITIGATION

4055—Cont.

Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions **269 NLRB No. 019**
(E's refusal to employ unit Ees at new location under terms and conditions of existing contract, violative)

Schnadig Corporation **265 NLRB No. 020**
(E unilaterally changing absentee and tardiness policies, unlawful)

4070 TERMINATION BY LOSS OF VIABLE RELATIONSHIP

N.L.R.B. v. Schmutz Foundry and Machine Company **678 F.2d 655 (C.A. 6, May 1982)**
(where, during negotiations for renewal of contract and 6 months after impasse had been reached, E closed its plant but then, approximately 1 year later, began limited production at plant, its refusal to bargain on U's demand at that time held unlawful, since E's closure, which E claimed constituted going out of business, was a lockout for purpose of getting rid of U, and operations were resumed only when E concluded it would no longer have to recognize U)

4075 TERMINATION BY WITHDRAWAL OF RECOGNITION

Redlands Construction Co., Inc., and Feitz Construction Co. **265 NLRB No. 079**
(withdrawal of recognition from U, violative where U did not lose its majority support and E had no good faith belief that U had lost its majority support)

Loretto Heights College **264 NLRB No. 149**
(withdrawal of recognition and refusal to bargain with U on behalf of unit of college faculty members on the ground that faculty members were managerial rather than Ees based on the *Yeshiva University* decision by the Supreme Court, unlawful, since they were found Ees herein)

Mobile Home Estates, Inc. **259 NLRB No. 182**
(withdrawal of recognition from and refusal to bargain with U during economic strike violative, as U represented majority at time of strike, although 13 Ees including same U officers resigned prior to strike, some Ees abandoned strike and replacements were hired)

United States Gypsum Company **259 NLRB No. 145**
(withdrawal of recognition violative where Ees ptns to E stating that they no longer wished U to represent them were tainted by E's refusal to disregard requests by U and mediator to set dates for bargaining)

Twin County Trucking, Inc. **259 NLRB No. 078**
(both initial refusal to recognize U with majority status and withdrawal of recognition following agreement to meet to negotiate U contract--which constituted de facto recognition--unlawful)

Puerto Rico Hotel Association **259 NLRB No. 088**
(E association and its member hotels' refusal to bargain regarding renewal contract with musicians U, unlawful, notwithstanding contentions that musicians were not Ees of hotels, that petitioned for unit of musicians, including bandleaders, (supervisors) at all hotels not appropriate, and that U lacked majority inasmuch as musicians' membership in U was not uncoerced)

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) **259 NLRB No. 037**
(as E-U's Secretary-Treasurer had authority under by-laws to hire office Ees and to fix their compensation, this is sufficient authority to permit him to establish wages, hours, and conditions of employment on collective basis and/or individual basis w/o Executive Board approval, and therefore, could sign contract recognizing U of office clericals, and such could not be repudiated by new administration)

J. D. Candler Roofing Company, Inc. **258 NLRB No. 060**
(withdrawal of recognition from U, violative where not explained by E as having been based on any *objective considerations* or loss of majority by U)

Belcon, Inc. **257 NLRB No. 178**
(E's withdrawal of recognition two weeks after U accepted E's final offer and Ees unconditionally offered to return to work after economic strike, violative)

Phelps Cement Products, Inc. **257 NLRB No. 004**
(withdrawing recognition from and refusing to bargain with U which had authorization cards from majority of Ees in appropriate unit held violative where credited testimony demonstrated E had recognized U for agreed upon unit)

Jax Mold & Machine, Inc. **255 NLRB No. 129**
(violation where presumption of majority status after expiration of certified year was not rebutted as Ee ptns rejecting U were tainted by E who gave advice on how to prepare it, interrogated Ees concerning ptns solicited Ee to sign one with promise of benefit for signing or threat of reprimand if he did not; additionally, E engaged in ULPs aimed at causing and did cause disaffection from U)

Fertilizer Company of Texas, Inc. **254 NLRB No. 183**
(withdrawing recognition and polling Ees on their desire for continued recognition before reasonable time to allow for bargaining after voluntary recognition passed, violative absent showing that at time of recognition U lacked majority support of Ees)

Mammoth of California, Inc. **253 NLRB No. 144**
(E's withdrawal of recognition from U during certification year, as extended, unlawful, where settlement agreement entered into by parties extended certification year, and as result of settlement agreement and E's commitment to bargain U withdrew its charges which had alleged, inter alia, a refusal to bargain; consequently, parties were entitled to and required to bargain for that portion of certification year to which U was entitled, free of any encumbrances)

Finger Lakes Plumbing & Heating Co., Inc. **253 NLRB NO. 069**
(E's withdrawal of recognition before contract expired and refusal to meet thereafter with U to negotiate new contract as requested, unlawful, where, contrary to E's contentions, bargaining unit did not cease, and U did not lose majority status)

Douglas & Lomason Company **253 NLRB No. 080**
(E's withdrawal of recognition and refusal to bargain, unlawful since they occurred in context of ULP's committed by E)

Western Truck Services, Inc. **252 NLRB No. 096**
(withdrawal of recognition, violative)

G and M Lath and Plaster Co., Inc. and Its Alter Ego, Central Texas Lath & Plastering Inc.; et al. **252 NLRB No. 137**
(corporation and its alter ego's repudiation of contract and withdrawal of recognition of U, violative)

Corrugated Structures, Inc. **252 NLRB No. 079**
(E's withdrawal of recognition from U with whom it had prehire agreement and execution of agreement with another U not violative, where there was no evidence that, at any relevant time, first U represented majority of substantial, stable work force of E's Ees at any of E's jobsites)

Construction Erectors, Inc. **252 NLRB No. 046**

Libbie Convalescent Center a/k/a Libbie Rehabilitation Center, Inc. **251 NLRB No. 116**
(withdrawal of recognition 7 days following end of certification year violative absent actual evidence that U no longer represented majority of Ees)

Cablevision Systems Development Company, A Partnership **251 NLRB NO. 176**
(violation where cable TV company had entered into negotiations with U representing cable company's subcontractor, and upon becoming subcontractor's successor, as found herein, it withdrew recognition and refused to bargain with U)

Schmutz Foundry and Machine Company **251 NLRB No. 197**
(withdrawal of recognition and refusal to bargain, unlawful where E failed to express its alleged doubt of U's majority status at time U requested bargaining after E announced forthcoming resumption of temporarily discontinued operations and where, when expressed, its doubts allegedly based on U's inactivity and Ee disaffection with U were not reasonably based on objective facts, and its own RM petition was not basis for doubt)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(where E had negotiated contract and it was automatically renewed, E's withdrawal of recognition and repudiation of contract's terms held unlawful for period after expiration of renewal period as well as period before expiration)

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**
(multi-E association's counterproposal for contract renewal with unwavering demand that lounge musicians be excluded from bargaining unit despite their inclusion for past decade held unlawful withdrawal of recognition; belief that lounge musicians were independent contractors and U's agreement to defer lounge musicians issue does not justify or legitimaze E's withdrawal of recognition)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(alter-ego E who required rehired Ees to sign agreement stating that all fringe benefits would be paid directly to them instead of U and to hold them responsible for transfer of monies to U violated Act)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 080**
(alter ego E's withdrawing recognition from and refusing to bargain with U over transfer of unit Ees from E to alter ego E, unlawful)

Martinsburg Concrete Products Co. **248 NLRB No. 172**
(E's refusal to continue recognition of U assertedly on ground that Ees had decided they no longer wished to be represented by U violative where E induced defection of U members by ULPs)

4075—Cont.

P. A. Incorporated 248 NLRB No. 077
(E's breaking off negotiations for new contract and withdrawing recognition of U allegedly on basis of U's loss of majority status, unlawful since E failed to rebut presumption of continued majority representation after 1 year of certification where its doubt of majority status was based on decertification ptn by bare majority which it had promoted by promise to pay higher wages w/o U)

B. N. Beard Company 248 NLRB No. 016
(E unlawfully withdrew recognition from Us before expiration of their contracts with E as evidenced by E's statements to the effect that E was getting rid of Us and would have no further contact with them)

The Saloon, Inc. 247 NLRB No. 196
(withdrawal of recognition upon expiration of contract, unlawful, where E failed to rebut contracting U's majority presumption by asserting that 10 percent of unit Ees lacked zeal for U, and by conclusionary observations to E by supervisor that *lot of* Ees did not care for U)

Bel-Air Bowl, Inc. 247 NLRB No. 003
(E's refusal to meet or arrange for future bargaining sessions after voluntarily recognizing U and agreeing to meet constituted unlawful withdrawal of recognition and refusal to bargain)

ABL General Systems Corp. JD-(NY)-67-82
(E's actions constituted unlawful withdrawal of recognition where, after being presented with U authorization cards, acknowledging that U represented majority of Ees, and agreeing to bargain later, E stated it had no interest in U and was not prepared to negotiate)

Gould, Inc. JD-409-81
(where E, pursuant to agreement with U, transferred unit Ees to U-contracting company engaged in joint venture with E, and E subsequently reemployed some of the transferred Ees, ALJ held E's refusal to recognize U as representative of reemployed Ees constituted unlawful withdrawal of recognition from U, since U had not waived its right to represent such Ees either under transfer agreement or by U's conduct, and Ees remained w/i scope of bargaining unit)

Carbon Specialties, Inc. JD-510-80
(attempting to withdraw recognition of U violative, where E and U had in being a bargaining agreement which when reduced to writing they were obliged to sign and which embraced recognition of U as bargaining agent; moreover, E had no basis to believe, as contended, that U had lost majority status in view of its promise and grant of benefits to induce Ees to defect from and disavow U)

Malibu Grand Prix Corp. JD-(SF)-90-80
(E's refusal to sign U contract on demand held not to constitute unlawful failure to bargain or withdrawal of recognition, notwithstanding unit was doubtless appropriate and assuming E had duty to bargain, where E had complied with pre-hire arrangement with U to pay U scale and cash equivalent of U fringe benefits; in addition, E's unlawful discharges were held not to constitute attempt to forestall U organizing drive or undermine U)

Prairie Glove Division, Advance Glove Company JD-164-80
(E's withdrawing recognition from, and refusing to bargain with, U assertedly because Ees at work during U strike said they would like to vote on *union issue*, or wanted to vote U issue, or could not understand why they could not vote on U issue, violative since, even if E's testimony concerning alleged statements by Ees was credited, the words attributed to Ees did not constitute rejection of U representation, and as such E did not have objective basis for doubting U's majority status)

Atlas Inc. JD-890-79
(violation where E withdrew its recognition of U, laid off all Ees, ceased operations and transferred all physical assets to corporation found herein to be successor to and *alter ego* of E, and the corporation refused to reinstate E's Ees, subcontracted work formerly performed by E's Ees, refused to recognize U selected by E's Ees, and unilaterally changed those Ees' existing conditions of employment w/o prior notice to U, all in order to avoid dealing with U)

N.L.R.B. v. United Optical Workers Union Local 408, Electrical Workers (Marine Optical, Inc.) 671 F.2d 11 (C.A. 1, Feb. 1982)
(E's withdrawal of recognition, refusal to bargain on demand, and unilateral changes after relocating operations violated 8(a)(5) and 8(d); contract's description of unit as consisting of Ees employed at address of E's old facility was not shown to be intended as geographical limitation, as contended, and continuity was sufficient for Bd to apply modified contract-bar doctrine and find contract effective at new facility where there was substantial continuity of operations and in bargaining unit after relocation, and new facility was near old facility and in same state)

Straus Communications, Inc. v. N.L.R.B. 625 F.2d 458 (C.A. 2, 1980)
(notwithstanding E's claim of U's loss of majority, parties' settlement agreement entered into at time of hearing before ALJ and *surrounded by formalities* held to have extended certification year for reasonable period embracing time in which E engaged in unlawful refusal to bargain, and E's withdrawal of recognition during such period, unlawful; Bd properly characterized ALJ's action as *approval of the agreement*, which is required by Bd's R/R, and extent of Bd involvement manifested administrative determination that some remedial action was necessary to safeguard public interests)

N.L.R.B. v. Triplett Corporation 619 F.2d 586 (C.A. 6, 1980)
(ct held E did not violate 8(a)(5) by withdrawing recognition from and refusing to bargain with certified U since E rebutted presumption of U's continued majority status by showing good faith doubt thereof where few eligible Ees became new members, grievances declined, and in one-week period one-sixth of unit Ees notified E that they were terminating membership and rescinding dues checkoff; Bd failed to distinguish or set forth acceptable reasons for not following this ct's decision in *Automated Business Systems*)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis 616 F.2d 940 (C.A. 6, 1980)
(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequent withdrawal of recognition from Teamsters local, violative, since Teamsters local wascontinuation of Brewery Workers local)

Westwood Import Co. Inc., and Gamut Designs, Inc., d/b/a Westwood Import Co. v. N.L.R.B. 681 F.2d 664 (C.A. 9, July 1982)
(where E, having contract with U, relocated its operations and then sold its business to another company, herein found to be successor E, ct held Bd properly found that E unlawfully withdrew recognition from U)

Mammoth of California, Inc. v. N.L.R.B. 673 F.2d 1091 (C.A. 9, Apr. 1982)
(where E signed settlement agreement in April stating that it would bargain with U, certification year expired in June, Ees filed decertification ptn in July, and E withdrew recognition in August alleging it believed U had lost majority status based on said ptn, withdrawal was unlawful, since E by its settlement agreement had committed itself to bargaining for a reasonable period regardless of certification year and U's status and reasonable period extended 4 months)

N.L.R.B. v. The Saloon, Inc. 647 F.2d 171(T) (C.A. 9, Mar 1981)
(withdrawing recognition upon expiration of contract, violative since bargaining relationship was presumed to continue where only 4 or 5 Ees out of unit of 40 or 50 Ees had misgivings relative to U representation)

Sahara-Tahoe Corporation v. N.L.R.B. 648 F.2d 553 (C.A. 9, Nov 1980)
(E's refusal to bargain held unlawful, notwithstanding E's contention of good faith doubt of U majority, since ptn for decertification, of which E had knowledge, although it was not filed, did not by itself or together with other evidence unequivocally indicate U support had declined to minority; however, this decision did not imply that a ptn which unambiguously indicated desire not to be represented by U and signed by substantial number of Ees could not be considered in arriving at good faith doubt if that ptn had not been filed)

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat 614 F.2d 777 (C.A. 9) (1980)
(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

4080 TERMINATION OF OBLIGATION BY EMPLOYER BECAUSE OF REPRESENTATIVE'S LOSS OF MAJORITY STATUS

Wm. Chalson & Co., Inc. 252 NLRB No. 006
(E's withdrawal of recognition from U unlawful, notwithstanding fact that majority of E's Ees withdrew their support from U, since appropriate unit is multi-E association unit)

4080-0100 Generally

Taurus Waste Disposal, Inc. 263 NLRB No. 029
(violation, where following evasive and dilatory tactics to avoid bargaining for new contract, E stated it would not meet with U, that it would decertify U, refused to bargain with U pending resolution of decertification ptn, and withdrew recognition from U where U still had presumption of majority)

Marvin J. Schiff Trust R-501, Marvin J. Schiff, Trustee, d/b/a Nevada Palace Casino & Motor Inn JD-(SF)-277-81
(new E succeeds to predecessor's bargaining obligations when majority of new E's work complement is determined, as in instant case, to have come from predecessor's bargaining unit)

4080-0100—Cont.

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)

(*despite clear loss of majority by U, E may be compelled to continue to bargain with U for reasonable period by virtue of entry into Bd approved settlement agreement with U concerning previous ULP charges*)

4080-0112 Loss of majority in recognized unit

Cobb Theatres, Inc. 260 NLRB No. 111

(E's withdrawal of recognition and refusal to bargain violative where not based on good faith doubt of U's majority support)

Baldor Electric Company 258 NLRB No. 183

(where majority of unit Ees voted to replace incumbent U with another U and E continued to recognize incumbent U and honor dues-checkoff authorization it did not violate Act as E is required to continue to recognize U with which it has contract so long as contract bars representation ptn; duty to bargain is not affected by U's loss of majority status and here where E faced with two tenable claims of representative status it should not be forced to choose between competing groups)

Mark Twain Marine Industries, Inc. 254 NLRB No. 144

(withdrawal of recognition and refusal to bargain based on contention that U lost support of majority, violative, since any loss of majority was result of E's ULPs)

WDIV Post-Newsweek Stations, Michigan, Inc. 254 NLRB No. 067

(E's withdrawal of recognition from U, unlawful where, in light of bargaining history of unit, E could not have had, and did not have, good faith doubt of U's majority status when it received mediator's report of rival U card check)

Independent Association of Steel Fabricators, Inc.; etc. 252 NLRB No. 129

(on ct remand, Bd held withdrawal of two Es from E association and execution of individual contracts with outside U, not unlawful, where each E possessed objective basis for good faith belief that incumbent U by date of execution of contract had lost support of majority of unit Ees)

Westwood Import Company, Inc. 251 NLRB No. 162

(purchaser of business held successor and obligated to bargain with U representing Ees of seller where it engaged in same business at same facility and sold to substantially same customers as seller and employed all of supervisory and nonsupervisory Ees in their same job classifications; further, purchaser may not justify its failure to bargain on basis of or basis of good faith doubt of Us majority where it acquired business with full knowledge of seller's unlawful refusal to bargain)

Victor Marsh, A Division of TCB, Inc. JD-272-82

4080-0125 Belief in loss of majority must be based upon objective consideration

Mingtree Restaurant, Inc. d/b/a Forbidden City Restaurant 265 NLRB No. 052

(after expiration of contract, withdrawal of recognition from voluntarily recognized U, unlawful; contention that U originally was unlawfully recognized and maintenance of contract with minority U constitutes continuing violation and any subsequent acquisition of majority status is attributable to earlier improper recognition, rejected, as E may not withdraw recognition unlawfully obtained outside Sec. 10(b) period)

Forester Beverage Corporation 265 NLRB No. 035

(E violated Act when it granted unilateral wage increases, created new driver sales routes, altered existing routes, and abolished helper position for 4 of its 5 package sales delivery routes after expiration of contract covering unit which was subject of decertification ptn, because E engaged in other unlawful conduct prior to filing ptn. See *Autoprod, Inc.* 223 NLRB 773 (1976))

Dresser Industries, Inc. 264 NLRB No. 145

(overruling *Telautograph* rule, Bd held that mere filing of decertification ptn, like mere filing of rival U's ptn, would not require or permit E to withdraw from bargaining or executing contract with incumbent U, since such rule does not give due weight to incumbent U's continuing presumption of majority status and is not best way to achieve E neutrality in the election; E with good faith doubt based on objective evidence, e.g. decertification ptn supported by unit majority, may still withdraw; E's actions herein held not unlawful since E relied on then applicable Bd law of *Telautograph*)

Stratford Visiting Nurses Association 264 NLRB No. 136

(presumption of continuation of certified U's majority status upon expiration of its contract with E not rebutted by facts that: only 2 of 6 unit Ees were U members; only 2 of 6 unit Ees were on dues checkoff; and 2, or 3, of 6 unit Ees testified at Bd hearing that they did not want U to represent them as of refusal-to-bargain date. None of above facts established lack of majority support for U. As to last reason, none of Ees had communicated to U their desire not to be represented and such testimony is highly unreliable for it requests Ee to relate several months old uncommunicated states of mind, knowing that E's defense rests on reply)

Hutchison-Hayes International, Inc. 264 NLRB No. 16

(E who withdrew recognition based on fact that 11 Ees out of 40-Ee unit no longer desired U representation violated Act)

Iowa Electric Light & Power Company 264 NLRB No. 021

(certified U's majority status *not* rebutted where E did not demonstrate that U no longer had majority or that its refusal to bargain was predicated on *good faith doubt based on objective considerations*)

Robertshaw Controls Company 263 NLRB No. 128

(following objective considerations of E to support claim U no longer majority insufficient to rebut presumption of continuing majority status: only 1/3 Ees employed at election time still employed; only 46 of total complement of 330 were U members, annual turnover of 60-65%, E advised by many Ees of dissatisfaction with U insufficient because: Bd holds that showing less than majority of unit Ees are U members not equivalent to lack of majority support, turnover not sufficient to establish reasonable doubt due to presumption that new Ees support E in same ratio as old, conversations with Ees not enough to establish proof Ees do not support U)

RCA del Caribe, Inc. 262 NLRB No. 116

(E violates Sec. 8(a)(5) by withdrawing from bargaining with incumbent U based solely on fact that ptn has been filed by outside U; however, may still withdraw recognition if its good faith doubt based on other objective considerations)

Wagner Distribution Services, Inc. d/b/a Distribution Services West 262 NLRB No. 096

(E's burden for rebuttal of presumption of continued majority after expiration of contract heavy one. E must come forward with evidence of objective considerations which would justify its claim of doubt of majority. *It is insufficient that E merely intuits nonsupport and good faith doubt may not depend solely on unfounded speculation or subjective state of mind*)

Wagner Distribution Services, Inc. d/b/a Distribution Services West 262 NLRB No. 096

(E had no basis for good faith doubt of majority that would justify refusal to continue to recognize and bargain with incumbent U where it had mere suspicions of Ee dissatisfaction which it could confirm only through coercive soliciting Ees to sign decertification ptn, and reports of Ee's dissatisfaction came to E second hand through supervisors and E never called Ees themselves, and number of Ees expressing dissatisfaction was far short of majority)

J. D. Candler Roofing Company, Inc. 258 NLRB No. 063

(withdrawal of recognition from U, violative where not explained by E as having been based on any *objective considerations* or loss of majority by U)

Landmark International Trucks, Inc. 257 NLRB No. 170

(successor E who withdrew recognition from U w/o objective evidence of U's loss of majority status violated Act)

Chicago Magnesium Castings Company 256 NLRB No. 105

(E's withdrawal of recognition, unlawful since E was precluded from asserting doubt of U's majority status by prior unremedied ULPs, and, therefore Bd found it unnecessary to consider whether E's evidence would amount to objective considerations sufficient to support asserted doubt of good-faith doubt of U's majority status)

First National Maintenance Corporation 254 NLRB No. 028

(inference that U did not represent majority of E's Ees gleaned from facts that: (1) no Ees had signed cards for U; (2) no Ees had paid dues to any U; (3) no notices, meetings or information concerning U had been brought to Ees' attention; and (4) U representative failed to appear at Bd hearing with any testimony or cards concerning U membership)

International Medication Systems, Ltd. 253 NLRB No. 120

(fact, that members of Ees' negotiating committee became disinterested in further participation in contract negotiations does not, alone, establish general Ee disinterest in being represented by U)

Independent Association of Steel Fabricators, Inc.; etc. 252 NLRB No. 129

(on ct remand, Bd in issuing bargaining order overruled ALJ finding that member of E-association withdrew from association and executed contract with outside U while entertaining good faith doubt of incumbent U's continued majority, where record was devoid of any objective factors w/i E's knowledge on which it could have reasonably relied to conclude that majority of its seven Ees no longer supported incumbent U)

Independent Association of Steel Fabricators, Inc.; etc. 252 NLRB No. 129

(on ct remand, Bd held withdrawal of two Es from E association and execution of individual contracts with outside U, not unlawful, where each E possessed objective basis for good faith belief that incumbent U by date of execution of contract had lost support of majority of unit Ees)

Westwood Import Company, Inc. 251 NLRB No. 162

Crestline Memorial Hospital Association, Inc. 250 NLRB No. 028

(E may lawfully insist on contract terminating with certification year only when it has reasonable belief based on objective considerations that U no longer possesses majority support, and here, where basis for E's belief was

4080-0125—Cont.

letter from some unit members expressing their dissatisfaction with U's conduct of ratification election in which U refused to allow nonmembers right to vote, does not constitute signers' opposition to continued representation by U and refusal to bargain violative)

Hospitality Motor Inn, Inc. (Hotel & Restaurant Employees & Bartenders Union, Local No. 235) **250 NLRB No. 185**
(refusal to meet with U because of alleged doubt of U's continued majority status, unlawful where doubt was w/o sufficient objective basis or based on alleged but unproved admission by U)

Tri-State Carpenters & Joiners District Council **250 NLRB No. 125**
(refusal to bargain violative where 3 Ee unit offered U option of bargaining for them or not but indicated their desire to remain members and U reassured members in letter that it would represent them; which letter E knew about; this along with E's unilateral promulgation of unlawful Ee rule indicates E did not have reasonable grounds based on objective consideration to doubt U's majority status)

Petroleum Contractors, Inc. **250 NLRB No. 094**

Victor Marsh, A Division of TCB, Inc. **JD-272-82**

Prairie Glove Division, Advance Glove Company **JD-164-80**
(E's withdrawing recognition from, and refusing to bargain with, U assertedly because Ees at work during U strike said they would like to vote on *union issue*, or wanted to vote U issue, or could not understand why they could not vote on U issue, violative since, even if E's testimony concerning alleged statements by Ees was credited, the words attributed to Ees did not constitute rejection of U representation, and as such E did not have objective basis for doubting U's majority status)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**

Thomas Industries, Inc. v. N.L.R.B. **687 F.2d 863 (C.A. 6, Sept. 1982)**
(rapid or large decline in dues checkoff (from 63% to 31% in period of 10 months), negative comments about U by 1/3 Ees, resignations by Ees, U vice president and 5 other officials was substantial objective evidence of loss of U support in 102 Ee unit)

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**
(although subjective evidence may be used to bolster E's argument)

N.L.R.B. v. Antonino Carilli, d/b/a Antonino's Restaurant **648 F.2d 1206 (C.A. 9, June 1981)**

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(Es' contention that E's good faith belief that U no longer had majority support is all that is required to withdraw recognition, rejected; E's good faith doubt of U's majority status must be objective considerations and Bd's determination of whether defense is established will be upheld if supported by substantial evidence on the record)

4080-0150 Belief must be held in good faith and not advanced to gain time to undermine union

Iowa Electric Light & Power Company **264 NLRB No. 021**
(certified U's majority status *not* rebutted where E did not demonstrate that U no longer had majority or that its refusal to bargain was predicated on *good faith doubt based on objective considerations*)

Carbon Specialties, Inc. **JD-510-80**
(attempting to withdraw recognition of U violative, where E and U had in being a bargaining agreement which when reduced to writing they were obliged to sign and which embraced recognition of U as bargaining agent; moreover, E had no basis to believe, as contended, that U had lost majority status in view of its promise and grant of benefits to induce Ees to defect from and disavow U)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(E's good faith doubt must not have been raised in context of illegal anti-U activities, or other conduct by E aimed at causing disaffection from U or indicating that in raising loss of majority issue E was merely seeking to gain time in which to undermine U; existence of ULP prior to refusal to bargain interjects element of uncertainty about whether E thus caused possible loss of majority; if it is shown that ULP did not significantly contribute to loss of majority, E may avoid bargaining order)

N.L.R.B. v. Koenig Iron Works, Inc.; et al. **681 F.2d 130 (C.A. 2, June 1982)**
(in considering evidence of support for U, court will look at Ee attitudes *before* E's refusal to bargain occurred and was E aware of this)

N.L.R.B. v. Scott Printing Corporation and J&J House of Composition **612 F.2d 783 (C.A. 3)**
(remand to Bd to determine if Bd should have allowed E to assert good faith doubt in U's majority status because ALJ failed to find that U did not represent majority of Ees and Bd adopted ALJ's findings, thus there are no findings on record concerning good faith doubt defense)

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**
(reasonable doubt as to majority status must only be asserted in good faith and may not, be in context of E's activities aimed at causing disaffection from U)

N.L.R.B. v. Antonino Carilli, d/b/a Antonino's Restaurant **648 F.2d 1206 (C.A. 9, June 1981)**
(E's contention it was not required to give U opportunity to bargain regarding changes in insurance plan since futile where U had erroneously asserted E bound by extension of multi-E bargaining agreement and had not requested bargaining once it learned of changes, since E was motivated by desire to undermine U where it had expressed intention to drop U and institute new insurance plan before U expressed belief E bound by bargaining agreement extension, and E refused invitation to meet with U and discuss its position, and U not so intransigent as to relieve E of duty to bargain)

Peoples Gas System, Inc. v. N.L.R.B. **629 F.2d 35 (C.A.D.C., 1980)**
(standard is good faith doubt, proof is not required)

4080-0175 Withdrawal of recognition must be at appropriate time in relation to

4080-0175-2000 Certification

Lexington Cartage Company, Inc. **259 NLRB No. 085**
(ptn signed by all members of unit stating that they wished to renounce U not unusual circumstance that would justify E's refusal to bargain during certification year; further, ptn signed after E's discharge of leading U adherent and where E had made no counterproposals to U contract proposals during two and a half months and several bargaining sessions)

4080-0175-4000 Voluntary recognition

Cardox Division of Chemetron Corporation **258 NLRB No. 159**
(violation where E withdrew recognition and refused to bargain with voluntarily recognized representative. Reasonable period of time did not pass where U and E met only once during 3-1/2 months of recognition despite efforts by U to have more meetings. Furthermore, whether unit is appropriate or not is of no consequence where E voluntarily recognized bargaining representative of unit)

Landmark International Trucks, Inc. **257 NLRB No. 170**
(successor E who voluntarily recognized U and withdrew recognition 3 weeks later violated Act as it did not give reasonable time for bargaining to succeed)

4080-0175-6000 Contract

Construction Erectors, Inc. **265 NLRB No. 098**
(on remand from U.S. Court of Appeals, Bd found E's repudiation of collective bargaining agreement before its termination date, unlawful, since workforce in bargaining unit had become permanent and stable and U obtained majority support w/i unit of Ironworkers during period w/i effective term of applicable contract; E moved its Ees from job to job and did not regularly assign Ees to single jobs and then to no subsequent jobs; 10 of 15 Ees in core group were U members and worked 75% of total days on which Ironworkers were employed)

Baldor Electric Company **258 NLRB No. 183**
(where majority of unit Ees voted to replace incumbent U with another U and E continued to recognize incumbent U and honor dues-checkoff authorization it did not violate Act as E is required to continue to recognize U with which it has contract so long as contract bars representation ptn; duty to bargain is not affected by U's loss of majority status and here where E faced with two tenable claims of representative status it should not be forced to choose between competing groups)

Pacific Erectors, Inc. **256 NLRB No. 066**
(violation, where contractor discharged Ironworker Ees, and rather than resolve dispute signed contract with Sheet Metal Workers over protest of Ironworkers, since E had short form contract with Iron Workers who had majority on job, notwithstanding Ironworker Ees walked off job, or that short form contract stated dispute provisions of master agreement were not binding; E's action could not be justified by existence of any jurisdictional dispute nor could Sheet Metal Workers contract be considered pre-hire contract under construction industry proviso for job herein where job between 34 to 40 percent complete when signed)

Royce Lindsay d/b/a Royce Lindsay Plumbing, Heating, and Refrigeration Supply Company, etc. **JD-(SF)-3-82**
(where owner of individual proprietorship formed several business entities to replace individual proprietorship which had E-association contract with U, and new entities were found to constitute single E, E held to have unlawfully refused to recognize and bargain with U and to have unlawfully withdrawn recognition of U, since new entities are *disguised continuance* of individual proprietorship, were admittedly formed to avoid higher costs of U contract, and are subject to all legal and contractual obligations of predecessor)

4080-0175-8000 Refusal to negotiate renewal of contract while continuing recognition under current one

4080-0175-8033—Cont.

Connecticut Distributors, Inc. 258 NLRB No. 170
(where E had withdrawn recognition and then reestablished bargaining relationship, withdrawal of recognition again and continued refusal to meet and bargain with U violative)

The Workshop, Inc. JD-230-80
(E's failure to ans U's letter requesting meeting to negotiate new, modified contract, unlawful where presumption of majority status continued, and evidence did not support E's claim of doubt of U's majority status; E's poll of Ees was unlawful, decline in Ees' checkoff authorizations resulted from decline in unit size, Ees' decertification ptn was filed 3 month's *after* E's refusal to bargain, and failure to fill U office at E's facility did not support E's claim when Ees there were still represented by U)

4080-0175-8067 Timely filing of petition for election

Abbey Medical/Abbey Rents, Inc. 264 NLRB No. 129
(during term of collective-bargaining agreement, E cannot withdraw recognition from U so long as valid election ptn cannot be timely filed)

4080-0175-9000 Settlement agreement

Mammoth of California, Inc. v. N.L.R.B. 673 F.2d 1091 (C.A. 9, Apr. 1982)
(where E signed settlement agreement in April stating that it would bargain with U, certification year expired in June, Ees filed decertification ptn in July, and E withdrew recognition in August alleging it believed U had lost majority status based on said ptn, withdrawal was unlawful, since E by its settlement agreement had committed itself to bargaining for a reasonable period regardless of certification year and U's status and reasonable period extended 4 months)

4080-9000 Objective Considerations Evaluated in Establishing Employer's Doubt of Majority Status

4080-9001 Generally

Volcan-Hart Corporation (St. Louis Division) 262 NLRB No. 017
(rejection of U induced by E is opposite of what is called *objective consideration* for questioning majority)

Farr's Cafeterias, Inc. 251 NLRB No. 125
(withdrawal of recognition from U, violative, where E cannot base good faith doubt of U's majority status upon anti-U petitions or Ees subsequent filing of decertification petition since such Ee defections resulted from E's own misconduct)

Schmutz Foundry and Machine Company 251 NLRB No. 197
(withdrawal of recognition and refusal to bargain, unlawful where E failed to express its alleged doubt of U's majority status at time U requested bargaining after E announced forthcoming resumption of temporarily discontinued operations and where, when expressed, its doubts allegedly based on U's inactivity and Ee disaffection with U were not reasonably based on objective facts, and its own RM petition was not basis for doubt)

Bellwood General Hospital, Inc. v. N.L.R.B. 627 F.2d 98 (C.A. 7, 1980)
(sum total of: 70% turnover in personnel, statements of Ees regarding dissatisfaction with U, extremely low attendance at U meetings, lack of any grievance activity, during first contract term or of visits by U to E's facility, cumulatively was sufficient to shift burden to GC to establish U's majority; ct refused to place burden on E of possibly committing ULP of bargaining with minority)

Bellwood General Hospital, Inc. v. N.L.R.B. 627 F.2d 98 (C.A. 7, 1980)
(cumulative effect of all evidence of loss of majority is what is relevant consideration, not each element)

4080-9006 Claims asserted by rival union

4080-9006-2000 By representation petition

Signal Transformer Co., Inc. 265 NLRB No. 033
(no violation where E withdrew recognition from U after expiration of contracts and made unilateral changes in working conditions where 124 Ees out of unit of 130 Ees signed ptn stating they no longer desired U to represent them, since withdrawal of recognition based on objective considerations to support good faith doubt of U's continuing majority; good faith doubt justified withdrawal notwithstanding another U had filed R ptn since these circumstances constitute exception to Bd's modification of *Midwest Piping*, in *RCA del Caribe* that normally E must continue to bargain with incumbent U during processing of ptn by outside U)

Dresser Industries, Inc. 264 NLRB No. 145
(overruling *Telautograph* rule, Bd held that mere filing of decertification ptn, like mere filing of rival U's ptn, would not require or permit E to withdraw from bargaining or executing contract with incumbent U, since such rule does not give due weight to incumbent U's continuing presumption of majority status and is not best way to achieve E neutrality in the election; E with good faith doubt based on objective evidence, e.g. decertification ptn supported by unit majority, may still withdraw; E's actions herein held not unlawful since E relied on then applicable Bd law of *Telautograph*)

RCA del Caribe, Inc. 262 NLRB No. 116
(E violates Sec. 8(a)(5) by withdrawing from bargaining with incumbent U based solely on fact that ptn has been filed by outside U; however, may still withdraw recognition if its good faith doubt based on other objective considerations)

Abraham Grossman d/b/a Bruckner Nursing Home 262 NLRB No. 115
(Bd will no longer find Sec. 8(a)(2) violations in rival U, initial organizing situations when an E recognizes U which alone represents uncoerced, unassisted majority, before valid ptn for election has been filed with Bd; however, once notified of valid ptn, E must refrain from recognizing any of rival Us)

4080-9006-9000 By other means

N.L.R.B. v. Koenig Iron Works, Inc.; et al. 681 F.2d 130 (C.A. 2, June 1982)
(signed representation cards of rival U are better evidence of loss of majority support than decline in dues payment as these are unambiguous indications that Ees have rejected U itself as their bargaining agent)

N.L.R.B. v. Koenig Iron Works, Inc.; et al. 681 F.2d 130 (C.A. 2, June 1982)
(where E told Ees that they would henceforth be represented by another U, they picketed for 5 minutes on behalf of that U and then with E signed collective-bargaining agreement with U, this is not evidence of *good faith* support for U)

4080-9012 Employer's information concerning employee dissatisfaction with union

Marriott In-Flite Service, A Division of Marriott Corporation 258 NLRB No. 099
(E's withdrawal of recognition based on decertification ptn filed after certification year, unlawful, in view of its previous failure to bargain in good faith, and where, notwithstanding it could only identify handfull of Ees who had indicated desire to get rid of U, E planted idea of decertification in minds of Ees by holding meetings on work time at which supervisors spoke time at which supervisors spoke in favor of decertification, distributed booklets regarding decertification procedure and suggested actual language for ptns)

4080-9012-0100 Generally

N.L.R.B. v. Koenig Iron Works, Inc.; et al. 681 F.2d 130 (C.A. 2, June 1982)
(E has burden of producing clear and convincing evidence of loss of U support)

H & D, Inc. v. N.L.R.B. 670 F.2d 120 (C.A. 9, Feb. 1982)
(ct upheld Bd's finding violation in E's unilateral withdrawal from and refusal to bargain as part of multi-E group where bargaining to impasse and mass resignation of E's Ees from U were not unusual circumstances justifying withdrawal from multi-E bargaining unit; test is not whether majority of Ees of one E resign from U but whether majority of all Ees represented in contract negotiations resign)

4080-9012-0150 Must come from employees and not employer on their behalf

Lincoln Hills Nursing Home, Inc.; et al. 257 NLRB No. 140
(proof of Ees dissatisfaction must be documented by objective evidence and lacking such evidence, E's withdrawal of recognition violative)

KPNX Broadcasting Company, Inc. d/b/a KSD-AM Radio 262 NLRB No. 080
(E who withdrew recognition from incumbent U based on ptn signed by majority of unit Ees did not violate Act where E played no part in circulating ptn and had never been involved in any ULPs)

Hydro Conduit Corporation 264 NLRB No. 048
(circulation of anti-U ptn signed by 34 out of 38 Ees in unit and withdrawal of recognition of U based on ptn, not unlawful, since not attributable to E even if individual who circulated ptn held supervisor where individual was member of U and bargaining unit, was acting in concert with fellow Ees and not as representative of management in circulating ptn)

4080-9012-1700 Through statements of employees

Mingtree Restaurant, Inc. d/b/a Forbidden City Restaurant 265 NLRB No. 082
(supervisors' affidavits stating that majority of Ees expressed strong antiunion sentiments w/o stating what those statements were held not sufficient to show good faith doubt of U's majority status since affidavits merely tantamount to allegations but not proof of discontent)

Stratford Visiting Nurses Association 264 NLRB No. 136
(presumption of continuation of certified U's majority status upon expiration of its contract with E not rebutted by facts that: only 2 of 6 unit Ees were U members; only 2 of 6 unit Ees were on dues checkoff; and 2, or 3, of 6 unit Ees testified at Bd hearing that they did not want U to represent them as of refusal-to-bargain date. None of above facts established lack of majority support for U. As to last reason, none of Ees had communicated to U their desire not to be represented and such testimony is highly unreliable for it

4080-5012-1700—Cont.

requests Ee to relate several months old uncommunicated states of mind, knowing that E's defense rests on reply)

Pick-Mt. Laurel Corporation **239 NLRB No. 094**
(expression of dissatisfaction with U made to supervisors by at least 29 out of 103 Ees; and notwithstanding occurred outside Section 10(b) period, predecessor E's illegal practice of requiring Ees to join U and sign dues checkoff on first day of work and continuing this practice into 10(b) period, and its recognition of U and negotiation of agreement w/o designation by any member of unit, sufficient to support successor E's good faith doubt justifying its withdrawal of recognition)

Landmark International Trucks, Inc. **257 NLRB No. 170**
(statements by two Ees that they were disenchanted with U and no longer wished to be members or pay dues insufficient to establish rejection of U - even by 2 Ees who made statements)

Landmark International Trucks, Inc. **257 NLRB No. 170**
(Ee's statement to E that everyone in service department had resigned from U not sufficient to provide E with objective evidence of Ee dissatisfaction with U and are merely hearsay)

Kenyon Printing and Office Supply, Inc. **252 NLRB No. 184**
(anti-U comments of one Ee out of unit of five did not signify loss of majority or warrant good faith doubt)

Schmutz Foundry and Machine Company **251 NLRB No. 197**
(supervisor's report of conversation with one allegedly disaffected Ee and uninvestigated hearsay not valid basis for doubt)

Hospitality Motor Inn, Inc. (Hotel & Restaurant Employees & Bartenders Union, Local No. 235) **249 NLRB No. 155**
(where 43 Ees had voted against U, expression in discussions with E's supervisors little more than a year after election of dissatisfaction with U by 33 Ees who, according to some testimony, had always been opposed to U found not to rebut presumption of U's majority status or to constitute objective basis for good faith doubt of U's continued majority status)

The Saloon, Inc. **247 NLRB No. 186**
(withdrawal of recognition upon expiration of contract, unlawful, where E failed to rebut contracting U's majority presumption by asserting that 10 percent of unit Ees lacked zeal for U, and by conclusionary observations to E by supervisor that *lot of* Ees did not care for U)

Victor Marsh, A Division of TCB, Inc. **JD-272-82**
(E had objective basis for good faith doubt of U's majority that justified withdrawal of recognition, in totality of circumstances, where strike replacements crossed picket line and there were conflicts on picket line between pickets and replacements, and in view of 12 resignations from U during strike out of unit of 105 and expression of applicants for positions replacing strikers that they prefered to work w/o U representation)

Patio Lodge, Inc., and Fountain Lodge, Inc. **JD-(ATL)-40-82**
(statement of Ee that she was glad to be out of U not basis for doubt of majority status)

International Total Services, Inc. **JD-66-81**
(successor E's refusal to recognize and bargain with U, not unlawful, where E could reasonably doubt that U was representative of majority of its Ees in light of U's waiting several months after successor took over facility before demanding recognition and by that time complement of current Ees no longer comprised majority of predecessor's Ees; moreover, there were no ULPs and majority of Ees interviewed by E stated they did not want U)

Prairie Glove Division, Advance Glove Company **JD-164-80**
(E's withdrawing recognition from, and refusing to bargain with, U assertedly because Ees at work during U strike said they would like to vote on *union issue,* or wanted to vote U issue, or could not understand why they could not vote on U issue, violative since, even if E's testimony concerning alleged statements by Ees was credited, the words attributed to Ees did not constitute rejection of U representation, and as such E did not have objective basis for doubting U's majority status)

Cain's Generator and Armature Company, Inc. v. N.L.R.B. **620 F.2d 933 (C.A. 6, 1980)**
(enforcement granted where substantial evidence supported Bd's finding that none of factors relied upon by E justified withdrawal or recognition from U; E had relied upon U's alleged loss of majority status where (1) 10 of 23 Ees were new Ees, (2) lack of Ee requests for dues checkoffs--a voluntary action, and (3) several *unidentified* Ees had expressed dissatisfaction with U--, not objective factor in determining majority status)

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**
(Ees' expression of dissatisfaction with U's failure to report bargaining developments and to respond to questions about consequences of working behind picket lines not valid basis for doubt where, taken in context, did not indicate repudiation of U but only displeasure with U's handling of bargaining negotiations)

N.L.R.B. v. The Saloon, Inc. **667 F.2d 1707(T) (C.A. 9, Mar 1982)**
(withdrawing recognition upon expiration of contract, violative since bargaining relationship was presumed to continue where only 4 or 5 Ees out of unit of 40 or 50 Ees had misgivings relative to U representation)

4080-5012-4000 Poll by employee

Petroleum Contractors, Inc. **250 NLRB No. 084**
(contention of E which had prior bargaining agreement with U that its refusal to sign new agreement justified since negotiations conducted subject to condition precedent that U demonstrate majority status, rejected, where Ees approved contract and presumption of majority not rebutted by Ees' lack of membership or check off authorizations, nor by written poll taken by Ee where no valid decertification ptn filed)

4080-5012-5000 Polling by employer

Mingtree Restaurant, Inc. d/b/a Forbidden City Restaurant **265 NLRB No. 082**
(poll conducted for E by accounting firm for E after expiration of contract which showed lack of Ee support for recognized U, unlawful, notwithstanding properly conducted w/i guidelines of *Struksnes Construction Co.,* where E did not have sufficient objective considerations upon which to base a reasonable doubt of U's majority status prior to conducting poll)

Hutchinson-Hayes International, Inc. **264 NLRB No. 148**
(before E can poll Ees about their desire for continued U representation, it must demonstrate it has objective basis for doubting U's majority status)

Thomas Industries, Inc. **255 NLRB No. 094**
(withdrawal of recognition based on poll of Ees as to whether they wished to continue to be represented by U, unlawful, where poll was violative since neither minority number of Ees' expression of dissatisfaction with U, decline in U dues check-off authorizations, nor resignations of U officers or members, provided requisite objective basis for doubting U's majority required for polling where U was certified and bargaining agreement in effect; further, atmosphere not conducive to free choice was created by E by delivering captive audience speech urging Ees to vote against U immediately prior to poll)

N.L.R.B. v. A.W. Thompson, Inc. **651 F.2d 1141 (C.A. 5, July 1981)**
(E who has not engaged in ULPs or otherwise created coercive atmosphere may, after giving notice to certified bargaining representative, poll Ees for their U sentiment if there is substantial, objective evidence of loss of U support (even if evidence by itself not sufficient to justify withdrawal), and if poll meets procedural guidelines set out in *Struksnes Construction Co.* 165 NLRB 1062 (1967))

Thomas Industries, Inc. v. N.L.R.B. **687 F.2d 863 (C.A. 6, Sept. 1982)**
(polls to test Ees' U sentiments are justified only if E has substantial, objective basis for doubting in good faith U's majority status even if that basis is insufficient in itself to justify withdrawal)

4080-5012-6700 Written communications from employees

Signal Transformer Co., Inc. **265 NLRB No. 033**
(no violation where E withdrew recognition from U after expiration of contracts and made unilateral changes in working conditions where 124 Ees out of unit of 130 Ees signed ptn stating they no longer desired U to represent them, since withdrawal of recognition based on objective considerations to support good faith doubt of U's continuing majority; good faith doubt justified withdrawal notwithstanding another U had filed R ptn since these circumstances constitute exception to Bd's modification of *Midwest Piping,* in *RCA del Caribe* that normally E must continue to bargain with incumbent U during processing of ptn by outside U)

Hutchinson-Hayes International, Inc. **264 NLRB No. 168**
(ptn signed by 9 Ees indicating that they did not want to be represented by U sufficient to prove that those Ees did not desire U representation)

Abbey Medical/Abbey Rents, Inc. **264 NLRB No. 129**
(E who withdrew recognition from U based on information received from Ees that they were no longer interested in U representation violated Act as assertion of doubt of majority status was tainted by its commission of Sec. 8(a)(5) ULP of unilaterally ceasing contractually mandated fringe-benefit contributions)

Antonopoulos, Incorporated d/b/a Roger's of Santa Clara **261 NLRB No. 040**
(E's withdrawal of recognition from U based on petition solicited by supervisory Ee violative as petition tainted and E did not have good faith doubt of majority status)

United States Gypsum Company **260 NLRB No. 148**
(withdrawal of recognition violative where Ees ptns to E stating that they no longer wished U to represent them were tainted by E's refusal to disregard requests by U and mediator to set dates for bargaining)

Lexington Cartage Company, Inc. **259 NLRB No. 088**
(ptn signed by all members of unit stating that they wished to renounce U not unusual circumstance that would justify E's refusal to bargain during

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4080-5012-6700—Cont.

certification year; further, ptn signed after E's discharge of leading U adherent and where E had made no counterproposals to U contract proposals during two and a half months and several bargaining sessions)

Staats and Staats, Inc. **254 NLRB No. 105**
(ptn signed by Ees stating they no longer wanted U rejected as reliable guage of Ee sentiment towards U where ptn followed in wake of E's unremedied ULPs)

Hydro Conduit Corporation **254 NLRB No. 048**
(circulation of anti-U ptn signed by 34 out of 38 Ees in unit and withdrawal of recognition of U based on ptn, not unlawful, since not attributable to E even if individual who circulated ptn held supervisor where individual was member of U and bargaining unit, was acting in concert with fellow Ees and not as representative of management in circulating ptn)

Crestline Memorial Hospital Association, Inc. **290 NLRB No. 028**
(E may lawfully insist on contract terminating with certification year only when it has reasonable belief based on objective considerations that U no longer possesses majority support, and here, where basis for E's belief was letter from some unit members expressing their dissatisfaction with U's conduct of ratification election in which U refused to allow nonmembers right to vote, does not constitute signers' opposition to continued representation by U and refusal to bargain violative)

Petroleum Contractors, Inc. **250 NLRB No. 094**
(contention of E which had prior bargaining agreement with U that its refusal to sign new agreement justified since negotiations conducted subject to condition precedent that U demonstrate majority status, rejected, where Ees approved contract and presumption of majority not rebutted by Ees' lack of membership or check off authorizations, nor by written poll taken by Ee where no valid decertification ptn filed)

Garrett Railroad Car & Equipment, Inc. v. N.L.R.B. **683 F.2d 731 (C.A. 3, June 1982)**
(Ee ptn signed by almost half of Ees asserting interest in representation by in-plant committee held not evidence of U's loss of majority as ptn was tainted by superintendants' suggestions that Ees sign or they might lose jobs, use of E's time and premises in support of ptn; thus, E did not demonstrate neutrality)

Crestline Memorial Hospital Association, Inc. v. N.L.R.B. **668 F.2d 243 (C.A. 6, Jan. 1982)**
(letter from non-U Ees to hospital protesting U ratification procedures which denied them vote not enough to support good faith doubt of majority status of certified bargaining representative which is conclusively presumed for 1 year, especially where letter silent on question of continued support of U itself)

N.L.R.B. v. Half-Century, Inc. d/b/a Holiday Inn of Niles, Michigan **644 F.2d 885(T) (C.A. 6, Jan 21, 1981)**
(ct denied enforcement of bargaining order, reversing Bd finding of bad faith bargaining, where successor-E had met with U but did not reach agreement and during course of negotiations ptn signed by 2/3's of Ees was presented to E indicating they no longer wished U representation and E refused to bargain further)

Sahara-Tahoe Corporation v. N.L.R.B. **648 F.2d 553 (C.A. 9, Nov 1980)**
(E's refusal to bargain held unlawful, notwithstanding E's contention of good faith doubt of U majority, since ptn for decertification, of which E had knowledge, although it was not filed, did not by itself or together with other evidence unequivocally indicate U support had declined to minority; however, this decision did not imply that a ptn which unambiguously indicated desire not to be represented by U and signed by substantial number of Ees could not be considered in arriving at good faith doubt if that ptn had not been filed)

N.L.R.B. v. Sacramento Clinical Laboratory, Inc. **623 F.2d 110 (C.A. 9, July 1980)**
(no violation by withdrawal of recognition and refusal to bargain or basis of U's loss of majority status where part-time Ee initiated and urged other part-time Ees to sign antiU ptn while predicting dire consequences of unionization, which predictions could not be attributed to E and could be evaluated by fellow Ees over whom Ee-petitioner had neither influence nor control)

4080-5012-8300 Employee support of rival union

Baldor Electric Company **258 NLRB No. 183**
(where majority of unit Ees voted to replace incumbent U with another U and E continued to recognize incumbent U and honor dues-checkoff authorization it did not violate Act as E is required to continue to recognize U with which it has contract so long as contract bars representation ptn; duty to bargain is not affected by U's loss of majority status and here where E faced with two tenable claims of representative status it should not be forced to choose between competing groups)

4080-5012-9900 From other sources

International Medication Systems, Ltd. **253 NLRB No. 128**
(fact, that members of Ees' negotiating committee became disinterested in further participation in contract negotiations does not, alone, establish general Ee disinterest in being represented by U)

Hospitality Motor Inn, Inc. (Hotel & Restaurant Employees & Bartenders Union, Local No. 235) **250 NLRB No. 158**
(U official's statement in newspaper article that few of E's workers employed during election and on bargaining committee remained because of E's harrassment found not to constitute objective basis for good faith doubt of majority status since it was not admission by U of loss of majority but accusations of ULPs of E; moreover, E's asserted high turnover was not abnormal)

N.L.R.B. v. A.W. Thompson, Inc. **651 F.2d 1141 (C.A. 5, July 1981)**
(lack of Ee participation in U affairs, Ee turnover, U's failure to process grievances, post notices on bulletin boards, appoint stewards, absence of Ee conversations about U and change in ownership of company are insufficient factors to support a good faith doubt in majority status as, unlike in industrial setting, nature of oil-drilling industry and wide dispersion of Ees did not lead to conclusion of lack of U support on part of Ees)

4080-5018 Employee support or lack thereof of incumbent's strike

Elias Mallouk Realty Corp. **265 NLRB No. 156**
(expression of Ee sentiment against engaging in strike *falls far short of providing sufficient objective evidence that U no longer represented majority of E's work force*)

Hutchison-Hayes International, Inc. **264 NLRB No. 168**
(non participation in strike is not enough to indicate lack of support for U)

Plymouth Locomotive Works, Inc. **261 NLRB No. 087**
(defense that E withdrew recognition because certification year had expired and E allegedly believed U had lost its majority status because unit Ees did not support strike vote, rejected where E offered no evidence of lack of such support; moreover E had undermined U support with its ULPs)

Pennco, Inc. **250 NLRB No. 093**
(new Ees, including replacements for strikers, are presumed to support incumbent U in same ratio as those they replaced, notwithstanding crossed picket line on which violence had occured; Bd refused to presume U would not be able to accomodate interests of striking and non-striking Ees)

Victor Marsh, A Division of TCB, Inc. **JD-272-82**
(E had objective basis for good faith doubt of U's majority that justified withdrawal of recognition, in totality of circumstances, where strike replacements crossed picket line and there were conflicts on picket line between pickets and replacements, and in view of 12 resignations from U during strike out of unit of 105 and expression of applicants for positions replacing strikers that they prefered to work w/o U representation).

Garrett Railroad Car & Equipment, Inc. v. N.L.R.B. **683 F.2d 731 (C.A. 3, June 1982)**
(no good faith doubt exists that U lost majority notwithstanding strike replacements plus number of Ees not on strike exceeds number of strikers, as Ees' refusal to cross or join picket line does not create such presumption)

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**
(fact no Ee joined in picket line established by U, not valid basis for doubt, where refusal to join was for economic reasons)

4080-5024 Checkoff authorizations

4080-5024-2500 Voluntary

Stratford Visiting Nurses Association **264 NLRB No. 136**
(presumption of continuation of certified U's majority status upon expiration of its contract with E not rebutted by facts that: only 2 of 6 unit Ees were U members; only 2 of 6 unit Ees were on dues checkoff; and 2, or 3, of 6 unit Ees testified at Bd hearing that they did not want U to represent them as of refusal-to-bargain date. None of above facts established lack of majority support for U. As to last reason, none of Ees had communicated to U their desire not to be represented and such testimony is highly unreliable for it requests Ee to relate several months old uncommunicated states of mind, knowing that E's defense rests on reply)

Cain's Generator and Armature Company, Inc. v. N.L.R.B. **628 F.2d 983 (C.A. 6, 1980)**
(enforcement granted where substantial evidence supported Bd's finding that none of factors relied upon by E justified withdrawal or recognition from U; E had relied upon U's alleged loss of majority status where (1) 10 of 23 Ees were new Ees, (2) lack of Ee requests for dues checkoffs–a voluntary action, and (3) several *unidentified* Ees had expressed dissatisfaction with U–, not objective factor in determining majority status)

4080-5024-5000 Pursuant to union security

4080-5024-5000—Cont.

Pick-Mt. Laurel Corporation 259 NLRB No. 034

(expression of dissatisfaction with U made to supervisors by at least 29 out of 103 Ees; and notwithstanding occurred outside Section 10(b) period, predecessor E's illegal practice of requiring Ees to join U and sign dues checkoff on first day of work and continuing this practice into 10(b) period, and its recognition of U and negotiation of agreement w/o designation by any member of unit, sufficient to support successor E's good faith doubt justifying its withdrawal of recognition)

Petroleum Contractors, Inc. 250 NLRB No. 094

(contention of E which had prior bargaining agreement with U that its refusal to sign new agreement justified since negotiations conducted subject to condition precedent that U demonstrate majority status, rejected, where Ees approved contract and presumption of majority not rebutted by Ees' lack of membership or check off authorizations, nor by written poll taken by Ee where no valid decertification ptn filed)

4080-5024-6700 Decrease in authorizations

Patio Lodge, Inc., and Fountain Lodge, Inc. JD-(ATL)-40-82

(dues checkoff revocations not basis for good faith doubt of majority status where no showing of substantial number of revocations shortly before withdrawal of recognition and particularly in right to work state)

Thomas Industries, Inc. v. N.L.R.B. 687 F.2d 863 (C.A. 6, Sept. 1982)

(rapid or large decline in dues checkoff (from 63% to 31% in period of 10 months), negative comments about U by 1/3 Ees, resignations by Ees, U vice president and 5 other officials was substantial objective evidence of loss of U support in 102 Ee unit)

N.L.R.B. v. Triplett Corporation 619 F.2d 586 (C.A. 6, 1980)

(ct held E did not violate 8(a)(5) by withdrawing recognition from and refusing to bargain with certified U since E rebutted presumption of U's continued majority status by showing good faith doubt thereof where few eligible Ees became new members, grievances declined, and in one-week period one-sixth of unit Ees notified E that they were terminating membership and rescinding dues checkoff; Bd failed to distinguish or set forth acceptable reasons for not following this ct's decision in *Automated Business Systems*)

Peoples Gas System, Inc. v. N.L.R.B. 625 F.2d 35 (C.A.D.C., 1980)

(E had insufficient evidence to overcome presumption of continuing majority support where withdrawal of recognition based on decline in U dues check-off authorization in right-to-work state, high Ee turnover and U's seeming willingness to agree to almost any E contract proposal and fact that E acted in good faith is necessary but not sufficient element to justify withdrawal)

4080-5024-7500 Revocations

Hutchison-Hayes International, Inc. 264 NLRB No. 168

(revocation of dues checkoff authorization not sufficient to prove lack of support for U)

Strite-Anderson Mfg. JD-175-82

(E's changes in working hours and punching in and disregard of old contract's seniority requirements regarding recall from layoff, not unlawful in absence of new contract or renewal of expired contract where E had reasonable doubt of U's majority status based on U shop steward's circulation of decertification ptn and Ees' revocation of checkoff authorizations)

4080-5030 Internal union activities as evidence of lack of support

4080-5030-3300 Nonpayment of dues or fees

N.L.R.B. v. Koenig Iron Works, Inc.; et al. 681 F.2d 130 (C.A. 2, June 1982)

(decreased dues payments alone cannot rebut presumption of majority support)

4080-5030-5000 Nonmembership in Union

Robertshaw Controls Company 263 NLRB No. 128

(following objective considerations of E to support claim U no longer majority insufficient to rebut presumption of continuing majority status: only 1/3 Ees employed at election time still employed; only 46 of total complement of 330 were U members, annual turnover of 60-65%, E advised by many Ees of dissatisfaction with U insufficient because: Bd holds that showing less than majority of unit Ees are U members not equivalent to lack of majority support, turnover not sufficient to establish reasonable doubt due to presumption that new Ees support E in same ratio as old, conversations with Ees not enough to establish proof Ees do not support U)

Petroleum Contractors, Inc. 250 NLRB No. 094

(contention of E which had prior bargaining agreement with U that its refusal to sign new agreement justified since negotiations conducted subject to condition precedent that U demonstrate majority status, rejected, where Ees approved contract and presumption of majority not rebutted by Ees' lack of membership or check off authorizations, nor by written poll taken by Ee where no valid decertification ptn filed)

Fort Wayne Newspapers, Inc. 267 NLRB No. [illegible]

Victor Marsh, A Division of TCB, Inc. JD-272-82

(E had objective basis for good faith doubt of U's majority that justified withdrawal of recognition, in totality of circumstances, where strike replacements crossed picket line and there were conflicts on picket line between pickets and replacements, and in view of 12 resignations from U during strike out of unit of 105 and expression of applicants for positions replacing strikers that they prefered to work w/o U representation)

Bellwood General Hospital, Inc. v. N.L.R.B. 627 F.2d 98 (C.A. 7, 1980)

(refusal to allow E to introduce into evidence U's membership list obtained after withdrawal of recognition improper, notwithstanding membership not correlative with U support, since low membership is *clearly probative* to issue of U's continued majority and admissibility is not determined solely by what evidence E could have relied on upon in making decision to withdraw recognition)

4080-5030-5500 Resignations from union

N.L.R.B. v. Mar-Len Cabinets, Inc. 659 F.2d 995 (C.A. 9, Oct. 1981)

(fact 4 out of 6 Ees in unit resigned from U not valid basis for doubt where sufficient evidence to support Bd's conclusion that Ees resigned from U to avoid potential fines rather than to oust U and resulted from Es unlawful refusal to bargain)

4080-5036 Inactivity by union

N.L.R.B. v. A.W. Thompson, Inc. 651 F.2d 1141 (C.A. 5, July 1981)

(lack of Ee participation in U affairs, Ee turnover, U's failure to process grievances, post notices on bulletin boards, appoint stewards, absence of Ee conversations about U and change in ownership of company are insufficient factors to support a good faith doubt in majority status as, unlike in industrial setting, nature of oil-drilling industry and wide dispersion of Ees did not lead to conclusion of lack of U support on part of Ees)

4080-5036-2500 Lack of communication with employer

Flex Plastics, Inc. 262 NLRB No. 078

(notwithstanding impasse reached, neither stalled negotiations, hiatus in bargaining requests, U's alleged inactivity, nor filing of RD and RM petitions, taken separately or together, suffice to raise good faith doubt of U's majority status)

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant 259 NLRB No. 065

(record does not support finding of U inactivity to question U's majority status where: U's showing of interest was tainted by E's ULPs; U had notified E of dues increase for checkoff purposes; several Ee grievances had been processed by U during term of its contract with E; and U had active shop steward who quit her job because of too many complaints)

Schmutz Foundry and Machine Company 251 NLRB No. 197

(U's failure to demand bargaining over closing and its effects not valid basis for doubt where closing was *fait accompli*)

International Total Services, Inc. JD-66-81

(successor E's refusal to recognize and bargain with U, not unlawful, where E could reasonably doubt that U was representative of majority of its Ees in light of U's waiting several months after successor took over facility before demanding recognition and by that time complement of current Ees no longer comprised majority of predecessor's Ees; moreover, there were no ULPs and majority of Ees interviewed by E stated they did not want U)

4080-5036-5000 Lack of communication or contact with employees

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant 259 NLRB No. 065

(record does not support finding of U inactivity to question U's majority status where: U's showing of interest was tainted by E's ULPs; U had notified E of dues increase for checkoff purposes; several Ee grievances had been processed by U during term of its contract with E; and U had active shop steward who quit her job because of too many complaints)

First National Maintenance Corporation 284 NLRB No. 028

(inference that U did not represent majority of E's Ees gleaned from facts that: (1) no Ees had signed cards for U; (2) no Ees had paid dues to any U; (3) no notices, meetings or information concerning U had been brought to Ees' attention; and (4) U representative failed to appear at Bd hearing with any testimony or cards concerning U membership)

N.L.R.B. v. Koenig Iron Works, Inc.; et al. 681 F.2d 130 (C.A. 2, June 1982)

(2 year lapse of time between strike and E's refusal to bargain does not prove U had any lack of interest in Ees of E and E did not have good faith doubt of majority status based on this reason)

4080-5036-7500 Failure to file grievances

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant 259 NLRB No. 065

(record does not support finding of U inactivity to question U's majority status where: U's showing of interest was tainted by E's ULPs; U had

4080-5036-7500—Cont.

notified E of dues increase for checkoff purposes; several Ee grievances had been processed by U during term of its contract with E; and U had active shop steward who quit her job because of too many complaints)

4080-5042 Union animus

4080-5042-3300 Employer's ULP as affecting asserted reasonable grounds

Elias Mallouk Realty Corp. 265 NLRB No. 156

(E's granting recognition to another U and negotiating contract with it after contract with incumbent U had expired, unlawful, in view of E's unlawful refusal to bargain with incumbent U and unlawful assistance to favored U and absent objective considerations to rebut U's presumption of continuing majoirty status)

Abbey Medical/Abbey Rents, Inc. 264 NLRB No. 129

(E who withdrew recognition from U based on information received from Ees that they were no longer interested in U representation violated Act as assertion of doubt of majority status was tainted by its commission of Sec. 8(a)(5) ULP of unilaterally ceasing contractually mandated fringe-benefit coutributions)

Cardinal Systems, A Division of Hospitality Motor
Inns, Inc., d/b/a Cummins Component Plant 259 NLRB No. 065

(ULPs preclude E from asserting doubt of U's continued majority status)

Garrett Railroad Car & Equipment, Inc. 255 NLRB No. 087

(withdrawing recognition and refusing to execute bargaining agreement, violative, where E's doubt that U represented Ee majority was based on disaffection ptn which E unlawfully induced and aided in its circulation)

Mark Twain Marine Industries, Inc. 254 NLRB No. 144

(withdrawal of recognition and refusal to bargain based on contention that U lost support of majority, violative, since any loss of majority was result of E's ULPs)

Kuno Steel Products Corp. etc. 252 NLRB No. 127

(E's defense to its refusal to offer strikers reinstatement was that U lost its majority, rejected, where any loss of majority attributable to ULPs of E who cannot reap benefits from such conduct)

Westwood Import Company, Inc. 251 NLRB No. 162

(purchaser of business held successor and obligated to bargain with U representing Ees of seller where it engaged in same business at same facility and sold to substantially same customers as seller and employed all of supervisory and nonsupervisory Ees in their same job classifications; further, purchaser may not justify its failure to bargain on basis of or basis of good faith doubt of Us majority where it acquired business with full knowledge of seller's unlawful refusal to bargain)

Osteopathic Hospital Founders Association, d/b/a
Oklahoma Osteopathic Hospital v. N.L.R.B. 618 F.2d 633 (C.A. 10, 1980)

(E's withdrawal of recognition assertedly because of its doubt as to U's majority status, violative, since U's loss of majority was at least partly attributable to E's refusing to promote and hire U supporters into bargaining unit and engaging in other conduct designed to convey a coercive message to a U member)

4080-5046 Prior bargaining relationship

WDIV Post-Newsweek Stations, Michigan, Inc. 254 NLRB No. 067

(E's withdrawal of recognition from U, unlawful where, in light of bargaining history of unit, E could not have had, and did not have, good faith doubt of U's majority status when it received mediator's report of rival U card check)

4080-5051 Unlawful recognition of and relationship with union

Arpame Electric Corp. 248 NLRB No. 049

(E's recognizing and contracting with U which picketed E at construction site at time when E and another U were bound by current contract which E refused to honor held *violative* of *Sections 8(a)(2), (3), (5) and (1) of Act*)

4080-5066 Change in unit composition

Garrett Railroad Car & Equipment, Inc. v.
N.L.R.B. 683 F.2d 731 (C.A. 3, June 1982)

(no good faith doubt exists that U lost majority notwithstanding strike replacements plus number of Ees not on strike exceeds number of strikers, as Ees' refusal to cross or join picket line does not create such presumption)

Peoples Gas System, Inc. v. N.L.R.B. 629 F.2d 35 (C.A.D.C., 1980)

(E had insufficient evidence to overcome presumption of continuing majority support where withdrawal of recognition based on decline in U dues check-off authorization in right-to-work state, high Ee turnover and U's seeming willingness to agree to almost any E contract proposal and fact that E acted in good faith is necessary but not sufficient element to justify withdrawal)

4080-5066-2500 Economic turnover

Carter-Glogau Laboratories, Inc. 265 NLRB No. 017

(contention that striker replacements and newly hired Ees comprise majority of bargaining unit and that strikers who supported U are minority held insufficient to establish that U lacked majority support and does not constitute *unusual circumstances*)

Robertshaw Controls Company 263 NLRB No. 12

(following objective considerations of E to support claim U no longer majority insufficient to rebut presumption of continuing majority status: only 1/3 Ees employed at election time still employed; only 46 of total complement of 330 were U members, annual turnover of 60-65%, E advised by many Ees of dissatisfaction with U insufficient because: Bd holds that showing less than majority of unit Ees are U members not equivalent to lack of majority support, turnover not sufficient to establish reasonable doubt due to presumption that new Ees support E in same ratio as old, conversations with Ees not enough to establish proof Ees do not support U)

Cardinal Systems, A Division of Hospitality Motor
Inns, Inc., d/b/a Cummins Component Plant 259 NLRB No. 065

(turnover of Ees insufficient basis to question U's majority status, since it is presumed new Ees will support U in same ratio as those whom they have replaced)

International Medication Systems, Ltd. 253 NLRB No. 12

Kenyon Printing and Office Supply, Inc. 252 NLRB No. 15

(Ee turnover held not proof that U no longer represented majority since new Ees are presumed to support U in same ratio as those they replaced)

Pennco, Inc. 250 NLRB No. 093

(fact only 42 striking Ees out of unit of 173 sought reinstatement at conclusion of strike not basis for good faith doubt of majority where E had withdrawn recognition from U 10 months prior to start of strike)

Patio Lodge, Inc., and Fountain Lodge, Inc. JD-(ATL)-40-82

(economic turnover after election not basis for doubt of Us majority status since, absence evidence to contrary, new Ees are presumed to support U in same ratio as those they replaced)

Cartwright Hardware Company, Inc. v. N.L.R.B. 600 F.2d 268 (C.A. 10, 1979)

(bargaining order appropriate notwithstanding voluntary quit of three U members since presumption of continuing majority after expiration of contract justifies enforcement of order)

W & W Steel Company v. N.L.R.B. 599 F.2d 934 (C.A. 10, 1979)

(where U certified for company-wide unit of P&M Ees employed in predecessor's 7 plants and new E purchases one of these plants, latter E held not successor and its refusal to bargain with certified U not violative, where certification over 2 years old; only 8 of 49 presently employed revealed themselves to be U adherents, 13 had worked for predecessor but did not participate in strike and rest hired by predecessor after strike or new E; no ULPs or U animus by new E, all of which gave rise to good faith doubt of majority status in changed bargaining unit)

4080-5066-3000 Retirement

Kuno Steel Products Corp. etc. 252 NLRB No. 127

(retirement of striking Ees not indication that U no longer represented majority since their replacements are presumed to support ratio as those whom they replaced)

N.L.R.B. v. Koenig Iron Works, Inc.; et al. 681 F.2d 130 (C.A. 2, June 1982)

4080-5066-3700 Change in Operations

Air Express International Corporation v. N.L.R.B. 659 F.2d 610 (C.A. 5, Oct. 1981)

(restructuring district from single plant unit where U certified into 2 plant district to include plant in another state and having labor management policy formed to cover expanded district is not kind of change that amounts to *unusual circumstances* that would make certification invalid because it does not cover aggregate Ees in expanded district)

4080-5066-7500 Substantial increase in work force

Suburban Ford, Inc. 240 NLRB No. 051

(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

4080-5072 Replacement of economic strikers

I T Services, Division of I T Corporation 263 NLRB No. 18

(E had adequate objective basis to support good faith doubt of U majority after contract expired and during strike where majority in unit were strike replacements and told supervisor that they did not want U, picket line violence had been directed against them, and they knew of U demands that they be discharged)

Pennco, Inc. 250 NLRB No. 093

(new Ees, including replacements for strikers, are presumed to support incumbent U in same ratio as those they replaced, notwithstanding crossed picket line on which violence had occured; Bd refused to presume U would not be able to accomodate interests of striking and non-striking Ees)

4080-5072—Cont.

Pittsburgh and New England Trucking Co. **249 NLRB NO. 104**
(withdrawal of recognition, after E had threatened striking Ees with statements that replacements would be hired and that these replacements' seniority would be superior to that of returning strikers, unlawful, where Ees felt continued concern about potential loss of employment)

Victor Marsh, A Division of TCB, Inc. **JD-272-82**
(E had objective basis for good faith doubt of U's majority that justified withdrawal of recognition, in totality of circumstances, where strike replacements crossed picket line and there were conflicts on picket line between pickets and replacements, and in view of 12 resignations from U during strike out of unit of 105 and expression of applicants for positions replacing strikers that they prefered to work w/o U representation)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(E's withdrawal of recognition based on loss of majority resulting from replacement of strikers, not violative, where there were 29 permanent replacements and 22 strikers, since replacements thus constituted majority, replacements are not presumed to support U whose picket line they cross, and herein replacements stated they wanted nothing to do with U; U took risk strikers would be replaced, knew replacements were being hired and E's actions, including those held ULPs not motivated by U animus)

N.L.R.B. v. Pennco, Inc. **684 F.2d 340 (C.A. 6, Mar. 1982)**
(ct held E had not demonstrated good faith doubt that U represented majority of Ees when it withdrew recognition from U, and expressly declined to adopt both Bd's presumption that new hires support U in same percentage as strikers they replaced and E's presumption that new hires do not support U when violence occurs on picket line as herein; ct found E's evidence was sufficient only to put parties in equipoise and not enough to demonstrate E's good faith doubt of U's majority status)

4080-5078 Lapse of time since bargaining relationship established

4080-5078-7500 Remedial order

Knox Steel Products Corp. etc. **252 NLRB No. 127**
(passage of time not justifiable cause for E's asserted doubt of U's majority status where passage of time was due to protracted litigation in which U actively participated, U engaged in at least occasional picketing and in meetings with Ees to keep them abreast of litigation)

4080-5080 Deauthorization movement

Hemet Casting Company **260 NLRB No. 060**

Connecticut Distributors, Inc. **255 NLRB No. 170**
(supervisor's circulation of decertification ptn violative)

Hydro Conduit Corporation **254 NLRB No. 048**
(circulation of anti-U ptn signed by 34 out of 38 Ees in unit and withdrawal of recognition of U based on ptn, not unlawful, since not attributable to E even if individual who circulated ptn held supervisor where individual was member of U and bargaining unit, was acting in concert with fellow Ees and not as representative of management in circulating ptn)

4080-5084 Decertification movement

Dresser Industries, Inc. **264 NLRB No. 145**
(overruling *Telautograph* rule, Bd held that mere filing of decertification ptn, like mere filing of rival U's ptn, would not require or permit E to withdraw from bargaining or executing contract with incumbent U, since such rule does not give due weight to incumbent U's continuing presumption of majority status and is not best way to achieve E neutrality in the election; E with good faith doubt based on objective evidence, e.g. decertification ptn supported by unit majority, may still withdraw; E's actions herein held not unlawful since E relied on then applicable Bd law of *Telautograph*)

Taurus Waste Disposal, Inc. **263 NLRB No. 028**
(filing of decertification ptn, three months after expiration of contract and E's cessation of payments to benefit funds, not objective basis for good faith doubt since *mere filing of decertification ptn does not destroy presumption of continued majority*)

Wagner Distribution Services, Inc. d/b/a Distribution Services West **262 NLRB No. 096**
(decertification ptn not basis for good faith doubt where form letters renouncing U were prepared by E and circulated by supervisors)

Marriott In-Flite Service, A Division of Marriott Corporation **258 NLRB No. 099**
(E's withdrawal of recognition based on decertification ptn filed after certification year, unlawful, in view of its previous failure to bargain in good faith, and where, notwithstanding it could only identify handfull of Ees who had indicated desire to get rid of U, E planted idea of decertification in minds of Ees by holding meetings on work time at which supervisors spoke time at which supervisors spoke in favor of decertification, distributed booklets regarding decertification procedure and suggested actual language for ptns)

Connecticut Distributors, Inc. **255 NLRB No. 170**
(withdrawal of recognition based on unlawfully circulated decertification ptn violative)

Arcadia Foods, Inc. **254 NLRB No. 128**
(withdrawal of recognition from, and refusal to bargain with U after E had heard rumor that decertification ptn was being circulated among Ees held violative, since *mere filing of decertification ptn is, of itself, insufficient justification for refusal to bargain*)

Fort Wayne Newspapers, Inc. **247 NLRB No. 085**
(anti U ptn signed by 15 out of 26 Ees in unit not basis for doubt where supervisor had unlawfully solicited signatures)

Nordstrom, Inc. **JD-(SF)-142-82**
(E's refusal to execute contract based on decertification ptn violative where decertification ptn is invalid as result of E's improper promises of benefits to Ees)

Patio Lodge, Inc., and Fountain Lodge, Inc. **JD-(ATL)-40-82**
(decertification ptn filed when E's predecessor was operating facilities not sufficient basis for good faith doubt absent sufficient facts in record to determine weight information should receive, where predecessor E subsequently signed contract with U and since E held successor with obligation to bargain)

C. Langenfelder & Sons, Inc. **JD-422-79**
(E's refusal to take any action regarding executing contract until qcr resolved justified by decertification ptn signed by majority of unit Ees, absent evidence E or its representatives assisted in obtaining signatures or unlawfully enmeshed itself in decertification movement)

Connecticut Distributors, Inc. v. N.L.R.B **681 F.2d 127 (C.A. 2, June 1982)**
(E not responsible for actions of Ee who circulated decertification ptn, notwithstanding E supplied Ee with names of 4 attorneys to contact for information about decertification where such referral not improper; moreover, fact that E filed decertification ptn immediately after receipt of Ee's anti-U ptn may show condonation but it does not prove E played any role in securing Ee signatures)

Connecticut Distributors, Inc. v. N.L.R.B **681 F.2d 127 (C.A. 2, June 1982)**
(if Ee found supervisor and is also member of U, E is responsible for his circulation of anti-U petitions only if it encouraged, authorized, or ratified supervisor's activities)

Garrett Railroad Car & Equipment, Inc. v. N.L.R.B. **683 F.2d 731 (C.A. 3, June 1982)**
(Ee ptn signed by almost half of Ees asserting interest in representation by in-plant committee held not evidence of U's loss of majority as ptn was tainted by superintendants' suggestions that Ees sign or they might lose jobs, use of E's time and premises in support of ptn; thus, E did not demonstrate neutrality)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(E who had engaged in decertification campaign held not entitled to benefit of rule that filing of decertification may be by itself, a valid excuse for not bargaining with incumbent representative (provided that U's loss of majority status is not attributable to E's ULPs) but must also show some objective evidence of loss of majority status)

4080-5084-5000 Decertification petition majority support

Forester Beverage Corporation **265 NLRB No. 035**
(E violated Act when it granted unilateral wage increases, created new driver sales routes, altered existing routes, and abolished helper position for 4 of its 5 package sales delivery routes after expiration of contract covering unit which was subject of decertification ptn, because E engaged in other unlawful conduct prior to filing ptn. See *Autoprod, Inc.* 223 NLRB 773 (1976))

KPNX Broadcasting Company, Inc. d/b/a KSD-AM Radio **262 NLRB No. 063**
(E who withdrew recognition from incumbent U based on ptn signed by majority of unit Ees did not violate Act where E played no part in circulating ptn and had never been involved in any ULPs)

Strite-Anderson Mfg. **JD-175-82**
(E's changes in working hours and punching in and disregard of old contract's seniority requirements regarding recall from layoff, not unlawful in absence of new contract or renewal of expired contract where E had reasonable doubt of U's majority status based on U shop steward's circulation of decertification ptn and Ees' revocation of checkoff authorizations)

N.L.R.B. v. Antonino Carilli, d/b/a Antonino's Restaurant **648 F.2d 1206 (C.A. 9, June 1981)**
(decertification ptn signed by 16 out of unit alleged in ptn to contain 26 Ees not basis for good faith doubt justifying E's termination of payments to pension and health funds, where payments terminated prior to circulation of ptn, GC never offered ptn into evidence to establish number of Ees in unit,

4080-5084-5000—Cont.

and E did not attempt to establish accuracy of number, since E was not prevented from litigating majority status issue notwithstanding precluded from litigating administrative matter of whether showing of interest sufficient to support decertification ptn)

4080-5088 Loss of election

The Dow Chemical Company, Texas Division **250 NLRB No. 103**
(violation where after U lost decertification election but prior to certification of results of election E unilaterally placed unit Ees on salary and fringe benefit schedule for unrepresented Ees)

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(U remains Ees bargaining representative until results of decertification election are certified)

The Dow Chemical Company, Texas Division **250 NLRB No. 102**
(unilateral granting of raises and changes of Ee status done while validity of decertification election in doubt, violative)

Dow Chemical Company, Texas Division v. N.L.R.B. **660 F.2d 637 (C.A. 5, Nov 1981)**
ct held transfers of former U members to salaried status immediately following decertification of U and before validation of election results, not unlawful, in light of *Mike O'Connor Rule* (209 NLRB 701); ct rejected Bd finding that E's obligation to bargain continues after U has lost decertification election and until election objections are reviewed by Bd, regardless of whether election is ultimately held lawful)

4080-5093 Filing of petition for election by employer

Flex Plastics, Inc. **262 NLRB No. 078**
(notwithstanding impasse reached, neither stalled negotiations, hiatus in bargaining requests, U's alleged inactivity, nor filing of RD and RM petitions, taken separately or together, suffice to raise good faith doubt of U's majority status)

Schmutz Foundry and Machine Company **251 NLRB No. 197**
(not valid basis for doubt)

N.T. Enloe Memorial Hospital v. N.L.R.B. **682 F.2d 790 (C.A. 9, July 1982)**
(filing of RM ptn by E does not in itself suspend E's duty to bargain; moreover, duty to bargain not suspended when RD schedules hearing based on E's ptn alone; for RM ptn to provide basis it must ultimately be found to be based on sufficient objective grounds to establish good faith doubt as to U's majority status)

W & W Steel Company v. N.L.R.B. **599 F.2d 934 (C.A. 10, 1979)**

4090 TERMINATION OF OBLIGATION BY EMPLOYER BY CHANGED CIRCUMSTANCES

4090-3000 Affiliation with an international union

Amoco Production Company **262 NLRB No. 160**
(reversing prior decision in which Bd had held E unlawfully refused to bargain by repudiating contract with U after it affiliated with international U following affiliation election, Bd held E's repudiation of contract was not unlawful since affiliation election, permitting *members only* to vote, was invalid; in order to provide adequate due process safeguards in affiliation election, all unit Ees, whether U members or not, must be permitted to vote and participate in such election)

The House of The Good Samaritan and The Samaritan-Keep Nursing Home, Inc. **248 NLRB No. 048**
(E's refusal to bargain with permanent international affiliate of U after two years' recognition as temporary affiliate, unlawful; no qcr arose where affiliation did not effect substantial changes in representation, and separate vote for affiliation was not required because of continuity of representation)

Aurelia Osborn Fox Memorial Hospital **247 NLRB No. 43**
(when collective bargaining representative affiliated with International U and E refused to bargain with U after this point, E violated Act where successor U is same bargaining entity as predecessor U, and since it had right to make its own policy determinations, negotiate contracts, call strikes, and retained right to establish and keep its own dues, local U is autonomous from International; vote in favor of affiliation was unanimous, conformed to U constitution; moreover, fact that vote was not secret or separate vote by unit Ees not held does not negate validity as Us are not held to Bd's own election standards)

Palo Alto Medical Clinic **JD-(SF)-282-80**
(affiliation of local independent U (Council) with an AFL-CIO chartered U (AFT) did not result in new bargaining entity where no changes made in Council's 1) bargaining committee; 2) administrative structure; 3) authority over its bargaining, content of and administration of agreement; 4) name; 5) bylaws; and 6) authority to levy dues notwithstanding Council agreed to subject itself to AFT's a) constitution and bylaws; b) dues requirements; and c) strike fund and attendant regulations)

N.L.R.B. v. The Coca-Cola Bottling Company of Memphis **616 F.2d 949 (C.A. 6, 1980)**
(where Teamsters local was affiliated with Brewery Workers International at time E entered into bargaining agreement with Brewery Workers local and Brewery Workers International, E's subsequent withdrawal of recognition from Teamsters local, violative, since Teamsters local wascontinuation of Brewery Workers local)

4090-5000 Change in unit

Contract Carrier, Inc. **258 NLRB No. 043**
(E's contention it had no obligation to recognize and bargain with U since scope of unit had substantially changed making only appropriate unit multifacility rather than single plant, rejected, since E did not rebut presumption of appropriateness of single plant unit, where facilities 130 miles apart, little interchange of Ees, separate day-to-day supervision, and bargaining history of single plant unit)

Finger Lakes Plumbing & Heating Co., Inc. **253 NLRB NO. 049**
(E's contention that bargaining unit ceased and thus E's obligation to bargain ceased when last active Ee in unit ceased work, rejected, since in unit involving normal fluctuating demand for Ees, work force was deemed to consist of Ees on layoff with reasonable expectancy of further employment as well as Ees actively working, and therefore unit continued to exist and with it E's obligation to bargain; before contract expired, E continued to seek work of type normally performed by unit Ees and, after contract expired, obtained such work and employed Ees to perform it)

C.J.B. Industries **250 NLRB No. 184**
(successor E's purchase of 1 of 2 predecessor's plants did not remove successor's bargaining obligation)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 097**
(withdrawal of recognition of U as bargaining agent for Ees transferred from subsidiary to parent organization in same building, unlawful, as they still remained part of bargaining unit)

W & W Steel Company v. N.L.R.B. **599 F.2d 934 (C.A. 10, 1979)**
(where U certified for company-wide unit of P&M Ees employed in predecessor's 7 plants and new E purchases one of these plants, latter E held not successor and its refusal to bargain with certified U not violative, where certification over 2 years old; only 8 of 49 presently employed revealed themselves to be U adherents, 13 had worked for predecessor but did not participate in strike and rest hired by predecessor after strike or new E; no ULPs or U animus by new E, all of which gave rise to good faith doubt of majority status in changed bargaining unit)

4090-7500 Relocation of plant or certain operations

Marine Optical, Inc. **255 NLRB No. 158**
(Ees, who constituted a majority at both old and new locations during relocation of operations during contract term, are presumed by reason of contract to continue their designation of U as their bargaining representative; and although Ees from former location no longer constituted majority at new location after old facility was completely closed, it is assumed that new hires in unit desired U representation in same proportion as Ees they replaced)

Marine Optical, Inc. **255 NLRB No. 158**
(E's refusal to bargain with U at relocated operation on ground unit was limited to old operation, unlawful, where existing contract remained in effect at new location, operations and equipment at new location were substantially same as at old location, substantial percentage of Ees transferred to new location, and at time of move qcr could not appropriately be raised under existing contract)

Westwood Import Company, Inc. **251 NLRB No. 162**
(withdrawal of recognition and failure to honor contract at relocated plant 35 miles from old site during period contract served as bar and no qcr present, violative, otherwise, E could unilaterally eliminate or change representative at time when Bd would refuse to allow change; relocation, providing operations and equipment remain substantially same at new location and substantial percentage of Ees (though less than 50) at old plant transfer to new location, has little effect on bargaining obligation)

Westwood Import Company, Inc. **251 NLRB No. 162**
(where E committs ULP by transferring only few Ees to relocated plant, Bd will then examine question of whether majority of unit Ees at new facility would have been comprised of Ees from old facility had it not been for E's unlawful activity)

Vitco Steel Supply Corp. **JD-103-80**
(refusal to recognize U at new location unlawful where new operation was substantial continuation of old operation with same Ees)

N.L.R.B. v. United Optical Workers Union Local 408, Electrical Workers (Marine Optical, Inc.) **671 F.2d 11 (C.A. 1, Feb. 1982)**
(E's withdrawal of recognition, refusal to bargain on demand, and unilateral changes after relocating operations violated 8(a)(5) and 8(d); contract's description of unit as consisting of Ees employed at address of E's old facility was not shown to be intended as geographical limitation, as contended, and

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continuity was sufficient for Bd to apply modified contract-bar doctrine and find contract effective at new facility where there was substantial continuity of operations and in bargaining unit after relocation, and new facility was near old facility and in same state)

4800 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF EMPLOYER

4825 OBLIGATION TO RECOGNIZE AND BARGAIN

4825-3300 Alter ego of employer

Fugazy Continental Corp.; Elite Services, Inc. **265 NLRB No. 165**
(purchaser of part of E's operations as *alter ego* of E, obligated to recognize and bargain with victorious U in election, and both purchaser and E violated 8(a)(5) by engaging in bad faith effort to avoid bargaining with U, in view of sham purchase transaction herein intended to continue E's operations in disguised form to avoid its statutory obligations and to thwart Ees' successful organizational efforts; E's extensive and ferocious anti-U campaign up to and beyond time of alleged sale; and subsequent unlawful termination of Ees, refusal to reinstate them, and denial of accrued vacation pay)

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal **265 NLRB No. 121**
(violation where purchasing E, found herein *alter ego* of predecessor E, terminated Ees w/o advance notice to or bargaining with Us representing Ees of predecessor since it was obligated to recognize and bargain with Us, to honor contracts, and to honor noncontractual conditions of employment of unit Ees)

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal **265 NLRB No. 121**
(violation where purchasing E, found herein *alter ego* of predecessor E, refused to process grievance filed by U representing predecessor E's Ees)

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal **265 NLRB No. 121**
(violation where purchasing E, found herein *alter ego* of predecessor E, refused to furnish information requested by Us representing predecessor E's Ees; information was relevant to Us representative obligations and to processing grievance relating to discharge of unit Ees)

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal **265 NLRB No. 121**
(violation where purchasing E, found herein *alter ego* of predecessor E, unilaterally subcontracted out unit work)

American Pacific Concrete Pipe Company, Inc. **262 NLRB No. 139**
(where E discontinued its trucking operation, laying off Ees and signed agreement with U which required it in the event it utilized its own equipment or purchased new equipment to recognize and bargain with U and recall Ees on seniority basis, it violated Act when it created alter ego which took over trucking operation and it refused to recognize U or recall its Ees)

G and M Lath and Plaster Co., Inc. and Its Aler Ego, Central Texas Lath & Plastering Inc.; et al. **252 NLRB No. 137**
(corporation and its alter ego's repudiation of contract and withdrawal of recognition of U, violative)

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(individual proprietorship held alter ego of corporation and obligated to recognize and bargain where individual, who became sole proprietor, had been chairman of board and with his wife owned all stock of corporation, proprietorship continued in same business at essentially same locations serving same sole customer and using same suppliers)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(alter ego E's withdrawing recognition from and refusing to bargain with U over transfer of unit Ees from E to alter ego E, unlawful)

Van-Ness Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(E's *alter ego's* refusal to recognize and bargain with U for Ees doing unit work previously performed by E, held violative)

International Harvester Company and Muller International Trucks, Inc. **247 NLRB No. 140**
(refusal of E alter ego to recognize U with which preexisting E, had contract, unlawful)

J. M. Tanaka Construction, Inc. v. N.L.R.B. **675 F.2d 1029 (C.A. 9, Apr. 1982)**
(unilateral withdrawal of recognition and repudiation of collective bargaining agreement, violative)

Sturdevant Sheet Metal & Roofing Company, Inc., and Orion Trading Company, Inc., d/b/a Sturdevant Roofing Company v. N.L.R.B. **363 F.2d 271 (C.A. 10, Nov. 1980)**
(where second E is found *alter ego* of its predecessor E, second E will be required not only to recognize U, but also to adhere to and work under bargaining agreement negotiated by predecessor)

4825-5000 Joint or single employer

DMR Corp. and Harrill Electric Contractors, Inc. **238 NLRB No. 130**
(single E found where husband and wife own 80% of both companies, financial affairs closely intertwined, identical nature of business, second company inheriting 2 major customers of first company; therefore refusal of second company to recognize and bargain with U first company had collective-bargaining agreement with is violative)

American Air Filter Company, Inc. **250 NLRB No. 010**
(lessee not absolved of duty to bargain by fact U made no direct bargaining demand on it until after it terminated its contract with lessor for unit Ees' services, where lessee by its indirect participation in lessor's negotiations with U appeared to acquiesce in its role as joint E with lessor and was even asked by U to attend meetings and since lessor was lessee's spokesman, U had no need to make specific separate demand on lessee until latter terminated contract with lessor and thus put unit Ees out of work)

Miami Foundry Corporation **252 NLRB No. 002**
(single integrated enterprise resulting from corporation's acquisition of iron foundry's stock held liable for new owner's refusal to recognize and meet with U representing foundry)

The Pulitzer Publishing Company v. N.L.R.B. **618 F.2d 1275 (C.A. 8, 1980)**
(newspaper publisher had no duty to bargain with U concerning Ees of delivery company providing services to publisher, in view of finding that publisher was not joint E with delivery company)

N.L.R.B. v. Big Bear Supermarkets #3 and its alter ego Richard Homes **640 F.2d 924 (C.A. 9, Apr 8, 1980)**
(E's refusal to recognize or bargain with Us with respect to new Ees at one of its stores which it franchised to individual in sham transaction for purpose of evading its bargaining obligations with Us but was found to constitute single-E with franchisee, and E's refusal to apply contract terms to new Ees, unlawful)

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat **614 F.2d 777 (C.A. 9) (1980)**
(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

4825-6700 Successor employer

Jeffries Lithograph Company, A Subsidiary of The Ticor Printing Group, Inc. **265 NLRB No. 190**
(successor E's refusal to bargain with U which had represented predecessor's Ees, violative where at time of demand predecessor's Ees constituted majority of successor's Ees, successor's projections of Ee complement was too indefinite and speculative to warrant finding Ee complement not representative or insubstantial, and there was no showing that increased staff would have different job classifications or duties)

Aircraft Magnesium, A Division of Grico Corporation **265 NLRB No. 172**
(successor E who purchased business from predecessor's creditors shortly after bankruptcy did not have option to postpone bargaining for 60 days until it made own determination of U's majority status; U not required to substantiate anew its majority status when successor assumes E's business)

Aircraft Magnesium, A Division of Grico Corporation **265 NLRB No. 172**
(hiatus of 3-4 weeks did not relieve successor E of duty to bargain with U which had contract with bankrupt predecessor, as hiatus is significant in determining successorship status only where other substantial changes in operations have occurred)

Aircraft Magnesium, A Division of Grico Corporation **265 NLRB No. 172**
(significance of hiatus is effect on Ees' expectations of rehire, and 3-4 week hiatus was not determinative)

Aircraft Magnesium, A Division of Grico Corporation **265 NLRB No. 172**
(successor E's refusal to recognize and bargain violative where he purchased business from predecessor's creditor's shortly after bankruptcy ptn was filed, hired majority of predecessor's Ees and resumed same business after 3-4 week hiatus)

General Processing Corporation **263 NLRB No. 13**
(Bd found respondent E was not successor E and did not violate Act by failing to bargain with U, where successorship turned on whether majority

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of respondent's unit Ees had been unit Ees of previous E, and correct computation reveals that from date of respondent's receipt of U's demand through date of complaint's issuance, there never was a time when majority of respondent's unit Ees were Ees who had worked for the previous e)

Stewart Chevrolet, Inc. **262 NLRB No. 030**
(auto dealership's new owner's refusal to bargain with U upon request not violative, since new owner was not successor E, notwithstanding he was engaged in substantially same business, at same location, selling same product and services to same customers as prior owner, since only four of the nine unit Ees he hired were unit Ees of prior owner, and, farther, at no time did bargaining unit Ees of prior owner constitute majority of unit Ees of new owner)

Premium Foods, Inc. **260 NLRB No. 092**
(successor E not precluded from establishing different conditions of employment for new Ee complement consisting of majority of predecessor's Ees where E's intentions from outset were to establish different rates and benefits which was fully comprehended by Ees who were neither actively nor tacitly misled into believing they would be retained w/o any changes; and since E intended initial work force to serve only as nucleus group to be augmented from various sources, full Ee complement had not been achieved immediately following acquisition of enterprise, and date such complement would be reached could not be accurately projected)

Premium Foods, Inc. **260 NLRB No. 092**
(in determining successor E's obligation to bargain, task is one of balancing objective of selection of bargaining representative by maximum number of Ees with objective of Ee representation as soon as possible; where employing industry remains the same and bargaining unit is appropriate, bargaining rights and interests of former unit Ees employed by E, newly hired Ees, and new E are best accomodated by determining majority status as of date E began full-scale operations with a representative Ee complement, even though E's hopes for expansion had not been fully achieved)

Premium Foods, Inc. **260 NLRB No. 092**
(successor E attained full Ee complement where E's original Ee nucleus consisted entirely of predecessor's Ees, soon enlarged to include Ees from other sources, resulting on date of U's request in 8-Ee unit, including 5 Ees of predecessor who constituted majority at time of U's request and E's refusal to bargain; unit size remained unchanged for 5 weeks following U's request indicating that on date of U's request E's operation was not transitional but full-scale; and subsequent introduction of new product and expanded 13-Ee unit as result of new hires did not invalidate *full complement* determination)

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**
(SCt's *Burns* decision, relied on by successor E, held not applicable because predecessor E had never negotiated a contract with U, and successor E held to have violated Act by unilaterally changing tems and conditions of employment where it was motivated by U animus in announcing and implementing changes, as evidenced by conduct which showed a desire to have Ee turnover for purpose of reducing U support; but, despite E's efforts, previously certified unit continued to exist as result of which E had duty to bargain over initial tems and conditions of employment)

Contract Carrier, Inc. **258 NLRB No. 043**
(lessee of trucks held successor to former lessee and obligated to recognize and bargain with U which represented Ees of former lessee where four out of five Ees in unit had been employed by former lessee and performed same type work as they had for former lessee i.e. loading same product in same trucks used by former lessee and delivering to same type customer, notwithstanding 29% of predecessor's customers not serviced, and fewer truck-drivers employed as such change in scale of operations not considered extreme as to affect successor finding)

Marco, Inc. d/b/a Towne Plaza Hotel **258 NLRB No. 016**
(purchase of stock in corporate entity which continued to exist after purchase, albeit under different management and w/o any hiatus in operations involves stock transfer rather than successor relationship; where stock transfer occurred during period between expiration of prior collective-bargaining agreement and U's execution of successor agreement with E, E may not decline to recognize and bargain with U in appropriate unit)

Landmark International Trucks, Inc. **257 NLRB No. 170**

Stewart Granite Enterprises **255 NLRB No. 091**
(successor E unlawfully refused to recognize and bargain with U where successor continued in materially unchanged manner operation of plant as monument manufacturing business and used Ees who in main, had been similarly employed under predecessor's operation of plant)

Southwestern Broadcasters, Inc. **255 NLRB No. 053**
(E who purchased assets of radio station held not successor E and thus not obligated to bargain with Us representing predecessor's Ees where E did not hire nor indicate that it planned to retain Ee complement of predecessor, supervisory hierarchy was replaced, and Us did not represent unit majority subsequent to E's acquisition of station; moreover, GC did not prove that E sought to avoid bargaining obligation by unlawfully refusing to hire sufficient number of predecessor's Ees in order for Us to maintain majority status)

W. Q. T., Inc. **254 NLRB No. [illegible]**
(lessor of predecessor's premises and purchaser of its goodwill, inventory, assets, name, etc., but hired none of its Ees held not successor and therefore its refusal to grant seniority for predecessor's striking Ees found not violative)

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(successor E's refusal to recognize and bargain with U, violative)

Stroehmann Brothers Company **252 NLRB No. 130**
(refusal of new owner of bake goods distributorship to recognize and bargain with U that historically represented unit of shipping Ees of former E, violative)

Zylan Pontiac **252 NLRB No. 087**

Cablevision Systems Development Company, A Partnership **251 NLRB NO. 176**
(violation where cable TV company had entered into negotiations with U representing cable company's subcontractor, and upon becoming subcontractor's successor, as found herein, it withdrew recognition and refused to bargain with U)

Westwood Import Company, Inc. **251 NLRB No. 162**
(purchaser of business held successor and obligated to bargain with U representing Ees of seller where it engaged in same business at same facility and sold to substantially same customers as seller and employed all of supervisory and nonsupervisory Ees in their same job classifications; further, purchaser may not justify its failure to bargain on basis of or basis of good faith doubt of Us majority where it acquired business with full knowledge of seller's unlawful refusal to bargain)

C.J.B. Industries **250 NLRB No. 184**
(successor's avoidence of its obligation to recognize and bargain with its predecessor's U by not hiring predecessor's former Ees who were U members, unlawful)

C.J.B. Industries **250 NLRB No. 184**
(contention that evidence of unlawful motive in hiring should not have been considered with respect to 8(a)(5) claim because no allegation or finding that E violated 8(a)(3) was made held w/o merit, since claim was based upon alleged successorship obligation, and element of continuity or work force between predecessor and successor is critical; GC must show either that E hired or retained requisite complement of former Ees *or* that it decided not to hire former Ees because of their U affiliation)

L.A.X. Medical Clinic, Inc.; et al. **248 NLRB No. 112**
(E held successor and obligated to recognize and bargain with U representing Ees of predecessor where after purchase it continued same operation at same location using essentially same equipment and providing same services to substantially same individuals)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(clothing store held successor to clothing store with which it had previously shared building and to which it had subcontracted alterations, and obligated to bargain, when it moved to separate building, established own alterations department and hired 16 of 18 individuals who had performed its alterations as subcontractor's Ees of other clothing store since no hiatus; notwithstanding contention no successorship since Ees from former unit did not constitute majority of members of appropriate storewide unit at new store, as no presumption storewide unit appropriate and alteration Ees' history of separate bargaining)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(fitters not counted for purpose of determining if E which was alleged successor had hired majority of Ees in alterations unit at alleged predecessor E since fitters had been historically excluded from alterations unit at alleged predecessor)

Barclay Hospital, Inc. **247 NLRB No. 144**
(successor E held to have unlawfully refused to bargain with U representing predecessor's Ees, notwithstanding contention that successor had no duty under law to bargain with certified U and that U did not represent Ees then on payroll)

Evergreen Lumber Company, Inc. **JD-(SF)-196-82**
(E's refusal to recognize and bargain with U, not violative since E was not successor where only 19 of 40 unit Ees employed by E when it rejected U's demand for recognition and bargaining had been unit Ees of predecessor when it ceased operations and thus U's majority status was not established)

Rome Management Inc. **JD-(NY)-75-82**
(Es had no obligation to recognize or bargain with U where, in addition to not retaining work force of predecessor, Es did not employ same supervisory staff)

Crosby Coal Corporation **JD-260-82**
(successor E's refusal to bargain with U violative where it refused to hire any of predecessor's Ees who refused to quit U so its claim of lack of majority status was invalid)

Patio Lodge, Inc., and Fountain Lodge, Inc. **JD-(ATL)-60-82**
(lessee operator of nursing homes who leased homes from former operator/owners held successors and obligated to bargain with U who represented

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Ees of predecessor, where employed full Ee complement of predecessors' Ees, continued operation of nursing homes in same facilities using names similar to predecessors, units continued with same Ees, and no hiatus in operations)

Shelby Processing Company, A Wheoly Owned Subsidiary of Fesano Industries **JD-191-82**

(successor E, who (using majority of predecessor's Ees) made same ultimate product as did predecessor albeit using changed processing (fresh apples rather than frozen) and packaging procedures, violated Act by refusing to hire and recall those Ees (of predecessor E) who were officials of incumbent U; credible evidence in record did not show legitimate and lawful considerations for successor E's determination or that such action would have taken place in absence of Ees' protected activity)

Valley Vista Hospital **JD-(SF)-88-82**

(refusal of successor E to bargain with U representing predecessor's Ees, not unlawful where operational structure and practice of successor E made unit no longer appropriate)

Hayim Salomon Home For The Aged, et al., d/b/a Lawson Life Extension Organization **JD-(NY)-78-81**

(successor E's withdrawal of recognition of U, which had presumption of continued majority status derived from its contract with predecessor and continuation of predecessor's work force in toto, unlawful

Marvin J. Schiff Trust R-501, Marvin J. Schiff, Trustee, d/b/a Nevada Palace Casino & Motor Inn **JD-(SF)-277-81**

(when Ees have bargained collectively with E and there occurs change of ownership not affecting essential nature of enterprise, successor E must recognize incumbent U and deal with it as bargaining representative)

Marvin J. Schiff Trust R-501, Marvin J. Schiff, Trustee, d/b/a Nevada Palace Casino & Motor Inn **JD-(SF)-277-81**

(new E succeeds to predecessor's bargaining obligations when majority of new E's work complement is determined, as in instant case, to have come from predecessor's bargaining unit)

Marvin J. Schiff Trust R-501, Marvin J. Schiff, Trustee, d/b/a Nevada Palace Casino & Motor Inn **JD-(SF)-277-81**

(successor E must bargain with representative of his Ees regardless of *whether such representative status (was) originally evidenced by a Bd certification or by recognition and the existence of a collective bargaining contract)*

Cascade Chevrolet Company **JD-(SF)-136-81**

(company that purchased General Motors franchise of predecessor held successor E and therefore obligated to bargain with U before making unilateral changes, E where location, equipment, etc., was same, it hired 11 out of 15 of predecessors Ees, and opened for business 3 days later under new name)

International Total Services, Inc. **JD-66-81**

(successor E's refusal to recognize and bargain with U, not unlawful, where E could reasonably doubt that U was representative of majority of its Ees in light of U's waiting several months after successor took over facility before demanding recognition and by that time complement of current Ees no longer comprised majority of predecessor's Ees; moreover, there were no ULPs and majority of Ees interviewed by E stated they did not want U)

Hospital San Miguel, Inc. **JD-287-80**

(where transfer of stock and sale of assets with lease back to E occurried, and hospital's name unchanged, same equipment used, Ees remained same, supervisory staff unchanged, corporate charter unchanged, refusal to bargain with U violative either because Respondent, a corporate entity remained same employing entity, or because E held successor)

N.L.R.B. v. Cablevision Systems Development Company, et al. **671 F.2d 737 (C.A. 2, Mar. 1982)**

(finding of violation by successor E's refusal to bargain with U, affirmed)

N.L.R.B. v. Hudson River Aggregates, Inc. **639 F.2d 865 (C.A. 2, 1981)**

(E which had purchased quarries obligated to recognize and bargain with local Us with which predecessor had contracts, since obligation arose at time it began production with complement comparable to that employed by predecessor rather than when it reached full complement of Ees and at time production began majority of Ees in units which remained appropriate had been employed by predecessor E)

Saks & Company v. N.L.R.B. **634 F.2d 681 (C.A. 2, 1980)**

(test for determining successor E's duty to bargain is whether majority of successor's bargaining unit is composed of predecessor's Ees; moreover diminution in unit size so that majority would not have been majority of predecessor E's Ees does not require different result)

Saks & Company v. N.L.R.B. **634 F.2d 681 (C.A. 2, 1980)**

(successor E may not establish initial terms and conditions of employment w/o bargaining with U if it makes clear that it plans to retain all Ees in predecessor unit and leads them to believe they will be hired on terms and conditions of predecessor; here Bd has failed to establish that successor intended to retain all Ees of predecessor as invitation to apply for positions not enough to indicate whether successors limited its search to Ees of predecessor)

N.L.R.B. v. A.W. Thompson, Inc. **651 F.2d 1141 (C.A. 5, July 1981)**

(where all of E's stock was acquired by another company, this does not provide basis for good faith doubt in U majority absent objective evidence that change in ownership of stock changed Ees' attitude about U)

Karl Kallmann, d/b/a Love's Barbeque Restaurant, No. 62 v. N.L.R.B. **640 F.2d 1094 (C.A. 9, 1981)**

(successor E's refusal to bargain with U representing predecessor's Ees, violative)

N.L.R.B. v. East Belden Corporation **634 F.2d 635(T) (C.A. 9, 1980)**

(where E entered into agreement to purchase bar and restaurant business from another corporation which had bargaining agreement with U, E's refusal to recognize bargaining agreement, violative)

N.L.R.B. v. Edjo, Inc., d/b/a Jose Costa Trucking **631 F.2d 604 (C.A. 9, Oct. 1980)**

(successor E has duty to recognize and bargain where all 21 Ees of predecessor were retained; presumption that U has majority support continues notwithstanding 8 Ees voiced dissatisfaction with U and Ee turnover resulted in 8 new hires)

Bellingham Frozen Foods, Inc. v. N.L.R.B. **626 F.2d 674 (C.A. 9, 1980)**

(E's refusal to bargain with U violative, since E which had purchased another company's assets was obligated to bargain with such U which represented seller's P&M Ees; E's obligation occurred as soon as it was perfectly clear that it intended to accept seller's Ees as its own)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**

(E held successor and obligated to recognize and bargain with U where immediately after takeover all Ees in unit were Ees of predecessor E, and notwithstanding flucuation in size of unit during following 77 days, Ees of predecessor constituted majority of unit)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**

(Bd certification not necessary to trigger obligation to bargain of successor E)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalmcent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**

(successor E's unilateral changes in wages, unlawful, where majority of Ees in unit were Ees of predecessor E and E had duty to bargain with U before making any changes)

N.L.R.B. v. Pre-Engineered Building Products, Inc. **603 F.2d 134 (C.A. 10, 1979)**

(where predecessor business had essentially collapsed at time of E's take over and E of necessity had to rebuild both production demand and work force, ct held Bd was arbitrary in denying E's mtn to reopen record for purpose of adducing evidence to determine whether E had acquired full complement of Ees at time E refused to bargain with predecessor's U)

W & W Steel Company v. N.L.R.B. **599 F.2d 934 (C.A. 10, 1979)**

(where U certified for company-wide unit of P&M Ees employed in predecessor's 7 plants and new E purchases one of these plants, latter E held not successor and its refusal to bargain with certified U not violative, where certification over 2 years old; only 8 of 49 presently employed revealed themselves to be U adherents, 13 had worked for predecessor but did not participate in strike and rest hired by predecessor after strike or new E; no ULPs or U animus by new E, all of which gave rise to good faith doubt of majority status in changed bargaining unit)

4825-7500 Change in corporate structure

Rice Food Markets, Inc. **255 NLRB No. 118**

(refusal to recognize and bargain, and apply terms of collective bargaining agreement to Ees of liquor operation, a spinoff from main food retail store, violative, where it was found appropriate not to exclude Ees of spinoff operation from existing store unit because separation of operations was mandated by state statutue, and similarities existed between both operations such as common control, personnel functions and Ee pay checks were handled in single location, and public telephone for both rang in either operation)

Owen Lee Floor Service, Inc. **250 NLRB No. 070**

(individual proprietorship held alter ego of corporation and obligated to recognize and bargain where individual, who became sole proprietor, had been chairman of board and with his wife owned all stock of corporation,

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proprietorship continued in same business at essentially same locations serving same sole customer and using same suppliers)

4825-8700 Bankruptcy trustee or debtor-in-possession

I.S.G. Extrusion Toolings, Inc. **262 NLRB No. 097**
(E obligated to bargain with U, notwithstanding its closing of facility and filing of bankruptcy ptn and order of bankruptcy ct prohibiting payment of any debt of E by debtor in possession w/o permission of ct)

Nathan Yorke, Trustee in Bankruptcy, Successor in Bankruptcy, or alter ego To The Seeburg Corporation and Seeburg Service Parts Co., a single employer **259 NLRB 105**
(trustee in bankruptcy is alter ego of bankrupt E, and, like that E, is under duty to comply with NLRA, including requirement to engage in collective bargaining)

Imperial Hospital; Donald W. Henry, Trustee in Bankruptcy **257 NLRB No. 061**
(trustee in bankruptcy is *alter ego* of bankrupt E and successor in law *vis-a-vis* U)

Burgmeyer Bros., Inc. **254 NLRB No. 126**
(refusal to bargain with U concerning effects of decision to close entire operations on unit Ees, violative, notwithstanding E's assertion that it was unable to bargain over effects of its closing because it was bankrupt; Bd has consistently held that fact that E becomes debtor-in-possession under Bankruptcy Act does not relieve E of obligation to bargain over impact of its decision to close on Ees)

Artyle Industries, Inc. **JD-299-82**
(E's refusal to provide wage and employment information, to engage in any bargaining, and relocating its plant w/o notice to and bargaining with U held violative, as E's defense that Bankruptcy Court had stayed all future negotiations with U was held insufficient in law because such Ct is w/o concurrent jurisdiction to hear, determine and remedy ULPs involving bankrupt Es and therefore can not authorize debtor in possession to ignore its obligations under Labor Act)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession **682 F.2d 72 (C.A. 3, June 1982)**
(debtor-in-possession, who had obtained permission from bankruptcy ct to reject bargaining agreement, held not alter ego of debtor nor party to bargaining agreement; rather, debtor-in-possession is new entity with its own rights and duties subject to bankruptcy ct's supervision and is comparable to trustee and is an officer of the ct; debtor-in-possession is analogous to successor E and may be required to bargain with U, but it is not party to predecessor's bargaining agreement unless it is assumed, and it is able to reject agreement w/o following 8(d) procedures)

4850 OBLIGATION TO HONOR CONTRACT

4850-0100 Generally

Texaco Inc. **264 NLRB No. 151**
(E's terminating contract and ceasing to deduct and remit dues to U in reliance on memorandum to terminate contract, unlawful where U would not have signed memorandum but for ptn by majority of unit Ees to withdraw from U and cancel checkoff authorizations which was tainted by E's having unlawfully participated in its preparation and circulation)

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**
(while not deciding whether E's payment of wage scale and benefits provided by E-association's agreement would in itself indicate E's intention to be bound by agreement, ct found that E adopted agreement, focusing on fact that E both enjoyed benefits of agreement and abided by its provisions)

4850-3500 Subsidiaries

Congo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(withdrawal of recognition of U as bargaining agent for Ees transferred from subsidiary to parent organization in same building, unlawful, as they still remained part of bargaining unit)

4850-5300 Alter ego of employer

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal **265 NLRB No. 121**
(violation where purchasing E, found herein *alter ego* of predecessor E, terminated Ees w/o advance notice to or bargaining with Us representing Ees of predecessor since it was obligated to recognize and bargain with Us, to honor contracts, and to honor noncontractual conditions of employment of unit Ees)

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal **265 NLRB No. 121**
(violation where purchasing E, found herein *alter ego* of predecessor E, refused to process grievance filed by U representing predecessor E's Ees)

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal **265 NLRB No. 121**
(violation where purchasing E, found herein *alter ego* of predecessor E, refused to furnish information requested by Us representing predecessor E's Ees; information was relevant to Us representative obligations and to processing grievance relating to discharge of unit Ees)

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal **265 NLRB No. 121**
(violation where purchasing E, found herein *alter ego* of predecessor E, unilaterally subcontracted out unit work)

Campbell-Harris Electric, Inc. and Campbell Electric, Inc. **263 NLRB No. 1**
(violation where partnership and subsequent sole proprietorship, found alter ego, failed to abide by terms of contract entered into between multi-E bargaining association and U at time when partnership assented to association as bargaining representative)

J. M. Tanaka Construction, Inc. **249 NLRB No. 03**

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 0**
(alter ego E's withdrawing recognition from and refusing to bargain with U over transfer of unit Ees from E to alter ego E, unlawful)

International Harvester Company and Muller International Trucks, Inc. **247 NLRB No. 1**
(violation by refusal of alter ego-E to give effect to contract, of its preexisting corporation)

J. M. Tanaka Construction, Inc. v. N.L.R.B. **675 F.2d 1029 (C.A. 9, Apr. 1982)**
(unilateral withdrawal of recognition and repudiation of collective bargaining agreement, violative)

Sturdevant Sheet Metal & Roofing Company, Inc., and Orion Trading Company, Inc., d/b/a Sturdevant Roofing Company v. N.L.R.B. **363 F.2d 271 (C.A. 10, Nov. 1980)**
(where second E is found *alter ego* of its predecessor E, second E will be required not only to recognize U, but also to adhere to and work under bargaining agreement negotiated by predecessor)

N.L.R.B. v. Tricor Products, Inc., and/or C & J Pattern Co. **636 F.2d 266 (C.A. 10, 1980)**
(E which absorbed comapny and its business, hired its Ees and was found its *alter ego* held obligated to honor its contract with U)

4850-6700 Successor employer

Ah Chu Company **259 NLRB No. 02**
(refusal to hire Ees of predecessor E after transfer of lease violative where sole reason for refusal was Ees membership in U which had represented them prior to transfer of lease; moreover where this refusal diluted U's majority and E refused to bargain with it E also violated Sec. 8(a)(5))

Ah Chu Company **259 NLRB No. 02**
(where E sold discount store but retained operation of sundry department as lessee and lessee negotiated new contract with U bringing leased sundry department Ees into unit of sundry Ees of another store owned by lessee, Bd held that when lessee afterwards sold lease to Respondent who also leased pharmacy department at store, Ees of leased sundry department formed appropriate unit in and of themselves at store since pharmacy Ees and sundry Ees were always represented by separate locals though latter in larger unit at time of sale)

Westwood Import Company, Inc. **251 NLRB No. 16**
(while successor E is ordinarily free to set initial terms on which it will hire Ees of predecessor, where successor E did not mention changes in conditions of employment in interviews with Ees of predecessor, unilateral changes instituted after hiring Ees cannot be considered as initial conditions of employment under *Burns* and thus violative)

World Evangelism, Inc. **248 NLRB No. 117**
(successor E's failure to honor predecessor's contract with U, unlawful where successor agreed to bind itself to predecessor's contract)

L.A.X. Medical Clinic, Inc.; et al. **248 NLRB No. 111**
(violation, where successor E, who had hired majority of unit Ees of predecessor, unilaterally changed conditions of employment in contract between U and predecessor E, since at time of hiring it did not indicate any intent to change conditions; E's contention it did not employ full Ee complement at time commenced operations rejected, in view of fact complement did not increase)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 12**
(successor E's changes in pension plan, work week, and vacation, unlawful, where it retained all Ees in unit at predecessor E, except two Ees, where successor E was corporate subsidiary of predecessor, on predecessor's request gave these Ees hiring preference, and there was no indication employment conditioned on terms mentioned in interview; further, predecessor's

4850-5700—Cont.

longstanding, policy of extending joint pension plan to Ees transferred between companies)

Barclay Hospital, Inc. **247 NLRB No. 144**
(although not dealing with all implications of E's argument that it has right not to be successor, Bd noted that *successorship* is a labor relations conclusion derived from economic facts and that a *right* not to become a successor would suggest a right to make employment decisions based on representational rights clearly proscribed by U.S. Sp.Ct. decision)

Cabinet Shop & Supply Co., Inc. **JD-(SF)-262-82**
(where successor-E never notified its Ees that it would establish initial terms and conditions of employment different from those of predecessor, its contributions to trust funds became established term or condition of employment and cessation of its contributions violated Act)

Haym Salomon Home For The Aged, et al., d/b/a Lawsen Life Extension Organization **JD-(NY)-78-81**
(repudiation of contract by successor E which had continued operations with same jobs, Ees, and working conditions, even deducting and remitting dues to U and discharging Ees it had hired w/o going through contractual U procedure when U had brought problem to E's attention, violative)

Marvin J. Schiff Trust R-501, Marvin J. Schiff, Trustee, d/b/a Nevada Palace Casino & Motor Inn **JD-(SF)-277-81**
(when Ees have bargained collectively with E and there occurs change of ownership not affecting essential nature of enterprise, successor E must recognize incumbent U and deal with it as bargaining representative)

Marvin J. Schiff Trust R-501, Marvin J. Schiff, Trustee, d/b/a Nevada Palace Casino & Motor Inn **JD-(SF)-277-81**
(successor E must bargain with representative of his Ees regardless of *whether such representative status (was) originally evidenced by a Bd certification or by recognition and the existence of a collective bargaining contract)*

N.L.R.B. v. Topinka's Country House, Inc. **624 F.2d 770 (C.A. 6, July 1980)**
(Bd's finding of unlawful refusal to bargain where individual transferred all of the corporate stock and liquor licenses to another individual, enforced, since corporation has existence separate and apart from its stockholders)

N.L.R.B. v. World Evangelism, Inc. **656 F.2d (C.A. 9, 1981)**
(successor E's paying wages to Ees which were lower than those prescribed by predecessor E's contract and discontinuing contributing to Ee's fringe benefit trusts, violative where successor E took these steps w/o prior notice or bargaining with U; it was perfectly clear successor E intended to retain Ees, had adopted predecessor's contract, and therefore was required to consult with U before altering terms of pre-existing contract)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse **647 F.2d 905 (C.A. 9, June 1981)**
(Bd did not err in ordering E to bargain with U representing engineers; had E not unlawfully refused to retain engineers, they would have comprised a majority of the bargaining unit, and E would have been required — as successor E— to bargain with their representative under *Burns*)

N.L.R.B. v. Edjo, Inc., d/b/a Jose Costa Trucking **631 F.2d 604 (C.A. 9, Oct. 1980)**
(successor E has duty to bargain with U before unilaterally changing terms and conditions of employment where it retained all Ees of predecessor)

4850-7500 Joint or single employer

Better Building Supply Corp., and Evergreen Roofing, Inc., Its Alter Ego **259 NLRB No. 063**
(single-E finding is not dispositive of issue of whether each is bound to collective-bargaining agreements of other; test is whether Ees of separate companies constitute appropriate unit, or whether Ees of each company constitute distinct and separate units, and here, where operations of Es are totally intertwined, appropriate unit is of Ees of both Es; thus refusal to apply contract violative)

Hageman Underground Construction; etc. **253 NLRB No. 007**
(non-U company found herein single E with company that executed 8(f) agreement held bound by agreement at all existing and future jobsites, where U at one time represented majority of Ees who constituted a permanent and stable group of backhoe operators and E did not generally hire on project-by-project basis; this established irrebuttable presumption of majority status during length of contract and whether U enjoyed such status at time E repudiated contract irrelevant)

Miami Foundry Corporation **252 NLRB No. 002**
(single integrated enterprise resulting from corporation's acquisition of stock of iron foundry held liable for new owner's termination of contract between iron foundry and U)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(unilaterally instituting classification and wage rates applicable to new equipment at wage rate lower than wage rates in contract, violative, since E repudiated obligation to honor contract executed by one of entities comprising single E)

U.S. Pipe & Foundry Company and Winfrey Enterprises, Inc. **247 NLRB No. 012**
(no violation where one joint E by previously giving notice to U of cancellation of contract which affected employment of Ees fulfilled duty of other joint E to notify U of same)

Royce Lindsay d/b/a Royce Lindsay Plumbing, Heating, and Refrigeration Supply Company, etc. **JD-(SF)-3-82**
(where owner of individual proprietorship formed several business entities to replace individual proprietorship which had E-association contract with U, and new entities were found to constitute single E, E held to have unlawfully refused to recognize and bargain with U and to have unlawfully withdrawn recognition of U, since new entities are *disguised continuance* of individual proprietorship, were admittedly formed to avoid higher costs of U contract, and are subject to all legal and contractual obligations of predecessor)

N.L.R.B. v. Big Bear Supermarkets #3 and its alter ego Richard Homes **640 F.2d 924 (C.A. 9, Apr 8, 1980)**
(E's refusal to recognize or bargain with Us with respect to new Ees at one of its stores which it franchised to individual in sham transaction for purpose of evading its bargaining obligations with Us but was found to constitute single-E with franchisee, and E's refusal to apply contract terms to new Ees, unlawful)

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat **614 F.2d 777 (C.A. 9) (1980)**
(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

4850-7550 Double-breasted operations

Al Bryant, Inc., Harrisburg Drywall and Construction Corporation, and Al Bryant Associates, Inc. **260 NLRB No. 010**
(violation where non-U company and U company, found herein single E, refused to recognize Us and extend agreements to its Ees as Ees were found to constitute single appropriate unit)

Malcolm Boring Co., Inc. B. C. Malcolm and Bruce C. Malcolm **259 NLRB No. 081**
(refusal of construction equipment company to honor construction company's contract with U, not unlawful notwithstanding companies were found double-breasted operation of single E herein, where construction equipment Ees were found to comprise separate unit from construction Ees' unit and not to be covered by latter's contract)

4850-8700 Bankruptcy trustee or debtor-in-possession

Tucson Yellow Cab, Inc., A Debtor in Possession **265 NLRB No. 062**
(Bd complied with inj of U.S. Bankruptcy Ct in granting summary judgment only to extent that Bd found E had committed ULPs w/o ordering normal remedies; Bd retained jurisdiction over present case pending outcome of bankruptcy)

Marvin J. Schiff Trust R-501, Marvin J. Schiff, Trustee, d/b/a Nevada Palace Casino & Motor Inn **JD-(SF)-277-81**
(when Ees have bargained collectively with E and there occurs change of ownership not affecting essential nature of enterprise, successor E must recognize incumbent U and deal with it as bargaining representative)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession **682 F.2d 72 (C.A. 3, June 1982)**
(debtor-in-possession, who had obtained permission from bankruptcy ct to reject bargaining agreement, held not alter ego of debtor nor party to bargaining agreement; rather, debtor-in-possession is new entity with its own rights and duties subject to bankruptcy ct's supervision and is comparable to trustee and is an officer of the ct; debtor-in-possession is analogous to successor E and may be required to bargain with U, but it is not party to predecessor's bargaining agreement unless it is assumed, and it is able to reject agreement w/o following 8(d) procedures)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession **682 F.2d 72 (C.A. 3, June 1982)**
(in finding Bd improperly granted mtn for summary judgment against debtor-in-possession, ct held that debtor's rejection of bargaining agreement would not affect its Sec. 8(*d*) obligations prior to date of bankruptcy ptn, and monetary claim resulting from Bd order is then governed by bankruptcy law and may be filed as creditor's claim in bankruptcy ct; as to post-bankruptcy ptn charges, Bd must await bankruptcy ct's determination on

remand from ct herein before proceeding to consider such charges, and if bankruptcy ct permits rejection, Bd will be precluded from finding any post-ptn ULPs)

4875 OBLIGATION TO HONOR NONCONTRACT CONDITIONS OF EMPLOYMENT

4875-3300 Alter ego of employer

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal 265 NLRB No. 121
(violation where purchasing E, found herein *alter ego* of predecessor E, terminated Ees w/o advance notice to or bargaining with Us representing Ees of predecessor since it was obligated to recognize and bargain with Us, to honor contracts, and to honor noncontractual conditions of employment of unit Ees)

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal 265 NLRB No. 121
(violation where purchasing E, found herein *alter ego* of predecessor E, refused to process grievance filed by U representing predecessor E's Ees)

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal 265 NLRB No. 121
(violation where purchasing E, found herein *alter ego* of predecessor E, refused to furnish information requested by Us representing predecessor E's Ees; information was relevant to Us representative obligations and to processing grievance relating to discharge of unit Ees)

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal 265 NLRB No. 121
(violation where purchasing E, found herein *alter ego* of predecessor E, unilaterally subcontracted out unit work)

4875-6700 Successor employer

Turnbull Enterprises, Inc. 259 NLRB No. 122
(successor E's failure to immediately employ predecessor E's entire work force held of no significance with respect to successor E's obligation to bargain with U before making any changes in established terms and conditions of employment where predecessor's Ees were informed by successor E that eventually all of them would be coming back to work)

Marvin J. Schiff Trust R-501, Marvin J. Schiff, Trustee, d/b/a Nevada Palace Casino & Motor Inn JD-(SF)-277-81
(when Ees have bargained collectively with E and there occurs change of ownership not affecting essential nature of enterprise, successor E must recognize incumbent U and deal with it as bargaining representative)

5400 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF EMPLOYEE REPRESENTATIVE

Robert E. Johnson and Geneva H. Johnson, a Partnership, d/b/a Jolie Belts Company 265 NLRB No. 141
(E obligated to bargain with District Council as successor to U, where U merger into District Council complied with U constitution and Bd mandated elements except that evidence was missing that all eligible Ees were properly notified and provided opportunity to vote on merger; E, having recognized and negotiated with District Council as continuation of U, cannot now attack validity of merger)

Yates Industries, Inc., California Division 264 NLRB No. 161
(E entering into new agreement with recognition of new local as sole representative during existing terms of contract, violative, where international (the certified representative) and local (U that executed contract) were joint representatives, notwithstanding local disaffiliated itself from international since international never relinquished its status, no amendment made to certification, no schism, old local not defunct; therefore contract act as bar to attempt midterm modification of bargaining representative in contract)

Amoco Production Company 262 NLRB No. 160
(reversing prior decision in which Bd had held E unlawfully refused to bargain by repudiating contract with U after it affiliated with international U following affiliation election, Bd held E's repudiation of contract was not unlawful since affiliation election, permitting *members only* to vote, was invalid; in order to provide adequate due process safeguards in affiliation election, all unit Ees, whether U members or not, must be permitted to vote and participate in such election)

AMPAC, a subsidiary of Kane-Miller Corp. 259 NLRB No. 151
(E's entering into agreement with international U rather than local U, with which E had prior contract, not violative where local U acquiesced in international's participation in contract negotiations and ratified fruits of that participation)

St. Vincent Hospital v. N.L.R.B. 621 F.2d 1054 (C.A. 10, 1980)
(enforcement granted since E violated Act by failing to recognize and bargain with new U affiliate that was voted in by unit Ees and certified by amendment; continuity of bargaining representative was preserved after affiliation where new U was not substantially different)

5700 MULTIEMPLOYER BARGAINING (SEE ALSO 440-5000)

5701 GENERALLY

Schaetzel Trucking, Inc. 250 NLRB No. 044
(mere adoption of multi-E contract, not sufficient to make an E part of multi-E unit, absent showing that E indicated unequivocal intention to pursue group course of action with regard to labor relations)

5714 INTENT OF EMPLOYERS

Michael J. Bollinger Co. 252 NLRB No. 067
(refusal of member of multi-E association to sign agreement reached by association, violative, notwithstanding letters of withdrawal sent to U, where member continued to participate in negotiations and manifested intention to be bound by group)

Schaetzel Trucking, Inc. 250 NLRB No. 044
(E not part of multi-E unit, notwithstanding that E adopted, with modifications, result of negotiations between U and representatives of E members of the unit, where neither E nor E's only representative participated in those negotiations, E gave notice of its intention to pursue separate course of bargaining well in advance of beginning of negotiations, and E's subsequent actions were consistent with its expressed intention to bargain individually)

Local #197, Electrical Workers, AFL-CIO (McLean County Electrical Contractors Association, Inc.) JD-(SF)-369-80
(U's insistence that certain members of predecessor multi-E association who did not consent to substitution of new multi-E association as bargaining representative must bargain only as part of new multi-E association, violative, as U had notice that these members had opposed such substitution; therefore, no consensual tripartite relationship between U, association and individual members of association existed; furthermore, continued observance of contract negotiated by new association w/o more, did not render these nonconsenting Es part of multi-E bargaining unit)

Binswanger Glass Company, Division of National Gypsum Company JD-462-80

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)
(U's refusing to negotiate with E on individual basis, violative, notwithstanding U's claim that it believed E had designated E association as bargaining representative; E had plainly stated its intention to bargain separately with U and not to join association)

H & D, Inc. v. N.L.R.B. 670 F.2d 120 (C.A. 9, Feb. 1982)
(substantial evidence supported Bd's finding that multi-E bargaining unit existed where, notwithstanding that there was no formal agreement establishing such, Es had bargained together for ten years, each E received same letter from U at commencement of negotiations, caucused together and formulated one response to U proposal, and signed identical contracts with U)

Kraft Plumbing & Heating, Inc., an Arizona Corp. v. N.L.R.B. 661 F.2d 940(T) (C.A. 9, Sep. 1981)
(ct affirmed Bd's determination that E violated Sec. 8(a)(5) by refusing to recognize bargaining agreement between U and multi-E bargaining unit where Bd's finding that E was member of unit was supported by substantial evidence provided by circumstances which permitted Bd to conclude that E manifested *unequivocal intention to be bound in collective bargaining by group rather than individual action*)

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. 675 F.2d 256 (C.A. 10, Apr. 1982)
(test to determine multi-E unit's apparent authority is whether individual E has indicated unequivocal intention to be bound by group action and whether U has been notified of existence of group and delegation of bargaining authority to it and has assented to and entered upon negotiating with group's representative)

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. 675 F.2d 256 (C.A. 10, Apr. 1982)
(evidence in instant case indicated that Es considered themselves to be segment of multi-E Association, retaining for themselves final authority to approve any contract negotiated by Association and U; U official had assured instant Es of separate negotiations and contracts for Es represented by multi-E Association)

5714—Cont.

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. 675 F.2d 256 (C.A. 10, Apr. 1982)

(while association membership raises inference of association authority to execute agreement binding E, membership alone insufficient to establish necessary unequivocal intention to be bound in face of evidence here clearly to contrary where contractors told U before start of negotiations that contractors retained final approval for themselves)

Arco Electric Company v. N.L.R.B. 618 F.2d 698 (C.A. 10, 1980)

(E's stopping compliance with new bargaining agreement between U and multi-E association because of financial hardship, violative notwithstanding asserted good faith doubt of majority U status, where E did not notify U of intent not to renew bargaining obligation as E's *letter of assent* to expired multi-E bargaining agreement had provided, but rather availed itself of U hiring hall for referral of Ees for 15 months after effective date of new contract and implemented terms of new contract until it encountered economic hardship)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. 615 F.2d 1289 (C.A. 10, 1980)

(no contract with U by implication absent E's application for multi-E association membership, payment of initiation fee, authorization for association to bargain on E's behalf or individual short-form agreement with U)

5728 STRUCTURE OF ASSOCIATION

5728-2300 Informal

McCormick-Boyett Plumbing Company JD-(ATL)-93-82

(Es held multi-E bargaining entity and single E for purposes of collective bargaining notwithstanding negotiations by informal group w/o specific delegation of authority rather than by formal association, or that Es in group customarily separately signed negotiated agreement, where Es have indicated unequivocal intent to bargain as group rather than as individuals; further, herein there was history of multi-E bargaining and appropriateness of multi-E unit not disputed)

Reliable Roofing Company, Inc. JD-237-81

(absence of any formal organization, charter, constitution or bylaws, membership dues and officers does not preclude roofing contractors from constituting a multi-E bargaining group, where contractors demonstrated *unequivocal intention* to be bound by group rather than individual action; Es comprised group of Es in related business whose Ees were represented by one U, and Es found it mutually advantageous to bargain with U as a group; Es had common goal to negotiate unified contract with U, and throughout negotiations Es spoke with one voice, mutually agreed upon; and Es signed identical through separate contracts)

5742 AUTHORITY OF ASSOCIATION

Crane Sheet Metal, Inc. 248 NLRB No. 015

(where E-association informed U that additional contractors had became members, including E, U justified in concluding that E-association had full authority to bargain for this E notwithstanding these additional contractors reserved right to reject contract as this limitation on association's right to negotiate for them was not communicated to U; this apparent authority is sufficient to bind E to agreement reached by E-association absent timely withdrawal)

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. 675 F.2d 256 (C.A. 10, Apr. 1982)

(apparent authority sufficient to determine whether multi-E bargaining unit is acting as agent of Es so as to bind individual E by bargaining unit's acts; whether specific acts were actually authorized or subsequently ratified not controlling)

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. 675 F.2d 256 (C.A. 10, Apr. 1982)

(test to determine multi-E unit's apparent authority is whether individual E has indicated unequivocal intention to be bound by group action and whether U has been notified of existence of group and delegation of bargaining authority to it and has assented to and entered upon negotiating with group's representative)

Crane Sheet Metal, Inc. and Hartley Shee[illegible] Company, Inc. v. N.L.R.B. 675 F.2d 256 (C.A. 10, Apr. 1982)

(evidence in instant case indica[illegible] considered themselves to be segment of multi-E Association, retaining for themselves final authority to approve any contract negotiated by Association and U; U official had assured instant Es of separate negotiations and contracts for Es represented by multi-E Association)

5756 UNION ASSENT TO MULTIEMPLOYER BARGAINING OF EMPLOYER

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. 675 F.2d 256 (C.A. 10, Apr. 1982)

(test to determine multi-E unit's apparent authority is whether individual E has indicated unequivocal intention to be bound by group action and whether U has been notified of existence of group and delegation of bargaining authority to it and has assented to and entered upon negotiating with group's representative)

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. 675 F.2d 256 (C.A. 10, Apr. 1982)

(evidence in instant case indicated that Es considered themselves to be segment of multi-E Association, retaining for themselves final authority to approve any contract negotiated by Association and U; U official had assured instant Es of separate negotiations and contracts for Es represented by multi-E Association)

5770 WITHDRAWAL FROM MULTIEMPLOYER BARGAINING

Hilton International Company d/b/a Caribe Hilton Hotel v. N.L.R.B. 690 F.2d 318 (C.A. 2, Sept. 1982)

(enforcement denied of order based on finding that hotels unlawfully withdrew from hotel association to avoid bargaining with U about steady engagement musicians, since musicians were found Ees of band leaders rather than of hotels herein)

5770-0100 Generally

Charles D. Bonanno Linen Service, Inc. v. N.L.R.B., et al. 454 US 404 (U.S. SCt. Jan. 1982)

(contrary to dissenting opn which would find that Es may withdraw from multi-E bargaining unit on impasse because Bd permits interim agreements to be executed with struck Es, ct majority held it was unwilling to substitute its judgment for that of Bd that withdrawal from group bargaining on impasse is unlawful; consequently, majority deferred to Bd's rule which, while denying E a particular economic weapon, does so in interest of proper and preeminent goal of maintaining stability of multi-E unit)

Polar Air Sheet Metal Company 264 NLRB No. 172

(relying on *Teamsters, Local 378 (Capitol Chevrolet* case, Bd adopted ALJ's determination that E violated 8(a)(5) when it attempted untimely withdrawal from multi-E bargaining w/o consent of U, and declined to take position that such withdrawal does not, of itself, constitute violation, but that refusal to execute and apply contract reached through multi-E bargaining is essential part of 8(a)(5) violation)

Beaumont Graphics, Ltd. 254 NLRB No. 044

(E not bound by strike settlement between multiE association and U, nor was E required to furnish information relevant to grievance brought by U alleging violations of association contract and strike agreement, since E had lawfully withdrawn from multiE association; E was not party to association contract and had not consented, to be bound by association's strike agreement with U)

Crane Sheet Metal, Inc. 248 NLRB No. 015

(where E-association informed U that additional contractors had became members, including E, U justified in concluding that E-association had full authority to bargain for this E notwithstanding these additional contractors reserved right to reject contract as this limitation on association's right to negotiate for them was not communicated to U; this apparent authority is sufficient to bind E to agreement reached by E-association absent timely withdrawal)

Reliable Roofing Company, Inc. JD-237-81

(E, who claimed to have withdrawn from multi-E bargaining, held engaged, with other contractors in multi-E bargaining through informal association of area contractors, notwithstanding E's ambiguous statement at early meetings in regard to option of individual E to negotiate separately, where more recent expression by another E, made in E's presence, negated alleged and rather vague understanding as to individual E's freedom to withdraw; and E, both before and during negotiations, acted in such a way as to create appearance of unequivocal acquiescence in multi-E bargaining, and was thus bound by results of such bargaining)

Reliable Roofing Company, Inc. JD-237-81

(Bd's rules governing unilateral withdrawal of E from multi-E bargaining provide that E may withdraw w/o U's consent prior to start of bargaining by giving unequivocal notice of intent to abandon multi-E unit and to pursue negotiations on individual E basis; however, once negotiations have actually begun, withdrawal can only be effectuated on basis of *mutual consent or unusual circumstances*)

5770-0100—Cont.

Local #197, Electrical Workers, AFL-CIO (McLean County Electrical Contractors Association, Inc.) **JD-(SF)-369-80**
(U's insistence that certain members of predecessor multi-E association who did not consent to substitution of new multi-E association as bargaining representative must bargain only as part of new multi-E association, violative, as U had notice that these members had opposed such substitution; therefore, no consensual tripartite relationship between U, association and individual members of association existed; furthermore, continued observance of contract negotiated by new association w/o more, did not render these nonconsenting Es part of multi-E bargaining unit)

Harding Glass Industries, Inc. v. N.L.R.B. **672 F.2d 1330 (C.A. 10, Feb. 1982)**
(after considering ct decisions which hold that impasse alone is sufficient for E's withdrawal from multi-E unit and those which consider impasse, in combination with other circumstances, as justifying withdrawal, ct held impasse alone does not justify withdrawal, since there is no reason to hold that impasse alone triggers right to withdraw, whereas concerns relating to impasse are actually related to separate contracts and selective strikes; impasse does not mean Es and U will not ultimately reach agreement; and recognized importance of multi-E units to labor peace must be considered)

5770-1200 Timely and unequivocal

S. Freedman Electric, Inc. **256 NLRB No. 068**
(E effectively withdrew from multi-E bargaining association where it notified U and association of its intention to withdraw 6 months prior to expiration of contract, abided by terms of contract until it expired; moreover, E has no duty to express willingness to bargain on individual unit basis with U for its withdrawal to be effective)

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. **630 F.2d 25 (C.A. 1, 1980)**
(E is free to withdraw from multi-E unit for any reason prior to date set for renegotiation of existing contract or date on which negotiations commence, provided adequate notice given U)

N.L.R.B. v. Joseph J. Callier, et al, d/b/a Callier's Custom Kitchens, a co-partnership **630 F.2d 595 (C.A. 8, 1980)**
(E's withdrawal from multi-E association ineffective because company failed to provide U with unequivocal notice of its withdrawal; moreover fact that U had constructive notice of E's withdrawal 10 weeks prior to signing of final agreement and did not formally protest, is not consent; thus, E's refusal to honor agreement violative)

N.L.R.B. v. Hayden Electric, Inc. **693 F.2d 1358 (C.A. 11, Dec. 1982)**
(company revoked association's bargaining authority and notified U by timely letter to U and association of its *intent to exercise our option to cancel contract* with U, notwithstanding company admitted that letter was *insurance* to preserve its right to bargain individually in event of strike or it did not like contract)

5770-2500 Untimely

5770-2501 Generally

N.L.R.B. v. Thomas Hoover and Dennis Loy, d/b/a The Players Restaurant **639 F.2d 789(T) (C.A. 9, 1981)**
(where E notified U 6 weeks prior to expiration of contract that it desired to terminate contract when it expired but made no mention of withdrawal from multi-E unit nor gave any indication of willingness to bargain on individual basis, E never effectively furnished adequate written notice to U that evinces unambiguous intent to withdraw from unit and is bound by provisions of successor contract)

5770-2833 During contract term

Fox Painting Company **263 NLRB No. 071**
(where E executed and implemented multi E contract, served on negotiating committee which negotiated addendum to contract and implemented addendum though E did not execute addendum, he is bound by contract and addendum and liable for all payments to funds set forth in agreements save industry advancement fund and for any loss of dues not collected under checkoff provision of agreement)

Huettig and Schromm, Inc. **JD-(SF)-139-82**
(E was bound by multiE association's (Council) agreement with U by its actions after contract was signed; paid increased contractual fringe benefits, E's secretary told U agent that E said it was bound by Council's agreement and so was unnecessary to sign another independent short-form agreement, attended meetings and paid membership fee to Council)

Royce Lindsey d/b/a Royce Lindsey Plumbing, Heating, and Refrigeration Supply Company, etc. **JD-(SF)-3-82**
(single E comprised of several companies held precluded from asserting withdrawal from E-association as defense to E's failure to abide by its contractual obligations under multi-E agreement, where association was never informed by E of its withdrawal nor received copy of E's letter to U in which E indicated that it wanted to terminate rather than negotiate regarding relations with U; and there were no unusual circumstances, impasse, or other factors warranting deviation from requirement that definitive notice of withdrawal be given to both U and association)

5770-2550 Where negotiations had begun

Charles D. Bonanno Linen Service, Inc. v. N.L.R.B., et al. **454 US 404 (U.S. SCt, Jan. 1982)**
(ct majority held Bd properly found bargaining impasse did not justify E's unilateral withdrawal from multi-E bargaining unit, and its withdrawal was unlawful as was its refusal to execute agreement later executed by U and E association; impasse is not sufficiently destructive of group bargaining and is not an unusual circumstance justifying withdrawal; it is only a temporary deadlock or hiatus in negotiations rather than a rupture of the bargaining relation; permitting withdrawal at impasse would undermine utility of multi-E bargaining; and Bd's resolution is neither arbitrary nor contrary to law)

Young's Market Company **265 NLRB No. 094**
(withdrawal after negotiations had begun, ineffective where there was no U consent, unusual circumstances or fragmentation of unit, as contended)

General Printing Company **263 NLRB No. 084**
(E's refusal to abide by agreement negotiated by U and to execute copy thereof as requested by U, violative where E did not effectively withdraw from multi-E bargaining associations before beginning of negotiations for new contract and U did not thereafter acquiesce in or consent to its withdrawal)l)

Puerto Rico Hotel Association **259 NLRB No. 058**
(contention of hotel E Association that unit of all Ee musicians of hotels, excluding bandleaders, not appropriate, because some hotels had attempted to withdraw from multi-E bargaining and bandleaders had historically been included in unit, rejected, since E hotels signatories to mutual aid and protection pact and participated in negotiating through E association; attempted withdrawal from multi-E bargaining was untimely where after U had presented demands, and placement of leaders in unit never issue in negotiations and inclusion of supervisors in unit does not render it inappropriate)

J. D. Candler Roofing Company, Inc. **258 NLRB No. 053**
(E was estopped from asserting its purported withdrawal from or nonmembership in multi-E association as defense to its failure to abide by terms of contract negotiated by multi-E association since, because of E's long history of participating in multi-group E bargaining arrangement involved, E was bound to give some positive notice of its intention not to participate or be bound by negotiations)

Beaumont Graphics, Ltd. **254 NLRB No. 044**
(refusal of E to give effect to, or enter into, contract negotiated on its behalf by multiE association, not unlawful where notwithstanding that E's withdrawal was untimely, association did not object to E's withdrawal and acquiesced thereto as demonstrated by its entire course of conduct; U never protested E's withdrawal nor insisted that E was bound by association contract and negotiated separately with E)

Teckwal Corp. **253 NLRB No. 022**
(where E member of multi-E bargaining unit sent notification of its withdrawal from the association weeks after new contract negotiations began, and E's attempted withdrawal lacked mutual assent or other cognizable justification, E's later refusal to execute and implement subsequently negotiated multi-E agreement, held violative)

Michael J. Bollinger Co. **252 NLRB No. 067**
(refusal of member of multi-E association to sign agreement reached by association, violative, notwithstanding letters of withdrawal sent to U, where member continued to participate in negotiations and manifested intention to be bound by group)

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(E's withdrawal from multi-E bargaining unit during negotiations because of doubt as to U's majority support among its Ees, held untimely and unwarranted and E's subsequent refusal to execute or abide by association wide contract held unlawful; prior withdrawal and signing of separate contract with U by large E that belonged to other of 2 multi-E bargaining units bargaining with U not unusual circumstances justifying withdrawal of respondent as each association separate appropriate unit and contract negotiations continued after E signed individual contract; there integrity of bargaining unit not undermined by separate agreement)

Harding Glass Industries **248 NLRB No. 091**
(withdrawal by E of one of its facilities from multi-E bargaining violative even if impasse)

J. F. Swick Insulation Co., Inc. **347 NLRB No. 006**
(E-member's refusal to sign and abide by contract negotiated on its behalf by multi-E association, violative, since E-member's attempted withdrawal from association was not with consent of U and there were no special circumstances to justify its untimely attempt to withdraw from the association)

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McCormick-Boyett Plumbing Company JD-(ATL)-93-82
(E's refusal sign and honor negotiated multi-E contract when it had not given required notice of withdrawal from multi-E bargaining prior to commencement of neogitations, unlawful; E's failure to respond to U's request for bargaining not timely withdrawal, nor did E's financial situation constitute unusual circumstances that would justify its withdrawal where its financial reports did not substantiate required dire straits; further, E's contention that change in character of business (more repair work than service or maintenance) made agreement inapplicable, rejected)

N.L.R.B. v. Marine Machine Works, Inc. 635 F.2d 522 (C.A. 5, 1980)
(withdrawal from multi-E bargaining association after negotiations had begun but after parties had reached impasse constituted unlawful refusal to bargain)

N.L.R.B. v. Preston H. Heskell Company 616 F.2d 136 (C.A. 5, 1980)
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

N.L.R.B. v. Preston H. Haskell Company 616 F.2d 136 (C.A. 5, 1980)
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

N.L.R.B. v. Preston H. Haskell Company 616 F.2d 136 (C.A. 5, 1980)
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

Weatherford Motors, Inc. v. N.L.R.B. 669 F.2d 1332 (C.A. 9, Feb. 1982)
(enforcement granted where issue herein, whether impasse existed when Es withdrew from multi-E unit, was rendered moot by SCt's *Bonanno* decision that impasse is not an *unusual circumstance* justifying withdrawal)

Seattle Auto Glass v. N.L.R.B. 669 F.2d 1332 (C.A. 9, Feb. 1982)
(where E association and U executed master agreement but reached impasse over separate agreement covering certain job classification, whereupon U struck and then entered into interim agreements with some E members, E's withdrawal from multi-E unit upon signing of such agreements, unlawful; under SCt's *Bonanno* decision neither impasse nor signing of interim agreements that do not survive final master agreement, as opposed to separate agreements that do survive unit negotiations, is an *unusual circumstances* justifying withdrawal; and here only interim agreements were signed)

Western Pacific Roofing Corporation v. N.L.R.B. 669 F.2d 1332 (C.A. 9, Feb. 1982)
(E's withdrawal from multi-E unit on ground that, because of extreme financial distress, it did not want to be bound by proposed contract submitted to U membership for approval, unlawful; while financial distress may be *unusual circumstance* justifying withdrawal, E, whose financial difficulties began long before negotiations began, never demanded special treatment, and nothing happened during negotiations to worsen its financial status; and E cannot withdraw at last minute claiming financial distress)

N.L.R.B. v. Birkenwald, Inc. d/b/a Birkenwald Distributing Company 669 F.2d 1332 (C.A. 9, Feb. 1982)
(E's withdrawal from multi-E unit upon signing of separate agreement with U by one member of unit, not unlawful, where signing of such agreement, constituting loss of 1 of 11 Es and 30 percent of unit Ees, sufficiently fragmented unit so as to amount to *unusual circumstance* justifying withdrawal)

H & D, Inc. v. N.L.R.B. 633 F.2d 139 (C.A. 9, 1980)
(E's withdrawal from multi-E bargaining unit w/o consent of U after bargaining had begun not violative, where there was negotiating impasse at time of withdrawal)

Harding Glass Industries, Inc. v. N.L.R.B. 672 F.2d 1330 (C.A. 10, Feb. 1982)
(while U's consent to E's withdrawal from multi-E unit may be inferred where U accepts benefits of withdrawal or proceeds to bargain individually w/o protest, ct held U did not consent as result of U negotiator's angry remarks during bargaining session that it might be possible to reach settlement if E was not part of negotiations; such remarks ought not to be treated as offer establishing binding contract if accepted before withdrawal; U negotiator subsequently indicated possibility that U would not consent; and when E actually attempted to withdraw, U expressed its unequivocal protest)

Harding Glass Industries, Inc. v. N.L.R.B. 672 F.2d 1330 (C.A. 10, Feb. 1982)
(after considering ct decisions which hold that impasse alone is sufficient for E's withdrawal from multi-E unit and those which consider impasse, in combination with other circumstances, as justifying withdrawal, ct held impasse alone does not justify withdrawal, since there is no reason to hold that impasse alone triggers right to withdraw, whereas concerns relating to impasse are actually related to separate contracts and selective strikes; impasse does not mean Es and U will not ultimately reach agreement; and recognized importance of multi-E units to labor peace must be considered)

Harding Glass Industries, Inc. v. N.L.R.B. 672 F.2d 1330 (C.A. 10, Feb. 1982)
(issue as to whether E's withdrawal from multi-E unit was permissible in light of separate agreement with U by another member of multi-E group w/o any protest by other members held not properly before ct where record was devoid of any information regarding what impact agreement had on other Es when separately contracting E continued working during strike; and, since distinction between permanent and interim agreements was not explored, ct could not make factual determination regarding matter for first time on record before it)

5770-2583 Absent unusual circumstances

Charles D. Bonanno Linen Service, Inc. v. N.L.R.B., et al. 454 US 404 (U.S. SCt. Jan. 1982)
(ct majority held Bd properly found bargaining impasse did not justify E's unilateral withdrawal from multi-E bargaining unit, and its withdrawal was unlawful as was its refusal to execute agreement later executed by U and E association; impasse is not sufficiently destructive of group bargaining and is not an unusual circumstance justifying withdrawal; it is only a temporary deadlock or hiatus in negotiations rather than a rupture of the bargaining relation; permitting withdrawal at impasse would undermine utility of multi-E bargaining; and Bd's resolution is neither arbitrary nor contrary to law)

Young's Market Company 265 NLRB No. 094
(withdrawal after negotiations had begun, ineffective where there was no U consent, unusual circumstances or fragmentation of unit, as contended)

Polar Air Sheet Metal Company 264 NLRB No. 172
(E's untimely withdrawal from multi-E bargaining and refusal to abide by multi-E agreement, unlawful, since there was no showing withdrawal was justified because of *unusual circumstances* arising from E's filing of bankruptcy ptn, where E's claimed inability to pay U wages and bid competitively on jobs did not justify E's withdrawal; E's continued operation following withdrawal negates finding that its *very existence* was then ending; E maintained its E-association membership for its benefits; and ptn did not retroactively extinguish E's obligation to execute and abide by agreement nor abrogate Bd's jurisdiction over ULPs)

J. D. Candler Roofing Company, Inc. 258 NLRB No. 053
(where no finding could be made that E was in dire economic circumstances which would constitute *unusual circumstances* and allow otherwise untimely withdrawal of E from results of association's bargaining but such circumstances might exist, remedy was fashioned which would allow for flexibility in compliance stage)

L.B. Priester & Son, Inc. 252 NLRB No. 034
(poor business year in which E's losses were approximately $45,000 does not justify untimely withdrawal)

Wm. Chalson & Co., Inc. 252 NLRB No. 006
(impasse not unusual circumstance justifying untimely withdrawal from multi-E bargaining association, especially where E's desire to withdraw from association is not motivated by an alleged impasse)

Wm. Chalson & Co., Inc. 252 NLRB No. 006
(E's withdrawal from multi-E bargaining unit during negotiations because of doubt as to U's majority support among its Ees, held untimely and unwarranted and E's subsequent refusal to execute or abide by association wide contract held unlawful; prior withdrawal and signing of separate contract with U by large E that belonged to other of 2 multi-E bargaining units bargaining with U not unusual circumstances justifying withdrawal of respondent as each association separate appropriate unit and contract negotiations continued after E signed individual contract; there integrity of bargaining unit not undermined by separate agreement)

J. F. Swick Insulation Co., Inc. 247 NLRB No. 086
(E-member's refusal to sign and abide by contract negotiated on its behalf by multi-E association, violative, since E-member's attempted withdrawal from association was not with consent of U and there were no special circumstances to justify its untimely attempt to withdraw from the association)

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. 630 F.2d 25 (C.A. 1, 1980)
(unusual circumstances consist of either extreme financial pressures or where bargaining unit has been substantially fragmented)

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. 630 F.2d 25 (C.A. 1, 1980)
(Bd decision that impasse alone does not justify E's unilateral withdrawal from multi-E bargaining association subject to only limited review where

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Congress intended to leave to Bd's *specialized judgment... questions concerning multi-E bargaining* and here Bd has struck reasonable balance)

N.L.R.B. v. L. B. Priester & Son, Inc. 669 F.2d 355 (C.A. 5, Mar. 1982)

(E who refused to sign collective-bargaining agreement which had been agreed upon by multi-E association (of which it was member) and U and also withdrew from E association violated Act where claim of dire financial hardship not supported by evidence and test to allow withdrawal is *dire circumstances*)

N.L.R.B. v. Marine Machine Works, Inc. 635 F.2d 522 (C.A. 5, 1980)

(Bd has repeatedly and explicitly held that impasse is not an unusual circumstance justifying unilateral withdrawal)

Tobey Fine Papers of Kansas City, Division of Distribix, Inc. v. N.L.R.B. 659 F.2d 841 (C.A. 8, Apr. 1981)

(Es' withdrawal from multi-E bargaining association based upon their Ees' desire to withdraw from U held unjustified)

N.L.R.B. v. Joseph J. Callier, et al, d/b/a Callier's Custom Kitchens, a co-partnership 630 F.2d 595 (C.A. 8, 1980)

(limited to either E suffering extreme financial hardship or association becoming so fragmented that it ceases to be viable bargaining entity)

N.L.R.B. v. Carpenters' District Council of Greater St. Louis, AFL-CIO 622 F.2d 381 (C.A. 8, 1980)

(E's refusal to abide by contract negotiated by multi-E association unlawful where E had untimely attempted to withdraw during negotiations upon association's request for its resignation because E's Ee had filed decertification ptn; neither filing of decertificaiton ptn, which was found not to constitute *unusual circumstance,* nor E's and association's mutual mistake of law in believing that E should resign because of ptn was held to justify E's untimely withdrawal w/o U's consent)

Weatherford Motors, Inc. v. N.L.R.B. 669 F.2d 1332 (C.A. 9, Feb. 1982)

(enforcement granted where issue herein, whether impasse existed when Es withdrew from multi-E unit, was rendered moot by SCt's *Bonanno* decision that impasse is not an *unusual circumstance* justifying withdrawal)

Western Pacific Roofing Corporation v. N.L.R.B. 669 F.2d 1332 (C.A. 9, Feb. 1982)

(E's withdrawal from multi-E unit on ground that, because of extreme financial distress, it did not want to be bound by proposed contract submitted to U membership for approval, unlawful; while financial distress may be *unusual circumstance* justifying withdrawal, E, whose financial difficulties began long before negotiations began, never demanded speical treatment, and nothing happened during negotiations to worsen its financial status; and E cannot withdraw at last minute claiming financial distress)

5770-3100 Unusual circumstances permitting untimely withdrawal

Beaumont Graphics, Ltd. 254 NLRB No. 044

(*impasse* is not, of itself, *unusual circumstance* warranting unilateral withdrawal from existing multiE bargaining relationship, but amounts to no more than temporary deadlock or hiatus which is usually resolved by actions of parties)

Wm. Chalson & Co., Inc. 252 NLRB No. 006

(impasse not unusual circumstance justifying untimely withdrawal from multi-E bargaining association, especially where E's desire to withdraw from association is not motivated by an alleged impasse)

Wm. Chalson & Co., Inc. 252 NLRB No. 006

(E's withdrawal from multi-E bargaining unit during negotiations because of doubt as to U's majority support among its Ees, hled untimely and unwarranted and E's subsequent refusal to execute or abide by association wide contract held unlawful; prior withdrawal and signing of separate contract with U by large E that belonged to other of 2 multi-E bargaining units bargaining with U not unusual circumstances justifying withdrawal of respondent as each association separate appropriate unit and contract negotiations continued after E signed individual contract; there integrity of bargaining unit not undermined by separate agreement)

Harding Glass Industries 248 NLRB No. 091

(impasse not unusual circumstance)

McCormick-Bayett Plumbing Company JD-(ATL)-93-82

(E's refusal sign and honor negotiated multi-E contract when it had not given required notice of withdrawal from multi-E bargaining prior to commencement of neogitations, unlawful; E's failure to respond to U's request for bargaining not timely withdrawal, nor did E's financial situation constitute unusual circumstances that would justify its withdrawal where its financial reports did not substantiate required dire straits; further, E's contention that change in character of business (more repair work than service or maintenance) made agreement inapplicable, rejected)

Reliable Roofing Company, Inc. JD-237-81

(where E merely withdraws from multi-E bargaining, establishment of *unusual circumstances* would permit withdrawal w/o U consent; however, here, E sought to avoid its U obligation entirely, to cease recognizing U, and to continue in business as non-U E, which E could only do if it secured U's consent; question of whether Ees are to be represented by U is not a question which may be answered by E or determined by his wishes)

Reliable Roofing Company, Inc. JD-237-81

(E held not entitled to withdraw in untimely manner from multi-E bargaining where failure of U to protest withdrawal prior to its filing of charge did not constitute requisite *overt act on part of U signifying clear intent to acquiesce in withdrawal;* and E did not meet requisite *unusual circumstances* test since E did not sustain burden of establishing *dire economic circumstances,* attributable to compliance with U contract or which would have been alleviated by escape from contract, in which very existence of E as viable business entity had ceased or was about to do so)

Reynolds Aluminum Supply Company, A Division of Reynolds Metals Company JD-(SF)-34-81

(E's assertion that it must comply with guidelines of Council on Wage and Price Stability did not present unusual circumstance that justified E's attempted withdrawal from multi-E bargaining and refusal to honor collective bargaining agreement executed by E-association and U)

N.L.R.B. v. Charles L. Bonanno Linen Service, Inc. 630 F.2d 25 (C.A. 1, 1980)

(Bd decision that impasse alone does not justify E's unilateral withdrawal from multi-E bargaining association subject to only limited review where Congress intended to leave to Bd's *specialized judgment... questions concerning multi-E bargaining* and here Bd has struck reasonable balance)

N.L.R.B. v. Birkenwald, Inc. d/b/a Birkenwald Distributing Company 669 F.2d 1332 (C.A. 9, Feb. 1982)

(E's withdrawal from multi-E unit upon signing of separate agreement with U by one member of unit, not unlawful, where signing of such agreement, constituting loss of 1 of 11 Es and 30 percent of unit Ees, sufficiently fragmented unit so as to amount to *unusual circumstance* justifying withdrawal)

N.L.R.B. v. Custom Sheet Metal & Service Co., Inc. 666 F.2d 454 (C.A. 10, Dec. 1981)

(*unusual circumstances* sufficient to justify E's withdrawal from multi-E association after bargaining has begun are: (1) extreme financial hardship threatening existence as viable business entity, (2) fragmentation of multi-E bargaining unit, and (3) bargaining impasse)

N.L.R.B. v. Custom Sheet Metal & Service Co., Inc. 666 F.2d 454 (C.A. 10, Dec. 1981)

(E's withdrawal from construction industry multi-E association after bargaining for new contract started justified by economic considerations where because of strike over progress in contract negotiations E was faced with imminent loss customer which purchased 75% of its production and having lost other customers its very existence as viable enterprise was threatened; furthermore, no showing of any anti-U sentiment)

5770-3700 Consent to untimely withdrawal

General Printing Company 263 NLRB No. 084

(E's refusal to abide by agreement negotiated by U and to execute copy thereof as requested by U, violative where E did not effectively withdraw from multi-E bargaining associations before beginning of negotiations for new contract and U did not thereafter acquiesce in or consent to its withdrawal)l)

Reliable Roofing Company, Inc. JD-237-81

(E held not entitled to withdraw in untimely manner from multi-E bargaining where failure of U to protest withdrawal prior to its filing of charge did not constitute requisite *overt act on part of U signifying clear intent to acquiesce in withdrawal;* and E did not meet requisite *unusual circumstances* test since E did not sustain burden of establishing *dire economic circumstances,* attributable to compliance with U contract or which would have been alleviated by escape from contract, in which very existence of E as viable business entity had ceased or was about to do so)

5770-3733 Consent of union

Young's Market Company 265 NLRB No. 084

(no U consent to withdrawal where U filed ULP charges against withdrawing Es and struck against one of them)

Hayden Electric, Inc. 256 NLRB No. 104

(E's failure to comply retroactively and its continuing failure to comply with U's agreement with multi-E bargaining association, violative, where U did not acquiesce in E's untimely withdrawal from the association)

J. F. Swick Insulation Co., Inc. 247 NLRB No. 086

(E-member's refusal to sign and abide by contract negotiated on its behalf by multi-E association, violative, since E-member's attempted withdrawal from association was not with consent of U and there were no special circumstances to justify its untimely attempt to withdraw from the association)

Reliable Roofing Company, Inc. JD-237-81

(where E merely withdraws from multi-E bargaining, establishment of *unusual circumstances* would permit withdrawal w/o U consent; however, here, E sought to avoid its U obligation entirely, to cease recognizing U, and

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to continue in business as non-U E, which E could only do if it secured U's consent; question of whether Ees are to be represented by U is not a question which may be answered by E or determined by his wishes)

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. **630 F.2d 25 (C.A. 1, 1980)**
(consent of U not found where: U did not explicitly object to E's announced withdrawal, continued to negotiate with E-association representatives and 3) did not formally protest attempted withdrawal until 2 weeks after unit-wide agreement reached, as U under no duty to protest in formal manner, consent involves affirmative action *antithetical* to claim of no withdrawal)

N.L.R.B. v. Joseph J. Callier, et al, d/b/a Callier's Custom Kitchens, a co-partnership **630 F.2d 595 (C.A. 8, 1980)**
(E's withdrawal from multi-E association ineffective because company failed to provide U with unequivocal notice of its withdrawal; moreover fact that U had constructive notice of E's withdrawal 10 weeks prior to signing of final agreement and did not formally protest, is not consent; thus, E's refusal to honor agreement violative)

N.L.R.B. v. Carpenters' District Council of Greater St. Louis, AFL-CIO **622 F.2d 381 (C.A. 8, 1980)**
(E's refusal to abide by contract negotiated by multi-E association unlawful where E had untimely attempted to withdraw during negotiations upon association's request for its resignation because E's Ee had filed decertification ptn; neither filing of decertificaiton ptn, which was found not to constitute *unusual circumstance*, nor E's and association's mutual mistake of law in believing that E should resign because of ptn was held to justify E's untimely withdrawal w/o U's consent)

J & D, Inc. v. N.L.R.B. **633 F.2d 139 (C.A. 9, 1980)**
(E's withdrawal from multi-E bargaining unit w/o consent of U after bargaining had begun not violative, where there was negotiating impasse at time of withdrawal)

Harding Glass Industries, Inc. v. N.L.R.B. **672 F.2d 1330 (C.A. 10, Feb. 1982)**
(while U's consent to E's withdrawal from multi-E unit may be inferred where U accepts benefits of withdrawal or proceeds to bargain individually w/o protest, ct held U did not consent as result of U negotiator's angry remarks during bargaining session that it might be possible to reach settlement if E was not part of negotiations; such remarks ought not to be treated as offer establishing binding contract if accepted before withdrawal; U negotiator subsequently indicated possibility that U would not consent; and when E actually attempted to withdraw, U expressed its unequivocal protest)

N.L.R.B. v. Hayden Electric, Inc. **693 F.2d 1358 (C.A. 11, Dec. 1982)**
(U consented to or acquiesced in company's withdrawal from multi-E bargaining unit by engaging in direct negotiations on overtime pay, special service contract rate, wage package, and possible welfare fund contributions after receiving company's withdrawal notice)

N.L.R.B. v. Hayden Electric, Inc. **693 F.2d 1358 (C.A. 11, Dec. 1982)**
(U engaged in individual bargaining with company which withdrew from multi-E unit by meeting with company to discuss proposals and by letters, i.e., offer of striking Ees to return to work, soliciting counter proposals while failing to indicate that company was bound to association agreement, and requesting further negotiations)

N.L.R.B. v. Hayden Electric, Inc. **693 F.2d 1358 (C.A. 11, Dec. 1982)**
(where U expresses its willingness to meet and discuss terms peculiar to individual E's operation, and listen to counter proposals, Bd has found that such conduct evidences acquiescence in otherwise untimely withdrawal, even though U ultimately insisted that E could sign only association contract)

5770-3784 Mutual consent of Union and Employer Association

Beaumont Graphics, Ltd. **254 NLRB No. 044**
(consent of both U and association must be present if withdrawal from multiE bargaining and ultimate refusal to be vound by agreement negotiated by U and association are not to be found unlawful)

Beaumont Graphics, Ltd. **254 NLRB No. 044**
(refusal of E to give effect to, or enter into, contract negotiated on its behalf by multiE association, not unlawful where notwithstanding that E's withdrawal was untimely, association did not object to E's withdrawal and acquiesced thereto as demonstrated by its entire course of conduct; U never protested E's withdrawal nor insisted that E was bound by association contract and negotiated separately with E)

Techval Corp. **283 NLRB No. 022**
(where E member of multi-E bargaining unit sent notification of its withdrawal from the association weeks after new contract negotiations began, and E's attempted withdrawal lacked mutual assent or other cognizable justification, E's later refusal to execute and implement subsequently negotiated multi-E agreement, held violative)

5770-5000 Interim agreements

Charles D. Bonanno Linen Service, Inc. v. N.L.R.B., et al. **454 US 404 (U.S. SCt. Jan. 1982)**
(fact that interim agreements exert economic pressure on struck Es in multi-E bargaining unit should no more warrant withdrawal by Es from unit than refusal of one E to join with others in lockout; uneven application of economic pressure per se is not inconsistent with multi-E bargaining; and, in any event, interim agreements tend to deter rather than promote unit fragmentation since they preserve a continuing mutual interest by all E members in final association-wide contract)

Charles D. Bonanno Linen Service, Inc. v. N.L.R.B., et al. **454 US 404 (U.S. SCt. Jan. 1982)**
(Bd properly rejected proposition that negotiation, on impasse, of truly interim, temporary agreements, as distinguished from separate, final contracts, is inconsistent with concept of multi-E bargaining; in balancing conflicting legitimate interests rather than economic weapons and bargaining strength, Bd properly concluded that unit stability, recognized as major consideration by SCt and Bd, adequately justifies enforcement of obligation to bargain despite execution of temporary agreement)

Charles D. Bonanno Linen Service, Inc. v. N.L.R.B., et al. **454 US 404 (U.S. SCt. Jan. 1982)**
(although no interim or separate agreements were executed in instant case involving E's withdrawal from multi-E bargaining unit on impasse, ct majority held that, while some circuit cts question legitimacy of enforcement of duty to bargain where impasse has occurred and interim agreements have been or may be executed, impasse did not initiate any right to execute an agreement unconsistent with duty to abide by results of group bargaining)

Fox Painting Company **263 NLRB No. 071**
(where E executed and implemented multi E contract, served on negotiating committee which negotiated addendum to contract and implemented addendum though E did not execute addendum, he is bound by contract and addendum and liable for all payments to funds set forth in agreements save industry advancement fund and for any loss of dues not collected under checkoff provision of agreement)

Seattle Auto Glass v. N.L.R.B. **669 F.2d 1332 (C.A. 9, Feb. 1982)**
(where E association and U executed master agreement but reached impasse over separate agreement covering certain job classification, whereupon U struck and then entered into interim agreements with some E members, E's withdrawal from multi-E unit upon signing of such agreements, unlawful; under SCt's *Bonanno* decision neither impasse nor signing of interim agreements that do not survive final master agreement, as opposed to separate agreements that do survive unit negotiations, is an *unusual circumstances* justifying withdrawal; and here only interim agreements were signed)

N.L.R.B. v. Inland Cities, Inc. **618 F.2d 117(T) (C.A. 9, 1980)**
(E who signed interim agreement which bound him to outcome of negotiations by E-association violated Act when it refused to comply with contract; repudiation is not excused because E was motivated by economic necessity)

Harding Glass Industries, Inc. v. N.L.R.B. **672 F.2d 1330 (C.A. 10, Feb. 1982)**
(issue as to whether E's withdrawal from multi-E unit was permissible in light of separate agreement with U by another member of multi-E group w/o any protest by other members held not properly before ct where record was devoid of any information regarding what impact agreement had on other Es when separately contracting E continued working during strike; and, since distinction between permanent and interim agreements was not explored, ct could not make factual determination regarding matter for first time on record before it)

5770-7500 Dissatisfaction with contract terms

N.L.R.B. v. Hayden Electric, Inc. **693 F.2d 1358 (C.A. 11, Dec. 1982)**
(company revoked association's bargaining authority and notified U by timely letter to U and association of its *intent to exercise our option to cancel contract* with U, notwithstanding company admitted that letter was *insurance* to preserve its right to bargain individually in event of strike or it did not like contract)

5770-8700 Adoption of parts of contract

Huettig and Schromm, Inc. **JD-(SF)-139-82**
(E was bound by multiE association's (Council) agreement with U by its actions after contract was signed; paid increased contractual fringe benefits, E's secretary told U agent that E said it was bound by Council's agreement and so was unnecessary to sign another independent short-form agreement, attended meetings and paid membership fee to Council)

McMillian Cartage, Inc. **JD-(ATL)-48-81**
(E adopted association contract by paying wage, cost of living and annual increases; and by attempting to negotiate changes in contract)

5770-8700—Cont.

Local #197, Electrical Workers, AFL-CIO (McLean County Electrical Contractors Association, Inc.) JD-(SF)-369-80

(U's insistence that certain members of predecessor multi-E association who did not consent to substitution of new multi-E association as bargaining representative must bargain only as part of new multi-E association, violative, as U had notice that these members had opposed such substitution; therefore, no consensual tripartite relationship between U, association and individual members of association exicted; furthermore, continued observance of contract negotiated by new association w/o more, did not render these nonconsenting Es part of multi-E bargaining unit)

5784 WITHDRAWAL OF UNION FROM MULTIEMPLOYER BARGAINING

5784-6700 Untimely where negotiations begun

H & D, Inc. v. N.L.R.B. 670 F.2d 120 (C.A. 9, Feb. 1982)

(ct upheld Bd's finding violation in E's unilateral withdrawal from and refusal to bargain as part of multi-E group where bargaining to impasse and mass resignation of E's Ees from U were not unusual circumstances justifying withdrawal from multi-E bargaining unit; test is not whether majority of Ees of one E resign from U but whether majority of all Ees represented in contract negotiations resign)

5791 INDIVIDUAL BARGAINING WITH UNION DURING MULTIEMPLOYER NEGOTIATIONS

Wm. Chalson & Co., Inc. 252 NLRB No. 006

(E's withdrawal from multi-E bargaining unit during negotiations because of doubt as to U's majority support among its Ees, hled untimely and unwarranted and E's subsequent refusal to execute or abide by association wide contract held unlawful; prior withdrawal and signing of separate contract with U by large E that belonged to other of 2 multi-E bargaining units bargaining with U not unusual circumstances justifying withdrawal of respondent as each association separate appropriate unit and contract negotiations continued after E signed individual contract; there integrity of bargaining unit not undermined by separate agreement)

5800 MULTIUNION BARGAINING

5850 ASSENT OF EMPLOYER

Campbell-Harris Electric, Inc. and Campbell Electric, Inc. 263 NLRB No. 167

(violation where partnership and subsequent sole proprietorship, found *alter ego*, failed to abide by terms of contract entered into between multi-E bargaining association and U at time when partnership assented to association as bargaining representative)

5892 COORDINATION OF BARGAINING DEMANDS

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. 658 F.2d 968 (C.A. 4, Sept. 1981)

(Bd properly found that *coordinated bargaining* by negotiating committees of Us representing Ees at E's different plants presented no clear and present danger to bargaining process where Us did not engage in multiplant bargaining w/o E's consent, and each round of bargaining and resulting agreements were confined to single plant)

6000 NATURE AND EXTENT OF OBLIGATION AND DUTY TO BARGAIN

6001 GENERALLY

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation 264 NLRB No. 063

(collateral litigation does not suspend duty to bargain under Sec. 8(a)(5))

N.L.R.B. v. United Optical Workers Union Local 408, Electrical Workers (Marine Optical, Inc.) 671 F.2d 11 (C.A. 1, Feb. 1982)

(E's withdrawal of recognition, refusal to bargain on demand, and unilateral changes after relocating operations violated 8(a)(5) and 8(d); contract's description of unit as consisting of Ees employed at address of E's old facility was not shown to be intended as geographical limitation, as contended, and continuity was sufficient for Bd to apply modified contract-bar doctrine and find contract effective at new facility where there was substantial continuity of operations and in bargaining unit after relocation, and new facility was near old facility and in same state)

6001-2900 Effect of 8(f) prehire agreement

Construction Erectors, Inc. 265 NLRB No. 098

(on remand from U.S. Court of Appeals, Bd found E's repudiation of collective bargaining agreement before its termination date, unlawful, since workforce in bargaining unit had become permanent and stable and U obtained majority support w/i unit of Ironworkers during period w/i effective term of applicable contract; E moved its Ees from job to job and did not regularly assign Ees to single jobs and then to no subsequent jobs; 10 of 15 Ees in core group were U members and worked 75% of total days on which Ironworkers were employed)

Remodeling By Oltmanns, Inc. 263 NLRB No. 160

(contractor's withdrawal of recognition from U after expiration of agreement with U to continue to maintain existing working conditions established by most recent contract between U and contractor's association of which it was not member, unlawful, notwithstanding no specific mention of recognition in agreement, where U had obtained majority in unit after having been recognized under Section 8(f) agreement, contractor never disavowed bargaining relationship, and continued to adhere to contractual terms)

Pacific Erectors, Inc. 256 NLRB No. 066

(violation, where contractor discharged Ironworker Ees, and rather than resolve dispute signed contract with Sheet Metal Workers over protest of Ironworkers, since E had short form contract with Iron Workers who had majority on job, notwithstanding Ironworker Ees walked off job, or that short form contract stated dispute provisions of master agreement were not binding; E's action could not be justified by existence of any jurisdictional dispute nor could Sheet Metal Workers contract be considered pre-hire contract under construction industry proviso for job herein where job between 34 to 40 percent complete when signed)

Carlson Roofing Co., Inc. 255 NLRB No. 007

(where E is member of E association which had collective bargaining agreement with U, E not bound by contract as E never signed written consent required by E-association bylaws to bind E to that contract, never paid Ees contract wages, or checked off dues on their behalf, notwithstanding E did recruit 2 Ees to join U and paid their initiation fee, 3 months dues, and made health, welfare and pension fund contributions for them; furthermore, manner in which memberships were obtained precludes reliance upon them as evidence of U's majority)

Hageman Underground Construction; etc. 253 NLRB No. 007

(non-U company found herein single E with company that executed 8(f) agreement held bound by agreement at all existing and future jobsites, where U at one time represented majority of Ees who constituted a permanent and stable group of backhoe operators and E did not generally hire on project-by-project basis; this established irrebutable presumption of majority status during length of contract and whether U enjoyed such status at time E repudiated contract irrelevant)

N.L.R.B. v. Haberman Construction Company 641 F.2d 351 (C.A. 5, Apr. 1981)

(while it is an ULP for E under 8(a)(1) and 8(a)(2) and for U under 8(b)(1)(A) to enter into bargaining agreement with minority U, Sec. 8(f) specifically provides that it shall not be an ULP for E to make an agreement with U covering Ees engaged in building and construction industry prior to establishment of U's majority status, and Sec. 8(f) contract is voidable until such time as U achieves majority support in appropriate unit)

6001-5000 Scope of section 8(d)

Marine Optical, Inc. 255 NLRB No. 158

(E's refusal to apply existing agreement with U to new location and to bargain with U, and unilateral changes in working conditions and wages violated Sec. 8(d), as well as Sec. 8(a)(5))

6001-5017 Obligation to meet with object of reaching understanding on wages, hours, and other terms and conditons of employment

Anaconda Ericsson Inc. JD-726-80

(E's failure to notify or consult with U concerning layoffs of some unit Ees due to its unintentional neglect, held violative notwithstanding E did consult with U as to subsequent layoffs of unit Ees)

N.L.R.B. v. Carbonex Coal Company 679 F.2d 200 (C.A. 10, May 1982)

(*the duty to bargain, at least in the sense of a prohibition on unilateral changes attaches as of the election date*)

6001-5017-5000 Obligation during contract hiatus

Martinsburg Concrete Products Co. 248 NLRB No. 172

(refusal to meet with U after expiration of U's bargaining agreement concerning grievance filed on behalf of unit Ee, violative, since E's continuing past contract obligation includes duty to meet with bargaining representative and discuss unit Ees' grievances)

6001-5017-7500 Effect of agreement to arbitrate

Sweet-Orr & Company, Inc. JD-(ATL)-1-82

(after agreeing to arbitrate grievance, E's reneging on agreement by instituting delays which culminated in flat refusal to arbitrate, violative)

6001-5017-7500—Cont.

Newspaper Guild, Local 10 v. N.L.R.B. **636 F.2d 550 (C.A.D.C. 1980)**
(Bd properly did not defer where issue involved bargainability over Code of Ethics unilaterally imposed by E)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(sympathy strike cannot be enjoined pending arbitration of scope of no-strike clause, since agreement to arbitrate disputes does not necessarily imply promise to refrain from sympathy strikes pending arbitration)

6001-5025 Continuation of existing terms and conditions pending bargaining

Southwest Security Equipment Corporation **263 NLRB No. 079**

Aeronca, Inc. **253 NLRB No. 026**
(Christmas bonus paid Ees over number of years was considered component of wages or terms of employment, even though not expressly provided for by contract, which cannot be discontinued by E before U has been given notice and opportunity to bargain)

Inta-Roto, Inc. **252 NLRB No. 111**
(E's insistence on bargaining over items which were non-negotiable as result of limitation in contract reopener clause to negotiations solely concerning wages, violative)

Vienna Sausage Manufacturing Company **252 NLRB No. 183**
(where contract contains reopener provision and also automatic renewal clause effective unless contractually terminated or parties agree to modifications during period of reopening, contract remains in effect after expiration date)

Island Typographers, Inc. **252 NLRB No. 003**
(E bound by unsigned collective bargaining agreement where it complied with all its terms for 1st year of contract term and gave U no reason to believe it repudiated contract terms already agreed upon)

Newspaper Printing Corporation **250 NLRB No. 132**
(unilateral removal of advertisement typesetting work from *composing room* to *job shop*, violative, since this work was customarily performed by *composing room* Ees)

6001-5033 Act does not compel agreement

Struthers Wells Corporation **262 NLRB No. 136**
(while E bargained in good faith on some topics, its overall course of conduct in negotiations constituted unlawful refusal to bargain; finding that E unlawfully refused to bargain by insisting on deletion of certain provisions does not in any way derogate from statutory scheme prohibiting compulsion by Bd or cts over actual terms of bargaining agreement; while E is not required to agree to re-establishment of precise clauses of prior contract, E is required to bargain with U in manner consistent with Sec. 8(d) requirements)

6001-5033-5000 Failure to agree to terms deemed reasonable by Board not proper basis for 8(a)(5) violation

AMPAC, a subsidiary of Kane-Miller Corp. **259 NLRB No. 151**
(no failure to recognize and bargain with U where E and U conducted negotiations for new agreement in over 13 negotiating sessions w/i one year; minutes of sessions showed both parties were flexing their economic muscles and none of E's bargaining positions or tactics were unlawful, since they were neither improperly motivated nor unyielding)

Westvaco Corporation, d/b/a Westvaco Gauley Woodyard v. N.L.R.B. **639 F.2d 185 (C.A. 4, 1981)**
(no violation, where E took firm stand on several issues as legitimate reasons existed for position of E and good faith negotiation does not compel party to agree to proposal or make concession)

Pittsburgh-Des Moines Corporation v. N.L.R.B. **663 F.2d 956 (C.A. 9, Dec. 1981)**
(ct rejected proposition implicit in Bd's conclusion that in face of U's unequivocal rejection of E's offer, E was somehow committed to all portions of the proposal as to which tentative agreement had been reached; that U could hold E to what U liked while rejecting that which it disapproved. Party may retract proposal before other side has accepted it)

6001-5050 Act does not regulate substantial terms of employment

Delmar Concentrator Company, Inc. **253 NLRB No. 040**
(E's proposal of open shop not violative where terms of prior settlement agreement did not oblige E to agree to U shop and Act imposes no obligation upon E to agree to any specific term of employment)

East Bay Chevrolet dba Time Chevrolet v. N.L.R.B. **659 F.2d 1006 (C.A. 9, Oct. 1981)**
(enforcement denied and case remanded to Bd where R/O improperly prescribed substantive provision for future agreement between E and U; namely, effective date of agreement be made retroactive to effective date of agreement between E and 3 Us representing other units of E, notwithstanding in previous successful negotiations, all 4 Us had conducted joint bargaining with E association of which E had properly withdrawn from)

6001-5083 Duty to bargain as to matters not covered by agreement

Dunham-Bush, Inc. **264 NLRB No. 175**
(if parties have collective-bargaining agreement which is silent as to certain terms and conditions of employment, but requires renewed bargaining to impasse over those particular terms, absent *clear and unmistakeable* waiver of bargaining)

GTE Automatic Electric Inc. **261 NLRB No. 196**
(E not obligated to bargain in midterm regarding implementation of new savings and investment plan granted to nonunit Ees since E may rely on waiver in contractual zipper clause which clearly and unequivocally covered U's request to bargain concerning implementation of new benefit, notwithstanding clause included w/o discussion, where E merely seeking to maintain status quo and has not made unilateral changes that directly or adversely affected unit Ees with accompaning effect of undermining and derogating U)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(parties should bargain in good faith regarding conditions under which needed information (names of substances E claims to constitute *trade secrets*,) may be furnished to U with appropriate safeguards protective of E's legitimate proprietary interests yet maintained)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(Bd will not engage in full balancing of countervaling rights discussed by SCt in *Detroit Edison Company v. N.L.R.B.*, 440 U.S. 301 (1979) concerning requested relevant information as to substances that may constitute trade secrets, before first affording E and U opportunity to reach accomodation on their own through traditional collective bargaining mechanism)

Aeronca, Inc. **253 NLRB No. 026**
(Christmas bonus paid Ees over number of years was considered component of wages or terms of employment, even though not expressly provided for by contract, which cannot be discontinued by E before U has been given notice and opportunity to bargain)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(E's stating it would not place in signed agreement certain existing terms and conditions of employment which it intended to continue and which U agreed should be continued, not violative since all minor terms and conditions of employment not required to be included in bargaining agreements)

6025 INVESTIGATORY INTERVIEW FOR DISCIPLINARY PURPOSES

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(*Weingarten* protection applies to both *investigatory* and *disciplinary* interviews save only those conducted for exclusive purpose of notifying Ee of previously determined disciplinary action)

6025-8000 Denial of union representation

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**
(compelling Ee to attend investigatory interview, which Ee reasonably believed might result in disciplinary action, when his request for U R has been denied, held violative)

6033 MECHANICS OF BARGAINING

6033-1400 Time and place of meeting

6033-1450 Employer not required to pay employees for attendance at sessions during worktime

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**
(E's discontinuance of negotiations on plant premises and of pay for lost work time to Ees serving on multiplant negotiating committee, unlawful, where E instituted changes as retaliation over U's inclusion of other plants in negotiating committee, and E's claimed security policy for excluding outside negotiators was mere pretext; U filed charges concerning changes; and where E had right to exclude non-Ees from plant, he cannot discontinue longstanding practices so as to interfere with Ees' statutory rights)

6033-1458 Employer representative must be available with reasonable frequency

Eastern Maine Medical Center **253 NLRB No. 024**
(E held to have engaged in deliberate effort to stretch out negotiations with U so as to delay effective start of negotiations and to infect entire bargaining process, where E's chief negotiator refused to consent to U's request to meet frequently because of his busy schedule, took position that he could not meet for longer hours or have more meetings unless he determined that satisfactory progress was being made, and unilaterally concelled specifically dated meeting on short order)

6033-1475 Situs of bargaining sessions

6033-1475—Cont.

E. I. Dupont De Nemours & Co. **JD-(ATL)-100-81**
(violation by E in insisting that negotiations be carried on inside plant (preferred place under Bd cases) where, in instant case, E's own bad faith by attempting to exert retribution from U for insisting on its (U) statutory rights percipitated U's desire to move negotiations away from plant so as to remove itself from locus of managerial authority and thereby maintain appearance, if not reality, of parity between both sides)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**
(E's discontinuance of negotietions on plant premises and of pay for lost work time to Ees serving on multiplant negotiating committee, unlawful, where E instituted changes as retaliation over U's inclusion of other plants in negotiating committee, and E's claimed security policy for excluding outside negotiators was mere pretext; U filed charges concerning changes; and where E had right to exclude non-Ees from plant, he cannot discontinue longstanding practices so as to interfere with Ees' statutory rights)

6033-2800 Authority of representative

Shawn's Launch Service, Inc. **261 NLRB No. 124**
(when agent is appointed to negotiate bargaining agreement that agent is deemed to have apparent authority in absence of clear notice to contrary)

Shawn's Launch Service, Inc. **261 NLRB No. 124**
(E's contention no agreement reached because of lack of approval by its managing partners rejected where managing partners have attended negotiating sessions)

Progressive Medical Group, Inc., t/a Walnut Hill Convalescent Center **260 NLRB No. 039**
(agent appointed to negotiate bargaining agreement is deemed to have apparent authority to bind his principal in absence of clear notice to the contrary; in instant case, there was clear notice that E's agents had no independent authority to bind E and there was no clear notice that E's board of directors reserved right to act upon agreement only after it had been accepted by bargaining unit Ees)

Progressive Medical Group, Inc., t/a Walnut Hill Convalescent Center **260 NLRB No. 039**
(Sec. 8(a)(5) does not demand that an E be represented at bargaining table by a negotiator with independent authority to bind the principal; however, lack of such authority is a factor to be considered in evaluating E's good faith)

Parkview Nursing Center II Corp. **260 NLRB No. 037**
(although E is not required to be represented by individual possessing final authority to enter into agreement, this is subject to limitation that it does not act to inhibit progress of negotiations, and degree of authority possessed by negotiator is factor which may be considered in determining good-faith bargaining)

Parkview Nursing Center II Corp. **260 NLRB No. 037**
(in context of totality of E's conduct, E's bad-faith bargaining was indicated by fact that E failed to vest its chief negotiator with sufficient authority to conduct negotiations but allowed him to agree to numerous contract proposals over prolonged period of time and then engaged in hiring and firing of representatives at bargaining table as result of which chief negotiator questioned his own authority to negotiate; such changing and confusing circumstances could only serve to disrupt and impede the bargaining process)

6033-2850 Must have sufficient authority and knowledge to negotiate effectively

Bedford Farmers Cooperative **259 NLRB No. 165**
(E sending to bargaining table standing committee which had no authority either to enter into contract or advance any binding proposals held violative, since proposals *were little more than trial balloons which (E's Bd of Directors) could seemingly shoot down or reject at will;* E used bargaining committee to frustrate U's efforts to obtain contract)

Marriott In-Flite Service, A Division of Marriott Corporation **258 NLRB No. 099**
(E's negotiators did not lack authority to engage in meaningful bargaining, notwithstanding fact they opposed implementing increase in wages proposed by E as bargaining tactic, left bargaining session to consult with supervisors, and contention that lack of communication between negotiators and principals prevented U from quickly ascertaining E's actual positions and demonstrated E's intent not to reach agreement and delay negotiations)

Rockingham Machine-Lunar Company **255 NLRB No. 015**
(refusal to bargain in good faith not evinced by E's failure to vest its negotiator with sufficient authority to conduct negotiations inasmuch as U was aware of E's negotiator's tentative authority and negotiated on that basis)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**
(violation where all E's representatives made clear to U that they did not have authority to consummate agreement w/o approval of E's president, and E's president did not agree to terms and conditions which had been ostensibly negotiated by E's negotiator with U)

6033-4200 Composition of bargaining committee

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**
(Bd properly found that *coordinated bargaining* by negotiating committees of Us representing Ees at E's different plants presented no clear and present danger to bargaining process where Us did not engage in multiplant bargaining w/o E's consent, and each round of bargaining and resulting agreements were confined to single plant)

6033-4220 Employees may designate composition of bargaining representative

E. I. Dupont De Nemours & Co. **JD-(ATL)-100-81**
(refusing to negotiate with U over selection of Ees to serve on safety committees, violative)

6033-4240 Employer may not refuse to meet with designated representative absent special circumstances

M K Laboratories, Inc. **261 NLRB No. 031**
(where E had discharged chief steward and steward had grieved the discharge, E's refusal to recognize grievant as chief steward at the grievance hearing constituted unlawful refusal to bargain with Ees' representative, since discharge was found unlawful, and discharged grievant therefore retained status as Ee and thus as steward)

Merillat Industries, Inc. **252 NLRB No. 114**
(E's refusal to allow U president to attend grievance meeting to act as advisor, not unlawful where contract was silent as to any right of U president to attend such meetings and absence of such practice in past represents closest approximation of evidence of how E and U would have decided issue in contract negotiations)

Fitzsimons Manufacturing Company, West Branch Tube Division **251 NLRB No. 053**
(E's refusal to meet and bargain with designated representative for purpose of resolving grievances, not unlawful, where representative physically assaulted E's personnel director during earlier bargaining session in presence of Ee bargaining committee and management officials, and thus justified such refusal since *presence of (this) particular individual would create ill will and make good-faith bargaining impossible;* furthermore, E had met and bargained with other U representatives in interim)

B. & S. Sandock, Inc. **JD-317-82**
(declining to meet with negotiating committee selected by U because number or identity of members of that committee did not conform with provision of bargaining contract which had expired, violative)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**
(E may refuse to negotiate with U committee if he can show that U's selected representatives present clear and present danger to bargaining process because of exceptional circumstances such as bad faith or ulterior motive underlying U's choice of its committee members; however, mere inclusion of persons outside negotiating unit does not constitute exceptional circumstances; and U's use of outsiders is also insufficient unless E can demonstrate U actually attempted to bargain outside unit bounderies)

International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) v. N.L.R.B. **670 F.2d 663 (C.A. 6, Feb. 1982)**
(ct affirmed Bd finding that E was relieved of its duty to bargain with U's lead negotiator because of his unprovoked assault on high company official during negotiating meeting and in presence of Ee bargaining committee whose members looked to negotiator for leadership; such conduct rendered good faith bargaining impossible)

6033-4280 Presence of persons other than conferees at bargaining session

6033-4280-1300 Stenographers or court reporters

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(it would be contrary to policy of Act, which mandates negotiation over substantive provisions of E-Ee relationship, to permit negotiations to break down over presence of ct reporter at negotiating session, since issue did not involve wages, *hours and other terms and conditions of employment; issue was one of preliminary procedure)*

N.L.R.B. v. Bartlett-Collins Company **639 F.2d 652 (C.A. 10, 1981)**
(Bd's decision that presence of court reporter during collective bargaining is nonmandatory subject of bargaining was not w/o reasonable basis in law; presence of court reporter is not so inextricably interwoven with substance of contract that it constitutes term or condition of employment)

6033-4280-2500 International representatives

6033-4280-2500—Cont.

AMPAC, a subsidiary of Kane-Miller Corp. **259 NLRB No. 151**
(E's entering into agreement with international U rather than local U, with which E had prior contract, not violative where local U acquiesced in international's participation in contract negotiations and ratified fruits of that participation)

6033-4280-7500 Representatives of other unions

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**
(E's denial of uncompensated leave and/or vacation time sought by Ees in order to serve as members on other Us' negotiating committees at E's other plants, unlawful, where E did so as retaliation over U's inclusion of outsiders in bargaining committees at its plants)

6033-5000 Counterproposals

6033-5050 Obligation to make after proposals

Hudson Chemical Company **258 NLRB No. 009**
(E's failure, during contract negotiations, to define, explain and advocate its position and, instead, its attempt to thrust its deletions from prior contracts on U on *take it-or leave it* basis constitute additional indicia of E's lack of sincere attempt to conduct meaningful negotiations)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**
(refusing to present counter proposals and utilizing negotiators who had no authority to make any concessions and indeed made none, violative)

6033-6000 Withdrawal of agreed-upon contract proposals

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(complete package proposal made on behalf of either party through negotiations remains viable, and upon acceptance in toto must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance or defeased by event upon which offer was expressly made contingent at time prior to acceptance)

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(since Bd not strictly bound by technical rules of contract law, fact that U rejected E's contract offer and even made counterproposals did not nullify offer; complete package proposal made on behalf of either party through negotiations remains viable, and upon accpetance *in toto* must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance, or defeated by an event upon which offer was expressly made contingent at time prior to acceptance)

Times-Herald, Inc. **249 NLRB No. 004**
(E's withdrawal of proposals, not unlawful, where U engaged in economic strike causing E to hire permanent replacements and no evidence to show action taken to prevent agreement)

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**
(E's change in position regarding wages, pensions and termination date of already agreed upon in contract, unlawful)

Pittsburgh-Des Moines Corporation v. N.L.R.B. **663 F.2d 956 (C.A. 9, Dec. 1981)**
(ct rejected proposition implicit in Bd's conclusion that in face of U's unequivocal rejection of E's offer, E was somehow committed to all portions of the proposal as to which tentative agreement had been reached; that U could hold E to what U liked while rejecting that which it disapproved. Party may retract proposal before other side has accepted it)

6033-7000 Impasse

Cote Bros. Bakery, Inc. **259 NLRB No. 101**
(insisting to impasse that U agree that there would be no U retribution from its members against members who had crossed picket line, violative, since insistance on such clause relates to nonmandatory subject of bargaining)

6033-7001 Generally

Charles D. Bonanno Linen Service, Inc. v. N.L.R.B., et al. **454 US 404 (U.S. SCt. Jan. 1982)**
(ct majority held Bd properly found bargaining impasse did not justify E's unilateral withdrawal from multi-E bargaining unit, and its withdrawal was unlawful as was its refusal to execute agreement later executed by U and E association; impasse is not sufficiently destructive of group bargaining and is not an unusual circumstance justifying withdrawal; it is only a temporary deadlock or hiatus in negotiations rather than a rupture of the bargaining relation; permitting withdrawal at impasse would undermine utility of multi-E bargaining; and Bd's resolution is neither arbitrary nor contrary to law)

Charles D. Bonanno Linen Service, Inc. v. N.L.R.B., et al. **454 US 404 (U.S. SCt. Jan. 1982)**
(although no interim or separate agreements were executed in instant case involving E's withdrawal from multi-E bargaining unit on impasse, ct majority held that, while some circuit cts question legitimacy of enforcement of duty to bargain where impasse has occurred and interim agreements have been or may be executed. impasse did not initiate any right to execute an agreement unconsistent with duty to abide by results of group bargaining)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(no *Borg Warner* ULP (see *N.L.R.B. v. Wooster Div. of Borg Warner Corp.*, 356 U.S. at 349) notwithstanding continued disagreement over nonmandatory subject since impasse over mandatory subject would have occurred even absent insistence on nonmandatory proposals)

Associated General Contractors of North Dakota (a non-profit corporation) v. N.L.R.B. **637 F.2d 556 (C.A. 8, 1980)**
(multi-E association's bargaining to impasse over no-conflicting agreements clause, violative, where such clause is not mandatory subject of bargaining since it does not sufficiently affect wages, hours and other terms and conditions of employment between E and Ees in bargaining unit)

Newspaper Printing Corporation v. N.L.R.B. **625 F.2d 956 (C.A. 10, 1980)**
(E's insistence to impasse on jurisdictional unit clause which modified unit description so as to give E unilateral control over unit scope unlawful in view of unlawfulness of both insistence on modification of unit scope and insistance to impasse on non-mandatory subject of bargaining; moreover, clause allowing E to change unit composition at will by unilaterally transferring work out of unit would deprive unit Ees of collective representation and bargaining over reduction or elimination of their jobs by work transfers or automation)

6033-7001-5000 No obligation to continue negotiations after impasse

Forester Beverage Corporation **265 NLRB No. 035**
(unilateral increase in wages after impasse equal to E's final offer not violative, but increase in wages after impasse greater than that which was offered to U in its final offer, violative for such action is necessarily inconsistent with sincere desire to conclude agreement with U)

Signatory Labor Committee of The Colorado Contractors' Association, Inc. **261 NLRB No. 191**
(respondent Es and their signatory labor committee failed and refused to bargain in good faith with U by conditioning further negotiations on U's consent to untimely withdrawal of certain Es from multi-E bargaining unit and thereafter disbanding multi-E unit, where contrary to contention, no genuine impasse existed because committee's demand for release of Es from unit was not mandatory subject of bargaining)

International Medication Systems, Ltd. **253 NLRB No. 120**
(although *impasse* may suspend bargaining for time, it *does not relieve an E from the continuous duty to take no action—which amounts to a withdrawal of recognition of the U's representative status*)

Patrick & Company **248 NLRB No. 061**
(E's refusal to discuss U's proposals other than economic and conditioning negotiation of agreement on U's acceptance of E's wage proposals, unlawful; contention impasse reached regarding wages, rejected; further, impasse regarding wages would not justify refusal to bargain regarding remainder of U's proposals)

Service Spring Company A Division of Garlock, Inc. A Wholly-Owned Subsidiary of Colt Industries **JD-123-82**
(no violation by refusing U's request to resume negotiations after impasse in absence of changed circumstances which would indicate that agreement might be possible)

Accessory Controls and Equipment Corporation **JD-590-81**

Newspaper Printing Corporation v. N.L.R.B. **692 F.2d 615 (C.A. 6, Nov. 1982)**
(ct held that words *all composing room work* used in prior agreement and words *all work performed in the composing room* contained in impasse proposal described same tasks; thus negotiations had centered on U's jurisdiction not question of appropriate unit and impasse was not reached over permissive subject of bargaining but rather over work assignment clause which was also negotiated and was mandatory subject of bargain and E was w/i its rights to bargain to impasse and to proceed unilaterally to implement changes in terms and conditions of employment)

6033-7008 What constitutes

Saunders House a/k/a The Old Man's Home of Philadelphia **265 NLRB No. 207**

Signatory Labor Committee of The Colorado Contractors' Association, Inc. **261 NLRB No. 191**
(no impasse where Es' bargaining committee insisted upon U release of certain Es from multi-E unit)

Harry Sonn, Jr. and Winton R. Wagner, Partners d/b/a Briarcliff Pavilion For Specialized Care **260 NLRB No. 184**
(no violation by increasing wages pursuant to last offer in view of impasse resulting from U's bad faith in failing to provide another negotiator to meet with E after U president engaged in physical altercation with E's negotiators and negotiations had to be carried out with mediator and with parties in separate rooms; U claimed that mediator did not relay E's message that E needed to hire strike replacements and then wages would be increased)

6033-7008—Cont.

Harry Senn, Jr. and Winston R. Wagner, Partners d/b/a Briarcliff Pavilion For Specialized Care 260 NLRB No. 184
(E's proposals for contract limited to 4-1/2 months' duration (closely linked to end of certification year), dues and fees limited to ten dollars and two hours pay caused impasse and were violative)

Marco, Inc. d/b/a Towne Plaza Hotel 258 NLRB No. 016
(no impasse where E never fully tested finality of U's bargaining position and E was in poor position to argue that further negotiations would have been futile)

South Shore Hospital 256 NLRB No. 001
(unilaterally implementing its last offer for increase in wages and benefits, violative, as no impasse could exist because of E engaging in surface bargaining with intent of preventing agreement)

Inta-Roto, Inc. 252 NLRB No. 111
(no impasse where neither party has exhausted bargaining possibilities nor reached stage where further meetings would have been fruitless)

Atlas Metal Parts Co., Inc. 252 NLRB No. 029
(no impasse justifying E's unilateral actions where bargaining stalemated by E's violative course of bargaining)

Wm. Chalson & Co., Inc. 252 NLRB No. 006
(no impasse existed, contrary to respondent's contention, notwithstanding facts that contract had expired, lockout had occurred, parties were far apart on many major issues and no new meeting date was set up at close of bargaining session, where bargaining had been conducted continuously, multi-E bargaining associations had not as yet considered significance and effect of Ees' unanimous rejection of their last offer, and associations knew that offer they made on date respondent contended impasse had occurred was not their final offer and would make further offers until U changed its position)

Excavation-Construction, Inc. 248 NLRB No. 081

Temp Tech Industries, Inc. JD-255-82
(no impasse, where antecedent bargaining had not been in good faith; moreover, U made clear to very last meeting that it was still prepared to alter bargaining position and E made no effort to fully test finality of U's position)

Bureau of Rehabilitation of The National Capital Area JD-262-82
(no genuine impasse where E failed to bargain in good faith)

Service Spring Company A Division of Garlock, Inc. A Wholly-Owned Subsidiary of Colt Industries JD-123-82
(impasse reached in view of E's prolonged meaning but good faith bargaining where U did not drop U shop proposal, adhered to broad grievance and arbitration procedure, refused to discuss economics and through Federal Mediator submitted its final position which E rejected in good faith, target date for end of negotiations was reached and no more meetings were scheduled)

Accessory Controls and Equipment Corporation JD-590-81
(impasse may exist as to some items of bargaining notwithstanding one party is guilty of bad faith bargaining on another item)

National Steel Service Center, Inc. JD-395-80
(E's insisting on charge in scope of unit as condition of signing new bargaining agreement and U unequivocally rejecting proposal and maintaining that position, notwithstanding side bar conversations at which U representative stated he was not personally opposed to unit charge)

H. H Fredericksen Co. JD-(SF)-64-80
(existence of bargaining impasse was evidenced, among other considerations, by fact that E's conduct, considerd in totality, was not in bad faith; limited number of bargaining sessions did not necessarily warrant finding that deadlock could not have happened since parties had fair and adequate opportunity to reach agreement; E and U recognized that situation was akin to a hiatus and that agreement was unlikely; and U's slightly modified proposals did not reflect concessions significant enough to break deadlock)

Excavation-Construction, Inc. v. N.L.R.B. 660 F.2d 1015 (C.A. 4, Oct. 1981)
(where U and E, bargaining seperately, agreed to defer negotiations on make-up pay provision until after Association agreement was reached, this, in effect, was bargaining; impasse reached only when U rejected E's final offer, it cannot be said that there was realistic possibility that negotiations would be fruitful)

Electric Machinery Company v. N.L.R.B. 653 F.2d 958 (C.A. 5, Aug 1981)
(no *impasse* in bargaining negotiations where U at no time refused to bargain nor did U waive its right to bargain; facts did not begin to support defense of *impasse* because bargaining had only just begun and there appeared no reason which impelled E unilaterally to make changes in Ees' working conditions)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)
(refusal to bargain not unlawful in view of impasse; ct stated that it could not as a matter of law hold that E's refusal to concede on one issue – arbitrability of merit increases – constituted bad faith bargaining)

N.L.R.B. v. Gibraltar Industries, Inc. and Case, Inc. 653 F.2d 1091 (C.A. 6, July 1981)
(bargaining impasse reached where E negotiated and eventually agreed with U on many proposals and stoutly resisted U efforts to increase basic wage package and to involve U in setting piece-work rates; it was hard bargaining but not unfair bargaining)

Blue Grass Provision Co., Inc. v. N.L.R.B. 636 F.2d 1127 (C.A. 6, 1980)
(no impasse regarding subcontracting of delivery operations where U never understood E meant to terminate bargaining unit upon expiration of contract and meetings between parties were at best preliminary sparring matches)

H & D, Inc. v. N.L.R.B. 633 F.2d 139 (C.A. 9, 1980)
(situation where the negotiating members could well conclude that *there was no realistic prospect that continuation of discussion at that time would have been fruitful*)

H & D, Inc. v. N.L.R.B. 633 F.2d 139 (C.A. 9, 1980)
(where E unilaterally withdrew from multi-E bargaining group after three months and seven sessions of bargaining followed by U membership's rejecting three E proposal and voting for strike, ct held impasse existed at time of E's withdrawal)

Albion Corporation d/b/a Brooks Towers, Inc. v. N.L.R.B. 682 F.2d 874 (C.A. 10, July 1982)
(notwithstanding Bd accepted ALJ's determination that E had not adopted and maintained its bargaining strategy with its janitorial Ees for other than legitimate reasons, E nontheless violated Act by conditioning reinstatement of striking maintenance Ees upon acceptance of the lower janitorial wage after they had unconditionally offered to return to work; therefore, no meaningful bargaining over wages possible so long as reinstatement of maintenance Ees used as *bargaining bait* by E to force acceptance of its terms. No good-faith impasse could exist because E unlawfully refused to restore status quo)

6033-7014 Agreement need not be reached

First National Maintenance Corp. v. N.L.R.B. 452 U.S. 666 (U.S. SCT, June 1981)

Deister Concentrator Company, Inc. 253 NLRB No. 049
(lack of agreement does not require conclusion that no impasse existed)

6033-7014-5000 Failure to reach agreement may be evidence of lack of good faith

Glenmar Cinestate, Inc. 264 NLRB No. 035
(E did not bargain in bad faith and valid impasse was reached, although under normal circumstances magnitude of wage decrease proposed along with proposed sharp curtailment of other benefits would be strong evidence of such, where evidence that E was experiencing severe financial difficulties stood uncontroverted; moreover, U never requested to see E's financial books or records, and in fact, U representative stated during negotiations that both sides were bargaining in good faith, that U did not question E's integrity, and that it was not demanding to see E's books)

Huck Manufacturing Company 254 NLRB No. 008
(where parties met only 4 times and E refused to bargain further no impasse existed)

Seattle-First National Bank v. N.L.R.B. 638 F.2d 1221 (C.A. 9, 1981)
(*those engaged in collective bargaining are normally required to bargain to impasse on all mandatory issues. E's unilateral change in conditions of employment under negotiation is a violation of 8(a)(5) since it is circumvention of duty to negotiate. If one party fails to negotiate in good faith, no valid impasse can be reached*)

6033-7028 Concessions indicate lack of impasse

Inta-Roto, Inc. 252 NLRB No. 111
(where U rejected E's last offer and struck E, and E then acquiesced to U's request for further bargaining; E waived any claim that impasse might have been created by U's actions)

Times-Herald, Inc. 249 NLRB No. 004
(E did not insist to impasse that U agree on modification of unit-juridiction clause of contract, where E changed its position and offered to agree to language from prior contract)

6033-7042 Existence of impasse is question of fact for Board

Carpenter Sprinkler Corporation v. N.L.R.B. 605 F.2d 60 (C.A. 2, 1979)

6033-7056 No impasse

6033-7056—Cont.

Bedford Farmers Cooperative **259 NLRB No. 165**
(no impasse where E, through its manager, made unilateral decision to reduce U working hours prior to time E and U began bargaining negotiations)

Marriott In-Flite Service, A Division of Marriott Corporation **258 NLRB No. 099**
(no impasse, notwithstanding 37 negotiating sessions, where at time of alleged impasse few economic proposals had been made or resolved, no serious discussion of U security and checkoff, or no-strike provision, and when negotiations broke off there were 26 open items; further there had been mediation and any alleged impasse caused by E's failure to bargain)

Henry Cauthorne, an individual, t/a Cauthorne Trucking **256 NLRB No. 115**
(unilaterally ceasing payments into U's health and welfare, and pension trust funds upon expiration of contract which E had not signed but to terms of which E had bound itself by signing interim agreement and implementing significant portion of contract held violative, since; (1) change was not made subsequent to bargaining impasse, (2) E did not, in good faith, doubt U's majority status, and (3) U did not waive right to bargain regarding alterations; health and welfare fund trust agreements did not contain language which might limit E's obligation to bargain regarding cessation of payments into fund)

Southern Newspapers, Inc., d/b/a The Baytown Sun **255 NLRB No. 022**
(while parties may have been at impasse at date of trial, no impasse existed as of controlling date when unilateral shift change was effected since E failed to meet burden of showing impasse existed as of that date inasmuch as there was no bargaining concerning shift change between date of E's submission of proposed change and date change was effected)

Mark Twain Marine Industries, Inc. **254 NLRB No. 144**
(unilateral implementation of contract proposals affecting changes in wages and other conditions of employment, violative, notwithstanding E's contention that negotiations had reached impasse, since evidence clearly establishes that E implemented contract provisions in retaliation for its Ees' determination to exercise their right to strike, U's decision to strike does not in itself amount to impasse)

Sea Bay Manor Home For Adults **253 NLRB No. 068**
(no impasse existed where parties had signed stipulation agreement setting forth method for resolving their differences; E's refusal to abide by agreement and unilateral change of wage rates of Ees violative)

Inta-Roto, Inc. **252 NLRB No. 111**
(work stoppage is not alone proof of impasse)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(no impasse justifying E's unilateral actions where bargaining stalemated by E's violative course of bargaining)

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**
(on ct remand, Bd affirmed ALJ's conclusion that impasse did not exist and that E's conduct in treating U's rejection of its *final offer* as revocation of U's earlier unconditional offer to return to work was w/o merit, where E seized upon Ees' strike as a means of obtaining favorable contract, and its continued bargaining while operating at lower cost by use of temporary replacements unfairly strengthened E's bargaining position; no meaningful bargaining over wages was possible so long as E used reinstatement of strikers as bargaining bait to force acceptance of its terms)

Pease Company **251 NLRB No. 080**
(E's claim that impasse existed, rejected, where breakdown in negotiations was caused by E's bad faith bargaining which precludes finding of impasse)

Burrell Construction & Supply Co. **JD-86-81**
(violation where E refused to bargain over choice of health plan for its Ees; no impasse because E did not give U cost of one plan it offered to E)

Carpenter Sprinkler Corporation v. N.L.R.B. **605 F.2d 60 (C.A. 2, 1979)**
(no justification for unilateral change in wages and benefits since contrary to contention, impasse had not been reached where parties only met twice, no specific proposals were made at first meeting, and no counter-proposals were made by E to U's suggestions at second meeting)

Huck Manufacturing Company v. N.L.R.B. **693 F.2d 1176 (C.A. 5, Dec. 1982)**
(no impasse existed where neither party indicated that negotiations would be fruitless, federal mediator's presence indicated that negotiations were continuing, bargaining had occurred at only four meetings, E's *final* offer was simply consolidation of previous positions, and strike was called to put *heat* on E rather than to break an impasse)

Electric Machinery Company v. N.L.R.B. **653 F.2d 958 (C.A. 5, Aug 1981)**
(no *impasse* in bargaining negotiations where U at no time refused to bargain nor did U waive its right to bargain; facts did not begin to support defense of *impasse* because bargaining had only just began and there appeared no reason which impelled E unilaterally to make changes in Ees' working conditions)

N.L.R.B. v. M. A. Harrison Manufacturing Company, Inc. **682 F.2d 580 (C.A. 6, June 1982)**
(no legitimate bargaining impasse where although E did participate in either directly or through mediator in approximately eleven bargaining attempts, there is evidence from which Bd could reasonably conclude that E was giving the U a runaround while purporting to be meeting with U for purpose of collective bargaining)

Blue Grass Provision Co., Inc. v. N.L.R.B. **636 F.2d 1127 (C.A. 6, 1980)**
(no impasse regarding subcontracting of delivery operations where U never understood E meant to terminate bargaining unit upon expiration of contract and meetings between parties were at best preliminary sparring matches)

6033-7056-3300 Intentional refusal to bargain

Elias Mallouk Realty Corp. **265 NLRB No. 156**
(Respondents' impasse defense to unilateral changes in wages rendered null in view of fact unilateral change took place in atmosphere permeated by E's ULPs)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **265 NLRB No. 161**
(E's proposal for management rights subcontracting and sale clause (sell all or part of its business) was, in this case, onerous request and part of E's strategy to provoke impasse and unilaterally implement clause to avoid compliance with ct order to reinstate discharged Ees)

Harding Glass Industries **248 NLRB No. 091**
(withdrawal by E of one of its facilities from multi-E bargaining violative even if impasse)

Seattle-First National Bank v. N.L.R.B. **638 F.2d 1221 (C.A. 9, 1981)**
(*those engaged in collective bargaining are normally required to bargain to impasse on all mandatory issues. E's unilateral change in conditions of employment under negotiation is a violation of 8(a)(5) since it is circumvention of duty to negotiate. If one party fails to negotiate in good faith, no valid impasse can be reached*)

6033-7056-5000 Surface bargaining

Hudson Chemical Company **258 NLRB No. 009**
(*surface bargaining* rather than *hard bargaining* violative where conduct of E exhibited refusal to budge from its original demands and was intended to insure that no agreement would be reached; U not equally stubborn where, during negotiations, it gave up far worse than was given to it)

Hudson Chemical Company **258 NLRB No. 009**
(E had no right to change Ees' terms and conditions of employment during contract negotiations with U where alleged *impasse* in bargaining resulted from E's *surface bargaining* and was not *legally cognizable*)

6033-7056-6700 Proposal as to which party is willing to bargain

Patrick & Company **248 NLRB No. 061**
(E's refusal to discuss U's proposals other than economic and conditioning negotiation of agreement on U's acceptance of E's wage proposals, unlawful; contention impasse reached regarding wages, rejected; further, impasse regarding wages would not justify refusal to bargain regarding remainder of U's proposals)

6033-7056-8400 Existence of possibility of agreement

Saunders House a/k/a The Old Man's Home of Philadelphia **265 NLRB No. 207**
(E implementing its wage increase offer w/o further negotiations, unlawful, notwithstanding E's contention justified by impasse, since serious issues concerning wages remained open, in view of fact negotiations on wages had been in progress for only a little over 7 weeks as compared to 7 months of other negotiations, and that U did not believe negotiations at impasse but rather had made significant concessions which would reasonably suggest further concessions; further, bargaining history does not favor impasse inasmuch as parties negotiating initial agreement)

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(no impasse existed, contrary to respondent's contention, notwithstanding facts that contract had expired, lockout had occurred, parties were far apart on many major issues and no new meeting date was set up at close of bargaining session, where bargaining had been conducted continuously, multi-E bargaining associations had not as yet considered significance and effect of Ees' unanimous rejection of their last offer, and associations knew that offer they made on date respondent contended impasse had occurred was not their final offer and would make further offers until U changed its position)

Wm. Chalson & Co., Inc. **252 NLRB No. 006**
(E's withdrawal from multi-E bargaining unit during negotiations because of doubt as to U's majority support among its Ees, held untimely and unwarranted and E's subsequent refusal to execute or abide by association wide contract held unlawful; prior withdrawal and signing of separate contract with U by large E that belonged to other of 2 multi-E bargaining units bargaining with U not unusual circumstances justifying withdrawal of respondent as each association separate appropriate unit and contract negotia-

6033-7056-8400—Cont.

tions continued after E signed individual contract; there integrity of bargaining unit not undermined by separate agreement)

6033-7070 Resumption of bargaining required

6033-7070-8000 Changed circumstances

Vitco Steel Supply Corp. JD-102-80

(E held to have unlawfully refused to bargain, notwithstanding parties had reached impasse, since circumstances changed after impasse when E not only withdrew its proposals in response to U's filing charges with Bd but also refused to meet with U thereafter)

6033-7084 Unilateral action may be justified by impasse

R. A. Hatch Company 263 NLRB No. 140

(E's unilateral implementation of its contract proposals, not unlawful, where impasse had been reached with us over signing of short-form memorandums of agreement that would have bound E to master labor agreement negotiated by Us and local chapter of multi-E bargaining association from which E had previously withdrawn)

Harry Sons, Jr. and Winton R. Wagner, Partners d/b/a Briarcliff Pavilion For Specialized Care 260 NLRB No. 184

(no violation by increasing wages pursuant to last offer in view of impasse resulting from U's bad faith in failing to provide another negotiator to meet with E after U president engaged in physical altercation with E's negotiators and negotiations had to be carried out with mediator and with parties in separate rooms; U claimed that mediator did not relay E's message that E needed to hire strike replacements and then wages would be increased)

Robbins Door & Sash Company, Inc. 260 NLRB No. 088

(E violated Act by instituting unilateral changes even if parties were at impasse since changes it instituted were not reasonably comprehended w/i proposals it had offered to U during bargaining sessions)

Bedford Farmers Cooperative 259 NLRB No. 165

(no impasse where E, through its manager, made unilateral decision to reduce U working hours prior to time E and U began bargaining negotiations)

Marriott In-Flite Service, A Division of Marriott Corporation 258 NLRB No. 099

(unilateral changes not justified by impasse where E put changes into effect at time few economic proposals had been made or resolved, no serious discussion of U security and check off, or no-strike provision, and when negotiations broke off there were 26 open items, further any alleged impasse caused by E's failure to bargain)

Hudson Chemical Company 258 NLRB No. 009

(E had no right to change Ees' terms and conditions of employment during contract negotiations with U where alleged *impasse* in bargaining resulted from E's *surface bargaining* and was not *legally cognizable*)

Southern Newspapers, Inc., d/b/a The Baytown Sun 255 NLRB No. 022

(Bd law does not require that any change in face of impasse must be exactly the same as a prior proposal or that change must have been subject of a specific proposal; rather, what is required is that change must have been reasonably comprehended by proposals previously offered)

Southern Newspapers, Inc., d/b/a The Baytown Sun 255 NLRB No. 022

(unilateral change in shift hours held not justified even if impasse had existed since it was not reasonably comprehended by E's original proposal which was directed to elimination of night shift and anticipated normal bargaining concerning shift work, whereas effected change was response to serious and real emergency situation, whereby E sought to avoid increased costs resulting from paying more than day shift rates; fact that emergency existed is not necessarily proper basis for unilateral change during negotiations)

Beaumont Graphics, Ltd. 254 NLRB No. 044

(*impasse* is not, of itself, *unusual circumstance* warranting unilateral withdrawal from existing multiE bargaining relationship, but amounts to no more than temporary deadlock or hiatus which is usually resolved by actions of parties)

International Medication Systems, Ltd. 253 NLRB No. 120

(although *impasse* may suspend bargaining for time, it *does not relieve an E from the continuous duty to take no action—which amounts to a withdrawal of recognition of the U's representative status*)

M. A. Harrison Manufacturing Company, Inc. 253 NLRB No. 097

(defense of waiver not available to E where E granted unit Ees merit wage increases, percentage wage increases, and extra paid holiday w/o giving U sufficient opportunity to bargain over those unilateral changes which it wanted to do, E and U had made no attempt to bargain on any economic issue during initial negotiations, hence neither party could contend that impasse had been reached justifying unilateral action)

M. A. Harrison Manufacturing Company, Inc. 253 NLRB No. 097

(E cannot take advantage of *impasse* when it was caused in large part by E's own unlawful conduct in unilaterally granting wage increases and benefits during contract negotiations)

Atlas Metal Parts Co., Inc. 252 NLRB No. [illegible]

(no impasse justifying E's unilateral actions where bargaining stalemated by E's violative course of bargaining)

Newspaper Printing Corporation 250 NLRB No. 132

(notwithstanding E had insisted to impasse concerning unit description proposals for new contract, E's unilateral adoption of those proposals held violative, since proposals substantially modified existing unit and work jurisdiction provisions)

Dial Tuxedos, Inc. 250 NLRB No. [illegible]

(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

KCW Furniture Company, Inc. 247 NLRB No. 079

(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

Potters' Medical Center, Inc. JD-605-81

(unilaterally changing wage scale and pay classification system violative notwithstanding impasse, as such changes were not those reasonably comprehended by the bargaining proposals; i.e., general wage increase granted though bargaining proposals covered merit pay increase on Ee's anniversary date)

Huck Manufacturing Company v. N.L.R.B. 693 F.2d 1176 (C.A. 5, Dec. 1982)

(unilateral grant of shift differential previously porposed during negotiations where there was no impasse to justify it, unlawful)

Newspaper Printing Corporation v. N.L.R.B. 692 F.2d 615 (C.A. 6, Nov. 1982)

(ct held that words *all composing room work* used in prior agreement and words *all work performed in the composing room* contained in impasse proposal described same tasks; thus negotiations had centered on U's jurisdiction not question of appropriate unit and impasse was not reached over permissive subject of bargaining but rather over work assignment clause which was also negotiated and was mandatory subject of bargain and E was w/i its rights to bargain to impasse and to proceed unilaterally to implement changes in terms and conditions of employment)

Blue Grass Provision Co., Inc. v. N.L.R.B. 636 F.2d 1127 (C.A. 6, 1980)

(E's unilaterally subcontracting its delivery operations and laying off Ees performing this work, unlawful, where U was not on notice E contemplated subcontracting and absent impasse, where U never understood E meant to subcontract operations upon expiration of contract and meetings between parties were preliminary sparring matches)

6033-8400 Failure to sign or reduce agreement to writing

Charles D. Bonanno Linen Service, Inc. v. N.L.R.B., et al. 454 US 404 (U.S. SCt. Jan. 1982)

(ct majority held Bd properly found bargaining impasse did not justify E's unilateral withdrawal from multi-E bargaining unit, and its withdrawal was unlawful as was its refusal to execute agreement later executed by U and E association; impasse is not sufficiently destructive of group bargaining and is not an unusual circumstance justifying withdrawal; it is only a temporary deadlock or hiatus in negotiations rather than a rupture of the bargaining relation; permitting withdrawal at impasse would undermine utility of multi-E bargaining; and Bd's resolution is neither arbitrary nor contrary to law)

Cutter Laboratories, Inc. 265 NLRB No. 078

(E's failure to reduce to writing and execute agreement, unlawful, where E and U had reached agreement which required E to reduce to writing and sign, notwithstanding E's contention binding agreement had not been reached, in view of agreement evidencing unambiguous intent to incorporate E's benefits into agreement, decision to prepare galley proofs of agreement, implementation of all new contractual provisions, submission to arbitration of issue raised under new agreement, and E's admission of contractual relationship at arbitration hearing)

Cutter Laboratories, Inc. 265 NLRB No. 078

(U's request to include job classification codes in agreement, which U later dropped, did not justify E's refusal to sign agreement unless language that limitations and qualifications of benefit plans shall apply to unit Ees be included in agreement, since signing of valid agreement may not be predicated on modification of agreement)

Beaks Corp. #2, d/b/a Delano Hotel 263 NLRB No. [illegible]

(refusing to sign negotiated contract violative where one of 3 owner-brothers negotiated contract, delivered it to U with his name signed, conferred with U over two week period and did not state there was no contract and

6033-8400—Cont.

then claimed signature on contract was not his and two brothers were also required to sign contract and they refused to sign)

General Printing Company **263 NLRB No. 084**
(E's refusal to abide by agreement negotiated by U and to execute copy thereof as requested by U, violative where E did not effectively withdraw from multi-E bargaining associations before beginning of negotiations for new contract and U did not thereafter acquiesce in or consent to its withdrawal))

Diplomat Envelope Corporation **263 NLRB No. 075**
(E's refusal to sign agreement prepared by U pursuant to signed memorandum of agreement violative; contention that there was no meeting of minds on terms, *e.g.*, increases in wages during 2d and 3d years, increases in annuity payments, and change in method of resolving disputes by substituting state board mediation for American Arbitration Association, rejected as any ambiguity over wages and annuity payments was resolved by bargaining history and memorandum provided for substitution of mediation for arbitration)

Wagner Distribution Services, Inc. d/b/a Distribution Services West **262 NLRB No. 096**
(no violation, since E and U never reached agreement for new contract where assertion that agreement reached over telephone on picket line clause which was only issue of substance dividing parties, rejected; subsequently E persuaded itself it could escape bargaining with U by alleging loss of majority)

C.P.S. Chemical Company **262 NLRB No. 082**
(E's refusal to reduce to writing and sign contract including pension plan, to which it had allegedly agreed, not unlawful where mediator had presented different set of proposals to each of the parties and there never was a meeting of the minds with regard to inclusion of pension plan in contract)

Presto Casting Company **262 NLRB No. 047**
(failing and refusing to sign 1-year agreement reached with U, violative)

Shawn's Launch Service, Inc. **261 NLRB No. 124**
(E's refusal to sign agreement, unlawful, notwithstanding changes made after agreement reached were merely to correct inadvertant errors, or fact U seeking more benefits where U had made clear that in event no further benefits could be obtained it desired contract be signed, or that contract had not been ratified by U members since no requirement for ratification in U rules and little or no discussion of ratification during negotiations)

Shawn's Launch Service, Inc. **261 NLRB No. 124**
(E's contention its refusal to sign agreement justified since when U had been informed by Ees of their unhappiness with contract and desire for greater benefits U effectively withdrew original offer from any further consideration by attempting after meeting with Ees to renegotiate terms before E could reasonably be expected to act and thus no agreement reached, rejected)

Progressive Medical Group, Inc., t/a Walnut Hill Convalescent Center **260 NLRB No. 039**
(E's refusal to execute and honor written agreement negotiated with U, unlawful, since it may properly be inferred that actual approval of terms of agreement was given by E's board of directors, as to whose participation in bargaining process U was informed early in negotiations, and U was justifiably led by E's agents to believe that such approval had been given; and, in the circumstances, U was entitled to rely on that belief)

Liberty Pavilion Nursing Home **259 NLRB No. 177**
(no violation where failure to execute contract was based on E's failure to obtain necessary approval of wage provision by State Rate Setting Commission as condition precedent to implementation, and since Commission does not approve rate increases based on a *contemplated collective bargaining agreement*, prior approval of this essential provision would never be forthcoming as erroneously believed by both parties; furthermore, wage provisions could not be severed from entire agreement, since it would be contrary to seeming agreement of the parties)

Mercedes-Benz of North America, Inc. **258 NLRB No. 107**
(E's refusal to execute bargaining agreement which included commencement date that parties had not agreed on, not violative)

Georgia Kraft Company, Woodcraft Division **256 NLRB No. 121**
(refusal to assist U in reducing agreement to writing after agreement reached, and submitting proposals piecemeal, violative, notwithstanding minor variations between written contract and E's proposals)

Alameda County Association For The Mentally Retarded, Inc. **255 NLRB No. 085**
(E's refusal to execute letter of understanding assertedly embodying oral agreement resolving dispute over wage provision contained in newly executed contract, unlawful; even assuming E's negotiator had no actual binding authority, Bd found cover letter accompanying letter of understanding evidenced E's clear agreement with terms of initial agreement reached by parties' negotiators; facts established explicit acceptance of terms of letter of understanding and of E's intention to execute it as signed agreement; and U could assume that necessary approval had been obtained by E's negotiator from his *principals*)

Murphy Bonded Warehouse, Inc. **254 NLRB No. 178**
(E's refusal to execute agreement negotiated during strikes unlawful, where all terms were agreed upon except return to work of strikers when U accepted E's final proposal and offered return to work of strikers but E falsely claimed it had hired permanent replacements)

Joe Carroll Orchestras & Entertainment Agency, Inc. d/b/a Meyer Davis Orchestra; et al. **254 NLRB No. 153**
(refusal to execute contract because U was not policing terms pursuant to *most-favored nations* clause violative; this objection goes only to enforcement of contract)

Mark Twain Marine Industries, Inc. **254 NLRB No. 144**
(refusal to execute previously agreed-upon contract because contention that U lost support of majority of Ees, violative, since any loss of majority was result of E's ULPs)

Consolidation Coal Company **253 NLRB No. 104**
(where parties had reached final unconditional agreement as to new absenteeism policy, E's refusal to execute written agreement violative)

Jefferson Stores, Inc. **253 NLRB No. 048**
(refusal to sign 1978-82 master agreement held not violative where agent who signed memorandum agreement of 1976-79 contract expressly limited contract to one jobsite and, therefore, did not become signatory to master contract and no obligation to sign new agreement; E's compliance with master agreement at additional jobsites does not establish adoption or ratification of agreement for those jobsites)

Teckwal Corp. **253 NLRB No. 022**
(where E member of multi-E bargaining unit sent notification of its withdrawal from the association weeks after new contract negotiations began, and E's attempted withdrawal lacked mutual assent or other cognizable justification, E's later refusal to execute and implement subsequently negotiated multi-E agreement, held violative)

Western Truck Service, Inc. **252 NLRB No. 096**
(refusal to sign agreed upon collective-bargaining contract, violative)

Petroleum Contractors, Inc. **250 NLRB No. 094**
(contention of E which had prior bargaining agreement with U that its refusal to sign new agreement justified since negotiations conducted subject to condition precedent that U demonstrate majority status, rejected, where Ees approved contract and presumption of majority not rebutted by Ees' lack of membership or check off authorizations, nor by written poll taken by Ee where no valid decertification ptn filed)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(E's stating it would not place in signed agreement certain existing terms and conditions of employment which it intended to continue and which U agreed should be continued, not violative since all minor terms and conditions of employment not required to be included in bargaining agreements)

Kennebec Beverage Co., Inc. **248 NLRB No. 176**
(E's failure to sign bargaining agreement previously agreed upon, violative, notwithstanding document prepared by U and forwarded to E did not contain provision for payment of helpers to which parties had agreed, where E insisted it would not execute document until it attorney approved, and since that time had neither informed U that document varied from agreement reached nor attempted to assist in reducing such agreement to writing; mere fact that addition to document was required did not relieve E of obligation to execute agreed-upon contract)

World Evangelism, Inc. **248 NLRB No. 117**
(successor E's failure to execute contract where it had agreed to adopt and sign predecessor's contract, unlawful)

Sidney M. Baer t/a Ashbourne Apartments **248 NLRB No. 089**
(E's refusing to incorporate certain terms in written document, not violative in view of insufficient evidence to support U's contention that E's sole negotiator communicated to U representative that agreement on those terms had been reached)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**
(E's refusal to execute proposed contract not violative since, although U and E had orally agreed upon many of terms to be included in the proposed contract, at no time had all of substantive terms been agreed upon)

Tasman Sea, Inc. **247 NLRB No. 097**
(successor E's failure to execute bargaining agreement, unlawful, where it had contract in its possession several months, was aware of specific provisions, and willingly accepted contract w/o modification upon receiving letter from U contract would not be effective until 6 months after close of escrow)

Redwood Chevrolet **JD-(SF)-128-82**
(E's refusal to sign agreement, unlawful, since agreement on terms had been reached and E's contention that negotiations were to be conducted in two stages, economic and non economic, rejected; neither representative's perusal of proposals handed him by E after agreement had been reached, nor his seeking strikers sanctions are admission that agreement not reached)

6033-8400—Cont.

D.V.C. Industries of Illinois, Inc. **JD-568-81**
(E's refusal to sign agreement submitted to it by U w/o deletions and alterations, violative where E and U had reached agreement and agreement embodied terms and conditions of employment set forth in document mailed by U to E)

Deer-Mac Manufacturing Co. **JD-347-81**
(E's failure to execute contract, violative, where E had agreed to be fully bound by all terms and conditions of such contract that U had negotiated through association bargaining with E's competitors)

Dubuque Packing Company **JD-(SF)-258-81**
(E's refusal to sign new bargaining agreement which it had agreed to, violative)

Illinois Valley Electric Cooperative, Inc. **JD-281-81**
(refusal to acknowledge, execute, and abide by collective-bargaining contract agreed to by E and U, violative)

McMillan Cartage, Inc. **JD-(ATL)-48-81**
(refusal to execute association contract violative, where E adopted contract by paying wage, cost of living, and annual wage increase, failed to respond to U's request that it execute contract or to advise U that it was not bound, and by attempting to negotiate changes in contract's wage and benefits provisions)

Anderson Sand & Gravel Company **JD-655-80**
(E had no obligation to sign contract since U and E had no meeting of minds regarding grievance and arbitration clause where name and composition of dispute resolving committee in contract submitted to U for signature were not identical to what was agreed upon; however, when parties reach agreement on that provision, E will be obligated to sign)

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(E's refusal to sign U contract on demand held not to constitute unlawful failure to bargain or withdrawal of recognition, notwithstanding unit was doubtless appropriate and assuming E had duty to bargain, where E had complied with pre-hire arrangement with U to pay U scale and cash equivalent of U fringe benefits; in addition, E's unlawful discharges were held not to constitute attempt to forestall U organizing drive or undermine U)

Petricca Construction Company **JD-179-80**
(E's refusal to execute written contract as requested by U, not violative, notwithstanding that E had paid its unit Ees new increased wage rate and fringe benefits contained in the new contract, where there was no evidence that E ever agreed, either orally or in writing, that it would sign new contract or that it considered itself bound by it)

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**
(E's refusal to sign contract, after reaching agreement with U unlawful, since it had reached agreement with U where it had read U's draft and indicated it was *all right,* notwithstanding contention incorporation by reference of area Standard Independent Agreement was substantial addition which E's counsel was entitled to study, where E was familiar with Standard Agreement and there had been negotiations as to modification of agreement)

Garrett Railroad Car & Equipment, Inc. v. N.L.R.B. **683 F.2d 731 (C.A. 3, June 1982)**
(refusal to reduce agreement to writing violative where prior contract expired, strike had occurred and company's complete and final proposal was ratified by members and strike ended)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**
(E's refusal to sign agreed-upon contract containing signatures of nonplant Ees who had participated in negotiations as members of U's negotiating committee, unlawful, where, in sharp contrast to past practice, E's refusal resulted solely from its opposition to inclusion of outsiders on U's bargaining team; Bd discredited E's claim that U, not E, refused to sign and, since Bd is in unique position to judge witnesses' credibility and there is substantial evidence to support Bd's determination, its finding of violation is upheld)

N.L.R.B. v. L. B. Priester & Son, Inc. **669 F.2d 355 (C.A. 5, Mar. 1982)**
(E who refused to sign collective-bargaining agreement which had been agreed upon by multi-E association (of which it was member) and U and also withdrew from E association violated Act where claim of dire financial hardship not supported by evidence and test to allow withdrawal is *dire circumstances*)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from group bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from group bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from goup bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

N.L.R.B. v. International Credit Service, A Division of Lucas County Credit Bureau, Inc. **644 F.2d 886(T) (C.A. 6, Jan 6, 1981)**
(refusal to execute bargaining agreement not violative, since no final agreement was ever reached by parties)

Capitol-Husting Company, Inc. v. N.L.R.B. **671 F.2d 237 (C.A. 7, Feb. 1982)**
(E's failure to execute contract that matched U's contract with other E, unlawful, since E had offered to do so and would have reasonably understood U's conduct as acceptance, U detrimentally relied on E's offer, E benefitted thereby, and E's obligation was not rescinded by subsequent events as contended; moreover, even if U did not accept offer when made, it did so later at time when E had not explicitly withdrawn its offer, and there was nothing to lead U to believe it had done so)

Consolidation Coal Company v. N.L.R.B. **669 F.2d 482 (C.A. 7, Jan. 1982)**
(E's refusal to execute contract not violative where U official himself was never ready to execute contract but instead reserved right to find fault or disclaim any part of agreement until he had approved actual writing and signed it)

Tobey Fine Papers of Kansas City, Division of Distribix, Inc. v. N.L.R.B. **659 F.2d 841 (C.A. 8, Apr. 1981)**
(Es' refusal to honor bargaining contract negotiated by multi-E association violative, notwithstanding Es' contention that they had effectively withdrawn from the multi-E association, where actual reason for each company's withdrawal was not based on impasse or fragmentation as contended, but on fact that Ees of the individual companies express doubt as to U's representation of majority of each company's Ees'. It is well settled that this constitutes an impermissible reason for company's withdrawal from multi-E bargaining)

Miscellaneous Drivers and Helpers Union, Local No. 610 v. N.L.R.B. **624 F.2d 831 (C.A. 8, 1980)**
(no violation where funeral home operator refused to sign funeral directors association's contract with U representing funeral vehicle drivers, since funeral home operator, though member of association, did not employ drivers but contracted with other Es for drivers' services notwithstanding he had signed contract in past)

N.L.R.B. v. General Brewing Company **628 F.2d 1357(T) (C.A. 9, 1980)**
(substantial evidence supported Bd's finding that E violated Act by refusing to execute bargaining agreement where complete agreement had been reached when memorandum of agreement was signed by the parties)

N.L.R.B. v. Custom Sheet Metal & Service Co., Inc. **666 F.2d 454 (C.A. 10, Dec. 1981)**
(E's refusal to execute multiE association construction industry contract held not violative where, since strike began, E's loss of major customer who purchased 75% of product and also minor customers left E in extremely difficult financial situation which constituted *unusual circumstance* justifying withdrawal)

6033-8401 Generally

6033-8401—Cont.

Computer Sciences Corporation Applied Technology Division, Huntsville Center **258 NLRB No. 065**
(failure to sign agreement not violative where no meeting of minds existed notwithstanding International agreed to accept contract, as Local and not International, was chosen representative of Ees)

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(E's refusal to execute contract held violative where, after 5 meetings between E and U to modify and renegotiate current contract, U, by telegram, advised E that (E's) last offer had been accepted as final and binding contract and that contacted strikers would return to work notwithstanding U did not intend to accept E's *proposal* on discipline of strikers who allegedly had committed acts of misconduct during strike)

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(if party insists, an agreed-upon provision must be reduced to writing)

Lincoln Hills Nursing Home, Inc.; et al. **257 NLRB No. 145**
(failure to execute contract not violative where no evidence that parties had come to meeting of minds)

Island Typographers, Inc. **252 NLRB No. 003**
(letter from U to E which expressed its dissatisfaction with E over its *determination not to sign* collective bargaining agreement does not constitute legally valid demand for signature; therefore E did not refuse to sign such agreement)

Enidine, Inc. **251 NLRB No. 168**
(violative, especially where refusal occurred during certification year absent unusual circumstances)

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(since Bd not strictly bound by technical rules of contract law, fact that U rejected E's contract offer and even made counterproposals did not nullify offer; complete package proposal made on behalf of either party through negotiations remains viable, and upon accpetance *in toto* must be executed as part of statutory duty to bargain in good faith, unless expresaly withdrawn prior to such acceptance, or defeated by an event upon which offer was expressly made contingent at time prior to acceptance)

McKinzie Enterprises, Inc. d/b/a Cherokee United Super and Westpark United Super **250 NLRB No. 014**
(E's refusal to sign contract, not unlawful where there was no *meeting of the minds* about inclusion of certain contractual provisions and thus no contract)

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(two inadvertent errors in written agreement submitted by U to E did not excuse E's complete refusal to execute agreement previously reached by U and E)

International Paper Company, Bag-Pak Div. **JD-(ATL)-90-82**
(no violation where parties never reached final agreement)

Nordstrom, Inc. **JD-(SF)-142-82**
(E's refusal to execute contract based on decertification ptn violative where decertification ptn is invalid as result of E's improper promises of benefits to Ees)

Carbon Specialties, Inc. **JD-510-80**
(failing to sign new contract bargained for and agreed upon, violative)

Somerville Hospital **JD-102-80**
(E's refusal to execute agreement, not unlawful, where parties had not reached agreement on salary provisions due to mutual mistake notwithstanding Ees had ratified agreement and new salary provisions had been implemented by E)

Shulman Air Freight, Inc. **JD-(SF)-39-80**
(E's refusal to sign contract containing terms which were agreed upon between E and certified U after exchange of letters, six negotiating meetings, and Ees' acceptance of E's final offer, violative)

N.L.R.B. v. Electra-Food Machinery, Inc. **621 F.2d 956 (C.A. 9, 1980)**

N.L.R.B. v. Electra-Food Machinery, Inc. **621 F.2d 956 (C.A. 9, 1980)**
(where U constitution prohibited it from entering into contract providing for open shop, this is no defense to E's refusal to execute contract containing such provision as internal U matters cannot releive E from its duty to execute agreed upon collective bargaining agreement)

N.L.R.B. v. Penasquitos Gardens, Inc.; etc. **603 F.2d 225 (C.A. 9, 1979)**
(where E initially offered 15 cent hourly raise and maintained its position through 2 U rejections, never withdrawing offer and voluntarily put raise into effect, it violated Act when it refused to sign agreement in which U accepted 15 cent raise and included no new terms or conditions in its offer)

[illegible] Continuing request

Pittsburgh and New England Trucking Co. **249 NLRB NO. 104**
(E's rejection of U's request that E's last proposal, accepted by U, be reduced to writing, unlawful, notwithstanding fact that E had withdrawn proposal since proposal was withdrawn solely because of E's unlawful withdrawal of recognition and contract thus remained open)

National Steel Service Center, Inc. **JD-398-80**
(E obligated to sign bargaining agreement, notwithstanding impasse on change in scope of unit, since impasse on permissive bargaining subject had effect of removing from E freedom to agree to any but historical unit; U's call for meetings reasonably constituted request imposing statutory obligation to sign; further, E's continued insistence on separate units rendered explicit request to sign futile and terms agreed upon implemented which further show then was complete agreement on terms for renewal)

6033-9200 Ratification by Employees

Shawn's Launch Service, Inc. **261 NLRB No. 124**
(E's refusal to sign agreement, unlawful, notwithstanding changes made after agreement reached were merely to correct inadvertant errors, or fact U seeking more benefits where U had made clear that in event no further benefits could be obtained it desired contract be signed, or that contract had not been ratified by U members since no requirement for ratification in U rules and little or no discussion of ratification during negotiations)

Joe Carroll Orchestras & Entertainment Agency, Inc. d/b/a Meyer Davis Orchestra; et al. **254 NLRB No. 153**
(violation where Es' refused to honor U's request to resume bargaining for renewal of contract after members failed to ratify agreement as Es knew that U's negotiators lacked authority to execute contract absent ratification; therefore, since no binding agreement reached Es obligated to negotiate further with U)

International Medication Systems, Ltd. **253 NLRB No. 120**
(failure of U to present final offer of E to unit members can not be used as evidence of E's good faith doubt of majority status since any inference drawn for U's behavior is merely speculative)

Shulman Air Freight, Inc. **JD-(SF)-39-80**
(E's refusal to sign contract containing terms which were agreed upon between E and certified U after exchange of letters, six negotiating meetings, and Ees' acceptance of E's final offer, violative)

N.L.R.B. v. Seneca Environmental Products, a Division of Seneca Sheet Metal, Inc. **646 F.2d 1170 (C.A. 6, Apr 1981)**
(E's refusal to sign agreement unlawful, notwithstanding E's contention that ratification by Ees was condition to execution of agreement, where condition was never put specifically into words, and ALJ, whose judgment on credibility of witnesses is of course given great weight, refused to imply it; E's further contention that it refused to sign agreement in part because U deleted name of international U from agreement rejected, in view of testimony that E would have signed agreement had ratification taken place)

6033-9500 Approval by attorney

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**
(fact contract was to be submitted to attorneys for *cleaning up* did not allow party to later modify terms of agreed upon contract where attorney objected)

6033-9600 Repudiation of contract

General Printing Company **263 NLRB No. 084**
(E's refusal to abide by agreement negotiated by U and to execute copy thereof as requested by U, violative where E did not effectively withdraw from multi-E bargaining associations before beginning of negotiations for new contract and U did not thereafter acquiesce in or consent to its withdrawal)l)

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) **259 NLRB No. 037**

Belcon, Inc. **257 NLRB No. 175**
(refusing to implement contract after U accepted E's lost offer and terminated economic strike, violative)

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**
(E's change in position regarding wages, pensions and termination date of already agreed upon in contract, unlawful)

6050 SUBJECT MATTER OF BARGAINING

6050-0100 Generally

First National Maintenance Corp. v. N.L.R.B. **452 U.S. 666 (U.S. SCT, June 1981)**
(*matter that is not a mandatory subject of bargaining, unless it is illegal, may be raised at bargaining table in good faith and parties may incorporate it into enforceable agreement. Labor and management may not, however, insist on it to point of impasse*)

Ford Motor Co. v. N.L.R.B. **365 U.S. 364 (S. Ct US, 1979)**
(in enacting Sec. 8(d), Congress delegated to Board primary responsibility of marking out scope of statutory language and of statutory duty to bargain; Bd's view that in-plant food prices and services are mandatory subjects of bargaining is entitled to considerable deference and should be enforced)

6050-0100—Cont.

Rockwell International Corporation **260 NLRB No. 153**
(duty to bargain continues during existence of bargaining agreement concerning any mandatory subject of bargaining which has not been specifically covered in the contract and regarding which U has not clearly and unmistakably waived its right to bargain)

A. Heller Metals Co., Inc. **JD-845-79**
(E's insistence to impasse upon bargaining at a restaurant while aware of U's policy against discussing business at lunch and rejecting U's five proposals of alternative meeting places held to unlawful stifle negotiations at inception over threshold issue)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(Bd has special expertise in classifying *mandatory* and *non-mandatory* subjects of bargaining; Congress delegated primary responsibility of defining scope of duty to bargain to Bd)

N.L.R.B. v. Bartlett-Collins Company **639 F.2d 652 (C.A. 10, 1981)**
(in reviewing Bd decision as to whether issue constitutes mandatory bargaining subject, ct must give considerable deference to Bd's judgment; Congress delegated to Bd primary responsibility of marking out scope of statutory duty to bargain and classification of bargaining subjects is matter concerning which Bd has special expertise)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(factor of anti-U animus is germane to determination of whether proposed change in company's operations is mandatory subject of bargaining)

6050-0120 Mandatory subjects defined

First National Maintenance Corp. v. N.L.R.B. **452 U.S. 666 (U.S. SCT, June 1981)**
(although parties are free to bargain about any legal subject, Congress has limited...duty to bargain to matters of wages, hours and other terms and conditions of employment. A unilateral change as to subject w/i any such category violates...duty to bargain and is subject to Bd's R/O. Conversely, both E and U may bargain to impasse over these matters and use economic weapons...in attempt to secure their respective aims. Congress deliberately left words -wages, hours, and other terms and conditions of employment- w/o further definition, for it did not intend to deprive Bd of power to define these terms)

First National Maintenance Corp. v. N.L.R.B. **452 U.S. 666 (U.S. SCT, June 1981)**
(management must be free from constraints of bargaining process to extent essential for running of...business, and have some degree of certainty...as to when it may...reach decisions w/o fear of later...labeling of its conduct ULP. Congress did not...state what issues...it intended to exclude from mandatory bargaining. Nevertheless, in view of E's need for unencumbered decision making, bargaining over management decisions that have substantial impact on continued availability of employment should be required only if benefit for labor management relations and...bargaining outweighs burden...conduct of business)

First National Maintenance Corp. v. N.L.R.B. **452 U.S. 666 (U.S. SCT, June 1981)**
(bargaining over decision to cancel contract for cleaning and maintenance at third party, not mandatory)

Ford Motor Co. v. N.L.R.B. **305 U.S. 364 (S. Ct US, 1979)**
(in-plant food prices and services held mandatory subjects of bargaining where E retained right to review and approves food prices and services provided by third-party supplier and in view of industrial practice to include such contract provisions)

Ciba-Geigy Pharmaceuticals Division **264 NLRB No. 134**
(E implementing completely revised attendance program w/o bargaining with U that provided for disciplinary actions for violations not contained in prior program, violated Act, as this was mandatory subject of bargaining)

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **264 NLRB No. 178**
(where distinction between subcontracting, which is mandatory bargaining subject, and partial closing, which may not be mandatory, is not readily apparent, Bd determines whether E's action is suitable for resolution by bargaining or is not suitable because it represents *a significant change* in operations or a decision *lying at the very core of entrepreneurial control* by reviewing facts of case, such as nature of E's business before and after the action, extent of capital expenditure, bases for action, and U's ability to engage in meaningful bargaining in view of E's situation and objectives)

Whitehead Brothers Company **263 NLRB No. 123**
(E's decision to subcontract its delivery operation is mandatory subject of bargaining and its refusal to both bargain over its decision to subcontract and also effects of that decision on unit violative)

Wagner Distribution Services, Inc. d/b/a Distribution Services West **262 NLRB No. 096**
(change of shift hours mandatory subject of bargaining)

Merrill & Ring, Inc. **262 NLRB No. 039**
(jury duty)

Otis Elevator Company, A Wholly Owned Subsidiary of United Technologies **235 NLRB No. [illegible]**
(decision to transfer some of unit Ees to another location for purpose of consolidating research and developement operation)

Armour Oil Company **253 NLRB No. 148**
(E's unilateral decision to transfer terminal area work at one of its terminals to another of its terminals constituted mandatory subject of bargaining notwithstanding that transfer did not reduce total amount of work performed by unit Ees'; transfer constituted material, substantial and significant change in unit Ees terms and conditions of employment involving Ees' seniority and commuting time)

Armour Oil Company **253 NLRB No. 148**
(noise level, safety equipment and ease of handling of trucks' by drivers at one of E's terminals constituted conditions of employment of drivers and, as such, were mandatory subjects of bargaining when E transferred operations from one terminal to another)

W. G. Best Homes Corporation **253 NLRB No. 123**
(subcontracting)

Sea Bay Manor Home For Adults **253 NLRB No. [illegible]**
(where parties to contract under negotiation voluntarily agreed in writing to resolve their differences over mandatory terms by submitting them to binding arbitration, this agreement becomes so intertwined with mandatory terms as to be inseparable and becomes mandatory itself; therefore E's repudiation of stipulation agreement violative, as it constitutes more than mere breach of contract)

Charmer Industries, Inc. **250 NLRB No. 031**
(notwithstanding contention that bill collection procedures are entrepreneurial credit policy decisions, ALJ held salesmens' collection of payments for merchandise sold and their responsibility for releasing orders for delivery were duties w/i term *working conditions* which are mandatory subjects of bargaining)

Tenneco Chemicals, Inc. **249 NLRB No. 171**
(establishment of work rules requiring higher standards of performance enforcable by discipline w/o bargaining with U, violative, as rules constitute mandatory subject of bargaining)

Van-Note Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(duty to bargain about wages, hours and other terms and conditions of employment includes duty to bargain about subcontracting out unit work)

Arizona Public Service Company **247 NLRB No. 084**
(subcontracting of unit work)

Heat Transfer Group, Gulf and Western Mfg. Co. **JD-381-82**
(decision to relocate portion of unit work to another location for purpose of reducing labor costs constituted mandatory subject of bargaining)

Heat Transfer Group, Gulf and Western Mfg. Co. **JD-381-82**
(subject must be one which is *amenable to resolution through the bargaining process*)

Sedan Operators Cooperative, Inc., d/b/a Desoto Cab Company **JD-(SF)-158-82**
(holding annual *sign-up* so that cabdrivers could change shifts, days off, starting times and vacations held mandatory subject of bargaining in view of longstanding practice)

Power Contractors, Ltd. **JD-(SF)-109-82**
(failing and refusing to consult with U concerning replacement of unit members, who were lawfully terminated, by another group of Ees during effective term of bargaining agreement violative, since such replacement of Ees is statutory subject of bargaining)

Accessory Controls and Equipment Corporation **JD-590-81**
(establishment of safety committee comprised of Ee and management representatives is mandatory subject of bargaining because it is device to insure continuation of bargaining regarding such matters which are themselves mandatory subjects of bargaining)

Apex International Management Service **JD-(ATL)-66-81**
(successor E's unilateral discontinuance of predecessor's existing (contractual) practice of *checkoff* held violative, since *checkoff* was mandatory subject of bargaining and as such a term and condition of employment)

Thomas Truck & Caster Company **JD-435-81**
(work week)

Lever Brothers Company **JD-301-80**
(E's refusal to bargain over absentee rule violative notwithstanding prior contracts contained management rights clause covering absenteeism because U's waiver expired with contract and E must bargain over mandatory subject)

Mission Childcare Consortium, Inc. **JD-(SF)-110-80**
(company provided meals)

N.L.R.B. v. First National Maintenance Corp. **627 F.2d 596 (C.A. 2, July 1980)**
(E's refusal to bargain with U over its decision to discontinue operations at one of its locations, violative since decision was based on economic consid-

6050-0120—Cont.

erations. Decisive factor is whether, regardless of origin of cost which precipitated management decision to terminate, bargaining could reasonably be expected to modify or reverse that decision, and here U could have made concessions which could possibly have enabled E to remain in operation)

ABC Trans-National Transport, Inc. v. N.L.R.B. **642 F.2d 675 (C.A. 3, Feb 19, 1981)**
(decision to close one of E's facilities constituted mandatory subject of bargaining where E failed to overcome presumption that partial closing requires bargaining with U in that, although it was undisputed that closing was solely economic decision, it was not matter for immediate necessity since facility's economic deterioration existed over past several years, and adverse impact on unit Ees who lost their jobs by decision was not mitigated by fact that E neither substituted non-unit workers for those displaced nor deliberately sought to perform work elsewhere)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(*mandatory* subjects (of bargaining) are limited to issues that settle aspect of relationship between E and Ees)

N.L.R.B. v. Robin American Corporation **667 F.2d 1170 (C.A. 5, Feb. 1982)**
(Bd order requiring E to bargain over all future closings of any department, too broad in light of subsequent SCt decision that economically motivated decision to shut down part of business was not mandatory subject of bargaining and refusal to bargain over it did not violate duty to bargain; only portion of order concerning department whose closing was motivated by antiU animus enforced)

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**
(contributions to health, welfare, and pension fund)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(contributions to health and welfare and pension funds, mandatory subject of bargaining)

Axelson, Inc., Subsidiary of U.S.A. Industries, Inc. v. N.L.R.B. **599 F.2d 91 (C.A. 5, 1979)**
(issues qualifying as mandatory subjects of bargaining are those that benefit all members of bargaining unit through encouraging collective bargaining process and vitally affecting relationship between E and Ees)

Newspaper Printing Corporation v. N.L.R.B. **692 F.2d 615 (C.A. 6, Nov. 1982)**
(jurisdictional clauses concern assignment of work to U members and are mandatory subjects of bargaining)

L. E. Davis, d/b/a Holiday Inn of Benton v. N.L.R.B. **617 F.2d 1264 (C.A. 7, 1980)**
(conversion of restaurant to cafeteria held mandatory bargaining subject where decision resulted in some Ees being terminated, was related to labor costs, and did not result in major capital investment or alteration of underlying nature of E's business)

Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. **606 F.2d 171 (C.A. 7, 1979)**
(ct found E's change in administrator of E's hospital, medical and surgical program was an *aspect of the relationship* between E and its Ees w/o a third party being directly implicated, and thus applied the *material and significant effect* standard, but held change in administrator a mandatory bargaining subject under both tests)

Associated General Contractors of North Dakota (a non-profit corporation) v. N.L.R.B. **637 F.2d 556 (C.A. 8, 1980)**
(multi-E association's bargaining to impasse over no-conflicting agreements clause, violative, where such clause is not mandatory subject of bargaining since it does not sufficiently affect wages, hours and other terms and conditions of employment between E and Ees in bargaining unit)

N.L.R.B. v. Antonino Carilli, d/b/a Antonino's Restaurant **640 F.2d 1206 (C.A. 9, June 1981)**
(pension plan mandatory subject of bargaining since traditionally associated with terms and conditions of employment and is not of matter entrusted solely to management discretion)

Local 2017, Lumber and Sawmill Workers a/w The Western Council, Lumber, Production & Industrial Workers v. N.L.R.B. **654 F.2d 730(T) (C.A. 9, June 1981)**
(in finding E's refusal to bargain about decision to close its sawmill operation, on ground that it was managerial decision based on economic factors, not unlawful, ct stated basic management decisions in a particular market are not mandatory subjects of bargaining)

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(E's decision to alter its marketing structure from branch office responsibility to new marketing hierarchy not mandatory subject of bargaining, since decision involved sale of significant assets, fundamental changes in marketing structure and significant reallocation of capital notwithstanding changes may have profound effect on employment conditions)

N.L.R.B. v. Bartlett-Collins Company **639 F.2d 652 (C.A. 10, 1981)**
(Bd's decision that presence of court reporter during collective bargaining is nonmandatory subject of bargaining was not w/o reasonable basis in law; presence of court reporter is not so inextricably interwoven with substance of contract that it constitutes term or condition of employment)

N.L.R.B. v. Bartlett-Collins Company **639 F.2d 652 (C.A. 10, 1981)**
(reasonableness of Bd's construction concerning issue of presence of court reporter as mandatory subject of bargaining is not altered because Bd reverses its previous rulings as long as new position is fully explained and is fair and reasoned one w/i scope of Bd's authority)

Lone Star Steel Company v. N.L.R.B. **639 F.2d 545 (C.A. 10, 1980)**
(classification of bargaining subjects as *terms or conditions of employment* is matter of special Bd expertise; Bd's judgment as to what is mandatory bargaining subject is entitled to considerable deference)

Lone Star Steel Company v. N.L.R.B. **639 F.2d 545 (C.A. 10, 1980)**
(*successorship clause* which restricted sale or disposition of operations only to Es who agreed to assume bargaining agreement not unlawful and was *mandatory* subject of bargaining; Bd fairly balanced rights of E and Ees)

Lone Star Steel Company v. N.L.R.B. **639 F.2d 545 (C.A. 10, 1980)**
(subject involving Ees outside unit to be considered mandatory must vitally affect terms and conditions of employment or job security of unit Ees and must represent direct attack on problem threatening such interest; agreement in advance concerning terms and conditions of employment in new and nonrelated facility has no bearing on wages, hours and other terms and conditions of employment)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**
(economic decision to close part of business is not mandatory subject of bargaining under Sec. 8(d) and Sec. 8(a)(5))

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC v. N.L.R.B. **648 F.2d 18 (C.A.D.C., Nov. 1980)**
(elimination of discrimination is mandatory subject of bargaining when raised by either U or E)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that E's decision affects conditions of employment does not necessarily imply that such decision is mandatory subject of bargaining)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral imposition of *take home* fee charged to commission drivers of Es' cabs unlawful, since imposition of such fees was change from past practice and thus mandatory bargaining subject)

6050-0140 Permissible subjects defined

First National Maintenance Corp. v. N.L.R.B. **452 U.S. 666 (U.S. SCT, June 1981)**
(*matter that is not a mandatory subject of bargaining, unless it is illegal, may be raised at bargaining table in good faith and parties may incorporate it into enforceable agreement. Labor and management may not, however, insist on it to point of impasse*)

Harry Sann, Jr. and Winton R. Wagner, Partners d/b/a Briarcliff Pavilion For Specialized Care **260 NLRB No. 184**
(E's proposal that U fees and dues be limited to ten dollars and two hours pay per month violative and evidenced bad faith as such fees are of no concern to E (they are nonmandatory subject of bargaining) and proposal was made to ensure that no agreement would be reached)

Cute Bros. Bakery, Inc. **259 NLRB No. 101**
(insisting to impasse that U agree that there would be no U retribution from its members against members who had crossed picket line, violative, since insistance on such clause relates to nonmandatory subject of bargaining)

F.M.L. Supply, Inc. **258 NLRB No. 083**
(refusal of E to bargain over industry promotion funds not ULP, since they are permissive, nonmandatory subjects of bargaining)

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(E's demand for nonreinstatement of illegally discharged Ees is nonmandatory subject of bargaining)

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(E's demanding to impasse U's agreement to discharge Ees accused of engaging in strike misconduct (non-mandatory subject of bargaining) warranting such discipline held violative, since such conduct on part of E tended to *frustrate the bargaining process*)

Finger Lakes Plumbing & Heating Co., Inc. **264 NLRB No. 183**
(on reconsideration, Bd modified original order by deleting requirement that E make delinquent and future payments to industry advancement fund since fund is permissive, nonmandatory subject of bargaining)

6050-0140—Cont.

Joe Carroll Orchestras & Entertainment Agency, Inc. d/b/a Meyer Davis Orchestra; et al. **254 NLRB No. 153**
(ratification is permissible subject for bargaining and absent bad faith either party may limit its negotiators authority to negotiations only)

Laredo Packing Company **254 NLRB No. 001**
(settlement of E's backpay liability in ct suit and withdrawal of ULP charges as conditions of signing bargaining agreement are nonmandatory subjects of bargaining; however, mere proposal of such demands is not per se illegal)

Sea Bay Manor Home For Adults **253 NLRB No. 068**
(interest arbitration clause, in itself, is nonmandatory subject of bargaining and bargaining to impasse over whether to include such clause in contract under negotiation would be violative)

B. & S. Sandock, Inc. **JD-317-82**
(composition of party's negotiating team is not mandatory subject of bargaining)

National Steel Service Center, Inc. **JD-395-80**
(appropriate unit permissive subject of bargaining)

A. Heller Metals Co., Inc. **JD-845-79**
(E's insistence to impasse upon bargaining at a restaurant while aware of U's policy against discussing business at lunch and rejecting U's five proposals of alternative meeting places held to unlawful stifle negotiations at inception over threshold issue)

The Leavenworth Times, A Division of Thomson Newspapers, Inc. **JD-(SF)-308-79**
(U's proposal to settle part of ULP charge against E w/i collective-bargaining agreement, held permissive and not mandatory)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(*interest arbitration* clause is *non-mandatory* subject of bargaining as it bears only remote or incidental relationship to terms or conditions of employment)

Newspaper Guild, Local 10 v. N.L.R.B. **636 F.2d 550 (C.A.D.C. 1980)**
(no requirement to bargain under Section 8(d) over decisions which *lie at core of entreprenirial control...are fundamental to basic direction of a corporate enterprise...or concern its basic scope*; i.e., editorial control and content, product selection or purchase of labor-saving machinery)

Newspaper Printing Corporation v. N.L.R.B. **692 F.2d 615 (C.A. 6, Nov. 1982)**
(unit description clause agreed to by U and E sets forth scope of membership in collective-bargaining unit and is permissive subject of bargaining)

6050-0160 Prohibited subjects defined

Inta-Roto, Inc. **252 NLRB No. 111**
(E's insistence on bargaining over items which were non-negotiable as result of limitation in contract reopener clause to negotiations solely concerning wages, violative)

6050-0180 Section 8(a)(5) must be construed with 8(d) and 9(a)

Heat Transfer Group, Gulf and Western Mfg. Co. **JD-381-82**
(E's repudiating agreement by announcing its intention to and by commencing to relocate portion of unit work to another location for performance by non-unit Ees represented by another U with contract providing for less costly wages and benefits held violative, as E's purpose was to evade obligations and to frustrate Ees' right to refuse to make mid-term concessions)

6050-0800 Scope and work of unit

6050-0825 Work preservation (see also 530-6067-4022)

N.L.R.B. v. International Longshoremen's Assn., AFL-CIO, et al. **447 US 490 (U.S. SCt. June 1980)**
(*work of stuffing* and *stripping* containers used in shipping goods at waterfront facilities must focus on bargaining unit Ees' work, not on work of other Ees who may be doing same or similar work, and (Bd) must examine relationship between work as it existed before innovation (*the container revolution*) and as agreement proposes to preserve it)

6050-0825-3300 Economically motivated managerial decisions which have destructive effect on unit (See also 530-6067-4011 and 4022)

Talbert Manufacturing, Inc. **264 NLRB No. 139**
(E's assigning bargaining unit production work to its foremen during course of layoff of unit Ees w/o notifying contracting U held violative, since there never had been layoff at E's plant and its foremen had not previously done production work of type and to extent they did during unit layoff; assignment was contrary to E's past practice and contractual obligation with U)

Heat Transfer Group, Gulf and Western Mfg. Co. **JD-381-82**
(E's repudiating agreement by announcing its intention to and by commencing to relocate portion of unit work to another location for performance by non-unit Ees represented by another U with contract providing for less costly wages and benefits held violative, as E's purpose was to evade obligations and to frustrate Ees' right to refuse to make mid-term concessions)

Equitable Gas Company v. N.L.R.B. **637 F.2d 980 (C.A. 3, 1981)**
(unilateral subcontracting of unit work of three remittance clerks in E's treasury department, not unlawful, where subcontract was not mandatory subject of bargaining, was motivated by proven economic considerations, and had no adverse impact on the three clerks since they were transferred to other departments obtaining equivalent or higher paying positions)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral actions effecting major shifts in capital investment or corporate strategy of E are not mandatory subjects of bargaining when motivated by economic considerations and not U animus even though they may have had profound effects on *conditions of employment*)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(factor of anti-U animus is germane to determination of whether proposed change in company's operations is mandatory subject of bargaining)

6050-0850 Work functions

Louisiana-Pacific Corporation **256 NLRB No. 133**
(E not obligated to bargain with U concerning undecking of logs at its mill and piling them preparatory to logs being loaded by subcontractor's Ees, since, subcontracting of work was consistent with E's past practice; work was only occasionally done by E's Ees; no bargaining history that E's Ees and subcontractor's Ees worked as composite crew; subcontracting was economically justified; and U, in past, had unsuccessfully sought contract language limiting established subcontracting)

Staats and Staats, Inc. **254 NLRB No. 105**
(promulgation of new work rule and reinstating previously unenforced rule concerning Ees working conditions w/o bargaining with U, Ees' majority representative, on day discriminatees returned to work, held violative, since rules imposed additional burden on Ees and timing left little doubt that event was part of E's response to its Ees U activity)

Newspaper Printing Corporation **250 NLRB No. 132**
(notwithstanding E had insisted to impasse concerning unit description proposals for new contract, E's unilateral adoption of those proposals held violative, since proposals substantially modified existing unit and work jurisdiction provisions)

Newspaper Printing Corporation **250 NLRB No. 132**
(unilateral removal of advertisement typesetting work from *composing room* to *job shop*, violative, since this work was customarily performed by *composing room* Ees)

Newspaper Printing Corporation v. N.L.R.B. **692 F.2d 615 (C.A. 6, Nov. 1982)**
(jurisdictional clauses concern assignment of work to U members and are mandatory subjects of bargaining)

6050-0875 Compostion of unit

Signatory Labor Committee of The Colorado Contractors' Association, Inc. **261 NLRB No. 191**
(respondent Es and their signatory labor committee failed and refused to bargain in good faith with U by conditioning further negotiations on U's consent to untimely withdrawal of certain Es from multi-E bargaining unit and thereafter disbanding multi-E unit, where contrary to contention, no genuine impasse existed because committee's demand for release of Es from unit was not mandatory subject of bargaining)

Carolina Telephone and Telegraph Company **258 NLRB No. 189**
(removing secretaries to district managers from bargaining unit, violative, since such unilateral modification of scope of unit during midterm of contract which covered such unit constituted unlawful withdrawal of recognition; Bd rejected E's contention that the secretaries were confidential Ees)

Dining and Kitchen Administration, d/b/a DAKA **257 NLRB No. 046**
(violation, where joint Es insisted that students, who were residents of E's facility and included in certified unit at Es' behest, now be excluded from negotiations)

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(integrity of bargaining unit cannot be unilaterally attacked; once unit is certified, it may be changed only by mutual agreement of parties or by Bd action)

Maine Yankee Atomic Power Company **JD-59-82**
(where E unilaterally created new classification outside of bargaining unit, transfered some unit work to that position and promoted unit Ee to fill position it did not violate Act because : 1) parties historically had amicable relationship 2) legitimate purpose in reorganization 3) no unit Ee was laid off, lost time or overtime or suffered any detriment to his job and 4) unit and its classifications remained unchanged in size)

National Steel Service Center, Inc. **JD-395-80**
(appropriate unit not mandatory, subject of bargaining)

6050-0875—Cont.

Newspaper Printing Corporation v. N.L.R.B. 692 F.2d 615 (C.A. 6, Nov. 1982)

(unit description clause agreed to by U and E sets forth scope of membership in collective-bargaining unit and is permissive subject of bargaining)

Newspaper Printing Corporation v. N.L.R.B. 625 F.2d 956 (C.A. 10, 1980)

(E's insistence to impasse on jurisdictional unit clause which modified unit description so as to give E unilateral control over unit scope unlawful in view of unlawfulness of both insistence on modification of unit scope and insistence to impasse on non-mandatory subject of bargaining; moreover, clause allowing E to change unit composition at will by unilaterally transferring work out of unit would deprive unit Ees of collective representation and bargaining over reduction or elimination of their jobs by work transfers or automation)

6050-0900 Outside the unit

Lone Star Steel Company v. N.L.R.B. 639 F.2d 545 (C.A. 10, 1980)

(subject involving Ees outside unit to be considered mandatory must vitally affect terms and conditions of employment or job security of unit Ees and must represent direct attack on problem threatening such interest; agreement in advance concerning terms and conditions of employment in new and nonrelated facility has no bearing on wages, hours and other terms and conditions of employment)

6050-1600 Remuneration and benefits

6050-1601 Generally

Connecticut Distributors, Inc. 255 NLRB No. 170

(supervisor who promised increased benefits while unlawfully circulating decertification ptn during time Ees on strike and negotiations for new contract being carried on violated Act)

Harowe Servo Controls, Inc. 250 NLRB No. 120

(refusal to negotiate over pay of group leaders who comprise part of bargaining unit)

6050-1612 Wages

N.L.R.B. v. International Harvester Company 618 F.2d 85 (C.A. 9, 1980)

(E had duty to bargain about *effects* of management decision to alter its marketing structure since conditions of employment of the fleet account executive and remaining members of bargaining unit will be affected concerning such conditions as wages, pension benefits and seniority)

6050-1612-0100 Generally

United States Postal Service 261 NLRB No. 068

(E's not informing certified U of E's decision not to pay, and not paying, certain wage increases to bargaining unit Ees while granting random wage increases to its unorganized Ees held not violative, since, once U was certified, bargaining unit Ees could not expect to receive all random wage increases while U was bargaining with E over new contract; absent evidence of animus or of contemporaneous unlawful conduct, E had no duty to notify U of wage increases to nonbargaining unit Ees, or to bargain with U about, or grant, wage increases to unit Ees)

6050-1612-3700 Automatic wage increase

The Mead Corporation 256 NLRB No. 108

(E's withdrawing proposal, during negotiations with U concerning wage rate adjustments when acceptance by U appeared imminent held violative, since E failed and refused to bargain in good faith)

Sheltering Pines Convalescent Hospital 255 NLRB No. 152

(where state enacted law, which provided for payments to nursing care facilities to be used for raising wages, after E and U had signed collective-bargaining agreement providing for automatic wage increases, E who used state monies to fund contractually provided for increases violated Act when it refused to bargain with U over disbursement of state funds; these funds directly related to terms and conditions of employment, U did not waive its right to bargain where law not enacted until after contract signed)

M. A. Harrison Manufacturing Company, Inc. 253 NLRB No. 097

6050-1612-5000 Individual merit wage increases

Arcadia Foods, Inc. 254 NLRB No. 128

M. A. Harrison Manufacturing Company, Inc. 253 NLRB No. 097

6050-1612-5800 Indirect wages

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)

(unilateral imposition of *take home* fee charged to commission drivers of Es' cabs unlawful, since imposition of such fees was change from past practice and thus mandatory bargaining subject)

6050-1612-6200 Shift differential

Wagner Distribution Services, Inc. d/b/a Distribution Services West 262 NLRB No. 096

(E unilaterally changing hours of swing shift which was paid shift differential to hours substantially overlapping hours of first shift which was not paid wage differential, unlawful, notwithstanding E's contention U had actual knowledge of E's intended change through communication by shop steward to U official and U waived its rights by its failure to request bargaining, since change was mandatory subject of bargaining and E failed to show U received sufficiently reliable notice of change to trigger obligation to demand bargaining)

6050-1612-7900 Cost-of-living Increases

Empire Pacific Industries, Inc. 257 NLRB No. 190

(according to case law, E who has granted benefit which is mandatory subject of bargaining to unrepresented Ees has duty to bargain about granting such benefit to represented Ees where benefit has not been covered by contract or clearly and unmistakably waived; E's grant herein of COL wage increase to unrepresented Ees only, not unlawful, however, since E was bargaining with U about COL wage increases for represented Ees when U voluntarily suspended negotiations)

6050-1625 Bonuses

Aeronca, Inc. 253 NLRB No. 026

(Christmas bonus paid Ees over number of years was considered component of wages or terms of employment, even though not expressly provided for by contract, which cannot be discontinued by E before U has been given notice and opportunity to bargain)

Woonsocket Spinning Company 252 NLRB No. 163

(Christmas bonus held wages where paid on 17 consecutive years, same formula for determining bonus used for past 5 years and income tax and FICA withheld from bonus)

6050-1645 Savings plan

National Broadcasting Co., Inc. 252 NLRB No. 033

(E's refusal to bargain over its saving plan being part of collective bargaining agreement, violative, as it is mandatory subject of bargaining; moreover, U did not waive its right to bargain over plan where E made brief reference to plan in response to U question and made clear to U that plan only available to non-U Ees notwithstanding U failed to press for savings plan at that time)

6050-1650 Stock purchase plan

Weirton Steel, Division of National Steel Corporation 259 NLRB No. 091

(E's refusal to bargain with U on subject of stock investment plan, violative where E's purpose in refusing to consider continuing plan was to discourage its Ees from participating in U activities)

Weirton Steel, Division of National Steel Corporation 259 NLRB No. 091

(stock investment plan held mandatory subject of bargaining where plan was always very substantive condition of employment)

Weirton Steel, Division of National Steel Corporation v. N.L.R.B. 689 F.2d 504 (C.A. 4, Sept. 1982)

(enforcement denied since there was no refusal to bargain over stock investment plan where E remained firm but did not refuse to discuss it or economic alternatives, made other concessions and compromises, and provided new benefits; ct placed little reliance on vague and conflicting testimony of U bargaining committee members about unrecorded session and found it against public policy for party which w/o reservations ratified agreement viable in all aspects to be permitted to complain later of injustice)

6050-1662 Pensions and group insurance

Henry Cauthorne, an individual, t/a Cauthorne Trucking 256 NLRB No. 115

(unilaterally ceasing payments into U's health and welfare, and pension trust funds upon expiration of contract which E had not signed but to terms of which E had bound itself by signing interim agreement and implementing significant portion of contract held violative, since; (1) change was not made subsequent to bargaining impasse, (2) E did not, in good faith, doubt U's majority status, and (3) U did not waive right to bargain regarding alterations; health and welfare fund trust agreements did not contain language which might limit E's obligation to bargain regarding cessation of payments into fund)

Henry Cauthorne, an individual, t/a Cauthorne Trucking 256 NLRB No. 115

(refusal to continue payment into U's pension trust fund not violative where expired contract stated that E and U's obligations to pension fund shall terminate and E did nothing that could be construed as adopting another contract; E was privileged, under terms of pension trust agreement, to cease such payments w/o bargaining with U)

Intermountain Rural Electric Association 253 NLRB No. 164

(E's abrogating article in current bargaining agreement, concerning allocation of pension-plan dividends, held violative, since U consent to such obligation was misleadingly induced and perpetuated; E's taking over Ee contributions to plan was *quid pro quo* for U's consent which ceased to exist when U petitioned for election in another unit; E failed to continue in *full*

6030-1662—Cont.

force and effect...all terms and conditions of the existing contract and, so failing, violated Section 8(a)(5) and (1))

Dial Tuxedo, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

Dial Tuxedo, Inc. **250 NLRB No. 064**
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

Burrell Construction & Supply Co. **JD-06-81**
(violation where E refused to bargain over choice of health plan for its Ees; no impasse because E did not give U cost of one plan it offered to E)

Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. **606 F.2d 171 (C.A. 7, 1979)**
(ct found E's change in administrator of E's hospital, medical and surgical program was an *aspect of the relationship* between E and its Ees w/o a third party being directly implicated, and thus applied the *material and significant effect* standard, but held change in administrator a mandatory bargaining subject under both tests)

N.L.R.B. v. Antonino Carilli, d/b/a Antoninino's Restaurant **648 F.2d 1206 (C.A. 9, June 1981)**
(pension plan mandatory subject of bargaining since traditionally associated with terms and conditions of employment and is not of matter entrusted solely to management discretion)

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(E had duty to bargain about *effects* of management decision to alter its marketing structure since conditions of employment of the fleet account executive and remaining members of bargaining unit will be affected concerning such conditions as wages, pension benefits and seniority)

6050-2500 Tenure and Seniority

Fundacion Educativa Ana G. Mendez d/b/a Puerto Rico Junior College **265 NLRB No. 003**
(educational institutions' unilaterally terminating existing faculty evaluation procedures governing retention, tenure and promotion and thereafter refusing to bargain about those procedures, unlawful where potential for effective faculty influence in overall evaluation process was markedly limited and faculty was neither supervisory nor managerial; furthermore, faculty could not be supervisory or managerial for evaluation purposes only and Ees for all other purposes as contended)

6050-2520 Seniority

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(E had duty to bargain about *effects* of management decision to alter its marketing structure since conditions of employment of the fleet account executive and remaining members of bargaining unit will be affected concerning such conditions as wages, pension benefits and seniority)

6050-2537 Promotions

South Carolina Education Association **JD-(ATL)-6-82**
(E violated Act when it failed to bargain with U concerning its transfer of 4 unit Ees out of unit by making them supervisors as this resulted in 25% reduction in size of unit, a substantial impact)

6050-2575 Layoffs and/or terminations

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**

Fox Manufacturing Company **261 NLRB No. 026**

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(E's demanding to impose U's agreement to discharge Ees accused of engaging in strike misconduct (non-mandatory subject of bargaining) warranting such discipline held violative, since such conduct on part of E tended to *frustrate the bargaining process*)

Anaconda Ericsson Inc. **JD-720-80**
(E's failure to notify or consult with U concerning layoffs of some unit Ees due to its unintentional neglect, held violative notwithstanding E did consult with U as to subsequent layoffs of unit Ees)

Sun-Maid Growers of California v. N.L.R.B. **618 F.2d 86 (C.A. 9, 1980)**
(terminating 3 Ees who comprised portion of overall unit for which E occupied joint E status w/o giving U notice and opportunity to bargain)

N.L.R.B. v. Carbonex Coal Company **679 F.2d 200 (C.A. 10, May 1982)**
(even accepting E's claim that layoffs were economically motivated, E's failure to bargain with U over such layoffs was violative)

6050-2578 Reinstatement of discriminatees

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(E's demand for nonreinstatement of illegally discharged Ees is nonmandatory subject of bargaining)

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(E's demanding to impose U's agreement to discharge Ees accused of engaging in strike misconduct (non-mandatory subject of bargaining) warranting such discipline held violative, since such conduct on part of E tended to *frustrate the bargaining process*)

6050-2579 Reinstatement rights of economic strikers

Pepsi-Cola Bottling Company of Mason City, Iowa **261 NLRB No. 023**
(economic strikers entitled to reinstatement where U in informing E that its members would return to work adverted repeatedly to its insistence that E's offer had been accepted, pickets were removed and there was no evidence of further strike action)

6050-3300 Working conditions

6050-3320 Hours

RAHCO, Inc. **265 NLRB No. 030**
(E's changing Ees' work week from four 10-hour days to five 8-hour days w/o notifying U held unlawful, since E was motivated by desire to punish its Ees because they voted for U to represent them and E did not afford U opportunity to bargain over action)

6050-3340 Work schedules

Wagner Distribution Services, Inc. d/b/a Distribution Services West **262 NLRB No. 096**
(E unilaterally changing hours of swing shift which was paid shift differential to hours substantially overlapping hours of first shift which was not paid wage differential, unlawful, notwithstanding E's contention U had actual knowledge of E's intended change through communication by shop steward to U official and U waived its rights by its failure to request bargaining, since shcnage was mandatory subject of bargaining and E failed to show U received sufficiently reliable notice of change to trigger obligation to demand bargaining)

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(additional Thanksgiving holiday)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(withdrawal, from some maintenance Ees, of permission to wash up five minutes before their usual quitting time held violative of Section 8(a)(5) of Act, since it was clearly unilateral change in terms or condition of employment previously fixed by E and made at time when E was obliged to deal with U notwithstanding initiation of and withdrawal of clean up time done w/o any knowledge of management other than their immediate low level supervisors)

6050-3350 Acceptance of gifts

Sedan Operators Cooperative, Inc., d/b/a Desoto Cab Company **JD-(SF)-150-82**
(refusal to honor U's request to hold annual *sign-up* at which time cabdrivers could change shifts, starting times, days off and vacations, violative notwithstanding contract had expired)

6050-3355 Plant rules

Champion Parts Rebuilders, Inc., Northeast Division **260 NLRB No. 090**
(refusing to continue to let U officials use in-plant telephone system for official business and also discontinuing letting U stewards give documents to supervisors who, in turn, would photocopy Ees' doctor's excuses violative of Sec. 8(a)(3) where part of other anti-U conduct and no business justification existed; moreover, change in steward's role in obtaining photocopy of excuses by only letting Ee give it directly to supervisor, thus bypassing steward, violated Section 8(a)(5))

6050-3370 Vending machines and cafeteria services

Ford Motor Co. v. N.L.R.B. **305 U.S. 264 (S. Ct. U.S. 1979)**
(E's refusal to bargain about in-plant food prices and services, violative, since prices are condition of employment w/i meaning of Sec. 8(d) where E retained right to review and approve prices and services provided by third-party supplier)

6050-3380 Health and safety rules

Colgate-Palmolive Company **261 NLRB No. 097**
(health and safety information relevant to U's representational functions as terms and conditions of employment)

Accessory Controls and Equipment Corporation **JD-[illegible]**
(establishment of safety committee comprised of Ee and management representatives is mandatory subject of bargaining because it is device to insure continuation of bargaining regarding such matters which are themselves mandatory subjects of bargaining)

[illegible] Disciplinary system

Good Hope Refineries, Inc. v. N.L.R.B. **620 F.2d 57 (C.A. 5, 1980)**
(E's counseling policy mandatory subject of bargaining where Ee's refusal to submit to it became part of his personnel file and could affect his job security)

6050-4100 Grievance and dispute resolving procedures

6050-4133 Grievances

6050-4133-0100 Generally

The Mead Corporation **256 NLRB No. 108**
(E's promulgation of new rules on procedures governing grievances ordering Ees to complete their work assignments before processing grievances held violative where E had existing practice of permitting grievance writing during Ee's working time)

Hickinbotham Bros. Ltd. **254 NLRB No. 022**
(contention that E's proposed grievance/arbitration provision complementing its no-strike proposal was ineffective because grievance proposal required agreement of supervisor before Ee could file grievance, rejected, where, at worst, language of proposal was inartfully phrased which is not unusual when nonlawyer negotiators are involved, and sinister motives cannot be ascribed from reliance on words used which could arguably have been intended to mean something else when, as here, standard contract language was not used)

6050-4133-1200 Arbitration as final step of grievance procedure

Hack Manufacturing Company **254 NLRB No. 088**
(E's instance on no arbitration clause coupled with severe limitations on grievance procedure but allowing U to strike over grievances put U in untenable position of either overlooking grievances or going on strike; thus reasonable to infer that E's motivation in refusing to consider arbitration clause was to frustrate bargaining process)

Independent Stave Company **248 NLRB No. 025**
(E's failure to comply with arbitrator selection clause of current agreement with U held violative; E's position, attempting to spread arbitration work equally among five chosen arbitrators, blocked the arbitration provision entirely, and was mid-term modification of agreement w/o consulting with U)

6050-4133-1250 Arbitration as quid pro quo for no-strike clause

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(express or implied no-strike obligation is *quid pro quo* for E's undertaking to submit grievance dispute to arbitration)

6050-4133-3700 Refusal to Process or Delay in Processing

Northwestern Dodge, Inc. **258 NLRB No. 118**
(refusal to process grievances protesting layoffs of two Ees violative notwithstanding contract had expired)

Pease Company **251 NLRB No. 080**
(E's refusal to process Ees' grievances pursuant to its unilaterally and unlawfully instituted procedure amounted to unlawful unilateral implementation thereof, thereby frustrating any meaningful role of U in grievance processing and serving notice on Ees that U representation in such matters was futile)

Ednamae Brewer d/b/a Kalama Cafe **JD-(SF)-244-81**
(refusal to process or adjust Ee's grievance under contract, violative)

Bill Fox Chevrolet, Inc. **JD-767-80**
(E's refusal to process grievances in customary manner with E president stating that he did not *recognize contract*, violative)

6050-4133-5000 Effect of contractual grievance procedure

Caterpillar Tractor Co. v. N.L.R.B. **638 F.2d 140 (C.A. 7, Sept. 1981)**
(arbitration concerning propriety or fairness of E's policy after it has been put into effect was not substitute for bargaining between E and U as to whether policy should be adopted in first instance)

6050-4800 Plant relocation

Heat Transfer Group, Gulf and Western Mfg. Co. **JD-381-82**
(mandatory subject)

6050-5000 Union-security and checkoff

Independent Stave Company **248 NLRB No. 025**
(E's failure and refusal to comply with U security provision of current contract in response to U demand that some 46 Ees be discharged for failure to be U members in good standing held violative, since E had thereby unilaterally modified terms and conditions of parties' contract which called for investigation of named Ees and determination that they were delinquent and would not become members, notwithstanding U's alleged failure to fulfill its fiduciary obligation of notification to Ees)

N.L.R.B. v. Electro-Food Machinery, Inc. **621 F.2d 956 (C.A. 9, 1980)**
(where U constitution prohibited it from entering into contract providing for open shop, this is no defense to E's refusal to execute contract containing such provision as internal U matters cannot releive E from its duty to execute agreed upon collective bargaining agreement)

N.L.R.B. v. Custom Sheet Metal & Service Co., Inc. **666 F.2d 454 (C.A. 10, Dec. 1981)**
(Bd's R/O, which required E to execute 8(f) contract but not give effect to those provisions (8 day U security and qualification for employment clause) which would be unlawful if applied to E who was no longer engaged in construction work but was manufacturing concern, set aside, where, especially latter clause, is so basic to contract and so interwoven with all its terms that it must stand or fall as an entirety; furthermore, no savings and severability clause in contract)

6050-5075 Checkoff

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to agree to checkoff provision in order to *protect* interests of *procompany* Ees)

Independent Stave Company **248 NLRB No. 025**
(E's refusal to remit checked-off dues to U held violative, since E failed to comply with checkoff provision in current contract; provision in E's authorization ptn that check-off dues be placed in escrow rather than be paid over to U deprived U of dues which Ees were obligated to pay)

Apex International Management Service **JD-(ATL)-86-81**
(successor E's unilateral discontinuance of predecessor's existing (contractual) practice of *checkoff* held violative, since *checkoff* was mandatory subject of bargaining and as such a term and condition of employment)

6050-5700 Interest arbitration clause

Sea Bay Manor Home For Adults **253 NLRB No. 068**
(interest arbitration clause, in itself, is nonmandatory subject of bargaining and bargaining to impasse over whether to include such clause in contract under negotiation would be violative)

Sea Bay Manor Home For Adults **253 NLRB No. 068**
(where parties to contract under negotiation voluntarily agreed in writing to resolve their differences over mandatory terms by submitting them to binding arbitration, this agreement becomes so intertwined with mandatory terms as to be inseparable and becomes mandatory itself; therefore E's repudiation of stipulation agreement violative, as it constitutes more than mere breach of contract)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(*Interest arbitration* clause is *non-mandatory* subject of bargaining as it bears only remote or incidental relationship to terms or conditions of employment)

6050-5800 Management prerogatives

6050-5825 Promulgation of disciplinary rules

Newspaper Guild, Local 10 v. N.L.R.B. **636 F.2d 550 (C.A.D.C. 1980)**
(unilaterally promulgated Code of Ethics for juournalists held not management prerogative; remand for substantive determination whether any particular subject matter is or is not mandatory bargaining subject)

6050-5875 Management rights clause

Milwaukee Spring Division of Illinois Coil Spring Company **265 NLRB No. 028**
(E's decision to relocate work from U to non-U plant, to layoff Ees as consequence during term of agreement solely because of higher labor costs, absent U's consent, is midterm repudiation of agreement in violation of Sec. 8(d), Sec. 8(a)(1), (3), (5); moreover, U did not waive right to bargain notwithstanding managements rights clause; such clause reserves for E right to decide whether and how products will be manufactured; it does not grant E right to transfer its operation. Thus, absent explicit language, U has not waived its right to object to E's decision)

Hickinbotham Bros. Ltd. **254 NLRB No. 022**
(it is not illegal per se to propose and bargain concerning broad management rights clause; rather, rigid and inflexible insistence on inclusion in contract of sweeping management rights clause may, under some circumstances, constitute evidence of bad-faith bargaining)

Hickinbotham Bros. Ltd. **254 NLRB No. 022**
(E's allegedly overly broad and restrictive management rights proposal, not unlawful, where E did not adopt rigid and inflexible position as to management rights indicating desire to avoid reaching agreement; proposal contained effective grievance/arbitration procedure complementing its proposal for no-strike provision; at worst, grievance proposal language was inartfully phrased; and U summarily rejected grievance proposal w/o any discussion and consequently, there is no way of knowing how flexible or inflexible E would have been as to such proposal)

Eastern Maine Medical Center **253 NLRB No. 024**
(E's insistence on management rights clause as well as finality clause, as price for any agreement reached, exhibited desire to undermine U, avoid any meaningful final agreement, and unwillingness to bargain in good faith, where management rights clause spelled out management control over almost all aspects of employment relationship and permitted unilateral action on detailed set of working conditions; and in finality clause E sought waiver

6050-5875—Cont.

of U's bargaining rights during term of agreement over any subject matter not specifically referred to or covered in agreement)

Lever Brothers Company **JD-301-80**
(E's refusal to bargain over absentee rule violative notwithstanding prior contracts contained management rights clause covering absenteeism because U's waiver expired with contract and E must bargain over mandatory subject)

N.L.R.B. v. Cable Vision, Inc. **660 F.2d 1 (C.A. 1, Sept. 1981)**
(E did not bargain in good faith where it insisted upon extensive management rights clause which would have significantly curtailed U's general power)

Eastern Maine Medical Center v. N.L.R.B. **658 F.2d 1 (C.A. 1, 1981)**
(intransigence in insisting on verbatim retention of all language of management rights clause which gave E unilateral control over every aspect of employment relationship except wages and benefits and which, in case of doubt, would prevail over other inconsistent provisions, unlawful)

6050-5887 Finality clause

Eastern Maine Medical Center **253 NLRB No. 024**
(E's insistence on management rights clause as well as finality clause, as price for any agreement reached, exhibited desire to undermine U, avoid any meaningful final agreement, and unwillingness to bargain in good faith, where management rights clause spelled out management control over almost all aspects of employment relationship and permitted unilateral action on detailed set of working conditions; and in finality clause E sought waiver of U's bargaining rights during term of agreement over any subject matter not specifically referred to or covered in agreement)

6050-6600 Internal union matters

Howland Hook Marine Terminal Corporation **263 NLRB No. 040**
(designation of agent of Ees' collective bargaining representative (appointment of interim steward) is purely internal U affair and resolution of dispute, regarding who would be interim steward rested with U and not Bd; *Section 8(a)(5) of Act* not applicable to internal U dispute concerning who had authority to conduct business of local U and E not required to determine which of 2 representatives was the validly designated one)

Harry Sann, Jr. and Winton R. Wagner, Partners d/b/a Briarcliff Pavilion For Specialized Care **260 NLRB No. 184**
(E's proposal that U fees and dues be limited to ten dollars and two hours pay per month violative and evidenced bad faith as such fees are of no concern to E (they are nonmandatory subject of bargaining) and proposal was made to ensure that no agreement would be reached)

6050-7000 Matters relating to nonunit employees

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(E not required to provide information pertaining to equipment purchased, whether equipment leased to nonunit Ees or its financial statements since data related to decision to institute leasing, a nonmandatory subject of bargaining, U did not represent nonunit Ees and so not relevant to U's performance as bargaining representative w/o special showing of pertinence to some bargainable issue; E not obligated to disclose financial statements merely because they might be helpful to U)

6050-7080 Participation in industry promotion funds

F.M.L. Supply, Inc. **258 NLRB No. 083**
(refusal of E to bargain over industry promotion funds not ULP, since they are permissive, nonmandatory subjects of bargaining)

6050-8700 Strike insurance

Axelson, Inc., Subsidiary of U.S.A. Industries, Inc. v. N.L.R.B. **599 F.2d 91 (C.A. 5, 1979)**
(remunerating of Ee negotiators for work time they lost because of negotiations, held mandatory subject of bargaining)

6050-9000 Most favored nations clause

Joe Carroll Orchestras & Entertainment Agency, Inc. d/b/a Meyer Davis Orchestras; et al. **254 NLRB No. 153**
(refusal to execute contract because U was not policing terms pursuant to *most-favored nations* clause violative; this objection goes only to enforcement of contract)

6050-9100 Contract enforcement provisions

Independent Stave Company **248 NLRB No. 025**
(E's failure and refusal to comply with U security provision of current contract in response to U demand that some 46 Ees be discharged for failure to be U members in good standing held violative, since E had thereby unilaterally modified terms and conditions of parties' contract which called for investigation of named Ees and determination that they were delinquent and would not become members, notwithstanding U's alleged failure to fulfill its fiduciary obligation of notification to Ees)

Newspaper Guild, Local 10 v. N.L.R.B. **636 F.2d 550 (C.A.D.C. 1980)**
(penalties cannot be separated from substantive provisions which they are designed to enforce; both are either mandatorily bargainable or they are not)

6050-9300 Code of ethics

Newspaper Guild, Local 10 v. N.L.R.B. **636 F.2d 550 (C.A.D.C. 1980)**
(Bd properly did not defer where issue involved bargainability over Code of Ethics unilaterally imposed by E)

6067 ACTS CONSTITUTING REFUSAL TO BARGAIN OR INDICATING BAD FAITH

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(failure to bargain not unlawful where (1) there was no contract between E and U by implication, (2) parties were equally at fault in contributing to ambiguity of their arrangement, and (3) there was no basis for finding of equitable estoppel absent evidence of (a) U's inability to obtain information as to status of E's membership in multi-E association and (b) U's detrimental reliance on E's conduct suggesting such membership)

6067-0100 Generally

Merrill & Ring, Inc. **262 NLRB No. [illegible]**
(*good faith* bargaining requires that parties meet and negotiate *prior* to any modification of working conditions)

P. J. Gear & Sons, Inc. **252 NLRB No. [illegible]**
(executing collective bargaining agreement with U while concealing existence of outstanding subcontract in derogation of agreement's provision against subcontracting)

United States Steel Corporation **248 NLRB No. [illegible]**
(violation where E refused to bargain concerning wages and working conditions of students attending E-sponsored school on basis that they were no longer unit members where Bd found that they remained in unit as Ees while in school)

Bureau of Rehabilitation of The National Capital Area **JD-262-81**
(E's unjustified refusal to invite Federal mediation found consistent with E's overall aim to avoid reaching agreement with U and constituted evidence of bad faith bargaining)

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**
(evidence of prior *use* or *misuse* of information requested of E by U is quite relevant in determining whether E was bargaining in good faith)

6067-0150 Good faith is question of fact for Board to determine

Hudson Chemical Company **258 NLRB No. [illegible]**
(by considering content of bargaining proposals of both E and U during contract negotiations)

6067-0150-3300 Can only be inferred from circumstantial evidence

Times-Herald, Inc. **249 NLRB No. 004**
(*off the record* statements may be considered)

Pittsburgh-Des Moines Corporation v. N.L.R.B. **663 F.2d 956 (C.A. 9, Dec. 1981)**
(Bd must consider *totality of the circumstances which are indicative of mental state* in deciding *whether or not (E) genuinely desires to reach an agreement*; it does not suffice to rely solely upon the terms of contract proposals which Bd can properly look at. In addition, however, Bd must show substantial evidence that E's attitude was inconsistent with its duty to seek agreement)

Seattle-First National Bank v. N.L.R.B. **638 F.2d 1221 (C.A. 9, 1981)**
(*since it would be extraordinary for a party directly to admit a bad faith intention his motive must of necessity be ascertained from circumstantial evidence*)

6067-0150-8300 Union animus not prerequisite to finding of lack of good faith

Production Plated Plastics, Inc. **247 NLRB No. 076**
(in finding independent 8(a)(5) violation, Bd did not rely on part of Judge's decision that found U animus prerequisite for 8(a)(3) violation in circumstances constituting unilateral change)

6067-0175 Policy of uniformity between unit and nonunit employees not per se indication of bad faith

United States Postal Service **261 NLRB No. [illegible]**
(E's not informing certified U of E's decision not to pay, and not paying, certain wage increases to bargaining unit Ees while granting random wage increases to its unorganized Ees held not violative, since, once U was certified, bargaining unit Ees could not expect to receive all random wage increases while U was bargaining with E over new contract; absent evidence of animus or of contemporaneous unlawful conduct, E had no duty to notify U of wage increases to nonbargaining unit Ees, or to bargain with U about, or grant, wage increases to unit Ees)

6067-1000 Bargaining with objective of causing a work stoppage

6067-1000—Cont.

Payson Centers, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) **JD-808-79**

6067-2000 Actions taken to avoid reaching agreement

Marriott In-Flite Service, A Division of Marriott Corporation **258 NLRB No. 099**
(E unilaterally implementing payment of time and a half for all work performed after Ees' regularly scheduled 8-hour day, unlawful, since alleged impasse did not exist)

Marriott In-Flite Service, A Division of Marriott Corporation **258 NLRB No. 099**
(E's conduct during negotiations, unlawful, where it close mindedly rejected U security and checkoff, wrongfully asserted impasse, unilaterally implemented changes in compensation, instigated, sponsored and encouraged decertification ptns and then withdrew recognition of U on basis of tainted ptns)

6067-3010 Response to bargaining request

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **264 NLRB No. 063**
(refusing to recognize and bargain with newly elected U, violative; Bd rejected E's contention that its duties under Act are suspended because of litigation pending before ct of appeals or before Bd on remand from such ct)

Penn Color, Inc. **261 NLRB No. 058**
(E unlawfully refused to bargain where E knew that U's demand for bargaining for E's *production and maintenance Ees* was intended for single location unit, not including Ees at separate location; after refusing to look at U authorization cards offered for his inspection, E stated that he was expecting U's demand and that his lawyer would decide; and at the same time E was engaged in ULPs which precluded fair election)

Peat Manufacturing Company **261 NLRB No. 026**
(claim that E had no obligation to bargain with U until Ninth Circuit (ct of appeals) acts on Bd's request for enforcement of its order in prior case (involving same parties) rejected, since collateral litigation does not suspend duty to bargain under Act)

Peat Manufacturing Company **261 NLRB No. 026**

Jensen's Motorcycle, Inc. d/b/a Honda of San Diego **254 NLRB No. 165**
(E's refusal to accept registered letter from U which it knew contained U's statement that it represented majority of Ees and requested bargaining violated Act as refusal of acceptance amounted to refusal to bargain)

Navajo Freight Lines, Inc. **254 NLRB No. 166**
(E's refusal to negotiate renewal of area practice agreement, unlawful; U did not waive its right to demand bargaining about such agreement because it agreed to be governed by existing E-association agreement since, upon signing preceding area practices agreements, it was E's and U's intention that, where there was a difference between area practices and E-association agreements, area practices agreement would govern, and such intent was sanctioned by E-association agreement; fact that E-association did not sign area prectices agreement did not invalidate such agreement nor excuse E's refusal to negotiate its refusal)

W. G. Best Homes Corporation **253 NLRB No. 123**
(*burden of requesting bargaining about a change or proposed change in business operations shifts to U upon notification by E that such change is imminent; although conjecture and rumor are not adequate substitute for a formal notice, notice less than formal may be sufficient where more formal notice would have been futile in view of U's insistence on bargaining through association unit from which E had properly withdrawn and U is not interested in bargaining with E on individual basis*)

The Arundel Corporation **252 NLRB No. 059**
(E's refusal of charging U's request to recognize it as representative of portion of unit at new operation at which E had assertedly precipitously recognized another U, not unlawful, where there was no unlawful intent, no logical basis exists for assuming that matter was rigged so as to exclude charging U since only 2 or 3 of 15 Ees would have been represented by it, and there was no contention raised based on Midwest Piping doctrine or on recognition of contracting U before E had representative complement in its employ)

The Arundel Corporation **252 NLRB No. 059**
(E's refusal of charging U's request to recognize it as representative of portion of unit at new operation at which E had recognized another U held not unlawful, where Ees sought by U were located substantial distance from other Ees covered by charging U's contract, they had no contact with such Ees, were employed in work situation in which their supervisor had considerable control over day-to-day personnel policies and employment, and they never expressed preference to be recognized by charging U rather than recognized U)

Howard Johnson Company **250 NLRB No. 16[illegible]**
(E's refusal to acknowledge U's admitted requests to bargain, unlaw[illegible] where E knew that U was certified representative, and yet it ignored [illegible] letters requesting bargaining; if E were acting in good faith, it would have acknowledged U's letters and advised it of its reasons for refusing to bargain, and after indirectly receiving notice of Bd's denial of requests for review of RD's D/O, E had option of complying with RD's decision or questioning Bd as to validity of notice it had indirectly received, but it failed to do either)

Suburban Ford, Inc. **248 NLRB No. 051**
(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

B. N. Beard Company **248 NLRB No. 016**
(refusal to recognize Us, unlawful, where E refused to accede to requests for bargaining made by Us regarding new contracts)

Bristol Spring Manufacturing Company **247 NLRB No. 034**
(E's refusal to bargain with certified U, unlawful where RD's overruling of E's objections to election again upheld on remand for hearing on such objections)

Wright Motors, Inc. **JD-266-81**
(violation, where E engaged in surface bargaining by its repetition of plainly non-productive bandying of words and injection of needless issues on simple question of setting date for further negotiations and where E subsequently refused to recognize or bargain with U)

Hart Ski Mfg. Co., Inc. **JD-11-80**
(E's refusal to bargain with U which had card majority, unlawful, notwithstanding E's contention cards tainted by U's alleged representation that sole purpose of cards was for election and U's offers of waiver or reduction of fees to Ees who signed cards before election)

6067-3020 Surface bargaining

A-1 King Size Sandwiches, Inc. **265 NLRB No. 127**
(E engaged in unlawful surface bargaining w/o intent to conclude a contract by refusing to negotiate as to wages, proposing exclusive control by E over discipline, discharge, layoff, and recall and exclusion of them from grievance procedures, and management's rights to unilaterally change working conditions in general, work rules, time studies, subcontracting, and safety rules, in particular)

Bedford Farmers Cooperative **259 NLRB No. 168**
(E sending to bargaining table standing committee which had no authority either to enter into contract or advance any binding proposals held violative, since proposals *were little more than trial balloons which (E's Bd of Directors) could seemingly shoot down or reject at will;* E used bargaining committee to frustrate U's efforts to obtain contract)

Hudson Chemical Company **258 NLRB No. 009**
(E had no right to change Ees' terms and conditions of employment during contract negotiations with U where alleged *impasse* in bargaining resulted from E's *surface bargaining* and was not *legally cognizable*)

South Shore Hospital **256 NLRB No. 001**
(violation where E's bargaining tactics were similar to prior 8(a)(5) case, e.g., meeting only once monthly, cutting meetings short, offering wage and benefits improvements to unit Ees one month after offer to non-unit Ees and offering less, maintaining inflexible position to reduce benefits previously won by U, inserting new issues late in bargaining)

K & S Circuits, Inc. **255 NLRB No. 163**
(E engaged in unlawful surface bargaining where E, over U objections, refused to discuss economic items on grounds that all other matters had to be resolved first, insisted upon probationary period, and insisted on arbitration clause requiring that decision must be rendered in 30 days, making such clause nugatory)

Walker Die Casting, Inc. **258 NLRB No. 034**
(no surface bargaining by E's submitting wage proposal three days before contract expired and 6 weeks after U submitted extensive proposals where E offered to engaged in early negotiations, or by E's proposal to amend dues checkoff provision to permit revacation of U authorization with ten days notice as E engaged in good faith bargaining)

J. D. Lunsford Plumbing, Heating and Air Conditioning, Inc., and Lunsford Brothers Mechanical Contractors, Inc. **254 NLRB No. 170**
(allegation of surface bargaining dismissed, where E was not endeavoring to frustrate posibility of arriving at agreement but was under constraint of trying to negotiate contract under which it could survive economically and U was constrained by concern of undermining wage structure in industry if it offered terms less than those contained in standard agreement in violation of most favored nations clause)

K & E Transportation Corp., Inc. **254 NLRB No. 087**
(E who stretched negotiations out over 1 year period and attempted to undermine U by promising benefits, creating impression of surveillance, threatening to close plant, insisting on restrictive grievance and arbitration procedures, threatening to discharge any Ee who testified against it in Bd

6067-2020—Cont.

proceeding etc. did not intend to reach agreement with U or sign collective bargaining agreement and violated Act)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**

Westvaco Corporation d/b/a Westvaco Gauley Woodyard **249 NLRB No. 012**

(violation found where pattern of negotiations consisted of E parrying U's substantive proposals with insignificant unrelated concessions and E failed to reach agreement on any substantive subjects of bargaining)

Carbonex Coal Company **248 NLRB No. 107**

(E's proposal of management rights clause requiring U to waive practically all its rights, refusing to negotiate U-security clause, refusing to negotiate over safety and health proposals constitute surface bargaining)

Maywood Do-Nut Co., Inc. **248 NLRB No. 090**

Southside Electric Cooperative, Inc. **247 NLRB No. 107**

(E announcing that it believed U had no majority and that it was only meeting because ct had ordered it to, presenting as final offer contract which included no wage increases or changes in existing benefits with wage reopener clause which required mutual consent which E knew U opposed and declining to make further proposals when its offer rejected by U membership)

Wright Motors, Inc. **JD-266-81**

(absence of agreement on most of major substantive subjects of bargaining which flowed from pattern of negotiations by E consisting of E parrying U's substantive proposals either by switching to tedious procedural matters such as conditional bargaining concepts or by making comparatively insignificant or unrelated concessions, was indicator of unlawful surface bargaining)

Wright Motors, Inc. **JD-266-81**

(violation, where E engaged in surface bargaining by its repetition of plainly non-productive bandying of words and injection of needless issues on simple question of setting date for further negotiations and where E subsequently refused to recognize or bargain with U)

Raines Lincoln-Mercury, Inc. **JD-224-80**

Southside Electric Cooperative, Inc. **JD-800-79**

N.L.R.B. v. Cable Vision, Inc. **660 F.2d 1 (C.A. 1, Sept. 1981)**

(in case of *surface bargaining, shadowboxing to a draw,* or *giving U a run-around* the question is whether it is to be inferred from totality of E's conduct that he went through motions of negotiations as an elaborate pretense with no sincere desire to reach an agreement if possible, or that it bargained in good faith but was unable to arrive at an acceptable agreement with U)

N.L.R.B. v. Cable Vision, Inc. **660 F.2d 1 (C.A. 1, Sept. 1981)**

(E did not bargain in good faith since evidence exists for concluding E has engaged in surface bargaining where E adhered uniformly to proposals predictably unacceptable to U, refused to make meaningful concessions and insisted, w/o clear justification, on maintaining its original position in such areas while U refrained from such conduct)

Seattle-First National Bank v. N.L.R.B. **638 F.2d 1221 (C.A. 9, 1981)**

K Mart Corporation v. N.L.R.B. **626 F.2d 704 (C.A. 9, 1980)**

(offers of little or no wage increase, delay in presenting proposal and refusal to supply information to substantiate E's claim that it was unable to pay salary increase constitute bad faith bargaining)

6067-2028 Piecemeal bargaining

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**

(refusal to assist U in reducing agreement to writing after agreement reached, and submitting proposals piecemeal, violative, notwithstanding minor variations between written contract and E's proposals)

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**

Patrick & Company **248 NLRB No. 061**

(E's refusal to discuss U's proposals other than economic and conditioning negotiation of agreement on U's acceptance of E's wage proposals, unlawful; contention impasse reached regarding wages, rejected; further, impasse regarding wages would not justify refusal to bargain regarding remainder of U's proposals)

6067-2030 Dilatory and evasive tactics

Taurus Waste Disposal, Inc. **263 NLRB No. 028**

(violation, in view of E's whole course of conduct where for four months E failed to respond to communications from U requesting bargaining for new contract and failed to meet with U, cancelling meetings w/o proposing any additional meetings, and failed to make any counterproposals to U's proposed contract)

Rockingham Machine-Lunex Company **255 NLRB No. 015**

(refusal to bargain in good faith not evinced by E's submission of only 19 proposals in first 10 bargaining sessions since conduct merely reflective of bargaining format utilized wherein parties bargained from U's proposed contract)

Cable Vision, Inc. **249 NLRB No. 082**

Normike Contractors, Inc. **JD-(NY)-51-81**

(E found to have engaged in bad faith bargaining, notwithstanding E unwittingly, voluntarily recognized U when it commenced negotiations, where E's counsel expressed in his brief that E *never negotiated with U, that all that ever happened as far as any sort of discussions with U were concerned was general conversation w/o any intention or determination to negotiate any sort of contract,* and E later unlawfully withdrew recognition when it refused to meet again with U under pretext of not being able to get training program for its files)

N.L.R.B. v. Cable Vision, Inc. **660 F.2d 1 (C.A. 1, Sept. 1981)**

(E held not to have bargained in good faith where bargaining was marked by series of delays caused primarily by E; E repeatedly ignored U's requests that frequency and length of bargaining sessions be increased and rejected U's request to accept counter-proposals by mail to expedite bargaining; because of E most bargaining sessions did not begin on time; and E engaged in foot-dragging in providing written proposals and in submitting bargaining data)

Clear Pine Mouldings, Inc. v. N.L.R.B. **632 F.2d 721 (C.A. 9, 1980)**

(E violated Act by dilatory bargaining where it never made specific economic proposals until 5 months after negotiations commenced and competitors had signed their contracts)

6067-2030-0100 Generally

SAS Ambulance Service, Inc., d/b/a Florida Ambulance Service; et al. **258 NLRB No. 065**

(demanding names of U members as precondition to engaging in collective bargaining, violative)

Delster Concentrator Company, Inc. **253 NLRB No. 040**

(E's statement that it was only present at negotiations because law required it to be there)

Harowe Servo Controls, Inc. **250 NLRB No. 130**

(unjustifiable, frequent, inordinately late arrival at bargaining sessions)

6067-2030-1200 Failure to reply, or delay in replying to request to bargain

Hassett Maintenance Corporation **260 NLRB No. 138**

(E who ignored U's letter requesting bargaining over new agreement for more than 6 weeks after it received letter and ignored U's efforts to contact him by telephone violated Act notwithstanding old contract contained clause requiring notice of intent to renegotiate more than 60 days prior to expiration of contract and U demand fell within 60 days, as E never refused to bargain on ground that request was untimely and thus waived its right to do so)

Edward Z. Holmes Detective Bureau, Inc. **256 NLRB No. 102**

(E held to have unlawfully refused to bargain for new contract, where, after announcing it did not want to renew contract upon expiration, it did not respond to U's request to bargain until U filed ULP charge and then insisted on eliminating contributions to health and welfare fund and contract coverage for part-time workers presently in unit; test of E's good faith not made impossible by U's misconduct)

Chicago Magnesium Castings Company **256 NLRB No. 100**

(refusal to respond to U's request to begin contract negotiations and to meet with U, unlawful)

Vore Cinema Corp. **254 NLRB No. 167**

Space Building Corp. **254 NLRB No. 119**

(E's contention to U's charge that it had refused to bargain was premature, rejected, where on 3 occasions during period of over 7 weeks U had requested that E meet and bargain)

Montecorp (Formerly Seymour Packing Division of Seymour American, Inc.) **251 NLRB No. 097**

Leland Detroit Mfg. Co. **JD-480-82**

(E's refusal to bargain for new contract by failing to respond to U's telephonic and written requests to bargain and expressing intent not to meet or negotiate with U, unlawful)

Russell Handy, d/b/a Handy Service Lines **JD-731-81**

Wholly Foods, Inc. **JD-(SF)-16-81**

(E's dilatoriness in responding to U's demands that it meet and bargain in good faith concerning provisions for successor labor agreement, its failure to honor agreed-upon bargaining date and its failure to make its owner and principal available for such bargaining, violative; E's willingness to meet at later date did not cure its earlier lack of communication and delay)

Industrial Uniform and Towel Service, Inc. **JD-(NY)-43-80**

(intentional delay of a month in negotiations, violative)

6067-2030-1700 Failure to designate bargaining representative

6067-2030-1700—Cont.

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**
(refusing to present counter proposals and utilizing negotiators who had no authority to make any concessions and indeed made none, violative)

6067-2030-1900 Failure to delegate sufficient authority to bargaining representative

Marriott In-Flite Service, A Division of Marriott Corporation **258 NLRB No. 099**
(E's negotiators did not lack authority to engage in meaningful bargaining, notwithstanding fact they opposed implementing increase in wages proposed by E as bargaining tactic, left bargaining session to consult with supervisors, and contention that lack of communication between negotiators and principals prevented U from quickly ascertaining E's actual positions and demonstrated E's intent not to reach agreement and delay negotiations)

Rockingham Machine-Lunex Company **255 NLRB No. 015**
(refusal to bargain in good faith not evinced by E's failure to vest its negotiator with sufficient authority to conduct negotiations inasmuch as U was aware of E's negotiator's tentative authority and negotiated on that basis)

Arcadia Foods, Inc. **254 NLRB No. 128**
(fact that agent confers with his principal about matters raised in bargaining session with which he may not be wholly conversant is not necessarily exhibition of bad faith)

Tribal American Consulting Corporation **JD-(SF)-314-80**
(continuing to subcontract bus driver's work after end of strike, violative where U was not consulted, and E failed to bargain by sending representative who had no authority to bind E)

N.L.R.B. v. Maywood Do-Nut Co., Inc., **659 F.2d 108 (C.A. 9, Oct. 1981)**

6067-2030-2500 Change in position

The Maud Corporation **256 NLRB No. 108**
(E's withdrawing proposal, during negotiations with U concerning wage rate adjustments when acceptance by U appeared imminent held violative, since E failed and refused to bargain in good faith)

Connecticut Distributors, Inc. **255 NLRB No. 170**
(where E had withdrawn recognition and then reestablished bargaining relationship, withdrawal of recognition again and continued refusal to meet and bargain with U violative)

Pittsburgh–Des Moines Steel Co. **253 NLRB No. 086**
(E's withdrawal of its original proposals tentatively agreed upon by U during negotiations for new contract, and substituting, w/o explanation, regressive proposals to U concerning U security, checkoff, picket line and right to strike provisions held violative, since E's reasons for, and timing of, its actions bore no relation to restrictive changes proposed; E's overall course of conduct evidenced intent to frustrate bargaining)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(offering less favorable proposals than previously offered on *take it or leave it basis*)

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) **JD-808-79**
(violation, where E, without explanation, reinstated previously withdrawn proposals)

Saule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(ct held E's alleged reneging following strike on number of zones in provision for wage zones, not unlawful, where parties were negotiating subject to mutual initial understanding that all agreements on non-economic issues were tentative until final agreement had been reached on all issues; further, absent bad faith, following strike E may repudiate previously made concessions, and herein change was justified by E's economic decision to close two of its four facilities)

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**
(E's change in position regarding wages, pensions and termination date of already agreed upon in contract, unlawful)

Walker Die Casting, Inc. v. N.L.R.B. **682 F.2d 592 (C.A. 6, July 1982)**
(no ULP where E's withdrawal of final offer during contract negotiations with U, but after economic strike started; E's action was legitimate bargaining tactic reflecting changed economic background)

Penn Company v. N.L.R.B. **666 F.2d 1036 (C.A. 6, Dec. 1981)**
(ct held that neither bargaining proposals nor tactics of E, nor sum of its conduct, amounted to substantial evidence of bad faith; ct determined that this was case of hard bargaining between two parties who used their respective economic power to their best advantage)

Pittsburgh-Des Moines Corporation v. N.L.R.B. **663 F.2d 956 (C.A. 3, Dec. 1981)**
(ct rejected proposition implicit in Bd's conclusion that in face of U's unequivocal rejection of E's offer, E was somehow committed to all portions of the proposal as to which tentative agreement had been reached; that U could hold E to what U liked while rejecting that which it disapproved. Party may retract proposal before other side has accepted it)

6067-2030-5000 Behavior in negotiations

Signal Transformer Co., Inc. **265 NLRB No. 033**
(E's president walking out of meeting with mediator, lawyers and representatives of both sides upon being informed U membership had rejected contract reached after long good faith bargaining, and upon return told mediator he doubted U's ability to sell offer and it was useless dealing with them because it was unrepresentative group, not unlawful refusal to bargain when considered in context of long peaceful bargaining relationship and negotiating conteinued between attorneys)

Billion Motors, Inc., d/b/a Billion Oldsmobile-Toyota **260 NLRB No. 099**
(E did not bargain in good faith by its *offer* to pay average of other local dealers' rates w/o explanation, since any average would be lower than the highest rate and E, as only unionized shop in city, paid highest rates in area: thus *average* would involve reduction for E's Ees, and proposal was attempt to freeze bargaining process into immobility)

Research Products/Blankenship Company **258 NLRB No. 003**
(E's insistence upon deletion of dues check-off clause, while providing no reasonable economic or even philosophical basis for desiring such modification, violative)

Dilene Answering Service, Inc. **257 NLRB No. 024**
(refusing to negotiate with U, in presence of four unit Ees who had been requested by U to attend meeting and who were said by U to be on committee, violative)

Clearwater Finishing Company, A Division of United Merchants and Manufacturers, Inc. **254 NLRB No. 155**
(E's refusal to accede to checkoff manifested bad faith where facts warranted inference that E's bargaining tactics were motivated by opposition to newly certified unit)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(repudiating agreement to bargain about and settle non-economic matters before negotiating economic provisions)

Hospitality Motor Inn, Inc. **249 NLRB No. 145**
(violation, where E had fixed intent not to reach agreement respecting U security and checkoff, demanded, in effect, as condition to contract, retention for itself right of unilateral modification of working conditions, and in addition, proposed management rights clause where E retained all rights not otherwise specifically covered by agreement, and refused to consider no discrimination provision)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**
(refusing to present counter proposals and utilizing negotiators who had no authority to make any concessions and indeed made none, violative)

Patrick & Company **248 NLRB No. 061**
(E's refusal to discuss U's proposals other than economic and conditioning negotiation of agreement on U's acceptance of E's wage proposals, unlawful; contention impasse reached regarding wages, rejected; further, impasse regarding wages would not justify refusal to bargain regarding remainder of U's proposals)

Southside Electric Cooperative, Inc. **247 NLRB No. 107**
(E announcing that it believed U had no majority and that it was only meeting because ct had ordered it to, presenting as final offer contract which included no wage increases or changes in existing benefits with wage reopener clause which required mutual consent which E knew U opposed and declining to make further proposals when its offer rejected by U membership)

Bureau of Rehabilitation of The National Capital Area **JD-262-83**
(E engaged in conduct inconsistent with good faith bargaining where E by its unwarranted delay in submitting its economic proposals prevented U from negotiating matter of wages)

Wright Motors, Inc. **JD-266-81**
(E's making it known to U that U could not ever consider there was a binding agreement on myriad of details in contract until E had agreed upon final entire package and also falsely representing what areas parties had agreed upon, evidenced lack of intent to bargain in good faith)

Wright Motors, Inc. **JD-266-81**
(E's nearly continuously demanding that U present new proposals on heels of E's rejections of U's proposals and coupling such conduct with such unproductive statements as *our proposal is to reject your proposal,* manifested unlawful fixed intent not to reach agreement)

6067-2030-5000—Cont.

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) JD-808-79
(E's deviation from past practice by refusing to rescind notice to U terminating existing contract on its expiration date, unlawful)

Raines Lincoln-Mercury, Inc. JD-224-80
(failure to present complete contract proposal when promised, unlawful)

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)
(E did not bargain in good faith where at bargaining sessions E tended neither to accept, reject, nor offer modifications of U proposals but, instead, made promises to *study* and *consider* U's suggestions, and after nearly a year of negotiations, E's proposals had been submitted and resubmitted with little if any change; while attitude of openmindedness is hallmark of good faith bargaining, mere statement that party will *study* and *consider* proposals, repeated ad infinitum and combined with other evidence of deliberate delay, gives impression that party is attempting to avoid rather than to induce agreement)

N.L.R.B. v. Hospitality Motor Inn, Inc. 667 F.2d 562 (C.A. 6, Jan. 1982)
(ct held substantial evidence supported Bd finding that E's promotion of U adherent, its refusal to accept U proposals on dues checkoff and U security, its insistence on broad management rights clause which would have permitted unilateral acts by E and its refusal to accept *no discrimination* and *no individual contracts* clauses constituted bargaining in bad faith, Bd *has been afforded flexibility to determine...whether party's conduct at the bargaining table evidences a real desire to come into agreement*)

Patrick & Co. v. N.L.R.B. 644 F.2d 889(T) (C.A. 9, Mar 5, 1981)
(E's termination of negotiations unjustified where no genuine impasse existed at meeting)

Patrick & Co. v. N.L.R.B. 644 F.2d 889(T) (C.A. 9, Mar 5, 1981)
(E's refusal of U's repeated requests to resume negotiations after wage concession had been made, violative)

6067-2030-5050 Away from bargaining table

Clearwater Finishing Company, A Division of United Merchants and Manufacturers, Inc. 254 NLRB No. 155
(E's statements to U away from bargaining table that if U would just walk away from newly-certified unit of back help Ees, E could give something better to craft unit which U also represented, were intended to undermine U's responsibility to backhelp Ees and constituted independent evidence of bad faith whatever the ultimate assessment of conduct of E's negotiators at bargaining table)

Interstate Paper Supply Company, Inc. 251 NLRB NO. 189
(refusal to bargain for 5-month period violative, since Bd rejected E's defenses of *crowded calendar* and unacceptability of individual negotiator who had assertedly, as striker, set fire to E's building, where most of E's business reasons in regard to crowded calendar were rectified and individual negotiator in contention was removed from committee before date of E's refusal to bargain)

Chateau Vegas JD-(SF)-132-82
(E's telling Ees that it is not going to have contract with U, violative)

Clearwater Finishing Company, a Division of United Merchants and Manufacturers, Inc. v. N.L.R.B. 670 F.2d 464 (C.A. 4, Feb. 1982)
(ct held that ALJ's credibility determinations were supported by substantial evidence and from such credited statements it was reasonable to infer that E was attempting to induce U to abandon backhelp by offering greater benefits to unit already represented by U; same evidence supports Bd's findings that these statements constituted bad faith bargaining)

Safeway Trails, Inc. v. N.L.R.B. 641 F.2d 930 (C.A.D.C. Sept 18, 1981)
(E's contention that its statements undermining authority of U representative made away from bargaining table could not be used as evidence of violation because protected by 8(c), rejected; 8(c) was intended to impose *rule of relevancy* on communications w/i Bd's purview, and E's communications here were not merely relevant evidence of ULP but ULP itself)

Pittsburgh-Des Moines Corporation v. N.L.R.B. 663 F.2d 956 (C.A. 9, Dec. 1981)
(enforcement of bargaining order denied where U flatly rejected E's contract proposal concerning Es retirement funds and E withdrew its proposal but E reiterated its willingness to negotiate with U; refusal to bargain was on part of U; U business representative's reckless (misunderstood) report of E's proposal to U members that proposal had been deleted from contract cannot be held against E)

6067-2030-6700 Failure to make agreed-upon changes in contract

Harowe Servo Controls, Inc. 250 NLRB No. 120
(failure to revise proposed management-rights clause in accordance with interpretation E gave U)

Appalachian Power Company John E. Amos Plant 250 NLRB No. 038
(E's stating it would not place in signed agreement certain existing terms and conditions of employment which it intended to continue and which U agreed should be continued, not violative since all minor terms and conditions of employment not required to be included in bargaining agreements)

6067-2030-7500 Failure to make or keep bargaining conference appointments

Platte Valley Plumbing and Heating 264 NLRB No. 157
(E's refusal to attend any meetings proposed by U after latter filed charge against E with NLRB, unlawful since E was still obligated to bargain notwithstanding U failed to present revised agreement as promised, Ees were on strike, and U had filed the NLRB charges)

Taurus Waste Disposal, Inc. 263 NLRB No. 028

United States Gypsum Company 259 NLRB No. 145
(violation where E's refusal to meet and bargain may be inferred by E's continuing disregard of requests by U and mediation to set dates for bargaining)

South Shore Hospital 256 NLRB No. 001

Eastern Maine Medical Center 253 NLRB No. 034
(E held to have engaged in deliberate effort to stretch out negotiations with U so as to delay effective start of negotiations and to infect entire bargaining process, where E's chief negotiator refused to consent to U's request to meet frequently because of his busy schedule, took position that he could not meet for longer hours or have more meetings unless he determined that satisfactory progress was being made, and unilaterally concelled specifically dated meeting on short order)

Hillcrest Furniture Manufacturing Co., Inc. 253 NLRB No. 009
(cancelling meeting scheduled with U)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(unjustifiable, frequent, inordinately late arrival at bargaining sessions)

Maywood Do-Nut Co., Inc. 248 NLRB No. 080

Bel-Air Bowl, Inc. 247 NLRB No. 003
(E's refusal to meet or arrange for future bargaining sessions after voluntarily recognizing U and agreeing to meet constituted unlawful withdrawal of recognition and refusal to bargain)

Russell Handy, d/b/a Handy Service Lines JD-721-81

Wholly Foods, Inc. JD-(SF)-16-81
(E's dilatoriness in responding to U's demands that it meet and bargain in good faith concerning provisions for successor labor agreement, its failure to honor agreed-upon bargaining date and its failure to make its owner and principal available for such bargaining, violative; E's willingness to meet at later date did not cure its earlier lack of communication and delay)

Clyde W. Dent Carpet Installation, Inc. JD-389-80
(E held to have refused to bargain in good faith where E, on several occasions, failed to meet with U at previously scheduled times; from the outset of bargaining, E's negotiator expressly voiced his belief that bargaining was futile and E went through the motions of negotiations without any serious intent to adjust differences and reach acceptable common ground)

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) JD-808-79
(E's failure to attend meeting arranged by F.M.C.S., not unlawful in view of wording of Section 203(c) that either party's failure to agree to procedure suggested by F.M.C.S. not to be deemed violation of duty imposed by the Act)

6067-2030-8100 Failure to meet at reasonable times and/or places

Alle Arecibo Corporation and Alle Industries Ltd. 264 NLRB No. 163
(refusing to meet and bargain with U at reasonable times and places and insisting upon bargaining by mail or telephone, violative)

Taurus Waste Disposal, Inc. 263 NLRB No. 028

Dilene Answering Service, Inc. 257 NLRB No. 036
(E's postponement of meeting was *de minimis* and not violative, where there had been numerous previous meetings between the parties)

Interstate Paper Supply Company, Inc. 251 NLRB NO. 189
(refusal to bargain for 5-month period violative, since Bd rejected E's defenses of *crowded calendar* and unacceptability of individual negotiator who had assertedly, as striker, set fire to E's building, where most of E's business reasons in regard to crowded calendar were rectified and individual negotiator in contention was removed from committee before date of E's refusal to bargain)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(refusal to meet because supposedly at impasse and because of picket line misconduct shows evidence of E's bad faith)

6067-2030-8100—Cont.

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E stalled negotiations by stalling scheduling of bargaining sessions)

Cable Vision, Inc. **249 NLRB No. 062**

The Baughman Company **248 NLRB No. 186**
(failure to respond to telephone calls except for one return call and failure to meet with U, unlawful)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**

Wellman Industries, Inc. **248 NLRB No. 029**

Wholly Foods, Inc. **JD-(SF)-16-81**
(E's dilatoriness in responding to U's demands that it meet and bargain in good faith concerning provisions for successor labor agreement, its failure to honor agreed-upon bargaining date and its failure to make its owner and principal available for such bargaining, violative; E's willingness to meet at later date did not cure its earlier lack of communication and delay)

Circle X Corporation **JD-(SF)-222-80**
(refusing U's request to meet with full U negotiating committee which contained unit Ees at a reasonable hour to discuss contract, unlawful)

Payson Casters, Inc. (Amalgamated Industrial Union, Local 44-A, S.E.I.U.-AFL-CIO) **JD-808-79**
(long delay in commencement of bargaining for new agreement, unlawful where E had received U's proposals for new meeting and request for meeting but refused to meet until day before old agreement expired)

Raines Lincoln-Mercury, Inc. **JD-224-80**
(failure to meet at reasonable times for reasonable periods of duration, unlawful)

A. Heller Metals Co., Inc. **JD-845-79**
(E's insistence to impose upon bargaining at a restaurant while aware of U's policy against bargaining in restaurants and rejecting U's five reasonable alternatives held unlawful refusal to meet at reasonable times and places so as to delay and prevent bargaining)

Lacy's, Inc. **JD-832-79**
(E's delay in meeting with U for period of over 4 months, unlawful, notwithstanding U did not provide E with certain information concerning U's health and welfare fund, where U repeatedly attempted to persuade E to return to bargaining table during this period; U's failure to provide E with requested information did not relieve E from its obligation to meet with U at reasonable times)

Eastern Maine Medical Center v. N.L.R.B. **658 F.2d 1 (C.A. 1, 1981)**
(failure to properly respond to legitimate U requests regarding mechanics of meeting times and places unlawful)

N.L.R.B. v. Gibraltar Industries, Inc. and Case, Inc. **653 F.2d 1091 (C.A. 6, July 1981)**
(E did not fail to negotiate with U regarding effects of closing plant where E stood ready and willing to negotiate; since plant was closed, and both U and E had their headquarters in New York, there was nothing unlawful or unreasonable with E's request to pursue discussions in New York)

N.L.R.B. v. Maywood Do-Nut Co., Inc., **659 F.2d 108 (C.A. 9, Oct. 1981)**

6067-2030-8700 Bargaining by alternative

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(E's posting of bargaining minutes which occasionally mistated positions taken by U, made some reference to U's mbargaining representative being unprepared, and blamed U for keeping E's representatives waiting, not violative, where no threats contained in minutes and no demand or urging that U be repudiated)

6067-2040 Bypassing or otherwise undermining representative

House of Cycle, Inc., t/a Kay Motors **264 NLRB No. 137**
(hiring of two new Ees constituted unlawful attempt to dilute U's majority where it occurred two weeks after U requested recognition, represented 30 percent increase in Ees, and new hires came from friend's company)

The Exchange Bank **264 NLRB No. 111**
(undermining and dissipating Ee support for U, after Ees had abandoned support for other U, by refusing to recognize and bargain with second U at time when it knew or should have known that it had majority support, violative)

Rockland Lake Manor, Inc. **263 NLRB No. 142**

Friedrich Truck Service, Inc. and FTL, Inc. **259 NLRB No. 053**
(E's bypassing U to deal directly with Ees and make unilateral changes unlawful where E unilaterally paid Ees less than required contractual wage scale and proposed in company meeting to U Ees that they accept additional wage cuts)

Mather Federal Credit Union **JD-(SF)-8-80**
(bargaining with U while at same time attempting to destroy U's majority and undermine its representative status by using delay in coming to agreement and putting pressure upon Ees, unlawful)

6067-2040-2000 Bargaining with other groups of representatives

6067-2040-2033 Employer initiated

Chester Valley, Inc. **251 NLRB No. 191**
(E's letter to Ees asking them to discuss problems and setting up of joint E-Ee committee, unlawful, since E thereby dealt directly with Ees in contravention of duty to bargain with U; E's contention that its conduct was not unlawful, since at time of letter its obligation to bargain was subject of litigation in pending cases, rejected, where Bd's decision issued this date found that E's obligation to bargain commenced on date on which E embarked on clear course of unlawful conduct which undermined U's majority status and subverted Bd's election process)

6067-2040-2067 Employee initiated

Glengarry Contracting Industries, Inc. **258 NLRB No. 156**
(at unit Ee's suggestion E unlawfully bargained with him directly to subcontract unit work to him as an independent contractor)

Highland Plastics, Inc. **256 NLRB No. 028**
(E who met with Ees' at their request to continue bargaining which had begun prior to strike and prior to advent of U did not violate Act even though he offered them 10 cents an hour raise as U, by being aware of this meeting and making no effort to stop it, acquiesced in E's bargaining)

6067-2040-4000 Bargaining With Individuals or Offers Thereof

Autoprod, Inc. **265 NLRB No. 042**
(bargaining directly with Ees by suggesting that grievances could be handled by direct negotiations, violative as it undermined status of duly designated collective bargaining agent)

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **264 NLRB No. 063**
(dealing directly with Ees by requesting they complete attitude surveys regarding how to improve working conditions, violative)

Kaplan Trucking **264 NLRB No. 181**
(where E was held member of E association and therefore bound by terms of Master Freight Agreement and Eastern Conference Area Iron and Steel Rider, its implementation of unilateral changes in lease structure mandated by above contracts after negotiating with local U, violative. Evidence indicates E made no attempt to bargain with local Us jointly or with Teamsters National Freight Industry Negotiating Committee, official designated bargaining representative, unlike facts in *Jones Motor Co., Inc.* 260 NLRB No. 15, because here E denied that E association had authority to negotiate on its behalf and so was not bound by above contracts)

Taft Broadcasting Company, WBRC–TV **264 NLRB No. 028**
(violation where E bargained directly with unit member and executed individual contract with him, as Ee was not agent of U notwithstanding he had attended negotiating session, since he attended session as Ee observer, and E's statements to him to contact U before signing agreement did not constitute notice to U as no agency. E had duty to notify U before entering into negotiations with unit Ee)

Admiral Merchants Motor Freight, Inc. **264 NLRB No. 012**
(E's going directly to Ees and coercing agreement to reduce their remuneration w/o notifying U of pending ERISA action requiring E to pay its debts to another U and unilaterally reducing Ees' wages, violative notwithstanding E's contention that inj under ERISA insulated it from Bd finding that Sec. 8(a)(5) and (1) were violated, since inj or any proposed order by Bd would not be in conflict either through asserted clashing of NLRA and ERISA or through principles of comity or judicial administration where inj could not be construed to have been in any way aimed at U represented Ees)

Import Body Shop, Inc. **262 NLRB No. 150**
(dealing directly with Ees by soliciting them to enter into individual employment contracts rather than dealing with them through U, violative)

John Geer Chevrolet Co., Inc., d/b/a Parkwood Chevrolet **262 NLRB No. 034**
(E who dealt directly with Ees about modification of contract terms relating to layoffs violated Act; this midterm modification also violative)

Hiney Printing Company **262 NLRB No. 022**
(E's telling Ees that U had not responded to its requests, w/o telling them that U had asked for information necessary to evaluate those requests, and asking Ees to signify to U their approval of E's demands while suggesting to Ees that their job security depended on E's demands being fulfilled held unlawful attempt to bypass U)

Hedison Manufacturing Co. **260 NLRB No. 137**
(direct dealing with Ees over proposed changes in hours)

Billion Motors, Inc., d/b/a Billion Oldsmobile-Toyota **260 NLRB No. 099**
(E's telling Ees that they deserved a raise and that if it was all right with U he would raise their wages, held unlawful bargaining directly with individuals)

Spector Freight System, Inc., Viking Division **260 NLRB No. 014**
(common carrier operating under master freight agreement held not to have unlawfully dealt directly with Ees nor to have unilaterally executed new

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leases with its owner-operators with terms differing from those in master agreement, where C alleged that *affiliated local Us* constituted designated bargaining representative whereas industry negotiating committee was such representative, and GC showed only that E had not reached agreement concerning leases with local's business agent; see also *Branch Motor Express Co.*, 260 NLRB No. 16)

Jones Motor Co., Inc. 260 NLRB No. 015
(element of direct dealing with Ees is lack of consent *by the designated bargaining representative* to contacts made with Ees before implementing changes in terms and conditions of contract)

Jones Motor Co., Inc. 260 NLRB No. 015
(common carrier holding meetings with Ees and unilaterally implementing change in rental payments to owner-operators (Ees) for lease of tractor-trailers in contravention of terms of multi E contract (FNMA), not violative, notwithstanding E did not discuss changes with local Us that represented Ees since E did consult with Teamsters National Freight Industry Negotiating Committee who had represented locals in contract negotiations and was agent for purposes of negotiations. See *Spector Freight Systems, Inc., Viking Division*, 260 NLRB No. 14 (1982))

Friederich Truck Service, Inc. and FTL, Inc. 259 NLRB No. 053
(dealing directly with Ees by proposing to Ees in company meeting that they participate in health and welfare plan, with Ees sharing cost with E, unlawful)

Bedford Farmers Cooperative 259 NLRB No. 165

Puerto Rico Hotel Association 259 NLRB No. 058
(hotels' promoting use of and using personal service contracts with leaders of musical groups which included disclaimer that musicians were not Ees of hotels, contrary to holding herein that musicians were Ees of hotels in which they played, unlawful, notwithstanding these form contracts not unlawful per se, where acknowledged purpose of contracts was in furtherance of position of hotles that musicians were not Ees of hotels and contracts were used to state that hotels would not bargain with U representing musicians)

SAS Ambulance Service, Inc., d/b/a Florida Ambulance Service; et al. 258 NLRB No. 065
(unilaterally engaging in individual bargaining with Ees, violative)

St. Mary's Home, Inc. t/a St. Mary's Infant Home 258 NLRB No. 134
(issuing warning to U adherent for administering hot sauce to child patient pursuant to behavior modification program not unlawful where Ee had never been instructed or authorized to do so)

Jaybil Steel Products, Inc.; etc. 258 NLRB No. 157
(promising Ees *if you guys will go with me, and not sign U card, I will take care of you guys in the future*, asking supervisor to negotiate with Ees to see what they wanted, and if they would sign against U, which supervisor did, and directly asking Ee if he would like to negotiate directly with E, unlawful)

Ver Cee Provisions, Inc. 256 NLRB No. 125
(E's attempt to negotiate wages directly with its Ees and thereby press U to acquiesce thereto, violative)

Chicago Magnesium Castings Company 256 NLRB No. 105

Hayden Electric, Inc. 256 NLRB No. 104
(E's posting notices to Ees stating that E no longer had agreement with U and that all persons interested in employment had to contact management to discuss wages, hours, and benefits and advising Ee that it had gone non-U and that he would be paid less than what new agreement called for, violative, since E had not effectively withdrawn from multi-E bargaining)

Care Ambulance, Inc. and Care Ambulance, Inc. d/b/c American Ambulance 255 NLRB No. 064
(E's negotiating directly with Ees rather than through U about payment for training courses unlawful)

Otis Elevator Company, A Wholly Owned Subsidiary of United Technologies 255 NLRB No. 005
(dealing directly with Ees concerning their transfer to another location, unlawful, notwithstanding E's contention that its decision to transfer some unit work went to control of entrepreneurial work, since decision to transfer is mandatory subject of bargaining; although size of capital investment at new location was not inconsequential, it was not a significant capital investment, and there was no basic change in scope of enterprise; and to require E to bargain about matter would not significantly abridge its freedom to manage its business)

Pacific Intercom Co. 255 NLRB No. 061
(violation, where E, which had had succession of previous agreements with U entered into 8(f) agreement with U which matured into full bargaining relationship when majority of Ees in unit joined U, embarked on long journey of unlawful conduct aimed at deceiving U and depriving Ees of fruits of collective bargaining by entering into private arrangement with Ees to pay them less than contractual wage rate, and avoided use of U hiring hall; contention that majority of Ees were coerced by E to join U and E paid U dues, rejected, as such conduct 8(a)(2) violation; therefore E estopped from asserting its own unlawful conduct as defense to U's majority status)

Dimo Ambulette Service, Inc. 255 NLRB No. 0
(E's conducting meeting during which it listened to Ee proposals concerning working conditions and instituted seniority system at time when U had already advised E that it represented majority of Ees, unlawful)

U.S. Utilities Corporation 254 NLRB No. 0
(negotiating directly with Ees working in county outside U's geographical jurisdiction violative as existing contract by its terms applied to work wherever company worked)

Atlas Metal Parts Co., Inc. 252 NLRB No. 0
(E's representative stating to Ees he could not understand why Ees would not prefer direct payment which they could use for IRA pension funds rather than be covered by U pension plan, not violative, since Ees offered nothing nor urged to do anything)

Ledford Construction Company, Inc. 251 NLRB No. 19
(bargaining directly with Ees at meeting with Ees w/o U representative present)

Meatxcorp (Formerly Seymour Packing Division of Seymour America, Inc.) 251 NLRB No. 047
(bargaining with Ees over piece work rates at time when collective-bargaining agreement in effect violative)

Top Manufacturing Company, Inc. 249 NLRB No. 0
(E's negotiating settlement of grievance directly with Ee w/o affording U opportunity to be present, unlawful; E's contention U's failure to reply to prior settlement offer constituted waiver of bargaining rights, rejected)

B. N. Beard Company 248 NLRB No. 01
(bargaining directly with individual Ees by offering them terms and conditions of employment differing substantially from those set forth in U contract, unlawful)

Kaiser-Permanente Medical Care Program 248 NLRB No. 02
(although contract provides exception to overtime rates where Ee requests particular work schedule, direct solicitation of Ees concerning waivers of right to overtime pay in order to institute new departmentwide schedule, violative, since E bypassed U in dealing directly with Ees on terms of employment)

The Saloon, Inc. 247 NLRB No. 15
(E's conduct in touting its medical/dental program to Ees directly, as alternative to U health and welfare coverages, unlawful)

Pre-Fab Transit Company and Tractor and Trailer Leasing Co., Inc. JD-333-81
(E's elimination of *short haul* operation resulting in termination of Ees and then bargaining individually with Ees, resulting in destruction of unit, violative)

Rainbo Baking Company JD-(SF)-117-81
(bypassing U and dealing directly with unit Ee regarding wages, unlawful)

Madison Newspapers, Inc. JD-157-81
(dealing directly with unit Ees concerning granting them a raise while still obligated to apply expired contract, unlawful)

Royce Lindsay d/b/a Royce Lindsay Plumbing, Heating, and Refrigeration Supply Company, etc. JD-(SF)-3-82
(where owner of individual proprietorship formed several new business entities to replace individual proprietorship which had E-association agreement with U, and new entities were found to constitute single E, E's unilateral change in providing separate, health, welfare and pension benefits for Ees of one of the entities held unlawful, since it was in derogation of binding contract inasmuch as E dealt directly with Ees in making such unilateral change)

Murphy Printing Company, Inc. JD-553-81
(bypassing U by negotiating individual wage increases with individual Ees who had been offered higher wages by other Es in order to keep them as Ees unlawful)

Transportation By La Mar, Inc. JD-279-81
(bypassing certified U and dealing directly with unit Ees by offering them vacation benefits, holiday pay, and wage increase w/o notification to or offering to bargain with U over such subjects held violative)

McMillan Cartage, Inc. JD-(ATL)-48-81
(after repudiating association contract, telling Ees that they must agree to work under terms of E's proposed letter agreement or there would be no work, and by requiring that they sign such agreement if they wanted to work, violative)

McMillan Cartage, Inc. JD-(ATL)-48-81
(telling Ee that it was unable to meet financial requirements of U contract held unlawful direct dealing as E's purpose was to erode U's bargaining position)

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Sunnyland Foods, Inc. JD-(ATL)-36-80
(publication and distribution of Ee handbok containing contractual grievance procedure which eliminated any reference to U's role in grievance processing unlawful, notwithstanding contention that handbook was drafted having in mind distribution at E's other plants which were unrepresented by Us and that E had not actually by-passed U and bargained directly with unit Ees, since intention for handbook to have primary application at E's other plants would not lessen its impact on unit Ees and U, and whether there was actual direct dealing with Ees during time handbook remained uncorrected is immaterial)

Russell Handy, d/b/a Handy Service Lines JD-721-81
(bargaining directly with Ees on reduction of hours for which paid, unlawful)

Raines Lincoln-Mercury, Inc. JD-224-80
(promising Ees improved benefits directly on conditions that they get rid of U, unlawful)

Hilton International Company d/b/a Caribe Hilton Hotel v. N.L.R.B. 690 F.2d 318 (C.A. 2, Sept. 1982)
(enforcement denied and association hotel's use of personal service contracts for leaders of bands of steady engagement musicians at hotels held not unlawful, where band leaders were found independent contractors rather than hotel supervisors, and musicians their Ees rather than hotel Ees)

N.L.R.B. v. Chester Valley, Inc. 652 F.2d 263 (C.A. 2, June 1981)
(E's sending letter to all Ees stating that meeting would be held to discuss *problems* and to see if labor and management could *work together on rectifying these problems* possibly through formation of *joint E/Ee committee*, not violative of 8(a)(5) since ct found there was no bargaining obligation at time of this alleged violation)

S & W Motor Lines, Inc. v. N.L.R.B. 621 F.2d 598 (C.A. 4, 1980)
(bonus payments during strike to non-striking over-the-road drivers not violative of 8(a)(5) as attempt to bypass U or as unilateral change in conditions of employment where E was struggling to keep operations going; cases where bonuses were paid after strike, distinguishable)

Huck Manufacturing Company v. N.L.R.B. 693 F.2d 1176 (C.A. 5, Dec. 1982)
(Es's posting of notice stating that it had proposed wage increase and had notified U's negotiator the day before, not violative; there was no direct bargaining with Ees, evidence of bad faith in negotiations, or subversion or disparagement of U or its negotiator)

Anchortank, Inc. v. N.L.R.B. 618 F.2d 1153 (C.A. 5, 1980)
(concerning mandatory subjects of collective bargaining)

6067-2040-4050 As to reinstatement of strikers

N.L.R.B. v. Koenig Iron Works, Inc.; et al. 681 F.2d 130 (C.A. 2, June 1982)
(reinstatement of strikers to levels of benefits inferior to those received at commencement of strike, violative)

6067-2040-4500 Refusal to release employee committee members for bargaining

Circle X Corporation JD-(SF)-222-80
(refusing U's request to meet with full U negotiating committee which contained unit Ees at a reasonable hour to discuss contract, unlawful)

N.L.R.B. v. Indiana and Michigan Electric Company 599 F.2d 185 (C.A. 7, 1979)
(E's refusal to grant Ee, who was bargaining representative for units other than his own and attended negotiations in other units, time off to attend bargaining sessions during work time, or to schedule sessions during off-duty time, unlawful, since it effectively denied Ees representation by Ee; E may not refuse to bargain with U bargaining committee or committees simply because U is coordinating various bargaining efforts and E fears U may use coordination to force it into company wide negotiations)

6067-2040-5000 Bargain with local where international certified or constitutes duly selected representative

Kaplan Trucking 264 NLRB No. 181
(where E was held member of E association and therefore bound by terms of Master Freight Agreement and Eastern Conference Area Iron and Steel Rider, its implementation of unilateral changes in lease structure mandated by above contracts after negotiating with local U, violative. Evidence indicates E made no attempt to bargain with local Us jointly or with Teamsters National Freight Industry Negotiating Committee, official designated bargaining representative, unlike facts in *Jones Motor Co., Inc.* 260 NLRB No. 15, because here E denied that E association had authority to negotiate on its behalf and so was not bound by above contracts)

6067-2040-5200 Bargaining with international where local certified

AMPAC, a subsidiary of Kane-Miller Corp. 259 NLRB No. 151
(E's entering into agreement with international U rather than local U, with which E had prior contract, not violative where local U acquiesced in international's participation in contract negotiations and ratified fruits of that participation)

6067-2040-7000 Recognition of minority union

Independent Association of Steel Fabricators, Inc.; etc. 252 NLRB No. 129
(on ct remand, Bd in issuing bargaining order overruled ALJ finding that member of E-association withdrew from association and executed contract with outside U while entertaining good faith doubt of incumbent U's continued majority, where record was devoid of any objective factors w/i E's knowledge on which it could have reasonably relied to conclude that majority of its seven Ees no longer supported incumbent U)

Stroehmann Brothers Company 252 NLRB No. 139
(new owner's recognizing U as representative of shipping Ees who historically were in unit of another U, violative, where U did not represent uncoerced majority of shipping Ees) •

6067-2040-8000 Undermining authority of representative

Merrill & Ring, Inc. 262 NLRB No. 039
(E's unilaterally instituting policy of having day-shift Ees report for work before their jury duty w/o affording contractual U reasonable opportunity to bargain held violative, since E's refusal to cease its unlawful conduct provided evidence that unilateral change was irrevocable and change in Ees' jury duty rights, mandatory subject of bargaining, was not so insignificant as to not undermine authority of U)

Sentle Trucking Corporation 260 NLRB No. 079
(sending letter to Ees soliciting their approval of proposed modification of contract, violative, where E's contention that it merely sought to initiate contractual relief procedure rejected in view of fact that Ees were never advised in writing or otherwise of E's proffered reason; no exceptions)

Sentle Trucking Corporation 260 NLRB No. 079
(no violation by E holding meeting with Ees at which it offered to seek contractual relief if Ees agreed to proposed modifications to contract where U representative was present during meeting; no exceptions)

Armour Oil Company 253 NLRB No. 148
(acting terminal manager's promise to drivers that E would give them more work and better trucks to drive provided U designate business agent other than individual presently representing Ees held violative, since promise was calculated to coerce Ees' choice of bargaining agent and had effect of weakening authority of U as bargaining agent; promise was direct dealing with Ees in derogation of U's status as bargaining representative)

Merillat Industries, Inc. 252 NLRB No. 114
(E's refusal to allow U president to attend grievance meeting to act as advisor, not unlawful where contract was silent as to any right of U president to attend such meetings and absence of such practice in past represents closest approximation of evidence of how E and U would have decided issue in contract negotiations)

Stroehmann Brothers Company 252 NLRB No. 139
(new owner of business entering into contract and honoring same with U purporting to cover unit of shipping Ees historically represented by another U, violative)

Chester Valley, Inc. 251 NLRB No. 191
(E's letter to Ees asking them to discuss problems and setting up of joint E-Ee committee, unlawful, since E thereby dealt directly with Ees in contravention of duty to bargain with U; E's contention that its conduct was not unlawful, since at time of letter its obligation to bargain was subject of litigation in pending cases, rejected, where Bd's decision issued this date found that E's obligation to bargain commenced on date on which E embarked on clear course of unlawful conduct which undermined U's majority status and subverted Bd's election process)

Martinsburg Concrete Products Co. 248 NLRB No. 172
(violation where, subsequent to notification by U of its intent to negotiate new bargaining agreement, E's president directed preparation in its office of letters rejecting U which were presented to unit Ees for their signatures by E's general manager)

St. Joseph's Hospital of The Franciscan Sisters of Milwaukee, Inc. 247 NLRB No. 135
(E conducting survey among Ees represented by U regarding their feelings about working conditions and supervision, unlawful, where E's purpose was to learn what complaints might have caused renewed U activity and where, questioning *would lead Ees to believe E was inviting direct dealing thus suggesting that U support and activities were unnecessary*)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass JD-452-80
(discussing with Ee issue of insurance being negotiated at time shortly after E posted notice of cancellation of major medical benefits, violative)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass JD-452-80
(violation where E informed Ees that they should go to U meeting and vote to pay increased insurance rate or Ees of another department would vote it down and they would all be w/o jobs)

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Malibu Grand Prix Corp. JD-(SF)-90-80

(E's refusal to sign U contract on demand held not to constitute unlawful failure to bargain or withdrawal of recognition, notwithstanding unit was doubtless appropriate and assuming E had duty to bargain, where E had complied with pre-hire arrangement with U to pay U scale and cash equivalent of U fringe benefits; in addition, E's unlawful discharges were held not to constitute attempt to forestall U organizing drive or undermine U)

Lucy's, Inc. JD-832-79

(E's distributions of letters to Ees which it had received from U concerning progress of negotiations and U's position concerning same with attached letters from E which attached letters from E which attacked authority of U's negotiating team, unlawful, where distributions were intended to create division between Ees and U)

• *Safeway Trails, Inc. v. N.L.R.B.* 641 F.2d 930 (C.A.D.C. Sept 18, 1981)

(E's contention that its statements undermining authority of U representative made away from bargaining table could not be used as evidence of violation because protected by 8(c), rejected; 8(c) was intended to impose *rule of relevancy* on communications w/i Bd's purview, and E's communications here were not merely relevant evidence of ULP but ULP itself)

6067-2040-8025 Refusal to recognize employee representative of union

SAS Ambulance Service, Inc., d/b/a Florida Ambulance Service; et al. 258 NLRB No. 065

(refusing upon demand to meet with U's authorized bargaining representatives, violative)

California Hyatt Corporation d/b/a Hyatt Regency San Francisco JD-(SF)-72-82

(refusal to accord standing to duly-designated shop steward, violative)

Western Die Casting Company JD-(SF)-86-82

(E's contention that U waived right to represent unit Ees in processing grievance because 2 members of 4 person *in-plant grievance committee* who attempted to present grievances were no longer Ees of E, rejected, since neither U's contract provisions with E nor its constitution, considered either separately or together, merited inference that U clearly and unmistakably waived Ees' statutory right to select their own grievance processors)

6067-2040-8027 Refusal to recognize individual designated as representative of union

Professional Air Traffic Controllers Organization 261 NLRB No. 132

(refusing to bargain with U elected by majority in non-Bd election and recognized by E, violative where E ceased recognizing U president on pretense of his promotion to supervisor)

Dilene Answering Service, Inc. 257 NLRB No. 024

(refusing to negotiate with U, in presence of four unit Ees who had been requested by U to attend meeting and who were said by U to be on committee, violative)

Dilene Answering Service, Inc. JD-(NY)-102-81

(E's conditioning further collective bargaining negotiation meetings upon non-presence and non-participation of U's chief negotiator, not unlawful, where such negotiator's verbal and physical threats of violence towards E's representative during previous meetings made continued good-faith collective bargaining impossible)

6067-2040-8030 Promotion of repudiation

Marriott In-Flite Service, A Division of Marriott Corporation 258 NLRB No. 099

(E holding meetings on work time at which supervisors spoke in favor of decertification in midst of negotiations for new contract, distributing booklets regarding decertification procedure, and suggesting actual language for decertification ptns, unlawful, notwithstanding supervisors not involved in solicitation of actual ptns and none were solicited on working time, since E planted idea of decertification and led Ees to believe E was sponsoring decertification effort while at same time making clear bargaining was over)

Jaybil Steel Products, Inc.; etc. 258 NLRB No. 157

(promising Ees *if you guys will go with me, and not sign U card, I will take care of you guys in the future*, asking supervisor to negotiate with Ees to see what they wanted, and if they would sign against U, which supervisor did, and directly asking Ee if he would like to negotiate directly with E, unlawful)

Walker Die Casting, Inc. 255 NLRB No. 034

(communicating directly with Ees by posting notice soliciting Ees to refuse to honor strike if called, advising Ees to resign from U to avoid fire in absence of U threat to fire, unilaterally raising wages, withdrawing last contract offer, ceasing bargaining, coercively threatening Ees, and establishing Ee committee, violative, notice was calculated to undermine U and set stage for further attempts to bypass and ignore U)

Atlas Metal Parts Co., Inc. 252 NLRB No. 039

(E's posting of bargaining minutes which occasionally misstated positions taken by U, made some reference to U's mbargaining representative being unprepared, and blamed U for keeping E's representatives waiting, not violative, where no threats contained in minutes and no demand or urging that U be repudiated)

N.L.R.B. v. Mar-Len Cabinets, Inc. 659 F.2d 995 (C.A. 8, Oct. 1981)

(advising strikers they would have to resign from U in order to return to work typing letters of resignation, furnishing postage and mailing letters, prior to bargaining session at which E withdrew recognition, unlawful)

6067-2040-8067 Restricting bargaining representative's access to employees

AMPAC, a subsidiary of Kane-Miller Corp. 259 NLRB No. 181

(E's objection to international U's designation of officials of Local U to police agreement, not violative where exclusion of such officials did not adversely affect representation of Ees involved; international U's representative who had authority under contract to do so acquiesced to E's request)

6067-2040-8075 Denying bargaining representative access to employer's premises

Tom's Ford, Inc. 253 NLRB No. 12

(E's ordering U representative out of shop and causing him to be removed by police from shop floor in presence of Ees held to constitute unlawful interference with Ees' right to select representatives for bargaining and presenting grievances where U representative had contractual right to investigate grievances and was investigating complaint that E was discriminating against U members in breach of contract by granting preferential treatment to nonmembers)

Yet Wah Restaurant 251 NLRB No. 018

(E's refusal to allow U access to its premises to administer valid contract still in effect which included proviso allowing U access for this purpose, unlawful)

Campo Slacks, Inc. and J & E Sportswear, Inc. 250 NLRB No. 087

(denial of access by U representatives to E's premises as provided in agreement unlawful)

N.L.R.B. v. Campo Slacks, Inc., and J & E Sportswear, Inc. 659 F.2d 1069(T) (C.A. 3, May 1981)

(no error in Bd's finding that Es refused U representative access to plants in derogation of bargaining agreement)

6067-2050 Commission of ULP

Greyhound Food Management, Inc. d/b/a Burger King 258 NLRB No. 17

(where ALJ failed to make finding with respect to C allegation that E engaged in misconduct violative of 8(a)(5), Bd found that E engaged in such unlawful conduct since record established presence of all necessary elements of such violation under rationale of Gissel and Trading Post)

Le Roy Fantasies, Inc., and Hardwicke's Plum, Inc., A Joint Venture, d/b/a Maxwell's Plum 256 NLRB No. 036

(violation, where E engaged in unlawful 8(a)(1) and (3) activity which could not help but dissipate U's majority status)

Douglas & Lomason Company 253 NLRB No. 039

(E's withdrawal of recognition and refusal to bargain, unlawful since they occurred in context of ULP's committed by E)

Albion Corporation d/b/a Brooks, Inc. 251 NLRB No. 104

(on ct remand requiring Bd to admit newly discovered evidence pertaining to post-hearing agreements reached by parties covering separate units of maintenance and janitorial Ees, Bd affirmed ALJ's conclusion that, while E asserted in good faith its economic proposals when dealing with U over janitors, such motivation did not legitimatize its conduct in bargaining over maintenance Ees since, during such bargaining E was commiting serious ULPs which directly impeded and adversely affected bargaining)

EMR Photoelectric, A Division of Sangamo Weston Inc. 251 NLRB No. 214

(E's refusal to bargain, unlawful, where U was Ee majority representative and E, by its unlawful conduct, prevented a free and fair election from being held, thereby impeding election process w/i meaning of Trading Post)

6067-2050-1000 Assisting favored union

Cas Walker's Cash Stores Inc. 249 NLRB No. 041

(support for, recognition of, and dealing with assisted U while undermining organizing campaign of rival U, unlawful)

6067-2050-1400 Antiunion campaign or actions precluding fair election

Professional Air Traffic Controllers Organization 261 NLRB No. 133

(where E discharged 4 leading U adherents unlawfully, E engaged in conduct so *serious, pervasive, egregious and substantial* that fair and free election would be impossible)

Penn Color, Inc. 261 NLRB No. [illegible]

(E unlawfully refused to bargain where E knew that U's demand for bargaining for E's *production and maintenance Ees* was intended for single location unit, not including Ees at separate location; after refusing to look at U authorization cards offered for his inspection, E stated that he was

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expecting U's demand and that his lawyer would decide; and at the same time E was engaged in ULPs which precluded fair election)

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant **261 NLRB No. 051**
(violation, where E upon demand for recognition by U refused to recognize and bargain and commenced upon course of ULPs including unlawful interrogation, promises of benefits in return for signing anti-U ptn, unilateral granting of wage increases, discontinuance of benefits, threat of closure, layoff and closure w/o warning to Ees, and discharge of U adherent)

Loy Food Stores, Inc. d/b/a Ken's IGA **259 NLRB No. 035**
(violation where E refused to recognize and bargain with U on and after date by which time E had embarked on clear course of unlawful conduct which undermined U's majority status and made holding of fair election improbable)

S. W. Hart & Company, Pty. Ltd., d/b/a Solahart of Fresno **258 NLRB No. 192**
(violation where E failed and refused to bargain with U which had card majority and instead engaged in ULPs)

Southern Moldings, Inc. **258 NLRB No. 115**
(refusing to recognize and bargain with U while contemporaneously engaging in conduct which undermined U's majority and prevented holding of fair election, unlawful)

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. **255 NLRB No. 098**
(violation where E refused to recognize and bargain with U while engaging and having engaged in various substantial ULPs)

United Oil Manufacturing Co., Inc. **254 NLRB No. 179**
(refusal to bargain with U which had been designated by majority of bargaining unit Ees, violative)

Century Moving & Storage, Inc. **251 NLRB No. 083**
(E's discriminatory conduct directed to two known U supporters and affecting two of seven unit Ees, violative and remedy was bargaining order, since conduct was calculated and tended to dissapate and erode possibility of holding free election)

Ben J. Mauro d/b/a Warehouse Food Distributing Company **250 NLRB No. 177**
(refusal to bargain with U with card majority requesting recognition and bargaining followed by pattern of ULP's precluding fair election, unlawful)

Olympic Medical Corporation **250 NLRB No. 011**
(violation where E refused to recognize and bargain with U as majority representative of Ees while coterminously refusing to grant scheduled periodic wage increases to Ees and instituting retroactive change in policies)

Raimund Corsten Co., Inc. d/b/a Raycor Co. **249 NLRB No. 078**
(violation, where after request by U which enjoyed majority status E refused to recognize and bargain with such U and commenced to engage in serious ULPs violative of 8(a)(1) and (3))

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**

Alumbaugh Coal Corporation **247 NLRB No. 112**
(refusal to recognize U with majority status followed by numerous ULPs, unlawful)

Tartan Marine Company **247 NLRB No. 073**
(refusal to bargain with U that had majority while coterminously engaging in ULPs, unlawful)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(widespread and extensive campaign which included coercive speeches, threats, interrogations and other coercive conduct, promises and grants of benefits, solicitations of grievances, disciplinary harassment, and warnings and discharges for Ee's U activities)

N.L.R.B. v. Berger Transfer & Storage Co. **678 F.2d 679 (C.A. 7, May 1982)**
(E's refusal to bargain with U which presented card majority, unlawful, where E subsequently committed ULPs which destroyed laboratory conditions necessary for fair election)

N.L.R.B. v. Hinky Dinky Super Markets **636 F.2d 231 (C.A. 8, 1980)**

6067-2050-3300 Polling employees

Mingtree Restaurant, Inc. d/b/a Forbidden City Restaurant **265 NLRB No. 052**
(poll conducted for E by accounting firm for E after expiration of contract which showed lack of Ee support for recognized U, unlawful, notwithstanding properly conducted w/i guidelines of *Struksnes Construction Co.*, where E did not have sufficient objective considerations upon which to base a reasonable doubt of U's majority status prior to conducting poll)

Fertilizer Company of Texas, Inc. **254 NLRB No. 183**
(polling Ees on their desire for continued recognition before reasonable time passed to allow for bargaining after voluntary recognition, violative absent showing that at time of recognition U lacked majority support of Ees)

N.L.R.B. v. A.W. Thompson, Inc. **651 F.2d 1141 (C.A. 5, July 1981)**
(E who has not engaged in ULPs or otherwise created coercive atmosphere may, after giving notice to certified bargaining representative, poll Ees for their U sentiment if there is substantial, objective evidence of loss of U support (even if evidence by itself not sufficient to justify withdrawal), and if poll meets procedural guidelines set out in *Struksnes Construction Co.* 165 NLRB 1062 (1967))

6067-2050-3800 Bargaining directly with employees

Admiral Merchants Motor Freight, Inc. **265 NLRB No. 016**
(E's dealing directly with Ees to secure their agreement that it reduce their contractual benefits in order to meet its court-ordered payments to U pension and health and welfare funds, and its unilateral implementation of these reductions, unlawful)

Alle Arecibo Corporation and Alle Industries Ltd. **264 NLRB No. 163**
(E's chief executive officer speaking directly to Ees and asking them to sign written form agreeing to work during next two months for same wages they were currently receiving and telling Ees that they had to sign agreement to continue working, violative)

Belford Farmers Cooperative **259 NLRB No. 165**

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. **255 NLRB No. 098**
(E's meeting with two Ees which resulted in grant of one Ee's 10-cent an hour increase for travel expenses, violative where U enjoyed majority support at time meetings were held)

K & K Transportation Corp., Inc. **254 NLRB No. 087**
(E who stretched negotiations out over 1 year period and attempted to undermine U by promising benefits, creating impression of surveillance, threatening to close plant, insisting on restrictive grievance and arbitration procedures, threatening to discharge any Ee who testified against it in Bd proceeding etc. did not intend to reach agreement with U or sign collective bargaining agreement and violated Act)

Armour Oil Company **253 NLRB No. 148**
(acting terminal manager's promise to drivers that E would give them more work and better trucks to drive provided U designate business agent other than individual presently representing Ees held violative, since promise was calculated to coerce Ees' choice of bargaining agent and had effect of weakening authority of U as bargaining agent; promise was direct dealing with Ees in derogation of U's status as bargaining representative)

Exxon Company, U.S.A. **253 NLRB No. 027**
(offering nonU members of unit same insurance plan as offered to non unit Ees, violative where contract gave U exclusive right to administer health plan, notwithstanding U made unilateral change by charging non-U Ees service fee)

Western Truck Services, Inc. **252 NLRB No. 096**
(promising Ees contract which *might contain better benefits* in order to undermine U's status, violative)

Olin Construction Co., Inc. **JD-192-82**
(offer of employment to laid off Ee at wage rate below contract rate, violative, since such conduct constituted direct dealing with Ees in circumvention of E's obligation to U)

Transportation By La Mar, Inc. **JD-279-81**
(bypassing certified U and dealing directly with unit Ees by offering them vacation benefits, holiday pay, and wage increase w/o notification to or offering to bargain with U over such subjects held violative)

Carbon Specialties, Inc. **JD-310-80**
(dealing directly with Ees in negotiation and grant of bonus benefits, violative)

Construction Supply Company, Inc., d/b/a Jim Bird Construction Supply **JD-(SF)-66-80**
(by soliciting Ees to enter into individual employment contracts)

N.L.R.B. v. St. Mary's Home, Inc., t/s St. Mary's Infant Home **690 F.2d 1062 (C.A. 4, Sept. 1982)**
(violation by refusing to bargain after U was certified and engaging in direct dealing with Ees)

N.L.R.B. v. International Credit Service, A Division of Lucas County Credit Bureau, Inc. **644 F.2d 886(T) (C.A. 6, Jan 6, 1981)**
(direct dealing with Ees, violative)

6067-2050-4200 Discrimination or threat thereof

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant **261 NLRB No. 051**
(violation, where E upon demand for recognition by U refused to recognize and bargain and commenced upon course of ULPs including unlawful interrogation, promises of benefits in return for signing anti-U ptn, unilateral granting of wage increases, discontinuance of benefits, threat of closure, layoff and closure w/o warning to Ees, and discharge of U adherent)

6067-2050-4200—Cont.

Dunmor Company d/b/a Madison South Convalescent Center **260 NLRB No. 106**
(violation, where E attempted to dissipate unit or undermine U's majority by failing to fill vacant positions in unit)

Rockingham Machine-Lunex Company **255 NLRB No. 015**
(E failed to bargain in good faith where it had predetermined intention not to reach agreement with U on U dues checkoff, offered only minimal concessions on both non-economic and economic demands, made unfounded threats of plant closure, and committed various ULPs away from bargaining table including unilateral changes, threats of discharge, refusal to pay strikers vacation pay)

Eastern Maine Medical Center **253 NLRB No. 024**
(E failed to bargain in good faith and instead bargained with determination not to reach agreement and to undermine U, in view of E's conduct in discriminatorily withholding wage increases and fringe benefits from unit Ees, publicizing withholding of benefits while at same time offering lower wage increase than Ees would have received had they not selected U, and refusing to consider retroactive payment of withheld wage increase during bargaining)

Discotron Equipment Inc., d/b/a Xenon **250 NLRB No. 024**

American Pistachio Corporation **249 NLRB No. 174**
(discharge of two leading U activists in unit of five Ees on same day E received bargaining demand, in addition to unlawful interrogation, unlawful)

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(E's refusal to sign U contract on demand held not to constitute unlawful failure to bargain or withdrawal of recognition, notwithstanding unit was doubtless appropriate and assuming E had duty to bargain, where E had complied with pre-hire arrangement with U to pay U scale and cash equivalent of U fringe benefits; in addition, E's unlawful discharges were held not to constitute attempt to forestall U organizing drive or undermine U)

Eastern Maine Medical Center v. N.L.R.B. **658 F.2d 1 (C.A. 1, 1981)**
(E's discriminatory practices regarding wage and benefit increases showed its disposition against agreement)

South Shore Hospital v. N.L.R.B. **630 F.2d 40 (C.A. 1, 1980)**
(E's refusal to make proposed wage increases for represented Ees in its final offer retroactive so as to equal wage increases already granted its unrepresented Ees, unlawful where its stated business reasons that it would be disadvantageous for it to do so resulted from its own unlawful bargaining strategy)

N.L.R.B. v. Hudson River Aggregates, Inc. **639 F.2d 865 (C.A. 2, 1981)**
(successor E's refusal to hire Ees of predecessor who were members of local U with which predecessor E had contract, and who would have composed majority of Ees in unit represented by local at time bargaining obligation arose, unlawful, since refusal for purpose of avoiding recognition and bargaining)

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**
(advising strikers they would have to resign from U in order to return to work typing letters of resignation, furnishing postage and mailing letters, prior to bargaining session at which E withdrew recognition, unlawful)

N.L.R.B. v. R & H Masonry Supply, Inc. **627 F.2d 1013 (C.A. 9, Sept. 1980)**
(E's refusal to bargain not justified on basis of that all unit Ees had been terminated or elevated to *managerial* position where E had unlawfully sold its trucks, discharged drivers and contracted out hauling after drivers had signed authorization cards)

6067-2050-4900 Statements

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant **261 NLRB No. 051**
(violation, where E upon demand for recognition by U refused to recognize and bargain and commenced upon course of ULPs including unlawful interrogation, promises of benefits in return for signing anti-U ptn, unilateral granting of wage increases, discontinuance of benefits, threat of closure, layoff and closure w/o warning to Ees, and discharge of U adherent)

Markoefer Baking Company, Inc. **258 NLRB No. 071**
(E's personnel director telling Ee to inform Ees that E would resist any attempt towards collective bargaining by U despite Bd certification and that E would never sign U contract, violative)

Pittsburgh and New England Trucking Co. **249 NLRB NO. 104**
(withdrawal of recognition, after E had threatened striking Ees with statements that replacements would be hired and that these replacements' seniority would be superior to that of returning strikers, unlawful, where Ees felt continued concern about potential loss of employment)

Lacy's, Inc. **JD-832-79**
(store manager's statements to Ees that they should abandon U and form or join another U, unlawful, where made in context of U's efforts to negotiate new contract as well as in context of E's other ULP's)

6067-2050-5600 Interrogation or conducting of polls

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant **261 NLRB No. 051**
(violation, where E upon demand for recognition by U refused to recognize and bargain and commenced upon course of ULPs including unlawful interrogation, promises of benefits in return for signing anti-U ptn, unilateral granting of wage increases, discontinuance of benefits, threat of closure, layoff and closure w/o warning to Ees, and discharge of U adherent)

Markoefer Baking Company, Inc. **258 NLRB No. 071**
(polling Ees, after majority had voted for U of their choice, as to whether or not they wished to be represented by U, violative)

Discotron Equipment Inc., d/b/a Xenon **250 NLRB No. 024**

Digital Paging Systems of Toledo, Inc. **248 NLRB No. 015**

6067-2050-7000 Lockout or threat thereof

Vore Cinema Corp. **254 NLRB No. 167**
(E's lockout of Ees while engaged in bad faith bargaining violative)

Harding Glass Industries **248 NLRB No. 091**
(refusal to reinstate ULP strikers after they requested reinstatement constitutes lockout)

Iowa Parcel Service, Inc. and Iowa Express Distribution, Inc. **JD-228-82**
(lockout of Ees and other abrogation of contract to force U to agree to unscheduled mid-term modification or termination of contract and subsequent refusal to bargain in good faith, unlawful)

6067-2050-8400 Shutdown

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant **261 NLRB No. 051**
(violation, where E upon demand for recognition by U refused to recognize and bargain and commenced upon course of ULPs including unlawful interrogation, promises of benefits in return for signing anti-U ptn, unilateral granting of wage increases, discontinuance of benefits, threat of closure, layoff and closure w/o warning to Ees, and discharge of U adherent)

Weather Tamer, Inc. and Tuskegee Garment Corporation **253 NLRB No. 086**
(unilaterally transferring all work to another facility and closing plant after U won election, violative)

Iowa Parcel Service, Inc. and Iowa Express Distribution, Inc. **JD-228-82**
(allegations of ULPs by company and its owner on and after date company went out of business, dismissed, notwithstanding technical admission of allegations where respondents failed to answer)

6067-2060 Proposals and demands

Parkview Nursing Center II Corp. **260 NLRB No. 037**
(while individual proposals made by E at bargaining table did not by themselves constitute *per se* violations, it was totality of E's conduct both at and away from bargaining table which clearly demonstrated E's intent to frustrate any meaningful bargaining with U in violation of 8(a)(5))

6067-2060-0100 Generally

Laredo Packing Company **254 NLRB No. 001**
(while mere proposing of nonmandatory subjects of bargaining is not per se illegal, insistence to impasse on agreement to mandatory subjects as condition of signing bargaining agreement; unlawful)

Bureau of Rehabilitation of The National Capital Area **JD-262-82**
(E's advancing and insisting on predictably unacceptable contract proposals and proposing and insisting upon to point of impasse inclusion in bargaining agreement of overly broad management rights clause in context of *take it or leave it* package proposal, violative)

Seattle-First National Bank v. N.L.R.B. **638 F.2d 1221 (C.A. 9, 1981)**
(while ct has sanctioned Bd's consideration of content of bargaining proposals as part of its review when making determination as to good faith of parties negotiating contract, inferences drawn from those proposals are not alone sufficient to support finding of violation of obligation to bargain in good faith)

6067-2060-1600 Less favorable working conditions

AMPAC, a subsidiary of Kane-Miller Corp. **259 NLRB No. 181**
(not violative)

Hudson Chemical Company **258 NLRB No. 009**
(E's failure, during contract negotiations, to define, explain and advocate its position and, instead, its attempt to thrust its deletions from prior contracts on U on *take it-or leave it* basis constitute additional indicia of E's lack of sincere attempt to conduct meaningful negotiations)

Bureau of Rehabilitation of The National Capital Area **JD-262-82**
(by advancing and insisting on contract proposals which undercut existing benefits, E engaged in bad faith bargaining where proposals were either unexplained or demonstrably motivated by anti-U animus)

6067-2060-1600—Cont.

N.L.R.B. v. Cable Vision, Inc. **660 F.2d 1 (C.A. 1, Sept. 1981)**

(E did not bargain in good faith where on most substantive issues it sought agreement less favorable to its Ees than current practice and did not accept any change during negotiations that would have made Ees better off in any significant respect than current practices)

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**

(abolishment of E's obligation to contribute to U pension fund)

Albion Corporation d/b/a Brooks Towers, Inc. v. N.L.R.B. **682 F.2d 874 (C.A. 10, July 1982)**

(notwithstanding Bd accepted ALJ's determination that E had not adopted and maintained its bargaining stratety with its janitorial Ees for other than legitimate reasons, E nontheless violated Act by conditioning reinstatement of striking maintenance Ees upon acceptance of the lower janitorial wage after they had unconditionally offered to return to work; therefore, no meaningful bargaining over wages possible so long as reinstatement of maintenance Ees used as *bargaining bait* by E to force acceptance of its terms. No good-faith impasse could exist because E unlawfully refused to restore status quo)

6067-2060-1800 Less favorable proposals than previously offered

Robbins Door & Sash Company, Inc. **260 NLRB No. 088**

(E violated Act by instituting unilateral changes even if parties were at impasse since changes it instituted were not reasonably comprehended w/i proposals it had offered to U during bargaining sessions)

Parkview Nursing Center II Corp. **260 NLRB No. 037**

(in context of totality of E's conduct, E's bad-faith bargaining was indicated by its offer to reduce wages of Ees who were already earning more than amount proposed, which was departure from E's original bargaining position to continue the *status quo*; E's claim that it gave assurances that no Ee would receive less than that being currently paid was not supported by the evidence)

Pittsburgh–Des Moines Steel Co. **253 NLRB No. 086**

(E's withdrawal of its original proposals tentatively agreed upon by U during negotiations for new contract, and substituting, w/o explanation, regressive proposals to U concerning U security, checkoff, picket line and right to strike provisions held violative, since E's reasons for, and timing of, its actions bore no relation to restrictive changes proposed; E's overall course of conduct evidenced intent to frustrate bargaining)

Deister Concentrator Company, Inc. **253 NLRB No. 040**

(offer of 3-1/2 month contract)

Harowe Servo Controls, Inc. **250 NLRB No. 120**

(offering less favorable proposals than previously offered on *take it or leave it basis*)

6067-2060-2700 Initial and final proposals essentially the same

Southside Electric Cooperative, Inc. **247 NLRB No. 107**

(E announcing that it believed U had no majority and that it was only meeting because ct had ordered it to, presenting as final offer contract which included no wage increases or changes in existing benefits with wage reopener clause which required mutual consent which E knew U opposed and declining to make further proposals when its offer rejected by U membership)

N.L.R.B. v. Cable Vision, Inc. **660 F.2d 1 (C.A. 1, Sept. 1981)**

(E did not bargain in good faith since evidence exists for concluding E has engaged in surface bargaining where E adhered uniformly to proposals predictably unacceptable to U, refused to make meaningful concessions and insisted, w/o clear justification, on maintaining its original position in such areas while U refrained from such conduct)

6067-2060-3300 Insistence on illegal or unreasonable provisions

Glenmar Cinestate, Inc. **264 NLRB No. 035**

(E did not bargain in bad faith and valid impasse was reached, although under normal circumstances magnitude of wage decrease proposed along with proposed sharp curtailment of other benefits would be strong evidence of such, where evidence that E was experiencing severe financial difficulties stood uncontroverted; moreover, U never requested to see E's financial books or records, and in fact, U representative stated during negotiations that both sides were bargaining in good faith, that U did not question E's integrity, and that it was not demanding to see E's books)

Harry Sann, Jr. and Winston R. Wagner, Partners d/b/a Briarcliff Pavilion For Specialized Care **260 NLRB No. 184**

(E's proposal that U fees and dues be limited to ten dollars and two hours pay per month violative and evidenced bad faith as such fees are of no concern to E (they are nonmandatory subject of bargaining) and proposal was made to ensure that no agreement would be reached)

K & S Circuits, Inc. **255 NLRB No. 163**

(E engaged in unlawful surface bargaining where E, over U objections, refused to discuss economic items on grounds that all other matters had to be resolved first, insisted upon probationary period, and insisted on arbitration clause requiring that decision must be rendered in 30 days, making such clause nugatory)

Nansemond Convalescent Center, Inc. **255 NLRB No. 089**

(E's insistence, during negotiations with U, on obtaining tentative agreement on non-economic issues prior to meaningful discussion of economic issues and its attendant refusal to engage in meaningful bargaining on economic issues held violative, since no binding agreement to resolve non-economic issues prior to meaningful discussion of economic issues existed; U had never agreed to this procedure and E insisted on conducting negotiations as if U had so agreed)

Deister Concentrator Company, Inc. **253 NLRB No. 040**

(offer of 3-1/2 month contract)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**

(E's insistence during negotiations on giving nonstrikers and replacements recall rights over strikers in event of layoff, unlawful, since granting of superseniority violates 8(a)(3), and insistence on such unlawful superseniority plan violates 8(a)(5), even though no layoff had occurred and thus no striker had been injured; however, 8(a)(5) allegation herein regarding layoff recall rights dismissed since GC did not meet burden of proving that E insisted on such plan)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**

(while agreeing with ALJ's finding that E's inistence during negotiations on proposal depriving strikers of accrual of seniority for period they were on strike was unlawful, Bd disavowed ALJ's reliance on any adverse effect E's seniority plan might have on strikers' pensions, vacation, or other substantive benefits)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**

(agreement, insisted upon by E during negotiations, that strikers be deprived of accrual of seniority for period they were on strike, would be unlawful regardless of whether GC proved anti-U motivation on part of E; implementation of proposal would be inherently destructive of Ee rights due to potential impact it would have on their employment tenure with E, and E failed to present evidence of any business justification for its action; consequently, by insisting on agreement violative of 8(a)(3) had it been implemented, E violated 8(a)(5))

Eastern Maine Medical Center v. N.L.R.B. **658 F.2d 1 (C.A. 1, 1981)**

(offer to unit Ees to give up right to bargain or to strike over changes in conditions of employment in exchange for wage increase equal to half of what they would have expected to receive w/o bargaining, unlawful)

Newspaper Printing Corporation v. N.L.R.B. **625 F.2d 956 (C.A. 10, 1980)**

(E's insistence to impasse on jurisdictional unit clause which modified unit description so as to give E unilateral control over unit scope unlawful in view of unlawfulness of both insistence on modification of unit scope and insistance to impasse on non-mandatory subject of bargaining; moreover, clause allowing E to change unit composition at will by unilaterally transferring work out of unit would deprive unit Ees of collective representation and bargaining over reduction or elimination of their jobs by work transfers or automation)

6067-2060-3317 Discriminatry seniority clause

Gehnrich & Gehnrich, Inc. **258 NLRB No. 075**

(proposing that strikers not accrue seniority for time they were on strike or receive general wage increases granted to nonstriking Ees during strike, not unlawful, where E did not insist upon either proposal and subsequently withdrew proposals voluntarily during negotiations)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**

(E insistence, during contract negotiations, on proposal depriving strikers of accrual of seniority for period Ees were on strike, violative, since they could be penalized for strike activity in manner which could affect their tenure of employment, and it is well settled that, except to the extent that a striker may be replaced during an economic strike, his employment relationship cannot otherwise be severed or impaired because of his strike activity)

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**

(insistence on super-seniority for stewards)

6037-2060-3353 Change in grievance procedure

N.L.R.B. v. Cable Vision, Inc. **660 F.2d 1 (C.A. 1, Sept. 1981)**

(E did not bargain in good faith where it insisted upon specific individual restrictions upon such U activities as grievance arbitration)

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**

(E's proposal to deny right to arbitration of grievances)

6067-2060-3365 Right of exclusive hiring hall

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**

6067-2060-3367 Withdrawal of ULP charges

6067-2060-3367—Cont.

Laredo Packing Company 254 NLRB No. 001
(settlement of E's backpay liability in ct suit and withdrawal of ULP charges as conditions of signing bargaining agreement are nonmandatory subjects of bargaining; however, mere proposal of such demands is not per se illegal)

Laredo Packing Company 254 NLRB No. 001
(E's insistence to impasse on U withdrawal of ULP charges and settlement of backpay in ct suit as condition of signing bargaining agreement, unlawful, not withstanding E expressed willingness to drop nonmandatory subjects after complaints issued)

Carbonex Coal Company 248 NLRB No. 107

Patrick & Company 248 NLRB No. 061
(E's insisting to impasse, after U submitted new contract proposal which accepted E's wage offer, that U withdraw ULP charges filed with Bd as condition of resuming negotiations and refusing to sign extension of recently terminated agreement prior to any withdrawal of charges, unlawful)

6067-2060-3375 **Union security provisions**

Parkview Nursing Center II Corp. 260 NLRB No. 037
(in context of totality of E's conduct, E's bad-faith bargaining was indicated by fact that E's negotiator initially proposed an agency shop which he thereafter withdrew and proposed instead an open shop; claim by negotiator, having years of negotiating experience, that there was no difference between agency shop and open shop and that when he originally proposed an agency shop he meant open shop cannot be credited)

6067-2060-3385 **Right of union access to plant**

N.L.R.B. v. Mar-Len Cabinets, Inc. 659 F.2d 995 (C.A. 9, Oct. 1981)

6067-2060-4400 **Contract limited to 1 year**

Huck Manufacturing Company v. N.L.R.B. 693 F.2d 1176 (C.A. 5, Dec. 1982)
(inference that E's insistence on one-year contract to expire on U's certification anniversary was tactic to undermine U's representative status, justified)

6067-2060-4900 **Contract to expire within certification year**

Harry Sann, Jr. and Winton R. Wagner, Partners d/b/a Briarcliff Pavilion For Specialized Care 260 NLRB No. 184
(E's proposals for contract limited to 4-1/2 months' duration (closely linked to end of certification year), dues and fees limited to ten dollars and two hours pay caused impasse and were violative)

Huck Manufacturing Company 254 NLRB No. 088
(E's instance that contract expire at end of certification year violative as this would create contract of less than 1 year deviation)

Furr's Cafeterias, Inc. 251 NLRB No. 125
(proposing contract term limited to end of certification year, violative)

Crestline Memorial Hospital Association, Inc. 250 NLRB No. 028
(E may lawfully insist on contract terminating with certification year only when it has reasonable belief based on objective considerations that U no longer possesses majority support, and here, where basis for E's belief was letter from some unit members expressing their dissatisfaction with U's conduct of ratification election in which U refused to allow nonmembers right to vote, does not constitute signers' opposition to continued representation by U and refusal to bargain violative)

Crestline Memorial Hospital Association, Inc. v. N.L.R.B. 668 F.2d 243 (C.A. 6, Jan. 1982)
(where certification year due to expire in 2 months insistence on that time period as contract term violative)

6067-2060-5500 **Unacceptable proposal to place the onus of rupture on union**

N.L.R.B. v. Mar-Len Cabinets, Inc. 659 F.2d 995 (C.A. 9, Oct. 1981)
(violation, since E made proposals with object of forcing breakdown in negotiations, where it proposed strong management rights clause, no strike/no picket policy, super-seniority for stewards and abolishment of: U security, right of U representative to visit plant, contribution to U pension fund, its obligation to hire first through hiring hall, Ees' right to arbitration of grievances)

6067-2060-6100 **Rejection of proposal by union**

Parkview Nursing Center II Corp. 260 NLRB No. 037
(in context of totality of E's conduct, E's bad-faith bargaining was indicated by fact that at time of strike deadline E accepted numerous proposals and made economic offers, but afterwards at last negotiating session it restricted its economic proposals so that U could not accept them)

Indiana Bell Telephone Company, Inc. 252 NLRB No. 065
(no violation where E at first would only arbitrate contractual grievances at its location but later offered to alternate with U in choosing site; moreover, E has no obligation to conduct all arbitrations at plant location, U's choice)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(failure to cast out U's proposal before rejecting it)

El Rancho Market JD-[illegible]
(U by filing Sec. 8(a)(5) charge rejected contract)

Excavation-Construction, Inc. v. N.L.R.B. 660 F.2d 1015 (C.A. 4, Oct. 1981)
(where U and E, bargaining separately, agreed to defer negotiations on make-up pay provision until after Association agreement was reached, this, in effect, was bargaining; impasse reached only when U rejected E's final offer, it cannot be said that there was realistic possibility that negotiations would be fruitful)

Pittsburgh-Des Moines Corporation v. N.L.R.B. 663 F.2d 956 (C.A. 9, Dec. 1981)
(contract proposal, rejected by U during negotiations and subsequently withdrawn by E, ceased to exist and could no longer form basis for agreement where E's withdrawal was fully justified)

Pittsburgh-Des Moines Corporation v. N.L.R.B. 663 F.2d 956 (C.A. 9, Dec. 1981)
(ct rejected proposition implicit in Bd's conclusion that in face of U's unequivocal rejection of E's offer, E was somehow committed to all portions of the proposal as to which tentative agreement had been reached; that U could hold E to what U liked while rejecting that which it disapproved. Party may retract proposal before other side has accepted it)

6067-2060-6600 **Illegal or unreasonable demands**

Parkview Nursing Center II Corp. 260 NLRB No. 037
(E's conduct in imposing its own procedural straightjacket on negotiations by first seeking U's agreement to tentatively resolve all noneconomic issues prior to meaningful discussion of economics, and then offering its economic proposal which presented position on wages unacceptable to U, unlawful)

Puerto Rico Hotel Association 259 NLRB No. [illegible]
(hotels conditioning further bargaining upon U's conceding that musicians in unit were not Ees because of personal contracts and thus w/o protection of Act or upon U withdrawing ULP charges, unlawful, in view of holding herein that musicians were Ees of hotels)

K & S Circuits, Inc. 255 NLRB No. 103
(E engaged in unlawful surface bargaining where E, over U objections, refused to discuss economic items on grounds that all other matters had to be resolved first, insisted upon probationary period, and insisted on arbitration clause requiring that decision must be rendered in 30 days, making such clause nugatory)

Huck Manufacturing Company 254 NLRB No. 088
(E's instance on no arbitration clause coupled with severe limitations on grievance procedure but allowing U to strike over grievances put U in untenable position of either overlooking grievances or going on strike; thus reasonable to infer that E's motivation in refusing to consider arbitration clause was to frustrate bargaining process)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(insisting that *pro-company* Ees be permitted to participate in selection of U stewards)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(E's seeking to impose contractual limitations on number of stewards available for handling grievances not bad faith bargaining where E was willing to pay stewards for time lost and U was making demands for authority, seniority and mobility of stewards)

Cable Vision, Inc. 249 NLRB No. 062

Taxman Sea, Inc. 247 NLRB No. 097
(E's refusal to enter into bargaining agreement absent U's written guarantee that E be permitted to deviate from contract by making health and welfare payments on behalf of only portion of unit Ees, unlawful, since such insistence has effect of causing U to breach its statutory obligation to fairly represent all unit Ees; neither U's previous acquiescence nor reluctant agreement absolves E from bargaining obligation)

Taxman Sea, Inc. 247 NLRB No. 097
(E requiring as condition precedent to entering into bargaining agreement that U not seek to enforce U security clause, unlawful)

South Shore Hospital v. N.L.R.B. 630 F.2d 40 (C.A. 1, 1980)
(repeated refusal to discuss wages and major economic benefits until after resolution of E's proposals for reductions in prior benefits, unlawful)

Hilton International Company d/b/a Caribe Hilton Hotel v. N.L.R.B. 690 F.2d 318 (C.A. 2, Sept. 1982)
(enforcement denied, since hotel association's refusal to bargain with U until U conceded that steady engagement musicians it represented who played at association's hotels were independent contractors not violative, where band leaders were independent contractors rather than hotel supervisors, and musicians were their Ees rather than hotel Ees)

N.L.R.B. v. Mar-Len Cabinets, Inc. 659 F.2d 995 (C.A. 9, Oct. 1981)
(violation, since E made proposals with object of forcing breakdown in negotiations, where it proposed strong management rights clause, no strike/

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no picket policy, super-seniority for stewards and abolishment of U security, right of U representative to visit plant, contribution to U pension fund, its obligation to hire first through hiring hall, Ees' right to arbitration of grievances)

6067-2060-7700 Right of unilateral modification reserved by employer

A-1 King Size Sandwiches, Inc. 265 NLRB No. 127
(E's insistence on retaining unilateral right to terminate or modify bonus or work incentive plans, unlawful)

Hospitality Motor Inn, Inc. 249 NLRB No. 145
(E's demanding management rights clause which would in effect retain for itself sole right to transfer, suspend, or discharge Ees for any reason, to make and enforce rules, to determine prices and services sold and furnished to Ees, to determine volume and rate of production, to redetermine number and location of operations and to discontinue operations, to subcontract work, to establish new job classifications and rates of pay; and further providing that E *retains all rights not otherwise specifically covered by this agreement*)

Newspaper Printing Corporation v. N.L.R.B. 625 F.2d 956 (C.A. 10, 1980)
(E's insistence to impasse on jurisdictional unit clause which modified unit description so as to give E unilateral control over unit scope unlawful in view of unlawfulness of both insistence on modification of unit scope and insistence to impasse on non-mandatory subject of bargaining; moreover, clause allowing E to change unit composition at will by unilaterally transferring work out of unit would deprive unit Ees of collective representation and bargaining over reduction or elimination of their jobs by work transfers or automation)

6067-2060-8400 Insistence on management rights clause

Bureau of Rehabilitation of The National Capital Area JD-262-82
(E's advancing and insisting on predictably unacceptable contract proposals and proposing and insisting upon to point of impasse inclusion in bargaining agreement of overly broad management rights clause in context of *take it or leave it* package proposal, violative)

N.L.R.B. v. Mar-Len Cabinets, Inc. 659 F.2d 995 (C.A. 9, Oct. 1981)

6067-2060-8800 Insistence on no-strike clause

N.L.R.B. v. Mar-Len Cabinets, Inc. 659 F.2d 995 (C.A. 9, Oct. 1981)

6067-2060-9400 Withdrawal of proposals

Parkview Nursing Center II Corp. 260 NLRB No. 037
(in context of totality of E's conduct, E's bad-faith bargaining was indicated by fact that E's negotiator initially proposed an agency shop which he thereafter withdrew and proposed instead an open shop; claim by negotiator, having years of negotiating experience, that there was no difference between agency shop and open shop and that when he originally proposed an agency shop he meant open shop cannot be credited)

Georgia Kraft Company, Woodkraft Division 258 NLRB No. 121
(complete package proposal made on behalf of either party through negotiations remains viable, and upon acceptance in toto must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance or defeated by event upon which offer was expressly made contingent at time prior to acceptance)

The Mead Corporation 256 NLRB No. 108
(E required to reinstate its unlawfully withdrawn offer concerning wage rate adjustments for consideration by U for reasonable period of time (20 days), since it is Bd's policy to order restoration of *status quo ante* to extent feasible where there is no evidence that to do so would impose undue or unfair burden on E; remedy not barred by *H. K. Porter Co., Inc., Disston Division-Danville Works v. N.L.R.B* 397 U.S. 99 (1970) since remedy merely requires E to do what it had previously agreed to do)

The Mead Corporation 256 NLRB No. 108
(E's withdrawing proposal, during negotiations with U concerning wage rate adjustments when acceptance by U appeared imminent held violative, since E failed and refused to bargain in good faith)

Walker Die Casting, Inc. 255 NLRB No. 034
(communicating directly with Ees by posting notice soliciting Ees to refuse to honor strike if called, advising Ees to resign from U to avoid fire in absence of U threat to fire, unilaterally raising wages, withdrawing last contract offer, ceasing bargaining, coercively threatening Ees, and establishing Ee committee, violative, notice was calculated to undermine U and set stage for further attempts to bypass and ignore U)

Walker Die Casting, Inc. 255 NLRB No. 034
(withdrawal of final offer because U struck E, violative as U effectively terminated negotiations instead of continuing good faith negotiations)

Hickinbotham Bros. Ltd. 254 NLRB No. 022
(E's allegedly regressive bargaining proposals, not unlawful, where E's prestrike proposals remained outstanding for month after strike began during which time E weathered strike and gained economic strenght as result of which it dropped some of its proposals made in effort to avoid strike, and it was not illegal for E to capitalize on new found strenght to secure contract terms it desired; moreover, E's specific reasons for its reversion to earlier proposals were not so illogical as to warrant finding intent not to reach agreement)

Atlas Metal Parts Co., Inc. 252 NLRB No. 029

Capitol-Husting Company, Inc. 252 NLRB No. 009
(where E agreed to match any proposal which U could obtain from either one of E's two named competitors, E's reneging on its agreement when confronted by U with such proposal, violative)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(repudiating agreement to bargain about and settle non-economic matters before negotiating economic provisions)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(E's bad faith shown by fact that after ULP strike ended and U's strength had dissipated, E withdrew offers previously made and agreements previously reached demonstrating its earlier predictions that Ees would be better off without U)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)
(ct held E's alleged reneging following strike on number of zones in provision for wage zones, not unlawful, where parties were negotiating subject to mutual initial understanding that all agreements on non-economic issues were tentative until final agreement had been reached on all issues; further, absent bad faith, following strike E may repudiate previously made concessions, and herein change was justified by E's economic decision to close two of its four facilities)

Walker Die Casting, Inc. v. N.L.R.B. 682 F.2d 592 (C.A. 6, July 1982)
(no ULP where E's withdrawal of final offer during contract negotiations with U, but after economic strike started; E's action was legitimate bargaining tactic reflecting changed economic background)

Pittsburgh-Des Moines Corporation v. N.L.R.B. 663 F.2d 956 (C.A. 9, Dec. 1981)
(contract proposal, rejected by U during negotiations and subsequently withdrawn by E, ceased to exist and could no longer form basis for agreement where E's withdrawal was fully justified)

Pittsburgh-Des Moines Corporation v. N.L.R.B. 663 F.2d 956 (C.A. 9, Dec. 1981)
(enforcement of bargaining order denied where U flatly rejected E's contract proposal concerning Ee retirement funds and E withdrew its proposal but E reiterated its willingness to negotiate with U; refusal to bargain was on part of U; U business representative's reckless (misunderstood) report of E's proposal to U members that proposal had been deleted from contract cannot be held against E)

Pittsburgh-Des Moines Corporation v. N.L.R.B. 663 F.2d 956 (C.A. 9, Dec. 1981)
(ct rejected proposition implicit in Bd's conclusion that in face of U's unequivocal rejection of E's offer, E was somehow committed to all portions of the proposal as to which tentative agreement had been reached; that U could hold E to what U liked while rejecting that which it disapproved. Party may retract proposal before other side has accepted it)

6067-2070 Imposing conditions

Hilton International Company d/b/a Caribe Hilton Hotel v. N.L.R.B. 690 F.2d 318 (C.A. 2, Sept. 1982)
(enforcement denied, since hotel association's refusal to bargain with U until U conceded that steady engagement musicians it represented who played at association's hotels were independent contractors not violative, where band leaders were independent contractors rather than hotel supervisors, and musicians were their Ees rather than hotel Ees)

6067-2070-5800 As to procedure in bargaining sessions

Nansemond Convalescent Center, Inc. 255 NLRB No. 089
(E's insistence, during negotiations with U, on obtaining tentative agreement on non-economic issues prior to meaningful discussion of economic issues and its attendant refusal to engage in meaningful bargaining on economic issues held violative, since no binding agreement to resolve non-economic issues prior to meaningful discussion of economic issues existed; U had never agreed to this procedure and E insisted on conducting negotiations as if U had so agreed)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(repudiating agreement to bargain about and settle non-economic matters before negotiating economic provisions)

Wright Motors, Inc. JD-366-81
(E's making it known to U that U could not ever consider there was a binding agreement on myriad of details in contract until E had agreed upon

6067-2070-5000—Cont.

final entire package and also falsely representing what areas parties had agreed upon, evidenced lack of intent to bargain in good faith)

Wright Motors, Inc. JD-206-81

(E's nearly continuously demanding that U present new proposals on heels of E's rejections of U's proposals and coupling such conduct with such unproductive statements as *our proposal is to reject your proposal*, manifested unlawful fixed intent not to reach agreement)

6067-2070-6700 Conditions outside area of mandatory bargaining

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121

(E's refusal to execute contract held violative where, after 5 meetings between E and U to modify and renegotiate current contract, U, by telegram, advised E that (E's) last offer had been accepted as final and binding contract and that contacted strikers would return to work notwithstanding U did not intend to accept E's *proposal* on discipline of strikers who allegedly had committed acts of misconduct during strike)

Eastern Maine Medical Center v. N.L.R.B. 658 F.2d 1 (C.A. 1, 1981)

(conditioning agreement as to economic issues on U's acceptance of E's unyielding stance as to non-economic issues, unlawful, particularly where E insisted that its economic proposal be accepted *as a package*)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)

(even if cab companies' decision to lease their cabs was mandatory subject of bargaining, their unilateral action was not ULP because U itself made negotiation impossible by imposing improper condition (recognition of U as bargaining representative of leased-drivers) as prerequisite to bargaining)

6067-2070-6715 Withdrawal of unfair labor practice charge

Laredo Packing Company 254 NLRB No. 001

(E's insistence to impasse on U withdrawal of ULP charges and settlement of backpay in ct suit as condition of signing bargaining agreement, unlawful, not withstanding E expressed willingness to drop nonmandatory subjects after complaints issued)

Master Slack, Ltd. JD-(ATL)-8-81

(conditioning bargaining upon U's withdrawal of ULP charge and refusal upon demand to bargain, violative)

6067-2070-6760 Waiver of rights under Act

A-1 King Size Sandwiches, Inc. 265 NLRB No. 127

(E's demand that U be precluded from striking to enforce wage demands while E contained complete control of wages, unlawful)

Puerto Rico Hotel Association 259 NLRB No. 058

(hotels conditioning further bargaining upon U's conceding that musicians in unit were not Ees because of personal contracts and thus w/o protection of Act or upon U withdrawing ULP charges, unlawful, in view of holding herein that musicians were Ees of hotels)

6067-2070-6770 Appropriate unit

Mercury Marine Division of Brunswick Corporation 259 NLRB No. 110

(E where UC ptn filed to determine exclusion or inclusion of job classification in bargaining unit opposing party on notice that petitioner intended to resolve unit issue through Bd's procedures rather than through negotiations; therefore, failure of U to insist that these Ees be included in unit during contract negotiations is not abandonment of its position)

National Steel Service Center, Inc. JD-395-80

(E's insisting to impasse on change in scope of unit, unlawful, since scope of unit nonmandatory subject of bargaining)

6067-2070-6780 Insistence upon stenographic transcript of negotiations

Latrobe Steel Company v. N.L.R.B. 630 F.2d 171 (C.A. 3, 1980)

(it would be contrary to policy of Act, which mandates negotiation over substantive provisions of E-Ee relationship, to permit negotiations to break down over presence of ct reporter at negotiating session, since issue did not involve wages, *hours and other terms and conditions of employment; issue was one of preliminary procedure*)

N.L.R.B. v. Bartlett-Collins Company 639 F.2d 652 (C.A. 10, 1981)

(Bd was justified in finding E failed to bargain in good faith by insisting to impasse that bargaining sessions be stenographically recorded, notwithstanding E's contention that issue was simply how to read, where U made counterproposal to E's demand for stenographic recording but E was unwilling to budge, declaring that court reporter's transcription was precondition to further bargaining)

6067-2070-6790 Strikers first return to work

Alle Arecibo Corporation and Alle Industries Ltd. 264 NLRB No. 165

(E's refusal to continue to bargain unless and until its Ees abandoned ULP strike, violative)

Albion Corporation d/b/a Brooks Towers, Inc. v. N.L.R.B. 692 F.2d 874 (C.A. 10, July 1982)

(notwithstanding Bd accepted ALJ's determination that E had not adopted and maintained its bargaining strategy with its janitorial Ees for other than legitimate reasons, E nontheless violated Act by conditioning reinstatement of striking maintenance Ees upon acceptance of the lower janitorial wage after they had unconditionally offered to return to work; therefore, no meaningful bargaining over wages possible so long as reinstatement of maintenance Ees used as *bargaining bait* by E to force acceptance of its terms. No good-faith impasse could exist because E unlawfully refused to restore status quo)

6067-2070-7000 Continuation of existing terms and conditions

Robbins Door & Sash Company, Inc. 260 NLRB No. [illegible]

(E's discontinuance of dues-check off after expiration of contract not violative as that duty is extinguished with expiration of contract)

6067-2080 Uncompromising attitude or refusal to make concessions

6067-2080-0100 Generally

Hudson Chemical Company 258 NLRB No. [illegible]

(*surface bargaining* rather than *hard bargaining* violative where conduct of E exhibited refusal to budge from its original demands and was intended to insure that no agreement would be reached; U not equally stubborn where, during negotiations, it gave up far worse than was given to it)

Westvaco Corporation, d/b/a Westvaco Gauley Woodyard v. N.L.R.B. 639 F.2d 189 (C.A. 4, 1981)

(no violation, where E took firm stand on several issues as legitimate reasons existed for position of E and good faith negotiation does not compel party to agree to proposal or make concession)

6067-2080-1200 Intransigence

A-1 King Size Sandwiches, Inc. 265 NLRB No. 127

(E's refusal to consider modification of basic wage rates, unlawful)

Signal Transformer Co., Inc. 265 NLRB No. [illegible]

(E's president walking out of meeting with mediator, lawyers and representatives of both sides upon being informed U membership had rejected contract reached after long good faith bargaining, and upon return told mediator he doubted U's ability to sell offer and it was useless dealing with them because it was unrepresentative group, not unlawful refusal to bargain when considered in context of long peaceful bargaining relationship and negotiating contained between attorneys)

Alle Arecibo Corporation and Alle Industries Ltd. 264 NLRB No. 165

(E's flat refusal even to entertain idea of continuing superseniority, equal distribution of work, and grievance and arbitration provisions, violative)

Billion Motors, Inc., d/b/a Billion Oldsmobile-Toyota 260 NLRB No. [illegible]

Research Products/Blankenship Company 258 NLRB No. [illegible]

(E's insistence upon deletion of dues check-off clause, while providing no reasonable economic or even philosophical basis for desiring such modification, violative)

Research Products/Blankenship Company 258 NLRB No. [illegible]

(E's insisting that vacations for Ees be reduced from 2 weeks to 1 week and consistently maintaining fixed position on proposal while failing to support necessity or desire for such change with any economic or other reasonable justification, violative)

Rockingham Machine-Lunex Company 255 NLRB No. 015

(E failed to bargain in good faith where it had predetermined intention not to reach agreement with U on U dues checkoff, offered only minimal concessions on both non-economic and economic demands, made unfounded threats of plant closure, and committed various ULPs away from bargaining table including unilateral changes, threats of discharge, refusal to pay strikers vacation pay)

Central Virginia Electric Cooperative 254 NLRB No. 066

(E's not bargaining about subcontracting with *open and fair mind*, violative, where E made reference to possibility of subcontracting at meeting with U in that it only recognized its obligation to bargain *regarding the impact on Ees* resulting from E's decision)

Hickinbotham Bros. Ltd. 254 NLRB No. 022

(it is not illegal per se to propose and bargain concerning broad management rights clause; rather, rigid and inflexible insistence on inclusion in contract of sweeping management rights clause may, under some circumstances, constitute evidence of bad-faith bargaining)

Eastern Maine Medical Center 253 NLRB No. [illegible]

(E's intransigent position in refusing to bargain in good faith was evidenced by its refusal to even consider reaching tentative agreement on economic matters until either noneconomic issues or acceptance of its noneconomic proposals was resolved; by postponing economic bargaining to end of negotiations, E reduces flexibility of bargaining and narrows range of possible compromises with result of rigidly and unreasonably fragmenting negotiations)

Roberts Oldsmobile, Inc. 252 NLRB No. [illegible]

(E's proposed strike settlement agreement not violative of 8(a)(3) nor 8(a)(5) notwithstanding that the proposal included provision for withdrawal of ULP

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charges pending as result of the strike, where contrary to GC's contention there is no evidence that E established, as unyielding term of reinstatement of strikers, that ULP charges be withdrawn by U or that E insisted on such withdrawals as condition precedent to resumption of bargaining)

Barrow Servo Controls, Inc. 250 NLRB No. 120

(refusal to negotiate over pay of group leaders who comprise part of bargaining unit)

Cable Vision, Inc. 249 NLRB No. 062

Smyth Manufacturing Company, Inc.; Beacon Industries 247 NLRB No. 164

(rigid insistence, for purpose of precluding agreement on terms other than erosion of U's role as representative, on open shop provision, on grievance procedure with limited U role, and on merit wage increase system w/o U participation in its operation, unlawful)

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)

(E did not bargain in good faith where it remained immovable in most key bargaining areas and, while U made important concessions in 14 of 16 key bargaining areas, E's concessions were minor)

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)

(while adamant insistence on a bargaining position is not in itself a refusal to bargain in good faith, and use of E's relative economic strenght to exert pressure on U is of itself not at all inconsistent with duty to bargain in good faith, failure to come close to agreement accompanied by failure to make meaningful concessions on nearly every substantive issue suggests that something is awry, since one major function of collective bargaining is to allow parties to separately order their priorities and then to trade off what is less important for what is more important to each side individually)

Eastern Maine Medical Center v. N.L.R.B. 658 F.2d 1 (C.A. 1, 1981)

(intransigence in insisting on verbatim retention of all language of management rights clause which gave E unilateral control over every aspect of employment relationship except wages and benefits and which, in case of doubt, would prevail over other inconsistent provisions, unlawful)

Rockingham Machine-Lunex Company v. N.L.R.B. 665 F.2d 303 (C.A. 8, Dec. 1981)

(E unlawfully refused to bargain where it rescinded or modified over a dozen provisions, offered only minimal concessions to U, and had predetermined intention not to reach agreement on mandatory subject of dues checkoff)

6067-2080-2300 Nominal or illusory concessions do not establish good faith

K Mart Corporation v. N.L.R.B. 626 F.2d 704 (C.A. 9, 1980)

(offers of little or no wage increase, delay in presenting proposal and refusal to supply information to substantiate E's claim that it was unable to pay salary increase constitute bad faith bargaining)

6067-2080-3100 Refusal to continue predecessor contract until completion of new contract

Research Products/Blankenship Company 258 NLRB No. 003

(E's refusal to agree to U's request that terms of predecessor contract, including no-strike clause, be continued until completion of new contract, violative)

6067-2080-3700 Wage increases and other unilateral changes in employment terms

Strathers Wells Corporation 262 NLRB No. 136

(E's insistence on deletion of juridiction-unit clause which prohibited any non-unit Ees from performing unit work, unlawful, since E's proposal would deny exclusive recognition of U as representative of unit Ees, and E's insistence upon right to withdraw partial or total recognition of U was evidence of intent to frustrate agreement; nor was E acting in good faith assertedly because U desired parity with contract w/o juriadictional clause E negotiated with another U, since U herein was seeking purely economic parity, and other U's prior contract had no juriadictional clause)

Strathers Wells Corporation 262 NLRB No. 136

(E's proposal and subsequent insistence on right to deny U any role in representing Ees on issue of merit wage reviews, unlawful, since such insistence on U's waiver of its right to represent Ees in such important area as merit wage increases was evidence of bad faith, and E was not privileged to insist upon U's waiving its statutory rights simply because different U representing dissimilar unit had agreed to such proposal)

Strathers Wells Corporation 262 NLRB No. 136

(E's insistence on deletion of provision allowing U to file *class* grievance on behalf of all similarly situated Ees at third step of grievance procedure, not unlawful, since, unlike situation in which U is excluded from handling all grievances until latter stages of grievance procedures are reached, U here remained accessible to Ees at all stages of grievance procedure, and U would only have lost right to file *class* grievances directly at third step; and inability to file such grievances in no way diminishes U's representational status)

Strathers Wells Corporation 262 NLRB No. 136

(E's insistence on elimination from new contract of provisions pertaining to job bidding and posting procedures contained in expired contract unlawful, since E's demand for unilateral control of all promotional opportunities would divest U of representational status in most vital area of employment relationship)

Strathers Wells Corporation 262 NLRB No. 136

(E's proposal and insistence upon *reduced wage structure* and increased probationary period, not unlawful, where, after delay, U was given information necessary to bargain about wage-structure; E conceded to U's objection on ranking of two jobs, and there was no evidence that had U made other such objections E would not have entertained them; and E bargained and did not show unyielding attitude on issue of increased probationary period which E had right to seek because it proposed to make jobs more complex)

Strathers Wells Corporation 262 NLRB No. 136

(E's proposal and insistence upon contract provision requiring that Ees, in layoff situation bumping junior Ees, *efficiently* perform latter's work and assume bumped Ee's wage rate, not unlawful; while word *efficiently* set higher standard for bumping Ees, it is not evidence of bad faith, since E is not forbidden to seek to raise efficiency standards, and proposal that bumping Ee take wage rate of bumped Ee is purely economic proposal upon which E had right to insist)

Strathers Wells Corporation 262 NLRB No. 136

(E's insistence upon deletion of U shop clause and substitution of maintenance of membership clause, unlawful, since, assuming E took position as matter of principle that Ees hired during ULP strike should not be compelled to join U, it cannot take advantage of its own ULPs; having created situation of *new Ees* by unlawfully failing to reinstate ULP strikers, E cannot thereby extinguish U-security agreement of longstanding; moreover, even if E lawfully refused to reinstate strikers, its proposed maintenance of membership clause covered all Ees who may have elected to withdraw from U membership after prior contract's expiration)

University of Vermont/Vermont Educational Television 258 NLRB No. 001

(refusal of nonprofit E which was funded largely by legislative appropriation to agree to immediate wage increase held hard bargaining and not unlawful in view of E's claim of inability to pay increase -- due to lack of funds and uncertainty as to amount of appropriation -- and other substantial reasons where E exhibited overall subjective good faith in bargaining and no intention to use same strategy in future to delay negotiations until it received funding)

Atlas Metal Parts Co., Inc. 252 NLRB No. 029

(elimination of pension plan and substitution of direct payment which Ees could use for IRA pension funds)

Patrick & Company 248 NLRB No. 061

(E's refusal to discuss U's proposals other than economic and conditioning negotiation of agreement on U's acceptance of E's wage proposals, unlawful; contention impasse reached regarding wages, rejected; further, impasse regarding wages would not justify refusal to bargain regarding remainder of U's proposals)

South Shore Hospital v. N.L.R.B. 630 F.2d 40 (C.A. 1, 1980)

(E's refusal to make proposed wage increases for represented Ees in its final offer retroactive so as to equal wage increases already granted its unrepresented Ees, unlawful where its stated business reasons that it would be disadvantageous for it to do so resulted from its own unlawful bargaining strategy)

Aaron Brothers Company, a Division of Chromalloy American Corp. v. N.L.R.B. 661 F.2d 750 (C.A. 9, Nov. 1981)

(refusing to entertain wage proposals beyond amount granted by unilateral wage increase, unlawful where record indicated E wished to circumvent bargaining and did not inform U of wage increase because of doubt of U's continued majority support)

6067-2080-4000 Strict security clause

Marriott In-Flite Service, A Division of Marriott Corporation 258 NLRB No. 099

(E's close minded rejection of U security and checkoff, unlawful, in context of other acts constituting refusal to bargain in good faith)

Pease Company v. N.L.R.B. 666 F.2d 1036 (C.A. 6, Dec. 1981)

(ct held that neither bargaining proposals nor tactics of E, nor sum of its conduct, amounted to substantial evidence of bad faith; ct determined that this was case of hard bargaining between two parties who used their respective economic power to their best advantage)

6067-2080-4300 Union-security provisions

Rockingham Machine-Lunex Company 255 NLRB No. 015

(E failed to bargain in good faith where it had predetermined intention not to reach agreement with U on U dues checkoff, offered only minimal concessions on both non-economic and economic demands, made unfounded

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threats of plant closure, and committed various ULPs away from bargaining table including unilateral changes, threats of discharge, refusal to pay strikers vacation pay)

Atlas Metal Parts Co., Inc. 252 NLRB No. 029

Hospitality Motor Inn, Inc. 249 NLRB No. 145
(E's contention that collection of U dues not E's responsibility, would constitute endorsement of U, and assertion of philosophical objections to checkoff does not satisfy statutory obligation to bargain, particularly where E did not ban solicitation for other causes; further, checkoff serves public good)

Bureau of Rehabilitation of The National Capital Area JD-262-82
(E's entering into and participating in negotiations with *fixed* intention not to consider or agree to any form of U security or checkoff, violative; inference of such intention was warranted where E adamantly opposed U security and checkoff on vague or generalized *philosophical* grounds, or questionable assertions of policy)

Potters' Medical Center, Inc. JD-605-81

Atlas Metal Parts Co., Inc. v. N.L.R.B. 660 F.2d 304 (C.A. 7, Sep. 1981)
(E's adherence to position that U-security clause and checkoff provisions be eliminated from contract, not unlawful where E made concessions on 34 of its 36 initial proposals)

Rockingham Machine-Lunex Company v. N.L.R.B. 665 F.2d 303 (C.A. 8, Dec. 1981)
(E unlawfully refused to bargain where it rescinded or modified over a dozen provisions, offered only minimal concessions to U, and had predetermined intention not to reach agreement on mandatory subject of dues checkoff)

N.L.R.B. v. Mar-Len Cabinets, Inc. 659 F.2d 995 (C.A. 9, Oct. 1981)
(E's proposal to abolish U security unreasonable absent evidence U was applying clause in unlawful manner)

6067-2080-4400 Non-discrimination provision

Hospitality Motor Inn, Inc. 249 NLRB No. 145
(E's rejection of provision prohibiting racial or sexual discrimination, unlawful, notwithstanding E's contention unnecessary because law already prohibits discrimination and that it had not and did not intend to discriminate)

6067-2080-4900 Recognition clause

Puerto Rico Hotel Association 259 NLRB No. 088
(no violation, where E hotel changed wording of recognitional clause of renewal bargaining agreement by inserting initials of U (AFM) before *musicians* after agreement had been reached but prior to final signatures, since fact U's president did not consciously assent to use of insertion did not require finding he did not assent to its use, parties agreed not *members only* contract, and change was to reflect agreement as it had been in past)

6067-2080-5600 Failure to make counter-proposals

Alls Arecibo Corporation and Alls Industries Ltd. 264 NLRB No. 163
(refusing to offer counterproposals on economic items above minimum requirements of local law, violative)

Taurus Waste Disposal, Inc. 263 NLRB No. 028
(violation, in view of E's whole course of conduct where for four months E failed to respond to communications from U requesting bargaining for new contract and failed to meet with U, cancelling meetings w/o proposing any additional meetings, and failed to make any counterproposals to U's proposed contract)

Hudson Chemical Company 258 NLRB No. 009
(E's failure, during contract negotiations, to define, explain and advocate its position and, instead, its attempt to thrust its deletions from prior contracts on U on *take it-or leave it* basis constitute additional indicia of E's lack of sincere attempt to conduct meaningful negotiations)

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division 257 NLRB No. 152
(alleged failure and refusal of E to bargain with certified U over E's decision to cease operating its janitorial division and lay off all janitorial Ees held not violative where E was advised by its counsel of necessity of bargaining concerning cancelling custodial contract and its effect on janitorial Ees and where U abruptly ended negotiating meeting with comment that *there was nothing left to discuss*; U did not avail itself of opportunity to discuss E's decision after E had requested response from U)

Rockingham Machine-Lunex Company 238 NLRB No. 015
(refusal to bargain in good faith not evinced by E's submission of only 19 proposals in first 10 bargaining sessions since conduct merely reflective of bargaining format utilized wherein parties bargained from U's proposed contract)

Southside Electric Cooperative, Inc. 247 NLRB No. 107
(E announcing that it believed U had no majority and that it was only meeting because ct had ordered it to, presenting as final offer contract which included no wage increases or changes in existing benefits with wage reopener clause which required mutual consent which E knew U opposed and declining to make further proposals when its offer rejected by U membership)

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)
(E did not bargain in good faith where it made little meaningful response to U's offers and counter-offers to the point that, after 22 months of bargaining, parties reached agreement on only one of 16 priority substantive issues)

6067-2080-5900 Final offer claim

Billion Motors, Inc., d/b/a Billion Oldsmobile-Toyota 260 NLRB No. 099

Hudson Chemical Company 258 NLRB No. 009
(E's failure, during contract negotiations, to define, explain and advocate its position and, instead, its attempt to thrust its deletions from prior contracts on U on *take it-or leave it* basis constitute additional indicia of E's lack of sincere attempt to conduct meaningful negotiations)

Temp Tech Industries, Inc. JD-258-82
(E's implementation of its *final offer* absent valid pre-existing impasse, or U consent, violative)

Willard A. Selle, Inc. d/b/a Selle Insulation Company JD-528-81
(no bad faith bargaining in violation of settlement agreement where E made proposal and marked it final insisting on industrial terms which would permit it to use skilled insulators in variety of non-insulation jobs when need arose as it had during illegal strike of U journeymen, in view of fact E had adopted different method of operation during illegal strike and proposals were to allow it to continue operating in same manner)

6067-2080-6200 Insistence on unilateral power to act on matters within employment relationship

The Mead Corporation 256 NLRB No. 108
(E's promulgation of new rules on procedures governing grievances ordering Ees to complete their work assignments before processing grievances held violative where E had existing practice of permitting grievance writing during Ee's working time)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(insisting that *pro-company* Ees be permitted to participate in selection of U stewards)

Hospitality Motor Inn, Inc. 249 NLRB No. 145
(E's demanding management rights clause which would in effect retain for itself sole right to transfer, suspend, or discharge Ees for any reason, to make and enforce rules, to determine prices and services sold and furnished to Ees, to determine volume and rate of production, to redetermine number and location of operations and to discontinue operations, to subcontract work, to establish new job classifications and rates of pay; and further providing that E *retains all rights not otherwise specifically covered by this agreement*)

Eastern Maine Medical Center v. N.L.R.B. 658 F.2d 1 (C.A. 1, 1981)
(intransigence in insisting on verbatim retention of all language of management rights clause which gave E unilateral control over every aspect of employment relationship except wages and benefits and which, in case of doubt, would prevail over other inconsistent provisions, unlawful)

N.L.R.B. v. Mar-Len Cabinets, Inc. 659 F.2d 995 (C.A. 9, Oct. 1981)

6067-2080-6900 Refusal to arbitrate grievance, interference with arbitration proceedings or award

6067-2080-6900 Refusal to arbitrate, grievance or interference with arbitration machinery

GAF Corporation 265 NLRB No. 176
(no violation where E refused to submit claim that it changed retirees benefits w/o explanation to grievance procedure of collective bargaining agreement, but rather elected to go under claims procedures provided under separate ERISA Pension Agreement executed by U and E, as latter procedure specifically designed to handle such disputes, required to be utilized by ERISA and E willing to have grievance's merits resolved under its provisions)

Autoprod, Inc. 265 NLRB No. 043
(failing to implement fully across-the-board wage increases and retroactive increases mandated by arbitration award, violative)

Autoprod, Inc. 265 NLRB No. 042
(delaying increase in vacation benefits and payments into U's pension and welfare funds mandated by arbitration award, violative)

E. I. Du Pont De Nemours and Company 259 NLRB No. 161
(E's refusal to permit recess during grievance so that U could make phone call not violative where E indicated its willingness to reconvene grievance meeting to consider any new points U might wish to present)

6067-2080-6900—Cont.

Indiana Bell Telephone Company, Inc. 252 NLRB No. 085

(no violation where E at first would only arbitrate contractual grievances at its location but later offered to alternate with U in choosing site; moreover, E has no obligation to conduct all arbitrations at plant location, U's choice)

Independent Stave Company 248 NLRB No. 025

(E's failure to comply with arbitrator selection clause of current agreement with U held violative; E's position, attempting to spread arbitration work equally among five chosen arbitrators, blocked the arbitration provision entirely, and was mid-term modification of agreement w/o consulting with U)

Westinghouse Electric Corporation JD-(ATL)-88-81

Westinghouse Electric Corporation JD-(ATL)-40-81

(E must process grievances in accordance with provisions in expired contract and refusal to do so violative)

Alstate Coin Machine Co., Inc. JD-(SF)-272-79

(alleged E violation of arbitration agreement not proper subject for Bd determination and complaint dismissed as Bd policy is to let court of competent jurisdiction resolve issue)

Caterpillar Tractor Co. v. N.L.R.B. 638 F.2d 140 (C.A. 7, Sept. 1981)

(arbitration concerning propriety or fairness of E's policy after it has been put into effect was not substitute for bargaining between E and U as to whether policy should be adopted in first instance)

N.L.R.B. v. Mar-Len Cabinets, Inc. 659 F.2d 995 (C.A. 9, Oct. 1981)

(E's proposal to deny right to arbitration of grievances)

6067-2080-8100 Willingness to continue bargaining

Pittsburgh-Des Moines Corporation v. N.L.R.B. 663 F.2d 956 (C.A. 9, Dec. 1981)

(Bd must consider *totality of the circumstances which are indicative of mental state* in deciding *whether or not (E) genuinely desires to reach an agreement;* it does not suffice to rely solely upon the terms of contract proposals which Bd can properly look at. In addition, however, Bd must show substantial evidence that E's attitude was inconsistent with its duty to seek agreement)

Pittsburgh-Des Moines Corporation v. N.L.R.B. 663 F.2d 956 (C.A. 9, Dec. 1981)

(enforcement of bargaining order denied where U flatly rejected E's contract proposal concerning Ee retirement funds and E withdrew its proposal but E reiterated its willingness to negotiate with U; refusal to bargain was on part of U; U business representative's reckless (misunderstood) report of E's proposal to U members that proposal had been deleted from contract cannot be held against E)

6067-2080-8700 Insistence on limiting contract to certification year

Huck Manufacturing Company v. N.L.R.B. 693 F.2d 1176 (C.A. 5, Dec. 1982)

(inference that E's insistence on one-year contract to expire on U's certification anniversary was tactic to undermine U's representative status, justified)

6067-2090 Totality of conduct

Autoprod, Inc. 265 NLRB No. 042

(E repudiated agreement by Sec. 8(a)(1), (3) and (5) violations and engaged in course of conduct designed to undermine U and to derogate its role as bargaining raepresentative)

Alle Arecibo Corporation and Alle Industries Ltd. 264 NLRB No. 163

Rockland Lake Manor, Inc. 263 NLRB No. 142

(direct dealing with Ees and offering Ees more money than E offered to U in negotiations and undermining U's status as exclusive bargaining representative, withdrawing recognition, unilaterally discontinuing vacation, health and welfare contributions, polling, inducing and aiding Ees to file decertification ptn, telling Ees that it would no longer deal with U, offering to recognize new U or grievance committee or make individual contracts, interrogation of U views, threats of discharge if they joined or continued U membership, and promising benefits if they abandoned U)

Taurus Waste Disposal, Inc. 263 NLRB No. 028

(violation, in view of E's whole course of conduct where for four months E failed to respond to communications from U requesting bargaining for new contract and failed to meet with U, cancelling meetings w/o proposing any additional meetings, and failed to make any counterproposals to U's proposed contract)

Struthers Wells Corporation 262 NLRB No. 136

(while E bargained in good faith on some topics, its overall course of conduct in negotiations constituted unlawful refusal to bargain; finding that E unlawfully refused to bargain by insisting on deletion of certain provisions does not in any way derogate from statutory scheme prohibiting compulsion by Bd or cts over actual terms of bargaining agreement; while E is not required to agree to re-establishment of precise clauses of prior contract, E is required to bargain with U in manner consistent with Sec. 8(d) requirements)

Schnelli Enterprises, Inc. d/b/a Cellar Restaurant 262 NLRB No. 094

Chevron Chemical Company 261 NLRB No. 004

(no unlawful refusal to bargain by E where E's proposals indicated hard bargaining rather than bad faith and displayed no harshness, vindictiveness or unreasonableness, and record showed no intent to undermine ongoing bargaining relationship, no refusal to meet and confer, provide information, make concessions, or justify bargaining posture; parties were not at impasse, no other ULPs were involved and record reflected no conduct away from bargaining table suggesting bad faith in negotiating)

Billion Motors, Inc., d/b/a Billion Oldsmobile-Toyota 260 NLRB No. 099

(attacks on U and officials, prediction of long negotiations, withdrawal of wage increase, announcement of impasse after its final offer was rejected, rigidity, etc.)

Parkview Nursing Center II Corp. 260 NLRB No. 037

(E unlawfully refused to bargain in view of its totality of conduct both at and away from bargaining table and cumlative force of circumstances, where U was in same position at end of negotiations as when it started negotiating because E continually subjected progress in negotiations to needless delays, sudden changes, and outright repudiations of agreed upon proposals, new negotiations, or change in status and authority of its representatives at bargaining table)

F.M.L. Supply, Inc. 258 NLRB No. 083

(including E's refusal to bargain over agreement that E led U to believe was extant but was't and E's unilateral changes with respect to such agreement)

Hudson Chemical Company 258 NLRB No. 009

(E's failure, during contract negotiations, to define, explain and advocate its position and, instead, its attempt to thrust its deletions from prior contracts on U on *take it-or leave it* basis constitute additional indicia of E's lack of sincere attempt to conduct meaningful negotiations)

Hudson Chemical Company 258 NLRB No. 009

(particularly accompanying surface bargaining)

Walker Die Casting, Inc. 255 NLRB No. 034

(communicating directly with Ees by posting notice soliciting Ees to refuse to honor strike if called, advising Ees to resign from U to avoid fire in absence of U threat to fire, unilaterally raising wages, withdrawing last contract offer, ceasing bargaining, coercively threatening Ees, and establishing Ee committee, violative, notice was claculated to undermine U and set stage for further attempts to bypass and ignore U)

Pittsburgh–Des Moines Steel Co. 253 NLRB No. 086

(E's withdrawal of its original proposals tentatively agreed upon by U during negotiations for new contract, and substituting, w/o explanation, regressive proposals to U concerning U security, checkoff, picket line and right to strike provisions held violative, since E's reasons for, and timing of, its actions bore no relation to restrictive changes proposed; E's overall course of conduct evidenced intent to frustrate bargaining)

Eastern Maine Medical Center 253 NLRB No. 024

(E's conduct throughout negotiations evidenced intent not to bargain in good faith and to undermine U as Ee representative, demonstrating classic case of E who is prepared to sit at bargaining table almost forever and to make concessions here and there as means by which to conceal a purposeful strategy to make bargaining futile or to fail)

Pease Company 251 NLRB No. 080

(where ALJ found that by its unlawful conduct herein, E had demonstrated intent not to veer from its previously established conduct which Bd had found unlawful in prior case, and that such conduct, taken as a whole, constituted a further violation of 8(a)(5) and (1), Bd found such additional finding unwarranted inasmuch as no such *overall* allegation was specifically alleged as violation or fully litigated at hearing)

Hospitality Motor Inn, Inc. 249 NLRB No. 145

(violation, where E had fixed intent not to reach agreement respecting U security and checkoff, demanded, in effect, as condition to contract, retention for itself right of unilateral modification of working conditions, and in addition, proposed management rights clause where E retained all rights not otherwise specifically covered by agreement, and refused to consider no discrimination provision)

Smyth Manufacturing Company, Inc.; Beacon Industries 247 NLRB No. 164

(rigid insistence, for purpose of precluding agreement on terms other than erosion of U's role as representative, on open shop provision, on grievance procedure with limited U role, and on merit wage increase system w/o U participation in its operation, unlawful)

Chateau Vegas JD-(SF)-132-82

Chateau Vegas JD-(SF)-132-82

Temp Tech Industries, Inc. JD-288-82

(violation where E, from time it received U's initial request to bargain, deliberately set forth to delay, confuse and obstruct meaningful bargaining)

6067-2090—Cont.

Clyde W. Dent Carpet Installation, Inc. **JD-389-80**
(E held to have refused to bargain in good faith where E, on several occasions, failed to meet with U at previously scheduled times; from the outset of bargaining, E's negotiator expressly voiced his belief that bargaining was futile and E went through the motions of negotiations without any serious intent to adjust differences and reach acceptable common ground)

H. H Frederickson Co. **JD-(SF)-64-80**
(E's general course of conduct, considered in totality, did not reflect E's purpose to frustrate or forestall contractual consensus, as evidenced, among other considerations, by absence of *meeting of the minds* or of consensus with respect to specific contract terms, and by fact that E's draft proposals cannot be considered clear repudiation of some tentative concession previously reached, and that E's bargaining tactics, though clearly firm, reflected no persistent or pervasive rigidity)

N.L.R.B. v. Cable Vision, Inc. **660 F.2d 1 (C.A. 1, Sept. 1981)**
(in case of *surface bargaining, shadowboxing to a draw,* or *giving U a run-around* the question is whether it is to be inferred from totality of E's conduct that he went through motions of negotiations as an elaborate pretense with no sincere desire to reach an agreement if possible, or that it bargained in good faith but was unable to arrive at an acceptable agreement with U)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(no separate violation based on *totality of conduct,* notwithstanding E's unlawful granting of wage increase, strike misconduct by supervisors, failure to bargain regarding plant closing and diversion of unit work and failure to furnish information, since each was essentially isolated event, absent evidence of bad faith bargaining as inferred from unreasonableness of E's substantive positions at bargaining table)

Weirton Steel, Division of National Steel Corporation v. N.L.R.B. **689 F.2d 504 (C.A. 4, Sept. 1982)**
(enforcement denied since there was no refusal to bargain over stock investment plan where E remained firm but did not refuse to discuss it or economic alternatives, made other concessions and compromises, and provided new benefits; ct placed little reliance on vague and conflicting testimony of U bargaining committee members about unrecorded session and found it against public policy for party which w/o reservations ratified agreement viable in all aspects to be permitted to complain later of injustice)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(from totality of evidence concerning circumstances of bargaining, Bd could rationally infer E had not bargained in good faith as required by Act)

Huck Manufacturing Company v. N.L.R.B. **693 F.2d 1176 (C.A. 5, Dec. 1982)**
(although it was dubious that E's refusal to consider arbitration alone was evidence of bad faith— E's UAW contract did not allow arbitration—, Bd's finding of bad faith was supported by totality of E's conduct, particularly its position on contract duration and its disparate treatment of U and nonU Ees)

N.L.R.B. v. Hospitality Motor Inn, Inc. **667 F.2d 562 (C.A. 6, Jan. 1982)**
(ct held substantial evidence supported Bd finding that E's promotion of U adherent, its refusal to accept U proposals on dues checkoff and U security, its insistence on broad management rights clause which would have permitted unilateral acts by E and its refusal to accept *no discrimination* and *no individual contracts* clauses constituted bargaining in bad faith, Bd *has been afforded flexibility to determine...whether party's conduct at the bargaining table evidences a real desire to come into agreement*)

Pease Company v. N.L.R.B. **666 F.2d 1036 (C.A. 6, Dec. 1981)**
(ct held that neither bargaining proposals nor tactics of E, nor sum of its conduct, amounted to substantial evidence of bad faith; ct determined that this was case of hard bargaining between two parties who used their respective economic power to their best advantage)

Pittsburgh-Des Moines Corporation v. N.L.R.B. **663 F.2d 956 (C.A. 9, Dec. 1981)**
(Bd must consider *totality of the circumstances which are indicative of mental state* in deciding *whether or not (E) genuinely desires to reach an agreement;* it does not suffice to rely solely upon the terms of contract proposals which Bd can properly look at. In addition, however, Bd must show substantial evidence that E's attitude was inconsistent with its duty to seek agreement)

6067-4000 Unilateral change in term or condition of employment

6067-4001 Generally

RAHCO, Inc. **265 NLRB No. 030**
(unilateral changes in Ees' working conditions in instant case made by E adversely affecting both pro and anti-U Ees does not detract from GC's *prima facie case*)

Rockwell International Corporation **260 NLRB No. [illegible]**
(duty to bargain continues during existence of bargaining agreement concerning any mandatory subject of bargaining which has not been specifically covered in the contract and regarding which U has not clearly and unmistakably waived its right to bargain)

Magnolia Manor Nursing Home, Inc. **260 NLRB No. [illegible]**
(SCt's *Burns* decision, relied on by successor E, held not applicable because predecessor E had never negotiated a contract with U, and successor E held to have violated Act by unilaterally changing terms and conditions of employment where it was motivated by U animus in announcing and implementing changes, as evidenced by conduct which showed a desire to have Ee turnover for purpose of reducing U support; but, despite E's efforts, previously certified unit continued to exist as result of which E had duty to bargain over initial terms and conditions of employment)

Bedford Farmers Cooperative **259 NLRB No. 165**
(claim of economic necessity, even if sustained, does not excuse E's unilateral actions concerning terms and conditions of employment)

Charmer Industries, Inc. **250 NLRB No. 031**
(contention that unilateral change in procedures for collecting c.o.d. payments by having salesmen replace drivers, represented in another unit, in making collections was caused by circumstances beyond Es' control as a consequence of change bargained for in drivers' contract, rejected; execution of agreement with drivers' U did not fall w/i category of *external influences, outside agencies* or *external contingencies* which adversely affected interests and *environment* of salemen)

Lorard Industries, Limited **JD-[illegible]-82**
(unilateral changes in terms and conditions of employment, including discharge and layoff, between election and certification held violative where there were no *compelling economic considerations* for discharges and/or layoffs)

Seattle-First National Bank v. N.L.R.B. **638 F.2d 1221 (C.A. 9, 1981)**
(*those engaged in collective bargaining are normally required to bargain to impasse on all mandatory issues. E's unilateral change in conditions of employment under negotiation is a violation of 8(a)(5) since it is circumvention of duty to negotiate. If one party fails to negotiate in good faith, no valid impasse can be reached*)

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. **676 F.2d 826**
(E's statutory duty to bargain with U before unilaterally changing terms and conditions of his Ees' employment is independent of any obligation E may incur under his contract with U)

6067-4001-1700 What constitutes change

Armour Oil Company **253 NLRB No. 168**
(unilaterally replacing trucks driven by drivers at closed terminal with different trucks that were harder to drive and more uncomfortable w/o affording U advance notice and opportunity to bargain with respect to decision held violative)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(successor E's changes in pension plan, work week, and vacation, unlawful, where it retained all Ees in unit at predecessor E, except two Ees, where successor E was corporate subsidiary of predecessor, on predecessor's request gave these Ees hiring preference, and there was no indication employment conditioned on terms mentioned in interview; further, predecessor's longstanding, policy of extending joint pension plan to Ees transferred between companies)

Automobile Club of Michigan; Detroit Automibile Inter-Insurance Exchange; Motor Land Insurance Company; Group Insurance Company of Michigan; and Member Life Insurance Company of Michigan **JD-[illegible]-82**
(requiring salesmen to use contact forms, and, if low producers, to attend classes and telephone calling sessions, not unlawful, since they do not constitute material, substantial or significant changes and were not new with E or industry)

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. **676 F.2d 826**
(modification of practices established by consistent pattern of conduct may constitute change in terms and conditions of employment whether or not it is also breach of contract; in face of such established practice, contract is only relevant to extent that it may indicate U's waiver of its right to bargain; moreover, any waiver of U's statutory rights under Act, by contract or otherwise, must be *clear and unmistakable*)

6067-4001-1750 Failure to abide by contract

Talbert Manufacturing, Inc. **264 NLRB No. [illegible]**
(E's assigning bargaining unit production work to its foremen during course of layoff of unit Ees w/o notifying contracting U held violative, since there never had been layoff at E's plant and its foremen had not previously done production work of type and to extent they did during unit layoff; assignment was contrary to E's past practice and contractual obligation with U)

6067-4001-1750—Cont.

Vincent Brass & Aluminum Co. **264 NLRB No. 070**
(E's refusal to allow bidding down to lower paying job in order to transfer to another shift and subsequently posting no job openings, unlawful unilateral change, notwithstnading not established openings existed after cessation of postings, since contractual provision provided that job vacancies be posted and that assignment be made to senior bidder able to perform work applied to down bidding, and in view of E's unlawful threats regarding Ee's using bidding and statement job bidding would be discontinued)

Ford Brothers, Inc. **263 NLRB No. 011**
(implementation of wage scales and conditions of employment at new facility which were different from those in existing collective bargaining agreement w/o agreement thereto by U and consequent failure to apply existing agreement with local U, violative where new facility was accretion to existing bargaining unit)

Midstate Telephone Company **262 NLRB No. 167**
(unilaterally discontinuing payments to Ee U negotiating committee members for per diem and travel expenses in accordance with past practice and supplemental agreement, violative)

Merrill & Ring, Inc. **262 NLRB No. 039**
(E's unilaterally instituting policy of having day-shift Ees report for work before their jury duty w/o affording contractual U reasonable opportunity to bargain held violative, since E's refusal to cease its unlawful conduct provided evidence that unilateral change was irrevocable and change in Ees' jury duty rights, mandatory subject of bargaining, was not so insignificant as to not undermine authority of U)

Presto Casting Company **262 NLRB No. 047**
(refusing to implement provisions of contract relating to dues checkoff and Ee grievances, violative)

John Geer Chevrolet Co., Inc., d/b/a Parkwood Chevrolet **262 NLRB No. 034**
(E who dealt directly with Ees about modification of contract terms relating to layoffs violated Act; this midterm modification also violative)

Hiney Printing Company **262 NLRB No. 022**
(refusal to pay contractual COLA increases and annual wage increase amounted to unlawful renunciation of bargaining principle)

Paramount Potato Chip Company, Inc. **252 NLRB No. 117**
(E's refusal to arbitrate grievances and post seniority list violative where both were provisions contained in collective bargaining agreement)

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(unilaterally discontinuing compliance with hiring hall provisions of contract, violative)

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(unilaterally failing to honor dues deductions authorizations of unit Ees and failing to disburse such dues to U in accordance with terms of contract, violative)

P. J. Gear & Sons, Inc. **252 NLRB No. 028**
(utilizing non-U subcontractors for carpentry work in violation of contract, discharging and failing to recall all bargaining unit Ees, and assigning their work to nonbargaining unit Ees w/o negotiating with U violative)

The Nestle Company, Inc. **251 NLRB No. 142**
(violation where E failed to apply pension minimum retroactively, as negotiated, and unilaterally imposed changes in contractual pension plan w/o consent of U)

Newspaper Printing Corporation **250 NLRB No. 132**
(additional unilateral changes after impasse in existing terms and conditions of employment held violative)

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(E's withdrawal of recognition from U as representative for E's load dispatchers and lead load dispatcher, alleged to be supervisor, during mid-term contract negotiations and E's contemporaneous unilateral change in lead load dispatcher's compensation violative, since E was not privileged in instant case to alter, unilaterally scope of unit during term of contract covering unit which included load dispatchers)

Franco Glass Company, Rolland Division **250 NLRB No. 144**
(E's elimination of incentive pay system before contract term expired, violative, as E is statutorily required to wait until contract expires to implement changes in working conditions; moreover, fact that U had been willing to listen to E's proposal does not constitute waiver of its rights under Sec. 8(d))

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(unilaterally instituting classification and wage rates applicable to new equipment at wage rate lower than wage rates in contract, violative, since E repudiated obligation to honor contract executed by one of entities comprising single E)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

L.A.X. Medical Clinic, Inc.; et al. **248 NLRB No. 112**
(violation, where successor E, who had hired majority of unit Ees of predecessor, unilaterally changed conditions of employment in contract between U and predecessor E, since at time of hiring it did not indicate any intent to change conditions; E's contention it did not employ full Ee complement at time commenced operations rejected, in view of fact complement did not increase)

Excavation-Construction, Inc. **248 NLRB No. 081**
(where upon commencement of strike E unilaterally increased Ees pay by amount it had been contributing to U funds and discontinued its contribution to funds, it violated Act, notwithstanding cost to E remained same)

Independent Stave Company **248 NLRB No. 025**
(E's refusal to remit checked-off dues to U held violative, since E failed to comply with checkoff provision in current contract; provision in E's authorization ptn that check-off dues be placed in escrow rather than be paid over to U deprived U of dues which Ees were obligated to pay)

KCW Furniture Company, Inc. **247 NLRB No. 079**
(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

Wayne Asphalt and Construction Co., Inc. **JD-311-82**
(Congress rejected provision which would have made it ULP for E or U to violate bargaining agreement and Bd has frequently stated that mere breach of bargaining agreement does not, in itself, violate Act. However, because of Section 8(d) of Act, which defines duty to bargain collectively as including obligation to refrain from terminating or modifying bargaining agreement w/o meeting certain prescribed conditions, attempted modification of agreement can be violative of Section 8(a)(5). Where E effects change which has continuing impact on basic term or condition of employment, such change manifestly constitutes modification w/i Section 8(d))

Wayne Asphalt and Construction Co., Inc. **JD-311-82**
(E's breach of bargaining agreement by using supervisory and other non-unit personnel to perform unit work on construction sites, violative, since such breach had continuing impact on basic terms and conditions of employment where E had stated it would use non-unit personnel if necessary to relieve its financial distress and had no intention to replace supervisor on job until U complained)

Apex International Management Service **JD-(ATL)-86-81**
(successor E's unilateral discontinuance of predecessor's existing (contractual) practice of *checkoff* held violative, since *checkoff* was mandatory subject of bargaining and as such a term and condition of employment)

Newspaper Printing Corporation **JD-203-80**

Construction Supply Company, Inc., d/b/a Jim Bird Construction Supply **JD-(SF)-86-80**
(failure to make payments to various U funds as required in agreements with U, violative)

Olinkraft, Inc. v. N.L.R.B. **666 F.2d 302 (C.A. 5, Jan. 1982)**
(subcontracting unit work without giving U notice as required in contract violated Act)

Axelson, Inc., Subsidiary of U.S.A. Industries, Inc. v. N.L.R.B. **599 F.2d 91 (C.A. 5, 1979)**
(violation where, contrary to contract and past practice, E unilaterally refused to pay Ee members of U's negotiating committee for production wages lost by them while participating in contract negotiations)

KCW Furniture, Inc. v. N.L.R.B. **634 F.2d 436 (C.A. 9, 1980)**
(*Duration and Renewal* provision in contract between E and U expressly authorized right to negotiate during term of automatically renewed contract; where U gave 60 day *notice of opening*, E's unilateral implementation of its final offer held unlawful since duration and renewal provision was neither ambiguous nor in violation of Act and bargaining agreement was never terminated)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**
(where two companies were found single E and their Ees were found appropriate unit, E's refusal to apply contract that U had with one company to other company held unilateral change of terms and conditions of employment and unlawful)

Arco Electric Company v. N.L.R.B. **618 F.2d 698 (C.A. 10, 1980)**
(E's stopping compliance with new bargaining agreement between U and multi-E association because of financial hardship, violative notwithstanding

6067-4001-1750—Cont.

asserted good faith doubt of majority U status, where E did not notify U of intent not to renew bargaining obligation as E's *letter of assent* to expired multi-E bargaining agreement had provided, but rather availed itself of U hiring hall for referral of Ees for 15 months after effective date of new contract and implemented terms of new contract until it encountered economic hardship)

6067-4001-2000 Changes greater than offered union

Rockland Lake Manor, Inc. 263 NLRB No. 142

Geharich & Geharich, Inc. 258 NLRB No. 075
(E cannot be found to have violated 8(a)(5) by unilaterally implementing wage increases exceeding E's preimpasse offers to U, where matter was not fully and fairly litigated since neither original nor amended complaint alleged such violation and GC raised issue for first time in post-hearing brief to ALJ)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(unilateral increase of wage rates of unit Ees in excess of amount offered by E in final proposal)

6067-4001-2300 Effect of announcement or offer of change

Island Typographers, Inc. 252 NLRB No. 003
(10(b) period begins to run when U first has notice of unlawful unilateral change)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(announcing to Ees that it was implementing new wage program prior to breakdown of negotiations, violative)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass JD-452-80
(unilaterally posting notice that falsely advised Ees that their major medical insurance was cancelled, violative)

Electric Machinery Company v. N.L.R.B. 653 F.2d 958 (C.A. 5, Aug 1981)
(during negotiations for new contract but before parties had bargained to alleged *impasse*, E personally urging its Ees to work under new conditions held violative, since E had duty to negotiate with U before changing terms and conditions of employment)

6067-4001-2700 Adequacy of notice of change to permit bargaining

Ford Brothers, Inc. 263 NLRB No. 011
(E's transfer of *truck driving* duties from one facility to another, violative notwithstanding U had opportunity to bargain about possibility f transfer of w ork where such opportunity was tainted by E's conduct violative of Sec. 8(a)(1), (2), and (3))

M & M Building and Electrical Contractors, Inc., d/b/a M & M Contractors 262 NLRB No. 101
(unilaterally implementing changes 5 days after U received E's written detailed contract proposal, not violative because of unusual circumstances whereby U refused for 7 months to give E bargaining date and then delayed setting date after it demanded immediate bargaining)

Champion Parts Rebuilders, Inc., Northeast Division 260 NLRB No. 098
(where E unilaterally implemented change in photocopying of doctor's excuses, it violated Act as U did not have sufficient notice of an intended charge prior to its implementation to have placed upon it the burden of demanding bargaining)

Huck Manufacturing Company 254 NLRB No. 088
(E which posted notice to Ees concerning proposed pay increase on day after it mailed same proposal to U, before opportunity to bargain, violated Act; finding of implementation is not necessary to finding violation)

M. A. Harrison Manufacturing Company, Inc. 253 NLRB No. 097
(defense of waiver not available to E where E granted unit Ees merit wage increases, percentage wage increases, and extra paid holiday w/o giving U sufficient opportunity to bargain over those unilateral changes which it wanted to do, E and U had made no attempt to bargain on any economic issue during initial negotiations, hence neither party could contend that impasse had been reached justifying unilateral action)

Parr's Cafeteria, Inc. 251 NLRB No. 125
(unilaterally laying Ees off, violative, where, notwithstanding U's knowledge that one Ee was to be laid off, U had no notice of extent of layoff nor sufficient notice to obligate it to request bargaining prior to effective date of layoff)

Potters' Medical Center, Inc. JD-605-81

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)
(*good faith bargaining requires timely notice and meaningful opportunity to bargain regarding E's proposed changes in working conditions since no genuine bargaining can be conducted where decision has already been made and implemented*)

J. P. Stevens & Co., Inc. v. N.L.R.B. 623 F.2d 322 (C.A. 4,

Olinkraft, Inc. v. N.L.R.B. 666 F.2d 302 (C.A. 5, Jan. 1982)
(where U and had E had agreement to discuss E's subcontracting of unit requiring it to give U 7 days notice of such action, E violated Act where i subcontracting job began day of meeting; no violation as to jobs scheduled to begin 7 days after meeting)

Blue Grass Provision Co., Inc. v. N.L.R.B. 636 F.2d 1127 (C.A. 6, 1980)
(E's unilaterally subcontracting its delivery operations and laying off Ees performing this work, unlawful, where U was not on notice E contemplated subcontracting and absent impasse, where U never understood E meant to subcontract operations upon expiration of contract and meetings between parties were preliminary sparring matches)

N.L.R.B. v. Carbonex Coal Company 679 F.2d 200 (C.A. 10, May 1982)
(E's power to alter working conditions (layoffs) not contingent upon U agreement, but E has duty to notify U before effecting changes so as to give U meaningful chance to offer counter-proposals and counter-arguments)

6067-4001-4100 Union request for bargaining

Hemet Casting Company 260 NLRB No. 060
(after E granted benefits to nonbargaining Ees and U was aware of this fact, it is U's responsibility to request that E bargain with it relative to benefits given to nonunit Ees)

6067-4001-4600 Adequacy of bargaining

Elias Mallouk Realty Corp. 265 NLRB No. 156
(Respondents' impasse defense to unilateral changes in wages rendered null in view of fact unilateral change took place in atmosphere permeated by E's ULPs)

Newspaper Printing Corporation JD-303-80

6067-4001-5000 Favorable to employees

Albion Corporation d/b/a Brooks, Inc. 251 NLRB No. 104
(on ct remand, Bd affirmed ALJ's conclusion that E's treatment of new non-U Ees hired to replace strikers who had refused its offer of reinstatement did not indicate bad faith bargaining, where E applied to them wage provisions of existing contract; E's failure to reduce new Ees' wages, while having U agree to reduction in wages because of E's precarious financial condition, was not an unreasonable business decision and did not adversely reflect upon E's good faith in dealing with U since exclusion of new Ees from contracts fringe benefits gave strikers higher combined compensation rate)

6067-4001-6700 Unfavorable to employees

Peat Manufacturing Company 261 NLRB No. 026

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)
(unilateral imposition of *take home* fee charged to commission drivers of E's cabs unlawful, since imposition of such fees was change from past practice and thus mandatory bargaining subject)

6067-4001-7500 Changes prior to bargaining obligation

Westwood Import Company, Inc. 251 NLRB No. 162
(while successor E is ordinarily free to set initial terms on which it will hire Ees of predecessor, where successor E did not mention changes in conditions of employment in interviews with Ees of predecessor, unilateral changes instituted after hiring Ees cannot be considered as initial conditions of employment under *Burns* and thus violative)

6067-4001-8500 Changes before impasse

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(plant manager's telling Ees they had no formal grievance procedure after contract containing such procedure had expired held violative, since E was required to process grievances in accordance with provisions of expired contract absent impasse on that subject)

South Shore Hospital 256 NLRB No. 001
(unilaterally implementing its last offer for increase in wages and benefits, violative, as no impasse could exist because of E engaging in surface bargaining with intent of preventing agreement)

Sea Bay Manor Home For Adults 253 NLRB No. 060
(no impasse existed where parties had signed stipulation agreement setting forth method for resolving their differences; E's refusal to abide by agreement and unilateral change of wage rates of Ees violative)

Dial Tuxedos, Inc. 250 NLRB No. 064
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

6067-4001-8500—Cont.

Dial Tuxedo, Inc. **280 NLRB No. 064**
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

Excavation-Construction, Inc. **240 NLRB No. 081**
(where E made proposal during bargaining session, U official expressed doubt that members would accept but took provision to members for vote and E implemented change w/o waiting for results, E violated Act as no impasse exited)

Laborers Funds Corporation **JD-(SF)-8-81**

Electric Machinery Company v. N.L.R.B. **653 F.2d 958 (C.A. 5, Aug 1981)**
(during negotiations for new contract but before parties had bargained to alleged *impasse,* E personally urging its Ees to work under new conditions held violative, since E had duty to negotiate with U before changing terms and conditions of employment)

Electric Machinery Company v. N.L.R.B. **653 F.2d 958 (C.A. 5, Aug 1981)**
(no *impasse* in bargaining negotiations where U at no time refused to bargain nor did U waive its right to bargain; facts did not begin to support defense of *impasse* because bargaining had only just begun and there appeared no reason which impelled E unilaterally to make changes in Ees' working conditions)

6067-4001-8700 Changes after impasse

Stone Boat Yard **264 NLRB No. 130**
(unilaterally discontinuing payments to U's health and welfare and pension plan established by expired collective bargaining agreement and unilaterally implementing company-funded medical insurance plan, violative, where E never provided U any type of written or detailed proposal of changes in expired contract, and therefore, E did not implement changes which were consistent with any pareviously rejected offer, especially in light of fact that U and E had not reached bargaining impasse nor had U waived its right to bargain about changes which were implemented)

Southern Newspapers, Inc., d/b/a The Baytown Sun **255 NLRB No. 022**
(Bd law does not require that any change in face of impasse must be exactly the same as a prior proposal or that change must have been subject of a specific proposal; rather, what is required is that change must have been reasonably comprehended by proposals previously offered)

Southern Newspapers, Inc., d/b/a The Baytown Sun **255 NLRB No. 022**
(unilateral change in shift hours held not justified even if impasse had existed since it was not reasonably comprehended by E's original proposal which was directed to elimination of night shift and anticipated normal bargaining concerning shift work, whereas effected change was response to serious and real emergency situation, whereby E sought to avoid increased costs resulting from paying more than day shift rates; fact that emergency existed is not necessarily proper basis for unilateral change during negotiations)

J. D. Lunsford Plumbing, Heating and Air
Conditioning, Inc., and Lunsford Brothers
Mechanical Contractors, Inc. **254 NLRB No. 170**
(unilateral change in terms and conditions of employment, not unlawful, where changes were implemented after impasse which resulted from U being bound by most favored nations clause which would not permit terms that would undermine association contract and E would not meet terms of new association contract because of economic considerations; E was lawfully entitled to implement terms of its last offer that had been rejected by U after negotiations reached impasse)

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(E cannot take advantage of *impasse* when it was caused in large part by E's own unlawful conduct in unilaterally granting wage increases and benefits during contract negotiations)

Newspaper Printing Corporation **250 NLRB No. 132**
(notwithstanding E had insisted to impasse concerning unit description proposals for new contract, E's unilateral adoption of those proposals held violative, since proposals substantially modified existing unit and work jurisdiction provisions)

Newspaper Printing Corporation **250 NLRB No. 132**
(additional unilateral changes after impasse in existing terms and conditions of employment held violative)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E unilaterally implemented its contract proposals when there was no impasse)

KCW Furniture Company, Inc. **247 NLRB No. 079**
(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

Excavation-Construction, Inc. v. N.L.R.B. **660 F.2d 1015 (C.A. 4, Oct. 1981)**
(no unlawful unilateral wage increase where E switched from paying $8.30 plus $.84 per hour in pension and hospitalization benefits contributions to paying striaght $9.14 per hour to replacements and offering same to non striking Ees; alternatively, as impasse had occurred, E free to make unilateral changes in terms and conditions of employment)

N.L.R.B. v. Gibraltar Industries, Inc. and Case, Inc. **653 F.2d 1091 (C.A. 6, July 1981)**
(E could temporarily close plant where negotiations had reached impasse; record did not support Bd's finding that E was motivated by anti-U animus when it closed its plant but, rather, evidence shows legitimate business reason for E's decision)

Blue Grass Provision Co., Inc. v. N.L.R.B. **636 F.2d 1127 (C.A. 6, 1980)**
(E's unilaterally subcontracting its delivery operations and laying off Ees performing this work, unlawful, where U was not on notice E contemplated subcontracting and absent impasse, where U never understood E meant to subcontract operations upon expiration of contract and meetings between parties were preliminary sparring matches)

Atlas Metal Parts Co., Inc. v. N.L.R.B. **660 F.2d 304 (C.A. 7, Sep. 1981)**
(ct found changes in Ees' terms of employment made by E w/o bargaining, not unlawful where it found, contrary to Bd, that E had bargained to impasse in good faith)

Seattle-First National Bank v. N.L.R.B. **638 F.2d 1221 (C.A. 9, 1981)**
(*those engaged in collective bargaining are normally required to bargain to impasse on all mandatory issues. E's unilateral change in conditions of employment under negotiation is a violation of 8(a)(5) since it is circumvention of duty to negotiate. If one party fails to negotiate in good faith, no valid impasse can be reached*)

6067-4001-9100 Changes after expiration of contract

Stone Boat Yard **264 NLRB No. 130**
(E is justified under certain circumstances in implementing unilateral changes in terms and conditions of employment when E has diligently and earnestly sought to engage in bargaining and U has continually avoided or delayed bargaining, but E's unilateral change must be consistent with E's previous proposal to U of changes in expired contract)

Stone Boat Yard **264 NLRB No. 130**
(unilaterally discontinuing payments to U's health and welfare and pension plan established by expired collective bargaining agreement and unilaterally implementing company-funded medical insurance plan, violative, where E never provided U any type of written or detailed proposal of changes in expired contract, and therefore, E did not implement changes which were consistent with any pareviously rejected offer, especially in light of fact that U and E had not reached bargaining impasse nor had U waived its right to bargain about changes which were implemented)

Alle Arecibo Corporation and Alle Industries Ltd. **264 NLRB No. 163**
(E's failure to make monthly payments to fringe benefit funds under expired contract as demanded by U's attorney, violative where negotiations relating to fringe benefit fund items were pending; obligation to make these payments under expired contract continued until it was discontinued through good faith bargaining)

Digmor Equipment and Engineering Company, Inc. **261 NLRB No. 176**
(E's refusal to arbitrate grievance after expiration of contract, unlawful, notwithstanding E's assertion of U's loss of majority and that qcr existed in view of RM ptn, since duty to arbitrate survives contract where grievant was discharged for conduct occurring in part prior to contract's expiration; basis for grievance was contract, and further, at time E asserted expiration of contract as basis for refusing to arbitrate, election had confirmed continued support of U and U certified)

Cobb Theatres, Inc. **260 NLRB No. 111**
(E's cessation of contributions to pension fund after expiration of contract violative absent good faith doubt of U's majority status)

Cardinal Systems, A Division of Hospitality Motor
Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 068**
(unilaterally depriving regularly employed Ees on layoff status of their holiday pay after contract with U had expired held violative)

Cardinal Systems, A Division of Hospitality Motor
Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 068**
(changing hours of work by no longer paying Ees for breaktime after expiration of contract, violative)

Northwestern Dodge, Inc. **258 NLRB No. 119**
(refusing laid off Ee accumulated vacation pay on anniversary date of his employment, violative where terms of expired contract did not apply only to Ees working on anniversary date)

6067-4001-9100—Cont.

Northwestern Dodge, Inc. 258 NLRB No. 118
(refusal to process grievances protesting layoffs of two Ees violative notwithstanding contract had expired)

The Sacramento Union 258 NLRB No. 141
(E's duty to bargain not relieved by expiration of bargaining agreement. Although expiration of contract may permit E to negotiate new and different terms, it may not, absent impasse or waiver by U, unilaterally change established practices with respect to mandatory subject of bargaining even if these practices may have constituted deviation from letters of parties expired agreement)

The Sacramento Union 258 NLRB No. 141
(E's unilateral change in criteria for work assignments after expiration of contract, unlawful, where previously job assignments had been made by steward on basis of priority list compiled by U by date on which Ees registered with U w/o regard to number of hours or shifts Ees had actually worked for E, but after expiration of contract E compiled and posted own priority list based in substantial part on actual shifts worked for E)

Hudson Chemical Company 258 NLRB No. 009
(E's cessation of checking off U dues after expiration of U security agreement not violative, since agreement had expired; *Section* 302(c)(4) of LMRA provides that life of checkoff authorization shall not be irrevocable for one year or termination date of applicable bargaining agreement, whichever occurs sooner)

Henry Cauthorne, an individual, t/a Cauthorne Trucking 256 NLRB No. 115
(unilaterally ceasing payments into U's health and welfare, and pension trust funds upon expiration of contract which E had not signed but to terms of which E had bound itself by signing interim agreement and implementing significant portion of contract held violative, since; (1) change was not made subsequent to bargaining impasse, (2) E did not, in good faith, doubt U's majority status, and (3) U did not waive right to bargain regarding alterations; health and welfare fund trust agreements did not contain language which might limit E's obligation to bargain regarding cessation of payments into fund)

Henry Cauthorne, an individual, t/a Cauthorne Trucking 256 NLRB No. 115
(refusal to continue payment into U's pension trust fund not violative where expired contract stated that E and U's obligations to pension fund shall terminate and E did nothing that could be construed as adopting another contract; E was privileged, under terms of pension trust agreement, to cease such payments w/o bargaining with U)

Henry Cauthorne, an individual, t/a Cauthorne Trucking 256 NLRB No. 115
(fringe benefit fund plans which are part of expired contract constitute aspect of Ee wages and terms of employment which survive expiration of contract)

S. Freedman Electric, Inc. 256 NLRB No. 068
(E who failed to contribute to Ee's benefit funds, medical benefit fund, pension fund and failed to reimburse Ees for travel money between jobs after expiration of contract violated Act as such contractual provisions survive expiration of contract, notwithstanding it had lawfully withdrawn from multi-E association)

Finger Lakes Plumbing & Heating Co., Inc. 253 NLRB NO. 049
(unlawful)

Island Typographers, Inc. 252 NLRB No. 003
(where E, more than 6 months prior to charge being filed, unilaterally and openly introduced cold type process operated by non-U Ees without U's timely objection, no violation and E's action effectively changed terms of unsigned contract so as to exclude cold-type work from jurisdiction of U)

Dial Tuxedo, Inc. 250 NLRB No. 064
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

Dial Tuxedo, Inc. 250 NLRB No. 064
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

KCW Furniture Company, Inc. 247 NLRB No. 079
(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

Peerless Roofing Co., Ltd. 247 NLRB No. 07
(refusal to pay contributions on behalf of Ees into U's pension, welfare, and similar trust funds upon expiration of contract, violative where cessation of such payments was not reasonably encompassed in E's offers during collective bargaining, and U did not waive right to bargain issue; such plans constitute aspect of Es wages and term and condition of employment which survives expiration of contract and cannot be altered w/o bargaining)

Stratford Visiting Nurses Association JD-(NY)-86-81
(unilaterally denying banked vacation time to Ees, violative, notwithstanding change was made subsequent to expiration of bargaining agreement)

Peerless Roofing Co., Ltd. v. N.L.R.B. 641 F.2d 734 (C.A. 9, Apr 4, 1981)
(E's ceasing to make contributions to U trust funds after bargaining agreement with U expired and while new agreement was under negotiation, violative where change was not reasonably comprehended in terms of E's contract offers to U)

6067-4001-9500 During pendency of postelection objections

C & D Battery Division—Eltra Corporation 263 NLRB No. 106
(since E who acts in derogation of its bargaining obligations at time when it is contesting validity of U's certification acts at its peril, E herein who unilaterally laid off Ees subsequent to Bd's resolution of objections to election and certification of U, was clearly under obligation to bargain with U concerning layoff)

Gulf States 261 NLRB No. 119
(E's failing to bargain over decision to lay Ees off during period when objections to decertification election were pending and final determination had not yet been made, violative; results of election were ultimately certified in favor of U)

Injected Rubber Products Corp. 258 NLRB No. 091
(E acts at peril in making unilateral changes in terms and conditions of employment while challenges to election pending)

Han-Dee Pak, Inc. 253 NLRB No. 126
(in supplemental decision Bd found unilateral changes in job classifications and rates of pay for unit Ees after conduct of R election, but *prior* to determination of outcome of election won by U, violative, since E acted at its peril in making such changes pending resolution of objections)

The Dow Chemical Company, Texas Division 250 NLRB No. 100
(violation where after U lost decertification election but prior to certification of results of election E unilaterally placed unit Ees on salary and fringe benefit schedule for unrepresented Ees)

The Dow Chemical Company, Texas Division 250 NLRB No. 102
(unilateral granting of raises and changes of Ee status done while validity of decertification election in doubt, violative)

New Mayo, Inc., d/b/a Mayo Products Company JD-(ATL)-19-81
(unilaterally changing shift schedule at time when outcome of challenge to determinative ballot was pending, not unlawful, where U was not ultimately certified)

Dow Chemical Company, Texas Division v. N.L.R.B. 660 F.2d 637 (C.A. 5, Nov 1981)
ct held transfers of former U members to salaried status immediately following decertification of U and before validation of election results, not unlawful, in light of *Mike O'Connor Rule* (209 NLRB 701); ct rejected Bd finding that E's obligation to bargain continues after U has lost decertification election and until election objections are reviewed by Bd, regardless of whether election is ultimately held lawful)

Anchortank, Inc. v. N.L.R.B. 618 F.2d 1153 (C.A. 5, 1980)
(E who refused to bargain by making unilateral changes in mandatory subjects *on ground that election is invalid does so at his own risk, and if election challenge proves fruitless, order by Bd based on refusal to bargain will be enforced*)

N.L.R.B. v. Carbonex Coal Company 679 F.2d 200 (C.A. 10, May 1982)
(unilateral action affecting working conditions taken by E following U victory at R election, violative, even if such unilateral action occurs prior to U's certification)

N.L.R.B. v. Carbonex Coal Company 679 F.2d 200 (C.A. 10, May 1982)
(the duty to bargain, at least in the sense of a prohibition on unilateral changes attaches as of the election date)

6067-4001-9600 During pendency of challenge to certification before Board or court

Peabody Coal Company 265 NLRB No. 013
(unilateral withholding from newly certified unit Ees wage and benefit increases granted nonU Ees, unlawful; pending challenge to certification in ct, no defense)

6067-4001-9800 Prior to certification

6067-4001-9800—Cont.

RAHCO, Inc. **265 NLRB No. 036**
(laying off Ees, after U won election but prior to certification, w/o notice to or bargaining with U held violative)

6067-4011 Failure to bargain before making economically motivated operating decision which has effect on unit

6067-4011-0100 Generally

Hanes Corporation **260 NLRB No. 077**
(E violated Act by refusing to bargain with U concerning specific discretionary aspects of wage increase, rules respecting wearing of respirators, and of an economic layoff; unilateral institution of these changes were not violative however, E had duty to bargain over effect of changes)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(where it may be permitted w/o finding of violation)

L. E. Davis, d/b/a Holiday Inn of Benton v. N.L.R.B. **617 F.2d 1264 (C.A. 7, 1980)**
(conversion of restaurant to cafeteria held mandatory bargaining subject where decision resulted in some Ees being terminated, was related to labor costs, and did not result in major capital investment or alteration of underlying nature of E's business)

N.L.R.B. v. Carbonex Coal Company **679 F.2d 200 (C.A. 10, May 1982)**
(E's power to alter working conditions (layoffs) not contingent upon U agreement, but E has duty to notify U before effecting changes so as to give U meaningful chance to offer counter-proposals and counter-arguments)

6067-4011-0167 Destructive effect on unit

First National Maintenance Corp. v. N.L.R.B. **452 U.S. 666 (U.S. SCT, June 1981)**
(*management must be free from constraints of bargaining process to extent essential for running of...business, and have some degree of certainty...as to when it may reach decisions w/o fear of later...labeling of its conduct ULP. Congress did not...state what issues...it intended to exclude from mandatory bargaining. Nevertheless, in view of E's need for unencumbered decision making, bargaining over management decisions that have substantial impact on continued availability of employment should be required only if benefit for labor management relations and...bargaining outweighs burden...conduct of business*)

Talbert Manufacturing, Inc. **264 NLRB No. 138**
(E's assigning bargaining unit production work to its foremen during course of layoff of unit Ees w/o notifying contracting U held violative, since there never had been layoff at E's plant and its foremen had not previously done production work of type and to extent they did during unit layoff; assignment was contrary to E's past practice and contractual obligation with U)

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(E's withdrawal of recognition from U as representative for E's load dispatchers and lead load dispatcher, alleged to be supervisor, during mid-term contract negotiations and E's contemporaneous unilateral change in lead load dispatcher's compensation violative, since E was not privileged in instant case to alter, unilaterally scope of unit during term of contract covering unit which included load dispatchers)

Pre-Fab Transit Company and Tractor and Trailer Leasing Co., Inc. **JD-353-82**
(E's elimination of *short haul* operation resulting in termination of Ees and then bargaining individually with Ees, resulting in destruction of unit, violative)

Haym Salomon Home For The Aged, et al., d/b/a Lawson Life Extension Organization **JD-(NY)-78-81**
(elimination by mass discharge of more than majority of Ees w/o notice on bargaining constituted unlawful unilateral change substantially affecting constitution of unit)

N.L.R.B. v. First National Maintenance Corp. **627 F.2d 596 (C.A. 2, July 1980)**
(E's refusal to bargain with U over its decision to discontinue operations at one of its locations, violative since decision was based on economic considerations. Decisive factor is whether, regardless of origin of cost which precipitated management decision to terminate, bargaining could reasonably be expected to modify or reverse that decision, and here U could have made concessions which could possibly have enabled E to remain in operation)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that E's decision affects conditions of employment does not necessarily imply that such decision is mandatory subject of bargaining)

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. **676 F.2d 826**
(test for whether work has been transferred away from bargaining unit is whether, as result of decisions by E, bargaining unit in question has suffered adverse impact)

6067-4011-0183 Actions taken during strike or lockout

Blue Grass Provision Co., Inc. v. N.L.R.B. **636 F.2d 1127 (C.A. 6, 1980)**
(E's contention that its subcontracting of its delivery operations and layoff of E is performing this work was in affect legal lockout rejected absent impasse or threat of imminent strike or absent evidence that E's business interests were so legitimate and substantial as to justify impact that lockout would have on Ees' rights)

6067-4011-1100 Subcontracting unit work

A & T Manufacturing Company **265 NLRB No. 201**
(E unilaterally subcontracting work, not unlawful, since E had lawfully withdrawn recognition from U in view of U's conflict of interest resulting from its representation of Ees of another E)

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **264 NLRB No. 178**
(E's failure to bargain over its decision to discontinue and subcontract its shrimp processing operation, which resulted in termination of twelve Ees, unlawful, since E's action was subcontracting – a mandatory bargaining subject – rather than partially closing its food preparation business – which may not be mandatory subject; nature and direction of E's business were not substantially altered, capital transactions were not substantial enough to remove decision from scope of mandatory bargaining obligation, and E's concerns for cost and quality control were suitable for resolution by bargaining)

General Electric Company, Apparatus Service Division **264 NLRB No. 096**
(where unit Ee went on extended sick leave and E subcontracted small portion of his work (16%) w/o bargaining with U, it did not violate Act as amount of work subcontracted was *de minimis* and there was no adverse impact on unit Ees and was done solely for economic considerations)

Whitehead Brothers Company **263 NLRB No. 123**
(E's decision to subcontract its delivery operation is mandatory subject of bargaining and its refusal to both bargain over its decision to subcontract and also effects of that decision on unit violative)

Salem College **261 NLRB No. 096**
(E did not violate Act when it subcontracted unit work where it had satisfied its obligation to provide U with adequate opportunity to bargain over its decision to subcontract and U's conduct indicated little interest in doing so, clinging to its position that parties were still negotiating collective-bargaining agreement)

Glengarry Contracting Industries, Inc. **258 NLRB No. 186**
(unilateral subcontracting of unit work to unit Ee operating as independent contractor, unlawful)

America Air Filter Company, Inc. **258 NLRB No. 010**
(lessee E's terminating contract with lessor E to provide unit Ees' services, thereby displacing unit Ees, w/o bargaining over decision or its effects, unlawful)

Liberty Homes, Inc. **257 NLRB No. 169**
(E's contracting out over-the-road delivery of its mobile homes w/o bargaining regarding its decision, not unlawful, where E had begun exploration of subcontracting and reached decision prior to U's demand for recognition and decision justified by business considerations in view of E's financial losses and large capital outlay which would be required for desired replacement of inefficient gasoline powered tractors with diesel tractors)

Tocco Division of Park-Ohio Industries, Inc. **257 NLRB No. 044**
(subcontracting out unit work w/o consulting U held not violative where E has long contracted out ten percent of work, U has not bargained about changes in contracting practices and no adverse impact on Ees)

Central Virginia Electric Cooperative **254 NLRB No. 046**
(E's not bargaining about subcontracting with *open and fair mind*, violative, where E made reference to possibility of subcontracting at meeting with U in that it only recognized its obligation to bargain *regarding the impact on Ees* resulting from E's decision)

W. G. Best Homes Corporation **253 NLRB No. 123**
(obligation to bargain regarding subcontracting *requires E to notify U involved of proposed subcontracting agreement and give U opportunity to discuss decision and consider alternative proposals; normally, U must be notified of proposed subcontract eliminating unit jobs before execution of agreement, nor is mere statement of general intent to subcontract in future sufficient prior notice where subsequent bargaining occurs in context of fait accompli; where, however, U is given full opportunity to bargain about executory contract, which may be rescinded, prima facie showing of violation because of failure to give U prior notice excused*)

W. G. Best Homes Corporation **253 NLRB No. 123**
(E's failure to bargain regarding subcontracting its transportation department, not unlawful, where U failed to request bargaining regarding subcontracting, notwithstanding U was apprised of E's economic problems and on notice of its intent to subcontract its transportation department to cut costs)

6067-4011-1100—Cont.

Olinkraft, Inc. **252 NLRB No. 185**

Olinkraft, Inc. **252 NLRB No. 185**
(unilaterally subcontracting unit work w/o affording U timely notice and opportunity to bargain, violative where contract provided that all routine maintenance work would be performed by unit Ees)

Atlas Metal Parts Co., Inc. **252 NLRB No. 029**
(no violation where E failed to return work subcontracted during strike to unit after termination of strike where contracting out simply effort to avoid economic consequences of strike and absent evidence to what extent work contracted out differed in nature from E's past practice prior to strike)

P. J. Gear & Sons, Inc. **252 NLRB No. 028**
(utilizing non-U subcontractors for carpentry work in violation of contract, discharging and failing to recall all bargaining unit Ees, and assigning their work to nonbargaining unit Ees w/o negotiating with U violative)

Carbonex Coal Company **248 NLRB No. 107**
(E's subcontracting of 100 percent of its hauling operation which resulted in layoff of 2 Ees, violative)

Smyth Manufacturing Company, Inc.; Bonner Industries **247 NLRB No. 164**
(unilateral termination of manufacturing at organized plant and subcontracting of said operations to nonU plant and outside subcontractees w/o good faith bargaining, unlawful notwithstanding U's having sufficient advance notice of E's intention, in view of E's discriminatory motives of retaliation for Ees' support of U bargaining position and erosion of U)

Van-Nate Harvey Associates and Nassau Surveying **247 NLRB NO. 139**
(bargaining with no intention of reaching agreement with U, evidenced by E's transferring unit work to its *alter ego*, held violative, since reactivation of *alter ego* was subterfuge to avoid bargaining with U)

Rainbo Baking Company **JD-(SF)-117-82**
(unilaterally changing route to distributorship, unlawful)

Olin Construction Co., Inc. **JD-192-82**
(subcontracting work of unit Ees w/o prior notice to U and w/o affording U an opportunity to bargain, violative)

Monark Boat Company **JD-(ATL)-60-81**
(E's unilateral subcontracting of unit work, not unlawful, where subcontract was motivated by economic reasons, did not vary substantially from established past practice, and did not result in avoiding U contract; no significant detriment resulted to unit Ees; and although E did not afford U opportunity to bargain about changing existing bargaining practices, E's overall bargaining obligation is pending before Bd on test of certification, and if Bd rules that bargaining obligation exists, E presumably will bargain on all mandatory issues including change in subcontracting practices)

Tribal American Consulting Corporation **JD-(SF)-314-80**
(continuing to subcontract bus driver's work after end of strike, violative where U was not consulted, and E failed to bargain by sending representative who had no authority to bind E)

Equitable Gas Company v. N.L.R.B. **637 F.2d 980 (C.A. 3, 1981)**
(unilateral subcontracting of unit work of three remittance clerks in E's treasury department, not unlawful, where subcontract was not mandatory subject of bargaining, was motivated by proven economic considerations, and had no adverse impact on the three clerks since they were transferred to other departments obtaining equivalent or higher paying positions)

Blue Grass Provision Co., Inc. v. N.L.R.B. **636 F.2d 1127 (C.A. 6, 1980)**
(E's unilaterally subcontracting its delivery operations and laying off Ees performing this work, unlawful, where U was not on notice E contemplated subcontracting and absent impasse, where U never understood E meant to subcontract operations upon expiration of contract and meetings between parties were preliminary sparring matches)

Jack Thompson Oldsmobile, Inc. v. N.L.R.B. **684 F.2d 458 (C.A. 7, July 1982)**
(unilaterally delegating responsibility for financing and insurance transactions to an outside firm, unlawful)

Nebraska Bulk Transport, Inc. v. N.L.R.B. **608 F.2d 311 (C.A. 8, 1979)**
(unilateral changes in work assignments of unit Ees and subcontracting portion of unit work)

6067-4011-2200 Change to reliance on independent contractors or franchisers

Capital Parcel Delivery Company **256 NLRB No. 050**
(E violated Act when it laid off all its unit Ees and subcontracted work notwithstanding contract gave E right to subcontract work to independent contractors where new hires found to be Ees and not independent contractors under *right to control* test)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(fact that E's decision affects conditions of employment does not necessarily imply that such decision is mandatory subject of bargaining)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral actions effecting major shifts in capital investment or corporate strategy of E are not mandatory subjects of bargaining when motivated by economic considerations and not U animus even though they may have had profound effects on *conditions of employment*)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(factor of anti-U animus is germane to determination of whether proposed change in company's operations is mandatory subject of bargaining)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(even if cab companies' decision to lease their cabs was mandatory subject of bargaining, their unilateral action was not ULP because U itself made negotiation impossible by imposing improper condition (recognition of U as bargaining representative of leased-drivers) as prerequisite to bargaining)

6067-4011-3300 Leasing or selling portion of operation

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **265 NLRB No. 161**
(reducing operations by selling some trucks, subcontracting, and transferring work formerly performed by discriminatee to other Ees w/o bargaining in order to avoid recalling discriminatee, violative)

Marine Officers Association, Teamsters Union Local No. 54 (Riverway Co.) **260 NLRB No. 182**
(where E unilaterally chartered out all its motor vessels and then chartered them back with crews who were non-U at time when valid agreement existed between E and U, and U made only limited protest at time of change, and this change existed for 3 years at which time it began to picket E, U found to have acquiesced in E's change in operations and to no longer have labor dispute with E; thus, U's dispute lies with E who control non-U crews and not with original E and its picketing is violative)

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. **248 NLRB No. 059**
(E's sale of 2 of its 30 trucks 3 months after strike which had no effect on Ee's job did not violate Act)

6067-4011-3800 Sale of operation

National Car Rental System, Inc. **252 NLRB No. 027**
(E's refusal to notify U representing contract unit of E's garagemen and mechanics of its decision to sell bulk of its accounts and sublease truck rental facility and transfer remainder of accounts to new location not violative, since sale was decision *essentially financial and managerial in nature* involving *significant investment or withdrawal of capital* affecting *scope and ultimate direction of enterprise*; it was speculative that relocation of operations would have had any adverse impact on Ees because of time period between proposal and actual commencement or relocated operations)

6067-4011-4200 Spinoff or transfer of operations

Carbonex Coal Company **262 NLRB No. 119**
(transforring operations to new mine 5 miles away w/o nofitying U so that they could bargain over effects of transfer violative)

Drukker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. **258 NLRB No. 097**
(when Respondent unilaterally relocated portion of its operation w/o bargaining with U; Section 8(a)(5) allegation dismissed where relocation took place outside 10(b) period and both U and Ees had received actual notice of relocation prior to 6-month period preceding filing of charge)

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**
(E's decision to alter its marketing structure from branch office responsibility to new marketing hierarchy not mandatory subject of bargaining, since decision involved sale of significant assets, fundamental changes in marketing structure and significant reallocation of capital notwithstanding changes may have profound effect on employment conditions)

6067-4011-4400 Partial termination of operation

First National Maintenance Corp. v. N.L.R.B. **452 U.S. 666 (U.S. SCT, June 1981)**
(E's failure to bargain regarding its decision to cancel contract for cleaning and maintenance at third party, lawful; difficulty of E determining situation was of such economic necessity that would obviate duty to bargain, and on balance necessity for E to freely make economic decision outweighed benefit gained by bargaining over decision which was not likely to have been forestalled by U participation; ct rejected holding that 8(d) created presumption of mandatory bargaining over decision to close part of business which is rebuttable by showing duty to bargain wouldn't further harmonious relations between parties)

Monongahela Steel Company and Youngstown Steel Corporation **265 NLRB No. 081**
(E's failing to meet and negotiate with U about one of its plants after initial negotiating session, and unilaterally closing plant w/o notifying or consulting with U about decision or its effects, unlawful where decision was discriminatorily rather than economically motivated as shown by evidence

6067-4011-4400—Cont.

that cures for the plant's problems were at hand, E's anti-U statements, its secrecy about the closing and fostering impression that plant would be reopening)

Swift & Company **264 NLRB No. 036**
(E need not bargain with U over its decision to close one of its meat processing plants (no subcontracting involved) where decision based solely on economic and profitability grounds and s such was solely w/i E's perogative. See *First National Maintenance Corp. v. N.L.R.B.* 107 LRRM 2705)

Chippewa Motor Freight, Inc. and Action Carrier, Inc. **261 NLRB No. 066**
(E has no obligation to bargain over its decision to partially close its business)

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division **257 NLRB No. 152**
(when economic reasons compel E to decide whether or not to shut down part of its business, E's need to operate freely outweighs any incremental benefit that might be gained through U's participation in decision-making)

Laredo Packing Company **254 NLRB No. 001**
(E's failure to bargain regarding temporary discontinuance of operations and resulting layoff of Ees, not unlawful, since U waived right to bargain regarding termination of operation by virture of management rights clause which generally reserved to E right to *abolish or change operations, determine extent to which plant will operate, layoff of Ees because of legitimate reasons, sell...terminate, discontinue, or transfer operations due to...economic factors,* and E's obligations to bargain was further limited by agreement to permanent discontinuance of operations)

Brockway Motor Trucks, Division of Mack Trucks, Inc. **251 NLRB No. 023**
(initial presumption exists that economically motivated partial closing is mandatory subject of bargaining; however, balancing test must be applied in each case to determine whether duty to bargain over decision to close exits and here though E's decision to close based on valid economic reasons, there were no compelling reasons which would have prohibited E from bargaining and its refusal violative, especially where closing not based on sudden or unanticipated situation requiring immediate action)

Boston Gas Company **JD-(NY)-101-81**
(E did not violate Act when it refused to bargain with U over its decision to terminate retail sale of appliances portion of its within ombit of *First National Maintenance Corporation* No. 80-548 (1981) U.S. ; moreover, it did bargain in good faith over effects of that decision)

Tri-State Warehouse & Distributing, Inc. and Public Warehousing Corp. **JD-261-80**

N.L.R.B. v. First National Maintenance Corp. **627 F.2d 596 (C.A. 2, July 1980)**
(E's refusal to bargain with U over its decision to discontinue operations at one of its locations, violative since decision was based on economic considerations. Decisive factor is whether, regardless of origin of cost which precipitated management decision to terminate, bargaining could reasonably be expected to modify or reverse that decision, and here U could have made concessions which could possibly have enabled E to remain in operation)

N.L.R.B. v. First National Maintenance Corp. **627 F.2d 596 (C.A. 2, July 1980)**
(there is presumption that E has obligation to bargain over decision to partially close business which may be rebutted by showing that purposes of statute would not be furthered by imposition of duty to bargain)

Brockway Motor Trucks, Division of Mack Trucks, Inc. v. N.L.R.B. **656 F.2d 32 (C.A. 3, 1981)**
(in view of SCt's decision in *First National Maintenance Corp.* holding that E is not required to bargain with U over its decision to shut down part of its business purely for economic reasons, ct ordered that Bd's consent to a decree denying enforcement of Bd's bargaining and backpay order shall be approved, that ptns for enforcement and review shall be dismissed, that Bd dismiss ULP charges, and that costs shall be imposed on Bd with question of amount reserved until appropriate motion is filed by E)

ABC Trans-National Transport, Inc. v. N.L.R.B. **642 F.2d 675 (C.A. 3, Feb 19, 1981)**
(failure to bargain with U about closing one of E's facilities, violative, since such decision to close constituted mandatory subject of bargaining)

Local 1017, Lumber and Sawmill Workers a/w The Western Council, Lumber, Production & Industrial Workers v. N.L.R.B. **654 F.2d 750(T) (C.A. 9, June 1981)**
(refusal to bargain about decision to close sawmill operation, while bargaining about effect of decision, on ground that it was managerial decision based on economic factors, not unlawful, where Bd had concluded that, because of scarcity of needed raw materials, bargaining would have been futile; there was no attempt by U to contradict E's economic facts in support of its position; ct cannot say that Bd's decision was w/o substantial support in record; and basic management decisions in particular market are not mandatory subjects of bargaining)

6067-4011-4600 Transferring work

Emerson G. M. Diesel, Inc. **258 NLRB No. 168**
(failing to notify and bargain with U about transfer of unit work and resulting layoff of unit Ees, unlawful)

Armour Oil Company **253 NLRB No. 148**

Universal Security Instruments, Inc. **259 NLRB No. 093**
(collective-bargaining agreement containing management rights clause allowing E to *relocate* plant w/o bargaining, does not constitute waiver of U's right to bargain over opening of new plant and subsequent transfer of Ees to that plant as term *relocate* does not cover this situation; clear and unequivocal waiver by U of its right to bargain with E over closing of plant and transfer of its Ees is necessary to constitute such waiver)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral termination of manufacturing at organized plant and subcontracting of said operations to nonU plant and outside subcontractees w/o good faith bargaining, unlawful notwithstanding U's having sufficient advance notice of E's intention, in view of E's discriminatory motives of retaliation for Ees' support of U bargaining position and erosion of U)

Heat Transfer Group, Gulf and Western Mfg. Co. **JD-361-82**
(E's repudiating agreement by announcing its intention to and by commencing to relocate portion of unit work to another location for performance by non-unit Ees represented by another U with contract providing for less costly wages and benefits held violative, as E's purpose was to evade obligations and to frustrate Ees' right to refuse to make mid-term concessions)

Iowa Parcel Service, Inc. and Iowa Express Distribution, Inc. **JD-230-82**
(unilaterally permitting or encouraging transfer of portion of bargaining unit work to another E, unlawful)

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. **676 F.2d 826**
(allocation of work to bargaining unit is *term and condition of employment, and E may not unilaterally attempt to divert work away from bargaining unit w/o fulfilling his statutory duty to bargain)*

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. **676 F.2d 826**
(fact that there is group of Ees legitimately outside bargaining unit does not change E's duty with regard to Ees in bargaining unit; non-U company of double-breasted operation is free both to function and to prosper as non-U company as long as its activity is not result of illegal transfer of work from U company)

6067-4011-4800 Elimination of jobs

First National Maintenance Corp. v. N.L.R.B. **452 U.S. 666 (U.S. SCT, June 1981)**
(E's failure to bargain regarding its decision to cancel contract for cleaning and maintenance at third party, lawful; difficulty of E determining situation was of such economic necessity that would obviate duty to bargain, and on balance necessity for E to freely make economic decision outweighed benefit gained by bargaining over decision which was not likely to have been forestalled by U participation; ct rejected holding that 8(d) created presumption of mandatory bargaining over decision to close part of business which is rebuttable by showing duty to bargain wouldn't further harmonious relations between parties)

Talbert Manufacturing, Inc. **264 NLRB No. 138**
(E's assigning bargaining unit production work to its foremen during course of layoff of unit Ees w/o notifying contracting U held violative, since there never had been layoff at E's plant and its foremen had not previously done production work of type and to extent they did during unit layoff; assignment was contrary to E's past practice and contractual obligation with U)

The Lutheran Home of Kendallville, Indiana, A Division of Lutheran Homes, Inc. **264 NLRB No. 074**
(creation of new supervisory positions w/o bargaining with U violative where E promoted Ees out of unit but they continued to do unit work and thus affectively created loss of unit work)

Plymouth Locomotive Works, Inc. **261 NLRB No. 087**
(unilateral elimination of timekeeper's job because of computerization of timekeeping, unlawful)

Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions **259 NLRB No. 019**
(terminating operations of plant and its Ees, violative where E relocated operations w/o bargaining with U)

Emerson G. M. Diesel, Inc. **258 NLRB No. 168**
(failing to notify and bargain with U about transfer of unit work and resulting layoff of unit Ees, unlawful)

Dura-Vent Corporation **257 NLRB No. 063**
(unilaterally eliminating unit classification *working foreman,* violative)

6067-4011-4800—Cont.

Laredo Packing Company **254 NLRB No. 001**
(E's failure to bargain regarding temporary discontinuance of operations and resulting layoff of Ees, not unlawful, since U waived right to bargain regarding termination of operation by virture of management rights clause which generally reserved to E right to *abolish or change operations, determine extent to which plant will operate, layoff of Ees because of legitimate reasons, sell...terminate, discontinue, or transfer operations due to...economic factors,* and E's obligations to bargain was further limited by agreement to permanent discontinuance of operations)

Associated Grocers **253 NLRB No. 005**
(unilaterally establishing, and setting wage rate for bargaining unit's new cashier position and offering to bargain after change effected, violative)

Island Typographers, Inc. **252 NLRB No. 003**
(E's unilateral action of terminating hot-type method of production and laying off its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

Miami Foundry Corporation **252 NLRB No. 002**
(single integrated enterprise resulting from acquisition of stock liable for new owner's unilaterally abolishing jobs and terminating unit Ees)

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral elimination of jobs, unlawful)

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral elimination of one department's third shift)

The Union Savings and Trust Company v. N.L.R.B. **643 F.2d 1249 (C.A. 6, 1981)**
(E's post-election unilateral change in schedule of three Ees and cessation of acceptance of new customer accounts resulting in elimination of two jobs after U won election, unlawful)

Blue Grass Provision Co., Inc. v. N.L.R.B. **636 F.2d 1127 (C.A. 6, 1980).**
(E's unilaterally subcontracting its delivery operations and laying off Ees performing this work, unlawful, where U was not on notice E contemplated subcontracting and absent impasse, where U never understood E meant to subcontract operations upon expiration of contract and meetings between parties were preliminary sparring matches)

6067-4011-5800 Reduction of employee complement

Anaconda Ericsson Inc. **JD-720-80**
(E's failure to notify or consult with U concerning layoffs of some unit Ees due to its unintentional neglect, held violative notwithstanding E did consult with U as to subsequent layoffs of unit Ees)

6067-4011-5900 Termination of operations

First National Maintenance Corp. v. N.L.R.B. **452 U.S. 666 (U.S. SCT, June 1981)**
(E's failure to bargain regarding its decision to cancel contract for cleaning and maintenance at third party, lawful; difficulty of E determining situation was of such economic necessity that would obviate duty to bargain, and on balance necessity for E to freely make economic decision outweighed benefit gained by bargaining over decision which was not likely to have been forestalled by U participation; ct rejected holding that 8(d) created presumption of mandatory bargaining over decision to close part of business which is rebuttable by showing duty to bargain wouldn't further harmonious relations between parties)

Hillcrest Furniture Manufacturing Co., Inc. **253 NLRB No. 089**

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral termination of manufacturing at organized plant and subcontracting of said operations to nonU plant and outside subcontractors w/o good faith bargaining, unlawful notwithstanding U's having sufficient advance notice of E's intention, in view of E's discriminatory motives of retaliation for Ees' support of U bargaining position and erosion of U)

U.S. Pipe & Foundry Company and Winfrey Enterprises, Inc. **247 NLRB No. 013**
(no violation where one joint E by previously giving notice to U of cancellation of contract which affected employment of Ees fulfilled duty of other joint E to notify U of same)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E held to have had duty to bargain over decision to close one of its two plants, where bargaining would have vindicated U's interest, it would not have hampered E's decision to close in any way, and customer withdrawals of orders did not excuse failure to involve U in decision to close plant)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E violated duty to bargain where E presented U with fait accompli and prevented U from participation in closing because of delay in informing U of decision to do so, and E would not give U a time table or ask for suggestions)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(proper moment of time at which E's motive is assessed is at time alleged ULP with respect to closing of plant is committed; effect of person's action normally is measured by looking at circumstances surrounding action at time it occurred, which includes careful scrutiny of manner in which E implements its decision to close)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(SCt's emphasis on purpose and effect means inquiry may not stop with basis for valid economic decision to close plant but must also consider manner of its implementation which may constitute ULP, and valid economic decision may not shield E where it has additional motive, as shown by timing, of chilling unionism)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E's implementation and closing of one of its two plants, unlawful, where it was partial closing timed to chill unionism in remaining plant; E's purpose was to affect U election at remaining plant and E knew reasonably probable effect of the closing; and E precipitated customer withdrawal of orders and hastened the closing sooner than was economically justified, and it may not now profit from its own conduct by claiming withdrawals required a fast closing)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**
(failure to bargain over plant closing not violative where plant was closed for legitimate economic reasons and not in violation of Sec. 8(a)(3))

6067-4011-6200 Layoffs and discharges

Gulf States **261 NLRB No. 110**
(E's failing to bargain over decision to lay Ees off during period when objections to decertification election were pending and final determination had not yet been made, violative; results of election were ultimately certified in favor of U)

6067-4011-6600 Introduction of automated methods

Island Typographers, Inc. **252 NLRB No. 003**
(where E, more than 6 months prior to charge being filed, unilaterally and openly introduced cold type process operated by non-U Ees without U's timely objection, no violation and E's action effectively changed terms of unsigned contract so as to exclude cold-type work from jurisdiction of U)

6067-4011-6900 Change in manner of operation

Dubois Transfer Company **259 NLRB No. 116**
(E's cancelling of lease agreement with its owner-operators not violative where such cancelling was not unilateral change but was contemplated by contract and E's motives were purely economic)

L. E. Davis, d/b/a Holiday Inn of Benton v. N.L.R.B. **617 F.2d 1264 (C.A. 7, 1980)**
(failure of innkeeper operating motel and restaurant to bargain over conversion of restaurant to cafeteria, unlawful where situation was not so immediate and severe that bargaining would have been fruitless, there was no showing that bargaining would have substantially impaired efforts to negotiate with third party, and E made no substantial capital expenditures)

6067-4011-7700 Relocation of operations

Lion Uniform, Janesville Apparel Division **259 NLRB No. 143**
(E's announcement of tentative decision not to move relocated operation back to facility from which it was temporarily removed because of Ees' strike, not unlawful, where E did in fact offer to negotiate with U about its decision and amply demonstrated that its decision was based upon valid business reasons; contention that announcement presented U with a *fait accompli*, rejected, since announcement was made during strike when E had no reason to believe Ees would have returned to work regardless of whether work was available)

Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions **259 NLRB No. 069**
(terminating operations of plant and its Ees, violative where E relocated operations w/o bargaining with U)

Glengarry Contracting Industries, Inc. **258 NLRB No. 135**
(unilateral transfer of operations and equipment with resulting layoffs or transfer of Ees who had previously operated that equipment, unlawful)

Whitehall Packing Company, Inc. and W.P.C., Ltd. **257 NLRB No. 043**
(E violated Act when it failed to bargain with U over its decision to transfer unit work to another plant and also over the effects of that decision; however, E was not required to bargain over its decision to completely shutdown operations of second plant as this was economically motivated and not mandatory subject of bargaining, but its refusal to discuss impact of closing on former Ees is also violative)

6067-4011-7700—Cont.

Otis Elevator Company, A Wholly Owned Subsidiary of United Technologies **269 NLRB No. 005**
(E's refusal to bargain over decision to relocate portion of operation, unlawful, since bargaining over transfer of Ees involved herein would not significantly abridge its prerogative to carry on its business; capital investment of $2 or $3 million in proposed new facility is not type of shift of assets considered outside scope of mandatory subjects of bargaining, and did not signal change in direction of E's activities or in character of its enterprise; and E has not undergone basic capital reorganization, terminated any activities, or liquidated any holdings in achieving its objectives)

Armour Oil Company **253 NLRB No. 148**

National Car Rental System, Inc. **252 NLRB No. 027**
(E's refusal to notify U representing contract unit of E's garagemen and mechanics of its decision to sell bulk of its accounts and sublease truck rental facility and transfer remainder of accounts to new location not violative, since sale was decision *essentially financial and managerial in nature* involving *significant investment or withdrawal of capital affecting scope and ultimate direction of enterprise*; it was speculative that relocation of operations would have had any adverse impact on Ees because of time period between proposal and actual commencement or relocated operations)

Vico Steel Supply Corp. **JD-103-80**

6067-4022 Failure to bargain over effect on unit of economically motivated operational decisions

6067-4022-0100 Generally

Kamer Corporation **260 NLRB No. 077**
(although E's unilateral institution of layoffs not violative, because of past practice, its refusal to bargain over timing, manner in which it was to be implemented and selection of Ees to exempted from it was violative)

Armour Oil Company **253 NLRB No. 148**
(unilaterally replacing trucks driven by drivers at closed terminal with different trucks that were harder to drive and more uncomfortable w/o affording U advance notice and opportunity to bargain with respect to decision held violative)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(regardless of whether E is obligated to bargain about such *major* decisions as going out of business or closing one of several plants, it must bargain about *effects or impact* of those decisions, such as severance pay or transfer to other company jobs or locations)

L. E. Davis, d/b/a Holiday Inn of Benton v. N.L.R.B. **617 F.2d 1264 (C.A. 7, 1980)**
(conversion of restaurant to cafeteria held mandatory bargaining subject where decision resulted in some Ees being terminated, was related to labor costs, and did not result in major capital investment or alteration of underlying nature of E's business)

6067-4022-0133 Nondestructive effect on unit

Olinkraft, Inc. v. N.L.R.B. **666 F.2d 302 (C.A. 5, Jan. 1982)**
(where there is no demonstrable adverse impact on Ees in unit, E's unilateral subcontracting of unit work cannot result in *per se* violation)

6067-4022-0167 Destructive effect on unit

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division **257 NLRB No. 152**
(alleged failure and refusal of E to bargain with certified U over E's decision to cease operating its janitorial division and lay off all janitorial Ees held not violative where E was advised by its counsel of necessity of bargaining concerning cancelling custodial contract and its effect on janitorial Ees and where U abruptly ended negotiating meeting with comment that *there was nothing left to discuss*; U did not avail itself of opportunity to discuss E's decision after E had requested response from U)

Marco Industries, Inc.; and All Southern Fabricators, A Division of Marco Industries, Inc. **265 NLRB No. 021**
(E's failure to bargain with U representative at older plant over allocation of work to newly opened plant became violative at time that reasonable prudent business man would have recognized that there might well be adverse impact on bargaining unit at older plant)

South Carolina Education Association **JD-(ATL)-6-82**
(E violated Act when it failed to bargain with U concerning its transfer of 4 unit Ees out of unit by making them supervisors as this resulted in 25% reduction in size of unit, a substantial impact)

6067-4022-1300 Subcontracting unit work

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **264 NLRB No. 178**
(refusal to bargain over effects of discontinuance of its shrimp processing operation and subcontracting of processing with result that twelve Ees were terminated, unlawful)

Whitehead Brothers Company **263 NLRB No. 123**
(E's decision to subcontract its delivery operation is mandatory subject of bargaining and its refusal to both bargain over its decision to subcontract and also effects of that decision on unit violative)

American Air Filter Company, Inc. **258 NLRB No. 010**
(lessee E's terminating contract with lessor E to provide unit Ees' services, thereby displacing unit Ees, w/o bargaining over decision or its effects, unlawful)

Louisiana-Pacific Corporation **256 NLRB No. 133**
(E not obligated to bargain with U concerning undecking of logs at its mill and piling them preparatory to logs being loaded by subcontractor's Ees, since, subcontracting of work was consistent with E's past practice; work was only occasionally done by E's Ees; no bargaining history that E's Ees and subcontractor's Ees worked as composite crew; subcontracting was economically justified; and U, in past, had unsuccessfully sought contract language limiting established subcontracting)

Central Virginia Electric Cooperative **254 NLRB No. 046**
(E's not bargaining about subcontracting with *open and fair mind*, violative, where E made reference to possibility of subcontracting at meeting with U in that it only recognized its obligation to bargain *regarding the impact on Ees* resulting from E's decision)

Olinkraft, Inc. **252 NLRB No. 180**

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. **248 NLRB No. 089**
(violation where E, engaged in manufacture and sale of foam products, announced its unequivocal and final decision to go out of trucking business and then contracted out that part of its business and made no effort to prove that the decision was economically motivated, no effort to accommodate drivers in finding other employment and no response to U's bargaining request)

Arizona Public Service Company **247 NLRB No. 034**
(E's refusal to bargain over clause to replace subcontracting restrictions in contract after restrictions had been declared invalid under 8(e), unlawful, notwithstanding alleged *zipper* and *management rights* clauses relied on by E, where E was obliged to meet and negotiate on U's proposals after U made timely request to negotiate concerning subcontracting, but E refused to entertain any proposals calculated to restrict subcontracting of unit work)

Rainbo Baking Company **JD-(SF)-117-82**
(unilaterally changing route to distributorship, unlawful)

Monark Boat Company **JD-(ATL)-80-81**
(E's unilateral subcontracting of unit work, not unlawful, where subcontract was motivated by economic reasons, did not vary substantially from established past practice, and did not result in avoiding U contract; no significant detriment resulted to unit Ees; and although E did not afford U opportunity to bargain about changing existing bargaining practices, E's overall bargaining obligation is pending before Bd on test of certification, and if Bd rules that bargaining obligation exists, E presumably will bargain on all mandatory issues including change in subcontracting practices)

Equitable Gas Company v. N.L.R.B. **637 F.2d 980 (C.A. 3, 1981)**
(unilateral subcontracting of unit work of three remittance clerks in E's treasury department, not unlawful, where subcontract was not mandatory subject of bargaining, was motivated by proven economic considerations, and had no adverse impact on the three clerks since they were transferred to other departments obtaining equivalent or higher paying positions)

Olinkraft, Inc. v. N.L.R.B. **666 F.2d 302 (C.A. 5, Jan. 1982)**
(where there is no demonstrable adverse impact on Ees in unit, E's unilateral subcontracting of unit work cannot result in *per se* violation)

Olinkraft, Inc. v. N.L.R.B. **666 F.2d 302 (C.A. 5, Jan. 1982)**
(where U and had E had agreement to discuss E's subcontracting of unit requiring it to give U 7 days notice of such action, E violated Act where 1 subcontracting job began day of meeting; no violation as to jobs scheduled to begin 7 days after meeting)

6067-4022-1700 Change in leases of common carrier's drivers

Kaplan Trucking **264 NLRB No. 181**
(where E was held member of E association and therefore bound by terms of Master Freight Agreement and Eastern Conference Area Iron and Steel Rider, its implementation of unilateral changes in lease structure mandated by above contracts after negotiating with local U, violative. Evidence indicates E made no attempt to bargain with local Us jointly or with Teamsters National Freight Industry Negotiating Committee, official designated bargaining representative, unlike facts in *Jones Motor Co., Inc.* 260 NLRB No. 15, because here E denied that E association had authority to negotiate on its behalf and so was not bound by above contracts)

Spector Freight System, Inc., Viking Division **260 NLRB No. 014**
(common carrier operating under master freight agreement held not to have unlawfully dealt directly with Ees nor to have unilaterally executed new leases with its owner-operators with terms differing from those in master

6067-4022-1700—Cont.

agreement, where C alleged that *affiliated local Us* constituted designated bargaining representative whereas industry negotiating committee was such representative, and GC showed only that E had not reached agreement concerning leases with local's business agent; see also *Branch Motor Express Co.*, 260 NLRB No. 16)

Jones Motor Co., Inc. **260 NLRB No. 015**
(common carrier holding meetings with Ees and unilaterally implementing change in rental payments to owner-operators (Ees) for lease of tractor-trailers in contravention of terms of multi E contract (FNMA), not violative, notwithstanding E did not discuss changes with local Us that represented Ees since E did consult with Teamsters National Freight Industry Negotiating Committee who had represented locals in contract negotiations and was agent for purposes of negotiations. See *Spector Freight Systems, Inc., Viking Division*, 260 NLRB No. 14 (1982))

6067-4022-3000 Sale of operation

Fugazy Continental Corp.; Elite Services, Inc. **265 NLRB No. 165**
(in finding that E and purchaser of part of E's operations, herein found *alter ego* of E, unlawfully engaged in bad faith effort to avoid bargaining with U by means of sham purchase transaction, Bd did not consider whether E's failure to bargain with U about sham sale also violated 8(a)(5), where E did not actually close, but continued operations in its *alter ego* status)

C. Elton Johnson, d/b/a Print-Quic **261 NLRB No. 109**
(where E announced to U his intention to sell business and U failed to ask for further details concerning impact on Ees, it vowed its right to bargain with E)

C. Elton Johnson, d/b/a Print-Quic **262 NLRB No. 109**
(where E announced to U his intention to sell business and U failed to ask for further details concerning impact on Ees, it waived its right to bargain with E)

Climate Control Corporation **257 NLRB No. 019**
(E's failure to timely notify U of its intent to close business and bargain regarding effects of closing, unlawful, where letter informing U of closing was sent only after closing fait accompli, notwithstanding negotiations for sale of E's inventory, trucks, and office equipment had been in progress for month or more; E prior threats during bargaining to close not definite notice)

National Car Rental System, Inc. **252 NLRB No. 027**
(refusal to bargain with U over effect on unit Ees of lawful sale of substantial portion of truck rental facility and relocation of remainder held violative, since combined effect of E's decisions was to have pronounced impact on represented Ees of E at sold facility as entire unit was being terminated)

Leland Detroit Mfg. Co. **JD-459-82**
(refusal to bargain over effects of sale of business, unlawful)

6067-4022-4200 Spinoff or transfer of operations

Milwaukee Spring Division of Illinois Coil Spring Company **265 NLRB No. 028**
(E's decision to relocate work from U to non-U plant, to layoff Ees as consequence during term of agreement solely because of higher labor costs, absent U's consent, is midterm repudiation of agreement in violation of Sec. 8(d), Sec. 8(a)(1), (3), (5); moreover, U did not waive right to bargain notwithstanding managements rights clause; such clause reserves for E right to decide whether and how products will be manufactured; it does not grant E right to transfer its operation. Thus, absent explicit language, U has not waived its right to object to E's decision)

N.L.R.B. v. Borg Warner Corporation; et al. **660 F.2d 324 (C.A. 6, Oct. 1981)**
(E's notice to U of intention to transfer operations from one subsidiary to another only two days prior to actual transfer, violative, where notice was untimely making good faith bargaining impossible)

N.L.R.B. v. Borg Warner Corporation; et al. **663 F.2d 666 (C.A. 6, Oct. 1981)**
(E's notice to U of intention to transfer operations from one subsidiary to another only two days prior to actual transfer, violative, where notice was untimely making good faith bargaining impossible)

6067-4022-4400 Partial termination of operation

First National Maintenance Corp. v. N.L.R.B. **452 U.S. 666 (U.S. SCT, June 1981)**
(E's failure to bargain regarding effects of its decision to cancel contract for cleaning and maintenance at third party, unlawful; however, E not obligated to bargain regarding decision to cancel contract)

Monongahela Steel Company and Youngstown Steel Corporation **265 NLRB No. 031**
(E's failing to meet and negotiate with U about one of its plants after initial negotiating session, and unilaterally closing plant w/o notifying or consulting with U about decision or its effects, unlawful where decision was discriminatorily rather than economically motivated as shown by evidence that cures for the plant's problems were at hand, E's anti-U statements, its secrecy about the closing and fostering impression that plant would be reopening)

Penntech Papers, Inc.; etc. **263 NLRB No. [illegible]**
(violation, where E failed to bargain with U regarding effect of closing of one its plants for economic reasons, notwithstanding U never requested bargaining, since at time bargaining would have been most productive, U was in fact mislead by E's statements as to whether closing would be permanent and E then closed plant w/o bargaining regarding effect of closing where no emergency situation justified such action)

Chippewa Motor Freight, Inc. and Action Carrier, Inc. **261 NLRB No. [illegible]**
(E has obligation to bargain with U over effects of its decision to close part of its operation and here where it notified U of its decision and then met with it 3 times and spoke with business agent many times it fulfilled its bargaining obligation)

Technicolor Graphic Services, Inc., South Dakota Operations **253 NLRB No. 075**
(failure to notify and bargain with U about effects of discontinuation of quality control group and reassignment of group members, unlawful)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. **248 NLRB No. [illegible]**
(violation where E, engaged in manufacture and sale of foam products, announced its unequivocal and final decision to go out of tracking business and then contracted out that part of its business and made no effort to prove that the decision was economically motivated, no effort to accommodate drivers in finding other employment and no response to U's bargaining request)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**
(failure to bargain over effects of partial plant closure, violative)

Souls Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(no unlawful failure to bargain by E regarding effect of economically based decision to close facility and have crews report directly to job sites from their homes where members of bargaining unit were on strike and in view of fact no bad faith on part of E where it offered to discuss effects on unit and bargaining did occur)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E failed to bargain in good faith over effect of closing of one of its two plants where E told U E's proposal on severance pay was not bargainable, U understood E's proposal that it had bargained in good faith to be attempt to force U to abandon its ULP charges, and E's contentions are not responsive to scope of ct's review since determination of credibility issues raised by E are for Bd)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(E's implementation and closing of one of its two plants, unlawful, where it was partial closing timed to chill unionism in remaining plant; E's purpose was to affect U election at remaining plant and E knew reasonably probable effect of the closing; and E precipitated customer withdrawal of orders and hastened the closing sooner than was economically justified, and it may not now profit from its own conduct by claiming withdrawals required a fast closing)

Universal Security Instruments, Inc. v. N.L.R.B. **649 F.2d 247 (C.A. 4, May 1981)**
(ct held Bd finding that E did not bargain in good faith over effects of partial closing supported by substantial evidence where meetings between E and U were insufficient to satisfy E's duty to bargain since meetings came too late for effective bargaining to take place in light of E's unilateral offer to Ees of transferring to other plants)

6067-4022-4800 Transfer of work

Whitehall Packing Company, Inc. and W.P.C., Ltd. **257 NLRB No. 048**
(E violated Act when it failed to bargain with U over its decision to transfer unit work to another plant and also over the effects of that decision; however, E was not required to bargain over its decision to completely shutdown operations of second plant as this was economically motivated and not mandatory subject of bargaining, but its refusal to discuss impact of closing on former Ees is also violative)

Morco Industries, Inc.; and All Southern Fabricators, A Division of Morco Industries, Inc. **255 NLRB No. 021**
(E's failure to bargain with U representative at older plant over allocation of work to newly opened plant became violative at time that reasonable prudent business man would have recognized that there might well be adverse impact on bargaining unit at older plant)

Armour Oil Company **253 NLRB No. 148**
(E's unilateral decision to transfer terminal area work at one of its terminals to another of its terminals constituted mandatory subject of bargaining notwithstanding that transfer did not reduce total amount of work performed by unit Ees'; transfer constituted material, substantial and significant change

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in unit Ees terms and conditions of employment involving Ees' seniority and commuting time)

N.L.R.B. v. International Harvester Company **618 F.2d 85 (C.A. 9, 1980)**

(E had duty to bargain about *effects* of management decision to alter its marketing structure since conditions of employment of the fleet account executive and remaining members of bargaining unit will be affected concerning such conditions as wages, pension benefits and seniority)

6067-4022-5800 Termination of operations

First National Maintenance Corp. v. N.L.R.B. **452 U.S. 666 (U.S. SCT, June 1981)**

(E's failure to bargain regarding effects of its decision to cancel contract for cleaning and maintenance at third party, unlawful; however, E not obligated to bargain regarding decision to cancel contract)

Armitage Lamp Company **260 NLRB No. 128**

(failure to bargain over effects of closing facility on Ees, violative)

Nathan Yorke, Trustee in Bankruptcy, Successor in Bankruptcy, or alter ego To The Seeburg Corporation and Seeburg Service Parts Co., a single employer **259 NLRB 105**

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division **257 NLRB No. 152**

(alleged failure and refusal of E to bargain with certified U over E's decision to cease operating its janitorial division and lay off all janitorial Ees held not violative where E was advised by its counsel of necessity of bargaining concerning cancelling custodial contract and its effect on janitorial Ees and where U abruptly ended negotiating meeting with comment that *there was nothing left to discuss*; U did not avail itself of opportunity to discuss E's decision after E had requested response from U)

Climate Control Corporation **257 NLRB No. 019**

(E's failure to timely notify U of its intent to close business and bargain regarding effects of closing, unlawful, where letter informing U of closing was sent only after closing fait accompli, notwithstanding negotiations for sale of E's inventory, trucks, and office equipment had been in progress for month or more; E prior threats during bargaining to close not definite notice)

Whitehall Packing Company, Inc. and W.P.C., Ltd. **257 NLRB No. 043**

(E violated Act when it failed to bargain with U over its decision to transfer unit work to another plant and also over the effects of that decision; however, E was not required to bargain over its decision to completely shutdown operations of second plant as this was economically motivated and not mandatory subject of bargaining, but its refusal to discuss impact of closing on former Ees is also violative)

H.S. Gravure of Leominster, Inc. **257 NLRB No. 007**

Bergmeyer Bros., Inc. **254 NLRB No. 126**

(refusal to bargain with U concerning effects of decision to close entire operations on unit Ees, violative, notwithstanding E's assertion that it was unable to bargain over effects of its closing because it was bankrupt; Bd has consistently held that fact that E becomes debtor-in-possession under Bankruptcy Act does not relieve E of obligation to bargain over impact of its decision to close on Ees)

Ferro Mechanical Corp. **249 NLRB No. 083**

ABC Trans-National Transport, Inc. **247 NLRB No. 025**

(where E made economically based decision to cease operations and did not notify U until decision made, it violated Act because U was denied opportunity to bargain during critical time where such bargaining could have been productive)

American Boiler & Tank Co. **JD-420-80**

N.L.R.B. v. National Car Rental System, Inc. **672 F.2d 1182 (C.A. 3, Feb. 1982)**

(while E's failure to bargain over decision to close its facility, assertedly because of economic reasons, and terminate U members and decision to open a new non-U facility was not unlawful, E's failure to bargain over effects of those 2 decisions, unlawful, where there was substantial evidence of U animus; Bd properly found there was no waiver of U's right to bargain about effects of relocation; and while there was evidence supporting conclusion that E did not foreclose *effects* bargaining, substantial evidence supports Bd's finding of violation)

N.L.R.B. v. National Car Rental System, Inc. **672 F.2d 1182 (C.A. 3, Feb. 1982)**

(E's failure to bargain over effects of its decision to close its facility, assertedly because of economic reasons, and to terminate U members, and its decision to open new non-U facility, unlawful, where U did not waive its right to bargain about effects of relocation, since U's prior knowledge of E's relocation decision based on plant gossip, conjecture and rumor was not legally sufficient notice; and U official's failure to request bargaining was due to E's announcement of decision as *fait accompli*, indicating that request to bargain would be futile)

N.L.R.B. v. National Car Rental System, Inc. **672 F.2d 1182 (C.A. 3, Feb. 1982)**

(E's announcement of termination of U members upon closing its facility in order to open new non-U facility, unlawful, since U must be given significant opportunity to bargain about matters of job security as part of *effects* bargaining, mandated by 8(a)(5), which must be conducted in meaningful manner and at meaningful time; and evidence amply supports Bd's conclusion that, when E informed U official of relocation decision, E had already decided not to bargain about whether Ees could be transferred to new facility)

6067-4022-6200 Discharge

6067-4022-6300 Layoffs or discharges

First National Maintenance Corp. v. N.L.R.B. **452 U.S. 666 (U.S. SCT, June 1981)**

(E's failure to bargain regarding effects of its decision to cancel contract for cleaning and maintenance at third party, unlawful; however, E not obligated to bargain regarding decision to cancel contract)

Milwaukee Spring Division of Illinois Coil Spring Company **265 NLRB No. 028**

(E's decision to relocate work from U to non-U plant, to layoff Ees as consequence during term of agreement solely because of higher labor costs, absent U's consent, is midterm repudiation of agreement in violation of Sec. 8(d), Sec. 8(a)(1), (3), (5); moreover, U did not waive right to bargain notwithstanding managements rights clause; such clause reserves for E right to decide whether and how products will be manufactured; it does not grant E right to transfer its operation. Thus, absent explicit language, U has not waived its right to object to E's decision)

Hadison Manufacturing Co. **260 NLRB No. 137**

N.L.R.B. v. Carbonex Coal Company **679 F.2d 200 (C.A. 10, May 1982)**

(E's power to alter working conditions (layoffs) not contingent upon U agreement, but E has duty to notify U before effecting changes so as to give U meaningful chance to offer counter-proposals and counter-arguments)

6067-4022-6600 Introduction of automated methods

N.L.R.B. v. International Longshoreman's Assn., AFL-CIO, et al. **447 US 490 (U.S. SCt, June 1980)**

(*work of stuffing* and *stripping* containers used in shipping goods at waterfront facilities must focus on bargaining unit Ees' work, not on work of other Ees who may be doing same or similar work, and (Bd) must examine relationship between work as it existed before innovation (*the container revolution*) and as agreement proposes to preserve it)

6067-4022-7700 Relocation of operations

Otis Elevator Company, A Wholly Owned Subsidiary of United Technologies **255 NLRB No. 006**

(E's refusal to bargain over transfer of unit work to another location, unlawful, where effects were so inextricably interwoven with decision that bargaining was not meaningful since carried on w/i framework of decision which could not be revised, and E engaged in *take it or leave it* bargaining as evidenced by refusal to provide U with bargaining information, by dealing directly with Ees, refusing to commit itself to timetable of anticipated unit changes, rejecting outright U's demands, and stating it had hoped U request had been more closely aligned with E's wishes)

National Car Rental System, Inc. **252 NLRB No. 027**

(refusal to bargain with U over effect on unit Ees of lawful sale of substantial portion of truck rental facility and relocation of remainder held violative, since combined effect of E's decisions was to have pronounced impact on represented Ees of E at sold facility as entire unit was being terminated)

Vitco Steel Supply Corp. **JD-183-80**

N.L.R.B. v. National Car Rental System, Inc. **672 F.2d 1182 (C.A. 3, Feb. 1982)**

(while E's failure to bargain over decision to close its facility, assertedly because of economic reasons, and terminate U members and decision to open a new non-U facility was not unlawful, E's failure to bargain over effects of those 2 decisions, unlawful, where there was substantial evidence of U animus; Bd properly found there was no waiver of U's right to bargain about effects of relocation; and while there was evidence supporting conclusion that E did not foreclose *effects* bargaining, substantial evidence supports Bd's finding of violation)

N.L.R.B. v. National Car Rental System, Inc. **672 F.2d 1182 (C.A. 3, Feb. 1982)**

• (E's failure to bargain over effects of its decision to close its facility, assertedly because of economic reasons, and to terminate U members, and its decision to open new non-U facility, unlawful, where U did not waive its right to bargain about effects of relocation, since U's prior knowledge of E's relocation decision based on plant gossip, conjecture and rumor was not legally sufficient notice; and U official's failure to request bargaining was due to E's announcement of decision as *fait accompli*, indicating that request to bargain would be futile)

6067-4022-7700—Cont.

N.L.R.B. v. National Car Rental System, Inc. 672 F.2d 1182 (C.A. 8, Feb. 1982)
(E's announcement of termination of U members upon closing its facility in order to open new non-U facility, unlawful, since U must be given significant opportunity to bargain about matters of job security as part of *effects* bargaining, mandated by 8(a)(5), which must be conducted in meaningful manner and at meaningful time; and evidence amply supports Bd's conclusion that, when E informed U official of relocation decision, E had already decided not to bargain about whether Ees could be transferred to new facility)

6067-4033 Unilateral change in remuneration or benefits (See also 530-6050-1600)

Colson Equipment, Inc. 257 NLRB No. 015
(unilateral increase in benefits, unlawful)

Madison Manufacturing Company 249 NLRB No. 096
(unilaterally promising Ees advancement and other benefits and improvements in order to discourage their U activities, unlawful)

Clear Pine Mouldings, Inc. v. N.L.R.B. 632 F.2d 721 (C.A. 9, 1980)
(unilateral implementation of health plan change violative)

6067-4033-1200 Uniforms, etc.

P. A. Incorporated 259 NLRB No. 111
(E's alleged unilateral discontinuance of its prior practice of issuing work gloves to Ees, not violative where E's conduct did not amount to *material, substantial* or *significant* unilateral change in working conditions; on contrary it was simple mistake with minimal effect on only few Ees for brief period of time, rectified immediately upon being brought to plant manager's attention)

Standard Homes, Inc. 249 NLRB No. 146
(violation where E refused to pay Ees returning from layoff status the safety shoe allowance to be paid *regular employees* under the contract, since parties' past practice had shown that *regular employees* included Ees on layoff and that on recall to work they were entitled to receive said allowance)

6067-4033-1500 Use of company vehicles

Owen Lee Floor Service, Inc. 250 NLRB No. 070
(E unilaterally informing Ees for whom bargaining agreement established hourly wage rate that they could either work as subcontractors on piece rate basis or quit and that each crew would be responsible for providing its own truck which E had previously provided)

California Pacific National JD-(SF)-260-81
(where E posted new rules concerning Ees taking home company vehicles (mandatory subject of bargaining) on bulletin board and U failed to protest change, it waived its right to do so and E's failure to negotiate not violative)

6067-4033-2500 Wages0329

Hadley Fruit Orchards, Inc. JD-(SF)-121119(unilaterally instituting wage increase when no impasse existed, unlawful)

Robert E. Johnson and Geneva H. Johnson, a Partnership, d/b/a Jolie Bois Company 265 NLRB No. 141
(failure to adhere to basic wage and overtime rates in contract constituted unilateral change)

Saunders House a/k/a The Old Man's Home of Philadelphia 265 NLRB No. 207
(E implementing its wage increase offer w/o further negotiations, unlawful, notwithstanding E's contention justified by impasse, since serious issues concerning wages remained open, in view of fact negotiations on wages had been in progress for only a little over 7 weeks as compared to 7 months of other negotiations, and that U did not believe negotiations at impasse but rather had made significant concessions which would reasonably suggest further concessions; further, bargaining history does not favor impasse inasmuch as parties negotiating initial agreement)

Elias Mallouk Realty Corp. 265 NLRB No. 156
(E unilaterally granting wage increases after expiration of contract, unlawful, absent impasse and objective considerations to rebut U's presumption of continuing majority status, and in view of E's ULPs including bargaining in bad faith, criticisms to Ees concerning U with which it had had contract, and suggesting to Ees that they choose new bargaining agent)

A & T Manufacturing Company 265 NLRB No. 201
(E's unilaterally implementing changes in Ee's pay not unlawful, since Ee had lawfully withdrawn recognition from U in view of U's conflict of interest resulting from its representation of Ees of another E and thus had no obligation to consult with U)

[illegible] Beverage Corporation 265 NLRB No. 035
(E violated Act when it granted unilateral wage increases, created new driver sales routes, altered existing routes, and abolished helper position for 4 of its 5 package sales delivery routes after expiration of contract covering unit which was subject of decertification pet, because E engaged in other unlawful conduct prior to filing pet. See *Autoprod, Inc.* 223 NLRB 773 (1976))

Schnadig Corporation 265 NLRB No. 0[illegible]
(E unilaterally changing classifications and wage scale, unlawful)

Gayston Corporation 265 NLRB No. 0[illegible]
(unilateral midterm modification with general pay raise, unlawful)

Perryville Coal Company 264 NLRB No. 046
(Ee's unilaterally notifying owners and drivers of leased trucks of change in method of payment from paying both drivers and owners to paying owners only where drivers were found Ees rather than independent contractors, unlawful)

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation 264 NLRB No. 093
(unilaterally increasing health and life insurance benefits and wages for unit Ees, violative)

Rochester Institute of Technology 264 NLRB No. 135
(instituting wage level adjustment during negotiations with U, not unlawful where, although U had notice of proposed change in terms and conditions of employment, it admittedly did not request bargaining over issue, and in thus failing to exercise its right to demand bargaining, U cannot now claim that E unlawfully refused to bargain)

Taft Broadcasting Company, WBRC–TV 264 NLRB No. 038
(unilaterally granting all bargaining unit Ees retroactive pay raise)

Artim Transportation System, Inc. 264 NLRB No. 028
(violation, where E failed to rebut GC's *prima facie* showing that E violated Sec. 8(a)(5) by unilaterally implementing changes in wage rate structure covered by multi-E association contract in circumstances which showed that E implemented changes w/o consulting in any manner with U and E did not effectively withdraw authority from multi-E association to bargain on its behalf with U negotiating committee)

Remodeling By Oltmanns, Inc. 263 NLRB No. 109
(violation, where contractor unilaterally reduced wages of newly hired Ees, increased wages of incumbent Ees, and instituted new insurance and vacation plans, since contractor had obligation to bargain with U after expiration of agreement with U to continue to maintain existing working conditions established by most recent contract between U and contractors' association of which it was not member, U had obtained majority in unit of contractor's Ees after having been recognized under Section 8(f) agreement, contractor had never disavowed bargaining relationship and continued to adhere to contractual terms of employment)

Diplomat Envelope Corporation 263 NLRB No. 075
(failing to grant wage increase due under new contract, violative)

Carbonex Coal Company 262 NLRB No. 159
(unilateral grant of wage increase violative and fact that Ees had not had wage increase for more than one year is not compelling business justification)

Plymouth Locomotive Works, Inc. 261 NLRB No. 007
(unilaterally granting merit increases and 25-cent-per-hour wage increase, unlawful)

United States Postal Service 261 NLRB No. 068
(E's not informing certified U of E's decision not to pay, and not paying, certain wage increases to bargaining unit Ees while granting random wage increases to its unorganized Ees held not violative, since, once U was certified, bargaining unit Ees could not expect to receive all random wage increases while U was bargaining with E over new contract; absent evidence of animus or of contemporaneous unlawful conduct, E had no duty to notify U of wage increases to nonbargaining unit Ees, or to bargain with U about, or grant, wage increases to unit Ees)

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant 261 NLRB No. 051
(granting of wage increases to cooks by E who operated restaurant with intent to discourage cooks' adherence to U after U had demanded recognition, unlawful)

Harry Sann, Jr. and Winton R. Wagner, Partners d/b/a Briarcliff Pavilion For Specialized Care 260 NLRB No. 184
(no violation by increasing wages pursuant to last offer in view of impasse resulting from U's bad faith in failing to provide another negotiator to meet with E after U president engaged in physical altercation with E's negotiators and negotiations had to be carried out with mediator and with parties in separate rooms; U claimed that mediator did not relay E's message that E needed to hire strike replacements and then wages would be increased)

Hanes Corporation 260 NLRB No. 077
(E violated Act by refusing to bargain with U concerning specific discretionary aspects of wage increase, rules respecting wearing of respirators, and of an economic layoff; unilateral institution of these changes were not violative however, E had duty to bargain over effect of changes)

Bedford Farmers Cooperative 259 NLRB No. 165

Twin County Trucking, Inc. 259 NLRB No. 070
(unilateral wage increase, unlawful)

6067-4033-2500—Cont.

Marriott In-Flite Services, A Division of Marriott Corporation **259 NLRB No. 017**
(violation, where E granted unit Ees 11-percent wage increase and additional holiday w/o notice to U and w/o having afforded U opportunity to negotiate and bargain with E concerning such changes)

Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions **259 NLRB No. 019**
(unilaterally changing wages and working conditions, violative where E instituted changes at new location while contract was still in effect with U which had represented same unit Ees at old location)

Gehnrich & Gehnrich, Inc. **258 NLRB No. 075**
(E cannot be found to have violated 8(a)(5) by unilaterally implementing wage increases exceeding E's preimpasse offers to U, where matter was not fully and fairly litigated since neither original nor amended complaint alleged such violation and GC raised issue for first time in post-hearing brief to ALJ)

Newtown Corporation **258 NLRB No. 080**
(unilaterally granting wage increase, violative)

SAS Ambulance Service, Inc., d/b/a Florida Ambulance Service; et al. **258 NLRB No. 065**
(unilaterally granting Ees wage increase, violative)

Carmichael Construction Company **258 NLRB No. 032**
(unilaterally granting Ees increases in wage rates, violative)

Meros, Inc. d/b/a Towne Plaza Hotel **258 NLRB No. 016**
(unilateral pay raise not violative where U never demanded bargaining over unilateral pay raise itself while engaging in bargaining over issue of wages; in such circumstances, U must be held to have waived its right to bargain over pay raise)

Research Products/Blankenship Company **258 NLRB No. 003**
(unilateral grant of wage increase just 11 days before bargaining was to commence, violative where wage increase was calculated to undermine U and to diminish U's status as collective-bargaining representative in eyes of Ees)

Empire Pacific Industries, Inc. **257 NLRB No. 180**
(according to case law, E who has granted benefit which is mandatory subject of bargaining to unrepresented Ees has duty to bargain about granting such benefit to represented Ees where benefit has not been covered by contract or clearly and unmistakably waived; E's grant herein of COL wage increase to unrepresented Ees only, not unlawful, however, since E was bargaining with U about COL wage increases for represented Ees when U voluntarily suspended negotiations)

Dura-Vent Corporation **257 NLRB No. 083**
(unilaterally granting increases in Ees' wages and benefits, violative)

Dilene Answering Service, Inc. **257 NLRB No. 024**
(violation, where E implemented wage increase after E received no specific response from U in answer to its mailgram stating E's firm intention to grant wage increase instead of discussing its proposal at regular bargaining session; here E had merely engaged in ritualistic *pro forma* bargaining which does not satisfy requirements of 8(a)(5))

Isadore Spiegel, an Individual t/a Spiegel Trucking Company; Spiegel Trucking Company, Inc.; I & L Trucking Company, Inc. **257 NLRB No. 020**
(unilaterally changing method of compensation for Ees, violative)

Colson Equipment, Inc. **257 NLRB No. 015**
(increase unlawful)

B. P. Oil, Inc. **256 NLRB No. 171**
(unilaterally increasing wages, violative)

B. P. Oil, Inc. **256 NLRB No. 171**
(unilaterally ceasing to pay shift differential, violative)

Hayden Electric, Inc. **256 NLRB No. 104**

South Shore Hospital **256 NLRB No. 001**
(unilaterally implementing its last offer for increase in wages and benefits, violative, as no impasse could exist because of E engaging in surface bargaining with intent of preventing agreement)

South Shore Hospital **256 NLRB No. 001**
(withholding from unit Ees wage and benefits increases granted to non unit Ees, violative where Bd of Trustees authorized equivalent benefits for both groups before bargaining began and E called to unit Ees' attention to advantages gained by non unit Ees while at same time persisting in making wage offer below that offered non-unit Ees)

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. **255 NLRB No. 098**
(unilateral grant of 10-cent increase to Ee, violative)

Stewart Granite Enterprises **255 NLRB No. 091**
(unilateral increase in hourly wage, violative)

Walker Die Casting, Inc. **255 NLRB No. 034**
(instituting minimum wage rates higher than offered U, violative as U did not waive its bargaining rights over minimum rates by permitting rates above contract rate during prior contract term)

Arcadia Foods, Inc. **254 NLRB No. 120**

Huck Manufacturing Company **254 NLRB No. 088**
(E which posted notice to Ees concerning proposed pay increase on day after it mailed same proposal to U, before opportunity to bargain, violated Act; finding of implementation is not necessary to finding violation)

Huck Manufacturing Company **254 NLRB No. 088**
(increasing wages of nonstriking Ees w/o communicating in advance with U)

Han-Dee Pak, Inc. **253 NLRB No. 126**
(in supplemental decision Bd found unilateral changes in job classifications and rates of pay for unit Ees after conduct of R election, but *prior* to determination of outcome of election won by U, violative, since E acted at its peril in making such changes pending resolution of objections)

Sea Bay Manor Home For Adults **253 NLRB No. 068**
(no impasse existed where parties had signed stipulation agreement setting forth method for resolving their differences; E's refusal to abide by agreement and unilateral change of wage rates of Ees violative)

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(contention that unilateral wage increase was justified by imminence of anticipated Presidential wage freeze rejected, since anticipated wage freeze was not such special circumstance that would justify remedial action under *N.L.R.B. v. Benne Katz, etc., d/b/a Williamsburg Steel Products Co., 369 U.S. 736, 743 (1962)*)

Technicolor Graphic Services, Inc., South Dakota Operations **253 NLRB No. 078**
(unilateral increase, unlawful notwithstanding E promoted individuals involved to professional status, since there was in fact no change in these individuals' duties or status as bargaining unit Ees or requirement that E bargain about increasing their wages)

Eastern Maine Medical Center **253 NLRB No. 024**
(unilaterally imposed wage and benefit increase while U still represented Ees, unlawful; implementation of its last wage proposal, in absence of legitimate impasse is unlawful, and there can be no legally cognizable impasse justifying unilateral action if cause of deadlock is failure of one of the parties to bargain in good faith, which E herein failed to do)

Allen Materials, Inc. Debtor-In-Possession **252 NLRB No. 157**
(E's failure to grant wage increase when due under contract and delay of grant for several months, not unlawful, where U acquiesced in delay)

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(unilaterally increasing wage rates of unit Ees, violative)

L.B. Priester & Son, Inc. **252 NLRB No. 034**
(hiring and employing carpenters at wages lower than that provided in collective bargaining agreement)

Westwood Import Company, Inc. **251 NLRB No. 162**
(violation, where successor E, who had hired all but two of predecessor's Ees and was obligated to bargain, unilaterally raised wages of some Ees, and cancelled all accrued seniority, sick leave and vacation rights, and reduced number of paid holidays)

Pease Company **251 NLRB No. 080**
(unilateral grant of general wage increase, unlawful, despite fact that wages were discussed several times during negotiation meetings, where no impasse existed because of E's bad-faith bargaining; even if bona fide impasse on wages existed, unilateral wage increase was not consistent with E's previously rejected offers, and therefore was unlawful)

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**
(E's withdrawal of recognition from U as representative for E's load dispatchers and lead load dispatcher, alleged to be supervisor, during mid-term contract negotiations and E's contemporaneous unilateral change in lead load dispatcher's compensation violative, since E was not privileged in instant case to alter, unilaterally scope of unit during term of contract covering unit which included load dispatchers)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(granting wage increases to selected Ees w/o notice to U where general policy of withholding wage increases because of adverse conditions was in effect, violative)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(announcing to Ees that it was implementing new wage program prior to breakdown of negotiations, violative)

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Angelus Block Co., Inc., Amari, Inc. 250 NLRB No. 127
(unilaterally instituting classification and wage rates applicable to new equipment at wage rate lower than wage rates in contract, violative, since E repudiated obligation to honor contract executed by one of entities comprising single E)

The Dow Chemical Company, Texas Division 250 NLRB No. 103
(violation where after U lost decertification election but prior to certification of results of election E unilaterally placed unit Ees on salary and fringe benefit schedule for unrepresented Ees)

Universal Security Instruments, Inc. 250 NLRB No. 092
(transfer of unit Ees to new plant and failing to bargain with U over changes in wages, health benefits and seniority violative)

Owen Lee Floor Service, Inc. 250 NLRB No. 070
(E unilaterally informing Ees for whom bargaining agreement established hourly wage rate that they could either work as subcontractors on piece rate basis or quit and that each crew would be responsible for providing its own truck which E had previously provided)

Talbert Manufacturing, Inc. 250 NLRB No. 026
(unilateral replacement of cost-of-living increases with across-the-board wage increases, unlawful)

Hedison Manufacturing Company 249 NLRB No. 096
(although granting of week's wages to Ees, 2 weeks before election, for time they were snowbound at E's plant because of great snowstorm was not violative of 8(a)(1), grant of such benefit w/o consultation with U held unlawful, since change in terms and conditions of employment, even for the better, is subject of bargaining)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. 249 NLRB No. 003
(payment to Ees at higher wage rate than rate negotiated, unlawful)

Excavation-Construction, Inc. 248 NLRB No. 081
(where upon commencement of strike E unilaterally increased Ees pay by amount it had been contributing to U funds and discontinued its contribution to funds, it violated Act, notwithstanding cost to E remained same)

P. A. Incorporated 248 NLRB No. 077
(posting of notice announcing grant of unilateral wage increases, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries 247 NLRB No. 164
(unilateral change by rehiring previously laid off Ees at higher rates, unlawful)

International Harvester Company and Muller International Trucks, Inc. 247 NLRB No. 140
(violation by unilateral grant of wage increase by new E which was bound as alter ego of old corporation bearing contract with U)

Southside Electric Cooperative, Inc. 247 NLRB No. 107
(E's unilateral recission of wage increases granted while ALJ's decision on ULP charges pending and after ct had issued injunction against unilateral actions by E, unlawful, notwithstanding E's contention withdrawal of increase resulted from U's objection and threat to refer matter to NLRB for possible contempt proceedings since U's objection was to E's failure to bargain regarding increases rather than to granting *per se*)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South 247 NLRB No. 038
(unilateral wage increase unlawful, since it came after E was obligated to bargain)

Bel-Air Bowl, Inc. 247 NLRB No. 003
(unilateral 50-cent, across-the-board raise w/o notice, unlawful)

Madison Newspapers, Inc. JD-157-82
(unilaterally creating position of reel room supervisor for journeymen pressmen and paying them additional $40 each per week, unlawful)

Hadley Fruit Orchards, Inc. JD-(SF)-121-82
(unilaterally instituting wage increase when no impasse existed, unlawful)

Potters' Medical Center, Inc. JD-608-81
(unilaterally changing wage scale and pay classification system violative notwithstanding impasse, as such changes were not those reasonably comprehended by the bargaining proposals; i.e., general wage increase granted though bargaining proposals covered merit pay increase on Ee's anniversary date)

Brueckner Sand & Gravel, Inc. JD-(SF)-312-81
(granting wage increase w/o first consulting with U and unilaterally announcing that there would be future wage increases and additional paid vacations and holiday benefits, violative)

Murphy Printing Company, Inc. JD-853-81
(unilateral promise and grant of wage increases, unlawful)

Gould, Inc. JD-480-81
(where E, pursuant to agreement with U, transferred unit Ees to U-contracting company engaged in joint venture with E, and E subsequently reemployed some of the transferred Ees, ALJ held E's unilateral change in reemployed Ees' wages was unlawful, since U had not waived its right to represent such Ees either under transfer agreement or by U's conduct, and Ees remained w/i scope of bargaining unit)

National King Coal, Inc. JD-(SF)-24-81
(E did not violate Act where it raised wages and instituted paid vacations after notifying U of its intention to do so, where U responded by mailgram that it had no objections to E's actions)

Sunnyland Foods, Inc. JD-(ATL)-36-80
(E's unilateral establishment of new wage rate for all Ees on rotating shifts violative)

Industrial Uniform and Towel Service, Inc. JD-(NY)-43-80
(grant of increase in minimum wage rates, violative)

Tri-State Warehouse & Distributing, Inc. and Public Warehousing Corp. JD-241-80
(refusal to pay wage increase)

Raines Lincoln-Mercury, Inc. JD-224-80
(unilateral grant and then recission of wage increases, unlawful)

H. H Fredericksen Co. JD-(SF)-64-80
(unilateral wage rate and fringe benefit changes, not unlawful, where genuine impasse developed sufficient to stall negotiations and privileged E's unilateral changes, and impasse was not subsequently dissipated when U submitted proposals which, however, did not reflect substantial concessions or change of position)

H. H Fredericksen Co. JD-(SF)-64-80
(unilateral granting, following impasse, of wage increases with retroactive date, not unlawful, notwithstanding that retroactive compensation had not been previously proffered to U during negotiations, and that E's condition precedent qualifying E's proposal on achievement of contract settlement was never satisfied; E's decision to grant retroactive wage increase did not disparage U's representative status nor constitute rejection of collective bargaining principles, and retroactive increases were reasonably comprehended w/i E's pre-impasse proposals)

Mather Federal Credit Union JD-(SF)-8-80
(unilateral change in E's last wage offer, unlawful, notwithstanding E's contention that impasse ensued because of failure to agree on other issues, where E's efforts to defeat Ees' statutory rights were not reconcilable with requirements of good faith bargaining)

Lucy's, Inc. JD-832-79
(E's unilateral grant of wage increases and other economic benefits when there was no impasse in bargaining, unlawful)

Southside Electric Cooperative, Inc. JD-800-79
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)
(E's granting of wage increase which was held violative of Section 8(a)(1) held not violative of Section 8(a)(5) where E did not have notice at hearing that its good faith in dealing with U on or before relevant date was in issue and issue was not fully litigated; further increase was granted to non-unit Ees with whom there was no duty to bargain)

N.L.R.B. v. Atlantic International Corporation and its wholly owned subsidiaries, Atlantic Manufacturing Corporation and Atlantic Marketing Corporation 664 F.2d 1231 (C.A. 4, Nov. 1981)
(enforcement granted, notwithstanding ct's rejection of Bd construction of *Wonder State*, 147 NLRB 179, as requiring determination of what result of bargaining would have been had E bargained in good faith and enforcement of such hypothetical result, where E unilaterally reduced wages and insurance premiums in violation of Sec. 8(a)(5))

Excavation-Construction, Inc. v. N.L.R.B. 660 F.2d 1015 (C.A. 4, Oct. 1981)
(no unlawful unilateral wage increase where E switched from paying $8.30 plus $.84 per hour in pension and hospitalization benefits contributions to paying striaght $9.14 per hour to replacements and offering same to non striking Ees; alternatively, as impasse had occurred, E free to make unilateral changes in terms and conditions of employment)

Huck Manufacturing Company v. N.L.R.B. 693 F.2d 1176 (C.A. 5, Dec. 1982)
(unilateral grant of shift differential previously porposed during negotiations where there was no impasse to justify it, unlawful)

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N.L.R.B. v. L. B. Priester & Son, Inc. **669 F.2d 355 (C.A. 5, Mar. 1982)**

Axelson, Inc., Subsidiary of U.S.A. Industries, Inc. v. N.L.R.B. **599 F.2d 91 (C.A. 5, 1979)**
(violation where, contrary to contract and past practice, E unilaterally refused to pay Ee members of U's negotiating committee for production wages lost by them while participating in contract negotiations)

N.L.R.B. v. International Credit Service, A Division of Lucas County Credit Bureau, Inc. **644 F.2d 886(T) (C.A. 6, Jan 6, 1981)**
(unilaterally implementing wage increases, violative)

Gardenia Buena Ventura, Inc. d/b/a Alondra Nursing Home and Convalescent Hospital, a corporation v. N.L.R.B. **618 F.2d 115(T) (C.A. 9, 1980)**
(successor E's unilateral changes in wages, unlawful, where majority of Ees in unit were Ees of predecessor E and E had duty to bargain with U before making any changes)

6067-4033-2600 Pay periods or paydays

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 065**
(E's unilaterally changing Ees' pay days from weekly to bi-weekly basis, not violative where E notified U of change approximately six weeks in advance of proposed change; record showed that U never responded to E's notice either to object or request meeting with E; U acquiesced in E's action)

B. P. Oil, Inc. **256 NLRB No. 171**
(unilaterally changing bi-weekly to semi-monthly payment system, violative)

Care Ambulance, Inc. and Care Ambulance, Inc. d/b/a American Ambulance **255 NLRB No. 064**
(unilateral change in payroll periods from every 2 weeks to twice each month, resulting in different paydays, following certification of union, unlawful)

6067-4033-2700 Wage decrease

Schnadig Corporation **265 NLRB No. 020**
(applying lower wage scale which he had unlawfully unilaterally adopted for new Ees to Ees recalled, and conditioning recall of laid off Ees upon acceptance of new wage scale, unlawful)

Valley Mfg., Inc. **264 NLRB No. 171**
(in summary judgment proceeding, Bd held E's unilateral reduction in wages and portion of its contribution to insurance premiums, cancellation of vacation, holiday, and sick pay and funeral leave, and discontinuance of contribution to Ee pension program, unlawful, since 8(d) prohibits party from unilaterally modifying terms of agreement during its term; inasmuch as no party need agree to modify terms of agreement in midterm, refusal of U to do so did not give E license to modify agreement; nor does E's distressing financial situation justify repudiation or modification of agreement)

Admiral Merchants Motor Freight, Inc. **264 NLRB No. 012**
(E's going directly to Ees and coercing agreement to reduce their remuneration w/o notifying U of pending ERISA action requiring E to pay its debts to another U and unilaterally reducing Ees' wages, violative notwithstanding E's contention that inj under ERISA insulated it from Bd finding that Sec. 8(a)(5) and (1) were violated, since inj or any proposed order by Bd would not be in conflict either through asserted clashing of NLRA and ERISA or through principles of comity or judicial administration where inj could not be construed to have been in any way aimed at U represented Ees)

Remodeling By Oltmanns, Inc. **263 NLRB No. 169**
(violation, where contractor unilaterally reduced wages of newly hired Ees, increased wages of incumbent Ees, and instituted new insurance and vacation plans, since contractor had obligation to bargain with U after expiration of agreement with U to continue to maintain existing working conditions established by most recent contract between U and contractors' association of which it was not member, U had obtained majority in unit of contractor's Ees after having been recognized under Section 8(f) agreement, contractor had never disavowed bargaining relationship and continued to adhere to contractual terms of employment)

Friederich Truck Service, Inc. and FTL, Inc. **259 NLRB No. 053**
(E's bypassing U to deal directly with Ees and make unilateral changes unlawful where E unilaterally paid Ees less than required contractual wage scale and proposed in company meeting to U Ees that they accept additional wage cuts)

Jack Thompson Oldsmobile, Inc. **256 NLRB No. 014**
(unilateral institution of commission penalty provision and new compensation plan for salesmen which directly affected its salesmen's wages, unlawful)

Corrugated Structures, Inc. **252 NLRB No. 079**
(unilateral reduction in wages, not unlawful where U did not enjoy majority status at jobsite when wages were unilaterally reduced)

Meatcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(lowering piece work rates and new hire rates)

World Evangelism, Inc. **248 NLRB No. 117**
(successor E's failure to maintain predecessor E's wage levels, unlawful where successor adopted predecessor's contract with U)

B. N. Beard Company **248 NLRB No. 016**
(E's unilateral reduction of wage rates provided for in existing contracts with Us, unlawful; E's contention that it had no obligation to pay strike replacements wages set forth in contracts, rejected)

Southside Electric Cooperative, Inc. **247 NLRB No. 107**
(E's unilateral recision of wage increases granted while ALJ's decision on ULP charges pending and after ct had issued injunction against unilateral actions by E, unlawful, notwithstanding E's contention withdrawal of increase resulted from U's objection and threat to refer matter to NLRB for possible contempt proceedings since U's objection was to E's failure to bargain regarding increases rather than to granting *per se*)

Ernst Construction, Div. of Ernst Steel Corporation **JD-826-79**
(violation, where E reinstated laid-off Ees at unilaterally established lower rates of pay; E and U had implemented practice of compensating Ees at rates higher than that called for in contract, subsequently E acquiescened in the continuing practice which survived prior instance of layoff and recall of Ees, and E took no steps before or during negotiations of current contract to abrogate, restrict, or alter continuing practice)

Southside Electric Cooperative, Inc. **JD-880-79**
(unilateral grant of wage increase to Ees and its rescission upon objections by U over lack of bargaining, violative)

N.L.R.B. v. Atlantic International Corporation and its wholly owned subsidiaries, Atlantic Manufacturing Corporation and Atlantic Marketing Corporation **664 F.2d 1231 (C.A. 4, Nov. 1981)**
(enforcement granted, notwithstanding ct's rejection of Bd construction of *Wonder State,* 147 NLRB 179, as requiring determination of what result of bargaining would have been had E bargained in good faith and enforcement of such hypothetical result, where E unilaterally reduced wages and insurance premiums in violation of Sec. 8(a)(5))

Jack Thompson Oldsmobile, Inc. v. N.L.R.B. **684 F.2d 458 (C.A. 7, July 1982)**
(Bd abused discretion by ruling that E's withholding of 50% of salesmen's commissions for violating its turnover rule unilaterally changed salesmen's wage structure w/o considering whether contract authorized E to require salesmen to observe turnover rule as condition precedent to receipt of sales commission and, if so, whether 50% commission reduction was excessive in light of E's injury due to loss of *turnover* customers)

N.L.R.B. v. World Evangelism, Inc. **656 F.2d (C.A. 9, 1981)**
(successor E's paying wages to Ees which were lower than those prescribed by predecessor E's contract and discontinuing contributing to Ee's fringe benefit trusts, violative where successor E took these steps w/o prior notice or bargaining with U; it was perfectly clear successor E intended to retain Ees, had adopted predecessor's contract, and therefore was required to consult with U before altering terms of pre-existing contract)

Karl Kallmann, d/b/a Love's Barbeque Restaurant, No. 62 v. N.L.R.B. **640 F.2d 1094 (C.A. 9, 1981)**
(successor E's unilateral act of reducing wages, violative; E had no obligation to accept predecessor's labor agreement, but still had duty to consult U before changing term of employment)

Sturdevant Sheet Metal & Roofing Company, Inc., and Orion Trading Company, Inc., d/b/a Sturdevant Roofing Company v. N.L.R.B. **363 F.2d 271 (C.A. 10, Nov. 1980)**
(E's implementation of wage reduction in response to letter from U unlawful, notwithstanding that E's action was not motivated by bad faith but was apparently based on less than careful reading of U's letter which, as testified to by U officials, was a counter-proposal and not, as understood by E, an acceptance of E's earlier proposal)

6067-4033-2900 Per diem and travel expenses

Midstate Telephone Company **262 NLRB No. 167**
(unilaterally discontinuing payments to Ee U negotiating committee members for per diem and travel expenses in accordance with past practice and supplemental agreement, violative)

General Telephone Company of Ohio **240 NLRB No. 010**
(E's revision of its general instructions regarding travel on company time while working on distant job site held unlawful unilateral change)

6067-4033-3100 Overtime pay schedules

Care Ambulance, Inc. and Care Ambulance, Inc. d/b/a American Ambulance **255 NLRB No. 064**
(unilateral reduction in overtime night pay rate from double time to time and a half following certification of U, unlawful)

6067-4033-3100—Cont.

The Baughman Company **248 NLRB No. 156**
(unilateral change in computation of overtime pay on basis of unilaterally lengthened workday and workweek, unlawful)

6067-4033-3800 Parking lot fees

Murphy Printing Company, Inc. **JD-553-81**
(unilateral change in system of reimbursing Ees for parking fees, unlawful)

6067-4033-4100 Cost of living raises

Strathers Wells Corporation **262 NLRB No. 136**
(refusal to pay cost-of-living wage adjustment provided for in recently expired contract, unlawful, since cost-of-living adjustment was existing term and condition of employment as established by expired contract, such condition of employment survives expiration of contract and cannot be altered w/o bargaining, and E had duty to continue terms of expired contract unless, unlike here, U waived bargaining on issue or unilateral change was result of rejected E offer after impasse had been reached)

Strathers Wells Corporation **262 NLRB No. 136**
(E's sudden withholding of cost-of-living adjustment, provided for in recently expired contract and which E had initially stated it would not eliminate but now stated it would use as leverage in bargaining, unlawful, since E's conduct is analogous to situation where E promises wage increase to Ees effective at later date but later unilaterally withholds it to use as leverage in bargaining)

Michigan Consolidated Gas Company **261 NLRB No. 080**
(E's contention that its unilateral decision not to extend existing merit and COLA program covering non-unit Ees to Ees in newly certified bargaining unit was not unlawful on ground that decision was based solely on economics, rejected; even if E's explanation for not implementing program was accurate, it would merely provide reason for refusing to grant wage increases beyond the merit program; and E's explanation would not justify canceling Ees' participation in merit program and then depriving them permanently of canceled benefits throughout protracted negotiations)

Michigan Consolidated Gas Company **261 NLRB No. 080**
(E's contention that its unilateral decision not to extend existing merit and COLA program covering non-unit Ees to Ees in newly certified bargaining unit was not unlawful on ground that inclusion of small unit of Ees in merit program could have serious consequences on overall non-unit Ees, rejected, since E thereby acknowledged its concern about non-unit Ees joining U and seeking higher wages and explained why E would be motivated to take reprisals against Ees in new bargaining unit, depriving them of wage increases they would otherwise have received as means of demonstrating that they would be better off w/o U representation)

Michigan Consolidated Gas Company **261 NLRB No. 080**
(E's removal of newly certified unit Ees from existing merit and COLA program covering non-unit Ees, unlawful, where E, during Ees' organizational effort, repeatedly referred to adverse effects of unionization at another company; after U won election, E adopted secret strategy to consider merit program waived if U failed to demand its continuation, overruling prior promise not to change existing benefits; and E then withheld merit program benefits and did so with determination, not revealed to U for several months, of never reimbursing Ees for benefits lost during protracted negotiations)

Michigan Consolidated Gas Company **261 NLRB No. 080**
(E's contention that U representing Ees in newly certified unit and Ees themselves were put on notice that existing merit and COLA program covering non-unit Ees would not be extended to them in absence of agreement on program, rejected, where no such notice was given during election campaign; failure by Ees to receive their merit reviews was insufficient to constitute notice to Ees or U; house organ news item was annual routine article which did not discuss withdrawal of merit program; and discussions between E and U representatives did not put U on notice)

Michigan Consolidated Gas Company **261 NLRB No. 080**
(E's removal of newly certified unit Ees from existing merit and COLA program covering non-unit Ees, and unilateral cancellation of scheduled wage increases due unit Ees, unlawful, where neither U nor Ees received notice of E's proposed action, E's decision to take such action was not made until the last week before program was to go into effect, and E notified U when cancellation of program was an accomplished fact, as result of which meaningful bargaining was obstructed)

Landmark International Trucks, Inc. **257 NLRB No. 170**
(Bd, rejecting E's defense of economic necessity in that it had filed for bankruptcy, granted partial summary judgment against E where E unilaterally modified terms of collective bargaining agreement by failing to pay dental insurance premiums pursuant to contract and allowing dental insurance policy to lapse, and by failing to pay cost-of-living increases)

6067-4033-4400 Holiday pay

The Sherwin-Williams Company **260 NLRB No. 185**
(unilaterally eliminating accrued holiday pay, violative)

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 063**
(unilaterally depriving regularly employed Ees on layoff status of their holiday pay after contract with U had expired held violative)

Marriott In-Flite Services, A Division of Marriott Corporation **259 NLRB No. 017**
(violation, where E granted unit Ees 11-percent wage increase and additional holiday w/o notice to U and w/o having afforded U opportunity to negotiate and bargain with E concerning such changes)

B. P. Oil, Inc. **256 NLRB No. 171**
(unilaterally ceasing premium pay for Sunday work, violative)

Rockingham Machine-Lunex Company **255 NLRB No. 018**

Westwood Import Company, Inc. **251 NLRB No. 162**
(violation, where successor E, who had hired all but two of predecessor's Ees and was obligated to bargain, unilaterally raised wages of some Ees, and cancelled all accrued seniority, sick leave and vacation rights, and reduced number of paid holidays)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E unilaterally discontinued semiannual bonus and substituted additional paid holidays and increased vacation pay for it)

The Saloon, Inc. **247 NLRB No. 156**
(E's failure, upon expiration of contract with U, to treat Memorial Day as paid holiday which was prior practice, unlawful)

Brueckner Sand & Gravel, Inc. **JD-(SF)-312-81**
(granting wage increase w/o first consulting with U and unilaterally announcing that there would be future wage increases and additional paid vacations and holiday benefits, violative)

Murphy Printing Company, Inc. **JD-553-81**
(unilateral grant of additional paid holiday, unlawful)

6067-4033-4700 Employee loans

Pease Company **251 NLRB No. 059**
(unilaterally adding interest-free loan program to Ee benefits, unlawful, where program was neither proposed to U in negotiations nor discussed with U prior to its implementation)

6067-4033-5000 Bonus

Gayston Corporation **265 NLRB No. 001**

Southern States Distribution, Inc. **264 NLRB No. 001**
(E's unilateral discontinuance of its practice of giving Ees Christmas bonus and Thanksgiving turkeys which it had given for past 6 years before U got in, unlawful; substantial loss of its property by Ee theft did not justify E's refusal to bargain)

Isla Verde Hotel Corporation d/b/a Hotel Holiday Inn De Isla Verde **259 NLRB No. 073**
(E's unilateral discontinuance of Christmas bonus and refusal to bargain about that bonus, violative)

Memphis Furniture Manufacturing Co. **254 NLRB No. 039**
(failing and refusing to pay Ees Christmas bonus as required by bargaining agreement then in effect, violative)

Aeronca, Inc. **253 NLRB No. 026**
(Christmas bonus paid Ees over number of years was considered component of wages or terms of employment, even though not expressly provided for by contract, which cannot be discontinued by E before U has been given notice and opportunity to bargain)

Woonsocket Spinning Company **252 NLRB No. 163**
(deprivation of Christmas bonus where E announced it intended to give one, granting bonus to salaried Ees, refusing to inform U basis on which bonus computed for salaried Ees and threats that Ees had lost bonus because they supported U violative)

Memphis Furniture Manufacturing Co. **252 NLRB No. 025**
(unilateral modification of contractual Christmas bonus provision of contract, unlawful)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E unilaterally discontinued semiannual bonus and substituted additional paid holidays and increased vacation pay for it)

Production Plated Plastics, Inc. **247 NLRB No. 076**
(withholding Christmas bonus, violative)

National King Coal, Inc. **JD-(SF)-24-81**
(institution of bonus program for production Ees violative as it altered terms and conditions of employment)

S & W Motor Lines, Inc. v. N.L.R.B. **621 F.2d 598 (C.A. 4, 1980)**
(bonus payments during strike to non-striking over-the-road drivers not violative of 8(a)(5) as attempt to bypass U or as unilateral change in conditions of employment where E was struggling to keep operations going; cases where bonuses were paid after strike, distinguishable)

6067-4033-5000—Cont.

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(violation where, following U's certification and start of negotiations, E discontinued Ee first quarter wage supplement, two savings funds, and Christmas bonus w/o consulting with U and in retaliation for Ees' choice of U R)

N.L.R.B. v. Pepsi-Cola Distributing Company of Knoxville, Tennessee, Inc. **646 F.2d 1173 (C.A. 6, May 1981)**
(successor E's unilateral cessation of payment of route salesmen's year-old bonuses, unlawful where successor E had assured Ees that it would continue to pay previously established compensation, bonuses were regularly calculated part of that wage compensation, and contract's general waiver clause, was not clear waiver of U's right to bargain)

N.L.R.B. v. Northeast Oklahoma City Manufacturing Company **631 F.2d 669 (C.A. 10, Sept. 1980)**
(contention that E fulfilled its duty to bargain by meeting with U representatives and Ees when it was approached concerning late payments of monthly bonuses to Ees, rejected; meetings with U after E had, w/o notice, effected unilateral change of delaying monthly bonus payments, did not exuse its violation of duty to bargain; moreover, there was no U acquiescence in, or failure to protest, unilateral changes)

N.L.R.B. v. Northeast Oklahoma City Manufacturing Company **631 F.2d 669 (C.A. 10, Sept. 1980)**
(Bd properly found that E's unilateral delays in making monthly bonus payments to Ees, w/o bargaining, amounted to serious ULP, where E's action affected most of its hourly Ees, repeated failure to pay bonus when due aggravated seriousness of E's offense, bonuses were substantial part of Ees' monthly wages, and E's conduct disparaged collective bargaining process itself, inflicting real injury to U's status as bargaining representative)

6067-4033-5500 Sick leave pay

Care Ambulance, Inc. and Care Ambulance, Inc. d/b/a American Ambulance **255 NLRB No. 064**
(announcement and application, following U certification, of new rule for sick leave pay which departed substantially from past practice, unlawful)

Westwood Import Company, Inc. **251 NLRB No. 162**
(violation, where successor E, who had hired all but two of predecessor's Ees and was obligated to bargain, unilaterally raised wages of some Ees, and cancelled all accrued seniority, sick leave and vacation rights, and reduced number of paid holidays)

Apex International Management Service **JD-(ATL)-86-81**
(failure of successor to pay vacation and sick benefits accrued under predecessor's contract, violative)

6067-4033-5700 Jury duty leave policy

Merrill & Ring, Inc. **262 NLRB No. 039**
(E's unilaterally instituting policy of having day-shift Ees report for work before their jury duty w/o affording contractual U reasonable opportunity to bargain held violative, since E's refusal to cease its unlawful conduct provided evidence that unilateral change was irrevocable and change in Ees' jury duty rights, mandatory subject of bargaining, was not so insignificant as to not undermine authority of U)

6067-4033-5800 Funeral leave policy

Kay Fries, Inc. **265 NLRB No. 132**
(E's unilateral institution of proof requirement for funeral leave, violative notwithstanding E's contention that U failed to timely request bargaining over rule where E instituted and began enforcing proof rule prior to notification to U and thus U was faced, not with mere change, but rather *fait accompli*; further, U did not acquiesce in unilateral change, for U protested rule, processed grievances regarding it, and when protesting rule to E, U president agreed to discuss alternative to rule at grievance meeting)

6067-4033-5900 Vacation scheduling and pay

Valley Mfg., Inc. **264 NLRB No. 171**
(in summary judgment proceeding, Bd held E's unilateral reduction in wages and portion of its contribution to insurance premiums, cancellation of vacation, holiday, and sick pay and funeral leave, and discontinuance of contribution to Ee pension program, unlawful, since 8(d) prohibits party from unilaterally modifying terms of agreement during its term; inasmuch as no party need agree to modify terms of agreement in midterm, refusal of U to do so did not give E license to modify agreement; nor does E's distressing financial situation justify repudiation or modification of agreement)

Remodeling By Oltmanns, Inc. **263 NLRB No. 169**
(violation, where contractor unilaterally reduced wages of newly hired Ees, increased wages of incumbent Ees, and instituted new insurance and vacation plans, since contractor had obligation to bargain with U after expiration of agreement with U to continue to maintain existing working conditions established by most recent contract between U and contractors' association of which it was not member, U had obtained majority in unit of contractor's Ees after having been recognized under Section 8(f) agreement, contractor had never disavowed bargaining relationship and continued to adhere to contractual terms of employment)

Robbins Door & Sash Company, Inc. **260 NLRB No. 088**
(unilateral institution of new vacation policy after contract expired, violative)

Stokely-Van Camp, Inc. **259 NLRB No. 128**
(unilaterally changing vacation pay policy by prohibiting paid vacations during strike held violation, where contract entitled Ees to paid vacations on request and E cancelled vacations before strike was definitely scheduled and past practice does not establish contrary pattern in strike situation)

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**
(failure to pay accrued vacation pay to strikers who had satisfied requisites for vacation pay under expired contract, violative)

Navajo Freight Lines, Inc. **254 NLRB No. 166**
(E's unilateral reduction of Ees' vacation pay upon expiration of area practices agreement, while abiding by terms of multi-E agreement, unlawful; fact that former agreement was not signed by E association did not make it void abinitio since none of E signatories to multi-E agreement was authorized to bargain on behalf of E who did not sign but only accepted terms of multi-E agreement as matter of custom and practice, and over long period of time E led U to believe that area practices agreements were bonafide and continued to do so after agreeing to abide by terms of multi-E agreement)

Navajo Freight Lines, Inc. **254 NLRB No. 166**
(E's unilateral reduction of Ees' vacation pay from 48 to 40 hours a week upon expiration of area practices agreement, while abiding by terms of multi-E agreement, unlawful; fact that latter agreement provided for 40 hours vacation pay did not make E's action permissible since intent of E and U, upon entering into area practices agreement, was that terms and conditions of employment were to be governed by area practices agreement as well as multi-E agreement, but if there was a difference between such agreements, area practices agreement would govern)

Navajo Freight Lines, Inc. **254 NLRB No. 166**
(unilateral changes by E, as successor, in the way in which Ees' vacations were scheduled and paid, unlawful, where E retained all of predecessor's Ees but failed to tell them that their continued Ee status was conditioned upon their accepting new terms and conditions of employment or that E intended to make any changes, and some weeks after taking over business E, who had become obligated to bargain with U, informed Ees that it was changing vacation policy)

Navajo Freight Lines, Inc. **254 NLRB No. 166**
(where E unlawfully changed vacation scheduling and pay, ALJ rejected E's contention that U waived its statutory right to bargain about vacation matters by virtue of E association agreement providing for designation of vacation periods by E with limitations; waiver must be expressed in *clear and unmistakeable language*, and applicable area practices agreement, which governed when conflict existed between the two agreements, required application of E's past practices which placed no limitations on vacation periods; fact that area practices agreement had terminated did not previlege E to unilaterally change terms and conditions of employment)

Deister Concentrator Company, Inc. **253 NLRB No. 040**
(changing method of computing vacation pay)

Allen Materials, Inc. Debtor-In-Possession **252 NLRB No. 187**
(E's nonpayment of vacation pay to Ees, unlawful notwithstanding E's inability to make such payments due to its bankruptcy where E's delay or refusal to pay vacation pay benefits constituted unilateral modification of its contractual obligation)

C. F. Martin & Co., Inc. **252 NLRB No. 167**
(withholding accrued vacation benefits from striking Ees which affected Ees in bargaining unit w/o notification or bargaining with U, violative)

Bay Medical Center, Inc. **252 NLRB No. 159**
(violation, where E unilaterally began computing vacation pay on hours worked rather than on hours paid, which was method provided in contract)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(violation where E unilaterally discontinued semiannual bonus and substituted additional paid holidays and increased vacation pay for it)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral recission of vacation pay of Ees laid off previous summer and refusal to negotiate as to reimbursement of such pay, unlawful)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(successor E's changes in pension plan, work week, and vacation, unlawful, where it retained all Ees in unit at predecessor E, except two Ees, where successor E was corporate subsidiary of predecessor, on predecessor's request gave these Ees hiring preference, and there was no indication employment conditioned on terms mentioned in interview; further, predecessor's longstanding, policy of extending joint pension plan to Ees transferred between companies)

6067-4033-5900—Cont.

Stratford Visiting Nurses Association **JD-(NY)-86-82**
(unilaterally denying banked vacation time to Ees, violative, notwithstanding change was made subsequent to expiration of bargaining agreement)

Brueckner Sand & Gravel, Inc. **JD-(SF)-312-81**
(granting wage increase w/o first consulting with U and unilaterally announcing that there would be future wage increases and additional paid vacations and holiday benefits, violative)

Apex International Management Service **JD-(ATL)-86-81**
(failure of successor to pay vacation and sick benefits accrued under predecessor's contract, violative)

6067-4033-6300 Savings funds

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(violation where, following U's certification and start of negotiations, E discontinued Ee first quarter wage supplement, two savings funds, and Christmas bonus w/o consulting with U and in retaliation for Ees' choice of U R)

6067-4033-6700 Merit wage increase

Rochester Institute of Technology **264 NLRB No. 135**
(E's unilateral withholding during negotiations with U of merit wage increases and discontinuance of annual merit reviews for unit Ees, while continuing such programs for nonunit Ees, unlawful; although U rejected specific wage proposals made by E, which were based in part on merit increase system, parties never discussed actual merit increases and annual review systems enjoyed by unit Ees as terms and conditions of employment prior to U's certification; and E's proposal and U's rejection of it did not satisfy E's obligation to bargain about terms and conditions of employment prior to discontinuing them)

Rochester Institute of Technology **264 NLRB No. 135**
(in finding E's unilateral withholding during negotiations with U of merit wage increases and discontinuance of annual merit reviews while continuing such program for nonunit Ees, unlawful, Bd held that terms and conditions of employment cannot be changed for U-represented Ees w/o affording U an opportunity to request bargaining about the change, and that the violation is the change in the *status quo* w/o notice to or bargaining with U; here, since merit increases and merit review programs were existing terms and conditions of employment, E was not free to change them w/o bargaining with U)

Rochester Institute of Technology **264 NLRB No. 135**
(in finding E's unilateral withholding during negotiations with U of merit wage increases and discontinuance of annual merit reviews while continuing such program for nonunit Ees, unlawful, Bd held that, while allowing such raises unrestricted by established pattern is tantamount to licensing E to grant Ees unilateral wage increases, facts here are quite different since E's merit system is term and condition of employment and, thus, holding herein is not that E *must* give increases in benefits granted nonunit Ees to unit Ees as well, but only that E cannot change terms and conditions of employment w/o bargaining with U)

Roper Corporation **263 NLRB No. 151**
(E who unilaterally discontinued merit wage increases and Ee job performance reviews at time when E was negotiating with U violated Act)

Michigan Consolidated Gas Company **261 NLRB No. 080**
(E's contention that its unilateral decision not to extend existing merit and COLA program covering non-unit Ees to Ees in newly certified bargaining unit was not unlawful on ground that decision was based solely on economics, rejected; even if E's explanation for not implementing program was accurate, it would merely provide reason for refusing to grant wage increases beyond the merit program; and E's explanation would not justify canceling Ees' participation in merit program and then depriving them permanently of canceled benefits throughout protracted negotiations)

Michigan Consolidated Gas Company **261 NLRB No. 080**
(E's contention that its unilateral decision not to extend existing merit and COLA program covering non-unit Ees to Ees in newly certified bargaining unit was not unlawful on ground that inclusion of small unit of Ees in merit program could have serious consequences on overall non-unit Ees, rejected, since E thereby acknowledged its concern about non-unit Ees joining U and seeking higher wages and explained why E would be motivated to take reprisals against Ees in new bargaining unit, depriving them of wage increases they would otherwise have received as means of demonstrating that they would be better off w/o U representation)

Michigan Consolidated Gas Company **261 NLRB No. 080**
(E's removal of newly certified unit Ees from existing merit and COLA program covering non-unit Ees, unlawful, where E, during Ees' organizational effort, repeatedly referred to adverse effects of unionization at another company; after U won election, E adopted secret strategy to consider merit program waived if U failed to demand its continuation, overruling prior promise not to change existing benefits; and E then withheld merit program benefits and did so with determination, not revealed to U for several months, of never reimbursing Ees for benefits lost during protracted negotiations)

Michigan Consolidated Gas Company **261 NLRB No. 080**
(E's contention that U representing Ees in newly certified unit and Ees themselves were put on notice that existing merit and COLA program covering non-unit Ees would not be extended to them in absence of agreement on program, rejected, where no such notice was given during election campaign; failure by Ees to receive their merit reviews was insufficient to constitute notice to Ees or U; house organ news item was annual routine article which did not discuss withdrawal of merit program; and discussions between E and U representatives did not put U on notice)

Michigan Consolidated Gas Company **261 NLRB No. 080**
(E's removal of newly certified unit Ees from existing merit and COLA program covering non-unit Ees, and unilateral cancellation of scheduled wage increases due unit Ees, unlawful, where neither U nor Ees received notice of E's proposed action, E's decision to take such action was not made until the last week before program was to go into effect, and E notified U when cancellation of program was an accomplished fact, as result of which meaningful bargaining was obstructed)

Furr's Cafeterias, Inc. **251 NLRB No. 125**
(unilateral grant of merit increases prior to U certification, violative, where merit increases were not automatic, involved much discretion on part of E, and given at unpredictable time intervals; moreover, U did not waive its right to notice about each increase when it agreed during negotiations not to oppose such merit increases as long as increases were granted in accordance with certain specified time procedures)

Pease Company **251 NLRB No. 090**
(each unilateral grant of merit increases given to Ees pursuant to new pay system program, unlawful)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(violation where, following U's certification and start of negotiations, E discontinued Ee first quarter wage supplement, two savings funds, and Christmas bonus w/o consulting with U and in retaliation for Ees' choice of U R)

6067-4033-7100 Incentive wage plans

B & B Gallo Pest Control Services, Inc. **265 NLRB No. 075**
(unilaterally instituting and maintaining incentive plan, not unlawful, where E relied on steward's assent to institution of plan on behalf of U; E and U steward usually settled between themselves problems that arose in workplace; moreover U did not maintain communication with E or its Ees except through U steward)

Hedison Manufacturing Company **260 NLRB No. 076**
(E violated Act when it unilaterally eliminated incentive payment of piece rate wages and also by unilaterally instituting new reporting time procedure for its Ees by making them leave cafeteria 5 minutes earlier)

K & K Transportation Corp., Inc. **254 NLRB No. 087**

Fourco Glass Company, Rolland Division **250 NLRB No. 144**
(E's elimination of incentive pay system before contract term expired, violative, as E is statutorily required to wait until contract expires to implement changes in working conditions; moreover, fact that U had been willing to listen to E's proposal does not constitute waiver of its rights under Sec. 8(d))

Hedison Manufacturing Company **249 NLRB No. 096**

N.L.R.B. v. Fourco Glass Company, Rolland Division **646 F.2d 863 (C.A. 4, Apr 1981)**
(although E violated Act by unilaterally terminating incentive pay program and implementing new wage plan with new hourly rate, Bd order was moot as E and U renegotiated their contract in light of E's economic difficulties)

6067-4033-7500 Service, attendance and other awards

Wellman Industries, Inc. **248 NLRB No. 025**
(unilateral improvement in attendance awards, unlawful)

6067-4033-8300 Recurrent Gift Practices

Southern States Distribution, Inc. **264 NLRB No. 091**
(E's unilateral discontinuance of its practice of giving Ees Christmas bonus and Thanksgiving turkeys which it had given for past 6 years before U got in, unlawful; substantial loss of its property by Ee theft did not justify E's refusal to bargain)

Presto Casting Company **262 NLRB No. 047**
(unilaterally discontinuing past practice of giving Ees annual Xmas gifts of turkeys, violative; E's subsequent correction of violation by giving turkeys to Ees later in February did not relieve E of the violation, and, contrary to contention, remedial order was warranted)

Lima Register Company **260 NLRB No. 171**
(unilateral discontinuance of established practice of giving each Ee a ham before Christmas, violative)

6067-4033-9100 Witness fees

Consolidated Aluminum Corporation **258 NLRB No. 033**
(E's refusal to compensate Ee for wages lost while testifying in his capacity as U officer in Bd case to which E was not party, not unlawful, absent

6067-4033-8100—Cont.

express contractual commitment and where not in retaliation for U activity or testifying; fact E had previously paid compensation to same officer in similar situation as result of grievance settlement did not establish precedent or law of the shop, nor did contract provision providing for compensation for loss due to jury duty or as witness subpoenaed by ct of law require payment)

Consolidated Aluminum Corporation **258 NLRB No. 033**
(notwithstanding E's previous payment pursuant to grievance settlement of compensation for wages lost while testifying at Bd hearing, E's subsequent refusal to pay compensation in similar circumstances not unlawful, absent express contractual commitment and where not in retaliation for U activity or testifying; contract provision stating circumstances in which grievance settlement shall not be deemed precedent did not manifest intent that all other grievance resolutions were to become precedent)

Consolidated Aluminum Corporation **258 NLRB No. 033**
(E's refusal to pay witness fees to compensate for lost wages to Ees subpoenaed for Bd hearing by oppositions not unlawful)

6067-4033-8600 Dues

Independent Stave Company **248 NLRB No. 025**
(E's failure and refusal to comply with U security provision of current contract in response to U demand that some 46 Ees be discharged for failure to be U members in good standing held violative, since E had thereby unilaterally modified terms and conditions of parties' contract which called for investigation of named Ees and determination that they were delinquent and would not become members, notwithstanding U's alleged failure to fulfil its fiduciary obligation of notification to Ees)

6067-4033-8800 Free food, beverages

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant **261 NLRB No. 051**
(unilaterally eliminating free desserts for Ees after U had demanded recognition by E who operated restaurant, unlawful)

Marriott In-Flite Service, A Division of Marriott Corporation **258 NLRB No. 099**
(E unilaterally eliminating meal charge, unlawful, since alleged impasse did not exist)

Mission Childcare Consortium, Inc. **JD-(SF)-110-80**
(discontinuing policy of furnishing free meals to Ees at child care center who ate with children, unlawful)

6067-4033-9100 Pensions and group benefits

GAF Corporation **265 NLRB No. 176**
(no violation where E refused to submit claim that it changed retirees benefits w/o explanation to grievance procedure of collective bargaining agreement, but rather elected to go under claims procedures provided under separate ERISA Pension Agreement executed by U and E, as latter procedure specifically designed to handle such disputes, required to be utilized by ERISA and E willing to have grievance's merits resolved under its provisions)

Admiral Merchants Motor Freight, Inc. **265 NLRB No. 016**
(E's dealing directly with Ees to secure their agreement that it reduce their contractual benefits in order to meet its court-ordered payments to U pension and health and welfare funds, and its unilateral implementation of these reductions, unlawful)

Perryville Coal Company **264 NLRB No. 046**
(Ee's unilaterally notifying owners and drivers of trucks of discontinuation of payment of personal income tax, social security assessments and U dues for drivers found Ees rather than independent contractors, unlawful)

Stone Boat Yard **264 NLRB No. 130**
(unilaterally discontinuing payments to U's health and welfare and pension plan established by expired collective bargaining agreement and unilaterally implementing company-funded medical insurance plan, violative, where E never provided U any type of written or detailed proposal of changes in expired contract, and therefore, E did not implement changes which were consistent with any pareviously rejected cffer, especially in light of fact that U and E had not reached bargaining impasse nor had U waived its right to bargain about changes which were implemented)

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **264 NLRB No. 063**
(unilaterally increasing health and life insurance benefits and wages for unit Ees, violative)

Alle Arecibo Corporation and Alle Industries Ltd. **264 NLRB No. 163**
(E's failure to make monthly payments to fringe benefit funds under expired contract as demanded by U's attorney, violative where negotiations relating to fringe benefit fund items were pending; obligation to make these payments under expired contract continued until it was discontinued through good faith bargaining)

American Distributing Company, Inc. **264 NLRB No. 183**
(E who discontinued contributions to Teamsters Pension Trust Fund w/o prior notice or bargaining violated Act)

Valley Mfg., Inc. **264 NLRB No. 171**
(in summary judgment proceeding, Bd held E's unilateral reduction in wages and portion of its contribution to insurance premiums, cancellation of vacation, holiday, and sick pay and funeral leave, and discontinuance of contribution to Ee pension program, unlawful, since 8(d) prohibits party from unilaterally modifying terms of agreement during its term; inasmuch as no party need agree to modify terms of agreement in midterm, refusal of U to do so did not give E license to modify agreement; nor does E's distressing financial situation justify repudiation or modification of agreement)

Abbey Medical/Abbey Rents, Inc. **264 NLRB No. 129**
(midterm contract modification can only be implemented if other party's consent is first obtained; thus, where E unilaterally ceased to make contractually mandated fringe benefits, it violated Act where it notified U 10 months after the fact; U was presented with fact accompli and did not acquiesce)

Abbey Medical/Abbey Rents, Inc. **264 NLRB No. 129**
(strike replacements are considered Ees, and E's failure to comply with contract to make required fringe benefit payments to contractual trust funds on their behalf is violative)

Remodeling By Oltmanns, Inc. **263 NLRB No. 169**
(violation, where contractor unilaterally reduced wages of newly hired Ees, increased wages of incumbent Ees, and instituted new insurance and vacation plans, since contractor had obligation to bargain with U after expiration of agreement with U to continue to maintain existing working conditions established by most recent contract between U and contractors' association of which it was not member, U had obtained majority in unit of contractor's Ees after having been recognized under Section 8(f) agreement, contractor had never disavowed bargaining relationship and continued to adhere to contractual terms of employment)

Capitol City Lumber Company **263 NLRB No. 102**
(where parties had negotiated 1-year contract with year-to-year extensions unless either party gave notice of cancellation but because U welfare and pension funds required 3-year commitment, they had included articles providing for 3-year contributions with yearly step-increases, E's failure to increase 2nd year amount and to make 3rd-year contributions after contract was terminated at end of 2nd year held unlawful, since contribution commitment survived contract, and parties' letter of understanding reiterated 3-year commitment and, although it seemed to contradict step-increase requirements, had to be construed consistently with contract)

Diplomat Envelope Corporation **263 NLRB No. 075**
(unilaterally ceasing payments into U's pension, welfare and annuity funds, violative in view of finding *meeting of minds* as to new contract which E had unlawfully refused to execute)

Taurus Waste Disposal, Inc. **263 NLRB No. 028**
(E's failure to make fringe benefit payments pursuant to contract after contract expired, unlawful, since fringe benefits constitute term and condition of employment which survive expiration of contract, and may not be unilaterally altered by E absent waiver by U, impasse, or U's loss of majority)

Southwest Security Equipment Corporation **262 NLRB No. 079**
(E violated Act when it unilaterally discontinued abiding by hiring hall provisions of contract, making required contributions to fringe benefit trust funds, and failed to participate in contractual grievance and arbitration procedure)

Hassett Maintenance Corporation **260 NLRB No. 135**
(E who discontinued contributions to Ees welfare and insurance fund and health insurance fund after expiration of contract violated Act)

Cobb Theatres, Inc. **260 NLRB No. 111**
(E's cessation of contributions to pension fund after expiration of contract violative absent good faith doubt of U's majority status)

Turnbull Enterprises, Inc. **259 NLRB No. 122**
(successor E's unilateral discontinuance of payment of contributions to U's health and welfare fund, unlawful, where E did not take any action to set initial terms and contitions of employment different from those under predecessor E before incurring obligation to bargain with U, and such obligation commenced on date U made its demand for recognition when E fully realized that its anticipated work force was represented by U)

Turnbull Enterprises, Inc. **259 NLRB No. 122**
(U did not acquiesce in E's refusal to make contributions to U's health and welfare fund, where U continued to negotiate toward restoration of fund until it finally capitulated to E's demand that fund be replaced with insurance company plan; moreover, there was nothing in either U's or E's conduct which cured the violation)

Turnbull Enterprises, Inc. **259 NLRB No. 122**
(fact that Ees engaged in strike against E did not establish basis for terminating E's obligation to make health and welfare fund contributions at that time; even if impasse existed on date of strike, E took no action which was consistent with its rejected offers to U, and record failed to prove E instituted plan with insurance company replacing plan until subsequent date on which it reached agreement with U)

6067-4033-9100—Cont.

La Mousse, Inc. 289 NLRB No. 097
(unilateral grant of group health insurance benefits, violative)

Schnoor Construction Company 288 NLRB No. 173
(E's failure to make payments into fringe benefit fund as required by bargaining agreement, unlawful; E's defense that its failure to do so was caused by financial conditions beyond its control and was not intentional evasion, rejected; *It is well established that economic necessity is not cognizable as defense to unilateral repudiation of monetary provisions in bargaining agreement*)

Henry Cauthorne, an individual, t/a Cauthorne Trucking 256 NLRB No. 115
(unilaterally ceasing payments into U's health and welfare, and pension trust funds upon expiration of contract which E had not signed but to terms of which E had bound itself by signing interim agreement and implementing significant portion of contract held violative, since; (1) change was not made subsequent to bargaining impasse, (2) E did not, in good faith, doubt U's majority status, and (3) U did not waive right to bargain regarding alterations; health and welfare fund trust agreements did not contain language which might limit E's obligation to bargain regarding cessation of payments into fund)

Henry Cauthorne, an individual, t/a Cauthorne Trucking 256 NLRB No. 115
(refusal to continue payment into U's pension trust fund not violative where expired contract stated that E and U's obligations to pension fund shall terminate and E did nothing that could be construed as adopting another contract; E was privileged, under terms of pension trust agreement, to cease such payments w/o bargaining with U)

Henry Cauthorne, an individual, t/a Cauthorne Trucking 256 NLRB No. 115
(fringe benefit fund plans which are part of expired contract constitute aspect of Ee wages and terms of employment which survive expiration of contract)

Hayden Electric, Inc. 256 NLRB No. 104
(E's unilaterally discontinuing its contributions to U's fringe benefit funds, violative)

Vore Cinema Corp. 254 NLRB No. 167
(cessation of pension fund contributions)

U.S. Utilities Corporation 254 NLRB No. 055
(refusing to contribute to health, welfare, and pension funds, violative as contract applies to operations outside U's territorial jurisdiction)

Allen Materials, Inc. Debtor-In-Possession 252 NLRB No. 157
(E's failure to make payments to its Ees' health and welfare and pension funds under collective bargaining agreement, unlawful notwithstanding E was unable to make payments because it was bankrupt, where there was no evidence of U acquiescence in E's failure to make payment)

Western Truck Services, Inc. 252 NLRB No. 096
(unilaterally discontinuing payments to health and welfare and pension funds as required by bargaining agreement and directly dealing with Ees, violative)

Kraft Plumbing and Heating, Inc. 252 NLRB No. 126
(unilaterally discontinuing monthly contributions to health and welfare, pension, industry and apprenticeship funds, violative)

Bay Medical Center, Inc. 252 NLRB No. 189
(E's unilateral change in method of computing contributions to annuity account, violative)

Capitol-Husting Company, Inc. 252 NLRB No. 089
(unilaterally changing health insurance plans and pension plans for Ees at commencement of their strike, violative)

The Nestle Company, Inc. 251 NLRB No. 142
(violation where E failed to apply pension minimum retroactively, as negotiated, and unilaterally imposed changes in contractual pension plan w/o consent of U)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers 251 NLRB No. 017
(unilateral failure to make health and welfare and pension fund contributions and institution of provision for separately funded *medical benefits* program with sick leave and vacation benefits, unlawful)

The Dow Chemical Company, Texas Division 250 NLRB No. 103
(violation where after U lost decertification election but prior to certification of results of election E unilaterally placed unit Ees on salary and fringe benefit schedule for unrepresented Ees)

Universal Security Instruments, Inc. 250 NLRB No. 082
(transfer of unit Ees to new plant and failing to bargain with U over changes in wages, health benefits and seniority violative)

Dial Tuxedo, Inc. 250 NLRB No. 064
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no impasse had been reached; and change in benefits was not consistent with any previously rejected offer)

Dial Tuxedo, Inc. 250 NLRB No. 064
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

Talbert Manufacturing, Inc. 250 NLRB No. 025
(unilateral increase in insurance benefits, unlawful)

J. M. Tanaka Construction, Inc. 249 NLRB No. 02
(alter-ego E who required rehired Ees to sign agreement stating that all fringe benefits would be paid directly to them instead of U and to hold them responsible for transfer of monies to U violated Act)

World Evangelism, Inc. 248 NLRB No. 117
(successor E's failure to maintain predecessor E's benefit levels, unlawful where successor adopted predecessor's contract with U)

Excavation-Construction, Inc. 248 NLRB No. 081
(where upon commencement of strike E unilaterally increased Ees pay by amount it had been contributing to U funds and discontinued its contributions to funds, it violated Act, notwithstanding cost to E remained same)

B. N. Beard Company 248 NLRB No. 016
(E's unilateral discontinuance of payments to health and welfare funds of two Us, unlawful, even assuming one U owed E credit for overpayment to pension fund, where E, despite U's request for bargaining, did not negotiate with U with respect to cessation of payments)

Saks & Company d/b/a Saks Fifth Avenue 247 NLRB No. 12
(successor E's changes in pension plan, work week, and vacation, unlawful, where it retained all Ees in unit at predecessor E, except two Ees, where successor E was corporate subsidiary of predecessor, on predecessor's request gave these Ees hiring preference, and there was no indication employment conditioned on terms mentioned in interview; further, predecessor's longstanding, policy of extending joint pension plan to Ees transferred between companies)

The Saloon, Inc. 247 NLRB No. 156
(E's unilateral discontinuance of contributions to welfare and retirement funds upon expiration of contract with U, unlawful)

The Saloon, Inc. 247 NLRB No. 156
(E's conduct in unilaterally instituting its own medical/dental/life insurance program upon expiration of contract with U, as alternative to U health and welfare coverage, unlawful)

Peerless Roofing Co., Ltd. 247 NLRB No. 072
(refusal to pay contributions on behalf of Ees into U's pension, welfare, and similar trust funds upon expiration of contract, violative where cessation of such payments was not reasonably encompassed in E's offers during collective bargaining, and U did not waive right to bargain issue; such plans constitute aspect of Ee wages and term and condition of employment which survives expiration of contract and cannot be altered w/o bargaining)

D.P.L. Painting, Inc. JD-470-83
(E's failure and refusal to make contributions to benefit fund as required by agreement, unlawful)

Cabinet Shop & Supply Co., Inc. JD-(SF)-263-83
(where successor-E never notified its Ees that it would establish initial terms and conditions of employment different from those of predecessor, its contributions to trust funds became established term or condition of employment and cessation of its contributions violated Act)

Chateau Vegas JD-(SF)-133-83
(E's telling Ees that it would institute its own health plan and instituting different medical plan, violative)

Chateau Vegas JD-(SF)-132-83
(unilaterally discontinuing contributions to health insurance and pension plan provided for in bargaining agreement, violative)

Royce Lindsay d/b/a Royce Lindsay Plumbing, Heating, and Refrigeration Supply Company, etc. JD-(SF)-3-83
(where owner of individual proprietorship formed several new business entities to replace individual proprietorship which had E-association agreement with U, and new entities were found to constitute single E, E's unilateral change in providing separate, health, welfare and pension benefits for Ees of one of the entities held unlawful, since it was in derogation of binding contract inasmuch as E dealt directly with Ees in making such unilateral change)

Door-Man Manufacturing Co. JD-347-81
(where E had agreed to be fully bound by terms of new contract and a preceding one that U had negotiated through association bargaining with E's competitors, E's failure to submit monthly payments to U's fringe benefit funds and relevant monthly reports, violative, since at all material times E

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was obliged to comply with Pension and Health and Welfare Fund contribution provisions set forth in new contract and in preceding contract)

D. M. Barber, Inc. **JD-(SF)-182-81**
(unilateral discontinuation of contractually required payments to pension, health and welfare, and training funds, unlawful)

Russell Handy, d/b/a Handy Service Lines **JD-721-81**
(unilaterally increasing cash payment in lieu of fringe benefits, unlawful)

Wholly Foods, Inc. **JD-(SF)-16-81**
(unilateral discontinuance of health and welfare and pension trust contributions, violative)

American Boiler & Tank Co. **JD-420-80**
(failure and refusal to make payments to pension trust fund as E was required to do under collective bargaining agreement unlawful, where it constitutes unilateral change in employment conditions)

Construction Supply Company, Inc., d/b/a Jim Bird Construction Supply **JD-(SF)-86-80**
(failure to make payments to various U funds as required in agreements with U, violative)

Excavation-Construction, Inc. v. N.L.R.B. **660 F.2d 1015 (C.A. 4, Oct. 1981)**
(no unlawful unilateral wage increase where E switched from paying $8.30 plus $.84 per hour in pension and hospitalization benefits contributions to paying striaght $9.14 per hour to replacements and offering same to non striking Ees; alternatively, as impasse had occerred, E free to make unilateral changes in terms and conditions of employment)

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**
(E's cessation of benefits by unilaterally stopping contributions to health, welfare and pension fund, unlawful, since contributions to such fund constitute mandatory subjects of bargaining, and E changed terms and conditions of employment w/o first granting U opportunity to bargain about such subjects)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(violation where E unilaterally ceased making health and welfare and pension fund contributions which are mandatory subjects of bargaining)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins **616 F.2d 966 (C.A. 6, 1980)**
(unilateral refusal to pay fringe benefits required by contract, unlawful)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins **616 F.2d 966 (C.A. 6, 1980)**
(unilateral refusal to pay fringe benefits required by contract, unlawful)

Capitol-Husting Company, Inc. v. N.L.R.B. **671 F.2d 237 (C.A. 7, Feb. 1982)**
(although unilateral change in health and pension benefits for strike replacements was found not unlawful, unilateral change in health and pension benefits for returning ULP strikers was found unlawful, since returning strikers' interests are more closely aligned with interests of strikers than of strike replacements, they are still part of unit, and to allow E to bypass their bargaining representative would undermine its authority and leave impression with Ees that it was powerless)

J. M. Tanaka Construction, Inc. v. N.L.R.B. **675 F.2d 1029 (C.A. 9, Apr. 1982)**
(requiring job applicant to sign agreement that E would pay him and not U all fringe benefits and would be responsible for reimbursement to U if problem arose, held violative of Ees' right to organize because they might conclude that this was binding agreement to remain non-U)

N.L.R.B. v. World Evangelism, Inc. **656 F.2d (C.A. 9, 1981)**
(successor E's paying wages to Ees which were lower than those prescribed by predecessor E's contract and discontinuing contributing to Ee's fringe benefit trusts, violative where successor E took these steps w/o prior notice or bargaining with U; it was perfectly clear successor E intended to retain Ees, had adopted predecessor's contract, and therefore was required to consult with U before altering terms of pre-existing contract)

N.L.R.B. v. Antonino Carilli, d/b/a Antonining's Restaurant **648 F.2d 1206 (C.A. 9, June 1981)**
(E's termination of payments to health and pension trust funds, unlawful, where E did not rebut presumption of U's majority status, notwithstanding contention that continued payments would have violated Section 302(c)(5) where bargaining agreement had expired and thus payments not made pursuant to specific written agreement since E required to maintain status quo following expiration of agreement until new agreement negotiated and herein bargaining agreement and trust agreement sufficient to permit continued payments into trust funds and are sufficient to satisfy requirements of Section 302(c)(5))

N.L.R.B. v. Antonino Carilli, d/b/a Antonining's Restaurant **648 F.2d 1206 (C.A. 9, June 1981)**
(decertification ptn signed by 16 out of unit alleged in ptn to contain 26 Ees not basis for good faith doubt justifying E's termination of payments to pension and health funds, where payments terminated prior to circulation of ptn, GC never offered ptn into evidence to establish number of Ees in unit, and E did not attempt to establish accuracy of number, since E was not prevented from litigating majority status issue notwithstanding precluded from litigating administrative matter of whether showing of interest sufficient to support decertification ptn)

Peerless Roofing Co., Ltd. v. N.L.R.B. **641 F.2d 734 (C.A. 9, Apr 4, 1981)**
(E's ceasing to make contributions to U trust funds after bargaining agreement with U expired and while new agreement was under negotiation, violative where change was not reasonably comprehended in terms of E's contract offers to U)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**

6067-4033-9800 Insurance

Perryville Coal Company **264 NLRB No. 046**
(Ee's unilaterally notifying owners and drivers of leased trucks of discontinuation of payment of unemployment insurance and workmen's compensation for drivers found Ees rather than independent contractors, unlawful)

Rochester Institute of Technology **264 NLRB No. 135**
(E's inauguration, during negotiations with U, of dental insurance plan for nonunit but not for unit Ees, not unlawful; unlike similarly granted unlawful merit increases, insurance plan herein involved no change in working conditions but was simply granting of benefit to group of Ees during negotiations with representaitve of another Ee group, which is not proscribed by 8(a)(5); if it were proscribed, all management decisions relating to terms and conditions of employment of nonrepresented Ees would be held in abeyance pending settlement with represented Ees, and duty to bargain does not go so far)

Valley Mfg., Inc. **264 NLRB No. 171**
(in summary judgment proceeding, Bd held E's unilateral reduction in wages and portion of its contribution to insurance premiums, cancellation of vacation, holiday, and sick pay and funeral leave, and discontinuance of contribution to Ee pension program, unlawful, since 8(d) prohibits party from unilaterally modifying terms of agreement during its term; inasmuch as no party need agree to modify terms of agreement in midterm, refusal of U to do so did not give E license to modify agreement; nor does E's distressing financial situation justify repudiation or modification of agreement)

Taurus Waste Disposal, Inc. **263 NLRB No. 028**
(E's failure to make fringe benefit payments pursuant to contract after contract expired, unlawful, since fringe benefits constitute term and condition of employment which survive expiration of contract, and may not be unilaterally altered by E absent waiver by U, impasse, or U's loss of majority)

Marin Grand Prix Motors Corporation **261 NLRB No. 170**
(unilateral decrease in health insurance coverage and tool insurance coverage, unlawful)

Plymouth Locomotive Works, Inc. **261 NLRB No. 087**
(unilateral increase in life insurance coverage limit and unilateral initial offer of personal accident insurance, unlawful)

Lake Development Management Co. **259 NLRB No. 069**
(E's unilateral change in its health, accident and insurance plan not unlawful, notwithstanding determinative challenges to voters in election still unresolved, where vote had not established U's majority status)

Landmark International Trucks, Inc. **257 NLRB No. 170**
(Bd, rejecting E's defense of economic necessity in that it had filed for bankruptcy, granted partial summary judgment against E where E unilaterally modified terms of collective bargaining agreement by failing to pay dental insurance premiums pursuant to contract and allowing dental insurance policy to lapse, and by failing to pay cost-of-living increases)

Pace Oldsmobile, Inc. **256 NLRB No. 111**
(unilaterally assuming full cost of increased insurance coverage, unlawful)

Stewart Granite Enterprises **258 NLRB No. 091**
(unilateral change in insurance benefits, unlawful)

Exxon Company, U.S.A. **253 NLRB No. 037**
(unilateral mid-term modification by making available to unit Ees health insurance plan formerly available only to non-unit Ees, violative where contract gave U exclusive right to administer medical plan, notwithstanding U made unilateral change by charging nonU Ees service fee)

Capitol-Husting Company, Inc. **252 NLRB No. 069**
(unilaterally changing health insurance plans and pension plans for Ees at commencement of their strike, violative)

6067-4033-9500—Cont.

Montcorp (Formerly Seymour Packing Division of Seymour America, Inc.) **251 NLRB No. 047**
(allowing insurance policy to lapse and changing carriers w/o notifying or bargaining with U)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(unilateral failure to make health and welfare and pension fund contributions and institution of provision for separately funded *medical benefits* program with sick leave and vacation benefits, unlawful)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain on *the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(E had legal duty to notify and bargain with U regarding contemplated changes in conditions of employment including changes in health insurance plans and payments, duty continued even after expiration of contract unless bargaining impasse occurred)

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral increase in insurance benefits, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral change in insurance benefits of previously laid off Ees at time of rehiring)

International Harvester Company and Muller International Trucks, Inc. **247 NLRB No. 140**
(violation by institution of new insurance policy by new E which was bound as alter ego to contract of preexisting corporation)

Stratford Visiting Nurses Association **JD-(NY)-86-82**
(E's unilaterally ceasing to pay its share of its Ees' family health insurance benefit premiums, violative)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass **JD-452-80**
(violation where E unilaterally instituted new policy that made Ees not eligible for insurance until they had been employed for two months and required thereafter to share cost of their insurance)

N.L.R.B. v. Atlantic International Corporation and its wholly owned subsidiaries, Atlantic Manufacturing Corporation and Atlantic Marketing Corporation **664 F.2d 1231 (C.A. 4, Nov. 1981)**
(enforcement granted, notwithstanding ct's rejection of Bd construction of *Wonder State*, 147 NLRB 179, as requiring determination of what result of bargaining would have been had E bargained in good faith and enforcement of such hypothetical result, where E unilaterally reduced wages and insurance premiums in violation of Sec. 8(a)(5))

Capitol-Husting Company, Inc. v. N.L.R.B. **671 F.2d 237 (C.A. 7, Feb. 1982)**
(although unilateral change in health and pension benefits for strike replacements was found not unlawful, unilateral change in health and pension benefits for returning ULP strikers was found unlawful, since returning strikers' interests are more closely aligned with interests of strikers than of strike replacements, they are still part of unit, and to allow E to bypass their bargaining representative would undermine its authority and leave impression with Ees that it was powerless)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(U's condonation of E's unilateral implementation of new insurance plan *wipes the slate clean*; Bd's order which required E to c/d from unilaterally changing terms of agreement reversed since there was no ULP upon which to base charge)

6067-4033-9700 Safety

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral contribution to purchase of safety shoes, unlawful)

6067-4044 Unilateral change in tenure or seniority (See also 530-6050-2500)

6067-4044-1500 Probationary period

A & T Manufacturing Company **265 NLRB No. 291**
(no lawful establishment of probationary period where E required Ees hired as result of increased work and newly established night shift to sign statement that they understood they were being hired as temporary Ees for 90 days and could be dismissed for any reason but merely had Ees sign statement to assure that they were aware their employment was temporary; nor was there violation of Section 8(a)(5) by unilateral hiring of temporary Ees since E had lawfully withdrawn recognition from U)

6067-4044-2500 Recall

Bedford Farmers Cooperative **259 NLRB No. 165**
(E's failure to recall certain previously laid off Ees and unilaterally, w/o notice to or consulting with U, hiring new Ees not violative where record contained no evidence that failing to recall laid off Ees was change in E's past practice, much less unlawful unilateral change)

Allen Materials, Inc. Debtor-In-Possession **262 NLRB No. 157**
(E making good-faith attempt to apply seniority provision of contract in recall and in fact achieving substantial compliance with such provision in effectuating recall, lawful)

Madison Newspapers, Inc. **JD-137-82**
(unilaterally altering preferential hire list recall procedure by hiring 3 apprentices rather than recalling striking journeymen from preferential hire list, unlawful)

6067-4044-4000 Discharge

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal **265 NLRB No. 128**
(violation where purchasing E, found herein *alter ego* of predecessor E, terminated Ees w/o advance notice to or bargaining with Us representing Ees of predecessor since it was obligated to recognize and bargain with Us, to honor contracts, and to honor noncontractual conditions of employment of unit Ees)

Perryville Coal Company **264 NLRB No. 096**
(E's unilaterally notifying owners and drivers of coal trucks leased to E that it was going to terminate employment status of those drivers (including those drivers who drove their own trucks), violative)

Fall River Savings Bank **260 NLRB No. 123**
(forcing Ee's resignation by unilaterally institution of mandatory 6-day work week held constructive discharge)

P. J. Gear & Sons, Inc. **262 NLRB No. 028**
(utilizing non-U subcontractors for carpentry work in violation of contract, discharging and failing to recall all bargaining unit Ees, and assigning their work to nonbargaining unit Ees w/o negotiating with U violative)

Consolidation Coal Co. **JD-(SF)-209-82**
(discharge of Ees as direct result of E's implementing revised absenteeism policy w/o bargaining with U, violative)

Atlas Inc. **JD-000-79**
(violation where E withdrew its recognition of U, laid off all Ees, ceased operations and transferred all physical assets to corporation found herein to be successor to and *alter ego* of E, and the corporation refused to reinstate E's Ees, subcontracted work formerly performed by E's Ees, refused to recognize U selected by E's Ees, and unilaterally changed those Ees' existing conditions of employment w/o prior notice to U, all in order to avoid dealing with U)

Sun-Maid Growers of California v. N.L.R.B. **618 F.2d 56 (C.A. 9, 1980)**
(terminating 3 Ees who comprised portion of overall unit for which E occupied joint E status w/o giving U notice and opportunity to bargain)

6067-4044-5000 Layoff

RAHCO, Inc. **265 NLRB No. 069**
(laying off Ees, after U won election but prior to certification, w/o notice to or bargaining with U held violative)

Schnadig Corporation **265 NLRB No. 028**
(E unilaterally changing layoff procedures and laying off large part of bargaining unit using new system, unlawful)

C & D Battery Division—Eltra Corporation **263 NLRB No. 196**
(unilateral layoff of Ees, assertedly for economic reasons, subsequent to Bd's resolution of E's election objections and certification of U, unlawful, since at time of layoff E was clearly under obligation to bargain and, by contesting validity of U's certification, E raises issues not properly litigable in ULP proceeding; moreover, E who acts in derogation of its bargaining obligations when contesting validity of U's certification acts at its peril; and, while E may properly decide economic layoff is required, once such decision is made, E must nevertheless notify U and, upon request, bargain with it concerning layoff)

Bobbies Door & Sash Company, Inc. **260 NLRB No. 085**
(E who departed from established seniority system and laid-off 3 Ees out of turn without notifying or bargaining with U violated Act)

Ilsco Corporation **260 NLRB No. 077**
(although E's unilateral institution of layoffs not violative, because of past practice, its refusal to bargain over timing, manner in which it was to be implemented and selection of Ees to exempted from it was violative)

Hillcrest Furniture Manufacturing Co., Inc. **263 NLRB No. 089**

Inland Typographers, Inc. **262 NLRB No. 088**
(E's unilateral action of terminating hot-type method of production and laying of its hot type Ees while retaining non-U Ees using cold type method of printing to avoid paying U scale for cold type work, violative; no finding of anti-U animus necessary as conduct *inherently destructive of Ees interest*)

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Furr's Cafeterias, Inc. **254 NLRB No. 125**
(unilaterally laying Ees off, violative, where, notwithstanding U's knowledge that one Ee was to be laid off, U had no notice of extent of layoff nor sufficient notice to obligate it to request bargaining prior to effective date of layoff)

Tylertown Wood Products **251 NLRB No. 048**
(unilateral layoff of Ees, not unlawful, where due to unanticipated breakdown of plant machine, E could not inform U it anticipated laying off Ees; E laid off Ees incrementally and it could not be expected that E would inform U each time small number of Ees were laid off; parties discussed effects of layoffs on Ees throughout period of their occurrence; E bargained in good faith from beginning; and it informed newspaper of situation to dispel any rumors linking layoffs to U activity or election results)

Wellman Industries, Inc. **248 NLRB No. 029**
(unilateral layoffs in two divisions, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral layoff, unlawful)

Leland Detroit Mfg. Co. **JD-459-82**
(E's laying off of chief steward who was able to perform available work in violation of contract clause providing super seniority for him so long as he was able to perform available work constituted unilateral change notwithstanding expiration of contract)

Hadley Fruit Orchards, Inc. **JD-(SF)-121-82**
(layoffs held to constitute unlawful unilateral change in view of variations in past practice in regard to layoffs)

N.L.R.B. v. Carbonex Coal Company **679 F.2d 200 (C.A. 10, May 1982)**
(even accepting E's claim that layoffs were economically motivated, E's failure to bargain with U over such layoffs was violative)

6067-4044-6700 Seniority

The Sacramento Union **258 NLRB No. 141**
(E's unilateral change in criteria for work assignments after expiration of contract, unlawful, where previously job assignments had been made by steward on basis of priority list compiled by U by date on which Ees registered with U w/o regard to number of hours or shifts Ees had actually worked for E, but after expiration of contract E compiled and posted own priority list based in substantial part on actual shifts worked for E)

Furr's Cafeterias, Inc. **251 NLRB No. 125**
(unilaterally altering seniority rights of Ees on layoff status by bridging their seniority if they remained on layoff status less than three and one half months, violative)

Westwood Import Company, Inc. **251 NLRB No. 162**
(violation, where successor E, who had hired all but two of predecessor's Ees and was obligated to bargain, unilaterally raised wages of some Ees, and cancelled all accrued seniority, sick leave and vacation rights, and reduced number of paid holidays)

The Baughman Company **248 NLRB No. 186**
(unilateral elimination of seniority as basis for scheduling vacation, unlawful)

6067-4044-7500 Reinstatement rights of economic strikers

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**
(where U offered to accept E's last offer in order to obtain reinstatement of terminated economic strikers, E's refusal to discuss offer and status of strikers unlawful)

6067-4055 Unilateral change in working conditions (See also 530-6050-3300)

Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions **259 NLRB No. 019**
(unilaterally changing wages and working conditions, violative where E instituted changes at new location while contract was still in effect with U which had represented same unit Ees at old location)

Marine Optical, Inc. **258 NLRB No. 158**
(E's refusal to recognize U and to apply existing contract, together with unilateral changes in working conditions, at new location after transfering operations there during contract term, unlawful, where Ees at new location constituted appropriate unit; existing contract remained in effect following relocation; by reason of contract Ees are presumed to have continued designating U as their representative; and although U's majority status did not continue at new location, new hires are assumed to have desired U representation in same proportion as Ees they had replaced)

Hallsen Manufacturing Company **249 NLRB No. 096**
(unilaterally soliciting Ees to adjust their grievances for purpose of dissuading Ees from joining, assisting, or supporting U, unlawful)

Saks & Company d/b/a Saks Fifth Avenue **247 NLRB No. 128**
(successor E's changes in pension plan, work week, and vacation, unlawful, where it retained all Ees in unit at predecessor E, except two Ees, where successor E was corporate subsidiary of predecessor, on predecessor's request gave these Ees hiring preference, and there was no indication employment conditioned on terms mentioned in interview; further, predecessor's longstanding, policy of extending joint pension plan to Ees transferred between companies)

N.L.R.B. v. United Optical Workers Union Local 408, Electrical Workers (Marine Optical, Inc.) **671 F.2d 11 (C.A. 1, Feb. 1982)**
(E's withdrawal of recognition, refusal to bargain on demand, and unilateral changes after relocating operations violated 8(a)(5) and 8(d); contract's description of unit as consisting of Ees employed at address of E's old facility was not shown to be intended as geographical limitation, as contended, and continuity was sufficient for Bd to apply modified contract-bar doctrine and find contract effective at new facility where there was substantial continuity of operations and in bargaining unit after relocation, and new facility was near old facility and in same state)

6067-4055-0100 Generally

Hudson Chemical Company **258 NLRB No. 069**
(E had no right to change Ees' terms and conditions of employment during contract negotiations with U where alleged *impasse* in bargaining resulted from E's *surface bargaining* and was not *legally cognizable*)

Staats and Staats, Inc. **254 NLRB No. 105**
(promulgation of new work rule and reinstating previously unenforced rule concerning Ees working conditions w/o bargaining with U, Ees' majority representative, on day discriminatees returned to work, held violative, since rules imposed additional burden on Ees and timing left little doubt that event was part of E's response to its Ees U activity)

6067-4055-0150 Minimal effect on unit

P. A. Incorporated **259 NLRB No. 111**
(E's alleged unilateral discontinuance of its prior practice of issuing work gloves to Ees, not violative where E's conduct did not amount to *material, substantial* or *significant* unilateral change in working conditions; on contrary it was simple mistake with minimal effect on only few Ees for brief period of time, rectified immediately upon being brought to plant manager's attention)

6067-4055-1000 Dress code

Holladay Park Hospital **262 NLRB No. 026**
(unilaterally changing past practice by prohibiting nursing Ees at hospital from wearing yellow ribbons as U insignia on their uniforms at work, violative)

Mediterranian Diner, Inc., t/a Bay Diner **259 NLRB No. 029**
(violation, where w/i 2 days after election E, who operated bar and restaurant, increased number of assigned tables to each waitress, prohibited smoking and talking even during breaks, required Ees to stand, changed dress code, and intensified checks on cleaning bar)

6067-4055-1500 Cleanup time

Appalachian Power Company John E. Amos Plant **260 NLRB No. 038**
(withdrawal, from some maintenance Ees, of permission to wash up five minutes before their usual quitting time held violative of Section 8(a)(5) of Act, since it was clearly unilateral change in terms or condition of employment previously fixed by E and made at time when E was obliged to deal with U notwithstanding initiation of and withdrawal of clean up time done w/o any knowledge of management other than their immediate low level supervisors)

6067-4055-2000 Production quota

Hallsen Manufacturing Co. **260 NLRB No. 137**
(modifying production standards and incentive bonus rates w/o consulting or bargaining with U)

Tenneco Chemicals, Inc. **249 NLRB No. 171**
(establishment of work rules requiring higher standards of performance enforcable by discipline w/o bargaining with U, violative, as rules constitute mandatory subject of bargaining)

N.L.R.B. v. Crystal Springs Shirt corporation, Bernstein and Sons Shirt Corporation **637 F.2d 399 (C.A. 5, 1981)**
(unilateral changes in piece rates and production quotas, violative where, contrary to E's contentions, U did not waive its rights to negotiate over subject of changes since alleged notice to U failed to indicate degree of such changes, and changes were not permissible as responsive to changes in underlying job requirements serving to maintain status quo since changes were not automatic but were discretionary and in fact brought Ees significant increases in earnings)

6067-4055-2100 Employee handbook

Holland American Wafer Company **260 NLRB No. 041**
(issuing revised Ee handbook w/o consulting with U violative)

6067-4055-2300 Use of rest rooms

Production Plated Plastics, Inc. **267 NLRB No. 076**
(institution in pro-U department of new restroom use policy requiring Ees to sign out in order to use restroom and providing *disciplinary* action if Ees

6067-4055-2500—Cont.

signed out more than five times each week, violative, where Ees previously merely obtained permission from supervisors)

Newspaper Printing Corporation **JD-203-80**
(violation, where E unilaterally instituted rule forbidding leaving to go to restroom w/o permission)

6067-4055-2600 Use of bulletin boards

Hudson Manufacturing Company **249 NLRB No. 096**
(unilateral imposition of new rule prohibiting Ees from posting U-related or U literature on E's bulletin boards, and threatening Ees with discipline for violating rule, unlawful)

6067-4055-2700 Holidays

E. I. Du Pont De Nemours and Company **259 NLRB No. 161**
(held unilateral mid-term contract modification where, though U and E agreed that Ees would have additional holiday, no agreement reached on what day would be observed as holiday so E selected date. All other holidays in contract are specified as to date celebrated)

6067-4055-2800 Hours worked

Talbert Manufacturing, Inc. **264 NLRB No. 128**
(orally informing U representative of reduction in hours to be worked 4 days before implementing change, and indirect notice via member of in-plant committee notifying U of further reduction in hours 2 days before implementing this change held sufficient notice to allow U to request bargaining, and by U's failure to make request it waived its right to complain about E's failure to bargain)

Carbonex Coal Company **262 NLRB No. 159**
(change of shift schedule from 8 hours to 12 hours without notifying or consulting with U violative)

Fall River Savings Bank **260 NLRB No. 125**
(forcing Ee's resignation by unilaterally institution of mandatory 6-day work week held constructive discharge)

Technical Careers Institutes, Inc. **259 NLRB No. 042**
(E's unilaterally increasing length of work day and work week and unilaterally reducing daily lunch break period violative, notwithstanding absence of showing that E had acted in bad faith)

Bay Medical Center, Inc. **252 NLRB No. 159**
(E's unilateral reduction in hours upon transfer of Ees to new facility, notwithstanding U's repeated requests to bargain over issue, unlawful)

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(E's institution of absence rule after expiration but during bargaining negotiations for new contract which gave E right to govern Ees' use of overtime, not unlawful, where E met its obligation to bargain with U over rule before its implementation and after impasse had occurred)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 100**
(promulgation of regulation concerning flex-time, w/o consulting with U, unlawful, notwithstanding contention that action did not establish new work rules but merely reiterated existing rules, where prior thereto local autonomy was regularly exercised between Ee and supervisors regarding working hours, and freezing hours w/i certain time limits deprived Ees of right to make individual adjustments of hours with their supervisors)

The Baughman Company **248 NLRB No. 186**
(unilateral increase in length of workday and workweek, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral reduction in hours, unlawful)

Vanity Fair Mills, Inc. **JD-(ATL)-35-82**
(E unilaterally requiring Ees to work 3 nine hour and one 5 hour day during week before holiday rather than 4 eight hour days as required by agreement, not unlawful, notwithstanding U not formally consulted about change, where U had actual notice about change and voiced no objections prior to working changed schedule)

Surgery Center of Sacramento **JD-(SF)-92-81**

Pamida Discount Store **JD-(SF)-89-81**
(unilaterally changing hours of work and days off, violative)

Russell Handy, d/b/a Handy Service Lines **JD-721-81**
(bargaining directly with Ees on reduction of hours for which paid, unlawful)

The Dow Chemical Company v. N.L.R.B. **636 F.2d 1352 (C.A. 3, 1980)**
(E's unilateral announcement and implementation of a shift change from a 7 to 5 day work week held not to justify strike protesting E's action, since U breached contract's no-strike clause w/o exhausting grievance procedures; strike was over conflicting interpretations of contract, and it would be unrealistic to suggest that no-strike clause was not intended to apply to dispute over meaning of contract; consequently, Bd's finding that strike was not breach of contract cannot be sustained as an application of rule of contract interpretation as to coverage of no-strike provision announced in SCt's Mastro Plastics decision)

6067-4055-3300 Break periods

Production Plated Plastics, Inc. **254 NLRB No. 048**
(unilaterally imposing more stringent break and lunch policy, changing standards for warnings, giving warnings and discharging Ees for violating such policy, violative)

Newspaper Printing Corporation **JD-203-80**
(violation, where E unilaterally instituted rule forbidding leaving to go to restroom w/o permission)

6067-4055-3500 Assignment of work

Schnadig Corporation **265 NLRB No. 030**
(E unilaterally eliminating job bidding procedures by replacing job bidding procedure with transfer procedure, with Ee applying to foreman where desired transfer, unlawful)

Vincent Brass & Aluminum Co. **264 NLRB No. 070**
(E's refusal to allow bidding down to lower paying job in order to transfer to another shift and subsequently posting no job openings, unlawful unilateral change, notwithstnading not established openings existed after cessation of postings, since contractual provision provided that job vacancies be posted and that assignment be made to senior bidder able to perform work applied to down bidding, and in view of E's unlawful threats regarding Ee's using bidding and statement job bidding would be discontinued)

The Dow Chemical Company **261 NLRB No. 001**
(E's actions in transferring or *loaning out* for other than their regular work unit Ees for periods of time in excess of those specified in collective agreements to which E was party and its continuing insistence that it had right to do so, violative, notwithstanding E's contentions that U waived contractual requirements in question before execution of current contract and bound itself to contrary understanding antedating execution of current contract where E knowledgeably entered into contract containing provision which, if unintended could readily have been stricken from contract or changed before signing)

Twin County Trucking, Inc. **259 NLRB No. 078**
(unilateral change in complement of work crews, unlawful)

The Sacramento Union **258 NLRB No. 141**
(E's unilateral change in criteria for work assignments after expiration of contract, unlawful, where previously job assignments had been made by steward on basis of priority list compiled by U by date on which Ees registered with U w/o regard to number of hours or shifts Ees had actually worked for E, but after expiration of contract E compiled and posted own priority list based in substantial part on actual shifts worked for E)

Dura-Vent Corporation **257 NLRB No. 063**
(unilaterally assigning bargaining unit work to individuals not covered by collective bargaining agreement, violative)

Louisiana-Pacific Corporation **256 NLRB No. 133**
(E not obligated to bargain with U concerning undecking of logs at its mill and piling them preparatory to logs being loaded by subcontractor's Ees, since, subcontracting of work was consistent with E's past practice; work was only occasionally done by E's Ees; no bargaining history that E's Ees and subcontractor's Ees worked as composite crew; subcontracting was economically justified; and U, in past, had unsuccessfully sought contract language limiting established subcontracting)

Newspaper Printing Corporation **JD-203-80**
(violation, where supervisor refused to grant Ee's request that he be rotated during shift to different machines because he was taking medication that might make him drowsy and endanger himself and others and subsequently terminated Ee pursuant to unlawful unilaterally instituted rule that prohibited rotation during shift)

Nebraska Bulk Transport, Inc. v. N.L.R.B. **608 F.2d 311 (C.A. 8, 1979)**
(unilateral changes in work assignments of unit Ees and subcontracting portion of unit work)

6067-4055-3700 Job classification

Schnadig Corporation **265 NLRB No. 030**
(E unilaterally changing classifications and wage scale, unlawful)

Dura-Vent Corporation **257 NLRB No. 063**
(violation, where E unilaterally offered to promote and promoted working foremen Ees to positions outside bargaining unit)

Jensen's Motorcycle, Inc. d/b/a Honda of San Diego **264 NLRB No. 165**
(E's unilateral decision to classify its mechanics as class *A* and *B* rather than to have no gradiations violated Act)

Hen-Dee Pak, Inc. **253 NLRB No. 126**
(in supplemental decision Bd found unilateral changes in job classifications and rates of pay for unit Ees after conduct of R election, but *prior* to determination of outcome of election won by U, violative, since E acted at its peril in making such changes pending resolution of objections)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(unilaterally instituting classification and wage rates applicable to new equipment at wage rate lower than wage rates in contract, violative, since E

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repudiated obligation to honor contract executed by one of entities comprising single E)

Talbert Manufacturing, Inc. 280 NLRB No. 026
(unilateral changes in classification and wage progressions, unlawful)

Kronenae Bottling Company, Inc. JD-338-82
(E's unilaterally eliminating job classification of driver-salesman, violative)

Madison Newspapers, Inc. JD-157-82
(unilaterally creating position of reel room supervisor for journeymen pressmen and paying them additional $40 each per week, unlawful)

Atlanta Baking Company, Inc. JD-298-80
(unilateral elimination of supervisory job classification, unlawful)

6067-4055-3800 Transfer

Schnadig Corporation 265 NLRB No. 020
(E unilaterally eliminating job bidding procedures by replacing job bidding procedure with transfer procedure, with Ee applying to foreman where desired transfer, unlawful)

Vincent Brass & Aluminum Co. 264 NLRB No. 070
(E's refusal to allow bidding down to lower paying job in order to transfer to another shift and subsequently posting no job openings, unlawful unilateral change, notwithstnading not established openings existed after cessation of postings, since contractual provision provided that job vacancies be posted and that assignment be made to senior bidder able to perform work applied to down bidding, and in view of E's unlawful threats regarding Ee's using bidding and statement job bidding would be discontinued)

Otis Elevator Company, A Wholly Owned Subsidiary of United Technologies 255 NLRB No. 005
(E's refusal to bargain over decision to relocate portion of operation, unlawful, since bargaining over transfer of Ees involved herein would not significantly abridge its prerogative to carry on its business; capital investment of $2 or $3 million in proposed new facility is not type of shift of assets considered outside scope of mandatory subjects of bargaining, and did not signal change in direction of E's activities or in character of its enterprise; and E has not undergone basic capital reorganization, terminated any activities, or liquidated any holdings in achieving its objectives)

Universal Security Instruments, Inc. 250 NLRB No. 092
(E violated Act by making job transfer offers to its new plant to Ees w/o bargaining with U)

Universal Security Instruments, Inc. 250 NLRB No. 092
(transfer of unit Ees to new plant and failing to bargain with U over changes in wages, health benefits and seniority violative)

Caterpillar Tractor Co. (Local 806, Allied Industrial Workers of America, AFL-CIO) 250 NLRB No. 089
(violation where E unilaterally announced and implemented new policy restricting use of transfer pool system; Ees previously had been able to downgrade themselves to lesser-paid, less demanding job classifications)

Hadison Manufacturing Company 249 NLRB No. 096
(unilaterally formulating and implementing new terms and conditions for possible transfer to other departments of Ees selected for layoff, unlawful)

Universal Security Instruments, Inc. v. N.L.R.B. 649 F.2d 247 (C.A. 4, May 1981)
(unilateral offer to Ees to transfer to new facility, violative)

Caterpillar Tractor Co. v. N.L.R.B. 658 F.2d 140 (C.A. 7, Sept. 1981)
(violation, where E unilaterally discontinued allowing Ees to request transfers which involved demotions, notwithstanding E's contention it gave three weeks notice of change and met with U numerous times where at initial meeting E merely informed U that it had changed its policy, at subsequent meetings did little more than explain reasons for change and informed U if U did not like it U should file grievance, and over U's objections proceeded to hire from street for position for which many Ees had applied requesting downgrading)

6067-4055-3900 Absentee rules

Van Dorn Plastic Machinery Co., Division of Van Dorn Company 265 NLRB No. 036
(where Ees were not aware of E's prior use of attendance/tardiness system, publication of the system represented unilateral change to Ees so that notification and enforcement of said new system was unlawful)

Ciba-Geigy Pharmaceuticals Division 264 NLRB No. 134
(E implementing completely revised attendance program w/o bargaining with U that provided for disciplinary actions for violations not contained in prior program, violated Act, as this was mandatory subject of bargaining)

Consolidation Coal Co. JD-(SF)-209-82
(discharge of Ees as direct result of E's implementing revised absenteeism policy w/o bargaining with U, violative)

6067-4055-4000 Working rules or schedules

RABCO, Inc. 265 NLRB No. 020
(E's changing Ees' work week from four 10-hour days to five 8-hour days w/o notifying U held unlawful, since E was motivated by desire to punish its Ees because they voted for U to represent them and E did not afford U opportunity to bargain over action)

Hudson Oxygen Therapy Sales Company 264 NLRB No. 004
(E's unilateral change in its disciplinary policy regarding Ee attendance, made while E's objections to election were pending, unlawful, where E imposed new penalties with respect to excessive Ee absences, which were material, substantial, and significant unilateral changes; there was no duty on part of U to demand bargaining while objections were pending, and even if U had duty to do so, it is excused because any demand would have been futile since U was not given notice of unilateral changes and, even if it was on notice, it was faced with *fait accompli*)

Wagner Distribution Services, Inc. d/b/a Distribution Services West 262 NLRB No. 096

Fall River Savings Bank 260 NLRB No. 125
(unilateral elimination of compensatory time off for Saturday over-time, violative)

Fall River Savings Bank 260 NLRB No. 125
(unilateral institution of mandatory six-day work week, violative)

Hadison Manufacturing Company 260 NLRB No. 076
(E violated Act when it unilaterally eliminated incentive payment of piece rate wages and also by unilaterally instituting new reporting time procedure for its Ees by making them leave cafeteria 5 minutes earlier)

The Celotex Corporation 259 NLRB No. 159
(unilateral institution of stricter enforcement of work rules after U won election violative)

Lion Uniform, Janesville Apparel Division 259 NLRB No. 143
(unilaterally informing Ees allegedly engaged in slowdown that work rules would be more strictly enforced and that Ee privileges of having coffee and placing lunch orders through outside restaurants were being removed, unlawful, where there was no showing that emergency action was required or that any other circumstances existed which prevented E from taking time to notify U of E's problems and its contemplated action)

Dilene Answering Service, Inc. 257 NLRB No. 024
(E's unilateral change in holiday work schedule not violative, where it implemented change after notifying U of its proposed change and giving U reasonable opportunity to respond which U never did; Bd found implementation of the new schedule was justified by business necessity)

Colson Equipment, Inc. 257 NLRB No. 018

Gulf Coast Automotive Warehouse, Inc. 256 NLRB No. 004
(no violation, where E administered new polygraph tests to Ees after discovering that one Ee had history as embezzler, since E had history of giving preemployment and specific suspicion situation polygraph tests, and test questions propounded were for security purposes and could not have been greatly different from questions propounded to job applicants and to Ees suspected of stealing)

Bay Medical Center, Inc. 252 NLRB No. 159
(E's unilateral reduction in hours upon transfer of Ees to new facility, notwithstanding U's repeated requests to bargain over issue, unlawful)

Castle-Pierce Printing Company, Inc. 251 NLRB No. 172
(E's institution of absence rule after expiration but during bargaining negotiations for new contract which gave E right to govern Ees' use of overtime, not unlawful, where E met its obligation to bargain with U over rule before its implementation and after impasse had occurred)

Mediterranean Diner, Inc., t/a Bay Diner 250 NLRB No. 029
(violation, where w/i 2 days after election E, who operated bar and restaurant, increased number of assigned tables to each waitress, prohibited smoking and talking even during breaks, required Ees to stand, changed dress code, and intensified checks on cleaning bar)

Portsmouth Lumber Treating, Inc. 248 NLRB No. 160
(violation where a week after U won election and before U's vitory was certified, E changed Ees' work hours and lunch period w/o consulting with U)

Automobile Club of Michigan; Detroit Automobile Inter-Insurance Exchange; Motor Land Insurance Company; Group Insurance Company of Michigan; and Member Life Insurance Company of Michigan JD-360-83
(changes in office hours because of Essential Insurance Act, not unlawful unilateral change where E had always altered office hours to accommodate business necessities)

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Automobile Club of Michigan; Detroit Automobile Inter-Insurance Exchange; Motor Land Insurance Company; Group Insurance Company of Michigan; and Member Life Insurance Company of Michigan JD-360-82
(check-out procedure requiring Ees to inform management when leaving for rest of day, not unlawful but *more efficient and dependable* method for enforcing workplace rules)

Vanity Fair Mills, Inc. JD-(ATL)-38-82
(E unilaterally requiring Ees to work 3 nine hour and one 5 hour day during week before holiday rather than 4 eight hour days as required by agreement, not unlawful, notwithstanding U not formally consulted about change, where U had actual notice about change and voiced no objections prior to working changed schedule)

Southern Farmers Association JD-47-82
(unilaterally adopting and announcing new and differently administered work rules, disciplinary procedures and more vigorous enforcement of such rules and discipline, violative)

Westinghouse Electric Corporation JD-(ATL)-60-81
(refusal to allow Ee to leave his job as promptly as possible to enable him to attend U meeting violative where this was provision of collective-bargaining agreement)

Thomas Truck & Caster Company JD-435-81
(unilaterally instituting short work week for indefinite term violative, as no discussion over management rights clause or short work weeks during contract negotiations, therefor, broad management rights clause did not constitute waiver by U to bargain over mandatory subjects)

Paradise Discount Store JD-(SF)-89-81
(unilaterally changing hours of work and days off, violative)

New Mayo, Inc., d/b/a Mayo Products Company JD-(ATL)-18-81
(unilaterally changing shift schedule at time when outcome of challenge to determinative ballot was pending, not unlawful, where U was not ultimately certified)

Fremont Auto Center, Inc. d/b/a Fremont Mazda JD-(SF)-12-81
(tightening work rules and conditions, not unlawful, where E desired better efficiency and control, and E's action preceded U's organizational drive and in fact prompted Ees desire to organize)

Newspaper Printing Corporation JD-203-80
(violation, where supervisor refused to grant Ee's request that he be rotated during shift to different machines because he was taking medication that might make him drowsy and endanger himself and others and subsequently terminated Ee pursuant to unlawful unilaterally instituted rule that prohibited rotation during shift)

Newspaper Printing Corporation JD-203-80
(violation, where E unilaterally instituted rules prohibiting rotation of onerous and demanding tasks)

The Union Savings and Trust Company v. N.L.R.B. 643 F.2d 1249 (C.A. 6, 1981)
(E's post-election unilateral change in schedule of three Ees and cessation of acceptance of new customer accounts resulting in elimination of two jobs after U won election, unlawful)

6067-4055-4200 Removing work from unit

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal 265 NLRB No. 121
(violation where purchasing E, found herein *alter ego* of predecessor E, unilaterally subcontracted out unit work)

Bay Shipbuilding Corp. 265 NLRB No. 166
(shipbuilder's refusal to apply terms of bargaining agreement to its manual lofters transferred to separate department established upon institution of computerized lofting, unlawful; E's contention computerized department should not be in unit rejected, since function of both manual and computerized lofting was to make part of ship with differences only in manner part is produced; both skilled jobs requiring same basic education; fact same supervisor used and substantial interaction between computerized and manual departments; further, management rights clause did not give E right to remove department from unit)

Lion Uniform, Janesville Apparel Division 259 NLRB No. 142
(unilateral removal of operations to newly purchased facility, not unlawful, where move was temporary and necessitated by business reasons brought on by Ees' strike; E engaged in good faith bargaining after U's certification, reinstated strikers at end of strike, and continuously told U that it would provide work for Ees at old facility; moreover, its prior threat to close plant and cancel expansion was never implemented, and its move came when its continued viability was endangered)

K & S Circuits, Inc. 259 NLRB No. 163
(transfer of unit work, not unlawful, where E acknowledged to U that work was being transferred, there was insufficient proof that work was *major portion* of unit work, and U did nothing more than file charge about such unilateral action)

Newspaper Printing Corporation 250 NLRB No. 128
(unilateral removal of advertisement typesetting work from *composing room* to *job shop*, violative, since this work was customarily performed by *composing room* Ees)

Universal Security Instruments, Inc. 250 NLRB No. 082
(collective-bargaining agreement containing management rights clause allowing E to *relocate* plant w/o bargaining, does not constitute waiver of U's right to bargain over opening of new plant and subsequent transfer of Ees to that plant as term *relocate* does not cover this situation; clear and unequivocal waiver by U of its right to bargain with E over closing of plant and transfer of its Ees is necessary to constitute such waiver)

California Hyatt Corporation d/b/a Hyatt Regency San Francisco JD-(SF)-72-82
(moving women deep cleaners out of unit w/o consent of U, violative)

Atlas Inc. JD-890-79
(violation where E withdrew its recognition of U, laid off all Ees, ceased operations and transferred all physical assets to corporation found herein to be successor to and *alter ego* of E, and the corporation refused to reinstate E's Ees, subcontracted work formerly performed by E's Ees, refused to recognize U selected by E's Ees, and unilaterally changed those Ees' existing conditions of employment w/o prior notice to U, all in order to avoid dealing with U)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)
(E's failure to bargain regarding its decision to transfer unit work, unlawful, where E's failed to give U notice of its intention since transfer permanent rather than temporary in response to strike; and only portion of work shifted back to unit upon hiring of strike replacements; E's contention U have waived right to bargain regarding transfer of unit work, rejected)

6067-4055-4300 Job requirements

The Sacramento Union 258 NLRB No. 141
(E's unilateral change in criteria for work assignments after expiration of contract, unlawful, where previously job assignments had been made by steward on basis of priority list compiled by U by date on which Ees registered with U w/o regard to number of hours or shifts Ees had actually worked for E, but after expiration of contract E compiled and posted own priority list based in substantial part on actual shifts worked for E)

Charmer Industries, Inc. 250 NLRB No. 031
(Es' unilateral change in procedures for collecting payments from customers, whereby salesmen replaced delivery drivers in making c.o.d. collections, unlawful, since procedure resulted in substantial additional duties and burdens for salesmen and were not a matter of management prerogative; inadequacy of alternative methods to direct collection exposed salesmen to considerable pressures which forced them to begin collecting payments themselves and, although Es did not directly pressure salesmen to make collections, they knowingly utilized force of circumstances to control salesmen' conduct)

Tenneco Chemicals, Inc. 249 NLRB No. 171
(establishment of work rules requiring higher standards of performance enforcable by discipline w/o bargaining with U, violative, as rules constitute mandatory subject of bargaining)

Automobile Club of Michigan; Detroit Automobile Inter-Insurance Exchange; Motor Land Insurance Company; Group Insurance Company of Michigan; and Member Life Insurance Company of Michigan JD-360-82
(requiring salesmen to use contact forms, and, if low producers, to attend classes and telephone calling sessions, not unlawful, since they do not constitute material, substantial or significant changes and were not new with E or industry)

Liquor Salesmen's Union Local 2 of The State of New York, Distillery, Rectifying, Wine & Allied Workers' International Union, AFL-CIO v. N.L.R.B. 664 F.2d 318 (C.A. 2, July 1981)
(ct denied enforcement of Bd's order based on finding that Es violated 8(a)(5), and instead concluded that Bd abused its discretion in declining to defer to arbitrator's award which held that Es did not violate contract with U when they unilaterally instituted new collection procedures for their salesmen since arbitrator found, as matter of contract interpretation and in light of examination of past practice, that Es' institution of new procedures did not impose change in rules)

6067-4055-4500 Personal conversation

Mediterranean Diner, Inc., t/a Bay Diner 250 NLRB No. 029
(violation, where w/i 2 days after election E, who operated bar and restaurant, increased number of assigned tables to each waitress, prohibited smoking and talking even during breaks, required Ees to stand, changed dress code, and intensified checks on cleaning bar)

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Newspaper Printing Corporation JD-203-80
(violation, where E unilaterally instituted rule prohibiting talking while working)

6067-4055-4600 Movement around workplace

Wayne County Neighborhood Legal Services, Inc. 249 NLRB No. 180
(E's issuance of directive forbidding attorney Ees to be present in area during specified hours when negotiations were in progress with Ees in another unit, unlawful, where E failed to notify U representing attorney Ees of proposed change and failed to discuss it with U)

Wayne County Neighborhood Legal Services, Inc. 249 NLRB No. 180
(E's reprimanding of attorney Ee for violating new work rule, herein found unlawful unilateral change, whereby attorneys were forbidden from being present in area where negotiations with Ees in another unit were in progress, unlawful)

Hedison Manufacturing Company 249 NLRB No. 096
(unilateral imposition of new rule prohibiting Ees from visiting fellow Ees in other departments during lunch and break periods, and threatening Ees with discipline for violating rule, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries 247 NLRB No. 164
(unilateral circumscription of Ee's representational function by imposition of restrictions as to his movement in the plant, unlawful)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. 629 F.2d 305 (C.A. 3, 1980)
(where Bd issued bargaining order and ct set it aside, remanding to Bd for further proceedings and Bd reinstated bargaining order, ct affirmed Bd, E's institution of new plant rules while bargaining order set aside violative as Bd may make bargaining order retroactive to date U achieved majority status)

6067-4055-4700 Rules governing entering, leaving, and movement within plant

Dunham-Bush, Inc. 264 NLRB No. 175
(GC's cross mtn for summary judgment granted where E violated Act by unilaterally modifying its collective-bargaining agreement by instituting new rule prohibiting Ees from leaving plant during lunchbreak and discharging 3 Ees for disobeying rule; Bd refused to defer to arbitrators decision upholding E's actions because arbitrator's finding that modification is not violative is repugnant to Act)

6067-4055-5000 Rules governing absenteeism and tardiness

Ciba-Geigy Pharmaceuticals Division 264 NLRB No. 134
(unilaterally implementing new Attendance Control Program w/o bargaining violative, as it provided all sorts of guidelines for attendance, imposed progression of warning notices and counseling sessions leading to discharge since these changes were serious and more stringent than rules in contract)

Zero Corporation, Zero East Division 262 NLRB No. 064

Production Plated Plastics, Inc. 254 NLRB No. 068
(unilaterally changing written plant rules on tardiness, violative)

Latex Industries, Inc. 252 NLRB No. 122

Merillat Industries, Inc. 252 NLRB No. 114
(E's unilateral adoption of more stringent rules on absenteeism, not unlawful notwithstanding facts that rules were mandatory subject of bargaining, E did not offer to bargain with U about them, and U did not contractually waive its rights to bargain about them, where prior to E's adoption of new rules, U president was advised of nature of rules and then proposed change that was accepted by E, one week prior to rules' implementation, all stewards were given copies of rules, at no time did U request bargaining, and did not object in any manner to implementation of new rules until 4 months after their adoption)

Castle-Pierce Printing Company, Inc. 251 NLRB No. 172
(E's institution of absence rule after expiration but during bargaining negotiations for new contract which gave E right to govern Ees' use of overtime, not unlawful, where E met its obligation to bargain with U over rule before its implementation and after impasse had occurred)

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors 251 NLRB No. 151
(one demand for doctor's excuse, not unlawful where demand does not constitute policy change affecting Ees in general; rather affected only one Ee; was E's response to unique situation where Ee out for first 3 days of hunting season and E felt Ee was supporting effort to put him out of business)

Meatcorp (Formerly Seymour Packing Division of Seymour America, Inc.) 251 NLRB No. 047
(new requirement of doctor's slips for absences due to illness)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(unilateral reduction in length of grace period for lateness and disciplining Ee because her late arrival was outside protection of more stringent grace period but w/i original grace period guideline, violative)

Wellman Industries, Inc. 248 NLRB No. 029
(discharge for violating unilaterally and unlawfully imposed on-call rule, unlawful)

Westinghouse Electric Corporation JD-(ATL)-40-81
(requiring Ees to produce doctor's certificate for 1-day illness when previous rule was for 3-day illness violative)

Packless Metal Hose, Inc. d/b/a Packless Industries JD-(SF)-98-81
(company rules not violative where evidence showed had been in existence for years prior to U campaign)

Lever Brothers Company JD-301-80
(E's promulgation of new, more stringent absentee rule during contract term not violative because U by its agreement to management rights clause, which by past agreements covered absenteeism, waived its right to be consulted and bargain thereon, at that time)

Good Hope Refineries, Inc. v. N.L.R.B. 620 F.2d 57 (C.A. 5, 1980)
(violation by unilateral modification of Ee absence-counseling system which deprived Ee of opportunity to seek U representation in session which could result in discipline)

6067-4055-5500 Work performance reviews

Fundacion Educativa Ana G. Mendez d/b/a Puerto Rico Junior College 265 NLRB No. 003
(educational institutions' unilaterally terminating existing faculty evaluation procedures governing retention, tenure and promotion and thereafter refusing to bargain about those procedures, unlawful where potential for effective faculty influence in overall evaluation process was markedly limited and faculty was neither supervisory nor managerial; furthermore, faculty could not be supervisory or managerial for evaluation purposes only and Ees for all other purposes as contended)

Roper Corporation 263 NLRB No. 151
(E who unilaterally discontinued merit wage increases and Ee job performance reviews at time when E was negotiating with U violated Act)

6067-4055-5900 Vacation plan

Texaco Inc. JD-(ATL)-98-82
(cancelling prescheduled vacations for Ees at commencement of strike not unilateral change where E had been found in prior Bd decision to have contractual right to schedule vacations and was thus empowered by contract as well as past practice of many years to cancel the vacations; vacation benefits were not denied, only postponed)

6067-4055-6000 Lunch period

Van Dorn Plastic Machinery Co., Division of Van Dorn Company 265 NLRB No. 036
(failure to bargain over unilateral change in paid lunch policy while objections to election won by U were pending, violative as well as failure to bargain over effects thereof, where E's stipulation of *business necessity* w/o more fell short of Bd's standard of *compelling economic considerations*)

Lion Uniform, Janesville Apparel Division 259 NLRB No. 142
(unilaterally informing Ees allegedly engaged in slowdown that work rules would be more strictly enforced and that Ee privileges of having coffee and placing lunch orders through outside restaurants were being removed, unlawful, where there was no showing that emergency action was required or that any other circumstances existed which prevented E from taking time to notify U of E's problems and its contemplated action)

Technical Careers Institutes, Inc. 259 NLRB No. 042
(E's unilaterally increasing length of work day and work week and unilaterally reducing daily lunch break period violative, notwithstanding absence of showing that E had acted in bad faith)

Larsen Supply Co., Inc. 251 NLRB No. 175
(E violated Act where prior to election which U won, Ees were allowed to take their lunch breaks whenevers it was convienent but afterwards required them to take it at specified time in retaliation for U vote and w/o E bargaining with U)

Newspaper Printing Corporation JD-203-80
(violation where E unilaterally instituted rule forbidding previous practice of eating and drinking at work stations)

6067-4055-6300 Physical examinations

Mark J. Leach d/b/a Mark J. Leach Electrical Contractors 251 NLRB No. 151
(one demand for doctor's excuse, not unlawful where demand does not constitute policy change affecting Ees in general; rather affected only one Ee; was E's response to unique situation where Ee out for first 3 days of hunting season and E felt Ee was supporting effort to put him out of business)

Talbert Manufacturing, Inc. 250 NLRB No. 036

6067-4055-6600 Medical services

Kraft Plumbing and Heating, Inc. 252 NLRB No. 126
(unilaterally instituting new health and welfare plan covering unit Ees, violative)

6067-4055-6700 Paid sick leave

6067-4055-6700—Cont.

Parkview Nursing Center II Corp. **260 NLRB No. 097**
(GC did not sustain burden of proving allegation that E unilaterally changed its sick pay policy where, while affected Ees believed that sick leave would be paid starting early in year due to E's statements, there was no testimony as to his definite pronouncements as to when benefits would actually start, and U never claimed Ees did not get paid amounts due but only that effective date of pay policy was changed; however, effective date was in fact established at mid-year)

6067-4055-7000 Vending machines and cafeteria services

Henry Vogt Machine Company **251 NLRB No. 040**
(unilateral elimination of privilege of using subsidized cafeteria by laboratory Ees, unlawful; E announced its intention to alter status quo by barring Ees from cafeteria just 2 days before contract was presented to Ees for ratification)

6067-4055-7500 Privileges

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(cancellation of wage program, discontinuation of Christmas bonuses and turkeys, dismantling women's lounge w/o notice to U and in retaliation for U victory, violative)

Louisiana Council No. 17, AFSCME, AFL-CIO **250 NLRB No. 072**
(E's unilateral rescission of Ees' credit card privileges, unlawful, since action constituted material change affecting working conditions inasmuch as Ees will be forced to use their own money rather than E's, and will be forced to wait up to a week or more for reimbursement)

Brueckner Sand & Gravel, Inc. **JD-(SF)-312/81**
(termination of drivers' fishing privileges on company property after U won election, violative where it was for discriminatory purpose and w/o notice to U)

Newspaper Printing Corporation **JD-203-80**
(violation where E unilaterally instituted rule forbidding previous practice of eating and drinking at work stations)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(unilateral imposition of *take home* fee charged to commission drivers of Es' cabs unlawful, since imposition of such fees was change from past practice and thus mandatory bargaining subject)

6067-4055-7700 Change in personnel practices and procedures

Together We Stand Women's Guild Day Care Center **256 NLRB No. 064**
(E's institution of new personnel practices and procedures w/o notification to or bargaining with U, violative)

6067-4055-8000 Telephones, radios, etc.

Hadison Manufacturing Company **249 NLRB No. 096**
(unilaterally prohibiting use of radios and pay telephones during working hours, unlawful)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(unilateral circumscription of U representative by restricting his access to telephone, unlawful)

Stockton Dodge, Inc. **JD-(SF)-255-81**
(no violation where E unilaterally prohibited radio playing at work stations and elimination of Christmas party since U never requested bargaining over these changes)

Bill Fox Chevrolet, Inc. **JD-767-80**
(E's unilateral blanket withdrawal of permission for Ee use of company telephones, unlawful)

6067-4055-8200 Safety rules

Hanes Corporation **260 NLRB No. 077**
(E violated Act by refusing to bargain with U concerning specific discretionary aspects of wage increase, rules respecting wearing of respirators, and of an economic layoff; unilateral institution of these changes were not violative however, E had duty to bargain over effect of changes)

Kewanee Bottling Company, Inc. **JD-330-82**
(E's unilateral enforcement of dormant rule requiring use of safety glasses, violative)

6067-4055-8600 Disciplinary system

Winer Motors, Inc. **265 NLRB No. 185**
(unilateral implementation of written warning system with its discriminatory application against pro-U Es, violative)

RAHCO, Inc. **265 NLRB No. 030**
(new system of written warnings and discipline)

Marin Grand Prix Motors Corporation **261 NLRB No. 179**
(unilaterally instituting policy that three comebacks by a mechanic would result in his discharge)

Robbins Door & Sash Company, Inc. **260 NLRB No. 060**
(E who posted a notice setting forth new progressive discipline system that was to be implemented if Ee was found engaging in slowdown activity violated Act where discipline system had not been discussed during any of the previous bargaining sessions, did not conform to any provisions of expired contract as this constitutes unlawful unilateral change in condition of employment)

Jaybil Steel Products, Inc.; etc. **258 NLRB No. 187**
(E unilaterally instituting use of written rather than oral warnings unlawful)

Latex Industries, Inc. **262 NLRB No. 122**

Pease Company **251 NLRB No. 069**
(E's reliance on tentative agreements as justification for imposition of new disciplinary program with respect to overtime was misplaced, where both parties understood that tentative agreements were subject to change until complete agreement was reached)

Good Hope Refineries, Inc. v. N.L.R.B. **620 F.2d 57 (C.A. 5, 1980)**
(violation by unilateral modification of Ee absence-counseling system which deprived Ee of opportunity to seek U representation in session which could result in discipline)

6067-4055-8700 Procedure for recalling laid-off employees

Quality Packaging, Inc. **265 NLRB No. 142**
(failing to recall Ees by seniority after economic layoff, violative, where no specific reason was given, more senior Ees brought U in, and basis for this recall; namely, attitude and work performance had not been used before)

A & T Manufacturing Company **265 NLRB No. 201**
(E's unilateral implementation of changes in method of selection of Ees for recall, not unlawful, since E had lawfully withdrawn recognition from U in view of U's conflict of interest resulting from its representation of Ees of another E and thus had no obligation to consult with U and no evidence of discriminatory basis for changes)

6067-4055-8900 Overtime

A & T Manufacturing Company **265 NLRB No. 201**
(E's institution of night shift with shift differential and hiring temporary Ees for shift rather than permitting Ees to perform additional work at overtime rates, not violative of Section 8(a)(3), nor was unilateral implementation violative of Section 8(a)(5) where E had lawfully withdrawn recognition from U)

Research Products/Blankenship Company **250 NLRB No. 083**
(E unilaterally changing overtime work on Saturday from voluntary to mandatory, violative)

Caterpillar Tractor Company **237 NLRB No. 029**
(reduction of weekend overtime, not unlawful, where such reduction was result of creation of irregular shifts and there was no evidence that shifts were created for discriminatory reasons)

Castle-Pierce Printing Company, Inc. **251 NLRB No. 172**
(E's institution of absence rule after expiration but during bargaining negotiations for new contract which gave E right to govern Ees' use of overtime, not unlawful, where E met its obligation to bargain with U over rule before its implementation and after impasse had occurred)

Pease Company **251 NLRB No. 069**
(unilateral implementation of new disciplinary program with respect to overtime, unlawful, where mandatory overtime was never agreed to by U, and E's reliance on tentative agreement that Ees were expected to work overtime did not constitute bining agreement on mandatory overtime by every Ee)

Wellman Industries, Inc. **248 NLRB No. 039**
(unilateral change from voluntary to mandatory overtime, unlawful)

Macotta Corporation **JD-326-82**
(E's failure to notify U about reduction in overtime work not violative where overtime was scheduled on as needed basis and reductions were routine production scheduling adjustments, notwithstanding occured following U victory)

Westinghouse Electric Corporation **JD-(ATL)-68-81**
(dividing work force into two overtime groups rather than informal overtime procedure)

Mahler Sales Co., Inc. **JD-(SF)-313-79**
(no violation found where E unilaterally changed Ees overtime policy at time when E had no obligation to bargain with U since U had lost election based on challenged ballot which was only later counted in favor of U)

6067-4055-9000 Imposition of fines or other financial liability

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(docking Ee for time he missed from work, not unlawful, since E has right to dock Ee for such reason, and evidence herein fell short of establishing that E was thereby unilaterally changing a generally applicable term or condition of employment)

6067-4060 Restrictions on plant access by nonemployee representative

6067-4060—Cont.

Robert E. Johnson and Geneva H. Johnson, a Partnership, d/b/a Jolie Bois Company 265 NLRB No. 141
(refusing U representative access to Ees on E's premises to advise them to assist her in determining whether contract provisions were being complied with constituted unilateral change)

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 106
(E's letter outlining for U representative E's interpretation of contract provision pertaining to non-Ee U representatives' access to plant held not to constitute unlawful unilateral change, since letter was nothing more than reasonable attempt to flesh out bare bones of contractual access provision with detail for its implementation)

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 106
(E's defense to unilateral change in U access rules on ground that broad managements rights clause and its common law property rights permitted it to establish any access rules it desired so long as they were not specifically limited by contract's access provision, rejected, since such argument ignores bargaining history concerning such provision)

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 106
(U access provision of contract held to have survived expiration of contract, since past practice of permitting access by non-Ee U agents for purpose of policing agreement rose to level of term of employment not subject to unilateral change; as such, access provision must be considered w/i terms related to E-Ee, as opposed to Ee-U, relationship which Bd regularly finds to survive term of contract)

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 106
(type of action engaged in by incumbent U's agents during pendency of decertification ptn held not to constitute overt campaigning E could permissibly prohibit by unilaterally changing access rules; it is only in indirect sense that it can be said that U agents were campaigning; indeed, absent decertification ptn, it appeared that U representatives were performing normal bargaining agent function, rather than type of overt organizational activities E could permissibly prohibit; and evidence failed to establish that U was engaged in such overt campaigning)

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 106
(restrictions on non-Ee U representatives' access to specific instances where U had prior knowledge of conditions it desired to check or had previously filed written grievance held unlawful impermissible changes)

National Sea Products, Incorporated 260 NLRB No. 005
(where contract permits plant access to U agent to observe working conditions and requires agent to *announce his presence* and *reason of his visit*, no violation by not allowing U agent access to plant at 6 a.m. and explaining that escort would be available at 8:30 a.m. as U agent did not tell E that problem could be observed only at 6 a.m. and insisting on providing escort was not imposing substantial, material, and significant change in its contractual U access clause)

Georgia Kraft Company, Woodkraft Division 238 NLRB No. 121
(plant manager's telling Ees they had no formal grievance procedure after contract containing such procedure had expired held violative, since E was required to process grievances in accordance with provisions of expired contract absent impasse on that subject)

6067-4066 Unilateral change in grievance and dispute resolving procedures (See also 530-6050- 4100)

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal 265 NLRB No. 121
(violation where purchasing E, found herein *alter ego* of predecessor E, refused to process grievance filed by U representing predecessor E's Ees)

United States Postal Service 263 NLRB No. 043
(no unilateral change in E's policy of promptly releasing U stewards on request to handle grievances where intermediate post office supervisors' sporadic efforts to make such changes were promptly negated by postmaster's unequivocal acts)

Southwest Security Equipment Corporation 262 NLRB No. 079
(E violated Act when it unilaterally discontinued abiding by hiring hall provisions of contract, making required contributions to fringe benefit trust funds, and failed to participate in contractual grievance and arbitration procedure)

Digmor Equipment and Engineering Company, Inc. 261 NLRB No. 176
(E's refusal to arbitrate grievance after expiration of contract, unlawful, notwithstanding E's assertion of U's loss of majority and that qcr existed in view of RM ptn, since duty to arbitrate survives contract where grievant was discharged for conduct occurring in part prior to contract's expiration; basis for grievance was contract, and further, at time E asserted expiration of contract as basis for refusing to arbitrate, election had confirmed continued support of U and U certified)

Colson Equipment, Inc. 257 NLRB No. 015
(refusal to process grievance, unlawful)

The Mead Corporation 256 NLRB No. 106
(E's promulgation of new rules on procedures governing grievances ordering Ees to complete their work assignments before processing grievances held violative where E had existing practice of permitting grievance writing during Ee's working time)

U.S. Utilities Corporation 254 NLRB No. 058
(refusal to apply grievance procedure to new operations, violative as contract was not restricted to U's jurisdiction)

Paramount Potato Chip Company, Inc. 252 NLRB No. 117
(E's refusal to arbitrate grievances and post seniority list violative where both were provisions contained in collective bargaining agreement)

Power Company 251 NLRB No. 090
(E's unilateral alteration of grievance procedure established under expired contract, unlawful, where E arrogated to itself sole authority in deciding what subject was grievable and reserved to itself final decision on merits of any grievance it deigned to consider)

Campo Slacks, Inc. and J & E Sportswear, Inc. 250 NLRB No. 087
(refusal to process grievances as provided in contract regarding layoffs, discharges, and or refusal to recall, refusal to checkoff U dues, and unilateral change in insurance benefits)

Appalachian Power Company John E. Amos Plant 250 NLRB No. 038
(E's letter, 4 days after U certified, unambiguously ending application of grievance-arbitration procedures to unit Ees in accordance with procedures set forth in Ee handbook held violative, since E did not offer to, and in fact did not, bargain with U about excluding unit Ees from coverage of grievance-arbitration procedure)

Leland Detroit Mfg. Co. JD-459-82
(E's failure to recognize provisions of contractual grievance procedures constituted unilateral change notwithstanding contract had expired)

Westinghouse Electric Corporation JD-(ATL)-40-81
(E must process grievances in accordance with provisions in expired contract and refusal to do so violative)

Sunnyland Foods, Inc. JD-(ATL)-36-80
(publication and distribution of Ee handbook containing contractual grievance procedure which eliminated any reference to U's role in grievance processing unlawful, notwithstanding contention that handbook was drafted having in mind distribution at E's other plants which were unrepresented by Us and that E had not actually by-passed U and bargained directly with unit Ees, since intention for handbook to have primary application at E's other plants would not lessen its impact on unit Ees and U, and whether there was actual direct dealing with Ees during time handbook remained uncorrected is immaterial)

Long Manufacturing, N.C., Inc. JD-483-80
(E's unilateral changes in established past practices associated with grievance procedures which it enforced with terminations and suspensions in retaliations for U's treatment of time limit on grievances and for radical increase in grievances filed, unlawful)

Tri-State Warehouse & Distributing, Inc. and Public Warehousing Corp. JD-261-80
(refusal to process grievances)

Newspaper Printing Corporation JD-203-80
(refusal to arbitrate not per se violation of Section 8(a)(5); however where refusal to arbitrate, like refusal to comply with any contract provision, evidences intention to violate entire contractual undertaking and is part and parcel of unlawful scheme to repudiate bargaining obligation then refusal to arbitrate unlawful; in such circumstances Bd will order remedy even though U might also have remedy under Section 301 of Act)

Newspaper Printing Corporation JD-203-80
(E's refusal to arbitrate or even submit to third step of grievance procedure involving whether E voluntarily quit or was discharged, unlawful; notwithstanding U might also have Section 301 remedy; nor was deferral to arbitration appropriate)

N.L.R.B. v. Campo Slacks, Inc., and J & E Sportswear, Inc. 659 F.2d 1069(T) (C.A. 3, May 1981)
(no error in Bd's finding that Es refused to accept communication from U concerning processing of grievances pursuant to grievance provisions of bargaining agreement)

6067-4077 Unilateral change in union-security and checkoff (See also 530-6050-5000)

Texaco Inc. 264 NLRB No. 151
(E's terminating contract and ceasing to deduct and remit dues to U in reliance on memorandum to terminate contract, unlawful where U would not have signed memorandum but for ptn by majority of unit Ees to withdraw from U and cancel checkoff authorizations which was tainted by E's having unlawfully participated in its preparation and circulation)

6067-4077—Cont.

Hamett Maintenance Corporation **260 NLRB No. 135**

(discontinuance of dues check-off after expiration of contract not violative)

Billion Motors, Inc., d/b/a Billion Oldsmobile-Toyota **260 NLRB No. 099**

(failure to transmit U dues pursuant to contract for one month, not unlawful where there was no evidence that E did so to interfere with Ee rights)

Robbins Door & Sash Company, Inc. **260 NLRB No. 088**

(E's discontinuance of dues-check off after expiration of contract not violative as that duty is extinguished with expiration of contract)

Kaiser Foundation Hospitals and Kaiser Foundation Health Plan of Oregon **258 NLRB No. 004**

(no violation, where E refused U's request to discharge Ees for nonpayment of dues; U did not fulfill fudiciary duty to furnish statement of precise amount of dues owed and explanation of method used to compute amount and afford Ees reasonable opportunity to satisfy obligation before seeking Ees' discharge notwithstanding U informed Ees of dues obligation and delinquency; U sought dues for hiatus period between two contracts which U not entitled to even though contract retroactively effective; furthermore, Ees offered to pay dues on new contract so inference is that proper demand would not be ignored)

Colson Equipment, Inc. **257 NLRB No. 015**

(refusal to honor dues-deduction cards submitted by U, unlawful)

Independent Stave Company **248 NLRB No. 025**

(E's failure and refusal to comply with U security provision of current contract in response to U demand that some 46 Ees be discharged for failure to be U members in good standing held violative, since E had thereby unilaterally modified terms and conditions of parties' contract which called for investigation of named Ees and determination that they were delinquent and would not become members, notwithstanding U's alleged failure to fulfil its fiduciary obligation of notification to Ees)

J. F. Swick Insulation Co., Inc. **247 NLRB No. 086**

(any failure by E-member of multi-E association, in unlawfully refusing to sign and abide by terms of contract negotiated between association and U, to deduct checkoff dues of Ees who had authorized such deduction, violative)

Peerless Roofing Co., Ltd. **247 NLRB No. 072**

(E's failure to deduct U dues and transmit dues to U, not unlawful where obligation for such payment was pursuant to U-security and dues-checkoff clauses which did not survive when contract expired)

Potomac Iron Works, Inc.

(JD-264-82

(unilateral discontinuance of dues checkoff after Ees had voluntarily signed ptn to terminate checkoff unlawful, where attempted revocation of checkoff authorization was ineffective as matter of law because Ees signed ptn outside 15-day revocation period provided in authorization)

Patio Lodge, Inc., and Fountain Lodge, Inc. **JD-(ATL)-40-82**

(E's discontinuing payment to U of withheld U dues, unlawful)

Apex International Management Service **JD-(ATL)-86-81**

(successor E's unilateral discontinuance of predecessor's existing (contractual) practice of *checkoff* held violative, since *checkoff* was mandatory subject of bargaining and as such a term and condition of employment)

Truman Medical Center, Inc. v. N.L.R.B. **641 F.2d 570 (C.A. 8, Feb 11, 1981)**

(ct affd Bd's finding that failure of medical center, a not-for-profit corporation, to abide by U-security provision formerly in effect between medical center and U was unlawful, since, contrary to medical center's contention, it was not a political subdivision of State or a joint E with City, County and University, and Bd's assertion of jurisdiction was proper)

6067-4080 Unilateral change in hiring policies

Robert E. Johnson and Geneva H. Johnson, a Partnership, d/b/a Jolie Belts Company **265 NLRB No. 141**

(failure to attempt to secure Ees through use of U hiring hall as required by contract constituted unilateral change)

Southwest Security Equipment Corporation **262 NLRB No. 079**

(E violated Act when it unilaterally discontinued abiding by hiring hall provisions of contract, making required contributions to fringe benefit trust funds, and failed to participate in contractual grievance and arbitration procedure)

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**

(unilaterally discontinuing compliance with hiring hall provisions of contract, violative)

6067-4090 Wage and/or employment data

Schmidt Enterprises, Inc. d/b/a Cellar Restaurant **262 NLRB No. 094**

(refusal to furnish U with necessary and relevant requested information concerning wages and job description, violative)

Amphlett Printing Company **258 NLRB No. 019**

(on remand for explication of its remedy that E should disclose to newspaper guild only aggregate amounts paid independent correspondents for editorial product on basis of confidentiality, Bd explained that its order was based on recognition of nonunit writers' right to keep financial arrangements private from U not representing them; guild showed no need to know sums paid individuals where they were not translatable to unit Ees' compensation and not necessary for unit Ees to achieve parity or determine how large their *slice of the pie* was)

ACC Typographers, Inc. d/b/a Advertisers Composition Company Typographers, Inc. **253 NLRB No. 147**

(refusing to provide names, addresses, wages and other information about strike replacements, violative, where said information was presumptively relevant for U to effectively bargain on behalf of Ees; Bd rejected defenses of confidentiality, strike replacements ptn to have information concerning them withheld from U, and E's failure to prove clear and present danger of violence and harrassment to strike replacements as result of release of information)

Ledford Construction Company, Inc. **251 NLRB No. 193**

(where U requested details of E's complex wage proposal and E complied by providing U with its proposal containing formula to be used in calculating changes in wage rates and also provided example using hypothetical wage rates it did not violate Act notwithstanding it could not provide actual *dollars and cents*, figures as these were not available at that time)

6067-5000 Disciplinary action to enforce unilateral changes

Hedison Manufacturing Company **249 NLRB No. 096**

(unilateral imposition of new rule prohibiting Ees from visiting fellow Ees in other departments during lunch and break periods, and threatening Ees with discipline for violating rule, unlawful)

Hedison Manufacturing Company **249 NLRB No. 096**

(unilateral imposition of new rule prohibiting Ees from posting U-related or U literature on E's bulletin boards, and threatening Ees with discipline for violating rule, unlawful)

Rockwell International Corporation **260 NLRB No. 153**

(unilaterally changing in-plant cafeteria and vending machine food prices, violative)

6067-6000 Duty to furnish information

6067-6001 Generally

Detroit Edison Company v. N.L.R.B. **99 U.S. 1123 (S Ct., 1979)**

(U's bare assertion that it needs information to process a grievance does not automatically oblige E to supply all the information in the manner requested, since duty to supply information turns upon the circumstances of the particular case, and the same may be said for type of disclosure that will satisfy that duty)

Plough, Inc. **262 NLRB No. 141**

(fact that relevant requested information might have immediate impact on working conditions does not affect E's obligation to produce)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**

(U interests in information arguably relevant to collective bargaining do not necessarily always predominate over all other interests, however legitimate)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**

(E's proposal that U's request for medical information would have to be secured from Ees themselves did not relieve E of obligation to meet U's request, since E's obligation to provide relevant information imposed on E obligation to make reasonable effort to secure requested information, and, if unavailable, explain or document reasons for asserted unavailebility)

Kitchen Fresh, Inc. **258 NLRB No. 074**

(refusal to supply U with requested data violative, notwithstanding E contesting U's certification)

Beaumont Graphics, Ltd. **254 NLRB No. 044**

(E not bound by strike settlement between multiE association and U, nor was E required to furnish information relevant to grievance brought by U alleging violations of association contract and strike agreement, since E had lawfully withdrawn from multiE association; E was not party to association contract and had not consented, to be bound by association's strike agreement with U)

Intermountain Rural Electric Association **253 NLRB No. 164**

(ignoring U's request for information for nearly two months and then complying with request in only token fashion held violative)

Intermountain Rural Electric Association **253 NLRB No. 164**

(no defense to request for information that some of information sought pertained to non-unit people)

Southwestern Bell Telephone Company **247 NLRB No. 027**

(contention that U had waived its right to requested information because requirement was not in contract with E, rejected, since failure to incorporate statutory right in collective agreement does not justify inference of waiver thereof)

6067-6001—Cont.

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(under certain narrow circumstances E may be excused from providing requested information presumed or shown to be relevant when E has good faith claim of undue burden, legitimate business need for confidentiality or justifiable fear of harassment of Ees, disclosure generally will not be required; in such cases, ct will weigh competing interests of E and U in requested information and type and extent of disclosure required will depend on circumstances of particular case)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(E may defend against disclosure by demonstrating that there is clear and present danger that U will use information to incite violence or harassment of Ees. In general, this defense is likely to be sustained where E articulates reasonable good faith fear of harm to striker replacements, offers to explore alternative forms of disclosure acceptable to both parties (third party verification) and U refuses to accept any such alternatives)

N.L.R.B. v. Associated General Contractors of California, Inc. **633 F.2d 766 (C.A. 9, 1980)**
(refusal to disclose even relevant information is not always 8(a)(5) violation; E's reasons for nondisclosure and negotiating conduct of parties must be considered; problem is one of accomodating competing interests)

N.L.R.B. v. Associated General Contractors of California, Inc. **633 F.2d 766 (C.A. 9, 1980)**
(Bd's determination on issue of relevancy of information sought (roster of membership) by U is given great weight, either because it is finding of fact or because it is finding on mixed question of law and fact which is w/i expertise of Bd)

Daniel Silverman, RD v. Major League Baseball Player Relations Committee, Inc. et al. **516 F.Supp. 588 (D Ct NY, June 1981)**
(ptn for inj pending disposition ofplayer-association's charge that multi-owner committee failed to provide requested financial information, denied for lack ofreasonable cause to believe ULP was committed; Es are not required to disclose financial condition except when claiming inability to pay during bargaining sessions--as Es here did not--and statements by individuals not authorized to determine committee's position did not put *inability* to pay in issue)

6067-6001-1200 For bargaining is statutory

Borden Chemical, A Division of Borden, Inc. **261 NLRB No. 006**
(E's contention that U's request for list of all materials or chemicals purchased, stored, or processed at E's chemical manufacturing facility could be denied since U did not seek information through contractually provided Health and Safety Committee, rejected, since request derives from statutory claims rather than contractual right)

Westwood Import Company, Inc. **251 NLRB No. 162**

Eastern Maine Medical Center v. N.L.R.B. **658 F.2d 1 (C.A. 1, 1981)**
(failure to properly respond to legitimate U requests to disclose information, unlawful)

6067-6001-2000 Specificity and/or clarity

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(U, when seeking information relative to its role as collective-bargaining representative, does not have to cite particular provisions of contract which it seeks to police; *See East Dayton Tool and Die Co.* 239 NLRB 142 (1978))

Colgate-Palmolive Company **261 NLRB No. 007**
(defense that request was overly broad in that it was not limited to a particular controversy--which reply appears to comport with plant safety clause--rejected; since that is not basis for U's statutory right; moreover E's reply left U w/o guideline for limiting it's demand)

Fremont Manufacturing Division, The Oil Gear Company, Inc. **259 NLRB No. 038**
(portion of complaint pertaining to U's *catch-all* request for information dismissed, where request did not delineate particular data, but rather utilized sweeping language of legal conclusion in place of specific description)

Ledford Construction Company, Inc. **251 NLRB No. 193**
(where U requested details of E's complex wage proposal and E complied by providing U with its proposal containing formula to be used in calculating changes in wage rates and also provided example using hypothetical wage rates it did not violate Act notwithstanding it could not provide actual *dollars and cents*, figures as these were not available at that time)

Tripp Electric, Inc.; Triple B Electric; Robert Stephen Tripp d/b/a Coordinated Systems; Ronald J. Tripp d/b/a Integrated Systems **JD-(SF)-220-81**
(refusal of signatory to multi-E bargaining agreement to grant U's request for books and records of nonsignatory Es, not violative where U did not request with sufficient specificity and clarity the information it needed and no Bd order requiring production could issue absent initial showing of probable affiliation with or access to records of nonsignatory Es)

N.L.R.B. v. A. S. Abell Company **624 F.2d 506 (C.A. 4, 1980)**
(U's bare assertion that it needs requested information to process grievance does not automatically oblige E to supply all information in manner requested)

6067-6001-2500 May not be limited by contract

Colgate-Palmolive Company **261 NLRB No. 007**
(contention that by agreeing to a health and safety clause in the contract U waived right to receive health and safety information on request, rejected; neither contract language nor record as a whole showed requisite *clear and unmistakable waiver* of right to such information)

Colgate-Palmolive Company **261 NLRB No. 007**
(defense that request was overly broad in that it was not limited to a particular controversy--which reply appears to comport with plant safety clause--rejected; since that is not basis for U's statutory right; moreover E's reply left U w/o guideline for limiting it's demand)

Designcraft Jewel Industries, Inc. **254 NLRB No. 094**
(despite E's contention that bargaining agreement does not contain any disclosure provision and as contract does not otherwise indicate that demands for information are to be made through grievance and arbitration machinery, existence of such machinery would still not be defense to E who has refused to supply relevant data upon U's request)

6067-6001-3700 Standard for furnishing is relevancy of information to union's role as bargaining agent

Leland Stanford Junior University **262 NLRB No. 017**
(in determining whether information is relevant need only find probability that desired information is relevant, and that it would be of use to U in carrying out statutory duties and responsibilities)

Leland Stanford Junior University **262 NLRB No. 017**
(*while burden of proving relevance shifts to E in case involving nonunit information, ultimate standard of relevancy is same in all cases, and information considered not ordinarily relevant may be proved in a particular case to have even more fundamental relevance than that considered presumptively relevant although U has burden of proving relevance of nonunit information, that burden is not exceptionally heavy* some initial, but overwhelming demonstration of relevance by U is required)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(U has right to know, to extent of E's knowledge as reflected in certain of information requested, of perceived dangers or likelihood of harm arising from Ees' working conditions in order that U may adequately represent interests of unit Ees)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(Bd required to balance U's need for relevant, but assertedly confidential, information against any *legitimate and substantial* confidentiality interests established by E)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(E's failure to supply U with requested Ee health and medical information to extent that information does not include individual medical records from which identifying data *have not* been removed, held violative, since U's need for medical data potentially revealing past effects of work place environment upon unit Ees outweighs intrusion upon Ee privacy implicit in supplying of *aggregate* data such as that sought)

Colgate-Palmolive Company **261 NLRB No. 007**
(health and safety information relevant to U's representational functions as terms and conditions of employment)

Colgate-Palmolive Company **261 NLRB No. 007**
(defense that request was overly broad in that it was not limited to a particular controversy--which reply appears to comport with plant safety clause--rejected; since that is not basis for U's statutory right; moreover E's reply left U w/o guideline for limiting it's demand)

Columbus Products Company, A Division of White-Westinghouse Corporation **259 NLRB No. 029**
(rule is not *per se* and Bd must determine in each case whether information is relevant, and if relevant, whether information is sufficiently important or needed to invoke statutory obligation of other party to produce same)

Loral Electronic Systems, A Division of Loral Corporation **253 NLRB No. 116**
(*in determining whether information requested by U is relevant the general approach has been to apply liberal discovery type standard to issue of relevancy in evaluating each case on its facts*)

Westwood Import Company, Inc. **251 NLRB No. 162**
(*in determining whether E is obligated to supply particular information, Bd need only find a probability that desired information is relevant, and that it will be of use to U in carrying out responsibilities, this is discovery type of standard; thus, it allows U access to broad range of potentially useful information for purpose of effectuating bargaining process*)

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(refusal to provide requested information as to Ee work status, unlawful notwithstanding information was w/i knowledge of Ees; information was

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relevant and necessary to U's performance of its obligations and representative, and its right thereto was not defeated by its ability to acquire information through independent source)

N.L.R.B. v. A. S. Abell Company 624 F.2d 506 (C.A. 4, 1980)

N.L.R.B. v. A. S. Abell Company 624 F.2d 506 (C.A. 4, 1980)
(*relevancy* in cases should be determined under *discovery-type standard* where cts *of necessity must follow a more liberal standard as to relevancy*)

N.L.R.B. v. Jaggars-Chiles-Stovall, Inc. 639 F.2d 1344 (C.A. 5, 1981)
(*wage data on Ees outside bargaining unit must meet standard of relevance before it must be surrendered to U but NLRB determination of relevance of information sought in particular case must be given great weight by courts if only because it is finding of law and fact w/i expertise of Bd*)

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC v. N.L.R.B. 648 F.2d 18 (C.A.D.C., Nov. 1980)
(determination of whether information presumptively relevant begins with some duty owed by U in representing its numbers and then evaluates requested information on its relevance to that U's ability to carry out that duty)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)
(E not required to provide information pertaining to equipment purchased, whether equipment leased to nonunit Ees or its financial statements since data related to decision to institute leasing, a nonmandatory subject of bargaining, U did not represent nonunit Ees and so not relevant to U's performance as bargaining representative w/o special showing of pertinence to some bargainable issue; E not obligated to disclose financial statements merely because they might be helpful to U)

6067-6001-3720 Relevance to bargaining negotiations

Semco Printing Center, Inc. 265 NLRB No. 073
(E's refusal to furnish information sought by U concerning Ees' rates of pay, benefits, seniority dates, work rules, and related information, unlawful, since such information is presumptively relevant for bargaining purposes and must be furnished upon request, and E had not attempted to rebut relevance of information sought)

Leland Stanford Junior University 262 NLRB No. 017

Minnesota Mining and Manufacturing Company 261 NLRB No. 002
(E's Affirmative Action Plans (AAPs) are not presumptively relevant (to bargaining) except for certain statistics contained in *Work Force Analysis* portion of E's AAPs, and as to those U must indicate with appropriate specificity relevant information sought; U must demonstrate relevance to be entitled to entire plan; E not required to produce its AAPs or specified portions of plans where U had not demonstrated their relevance)

Minnesota Mining and Manufacturing Company 261 NLRB No. 002
(U entitled to full disclosure of requested health and safety information to extent that such disclosure is consonant with protection of individual Ees' privacy rights and with E's legitimate proprietary confidentiality concerns, since health and safety are terms and conditions of employment regarding which E is obligated to bargain on request, therefore such information is relevant)

Mobile Home Estates, Inc. 259 NLRB No. 182
(during and following economic strike, refusal to provide U with requested information on unit Ees, including jobs, rates of pay, held violative as U represented majority during this period)

Leonard B. Hebert, Jr., and Co., Inc.; et al. 259 NLRB No. 126
(refusing to provide information requested by U concerning E's alleged *double breasted* nonunion companies, violative, where U needed and sought information to police existing agreement and to prepare for bargaining negotiations)

SAS Ambulance Service, Inc., d/b/a Florida Ambulance Service; et al. 258 NLRB No. 065
(demanding names of U members as precondition to engaging in collective bargaining, violative)

Amphlett Printing Company 258 NLRB No. 019
(on remand for explication of its remedy that E should disclose to newspaper guild only aggregate amounts paid independent correspondents for editorial product on basis of confidentiality, Bd explained that its order was based on recognition of nonunit writers' right to keep financial arrangements private from U not representing them; guild showed no need to know sums paid individuals where they were not translatable to unit Ees' compensation and not necessary for unit Ees to achieve parity or determine how large *their slice of the pie* was)

Grand Islander Health Care Center, Inc. 256 NLRB No. 189
(refusal to furnish wage and employment information pertaining to Ees in recently certified unit, violative, notwithstanding U has not demonstrated *exact* relevance of such information where E has not rebutted presumption that such information is relevant)

Kraft Plumbing and Heating, Inc. 283 NLRB No. 12[illegible]
(refusing to furnish U certain payroll records requested by U and necessary to U's performance of its bargaining functions, violative)

Safeway Stores, Inc. 282 NLRB No. [illegible]
(it is well established that U entitled to such information from E as may be relevant and necessary for performance of its bargaining function *test of U's need for such information is merely showing probability that desired information was relevant, and that would be of use to U in carrying out its statutory duties and responsibilities*)

Safeway Stores, Inc. 292 NLRB No. [illegible]
(retail store's refusal to furnish reports, studies, documents, and tests on which it based its decision to install electronic scanning checkout equipment, including projected labor costs and savings, productivity, reduced head count, elimination of item price, marking and effect on inventory procedures; unlawful)

Westwood Import Company, Inc. 251 NLRB No. 1[illegible]
(*in accessing relevance of requested information concerning bargaining unit wage data is deemed presumptively relevant, while other information not so clearly related to U's bargaining and contract administration responsibilities must be shown to be relevant to bargainable issues, burden of proof is thus different, but ultimate standard of relevance is same in all cases, nonunit data may have even more fundamental relevance than that considered presumptively relevant*)

Villa Care, Inc., d/b/a Edmonds Villa Care Center 249 NLRB No. [illegible]
(refusal to furnish U with requested information concerning Ees' names, classifications, dates of hire, current wage rates, and dates and amounts of last pay increases, unlawful since information was necessary and relevant to negotiations)

James F. Stanford, Inc. d/b/a Ace Machine Co. 249 NLRB No. 073
(E's refusal to furnish U names and addresses of all unit Ees almost year after U's certification held violative, since they were necessary for U to perform its role as bargaining representative of E's Ees)

Southwestern Bell Telephone Company 247 NLRB No. 027
(failure of E to furnish U, pursuant to request, weekly list of unit job vacancies filled by Ee's name and service date, together with names and service dates of unit Ees having requests on file for those vacancies held violative, since data requested are central to tenure, terms and conditions of unit members employment and to important provisions and aspects of the contract and bargaining relationship)

Heat Transfer Group, Gulf and Western Mfg. Co. JD-281-81
(refusing to supply U with information concerning financial status of plant, contemplated relocation sites, comparative labor costs, its sources of information of competitors' wages and benefits and relocation feasibility studies, violative where E proposed and then commenced relocation of certain work, as U required information for intelligent bargaining and E had not bargained to impasse in good faith)

Industrial Uniform and Towel Service, Inc. JD-(NY)-43-80

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)
(where requested information concerns wages and related information for Ees in bargaining unit, information is presumptively relevant to bargainable issues; where the request is for information concerning Ees outside bargaining unit, U must show requested information is relevant to bargainable issues; to meet its burden regarding such information U must show more than an abstract potential relevance or mere suspicion or surmise; however, when E during bargaining put in issue information not presumptively relevant E must produce data to substantiate claims)

N.L.R.B. v. A. S. Abell Company 624 F.2d 506 (C.A. 4, 1980)
(U bears burden of showing that information it seeks concerning Ees outside bargaining unit is relevant to bargaining issues)

N.L.R.B. v. Gibraltar Industries, Inc. and Cane, Inc. 653 F.2d 1091 (C.A. 6, July 1981)
(U's claim that E violated its duty to bargain by failing to supply financial and wage information, rejected where only after E and U reached impasse and E lawfully ceased operation of one of plants did U request information and at this plant, information requested was not relevant to discussions on effects of plant closure)

N.L.R.B. v. Associated General Contractors of California, Inc. 633 F.2d 766 (C.A. 9, 1980)

Press Democrat Publishing Co., etc. v. N.L.R.B. 629 F.2d 1320 (C.A. 9, 1980)
(refusal to furnish wage date on non-unit independent editorial correspondents of publishing company who are paid per article or monthly retainer fee rather than per hour, violative as nonunit compensation data was relevant and potentially helpful to Guild in framing unit wage demands)

Press Democrat Publishing Co., etc. v. N.L.R.B. 629 F.2d 1320 (C.A. 9, 1980)
(Bd's use of liberal *discovery-type* standard of relevancy upheld as furthering statutory policy of facilitating meaningful collective-bargaining)

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Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)
(E not required to provide information pertaining to equipment purchased, whether equipment leased to nonunit Ees or its financial statements since data related to decision to institute leasing, a nonmandatory subject of bargaining. U did not represent nonunit Ees and so not relevant to U's performance as bargaining representative w/o special showing of pertinence to some bargainable issue; E not obligated to disclose financial statements merely because they might be helpful to U)

6067-6001-3730 Relevance to finding of race or sex discrimination

Safeway Stores, Inc. v. N.L.R.B. 691 F.2d 953 (C.A. 10, Oct. 1982)
(U's request for list of EEO complaints and charges filed against E held relevant to U's duty to administer agreement, because charges related to matters involving U members pending under EEO statutes)

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC v. N.L.R.B. 648 F.2d 18 (C.A.D.C., Nov. 1980)
(Bd's holding that data showing distribution and recent advancements of women and minorities is presumptively relevant upheld as this type of information aids the U in carrying out its duty to represent Ees in policing nondiscrimination clause in contract, and withholding of such information affects the U's ability to carry out its duties)

6067-6001-3740 Relevance to policing agreement

Homer F. Hatch, an Individual, d/b/a East Texas Fire Protection Company 260 NLRB No. 018
(E's failure to produce its purchase orders and/or invoices for past 3 years and register it kept summarizing these documents, violative; where U needed information to prepare its case in dispute with E over whether E complied with contract, and E failed to detail claim that its business would be harmed. However, GC must insure that information is not widely disseminated to protect E's business)

Southwestern Bell Telephone Company 262 NLRB No. 114
(E's refusal to furnish financial information about subcontracting, not violative since probable relevance of requested information was not demonstrated where E never asserted economic defense for its actions and it was clear that E let subcontracts involved for non-economic reasons)

Minnesota Mining and Manufacturing Company 261 NLRB No. 002
(U entitled to full disclosure of requested health and safety information to extent that such disclosure is consonant with protection of individual Ees' privacy rights and with E's legitimate proprietary confidentiality concerns, since health and safety are terms and conditions of employment regarding which E is obligated to bargain on request, therefore such information is relevant)

Borden Chemical, A Division of Borden, Inc. 261 NLRB No. 006
(U's request for list of all materials or chemicals purchased, stored, or processed at E's chemical manufacturing facility relevant to U's performance as bargaining representative since request, related to work place health and safety problems, presumptively relevant, and no contention request overbroad and need existed to deal with potential hazards, notwithstanding E's safety and health programs which were responsive to specific problems rather than calculated to provide broadly preventive policies)

Leonard B. Hebert, Jr., and Co., Inc.; et al. 259 NLRB No. 126
(refusing to provide information requested by U concerning E's alleged *double breasted* nonunion companies, violative, where U needed and sought information to police existing agreement and to prepare for bargaining negotiations)

L.M. Sattler Construction Co., Inc. 259 NLRB No. 087
(E's refusal to produce its general ledger pursuant to U's request for comprehensive audit of its financial records which U claims necessary to determine whether E was in breach of its bargaining obligation to make contributions to benefit funds unlawful, notwithstanding E provided other financial records, since U had cause to believe E was in violation of contract where Ees had been issued *side checks* not from payroll funds, and only through general ledger could U ascertain if E issuing checks to Ees not from payroll accounts which would indicate violation of contract and ledger thus relevant to U's obligation to police contract)

L.M. Sattler Construction Co., Inc. 259 NLRB No. 087
(test of U's need for such information is simply showing of probability that desired information was relevant and that it would be of use to U in carrying out its statutory responsibility. U need not demonstrate that information sought is certainly relevant or clearly dispositive of dispute between parties. Fact information is of potential relevance is sufficient to give rise to obligation on part of E to provide it)

Edward Z. Holmes Detective Bureau, Inc. 256 NLRB No. 102
(E's refusal to supply U with Ees' names, addresses, social security numbers, dates of hire and termination, employment location, and pay rate, unlawful where information was relevant to U's policing of contract, particularly as to payments of initiation fees, dues, and welfare fund contributions for new hires; U's contributions for new hires; U's misconduct held not to make test of E's good faith impossible or free E from obligation to supply information)

Designcraft Jewel Industries, Inc. 254 NLRB No. 094
(violation where E rejected U's request to examine its list of customers, accounts payable journal, invoices from suppliers, checkbooks, general ledger, general journal chart of accounts and computer summary sheets which U claimed would aid it in determining whether E was evading its contractual obligations)

Loral Electronic Systems, A Division of Loral Corporation 253 NLRB No. 116
(E's refusal to furnish U information, including job descriptions and production and sales data, for purpose of settlement of grievance as to whether Ees were performing production work as contended by U, rather than research work, and thus should be included in unit, violative)

Safeway Stores, Inc. 252 NLRB No. 095
(retail store's refusal to furnish reports, studies, documents, and tests on which it based its decision to install electronic scanning checkout equipment, including projected labor costs and savings, productivity, reduced head count, elimination of item price, marking and effect on inventory procedures; unlawful)

Safeway Stores, Inc. 252 NLRB No. 184
(no merit found to E's claim in response to U's request for information concerning race, sex and handicapped Ees, that U had failed to satisfy requirement in *Westinghouse Electric Corporation, 239 NLRB 106 (1978)* where information requested related directly to U's representation of all unit Ees, including handicapped Ees, which information was presumptively relevant)

Pullman Building Company 251 NLRB No. 145

Westwood Import Company, Inc. 251 NLRB No. 162
(in assessing relevance of requested information concerning bargaining unit wage data is deemed presumptively relevant, while other information not so obviously related to U's bargaining and contract administration responsibilities must be shown to be relevant to bargainable issues, burden of proof is thus different, but ultimate standard of relevance is same in all cases, nonunit data may have even more fundamental relevance than that considered presumptively relevant)

Almeco, A Division of Rodman Building Products, Inc. 251 NLRB No. 067
(E's refusal to furnish U with requested wage information which involved matter of claimed unilateral reduction of pay rates of certain Ees, violative)

Campo Slacks, Inc. and J & E Sportswear, Inc. 250 NLRB No. 057
(E's failure to furnish information regarding layoffs and insurance coverage, unlawful, since required for administering bargaining agreement and processing grievances)

Southwestern Bell Telephone Company 247 NLRB No. 027
(failure of E to furnish U, pursuant to request, weekly list of unit job vacancies filled by Ee's name and service date, together with names and service dates of unit Ees having requests on file for those vacancies held violative, since data requested are central to tenure, terms and conditions of unit members employment and to important provisions and aspects of the contract and bargaining relationship)

D.P.L. Painting, Inc. JD-478-82
(E's failure to present all books and records necessary to perform benefit accounts audit, violative, since information and necessary to determine compliance with agreement)

N.L.R.B. v. Jaggers-Chiles-Stovall, Inc. 639 F.2d 1344 (C.A. 5, 1981)
(E obligated to furnish wage data of foremen and assistant foremen who occasionally performed unit work, notwithstanding they were supervisors and not included in unit, where information necessary to verify amount of overtime work performed by them and whether being paid for overtime in order to ascertain if there has been compliance with bargaining agreement provisions regarding overtime)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins 616 F.2d 966 (C.A. 6, 1980)
(violation by refusal of one of two related companies and of individual who was found their alter ego to supply trustees of U's fringe benefit funds with requested information necessary to audit funds' administration and required to be supplied under contract)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins 616 F.2d 966 (C.A. 6, 1980)
(violation by refusal of one of two related companies and of individual who was found their alter ego to supply trustees of U's fringe benefit funds with requested information necessary to audit funds' administration and required to be supplied under contract)

N.L.R.B. v. Carpenters' District Council of Greater St. Louis, AFL-CIO 623 F.2d 281 (C.A. 8, 1980)
(E's refusal to furnish U with information necessary to administer provisions of contract, unlawful)

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N.L.R.B. v. Associated General Contractors of California, Inc. **633 F.2d 766 (C.A. 9, 1980)**
(actual contract violations need not be established in order to show relevancy of information sought where information (roster of membership) is relevant to possible violations where U has established reasonable basis to suspect such violations have occurred)

Safeway Stores, Inc. v. N.L.R.B. **691 F.2d 953 (C.A. 10, Oct. 1982)**
(test of relevancy is whether under liberal discovery-type standard, information sought would aid U in performing its statutory duties)

6067-6001-3750 Relevance to processing grievances

New Jersey Bell Telephone Company **265 NLRB No. 180**
(E's failure to supply U with three Ees' absence and tardiness records until Ees signed written releases violative, since records were relevant and necessary for U's performance of its bargaining obligation in possible grievance action, type of information sought was not of nature to cloak it with confidentiality and, notwithstanding obtaining releases might have been relatively simple, it was not *gamesmanship* for U to insist upon receiving information to which it was entitled under the Act)

Realty Maintenance Inc., d/b/a National Cleaning Company **265 NLRB No. 173**
(respondent's refusal to provide requested information about its relationship with two other companies so as to resolve grievance about contractual violations, particularly subcontracting, unlawful, where respondent's Ees had complained to U official that they were being paid less than contractual wage rate and that U had told them that respondent was not covering them for health and welfare benefits, one Ee hired by respondent showed U official a check stub indicating he was being paid by one of the two companies, and Ees, in their complaints, made reference to the other company)

Realty Maintenance Inc., d/b/a National Cleaning Company **265 NLRB No. 173**
(specific items of information requested by U as to E's relationship with other companies held relevant as to its grievance regarding contractual violations, since evidence establishing commonality of officers, directors, supervisors and the like could show that respondent had power to transfer Ees and work to other Es to escape contractual wage and benefit requirements, and evidence that other Es were using respondent's equipement and supplies or performing work it had previously performed would lend credence to contentions of subcontracting violations)

Realty Maintenance Inc., d/b/a National Cleaning Company **265 NLRB No. 173**
(GC's evidence reasonably relevant to U's requesting information about E's relationship to other companies so as to resolve grievance about contractual violations and subcontracting although, U did not make request until 5-13 months after U official received C from E's Ee who was paid by one of the other companies; since U official received all Cs during contract term and was not time-barred from filing grievances about them, his testimony about them was not irrelevant; and U was entitled to delay asserting rights to determine whether Cs were due to error or showed pattern of subcontracting unit work)

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal **265 NLRB No. 121**
(violation where purchasing E, found herein *alter ego* of predecessor E, refused to furnish information requested by Us representing predecessor E's Ees; information was relevant to Us representative obligations and to processing grievance relating to discharge of unit Ees)

Autoprod, Inc. **265 NLRB No. 042**
(failing to comply in timely fashion to U's request for information required in prosecution of grievances relating to administration of U pension fund, violative)

Conrock Company **263 NLRB No. 183**
E's refusal to furnish records of repair work performed on E's trucks and estimated costs of repair, violative since information sought by U was clearly relevant to grievance it had filed where E maintained at initial grievance meeting and again before joint panel that trucks were retired from service because they were *too costly to operate*, E's promise not to raise operating costs of its trucks as defense did not render information irrelevant since costs could nevertheless be at issue in arbitration proceeding)

Leland Stanford Junior University **262 NLRB No. 017**
(E's refusal to furnish U number of persons working as temporary Ees in certain classification in connection with grievance regarding E's refusal to grant Ee medical leave and use temporary rather than replacing Ee with permanent Ee while Ee on leave, not unlawful, since not presumptively relevant for bargaining where information sought was about nonbargaining unit personnel; nor was information relevant to processing of grievance by enabling U to determine whether E was able to employ temporary Ee since E concluded efficiency rather than ability to hire temporary Ee dictated permanently replacing grievant)

Leland Stanford Junior University **262 NLRB No. 017**
(E's refusal to furnish U seniority list of Ees in certain job classification requested in connection with grievance filed regarding retention of less senior Ees in classification after layoff where all Ees in classification on one shift laid off rather than considering seniority of all Ees in classification, not unlawful, since U had requested information where pursuant to bargaining contract, E had each month furnished U names of all unit personnel with dates of hire and classification)

Leland Stanford Junior University **262 NLRB No. 017**
(E's refusal to furnish job discription for research assistant, a job series outside unit, to help U process grievances filed by research technicians, job series w/i unit, who were alleging that assistants were doing their work, violative, notwithstanding E offered to furnish *classification specifications* which provide in general terms characteristic tasks, responsibilities, and qualifications of jobs so classified but does not set forth all duties, responsibilities or qualifications for individual jobs so classified which are contained in *job discriptions*)

Columbus Products Company, A Division of White-Westinghouse Corporation **259 NLRB No. 039**
(E's refusal to furnish U with names of Ees who volunteered information that stewards told them to disobey orders by not taking earlier lunch break while production line halted and names of Ees who allegedly were told to disobey orders held not violative as such names will not enable U to defend stewards' grievance more effectively as E told U substance of statements, E will not call such Ees as witnesses or refer to statements and U has interviewed every Ee involved in incident)

Chesapeake and Potomac Telephone Company **259 NLRB No. 030**
(where Ee grieved his suspension for *improper tone of voice* when speaking to one of E's customers and U filed demand for arbitration, E's failure to produce at U's request prior to arbitration, name of each employee fired, suspended, or given final warning solely for improper tone of voice toward a customer during last five years, violative since requested information was necessary for U to make judgment whether to proceed to formal arbitration hearing and to prepare for that arbitration)

Colson Equipment, Inc. **257 NLRB No. 015**
(denial of U request for records relating to a grievance, unlawful)

Safeway Stores, Inc. **255 NLRB No. 066**
(E did not refuse to furnish information concerning Ees discharge to U prior to arbitration concerning discharge where it had supplied U with reasons for and details of Ees' suspension and discharge and only other information it possessed was unconfirmed and disclosure would constitute type of discovery Bd finds unnecessary and undesireable in ULP cases)

PPG Industries, Inc. **255 NLRB No. 041**
(refusal to furnish U work evaluation reports and related documents concerning grievant who was temporary summer Ee, violative, where information was relevant to underlying grievance and U's capacity as bargaining agent, and U did not clearly and unmistakably waive its right to grieve over termination of temporary Ees or to obtain information relevant to such grievant)

Tom's Ford, Inc. **253 NLRB No. 128**
(E's refusal to supply payroll records requested by U to evaluate grievance alleging E had violated contractual provision, unlawful where information was relevant to administration of contract and processing of grievance)

Loral Electronic Systems, A Division of Loral Corporation **253 NLRB No. 116**
(E's refusal to furnish U information, including job descriptions and production and sales data, for purpose of settlement of grievance as to whether Ees were performing production work as contended by U, rather than research work, and thus should be included in unit, violative)

Southwestern Bell Telephone Company **251 NLRB No. 061**
(E's refusal to supply U with copies of Ee's employment application and driving record where Ee was accused of falsifying his driving record on application violative as information necessary for U to adise Ee on whether he should file grievance and fact that Ee had not authorized such release in writing is immaterial)

Lucky Markets, Inc. **251 NLRB No. 118**
(E's refusal to furnish information sought by U pertaining to grievance arising from transfer of Ee pursuant to E's affirmative action program, unlawful, since U is entitled to statistical information (Ees' names, ages, race, sex, marital status) requested by U inasmuch as test for U's need for information concerning terms and conditions of employment is simply a showing of probability that desired information was relevant and would be of use to U in carrying out its statutory duty and responsibilities; however, E was not obligated to divulge statistical age data not applicable to Ee's age)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 007**
(E's failure to furnish information regarding layoffs and insurance coverage, unlawful, since required for administering bargaining agreement and processing grievances)

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Safeway Stores, Inc. JD-438-82
(E's refusal to supply U with copy of its training manual and computer production records which were necessary for U to process grievance, violative)

Westinghouse Electric Corporation JD-(ATL)-88-81
(failure of E to provide personnel records of other Ees requested by U w/i reasonable time, violative as documents were relevant to processing Ee grievance)

Westinghouse Electric Corporation JD-(ATL)-88-81
(requested information (personnel records) *not discovery* concerning pending charges where information was relevant for ascertaining validity of grievance already in grievance-arbitration channels)

Brodart, Inc. JD-148-81
(violation, where E refused U photocopies of documents relevant to processing of different grievances including confidential report on reasons for discharge of Ee; performance evaluations for Ee whom E had failed to reinstate; forms on which E based its contention Ee would not properly been considered for position she had desired. Neither confidential nature of report nor fact sent to lawyer justified disallowing U right to photocopies of documents nor was furnishing in oral form or letting U read documents sufficient)

Allied Paper, Inc., Division of SCM Corporation JD-341-80
(E's refusal to furnish U copy of timebook in order to establish whether grievant was probationary Ee where E had refused to process grievance because of Ee's alleged probationary status, not unlawful, where whether Ee worked on certain day determinative of question, U representative could testify what timebook showed, and testimony would be admissible upon E's failure to furnish timebook; further, Ee himself could testify as to his whereabouts on day in question)

Communication Workers of America AFL-CIO, Local 1051 644 F.2d 923 (C.A. 1, Mar 31, 1981)
(E who agreed to supply U with requested information but refused to photocopy it and would only allow U to handcopy desired documents violated Act as E's insistance impeded grievance process, U never waived right to request to photocopy grievance related documents; moreover U's need for photocopies outweighs E's wish to deny them)

The Chesapeake and Potomac Telephone Company v. N.L.R.B. 687 F.2d 633 (C.A. 2, Aug. 1982)
(refusal of U requested information regarding grievance resulting from Ee's suspension for improper conduct and pertaining to names of Ees previously similarly disciplined, unlawful, since E's duty to produce information survives U's demand for arbitration; reasonable discovery of material relevant to grievance prior to arbitration hearing may eliminate delay and expense that might otherwise be incurred; reasonable delay for obtaining evidence in order for U to decide how to proceed is justifiable; and disclsoure of prior disciplinary action may lead to arbitration withdrawal on grievance settlement)

N.L.R.B. v. A. S. Abell Company 624 F.2d 506 (C.A. 4, 1980)
(U's bare assertion that it needs requested information to process grievance does not automatically oblige E to supply all information in manner requested)

N.L.R.B. v. Associated General Contractors of California, Inc. 633 F.2d 766 (C.A. 9, 1980)

N.L.R.B. v. Safeway Stores, Inc. 622F.2d 425 (C.A. 9, 1980)
(E's refusal to furnish U with records pertaining to Ee production levels violative where U requested information to help it process grievances Ees filed over their being transferred to less desirable positions because they did not satisfy new production requirements)

6067-6001-3760 Wage and related information presumptively relevant

Abbey Medical/Abbey Rents, Inc. 264 NLRB No. 129

Leland Stanford Junior University 262 NLRB No. 017
(burden of proving that standard of relevance is or is not met shifts according to nature of information. Information about bargaining unit personnel such as wage data is so intrinsic to Ee relationship that it is considered presumptively relevant and E has burden of proving lack of relevance)

The Trustees of The Masonic Hall and Asylum Fund 261 NLRB No. 049
(mtn for summary judgment that E violated 8(a)(5) by refusing to furnish requested information on wage, fringe benefit, and employment data granted where E defended its refusal on grounds that certified unit was not appropriate, since E offered no new evidence concerning appropriateness of certified unit – which had already been litigated – and no evidence to rebut presumptive relevance of information requested)

Borden Chemical, A Division of Borden, Inc. 261 NLRB No. 006
(wage and related information pertaining to bargaining unit presumptively relevant, U need not demonstrate precise relevance, except in cases where effective E rebuttal has been proffered)

Amphlett Printing Company 299 NLRB No. 019
(on remand for explication of its remedy that E should disclose to newspaper guild only aggregate amounts paid independent correspondents for editorial product on basis of confidentiality, Bd explained that its order was based on recognition of nonunit writers' right to keep financial arrangements private from U not representing them; guild showed no need to know sums paid individuals where they were not translatable to unit Ees' compensation and not necessary for unit Ees to achieve parity or determine how large their *slice of the pie* was)

General Motors Corporation, Delco Moraine Division 257 NLRB No. 146
(requested original time study sheets and documents relating to standards and wage rates found to be central to U's performance of its obligation to its members, and E's refusal to supply U with such requested information, unlawful)

Grand Islander Health Care Center, Inc. 256 NLRB No. 199
(refusal to furnish wage and employment information pertaining to Ees in recently certified unit, violative, notwithstanding U has not demonstrated exact relevance of such information where E has not rebutted presumption that such information is relevant)

Salem Village I, Inc., Salem Village II, Inc., and Salem Village III, Inc. 256 NLRB No. 141
(U was not required to show precise relevance of its request for information of wages and fringe benefits where E has not attempted to rebut relevance by proffer of proof)

ACC Typographers, Inc. d/b/a Advertisers Composition Company Typographers, Inc. 253 NLRB No. 147
(refusing to provide names, addresses, wages and other information about strike replacements, violative, where said information was presumptively relevant for U to effectively bargain on behalf of Ees; Bd rejected defenses of confidentiality, strike replacements ptn to have information concerning them withheld from U, and E's failure to prove clear and present danger of violence and harrassment to strike replacements as result of release of information)

Tom's Ford, Inc. 253 NLRB No. 128
(refusal to furnish names, addresses, job classifications and pay rates of unit Ees requested for purposes of contract administration, unlawful since that information was presumptively relevant)

Westwood Import Company, Inc. 251 NLRB No. 162

Westwood Import Company, Inc. 251 NLPB No. 162

Living and Learning Centers, Inc. 251 NLRB No. 041
(U is not required to demonstrate exact relevance of such information unless E has submitted evidence to rebut presumption)

Jaggars-Chiles-Stovall, Inc. 249 NLRB No. 108
(U entitled to earnings information on all unit Ees, not just U members, including assistant foremen and foremen, where under contract they perform unit work, as such information is essential to U's policing of collective-bargaining agreement; fact U informed E only at hearing of reason behind request, immaterial)

Westinghouse Electric Corporation JD-(ATL)-88-81
(no portion of instant proceeding alleging violations of Sections 8(a)(5), (4), (3) and (1) appropriate for deferral; E's alleged refusal to provide information to U (8(a)(5) was intimately connected with 8(a)(3) allegations and as such were inappropriate for deferral; charges of Sec. 8(a)(4) and (3) related to discharge of Ee where Bd no longer defers)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)

6067-6001-3770 Names and addresses of unit employees presumptively relevant

Salem Village I, Inc., Salem Village II, Inc., and Salem Village III, Inc. 256 NLRB No. 141

Tom's Ford, Inc. 253 NLRB No. 128
(refusal to furnish names, addresses, job classifications and pay rates of unit Ees requested for purposes of contract administration, unlawful since that information was presumptively relevant)

Hecla Mining Company 248 NLRB No. 182
(where furnishing list of unit Ees names places no unreasonable burden on E, refusal to furnish even w/o showing of need is violative)

Accessory Controls and Equipment Corporation JD-890-81
(during course of strike which had been characterized by violence U requested E to furnish it with names and addresses of unit Ees and E refused to comply unless U assured it that list would not be used for improper purposes; E's failure to comply not violative absent those assurances because list could be used as tool for thier harassment)

6067-6001-3790 Relevancy of other data must be demonstrated

Minnesota Mining and Manufacturing Company 261 NLRB No. 002
(E's Affirmative Action Plans (AAPs) are not presumptively relevant (to bargaining) except for certain statistics contained in *Work Force Analysis*

6067-6001-3780—Cont.

portion of E's AAPs, and as to those U must indicate with appropriate specificity relevant information sought; U must demonstrate relevance to be entitled to entire plan; E not required to produce its AAPs or specified portions of plans where U had not demonstrated their relevance)

Minnesota Mining and Manufacturing Company 261 NLRB No. 002
(U entitled to full disclosure of requested health and safety information to extent that such disclosure is consonant with protection of individual Ees' privacy rights and with E's legitimate proprietary confidentiality concerns, since health and safety are terms and conditions of employment regarding which E is obligated to bargain on request, therefore such information is relevant)

Borden Chemical, A Division of Borden, Inc. 261 NLRB No. 006
(where U requests information which cannot be considered ordinarily relevant to performance as bargaining representative but which is alleged to have become so because of special circumstances, some showing of pertinence has been required)

Tom's Ford, Inc. 253 NLRB No. 125
(refusal to furnish unit Ees' social security numbers requested for purposes of contract administration, not unlawful since relevance was not shown)

Loral Electronic Systems, A Division of Loral Corporation 253 NLRB No. 116
(where request is for information concerning Ees outside bargaining unit, U must show requested information is relevant to bargainable issues)

Westwood Import Company, Inc. 251 NLRB No. 162
(in assessing relevance of requested information concerning bargaining unit wage data is deemed presumptively relevant, while other information not so obviously related to U's bargaining and contract administration responsibilities must be shown to be relevant to bargainable issues, burden of proof is thus different, but ultimate standard of relevance is same in all cases, nonunit data may have even more fundamental relevance than that considered presumptively relevant)

N.L.R.B. v. A. S. Abell Company 624 F.2d 506 (C.A. 4, 1980)
(U's bare assertion that it needs requested information to process grievance does not automatically oblige E to supply all information in manner requested)

N.L.R.B. v. A. S. Abell Company 624 F.2d 506 (C.A. 4, 1980)
(E not required to supply requested information to U concerning *cross-trained* Ees of newspaper publisher, since presumption of *relevancy* with respect to information sought was rebutted by E and U gave no indication of how information might be relevant either contemporaneously with its request or on face of request)

Atlas Metal Parts Co., Inc. v. N.L.R.B. 660 F.2d 304 (C.A. 7, Sep. 1981)
(ct found E's refusal to supply information on subcontracting not unlawful where there was no showing that information was so intrinsic to E-Ee relationship as to be presumptively relevant and no U showing of relevance)

N.L.R.B. v. Associated General Contractors of California, Inc. 633 F.2d 766 (C.A. 9, 1980)
(Us had initial burden to show relevancy of information sought (roster of membership) where such information does not fall w/i category of information that is presumptively relevant)

Press Democrat Publishing Co., etc. v. N.L.R.B. 629 F.2d 1320 (C.A. 9, 1980)
(requirement of showing necessity as distinct element of relevance where information sought on nonunit personnel, rejected)

Press Democrat Publishing Co., etc. v. N.L.R.B. 629 F.2d 1320 (C.A. 9, 1980)
(burden of showing relevancy to bargainable issue as to nonunit information on U)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)
(E not required to provide information pertaining to equipment purchased, whether equipment leased to nonunit Ees or its financial statements since data related to decision to institute leasing, a nonmandatory subject of bargaining, U did not represent nonunit Ees and so not relevant to U's performance as bargaining representative w/o special showing of pertinence to some bargainable issue; E not obligated to disclose financial statements merely because they might be helpful to U)

6067-6001-3790 Relevancy of wage and fringe benefits of employees outside bargaining unit must be demonstrated

E. I. Du Pont De Nemours & Company 264 NLRB No. 008
(E's failure and refusal to furnish instant Ees' Council hourly wage rates and job classifications for similarly skilled Ees at 9 other of E's textile fiber plants held violative, since Council had shown logical basis for needing requested data; w/o such data Council could not intelligently formulate its desired approach to wage policy different from that adhered to by E who based their wage policy on survey of wages in local area where plants located)

Lamar Advertising Associates of Biloxi d/b/a Lamar Outdoor Advertising 257 NLRB No. 013
(E's refusal to supply U with requested wage and fringe benefits information violative notwithstanding information concerned E's other subsidiaries and not bargaining unit where bargaining unit wages and benefits were greatly influenced or compelled by those at E's other locations and thus relevant to negotiations)

6067-6001-4800 Good faith of refusal to furnish is immaterial

N.L.R.B. v. Associated General Contractors of California, Inc. 633 F.2d 766 (C.A. 9, 1980)
(refusal to disclose even relevant information is not always 8(a)(5) violation; E's reasons for nondisclosure and negotiating conduct of parties must be considered; problem is one of accommodating competing interests)

6067-6001-5000 Good faith of request

Lumber and Mill Employers Association 265 NLRB No. 027
(refusing to furnish Us requested copy of multi-E association's roster of E-members who perform work covered by its collective bargaining agreement with Us, violative where there was no evidence that Us' request was not made in good faith, disclosure would not impose onerous burden on E, and E proposed no practicable alternative to disclosure)

Chesapeake and Potomac Telephone Company 259 NLRB No. 030
(U's requesting information to determine merits of grievance and delaying arbitration until it could do so, not bad faith but attempt to avoid expense of arbitration if not justified)

Rochie's Paramedic Ambulance, Inc. JD-128-82
(E did not need to supply financial information requested by U after E said he could not pay wage figure put forth by U during negotiations as figure suggested by U was obviously excessive; *N.L.R.B. v. Truitt Mfg. Co.* 351 U.S. 149 (1956), is not to be mechanically applied)

N.L.R.B. v. A. S. Abell Company 624 F.2d 506 (C.A. 4, 1980)
(evidence of prior use or *misuse* of information requested of E by U is quite relevant in determining whether E was bargaining in good faith)

Daniel Silverman, RD v. Major League Baseball Player Relations Committee, Inc. et al. 516 F.Supp. 588 (D.C.N.Y., June 1981)
(ct found player association's request for information as to ball club's financial records on basis of alleged belief in club's inability to pay, insincere and apparently made as bargaining tactic to delay implementation of club's committee's *compensation* proposal because of association's delay in making request and expressed opinion of players' bargaining agent that clubs were not losing money)

6067-6001-5400 Misuse of information

E. I. Du Pont De Nemours & Company 264 NLRB No. 008
(*good faith* of request for information demonstrated where, although plant U was and is interested in company wide bargaining under international U's banner, that interest is independent of plant U's request for information from 9 other of E's plants so that U could formulate wage proposal different from E's policy of bargaining only w/i the framework of local pay comparison)

Accessory Controls and Equipment Corporation JD-590-81
(during course of strike which had been characterized by violence U requested E to furnish it with names and addresses of unit Ees and E refused to comply unless U assured it that list would not be used for improper purposes; E's failure to comply not violative absent those assurances because list could be used as tool for their harassment)

N.L.R.B. v. A. S. Abell Company 624 F.2d 506 (C.A. 4, 1980)
(evidence of prior use or *misuse* of information requested of E by U is quite relevant in determining whether E was bargaining in good faith)

N.L.R.B. v. A. S. Abell Company 624 F.2d 506 (C.A. 4, 1980)
(prior harassment of Ees and their legitimate fear of harassment justified E's subsequent refusal to provide U payroll information on replacement workers or names and addresses of unit Ees)

N.L.R.B. v. Associated General Contractors of California, Inc. 633 F.2d 766 (C.A. 9, 1980)
(disclosure of information sought (roster of membership) not violative of trade association's members' *First Amendment* rights where there was no *clear and present* danger that U will engage in violent, harassing, or unlawful conduct justifying association's refusal to supply information sought)

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC v. N.L.R.B. 648 F.2d 18 (C.A.D.C., Nov. 1980)
(race and sex discrimination data is presumptively relevant and fact that information could be used against E in litigation does not prevent disclosure as trial court can control actual use of information to prevent unfairness)

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC v. N.L.R.B. 648 F.2d 18 (C.A.D.C., Nov. 1980)
(Title VII's (anti discrimination) purpose and procedures strongly suggest that individual does not forfeit his private cause of action if he first pursues grievance to final arbitration under nondiscrimination clause of bargaining agreement)

6067-6001-6200 Good faith of request not rebutted where any purpose is relevant

6067-6001-6200—Cont.

E. I. Du Pont De Nemours & Company **264 NLRB No. 005**
(*good faith* of request for information demonstrated where, although plant U was and is interested in company wide bargaining under international U's banner, that interest is independent of plant U's request for information from 9 other of E's plants so that U could formulate wage proposal different from E's policy of bargaining only w/i the framework of local pay comparison)

Westwood Import Company, Inc. **251 NLRB No. 162**
(fact that U's request to purported successor E regarding sale of business encompassed information which E was not legally obligated to provide did not automatically excuse E from complying with request to extent that it also encompassed information which it would be required to provide if it were sole object of demand)

6067-6001-6700 Extent or volume of information requested does not justify refusal

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC v. N.L.R.B. **648 F.2d 18 (C.A.D.C., Nov. 1980)**
(race and sex discrimination data is presumptively relevant and fact that information could be used against E in litigation does not prevent disclosive as trial court can control actual use of information to prevent unfairness)

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC v. N.L.R.B. **648 F.2d 18 (C.A.D.C., Nov. 1980)**
(burden in time and money imposed on E to supply presumptively relevant information is not irrelevant consideration but is not basis for initial refusal to supply such information and cost should be considered at compliance stage)

6067-6033 Form and circumstances in which information supplied

6067-6033-1900 *Adequacy*

Leland Stanford Junior University **262 NLRB No. 017**
(E's refusal to furnish job description for research assistant, a job series outside unit, to help U process grievances filed by research technicians, job series w/i unit, who were alleging that assistants were doing their work, violative, notwithstanding E offered to furnish *classification specifications* which provide in general terms characteristic tasks, responsibilities, and qualifications of jobs so classified but does not set forth all duties, responsibilities or qualifications for individual jobs so classified which are contained in *job descriptions*)

Leland Stanford Junior University **262 NLRB No. 017**
(when U grieved about layoff of more senior Ees in face of retention of Ee who shortly before layoff was reclassified as *leader* and requested E to furnish names of Ees that leader led, E complied with request when it identified the group of Ees, though not by name, in such manner that U was able to interview all members of group)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(manner in which E must make (relevant) statistical information available to U and allocation of *substantial costs*, if any, shall be determined in accordance with *Food Employer Council Inc., et al.*, 197 NLRB 651 (1972))

Hudson Chemical Company **258 NLRB No. 009**
(E did not comply with U's demand for list of Ees notwithstanding it furnished U with monthly computerized list of checkoff deductions as no addresses were included, high turnover rate, and list did not reflect names of Ees who were sick, on vacation, laid off or otherwise not on payroll because they weren't paid that month)

Safeway Stores, Inc. **252 NLRB No. 095**
(E's refusal to supply U information relevant and necessary for bargaining prior to meeting, unlawful, since *merely meeting and conferring w/o prior exchange of requested data does not meet requirements imposed on E under Section 8(a)(5) of Act*)

Johns-Manville Sales Corporation **252 NLRB No. 056**
(if E does not possess sufficient medical test data to satisfy U's needs, good faith discussions by parties should enable parties to agree to method of production which would permit E to present requested medical test data in clear and understandable form)

American Telephone and Telegraph Company— Long Lines Department **250 NLRB No. 008**
(refusal to provide U with photocopies of requested documents necessary to process five grievances violative where, although E would rather furnish the information by reading to note-takers or permitting U to hand-copy documents, photocopying procedure would have been much less costly to E and U, and would have given U greater assurance of accuracy and completeness of information furnished)

Brodart, Inc. **JD-148-81**
(violation, where E refused U photocopies of documents relevant to processing of different grievances including confidential report on reasons for discharge of Ee; performance evaluations for Ee whom E had failed to reinstate; forms on which E based its contention Ee would not properly been considered for position she had desired. Neither confidential nature of report nor fact sent to lawyer justified disallowing U right to photocopies of documents nor was furnishing in oral form or letting U read documents sufficient)

Sunnyland Foods, Inc. **JD-(ATL)-36-80**
(E's providing U with labor grades of unit Ees in response to request for job classifications, not violative where E would otherwise have had to create new system of job classifications for U's convenience)

Communication Workers of America AFL-CIO, Local 1051 **644 F.2d 923 (C.A. 1, Mar 31, 1981)**
(E who agreed to supply U with requested information but refused to photocopy it and would only allow U to handcopy desired documents violated Act as E's insistance impeded grievance process, U never waived right to request to photocopy grievance related documents; moreover U's need for photocopies outweighs E's wish to deny them)

6067-6033-5000 Oral information insufficient ,

Safeway Stores, Inc. **252 NLRB No. 095**
(E's refusal to supply U information relevant and necessary for bargaining prior to meeting, unlawful, since *merely meeting and conferring w/o prior exchange of requested data does not meet requirements imposed on E under Section 8(a)(5) of Act*)

Brodart, Inc. **JD-148-81**
(violation, where E refused U photocopies of documents relevant to processing of different grievances including confidential report on reasons for discharge of Ee; performance evaluations for Ee whom E had failed to reinstate; forms on which E based its contention Ee would not properly been considered for position she had desired. Neither confidential nature of report nor fact sent to lawyer justified disallowing U right to photocopies of documents nor was furnishing in oral form or letting U read documents sufficient)

6067-6033-6000 Copy of document

Brodart, Inc. **JD-148-81**
(violation, where E refused U photocopies of documents relevant to processing of different grievances including confidential report on reasons for discharge of Ee; performance evaluations for Ee whom E had failed to reinstate; forms on which E based its contention Ee would not properly been considered for position she had desired. Neither confidential nature of report nor fact sent to lawyer justified disallowing U right to photocopies of documents nor was furnishing in oral form or letting U read documents sufficient)

6067-6033-8800 Delay in furnishing information

L.M. Settles Construction Co., Inc. **259 NLRB No. 067**
(E's refusal to produce its general ledger pursuant to U's request for comprehensive audit of its financial records which U claims necessary to determine whether E was in breach of its bargaining obligation to make contributions to benefit funds unlawful, notwithstanding E provided other financial records, since U had cause to believe E was in violation of contract where Ees had been issued *side checks* not from payroll funds, and only through general ledger could U ascertain if E issuing checks to Ees not from payroll accounts which would indicate violation of contract and ledger thus relevant to U's obligation to police contract)

K & K Transportation Corp., Inc. **254 NLRB No. 067**
(refusal to supply current list of names, addresses and telephone numbers until after U began strike, 2 months after request made)

Safeway Stores, Inc. **252 NLRB No. 095**
(E's refusal to supply U information relevant and necessary for bargaining prior to meeting, unlawful, since *merely meeting and conferring w/o prior exchange of requested data does not meet requirements imposed on E under Section 8(a)(5) of Act*)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(unreasonable delay in furnishing information and documents requested by U in course of contract negotiations violative)

Aeolian Corporation, Ivers & Pond Piano Division **247 NLRB No. 170**
(violation where, although E's attorney indicated that he would give information concerning time study and production on request and E admitted to U that such information was available on 2 or 3 days' notice, E did not order information to be compiled until 3 weeks after U first asked for it, and U did not obtain the information until more than a month after asking for it)

Illinois Bell Telephone Company **JD-176-82**
(E's protracted (3 months) delay in furnishing requested information to U in order for U to process grievance, violative)

Westinghouse Electric Corporation **JD-(ATL)-09-81**
(failure of E to provide personnel records of other Ees requested by U w/i reasonable time, violative as documents were relevant to processing Ee grievance)

6067-6033-8800—Cont.

Sunnyland Foods, Inc. **JD-(ATL)-36-80**
(E's failure to provide U with requested information regarding names, grades, dates of hire, departments, and job descriptions of new hires, unlawful notwithstanding that seniority lists available to U might have provided some of information relative to new hires and that U ultimately received information requested through Bd after charge had been filed by U, where ultimate receipt of information was clearly untimely with respect to U's requests and E submitted no reasonable explanation for delay)

6067-[illegible] Availability of Information Sought

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(E's proposal that U's request for medical information would have to be secured from Ees themselves did not relieve E of obligation to meet U's request, since E's obligation to provide relevant information imposed on E obligation to make reasonable effort to secure requested information, and, if unavailable, explain or document reasons for asserted unavailability)

Colgate-Palmolive Company **261 NLRB No. 007**
(E's contention that health and safety data requested by U would be too expensive and time-consuming to accumulate and too difficult to retrieve rejected where E offered no evidence to verify its cost estimates, did nothing to verify its cost estimates, did nothing to reduce burden of retrieval, and did not suggest that U share costs)

Borden Chemical, A Division of Borden, Inc. **261 NLRB No. 006**
(E's contention that U might readily obtain requested list of all chemicals or materials purchased, stored or processed at its chemical manufacturing facility from sources such as OSHA form, manufacturing order form, batch ticket, rejected as excusing E from its duty to furnish such information; since compilation by U would be much more burdensome than compilation by E's management and absent special circumstances U's right to information may not be defeated because U could acquire reasonably needed information through some independent course of investigation)

LaGuardia Hospital—H.I.P. Hospital, Inc. **260 NLRB No. 199**
(E not required to provide U with provisions of State Health Code to be used in processing grievance where Code is public statute and generally available to all persons)

LaGuardia Hospital—H.I.P. Hospital, Inc. **260 NLRB No. 199**
(E did not violate Act when it refused to supply U with its policy and procedures manual to be used in processing grievance where manual was kept in location always accessible to Ees and there was no rule prohibiting inspection or copying the manual)

Chesapeake and Potomac Telephone Company **259 NLRB No. 030**
(E's contention that to supply requested information was undue burden, rejected where record showed that E could easily gather information, and claim that U might obtain information also rejected where it was more conveniently available to E)

Designcraft Jewel Industries, Inc. **254 NLRB No. 094**
(absent special circumstances, U's right to information is not defeated merely because U may acquire needed information through independent course of investigation)

Safeway Stores, Inc. **252 NLRB No. 184**
(refusal to supply U requested information on handicapped persons held violative where E had insufficient justification to avoid its bargaining obligations; information sought, in instant case, was not type which would have potential of compromising privacy rights of individual Ees, nor was expense and inconvenience involved in furnishing information so great as to justify E's refusal)

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(refusal to provide requested information as to Ee work status, unlawful notwithstanding information was w/i knowledge of Ees; information was relevant and necessary to U's performance of its obligations and representative, and its right thereto was not defeated by its ability to acquire information through independent source)

Tripp Electric, Inc.; Triple B Electric; Robert
Stephen Tripp d/b/a Coordinated Systems;
Ronald J. Tripp d/b/a Integrated Systems **JD-(SF)-220-81**
(refusal of signatory to multi-E bargaining agreement to grant U's request for books and records of nonsignatory Es, not violative where U did not request with sufficient specificity and clarity the information it needed and no Bd order requiring production could issue absent initial showing of probable affiliation with or access to records of nonsignatory Es)

Sunnyland Foods, Inc. **JD-(ATL)-36-80**
(E's providing U with labor grades of unit Ees in response to request for job classifications, not violative where E would otherwise have had to create new system of job classifications for U's convenience)

Avanti, Inc. **JD-(SF)-300-80**
(where U's request for information necessary and relevant to its duty as bargaining agent, E's refusal to furnish violative; E's contention that subcontractor had control of information not valid where E exercised some control over subcontractor and made no real effort to obtain information)

6067-[illegible] Cost of Supplying Information

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(if substantial costs would be incurred (for obtaining requested relevant information), Bd expects parties to bargain as to allocation of those costs)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(manner in which E must make (relevant) statistical information available to U and allocation of *substantial costs,* if any, shall be determined in accordance with *Food Employer Council Inc., et al.,* 197 NLRB 651 (1972))

Colgate-Palmolive Company **261 NLRB No. 007**
(E's contention that health and safety data requested by U would be too expensive and time-consuming to accumulate and too difficult to retrieve rejected where E offered no evidence to verify its cost estimates, did nothing to verify its cost estimates, did nothing to reduce burden of retrieval, and did not suggest that U share costs)

Safeway Stores, Inc. **252 NLRB No. 184**
(if production of information ordered involved substantial costs, parties may bargain over allocation of those costs)

Safeway Stores, Inc. **252 NLRB No. 184**
(refusal to supply U requested information on handicapped persons held violative where E had insufficient justification to avoid its bargaining obligations; information sought, in instant case, was not type which would have potential of compromising privacy rights of individual Ees, nor was expense and inconvenience involved in furnishing information so great as to justify E's refusal)

United Aircraft Corporation (Pratt and Witney
Division) **247 NLRB No. 174**
(on ct remand, Bd reaffirmed its original decision that E did not violate Sec. 8(a)(5) when it conditioned its agreement to provide Us with certain company records upon Us' payment of costs incurred in supplying requested documents)

Safeway Stores, Inc. v. N.L.R.B. **691 F.2d 953 (C.A. 10, Oct. 1982)**
(time and pecuniary considerations, though not irrelevant, are not basis for refusing to supply requested information)

6067-6067 Nature of information to be supplied

6067-6067-2000 Financial data substantiating claim of economic hardship

Conrock Company **263 NLRB No. 180**
E's refusal to furnish records of repair work performed on E's trucks and estimated costs of repair, violative since information sought by U was clearly relevant to grievance it had filed where E maintained at initial grievance meeting and again before joint panel that trucks were retired from service because they were *too costly to operate*; E's promise not to raise operating costs of its trucks as defense did not render information irrelevant since costs could nevertheless be at issue in arbitration proceeding)

Winges Company, Inc. **263 NLRB No. 021**

Rockingham Machine-Lunex Company **255 NLRB No. 015**
(refusal to bargain in good faith not evinced by E's failure to document its statements that financial conditions might cause it to liquidate or close plant, inasmuch as U never requested documentation thereof)

Vore Cinema Corp. **254 NLRB No. 167**
(E's refusal to comply with U's request for financial data not violative where during negotiations E expressed desire to reduce guaranteed number of shift hours but it did not plead economic hardship; mere fact that E's offer might reduce Ee's earnings does not create plea of such hardship)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to furnish updated pension plan booklet, economic data to justify claim of financial hardship, pay scale information, internal policy governing Ee classification, and wage increase data violative)

Stratford Visiting Nurses Association **JD-(NY)-86-82**
(E's refusal to furnish current and proposed budget, not violative where E did not claim inability to afford wage increases and information was not relevant)

Ruehle's Paramedic Ambulance, Inc. **JD-120-82**
(E did not need to supply financial information requested by U after E said he could not pay wage figure put forth by U during negotiations as figure suggested by U was obviously excessive; *N.L.R.B. v. Truitt Mfg. Co.* 351 U.S. 149 (1956), is not to be mechanically applied)

N.L.R.B. v. Gibraltar Industries, Inc. and Cass, Inc. **683 F.2d 1091 (C.A. 6, July 1981)**
(U's claim that E violated its duty to bargain by failing to supply financial and wage information, rejected where only after E and U reached impasse and E lawfully ceased operation of one of plants did U request information and at this plant, information requested was not relevant to discussions on effects of plant closure)

6067-6067-2000—Cont.

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)
(E not required to provide information pertaining to equipment purchased, whether equipment leased to nonunit Ees or its financial statements since data related to decision to institute leasing, a nonmandatory subject of bargaining. U did not represent nonunit Ees and so not relevant to U's performance as bargaining representative w/o special showing of pertinence to some bargainable issue; E not obligated to disclose financial statements merely because they might be helpful to U)

6067-6067-2300 Operational study reports on which decision to transfer unit work was based

Whitehead Brothers Company 263 NLRB No. 123
(E's refusal to supply U with requested information, a study and other supporting data on which it based its conclusion that it would be uneconomical to continue its delivery operations, violative, as information was both relevant and necessary for U to negotiate and bargain meaningfully concerning E's decision to subcontract such work and its effect on unit; moreover, E's offer of information at hearing does not excuse its unlawful conduct)

Otis Elevator Company, A Wholly Owned Subsidiary of United Technologies 255 NLRB No. 005
(refusal to furnish U, upon its request, reports resulting from studies of E's operations, upon which E relied in making its decision to relocate certain unit work, unlawful, notwithstanding E's contention that reports were not relevant to U's bargaining functions since E's decision did not relate to terms and conditions of employment; inasmuch as decision involved mandatory subject of bargaining, U was entitled to reports in its exercise of its representative responsibilities)

Heat Transfer Group, Gulf and Western Mfg. Co. JD-381-82
(refusing to supply U with information concerning financial status of plant, contemplated relocation sites, comparative labor costs, its sources of information of competitors' wages and benefits and relocation feasibility studies, violative where E proposed and then commenced relocation of certain work, as U required information for intelligent bargaining and E had not bargained to impasse in good faith)

6067-6067-2500 Financial data to justify modification of contract

Hiney Printing Company 262 NLRB No. 022
(failure to provide requested data that would explain financial data voluntarily supplied, unlawful)

Meatcorp (Formerly Seymour Packing Division of Seymour America, Inc.) 251 NLRB No. 047
(piecework rates and how they were arrived at, moreover, belatedly supplying information does not fulfill bargaining obligation)

6067-6067-2800 Audit of financial records

Ruckle's Paramedic Ambulance, Inc. JD-128-82
(E did not need to supply financial information requested by U after E said he could not pay wage figure put forth by U during negotiations as figure suggested by U was obviously excessive; *N.L.R.B. v. Truitt Mfg. Co.* 351 U.S. 149 (1956), is not to be mechanically applied)

6067-6067-3000 Data concerning contracted out work

Southwestern Bell Telephone Company 262 NLRB No. 114
(E's refusal to furnish financial information about subcontracting, not violative since probable relevance of requested information was not demonstrated where E never asserted economic defense for its actions and it was clear that E let subcontracts involved for non-economic reasons)

Leland Stanford Junior University 262 NLRB No. 017
(E's refusal to furnish U names, classifications, and dates of employment of temporary Ees, unlawful, since relevant to U's bargaining responsibilities administering agreement and processing grievances, in view of evidence E was hiring temporary Ees to perform unit work and dismissing them shortly before they became covered by contract, and frequent layoffs of unit Ees while contracting out unit work; U had informed E use of nonunit Ees to perform unit work would be U's priority in coming negotiations; E's further refusal to give U classification, pay, and date specific non-unit individuals performing unit work commenced work, unlawful)

Tocco Division of Park-Ohio Industries, Inc. 257 NLRB No. 044
(no violation where E provided number of subcontracting hours but did not provide dates and names of subcontractors, and U did not pursue request until complaint issued)

Atlas Metal Parts Co., Inc. 252 NLRB No. 029
(E's failure to furnish information regarding whether it had subcontracted unit work, to whom, for how long, and any agreement regarding subcontracting, unlawful, since subcontracting relevant to negotiations and to whether jobs of ULP striker had been lawfully abolished)

N.L.R.B. v. Designcraft Jewel Industries, Inc. 675 F.2d 493 (C.A. 2, Mar. 1982)
(E's claim that its failure to produce U's requested records regarding subcontracting of unit work was at most a *technical* violation, rejected, since information was pertinent to determining whether E had violated contract by subcontracting, and failure to furnish information was therefore material violation of Act)

N.L.R.B. v. Designcraft Jewel Industries, Inc. 675 F.2d 493 (C.A. 2, Mar. 1982)
(E's contention that U's initial request to examine E's records, in order to determine whether E had violated contract in subcontracting unit work, was too vague and ambiguous, rejected; pursuant to ct's enunciated standard, request for information was clear and adequate)

N.L.R.B. v. Designcraft Jewel Industries, Inc. 675 F.2d 493 (C.A. 2, Mar. 1982)
(violation, where E refused U's request for information to determine whether E violated contract by subcontracting unit work; Bd acted w/i its discretion in not deferring to arbitral award requiring E to furnish U with specified records and later denying U's request for additional information)

Equitable Gas Company v. N.L.R.B. 637 F.2d 980 (C.A. 3, 1981)
(refusing to provide U copy of subcontract and relevant cost data, not unlawful, where E had no obligation to bargain over subject matter of subcontracting since it was not mandatory subject of bargaining)

6067-6067-3100 Information concerning employer's relationship with other companies

Realty Maintenance Inc., d/b/a National Cleaning Company 265 NLRB No. 173
(respondent's refusal to provide requested information about its relationship with two other companies so as to resolve grievance about contractual violations, particularly subcontracting, unlawful, where respondent's Ees had complained to U official that they were being paid less than contractual wage rate and that U had told them that respondent was not covering them for health and welfare benefits, one Ee hired by respondent showed U official a check stub indicating he was being paid by one of the two companies, and Ees, in their complaints, made reference to the other company)

6067-6067-3300 Documents in personnel file

LaGuardia Hospital—H.I.P. Hospital, Inc. 260 NLRB No. 199
(failure to provide Ee's personnel files which were needed to process grievance violative)

Southwestern Bell Telephone Company 251 NLRB No. 061
(E's refusal to supply U with copies of Ee's employment application and driving record where Ee was accused of falsifying his driving record on application violative as information necessary for U to adise Ee on whether he should file grievance and fact that Ee had not authorized such release in writing is immaterial)

Westinghouse Electric Corporation JD-(ATL)-88-81
(failure of E to provide personnel records of other Ees requested by U w/i reasonable time, violative as documents were relevant to processing Ee grievance)

6067-6067-3500 Profit sharing plan

Patio Lodge, Inc., and Fountain Lodge, Inc. JD-(ATL)-40-82
(refusal to furnish copies of plan to U unlawful)

6067-6067-3800 Incentive program

Meatcorp (Formerly Seymour Packing Division of Seymour America, Inc.) 251 NLRB No. 047
(piecework rates and how they were arrived at, moreover, belatedly supplying information does not fulfill bargaining obligation)

6067-6067-4000 Production and sales data

Horace F. Hatch, an Individual, d/b/a East Texas Fire Protection Company 265 NLRB No. 018
(E's failure to produce its purchase orders and/or invoices for past 3 years and register it kept summarizing these documents, violative; where U needed information to prepare its case in dispute with E over whether E complied with contract, and E failed to detail claim that its business would be harmed. However, GC must insure that information is not widely disseminated to protect E's business)

Loral Electronic Systems, A Division of Loral Corporation 253 NLRB No. 116
(E's refusal to furnish U information, including job descriptions and production and sales data, for purpose of settlement of grievance as to whether Ees were performing production work as contended by U, rather than research work, and thus should be included in unit, violative)

Aeolian Corporation, Ivers & Pond Piano Division 247 NLRB No. 170
(information as to production and job assignment, product specifications and engineering drawings, and time study for named department)

Safeway Stores, Inc. JD-435-82
(E's refusal to supply U with copy of its training manual and computer production records which were necessary for U to process grievance, violative)

Patio Lodge, Inc., and Fountain Lodge, Inc. JD-(ATL)-40-82
(total hours worked by all bargaining unit Ees during last 12 months)

6067-6067-4000—Cont.

N.L.R.B. v. Safeway Stores, Inc. 622 F.2d 425 (C.A. 9, 1980)
(E's refusal to furnish U with records pertaining to Ee production levels violative where U requested information to help it process grievances Ees filed over their being transferred to less desirable positions because they did not satisfy new production requirements)

6067-6067-4200 Substances used in manufacturing process

Minnesota Mining and Manufacturing Company 261 NLRB No. 082
(E's refusal to provide U with requested listing of substances used in E's manufacturing process held violative, since listing of substances *admittedly* did not compromise any proprietary advantage)

Minnesota Mining and Manufacturing Company 261 NLRB No. 082
(parties should bargain in good faith regarding conditions under which needed information (names of substances E claims to constitute *trade secrets,*) may be furnished to U with appropriate safeguards protective of E's legitimate proprietary interests yet maintained)

Colgate-Palmolive Company 261 NLRB No. 087
(where E claimed that disclosure of generic names of certain ingredients used at its plant would impinge on its proprietary interests by revealing its trade secrets or would improperly disclose proprietary ingredients of its suppliers, Bd found that such claims of confidentiality, as substantiated by record evidence, might justify failure to furnish health and safety information)

Borden Chemical, A Division of Borden, Inc. 261 NLRB No. 086
(violation, where E refused to provide U with list of materials or chemicals purchased, stored or processed at its chemical manufacturing facility which concededly would not constitute trade secrets and compromise E's proprietory advantage; however, E need not disclose established propreitory, confidential or trade secret information. Parties ordered to bargain regarding disclosure of those substances to which E claims constitute confidential trade secret information)

6067-6067-4300 Wage and/or employment data

Semco Printing Center, Inc. 265 NLRB No. 073
(E's refusal to furnish information sought by U concerning Ees' rates of pay, benefits, seniority dates, work rules, and related information, unlawful, since such information is presumptively relevant for bargaining purposes and must be furnished upon request, and E had not attempted to rebut relevance of information sought)

Rochester Institute of Technology 264 NLRB No. 135
(alleged refusal by E to furnish budget information requested by U during negotiations, not unlawful, where E's statement concerning inability to pay wages demanded by U was at best ambiguous and did not contain any assertion that E could *not afford* proposed wage increase; information was available at E's library, which makes it unlikely E would have refused to furnish it; and U then dropped the subject and made no other mention of it thereafter; moreover, at most, only technical violation was committed which did not place U in an unfavorable position with regard to wage issue)

Abbey Medical/Abbey Rents, Inc. 264 NLRB No. 129
(E's refusal to supply U with addresses, seniority dates, wage and benefit information is violative; however, not violative to refuse to supply Ee's social security numbers as this information has no relevancy to U's role as bargaining representative)

Stecher's Supermarket, Inc. 264 NLRB No. 102
(supplying incomplete employment data violative where U needed information to determine if proper contributions to health and welfare and pension funds were being made)

Cherokee Culvert Company, Inc. 262 NLRB No. 108
(refusal to supply wage and employment information to enable U to ascertain whether or not 2 Ees were no longer in bargaining unit as E claimed, unlawful)

Lauren Manufacturing Company 261 NLRB No. 019

General Motors Corporation, Delco Moraine Division 257 NLRB No. 146
(requested original time study sheets and documents relating to standards and wage rates found to be central to U's performance of its obligation to its members, and E's refusal to supply U with such requested information, unlawful)

Grand Islander Health Care Center, Inc. 256 NLRB No. 189
(refusal to furnish wage and employment information pertaining to Ees in recently certified unit, violative, notwithstanding U has not demonstrated *exact* relevance of such information where E has not rebutted presumption that such information is relevant)

Salem Village I, Inc., Salem Village II, Inc., and Salem Village III, Inc. 256 NLRB No. 141
(refusal to furnish information on wages, employment data and fringe benefits of unit Ees to recently certified U, violative as this information is presumed relevant)

Edward E. Holmes Detective Bureau, Inc. 256 NLRB No. 102
(E's refusal to supply U with Ees' names, addresses, social security numbers, dates of hire and termination, employment location, and pay rate, unlawful where information was relevant to U's policing of contract, particularly as to payments of initiation fees, dues, and welfare fund contributions for new hires; U's contributions for new hires; U's misconduct held not to make test of E's good faith impossible or free E from obligation to supply information)

Maywood Do-Nut Co., Inc. 256 NLRB No. 072
(pending 9th Circuit decision on prior 8(a)(5) finding, refusal to furnish information on wage rates and Ee benefits, held violative as pending charges do not relieve party from bargaining obligations)

Armstrong World Industries, Inc. 254 NLRB No. 160
(refusing to provide U with copies of policies concerning wages and methods of payment, and names and addresses of Ees in bargaining unit, violative)

Tom's Ford, Inc. 253 NLRB No. 128
(E's refusal to supply payroll records requested by U to evaluate grievance alleging E had violated contractual provision, unlawful where information was relevant to administration of contract and processing of grievance)

Tom's Ford, Inc. 253 NLRB No. 128
(refusal to furnish names, addresses, job classifications and pay rates of unit Ees requested for purposes of contract administration, unlawful since the information was presumptively relevant)

Tom's Ford, Inc. 253 NLRB No. 128
(refusal to furnish unit Ees' social security members requested for purposes of contract administration, not unlawful since relevance was not shown)

Kraft Plumbing and Heating, Inc. 252 NLRB No. 126
(refusing to furnish U certain payroll records requested by U and necessary to U's performance of its bargaining functions, violative)

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers 251 NLRB No. 017
(refusal to grant U's request to review E's payroll records, violative)

Monroe Servo Controls, Inc. 250 NLRB No. 120
(refusal to furnish updated pension plan booklet, economic data to justify claim of financial hardship, pay scale information, internal policy governing Ee classification, and wage increase data violative)

Villa Care, Inc., d/b/a Edmonds Villa Care Center 249 NLRB No. 086
(refusal to furnish U with requested information concerning Ees' names, classifications, dates of hire, current wage rates, and dates and amounts of last pay increases, unlawful since information was necessary and relevant to negotiations)

Jaggars-Chiles-Stovall, Inc. 249 NLRB No. 108
(U entitled to earnings information on all unit Ees, not just U members, including assistant foremen and foremen, where under contract they perform unit work, as such information is essential to U's policing of collective-bargaining agreement; fact U informed E only at hearing of reason behind request, immaterial)

Martinsburg Concrete Products Co. 248 NLRB No. 172
(refusal to produce, at U's request, record of number of hours-worked by unit Ees during stated contract year, violative where E defended its refusal on ground that U's bargaining contract had expired)

Bel-Air Bowl, Inc. 247 NLRB No. 088
(refusal to provide requested information as to Ee work status, unlawful notwithstanding information was w/i knowledge of Ees; information was relevant and necessary to U's performance of its obligations and representative, and its right thereto was not defeated by its ability to acquire information through independent source)

Patio Lodge, Inc., and Fountain Lodge, Inc. JD-(ATL)-40-82
(total hours worked by all bargaining unit Ees during last 12 months)

Potters' Medical Center, Inc. JD-625-81
(must be provided even though request made after parties at impasse)

Wyland Enterprises, Inc. JD-(SF)-315-81
(E's refusing to provide information concerning pending claims for subsistence and travel time upon U's request, violative, where information was relevant to U's obligation to police contract)

Avenia, Inc. JD-(SF)-300-80

The Workshop, Inc. JD-230-80
(refusal to supply names and addresses and hiring dates of Ees relevant to and necessary for negotiations, unlawful)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 653 F.2d 1055 (C.A. 1, May 1981)
(where requested information concerns wages and related information for Ees in bargaining unit, information is presumptively relevant to bargainable issues; where the request is for information concerning Ees outside bargaining unit, U must show requested information is relevant to bargainable issues; to meet its burden regarding such information U must show more than an abstract potential relevance or mere suspicion or surmise; however, when E during bargaining put in issue information not presumptively relevant E must produce data to substantiate claims)

6067-6067-4500—Cont.

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(E's refusal to furnish wage data concerning nonunit Ees, unlawful, where at date of hearing, E was first formally put on notice of ULP charge as to contract negotiation need for requested data, E did not agree at that time to furnish information, nor did it seek to postpone hearing or claim inadequate advance notice of this basis of charge, but instead E insisted it had been under no obligation to furnish data prior to hearing)

N.L.R.B. v. International Credit Service, A Division of Lucas County Credit Bureau, Inc. **644 F.2d 886(T) (C.A. 6, Jan 6, 1981)**
(refusing to furnish w/i reasonable time wage information requested by U, violative)

Press Democrat Publishing Co., etc. v. N.L.R.B. **629 F.2d 1320 (C.A. 9, 1980)**
(refusal to furnish wage date on non-unit independent editorial correspondents of publishing company who are paid per article or monthly retainer fee rather than per hour, violative as nonunit compensation data was relevant and potentially helpful to Guild in framing unit wage demands)

K Mart Corporation v. N.L.R.B. **626 F.2d 704 (C.A. 9, 1980)**
(E's refusal to furnish information as to wage increases in its other distribution centers to substantiate claim that its policy was to set wages in accordance with community standards, violative, (same result if set according to *prevailing wages*) as information is relevant)

6067-6067-4700 Strike replacement personnel data

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(E's refusal to furnish names of strike replacements justified since reasonable to believe *clear and present danger* U members would use replacement names to facilitate harassment and U offered no assurances names would be misused; U's needs for names other than for verification purposes is not obvious, E's offer of third party verification indicated E's good faith concern regarding Ee harassment)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(E's failure to disclose job descriptions of strike replacements to correspond wage rate information which it furnished unjustified particularly in view of its unexplained failure to furnish names of replacements; in absence of job descriptions U could not substantiate its allegation that striker replacements had received wage increase nor substantiate E's claims that replacements were more productive and it was getting work done for less money)

6067-6067-5100 Nature and type of work at new location

N.L.R.B. v. General Motors Corporation **510 F.Supp. 338 (DC S.D. OH, Sept. 1980)**
(order requiring obedience to *subpoenas duces tecum and ad testificandum* granted where Bd sought information, during R case investigation, concerning: Ee job descriptions; equipment descriptions; comparison of supervision; management; and description of physical changes in (E's) plants; all before E relocated its appliance operation, and now during conversion of appliance plants to light body truck and engine assembly plants, since information was related to matter under investigation; information would clarify issues of: relationship of Ees in unit will have with entire production procession E's facilities)

6067-6067-5200 Confidential nature of information

Horace F. Hatch, an Individual, d/b/a East Texas Fire Protection Company **265 NLRB No. 018**
(E's failure to produce its purchase orders and/or invoices for past 3 years and register it kept summarizing these documents, violative; where U needed information to prepare its case in dispute with E over whether E complied with contract, and E failed to detail claim that its business would be harmed. However, GC must insure that information is not widely disseminated to protect E's business)

Abbey Medical/Abbey Rents, Inc. **264 NLRB No. 129**
(E's refusal to supply U with addresses, seniority dates, wage and benefit information is violative; however, not violative to refuse to supply Ee's social security numbers as this information has no relevancy to U's role as bargaining representative)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(Bd required to balance U's need for relevant, but assertedly confidential, information against any *legitimate and substantial* confidentiality interests established by E)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(mere assertion of confidentiality, w/o any showing of reasons for such assertion, is inadequate as defense to refusal to supply information demanded)

LaGuardia Hospital—H.I.P. Hospital, Inc. **260 NLRB No. 199**
(E's failure to supply U with patient charts necessary for U to be able to process grievances involving nurses who cared for patients violative, however, in providing information it is not necessary for hospital to reveal patient's names to U but only to nurses to enable comparison of abstracts of charts to verify accuracy)

Safeway Stores, Inc. **JD-421-82**
(refusal to provide U information concerning specific comparative sales data relating to grievant's performance, violative where information sought was relevant to basis of grievance; belated assertion of confidentiality rejected)

6067-6067-5233 Trade secret

Plough, Inc. **262 NLRB No. 141**
(E violated Act when it refused to supply U with list of chemical substances it used and also any warnings or instructions it had regarding substances; however, Bd recognized E's legitimate interest in protecting confidential, proprietary and/or trade secret information and E ordered to turn over to U list of substances to which it asserts no trade secrets defense and for those to which it raised such defense parties ordered under procedure set forth in *Minnesota Mining and Manufacturing* 261 NLRB No. 2 to reach some satisfactory agreement through collective-bargaining to arrive at appropriate safeguards)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(U entitled to full disclosure of requested health and safefy information to extent that such disclosure is consonant with protection of individual Ees' privacy rights and with E's legitimate proprietary confidentiality concerns, since health and safety are terms and conditions of employment regarding which E is obligated to bargain on request, therefore such information is relevant)

Borden Chemical, A Division of Borden, Inc. **261 NLRB No. 006**
(violation, where E refused to provide U with list of materials or chemicals purchased, stored or processed at its chemical manufacturing facility which concededly would not constitute trade secrets and compromise E's proprietory advantage; however, E need not disclose established propreitory, confidential or trade secret information. Parties ordered to bargain regarding disclosure of those substances to which E claims constitute confidential trade secret information)

Borden Chemical, A Division of Borden, Inc. **261 NLRB No. 006**
(in order for trade secret defense to E's refusal to furnish information to be recognized, E must show that a legitimate business need for confidentiality exists, U concerned has been advised as to U's request, U's request is overbroad and position inflexible, E is willing to make some effort to accommodate U's request)

6067-6067-5267 Employee medical record

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(individual medical records should not be furnished U *unless and until that individual's physical capabilities become relevant to some particular problem* and here where medical history of individual Ees is patently relevant to U's effort to promote occupational safety for these same Ees, test is met)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(E's proposal that U's request for medical information would have to be secured from Ees themselves did not relieve E of obligation to meet U's request, since E's obligation to provide relevant information imposed on E obligation to make reasonable effort to secure requested information, and, if unavailable, explain or document reasons for asserted unavailability)

6067-6067-5400 Insurance plans

Eastern Maine Medical Center **253 NLRB No. 024**
(E's refusal to furnish insurance information requested by U, unlawful, since providing such information is essential bargaining requirement, and there is no evidence that E thereafter provided the requested information)

Patio Lodge, Inc., and Fountain Lodge, Inc. **JD-(ATL)-40-82**
(refusal to furnish copies of plan to U unlawful)

Burrell Construction & Supply Co. **JD-86-81**
(violation where E refused to bargain over choice of health plan for its Ees; no impasse because E did not give U cost of one plan it offered to E)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(enforcement granted on Bd's determination that E's refusal to furnish U with requested copy of new insurance program, unlawful, where there was continuing duty to bargain)

6067-6067-8700 Vacations, holidays, etc.

C. W. Sweeney & Co. **258 NLRB No. 096**
(E's refusal to supply information relating to vacation schedules and Ee's absentee records, violative)

Patio Lodge, Inc., and Fountain Lodge, Inc. **JD-(ATL)-40-82**
(refusal to furnish copies of plan to U unlawful)

6067-6067-8800 Data concerning production scheduling

Southwestern Bell Telephone Company **251 NLRB No. 061**

6067-6067-8900 Performance reviews

PPG Industries, Inc. **255 NLRB No. 041**
(refusal to furnish U work evaluation reports and related documents concerning grievant who was temporary summer Ee, violative, where information was relevant to underlying grievance and U's capacity as bargaining agent, and U did not clearly and unmistakably waive its right to grieve over

6067-6067-5900—Cont.

termination of temporary Ees or to obtain information relevant to such grievant)

Pease Company **251 NLRB No. 080**

(E's refusal to furnish, at U's request, performance review records with respect to recently granted pay increases, unlawful, where records were necessary for U to police E's application of E's new pay system, and they were relevant to bargaining on wages on which there had as yet been no agreement; nor was there any evidence that U, expressly and unequivocally, or even by implication, waived its right to the information)

Safeway Stores, Inc. **JD-421-82**

(refusal to provide U information concerning specific comparative sales data relating to grievant's performance, violative where information sought was relevant to basis of grievance; belated assertion of confidentiality rejected)

6067-6067-6000 Specific individual wage and/or employment data

Van Dorn Plastic Machinery Co., Division of Van Dorn Company **265 NLRB No. 036**

(refusal to furnish requested data relating to wages, job classifications, and hiring dates of Ees, unlawful)

The New York Times Company **265 NLRB No. 045**

(case remanded for hearing *de novo* before different ALJ where ALJ at hearing dismissed C alleging E violated Sec. 8(a)(5) by refusing to supply U with Ee job evaluation reports on grounds that information was allegedly available from other sources (Ees); ALJ erred as matter of law as fact that Ees may have information and may be willing to give it to U does not relieve E of its obligations under Act. Moreover, ALJ inpunged good faith of U and questioned whether GC and charging party were abusing Bd processes, in contravention of Bd policy to not only avoid partiality and prejudgment but even appearance thereof)

Alle Arecibo Corporation and Alle Industries Ltd. **264 NLRB No. 163**

(refusing to provide relevant payroll and personnel data to U, violative)

Leland Stanford Junior University **262 NLRB No. 017**

(when U grieved about layoff of more senior Ees in face of retention of Ee who shortly before layoff was reclassified as *leader* and requested E to furnish names of Ees that leader led, E complied with request when it identified the group of Ees, though not by name, in such manner that U was able to interview all members of group)

C. W. Sweeney & Co. **258 NLRB No. 096**

(E's refusal to supply information relating to vacation schedules and Ee's absentee records, violative)

Hillcrest Furniture Manufacturing Co., Inc. **253 NLRB No. 009**

Yet Wah Restaurant **251 NLRB No. 010**

(refusal to furnish U with requested names, dates of hire, termination dates, social security numbers, work classifications and wages for all Ees employed since November 1978, unlawful)

Jaggars-Chiles-Stovall, Inc. **249 NLRB No. 108**

(U entitled to earnings information on all unit Ees, not just U members, including assistant foremen and foremen, where under contract they perform unit work, as such information is essential to U's policing of collective-bargaining agreement; fact U informed E only at hearing of reason behind request, immaterial)

Stratford Visiting Nurses Association **JD-(NY)-86-82**

(E's refusal to furnish information to U including current salaries, employment dates, current wage scales, hours worked, names, addresses, birth date, title, employment policies and practices, violative)

Patio Lodge, Inc., and Fountain Lodge, Inc. **JD-(ATL)-40-82**

(E's refusal to furnish U list of all Ees in bargaining unit, with social security numbers, dates of employment, job classifications, wage rates, and time worked, unlawful)

Patio Lodge, Inc., and Fountain Lodge, Inc. **JD-(ATL)-40-82**

(total hours worked by all bargaining unit Ees during last 12 months)

Sunnyland Foods, Inc. **JD-(ATL)-36-80**

(E's failure to provide U with requested information regarding names, grades, dates of hire, departments, and job descriptions of new hires, unlawful notwithstanding that seniority lists available to U might have provided some of information relative to new hires and that U ultimately received information requested through Bd after charge had been filed by U, where ultimate receipt of information was clearly untimely with respect to U's requests and E submitted no reasonable explanation for delay)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**

(where requested information concerns wages and related information for Ees in bargaining unit, information is presumptively relevant to bargainable issues; where the request is for information concerning Ees outside bargaining unit, U must show requested information is relevant to bargainable issues; to meet its burden regarding such information U must show more than an abstract potential relevance or mere suspicion or surmise; however, when E during bargaining put in issue information not presumptively relevant E must produce data to substantiate claims)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**

(E's failure to disclose job descriptions of strike replacements to correspond wage rate information which it furnished unjustified particularly in view of its unexplained failure to furnish names of replacements; in absence of job descriptions U could not substantiate its allegation that striker replacements had received wage increase nor substantiate E's claims that replacements were more productive and it was getting work done for less money)

6067-6067-6017 Non-unit employees

E. I. Du Pont De Nemours & Company **264 NLRB No. 088**

(E's failure and refusal to furnish instant Ees' Council hourly wage rates and job classifications for similarly skilled Ees at 9 other of E's textile fiber plants held violative, since Council had shown logical basis for needing requested data; w/o such data Council could not intelligently formulate its desired approach to wage policy different from that adhered to by E who based their wage policy on survey of wages in local area where plants located)

Leland Stanford Junior University **262 NLRB No. 017**

(E's refusal to furnish U number of persons working as temporary Ees in certain classification in connection with grievance regarding E's refusal to grant Ee medical leave and use temporary rather than replacing Ee with permanent Ee while Ee on leave, not unlawful, since not presumptively relevant for bargaining where information sought was about nonbargaining unit personnel; nor was information relevant to processing of grievance by enabling U to determine whether E was able to employ temporary Ee since E concluded efficiency rather than ability to hire temporary Ee dictated permanently replacing grievant)

Leland Stanford Junior University **262 NLRB No. 017**

(E's refusal to furnish U names, classifications, and dates of employment of temporary Ees, unlawful, since relevant to U's bargaining responsibilities administering agreement and processing grievances, in view of evidence E was hiring temporary Ees to perform unit work and dismissing them shortly before they became covered by contract, and frequent layoffs of unit Ees while contracting out unit work; U had informed E use of nonunit Ees to perform unit work would be U's priority in coming negotiations; E's further refusal to give U classification, pay, and date specific non-unit individuals performing unit work commenced work, unlawful)

Brown Newspaper Publishing Co., Inc. **290 NLRB No. 100**

(E ordered to supply U with *aggregate* amounts paid to independent correspondents for editorial product and not amounts paid to individual writers as these writers are non-unit Ees and these amounts should remain confidential between E and those writers)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**

(where requested information concerns wages and related information for Ees in bargaining unit, information is presumptively relevant to bargainable issues; where the request is for information concerning Ees outside bargaining unit, U must show requested information is relevant to bargainable issues; to meet its burden regarding such information U must show more than an abstract potential relevance or mere suspicion or surmise; however, when E during bargaining put in issue information not presumptively relevant E must produce data to substantiate claims)

N.L.R.B. v. Jaggars-Chiles-Stovall, Inc. **639 F.2d 1344 (C.A. 5, 1981)**

(E obligated to furnish wage data of foremen and assistant foremen who occasionally performed unit work, notwithstanding they were supervisors and not included in unit, where information necessary to verify amount of overtime work performed by them and whether being paid for overtime in order to ascertain if there has been compliance with bargaining agreement provisions regarding overtime)

N.L.R.B. v. Jaggars-Chiles-Stovall, Inc. **639 F.2d 1344 (C.A. 5, 1981)**

(wage data on Ees outside bargaining unit must meet standard of relevance before it must be surendered to U but NLRB determination of relevance of information sought in particular case must be given great weight by courts if only because it is finding of law and fact w/i expertise of Bd)

6067-6067-6033 Confidential nature of information

New Jersey Bell Telephone Company **265 NLRB No. 180**

(E's failure to supply U with three Ees' absence and tardiness records until Ees signed written releases violative, since records were relevant and necessary for U's performance of its bargaining obligation in possible grievance action, type of information sought was not of nature to cloak it with confidentiality and, notwithstanding obtaining releases might have been relatively simple, it was not *gamesmanship* for U to insist upon receiving information to which it was entitled under the Act)

Plough, Inc. **262 NLRB No. 141**

(E violated Act when it refused to supply U with results of Ee physicals, however information must not include individual medical records from which identifying data has not been removed)

6067-6067-6033—Cont.

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(Bd required to balance U's need for relevant, but assertedly confidential, information against any *legitimate and substantial* confidentiality interests established by E)

Colgate-Palmolive Company **261 NLRB No. 007**
(failure to provide requested health and safety information contained in medical records with identification removed, unlawful, since supplying records is not overwhelmingly burdensome, and removal of identifying data, though expensive, protects individual Ee's privacy and physician-patient relationship, and where Ee's identity is revealed in spite of precautions, minimal intrusions on Ee privacy is outweighed by U's need for medical data showing effect of workplace environment on Ees)

Colgate-Palmolive Company **261 NLRB No. 007**
(where E claimed that disclosure of generic names of certain ingredients used at its plant would impinge on its proprietary interests by revealing its trade secrets or would improperly disclose proprietary ingredients of its suppliers, Bd found that such claims of confidentiality, as substantiated by record evidence, might justify failure to furnish health and safety information)

Press Democrat Publishing Company **258 NLRB No. 185**
(E ordered to supply U with *aggregate* amounts paid to independent correspondents for editorial product and not amounts paid to individual writers as these writers are non-unit Ees and these amounts should remain confidential between E and those writers)

Press Democrat Publishing Co., etc. v. N.L.R.B. **629 F.2d 1320 (C.A. 9, 1980)**
(though U's interest in information may be relevant, disclosure may be conditioned to accommodate E's interest in confidentiality so that less than complete disclosure justified)

6067-6067-6067 Confidential privilege to refuse disclosure on behalf of employees

Colgate-Palmolive Company **261 NLRB No. 007**
(failure to provide requested health and safety information contained in medical records with identification removed, unlawful, since supplying records is not overwhelmingly burdensome, and removal of identifying data, though expensive, protects individual Ee's privacy and physician-patient relationship, and where Ee's identity is revealed in spite of precautions, minimal intrusions on Ee privacy is outweighed by U's need for medical data showing effect of workplace environment on Ees)

Amphlett Printing Company **258 NLRB No. 019**
(on remand for explication of its remedy that E should disclose to newspaper guild only aggregate amounts paid independent correspondents for editorial product on basis of confidentiality, Bd explained that its order was based on recognition of nonunit writers' right to keep financial arrangements private from U not representing them; guild showed no need to know sums paid individuals where they were not translatable to unit Ees' compensation and not necessary for unit Ees to achieve parity or determine how large their *slice of the pie* was)

N.L.R.B. v. Jaggars-Chiles-Stovall, Inc. **639 F.2d 1344 (C.A. 5, 1981)**
(E not entitled to withhold non-U unit Ee wage data because non-unit Ees requested that their wage data remain confidential, since if claim of confidentiality were recognized, U's fulfillment of its obligation to enforce bargaining agreement for benefit of both non-U and U unit Ees would be frustrated)

6067-6067-6400 Equal employment and/or affirmative action data

Wellman Industries, Inc. **248 NLRB No. 029**
(refusal to supply equal employment data, unlawful)

6067-6067-6800 Attendance records of employees

Penn Company **251 NLRB No. 080**

Allied Paper, Inc., Division of SCM Corporation **JD-341-80**
(E's refusal to furnish U copy of timebook in order to establish whether grievant was probationary Ee where E had refused to process grievance because of Ee's alleged probationary status, not unlawful, where whether Ee worked on certain day determinative of question, U representative could testify what timebook showed, and testimony would be admissible upon E's failure to furnish timebook; further, Ee himself could testify as to his whereabouts on day in question)

6067-6067-7000 Correlated wage survey data

6067-6067-7050 Confidential nature of information

Safeway Stores, Inc. **252 NLRB No. 194**
(refusal to supply U requested information on handicapped persons held violative where E had insufficient justification to avoid its bargaining obligations; information sought, in instant case, was not type which would have potential of compromising privacy rights of individual Ees, nor was expense and inconvenience involved in furnishing information so great as to justify E's refusal)

6067-6067-7100 Employee misconduct

Safeway Stores, Inc. **253 NLRB No. 066**
(E did not refuse to furnish information concerning Ees discharge to U prior to arbitration concerning discharge where it had supplied U with reasons for and details of Ees' suspension and discharge and only other information it possessed was uncofirmed and disclosure would constitute type of discovery Bd finds unnecessary and undesireable in ULP cases)

Southwestern Bell Telephone Company v. N.L.R.B. **667 F.2d 470 (C.A. 5, Feb. 1982)**
(E's refusal to supply U with Ee's job application form which it alleged he had falsified and report from State Department of Public Safety not violative where U had waived its right in settlement agreement to receive these documents without Ee's written request)

6067-6067-7300 Data concerning employee benefits

Van Dorn Plastic Machinery Co., Division of Van Dorn Company **265 NLRB No. 096**
(refusing to furnish requested data relating to fringe benefits, violative)

Semco Printing Center, Inc. **265 NLRB No. 073**
(E's refusal to furnish information sought by U concerning Ees' rates of pay, benefits, seniority dates, work rules, and related information, unlawful, since such information is presumptively relevant for bargaining purposes and must be furnished upon request, and E had not attempted to rebut relevance of information sought)

Wellman Industries, Inc. **248 NLRB No. 029**
(refusal to supply forms related to E's insurance and pension programs, unlawful)

D.P.L. Painting, Inc. **JD-478-82**
(E's failure to present all books and records necessary to perform benefit accounts audit, violative, since information and necessary to determine compliance with agreement)

Patio Lodge, Inc., and Fountain Lodge, Inc. **JD-(ATL)-40-81**
(refusal to furnish copies of plan to U unlawful)

N.L.R.B. v. Laredo Coca Cola Bottling Company **613 F.2d 1338 (C.A. 5) (1980)**
(where U requested E to provide it with terms and conditions of employment, including benefits received, E's refusal to include in the list four benefits, namely Ee first quarter wage increase, two savings funds, and Christmas bonus that it had unilaterally discontinued, violative)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins **616 F.2d 966 (C.A. 6, 1980)**
(refusal to supply information regarding payments to fringe benefit funds required by contract, unlawful)

N.L.R.B. v. Michigan Drywall Corporation, M & D Drywall, Inc., and James F. Mullins **616 F.2d 966 (C.A. 6, 1980)**
(refusal to supply information regarding payments to fringe benefit funds required by contract, unlawful)

6067-6067-7400 Data concerning employment aptitude tests

Detroit Edison Company v. N.L.R.B. **99 U.S. 1123 (S Ct., 1979)**
(Bd abused its discretion in ordering E to turn over, in compliance with U's request, employment aptitude tests and ans sheets directly to U, where Bd cited no principle of national labor policy to warrant remedy that would unnecessarily disserve E's concern for test secrecy, Bd's order did not adequately protect secrecy of tests, there is substantial doubt whether U would be subject to contempt citation were it to ignore Bd's restrictions, other effective Bd sanctions are similarly problematic, and U would not be accountable in either contempt or ULP proceedings for inadvertent leaks)

Detroit Edison Company v. N.L.R.B. **99 U.S. 1123 (S Ct., 1979)**
(E's willingness to disclose, at U's request, scores of employment aptitude tests upon receipt of consents from examinees satisfied E's statutory obligation; ct declined to adopt rule that U's interests in arguably relevant information always predominate over all other interests, no matter how legitimate; in view of sensitive nature of information, minimal burden E's offer placed on U, and absence of evidence that E acted to frustrate U in discharge of its statutory responsibilities, ct rejected Bd's conclusion that E violated Act)

6067-6067-7500 Pension plan and funding

Autoprod, Inc. **265 NLRB No. 042**
(failing to comply in timely fashion to U's request for information required in prosecution of grievances relating to administration of U pension fund, violative)

Vore Cinema Corp. **254 NLRB No. 167**
(E's refusal to supply U with copy of pension plan violative, notwithstanding U had agreed to have eligible Ees included in E's pension plan; agreement to plan does not waive U's right to have copy of plan)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(refusal to furnish updated pension plan booklet, economic data to justify claim of financial hardship, pay scale information, internal policy governing Ee classification, and wage increase data violative)

6067-6067-7500—Cont.

D.P.L. Painting, Inc. **JD-478-82**
(E's failure to present all books and records necessary to perform benefit accounts audit, violative, since information and necessary to determine compliance with agreement)

Patio Lodge, Inc., and Fountain Lodge, Inc. **JD-(ATL)-40-83**
(refusal to furnish copies of plan to U unlawful)

6067-6067-7600 Health and safety matters

Plough, Inc. **262 NLRB No. 141**
(E violated Act when it refused to supply U with list of chemical substances it used and also any warnings or instructions it had regarding substances; however, Bd recognized E's legitimate interest in protecting confidential, proprietary and/or trade secret information and E ordered to turn over to U list of substances to which it asserts no trade secrets defense and for those to which it raised such defense parties ordered under procedure set forth in *Minnesota Mining and Manufacturing* 261 NLRB No. 2 to reach some satisfactory agreement through collective-bargaining to arrive at appropriate safeguards)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(U entitled to full disclosure of requested health and safety information to extent that such disclosure is consonant with protection of individual Ees' privacy rights and with E's legitimate proprietary confidentiality concerns, since health and safety are terms and conditions of employment regarding which E is obligated to bargain on request, therefore such information is relevant)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(U has right to know, to extent of E's knowledge as reflected in certain of information requested, of perceived dangers or likelihood of harm arising from Ees' working conditions in order that U may adequately represent interests of unit Ees)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(E's failure to supply U with requested Ee health and medical information to extent that information does not include individual medical records from which identifying data *have not* been removed, held violative, since U's need for medical data potentially revealing past effects of work place environment upon unit Ees outweighs intrusion upon Ee privacy implicit in supplying of aggregate data such as that sought)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(individual medical records should not be furnished U *unless and until that individual's physical capabilities become relevant to some particular problem* and here where medical history of individual Ees is patently relevant to U's effort to promote occupational safety for these same Ees, test is met)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(E's proposal that U's request for medical information would have to be secured from Ees themselves did not relieve E of obligation to vest U's request, since E's obligation to provide relevant information imposed on E obligation to make reasonable effort to secure requested information, and, if unavailable, explain or document reasons for asserted unavailability)

Colgate-Palmolive Company **261 NLRB No. 007**
(E's contention that health and safety data requested by U would be too expensive and time-consuming to accumulate and too difficult to retrieve rejected where E offered no evidence to verify its cost estimates, did nothing to verify its cost estimates, did nothing to reduce burden of retrieval, and did not suggest that U share costs)

Colgate-Palmolive Company **261 NLRB No. 007**
(failure to provide requested health and safety information contained in medical records with identification removed, unlawful, since supplying records is not overwhelmingly burdensome, and removal of identifying data, though expensive, protects individual Ee's privacy and physician-patient relationship, and where Ee's identity is revealed in spite of precautions, minimal intrusions on Ee privacy is outweighed by U's need for medical data showing effect of workplace environment on Ees)

Colgate-Palmolive Company **261 NLRB No. 007**
(where E claimed that disclosure of generic names of certain ingredients used at its plant would impinge on its proprietary interests by revealing its trade secrets or would improperly disclose proprietary ingredients of its suppliers, Bd found that such claims of confidentiality, as substantiated by record evidence, might justify failure to furnish health and safety information)

Colgate-Palmolive Company **261 NLRB No. 007**
(failing to supply U with requested health and safety information, unlawful to extent data did not include (a) medical records from which identifying data had not been removed and (b) generic names of substances used at plant, including proprietary ingredients of E's suppliers, which E and suppliers regarded as trade secrets)

Borden Chemical, A Division of Borden, Inc. **261 NLRB No. 086**
(U's request for list of all materials or chemicals purchased, stored, or processed at E's chemical manufacturing facility relevant to U's performance as bargaining representative since request, related to work place health and safety problems, presumptively relevant, and no contention request overbroad and need existed to deal with potential hazards, notwithstanding E's safety and health programs which were responsive to specific problems rather than calculated to provide broadly preventive policies)

Johns-Manville Sales Corporation **252 NLRB No. 086**
(U's request for names of Ees whose medical files E had *red-tagged* because its doctors had diagnosed them as being partially disabled by lung disease, properly refused by E where, although the information may be relevant because contract awarded them additional seniority rights, U's showing of need did not clearly outweigh confidentiality claimed by E)

Johns-Manville Sales Corporation **252 NLRB No. 086**
(E's refusal to provide U with statistical data on sputum cytology, X-rays, blood tests, pulmonary function tests, and listing of diseases which cause Ees' disability retirements, which could be considered occupational in nature, unlawful)

6067-6067-7800 Names of employer-association members

Lumber and Mill Employers Association **268 NLRB No. 037**
(refusing to furnish Us requested copy of multi-E association's roster of E-members who perform work covered by its collective bargaining agreement with Us, violative where there was no evidence that Us' request was not made in good faith, disclosure would not impose onerous burden on E, and E proposed no practicable alternative to disclosure)

6067-6067-7900 Statistical data (race, sex, etc.)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(E's Affirmative Action Plans (AAPs) are not presumptively relevant (to bargaining) except for certain statistics contained in *Work Force Analysis* portion of E's AAPs, and as to those U must indicate with appropriate specificity relevant information sought; U must demonstrate relevance to be entitled to entire plan; E not required to produce its AAPs or specified portions of plans where U had not demonstrated their relevance)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(manner in which E must make (relevant) statistical information available to U and allocation of *substantial costs*, if any, shall be determined in accordance with *Food Employer Council Inc., et al.*, 197 NLRB 651 (1972))

Safeway Stores, Inc. **252 NLRB No. 184**
(no merit found to E's claim in response to U's request for information concerning race, sex and handicapped Ees, that U had failed to satisfy requirement in *Westinghouse Electric Corporation, 239 NLRB 106 (1978)* where information requested related directly to U's representation of all unit Ees, including handicapped Ees, which information was presumptively relevant)

Lucky Markets, Inc. **251 NLRB No. 118**
(E's refusal to furnish information sought by U pertaining to grievance arising from transfer of Ee pursuant to E's affirmative action program, unlawful, since U is entitled to statistical information (Ees' names, ages, race, sex, marital status) requested by U inasmuch as test for U's need for information concerning terms and conditions of employment is simply a showing of probability that desired information was relevant and would be of use to U in carrying out its statutory duty and responsibilities; however, E was not obligated to divulge statistical age data not applicable to Ee's age)

Safeway Stores, Inc. v. N.L.R.B. **691 F.2d 953 (C.A. 10, Oct. 1982)**
(E's refusal to supply information concerning race and employment status of city-wide Ees of grocery chain, violative as collective bargaining agreement contains anti-discrimination clauses, and information pertaining to such clauses is relevant and necessary to enable U to administer that agreement and no requirement that grievance on subject had to be filed before information became relevant)

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC v. N.L.R.B. **648 F.2d 18 (C.A.D.C., Nov. 1980)**
(Bd's holding that data showing distribution and recent advancements of women and minorities is presumptively relevant upheld as this type of information aids the U in carrying out its duty to represent Ees in policing nondiscrimination clause in contract, and withholding of such information affects the U's ability to carry out its duties)

6067-6067-8000 Names and addresses of employees and former employees

Robert E. Johnson and Geneva H. Johnson, a Partnership, d/b/a Jolie Belts Company **268 NLRB No. 141**
(refusal to supply requested employment data, including names and addresses and job classifications of present and past Ees, on ground that U could get the information from other sources, violative)

Van Dorn Plastic Machinery Co., Division of Van Dorn Company **265 NLRB No. 086**
(refusal to furnish requested data of Ees' home addresses, violative)

Abbey Medical/Abbey Rents, Inc. **264 NLRB No. 129**
(E's refusal to supply U with addresses, seniority dates, wage and benefit information is violative; however, not violative to refuse to supply Ee's social security numbers as this information has no relevancy to U's role as bargaining representative)

6067-6067-8000—Cont.

Royal Electric Company **260 NLRB No. 190**

Gehurich & Gehurich, Inc. **258 NLRB No. 075**

(refusing to furnish U with addresses of unit Ees, violative)

Hudson Chemical Company **258 NLRB No. 009**

(E did not comply with U's demand for list of Ees notwithstanding it furnished U with monthly computerized list of checkoff deductions as no addresses were included, high turnover rate, and list did not reflect names of Ees who were sick, on vacation, laid off or otherwise not on payroll because they weren't paid that month)

Edward Z. Holmes Detective Bureau, Inc. **256 NLRB No. 102**

(E's refusal to supply U with Ees' names, addresses, social security numbers, dates of hire and termination, employment location, and pay rate, unlawful where information was relevant to U's policing of contract, particularly as to payments of initiation fees, dues, and welfare fund contributions for new hires; U's contributions for new hires; U's misconduct held not to make test of E's good faith impossible or free E from obligation to supply information)

Armstrong World Industries, Inc. **254 NLRB No. 160**

(refusing to provide U with copies of policies concerning wages and methods of payment, and names and addresses of Ees in bargaining unit, violative)

K & K Transportation Corp., Inc. **254 NLRB No. 087**

(refusal to supply current list of names, addresses and telephone members until after U began strike, 2 months after request made)

Tom's Ford, Inc. **253 NLRB No. 125**

(refusal to furnish names, addresses, job classifications and pay rates of unit Ees requested for purposes of contract adminictration, unlawful since that information was presumptively relevant)

Wells Fargo Guard Services, A Division of Baker Protective Services, Inc. **252 NLRB No. 013**

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**

(E's refusal to furnish U names and addresses of all unit Ees almost year after U's certification held violative, since they were necessary for U to perform its role as bargaining representative of E's Ees)

Hecla Mining Company **248 NLRB No. 182**

(where furnishing list of unit Ees names places no unreasonable burden on E, refusal to furnish even w/o showing of need is violative)

Wellman Industries, Inc. **248 NLRB No. 029**

(refusal to supply list of Ees affected by E's unilateral actions in earlier case, unlawful)

Patio Lodge, Inc., and Fountain Lodge, Inc. **JD-(ATL)-40-82**

(E's refusal to furnish U list of all Ees in bargaining unit, with social security numbers, dates of employment, job classifications, wage rates and time worked, unlawful)

Wholly Foods, Inc. **JD-(SF)-16-81**

(E's failure to furnish information sought by U pertaining to identities and seniority dates of Ees in unit, violative)

The Workshop, Inc. **JD-230-80**

(refusal to supply names and addresses and hiring dates of Ees relevant to and necessary for negotiations, unlawful)

N.L.R.B. v. Big Bear Supermarkets #3 and its alter ego Richard Homes **640 F.2d 924 (C.A. 9, Apr 8, 1980)**

(failure to supply U's requested information concerning names and addresses of new Ees at one of its stores which it franchised to individual in sham transaction for purpose of evading its bargaining obligations with Us but was found to constitute a single-E with franchisee, unlawful)

6067-6067-8100 Information about grievances

Chesapeake and Potomac Telephone Company **259 NLRB No. 030**

(where Ee grieved his suspension for *improper tone of voice* when speaking to one of E's customers and U filed demand for arbitration, E's failure to produce at U's request prior to arbitration, name of each employee fired, suspended, or given final warning solely for improper tone of voice toward a customer during last five years, violative since requested information was necessary for U to make judgment whether to proceed to formal arbitration hearing and to prepare for that arbitration)

Safeway Stores, Inc. **265 NLRB No. 066**

(E did not refuse to furnish information concerning Ees discharge to U prior to arbitration concerning discharge where it had supplied U with reasons for and details of Ees' suspension and discharge and only other information it possesed was uncofirmed and disclosure would constitute type of discovery Bd finds unnecessary and undesireable in ULP cases)

The Chesapeake and Potomac Telephone Company v. N.L.R.B. **687 F.2d 633 (C.A. 2, Aug. 1982)**

(refusal of U requested information regarding grievance resulting from Ee's suspension for improper conduct and pertaining to names of Ees previously similarly disciplined, unlawful, since E's duty to produce information survives U's demand for arbitration; reasonable discovery of material relevant to grievance prior to arbitration hearing may eliminate delay and expense that might otherwise be incurred; reasonable delay for obtaining evidence in order for U to decide how to proceed is justifiable; and dischoure of prior disciplinary action may lead to arbitration withdrawal on grievance settlement)

The Chesapeake and Potomac Telephone Company v. N.L.R.B. **687 F.2d 633 (C.A. 2, Aug. 1982)**

(E's contention that U, having invoked arbitration of grievance, waived any statutory right to request information relating to grievance, rejected; national labor policy disfavors waivers of statutory rights, and U's intention to waive right must be clear before claim of waiver can succeed; contract language will effect waiver only if it is *clear and unmistakable* in waiving statutory right; and conduct of parties, whether alone or in combination with contractual language, can effectuate waiver only if U's intent to waive is clear and unmistakable from evidence presented)

The Chesapeake and Potomac Telephone Company v. N.L.R.B. **687 F.2d 633 (C.A. 2, Aug. 1982)**

(in finding E's failure to produce U requested information relating to arbitration of grievance unlawful, ct rejected E's defense for its refusal to produce information on ground contract provided that arbitration hearings shall be conducted in accordance with rules of American Arbitration Association, and such rules do not provide for prehearing discovery; fact that U agreed that arbitration hearings would be governed by such rules hardly proves that it has waived its statutory right to discovery before hearing takes place, especially under *clear and unmistakable* standard for waiver to be effective)

The Chesapeake and Potomac Telephone Company v. N.L.R.B. **687 F.2d 633 (C.A. 2, Aug. 1982)**

(in finding E's failure to produce U requested information relating to arbitration of grievance unlawful, ct found previous treatment by arbitrator, in declining to consider U request for documents until arbitration hearing, of no probative value where, in doing so, arbitrator stated he was acting on belief that arbitration board was not empowered to pass upon any issue until it had convened; however, such statement did not relate to U's statutory right to discovery, which is basis of present proceeding)

The Chesapeake and Potomac Telephone Company v. N.L.R.B. **687 F.2d 633 (C.A. 2, Aug. 1982)**

(in finding E's failure to produce U requested information relating to arbitration of grievance unlawful, ct rejected E's attempts to prove that parties' past practice had been not to allow pre-arbitration discovery; at best, E showed that on some occasions it had refused to produce information, and fact that U did not file ULP charges on such few occasions hardly establishes *clear and unmistakable* waiver, especially since on other occasions E had produced requested information)

The Chesapeake and Potomac Telephone Company v. N.L.R.B. **687 F.2d 633 (C.A. 2, Aug. 1982)**

(E's defense to refusal to furnish information requested by U for arbitration of grievance resulting from suspension of Ee on ground U had alternate means of obtaining information by polling its members, rejected, since polling of U membership would be poor substitute, both in accuracy and completeness, for records kept by E)

The Chesapeake and Potomac Telephone Company v. N.L.R.B. **687 F.2d 633 (C.A. 2, Aug. 1982)**

(E's defense to refusal to furnish information requested by U for arbitration of grievance resulting from suspension of Ee on ground U's request was made in bad faith, rejected, since E failed to prove lack of sincerity on U's part, and prospective costs of hearing demonstrated reasonableness of U's desire to postpone it until after receiving information; U did not believe E would have any objection to postponement; and to convene hearing before production of information would have been pointless and wasteful since arbitrator undoubtedly would have recessed until information had been produced)

6067-6067-8200 Discipline

Huck Manufacturing Company **254 NLRB No. 088**

(where E discharged Ees and U elected to file charge with Bd rather than grieve discharges, E's refusal to supply information concerning discharges not violative where information U sought was pertinent to Bd charge not to bargaining)

6067-6067-8300 Training

Safeway Stores, Inc. **JD-435-82**

(E's refusal to supply U with copy of its training manual and computer production records which were necessary for U to process grievance, violative)

6067-6067-8400 Time study data

6067-6067-8400—Cont.

Aeolian Corporation, Ivers & Pond Piano Division 247 NLRB No. 170
(information as to production and job assignment, product specifications and engineering drawings, and time study for named department)

6067-6067-8500 Job descriptions

Robert E. Johnson and Geneva H. Johnson, a Partnership, d/b/a Jolie Belts Company 265 NLRB No. 141
(refusal to supply requested employment data, including names and addresses and job classifications of present and past Ees, on ground that U could get the information from other sources, violative)

Minnesota Mining and Manufacturing Company 261 NLRB No. 002
(E's Affirmative Action Plans (AAPs) are not presumptively relevant (to bargaining) except for certain statistics contained in *Work Force Analysis* portion of E's AAPs, and as to those U must indicate with appropriate specificity relevant information sought; U must demonstrate relevance to be entitled to entire plan; E not required to produce its AAPs or specified portions of plans where U had not demonstrated their relevance)

Loral Electronic Systems, A Division of Loral Corporation 283 NLRB No. 116
(E's refusal to furnish U information, including job descriptions and production and sales data, for purpose of settlement of grievance as to whether Ees were performing production work as contended by U, rather than research work, and thus should be included in unit, violative)

Wellman Industries, Inc. 248 NLRB No. 029
(refusal to supply job descriptions, unlawful)

Sunnyland Foods, Inc. JD-(ATL)-36-80
(E's failure to provide U with requested information regarding names, grades, dates of hire, departments, and job descriptions of new hires, unlawful notwithstanding that seniority lists available to U might have provided some of information relative to new hires and that U ultimately received information requested through Bd after charge had been filed by U, where ultimate receipt of information was clearly untimely with respect to U's requests and E submitted no reasonable explanation for delay)

Sunnyland Foods, Inc. JD-(ATL)-36-80
(E's providing U with labor grades of unit Ees in response to request for job classifications, not violative where E would otherwise have had to create new system of job classifications for U's convenience)

N.L.R.B. v. General Motors Corporation 510 F.Supp. 338 (DC S.D. OH, Sept. 1980)
(order requiring obedience to *subpoenas duces tecum and ad testificandum* granted where Bd sought information, during R case investigation, concerning: Ee job descriptions; equipment descriptions; comparison of supervision; management; and description of physical changes in (E's) plants; all before E relocated its appliance operation, and now during conversion of appliance plants to light body truck and engine assembly plants, since information was related to matter under investigation; information would clarify issues of: relationship of Ees in unit will have with entire production procession E's facilities)

Leland Stanford Junior University 262 NLRB No. 017
(E's refusal to furnish job discription for research assistant, a job series outside unit, to help U process grievances filed by research technicians, job series w/i unit, who were alleging that assistants were doing their work, violative, notwithstanding E offered to furnish *classification specifications* which provide in general terms characteristic tasks, responsibilities, and qualifications of jobs so classified but does not set forth all duties, responsibilities or qualifications for individual jobs so classified which are contained in *job discriptions*)

6067-6067-8600 Actions pending before governmental agencies or courts

Safeway Stores, Inc. v. N.L.R.B. 691 F.2d 953 (C.A. 10, Oct. 1982)
(U's request for list of EEO complaints and charges filed against E held relevant to U's duny to administer agreement, because charges related to matters involving U members pending under EEO statutes)

Safeway Stores, Inc. v. N.L.R.B. 691 F.2d 953 (C.A. 10, Oct. 1982)
(E ordered to furnish U copies of EEO complaints and charges filed against E, with only names deleted as this is sufficient to protect members' rights)

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC v. N.L.R.B. 648 F.2d 18 (C.A.D.C., Nov. 1980)
(information pertaining to type and frequency of discrimination complaints filed by Ees is relevant to U's role as bargaining agent, however, actual copies of complaints need not be provided (even with complainants' name deleted) as this would affect Ee's privacy rights)

6067-6067-8700 Information regarding Employer's antidiscrimination plans

Minnesota Mining and Manufacturing Company 261 NLRB No. 002
(E's Affirmative Action Plans (AAPs) are not presumptively relevant (to bargaining) except for certain statistics contained in *Work Force Analysis* portion of E's AAPs, and as to those U must indicate with appropriate specificity relevant information sought; U must demonstrate relevance to be entitled to entire plan; E not required to produce its AAPs or specified portions of plans where U had not demonstrated their relevance)

Minnesota Mining and Manufacturing Company 261 NLRB No. 002
(fact that litigation under *Title VII of the Civil Rights Act of 1964* is pending does not restrict Us' rights to information concerning alleged discrimination)

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC v. N.L.R.B. 648 F.2d 18 (C.A.D.C., Nov. 1980)
(E not required to furnish entire affirmative action plan (AAP) as it contains much information not relevant to collective bargaining; moreover, agency with which AAP is filed is prohibited by law from disclosing report and it would be incongruous to allow another agency to force its disclosure)

6067-6067-8800 Information concerning laid-off employees

S & W Motor Lines, Inc. v. N.L.R.B. 621 F.2d 598 (C.A. 4, 1980)
(E's denial of U's request for information as to layoffs of non-unit-members, not unlawful absent showing of U's demonstration to E of its need to know; moreover U's reason advanced in ct for its request reinforced conclusion that it had no need to know)

6067-6067-9000 Seniority Lists

Semco Printing Center, Inc. 265 NLRB No. 073
(E's refusal to furnish information sought by U concerning Ees' rates of pay, benefits, seniority dates, work rules, and related information, unlawful, since such information is presumptively relevant for bargaining purposes and must be furnished upon request, and E had not attempted to rebut relevance of information sought)

Leland Stanford Junior University 262 NLRB No. 017
(E's refusal to furnish U seniority list of Ees in certain job classification requested in connection with grievance filed regarding retention of less senior Ees in classification after layoff where all Ees in classification on one shift laid off rather than considering seniority of all Ees in classification, not unlawful, since U had requested information where pursuant to bargaining contract, E had each month furnished U names of all unit personnel with dates of hire and classification)

Kitchen Fresh, Inc. 258 NLRB No. 074

Delcon, Inc. 257 NLRB No. 178
(refusal to provide U with names, social security numbers and seniority dates of Ees, violative as it was presumptively relevant)

Whelly Foods, Inc. JD-(SF)-16-81
(E's failure to furnish information sought by U pertaining to identities and seniority dates of Ees in unit, violative)

Raines Lincoln-Mercury, Inc. JD-224-80
(failure to supply Ees' dates of hire requested by U for seniority list purposes, unlawful)

6067-6067-9400 Policies on personal appearance

Patio Lodge, Inc., and Fountain Lodge, Inc. JD-(ATL)-40-82
(E's refusal to furnish U copy of any and all company policies on personal appearance, including dress, hair, beards, and any other policies not specifically mentioned, unlawful)

6067-6067-9600 Changes in working conditions

Safeway Stores, Inc. 252 NLRB No. 086
(retail store's refusal to furnish reports, studies, documents, and tests on which it based its decision to install electronic scanning checkout equipment, including projected labor costs and savings, productivity, reduced head count, elimination of item price, marking and effect on inventory procedures; unlawful)

N.L.R.B. v. General Motors Corporation 510 F.Supp. 338 (DC S.D. OH, Sept. 1980)
(order requiring obedience to *subpoenas duces tecum and ad testificandum* granted where Bd sought information, during R case investigation, concerning: Ee job descriptions; equipment descriptions; comparison of supervision; management; and description of physical changes in (E's) plants; all before E relocated its appliance operation, and now during conversion of appliance plants to light body truck and engine assembly plants, since information was related to matter under investigation; information would clarify issues of: relationship of Ees in unit well have with entire production procession E's facilities)

6067-6067-9800 Job vacancies

Southwestern Bell Telephone Company 247 NLRB No. 027
(failure of E to furnish U, pursuant to request, weekly list of unit job vacancies filled by Ee's name and service date, together with names and service dates of unit Ees having requests on file for those vacancies held violative, since data requested are central to tenure, terms and conditions of unit members employment and to important provisions and aspects of the contract and bargaining relationship)

6067-6067-9900 Sale of business

6067-6067-9900—Cont.

Westwood Import Company, Inc. 251 NLRB No. 162
(purported successor E's refusal to furnish information pertaining to sale of business, unlawful, since whether new owner is successor E and obligated to recognize and bargain with U is relevant to U's duty to represent Ees, notwithstanding U's request for information not limited to that aspect of sale nor was E advised of reasons for request)

6067-7000 Repudiation of contract

Merrill M. Williams; Boy's Restaurant, Inc.; Girl's Restaurant; Jumbo's d/b/a Farm Boy Restaurant; Farm Boy Restaurants Nos. 2 and 3 263 NLRB No. 070
(E's repudiation of its tentative agreements with U on subject of meal credits and cost-of-living increases in wages, violative)

Autoprod, Inc. 265 NLRB No. 042
(E repudiated agreement by Sec. 8(a)(1), (3) and (5) violations and engaged in course of conduct designed to undermine U and to derogate its role as bargaining raepresentative)

Amoco Production Company 262 NLRB No. 160
(reversing prior decision in which Bd had held E unlawfully refused to bargain by repudiating contract with U after it affiliated with international U following affiliation election, Bd held E's repudiation of contract was not unlawful since affiliation election, permitting *members only* to vote, was invalid; in order to provide adequate due process safeguards in affiliation election, all unit Ees, whether U members or not, must be permitted to vote and participate in such election)

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) 239 NLRB No. 037

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) 259 NLRB No. 037
(as E-U's Secretary-Treasurer had authority under by-laws to hire office Ees and to fix their compensation, this is sufficient authority to permit him to establish wages, hours, and conditions of employment on collective basis and/or individual basis w/o Executive Board approval, and therefore, could sign contract recognizing U of office clericals, and such could not be repudiated by new administration)

Carrothers Construction Company, Inc. 258 NLRB No. 015
(E's repudiation of contract, unlawful where E had signed stipulation binding it to multi-E association agreements at time when U represented a majority of a representative complement of its Ees in appropriate unit)

Pacific Intercom Co. 256 NLRB No. 061
(violation, where E, which had had succession of previous agreements with U entered into 8(f) agreement with U which matured into full bargaining relationship when majority of Ees in unit joined U, embarked on long journey of unlawful conduct aimed at deceiving U and depriving Ees of fruits of collective bargaining by entering into private arrangement with Ees to pay them less than contractual wage rate, and avoided use of U hiring hall; contention that majority of Ees were coerced by E to join U and E paid U dues, rejected, as such conduct 8(a)(2) violation; therefore E estopped from asserting its own unlawful conduct as defense to U's majority status)

Beaumont Graphics, Ltd. 254 NLRB No. 044
(E not bound by strike settlement between multiE association and U, nor was E required to furnish information relevant to grievance brought by U alleging violations of association contract and strike agreement, since E had lawfully withdrawn from multiE association; E was not party to association contract and had not consented, to be bound by association's strike agreement with U)

U.S. Utilities Corporation 254 NLRB No. 085
(refusing to apply contract to work outside U's jurisdiction and unilaterally establishing new terms for these operations, violative as contract by its terms applied to work wherever company works)

United Artists Theatre Circuit, Inc. 253 NLRB No. 078
(no unlawful repudiation of terms of verbal bargaining agreement, in view of credited testimony that no agreement on issue was reached between the parties)

Kraft Plumbing and Heating, Inc. 252 NLRB No. 126
(repudiation and failure to abide by terms of bargaining agreement between multi-E association and U, violative)

Construction Erectors, Inc. 252 NLRB No. 045
(repudiating multisite contract, violative, notwithstanding E's contention that it was unenforceable as pre-hire agreement, where, although first contract between E and U fell into category of Sec. 8(f) agreement, at least by time of the contract here in question, U had achieved majority status in stable unit of E's Ees)

Pullman Building Company 251 NLRB No. 145
(violation, where E refused to abide by state homebuilder-Es' association contract; E's claims that it was not bound because it was operating as developer rather than homebuilder and that it had separate agreement with U, rejected where work was typical homebuilders' work and, as association member, E had invested exclusive bargaining authority in association and could not enter into separate agreement)

SFS Painting and Drywall, Inc.; James Sesch d/b/a J. Sesch Painting and Drywall 249 NLRB No. 069
(E's announcement that it was withdrawing its application to be bound by master labor agreement shortly after renewal thereof and refusal thereafter to abide by provisions of master labor agreement, unlawful)

Land Equipment Inc. 248 NLRB No. 098
(violation where E failed to pay contractually required wages or make required benefit trust fund contributions in repudiation of U's contract with one of two companies found single E herein since Ees of both companies constituted E-wide unit herein, were found stable complement moving from job to job and majority were found to support U at time of repudiation)

D'Angelo & Khan, Inc. 248 NLRB No. 062
(where E entered into 8(f) prehire agreement with local when it first worked at jobsite w/i local's jurisdiction, its refusal to apply agreement to Ees at succeeding jobsite held not unlawful, since prehire agreement did not give rise to presumption of local's majority status at original jobsite; furthermore, regardless of local's majority status at original site, provisions of 8(a)(5) do not apply unless U can demonstrate its majority status at succeeding sites, record here showed Local did not have majority support at the succeeding site)

McMillian Cartage, Inc. JD-(ATL)-48-81
(E repudiated association contract by refusing to allow Ees to work under contract and by insisting that they sign E's proposed contract or there would be no work, telling U representative that there was no contract, refusing to execute contract, and refusing to comply with contractual grievance procedure)

Carbon Specialties, Inc. JD-510-80
(failing and refusing to give effect to certain obligations that accrued under contract, such as payment to Ees of wage increases and payment to U of Ee dues under checkoff provisions, violative)

N.L.R.B. v. Haberman Construction Company 641 F.2d 351 (C.A. 5, Apr. 1981)
(even though construction contractor never formally executed bargaining agreement with U and was not member of E association, contractor who adopted association's 8(f) prehire contract by enjoying its benefits and abiding by its provisions was not free to repudiate contract and, consequently, its actions, taken when U was majority representative and consisting of unilateral conduct, of announcing intention to go *open shop,* and constructively discharging Ees were unlawful)

N.L.R.B. v. Haberman Construction Company 641 F.2d 351 (C.A. 5, Apr. 1981)
(E's announcement of its intention to go *open shop,* unlawful, since Bd found announcement conveyed E's intention to repudiate its bargaining obligation; even if ct disagreed with Bd, it cannot reverse such finding since it is not ct's province to substitute its judgment for that of Bd when Bd has drawn plausible inference from competent evidence; and Bd's inference is quite plausible since announcement was made simultaneously with E's repudiation of its obligation to pay Ees' contractual benefits)

Tobey Fine Papers of Kansas City, Division of Distribix, Inc. v. N.L.R.B. 639 F.2d 841 (C.A. 8, Apr. 1981)
(Es' refusal to honor bargaining contract negotiated by multi-E association violative, notwithstanding Es' contention that they had effectively withdrawn from the multi-E association, where actual reason for each company's withdrawal was not based on impasse or fragmentation as contended, but on fact that Ees of the individual companies express doubt as to U's representation of majority of each company's Ees'. It is well settled that this constitutes an impermissible reason for company's withdrawal from multi-E bargaining)

Precision Striping, Inc. v. N.L.R.B. 643 F.2d 1344 (C.A. 9, Mar 23, 1981)
(ct denied enforcement of Bd's bargaining order where, during term of lawful Sec. 8(f) U security contract, E, after lawfully polling its Ees majority of whom voted against U representation, repudiated contract with U; it is irrational to hold that majority U membership obtained pursuant to a U security clause creates an irrebuttable presumption of majority U support, since U security clause operates to compel Ees to join U because U membership is price for obtaining a job, and it is well established that U membership is not always an accurate barometer of U support)

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat 614 F.2d 777 (C.A. 9) (1980)
(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

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6083 REQUIREMENTS FOR TERMINATION OR MODIFICATION OF CONTRACTS - 8(d) PROVISO

6083-0100 Generally

Wayne Asphalt and Construction Co., Inc. **JD-311-82**

(Congress rejected provision which would have made it ULP for E or U to violate bargaining agreement and Bd has frequently stated that mere breach of bargaining agreement does not, in itself, violate Act. However, because of Section 8(d) of Act, which defines duty to bargain collectively as including obligation to refrain from terminating or modifying bargaining agreement w/o meeting certain prescribed conditions, attempted modification of agreement can be violative of Section 8(a)(5). Where E effects change which has continuing impact on basic term or condition of employment, such change manifestly constitutes modification w/i Section 8(d))

6083-0125 No obligation to discuss or agree to modification during fixed contract term

Valley Mfg., Inc. **264 NLRB No. 171**

GTE Automatic Electric Inc. **261 NLRB No. 196**

(E not obligated to bargain in midterm regarding implementation of new savings and investment plan granted to nonunit Ees since E may rely on waiver in contractual zipper clause which clearly and unequivocally covered U's request to bargain concerning implementation of new benefit, notwithstanding clause included w/o discussion, where E merely seeking to maintain status quo and has not made unilateral changes that directly or adversely affected unit Ees with accompaning effect of undermining and derogating U)

Jones Motor Co., Inc. **260 NLRB No. 015**

6083-0150 Obligation to refrain from termination or modification without notice and bargaining

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**

(E's belated termination notice and offer to bargain two years after repudiation of contract and unilateral changes, no defense)

N.L.R.B. v. Northeast Oklahoma City Manufacturing Company **631 F.2d 669 (C.A. 10, Sept. 1980)**

(Bd properly found material breach of contract by E in its unilateral persistent delays in making monthly bonus payments, thereby excusing Ees' breach of no-strike agreement)

6083-0150-5000 Modification of terms without bargaining

Milwaukee Spring Division of Illinois Coil Spring Company **265 NLRB No. 028**

(E's decision to relocate work from U to non-U plant, to layoff Ees as consequence during term of agreement solely because of higher labor costs, absent U's consent, is midterm repudiation of agreement in violation of Sec. 8(d), Sec. 8(a)(1), (3), (5); moreover, U did not waive right to bargain notwithstanding managements rights clause; such clause reserves for E right to decide whether and how products will be manufactured; it does not grant E right to transfer its operation. Thus, absent explicit language, U has not waived its right to object to E's decision)

Mar-Len Cabinets, Inc. **262 NLRB No. 172**

(E's unilaterally implementing its bargaining proposals for Ees in outside unit w/o providing to mediation services timely notice of its dispute with U, violative; E's obligations under Sec. (d)(3) and 8(d)(4) remained unaffected by U's notice informing mediation services only of dispute involving parties to master labor agreement where E had initiated bargaining with U on individual basis and thereby created separate dispute)

The Dow Chemical Company **261 NLRB No. 031**

(E's actions in transferring or *loaning out* for other than their regular work unit Ees for periods of time in excess of those specified in collective agreements to which E was party and its continuing insistence that it had right to do so, violative, notwithstanding E's contentions that U waived contractual requirements in question before execution of current contract and bound itself to contrary understanding antedating execution of current contract where E knowledgeably entered into contract containing provision which, if unintended could readily have been stricken from contract or changed before signing)

Bedford Farmers Cooperative **259 NLRB No. 165**

Intermountain Rural Electric Association **253 NLRB No. 164**

(E's abrogating article in current bargaining agreement, concerning allocation of pension-plan dividends, held violative, since U consent to such obligation was misleadingly induced and perpetuated; E's taking over Ee contributions to plan was *quid pro quo* for U's consent which ceased to exist when U petitioned for election in another unit; E failed to continue in *full force and effect...all terms and conditions of the existing contract* and, so failing, violated Section 8(a)(5) and (1))

Exxon Company, U.S.A. **253 NLRB No. [illegible]**

(8(d) provides that U's failure to discuss E's unilateral modification of contractual terms or conditions of employment is not defense to ULP)

Heat Transfer Group, Gulf and Western Mfg. Co. **JD-381-81**

(E's repudiating agreement by announcing its intention to and by commencing to relocate portion of unit work to another location for performance by non-unit Ees represented by another U with contract providing for less costly wages and benefits held violative, as E's purpose was to evade obligations and to frustrate Ees' right to refuse to make mid-term concessions)

Wayne Asphalt and Construction Co., Inc. **JD-311-82**

(E's breach of bargaining agreement by using supervisory and other non-unit personnel to perform unit work on construction sites, violative, since such breach had continuing impact on basic terms and conditions of employment where E had stated it would use non-unit personnel if necessary to relieve its financial distress and had no intention to replace supervisor on job until U complained)

Rockingham Machine-Lunex Company v. N.L.R.B. **665 F.2d 303 (C.A. 8, Dec. 1981)**

(E unlawfully refused to bargain where it rescinded or modified over a dozen provisions, offered only minimal concessions to U, and had predetermined intention not to reach agreement on mandatory subject of dues checkoff)

6083-0150-6700 Cancellation of contract

The Dow Chemical Company v. N.L.R.B. **636 F.2d 1352 (C.A. 3, 1980)**

(E's cancellation of contract after U struck in protest over E's unilateral change in work schedule, before exhausting grievance procedures and thereby breaching contract's no-strike clause, not unlawful, where *Boys Markets* injunctive relief was not available to E because arbitration provision was not coextensive with no-strike clause and E's remaining option of operating plant with permanent new hires would be seriously undermined if E were unable to bargain with new Ees, and *Marathon Electric* rule, that material breach of contract by U warrants E's concellation thereof, is applicable)

6083-1000 8(f) contracts

6083-1050 Unilateral termination

Construction Erectors, Inc. **265 NLRB No. [illegible]**

(E's repudiation of collective bargaining agreement with U would be unlawful if E employed permanent and stable workforce under agreement before repudiation and U enjoyed majority support; analysis of permanent and stable workforce goes beyond numbers and dates, and focuses upon issue of whether Ee complement possesses sufficient continuity as to merit continued reliance on showing of majority support for U made at any point during effective term of applicable bergaining agreement)

6083-2000 Notice requirements

6083-2001 Generally

W. G. Best Homes Corporation **253 NLRB No. 123**

(burden of requesting bargaining about a change or proposed change in business operations shifts to U upon notification by E that such change is imminent; although conjecture and rumor are not adequate substitute for a formal notice, notice less than formal may be sufficient where more formal notice would have been futile in view of U's insistence on bargaining through association unit from which E had properly withdrawn and U is not interested in bargaining with E on individual basis)

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**

(while initiating party must bear consequences in case of lack of or untimely notice, purpose of act would not be served by initiating party to give notice after other party had done so)

6083-2033 Sixty-day notice to other party

6083-2033-6000 Effect of notice given prior to 60-days before contract reopening or termination date

KCW Furniture, Inc. v. N.L.R.B. **634 F.2d 436 (C.A. 9, 1980)**

(*Duration and Renewal* provision in contract between E and U expressly authorized right to negotiate during term of automatically renewed contract; where U gave 60 day *notice of opening,* E's unilateral implementation of its final offer held unlawful since duration and renewal provision was neither ambiguous nor in violation of Act and bargaining agreement was never terminated)

6083-2067 Thirty-day notice to mediation services

Mar-Len Cabinets, Inc. **262 NLRB No. 172**

(E's unilaterally implementing its bargaining proposals for Ees in outside unit w/o providing to mediation services timely notice of its dispute with U, violative; E's obligations under Sec. (d)(3) and 8(d)(4) remained unaffected by U's notice informing mediation services only of dispute involving parties to master labor agreement where E had initiated bargaining with U on individual basis and thereby created separate dispute)

6083-2067-0100 **Generally**

6083-2067-0150 Purpose to provide opportunity for government mediation

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**
(*notice provision is not concerned with good faith, it is designed to give mediation services time to intervene before disruptive economic action is taken by one of parties*; unilateral departure during 60 day waiting period from terms of contract prohibited whether or not strike or lockout follows)

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**
(ct remanded to Bd to determine whether U's notice to Mediation Services was sufficient to appraise Services of potenial dispute which might relieve E of duty to notify Services, notwithstanding E was initiating party and, thus, render permissible E's failure to abide by terms of contract, where E timely informed U it did not wish to be bound by master outside agreement but not Mediation Service, later U notified E association and Mediation Services it wished to reopen agreement; after new agreement negotiated, U took position E bound by new agreement because E's notice ineffective since not sent to Mediation Services)

6083-4000 Obligation to meet and confer with other party on proposals

Merrill & Ring, Inc. **262 NLRB No. 039**
(*good faith* bargaining requires that parties meet and negotiate *prior* to any modification of working conditions)

Intermountain Rural Electric Association **253 NLRB No. 164**
(E's abrogating article in current bargaining agreement, concerning allocation of pension-plan dividends, held violative, since U consent to such obligation was misleadingly induced and perpetuated; E's taking over Ee contributions to plan was *quid pro quo* for U's consent which ceased to exist when U petitioned for election in another unit; E failed to continue in *full force and effect...all terms and conditions of the existing contract* and, so failing, violated Section 8(a)(5) and (1))

W. G. Best Homes Corporation **253 NLRB No. 123**
(obligation to bargain regarding subcontracting *requires E to notify U involved of proposed subcontracting agreement and give U opportunity to discuss decision and consider alternative proposals; normally, U must be notified of proposed subcontract eliminating unit jobs before execution of agreement, nor is mere statement of general intent to subcontract in future sufficient prior notice where subsequent bargaining occurs in context of fait acompli; where, however, U is given full opportunity to bargain about executory contract, which may be rescinded, proma facie showing of violation because of failure to give U prior notice excused*)

Heat Transfer Group, Gulf and Western Mfg. Co. **JD-381-82**
(E's repudiating agreement by announcing its intention to and by commencing to relocate portion of unit work to another location for performance by non-unit Ees represented by another U with contract providing for less costly wages and benefits held violative, as E's purpose was to evade obligations and to frustrate Ees' right to refuse to make mid-term concessions)

6083-6000 Obligation to continue contract in effect until later of 60 days after notice or contract expiration date

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**
(ct remanded to Bd to determine whether U's notice to Mediation Services was sufficient to appraise Services of potenial dispute which might relieve E of duty to notify Services, notwithstanding E was initiating party and, thus, render permissible E's failure to abide by terms of contract, where E timely informed U it did not wish to be bound by master outside agreement but not Mediation Service, later U notified E association and Mediation Services it wished to reopen agreement; after new agreement negotiated, U took position E bound by new agreement because E's notice ineffective since not sent to Mediation Services)

8000 AFFIRMATIVE DEFENSES

8004 SUBSEQUENT PERFORMANCE OF OBLIGATION

Jefferson Electric Co., Inc. **251 NLRB No. 129**
(E's subsequent recognition of U, occuring after its initial, unlawful refusal to bargain, insufficient to withstand *Motion for Summary Judgment,* since Ees' statutory rights had been violated)

Anaconda Ericsson Inc. **JD-720-80**
(E's failure to notify or consult with U concerning layoffs of some unit Ees due to its unintentional neglect, held violative notwithstanding E did consult with U as to subsequent layoffs of unit Ees)

8005 DOUBT OF BOARD'S JURISDICTION

Children's Receiving Home of Sacramento **248 NLRB No. 053**
(Bd had properly asserted jurisdiction over children's home where governmental department was connected with home but not joint E with it)

8005-5000 No defense where Board has jurisdiction

Franklin Art Glass Studios, Inc. **250 NLRB No. 095**
(in summary judgment proceeding, E's denial of allegation that it is E engaged in commerce w/i meaning of Act, on ground such allegation states legal conclusion, held w/o merit, where E's admission of facts of commerce in effect admitted both statutory and discretionary jurisdiction of Bd, and E stipulated to jurisdiction in prior R case; moreover, E has presented no newly discovered or previously unavailable evidence or asserted any circumstance which would require Bd to allow relitigation of jurisdiction issue)

8006 BOARD DEFFERENCE TO ARBITRATION

Maine Yankee Atomic Power Company **258 NLRB No. 112**
(contrary to ALJ who deferred issue as to disputed position, unilaterally created by E outside unit, to arbitration because E's contention that matter of E's obligation to bargain should be decided under binding grievance-arbitration procedure if position is found to be w/i unit, Bd held deferral was inappropriate where, because of E's failure to raise issue at hearing or in its pleadings, record evidence before Bd was insufficient for finding that deferral was appropriate)

Bay Shipbuilding Corporation **231 NLRB No. 114**
(mtn for summary judgment granted and C dismissed where Bd deferred to arbitration award finding that E did not violate contract by changing insurance carrier since *coverage* which could only be changed by mutual consent under contract did not include carrier, and level of benefits remained the same; arbitrator stated he would not decide Sec. 8(a)(5) violation, but made factual findings, in course of resolving contractual issue, which resolved ULP issues)

Vesuvius Crucible Company v. N.L.R.B. **668 F.2d 162 (C.A. 3, Nov. 1981)**
(whether Bd correct in refusing to defer to arbitration question of E's refusal to grant accrued vacation pay under expired contract, *mooted,* since parties informed ct that accrued vacation benefits for time period in question eventually were awarded under new contract; so arbitrable dispute remained)

Caterpillar Tractor Co. v. N.L.R.B. **638 F.2d 140 (C.A. 7, Sept. 1981)**
(violation, where E unilaterally discontinued allowing Ees to request transfers which involved demotions, notwithstanding E's contention it gave three weeks notice of change and met with U numerous times where at initial meeting E merely informed U that it had changed its policy, at subsequent meetings did little more than explain reasons for change and informed U if U did not like it U should file grievance, and over U's objections proceeded to hire from street for position for which many Ees had applied requesting downgrading)

Caterpillar Tractor Co. v. N.L.R.B. **638 F.2d 140 (C.A. 7, Sept. 1981)**
(arbitration concerning propriety or fairness of E's policy after it has been put into effect was not substitute for bargaining between E and U as to whether policy should be adopted in first instance)

Caterpillar Tractor Co. v. N.L.R.B. **638 F.2d 140 (C.A. 7, Sept. 1981)**
(Bd did not abuse its discretion by refusing to defer to grievance-arbitration procedure alleged unlawful discontinuance of Ees' right to request transfers involving down-grading, since Bd's determination that determinative issue required interpretation of Act rather mere contract interpretation, not unreasonable)

8007 LACK OF KNOWLEDGE OF UNION'S MAJORITY STATUS

Medical Investors Association **260 NLRB No. 124**
(E's refusal to accept U letter which contained request for bargaining device to avoid bargaining demand and U letter found to constitute valid demand for bargaining)

8009 DOUBT AS TO UNION'S MAJORITY STATUS (SEE ALSO 530-4030-5000)

Comet Corporation **261 NLRB No. 188**
(E's contention that U did not have majority since authorization cards invalid inasmuch as Ees believed signed cards only for election, rejected, where cards unambiguously stating singer designated U as his/her bargaining representative)

Patio Lodge, Inc., and Fountain Lodge, Inc. **JD-(ATL)-40-82**
(neither statement of Ee that she was glad to be out of U, decertification ptn filed when E predecessor's was operating facilities nor 7 revocation dues checkoff authorizations out of 57 Ees basis for good faith doubt of U's majority that justify E's refusal to bargain, furnish information or discontinuing payment to U of withheld U dues)

Walla Walla Union-Bulletin, Inc. v. N.L.R.B. **631 F.2d 669 (C.A. 9, Oct. 1980)**
(newspaper's refusal to bargain violative, notwithstanding contention that U was improperly certified because certain editors should have been excluded

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from unit as managerial or supervisory Ees, where removal of contested editors would not have affected outcome of election)

8009-0100 Generally

Puerto Rico Hotel Association 259 NLRB No. 058

(E association's contention musicians' U did not represent uncoerced majority of unit Ees, rejected, where throughout course of negotiations for renewed contract are musicians in unit were members of U and not until after strike did some members resign from U, notwithstanding U had never been certified by Bd as bargaining representative and many had joined because they felt no musician would work with them if they did not join U and that U membership enhanced their status as musicians)

Westwood Import Company, Inc. 251 NLRB No. 162

(after the expiration of valid collective bargaining agreement, U enjoys a rebuttable presumption that its majority representative status continues; such presumption may be effectively rebutted if E affirmatively establishes either (1) that at time of refusal to recognize U, U in fact no longer enjoyed majority support of unit Ees; or (2) that E's refusal was predicated on good faith doubt based on objective considerations; however, burden of rebutting presumption rests on party who would do so)

Pick-Mt Laurel Corporation v. N.L.R.B. 625 F.2d 476 (C.A. 3, 1980)

(where E proferred defense of good faith doubt of U's majority status, ct held E could reasonably consider pre-10(b) circumstances because *sweetheart* relationship evidenced by unlawful prehire contract entered into by predecessor E sheds light on its commission of independent ULP in assisting U w/i 10(b) period; however, since successor E did not make clear the relationship, if any, between unlawful assistance during 10(b) period and its claim of good faith doubt, ct deemed it best left to Bd, which had not previously considered issue, to consider it in the first instance)

Bellwood General Hospital, Inc. v. N.L.R.B. 627 F.2d 98 (C.A. 7, 1980)

(sum total of: 70% turnover in personnel, statements of Ees regarding dissatisfaction with U, extremely low attendance at U meetings, lack of any grievance activity, during first contract term or of visits by U to E's facility, cumulatively was sufficient to shift burden to GC to establish U's majority; ct refused to place burden on E of possibly committing ULP of bargaining with minority)

N.L.R.B. v. Silver Spur Casino 623 F.2d 571 (C.A. 9, 1980)

(Es' contention that E's good faith belief that U no longer had majority support is all that is required to withdraw recognition, rejected; E's good faith doubt of U's majority status must be reasonable and supported by objective considerations and Bd's determination of whether defense is established will be upheld if supported by substantial evidence on the record)

8009-1100 Good-faith doubt of majority status justifies refusal to recognize

Stratford Visiting Nurses Association 264 NLRB No. 136

(presumption of continuation of certified U's majority status upon expiration of its contract with E not rebutted by facts that: only 2 of 6 unit Ees were U members; only 2 of 6 unit Ees were on dues checkoff; and 2, or 3, of 6 unit Ees testified at Bd hearing that they did not want U to represent them as of refusal-to-bargain date. None of above facts established lack of majority support for U. As to last reason, none of Ees had communicated to U their desire not to be represented and such testimony is highly unreliable for it requests Ee to relate several months old uncommunicated states of mind, knowing that E's defense rests on reply)

I T Services, Division of I T Corporation 263 NLRB No. 186

(E had adequate objective basis to support good faith doubt of U majority after contract expired and during strike where majority in unit were strike replacements and told supervisor that they did not want U, picket line violence had been directed against them, and they knew of U demands that they be discharged)

Pick-Mt. Laurel Corporation 259 NLRB No. 034

(expression of dissatisfaction with U made to supervisors by at least 29 out of 103 Ees; and notwithstanding occurred outside Section 10(b) period, predecessor E's illegal practice of requiring Ees to join U and sign dues checkoff on first day of work and continuing this practice into 10(b) period, and its recognition of U and negotiation of agreement w/o designation by any member of unit, sufficient to support successor E's good faith doubt justifying its withdrawal of recognition)

Henry Cauthorne, an individual, t/a Cauthorne Trucking 236 NLRB No. 118

(unilaterally ceasing payments into U's health and welfare, and pension trust funds upon expiration of contract which E had not signed but to terms of which E had bound itself by signing interim agreement and implementing significant portion of contract held violative, since; (1) change was not made subsequent to bargaining impasse, (2) E did not, in good faith, doubt U's majority status, and (3) U did not waive right to bargain regarding alterations; health and welfare fund trust agreements did not contain language which might limit E's obligation to bargain regarding cessation of payments into fund)

Warehouse Groceries Management, Inc. 254 NLRB No. 081

(no violation where U lacked majority status at time it requested bargaining and demand was not continuing demand)

Roza Watch Corp. 249 NLRB No. 086

(refusal to recognize and bargain with certified U after expiration of contract, violative where E failed to rebut presumption or sustain good faith doubt of U's continued majority support following expiration of contract)

N.L.R.B. v. Koenig Iron Works, Inc.; et al. 681 F.2d 130 (C.A. 2, June 1982)

(in considering evidence of support for U, court will look at Es attitudes *before* E's refusal to bargain occurred and was E aware of this)

N.L.R.B. v. Pennco, Inc. 684 F.2d 340 (C.A. 6, Mar. 1982)

(ct held E had not demonstrated good faith doubt that U represented majority of Ees when it withdrew recognition from U, and expressly declined to adopt both Bd's presumption that new hires support U in same percentage as strikers they replaced and E's presumption that new hires do not support U when violence occurs on picket line as herein; ct found E's evidence was sufficient only to put parties in equipoise and not enough to demonstrate E's good faith doubt of U's majority status)

N.L.R.B. v. Half-Century, Inc. d/b/a Holiday Inn of Niles, Michigan 644 F.2d 685(T) (C.A. 6, Jan 21, 1981)

(ct denied enforcement of bargaining order, reversing Bd finding of bad faith bargaining, where successor-E had met with U but did not reach agreement and during course of negotiations ptn signed by 2/3's of Ees was presented to E indicating they no longer wished U representation and E refused to bargain further)

8009-1500 Good-faith doubt of majority status justifies refusal to bargain after certification year

Dresser Industries, Inc. 264 NLRB No. 145

(overruling *Telautograph* rule, Bd held that mere filing of decertification ptn, like mere filing of rival U's ptn, would not require or permit E to withdraw from bargaining or executing contract with incumbent U, since such rule does not give due weight to incumbent U's continuing presumption of majority status and is not best way to achieve E neutrality in the election; E with good faith doubt based on objective evidence, e.g. decertification ptn supported by unit majority, may still withdraw; E's actions herein held not unlawful since E relied on then applicable Bd law of *Telautograph*)

Plymouth Locomotive Works, Inc. 261 NLRB No. 087

(defense that E withdrew recognition because certification year had expired and E allegedly believed U had lost its majority status because unit Ees did not support strike vote, rejected where E offered no evidence of lack of such support; moreover E had undermined U support with its ULPs)

N.L.R.B. v. Pre-Engineered Building Products, Inc. 603 F.2d 134 (C.A. 10, 1979)

(where predecessor business had essentially collapsed at time of E's take over and E of necessity had to rebuild both production demand and work force, ct held Bd was arbitrary in denying E's mtn to reopen record for purpose of adducing evidence to determine whether E had acquired full complement of Ees at time E refused to bargain with predecessor's U)

N.L.R.B. v. Maywood Plant of Grede Plastics 628 F.2d 1 (C.A.D.C.)

8009-2200 Doubt not defense if in fact refusal otherwise motivated

Elias Mallouk Realty Corp. 263 NLRB No. 156

(E unilaterally granting wage increases after expiration of contract, unlawful, absent impasse and objective considerations to rebut U's presumption of continuing majority status, and in view of E's ULPs including bargaining in bad faith, criticisms to Ees concerning U with which it had had contract, and suggesting to Ees that they choose new bargaining agent)

Doug Hartley, Inc. 255 NLRB No. 097

(E's refusal to bargain with U which had card majority not justified by ascertion of doubt of majority, where E had unlawfully discharged all members of unit)

Scott Printing Corporation 249 NLRB No. 134

(Bd, in affirming its prior D/O, found E and its *alter ego* may not now allege that at time of refusal to bargain, they had good-faith doubt as to U's continuing majority support, since defense was based on events induced by *sham* sale to E's *alter ego*; purpose of sale was to enable E to avoid its duty to bargain with U)

8009-2700 Doubt no defense where employer has knowledge of union majority

Digmor Equipment and Engineering Company, Inc. 261 NLRB No. 176

(E's refusal to arbitrate grievance after expiration of contract, unlawful, notwithstanding E's assertion of U's loss of majority and that qcr existed in view of RM ptn, since duty to arbitrate survives contract where grievant was discharged for conduct occurring in part prior to contract's expiration; basis for grievance was contract, and further, at time E asserted expiration

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of contract as basis for refusing to arbitrate, election had confirmed continued support of U and U certified)

Premium Foods, Inc. **260 NLRB No. 092**
(successor E's refusal to bargain with predecessor's incumbent U, unlawful, notwithstanding E's claim of good faith doubt of U's majority based on information that some Ees sought to withdraw from U, since E's claim was exercise in subjective interpretation in view of E's lack of action to determine whether segment of Ees desired no representation and lack of reliable information as to desires of Ee complement as a whole; and E knew that Ees had been previously represented by U and therefore had basis for assuming that U had colorable claim to recognition)

Gregory Chevrolet, Inc. **258 NLRB No. 034**
(where E examined cards indicating U majority and with U's consent held Ee meeting to satisfy himself that Ees had not been *conned* into signing cards, E's refusal to bargain w/o election held violative as E may not disclaim results of that meeting)

8009-4400 Filing of representation or decertification petition

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company **265 NLRB No. 106**
(Bd applied rule announced in *Dresser Industries* prohibiting withdrawal from bargaining while decertification ptn is pending, on a prospective basis only, and held E's unilateral changes in access requirements for U representatives unlawful, since E is not licensed to interfere with U's representative functions during pendency of decertification ptn; U remains Ees' bargaining representative until and unless it is decertified; consequently, Bd distinguished unilateral changes affecting U's dealings with Ees whom it represents from those relating to wages and benefits)

Forester Beverage Corporation **265 NLRB No. 035**
(E violated Act when it granted unilateral wage increases, created new driver sales routes, altered existing routes, and abolished helper position for 4 of its 5 package sales delivery routes after expiration of contract covering unit which was subject of decertification ptn, because E engaged in other unlawful conduct prior to filing ptn. See *Autoprod, Inc.* 223 NLRB 773 (1976))

Signal Transformer Co., Inc. **265 NLRB No. 033**
(no violation where E withdrew recognition from U after expiration of contracts and made unilateral changes in working conditions where 124 Ees out of unit of 130 Ees signed ptn stating they no longer desired U to represent them, since withdrawal of recognition based on objective considerations to support good faith doubt of U's continuing majority; good faith doubt justified withdrawal notwithstanding another U had filed R ptn since these circumstances constitute exception to Bd's modification of *Midwest Piping*, in *RCA del Caribe* that normally E must continue to bargain with incumbent U during processing of ptn by outside U)

Taurus Waste Disposal, Inc. **263 NLRB No. 028**
(filing of decertification ptn, three months after expiration of contract and E's cessation of payments to benefit funds, not objective basis for good faith doubt since *mere filing of decertification ptn does not destroy presumption of continued majority*)

RCA del Caribe, Inc. **262 NLRB No. 116**
(E violates Sec. 8(a)(5) by withdrawing from bargaining with incumbent U based solely on fact that ptn has been filed by outside U; however, may still withdraw recognition if its good faith doubt based on other objective considerations)

Abraham Grossman d/b/a Bruckner Nursing Home **262 NLRB No. 115**
(Bd will no longer find Sec. 8(a)(2) violations in rival U, initial organizing situations when an E recognizes U which alone represents uncoerced, unassisted majority, before valid ptn for election has been filed with Bd; however, once notified of valid ptn, E must refrain from recognizing any of rival Us)

Abraham Grossman d/b/a Bruckner Nursing Home **262 NLRB No. 115**
(duty of struct E neutrality and necessarily for Bd conducted election attaches only when properly supported ptn has been filed by 1 or more of competing Us; where no ptn has been filed, E free to grant recognition to labor organization with uncoerced majority, so long as it does not render assistance which would otherwise violate Sec. 8(a)(2) of Act)

Pittsburgh and New England Trucking Co. v. N.L.R.B. **643 F.2d 174 (C.A. 4, 1981)**
(ct denied enforcement of Bd bargaining order in view of distinct possibility that ALJ could have concluded that causal connection between E's ULPs and U disaffection was lacking had ALJ not improperly declined to receive proffered testimony of Ee who had headed decertification campaign to the effect that ULPs had not affected her or other signers, that nothing had interfered with them nor had E interfered or discriminated against them in any way; barring such testimony as to E's state of mind was denying E most direct proof available on controverted issue)

Walker Die Casting, Inc. v. N.L.R.B. **682 F.2d 592 (C.A. 6, July 1982)**
(*the mere filing of decertification ptn is of itself insufficient justification* to support refusal to bargain)

N.L.R.B. v. M. A. Harrison Manufacturing Company, Inc. **682 F.2d 580 (C.A. 6, June 1982)**
(E's refusal to bargain with U assertedly because of loss of majority on basis of decertification ptn, violative in view of E's history of ULPs)

N.T. Enloe Memorial Hospital v. N.L.R.B. **682 F.2d 790 (C.A. 9, July 1982)**
(filing of RM ptn by E does not in itself suspend E's duty to bargain; moreover, duty to bargain not suspended when RD schedules hearing based on E's ptn alone; for RM ptn to provide basis it must ultimately be found to be based on sufficient objective grounds to establish good faith doubt as to U's majority status)

N.L.R.B. v. Antonino Carilli, d/b/a Antonino's Restaurant **648 F.2d 1206 (C.A. 9, June 1981)**
(decertification ptn signed by 16 out of unit alleged in ptn to contain 26 Ees not basis for good faith doubt justifying E's termination of payments to pension and health funds, where payments terminated prior to circulation of ptn, GC never offered ptn into evidence to establish number of Ees in unit, and E did not attempt to establish accuracy of number, since E was not prevented from litigating majority status issue notwithstanding precluded from litigating administrative matter of whether showing of interest sufficient to support decertification ptn)

Sahara-Tahoe Corporation v. N.L.R.B. **648 F.2d 553 (C.A. 9, Nov 1980)**
(E's refusal to bargain held unlawful, notwithstanding E's contention of good faith doubt of U majority, since ptn for decertification, of which E had knowledge, although it was not filed, did not by itself or together with other evidence unequivocally indicate U support had declined to minority; however, this decision did not imply that a ptn which unambiguously indicated desire not to be represented by U and signed by substantial number of Ees could not be considered in arriving at good faith doubt if that ptn had not been filed)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**

8009-5500 Indicia of bad faith in asserting doubt

8009-5517 Antiunion conduct

Volcan-Hart Corporation (St. Louis Division) **262 NLRB No. 017**
(rejection of U induced by E is opposite of what is called *objective consideration* for questioning majority)

Mark Twain Marine Industries, Inc. **254 NLRB No. 144**
(withdrawal of recognition and refusal to bargain based on contention that U lost support of majority, violative, since any loss of majority was result of E's ULPs)

Mark Twain Marine Industries, Inc. **254 NLRB No. 144**
(refusal to execute previously agreed-upon contract because contention that U lost support of majority of Ees, violative, since any loss of majority was result of E's ULPs)

Furr's Cafeterias, Inc. **251 NLRB No. 125**
(withdrawal of recognition from U, violative, where E cannot base good faith doubt of U's majority status upon anti-U petitions or Ees subsequent filing of decertification petition since such Ee defections resulted from E's own misconduct)

Nordstrom, Inc. **JD-(SF)-143-82**
(E's refusal to execute contract based on decertification ptn violative where decertification ptn is invalid as result of E's improper promises of benefits to Ees)

Reeves Rubber, Inc. **JD-(SF)-221-81**

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(*E's good faith doubt must not have been raised in context of illegal anti-U activities, or other conduct by E aimed at causing disaffection from U or indicating that in raising loss of majority issue E was merely seeking to gain time in which to undermine U; existence of ULP prior to refusal to bargain interjects element of uncertainty about whether E thus caused possible loss of majority; if it is shown that ULP did not significantly contribute to loss of majority, E may avoid bargaining order*)

8009-5525 Unremedied unfair labor practices

Robertshaw Controls Company **263 NLRB No. 128**
(notwithstanding E found not responsible for distribution of anti-U ptn, its withdrawal of recognition from U based on ptn, violative, where E was in process of remedying a Sec. 8(a)(5) violation, and that during 60-day posting period unwholesome effects of E's previous unlawful conduct have not been expunged; therefore, signatures obtained during that time are not reliable barometer of Ee sentiment)

Chicago Magnesium Castings Company **256 NLRB No. 108**
(E precluded by prior unremedied ULPs from raising asserted doubt of U's majority status on basis of decertification ptn as defense to withdrawal of recognition and refusal to negotiate new contract)

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Permanent Label Corporation 248 NLRB No. 021
(refusal to bargain with U which had majority status and engaging in ULP's which prevented fair election violative)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)
(E's good faith doubt must not have been raised in context of illegal anti-U activities, or other conduct by E aimed at causing disaffection from U or indicating that in raising loss of majority issue E was merely seeking to gain time in which to undermine U; existence of ULP prior to refusal to bargain interjects element of uncertainty about whether E thus caused possible loss of majority; if it is shown that ULP did not significantly contribute to loss of majority, E may avoid bargaining order)

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)
(E's refusal to bargain with U and instead engaging in ULPs which undermined U's majority)

8009-6100 Belated assertion of doubt

N.L.R.B. v. Antonino Carilli, d/b/a Antoninino's Restaurant 648 F.2d 1206 (C.A. 9, June 1981)
(decertification ptn signed by 16 out of unit alleged in ptn to contain 26 Ees not basis for good faith doubt justifying E's termination of payments to pension and health funds, where payments terminated prior to circulation of ptn, GC never offered ptn into evidence to establish number of Ees in unit, and E did not attempt to establish accuracy of number, since E was not prevented from litigating majority status issue notwithstanding precluded from litigating administrative matter of whether showing of interest sufficient to support decertification ptn)

N.L.R.B. v. Antonino Carilli, d/b/a Antoninino's Restaurant 648 F.2d 1206 (C.A. 9, June 1981)
(E's contention it was not required to give U opportunity to bargain regarding changes in insurance plan since futile where U had erroneously asserted E bound by extension of multi-E bargaining agreement and had not requested bargaining once it learned of changes, since E was motivated by desire to undermine U where it had expressed intention to drop U and institute new insurance plan before U expressed belief E bound by bargaining agreement extension, and E refused invitation to meet with U and discuss its position, and U not so intransigent as to relieve E of duty to bargain)

8009-6800 Fluctuation in employment does not support asserted doubt

International Medication Systems, Ltd. 253 NLRB No. 120

Cain's Generator and Armature Company, Inc. v. N.L.R.B. 628 F.2d 933 (C.A. 6, 1980)
(enforcement granted where substantial evidence supported Bd's finding that none of factors relied upon by E justified withdrawal or recognition from U; E had relied upon U's alleged loss of majority status where (1) 10 of 23 Ees were new Ees, (2) lack of Ee requests for dues checkoffs—a voluntary action, and (3) several *unidentified* Ees had expressed dissatisfaction with U—, not objective factor in determining majority status)

8009-9400 Employee withdrawal from U or lack of interest

Premium Foods, Inc. 260 NLRB No. 092
(successor E's refusal to bargain with predecessor's incumbent U, unlawful, notwithstanding E's claim of good faith doubt of U's majority based on information that some Ees sought to withdraw from U, since E's claim was exercise in subjective interpretation in view of E's lack of action to determine whether segment of Ees desired no representation and lack of reliable information as to desires of Ee complement as a whole; and E knew that Ees had been previously represented by U and therefore had basis for assuming that U had colorable claim to recognition)

International Medication Systems, Ltd. 253 NLRB No. 120
(fact, that members of Ees' negotiating committee became disinterested in further participation in contract negotiations does not, alone, establish general Ee disinterest in being represented by U)

Pennco, Inc. 250 NLRB No. 093
(fact only 42 striking Ees out of unit of 173 sought reinstatement at conclusion of strike not basis for good faith doubt of majority where E had withdrawn recognition from U 10 months prior to start of strike)

N.T. Enloe Memorial Hospital v. N.L.R.B. 682 F.2d 790 (C.A. 9, July 1982)
(where E's subpoena requesting U to bring to hearing documents reflecting number of its Ees who belonged to U was revoked, even if Bd erred in revoking subpoena such error is harmless as evidence of U membership has been held irrelevant in proving lack of majority support in support of E's refusal to bargain)

8009-9800 Following withdrawal from multiemployer bargaining unit

Wm. Chalson & Co., Inc. 252 NLRB No. 0[illegible]
(E's withdrawal from multi-E bargaining unit during negotiations because of doubt as to U's majority support among its Ees, held untimely and unwarranted and E's subsequent refusal to execute or abide by association wide contract held unlawful; prior withdrawal and signing of separate contract with U by large E that belonged to other of 2 multi-E bargaining units bargaining with U not unusual circumstances justifying withdrawal of respondent as each association separate appropriate unit and contract negotiations continued after E signed individual contract; there integrity of bargaining unit not undermined by separate agreement)

Wm. Chalson & Co., Inc. 252 NLRB No. 0[illegible]
(E's withdrawal of recognition from U unlawful, notwithstanding fact that majority of E's Ees withdrew their support from U, since appropriate unit is multi-E association unit)

Cain's Generator and Armature Company, Inc. v. N.L.R.B. 628 F.2d 933 (C.A. 6, 1980)
(enforcement granted where substantial evidence supported Bd's finding that none of factors relied upon by E justified withdrawal or recognition from U; E had relied upon U's alleged loss of majority status where (1) 10 of 23 Ees were new Ees, (2) lack of Ee requests for dues checkoffs—a voluntary action, and (3) several *unidentified* Ees had expressed dissatisfaction with U—, not objective factor in determining majority status)

8018 DOUBT AS TO APPROPRIATENESS OF UNIT

Walla Walla Union-Bulletin, Inc. v. N.L.R.B. 631 F.2d 609 (C.A. 9, Oct. 1980)
(newspaper's refusal to bargain violative, notwithstanding contention that U was improperly certified because certain editors should have been excluded from unit as managerial or supervisory Ees, where removal of contested editors would not have affected outcome of election)

8018-0100 Generally

Burns Electronic Security Services, Inc. v. N.L.R.B. 624 F.2d 403 (C.A. 2, 1980)
(ct remanded to Bd for reconsideration of its finding that E violated Act by unilaterally altering job requirements of Ees in light of ct's opinion that Bd had improperly made finding as to inclusion in unit of Ees affected by such unilateral change)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)
(requiring health care industry Es to bear burden of producing evidence that limited bargaining units are more inappropriate than broader bargaining units runs contrary to Congress' admonition)

Osteopathic Hospital Founders Association, d/b/a Oklahoma Osteopathic Hospital v. N.L.R.B. 618 F.2d 633 (C.A. 10, 1980)
(E's withdrawal of recognition from U assertedly because certified unit was inappropriate, violative, even if Bd certification was improper; E is deemed to have consented to Bd's unit determination by acquiescing in the unit determination until after ALJ found E guilty of 8(a)(5) violations over two years later, by executing one-year bargaining agreement with U following date when unit was certified, and by subsequently specifically admitting appropriateness of unit in its ans to GC's C)

8018-1200 Nonrepresentative unit

Jeffries Lithograph Company, A Subsidiary of The Ticor Printing Group, Inc. 265 NLRB No. 1[illegible]
(successor E's refusal to bargain with U which had represented predecessor's Ees, violative where at time of demand predecessor's Ees constituted majority of successor's Ees, successor's projections of Ee complement was too indefinite and speculative to warrant finding Ee complement not representative or insubstantial, and there was no showing that increased staff would have different job classifications or duties)

Construction Erectors, Inc. 265 NLRB No. 0[illegible]
(on remand from U.S. Court of Appeals, Bd found E's repudiation of collective bargaining agreement before its termination date, unlawful, since workforce in bargaining unit had become permanent and stable and U obtained majority support w/i unit of Ironworkers during period w/i effective term of applicable contract; E moved its Ees from job to job and did not regularly assign Ees to single jobs and then to no subsequent jobs; 10 of 15 Ees in core group were U members and worked 75% of total days on which Ironworkers were employed)

8018-2800 Changed circumstances

Ah Chu Company 259 NLRB No. 0[illegible]
(where E sold discount store but retained operation of sundry department as lessee and lessee negotiated new contract with U bringing leased sundry department Ees into unit of sundry Ees of another store owned by lessee, Bd held that when lessee afterwards sold lease to Respondent who also leased pharmacy department at store, Ees of leased sundry department formed appropriate unit in and of themselves at store since pharmacy Ees and sundry Ees were always represented by separate locals though latter in larger unit at time of sale)

8018-2513 Relocated operations

Marine Optical, Inc. **255 NLRB No. 158**
(E's refusal to bargain with U at relocated operation on ground unit was limited to old operation, unlawful, where existing contract remained in effect at new location, operations and equipment at new location were substantially same as at old location, substantial percentage of Ees transferred to new location, and at time of move qcr would not appropriately be raised under existing contract)

Westwood Import Company, Inc. **251 NLRB No. 162**
(withdrawal of recognition and failure to honor contract at relocated plant 35 miles from old site during period contract served as bar and no qcr present, violative, otherwise, E could unilaterally eliminate or change representative at time when Bd would refuse to allow change; relocation, providing operations and equipment remain substantially same at new location and substantial percentage of Ees (though less than 50) at old plant transfer to new location, has little effect on bargaining obligation)

Westwood Import Company, Inc. **251 NLRB No. 162**
(where E committs ULP by transferring only few Ees to relocated plant, Bd will then examine question of whether majority of unit Ees at new facility would have been comprised of Ees from old facility had it not been for E's unlawful activity)

Universal Security Instruments, Inc. **250 NLRB No. 092**
(where Ees at new plant are accretion to unit at old plant, refusal to extend contract covering old Ees to Ees at new plant violative)

N.L.R.B. v. United Optical Workers Union Local 408, Electrical Workers (Marine Optical, Inc.) **671 F.2d 11 (C.A. 1, Feb. 1982)**
(E's withdrawal of recognition, refusal to bargain on demand, and unilateral changes after relocating operations violated 8(a)(5) and 8(d); contract's description of unit as consisting of Ees employed at address of E's old facility was not shown to be intended as geographical limitation, as contended, and continuity was sufficient for Bd to apply modified contract-bar doctrine and find contract effective at new facility where there was substantial continuity of operations and in bargaining unit after relocation, and new facility was near old facility and in same state)

Air Express International Corporation v. N.L.R.B. **659 F.2d 610 (C.A. 5, Oct. 1981)**
(restructuring district from single plant unit where U certified into 2 plant district to include plant in another state and having labor management policy formed to cover expanded district is not kind of change that amounts to *unusual circumstances* that would make certification invalid because it does not cover aggregate Ees in expanded district).

8018-2525 New operation not accretion

Gould, Inc., Electrical Components Division **263 NLRB No. 035**
(E's refusal to recognize U as bargaining representative of Ees at relocated operation not violative since Ees were not accretion to certified unit)

Weatherite Company, Inc. **261 NLRB No. 095**
(refusal to recognize U as representative of urethane foam roofing Ees, and refusal to apply agreement with U representing built-up roofing Ees, not unlawful, where foam roofers do not share sufficient community of interest with built-up roofers so as to constitute an accretion to latter unit)

DMR Corp. and Harrill Electric Contractors, Inc. **258 NLRB No. 139**
(where single E relationship found, new operation held to be accretion to unit in first company and E wide unit is appropriate since Ees at both locations possess similar skills, perform same kinds of work, operations of two companies are closely intertwined, E retains significant control over labor relations of both operations)

Cannon Air Conditioning and Heating Co., Inc. and Yor-Tex, Inc. **252 NLRB No. 091**
(where E, whose sheet metal workers were represented by U, entered into arrangement with another company by which the latter would hire its own Ees and do bin repair work contracted for by E, E's refusal to apply its U contract to the bin repair Ees not violative absent finding bin repair Ees accretion to sheet metal workers unit)

Westwood Import Company, Inc. **251 NLRB No. 162**
(where relevant considerations are not free from doubt as to whether or not Ees are accretion to existing unit, Bd and cts are in agreement that best way to resolve close question is through election process because accretion doctrine applied restrictively since it deprives Ees of opportunity to express their desires)

A-1 Fire Protection, Inc., and Corcoran Automatic Sprinkler, Inc. **250 NLRB No. 034**
(E's refusal to extend collective-bargaining agreement which describes scope of unit represented by U to Ees in its non-U company not violative as parties voluntarily entered into agreement with full knowledge of double breasted operation of E; therefore use of *clear and unmistakable* waiver standard is not applicable as parties never intended to include Ees of non-U company in bargaining unit)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**
(ct held that workers employed by E's newly acquired non-U subsidiary formed a separate bargaining unit from Ees of existing unionized subsidiary, and E's failure to apply existing U contract to non-U subsidiary was not unlawful, even though subsidiaries constituted a single E, where Bd in its discretion found an appropriate unit of non-U Ees separate from those of unionized subsidiary, and it was not ct's duty to determine whether other units would be appropriate inasmuch as Bd's decision was rational, in accord with past precedent, and unit chosen was appropriate)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**
(in finding that E's operation of unionized subsidiary and newly acquired non-U subsidiary constituted separate appropriate Ee units, ct rejected U's contention that fact that subsidiaries comprised a single E necessarily established that single unit of Ees of both subsidiaries was appropriate; a single E determination does not necessarily establish that E-wide unit is appropriate)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**
(in finding that E's operation of unionized subsidiary and newly acquired non-U subsidiary constituted separate appropriate Ee units, ct rejected U's contention that Bd's decision that Ees of both subsidiaries constituted separate units was inconsistent with Bd precedent, where Bd found subsidiaries functioned as substantially separate operations and that two groups of Ees had distinct interests)

Local 627, Operating Engineers v. N.L.R.B. **595 F.2d 844 (C.A.D.C., 1979)**
(in finding that E's operation of unionized subsidiary and newly acquired non-U subsidiary constituted separate appropriate Ee units, ct rejected U's contention that Bd's decision was not in accord with past precedent; cases relied on by U contain factual differences that justify different outcome herein, Bd's decision is supported by its accretion decisions, and ct with its limited scope of review cannot say that Bd's determination is erroneous)

8018-2550 Accretion does not render existing unit inappropriate

Safety Electric Corporation and San Joaquin Pacific Corporation **620 F.2d 311(T) (C.A. 9, 1980)**
(Ees of two corporations found to be single E shared same type of skills and duties and should be included in same bargaining unit as accretion to original bargaining unit)

8018-2562 Accretion of appropriate unit into larger unit

Ah Chu Company **259 NLRB No. 025**
(where E sold discount store but retained operation of sundry department as lessee and lessee negotiated new contract with U bringing leased sundry department Ees into unit of sundry Ees of another store owned by lessee, Bd held that when lessee afterwards sold lease to Respondent who also leased pharmacy department at store, Ees of leased sundry department formed appropriate unit in and of themselves at store since pharmacy Ees and sundry Ees were always represented by separate locals though latter in larger unit at time of sale)

DMR Corp. and Harrill Electric Contractors, Inc. **258 NLRB No. 139**
(where single E relationship found, new operation held to be accretion to unit in first company and E wide unit is appropriate since Ees at both locations possess similar skills, perform same kinds of work, operations of two companies are closely intertwined, E retains significant control over labor relations of both operations)

Universal Security Instruments, Inc. v. N.L.R.B. **649 F.2d 247 (C.A. 4, May 1981)**
(refusal to recognize U as bargaining representative of Ees of new plant violative where Ees at new plant were accretion to existing unit represented by U at E's other plants, in light of similarity of skills required at all plants, similarity of product produced, geographical proximity of facilities when metropolitan area is viewed as a whole, and centralized management and Ee relations)

8018-2569 Merger of multi-location units

Air Express International Corporation v. N.L.R.B. **659 F.2d 610 (C.A. 5, Oct. 1981)**
(restructuring district from single plant unit where U certified into 2 plant district to include plant in another state and having labor management policy formed to cover expanded district is not kind of change that amounts to *unusual circumstances* that would make certification invalid because it does not cover aggregate Ees in expanded district)

8018-2600 Union merger or affiliation

Palo Alto Medical Clinic **JD-(SF)-282-80**
(affiliation of local independent U (Council) with an AFL-CIO chartered U (AFT) did not result in new bargaining entity where no changes made in Council's 1) bargaining committee; 2) administrative structure; 3) authority

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over its bargaining, content of and administration of agreement; 4) name; 5) bylaws; and 6) authority to levy dues notwithstanding Council agreed to subject itselfto AFT's a) constitution and bylaws; b) dues requirements; and c) strike fund and attendant regulations)

N.L.R.B. v. Samuel P. Katz, d/b/a American Mailers (Plant #2) **622 F.2d 242 (C.A. 6, 1980)**
(refusal to bargain with local which had merged with incumbent violative, notwithstanding contention of procedurally defective merger vote and no continuity of R; (1) election procedures were adequate in view of timely and adequate election notice and there was absence of evidence of invasion of Ee privacy, prejudice to any Ee, achievement of different outcome by more formal methods or significant effect on E's bargaining obligation, and (2) this ct has not adopted continuity of R as a standard — as long as choice of representative has been freely made, Ees' preference should be recognized)

8018-7800 Doubt no defense if in fact unit appropriate

Penetone Corporation **260 NLRB No. 188**
(E, in C case, cannot challenge appropriateness of unit, since E had stipulated to unit's appropriateness in R proceeding and U was certified as bargaining representation for E's Ees in unit)

Puerto Rico Hotel Association **259 NLRB No. 058**
(contention of hotel E Association that unit of all Ee musicians of hotels, excluding bandleaders, not appropriate, because some hotels had attempted to withdraw from multi-E bargaining and bandleaders had historically been included in unit, rejected, since E hotels signatories to mutual aid and protection pact and participated in negotiating through E association; attempted withdrawal from multi-E bargaining was untimely where after U had presented demands, and placement of leaders in unit never issue in negotiations and inclusion of supervisors in unit does not render it inappropriate)

Contract Carrier, Inc. **258 NLRB No. 043**
(E's contention it had no obligation to recognize and bargain with U since scope of unit had substantially changed making only appropriate unit multi-facility rather than single plant, rejected, since E did not rebut presumption of appropriateness of single plant unit, where facilities 130 miles apart, little interchange of Ees, separate day-to-day supervision, and bargaining history of single plant unit)

B. P. Oil, Inc. **256 NLRB No. 171**
(withdrawal of recognition and refusal to bargain with U in regard to unit of dispatchers because of contention that these Ees were supervisors, violative; dispatchers did not exercise independent judgment in handling Ees' minor complaints and in fact functioned only as conduits for information)

J. C. Penney Company **252 NLRB No. 047**
(E's failure and refusal to recognize U as representative of Ees in new catalog sales department and failure and refusal to apply terms and conditions of existing E-U contract covering unit of floor sales department Ees, violative, where the new catalog sales department was found herein to be accretion to the unit floor sales department Ees)

Stanley M. Feil, Inc. **250 NLRB No. 065**
(contention of E that manufactured garments that appropriate unit should encompass its factory and warehouse Ees rather than be limited to warehouse Ees, rejected, in view of differences in skills, working conditions and wages of Ees)

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **259 NLRB No. 190**
(violation where E failed to apply contract to all Ees in appropriate unit and failed after contract's expiration to continue to maintain provisions of contract or to bargain for a new contract covering all unit Ees while erroneously insisting that a large number of Ees were not included in unit; although failure to apply existing contract to all unit Ees was not alleged as violation, matter was fully litigated, since it and later violation both turned on question of who was in appropriate unit)

United States Steel Corporation **248 NLRB No. 090**
(violation where E refused to bargain concerning wages and working conditions of students attending E-sponsored school on basis that they were no longer unit members where Bd found that they remained in unit as Ees while in school)

N.L.R.B. v. Holly's, Inc., d/b/a Holiday Inn South **644 F.2d 885(T) (C.A. 6, Jan 5, 1981)**
(exclusion of front desk porters and yardmen from unit of housekeeping Ees at motel w/i discretion of Bd since facts similar to other cases where unit composed of only housekeeping Ees held appropriate)

Alaska Statebank v. N.L.R.B. **653 F.2d 1285 (C.A. 9, Aug 1981)**

8019 Rival union claim to recognition

Signal Transformer Co., Inc. **265 NLRB No. [illegible]**
(no violation where E withdrew recognition from U after expiration of contracts and made unilateral changes in working conditions where 124 Ees out of unit of 130 Ees signed ptn stating they no longer desired U to represent them, since withdrawal of recognition based on objective considerations to support good faith doubt of U's continuing majority; good faith doubt justified withdrawal notwithstanding another U had filed R ptn since these circumstances constitute exception to Bd's modification of *Midwest Piping*, in *RCA del Caribe* that normally E must continue to bargain with incumbent U during processing of ptn by outside U)

Anderson Sand & Gravel Company **JD-[illegible]**
(E which was engaged in manufacture of prefabricated structural concrete signing contract with Laborers in regard to representation of Ees in new wet concrete operation, unlawful, since E had obligation to bargain with Teamsters where Ees in new operation part of existing unit represented by Teamsters; inasmuch as work was performed in same plant with same tools, basically same wages, under same general supervision and working conditions; nor was operation result of establishment of new division where operation neither physically nor functionally distinct, and E's proposal for new division during bargaining had been withdrawn)

8020 DEMAND FOR BARGAINING IN INAPPROPRIATE OR NONEXISTING UNIT

Penn Color, Inc. **261 NLRB No. [illegible]**
(where unit requested herein was previously found inappropriate, but Bd now found such unit appropriate, Bd rejected E's contention that it had right to refuse U's bargaining demand because of prior finding of unit inappropriateness; question whether unit is or is not appropriate is completely irrelevant to question of whether E has committed ULPs; E may lawfully withhold recognition for number of reasons but only so long as it does not coerce and intimidate Ees, making fair election impossible, which is what complaint herein alleges)

Puerto Rico Hotel Association **259 NLRB No. [illegible]**
(contention of hotel E Association that unit of all Ee musicians of hotels, excluding bandleaders, not appropriate, because some hotels had attempted to withdraw from multi-E bargaining and bandleaders had historically been included in unit, rejected, since E hotels signatories to mutual aid and protection pact and participated in negotiating through E association; attempted withdrawal from multi-E bargaining was untimely where after U had presented demands, and placement of leaders in unit never issue in negotiations and inclusion of supervisors in unit does not render it inappropriate)

Cardox Division of Chemetron Corporation **258 NLRB No. [illegible]**
(violation where E withdrew recognition and refused to bargain with voluntarily recognized representative. Reasonable period of time did not pass where U and E met only once during 3-1/2 months of recognition despite efforts by U to have more meetings. Furthermore, whether unit is appropriate or not is of no consequence where E voluntarily recognized bargaining representative of unit)

Burns Electronic Security Services, Inc. **256 NLRB No. [illegible]**
(E's refusal to bargain not violative where unit had been improperly certified because it contained both guard and nonguard Ees)

Home Insulation Service, A Division of Sunstate Wholesalers **255 NLRB No. [illegible]**
(E's refusal to recognize and bargain with U, not unlawful, where U demanded recognition for production and maintenance Ees at single branch of E's operations rather than for production and maintenance Ees at all [illegible] branches of E's business which Bd found to be the appropriate unit)

Southern Newspapers, Inc., d/b/a The Baytown Sun **255 NLRB No. [illegible]**
(E's defense to its refusal of U's request to bargain over unilateral change in Ees' working conditions, on ground unit was not appropriate, rejected, where parties had successive agreements for approximately 35 years, were negotiating for successor agreement upon expiration of most recent agreement, and there was no change in unit over past 35 years; consequently, presumption is that U, during term of expired contract, and currently is, representative of Ees in appropriate unit)

The Arundel Corporation **252 NLRB No. [illegible]**
(E's refusal of charging U's request to recognize it as representative of portion of unit at new operation at which E had recognized another U held not unlawful, where Ees sought by U were located substantial distance from other Ees covered by charging U's contract, they had no contact with such Ees, were employed in work situation in which their supervisor had considerable control over day-to-day personnel policies and employment, and they never expressed preference to be recognized by charging U rather than recognized U)

Chester Valley, Inc. **251 NLRB No. [illegible]**
(U's demand held not proper request to bargain where there was substantial deviation between appropriate three-facility unit and demand specifying unit limited to E's two-facility unit, and demand was not cured by U's amendment of its R ptn so as to add third facility; note taken of E's letter to Ees, bearing same date as date of U's addition of third facility to petitioned-for unit, that he would not recognize U w/o an election)

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Howard Johnson Company **250 NLRB No. 161**
(E's contention that unit of motel housekeeping Ees was inappropriate because it excluded, among others, front desk clerks, rejected, where case relied on by E is hereby overruled in view of later decisions cited by RD in his D/O directing election which fully supported his determination; *Howard Johnson Co.*, 201 NLRB 376, overruled)

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**
(multi-E association's counterproposal for contract renewal with unwavering demand that lounge musicians be excluded from bargaining unit despite their inclusion for past decade held unlawful withdrawal of recognition; belief that lounge musicians were independent contractors and U's agreement to defer lounge musicians issue does not justify or legitimaze E's withdrawal of recognition)

Valley Vista Hospital **JD-(SF)-88-82**
(refusal of successor E to bargain with U representing predecessor's Ees, not unlawful where operational structure and practice of successor E made unit no longer appropriate)

Gould, Inc. **JD-489-81**
(where E, pursuant to agreement with U, transferred unit Ees to U-contracting company engaged in joint venture with E, and subsequently reemployed some of the transferred Ees, E's contention that bargaining unit no longer existed, rejected, since reemployed Ees' jobs bore a sufficient relationship and content to those previously performed so as to bring them w/i scope of appropriate unit, and Ees' added responsibilities did not make them supervisory or managerial)

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**
(E's contention its refusal to bargain justified as U represented inappropriate unit, rejected, since not clear unit would have been inappropriate absent stipulation; further, E had not raised issue previously and had agreed to E's request for desired exclusion)

United Oil Manufacturing Co., Inc. v. N.L.R.B. **672 F.2d 1208 (C.A. 3, Feb. 1982)**
(fact that E rejected the U's demand for recognition at time when it had no knowledge that unit sought was inappropriate did not affect finding violation where subsequent ptn described unit differently)

St. Anthony Hospital Systems v. N.L.R.B. **655 F.2d 1028 (C.A. 10, Aug 1981)**
(remand for determination of appropriate unit and its effect on E's duty to bargain in view of Bd's holding that had improperly relieved GC of burden of establishing ULP occured by holding unit of registered nurses at hospital presumptively appropriate and E had duty of rebutting presumption)

W & W Steel Company v. N.L.R.B. **599 F.2d 934 (C.A. 10, 1979)**
(where U certified for company-wide unit of P&M Ees employed in predecessor's 7 plants and new E purchases one of these plants, latter E held not successor and its refusal to bargain with certified U not violative, where certification over 2 years old; only 8 of 49 presently employed revealed themselves to be U adherents, 13 had worked for predecessor but did not participate in strike and rest hired by predecessor after strike or new E; no ULPs or U animus by new E, all of which gave rise to good faith doubt of majority status in changed bargaining unit)

8023 NOT BOUND BY MULTIEMPLOYER BARGAINING

H & D, Inc. v. N.L.R.B. **670 F.2d 120 (C.A. 9, Feb. 1982)**
(ct upheld Bd's finding violation in E's unilateral withdrawal from and refusal to bargain as part of multi-E group where bargaining to impasse and mass resignation of E's Ees from U were not unusual circumstances justifying withdrawal from multi-E bargaining unit; test is not whether majority of Ees of one E resign from U but whether majority of all Ees represented in contract negotiations resign)

8023-0100 Generally

Carlson Roofing Co., Inc. **255 NLRB No. 067**
(where E is member of E association which had collective bargaining agreement with U, E not bound by contract as E never signed written consent required by E-association bylaws to bind E to that contract, never paid Ees contract wages, or checked off dues on their behalf, notwithstanding E did recruit 2 Ees to join U and paid their initiation fee, 3 months dues, and made health, welfare and pension fund contributions for them; furthermore, manner in which memberships were obtained precludes reliance upon them as evidence of U's majority)

Beaumont Graphics, Ltd. **254 NLRB No. 044**
(E not bound by strike settlement between multiE association and U, nor was E required to furnish information relevant to grievance brought by U alleging violations of association contract and strike agreement, since E had lawfully withdrawn from multiE association; E was not party to association contract and had not consented, to be bound by association's strike agreement with U)

Pullman Building Company **251 NLRB No. 148**
(violation, where E refused to abide by state homebuilder-Es' association contract; E's claims that it was not bound because it was operating as developer rather than homebuilder and that it had separate agreement with U, rejected where work was typical homebuilders' work and, as association member, E had invested exclusive bargaining authourity in association and could not enter into separate agreement)

8023-1200 Never became member

Remodeling By Oltmanns, Inc. **263 NLRB No. 169**
(refusal of E who was not member of multi-E association to abide by current contract between association and U, not unlawful, notwithstanding agreement with U in which E had agreed to abide by expired association bargaining agreement and to *be bound by terms of negotiated agreements with association during terms of agreement* since agreement was only meant to be temprorary interim agreement with intent to bind E only for duration of next agreement with association and this agreement with association and this agreement expired)

Jefferson Stores, Inc. **253 NLRB No. 048**
(refusal to sign 1978-82 master agreement held not violative where agent who signed memorandum agreement of 1976-79 contract expressly limited contract to one jobsite and, therefore, did not become signatory to master contract and no obligation to sign new agreement; E's compliance with master agreement at additional jobsites does not establish adoption or ratification of agreement for those jobsites)

Local #197, Electrical Workers, AFL-CIO (McLean County Electrical Contractors Association, Inc.) **JD-(SF)-369-80**
(U's insistence that certain members of predecessor multi-E association who did not consent to substitution of new multi-E association as bargaining representative must bargain only as part of new multi-E association, violative, as U had notice that these members had opposed such substitution; therefore, no consensual tripartite relationship between U, association and individual members of association existed; furthermore, continued observance of contract negotiated by new association w/o more, did not render these nonconsenting Es part of multi-E bargaining unit)

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. **675 F.2d 256 (C.A. 10, Apr. 1982)**
(while association membership raises inference of association authority to execute agreement binding E, membership alone insufficient to establish necessary unequivocal intention to be bound in face of evidence here clearly to contrary where contractors told U before start of negotiations that contractors retained final approval for themselves)

8023-2500 Withdrawal timely

Schaetzel Trucking, Inc. **250 NLRB No. 044**
(E's withdrawal held timely, inasmuch as it was undisputed that no negotiations had begun for successor to expired multi-E bargaining agreement at time E withdrew from multi-E unit)

8023-5000 Withdrawal untimely

Beaumont Graphics, Ltd. **254 NLRB No. 044**
(*impasse* is not, of itself, *unusual circumstance* warranting unilateral withdrawal from existing multiE bargaining relationship, but amounts to no more than temporary deadlock or hiatus which is usually resolved by actions of parties)

McCormick-Boyett Plumbing Company **JD-(ATL)-93-82**
(E's refusal sign and honor negotiated multi-E contract when it had not given required notice of withdrawal from multi-E bargaining prior to commencement of neogitations, unlawful; E's failure to respond to U's request for bargaining not timely withdrawal, nor did E's financial situation constitute unusual circumstances that would justify its withdrawal where its financial reports did not substantiate required dire straits; further, E's contention that change in character of business (more repair work than service or maintenance) made agreement inapplicable, rejected)

N.L.R.B. v. Thomas Hoover and Dennis Loy, d/b/a The Players Restaurant **629 F.2d 789(T) (C.A. 9, 1981)**
(where E notified U 6 weeks prior to expiration of contract that it desired to terminate contract when it expired but made no mention of withdrawal from multi-E unit nor gave any indication of willingness to bargain on individual basis, E never effectively furnished adequate written notice to U that evinces unambiguous intent to withdraw from unit and is bound by provisions of successor contract)

8023-6600 Association exceeded its authority

Crane Sheet Metal, Inc. **248 NLRB No. 015**
(E's failure to honor contract executed by E-association of which it was member violative notwithstanding E believed association had no power to bind it to contract with U because it had reserved to itself right to reject

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contract since such reservation not communicated to U until after contract reached)

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. 675 F.2d 256 (C.A. 10, Apr. 1982)

(apparent authority sufficient to determine whether multi-E bargaining unit is acting as agent of Es so as to bind individual E by bargaining unit's acts; whether specific acts were actually authorized or subsequently ratified not controlling)

8023-6700 Unusual circumstances in untimely withdrawal

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. 630 F.2d 25 (C.A. 1, 1980)

(unusual circumstances consist of either extreme financial pressures or where bargaining unit has been substantially fragmented)

N.L.R.B. v. Custom Sheet Metal & Service Co., Inc. 666 F.2d 454 (C.A. 10, Dec. 1981)

(*unusual circumstances* sufficient to justify E's withdrawal from multi-E association after bargaining has begun are: (1) extreme financial hardship threatening existence as viable business entity, (2) fragmentation of multi-E bargaining unit, and (3) bargaining impasse)

N.L.R.B. v. Custom Sheet Metal & Service Co., Inc. 666 F.2d 454 (C.A. 10, Dec. 1981)

(E's withdrawal from construction industry multi-E association after bargaining for new contract started justified by economic considerations where because of strike over progress in contract negotiations E was faced with imminent loss customer which purchased 75% of its production and having lost other customers its very existence as viable enterprise was threatened; furthermore, no showing of any anti-U sentiment)

8023-6800 No unit employees employed

Miscellaneous Drivers and Helpers Union, Local No. 610 v. N.L.R.B. 624 F.2d 831 (C.A. 8, 1980)

(no violation where funeral home operator refused to sign funeral directors association's contract with U representing funeral vehicle drivers, since funeral home operator, though member of association, did not employ drivers but contracted with other Es for drivers' services notwithstanding he had signed contract in past)

8023-7500 Union's acquiescence in untimely withdrawal

Beaumont Graphics, Ltd. 254 NLRB No. 044

(refusal of E to give effect to, or enter into, contract negotiated on its behalf by multiE association, not unlawful where notwithstanding that E's withdrawal was untimely, association did not object to E's withdrawal and acquiesced thereto as demonstrated by its entire course of conduct; U never protested E's withdrawal nor insisted that E was bound by association contract and negotiated separately with E)

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. 630 F.2d 25 (C.A. 1, 1980)

(consent of U not found where: U did not explicitly object to E's announced withdrawal, continued to negotiate with E-association representatives and 3) did not formally protest attempted withdrawal until 2 weeks after unit-wide agreement reached, as U under no duty to protest in formal manner, consent involves affirmative action *antithetical* to claim of no withdrawal)

Harding Glass Industries, Inc. v. N.L.R.B. 672 F.2d 1330 (C.A. 10, Feb. 1982)

(while U's consent to E's withdrawal from multi-E unit may be inferred where U accepts benefits of withdrawal or proceeds to bargain individually w/o protest, ct held U did not consent as result of U negotiator's angry remarks during bargaining session that it might be possible to reach settlement if E was not part of negotiations; such remarks ought not to be treated as offer establishing binding contract if accepted before withdrawal; U negotiator subsequently indicated possibility that U would not consent; and when E actually attempted to withdraw, U expressed its unequivocal protest)

8023-9000 Individual member variance in negotiations

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. 675 F.2d 256 (C.A. 10, Apr. 1982)

(evidence in instant case indicated that Es considered themselves to be segment of multi-E Association, retaining for themselves final authority to approve any contract negotiated by Association and U; U official had assured instant Es of separate negotiations and contracts for Es represented by multi-E Association)

8023-9700 Effect of Section 10(b) 6-month limitation

McCormick-Bryant Plumbing Company JD-(ATL)-93-82

(Section 10(b) period for charge alleging unlawful refusal to sign and honor multi-E bargaining agreement began running when E specifically informed U it was not going to sign agreement which was w/i 10(b) period, rather than from U's letter asking E to sign new agreement which was outside 10(b) period, since E's failure to reply to or comply with request to sign agreement did not put U on notice of act committing ULP)

N.L.R.B. v. Preston H. Haskell Company 616 F.2d 136 (C.A. 5, 1980)

(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from group bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

N.L.R.B. v. Preston H. Haskell Company 616 F.2d 136 (C.A. 5, 1980)

(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from goup bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

8027 LOSS OF MAJORITY (SEE ALSO 530-4080-5000)

8027-0400 No defense where raised after commission of ULP

Forester Beverage Corporation 265 NLRB No. 035

(E violated Act when it granted unilateral wage increases, created new driver sales routes, altered existing routes, and abolished helper position for 4 of its 5 package sales delivery routes after expiration of contract covering unit which was subject of decertification ptn, because E engaged in other unlawful conduct prior to filing ptn. See *Autoprod, Inc.* 223 NLRB 773 (1976))

Plymouth Locomotive Works, Inc. 261 NLRB No. 087

(defense that E withdrew recognition because certification year had expired and E allegedly believed U had lost its majority status because unit Ees did not support strike vote, rejected where E offered no evidence of lack of such support; moreover E had undermined U support with its ULPs)

United States Gypsum Company 259 NLRB No. 145

(Ees ptns signed by majority not basis for doubting U's continuing majority status where E's unlawful refusal to bargain continued w/o interruption in serious ULP and tainted ptns)

Colson Equipment, Inc. 257 NLRB No. 015

Scioto Coca-Cola Bottling Company 251 NLRB No. 105

James F. Stanford, Inc. d/b/a Ace Machine Co. 249 NLRB No. 073

Martinsburg Concrete Products Co. 248 NLRB No. 172

(E's refusal to continue recognition of U assertedly on ground that Ees had decided they no longer wished to be represented by U violative where E induced defection of U members by ULPs)

N.L.R.B. v. Mar-Len Cabinets, Inc. 659 F.2d 995 (C.A. 9, Oct. 1981)

(not sustained as defense where resignations from U on which E relied as basis for belief in loss of majority were direct result of E's failure to bargain in good faith)

8027-0700 Unfavorable employee comments

Crestline Memorial Hospital Association, Inc. v. N.L.R.B. 668 F.2d 243 (C.A. 6, Jan. 1982)

(letter from non-U Ees to hospital protesting U ratification procedures which denied them vote not enough to support good faith doubt of majority status of certified bargaining representative which is conclusively presumed for 1 year, especially where letter silent on question of continued support of U itself)

N.L.R.B. v. Mar-Len Cabinets, Inc. 659 F.2d 995 (C.A. 9, Oct. 1981)

(Ees expressions of dissatisfaction with U's failure to report bargaining developments and respond to questions not sustained as defense where, taken in context, did not indicate repudiation of U, but only displeasure with U's handling of bargaining negotiations)

8027-0900 Employee turnover

Construction Erectors, Inc. 265 NLRB No. 098

(E's repudiation of collective bargaining agreement with U would be unlawful if E employed permanent and stable workforce under agreement before repudiation and U enjoyed majority support; analysis of permanent and stable workforce goes beyond numbers and dates, and focuses upon issue of whether Es complement possesses sufficient continuity as to merit continued reliance on showing of majority support for U made at any point during effective term of applicable bargaining agreement)

Boston Insulated Wire & Cable Co. 264 NLRB No. 044

(contention that summary judgment finding that E's refusal to bargain violated Act should be denied on grounds that E has experienced substantial Ee turnover in period following election held w/o merit, since such turnover is

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not *special circumstance* warranting attack on conclusively presumed majority status U enjoys during certification year)

Silverman's Men's Wear, Inc. **263 NLRB No. 023**
(Bd upheld ALJ's refusal to allow testimony to demonstrate post-election changes in bargaining unit on ground that any issue of change in unit was beyond scope of hearing; furthermore, absent special circumstances, there is irrebuttable presumption that majority status of certified U continues for 1 year from date of certification; as E's refusal to bargain occurred during certification year, presumption was clearly applicable; moreover, even if E's refusal to bargain had not occurred during certification year, factor of Ee turnover did not establish that U had lost majority status)

Colson Equipment, Inc. **257 NLRB No. 015**
(statistical evidence of high unit Ee turnover, no defense, since, absent evidence to contrary, new Ees are presumed to support incumbent U in same ratio as their predecessors)

International Medication Systems, Ltd. **253 NLRB No. 120**

Taylor Hospital **249 NLRB No. 031**
(Ee turnover, no defense where no evidence was adduced to rebut presumption that new Ees would support U in same ratio as Ees they replaced)

Glomac Plastics, Inc. v. N.L.R.B. **600 F.2d 3 (C.A. 2, 1979)**
(ct entered judgment enforcing bargaining order where ct had remanded cause to Bd for reconsideration of propriety of bargaining order and, pursuant to that remand, Bd had reassessed remedial order and, notwithstanding its assumption of the accuracy of the E's principal claims of substantial Ee turnover in unit and/or abandonment of unit by U, nevertheless entered supplemental order affirming that the original relief granted remained appropriate)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(Ee turnover between ULPs and Bd order is relevant in determining whether *Gissel* order should be used but Bd not required to reopen record to determine whether fair election could be held regardless of turnover since time of hearing where other evidence, such as, card majority, past union activity, and E responses to such activity support such finding)

Fotomat Corporation v. N.L.R.B. **634 F.2d 320 (C.A. 6, 1980)**
(contention that U lacked support of majority of Ees because of high turnover and 50% increase in E locations, rejected, where new locations not included in certified unit and E presented no evidence that new Ees did not support U)

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**
(refusal to allow E to introduce into evidence U's membership list obtained after withdrawal of recognition improper, notwithstanding membership not correlative with U support, since low membership is *clearly probative* to issue of U's continued majority and admissibility is not determined solely by what evidence E could have relied on upon in making decision to withdraw recognition)

8027-1000 Packing the unit

Suburban Ford, Inc. **248 NLRB No. 051**
(E's sudden and unprecedented attempt to *pack bargaining units* of salesmen and clerks with new Ees prior to election in two appropriate units held violative, since action was attempt to dilute, emasculate and destroy Us' majority status)

8027-1600 Return of striking employees during strike

Victor Marsh, A Division of TCB, Inc. **JD-272-82**

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**
(fact no Ee joined in picket line not sustained as defense where refusal to join was for economic reasons)

8027-1800 Failure of employees to join strike

Victor Marsh, A Division of TCB, Inc. **JD-272-82**

8027-3200 No election held

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**
(refusal to allow E to introduce into evidence U's membership list obtained after withdrawal of recognition improper, notwithstanding membership not correlative with U support, since low membership is *clearly probative* to issue of U's continued majority and admissibility is not determined solely by what evidence E could have relied on upon in making decision to withdraw recognition)

8027-3400 Not defense where employer is responsible for loss

Bel-Air Bowl, Inc. **247 NLRB No. 003**
(inducement of Ees to abandon support for U, unlawful)

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**
(not sustained as *defense* where resignations from U on which E relied as basis for belief in loss of majority were direct result of E's failure to bargain in good faith)

8027-5400 Plant relocation

Marine Optical, Inc. **255 NLRB No. 158**
(Ees, who constituted a majority at both old and new locations during relocation of operations during contract term, are presumed by reason of contract to continue their designation of U as their bargaining representative; and although Ees from former location no longer constituted majority at new location after old facility was completely closed, it is assumed that new hires in unit desired U representation in same proportion as Ees they replaced)

Westwood Import Company, Inc. **251 NLRB No. 162**
(withdrawal of recognition and failure to honor contract at relocated plant 35 miles from old site during period contract served as bar and no qcr present, violative, otherwise, E could unilaterally eliminate or change representative at time when Bd would refuse to allow change; relocation, providing operations and equipment remain substantially same at new location and substantial percentage of Ees (though less than 50) at old plant transfer to new location, has little effect on bargaining obligation)

Westwood Import Company, Inc. **251 NLRB No. 162**
(where E committs ULP by transferring only few Ees to relocated plant, Bd will then examine question of whether majority of unit Ees at new facility would have been comprised of Ees from old facility had it not been for E's unlawful activity)

N.L.R.B. v. United Optical Workers Union Local 408, Electrical Workers (Marine Optical, Inc.) **671 F.2d 11 (C.A. 1, Feb. 1982)**
(E's withdrawal of recognition, refusal to bargain on demand, and unilateral changes after relocating operations violated 8(a)(5) and 8(d); contract's description of unit as consisting of Ees employed at address of E's old facility was not shown to be intended as geographical limitation, as contended, and continuity was sufficient for Bd to apply modified contract-bar doctrine and find contract effective at new facility where there was substantial continuity of operations and in bargaining unit after relocation, and new facility was near old facility and in same state)

8027-7200 Replacement of non-ULP strikers

I T Services, Division of I T Corporation **263 NLRB No. 186**
(E had adequate objective basis to support good faith doubt of U majority after contract expired and during strike where majority in unit were strike replacements and told supervisor that they did not want U, picket line violence had been directed against them, and they knew of U demands that they be discharged)

Pennco, Inc. **250 NLRB No. 093**
(new Ees, including replacements for strikers, are presumed to support incumbent U in same ratio as those they replaced, notwithstanding crossed picket line on which violence had occured; Bd refused to presume U would not be able to accomodate interests of striking and non-striking Ees)

Victor Marsh, A Division of TCB, Inc. **JD-272-82**
(E had objective basis for good faith doubt of U's majority that justified withdrawal of recognition, in totality of circumstances, where strike replacements crossed picket line and there were conflicts on picket line between pickets and replacements, and in view of 12 resignations from U during strike out of unit of 105 and expression of applicants for positions replacing strikers that they prefered to work w/o U representation)

Garrett Railroad Car & Equipment, Inc. v. N.L.R.B. **683 F.2d 731 (C.A. 3, June 1982)**
(no good faith doubt exists that U lost majority notwithstanding strike replacements plus number of Ees not on strike exceeds number of strikers, as Ees' refusal to cross or join picket line does not create such presumption)

8027-7500 Lack of activity on part of bargaining representative

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**
(sum total of: 70% turnover in personnel, statements of Ees regarding dissatisfaction with U, extremely low attendance at U meetings, lack of any grievance activity, during first contract term or of visits by U to E's facility, comulatively was sufficient to shift burden to GC to establish U's majority; ct refused to place burden on E of possibly committing ULP of bargaining with minority)

8027-7800-8000 Grievances

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**
(sum total of: 70% turnover in personnel, statements of Ees regarding dissatisfaction with U, extremely low attendance at U meetings, lack of any grievance activity, during first contract term or of visits by U to E's facility, comulatively was sufficient to shift burden to GC to establish U's majority; ct refused to place burden on E of possibly committing ULP of bargaining with minority)

8027-8300 Disinterest of unit members

International Total Services, Inc. **JD-66-81**
(successor E's refusal to recognize and bargain with U, not unlawful, where E could reasonably doubt that U was representative of majority of its Ees in

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light of U's waiting several months after successor took over facility before demanding recognition and by that time complement of current Ees no longer comprised majority of predecessor's Ees; moreover, there were no ULPs and majority of Ees interviewed by E stated they did not want U)

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**
(sum total of: 70% turnover in personnel, statements of Ees regarding dissatisfaction with U, extremely low attendance at U meetings, lack of any grievance activity, during first contract term or of visits by U to E's facility, comulatively was sufficient to shift burden to GC to establish U's majority; ct refused to place burden on E of possibly committing ULP of bargaining with minority)

8027-9000 Employee petition repudiating certified union

Signal Transformer Co., Inc. **265 NLRB No. 033**
(no violation where E withdrew recognition from U after expiration of contracts and made unilateral changes in working conditions where 124 Ees out of unit of 130 Ees signed ptn stating they no longer desired U to represent them, since withdrawal of recognition based on objective considerations to support good faith doubt of U's continuing majority; good faith doubt justified withdrawal notwithstanding another U had filed R ptn since these circumstances constitute exception to Bd's modification of *Midwest Piping*, in *RCA del Caribe* that normally E must continue to bargain with incumbent U during processing of ptn by outside U)

Dresser Industries, Inc. **264 NLRB No. 145**
(overruling *Telautograph* rule, Bd held that mere filing of decertification ptn, like mere filing of rival U's ptn, would not require or permit E to withdraw from bargaining or executing contract with incumbent U, since such rule does not give due weight to incumbent U's continuing presumption of majority status and is not best way to achieve E neutrality in the election; E with good faith doubt based on objective evidence, e.g. decertification ptn supported by unit majority, may still withdraw; E's actions herein held not unlawful since E relied on then applicable Bd law of *Telautograph*)

Wagner Distribution Services, Inc. d/b/a Distribution Services West **262 NLRB No. 096**
(decertification ptn not basis for good faith doubt where form letters renouncing U were prepared by E and circulated by supervisors)

Hemet Casting Company **260 NLRB No. 060**

United States Gypsum Company **259 NLRB No. 145**
(Ees ptns signed by majority not basis for doubting U's continuing majority status where E's unlawful refusal to bargain continued w/o interruption is serious ULP and tainted ptns)

United States Gypsum Company **259 NLRB No. 145**
(withdrawal of recognition violative where Ees ptns to E stating that they no longer wished U to represent them were tainted by E's refusal to disregard requests by U and mediator to set dates for bargaining)

Lexington Cartage Company, Inc. **259 NLRB No. 005**
(ptn signed by all members of unit stating that they wished to renounce U not unusual circumstance that would justify E's refusal to bargain during certification year; further, ptn signed after E's discharge of leading U adherent and where E had made no counterproposals to U contract proposals during two and a half months and several bargaining sessions)

Chicago Magnesium Castings Company **256 NLRB No. 105**
(E precluded by prior unremedied ULPs from raising asserted doubt of U's majority status on basis of decertification ptn as defense to withdrawal of recognition and refusal to negotiate new contract)

Hydro Conduit Corporation **254 NLRB No. 049**
(circulation of anti-U ptn signed by 34 out of 38 Ees in unit and withdrawal of recognition of U based on ptn, not unlawful, since not attributable to E even if individual who circulated ptn held supervisor where individual was member of U and bargaining unit, was acting in concert with fellow Ees and not as representative of management in circulating ptn)

P. A. Incorporated **248 NLRB No. 077**
(E's breaking off negotiations for new contract and withdrawing recognition of U allegedly on basis of U's loss of majority status, unlawful since E failed to rebut presumption of continued majority representation after 1 year of certification where its doubt of majority status was based on decertification ptn by bare majority which it had promoted by promise to pay higher wages w/o U)

Strite-Anderson Mfg. **JD-175-82**
(E's changes in working hours and punching in and disregard of old contract's seniority requirements regarding recall from layoff, not unlawful in absence of new contract or renewal of expired contract where E had reasonable doubt of U's majority status based on U shop steward's circulation of decertification ptn and Ees' revocation of checkoff authorizations)

Master Slack, Ltd. **JD-(ATL)-8-81**
(filing decertification ptn raises qcr only where there is objective evidence creating doubt of U's majority status which in ULP proceeding would justify company in refusing to bargain)

C. Langenfelder & Sons, Inc. **JD-822-79**
(E's refusal to take any action regarding executing contract until qcr resolved justified by decertification ptn signed by majority of unit Ees, absent evidence E or its representatives assisted in obtaining signatures or unlawfully enmeshed itself in decertification movement)

Connecticut Distributors, Inc. v. N.L.R.B **681 F.2d 127 (C.A. 2, June 1982)**
(E not responsible for actions of Ee who circulated decertification ptn, notwithstanding E supplied Ee with names of 4 attorneys to contact for information about decertification where such referral not improper; moreover, fact that E filed decertification ptn immediately after receipt of Ee's anti-U ptn may show condonation but it does not prove E played any role in securing Ee signatures)

Connecticut Distributors, Inc. v. N.L.R.B **681 F.2d 127 (C.A. 2, June 1982)**
(if Ee found supervisor and is also member of U, E is responsible for his circulation of anti-U petitions only if it encouraged, authorized, or ratified supervisor's activities)

N.L.R.B. v. Half-Century, Inc. d/b/a Holiday Inn of Niles, Michigan **644 F.2d 885(T) (C.A. 6, Jan 21, 1981)**
(ct denied enforcement of bargaining order, reversing Bd finding of bad faith bargaining, where successor-E had met with U but did not reach agreement and during course of negotiations ptn signed by 2/3's of Ees was presented to E indicating they no longer wished U representation and E refused to bargain further)

8027-9500 Checkoff authorizations

Strite-Anderson Mfg. **JD-175-82**
(E's changes in working hours and punching in and disregard of old contract's seniority requirements regarding recall from layoff, not unlawful in absence of new contract or renewal of expired contract where E had reasonable doubt of U's majority status based on U shop steward's circulation of decertification ptn. and Ees' revocation of checkoff authorizations)

The Workshop, Inc. **JD-230-80**
(E's failure to ans U's letter requesting meeting to negotiate new, modified contract, unlawful where presumption of majority status continued, and evidence did not support E's claim of doubt of U's majority status; E's poll of Ees was unlawful, decline in Ees' checkoff authorizations resulted from decline in unit size, Ees' decertification ptn was filed 3 month's after E's refusal to bargain, and failure to fill U office at E's facility did not support E's claim when Ees there were still represented by U)

8033 UNION POSITION INCONSISTENT WITH ITS OBLIGATION TO REPRESENT EMPLOYEES

A & T Manufacturing Company **265 NLRB No. 201**
(withdrawal of recognition by E from certified U which also represented Ees of another E which contracted out work to E, lawful, where U in negotiations with contractor-E obtained side agreement to cease contracting out work and presented agreement during negotiations for standard agreement with subcontractor-E, since substantial conflict with cts duty to represent subcontractor-E's Ees)

Edward Z. Holmes Detective Bureau, Inc. **256 NLRB No. 102**
(U's misconduct held not to make test of E's good faith impossible or free E from bargaining obligations where E flagrantly disregarded U contract and status; although U president had stated he would put E out of business, statement was unaccompanied by increased bargaining demands, conflicting interest or attempt to destroy E; his bigoted reference to Ees was made while he was vociferously defending their economic interest; his abrupt leaving of bargaining session was provoked by E; and his fabricated contractual provision submitted to arbitrator neither related to E's obligations nor impacted on E's violations)

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 1979)**
(where U agreed in advance to accept whatever proposals E submitted covering certain mandatory subjects of bargaining that remained unresolved, R/O requiring E to propose contract terms covering these unresolved issues and to execute contract if U agreed to proposals, denied enforcement, since it is doubtful U representative has legal authority to make any such commitment or that Bd or ct has authority to enforce such contract; furthermore, since U free to reject contract there was no contract agreed to by both parties)

8034 ABANDONMENT OF EMPLOYEES BY UNION

Post Manufacturing Company **261 NLRB No. 026**
(U not estopped from singling out layoff of one Ee when Ee was laid off in middle of series of layoffs and U had never requested that E bargain about previous layoffs, since legality of other layoffs was not at issue in instant case; E has generally refused to recognize or bargain with U until ct of appeals enforced prior Bd Order directing E to do so)

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Colson Equipment, Inc. **257 NLRB No. 015**
(U held not to have abandoned or lost its representative status in view of fact that presumption of majority status continued during period of initial contract regardless of degree of U's deficiency in administering contract, that contract contained automatic renewal clause, and that U supported members filing grievance and fulfilled its representative duties, particularly at time its status was called into question, by holding membership meetings, submitting dues deduction cards and designating a shop committeeman)

Martinsburg Concrete Products Co. **248 NLRB No. 172**
(E's refusal to continue recognition of U assertedly on ground that Ees had decided they no longer wished to be represented by U violative where E induced defection of U members by ULPs)

Glomac Plastics, Inc. v. N.L.R.B. **600 F.2d 3 (C.A. 2, 1979)**
(ct entered judgment enforcing bargaining order where ct had remanded cause to Bd for reconsideration of propriety of bargaining order and, pursuant to that remand, Bd had reassessed remedial order and, notwithstanding its assumption of the accuracy of the E's principal claims of substantial Ee turnover in unit and/or abandonment of unit by U, nevertheless entered supplemental order affirming that the original relief granted remained appropriate)

N.L.R.B. v. A.W. Thompson, Inc. **651 F.2d 1141 (C.A. 5, July 1981)**
(lack of Ee participation in U affairs, Ee turnover, U's failure to process grievances, post notices on bulletin boards, appoint stewards, absence of Ee conversations about U and change in ownership of company are insufficient factors to support a good faith doubt in majority status as, unlike in industrial setting, nature of oil-drilling industry and wide dispersion of Ees did not lead to conclusion of lack of U support on part of Ees)

8034-6700 Failure to process grievances

St. Joseph Hospital Corporation **260 NLRB No. 089**
(E's refusal to process, pursuant to contract's grievance-arbitration provision, Ee's grievance concerning her suspension, assertedly for filing charge with Bd, not unlawful, where in refusing to do so E was merely enforcing contract provision barring any further processing once grievant elects to pursue any legal or statutory remedy that might be available to resolve grievance; such provision, which seeks to prevent duplicative adjudication by election of remedies, is not impermissible especially where limitation being imposed is a contractual rather than a legal or statutory right)

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 065**
(record does not support finding of U inactivity to question U's majority status where: U's showing of interest was tainted by E's ULPs; U had notified E of dues increase for checkoff purposes; several Ee grievances had been processed by U during terms of its contract with E; and U had active shop steward who quit her job because of too many complaints)

8036 CONDUCT OF UNION REPRESENTATIVE DURING BARGAINING

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division **257 NLRB No. 152**
(alleged failure and refusal of E to bargain with certified U over E's decision to cease operating its janitorial division and lay off all janitorial Ees held not violative where E was advised by its counsel of necessity of bargaining concerning cancelling custodial contract and its effect on janitorial Ees and where U abruptly ended negotiating meeting with comment that *there was nothing left to discuss*; U did not avail itself of opportunity to discuss E's decision after E had requested response from U)

8036-0100 Generally

International Medication Systems, Ltd. **253 NLRB No. 120**
(failure of U to present final offer of E to unit members can not be used as evidence of E's good faith doubt of majority status since any inference drawn for U's behavior is merely speculative)

8036-1900 Hostility towards employer

Harold Boire, RD v. SAS Ambulance Service, Inc. dba Florida Ambulance Service et al. **No. 80-1112, Oct. 20, 1980, DC M.D. FL (unreported)**
(10(j) inj granted and E restrained from refusing to bargain with U notwithstanding that 2 members of U bargaining committee had been unlawfully discharged by E prior to attempted negotiations; circumstances did not suggest species of ill-will between parties that would justify E's refusal to bargain; circumstances were not permissible exception to rule under criteria of *General Elecric Company v. NLRB*, 412 F.2d 512 (2d Cir. 1969) where negotiator's hostility toward E was held to be sufficient to sustain finding that E's refusal to bargain was not ULP)

8036-2000 Attempts to harrass employer

Edward Z. Holmes Detective Bureau, Inc. **256 NLRB No. 102**
(U's misconduct held not to make test of E's good faith impossible or free E from bargaining obligations where E flagrantly disregarded U contract and status; although U president had stated he would put E out of business, statement was unaccompanied by increased bargaining demands, conflicting interest or attempt to destroy E; his bigoted reference to Ees was made while he was vociferously defending their economic interest; his abrupt leaving of bargaining session was provoked by E; and his fabricated contractual provision submitted to arbitrator neither related to E's obligations nor impacted on E's violations)

8036-3000 Disruptive conduct

Harry Sann, Jr. and Winton R. Wagner, Partners d/b/a Briarcliff Pavilion For Specialized Care **260 NLRB No. 104**
(no violation by increasing wages pursuant to last offer in view of impasse resulting from U's bad faith in failing to provide another negotiator to meet with E after U president engaged in physical altercation with E's negotiators and negotiations had to be carried out with mediator and with parties in separate rooms; U claimed that mediator did not relay E's message that E needed to hire strike replacements and then wages would be increased)

Edward Z. Holmes Detective Bureau, Inc. **256 NLRB No. 102**
(U's misconduct held not to make test of E's good faith impossible or free E from bargaining obligations where E flagrantly disregarded U contract and status; although U president had stated he would put E out of business, statement was unaccompanied by increased bargaining demands, conflicting interest or attempt to destroy E; his bigoted reference to Ees was made while he was vociferously defending their economic interest; his abrupt leaving of bargaining session was provoked by E; and his fabricated contractual provision submitted to arbitrator neither related to E's obligations nor impacted on E's violations)

Dilene Answering Service, Inc. **JD-(NY)-102-81**
(E's conditioning further collective bargaining negotiation meetings upon non-presence and non-participation of U's chief negotiator, not unlawful, where such negotiator's verbal and physical threats of violence towards E's representative during previous meetings made continued good-faith collective bargaining impossible)

8036-4000 Walking out of meeting

Edward Z. Holmes Detective Bureau, Inc. **256 NLRB No. 102**
(U's misconduct held not to make test of E's good faith impossible or free E from bargaining obligations where E flagrantly disregarded U contract and status; although U president had stated he would put E out of business, statement was unaccompanied by increased bargaining demands, conflicting interest or attempt to destroy E; his bigoted reference to Ees was made while he was vociferously defending their economic interest; his abrupt leaving of bargaining session was provoked by E; and his fabricated contractual provision submitted to arbitrator neither related to E's obligations nor impacted on E's violations)

8036-5500 Attacking preconditions to bargaining

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(even if cab companies' decision to lease their cabs was mandatory subject of bargaining, their unilateral action was not ULP because U itself made negotiation impossible by imposing improper condition (recognition of U as bargaining representative of leased-drivers) as prerequisite to bargaining)

8036-6000 Lack of diligence in pursuing bargaining objectives

Cobb Theatres, Inc. **260 NLRB No. 111**
(gap of 2 months where U failed to contact E to arange for negotiations is too brief a period to give rise to good faith doubt of U's interest in representing its membership)

Mercury Marine Division of Brunswick Corporation **259 NLRB No. 110**
(E where UC ptn filed to determine exclusion or inclusion of job classification in bargaining unit opposing party on notice that petitioner intended to resolve unit issue through Bd's procedures rather than through negotiations; therefore, failure of U to insist that these Ees be included in unit during contract negotiations is not abandonment of its position)

Tri-State Carpenters & Joiners District Council **259 NLRB No. 125**
(notwithstanding over year passed after contract expired where U wrote E proposing to initiate bargaining on new contract and during this interim Ees negotiated wage increases by themselves, U still representative of Ees since it had processed grievance through arbitration, had written Ees it would negotiate on their behalf, and E knew that Ees considered U as its bargaining agent)

8036-6300 Failure to make timely response to proposal

Wagner Distribution Services, Inc. d/b/a Distribution Services West **262 NLRB No. 096**
(E unilaterally changing hours of swing shift which was paid shift differential to hours substantially overlapping hours of first shift which was not paid wage differential, unlawful, notwithstanding E's contention U had actual knowledge of E's intended change through communication by shop steward to U official and U waived its rights by its failure to request bargaining, since change was mandatory subject of bargaining and E failed to show U

8036-6500—Cont.

received sufficiently reliable notice of change to trigger obligation to demand bargaining)

W. G. Best Homes Corporation **253 NLRB No. 123**
(E's failure to bargain regarding subcontracting its transportation department, not unlawful, where U failed to request bargaining regarding subcontracting, notwithstanding U was apprised of E's economic problems and on notice of its intent to subcontract its transportation department to cut costs)

8036-7000 Repudiation of previous progress and tentative agreements

Pittsburgh-Des Moines Corporation v. N.L.R.B. **663 F.2d 956 (C.A. 9, Dec. 1981)**
(ct rejected proposition implicit in Bd's conclusion that in face of U's unequivocal rejection of E's offer, E was somehow committed to all portions of the proposal as to which tentative agreement had been reached; that U could hold E to what U liked while rejecting that which it disapproved. Party may retract proposal before other side has accepted it)

8040 CONDUCT OF EMPLOYER DURING BARGAINING

Parkview Nursing Center II Corp. **260 NLRB No. 037**
(in context of totality of E's conduct, E's bad-faith bargaining was indicated by its chief negotiator's statement away from bargaining table that E had not made up its mind whether it would sign contract with U)

8040-3300 Employer gave adequate notice

Jones Motor Co., Inc. **250 NLRB No. 015**
(common carrier holding meetings with Ees and unilaterally implementing change in rental payments to owner-operators (Ees) for lease of tractor-trailers in contravention of terms of multi E contract (FNMA), not violative, notwithstanding E did not discuss changes with local Us that represented Ees since E did consult with Teamsters National Freight Industry Negotiating Committee who had represented locals in contract negotiations and was agent for purposes of negotiations. See *Spector Freight Systems, Inc., Viking Division,* 260 NLRB No. 14 (1982))

W. G. Best Homes Corporation **253 NLRB No. 123**
(E's failure to bargain regarding subcontracting its transportation department, not unlawful, where U failed to request bargaining regarding subcontracting, notwithstanding U was apprised of E's economic problems and on notice of its intent to subcontract its transportation department to cut costs)

8042 EXISTENCE OF BINDING AGREEMENT

F.M.L. Supply, Inc. **258 NLRB No. 083**
(notwithstanding that E did not have signed contract with U, E was estopped from denying it was bound by residential and commercial agreements between multiE group, of which E was not member, and U, since E held itself out to its Ees under U contract by hiring through U hiring hall and making payments into various U trust funds; E's conduct was consciously deceptive (to its Ees and U) over long period and manifest desire to take advantage of U's miscalculation concerning existence of contract)

Georgia Kraft Company, Woodkraft Division **258 NLRB No. 121**
(E's refusal to execute contract held violative where, after 5 meetings between E and U to modify and renegotiate current contract, U, by telegram, advised E that (E's) last offer had been accepted as final and binding contract and that contacted strikers would return to work notwithstanding U did not intend to accept E's *proposal* on discipline of strikers who allegedly had committed acts of misconduct during strike)

Associated Grocers **253 NLRB No. 005**
(no violation where E gave U adequate notice that it planned to discontinue job of packaging potatoes in unit and agreed to bargain over)

Franklin Art Glass Studios, Inc. **250 NLRB No. 095**
(even assuming parties' private settlement agreement had been executed, whereby E had withdrawn its exceptions to RD's report on challenged ballots and U had agreed to withdraw ULP charges, terms of settlement agreement had no bearing on E's obligation to recognize and bargain with U, where U received majority vote in election; E's allegation that U breached agreement held immaterial to issues involved in instant summary judgment proceeding and did not justify E's refusal to bargain)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 098**
(contract not void for uncertainty, where E signed extension stipulating that E would be bound by whatever terms and conditions were negotiated with multi-E association since there was no evidence of coercion or duress and E and U actually continued their collective bargaining relationship beyond one year provided by extension stipulation and in accordance with past practice)

Suburban Transit Corporation **JD-198-82**
(E's refusal to bargain anew with U chairmen over contract for unit Ees, not violative, where contract had already been ratified by unit Ees and executed by U's committeemen and E's representative though not by U chairmen, as this procedure was in accord with past practices in reaching binding agreement; U chairman's signature to contract was ministerial act only; U chairman knew of contract negotiations and did not raise any objections until after contract executed by parties)

8045 DEFENSES BASED UPON CONTRACT CONSIDERATIONS

8045-1200 Actions permissible in absence of contract

Diplomat Envelope Corporation **263 NLRB No. 079**
(refusing to arbitrate Ee's discharge on grounds that no contract was in existence violative, in view of finding that signed memorandum agreement was binding and that E had unlawfully refused to execute new contract)

Taurus Waste Disposal, Inc. **263 NLRB No. 028**
(E's failure to make fringe benefit payments pursuant to contract after contract expired, unlawful, since fringe benefits constitute term and condition of employment which survive expiration of contract, and may not be unilaterally altered by E absent waiver by U, impasse, or U's loss of majority)

United States Postal Service **261 NLRB No. 068**
(E's not informing certified U of E's decision not to pay, and not paying, certain wage increases to bargaining unit Ees while granting random wage increases to its unorganized Ees held not violative, since, once U was certified, bargaining unit Ees could not expect to receive all random wage increases while U was bargaining with E over new contract; absent evidence of animus or of contemporaneous unlawful conduct, E had no duty to notify U of wage increases to nonbargaining unit Ees, or to bargain with U about, or grant, wage increases to unit Ees)

F.M.L. Supply, Inc. **258 NLRB No. 083**
(notwithstanding that E did not have signed contract with U, E was estopped from denying it was bound by residential and commercial agreements between multiE group, of which E was not member, and U, since E held itself out to its Ees under U contract by hiring through U hiring hall and making payments into various U trust funds; E's conduct was consciously deceptive (to its Ees and U) over long period and manifest desire to take advantage of U's miscalculation concerning existence of contract)

Island Typographers, Inc. **252 NLRB No. 063**
(E bound by unsigned collective bargaining agreement where it complied with all its terms for 1st year of contract term and gave U no reason to believe it repudiated contract terms already agreed upon)

Westwood Import Company, Inc. **251 NLRB No. 162**
(while successor E is ordinarily free to set initial terms on which it will hire Ees of predecessor, where successor E did not mention changes in conditions of employment in interviews with Ees of predecessor, unilateral changes instituted after hiring Ees cannot be considered as initial conditions of employment under *Burns* and thus violative)

Strite-Anderson Mfg. **JD-178-82**
(E's changes in working hours and punching in and disregard of old contract's seniority requirements regarding recall from layoff, not unlawful in absence of new contract or renewal of expired contract where E had reasonable doubt of U's majority status based on U shop steward's circulation of decertification ptn and Ees' revocation of checkoff authorization)

Potters' Medical Center, Inc. **JD-605-81**
(unilaterally changing wage scale and pay classification system violative notwithstanding impasse, as such changes were not those reasonably comprehended by the bargaining proposals; i.e., general wage increase granted though bargaining proposals covered merit pay increase on Ee's anniversary date)

Excavation-Construction, Inc. v. N.L.R.B. **660 F.2d 1015 (C.A. 4, Oct. 1981)**
(no unlawful unilateral wage increase where E switched from paying $8.30 plus $.84 per hour in pension and hospitalization benefits contributions to paying striaght $9.14 per hour to replacements and offering same to non striking Ees; alternatively, as impasse had occurred, E free to make unilateral changes in terms and conditions of employment)

Cartwright Hardware Company, Inc. v. N.L.R.B. **600 F.2d 268 (C.A. 10, 1979)**
(bargaining order appropriate notwithstanding voluntary quit of three U members since presumption of continuing majority after expiration of contract justifies enforcement of order)

8045-2500 Actions permissible during hiatus between contract

Elias Mallouk Realty Corp. **265 NLRB No. 156**
(E unilaterally granting wage increases after expiration of contract, unlawful, absent impasse and objective considerations to rebut U's presumption of continuing majority status, and in view of E's ULPs including bargaining in bad faith, criticisms to Ees concerning U with which it had had contract, and suggesting to Ees that they choose new bargaining agent)

Vesuvius Crucible Company v. N.L.R.B. **668 F.2d 162 (C.A. 3, Nov. 1981)**
(refusal to pay strikers accrued vacation pay pursuant to expired contract not violative, as E had good faith belief that entitlement to and amount of

8045-2500—Cont.

vacation pay was to be determined under new collective bargaining contract if and when contract executed. Such conduct, unlike offering non-strikers benefits, or threatening strikers with loss of benefits if they did not return to work, is not inherently destructive of Ee rights so as to obviate need to show prohibited motive; furthermore, here E's good faith belief does not show anti-U motivation on part of E)

8045-3300 Incomplete contract

James F. Stanford, Inc. d/b/a Ace Machine Co. **249 NLRB No. 073**
(two inadvertent errors in written agreement submitted by U to E did not excuse E's complete refusal to execute agreement previously reached by U and E)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(contract not void for uncertainty, where E signed extension stipulating that E would be bound by whatever terms and conditions were negotiated with multi-E association since there was no evidence of coercion or duress and E and U actually continued their collective bargaining relationship beyond one year provided by extension stipulation and in accordance with past practice)

Crane Sheet Metal, Inc. **248 NLRB No. 015**
(where E association and U had reached agreement on terms of contract fact that another separate agreement covering wage rates for other types of jobs still needed to be negotiated does not affect legal status of first contract)

N.L.R.B. v. Sumner Home For The Aged **293 F.2d 754 (C.A. 6, 1979)**
(where U agreed in advance to accept whatever proposals E submitted covering certain mandatory subjects of bargaining that remained unresolved, R/O requiring E to propose contract terms covering these unresolved issues and to execute contract if U agreed to proposals, denied enforcement, since it is doubtful U representative has legal authority to make any such commitment or that Bd or ct has authority to enforce such contract; furthermore, since U free to reject contract there was no contract agreed to by both parties)

8045-3600 Contract provision prohibits action

Navajo Freight Lines, Inc. **254 NLRB No. 166**
(E's refusal to negotiate area practices agreement on gound that provision in applicable E association agreement prohibited it from doing so, unlawful, where area practices agreement was sanctioned by another provision of E association agreement, and reading its provisions in conjunction with each other, when viewed in light of past history of negotiations of area practices agreements, indicates that E has not proved *clear and unmistakeable* case of statutory waiver)

8045-3700 Contract provisions expressly authorize actions

Debolt Transfer Company **259 NLRB No. 116**
(E's cancelling of lease agreement with its owner-operators not violative where such cancelling was not unilateral change but was contemplated by contract and E's motives were purely economic)

8045-3725 Management rights clause

Bay Shipbuilding Corp. **263 NLRB No. 166**
(bargaining contract which gave E right to establish new department did not give E right to designate department as non-U and remove Ees transferred to new department from unit; rather, *E has burden of showing that group is sufficiently dissimilar from remainder of unit so as to warrant its removal*)

Capital Parcel Delivery Company **256 NLRB No. 050**
(E violated Act when it laid off all its unit Ees and subcontracted work notwithstanding contract gave E right to subcontract work to independent contractors where new hires found to be Ees and not independent contractors under *right to control* test)

Laredo Packing Company **254 NLRB No. 001**
(E's failure to bargain regarding temporary discontinuance of operations and resulting layoff of Ees, not unlawful, since U waived right to bargain regarding termination of operation by virture of management rights clause which generally reserved to E right to *abolish or change operations, determine extent to which plant will operate, layoff of Ees because of legitimate reasons, sell...terminate, discontinue, or transfer operations due to...economic factors*, and E's obligations to bargain was further limited by agreement to permanent discontinuance of operations)

Universal Security Instruments, Inc. **250 NLRB No. 092**
(collective-bargaining agreement containing management rights clause allowing E to *relocate* plant w/o bargaining, does not constitute waiver of U's right to bargain over opening of new plant and subsequent transfer of Ees to that plant as term *relocate* does not cover this situation; clear and unequivocal waiver by U of its right to bargain with E over closing of plant and transfer of its Ees is necessary to constitute such waiver)

Lever Brothers Company **JD-301-80**
(E's promulgation of new, more stringent absentee rule during contract term not violative because U by its agreement to management rights clause, which by past agreements covered absenteeism, waived its right to be consulted and bargain thereon, at that time)

8045-5000 Contract provisions impliedly authorizes action

U.S. Utilities Corporation **254 NLRB No. 055**
(refusing to apply contract to work outside U's jurisdiction and unilaterally establishing new terms for these operations, violative as contract by its terms applied to work wherever company works)

8045-5600 Contract terms affected by government policy or regulations

GAF Corporation **265 NLRB No. 176**
(no violation where E refused to submit claim that it changed retirees benefits w/o explanation to grievance procedure of collective bargaining agreement, but rather elected to go under claims procedures provided under separate ERISA Pension Agreement executed by U and E, as latter procedure specifically designed to handle such disputes, required to be utilized by ERISA and E willing to have grievance's merits resolved under its provisions)

E. I. Du Pont De Nemours and Company **259 NLRB No. 161**
(held unilateral mid-term contract modification where, though U and E agreed that Ees would have additional holiday, no agreement reached on what day would be observed as holiday so E selected date. All other holidays in contract are specified as to date celebrated)

8045-5900 Contract as bar to election

N.L.R.B. v. Circle A & W Products Company **647 F.2d 924 (C.A. 9, June 1981)**
(where U disclaimed representation of unit during contract term and, in the meantime, Ees elected new U with whom E refused to bargain on grounds that Bd's contract bar rules were applicable, ct enforced Bd's bargaining order, where E did not allege that election ptn was pretext, or that collusion or significant motivation existed for purpose of avoiding agreement, but stated that dispute over U security clause was sole reason for changing bargaining agents; and fair inference is that there was legitimate disagreement between Ees and their U over fundamental matter of policy)

8045-6000 Illegal execution of contract

Pick-Mt. Laurel Corporation **259 NLRB No. 034**
(expression of dissatisfaction with U made to supervisors by at least 29 out of 103 Ees; and notwithstanding occurred outside Section 10(b) period, predecessor E's illegal practice of requiring Ees to join U and sign dues checkoff on first day of work and continuing this practice into 10(b) period, and its recognition of U and negotiation of agreement w/o designation by any member of unit, sufficient to support successor E's good faith doubt justifying its withdrawal of recognition)

Pick-Mt Laurel Corporation v. N.L.R.B. **625 F.2d 476 (C.A. 3, 1980)**
(where E proferred defense of good faith doubt of U's majority status, ct held E could reasonably consider pre-10(b) circumstances because *sweetheart* relationship evidenced by unlawful prehire contract entered into by predecessor E sheds light on its commission of independent ULP in assisting U w/i 10(b) period; however, since successor E did not make clear the relationship, if any, between unlawful assistance during 10(b) period and its claim of good faith doubt, ct deemed it best left to Bd, which had not previously considered issue, to consider it in the first instance)

8045-6200 Breach of contract

Baker Marine Corporation **258 NLRB No. 091**
(failure to install extra spider baskets during construction of drilling rig by certain date, not unlawful, where although E queried Ees about willingness to work on rig with extra spider baskets, evidence failed to establish there was contracted-for commitment)

8045-6220 No-strike provisions

The Dow Chemical Company v. N.L.R.B. **636 F.2d 1352 (C.A. 3, 1980)**
(E's unilateral announcement and implementation of a shift change from a 7 to 5 day work week held not to justify strike protesting E's action, since U breached contract's no-strike clause w/o exhausting grievance procedures; strike was over conflicting interpretations of contract, and it would be unrealistic to suggest that no-strike clause was not intended to apply to dispute over meaning of contract; consequently, Bd's finding that strike was not breach of contract cannot be sustained as an application of rule of contract interpretation as to coverage of no-strike provision announced in SCt's Mastro Plastics decision)

N.L.R.B. v. Northeast Oklahoma City Manufacturing Company **631 F.2d 669 (C.A. 10, Sept. 1980)**
(Bd properly found material breach of contract by E in its unilateral persistent delays in making monthly bonus payments, thereby excusing Ees' breach of no-strike agreement)

8045-6240 Grievance and arbitration provisions

GAF Corporation **265 NLRB No. 176**
(no violation where E refused to submit claim that it changed retirees benefits w/o explanation to grievance procedure of collective bargaining

8045-6240—Cont.

agreement, but rather elected to go under claims procedures provided under separate ERISA Pension Agreement executed by U and E, as latter procedure specifically designed to handle such disputes, required to be utilized by ERISA and E willing to have grievance's merits resolved under its provisions)

St. Joseph Hospital Corporation 260 NLRB No. 089

(right of party to pursue grievance to arbitration is contractual right and does not arise by operation of law; thus, while contract may or may not, depending on wishes of parties, contain a grievance-arbitration clause, it is clear that in absence of such clause a party cannot be compelled to arbitrate a grievance)

Indiana Bell Telephone Company, Inc. 252 NLRB No. 085

(no violation where E at first would only arbitrate contractual grievances at its location but later offered to alternate with U in choosing site; moreover, E has no obligation to conduct all arbitrations at plant location, U's choice)

United States Postal Service 251 NLRB No. 033

(E meeting with grievant w/o U representative, not unlawful, where U contractually waived any mandatory right to be present during first step grievance meetings and where E merely restated contract to Ee w/o discussing merits of grievance or dissuading Ee from filing formal grievance)

Caterpillar Tractor Co. v. N.L.R.B. 638 F.2d 140 (C.A. 7, Sept. 1981)

(strike not protected, notwithstanding contention strike ULP and no waiver under contract to strike regarding ULP since contract provided that there would be no strikes until grievance procedure exhausted and grievance on underlying dispute was pending; nor was E's unlawful unilateral changes regarding transfers *serious* labor dispute w/i Mastro Plastics so as to preclude waiver of right to strike regarding ULPs)

8045-6280 Condonation of prior breach

N.L.R.B. v. Silver Spur Casino 623 F.2d 571 (C.A. 9, 1980)

(U's condonation of E's unilateral implementation of new insurance plan *wipes the slate clean*; Bd's order which required E to c/d from unilaterally changing terms of agreement reversed since there was no ULP upon which to base charge)

8045-6700 Unlawful provision

Taurus Waste Disposal, Inc. 263 NLRB No. 028

(E's contention that expired contract contained subcontracting provision unlawful under Section 8(e) of Act, thus no obligation to bargain for new contract, rejected, since provision was in two prior agreements and had never been held unlawful, and it was only after E filed charge alleging unlawfulness of provision that it sought to avoid its bargaining obligation; further, pursuant to settlement of charge provision had been modified, and in view of its separability clause agreement as whole was not rendered invalid)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)

(even if cab companies' decision to lease their cabs was mandatory subject of bargaining, their unilateral action was not ULP because U itself made negotiation impossible by imposing improper condition (recognition of U as bargaining representative of leased-drivers) as prerequisite to bargaining)

8045-8300 Automatic Renewal of Contract

Taft Broadcasting Company, WBRC–TV 268 NLRB No. 028

(contract not automatically renewed notwithstanding U's notice to E that it wished to reopen negotiations was not timely received, where U sent notice in sufficient time to be timely delivered by post office)

KCW Furniture Company, Inc. 247 NLRB No. 079

(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

8045-9100 Execution of contract clause illegal under state or federal law

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(*anyone sued upon a contract may set up as a defense that it is a violation of Act of Congress, and if found to be so, that fact will constitute a good defense to the action*—; a defendent proferring defense of illegal contract seeks only to be relieved of an illegal obligation and does not ask any affirmative remedy based on antitrust or labor laws)

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(third party beneficiaries, like Trustees of benefit funds, are subject to contract defenses of nonperforming promisors; pension fund trustees have no special status which exempts them from general rule that cts do not enforce illegal contracts)

N.L.R.B. v. Custom Sheet Metal & Service Co., Inc. 666 F.2d 484 (C.A. 10, Dec. 1981)

(Bd's R/O, which required E to execute 8(f) contract but not give effect to those provisions (8 day U security and qualification for employment clause) which would be unlawful if applied to E who was no longer engaged in construction work but was manufacturing concern, set aside, where, especially latter clause, is so basic to contract and so interwoven with all its terms that it must stand or fall as an entirety; furthermore, no savings and severability clause in contract)

8045-9500 Termination of contract

Remodeling By Oltmanns, Inc. 263 NLRB No. 10

(refusal of E who was not member of multi-E association to abide by current contract between association and U, not unlawful, notwithstanding agreement with U in which E had agreed to abide by expired association bargaining agreement and to *be bound by terms of negotiated agreements with association during terms of agreement* since agreement was only meant to be temproary interim agreement with intent to bind E only for duration of next agreement with association and this agreement expired)

Capitol City Lumber Company 263 NLRB No. 10

(where parties had negotiated 1-year contract with year-to-year extensions unless either party gave notice of cancellation but because U welfare and pension funds required 3-year commitment, they had included articles providing for 3-year contributions with yearly step-increases, E's failure to increase 2nd year amount and to make 3rd-year contributions after contract was terminated at end of 2nd year held unlawful, since contribution commitment survived contract, and parties' letter of understanding reiterated 3-year commitment and, although it seemed to contradict step-increase requirements, had to be construed consistently with contract)

KCW Furniture Company, Inc. 247 NLRB No. 079

(E's implementation of its last offer upon impasse, violative, since contract automatically renewed upon failure to give termination notice; contention that U's notice of *opening of labor agreement to negotiate changes in wages, hours, and other forms and conditions of employment* terminated contract by, in substance, asking for new agreement, rejected, where contract expressly provided w/o qualification that notice of opening does not terminate or forestall automatic renewal and imposed no limitation or restriction on extent or form which negotiations may take pursuant to such notice)

Potomac Iron Works, Inc.

(JD-264-82

(contract held not terminated, as claimed by E, after its meeting with U representatives concerning E's financial inability to honor contract, absent clear and unmistakable evidence of mutual intent to terminate; E was not entitled, as matter of law, to conclude from U's silence at meeting that U agreed to terminate contract *in toto*, and E, itself, may have felt contract was not terminated in view of U pressure for payment of fringe benefits and its filing of grievance with demand for arbitration, and E's continued honoring of checkoff provision, granting of wage increase, and subsequent attempt to amend contract)

KCW Furniture, Inc. v. N.L.R.B. 634 F.2d 436 (C.A. 9, 1980)

(*Duration and Renewal* provision in contract between E and U expressly authorized right to negotiate during term of automatically renewed contract; where U gave 60 day *notice of opening.* E's unilateral implementation of its final offer held unlawful since duration and renewal provision was neither ambiguous nor in violation of Act and bargaining agreement was never terminated)

8045-9700 Rescission of contract

Lincoln Technical Institute, Inc. 256 NLRB No. 03

(rescission of collective-bargaining agreement containing no-strike clause after U materially breached contract not violative, where U engaged in strike rather than utilizing grievance-arbitration procedures after E expressed willingness to submit matters to arbitration)

8049 DEFENSES BASED UPON PAST PRACTICES

The Sacramento Union 258 NLRB No. 141

(*E's duty to bargain not relieved by expiration of bargaining agreement. Although expiration of contract may permit E to negotiate new and different terms, it may not, absent impasse or waiver by U, unilaterally change established practices with respect to mandatory subject of bargaining even if these practices may have constituted deviation from letters of parties expired agreement)*

Louisiana-Pacific Corporation 256 NLRB No. 13

(E not obligated to bargain with U concerning undecking of logs at its mill and piling them preparatory to logs being loaded by subcontractor's Ees, since, subcontracting of work was consistent with E's past practice; work was only occasionally done by E's Ees; no bargaining history that E's Ees and subcontractor's Ees worked as composite crew; subcontracting was economically justified; and U, in past, had unsuccessfully sought contract language limiting established subcontracting)

8049—Cont.

Associated Grocers **253 NLRB No. 065**

(administering industrial vehicle tests to returning strikers not violative where tests were a prestrike practice)

The Arundel Corporation **252 NLRB No. 089**

(E's establishment of corporate subsidiary held legitimate attempt to establish part of its business as non-U operation where E took advantage of past practices under which Us did not seek to apply their agreements to E's other subsidiaries, and new operation was not merely device for draining off work from existing unit work but was a *parallel and simultaneous one*, and E managed to create separate appropriate unit at new location)

8050 DEFENSE BASED UPON STATUTORY PROSCRIPTION

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**

(contention that unilateral wage increase was justified by imminence of anticipated Presidential wage freeze rejected, since anticipated wage freeze was not such special circumstance that would justify remedial action under *N.L.R.B. v. Benne Katz, etc., d/b/a Williamsburg Steel Products Co., 369 U.S. 736, 743 (1962)*)

8052 DEFENSE OF ECONOMIC HARDSHIP

Valley Mfg., Inc. **264 NLRB No. 171**

(E's distressing financial situation held not to justify its repudiation or modification of contract)

Glenmar Cinestate, Inc. **264 NLRB No. 035**

(E did not bargain in bad faith and valid impasse was reached, although under normal circumstances magnitude of wage decrease proposed along with proposed sharp curtailment of other benefits would be strong evidence of such, where evidence that E was experiencing severe financial difficulties stood uncontroverted; moreover, U never requested to see E's financial books or records, and in fact, U representative stated during negotiations that both sides were bargaining in good faith, that U did not question E's integrity, and that it was not demanding to see E's books)

C & D Battery Division—Eltra Corporation **263 NLRB No. 106**

(fact that layoff of Ees may have been economically motivated does not justify E's unilateral action in doing so; while E may properly decide that economic layoff is required, once such decision is made E must nevertheless notify U and, upon request, bargain with it concerning layoff)

Bedford Farmers Cooperative **259 NLRB No. 165**

(claim of economic necessity, even if sustained, does not excuse E's unilateral actions concerning terms and conditions of employment)

F.M.L. Supply, Inc. **258 NLRB No. 083**

(financial hardship no justification for (unilateral) repudiation or modification of collective-bargaining agreement or any of its terms)

Schauer Construction Company **258 NLRB No. 173**

(E's failure to make payments into fringe benefit fund as required by bargaining agreement, unlawful; E's defense that its failure to do so was caused by financial conditions beyond its control and was not intentional evasion, rejected; *It is well established that economic necessity is not cognizable as defense to unilateral repudiation of monetary provisions in bargaining agreement*)

University of Vermont/Vermont Educational Television **258 NLRB No. 001**

(refusal of nonprofit E which was funded largely by legislative appropriation to agree to immediate wage increase held hard bargaining and not unlawful in view of E's claim of inability to pay increase -- due to lack of funds and uncertainty as to amount of appropriation -- and other substantial reasons where E exhibited overall subjective good faith in bargaining and no intention to use same strategy in future to delay negotiations until it received funding)

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division **257 NLRB No. 152**

(when economic reasons compel E to decide whether or not to shut down part of its business, E's need to operate freely outweighs any incremental benefit that might be gained through U's participation in decision-making)

Care Ambulance, Inc. and Care Ambulance, Inc. d/b/a American Ambulance **255 NLRB No. 064**

(contention that unilateral changes in payroll period, paydays and overtime rates was privileged because of urgent economic necessity, rejected where there was time to bargain before making changes and reduction in overtime rate would have little impact and could have been made temporary rather than permanent)

Albion Corporation d/b/a Brooks, Inc. **251 NLRB No. 104**

(on ct remand requiring Bd to admit newly discovered evidence pertaining to post-hearing agreements reached by parties, Bd affirmed ALJ's conclusion that new evidence established that, in negotiating with U resulting in agreement for substantially lower economic package than was had previsouly, E did not maintain its bargaining strategy for other than legitimate business considerations occasioned by its severe financial condition)

Lorard Industries, Limited **JD-290-82**

(unilateral changes in terms and conditions of employment, including discharge and layoff, between election and certification held violative where there were no *compelling economic considerations* for discharges and/or layoffs)

D. M. Barber, Inc. **JD-(SF)-102-81**

(economic necessity no defense to unilateral discontinuation contractually required payments to pension, health and welfare, and training funds)

Clifford Cook, d/b/a Pinnacle Company and Pinnacle Roofing Co., Inc. **JD-(SF)-196-79**

(repudiation of contract with Us for economic reason based upon E's *desire* to be more competitive in order to perform work for E's primary customer held violative, since economic *desire* to become more competitive would not legally justify E's abrogation of contract with Us)

N.L.R.B. v. Inland Cities, Inc. **618 F.2d 117(T) (C.A. 9, 1980)**

(E who signed interim agreement which bound him to outcome of negotiations by E-association violated Act when it refused to comply with contract; repudiation is not excused because E was motivated by economic necessity)

Arco Electric Company v. N.L.R.B. **618 F.2d 698 (C.A. 10, 1980)**

(E's stopping compliance with new bargaining agreement between U and multi-E association because of financial hardship, violative notwithstanding asserted good faith doubt of majority U status, where E did not notify U of intent not to renew bargaining obligation as E's *letter of assent* to expired multi-E bargaining agreement had provided, but rather availed itself of U hiring hall for referral of Ees for 15 months after effective date of new contract and implemented terms of new contract until it encountered economic hardship)

8054 WAIVER (SEE ALSO 775-0000)

Rockwell International Corporation **260 NLRB No. 153**

(duty to bargain continues during existence of bargaining agreement concerning any mandatory subject of bargaining which has not been specifically covered in the contract and regarding which U has not clearly and unmistakably waived its right to bargain)

Navajo Freight Lines, Inc. **254 NLRB No. 166**

(E's refusal to negotiate renewal of area practice agreement, unlawful; U did not waive its right to demand bargaining about such agreement because it agreed to be governed by existing E-association agreement since, upon signing preceding area practices agreements, it was E's and U's intention that, where there was a difference between area practices and E-association agreements, area practices agreement would govern, and such intent was sanctioned by E-association agreement; fact that E-association did not sign area practices agreement did not invalidate such agreement nor excuse E's refusal to negotiate its refusal)

Laredo Packing Company **254 NLRB No. 001**

(E's failure to bargain regarding temporary discontinuance of operations and resulting layoff of Ees, not unlawful, since U waived right to bargain regarding termination of operation by virture of management rights clause which generally reserved to E right to *abolish or change operations, determine extent to which plant will operate, layoff of Ees because of legitimate reasons, sell...terminate, discontinue, or transfer operations due to...economic factors*, and E's obligations to bargain was further limited by agreement to permanent discontinuance of operations)

Furr's Cafeterias, Inc. **251 NLRB No. 125**

(unilateral grant of merit increases prior to U certification, violative, where merit increases were not automatic, involved much discretion on part of E, and given at unpredictable time intervals; moreover, U did not waive its right to notice about each increase when it agreed during negotiations not to oppose such merit increases as long as increases were granted in accordance with certain specified time procedures)

8054-0100 Generally

The Dow Chemical Company **261 NLRB No. 031**

(E's actions in transferring or *loaning out* for other than their regular work unit Ees for periods of time in excess of those specified in collective agreements to which E was party and its continuing insistence that it had right to do so, violative, notwithstanding E's contentions that U waived contractual requirements in question before execution of current contract and bound itself to contrary understanding antedating execution of current contract where E knowledgeably entered into contract containing provision which, if unintended could readily have been stricken from contract or changed before signing)

Hassett Maintenance Corporation **260 NLRB No. 135**

(E who ignored U's letter requesting bargaining over new agreement for more than 6 weeks after it received letter and ignored U's efforts to contact him by telephone violated Act notwithstanding old contract contained clause requiring notice of intent to renegotiate more than 60 days prior to expiration of contract and U demand fell within 60 days, as E never refused to bargain on ground that request was untimely and thus waived its right to do so)

8054-0100—Cont.

Navajo Freight Lines, Inc. **254 NLRB No. 166**

(E's refusal to negotiate area practices agreement on ground that U's acceptance of E association agreement constituted waiver of negotiations for area practices agreement and was bar to and estopped ULP charges, unlawful, in view of circumstances herein, which included fact that U members voted to accept E association's negotiated settlement agreement rather than enter into separate negotiations with E, which was option contained in settlement agreement, and such agreement did not support argument that U waived right to negotiate for area practices agreement or to file ULP charges regarding E's refusal to do so)

Transportation Manpower Services of Ohio, Inc. **JD-(SF)-192-82**

(E's refusal to bargain with U, not violative, notwithstanding E was successor to predecessor E where U waived its right to bargain with any successor of predecessor)

Lever Brothers Company **JD-301-80**

(E's refusal to bargain over absentee rule violative notwithstanding prior contracts contained management rights clause covering absenteeism because U's waiver expired with contract and E must bargain over mandatory subject)

N.L.R.B. v. National Car Rental System, Inc. **672 F.2d 1182 (C.A. 3, Feb. 1982)**

(E's failure to bargain over effects of its decision to close its facility, assertedly because of economic reasons, and to terminate U members, and its decision to open new non-U facility, unlawful, where U did not waive its right to bargain about effects of relocation, since U's prior knowledge of E's relocation decision based on plant gossip, conjecture and rumor was not legally sufficient notice; and U official's failure to request bargaining was due to E's announcement of decision as *fait accompli*, indicating that request to bargain would be futile)

8054-0133 Waiver must be explicit

RAHCO, Inc. **265 NLRB No. 030**

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**

(U did not waive its right to request health and safety information, since right was derived from Section 8(d) of Act and contract between E and U contained no such waiver either in *clear and unmistakable* language, or even impliedly)

Colgate-Palmolive Company **261 NLRB No. 007**

(contention that by agreeing to a health and safety clause in the contract U waived right to receive health and safety information on request, rejected; neither contract language nor record as a whole showed requisite *clear and unmistakable waiver* of right to such information)

The Mead Corporation **256 NLRB No. 108**

(fact that contract article concerning wage rate adjustments specifies legal effect of agreement or lack of agreement by parties during mid-term (contract) negotiations, held not waiver of Ee rights and may not be equated with express relinquishment by U of its rights to demand bargaining especially in view of U's vigorous assertion of its position during negotiations, and its demand that E promise to make wage adjustments rather than merely discuss them)

PPG Industries, Inc. **255 NLRB No. 041**

(refusal to furnish U work evaluation reports and related documents concerning grievant who was temporary summer Ee, violative, where information was relevant to underlying grievance and U's capacity as bargaining agent, and U did not clearly and unmistakably waive its right to grieve over termination of temporary Ees or to obtain information relevant to such grievant)

Navajo Freight Lines, Inc. **254 NLRB No. 166**

(where E unlawfully changed vacation scheduling and pay, ALJ rejected E's contention that U waived its statutory right to bargain about vacation matters by virtue of E association agreement providing for designation of vacation periods by E with limitations; waiver must be expressed in *clear and unmistakeable language*, and applicable area practices agreement, which governed when conflict existed between the two agreements, required application of E's past practices which placed no limitations on vacation periods; fact that area practices agreement had terminated did not previlege E to unilaterally change terms and conditions of employment)

Navajo Freight Lines, Inc. **254 NLRB No. 166**

(E's refusal to negotiate area practices agreement on gound that provision in applicable E association agreement prohibited it from doing so, unlawful, where area practices agreement was sanctioned by another provision of E association agreement, and reading its provisions in conjunction with each other, when viewed in light of past history of negotiations of area practices agreements, indicates that E has not proved *clear and unmistakeable* case of statutory waiver)

Armour Oil Company **253 NLRB No. 148**

(contract language that *—closing of plant or any department or single operation—shall not be deemed a lockout*, by itself, did not constitute clear and unmistakeable waiver of U's right to be consulted about change in E's operations)

National Car Rental System, Inc. **252 NLRB No. [illegible]**

(contract's *zipper clause* waiving parties' bargaining rights over subject matter not included, or referred to, in contract or w/i contemplation or knowledge of parties when they negotiated agreement held not waiver of effects of E decision to sell and relocate operations, since general *zipper clause* did not amount to *clear specific and unmistakable waiver* by U of right to be consulted regarding effects of elimination of all unit positions)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**

(*zipper clause* not waiver where record did not establish what, if any, specific proposals were considered during contract negotiations nor even whether parties were agreed on precisely what provisions they were agreeing to exclude)

Universal Security Instruments, Inc. **250 NLRB No. [illegible]**

(collective-bargaining agreement containing management rights clause allowing E to *relocate* plant w/o bargaining, does not constitute waiver of U's right to bargain over opening of new plant and subsequent transfer of Ees to that plant as term *relocate* does not cover this situation; clear and unequivocal waiver by U of its right to bargain with E over closing of plant and transfer of its Ees is necessary to constitute such waiver)

Tenneco Chemicals, Inc. **249 NLRB No. 171**

Arizona Public Service Company **247 NLRB No. [illegible]**

(U held not to have waived its statutory right to bargain over E's subcontracting practices after existing subcontracting clause was declared invalid; contract *reopener* clause clearly and unmistakably manifested intention to preserve, rather than to forfeit, right to bargain about subject covered by any clause which had been invalidated, and *management rights* and *zipper* clauses contained no language which clearly and unmistakably committed U to forfeiture of right to bargain with E over subcontracting issue)

Lever Brothers Company **JD-301-80**

(E's promulgation of new, more stringent absentee rule during contract term not violative because U by its agreement to management rights clause, which by past agreements covered absenteeism, waived its right to be consulted and bargain thereon, at that time)

The Chesapeake and Potomac Telephone Company v. N.L.R.B. **687 F.2d 633 (C.A. 2, Aug. 1982)**

(E's contention that U, having invoked arbitration of grievance, waived any statutory right to request information relating to grievance, rejected; national labor policy disfavors waivers of statutory rights, and U's intention to waive right must be clear before claim of waiver can succeed; contract language will effect waiver only if it is *clear and unmistakable* in waiving statutory right; and conduct of parties, whether alone or in combination with contractual language, can effectuate waiver only if U's intent to waive is clear and unmistakable from evidence presented)

The Chesapeake and Potomac Telephone Company v. N.L.R.B. **687 F.2d 633 (C.A. 2, Aug. 1982)**

(in finding E's failure to produce U requested information relating to arbitration of grievance unlawful, ct rejected E's defense for its refusal to produce information on ground contract provided that arbitration hearings shall be conducted in accordance with rules of American Arbitration Association, and such rules do not provide for prehearing discovery; fact that U agreed that arbitration hearings would be governed by such rules hardly proves that it has waived its statutory right to discovery before hearing takes place, especially under *clear and unmistakable* standard for waiver to be effective)

The Chesapeake and Potomac Telephone Company v. N.L.R.B. **687 F.2d 633 (C.A. 2, Aug. 1982)**

(in finding E's failure to produce U requested information relating to arbitration of grievance unlawful, ct rejected E's attempts to prove that parties' past practice had been not to allow pre-arbitration discovery; at best, E showed that on some occasions it had refused to produce information, and fact that U did not file ULP charges on such few occasions hardly establishes *clear and unmistakable* waiver, especially since on other occasions E had produced requested information)

N.L.R.B. v. M. A. Harrison Manufacturing Company, Inc. **682 F.2d 580 (C.A. 6, June 1982)**

(no plausible argument can be made that U *waived* right to bargain on issues of wage increases, holidays, or insurance plans where such subjects were not subjects of bargaining before E submitted unilateral decisions on the matters; here U did not have opportunity to bargain on issues, let alone clearly waive its interest in the matters)

N.L.R.B. v. Pepsi-Cola Distributing Company of Knoxville, Tennessee, Inc. **646 F.2d 1173 (C.A. 6, May 1981)**

(general waiver clause which does not refer specifically to waiver of a portion of compensation, not clear and unmistable waiver of U's right to bargain over that portion of compensation)

8054-0133—Cont.

Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. **606 F.2d 171 (C.A. 7, 1979)**
(lack of prohibition against change in administrator in contract, not waiver where administrator was specified and no change expressly authorized)

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. **676 F.2d 826**
(modification of practices established by consistent pattern of conduct may constitute change in terms and conditions of employment whether or not it is also breach of contract; in face of such established practice, contract is only relevant to extent that it may indicate U's waiver of its right to bargain; moreover, any waiver of U's statutory rights under Act, by contract or otherwise, must be *clear and unmistakable*)

8054-0167 Waiver will not be implied

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**
(U did not waive its right to request health and safety information, since right was derived from Section 8(d) of Act and contract between E and U contained no such waiver either in *clear and unmistakable* language, or even impliedly)

Borden Chemical, A Division of Borden, Inc. **261 NLRB No. 006**
(no waiver of U's right to request list of materials and chemicals purchased, stored, or processed at E's chemical manufacturing facility where U never proposed contractual provision which would have committed E to provide requested list, when in presenting health and safety proposal E did not state it should be dispositive of prior request for list, U negotiators never consciously relinquished list request and mere silence when confronted with presentation of counter proposal cannot be construed as relinquishment)

The Mead Corporation **256 NLRB No. 108**
(fact that contract article concerning wage rate adjustments specifies legal effect of agreement or lack of agreement by parties during mid-term (contract) negotiations, held not waiver of Ee rights and may not be equated with express relinquishment by U of its rights to demand bargaining especially in view of U's vigorous assertion of its position during negotiations, and its demand that E promise to make wage adjustments rather than merely discuss them)

Armour Oil Company **253 NLRB No. 148**
(contract language that *—closing of plant or any department or single operation—shall not be deemed a lockout,* by itself, did not constitute clear and unmistakeable waiver of U's right to be consulted about change in E's operations)

8054-2000 Omission from contract of matters subject to collective bargaining does not constitute waiver

Borden Chemical, A Division of Borden, Inc. **261 NLRB No. 006**
(no waiver of U's right to request list of materials and chemicals purchased, stored, or processed at E's chemical manufacturing facility where U never proposed contractual provision which would have committed E to provide requested list, when in presenting health and safety proposal E did not state it should be dispositive of prior request for list, U negotiators never consciously relinquished list request and mere silence when confronted with presentation of counter proposal cannot be construed as relinquishment)

Marine Optical, Inc. **255 NLRB No. 158**
(U's failure to insist on redefining unit description during bargaining on new contract in event of relocation of operations held not to constitute acquiescence in limitation of unit to old location and not waiver of U's claim to represent Ees at new location, where E and U were faced with speculative possibility of change in condition of employment during contract term and decided to deal with problem when and if it occurred; to hold such action a commitment on dealing with problem would establish rule disruptive of bargaining and of stability promoted by Act)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*zipper clause* not waiver where record did not establish what, if any, specific proposals were considered during contract negotiations nor even whether parties were agreed on precisely what provisions they were agreeing to exclude)

Southwestern Bell Telephone Company **247 NLRB No. 027**
(contention that U had waived its right to requested information because requirement was not in contract with E, rejected, since failure to incorporate statutory right in collective agreement does not justify inference of waiver thereof)

N.L.R.B. v. United Optical Workers Union Local 408, Electrical Workers (Marine Optical, Inc.) **671 F.2d 11 (C.A. 1, Feb. 1982)**
(contention that U waived its claim to continued representation of E's Ees after E's plant relocation by its conduct during contract negotiations, rejected notwithstanding contract did not mention coverage at new location, since U's assertion that there would be no problem in taking contract along and its insistence on 3-year contract manifested intention not to waive continued representation)

N.L.R.B. v. Pepsi-Cola Distributing Company of Knoxville, Tennessee, Inc. **646 F.2d 1173 (C.A. 6, May 1981)**
(general waiver clause which does not refer specifically to waiver of a portion of compensation, not clear and unmistable waiver of U's right to bargain over that portion of compensation)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(U does not necessarily waive right by failing to negotiate contractual confirmation and silence in bargaining agreement cannot be considered to be waiver even in light of bargaining history; failure to obtain contractual confirmation of right is evidence of *waiver only* if it shows that U thought right had been waived by other provisions of contract and sought to regain right)

8054-2050 Effect of 'zipper' or wrap-up clause

GTE Automatic Electric Inc. **261 NLRB No. 196**
(E not obligated to bargain in midterm regarding implementation of new savings and investment plan granted to nonunit Ees since E may rely on waiver in contractual zipper clause which clearly and unequivocally covered U's request to bargain concerning implementation of new benefit, notwithstanding clause included w/o discussion, where E merely seeking to maintain status quo and has not made unilateral changes that directly or adversely affected unit Ees with accompaning effect of undermining and derogating U)

Aeronca, Inc. **253 NLRB No. 026**
(Christmas bonus paid Ees over number of years was considered component of wages or terms of employment, even though not expressly provided for by contract, which cannot be discontinued by E before U has been given notice and opportunity to bargain)

National Car Rental System, Inc. **252 NLRB No. 027**
(contract's *zipper clause* waiving parties' bargaining rights over subject matter not included, or referred to, in contract or w/i contemplation or knowledge of parties when they negotiated agreement held not waiver of effects of E decision to sell and relocate operations, since general *zipper clause* did not amount to *clear specific and unmistakable waiver* by U of right to be consulted regarding effects of elimination of all unit positions)

8054-4000 Abandonment of demands does not constitute waiver

Saint Marys Hospital **260 NLRB No. 175**
(Us waived right to reopen contract and bargain over dental plan by discussion of formal proposal concerning dental care during negotiations though specifics of plan later adopted for nonbargaining unit Ees were not discussed, and elimination of this proposal from final agreement as this was conscious relinquishment of proposal for dental plan in contracts)

The Mead Corporation **256 NLRB No. 108**
(fact that contract article concerning wage rate adjustments specifies legal effect of agreement or lack of agreement by parties during mid-term (contract) negotiations, held not waiver of Ee rights and may not be equated with express relinquishment by U of its rights to demand bargaining especially in view of U's vigorous assertion of its position during negotiations, and its demand that E promise to make wage adjustments rather than merely discuss them)

Eastern Maine Medical Center **253 NLRB No. 024**
(E's contention that because U tentatively accepted some of its proposals, it is absolved of bad faith bargaining charge, rejected; U does not *waive* refusal to bargain charges by signing up for best deal it can obtain and continuing to make effort to reach agreement)

National Car Rental System, Inc. **252 NLRB No. 027**
(U's failure to specifically request *effects* bargaining when it learned of sale and relocation of segments of E's rental operations not waiver of U's right to effects bargaining where E's announcement that entire unit was being terminated precluded U request to bargain; E had indicated that any attempt at bargaining would have been futile)

American Telephone and Telegraph Company—Long Lines Department **250 NLRB No. 008**
(U's statutory right to photocopies of requested documents, not waived regardless of contention that E rejected U's demand for photocopies during contract negotiations and that bargaining agreement contained *zipper* clause; waiver of statutory right, unlike waiver of *rates of pay, wages, hours of employment, or other conditions of employment,* requires *conscious relinquishment* by U)

8054-5000 Effect of zipper clause

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*zipper clause* not waiver where record did not establish what, if any, specific proposals were considered during contract negotiations nor even whether parties were agreed on precisely what provisions they were agreeing to exclude)

8054-5000—Cont.

*American Telephone and Telegraph Company—
Long Lines Department* **250 NLRB No. 088**
(U's statutory right to photocopies of requested documents, not waived regardless of contention that E rejected U's demand for photocopies during contract negotiations and that bargaining agreement contained *zipper* clause; waiver of statutory right, unlike waiver of *rates of pay, wages, hours of employment, or other conditions of employment,* requires *conscious relinquishment* by U)

Arizona Public Service Company **247 NLRB No. 054**
(U held not to have waived its statutory right to bargain over E's subcontracting practices after existing subcontracting clause was declared invalid; contract *reopener* clause clearly and unmistakably manifested intention to preserve, rather than to forfeit, right to bargain about subject covered by any clause which had been invalidated, and *management rights* and *zipper* clauses contained no language which clearly and unmistakably commited U to forfeiture of right to bargain with E over subcontracting issue)

Rochester Methodist Hospital **JD-505-81**
(E's refusal to bargain for dental plan during contract term held not violative where such proposals were discussed and eliminated as part of final agreement which was settlement of all issues and waiver was clearly intended and clearly expressed)

8054-6500 Waiver to represent employees

C. Elton Johnson, d/b/a Print-Quic **261 NLRB No. 109**
(where E announced to U his intention to sell business and U failed to ask for further details concerning impact on Ees, it its right to bargain with E)

C. Elton Johnson, d/b/a Print-Quic **262 NLRB No. 109**
(where E announced to U his intention to sell business and U failed to ask for further details concerning impact on Ees, it waived its right to bargain with E)

Gould, Inc. **JD-489-81**
(U's agreement with E, engaged in joint venture with U-contracting company, whereby unit Ees at E's plant were transferred to latter company held not to constitute waiver to represent some of the transferred Ees upon their reemployment by E, where asserted waiver was ambiguous and there was no intention on part of U to surrender its representation of such Ees; agreement's statement that U would no longer represent any of E's Ees meant only that unit Ees would no longer be working for E)

Gould, Inc. **JD-489-81**
(U official's statements, made during final stages of reaching agreement whereby unit Ees were transferred to U-contracting company engaged in joint venture with E, that E had gotten rid of U for which E's negotiators would be rewarded by E held not to constitute waiver to represent transferred Ees upon their reemployment by E, since statements, made in atmosphere of having solved difficult problem under stress, were merely relieved acknowledgements of successful conclusion of negotiations for Ee transfer)

Gould, Inc. **JD-489-81**
(U's actions, after entering agreement to transfer unit Ees to U-contracting company engaged in joint venture with E, in having unit Ees to report for work at latter company held not to constitute waiver to represent transferred Ees upon their reemployment by E, where U asked E for right to represent Ees which request E refused, and E's action in informing U concerning probable reemployment of Ees indicated E was concerned that U might assert its rights as Ee representative pursuant to Bd certification)

8054-7000 Agreeing to management rights clause does not constitute waiver

*Milwaukee Spring Division of Illinois Coil Spring
Company* **265 NLRB No. 028**
(E's decision to relocate work from U to non-U plant, to layoff Ees as consequence during term of agreement solely because of higher labor costs, absent U's consent, is midterm repudiation of agreement in violation of Sec. 8(d), Sec. 8(a)(1), (3), (5); moreover, U did not waive right to bargain notwithstanding managements rights clause; such clause reserves for E right to decide whether and how products will be manufactured; it does not grant E right to transfer its operation. Thus, absent explicit language, U has not waived its right to object to E's decision)

8054-9000 Failure to request that employer bargain over impact of changed conditions

Ciba-Geigy Pharmaceuticals Division **266 NLRB No. 134**
(U did not waive right to bargain over new Attendance Control Program by its failure in past not to request bargaining when E unilaterally implemented new rules and regulations since right once waived is not lost forever, and each time bargainable incident occurs-each time new rules are issued-U has option to request bargaining or not. Nor by its failure to request bargaining at meeting in which E gave U copy of new program, as U was presented with *fait accompli* since E told U on same day Ees were notified that program would be effective in ten days yet E had been studying matter over many months w/o notice to U)

Talbert Manufacturing, Inc. **264 NLRB No. [illegible]**
(orally informing U representative of reduction in hours to be worked 4 d before implementing change, and indirect notice via member of in-plant committee notifying U of further reduction in hours 2 days before implementing this change held sufficient notice to allow U to request bargaining, and by U's failure to make request it waived its right to complain about E's failure to bargain)

*Wagner Distribution Services, Inc. d/b/a
Distribution Services West* **262 NLRB No. 096**
(E unilaterally changing hours of swing shift which was paid shift differential to hours substantially overlapping hours of first shift which was not paid wage differential, unlawful, notwithstanding E's contention U had actual knowledge of E's intended change through communication by shop steward to U official and U waived its rights by its failure to request bargaining, since shenage was mandatory subject of bargaining and E failed to show U received sufficiently reliable notice of change to trigger obligation to demand bargaining)

*Wagner Distribution Services, Inc. d/b/a
Distribution Services West* **262 NLRB No. 096**
(no waiver of right to bargain over change in shift hours since waiver must be clear and unmistakable and mere conversation of shop steward with U official regarding E's intent to change hours of shift not sufficiently reliable notice to trigger U's obligation to request bargaining)

*Wagner Distribution Services, Inc. d/b/a
Distribution Services West* **262 NLRB No. 096**
(E's contention U had knowledge of proposed change in shift hours and did not request bargaining justified its unilateral change, rejected, where E failed to show U received sufficiently reliable notice of change and E had taken position it would not bargain with U at time U received information on propose change)

Peat Manufacturing Company **261 NLRB No. 026**
(U not estopped from singling out layoff of one Ee when Ee was laid off in middle of series of layoffs and U had never requested that E bargain about previous layoffs, since legality of other layoffs was not at issue in instant case; E has generally refused to recognize or bargain with U until ct of appeals enforced prior Bd Order directing E to do so)

*Cardinal Systems, A Division of Hospitality Motor
Inns, Inc., d/b/a Cummins Component Plant* **259 NLRB No. 065**
(E's unilaterally changing Ees' pay days from weekly to bi-weekly basis, not violative where E notified U of change approximately six weeks in advance of proposed change; record showed that U never responded to E's notice either to object or request meeting with E; U acquiesced in E's action)

Morco, Inc. d/b/a Towne Plaza Hotel **258 NLRB No. 016**
(unilateral pay raise not violative where U never demanded bargaining over unilateral pay raise itself while engaging in bargaining over issue of wages; in such circumstances, U must be held to have waived its right to bargain over pay raise)

Armour Oil Company **253 NLRB No. 168**
(U did not waive its right to be afforded opportunity to bargain about subsequent *wholesale* reassignment of trucks which adversely effected unit Ees' working conditions when it acquiesced in *isolated wholesale* reassignment of trucks which did not *adversely* effect unit Ees' working conditions)

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(defense of *waiver* not available to E where E granted unit Ees merit wage increases, percentage wage increases, and extra paid holiday w/o giving U sufficient opportunity to bargain over those unilateral changes which it wanted to do, E and U had made no attempt to bargain on any economic issue during initial negotiations, hence neither party could contend that impasse had been reached justifying unilateral action)

Exxon Company, U.S.A. **253 NLRB No. 027**
(8(d) provides that U's failure to discuss E's unilateral modification of contractual terms or conditions of employment is not defense to ULP)

National Car Rental System, Inc. **252 NLRB No. [illegible]**
(U's failure to specifically request *effects* bargaining when it learned of sale and relocation of segments of E's rental operations not waiver of U's right to effects bargaining where E's announcement that entire unit was being terminated precluded U request to bargain; E had indicated that any attempt at bargaining would have been futile)

Island Typographers, Inc. **252 NLRB No. 083**
(where E, more than 6 months prior to charge being filed, unilaterally and openly introduced cold type process operated by non-U Ees without U's timely objection, no violation and E's action effectively changed terms of unsigned contract so as to exclude cold-type work from jurisdiction of U)

Fourco Glass Company, Rolland Division **250 NLRB No. 144**
(E's elimination of incentive pay system before contract term expired, violative, as E is statutorily required to wait until contract expires to implement changes in working conditions; moreover, fact that U had been willing to listen to E's proposal does not constitute waiver of its rights under Sec. 8(d))

8054-9000—Cont.

Biel Tuxedos, Inc. 250 NLRB No. 064

(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

Charmer Industries, Inc. 250 NLRB No. 031

(U did not waive its right to contest Es' unilateral change in work procedures where U did make request for bargaining over such procedures)

Vanity Fair Mills, Inc. JD-(ATL)-35-82

(E unilaterally requiring Ees to work 3 nine hour and one 5 hour day during week before holiday rather than 4 eight hour days as required by agreement, not unlawful, notwithstanding U not formally consulted about change, where U had actual notice about change and voiced no objections prior to working changed schedule)

California Pacific National JD-(SF)-260-81

(where E posted new rules concerning Ees taking home company vehicles (mandatory subject of bargaining) on bulletin board and U failed to protest change, it waived its right to do so and E's failure to negotiate not violative)

N.L.R.B. v. Carbonex Coal Company 679 F.2d 200 (C.A. 10, May 1982)

(whether U has waived its right to bargain over layoff by failing to raise issue or by agreeing to E's action is question of fact to be determined by Bd and to be upheld (by ct) if supported by substantial evidence)

8059 DEFENSE OF CURRENT BARGAINING DEVELOPMENTS AND INDUSTRY PRACTICE

M. A. Harrison Manufacturing Company, Inc. 253 NLRB No. 097

(contention that unilateral wage increase was justified by imminence of anticipated Presidential wage freeze rejected, since anticipated wage freeze was not such special circumstance that would justify remedial action under *N.L.R.B. v. Benne Katz, etc., d/b/a Williamsburg Steel Products Co., 369 U.S. 736, 743 (1962)*)

8063 STRIKES

8063-0100 Generally

8063-0150 Obligation to bargain during strike

M. A. Harrison Manufacturing Company, Inc. 253 NLRB No. 097

N.L.R.B. v. Mar-Len Cabinets, Inc. 659 F.2d 995 (C.A. 9, Oct. 1981)

(end of strike did not end E's bargaining obligation where it cancelled last bargaining session claiming U had lost majority support, and if negotiations became truncated depriving E of opportunity to bargain over non-economic matters, it was primarily E fault)

8063-1400 Effect on impasse

Turnbull Enterprises, Inc. 259 NLRB No. 122

(fact that Ees engaged in strike against E did not establish basis for terminating E's obligation to make health and welfare fund contributions at that time; even if impasse existed on date of strike, E took no action which was consistent with its rejected offers to U, and record failed to prove E instituted plan with insurance company replacing plan until subsequent date on which it reached agreement with U)

8063-8400 Fear of strike endangering operations

Blue Grass Provision Co., Inc. v. N.L.R.B. 636 F.2d 1127 (C.A. 6, 1980)

(E's contention that its subcontracting of its delivery operations and layoff of E is performing this work was in affect legal lockout rejected absent impasse or threat of imminent strike or absent evidence that E's business interests were so legitimate and substantial as to justify impact that lockout would have on Ees' rights)

8063-9000 Violence during strike

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121

(E's refusal to execute contract held violative where, after 5 meetings between E and U to modify and renegotiate current contract, U, by telegram, advised E that (E's) last offer had been accepted as final and binding contract and that contacted strikers would return to work notwithstanding U did not intend to accept E's *proposal* on discipline of strikers who allegedly had committed acts of misconduct during strike)

8068 GRIEVANCE/ARBITRATION PROCEEDINGS AND/OR AWARD

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121

(plant manager's telling Ees they had no formal grievance procedure after contract containing such procedure had expired held violative, since E was required to process grievances in accordance with provisions of expired contract absent impasse on that subject)

Caterpillar Tractor Co. v. N.L.R.B. 658 F.2d 140 (C.A. 7, Sept. 1981)

(strike protesting E's unlawful discontinuance of allowing Ees to request transfers which involved demotions, not ULP strike, since contract waived right to strike where underlying dispute being processed through grievance procedure and herein grievance pending; further, unlawful unilateral change was not *serious* labor dispute (destructive of foundation on which bargaining must rest) w/i *Mastro Plastics* so as to preclude waiver of right to strike regarding ULP since E in good faith relied on management rights clause, and U neither called nor ratified strike)

8072 PENDENCY OF BOARD PROCEEDINGS

8072-2000 Filing of decertification petition

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 106

(Bd applied rule announced in *Dresser Industries*, prohibiting withdrawal from bargaining while decertification ptn is pending, on a prospective basis only, and held E's unilateral changes in access requirements for U representatives unlawful, since E is not licensed to interfere with U's representative functions during pendency of decertification ptn; U remains Ees' bargaining representative until and unless it is decertified; consequently, Bd distinguished unilateral changes affecting U's dealings with Ees whom it represents from those relating to wages and benefits)

Taurus Waste Disposal, Inc. 263 NLRB No. 028

(violation, where following evasive and dilatory tactics to avoid bargaining for new contract, E stated it would not meet with U, that it would decertify U, refused to bargain with U pending resolution of decertification ptn, and withdrew recognition from U where U still had presumption of majority)

Pease Company 251 NLRB No. 090

(E's refusal to meet and bargain with U, and failure to arrange another meeting, unlawful; E's failure to timely notify U of its intention to suspend negotiations casts doubt on its position that it had obligation to suspend negotiations because of pending decertification ptn which assertedly raised qcr, and was wrong as matter of law; Bd's prior order to bargain had not been complied with at time of ptn, and existence of unremedied unlawful refusal to bargain prohibits finding qcr exists)

Master Slack, Ltd. JD-(ATL)-8-81

(filing decertification ptn raises qcr only where there is objective evidence creating doubt of U's majority status which in ULP proceeding would justify company in refusing to bargain)

N.L.R.B. v. Antonino Carilli, d/b/a Antoninino's Restaurant 648 F.2d 1206 (C.A. 9, June 1981)

(E's contention it was not required to bargain with U since it had learned decertification ptn was pending, rejected, notwithstanding filing of ptn was not caused by action of E, where E had committed ULPs precluding fair election, absent showing majority of Ees supported decertification before learning of E's prior ULPs or being exposed to E's subsequent ULPs; underlying issue is reasonable doubt of U's majority which may not be raised in context of ULPs)

8072-4200 Pendency of ULP charges

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation 264 NLRB No. 063

(refusing to recognize and bargain with newly elected U, violative; Bd rejected E's contention that its duties under Act are suspended because of litigation pending before ct of appeals or before Bd on remand from such ct)

Chester Valley, Inc. 251 NLRB No. 191

(E's letter to Ees asking them to discuss problems and setting up of joint E-Ee committee, unlawful, since E thereby dealt directly with Ees in contravention of duty to bargain with U; E's contention that its conduct was not unlawful, since at time of letter its obligation to bargain was subject of litigation in pending cases, rejected, where Bd's decision issued this date found that E's obligation to bargain commenced on date on which E embarked on clear course of unlawful conduct which undermined U's majority status and subverted Bd's election process)

Hilton International Company d/b/a Caribe Hilton Hotel v. N.L.R.B. 690 F.2d 318 (C.A. 2, Sept. 1982)

(enforcement denied and suspension of bargaining because of U's filing of charges found not unlawful, where charges asserted that steady engagement musicians playing at association hotels were hotel Ees but they were found Ees of band leaders found independent contractors herein)

8072-4300 Request for review of Regional Director's decision

Kitchen Fresh, Inc. 259 NLRB No. 074

(refusal to supply U with requested data violative, notwithstanding E contesting U's certification)

Madison Detective Bureau, Inc. 259 NLRB No. 062

(refusal to bargain with certified U before there has been final action by Bd on request for review of RD's Decision on objections, violative)

8072-6300—Cont.

Advertisers Manufacturing Company v. N.L.R.B. 677 F.2d 544 (C.A. 7, Apr. 1982)

(E acts at its peril in making unilateral changes in conditions of employment following U victory in initial representation election and before Bd renders decision of E's election objections where Bd's rejection of objections and certification of U would make E's actions automatic violations of Sec. 8(a)(5))

8072-7000 Rival union's RC petition

RCA del Caribe, Inc. 262 NLRB No. 116

(E violates Sec. 8(a)(5) by withdrawing from bargaining with incumbent U based solely on fact that ptn has been filed by outside U; however, may still withdraw recognition if its good faith doubt based on other objective considerations)

8072-9200 Pendency of collateral litigation

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation 264 NLRB No. 063

(collateral litigation does not suspend duty to bargain under Sec. 8(a)(5))

8075 REGIONAL DIRECTOR'S RULING

Navajo Freight Lines, Inc. 254 NLRB No. 166

(E's refusal to negotiate area practices agreement on gound RD dismissed charge to that effect, unlawful, where RD deferred ruling upon such allegation until outcome of U's grievance pending for decision before arbitrator; thereafter, upon considering arbitrator's decision, RD decided to issue instant complaint)

8076 PENDENCY OF COURT PROCEEDINGS

Peabody Coal Company 265 NLRB No. 013

(unilateral withholding from newly certified unit Ees wage and benefit increases granted nonU Ees, unlawful; pending challenge to certification in ct, no defense)

8076-3300 Review of Board Order of Certification

Post Manufacturing Company 261 NLRB No. 026

(claim that E had no obligation to bargain with U until Ninth Circuit (ct of appeals) acts on Bd's request for enforcement of its order in prior case (involving same parties) rejected, since collaterial litigation does not suspend duty to bargain under Act)

Fremont Manufacturing Division, The Oil Gear Company, Inc. JD-(SF)-235-82

(collateral litigation including ct review of Bd order to recognize and bargain does not suspend duty to bargain under Sec. 8(a)(5), therefore E's request for stay of proceedings denied and unilateral changes in benefits violative)

8076-6700 Review of Board Finding of ULP

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation 264 NLRB No. 063

(refusing to recognize and bargain with newly elected U, violative; Bd rejected E's contention that its duties under Act are suspended because of litigation pending before ct of appeals or before Bd on remand from such ct)

Jeffrey Manufacturing Division, Dresser Industries, Inc. 252 NLRB No. 084

(refusal to bargain violative, notwithstanding contention that E need not bargain with U until it has obtained complete review of previous ULP proceeding, since it is well established that collateral litigation does not suspend duty to bargain)

8079 ULP's BY OTHER PARTY

North Shore University Hospital 259 NLRB No. 121

(E's defense to refusal to bargain with nurses' association on ground that its demand for bargaining and execution of contract violated 8(b)(1)(A) and (2), rejected, where association was found to be labor organization and qualified to represent nurses despite admission of supervisors to membership, and E failed to sustain considerable burden to show clear and present danger of conflict of interest due to influence, domination, or control of association by its supervisory or managerial members)

Independent Stave Company 248 NLRB No. 025

(E's failure and refusal to comply with U security provision of current contract in response to U demand that some 46 Ees be discharged for failure to be U members in good standing held violative, since E had thereby unilaterally modified terms and conditions of parties' contract which called for investigation of named Ees and determination that they were delinquent and would not become members, notwithstanding U's alleged failure to fulfill its fiduciary obligation of notification to Ees)

N.L.R.B. v. Fox Striders, Inc. 667 F.2d 171(T) (C.A. 9, Mar 1981)

(Bd's summary judgment proper, notwithstanding E's contention that political party campaigning for U created conditions sufficient to preclude summary judgment; setting aside of election is justified only when third party misconduct, attributable to neither party to election, creates atmosphere of fear or reprisal rendering free expression of Ees' choice impossible; and third party conduct can be attributed to U only where instigated, authorized, solicited, ratified, condoned or adopted by U; however, facts herein did not require hearing on either issue, and ct did not accord controlling weight to issue of U responsibility)

8080 DISCRIMINATION

8080-5800 Race

Steelworkers v. Weber, et al. 443 U.S. 193 (June 1979)

(Title VII does not prohibit race conscious affirmative action plans; private E and U voluntarily agreed upon affirmative action plan that accorded preference to Black trainees in order to eliminate conspicuous racial imbalance segregated job categories upheld)

Colonial Manor 1977, Inc. 253 NLRB No. 181

(E's allegations that U has engaged in and is engaging in prohibited discrimination on basis of race and sex held inappropriately raised as defense in 8(a)(5) summary judgment proceeding for reasons set forth in Handy Andy and similar cases)

8080-7500 Sex

Colonial Manor 1977, Inc. 253 NLRB No. 181

(E's allegations that U has engaged in and is engaging in prohibited discrimination on basis of race and sex held inappropriately raised as defense in 8(a)(5) summary judgment proceeding for reasons set forth in Handy Andy and similar cases)

8080-8700 Religion

Scandia Log Homes, Inc. 258 NLRB No. [illegible]

(E's refusal of U's request to discharge Ees who had refused to pay U dues required by valid U-security clause, not unlawful, where Ees were members of and adhere to traditional tenets or teachings of bona fide religions which have historically held conscientious objections to joining or financially supporting labor organizations, and recently enacted Sec. 19 of Act, exempting such conscientious objectors form joining or financially supporting labor organizations, is applicable)

8081 INVALIDITY OF CERTIFICATION OR RECOGNITION

8081-1200 Denial of fair hearing

Franklin Art Glass Studios, Inc. 250 NLRB No. [illegible]

(in summary judgment proceeding, E's contention that certification was improper because E had been denied hearing on challenged ballots, rejected, since contention was merely attempt to relitigate matters in C proceeding which had been previously litigated and decided in R proceeding)

N.L.R.B. v. Morgan Health Care Center, Inc. 618 F.2d 127 (C.A. 1, 1980)

(hearing was not required on whether alleged misrepresentation had impact on election and whether attributable to U since no material issues of fact existed where E failed to come forward with specific evidence to refute RD's finding that statement did not affect Ees' votes)

Tressler Lutheran Home For Children, t/a Frostburg Village of Allegany County Nursing Home v. N.L.R.B. 677 F.2d 302 (C.A. 4, Apr. 1982)

(E who operated nursing home obligated to bargain since Bd did not abuse discretion when overruled objections to election concluding material sent to Ees by U 2 days before election allegedly containing misrepresentations did not exceed allowable bounds of campaigning, nor was hearing on objections required; inclusion in unit of LPN held not to be supervisors in unit, proper)

N.L.R.B. v. South Mississippi Electric Power Association 616 F.2d 837 (C.A. 5, 1980)

(*neither constitution nor Congress grant a right to a full evidentiary hearing in U election challenges*; where factual issues unresolved not substantial or material, hearing not required)

N.L.R.B. v. Elixir Industries 682 F.2d 867 (C.A. 9, July 1982)

(E's contention certification improper where student legal assistant used as hearing officer in representation hearing, rejected; notwithstanding this function not included in job description)

8081-2500 New matter or evidence

Franklin Art Glass Studios, Inc. 250 NLRB No. [illegible]

(in summary judgment proceeding, E's contention that certification was improper because U breached alleged private settlement agreement which is newly discovered and previously unavailable evidence, rejected, since alleged breach of agreement has no bearing on issues herein)

8081-4300 Union's conflict of interest

J & T Manufacturing Company 265 NLRB No. [illegible]

(withdrawal of recognition by E from certified U which also represented Ees of another E which contracted out work to E, lawful, where U is

8081-4300—Cont.

negotiations with contractor-E obtained side agreement to cease contracting out work and presented agreement during negotiations for standard agreement with subcontractor-E, since substantial conflict with cts duty to represent subcontractor-E's Ees)

North Shore University Hospital 259 NLRB No. 121
(E held to have unlawfully refused to bargain with nurses' association, where it failed to sustain its considerable burden to show clear and present danger of conflict of interest due to influence, domination, or control of association by its supervisory or managerial members)

N.T. Enloe Memorial Hospital 250 NLRB No. 078
(in unit of Ees represented by association which admitted supervisors to membership, there is no conflict of interest which would disqualify association as bargaining representative where one unit member is supervisor but is not engaged in collective bargaining)

N.L.R.B. v. Pinkerton's, Inc. 621 F.2d 1322 (C.A. 6, June 1980)
(no conflict of interest that would relieve E of bargaining obligation where in exchange for not organizing subsidiary of E's competitor for 9 months, competitor's supervisor gave U organizer names of E's Ees and clients, since agreement not to organize Ees of competitor-subsidiary not inconsistent with representing Ees inasmuch as U had no financial stake in continued existence of competitor or E except insofar as continued existence in interest of Ees; in short, if U has nothing to gain by not asserting Ees' best interests, there is no conflict of interest)

8081-5000 Fairness of election

Pursell's Pride, Inc. 265 NLRB No. 146
(E's refusal to bargain, violative, since alleged misrepresentations did not warrant setting election aside)

Van Dorn Plastic Machinery Co., Division of Van Dorn Company 265 NLRB No. 036
(where Bd found, contrary to contention, that U's campaign material was not objectionable and that U was properly certified, E's refusal to brgain with U, violative)

Sonoma Vineyards, Inc. 264 NLRB No. 085
(E's cross-mtn for withdrawal of order transferring proceeding to Bd and Notice to Show Cause denied since Bd rejected alleged newly discovered evidence showing bias on part of Bd agent who conducted election where agent's comments at polls regarding U's ability to overcome challenges to ballots were not, if stated, overheard by voters as to have impact on election, and furthermore, agent's subsequent employment with U 3 years after election is not evidence of bias nor contravenes R/R 102.119 inasmuch as there is no evidence that former agent is representing U in any capacity before Bd in this proceeding accordingly Bd granted mtn for summary judgment)

The Pape, Inc. 263 NLRB No. 170
(on remand Bd set aside election and held E not obligated to bargain where captains in its restaurant promised waiters and bus boys that, if U won election, captains, who had sole authority over tip division, would change division of tips to increase shares of waiters and busboys, since offer would have impaired election whether or not captains supervisors)

Clinton Manufacturing Co., Inc. 258 NLRB No. 056
(election set aside and new election directed where U stated to Ees during election campaign that Ees who signed U cards before election would not be subject to initiation fees but that the Ees could determine whether to impose initiation fees on those Ees who signed U cards after election since suggestion that initiation fees might be imposed after election linked such waiver of fees to support of U before election)

Divine Providence Hospital of Pittsburgh 248 NLRB No. 078
(E's refusal to bargain with U representing unit of plant operations department Ees at hospital on ground U's certification was invalid because unit was inappropriate as matter of law unlawful, where E did not raise any issue which is properly litigable in ULP proceeding herein, and ct decisions relied on by E for its position in opposition to GC's mtn for summary judgment are not controlling)

Valley Rock Products, Inc. JD-(SF)-285-79
(defense sustained in view of threats and assaults by U representative against E's officers, and failure to count ballot of Ee on leave of absence at time of election)

N.L.R.B. v. Granite State Minerals, Inc. 674 F.2d 101 (C.A. 1, Mar. 1982)
(E held not obligated to bargain in view of Bd's unilateral departure from stipulated election agreement in allowing one Ee to vote at different time and place from that set in agreement with transportation assistance from U, and Bd's failure to adequately investigate and/or hold hearing on allegation of U coercion of E)

N.L.R.B. v. Granite State Minerals, Inc. 674 F.2d 101 (C.A. 1, Mar. 1982)
(E's objection to election upheld and E held not obligated to bargain since Bd's investigation of alleged threat to Ee by U held inadequate. Importance of single threat likely in view of closeness of vote and small number in unit)

N.L.R.B. v. Morgan Health Care Center, Inc. 618 F.2d 127 (C.A. 1, 1980)
(E's contention its refusal to bargain justified by alleged misrepresentations of Ee who was active in U campaign, rejected, since remarks not attributable to U where U neither authorized nor condoned them, and remarks did not create atmosphere of fear and violence but rather had no effect on Ees' votes)

The Catholic Medical Center of Brooklyn and Queens, Inc., et al. v. N.L.R.B. 620 F.2d 20 (C.A. 2, 1980)
(8(a)(5) violation upheld where on remand Bd inferred that supervisors' pro-U activities did not impair Ees' free choice in election, and ct found that Bd's inference did not transgress bounds of reason)

Trexler Lutheran Home For Children, t/a Frostburg Village of Allegany County Nursing Home v. N.L.R.B. 677 F.2d 302 (C.A. 3, Apr. 1982)
(E who operated nursing home obligated to bargain since Bd did not abuse discretion when overruled objections to election concluding material sent to Ees by U 2 days before election allegedly containing misrepresentations did not exceed allowable bounds of campaigning, nor was hearing on objections required; inclusion in unit of LPN held not to be supervisors in unit, proper)

Wells Fargo Guard Services, A Division of Baker Protective Services, Inc. v. N.L.R.B. 659 F.2d 363 (C.A. 3, Sep. 1981)
(ct must consider validity of certification where Bd's decision that E was guilty of ULP (in refusing to bargain) was premised on certification of election)

N.L.R.B. v. South Mississippi Electric Power Association 616 F.2d 837 (C.A. 5, 1980)

N.L.R.B. v. Production Plated Plastics, Inc. 663 F.2d 709 (C.A. 6, Nov. 1981)
(E ordered to bargain with Intervenor U since whether or not Ees acting as agents of U while making threats to fellow Ees during U campaign, laboratory conditions for election not destroyed in view of limited nature of their conduct, subsequent apologies by Ees, absence of violence in campaign and sizable U majority)

N.L.R.B. v. Osterlen Services For Youth, Inc. 649 F.2d 399 (C.A. 6, May 1981)
(refusal to bargain notwithstanding E's contention that integrity of election had not been maintained when Bd agent absented himself from polling area for ten minutes and took with him unused ballots, where both U's and E's observers constantly watched the unsealed ballot box, and Ees known to have been in polling area during Bd agent's absence cast their ballots upon Bd agent's return)

N.L.R.B. v. Osterlen Services For Youth, Inc. 649 F.2d 399 (C.A. 6, May 1981)
(refusal to bargain based on objection to election that U's observer allegedly engaged in unlawful electioneering, violative, where observer's conversations with voters at polling area were nothing more than *innocuous* conversation that did not constitute electioneering)

Randall, Burkart/Randall Division of Textron, Inc. v. N.L.R.B. 638 F.2d 951 (C.A. 6, 1981)
(ct affd Bd's findings of unlawful refusal to bargain with certified U where Bd properly overruled E's objections to representation election; U agents did not engage in improper campaign activities, innocuous and isolated events of misconduct during critical period were not sufficient to vacate election nor significant to admit pre-pin events of misconduct, and there was no evidence proffered to demonstrate that these occurances interfered with voters' choice or impugned integrity of election)

Six Flags Over Mid-America, Inc. v. N.L.R.B. 638 F.2d 59 (C.A. 8, 1981)
(refusal to bargain with certified U, violative, where Bd rejected E's objections to stipulated rerun election in that two U adherents made statements prior to election to the effect that E's letter to Ees concerning stipulation to set aside first election was admission of guilt in light of U objections to first election under investigation; Bd found that U adherents' statements were not attributable to U and were clearly expressions of personal opinion)

N.L.R.B. v. Fun Striders, Inc. 647 F.2d 171(T) (C.A. 9, Mar 1981)
(Bd's summary judgment proper, notwithstanding E's contention that political party campaigning for U created conditions sufficient to preclude summary judgment; setting aside of election is justified only when third party misconduct, attributalbe to neither party to election, creates atmosphere of fear or reprisal rendering free expression of Ees' choice impossible; and third party conduct can be attributed to U only where instigated, authorized, solicited, ratified, condoned or adopted by U; however, facts herein did not require hearing on either issue, and ct did not accord *controlling weight* to issue of U responsibility)

N.L.R.B. v. Vista Hill Foundation d/b/a Vista Hill 639 F.2d 479 (C.A. 9, 1980)
(ct affd Bd's overruling E's objection to election that E should not have beencertified because of alleged election irregularities and, accordingly, affd Bd's finding that E's refusal to bargain violated Act)

8081-5000—Cont.

N.L.R.B. v. Olivera Egg Ranch **636 F.2d 1227(T) (C.A. 9, 1980)**
(E's contention that election was invalid because of conversations between voters and alleged U agent near polling place rejected, where E failed to present evidence that conduct was attributable to U)

8081-6200 Appropriateness of unit

Purnell's Pride, Inc. **255 NLRB No. 146**
(petitioned for unit held appropriate, election not set aside and E's refusal to bargain thus violative)

Penetone Corporation **260 NLRB No. 158**
(E, in C case, cannot challenge appropriateness of unit, since E had stipulated to unit's appropriateness in R proceeding and U was certified as bargaining representation for E's Ees in unit)

Supreme Sugar Company, Inc. **258 NLRB No. 039**
(E's refusal to adhere to terms of collective-bargaining agreement regarding pay and benefits of watchman (found to be guard) not violative, notwithstanding E voluntarily agreed to include watchmen in unit, in view of express prohibition of Sec. 9(b)(3) that *Bd shall not decide that any unit is appropriate for (purposes of collective bargaining) if it includes, together with other Ees, any individual employed as guard*)

Burns Electronic Security Services, Inc. **256 NLRB No. 139**
(E's refusal to bargain not violative where unit had been improperly certified because it contained both guard and nonguard Ees)

Goldim, Inc. v. N.L.R.B. **628 F.2d 706 (C.A. 1, 1980)**
(contention that certified bargaining unit was improper because it included four persons who were *supervisors* rejected, where such persons were found nonsupervisory Ees)

Burns Electronic Security Services, Inc. v. N.L.R.B. **624 F.2d 403 (C.A. 2, 1980)**
(ct remanded to Bd for reconsideration of its finding that E violated Act by unilaterally altering job requirements of Ees in light of ct's opinion that Bd had improperly made finding as to inclusion in unit of Ees affected by such unilateral change)

N.L.R.B. v. Midvalley Steel Fabricators, Inc. **621 F.2d 49 (C.A. 2, 1980)**
(E's contention its refusal to bargain justified as U represented inappropriate unit, rejected, since not clear unit would have been inappropriate absent stipulation; further, E had not raised issue previously and had agreed to E's request for desired exclusion)

The Union Savings and Trust Company v. N.L.R.B. **643 F.2d 1249 (C.A. 6, 1981)**
(E's defense to unilateral change based on contention that facts compelled certification of multi-location unit rather than operation center unit at savings and trust company rejected, where work of operations center departments was functionally integrated and operations of center's work were unique to it, its Ees had little contact with or transfer to E's other facilities, and its management was sufficiently autonomous for separate unit)

N.L.R.B. v. Mr. B. IGA, Inc. **677 F.2d 32 (C.A. 8, Apr. 1982)**
(E's contention that it had no obligation to bargain because of changed circumstances resulting from 3-year delay between election and certification, i.e., reduction in size of unit from 19 to 3 Ees and complete turnover in composition of unit, rejected, since Bd carefully considered changes in unit and concluded that changes were insufficient to override Sec. 9(c)(1) and ct recognized that administrative delay and Ee turnover are not adequate reasons to set aside certified election)

N.L.R.B. v. HMO International/California Medical Group Health Plan, Inc. **678 F.2d 806 (C.A. 9, June 1982)**
(where E refused to bargain on ground that Bd certified RN unit should have included LVNs, Bd on remand must state why Ees' tasks and E's personnel policies mandated that RNs be classified as professional Ees and LVNs as technical Ees, why RNs should not be preliminarily certified in same unit with LVNs with proviso of a *Sonotone* election, and how precisely it proposed to modify its traditional community of interest standard so as to implement herein the congressional nonproliferation mandate)

Safety Electric Corporation and San Joaquin Pacific Corporation **620 F.2d 311(T) (C.A. 9, 1980)**
(Ees of two corporations found to be single E shared same type of skills and duties and should be included in same bargaining unit as accretion to original bargaining unit)

8081-6900 Union merger or affiliation

Seattle-First National Bank **265 NLRB No. 055**
(upon *sua sponte* reconsideration Bd dismissed C of refusal to bargain with newly affiliated U certified by amendment, since certification was revoked and affiliation found improper where election did not meet due process standards due to fact nonU members of unit were not permitted)

State Bank of India **262NLRB No. 143**
(refusal to bargain with outside local not violative where attempted merger of incumbent local into outside local was invalid; merger held invalid since incumbent local failed to adhere to minimal standards of due process in ascertaining whether Ees it represented desired to merge incumbent local into outside local by, *inter alia*, failing to provide sufficient opportunity for discussion of merger agreement)

Colonial Manor 1977, Inc. **253 NLRB No. 181**
(E's contention that two merged Us cannot assume certification issued to one of them prior to merger, w/o affording E opportunity to litigate whether alleged merger created a labor organization with which E is obligated to bargain, rejected, since Bd had previously found that merged U merely represented change of name from that of originally certified U; and E's refusal to bargain did not arise out of any concern with respect to merger in view of fact that it did not answer originally certified U's demands for bargaining for which it gave no explanation)

8081-7500 Validity of ballots

Valley Rock Products, Inc. **JD-(SF)-205-79**
(defense sustained in view of threats and assaults by U representative against E's officers, and failure to count ballot of Ee on leave of absence at time of election)

N.L.R.B. v. A. G. Parrott Company **630 F.2d 212 (C.A. 4, 1980)**
(Bd's order to bargain denied where ballot, decisive of election, was signed, and ballot, having substantial arguments for and against counting it, was placed in an anomalous position and relegated to a position in limbo and, therefore, certification of U was error and E had no duty to bargain)

Childers Products Company v. N.L.R.B. **653 F.2d 242 (C.A. 6, Feb 1981)**
(refusal to bargain with certified U unlawful where U won election, eight votes to six, and evidence supported Bd finding that two additional Ees were ineligible to vote in the election on ground they were supervisors)

8081-8100 Validity of authorization cards

Southern Moldings, Inc. **255 NLRB No. 115**
(cards valid where Ees were not told that cards would be used *only* or *just* for election and signers' own testimony showed that no statement was made to them which canceled clear, unambiguous meaning of card as designation of U)

Pulby Lingerie, Inc. and Argus Lingerie Corp. **252 NLRB No. 032**
(objection to receipt in evidence of Ee's card on ground that it was dated one month prior to date shown in U organizer's notes, overruled in view of U organizer's credited testimony that her writing of the date on her notes was in nature of clerical error, fact that date marked on card itself was date on which organizational activities were conducted, and absence of evidence that signature on card was other than authentic)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(authorization cards signed at U meeting held not invalidated by presence of assertedly supervisory Ees, where they were not considered by Ees to be supervisors, none of them exerted any influence over Ees' U activities, and they were minor supervisors at most)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **247 NLRB No. 090**
(card valid, where objective facts, as evidenced by events contemporaneous with signing, did not show that alleged misrepresentations made to signer that *everybody* had signed was decisive factor causing him to sign)

Red Oaks Nursing Home, Inc. v. N.L.R.B. **633 F.2d 503 (C.A. 7, 1980)**
(card held valid notwithstanding E's contention that card signer was misinformed by U representative as to purpose of cards, where terms of card were unambiguous and it was not established that the signer heard deliberate misstatement about purpose of cards or that her impression of purpose of cards was attributable directly to any U agent)

8081-9000 Recognition coerced by supervisory pressure

N.L.R.B. v. Manufacturer's Packaging Co., Inc. **645 F.2d 223 (C.A. 4, Apr 1, 1981)**
(E cannot defend its refusal to bargain on grounds that election was tainted by sub-supervisors where their activities were minimal, occurred prior to their exclusion from unit, were made principally in response to Ee inquiry and E knew of activity prior to and subsequent to date they were designated supervisors, yet E did not disavow conduct)

8081-9500 Union lacked majority when recognized

Mingtree Restaurant, Inc. d/b/a Forbidden City Restaurant **265 NLRB No. 082**
(after expiration of contract, withdrawal of recognition from voluntarily recognized U, unlawful; contention that U originally was unlawfully recognized and maintenance of contract with minority U constitutes continuing violation and any subsequent acquisition of majority status is attributable to earlier improper recognition, rejected, as E may not withdraw recognition unlawfully obtained outside Sec. 10(b) period)

8081-9300—Cont.

Pick-Mt. Laurel Corporation **259 NLRB No. 034**

(expression of dissatisfaction with U made to supervisors by at least 29 out of 103 Ees; and notwithstanding occurred outside Section 10(b) period, predecessor E's illegal practice of requiring Ees to join U and sign dues checkoff on first day of work and continuing this practice into 10(b) period, and its recognition of U and negotiation of agreement w/o designation by any member of unit, sufficient to support successor E's good faith doubt justifying its withdrawal of recognition)

Franklin Art Glass Studios, Inc. **250 NLRB No. 095**

(in summary judgment proceeding, E's denial that U was Ee representative held w/o merit, where Bd, in prior decision certifying U as Ee representative, disposed of such issue, and it therefore cannot be relitigated herein)

Machine Tool and Gear, Inc. v. N.L.R.B. **633 F.2d 216(T) (C.A. 6, 1980)**

(contention that Bd was in error in finding E unlawfully failed to recognize and bargain with U because alleged misrepresentations by U organizers to non-English speaking and illiterate workers prevented acquisition of actual majority support for U rejected, since Bd's finding that there were no misrepresentations outside standard set out in *N.L.R.B. v. Gissel* is supported by substantial evidence)

8082 ELIMINATION OF UNIT OR JOB CLASSIFICATION FROM UNIT

Finger Lakes Plumbing & Heating Co., Inc. **253 NLRB NO. 049**

(E's contention that bargaining unit ceased and thus E's obligation to bargain ceased when last active Ee in unit ceased work, rejected, since in unit involving normal fluctuating demand for Ees, work force was deemed to consist of Ees on layoff with reasonable expectancy of further employment as well as Ees actively working, and therefore unit continued to exist and with it E's obligation to bargain; before contract expired, E continued to seek work of type normally performed by unit Ees and, after contract expired, obtained such work and employed Ees to perform it)

Associated Grocers **253 NLRB No. 005**

(unilaterally establishing, and setting wage rate for bargaining unit's new cashier position and offering to bargain after change effected, violative)

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**

(E's withdrawal of recognition from U as representative for E's load dispatchers and lead load dispatcher, alleged to be supervisor, during mid-term contract negotiations and E's contemporaneous unilateral change in lead load dispatcher's compensation violative, since E was not privileged in instant case to alter, unilaterally scope of unit during term of contract covering unit which included load dispatchers)

Arizona Electric Power Cooperative, Inc. **250 NLRB No. 110**

(integrity of bargaining unit cannot be unilaterally attacked; once unit is certified, it may be changed only by mutual agreement of parties or by Bd action)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**

(transfer of Ees from E to E's alter ego, unlawful, since E's purpose for transfer was to avoid its collective bargaining obligation to Ees represented by U)

N.L.R.B. v. R & H Masonry Supply, Inc. **627 F.2d 1013 (C.A. 9, Sept. 1980)**

(E's refusal to bargain not justified on basis of that all unit Ees had been terminated or elevated to *managerial* position where E had unlawfully sold its trucks, discharged drivers and contracted out hauling after drivers had signed authorization cards)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(even if cab companies' decision to lease their cabs was mandatory subject of bargaining, their unilateral action was not ULP because U itself made negotiation impossible by imposing improper condition (recognition of U as bargaining representative of leased-drivers) as prerequisite to bargaining)

8083 LACK OR LOSS OF STANDING OF REPRESENTATIVE

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 065**

(record does not support finding of U inactivity to question U's majority status where: U's showing of interest was tainted by E's ULPs; U had notified E of dues increase for checkoff purposes; several Ee grievances had been processed by U during term of its contract with E; and U had active shop steward who quit her job because of too many complaints)

8084 OTHER MATTERS PERTAINING TO PRIOR REPRESENTATION CASE

Howard Johnson Company **250 NLRB No. 161**

(although E did not receive Bd's telegrams notifying it of Bd's rulings on E's requests for review of RD's D/O directing election, E had indirectly received notice of Bd's denial of requests for review, and E's assertion that its technical right to receive notice from Bd itself negated its duty to bargain held not supported by law; Bd is not required to place consequences of its own delay, even if inordinate, upon wronged Ees to benefit of wrongdoing E)

Wells Fargo Guard Services, A Division of Baker Protective Services, Inc. v. N.L.R.B. **659 F.2d 363 (C.A. 3, Sep. 1981)**

(determination of truth of party's allegation in objecting to conduct of election requires evidentiary hearing, since allegation that past president did not remove himself from operation of U, if true, would lead to setting election aside)

8084-2500 Foreign employer's labor relations policies in own country

Honda of America Mfg., Inc. **259 NLRB No. 055**

(E's contention that its application of *Japanese approach to labor relations* should be considered held w/o merit and not special circumstance warranting further consideration by Bd)

8085 STATE CERTIFICATION

Taylor Hospital **249 NLRB No. 031**

(refusal to bargain, unlawful where certification by state labor board met Bd's standards for granting comity and there was no newly discovered evidence presented or lack of due process or other grounds found for refusing comity, and long passage of time since certification due to E's exhausting its remedies, does not warrant relieving E of its bargaining obligation)

8090 CHANGE IN EMPLOYER'S OPERATIONS

8090-0100 Generally

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(unilateral actions effecting major shifts in capital investment or corporate strategy of E are not mandatory subjects of bargaining when motivated by economic considerations and not U animus even though they may have had profound effects on *conditions of employment*)

8090-0167 Pressing economic necessity

Van Dorn Plastic Machinery Co., Division of Van Dorn Company **265 NLRB No. 036**

(E's stipulation of *business necessity* w/o more, no defense, since it was insufficient to allow Bd to evaluate E's reasons for unilateral change in light of its standard of *compelling economic considerations*)

Walker Die Casting, Inc. v. N.L.R.B. **682 F.2d 592 (C.A. 6, July 1982)**

(no ULP where E's withdrawal of final offer during contract negotiations with U, but after economic strike started; E's action was legitimate bargaining tactic reflecting changed economic background)

8090-1000 Closing of plant

Universal Security Instruments, Inc. **253 NLRB No. 019**

(E's refusal to recognize U as representative of P&M Ees at its new plant after it closed existing plant, moved its production lines to new location and transferred those Ees who accepted offer of transfer to new facility, violative)

N.L.R.B. v. Schmutz Foundry and Machine Company **678 F.2d 655 (C.A. 6, May 1982)**

(where, during negotiations for renewal of contract and 6 months after impasse had been reached, E closed its plant but then, approximately 1 year later, began limited production at plant, its refusal to bargain on U's demand at that time held unlawful, since E's closure, which E claimed constituted going out of business, was a lockout for purpose of getting rid of U, and operations were resumed only when E concluded it would no longer have to recognize U)

8090-2000 Closing or sale of department, division, or operation

Fugazy Continental Corp.; Elite Services, Inc. **265 NLRB No. 165**

(purchaser of part of E's operations as *alter ego* of E, obligated to recognize and bargain with victorious U in election, and both purchaser and E violated 8(a)(5) by engaging in bad faith effort to avoid bargaining with U, in view of sham purchase transaction herein intended to continue E's operations in disguised form to avoid its statutory obligations and to thwart Ees' successful organizational efforts; E's extensive and ferocious anti-U campaign up to and beyond time of alleged sale; and subsequent unlawful termination of Ees, refusal to reinstate them, and denial of accrued vacation pay)

U.S. Contractors, Inc., and The Dow Chemical Company, U.S.A., Texas Division **257 NLRB No. 182**

(when economic reasons compel E to decide whether or not to shut down part of its business, E's need to operate freely outweighs any incremental benefit that might be gained through U's participation in decision-making)

8090-2000—Cont.

Scott Printing Corporation 249 NLRB No. 134

(Bd, in affirming its prior D/O, found E and its *alter ego* may not now allege that at time of refusal to bargain, they had good-faith doubt as to U's continuing majority support, since defense was based on events induced by *sham* sale to E's *alter ego*; purpose of sale was to enable E to avoid its duty to bargain with U)

N.L.R.B. v. A.W. Thompson, Inc. 651 F.2d 1141 (C.A. 5, July 1981)

(where all of E's stock was acquired by another company, this does not provide basis for good faith doubt in U majority absent objective evidence that change in ownership of stock changed Ees' attitude about U)

N.L.R.B. v. R & H Masonry Supply, Inc. 627 F.2d 1013 (C.A. 9, Sept. 1980)

(E's refusal to bargain not justified on basis of that all unit Ees had been terminated or elevated to *managerial* position where E had unlawfully sold its trucks, discharged drivers and contracted out hauling after drivers had signed authorization cards)

8090-4000 Transfer of operations to another location

Marine Optical, Inc. 255 NLRB No. 158

(E's refusal to recognize U and to apply existing contract, together with unilateral changes in working conditions, at new location after transfering operations there during contract term, unlawful, where Ees at new location constituted appropriate unit; existing contract remained in effect following relocation; by reason of contract Ees are presumed to have continued designating U as their representative; and although U's majority status did not continue at new location, new hires are assumed to have desired U representation in same proportion as Ees they had replaced)

U.S. Utilities Corporation 254 NLRB No. 055

(refusing to apply contract to work outside U's jurisdiction and unilaterally establishing new terms for these operations, violative as contract by its terms applied to work wherever company works)

Universal Security Instruments, Inc. 253 NLRB No. 019

(E's refusal to recognize U as representative of P&M Ees at its new plant after it closed existing plant, moved its production lines to new location and transferred those Ees who accepted offer of transfer to new facility, violative)

Westwood Import Company, Inc. 251 NLRB No. 162

(withdrawal of recognition and failure to honor contract at relocated plant 35 miles from old site during period contract served as bar and no qcr present, violative, otherwise, E could unilaterally eliminate or change representative at time when Bd would refuse to allow change; relocation, providing operations and equipment remain substantially same at new location and substantial percentage of Ees (though less than 50) at old plant transfer to new location, has little effect on bargaining obligation)

Campo Slacks, Inc. and J & E Sportswear, Inc. 250 NLRB No. 057

(withdrawal of recognition of U as bargaining agent for Ees transferred from subsidiary to parent organization in same building, unlawful, as they still remained part of bargaining unit)

Monongahela Valley Hospital, Inc. 249 NLRB No. 013

(where E built new facility 3 miles away and transferred all patients, equipment, and Ees from old facility except 4 boiler firemen who remained behind at old structure which enjoyed limited use in support of new facility; these 4 boiler firemen remained in unit at new facility because of common supervision and community of interest; U did not waive any rights to their representation by waiting 3 months after move before filing charges)

Van-Note Harvey Associates and Nassau Surveying 247 NLRB NO. 139

(bargaining with no intention of reaching agreement with U, evidenced by E's transferring unit work to its *alter ego*, held violative, since reactivation of *alter ego* was subterfuge to avoid bargaining with U)

N.L.R.B. v. United Optical Workers Union Local 408, Electrical Workers (Marine Optical, Inc.) 671 F.2d 11 (C.A. 1, Feb. 1982)

(E's withdrawal of recognition, refusal to bargain on demand, and unilateral changes after relocating operations violated 8(a)(5) and 8(d); contract's description of unit as consisting of Ees employed at address of E's old facility was not shown to be intended as geographical limitation, as contended, and continuity was sufficient for Bd to apply modified contract-bar doctrine and find contract effective at new facility where there was substantial continuity of operations and in bargaining unit after relocation, and new facility was near old facility and in same state)

Air Express International Corporation v. N.L.R.B. 659 F.2d 610 (C.A. 5, Oct. 1981)

(in relocation non-*Gissel* case, composition of bargaining unit is determined at time of relocation (or after reasonable shakedown period) otherwise, situation would create undisirable incentive to delay through litigation)

8090-4100 Transfer of work outside of unit

Bay Shipbuilding Corp. 263 NLRB No. 166

(bargaining contract which gave E right to establish new department did not give E right to designate department as non-U and remove Ees transferred to new department from unit; rather, *E has burden of showing that group is sufficiently dissimilar from remainder of unit so as to warrant its removal*)

Maine Yankee Atomic Power Company JD-59-82

(where E unilaterally created new classification outside of bargaining unit, transfered some unit work to that position and promoted unit Ee to fill position it did not violate Act because : 1) parties historically had amicable relationship 2) legitimate purpose in reorganization 3) no unit Ee was laid off, lost time or overtime or suffered any detriment to his job and 4) unit and its classifications remained unchanged in size)

8090-5000 Administrative action eliminating employee category

Yellow Taxi Company of Minneapolis, d/b/a Suburban Yellow Taxi Company 249 NLRB No. 035

(E's withdrawal of recognition from and refusal to continue to recognize and bargain with U as representative of E's lessee drivers, unlawful; contrary to E's contention, drivers were found to be Ees and not independent contractors)

8090-5500 Change in administrative structure

The Lutheran Home of Kendallville, Indiana, A Division of Lutheran Homes, Inc. 264 NLRB No. 074

(creation of new supervisory positions w/o bargaining with U violative where E promoted Ees out of unit but they continued to do unit work and thus affectively created loss of unit work)

Air Express International Corporation v. N.L.R.B. 659 F.2d 610 (C.A. 5, Oct. 1981)

(restructuring district from single plant unit where U certified into 2 plant district to include plant in another state and having labor management policy formed to cover expanded district is not kind of change that amounts to *unusual circumstances* that would make certification invalid because it does not cover aggregate Ees in expanded district)

8090-6000 Subcontracting

Van-Note Harvey Associates and Nassau Surveying 247 NLRB NO. 139

(bargaining with no intention of reaching agreement with U, evidenced by E's transferring unit work to its *alter ego*, held violative, since reactivation of *alter ego* was subterfuge to avoid bargaining with U)

N.L.R.B. v. R & H Masonry Supply, Inc. 627 F.2d 1013 (C.A. 9, Sept. 1980)

(E's refusal to bargain not justified on basis of that all unit Ees had been terminated or elevated to *managerial* position where E had unlawfully sold its trucks, discharged drivers and contracted out hauling after drivers had signed authorization cards)

8090-6900 Increase in number of employer business locations

Fotomat Corporation v. N.L.R.B. 634 F.2d 320 (C.A. 6, 1980)

(contention that U lacked support of majority of Ees because of high turnover and 50% increase in E locations, rejected, where new locations not included in certified unit and E presented no evidence that new Ees did not support U)

8090-7500 Institution of new production method

Bay Shipbuilding Corp. 263 NLRB No. 166

(shipbuilder's refusal to apply terms of bargaining agreement to its manual lofters transferred to separate department established upon institution of computerized lofting, unlawful; E's contention computerized department should not be in unit rejected, since function of both manual and computerized lofting was to make part of ship with differences only in manner part is produced; both skilled jobs requiring same basic education; fact same supervisor used and substantial interaction between computerized and manual departments; further, management rights clause did not give E right to remove department from unit)

8090-8000 Manufacture of new product by new method

Andersen Sand & Gravel Company JD-655-80

(E which was engaged in manufacture of prefabricated structual concrete signing contract with Laborers in regard to representation of Ees in new wet concrete operation, unlawful, since E had obligation to bargain with Teamsters where Ees in new operation part of existing unit represented by Teamsters; inasmuch as work was performed in same plant with same tools, basically same wages, under same general supervision and working conditions; nor was operation result of establishment of new division where operation neither physically nor functionally distinct, and E's proposal for new division during bargaining had been withdrawn)

8090-9000 Reopening after shutdown

N.L.R.B. v. Circle T Corporation and Meat Men Inc. d/b/a Royal T Meat 614 F.2d 777 (C.A. 9) (1980)

(E who ceased operations at plant for 6 weeks and then resumed operations under different name violated Act by withdrawing recognition from U and repudiating contract since new business was disguised continuance of original and that they both constituted single E and purpose of shutdown and resumption was to evade bargaining obligation)

536 UNION COERCION OF EMPLOYEES (8(b)(1)(A))

0100 GENERALLY

0150 SCOPE OF PROSCRIPTION

N.L.R.B. v. Plumbers and Steamfitters Local No. 40 **642 F.2d 456(T) (C.A. 9, Feb 19, 1981)**

(By wielding its power arbitrarily the U gives notice that its favor must be carried, thereby encouraging membership and unquestioned adherence to its policies)

0150-0100 Generally

Charles E. Helton v. N.L.R.B. **656 F.2d 883 (C.A.D.C., Jun 1981)**

(omission of words *interfere with* from Sec. 8(b)(1)(A) was not intended to indicate that U conduct should be measured against less demanding standard than E conduct)

0150-7500 Conduct reasonably calculated to coerce

Construction, Production & Maintenance Laborers' Local Union 383, Laborers (Carter-Glogau Laboratories, Inc.) **260 NLRB No. 192**

(taking pictures of non-striking Ees and/or writing down license numbers of vehicles of nonstriking Ees violative since where *intimidated* was used in reference to act in unrebutted stipulation of facts, it may be inferred that action *was calculated to instill fear of retribution among Ees involved*)

Construction, Production & Maintenance Laborers' Local Union 383, Laborers (Carter-Glogau Laboratories, Inc.) **260 NLRB No. 192**

(where stipulation of facts by its terms stated that U's conduct as to allegations *Intimidated and coerced non-striking Ees* U has admitted necessary restraint and coercion which sustains finding of violation of Section 8(b)(1)(A))

United Mine Workers of America, District 17 (Corvette Coal Company) **JD-167-82**

(picketing accompanied by acts of violence in relation thereto, violative where entrance to E's coal mine was obstructed by members of uncertified U which sought recognition from E)

N.L.R.B. v. Local 90, Plasterers **606 F.2d 189 (C.A. 7, 1979)**

(to constitute coercion or intimidation unlawful under Section 8(b)(1)(A), conduct need not actually discourage exercise of Ee's rights; the conduct need only have reasonable tendency toward this effect)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**

(U's unreasonable and arbitrary course of action may constitute breach of duty of fair R even w/o hostile motive)

N.L.R.B. v. Glaziers and Glassworkers Local Union No. 1621 **632 F.2d 89 (C.A. 9, 1980)**

(although neither cts nor Bd will judge wisdom or fairness of particular U rule, they will inquire into whether rule reflects legitimate U interests, and *if rule invades or frustrates overriding policy of labor laws the rule may not be enforced)*

Charles E. Helton v. N.L.R.B. **656 F.2d 883 (C.A.D.C., Jun 1981)**

(ct rejected Bd's contention that simple restraint is not enough to violate Sec. 8(b)(1)(A), and that U must engage in economic coercion or threaten violence; simple fact that U has attempted to restrain Ee in exercise of his Sec. 7 rights is enough to justify finding of Sec. 8(b)(1)(A) violation)

Warehouse Union, Local 860, Teamsters v. N.L.R.B. **652 F.2d 1022 (C.A.D.C., Apr 1981)**

(actions (by U) found to be hostile, discriminatory or arbitrary are likely to constitute a violation of *Section* 8(b)(1)(A))

0169 DISCIPLINE INCONSISTENT WITH AMNESTY OR SETTLEMENT AGREEMENT

Hospital and Institutional Workers Union, Local 250, SEIU, AFL-CIO (Associated Hospitals of The East Bay) **254 NLRB No. 103**

(where pursuant to strike settlement agreement which provided for binding arbitration, U, in contravention of arbitrator's decision providing for complete amnesty and no retaliation by anyone against Ees for activities during strike, subjected members to intro-U trial for such activities, and thereby unlawfully coerced Ees notwithstanding no penalties imposed)

1200 UNION INTERFERENCE WITH EMPLOYEE REFRAINING FROM ENGAGING IN UNION ACTIVITY

Teamsters Local Union No. 515 (Cavalier Corporation) **259 NLRB No. 094**

(where U relied unreasonably on contract clause and initiated grievance which resulted in removal of Ee from his overtime assignment, U's action violative as it was done in retaliation for Ee's resignation from U)

Machinists, Lodge 727 (Lockheed-California Company, A Division of Lockheed Corporation) **250 NLRB No. 032**

(U's refusal to give effect to member's resignation violative where member willing to meet financial core membership obligation, no provision in U's constitution which restrains membership resignation, and effect of membership is to deprive member from accepting employment wherever U is involved in strike as such conduct prohibited by constitution)

International Brotherhood of Electrical Workers, Local 234, AFL-CIO (Blair Broadcasting of California, Inc. d/b/a KSBW) **JD-(SF)-262-81**

(GC failed to establish that U violated Act by demanding as condition of Ee's employment with E that, under U-security provision between E and U, the become full member of U in addition to tendering dues and fees required for membership)

N.L.R.B. v. American Postal Workers Union . **618 F.2d 1249 (C.A. 8, 1980)**

(specific evidence of intent to encourage U membership not essential; *U violates 8(b)(1)(A) and (2) of Act if it or its agent adversely affects Ee's job for purely personal or arbitrary reasons*)

N.L.R.B. v. Maui Surf Hotel Company and ILWU Local 142 **601 F.2d 603(T) (C.A. 9, 1979)**

(Ee and U which enforced attendance at contractually mandated *work stop* meeting by requiring Ees who refused to attend meeting to sign out and lose 1 hour's pay violated Act because Ees who refused to sign out were threatened with disciplinary action)

2500 FORM OF UNION CONDUCT

Sanford Home For Adults **253 NLRB No. 153**

(U which threatened Ee with discharge if he did not sign authorization card violated Act)

2501 GENERALLY

N.L.R.B. v. Wismer and Becker Contracting Engineers, and Electrical Workers Local Union 497 **654 F.2d 731(T) (C.A. 9, June 1981)**

(*Section* 8(a)(1), 8(a)(2), 8(b)(1)(A) and 8(b)(2) are violated only when actor's *true purpose* in discriminating was to encourage or discourage U membership; intent must be proved specifically unless actor's conduct implied prohibited motive)

Warehouse Union, Local 860, Teamsters v. N.L.R.B. **652 F.2d 1022 (C.A.D.C., Apr 1981)**

(actions (by U) found to be hostile, discriminatory or arbitrary are likely to constitute a violation of *Section* 8(b)(1)(A))

2501-4000 Effectiveness need not be shown

Laborers' International Union of North America, Local No. 496 (Newport News of Ohio, Inc.) **258 NLRB No. 144**

(test used to determine if U's remarks to member were coercive is not subjective one, but rather whether remarks tended to restrain or coerce Ee in rights guaranteed by Sec. 7)

2501-4000—Cont.

N.L.R.B. v. Local 90, Plasterers **606 F.2d 189 (C.A. 7, 1979)**
(to constitute coercion or intimidation unlawful under Section 8(b)(1)(A), conduct need not actually discourage exercise of Ee's rights; the conduct need only have reasonable tendency toward this effect)

2501-6000 Indirect coercion

East Texas Motor Freight **262 NLRB No. 101**
(notwithstanding that U steward, when assaulting Ee outside of U meeting hall, was not acting as agent of U during assault, U's failure to reprimand steward or make any effort to prevent him from engaging in such conduct in future held violative, since failing to act in connection with preventing assault constituted condonation of steward's action by U)

2501-6500 Isolated conduct

Interstate Cigar Co., Inc. and L. S. Amster Co., Inc. **256 NLRB No. 082**
(conduct of non-Ee pickets, after ptn filed, of photographing Ees and vehicles entering and leaving E's plant, of recording license numbers of those vehicles, not violative nor objectionable, since actions were isolated and carried out by persons unknown; in instant case there was lack of credible evidence that Ees were threatened nor did U elicit strike by E's Ees but set up picket line for organizational purposes)

2501-7000 Triviality of conduct

Construction, Production & Maintenance Laborers' Local Union 383, Laborers (Carter-Glogau Laboratories, Inc.) **260 NLRB No. 192**
(where stipulated facts included 26 instances of various threats, damage to property, assaults, throwing nails on E's property, pursuing nonstriking Ees in autos, and blockage of entrance to E's facility, dismissal of blockage and damage allegations as generally isolated and minor, denied; *Totality of U's acts as course of conduct lends support to finding that each action is separately violative of Act. Failure of U to rebut or supply an explaining context to admitted conduct sustains violation in each instance and when taken as single course of conduct*)

Interstate Cigar Co., Inc. and L. S. Amster Co., Inc. **256 NLRB No. 082**
(non-Ee pickets' asking truckdrivers, making deliveries to E, to honor pikcet line, not violative, since such conduct was merely incidental to primary picketing activity which is permitted under Act)

2501-8000 Noncoercive circumstances

East Texas Motor Freight **262 NLRB No. 101**
(U's inaction not violative where physical altercation took place outside of U meeting hall in presence of U agents; none of U agents knew who participated in brief fight that occurred at some distance from where agents were positioned)

Interstate Cigar Co., Inc. and L. S. Amster Co., Inc. **256 NLRB No. 082**
(non-Ee pickets' asking truckdrivers, making deliveries to E, to honor pikcet line, not violative, since such conduct was merely incidental to primary picketing activity which is permitted under Act)

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(where E merely introduced U officials to its Ees; officials had Ees sign U membership cards and stated that they wanted Ees to get into U apprenticeship program, not violative because U had majority support and E's actions were non threatening)

Teamsters Local 515 (Roadway Express, Inc.) **248 NLRB No. 020**
(no violation by U's removal from U bulletin board in Ees' breakroom of material posted by dissident member criticizing U and its leaders, notwithstanding U had previously allowed Ees to post all types of notices on bulletin board, where there was no discipline, threat or implication of retribution by U against Ee, like literature was distribution in breakroom w/o either E or U action, and *all-purpose* bulletin board was available)

2505 INTERROGATION OF EMPLOYEES

Electrical Workers Local 401 (Stone and Webster Engineering Corporation) **251 NLRB NO. 039**
(questioning members about conversations with Bd agent w/o giving assurances against reprisal, violative)

2506 PICKETING

Local 282, Teamsters (The General Contractors Association of New York, Inc.) **262 NLRB No. 085**
(picketing, strike threats and other action in support of U's demands that Es hire its members to protect other members on jobsite from minority groups constituted unlawful action to compel U membership as condition for hiring of new job classification found to be guards)

Operating Engineers, Local No.12 (Wilshire Fremont Associates) **252 NLRB No. 149**
(picketing by U which claimed it was engaged in informational picketing at construction site regarding independent contractor's practice of undercharging for work he was performing for owner-builder, unlawful, where object was to force contractor to join U, as evidenced by U representative's clear signal to owner-builder's superintendent and independent contractor that such was the object, even if such object was only one among others)

2507 FILING CRIMINAL OR CIVIL LAW SUIT

Sheet Metal Workers' Union Local 355 (Zinsco Electrical Products) **254 NLRB No. 092**
(filing complaint for Declaratory Relief in Superior Court for damages because member filed ULP charge with Bd against U, violative)

2509 THREATS TO EMPLOYEES

2509-0100 Generally

Transport Workers Union of America, Local 514 (Kethe, Nichols & Wolfe, Inc., et al.) **249 NLRB No. 109**
(no violation by U member's threat to get fellow Ees for circulating decertification ptn where it could be considered threat to take lawful action under U's internal rules as well as to engage in unlawful conduct)

2509-0600 Prohibiting resignation from union during strike

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(violation by informing member that he could be fined for crossing picket line during strike and that he could not resign during strike)

2509-1200 Refusal to refer

International Association of Heat and Frost Insulators and Asbestos Workers Local No. 53 (Insul-Contractors, Inc.) (Betty Ruth Turner) **262 NLRB No. 111**

International Alliance of Theatrical Stage Employees, Local No. 7 (Universal City Studios, Inc.) **254 NLRB No. 154**
(U steward's statement that Ees would never work at job again unlawful, since it reinforced his prior unlawful action in preventing their employment by E; statement was particularly threatening where U had exclusive job referral arrangement with E)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(threats to refer Ees not at all, not to refer them to jobs near home or to refer them to undesirable work because of Ees' refusal to sign checkoff authorizations and filing of charges with Bd, unlawful)

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 109**
(violation bythreatening to refuse to refer Ee for future employment because he opposed proposed U dues increase)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(threats affecting Ee as well as fellow members of U in their dispatches from hiring hall held violative when made because Ee filed charges with Bd and were employment related)

Bechtel Power Corporation **248 NLRB No. 166**
(statements made by U officer at a bar during argument on U politics implying refusal of hiring hall referrals to Ee-members because they supported candidates running in opposition to U incumbent officers, violative)

Moving Pictures Projectionists Local 150, Stage Employees (Mann Theatres) **JD-(SF)-221-82**
(U's business agent threatening member that he would never work in U's jurisdiction again, unlawful, where threat motivated by member's complaint to U's executive committee regarding operation of U's referral system)

Teamsters Local Union No. 159, a/w Teamsters (John G. Ruhlin Construction Company) **JD-834-81**
(U official's statement to applicant for job referral, in response to latter's inquiry into availability of work, that applicant had filed charges, written grievances, and *screwed up* on last job he was sent to, unlawful, since statement plainly implied that applicant's filing of charges, among other things, had a direct impact on work U would make available to him, which amounted to a threat to withhold referral services because of applicant's protected activity)

Laborers International Union of North America, Local 1136 (Southern Illinois Builders Association) **JD-477-81**
(U which threatened Ee that it would refuse to refer him from exclusive hiring hall if he engaged in conduct publicly critical of U or its business agent, violative Act)

2509-2500 Loss of employment

2509-2500—Cont.

The Buffalo Newspaper Guild, Local 26, and The Newspaper Guild, AFL-CIO-CLC (Buffalo Courier Express, Inc.) **265 NLRB No. 048**
(U violated Act when it threatened Ee that unless he provided U with signed checkoff form and $3 fee it withheld demand that E dismiss Ee where error was made in requiring checkoff form and this information was never conveyed to Ee)

H. H. Robertson Company **263 NLRB No. 173**
(U's filing internal charges against supervisor, fining and removing him from U office for *hiring his son and friend off street* in violation of oath to secure employment for U members, violative, where supervisor had requested Ees through hiring hall but there being no applicants in hall, relied on E's contractual right to hire directly under those circumstances and on rights of individuals not registered to be hired and since U's actions amounted to demand supervisor prefer U job applicants over non-members, and proceedings reasonably tended to make individuals present at hearing, in believing it wise to apply for membership and use hiring hall)

Local Union #1010, Furniture Workers (Leggett & Platt, Inc.) **261 NLRB No. 077**
(threatening to speak to E's representative for new contract about having charging party and other *troublemaker* discharged because they were protesting signing of new contract, violative)

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) **261 NLRB No. 040**
(telling Ees and applicants for employment that Ee who filed charges against U with Bd would not be able to work and/or would lose his job, or, impliedly, would be harmed if he did not drop his charges, violative)

Building Material & Dump Truck Drivers Local 420, Teamsters (Standard Concrete Material, Inc.) **260 NLRB No. 115**
(U's advising Ees of their suspension from membership in U for nonpayment of dues, and requiring reinitiation fee and reciting that failure to do so would result in their termination, violative where U was never representative of E's Ees, since transfer of E's Ees from another U to U was ineffective)

Bricklayers and Masons Union, Local No. 2, International Union Bricklayers and Allied Craftsmen, AFL-CIO (Macfarlane & Hays Co.) **259 NLRB No. 036**
(attempting to cause, and causing, removal of apprentice bricklayer from employment on *fire brick* job for E who did not sponsor his apprenticeship pursuant to contract between E association and U held violative, since U prohibited *all* apprentices from working on *fire brick* jobs for Es who did not sponsor apprentice regardless of skill or ability of apprentice to perform work; basis for U's action was status of Ee in U as apprentice rather than journeyman, clearly arbitrary and capricious conduct)

Versatile Services, Inc. **258 NLRB No. 109**
(U which threatened Ees who refused to join it violated Act notwithstanding existence of U-security clause where Ees had not been afforded reasonable opportunity to comply with clause and were not informed of their obligations)

United Brotherhood of Carpenters and Joiners of America, Carpenters' District Council of Western Pennsylvania and Industrial Local No. 2605, AFL-CIO (DeRose Industries, Inc.) **256 NLRB No. 092**
(U president's threatening Ee that his time card would be pulled if he did not pay U assessed fine, violative; although not specifically alleged in complaint as separate violation of Sec. 8(b)(1)(A), issue was fully litigated)

Classic Truck Rental Corp. **251 NLRB No. 056**
(U representative's statement to drivers' helpers that he had no objection to their joining U representing drivers, and if they wanted to, they could join but that he would not guarantee their jobs because E might dismiss them, not unlawful, where representative had no apparent control over helpers' employment, and there was no evidence that representative was agent of E)

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 109**
(violation bythreatening to cause discharge of Ee and to keep him from working in the industry because he opposed U dues increase)

Tower Hotel Company, d/b/a Holiday Inn Riverfront **280 NLRB No. 010**
(U steward's statement to Ee that if he did not obtain U permit other Ees would refuse to work with him violative of 8(b)(1)(A) but not 8(b)(2) as no evidence that U sought to involve E)

Local Lodge Number 5, Boilermakers (Roger Construction Company, Inc.) **269 NLRB No. 105**
(threats of job loss or bodily harm for failing to support incumbent for office in local U, unlawful)

Baine Service Systems, Inc. **265 NLRB No. 067**
(statement to Ees that they were compelled to join U as condition of employment)

Siro Security Service, Inc. **247 NLRB No. 157**
(U threatening to cause discharge of Ees if they did not execute applications and checkoff authorizations when it did not have majority and w/o according Ees 30 day grace period)

Pacific Northwest Newspaper Guild Local 82 **JD-(SF)-196-82**
(violation, where U notified Ee that her request for financial-core membership status would be treated as resignation request, and that she would be subject to discharge under U-security agreement should it grant that request)

Truck Drivers, Chauffeurs & Helpers Local Union No. 100, an affiliate of Teamsters (Clyde F. Overstreet, an individual; etc.) **JD152-82**
(threatening member with loss of employment because he supported deauthorization petition, violative)

International Brotherhood of Electrical Workers, Local 234, AFL-CIO (Blair Broadcasting of California, Inc. d/b/a KSBW) **JD-(SF)-262-81**
(GC failed to establish that U violated Act by demanding as condition of Ee's employment with E that, under U-security provision between E and U, she become full member of U in addition to tendering dues and fees required for membership)

Teamsters Local Union No. 688, a/w Teamsters (Ritepoint Division of Penn Corp.) **JD-403-81**
(U rule that if member fails to secure withdrawal card when (1) leaves Industry for 1 year and then returns, or (2) leaves industry for less than 1 year or upon layoff member must pay dues for time absent w/o withdrawal card, violative as future employment cannot be conditioned on obligation Ees were free from (not employed) under U-security agreement; contention rule falls w/i U's right to regulate internal affairs rejected since rule constitutes implied threat of loss of employment because of U-security clause)

Teamsters Local 312 a/w Teamsters (William E. Coons, an Individual) **JD-378-81**
(where assistant U steward assaulted Ee for his criticism of U, U steward's threat to Ee that if he pursued redress for assault, his U card would be pulled and he would not have job anywhere, violative)

International Union of Petroleum and Industrial Workers, AFL-CIO (Chevron U.S.A. Inc.) **JD-(SF)-172-81**
(threatening Ees with loss of employment for nonpayment of dues after they effectively had resigned from U violative)

Teamsters, Local No. 671 (Connecticut Natural Gas Corporation) **JD-550-80**
(violation where U official threatened to cause Ee's discharge, evicted him from U office, and told him not to return, thus causing him to lose strike benefits, because of his prior protected activity of supporting rival U in attempt to replace respondent U)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(threat that U would seek to impair job status of member for seeking access to Bd for decertification purposes, unlawful)

N.L.R.B. v. International Brotherhood of Electrical Workers, Local Union No. 453 **668 F.2d 991 (C.A. 8, Jan. 1982)**
(U's request that *travelers* quit their employment so that unemployed members of local U could have their jobs violative where after few days of request all travelers had quit or been laid off as this shows that travelers in these circumstances were aware of U's control over their right to work in that jurisdiction, especially where similar requests had been accompanied by threats of violence)

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 109**
(violation bythreatening to keep Ee from working in the industry where there was a U because he opposed increase in U dues)

2509-3700 Legal action

Electrical Workers, Local Union No. 11, (Los Angeles County Chapter of the National Electrical Contractors Association) **258 NLRB No. 046**
(U's threat to bring legal action against charging party for filing and pursuing ULP charges against U, not unlawful, notwithstanding ALJ's finding that U had reasonable basis to believe that charging party was misusing or attempting to misuse Bd's processes and, therefore, U's threat to bring legal action was not calculated to restrain or coerce charging party)

Electrical Workers, Local Union No. 11, (Los Angeles County Chapter of the National Electrical Contractors Association) **258 NLRB No. 046**
(defense to charge that U unlawfully threatened to take legal action against charging party (CP) for filing ULP charges against it, on ground CP misused Bd processes, rejected; fact that only small percentage of many charges filed by CP resulted in issuance of C does not establish U had *reasonable basis* to believe CP was misusing Bd processes; right to file charges is not

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dependent on whether charge has merit, and refusal of Bd to issue C is not determination that charge was filed in bad faith)

Electrical Workers, Local Union No. 11, (Los Angeles County Chapter of the National Electrical Contractors Association) **258 NLRB No. 046**
(U's threat to bring legal action against charging party for filing ULP charges against U, unlawful, notwithstanding that only small percentage of charging party's numerous charges over the years were found to have merit; such fact does not establish that U had *reasonable basis* to believe charging party was misusing Bd processes since right to file charge is not dependent on whether it is ultimately determined that charge has merit, and Bd's refusal to issue C is not determination that charge was filed in bad faith)

Electrical Workers, Local Union No. 11, (Los Angeles County Chapter of the National Electrical Contractors Association) **258 NLRB No. 046**
(U's threat to bring legal action against charging party for filing ULP charges against U, unlawful, notwithstanding ALJ's reliance on fact that charging party corresponded with U officials rather than U's attorney to find that U's threat was made in good faith and was not calculated to unlawfully restrain or coerce charging party; there was nothing that evinced a misuse of Bd process; and, even assuming such correspondence was significant, there were only 2 instances of correspondence with U officials and letters were turned over to attorney for response)

Electrical Workers, Local Union No. 11, (Los Angeles County Chapter of the National Electrical Contractors Association) **258 NLRB No. 046**
(U's threat to bring legal action against charging party for filing ULP charges against U, unlawful, notwithstanding charging party's seizure and destruction of affidavit during prior investigation of charges he had filed; while not condoned by Bd, single incident of seizure and destruction of affidavit did not debar charging party from resort to Bd processes or warrant finding that his intent was to misuse those processes)

Electrical Workers, Local Union No. 11, (Los Angeles County Chapter of the National Electrical Contractors Association) **258 NLRB No. 046**
(U's threat to bring legal action against charging party for filing ULP charges against U, unlawful, notwithstanding ALJ's finding that charging party's letter to U, stating that he would take legal action if not allowed to appear before U's appeals committee, corroborated U's good faith defense under the circumstances; letter, written almost 8 months after U threatened charging party with legal action, had no bearing on issue herein as to whether U had violated Act by its threat of legal action and consequently was of no significance)

Teamsters Local 312 a/w Teamsters (William E. Coons, an Individual) **JD-378-81**
(where assistant U steward assaulted Ee for his criticism of U, U president's threat to sue Ee if he persisted in his criticism of U and pursuit of remedy for assault, violative)

2509-5800 Loss of employment benefits

United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) Local Union NO. 1085 **JD-509-80**
(where U refused to reimburse elected U executive committee member for time he took off from work in connection with executive board meetings, U president's stating that he caused the cut-off of the executive member's reimbursement partly because of the executive member's opposition to and attacks on U's president and persons associated with the president, violative)

2509-5900 Loss of pension

Pattern Makers' League of North America, AFL-CIO, and Its Rockford and Beloit Associations (Rockford-Beloit Pattern Jobbers Association) **265 NLRB No. 170**
(U official strongly suggesting that Ees would lose a day of pension benefits to which they were entitled for each day they worked during strike, violative where statement constituted threat of reprisal)

Bakery Workers Union, Local No. 213 (Krispy Kreme Division, Beatrice Foods Co.) **261 NLRB No. 114**
(no violation where U informed Fund that pensioner who was opposing U's organizational campaign at plant where he was presently employed was no longer eligible for pension, and Fund stopped pension payments, notwithstanding U would not have been aware of Ee's ineligibility if not for organizing campaign since once U acquired such knowledge it was bound to inform Fund of such)

2509-6300 Lack of representation

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **259 NLRB No. 109**
(violation by threatening to refuse to represent Ee because he opposed increase in U dues)

2509-7500 Violence

Pattern Makers' League of North America, AFL-CIO, and Its Rockford and Beloit Associations (Rockford-Beloit Pattern Jobbers Association) **265 NLRB No. 170**
(U officials stating to members that some men on picket line could get pretty hostile and that sometimes strikebreakers end up with broken arms and broken legs, violative, where statement constituted threat of reprisal)

Plumbers, Local Union 119 (Kamtech, Inc.264 NLRB No. 084
(threatening Ee-member of another local U with physical harm unless they quit working for non-U contractor, violative)

Construction, Production & Maintenance Laborers' Local Union 383, Laborers (Carter-Glogau Laboratories, Inc.) **260 NLRB No. 153**
(U held to have violated Section 8(b)(1)(A) in each of 26 instances, by totality of conduct where U stipulated to facts; picketing of E's operations, blocking entrance, threatening nonstriking Ees and their families with bodily harm and damage to their property, damaging vehicles of nonstriking Ees, pursuing nonstriking Ees in cars, throwing nails on E's property, assaulting nonstriking Ees with picket sign, making obscene remarks to nonstriking female Ees; where contention that de minimus nature of some incidents precludes finding violations as to incidents rejected)

Electrical Workers Local Union No. 453 (National Electrical Contractors Association, Inc.) **258 NLRB No. 158**
(U violated Act when member of its executive board threatened member with bodily harm because he had filed charges against U with Bd)

District 34, Machinists, and its Lodge No. 162 (The Wolf Machine Company) **254 NLRB No. 025**
(threatening to inflict personal injury upon strike replacements, violative)

Local Lodge Number 5, Boilermakers (Ragor Construction Company, Inc.) **249 NLRB No. 165**
(threats of job loss or bodily harm for failing to support incumbent for office in local U, unlawful)

General Teamsters Local 959, State of Alaska (Frontier Transportation Company) **248 NLRB No. 108**
(where truckdriver refused to join strike and attempted to cross picket line accompanied by his wife and son, U agent's telling truckdriver that *with a few broken bone, you wouldn't be able to drive that truck*, violative)

General Teamsters Local 959, State of Alaska (Frontier Transportation Company) **248 NLRB No. 108**
(where truckdriver refused to join strike and attempted to cross U's picket line accompanied by his wife and son, U agent's telling truckdriver that he knew where truckdriver lived and where his son went to school, violative since, in the context of U's agent's other threats of bodily harm to truckdriver, U agent impliedly threatened to harm truckdriver's family)

General Teamsters Local 959, State of Alaska (Frontier Transportation Company) **248 NLRB No. 108**
(shop steward's telling two of E's drivers that because they crossed picket lines U had their number and they were going to get hurt by outside teamsters, violative notwithstanding shop steward's concluding statement that *he was telling them as a friend*

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 190**
(international and local U's threats, through local's business agents (appointed by international during its trusteeship of local) of physical violence against member for his talk about running against business agent in election, unlawful)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 190**
(local U's threat of serious physical harm or violence against member for filing charge with Bd against U, unlawful)

Truck Drivers, Chauffeurs & Helpers Local Union No. 100, an affiliate of Teamsters (Clyde F. Overstreet, an individual; etc.) **JD183-83**
(threatening member with physical harm because he supported deauthorization petition, violative)

United Mine Workers of America, District 17 (Carvens Coal Company) **JD-167-83**
(picketing accompanied by acts of violence in relation thereto, violative where entrance to E's coal mine was obstructed by members of uncertified U which sought recognition from E)

Local 32B-32J, Service Employees International Union, AFL-CIO (Corporation of Trinity Church) **JD-(NY)-18-83**
(U coercively threatened two Ees with physical harm because they had participated in arbitration proceeding, and threatened one of them because he had filed charges with Bd)

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Teamsters Local 312 a/w Teamsters (William E. Coons, an Individual) JD-378-81
(U agents' threats of violence to Ee, who was member of U, and physical assault of agent upon Ee, because he was critical of U while engaged in intra-U activity, violative)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) JD-401-80
(threats uttered by pickets to non-striking Ees as they crossed picket line are not protected and are unlawful)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) JD-401-80
(U not responsible for threats and violence engaged in by pickets where these actions took place away from picket line and no evidence was introduced to prove that this was U venture or extension of picket line activity)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) JD-401-80
(threats by unidentified picket to Ee as she walked home, unlawful, where picket left picket line to make threats)

Construction Teamsters Local 216, IBT JD-(SF)-202-80
(U officer's threat that bodily harm would come to Ee expelled from U for refusing to support U's strike and picketing activities against E, violative, notwithstanding U's letter to Ee, after charges were filed advising Ee that officer's remarks were not to be construed as threat since U could not affect Ee's continued employment; letter was deemed insufficient to dispel effect of ULP committed)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) JD-(NY)-18-80
(photographing of non-striking Ees by striking Ees as the former entered and left E's facility during strike, held violative, where photographing was coupled with various acts and threats of violence by non-striking Ees; such conduct was calculated to instill in minds of non-striking Ees fear of retribution because of their refusal to join strike)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) JD-(NY)-18-80
(violation where strikers made various threats, during U-authorized and supervised strike, to inflict bodily harm upon Ees who did not honor U's picket line)

Local 200, Service Employees International Union, AFL-CIO (Lakeside Nursing Home, Inc.) JD-195-80
(violation where pickets attempted to cause nonstriking Ees to honor picket line by blocking ingress to premises, hitting Ees' cars with fists and picket signs, damaging and climbing on cars and obscouring Ees' vision while they attempted to enter premises)

Local 6, Longshoremen's Association (Baine Service Systems Incorporated) JD-774-79
(U president's telling Ee in presence of many other Ees, that he would kill Ee if Ee did not stop his activity towards removing U as established bargaining agent at E's nursing home, violative)

N.L.R.B. v. Union Nacional De Trabajadores, et al. 611 F.2d 926 (C.A. 2, 1979)
(U president and U that were found in violation of Sections 8(b)(1)(A) and 8(b)(4)(ii)(B) of LMRA were in civil contempt of ct decree when U members picketing struck gas station threatened violence and other reprisals against 2 Ees of gas station, notwithstanding that Ees were employed by security firm that was engaged by gas station operator to provide individuals to pump gas and report threats to persons and damage to property)

2509-8100 Change of working conditions

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) 250 NLRB No. 105
(violation where, because of two unit Ees' nonmembership in U, U threatened not to approve their requests for change in schedule to attend military drills so that one of them joined and paid dues to U (although he was and wished to remain member of another U), and U itself unlawfully disapproved and attempted to cause E to disapprove the other Ee's requested change in schedule)

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) 250 NLRB No. 105
(violation where, after charge was filed against U for unlawful refusal to approve requested change in schedule because of requesting Ee's nonmembership in U, U adopted policy of disapproving all requests for change of schedule and told Ees it represented that such policy was being enforced because Ee had filed ULP charge against it with Bd)

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) 250 NLRB No. 105
(violation where during period there was in effect U's unlawful order to approve no requests for change in schedule—because of pending ULP charge against it alleging discriminatory refusal of such request—U disapproved Ees' request for changes in schedule pursuant to said order)

N.L.R.B. v. Tid-Bit Products Company, et al. 620 F.2d 581 (C.A. 6, 1980)
(threatening Ee with job-related reprisals because she initiated grievance proceedings, unlawful)

2509-8700 Harassment

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) JD-401-80
(pickets uttering obscenities when non-striking Ees crossed picket line, not unlawful where epithets used by pickets are typical kind of abusive language often found on picket line)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) JD-401-80
(pickets following vehicles of non-striking parties, unlawful where such activity had its origins in picket line activity)

2509-9000 Deportation

Local 300, Cosmetic and Novelties Workers' Union, Affiliated With International Production Service and Sales Employees Union 257 NLRB No. 174
(threat to Ees, some of whom were illegal aliens, by U agent, interpreter, that Ees would be deported if they did not vote for U held violative and warranted setting aside election)

2509-9300 Fines and other sanctions for violating union rules and opposing union

Tile, Marble, Terrazzo Finishers and Shopmen International Union, Local No. 31, AFL-CIO (Standard Art, Marble and Tile Co.) 258 NLRB No. 152
(announcement to U members that anyone who worked with suspended member could be fined and resultant lay-off of suspended member from project when another member refused to work with him, violative, where threat of U discipline, notwithstanding local's constitution and by-laws provided for such action, was intended to interfere with Ee's employment)

GAIU Local 13-B, Graphic Arts International Union (Western Publishing Co., Inc.) 252 NLRB No. 130
(rule instituted by U as bargaining tactic against mandatory overtime which was lawfully imposed constituted unprotected partial strike and U's disciplining of its members who refused to engage in such unprotected activity, violative; Bd did not decide legality of rule if instituted to protest ULPs committed by E rather than as bargaining tactic, since no ULPs found against E, U waited 2 months after overtime ban implemented to file ULP charges and U's announcement of overtime ban contained no mention of ULPs)

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) 250 NLRB No. 109
(violation bythreatening Ee with internal U discipline because he opposed increase in U dues)

Transport Workers Union of America, Local 514 (Kothe, Nichols & Wolfe, Inc., et al.) 260 NLRB No. 169
(threat that U would bring charges and assess fines against members supporting decertification effort during contract negotiations and strike, unlawful)

Truck Drivers, Chauffeurs & Helpers Local Union No. 100, an affiliate of Teamsters (Clyde F. Overstreet, an individual; etc.) JD152-82
(threatening member with fine because he supported deauthorization ptn, violative)

Truck Drivers, Chauffeurs & Helpers Local Union No. 100, an affiliate of Teamsters (Clyde F. Overstreet, an individual; etc.) JD152-82
(threatening member with fine if he testified meeting, violative)

General Teamsters, Chauffeurs, Helpers and Yardmen, Local No. 478, a/w Teamsters (Connelly Containers, Inc.) JD-669-81
(U filing grievance regarding E stripping steward of superseniority for trip selection as result of out-of-Bd settlement after charges filed with NLRB regarding steward's superseniority, unlawful, since in pursuit of unlawful object inasmuch as superseniority for job selection presumptively invalid under *Dairylea*, and no justification that overcame presumption but rather steward selected trips that made him unavailable during hours most grievances arose, and thus neither members nor labor relations benefited)

Teamsters Local Union No. 688, a/w Teamsters (Ringmaster, Division of Penn Corp.) JD-468-81
(U rule that if member fails to secure withdrawal card when (1) leaves industry for 1 year and then returns, or (2) leaves industry for less than 1 year or upon layoff member must pay dues for time absent w/o withdrawal

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card, violative as future employment cannot be conditioned on obligation Ees were free from (not employed) under U-security agreement; contention rule falls w/i U's right to regulate internal affairs rejected since rule constitutes implied threat of loss of employment because of U-security clause)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's threats to members of fines and/or expulsion for circulating ptn seeking to undermine U's declared bargaining goals regarding insurance coverage, and thereby compromising contract negotiations, not unlawful, since U legitimately exercised its right to prevent erosion of its bargaining representative status and to use discipline against members who refused to assist U in solidifying such status)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's conditioning of threats of discipline, including use of fines, on whether or not members maintained or withdrew decertification ptn, unlawful)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(violation by informing member that he could be fined for crossing picket line during strike and that he could not resign during strike)

N.L.R.B. v. GAIU Local 13-B, Graphic Arts International Union **682 F.2d 304 (C.A. 2, June 1982)**
(violation where, pursuant to its overtime ban, U fined members for working overtime; refusal by Ees to work overtime was unprotected activity since overtime was mandatory, and rule was imposed as bargaining tactic rather than in response to E's ULP as contended)

N.L.R.B. v. Glaziers and Glassworkers Local Union No. 1621 **632 F.2d 89 (C.A. 9, 1980)**
(although neither cts nor Bd will judge wisdom or fairness of particular U rule, they will inquire into whether rule reflects legitimate U interests, and *if rule invades or frustrates overriding policy of labor laws the rule may not be enforced)*

Elevator Constructors Local Union No. 8 v. N.L.R.B. **665 F.2d 376 (C.A.D.C., Sep. 1981)**
(U's maintenance of fines payable provision of its constitution and bylaws, requiring members to pay fines before dues, in conjunction with valid U security clause, held unlawful threat, even in absence of overt threat to discharge fined Ee who paid his regular dues only; ct rejected U's contentions that bylaw was w/i 8(b)(1)(A) proviso; ct rejected contention that Bd may not rely on presumption that U will act illegally in enforcing its rules or possibility that Ees will misinterpret clearly valid contractual provision, and that Bd exceeded its statutory powers by adopting a per se rule herein)

2509-9500 Unspecified

East Texas Motor Freight **262 NLRB No. 101**
(U officer's remarks to Ee seeking U office that candidate *would not enjoy it, would feel bad, would get despondent, would be remorseful and would have nervous breakdown* held violative, since words were veiled threat of misfortune if incumbent officer lost U election; incumbent was chief executive officer of local U and local was responsible for his acts)

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) **261 NLRB No. 040**
(telling Ees and applicants for employment that Ee who filed charges against U with Bd would not be able to work and/or would lose his job, or, impliedly, would be harmed if he did not drop his charges, violative)

McLean Trucking Company **257 NLRB No. 179**
(U's threatening U members and Ees with unspecified reprisals if Ee filed grievance under collective-bargaining agreement involving complaint about alternate U steward, violative)

International Longshoremen's Association, Local 1339 (Metals Processing Co.) **252 NLRB No. 038**
(local's president accusing member witnesses of being *lying rats and bastards* at prior Bd hearing and stated that they would *get theirs,* violative, since such statements constituted implied threats of reprisals)

Highway, City and Air Freight Drivers, and Dockmen and Helpers, Local Union No. 600, Affiliated With The Teamsters (Various Employers in the Metropolitan St. Louis Area) **250 NLRB No. 109**
(violation bythreatening Ee with reprisals because he opposed increase in U dues)

2509-9900 Other

Local No. 121, Plasterers (Associated Building Contractors of Lafayette, Inc.) **264 NLRB No. 029**
(U committee's threats to malign Ee if he filed charges with Bd, unlawful)

2512 SURVEILLANCE

Construction, Production & Maintenance Laborers' Local Union 383, Laborers (Carter-Glogau Laboratories, Inc.) **260 NLRB No. 193**
(taking pictures of non-striking Ees and/or writing down license numbers of vehicles of nonstriking Ees violative since where *intimidated* was used in reference to act in unrebutted stipulation of facts, it may be inferred that action *was calculated to instill fear of retribution among Ees involved)*

2514 PROMISES OF BENEFITS TO EMPLOYEES

2514-2300 Jobs

The Mead Corporation **256 NLRB No. 100**
(promising temporary Ees working at construction site that they would be guaranteed jobs once plant went into production if they signed cards and telling Ees that no guarantees about future employment could be made if they did not sign cards held violative where E was found to be unlawfully assisted U)

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. **683 F.2d 305 (C.A. 9, July 1982)**
(violation, where U organizers promised temporary workers that they would be guaranteed permanent jobs if they signed U authorization cards, and that, if they failed to select U, no promises of future employment could be made; and such references to future jobs were significant since Ees were aware of E's support for U and, consequently, they believed U had ability to carry out threats of possible job loss)

2516 CONDUCT TO PROTECT STATUS AS REPRESENTATIVE

United Brick and Clay Workers of America Local No. 957, AFL-CIO (Ralco Sewing Industries) **JD-300-80**
(certified bargaining representative's removal of notices concerning grievances posted by rival U in derogation of certified representative from bulletin board while leaving rival U's organizing material undisturbed, not unlawful; rival U's notices were not protected and there was no evidence of coercion of Ees or retribution or retaliation for posting notices again or proof of blanket denial of access to Ees by rival U)

2518 VIOLENCE AGAINST EMPLOYEES

2518-0100 Generally

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U violated Act where pickets damaged vehicles in presence of U agents)

2518-2000 On picket line

Construction, Production & Maintenance Laborers' Local Union 383, Laborers (Carter-Glogau Laboratories, Inc.) **260 NLRB No. 193**
(U held to have violated Section 8(b)(1)(A) in each of 26 instances, by totality of conduct where U stipulated to facts; picketing of E's operations, blocking entrance, threatening nonstriking Ees and their families with bodily harm and damage to their property, damaging vehicles of nonstriking Ees, pursuing nonstriking Ees in cars, throwing nails on E's property, assaulting nonstriking Ees with picket sign, making obscene remarks to nonstriking female Ees; where contention that de minimus nature of some incidents precludes finding violations as to incidents rejected)

Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.) **257 NLRB No. 042**
(picket discharged firearm at windshield of truck operated by nonstriking Ee)

Interstate Cigar Co., Inc. and L. S. Amster Co., Inc. **256 NLRB No. 083**
(non-Ee pickets' asking truckdrivers, making deliveries to E, to honor picket line, not violative, since such conduct was merely incidental to primary picketing activity which is permitted under Act)

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL–CIO (North American Car Corporation) **248 NLRB No. 043**
(threats of bodily harm to replacement Ee, violative)

United Mine Workers of America, District 29 **JD-268-83**
(pickets' brandishing and firing of fire arms, and threatening Ees with bodily harm if they attempted to cross picket line, violative)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(individual U members cannot be considered agents of U *per se,* however, if picket line misconduct occurs, U responsible for pickets' actions even if particular picket who engaged in misconduct cannot be identified, and even responsible for misconduct away from picket line which was reasonable extension of actions which occurred on picket line)

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Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**

(U cannot abdicate responsibility to control its picket line with inaction where either U leaders or picket captains are present when picket line misconduct occurred)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**

(U violated Act where pickets damaged vehicles in presence of U agents)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**

(photographing of non-striking Ees by striking Ees as the former entered and left E's facility during strike, held violative, where photographing was coupled with various acts and threats of violence by non-striking Ees; such conduct was calculated to instill in minds of non-striking Ees fear of retribution because of their refusal to join strike)

Local 200, Service Employees International Union, AFL-CIO (Lakeside Nursing Home, Inc.) **JD-195-80**

(violation where pickets attempted to cause nonstriking Ees to honor picket line by blocking ingress to premises, hitting Ees' cars with fists and picket signs, damaging and climbing on cars and obscouring Ees' vision while they attempted to enter premises)

2518-4000 Away from picket line

Laborer's International Union of North America, Local No. 721, AFL-CIO (Crouse Nuclear Energy Services, Inc.) **256 NLRB No. 033**

(U held not responsible for incident involving damage to vehicle by picketing Ees, where majority of pickets were more than a quarter of mile away, U did not authorize picketing and had no agents stationed at location where incident occurred)

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL–CIO (North American Car Corporation) **248 NLRB No. 042**

(pickets' threats to Ees of company which provided protection services to E at struck premises, violative)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**

(individual U members cannot be considered agents of U *per se*, however, if picket line misconduct occurs, U responsible for pickets' actions even if particular picket who engaged in misconduct cannot be identified, and even responsible for misconduct away from picket line which was reasonable extension of actions which occurred on picket line)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**

(U not responsible for threats and violence engaged in by pickets where these actions took place away from picket line and no evidence was introduced to prove that this was U venture or extension of picket line activity)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**

(threats by unidentified picket to Ee as she walked home, unlawful, where picket left picket line to make threats)

2518-6000 Mass picketing

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**

(strikers' stopping only 2 trucks, while on picket line, out of 125 vehicles entering and leaving E's plant daily, held insufficient to prove *blocking* of access to plant or to establish *mass* picketing)

Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.) **257 NLRB No. 042**

(mass picketing blocking and impeding egress and ingress to E's jobsite by supervisors)

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL–CIO (North American Car Corporation) **248 NLRB No. 042**

(pickets' blocking entrance to parking lot while carrying ax handles, iron bars, signs and boards with large nails protruding from them, violative)

United Mine Workers of America, District 29 **JD-265-82**

2518-7000 At employer's plant

Construction, Production & Maintenance Laborers' Local Union 383, Laborers (Carter-Glogau Laboratories, Inc.) **260 NLRB No. 192**

(U held to have violated Section 8(b)(1)(A) in each of 26 instances, by totality of conduct where U stipulated to facts; picketing of E's operations, blocking entrance, threatening nonstriking Ees and their families with bodily harm and damage to their property, damaging vehicles of nonstriking Ees, pursuing nonstriking Ees in cars, throwing nails on E's property, assaulting nonstriking Ees with picket sign, making obscene remarks to nonstriking female Ees; where contention that de minimus nature of some incidents precludes finding violations as to incidents rejected)

Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.) **257 NLRB No. 042**

(picket aimed rifle at Ees at jobsite)

2518-8000 Obstructing ingress to and egress from plant

Construction, Production & Maintenance Laborers' Local Union 383, Laborers (Carter-Glogau Laboratories, Inc.) **260 NLRB No. 192**

(U held to have violated Section 8(b)(1)(A) in each of 26 instances, by totality of conduct where U stipulated to facts; picketing of E's operations, blocking entrance, threatening nonstriking Ees and their families with bodily harm and damage to their property, damaging vehicles of nonstriking Ees, pursuing nonstriking Ees in cars, throwing nails on E's property, assaulting nonstriking Ees with picket sign, making obscene remarks to nonstriking female Ees; where contention that de minimus nature of some incidents precludes finding violations as to incidents rejected)

Georgia Kraft Company, Woodcraft Division **258 NLRB No. 121**

(strikers' stopping only 2 trucks, while on picket line, out of 125 vehicles entering and leaving E's plant daily, held insufficient to prove *blocking* of access to plant or to establish *mass* picketing)

Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.) **257 NLRB No. 042**

(mass picketing blocking and impeding egress and ingress to E's jobsite by supervisors)

Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.) **257 NLRB No. 042**

(scattering nails on access road to jobsite)

Laborer's International Union of North America, Local No. 721, AFL-CIO (Crouse Nuclear Energy Services, Inc.) **256 NLRB No. 033**

(blocking ingress and egress to E's facility by jumping on, rocking, damaging, or hitting vehicles crossing picket line, violative)

District 34, Machinists, and its Lodge No. 162 (The Wolf Machine Company) **254 NLRB No. 025**

(repeatedly placing tire-damaging nails at entrance and parking lot to deter Ees from crossing picket line to work, violative)

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL–CIO (North American Car Corporation) **248 NLRB No. 042**

(pickets' threats that there would be trouble if driver of fuel truck insisted on entering plant, violative)

United Mine Workers of America, District 29 **JD-265-82**

(pickets' blocking of ingress and egress to mines, violative)

United Mine Workers of America, District 17 (Corvette Coal Company) **JD-167-82**

(picketing accompanied by acts of violence in relation thereto, violative where entrance to E's coal mine was obstructed by members of uncertified U which sought recognition from E)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**

(pickets blocking ingress and egress to facility in presence of U agents, unlawful notwithstanding such blocking occurred for only a few minutes)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**

(U's toleration of picket interference with ingress and egress to facility, unlawful)

2518-9000 For intra-union or contra-union activity

East Texas Motor Freight **262 NLRB No. 101**

(U's inaction not violative where physical altercation took place outside of U meeting hall in presence of U agents; none of U agents knew who participated in brief fight that occurred at some distance from where agents were positioned)

East Texas Motor Freight **262 NLRB No. 101**

(notwithstanding that U steward, when assaulting Ee outside of U meeting hall, was not acting as agent of U during assault, U's failure to reprimand steward or make any effort to prevent him from engaging in such conduct in future held violative, since failing to act in connection with preventing assault constituted condonation of steward's action by U)

2518-9000—Cont.

National Association of Broadcast Employees and Technicians, Local 16, AFL-CIO (American Broadcasting Company, a Division of American Broadcasting Companies, Inc.) **258 NLRB No. 070**
(U's refusal to grant waiver permitting E to retain individual as temporary Ee because U believed Ee to be company spy, unlawful, since individual was Ee w/i Act and it is unlawful for U to discriminate against Ees because of pro-E activity)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**
(pistol-whipping by local U's agent of member for opposing election or leadership of local's business manager, unlawful)

Teamsters Local 312 a/w Teamsters (William E. Coons, an Individual) **JD-378-81**
(U agents' threats of violence to Ee, who was member of U, and physical assault of agent upon Ee, because he was critical of U while engaged in intra-U activity, violative)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's gestures drawing Ees' attention to his apparently armed condition in order to cause them to believe he was carrying a weapon, accompanied by remarks threatening resort to physical violence, unlawful, since conduct was intended to frighten Ees because they had spearheaded decertification effort)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's resort to physical force in pushing Ee, who had spearheaded decertification effort, toward apparently armed fellow agent, and doing so in view of other Ees, unlawful, since it was not only attempt to punish Ee involved, but also to demonstrate to other Ees how U intended to treat its Ee-opponents)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's conduct in calling to his assistant in presence of Ee that Ee was *with the company,* and further stating *we're going to get him,* unlawful, as attempt to threaten opponent of U with violence)

2519 VIOLENCE AGAINST SUPERVISORS

Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.) **257 NLRB No. 042**
(mass picketing blocking and impeding egress and ingress to E's jobsite by supervisors)

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL–CIO (North American Car Corporation) **248 NLRB No. 042**
(pickets' blocking entrance and *rocking* cars carrying supervisory personnel and company attorneys in effort to overturn them, violative)

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL–CIO (North American Car Corporation) **248 NLRB No. 042**
(pickets' blocking entrance and destroying tires of several cars of different supervisors with nailed board or slashing tires with knife, violative)

2520 BLACKLISTING OF EMPLOYEES

General Teamsters Local 959, State of Alaska (Frontier Transportation Company) **248 NLRB No. 108**
(U business agent's calling Ee, who refused to join strike and refused to honor U's picket line, a scab, and telling Ee that he would never work in the state as teamster again, and that there would be lot of people watching him, violative, since U agent's remarks amounted to threat to blackball Ee from employment as teamster)

2522 DEMANDS AGAINST EMPLOYER

Western Publishing Co., Inc. **263 NLRB No. 145**
(causing discharge of Ees who were delinquent in dues payments, violative, where U fell short of meeting minimum notice requirements, and absent evidence of bad faith or willfull avoidance of Ees' dues obligations)

Laborers' International Union of North America, Local 125 (O'Neil Construction, Inc.) **260 NLRB No. 155**
(telling E that U did not want E to employ Ee because Ee had filed ULP charges against U, violative)

International Photographers of The Motion Picture Industries, Local No. 644, etc. (King-Hitzig Productions) **259 NLRB No. 188**
(U which tabled discriminatee's membership application, pressured E to seek its permission before hiring her; and also pressured E to hire another photographer in her place because she was not U member while simultaneously refusing to admit her to membership, violated Act as it caused E to discriminate against her with regard to her employment on ground other than her refusal to tender U dues or fees)

Valley Cabinet & Mfg., Inc. **253 NLRB No. 008**
(requesting Ees discharge for nonpayment of dues, w/o adequately informing her of her financial obligations to U, violative)

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) **251 NLRB No. [illegible]**
(causing E to discharge Ees because Ees had withdrawn their membership in U and had not been referred through U's nonexclusive hiring hall, violative, where such action created presumption that desired effect was to encourage U membership and was not shown to have been essential to effective performance of U's representation of its constituency)

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. [illegible]**
(U's demand for and E's carrying out discharge of Ees who had resigned from U and were attempting to decertify U and replace it with another U, violative, since U's demand was erroneously based on U-security provision and inasmuch as there was no valid basis for discharge request, demand for and discharge of Ees was in retaliation for Ees' exercising their Sec. 7 right to displace incumbent with another U)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. [illegible]**
(U causing discharge of Ee who had previously worked 1 day for E as *fill in* not violative where U and E had hiring arrangement which only involved permanent Ees and 1 day's employment did not qualify Ee for continued employment with E)

Siro Security Service, Inc. **247 NLRB No. 107**
(U demanding discharge of Ee who opposed U as bargaining representative and objected to deduction of U dues w/o his consent, unlawful)

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**
(causing termination of Ee, suspended from local, from film crew because of U's threats to withhold U seal from finished film, violative, where E would have retained Ee irrespective of his lack of membership in local had not U threatened retaliatory action)

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**
(although maintaining integrity of U's established trademark which has purpose of promoting employment of U members under U conditions is protected, withholding U seal for unlawful objectives is not privileged)

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(U's demand for termination or reduction in classification of former member who had crossed picket line, unlawful, since U's concern was not for enforcement of any contract right but that ....*scab* was working, particularly where U refused to discuss Ee's past experience)

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(U's filing of grievance alleging that E had misclassified former member, who had crossed picket line, at higher classification than that for which he qualified, unlawful, since U was not motivated by desire to protect wage structure, but to penalize Ee for protected activity, where it had previously demanded discharge of ....*scab*)

Electrical Workers, Local Union 649 (Olin Corporation) **JD-190-81**
(U violated Act when it requested that E discharge Ee for failure to join U as required by U security clause where Ee had made good faith attempt to join, U official gave him another date to be sworn into U when Ee requested different date but in interim, w/o any notice to Ee, U informed E to discharge Ee)

Moser Brothers Welding, Inc. **JD-(NY)-38-80**
(no violation where U was found to have caused member's discharge, not to retaliate for member's relative's running against U business manager for his office as alleged, but to protect integrity of hiring procedure where member had disregarded business manager's instructions and gone behind his back to get good job)

Standard Bridge Corporation **JD-174-80**
(U's and E's conduct violative, where U threatened to picket E's jobsite in attempt to cause and caused E to discharge Ees because they were not members of U notwithstanding that U had denied Ees membership and refused to provide them opportunity to tender dues and initiation fees pursuant to lawful U security agreement)

Dallas Stage Employees Local Union 127 v. N.L.R.B. **633 F.2d 1195 (C.A. 8, 1980)**
(threat to recommend that U withhold its registered trademark from film if producer hired non-U member for film crew which actually resulted in termination of non-U Ee, not unlawful, where U has authority if not duty to deny producer right to exhibit U trademark and right to maintain integrity of its trademark, and to issue it only when all Ees on production crew are U members)

N.L.R.B. v. Construction and Building Material Teamsters Local No. 291 **633 F.2d 291 (C.A. 9, 1980)**
(violation where U caused E to discharge Ee for delinquency in dues payments w/o first giving him notice of suspension from U membership and opportunity to restore himself in good standing)

2527 VIOLENCE OR THREATS THEREOF AGAINST EMPLOYERS KNOWN TO EMPLOYEES

Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.) **257 NLRB No. 042**
(broke window of E's automobile as he attempted to leave jobsite)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(pickets threatening 2 of E's officials with bodily harm as they crossed picket line unlawful, because of indirect effect upon Ees who heard threats or thereafter learned about them)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's statement to E's president, made repeatedly in presence of Ees entering plant on election day that E's president ...*better watch out. We're bad losers* held unlawful attempt to impress upon Ees that opposition to U was risky)

2527-5000 Destruction of employer's property

Industrial Chemical Corporation **JD-473-80**
(U held to have violated 8(b)(1)(A) through conduct of its vice president and of shop steward who deliberately broke main water line into E's plant; since they were U officials, U is responsible for their conduct; and destruction of E's property restrains Ees in exercise of their statutory rights by threatening their jobs and creating general atmosphere of fear and violence)

2529 VIOLENCE OR THREATS THEREOF AGAINST OTHERS

East Texas Motor Freight **262 NLRB No. 101**
(notwithstanding that U steward, when assaulting Ee outside of U meeting hall, was not acting as agent of U during assault, U's failure to reprimand steward or make any effort to prevent him from engaging in such conduct in future held violative, since failing to act in connection with preventing assault constituted condonation of steward's action by U)

District 34, Machinists, and its Lodge No. 162 (The Wolf Machine Company) **254 NLRB No. 025**
(physically assaulting and injurying strike replacement, violative)

Brotherhood of Railway Carmen of The United States and Canada, Local No. 543, AFL–CIO (North American Car Corporation) **248 NLRB No. 042**
(striking Ees' threat to inflict bodily injury upon driver of independent supplier, violative)

2530 REPRISALS AGAINST EMPLOYEES FOR ENGAGING IN PROTECTED ACTIVITIES

International Association of Heat and Frost Insulators and Asbestos Workers Local No. 53 (Insul-Contractors, Inc.) (Betty Ruth Turner) **262 NLRB No. 111**
(U which threatened not to refer Ee or to refer her at lowest possible rates because she had complained about its failure to process her grievance over pay matter violated Act)

East Texas Motor Freight **262 NLRB No. 101**
(local U's processing intra-U charges against 2 dissident members resulting in their suspension; one for 6 months and other for 3 years, not violative, since findings were based on sufficient cause (violence) unrelated to protected activity)

Local Union No. 46 Metallic Lathers and Reinforcing Iron Workers (Cement League) **259 NLRB No. 010**
(U which unlawfully disciplined 3 members who were foremen by having them barred from working as foremen violated Section 8(b)(1)(A) of Act where these foremen were unit members as it impacts on all unit Ees by causing them to fear U control over their employment status)

National Association of Broadcast Employees and Technicians, Local 16, AFL-CIO (American Broadcasting Company, a Division of American Broadcasting Companies, Inc.) **258 NLRB No. 070**
(U's refusal to grant waiver permitting E to retain individual as temporary Ee because U believed Ee to be company spy, unlawful, since individual was Ee w/i Act and it is unlawful for U to discriminate against Ees because of pro-E activity)

International Longshoremen's Association, Local 1329 (Metals Processing Co.) **252 NLRB No. 038**
(refusal and failure to select member as relief winchman because of his testimony at Bd hearing and his defense of same at subsequent U meeting, violative)

Local 889, Laborers' International Union of North America, AFL–CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**
(U's business nmanager informing E that Ee was to blame for problems among crew and causing Ee's discharge as toublemaker, unlawful, since action of business manager of rival for his post)

United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 1989 (Caterpillar Tractor Company) **249 NLRB No. 123**
(Institution of internal U disciplinary proceeding against some members, selecting trial committee, and issuing formal notice of hearing on these charges because these Ee-members had appeared as witnesses and testified adversely to U's grievance in arbitration hearing held pursuant to provisions of collective-bargaining agreement, violative, notwithstanding charges were later withdrawn since Respondent took no specific action to repudiate coercive effect of its conduct)

Teamsters Local 515 (Roadway Express, Inc.) **248 NLRB No. 020**
(no violation by U's removal from U bulletin board in Ees' breakroom of material posted by dissident member criticizing U and its leaders, notwithstanding U had previously allowed Ees to post all types of notices on bulletin board, where there was no discipline, threat or implication of retribution by U against Ee, like literature was distribution in breakroom w/o either E or U action, and *all-purpose* bulletin board was available)

Legal Service Staff Association (Bronx Legal Services Corporation C, a/w Communicty Action for Legal Services, Inc.) **JD-374-81**
(writing to corporation which controlled E that Ees were not working full-time and were practicing law outside job held unlawful attempt to cause E to discriminate against nonstriking U members)

United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) Local Union NO. 1005 **JD-509-80**
(U's refusal to reimburse elected executive board member for time he took off from work in connection with executive board meetings, violative, where U would not have treated the executive member in that manner had he not opposed positions favored by U's president and spoken unfavorably of U's president and persons with whom the president considered himself associated)

Fort Wayne Area Local, American Postal Workers Union, AFL-CIO (Kim Smith) **JD-576-80**
(U's refusal to approve Ee's request to sign preferential overtime list, not unlawful reprisal for criticism of U officials, policy and conduct of internal elections, as alleged, or arbitrary or invidious where Ee failed to timely establish contractual eligibility or show necessity for dilatoriness, and U had legitimate interest in protecting those who acted timely and in avoiding setting undesirable precedent)

Teamsters, Local No. 671 (Connecticut Natural Gas Corporation) **JD-559-80**
(violation where U official threatened to cause Ee's discharge, evicted him from U office, and told him not to return, thus causing him to lose strike benefits, because of his prior protected activity of supporting rival U in attempt to replace respondent U)

Construction Teamsters Local 216, IBT **JD-(SF)-202-80**
(U officer's threat that bodily harm would come to Ee expelled from U for refusing to support U's strike and picketing activities against E, violative, notwithstanding U's letter to Ee, after charges were filed advising Ee that officer's remarks were not to be construed as threat since U could not affect Ee's continued employment; letter was deemed insufficient to dispel effect of ULP committed)

2531 DISCRIMINATION AGAINST SUPERVISORS

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) **261 NLRB No. 040**
(local's refusal to dispatch supervisory applicant who was member of sister local (traveler), violative, where supervisory applicant's treatment was but one inseparable element in pattern of dispatch refusals for improper reasons)

International Brotherhood of Electrical Workers, Local No. 46, AFL-CIO (Herbert Simmons, an Individual) **JD-(SF)-98-81**
(refusing to register and refer Ee to work from U's exclusive hiring hall, not unlawful, where GC failed to prove that U denied referral in retaliation for Ee's activities as foreman on prior jobs and not for Ee's failure to tender periodic dues and initiation fees uniformly required as condition to retain membership in U)

2536 STRIKES AND BOYCOTTS, OR THREATS THEREOF

2536-2000 Strikes

2536-2000—Cont.

Laborers' International Union of North America, Local 125 (O'Neil Construction, Inc.) **260 NLRB No. 155**
(threatening to call a strike against E if E hired Es who had filed ULP charges against U, violative)

2545 HIRING HALL AND OTHER REFERRAL PRACTICES

2545-0100 Generally

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) **262 NLRB No. 006**
(U's change in established hiring hall procedure from 5-day (out-of-work) rule to 6-day (out-of-work) rule before having applicant's name removed from out-of-work list held violative, since procedure, resulted in denial of employment to applicants, breaching U's duty of fair representation owed to all hiring hall users and U did not demonstrate that its interference with employment was pursuant to valid U-security clause or was necessary to effect performance of its representative function)

Local Union No. 46 Metallic Lathers and Reinforcing Iron Workers (Cement League) **259 NLRB No. 010**
(U which imposed discipline on 3 unit members who were foremen by barring them from working as foremen violated Act where these Ees fluctuated between supervisory and nonsupervisory positions as such conduct restrained and coerced them under exclusive hiring hall procedures in their nonsupervisory capacities)

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**
(bonafide hiring hall arrangement is characterized by agreement between parties for E to notify U as jobs become available and U to send E sufficient manpower for E to fulfill his employment requirements)

Stage Employees Union, Local 592 (William A. Thomas, an Individual) **JD-358-82**
(U's general operation of hiring procedure by which E delegated its hiring function to U through dual agent, not violative notwithstanding agent may not have assembled hiring of crews in efficient or mechanical manner, or fact that he made mistakes and caused ruffled feelings in making calls, where basis of crew selection was seniority, ability, and availability)

N.L.R.B. v. Moving Picture and Projection Machine Operators Union, Local No. 143, a/w Stage Employees, AFL-CIO **649 F.2d 610 (C.A. 8, May 1981)**
(although U contract does not provide for exclusive hiring arrangement, E's long time practice of hiring only persons referred by U supports finding of exclusive hiring hall)

2545-0600 Requirement of referral

Local 513, Plumbers (Master Plumbers and Heating Contractors of the Twin Cities (Benton Harbor and St. Joseph, MI)) **264 NLRB No. 059**
(where hiring hall is not exclusive, failure to refer is violative of Sec. 8(b)(1)(A) only if U was motivated by individuals having engaged in activities protected by Sec. 7; however, failure of non-exclusive hiring hall to refer is not violative of Sec. 8(b)(2) since U not causing E to discriminate in violation of Sec. 8(a)(3))

Federation of Employees Union, Local 1027 (Index Construction Corporation) **263 NLRB No. 66**

Longshoremen's Union, Local 6 (Industrial Employers and Distributors Association) **249 NLRB No. 127**
(no violation where U hiring hall disciplined member by revoking his black book status which evidences holder's work experience and U determination that holder possesses highest adherence to principles of trade unionism, since revocation did not diminish member's hiring status or employment rights with respect to job calls involving skilled or unskilled work)

N.L.R.B. v. Local Union 433, Plumbers **668 F.2d 921 (C.A. 6, Jan. 1982)**
(U discriminated against non-U job applicants where it requested them to take more difficult qualifying test for referral than U members; noted that U's system not *per se* illegal but enforced in discriminatory manner)

N.L.R.B. v. Highway and Local Motor Freight Employees, Local Union No. 667 **654 F.2d 294 (C.A. 6, 1981)**
(U did not operate bona fide referral hall where U did not receive calls from Es for referrals and U merely collected the referral fees, did not provide any referral service; U's interest in Ees did not go beyond referral fees they paid)

2545-1200 Refusal of referral

Painters Local Union No. 1178, (Roland Painting, Inc.) **265 NLRB No. 171**
(refusal to refer Ee in accordance with terms of exclusive nondiscriminatory job-referral system in contract, violative)

Local 513, Plumbers (Master Plumbers and Heating Contractors of the Twin Cities (Benton Harbor and St. Joseph, MI)) **264 NLRB No. 059**
(violation, where business representative of local U referred members who had been on out of work list shorter time than Charging Party contrary to his local's established procedure when requested by other locals to refer Ees to jobs in their areas, since referral in effect through exclusive hiring hall inasmuch as business agent became agent of other locals to which he referred Ees, and those locals operated exclusive halls therefore, referrals made in haphazard manner are violative)

Local No. 121, Plasterers (Associated Building Contractors of Lafayette, Inc.) **264 NLRB No. [illegible]**
(violation where GC presented *prima facie* case of U business agent's unlawfully recinding Ee's referral and advising Ee of termination of his apprenticeship because of his criticism of way business agent ran U, and U failed to show that it would have acted thus even if Ee had not criticized business agent; U failed to show why it continued to refer Ee until day of criticism in spite of alleged E complaints, why it never discussed complaints with Ee, and why complaints about him differed from complaints about other Ees)

H. H. Robertson Company **263 NLRB No. 173**
(U's refusal to refer supervisor-member, unlawful, in retaliation for his intra-U political opposition, his hiring of Ees w/o referral from hiring hall, and his filing of charges with NLRB, notwithstanding U's contention refusal to refer justified by failure to comply with requirement of his signing out of work list and receiving referral slip at hiring hall, where no consistent policy that applicants sign out of work list personally or that referral slips be obtained at hiring hall rather than at job, and hiring hall was 80-90 mile round trip for supervisor-member)

Longshoremen's Association, Local 1180 (Kenneth E. Mason, an Individual) **263 NLRB No. 114**
(local U requesting that sister local not refer one of its members until he had paid fine which it had imposed, unlawful)

Polis Wallcovering Co., et al. **262 NLRB No. 169**
(refusal to refer U member, not violative where local U would not have referred him even if he had not engaged in conduct found offensive by U officials since his removal from apprenticeship on basis of his past employment record, recent discharge for flagrant misconduct, and his failure to meet apprenticeship's classroom attendance requirements removed him from classifications legitimately encompassed w/i hiring arrangement)

Polis Wallcovering Co., et al. **262 NLRB No. 169**
(refusal to refer individual because he engaged in conduct viewed by U officials as disloyal, violative)

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) **262 NLRB No. 006**
(U's refusing to refer Ee for employment pursuant to operation of exclusive hiring hall agreement and by informing Ee that it was denying him referrals because he had failed to comply with business agent's request that he relinquish his past job so that agent could put his own man in job, held violative where U business agent had threatened Ee to use agent's hiring hall authority to retaliate against Ee; agent frequently referred persons to jobs whose names appeared below Ee's on hiring hall's out-of-work list of jobs)

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) **261 NLRB No. [illegible]**
(local's denying or substantially delaying dispatch of members of sister locals (travelers) to project and therefore denying them opportunity to become Ees of E, violative where local's conduct was motivated by its desire to discriminate against applicants based on local membership and, on secondary basis, on membership in locals affiliated with U according to their geographical location)

C. B. Display Serice, Inc. **260 NLRB No. 169**
(U which demanded former member reinstate his membership as condition of referral from exclusive hiring hall violated Act in absence of U-security clause)

New York Lithographers and Photoengravers' Union No. 1–P GAIU, AFL-CIO (The Publishers Association of New York City) **258 NLRB No. 136**
(failure to refer applicant to job for which he was qualified held not unlawful operation of exclusive hiring hall, since U based referrals on objective criteria and was following policy of not offering applicant second job at plant on same day he had already refused one job offer at that plant; and there was no showing that U treated applicant disparately or with hostile motivation)

Berry-Mahurin Construction, Inc. **258 NLRB No. 171**
(Local U's refusal to refer qualified individual who was member only of sister Local, because of non-membership in Local, fact individual sought job directly with E rather than through U, and his refusal to execute checkoff authorization w/i 7 day grace period, unlawful)

2545-1200—Cont.

International Longshoremen's Association, Local 1408, AFL-CIO (Jacksonville Maritime Association) **258 NLRB No. 029**

(U's selection for training assignment of member who did not meet its objective criteria for such assignment rather than member who did, not unlawful where reason was that member selected was only member available when request for assignment came in and assignment would be lost if not filled immediately and not, as alleged, because of personal and/or polictical considerations involving other member)

International Longshoremen's Association, Local 1408, AFL-CIO (Jacksonville Maritime Association) **258 NLRB No. 029**

(refusal to refer U member for employment because of his criticism of U's hiring hall and referral system practices and his dispute with U's president, unlawful)

Plumbers and Steamfitters Local Union No. 598, AFL-CIO (Rust/W.S.H.) **258 NLRB No. 071**

(U's refusal to allow member to register on out-of-work list until he paid assessment for time period he was supervisor violative as member had not been working under contract coverage and was thus not obligated to pay assessment)

Lower Ohio Valley District Council of Carpenters, Millwrights Local Union No. 1080, Carpenters **255 NLRB No. 014**

(refusal to refer non-member because he was not U member violative)

International Longshoremen's Association, Local 1329 (Metals Processing Co.) **252 NLRB No. 038**

(refusal and failure to select member as relief winchman because of his testimony at Bd hearing and his defense of same at subsequent U meeting, violative)

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) **251 NLRB No. 166**

(U's refusal to seek out and refer Ees specifically requested by E because they withdrew from U, and ceasing to register at nonexclusive hiring hall, not unlawful, where Ees should not have expectation that U would assist them in referrals to jobs once they severed their relationship with U)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**

(refusal to refer members because of their opposition to U officials violative)

Local 873, Electrical Workers (Kokomo-Marian Division, Central Indiana Chapter, National Electrical Contractors Association, Inc.) **250 NLRB No. 113**

(refusal to refer U member who was rightfully terminated from apprenticeship program not violative where collective-bargaining agreement provided that only journeyman or participants in training program could be referred; thus, presumption that U's action of refusing to refer U member will tend to coerce other members as a display of U power rebutted)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

(where U departs from its lawful contractual hiring hall rules and admitted standards of referral in denial of employment, action, standing alone, is discrimination which inherently encourages U membership)

Bechtel Power Corporation **248 NLRB No. 166**

(absent any recall rights and statistical analysis of actual recall of laid-off Ees showing discrimination towards swing shift Ees, either individually or as group, GC failed to sustain burden proving such discrimination by U hiring hall practices, and thus by E)

Moving Picture and Projection Machine Operators Union, Local No. 143 (Wehrenberg Theatres, Inc.) **248 NLRB No. 174**

Iron Workers, Local Union 433 (Stockton Steel Fabricators and Erectors, Inc.) **248 NLRB No. 033**

(U business agent at exclusive hiring hall who maintained separate lists for priority referrals and one for all others did not violate Act when he placed member of another local on non-priority list as this was w/i requirements of contract notwithstanding list keeping requirements of contract were not totally complied with)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**

(Bd held that U local had unlawfully refused to refer 2 members for work where GC showed that on dates in question and thereafter U's agent threatened to retaliate against his political opponents in local which included the two members, and manipulated hiring hall in order to discriminate against them; it was not necessary to show that jobs were available at time; and burden of negating GC's *prima facie* case fell on U as sole custodian of hiring hall records and its failure to produce them created adverse inference)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**

(no unlawful refusal of local U's hiring hall to refer where there was no request for referral or explanation for lack of request)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**

(Bd found refusal to refer member by U local unlawful notwithstanding lack of request for referral, since request would have been futile where U's agent had threatened retaliation against his political opponents in U which included member herein, and had effectuated discriminatory discharge of member; moreover U's self-serving memoranda recording its efforts to contact member for referrals after latter finally registered for referrals were made pursuant to procedures introduced to justify U's discriminatory referrals)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**

(local U agent's physical attack on member while he sought referral unlawfully deprived him of employment through job referrals)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**

(international and local Us held to have violated 8(b)(1)(A) when business manager appointed by international refused to refer one member because of his intra-U opposition to business manager, and he and his appointee refused to refer another member who had sought imposition of trusteeship while business manager was acting business manager, run against him in election, and filed intraU charges against him)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 150**

(no violation by local and international Us during international's trusteeship of local for refusal to refer two members seeking referrals as stewards where one steward did not even ask for referral to job as common laborer when told it was open, and other's name was not on out-of-work list)

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**

(refusal to refer members who protested hiring hall operation policies (particularly selection methods employed by U officials operating hall) at U meetings, to local and International, to NLRB and other government agencies)

Stage Employees Union, Local 592 (William A. Thomas, an Individual) **JD-358-82**

(U's denial of refusal to individual for his widely publicized growing of marijuana, not violative)

Hotel Employees Union Local 471 (Arusers, Inc.) **JD-361-82**

(refusal of U's business agent to see, accept calls from, or furnish referral slips to applicants, unlawful, where because of their relationship to man who was father of one applicant and uncle of other, particularly where applicants had experience and nothing in U's prior policy or usual procedure would preclude their referral)

Teamsters Local Union No. 159, a/w Teamsters (John G. Ruhlin Construction Company) **JD-534-81**

(applicant for job referral held not to have been refused referral to job filled by another applicant, where latter attained job in settlement of a grievance w/o any resort to U's hiring process, there was no referral at all to such job or any request for referral by E during period of applicant's availability for referral, and there was no allegation or evidence that applicant was refused referral to any other job, even though U officials' statements to him clearly showed hostility toward him because he had filed charges and grievances against his former E)

Local Union No. 277, International Brotherhood of Painters and Allied Trades (Member of National Painting and Decorating Contractors of America) **JD-(NY)-86-81**

(refusal to refer U member of sister local to job not violative where member had failed to comply with requirements of U's referral system)

Millwright Local Union No. 1931 **JD-391-81**

(U's refusal to refer Ee from hiring hall to Ee's chosen E not violative where GC did not establish foundation for presumption of illegality; record showed no animus against longstanding member of local U and no departure from U's established (hiring hall) procudures which involved no deliberate effort to foreclose Ee from opting on referral)

Local Union No. 410, Sheet Metal Workers International Association, AFL-CIO (Inryco, Inc.) **JD-218-81**

(conditioning job referrals upon withdrawal of ULP charges against U, violative as it interferes with or discourages right of Ees to have access to Bd process for vindication of their rights)

International Brotherhood of Electrical Workers, Local No. 46, AFL-CIO (Herbert Simmons, an Individual) **JD-(SF)-95-81**

(refusing to register and refer Ee to work from U's exclusive hiring hall, not unlawful, where GC failed to prove that U denied referral in retaliation for Ee's activities as foreman on prior jobs and not for Ee's failure to tender periodic dues and initiation fees uniformly required as condition to retain membership in U)

2545-1200—Cont.

International Longshoremen's Association, Local 1414 JD-387-80

(unnecessary that GC demonstrate what specific jobs were available at time of discriminatory refusal to refer, inorder to establish violation)

Plumbers, Local 388 v. N.L.R.B. 655 F.2d 93 (C.A. 6, 1981)

(refusal to refer traveller because he had caused work slowdown w/i U's jurisdiction but w/o U's approval, violative; contention that he had limited his availability to welding was rejected as referral slip clearly indicated work as pipefitter also)

N.L.R.B. v. Local 90, Plasterers 606 F.2d 189 (C.A. 7, 1979)

(enforcement granted to Bd order, notwithstanding that evidence supporting underlying complaint was obtained in violation of state criminal law, where Bd found that U violated 8(b)(1)(A) by threatening Ee with reprisals, refusing to place his name on referral list, refusing to refer him to jobs, and refusing to furnish copies of referral list to which he was entitled, all in retaliation against Ee for filing ULP charges against U; federal, and not state, law governs admission of evidence in federal proceedings)

Carpenters, Local # 308 v. N.L.R.B. 690 F.2d 661 (C.A. 8, July 1982)

(where Ee joined local U, then withdrew from U, went to another area and joined different local and later on came back into jurisdiction of first local who refused to refer Ee to job because not member of local and thereby violated Act)

N.L.R.B. v. Laborers', Local 300 613 F.2d 203 (C.A. 9)

(U's refusing to refer Ee to job, and causing him to be discharged after he had secured the job w/o referral from U, violative, notwithstanding Ee's securing the job w/o referral from U violated hiring hall provisions of bargaining agreement between U and E; U enforced the hiring hall provisions to the effect that Ee was removed from job only when U business agent was advised of Ee's dissident activities)

2545-1500 Preference for union members

Local No. 121, Plasterers (Associated Building Contractors of Lafayette, Inc.) 264 NLRB No. 029

(maintaining and enforcing contract clauses which gave preference to U members over nonmembers, violative)

Polis Wallcovering Co., et al. 262 NLRB No. 169

(U's operating hiring hall w/o reference to objective criteria or standards and manifesting intention to make referrals under conditions which might accord arbitrary preference to members over nonmembers, violative)

Q.V.L. Construction, Inc. 260 NLRB No. 139

(U agent's telling individual that he could not be referred for employment because he was not U member, violative)

International Photographers of The Motion Picture Industries, Local No. 644, etc. (King-Hitzig Productions) 259 NLRB No. 185

(U which tabled discriminatee's membership application, pressured E to seek its permission before hiring her; and also pressured E to hire another photographer in her place because she was not U member while simultaneously refusing to admit her to membership, violated Act as it caused E to discriminate against her with regard to her employment on ground other than her refusal to tender U dues or fees)

Lower Ohio Valley District Council of Carpenters, Millwrights Local Union No. 1080, Carpenters 255 NLRB No. 014

(refusal to refer non-member because he was not U member violative)

Lower Ohio Valley District Council of Carpenters, Millwrights Local Union No. 1080, Carpenters 255 NLRB No. 014

(U violated Act by operating referral system discriminatory to non-members where it forced E's to layoff non members before U members)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) 253 NLRB No. 098

(U's operation of exclusive hiring hall in manner that gave preference in referral to members over nonmembers, was subjective w/o objective standards or criteria, and substantially disregarded written procedures in agreement with E, unlawful since it caused Es to discriminate against nonmembers, violated U's duty to fairly represent job applicants, and impaired job applicants' employment opportunities)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) 253 NLRB No. 095

(refusal to allow nonmembers sign out-of-work list at hiring hall, unlawful)

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) 251 NLRB No. 166

(causing Ee not to be hired, violative, where U which ran nonexclusive hiring hall told E not to hire members of rival Us)

Local Union 633, Plumbers (B & W Construction Company) 249 NLRB No. 011

(delay in giving test which was required before referral would be made violative as test only required for nonmembers)

Local Union 633, Plumbers (B & W Construction Company) 249 NLRB No. 011

(while setting up categories for referrals based on experience in trade or working for particular employers not violative, automatic placement of nonmembers in lowest category is violative)

Local Union 633, Plumbers (B & W Construction Company) 249 NLRB No. 011

(testing of nonmembers in such manner as to result in their discrimination versus members, violative)

Moving Picture and Projection Machine Operators Union, Local No. 143 (Wehrenberg Theatres, Inc.) 248 NLRB No. 174

Sachs Electric Company 248 NLRB No. 092

(U's request that members of sister Us (*travelers*), who had been referred out of U's hiring hall, quit their jobs in favor of unemployed members of U, coercive and unlawful, notwithstanding that requests were not accompanied by direct threats of reprisal; in view of fact that of 32 travelers none remained employed in short period of time, it strains credibility and contradicts record testimony to claim that they quit *voluntarily* and as a *courtesy* to their U brethren)

Ironworkers, Local 483 (Building Contractors Association of New Jersey) 248 NLRB No. 086

(violation where locals discriminated in operation of their hiring halls by preferring members to non-members and others as yet unidentified nonmembers in making job referrals; bypassing discriminatees because members were *recalled* or *requested* by Es not valid defense w/o letter of confirmation to U by Es, proving such specific request, as required by Consent Decree)

Laborers International Union of North America, Local 1136 (Southern Illinois Builders Association) JD-477-81

(U which denied non-members access to referral list because they were nonmembers and black and because they protested the unfair operation of the system violated Act)

N.L.R.B. v. New York Typographical Union No. 6 632 F.2d 171 (C.A. 2, 1980)

(where collective-bargaining agreement contained job referral provisions which gave priority to group of Ees who *if* unemployed would be paid *guaranteed income payments,* U's refusal to refer nonmembers who were not in preferred group not violative where insufficient evidence to support discrimination finding that only U members in preferred group, or that preference has effect of encouraging U membership because preferred class is closed, or procedure established for improper motive)

N.L.R.B. v. Local Union 633, Plumbers 668 F.2d 921 (C.A. 6, Jan. 1982)

(U discriminated against non-U job applicants where it requested them to take more difficult qualifying test for referral than U members; noted that U's system not *per se* illegal but enforced in discriminatory manner)

N.L.R.B. v. Moving Picture and Projection Machine Operators Union, Local No. 143, a/w Stage Employees, AFL-CIO 649 F.2d 610 (C.A. 8, May 1981)

(refusing to refer nonmembers for permanent jobs, violative where hiring hall was exclusive)

2545-1800 Refusal to comply with seniority procedures

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) 262 NLRB No. 086

(U's refusing to refer Ee for employment pursuant to operation of exclusive hiring hall agreement and by informing Ee that it was denying him referrals because he had failed to comply with business agent's request that he relinquish his past job so that agent could put his own man in job, held violative where U business agent had threatened Ee to use agent's hiring hall authority to retaliate against Ee; agent frequently referred persons to jobs, whose names appeared below Ee's on hiring hall's out-of-work list of jobs)

International Longshoremen's Association, Local 1414 JD-387-80

(enforcing provision of U constitution and by laws which provision revoked Ee's preferred seniority in *hiring hall* situation because Ee was delinquent in repaying loan borrowed from U credit union held violative, since U caused Ee's loss of employment opportunities; U adduced no evidence that action was essential to its financial survival)

2545-2000 Refusal of clearance by hiring hall

C. B. Display Service, Inc. 260 NLRB No. 140

(U which had exclusive hiring hall agreement with E violated Act when it refused to refer lapsed member where he tendered his hiring hall fee since state was right-to-work state and there was no U-security clause)

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilsen Freight Lines, Inc., et al.) 249 NLRB No. 085

(no violation where U's business agent informed E who requested member by name that member did not qualify for dispatch by name because he did

2545-2500—Cont.

not have sufficient seniority under agreement to qualify for list from which such dispatches made)

Local Union No. 410, Sheet Metal Workers International Association, AFL-CIO (Inryco, Inc.) **JD-218-81**

(revoking referral permits of 2 non-U Ees because they declined to picket and handbill as directed by U, violative, as it restrained Ees in exercise of their Sec. 7 rights)

2545-2900 Job referrals based on group classifications arrived at through journeyman's examinations

Lower Ohio Valley District Council of Carpenters, Millwrights Local Union No. 1080, Carpenters **255 NLRB No. 014**

2545-3100 Denial of access to employment roster

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**

(refusal to allow nonmembers sign out-of-work list at hiring hall, unlawful)

Local Union No. 948, Electical Workers (Lawrence Moore, an Individual) **253 NLRB No. 094**

(violation where, because it wanted to keep jobs with most overtime for its own members, local U refused to let *travellers* from another jurisdiction stay on its out-of-work list to wait for overtime jobs as they should have been under contract provision)

Electrical Workers Local 401 (Stone and Webster Engineering Corporation) **251 NLRB NO. 039**

International Photographers of the Motion Picture Industry, Local 659, et al.(Medway Productions, Inc.) **250 NLRB No. 052**

(U violated 8(b)(2) and 1(A) where under its preferential hiring agreement requiring new hires to have previous work experience with an E signatory to U contract, it refused to clear qualified applicants for employment as cameramen because they lacked U membership)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

(removal of Ee's name from hiring hall's *out-of-work* list precluding Ee from being dispatched in manner prescribed by contractual rules held violative where action was motivated by factors in contravention of hiring hall contract and caused by pique at Ee)

Laborers International Union of North America, Local 1136 (Southern Illinois Builders Association) **JD-477-81**

(U which denied non-members access to referral list because they were non-members and black and because they protested the unfair operation of the system violated Act)

N.L.R.B. v. Local 90, Plasterers **606 F.2d 189 (C.A. 7, 1979)**

(enforcement granted to Bd order, notwithstanding that evidence supporting underlying complaint was obtained in violation of state criminal law, where Bd found that U violated 8(b)(1)(A) by threatening Ee with reprisals, refusing to place his name on referral list, refusing to refer him to jobs, and refusing to furnish copies of referral list to which he was entitled, all in retaliation against Ee for filing ULP charges against U; federal, and not state, law governs admission of evidence in federal proceedings)

N.L.R.B. v. International Brotherhood of Electrical Workers, Local Union No. 453 **668 F.2d 991 (C.A. 8, Jan. 1982)**

(U's refusal to permit qualified *travelers* to sign highest level referral book violative where they were entitled to highest priority registration, U had reason to know this; and no evidence of policy requiring written proof of qualification)

2545-3700 Denial or revocation of work permit

Local Union No. 410, Sheet Metal Workers International Association, AFL-CIO (Inryco, Inc.) **JD-218-81**

(revoking referral permits of 2 non-U Ees because they declined to picket and handbill as directed by U, violative, as it restrained Ees in exercise of their Sec. 7 rights)

2545-8000 Refusal of access to hiring hall

Laborers' International Union of North America, Local 125 (O'Neil Construction, Inc.) **260 NLRB No. 155**

(telling Ee who had filed ULP charges against U that he would not be allowed to transfer into local and could not work out of local's hiring hall because Ee had filed such ULP charges)

Longshoremen's Association, Local No. 341 (West Gulf Maritime Association) **284 NLRB NO. 040**

(U's refusal to Ee of access to hiring hall for referral not unlawful, where Ee had engaged in strike in violation of no-strike clause which disrupted employment opportunities of people that U represented; U has legitimate interest in taking action to preserve those job opportunities)

N.L.R.B. v. Plumbers and Steamfitters Local No. 40 **642 F.2d 400(T) (C.A. 9, Feb 19, 1981)**

(removing member's name from dispatch list w/o notice and w/o referring to Appeals Board as required in contract, violative as noncompliance with contractually prescribed rules is arbitrary and subverts integrity of hiring hall)

2545-9900 Other

Laborers, Local No. 304 (Associated General Contractors of California, Inc. and Bay Counties General Contractors Association) **265 NLRB No. 072**

(impliedly conditioning referral on execution of waiver of right to sue U, its agents and representatives, unlawful; U instructed jobseekers to fill out hiring hall registration forms which contained such waivers w/o indicating that execution of the waiver was optional)

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) **261 NLRB No. 040**

(local's requiring members of sister locals (travelers) to sign their travel cards in manner signifying that they were no longer seeking employment in craft w/i geographical area covered by local, violative since local was encouraging travelers to join it to insure opportunities to pursue employment w/i area w/o fear of discrimination)

Plumbers, Local 224 (Master Plumbing, Heating and Pipefitting Contractors of the McKean-Warren Counties) **JD-434-82**

(violation where U discriminatorily refused member access to U's business agent by requiring him to go through answering service for purpose of placing name on out-of-work list and securing information about job referrals in administration of its exclusive hiring referral system because he filed ULP charges with Bd)

2548 REFUSAL TO FURNISH INFORMATION

Local 513, Plumbers (Master Plumbers and Heating Contractors of the Twin Cities (Benton Harbor and St. Joseph, MI)) **264 NLRB No. 059**

(U's business agent refusing to allow member on out of work list to copy out of work list, unlawful)

Lower Ohio Valley District Council of Carpenters, Millwrights Local Union No. 1080, Carpenters **255 NLRB No. 014**

(refusal to supply non-U member with information from U's referral list violative of duty of fair representation to all Ees subject to U's referral procedures and its collective bargaining agreement)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**

(refusal to provide information about referral system to job applicant because he was not member of U and had filed charges against U and because U wanted to keep him from finding out whether he had been discriminated against by U in referral)

2553 DISCRIMINATORY DUES OR INITIATION FEES

N.L.R.B. v. Actors' Equity Association **644 F.2d 939 (C.A. 2, Mar 17, 1981)**

(U which represented actors charging aliens higher dues than other members, unlawful; contentions that aliens not protected under Act and that discriminatory dues justified in that they protected Americans from hostile or retaliatory actions on part of British U, and provided counterweight to British U's influence over alien admissions in England, rejected)

2554 REQUIRING PAYMENTS OTHER THAN DUES

2554-2500 Fine, assessment, reinstatement fee or back dues

Building Material & Dump Truck Drivers Local 420, Teamsters (Standard Concrete Material, Inc.) **260 NLRB No. 115**

(U's advising Ees of their suspension from membership in U for nonpayment of dues, and requiring reinitiation fee and reciting that failure to do so would result in their termination, violative where U was never representative of E's Ees, since transfer of E's Ees from another U to U was ineffective)

Plumbers and Steamfitters Local Union No. 398, AFL-CIO (Rust/W.S.H.) **255 NLRB No. 071**

(U's refusal to allow member to register on out-of-work list until he paid assessment for time period he was supervisor violative as member had not been working under contract coverage and was thus not obligated to pay assessment)

2554-2500—Cont.

International Brotherhood of Electrical Workers, Local NO. 12 (Commonwealth Electric Company) **252 NLRB No. 040**

(fining members who worked during strike and picketing, not unlawful; contrary to contention, U had not bargained to impasse on nonmandatory subject during negotiations precipitating strike and picketing)

Hospital and Institutional Workers' Union Local 250 (Dameron Hospital Association) **248 NLRB No. 187**

(where U and E entered into strike settlement agreement containing *amnesty* clause and U filed charges and imposed fines against members for strike breaking, it violated Act as its action *impairs congressional policy embedded in the labor laws*)

Pipeline Workers Local Union No. 38, a/w Laborers' International Union of North America, AFL-CIO-CLC (Thomas H. Mitchell, an Individual) **JD-385-82**

(U violated Act when it fabricated charges against member who had complained about intra-U procedures, and fined him $1000; moreover, although International reversed Local U's action it is also liable for violation as it did not specifically repudiate coercive effects of local's conduct)

Graphic Arts International Union, Local 261 (Sale-Niagara, Inc.) **JD-202-82**

(enforcing overtime ban that prohibited U members from performing mandatory assigned overtime work by imposing internal U discipline of charges and fines, unlawful notwithstanding contract provided that overtime be voluntary, since overtime was term of employment for members in question who as working foremen were regularly scheduled a nine hour day and in their case was outside ambit of contractual overtime provisions, for them to refuse to perform overtime would constitute unprotected recurring and intermittent partial strike)

International Brotherhood of Security Personel Officers and Guards, formerly known as L. Joseph Overton & Associates **JD-(NY)-44-82**

(U's charging *initiation fee* to members refusing to pay retroactive dues, violative, since it was different method of collecting unlawful dues (dues for period prior to execution of contract)

Truck Drivers, Chauffeurs & Helpers Local Union No. 100, an affiliate of Teamsters (Clyde F. Overstreet, an individual; etc.) **JD152-82**

(imposing fines against members because they had supported deauthorization ptn, violative)

Local Union No. 1112, Laborers' International Union of North America, AFL-CIO (Frank M. Russell, an Individual) **JD-1-82**

(causing discharge of Ee for failure of Ee to complete payment of requisite U initiation fee and dues, held violative where there was no *clear and unambiguous notice of dues delinquencies, the manner of their computation (and) the consequences which follow if the arrears were not paid by a certain date*)

Teamsters Local Union No. 688, a/w Teamsters (Ritepoint, Division of Penn Corp.) **JD-403-81**

(U rule that if member fails to secure withdrawal card when (1) leaves Industry for 1 year and then returns, or (2) leaves industry for less than 1 year or upon layoff member must pay dues for time absent w/o withdrawal card, violative as future employment cannot be conditioned on obligation Ees were free from (not employed) under U-security agreement; contention rule falls w/i U's right to regulate internal affairs rejected since rule constitutes implied threat of loss of employment because of U-security clause)

Yellow Cab Company of Philadelphia (Debtor in Possession) **JD-247-81**

(U's conditioning continuing employment of Ee upon payment in excess of back dues actually owed by Ee, violative since by demanding full payment of amount in excess of dues actually owed by Ee, U *de facto* demanded payment of fine or penalty as condition of his continued employment)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**

(fines, expulsions, and charges against Ees for crossing picket line during strike in contravention of strike amnesty agreement, unlawful and not protected by Sec. 8(b)(1)(A) proviso notwithstanding discipline was undertaken before U signed agreement, since agreement was not solely prospective but intended to cover action during strike, and U, by signing it, waived right to discipline Ees for action during strike and bound its individual members as well as itself to abide by agreement)

Brotherhood Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC v. N.L.R.B. **624 F.2d 819 (C.A. 8, 1980)**

(checkoff of *assessments* though specifically permitted in bargaining agreement and had been done in past nevertheless held unlawful because checkoff authorization cards did not list *assessments* as item that could be checked off)

Elevator Constructors Local Union No. 8 v. N.L.R.B. **665 F.2d 376 (C.A.D.C., Sep. 1981)**

(U's maintenance of fines payable provision of its constitution and bylaws, requiring members to pay fines before dues, in conjunction with valid U security clause, unlawful, notwithstanding U's contention that fines payable bylaw was merely a valid U rule w/i 8(b)(1)(A) proviso; while bylaw has legitimate purpose of encouraging members to pay fines and, considered independently, would be protected by 8(b)(1)(A) proviso, U juxtaposed bylaw with U security clause and thereby crossed the line from valid bylaw to impermissible *external* coercion)

Elevator Constructors Local Union No. 8 v. N.L.R.B. **665 F.2d 376 (C.A.D.C., Sep. 1981)**

(U's maintenance of fines payable provision of its constitution and bylaws, requiring members to pay fines before dues, in conjunction with valid U security clause, unlawful, notwithstanding U's contention that, in finding coercion herein, Bd may not rely on presumption that U will act illegally in enforcing its rules; Bd here had no need to employ presumption of illegal U activity in finding violation, since it found that conjunction of bylaw with U security clause was itself sufficient coercion to violate Act; line of cases relied on by U, distinguished)

Elevator Constructors Local Union No. 8 v. N.L.R.B. **665 F.2d 376 (C.A.D.C., Sep. 1981)**

(U's maintenance of fines payable provision of its constitution and bylaws, requiring members to pay fines before dues, in conjunction with valid U security clause, unlawful, notwithstanding U's contention that, in finding coercion, Bd may not rely on possibility that Ees will misinterpret constitution or valid contractual provision; ambiguous provisions left members to speculate on manner in which they will be applied and, although U claims that felicitous draftmanship of inartfully drawn bylaw herein is problem for U and not Bd, impression created by ambiguous U rules themselves unlawfully coerced Ees)

Elevator Constructors Local Union No. 8 v. N.L.R.B. **665 F.2d 376 (C.A.D.C., Sep. 1981)**

(U's maintenance of fines payable provision of its constitution and bylaws, requiring members to pay fines before dues, in conjunction with valid U security clause, unlawful, notwithstanding contention that Bd exceeded its powers by adopting per se rule against combining fines payable bylaw with U security clause; Bd's decision was not abuse of discretion; leading Bd case did not pass on situation herein; Bd's treatment of issue did not require stricter standards of judicial review; and Bd reasonably determined that combination herein may induce unsophisticated Ees to fear loss of jobs for not paying fines)

2554-7600 Grievance service fee of bond

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers, Local 72, AFL-CIO (Combustion Engineering, Inc.) **260 NLRB No. 033**

(by refusing to discuss grievance preliminarily with grievant before grievant paid $50 dispute bond as required by collective bargaining agreement, U deprived one of unit members of his grievance representation which belongs to him as matter of right. Bd did not reach question of whether, under any circumstances, $50 *dispute bond* procedure constitutes *per se* violation)

2556 REFUSAL TO ALLOW WITHDRAWAL OF CHECKOFF AUTHORIZATIONS

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**

(U's maintaining and enforcing provision in bargaining agreement which required checkoff authorization revocations be on forms provided by U which were only available at U headquarters and refusing to accept Ees' revocations by letter, and informing E it would be in violation of bargaining agreement if E honored revocations violated revocation rights of Ees conferred in Sec. 302(c)(4))

American Nurses' Association **250 NLRB No. 175**

(refusal to honor revocations of checkoff authorizations, not unlawful where Ees failed to revoke w/i appropriate period)

American Nurses' Association **250 NLRB No. 175**

(resignations from U did not revoke dues checkoff authorization, notwithstanding GC's contention that resignations from U membership served to revoke checkoff authorizations insofar as they specifically refer to deductions and payment of monies in an amount equal to *all my U membership dues and membership assessments*)

American Nurses' Association **250 NLRB No. 175**

(Ees prohibited from modifying dues checkoff authorization, where Ees could not make unilateral changes in their preexisting checkoff authorization contrary to contract)

2556—Cont.

United States Postal Service **248 NLRB No. 002**
(E and U's maintaining check-off agreement whose revocation terms were changed after enactment date of Postal Reorganization Act from 6-month period to 1-year period of revocability, and refusing therefor to permit revocation of Ees' checkoff authorizations, not violative since, according to Bd's interpretation of exception to NLRA embodied in Section 1205(b) of PRA, Congress intended to permit changes in check-off revocation period so long as they complied with limitation set forth in last sentence of Section 1205(b))

Peninsula Shipbuilders' Association v. N.L.R.B. **663 F.2d 488 (C.A. 4, Sep. 1981)**
(ct enforced Bd order holding E and incumbent U jointly and severally liable to reimburse Ees who had effectively revoked their check-off authorizations although on non-U forms in contravention of provision in extended bargaining agreement, where substantial evidence showed that such provision which required use of U revocation forms was facially invalid under LMRA Sec. 302(c)(4) and revocation procedure as actually enforced was ULP, in view of Ees' lack of easy, general access to U forms, Ees were not sufficiently informed about revocation requirement, and Ees had to appear personally at U hall to sign forms)

2557 DEMANDING DUES WHILE DENYING MEMBERSHIP

Pipefitters Union Local No. 120 (Schweizer Dipple, Inc.) **260 NLRB No. 045**
(U's charging Ees dues and fees at times, including their probationary periods, during which they were not members of U, held violative)

2559 REFUSAL TO ACCEPT DUES OR OTHER PAYMENTS, OR REFUND SAME

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilson Freight Lines, Inc., et al.) **249 NLRB No. 006**
(no violation where U notified member it would refuse to accept his dues until his fine had been paid toll in view of fact member was not working for E which was party to bargaining agreement containing U security clause, and where U's Local Freight Agreement contained exclusive hiring hall procedure which required U to refer registrants w/o regard to U membership)

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**
(U which had internal policy requiring payment of dues by check or money order violated Act when it requested Ee's discharge for lack of membership when Ee tendered dues in cash; U had right to deny Ee membership but did not have right to deny him job and E violated Act when it acquiesced in U's demand; moreover, fact that Ee had alternative method of payment; namely, executing checkoff card immaterial since under Sec. 7 Ee has right to refuse such method of payment)

2561 DEMAND FOR CHECKOFF DUES OR DUES EQUIVALENCY OF RESIGNED MEMBERS

Peoria Newspaper Guild, Local 86 (Peoria Journal Star) **248 NLRB No. 028**
(Guild's threatening Ee with discharge and attempting to discharge him for failure to maintain membership and pay dues unlawful, where Ee unequivocally had resigned after expiration of bargaining contract having security clause but before new contract with maintenance-of-membership clause was ratified by Guild members and executed by parties; Ee's payment of dues for one month after resignation because he was a Guild member for part of month did not impair resignation's effectiveness)

Honeywell, Inc. - Tampa Operations **JD-116-81**
(causing E to deduct dues from wages of Ees who had effectively revoked their dues checkoff authorizations by resigning from U during hiatus period between contracts, violative)

2562 DEMAND FOR DUES OF MEMBERS WHO HAVE REVOKED CHECKOFF AUTHORIZATION

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(U's maintaining and enforcing provision in bargaining agreement which required checkoff authorization revocations be on forms provided by U which were only available at U headquarters and refusing to accept Ees' revocations by letter, and informing E it would be in violation of bargaining agreement if E honored revocations violated revocation rights of Ees conferred in Sec. 302(c)(4))

United States Postal Service **248 NLRB No. 002**
(E and U's maintaining check-off agreement whose revocation terms were changed after enactment date of Postal Reorganization Act from 6-month period to 1-year period of revocability, and refusing therefor to permit revocation of Ees' checkoff authorizations, not violative since, according to Bd's interpretation of exception to NLRA embodied in Section 1205(b) of PRA, Congress intended to permit changes in check-off revocation period so long as they complied with limitation set forth in last sentence of Section 1205(b))

Peninsula Shipbuilders' Association v. N.L.R.B. **663 F.2d 488 (C.A. 4, Sep. 1981)**
(ct enforced Bd order holding E and incumbent U jointly and severally liable to reimburse Ees who had effectively revoked their check-off authorizations although on non-U forms in contravention of provision in extended bargaining agreement, where substantial evidence showed that such provision which required use of U revocation forms was facially invalid under LMRA Sec. 302(c)(4) and revocation procedure as actually enforced was ULP, in view of Ees' lack of easy, general access to U forms, Ees were not sufficiently informed about revocation requirement, and Ees had to appear personally at U hall to sign forms)

2563 MINORITY UNION'S ACCEPTANCE OF EXCLUSIVE BARGAINING AUTHORITY

The Mead Corporation **256 NLRB No. 108**
(violation where U accepted unlawful assistance from E of unlimited access to plant, made misleading and threatening statements to Ees that if card signed Ees would be guaranteed job but if not signed no promise could be made to coerce card signatures on which recognition was based, and executed contract on same day E extended recognition ot forestall organizing by U which represented Ees of predecessor E)

Mego Corp. and Samet and Wells, Inc. **254 NLRB No. 031**
(accepting recognition and executing contract on behalf of Ees at E's new plant of whom U did not represent majority, violative)

Sanford Home For Adults **253 NLRB No. 153**
(U which did not represent uncoerced majority of Ees and accepted recognition from E, entered into collective bargaining agreement containing U security provision and enforced agreement violated Act)

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**
(international U held to have violated 8(b)(1)(A) where it asked for and obtained recognition as Ee representative and obtained and began administering contract when it did not represent Ee majority following election, purporting to affiliate Ee committee with international, which was ineffective and void because election was conducted in violation of minimal standards of democratic procedure or due process; while international's actions connected with and following election were not regarded as taken in good faith, violation would not be excused even by showing of good faith)

Corrugated Structures, Inc. **252 NLRB No. 079**
(U's entering into and maintaining bargaining agreement with E when assertedly it knew that E had bargaining agreement with other U, not unlawful, where other U had not established itself as majority representatives of E's Ees)

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse **249 NLRB No. 060**
(violation where U accepted recognition and executed contract at time when U did not represent uncoerced majority of Ees, and E did not employ work force which was substantially representative of anticipated Ee complement)

Dubuque Packing Company **JD-250-82**
(recognition of U based on tainted authorization cards violative; moreover, U which accepted recognition also violated Act)

N.L.R.B. v. Sanford Home For Adults **669 F.2d 35 (C.A. 2, Dec. 1981)**

2563-0100 Generally

Herman Brothers, Inc. **264 NLRB No. 064**
(where E recognized U and signed contract containing U security provision, on basis of 4 signed authorization cards out of contemplated unit of 7, it did not violate ACt, moreover, fact that unit eventually expanded to 14 or 16 does not warrant different conclusion as this increase was not anticipated by E. U also did not violate Act by entering into contract)

First National Maintenance Corporation **254 NLRB No. 028**
(recognition of U and entering into collective bargaining agreement with U, which, on date of execution of contract, did not in fact represent majority of E's Ees and this was known by both parties, held violative as to both E and U)

Dubuque Packing Company **JD-250-82**
(entering into contract with unlawfully recognized U violative; U's entering into and maintaining agreement also violative)

2563-5000 Good faith immaterial

2563-5000—Cont.

Siro Security Service, Inc. 247 NLRB No. 157

2564 UNION'S ACCEPTANCE OF REPRESENTATION STATUS FOR INAPPROPRIATE UNIT

Save-It Discount Foods, Inc. 263 NLRB No. 097

(E who applied and enforced collective-bargaining agreement including provisions providing for U-security clause, dues checkoff and insurance, to Ees of new store which was found not to be accretion to unit consisting of E's other four stores violated Act; moreover, U which accepted all of foregoing also violated Act)

General Instrument Corporation, Amtote Systems Division 262 NLRB No. 149

(E who opened two new operations and extended U contract to cover these operations violated Act where units were not accretions and E provided U with room to meet Ees, paid Ees for time spent at meeting, solicited newly hired Ees to sign U dues checkoff authorization, withheld dues even without valid checkoff authorizations and applied U-security provisions of its existing contract; moreover, by acquiescing in above conduct and by accepting recognition and extending dues and U-security provisions of contract to Ees at new operations U also violated Act)

Baine Service Systems, Inc. 248 NLRB No. 087

(U and E by executing contract when both parties knew that size of unit was going to increase violated Act)

2565 CHANGE IN REPRESENTATIVE THROUGH CHANGE IN LOCAL

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) 615 F.2d 820 (C.A. 9) (1980)

(international U's attempt to transfer jurisdiction over Ee's bargaining unit from certified local to its sister local, not violative, notwithstanding that the attempt was made w/o consent of unit Ees; transfer was executed for legitimate reasons and constituted, therefore, both a valid disclaimer by certified local of further interest in representation of Ee's unit, and a noncoercive offer by sister local to assume role of representative)

2566 EXECUTION OR RENEWAL OF CONTRACT DURING PENDENCY OF REAL QUESTION OF REPRESENTATION

Lutheran Hospital of Maryland, Inc. 265 NLRB No. 148

(signing of contract by E and incumbent U not violative, notwithstanding GC's contention that question concerning representation existed, since, in *RCA del Caribe, Inc.*, Bd recently reexamined law applicable to situations where incumbent U is challenged by *outside* U and held that raising of question concerning representation will no longer require or permit an E to withdraw from bargaining, nor will an E be privileged to refuse to execute a contract with incumbent U; thus by executing contract, E did not violate 8(a)(2) and it necessarily follows that incumbent U did not violate 8(b)(1)(A))

Signal Transformer Co., Inc. 265 NLRB No. 033

(U's acceptance of recognition from E and signing bargaining agreement containing security clause at time another U still claimed to represent E's Ees and while its R ptn still pending before Bd, unlawful, since qcr existed)

2567 RECOGNITION OF UNION DURING PENDENCY OF REAL QUESTION OF REPRESENTATION

Signal Transformer Co., Inc. 265 NLRB No. 033

(U's acceptance of recognition from E and signing bargaining agreement containing security clause at time another U still claimed to represent E's Ees and while its R ptn still pending before Bd, unlawful, since qcr existed)

Queen City Paving Co., Inc. JD-(SF)-156-80

(E and Us violated Act by entering into, maintaining, and enforcing collective bargaining agreements covering bargaining units since qcr existed where petitions had been filed, elections held, and objections to election and challenged ballots were under Bd consideration; Sec. 8(f) was no defense because of existence of qcr)

2569 RENEWAL OF CONTRACT AFTER LOSS OF MAJORITY

2569-3300 During insulated period of contract

Clark Equipment Company 249 NLRB No. 094

(no violation of 8(a)(2) by E or 8(b)(1)(A) by incumbent U where they negotiated and executed new contract when incumbent no longer represented majority of E's Ees, since E lacked requisite knowledge of incumbent U's loss of majority support; dissidents' committee and its leader withheld from E during insulated period the very evidence that would have required E to cease negotiating with incumbent U)

2569-3367 Where union has knowledge of loss of majority

Campus Housekeeping, Inc. 252 NLRB No. 072

(U and E violated Act when they signed renewal contract which contained U security clause after U had lost its majority and E had knowledge of this)

2570 ACCEPTANCE OF ASSISTANCE FROM EMPLOYER

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation 264 NLRB No. 063

(violation where Ees' former U which had lost election entered into contract containing U-security provision since it was not exclusive bargaining representative of Ees)

General Instrument Corporation, Amtote Systems Division 262 NLRB No. 149

(E who opened two new operations and extended U contract to cover these operations violated Act where units were not accretions and E provided U with room to meet Ees, paid Ees for time spent at meeting, solicited newly hired Ees to sign U dues checkoff authorization, withheld dues even without valid checkoff authorizations and applied U-security provisions of its existing contract; moreover, by acquiescing in above conduct and by accepting recognition and extending dues and U-security provisions of contract to Ees at new operations U also violated Act)

McKesson Drug Company 257 NLRB No. 054

(where E consolidated 3 facilities into 1 facility at new location and U, representing Ees in one facility, accepting recognition and giving effect to contract containing U security clause at consolidated facility violative, as U did not represent uncoerced majority)

The Mead Corporation 256 NLRB No. 108

(violation where U accepted unlawful assistance from E of unlimited access to plant, made misleading and threatening statements to Ees that if card signed Ees would be guaranteed job but if not signed no promise could be made to coerce card signatures on which recognition was based, and executed contract on same day E extended recognition ot forestall organizing by U which represented Ees of predecessor E)

Cas Walker's Cash Stores Inc. 249 NLRB No. 041

(violation by E and favored U where E recognized and executed agreement with such U when U did not represent majority of E's Ees)

Dubuque Packing Company JD-250-82

(E violated Act where, prior to opening of plant it gave Ees U authorization cards to sign; U violated Act by accepting E's assistance)

Dubuque Packing Company JD-250-82

(E who afforded opportunity to U it favored to address Ees on company time while refusing to have any dealings with another U which had expressed interest in representing Ees violated Act; moreover, U which accepted assistance and coerced Ees into signing cards and stated that U already represented them violated Act)

Sav-On Drugs, Inc. JD-(SF)-214-81

(U's acting in concert with E extending coverage of current agreement to include enforcing U security clause to Ees at E's two new facilities and enforcing U security clause contained therein at time U did not represent uncoerced majority of Ees at new facilities, having obtained authorization cards through threats of loss of employment)

2571 DEDUCTION OF DUES WITHOUT CHECKOFF AUTHORIZATION

Edward L. Nezelek, Inc. 252 NLRB No. 070

(E's deduction of dues w/o Ee's executing checkoff authorization and U's acceptance of dues for nonmembers w/o authorization violative)

2572 EXECUTION OR MAINTENANCE OF INVALID UNION-SECURITY AGREEMENT

Federation of Employees Union, Local 1027 (Index Construction Corporation) 263 NLRB No. 66

(deduction of dues during first 7 days of employment)

International Photographers of The Motion Picture Industries, Local No. 644, etc. (King-Hitzig Productions) 259 NLRB No. 135

(U violated Act by maintaining in its contracts union-security clauses which do not provide for statutory 30-day waiting period before requiring U membership)

McKesson Drug Company 257 NLRB No. 054

(where E consolidated 3 facilities into 1 facility at new location and U, representing Ees in one facility, accepting recognition and giving effect to contract containing U security clause at consolidated facility violative, as U did not represent uncoerced majority)

2572—Cont.

United States Postal Service **248 NLRB No. 002**

(E and U's maintaining check-off agreement whose revocation terms were changed after enactment date of Postal Reorganization Act from 6-month period to 1-year period of revocability, and refusing therefor to permit revocation of Ees' checkoff authorizations, not violative since, according to Bd's interpretation of exception to NLRA embodied in Section 1205(b) of PRA, Congress intended to permit changes in check-off revocation period so long as they complied with limitation set forth in last sentence of Section 1205(b))

International Brotherhood of Security Personel Officers and Guards, formerly known as L. Joseph Overton & Associates **JD-(NY)-44-82**

(U security clause may not be applied retroactively. Date of execution and not effective date of bargaining agreement governs validity of such clause notwithstanding members voted for earlier date)

International Brotherhood of Security Personel Officers and Guards, formerly known as L. Joseph Overton & Associates **JD-(NY)-44-82**

(demand for dues covering lawful period and also unlawful period (prior to execution date of contract) violative)

2572-2500 Covering employees for whom union not exclusive representative

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation **264 NLRB No. 063**

(violation where Ees' former U which had lost election entered into contract containing U-security provision since it was not exclusive bargaining representative of Ees)

General Instrument Corporation, Amtote Systems Division **262 NLRB No. 149**

(E who opened two new operations and extended U contract to cover these operations violated Act where units were not accretions and E provided U with room to meet Ees, paid Ees for time spent at meeting, solicited newly hired Ees to sign U dues checkoff authorization, withheld dues even without valid checkoff autkorizations and applied U-security provisions of its existing contract; moreover, by acquiescing in above conduct and by accepting recognition and extending dues and U-security provisions of contract to Ees at new operations U also violated Act)

Mego Corp. and Samet and Wells, Inc. **254 NLRB No. 031**

(accepting recognition and executing contract on behalf of Ees at E's new plant of whom U did not represent majority, violative)

Sav-On Drugs, Inc. **JD-(SF)-214-81**

(U's acting in concert with E extending coverage of current agreement to include enforcing U security clause to Ees at E's two new facilities and enforcing U security clause contained therein at time U did not represent uncoerced majority of Ees at new facilities, having obtained authorization cards through threats of loss of employment)

2573 ACCEPTING UNLAWFULLY COLLECTED DUES

Herman Brothers, Inc. **264 NLRB No. 064**

(accepting dues deducted pursuant to coercively obtained authorizations violative)

2574 UNION'S ACCEPTANCE OF CONCEALED PAYMENTS FROM EMPLOYER (KICKBACKS)

Jackson Engineering Co. **265 NLRB No. 175**

(E's concealed cash payments, involving large sums of money, made to U officials, representing 10-percent kickback from all business referred to E by U, unlawful, since there was no disagreement that such payments made to *labor organization* constitute violations of 8(a)(1) and (2), and 8(b)(1)(A); while Act does not regulate individuals acting in private capacity, conduct of officials can properly be imputed to U since they acted as agents of U and not as individuals engaged in *individual frolic* or *personal adventure*)

2576 DISCRIMINATORY MAINTENANCE OF CONTRACT CLAUSE

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO **253 NLRB No. 091**

(on ct remand, Bd affirmed earlier decision stating that recently negotiated collective-bargaining agreement and letter of understanding which provided for mutually agreed upon method of operating U's out-of-work lists neither renders original order moot nor justifies its modifications; furthermore, compliance with order does not rule out necessity for an order to deter future unlawful conduct)

Fort Wayne Area Local, American Postal Workers Union, AFL-CIO (Kim Smith) **JD-576-80**

(U's refusal to approve Ee's request to sign preferential overtime list, not unlawful reprisal for criticism of U officials, policy and conduct of internal elections, as alleged, or arbitrary or invidious where Ee failed to timely establish contractual eligibility or show necessity for dilatoriness, and U had legitimate interest in protecting those who acted timely and in avoiding setting undesirable precedent)

Teamsters Local 20 v. N.L.R.B. **610 F.2d 991 (C.A.D.C.)**

(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

2576-3000 Superseniority

McQuay-Norris, Inc. **258 NLRB No. 191**

(E and U violated Act by maintaining and enforcing superseniority clause which caused retention of Ee-U officials (trustee and guide) above other Ees with more seniority where U officials duties concerned organizational and internal functions of U and not contractual matters pertaining to bargaining and grievances)

United States Postal Service **254 NLRB No. 010**

(violation where U president used contractual superseniority and appointment-of-steward provisions to protect junior Ees from involuntary transfer to another facility of E, which action resulted in involuntary transfer of Ees who were fourth and fifth least senior Ees)

Teamsters, Local No. 671 (Connecticut Natural Gas Corporation) **JD-558-80**

(maintaining and enforcing contractual seniority clause according U stewards superseniority as to terms and conditions of employment beyond layoff and recall, unlawful)

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. **622 F.2d 267 (C.A. 6, 1980)**

N.L.R.B. v. Stanley H. Egan and Donald R. Egan **658 F.2d 746 (C.A. 10, Aug 1980)**

(application of contractual superseniority provision to U trustee and U guard for purpose of layoff and recall held violative, as these duties do not contribute in any meaningful way to implementation of collective bargaining agreement)

Teamsters Local 20 v. N.L.R.B. **610 F.2d 991 (C.A.D.C.)**

(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

2581 DUTY OF FAIR REPRESENTATION

2581-0100 Generally

International Brotherhood of Electrical Workers, et al. v. Foust RD **442 U.S. 42 (S Ct US, 1979)**

(right to bring unfair representation actions is judicially *implied from the statute and the policy which it has adopted* and Congress has not specified what remedies are available)

International Brotherhood of Electrical Workers, et al. v. Foust RD **442 U.S. 42 (S Ct US, 1979)**

(duty of fair representation is also implicit in NLRA because that statute affords Us exclusive power to represent all Ees of bargaining unit)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

(in order to determine whether U has fairly represented Ees, it is recognized that wide range of reasonableness must be allowed representative in serving unit it represents, subject to complete good faith and honesty of purpose in exercise of its discretion)

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**

(U's unreasonable and arbitrary course of action may constitute breach of duty of fair R even w/o hostile motive)

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) **618 F.2d 820 (C.A. 9) (1980)**

(international U's attempt to transfer jurisdiction over Ee's bargaining unit from certified local to its sister local, not violative, notwithstanding that the attempt was made w/o consent of unit Ees; transfer was executed for legitimate reasons and constituted, therefore, both a valid disclaimer by certified local of further interest in representation of Ee's unit, and a noncoercive offer by sister local to assume role of representative)

2581-0100—Cont.

Denver Stereotypers and Electrotypers Union, Local No. 13 v. N.L.R.B. 623 F.2d 134 (C.A. 10, June 1980)

(in determining whether U, acting through its officers and members, breached its duty of fair representation, skill of union officers, as opposed to that of, in interpreting U's constitution and bylaws, is very relevant)

Warehouse Union, Local 860, Teamsters v. N.L.R.B. 652 F.2d 1022 (C.A.D.C., Apr 1981)

(actions (by U) found to be hostile, discriminatory or arbitrary are likely to constitute a violation of *Section* 8(b)(1)(A))

2581-0120 Section 7 as source of employee's right to fair treatment by representative

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) 250 NLRB No. 023

United Steelworkers of America, AFL-CIO-CLC v. N.L.R.B. 692 F.2d 1052 (C.A. 7, Nov. 1982)

2581-0140 Section 8(b)(1)(A) as encompassing duty to represent fairly

Local No. 256, International Molders' and Allied Workers' Union, AFL-CIO-CLC (United States Pipe and Foundry Company) 253 NLRB No. 133

(failure to process grievance assertedly because Ee was not member of incumbent U, not violative where agents of U were sympathetic and helpful in providing Ee with information and forms necessary to pursue grievance; record did not sustain contentions of GC and charging party that U acted arbitratily, discriminatorily or in bad faith with respect to pursuing Ee's grievance to arbitration)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) 250 NLRB No. 023

(in order to determine whether U has fairly represented Ees, it is recognized that wide range of reasonableness must be allowed representative in serving unit it represents, subject to complete good faith and honesty of purpose in exercise of its discretion)

United Steelworkers of America, AFL-CIO-CLC v. N.L.R.B. 692 F.2d 1052 (C.A. 7, Nov. 1982)

2581-0160 Duty owed all employees whom union represents

Local 262, Electrical Workers (Arthur Paul, Jr., Electrical Contractor, Inc.) 264 NLRB No. 038

U violated Act when it caused E to remove one of its members from position so that Ee preferred by construction manager could be hired as U's actions were irrelevant to legitimate U interests)

United Rubber, Cork, Linoleum and Plastic Workers of America, Local 878 (Goodyear Tire & Rubber Company) 255 NLRB No. 032

(U representative's statements that they intentionally left Ee off list of Ees to receive grievance pay because he was not U member, violative)

Exxon Company, U.S.A. 253 NLRB No. 027

(charging service fee to nonU Ees for medical insurance coverage is *per se* violation where it was imposed for receiving term of employment for which U has bargained and which is due unit members by right)

United Steelworkers of America, AFL-CIO, CLC (Geraldine Shanks, an individual) JD-464-80

(refusal to process grievance for Ee because she was not U member violative)

Newport News Shipbuilding and Dry Dock Company v. N.L.R.B. 631 F.2d 263 (C.A. 4, June 1980)

(threat to deny non-U members equal representation with U members in bargaining unit, violative)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)

(U owed duty to represent apprentice Ee in processing grievance, notwithstanding U's contention that Bd expressly certified U to represent only *mechanics*, that term *mechanic* is synonymous with *journeyman* and that Ee was not U member, where apprentices share common characteristics with expressly included journeymen, contract reveals that U undertook to represent apprentices, and ct found that U had duty to fairly represent Ee by investigating his grievance even though not member of U)

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) 615 F.2d 820 (C.A. 9) (1980)

(where several weeks prior to Ee's discharge certified local U representing Ee's bargaining unit agreed to international U's attempt to transfer jurisdiction over Ee's unit to a sister local for legitimate reasons, and two weeks before Ee's discharge the sister local, for legitimate reasons, sought to disclaim any right it had in representing Ee, locals' failure to process Ee's grievance concerning his discharge, not violative, in view of valid disclaimer on part of each local prior to Ee's discharge)

2581-0180 Duty may be breached by action or inaction

East Texas Motor Freight 262 NLRB No. 101

(U's inaction not violative where physical altercation took place outside of U meeting hall in presence of U agents; none of U agents knew who participated in brief fight that occurred at some distance from where agents were positioned)

East Texas Motor Freight 262 NLRB No. 101

(notwithstanding that U steward, when assaulting Ee outside of U meeting hall, was not acting as agent of U during assault, U's failure to reprimand steward or make any effort to prevent him from engaging in such conduct in future held violative, since failing to act in connection with preventing assault constituted condonation of steward's action by U)

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) 262 NLRB No. 086

(U's changing established 5-day (out-of-work) referral rule to 6-day (out-of-work) referral rule w/o giving timely notice to all job applicants, held violative; applicants suffered loss of earnings acting in reliance of continued existence of 5-day rule)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) 250 NLRB No. 023

(U's own failure to maintain (out-of-work) records does not obviate its burden of rebutting GC's *prima facie* case of discrimination)

2581-3300 Forms of representation to which duty applies

2581-3307 Union security requirements

Western Publishing Co., Inc. 263 NLRB No. 148

(it is not necessary to show causal connection between failure of U to give sufficient notice of delinquency in dues payments and Ee's failure to meet such obligations)

Western Publishing Co., Inc. 263 NLRB No. 145

(Ees' conduct, although less than diligent and even cavalier, did not evidence a conscious choice to avoid dues obligations so as to excuse U of its breach of fiduciary duty in regard to sufficient notice of such obligations; mere negligence or inattention on part of Ee in regard to delinquent payment of dues is not enough to relieve U of its fiduciary obligation to provide sufficient notice to Ee of obligations)

Federation of Employees Union, Local 1027 (Index Construction Corporation) 263 NLRB No. 66

(deduction of dues during first 7 days of employment)

General Instrument Corporation, Amtote Systems Division 262 NLRB No. 140

(notwithstanding presence of valid dues checkoff and U-security clause, U and E violated Act where E deducted dues and fees from Ees who had not signed check-off authorization and U accepted fees for first 45 days of employment when Ees had no obligation to honor checkoff and U security provisions)

Big Rivers Electric Corporation 260 NLRB No. [illegible]

(U's obligations prior to seeking discharge of Ee for failure to pay dues under U security clause include; informing Ee of amount owed, method used to compute amount, when such payment to be made, and fact that discharge will result from failure to pay; however, these requirements are not rigidly applied and where Ee failed to make any effort to pay dues after 8 months of warnings. U did not violate Act by requesting and causing her discharge)

Actors' Equity Association 247 NLRB No. 172

(U unlawfully failed to represent non-resident alien members by maintaining and enforcing U security requirement that such members pay 5 percent of gross earnings while requiring significantly less dues from other members)

Boilermakers' Union, Local No. 104 (Marco Seattle, Inc.) JD-(SF)-294-82

(U's demanding discharge of Ee pursuant to U security clause for failure to pay dues and reinstatement fee that were not delinquent, unlawful where U breached fiduciary duty to Ee by failing to investigate his claim of nondelinquency and correct its records when his claim was verified)

Chauffeurs, Teamsters, Warehousemen, and Helpers, Local Union No. 525, affiliated with International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America JD-260-82

(U did not violate Act when it requested member's discharge for nonpayment of dues under valid U security clause where it notified member by mail of his delinquency, notified him in person, informed him of exact amount owed and was given 3 months grace period after demand before discharge was requested)

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Service Employees' International Union, Pittsburgh Local No. 29 AFL-CIO (Alcoa Service Corporation) **JD-272-81**
(U's demand under security clause for Ee's discharge for dues arrearages, unlawful, since U failed to fulfill fidiciary duty to make certain Ee will not fail to meet obligation through ignorance or oversight, but only by choice, where first explanation of his arrearages and how his payments had been credited given Ee after discharge, Ee did not understand U's system of applying payments to arrearages, and had stated he did not believe he was in arrears, and when confronted previously with obvious delinquency had paid. Irrelevant Ee might had determined dues were owed from pay stubs)

Electrical Workers, Local Union 649 (Olin Corporation) **JD-190-81**
(U violated Act when it requested that E discharge Ee for failure to join U as required by U security clause where Ee had made good faith attempt to join, U official gave him another date to be sworn into U when Ee requested different date but in interim, w/o any notice to Ee, U informed E to discharge Ee)

N.L.R.B. v. Construction and Building Material Teamsters Local No. 291 **633 F.2d 291 (C.A. 9, 1980)**
(U is perfectly free to discourage delinquent dues payments by imposing sanctions on members unless those sanctions interfere with a member's employment and his relations with E; in that event, U's fiduciary duty to represent and deal fairly with its members comes into play)

2581-3314 Operation of referral system

Local 513, Plumbers (Master Plumbers and Heating Contractors of the Twin Cities (Benton Harbor and St. Joseph, MI)) **264 NLRB No. 059**
(violation, where business representative of local U referred members who had been on out of work list shorter time than Charging Party contrary to his local's established procedure when requested by other locals to refer Ees to jobs in their areas, since referral in effect through exclusive hiring hall inasmuch as business agent became agent of other locals to which he referred Ees, and those locals operated exclusive halls therefore, referrals made in haphazard manner are violative)

Electrical Workers, Local Union No. 453 (Southern Sun Electric Corporation) **263 NLRB No. 115**
(fining *traveller* for employment with firm that was in *disfavor* which was in violation of U contract, unlawful where real reasons were: he had testified against U during ULP proceeding and thereafter received no referrals through hiring hall; successfully appealed U's refusal to place him on referral roster; testified at hearing on behalf of fellow traveller-grievant and disparate amount of his fines *vis a vis* its own members)

International Association of Heat and Frost Insulators and Asbestos Workers Local No. 53 (Insul-Contractors, Inc.) (Betty Ruth Turner) **262 NLRB No. 111**
(U which threatened not to refer Ee or to refer her at lowest possible rates because she had complained about its failure to process her grievance over pay matter violated Act)

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) **262 NLRB No. 006**
(U's refusing to refer Ee for employment pursuant to operation of exclusive hiring hall agreement and by informing Ee that it was denying him referrals because he had failed to comply with business agent's request that he relinquish his past job so that agent could put his own man in job, held violative where U business agent had threatened Ee to use agent's hiring hall authority to retaliate against Ee; agent frequently referred persons to jobs, whose names appeared below Ee's on hiring hall's out-of-work list of jobs)

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) **262 NLRB No. 006**
(U's change in established hiring hall procedure from 5-day (out-of-work) rule to 6-day (out-of-work) rule before having applicant's name removed from out-of-work list held violative, since procedure, resulted in denial of employment to applicants, breaching U's duty of fair representation owed to all hiring hall users and U did not demonstrate that its interference with employment was pursuant to valid U-security clause or was necessary to effect performance of its representative function)

Bartenders' and Beverage Dispensers' Union, Local 165 (Nevada Resort Association) **261 NLRB No. 067**
(denying referral registrant right to examine records U utilizes in operating exclusive hiring hall that would affect him unlawful, since U in operating hiring hall always risks making an error, has potential to discriminate against Ees based on U membership, or may otherwise breach duty of fair representation; and data contained in records was not confidential and records were not burdensome or of particular hardship to reveal)

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) **261 NLRB No. 060**
(telling Ees and applicants for employment that U had caused E's shutdown and subsequently insisting on dispatching job anew in order to deprive members of sister locals (travelers) of their jobs, violative)

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) **261 NLRB No. 060**
(telling Ees and applicants for employment that members of sister locals (travelers) could not register on U's out-of-work books or, in other cases, that traveler registration would be delayed to allow U members and members of district local Us to obtain dispatch priority over other local U members, violative)

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) **261 NLRB No. 060**
(telling members of sister locals (travelers) that their registration and/or dispatch would be delayed or denied in order to provide dispatch priority to respondent local's members and thereafter to those members of local Us w/i district followed by other state local U members and lastly other local U members, violative)

New York Lithographers and Photoengravers' Union No. 1–P GAIU, AFL-CIO (The Publishers Association of New York City) **258 NLRB No. 136**
(refusal to offer applicant job for which he was qualified at plant same day he had rejected job for which he believed himself not qualified, not unlawful where U followed objective policy, did not knowingly offer applicant job he felt unqualified to fill, and received no protest from applicant pursuant to his right to do so)

Lower Ohio Valley District Council of Carpenters, Millwrights Local Union No. 1080, Carpenters **256 NLRB No. 014**
(refusal to supply non-U member with information from U's referral list violative of duty of fair representation to all Ees subject to U's referral procedures and its collective bargaining agreement)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(U's operation of exclusive hiring hall in manner that gave preference in referral to members over nonmembers, was subjective w/o objective standards or criteria, and substantially disregarded written procedures in agreement with E, unlawful since it caused Es to discriminate against nonmembers, violated U's duty to fairly represent job applicants, and impaired job applicants' employment opportunities)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(change in nature of work to which Ees were referred from usual work to undesirable work because of Ees' refusing to sign checkoff authorizations and filing of charges with Bd, unlawful)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(refusal to provide information about referral system to job applicant because he was not member of U and had filed charges against U and because U wanted to keep him from finding out whether he had been discriminated against by U in referral)

Laborers' International Union of North America, AFL-CIO, Local Union No. 1320 (Dunbar & Sullivan Dredging Co.) **253 NLRB No. 058**
(U business manager's departure from numerical order on referral list to preserve his son's employment, violative)

Laborers' International Union of North America, AFL-CIO, Local Union No. 1320 (Dunbar & Sullivan Dredging Co.) **253 NLRB No. 058**
(U's selection of Ees to be laid off unlawful, where motivated by desire to maintain employment for two job stewards even though their presence at jobsite was unnecessary at time of layoff)

Local 889, Laborers' International Union of North America, AFL–CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**
(U's preference for referral of members over non-members in response to requests from Es not unlawful since hiring hall is not exclusive, either by contract or practice, notwithstanding number of members obtained all their employment through hiring hall, where language in agreement states *in the event any E should use the services of U to secure ... Ees* is clearly permissive and Es obtained Ees from other sources)

Local 889, Laborers' International Union of North America, AFL–CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**
(failure to refer member because of his support of rival of U business manager for that post and dispute over lack of receipts for dues and fees paid by his son which resulted in letter of complaint and hearing)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(removal of Ee's name from hiring hall's *out-of-work* list precluding Ee from being dispatched in manner prescribed by contractual rules held violative

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where action was motivated by factors in contravention of hiring hall contract and caused by pique at Ee)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **259 NLRB No. 023**
(where U departs from its lawful contractual hiring hall rules and admitted standards of referral in denial of employment, action, standing alone, is discrimination which inherently encourages U membership)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **259 NLRB No. 023**
(U's own failure to maintain (out-of-work) records does not obviate its burden of rebutting GC's *prima facie* case of discrimination)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **259 NLRB No. 023**
(threats affecting Ee as well as fellow members of U in their dispatches from hiring hall held violative when made because Ee filed charges with Bd and were employment related)

Plumbers, Local Union No. 412 (Thomas Mechanical, Inc.) **249 NLRB No. 098**
(failure to refer *traveler* U member from local U hiring hall not violative where *traveler* failed to follow procedures for registration for referral and also local U had rule which required *traveler* to be in jurisdiction 3 years before he could transfer into local U)

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**
(delay in giving test which was required before referral would be made violative as test only required for nonmembers)

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**
(while setting up categories for referrals based on experience in trade or working for particular employers not violative, automatic placement of nonmembers in lowest category is violative)

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**
(testing of nonmembers in such manner as to result in their discrimination versus members, violative)

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**
(U which charged Ees monthly referral fee for participation in its hiring hall violated Act where it never effectively operated referral hall and purpose of fee was to make money for U)

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**
(bonafide hiring hall arrangement is characterized by agreement between parties for E to notify U as jobs become available and U to send E sufficient manpower for E to fulfill his employment requirements)

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(U operating hiring hall w/o objective criteria but rather leaving operation w/i discretion of few U officials including factor that written records not kept, unlawful; while failure to keep records not violative per se, considered as one of several factors, not does use of subjective criteria in referral such as financial need necessarily reflect discriminatory movite and violative per se, provided such criteria subordinated to overall established objective system)

Plumbers, Local 224 (Master Plumbing, Heating and Pipefitting Contractors of the McKean-Warren Counties) **JD-434-82**
(violation where U discriminatorily refused member access to U's business agent by requiring him to go through answering service for purpose of placing name on out-of-work list and securing information about job referrals in administration of its exclusive hiring referral system because he filed ULP charges with Bd)

Moving Picture Projectionists Local 150, Stage Employees (Mann Theatres) **JD-(SF)-321-82**
(U's business manager's refusal to place member on out of work list for relief projectionists and refer him for employment and referring others with less seniority, unlawful, notwithstanding two theatre chains had requested that member not be referred to them and other theatres had complained to U about member's misconduct or incompetence, since refusal to refer motivated by member's complaint to U's executive committee regarding operation of U's referral system)

Laborers International Union of North America, Local 1136 (Southern Illinois Builders Association) **JD-677-81**
(U which denied non-members access to referral list because they were non-members and black and because they protested the unfair operation of the system violated Act)

Millwright Local Union No. 1931 **JD-581-81**
(Bd established presumption of illegality where labor organization operates hiring hall in fashion impeding work opportunities of Ees; see *International Union of Operating Engineers, Local 18, AFL-CIO, (William F. Murphy),* 204 NLRB 681)

Millwright Local Union No. 1931 **JD-581-81**
(U's refusal to refer Ee from hiring hall to *Ee's* chosen E not violative where GC did not establish foundation for presumption of illegality; record showed no animus against longstanding member of local U and no departure from U's established (hiring hall) procedures which involved no deliberate effort to foreclose Ee from opting on referral)

International Longshoremen's Association, Local 1414 **JD-397-80**
(enforcing provision of U constitution and by laws which provision revoked Ee's preferred seniority in *hiring hall* situation because Ee was delinquent in repaying loan borrowed from U credit union held violative, since U caused Ee's loss of employment opportunities; U adduced no evidence that action was essential to its financial survival)

N.L.R.B. v. New York Typographical Union No. 6 **632 F.2d 171 (C.A. 2, 1980)**
(where collective-bargaining agreement contained job referral provisions which gave priority to group of Ees who if unemployed would be paid *guaranteed income payments,* U's refusal to refer nonmembers who were not in preferred group not violative where insufficient evidence to support discrimination finding that only U members in preferred group, or that preference has effect of encouraging U membership because preferred class is closed, or procedure established for improper motive)

Plumbers, Local 388 v. N.L.R.B. **686 F.2d 93 (C.A. 6, 1981)**
(refusal to refer traveller because he had caused work slowdown w/i U's jurisdiction but w/o U's approval, violative; contention that he had limited his availability to welding was rejected as referral slip clearly indicated work as pipefitter also)

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. **622 F.2d 267 (C.A. 6, 1980)**
(placing U leaders at top of out-of work list, unlawful, since not justified by representational needs where their presence not required in work place)

N.L.R.B. v. International Brotherhood of Electrical Workers, Local Union No. 453 **668 F.2d 991 (C.A. 8, Jan. 1982)**
(U's refusal to permit qualified *travelers* to sign highest level referral book violative where they were entitled to highest priority registration, U had reason to know this; and no evidence of policy requiring written proof of qualification)

N.L.R.B. v. Plumbers and Steamfitters Local No. 40 **642 F.2d 406(T) (C.A. 9, Feb 19, 1981)**
(removing member's name from dispatch list w/o notice and w/o referring to Appeals Board as required in contract, violative as noncompliance with contractually prescribed rules is arbitrary and subverts integrity of hiring hall)

2581-3316 Operation of pension and health trust funds

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**
(Bd properly dismissed complaint alleging that maintenance and enforcement of cancellation provisions of pension plan unlawfully coerced Ees in exercise of right to vote to decertify U as Ee representative in that automatic cancellation rules effectively dictated Ees' choice to vote for continued representation by U; there was no evidence in the record or from the provisions themselves of intention to violate Act; provisions, on their face and as here applied, were not discriminatory or coercive; and their impact on Ee voting rights was indirect and served a legitimate business purpose of pension fund)

2581-3330 Operation of seniority system

Stage Employees, Local 695 (Twentieth Century-Fox Film Corp.) **261 NLRB No. 086**
(clause in contract which entitles former U official to claim his former employment with his former E *as though he had never left such job* found not to be violative superseniority provision as it is not preference but restoration and Ee is no better off than before he left unit position and has no additional seniority)

Bartenders, Waiters, Waitresses, Cooks & Hotel Employees Union Local 332, AFL-CIO (Ogden Food Service Corporation) **259 NLRB No. 083**
(violation, where U business agent, soon after Ee was nominated to run for business agent's job, requested E to reduce Ee's seniority for Ee's nonpayment of U dues during her maternity leave, and reduction in seniority pursuant to request resulted in loss of work hours to Ee)

2581-3328—Cont.

Glass Bottle Blowers Association of The United States and Canada, Local 149, AFL-CIO (Anchor Hocking Corporation) 255 NLRB No. 100
(agreeing with E to new seniority system based on Ees' length of U membership, violative; however, no breach of duty of fair representation to negotiate new seniority system in face of layoff or in midcontract term)

General Teamsters, Chauffeurs, Helpers and Yardmen, Local No. 470, a/w Teamsters (Connelly Containers, Inc.) JD-469-81
(U's maintaining and enforcing policy or practice whereby its steward was given superseniority for trip selection, unlawful, since w/o justification that would overcome presumption of invalidity under *Dairylea* of superseniority relating to job selection for stewards, where steward selected trips to take place during hours when most grievances arose and thus superseniority did not benefit unit members or labor relations)

General Teamsters, Chauffeurs, Helpers and Yardmen, Local No. 470, a/w Teamsters (Connelly Containers, Inc.) JD-469-81
(U's refusal to process members' grievance regarding superseniority of steward for job bidding, not unlawful notwithstanding lack of investigation and fact U was mistaken as to the legality of this type of superseniority, since U's handling of grievance resulted from its position that superseniority for steward was allowable and not from any will or invidious considerations)

General Teamsters, Chauffeurs, Helpers and Yardmen, Local No. 470, a/w Teamsters (Connelly Containers, Inc.) JD-469-81
(U filing grievance regarding E stripping steward of superseniority for trip selection as result of out-of-Bd settlement after charges filed with NLRB regarding steward's superseniority, unlawful, since in pursuit of unlawful object inasmuch as superseniority for job selection presumptively invalid under *Dairylea*, and no justification that overcame presumption but rather steward selected trips that made him unavailable during hours most grievances arose, and thus neither members nor labor relations benefited)

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. 622 F.2d 267 (C.A. 6, 1980)
(placing U leaders at top of out-of work list, unlawful, since not justified by representational needs where their presence not required in work place)

N.L.R.B. v. Stanley H. Egan and Donald R. Egan 628 F.2d 746 (C.A. 10, Aug 1980)
(application of contractual superseniority provision to U trustee and U guard for purpose of layoff and recall held violative, as these duties do not contribute in any meaningful way to implementation of collective bargaining agreement)

Denver Stereotypers and Electrotypers Union, Local No. 13 v. N.L.R.B. 623 F.2d 134 (C.A. 10, June 1980)
(U executive board's vote to place Ee at bottom of seniority list of substitute stereotypers, held not violative where, contrary to Bd's findings, U executive board's vote was based not on considerations of dual unionism, but rather on the executive board's good faith belief that U's local constitution and bylaws did not directly speak to Ee's situation)

2581-3335 Operation of apprenticeship program

Bricklayers and Masons Union, Local No. 2, International Union Bricklayers and Allied Craftsmen, AFL-CIO (Macfarlane & Hays Co.) 259 NLRB No. 036
(attempting to cause, and causing, removal of apprentice bricklayer from employment on *fire brick* job for E who did not sponsor his apprenticeship pursuant to contract between E association and U held violative, since U prohibited *all* apprentices from working on *fire brick* jobs for Es who did not sponsor apprentice regardless of skill or ability of apprentice to perform work; basis for U's action was status of Ee in U as apprentice rather than journeyman, clearly arbitrary and capricious conduct)

2581-3336 Operation of driver dispatch system

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) 249 NLRB No. 007
(allegation that U business agent (Horta) willfully misrepresented to Ee that decision by joint labor management committee establishing new dispatch rules for E's drivers, had eliminated driver preference from dispatch procedure, dismissed, where, in fact, driver preference had been temporarily eliminated upon adoption of new dispatch rules)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) 249 NLRB No. 007
(allegation that U business agent, having advised Ee that he would seek restoration of driver preference rule at meeting of joint labor management committee considering new dispatch rules for E's drivers, took contrary position at such meeting and supported E's proposal to eliminate driver preference, dismissed, where at meeting agent affirmed existence of driver preference rule and, while he made no further effort to urge retention of driver preference, he appropriately deemed unnecessary any additional exhortation)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) 249 NLRB No. 007
(allegation that U business agent (Moody) willfully misrepresented to Ee that driver preference had been eliminated by decision of joint labor management committee establishing new dispatch rules for E's drivers, dismissed, where it was not apparent why business agent would want to *willfully* conceal driver preference retention from Ee, his conduct hardly even rose to arguable level of negligence, and there was, at worst, misunderstanding by agent of thrust of Ee's inquiry regarding committee's decision)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) 249 NLRB No. 007
(allegation that U violated Act by failing and refusing to seek E compliance with decision of joint labor management committee to preserve driver preference in dispatch procedure for E's drivers, dismissed, where U business agent, in absence of any knowledge of, or grievance about, noncompliance was not guilty of ULP for failing to monitor compliance with decision)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) 249 NLRB No. 007
(allegation that U business agent failed and refused to prosecute in good faith Ee's grievance as to elimination of driver preference in E's dispatch procedure upon adoption of new dispatch rules, dismissed, where Ee had already been well represented by another business agent officially in charge of grievance presentation, merits of grievance had already been passed upon at time of agent's remark, and his candor about his own confusion with respect to preference practice must have seemed to him of little moment in the given situation)

2581-3342 Informing employees of rights under contract

Pattern Makers' League of North America, AFL-CIO, and its Rockford and Beloit Associations (Rockford-Beloit Pattern Jobbers Association) 265 NLRB No. 170
(letter to E requesting E to take *appropriate action* against Ee who failed to join U, violative where letter constituted unlawful request for discharge in light of U's breach of fiduciary duty to inform Ee of obligations so that he could take steps to protect his job; Ee made good-faith effort to comply with obligations by tendering dues to U, but instead of properly advising Ee of his obligations under union-security agreement of new contract, U rejected tender of dues by telling Ee that he did not owe dues since he was not member)

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) 262 NLRB No. 006
(U's changing established 5-day (out-of-work) referral rule to 6-day (out-of-work) referral rule w/o giving timely notice to all job applicants, held violative; applicants suffered loss of earnings acting in reliance of continued existence of 5-day rule)

Law Enforcement & Security Officers, Local 40B (South Jersey Detective Agency) 260 NLRB No. 049
(U's failure to make available to unit Ee upon his request copy of its bargaining contract with E, violative)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) 253 NLRB No. 098
(U's failure to post provisions of agreement with Es relating to hiring hall's functioning held unlawful failure to advise job applicants of their rights and obligations under the agreement which led them to believe that signing out-of-work list was what was necessary to register for employment)

Valley Cabinet & Mfg., Inc. 253 NLRB No. 008
(requesting Ees discharge for nonpayment of dues, w/o adequately informing her of her financial obligations to U, violative)

Electrical Workers, Local Union No. 1507 (General Electric Company) 252 NLRB No. 066
(U's submission of Ee's dues checkoff authorization card to E thereby causing E to deduct such dues, violative, where U submitted the card to E after having permitted Ee to rescind the card which he had signed as result of misrepresentation regarding U-security contract made to him by U representative)

Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO (Samuel M. Moody, an Individual) JD-(SF)-89-81
(no violation where GC failed to prove that U during course of ratification meeting over deliberately misled unit Ees regarding 10 percent CPI wage cap)

2581-3343 Informing employees of rights under constitution and bylaws

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International Brotherhood of Pottery & Allied Workers, AFL-CIO (Colton Manufacturing, Inc.) **254 NLRB No. 035**
(no breach of duty of fair representation by U by failure to communicate to Ees rules and policies governing when strike benefit disbursements would be made where U's constitution not misleading as to payment of strike benefits, and absent evidence any misleading representations had impact on Ees to whom U allegedly unlawfully refused to pay accrued strike benefits)

2581-3344 Informing employees of rights under benefit plans

Law Enforcement & Security Officers, Local 40B (South Jersey Detective Agency) **260 NLRB No. 049**
(U's failure to make available to unit Ee upon his request copy of its health and welfare plan, violative)

2581-3356 Informing employees of obligation under contract

The Buffalo Newspaper Guild, Local 26, and The Newspaper Guild, AFL-CIO-CLC (Buffalo Courier Express, Inc.) **265 NLRB No. 048**
(U violated Act when it threatened Ee that unless he provided U with signed checkoff form and $3 fee it withheld demand that E dismiss Ee where error was made in requiring checkoff form and this information was never conveyed to Ee)

Western Publishing Co., Inc. **263 NLRB No. 145**
(delinquent U members' waiting 2 weeks to contact U official concerning E's letter telling Ees that non-payment of dues would subject them to termination cannot, by itself, absolve U of its affirmative obligation to notify them of the delinquency; nor is E's notice sufficient to satisfy U's obligation)

Western Publishing Co., Inc. **263 NLRB No. 145**
(U's failure to sufficiently advise members of precise amounts of their dues obligations, the method of computation, or the deadline for such payment, violative as a breach of its fiduciary duty to deal fairly with members)

Food, Drug, Beverage Warehousemen and Clerical Employees, Local 595, Teamsters (Certified Grocers of California, Ltd.) **257 NLRB No. 080**
(giving inadequate notice of dues and reinitiation fee delinquencies to member before enforcing U-security clause and causing his discharge, violative, where U sent letter relating to dues delinquency that was not received and shop steward spoke about dues to member upon his return to work after illness; however, member was entitled to statement of precise amount and months for which dues were owed, an explanation of methods used in computing amount and an adequate opportunity to make payment)

United Metaltronics and Hospital Supply Employees, Local 955 (Pharmaseal Laboratories, Inc.) **254 NLRB No. 073**
(causing discharge of Ees for non-payment of dues and initiation fees, unlawful where U did not give sufficient notice to Ees of their obligations to U; requirements that Ees be given precise information concerning their obligation was of particular importance as result of confusing history of applicability of U security clause and lengthy hiatus which interrupted Ees' dues obligations)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(U's failure to post provisions of agreement with Es relating to hiring hall's functioning held unlawful failure to advise job applicants of their rights and obligations under the agreement which led them to believe that signing out-of-work list was what was necessary to register for employment)

Western Conference of Teamsters, IBT (California Cartage Company, Inc.) **251 NLRB No. 052**
(where U negotiated contract with E and failed to adequately explain all ramifications of proposals, some of which involved Ees foregoing salary increase, no violation, where U's failure did not amount to intentional, wilfull misleading of Ees)

Boilermakers' Union, Local No. 104 (Marco Seattle, Inc.) **JD-(SF)-204-82**
(U's breach of fiduciary obligation to give Ee reasonable notice of dues delinquency which resulted in discharge under U security clause, violative; U's issuing notice that was defective even under its view of the case not excused where inference cannot be drawn on the record that proper notice would have been ignored)

Plumbers, Local No. 32, AFL-CIO (David Penn, Sr., an Individual) **JD-(SF)-148-82**
(U did not violate Act when it requested discharge of Ee for failure to pay his initiation fee and dues payments notwithstanding U did not notify Ee of exact amount due where E had been in arrears for almost two year period, U had tried to collect from him over entire time and Ee acted in bad faith by continually promising to pay and then failing to follow through)

Local Union No. 1112, Laborers' International Union of North America, AFL-CIO (Frank M. Russell, an Individual) **JD-1-83**
(causing discharge of Ee for failure of Ee to complete payment of requisite U initiation fee and dues, held violative where there was no *clear and unambiguous notice of dues delinquencies, the manner of their computation (and) the consequences which would follow if the arrears were not paid by a certain date*)

Yellow Cab Company of Philadelphia (Debtor in Possession) **JD-247-81**
(U causing termination of Ees for dues delinquencies violative where U failed to give Ees accurate, complete or timely notice of U's alleged change in policy regarding consequences of dues delinquency)

Laborers International Union of North America, AFL-CIO, Local 297 (Kaiser Refractories) **JD-(SF)-204-80**
(causing discharge of Ee for failing to tender dues and initiation fee, not unlawful where Ee ignored U's letters to him informing him of his obligation to pay dues and initiation fee)

2581-3360 Job assignment

General Teamsters, Chauffeurs, Helpers and Yardmen, Local No. 470, a/w Teamsters (Connelly Containers, Inc.) **JD-460-81**
(U's maintaining and enforcing policy or practice whereby its steward was given superseniority for trip selection, unlawful, since w/o justification that would overcome presumption of invalidity under *Dairylea* of superseniority relating to job selection for stewards, where steward selected trips to take place during hours when most grievances arose and thus superseniority did not benefit unit members or labor relations)

2581-3370 Negotiation of agreements

2581-3370-0100 Generally

Western Conference of Teamsters, IBT (California Cartage Company, Inc.) **251 NLRB No. 052**
(where U negotiated contract with E and failed to adequately explain all ramifications of proposals, some of which involved Ees foregoing salary increase, no violation, where U's failure did not amount to intentional, wilfull misleading of Ees)

2581-3370-0150 Fair treatment for all unit members

Lodge No. 10, International Association of Machinists and Aerospace Workers **257 NLRB No. 071**
(by not according predominantly nonmember storeroom attendants opportunity to vote on which of four schedules they would work when it became necessary for them to work a 7-day operation, violative, where U's reasons were related to membership and based on arbitrary considerations)

Exxon Company, U.S.A. **253 NLRB No. 037**
(charging service fee to nonU Ees for medical insurance coverage is *per se* violation where it was imposed for receiving term of employment for which U has bargained and which is due unit members by right)

N.L.R.B. v. Actors' Equity Association **644 F.2d 939 (C.A. 2, Mar 17, 1981)**
(U which represented actors charging aliens higher dues than other members, unlawful; contentions that aliens not protected under Act and that discriminatory dues justified in that they protected Americans from hostile or retaliatory actions on part of British U, and provided counterweight to British U's influence over alien admissions in England, rejected)

2581-3370-5000 Failure or refusal to cover all Employees in certified unit in negotiated contract

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(U owed duty to represent apprentice Ee in processing grievance, notwithstanding U's contention that Bd expressly certified U to represent only *mechanics*, that term *mechanic* is synonymous with *journeyman* and that Ee was not U member, where apprentices share common characteristics with expressly included journeymen, contract reveals that U undertook to represent apprentices, and ct found that U had duty to fairly represent Ee by investigating his grievance even though not member of U)

2581-3370-8900 Strike settlement agreement

Hospital and Institutional Workers Union, Local 250, SEIU, AFL-CIO (Associated Hospitals of The East Bay) **254 NLRB No. 180**
(where pursuant to strike settlement agreement which provided for binding arbitration, U, in contravention of arbitrator's decision providing for complete amnesty and no retaliation by anyone against Ees for activities during strike, subjected members to intro-U trial for such activities, and thereby unlawfully coerced Ees notwithstanding no penalties imposed)

Hospital and Institutional Workers' Union Local 250 (Dameron Hospital Association) **248 NLRB No. 187**
(where U and E entered into strike settlement agreement containing amnesty clause and U filed charges and imposed fines against members for strike

2581-3370-8900—Cont.

breaking, it violated Act as its action *impairs congressional policy embedded in the labor laws*)

2581-3384 Presentation of grievances

Teamsters Local Union No. 528 (Associated Grocers Co-Op) **265 NLRB No. 065**

(U's refusal to accept and process dischargee's grievance over his termination, unlawful, particularly in view of telephone conversation between dischargee and U official who, upon being informed by dischargee that he was not U member, stated that dischargee could not file grievance nor otherwise get help from U because dischargee was not U member)

Asbestos Workers, Local No. 17 (Catalytic, Inc.) **264 NLRB No. 099**

(no violation, where contrary to GC's contentions that U handled grievances over discharges of Ees of insulation contractor in perfunctory or arbitrary manner, that its conduct was influenced by hostility to charging party's activity w/i U, and that U's conduct amounted to *blind* acceptance of E's position and displayed indifference to interests of discharged Ees, U acted w/i area of discretion permitted representative, and U had legitimate concern that dissatisfaction of E's contracting company with insulation work and E's performance might result in loss of all insulation jobs)

Las Industries **261 NLRB No. 166**

(U's failing to file unit Ee's grievance and misleading her into believing, to her detriment, that U was pursuing her grievance, violative where reason was her nonmembership in and open opposition to U)

Retail Clerks Union Local 324, United Food and Commercial Workers International Union, AFL-CIO-CLC (Fed Mart Stores, Inc.) **261 NLRB No. 156**

(U unlawfully failed to properly process grievance by misinforming grievant about manner in which it would process grievance (first go after sick and vacation pay and afterwards go after reinstatement and backpay) but then informed E that U would not seek reinstatement and backpay and proceeded to process grievance in perfunctory manner and closing grievance file after obtaining sum for sick and vacation w/o pursuing grievance claim for backpay and reinstatement that Ee also wanted)

Local Union #1010, Furniture Workers (Leggett & Platt, Inc.) **261 NLRB No. 077**

(failure to process discharge grievance to arbitration was unreasonable and arbitrary where U officer admitted that he saw Ee's name on ptn protesting new labor agreement at recent U meeting considered him *troublemaker*, failed to investigate grievance seriously, accepted E's word that Ee had excessive absences and tardiness, and grievance meeting was merely *show* for chief shop steward and Ee)

Brewery Workers Local 1016, IBT (American Malting Inc.) **260 NLRB No. 154**

(refusal to process grievance over loss of one day's pay not violative where U contract does not provide for sick leave and Ee was told that he would not receive sick pay when he left work due to illness resulting, in Ee's opinion, from supervisory harassment over recent fight with another Ee)

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers, Local 72, AFL-CIO (Combustion Engineering, Inc.) **260 NLRB No. 033**

(by refusing to discuss grievance preliminarily with grievant before grievant paid $50 dispute bond as required by collective bargaining agreement, U deprived one of unit members of his grievance representation which belongs to him as matter of right. Bd did not reach question of whether, under any circumstances, $50 *dispute bond* procedure constitutes *per se* violation)

Amalgamated Clothing and Textile Workers Local Union 148T, AFL-CIO-CLC (Leshner Corporation) **259 NLRB No. 152**

(where two Ees were discharged for fighting pursuant to E's rule and U, while handling grievance, refused to accept E's offer to reinstate noninstigating Ee because it was conditioned on not rehiring other Ee, U did not violate its duty of fair representation to Ee E was willing to reinstate because it acted in good faith to attempt to achieve reinstatement of both Ees' moreover, U's refusal to invoke arbitration not violative where no evidence that decision was based on animosity, discrimination to Ee who E would have reinstated or any irrelevant considerations)

Henry J. Kaiser Company **259 NLRB No. 001**

(U steward's statement, upon being asked for a grievance form by discharged Ee, that if Ee didn't *like it he should hit the road*, unlawful, since steward, as representative of U, thereby summarily rejected request for representation w/o investigation; fact that Ee asked for grievance form rather than stated he desired to file grievance is of no moment since steward knew exactly what Ee was asking of him)

Henry J. Kaiser Company **259 NLRB No. 001**

(contention that U representative, upon being advised of Ee's discharge grievance, immediately investigated discharge, found that discharge was proper, and that no futher grievance procedure was warranted, rejected, where evidence showed that U representative was much more concerned with ULP charge Ee had filed against U; nor did U representatives rely on contract provision that terminations were at sole discretion of E so as to warrant dismissal of instant allegation)

Henry J. Kaiser Company **259 NLRB No. 001**

(where U unlawfully failed to process discharged Ee's grievance because he had filed ULP charge against U with Bd, fact that E did not unlawfully discharge Ee does not affect U's liability; merely because E took disciplinary action which was not unlawful does not mean that arbitrator might not have deemed discipline unwarranted or too severe; nor is arbitrator bound by same factual findings made by ALJ herein; he may do industrial justice and may effectuate a compromise of a grievance, whereas Bd may not)

United Steelworkers of America, AFL-CIO-CLC, On Behalf of Its Local Union No. 15167 (Memphis Folding Stairs, Inc.) **258 NLRB No. 068**

(U's failure to process grievance for Ee violative where refusal based solely on U representatives animosity to Ee and grievance was not clearly frivolous)

Central States, Southeast and Southwest Areas Pension Fund d/b/a Three Hundred South Grand Company **257 NLRB No. 178**

(violation, since U breached duty of fair R where it failed to afford Ee fair consideration of her grievance inasmuch as Ee's supervisor who rejected grievance was president of U and served on U's executive committee to which Ee appealed thereby inherently tainted processing of grievance, notwithstanding supervisor did not participate in consideration of grievance at executive committee level; further, steward representing Ee was also supervised by U president, and U contended grievance was untimely despite no contractual time limit and fact E did not raise issue of timeliness)

McLean Trucking Company **257 NLRB No. 179**

(U did not engage in perfunctory grievance handling in violation of Act by failing more fully to present evidence at hearing where U faced substantial obstacle at arbitration hearing which drastically impeded its ability to more vigorously present Ee's grievance, namely, Ee's voluntary absence from hearing and his consequent failure to testify in support of grievance)

International Union of Operating Engineers, Local No. 139, AFL–CIO (C. F. Kalupa, Inc.) **256 NLRB No. 089**

(failure to prosecute discharge grievance and deliberate attempt to ignore grievance, violative of its fiduciary duty to deal fairly, where U agent's conduct (E consulted with him prior to discharge) contributed to discharge and U's failure to prosecute grievance was caused by U agent's hostility toward member for enforcing contract and personal animus for Ee's opposition to U leadership)

General Teamsters Local 162, Teamsters (American Steel, Inc.) **255 NLRB No. 159**

(U's alleged threat not to process grievance because grievant had filed ULP charges against E and U, not unlawful, where U representative's statement that he felt dutybound to inform E about U charges did not support finding of violation absent other probative evidence of threats to grievant; no adverse inference is drawn from fact U representative intended to inform E concerning filing of charges which was public and not confidential information; and, although unhappy over ULP charges, U was prepared, after considerable preparation, to timely process grievance no matter what grievant did with charges)

United Electrical, Radio and Machine Workers of America and Local 1105, United Electrical, Radio and Machine Workers of America (Westinghouse Electric Corporation) **254 NLRB No. 161**

(failing to file grievance at time when U should have filed violative since U's decision was based on either Ee's criticism of Local's president or, additionally, Ee's lack of U membership)

Local No. 256, International Molders' and Allied Workers' Union, AFL-CIO-CLC (United States Pipe and Foundry Company) **253 NLRB No. 133**

(failure to process grievance assertedly because Ee was not member of incumbent U, not violative where agents of U were sympathetic and helpful in providing Ee with information and forms necessary to pursue grievance; record did not sustain contentions of GC and charging party that U acted arbitrarily, discriminatorily or in bad faith with respect to pursuing Ee's grievance to arbitration)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 096**

(rejection of grievance because grievant was not U member, unlawful)

Electrical Workers, Local 1701 (Dynalectric Company) **252 NLRB No. 119**

(U's filing of grievance on behalf of terminated non-U Ees seeking their restoration with backpay, not unlawful, even though Ees objected to U's action, where E had terminated them pursuant to scheme whereby Ees would become U members and thus become available for referral back to E under lawful exclusive hiring hall contract; U was fully justified in its action since filing of grievance was used as device to counter E's scheme)

2581-3384—Cont.

International Chemical Workers Union, Local No. 190 (FMC Corporation) 251 NLRB No. 204

(U which refused to process Ee's grievance to arbitration where they believed he was not good U member because he had circulated petition protesting U conduct, did not attend U meetings, and had also gone to outside agency violated Act)

Steelworkers, Local No. 3029 (Gardner-Denver Company) 250 NLRB No. 114

(U's failure to process grievance through to ultimate stage of contract's grievance procedures not violative where U acted in good faith and exercised its discretion in determining merits of case)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) 250 NLRB No. 023

Eldorado Manufacturing Corporation 249 NLRB No. 088

(U's failure to notify Ees that it was willing to process their apparently meritorious grievances, or its unsuccessful perfunctory attempt to notify one of the Ees, unlawful; U agent's asking Ee whether he had grievance forms did not constitute adequate communication to Ee, and it was not sufficient for U, after filing of charges, to have its lawyer request E to reinstate Ees)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) 249 NLRB No. 007

(allegation that U business agent failed and refused to prosecute in good faith Ee's grievance as to elimination of driver preference in E's dispatch procedure upon adoption of new dispatch rules, dismissed, where Ee had already been well represented by another business agent officially in charge of grievance presentation, merits of grievance had already been passed upon at time of agent's remark, and his candor about his own confusion with respect to preference practice must have seemed to him of little moment in the given situation)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) 249 NLRB No. 007

(U's efforts on Ee's behalf in grievance procedure, though not optimal, rose above perfunctory and unjustified treatment of Ee's problem and thereby comported with duty of fair representation)

Truck Drivers Union Local No. 407 (Wenham Transportation, Inc.) 249 NLRB No. 007

(although it was bad form for U business agent to engage in argument with Ee at grievance proceeding dealing with Ee's problem, argument concerned technical matter of little importance and did not amount to failure to prosecute in good faith Ee's grievance)

San Francisco Web Pressmen and Platemakers' Union No. 4 (San Francisco Newspaper Printing Company, Inc., d/b/a San Francisco Newspaper Agency) 249 NLRB No. 023

(U's failure to carry grievance to arbitration stage of procedure not breach of duty where U conducted investigation and determined to its satisfaction that E's exertions were true; moreover it need not obtain explanation from grievant as Bd has not established that as requirement)

United Food and Commercial Workers, District Local Union 540, AFL-CIO-CLC (The Kroger Co.) JD-144-82

(U's refusal to furnish Ee with information which was, or could have been, relevant to processing of grievances under contract between U and E, violative)

Local 328-321, Service Employees International Union, AFL-CIO (Corporation of Trinity Church) JD-(NY)-18-82

(U's failure to seek compliance with arbitration award issued pursuant to grievance filed by Ee, violative, since reason was U's hostility toward Ee because he had filed charges against U)

United Steelworkers of America, AFL-CIO-CLC, District No. 38 (American Bridge Division of United States Steel Corporation) JD-(SF)-326-81

(U's refusal to process Ee's grievance to arbitration concerning his demotion, not unlawful, where U representative's failure to do so was based not on racial factors, personal animosity, or preference for another Ee who would have been affected by Ee's winning his grievance, rather at all times U representative acted in utmost good faith; and Ee's grievance was frivolous in all aspects of his arguments in support of grievance)

General Teamsters, Chauffeurs, Helpers and Yardmen, Local No. 470, a/w Teamsters (Connelly Containers, Inc.) JD-469-81

(U's refusal to process members' grievance regarding superseniority of steward for job bidding, not unlawful notwithstanding lack of investigation and fact U was mistaken as to the legality of this type of superseniority, since U's handling of grievance resulted from its position that superseniority for steward was allowable and not from any ill will or invidious considerations)

General Teamsters, Chauffeurs, Helpers and Yardmen, Local No. 470, a/w Teamsters (Connelly Containers, Inc.) JD-469-81

(U filing grievance regarding E stripping steward of superseniority for trip selection as result of out-of-Bd settlement after charges filed with NLRB regarding steward's superseniority, unlawful, since in pursuit of unlawful object inasmuch as superseniority for job selection presumptively invalid under *Dairylea*, and no justification that overcame presumption but rather steward selected trips that made him unavailable during hours most grievances arose, and thus neither members nor labor relations benefited)

Local 99, International Ladies Garment Workers Union (Associated Retail Stores, Inc.) JD-(NY)-46-81

(U's failure to process grievance after it made full investigation of all facts surrounding Ees discharge and determined it was meritless not violative)

Campbell Industries JD-(SF)-158-81

(mere negligence, poor judgment, or ineptitude in grievance handling are insufficient to establish breach of duty of fair representation)

Ebasco Services, Inc. JD-(NY)-90-80

(no violation in handling of divers' grievances concerning their termination where U representative immediately repaired to job site, met with E representative and negotiated 6 additional hours pay for time Ees remained on site for meeting with management in addition to adjustment of damages to their diving suits and immediate payment of retroactive pay arising from dispute not yet clearly resolved, and although he could not get Ees reinstatement or change in reasons for discharge, he decided formal grievance action could not succeed; there was no evidence his judgement was unreasonable or decision arbitrary or capricious)

General Grocer Company JD-891-80

(U's alleged refusal to process grievance of member adversely affected by change in E's seniority truckdriver bidding system for city run deliveries, not unlawful, since there was no bad faith on U's part inasmuch as U considered that member's grievance was disposed of by disposition of another member's converse grievance; any discrimination toward member arose as a side effect of U action based upon relevant considerations and not upon capricious or arbitrary factors, since U had restoration of contract rights as its goal and had objective justification for its conduct)

United Steelworkers of America, AFL-CIO, CLC (Geraldine Shanks, an individual) JD-464-80

(refusal to process grievance for Ee because she was not U member violative)

Cowlitz Stud Company JD-(SF)-141-80

(U which successfully obtained Ee's discharge because E had violated contract provision when it hired him did not violate act when it refused to process grievance on Ee's behalf which sought his reinstatement)

Vulcan Fuel Corporation JD-843-79

(refusal of U to process grievance because Ee had filed charge against U, violative)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)

(U owed duty to represent apprentice Ee in processing grievance, notwithstanding U's contention that Bd expressly certified U to represent only *mechanics*, that term *mechanic* is synonymous with *journeymen* and that Ee was not U member, where apprentices share common characteristics with expressly included journeymen, contract reveals that U undertook to represent apprentices, and ct found that U had duty to fairly represent Ee by investigating his grievance even though not member of U)

United Steelworkers of America, AFL-CIO-CLC v. N.L.R.B. 692 F.2d 1052 (C.A. 7, Nov. 1982)

(while U must be allowed considerable discretion in deciding which grievances to present and how to present them, it may not ignore meritorious grievance. Once having undertaken to process Ees grievance, U may not arbitrarily ignore it or handle it in perfunctory manner)

United Steelworkers of America, AFL-CIO-CLC v. N.L.R.B. 692 F.2d 1052 (C.A. 7, Nov. 1982)

(no violation where grievant failed to show grievance violated bargaining agreement; Bd erred when it held only necessary for grievance to be not *clearly frivolous*, Bd contention that *U is not its function to decide merits of* grievance rejected; since Bd must pass on merits of claim to extent affects U's liability. Otherwise, assessment of backpay against U would be speculative and punitive)

N.L.R.B. v. Eldorado Manufacturing Corporation and United Steelworkers of America, AFL-CIO 660 F.2d 1207 (C.A. 7, Sep. 1981)

(U did not unlawfully fail to notify dischargees of willingness to process their discharge grievances, where grievances were not meritorious because discharges were for just cause; moreover, although U steward did not relay U official's message to dischargee, who stated he wanted to write his grievance, that he could file grievance, steward did contact him to ask if he had necessary forms, and U official had already told dischargee he would

2581-3384—Cont.

file grievance, but dischargee did not file grievance nor contact U about doing so)

Michael Tenorio & Gil Fowler v. N.L.R.B. 680 F.2d 598 (C.A. 9, June 1982)

(U's handling of grievance concerning discharge of two Ees was so inadequate and showed such disregard of their rights that it constituted breach of duty of fair representation, in view of U's departure herein from its policy of interviewing all discharged Ees to obtain their story, the potential conflict of interest for U in handling grievance in that it involved a U official, and U's issuance of travel cards to dischargees which suggested that U intended to handle grievance in summary manner)

N.L.R.B. v. Pacific Coast Utilities Service, Inc. 638 F.2d 73 (C.A. 9, Apr. 1980)

(U failure to fairly and impartially represent U steward discharged for protected activity because of his support of rival U and his insistence that U dues not be paid until health insurance coverage was provided, unlawful)

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) 615 F.2d 820 (C.A. 9) (1980)

(where several weeks prior to Ee's discharge certified local U representing Ee's bargaining unit agreed to international U's attempt to transfer jurisdiction over Ee's unit to a sister local for legitimate reasons, and two weeks before Ee's discharge the sister local, for legitimate reasons, sought to disclaim any right it had in representing Ee, locals' failure to process Ee's grievance concerning his discharge, not violative, in view of valid disclaimer on part of each local prior to Ee's discharge)

2581-3388 Representation of employee at interview with management

Amalgamated Clothing and Textile Workers Local Union 148T, AFL-CIO-CLC (Leshner Corporation) 259 NLRB No. 152

(where two Ees were discharged for fighting pursuant to E's rule and U, while handling grievance, refused to accept E's offer to reinstate noninstigating Ee because it was conditioned on not rehiring other Ee, U did not violate its duty of fair representation to Ee E was willing to reinstate because it acted in good faith to attempt to achieve reinstatement of both Ees' moreover, U's refusal to invoke arbitration not violative where no evidence that decision was based on animosity, discrimination to Ee who E would have reinstated or any irrelevant considerations)

2581-6700 Basis for union action or failure to act

Newport News Shipbuilding and Dry Dock Company v. N.L.R.B. 631 F.2d 263 (C.A. 4, June 1980)

(U failed to fulfill duty of fair representation by agreeing to discharge Ee based almost solely upon E's explanation of alleged Ee's ringleader-role in work stoppage, and prior to U's consulting with Ee and w/o any substantial investigation of incident, violative)

2581-6701 Generally

Amalgamated Clothing and Textile Workers Local Union 148T, AFL-CIO-CLC (Leshner Corporation) 259 NLRB No. 152

(where two Ees were discharged for fighting pursuant to E's rule and U, while handling grievance, refused to accept E's offer to reinstate noninstigating Ee because it was conditioned on not rehiring other Ee, U did not violate its duty of fair representation to Ee E was willing to reinstate because it acted in good faith to attempt to achieve reinstatement of both Ees' moreover, U's refusal to invoke arbitration not violative where no evidence that decision was based on animosity, discrimination to Ee who E would have reinstated or any irrelevant considerations)

Millwright Local Union No. 1931 JD-381-81

(Bd established presumption of illegality where labor organization operates hiring hall in fashion impeding work opportunities of Ees; see *International Union of Operating Engineers, Local 18, AFL-CIO, (William F. Murphy)*, 204 NLRB 681)

2581-6733 Permissible considerations

Electrical Workers, Local 1701 (Dynalectric Company) 252 NLRB No. 119

(U's refusal to consent to E's offer, made during discharge grievance sessions, either to reinstate w/o backpay terminated non-U Ees or to reinstate them after short suspension, and U's failure to act as advocate for Ees at grievance hearing, not unlawful; U's object was to sustain contractual hiring hall procedures and to represent all Ees rather than to give advantage to grievants over others using referral procedures; fact that grievant may suffer is not controlling, even though U's position is contrary to grievant; and U acted w/o discrimination, fairly, impartially and in good faith)

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) 615 F.2d 820 (C.A. 9) (1980)

(where several weeks prior to Ee's discharge certified local U representing Ee's bargaining unit agreed to international U's attempt to transfer jurisdiction over Ee's unit to a sister local for legitimate reasons, and two weeks before Ee's discharge the sister local, for legitimate reasons, sought to disclaim any right it had in representing Ee, locals' failure to process Ee's grievance concerning his discharge, not violative, in view of valid disclaimer on part of each local prior to Ee's discharge)

2581-6733-2500 Contract

Cowlitz Stud Company JD-(SF)-141-80

(U's action in seeking removal of new Ee not violative where Ee was hired in abbrogation of collective-bargaining agreement which required vacant positions to be filled by seniority unless outside applicant highly qualified; U was fulfilling its duty to represent its constituency)

2581-6733-5000 Good-faith evaluation of merits of grievance

Retail Clerks Union Local 324, United Food and Commercial Workers International Union, AFL-CIO-CLC (Fed Mart Stores, Inc.) 261 NLRB No. 156

United Steelworkers of America, AFL-CIO-CLC, District No. 38 (American Bridge Division of United States Steel Corporation) 261 NLRB No. 137

(no violation where U representative refused to take *nonmeritorious* and *clearly frivolous* Ee grievance to arbitration)

San Francisco Web Pressmen and Platemakers' Union No. 4 (San Francisco Newspaper Printing Company, Inc., d/b/a San Francisco Newspaper Agency) 249 NLRB No. 023

(U's failure to carry grievance to arbitration stage of procedure not breach of duty where U conducted investigation and determined to its satisfaction that E's exertions were true; moreover it need not obtain explanation from grievant as Bd has not established that as requirement)

United Steelworkers of America, AFL-CIO-CLC, District No. 38 (American Bridge Division of United States Steel Corporation) JD-(SF)-326-81

(refusal to process Ee's grievance to arbitration, not unlawful, since at all times U representative in matter acted in utmost good faith)

Gardner-Denver Company JD-(SF)-286-80

United Steelworkers of America, AFL-CIO-CLC v. N.L.R.B. 692 F.2d 1052 (C.A. 7, Nov. 1982)

(no violation where grievant failed to show grievance violated bargaining agreement; Bd erred when it held only necessary for grievance to be *not clearly frivolous*, Bd contention that *U is not its function to decide merits of grievance* rejected; since Bd must pass on merits of claim to extent affects U's liability. Otherwise, assessment of backpay against U would be speculive and punitive)

Denver Stereotypers and Electrotypers Union, Local No. 13 v. N.L.R.B. 623 F.2d 134 (C.A. 10, June 1980)

(U executive board's vote to place Ee at bottom of seniority list of substitute stereotypers, held not violative where, contrary to Bd's findings, U executive board's vote was based not on considerations of dual unionism, but rather on the executive board's good faith belief that U's local constitution and bylaws did not directly speak to Ee's situation)

2581-6767 Irrelevant or invidious considerations

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) 253 NLRB No. 098

(U's operation of exclusive hiring hall in manner that gave preference in referral to members over nonmembers, was subjective w/o objective standards or criteria, and substantially disregarded written procedures in agreement with E, unlawful since it caused Es to discriminate against nonmembers, violated U's duty to fairly represent job applicants, and impaired job applicants' employment opportunities)

2581-6767-0100 Generally

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) 262 NLRB No. 006

N.L.R.B. v. Plumbers and Steamfitters Local No. 40 642 F.2d 486(T) (C.A. 9, Feb 19, 1981)

(*By wielding its power arbitrarily the U gives notice that its favor must be curried, thereby encouraging membership and unquestioned adherence to its policies*)

2581-6767-2500 Race

Steelworkers v. Weber, et al. 443 U.S. 193 (June 1979)

(Title VII does not prohibit race conscious affirmative action plans; private E and U voluntarily agreed upon affirmative action plan that accorded preference to Black trainees in order to eliminate conspicuous racial imbalance segregated job categories upheld)

2581-6767-2500—Cont.

United Steelworkers of America, AFL-CIO-CLC, District No. 38 (American Bridge Division of United States Steel Corporation) JD-(SF)-326-81
(U's refusal to process Ee's grievance to arbitration, not unlawful, since not based as alleged on racial factors)

Laborers International Union of North America, Local 1136 (Southern Illinois Builders Association) JD-477-81
(U which denied non-members access to referral list because they were non-members and black and because they protested the unfair operation of the system violated Act)

2581-6767-3000 Request by employer

Local 262, Electrical Workers (Arthur Paul, Jr., Electrical Contractor, Inc.) 264 NLRB No. 038
U violated Act when it caused E to remove one of its members from position so that Ee preferred by construction manager could be hired as U's actions were irrelevant to legitimate U interests)

2581-6767-4300 Nepotism

Laborers' International Union of North America, AFL-CIO, Local Union No. 1320 (Dunbar & Sullivan Dredging Co.) 253 NLRB No. 058
(U business manager's departure from numerical order on referral list to preserve his son's employment, violative)

2581-6767-4600 Dual unionism

Denver Stereotypers and Electrotypers Union, Local No. 13 v. N.L.R.B. 633 F.2d 134 (C.A. 10, June 1980)
(U executive board's vote to place Ee at bottom of seniority list of substitute stereotypers, held not violative where, contrary to Bd's findings, U executive board's vote was based not on considerations of dual unionism, but rather on the executive board's good faith belief that U's local constitution and bylaws did not directly speak to Ee's situation)

2581-6767-5000 Nonmembership in union of unit employee

Teamsters Local Union No. 528 (Associated Grocers Co-Op) 265 NLRB No. 065
(U's refusal to accept and process dischargee's grievance over his termination, unlawful, particularly in view of telephone conversation between dischargee and U official who, upon being informed by dischargee that he was not U member, stated that dischargee could not file grievance nor otherwise get help from U because dischargee was not U member)

Teamsters Local Union No. 515 (Cavalier Corporation) 259 NLRB No. 094
(where U relied unreasonably on contract clause and initiated grievance which resulted in removal of Ee from his overtime assignment, U's action violative as it was done in retaliation for Ee's resignation from U)

United Rubber, Cork, Linoleum and Plastic Workers of America, Local 878 (Goodyear Tire & Rubber Company) 255 NLRB No. 032
(U representative's statements that they intentionally left Ee off list of Ees to receive grievance pay because he was not U member, violative)

United Rubber, Cork, Linoleum and Plastic Workers of America, Local 878 (Goodyear Tire & Rubber Company) 255 NLRB No. 032
(U which left non-U member Ee off list of Ees entitled to grievance pay because he was non-U member which resulted in E's not paying Ee monies owed him violated Act)

Local No. 256, International Molders' and Allied Workers' Union, AFL-CIO-CLC (United States Pipe and Foundry Company) 253 NLRB No. 133
(failure to process grievance assertedly because Ee was not member of incumbent U, not violative where agents of U were sympathetic and helpful in providing Ee with information and forms necessary to pursue grievance; record did not sustain contentions of GC and charging party that U acted arbitrarily, discriminatorily or in bad faith with respect to pursuing Ee's grievance to arbitration)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) 253 NLRB No. 098
(rejection of grievance because grievant was not U member, unlawful)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) 253 NLRB No. 098
(refusal to provide information about referral system to job applicant because he was not member of U and had filed charges against U and because U wanted to keep him from finding out whether he had been discriminated against by U in referral)

Exxon Company, U.S.A. 258 NLRB No. 0[illegible]
(charging service fee to nonU Ees for medical insurance coverage is *per se* violation where it was imposed for receiving term of employment for which U has bargained and which is due unit members by right)

International Chemical Workers Union, Local No. 190 (FMC Corporation) 251 NLRB No. [illegible]
(U which refused to process Ee's grievance to arbitration where they believed he was not good U member because he had circulated petition protesting U conduct, did not attend U meetings, and had also gone to *outside agency* violated Act)

Tower Hotel Company, d/b/a Holiday Inn Riverfront 250 NLRB No. 010
(U steward's statement to Ee that if he did not obtain U permit other Ee would refuse to work with him violative of 8(b)(1)(A) but not 8(b)(2) as no evidence that U sought to involve E)

Local Union No. 813, International Brotherhood of Painters and Allied Trades of The United States and Canada, AFL-CIO (W.Q. Watters Company) JD-143-81
(over zealous new U steward's removing Ee, *traveling* member of Painters local 970, from job being performed by members of Painters' local 813 because Ee did not produce U *book* immediately when asked by stewards and ratio of local 970 members to 813 members was not right, violative, since *traveling* Ee did produce *book* one day after being asked; U prohibited from seeking discharge of *travelers* who are working on job site w/i jurisdiction of home local, but are members of another local of same International U)

Musicians' Association of Hawaii, Local 677, a/w AFM JD-(SF)-[illegible]
(no violation where bandleader-E told Ee that his job was temporary and that he would have to go as soon as U member replacement arrived, because U did not threaten E with any discipline for having non-U member of band which is contrary to U bylaws)

American Postal Workers Union, Local 4881 (United States Postal Service) JD-37-81
(refusing to agree to nonmember Ee's request for temporary change in work schedule, not unlawful, where U had previously allowed several temporary changes despite no work-related justification and then refused Ee's schedule change for two consecutive Fridays because U feared management was attempting to permanently change Ee's schedule in circumvention of job posting and bidding provisions of contract)

United Steelworkers of America, AFL-CIO, CLC (Geraldine Shanks, an individual) JD-464-80
(refusal to process grievance for Ee because she was not U member violative)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)
(U owed duty to represent apprentice Ee in processing grievance, notwithstanding U's contention that Bd expressly certified U to represent only *mechanics*, that term *mechanic* is synonymous with *journeyman* and that Ee was not U member, where apprentices share common characteristics with expressly included journeymen, contract reveals that U undertook to represent apprentices, and ct found that U had duty to fairly represent Ee by investigating his grievance even though not member of U)

N.L.R.B. v. American Postal Workers Union 618 F.2d 1249 (C.A. 8, 1980)
(revocation by U local's president of general president's approval of temporary assignment of Ee-prominent member of rival U-resulting in Ee taking leave w/o pay, unlawful, since revocation not to maintain contract requirement of Ee's assent to working outside his regular schedule where request was for personal reasons and revocation based on personal views of U official, notwithstanding request not signed by steward and exceeded 30 day limit on schedule changes, where general president had apparent authority to approve request, and 30 day limit was personal policy of president of division)

International Association of Machinists and Aerospace Workers, Aeronautical Industrial District Lodge 720 v. N.L.R.B. 625 F.2d 119 (C.A. 9, 1980)
(denying *financial core* members privilege of buying unemployment stamps rather than pay full amount of dues when they were unemployed violative where only reason they were denied privilege was because they were not members)

2581-6767-7500 Intraunion activity

H. H. Robertson Company 265 NLRB No. 173
(U's requesting discharge of Ees hired outside hiring hall, unlawful, since contrary to E's seniority policies and motivated by Ees' association with U dissident, father of one of Ees, notwithstanding E's contention merely reducing Ee complement on job where job cost would not be lowered; further, no applicants in hiring hall at time of hirings, U gave permission to hire Ees and estopped to object; non-discriminatory referral clause of contract would be defeated if U, while adhering to referral clause permitted to cause termina-

2581-6767-7500—Cont.

tions for discrimination reasons, notwithstanding no termination procedure provisions)

H. H. Robertson Company 263 NLRB No. 173

(U's refusal to refer supervisor-member, unlawful, in retaliation for his intra-U political opposition, his hiring of Ees w/o referral from hiring hall, and his filing of charges with NLRB, notwithstanding U's contention refusal to refer justified by failure to comply with requirement of his signing out of work list and receiving referral slip at hiring hall, where no consistent policy that applicants sign out of work list personally or that referral slips be obtained at hiring hall rather than at job, and hiring hall was 80-90 mile round trip for supervisor-member)

Electrical Workers, Local Union No. 453 (Southern Sun Electric Corporation) 263 NLRB No. 115

(fining *traveller* for employment with firm that was in *disfavor* which was in violation of U contract, unlawful where real reasons were: he had testified against U during ULP proceeding and thereafter received no referrals through hiring hall; successfully appealed U's refusal to place him on referral roster; testified at hearing on behalf of fellow traveller-grievant and disparate amount of his fines *vis a vis* its own members)

East Texas Motor Freight 262 NLRB No. 101

(U officer's remarks to Ee seeking U office that candidate *would not enjoy it, would feel bad, would get despondent, would be remorseful and would have nervous breakdown* held violative, since words were veiled threat of misfortune if incumbent officer lost U election; incumbent was chief executive officer of local U and local was responsible for his acts)

Bartenders, Waiters, Waitresses, Cooks & Hotel Employees Union Local 332, AFL-CIO (Ogden Food Service Corporation) 259 NLRB No. 032

(violation, where U business agent, soon after Ee was nominated to run for business agent's job, requested E to reduce Ee's seniority for Ee's nonpayment of U dues during her maternity leave, and reduction in seniority pursuant to request resulted in loss of work hours to Ee)

Sheet Metal Workers' Union Local 355 (Zinsco Electrical Products) 254 NLRB No. 092

(failing to notify E that it had granted Ee extension of time to pay dues thereby resulting in E honoring U's request for discharge, violative)

Local 889, Laborers' International Union of North America, AFL–CIO (Anthony Ferrante & Sons, Inc.) 251 NLRB No. 211

(failure to refer member because of his support of rival of U business manager for that post and dispute over lack of receipts for dues and fees paid by his son which resulted in letter of complaint and hearing)

Local 889, Laborers' International Union of North America, AFL–CIO (Anthony Ferrante & Sons, Inc.) 251 NLRB No. 211

(U's business nmanager informing E that Ee was to blame for problems among crew and causing Ee's discharge as toublemaker, unlawful, since action of business manager of rival for his post)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. 251 NLRB No. 032

(U's imposition of discipline on Ees violative where true motive was to retaliate for their activities, against U leadership and for filing charges with Bd)

Pipeline Workers Local Union No. 38, a/w Laborers' International Union of North America, AFL-CIO-CLC (Thomas H. Mitchell, an Individual) JD-385-82

(U violated Act when it fabricated charges against member who had complained about intra-U procedures, and fined him $1000; moreover, although International reversed Local U's action it is also liable for violation as it did not specifically repudiate coercive effects of local's conduct)

Teamsters Local 312 a/w Teamsters (William E. Coons, an Individual) JD-378-81

(violation where U president and U steward declined to provide redress for known assault by assistant steward upon Ee for his criticism of U and its leadership)

United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) Local Union NO. 1005 JD-509-80

(U's refusal to reimburse elected executive board member for time he took off from work in connection with executive board meetings, violative, where U would not have treated the executive member in that manner had he not opposed positions favored by U's president and spoken unfavorably of U's president and persons with whom the president considered himself associated)

United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) Local Union NO. 1005 JD-509-80

(U's failure, contrary to long-standing practice, to ask E to excuse member of U executive board for time he took off from work in connection with executive board meetings, violative, where U would not have failed to ask for the excuse had the executive board member not opposed positions favored by U president)

Fort Wayne Area Local, American Postal Workers Union, AFL-CIO (Kim Smith) JD-676-80

(U's refusal to approve Ee's request to sign preferential overtime list, not unlawful reprisal for criticism of U officials, policy and conduct of internal elections, as alleged, or arbitrary or invidious where Ee failed to timely establish contractual eligibility or show necessity for dilatoriness, and U had legitimate interest in protecting those who acted timely and in avoiding setting undesirable precedent)

N.L.R.B. v. Pacific Coast Utilities Service, Inc. 638 F.2d 73 (C.A. 9, Apr. 1980)

(U failure to fairly and impartially represent U steward discharged for protected activity because of his support of rival U and his insistence that U dues not be paid until health insurance coverage was provided, unlawful)

N.L.R.B. v. Laborers', Local 300 613 F.2d 203 (C.A. 9)

(U's refusing to refer Ee to job, and causing him to be discharged after he had secured the job w/o referral from U, violative, notwithstanding Ee's securing the job w/o referral from U violated hiring hall provisions of bargaining agreement between U and E; U enforced the hiring hall provisions to the effect that Ee was removed from job only when U business agent was advised of Ee's dissident activities)

2581-6767-7600 Delinquency in dues or other monies owed to union

Mailers Union Local No. 7 a/w International Typographical Union (The Kansas City Star Company) 262 NLRB No. 107

(refusing to assign overtime work to, and forcing overtime by, Ee because of delinquency in dues, violative)

Harsh Investment Corporation d/b/a The Claremont Resort Hotel and Tennis Club 260 NLRB No. 034

(U which requested that E discharge Ee under provisions of U security clause for nonpayment of U dues violated Act where U's notice to Ee on amount that he owed was defective, notice was received late due to mistake by post office, Ee tendered partial payment before due date and U never notified him that it didn't accept partial payments; moreover, U accepted rest of money owed after last day to pay had passed thus waiving its rights to enforce U security clause)

Bartenders, Waiters, Waitresses, Cooks & Hotel Employees Union Local 332, AFL-CIO (Ogden Food Service Corporation) 259 NLRB No. 032

(violation, where U business agent, soon after Ee was nominated to run for business agent's job, requested E to reduce Ee's seniority for Ee's nonpayment of U dues during her maternity leave, and reduction in seniority pursuant to request resulted in loss of work hours to Ee)

Plumbers and Steamfitters Local Union No. 598, AFL-CIO (Rust/W.S.H.) 255 NLRB No. 071

(U's refusal to allow member to register on out-of-work list until he paid assessment for time period he was supervisor violative as member had not been working under contract coverage and was thus not obligated to pay assessment)

International Longshoremen's Association, Local 1414 JD-357-80

(enforcing provision of U constitution and by laws which provision revoked Ee's preferred seniority in *hiring hall* situation because Ee was delinquent in repaying loan borrowed from U credit union held violative, since U caused Ee's loss of employment opportunities; U adduced no evidence that action was essential to its financial survival)

2581-6767-7800 Failure to follow union rules or procedures

Machinists Local 1327, Machinists, District Lodge 115 (Dalmo Victor) 263 NLRB No. 141

(U's constitution permitting members to resign if resignations submitted 14 days prior to strike is impermissible as fails to protect Ee rights. Balancing Ee's right against interest of U and members, restrictions on members must apply to strike/nonstrike situations; U entitled to reasonable notice of resignation and Bd finds rule restricting member's right for period not to exceed 30 days after notice is reasonable; therefore, U's enforcement of 14-day rule violative and fining members for resigning during strike and returning to work w/o following 14-day proscription violative)

GAIU Local 13-B, Graphic Arts International Union (Western Publishing Co., Inc.) 252 NLRB No. 130

(rule instituted by U as bargaining tactic against mandatory overtime which was lawfully imposed constituted unprotected partial strike and U's disciplining of its members who refused to engage in such unprotected activity, violative; Bd did not decide legality of rule if instituted to protest ULPs committed by E rather than as bargaining tactic, since no ULPs found against E, U waited 2 months after overtime ban implemented to file ULP charges and U's announcement of overtime ban contained no mention of ULPs)

2581-6767-7800—Cont.

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(removal of Ee's name from hiring hall's *out-of-work list* precluding Ee from being dispatched in manner prescribed by contractual rules held violative where action was motivated by factors in contravention of hiring hall contract and caused by pique at Ee)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(where U departs from its lawful contractual hiring hall rules and admitted standards of referral in denial of employment, action, standing alone, is discrimination which inherently encourages U membership)

2581-6767-8100 Personal animosity toward employee

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) **262 NLRB No. 006**
(U's refusing to refer Ee for employment pursuant to operation of exclusive hiring hall agreement and by informing Ee that it was denying him referrals because he had failed to comply with business agent's request that he relinquish his past job so that agent could put his own man in job, held violative where U business agent had threatened Ee to use agent's hiring hall authority to retaliate against Ee; agent frequently referred persons to jobs, whose names appeared below Ee's on hiring hall's out-of-work list of jobs)

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) **262 NLRB No. 006**
(U's changing established 5-day (out-of-work) referral rule to 6-day (out-of-work) referral rule w/o giving timely notice to all job applicants, held violative; applicants suffered loss of earnings acting in reliance of continued existence of 5-day rule)

United Steelworkers of America, AFL-CIO-CLC, On Behalf of Its Local Union No. 15167 (Memphis Folding Stairs, Inc.) **258 NLRB No. 068**
(U's failure to process grievance for Ee violative where refusal based solely on U representatives animosity to Ee and grievance was not clearly frivolous)

International Union of Operating Engineers, Local No. 139, AFL–CIO (C. F. Kalupa, Inc.) **256 NLRB No. 089**
(failure to prosecute discharge grievance and deliberate attempt to ignore grievance, violative of its fiduciary duty to deal fairly, where U agent's conduct (E consulted with him prior to discharge) contributed to discharge and U's failure to prosecute grievance was caused by U agent's hostility toward member for enforcing contract and personal animus for Ee's opposition to U leadership)

United Electrical, Radio and Machine Workers of America and Local 1105, United Electrical, Radio and Machine Workers of America (Westinghouse Electric Corporation) **254 NLRB No. 161**
(failing to file grievance at time when U should have filed violative since U's decision was based on either Ee's criticism of Local's president or, additionally, Ee's lack of U membership)

Local 889, Laborers' International Union of North America, AFL–CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**
(failure to refer member because of his support of rival of U business manager for that post and dispute over lack of receipts for dues and fees paid by his son which resulted in letter of complaint and hearing)

Local 889, Laborers' International Union of North America, AFL–CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**
(U's business manager informing E that Ee was to blame for problems among crew and causing Ee's discharge as troublemaker, unlawful, since action of business manager of rival for his post)

Moving Picture Projectionists Local 150, Stage Employees (Moon Theatres) **JD-(SF)-221-82**
(U's business manager's refusal to place member on out of work list for relief projectionists and refer him for employment and referring others with less seniority, unlawful, notwithstanding two theatre chains had requested that member not be referred to them and other theatres had complained to U about member's misconduct or incompetence, since refusal to refer motivated by member's complaint to U's executive committee regarding operation of U's referral system)

United Steelworkers of America, AFL-CIO-CLC, District No. 38 (American Bridge Division of United States Steel Corporation) **JD-(SF)-326-81**
(U's refusal to process Ee's grievance to arbitration, not unlawful, since not based as alleged on personal animosity of U representative in matter toward grievant)

Millwright Local Union No. 1931 **JD-281-81**
(U's refusal to refer Ee from hiring hall to Ee's chosen E not violative where GC did not establish foundation for presumption of illegality; record showed no animus against longstanding member of local U and no departure from U's established (hiring hall) procedures which involved no deliberate effort to foreclose Ee from opting on referral)

United Steelworkers of America, AFL-CIO, CLC (Geraldine Shanks, an individual) **JD-444-80**

2581-6767-8600 Failure to sign checkoff authorization cards

The Buffalo Newspaper Guild, Local 26, and The Newspaper Guild, AFL-CIO-CLC (Buffalo Courier Express, Inc.) **268 NLRB No. 0[illegible]**
(U violated Act when it threatened Ee that unless he provided U with signed checkoff form and $3 fee it withheld demand that E dismiss Ee where error was made in requiring checkoff form and this information was never conveyed to Ee)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(change in nature of work to which Ees were referred from usual work to undesirable work because of Ees' refusing to sign checkoff authorizations and filing of charges with Bd, unlawful)

2581-6767-8700 Recourse to the NLRB

Sheet Metal Workers' Union Local 355 (Zinsco Electrical Products) **254 NLRB No. 002**
(filing complaint for Declaratory Relief in Superior Court for damages because member filed ULP charge with Bd against U, violative)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(change in nature of work to which Ees were referred from usual work to undesirable work because of Ees' refusing to sign checkoff authorizations and filing of charges with Bd, unlawful)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(refusal to provide information about referral system to job applicant because he was not member of U and had filed charges against U and because U wanted to keep him from finding out whether he had been discriminated against by U in referral)

Machinery Movers, Riggers and Machinery Erectors Local 136, Iron Workers (United Exposition Service Co., Inc.) **252 NLRB No. 0[illegible]**
(refusal to allow prospective member to join U because he had filed charges against U with Bd violative)

International Chemical Workers Union, Local No. 190 (FMC Corporation) **251 NLRB No. 204**
(U which refused to process Ee's grievance to arbitration where they believed he was not good U member because he had circulated petition protesting U conduct, did not attend U meetings, and had also gone to *outside agency* violated Act)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 002**
(U's imposition of discipline on Ees violative where true motive was to retaliate for their activities, against U leadership and for filing charges with Bd)

Steelworkers, Local No. 3029 (Gardner-Denver Company) **250 NLRB No. 114**
(U president's response to inquiry of member on status of grievance in which he told member that he didn't think U should do anything for him since he had filed charge against U with Bd violative as threat to refuse to continue to represent him)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**
(threats affecting Ee as well as fellow members of U in their dispatches from hiring hall held violative when made because Ee filed charges with Bd and were employment related)

Plumbers, Local 224 (Master Plumbing, Heating and Pipefitting Contractors of the McKean-Warren Counties) **JD-434-82**
(violation where U discriminatorily refused member access to U's business agent by requiring him to go through answering service for purpose of placing name on out-of-work list and securing information about job referrals in administration of its exclusive hiring referral system because he filed ULP charges with Bd)

United Food and Commercial Workers, District Local Union 540, AFL-CIO-CLC (The Kroger Co.) **JD-144-82**
(telling Ee that, because he had filed charges under Act, he would not be provided with information which was, or could have been relevant to processing of grievances under contract between U and E, violative)

2581-6767-8700—Cont.

Local 32B-32J, Service Employees International Union, AFL-CIO (Corporation of Trinity Church) JD-(NY)-18-82

(U's failure to seek compliance with arbitration award issued pursuant to grievance filed by Ee, violative, since reason was U's hostility toward Ee because he had filed charges against U)

Local 32B-32J, Service Employees International Union, AFL-CIO (Corporation of Trinity Church) JD-(NY)-18-82

(U coercively threatened two Ees with physical harm because they had participated in arbitration proceeding, and threatened one of them because he had filed charges with Bd)

General Teamsters, Chauffeurs, Helpers and Yardmen, Local No. 470, a/w Teamsters (Connelly Containers, Inc.) JD-469-81

(U filing grievance regarding E stripping steward of superseniority for trip selection as result of out-of-Bd settlement after charges filed with NLRB regarding steward's superseniority, unlawful, since in pursuit of unlawful object inasmuch as superseniority for job selection presumptively invalid under *Dairylea*, and no justification that overcame presumption but rather steward selected trips that made him unavailable during hours most grievances arose, and thus neither members nor labor relations benefited)

Construction Teamsters Local 216, IBT JD-(SF)-202-80

(U officer's threat that bodily harm would come to Ee expelled from U for refusing to support U's strike and picketing activities against E, violative, notwithstanding U's letter to Ee, after charges were filed advising Ee that officer's remarks were not to be construed as threat since U could not affect Ee's continued employment; letter was deemed insufficient to dispel effect of ULP committed)

Vulcan Fuel Corporation JD-842-79

(refusal of U to process grievance because Ee had filed charge against U, violative)

N.L.R.B. v. Plumbers and Steamfitters Local No. 40 642 F.2d 456(T) (C.A. 9, Feb 19, 1981)

(filing charges against U members for filing initial ULP complaint, unlawful as such charges *Touches part of public domain covered by Act*, and member's failure to resort to intra-U grievance procedures does not bar claim)

2581-6767-9500 Filing of discrimination charges with other agencies

Electrical Workers, Local Union No. 453 (Southern Sun Electric Corporation) 263 NLRB No. 115

(fining *traveller* for employment with firm that was in *disfavor* which was in violation of U contract, unlawful where real reasons were: he had testified against U during ULP proceeding and thereafter received no referrals through hiring hall; successfully appealed U's refusal to place him on referral roster; testified at hearing on behalf of fellow traveller-grievant and disparate amount of his fines *vis a vis* its own members)

2585 WAIVER OF EMPLOYEE RIGHTS BY CONTRACT

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers, Local 72, AFL-CIO (Combustion Engineering, Inc.) 260 NLRB No. 033

(by refusing to discuss grievance preliminarily with grievant before grievant paid $50 dispute bond as required by collective bargaining agreement, U deprived one of unit members of his grievance representation which belongs to him as matter of right. Bd did not reach question of whether, under any circumstances, $50 *dispute bond* procedure constitutes *per se* violation)

2590 INTERFERENCE WITH BOARD PROCEEDINGS

Henry J. Kaiser Company 259 NLRB No. 001

(interview of prospective Ee witnesses in preparation for defense in 8(a)(3) and 8(b)(1)(A) proceeding, conducted by attorneys for both U and E in presence of E's officials, unlawful, where Ees were not told prior to investigation that their participation in interview was voluntary and that they did not have to be present; fact that they were later advised, after they declined to cooperate with interviewers, that their silence would not be held against them did not relieve coerciveness of initial interview)

Henry J. Kaiser Company 259 NLRB No. 001

(where U's and E's attorneys conducted interviews of prospective Ee witnesses in preparation for defense in ULP proceeding against both U and E, U's contention that a violation of *Johnnie's Poultry* may be found only against E, rejected, where coercive effect of interrogation w/o necessary precautions required by law was evident from record)

Henry J. Kaiser Company 259 NLRB No. 001

(where U's and E's attorneys conducted interviews of prospective Ee witnesses in preparation for defense in ULP proceeding against both U and E, U's contention that a violation of *Johnnie's Poultry* may be found only against E, rejected, where coercive effect of interrogation w/o necessary precautions by law was evident from record)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) 250 NLRB No. 025

(threats affecting Ee as well as fellow members of U in their dispatches from hiring hall held violative when made because Ee filed charges with Bd and were employment related)

Local 24, Hotel & Restaurant Employees (George Dore, an Individual) JD-414-82

(U's imposition of suspension from job referral list of U member who had filed charges with Bd against U over his prior suspension, unlawful, where, after lifting first suspension of member, U reimposed it following service of Bd charge, and the only reasonable explanation for U's action is that it learned that member had filed charges with Bd)

Teamsters Local Union No. 159, a/w Teamsters (John G. Ruhlin Construction Company) JD-534-81

(U official's statement to applicant for job referral, in response to latter's inquiry into availability of work, that applicant had filed charges, written grievances, and *screwed up* on last job he was sent to, unlawful, since statement plainly implied that applicant's filing of charges, among other things, had a direct impact on work U would make available to him, which amounted to a threat to withhold referral services because of applicant's protected activity)

United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) Local Union NO. 1005 JD-509-80

(U president's promising that U would grant a benefit to Ee in exchange for Ee's withdrawing statement he gave to Bd, violative)

Local No. 1367, International Longshoremen's Association, AFL-CIO JD-(NY)-48-80

(U president's direction to U's office and agents that they insist upon presence of attorney during Bd's inquiry of charges against it before responding to any interrogatories, not unlawful, since it is established law that respondent labor organization has legitimate interest in ordering its agents not to speak with Bd agent w/o presence of its counsel concerning ULP charges filed against it)

Local No. 1367, International Longshoremen's Association, AFL-CIO JD-(NY)-48-80

(U president's order to rank-and-file members of U not to talk to Bd agents concerning charges against U except on advice of counsel, unlawful where this amounted to coercive intrusion upon member's freedom to assist Bd and beyond legitimate interests of U)

2595 INTERFERENCE WITH ACCESS TO BOARD

Laborers' International Union of North America, Local 125 (O'Neil Construction, Inc.) 260 NLRB No. 155

(telling E that U did not want E to employ Ee because Ee had filed ULP charges against U, violative)

Laborers' International Union of North America, Local 125 (O'Neil Construction, Inc.) 260 NLRB No. 155

(telling Ee who had filed ULP charges against U that he would not be allowed to transfer into local and could not work out of local's hiring hall because Ee had filed such ULP charges)

Laborers' International Union of North America, Local 125 (O'Neil Construction, Inc.) 260 NLRB No. 155

(threatening to call a strike against E if E hired Ee who had filed ULP charges against U, violative)

Electrical Workers Local Union No. 433 (National Electrical Contractors Association, Inc.) 258 NLRB No. 195

(U violated Act when member of its executive board threatened member with bodily harm because he had filed charges against U with Bd)

International Longshoremen's Association, Local 1329 (Metals Processing Co.) 252 NLRB No. 030

(local's president accusing member witnesses of being *lying rats and bastards* at prior Bd hearing and stated that they would *get theirs*, violative, since such statements constituted implied threats of reprisals)

International Longshoremen's Association, Local 1329 (Metals Processing Co.) 252 NLRB No. 030

(local's president accusing member witnesses of being *lying rats and bastards* at prior Bd hearing and stated that they would *get theirs*, violative, since such statements constituted implied threats of reprisals)

International Longshoremen's Association, Local 1329 (Metals Processing Co.) 252 NLRB No. 030

(refusal and failure to select member as *relief* winchman because of his testimony at Bd hearing and his defense of same at subsequent U meeting, violative)

2595—Cont.

Bartenders & Culinary Workers Union Local 867, a/w Hotel and Restaurant Employees (Alvin W. Martinets, an Individual) **JD-(SF)-297-82**
(U's disregard of Ee's being elected steward on construction project, and its later instigation of his removal, violative since U was prompted by his filing ULP charges with the Bd against the U)

Bartenders & Culinary Workers Union Local 867, a/w Hotel and Restaurant Employees (Alvin W. Martinets, an Individual) **JD-(SF)-297-82**
(U's stating, through its secretary-treasurer and business agent, to Ee that he could not be a steward because he had filed ULP charges with the Bd against the U violative)

Local Union No. 410, Sheet Metal Workers International Association, AFL-CIO (Inryco, Inc.) **JD-218-81**
(conditioning job referrals upon withdrawal of ULP charges against U, violative as it interferes with or discourages right of Ees to have access to Bd process for vindication of their rights)

Campbell Industries **JD-(SF)-108-81**
(internal local U charge alleging that Ee member had filed ULP charges against international U held violative notwithstanding particular charge was withdrawn at outset of U trial)

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and its Local 961 (Chrysler Corporation) **JD-69-81**
(removing from office local president who had filed charges with Bd and other government agencies, not unlawful, where dissatisfaction with and threats to remove U official arose prior to his filing charges, and U was motivated by official's inability to function smoothly under administration of other U officials)

American Postal Workers Union, Local 4881 (United States Postal Service) **JD-37-81**
(refusing to agree to member Ee's request for temporary change in schedule because of pendency of ULP charges of similar refusal involving nonmember, violative)

United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) Local Union NO. 1005 **JD-509-80**
(violation where at meeting of elected members of U executive board U president called dissident executive board member who filed charge with NLRB against the president a *disgrace,* indicated that filing of ULP by U officer amounted to broken commitment and meant that the officer could not be trusted)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's threat to bring member before U's executive board in reaction to member's use of Bd's decertification processes construed, in light of prior threats of fine and expulsion, to include intention on U agent's part to seek both fines and expulsion for member's action; while threat to expel member for filing decertification ptn is not violative, threat to fine person seeking access to Bd is, and agent's invoking of both expulsion and fines held unlawful)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's conditioning of threats of discipline, including use of fines, on whether or not members maintained or withdrew decertification ptn, unlawful)

N.L.R.B. v. Local 212, Automobile Workers **690 F.2d 82 (C.A. 6, Oct. 1982)**
(U violated Act when it removed member from his position as chairman of Fair Employment Practices Committee after he had filed ULP charges with Bd alleging that he had encountered resistence while attempting to process grievance submitted to his committee; it is immaterial that Bd did not issue complaint on charge as he acted in good faith, and also fact that removal from position involved no loss of salary or seniority as result is to *chill* willingness of other U members to file charges with Bd)

2599 OTHER FORMS OF COERCIVE CONDUCT

Local 345, Utility Workers of New England, Inc. (New England Power Service Company) **261 NLRB No. 073**
(no violation, where U provided health benefits to sympathy strikers and forgave their dues during strike, and increased all members' dues to pay for health benefit premiums during strike; contention U thereby *condoned* strikers' activity which violated no-strike provision, and *punished* members who continued to work, rejected, since latter were in exactly same position that they would have been in had there been no strike; and remote and exiguous impact of having costs ultimately borne by general membership is insufficient basis for Bd's intrusion into U's internal affairs)

Local 345, Utility Workers of New England, Inc. (New England Power Service Company) **261 NLRB No. 073**
(U's conduct in providing health benefits to sympathy strikers through payment of their premiums and in forgiving their dues during strike, whereas employment status of members who crossed picket line remained the same, not unlawful, since U's conduct did not constitute direct action, as would a fine for example, to interfere with employment status of members who chose to cross picket line and return to work; nor were such members indirectly penalized since they received full benefits, including health benefits, and continued to pay dues under checkoff authorizations)

Local 345, Utility Workers of New England, Inc. (New England Power Service Company) **261 NLRB No. 073**
(in finding no violation because of insufficient basis for Bd's intrusion into U's internal affairs involving alleged *condonation* by U of members engaged in sympathy strike in violation of no-strike provision, and U's *punishment* of members who crossed picket line, Bd held that not all U members will be satisfied with every U action, but their dissatisfaction does not of itself establish violation; Bd did not pass on question whether U's conduct may have violated some provision of state or Federal law under which aggrieved members may have redress)

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 108**
(violation where, because of two unit Ees' nonmembership in U, U threatened not to approve their requests for change in schedule to attend military drills so that one of them joined and paid dues to U (although he was and wished to remain member of another U), and U itself unlawfully disapproved and attempted to cause E to disapprove the other Ee's requested change in schedule)

United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) Local Union NO. 1005 **JD-509-80**
(where U refused to reimburse elected U executive committee member for time he took off from work in connection with executive board meetings, U president's stating that he caused the cut-off of the executive member's reimbursement partly because of the executive member's opposition to and attacks on U's president and persons associated with the president, violative)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(photographing of non-striking Ee, unlawful)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(where striking Ees' acts and threats of violence accompany their photographing of non-striking Ees as they left and entered plant were neither attributable nor alleged to be attributable to U, ALJ declined, contrary to GC's contention, to rely upon such acts and threats of violence in evaluating lawfulness of the photographing)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(photographing of non-striking Ees by striking Ees as the former entered and left E's facility during strike, held violative, where photographing was coupled with various acts and threats of violence by non-striking Ees; such conduct was calculated to instill in minds of non-striking Ees fear of retribution because of their refusal to join strike)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(pickets' recording or appearing to copy license plate numbers of Ees who crossed or sought to cross U's picket line, violative in view of accompanying unlawful acts, including threats of violence against Ees because of their refusal to join strike)

5000 UNION RULES PROVISO

5025 SCOPE OF EXEMPTION

5025-0100 Generally

Local 345, Utility Workers of New England, Inc. (New England Power Service Company) **261 NLRB No. 073**
(as noted by SCt with regard to 8(b)(1)(A) proviso, Congress did not propose any limitations with respect to internal affairs of Us, aside from barring enforcement of U's regulations to affect a member's employment status)

Local 345, Utility Workers of New England, Inc. (New England Power Service Company) **261 NLRB No. 073**
(under proviso to 8(b)(1)(A), Us may pass, and operate under, a myriad of rules governing internal affairs as long as those rules encompass a legitimate U interest, impair no policy imbedded in labor laws, and are reasonably enforced against members who can leave the U and thus escape the effect of the rule)

5025-1300 Rules respecting acquisition or retention of membership

5025-3300—Cont.

Pattern Makers' League of North America, AFL-CIO, and Its Rockford and Beloit Associations (Rockford-Beloit Pattern Jobbers Association) **265 NLRB No. 170**

(imposition of fines on members who tendered resignations and returned to work during course of strike in apparent contravention of U's rule prohibiting resignations during strike or lockout or when one appeared imminent, violative, where U's rule was neither valid nor enforceable since it unreasonably restricted members' Sec. 7 right to resign under *Delmo Victor*)

Broadcast Employees, Local 531 (Skateboard Productions, Inc.) **265 NLRB No. 213**

(U can impose reasonable time restrictions on its members' right to resign and thereby effectively preclude members from returning to work during strike for specified period; such situation requires balancing of two fundamentally conflicting principles; namely, Ee's right to resign, pursuant to Ee's Sec. 7 right to refrain from concerted activities, as against right of U in preserving strike solidarity in order to protect striking members, as well as U's need to achieve responsible operational effectiveness by imposing rules governing acquisition and retention of membership pursuant to 8(b)(1)(A) proviso)

Machinists Local 1327, Machinists, District Lodge 115 (Delmo Victor) **263 NLRB No. 141**

(U's constitution permitting members to resign if resignations submitted 14 days prior to strike is impermissible as fails to protect Ee rights. Balancing Ee's right against interest of U and members, restrictions on members must apply to strike/nonstrike situations; U entitled to reasonable notice of resignation and Bd finds rule restricting member's right for period not to exceed 30 days after notice is reasonable; therefore, U's enforcement of 14-day rule violative and fining members for resigning during strike and returning to work w/o following 14-day proscription violative)

Electrical Workers, Local Union No. 66 (Houston Lighting and Power Company) **262 NLRB No. 061**

(U's refusal to accept U member's resignation from U, unlawful, where, as result of equating resignation with revocation of checkoff authorization, U required Ee to revoke his checkoff authorization for his resignation to become effective and told member it was too late for him to cancel his membership because he had failed to sign dues-deduction cancellation form during prescribed escape period; and, since there were no impediments to member's resignation under U's constitution and bylaws, and he clearly communicated to U his desire to sever all ties with it, his resignation was effectively made)

Local 345, Utility Workers of New England, Inc. (New England Power Service Company) **261 NLRB No. 073**

(as noted by SCt with regard to 8(b)(1)(A) proviso, Congress did not propose any limitations with respect to internal affairs of Us, aside from barring enforcement of U's regulations to affect a member's employment status)

Machinery Movers, Riggers and Machinery Erectors Local 136, Iron Workers (United Exposition Service Co., Inc.) **252 NLRB No. 058**

(refusal to allow prospective member to join U because he had filed charges against U with Bd violative)

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**

(as U's constitution and by-laws does not permit voluntary resignation while member is Ee in industry this has effect of allowing members to resign at will, and thus resignations were effective when received; however, U's refusal to accept resignations is not violative as it may prescribe its own rules with respect to membership)

Machinists, Lodge 727 (Lockheed-California Company, A Division of Lockheed Corporation) **250 NLRB No. 032**

(U's refusal to give effect to member's resignation violative where member willing to meet financial core membership obligation, no provision in U's constitution which restrains membership resignation, and effect of membership is to deprive member from accepting employment wherever U is involved in strike as such conduct prohibited by constitution)

International Union of Petroleum and Industrial Workers, AFL-CIO (Chevron U.S.A. Inc.) **JD-(SF)-172-81**

(U's failure to inform members that it had changed method for resigning from U violative as it must be shown that members either knew of or had consented to any limitation on their right to resign)

Glaziers, Architectural Metal and Glass Workers Union, Local 767, Painters **JD-(SF)-370-80**

(violation by fining former member for post-resignation conduct of working during strike where fine was based upon invalid rule which restricts resignations to Ees who have left trade and Ee's letter of resignation was accepted by U w/o comment before authorized sympathy strike and notwithstanding Ee continued to pay dues thereafter and accepted strike benefits for period before resignation became effective)

N.L.R.B. v. Machinists Local 1327, District Lodge 115 **608 F.2d 1219 (C.A. 9, 1979)**

(U member has right to resign from U but U can proscribe rule which limits right to resign during strike to protect its members and U during that critical period)

5025-3350 Cannot be prescribed to change employer hiring policy or affect employment status

Boilermakers' Union, Local No. 104 (Marco Seattle, Inc.) **JD-(SF)-294-82**

(U's contention that Ee's status as U steward – and consequent reduced U dues obligation – was internal U matter, rejected, where suspension of and imposition of reinstatement fee on steward for dues delinquency resulted in his discharge pursuant to U security clause)

Boilermakers' Union, Local No. 104 (Marco Seattle, Inc.) **JD-(SF)-294-82**

(U may suspend member and impose sanctions on him for dues delinquency, even mistakenly, but may not interfere thereby with his employment and employment relations)

5025-6700 Rules governing conduct of members

Transport Workers Union of America, Local 514 (Kathe, Nichols & Wolfe, Inc., et al.) **249 NLRB No. 169**

(no violation by U member's threat to get fellow Ees for circulating decertification ptn where it could be considered threat to take lawful action under U's internal rules as well as to engage in unlawful conduct)

N.L.R.B. v. Machinists Local 1327, District Lodge 115 **608 F.2d 1219 (C.A. 9, 1979)**

(U rule prohibiting its members from crossing lawful picket line or returning to work during strike is legitimate internal regulation of conduct of members and imposition of fine for such conduct lawful)

Charles E. Helton v. N.L.R.B. **656 F.2d 883 (C.A.D.C., Jun 1981)**

(U's conduct in removing Ee's materials critical of U from U's bulletin board was not insulated by internal U affairs proviso, since it did not serve legitimate U interest and would have frustrated free speech rights guaranteed by LMRDA)

5025-8300 Rules governing internal procedures

Howland Hook Marine Terminal Corporation **263 NLRB No. 040**

(designation of agent of Ees' collective bargaining representative (appointment of interim steward) is purely internal U affair and resolution of dispute, regarding who would be interim steward rested with U and not Bd; *Section 8(a)(5) of Act* not applicable to internal U dispute concerning who had authority to conduct business of local U and E not required to determine which of 2 representatives was the validly designated one)

James Dycus v. N.L.R.B. (Joint Council of Teamsters No. 42) **615 F.2d 820 (C.A. 9) (1980)**

(international U's attempt to transfer jurisdiction over Ee's bargaining unit from certified local to its sister local, not violative, notwithstanding that the attempt was made w/o consent of unit Ees; transfer was executed for legitimate reasons and constituted, therefore, both a valid disclaimer by certified local of further interest in representation of Ee's unit, and a noncoercive offer by sister local to assume role of representative)

5025-8350 Cannot be prescribed to change employer hiring policy or affect employment status

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**

(U which had internal policy requiring payment of dues by check or money order violated Act when it requested Ee's discharge for lack of membership when Ee tendered dues in cash; U had right to deny Ee membership but did not have right to deny him job and E violated Act when it acquiesced in U's demand; moreover, fact that Ee had alternative method of payment; namely, executing checkoff card immaterial since under Sec. 7 Ee has right to refuse such method of payment)

Boilermakers' Union, Local No. 104 (Marco Seattle, Inc.) **JD-(SF)-294-82**

(U's contention that Ee's status as U steward – and consequent reduced U dues obligation – was internal U matter, rejected, where suspension of and imposition of reinstatement fee on steward for dues delinquency resulted in his discharge pursuant to U security clause)

Boilermakers' Union, Local No. 104 (Marco Seattle, Inc.) **JD-(SF)-294-82**

(U may suspend member and impose sanctions on him for dues delinquency, even mistakenly, but may not interfere thereby with his employment and employment relations)

5050 EMPLOYEE CONDUCT REGULATED BY RULES

5050-0100 Generally

5050-0100—Cont.

N.L.R.B. v. Glaziers and Glassworkers Local Union No. 1621 632 F.2d 89 (C.A. 9, 1980)

(although neither cts nor Bd will judge wisdom or fairness of particular U rule, they will inquire into whether rule reflects legitimate U interests, and *if rule invades or frustrates overriding policy of labor laws the rule may not be enforced)*

5050-3300 Regulation within proviso

Local 345, Utility Workers of New England, Inc. (New England Power Service Company) 261 NLRB No. 073

(in finding no violation because of insufficient basis for Bd's intrusion into U's internal affairs involving alleged *condonation* by U of members engaged in sympathy strike in violation of no-strike provision, and U's *punishment* of members who crossed picket line, Bd held that not all U members will be satisfied with every U action, but their dissatisfaction does not of itself establish violation; Bd did not pass on question whether U's conduct may have violated some provision of state or Federal law under which aggrieved members may have redress)

5050-3350 Prohibition against crossing picket line

5050-3350-0100 Generally

N.L.R.B. v. Machinists Local 1327, District Lodge 115 608 F.2d 1219 (C.A. 9, 1979)

(U rule prohibiting its members from crossing lawful picket line or returning to work during strike is legitimate internal regulation of conduct of members and imposition of fine for such conduct lawful)

5050-3350-2500 Primary picket lines

Pattern Makers' League of North America, AFL-CIO, and Its Rockford and Beloit Associations (Rockford-Beloit Pattern Jobbers Association) 265 NLRB No. 170

(imposition of fines on members who tendered resignations and returned to work during course of strike in apparent contravention of U's rule prohibiting resignations during strike or lockout or when one appeared imminent, violative, where U's rule was neither valid nor enforceable since it unreasonably restricted members' Sec. 7 right to resign under *Delmo Victor*)

Broadcast Employees, Local 531 (Skateboard Productions, Inc.) 265 NLRB No. 213

(imposition and attempt to enforce fines against U members for returning to work during U's boycott of E, unlawful, where members, when informed of boycott, submitted written resignations and did not return to work until after resignations had been delivered to U; and U's constitutional provision for 60-day waiting period before resignations become effective was unreasonable and unenforceable because of its excessive duration of twice the 30-day period Bd has determined is appropriate; and neither objectives sought to be achieved by U's rule nor any extraordinary circumstances justify 60-day restriction)

Broadcast Employees, Local 531 (Skateboard Productions, Inc.) 265 NLRB No. 213

(Bd rejected U's contention that, even if 60-day waiting period before resignations from U membership could become effective is found unreasonable because of period's excessive duration, fines imposed against resigned U members for returning to work at U-boycotted E should be upheld to extent that fines cover action taken w/i 30-day period which Bd has found reasonable for restricting resignations; here, no reasonable time limitation on right to resign was present to outweigh Ees' right to do so because rule went beyond Bd's permissible 30-day period, and U's rule is invalid as too broadly drawn)

Machinists Local 1327, Machinists, District Lodge 115 (Dalmo Victor) 263 NLRB No. 141

(U's constitution permitting members to resign if resignations submitted 14 days prior to strike is impermissible as fails to protect Ee rights. Balancing Ee's right against interest of U and members, restrictions on members must apply to strike/nonstrike situations; U entitled to reasonable notice of resignation and Bd finds rule restricting member's right for period not to exceed 30 days after notice is reasonable; therefore, U's enforcement of 14-day rule violative and fining members for resigning dring strike and returning to work w/o following 14-day proscription violative)

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) 280 NLRB No. 130

(as U's constitution and by-laws does not permit voluntary resignation while member is Ee in industry this has effect of allowing members to resign at will, and thus resignations were effective when received; however, U's refusal to accept resignations is not violative as it may prescribe its own rules with respect to membership)

District Union 227, United Food (The Kroger Co.) 247 NLRB No. 023

(U's demand for termination or reduction in classification of former member who had crossed picket line, unlawful, since U's concern was not for enforcement of any contract right but that ....*scab* was working, particularly where U refused to discuss Ee's past experience)

Glaziers, Architectural Metal and Glass Workers Union, Local 767, Painters JD-(SF)-378-80

(violation by fining former member for post-resignation conduct of working during strike where fine was based upon invalid rule which restricts resignations to Ees who have left trade and Ee's letter of resignation was accepted by U w/o comment before authorized sympathy strike and notwithstanding Ee continued to pay dues thereafter and accepted strike benefits for period before resignation became effective)

N.L.R.B. v. Oil Workers, Local 6-578 619 F.2d 708 (C.A. 8, 1980)

(ct upheld Bd in finding that U's activities in filing charges and sending letters stating penalties to Ees for post resignation conduct of crossing picket line were coercive and restrictive; however, ct believed that direct threats to Ees of such penalties could also have been properly considered by ALJ)

5050-3362 Prohibition against remaining on job after picket line established

N.L.R.B. v. Glaziers and Glassworkers Local Union No. 1621 632 F.2d 89 (C.A. 9, 1980)

(enforcement of U rule prohibiting U members from working for neutral E at construction site where neutral gate established tends to frustrate national labor policy against secondary boycotts)

5050-3375 Prohibition against filing decertification or representation petition

Transport Workers Union of America, Local 514 (Kothe, Nichols & Wolfe, Inc., et al.) 249 NLRB No. 169

(no violation by U member's threat to get fellow Ees for circulating decertification ptn where it could be considered threat to take lawful action under U's internal rules as well as to engage in unlawful conduct)

5050-3377 Prohibition against filing unit clarification petition

The Buffalo Newspaper Guild, Local 26, and The Newspaper Guild, AFL-CIO-CLC (Buffalo Courier Express, Inc.) 265 NLRB No. 048

(U violated Act by conducting intra-U proceedings against member in retaliation for his having filed UC ptn with Bd, notwithstanding individual member is precluded from filing such ptn by Sec. 102.60(b) which provides that such ptn may be filed by labor organization or by an E because Bd's overriding policy is not to prevent or limit access to its processes and filing of UC ptn is more analogous to filing of ULP charge than decertification ptn)

5050-3385 Violation of hiring hall procedure

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilsen Freight Lines, Inc., et al.) 249 NLRB No. 086

(no violation where U charges against and fine of member were for his solicitation of job outside of hiring hall procedures, notwithstanding intra-U charges motivated by U officer's animosity resulting from member's criticism of officer's management of U)

Local Union No. 277, International Brotherhood of Painters and Allied Trades (Member of National Painting and Decorating Contractors of America) JD-(NY)-86-81

(refusal to refer U member of sister local to job not violative where member had failed to comply with requirements of U's referral system)

5050-6700 Regulation not within proviso

5050-6717 Prohibition against working with delinquent union member

Tile, Marble, Terrazzo Finishers and Shopmen International Union, Local No. 31, AFL-CIO (Standard Art, Marble and Tile Co.) 258 NLRB No. 182

(announcement to U members that anyone who worked with suspended member could be fined and resultant lay-off of suspended member from project when another member refused to work with him, violative, where threat of U discipline, notwithstanding local's constitution and by-laws provided for such action, was intended to interfere with Ee's employment)

5050-6733 Prohibition against filing ULP charge

The Buffalo Newspaper Guild, Local 26, and The Newspaper Guild, AFL-CIO-CLC (Buffalo Courier Express, Inc.) 265 NLRB No. 048

(U violated Act by conducting intra-U proceedings against member in retaliation for his having filed UC ptn with Bd, notwithstanding individual member is precluded from filing such ptn by Sec. 102.60(b) which provides that such ptn may be filed by labor organization or by an E because Bd's overriding policy is not to prevent or limit access to its processes and filing of UC ptn is more analogous to filing of ULP charge than decertification ptn)

5050-6733—Cont.

United Steelworkers of America, Local 8831 (Chapin & Bangs Steel Company, Inc.) **JD-(NY)-97-80**

(U violates Act if it disciplines member because he filed ULP charge against U, and unlawful disciplining covers fining as well as expulsion; although U does not violate Act when it expels from membership U member who files either a decertification or deauthorization ptn with Bd, it does violate Sec. 8(b)(1)(A) when it fines U member for filing such ptns)

N.L.R.B. v. Local 212, Automobile Workers **690 F.2d 82 (C.A. 6, Oct. 1982)**

(U violated Act when it removed member from his position as chairman of Fair Employment Practices Committee after he had filed ULP charges with Bd alleging that he had encountered resistence while attempting to process grievance submitted to his committee; it is immaterial that Bd did not issue complaint on charge as he acted in good faith, and also fact that removal from position involved no loss of salary or seniority as result is to *chill* willingness of other U members to file charges with Bd)

5050-6741 Prohibition against complaining about union to federal agencies other than National Labor Relations Board

The Buffalo Newspaper Guild, Local 26, and The Newspaper Guild, AFL-CIO-CLC (Buffalo Courier Express, Inc.) **265 NLRB No. 048**

(U lawfully expelled U member for having filed charges with EEOC in his official capacity as grievance chairman w/o proper authorization; moreover, fine U imposed on member not violative where not established that fine was related to dues which would be foregone by his expulsion from U; furthermore, Bd will not otherwise inquire into reasonableness of fine as this is internal U matter protected by 8(b)(1)(A) proviso)

5050-6755 Prohibition against testifying adverse to union's position

United Steelworkers of America, AFL-CIO, CLC, Local 1981 (Major Safe Company, Inc.) **259 NLRB No. 067**

(violation, where U tried, fined, and suspended U's international representative because he testified adverse to U's position in arbitration hearing)

5050-6759 Prohibition against overtime work

GAIU Local 13-B, Graphic Arts International Union (Western Publishing Co., Inc.) **252 NLRB No. 130**

(rule instituted by U as bargaining tactic against mandatory overtime which was lawfully imposed constituted unprotected partial strike and U's disciplining of its members who refused to engage in such unprotected activity, violative; Bd did not decide legality of rule if instituted to protest ULPs committed by E rather than as bargaining tactic, since no ULPs found against E, U waited 2 months after overtime ban implemented to file ULP charges and U's announcement of overtime ban contained no mention of ULPs)

Graphic Arts International Union, Local 261 (Sale-Niagara, Inc.) **JD-202-82**

(enforcing overtime ban that prohibited U members from performing mandatory assigned overtime work by imposing internal U discipline of charges and fines, unlawful notwithstanding contract provided that overtime be voluntary, since overtime was term of employment for members in question who as working foremen were regularly scheduled a nine hour day and in their case was outside ambit of contractual overtime provisions, for them to refuse to perform overtime would consitute unprotected recurring and intermittent partial strike)

N.L.R.B. v. GAIU Local 13-B, Graphic Arts International Union **682 F.2d 304 (C.A. 2, June 1982)**

(violation where, pursuant to its overtime ban, U fined members for working overtime; refusal by Ees to work overtime was unprotected activity since overtime was mandatory, and rule was imposed as bargaining tactic rather than in response to E's ULP as contended)

5050-6767 Requiring employees to sign dues checkoff authorizations

Siro Security Service, Inc. **247 NLRB No. 157**

(U demanding discharge of Ee who opposed U as bargaining representative and objected to deduction of U dues w/o his consent, unlawful)

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**

5075 ENFORCEMENT OF RULES WITHIN PROVISO

5075-0100 Generally

Machine Stone Workers, Rubbers, Sawyers and Helpers Local 89, a/w Tile, Marble and Terrazzo Finishers and Shopmen International Union, AFL-CIO (Bybee Stone Company, Inc.) **265 NLRB No. 069**

(in answer to legal question as to whether U's fining and expulsion of members who voted, in Bd-conducted R election, against R by the U is violative of the Act where the affected U members failed to exhaust U's internal appellate procedures available to them, it would appear that the right of U members to seek redress under the Act from their allegedly improper discipline by U may not be subordinated by internal U requirements)

5075-0125 May not be enforced through employment relationship

Longshoremen's Association, Local 1180 (Kenneth E. Mason, an Individual) **263 NLRB No. 134**

(local U requesting that sister local not refer one of its members until he had paid fine which it had imposed, unlawful)

AMF Wheel Goods Division, a Division of AMF Incorporated **247 NLRB No. 045**

(U which had internal policy requiring payment of dues by check or money order violated Act when it requested Ee's discharge for lack of membership when Ee tendered dues in cash; U had right to deny Ee membership but did not have right to deny him job and E violated Act when it acquiesced in U's demand; moreover, fact that Ee had alternative method of payment; namely, executing checkoff card immaterial since under Sec. 7 Ee has right to refuse such method of payment)

5075-0137 Board not authorized to evaluate fairness of union discipline

The Buffalo Newspaper Guild, Local 26, and The Newspaper Guild, AFL-CIO-CLC (Buffalo Courier Express, Inc.) **265 NLRB No. 048**

(U lawfully expelled U member for having filed charges with EEOC in his official capacity as grievance chairman w/o proper authorization; moreover, fine U imposed on member not violative where not established that fine was related to dues which would be foregone by his expulsion from U; furthermore, Bd will not otherwise inquire into reasonableness of fine as this is internal U matter protected by 8(b)(1)(A) proviso)

5075-0150 Membership status of employees at time of conduct

International Brotherhood of Pottery & Allied Workers, AFL-CIO (Colton Manufacturing, Inc.) **234 NLRB No. 035**

(U's refusal to pay accrued strike benefits to strikers who resigned from U and returned to work for E prior to end of strike, not unlawful since not punitive where U's constitution limited strike benefits to those in actual need using earnings as criteria rather than considering benefits renumeration for services during strike, and absent evidence U would have construed its disbursement rules more generously if Ees had obtained positions elsewhere than at struck E)

American Nurses' Association **230 NLRB No. 175**

(U's fines of members for crossing picket lines enforceable where, contrary to contention, Ees were members of U as they paid initiation fees and monthly dues, participated in U activities, accepted U benefits and some of Ees U had attempted to resign from U)

5075-0150-9000 Unenforceable if done for conduct engaged in subsequent to resignation

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) **264 NLRB No. 121**

(violation where U fined Ees who proffered letters of resignation to U for working behind picket line during 30-day waiting period before resignations would take effect since, even assuming that 30-day waiting period found in U by-laws was valid, U failed to give adequate and timely notice thereof)

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) **264 NLRB No. 121**

(fining Ees who worked behind picket line, despite their proffered letters of resignation, violative, where, contrary to contention, resignations were effective because U failed to advise Ees how much they owed in dues and failed to advise of 30-day waiting period before resignations could become effective and during which time Ees were still obligated to pay dues)

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) **264 NLRB No. 121**

(fining Ees for working behind picket line after U had received their resignations, but w/i 30-day waiting period, violative, where, even assuming U had given timely and adequate notice of amount of dues owed (dues obligation continued through waiting period) and existence of 30-day waiting period, any legitimate U interest served by 30-day period, found overly vague

5075-0150-5000—Cont.

herein, was outweighed by its curtailment of Ees' statutory right to work behind picket line)

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **280 NLRB No. 132**
(statements made by U agents to news media that U members who resigned and crossed picket line would be fired violative)

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **280 NLRB No. 130**
(Us which summoned former members to appear before their executive boards for conduct (returning to work during strike) occurring after their effective resignations violative)

International Union of Petroleum and Industrial Workers, AFL-CIO (Chevron U.S.A. Inc.) **JD-(SF)-172-81**
(threatening Ees with loss of employment for nonpayment of dues after they effectively had resigned from U violative)

Glaziers, Architectural Metal and Glass Workers Union, Local 767, Painters **JD-(SF)-370-80**
(violation by fining former member for post-resignation conduct of working during strike where fine was based upon invalid rule which restricts resignations to Ees who have left trade and Ee's letter of resignation was accepted by U w/o comment before authorized sympathy strike and notwithstanding Ee continued to pay dues thereafter and accepted strike benefits for period before resignation became effective)

N.L.R.B. v. Oil Workers, Local 6-578 **619 F.2d 708 (C.A. 8, 1980)**
(ct upheld Bd in finding that U's activities in filing charges and sending letters stating penalties to Ees for post resignation conduct of crossing picket line were coercive and restrictive; however, ct believed that direct threats to Ees of such penalties could also have been properly considered by ALJ)

5075-0150-6000 Duty to provide notice of restrictions on resignation

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) **264 NLRB No. 121**
(Ee's resignation from U found effective, notwithstanding nonconforming resignation letter, where Ee was unaware of governing constitutional requirements, and, upon receipt of such resignation, U failed to take reasonably prompt steps to tell Ee about constitutional restrictions on resignation; existence of constitutional provision setting forth restrictions on resigning from U is not substitute for proper notice)

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) **264 NLRB No. 121**
(violation where U fined Ees who proffered letters of resignation to U for working behind picket line during 30-day waiting period before resignations would take effect since, even assuming that 30-day waiting period found in U by-laws was valid, U failed to give adequate and timely notice thereof)

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) **264 NLRB No. 121**
(fining Ees who worked behind picket line, despite their proffered letters of resignation, violative, where, contrary to contention, resignations were effective because U failed to advise Ees how much they owed in dues and failed to advise of 30-day waiting period before resignations could become effective and during which time Ees were still obligated to pay dues)

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) **264 NLRB No. 121**
(fining Ees for working behind picket line after U had received their resignations, but w/i 30-day waiting period, violative, where, even assuming U had given timely and adequate notice of amount of dues owed (dues obligation continued through waiting period) and existence of 30-day waiting period, any legitimate U interest served by 30-day period, found overly vague herein, was outweighed by its curtailment of Ees' statutory right to work behind picket line)

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) **264 NLRB No. 121**
(preferring and processing internal charges against Ees because they worked behind picket line, violative, where procedurally defective resignations from Ees prior to their crossing picket line were found effective herein because of U's failure to notify Ees of proper procedure and limitations)

5075-0150-7000 Resignation effective when submitted

Pattern Makers' League of North America, AFL-CIO, and Its Rockford and Beloit Associations (Rockford-Beloit Pattern Jobbers Association) **265 NLRB No. 170**
(imposition of fines on members who tendered resignations and returned to work during course of strike in apparent contravention of U's rule prohibiting resignations during strike or lockout or when one appeared imminent, violative, where U's rule was neither valid nor enforceable since it unreasonably restricted members' Sec. 7 right to resign under *Dalmo Victor*)

5075-0150-7500 Unless union rule or bylaw states otherwise

International Union of Petroleum and Industrial Workers, AFL-CIO (Chevron U.S.A. Inc.) **JD-(SF)-172-81**
(U's failure to inform members that it had changed method for resigning from U violative as it must be shown that members either knew of or had consented to any limitation on their right to resign)

Glass Workers' Local Union No. 740, Painters (Auto Glass Service Co.) **JD-(SF)-371-80**
(contention that because Ee-members were not current in their dues payments when they tendered their resignations there was no dissolution of U-membership relationship under U's constitutional provisions governing resignations and therefore U could not fine members for conduct which U rules proscribe rejected, since U had failed to timely notify Ees of constitutional restrictions on resignation and hence their resignations were effective at will)

National Association of Broadcast Employees and Technicians, Local 531, AFL-CIO, CLC **634 F.2d 638(T) (C.A. 9, 1980)**
(ct denied Bd order and remanded case back to Bd where it had not addressed question of reasonableness of U's constitutional rule making resignations ineffective for at least 60 days which Bd incorrectly found to be unenforceable for vagueness and ambiguity against members who submitted resignations and subsequently were fined for violating U boycott)

N.L.R.B. v. Machinists Local 1327, District Lodge 115 **608 F.2d 1219 (C.A. 9, 1979)**
(U member has right to resign from U but U can proscribe rule which limits right to resign during strike to protect its members and U during that critical period)

5075-0150-7875 Unduly restrictive resignation procedure

District Lodge 160, Machinists, and Its Affiliated Local Lodge 1028 (Gray Motors, Inc.) **265 NLRB No. 123**
(U's post resignation fine pursuant to U constitution which prohibited resignation during entire course of strike or w/i 14 days preceding commencement of strike, after member resigned from U subsequent to strike vote against E and returned to work for E, held violative, since provision in U constitution was unreasonable restriction on members' resignation (allowing resignations only during nonstrike periods); See *Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115 (Dalmo Victor)* 263 NLRB No. 141 (1982))

Broadcast Employees, Local 531 (Skateboard Productions, Inc.) **265 NLRB No. 213**
(imposition and attempt to enforce fines against U members for returning to work during U's boycott of E, unlawful, where members, when informed of boycott, submitted written resignations and did not return to work until after resignations had been delivered to U; and U's constitutional provision for 60-day waiting period before resignations become effective was unreasonable and unenforceable because of its excessive duration of twice the 30-day period Bd has determined is appropriate; and neither objectives sought to be achieved by U's rule nor any extraordinary circumstances justify 60-day restriction)

Broadcast Employees, Local 531 (Skateboard Productions, Inc.) **265 NLRB No. 213**
(in case involving imposition of fines against resigned U members for returning to work at U-boycotted E pursuant to U's constitutional rule for 60-day waiting period before resignations become effective, Bd noted it is not Bd's practice to rewrite an invalid rule and then apply it to facts at hand; rather, in cases where Bd has found rule governing resignations to be unreasonable, as here, Bd has concluded that Ees' resignations were effective upon receipt by U)

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) **264 NLRB No. 121**
(30-day waiting period before procedurally proper resignation can be effective found overly vague where U interpreted purpose of waiting period was to enable U to determine whether Ee's resignation had complied with all U requirements and that an Ee would be required to abide by U rules for maximum of 30 days, rather than invariably for full 30 days after submission of procedurally proper resignation)

Machinists Local 1327, Machinists, District Lodge 115 (Dalmo Victor) **263 NLRB No. 141**
(U's constitution permitting members to resign if resignations submitted 14 days prior to strike is impermissible as fails to protect Ee rights. Balancing Ee's right against interest of U and members, restrictions on members must apply to strike/nonstrike situations; U entitled to reasonable notice of resignation and Bd finds rule restricting member's right for period not to exceed 30 days after notice is reasonable; therefore, U's enforcement of 14-day rule violative and fining members for resigning during strike and returning to work w/o following 14-day proscription violative)

5075-0150-8700 Resignation effective when received

5075-0150-8700—Cont.

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) 264 NLRB No. 121

(U members' resignation letters delivered to rank-and-file pickets and picket captains found ineffective since receipt of such resignations was not w/i apparent scope of such pickets' authority nor picket-captains' authority which was limited to conduct of picketing; moreover, apparent authority of negotiating-committee members, stewards, and chief steward did not include receipt of resignations)

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) 264 NLRB No. 121

(fining Ees who effectively resigned from U for crossing picket line and working, violative, where Ees mailed letters of resignation to U and such letters were presumed to have been received day after date of mailing and at an hour before Ees crossed picket line)

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) 250 NLRB No. 130

(as U's constitution and by-laws does not permit voluntary resignation while member is Ee in industry this has effect of allowing members to resign at will, and thus resignations were effective when received; however, U's refusal to accept resignations is not violative as it may prescribe its own rules with respect to membership)

Glaziers, Architectural Metal and Glass Workers Union, Local 767, Painters JD-(SF)-370-80

(violation by fining former member for post-resignation conduct of working during strike where fine was based upon invalid rule which restricts resignations to Ees who have left trade and Ee's letter of resignation was accepted by U w/o comment before authorized sympathy strike and notwithstanding Ee continued to pay dues thereafter and accepted strike benefits for period before resignation became effective)

5075-0162 Rules consistent with collective bargaining agreement may be enforced

Newport News Shipbuilding and Dry Dock Company 253 NLRB No. 096

(U's maintaining and enforcing provision in bargaining agreement which required checkoff authorization revocations be on forms provided by U which were only available at U headquarters and refusing to accept Ees' revocations by letter, and informing E it would be in violation of bargaining agreement if E honored revocations violated revocation rights of Ees conferred in Sec. 302(c)(4))

5075-0169 Discipline inconsistent with amnesty or settlement agreement

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) JD-(SF)-122-80

(fines, expulsions, and charges against Ees for crossing picket line during strike in contravention of strike amnesty agreement, unlawful and not protected by Sec. 8(b)(1)(A) proviso notwithstanding discipline was undertaken before U signed agreement, since agreement was not solely prospective but intended to cover action during strike, and U, by signing it, waived right to discipline Ees for action during strike and bound its individual members as well as itself to abide by agreement)

5075-0800 Forms of enforcement

5075-0817 Fine

United Steelworkers of America, Local 8831 (Chapin & Bangs Steel Company, Inc.) JD-(NY)-97-80

(U violates Act if it disciplines member because he filed ULP charge against U, and unlawful disciplining covers fining as well as expulsion; although U does not violate Act when it expels from membership U member who files either a decertification or deauthorization ptn with Bd, it does violate Sec. 8(b)(1)(A) when it fines U member for filing such ptns)

United Steelworkers of America, Local 8831 (Chapin & Bangs Steel Company, Inc.) JD-(NY)-97-80

(U's contention, based on interpretation of its committee's report, to make it appear that expulsion and not fining of U member was discipline imposed on him because he had filed deauthorization ptn against U, rejected, where language in report was quite clear in stating that if U member did not pay fine he would be expelled)

5075-0817-0100 Generally

Broadcast Employees, Local 531 (Skateboard Productions, Inc.) 265 NLRB No. 213

(Bd rejected U's contention that, even if 60-day waiting period before resignations from U membership could become effective is found unreasonable because of period's excessive duration, fines imposed against resigned U members for returning to work at U-boycotted E should be upheld to extent that fines cover action taken w/i 30-day period which Bd has found reasonable for restricting resignations; here, no reasonable time limitation on right to resign was present to outweigh Ees' right to do so because rule went beyond Bd's permissible 30-day period, and U's rule is invalid as too broadly drawn)

Broadcast Employees, Local 531 (Skateboard Productions, Inc.) 265 NLRB No. 213

(in case involving imposition of fines against resigned U members for returning to work at U-boycotted E pursuant to U's constitutional rule for 60-day waiting period before resignations become effective, Bd held that where rule, which impinges on Sec. 7 rights of Ees is too broadly drawn, it is generally invalid and cannot be relied on to justify fines against U members)

Machinists Local 1327, Machinists, District Lodge 115 (Dalmo Victor) 263 NLRB No. 141

(U's constitution permitting members to resign if resignations submitted 14 days prior to strike is impermissible as fails to protect Ee rights. Balancing Ee's right against interest of U and members, restrictions on members must apply to strike/nonstrike situations; U entitled to reasonable notice of resignation and Bd finds rule restricting member's right for period not to exceed 30 days after notice is reasonable; therefore, U's enforcement of 14-day rule violative and fining members for resigning during strike and returning to work w/o following 14-day proscription violative)

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilson Freight Lines, Inc., et al.) 249 NLRB No. 006

(no violation where U charges against and fine of member were for his solicitation of job outside of hiring hall procedures, notwithstanding intra-U charges motivated by U officer's animosity resulting from member's criticism of officer's management of U)

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilson Freight Lines, Inc., et al.) 249 NLRB No. 006

(no violation where U notified member it would refuse to accept his dues until his fine had been paid toll in view of fact member was not working for E which was party to bargaining agreement containing U security clause, and where U's Local Freight Agreement contained exclusive hiring hall procedure which required U to refer registrants w/o regard to U membership)

Hospital and Institutional Workers' Union Local 250 (Dameron Hospital Association) 248 NLRB No. 187

(where U and E entered into strike settlement agreement containing *amnesty* clause and U filed charges and imposed fines against members for strike breaking, it violated Act as its action *impairs congressional policy embedded in the labor laws*)

United Steelworkers of America, Local 8831 (Chapin & Bangs Steel Company, Inc.) JD-(NY)-97-80

(GC met burden of proof and established that U, by fining member for filing deauthorization ptn. violated Act, where discipline meted out to U member can only be attributed to fact that he had filed such ptn)

United Steelworkers of America, Local 8831 (Chapin & Bangs Steel Company, Inc.) JD-(NY)-97-80

(U's contention that fine levied against U member for filing deauthorization ptn was not unlawful because fine never became operative, rejected, where disciplinary action still exists, although it has not been enforced; until such unlawful action has been eradicated, threat of enforcement is sufficient to warrant finding of violation)

United Steelworkers of America, Local 8831 (Chapin & Bangs Steel Company, Inc.) JD-(NY)-97-80

(U's contention that failure of U member, fined by U for filing deauthorization ptn, to appeal U's guilty verdict, should make U blameless, rejected, since U member, who chose not to appeal or seek remedy elsewhere, is not to be faulted for doing so; rather, affirmative action to erase violation had to be forthcoming from U, not U member)

Elevator Constructors Local Union No. 8 v. N.L.R.B. 665 F.2d 376 (C.A.D.C., Sep. 1981)

(U's maintenance of fines payable provision of its constitution and bylaws, requiring members to pay fines before dues, in conjunction with valid U security clause, unlawful, notwithstanding U's contention that fines payable bylaw was merely a valid U rule w/i 8(b)(1)(A) proviso; while bylaw has legitimate purpose of encouraging members to pay fines and, considered independently, would be protected by 8(b)(1)(A) proviso, U juxtaposed bylaw with U security clause and thereby crossed the line from valid bylaw to impermissible *external* coercion)

5075-0817-3700 Imposition contrary to statutory intendment

H. H. Robertson Company 263 NLRB No. 173

(U's filing internal charges against supervisor, fining and removing him from U office for *hiring his son and friend off street* in violation of oath to secure employment for U members, violative, where supervisor had requested Ees through hiring hall but there being no applicants in hall, relied on E's contractual right to hire directly under those circumstances and on rights of individuals not registered to be hired and since U's actions amounted to

5075-5017-3700—Cont.

demand supervisor prefer U job applicants over non-members, and proceedings reasonably tended to make individuals present at hearing, in believing it wise to apply for membership and use hiring hall)

N.L.R.B. v. Glaziers and Glassworkers Local Union No. 1621 **632 F.2d 89 (C.A. 9, 1980)**
(enforcement of U rule prohibiting U members from working for neutral E at construction site where neutral gate established tends to frustrate national labor policy against secondary boycotts)

5075-5017-6000 Reasonableness of amount not relevant

The Buffalo Newspaper Guild, Local 26, and The Newspaper Guild, AFL-CIO-CLC (Buffalo Courier Express, Inc.) **265 NLRB No. 048**
(U lawfully expelled U member for having filed charges with EEOC in his official capacity as grievance chairman w/o proper authorization; moreover, fine U imposed on member not violative where not established that fine was related to dues which would be foregone by his expulsion from U; furthermore, Bd will not otherwise inquire into reasonableness of fine as this is internal U matter protected by 8(b)(1)(A) proviso)

Plumbers, Local Union 119 (Kamsack, Inc.)[illegible] **NLRB No. 004**
(Bd will not determine reasonableness of fines imposed upon members in order to secure compliance with U's constitution, bylaws, or other rules)

Local Union No. 965, Operating Engineers (Kleen Pipeliners, Inc.) **247 NLRB No. 029**
(however, excessiveness or severity of such fine may nevertheless be considered in ascertaining motive, reason, and purpose for fine)

5075-5017-6700 Unenforceable as sanction against member for filing or circulating decertification, deauthorization or representation petition

Transport Workers Union of America, Local 514 (Kothe, Nichols & Wolfe, Inc., et al.) **249 NLRB No. 169**
(threat that U would bring charges and assess fines against members supporting decertification effort during contract negotiations and strike, unlawful)

United Steelworkers of America, Local 8831 (Chapin & Bangs Steel Company, Inc.) **JD-(NY)-97-80**
(U violates Act if it disciplines member because he filed ULP charge against U, and unlawful disciplining covers fining as well as expulsion; although U does not violate Act when it expels from membership U member who files either a decertification or deauthorization ptn with Bd, it does violate Sec. 8(b)(1)(A) when it fines U member for filing such ptns)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**

5075-5017-7000 Unenforceable as sanction against member for filing charges

Electrical Workers, Local Union No. 453 (Southern Sun Electric Corporation) **263 NLRB No. 115**
(fining *traveller* for employment with firm that was in *disfavor* which was in violation of U contract, unlawful where real reasons were: he had testified against U during ULP proceeding and thereafter received no referrals through hiring hall; successfully appealed U's refusal to place him on referral roster; testified at hearing on behalf of fellow traveller-grievant and disparate amount of his fines *vis a vis* its own members)

5075-5017-7200 Unenforceable as sanction against member for supporting rival union

Local Union No. 965, Operating Engineers (Kleen Pipeliners, Inc.) **247 NLRB No. 029**
(U fining member $1,000 for *failing to appear before Executive Board meeting to explain your actions while working at (E)*, violative, where actions were protected activities of expressing dissatisfaction at U's hiring hall practices and signing authorization card for another U; particularly where Charging Party was only member on whom fine of such large amount had been imposed and U's president had threatened him with loss of job when he affiliated with another U)

5075-5017-7500 Refusal to honor picket line or to participate in strike

Pattern Makers' League of North America, AFL-CIO, and Its Rockford and Beloit Associations (Rockford-Beloit Pattern Jobbers Association) **265 NLRB No. 170**
(imposition of fines on members who tendered resignations and returned to work during course of strike in apparent contravention of U's rule prohibiting resignations during strike or lockout or when one appeared imminent, violative, where U's rule was neither valid nor enforceable since it unreasonably restricted members' Sec. 7 right to resign under *Dalmo Victor*)

Local 28, Bricklayers & Allied Craftsmen (AFL-CIO) (Sal Masonry Contractors, Inc.) **265 NLRB No. 198**
(charging and fining member, found herein to be supervisor, for working behind picket line, violative, in view of minimal assistance given E as to work which itself was not rank-and-file work)

Broadcast Employees, Local 531 (Skateboard Productions, Inc.) **268 NLRB No. 23**
(imposition and attempt to enforce fines against U members for returning to work during U's boycott of E, unlawful, where members, when informed of boycott, submitted written resignations and did not return to work until after resignations had been delivered to U; and U's constitutional provision for 60-day waiting period before resignations become effective was unreasonable and unenforceable because of its excessive duration of twice the 30-day period Bd has determined is appropriate; and neither objectives sought to be achieved by U's rule nor any extraordinary circumstances justify 60-day restriction)

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) **264 NLRB No. 121**
(fining Ees who effectively resigned from U for crossing picket line and working, violative, where Ees mailed letters of resignation to U and such letters were presumed to have been received day after date of mailing and at an hour before Ees crossed picket line)

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) **264 NLRB No. 121**
(violation where U fined Ees who proffered letters of resignation to U for working behind picket line during 30-day waiting period before resignations would take effect since, even assuming that 30-day waiting period found in U by-laws was valid, U failed to give adequate and timely notice thereof)

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) **264 NLRB No. 121**
(fining Ees who worked behind picket line, despite their proffered letters of resignation, violative, where, contrary to contention, resignations were effective because U failed to advise Ees how much they owed in dues and failed to advise of 30-day waiting period before resignations could become effective and during which time Ees were still obligated to pay dues)

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) **264 NLRB No. 121**
(fining Ees for working behind picket line after U had received their resignations, but w/i 30-day waiting period, violative, where, even assuming U had given timely and adequate notice of amount of dues owed (dues obligation continued through waiting period) and existence of 30-day waiting period, any legitimate U interest served by 30-day period, found overly vague herein, was outwidghed by its curtailment of Ees' statutory right to work behind picket line)

Machinists Local 1327, Machinists, District Lodge 115 (Dalmo Victor) **263 NLRB No. 141**
(U's constitution permitting members to resign if resignations submitted 14 days prior to strike is impermissible as fails to protect Ee rights. Balancing Ee's right against interest of U and members, restrictions on members must apply to strike/nonstrike situations; U entitled to reasonable notice of resignation and Bd finds rule restricting member's right for period not to exceed 30 days after notice is reasonable; therefore, U's enforcement of 14-day rule violative and fining members for resigning during strike and returning to work w/o following 14-day proscription violative)

Local 345, Utility Workers of New England, Inc. (New England Power Service Company) **261 NLRB No. 073**
(in absence of exceptions, Bd held U's fining of members, because they crossed picket line during sympathy strike, unlawful; but see *Operating Engineers Local 18*, 238 NLRB 652)

Ventura County District Council of Carpenters (Commercial Industrial Constructors, Inc.) **239 NLRB No. 028**
(U's fining of its members who worked behind its picket line for neutral E at construction site at which U had labor dispute with another E, violative of 8(b)(1)(A), since such discipline induced or encouraged neutral Ees to refuse to perform services, w/i meaning of 8(b)(4)(i)(B), with object of causing neutral E to c/d/b with primary E; fact that neutral Ees failed to use gate reserved for them was not crucial or determinative fact, since area used by them for entering and leaving jobsite was not part of gate reserved for primary E and suppliers)

Graphic Arts International Union, Local No. 32B, AFL-CIO-CLC (Banta Division of George Banta Company, Inc.) **250 NLRB No. 130**
(statements made by U agents to news media that U members who resigned and crossed picket line would be fired violative)

Glaziers, Architectural Metal and Glass Workers Union, Local 767, Painters **JD-(SF)-370-80**
(violation by fining former member for post-resignation conduct of working during strike where fine was based upon invalid rule which restricts resignations to Ees who have left trade and Ee's letter of resignation was accepted by U w/o comment before authorized sympathy strike and notwithstanding Ee continued to pay dues thereafter and accepted strike benefits for period before resignation became effective)

5075-5017-7500—Cont.

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**

(fines, expulsions, and charges against Ees for crossing picket line during strike in contravention of strike amnesty agreement, unlawful and not protected by Sec. 8(b)(1)(A) proviso notwithstanding discipline was undertaken before U signed agreement, since agreement was not solely prospective but intended to cover action during strike, and U, by signing it, waived right to discipline Ees for action during strike and bound its individual members as well as itself to abide by agreement)

N.L.R.B. v. Laborer's International Union of North America, Local No. 721 **640 F.2d 33 (C.A. 1, May 1981)**

(fining U members for refusing to participate in strike unwarranted by E's ULP, unlawful, where E's refusal to hire U-designated steward was not sufficiently serious ULP to justify strike in violation of no-strike provision inasmuch as E's conduct was result of simple dispute as to identity of steward and did not constitute refusal to honor U's contractual right to have steward on jobsite)

N.L.R.B. v. Glaziers and Glassworkers Local Union No. 1621 **632 F.2d 89 (C.A. 9, 1980)**

(enforcement of U rule prohibiting U members from working for neutral E at construction site where neutral gate established tends to frustrate national labor policy against secondary boycotts)

N.L.R.B. v. Machinists Local 1327, District Lodge 115 **608 F.2d 1219 (C.A. 9, 1979)**

(U rule prohibiting its members from crossing lawful picket line or returning to work during strike is legitimate internal regulation of conduct of members and imposition of fine for such conduct lawful)

5075-5017-7600 Working in nonunion shop

Electrical Workers, Local Union No. 453 (Southern San Electric Corporation) **263 NLRB No. 115**

(fining *traveller* for employment with firm that was in *disfavor* which was in violation of U contract, unlawful where real reasons were: he had testified against U during ULP proceeding and thereafter received no referrals through hiring hall; successfully appealed U's refusal to place him on referral roster; testified at hearing on behalf of fellow traveller-grievant and disparate amount of his fines *vis a vis* its own members)

5075-5017-7800 Voting against representation by union of which voter is a member

Machine Stone Workers, Rubbers, Sawyers and Helpers Local 89, a/w Tile, Marble and Terrazzo Finishers and Shopmen International Union, AFL-CIO (Bybee Stone Company, Inc.) **265 NLRB No. 069**

(fining U members for voting against U's R in Bd election where knowledge of how they voted was not improperly obtained due to coincidence that all votes were against R, unlawful under proviso; fines were not conditions with respect to retention of members and, although uncollected, might be pursued to collection or used to bar members expelled herein from reentry into U until liquidation and, unless erased, might have continuingly hovering coercive impact against those eligible to vote in future Bd election)

5075-5025 Filing intra-union charges

The Buffalo Newspaper Guild, Local 26, and The Newspaper Guild, AFL-CIO-CLC (Buffalo Courier Express, Inc.) **265 NLRB No. 048**

(U violated Act by conducting intra-U proceedings against member in retaliation for his having filed UC ptn with Bd, notwithstanding individual member is precluded from filing such ptn by Sec. 102.60(b) which provides that such ptn may be filed by labor organization or by an E because Bd's overriding policy is not to prevent or limit access to its processes and filing of UC ptn is more analogous to filing of ULP charge than decertification ptn)

Miscellaneous Drivers and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) **264 NLRB No. 121**

(preferring and processing internal charges against Ees because they worked behind picket line, violative, where procedurally defective resignations from Ees prior to their crossing picket line were found effective herein because of U's failure to notify Ees of proper procedure and limitations)

Miscellaneous Driveri and Helpers, Local Union no. 610 a/w Teamsters (Browning-Ferris Industries) **264 NLRB No. 121**

(preferring internal charges against U member who urged picket captain/negotiating committeeman to try to induce other Ees to vote for acceptance of E's last contract offer, violative, where conduct did not occur in E's presence)

Local No. 121, Plasterers (Associated Building Contractors of Lafayette, Inc.) **264 NLRB No. 029**

(violation, where filing of intra-U charge against Ee was found to be in retaliation for filing of charge with Bd against U by Ee's son, rather than for Ee's not performing in *workmanlike* manner as required by U constitution, in view of fact intra-U charges were filed some time after stated offense but soon after Bd charge was filed, offense was minor, and intra-U charges were rarely filed)

H. H. Robertson Company **263 NLRB No. 173**

(U's filing internal charges against supervisor, fining and removing him from U office for *hiring his son and friend off street* in violation of oath to secure employment for U members, violative, where supervisor had requested Ees through hiring hall but there being no applicants in hall, relied on E's contractual right to hire directly under those circumstances and on rights of individuals not registered to be hired and since U's actions amounted to demand supervisor prefer U job applicants over non-members, and proceedings reasonably tended to make individuals present at hearing, in believing it wise to apply for membership and use hiring hall)

Hospital and Institutional Workers Union, Local 250, SEIU, AFL-CIO (Associated Hospitals of The East Bay) **264 NLRB No. 103**

(where pursuant to strike settlement agreement which provided for binding arbitration, U, in contravention of arbitrator's decision providing for complete amnesty and no retaliation by anyone against Ees for activities during strike, subjected members to intro-U trial for such activities, and thereby unlawfully coerced Ees notwithstanding no penalties imposed)

Transport Workers Union of America, Local 514 (Kathe, Nichols & Wolfe, Inc., et al.) **249 NLRB No. 160**

(threat that U would bring charges and assess fines against members supporting decertification effort during contract negotiations and strike, unlawful)

United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 1989 (Caterpillar Tractor Company) **249 NLRB No. 123**

(Institution of internal U disciplinary proceeding against some members, selecting trial committee, and issuing formal notice of hearing on these charges because these Ee-members had appeared as witnesses and testified adversely to U's grievance in arbitration hearing held pursuant to provisions of collective-bargaining agreement, violative, notwithstanding charges were later withdrawn since Respondent took no specific action to repudiate coercive effect of its conduct)

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilsen Freight Lines, Inc., et al.) **249 NLRB No. 006**

(no violation where U charges against and fine of member were for his solicitation of job outside of hiring hall procedures, notwithstanding intra-U charges motivated by U officer's animosity resulting from member's criticism of officer's management of U)

Sachs Electric Company **248 NLRB No. 092**

(U's threat to file internal U charges against U members, and filing of such charges against one of them, because they had protested and sought to vindicate their right to sign referral list at U's hiring hall, unlawful)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**

(fines, expulsions, and charges against Ees for crossing picket line during strike in contravention of strike amnesty agreement, unlawful and not protected by Sec. 8(b)(1)(A) proviso notwithstanding discipline was undertaken before U signed agreement, since agreement was not solely prospective but intended to cover action during strike, and U, by signing it, waived right to discipline Ees for action during strike and bound its individual members as well as itself to abide by agreement)

N.L.R.B. v. International Brotherhood of Electrical Workers, Local Union No. 453 **660 F.2d 991 (C.A. 8, Jan. 1982)**

(U official did not violate Act when he filed intra-U charges against *traveler* member who falsely accused him of passing over member when referring to job as this claim could have impact on U officials reputation and is entitled to be answered through official procedures; it also did not violate Act when it filed charges against same member for allegedly releasing confidential U information to his attorney as this was part of same incident)

N.L.R.B. v. Oil Workers, Local 6-578 **619 F.2d 708 (C.A. 8, 1980)**

(ct upheld Bd in finding that U's activities in filing charges and sending letters stating penalties to Ees for post resignation conduct of crossing picket line were coercive and restrictive; however, ct believed that direct threats to Ees of such penalties could also have been properly considered by ALJ)

N.L.R.B. v. Plumbers and Steamfitters Local No. 40 **642 F.2d 486(T) (C.A. 9, Feb 19, 1981)**

(filing charges against U members for filing initial ULP complaint, unlawful as such charges *Touches part of public domain covered by Act*, and member's failure to resort to intra-U grievance procedures does not bar claim)

5075-5050 Expulsion

Teamsters, Local Union 215 (B & W Construction Company) **251 NLRB No. 164**

(threat to expel Ee-member and subsequent expulsion assertedly for permitting non-U laborer to perform U work of driving truck, unlawful, where

5075-5033—Cont.

real reason was failure of member herein and fellow member who had filed ULP charges against U, to settle and withdraw such charges at U official's request, as evidenced by Ee-member's involvement in fellow member's filing of charges, timing of unprecedented expulsion, and U official's full participation in expulsion proceeding w/o making any effort to get U steward to drop intra-U charges against member herein)

United Steelworkers of America, Local 8831
(Chapin & Bangs Steel Company, Inc.) JD-(NY)-97-80

(U violates Act if it disciplines member because he filed ULP charge against U, and unlawful disciplining covers fining as well as expulsion; although U does not violate Act when it expels from membership U member who files either a decertification or deauthorization ptn with Bd, it does violate Sec. 8(b)(1)(A) when it fines U member for filing such ptns)

United Steelworkers of America, Local 8831
(Chapin & Bangs Steel Company, Inc.) JD-(NY)-97-80

(U's contention, based on interpretation of its committee's report, to make it appear that expulsion and not fining of U member was discipline imposed on him because he had filed deauthorization ptn against U, rejected, where language in report was quite clear in stating that if U member did not pay fine he would be expelled)

5075-5033-3300 Refusal to honor picket line

Graphic Arts International Union, Local No. 32B,
AFL-CIO-CLC (Banta Division of George
Banta Company, Inc.) 250 NLRB No. 130

(Us which summoned former members to appear before their executive boards for conduct (returning to work during strike) occurring after their effective resignations violative)

Old Pueblo Lodge No. 933, Machinists (Hughes
Aircraft Company) JD-(SF)-122-80

(fines, expulsions, and charges against Ees for crossing picket line during strike in contravention of strike amnesty agreement, unlawful and not protected by Sec. 8(b)(1)(A) proviso notwithstanding discipline was undertaken before U signed agreement, since agreement was not solely prospective but intended to cover action during strike, and U, by signing it, waived right to discipline Ees for action during strike and bound its individual members as well as itself to abide by agreement)

5075-5033-5000 Enforceable as sanction against member for filing decertification or representation petition

General Warehousemen, Local 598, Teamsters JD-(SF)-196-80

5075-5033-6600 Voting against representation by union of which voter is a member

Machine Stone Workers, Rubbers, Sawyers and
Helpers Local 89, a/w Tile, Marble and
Terrazzo Finishers and Shopmen International
Union, AFL-CIO (Bybee Stone Company, Inc.) 265 NLRB No. 069

(expelling U members for voting against U's R in Bd election where knowledge of how they voted was not improperly acquired due to coincidence that all votes were against R, not unlawful under proviso; U members' actions were derogatory to U's representational status, secrecy of ballot was not impaired, Bd election process was not interfered with and voters' rights were not infringed)

5075-5033-7500 Enforceable as sanction against resigned member for crossing picket line

Glass Workers' Local Union No. 748, Painters
(Auto Glass Service Co.) JD-(SF)-271-80

(imposing fines on Ee-members who had duly resigned from U for their post-resignation crossing of picket line and working at shops at which U was on strike, violative)

5075-5050 Threats

Sacks Electric Company 248 NLRB No. 092

(U's threat to file internal U charges against U members, and filing of such charges against one of them, because they had protested and sought to vindicate their right to sign referral list at U's hiring hall, unlawful)

5075-5050-0100 Generally

Graphic Arts International Union, Local No. 32B,
AFL-CIO-CLC (Banta Division of George
Banta Company, Inc.) 250 NLRB No. 130

(statements made by U agents to news media that U members who resigned and crossed picket line would be fired violative)

Plumbers, Local Union 598 (Columbia Mechanical
Contractors Association) 250 NLRB No. 020

(threats affecting Ee as well as fellow members of U in their dispatches from hiring hall held violative when made because Ee filed charges with Bd and were employment related)

5075-5050-3300 Charges by union against member if he resorts to or is involved in Board processes

Teamsters, Local Union 215 (B & W Construction
Company) 291 NLRB No. 10

(threat to expel Ee-member and subsequent expulsion assertedly for permitting non-U laborer to perform U work of driving truck, unlawful, where real reason was failure of member herein and fellow member who had filed ULP charges against U, to settle and withdraw such charges at U official's request, as evidenced by Ee-member's involvement in fellow member's filing of charges, timing of unprecedented expulsion, and U official's full participation in expulsion proceeding w/o making any effort to get U steward to drop intra-U charges against member herein)

5075-5067 Suspension from membership

5075-5067-0100 Generally

The Buffalo Newspaper Guild, Local 26, and The
Newspaper Guild, AFL-CIO-CLC (Buffalo
Courier Express, Inc.) 265 NLRB No. 048

(U lawfully expelled U member for having filed charges with EEOC in his official capacity as grievance chairman w/o proper authorization; moreover, fine U imposed on member not violative where not established that fine was related to dues which would be foregone by his expulsion from U; furthermore, Bd will not otherwise inquire into reasonableness of fine as this is internal U matter protected by 8(b)(1)(A) proviso)

East Texas Motor Freight 262 NLRB No. 101

(local U's processing intra-U charges against 2 dissident members resulting in their suspension; one for 6 months and other for 3 years, not violative, since findings were based on sufficient cause (violence) unrelated to protected activity)

5075-5067-6700 Illegal where rule was discriminatorily applied

Building Material & Dump Truck Drivers Local
420, Teamsters (Standard Concrete Material,
Inc.) 260 NLRB No. 118

(U's advising Ees of their suspension from membership in U for nonpayment of dues, and requiring reinitiation fee and reciting that failure to do so would result in their termination, violative where U was never representative of E's Ees, since transfer of E's Ees from another U to U was ineffective)

5075-5067-7500 Not enforceable for crossing picket line

Local 714, Operating Engineers (Contractors
Foundation Drilling Company) 262 NLRB No. 142

(U violated Act when it imposed discipline on member who was employed by secondary E at common situs where U was lawfully picketing primary E and Ee never crossed picket line but entered and left by reserved gate)

5075-5075 Suspension or termination from apprenticeship program

Local No. 121, Plasterers (Associated Building
Contractors of Lafayette, Inc.) 264 NLRB No. 029

(violation where GC presented *prima facie* case of U business agent's unlawfully recinding Ee's referral and advising Ee of termination of his apprenticeship because of his criticism of way business agent ran U, and U failed to show that it would have acted thus even if Ee had not criticized business agent; U failed to show why it continued to refer Ee until day of criticism in spite of alleged E complaints, why it never discussed complaints with Ee, and why complaints about him differed from complaints about other Ees)

5075-5076 Removal from job

Marsh Investment Corporation d/b/a The
Claremont Resort Hotel and Tennis Club 260 NLRB No. 084

(U which requested that E discharge Ee under provisions of U security clause for nonpayment of U dues violated Act where U's notice to Ee on amount that he owed was defective, notice was received late due to mistake by post office, Ee tendered partial payment before due date and U never notified him that it didn't accept partial payments; moreover, U accepted rest of money owed after last day to pay had passed thus waiving its rights to enforce U security clause)

Local Union No. 46 Metallic Lathers and
Reinforcing Iron Workers (Cement League) 259 NLRB No. 010

(U which unlawfully disciplined members for disruptive conduct at U meeting by requiring them to remove themselves from their positions as foremen, further violated Act by reading report at U meeting which outlined disciplinary action)

Siro Security Service, Inc. 247 NLRB No. 157

5075-5083 Removal of member from office

5075-5083-2500 Union officers affected

H. H. Robertson Company 263 NLRB No. 173

(U's filing internal charges against supervisor, fining and removing him from U office for *hiring his son and friend off street* in violation of oath to secure employment for U members, violative, where supervisor had requested Ees through hiring hall but there being no applicants in hall, relied on E's contractual right to hire directly under those circumstances and on rights of individuals not registered to be hired and since U's actions amounted to

5075-5083-2500—Cont.

demand supervisor prefer U job applicants over non-members, and proceedings reasonably tended to make individuals present at hearing, in believing it wise to apply for membership and use hiring hall)

N.L.R.B. v. Local 212, Automobile Workers 690 F.2d 82 (C.A. 6, Oct. 1982)

(U violated Act when it removed member from his position as chairman of Fair Employment Practices Committee after he had filed ULP charges with Bd alleging that he had encountered resistence while attempting to process grievance submitted to his committee; it is immaterial that Bd did not issue complaint on charge as he acted in good faith, and also fact that removal from position involved no loss of salary or seniority as result is to *chill* willingness of other U members to file charges with Bd)

5075-5091 Denial of membership

5075-5091-0100 Generally

Machine Stone Workers, Rubbers, Sawyers and Helpers Local 89, a/w Tile, Marble and Terrazzo Finishers and Shopmen International Union, AFL-CIO (Bybee Stone Company, Inc.) 265 NLRB No. 069

(to compel labor organization to keep as members persons opposed to collective bargaining by the U they have designated for that purpose and to which they have pledged allegiance and support is inconsistent with the fundamental principle of trade unionism and thwarts the Act's underlying purpose of fostering collective bargaining)

Machinery Movers, Riggers and Machinery Erectors Local 136, Iron Workers (United Exposition Service Co., Inc.) 252 NLRB No. 058

(refusal to allow prospective member to join U because he had filed charges against U with Bd violative)

5075-5098 Denial of benefits

International Brotherhood of Pottery & Allied Workers, AFL-CIO (Colton Manufacturing, Inc.) 254 NLRB No. 035

(U's refusal to pay accrued strike benefits to strikers who resigned from U and returned to work for E prior to end of strike, not unlawful since not punitive where U's constitution limited strike benefits to those in actual need using earnings as criteria rather than considering benefits renumeration for services during strike, and absent evidence U would have construed its disbursement rules more generously if Ees had obtained positions elsewhere than at struck E)

International Association of Machinists and Aerospace Workers, Aeronautical Industrial District Lodge 720 v. N.L.R.B. 625 F.2d 119 (C.A. 9, 1980)

(denying *financial core* members privilege of buying unemployment stamps rather than pay full amount of dues when they were unemployed violative where only reason they were denied privilege was because they were not U members)

5085 PROHIBITION AGAINST EMPLOYEES' USE OF UNION BULLETIN BOARD

Teamsters Local 515 (Roadway Express, Inc.) 248 NLRB No. 028

(no violation by U's removal from U bulletin board in Ees' breakroom of material posted by dissident member criticizing U and its leaders, notwithstanding U had previously allowed Ees to post all types of notices on bulletin board, where there was no discipline, threat or implication of retribution by U against Ee, like literature was distribution in breakroom w/o either E or U action, and *all-purpose* bulletin board was available)

Charles E. Helton v. N.L.R.B. 656 F.2d 883 (C.A.D.C., Jun 1981)

(U's conduct in removing materials critical of U from U's bulletin board, violative; even if alternative means of communication were available, their availability was irrelevant)

Charles E. Helton v. N.L.R.B. 656 F.2d 883 (C.A.D.C., Jun 1981)

(U's conduct in removing Ee's materials critical of U from U's bulletin board was not insulated by internal U affairs proviso, since it did not serve legitimate U interest and would have frustrated free speech rights guaranteed by LMRDA)

542 UNION COERCION OF EMPLOYER IN SELECTION OF REPRESENTATIVES

0100 GENERALLY

N.L.R.B. v. Amax Coal Co., A Division of Amax, Inc., et al. 101 U.S. 2789 (U.S. SCt, June 1981)
(E-selected trustees of trust fund created under Sec. 302(c)(5) held not Sec. 8(b)(1)(B) E representatives for purposes of bargaining or adjusting grievances, since their duties are not consistent with E-agent's duties but rather are duties of loyalty to trust's beneficiaries under established equity principles and Sec. 302(c)(5) language and legislative history; Congress codified strict fiduciary standards in ERISA with intent to prevent dual loyalty; it passed Sec. 8(b)(1)(B) to prevent Us from pressuring Es about choosing representatives U wanted, not about contributing to multi-E funds as here)

Operating Engineers, Local Union No. 428 (Bechtel Power Corporation) JD-(SF)78-82
(U's contention that processing members internal U charge against supervisor fining him and ordering supervisor to trial was purely ministeral and free of animus, rejected, since charge on its face made clear charge was based on fact fellow member fired him and thus *clearly addressed action protected by Section 8(b)(1)(B))*

Teamsters Local 296 (Northwest Publications, Inc.) 250 NLRB No. 126

0125 SCOPE OF PRESCRIPTION

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 147
(U's contention that its picketing, threatening strike or work stoppage and related conduct were not aimed at removal of E's representative but solely at his resort to violence, and therefore U's actions constituted protected activity since his presence on job threatened Ee safety, rejected; in labor dispute Act allows Ees to engage in any concerted activity unless it falls, as herein, w/i proscription of 8(b)(1)(B) which is not conditioned upon perfect conduct by representative and places some limitation on Ees' right to strike)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 147
(absent an apparent and immediate threat to Ee safety which might justify a work stoppage or other action either under Sec. 502 of Act or as a matter of general equity, a U, whatever its motivation, cannot by restraint and coercion force E to select or remove its representative for purposes of collective bargaining or adjustment of grievances)

0125-2800 Act does not prescribe scienter for 8(b)(1)(B)

International Longshoremen's and Warehousemen's Union, Local No. 10 (Pacific Maritime Association) 254 NLRB No. 065
(U's instigation of work stoppages to protest E's choice of walking bosses violative where contract provides that E chooses walking bosses; moreover, fact that U is protesting E's alleged racial discrimination in choosing walking bosses is immaterial, as U's motives are irrelevant)

0125-5000 Maintains employer agent's freedom to act in employer's interest

N.L.R.B. v. Electrical Workers, Local Union No. 73 621 F.2d 1035 (C.A. 9, June 1980)
(major concern of Congress in enacting 8(b)(1)(B) of NLRA, was to prevent Us from forcing Es into or out of multi-E bargaining units and to guarantee that E's bargaining representative would be completely faithful to E's desires)

N.L.R.B. v. Electrical Workers, Local Union No. 73 621 F.2d 1035 (C.A. 9, June 1980)
(ct found U's fining of its member for working in non-U shop and who was grievance arbiter for E, not violative, since U neither represented company's Ees nor had it demonstrated desire to represent such Ees; U had no incentive to either influence company's choice of bargaining representative or affect representative's loyalty to E; acts did not deprive E of loyal bargaining representative)

0125-9000 Preserves employer's right to select representative

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) 249 NLRB No. 182
(placing supervisor, who had been lawfully suspended from membership year ago for nonpayment of dues, on list of members suspended and only other name on list was supervisor suspended for working behind picket line, violative, since placement of former on list created impression he, too, was suspended for refusing to honor picket line and thereby interfering with ability of E to obtain supervisors from among U members)

N.L.R.B. v. Electrical Workers, Local Union No. 73 621 F.2d 1035 (C.A. 9, June 1980)
(ct found U's fining of its member for working in non-U shop and who was grievance arbiter for E, not violative, since U neither represented company's Ees nor had it demonstrated desire to represent such Ees; U had no incentive to either influence company's choice of bargaining representative or affect representative's loyalty to E; acts did not deprive E of loyal bargaining representative)

0175 MAJORITY STATUS OF UNION NOT REQUIRED

Plumbers, Local Union 119 (Kamtech, Inc. 264 NLRB No. 094
(joint violation where, contemporaneously with local's organizing activities at E, one local instituted charges against statutory supervisors, referring said charges for processing to supervisor members own local who tried them and fined them for, inter alia, working for non-U E as this amounts to restraint and coercion by U against selecting representative; furthermore, threat of bodily harm by locals to these supervisors if they continued working for this E is more direct restraint and coercion)

3300 FORMS OF RESTRAINT OR COERCION AND THREATS THEREOF

3333 ON EMPLOYER

3333-0100 Generally

Local Union No. 46 Metallic Lathers and Reinforcing Iron Workers (Cement League) 259 NLRB No. 010
(restraint or coercion does not require economic pressure directed at E but can be accomplished by internal U discipline which reasonably tends to deprive E of right to select its representative)

3333-1700 Strike or work stoppage

Asbestos Workers Local Union No. 27, (Master Insulators Association, Inc.) 263 NLRB No. 118
(refusal to bargain with E assoc. about apprenticeship training, and meet with reps., threatening strike as attempt to dictate who should be selected for bargaining, violative; joint apprenticeship committee existed to administer trust fund-financed program; E-assoc. always chose same 3 to serve as trustees of fund and assoc. reps., but here assoc. requested trustees resign but remain reps.; U refused to bargain so long as 1 of former trustees still remained as rep.; role of trustee distinct from rep., trustee would not be bargaining rep. U's actions coerced and restrained E-assoc. in its choice of rep.)

International Longshoremen's and Warehousemen's Union, Local No. 10 (Pacific Maritime Association) 254 NLRB No. 065
(U's instigation of work stoppages to protest E's choice of walking bosses violative where contract provides that E chooses walking bosses; moreover, fact that U is protesting E's alleged racial discrimination in choosing walking bosses is immaterial, as U's motives are irrelevant)

3333-1700—Cont.

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 147
(although E representative's altercation with Ee, who was U president, could have been factor in E's discharge of representative, real reason was U's continuous demand for his dismissal which it sought by engaging in picketing, threats of strike or work stoppage and violence, and confrontations which clearly constituted restraint and coercion of E in selection of its representative)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)
(U's striking E to compel it to join multi-E association and negotiate through association instead of independently with U, violative, where E's letter to U had plainly stated E's intention to bargain individually with U)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors,* 559 F.2d 222)

Central Florida Sheet Metal Contractors Association, Inc. v. N.L.R.B. 664 F.2d 489 (C.A. 5, Dec. 1981)
(contention that by striking to have trust fund provision included in contract U was coercing E association in its choice of bargaining agent, rejected, since supreme ct has held that trust fund trustee acts solely as fiduciary, not in interest of party that appointed him; facts which E association alleged rendered trustee selection process not valid did not cause trustees to function as bargaining agents, and remedy for allegedly invalid process lay with district ct, which has authority to enforce Sec. 302 of LMRA governing trust funds)

3333-3300 Picketing

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 147
(although E representative's altercation with Ee, who was U president, could have been factor in E's discharge of representative, real reason was U's continuous demand for his dismissal which it sought by engaging in picketing, threats of strike or work stoppage and violence, and confrontations which clearly constituted restraint and coercion of E in selection of its representative)

Pacific Northwest Chapter of The Associated Builders & Contractors, Inc. v. N.L.R.B. 638 F.2d 73 (C.A. 9, Apr 17, 1981)
(picketing to enforce U's demand to include foremen in unit, unlawful)

3333-6000 Physical violence

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 147
(although E representative's altercation with Ee, who was U president, could have been factor in E's discharge of representative, real reason was U's continuous demand for his dismissal which it sought by engaging in picketing, threats of strike or work stoppage and violence, and confrontations which clearly constituted restraint and coercion of E in selection of its representative)

Local 295, Teamsters (International Customs Services, Inc.) JD-(SF)-81-80

3333-7300 Requesting discharge or replacements

H. H. Robertson Company 263 NLRB No. 173
(violation, where U, by complaining to management frequently, attempted to cause and caused discharge of general foreman because of his opposition to U leadership since foreman was E's representative for bargaining and adjustment of grievances)

International Longshoremen's and Warehousemen's Union, Local No. 10 (Pacific Maritime Association) 254 NLRB No. 065
(U's instigation of work stoppages to protest E's choice of walking bosses violative where contract provides that E chooses walking bosses; moreover, fact that U is protesting E's alleged racial discrimination in choosing walking bosses is immaterial, as U's motives are irrelevant)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 147
(violation, where U demanded and obtained discharge of E's personnel relations officer through means of picketing, threats of work stoppage or strike, violent acts and confrontations, and actual confrontations, therebyrestraining and coercing E in selection of his representative for purposes of collective bargaining or adjustment of grievances)

3333-8500 Refusal to meet with designated representative

Asbestos Workers Local Union No. 27, (Master Insulators Association, Inc.) 263 NLRB No. 128
(refusal to bargain with E assoc. about apprenticeship training, and meet with reps., threatening strike as attempt to dictate who should be selected for bargaining, violative; joint apprenticeship committee existed to administer trust fund-financed program; E-assoc. always chose same 3 to serve as trustees of fund and assoc. reps., but here assoc. requested trustees resign but remain reps.; U refused to bargain so long as 1 of former trustees still remained as rep.; role of trustee distinct from rep., trustee would not be bargaining rep. U's actions coerced and restrained E-assoc. in its choice of rep.)

3333-9500 Fine levied against union member employee or employer for employer's refusing contract with union

Local 460, Plumbers (De Best Plumbing, Inc.) JD-(SF)-190-82
(local U bringing internal U charges and fining member of sister local, who was acting as general manager and supervisor at contracting business of which his father was sole shareholder, unlawful, since U motivated by member working as E's supervisor and representative during dispute with U over E's failure to hire local U members which had resulted in picketing and E filing Section 8(b)(7)(C) charge and also failure to honor collective bargaining agreement to which there was dispute as to whether contract expired)

3333-9900 Fine levied against union member employer for crossing picket line

Glaziers, Architectural Metal and Glass Workers Union, Local 767, Painters JD-(SF)-370-80
(violation by fining supervisor for post-resignation conduct of performing supervisory work during sympathy strike; defense that U lacked knowledge that former member was supervisor rejected, as his changed status was readily obtainable)

3367 ON REPRESENTATIVE

3367-0100 Generally

Local Union No. 46 Metallic Lathers and Reinforcing Iron Workers (Cement League) 259 NLRB No. 010
(restraint or coercion does not require economic pressure directed at E but can be accomplished by internal U discipline which reasonably tends to deprive E of right to select its representative)

Plumbers, Local 44 (W. R. Thomason, Inc.) JD-(SF)-247-80
(international's remission of fines imposed by U against supervisor-members for discharging Ee-member did not moot finding herein that U's conduct was unlawful, since supervisors were given no assurance by international that they would not be retried for conduct for which they were fined; supervisors expended time, money, and effort in defending themselves; guilty findings against them remained in U records; effect on E has not been remitted; and international remitted fines after reviewing the matter while ULP proceedings were pending)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) JD-818-79
(where supervisor-member's ownership interest in E was only 4 percent, U was not free to fine the supervisor-member since supervisor-member's interest was not so substantial as to make him an E)

3367-3300 Refusal to meet with designated representative

Local 295, Teamsters (International Customs Services, Inc.) JD-(SF)-81-80
(violation, where U conditioned bargaining on physical withdrawal of E's counsel and threat implemented by picketing E which precipitated withdrawal of counsel resulting in disadvantage of counsel having to communicate with both U and company negotiators by telephone and E being able to consult with its counsel only during recesses)

3367-8000 Coercive tactics to cause removal

H. H. Robertson Company 263 NLRB No. 173
(violation, where U, by complaining to management frequently, attempted to cause and caused discharge of general foreman because of his opposition to U leadership since foreman was E's representative for bargaining and adjustment of grievances)

Local 295, Teamsters (International Customs Services, Inc.) JD-(SF)-81-80
(violation, where U conditioned bargaining on physical withdrawal of E's counsel and threat implemented by picketing E which precipitated withdrawal of counsel resulting in disadvantage of counsel having to communicate with both U and company negotiators by telephone and E being able to consult with its counsel only during recesses)

3367-6700 Internal union discipline or threat thereof to enforce adherence to union authority

3367-6701 Generally

N.L.R.B. v. Electrical Workers, Local Union No. 73 621 F.2d 1035 (C.A. 9, June 1980)

(U activity prohibited by Section 8(b)(1)(B) includes: (1) picketing company in attempt to force E to dismiss labor relations consultant thought to be *anti-U,* (2) attempting to force Es to join or resign from multi-E bargaining associations, (3) attempting to force Es to select foremen from ranks of U members, (4) expelling U-member foreman from U for assigning unit work in violation of bargaining agreement, and (5) penalizing U members for performing nonU supervisory duties during strike and forbidding them from resigning from U to avoid further threats)

N.L.R.B. v. Electrical Workers, Local Union No. 73 621 F.2d 1035 (C.A. 9, June 1980)

(ct found U's fining of its member for working in non-U shop and who was grievance arbiter for E, not violative, since U neither represented company's Ees nor had it demonstrated desire to represent such Ees; U had no incentive to either influence company's choice of bargaining representative or affect representative's loyalty to E; acts did not deprive E of loyal bargaining representative)

3367-6701-5080 Discipline for performing nonsupervisory work during work stoppage

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) 249 NLRB No. 182

(suspension of 2 supervisors for performing rank-and-file work during strike violative where neither supervisor performed sufficient rank and file work to remove them from Act's protection)

3367-6701-5033 Substantiality of work performed

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) JD-818-79

(U business manager's preferring charges against supervisor-member of U for crossing picket line and performing bargaining unit work during strike, violative, where supervisor-member spent only minimal amount of time performing the work)

3367-6701-5067 Nature of work performed

Teamsters Local 296 (Northwest Publications, Inc.) 250 NLRB No. 126

(fining supervisor, member of U, for performing *pre-start* duties (thereby working *off the clock*) not violative, since U was not attempting through its discipline of supervisor to force E to change its interpretation of collective bargaining agreement, but rather to address personal decision of supervisor to violate trade U principles by *donating* labor to E; *Yakima, 212 NLRB 908 (1974),* distinguished)

3367-6708 Summoning representative to appear before union executive board or membership

Operating Engineers, Local Union No. 428 (Bechtel Power Corporation) JD-(SF)78-82

(violation, where U served supervisor who was adjustor of grievances and bargaining agent for E with internal U charges, tried him for firing fellow U member, fined and put him on probation, threatened to suspend or expel him unless he paid fine, and refunded and refused to accept dues until fine paid)

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) 249 NLRB No. 182

3367-6713>112Violence

*Plumbers, Local Union 119 (Kamtech, Inc.*264 NLRB No. 094

(joint violation where, contemporaneously with local's organizing activities at E, one local instituted charges against statutory supervisors, referring said charges for processing to supervisor members own local who tried them and fined them for, inter alia, working for non-U E as this amounts to restraint and coercion by U against selecting representative; furthermore, threat of bodily harm by locals to these supervisors if they continued working for this E is more direct restraint and coercion)

3367-6717 Disciplinary charges

*Plumbers, Local Union 119 (Kamtech, Inc.*264 NLRB No. 094

(joint violation where, contemporaneously with local's organizing activities at E, one local instituted charges against statutory supervisors, referring said charges for processing to supervisor members own local who tried them and fined them for, inter alia, working for non-U E as this amounts to restraint and coercion by U against selecting representative; furthermore, threat of bodily harm by locals to these supervisors if they continued working for this E is more direct restraint and coercion)

H. H. Robertson Company 263 NLRB No. 173

(U's filing internal charges against supervisor, fining and removing him from U office for *hiring his son and friend off street,* unlawful, where supervisor had requested Ees through hiring hall, but there being no applicants in hiring hall U gave permission to hire directly, and since U's actions rooted in dispute over interpretation of bargaining agreement; and filing charges against supervisor for actions which constituted interpretation and assertion of E's rights under contract was attempt by U to impose its own interpretation of contract on E and coerced E by adversely affecting supervisor's bargaining and grievance adjustment tasks)

Operating Engineers, Local No. 428 (C.S. McCrossan, Inc.) (JD-(SF)-196-82

(intra-U charges against and discipline of supervisor for operating, when E was shorthanded, equipment normally operated by Ee-members of U unlawful in that U's action tended to deprive E of his 8(b)(1)(B) representative's undivided loyalty in matters of grievance adjustments or collective bargaining, where there was genuine dispute between supervisor and U over interpretation of contractual language allowing foremen to perform bargaining unit work in emergency or absence of operator, and U was attempting to impose its interpretation on supervisor by use of intra-U discipline in dispute not involving internal U matter)

Local 460, Plumbers (De Best Plumbing, Inc.) JD-(SF)-190-82

(local U bringing internal U charges and fining member of sister local, who was acting as general manager and supervisor at contracting business of which his father was sole shareholder, unlawful, since U motivated by member working as E's supervisor and representative during dispute with U over E's failure to hire local U members which had resulted in picketing and E filing Section 8(b)(7)(C) charge and also failure to honor collective bargaining agreement to which there was dispute as to whether contract expired)

Local 460, Plumbers (De Best Plumbing, Inc.) JD-(SF)-190-82

(U's business representative's statements to supervisor regarding his E not hiring members of local U, working out differences, and dropping possible U charges, not unlawful threat to file internal U charges against supervisor, since not clear whether charges would be brought against E or supervisor, statement too vague for supervisor to reasonably conclude charges would be brought against him, and absent evidence U had considered filing charges against supervisor at that time)

International Union of Elevator Constructors, Local No. 16 (Otis Elevator Company) JD-183-80

(U's conduct in bringing charges against supervisor who was E's representative for purpose of resolving grievances, subjecting him to trials, and fining him on one charge for violating U's constitution, unlawful; to hold otherwise would permit U to ensure contracts would be interpreted as it sees fit by, first, seeking arbitration of grievances which could not be resolved and, second, ensuring that no disputes arise by pressuring supervisors by means of internal discipline, thereby inhibiting supervisor from disagreeing with U's interpretation of contract and working conditions)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) JD-818-79

(violation where U tried and fined supervisor-member for crossing picket line and performing unit work during strike; supervisor-member spent only minimal amount of time performing work)

3367-6750 Fines

H. H. Robertson Company 263 NLRB No. 173

(U's filing internal charges against supervisor, fining and removing him from U office for *hiring his son and friend off street,* unlawful, where supervisor had requested Ees through hiring hall, but there being no applicants in hiring hall U gave permission to hire directly, and since U's actions rooted in dispute over interpretation of bargaining agreement; and filing charges against supervisor for actions which constituted interpretation and assertion of E's rights under contract was attempt by U to impose its own interpretation of contract on E and coerced E by adversely affecting supervisor's bargaining and grievance adjustment tasks)

Operating Engineers, Local Union No. 428 (Bechtel Power Corporation) JD-(SF)78-82

(violation, where U served supervisor who was adjustor of grievances and bargaining agent for E with internal U charges, tried him for firing fellow U member, fined and put him on probation, threatened to suspend or expel him unless he paid fine, and refunded and refused to accept dues until fine paid)

Cement Masons Union Local No. 526 of The Operative Plasterers' and Cement Masons' International Association, AFL-CIO (P. J. Dick Contracting, Inc.) 261 NLRB No. 139

(U's fining cement finisher, who was hired as future supervisor, for taking job through E's selection rather than through contractual hiring hall procedure not violative; fine was essence of lawful internal U discipline for violating contractual understanding)

Painters District Council No. 36 239 NLRB No. 106

(restraining or coercing E in selection of representative for adjusting grievances by preferring charges against, holding trial of, and fining supervisor to discipline him for working for *nonaffiliated contractor,* unlawful where prior to contract's expiration U expressed intent to bargain with E, informed E telephonically that it would not dispatch workers until E signed new con-

3367-6750—Cont.

tract and presented no evidence that it subsequently abandoned its intent to continue to represent E's Ees)

International Brotherhood of Electrical Workers, Local Union No. 323 (Drexel Properties, Inc.) **255 NLRB No. 182**

(U's fine of member for working in supervisory capacity for non-U E violative as it constitutes coercion of E in selection of grievance representative)

Plumbers, Local No. 364 (William Stewart d/b/a West Coast Contractors) **254 NLRB No. 147**

(U's preferring U charges, fining and expelling member who was working as supervisor for E with which U had Section 8(f) agreement but which employed non-U Ees and was not abiding by bargaining agreement, violative, notwithstanding U had subsequently disclaimed interest in representing Ees and contention U never represented majority of Ees, since E and U were signatories to agreement with U which U was attempting to enforce when U initiated disciplinary action against supervisor)

Teamsters Local 296 (Northwest Publications, Inc.) **290 NLRB No. 126**

(fining supervisor, member of U, for performing *pre-start* duties (thereby working *off the clock*) not violative, since U was not attempting through its discipline of supervisor to force E to change its interpretation of collective bargaining agreement, but rather to address personal decision of supervisor to violate trade U principles by *donating* labor to E; *Yakima, 212 NLRB 908 (1974)*, distinguished)

Carpenters, Local Union 1098 (Basic Industries, Inc.) **JD-(ATL)-83-82**

(U's fining and indefinitely suspending E's foreman (U member) for working for non-U E, held violative since U restrained and coerced E in selection of its grievance adjustment representative; part of foreman's supervisory responsibility was to instruct rank-and-file Ees in proper method for performing their tasks; U's interest in protecting rank-and-file work which existed in *Florida Power and Light Co. v. I.B.E.W. Local 134, AFL-CIO 417 U.S. 790* was not present in instant case)

Glaziers, Architectural Metal and Glass Workers Union, Local 767, Painters **JD-(SF)-370-80**

(violation by fining supervisor for post-resignation conduct of performing supervisory work during sympathy strike; defense that U lacked knowledge that former member was supervisor rejected, as his changed status was readily obtainable)

Glass Workers' Local Union No. 740, Painters (Auto Glass Service Co.) **JD-(SF)-271-80**

(imposing fines on supervisor members who had duly resigned from U for their post-resignation crossing of picket line and performing more than minimal amount of rank-and-file work, violative)

Plumbers, Local 44 (W. R. Thomason, Inc.) **JD-(SF)-247-80**

(U unlawfully restrained and coerced E in its selection and retention of supervisors-members as its grievance adjusters by authorizing proceedings against supervisor over their exercise of supervisory duties and fundtions on behalf of E in discharging Ee-member, by bringing them to trial on Ee's charges, by issueing decision finding supervisors guilty of violation of international's constitution, by fining them for discharging Ee, and by petitioning international for apporval of its actions; moreover, fact that international remitted fines did not render case moot)

Steelworkers, Local 1256, and Local 1397 (United States Steel Corporation) **JD-275-80**

(imposition of monetary fine upon U member *for his decisive role in the discharge of a Union Brother through his written testimony,* violative, where *his decisive role* and *written testimony* were what he did in his supervisory capacity)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**

(U's fining supervisor-member for failing to perform scheduled picket duty during strike against E, violative, since supervisor-member was E's only Section 8(b)(1)(B) representative and his compliance with U's order would have deprived E of supervisor-member's services as job superintendent)

Northwest Publications, Inc. v. N.L.R.B. **656 F.2d 461 (C.A. 9, 1981)**

(U's fining of supervisor for performing *off-the-clock* activities for no pay, unlawful, since U contention that supervisor was entitled to overtime under contract for only *one* of his off-the-clock activities, U was in effect deciding unilaterally which of his acts covered under bargaining agreement and which supervisory, thus avoiding established grievance procedures and possibly affecting manner in which supervisor might fulfill grievance adjustor or collective bargaining function)

N.L.R.B. v. Electrical Workers, Local Union No. 73 **621 F.2d 1035 (C.A. 9, June 1980)**

(ct found U's fining of its member for working in non-U shop and who was grievance arbiter for E, not violative, since U neither represented company's Ees nor had it demonstrated desire to represent such Ees; U had no incentive to either influence company's choice of bargaining representative or affect representative's loyalty to E; acts did not deprive E of loyal bargaining representative)

3367-6751 Barring member from serving as supervisor

Local Union No. 46 Metallic Lathers and Reinforcing Iron Workers (Cement League) **259 NLRB No. 010**

(where U disciplined U members, who were foremen on their jobs, for disruptive behavior at U meeting by suspending them as foremen it violated Act; U had legitimate interest in disciplining Ees (fine or other penalty valid) as U members but its method deprived E of the right to select its representatives)

3367-6758 Removal from job

Local No. 1367, International Longshoremen's Association, AFL-CIO **JD-(NY)-48-80**

(U's deprivation of gang foreman of his post, not unlawful since he had failed to follow lawful seniority system that U had established to give better jobs to more senior workers)

3367-6767 Suspension

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**

(suspension of 2 supervisors for performing rank-and-file work during strike violative where neither supervisor performed sufficient rank and file work to remove them from Act's protection)

Carpenters, Local Union 1098 (Basic Industries, Inc.) **JD-(ATL)-83-82**

(U's fining and indefinitely suspending E's foreman (U member) for working for non-U E, held violative since U restrained and coerced E in selection of its grievance adjustment representative; part of foreman's supervisory responsibility was to instruct rank-and-file Ees in proper method for performing their tasks; U's interest in protecting rank-and-file work which existed in *Florida Power and Light Co. v. I.B.E.W. Local 134, AFL-CIO 417 U.S. 790* was not present in instant case)

3367-6783 Expulsion

Plumbers, Local No. 364 (William Stewart d/b/a West Coast Contractors) **254 NLRB No. 147**

(U's preferring U charges, fining and expelling member who was working as supervisor for E with which U had Section 8(f) agreement but which employed non-U Ees and was not abiding by bargaining agreement, violative, notwithstanding U had subsequently disclaimed interest in representing Ees and contention U never represented majority of Ees, since E and U were signatories to agreement with U which U was attempting to enforce when U initiated disciplinary action against supervisor)

3367-6787 Refusal to accept dues

Operating Engineers, Local Union No. 428 (Bechtel Power Corporation) **JD-(SF)78-82**

(violation, where U served supervisor who was adjustor of grievances and bargaining agent for E with internal U charges, tried him for firing fellow U member, fined and put him on probation, threatened to suspend or expel him unless he paid fine, and refunded and refused to accept dues until fine paid)

3367-6799 Other disciplinary action

Steelworkers, Local 1256, and Local 1397 (United States Steel Corporation) **JD-275-80**

(violation where local's president removed U member from golf team for reason that as supervisor he had issued disciplinary notice to rank-and-file member of U)

6700 REPRESENTATIVES AFFECTED

6725 FOR COLLECTIVE BARGAINING

6725-3300 Employer association

Abestos Workers Local Union No. 27, (Master Insulators Association, Inc.) **263 NLRB No. 118**

(refusal to bargain with E assoc. about apprenticeship training, and meet with reps., threatening strike as attempt to dictate who should be selected for bargaining, violative; joint apprenticeship committee existed to administer trust fund-financed program; E-assoc. always chose same 3 to serve as trustees of fund and assoc. reps., but here assoc. requested trustees resign but remain reps.; U refused to bargain so long as 1 of former trustees still remained as rep.; role of trustee distinct from rep., trustee would not be bargaining rep. U's actions coerced and restrained E-assoc. in its choice of rep.)

Abestos Workers Local Union No. 27, (Master Insulators Association, Inc.) **263 NLRB No. 118**

(where E-association acceded to U's demand that trustees E-association appointed to training fund be *industry-related* association request that order remedying U's ULPs include order that this language be deleted from collective bargaining agreement denied where C did not allege this provision as unlawful, matter was not fully litigated; moreover, since trustees are not collective-bargaining representatives w/i meaning of Sec. 8(b)(1)(B) U was free to insist upon qualifications of these individuals)

6725-3300—Cont.

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)

(U's striking E to compel it to join multi-E association and negotiate through association instead of independently with U, violative, where E's letter to U had plainly stated E's intention to bargain individually with U)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)

(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); *See Associated Contractors,* 559 F.2d 222)

N.L.R.B. v. Electrical Workers, Local Union No. 73 621 F.2d 1035 (C.A. 9, June 1980)

(major concern of Congress in enacting 8(b)(1)(B) of NLRA, was to prevent Us from forcing Es into or out of multi-E bargaining units and to guarantee that E's bargaining representative would be completely faithful to E's desires)

6725-5000 Employer's bargaining agent

United Food and Commercial Workers Union Local 1439, Chartered By United Food and Commercial Workers International Union, AFL-CIO-CLC (Food City West) 262 NLRB No. 036

(coercing E in selection of its bargaining representative by threatening to strike, striking and/or picketing, and circumventing E's chosen spokesman, unlawful)

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) 249 NLRB No. 182

(supervisor found sufficiently involved in negotiating process to be protected by Act where his job was to instruct principal negotiators of effect of various proposals)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 147

(contention that charging party, E's bargaining representative, was equitably barred in instant 8(b)(1)(B) proceeding from obtaining any relief sought, rejected, since *clean hands* doctrine does not operate against charging party inasmuch as proceedings are brought not for vindication of private rights but are brought in public interest and to effectuate statutory policy)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 147

(personnel relations officer held E's representative for purposes of collective bargaining and adjustment of grievances, notwithstanding U's contention that officer ceased to be such representative when he assertedly was relieved of his duties, where subsequent thereto officer continued to consider and recommend grievance dispositions, and E's offer to him of different managerial position was conditional and never effectuated)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 147

(violation, where U demanded and obtained discharge of E's personnel relations officer through means of picketing, threats of work stoppage or strike, violent acts and confrontations, and actual confrontations, therebyrestraining and coercing E in selection of his representative for purposes of collective bargaining or adjustment of grievances)

Local 295, Teamsters (International Customs Services, Inc.) JD-(SF)-81-80

(labor counsel)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)

(U's insisting to impasse for establishment of committee to develop adequate safety training programs for Ees, not violative, since function of training committee was merely advisory, with training representative limited to no more power than to advise and recommend, and all programs are such that E was in control with power to put them into effect or not)

N.L.R.B. v. Electrical Workers, Local Union No. 73 621 F.2d 1035 (C.A. 9, June 1980)

(major concern of Congress in enacting 8(b)(1)(B) of NLRA, was to prevent Us from forcing Es into or out of multi-E bargaining units and to guarantee that E's bargaining representative would be completely faithful to E's desires)

6750 FOR ADJUSTMENT OF GRIEVANCES

6750-0100 Generally

Teamsters Local 296, Sales Delivery Drivers, Warehousemen and Helpers Union w/o Teamsters (Northwest Publications, Inc.) 263 NLRB No. 184

(all supervisors w/i meaning of Sec. 2(11) are representatives w/i intent of Sec. 8(b)(1)(B) notwithstanding absence of evidence that individual in question is specifically vested with authority to act for E in collective bargaining or adjustment of grievance; this is *reservoir doctrine*)

6750-3300 Supervisors

Teamsters Local 296, Sales Delivery Drivers, Warehousemen and Helpers Union w/o Teamsters (Northwest Publications, Inc.) 263 NLRB No. 184

(U violated Act when it fined supervisor/member for performing certain pre-start job tasks as required by E for his supervisory position; U claimed pre-start activities violated collective-bargaining agreement but E had established practice of having supervisors perform such tasks; thus U sought to interfere with supervisory functions and was disputing applicability and interpretation of collective-bargaining agreement by disciplining supervisor/member rather than invoking grievance machinery for determination of contract provision)

Teamsters Local 296, Sales Delivery Drivers, Warehousemen and Helpers Union w/o Teamsters (Northwest Publications, Inc.) 263 NLRB No. 184

(all supervisors w/i meaning of Sec. 2(11) are representatives w/i intent of Sec. 8(b)(1)(B) notwithstanding absence of evidence that individual in question is specifically vested with authority to act for E in collective bargaining or adjustment of grievance; this is *reservoir doctrine*)

Painters District Council No. 36 259 NLRB No. 106

(restraining or coercing E in selection of representative for adjusting grievances by preferring charges against, holding trial of, and fining supervisor to discipline him for working for *nonaffiliated contractor,* unlawful where prior to contract's expiration U expressed intent to bargain with E, informed E telephonically that it would not dispatch workers until E signed new contract and presented no evidence that it subsequently abandoned its intent to continue to represent E's Ees)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 147

(personnel relations officer held E's representative for purposes of collective bargaining and adjustment of grievances, notwithstanding U's contention that officer ceased to be such representative when he assertedly was relieved of his duties, where subsequent thereto officer continued to consider and recommend grievance dispositions, and E's offer to him of different managerial position was conditional and never effectuated)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 147

(violation, where U demanded and obtained discharge of E's personnel relations officer through means of picketing, threats of work stoppage or strike, violent acts and confrontations, and actual confrontations, therebyrestraining and coercing E in selection [illegible] his representative for purposes of collective bargaining or adjustment [illegible] grievances)

Operating Engineers, Local No. 428 (C.S. McCrossan, Inc.) (JD-(SF)-196-82

(intra-U charges against and discipline of supervisor for operating, when E was shorthanded, equipment normally operated by Ee-members of U unlawful in that U's action tended to deprive E of his 8(b)(1)(B) representative's undivided loyalty in matters of grievance adjustments or collective bargaining, where there was genuine dispute between supervisor and U over interpretation of contractual language allowing foremen to perform bargaining unit work in emergency or absence of operator, and U was attempting to impose its interpretation on supervisor by use of intra-U discipline in dispute not involving internal U matter)

Steelworkers, Local 1256, and Local 1397 (United States Steel Corporation) JD-275-80

(imposition of monetary fine upon U member *for his decisive role in the discharge of a Union Brother through his written testimony,* violative, where *his decisive role* and *written testimony* were what he did in his supervisory capacity)

Steelworkers, Local 1256, and Local 1397 (United States Steel Corporation) JD-275-80

(violation where local's president removed U member from golf team for reason that as supervisor he had issued disciplinary notice to rank-and-file member of U)

International Union of Elevator Constructors, Local No. 16 (Otis Elevator Company) JD-183-80

(U's conduct in bringing charges against supervisor who was E's representative for purpose of resolving grievances, subjecting him to trials, and fining him on one charge for violating U's constitution, unlawful; to hold otherwise would permit U to ensure contracts would be interpreted as it sees fit by, first, seeking arbitration of grievances which could not be resolved and,

6750-3300—Cont.

second, ensuring that no disputes arise by pressuring supervisors by means of internal discipline, thereby inhibiting supervisor from disagreeing with U's interpretation of contract and working conditions)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**
(U business manager's preferring charges against supervisor-member of U for crossing picket line and performing bargaining unit work during strike, violative, where supervisor-member spent only minimal amount of time performing the work)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**
(U's fining supervisor-member for failing to perform scheduled picket duty during strike against E, violative, since supervisor-member was E's only Section 8(b)(1)(B) representative and his compliance with U's order would have deprived E of supervisor-member's services as job superintendent)

6750-6700 Low level supervisors

Pacific Northwest Chapter of The Associated Builders & Contractors, Inc. v. N.L.R.B. **638 F.2d 73 (C.A. 9, Apr 17, 1981)**
(picketing to enforce U's demand to include foremen in unit, unlawful)

6763 FOR ADMINISTERING TRUST FUNDS

N.L.R.B. v. Amax Coal Co., A Division of Amax, Inc., et al. **101 U.S. 2789 (U.S. SCt, June 1981)**
(E-selected trustees of trust fund created under Sec. 302(c)(5) held not Sec. 8(b)(1)(B) E representatives for purposes of bargaining or adjusting grievances, since their duties are not consistent with E-agent's duties but rather are duties of loyalty to trust's beneficiaries under established equity principles and Sec. 302(c)(5) language and legislative history; Congress codified strict fiduciary standards in ERISA with intent to prevent dual loyalty; it passed Sec. 8(b)(1)(B) to prevent Us from pressuring Es about choosing representatives U wanted, not about contributing to multi-E funds as here)

Central Florida Sheet Metal Contractors Association, Inc. v. N.L.R.B. **664 F.2d 489 (C.A. 5, Dec. 1981)**
(contention that by striking to have trust fund provision included in contract U was coercing E association in its choice of bargaining agent, rejected, since supreme ct has held that trust fund trustee acts solely as fiduciary, not in interest of party that appointed him; facts which E association alleged rendered trustee selection process not valid did not cause trustees to function as bargaining agents, and remedy for allegedly invalid process lay with district ct, which has authority to enforce Sec. 302 of LMRA governing trust funds)

Central Florida Sheet Metal Contractors Association, Inc. v. N.L.R.B. **664 F.2d 489 (C.A. 5, Dec. 1981)**
(Bd's interpretation of Sec. 8(d) of NLRA as permitting U to participate in selection of E-appointed trustee did not fail to accommodate Sec. 302 of LMRA since Sec. 8(b)(1)(B) of NLRA does not limit U's freedom to induce E to select a particular trustee because NLRA and LMRA have different purposes and standards to enforce, and to prevent U from striking to obtain E's participation in multi-E trust fund when E objects to trustee selection mechanism would hinder congressional policy favoring multi-E trust funds)

6775 POTENTIAL REPRESENTATIVES

6775-0100 Generally

Cement Masons Union Local No. 526 of The Operative Plasterers' and Cement Masons' International Association, AFL-CIO (P. J. Dick Contracting, Inc.) **261 NLRB No. 159**
(U's fining cement finisher, who was hired as future supervisor, for taking job through E's selection rather than through contractual hiring hall procedure not violative; fine was essence of lawful internal U discipline for violating contractual understanding)

6775-0150 Future representative resources of employer entitled to protection

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**
(placing supervisor, who had been lawfully suspended from membership year ago for nonpayment of dues, on list of members suspended and only other name on list was supervisor suspended for working behind picket line, violative, since placement of former on list created impression he, too, was suspended for refusing to honor picket line and thereby interfering with ability of E to obtain supervisors from among U members)

6787 FUND TRUSTEES

Abestos Workers Local Union No. 27, (Master Insulators Association, Inc.) **263 NLRB No. 118**
(refusal to bargain with E assoc. about apprenticeship training, and meet with reps., threatening strike as attempt to dictate who should be selected for bargaining, violative; joint apprenticeship committee existed to administer trust fund-financed program; E-assoc. always chose same 3 to serve as trustees of fund and assoc. reps., but here assoc. requested trustees resign but remain reps.; U refused to bargain so long as 1 of former trustees still remained as rep.; role of trustee distinct from rep., trustee would not be bargaining rep. U's actions coerced and restrained E-assoc. in its choice of rep.)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U'insisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); *See Associated Contractors,* 559 F.2d 222)

7500 REPRESENTATIVE'S ACTION FOR WHICH DISCIPLINED

7533 PERFORMANCE OF RANK-AND-FILE WORK

Teamsters Local 296 (Northwest Publications, Inc.) **250 NLRB No. 126**
(fining supervisor, member of U, for performing *pre-start* duties (thereby working *off the clock*) not violative, since U was not attempting through its discipline of supervisor to force E to change its interpretation of collective bargaining agreement, but rather to address personal decision of supervisor to violate trade U principles by *donating* labor to E; *Yakima, 212 NLRB 908 (1974)*, distinguished)

Carpenters, Local Union 1098 (Basic Industries, Inc.) **JD-(ATL)-83-82**
(U's fining and indefinitely suspending E's foreman (U member) for working for non-U E, held violative since U restrained and coerced E in selection of its grievance adjustment representative; part of foreman's supervisory responsibility was to instruct rank-and-file Ees in proper method for performing their tasks; U's interest in protecting rank-and-file work which existed in *Florida Power and Light Co. v. I.B.E.W. Local 134, AFL-CIO 417 U.S. 790* was not present in instant case)

Local Union #446, Electrical Workers (Bayou Electric Co. and Twin City Electric Co.) **JD-818-79**
(violation where U tried and fined supervisor-member for crossing picket line and performing unit work during strike; supervisor-member spent only minimal amount of time performing work)

Northwest Publications, Inc. v. N.L.R.B. **636 F.2d 461 (C.A. 9, 1981)**
(U's fining of supervisor for performing *off-the-clock* activities for no pay, unlawful, since U contention that supervisor was entitled to overtime under contract for only *one* of his off-the-clock activities, U was in effect deciding unilaterally which of his acts covered under bargaining agreement and which supervisory, thus avoiding established grievance procedures and possibly affecting manner in which supervisor might fulfill grievance adjustor or collective bargaining function)

7567 PERFORMANCE OF SUPERVISORY DUTIES

Teamsters Local 296, Sales Delivery Drivers, Warehousemen and Helpers Union w/o Teamsters (Northwest Publications, Inc.) **263 NLRB No. 104**
(U violated Act when it fined supervisor/member for performing certain pre-start job tasks as required by E for his supervisory position; U claimed pre-start activities violated collective-bargaining agreement but E had established practice of having supervisors perform such tasks; thus U sought to interfere with supervisory functions and was disputing applicability and interpretation of collective-bargaining agreement by disciplining supervisor/member rather than invoking grievance machinery for determination of contract provision)

Operating Engineers, Local Union No. 428 (Bechtel Power Corporation) **JD-(SF)78-82**
(violation, where U served supervisor who was adjustor of grievances and bargaining agent for E with internal U charges, tried him for firing fellow U member, fined and put him on probation, threatened to suspend or expel him unless he paid fine, and refunded and refused to accept dues until fine paid)

International Brotherhood of Electrical Workers, Local Union No. 323 (Drexel Properties, Inc.) **255 NLRB No. 182**
(U's fine of member for working in supervisory capacity for non-U E violative as it constitutes coercion of E in selection of grievance representative)

7567—Cont.

Glaziers, Architectural Metal and Glass Workers Union, Local 767, Painters JD-(SF)-370-80

(violation by fining supervisor for post-resignation conduct of performing supervisory work during sympathy strike; defense that U lacked knowledge that former member was supervisor rejected, as his changed status was readily obtainable)

Steelworkers, Local 1256, and Local 1397 (United States Steel Corporation) JD-275-80

(imposition of monetary fine upon U member *for his decisive role in the discharge of a Union Brother through his written testimony*, violative, where *his decisive role and written testimony* were what he did in his supervisory capacity)

Northwest Publications, Inc. v. N.L.R.B. 696 F.2d 661 (C.A. 9, 1983)

(U's fining of supervisor for performing *off-the-clock* activities for no pay, unlawful, since U contention that supervisor was entitled to overtime under contract for only *one* of his off-the-clock activities, U was in effect deciding unilaterally which of his acts covered under bargaining agreement and which supervisory, thus avoiding established grievance procedures and possibly affecting manner in which supervisor might fulfill grievance adjustor or collective bargaining function)

7583 WORKING FOR NONUNION EMPLOYER

*Plumbers, Local Union 119 (Kamtech, Inc.*284 NLRB No. 094

(joint violation where, contemporaneously with local's organizing activities at E, one local instituted charges against statutory supervisors, referring said charges for processing to supervisor members own local who tried them and fined them for, inter alia, working for non-U E as this amounts to restraint and coercion by U against selecting representative; furthermore, threat of bodily harm by locals to these supervisors if they continued working for this E is more direct restraint and coercion)

International Brotherhood of Electrical Workers, Local Union No. 323 (Drexel Properties, Inc.) 285 NLRB No. 182

(U's fine of member for working in supervisory capacity for non-U E violative as it constitutes coercion of E in selection of grievance representative)

Carpenters, Local Union 1096 (Basic Industries, Inc.) JD-(ATL)-60-81

(U's fining and indefinitely suspending E's foreman (U member) for working for non-U E, held violative since U restrained and coerced E in selection of its grievance adjustment representative; part of foreman's supervisory responsibility was to instruct rank-and-file Ees in proper method for performing their tasks; U's interest in protecting rank-and-file work which existed in *Florida Power and Light Co. v. I.B.E.W. Local 134, AFL-CIO 417 U.S. 790* was not present in instant case)

7587 DISREGARD OF SENIORITY RULES

Local No. 1367, International Longshoremen's Association, AFL-CIO JD-(NY)-48-80

(U's deprivation of gang foreman of his post, not unlawful since he had failed to follow lawful seniority system that U had established to give better jobs to more senior workers)

548 UNION CAUSATION OF EMPLOYER DISCRIMINATION

0100 GENERALLY

0125 NATURE AND SCOPE OF PROSCRIPTION

0125-6000 Actions must tend to encourage or discourage union membership

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) **251 NLRB No. 166**
(causing E to discharge Ees because Ees had withdrawn their membership in U and had not been referred through U's nonexclusive hiring hall, violative, where such action created presumption that desired effect was to encourage U membership and wasnot shown to have been essential to effective performance of U's representation of its constituency)

N.L.R.B. v. Wismer and Becker Contracting Engineers, and Electrical Workers Local Union 497 **654 F.2d 731(T) (C.A. 9, June 1981)**
(*Section 8(a)(1), 8(a)(2), 8(b)(1)(A) and 8(b)(2)* are violated only when actor's *true purpose* in discriminating was to encourage or discourage U membership; intent must be proved specifically unless actor's conduct implied prohibited motive)

N.L.R.B. v. Wismer and Becker Contracting Engineers, and Electrical Workers Local Union 497 **654 F.2d 731(T) (C.A. 9, June 1981)**
(enforcement denied when Bd's finding of violations based solely on discriminatory impact and consequent encouraging of U membership, which, w/o showing of intent, is erroneous legal foundation)

0125-7000 Specific proof of intent not required where conduct inherently destructive of employee rights

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**
(specific evidence of intent to encourage U membership not essential; *U violates 8(b)(1)(A) and (2) of Act if it or its agent adversely affects Ee's job for purely personal or arbitrary reasons)*

N.L.R.B. v. Wismer and Becker Contracting Engineers, and Electrical Workers Local Union 497 **654 F.2d 731(T) (C.A. 9, June 1981)**
(*Section 8(a)(1), 8(a)(2), 8(b)(1)(A) and 8(b)(2)* are violated only when actor's *true purpose* in discriminating was to encourage or discourage U membership; intent must be proved specifically unless actor's conduct implied prohibited motive)

N.L.R.B. v. Wismer and Becker Contracting Engineers, and Electrical Workers Local Union 497 **654 F.2d 731(T) (C.A. 9, June 1981)**
(enforcement denied when Bd's finding of violations based solely on discriminatory impact and consequent encouraging of U membership, which, w/o showing of intent, is erroneous legal foundation)

0125-7500 Not every form of interference prohibited though tending to encourage membership

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**
(in same way that E, unmotivated by intent to discourage U membership, may make decisions having foreseeable effect of discouraging U membership, so also may U make decisions reasonably calculated to further welfare of all Ees it represents, non-U as well as U, even though foreseeable result of decision may be to encourage U membership)

0125-8000 Test is whether employer would violate Section 8(a)(3) by action caused by union

Local 513, Plumbers (Master Plumbers and Heating Contractors of the Twin Cities (Benton Harbor and St. Joseph, MI)) **264 NLRB No. 069**
(where hiring hall is not exclusive, failure to refer is violative of Sec. 8(b)(1)(A) only if U was motivated by individuals having engaged in activities protected by Sec. 7; however, failure of non-exclusive hiring hall to refer is not violative of Sec. 8(b)(2) since U not causing E to discriminate in violation of Sec. 8(a)(3))

0125-9000 Mixed motives; other grounds immaterial if discrimination was one reason

The Soft Drink Employees Independent Union (Chattanooga Coca Cola Bottling Company) **264 NLRB No. 006**
(U rebutted *prima facie* case of discrimination concerning U president's filing of grievance against individual, adversely affecting his seniority ranking, following intra U charges filed by individual against U president, where it was established that U and U president would have taken same action against individual notwithstanding existence of discriminatory concerns)

0150 FINDING OF 8(a)(3) VIOLATION NOT PREREQUISITE TO 8(b)(2) FINDING

National Association of Broadcast Employees and Technicians, Local 16, AFL-CIO (American Broadcasting Company, a Division of American Broadcasting Companies, Inc.) **258 NLRB No. 070**

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**
(finding of violation of 8(b)(2) of Act by U's causing E to alter working conditions for arbitrary reasons does not mandate finding per se violation of 8(a)(3) by E)

0150-2000 Employer not necessary party to section 8(b)(2)

Local Union No. 410, Sheet Metal Workers International Association, AFL-CIO (Inryco, Inc.) **JD-318-81**

0162 UNION ACQUIESCENCE IN EMPLOYER DISCRIMINATION

General Instrument Corporation, Amtote Systems Division **262 NLRB No. 149**
(E who opened two new operations and extended U contract to cover these operations violated Act where units were not accretions and E provided U with room to meet Ees, paid Ees for time spent at meeting, solicited newly hired Ees to sign U dues checkoff authorization, withheld dues even without valid checkoff authorizations and applied U-security provisions of its existing contract; moreover, by acquiescing in above conduct and by accepting recognition and extending dues and U-security provisions of contract to Ees at new operations U also violated Act)

2000 FORMS OF PRESSURE

2035 UNION LIABLE FOR FORESEEABLE CONSEQUENCES OF CONDUCT

Legal Service Staff Association (Bronx Legal Services Corporation C, a/w Community Action for Legal Services, Inc.) **JD-374-81**
(although in its letter to corporation which controlled E, U had only requested that latter investigate U's allegation that E's Ees were not working at their jobs full-time and that one Ee was practicing law outside his job, U was liable for foreseeable consequences that Ees would be disciplined if its allegations were investigated and found to be true)

2067 REFUSAL TO REFER EMPLOYEES

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) **262 NLRB No. 086**
(U's refusing to refer Ee for employment pursuant to operation of exclusive hiring hall agreement and by informing Ee that it was denying him referrals because he had failed to comply with business agent's request that he relinquish his past job so that agent could put his own man in job, held violative where U business agent had threatened Ee to use agent's hiring hall

2067—Cont.

authority to retaliate against Ee; agent frequently referred persons to jobs, whose names appeared below Ee's on hiring hall's out-of-work list of jobs)

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) 262 NLRB No. 086
(U's change in established hiring hall procedure from 5-day (out-of-work) rule to 6-day (out-of-work) rule before having applicant's name removed from out-of-work list held violative, since procedure, resulted in denial of employment to applicants, breaching U's duty of fair representation owed to all hiring hall users and U did not demonstrate that its interference with employment was pursuant to valid U-security clause or was necessary to effect performance of its representative function)

Millwright Local Union No. 1931 JD-381-81
(U's refusal to refer Ee from hiring hall to Ee's chosen E not violative where GC did not establish foundation for presumption of illegality; record showed no animus against longstanding member of local U and no departure from U's established (hiring hall) procedures which involved no deliberate effort to foreclose Ee from opting on referral)

2075 COURT ACTION OR ARBITRATION

Wine and Liquor Store Employees Union, Local 122, a/w Distillery Workers (Harvey Entin, d/b/a Oz Liquor Co.) 261 NLRB No. 182
(seeking enforcement of unlawful clauses through commencement of arbitration proceeding and settlement thereof with E in which E agreed to discharge Ees not in good standing, violative)

Teamsters Local Union No. 515 (Cavalier Corporation) 259 NLRB No. 094
(where U relied unreasonably on contract clause and initiated grievance which resulted in removal of Ee from his overtime assignment, U's action violative as it was done in retaliation for Ee's resignation from U)

District Union 227, United Food (The Kroger Co.) 247 NLRB No. 023
(U's filing of grievance alleging that E had misclassified former member, who had crossed picket line, at higher classification than that for which he qualified, unlawful, since U was not motivated by desire to protect wage structure, but to penalize Ee for protected activity, where it had previously demanded discharge of ....scab)

District Union 227, United Food (The Kroger Co.) 247 NLRB No. 023
(U filing Section 301 suit to compel arbitration of grievance alleging that E had misclassified Ee who had crossed picket line at higher grade than that for which he qualified, unlawful, since suit was in pursuit of unlawful objective where filing of grievance was in retaliation for crossing picket line rather for protection of wage structure)

2091 PICKETING

Local 282, Teamsters (The General Contractors Association of New York, Inc.) 262 NLRB No. 088
(picketing, strike threats and other action in support of U's demands that Es hire its members to protect other members on jobsite from minority groups constituted unlawful action to compel U membership as condition for hiring of new job classification found to be guards)

Sacramento District Council of Carpenters, AFL-CIO (Garry L. Denny, an Individual Proprietorship, d/b/a Gary Denny Construction) 264 NLRB No. 132
(threats to shut down E's operations if it failed to honor lawfully repudiated Sec. 8(f) agreement requiring E to use U hiring hall, violative)

Tower Hotel Company, d/b/a Holiday Inn Riverfront 259 NLRB No. 010
(U's picketing of E not violative where not for recognitional purposes and evidence does not establish that U does not have majority support)

United Mine Workers of America, District 29 JD-268-82
(U's picketing and other coercive tactics imposed on Es, causing them to sign new agreement, violative where U did not represent uncoerced majority of Ees; fact that U did not sign agreement, was of no consequence since U would administer agreement whether U signed it or not)

4000 MEANS OF ATTEMPTING TO CAUSE DISCRIMINATION

4001 GENERALLY

4001-0000 Where illegal agreement or practice exists

Eldorado Manufacturing Corporation 249 NLRB No. 088
(no express demand by U steward for discharge of Ees was required, since steward's threat to quit if Ees, who were antagonistic to him, were not discharged was sufficient)

Legal Service Staff Association (Bronx Legal Services Corporation C, a/w Community Action for Legal Services, Inc.) JD-374-81
(writing to corporation which controlled E about Ees not working full-time and practicing law outside job held unlawful attempt to cause E to discriminate against Ees because they did not participate in strike)

Local Union No. 410, Sheet Metal Workers International Association, AFL-CIO (Inryco, Inc.) JD-338-81

4020 EXECUTION OR MAINTENANCE OF AGREEMENTS CONTAINING ILLEGAL PROVISIONS

4020-2000 Hiring and employment provision

Wine and Liquor Store Employees Union, Local 122, a/w Distillery Workers (Harvey Entin, d/b/a Oz Liquor Co.) 261 NLRB No. 182
(U's maintenance of exclusive hiring hall clause that limited referral to U members, unlawful since limitation violated well-established requirement that through exclusive hiring hall arrangement U must service prospective Ees in fair and equitable manner irrespective of U membership)

N.L.R.B. v. New York Typographical Union No. 6 632 F.2d 171 (C.A. 2, 1980)
(where collective-bargaining agreement contained job referral provision which gave priority to group of Ees who if unemployed would be paid *guaranteed income payments,* U's refusal to refer nonmembers who were not in preferred group not violative where insufficient evidence to support discrimination finding that only U members in preferred group, or that preference has effect of encouraging U membership because preferred class is closed, or procedure established for improper motive)

4020-3000 Revocation of checkoff

Newport News Shipbuilding and Dry Dock Company 253 NLRB No. 096
(U's maintaining and enforcing provision in bargaining agreement which required checkoff authorization revocations be on forms provided by U which were only available at U headquarters and refusing to accept Ees' revocations by letter, and informing E it would be in violation of bargaining agreement if E honored revocations violated revocation rights of Ees conferred in Sec. 302(c)(4))

Peninsula Shipbuilders' Association v. N.L.R.B. 663 F.2d 488 (C.A. 4, Sep. 1981)
(ct enforced Bd order holding E and incumbent U jointly and severally liable to reimburse Ees who had effectively revoked their check-off authorizations although on non-U forms in contravention of provision in extended bargaining agreement, where substantial evidence showed that such provision which required use of U revocation forms was facially invalid under LMRA Sec. 302(c)(4) and revocation procedure as actually enforced was ULP, in view of Ees' lack of easy, general access to U forms, Ees were not sufficiently informed about revocation requirement, and Ees had to appear personally at U hall to sign forms)

4020-4000 Union membership requirements

Save-It Discount Foods, Inc. 263 NLRB No. 097
(E who applied and enforced collective-bargaining agreement including provisions providing for U-security clause, dues checkoff and insurance, to Ees of new store which was found not to be accretion to unit consisting of E's other four stores violated Act; moreover, U which accepted all of foregoing also violated Act)

Federation of Employee Union, Local 1027 (Inder Construction Corporation) 263 NLRB No. 46

International Photographers of The Motion Picture Industries, Local No. 644, etc. (King-Hitzig Productions) 259 NLRB No. 105
(U which tabled discriminatee's membership application, pressured E to seek its permission before hiring her; and also pressured E to hire another photographer in her place because she was not U member while simultaneously refusing to admit her to membership, violated Act as it caused E to discriminate against her with regard to her employment on ground other than her refusal to tender U dues or fees)

P. C. Foods, Inc., d/b/a Price Crusher Food Warehouse 249 NLRB No. 089
(execution of contract containing U-security clause when U did not represent uncoerced majority of Ees, violative, notwithstanding subsequent deletion of such clause)

Gold Standard Enterprises, Inc., et al. 249 NLRB No. 046
(enforcement of agreement with security clause where U did not have majority, unlawful)

Baine Service Systems, Inc. 248 NLRB No. 057
(unlawfully executed contract because it covered inappropriate unit and contained U-security clause)

4020-4000—Cont.

Actors' Equity Association 247 NLRB No. 172

(U's maintenance of disparate dues requirement for non-resident aliens, in conjunction with its U security agreements, held not per se unlawful; however, such disparate dues structure is presumptively invalid since discrimination based on alienage is inherently suspect, and burden is on those seeking to justify it to show that reasons for such discrimination overcome policy against it)

4020-6000 Dues and initiation fee requirements

International Brotherhood of Security Personnel Officers and Guards, formerly known as L. Joseph Overton & Associates JD-(NY)-44-82

(U security clause may not be applied retroactively. Date of execution and not effective date of bargaining agreement governs validity of such clause notwithstanding members voted for earlier date)

International Brotherhood of Security Personnel Officers and Guards, formerly known as L. Joseph Overton & Associates JD-(NY)-44-82

(U's charging *initiation fee* to members refusing to pay retroactive dues, violative, since it was different method of collecting unlawful dues (dues for period prior to execution of contract)

4020-8000 Seniority provisions

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO 253 NLRB No. 091

(on ct remand, Bd affirmed earlier decision stating that recently negotiated collective-bargaining agreement and letter of understanding which provided for mutually agreed upon method of operating U's out-of-work lists neither renders original order moot nor justifies its modifications; furthermore, compliance with order does not rule out necessity for an order to deter future unlawful conduct)

N.L.R.B. v. Stanley H. Egan and Donald R. Egan 629 F.2d 746 (C.A. 10, Aug 1980)

(application of contractual superseniority provision to U trustee and U guard for purpose of layoff and recall held violative, as these duties do not contribute in any meaningful way to implementation of collective bargaining agreement)

4060 ATTEMPTS TO ENFORCE VALID AGREEMENTS OR PRACTICES IN AN ILLEGAL MANNER (SEE 548- 6000)

United States Postal Service 254 NLRB No. 010

(violation where U president used contractual superseniority and appointment-of-steward provisions to protect junior Ees from involuntary transfer to another facility of E, which action resulted in involuntary transfer of Ees who were fourth and fifth least senior Ees)

4080 DEMAND FOR DISCRIMINATORY TREATMENT (SEE 548-6000)

Bricklayers and Masons Union, Local No. 2, International Union Bricklayers and Allied Craftsmen, AFL-CIO (Macfarlane & Hays Co.) 259 NLRB No. 036

(attempting to cause, and causing, removal of apprentice bricklayer from employment on *fire brick* job for E who did not sponsor his apprenticeship pursuant to contract between E association and U held violative, since U prohibited *all* apprentices from working on *fire brick* jobs for Es who did not sponsor apprentice regardless of skill or ability of apprentice to perform work; basis for U's action was status of Ee in U as apprentice rather than journeyman, clearly arbitrary and capricious conduct)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. 251 NLRB No. 032

(U causing discharge of Ee who had previously worked 1 day for E as *fill in* not violative where U and E had hiring arrangement which only involved permanent Ees and 1 day's employment did not qualify Ee for continued employment with E)

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) 247 NLRB NO. 110

(although maintaining integrity of U's established trademark which has purpose of promoting employment of U members under U conditions is protected, withholding U seal for unlawful objectives is not privileged)

6000 MEANS OF CAUSING OR ATTEMPTING TO CAUSE DISCRIMINATION

6001 GENERALLY

6001-1200 'Causal' link between union and employer's action

Pipefitters Union Local No. 120 (Schweizer Dipple, Inc.) 260 NLRB No. 068

(discharge of 2 Ees on recommendation of U for not attending pipefitting classes, violative, where agreement to attend classes was executed only by Ees and U but was not part of collective bargaining agreement between E and U, E did not require attendance at classes as condition of employment and Ees were performing satisfactorily on job)

United Rubber, Cork, Linoleum and Plastic Workers of America, Local 878 (Goodyear Tire & Rubber Company) 238 NLRB No. 032

(U which left non-U member Ee off list of Ees entitled to grievance pay because he was non-U member which resulted in E's not paying Ee monies owed him violated Act)

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) 247 NLRB NO. 110

(causing termination of Ee, suspended from local, from film crew because of U's threats to withhold U seal from finished film, violative, where E would have retained Ee irrespective of his lack of membership in local had not U threatened retaliatory action)

Musicians' Association of Hawaii, Local 677, a/w AFM JD-(SF)-03-82

(no violation where bandleader-E told Ee that his job was temporary and that he would have to go as soon as U member replacement arrived, because U did not threaten E with any discipline for having non-U member of band which is contrary to U bylaws)

6001-1250 In absence of specific demand upon employer

Tower Hotel Company, d/b/a Holiday Inn Riverfront 250 NLRB No. 010

(U steward's statement to Ee that if he did not obtain U permit other Ees would refuse to work with him violative of 8(b)(1)(A) but not 8(b)(2) as no evidence that U sought to involve E)

6001-3000 Employer acquiescence in union conduct

Valley Cabinet & Mfg., Inc. 253 NLRB No. 008

(requesting Ees discharge for nonpayment of dues, w/o adequately informing her of her financial obligations to U, violative)

6001-4200 Employer knowledge of union motive

Q.V.L. Construction, Inc. 260 NLRB No. 139

(E's telling individual to apply for job through referral system run by U, which subsequently discriminated against him because he was not U member violative, and E held jointly and severally liable with U for discriminatory operation of referral system; U held primarily, and E secondarily liable for any backpay due individual because of discriminatory operation of referral hall, since even if E had investigated U's operation of referral system, it would not have discovered discrimination against Ee)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. 251 NLRB No. 032

(where E delegates hiring to U under U referral system it is responsible if U operates system discriminatorily, even if E has no knowledge of U's discrimination, and thus U and E are normally jointly and severally liable for any back pay due, but here where even if E had investigated it would have been unable to discover discriminatory practices of U, U will be held primarily liable and E secondarily liable)

6010 EXECUTION, MAINTENANCE AND/OR ENFORCEMENT OF AGREEMENT ENTERED INTO BY MINORITY UNION

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation 264 NLRB No. 063

(violation where Ees' former U which had lost election entered into contract containing U-security provision since it was not exclusive bargaining representative of Ees)

Regency Gardens Company 263 NLRB No. 164

(execution and maintenance of U security agreement not unlawful, where U official, after being told orally by majority of unit Ees that they wanted *to be with* U, informed E that U represented Ee majority, whereupon E recognized U as Ee representative, and both then agreed to be covered by existing master agreement containing U security provision; since there is no requirement that U must have, and show to E, majority of signed cards before U may be lawfully recognized, GC failed to prove that U did not represent Ee majority on date E recognized U)

Building Material & Dump Truck Drivers Local 420, Teamsters (Standard Concrete Material, Inc.) 260 NLRB No. 118

(U's requesting E to terminate various unit Ees to enforce U security provisions of contract, violative, since U was never bargaining representative of E's Ees, where transfer of E's Ees to U herein from another U was ineffective)

McKesson Drug Company 257 NLRB No. 084

(where E consolidated 3 facilities into 1 facility at new location and U, representing Ees in one facility, accepting recognition and giving effect to contract containing U security clause at consolidated facility violative, as U did not represent unaccreted majority)

6010—Cont.

Mego Corp. and Samet and Wells, Inc. 284 NLRB No. 031
(accepting recognition and executing contract on behalf of Ees at E's new plant of whom U did not represent majority, violative)

Sanford Home For Adults 283 NLRB No. 183
(U which did not represent uncoerced majority of Ees and accepted recognition from E, entered into collective bargaining agreement containing U security provision and enforced agreement violated Act)

Campus Housekeeping, Inc. 282 NLRB No. 072
(U and E violated Act when they signed renewal contract which contained U security clause after U had lost its majority and E had knowledge of this)

Gold Standard Enterprises, Inc., et al. 249 NLRB No. 046
(enforcement of agreement with security clause where U did not have majority, unlawful)

United Mine Workers of America, District 29 JD-263-82
(U's picketing and other coercive tactics imposed on Es, causing them to sign new agreement, violative where U did not represent uncoerced majority of Ees; fact that U did not sign agreement, was of no consequence since U would administer agreement whether U signed it or not)

6015 EXECUTION, MAINTENANCE AND/OR ENFORCEMENT OF AGREEMENT ENTERED INTO BY ASSISTED UNION

Save-It Discount Foods, Inc. 263 NLRB No. 097
(E who applied and enforced collective-bargaining agreement including provisions providing for U-security clause, dues checkoff and insurance, to Ees of new store which was found not to be accretion to unit consisting of E's other four stores violated Act; moreover, U which accepted all of foregoing also violated Act)

General Instrument Corporation, Amtote Systems Division 262 NLRB No. 149
(E who opened two new operations and extended U contract to cover these operations violated Act where units were not accretions and E provided U with room to meet Ees, paid Ees for time spent at meeting, solicited newly hired Ees to sign U dues checkoff authorization, withheld dues even without valid checkoff authorizations and applied U-security provisions of its existing contract; moreover, by acquiescing in above conduct and by accepting recognition and extending dues and U-security provisions of contract to Ees at new operations U also violated Act)

Cas Walker's Cash Stores Inc. 249 NLRB No. 041
(E and assisted U's inclusion of U security provision in their agreement, not unlawful, notwithstanding agreement itself was unlawful because U lacked majority status at time of execution, where there was no proof that the provision was ever enforced or any Ee discriminated against by its application)

Sav-On Drugs, Inc. JD-(SF)-214-81
(U's acting in concert with E extending coverage of current agreement to include enforcing U security clause to Ees at E's two new facilities and enforcing U security clause contained therein at time U did not represent uncoerced majority of Ees at new facilities, having obtained authorization cards through threats of loss of employment)

6020 EXECUTION, MAINTENANCE AND/OR ENFORCEMENT OF AGREEMENT MADE WHILE QUESTION OF REPRESENTATION PENDING

Signal Transformer Co., Inc. 265 NLRB No. 033
(U's acceptance of recognition from E and signing bargaining agreement containing security clause at time another U still claimed to represent E's Ees and while its R ptn still pending before Bd, unlawful, since qcr existed)

New-Stan Dyeing and Finishing Co., Inc. 263 NLRB No. 140
(acceptance of E's recognition by U which had represented predecessor E's Ees and entering into contract containing U security clause with E before it hired any Ees, not unlawful, since E was prior E's successor and intended to and did hire all prior E's Ees; although successor discussed hiring a third company's Ees with U which represented them, since it did not hire them, there was no qcr or conflicting claims of two Us representing potential Ees of E found successor herein)

6030 HIRING AND EMPLOYMENT AGREEMENTS AND PRACTICES

6030-0100 Generally

District 30, United Mine Workers of America (Beth-Elkhorn Corporation) JD-19-81
(U's contention that labor organization does not violate Act by causing discharge of Ees from another locality in favor of persons from U's area held inapposite where agreement contained no provision favoring local Ees over other Ees)

Plumbers, Local Union No. 577 (Catalytic, Inc. and Pullman, Inc.) JD-221-80
(exclusive referral system established by fact that Es under contract with U are obliged to, and in practice, do obtain all Ees of plumbing and pipefitting craft by referral from or clearance with U)

6030-3300 Illegal provisions or arrangements

6030-3301 Generally

New York Typographical Union No. 6 (Baker Typographers, Inc.) JD-(NY)-70-80
(GC's contention that contract amendment, made as result of Bd's Royal Composing Room decision and modifying hiring hall provisions so as to comply with such decision, failed to conform thereto because amendment stated that appendix containing names of higher contract priority Ees will be prepared but no such list was forthcoming, rejected; such requirement was merely a ministerial act, and U's failure to complete mechanics of preparing list did not in any way affect substantive terms of amendment nor determine those Ees who had higher contract priority)

6030-3310 Incorporation of union bylaws or constitution as terms

Musicians' Association of Hawaii, Local 677, a/w AFM JD-(SF)-33-82
(no violation where bandleader-E told Ee that his job was temporary and that he would have to go as soon as U member replacement arrived, because U did not threaten E with any discipline for having non-U member of band which is contrary to U bylaws)

6030-3320 In referral

Laborers, Local No. 304 (Associated General Contractors of California, Inc. and Bay Counties General Contractors Association) 265 NLRB No. 072
(refusing to dispatch Ee to job because he had not turned in hiring hall registration form containing waiver-of-suit language violative of 8(b)(1)(A), unlawful, where U held out completion of waiver section of form as apparent condition for dispatch; U had not told Ee he need not complete waiver section and Ee failed to complete and submit the *qualifications* section 12, believing it futile to do so w/o completing the waiver section; U cannot escape liability by relying on Ee's failure to fill out the lawful qualifications section)

Local 513, Plumbers (Master Plumbers and Heating Contractors of the Twin Cities (Benton Harbor and St. Joseph, MI)) 264 NLRB No. 089
(violation, where business representative of local U referred members who had been on out of work list shorter time than Charging Party contrary to his local's established procedure when requested by other locals to refer Ees to jobs in their areas, since referral in effect through exclusive hiring hall inasmuch as business agent became agent of other locals to which he referred Ees, and those locals operated exclusive halls therefore, referrals made in haphazard manner are violative)

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) 262 NLRB No. 086
(U's change in established hiring hall procedure from 5-day (out-of-work) rule to 6-day (out-of-work) rule before having applicant's name removed from out-of-work list held violative, since procedure, resulted in denial of employment to applicants, breaching U's duty of fair representation owed to all hiring hall users and U did not demonstrate that its interference with employment was pursuant to valid U-security clause or was necessary to effect performance of its representative function)

Freight, Construction, General Drivers, Warehousemen and Helpers, Local Union 287, Teamsters (Container Corporation of America) 257 NLRB No. 168
(U's refusal to issue referral to Ee for job with E because he was not member of U, violative)

Local Union 633, Plumbers (B & W Construction Company) 249 NLRB No. 011
(delay in giving test which was required before referral would be made violative as test only required for nonmembers)

Local Union 633, Plumbers (B & W Construction Company) 249 NLRB No. 011
(while setting up categories for referrals based on experience in trade or working for particular employers not violative, automatic placement of nonmembers in lowest category is violative)

Local Union 633, Plumbers (B & W Construction Company) 249 NLRB No. 011
(testing of nonmembers in such manner as to result in their discrimination versus members, violative)

6030-3320—Cont.

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**
(U which charged Ees monthly referral fee for participation in its hiring hall violated Act where it never effectively operated referral hall and purpose of fee was to make money for U)

Local 394, Laborers' (Building Contractors Association of New Jersey) **267 NLRB No. 008**
(U operating hiring hall w/o objective criteria but rather leaving operation w/i discretion of few U officials including factor that written records not kept, unlawful; while failure to keep records not violative per se, considered as one of several factors, nor does use of subjective criteria in referral such as financial need necessarily reflect discriminatory motive and violative per se, provided such criteria subordinated to overall established objective system)

Millwright Local Union No. 1931 **JD-381-81**
(U's refusal to refer Ee from hiring hall to Ee's chosen E not violative where GC did not establish foundation for presumption of illegality; record showed no animus against longstanding member of local U and no departure from U's established (hiring hall) procedures which involved no deliberate effort to foreclose Ee from opting on referral)

Plumbers, Local Union No. 577 (Catalytic, Inc. and Pullman, Inc.) **JD-221-80**
(even if nonmember had visited U's hiring hall to seek referral to job with specific E, U did not unlawfully refuse to give him such referral where at time in question U made no referrals to E at which nonmember sought employment and, in any event, he would not have been eligible for referral since he retained his employment with another E)

N.L.R.B. v. Highway and Local Motor Freight Employees, Local Union No. 667 **654 F.2d 284 (C.A. 6, 1981)**
(U did not operate bona fide referral hall where U did not receive calls from Es for referrals and U merely collected the referral fees and did not provide any referral service, U's interest in Ees did not go beyond referral fees they paid)

6030-3330 Preference to union members and/or members of local

Local 282, Teamsters (The General Contractors Association of New York, Inc.) **262 NLRB No. 055**
(picketing, strike threats and other action in support of U's demands that Es hire its members to protect other members on jobsite from minority groups constituted unlawful action to compel U membership as condition for hiring of new job classification found to be guards)

Wine and Liquor Store Employees Union, Local 122, a/w Distillery Workers (Harvey Entin, d/b/a Oz Liquor Co.) **261 NLRB No. 152**
(U's maintenance of closed shop provision which required that Ee or Ees chosen by E (after U is unable to refer member or members w/i 24 hours) *make application and be accepted as member of U by duly authorized officer of U,* violative since provision conditioned new Ee's job or U's willingness to accept Ee as U member)

International Photographers of The Motion Picture Industries, Local No. 644, etc. (King-Hitzig Productions) **259 NLRB No. 185**
(U which tabled discriminatee's membership application, pressured E to seek its permission before hiring her; and also pressured E to hire another photographer in her place because she was not U member while simultaneously refusing to admit her to membership, violated Act as it caused E to discriminate against her with regard to her employment on ground other than her refusal to tender U dues or fees)

Townsend and Bottum, Inc. **259 NLRB No. 027**
(question whether laid off Ees, who were discriminatorily not placed on referral lists because they were not U members, were qualified for positions U members were referred to, left to compliance stage of proceeding since, in any event, finding of violation does not turn on whether work was available at the time)

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) **251 NLRB No. 166**
(causing Ee not to be hired, violative, where U which ran nonexclusive hiring hall told E not to hire members of rival Us)

International Photographers of the Motion Picture Industry, Local 659, et al.(Malvey Productions, Inc.) **250 NLRB No. 052**
(U violated 8(b)(2) and 1(A) where under its preferential hiring agreement requiring new hires to have previous work experience with an E signatory to U contract, it refused to clear qualified applicants for employment as cameramen because they lacked U membership)

N.L.R.B. v. New York Typographical Union No. 6 **632 F.2d 171 (C.A. 2, 1980)**
(where collective-bargaining agreement contained job referral provisions which gave priority to group of Ees who if unemployed would be paid *guaranteed income payments,* U's refusal to refer nonmembers who were not in preferred group not violative where insufficient evidence to support discrimination finding that only U members in preferred group, or that preference has effect of encouraging U membership because preferred class is closed, or procedure established for improper motive)

6030-3335 Preference to union officers

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. **622 F.2d 267 (C.A. 6, 1980)**
(placing U leaders at top of out-of work list, unlawful, since not justified by representational needs where their presence not required in work place)

6030-3340 In selection for hiring

Colonial Baking Company of Springfield **264 NLRB No. 072**
(E's and U's maintaining and giving effect to bargaining agreement which conditioned hire and tenure of Ee upon membership in or clearance by U, violative)

Local 282, Teamsters (The General Contractors Association of New York, Inc.) **262 NLRB No. 055**
(picketing, strike threats and other action in support of U's demands that Es hire its members to protect other members on jobsite from minority groups constituted unlawful action to compel U membership as condition for hiring of new job classification found to be guards)

C. B. Display Service, Inc. **260 NLRB No. 140**
(U which had exclusive hiring hall agreement with E violated Act when it refused to refer lapsed member where he tendered his hiring hall fee since state was right-to-work state and there was no U-security clause)

International Photographers of The Motion Picture Industries, Local No. 644, etc. (King-Hitzig Productions) **259 NLRB No. 185**
(U which tabled discriminatee's membership application, pressured E to seek its permission before hiring her; and also pressured E to hire another photographer in her place because she was not U member while simultaneously refusing to admit her to membership, violated Act as it caused E to discriminate against her with regard to her employment on ground other than her refusal to tender U dues or fees)

Stage Employees Union, Local 592 (William A. Thomas, an Individual) **JD-288-82**
(U's general operation of hiring procedure by which E delegated its hiring function to U through dual agent, not violative notwithstanding agent may not have assembled hiring of crews in efficient or mechanical manner, or fact that he made mistakes and caused ruffled feelings in making calls, where basis of crew selection was seniority, ability, and availability)

N.L.R.B. v. New York Typographical Union No. 6 **632 F.2d 171 (C.A. 2, 1980)**
(where collective-bargaining agreement contained job referral provisions which gave priority to group of Ees who if unemployed would be paid *guaranteed income payments,* U's refusal to refer nonmembers who were not in preferred group not violative where insufficient evidence to support discrimination finding that only U members in preferred group, or that preference has effect of encouraging U membership because preferred class is closed, or procedure established for improper motive)

6030-3360 In continued employment

Tri-City Electric Company, Inc. **244 NLRB No. 182**
(discharge of *traveler,* assertedly at request of local U, not violative notwithstanding Ees had problems with *traveler* that created dissension and local U caused E to demote *traveler* prior to discharge, where problems which Ees had with *traveler* were not associated with his status as *traveler,* E did not let go because of his status as *traveler* but as part of reduction in force and demotion occurred outside 10(b) period and was neither alleged in C nor did ALJ find it to be violation)

Freight, Construction, General Drivers, Warehousemen and Helpers, Local Union 287, Teamsters (Container Corporation of America) **237 NLRB No. 103**
(causing E to discharge Ee because he was not U member violative)

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) **251 NLRB No. 166**
(causing E to discharge Ees because Ees had withdrawn their membership in U and had not been referred through U's nonexclusive hiring hall, violative, where such action created presumption that desired effect was to encourage U membership and was not shown to have been essential to effective performance of U's representation of its constituency)

Local Lodge Number 5, Boilermakers (Bogar Construction Company, Inc.) **249 NLRB No. 155**
(causing E to select for layoff Ees identified as supporters in U election of U member running against incumbent U official for latter's office, unlawful)

New York Typographical Union No. 6 (Kaiser Typographers, Inc.) **JD-(NY)-78-80**
(waiver required to be signed by casual Ees as condition of employment, which provided that casual Ees can be replaced by Ees with greater con-

6030-3360—Cont.

tract priority, not unlawful, since waiver did not in any way distinguish between U members and non-members nor did it provide for any preference based upon membership in U, moreover, purpose of waiver was not to encourage or discourage U membership, but rather to avoid disappointment and litigation by casuals in event they were displaced by Ees with greater contract priority)

New York Typographical Union No. 6 (Huber Typographers, Inc.) **JD-(NY)-78-80**
(application of waiver required to be signed by casual Ees as condition of employment, which provided that casuals can be replaced by Ees with greater contract priority, not unlawful, where GC failed to establish whether waivers were executed by U or non-U casuals and to introduce evidence establishing that U casuals were not required to sign waiver; even if all waivers had been executed by non-U casuals, it would not have established unlawful discrimination since U can not be faulted if U casuals failed to apply for work and only non-U casuals were hired)

New York Typographical Union No. 6 (Huber Typographers, Inc.) **JD-(NY)-78-80**
(where casual Ees were required to sign waiver as condition of employment, which provided that casual Ees can be replaced by Ees with greater contract priority, Bd rejected GC's contention that E unlawfully hired Ees through hiring hall w/o requiring them to sign waiver; all Ees hired were those with contract priority and were not required to sign waivers which was limited to casual Ees)

New York Typographical Union No. 6 (Huber Typographers, Inc.) **JD-(NY)-78-80**
(GC's contention that any requirement that casual Ees sign waiver as condition of employment, which provided that casuals can be replaced by Ees with greater contract priority, was unlawful, rejected; while Bd's decision in Royal Composing Room found hiring hall procedures unlawful because they inherently discriminated in favor of U members over non-members, hiring hall provisions were amended since then to conform to Bd's decision; although agreement to do so was not signed, amendment became effective after posting and publication, and parties are bound by terms agreed upon notwithstanding failure to sign agreement)

New York Typographical Union No. 6 (Huber Typographers, Inc.) **JD-(NY)-78-80**
(GC's contention that waiver required to be signed by casual Ees as condition of employment, which provided that casuals can be replaced by Ees with greater contract priority, was unlawful because waiver language did not specifically set forth that Ee could be displaced only by Ees with higher contract priority qualifications, rejected, where waiver contained reference to existing contract between parties which, read in conjunction therewith, made waiver lawful)

New York Typographical Union No. 6 (Huber Typographers, Inc.) **JD-(NY)-78-80**
(ALJ rejected GC's contention that, assuming hiring hall procedures provided by amendment of contract to conform to Bd's Royal Composing Room decision dealing with preferential hiring were followed, amendment still failed to correct unlawful provision because higher contract priority Ees may have obtained such priority through prior unlawful agreement and would continue to enjoy fruits gained thereby, thus tainting any hire of higher contract priority Ee entitling him to bump casual Ee; no such bumping occurred, and GC's contention failed to make valid comparison between U and non-U casuals)

United Electrical, Radio & Machine Workers of America, Local 262 (Hemisphere Broadcasting, Inc.) **JD-437-80**
(U unlawfully attempted to cause and did cause discharge of nonmember of U by threatening to continue engaging in strike unless E terminated him because he did not support U's strike; and subsequently, when Ee was ostensibly terminated but retained by E through another E who was cover for E herein, by threatening to resume strike unless Ee was terminated; U's defense, based on strike settlement agreement, that it was concerned with protecting jobs of Ees under former ownership before operation was acquired by E, rejected)

6030-3380 Union control over hiring and employment

6030-3380-3300 Union stewards

Laborers' International Union of North America, AFL-CIO, Local Union No. 1320 (Dunbar & Sullivan Dredging Co.) **253 NLRB No. 098**
(U's selection of Ees to be laid off unlawful, where motivated by desire to maintain employment for two job stewards even though their presence at jobsite was unnecessary at time of layoff)

District Council No. 2 of The Brotherhood of Painters and Allied Trades, AFL-CIO (The Paintsmiths, Inc.) **253 NLRB No. 017**
(U's causing E, in violation of *Sec. 8(a)(3)* of Act, to lay off regular Ee by enforcing contractual, *appointment-of-steward clause* held violative where U had not made requisite showing of legitimate and substantial reasons for exercising its *appointment-of-steward* power)

Local Union No. 813, International Brotherhood of Painters and Allied Trades of The United States and Canada, AFL-CIO (W.Q. Watters Company) **JD-148-80**
(over zealous new U steward's removing Ee, traveling member of Painters local 970, from job being performed by members of Painters' local 813 because Ee did not produce U *book* immediately when asked by steward and ratio of local 970 members to 813 members was not right, violative, since *traveling* Ee did produce *book* one day after being asked; U prohibited from seeking discharge of *travelers* who are working on job site w/i jurisdiction of home local, but are members of another local of same International U)

General Teamsters, Chauffeurs, Helpers and Yardmen, Local No. 470, a/w Teamsters (Connelly Containers, Inc.) **JD-440-80**
(U's maintaining and enforcing policy or practice whereby its steward was given superseniority for trip selection, unlawful, since w/o justification that would overcome presumption of invalidity under *Dairylea* of superseniority relating to job selection for stewards, where steward selected trips to take place during hours when most grievances arose and thus superseniority did not benefit unit members or labor relations)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(U's exercise of appointment of steward power which caused layoff of regular Ee violative absent legitimate and substantial reasons for doing so)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(U's purpose in placing steward on job is presumptively legitimate)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(*steward preference* clauses are facially valid; however, selecting steward from outside Ee ranks will require substantial showing that worker E already has on job are not competent to carry out steward function)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(*broad* appointment-of-steward clause which authorizes U to select steward from outside *regular force* may be presumptively valid if steward is placed on jobsite at beginning of project w/o causing layoff that would demonstrate U's power over Ee and its ability to affect his livelihood)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(fact that E did not notify U of job's commencement coupled with one Ee's violation of a work rule does not give rise to *substantial* reason for invoking appointment-of-steward clause which caused layoff of Ee)

6030-3380-8600 Competency tests and apprenticeship requirements

Electrical Workers, Local 1701 (Dynalectric Company) **253 NLRB No. 119**
(GC's contention that journeyman's test given referral applicants for electricians' jobs was unfair and discriminatory, rejected, where electrician with considerable experience testified test was fair notwithstanding his failure to pass test; GC's attempt to introduce other examinations into evidence to show that, perhaps, instant examination was more difficult held entirely irrelevant in view of electrician's testimony)

6030-3390 Coercing employer to discriminate in employment

Bricklayers and Masons Union, Local No. 2, International Union Bricklayers and Allied Craftsmen, AFL-CIO (Macfarlane & Hays Co.) **249 NLRB No. 036**
(attempting to cause, and causing, removal of apprentice bricklayer from employment on *fire brick* job for E who did not sponsor his apprenticeship pursuant to contract between E association and U held violative, since U prohibited *all* apprentices from working on *fire brick* jobs for Es who did not sponsor apprentice regardless of skill or ability of apprentice to perform work; basis for U's action was status of Ee in U as apprentice rather than journeyman, clearly arbitrary and capricious conduct)

Local Lodge Number 5, Boilermakers (Bogar Construction Company, Inc.) **249 NLRB No. 155**
(causing E to select for layoff Ees identified as supporters in U election of U member running against incumbent U official for latter's office, unlawful)

Eldorado Manufacturing Corporation **249 NLRB No. 098**
(U's conduct in causing discharge of Ees, and E's discharge of Ees at U's request, unlawful, where U steward in requesting discharges was motivated by harassment flowing from Ees' continued accusations of steward's failure to adequately perform his steward's duties, their insistence on prompt grievance meetings, and attempt to unseat him as steward; moreover, even if no intraunion retaliation motivated steward in demanding discharges, but only that personal harassment was no longer bearable, U's demands for discharge would nevertheless be unlawful)

N.L.R.B. v. Tel-Bit Products Company, et al. **620 F.2d 981 (C.A. 6, 1980)**
(attempting to cause and causing E to post Ee's job for bids, with clearly foreseeable result that she would be laid off because of initiating grievance proceedings, unlawful)

[illegible] Refusing to permit nonmember to obtain his own job

Berry-Maharin Construction, Inc. 230 NLRB No. 171
(Local U's refusal to refer qualified individual who was member only of sister Local, because of non-membership in Local, fact individual sought job directly with E rather than through U, and his refusal to execute checkoff authorization w/i 7 day grace period, unlawful)

Local Union No. 277, International Brotherhood of Painters and Allied Trades (Member of National Painting and Decorating Contractors of America) JD-(NY)-86-81
(refusal to refer U member of sister local to job not violative where member had failed to comply with requirements of U's referral system)

6030-6700 Discrimination in application of valid provisions and agreements

Classic Truck Rental Corp. 251 NLRB No. 096
(refusal by E and U to permit drivers' helpers to become U members or to apply to them terms and conditions contained in drivers' contract, not unlawful, where U did not represent helpers or anyone else described in contract's boiler-plate preamble, helpers were outside unit and therefore U had no obligation to represent them nor any obligation to insist that E extend contract provisions to them; similarly, E had no obligation to extend contract's wage scale or other benefits to helpers or any other Ees outside unit)

Local Union No. 277, International Brotherhood of Painters and Allied Trades (Member of National Painting and Decorating Contractors of America) JD-(NY)-86-81
(refusal to refer U member of sister local to job not violative where member had failed to comply with requirements of U's referral system)

6030-6701 Generally

Local 394, Laborers' (Building Contractors Association of New Jersey) 247 NLRB No. 005
(U operating hiring hall w/o objective criteria but rather leaving operation w/i discretion of few U officials including factor that written records not kept, unlawful; while failure to keep records not violative per se, considered as one of several factors, not does use of subjective criteria in referral such as financial need necessarily reflect discriminatory motive and violative per se, provided such criteria subordinated to overall established objective system)

6030-6712 In registration for referral

Freight, Construction, General Drivers, Warehousemen and Helpers, Local Union 287, Teamsters (Container Corporation of America) 257 NLRB No. 168
(refusal to permit Ee to sign out-of-work list U maintained in its hiring hall facility because he was not member of U, violative)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) 253 NLRB No. 098
(U's operation of exclusive hiring hall in manner that gave preference in referral to members over nonmembers, was subjective w/o objective standards or criteria, and substantially disregarded written procedures in agreement with E, unlawful since it caused Es to discriminate against nonmembers, violated U's duty to fairly represent job applicants, and impaired job applicants' employment opportunities)

Local Union No. 948, Electical Workers (Lawrence Moore, an Individual) 253 NLRB No. 094
(violation where, because it wanted to keep jobs with most overtime for its own members, local U refused to let *travellers* from another jurisdiction stay on its out-of-work list to wait for overtime jobs as they should have been under contract provision)

Jacks Electric Company 240 NLRB No. 092
(refusal by U administering hiring hall under exclusive referral agreement to permit members of sister Us to sign referral list, unlawful)

6030-6725 In referral

Electrical Workers, Local 1701 (Dynalectric Company) 282 NLRB No. 119
(U's requirement that nonmember applicants for referral under exclusive hiring hall contract complete complex and lengthy application for referral questionnaire form, not unlawful, where form was used to check out veracity of applicants' statements as to their qualifications, which E had recommended that they falsify in order to become U members and be referred for jobs with E; there was no showing that U had discriminatory motive in using form but, rather, that it was used to ensure lawful operation of hiring hall and prevent false information from being used by applicants for gaining preferred status)

6030-6725-0000 Generally

Local 513, Plumbers (Master Plumbers and Heating Contractors of the Twin Cities (Benton Harbor and St. Joseph, MI)) 264 NLRB No. 089
(where hiring hall is not exclusive, failure to refer is violative of Sec. 8(b)(1)(A) only if U was motivated by individuals having engaged in activities protected by Sec. 7; however, failure of non-exclusive hiring hall to refer is not violative of Sec. 8(b)(2) since U not causing E to discriminate in violation of Sec. 8(a)(3))

Local 513, Plumbers (Master Plumbers and Heating Contractors of the Twin Cities (Benton Harbor and St. Joseph, MI)) 264 NLRB No. 089
(violation, where business representative of local U referred members who had been on out of work list shorter time than Charging Party contrary to his local's established procedure when requested by other locals to refer Ees to jobs in their areas, since referral in effect through exclusive hiring hall inasmuch as business agent became agent of other locals to which he referred Ees, and those locals operated exclusive halls therefore, referrals made in haphazard manner are violative)

Sheet Metal Workers International Association, Local Union No. 13, AFL-CIO (Sheet Metal Contractors Association Hudson & Bergen Counties, New Jersey) 289 NLRB No. 006
(where U refuses to refer applicant because of improper U considerations, GC need not prove that jobs were available at the time of the request for referral)

Electrical Workers, Local 1701 (Dynalectric Company) 282 NLRB No. 119
(no animus on part of U toward nonmember referral applicants was shown by U official's temperamental outbursts on the job against Ees which included applicants, where evidence did not show that outbursts were addressed solely to non-U Ees but that official's hostility was not related at all to issues of employment but to Ees' incompetence on job; moreover, official in no way controlled referral of Ees or acted as U agent in impeding nonmembers' access to referral)

Local 24, Hotel & Restaurant Employees (George Dorn, an Individual) JD-414-82
(U's defense to alleged unlawful failure to refer and removal from job referral list of U member, who had filed charges with Bd, on ground he was not entitled to relief from Bd because he failed to exhaust internal U remedies, rejected, where existence of such remedies was not established, and if it were, Ee rights to seek Bd assistance may not be held hostage to U requirement that its own remedies be exhausted first)

6030-6725-0800 Requiring non-members to pay referral fees not reasonably related to services

Peter Frattaroli, et al. v. N.L.R.B. 590 F.2d 15 (C.A. 1, 1978)
(requirement that nonmembers pay fee to help support operation of exclusive hiring hall, unlawful where U actually operated referral system for members only; whether or not U actually operated exclusive hiring hall, rather than whether or not contract permitted it do so, was determining factor)

6030-6725-1200 Requiring referral fees not reasonably related to operation of hiring hall

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) 240 NLRB No. 035

6030-6725-1700 Preference to union members

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) 253 NLRB No. 098
(U's operation of exclusive hiring hall in manner that gave preference in referral to members over nonmembers, was subjective w/o objective standards or criteria, and substantially disregarded written procedures in agreement with E, unlawful since it caused Es to discriminate against nonmembers, violated U's duty to fairly represent job applicants, and impaired job applicants' employment opportunities)

Local 889, Laborers' International Union of North America, AFL–CIO (Anthony Ferrante & Sons, Inc.) 251 NLRB No. 211
(U's preference for referral of members over non-members in response to requests from Es not unlawful since hiring hall is not exclusive, either by contract or practice, notwithstanding number of members obtained all their employment through hiring hall, where language in agreement states *in the event any E should use the services of U to secure ... Ees* is clearly permissive and Es obtained Ees from other sources)

Local Union 630, Plumbers (B & W Construction Company) 240 NLRB No. 011
(testing of nonmembers in such manner as to result in their discrimination versus members, violative)

6030-6725-1700—Cont.

N.L.R.B. v. Local Union 633, Plumbers 668 F.2d 913 (C.A. 6, Jan. 1982)
(U discriminated against non-U job applicants where it requested them to take more difficult qualifying test for referral than U members; noted that U's system not *per se* illegal but enforced in discriminatory manner)

6030-6725-2000 Priority based on service with employer

Local Union 633, Plumbers (D & W Construction Company) 249 NLRB No. 011
(while setting up categories for referrals based on experience in trade or working for particular employers not violative, automatic placement of nonmembers in lowest category is violative)

6030-6725-3300 Priority based on residence or service in geographical area

Local No. 17, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (American Bridge Division, United States Steel Corporation) JD-593-81
(attempting to cause E to discriminate against all *permit men* (not U members) violative. Defense that Sec. 8(f)(4) allowed such U conduct as attempt to provide priority to workers in particular geographical area, rejected, since U failed to so qualify request)

6030-6725-4200 Refusal to refer because of nonmembership

Federation of Employees Union, Local 1027 (Index Construction Corporation) 263 NLRB No. 66

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) 261 NLRB No. 040
(local's denying or substantially delaying dispatch of members of sister locals (travelers) to project and therefore denying them opportunity to become Ees of E, violative where local's conduct was motivated by its desire to discriminate against applicants based on local membership and, on secondary basis, on membership in locals affiliated with U according to their geographical location)

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) 261 NLRB No. 040
(local's refusal to dispatch supervisory applicant who was member of sister local (traveler), violative, where supervisory applicant's treatment was but one inseparable element in pattern of dispatch refusals for improper reasons)

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) 261 NLRB No. 040
(local's requiring members of sister locals (travelers) to sign their travel cards in manner signifying that they were no longer seeking employment in craft w/i geographical area covered by local, violative since local was encouraging travelers to join it to insure opportunities to pursue employment w/i area w/o fear of discrimination)

Sheet Metal Workers International Association, Local Union No. 13, AFL-CIO (Sheet Metal Contractors Association Hudson & Bergen Counties, New Jersey) 259 NLRB No. 056
(refusal to refer applicant through U's exclusive hiring hall because he was not member of U, unlawful)

Townsend and Bottum, Inc. 259 NLRB No. 027
(U unlawfully failed to register laid off Ees on its referral lists and to refer them for employment because they were not U members, where Ees' conduct in reporting their layoff to U and indicating availability for work entitled them to be placed on out-of-work lists; and U's past practice of maintaining *members only* out-of-work lists, its misleading statements to Ees concerning willingness to refer them for work, and absence of single instance in which nonmember was placed on lists indicate that U was continuing its past practice of maintaining *members only* lists)

Painters' Local No. 64, etc. (Marine Industries Northwest, Inc.) JD-(SF)121-81
(craft U's refusal to issue a job dispatch to female applicant already hired by E, and E's termination of applicant because of U's refusal, not unlawful, since U would not have dispatched any job applicant in classification other than journeyman, in view of custom and practice of dispatching only journeyman painters, U's offer to dispatch applicant as such but E ommitted to make such request, U's legitimate desire to maintain its practice of dispatching only journeymen, and fact that no causal relationship to applicant's sex or nonmembership in U existed)

United Association of Journeymen, Plumbers and Steamfitters of Mobile, Alabama, Local Union No. 119 and its agents Max Green and Walter Wilson (Mobile Mechanical Contractors Association, Inc.) 253 NLRB No. 139
(violation, where U refused to register or refer non-member, where no nonmember signed register in past year and charging party was asked by U to quit his job in order to make it available to U member)

Electrical Workers, Local 1791 (Dynaelectric Company) 252 NLRB No. 119
(U's refusal to register non-U Ees whom E had terminated pursuant to scheme whereby Ees would become U members and thus become available for referral back to E under lawful exclusive hiring hall contract, not unlawful, since U's motivation was to support and maintain hiring hall procedures against E's attempt to circumvent them and thereby give Ees referral preference over persons who might thereafter be out of work and legitimately on referral list)

Moving Picture and Projection Machine Operators Union, Local No. 143 (Wehrenberg Theatres, Inc.) 248 NLRB No. 176

Laborers International Union of North America, Local 1136 (Southern Illinois Builders Association) JD-477-81
(U which denied non-members access to referral list because they were nonmembers and black and because they protested the unfair operation of the system violated Act)

N.L.R.B. v. Moving Picture and Projection Machine Operators Union, Local No. 143, a/w Stage Employees, AFL-CIO 649 F.2d 610 (C.A. 8, May 1981)
(refusing to refer nonmembers for permanent jobs, violative where hiring hall was exclusive)

6030-6725-4300 Refusal to refer because of collective bargaining agreement

Longshoremen's Association, Local No. 341 (West Gulf Maritime Association) 254 NLRB NO. 080
(U's refusal to Ee of access to hiring hall for referral not unlawful, where Ee had engaged in strike in violation of no-strike clause which disrupted employment opportunities of people that U represented; U has legitimate interest in taking action to preserve those job opportunities)

Local 873, Electrical Workers (Kokomo-Marion Division, Central Indiana Chapter, National Electrical Contractors Association, Inc.) 259 NLRB No. 113
(refusal to refer U member who was rightfully terminated from apprenticeship program not violative where collective-bargaining agreement provided that only journeyman or participants in training program could be referred; thus, presumption that U's action of refusing to refer U member will tend to coerce other members as a display of U power rebutted)

6030-6725-4400 Refusal to refer because of sex

Painters' Local No. 64, etc. (Marine Industries Northwest, Inc.) JD-(SF)121-81
(craft U's refusal to issue a job dispatch to female applicant already hired by E, and E's termination of applicant because of U's refusal, not unlawful, since U would not have dispatched any job applicant in classification other than journeyman, in view of custom and practice of dispatching only journeyman painters, U's offer to dispatch applicant as such but E ommitted to make such request, U's legitimate desire to maintain its practice of dispatching only journeymen, and fact that no causal relationship to applicant's sex or nonmembership in U existed)

6030-6725-4500 Refusal to refer because of race

Laborers International Union of North America, Local 1136 (Southern Illinois Builders Association) JD-477-81
(U which denied non-members access to referral list because they were nonmembers and black and because they protested the unfair operation of the system violated Act)

6030-6725-4600 Refusal to refer because of dues delinquency

C. B. Display Serice, Inc. 260 NLRB No. 140
(U which had exclusive hiring hall agreement with E violated Act when it refused to refer lapsed member where he tendered his hiring hall fee since state was right-to-work state and there was no U-security clause)

6030-6725-4800 Refusal to refer because of membership in or registration with sister local

Plumbers and Steamfitters Local 398, etc. (Orcon Inc. and Cal Orcon East Inc.) 260 NLRB No. 085
(one U's refusal to refer under exclusive hiring hall, member of another local U with valid travel card to job for which E had requested him violative where sole reason for refusal was membership in another local)

Berry-Maharin Construction, Inc. 258 NLRB No. 171
(Local U's refusal to refer qualified individual who was member only of sister Local, because of non-membership in Local, fact individual sought job directly with E rather than through U, and his refusal to execute checkoff authorization w/i 7 day grace period, unlawful)

Local Union No. 948, Electical Workers (Lawrence Moore, an Individual) 253 NLRB No. 094
(violation where, because it wanted to keep jobs with most overtime for its own members, local U refused to let *travellers* from another jurisdiction stay

6030-6725-4800—Cont.

on its out-of-work list to wait for overtime jobs as they should have been under contract provision)

Carpenters, Local # 308 v. N.L.R.B. **690 F.2d 661 (C.A. 8, July 1982)**
(where Ee joined local U, then withdrew from U, went to another area and joined different local and later on came back into jurisdiction of first local who refused to refer Ee to job because not member of local and thereby violated Act)

6030-6725-5000 Refusal to refer because of opposition to union leadership

H. H. Robertson Company **263 NLRB No. 173**
(U's refusal to refer supervisor-member, unlawful, in retaliation for his intra-U political opposition, his hiring of Ees w/o referral from hiring hall, and his filing of charges with NLRB, notwithstanding U's contention refusal to refer justified by failure to comply with requirement of his signing out of work list and receiving referral slip at hiring hall, where no consistent policy that applicants sign out of work list personally or that referral slips be obtained at hiring hall rather than at job, and hiring hall was 80-90 mile round trip for supervisor-member)

Pelis Wallcovering Co., et al. **262 NLRB No. 169**
(refusal to refer U member, not violative where local U would not have referred him even if he had not engaged in conduct found offensive by U officials since his removal from apprenticeship on basis of his past employment record, recent discharge for flagrant misconduct, and his failure to meet apprenticeship's classroom attendance requirements removed him from classifications legitimately encompassed w/i hiring arrangement)

Pelis Wallcovering Co., et al. **262 NLRB No. 169**
(refusal to refer individual because he engaged in conduct viewed by U officials as disloyal, violative)

International Longshoremen's Association, Local 1408, AFL-CIO (Jacksonville Maritime Association) **258 NLRB No. 029**
(U's selection for training assignment of member who did not meet its objective criteria for such assignment rather than member who did, not unlawful where reason was that member selected was only member available when request for assignment came in and assignment would be lost if not filled immediately and not, as alleged, because of personal and/or polictical considerations involving other member)

International Longshoremen's Association, Local 1408, AFL-CIO (Jacksonville Maritime Association) **258 NLRB No. 029**
(refusal to refer U member for employment because of his criticism of U's hiring hall and referral system practices and his dispute with U's president, unlawful)

Sheet Metal Workers International Association, Local Union No. 20, AFL-CIO (The Employers Association of Sheet Metal Workers, etc.) **253 NLRB No. 018**
(refusal to refer Ee for work according to first-in-first-out rule of referral from register, not unlawful since refusal was not motivated discriminatorily by Ee's running for office or testifying against U at Bd hearing, as alleged, where refusal was remote in time from Ee's protected activity, U referred Ee after protected activity, Ee told U he would not be available for certain types of referral, and U did not require Ee to file withdrawal card from its hiring hall although he was also being referred out of another hiring hall)

Local 089, Laborers' International Union of North America, AFL–CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**
(failure to refer member because of his support of rival of U business manager for that post and dispute over lack of receipts for dues and fees paid by his son which resulted in letter of complaint and hearing)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(refusal to refer members because of their opposition to U officials violative)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**
(expelling and suspending dissident members violative where result was denial of employment since all hiring was done through U hiring facilities)

Carpenters and Joiners, Local No. 1914 (W & H Conveyer Systems, Inc.) **250 NLRB No. 183**
(refusal to refer properly qualified and registered member of exclusive hiring hall, unlawful, where U official disregarded referral provisions of contract and refused to dispatch member, who was requested by signatory E, because of member's opposition to official's administration of U)

N.L.R.B. v. Laborers', Local 300 **613 F.2d 203 (C.A. 9)**
(U's refusing to refer Ee to job, and causing him to be discharged after he had secured the job w/o referral from U, violative, notwithstanding Ee's securing the job w/o referral from U violated hiring hall provisions of bargaining agreement between U and E; U enforced the hiring hall provisions to the effect that Ee was removed from job only when U business agent was advised of Ee's dissident activities)

6030-6725-5700 Refusal to refer because of criticism of referral system

International Longshoremen's Association, Local 1408, AFL-CIO (Jacksonville Maritime Association) **258 NLRB No. 029**
(refusal to refer U member for employment because of his criticism of U's hiring hall and referral system practices and his dispute with U's president, unlawful)

Electrical Workers Local 401 (Stone and Webster Engineering Corporation) **251 NLRB NO. 009**

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(refusal to refer members who protested hiring hall operation policies (particularly selection methods employed by U officials operating hall) at U meetings, to local and International, to NLRB and other government agencies)

Moving Pictures Projectionists Local 159, Stage Employees (Mann Theatres) **JD-(SF)-221-82**
(U's business manager's refusal to place member on out of work list for relief projectionists and refer him for employment and referring others with less seniority, unlawful, notwithstanding two theatre chains had requested that member not be referred to them and other theatres had complained to U about member's misconduct or incompetence, since refusal to refer motivated by member's complaint to U's executive committee regarding operation of U's referral system)

Laborers International Union of North America, Local 1136 (Southern Illinois Builders Association) **JD-477-81**
(U which denied non-members access to referral list because they were non-members and black and because they protested the unfair operation of the system violated Act)

6030-6725-5900 Refusal to refer because of failure to complete examination successfully

Electrical Workers, Local 1701 (Dynalectric Company) **252 NLRB No. 119**
(GC's contention that journeyman's test given referral applicants for electricians' jobs was unfair and discriminatory, rejected, where electrician with considerable experience testified test was fair notwithstanding his failure to pass test; GC's attempt to introduce other examinations into evidence to show that, perhaps, instant examination was more difficult held entirely irrelevant in view of electrician's testimony)

N.L.R.B. v. Local Union 633, Plumbers **668 F.2d 921 (C.A. 6, Jan. 1982)**
(U discriminated against non-U job applicants where it requested them to take more difficult qualifying test for referral than U members; noted that U's system not *per se* illegal but enforced in discriminatory manner)

6030-6725-6300 Refusal to refer because of failure to follow internal union rule

International Alliance of Theatrical Stage Employees, Local No. 7 (Universal City Studios, Inc.) **254 NLRB No. 184**
(U's action in refusing to refer Ees, unlawful notwithstanding U's contention that Ees circumvented U's hiring hall procedures by appearing at E's jobsite w/o referral from U, where Ees made repeated attempts to contact U's business agent before they went to jobsite and after having been informed of business agent's refusal of clearance, made no attempt to work and left jobsite; U's action in refusing to refer Ees was not necessary to enforce its hiring hall regulations and served no other legitimate U purpose)

Millwright Local Union No. 1931 **JD-301-81**
(U's refusal to refer Ee from hiring hall to Ee's chosen E not violative where GC did not establish foundation for presumption of illegality; record showed no animus against longstanding member of local U and no departure from U's established (hiring hall) procedures which involved no deliberate effort to foreclose Ee from opting on referral)

Plumbers, Local 388 v. N.L.R.B. **655 F.2d 93 (C.A. 6, 1981)**
(refusal to refer traveller because he had caused work slowdown w/i U's jurisdiction but w/o U's approval, violative; contention that he had limited his availability to welding was rejected as referral slip clearly indicated work as pipefitter also)

6030-6725-6600 Refusal to refer in order to demonstrate power

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) **262 NLRB No. 006**
(U's refusing to refer Ee for employment pursuant to operation of exclusive hiring hall agreement and by informing Ee that it was denying him referrals because he had failed to comply with business agent's request that he relinquish his past job so that agent could put his own man in job, held violative where U business agent had threatened Ee to use agent's hiring hall authority to retaliate against Ee; agent frequently referred persons to jobs, whose names appeared below Ee's on hiring hall's out-of-work list of jobs)

6030-6725-6700 Refusal to refer because of personal animosity

6030-6725-8700—Cont.

Hotel Employees Union Local 471 (Armore, Inc.) **JD-361-82**
(refusal of U's business agent to see, accept calls from, or furnish referral slips to applicants, unlawful, where because of their relationship to man who was father of one applicant and uncle of other, particularly where applicants had experience and nothing in U's prior policy or usual procedure would preclude their referral)

6030-6725-9000 **Refusal to refer because of failure to pay fine**

Longshoremen's Association, Local 1180 (Kenneth E. Mason, an Individual) **263 NLRB No. 134**
(local U requesting that sister local not refer one of its members until he had paid fine which it had imposed, unlawful)

6030-6725-9100 **Refusal to refer because of charges filed with Board or other governmental bodies against union**

International Longshoremen's Association, Local 1329 (Metals Processing Co.) **262 NLRB No. 038**
(refusal and failure to select member as relief winchman because of his testimony at Bd hearing and his defense of same at subsequent U meeting, violative)

Local 24, Hotel & Restaurant Employees (George Dore, an Individual) **JD-414-82**
(U's conduct in advising E not to request U member for job referral from U by name, after member had filed charges against U with Bd and had engaged in protected activities consisting of intra-U efforts to reestablish himself on referral list, unlawful, where E altered its procedure to avoid requesting member for job by name, and thereby adversely affected member's employment; and U's defenses based on member's work habits and general attitude were pretext, and such reasons were a sham)

Hotel Employees Union Local 471 (Armore, Inc.) **JD-361-82**
(U's business agent demanding that applicants withdraw charges before being referred, unlawful)

6030-6725-9200 **Refusal to refer because of testifying at Board proceeding**

Sheet Metal Workers International Association, Local Union No. 28, AFL-CIO (The Employers Association of Sheet Metal Workers, etc.) **260 NLRB No. 018**
(refusal to refer Ee for work according to first-in-first-out rule of referral from register, not unlawful since refusal was not motivated discriminatorily by Ee's running for office or testifying against U at Bd hearing, as alleged, where refusal was remote in time from Ee's protected activity, U referred Ee after protected activity, Ee told U he would not be available for certain types of referral, and U did not require Ee to file withdrawal card from its hiring hall although he was also being referred out of another hiring hall)

6030-6725-9900 **Other refusals**

Stage Employees Union, Local 592 (William A. Thomas, an Individual) **JD-358-82**
(U's denial of referral to individual for his widely publicized growing of marijuana, not violative)

6030-6730 Selection for hiring, work on job, or training

Q.V.L. Construction, Inc. **260 NLRB No. 139**
(U's causing or attempting to cause E to refuse to hire individual because of his lack of membership in U, violative)

Townsend and Bottum, Inc. **259 NLRB No. 027**
(U's alleged causing E to deny nonmember of U permission to attend E's welding training classes, not unlawful, where U steward did not inform nonmember that U members were being given preference over nonmembers in admission to welding classes, and E alone determined which applicants will be accepted for training)

International Longshoremen's Association, Local 1329 (Metals Processing Co.) **262 NLRB No. 038**
(refusal and failure to select member as relief winchman because of his testimony at Bd hearing and his defense of same at subsequent U meeting, violative)

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Nelson Freight Lines, Inc., et al.) **260 NLRB No. 086**
(no violation where E cancelled request for dispatch of member absent evidence U engaged in conduct designed to cause E to refuse to employ member; notwithstanding U's secretary-treasurer's animosity towards member, fact E and U were engaged in negotiations, and statement of E's superintendent that orders for cancellation had come *from above*)

Dallas Stage Employees Local Union 127 v. N.L.R.B. **638 F.2d 1198 (C.A. 5, 1981)**
(threat to recommend that U withhold its registered trademark from film if producer hired non-U member for film crew which actually resulted in termination of non-U Ee, not unlawful, where U has authority if not duty to deny producer right to exhibit U trademark and right to maintain integrity of its trademark, and to issue it only when all Ees on production crew are U members)

6030-6762 In conditions of employments

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 105**
(violation where, because of two unit Ees' nonmembership in U, U threatened not to approve their requests for change in schedule to attend military drills so that one of them joined and paid dues to U (although he was and wished to remain member of another U), and U itself unlawfully disapproved and attempted to cause E to disapprove the other Ee's requested change in schedule)

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) **250 NLRB No. 105**
(violation where during period there was in effect U's unlawful order to approve no requests for change in schedule--because of pending ULP charge against it alleging discriminatory refusal of such request--U disapproved Ees' request for changes in schedule pursuant to said order)

N.L.R.B. v. Maui Surf Hotel Company and ILWU Local 142 **601 F.2d 605(T) (C.A. 9, 1979)**
(where all non-essential Ees were required by contract to either sign out or attend work stop meeting, no discrimination as all Ees, including ones who protested were treated same way)

6030-6762-5000 **Seniority position**

Bartenders, Waiters, Waitresses, Cooks & Hotel Employees Union Local 332, AFL-CIO (Ogden Food Service Corporation) **259 NLRB No. 012**
(violation, where U business agent, soon after Ee was nominated to run for business agent's job, requested E to reduce Ee's seniority for Ee's nonpayment of U dues during her maternity leave, and reduction in seniority pursuant to request resulted in loss of work hours to Ee)

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(U's demand for termination or reduction in classification of former member who had crossed picket line, unlawful, since U's concern was not for enforcement of any contract right but that ....*scab* was working, particularly where U refused to discuss Ee's experience)

General Grocer Company **JD-591-80**
(E's and U's action in changing system by which truckdrivers bid, on basis of seniority, for assignments to E's city run deliveries, not unlawful, since U's conduct, following its acquiescence to E's desire to change bidding system for economic reasons, was neither arbitrary, capricious, nor in bad faith, inasmuch as U justifiably viewed its position as effort, under agreement with E, to regain lost rights of its old members as opposed to rights of its members who had transferred from sister local)

6030-6762-5050 Overtime work

Teamsters Local Union No. 315 (Cavalier Corporation) **259 NLRB No. 094**
(where U relied unreasonably on contract clause and initiated grievance which resulted in removal of Ee from his overtime assignment, U's action violative as it was done in retaliation for Ee's resignation from U)

Sprinkmann Sons Corporation of Illinois **JD-763-80**
(E and U held not to have violated Act by E's alleged denial of overtime to non-U Ees at U's behest, where E apportioned overtime based on production ability of E, neither contract nor U's by-laws required that U members be awarded overtime before non-U Ees, contract did not provide that overtime be awarded on basis of seniority, no pattern of discrimination in overtime against non-U Ees was apparent from work records, and one instance of excess in overtime by U member over non-U Ee was due to special circumstances)

Fort Wayne Area Local, American Postal Workers Union, AFL-CIO (Kim Smith) **JD-676-80**
(U's refusal to approve Ee's request to sign preferential overtime list, not unlawful reprisal for criticism of U officials, policy and conduct of internal elections, as alleged, or arbitrary or invidious where Ee failed to timely establish contractual eligibility or show necessity for dilatoriness, and U had legitimate interest in protecting those who acted timely and in avoiding setting undesirable precedent)

6030-6762-5063 Use of tools of trade

Sprinkmann Sons Corporation of Illinois **JD-763-80**
(E and U held not to have violated Act by E's alleged failure to assign, at U's behest, non-U Ees working as journeymen's helpers to jobs requiring use of tools of trade, where E eliminated U steward from job for protesting use of tools by non-U Ees, non-U Ees either used tools or did not request assignment to work requiring their use, contract did not provide that helpers be assigned use of tools nor was it U policy that non-U men should not work with tools, and E determined which Ees would use tools on basis of efficiency and increased production)

6030-6762-5075 **Shift**

6030-6762-5075—Cont.

N.L.R.B. v. American Postal Workers Union **618 F.2d 1249 (C.A. 8, 1980)**
(revocation by U local's president of general president's approval of temporary assignment of Ee-prominent member of rival U-resulting in Ee taking leave w/o pay, unlawful, since revocation not to maintain contract requirement of Ee's assent to working outside his regular schedule where request was for personal reasons and revocation based on personal views of U official, notwithstanding request not signed by steward and exceeded 30 day limit on schedule changes, where general president had apparent authority to approve request, and 30 day limit was personal policy of president of division)

6030-6762-5080 Access to study material for journeyman's examination

Townsend and Bottum, Inc. **299 NLRB No. 027**
(U's alleged denial to nonmember of U of access to study material for its journeyman's examination, not unlawful, where U official did not inform nonmember he could not get material for test unless he was in some way affiliated with U or referred or accepted as an apprentice, U official uncontradictedly denied allegation, and there was no evidence that study material in question even existed)

6030-6775 In continued employment

Pattern Makers' League of North America, AFL-CIO, and Its Rockford and Beloit Associations (Rockford-Beloit Pattern Jobbers Association) **265 NLRB No. 170**
(letter to E requesting E to take *appropriate action* against Ee who failed to join U, violative where letter constituted unlawful request for discharge in light of U's breach of fiduciary duty to inform Ee of obligations so that he could take steps to protect his job; Ee made good-faith effort to comply with obligations by tendering dues to U, but instead of properly advising Ee of his obligations under union-security agreement of new contract, U rejected tender of dues by telling Ee that he did not owe dues since he was not member)

H. H. Robertson Company **263 NLRB No. 173**
(U's requesting discharge of Ees hired outside hiring hall, unlawful, since contrary to E's seniority policies and motivated by Ees' association with U dissident, father of one of Ees, notwithstanding E's contention merely reducing Ee complement on job where job cost would not be lowered; further, no applicants in hiring hall at time of hirings, U gave permission to hire Ees and estopped to object; non-discriminatory referral clause of contract would be defeated if U, while adhereing to referral clause permitted to cause terminations for discrimination reasons, notwithstanding no termination procedure provisions)

Pipefitters Union Local No. 120 (Schweizer Dipple, Inc.) **260 NLRB No. 045**
(discharge of 2 Ees on recommendation of U for not attending pipefitting classes, violative, where agreement to attend classes was executed only by Ees and U but was not part of collective bargaining agreement between E and U, E did not require attendance at classes as condition of employment and Ees were performing satisfactorily on job)

Laborers' International Union of North America, Local No. 496 (Newport News of Ohio, Inc.) **258 NLRB No. 144**
(U's selection of member who had been involved in internal U disputes for layoff by E not violative where U played no role in decision to reduce workforce, his selection did not violate existing criteria, after layoff U sought to refer him to available work)

Tile, Marble, Terrazzo Finishers and Shopmen International Union, Local No. 31, AFL-CIO (Standard Art, Marble and Tile Co.) **258 NLRB No. 152**
(announcement to U members that anyone who worked with suspended member could be fined and resultant lay-off of suspended member from project when another member refused to work with him, violative, where threat of U discipline, notwithstanding local's constitution and by-laws provided for such action, was intended to interfere with Ee's employment)

United Brotherhood of Carpenters and Joiners of America, Carpenters' District Council of Western Pennsylvania and Industrial Local No. 2665, AFL-CIO (DeRose Industries, Inc.) **256 NLRB No. 092**
(causing E to terminate Ee for failure to pay U assessed fine, violative, where conduct, contrary to U's contention, reached beyond internal U affairs since it involved allegation of Sec. 8(b)(2) and therefore not subject to Landrum Griffin proviso requiring exhaustion of internal U remedies)

International Alliance of Theatrical Stage Employees, Local No. 7 (Universal City Studios, Inc.) **254 NLRB No. 134**
(where E had scheduled a number of layoffs, U's action in causing layoff of particular Ee not unlawful, since he could have been placed on another job, thereby permitting fellow Ee who was not eligible for other job to continue working; U's action was in furtherance of legitimate U objective and necessary to effective performance of its function of representing its constituency)

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**
(U's demand for and E's carrying out discharge of Ees who had resigned from U and were attempting to decertify U and replace it with another U, violative, since U's demand was erroneously based on U-security provision and inasmuch as there was no valid basis for discharge request, demand for and discharge of Ees was in retaliation for Ees' exercising their Sec. 7 right to displace incumbent with another U)

Local 889, Laborers' International Union of North America, AFL–CIO (Anthony Ferrante & Sons, Inc.) **251 NLRB No. 211**
(U's business umanager informing E that Ee was to blame for problems among crew and causing Ee's discharge as toublemaker, unlawful, since action of business manager of rival for his post)

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilsen Freight Lines, Inc., et al.) **249 NLRB No. 006**
(violation, where U's secretary-treasurer informed E one day before member who was Ee of E was to achieve seniority under Local Agreement and become permanent Ee of E that member had been dispatched to E in violation of Agreement and that E should be using another of its members, where dispatch had been in accordance with hiring procedures of Agreement and in view of U's secretary-treasurer's antagonism to member, notwithstanding no threats made)

Peoria Newspaper Guild, Local 86 (Peoria Journal Star) **248 NLRB No. 029**
(Guild's threatening Ee with discharge and attempting to discharge him for failure to maintain membership and pay dues unlawful, where Ee unequivocally had resigned after expiration of bargaining contract having security clause but before new contract with maintenance-of-membership clause was ratified by Guild members and executed by parties; Ee's payment of dues for one month after resignation because he was a Guild member for part of month did not impair resignation's effectiveness)

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(U's demand for termination or reduction in classification of former member who had crossed picket line, unlawful, since U's concern was not for enforcement of any contract right but that ....*scab* was working, particularly where U refused to discuss Ee's past experience)

Local Union No. 813, International Brotherhood of Painters and Allied Trades of The United States and Canada, AFL-CIO (W.Q. Watters Company) **JD-143-82**
(over zealous new U steward's removing Ee, *traveling* member of Painters local 970, from job being performed by members of Painters' local 813 because Ee did not produce U *book* immediately when asked by stewards and ratio of local 970 members to 813 members was not right, violative, since *traveling* Ee did produce *book* one day after being asked; U prohibited from seeking discharge of *travelers* who are working on job site w/i jurisdiction of home local, but are members of another local of same International U)

Musicians' Association of Hawaii, Local 677, a/w AFM **JD-(SF)-83-82**
(no violation where bandleader-E told Ee that his job was temporary and that he would have to go as soon as U member replacement arrived, because U did not threaten E with any discipline for having non-U member of band which is contrary to U bylaws)

Local No. 17, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (American Bridge Division, United States Steel Corporation) **JD-893-81**
(attempting to cause E to discriminate against all *permit men* (not U members) violative. Defense that Sec. 8(f)(4) allowed such U conduct as attempt to provide priority to workers in particular geographical area, rejected, since U failed to so qualify request)

Local Union No. 410, Sheet Metal Workers International Association, AFL-CIO (Inryco, Inc.) **JD-218-81**
(revoking referral permits of 2 non-U Ees which caused E to discriminatorily discharge Ees because they declined to picket and handbill another E, violative)

Sprinkmann Sons Corporation of Illinois **JD-763-80**
(neither E nor U held to have violated Act by lay off of non-U Ee, where E creditably testified that no U representative talked with him as to who should, and who should not, be laid off; E cut Ee complement by 40% after completing, in major part, biggest and most complex part of construction job; and E kept U Ees on job because they were better suited than non-U Ee to complete final work on job)

District 30, United Mine Workers of America (Beth-Elkhorn Corporation) **JD-19-81**
(U unlawfully caused discharge of Ee because he was not U member, by engaging in strike for that purpose and to have him replaced by U member;

6030-6775—Cont.

strike was not caused by discharge of U members who gathered at mine to stop Ee from working and were terminated when they refused to comply with E's instructions to go to work; it was apparent strike had discriminatory motive and was not an overreaching or misinterpretation of contract; failing proof that there was an arguable claim which U could make, presumption of illegality remains)

District 30, United Mine Workers of America (Beth-Elkhorn Corporation) **JD-19-81**
(U held to have caused constructive discharge, in violation of Sec. 8(a)(3), of nonmember of U because of unbearable pressure he experienced, where he knew he was reason for work stoppage, was verbally and physically abused at U hall, received threatening phone calls, was told by U officers that he had taken U member's job and other Ees would not work with him and that he might as well quit, and E finally invited him to do so)

Moser Brothers Welding, Inc. **JD-(NY)-38-80**
(no violation where U was found to have caused member's discharge, not to retaliate for member's relative's running against U business manager for his office as alleged, but to protect integrity of hiring procedure where member had disregarded business manager's instructions and gone behind his back to get good job)

General Warehousemen, Local 598, Teamsters **JD-(SF)-196-80**
(U agent's attempt to cause lay off of Ee who was leader in decertification campaign, unlawful, where, after threatending to *have* Ee's job, agent telephoned E in attempt to cause E to lay off Ee who had knowledge of incident, and unlawful motive was evident from agent's hostility towards Ee's leadership in decertification campaign; moreover, GC met his prima facie burden of proof thru parties' stipulation, and there was no evidence to satisfy U's rebuttal burden)

Cowlitz Stud Company **JD-(SF)-141-80**
(U's action in seeking removal of new Ee not violative where Ee was hired in abbrogation of collective-bargaining agreement which required vacant positions to be filled by seniority unless outside applicant highly qualified; U was fulfilling its duty to represent its constituency)

Standard Bridge Corporation **JD-174-80**
(U's and E's conduct violative, where U threatened to picket E's jobsite in attempt to cause and caused E to discharge Ees because they were not members of U notwithstanding that U had denied Ees membership and refused to provide them opportunity to tender dues and initiation fees pursuant to lawful U security agreement)

Dallas Stage Employees Local Union 127 v. N.L.R.B. **633 F.2d 1195 (C.A. 5, 1981)**
(threat to recommend that U withhold its registered trademark from film if producer hired non-U member for film crew which actually resulted in termination of non-U Ee, not unlawful, where U has authority if not duty to deny producer right to exhibit U trademark and right to maintain integrity of its trademark, and to issue it only when all Ees on production crew are U members)

N.L.R.B. v. Eldorado Manufacturing Corporation and United Steelworkers of America, AFL-CIO **660 F.2d 1207 (C.A. 7, Sep. 1981)**
(U did not unlawfully cause discharge of Ees, since U was not liable for acts of U steward and grievance committeemen who met with E as individuals on behalf of themselves and other Ees distressed by dischargees' misconduct at work place in course of intra-U dispute; steward and committeemen were not acting in accordance with their agreement of association, nor did U instigate, support, ratify, or encourage discharges; no discharge ultimatum was given E who was left with resolution of problem; and dischargees' offensive behavior justified discharges)

N.L.R.B. v. Laborers', Local 309 **613 F.2d 203 (C.A. 9)**
(U's refusing to refer Ee to job, and causing him to be discharged after he had secured the job w/o referral from U, violative, notwithstanding Ee's securing the job w/o referral from U violated hiring hall provisions of bargaining agreement between U and E; U enforced the hiring hall provisions to the effect that Ee was removed from job only when U business agent was advised of Ee's dissident activities)

6030-6787 In processing grievances

The Soft Drink Employees Independent Union (Chattanooga Coca Cola Bottling Company) **264 NLRB No. 096**
(U rebutted *prima facie* case of discrimination concerning U president's filing of grievance against individual, adversely affecting his seniority ranking, following intra U charges filed by individual against U president, where it was established that U and U president would have taken same action against individual notwithstanding existence of discriminatory concerns)

United Rubber, Cork, Linoleum and Plastic Workers of America, Local 878 (Goodyear Tire & Rubber Company) **255 NLRB No. 032**
(U which left non-U member Ee off list of Ees entitled to grievance pay because he was non-U member which resulted in E's not paying Ee monies owed him violated Act)

Classic Truck Rental Corp. **251 NLRB No. [illegible]**
(U's refusal to pursue Ee's grievance, not unlawful, where there was no reason for U to deny him proper representation because Ee had not yet undertaken alleged protected activity, U refused to process grievance because it concerned work which U did not consider unit work, and refusal cannot be considered either irrelevant or arbitrary when viewed in light of history of special nature of job assignment which was subject of Ee's grievance)

Detroit Diesel Allison Division, General Motors Corporation **249 NLRB No. [illegible]**
(U's filing of grievance assertedly in order to cause transfer of Ee and his politically allied fellow Ee out of their department because Ee intended to run for election against incumbent U officer, and E's implementation of sustained grievance, not unlawful, where incumbent officer successfully handled financially rewarding grievance for Ee, thereby mitigating any inference of animosity on part of incumbent towards Ee; grievance was arguable and not unmeritorious; Ees' transfer resulted from drop in production; and Ees were not harmed by temporary transfer or inhibited in running for U office)

General Teamsters, Chauffeurs, Helpers and Yardmen, Local No. 470, a/w Teamsters (Connelly Containers, Inc.) **JD-[illegible]-81**
(U's refusal to process members' grievance regarding superseniority of steward for job bidding, not unlawful notwithstanding lack of investigation and fact U was mistaken as to the legality of this type of superseniority, since U's handling of grievance resulted from its position that superseniority for steward was allowable and not from any will or invidious considerations)

Cowlitz Stud Company **JD-(SF)-141-80**
(U which successfully obtained Ee's discharge because E had violated contract provision when it hired him did not violate act when it refused to process grievance on Ee's behalf which sought his reinstatement)

6040 ENFORCEMENT OF UNION MEMBERSHIP REQUIREMENT

6040-0100 Generally

Big Rivers Electric Corporation **260 NLRB No. [illegible]**
(U's obligations prior to seeking discharge of Ee for failure to pay dues under U security clause include; informing Ee of amount owed, method used to compute amount, when such payment to be made, and fact that discharge will result from failure to pay; however, these requirements are not rigidly applied and where Ee failed to make any effort to pay dues after 8 months of warnings. U did not violate Act by requesting and causing her discharge)

Musicians Union Local 47, etc. (American Broadcasting Company, etc.) **255 NLRB No. [illegible]**
(nothing in Act or its legistative history indicates that U-shop provisions in Sec. 8(a)(3) and 8(b)(2) were designed to give Es and Us license to use various discriminatory devices, short of discharge, to require Ees to join or maintain their U membership)

Plumbers, Local No. 32, AFL-CIO (David Pena, Sr., an Individual) **JD-(SF)-[illegible]-82**
(U did not violate Act when it requested discharge of Ee for failure to pay his initiation fee and dues payments notwithstanding U did not notify Ee of exact amount due where E had been in arrears for almost two year period, U had tried to collect from him over entire time and Ee acted in bad faith by continually promising to pay and then failing to follow through)

6040-2800 Illegal provisions or requirements

Building Material & Dump Truck Drivers Local 420, Teamsters (Standard Concrete Material, Inc.) **260 NLRB No. 115**
(U's requesting E to terminate various unit Ees to enforce U security provisions of contract, violative, since U was never bargaining representative of E's Ees, where transfer of E's Ees to U herein from another U was ineffective)

6040-2880 Membership in less than 30 days

Wine and Liquor Store Employees Union, Local 122, a/w Distillery Workers (Harvey Entin, d/b/a Oz Liquor Co.) **261 NLRB No. 183**
(U's maintenance of contract with E that did not specify that Ee has 30 days in which to establish relationship with U, violative since contract exceeds permissive bounds of U-security clause)

International Photographers of The Motion Picture Industries, Local No. 644, etc. (King-Hitzig Productions) **259 NLRB No. 186**
(U violated Act by maintaining in its contracts union-security clauses which do not provide for statutory 30-day waiting period before requiring U membership)

6040-[illegible] Discriminatory application of valid requirement

6040-[illegible] Generally

6040-6001-6000 Union obligation to inform employees of membership requirements

Versatile Services, Inc. **258 NLRB No. 109**
(U which caused E to discharge Ees for failure to join U violated Act notwithstanding existence of U-security clause where Ees had not been afforded reasonable opportunity to comply with clause nor informing them of their obligations)

Chauffeurs, Teamsters, Warehousemen, and Helpers,
Local Union No. 525, affiliated with
International Brotherhood of Teamsters
Chauffeurs, Warehousemen and Helpers of
America **JD-260-82**
(U did not violate Act when it requested member's discharge for nonpayment of dues under valid U security clause where it notified member by mail of his delinquency, notified him in person, informed him of exact amount owed and was given 3 months grace period after demand before discharge was requested)

Electrical Workers, Local Union 649 (Olin
Corporation) **JD-190-81**
(U violated Act when it requested that E discharge Ee for failure to join U as required by U security clause where Ee had made good faith attempt to join, U official gave him another date to be sworn into U when Ee requested different date but in interim, w/o any notice to Ee, U informed E to discharge Ee)

6040-6025 Extension of contract to non-consenting employees

Sav-On Drugs, Inc. **JD-(SF)-214-81**
(U's acting in concert with E extending coverage of current agreement to include enforcing U security clause to Ees at E's two new facilities and enforcing U security clause contained therein at time U did not represent uncoerced majority of Ees at new facilities, having obtained authorization cards through threats of loss of employment)

6040-6050 For reasons other than failure to tender dues or initiation fees

Wine and Liquor Store Employees Union, Local
122, a/w Distillery Workers (Harvey Entin, d/
b/a Oz Liquor Co.) **261 NLRB No. 152**
(U's maintenance of U security clause, violative since clause gave U right to insist that Ees do more than pay initiation fees and dues such as for example , U could insist that Ees attend meetings, take oath, or pay additional assessments; failure to do so would jeopardize Ees' job tenure)

Pipefitters Union Local No. 120 (Schweizer Dipple,
Inc.) **260 NLRB No. 045**
(discharge of 2 Ees on recommendation of U for not attending pipefitting classes, violative, where agreement to attend classes was executed only by Ees and U but was not part of collective bargaining agreement between E and U, E did not require attendance at classes as condition of employment and Ees were performing satisfactorily on job)

Port Jefferson Nursing Home and Health Related
Facility **251 NLRB No. 092**
(U's demand for and E's carrying out discharge of Ees who had resigned from U and were attempting to decertify U and replace it with another U, violative, since U's demand was erroneously based on U-security provision and inasmuch as there was no valid basis for discharge request, demand for and discharge of Ees was in retaliation for Ees' exercising their Sec. 7 right to displace incumbent with another U)

Actors' Equity Association **247 NLRB No. 172**
(U's maintenance and enforcement of U security requirement that nonresident aliens pay dues of 5 percent of gross earnings while requiring significantly less dues from other members, unlawful; U's defenses to presumptive invalidity of such disparate requirement rejected, since U failed to establish any present or recent purpose for maintaining such dues other than its effectiveness in producing revenues)

Local Union No. 813, International Brotherhood of
Painters and Allied Trades of The United
States and Canada, AFL-CIO (W.Q. Watters
Company) **JD-143-82**
(over zealous new U steward's removing Ee, *traveling* member of Painters local 970, from job being performed by members of Painters' local 813 because Ee did not produce U *book* immediately when asked by stewards and ratio of local 970 members to 813 members was not right, violative, since *traveling* Ee did produce *book* one day after being asked; U prohibited from seeking discharge of *travelers* who are working on job site w/i jurisdiction of home local, but are members of another local of same International U)

Standard Bridge Corporation **JD-174-80**
(U's and E's conduct violative, where U threatened to picket E's jobsite in attempt to cause and caused E to discharge Ees because they were not members of U notwithstanding that U had denied Ees membership and refused to provide them opportunity to tender dues and initiation fees pursuant to lawful U security agreement)

6040-7500 Maintenance-of-membership requirements

6040-7550 Resignation during contract hiatus

Peoria Newspaper Guild, Local 86 (Peoria Journal
Star) **248 NLRB No. 028**
(Guild's threatening Ee with discharge and attempting to discharge him for failure to maintain membership and pay dues unlawful, where Ee unequivocally had resigned after expiration of bargaining contract having security clause but before new contract with maintenance-of-membership clause was ratified by Guild members and executed by parties; Ee's payment of dues for one month after resignation because he was a Guild member for part of month did not impair resignation's effectiveness)

6050 ENFORCEMENT OF DUES AND INITIATION FEE REQUIREMENTS

6050-0100 Generally

6050-0150 Dues and initiation fees uniformly required

Local Union No. 1112, Laborers' International
Union of North America, AFL-CIO (Frank M.
Russell, an Individual) **JD-1-82**
(causing discharge of Ee for failure of Ee to complete payment of requisite U initiation fee and dues, violative where fee and dues were not uniformly imposed on Ee and other Ees)

6050-3300 Illegal provisions or requirements

6050-3325 Payment required within 30-day grace period

Versatile Services, Inc. **258 NLRB No. 109**
(U which caused E to discharge Ees for failure to join U violated Act notwithstanding existence of U-security clause where Ees had not been afforded reasonable opportunity to comply with clause nor informing them of their obligations)

6050-3350 Payment required within 8(f) grace period of 7 days

Federation of Employees Union, Local 1027 (Index
Construction Corporation) **263 NLRB No. 66**
(deduction of dues during first 7 days of employment)

Berry-Maharin Construction, Inc. **258 NLRB No. 171**
(Local U's refusal to refer qualified individual who was member only of sister Local, because of non-membership in Local, fact individual sought job directly with E rather than through U, and his refusal to execute checkoff authorization w/i 7 day grace period, unlawful)

6050-3375 Payment through dues checkoff required

AMF Wheel Goods Division, a Division of AMF
Incorporated **247 NLRB No. 048**

6050-3387 Requiring payment of excessive and/or discriminatory initiation fees or dues

Actors' Equity Association **247 NLRB No. 173**
(U's maintenance and enforcement of U security requirement that nonresident aliens pay dues of 5 percent of gross earnings while requiring significantly less dues from other members, unlawful; U's defenses to presumptive invalidity of such disparate requirement rejected, since U failed to establish any present or recent purpose for maintaining such dues other than its effectiveness in producing revenues)

N.L.R.B. v. Actors' Equity Association **644 F.2d 939 (C.A. 2, Mar 17, 1981)**
(U which represented actors charging aliens higher dues than other members, unlawful; contentions that aliens not protected under Act and that discriminatory dues justified in that they protected Americans from hostile or retaliatory actions on part of British U, and provided counterweight to British U's influence over alien admissions in England, rejected)

6050-3393 Requiring payment of reinstatement fee

Sheet Metal Workers International Association,
Local Union No. 13, AFL-CIO (Sheet Metal
Contractors Association Hudson & Bergen
Counties, New Jersey) **259 NLRB No. 056**
(requiring nonmember applicant to pay *reinitiation fee* covering period when he was not offered work through U's exclusive hiring hall, unlawful, since reinitiation fee actually constituted back dues which an applicant cannot be required to pay when dues are not validly required to be paid as a condition of employment)

6050-4700 Discriminatory application of valid requirements

6050-4701 Generally

AMF Wheel Goods Division, a Division of AMF
Incorporated **247 NLRB No. 048**
(U which had internal policy requiring payment of dues by check or money order violated Act when it requested Ee's discharge for lack of membership

6050-6701—Cont.

when Ee tendered dues in cash; U had right to deny Ee membership but did not have right to deny him job and E violated Act when it acquiesced in U's demand; moreover, fact that Ee had alternative method of payment; namely, executing checkoff card immaterial since under Sec. 7 Ee has right to refuse such method of payment)

N.L.R.B. v. Construction and Building Material Teamsters Local No. 291 — 633 F.2d 291 (C.A. 9, 1980)
(before U takes drastic step of causing member to be discharged for delinquent dues payments, U must take whatever steps are necessary to be certain that delinquency was not due to member's ignorance or inadvertence)

6050-6701-0000 Union obligation to inform employees of dues requirements

Local 1445, United Food and Commercial Workers (Gallahue's Supermarkets) — 247 NLRB No. 131
(U demanding discharge of Ees who had not paid U dues or executed checkoff authorizations as required by U security and checkoff agreements before U had advised Ees of their obligation under provisions, notwithstanding almost one half of Ees attended meeting at which agreement ratified)

Plumbers, Local No. 32, AFL-CIO (David Pena, Sr., an Individual) — JD-(SF)-148-82
(U did not violate Act when it requested discharge of Ee for failure to pay his initiation fee and dues payments notwithstanding U did not notify Ee of exact amount due where E had been in arrears for almost two year period, U had tried to collect from him over entire time and Ee acted in bad faith by continually promising to pay and then failing to follow through)

Local Union No. 1112, Laborers' International Union of North America, AFL-CIO (Frank M. Russell, an Individual) — JD-1-82
(causing discharge of Ee for failure of Ee to complete payment of requisite U initiation fee and dues, held violative where there was no *clear and unambiguous notice of dues delinquencies, the manner of their computation (and) the consequences which would follow if the arrears were not paid by a certain date*)

Service Employees' International Union, Pittsburgh Local No. 29 AFL-CIO (Alcoa Service Corporation) — JD-272-81
(U's demand under security clause for Ee's discharge for dues arrearages, unlawful, since U failed to fulfill fidiciary duty to make certain Ee will not fail to meet obligation through ignorance or oversight, but only by choice, where first explanation of his arrearages and how his payments had been credited given Ee after discharge, Ee did not understand U's system of applying payments to arrearages, and had stated he did not believe he was in arrears, and when confronted previously with obvious delinquency had paid. Irrelevant Ee might had determined dues were owed from pay stubs)

N.L.R.B. v. Local 1445, United Food and Commercial Workers International Union, AFL-CIO (Gallahue's Supermarkets) — 647 F.2d 214 (C.A. 1, Apr 1981)
(U's duty to deal fairly with its members when seeking to enforce U-security agreement requires it to inform Ee of his obligations under U-security clause in order that Ee may take whatever action is necessary to protect his job; and U's failure to give actual and clear notice to Ee of his responsibility to pay dues before demanding his discharge is unlawful)

N.L.R.B. v. Local 1445, United Food and Commercial Workers International Union, AFL-CIO (Gallahue's Supermarkets) — 647 F.2d 214 (C.A. 1, Apr 1981)
(ct expressly adopted rule imposing duty on U to notify Ee of amount of U dues owed, methods for calculating dues owed, and deadline for payment before it could ask E to terminate Ee for failure to pay dues)

N.L.R.B. v. Distillery, Rectifying, Wine and Allied Workers International Union of America, Local Union 38, AFL-CIO — 642 F.2d 185 (C.A. 6, Feb 16, 1981)
(U's conduct held unlawful where it failed to give clear and unambiguous notices to U members that continued failure to pay dues in arrears and maintain current dues payments would result in expulsion from U and discharge from employment; Bd's error in its decision that U had permitted other Ees to become more than 6 months delinquent w/o causing their discharge held not dispositive of case)

6050-6703 Requesting discharge after waiver of delinquency

Marsh Investment Corporation d/b/a The Claremont Resort Hotel and Tennis Club — 260 NLRB No. 034
(U which requested that E discharge Ee under provisions of U security clause for nonpayment of U dues violated Act where U's notice to Ee on amount that he owed was defective, notice was received late due to mistake by post office, Ee tendered partial payment before due date and U never notified him that it didn't accept partial payments; moreover, U accepted rest of money owed after last day to pay had passed thus waiving its rights to enforce U security clause)

Sheet Metal Workers' Union Local 355 (Zinsco Electrical Products) — 284 NLRB No. 082
(failing to notify E that it had granted Ee extension of time to pay dues thereby resulting in E honoring U's request for discharge, violative)

6050-6707 Failure to inform member of obligation

Pattern Makers' League of North America, AFL-CIO, and Its Rockford and Beloit Associations (Rockford-Beloit Pattern Jobbers Association) — 265 NLRB No. 170
(letter to E requesting E to take *appropriate action* against Ee who failed to join U, violative where letter constituted unlawful request for discharge in light of U's breach of fiduciary duty to inform Ee of obligations so that he could take steps to protect his job; Ee made good-faith effort to comply with obligations by tendering dues to U, but instead of properly advising Ee of his obligations under union-security agreement of new contract, U rejected tender of dues by telling Ee that he did not owe dues since he was not member)

Western Publishing Co., Inc. — 263 NLRB No. 165
(delinquent U members' waiting 2 weeks to contact U official concerning E's letter telling Ees that non-payment of dues would subject them to termination cannot, by itself, absolve U of its affirmative obligation to notify them of the delinquency; nor is E's notice sufficient to satisfy U's obligation)

Western Publishing Co., Inc. — 263 NLRB No. 165
(causing discharge of Ees who were delinquent in dues payments, violative, where U fell short of meeting minimum notice requirements, and absent evidence of bad faith or willfull avoidance of Ees' dues obligations)

Marsh Investment Corporation d/b/a The Claremont Resort Hotel and Tennis Club — 260 NLRB No. 034
(U which requested that E discharge Ee under provisions of U security clause for nonpayment of U dues violated Act where U's notice to Ee on amount that he owed was defective, notice was received late due to mistake by post office, Ee tendered partial payment before due date and U never notified him that it didn't accept partial payments; moreover, U accepted rest of money owed after last day to pay had passed thus waiving its rights to enforce U security clause).

Food, Drug, Beverage Warehousemen and Clerical Employees, Local 595, Teamsters (Certified Grocers of California, Ltd.) — 257 NLRB No. 080
(giving inadequate notice of dues and reinitiation fee delinquencies to member before enforcing U-security clause and causing his discharge, violative, where U sent letter relating to dues delinquency that was not received and shop steward spoke about dues to member upon his return to work after illness; however, member was entitled to statement of precise amount and months for which dues were owed, an explanation of methods used in computing amount and an adequate opportunity to make payment)

United Metaltronics and Hospital Supply Employees, Local 955 (Pharmaseal Laboratories, Inc.) — 284 NLRB No. 070
(causing discharge of Ees for non-payment of dues and initiation fees, unlawful where U did not give sufficient notice to Ees of their obligations to U; requirements that Ees be given precise information concerning their obligation was of particular importance as result of confusing history of applicability of U security clause and lengthy hiatus which interrupted Ees' dues obligations)

Valley Cabinet & Mfg., Inc. — 253 NLRB No. 098
(requesting Ees discharge for nonpayment of dues, w/o adequately informing her of her financial obligations to U, violative)

Local 572, Teamsters (Ralphs Grocery Company) — 247 NLRB No. 190
(U's seeking and causing discharge of Ee for failing to pay dues pursuant to U-security agreement, unlawful, where U did not give Ee sufficient prior notice of her delinquency, and during Ee's conversation in U office she was not given correct amount nor reasonable opportunity to satisfy her obligation before her termination)

Boilermakers' Union, Local No. 104 (Marco Seattle, Inc.) — JD-(SF)-294-82
(U's breach of fiduciary obligation to give Ee reasonable notice of dues delinquency which resulted in discharge under U security clause, violative; U's issuing notice that was defective even under its view of the case not excused where inference cannot be drawn on the record that proper notice would have been ignored)

Local Union No. 1112, Laborers' International Union of North America, AFL-CIO (Frank M. Russell, an Individual) — JD-1-82
(causing discharge of Ee for failure of Ee to complete payment of requisite U initiation fee and dues, held violative where there was no *clear and unambiguous notice of dues delinquencies, the manner of their computation (and) the consequences which would follow if the arrears were not paid by a certain date*)

6050-6767—Cont.

Service Employees' International Union, Pittsburgh Local No. 29 AFL-CIO (Alson Service Corporation) **JD-272-81**
(U's demand under security clause for Ee's discharge for dues arrearages, unlawful, since U failed to fulfill fiduciary duty to make certain Ee will not fail to meet obligation through ignorance or oversight, but only by choice, where first explanation of his arrearages and how his payments had been credited given Ee after discharge. Ee did not understand U's system of applying payments to arrearages, and had stated he did not believe he was in arrears, and when confronted previously with obvious delinquency had paid. Irrelevant Ee might had determined dues were owed from pay stubs)

Yellow Cab Company of Philadelphia (Debtor in Possession) **JD-247-81**
(U causing termination of Ees for dues delinquencies violative where U failed to give Ees accurate, complete or timely notice of U's alleged change in policy regarding consequences of dues delinquency)

Laborers International Union of North America, AFL-CIO, Local 297 (Kaiser Refractories) **JD-(SF)-354-80**
(causing discharge of Ee for failing to tender dues and initiation fee, not unlawful where Ee ignored U's letters to him informing him of his obligation to pay dues and initiation fee)

N.L.R.B. v. Local 1445, United Food and Commercial Workers International Union, AFL-CIO (Gallahue's Supermarkets) **647 F.2d 214 (C.A. 1, Apr 1981)**
(U's demands that E terminate Ees who had not paid their dues under U-security agreement, unlawful, where demands were made before U notified Ees of amount of dues owed, method of computing them, and deadline for payment; ct rejected U's contentions that (1) its action was not unlawful because its discharge demands were not communicated to Ees and no Ees were fired; (2) violation was so minor as not to warrant enforcement of Bd order; and (3) Bd order should not be enforced because U had notified all Ees of their dues obligations)

N.L.R.B. v. Distillery, Rectifying, Wine and Allied Workers International Union of America, Local Union 38, AFL-CIO **643 F.2d 185 (C.A. 6, Feb 16, 1981)**
(U's conduct held unlawful where it failed to give clear and unambiguous notices to U members that continued failure to pay dues in arrears and maintain current dues payments would result in expulsion from U and discharge from employment; Bd's error in its decision that U had permitted other Ees to become more than 6 months delinquent w/o causing their discharge held not dispositive of case)

N.L.R.B. v. Construction and Building Material Teamsters Local No. 291 **633 F.2d 291 (C.A. 9, 1980)**
(violation where U caused E to discharge Ee for delinquency in dues payments w/o first giving him notice of suspension from U membership and opportunity to restore himself in good standing)

Local 1445, United Food and Commercial Workers (Gallahue's Supermarkets) **247 NLRB No. 151**
(U demanding discharge of Ees who had not paid U dues or executed checkoff authorizations as required by U security and checkoff agreements before U had advised Ees of their obligation under provisions, notwithstanding almost one half of Ees attended meeting at which agreement ratified)

6050-6772 Requesting discharge after acceptance of dues arrearages

Harsh Investment Corporation d/b/a The Claremont Resort Hotel and Tennis Club **260 NLRB No. 094**
(U which requested that E discharge Ee under provisions of U security clause for nonpayment of U dues violated Act where U's notice to Ee on amount that he owed was defective, notice was received late due to mistake by post office, Ee tendered partial payment before due date and U never notified him that it didn't accept partial payments; moreover, U accepted rest of money owed after last day to pay had passed thus waiving its rights to enforce U security clause)

Yellow Cab Company of Philadelphia (Debtor in Possession) **JD-247-81**
(causing E to discharge Ees, violative where Ees paid their back dues in accordance with deadline agreed upon by E and U and thereby met their dues obligations)

6050-6781 Retroactive application of dues requirement

International Brotherhood of Security Personnel Officers and Guards, formerly known as L. Joseph Overton & Associates **JD-(NY)-44-82**
(U security clause may not be applied retroactively. Date of execution and not effective date of bargaining agreement governs validity of such clause notwithstanding members voted for earlier date)

International Brotherhood of Security Personnel Officers and Guards, formerly known as L. Joseph Overton & Associates **JD-(NY)-44-82**
(demand for dues covering lawful period and also unlawful period (prior to execution date of contract) violative)

6050-6790 Requiring payment for period when no obligation

Electrical Workers, Local Union No. 66 (Houston Lighting and Power Company) **262 NLRB No. 061**
(U's refusal to give effect to U member's valid revocation of checkoff authorization by notifying E thereof, and its continued acceptance of dues deducted from member's wages, unlawful, where member clearly conveyed to U his intention to revoke authorization, and U was aware that he had requested E to stop his payroll deductions; member complied with authorization's precondition for revocation by clearly communicating to U his desire to cancel checkoff; and, even if execution of cancellation form was prerequisite for revocation, U repeatedly frustrated member's attempts to do so)

C. B. Display Service, Inc. **260 NLRB No. 140**
(U which demanded former member reinstate his membership as condition of referral from exclusive hiring hall violated Act in absence of U-security clause)

Sheet Metal Workers International Association, Local Union No. 13, AFL-CIO (Sheet Metal Contractors Association Hudson & Bergen Counties, New Jersey) **259 NLRB No. 096**
(requiring nonmember applicant to pay *reinitiation fee* covering period when he was not offered work through U's exclusive hiring hall, unlawful, since reinitiation fee actually constituted back dues which an applicant cannot be required to pay when dues are not validly required to be paid as a condition of employment)

Boilermakers' Union, Local No. 104 (Marco Seattle, Inc.) **JD-(SF)-294-81**
(U's demanding discharge of Ee pursuant to U security clause for failure to pay dues and reinstatement fees that were not delinquent, violative)

International Brotherhood of Security Personnel Officers and Guards, formerly known as L. Joseph Overton & Associates **JD-(NY)-44-82**
(U security clause may not be applied retroactively. Date of execution and not effective date of bargaining agreement governs validity of such clause notwithstanding members voted for earlier date)

Honeywell, Inc. - Tampa Operations **JD-116-81**
(causing E to deduct dues from wages of Ees who had effectively revoked their dues checkoff authorizations by resigning from U during hiatus period between contracts, violative)

6050-6800 Means of enforcement

Mailers Union Local No. 7 a/w International Typographical Union (The Kansas City Star Company) **262 NLRB No. 107**
(refusing to assign overtime work to, and forcing overtime by, Ee because of delinquency in dues, violative)

Musicians Union Local 47, etc. (American Broadcasting Company, etc.) **255 NLRB No. 068**
(U's withholding of member's paycheck, transmitted by E through U for member's nonpayment of dues, unlawful, where member made demand for check through properly authorized individual; U failed to call persons at U office instrumental in denying check to member to testify, thereby giving rise to inference that their testimony would not have been favorable to U; other members in same situation confirmed member's account; and U finally conceded its action was based on member's dues deficiency)

Musicians Union Local 47, etc. (American Broadcasting Company, etc.) **255 NLRB No. 068**
(U's withholding of member's paychecks, transmitted by Ee through U for member's services, unlawful; while U is free to seek discharge of Ees behind in their dues, that is sole measure available to it under Act to enforce members' financial obligations, and E was obliged to maintain statutorily mandated separation between employment rights, such as right to receive paycheck, and membership obligations)

6060 ENFORCEMENT OF SENIORITY AGREEMENTS AND PRACTICES

6060-0100 Generally

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Nelson Freight Lines, Inc., et al.) **249 NLRB No. 086**
(no violation where U's business agent informed E who requested member by name that member did not qualify for dispatch by name because he did not have sufficient seniority under agreement to qualify for list from which such dispatches made)

6060-0190 Union actions may not be based on irrelevant or invidious considerations

Bartenders, Waiters, Waitresses, Cooks & Hotel Employees Union Local 332, AFL-CIO (Ogden Food Service Corporation) 259 NLRB No. 032
(violation, where U business agent, soon after Ee was nominated to run for business agent's job, requested E to reduce Ee's seniority for Ee's nonpayment of U dues during her maternity leave, and reduction in seniority pursuant to request resulted in loss of work hours to Ee)

District Union 227, United Food (The Kroger Co.) 247 NLRB No. 023
(U's filing of grievance alleging that E had misclassified former member, who had crossed picket line, at higher classification than that for which he qualified, unlawful, since U was not motivated by desire to protect wage structure, but to penalize Ee for protected activity, where it had previously demanded discharge of ....scab)

6060-5000 Enforcement of discriminatory seniority rules

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO 253 NLRB No. 091
(on ct remand, Bd affirmed earlier decision stating that recently negotiated collective-bargaining agreement and letter of understanding which provided for mutually agreed upon method of operating U's out-of-work lists neither renders original order moot nor justifies its modification; furthermore, compliance with order does not rule out necessity for an order to deter future unlawful conduct)

Teamsters, Local No. 671 (Connecticut Natural Gas Corporation) JD-559-80
(maintaining and enforcing contractual seniority clause according U stewards superseniority as to terms and conditions of employment beyond layoff and recall, unlawful)

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. 622 F.2d 267 (C.A. 6, 1980)
(placing U leaders at top of out-of work list, unlawful, since not justified by representational needs where their presence not required in work place)

The PaintSmiths, Inc. v. N.L.R.B. 620 F.2d 1326 (C.A. 8, 1980)
(U's exercise of appointment of steward power which caused layoff of regular Ee violative absent legitimate and substantial reasons for doing so)

The PaintSmiths, Inc. v. N.L.R.B. 620 F.2d 1326 (C.A. 8, 1980)
(*steward preference* clauses are facially valid; however, selecting steward from outside Ee ranks will require substantial showing that workers E already has on job are not competent to carry out steward functions)

The PaintSmiths, Inc. v. N.L.R.B. 620 F.2d 1326 (C.A. 8, 1980)
(fact that E did not notify U of job's commencement coupled with one Ee's violation of a work rule does not give rise to *substantial* reason for invoking appointment-of-steward clause which caused layoff of Ee)

6060-5800 Superseniority

Stage Employees, Local 695 (Twentieth Century-Fox Film Corp.) 241 NLRB No. 086
(clause in contract which entitles former U official to claim his former employment with his former E *as though he had never left such job* found not to be violative superseniority provision as it is not preference but restoration and E is no better off than before he left unit position and has no additional seniority)

McQuay-Norris, Inc. 250 NLRB No. 191
(E and U violated Act by maintaining and enforcing superseniority clause which caused retention of Ee-U officials (trustee and guide) above other Ees with more seniority where U officials duties concerned organizational and internal functions of U and not contractual matters pertaining to bargaining and grievances)

Sheaffer Eaton Division of Textron, Inc. 251 NLRB No. 141
(following election, E's granting U steward top seniority in permanent job classification pursuant to contract's superseniority provisions which specifically apply to *bump/layoff* status found not violative, although it resulted in his transfer from lower paying job at which he had been working while in *bump/layoff* status and bumping Ee whom he replaced who had greater job seniority into lower paying job)

General Teamsters, Chauffeurs, Helpers and Yardmen, Local No. 470, a/w Teamsters (Connelly Containers, Inc.) JD-449-81
(U's maintaining and enforcing policy or practice whereby its steward was given superseniority for trip selection, unlawful, since w/o justification that would overcome presumption of invalidity under *Dairylea* of superseniority relating to job selection for stewards, where steward selected trips to take place during hours when most grievances arose and thus superseniority did not benefit unit members or labor relations)

General Teamsters, Chauffeurs, Helpers and Yardmen, Local No. 470, a/w Teamsters (Connelly Containers, Inc.) JD-449-81
(U filing grievance regarding E stripping steward of superseniority for trip selection as result of out-of-Bd settlement after charges filed with NLRB regarding steward's superseniority, unlawful, since in pursuit of unlawful object inasmuch as superseniority for job selection presumptively invalid under *Dairylea*, and no justification that overcame presumption but rather steward selected trips that made him unavailable during hours most grievances arose, and thus neither members nor labor relations benefited)

Chrysler Corporation-Amplex Division of Chrysler Corporation JD-232-81
(superseniority clause valid where U adduced substantial justification for awarding superseniority to officers (of U) by showing that in their respective capacities as members of (U) Executive Board they were involved in effective representation of unit Ees at plant level in matters affecting administration of collective-bargaining agreement)

N.L.R.B. v. Stanley H. Egan and Donald R. Egan 656 F.2d 746 (C.A. 10, Aug 1980)
(application of contractual superseniority provision to U trustee and U guard for purpose of layoff and recall held violative, as these duties do not contribute in any meaningful way to implementation of collective bargaining agreement)

Teamsters Local 20 v. N.L.R.B. 610 F.2d 991 (C.A.D.C.)
(granting preference in truck route assignments to U steward over more senior Ee pursuant to *all purpose* superseniority clause, unlawful, since clause, extending such preference beyond layoff and recall, was presumptively unlawful, and U failed to justify application of clause, notwithstanding its contention that preference in route assignments would facilitate steward's handling of Ee grievances by increasing his access to Ees and management representatives)

6060-5900 Discriminatory enforcement of valid seniority rules

Complete Auto Transit 257 NLRB No. 088
(violation, where U granted superseniority not limited to layoff and recall, w/o adequate justification and caused E to assign position of rail lead man to U steward and to deny position to Ee who had expressed preference for position which he was entitled to by natural seniority as against U steward)

United States Postal Service 254 NLRB No. 039
(violation where U president used contractual superseniority and appointment-of-steward provisions to protect junior Ees from involuntary transfer to another facility of E, which action resulted in involuntary transfer of Ees who were fourth and fifth least senior Ees)

6060-6700 'Dovetailing' or 'end tailing' of seniority

National Association of Broadcast Employees and Technicians, Local 16, AFL-CIO (American Broadcasting Company, a Division of American Broadcasting Companies, Inc.) 238 NLRB No. 070
(U's refusal to grant waiver permitting E to retain individual as temporary Ee because U believed Ee to be company spy, unlawful, since individual was Ee w/i Act and it is unlawful for U to discriminate against Ees because of pro-E activity)

6060-7000 Retention and accumulation of seniority while outside unit

Sign, Pictorial & Display Union, Local 230, Painters & Allied Trades (Forum Lion Corp. of America) JD-(NY)-66-80

6070 ENFORCEMENT OF UNION RULES AS CONDITIONS OF EMPLOYMENT

6070-0100 Generally

Local Union No. 410, Sheet Metal Workers International Association, AFL-CIO (Inryco, Inc.) JD-210-81
(revoking referral permits of 2 non-U Ees which caused E to discriminatorily discharge Ees because they declined to picket and handbill another E, violative)

6070-0190 Union actions may not be based on irrelevant or invidious considerations

Bricklayers and Masons Union, Local No. 2, International Union Bricklayers and Allied Craftsmen, AFL-CIO (Macfarlane & Hays Co.) 259 NLRB No. 086
(attempting to cause, and causing, removal of apprentice bricklayer from employment on *fire brick* job for E who did not sponsor his apprenticeship pursuant to contract between E association and U held violative, since U prohibited *all* apprentices from working on *fire brick* jobs for Es who did not sponsor apprentice regardless of skill or ability of apprentice to perform

6070-0150—Cont.

work; basis for U's action was status of Ee in U as apprentice rather than journeyman, clearly arbitrary and capricious conduct)

6070-7000 Rule against members on travelers cards working while local area residents unemployed

Local Union No. 813, International Brotherhood of Painters and Allied Trades of The United States and Canada, AFL-CIO (W.Q. Watters Company) **JD-143-82**

(over zealous new U steward's removing Ee, *traveling* member of Painters local 970, from job being performed by members of Painters' local 813 because Ee did not produce U *book* immediately when asked by stewards and ratio of local 970 members to 813 members was not right, violative, since *traveling* Ee did produce *book* one day after being asked; U prohibited from seeking discharge of *travelers* who are working on job site w/i jurisdiction of home local, but are members of another local of same International U)

6075 ENFORCEMENT OF DISCRIMINATION IN TERMS OR CONDITIONS OF EMPLOYMENT

Laborers' International Union of North America, Local No. 696 (Newport News of Ohio, Inc.) **298 NLRB No. 144**

(U's selection of member who had been involved in internal U disputes for layoff by E not violative where U played no role in decision to reduce workforce, his selection did not violate existing criteria, after layoff U sought to refer him to available work)

United Association of Journeymen, Plumbers and Steamfitters of Mobile, Alabama, Local Union No. 119 and its agents Max Green and Walter Wilson (Mobile Mechanical Contractors Association, Inc.) **265 NLRB No. 139**

(violation, where E paid, in compliance with contract, 75 cents per hour additional payment to U stewards because this encouraged U activism and as such constituted discrimination against those Ees who, in exercise of their Sec. 7 rights, preferred to refrain from such activity and notwithstanding steward not required under contract to be U member)

Detroit Diesel Allison Division, General Motors Corporation **249 NLRB No. 089**

(U's filing of grievance assertedly in order to cause transfer of Ee and his politically allied fellow Ee out of their department because Ee intended to run for election against incumbent U officer, and E's implementation of sustained grievance, not unlawful, where incumbent officer successfully handled financially rewarding grievance for Ee, thereby mitigating any inference of animosity on part of incumbent towards Ee; grievance was arguable and not unmeritorious; Ees' transfer resulted from drop in production; and Ees were not harmed by temporary transfer or inhibited in running for U office)

Pipeline Local Union No. 38, (Hancock-Northwest, J.V.) **247 NLRB No. 139**

(violation where local U's agent caused E to discharge steward for latter's failure to support business agent in U election)

Local 32B-32J, Service Employees International Union, AFL-CIO (Corporation of Trinity Church) **JD-(NY)-19-82**

(U's causing E to issue disciplinary warning to Ee and to dock him 2-1/2 hours pay because he filed ULP charges with Bd against U and because he participated in arbitration proceeding, violative)

N.L.R.B. v. Laborer's International Union of North America, Local No. 721 **649 F.2d 33 (C.A. 1, May 1981)**

(attempt to secure E's discharge of U members suspended for refusal to pay fines unlawfully imposed for refusing to participate in strike, violative; although Us are permitted to assess fines to maintain discipline, act prohibits Us from maintaining discipline by interfering with their members' employment, and U's imperative request for E's immediate implementation of contract's discharge provision supports finding of such interference)

N.L.R.B. v. Eldorado Manufacturing Corporation and United Steelworkers of America, AFL-CIO **660 F.2d 1207 (C.A. 7, Sep. 1981)**

(where Ees were discharged assertedly at U's demand for misconduct at work in course of intra-U dispute, ct held that, while Ees are afforded considerable leeway in expression of disagreement with U or E policies, instant case did not present an isolated moment of intemperate conduct committed in course of internal U functions, but continuing disruptive acts beyond Act's protection; and test, by which prima facie case of discrimination is rebuttable by showing justification, was not met since, even assuming U requested discharges, discharges were justified)

N.L.R.B. v. Eldorado Manufacturing Corporation and United Steelworkers of America, AFL-CIO **660 F.2d 1207 (C.A. 7, Sep. 1981)**

(where Ees were discharged assertedly at U's demand, for misconduct at work place in course of intra-U dispute, U held not to have misused its power since U representatives involved herein were proper vehicles for communicating Ee dissatisfaction over state of affairs, even concerning disruptive action of other Ees; and there was no ULP because complaints of U representatives were entirely legitimate)

N.L.R.B. v. Eldorado Manufacturing Corporation and United Steelworkers of America, AFL-CIO **660 F.2d 1207 (C.A. 7, Sep. 1981)**

(discharge, assertedly at U's demand, of Ees engaged in misconduct at work as result of intra-U dispute, not unlawful, where E's failure to take action against Ees showed exceptional tolerance of intra-U disagreement; E believed he was faced with choice of losing valuable senior Ees or terminating dischargees; E is not required to tolerate blatant misconduct forever, and to ascribe any motive to discharge other than long overdue intolerance of dischargees' misconduct would be to indulge in unwarranted speculation which is no basis for deciding cases)

6090 DISCRIMINATORY ADMINISTRATION OF INSURANCE, PENSION, AND OTHER BENEFIT PLANS

Baltimore Rebuilders, Inc. v. N.L.R.B. **611 F.2d 1372 (C.A. 4)**

(Bd properly dismissed complaint alleging that maintenance and enforcement of cancellation provisions of pension plan unlawfully coerced Ees in exercise of right to vote to decertify U as Ee representative in that automatic cancellation rules effectively dictated Ees' choice to vote for continued representation by U; there was no evidence in the record or from the provisions themselves of intention to violate Act; provisions, on their face and as here applied, were not discriminatory or coercive; and their impact on Ee voting rights was indirect and served a legitimate business purpose of pension fund)

8000 AFFIRMATIVE DEFENSES

8010 ACHIEVING RACIAL BALANCE

Steelworkers v. Weber, et al. **443 U.S. 193 (June 1979)**

(Title VII does not prohibit race conscious affirmative action plans; private E and U voluntarily agreed upon affirmative action plan that accorded preference to Black trainees in order to eliminate conspicuous racial imbalance segregated job categories upheld)

8015 ACTING IN DEROGATION OF BARGAINING REPRESENTATIVE

Moser Brothers Welding, Inc. **JD-(NY)-38-80**

(no violation where U was found to have caused member's discharge, not to retaliate for member's relative's running against U business manager for his office as alleged, but to protect integrity of hiring procedure where member had disregarded business manager's instructions and gone behind his back to get good job)

8020 COMPLIANCE WITH CONTRACT

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) **262 NLRB No. 006**

(U's change in established hiring hall procedure from 5-day (out-of-work) rule to 6-day (out-of-work) rule before having applicant's name removed from out-of-work list held violative, since procedure, resulted in denial of employment to applicants, breaching U's duty of fair representation owed to all hiring hall users and U did not demonstrate that its interference with employment was pursuant to valid U-security clause or was necessary to effect performance of its representative function)

Pipefitters Union Local No. 120 (Schweizer Dipple, Inc.) **260 NLRB No. 045**

(discharge of 2 Ees on recommendation of U for not attending pipefitting classes, violative, where agreement to attend classes was executed only by Ees and U but was not part of collective bargaining agreement between E and U, E did not require attendance at classes as condition of employment and Ees were performing satisfactorily on job)

Teamsters Local Union No. 515 (Cavalier Corporation) **259 NLRB No. 094**

(where U relied unreasonably on contract clause and initiated grievance which resulted in removal of Ee from his overtime assignment, U's action violative as it was done in retaliation for Ee's resignation from U)

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 094**

(U's maintaining and enforcing provision in bargaining agreement which required checkoff authorization revocations be on forms provided by U which were only available at U headquarters and refusing to accept Ees' revocations by letter, and informing E it would be in violation of bargaining

8020—Cont.

agreement if E honored revocations violated revocation rights of Ees conferred in Sec. 302(c)(4))

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO **253 NLRB No. 091**
(on ct remand, Bd affirmed earlier decision stating that recently negotiated collective-bargaining agreement and letter of understanding which provided for mutually agreed upon method of operating U's out-of-work lists neither renders original order moot nor justifies its modifications; furthermore, compliance with order does not rule out necessity for an order to deter future unlawful conduct)

General Truck Drivers, Warehousemen & Helpers Union, Local 980, et al. (Neilsen Freight Lines, Inc., et al.) **249 NLRB No. 006**
(no violation where U's business agent informed E who requested member by name that member did not qualify for dispatch by name because he did not have sufficient seniority under agreement to qualify for list from which such dispatches made)

General Teamsters, Chauffeurs, Helpers and Yardmen, Local No. 470, a/w Teamsters (Connelly Containers, Inc.) **JD-449-81**
(U's refusal to process members' grievance regarding superseniority of steward for job bidding, not unlawful notwithstanding lack of investigation and fact U was mistaken as to the legality of this type of superseniority, since U's handling of grievance resulted from its position that superseniority for steward was allowable and not from any will or invidious considerations)

Fort Wayne Area Local, American Postal Workers Union, AFL-CIO (Kim Smith) **JD-575-80**
(U's refusal to approve Ee's request to sign preferential overtime list, not unlawful reprisal for criticism of U officials, policy and conduct of internal elections, as alleged, or arbitrary or invidious where Ee failed to timely establish contractual eligibility or show necessity for dilatoriness, and U had legitimate interest in protecting those who acted timely and in avoiding setting undesirable precedent)

Peninsula Shipbuilders' Association v. N.L.R.B. **663 F.2d 488 (C.A. 4, Sep. 1981)**
(ct enforced Bd order holding E and incumbent U jointly and severally liable to reimburse Ees who had effectively revoked their check-off authorizations although on non-U forms in contravention of provision in extended bargaining agreement, where substantial evidence showed that such provision which required use of U revocation forms was facially invalid under LMRA Sec. 302(c)(4) and revocation procedure as actually enforced was ULP, in view of Ees' lack of easy, general access to U forms, Ees were not sufficiently informed about revocation requirement, and Ees had to appear personally at U hall to sign forms)

8030 COMPLIANCE WITH COURT DECREE

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 086**

554 UNION OBLIGATION TO BARGAIN

0100 GENERALLY

Central Florida Sheet Metal Contractors Association, Inc. v. N.L.R.B. **664 F.2d 489 (C.A. 5, Dec. 1981)**

(burden of proof was not on U to show that trust fund was lawful under Sec. 302 of LMRA and not *union war chest*, but on GC to show that trust fund's providing for strike benefits changed it from mandatory to nonmandatory bargaining subject and made U's bargaining to impasse over it unlawful; potential surreptitious payments of strike benefits was sufficient basis for ct's finding fund violated Sec. 302, but not for GC's showing 8(b)(3) violation)

1400 NATURE AND EXTENT OF OBLIGATION AND DUTY TO BARGAIN

1401 GENERALLY

Mass & Feduska, Inc. v. N.L.R.B. **632 F.2d 714 (C.A. 9, 1980)**

(in reversing Bd's finding that U's threat to strike to compel payment by E of E's contribution to fringe-benefit trust funds on behalf two executives and sole owners of E was not unlawful refusal to bargain, ct held that the contribution was permissive subject of bargaining and bargaining agreement authorized U to strike over permissive subjects of bargaining; the two executives, although belonging to the U and performing same unit work and as such eligible for participation in the trust funds, were statutory supervisors and U could not compel E to treat them as Ees for collective bargaining purposes)

1433 MECHANICS OF BARGAINING

1433-3300 Authority of representative

1433-3350 Presence of persons other than conferees at bargaining sessions

1433-3350-1700 Attorneys

Local 295, Teamsters (International Customs Services, Inc.) **JD-(SF)-81-80**

(violation, where U conditioned bargaining on physical withdrawal of E's counsel and threat implemented by picketing E which precipitated withdrawal of counsel resulting in disadvantage of counsel having to communicate with both U and company negotiators by telephone and E being able to consult with its counsel only during recesses)

1433-5000 Counterproposals

1433-5001 Generally

International Union of Operating Engineers, Local 302 (Commercial Excavating Co., Inc.) **JD-(SF)-114-82**

(U's conduct (including inconsistent statements during bargaining sessions with E) and withdrawing concessions and returning to original proposals not violative where E just kept asking for more concessions w/o advancing any proposals of their own)

1433-6700 Impasse

1433-6720 What constitutes

Local 1115, Joint Board, Nursing Home & Hospital Employees—Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **248 NLRB No. 167**

(impasse reached on *successor and assigns* clause, a mandatory subject of bargaining, where E made numerous statements that he planned to sell or lease his facilities as soon as possible, U desired to obtain immediate commitment to protect itself and Ees but E refused to make such commitment, and both sides were firmly committed to their positions)

Local 1115, Joint Board, Nursing Home & Hospital Employees—Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **248 NLRB No. 167**

(vacations, holidays, sick leave, health insurance)

1433-6740 Unilateral actions may be justified by impasse

Teamsters, Local 418 (Seigle's Express Inc.) **254 NLRB No. 117**

(E's unilateral changes of increased wages and fund contributions implemented on urging of Ees not violative since at time of implementation bargaining negotiations had reached impasse)

1433-8300 Failure to sign or reduce agreement to writing

Climate Control Corporation **257 NLRB No. 019**

(U's refusal to execute collective-bargaining agreement after reaching full agreement on its terms violative)

International Union, United Automobile Workers of America and International Union United Automobile Workers of America, Local 502 (Roller Bearing Company of America) **JD-(NY)-7-82**

(U's refusal to execute written agreement violative, notwithstanding U's contention that supplemental letter agreement was left out and should have been included, where omission from contract of letter was neither unauthorized nor surreptitious)

Merchandise Drivers Local No. 641, a/w Teamsters (Taf Delivery Systems, Inc.) **JD-789-80**

Highway and City Freight Drivers, Dockmen and Helpers, Local Union No. 600, Teamsters **JD-698-80**

(U's refusal to execute contract because condition precedent that mandated Area Council approval of contract had not been satisfied, rejected, since no condition precedent existed because E never informed of this requirement; moreover, no requirement for Area Council ratification established where International U's constitution only calls for General Executive Board's ratification of contract and no mention made of requirement for Area Council's ratification)

1433-9100 Ratification by employees

Local Union No. 381, Teamsters (Federal Electric Corporation) **JD-(SF)-204-79**

(valid ratification of contract where two-thirds of Ees failed to vote against ratification as required by constitution, notwithstanding votes necessary for rejection obtained when combined with second ratification vote held only for Ees who had not previously voted, since first vote determinative; U's contentions that it is for it to determine if ratification has taken place and that ratification tainted by E's interference, rejected)

1433-9200 Ratification by higher governing bodies of union

United Paperworkers International Union and Its Local No. 795 (International Paper Company - Bagpak Division) **254 NLRB No. 170**

(U's refusal to sign agreement with E which operated two facilities aimed at putting one facility on economic basis that would permit facility to remain open, unlawful, notwithstanding contention acceptance and implementation of agreement conditioned on approval by International's president of separation of dual plant unit into separate plant units, where E implemented economic terms of agreement and plant remained open, U acquiesced in implementation, adhered to its terms and dropped grievances and law suit)

Highway and City Freight Drivers, Dockmen and Helpers, Local Union No. 600, Teamsters **JD-698-80**

(U's refusal to execute contract because condition precedent that mandated Area Council approval of contract had not been satisfied, rejected, since no condition precedent existed because E never informed of this requirement; moreover, no requirement for Area Council ratification established where International U's constitution only calls for General Executive Board's ratification of contract and no mention made of requirement for Area Council's ratification)

1450 SUBJECT MATTER OF BARGAINING

1450-0100 Generally

1450-0120 Mandatory subjects defined

1450-0120—Cont.

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)
(U's insisting to impasse for establishment of committee to develop adequate safety training programs for Ees, not violative, since function of training committee was merely advisory, with training representative limited to no more power than to advise and recommend, and all programs are such that E was in control with power to put them into effect or not)

Central Florida Sheet Metal Contractors Association, Inc. v. N.L.R.B. 664 F.2d 489 (C.A. 5, Dec. 1981)
(where trust fund provided for payment of benefits to *involuntarily underemployed* workers but provision did not specifically provide for strike benefits which were nonmandatory bargaining subject and had not been interpreted by trustees as so providing, possibility that trust fund benefits might be paid to strikers under guise of *involuntarily underemployed* workers did not make trust fund nonmandatory subject of bargaining and did not render U's bargaining to impasse for inclusion of trust fund provision in contract unlawful)

Central Florida Sheet Metal Contractors Association, Inc. v. N.L.R.B. 664 F.2d 489 (C.A. 5, Dec. 1981)
(sufficient nexus held to exist between trust fund trustee selection mechanism and trust fund benefits paid for ejection mechanism to constitute mandatory subject of bargaining)

1450-0140 Permissible or nonmandatory subjects defined

United Mine Workers of America (Lone Star Steel Company) 262 NLRB No. 043
(accepting ct remand as law of case, Bd found that application-of-contract clause was nonmandatory subject of bargaining and U's striking for this clause violated 8(b)(3))

Plumbers, Local Unions Nos. 141, 229, 681 and 706 (International Paper Company, Southern Kraft Division) 262 NLRB No. 181
(R fee clause requiring Ees who are not U members to pay pro rata service fee at rate less than monthly dues is nonmandatory subject of bargaining only in *right to work States*)

Local No. 3, Electrical Workers (Nixdorf Computer Corporation) 262 NLRB No. 082
(modification of Bd certified unit is not mandatory subject of bargaining)

Max & Pelsuke, Inc. v. N.L.R.B. 632 F.2d 714 (C.A. 9, 1980)
(in reversing Bd's finding that U's threat to strike to compel payment by E of E's contribution to fringe-benefit trust funds on behalf two executives and sole owners of E was not unlawful refusal to bargain, ct held that the contribution was permissive subject of bargaining and bargaining agreement authorized U to strike over permissive subjects of bargaining; the two executives, although belonging to the U and performing same unit work and as such eligible for participation in the trust funds, were statutory supervisors and U could not compel E to treat them as Ees for collective bargaining purposes)

Lone Star Steel Company v. N.L.R.B. 639 F.2d 545 (C.A. 10, 1980)
(strike to achieve agreement on *application of contract clause, nonmandatory subject* held violative of *Section 8(b)(3) of Act*, since application of contract to other phases of coal production would have no bearing on unit jobs; here implementation of *clause* could only affect unit jobs if coal company opened another mine)

Plumbers, Local Unions Nos. 141, 229, 681, and 706 v. N.L.R.B. 675 F.2d 1257 (C.A.D.C., Apr. 1982)
(provision allowing assessment of non-U Ees in unit for costs of U representation illegal in right-to-work-states; further, such provisions not mandatory subject of bargaining and insistence on such provision, unlawful)

1450-0160 Prohibited subjects defined

Plumbers, Local Unions Nos. 141, 229, 681, and 706 v. N.L.R.B. 675 F.2d 1257 (C.A.D.C., Apr. 1982)
(provision allowing assessment of non-U Ees in unit for costs of U representation illegal in right-to-work-states; further, such provisions not mandatory subject of bargaining and insistence on such provision, unlawful)

1450-0800 Scope and work of unit

1450-0820 Work preservation

N.L.R.B. v. International Longshoremen's Assn., AFL-CIO, et al. 447 US 490 (U.S. SCt. June 1980)
(lawful work *preservation* agreement must pass two tests: (1) it must have as objective preservation of work traditionally performed by Ees represented by U; and (2) contracting E must have power to give Ees work in question - the so-called *right of control* test)

N.L.R.B. v. International Longshoremen's Assn., AFL-CIO, et al. 447 US 490 (U.S. SCt. June 1980)
(*work of stuffing and stripping* containers used in shipping goods at waterfront facilities must focus on bargaining unit Ees' work, not on work of other Ees who may be doing same or similar work, and (Bd) must examine relationship between work as it existed before innovation (*the container revolution*) and as agreement proposes to preserve it)

1450-0850 Work functions

Lone Star Steel Company v. N.L.R.B. 639 F.2d 545 (C.A. 10, 1980)
(strike to achieve agreement on *application of contract clause, nonmandatory subject* held violative of *Section 8(b)(3) of Act*, since application of contract to other phases of coal production would have no bearing on unit jobs; here implementation of *clause* could only affect unit jobs if coal company opened another mine)

1450-0875 Composition of unit

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)
(U's bargaining to impasse on clause that would require E, during term of contract, to agree to same contract terms for any of its other plants whose Ees selected U to bargain for them, violative, where U clause was to apply to both plants in operation at time contract was signed and plants acquired and put into production during term of contract; scope of certified bargaining unit is not mandatory subject)

1450-1400 Remuneration and benefits

1450-1460 Pensions and group insurance

National Union of Hospital and Health Care Employees, Division of RWDSU, AFL-CIO; et al. (Sinai Hospital of Baltimore, Inc.) 248 NLRB No. 086
(ERISA and NLRA permit persons to act as both trustee of fund administering benefit plan and as U official; however when controlling trustee-U official denied E information on trust fund operations which was necessary and relevant to enable E to perform its collective-bargaining function, official breached his fiduciary duty by acting inimical to interest of beneficiaries in that it undermined good faith bargain on which E contributions providing benefits depend)

N.L.R.B. v. Driver Salesmen, Warehousemen, Food Handlers, Clerical & Industrial Production Teamsters Union, Local No. 582, a/w Teamsters 678 F.2d 808 (C.A. 9, Mar. 1982)
(contrary to Bd which found Trust made up of U and E trustees was agent of U and that its establishment of new benefits for U members constituted unilateral contract modification in violation of Sec. 8(b)(3), ct held Bd did not establish that Trust was agent of U and that U *caused* Trust to violate trust agreement where Trust was lawfully established, E trustees were not coerced by U trustees in voting in favor of proposal, and U's distribution of information about new benefits did not demonstrate U control over Trust)

1450-5000 Union security and checkoff

1450-5025 State law limiting or prohibiting

Plumbers, Local Unions Nos. 141, 229, 681 and 706 (International Paper Company, Southern Kraft Division) 262 NLRB No. 181
(R fee clause requiring Ees who are not U members to pay pro rata service fee at rate less than monthly dues is nonmandatory subject of bargaining only in *right to work States*)

Plumbers, Local Unions Nos. 141, 229, 681, and 706 v. N.L.R.B. 675 F.2d 1257 (C.A.D.C., Apr. 1982)
(provision allowing assessment of non-U Ees in unit for costs of U representation illegal in right-to-work-states; further, such provisions not mandatory subject of bargaining and insistence on such provision, unlawful)

1450-5050 Hiring hall

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of The United States and Canada, Local 139, AFL-CIO (Associated Plumbing, Heating and Cooling Contractors of Great Falls, Montana) 256 NLRB No. 065
(U which unilaterally changed exclusive hiring hall provision of collective-bargaining agreement by refusing to refer Ees upon request of E's as provided for and changing *call in* provisions for *travelling* members to put burden on U to contact them rather than on Ees as provided in contract violated Act)

1450-6000 Internal union matters

1450-6600—Cont.

Howland Hook Marine Terminal Corporation **263 NLRB No. 040**
(designation of agent of Ees' collective bargaining representative (appointment of interim steward) is purely internal U affair and resolution of dispute, regarding who would be interim steward rested with U and not Bd; *Section 8(a)(5) of Act* not applicable to internal U dispute concerning who had authority to conduct business of local U and E not required to determine which of 2 representatives was the validly designated one)

1450-7000 Matters relating to nonunit employees

Operating Engineers, Local Union No. 12; et al. (Maas & Feduska, Inc.) **248 NLRB No. 175**
(threatening to strike to force E to make payments to U's trust funds on behalf of nonunit executives and supervisors)

Lone Star Steel Company v. N.L.R.B. **639 F.2d 545 (C.A. 10, 1980)**
(strike to achieve agreement on *application of contract clause, nonmandatory subject* held violative of *Section 8(b)(3) of Act*, since application of contract to other phases of coal production would have no bearing on unit jobs; here implementation of *clause* could only affect unit jobs if coal company opened another mine)

1450-7600 Participation in funds to defray operating costs of benefit plans

Maas & Feduska, Inc. v. N.L.R.B. **632 F.2d 714 (C.A. 9, 1980)**
(in reversing Bd's finding that U's threat to strike to compel payment by E of E's contribution to fringe-benefit trust funds on behalf two executives and sole owners of E was not unlawful refusal to bargain, ct held that the contribution was permissive subject of bargaining and bargaining agreement authorized U to strike over permissive subjects of bargaining; the two executives, although belonging to the U and performing same unit work and as such eligible for participation in the trust funds, were statutory supervisors and U could not compel E to treat them as Ees for collective bargaining purposes)

1450-7700 Trust fund provisions

Warehousemen's Union Local 334 a/k/a Teamsters Union, Local No. 582 (The Crescent, Division of The Halle Brothers Company) **253 NLRB No. 109**
(violation, where U trustee of benefit trust fund initiated proposal for vision plan which had been rejected in bargaining and U subsequently implemented and held itself out as responsible for plan, notwithstanding majority of E and U trustees voted for plan, since action was unilateral where E had no voice in election of trustees; further, trust agreements are mere product of bargaining rather than extension thereof, and authority of trustee extends only to benefit plans specifically agreed upon in collective bargaining agreement)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Ar.ociated Contractors*, 559 F.2d 222)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's insisting to impasse for establishment of committee to develop adequate safety training programs for Ees, not violative, since function of training committee was merely advisory, with training representative limited to no more power than to advise and recommend, and all programs are such that E was in control with power to put them into effect or not)

Central Florida Sheet Metal Contractors Association, Inc. v. N.L.R.B. **664 F.2d 489 (C.A. 5, Dec. 1981)**
(Bd's interpretation of Sec. 8(b)(3) of NLRA found reasonable where it found that U did not violate Sec. 8(b)(3) by bargaining to impasse and striking to have included in contract provision for trust fund alleged by E to violate Sec. 302(5) of LMRA where district ct, the body with authority to enforce LMRA, had not found trust fund illegal under LMRA at time of decision, and trust fund document was not illegal on its face)

1467 ACTS CONSTITUTING REFUSAL TO BARGAIN OR INDICATING BAD FAITH

1467-0100 Generally

1467-0150 Obstructing Contractual Grievance-Arbitration Procedures

United Steelworkers of America, AFL-CIO, CLC, Local 1981 (Major Safe Company, Inc.) **259 NLRB No. 067**
(U's trying, fining and suspending U's international representative because he testified adverse to U's position in arbitration hearing, violative since U's conduct impaired integrity of contractual arbitration procedure)

1467-0155 Effect of arbitration award

Local 1115, Joint Board, Nursing Home & Hospital Employees—Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **248 NLRB No. 167**
(U's alleged refusal to bargain and its insistence to point of impasse that contract between U and E's predecessor was binding on E, not unlawful, where successor E, pursuant to SCt's Wiley decision, was bound to arbitrate extent of its obligations under predecessor's contract and U's insistence on arbitration did not violate principles of SCt's Burns decision; moreover, under Wiley U was permitted to seek protection of federal cts and arbitration and, by so doing, did not violate Act)

1467-0300 Withholding information or giving misleading information

Electrical Workers, Local Union No. 1186 (Pacific Electrical Contractors Association, etc.) **264 NLRB No. 097**
(U's refusal to furnish E with copies of agreements with other Es so that E could determine whether other Es had been granted more favorable terms than provided in E's agreement with U, unlawful, since information requested for purpose of determining whether U was complying with *most favored nation* clause which required that if more favorable terms granted to any E in industry other Es under agreement shall be notified of such concessions and terms made available to other Es; U's attempted termination of agreements did not justify refusal since terminations not effective)

National Union of Hospital and Health Care Employees, Division of RWDSU, AFL-CIO; et al. (Sinai Hospital of Baltimore, Inc.) **248 NLRB No. 066**
(ERISA and NLRA permit persons to act as both trustee of fund administering benefit plan and as U official; however when controlling trustee-U official denied E information on trust fund operations which was necessary and relevant to enable E to perform its collective-bargaining functions, official breached his fiduciary duty by acting inimical to interest of beneficiaries in that it undermined good faith bargain on which E contributions providing benefits depend)

Asbestos Workers, Local No. 80 (West Virginia Master Insulators Association) **248 NLRB No. 022**
(U's refusal to furnish information requested by E association relating to U's referral system, unlawful, since such information is clearly relevant and necessary for association to evaluate present referral practices under existing contract, to test validity of contract proposals, and to formulate future contract proposals or referrals; fact that parties were not engaged in contract negotiations is not determinative inasmuch as information regarding referrals is relevant to day-to-day administration of contract as well as to future contract negotiations)

1467-0600 Actions taken to avoid reaching agreement

1467-0650 Economic pressure as substitute for bargaining to secure demands

United Food and Commercial Workers Union Local 1439, Chartered By United Food and Commercial Workers International Union, AFL-CIO-CLC (Food City West) **262 NLRB No. 036**
(threatening and immediately calling strike when E did not sign area agreement showed bad faith in bargaining)

1467-1200 Demand for bargaining in inappropriate unit

1467-1250 Broader than certified unit

Local No. 3, Electrical Workers (Nixdorf Computer Corporation) **262 NLRB No. 082**
(U's insistence, in face of E's repeated objections, that any contract negotiated must contain U recognition clause with unit proposal including additional Ee classifications and geographical variations unlawful; U's insistance constituted a demand for an expanded unit)

1467-1275 Multiemployer unit

Local #197, Electrical Workers, AFL-CIO (McLean County Electrical Contractors Association, Inc.) **JD-(SF)-340-80**
(U's insistence that certain members of predecessor multi-E association who did not consent to substitution of new multi-E association as bargaining representative must bargain only as part of new multi-E association, violative, as U had notice that these members had opposed such substitution; therefore, no consensual tripartite relationship between U, association and individual members of association existed; furthermore, continued observance of contract negotiated by new association w/o more, did not render these nonconsenting Es part of multi-E bargaining unit)

1467-1800 Surface bargaining

Teamsters, Local 418 (Seigle's Express Inc.) **254 NLRB No. 117**
(where local insisted that under mandate from International any new contract could not contain anything less than economic terms of master agreement, violative, since (1) U representatives had no authority to negotiate

1467-1800—Cont.

meaningfully about mandatory subjects notwithstanding it could negotiate on noneconomic provisions, and (2) its rigid adherence not to negotiate anything less than master agreement evidenced bad faith and not open mind)

1467-3000 Proposals and demands

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)
(U's offering proposal which would carry forward any agreement to which E was party and preserve prior agreements between U and various Es, not violative notwithstanding E's contention that such clause violates 8(b)(1)(B) because it requires E to accept as its bargaining representative persons representating other Es who negotiated or would negotiate changes in agreement to which E was not party; U did not bargain to impasse on proposed clause)

1467-3033 Illegal and/or unreasonable provisions

United Mine Workers of America (Lone Star Steel Company) 262 NLRB No. 043
(accepting ct remand as law of case, Bd found that application-of-contract clause was nonmandatory subject of bargaining and U's striking for this clause violated 8(b)(3))

Plumbers, Local Unions Nos. 141, 229, 681 and 706 (International Paper Company, Southern Kraft Division) 252 NLRB No. 131
(insisting to impasse upon inclusion of R fee clause for non-U member Ees held violative in *right to work States*)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors,* 559 F.2d 222)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)
(U's insisting to impasse for establishment of committee to develop adequate safety training programs for Ees, not violative, since function of training committee was merely advisory, with training representative limited to no more power than to advise and recommend, and all programs are such that E was in control with power to put them into effect or not)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)
(U's insisting to impasse and striking to obtain E's agreement to clause providing that E could subcontract transportation of its product *only to contractor* employing members of U under parties' agreement, violative, since clause seeks to aid U members generally rather than those U members employed at E's plant; effect of clause is secondary)

Central Florida Sheet Metal Contractors Association, Inc. v. N.L.R.B. 664 F.2d 489 (C.A. 5, Dec. 1981)
(Bd's interpretation of Sec. 8(b)(3) of NLRA found reasonable where it found that U did not violate Sec. 8(b)(3) by bargaining to impasse and striking to have included in contract provision for trust fund alleged by E to violate Sec. 302(5) of LMRA where district ct, the body with authority to enforce LMRA, had not found trust fund illegal under LMRA at time of decision, and trust fund document was not illegal on its face)

Plumbers, Local Unions Nos. 141, 229, 681, and 706 v. N.L.R.B. 675 F.2d 1257 (C.A.D.C., Apr. 1982)
(insistence to impasse upon provision allowing assessment of non-U Ees in unit for costs of U representation, unlawful, since not mandatory subject of bargaining in right-to-work states)

1467-3060 Initial and final proposals essentially same

Teamsters, Local 418 (Seigle's Express Inc.) 264 NLRB No. 117
(where local insisted that under mandate from International any new contract could not contain anything less than economic terms of master agreement, violative, since (1) U representatives had no authority to negotiate meaningfully about mandatory subjects notwithstanding it could negotiate on noneconomic provisions, and (2) its rigid adherence not to negotiate anything less than master agreement evidenced bad faith and not open mind)

1467-3070 Withdrawal of proposals

International Union of Operating Engineers, Local 302 (Commercial Excavating Co., Inc.) JD-(SF)-114-82
(U's conduct (including inconsistent statements during bargaining sessions with E) and withdrawing concessions and returning to original proposals not violative where E just kept asking for more concessions w/o advancing any proposals of their own)

1467-3084 Pertaining to nonunit employees

Operating Engineers, Local Union No. 12; et al. (Maas & Feduska, Inc.) 248 NLRB No. 175
(threatening to strike to force E to make payments to U's trust funds on behalf of nonunit executives and supervisors)

1467-3090 Insistence that nonmember Employer agree to terms of multi-employer contract

United Brotherhood of Carpenters & Joiners of America, Local Union No. 743 261 NLRB No. 028
(termination provisions included in memorandum agreement signed by U and E govern over termination provisions of agreement signed by U and multi E association and refusal of U to bargain after notice given under memorandum violative since latter agreement bound parties to all provisions of agreement save those specifically excluded in memorandum agreement. E did not become signatory to multi-E agreement by signing memorandum; furthermore, U had let other Es with identical termination clauses in their memorandum agreements terminate agreements prior to expiration year of multiE agreement)

Teamsters, Local 418 (Seigle's Express Inc.) 264 NLRB No. 117
(where local insisted that under mandate from International any new contract could not contain anything less than economic terms of master agreement, violative, since (1) U representatives had no authority to negotiate meaningfully about mandatory subjects notwithstanding it could negotiate on noneconomic provisions, and (2) its rigid adherence not to negotiate anything less than master agreement evidenced bad faith and not open mind)

International Union of Operating Engineers, Local 302 (Commercial Excavating Co., Inc.) JD-(SF)-114-82

1467-5100 Insisting employer designate as its bargaining representative one chosen by union

Local #197, Electrical Workers, AFL-CIO (McLean County Electrical Contractors Association, Inc.) JD-(SF)-349-82
(U's insistence that certain members of predecessor multi-E association who did not consent to substitution of new multi-E association as bargaining representative must bargain only as part of new multi-E association, violative, as U had notice that these members had opposed such substitution; therefore, no consensual tripartite relationship between U, association and individual members of association existed; furthermore, continued observance of contract negotiated by new association w/o more, did not render these nonconsenting Es part of multi-E bargaining unit)

1467-6000 Uncompromising attitude or refusal to make concessions

United Food and Commercial Workers Union Local 1439, Chartered By United Food and Commercial Workers International Union, AFL-CIO-CLC (Food City West) 262 NLRB No. 036
(absolute insistence on E's signing area agreement showed bad faith in bargaining)

Carpenters District Council of Will County and Vicinity 255 NLRB No. 075
(adamant refusal to consider E's proposal regarding subject of grievance arbitration during negotiations, violative)

Teamsters, Local 418 (Seigle's Express Inc.) 264 NLRB No. 117
(where local insisted that under mandate from International any new contract could not contain anything less than economic terms of master agreement, violative, since (1) U representatives had no authority to negotiate meaningfully about mandatory subjects notwithstanding it could negotiate on noneconomic provisions, and (2) its rigid adherence not to negotiate anything less than master agreement evidenced bad faith and not open mind)

Local 1115, Joint Board, Nursing Home & Hospital Employees—Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) 246 NLRB No. 107
(U's persistence in demanding of successor E same fringe benefits, wage increments, dues deductions and other contract provisions it had with predecessor, not unlawful; U may not refuse to bargain on ground successor is bound to comply with predecessor; however, U is not required to offer proposals different from conditions of employment it had achieved, as long as it bargains in good faith)

International Union of Operating Engineers, Local 302 (Commercial Excavating Co., Inc.) JD-(SF)-114-82
(U's conduct (including inconsistent statements during bargaining sessions with E) and withdrawing concessions and returning to original proposals not violative where E just kept asking for more concessions w/o advancing any proposals of their own)

1467-6600 Commission of unfair labor practices

1467-6604 Refusal to deal with employer's designated representative

1467-6684—Cont.

United Food and Commercial Workers Union Local 1439, Chartered By United Food and Commercial Workers International Union, AFL-CIO-CLC (Food City West) **242 NLRB No. 096**
(repeated attempt to circumvent E's chosen spokesman showed bad faith in bargaining)

Local 295, Teamsters (International Customs Services, Inc.) **JD-(SF)-61-80**
(violation, where U conditioned bargaining on physical withdrawal of E's counsel and threat implemented by picketing E which precipitated withdrawal of counsel resulting in disadvantage of counsel having to communicate with both U and company negotiators by telephone and E being able to consult with its counsel only during recesses)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's refusing to negotiate with E on individual basis, violative, notwithstanding U's claim that it believed E had designated E association as bargaining representative; E had plainly stated its intention to bargain separately with U and not to join association)

1467-7200 Refusal to sign or reduce agreement to writing

Teamsters Local Union No. 174, a/w Teamsters (Allied Employers, Inc.) **265 NLRB No. 089**
(violation where one local refused to execute and honor association contract which was result of coordinated bargaining by 3 locals as in 2 prior contract negotiations, notwithstanding U notified association that it reserved right to separate vote, as association was neither privy to U's withdrawal of authorization from U bargaining agent nor had any basis for construing U's reservation as change from established procedure)

Kiney Printing Company **262 NLRB No. 022**
(E's refusal to execute mid-contract modification agreement, not unlawful where approval of agreement by international U president was admittedly required, and there was insufficient proof of his approval either expressly, or by implication, or by creation of such impression of approval that he would be estopped from denying it)

Pacific Coast Metal Trades District Council and Seattle Metal Trades Council **260 NLRB No. 152**
(U did not violate Act when it refused to execute agreement it had reached with E where E used different name to identify itself in contract (subsidiary and not parent) than its lawful name registered in state of incorporation and U was willing to sign if E used correct name; therefore, there was no meeting of the minds)

United Paperworkers International Union and Its Local No. 795 (International Paper Company - Bagpak Division) **254 NLRB No. 173**
(U's refusal to sign agreement with E which operated two facilities aimed at putting one facility on economic basis that would permit facility to remain open, unlawful, notwithstanding contention acceptance and implementation of agreement conditioned on approval by International's president of separation of dual plant unit into separate plant units, where E implemented economic terms of agreement and plant remained open, U acquiesced in implementation, adhered to its terms and dropped grievances and law suit)

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**
(U's refusal to sign contract upon which parties had orally agreed as to all terms except lounge musicians' status, unlawful; after multi-E association had unlawfully refused to continue to include lounge musicians in contract with house musicians, at U's suggestion parties had continued to negotiate and reached agreement on all other terms)

Highway and City Freight Drivers, Dockmen and Helpers, Local Union No. 600, Teamsters **JD-606-80**
(U's refusal to execute contract because condition precedent that mandated Area Council approval of contract had not been satisfied, rejected, since no condition precedent existed because E never informed of this requirement; moreover, no requirement for Area Council ratification established where International U's constitution only calls for General Executive Board's ratification of contract and no mention made of requirement for Area Council's ratification)

Operative Plasterers' and Cement Masons' International Association of The United States and Canada, Local 526, AFL-CIO (The Builders Association of Eastern Ohio and Western Pennsylvania)

1467-7600 Unilateral changing of terms and conditions of employment

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of The United States and Canada, Local 139, AFL-CIO (Associated Plumbing, Heating and Cooling Contractors of Great Falls, Montana) **256 NLRB No. 061**
(U which unilaterally changed exclusive hiring hall provision of collective-bargaining agreement by refusing to refer Ees upon request of E's as provided for and changing *call in* provisions for *travelling* members to put burden on U to contact them rather than on Ees as provided in contract violated Act)

Warehousemen's Union Local 334 a/k/a Teamsters Union, Local No. 582 (The Crescent, Division of The Halle Brothers Company) **253 NLRB No. 109**
(violation, where U trustee of benefit trust fund initiated proposal for vision plan which had been rejected in bargaining and U subsequently implemented and held itself out as responsible for plan, notwithstanding majority of E and U trustees voted for plan, since action was unilateral where E had no voice in election of trustees; further, trust agreements are mere product of bargaining rather than extension thereof, and authority of trustee extends only to benefit plans specifically agreed upon in collective bargaining agreement)

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO **253 NLRB No. 091**
(on ct remand, Bd affirmed earlier decision stating that recently negotiated collective-bargaining agreement and letter of understanding which provided for mutually agreed upon method of operating U's out-of-work lists neither renders original order moot nor justifies its modifications; furthermore, compliance with order does not rule out necessity for an order to deter future unlawful conduct)

Exxon Company, U.S.A. **253 NLRB No. 027**
(violation where U did not give notice to E of unilateral change in which U required nonU Ees to pay service fee for administering health insurance plan)

1467-7800 Actions to compel contract modification

Electrical Workers, Local Union No. 1186 (Pacific Electrical Contractors Association, etc.) **264 NLRB No. 097**
(violation, where U refused to process E association grievance over validity of local U's attempted unilateral termination of bargaining agreements)

Local Union No. 381, Teamsters (Federal Electric Corporation) **JD-(SF)-296-79**
(U's repudiation of contract and threatening to strike to force E to negotiate new contract, unlawful, notwithstanding U's contention no valid ratification of contract where votes necessary for rejection obtained by combining votes in second ratification vote held for those who had not previously voted with votes cast in first ratification vote, since first vote alone determinative)

1467-7850 Strikes and work stoppages

Fundacion Educativa Ana G. Mendez d/b/a Puerto Rico Junior College **265 NLRB No. 068**
(striking w/o complying with 8(d) notice requirements, not excused since strike was not ULP strike due to E's unilateral change as contended but economic strike to compel contract modification; moreover Bd has held that strikes to compel contract changes call for prior 8(d) compliance even if E has not bargained in good faith concerning them)

Electrical Workers, Local Union No. 1186 (Pacific Electrical Contractors Association, etc.) **264 NLRB No. 097**
(violation, where U sought to terminate multi-E contracts long prior to their termination date, w/o complying with Sec. 8(d) of Act and threatened and took strike action to secure contract modifications; nor were U actions justified by E association's alleged contract violations of replacing member of Joint Conference Committee)

Local 282, Teamsters (The General Contractors Association of New York, Inc.) **263 NLRB No. 086**
(picketing and striking to force Es to create and hire new classification of Ees found to be guards and modify existing contract which does not cover guards to cover them, violative)

Local Union No. 430, Plumbers (Paragon Mechanical) **254 NLRB No. 081**
(strike by U to cause E to honor local agreement rather than agreed upon national agreement violated Act)

1467-7880 Refusal of Employer's tender of contributions to employee benefit fund

Truck Drivers Local Union No. 449, Teamsters, et al. (Universal Liquor Corp.) **265 NLRB No. 179**
(violation where U demanded Es to execute stipulations which modified provisions in recently negotiated and signed contracts by extending Es' obligation to make contributions to pension fund for casual, seasonal, or part-time Ees as well as regular full-time Ees, and thereafter refused through

1467-7880—Cont.

pension fund trustees, found herein to be agents of U, to accept payments tendered by Es on behalf of regular full-time Ees)

1467-8700 Actions nullifying contractual arbitration proceedings

United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 1989 (Caterpillar Tractor Company) **269 NLRB No. 123**

(Institution of internal U discipline against members who testified against Respondent's position in grievance procedure violative as this destroys integrity of arbitration clause in contract)

1467-9000 General refusal to bargain

Asbestos Workers Local Union No. 27, (Master Insulators Association, Inc.) **263 NLRB No. 118**

(refusal to bargain with E assoc. about apprenticeship training, and meet with reps., threatening strike as attempt to dictate who should be selected for bargaining, violative; joint apprenticeship committee existed to administer trust fund-financed program; E-assoc. always chose same 3 to serve as trustees of fund and assoc. reps., but here assoc. requested trustees resign but remain reps.; U refused to bargain so long as 1 of former trustees still remained as rep.; role of trustee distinct from rep., trustee would not be bargaining rep. U's actions coerced and restrained E-assoc. in its choice of rep.)

International Brotherhood of Painters and Allied Trades, Local Union No. 567 (Painting & Decorating Contractors of California and Nevada, Inc., Reno Chapter) **263 NLRB No. 180**

(no violation, since any unlawful refusal by U to consider E's proposals for contract changes cured by fact parties ultimately bargained and reached contract, notwithstanding differing interpretations of reopener clause which U initially contended justified its refusal to consider E's proposals since only U had given notice of intent to negotiate changes in agreement, and in its view any party wishing to make changes in agreement must notify other party 90 days before expiration of agreement)

United Brotherhood of Carpenters & Joiners of America, Local Union No. 743 **261 NLRB No. 028**

(termination provisions included in memorandum agreement signed by U and E govern over termination provisions of agreement signed by U and multi E association and refusal of U to bargain after notice given under memorandum violative since latter agreement bound parties to all provisions of agreement save those specifically excluded in memorandum agreement. E did not become signatory to multi-E agreement by signing memorandum; furthermore, U had let other Es with identical termination clauses in their memorandum agreements terminate agreements prior to expiration year of multiE agreement)

1467-9600 Totality of conduct

Local 1115, Joint Board, Nursing Home & Hospital Employees—Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) **268 NLRB No. 167**

(colloquy during hearing on injunction sought by U against E's transfer of its facilities w/o binding transferee to U's contract, during which E alleged that it was willing to negotiate agreement but which U rejected on gound it had contract with E, did not amount to request and refusal to bargain)

International Union of Operating Engineers, Local 302 (Commercial Excavating Co., Inc.) **JD-(SF)-114-82**

(U's conduct (including inconsistent statements during bargaining sessions with E) and withdrawing concessions and returning to original proposals not violative where E just kept asking for more concessions w/o advancing any proposals of their own)

1475 DUTY TO FURNISH INFORMATION

Cook Paint and Varnish Company **268 NLRB No. 166**

(in finding E unlawfully questioned and threatened U steward with discipline for not submitting information obtained in course of consultations with Ee concerning his grievance, Bd held U steward was not obligated, pursuant to bargaining obligation of Sec. 8(d), to turn over documents in his possession relating to Ee's grievance which steward obtained in course of protected activity of consulting with grievant; no case authority supports proposition that notes kept by steward in course of representing Ees are subject to requirements of supplying relevant information)

National Union of Hospital and Health Care Employees, Division of RWDSU, AFL-CIO; et al. (Sinai Hospital of Baltimore, Inc.) **268 NLRB No. 086**

(ERISA and NLRA permit persons to act as both trustee of fund administering benefit plan and as U official; however when controlling trustee-U official denied E information on trust fund operations which was necessary and relevant to enable E to perform its collective-bargaining functions, official breached his fiduciary duty by acting inimical to interest of beneficiaries in that it undermined good faith bargain on which E contributions providing benefits depend)

Asbestos Workers, Local No. 80 (West Virginia Master Insulators Association) **268 NLRB No. 022**

(U's refusal to furnish information requested by E association relating to U's referral system, unlawful, since such information is clearly relevant and necessary for association to evaluate present referral practices under existing contract, to test validity of contract proposals, and to formulate future contract proposals or referrals; fact that parties were not engaged in contract negotiations is not determinative inasmuch as information regarding referrals is relevant to day-to-day administration of contract as well as to future contract negotiations)

Service Employees International Union, Local 6, AFL-CIO-CLC (Quality Building Maintenance, Inc.) **JD-(SF)-23-83**

(U's refusal to comply with E's request to conduct inspection of U's signed contracts, side agreements or similar documents, on U property with security person present which it had lawful right to do, violative notwithstanding U's insistence on supplying copies of all documents it thought relevant and charging copying fee without letting E decide which ones it wanted, as it impeded E's access to information relevant and necessary to administration of collective-bargaining agreement; 25 cents per page copying fee held reasonable if charged only for pages requested by E)

1475-2900 Contracts

Electrical Workers, Local Union No. 1186 (Pacific Electrical Contractors Association, etc.) **264 NLRB No. 097**

(U's refusal to furnish E with copies of agreements with other Es so that E could determine whether other Es had been granted more favorable terms than provided in E's agreement with U, unlawful, since information requested for purpose of determining whether U was complying with *most favored nation* clause which required that if more favorable terms granted to any E in industry other Es under agreement shall be notified of such concessions and terms made available to other Es; U's attempted termination of agreements did not justify refusal since terminations not effective)

1475-7900 Hiring hall records

Electrical Workers, Local Union No. 1186 (Pacific Electrical Contractors Association, etc.) **264 NLRB No. 097**

(no violation, where U denied E association access to its hiring hall records for stated purpose of determining if hiring hall was complying with requirement that referral be w/o regard to race, color, religion, sex, national origin, or U membership, since E association did not avail itself of U's offer to permit association to examine records for one hour per day between 1:30-4:30 p.m.)

1483 REQUIREMENTS FOR TERMINATION OR MODIFICATION OF CONTRACTS - 8(d) PROVISO

1483-0100 Generally

Electrical Workers, Local Union No. 1186 (Pacific Electrical Contractors Association, etc.) **264 NLRB No. 097**

(violation, where U sought to terminate multi-E contracts long prior to their termination date, w/o complying with Sec. 8(d) of Act and threatened and took strike action to secure contract modifications; nor were U actions justified by E association's alleged contract violations of replacing member of Joint Conference Committee)

1483-0125 No obligation to discuss or agree to modification during fixed contract term

United Brotherhood of Carpenters & Joiners of America, Local Union No. 743 **261 NLRB No. 028**

(termination provisions included in memorandum agreement signed by U and E govern over termination provisions of agreement signed by U and multi E association and refusal of U to bargain after notice given under memorandum violative since latter agreement bound parties to all provisions of agreement save those specifically excluded in memorandum agreement. E did not become signatory to multi-E agreement by signing memorandum; furthermore, U had let other Es with identical termination clauses in their memorandum agreements terminate agreements prior to expiration year of multiE agreement)

1483-2000 Notice requirements

1483-2001 Generally

1483-2001-1700 Applicable only as prerequisite to strike, lockout, modification, or termination

Local Union No. 420, Plumbers (Paragon Mechanical) **254 NLRB No. 081**

(U which insisted that local agreement be substituted for agreed upon national agreement without giving proper notice under Sec. 8(d) and by striking violated Act)

1483-2001-3300 Not required before ULP strike

1483-2001-3300—Cont.

Fundacion Educativa Ana G. Mendez d/b/a Puerto Rico Junior College 265 NLRB No. 003
(striking w/o complying with 8(d) notice requirements, not excused since strike was not ULP strike due to E's unilateral change as contended but economic strike to compel contract modification; moreover Bd has held that strikes to compel contract changes call for prior 8(d) compliance even if E has not bargained in good faith concerning them)

1483-2001-5800 Actual notice required

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)
(U's failure to give FMCS notice of existence of dispute, violative even if, as contended by U, FMCS independently obtained *actual knowledge* of dispute from other sources; purpose of Sec. 8(d)(3) is not fulfilled when FMCS happens to find out about a dispute on its own)

1483-2067 Thirty-day notice to mediation services

1483-2067-2500 Adequacy of service

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)
(U's failure to give FMCS notice of existence of dispute, violative even if, as contended by U, FMCS independently obtained *actual knowledge* of dispute from other sources; purpose of Sec. 8(d)(3) is not fulfilled when FMCS happens to find out about a dispute on its own)

1483-4000 Obligation to meet and confer with other party on proposals

United Brotherhood of Carpenters & Joiners of America, Local Union No. 743 261 NLRB No. 028
(termination provisions included in memorandum agreement signed by U and E govern over termination provisions of agreement signed by U and multi E association and refusal of U to bargain after notice given under memorandum violative since latter agreement bound parties to all provisions of agreement save those specifically excluded in memorandum agreement. E did not become signatory to multi-E agreement by signing memorandum; furthermore, U had let other Es with identical termination clauses in their memorandum agreements terminate agreements prior to expiration year of multiE agreement)

2800 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF UNION

4200 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF EMPLOYER

5600 MULTI-EMPLOYER BARGAINING

5601 GENERALLY

Local #197, Electrical Workers, AFL-CIO (McLean County Electrical Contractors Association, Inc.) JD-(SF)-369-80
(U's insistence that certain members of predecessor multi-E association who did not consent to substitution of new multi-E association as bargaining representative must bargain only as part of new multi-E association, violative, as U had notice that these members had opposed such substitution; therefore, no consensual tripartite relationship between U, association and individual members of association existed; furthermore, continued observance of contract negotiated by new association w/o more, did not render these nonconsenting Es part of multi-E bargaining unit)

5622 STRUCTURE OF ASSOCIATION

Local #197, Electrical Workers, AFL-CIO (McLean County Electrical Contractors Association, Inc.) JD-(SF)-369-80
(U's insistence that certain members of predecessor multi-E association who did not consent to substitution of new multi-E association as bargaining representative must bargain only as part of new multi-E association, violative, as U had notice that these members had opposed such substitution; therefore, no consensual tripartite relationship between U, association and individual members of association existed; furthermore, continued observance of contract negotiated by new association w/o more, did not render these nonconsenting Es part of multi-E bargaining unit)

5644 UNION ASSENT TO MULTI-EMPLOYER BARGAINING

Local #197, Electrical Workers, AFL-CIO (McLean County Electrical Contractors Association, Inc.) JD-(SF)-369-80
(U's insistence that certain members of predecessor multi-E association who did not consent to substitution of new multi-E association as bargaining representative must bargain only as part of new multi-E association, violative, as U had notice that these members had opposed such substitution; therefore, no consensual tripartite relationship between U, association and individual members of association existed; furthermore, continued observance of contract negotiated by new association w/o more, did not render these nonconsenting Es part of multi-E bargaining unit)

5655 UNION ASSENT TO WITHDRAWAL OF EMPLOYER FROM MULTI-EMPLOYER BARGAINING

Beaumont Graphics, Ltd. 254 NLRB No. 044
(consent of both U and association must be present if withdrawal from multiE bargaining and ultimate refusal to be vound by agreement negotiated by U and association are not to be found unlawful)

Beaumont Graphics, Ltd. 254 NLRB No. 044
(refusal of E to give effect to, or enter into, contract negotiated on its behalf by multiE association, not unlawful where notwithstanding that E's withdrawal was untimely, association did not object to E's withdrawal and acquiesced thereto as demonstrated by its entire course of conduct; U never protested E's withdrawal nor insisted that E was bound by association contract and negotiated separately with E)

5666 WITHDRAWAL OF UNION FROM MULTI-EMPLOYER BARGAINING

Teamsters Local Union No. 174, a/w Teamsters (Allied Employers, Inc.) 265 NLRB No. 059
(violation where one local refused to execute and honor association contract which was result of coordinated bargaining by 3 locals as in 2 prior contract negotiations, notwithstanding U notified association that it reserved right to separate vote, as association was neither privy to U's withdrawal of authorization from U bargaining agent nor had any basis for construing U's reservation as change from established procedure)

5688 INDIVIDUAL BARGAINING WITH EMPLOYER- MEMBERS OF ASSOCIATION

Local 32B-32J, Service Employees International Union, AFL-CIO (Allied Maintenance Corporation) 258 NLRB No. 089
(U's insisting that Ees of E who provided cleaning and maintenance services to school were covered by terms and conditions of employment set forth in multi-E agreement and consequently refusing to bargaining further with E with respect to terms and conditions of employment of such Ees, violative where U had bargained separately with E concerning Ees at school and it was not until 4 months after such bargaining began that U informed E that it considered E bound to multi-E agreement, by which time that agreement had already been in effect over 1 year)

N.L.R.B. v. Teamsters Union Local No. 378, a/w Teamsters 672 F.2d 741 (C.A. 9, Mar. 1982)
(case remanded for factual determinations 1) regarding existence of solidarity agreement among multi-E association's E-members, or 2) whether notice of such solidarity agreement had been sent to U prior to negotiations, either of which would be determinative in concluding whether, as found by Bd, U violated 8(b)(3) by separately negotiating agreement with E which had withdrawn from multi-E bargaining unit w/o unit's consent)

7000 MULTI-UNION BARGAINING

8400 AFFIRMATIVE DEFENSES

8460 CONTRACT CONSIDERATIONS

Abestos Workers Local Union No. 27, (Master Insulators Association, Inc.) 263 NLRB No. 118
(refusal to bargain with E assoc. about apprenticeship training, and meet with reps., threatening strike as attempt to dictate who should be selected for bargaining, violative; joint apprenticeship committee existed to administer trust fund-financed program; E-assoc. always chose same 3 to serve as trustees of fund and assoc. reps., but here assoc. requested trustees resign but remain reps.; U refused to bargain so long as 1 of former trustees still remained as rep.; role of trustee distinct from rep., trustee would not be bargaining rep. U's actions coerced and restrained E-assoc. in its choice of rep.)

United Paperworkers International Union and Its Local No. 795 (International Paper Company - Bagpak Division) 284 NLRB No. 173
(U's refusal to sign agreement with E which operated two facilities aimed at putting one facility on economic basis that would permit facility to remain open, unlawful, notwithstanding contention acceptance and implementation of agreement conditioned on approval by International's president of separation of dual plant unit into separate plant units, where E implemented economic terms of agreement and plant remained open, U acquiesced in implementation, adhered to its terms and deopped grievances and law suit)

8460—Cont.

International Brotherhood of Painters and Allied Trades, Local Union No. 567 (Painting & Decorating Contractors of California and Nevada, Inc., Reno Chapter) **263 NLRB No. 188**

(no violation, since any unlawful refusal by U to consider E's proposals for contract changes cured by fact parties untimately bargained and reached contract, notwithstanding differing interpretations of reopener clause which U initially contended justified its refusal to consider E's proposals since only U had given notice of intent to negotiate changes in agreement, and in its view any party wishing to make changes in agreement must notify other party 90 days before expiration of agreement)

560 PROHIBITED STRIKES AND BOYCOTTS

0100 GENERALLY

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

2500 CONDUCT PROHIBITED WHEN FOR PROHIBITED OBJECT

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**
(*The controlling factor in determining legality of picketing is not its effect but its object. If an object of the picketing is to pressure a neutral E, activity is secondary and unlawful. The picketing is protected however, where there are incidental effects on the neutral*)

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**
(*It is well settled that Us' object is prohibited where an object, not necessarily sole object is proscribed. Thus, while U's picketing may also have had object of publicizing E's failure to pay prevailing wages and benefits in community, it is no defense to violation (where) record establishes another object of picketing was to enmesh neutral Es in Us' dispute with E*)

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**
(*It is well settled that U's object is prohibited where an object, not necessarily sole object, is proscribed. Thus, while U's picketing may also have had object of publicizing E's failure to pay prevailing wages and benefits in community, it is no defense to violation (where) record establishes another object of picketing was to enmesh neutral Es in U's dispute with E*)

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**
(intent of 8(b)(4) is to protect third person who is wholly unconcerned with disagreement)

2512 ISOLATED CONDUCT

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) **253 NLRB No. 006**
(upon seeing truck of primary, ambulatory pickets unlawfully picketed site of neutral E who repaired primary's trucks but was not ally nor were any primary Ees at neutral; picketing 20 minutes in 2 occasions held not de minimis where it ceased only after primary's truck was removed and when pickets were arrested)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(picketing at gate reserved for neutrals at jobsite, unlawful and warranted remedial order, notwithstanding involved picketing by only two pickets for one day, in view of Respondent's unlawful picketing at another jobsite at same time in connection with dispute with same E)

2525 ENGAGEMENT IN - (i)

2525-6000 Refusal to use, handle, or work on goods or commodities

International Longshoremen's Association, AFL-CIO (Kansas Farm Bureau, et al.) **264 NLRB No. 088**
(U unlawfully coerced and restrained neutral E who sold grain to USSR under U.S. Government sanction during government's embargo, E who hired Ees to load grain, E who was agent of USSR's government agency responsible for shipping, and foreign flagship (person under Act), to c/d/b with each other by telling E that no labor would be supplied to load ship as secondary action was primarily directed against American entities and foreign flagship; existence of contractual relationships with USSR did not make these Es party to primary dispute between U and USSR over Afghanistan invasion)

2525-7500 Refusal to perform services

Local 456, Teamsters (Westchester Colprovia Corp.)
(JD-(NY)-115-82
(U unlawfully induced and encouraged its steward at plant of asphalt paving manufacturer not to load truck of non-U primary E, where steward did not load truck because it was on list of Es provided by U which he understood was list of Es whose trucks were not to be loaded except on further instructions from U, and because when he called U he was instructed that picket was on his way to asphalt plant and that he understood that he was not to load truck in the meantime)

2550 INDUCEMENT OR ENCOURAGEMENT OF - (i)

2550-1700 Any individual employed by any person engaged in commerce

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**
(although U was not obligated by contract to make referrals of applicants for employment to subcontractor, there existed an *established arrangement and course of employment* affecting members of U and having sufficient characteristics of *certainty and continuity* to warrant conclusion members on U referral list are *individuals employed* w/i meaning of Sec. 8(b)(4)(i), even though subcontractor and members do not stand *in the proximate relation of E and Ee*)

2550-6000 To refuse to use, handle, or work on goods or commodities

Carpenters, Local Union No. 1622 (Specialty Building Company) **262 NLRB No. 162**
(U's picketing at gates reserved for neutral subcontractors at construction site with object of forcing neutral subcontractors to cease doing business with non-U general contractor with which it had dispute, unlawful, notwithstanding U's contentions of violation of gates, inadequate signs at gates and it was related work)

Longshoremen's Association, Local 1414, AFL-CIO (Occidental Chemical Co.) **261 NLRB No. 001**
(Us engaged in, and induced and encouraged U members employed by neutral Es to engage in, a refusal to handle shipments of products from Russia in dispute between U and Russia over latter's invasion of Afghanistan where locals' presidents found U leadership's statements not to handle vessels bearing Russian cargoes to be a binding order; and Us only object in refusing to handle such cargoes was to demonstrate their disapproval of Russian foreign policy and their unwillingness to contribute to Russian cause)

Longshoremen's Association, Local 1414, AFL-CIO (Occidental Chemical Co.) **261 NLRB No. 001**
(in finding that U unlawfully refused to handle Russian cargoes delivered to American ports, because of Russia's invasion of Afghanistan and Us' unwillingness to contribute to Russian cause, Bd held Us were responsible for foreseeable consequences of their conduct since it was foreseeable that no non-U labor could be employed by neutral parties in face of U boycott, Us had every reason to foresee that its boycott meant that Russian products would not move in any ports, and that neutral Es would be forced to c/d/b with importer and each other)

2550-6700 To refuse to perform services

Local 3, Electrical Workers (Northern Telecom, Inc.) **263 NLRB No. 029**
(violation where U encouraged members to cease performing services for E because of jurisdictional problem, in view of U's maintenance of provision in bylaws embodying *total job* policy, its failure to take action to discipline members who unilaterally participated in work stoppage contrary to consti-

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2550-6700—Cont.

tution of international U which provided for discipline, enforcement of *total job* policy in light of statements made by foreman-member regarding such, pattern of harassment by U against E preceding events of this case, and a demonstrated proclivity to engage in unlawful secondary activity based on prior Bd decisions)

Carpenters, Local Union No. 1622 (Specialty Building Company) **262 NLRB No. 162**
(U's picketing at gates reserved for neutral subcontractors at construction site with object of forcing neutral subcontractors to cease doing business with non-U general contractor with which it had dispute, unlawful, notwithstanding U's contentions of violation of gates, inadequate signs at gates and it was related work)

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**
(statement of picket, in presence of U representative, to Ee who approached gate *You are not going across this gate, are you,* unlawful, since words of Section 8(b)(4)(i)(b) *induce and encourage* are broad enough *to include every form of influence and persuasion* and since *in causing Ee to refuse to perform services for his E it also violated Section 8(b)(4)(ii)(B) of Act*)

Teamsters & Auto Truck Drivers, Local No. 85 (William Volker and Company) **253 NLRB No. 089**
(U's picketing of neutral E with sign bearing E's name stating it pays less than area standards violative as attempt to induce and encourage Ees of neutral E to refuse to perform services)

Carpenters Local 316 (E & E Development Company) **247 NLRB No. 173**
(U representative refusing to tell U member whether or not he should work behind picket line of another U picketing different subcontractor than one he was working for, not unlawful since Ee never threatened with coercive U action of unspecified nature nor told that primary E was *unfair*)

International Union of Operating Engineers, Hoisting Local 513, AFL-CIO (Trojan Contractors, Inc.) **JD-637-81**
(U's statement to neutral E that his Ees would incur their U's displeasure if they crossed U's picket line and performed work for primary E violated Act)

Local 3, International Brotherhood of Electrical Workers, AFL-CIO (Eugene Iovine, Inc.) **JD-(NY)-91-81**
(U which picketed construction site to protest non-U contractor on job violated Act where picketing induced Ees of neutral E and other subcontractors to refuse to work, it did not conform to *Moore Dry Dock*, standards (picket signs and handbills did not identify U picketing and E picketed; furthermore picketed at gates reserved for neutral Ees), and was not engaged in mere informational picketing to protest primary E's alleged payment of substandard wages)

Local Union No. 1396, Painters (C. H. Wolff and Sons Painting Company) **JD-61-80**
(where U's dispute was with E whose Ees were represented by another U, and Respondent U had no dispute with any other E at construction site and reserved gate had been set up for Ees of E to use, U violated Act when it picketed only at entrances reserved for neutral Ees)

2550-8300 Forms of inducement or encouragement

2550-8301 Generally

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**
(the words *induce or encourage* are broad enough to include in them every form of influence and persuasion)

2550-8333 Picketing

Construction & General Laborers Union, Local 304, Laborers International Union of North America (Athejen Corp.) **260 NLRB No. 177**
(placing U's signs on safety cones barricades, and jobsite fence constitutes form of picketing, notwithstanding signs stationary)

Teamsters & Auto Truck Drivers, Local No. 85 (William Volker and Company) **253 NLRB No. 089**
(U's picketing of neutral E with sign bearing E's name stating it pays less than area standards violative as attempt to induce and encourage Ees of neutral E to refuse to perform services)

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) **250 NLRB No. 157**
(U, which had dispute with E engaged in refuse collection, by picketing at main gate at landfill of neutral E after reserved gate had been established and interfering with ingress and egress of trucks of other Es, violated Act, notwithstanding picketing only at time truck of primary E at site and signs disclosed clearly E with which U had dispute; defense that work of primary E directly related to that of secondary Es, rejected as they are competitors)

Highway, City & Air Freight Drivers, Dockmen & Helpers Local Union No. 600, a/w Teamsters (Mid-American Shippers and Receivers, Inc.) **JD-140-82**
(U which engaged in area standards picketing at dock facility owned by neutral E but heavily utilized by primary E did not violate Act where picketing occurred at sole entrance to dock facility, primary was engaged in normal business operations at this location, its Ees were frequently on premises although at no specific times)

International Union of Operating Engineers, Hoisting Local 513, AFL-CIO (Trojan Contractors, Inc.) **JD-637-81**
(U's picketing of primary E found violative where purpose was to attempt to cause neutral Ees to cease work)

Local 3, International Brotherhood of Electrical Workers, AFL-CIO (Eugene Iovine, Inc.) **JD-(NY)-91-81**
(U which picketed construction site to protest non-U contractor on job violated Act where picketing induced Ees of neutral E and other subcontractors to refuse to work, it did not conform to *Moore Dry Dock*, standards (picket signs and handbills did not identify U picketing and E picketed; furthermore picketed at gates reserved for neutral Ees), and was not engaged in mere informational picketing to protest primary E's alleged payment of substandard wages)

Local Union No. 1396, Painters (C. H. Wolff and Sons Painting Company) **JD-61-80**
(where U's dispute was with E whose Ees were represented by another U, and Respondent U had no dispute with any other E at construction site and reserved gate had been set up for Ees of E to use, U violated Act when it picketed only at entrances reserved for neutral Ees)

2550-8384 Statements

Local 3, Electrical Workers (Northern Telecom, Inc.) **265 NLRB No. [illegible]**
(violation where U encouraged members to cease performing services for E because of jurisdictional problem, in view of U's maintenance of provision in bylaws embodying *total job* policy, its failure to take action to discipline members who unilaterally participated in work stoppage contrary to constitution of international U which provided for discipline, enforcement of *total job* policy in light of statements made by foreman-member regarding such, pattern of harassment by U against E preceding events of this case, and a demonstrated proclivity to engage in unlawful secondary activity based on prior Bd decisions)

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**
(statement of picket, in presence of U representative, to Ee who approached gate *You are not going across this gate, are you,* unlawful, since words of Section 8(b)(4)(i)(b) *induce and encourage* are broad enough *to include every form of influence and persuasion* and since *in causing Ee to refuse to perform services for his E it also violated Section 8(b)(4)(ii)(B) of Act*)

Carpenters Local 316 (E & E Development Company) **247 NLRB No. 173**
(U representative refusing to tell U member whether or not he should work behind picket line of another U picketing different subcontractor than one he was working for, not unlawful since Ee never threatened with coercive U action of unspecified nature nor told that primary E was *unfair*)

Local 456, Teamsters (Westchester Colprovia Corp.)
(JD-(NY)-115-82
(U unlawfully induced and encouraged its steward at plant of manufacturer of asphalt paving not to load truck of non-U primary E, notwithstanding claim that steward did not refuse to load truck on instructions from U but that he was acting out of his own convictions, where steward had previously loaded trucks of non-U Es, at time of incident he stated he was doing what he was told to do, that he was unable to say whether he would load truck until he had called U, and that someone was coming from U who would explain the situation)

2575 THREATENING, COERCION, OR RESTRAINT OF - (ii)

2575-3300 Any person engaged in commerce

International Longshoremen's Association, AFL-CIO (Kansas Farm Bureau, et al.) **264 NLRB No. [illegible]**
(U unlawfully coerced and restrained neutral E who sold grain to USSR under U.S. Government sanction during government's embargo, E who hired Ees to load grain, E who was agent of USSR's government agency responsible for shipping, and foreign flagship (person under Act), to c/d/b with each other by telling E that no labor would be supplied to load ship as secondary action was primarily directed against American entities and foreign flagship; existence of contractual relationships with USSR did not make these Es party to primary dispute between U and USSR over Afghanistan invasion)

2575-3300—Cont.

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**
(U's refusal to handle cargo from USSR to protest USSR's invasion of another country which affected neutral U.S. users of cargo, violative, notwithstanding contentions Bd w/o jurisdiction and that effect on neutral incidental rather than objective, since Bd not deprived of jurisdiction over domestic secondary activity in furtherance of primary dispute with foreign primary E or nation or by fact that primary dispute does not involve labor relations, and necessary and foreseeable consequences of U's activity as much objective as stated objective)

Over-The-road, City Transfer, Cold Storage, Grocery and Market Drivers and Helpers, Inside Employees, Local 544, a/w Teamsters (Dahl & Curry, Inc.) **JD-71-81**
(U agent's statement to E that U would take whatever action necessary to compel compliance with unlawful 8(e) contract and prevent E from subcontracting delivery service with non signatory E, violative, as attempt to force E to c/d/b with subcontractor)

Louis V. Baldovin, Jr., RD v. International Longshoremen's Association, AFL-CIO, et al. **626 F.2d 445 (C.A. 5, 1980)**
(inj denied since no basis to believe U's refusal to load grain aboard ships bound for Russia in order to protest Russia's invasion of another country, and avoid enhancing economic status of Russia *affected commerce*, where only political decision by foreign government could satisfy U's grievance; notwithstanding U's action affected producers and transporters of grain and those who loaded it aboard ships; boycott secondary in that U did not seek to affect labor relations of E's with which it had contract or terms and conditions of employment of their Ees)

2575-6700 Forms of threats, restraint, or coercion

2575-6701 Generally

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**
(U's referral to industry review board and board meeting itself concerning refusal of subcontracting E's U Ees to work on project with general contractor's Ees represented by another U and performing specialized installation work sought by E's U held not to have threatened, coerced, or restrained E where conversations between parties and discussions before board were effort to persuade E to make business judgement either to obtain total job performance on project rather than have general contractor perform specialized installation work, or not to perform work at job site at all)

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**
(the words *induce or encourage* are broad enough to include in them every form of influence and persuasion)

Local 40, Ironworkers (Spancrete Northeast, Inc. **249 NLRB No. 112**
(fact that E's representatives were not present at meeting between competing U and representatives of contracting entity does not change violative nature of Respondent U's threat to strike E because such threat unlawfully coerces not only person threatened but also E from whom work assignment is sought)

2575-6725 Statements to employees of secondary

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) **250 NLRB No. 157**
(U steward threatening driver employed by neutral E with large rock and to report driver to U which he informed him would result in being thrown out of U and fined)

Carpenters Local 316 (E & E Development Company) **247 NLRB No. 173**
(U representative refusing to tell U member whether or not he should work behind picket line of another U picketing different subcontractor than one he was working for, not unlawful since Ee never threatened with coercive U action of unspecified nature nor told that primary E was *unfair*)

2575-6730 Refusal to refer

International Longshoremen's Association, AFL-CIO (Kansas Farm Bureau, et al.) **264 NLRB No. 055**
(U unlawfully coerced and restrained neutral E who sold grain to USSR under U.S. Government sanction during government's embargo, E who hired Ees to load grain, E who was agent of USSR's government agency responsible for shipping, and foreign flagship (person under Act), to c/d/b with each other by telling E that no labor would be supplied to load ship as secondary action was primarily directed against American entities and foreign flagship; existence of contractual relationships with USSR did not make these Es party to primary dispute between U and USSR over Afghanistan invasion)

Longshoremen's Association, Local 1414, AFL-CIO (Occidental Chemical Co.) **261 NLRB No. 001**
(Us unlawfully threatened, coerced, and restrained neutral Es and foreign flagships by refusing to refer Us' members for unloading Russian cargoes, because of Russia's invasion of Afghanistan, where Us' object was to force or require neutral Es to c/d/b with each other and with neutral ships carrying Russian cargoes)

2575-6737 Imposition of monetary penalties

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) **250 NLRB No. 157**
(U steward threatening driver employed by neutral E with large rock and to report driver to U which he informed him would result in being thrown out of U and fined)

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. 004**
(maintaining and giving effect to, and enforcing rules requiring that off-pier *stripping* and *stuffing* of containers done w/i 50 mile radius of port must be performed by U unlawful where such work not historically perofrmed by U and U had no prescriptive right to perform it)

International Union of Operating Engineers, Hoisting Local 513, AFL-CIO (Trojan Contractors, Inc.) **JD-637-81**
(U which informed secondary E that one of its members employed by secondary E could be subjected to U discipline for crossing lawful picket line set up at primary E did not violate Act. No showing that there were other secondary Es at jobsite)

United Scenic Artists, Local 829, Brotherhood of Painters and Allied Trades, AFL-CIO v. N.L.R.B. **655 F.2d 1267 (C.A.D.C., 1981)**
(ct reversed Bd's finding of unlawful secondary boycott by U and remanded for development of adequate evidence in support of Bd's unstated assumption that U knew general contractor possessed contractual control when U encouraged subcontractor's Ees not to work on prefabricated material supplied to subcontractor by general contractor and informed subcontractor it would assess him for time it would have taken his Ees to fabricate said material)

2575-6750 Appeals to honor picket line

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**
(statement of picket, in presence of U representative, to Ee who approached gate *You are not going across this gate, are you*, unlawful, since words of Section 8(b)(4)(i)(b) *induce and encourage* are broad enough *to include every form of influence and persuasion* and since *in causing Ee to refuse to perform services for his E it also violated Section 8(b)(4)(ii)(B) of Act*)

Carpenters Local 316 (E & E Development Company) **247 NLRB No. 173**
(U representative refusing to tell U member whether or not he should work behind picket line of another U picketing different subcontractor than one he was working for, not unlawful since Ee never threatened with coercive U action of unspecified nature nor told that primary E was *unfair*)

International Union of Operating Engineers, Hoisting Local 513, AFL-CIO (Trojan Contractors, Inc.) **JD-637-81**
(U's statement to neutral E that his Ees would incur their U's displeasure if they crossed U's picket line and performed work for primary E violated Act)

N.L.R.B. v. Union Nacional De Trabajadores, et al. **611 F.2d 926 (C.A. 2, 1979)**
(U president and U that were found in violation of Sections 8(b)(1)(A) and 8(b)(4)(ii)(B) of LMRA were in civil contempt of ct decree when U members picketing struck gas station threatened violence and other reprisals against 2 Ees of gas station, notwithstanding that Ees were employed by security firm that was engaged by gas station operator to provide individuals to pump gas and report threats to persons and damage to property)

2575-6767 Picketing

Construction & General Laborers Union, Local 304, Laborers International Union of North America (Athejen Corp.) **260 NLRB No. 177**
(placing U's signs on safety cones barricades, and jobsite fence constitutes form of picketing, notwithstanding signs stationary)

Local Union No. 2362, Lumber, Production and Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Phost Construction, Inc.) **259 NLRB No. 120**
(U's threat made to primary to picket primary's job site if it refused to sign 3-year contract, not unlawful)

2575-6767—Cont.

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) 283 NLRB No. 086

(upon seeing truck of primary, ambulatory pickets unlawfully picketed site of neutral E who repaired primary's trucks but was not ally nor were any primary Ees at neutral; picketing 20 minutes in 2 occasions held not de minimis where it ceased only after primary's truck was removed and when pickets were arrested)

Local 32B–32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) 230 NLRB No. 039

(common situs is created by engagement of activities by secondary E at premises of primary E; therefore *Moore Dry Dock* criteria are applicable and U's picketing with signs which failed to disclose identity of E with whom it had dispute and at places reserved exclusively for use by secondary E's Ees and delivery persons violated Act)

Highway, City & Air Freight Drivers, Dockmen & Helpers Local Union No. 600, a/w Teamsters (Mid-American Shippers and Receivers, Inc.) JD-140-82

(U which engaged in area standards picketing at dock facility owned by neutral E but heavily utilized by primary E did not violate Act where picketing occurred at sole entrance to dock facility, primary was engaged in normal business operations at this location,its Ees were frequently on premises although at no specific times)

Over-The-road, City Transfer, Cold Storage, Grocery and Market Drivers and Helpers, Inside Employees, Local 544, a/w Teamsters (Dahl & Curry, Inc.) JD-71-81

(U agent's statement to E that U would take whatever means necessary to compel compliance with unlawful subcontracting clause, either through courts or picketing, violative where he stated that picketing would be with area standards banners)

Pipefitters Local Union No. 120 (Huge Heating & Cooling Co., Inc. JD-7-80

(U agents who threatened neutral E with picketing unless non-U subcontractors were removed from job violated Act as U's object of enmeshing neutral E in contraversy not its own is proscribed)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(U engaged in picketing at neutral retail store against sale of nonlocal soft drinks cannot successfully argue that it was impractical to devise picket signs that would help consumers distinguish between local and nonlocal soft drinks; otherwise legal consumer boycotts of disfavored products *threaten, coerce, or restrain* neutral Es if they fail to distinguish favored from disfavored products with sufficient clarity; boycott that fails to isolate struck product is illegal even if circumstances make it practically impossible for well intentioned U to confine its campaigning to that product)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(in case of a consumer boycott, picketing does not unlawfully *threaten, coerce, or restrain* neutral E if it confines itself to product, sale of which directly undermines U's interest; boycott that goes beyond legitimate primary dispute creates *separate dispute* with neutral, and since extra pressure U places on neutral causes more interference with latter's business than it would suffer as natural consequence of U's success in its primary dispute, it falls w/i congressional ban)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(contention by U, engaged in consumer picketing at neutral retail store against sale of nonlocal soft drinks, that under Tree Fruits case, product boycott is only illegal if it amounts to complete boycott of secondary's business, rejected; Tree Fruits did not address issue of boycott that posed harm to substantial part, but not all, of secondary E's business, and ct there had no occasion to decide legality of overbroad boycott that put excessive pressure on secondary but did not put his business in jeopardy)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(contention by U, engaged in consumer picketing at neutral retail store against sale of nonlocal soft drinks, that phrase *threaten, coerce, or restrain* creates empirical requirement for Bd, and that picketing was legal absent proof that neutral E suffered significant loss of income because of picketing, rejected; Bd is not required to produce actual empirical evidence and, while it is permitted to order cessation of boycotts that threaten *ruin or substantial loss* to neutral, an extremely costly boycott is not the only type proscribed by Act)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(contention by U, engaged in consumer picketing at neutral retail store against sale of nonlocal soft drinks, that Bd's application of 8(b)(4)(B) to find that U's conduct was unlawful so severely restricts U's power to appeal to public that it violates First Amendment, rejected; Bd carefully adhered to narrow construction of Act required by Tree Fruits case, and marshalled evidence demonstrating that picketing herein placed peculiarly severe burden on commerce by imposing on neutral E economic pressure disproportionate to U's legitimate campaign to protect its members' jobs)

2575-6767-2500 Consumer

Pet, Inc. v. N.L.R.B. 641 F.2d 545 (C.A. 8, Jan 30, 1981)

(handbilling and newspaper advertisements (no picketing) urging consumer boycott of products produced by divisions of conglomirate other than only one that U represented Ees and was striking, held outside publicity proviso as struck division not *producer* as it didn't work on any products produced by other divisions; fact that struck division's profits inured to other divisions not reason enough to make other divisions *primary* along with struck division)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(where U, engaged in consumer picketing at neutral retail store against sale of nonlocal soft drinks, had no conventional labor dispute with store or nonlocal suppliers, ct rejected U's contention that Bd has no authority to resolve controversies that do not contain *labor dispute* as defined in Sec. 2(9); that section is not a jurisdictional requirement, and is construed as a definitional provision only, designed to ensure uniform meaning to important phrase statute)

2575-6779 Violence

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) 230 NLRB No. 157

(U steward threatening driver employed by neutral E with large rock and to report driver to U which he informed him would result in being thrown out of U and fined)

2575-6780 Work stoppage

Local 3, Electrical Workers (Northern Telecom, Inc.) 265 NLRB No. 029

(violation where U representing Ees of subcontractor E attempted to restrain subcontractor E with whom it had no dispute with object of forcing subcontractor E and principal E to c/d/b with another subcontractor E performing work at same jobsite)

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) 257 NLRB No. 167

(a complete work stoppage is not necessary to show unlawful restraint or a c/d/b object w/i meaning of Sec. 8(b)(4)(B))

2575-6784 Statements

Local 40, Ironworkers (Spancrete Northeast, Inc. 249 NLRB No. 112

(fact that E's representatives were not present at meeting between competing U and representatives of contracting entity does not change violative nature of Respondent U's threat to strike E because such threat unlawfully coerces not only person threatened but also E from whom work assignment is sought)

Local No. 12, Operating Engineers (Enterprise Aggregates Corp.; Jones, Jones, and Jones) JD-(SF)-284-82

(U's threat to picket neutral E unless it stopped using services of another neutral E engaged in truck hauling services because latter was patronizing primary E, unlawful, since, unlike in SCt's *Servette* decision holding that U can appeal to neutral E if not accompanied by unlawful threat, appeal here was accompanied by threat to picket jobsite where E did not conduct business to force neutral E not to utilize product of primary E; it is not necessary to show inducement resulted in work stoppage; and threat herein is included in 8(b)(4)(ii)(B) prohibition against economic sanctions)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) JD-799-79

(U business manager's statement to general contractor that none of his men were going to work for any contractor signatory to agreement with U that did business with non-U subcontractors, not violative of *Sec. 8(b)(4)(i)(B)* because there was no showing that threat to withhold men was effectuated or transmitted to Ees)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) JD-799-79

(though U may have lawfully proceeded to enforce contract through grievance procedure, threat of economic action to compel general contractor to contract sheet metal work to U subcontractor held violative of *Sec. 8(b)(4)(ii)(B) of Act*)

2583 UNION REPONSIBILITY FOR CONDUCT

2583-0100 Generally

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**

(U's intent or purpose may be shown by nature of its conduct. Necessary and foreseeable consequences of U's activity are as much objective w/i Section 8(b)(4) as its stated objective)

2583-3000 Of trustees

Griffith Company; et al. v. N.L.R.B. **660 F.2d 406 (C.A. 9, Oct 1981)**

(actions of neither trust fund administrator of joint E-Ee benefit trust nor his counsel attributable to U since none of the following situations present: (1) provisions of bargaining agreement remove discretionary of administrator to administer funds solely for benefit of Ees (2) where trustee's actions which are in question were directed by U officials (3) where trustees actions which are in question are undertaken in their capacity as U officials rather than as trustees)

5000 CONDUCT EXEMPTED FROM PROHIBITION

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**

(primary conduct which interferes with foreign maritime operations is not subject to Bd juridiction regardless of whether charging party is primary or secondary E)

5067 PUBLICITY OTHER THAN PICKETING - (8(b)(4) PROVISO)

5067-0100 Generally

Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399 (Delta Air Lines, Inc.) **263 NLRB No. 153**

(in resolving differences between House and Senate versions of Act conference committee arrived at compromise bill in response to House version, which would have interfered with freedom of speech preventing Us from appealing to public for assistance in labor dispute, by including publicity proviso; while statements made in conference tend to support interpretation that proviso authorized *all publicity* short of picketing, proviso language itself does not permit Us to carry on *all publicity*, but only publicity which meets all requirements of proviso)

5067-2000 Forms of publicity

5067-2060 Handbilling

Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399 (Delta Air Lines, Inc.) **263 NLRB No. 153**

(in finding that U, having dispute with primary E, unlawfully distributed handbills at secondary E's facilities and unlawfully published them in U newspapers, Bd did not pass upon whether U's conduct was protected by first amendment to constitution, since Bd, as administrative agency, will presume constitutionality of Act it is charged with administering, absent binding contrary ct decisions; and since U's conduct was not saved by publicity proviso, Bd presumed constitutionality of its finding of violation)

Florida Gulf Coast Building Trades Council, AFL-CIO **252 NLRB No. 099**

(U handbilling all entrances to shopping mall in orderly manner calling for total consumer boycott of all stores there because major department store was being constructed at mall by general contractor paying substandard wages, held protected by *publicity* proviso, because general contractor qualifies as *producer* by applying capital, enterprise and service to shopping mall in building store and because of interdependent relationships that exists between department store, all other stores (neutral Es) and shopping mall owner as shown by rental and lease arrangements)

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) **JD-(SF)-110-81**

(U's handbilling at entrance to bank which employed janitorial service with which U had dispute to inform recipients about nature of U's dispute with janitorial service and bank and asking bank's customers to boycott bank not w/i publicity proviso where accompanied by picketing, in view of interdependence between handbilling and picketing since handbilling must be considered as integral part of picketing and bank's customers would have considered message on handbill as part and parcel of picketing)

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) **JD-(SF)-110-81**

(no violation, where U picketed only at entrance reserved for Ees of janitorial service with which it had dispute, but continued to handbill at neutral entrance through which customers of bank which employed janitorial service entered, since handbills did not refer to picketing or did U otherwise engage in conduct calculated to cause recipients of handbills to reasonably believe that handbilling was merely extension of picket line at other entrance)

The Edward J. DeBartolo Corporation v. N.L.R.B. **662 F.2d 264 (C.A. 4, Oct 1981)**

(ct denied ptn for review of Bd dismissal where Bd held that U handbilling all entrances to shopping mall in orderly manner calling for total consumer boycott of all stores including neutral Es because major department store was being constructed at mall by general contractor paying substandard wages fell w/i *publicity* proviso, and that general contractor was a *producer*, and shopping mall owner and its tenant stores were *distributors* w/i meaning of proviso due to rental and lease arrangements)

Pet, Inc. v. N.L.R.B. **641 F.2d 545 (C.A. 8, Jan 30, 1981)**

(handbilling and newspaper advertisements (no picketing) urging consumer boycott of products produced by divisions of conglomirate other than only one that U represented Ees and was striking, held outside publicity proviso as struck division not *producer* as it didn't work on any products produced by other divisions; fact that struck division's profits inured to other divisions not reason enough to make other divisions *primary* along with struck division)

5067-2063 Newspaper advertising

Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399 (Delta Air Lines, Inc.) **263 NLRB No. 153**

(in finding that U, having dispute with primary E, unlawfully distributed handbills at secondary E's facilities urging total consumer boycott of secondary E, Bd held publication of handbills in U newspapers was also unlawful for similar reasons as distribution; view that, while publication of handbills was for proscribed object, such publication did not restrain or coerce secondary E, does not explain why message contained in unlawfully distributed handbills should be treated any differently when disseminated in form of advertisements in U's newspapers)

Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399 (Delta Air Lines, Inc.) **263 NLRB No. 153**

(in finding that U, having dispute with primary E, unlawfully distributed handbills at secondary-E airline's facilities urging total consumer boycott of airline, Bd held publication of handbills in U newspapers was also unlawful for similar reasons as distribution, where handbills contained message to airline customers that they should be concerned for their safety in light of airline's accident record; and in view of nature of airline's business and serious consequences of aircraft accidents, U's appeal in newspapers clearly coerced airline)

Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399 (Delta Air Lines, Inc.) **263 NLRB No. 153**

(in finding that U, having dispute with primary E, unlawfully distributed handbills at secondary-E airline's facilities urging total consumer boycott of airline, Bd held publication of handbills in U newspapers was also unlwful for similar reasons as distribution; publication of handbills was part of total consumer boycott bearing little resemplance to lawful secondary consumer picketing limited to struck product; here, published handbills failed to mention primary E at all and appealed for boycott unrelated to secondary E's connections with primary dispute)

Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399 (Delta Air Lines, Inc.) **263 NLRB No. 153**

(in finding that U, having dispute with primary E, unlawfully distributed handbills at secondary-E airline's facilities urging total consumer boycott of airline, Bd held publication of handbills in U newspapers was also unlawful for similar reasons as distribution; view that publication of boycott appeal resulted in trivial impact on secondary E's business and did not materially expand scope of primary dispute, apparently based on newspapers' limited audience and therefore not likely to injure secondary E, is contrary to both statute and reality)

Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399 (Delta Air Lines, Inc.) **263 NLRB No. 153**

(in finding that U, having dispute with primary E, unlawfully distributed handbills at secondary-E airline's facilities urging total consumer boycott of airline, Bd held publication of handbills in U newspapers was also unlawful for similar reasons as distribution; advvertisements were part of U's appeal for public assistance in primary dispute and proviso expressly provides that term *public* includes U members; moreover, by publishing handbills and carrying boycott appeal to broaden public segment, U expanded scope of primary dispute)

5067-4050 Purpose of truthfully advising public

5067-4000—Cont.

Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399 (Delta Air Lines, Inc.) 263 NLRB No. 153
(U's handbilling at secondary-E airline's facilities urging total consumer boycott of airline to force it to c/d/b with primary E, unlawful, where handbills included information regarding airline's accident and consumer complaint record totally unrelated to airline's connection with primary dispute and did not truthfully advise public of nature of primary dispute; in fact, information misleadingly implied U had independent dispute with airline over its flying record, whereas U's dispute with airline was over its subcontracting with primary E)

5067-4025 Public

Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399 (Delta Air Lines, Inc.) 263 NLRB No. 153
(publicity proviso stating that nothing in 8(b)(4) shall prohibit *publicity, other than picketing, for purpose of truthfully advising the public* of nature of primary dispute requires, by reason of *for the purpose* phrase, that *all* coercive information contained in publicity must be included for the purpose of advising public of nature of primary dispute; information unrelated to secondary E's sole in primary dispute is not covered by proviso, which reading accords with meaning of *for purpose* phrase and congressional objectives)

Plumbers, Local 388 (Charles Featherly Construction Co.) 252 NLRB No. 062
(picketing held unlawful, notwithstanding contention of U and trades council that they engaged only in lawful informational picketing concerning non-U contractor's wages and working conditions, where U began picketing at time it knew nothing about contractor's wages and working conditions and Respondents never sought information regarding these matters; trades council's objectives went beyond seeking U wages and working conditions)

5067-4050 Consumers

Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399 (Delta Air Lines, Inc.) 263 NLRB No. 153
(U's distribution, in course of dispute with primary E, of handbills at secondary E's facilities urging total consumer boycott of secondary E for purpose of forcing it to c/d/b with primary E, unlawful, since publicity proviso requires that publicity advise public of nature of primary dispute and the secondary E's relationship to it, but handbills herein failed to mention primary E at all, and thus, by failing to identify primary dispute, were not *for the purpose of truthfully advising the public* w/i meaning of proviso)

Florida Gulf Coast Building Trades Council, AFL-CIO 252 NLRB No. 099
(U handbilling all entrances to shopping mall in orderly manner calling for total consumer boycott of all stores there because major department store was being constructed at mall by general contractor paying substandard wages, held protected by *publicity* proviso, because general contractor qualifies as *producer* by applying capital, enterprise and service to shopping mall in building store and because of interdependent relationships that exists between department store, all other stores (neutral Es) and shopping mall owner as shown by rental and lease arrangements)

Florida Gulf Coast Building Trades Council, AFL-CIO 252 NLRB No. 099
(omission of general contractor's name in handbill urging total consumer boycott of shopping mall where contractor constructing store, did not remove handbill from protection of *publicity* proviso as no intention to deceive found)

The Edward J. DeBartolo Corporation v. N.L.R.B. 662 F.2d 264 (C.A. 4, Oct 1981)
(ct denied ptn for review of Bd dismissal where Bd held that U handbilling all entrances to shopping mall in orderly manner calling for total consumer boycott of all stores including neutral Es because major department store was being constructed at mall by general contractor paying substandard wages fell w/i *publicity* proviso, and that general contractor was a *producer*, and shopping mall owner and its tenant stores were *distributors* w/i meaning of proviso due to rental and lease arrangements)

The Edward J. DeBartolo Corporation v. N.L.R.B. 662 F.2d 264 (C.A. 4, Oct 1981)
(ct held that Bd correctly applied *Lohman Sales* standard of truthfulness where there was no evidence of intent to deceive or depart from fact by U's omission of general contractor's name in handbill urging total consumer boycott of shopping mall, and thus did not remove such handbill from protection of *publicity* proviso)

5067-4800 Product or products produced

5067-4820 Produced by primary

Florida Gulf Coast Building Trades Council, AFL-CIO 252 NLRB No. 099
(U handbilling all entrances to shopping mall in orderly manner calling for total consumer boycott of all stores there because major department store was being constructed at mall by general contractor paying substandard wages, held protected by *publicity* proviso, because general contractor qualifies as *producer* by applying capital, enterprise and service to shopping mall in building store and because of interdependent relationships that exists between department store, all other stores (neutral Es) and shopping mall owner as shown by rental and lease arrangements)

Florida Gulf Coast Building Trades Council, AFL-CIO 252 NLRB No. 099
(omission of general contractor's name in handbill urging total consumer boycott of shopping mall where contractor constructing store, did not remove handbill from protection of *publicity* proviso as no intention to deceive found)

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) JD-(SF)-110-81
(U's handbilling at entrance to bank which employed janitorial service with which U had dispute to inform recipients about nature of U's dispute with janitorial service and bank and asking bank's customers to boycott bank not w/i publicity proviso where accompanied by picketing, in view of interdependence between handbilling and picketing since handbilling must be considered as integral part of picketing and bank's customers would have considered message on handbill as part and parcel of picketing)

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) JD-(SF)-110-81
(*proviso in Section 8(b)(4)(B) makes exemption for publicity other than picketing if publicity is for truthfully advising public that products produced by E with whom U has primary dispute are distributed by another E. Protection of publicity proviso extends to services, such as janitorial service, publicity proviso immunizes publicity other than picketing from scope of 8(b)(4)(B) even though U seeks total rather than limited boycott of secondary E. But picketing of secondary E which calls for total boycott by secondary E's customers in furtherance of U's labor dispute with primary E violative)*

The Edward J. DeBartolo Corporation v. N.L.R.B. 662 F.2d 264 (C.A. 4, Oct 1981)
(ct held that Bd correctly applied *Lohman Sales* standard of truthfulness where there was no evidence of intent to deceive or depart from fact by U's omission of general contractor's name in handbill urging total consumer boycott of shopping mall, and thus did not remove such handbill from protection of *publicity* proviso)

Pet, Inc. v. N.L.R.B. 641 F.2d 545 (C.A. 8, Jan 20, 1981)
(handbilling and newspaper advertisements (no picketing) urging consumer boycott of products produced by divisions of conglomerate other than only one that U represented Ees and was striking, held outside publicity proviso as struck division not *producer* as it didn't work on any products produced by other divisions; fact that struck division's profits inured to other divisions not reason enough to make other divisions *primary* along with struck division)

5067-8000 Exemption lost where

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) JD-(SF)-110-81
(U's handbilling at entrance to bank which employed janitorial service with which U had dispute to inform recipients about nature of U's dispute with janitorial service and bank and asking bank's customers to boycott bank not w/i publicity proviso where accompanied by picketing, in view of interdependence between handbilling and picketing since handbilling must be considered as integral part of picketing and bank's customers would have considered message on handbill as part and parcel of picketing)

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) JD-(SF)-110-81
(*proviso in Section 8(b)(4)(B) makes exemption for publicity other than picketing if publicity is for truthfully advising public that products produced by E with whom U has primary dispute are distributed by another E. Protection of publicity proviso extends to services, such as janitorial service, publicity proviso immunizes publicity other than picketing from scope of 8(b)(4)(B) even though U seeks total rather than limited boycott of secondary E. But picketing of secondary E which calls for total boycott by secondary E's customers in furtherance of U's labor dispute with primary E violative)*

7500 PROHIBITED OBJECTS OF PROHIBITED CONDUCT

7501 GENERALLY

International Longshoremen's Association, AFL-CIO (Kansas Farm Bureau, et al.) 264 NLRB No. [illegible]
(where U's object in refusing to handle Russian cargo was to demonstrate disapproval with Soviet invasion of Afghanistan and E had exemptions from U.S. President's embargo, U engaging in, and inducing and encouraging their members to engage in refusal to handle Russian grain threatened Es with breach of contract and substantial economic loss and Us were responsible for foreseeable consequences of their conduct which would be to force these Es to c/d/b with USSR and with each other)

7501—Cont.

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**
(U's intent or purpose may be shown by nature of its conduct. Necessary and foreseeable consequences of U's activity are as much objective w/i Section 8(b)(4) as its stated objective)

7501-5000 'An' object only required

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. **657 F.2d 1252 (C.A.D.C., Oct. 1980)**
(U's contention that its consumer picketing at neutral retail store against sale of nonlocal soft drinks was legal because U did not intend complete boycott of store's business, rejected; Act does not require such broad intent and requires only that an object of picketing be to force neutral E to c/d/b with another person)

7520 CLAUSE 8(b)(4)(A) - FORCING OR REQUIRING

7520-2500 Joining of labor organization

7520-2533 By employer

Jaime Andino d/b/a Jaime Andino Trucking v. N.L.R.B. **619 F.2d 147 (C.A. 1, 1980)**
(U's attempt to get E to sign stipulation extending U-E association agreement, not unlawful, where E failed to give notice of withdrawal from E association before bargaining began and, while U took no action against E to enforce agreement, it was not under any obligation to take such action; consequently, there was no U consent to E's non-participation and U had right to rely on E's continued participation in E association)

Jaime Andino d/b/a Jaime Andino Trucking v. N.L.R.B. **619 F.2d 147 (C.A. 1, 1980)**
(U's attempt to get E to sign stipulation extending U-E association agreement, not unlawful, where formation of new organization by representatives from E associations participating in bargaining with U, including E association herein, did not extinguish latter association and make it different entity; new organization was committee of convenience by which participating E associations tried unsuccessfully to coordinate their bargaining efforts, and Es' forms authorizing new organization to bargain for them did not create new association)

Jaime Andino d/b/a Jaime Andino Trucking v. N.L.R.B. **619 F.2d 147 (C.A. 1, 1980)**
(U's attempt to get E to sign stipulation extending U-E association agreement, not unlawful, where there were no *unusual circumstances* that would have permitted E to withdraw from U association once negotiations began with U, since there was no impasse between association and U, and there was no dissolution of association)

7520-2567 By self-employed person

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U threatening selfemployed dump truck owner-operator, an independent contractor, with loss of job at jobsite of construction contractor until he joined U, and insisting contractor c/d/b with independent contractors who were not and would not become members of U unlawful as it is secondary on its face)

7520-3000 Joining of employer organization

7520-3025 By employer

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's striking E to compel it to join multi-E association and negotiate through association instead of independently with U, violative, where E's letter to U had plainly stated E's intention to bargain individually with U)

7520-5063 Employer action sought by union conduct

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(U's picketing for recognitional object after E's lawful recognition of another U, unlawful, notwithstanding factors which favored finding picketing was not for proscribed object, where *Please do not patronize* picket sign language imported present object of organization and GC needed only to demonstrate that recognition or organization is an object; U officials, testified that there would be no picketing if U represented Ees, and such admissions have been basis for finding proscribed object and officials' self-serving statements herein are not determinative)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**
(reasonable cause exists to believe U's activities violated 8(b)(4)(A) where U's contract, proffered to general contractor at construction site, violated 8(e) since *an object* of picketing inducements and coercion was to require contractor toenter into unlawful 8(e) agreement)

7520-5075 Indicia of objective

7520-5075-1200 Picket signs

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(U's picketing for recognitional object after E's lawful recognition of another U, unlawful, notwithstanding factors which favored finding picketing was not for proscribed object, where *Please do not patronize* picket sign language imported present object of organization and GC needed only to demonstrate that recognition or organization is an object; U officials, testified that there would be no picketing if U represented Ees, and such admissions have been basis for finding proscribed object and officials' self-serving statements herein are not determinative)

7520-5075-2500 Place of picketing

Construction and General Laborers Union, Local 185, Laborers International Union of North America, AFL-CIO; Cement Masons Local 582, Operative Plasterers and Cement Masons International Association, AFL-CIO (West-Cal Construction, Inc.) **255 NLRB No. 003**
(picketing reserved gate designated for neutral subcontractors and suppliers, violative, where U was attempting to force primary E to sign master agreement and to do business only with subcontractors who hire U members)

7520-5075-6200 Statements to employers

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's striking E to compel it to join multi-E association and negotiate through association instead of independently with U, violative, where E's letter to U had plainly stated E's intention to bargain individually with U)

7520-7500 Entering into agreement prohibited by section 8(e)

7520-7517 What constitutes entering into

Over-The-road, City Transfer, Cold Storage, Grocery and Market Drivers and Helpers, Inside Employees, Local 544, a/w Teamsters (Dahl & Curry, Inc.) **JD-71-81**
(although executed outside 10(b) period, U reaffirmed agreement w/i 10(b) by requesting and demanding that E adhere to its terms and not subcontract work to a certain company because it was not signatory to Master Agreement and thus brought violation w/i Sec. 10(b) orbit)

7520-7533 Agreements prohibited by section 8(e) (See 584-0000-0000-0000)

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**
(violation where U coerced construction contractor with whom it had dispute to apply contract to hauling of gravel to jobsite by non-U materialman)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's insisting to impasse and striking to obtain E's agreement to clause providing that E could subcontract transportation of its product *only to contractor* employing members of U under parties' agreement, violative, since clause seeks to aid U members generally rather than those U members employed at E's plant; effect of clause is secondary)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(striking with object of forcing E to accept licensing-leasing out clause which forbids E from licensing out its operations absent compliance with contract terms by licensee E's Ees violative)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**
(*hotcargo or secondary contract* having sole purpose of making general contractor at construction site use only U subcontractors held not w/in construction industry proviso nor permissible under 8(f), since contract was not in context ofbargaining relationship inasmuch as U was not, nor contemplating becoming, representative of contractor's Ees, and contract was not offered to protect its Ees whom U might represent in future nor limited itself to *special problems inherent in common situs relationships*)

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7520-7533—Cont.

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**
(reasonable cause exists to believe U's activities violated 8(b)(4)(A) where U's contract, proffered to general contractor at construction site, violated 8(e) since *an object* of picketing inducements and coercion was to require contractor toenter into unlawful 8(e) agreement)

7520-7571 Employer action sought by union conduct

Emery Air Freight Corporation **JD-(NY)-36-81**
(striking, picketing E and preventing tracks from entering premises to make deliveries or pickups, unlawful where purpose was to coerce primary to c/d/b with subcontractor)

Over-The-road, City Transfer, Cold Storage, Grocery and Market Drivers and Helpers, Inside Employees, Local 544, a/w Teamsters (Dahl & Curry, Inc.) **JD-71-81**
(U agent's statement to E that U would take whatever means necessary to compel compliance with unlawful subcontracting clause, either through courts or picketing, violative where he stated that picketing would be with area standards banners)

Donald Schriver, Inc., et al. v. N.L.R.B. **636 F.2d 859 (C.A.D.C. 1980)**
(picketing and threats to picket to obtain inclusion of subcontracting agreements in 8(f) prehire agreements, not unlawful, since subcontracting agreements are w/i scope of construction industry proviso to 8(e))

N.L.R.B. v. Hotel and Restaurant Employees' Union Local 531 **623 F.2d 61 (C.A. 9, June 1980)**
(threat of strike against lessor E by U to enforce unlawful 8(e) agreement violative where agreement provided that as condition precedent to lease of premises by E that lessee-E agreed to recognize and contract with U, and lessor E became liable in event lessee failed to comply with any terms of contract; thus involving neutral (lessor) in labor disputes between primary (lessee) and U)

7520-7583 Indicia of objective

7520-7583-2500 Place of picketing

Teamsters Local 70, a/w Teamsters (United States of America, Department of The Navy) **261 NLRB No. 079**
(Moore Dry Dock test not met where U picketed neutral gate at U.S. Navy supply center in dispute over award of new subcontract at center)

7520-7583-6200 Statements to employers

Teamsters, Local Union 222 (S.J. Grover & Sons Company **JD-(SF)-118-80**

7540 CLAUSE 8(b)(4)(B) - FORCING OR REQUIRING

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**
(absence of primary dispute does not preclude invocation of Section 8(b)(4) protection)

7540-0100 Generally

N.L.R.B. v. Retail Store Employees, Local 1001 **444 US 1011 (U.S. SCt. June 1981)**
(inasmuch as secondary picketing spreads labor discord by coercing neutral party to join fray, prohibition on picketing in furtherance of such unlawful objectives does not offend First Amendment and, consequently, as applied to picketing that predictably encourages consumers to boycott a secondary business, 8(b)(4)(ii)(B) imposes no impermissible restrictions on constitutionally protected free speech)

Longshoremen's Association, Local 1414, AFL-CIO (Occidental Chemical Co.) **261 NLRB No. 001**
(presence of foreign flagships did not invoke limitations on Bd's commerce jurisdiction delineated in SCt decisions in which its major concern was that assertion of jurisdiction would interfere with maritime operations, principles of comity and international trade and relations; here, secondary activity did not affect internal affairs of foreign ships so as to implicate such matters; instead, assertion of jurisdiction protects ships' right to do business free from economic pressure by U engaged in dispute with another nation over latter's foreign policy)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. **657 F.2d 1252 (C.A.D.C., Oct. 1980)**
(under 8(b)(4)(B) Bd is only required to show that U intended some significant disruption of neutral E's trade with another business; nothing in statute suggests that U pressure on neutral E's premises is immune simply because E does a great amount of business at another site which U has left alone)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. **657 F.2d 1252 (C.A.D.C., Oct. 1980)**
(Bd need not identify a *primary labor dispute* to find a violation of Sec. 8(b)(4)(ii)(B); ct found ample authority for such view in ct decisions, including legislative history, and held that U's picketing of neutral retail store against sale of nonlocal soft drinks did not concern store's Es but was aimed at enhancing job opportunities of U members at local manufacturing plants; store was thus neutral E meriting protection of Sec. 8(b)(4)(ii)(B) regardless of whether U had conventional labor dispute with any other E)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. **657 F.2d 1252 (C.A.D.C., Oct. 1980)**
(Sec. 8(b)(4)(ii)(B) creates two separate requirements for Bd finding of ULP on part of U: (1) challenged U conduct must have as object forcing or requiring neutral business to c/d/b with another business; and (2) U must pursue its object by threatening, coercing, or restraining neutral business; fact that U here is a *labor organization* engaged in *buy local* picketing distinguishes it from that of general citizens group engaged in such campaign, and fact that conduct is lablr picketing distinguishes instant case from others where government regulation might raise constitutional problems)

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**
(Sec. 8(b)(4) as amended, *was enacted to prevent the widening of a labor dispute to entangle Es who had no concern with the original dispute*)

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**
(as neutrals to dispute between U and title insurance company whose policies they sold, and which generated 95% of their revenues, land title companies are protected by sec. 8(b)(4)(ii)(B) from secondary pressures notwithstanding minority interest of ownership title company had in land title companies)

George Squillacote, RD v. Racine Building & Construction Trades Council, AFL-CIO **483 F.Supp. 1218 (D Ct WI, 1980)**
(if activity is *primary* in nature, even if it disrupts target E's business, it is protected under Act)

7540-2000 Any person to cease using products of any other producer

N.L.R.B. v. Retail Store Employees, Local 1001 **444 US 1011 (U.S. SCt. June 1981)**
(picketing of neutral title companies, 90% of whose gross income was derived from sale of insurance policies underwritten by primary insurance company, accompanied by appeal to consumers to cancel insurance company's policies, unlawful, where U's secondary appeal against title companies' central product was reasonably calculated to induce customers not to patronize neutrals, and resulting injury to their businesses was different from incidental injury to neutrals in *Tree Fruits* inasmuch as successful picketing herein would make neutrals choose between survival and severance of ties with primary E)

N.L.R.B. v. Retail Store Employees, Local 1001 **444 US 1011 (U.S. SCt. June 1981)**
(in situation where secondary picketing is directed against a product representing a major portion of neutral's business, but significantly less than represented by a single dominant product, ct held that the critical question would be whether, by encouraging customers to reject struck product, secondary appeal is reasonably likely to threaten neutral party with ruin or substantial loss, and resolution of the question in each case will be entrusted to Bd's expertise)

N.L.R.B. v. Retail Store Employees, Local 1001 **444 US 1011 (U.S. SCt. June 1981)**
(while successful secondary product picketing may have no greater effect upon a neutral than a legal primary boycott, secondary product picketing, in situation where neutral's business depends upon products of a particular primary E, can produce injury almost identical to harm resulting from an illegal secondary boycott, and Congress intended 8(b)(4)(ii)(B) to protect neutrals from that type of coercion)

N.L.R.B. v. Retail Store Employees, Local 1001 **444 US 1011 (U.S. SCt. June 1981)**
(contrary to the view that legality of secondary picketing should depend upon whether pickets urge only a boycott of primary E's product, ct held that such a position would provide little or no protection since no well-advised U would allow secondary pickets to carry placards urging anything other than a product boycott, and Sec. 8(b)(4)(ii)(B) cannot bear a construction so inconsistent with Congressional intention to prevent neutrals from becoming innocent victims in contests between others)

Longshoremen's Association, Local 1414, AFL-CIO (Occidental Chemical Co.) **261 NLRB No. 001**
(Us engaged in, and induced and encouraged U members employed by neutral Es to engage in, a refusal to handle shipments of products from

7540-2000—Cont.

Russia in dispute between U and Russia over latter's invasion of Afghanistan where locals' presidents found U leadership's statements not to handle vessels bearing Russian cargoes to be a binding order; and Us only object in refusing to handle such cargoes was to demonstrate their disapproval of Russian foreign policy and their unwillingness to contribute to Russian cause)

7540-2020 Any person entitled to protection

Longshoremen's Association, Local 1414, AFL-CIO (Occidental Chemical Co.) **261 NLRB No. 001**

(foreign flagships held *persons* entitled to protection as proscribed targets of secondary activity inasmuch as 1959 amendments to Sec. 8(b)(4) broadened its protection by inserting *any person engaged in commerce* in place of *any employer*, one purpose of change was to bring w/i the section activities directed against entities specifically excluded from Act's definition of *employer* and thus otherwise beyond protection of Act)

7540-2040 What constitutes cessation of use or dealing

Plumbers, Local Union 342 (Conduit Fabricators, Inc.) **251 NLRB No. 112**

(U's refusal to handle pipe prefabricated by one E, thus causing another E not to install pipe, unlawful, where U claimed entire fabrication of pipe since work not covered by work preservation clause inasmuch as entire fabrication had not been traditionally performed by U)

7540-2070 Employer action sought by union conduct

United Paperworkers International Union, AFL-CIO, Local 832 **258 NLRB No. 013**

(on ct remand U's picketing two grocery stores with whom it had no labor dispute in order to pressure stores not to continue use of product (paper bags) of struck E, held violative because bags were necessary, they lost their separate identity and merged into operation of store; successful boycott of product would have required boycott of store as well)

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) **JD-(SF)-110-81**

(U's picketing at entrance to bank which employed janitorial service that U had dispute with signs which stated janitorial service paid substandard wages and distributing handbills informing recipients about U's dispute with bank and janitorial service and asking bank's customers to boycott bank, unlawful, since U asked bank's customers to engaged in total boycott of bank, and in view of interdependence between handbilling and picketing since handbilling considered integral part of picketing and customers would have considered handbill message part of picketing and thus not w/i 8(c)(4) proviso)

7540-2080 Indicia of objective

7540-2080-1200 Picket signs

Local 3, International Brotherhood of Electrical Workers, AFL-CIO (Eugene Iovine, Inc.) **JD-(NY)-91-81**

(U which picketed construction site to protest non-U contractor on job violated Act where picketing induced Ees of neutral E and other subcontractors to refuse to work, it did not conform to *Moore Dry Dock*, standards (picket signs and handbills did not identify U picketing and E picketed; furthermore picketed at gates reserved for neutral Ees), and was not engaged in mere informational picketing to protest primary E's alleged payment of substandard wages)

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) **JD-(SF)-110-81**

(U's picketing at entrance to bank which employed janitorial service that U had dispute with signs which stated janitorial service paid substandard wages and distributing handbills informing recipients about U's dispute with bank and janitorial service and asking bank's customers to boycott bank, unlawful, since U asked bank's customers to engaged in total boycott of bank, and in view of interdependence between handbilling and picketing since handbilling considered integral part of picketing and customers would have considered handbill message part of picketing and thus not w/i 8(c)(4) proviso)

7540-2080-2300 Place of picketing

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**

(*if picketing is not confined reasonably close to entrance reserved for primary E and its Ees, U is considered to be picketing with unlawful secondary objectives*)

7540-4000 Any person to cease doing business with any other person

N.L.R.B. v. Retail Store Employees, Local 1001 **444 US 1011 (U.S. SCt. June 1981)**

(picketing of neutral title companies, 90% of whose gross income was derived from sale of insurance policies underwritten by primary insurance company, accompanied by appeal to consumers to cancel insurance company's policies, unlawful, where U's secondary appeal against title companies' central product was reasonably calculated to induce customers not to patronize neutrals, and resulting injury to their businesses was different from incidental injury to neutrals in *Tree Fruits* inasmuch as successful picketing herein would make neutrals choose between survival and severance of ties with primary E)

Local 3, Electrical Workers (Northern Telecom, Inc.) **265 NLRB No. 029**

(violation where U encouraged members to cease performing services for E because of jurisdictional problem, in view of U's maintenance of provision in bylaws embodying *total job* policy, its failure to take action to discipline members who unilaterally participated in work stoppage contrary to constitution of international U which provided for discipline, enforcement of *total job* policy in light of statements made by foreman-member regarding such, pattern of harassment by U against E preceding events of this case, and a demonstrated proclivity to engage in unlawful secondary activity based on prior Bd decisions)

Local 3, Electrical Workers (Northern Telecom, Inc.) **265 NLRB No. 029**

(violation where U representing Ees of subcontractor E attempted to restrain subcontractor E with whom it had no dispute with object of forcing subcontractor E and principal E to c/d/b with another subcontractor E performing work at same jobsite)

Carpenters Union Local No. 1622, UBCJA (Robert Wood & Associates, Inc. **262 NLRB No. 138**

(picketing at alleyway of construction site which was used by neutral subcontractors and suppliers, unlawful, where for object of advertising labor dispute with primary contractor to Ees of all neutral subcontractors and their suppliers with expectation that individuals would honor picket line and not work; notwithstanding contention sign designating entrance did not clearly designate who was to use entrance but rather for *all others but primary contractor*, when primary's gate was clearly defined and there was no contention of neutral's access area by primary E or its suppliers)

Ventura County District Council of Carpenters (Commercial Industrial Constructors, Inc.) **259 NLRB No. 028**

(c/d/b element of 8(b)(4)(B) embraces prospective as well as existing business relationships, and does not require that the company-party to primary dispute even be known at time of U conduct having object of causing neutral E to c/d/b with primary E)

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**

(refusal to refer U journeyman to subcontractor who was not complying with U's policy requiring performance of total work on job and instead was sharing work with general contractor whose Ees were members of another U and were performing work sought by U herein held not motivated by any unlawful secondary object where there admittedly was very short supply of experienced journeymen, and subcontractor's delinquencies in making contractual payments of requisite fund contributions triggered application of U rule denying referrals to excessively delinquent Es)

Longshoremen's Association, and Local 799; etc.(Allied International, Inc.) **257 NLRB No. 151**

(U's refusal to handle cargo from USSR to protest USSR's invasion of another country which affected neutral U.S. users of cargo, violative, notwithstanding contentions Bd w/o jurisdiction and that effect on neutral incidental rather than objective, since Bd not deprived of jurisdiction over domestic secondary activity in furtherance of primary dispute with foreign primary E or nation or by fact that primary dispute does not involve labor relations, and necessary and foreseeable consequences of U's activity as much objective as stated objective)

Louis V. Baldovin, Jr., RD v. International Longshoremen's Association, AFL-CIO, et al. **626 F.2d 445 (C.A. 5, 1980)**

(inj denied since no basis to believe U's refusal to load grain aboard ships bound for Russia in order to protest Russia's invasion of another country, and avoid enhancing economic status of Russia *affected commerce*, where only political decision foreign government could satisfy U's grievance; notwithstanding U's action affected producers and transporters of grain and those who loaded it aboard ships; boycott secondary in that U did not seek to affect labor relations of E's with which it had contract or terms and conditions of employment of their Ees)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. **657 F.2d 1252 (C.A.D.C., Oct. 1980)**

(U's contention that its consumer picketing at neutral retail store against sale of nonlocal soft drinks was legal because U did not intend complete boycott of store's business, rejected; Act does not require such broad intent and requires only that an object of picketing be to force neutral E to c/d/b with another person)

7540-4001 Generally

7540-4001—Cont.

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**

(a complete work stoppage is not necessary to show unlawful restraint or a c/d/b object w/i meaning of Sec. 8(b)(4)(B))

7540-4020 Any other person entitled to protection

Marine Officers Association, Teamsters Union Local No. 54 (Riverway Co.) **260 NLRB No. 182**

(where E unilaterally chartered out all its motor vessels and then chartered them back with crews who were non-U at time when valid agreement existed between E and U, and U made only limited protest at time of change, and this change existed for 3 years at which time it began to picket E, U found to have acquiesced in E's change in operations and to no longer have labor dispute with E; thus, U's dispute lies with E who control non-U crews and not with original E and its picketing is violative)

Sheetmetal Workers International Association, Local Union No. 91 (Hollister-Whitney Elevator Corp.) **JD-498-80**

(violation, where U picketed neutral non-U subcontractor with proscribed object of forcing general contractor to c/d/b with and reverse its decision to use another non-U subcontractor (primary) whom U had picketed in past over substandard wages on other parts of job where U had never picketed subcontractor on other jobs, and only did so when it found out primary subcontractor awarded job)

7540-4020-1200 Persons with right to control method of performing work

United Scenic Artists, Local 829, Brotherhood of Painters and Allied Trades, AFL-CIO v. N.L.R.B. **658 F.2d 1267 (C.A.D.C., 1981)**

(ct reversed Bd's finding of unlawful secondary boycott by U and remanded for development of adequate evidence in support of Bd's unstated assumption that U knew general contractor possessed contractual control when U encouraged subcontractor's Ees not to work on prefabricated material supplied to subcontractor by general contractor and informed subcontractor it would assess him for time it would have taken his Ees to fabricate said material)

7540-4020-2500 Common ownership and control of primary and secondary firms

Southwestern Council of Industrial Workers, AFL-CIO (Duke City Lumber Company, Inc.) **253 NLRB No. 117**

(where U extended its picketing of E with which it had dispute to another E, extension of picketing to other E not unlawful, since the companies were not separate Es where second company effectively controlled first company)

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**

(as neutrals to dispute between U and title insurance company whose policies they sold, and which generated 95% of their revenues, land title companies are protected by sec. 8(b)(4)(ii)(B) from secondary pressures notwithstanding minority interest of ownership title company had in land title companies)

7540-4020-3700 Guarantors of contract obligation

N.L.R.B. v. Local 282, Teamsters **No. 29149, Mar. 28, 1980, C.A. 2 (unreported)**

(memorandum of understanding between corporation and U representing its former Ees which set forth that: another E was taking over corporation's delivery service and had agreed to negotiate with U concerning drivers, and if U and trucking company failed to reach agreement, it would resume negotiations, does not render corporation primary E subject to lawful picketing where U and trucking company have been parties to collective-bargaining agreements and memorandum bound corporation only if initial negotiations did not result in agreement)

7540-4020-5000 Ally doctrine

International Brotherhood of Electrical Workers, Local 595 (Hayward Electric Co.) **262 NLRB No. 109**

(secondary or neutral E's merely warehousing of materials for primary E in construction *site* does not create *ally* situation as warehousing not basic to primary's entire operation)

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**

(ally doctrine held inapplicable to U contracting subcontractor and general contractor having contract with another U whose members were performing work sought by subcontractor's U; even if general contractor's project coordinator had been proven to have been on subcontractor's payroll, the fact is that subcontractor was neither performing struck work nor was it commonly owned or controlled to extent of constituting, with general contractor, a single employing enterprise)

Office and Professional Employees International Union, Local 2, AFL-CIO (American Postal Workers Union, AFL-CIO) **233 NLRB No. 19**

(where neutral E was national U and struck E was hospital plan established by national U for its members, no ally relationship existed in view of their separate purposes, separate and distinct operations in separate buildings, separate labor relations policies business records, auditors, and attorneys and lack of Ee interchange)

Teamsters, Local Union No. 560 (Curtin Matheson Scientific, Inc.) **248 NLRB No. 156**

(local's picketing at Missouri warehouse branch of national company in support of sister local's primary dispute at New Jersey warehouse branch, not unlawful, since Missouri branch was ally of New Jersey branch; since E had corporate policy of having struck work of branches performed by other branches, there is no need to prove actual performance of struck work before concluding that nonstruck branches are *acting as part of* E and are not *wholly unconcerned* with one branch's labor dispute)

7540-4020-5001 Generally

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

7540-4020-5033 Work performed that of employees of primary (struckwork)

Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Water District **253 NLRB No. 033**

(U picketing of neutral E because barges of primary E located there, violative, where no Ees of primary are at, or expected to be at, neutral E, and work performed by neutral or primary's barges never performed by primary)

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) **253 NLRB No. 006**

(no ally relationship existed between primary E and neutral company that repaired its trucks as it had done in past; primary never performed nor had capability of performing maintenance on its vehicles and no contractual relationship between primary and neutral)

Teamsters, Local Union No. 560 (Curtin Matheson Scientific, Inc.) **240 NLRB No. 156**

(local's picketing at Missouri warehouse branch of national company in support of sister local's primary dispute at New Jersey warehouse branch, not unlawful, where E had corporate policy of cross-shipping, whereby other branches perform work of struck branch, and E's control over labor relations, though not on day-to-day basis, gives appearance of single-E by way of tactical advantage in dealing with labor disputes at local level)

Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America (Mystic Trucking, Inc.) **JD-(NY)-4-81**

(E (trucking company) found to be ally where it served as transhipping point for primary's incoming and outgoing orders and its Ees performed important elements of primary E's work after primary was struck; thus U's picketing of ally E not violative)

7540-4020-5050 Where primary employer terminated portion of intergrated operation

N.L.R.B. v. Local 282, Teamsters **No. 29149, Mar. 28, 1980, C.A. 2 (unreported)**

(corporation which changed from operating its own delivery service to having trucking company handle all its deliveries found neutral E in dispute between U and trucking company where there is: no common ownership or management; no integration of business operations, no centralized labor relations policy between corporation and trucking company)

7540-4020-5967 Performed pursuant to agreement with primary

International Longshoremen's Association, AFL-CIO (Kansas Farm Bureau, et al.) **264 NLRB No. [illegible]**

(U unlawfully coerced and restrained neutral E who sold grain to USSR under U.S. Government sanction during government's embargo, E who hired Ees to load grain, E who was agent of USSR's government agency responsible for shipping, and foreign flagship (person under Act), to c/d/b with each other by telling E that no labor would be supplied to load ship as secondary action was primarily directed against American entities and foreign flagship; existence of contractual relationships with USSR did not make these Es party to primary dispute between U and USSR over Afghanistan invasion)

7540-4020-5067—Cont.

General Drivers & Helpers Union, Local No. 554
(Prairie Ford Truck Sales) 253 NLRB No. 006
(no ally relationship existed between primary E and neutral company that repaired its trucks as it had done in past; primary never performed nor had capability of performing maintenance on its vehicles and no contractual relationship between primary and neutral)

Samuel M. Kaynard v. Local 259, United
Automobile Aerospace and Agricultural
Implement Workers of America No. CV-80-2305, Oct. 10, 1980, DC E.D. NY (unreported)
(trucking company held ally and picketing of it by U striking primary not violative where under new arrangement after strike started it received goods destined for primary, unloaded goods from trucks, checked for damage and signed for shipments which were later picked up by primary's truck and taken to primary's warehouse where goods were processed in same manner as before strike)

7540-4040 What constitutes cessation of business

7540-4040-7300 Cessation of business between neutrals

Plumbers, Local Union 342 (Conduit Fabricators,
Inc.) 251 NLRB No. 112
(U's refusal to handle pipe prefabricated by one E, thus causing another E not to install pipe, unlawful, where U claimed entire fabrication of pipe since work not covered by work preservation clause inasmuch as entire fabrication had not been traditionally performed by U)

7540-4070 Employer action sought by union conduct

N.L.R.B. v. Retail Store Employees, Local 1001 444 US 1011 (U.S. SCt. June 1981)
(picketing of neutral title companies, 90% of whose gross income was derived from sale of insurance policies underwritten by primary insurance company, accompanied by appeal to consumers to cancel insurance company's policies, unlawful, where U's secondary appeal against title companies' central product was reasonably calculated to induce customers not to patronize neutrals, and resulting injury to their businesses was different from incidental injury to neutrals in *Tree Fruits* inasmuch as successful picketing herein would make neutrals choose between survival and severance of ties with primary E)

Local 3, Electrical Workers (General Dynamics
Communications Company) 264 NLRB No. 096
(respondent U's encouraging Ees it represented to strike against their E and coercing such E and neutral Es who employed Ees represented by another U to c/d/b with each other in order to secure for Ees represented by respondent work being done for neutral Es by Ees represented by the other U, violative)

Service Employees Union Local 77, Service
Employees International Union, AFL-CIO
(Thrust IV; 264 NLRB No. 003
(telling E that there might be pickets next work day w/o asking when primary would be present, admitting that U was *picketing jobsite and not job* indicated that U would not be satisfied with anything less than removal of primary)

Hospital and Service Employees Union, Service
Employees International Union, AFL-CIO,
Local 399 (Delta Air Lines, Inc.) 263 NLRB No. 153
(U's handbilling at facilities of secondary E, unlawful, where handbilling was designed to bring secondary E under economic pressure for purpose of forcing it to c/d/b with primary E, and handbills failed to *truthfully advise the public* by failing to identify nature of primary dispute, and by including coercive information totally unrelated to secondary E's connection with primary dispute)

Tri-State Building & Construction Trades Council,
AFL-CIO (Stark Electric, Inc.) 262 NLRB No. 080
(threatening to picket general contractor if it subcontracted work to non-U subcontractor, violative)

International Brotherhood of Electrical Workers,
Local 595 (Hayward Electric Co.) 261 NLRB No. 109
(picketing reserve gate at time Ees of primary E were absent from jobsite in order to cause neutral Es to c/d/b with primary E held violative)

Teamsters Local 70, a/w Teamsters (United States of
America, Department of The Navy) 261 NLRB No. 079
(picketing at neutral gate at naval facility, assertedly to compel U.S. Navy or Defense Logistics Agency (neutral Es) to apply and enforce Service Contract Act after U had supposedly abandoned its original dispute with non-U contractor and switched its complaint to above Es, unlawful, where U's real dispute remained with contractor; U's claim was subterfuge and *tactically calculated* to pressure neutral Es to c/d/b with contractor or to force it to bargain with U; U never showed that contractor was not paying prevailing wages and benefits and picketing began 5 days before primary started)

Longshoremen's Association, Local 1414, AFL-CIO
(Occidental Chemical Co.) 261 NLRB No. 001
(Us unlawfully engaged in, and induced and encouraged their members to engage in, refusals in course of their employment by neutral Es to process or otherwise handle Russian cargoes on foreign flagships in U.S. ports, because of Russia's invasion of Afghanistan, where Us' object was to force or require neutral Es to c/d/b with each other and with neutral ships carrying Russian cargoes)

Longshoremen's Association, Local 1414, AFL-CIO
(Occidental Chemical Co.) 261 NLRB No. 001
(Us unlawfully threatened, coerced, and restrained neutral Es and foreign flagships by refusing to refer Us' members for unloading Russian cargoes, because of Russia's invasion of Afghanistan, where Us' object was to force or require neutral Es to c/d/b with each other and with neutral ships carrying Russian cargoes)

Construction & General Laborers Union, Local 304,
Laborers International Union of North
America (Athejen Corp.) 260 NLRB No. 177
(U's business agent threatening to picket non-U general contractor because general contractor did not employ U's members, though subcontractors were U, and subsequently picketing at gate reserved for neutral subcontractors with signs bearing its name in order to induce neutral subcontractors not to perform services for general contractor, violative, notwithstanding contention subcontractor's work related to primary E's)

Detroit Building and Construction Trades Council,
AFL-CIO 259 NLRB No. 129
(picketing construction site of neutral E where neutral E had engaged non-U corporation to do carpentry work violative as signs stated neutral E unfair; therefore object was to force neutral to c/d/b with non U firm)

Detroit Building and Construction Trades Council,
AFL-CIO 259 NLRB No. 129
(threat to picket all stores of neutral E because he hired non-U construction firm to remodel one of its stores violative as attempt to force neutral E to c/d/b with non U E)

Ventura County District Council of Carpenters
(Commercial Industrial Constructors, Inc.) 259 NLRB No. 028
(U's fining of U members who worked behind picket line for neutral E at which U had labor dispute with another E, unlawful, where U's discipline induced or encouraged neutral Ees to refuse to perform services for their E with object of causing neutral E to c/d/b with primary E)

Local Union No. 3, Electrical Workers (L. M.
Ericsson Telecommunications, Inc., New York
Division) 257 NLRB No. 167
(U pressured contracting subcontractor to c/d/b with general contractor whose Ees, represented by another U, were performing work at subcontractor's jobsite which subcontractor's U sought to obtain in order to attain total job performance in accordance with its total job policy)

Office and Professional Employees International
Union, Local 2, AFL-CIO (American Postal
Workers Union, AFL-CIO) 253 NLRB No. 159
(where picketing U represents Ees of neutral, national U, and primary E, hospital plan of national U, picketing neutral with whom it had no labor dispute in order to pressure primary E to make concessions in bargaining negotiations, violative)

Teamsters & Auto Truck Drivers, Local No. 85
(William Volker and Company) 253 NLRB No. 089
(picketing calculated to involve neutral E in labor dispute and coerce it into severing relationship with primary E's violative)

International Longshoremen's Association, AFL-
CIO; et al. (The Terminal Corporation) 250 NLRB No. 004
(maintaining and giving effect to, and enforcing rules requiring that off-pier *stripping* and *stuffing* of containers done w/i 50 mile radius of port must be performed by U unlawful where such work not historically perofrmed by U and U had no prescriptive right to perform it)

Local 456, Teamsters (Westchester Colprovia Corp.)
(JD-(NY)-115-82
(U's conduct in inducing and encouraging its steward at neutral E's facility not to load truck of primary E, and in coercing and restraining neutral E with object of forcing it to c/d/b with primary E, unlawful)

Local No. 12, Operating Engineers (Enterprise
Aggregates Corp.; Jones, Jones, and Jones) JD-(SF)-184-82
(U's threat to picket neutral E unless it stopped using services of another neutral E engaged in truck hauling services because latter was patronizing primary E, unlawful, since U's threat to picket jobsite where primary E did not conduct business was to force neutral E not to utilize product of primary E)

Carpenters Local 1280 (W.S. Bennett Construction
Company, Inc.) JD-(SF)-78-82
(U's telephonic communication to neutral contractor that U considered reserve gate picketing at plant of neutral owner to be picketing at plant in

7540-4070—Cont.

general and that neutral contractor was not to work behind U's picket line held unlawful coercion of neutral plant owner and contractors to c/d/b with Es named in picket signs with whom U had dispute)

Over-The-road, City Transfer, Cold Storage, Grocery and Market Drivers and Helpers, Inside Employees, Local 544, a/w Teamsters (Dahl & Curry, Inc.) **JD-71-81**

(U agent's statement to E that U would take whatever means necessary to compel compliance with unlawful subcontracting clause, either through courts or picketing, violative where he stated that picketing would be with area standards banners)

Sacramento Area District Council of Carpenters, Local 447 (Lincoln Nevada Construction Company) **JD-(SF)-51-81**

(U's picketing at neutral gate following posting of reserved gate signs violative, as picketing was designed to enmesh neutrals in its dispute with subcontractor)

Sheetmetal Workers International Association, Local Union No. 91 (Hallimer-Whitney Elevator Corp.) **JD-498-80**

(violation, where U threatened to picket and picketed neutral contractor to force it to c/d/b with and reverse its decision to use low bidder and non-U primary E that U has picketed over past several years for failing to meet area standards)

General Teamsters Union Local No. 170, a/w IBT (Claflin - Donohue) **JD-373-80**

(violation where U's business agents threatened E in automotive repair business that U would picket E if E did not cease working on vehicles of E with which U had dispute)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**

(U business manager's statement to general contractor that none of his men were going to work for any contractor signatory to agreement with U that did business with non-U subcontractors, not violative of *Sec. 8(b)(4)(i)(B)* because there was no showing that threat to withhold men was effectuated or transmitted to Ees)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**

(though U may have lawfully proceeded to enforce contract through grievance procedure, threat of economic action to compel general contractor to contract sheet metal work to U subcontractor held violative of *Sec. 8(b)(4)(ii)(B) of Act*)

N.L.R.B. v. Hotel and Restaurant Employees' Union Local 531 **623 F.2d 61 (C.A. 9, June 1980)**

(threat of strike against lessor E by U to enforce unlawful 8(e) agreement violative where agreement provided that as condition precedent to lease of premises by E that lessee-E agreed to recognize and contract with U, and lessor E became liable in event lessee failed to comply with any terms of contract; thus involving neutral (lessor) in labor disputes between primary (lessee) and U)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. **657 F.2d 1252 (C.A.D.C., Oct. 1980)**

(U's picketing at neutral retail store against sale of nonlocal soft drinks, unlawful; while U had legitimate interest in conducting *buy local* campaign to preserve its members' jobs, and neutral E would be required to endure whatever pressure resulted from U's success in urging consumers to boycott nonlocal soft drinks, U's failure to tailor its campaign precisely by identifying local and nonlocal soft drinks exposed neutral E to more economic pressure than U's interest in *buy local* campaign warranted)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1219 (D Ct WI, 1980)**

(U's picketing, questioning workers on site, or calling and writing letters to neutral subcontractors and owner of site had objective of inducing or encouraging such individuals to c/d/b with primary general contractor, and U's direct and indirectpressure on secondary parties had as its goal pressuring of primary E to agree to U's contract demands; consequently, reasonable cause exists to believe 8(b)(4)(B) was violated)

7540-4080 Indicia of objective

Local 3, Electrical Workers (General Dynamics Communications Company) **264 NLRB No. 086**

(U had total job policy previously held unlawful and had been held responsible for action pursuant to it by its members and had shown proclivity toward unlawful secondary activity involving same rival U as here; also evidence of pattern of unlawful secondary harassment of a primary E such as here had been held evidence of U's inducement of secondary activity of U's inducement of secondary activity against that E)

Over-The-road, City Transfer, Cold Storage, Grocery and Market Drivers and Helpers, Inside Employees, Local 544, a/w Teamsters (Dahl & Curry, Inc.) **JD-71-81**

(U agent's statement to E that U would take whatever means necessary to compel compliance with unlawful subcontracting clause, either through courts or picketing, violative where he stated that picketing would be with area standards banners)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. **657 F.2d 1252 (C.A.D.C., Oct. 1980)**

(ct held Bd's findings were internally consistent in finding that U's picketing at neutral store against sale of nonlocal soft drinks and to c/d/b with nonlocal suppliers, where Bd held that chanting and booing by pickets directed at customers had not disturbed the peace nor constituted overt physical coercion of customers; rather, such finding was thoroughly consistent with view that chanting and booing helped demonstrate object of picketing)

7540-4080-1200 Picket signs

Detroit Building and Construction Trades Council, AFL-CIO **259 NLRB No. 129**

(picketing construction site of neutral E where neutral E had engaged non-U corporation to do carpentry work violative as signs stated neutral E unfair; therefore object was to force neutral to c/d/b with non U firm)

Local 32B–32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**

(common situs is created by engagement of activities by secondary E at premises of primary E; therefore *Moore Dry Dock* criteria are applicable and U's picketing with signs which failed to disclose identity of E with whom it had dispute and at places reserved exclusively for use by secondary E's Ees and delivery persons violated Act)

7540-4080-2500 Place of picketing

Local 388, Plumbers (Barton Malow Co.) **262 NLRB No. 015**

(where one school district had 2 construction job sites (old high school renovation job and new high school project), U agent's statement that it picketed both sites to protest using non-U contractor at old high school job made clear that one of purposes of U picketing was to enmesh secondary E's)

International Brotherhood of Electrical Workers, Local 595 (Hayward Electric Co.) **261 NLRB No. 109**

(picketing reserve gate at time Ees of primary E were absent from jobsite in order to cause neutral Es to c/d/b with primary E held violative)

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**

(*if picketing is not confined reasonably close to entrance reserved for primary E and its Ees, U is considered to be picketing with unlawful secondary objective*)

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**

(U's picketing at construction project gate after gate had been clearly designated as gate for Ees of neutral Es rather than at gate reserved for Ees of contractor with whom U had dispute and its suppliers, violative, where gate reserved for contractor with whom U had dispute was readily accessible, and U's representative had stated his intent not to honor reserved gate system)

Detroit Building and Construction Trades Council, AFL-CIO **259 NLRB No. 129**

(picketing construction site of neutral E where neutral E had engaged non-U corporation to do carpentry work violative as signs stated neutral E unfair; therefore object was to face neutral to c/d/b with non U firm)

Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Water District **253 NLRB No. 033**

(U picketing of neutral E because barges of primary E located there, violative, where no Ees of primary are at, or expected to be at, neutral E, and work performed by neutral or primary's barges never performed by primary)

Operating Engineers, Local 12 (Frank De Pietro and Sons) **JD-(SF)-[illegible]**

(U's picketing of neutral gate violative where there was no breach of gate's integrity and object of picketing was to enmesh neutral subcontractors in a dispute not their own)

N.L.R.B. v. Local 282, Teamsters **No. 29149, Mar. 28, [illegible], C.A. 2 (unreported)**

(U which picketed at facility of E, whose Ees it had previously represented, violated Act where its dispute was with company which had taken over E's delivery operations, situs of dispute was never at E's premises and picket signs did not identify E against whom picketing directed)

7540-4080-3700 Time of picketing

7540-4080-3700—Cont.

International Brotherhood of Electrical Workers, Local 595 (Hayward Electric Co.) **261 NLRB No. 109**
(picketing reserve gate at time Ees of primary E were absent from jobsite in order to cause neutral Es to c/d/b with primary E held violative)

Sheetmetal Workers International Association, Local Union No. 91 (Hollister-Whitney Elevator Corp.) **JD-498-80**
(violation, where U picketed neutral non-U subcontractor with proscribed object of forcing general contractor to c/d/b with and reverse its decision to use another non-U subcontractor (primary) whom U had picketed in past over substandard wages on other parts of job where U had never picketed subcontractor on other jobs, and only did so when it found out primary subcontractor awarded job)

7540-4080-5000 Statements of pickets

Carpenters Union Local No. 1622, UBCJA (Robert Ward & Associates, Inc. **262 NLRB No. 138**
(*pickets informing drivers who were attempting make delivery to neutral subcontractors that picketing was sanctioned, threatening drivers with trouble* if deliveries were made and writing down license numbers)

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**
(statement of picket, in presence of U representative, to Ee who approached gate *You are not going across this gate, are you,* unlawful, since words of Section 8(b)(4)(i)(b) *induce and encourage* are broad enough *to include every form of influence and persuasion* and since *in causing Ee to refuse to perform services for his E it also violated Section 8(b)(4)(ii)(B) of Act*)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. **657 F.2d 1252 (C.A.D.C., Oct. 1980)**
(Bd properly rejected argument by U, engaged in picketing at neutral retail store against selling of nonlocal soft drinks, that U's object was not proscribed by Act but was affirmative one of urging consumers to buy local soft drinks and thus to enhance store's business, in view of pickets' chanting and remarks to store's customers to cease buying nonlocal soft drinks, and fact that Bd was entitled to infer object of U's conduct from practical realities of situation, since *an object* of picketing must have been to cause consumers to stop buying nonlocal soft drinks)

7540-4080-6300 Statements to employers

Service Employees Union Local 77, Service Employees International Union, AFL-CIO (Thrust IV) **264 NLRB No. 082**
(picketing construction site when U had knowledge that no Ees of primary, were present, and picketing was not carried on at reserve gate, violative where U agent admitted he was *picketing jobsite and not job* because it was *outlaw company* that did not pay minimum wage or provide Ee benefits)

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**
(U's picketing at construction project gate after gate had been clearly designated as gate for Ees of neutral Es rather than at gate reserved for Ees of contractor with whom U had dispute and its suppliers, violative, where gate reserved for contractor with whom U had dispute was readily accessible, and U's representative had stated his intent not to honor reserved gate system)

Teamsters Local 70, a/w Teamsters (United States of America, Department of The Navy) **261 NLRB No. 079**
(threat to naval officer that U would shut down naval supply facility (neutal E) unless new contractor (primary E) hired its members as U was certain that it would not sign U contract, and threat to close down facility if Defense Logistics Agency persisted in giving contract to U subcontractor held violative)

Detroit Building and Construction Trades Council, AFL-CIO **259 NLRB No. 129**
(threat to picket all stores of neutral E because he hired non-U construction firm to remodel one of its stores violative as attempt to force neutral E to c/d/b with non U E)

Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (A.C.O., Inc.) **258 NLRB No. 186**
(U's threatening to pull neutral Es' Ees off jobsite if primary E came back held unlawful threat of work stoppage to force neutral Es to c/d/b with primary E)

Plumbers, Local 388 (Charles Featherly Construction Co.) **253 NLRB No. 062**
(U's business manager in presence of field representative of trades' council informing general contractor's job superintendent that U was *going to try to shut job down* because of presence of non-U plumbing contractor, unlawful, since threat was to shut job down by whatever means necessary rather than to picket non-U contractor in compliance with *Moore Dry Dock* which would allow general contractor to protect job by establishing reserve gate)

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**
(Us' picketing primary E at properly established and validly maintained gates reserved for neutral secondary Es, violative, in view of picketing's nonconformance with *Moore Dry Dock* standards, U business manager's threats to cause complete work stoppage if contract was awarded to the non-U primary E, and U's failure to adduce competent evidence that reserved gates were at any relevant time used by primary E)

Teamsters Local No. 600, a/w Teamsters (Poplar Bluff Express) **JD-226-82**
(threats to secondary and neutral E to picket his company because primary E's driver was nonU driver and solicitation of same secondary E not to ship or do business with primary E because it was nonU)

Carpenters Local 1280 (W.S. Bennett Construction Company, Inc.) **JD-(SF)-78-82**
(U business representative's telephonic communication to neutral plant owner that U would not picket at plant if owner would remove E with which U had dispute from plant)

Sheet Metal Workers International Association, Local 263, AFL-CIO (Colony Plumbing and Heating, Inc.) **JD-504-81**
(U's sending project manager of secondary E letter which indicated that it intended to engage in lawful primary picketing, not violative)

General Teamsters Union Local No. 170, a/w IBT (Claflin - Donohue) **JD-373-80**
(violation where U's business agents threatened E in automotive repair business that U would picket E if E did not cease working on vehicles of E with which U had dispute)

Pipefitters Local Union No. 120 (Huge Heating & Cooling Co., Inc. **JD-7-80**
(U agents who threatened neutral E with picketing unless non-U subcontractors were removed from job violated Act as U's object of enmeshing neutral E in contraversy not its own is proscribed)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**
(U business manager's statement to general contractor that none of his men were going to work for any contractor signatory to agreement with U that did business with non-U subcontractors, not violative of *Sec. 8(b)(4)(i)(B)* because there was no showing that threat to withhold men was effectuated or transmitted to Ees)

Local #79, Plumbers (Jules Mallette Sheet Metal, Inc.) **JD-799-79**
(though U may have lawfully proceeded to enforce contract through grievance procedure, threat of economic action to compel general contractor to contract sheet metal work to U subcontractor held violative of *Sec. 8(b)(4)(ii)(B) of Act*)

Southern Sun Electric Corporation v. N.L.R.B. **620 F.2d 170 (C.A. 8, 1980)**
(telephone conversation between neutral E and U agent during which U agent, in response to E's question what it would take to get pickets to leave, answered removal of primary E, not unlawful; conversation was initiated by E, and picketing ceased shortly thereafter, w/o any other evidence of a secondary objective, of work stoppages, or of interrupted deliveries; moreover, neither party interpreted conversation as attempt to involve neutral E in dispute)

7540-4080-6900 Statements to employees

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**
(statement of picket, in presence of U representative, to Ee who approached gate *You are not going across this gate, are you,* unlawful, since words of Section 8(b)(4)(i)(b) *induce and encourage* are broad enough *to include every form of influence and persuasion* and since *in causing Ee to refuse to perform services for his E it also violated Section 8(b)(4)(ii)(B) of Act*)

7540-4080-8700 Handbills

Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399 (Delta Air Lines, Inc.) **263 NLRB No. 183**
(U's distribution, in course of dispute with primary E, of handbills at secondary E's facilities urging total consumer boycott of secondary E for purpose of forcing it to c/d/b with primary E, unlawful, since publicity proviso requires that publicity advise public of nature of primary dispute and the secondary E's relationship to it, but handbills herein failed to mention primary E at all, and thus, by failing to identify primary dispute, were not *for the purpose of truthfully advising the public* w/i meaning of proviso)

Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399 (Delta Air Lines, Inc.) **263 NLRB No. 193**
(U's handbilling, in course of dispute with primary E, at secondary-E airline's facilities, urging total consumer boycott of airline, unlawful, where handbills, while identifying nature of primary dispute, included statistical

7540-4080-8700—Cont.

information pertaining to airline's accident and consumer complaint record, which information was totally unrelated to airline's subcontracting with primary E, and U included information for purpose of forcing airline to c/d/b with primary E, and not because of independent dispute with airline over its safety record)

Hospital and Service Employees Union, Service Employees International Union, AFL-CIO, Local 399 (Delta Air Lines, Inc.) **263 NLRB No. 153**
(in finding unlawful U's handbilling at secondary-E airline's facilities, urging total consumer boycott of airline and including statistical information pertaining to airline's accident record, Bd noted that case would be intirely different if information was published in handbills because U had primary dispute with airline over its accident record and wanted to force airline to improve its airplane safety, since U would be publishing information for lawful primary object; however, U admitted it published information for secondary purpose)

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) **JD-(SF)-110-81**
(U's picketing at entrance to bank which employed janitorial service that U had dispute with signs which stated janitorial service paid substandard wages and distributing handbills informing recipients about U's dispute with bank and janitorial service and asking bank's customers to boycott bank, unlawful, since U asked bank's customers to engaged in total boycott of bank, and in view of interdependence between handbilling and picketing since handbilling considered integral part of picketing and customers would have considered handbill message part of picketing and thus not w/i 8(c)(4) proviso)

7540-6000 Any other employer to recognize or bargain with union as representative

7540-6017 'Any other employer' entitled to protection

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**
(as neutrals to dispute between U and title insurance company whose policies they sold, and which generated 95% of their revenues, land title companies are protected by sec. 8(b)(4)(ii)(B) from secondary pressures notwithstanding minority interest of ownership title company had in land title companies)

7540-6050 Exemption where union certified under section 9

International Union of Operating Engineers, Hoisting Local 513, AFL-CIO (Trojan Contractors, Inc.) **JD-637-81**
(bargaining agreement can not be equated to certification and *it is only certified U that can lawfully induce the Ees of some other E to engage in a strike or other concerted activity for purpose of compelling primary E to recognize it....*)

7540-6083 Indicia of objective

7540-6083-6200 Statements to employers

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**

Plumbers and Steamfitters, Local 129, AFL-CIO v. N.L.R.B. **622 F.2d 575(T) (C.A. 2, 1980)**
(U's threat to picket jobsite immediately upon learning that neutral contractor had let plumbing job to subcontractor whose Ees were represented by another U certified by Bd)

7540-6083-6900 Statements to employees

N.L.R.B. v. Union Nacional De Trabajadores, et al. **611 F.2d 926 (C.A. 2, 1979)**
(U president and U that were found in violation of Sections 8(b)(1)(A) and 8(b)(4)(ii)(B) of LMRA were in civil contempt of ct decree when U members picketing struck gas station threatened violence and other reprisals against 2 Ees of gas station, notwithstanding that Ees were employed by security firm that was engaged by gas station operator to provide individuals to pump gas and report threats to persons and damage to property)

7540-8000 Exemption of primary strike or picketing

7540-8001 Generally

Carpenters Union Local No. 1622, UBCJA (Robert Wood & Associates, Inc. **263 NLRB No. 138**
([I]n common situs situations line between primary and unlawful secondary activity is not clearly defined . . . and Bd adopted guidelines which have been approved by cts, to aid in determining whether object of common situs picketing by labor organization is primary or secondary. However, said guidelines are merely evidentiary in nature are not to be mechanically applied. Thus, while compliance may give rise to rebuttable presumption that picketing is primary, totality of evidence may establish underlying secondary objective)

7540-8001-1700 Identification of primary employer

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 8**
(picketing of construction jobsite which preceded establishment of reserved gates, not violative, notwithstanding name of primary E on signs was lightly handwritten and fact Ees of secondary E were transferred to other jobs for one day as result of picketing, since signs identified primary E and transfer of Ees was not result of coericon by Respondents)

N.L.R.B. v. Local 282, Teamsters **No. 29149, Mar. 28, 1980, C.A. 2 (unreported)**
(memorandum of understanding between corporation and U representing its former Ees which set forth that: another E was taking over corporation's delivery service and had agreed to negotiate with U concerning drivers, and if U and trucking company failed to reach agreement, it would resume negotiations, does not render corporation primary E subject to lawful picketing where U and trucking company have been parties to collective-bargaining agreements and memorandum bound corporation only if initial negotiations did not result in agreement)

Pet, Inc. v. N.L.R.B. **641 F.2d 545 (C.A. 8, Jan 30, 1981)**
(handbilling and newspaper advertisements (no picketing) urging consumer boycott of products produced by divisions of conglomirate other than only one that U represented Ees and was striking, held outside publicity proviso as struck division not *producer* as it didn't work on any products produced by other divisions; fact that struck division's profits inured to other divisions not reason enough to make other divisions *primary* along with struck division)

7540-8001-1750 'Right to Control' test

N.L.R.B. v. International Longshoremen's Assn., AFL-CIO, et al. **447 US 490 (U.S. SCt. June 1980)**
(lawful *work preservation* agreement must pass two tests: (1) it must have as objective preservation of work traditionally performed by Ees represented by U; and (2) contracting E must have power to give Ees work in question - the so-called *right of control* test)

Carpenters, Local Union No. 1622 (Specialty Building Company) **262 NLRB No. 162**
(U's contention that relationship of primary general contractor with which it had dispute to its subcontractors warranted application of *related work* doctrine and justified picketing at reserved gate, rejected; fact contractor and subcontractor engaged on same project and contractor had some supervision over subcontractors work, did not eliminate status of each as independent contractor or make Ees of one Ees of other more importantly, Bd has refused to extend *related work* doctrine to construction industry)

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**
(attempt by electricians' U to acquire work of installing certain type of electronic telephone switches held unlawful, even though U may have had a work preservation object, where disputed work went beyond that traditionally performed by U's members in view of changes in technology and special nature of electronic switch involved herein, and U pressured contracting subcontractor involved in dispute who was unable to satisfy U's demand because he had no right of control of disputed work which was being performed by general contractor's Ees represented by another U)

N.L.R.B. v. Local 282, Teamsters **No. 29149, Mar. 28, 1980, C.A. 2 (unreported)**
(corporation which changed from operating its own delivery service to having trucking company handle all its deliveries found neutral E in dispute between U and trucking company where there is: no common ownership or management; no integration of business operations, no centralized labor relations policy between corporation and trucking company)

7540-8001-3300 Primary activity defined

Pet, Inc. v. N.L.R.B. **641 F.2d 545 (C.A. 8, Jan 30, 1981)**
(handbilling and newspaper advertisements (no picketing) urging consumer boycott of products produced by divisions of conglomirate other than only one that U represented Ees and was striking, held outside publicity proviso as struck division not *producer* as it didn't work on any products produced by other divisions; fact that struck division's profits inured to other divisions not reason enough to make other divisions *primary* along with struck division)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(under NLRA's proscription of secondary boycotts, work preservation agreements, by which parties seek to preserve work for contracting E's Ees when nature or location of that work has changed due to technological advances, as well as primary collective action enforcing their terms, are not considered illegal)

7540-8001-6700 Secondary activity defined

Longshoremen's Association, Local 1414, AFL-CIO (Occidental Chemical Co.) **261 NLRB No. 001**

(presence of foreign flagships did not invoke limitation of Bd's commerce juriadiction delineated in SCt decisions which bar Bd from asserting juriadiction over primary activity directed against foreign flagships and over secondary conduct inextricably intertwined with primary activity; in instant case, conduct was purely secondary since primary dispute was between U's and Russia because of Russia's invasion of Afghanistan, and no primary activity occurred concerning such dispute; instead, Us' action was wholly directed against parties having no involvement in or power to directly affect primary dispute)

7540-8001-7500 Merger of primary's product with that of secondary

United Paperworkers International Union, AFL-CIO, Local 832 **258 NLRB No. 013**

(on ct remand U's picketing two grocery stores with whom it had no labor dispute in order to pressure stores not to continue use of product (paper bags) of struck E, held violative because bags were necessary, they lost their separate identity and merged into operation of store; successful boycott of product would have required boycott of store as well)

Retail Store Employees Union, Local 1001 v. N.L.R.B. **600 F.2d 280 (C.A.D.C.)**

(*Tree Fruits,* 377 U.S. 52 (1964) does not apply to cases in which retailer (neutral) sells only struck product (here, title insurance); when struck product had *so merged into (neutral) seller's total business as to be indistinguishable therefrom* boycott of struck product was illegal; interests of neutral secondary (E) must prevail)

7540-8020 Primary strikes or Inducements to Strike

7540-8020-5000 Primary objectives

7540-8020-5025 Contract enforcement

International Union of Operating Engineers, Hoisting Local 513, AFL-CIO (Trojan Contractors, Inc.) **JD-637-81**

(U which informed secondary E that one of its members employed by secondary E could be subjected to U discipline for crossing lawful picket line set up at primary E did not violate Act. No showing that there were other secondary Es at jobsite)

7540-8020-5037 Area standards

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(picketing held unlawful, notwithstanding contention of U and trades council that they engaged only in lawful informational picketing concerning non-U contractor's wages and working conditions, where U began picketing at time it knew nothing about contractor's wages and working conditions and Respondents never sought information regarding these matters; trades council's objectives went beyond seeking U wages and working conditions)

Highway, City & Air Freight Drivers, Dockmen & Helpers Local Union No. 600, a/w Teamsters (Mid-American Shippers and Receivers, Inc.) **JD-149-82**

(U which engaged in area standards picketing at dock facility owned by neutral E but heavily utilized by primary E did not violate Act where picketing occurred at sole entrance to dock facility, primary was engaged in normal business operations at this location,its Ees were frequently on premises although at no specific times)

7540-8020-5050 Unit work preservation

N.L.R.B. v. International Longshoremen's Assn., AFL-CIO, et al. **447 US 490 (U.S. SCt. June 1980)**

(lawful *work preservation* agreement must pass two tests: (1) it must have as objective preservation of work traditionally performed by Ees represented by U; and (2) contracting E must have power to give Ees work in question - the so-called *right of control* test)

N.L.R.B. v. International Longshoremen's Assn., AFL-CIO, et al. **447 US 490 (U.S. SCt. June 1980)**

(*work of stuffing* and *stripping* containers used in shipping goods at waterfront facilities must focus on bargaining unit Ees' work, not on work of other Ees who may be doing same or similar work, and (Bd) must examine relationship between work as it existed before innovation (*the container revolution*) and as agreement proposes to preserve it)

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 147**

(attempt by electricians' U to acquire work of installing certain type of electronic telephone switches held unlawful, even though U may have had a work preservation object, where disputed work went beyond that traditionally performed by U's members in view of changes in technology and special nature of electronic switch involved herein, and U pressured contracting subcontractor involved in dispute who was unable to satisfy U's demand because he had no right of control of disputed work which was being performed by general contractor's Ees represented by another U)

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. 004**

(maintaining and giving effect to, and enforcing rules requiring that off-pier *stripping* and *stuffing* of containers done w/i 50 mile radius of port must be performed by U unlawful where such work not historically perofrmed by U and U had no prescriptive right to perform it)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(work preservation doctrine provides generally that efforts to preserve work for Ees displaced by technological innovation (in instant case, *containerized shipping*) are not unlawful secondary activities and that U-management contracts with same purpose are not proscribed *hot cargo* agreements)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(activities and agreements that seek not to preserve traditional work of displaced Ees but to acquire work of other Ees are unlawful under congressional proscription)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(under NLRA's proscription of secondary boycotts, work preservation agreements, by which parties seek to preserve work for contracting E's Ees when nature or location of that work has changed due to technological advances, as well as primary collective action enforcing their terms, are not considered illegal)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(to be classified as work preservation, boycott must be focused on *labor relations of contracting E vis-a-vis his own Ees*; boycott must not be *tactically calculated to satisfy U objectives elsewhere;* however, other Es and their Ees may be affected by the boycott but this is incidental effects of primary activity)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(under *National Woodworking* 386 U.S. 612 (1967) *all surrounding circumstances* must be examined and this requires inquiry into work patterns both before and after technological innovation is introduced rather than just post-innovation work patterns because to do only latter would remove any opportunity for pre-innovation workers to preserve their work and Bd must show that new work is sufficiently unrelated to old work before ignoring traditional work patterns)

7540-8020-7500 Indicia of objective

7540-8020-7562 Statements to employers

Local Union No. 2362, Lumber, Production and Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Phost Construction, Inc.) **259 NLRB No. 120**

(U's threat made to primary to picket primary's job site if it refused to sign 3-year contract, not unlawful)

7540-8040 Primary picketing

7540-8040-3300 Primary objectives

7540-8040-3312 Contract enforcement

International Union of Operating Engineers, Hoisting Local 513, AFL-CIO (Trojan Contractors, Inc.) **JD-637-81**

(U's picketing of primary E found violative where purpose was to attempt to cause neutral Ees to cease work)

7540-8040-3350 Unit work preservation

N.L.R.B. v. International Longshoremen's Assn., AFL-CIO, et al. **447 US 490 (U.S. SCt. June 1980)**

(*work of stuffing* and *stripping* containers used in shipping goods at waterfront facilities must focus on bargaining unit Ees' work, not on work of other Ees who may be doing same or similar work, and (Bd) must examine relationship between work as it existed before innovation (*the container revolution*) and as agreement proposes to preserve it)

7540-8040-3350—Cont.

Marine Officers Association, Teamsters Union Local No. 54 (Riverway Co.) 280 NLRB No. 182

(where E unilaterally chartered out all its motor vessels and then chartered them back with crews who were non-U at time when valid agreement existed between E and U, and U made only limited protest at time of change, and this change existed for 3 years at which time it began to picket E, U found to have acquiesced in E's charge in operations and to no longer have labor dispute with E; thus, U's dispute lies with E who control non-U crews and not with original E and its picketing is violative)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(Bd properly found that object of U's picketing was to force neutral retail store to cease selling nonlocal soft drinks and to c/d/b with nonlocal suppliers; while U's ultimate goal was to preserve job opportunities for its members, and not to harm store's business, such claim is irrelevant to Act's requirement that *an object* of picketing be one proscribed by statute, and legality of U's ultimate goal cannot immunize any otherwise illegal immediate objective)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(U's picketing at neutral retail store against sale of nonlocal soft drinks, unlawful; while U had legitimate interest in conducting *buy local* campaign to preserve its members' jobs, and neutral E would be required to endure whatever pressure resulted from U's success in urging consumers to boycott nonlocal soft drinks, U's failure to tailor its campaign precisely by identifying local and nonlocal soft drinks exposed neutral E to more economic pressure than U's interest in *buy local* campaign warranted)

7540-8040-3375 Struck work or product

Office and Professional Employees International Union, Local 2, AFL-CIO (American Postal Workers Union, AFL-CIO) 253 NLRB No. 159

(picketing neutral E on theory of following *struck work* violative where neutral E is *one product* site and picketing reasonably can be expected to threaten neutral party with ruin cr substantial loss)

Teamsters, Local Union No. 560 (Curtin Matheson Scientific, Inc.) 248 NLRB No. 156

(local's picketing at Missouri warehouse branch of national company in support of sister local's primary dispute at New Jersey warehouse branch, not unlawful, where E had corporate policy of cross-shipping, whereby other branches perform work of struck branch, and E's control over labor relations, though not on day-to-day basis, gives appearance of single-E by way of tactical advantage in dealing with labor disputes at local level)

The Kroger Company v. N.L.R.B. 645 F.2d 634 (C.A. 6, Oct 1980)

(ct set aside Bd's dismissal of compalint against U for picketing secondary E's grocery stores and remanded case for further proceedings where there was no substantial evidence in record to support Bd's finding that cessation of business of secondary E would not have been result of successful boycott of primary E's paper bags, since such bags were necessary for every purchase made at stores and thus lost their separate identity and merged into secondary E's operation of grocery stores)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(Bd need not identify a *primary labor dispute* to find a violation of Sec. 8(b)(4)(ii)(B); ct found ample authority for such view in ct decisions, including legislative history, and held that U's picketing of neutral retail store against sale of nonlocal soft drinks did not concern store's Ees but was aimed at enhancing job opportunities of U members at local manufacturing plants; store was thus neutral E meriting protection of Sec. 8(b)(4)(ii)(B) regardless of whether U had conventional labor dispute with any other E)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(Sec. 8(b)(4)(ii)(B) creates two separate requirements for Bd finding of ULP on part of U: (1) challenged U conduct must have as object forcing or requiring neutral business to c/d/b with another business; and (2) U must pursue its object by threatening, coercing, or restraining neutral business; fact that U here is a *labor organization* engaged in *buy local* picketing distinguishes it from that of general citizens group engaged in such campaign, and fact that conduct is labor picketing distinguishes instant case from others where government regulation might raise constitutional problems)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(Bd properly found that object of U's picketing was to force neutral retail store to cease selling nonlocal soft drinks and to c/d/b with nonlocal suppliers; while U's ultimate goal was to preserve job opportunities for its members, and not to harm store's business, such claim is irrelevant to Act's requirement that *an object* of picketing be one proscribed by statute, and legality of U's ultimate goal cannot immunize any otherwise illegal immediate objective)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(Bd properly rejected argument by U, engaged in picketing at neutral retail store against selling of nonlocal soft drinks, that U's object was not proscribed by Act but was affirmative one of urging consumers to buy local soft drinks and thus to enhance store's business, in view of pickets' chanting and remarks to store's customers to cease buying nonlocal soft drinks, and fact that Bd was entitled to infer object of U's conduct from practical realities of situation, since *an object* of picketing must have been to cause consumers to stop buying nonlocal soft drinks)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(U engaged in picketing at neutral retail store against sale of nonlocal soft drinks cannot successfully argue that it was impractical to devise picket signs that would help consumers distinguish between local and nonlocal soft drinks; otherwise legal consumer boycotts of disfavored products *threaten, coerce, or restrain* neutral Es if they fail to distinguish favored from disfavored products with sufficient clarity; boycott that fails to isolate struck product is illegal even if circumstances make it practically impossible for well intentioned U to confine its campaigning to that product)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(in case of a consumer boycott, picketing does not unlawfully *threaten, coerce, or restrain* neutral E if it confines itself to product, sale of which directly undermines U's interest; boycott that goes beyond legitimate primary dispute creates *separate dispute* with neutral, and since extra pressure U places on neutral causes more interference with latter's business than it would suffer as natural consequence of U's success in its primary dispute, it falls w/i congressional ban)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(U's picketing at neutral retail store against sale of nonlocal soft drinks, unlawful; while U had legitimate interest in conducting *buy local* campaign to preserve its members' jobs, and neutral E would be required to endure whatever pressure resulted from U's success in urging consumers to boycott nonlocal soft drinks, U's failure to tailor its campaign precisely by identifying local and nonlocal soft drinks exposed neutral E to more economic pressure than U's interest in *buy local* campaign warranted)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(contention by U, engaged in consumer picketing at neutral retail store against sale of nonlocal soft drinks, that under Tree Fruits case, product boycott is only illegal if it amounts to complete boycott of secondary's business, rejected; Tree Fruits did not address issue of boycott that posed harm to substantial part, but not all, of secondary E's business, and ct there had no occasion to decide legality of overbroad boycott that put excessive presure on secondary but did not put his business in jeopardy)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(U's consumer-aimed boycott of neutral E will *threaten, coerce, or restrain* such E if U fails to limit itself to an appeal to boycott struck or disfavored product or creates danger of *ruin or substantial loss* to such E)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)

(contention by U, engaged in consumer picketing at neutral retail store against sale of nonlocal soft drinks, that phrase *threaten, coerce, or restrain* creates empirical requirement for Bd, and that picketing was legal absent proof that neutral E suffered significant loss of income because of picketing, rejected; Bd is not required to produce actual empirical evidence and, while it is permitted to order cessation of boycotts that threaten *ruin or substantial loss* to neutral, an extremely costly boycott is not the only type proscribed by Act)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1253 (C.A.D.C., Oct. 1980)

(contention by U, engaged in consumer picketing at neutral retail store against sale of nonlocal soft drinks, that Bd's application of 8(b)(4)(B) to find that U's conduct was unlawful so severely restricts U's power to appeal to public that it violates First Amendment, rejected; Bd carefully adhered to narrow construction of Act required by Tree Fruits case, and marshalled

7540-8040-3375—Cont.

evidence demonstrating that picketing herein placed peculiarly severe burden on commerce by imposing on neutral E economic pressure disproportionate to U's legitimate campaign to protect its members' jobs)

7540-8060 Common situs picketing

7540-8060-0100 Generally

Electrical Workers, Local 323 (Renel Construction, Inc.) **264 NLRB No. 081**
(*Moore Dry Dock* guidelines, established to determine whether U's picketing at common situs has unlawful object of enmeshing neutral Es and Ees in U's dispute with primary E, are not to be mechanically applied, and U may reveal unlawful object by other conduct even when it has complied with guidelines)

Carpenters Union Local No. 1622, UBCJA (RObert Wood & Associates, Inc.) **262 NLRB No. 138**
(violation, where U picketed at neutral gate at construction project, notwithstanding Ees of neutral subcontractors were not on construction site at time of picketing, where common situs had previously been established, neutral subcontractors had begun work and were scheduled to continue work on days picketing took place)

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**
(*Construction contractors involved on a common situs are neutral to each other's labor disputes and are, accordingly, entitled to protection of Section 8(b)(4) and while U is allowed to picket project in furtherance of its dispute with primary E, it nevertheless is obligated to make very reasonable effort to minimize impact on neutrals of inducements and restraints inherent in picket line*)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(*since picketing must be restricted so as to effect only primary Ees, there is heavy burden on picketing U to convince trier of fact that picketing was conducted in manner least likely to encourage secondary affects*)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(Moore Dry Dock criteria conjunctive, therefore all four must be met)

Local 32B–32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**
(common situs is created by engagement of activities by secondary E at premises of primary E; therefore *Moore Dry Dock* criteria are applicable and U's picketing with signs which failed to disclose identity of E with whom it had dispute and at places reserved exclusively for use by secondary E's Ees and delivery persons violated Act)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**
(construction site not common situs and U's picketing subcontractor at the site not violative, in view of absence of Ees of any E other than primary subcontractor, and lack of reliable evidence that any neutral was present at time of picketing)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**
(general contractor's and project owner's going to primary subcontractor's construction site periodically each day merely to oversee work as it progressed in order to carry out functions as project coordinator and interested owner, held not being *present* at construction jobsite, notwithstanding that project owner had his storage van near project; his normal business was conducted at places other than construction sites)

Highway, City & Air Freight Drivers, Dockmen & Helpers Local Union No. 600, a/w Teamsters (Mid-American Shippers and Receivers, Inc.) **JD-149-82**
(U which engaged in area standards picketing at dock facility owned by neutral E but heavily utilized by primary E did not violate Act where picketing occurred at sole entrance to dock facility, primary was engaged in normal business operations at this location,its Ees were frequently on premises although at no specific times)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

7540-8060-0120 Moore Dry Dock criteria of primary activity

Air Engineering Metal Trades Council and Affiliated Unions, AFL-CIO (Pan Am World Services, Inc.) **265 NLRB No. 019**

Carpenters Union Local No. 1622, UBCJA (Robert Wood & Associates, Inc.) **262 NLRB No. 138**

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

Local 32B–32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**
(common situs is created by engagement of activities by secondary E at premises of primary E; therefore *Moore Dry Dock* criteria are applicable and U's picketing with signs which failed to disclose identity of E with whom it had dispute and at places reserved exclusively for use by secondary E's Ees and delivery persons violated Act)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**
(U's picketing at common situs is presumptively lawful if U limits its picketing to times when primary E's Ees are actually present, pickets reasonably close to primary E's workers and clearly names person with whom it has primary dispute, and if primary E's workers are engaged in the company's normal business)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**
(U not under obligation to comply with *Moore Dry Dock* guidelines absent evidence that site of U's picketing was a common situs)

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**
(Us' picketing primary E at properly established and validly maintained gates reserved for neutral secondary Es, violative, in view of picketing's nonconformance with *Moore Dry Dock* standards, U business manager's threats to cause complete work stoppage if contract was awarded to the non-U primary E, and U's failure to adduce competent evidence that reserved gates were at any relevant time used by primary E)

Local 3, International Brotherhood of Electrical Workers, AFL-CIO (Eugene Iovine, Inc.) **JD-(NY)-91-81**
(U which picketed construction site to protest non-U contractor on job violated Act where picketing induced Ees of neutral E and other subcontractors to refuse to work, it did not conform to *Moore Dry Dock*, standards (picket signs and handbills did not identify U picketing and E picketed; furthermore picketed at gates reserved for neutral Ees), and was not engaged in mere informational picketing to protest primary E's alleged payment of substandard wages)

District Council of Carpenters, Sacramento Area, United Brotherhood of Carpenters & Joiners of America, AFL-CIO (Nielsen Mickles Co.) **JD-(SF)-329-80**
(picketing gates reserved exclusively for neutral subcontractors, violative, where object for picketing was presumably to induce strike action by Ees of such subcontractors)

N.L.R.B. v. Local 282, Teamsters **No. 29149, Mar. 28, 1980, C.A. 2 (unreported)**

J. F. Hoff Electric Company v. N.L.R.B. **642 F.2d 1266 (C.A.D.C. Sept 12, 1980)**

7540-8060-0130 Presumption of validity of picketing overcome

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**
(U's contention that it was privileged to picket at neutral's reserved gate rather than at gate reserved for Ees of contractor with whom E had dispute and its suppliers since its right to legitimately publicize dispute was compromised by fact that Ees of E with whom it had dispute were not visible from that gate, rejected, where U had ample opportunity to contact primary E's Ees and suppliers each time they entered and departed and public informed since gate on public street from which picket signs would be visible; fact picket signs not visible to Ees of primary E from their work site, irrelevant)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(*it is well settled that Moore Dry Dock* does not establish substantive standards to be applied mechanically in determining lawfulness of specific common situs picketing; rather, *Moore Dry Dock* merely provides evidentiary tools to be employed in absence of more direct evidence of intent and purpose of labor organization; thus common situs picketing may be found to be violative even it conforms to *Moore Dry Dock* standards)

7540-8060-0140 Failure to meet criteria not per se violation

Carpenters Union Local No. 1622, UBCJA (Robert Wood & Associates, Inc. **262 NLRB No. 138**
(*In common situs situations line between primary and unlawful secondary activity is not clearly defined . . . and Bd adopted guidelines which have been*

7540-8060-0140—Cont.

approved by cts to aid in determining whether object of common situs picketing by labor organization is primary or secondary. However, said guidelines are merely evidentiary in nature are not to be mechanically applied. Thus, while compliance may give rise to rebuttable presumption that picketing is primary, totality of evidence may establish underlying secondary objective

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**
(*standards are not applied mechanically. However, failure to comply with Moore Dry Dock criteria provides strong, although rebuttable, presumption that picketing had unlawful secondary purpose*)

7540-8060-1700 Picketing limited to times when situs of dispute located on common premises

7540-8060-1717 Construction sites

Service Employees Union Local 77, Service Employees International Union, AFL-CIO (Thrust IV) **264 NLRB No. 082**
(picketing when U had knowledge that primary who supplied janitorial services for finished buildings was not at construction site, and picketing was not carried on at reserved gate, violative)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(picketing at common situs unlawful since *Moore Dry Dock* standards breached where picketing took place when primary E was not on site, picketing was not reasonably close to situs of dispute where pickets crossed gate reserved for seconcaries and subsequent picketing was between gate reserved for primary E and gate reserved for secondary E and it was impossible to identify E which was involved in dispute by position of pikcets; fact picket signs adequately identified E which was target not sufficient for compliance with *Moore Dry Dock* standards)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**
(construction site not common situs and U's picketing subcontractor at the site not violative, in view of absence of Ees of any E other than primary subcontractor, and lack of reliable evidence that any neutral was present at time of picketing)

Local Union No. 1396, Painters (C. H. Wolff and Sons Painting Company) **JD-61-80**
(where U's dispute was with E whose Ees were represented by another U, and Respondent U had no dispute with any other E at construction site and reserved gate had been set up for Ees of E to use, U violated Act when it picketed only at entrances reserved for neutral Ees)

7540-8060-1783 Business relationship between employers which picketing could disrupt

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(separate reserved gates on construction site for U general contractor and for non-U plumbing contractor in anticipation of picketing, proper, notwithstanding contention since non-U plumbing contractor with which U had dispute was prime contractor rather than subcontractor and no contractual relationship between general contractor and plumbing contractor and thus neutral E *not using, selling, transporting, dealing or doing business with* secondary E, since need for cooperation on project entails dealing among contractors and there is no authority or reason for limitation to contractor-subcontractor situations)

7540-8060-3300 Primary employer engaged in normal business at common situs

7540-8060-3333 Primary employees working with secondary employees as part of normal business

Air Engineering Metal Trades Council and Affiliated Unions, AFL-CIO (Pan Am World Services, Inc.) **265 NLRB No. 019**
(U picketing air force research and testing center (not construction site) at gates reserved for neutral Ees, not unlawful where nonstruck Es' Ees carried on interrelated tasks necessary to normal operation of primary E. Fact that primary did not own land or buildings at site not decisive; Bd looks to duties of those Ees using picketed gates and determines whether or not *these duties are connected with normal operations of the primary E*)

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) **253 NLRB No. 006**
(upon seeing truck of primary, ambulatory pickets unlawfully picketed site of neutral E who repaired primary's trucks but was not ally nor were any primary Ees at neutral; picketing 20 minutes in 2 occasions held not de minimis where it ceased only after primary's truck was removed and when pickets were arrested)

7540-8060-3340 Merger of primary's product with that of secondary

United Paperworkers International Union, AFL-CIO, Local 832 **255 NLRB No. 013**
(on or remand U's picketing two grocery stores with whom it had no labor dispute in order to pressure stores not to continue use of product (paper bags) of struck E, held violative because bags were necessary, they lost their separate identity and merged into operation of store; successful boycott of product would have required boycott of store as well)

7540-8060-3367 Departure of primary employees because of picketing

Local 3, International Brotherhood of Electrical Workers, AFL-CIO (Eugene Iovine, Inc.) **JD-(NY)-91-81**
(U which picketed construction site to protest non-U contractor on job violated Act where picketing induced Ees of neutral E and other subcontractors to refuse to work, it did not conform to *Moore Dry Dock* standards (picket signs and handbills did not identify U picketing and E picketed; furthermore picketed at gates reserved for neutral Ees), and was not engaged in mere informational picketing to protest primary E's alleged payment of substandard wages)

7540-8060-3375 Work of secondary related to normal business of primary employer

Air Engineering Metal Trades Council and Affiliated Unions, AFL-CIO (Pan Am World Services, Inc.) **265 NLRB No. 019**
(U picketing air force research and testing center (not construction site) at gates reserved for neutral Ees, not unlawful where nonstruck Es' Ees carried on interrelated tasks necessary to normal operation of primary E. Fact that primary did not own land or buildings at site not decisive; Bd looks to duties of those Ees using picketed gates and determines whether or not *these duties are connected with normal operations of the primary E*)

Carpenters, Local Union No. 1622 (Specialty Building Company) **262 NLRB No. 162**
(U's contention that relationship of primary general contractor with which it had dispute to its subcontractors warranted application of *related work* doctrine and justified picketing at reserved gate, rejected; fact contractor and subcontractor engaged on same project and contractor had some supervision over subcontractors work, did not eliminate status of each as independent contractor or make Ees of one Ees of other more importantly, Bd has refused to extend *related work* doctrine to construction industry)

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) **253 NLRB No. 006**
(upon seeing truck of primary, ambulatory pickets unlawfully picketed site of neutral E who repaired primary's trucks but was not ally nor were any primary Ees at neutral; picketing 20 minutes in 2 occasions held not de minimis where it ceased only after primary's truck was removed and when pickets were arrested)

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) **250 NLRB No. 157**
(U, which had dispute with E engaged in refuse collection, by picketing at main gate at landfill of neutral E after reserved gate had been established and interfering with ingress and egress of trucks of other Es, violated Act, notwithstanding picketing only at time truck of primary E at site and signs disclosed clearly E with which U had dispute; defense that work of primary E directly related to that of secondary Es, rejected as they are competition)

7540-8060-5000 Picketing limited to places reasonably close to location of common situs

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**
(*If picketing is not confined reasonably close to entrance reserved for primary E and its Ees, U is considered to be picketing with unlawful secondary objective*)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(territorial limits of permissible picketing where there are reserved gates must be decided on *ad hoc basis under/underlying rule that involvement of secondary Es' must be kept to absolute minimum*)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(picketing at common situs unlawful since *Moore Dry Dock* standards breached where picketing took place when primary E was not on site, picketing was not reasonably close to situs of dispute where pickets crossed gate reserved for seconcaries and subsequent picketing was between gate reserved for primary E and gate reserved for secondary E and it was impossible to identify E which was involved in dispute by position of pikcets; fact picket signs adequately identified E which was target not sufficient for compliance with *Moore Dry Dock* standards)

Teamsters Local No. 600, a/w Teamsters (Poplar Bluff Express) **JD-226-82**
(following primary E's trucks to various secondary and neutral Es' premises and picketing entrances there w/o seeking permission to enter their property to picket beside primary E's trucks or producing evidence to show such requests would have proved futile constituted ambulatory and common situs picketing not conforming to *Moore Dry Dock* criteria of picketing reasonably close to situs of dispute)

7540-8060-5000—Cont.

J. F. Hoff Electric Company v. N.L.R.B. **642 F.2d 1266 (C.A.D.C. Sept 12, 1980)**
(picketing along fence bordering area where primary's Ees worked, lawful primary picketing as it only occurred while primary's Ees were at work and no evidence of direct appeal to Ees of neutral contractors to force their E's to c/d/b with primary)

George Squillacote, RD v. Racine Building & Construction Trades Council, AFL-CIO **483 F.Supp. 1218 (D Ct WI, 1980)**
(contention that U's conduct was unlawful secondary activity because picketing was notlimited to place *reasonably close* to gate which was reserved for primary E and its suppliers held of doubtful merit, in view of small size of site, small number of pickets, nearness of pickets to reserved gate, and improper initial marking of two gates by primary E as *union* and *non-union*)

7540-8060-5067 Availability of alternative places for picketing

Inland Steel Company **264 NLRB No. 015**
(E's contention its discharge of Ee for refusal to cross picket line at its premises resulting from strike aginst another E performing work there lawful, since picketing violative of Section 8(b)(4) and Ee had assumed picketer's unlawful status inasmuch as picketing not reasonably close to situs and closer alternative sites vailalable, rejected, since reasonably close criteria does not mean pickets must be stationed at only one location absent evidence objectives of picketing aimed at coercing secondary Ees, nor must picketing situs designated by secondary E for its convenience be accepted)

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) **250 NLRB No. 157**
(U, which had dispute with E engaged in refuse collection, by picketing at main gate at landfill of neutral E after reserved gate had been established and interfering with ingress and egress of trucks of other Es, violated Act, notwithstanding picketing only at time truck of primary E at site and signs disclosed clearly E with which U had dispute; defense that work of primary E directly related to that of secondary Es, rejected as they are competitors)

Local Union No. 1396, Painters (C. H. Wolff and Sons Painting Company) **JD-61-80**
(where U's dispute was with E whose Ees were represented by another U, and Respondent U had no dispute with any other E at construction site and reserved gate had been set up for Ees of E to use, U violated Act when it picketed only at entrances reserved for neutral Ees)

7540-8060-6700 Picketing clearly discloses that dispute is with primary employer

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(picketing at common situs unlawful since *Moore Dry Dock* standards breached where picketing took place when primary E was not on site, picketing was not reasonably close to situs of dispute where pickets crossed gate reserved for seconcaries and subsequent picketing was between gate reserved for primary E and gate reserved for secondary E and it was impossible to identify E which was involved in dispute by position of pikcets; fact picket signs adequately identified E which was target not sufficient for compliance with *Moore Dry Dock* standards)

Local 3, International Brotherhood of Electrical Workers, AFL-CIO (Eugene Iovine, Inc.) **JD-(NY)-91-81**
(U which picketed construction site to protest non-U contractor on job violated Act where picketing induced Ees of neutral E and other subcontractors to refuse to work, it did not conform to *Moore Dry Dock,* standards (picket signs and handbills did not identify U picketing and E picketed; furthermore picketed at gates reserved for neutral Ees), and was not engaged in mere informational picketing to protest primary E's alleged payment of substandard wages)

7540-8060-6717 Ambiguous, vague or misleading picket signs

Local 32B–32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 039**
(common situs is created by engagement of activities by secondary E at premises of primary E; therefore *Moore Dry Dock* criteria are applicable and U's picketing with signs which failed to disclose identity of E with whom it had dispute and at places reserved exclusively for use by secondary E's Ees and delivery persons violated Act)

N.L.R.B. v. Local 282, Teamsters **No. 29149, Mar. 28, 1980, C.A. 2 (unreported)**
(U which picketed at facility of E, whose Ees it had previously represented, violated Act where its dispute was with company which had taken over E's delivery operations, situs of dispute was never at E's premises and picket signs did not identify E against whom picketing directed)

7540-8060-6733 Picket signs describing dispute

Teamsters Local 70, a/w Teamsters (United States of America, Department of The Navy) **261 NLRB No. 079**
(Moore Dry Dock test not met where picket signs used in picketing naval facility failed to clearly disclose that its dispute was with primary E; signs read: *U.S. Navy Alameda Cold Storage Unfair Violates Walsh/Healy Act Refuses to Contract Under Fair Wages*; however, Navy was neutral E while primary was nonU E)

7540-8060-6750 Picket signs stating that picketing for organizational purposes

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(picketing of construction jobsite which preceded establishment of reserved gates, not violative, notwithstanding name of primary E on signs was lightly handwritten and fact Ees of secondary E were transferred to other jobs for one day as result of picketing, since signs identified primary E and transfer of Ees was not result of coericon by Respondents)

7540-8060-6767 Picket signs naming employer, craft or product

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) **250 NLRB No. 157**
(U, which had dispute with E engaged in refuse collection, by picketing at main gate at landfill of neutral E after reserved gate had been established and interfering with ingress and egress of trucks of other Es, violated Act, notwithstanding picketing only at time truck of primary E at site and signs disclosed clearly E with which U had dispute; defense that work of primary E directly related to that of secondary Es, rejected as they are competitors)

Local No. 25, United Automobile, Aerospace and Agricultural Implement Workers of America (Prophet Foods Co.) **JD-18-81**
(where primary E operated cafeteria in plant of neutral and U represented Ees of both Es, picketing at gates used by all Ees w/o identifying E with which it had dispute violative of *Moore Dry Dock* criteria)

7540-8070 Reserved gate picketing

Electrical Workers, Local 323 (Renel Construction, Inc.) **264 NLRB No. 081**
(U's contention that its picketing at reserved gate, which extended to w/i 100 feet of neutral gate, was lawful because it was conducted at closest point, on public property, to work location of primary Ees, rejected, since *Moore Dry Dock's* third condition, requiring picketing to be reasonably close to location of situs, focuses on proximity of picketing to reserved gate rather than to primary Ees' work location; properly established system of separate gates requires U to confine its picketing to reserved gate, and picketing conducted away therefrom may indicate noncompliance with *Moore Dry Dock*)

Electrical Workers, Local 323 (Renel Construction, Inc.) **264 NLRB No. 081**
(picketing not confined to reserved gate, unlawful, where reserved gate was properly establihed w/o any impairment of neutral gate, thereby restricting situs of dispute to reserved gate and obliging U to conduct its picketing accordingly; however, not only did U fail to confine its picketing to reserved gate, but it engaged in picketing a mere 100 feet from neutral gate, thereby failing to comply with *Moore Dry Dock* and to minimize its impact on neutral Ees, with object of enmeshing neutral Es and Ees in its primary dispute)

Electrical Workers, Local 323 (Renel Construction, Inc.) **264 NLRB No. 081**
(reserved gate was not so remotely located as to impair effectiveness of U's picketing in bringing its message to public and to primary Ees, where U's claim of remoteness contradicted its stipulation that reserved gate was properly established; while reserved gate was not located on main road, there was no indication that public's use thereof was restricted or that U could not communicate to public at such location; and there was no evidence of confusion caused by improper marking of gate which would cause U not to be able to adequately convey its message)

Construction and General Laborers Union, Local 185, Laborers International Union of North America, AFL-CIO; Cement Masons Local 582, Operative Plasterers and Cement Masons International Association, AFL-CIO (West-Cal Construction, Inc.) **255 NLRB No. 003**
(picketing reserved gate designated for neutral subcontractors and suppliers, violative, where U was attempting to force primary E to sign master agreement and to do business only with subcontractors who hire U members)

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) **JD-(SF)-110-81**
(no violation, where U picketed only at entrance reserved for Ees of janitorial service with which it had dispute, but continued to handbill at neutral entrance through which customers of bank which employed janitorial service entered, since handbills did not refer to picketing or did U otherwise engage in conduct calculated to cause recipients of handbills to reasonably

7540-8070—Cont.

believe that handbilling was merely extension of picket line at other entrance)

7540-8070-0100 Generally

Carpenters Union Local No. 1632, UBCJA (Robert Wood & Associates, Inc. **262 NLRB No. 138**

(T3when such gates are properly established, U may picket only at gate of E with whom it has dispute; however, integrity of neutral gate must not be compromised by utilization of primary E's Ees or suppliers which conduct would destroy its immunity from picketing. Moreover, primary gate must not be placed so as to impair effectiveness of picketing at that location, for purpose of separate primary gate is to minimize impact of picketing on neutral Es w/o substantial impairment of effectiveness of picketing in reaching Ees of primary E

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 072**

(U's contention that it was privileged to picket at neutral's reserved gate rather that at gate reserved for Ees of contractor with whom E had dispute and its suppliers since its right to legitimately publicize dispute was compromised by fact that Ees of E with whom it had dispute were not visible from that gate, rejected, where U had ample opportunity to contact primary E's Ees and suppliers each time they entered and departed and public informed since gate on public street from which picket signs would be visible; fact picket sings not visible to Ees of primary E from their work site, irrelevant)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(territorial limits of permissible picketing where there are reserved gates must be decided on *ad hoc basis under/underlying rule that involvement of secondary Es' must be kept to absolute minimum*)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**

(separate reserved gates on construction site for U general contractor and for non-U plumbing contractor in anticipation of picketing, proper, notwithstanding contention since non-U plumbing contractor with which U had dispute was prime contractor rather than subcontractor and no contractual relationship between general contractor and plumbing contractor and thus neutral E *not using, selling, transporting, dealing or doing business with* secondary E, since need for cooperation on project entails dealing among contractors and there is no authority or reason for limitation to contractor-subcontractor situations)

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**

(Us' picketing primary E at properly established and validly maintained gates reserved for neutral secondary Es, violative, in view of picketing's nonconformance with *Moore Dry Dock* standards, U business manager's threats to cause complete work stoppage if contract was awarded to the non-U primary E, and U's failure to adduce competent evidence that reserved gates were at any relevant time used by primary E)

Operating Engineers, Local 12 (Frank De Pietro and Sons) **JD-(SF)-265-82**

(U's picketing of neutral gate violative where there was no breach of gate's integrity and object of picketing was to enmesh neutral subcontractors in a dispute not their own)

Sacramento Area District Council of Carpenters, Local 447 (Lincoln Nevada Construction Company) **JD-(SF)-51-81**

(U's picketing at neutral gate following posting of reserved gate signs violative, as picketing was designed to enmesh neutrals in its dispute with subcontractor)

J. F. Hoff Electric Company v. N.L.R.B. **642 F.2d 1266 (C.A.D.C. Sept 12, 1980)**

7540-8070-1700 Failure to use

Service Employees Union Local 77, Service Employees International Union, AFL-CIO (Thrust IV) **264 NLRB No. 082**

(picketing when U had knowledge that primary who supplied janitorial services for finished buildings was not at construction site, and picketing was not carried on at reserved gate, violative)

Carpenters, Local Union No. 1622 (Specialty Building Company) **262 NLRB No. 162**

(U's picketing at gates reserved for neutral subcontractors at construction site with object of forcing neutral subcontractors to cease doing business with non-U general contractor with which it had dispute, unlawful, notwithstanding U's contentions of violation of gates, inadequate signs at gates and it was related work)

Carpenters Union Local No. 1622, UBCJA (RObert Wood & Associates, Inc.) **262 NLRB No. 138**

(violation, where U picketed at neutral gate at construction project, notwithstanding Ees of neutral subcontractors were not on construction site at time of picketing, where common situs had previously been established, neutral subcontractors had begun work and were scheduled to continue work on days picketing took place)

Carpenters Union Local No. 1622, UBCJA (Robert Wood & Associates, Inc. **262 NLRB No. 13**

(picketing at alleyway of construction site which was used by neutral subcontractors and suppliers, unlawful, where for object of advertising labor dispute with primary contractor to Ees of all neutral subcontractors and their suppliers with expectation that individuals would honor picket line and not work; notwithstanding contention sign designating entrance did not clearly designate who was to use entrance but rather for *all others but primary contractor*, when primary's gate was clearly defined and there was no contention of neutral's access area by primary E or its suppliers)

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 07**

(*if picketing is not confined reasonably close to entrance reserved for primary E and its Ees, U is considered to be picketing with unlawful secondary objective*)

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 07**

(U's picketing at construction project gate after gate had been clearly designated as gate for Ees of neutral Es rather than at gate reserved for Ees of contractor with whom U had dispute and its suppliers, violative, where gate reserved for contractor with whom U had dispute was readily accessible, and U's representative had stated his intent not to honor reserved gate system)

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) **261 NLRB No. 07**

(no violation, where U picketed gate at construction project used by Ees of neutral Ees where it was impossible for motor vehicles to enter or leave other gate allegedly rearved for primary E and thus U reasonably believed Ees of contractor with whom it had dispute would not use other gate; further, language of reserved gate signs clearly indicated that suppliers of contractor with whom E had dispute were required to use gate at which U picketed rather than other gate)

Ventura County District Council of Carpenters (Commercial Industrial Constructors, Inc.) **259 NLRB No. 0**

(U's fining of its members who worked behind its picket line for neutral E at construction site at which U had labor dispute with another E, violative of 8(b)(1)(A), since such discipline induced or encouraged neutral Ees to refuse to perform services, w/i meaning of 8(b)(4)(i)(B), with object of causing neutral E to c/d/b with primary E; fact that neutral Ees failed to use gate reserved for them was not crucial or determinative fact, since area used by them for entering and leaving jobsite was not part of gate reserved for primary E and suppliers)

Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (A.C.O., Inc.) **258 NLRB No.**

(picketing at construction site entrance reserved for neutral Es' Ees, unlawful where another gate had been established for exclusive use of Ees of primary E with whom U had dispute, thus showing U's intent to force neutral Es to c/d/b with primary E)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 06**

(*frequent breach of neutrality of gate reserved for Ees of secondary E will justify picketing U in not observing reservation of gates; however, common situs picketing may be found violative of Act even where reservation of primary E's gate is not precisely correct in all respects*)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 06**

(use of gate reserved for neutral U general contractor rather than gate rather than gate reserved for primary E non-U plumbing contractor at construction site by architect and plumbing inspector did not deprive neutral E of statutory protection from secondary picketing since architect had overall responsibility and U may not assert right by impeding performance of duties by public officers)

Truck Drivers, Chauffeurs & Helpers Local No. 100; et al., (King Containers, Inc., etc.) **250 NLRB No. 15**

(U, which had dispute with E engaged in refuse collection, by picketing at main gate at landfill of neutral E after reserved gate had been established and interfering with ingress and egress of trucks of other Es, violated Act, notwithstanding picketing only at time truck of primary E at site and signs disclosed clearly E with which U had dispute; defense that work of primary E directly related to that of secondary Es, rejected as they are competitors)

Local 32B–32J, Service Employees International Union, AFL-CIO (The New York Association for The Blind) **250 NLRB No. 0**

(breaches in reserved gate system)

Plumbers, Local 48 (Calvert General Contractors, Inc.) **249 NLRB No. 17**

(U's picketing of neutral Es' gate, unlawful where, although reserve gate system was knowingly breached on one occasion due to difficulty in making

7540-8070-1700—Cont.

a delivery, neutral general contractor immediately acknowledged such error and subsequent delivery of material was made through proper reserve gate; moreover, even assuming that certain incidents contaminated neutral gate and general contractor subsequently *rehabilitated* reserve gate system, incidents were isolated occurrences and did not establish pattern of destruction of reserve gate system justifying resumption of picketing at neutral gates)

Carpenters Local 1280 (W.S. Bennett Construction Company, Inc.) JD-(SF)-78-82

(where neutral Ee had established reserve gate at its plant for use of contractors with which U had dispute, U's picketing of main gate with signs that contractors with which it had dispute failed to meet U's area standards and thus inducing Ees of neutral Es to refuse to perform services for their Es, unlawful)

Sheet Metal Workers International Association, Local 263, AFL-CIO (Colony Plumbing and Heating, Inc.) JD-504-81

(U's picketing neutral gate rather than gate reserved for primary E, violative where U president informed project manager of neutral E that he was picketing neutral gate rather than gate reserved for primary E because it would do no good to picket reserved gate; U's picketing at neutral gate caused several individuals employed by neutral Es to refuse to work)

United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local 266 (Grupe Construction Company) JD-(SF)-267-81

(U's picketing at place all Es, both primary and secondary, their Ees and those with whom they dealt, had to pass in order to go onto the worksite violative, where it was feasible and simple for U to have picketed at gate reserved for primary E rather than at the intersection all Es had to pass through)

District Council of Carpenters, Sacramento Area, United Brotherhood of Carpenters & Joiners of America, AFL-CIO (Nielsen Mickles Co.) JD-(SF)-329-80

(picketing gates reserved exclusively for neutral subcontractors, violative, where object for picketing was presumably to induce strike action by Ees of such subcontractors)

Local Union No. 1396, Painters (C. H. Wolff and Sons Painting Company) JD-61-80

(where U's dispute was with E whose Ees were represented by another U, and Respondent U had no dispute with any other E at construction site and reserved gate had been set up for Ees of E to use, U violated Act when it picketed only at entrances reserved for neutral Ees)

N.L.R.B. v. Local 58, International Brotherhood of Electrical Workers, AFL-CIO 638 F.2d 36 (C.A. 6, 1981)

(violation where object of picketing was to bring pressure upon neutral by picketing main or general entrance gate rather than entrance assigned to U, where E had two entrances, one for U and one for non-U contractors)

7540-8070-2500 Delivery of goods essential to primary's operation

J. F. Hoff Electric Company v. N.L.R.B. 642 F.2d 1266 (C.A.D.C. Sept 12, 1980)

(*neutral gate* set up by construction contractor to insulate neutral Es at common site from impact of U picketing lost its protected status when supplies intended for use by primary E but ordered and owned by owner of construction site were delivered through neutral gate; therefore, U's picketing not violative)

7540-8070-3300 Adequacy of designation of reserved gate

Carpenters Union Local No. 1622, UBCJA (Robert Wood & Associates, Inc. 262 NLRB No. 138

(picketing at alleyway of construction site which was used by neutral subcontractors and suppliers, unlawful, where for object of advertising labor dispute with primary contractor to Ees of all neutral subcontractors and their suppliers with expectation that individuals would honor picket line and not work; notwithstanding contention sign designating entrance did not clearly designate who was to use entrance but rather for *all others but primary contractor*, when primary's gate was clearly defined and there was no contention of neutral's access area by primary E or its suppliers)

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) 261 NLRB No. 072

(U's picketing at construction project gate after gate had been clearly designated as gate for Ees of neutral Es rather than at gate reserved for Ees of contractor with whom U had dispute and its suppliers, violative, where gate reserved for contractor with whom U had dispute was readily accessible, and U's representative had stated his intent not to honor reserved gate system)

Plumbers, Local Union No. 398 (Robbins Plumbing & Heating Contractors, Inc.) 261 NLRB No. 072

(no violation, where U picketed gate at construction project used by Ees of neutral Ees where it was impossible for motor vehicles to enter or leave other gate allegedly reserved for primary E and thus U reasonably believed Ees of contractor with whom it had dispute would not use other gate; further, language of reserved gate signs clearly indicated that suppliers of contractor with whom E had dispute were required to use gate at which U picketed rather than other gate)

Plumbers, Local 388 (Charles Featherly Construction Co.) 252 NLRB No. 062

(contention that no proper reserve gate for Ees of primary E and persons dealing with that company was established so as to limit picketing to gate in order to comply with *Moore Dry Dock* criteria, where there was no paved or marked roadway for separate access by primary E, since no rationale that would require road construction, signs were large and no one was mislead by absence of paved road, nor was ingress difficult)

Plumbers, Local 388 (Charles Featherly Construction Co.) 252 NLRB No. 062

(sign at reserved gate which referred to primary E's *Ees and suppliers* but did not mention visitors did not give U carte blanche to engage in secondary picketing; further, Respondents could not be prejudiced where access through other gate by those dealing with primary E was forbidden)

Plumbers, Local 48 (Calvert General Contractors, Inc.) 249 NLRB No. 173

(contention that reserved gate was not properly posted because it did not specifically mention that gate was to be used by primary E's suppliers, rejected, since omission of reference to such suppliers in posting of primary gate, w/o more, does not void reserved gate designation; moreover, result of posted signs was that primary E's suppliers clearly would be directed to reserved gate, there was no confusion which was attributable to signs, and primary Ees were diligent in obtaining compliance with reserved gate system)

Erie Haven, Inc. JD-194-82

(close proximity of *reserved gate*, at construction site, to gate used by secondary E's Ees, suppliers, etc., destroyed any insulating effect of such *reserved* gate on picketing of primary E)

Southern Sun Electric Corporation v. N.L.R.B. 620 F.2d 170 (C.A. 8, 1980)

(picketing at construction site not unlawful, even though picketing continued at reserved gate, where gates had been improperly established, and there was evidence that gates had not been strictly observed even by president of company having dispute with U)

7540-8070-6700 Employees performing work related to that of primary's employees

Air Engineering Metal Trades Council and Affiliated Unions, AFL-CIO (Pan Am World Services, Inc.) 265 NLRB No. 019

(U picketing air force research and testing center (not construction site) at gates reserved for neutral Ees, not unlawful where nonstruck Es' Ees carried on interrelated tasks necessary to normal operation of primary E. Fact that primary did not own land or buildings at site not decisive; Bd looks to duties of those Ees using picketed gates and determines whether or not *these duties are connected with normal operations of the primary E*)

7540-8070-6767 Necessity to continuation of primary work

Construction & General Laborers Union, Local 304, Laborers International Union of North America (Athejen Corp.) 260 NLRB No. 177

(U's business agent threatening to picket non-U general contractor because general contractor did not employ U's members, though subcontractors were U, and subsequently picketing at gate reserved for neutral subcontractors with signs bearing its name in order to induce neutral subcontractors not to perform services for general contractor, violative, notwithstanding contention subcontractor's work related to primary E's)

J. F. Hoff Electric Company v. N.L.R.B. 642 F.2d 1266 (C.A.D.C. Sept 12, 1980)

(*neutral gate* set up by construction contractor to insulate neutral Es at common site from impact of U picketing lost its protected status when supplies intended for use by primary E but ordered and owned by owner of construction site were delivered through neutral gate; therefore, U's picketing not violative)

7540-8080 Ambulatory picketing

7540-8080-1700 Picketing limited to times when situs of dispute is located on secondary employer's premises

Highway, City & Air Freight Drivers, Dockmen & Helpers Local Union No. 600, a/w Teamsters (Mid-American Shippers and Receivers, Inc.) JD-149-82

7540-8080-3300 Primary employer engaged in normal business at situs

Highway, City & Air Freight Drivers, Dockmen & Helpers Local Union No. 600, a/w Teamsters (Mid-American Shippers and Receivers, Inc.) JD-149-82

7540-8080-5000 Picketing limited to places reasonably close to location of situs

7540-8080-5000—Cont.

Teamsters Local No. 600, a/w Teamsters (Poplar Bluff Express) **JD-226-82**
(following primary E's trucks to various secondary and neutral Es' premises and picketing entrances there w/o seeking permission to enter their property to picket beside primary E's trucks or producing evidence to show such requests would have proved futile constituted ambulatory and common situs picketing not conforming to *Moore Dry Dock* criteria of picketing reasonably close to situs of dispute)

7560 CLAUSE 8(b)(4)(C) - FORCING OR REQUIRING

7560-4000 To recognize or bargain with labor organization as representative

Plumbers and Steamfitters, Local 129, AFL-CIO v. N.L.R.B. **622 F.2d 575(T) (C.A. 2, 1980)**

7560-6000 Where another union certified as representative

Yates Industries, Inc., California Division **264 NLRB No. 161**
(Local U engaging in strike and picketing in furtherance of its demands that E recognize and bargain with it as sole representative of its Ees, unlawful, where International from which U had attempted to disaffiliate was certified representative and joint representative with local, notwithstanding U did not instigate strike since U representatives demonstrated control over strikers and ratified action of strikers; furthermore, no qcr could be raised at this time because of existing contract)

Plumbers and Steamfitters, Local 129, AFL-CIO v. N.L.R.B. **622 F.2d 575(T) (C.A. 2, 1980)**

7560-8000 Indicia of objective

7560-8037 Time of picketing

Local 282, Teamsters (Mid-County Transit Mix, Inc.) **250 NLRB No. 076**
(violation where U picketed successor for recognition at time it knew predecessor E with which it had contract was out of business and that its only member-Ee who had worked for predecessor was now employed by successor E, who had recognized another U)

7560-8075 Statements away from picket line

Plumbers and Steamfitters, Local 129, AFL-CIO v. N.L.R.B. **622 F.2d 575(T) (C.A. 2, 1980)**
(U business manager's approval of trade council president's attempt to bring company and U together in collective bargaining attempt indicated U's purpose of gaining recognition as representative of subcontractor primary's Ees who were represented by another U certified by Bd)

7580 CLAUSE 8(b)(4)D - FORCING OR REQUIRING

7580-0100 Generally

Local 295, Teamsters (Emery Air Freight Corporation) **255 NLRB No. 135**
(critical issue is legality of U's attempt to force *any* E to assign disputed work to its members rather than to another group of Ees regardless of whether such E employs either groups of Ees)

7580-4000 To assign particular work to particular employees rather than to other employees

7580-4001 Generally

7580-4001-3300 To employees in particular labor organization

General Teamsters Local Union No. 528, Teamsters (National HOmes Corporation) **255 NLRB No. 030**
(threatening to strike E unless it assigned work to Ees represented by U rather than another U which was entitled to disputed work pursuant to Section 10(k) determination, violative)

Teamsters Local Union No. 170 (Massachusetts Laborers' District Council) **JD-36-80**
(violation where Bd awarded disputed work to Laborers in 10(k) proceeding and Teamsters continued to picket E for assigning such work to Laborers)

7580-4033 What constitutes jurisdictional dispute

7580-4033-0100 Generally

United Food Commercial Workers International Union, Local No. 1222, AFL-CIO, CLC(Fedmart Stores, Inc.) **262 NLRB No. [illegible]**
(where dispute is not over assignment of work to one group of Ees rather than another within meaning of Sec. 8(b)(4)(D) but rather revolves around question of which U shall represent Ees whom E has chosen or will choose in future to operate *SCORE* marking system, matter is not dispute within meaning of Sec. 10(k) and notice of hearing quashed. However, determination was made in UC hearing)

Geiger & Peters, Inc. **JD-(SF)-240-81**
(where disputed work was performed by supervisor rather than Ee and dispute was therefore between management and U rather than rival Us, no JDP existed, picketing because of disputed work would not be violative w/i meaning of 8(b)(4)(D), and Ees' honoring of picket line was protected activity)

7580-4033-1000 Demand for work assigned employee-member of another union

Local 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **253 NLRB No. 081**
(dispute existed where U, representing Ees of subcontractor for installation of telephone system except for installation of switch which contractor had reserved for itself, demanded work of installation of switch also, refused to work with Ees of contractor who were installing switch, and threatened not to perform other portions of telephone system installation for contractor in future unless it had whole job; U's actions constituted demand for work rather than refusal to perform partial job)

7580-4033-2000 Demand for work assigned to employer's own unrepresented employees

Operating Engineers, Local 926 (George L. Smith, II, Georgia World Congress Center) **254 NLRB No. 116**
(jurisdictional dispute existed where U demanded for its members work being performed by individuals furnished by temporary help service and subsequently picketed job site, notwithstanding contention dispute was between E and U rather than between competing groups of Ees where individuals performing work never made formal demand for work; since, although temporary, work force was as stable as circumstances permitted, and fact Ees are performing disputed work is evidence they claim work and E hired, directed and supervised Ees)

7580-4033-3000 Employee demand for work notwithstanding union disclaimer

Laborers International Union of North America, AFL-CIO, Local Union No. 264 (Arrowhead Building Materials) **253 NLRB No. 037**

7580-4033-6000 Demand for assignment of work to be made in future

Local 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **253 NLRB No. 081**
(dispute existed where U, representing Ees of subcontractor for installation of telephone system except for installation of switch which contractor had reserved for itself, demanded work of installation of switch also, refused to work with Ees of contractor who were installing switch, and threatened not to perform other portions of telephone system installation for contractor in future unless it had whole job; U's actions constituted demand for work rather than refusal to perform partial job)

7580-4050 Employer action sought through union conduct

National Association of Broadcast Employees and Technicians, AFL-CIO, CLC (Metromedia, Inc.) **255 NLRB No. 067**
(filing grievance and initiating ct proceedings, assertedly in face of 10(k) determination, to compel E to arbitrate grievance over assignment of disputed work to Ees represented by another U, not unlawful, where 10(k) award was open to reasonable doubt because of its ambiguity and changed circumstances resulting from passage of time; U filed grievances under contract executed almost 2 years after award, which gave grievances colorable basis and was not attempt to circumvent award; and evidence did not show U refused to comply with award or unlawfully coerced E)

National Association of Broadcast Employees and Technicians, AFL-CIO, CLC (Metromedia, Inc.) **255 NLRB No. 067**
(where U allegedly violated 8(b)(4)(ii)(D) because it assertedly failed to abide by 10(k) award by filing grievances and initiating ct proceedings to compel E to arbitrate grievance over assignment of disputed work to Ees represented by another U, Bd dismissed complaint after evaluating evidence in light of Federal labor policy encouraging use of grievance-arbitration procedures, Bd's reluctance to interfere with parties' mechanism for private resolution, and its exercise of authority in manner that does not needlessly restrict party's access to judicial remedies)

National Association of Broadcast Employees and Technicians, AFL-CIO, CLC (Metromedia, Inc.) **255 NLRB No. 067**
(in dismissing C alleging U violated 8(b)(4)(ii)(D) because it assertedly failed to abide by 10(k) award by filing grievances and initiating ct proceedings to compel E to arbitrate grievance over assignment of disputed work to Ees represented by another U, Bd held it was not suggesting that filing grievance and ct suit can never constitute ULP; however, U here acted properly as Ee representative in pursuing its legal remedies for arguably meritorious

7580-4050—Cont.

claim under properly negotiated contract, and there was no evidence of threats, restraint, or coercion of E)

Plumbers, Local Union No. 412 (The Zia Company) **250 NLRB No. 137**
(violation of 8(b)(4)(i) and (ii)(D) where U induced and encouraged E's Ees to engage in work stoppages in course of their employment by refusing to perform services and cancelling contract with object of forcing or requiring E to reassign certain sewer installation work and also restrained and enforced E)

N.L.R.B. v. International Union of Operating Engineers, Local 571, AFL-CIO **624 F.2d 846 (C.A. 8, 1980)**
(violation where Operating Engineers refused to abide by Bd's award in 10(k) proceeding of disputed forklift work to Ees represented by Laborers rather than by Operating Engineers and picketed jobsite with jurisdictional objective of forcing E to assign forklift work to Ees represented by Operating Engineers; claim of area standards picketing rejected in view of failure to investigate E's wage rates, lack of picket signs' support of assertion, and prior claims to disputed work)

7580-4067 Indicia of objective

7580-4067-1200 Picket signs

Local 965, Operating Engineers (Teamsters Local 371) **249 NLRB No. 124**
(claim of U that it was engaging in informational picketing only, rejected, where U claimed work, appeared at worksite with signs reading *E does not employ operators from Local U* and caused project to be shutdown)

N.L.R.B. v. International Union of Operating Engineers, Local 571, AFL-CIO **624 F.2d 846 (C.A. 8, 1980)**
(picket signs stating that E did not pay U wages found not to support claim of lawful area standards picketing)

7580-4067-3700 Time of picketing

Local No. 2007, Carpenters (Oliver B. Cannon and Son, Inc.) **265 NLRB No. 099**
(where picketing commenced 6 days after U demanded reassignment of disputed work)

7580-4067-6200 Statements to employers

Operating Engineers, Local Union No. 15 (Luedtke Engineering Company) **264 NLRB No. 115**
(business agent's statement to job superintendent that U would *go to war* and *shut job down* because E was using unrepresented Ees referred by another U and E's request one week later to provide Ees for disputed work, violative as Sec. 8(b)(4)(D) encompasses competing claims of U and unrepresented Ees)

Local 40, Ironworkers (Spancrete Northeast, Inc. **249 NLRB No. 112**
(statement made by agent for Respondent U at meeting between parties involved in work jurisdiction dispute that Respondent U would engage in strike and picket E unless work involved was assigned to its members rather than Ees of E who were represented by another U violative)

Local 965, Operating Engineers (Teamsters Local 371) **249 NLRB No. 124**
(claim of U that it was engaging in informational picketing only, rejected, where U claimed work, appeared at worksite with signs reading *E does not employ operators from Local U* and caused project to be shutdown)

7580-6000 Unless employer failing to conform to Board order or certification determining representative of employees performing work

7580-6050 Failure to comply with Board determination of dispute

United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry, Local Union NO. 741 (The Ashton Company, Inc.)
(issues raised and litigated in prior 10(k) proceeding may not be relitigated in subsequent ULP proceeding alleging violations of Section 8(b)(4)(D) which are based in part on factual determinations made in prior 10(k) proceeding)

National Association of Broadcast Employees and Technicians, AFL-CIO, CLC (Metromedia, Inc.) **255 NLRB No. 057**
(filing grievance and initiating ct proceedings, assertedly in face of 10(k) determination, to compel E to arbitrate grievance over assignment of disputed work to Ees represented by another U, not unlawful, where 10(k) award was open to reasonable doubt because of its ambiguity and changed circumstances resulting from passage of time; U filed grievances under contract, executed almost 2 years after award, which gave grievances colorable basis and was not attempt to circumvent award; and evidence did not show U refused to comply with award or unlawfully coerced E)

National Association of Broadcast Employees and Technicians, AFL-CIO, CLC (Metromedia, Inc.) **255 NLRB No. 057**
(where U allegedly violated 8(b)(4)(ii)(D) because it assertedly failed to abide by 10(k) award by filing grievances and initiating ct proceedings to compel E to arbitrate grievance over assignment of disputed work to Ees represented by another U, Bd dismissed complaint after evaluating evidence in light of Federal labor policy encouraging use of grievance-arbitration procedures, Bd's reluctance to interfere with parties' mechanism for private resolution, and its exercise of authority in manner that does not needlessly restrict party's access to judicial remedies)

National Association of Broadcast Employees and Technicians, AFL-CIO, CLC (Metromedia, Inc.) **255 NLRB No. 057**
(in dismissing C alleging U violated 8(b)(4)(ii)(D) because it assertedly failed to abide by 10(k) award by filing grievances and initiating ct proceedings to compel E to arbitrate grievance over assignment of disputed work to Ees represented by another U, Bd held it was not suggesting that filing grievance and ct suit can never constitute ULP; however, U here acted properly as Ee representative in pursuing its legal remedies for arguably meritorious claim under properly negotiated contract, and there was no evidence of threats, restraint, or coercion of E)

Teamsters Local Union No. 170 (Massachusetts Laborers' District Council) **JD-39-80**
(violation where Bd awarded disputed work to Laborers in 10(k) proceeding and Teamsters continued to picket E for assigning such work to Laborers)

N.L.R.B. v. International Union of Operating Engineers, Local 571, AFL-CIO **624 F.2d 846 (C.A. 8, 1980)**
(violation where Operating Engineers refused to abide by Bd's award in 10(k) proceeding of disputed forklift work to Ees represented by Laborers rather than by Operating Engineers and picketed jobsite with jurisdictional objective of forcing E to assign forklift work to Ees represented by Operating Engineers; claim of area standards picketing rejected in view of failure to investigate E's wage rates, lack of picket signs' support of assertion, and prior claims to disputed work)

7580-8000 Section 10(k) proceedings for determination of jurisdictional dispute

7580-8001 Generally

United Food Commercial Workers International Union, Local No. 1222, AFL-CIO, CLC(Fedmart Stores, Inc.) **262 NLRB No. 88**
(where dispute is not over assignment of work to one group of Ees rather than another within meaning of Sec. 8(b)(4)(D) but rather revolves around question of which U shall represent Ees whom E has chosen or will choose in future to operate *SCORE* marking system, matter is not dispute within meaning of Sec. 10(k) and notice of hearing quashed. However, determination was made in UC hearing)

Bricklayers, Local Union No. 44 **253 NLRB No. 15**
(conflict in testimony does not prevent Bd from proceeding under *10(k)* for, in this type of proceeding, Bd is charged w/determining that *reasonable cause* existsfor finding violation rather than occurrence of violation)

7580-8001-1000 Exclusive procedure for resolving jurisdictional dispute

Automobile Workers (UAW) and Its Local 1519 v. N.L.R.B. **619 F.2d 580 (C.A. 6, Apr. 1980)**
(Bd has express authority to settle work assignment disputes as stated in Section 10(k) whenever person has engaged in *Section 8(b)(4)(D)* ULP)

Automobile Workers (UAW) and Its Local 1519 v. N.L.R.B. **619 F.2d 580 (C.A. 6, Apr. 1980)**
(Bd's determination of work assignment dispute takes precedence over contrary award of arbitrator, regardless of which action was initiated first; both legislative history and case law on such issue support finding that Bd's 10(k) determination takes priority)

7580-8001-6000 Relationship to UC proceeding

United Food Commercial Workers International Union, Local No. 1222, AFL-CIO, CLC(Fedmart Stores, Inc.) **262 NLRB No. 88**
(where dispute is not over assignment of work to one group of Ees rather than another within meaning of Sec. 8(b)(4)(D) but rather revolves around question of which U shall represent Ees whom E has chosen or will choose in future to operate *SCORE* marking system, matter is not dispute within meaning of Sec. 10(k) and notice of hearing quashed. However, determination was made in UC hearing)

7580-8001-9000 Relationship to ULP proceeding

7580-8001-9000—Cont.

International Brotherhood of Teamsters, Local 222
(Emery mining Corporation) **262 NLRB No. 132**
(10(k) proceeding not barred by Sec. 8(a)(5) charge pending before Bd because charge related to E's alleged untimely w/drawal from multi-E association and had no bearing on question of which of 2 competing Us is entitled to perform work in dispute)

Sprinkler Fitters Local 703, Plumbers (Airco
Carbon, Div. of Airco, Inc.) **261 NLRB No. 162**
(Bd's finding that there is reasonable cause to believe that *Section* 8(b)(4)(D) has been violated is necessary before making determination of dispute out of which alleged ULP has arisen)

General Teamsters Local Union No. 528, Teamsters
(National HOmes Corporation) **255 NLRB No. 030**
(threatening to strike E unless it assigned work to Ees represented by U rather than another U which was entitled to disputed work pursuant to Section 10(k) determination, violative)

7580-8020 Procedure under Section 10(k)

7580-8020-0100 Generally

Laborers District Council of Baltimore and
Vicinity, a/w The Laborers International
Union of North America, AFL-CIO (Potts &
Callahan, Inc.) **265 NLRB No. 090**
(E's exception to Hearing Officer's refusal to admit into evidence letters sent to Acting RD from U's attorney during prehearing investigation held w/o merit, notwithstanding E's contention that letters were necessary for resolution of credibility issues, since *Bd has repeatedly held that in 10(k) proceedings it is unnecessary to rule on credibility of testimony at issue in order to proceed to determination of dispute.*)

7580-8020-2200 Opportunity for voluntary adjustment

7580-8020-2210 Court ordered arbitration

International Alliance of Theatrical Stage
Employees and Moving Picture Machine
Operators of The United States and Canada
(Metromedia, Inc.) **260 NLRB No. 052**
(even where ct had already ordered tripartite arbitration proceeding, this is less than voluntary method of settling dispute in view of one of parties' opposition)

7580-8020-2225 Existence of agreed upon method for voluntary adjustment

Ironworkers, Local No. 86, (Kulama Erectors) **264 NLRB No. 008**
(differences in contract of two Us involved in work assignment dispute, pertaining to how and when parent organizations are to become involved in dispute and as to precise criteria to be applied in assigning disputed work, held significant enough to preclude finding that all parties have agreed to be bound by single mutually agreed upon procedure)

Ironworkers, Local No. 86, (Kulama Erectors) **264 NLRB No. 008**
(claim that Us involved in work assignment dispute actually resolved it by agreeing that one U's members would perform disputed work, rejected, where evidence indicated only that rival U refrained from backing up its claim to work with unlawful threats or other acts of coercion, not that it abandoned such claim)

Construction and General Laborers' Local 118,
Laborers' International Union of North
America, AFL-CIO (D.H. Johnson Company) **262 NLRB No. 120**
(no agreed upon method for voluntary adjustment of dispute where conflict existed between 2 sets of collective bargaining agreements: 1) between Int'l Laborers U and Mason Contractors Assoc. of America (MCAA), of which E is member, which provides that all work jurisdiction disputes are to be referred to Int'l U and MCAA for resolution and this is exclusive procedure; and 2) agreements between 2 competing Us and E whereby all agreed to be bound to Joint Conference Board)

Local 3–90, Western States Regional Council No. 3,
International Woodworkers of America, AFL-
CIO (Crown Zellerbach Corp.) **261 NLRB No. 089**
(mtn to dismiss Sec. 10(k) proceeding because there was outstanding arbitrator's decision awarding disputed work to members of U, denied since other U was not bound to arbitration in instant case)

Local 360, Sheet Metal Workers (United Piping and
Erecting Co., an Employer-Member of Lansing
Mechanical Contractors Association) **255 NLRB No. 114**
(notice of hearing to determine jurisdictional dispute quashed where E and Pipefitters have signed contract agreeing to be bound by IJDB procedures governing jurisdictional disputes and Sheet Metal Workers, as member of Building and Construction Trades Department, AFL-CIO, is signatory to agreement creating IJDB, and, thus, is bound by its determinations)

International Typographical Union, Dayton
Typographical Union, Local No. 57, AFL-CIO
(The Reynolds and Reynolds Company) **255 NLRB No. 079**
(U's mtn to quash notice of hearing pending completion of arbitration of grievance alleging that disputed work is covered by jurisdictional clause in contract with E denied since other U involved herein has not agreed to participate in and be bound by arbitrator's award; moreover Bd can adequately interpret jurisdictional clause in contract as it considers various factors in resolving work assignment dispute)

Operating Engineers, Local 17, 17A, 17B (Sullivan
and Humes) **254 NLRB No. 0**
(where there is agreed upon method for voluntary adjustment of disputes (IJDB), fact parties refusal or failure to submit dispute does not satisfy requirements of Sec. 10(k); moreover, completion of job, which under IJDB rules precludes determination on its part, still does not satisfy Sec. 10(k) requirements as no IJDB ruling to that effect)

Local 542, Operating Engineers (Georgia Pacific
Corporation) **253 NLRB No. 061**
(none, where there was no evidence to show that E was bound by inter-U agreement assigning work similar to disputed work to Ees represented by Operating Engineers)

Bricklayers, Local Union No. 44 **253 NLRB No. 1**
(*none* where no evidence that E participated in, or was bound by, adjudication of dispute by (T3ImpartialJurisdictional Disputes Board)

New York Typographical Union No. 6, AFL-CIO
(New York Times Newspaper Division of The
New York Times Company) **252 NLRB No. 039**
(none where contract of one U claiming disputed work contained no arbitration requirement and contract of other U claiming disputed work was not in evidence and no evidence that E had agreed to submit work assignment disputes to *AFL-CIO Internal Disputes Plan*)

Local Union No. 72, Boilermakers (Local Union
No. 701, Operating Engineers) **247 NLRB No. 016**
(no agreed-upon method for voluntary adjustment, where subcontractor, not contractually related to general contractor and necessary party herein, was not bound by IJDB award by virtue of general contractor's membership in Associated General Contractors)

Automobile Workers (UAW) and Its Local 1519 v.
N.L.R.B. **619 F.2d 580 (C.A. 6, Apr. 1980)**
(Bd's determination of work assignment dispute takes precedence over contrary award of arbitrator, regardless of which action was initiated first; both legislative history and case law on such issue support finding that Bd's 10(k) determination takes priority)

7580-8020-2250 Voluntary adjustment

Sprinkler Fitters Local 703, Plumbers (Airco
Carbon, Div. of Airco, Inc.) **261 NLRB No. 162**
(no opportunity for voluntary adjustment (of dispute) where Joint Board for Settlement of Jurisdictional Disputes in Building and Construction Trades Department, AFL–CIO, has, since June 1, 1981, ceased hearing such disputes and was incapable of administering or policing a determination)

United Association of Journeymen and Apprentices
of The Plumbing and Pipefitting Industry,
Local Union NO. 741 (The Ashton Company,
Inc.)
(no voluntary method for adjustment of instant jurisdictional dispute, since all parties were not bound to Impartial Jurisdictional Disputes Board procedure)

7580-8020-3300 Notice of hearing

7580-8020-3367 Adequacy

Local 1294, International Longshoremen's
Association, AFL-CIO (Cibro Petroleum
Products, Inc.) **257 NLRB No. 037**
(E's mtn at hearing to broaden scope of work in dispute to include assignment of line-handling in docking barges at its terminal, rather than limiting to work of line handling of ships, denied where notice of hearing clearly described work in dispute as line-handling on ships, two of three Locals claiming work have never demanded work on barges and members of one Local have never performed such work on barges for any E)

7580-8020-4400 Quashing of notice of hearing

7580-8020-4417 Existence of agreed upon method

Local 292, Sheet Metal Workers (Gallagher-Kaiser
Corporation) **264 NLRB No. 063**
(notice of hearing quashed notwithstanding contention that Sheet Metal Workers was not bound by decision of trades council executive board awarding work to Iron Workers because project agreement amendment executed by Sheet Metal Workers pertained only to jurisdictional disputes between or among parties to that document which did not include Iron Workers; amendment obligated Sheet Metal Workers to comply with all awards rendered by executive board in which Sheet Metal Workers was party since parties to jurisdictional disputes need not sign same document in order to be bound by agreed-upon method for resolving dispute)

7580-8020-4417—Cont.

Plasterers, Local No. 478 (J. L. Manta, Inc.) **264 NLRB No. 024**

Laborers' International Union of North America, Local No. 118, AFL-CIO (Ronald Huber d/b/a Huber Masonry) **260 NLRB No. 193**

(notice squashed since all parties agreed to be bound by JCB, created by standard agreement between local E association and building trades council; locals were bound through their affiliation with council and by master agreements with regional E association which incorporated standard agreement, and E who was not association member was bound by signing memoranda of agreement with operating engineers' local and with laborers' district council as those memoranda expressly incorporated master agreements)

Construction and General Laborers, Local Union No. 449, Connecticut Laborers District Council, Laborers International Union of North America, AFL-CIO **260 NLRB No. 112**

(although all parties were bound to IJDB procedure who awarded work to Laborers, dispute was properly before Bd because IJDB, no longer viable organization, cannot enforce its decision, and parties consider dispute unresolved and press Bd for resolution)

7580-8020-4433 Voluntary adjustment

Local 360, Sheet Metal Workers (United Piping and Erecting Co., an Employer-Member of Lansing Mechanical Contractors Association) **255 NLRB No. 114**

(notice of hearing to determine jurisdictional dispute quashed where E and Pipefitters have signed contract agreeing to be bound by IJDB procedures governing jurisdictional disputes and Sheet Metal Workers, as member of Building and Construction Trades Department, AFL-CIO, is signatory to agreement creating IJDB, and, thus, is boued by its determinations)

Operating Engineers, Local 17, 17A, 17B (Sullivan and Humes) **254 NLRB No. 009**

(where there is agreed upon method for voluntary adjustment of disputes (IJDB), fact parties refusal or failure to submit dispute does not satisfy requirements of Sec. 10(k); moreover, completion of job, which under IJDB rules precludes determination on its part, still does not satisfy Sec. 10(k) requirements as no IJDB ruling to that effect)

7580-8020-4450 No reasonable cause to believe Act violated

Ironworkers, Local No. 86, (Kulama Erectors) **264 NLRB No. 008**

(Bd held no reasonable cause exists to believe Act was violated with respect to disputed work at future jobsites, where U was unwilling to endorse, so long as E refused to assign disputed work to its members, E's efforts to secure type of contract from U's parent organization of considerable value to E because of considerable efficiencies it would effect; while withholding of such endorsement was intended to influence E's work assignment, 8(b)(4)(D) does not authorize Bd to implicate itself into substance of collective bargaining, or to force party to make economic concessions against its wishes)

Operating Engineers, Local 926 (George L. Smith, II, Georgia World Congress Center) **254 NLRB No. 116**

(mtn to quash notice of hearing denied since jurisdictional dispute existed and reasonable cause to believe Act violated where U demanded work being performed by individuals furnished by temporary help service and subsequently picketed job site, notwithstanding contention dispute was between E and U rather than between competing groups of Ees where individuals performing work never made formal demand for work; since, although temporary, work force was as stable as permitted, and fact are performing disputed work is evidence they claim work and no agreed upon method for voluntary adjustment)

Plumbers, Local 262 (Dyad Construction, Inc.) **252 NLRB No. 010**

(jurisdictional dispute no longer existed where one of competing Us or parties had effectively renounced its claim to disputed work of laying sewer line pipes for municipality)

United Steelworkers of America, Local 12970 (Rainbow Security Systems, Inc.) **250 NLRB No. 106**

(where allegedly disputed work assignment was only one of 31 reasons for threat of generalized strike, E proposed to assign that work to Ees represented by U rather than to unrepresented Ees as concession to get something it considered more important from U, and assignment was agreed upon before strike and not a reason for it)

Local 965, Operating Engineers (Teamsters Local 371) **249 NLRB No. 124**

(dispute properly before Bd, notwithstanding contention of one of competing Us that it was merely engaging in informational picketing and that work was not claimed by proper Local of competing U, where U appeared at worksite, claimed work, and caused shutdown of project)

7580-8020-4458 Completion of project

Local 127, International Alliance of Theatrical Stage Employees and Moving Picture Operators of The U.S. & Canada, AFL-CIO-CLC **257 NLRB No. 041**

(Bd quashed notice of hearing in dispute involving film production work for movie since Bd held such dispute moot where work had been completed and there was no evidence of similar dispute having occurred between parties in past or will arise in future)

Operating Engineers, Local 25, Marine Division, AFL-CIO (Great Lakes Dredge & Dock Company **251 NLRB No. 188**

(notwithstanding conclusion that reasonable cause existed to believe *Sec. 8(b)(4)(D)* violation had occurred, notice of *10(k) hearing* was *quashed* where Bd was unable to award work of manning tugboat in dredging operation, because on record, Bd could not evaluate meaningfully traditional factors used in determining which competing Ee group should be awarded disputed work and job completed)

7580-8020-4467 No jurisdictional dispute

Retail Clerks Local 1689, a/w United Food and Commercial Workers International, AFL-CIO (Market Basket Stores, Inc., et al.) **256 NLRB No. 097**

(notice of hearing quashed where dispute was not over assignment of specific work to one group of Ees rather than another w/i meaning of 10(k) but merely a dispute over which of 2 Us should represent certain Ees)

Local 295, Teamsters (Emery Air Freight Corporation) **255 NLRB No. 135**

(activity which is proscribed by Sec. 8(b)(4)(i) and (ii) of Act and which is aimed at ending contracting out of work to firm using members of different U involves work assignment dispute cognizable under Section 8(b)(4)(D))

Operating Engineers, Local 926 (George L. Smith, II, Georgia World Congress Center) **254 NLRB No. 116**

(mtn to quash notice of hearing denied since jurisdictional dispute existed and reasonable cause to believe Act violated where U demanded work being performed by individuals furnished by temporary help service and subsequently picketed job site, notwithstanding contention dispute was between E and U rather than between competing groups of Ees where individuals performing work never made formal demand for work; since, although temporary, work force was as stable as permitted, and fact are performing disputed work is evidence they claim work and no agreed upon method for voluntary adjustment)

United Steelworkers of America, Local 12970 (Rainbow Security Systems, Inc.) **250 NLRB No. 106**

(where allegedly disputed work assignment was only one of 31 reasons for threat of generalized strike, E proposed to assign that work to Ees represented by U rather than to unrepresented Ees as concession to get something it considered more important from U, and assignment was agreed upon before strike and not a reason for it)

Local 965, Operating Engineers (Teamsters Local 371) **249 NLRB No. 124**

(dispute properly before Bd, notwithstanding contention of one of competing Us that it was merely engaging in informational picketing and that work was not claimed by proper Local of competing U, where U appeared at worksite, claimed work, and caused shutdown of project)

Teamsters, Union Local 839 (Operating Engineers, Local 370) **249 NLRB No. 010**

(notice of hearing quashed where only dispute was between U and E, not between rival groups of Ees competing for same work)

Foley-Wismer & Becker and Shurtleff & Andrews Construction v. N.L.R.B. **695 F.2d 424 (C.A. 9, Dec. 1982)**

(jurisdictional dispute cannot by definition exist unless there are rival claims to same work and, in absence of active and competing claims, Sec. 10(k) is not applicable; thus, if one renounces its claim, Sec. 10(k) proceedings are aborted, even where E maintains interest in securing Bd decision on merits of dispute; similarly, Sec. 10(k) does not apply in absence of conflicting claims but one U pickets to get future work, even if E would have valid ULP claim under some other section of Act)

Foley-Wismer & Becker and Shurtleff & Andrews Construction v. N.L.R.B. **695 F.2d 424 (C.A. 9, Dec. 1982)**

(Bd properly quashed 10(k) hearing, since no jurisdictional dispute existed between Teamsters and Operating Engineers where they executed agreement that work involving use of trailers pulled by cranes in hauling construction material would be manned by composite crew consisting of engineer operating crane and teamster assisting in loading and unloading trailer; Teamsters explicitly stated it has no interest in operating crane, and Operating Engineers only claimed work traditionally performed by its members; and Teamsters' trailer work had never been sought by Operating Engineers)

Foley-Wismer & Becker and Shurtleff & Andrews Construction v. N.L.R.B. **695 F.2d 424 (C.A. 9, Dec. 1982)**

(where Bd properly quashed 10(k) hearing because no jurisdictional dispute existed between two Us over assertedly disputed work, ct held it would have been improper for Bd, which noted existence of possible jurisdictional dispute between one U's members and craft Ees, not represented by either of two Us and traditionally performing work now claimed by one U, to

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speculate on whether such dispute might exists, since Es did not assert or present any evidence of competing claims by craft Ees or that craft Ees are parties to present dispute)

7580-8020-4476 Disclaimer

Building and Construction Trades Council of Philadelphia and Vicinity, AFL-CIO (Neshaminy Constructors, Inc.) **265 NLRB No. 147**
(Bd rejected Trades Council's disclaimer of work where Council picketed one location for area standards, was enjoined, then picketed second site and was enjoined from picketing at that site too, and U made no further investigation to determine whether E was in compliance with area standards)

Operating Engineers, AFL-CIO, Local 925 (Bradshaw Industrial Coatings, Inc.) **264 NLRB No. 127**
(notice of hearing quashed notwithstanding E's claim that U's picketing was for purpose other than forcing E to pay E's workers area standard wages where at no time did U make any demand for work assignment at job on behalf of its members)

Local 372, Service Employees International Union, AFL-CIO (Pepper construction Company) **262 NLRB No. 106**
(notice of hearing quashed where there no longer existed jurisdictional dispute since one Local U unequivocally disclaimed interest in disputed work at hearing and again in its brief to Bd)

Sprinkler Fitters Local 703, Plumbers (Airco Carbon, Div. of Airco, Inc.) **261 NLRB No. 162**
(*none* where disclaimer presented for purpose of avoiding authoritative decision on merits as in instant case where U waited to disclaim until work in dispute was almost completed and hearing was in its last day)

Construction and General Laborers, Local Union No. 449, Connecticut Laborers District Council, Laborers International Union of North America, AFL-CIO **260 NLRB No. 112**
(no disclaims where U pursued claim before IJDB and was awarded work)

Local 1294, International Longshoremen's Association, AFL-CIO (Cibro Petroleum Products, Inc.) **257 NLRB No. 037**
(notice of hearing quashed in regard to one Local U allegedly claiming work since dispute no longer exists in view of Local U's effective renunciation of claim to disputed work where at hearing Local stated it had no interest in work, disclaimer not vitiated by any equivocal conduct, and its members did not perform type of work, notwithstanding Local U had signed letter to International protesting assignment of work to another Local and had filed ct suit alleging assignment of work to another Local alleging assignment violated International constitution)

Local 1294, International Longshoremen's Association, AFL-CIO (Cibro Petroleum Products, Inc.) **257 NLRB No. 037**
(notice of hearing not squashed since no sufficiently unequivocal disclaimer where Local U, which had ct suit pending alleging that International's constitution had been violated by assignment of work in dispute to another Local, stated in its disclaimer that if successful in its ct suit it would of course take position it should be assigned work in dispute)

International Union of Operating Engineers, Local No. 673 (Oliver B. Cannon & Son, Inc., of Florida) **256 NLRB No. 184**
(contention that Painters disclaimed disputed work by memorandum of understanding, rejected, since Bd has long held such disclaimers ineffective where, as here, Ees represented by disclaiming organization continued to perform disputed work)

Ironworkers, Local Union No. 395 (Morse Electric Co., Inc.) **254 NLRB No. 049**
(notice of hearing quashed where one of two competing Us orally disclaimed any interest in work at issue and there was no evidence such U engaged in conduct inconsistent with its disclaimer; contrary to E, Bd concluded that in making oral disclaimer, U had effectively renounced its claim to work involved)

Local Union No. 542, Operating Engineers (Local 15253, Steelworkers) **247 NLRB No. 159**
(notice of hearing not quashed since jurisdictional dispute existed, notwithstanding one U's disclaimer of interest in work through its attorney by letter and on record at hearing, where U had engaged in noninformational picketing at disputed worksite and threatened Ees and officers of competing U to prevent them from crossing picket line)

Foley-Wismer & Becker and Shurtleff & Andrews Construction v. N.L.R.B. **695 F.2d 424 (C.A. 9, Dec. 1982)**
(E's contention that one U's disclaimer of disputed work was ineffective in that it involved no giving up of work and because its members' wages were not reduced by reason of disclaimer, rejected; cases in which genuine jurisdictional dispute existed notwithstanding disclaimer dealt with violations in which disclaiming U had performed it if required; here, however, disclaiming U had never performed, and did not request, work claimed by other U)

7580-8020-8500 Board determination

7580-8020-8850 Finding of reasonable cause to believe Act violated

Ironworkers, Local No. 86, (Kulama Erectors) **264 NLRB No.**
(reasonable cause exists to believe Act was violated only with respect to disputed work at jobsite involved herein, where on several occasions U's business agent threatened to tear up contract unless U members performed disputed work; U's own witnesses admitted that, w/o contract, U would refuse to refer its members to jobsite; and at time threats to tear up contract were made, U members were repeatedly threatening walkouts if members of rival U were allowed to perform disputed work)

Allied Workers Local 101 and Leonard Samuels and Walter Dickson (Northwestern Indiana Building and Construction Trades Council) **259 NLRB No. 068)119(where U representing black Ees, upon refusal of its demand for assignment of at least 50 percent of black Ees to disputed work at construction site, engaged in picketing and made threats in furtherance of its demands)**

Local 1294, International Longshoremen's Association, AFL-CIO (Cibro Petroleum Products, Inc.) **257 NLRB No. 037**
(conflict in testimony does not prevent Bd from proceeding under Section 10(k). Bd is not charged with finding violation did occur but only that reasonable cause exists for findings violation)

Bricklayers, Local Union No. 44 **253 NLRB No. 15**
(conflict in testimony does not prevent Bd from proceeding under *10(k)* for, in this type of proceeding, Bd is charged w/determining that *reasonable cause* existsfor finding violation rather than occurrence of violation)

Local Union No. 72, Boilermakers (Local Union No. 701, Operating Engineers) **247 NLRB No. 016**
(U stated to general contractor that U would shut down construction project if subcontractor did not abide by anticipated IJDB award in favor of U; U stated to subcontractor that friendly relations would be impossible if disputed work was not reassigned; and U's picketing caused other Ees not to report to work)

7580-8040 Factors evaluated in making determination

7580-8040-0500 Board certification

Laborers International Union of North America, AFL-CIO, Local Union No. 264 (Arrowhead Building Materials) **253 NLRB No. 037**

7580-8040-1100 Collective bargaining agreements

International Brotherhood of Teamsters, Local 222 (Emery mining Corporation) **262 NLRB No. 132**
(contention that work in dispute is encompassed w/i phrase *work customarily related to all of the above* found in jurisdictional clause, rejected, as phrase is too vague and ambiguous to warrant finding that it covers disputed work)

7580-8040-1125 Between local union and single employer

Operating Engineers, Local Union No. 18 (Luedtke Engineering Company) **264 NLRB No. 115**
(both by their terms and past practice, two agreements, E association and memorandum agreements, did not cover disputed work of hydraulic dredging as that work was excluded purposely because 3 of 4 signatories of association agreement had other long-term agreements with another local covering their work; as to latter agreement E did not become party to memorandum agreement until more than one month after work in dispute began, primary purpose of memorandum agreement was to cover different project, and U agent said that latter agreement did not apply to work in dispute)

Local 295, Teamsters (Emery Air Freight Corporation) **255 NLRB No. 135**
(where 1 U's contract covered all disputed work and other U's contract covered only part of disputed work, this factor favored award to former U)

7580-8040-1150 Between local union and multi-employer association

Operating Engineers, Local Union No. 18 (Luedtke Engineering Company) **264 NLRB No. 115**
(both by their terms and past practice, two agreements, E association and memorandum agreements, did not cover disputed work of hydraulic dredging as that work was excluded purposely because 3 of 4 signatories of association agreement had other long-term agreements with another local covering their work; as to latter agreement E did not become party to memorandum agreement until more than one month after work in dispute began, primary purpose of memorandum agreement was to cover different

7580-8040-1150—Cont.

project, and U agent said that latter agreement did not apply to work in dispute)

7580-8040-1600 Union agreement allocating work

7580-8040-1683 Award of parent federation

General Teamsters Local 162 (K-Lines, Inc.) **249 NLRB No. 019**
(award of jurisdiction by Joint Council not binding upon Bd)

7580-8040-3300 Board rulings in related representation proceedings

7580-8040-3350 In related 10(k) proceedings

N.L.R.B. v. International Union of Operating Engineers, Local 571, AFL-CIO **624 F.2d 846 (C.A. 8, 1980)**
(violation where Operating Engineers refused to abide by Bd's award in 10(k) proceeding of disputed forklift work to Ees represented by Laborers rather than by Operating Engineers and picketed jobsite with jurisdictional objective of forcing E to assign forklift work to Ees represented by Operating Engineers; claim of area standards picketing rejected in view of failure to investigate E's wage rates, lack of picket signs' support of assertion, and prior claims to disputed work)

7580-8040-3800 Joint Board decisions

7580-8040-3867 In related cases

International Association of Heat and Frost Insulators and Asbestos Workers, Local Union No. 41 (Close Insulation Company, Inc.) **251 NLRB No. 192**
(which were merely records of first-step grievance settlements involving U and another E, and not formal determinations or awards; therefore, not entitled to significant weight in deciding instant dispute)

7580-8040-4400 Reconstituted Joint Board decisions

Plasterers, Local No. 478 (J. L. Manta, Inc.) **264 NLRB No. 024**

Construction and General Laborers, Local Union No. 449, Connecticut Laborers District Council, Laborers International Union of North America, AFL-CIO **260 NLRB No. 112**
(although all parties were bound to IJDB procedure who awarded work to Laborers, dispute was properly before Bd because IJDB, no longer viable organization, cannot enforce its decision, and parties consider dispute unresolved and press Bd for resolution)

Local Union No. 1333, Painters & Allied Trades **247 NLRB No. 197**
(E not obligated to comply with Joint Board decision since it did not agree to be bound by decision, nor did E join in submission of matter to Joint Board since it was neither present nor represented in proceedings, and its submission of information to Joint Board was insufficient to amount to participation; further, award did not set forth factors weighed in making decision)

7580-8040-4433 In subject case

Local Union No. 72, Boilermakers (Local Union No. 701, Operating Engineers) **247 NLRB No. 016**
(although IJDB award was not finding on E, Bd considered it as factor in determining proper assignment of work in dispute; however, Bd gave award no controlling weight where Bd was unable to evaluate award because record did not indicate what evidence formed basis for award, and award did not explain even in cursory fashion what particular facts were relied upon)

7580-8040-4900 Other awards or rulings

7580-8040-4910 United States Government

Local 701, International Brotherhood of electrical Workers (The University of Chicago d/b/a Argonne National Laboratory) **255 NLRB No. 148**
(where contract between E and Department of Energy provided that DOE determine which work was covered by Davis-Bacon Act, DOE's determination that disputed work is *uncovered* favors award of work to E's Ees rather than to Ees of subcontractor)

7580-8040-4930 Arbitrator's award

Electrical Workers, Local 194 (Teamsters Local Union No. 170) **248 NLRB No. 134**
(controlling weight not given to award where one U in dispute neither participated nor agreed to be bound and arbitrator refused to consider any factors Bd might consider)

7580-8040-5000 Custom and practice

7580-8040-5017 Industry

Ironworkers, Local No. 86, (Kulama Erectors) **264 NLRB No. 008**
(where industry practice regarding performance of disputed work by contending Us is mixed, little weight is afforded to such industry practice, and E's own preference and experience is relied upon more heavily)

7580-8040-7100 Gain or loss of job opportunities for a group

Operating Engineers, Local Union No. 18 (Luedtke Engineering Company) **254 NLRB No. 115**
(where Ees represented by U had no expectation that they would be assigned disputed work because U told them that they would not be dispatched to that work during present season and unrepresented Ees referred by Teamsters agreed to perform work with expectation of full season's work, job impact and economy of operation favored award to unrepresented Ees as they otherwise would be laid off late in season when they could not find comparable jobs)

7580-8040-7700 Efficiency of operations

7580-8040-7717 Economy

Local No. 2007, Carpenters (Oliver B. Cannon and Son, Inc.) **265 NLRB No. 099**
(where Carpenters U was claiming only part of work to be done and E's Ees represented by Painters were going to do whole job, it was more efficient to assign disputed work to latter since it is evident that fragmentation of E's work would require hiring additional Ees to do same amount of work, working foreman of E, member of Painters would be idle while carpenters performed disputed work and assignment to carpenters would be disruptive of E's work process)

7580-8040-8200 Safety of operation

Local No. 2007, Carpenters (Oliver B. Cannon and Son, Inc.) **265 NLRB No. 099**
(contention that safety considerations dictate award of constructing *false ceiling* to Painters because it will serve as their work platform, rejected as if work is awarded to Carpenters, he will be equally concerned with safety as his life is at risk when he's building scaffold)

Local 701, International Brotherhood of electrical Workers (The University of Chicago d/b/a Argonne National Laboratory) **255 NLRB No. 148**
(E's Ees could better be monitored for radiation exposure)

7580-8060 Board determination of jurisdictional disputes (by SIC category)

7580-8060-1100 Anthracite mining

International Brotherhood of Teamsters, Local 222 (Emery mining Corporation) **262 NLRB No. 132**
(hauling of recyclable and nonrecyclable trash from coal mine sites to dumping sites away from mines awarded to Teamsters rather than United Mine Workers in view of E preference, area practice, efficiency and economy)

7580-8060-1500 Building construction - General contractors

International Association of Bridge, Structural & Ornamental Iron Workers Local Union No. 380 (Felmley-Dickerson Co.) **258 NLRB No. 089**
(erection and installation of certain glass windows for general contractor working on bank building construction awarded to Ees represented by Glaziers rather than Iron workers)

Local 370, Plumbers (Clifton M. Black Co., Inc.) **262 NLRB No. 008**
(work of installing vanity tops around bathroom sinks awarded to Ees represented by carpenters rather than Plumbers based on greater woodworking skills of Carpenters, E preference and economy and efficiency of operation)

Allied Workers Local 101 and Leonard Samuels and Walter Dickson (Northwestern Indiana Building and Construction Trades Council) **259 NLRB No. 069)119(disputed work involving all rehabilitation work at construction site, including but not limited to carpentry, painting, bricklaying, plumbing, etc., assigned to Ees represented by affiliates of charging party (Carpenters, Painters, Bricklayers, Plumbers, etc.), rather than to Allied Workers Union representing black Ees)**

Plumbers, Local Union 343 (A-Associate Industries Corporation of Montebello) **255 NLRB No. 081**
(handling, laying and installation of lawn sprinkler and irrigation pipes as well as installation of valves and valve boxes connected therewith at commercial and residential job sites located in nine southern California countries in which Plumbers and Laborers have concurrent jurisdiction awarded Ees represented by Laborers rather than Plumbers)

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Plasterers' and Cement Masons' Local 449, International Association of Operative Plasterers and Cement Masons, AFL-CIO (Cusick's, Inc.) **252 NLRB No. 113**
(work of installing or reinstalling all forms, screeds, screed forms, bulkheads, or pins used in connection with horizontal pouring of concrete awarded to Ees represented by Carpenters rather than Plasters' and Cement Masons based on E's assignment of work, past practice, and effeciency and economy of operation)

Operating Engineers, Local No. 234 (Garmer Construction Co.) **251 NLRB No. 031**
(work operating forklift tractors used to transport building framing materials from stockpiles or delivery vehicles to structures being erected and movement of wooden structures onto buildings that are being erected or movement of such building materials to other points at projects awarded to Ees working at projects for housing of elderly people represented by Carpenters rather than to Operating Engineers)

Local 13, Bricklayers (Bjork Builders, Ltd.) **265 NLRB No. 057**
(work of block and brick laying, concrete finishing, pouring of concrete, and patching and patching of masonry work at building renovation awarded to unrepresented Ees of E rather than to Bricklayers in view of E preference and efficiency)

Millwrights, Piledrivers, Drivers, Highway Construction, AFL-CIO, Local Union No. 1026, a/w The International Brotherhood of Carpenters and Journeymen of America, AFL-CIO (McKinney Drilling Company) **264 NLRB No. 042**
(work of spotting drilling rig at courthouse and hotel jobsites for E engaged in business of foundation construction awarded to Ees represented by Laborers rather than Piledrivers)

Millwrights, Piledrivers, Drivers, Highway Construction, AFL-CIO, Local Union No. 1026, a/w The International Brotherhood of Carpenters and Journeymen of America, AFL-CIO (McKinney Drilling Company) **264 NLRB No. 042**
(operation of control panel on vibro-unit at courthouse and hotel jobsites for E engaged in business of foundation construction awarded to Ees represented by Operating Engineers rather than Piledrivers)

Local Union No. 379, Ironworkers (Owen Kirklin & Sons, Inc.) **261 NLRB No. 105**
(work involving construction and erection of pre-engineered commercial and industrial buildings awarded to Ees represented by Carpenters rather than Ironworkers)

Laborers International Union of North America, AFL-CIO, Local 282 (Hannin Roofing and Sheet Metal Company, Inc.) **259 NLRB No. 018**
(shovelling of roofing gravel at ground level and daily cleaning up of debris resulting from application of roofing materials at power plant assigned Ees represented by Roofers rather than Laborers)

Local No. 393, Ironworkers (Fabcon, Inc.) **258 NLRB No. 171**
(Ees represented by Bricklayers and by Laborers awarded work of erecting and installing precast, prestressed concrete walls at VWR Scientific Distribution Center construction project rather than Ees represented by Ironworkers)

Local 825, International Union of Operating Engineers, AFL-CIO (Pasack Construction Co.) **255 NLRB No. 035**
(operation of backhoe awarded Ees represented by Laborers rather than Operating Engineers)

Local 1485, Northwest Indiana and Vicinity district Council of The United Brotherhood of Carpenters and Joiners of America, AFL-CIO; et al. (C. J. Reinke & Sons, Inc.) **264 NLRB No. 141**
(work of erecting *Morgan* scaffolding awarded to Ees represented by Laborers rather than Carpenters based on E's longstanding practice of assigning that work to those Ees, its satisfaction with performance of those Ees, absence of other factors which clearly would dictate award of such work to Ees represented by Carpenters)

Sheet Metal Workers International Association, Local No. 20 (Sarbo Inc.) **254 NLRB No. 143)**
(installation and fabrication of sheet metal in connection with construction of county library awarded E's Ees who are currently unrepresented rather than Ees represented by Sheet Metal Workers)

Plumbers, Local Union 345 (A-Associate Industries Corporation of Montebello) **283 NLRB No. 081**
(handling, laying and installation of lawn sprinkler and irrigation pipes as well as installation of valves and valve boxes connected therewith at commercial and residential job sites located in nine southern California countries in which Plumbers and Laborers have concurrent jurisdiction awarded Ees represented by Laborers rather than Plumbers)

Laborers International Union of North America, AFL-CIO, Local Union No. 264 (Arrowhead Building Materials) **283 NLRB No. 007**
(transporting drywall material, either by hand or dolly, from point dropped from E's truck to location designated for delivery by contractor who purchased material awarded to E's Ees represented by Teamsters rather than to Laborers in view of E preference, efficiency, economy, job impact and board certification)

International Union of Operating Engineers, Local Nos. 77, 77-A, 77-RA, 77-B, 77-C, 77-D, AFL-CIO **252 NLRB No. 016**
(operation of forklift which transports and hoists masonry materials in servicing masons employed by E at Dirksen Senate Office Building construction site awarded to Ees represented by Laborers rather than operating Engineers)

International Brotherhood of Painters and Allied Trades of The United States and Canada, District Council No. 51, AFL-CIO (Plasters' Local Union No. 96) **290 NLRB No. 171**
(finishing of gypsum wallboard at construction sites of two stores on shopping mall awarded Ees represented by Plasterers rather than Painters)

7580-8060-1600 Construction other than building construction - General contractors

Operating Engineers, Local Union No. 18 (Luedtke Engineering Company) **264 NLRB No. 118**
(offshore and onshore work performed by operator and engineer related to operation of hydraulic dredge in boat harbor awarded to unrepresented Ees referred by Teamsters rathe than Ees represented by Operating Engineers in view of E preference, economy and efficiency, including job impact)

United Association of Journeymen and Apprentices of The Plumbing and Pipe Fitting Industry of The United States and Canada, Local Union No. 195, AFL-CIO **260 NLRB No. 186**
(work of fabricating and installing pipe and pumps for fire control system at petroleum company's marketing terminal awarded to unrepresented Ees of construction company which performed construction and maintenance work for petroleum company rather than Ees represented by Plumbers)

International Union of Operating Engineers, Local 369, AFL-CIO (The Austin Company) **255 NLRB No. [illegible]**
(heavy concrete work for airport runway awarded to unrepresented Ees of E rather than Ees represented by Operating Engineers based on E's practice and preferance, work traditionally done by annU Ees, E's Ees possess superior skills)

Building and Construction Trades Council of Philadelphia and Vicinity, AFL-CIO (Neshaminy Constructors, Inc.) **265 NLRB No. 147**
(concrete work and some mechanical work in construction of large concrete structures for sewage treatment at water polution control project awarded to E's Ees represented by Steelworkers rather than Building and Construction Trades Council, in view of E preference, past practice, collective bargaining agreement, and area practice)

Laborers' District Council of Western Pennsylvania a/w Laborers' International Union of North America, AFL-CIO (Anjo Construction Co.) **265 NLRB No. 024**
(disputed work of unloading, hooking-on, signaling, handling, installation, and removal of lagging for subway construction project awarded to Ees represented by Laborers rather than Carpenters)

Oilfield Maintenance Workers Local 1234 Laborers International Union of North America (Allied/Lynn Companies, Inc.) **264 NLRB No. 184**
(disputed work of welders' helpers on lease gathering lines which move gas, water, or oil from producing wells to storage facility assigned Ees represented by Oilfield Maintenance Workers rather than Plumbers)

International Association of Bridge, Structural and Ornamental Ironworkers, Local Union No. 769, AFL-CIO (Barbourrsville Bridge Co.) **260 NLRB No. [illegible]**
(disputed work involving placement and binding together of steel rods or mesh used as reinforcement in construction of concrete support columns at construction site at bridge project awarded to Ees of E currently performing disputed work rather than to Ees represented by Ironworkers)

Plumbers, Local Union No. 741 (The Ashton Company, Inc.) **296 NLRB No. [illegible]**
(installation of all process piping, including water, air, slurry, mill water, reagent, and line slurry piping at copper mine and copper smelting facility awarded to Ees represented by Laborers rather than Plumbers)

International Union of Operating Engineers, AFL-CIO, Local 542 (Stauffer Chemical Company) **258 NLRB No. [illegible]**
(excavation of trench for installation of high pressure line between reactor building and service building at chemical manufacturing plant awarded Ees

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of non-U construction contractor rather than Ees represented by Operating Engineers)

Plumbers and Steamfitters Local Union No. 189, Plumbers (Davis-McKee, Inc.) **254 NLRB No. 151**
(installation of prefabricated circulating water pipe at municipal electric plant, including fitting and welding of segments of piping awarded E's Ees represented by Laborers rather than Plumbers in view of E preference, past practice, bargaining relationship, skills, efficiency and economy of operation)

Bricklayers & Allied Craftsmen, Local Union No. 2 of California, Bricklayers and Allied Craftsmen, AFL-CIO (E. J. Harris Construction, Inc.) **254 NLRB No. 123**
(construction of rock-rubble slope protection in canyon awarded to Ees represented by Laborers rather than Bricklayers)

Bricklayers, Local Union No. 44 **253 NLRB No. 15**
(work of *spray curing* concrete for contractor installing concrete deck on bridge surface awarded to Ees represented by Laborers rather than Bricklayers)

United Mine Workers of America; District No. 17, et al. (Elk Run Coal Company, Inc.) **251 NLRB No. 169**
(construction of coal mining complex awarded to Ees represented by Steelworkers rather than by United Mine Workers)

Local 157, Plumbers (Local 204, Laborers) **248 NLRB No. 032**
(installation of water lines, awarded to Ees represented by Laborers rather than Plumbers and Steamfitters)

Local Union No. 542, Operating Engineers (Local 15253, Steelworkers) **247 NLRB No. 159**
(clearing sites, grading for roadways, placing storm drainage, building excavation for place of driving of pilings and placing stone for site stabilization in area excavated at land fill assigned to Ees of E represented by Steelworkers rather than to Operating Engineers in view of bargaining agreement between Steelworkers and E and past practice)

7580-8060-1700 Construction - Special trade contractors

United Union of Roofers, Waterproofers and Allied Workers of Western Massachusetts and Vermont, Local No. 248 (Labor Relations Division of Construction Industries of Massachusetts) **263 NLRB No. 144**
(work of applying protective emulsion and fabric layers on concrete bridges at highway construction site for subcontractor engaged in waterproofing and coating business awarded to Ees represented by *Laborers rather than by Roofers,* in view of E's assignment and preference, area practice and economy and efficiency of operation)

International Association of Heat and Frost Insulators and Asbestos Workers, Local Union No. 41 (Close Insulation Company, Inc.) **251 NLRB No. 192**
(work of making metal jacketing for insulating contractor and constructing jacketing for contractor's customers awarded to E's unrepresented Ees rather than to Ees represented by Asbestos Workers)

Local Union No. 72, Boilermakers (Local Union No. 701, Operating Engineers) **247 NLRB No. 016**
(welding of pipes and joints at water reservoir project awarded to Ees represented by Operating Engineers rather than by Boilermakers)

Local No. 2007, Carpenters (Oliver B. Cannon and Son, Inc.) **265 NLRB No. 099**
(erection of large area suspended scaffold (*false ceiling*) to be used as work platform and protective covering by attaching I-beams to ceiling trusses with prefabricated square boxes and then placing plywood between I-beams and covering plywood with polyethylene at paper machine building and removal of suspended scaffold, awarded to E's Ees represented by Painters rather than Carpenters, in view of E's present assignment, past practice, efficiency and economy)

Laborers International Union of North America, AFL-CIO, Local No. 282 (Hartman-Walsh Painting Company 1) **263 NLRB No. 27**
(carrying paint hoses, general cleanup, removing paint cans, and carrying paint cans to worksite for E engaged in commercial and industrial painting and sandblasting at power plant construction site awarded Ees represented by Painters rather than Laborers)

International Union of Operating Engineers, Local No. 673 (Oliver B. Cannon & Son, Inc., of Florida) **256 NLRB No. 184**
(servicing and operating of air compressors incident to sandblasting and repainting of building assigned Ees represented by Painters rather than Engineers)

Local 513, International Union of Operating Engineers, AFL-CIO (United Painting Co., Inc.) **265 NLRB No. 167**
(work for E engaged in non-retail sale of painting services involving (1) operating sand and hydroblasters, compressors, and related equipment used in surface preparation work prior to painting of structures, (2) placing sand in pots used in conjunction of sandblasting and surface preparation work prior to painting of structures, and (3) driving vehicles and delivering paint supplies from painting shack to various work locations of construction project and manning painting shack awarded to Ees represented by Painters rather than Operating Engineers, Laborers, or Teamsters)

Local 3, Electrical Workers (General Dynamics Communications Co., Inc.) **264 NLRB No. 027**
(work of installing telephone system for law firm awarded to Ees represented by Communications Workers rather than Electrical Workers)

Local Union No. 3, Electrical Workers, AFL-CIO (Northern Telecom, Inc.) **262 NLRB No. 184**
(work of installing, testing, and servicing of equipment relating to installation of electronic telepone system assigned to E's Ees represented by Communications Workers rather than Electrical Workers in view of contract with CWA which specifically refers to this work, E's past practice and preference, Ee skills and economy and efficiency)

Electrical Workers, Local 104 (Teamsters Local Union No. 170) **248 NLRB No. 134**
(operation of pickup and service trucks used to transport to and from jobsite and from locations w/i site electrical construction crew employed by contractor engaged in installation of traffic signals assigned to Ees of E represented by Electrical Workers rather than to Teamsters; notwithstanding arbitration award in which contractor was found to have breached contract by subcontracting work to E not using Teamster drivers where Electrical Workers did not participate or agree to be bound and arbitrator refused to consider any factors Bd might consider)

International Brotherhood of Painters and Allied Trades of The United States and Canada, Local Union No. 91, AFL-CIO (Frank M. Burson, Inc.) **265 NLRB No. 166**
(work of perfataping installed drywalls for constuction contractor engaged in cement finishing, awarded to E's Ees represented by Plasterers rather than Painters)

Laborers International Union of North America Local 1359 (McWad, Inc.) **264 NLRB No. 180**
(operation of forklifts and skid loaders used in connection with E's masonry work at construction site awarded to Ees represented by Laborers rather than Operating Engineers)

International Union of Operating Engineers, Local NO. 139 (McWad, Inc.) **262 NLRB No. 118**
(work of operating forklifts and skid loaders in connections with E's masonry work at construction site awerded Ees represented by Laborers rather than Operating Engineers)

Construction and General Laborers' Local 118, Laborers' International Union of North America, AFL-CIO (D.H. Johnson Company) **262 NLRB No. 120**
(work of operating forklift which transports and hoists masonry materials and erects scaffolding in aid of bricklayers awarded to Ees represented by laborers rather than operating Engineers based on economy and efficiency of operation and E preference)

Construction and General Laborers, Local Union No. 449, Connecticut Laborers District Council, Laborers International Union of North America, AFL-CIO **260 NLRB No. 112**
(unloading and handling of equipment and materials used in installation of acoustical ceilings and metal stud and drywall construction at construction sites awarded to Es' Ees represented by Carpenters rather than Laborers in view of Es' assignment of work to their own Ees, current collective bargaining agreements, skills, efficiency and economy)

District Council of Painters No. 8, of The International Brotherhood of Painters and Allied Trades, AFL-CIO, et al. (Quad C Corporation) **259 NLRB No. 115**
(taping of drywall at construction site awarded to Ees represented by Plasterers rather than Painters)

Local 965, Operating Engineers (Teamsters Local 371) **249 NLRB No. 124**
(operation of cranes mounted on E's semitractor rigs to erect prefabricated floors, walls, and trusses at construction of building assigned to Ees of E engaged in manufacture, sale, and erection of fabricated building components represented by Teamsters rather than to Operating Engineers in view of E preference, area practice, relative skills and economy of operation)

7580-8060-1700—Cont.

Drywall Tapers and Finishers, Local 2006, a/w Painters (Painters, Local Union 6) **248 NLRB No. 093**
(assignment of drywall taping performed by members of E association engaged in contruction business, awarded to Ees represented by Drywall Tapers and Finishers Local 2006, rather than International Brotherhood of Painters and Allied Trades of U.S. and Canada, Local 6)

International Brotherhood of Painters and Allied Trades of The United States and Canada, Local 813, AFL-CIO (Cincinnati Floor Company) **261 NLRB No. 069**
(installing, painting, stripping and sealing of polyurethane floors at university athletic facility awarded Ees represented by Carpenters rather than Painters)

Millwrights Union Local 102, United Brotherhood of Carpenters & Joiners of America, AFL-CIO (Frederick Meiswinkel, Inc. d/b/a Meiswinkel Interiors) **260 NLRB No. 120**
(installation of computer floor, involving 11,600 square feet of false or raised floor, at IBM project awarded to Ees represented by Carpenters rather than Millwrights)

Sheet Metal Workers Local Union 156, AFL-CIO (Martin, Inc.) **259 NLRB No. 049**
(installation of grillwork in building assigned to Ees of E represented by Ironworkers rather than to Sheet Metal Workers in view of E preference, area and past practice, economy and efficiency)

Cement Masons Local Union 518 of The Operative Plasterers' and Cement Masons International Association, AFL-CIO **258 NLRB No. 025**
(work of installing acid resistant and ceramic granular flooring for E engaged in business of installing epoxy floor covering and protective wall finishes awarded to Ees represented by Painters rather than Ees represented by Cement Masons)

Local Union No. 91 of The Sheet Metal Workers International Association (Blount Brothers Corporation J & J) **255 NLRB No. 121**
(work of handling and installation of metal roof decking lighter than 10 gauge (build-up and weatherseal) fascia, drain through, gutters, downspouts, and all flashings, aluminum wall covering, and metal ceilings in construction of army ammunition plant awarded to Ironworkers rather than Sheet Metal Workers)

Sheetmetal Workers' International Association, Local Union No. 9, AFL-CIO (Elward, Inc.) **250 NLRB No. 099**
(work of installing metal panels, including walls, floors and roofs assigned in ratio of 9-1 to Ees represented by Ironworkers and Sheetmetal Workers in composite crew based on E's past practice)

Bay Counties District Council of Carpenters (Northern California Drywall Contractors Association) **265 NLRB No. 061**
(scrapping or cleanup of debris which follows installation of drywall awarded to Ees represented by Carpenters rather than Laborers)

Bay Counties District Council of Carpenters (Northern California Drywall Contractors Association) **265 NLRB No. 061**
(scrapping or cleanup which follows process of taping joints between pieces of drywall awarded to Ees represented by painters rather than laborers)

District No. 10, Machinists (Ken Thelen Co., Inc.) **264 NLRB No. 176**
(work of fabrication and erection of structural steel such as platform, stairways and floor gratings, as well as catwalks, monorails, backstops, bumpers, aisle guards, column guards, pipe guards, refrigeration and heating unit guards, and moving of equipment and welding required to erect them at brewery awarded to Ees represented by Iron Workers rather than Machinists)

Ironworkers, Local No. 86, (Kulama Erectors) **264 NLRB No. 008**
(work involving installation of metal rollbars in *Hambro* flooring system at construction site assigned to Ees represented by Carpenters rather than Ironworkers)

United Union of Roofers, Waterproofers & Allied Workers, Local 189 (Northwest Foam Systems, Inc.) **259 NLRB No. 171**
(work associated with application of foam on exterior of new buildings awarded to Ees represented by Carpenters rather than Ees represented by Roofers based on E's preference and existant contract with Carpenters)

Local 1005, Northwest Indiana & Vicinity District Council of Carpenters (J. F. Edwards Construction Company) **253 NLRB No. 103**
(work of erection and setting concrete forms, and construction and placement of wooden box-like forms for shoring up walls of foundation holes, for contractor engaged in construction of highway traffic signs and lighting signals project along Interstate Tollroad awarded to Ees represented by Laborers rather than Carpenters)

Operating Engineers, AFL-CIO, Local 542 (Power Systems, Inc.) **253 NLRB No. 08**
(operation of 2-ton portable electrical hoist and operation of three-quarter inch hand valve for transmission of plant air as tools of the trade in performance of boiler repair and maintenance work at power station awarded to Ees represented by Boilermakers rather than Operating Engineers)

Local Union No. 1333, Painters & Allied Trades **247 NLRB No. 197**
(handling and installation of alumium frame windows secured to wood blocking contracted to glass installation subcontractor assigned to Glaziers rather than to Carpenters in view of E preference, fact E had stable work force of glaziers but had to hire carpenters, and that carpenters had to be instructed in some aspects of work while glaziers possessed requisite skills)

Ironworkers Local 25 (Glaziers and Glass Workers Local Union No. 357) **247 NLRB No. 20**
(work of unloading, storing, and installing storefront framing material on three construction projects for wholesaler, installer and contractor of glass installation work awarded Ees represented by Glaziers rather than by Ironworkers)

Local Union No. 683, Electrical Workers (Ducore, Inc.) **247 NLRB No. 154**
(installation of guide wires which are imbedded in concreate flour for use by forklift guidance system, awarded to Ees represented by Laborers rather than Electrical Workers)

7580-8060-2000 Food and kindred products

Milk Drivers and Dairy Employees Local 680, Teamsters (Kraft, Inc., Dairy Group, A Division of Draft, Inc.) **265 NLRB No. 117**
(work of delivering ice cream and related products in particular geographic area of E engaged in business of manufacturing and distributing food products awarded to Ice Cream Drivers local of Teamsters rather than Milk Drivers local of Teamsters)

Brewery Workers Local No. 9, Directly Affiliated Local Union, AFL-CIO (Pabst Brewing Company) **264 NLRB No. 4**
(work involving use of battery exhanger to charge batteries of electric fork trucks at brewery awarded to Ees represented by Brewery Workers rather than Machinists)

Brewery Workers Union No. 9, DALU-AFL-CIO (Pabst Brewing Company) **263 NLRB No. 6**
(work of loading, unloading, handling, and shipping of advertising materials at E's warehouse awarded to Ees represented by Brewers rather than Laborers based on E preference, past assignments, area practice, and economy and efficiency of operations)

District 9, International Association of Machinists and Aerospace Workers, AFL-CIO (Anheuser-Busch, Inc.) **260 NLRB No. 10**
(installation, adjustment, and maintenance of hold-down parts on J-N-T packers at E's bottling factory awarded to E's Ees represented by machinists rather than sheet metal workers, in view of skills and training, economy, efficiency, job impact, E preference and assignment)

Bottlers Local Union No. 1187, a/w Teamsters **258 NLRB No. 129**
(work of receiving, storage, handling of empty bottles and related packaging functions and lubrication of equipment and fixtures used in conjunction thereof, awarded to Ees represented by Bottlers rather than Ees represented by Brewers and Malsters, Oilers, or Brewery Drivers based on existing Bd certification and resulting terms of recognition in colleqtive-bargaining agreement, E practice, skills and experience, efficiency and economy of operations, and E assignment and preference)

Brewery Workers Union Local Union No. 9, Directly Affiliated Local Union, AFL-CIO (Miller Brewing Company) **256 NLRB No. 09**
(transportation of equipment and supplies from receiving area to various locations throughout plant, outdoor cleaning, and transportation of garbage containing advertising materials at brewery awarded to Ees represented by Laborers rather than Brewery Workers)

Carpenters District Council of Milwaukee County and Vicinity of the UBC, AFL-CIO (Pabst Brewing Company) **255 NLRB No. 06**
(installation and maintenance of Hytrol Flap Opener units at E's brewery awarded millwrights represented by Carpenters rather than Ees represented by Machinists)

Carpenters District Council of Milwaukee County (District No. 10, Machinists and Aerospace Workers) **247 NLRB No. 10**
(work of installing and maintaining entire case stop assembly on pneumatic Automatic Depalletizers used at E's brewery awarded to millwrights represented by carpenters rather than machinists)

7580-8060-2600 Paper and allied products

7580-8060-2600—Cont.

Local 3–98, Western States Regional Council No. 3, International Woodworkers of America, AFL-CIO (Crown Zellerbach Corp.) **261 NLRB No. 069**

(work associated with processing of logs into chips and related tasks for E engaged in timber, pulp, and papermill business at area near millsite awarded to Ees represented by Woodworkers rather than Paper Workers)

International Union of Operating Engineers, Local 926 (Oliver B. Cannon, Inc.) **258 NLRB No. 143**

(operation of compressors used in cleaning, sandblasting, and painting maintenance work at paper mill assigned to Ees of E represented by Painters rather than to Operating Engineers in view of bargaining agreement, area practice, and E preference)

Local 32, International Longshoremen's and Warehousemen's Union (Weyerhaeuser Company) **256 NLRB No. 024**

(handling of cargo from warehouse or last point of rest to shipside at dock of manufacturer of wood products and tying and untying lines of vessels docked at E's dock awarded to Ees represented by Association of Western Pulp and Paperworkers rather than Longshoremen)

Woodworkers, Local 3–364; I.W.A. Joint Administration No. 1, Woodworkers (Local 712, United Paperworkers) **247 NLRB No. 193**

(operation, control, and maintenance of newly installed power boiler at manufacturer of paper and wood products assigned to Ees of E represented by Woodworkers rather than to Paperworkers in view of past practice, fact that new boilers will replace boilers manned by Woodworkers, and that supervisors would not have to supervise Ees from two separate units)

Norway Printing Pressmen and Assistants Union, Local 663, International Printing and Graphic Communications Union, AFL-CIO (Norway Gravure) **258 NLRB No. 060**

(work of running, *Chambon*, a new in-line cutting machine for labels awarded to Ees represented by Pressmen and Assistants Local of International Printing and Graphics Communication Union rather than Ees represented by Graphic Arts International Union based on Ee skills, economy, efficiency of operation, employer assignment and practice)

7580-8060-2700 Printing, publishing, and allied industries

New York Typographical Union No. 6, AFL-CIO (New York Times Newspaper Division of The New York Times Company) **252 NLRB No. 039**

(work of service, maintenance and repair of automated composing room equipment at plant of publisher and distributor of daily newspaper awarded to E's Ees represented by *Typographers* rather than Electricians)

Local 1294, International Longshoremen's Association, AFL-CIO (Cibro Petroleum Products, Inc.) **257 NLRB No. 037**

(Longshoremen's Local assigned line-handling work involved in anchoring ships at facility of E engaged in refining and distribution of petroleum products in preference to another Local, in view of Bd certification and bargaining agreement, economy and efficiency of operation since other Local has no bargaining agreement its members would be employed only for short periods to perform disputed work, E preference and past practice, and Internationals award of work)

Teamsters Local Union 284, a/w Teamsters (The Dispatch Printing Company) **256 NLRB No. 063**

(operation of forklifts or similar devices for movement of preprinted, preinserted bundles from dock area to delivery trucks at E's facility awarded to E's Ees represented by Mailers rather than Teamsters)

Newspaper Guild of New York, Local 3, The Newspaper Guild, AFL-CIO **255 NLRB No. 082**

(operation of Dec computer peripheral printer and Standard Register 2500 bursting/decollating machine used in production of label/wrappers at newspaper plant awarded to Ees represented by Newspaper Guild rather than mailers)

Local Union No. 3, Electrical Workers (New York News, Inc.) **255 NLRB No. 051**

(maintenance of Log-E Scanner electronic equipment for newspaper publisher awarded to Ees represented by Electrical Workers rather than Typographical Union)

Newspaper and Mail Deliverers Union of New York and Vicinity (Newark Morning Ledger Company) **255 NLRB No. 027**

(work of handling of newspapers and equipment after newspapers are wire tied by tying machines in publisher's mailroom at plant awarded to Ees represented by Newark Mailers Union No. 11 rather than NMDU of New York and vicinity)

New York Typographical Union No. 6, International Typographical Union, AFL-CIO (New York News, Inc.) **252 NLRB No. 090**

(maintenance and servicing of electronic publishing system awarded to Ees represented Typographical U rather than those represented by Electrical Workers based on their superior skills and training, economy and efficiency of operation, job impoct, E preference and assignment)

Columbia Typographical Union No. 101, Affiliated with International Typographical Union, AFL-CIO (The Washington Post Company) **251 NLRB No. 026**

(work of operating scanner portion of EOCOM facsimile machine awarded to Ees represented by Typographical U rather than those represented by Graphic Arts U based on economy and efficiency of operation, past practice and E preference)

Newspaper Guild of New York, Local 3, The Newspaper Guild, AFL-CIO-CLC (New York Times Newspaper Division of The New York Times Company) **249 NLRB No. 135**

(recording of news stories called in by reporters and transcribing these recordings into video display terminal or typewriter at newspaper recording room assigned to Ees represented by Newspaper Guild rather than Typographers on basis of E's past practice, efficiency and economy of E's operations, skills and work involved and job impact)

Newspaper & Mail Deliverers' Union of New York & Vicinity (New York Mailers' Union No. 6) **247 NLRB No. 080**

(work of operating auxiliary control panel located at bundle entry device during distribution of newspaper for city circulation at facility of E engaged in business of publishing morning daily and Sunday newspaper, awarded to Ees represented by Drivers rather than Mailers)

Buffalo Printing Pressmen, Assistants and Offset Workers, Local Union No. 27 (Graphic Arts International Union, Local 17–B) **247 NLRB NO. 194**

(operation of delivery room conveyor lines equipment in production of newspaper at E engaged in printing books and magazines, awarded to Ees represented by Pressmen rather Bookbinders)

Minneapolis Printing and Graphic Communications Union, Local 20 (Johnson Printing Co., Inc.) **261 NLRB No. 193**

(operation of (1) Thermo-Former Machine and (2) Finester Windowing Machine, Model D for E engaged in commercial printing and packaging awarded to Ees represented by Pressmen rather than Bookbinders)

International Typographical Union, Dayton Typographical Union, Local No. 57, AFL-CIO (The Reynolds and Reynolds Company) **255 NLRB No. 079**

(operation of phototypesetting machine referred to as Comp-Edit machine at plant printing commercial and business forms awarded to Ees represented by Typographical Union rather than Graphic Arts Union)

Paper Handlers' and Sheet Straighteners' Union Local No. 1, International Printing and Graphic Communications Union, AFL-CIO (American Bank Note Company) **255 NLRB No.038**

(stacking of sheets of interleaving tissue paper on automatic feeding mechanism of Giori press for E engaged in printing of securities, bonds and similar documents awarded to Ees represented by Plate Printers rather than Paper Handlers)

Cincinnati Mailers Union No. 17 (S. Rosenthal & Company, Inc.) **265 NLRB No. 125**

(disputed work of work beyond the fifth knives, or trimmers on the Harris Perfect Binders at E's bindery plant involving tying or shrink-wrapping of commercial work or publications which are then mailed or distributed to newstands awarded to Ees represented by Mailers rather than Graphic Arts)

7580-8060-2800 Chemical and allied products

Warehouse Union Local 6 (Paint Makers and Allied Trades Union Local 1975, AFL-CIO) **247 NLRB No. 035**

(transferring paint and paint-related materials directly from holding tanks to tank trucks for paint manufacturer assigned to Ees represented by Paint Makers rather than by Longshoremen's and Warehousemen's Union)

7580-8060-2900 Petroleum refining and related industries

Plumbers, Local 195 (Gulf Oil Corporation) **265 NLRB No. 067**

(joining, welding, carrying, and laying of 8-inch polyethylene pipe of 14,000 feet from waste water treatment pond at oil refinery awarded to unrepresented Ees of subcontractor rather than pipefitters, as subcontractor has never used Ees represented by Pipefitters, E's Ees are qualified to do job and do it more efficiently because they are able to, and do, interchange job classifications)

7580-8060-3200 Stone, clay, glass, and concrete products

7580-8060-3200—Cont.

Painters Union Local No. 786 (Pittsburgh Corning Corporation) **262 NLRB No. 52**

(work of painting modified lehrs and furnaces within cellular glass manufacturing area of plant awarded to Ees represented by Glass Workers rather than Painters)

Sand, Gravel & Crushed Stone Workers Union, Local No. 681, a/w The Laborer's International Union of North America, AFL-CIO (Elmhurst-Chicago Stone Company) **263 NLRB No. 138**

(maintenance and repair of heavy mobile machinery in shop of stone mining company awarded to Ees represented by Operating Engineers rather than Laborers)

Laborers International Union of North America, Local Union No. 282 **258 NLRB No. 123**

(operation of secondary crusher at E's stone quarry awarded Ees represented by Laborers rather than Operating Engineers)

7580-8060-3300 Primary metal industries

United Steelworkers of America and Its Local Union No. 5724, AFL-CIO (Ormet Corporation) **260 NLRB No. 072**

(operation of 60-ton Thurman Load Cell truck scale for weighing incoming and outgoing trucks located at main entrance of E's aluminum ore processing plant awarded to Ees represented by Plant Guard Workers rather than Ees represented by Steelworkers)

7580-8060-3400 Fabricated metal products, except ordnance, machinery, and transportation equipment

Local 542, Operating Engineers (Georgia Pacific Corporation) **253 NLRB No. 061**

(work of hoisting drywall and metal support brackets for delivery above ground floor level at customer's construction site for E engaged in manufacture and supply of building construction materials awarded to Ees represented by Teamsters rather than Operating Engineers)

Laborers District Council of Baltimore and Vicinity, a/w The Laborers International Union of North America, AFL-CIO (Potts & Callahan, Inc.) **265 NLRB No. 080**

(setting, leveling, and securing of prefabricated metal and individually constructed wooden highway barrier forms used to form permanent concrete barrier walls on street project for E engaged in heavy and highway construction business, awarded to Ees represented by Laborers rather than Carpenters)

7580-8060-3500 Machinery, except electrical

Millwright-Technical Engineers Local 2158 of The United Brotherhood of Carpenters and Joiners of America (FMC Corporation, MHS Division) **259 NLRB No. 011**

(installation of overhead power and free conveyor system at foundry for material handling manufacturer assigned Ees represented by Ironworkers rather than Millwrights)

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmith, Forgers and Helpers, AFL-CIO-CLC (Mechanical Systems, Inc.) **259 NLRB No. 168**

(work involving portion of construction of nonpressurized reverse air baghouse at foundry awarded to Ees represented by Local 111 of Ironworkers rather than to Ees represented by Lodge No. 60 of Boilermakers)

Local 172, Sheet Metal Workers (The Wing Company, Division of Wing Industries, Inc.) **263 NLRB No. 116**

(set-up and operation of machinery used in fabrication and assembly of finned tubes awarded to E's Ees represented by Sheet Metal Workers rather than Electrical Workers in view of economy and efficiency of operation and Ee assignment and preference)

7580-8060-3600 Electrical machinery, equipment, and supplies

Sprinkler Fitters Local 703, Plumbers (Airco Carbon, Div. of Airco, Inc.) **261 NLRB No. 162**

(work of installing dual-purpose waterline at worksite of manufacturer of graphitized electrodes and anodes awarded to E's Ees represented by Laborers rather than Sprinkler Fitters in view of E assignment, practice, economy and efficiency of operation)

Local 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **258 NLRB No. 081**

(installation of switch in automatic telephone system assigned to Ees of E engaged in sale, installation and servicing of private telephone intercom equipment including switch, represented by Communications Workers, rather than to Ees of another E represented by Electrical Workers, to which E had subcontracted installation of system except for switch, in view of E preference and custom, fact only contractor's Ees had necessary expertise, and on basis of bargaining agreement)

Local 701, International Brotherhood of electrical Workers (The University of Chicago d/b/a Argonne National Laboratory) **265 NLRB No. 140**

(installation of cable tray and cable w/i area known as beam line, which extends between Rapid Cycling Synchrontron and neutron target in connection with Intense Pulse Neutron Source project at Argonne, Illinois, awarded to E's Ees represented by Machinists rather than IBEW in view of contract between University and Department of Energy, past practice, present assignment, efficiency, economy, safety and Davis-Bacon Act determination)

7580-8060-3700 Transportation equipment

Millwrights and Machine Erectors Local No. 1906, Carpenters (Sheet Metal Workers', Local Union 19) **249 NLRB No. 025**

(erection of Eaton-Kenway automated mini-load storage system at automobile manufacturer's parts warehouse awarded to Ees represented by Sheet Metal Workers rather than Millwrights)

7580-8060-3800 Professional, scientific, and controlling instruments; photographic and optical goods, watches and clocks

International Brotherhood of Electrical Workers, Local Union No. 292, AFL-CIO (Frantz Klodt & Son, Inc.) **259 NLRB No. 084**

(installation of wire molding, nonpermanent wiring, and related electrical work at premises leased by E manufacturing temperature control systems, computers, and military defense systems assigned Ees represented by Teamsters rather than Electrical Workers)

7580-8060-4200 Motor freight transportation and warehousing

Brotherhood of Railway, Airline, and Steamship Clerks, System Board No. 94 (Pacific Motor Trucking Company) **256 NLRB No. 148**

(operation of cathode ray tube computer terminals at truck repair and maintenance shops of one of trucking company's facilities awarded Ees represented by Machinists and Teamsters rather than those represented by Railway Clerks)

Dallas General Drivers, Local 745 (Local 714, Operating Engineers) **247 NLRB No. 116**

(all fork-lift or fork truck work involving relocation, installation or removal of machinery or equipment in existing construction performed by Ees of specialized common carrier engaged in heavy equipment drayage and rigging and trade show convention handling assigned either to Ees represented by Teamsters and/or to Ees represented by Operating Engineers but to neither exclusively in view of E's past practice and E's desire to continue it)

Local Union No. 12, Distillery Workers (Distribution Systems Division, AJF Industries) **257 NLRB No. 125**

(Ees of E engaged in warehousing and distribution of general dry goods and drugs represented by distillery workers rather than Ees of E represented by Teamsters assigned work of handling all products other than those related to drugs, liquors, or toiletry items, which involve handling of originally shipped food stuffs, packing and wighing for retail orders, movement of individual packages of small appliances, movement, storage and inventory control, cleaning up areas where food stuffs stored, and working in area where small items stored)

International Longshoremen's Association and its Locals No. 1413–1465, AFL-CIO (Bridge Terminal, Inc.) **252 NLRB No. 097**

(unloading of cargo vessels at docks located near E's cold storage warehouse not awarded to Longshoremen but rather to unrepresented Ees of E hired persuant to oral agreement with Teamsters which anticipated they be added to Teamsters unit to perform unloading and obviate need for Longshoremen, in view of economy and efficiency and E preference since Longshoremen's agreement would require more Ees to perform work and shorter shifts)

7580-8060-4400 Water transportation

Local 1332, International Longshoremen's Association, AFL-CIO (Trailer Marine Transport Corporation) **264 NLRB No. 061**

(work involving movement of trailers on and off oceangoing barges and maintenance and inspection of said trailers at New Jersey terminal for E engaged in transport of cargo as common carrier awarded to Ees represented by United Industrial Workers, etc., SIU, rather than Longshoremen's Association)

International Longshoremen's Association #1922; and International Longshoremen's Association #1526 (Sea-Land Service, Inc. (Atlantic Division)) **249 NLRB No. 069**

(disputed work of performing maintenance work on shoreside container crane for E engaged in containerized ocean transportation business at its loading facility awarded Ees represented by Marine Engineers and Seafarers rather than by Longshoremen)

7380-8060-4400—Cont.

General Truck Drivers, Chauffeurs & Helpers Union, Local No. 692, Teamsters (Sea-Land Service, Inc. (Pacific Division)) **258 NLRB No. 055**
(transporting and grounding of empty shipping containers outside container yard but near marine yard awarded to Ees of shipping company represented by Teamsters rather than Ees represented by Longshoremen)

International Longshoremen's Association, Local No. 1830, AFL-CIO (Ryan-Walsh Stevedoring Company, Inc.) **256 NLRB No. 113**
(longshore work involved in loading and unloading grain at E's new grain transfer facility in Convent, La. awarded to Ees represented by Baton Rouge Locals rather than New Orleans Locals of Longshoremen's Association)

7580-8060-4500 Transportation by Air

Local 85, Teamsters (Emery Air Freight Corporation) **262 NLRB No. 072**
(work of loading and unloading freight at airport onto and off delivery trucks of air freight forwarding company awarded to unrepresented Ees of E engaged in performing such services under contract with businesses and the United States, rather than to Ees represented by Teamsters)

7580-8060-4700 Transportation services

Local 295, Teamsters (Emery Air Freight Corporation) **255 NLRB No. 135**
(loading and unloading of trucks and aircraft, breakdown of containers and pallets, transfer to FMC loader or its equivalent and transfer to and from aircraft, incidental to shipping by E's leased, owned, or chartered aircraft, awarded to subcontractor E's Ees represented by Transport Workers rather than Teamsters, in view of company practice pursuant to contract with that U, E preference, economy and efficiency)

7580-8060-4800 Communication

Local 659, Stage Employees (King Broadcasting Co., d/b/a KGW-T) **264 NLRB No. 106**
(work of operating mini-cameras in newsroom which are mounted on tripods with wheels and connected by cable to control booth awarded to Ees represented by IBEW rather than those represented by IATSE based on E preference, economy and effeciency of operation; also Bd considered fact that mobile mini-cameras which are placed on tripods and connected to control booth are more properly viewed as extensions of stationary studio cameras which film news after it has been gathered and different from portable hand-held mini-cameras)

International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of The United States and Canada (Metromedia, Inc.) **260 NLRB No. 052**
(work of operation of portable handheld electronic cameras for live transmission of election eve coverage awarded to Ees represented by IATSE based on Ees' skills, economy, efficiency and E preference)

Theatrical Protective Union No. One, I.A.T.S.E., AFL-CIO (American Broadcasting Company, A Division of American Broadcasting Companies, Inc.) **249 NLRB No. 148**
(carrying and handling of handheld, mobile electronic television monitor used for cuing actors awarded to Ees represented by Theatrical Protective U, I.A.T.S.E., rather than Ees represented by National Association of Broadcast Ees and Technicians because of E's past practice, relative skills, job function and job impact)

7580-8060-4900 Electric, gas, and sanitary services

Local Union No. 702, Electrical Workers (Central Illinois Public Service Company) **254 NLRB No. 186**
(operation, inspection and maintenance of electrical transformers, breakers, switches and related equipment at E's substations adjacent to its power station, and maintenance of E's KV loop transmission line awarded Ees represented by Electrical Workers rather than Operating Engineers)

7580-8060-5000 Wholesale trade - durable goods

International Longshore Workers Union, Local No. 62-B (Alaska Timber Corporation) **261 NLRB No. 153**
(work of loading lumber on to ships of customers of E at E's private docking facility (formerly done by different unionized E) awarded to unrepresented Ees of E rather than to Ees represented by ILWU in view of: E's preference and past practice; economy to E; and fact of insufficient evidence to determine if there was an industry practice)

Plumbers Union Local No. 15, etc. (Minnesota Tile Supply Company) **258 NLRB No. 064**
(work of installing or mounting corian basins in guestrooms and public restrooms at hotel construction site for E engaged in business of supplying ceramic tile and related products awarded to unrepresented Ees rather than Ees represented by Plumbers)

International Longshoremen, Local No. 54 (General Teamsters Local No. 439) **248 NLRB No. 103**
(transportation of scrap metal from yard of E engaged in non-retail sale of scrap metal to dockside assigned to Ees of E represented by Teamsters, rather than to Longshoremen in view of collective bargaining agreement)

7580-8060-5300 Retail trade-general merchandise

Retail and Wholesale Warehousemen's Union, Local No. 130 (Nordstrom, Inc.) **250 NLRB No. 115**
(work of loading and unloading trucks at E's distribution center for retailing clothing and shoes awarded to Ees represented by Retail and Wholesale Warehousemen rather than Teamsters, in view of E preference, economy and efficiency of operation, and company practice)

Teamsters Union Local No. 117, a/w Teamsters (Tradewell Stores, Inc.) **256 NLRB No. 187**
(removing cargo from Rapistan conveyor belt system and placing cargo on pallets in trailers at E's grocery distribution center awarded to E's Ees represented by Teamsters local that represents warehousemen, rather Teamsters local that represents E's loaders and drivers)

IBT, General Warehousemen and Employees Union, Local 636 (Gimbel Brothers, Inc. **251 NLRB No. 177**
(operation of freight elevators when used to haul store merchandise at E's store assigned to Ees represented by Teamsters rather than Service Employees)

7580-8060-7300 Miscellaneous business services

Operating Engineers, Local 926 (George L. Smith, II, Georgia World Congress Center) **254 NLRB No. 116**
(operation of forklifts to receive incoming freight and erect and dismantle exhibits at trade show assigned to Ees furnished by temporary help service rather than to individuals represented by Operating Engineers in view of E practice and preference, economy of operation and fact no particular skill or training required)

7580-8060-7600 Miscellaneous repair services

Boilermakers, Local Lodge No. 193, AFL-CIO (Capitol Boiler Works, Inc.) **263 NLRB No. 171**
(replacement of 30-foot section of fabricated sheet metal in boiler of PEPCO facility awarded to Ees represented by Boilermakers' Local 518 rather than to its Local Lodge No. 193 on basis of company practice and preferance)

7580-8060-7800 Motion pictures

National Association of Broadcast Employees and Technicians, AFC Local 15, AFL-CIO (Lee Rothberg Productions, Inc.) **260 NLRB No. 043**
(timing function performed in connection with production of vidio tape television commercials awarded to Ees represented by National Association of Broadcast Employees and Technicians on basis of E's preference as well as skills and economy and efficiency of operations)

Theatrical Protective Union, Local One, IATSE, AFL-CIO (Twentieth Century-Fox Film Corporation) **255 NLRB No. 120**
(moving, handling, and placement of cables, props, dollies, cameras, and related equipment at Madison Square Garden in New York City during filming of motion pictures using only E's own equipment and Garden as backdrop for its performers awarded to Ees represented by Motion Picture Studio Mechanics rather than Theatrical Protective Union)

7580-8060-7900 Amusement and recreation services, except motion pictures

Theatrical Protective Union No. One, Stage Employees, AFL-CIO (CBS, Inc.) **263 NLRB No. 136**
(work of installing wood veneer product with canvas-mesh backing for shows in TV studios of national TV network in New York City assigned to Ees represented by Theatrical Protective Union rather than United Scenic Artists)

7580-8080 Scope of award

7580-8080-0100 Generally

N.L.R.B. v. International Union of Operating Engineers, Local 571, AFL-CIO **624 F.2d 846 (C.A. 8, 1980)**
(remedy affecting U's activities with other Es in city not overly broad, since it proscribes only conduct with unlawful jurisdictional objective)

7580-8080-1000 Limited to instant dispute

International Longshore Workers Union, Local No. 62-B (Alaska Timber Corporation) **261 NLRB No. 153**
(loading customers' ships)

International Brotherhood of Painters and Allied Trades of The United States and Canada, Local 813, AFL-CIO (Cincinnati Floor Company) **261 NLRB No. 069**
(request for broad work award of disputed work to Carpenters applicable throughout Painters' territorial jurisdiction, denied in absence of evidence that Painters would again resort to action proscribed by 8(b)(4)(D))

7580-8080-1000—Cont.

International Union of Operating Engineers, Local 926 (Oliver B. Cannon, Inc.) **258 NLRB No. 143**
(E's request for broad award applying to all similar work disputes arising between it and U, denied, since U used proscribed means to force assignment of work to Ees it represented for very brief period, and E has not shown U is likely to engage in similar conduct in order to obtain work similar to that in dispute)

Theatrical Protective Union, Local One, IATSE, AFL-CIO (Twentieth Century-Fox Film Corporation) **255 NLRB No. 120**
(request to expend scope of award beyond E in this proceeding and jobsite in question denied)

Bricklayers, Local Union No. 44 **253 NLRB No. 15**
(where issuance of *broad work award* soughtby Laborers' U was not warranted)

7580-8080-2000 Similar dispute within entire geographic area of employer's normal operations

Sheetmetal Workers' International Association, Local Union No. 9, AFL-CIO (Elward, Inc.) **250 NLRB No. 099**
(scope of award encompasses whole state where E operates because nature of E's business, i.e., performing various jobs at one time with stable work force which is constantly interchanging, indicates that dispute is not restricted to one jobsite and dispute likely to arise again)

7580-8080-5000 Similar disputes on jobs of particular employer in geographic area where competing unions' jurisdictions coincide

Local Union No. 3, Electrical Workers, AFL-CIO (Northern Telecom, Inc.) **262 NLRB No. 18**
(E's request for broad award covering E's work in any area in which jurisdictions of CWA and Electrical Workers coincide granted because disputed work has been continuous source of controversy between two Us, other disputes are likely, Electrical Workers have proclivity to engage in unlawful secondary boycott activity over this work and have job policy and bylaw which induces such unlawful conduct)

7580-8080-5500 Similar disputes on jobs of particular employer within the unions' geographic jurisdiction

International Union of Operating Engineers, Local 926 (Oliver B. Cannon, Inc.) **258 NLRB No. 14**
(E's request for broad award applying to all similar work disputes arising between it and U, denied, since U used proscribed means to force assignment of work to Ees it represented for very brief period, and E has not shown U is likely to engage in similar conduct in order to obtain work similar to that in dispute)

7580-8080-6000 Similar disputes involving the same contractors on the same project

Local No. 2007, Carpenters (Oliver B. Cannon and Son, Inc.) **265 NLRB No. [illegible]**
(request for broad work award to cover disputed work by any painting contractor at papermill rejected where record contains no evidence that Carpenters will resort to unlawful means in future to obtain disputed work)

566 EXCESSIVE OR DISCRIMINATORY MEMBERSHIP FEES - (SEC. 8(b)(5))

2000 NATURE AND SCOPE OF PROSCRIPTION

2001 GENERALLY

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**

(statute does not define the term *excessive* The legislative history of the Act shows that the purpose of Section 8(b)(5) was to prevent the circumvention of Sections 8(a)(3) and 8(b)(2), which interdict closed shops, by the device of requiring new members to pay exhorbitant initiation fees)

2033 DESIGNED TO PREVENT IMPOSITION OF HIGH FEE TO PROTECT JOB SECURITY

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**

2067 TERMS ARE TO BE READ IN THE DISJUNCTIVE

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**

4000 EXCESSIVE OR DISCRIMINATORY FEE

Brewery and Soft Drink Workers, Liquor Drivers and New and Used Car Workers, Local 1040 Teamsters (Pepsi-Cola Bottling Company; et al.) **249 NLRB No. 039**

(where U's decision to raise fees was part of overall reevaluation of initiation fees at all named Es as required by parent body, fact that fees at charging party E were raised 500 percent which was much more than at others not violative where no unlawful intention to create closed shop or monopolize employment for U members existed)

4017 UNLAWFUL IF EITHER EXCESSIVE OR DISCRIMINATORY INITIATION FEES

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**

(contention that increased initiation fee restrained applicants from accepting jobs with E rejected; evidence of increase in ratio of number of interviews of applicants to number of jobs filled by E valueless where E failed to give basis for his figures or describe records he consulted to refresh his recollection)

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**

(initiation fee held not excessive where it was 112 percent of Ees' average weekly wage, and it was not shown to be excessive in comparison with initiation fees in that *particular industry*)

6000 RELEVANT FACTORS

6000-0100 Generally

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**

(evidence of U's motive, object, or purpose in imposing initiation fee irrelevant to whether it was excessive)

6033 INITIATION FEE OF OTHER UNIONS IN PARTICULAR INDUSTRY

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**

(GC's evidence of initiation fee charged by U representing Ees of polyvinyl chloride resins manufacturers too limited and the manufacturers do not constitute *a particular industry* w/i meaning of 98(b)(5); but, assuming they did constitute such industry, difference between initiation fee herein and highest fee elsewhere in such industry not excessive)

6067 WAGES CURRENTLY PAID TO EMPLOYEES AFFECTED

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**

(initiation fees of 112 percent of Ees' average weekly wage herein found not excessive)

8000 AFFIRMATIVE DEFENSES

572 PAYMENT FOR SERVICES NOT PERFORMED - (SEC. 8(b)(6))

0100 GENERALLY

5000 SCOPE OF PROSCRIPTION

578 PICKETING FOR RECOGNITION AND BARGAINING

0100 GENERALLY

2000 CONDUCT PROHIBITED WHEN FOR PROHIBITED OBJECT

2025 PICKETING

2025-0100 Generally

Retail Clerks Local 1357 (Genuardi Super Markets, Inc.) **252 NLRB No. 124**
(U's picketing of E (who purchased bankrupt store and failed to hire Ees of bankrupt E) to induce it to give preferential hiring consideration to former Ees has permissible object)

2025-6700 What constitutes picketing

2025-6775 Absence of picket signs

Local 282, Teamsters (The General Contractors Association of New York, Inc.) **262 NLRB No. 055**
(actions which conveyed *signal* to drivers of delivery trucks to refuse to make deliveries constituted picketing notwithstanding there were no picket signs)

4000 PROHIBITED OBJECTS - FORCING OR REQUIRING

4025 AN EMPLOYER TO RECOGNIZE OR BARGAIN WITH A LABOR ORGANIZATION AS REPRESENTATIVE OF HIS EMPLOYEES

Yates Industries, Inc., California Division **264 NLRB No. 161**
(Local U engaging in strike and picketing with object of forcing or requiring E to recognize and bargain with it as sole representative of its Ees, where it was not certified representative of its Ees, and E had recognized International (from which U had attempted to disaffiliate and affiliate with another International), and Local as joint representatives in contract still effective and thus qcr could not appropriately be raised, unlawful, notwithstanding U did not instigate strike since U representative demonstrated control over strikers and ratified action of strikers)

4025-5000 What constitutes recognition and bargaining

4025-5050 To obtain initial acceptance as representative

Local 137, Sheet Metal Workers International Association, AFL-CIO (Walter Sign Corporation) **260 NLRB No. 191**
(organizational and representational object shown by one U representative's presentation of U authorization cards and both U representatives' solicitation of contracts with E)

Sheet Metal Workers Union Local No. 3 (McCarthy Heating & Air Conditioning Services, Inc.) **253 NLRB No. 053**
(U's picketing had unlawful objective of forcing E to recognize U as Ees' representative rather than, as contended, protecting area standards, where U showed Ees disparity between their conditions and those of Ees it represented, made notes on Ees' attitude toward U and prior U membership, inquired about minorities and females, and told Ees it was picketing to benefit them, that they could have a U shop and get more benefits as such through U's leadership)

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO **252 NLRB No. 156**
(U's picketing E for over 30 days w/o filing ptn for purpose of securing recognition, unlawful; U not permitted to present evidence regarding possibility of alter ego, joint E, or successorship relationship between picketed E with which U had no bargaining relationship, and another E with which had longstanding relationship, thus rendering picketing for continued ratherthan initial recognition, where same theories had been rejected by GC in refusing to issue complaint in prior ULP case and no ULP charge that would impede processing of R ptn)

Carpenters Local Union No. 1622 (Paul E. Iacono Structural Engineer, Inc.) **250 NLRB No. 056**
(U's picketing for more than 30 days w/o filing *R* ptn violative since picketing was for recognitional purposes, notwithstanding U's disclaimer and claim that it was protesting E's standard labor costs, where U had never investigated whether E's labor costs were substandard and subsequent to its disclaimer and contemporaneously with picketing, it had attempted to organize E's Ees)

United Mine Workers of America, District 17 (Corvette Coal Company) **JD-167-82**

Local No. 340, Electrical Workers (Warren B. Burgess, d/b/a AJR Electric) **JD-(SF)-165-80**
(U's picketing construction site with placards protesting subcontractor's prevailing wages and working conditions held violative, since creditable testimony showed that object of picketing was to force subcontractor to *sign up* with U; U was not currently certified as Ee representative and had failed to file ptn under Sec. 9(c) of Act w/i 30 days from commencement of picketing)

N.L.R.B. v. Sheet Metal Workers Union Local No. 3 **662 F.2d 513 (C.A. 8, Oct 1981)**
(U agent's oral and written representations to E's Ees during picketing comparing U with non-U benefits and his admission that U might seek to organize them in the future indicated unlawful organizational purpose)

4025-5062 To enforce prehire agreement

Operating Engineers, Local Union No. 150 (Tri-City Excavating, Inc.) **255 NLRB No. 083**
(U's picketing of E for more than 30 days not violative where parties had had 8(f) contract and U was picketing to protest E's failure to comply with pension fund contribution provisions; 8(f) contract was voluntary and U was seeking payment of alleged past indebtedness and not trying to require current application of new contract)

4025-5083 Not applicable to union entitled to recognition

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO **252 NLRB No. 156**
(U's picketing E for over 30 days w/o filing ptn for purpose of securing recognition, unlawful; U not permitted to present evidence regarding possibility of alter ego, joint E, or successorship relationship between picketed E with which U had no bargaining relationship, and another E with which had longstanding relationship, thus rendering picketing for continued ratherthan initial recognition, where same theories had been rejected by GC in refusing to issue complaint in prior ULP case and no ULP charge that would impede processing of R ptn)

6000 INDICIA OF OBJECTIVE

6001 GENERALLY

San Diego Typographical Union No. 221, AFL-CIO (Central Typesetting, Inc., d/b/a Central Graphics) **264 NLRB No. 119**
(U's previous picketing or shortness of hiatus in picketing cannot, alone, establish whether picketing had recognitional or organizational object)

6007 PICKET SIGNS

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) **JD-(SF)-110-81**
(violation, where U, which had demanded recognition, intermittently picketed buildings where Ees of janitorial service were working for three months w/o filing ptn since picketing was for recognition where picket signs said *Ees of E on strike*, U distributed handbills informing public that Ees received substandard wages even though U represented majority of Ees and that its objective was U contract; U's contention that its objective changed from recognitional to informational, rejected, where it never informed E or membership that it was no longer seeking to organize contractor's Ees)

6007-3300 Signs advising public employer does not have contract

San Diego Typographical Union No. 221, AFL-CIO (Central Typesetting, Inc., d/b/a Central Graphics) **264 NLRB No. 119**

(U picketing w/i a year of valid election, violative, where picket signs and handbills which stated that E did not have contract with nor employed members of U implied that U considered its quarrel with E would cease when E employed U members or entered into contract with U and therefore, contrary to U's contention, picketing did not have non-coercive, informational objective)

Retail Store Employees Union Local 214, Affiliated With United Food & Commercial Workers International Union, AFL-CIO & CLC (Pick-N-Save Warehouse Foods, Inc.) **252 NLRB No. 086**

(while picketing was ostensibly informational, signs utilized by U protesting E did not have contract with U and did not employ members of U left no doubt of recognitional object)

Ogden Enterprises, Ltd. (Local 471, Restaurant Employees) **248 NLRB No. 046**

(notwithstanding U's picket signs and leaflets stating that E did not have contract with U and U's alleged purpose of persuading public to patronize restaurants with U contracts, Bd held U's picketing tantamount to demand for recognition where U neither pikceted all nonU restaurants nor did it attempt to inform public which restaurants had agreements with U; additionally U made no attempt to inform either public or E that it was not seeking recognition, and it was U's chief organizer, not business manager, who initially contacted and later met with E for purpose of discussing the picketing)

Local 1506, Carpenters (Best Drywall Co.) **JD-(SF)-266-79**

(picket signs held not to come w/i second proviso because of failure to state that E did not employ members of, or have a contract with, U)

6007-5000 Signs protesting violation of contract or agreement

Operating Engineers, Local Union No. 150 (Tri-City Excavating, Inc.) **255 NLRB No. 083**

(U's picketing of E for more than 30 days not violative where parties had had 8(f) contract and U was picketing to protest E's failure to comply with pension fund contribution provisions; 8(f) contract was voluntary and U was seeking payment of alleged past indebtedness and not trying to require current application of new contract)

6007-6700 Area standards signs

Miscellaneous Drivers and Helpers Union Local 610 (Tower Hotel, Inc.) **JD-238-80**

(U's picketing of E with signs stating wages and working conditions of E were not equal to those of U members and also containing recognitional disclaimer not violative where U had contract with another E which did establish area standards, U was aware of wages, though not fringe benefits, paid to Ees of picketed E, U made no cliam to represent Ees of E)

Congress of Independent Unions and Southern Sun Electric Corporation v. N.L.R.B. **620 F.2d 172 (C.A. 8, 1980)**

(U's picketing violative since E had lawfully recognized another U; respondent U's picketing had recognitional object where letters to E and pickets stated that Ees were working under conditions substandard to those enjoyed by its members and picketing commenced w/i 2 weeks of Bd overruling its objections to election)

Joseph H. Solien, RD v. Teamsters Local No. 610 **484 F.Supp. 1240 (DC E.D. MO, Feb. 1980)**

(signs which stated Ees of E who were represented by another U were not being paid wages comparable to those paid Ees represented by U picketing and that picketing was informational and had no organizational or recognition objective, indicative of area standards objective, notwithstanding area standards should encompass more than those comparable to Ees represented by picketing U; contention U failed to meet burden of investigating wages and working conditions in defining area standards, rejected, since statement does not have to be totally accurate to be protected by first amendment)

6014 PLACE OF PICKETING

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO (Earl J. Engle, Attorney on Behalf of R & F Grocers, Inc.) **252 NLRB No. 186**

(where E and U had collective-bargaining relationship at one location and E's sons opened same type of store at second location U's recognitional picketing at second store w/o filing representative petition violative)

6028 STATEMENNTS OF PICKETS

N.L.R.B. v. Sheet Metal Workers Union Local No. 3 **642 F.2d 513 (C.A. 8, Oct 1981)**

(U agent's oral and written representations to E's Ees during picketing comparing U with non-U benefits and his admission that U might seek to organize them in the future indicated unlawful organizational purpose)

6031 STATEMENTS OF UNION LEADERS

Local 137, Sheet Metal Workers International Association, AFL-CIO (Walter Sign Corporation) **260 NLRB No. 191**

(organizational and representational object shown by one U representative's presentation of U authorization cards and both U representatives' solicitation of contracts with E)

Retail Clerks Local 1357 (Genuardi Super Markets, Inc.) **252 NLRB No. 124**

(picketing which U claimed informational held to be for recognition and thus unlawful where at rally immediately preceding start of picketing U officials stated: *this place will be U* and also *who needs the U-E*)

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 082**

(U's picketing for recognitional object after E's lawful recognition of another U, unlawful, notwithstanding factors which favored finding picketing was not for proscribed object, where *Please do not patronize* picket sign language imported present object of organization and GC needed only to demonstrate that recognition or organization is an object; U officials, testified that there would be no picketing if U represented Ees, and such admissions have been basis for finding proscribed object and officials' self-serving statements herein are not determinative)

Carpenters Local Union No. 2361 (Adams Insulation Co., Inc. **248 NLRB No. 089**

(U wrote contractor stating that subcontractor was not signatory to U contract and therefore would engage in *publicity* picketing, and 5 weeks later did picket for 1 day with some Ees walking off job; contention that letter was legally equivalent to picketing because it contained coded threat to engage in recognitional picketing which started 30 day clock running from receipt of letter, rejected, as letter exhibited intention to engage in publicity picketing, contained no threat regardless of what object U had in mind)

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**

(picketing non-U contractor on construction project violative where testimony refuted U's alleged area standards object and, conversely, indicated a recognitional object in view of U's failure to investigate what wages and benefits were being paid, U business manager's statement indicating that U was determined to picket contractor before it learned what wages and benefits contractor intended to pay, and his statement to project officials that only thing he could recommend to avoid disruption on job was for contract or to sign agreement with U)

Carpenters Local 316, United Brotherhood of Carpenters and Joiners of America, AFL-CIO **JD-(SF)-316-80**

(U's picketing of joint venture with informational area standards signs for more than 30 days violative where U's agents revealed to E at beginning of picketing that goal was representation and never made any attempt to learn economic status of joint venture, and demanded that joint venture sign agreement)

6035 STATEMENTS TO EMPLOYERS

Local 137, Sheet Metal Workers International Association, AFL-CIO (Walter Sign Corporation) **260 NLRB No. 191**

(organizational and representational object shown by one U representative's presentation of U authorization cards and both U representatives' solicitation of contracts with E)

Teamsters Local No. 600, a/w Teamsters (Poplar Bluff Express) **JD-226-82**

(unlawful purpose indicated by U's telling secondary neutral E it was picketing its company because of nonU truckdriver and soliciting it not to do business with primary E because it was nonU)

Local 1506, Carpenters (Best Drywall Co.) **JD-(SF)-266-79**

(U representative's asking what were chances of getting a contract, requesting E to join U and stating that for E to join U would be a lot easier on him)

6040 INQUIRIES OF EMPLOYEES

Sheet Metal Workers Union Local No. 3 (McCarthy Heating & Air Conditioning Services, Inc.) **253 NLRB No. 083**

(U's inquiries about Ees' attitude toward Us, prior U membership, and minorities and females indicated organizational intent)

6042 STATEMENTS TO EMPLOYEES

Sheet Metal Workers Union Local No. 3 (McCarthy Heating & Air Conditioning Services, Inc.) **253 NLRB No. 083**

(U's showing Ees through its survey form the disparity between their conditions and those of Ees it represented and telling them it was picketing to benefit them, that they were not too small for a U shop and as such could get more benefits, and that U was a leader in getting benefits indicated organizational intent)

6046 CONDITION FOR DISCONTINUANCE OF PICKETING

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) **248 NLRB No. 034**
(picketing non-U contractor on construction project violative where testimony refuted U's alleged area standards object and, conversely, indicated a recognitional object in view of U's failure to investigate what wages and benefits were being paid, U business manager's statement indicating that U was determined to picket contractor before it learned what wages and benefits contractor intended to pay, and his statement to project officials that only thing he could recommend to avoid disruption on job was for contract or to sign agreement with U)

6049 PRIOR RECOGNITION DEMANDS

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) **JD-(SF)-110-81**
(violation, where U, which had demanded recognition, intermittently picketed buildings where Ees of janitorial service were working for three months w/o filing ptn since picketing was for recognition where picket signs said *Ees of E on strike,* U distributed handbills informing public that Ees received substandard wages even though U represented majority of Ees and that its objective was U contract; U's contention that its objective changed from recognitional to informational, rejected, where it never informed E or membership that it was no longer seeking to organize contractor's Ees)

6056 HANDBILLS

San Diego Typographical Union No. 221, AFL-CIO (Central Typesetting, Inc., d/b/a Central Graphics) **264 NLRB No. 119**
(U picketing w/i a year of valid election, violative, where picket signs and handbills which stated that E did not have contract with nor employed members of U implied that U considered its quarrel with E would cease when E employed U members or entered into contract with U and therefore, contrary to U's contention, picketing did not have non-coercive, informational objective)

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) **JD-(SF)-110-81**
(violation, where U, which had demanded recognition, intermittently picketed buildings where Ees of janitorial service were working for three months w/o filing ptn since picketing was for recognition where picket signs said *Ees of E on strike,* U distributed handbills informing public that Ees received substandard wages even though U represented majority of Ees and that its objective was U contract; U's contention that its objective changed from recognitional to informational, rejected, where it never informed E or membership that it was no longer seeking to organize contractor's Ees)

6063 AREA STANDARDS OBJECTIVES

Carpenters Local Union No. 1622 (Paul E. Iacono Structural Engineer, Inc.) **250 NLRB No. 056**
(U's picketing for more than 30 days w/o filing *R* ptn violative since picketing was for recognitional purposes, notwithstanding U's disclaimer and claim that it was protesting E's standard labor costs, where U had never investigated whether E's labor costs were substandard and subsequent to its disclaimer and contemporaneously with picketing, it had attempted to organize E's Ees)

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) **JD-(SF)-110-81**
(violation, where U, which had demanded recognition, intermittently picketed buildings where Ees of janitorial service were working for three months w/o filing ptn since picketing was for recognition where picket signs said *Ees of E on strike,* U distributed handbills informing public that Ees received substandard wages even though U represented majority of Ees and that its objective was U contract; U's contention that its objective changed from recognitional to informational, rejected, where it never informed E or membership that it was no longer seeking to organize contractor's Ees)

Local No. 340, Electrical Workers (Warren B. Burgess, d/b/a AJR Electric) **JD-(SF)-165-80**
(*area standards* picketing permissible if there is no recognitional or organizational purpose)

Local No. 340, Electrical Workers (Warren B. Burgess, d/b/a AJR Electric) **JD-(SF)-165-80**
(U's picketing construction site with placards protesting subcontractor's prevailing wages and working conditions held violative, since creditable testimony showed that object of picketing was to force subcontractor to *sign up* with U; U was not currently certified as Ee representative and had failed to file ptn under Sec. 9(c) of Act w/i 30 days from commencement of picketing)

Miscellaneous Drivers and Helpers Union Local 610 (Tower Hotel, Inc.) **JD-238-80**
(U's picketing of E with signs stating wages and working conditions of E were not equal to those of U members and also containing recognitional disclaimer not violative where U had contract with another E which did establish area standards, U was aware of wages, though not fringe benefits, paid to Ees of picketed E, U made no cliam to represent Ees of E)

Joseph H. Sollen, RD v. Teamsters Local No. 610 **484 F.Supp. 1240 (DC E.D. MO, Feb. 1980)**
(inj not granted since no reasonable cause to believe Act violated where U was not picketing for recognition but for purpose of disseminating information that that E was not paying area standards in view of signs which stated Ees of E who were represented by another U were not being paid wages comparable to those paid to Ees represented by U which was picketing and that picketing was informational rather than for recognition)

International Brotherhood of Electrical Workers, Local 453 (Southern Sun Electric Corporation) **252 NLRB No. 103**
(U which picketed E who had lawful contract with another U violated Act where U's demands were much broader than necessary to achieve compliance with area standards)

6081 DEMANDING FOR HIRING OF UNION MEMBERS OR GRANTING OF UNION BENEFITS

San Diego Typographical Union No. 221, AFL-CIO (Central Typesetting, Inc., d/b/a Central Graphics) **264 NLRB No. 119**
(U picketing w/i a year of valid election, violative, where picket signs and handbills which stated that E did not have contract with nor employed members of U implied that U considered its quarrel with E would cease when E employed U members or entered into contract with U and therefore, contrary to U's contention, picketing did not have non-coercive, informational objective)

6091 DISCLAIMER OF INTEREST IN RECOGNITION

San Diego Typographical Union No. 221, AFL-CIO (Central Typesetting, Inc., d/b/a Central Graphics) **264 NLRB No. 119**
(U picketing w/i a year of valid election, violative, where picket signs and handbills which stated that E did not have contract with nor employed members of U implied that U considered its quarrel with E would cease when E employed U members or entered into contract with U and therefore, contrary to U's contention, picketing did not have non-coercive, informational objective)

Carpenters Local Union No. 1622 (Paul E. Iacono Structural Engineer, Inc.) **250 NLRB No. 056**
(U's picketing for more than 30 days w/o filing *R* ptn violative since picketing was for recognitional purposes, notwithstanding U's disclaimer and claim that it was protesting E's standard labor costs, where U had never investigated whether E's labor costs were substandard and subsequent to its disclaimer and contemporaneously with picketing, it had attempted to organize E's Ees)

8000 CIRCUMSTANCE WHERE RECOGNITIONAL PICKETING PROHIBITED

8025 WHERE EMPLOYER HAS RECOGNIZED ANOTHER LABOR ORGANIZATION - CLAUSE 8(b)(7)(A)

8025-0100 Generally

American Radio Association, AFL-CIO **258 NLRB No. 170**
(where respondent U represented single radio operator aboard vessel whose owner replaced operator of vessel with charging E, who thereupon unlawfully recognized rival U as representative of radio operator and then replaced him with operator who had authorized rival U to represent him, U's picketing of E's vessel for recognition as representative of raido operator and because former operator had been locked out, not unlawful, since picketing for recognition in one-person unit is not w/i proscription of 8(b)(7)(A))

Joseph H. Sollen, RD v. Teamsters Local No. 610 **484 F.Supp. 1240 (DC E.D. MO, Feb. 1980)**
(picketing by U of E which had recognized another U and where no Section 8(a)(2) charge had been filed, not unlawful, since picketing not for recognition but rather for purpose of disseminating information that Ees of E were not being paid wages comparable to those paid Ees represented by U)

8025-3300 Recognition lawful

8025-3320 Majority representative

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(in 8(b)(7)(A) proceeding, U's evidence tending to show that *incumbent* U's majority may have been tainted and not uncoerced held insufficient to rebut

8025-3320—Cont.

conclusion that incumbent had been lawfully recognized; U's evidence of sporadic substitution for supervisors by Ees participating in U activities, supervisor's election to U office, apparent acceleration of dues checkoff, and brief nature of, and rapidly concluded, negotiations had little probative value in support of U's contentions)

Congress of Independent Unions and Southern Sun
Electric Corporation v. N.L.R.B. 620 F.2d 172 (C.A. 8, 1980)

(U's picketing violative since E had lawfully recognized another U; respondent U's picketing had recognitional object where letters to E and pickets stated that Ees were working under conditions substandard to those enjoyed by its members and picketing commenced w/i 2 weeks of Bd overruling its objections to election)

8025-6700 Question concerning recognition may not be raised (see 347- for bars to conduct of election)

8025-6720 Petition would be barred by contract

Yates Industries, Inc., California Division 264 NLRB No. 161

(Local U engaging in strike and picketing with object of forcing or requiring E to recognize and bargain with it as sole representative of its Ees, where it was not certified representative of its Ees, and E had recognized International (from which U had attempted to disaffiliate and affiliate with another International), and Local as joint representatives in contract still effective and thus qcr could not appropriately be raised, unlawful, notwithstanding U did not instigate strike since U representative demonstrated control over strikers and ratified action of strikers)

8025-6780 Employees for whom recognition sought covered by contract

Yates Industries, Inc., California Division 264 NLRB No. 161

(Local U engaging in strike and picketing with object of forcing or requiring E to recognize and bargain with it as sole representative of its Ees, where it was not certified representative of its Ees, and E had recognized International (from which U had attempted to disaffiliate and affiliate with another International), and Local as joint representatives in contract still effective and thus qcr could not appropriately be raised, unlawful, notwithstanding U did not instigate strike since U representative demonstrated control over strikers and ratified action of strikers)

International Brotherhood of Electrical Workers,
Local 453 (Southern Sun Electric Corporation) 252 NLRB No. 103

(U which picketed E who had lawful contract with another U violated Act where U's demands were much broader than necessary to achieve compliance with area standards)

Seafarers International Union of North America,
Pacific District, AFL-CIO, and Its Affiliates
(American Pacific Container Lines, Inc.
(AMPAC)) 252 NLRB No. 105

(U's picketing at E had recognitional or organizational object and is proscribed by Sec. 8(b)(7)(A) since E lawfully was represented by another U)

8050 WHERE VALID ELECTION CONDUCTED WITHIN PRECEDING TWELVE MONTHS - CLAUSE 8(b)(7)(B)

8050-0100 Generally

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD 482 F.Supp. 489 (D Ct IL)

(no valid election existed until Bd had certified the results, the point in time at which *all challenges and objections have been ruled upon or otherwise disposed*)

8050-2000 Election among employees for whom recognition sought

San Diego Typographical Union No. 221, AFL-CIO
(Central Typesetting, Inc., d/b/a Central
Graphics) 264 NLRB No. 119

(U picketing w/i a year of valid election, violative, where picket signs and handbills which stated that E did not have contract with nor employed members of U implied that U considered its quarrel with E would cease when E employed U members or entered into contract with U and therefore, contrary to U's contention, picketing did not have non-coercive, informational objective)

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD 482 F.Supp. 489 (D Ct IL)

(U's continuing recognitional picketing after election, not violative, since Bd had not resolved challenged ballots)

8050-4000 Election pursuant to section 9(c)

Retail Store Employees Union Local 214, Affiliated
With United Food & Commercial Workers
International Union, AFL-CIO & CLC (Pick-
N-Save Warehouse Foods, Inc.) 252 NLRB No. 086

(picketing to force E to recognize U, unlawful, where picketing commenced on two occasions w/i 12 months after valid 9(c) election; settlement agreement reached after first period of picketing set aside and Bd may reach earlier picketing which was subject matter of settlement agreement)

8075 WHERE PICKETING FOR MORE THAN REASONABLE TIME WITHOUT PETITION BEING FILED - CLAUSE 8(b)(7)(C)

8075-0100 Generally

Tri-State Building and Construction Trades
Council, AFL-CIO (Structures, Inc.) 257 NLRB No. 042

United Food and Commercial Workers
International Union, Local No. 576, AFL-CIO
(Earl J. Engle, Attorney on Behalf of R & F
Grocers, Inc.) 252 NLRB No. 156

(in 8(b)(7)(c) proceeding significant issue is whether U filed R-ptn; such issues as *alter ego, joint E-successorship* are defenses to not filing R-ptn but not to unlawful picketing)

8075-2000 Reasonable time of picketing

8075-2017 Not to exceed thirty days

Local 137, Sheet Metal Workers International
Association, AFL-CIO (Walter Sign
Corporation) 260 NLRB No. 191

(2 U's picketing of E's premises for more than 30 days before filing representation election ptn with organizational or representational purpose and thereby inducing other E's Ees not to pick up or deliver goods at E's premises, unlawful)

United Food and Commercial Workers
International Union, Local No. 576, AFL-CIO 252 NLRB No. 156

(U's picketing E for over 30 days w/o filing ptn for purpose of securing recognition, unlawful; U not permitted to present evidence regarding possibility of alter ego, joint E, or successorship relationship between picketed E with which U had no bargaining relationship, and another E with which had longstanding relationship, thus rendering picketing for continued ratherthan initial recognition, where same theories had been rejected by GC in refusing to issue complaint in prior ULP case and no ULP charge that would impede processing of R ptn)

Carpenters Local Union No. 1622 (Paul E. Iacono
Structural Engineer, Inc.) 250 NLRB No. 056

(U's picketing for more than 30 days w/o filing *R* ptn violative since picketing was for recognitional purposes, notwithstanding U's disclaimer and claim that it was protesting E's standard labor costs, where U had never investigated whether E's labor costs were substandard and subsequent to its disclaimer and contemporaneously with picketing, it had attempted to organize E's Ees)

Carpenters Local Union No. 2361 (Adams
Insulation Co., Inc. 248 NLRB No. 059

(U wrote contractor stating that subcontractor was not signatory to U contract and therefore would engage in *publicity* picketing, and 5 weeks later did picket for 1 day with some Ees walking off job; contention that letter was legally equivalent to picketing because it contained coded threat to engage in recognitional picketing which started 30 day clock running from receipt of letter, rejected, as letter exhibited intention to engage in publicity picketing, contained no threat regardless of what object U had in mind)

Electrical Workers, Local Union No. 211 (Jaden
Electric, A Division of The Farfield Company) 248 NLRB No. 034

(picketing non-U contractor on construction project violative where testimony refuted U's alleged area standards object and, conversely, indicated a recognitional object in view of U's failure to investigate what wages and benefits were being paid, U business manager's statement indicating that U was determined to picket contractor before it learned what wages and benefits contractor intended to pay, and his statement to project officials that only thing he could recommend to avoid disruption on job was for contract or to sign agreement with U)

United Mine Workers of America, District 29 JD-265-83

(picketing Es for period in excess of 30 days w/o having filed ptn under Sec. 9(c) at time when U did not represent uncoerced majority of Ees, violative)

Teamsters Local No. 600, a/w Teamsters (Poplar
Bluff Express) JD-226-83

(picketing of E by U, not certified by Bd, as bargaining representative of Ees, in excess of 30 days w/o filing 9(c) ptn concerning representing them, for recognitional and organizational objects which resulted in stoppage of deliveries to picketed E causing it to close, unlawful)

8075-2017—Cont.

United Mine Workers of America, District 17 (Corvette Coal Company) JD-167-82

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) JD-(SF)-110-81
(violation, where U, which had demanded recognition, intermittently picketed buildings where Ees of janitorial service were working for three months w/o filing ptn since picketing was for recognition where picket signs said *Ees of E on strike,* U distributed handbills informing public that Ees received substandard wages even though U represented majority of Ees and that its objective was U contract; U's contention that its objective changed from recognitional to informational, rejected, where it never informed E or membership that it was no longer seeking to organize contractor's Ees)

Carpenters Local 316, United Brotherhood of Carpenters and Joiners of America, AFL-CIO JD-(SF)-316-80
(U's picketing of joint venture with informational area standards signs for more than 30 days violative where U's agents revealed to E at beginning of picketing that goal was representation and never made any attempt to learn economic status of joint venture, and demanded that joint venture sign agreement)

Local No. 340, Electrical Workers (Warren B. Burgess, d/b/a AJR Electric) JD-(SF)-165-80
(U's picketing construction site with placards protesting subcontractor's prevailing wages and working conditions held violative, since creditable testimony showed that object of picketing was to force subcontractor to *sign up* with U; U was not currently certified as Ee representative and had failed to file ptn under Sec. 9(c) of Act w/i 30 days from commencement of picketing)

Oil, Chemical and Atomic Workers International Union, Local 6-578 (D & M Truck Stop, Inc.) JD-207-80
(picketing for more than 30 days for recognitional purpose w/o filing of valid R ptn violative)

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD 482 F.Supp. 489 (D Ct IL)
(U's post election recognitional picketing, not violative, since U filed ptn for election 28 days after commencement of picketing)

8075-2033 Where accompanied by violence

Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.) 257 NLRB No. 042

United Mine Workers of America, District 17 (Corvette Coal Company) JD-167-82

8075-2067 Tacking of periods of picketing

Retail Clerks Local 1357 (Gennardi Super Markets, Inc.) 252 NLRB No. 124
(where U engaged in unlawful recognitional picketing and after hiatus of 1 day resumed picketing with informational purpose, taint of unlawful picketing not transferred to informational picketing)

Local 1506, Carpenters (Best Drywall Co.) JD-(SF)-266-79
(U held to have picketed E more than reasonable time where, notwithstanding it had picketed E at two different jobsites in two consecutive months each time for less than 30 days, it had nevertheless thereby picketed same E for total of more than 30 days w/o filing ptn for election)

8075-2092 Picketing at employer's different locations

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO (Earl J. Engle, Attorney on Behalf of R & F Grocers, Inc.) 252 NLRB No. 156
(where E and U had collective-bargaining relationship at one location and E's sons opened same type of store at second location U's recognitional picketing at second store w/o filing representative petition violative)

8075-4000 Filing of petition

8075-4001 Generally

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO (Earl J. Engle, Attorney on Behalf of R & F Grocers, Inc.) 252 NLRB No. 156
(in 8(b)(7)(c) proceeding significant issue is whether U filed R-ptn; such issues as *alter ego, joint E-successorship* are defenses to not filing R-ptn but not to unlawful picketing)

8075-5000 Picketing by union unable to obtain certification

8075-5033 Non-guard union seeking to represent unit of guards

Local 282, Teamsters (The General Contractors Association of New York, Inc.) 262 NLRB No. 055
(working foremen's picketing by actions which conveyed *signal* to drivers to refuse to make deliveries at E-association members' jobsites with object of forcing E members to recognize and bargain with U not currently certified or recognized as representative of newly sought Ees, unlawful where U was ineligible for certification as their representative, since they were to function as guards, and other members were nonguards)

8075-8000 Informational picketing not prohibited (second proviso, clause 8(b)(7)(C)

8075-8001 Generally

Carpenters Local Union No. 2361 (Adams Insulation Co., Inc. 249 NLRB No. 059
(U wrote contractor stating that subcontractor was not signatory to U contract and therefore would engage in *publicity* picketing, and 5 weeks later did picket for 1 day with some Ees walking off job; contention that letter was legally equivalent to picketing because it contained coded threat to engage in recognitional picketing which started 30 day clock running from receipt of letter, rejected, as letter exhibited intention to engage in publicity picketing, contained no threat regardless of what object U had in mind)

8075-8025 Form of activity

8075-8025-3300 Informational picketing

Retail Clerks Local 1357 (Genuardi Super Markets, Inc.) 252 NLRB No. 124
(picketing which U claimed informational held to be for recognition and thus unlawful where at rally immediately preceding start of picketing U officials stated: *this place will be U* and also *who needs the U-E*)

Retail Clerks Local 1357 (Genuardi Super Markets, Inc.) 252 NLRB No. 124
(where U engaged in unlawful recognitional picketing and after hiatus of 1 day resumed picketing with informational purpose, taint of unlawful picketing not transferred to informational picketing)

8075-8050 Purpose of activity

8075-8050-5600 That employer does not employ members of or have contract with labor organizations

8075-8050-5625 Signs must follow language of proviso

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) JD-(SF)-110-81
(picket sign legend *E fails to pay wages and benefits established by local U* was phrased in ostentsible area standards language rather than requisite proviso language and as such was not protected by proviso)

8075-8050-5675 Signs not within proviso

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) JD-(SF)-110-81
(picket sign legend *E fails to pay wages and benefits established by local U* was phrased in ostentsible area standards language rather than requisite proviso language and as such was not protected by proviso)

8075-8050-9800 Picketing for area standards

Electrical Workers, Local Union No. 211 (Jaden Electric, A Division of The Farfield Company) 248 NLRB No. 034
(picketing non-U contractor on construction project violative where testimony refuted U's alleged area standards object and, conversely, indicated a recognitional object in view of U's failure to investigate what wages and benefits were being paid, U business manager's statement indicating that U was determined to picket contractor before it learned what wages and benefits contractor intended to pay, and his statement to project officials that only thing he could recommend to avoid disruption on job was for contract or to sign agreement with U)

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) JD-(SF)-110-81
(violation, where U, which had demanded recognition, intermittently picketed buildings where Ees of janitorial service were working for three months w/o filing ptn since picketing was for recognition where picket signs said *Ees of E on strike,* U distributed handbills informing public that Ees received substandard wages even though U represented majority of Ees and that its objective was U contract; U's contention that its objective changed from recognitional to informational, rejected, where it never informed E or membership that it was no longer seeking to organize contractor's Ees)

Local 77, Service Employees International Union, AFL-CIO (Service By Medallion) JD-(SF)-110-81
(picket sign legend *E fails to pay wages and benefits established by local U* was phrased in ostentsible area standards language rather than requisite proviso language and as such was not protected by proviso)

Carpenters Local 316, United Brotherhood of Carpenters and Joiners of America, AFL-CIO JD-(SF)-316-80
(U's picketing of joint venture with informational area standards signs for more than 30 days violative where U's agents revealed to E at beginning of picketing that goal was representation and never made any attempt to learn economic status of joint venture, and demanded that joint venture sign agreement)

8075-8075 Except where having prohibited effect

8075-8075-5300 Effect not dependent upon intent

Carpenters Local Union No. 2361 (Adams Insulation Co., Inc. **248 NLRB No. 069**

(U wrote contractor stating that subcontractor was not signatory to U contract and therefore would engage in *publicity* picketing, and 5 weeks later did picket for 1 day with some Ees walking off job; contention that letter was legally equivalent to picketing because it contained coded threat to engage in recognitional picketing which started 30 day clock running from receipt of letter, rejected, as letter exhibited intention to engage in publicity picketing, contained no threat regardless of what object U had in mind)

8075-8075-6700 Inducement of employees of any other person

8075-8075-6733 Not to deliver, pickup or transport goods

Local 137, Sheet Metal Workers International Association, AFL-CIO (Walter Sign Corporation) **260 NLRB No. 191**

(2 U's picketing of E's premises for more than 30 days before filing representation election ptn with organizational or representational purpose and thereby inducing other E's Ees not to pick up or deliver goods at E's premises, unlawful)

Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.) **257 NLRB No. 043**

8075-8075-6767 Not to perform services

Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.) **257 NLRB No. 043**

584 AGREEMENTS TO CEASE DOING BUSINESS

0100 GENERALLY

0120 NATURE AND PURPOSE OF PROSCRIPTION

Keiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(where 8(e) defense is raised by party which 8(e) was designed to protect, and where defense is not directed to collateral matter but to portion of contract for which enforcement is sought ct, must entertain the defense)

Furriers Joint Council of New York, United Food and Commercial Workers International Union, AFL-CIO (The Resident Fur Buyers Association) **261 NLRB No. 106**

(*purchasing prohibitions* clause, limiting Es' (resident fur buyers') purchase of fur garments from sources whose workers work under terms and conditions prevailing in fur manufacturing industry, violative, since object of clause was calculated to satisfy U objectives elsewhere; not in bargaining unit of resident fur buyers but to labor relations of (fur garment) manufacturers)

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) **254 NLRB No. 093**

(contract clauses which are limited to primary considerations, such as preservation or protection of traditional work of Ees in bargaining units represented by labor organization, are not proscribed by Section 8(e) of Act)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(activities and agreements that seek not to preserve traditional work of displaced Ees but to acquire work of other Ees are unlawful under congressional proscription)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(*Sec. 8(e)* proscribes *not secondary activity,* but *collective-bargaining contracts* whereby E ceases or agrees to c/d/b with any other person)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36, etc. v. N.L.R.B. **669 F.2d 759 (C.A.D.C., Feb. 1981)**

(*evidence of coercion not necessary to prove violation of Section 8(e)*)

0130 CONSTRUCTION OF CONTRACT CLAUSES

District 2, Marine Engineers Beneficial Association—Associated Maritime Officers, AFL-CIO **261 NLRB No. 046**

(agreement providing that *any operator employed ... to operate its U.S. flag ships shall have labor agreements with U* (U signatory clause) held unlawful because it furthered U objectives elsewhere as evidenced by U's admission in its complaint for TRO to compel specific performance of agreement and affidavit of U agent, e.g., members' jobs will be reduced, enforcement of agreements with contractors will be undermined, U's ability to attract new members will be reduced)

Pacific Maritime Association & ILWU Local 13 (Stone Tire Service and Off-Dock Unlimited **256 NLRB No. 122**

(in determining facial validity of contract clauses alleged to be violative of Sec. 8(e), Bd applied rules of construction summarized in J. K. Barker Trucking Co., which provide that if meaning of clause is clear and it is not clearly unlawful on its face, Bd will interpret it to require no more than what is allowed by law; but if clause is ambiguous, Bd will consider extrinsic evidence to determine whether clause was intended to be administered in lawful or unlawful manner; absent such evidence Bd will refuse to pass on validity of clause)

0140 CONSTRUCTION OF LEGISLATIVE HISTORY

Furriers Joint Council of New York, United Food and Commercial Workers International Union, AFL-CIO (The Resident Fur Buyers Association) **261 NLRB No. 106**

(*Section* 8(e) of Act was intended to supplement existing prohibitions against secondary boycotts. Congress intended that *Section* 8(e) embody same distinction between lawful primary and unlawful secondary boycott activity contained in *Section* 8(b)(4) of Act)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(legislative history of construction industry proviso demonstrates that Congress expressed its intent to exempt from proviso total process of transporting materials in spite of fact that some tasks in process might take place on construction site; in interpreting legislative history of proviso Bd has consistently adhered to narrow definition of jobsite work, refusing to apply proviso's coverage to various types of transportation work or to offsite work merely because such work could be done at construction site)

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**

(E's transportation of gravel to work site held not to constitute onsite work and therefore not to be exempt according to Act's legislative history)

Donald Schriver, Inc., et al. v. N.L.R.B. **635 F.2d 859 (C.A.D.C. 1980)**

(ct held Bd's interpretation of scope of construction industry proviso to 8(e) was entirely consistent with its legislative history and purposes for which it was enacted; in matters of statutory construction ct is bound to give considerable deference to interpretation of statute by Bd)

Joint Council of Teamsters, No. 42 v. N.L.R.B. **671 F.2d 305 (C.A. 9, Dec. 1981)**

(neither legislative history of Section 8(e) nor text of Act suggest that Congress intended Section 8(e) to parallel Davis Bacon Act)

Pacific Northwest Chapter of The Associated Builders & Contractors, Inc. v. N.L.R.B. **638 F.2d 73 (C.A. 9, Apr 17, 1981)**

(legislative history regarding 8(e) construction industry proviso shows Congressional intent, in view of peculiarities of construction industry, to avoid serious damage to pattern of collective bargaining in industry, and to permit Es and Us to enter subcontracting agreements permitted by law prior to enactment of Sec. 8(e))

Lone Star Steel Company v. N.L.R.B. **639 F.2d 545 (C.A. 10, 1980)**

(ct, considering *products* and *cease doing business* clauses as well as legislative history of Section 8(e) of LMRDA of 1959, found no indication that Congress was concerned with agreements by common carriers or Es in other industries relating to sale of their businesses or of assets as was done in instant case)

0180 RELATION TO OTHER SUBSECTIONS

Furriers Joint Council of New York, United Food and Commercial Workers International Union, AFL-CIO (The Resident Fur Buyers Association) **261 NLRB No. 106**

(*Section* 8(e) of Act was intended to supplement existing prohibitions against secondary boycotts. Congress intended that *Section* 8(e) embody same distinction between lawful primary and unlawful secondary boycott activity contained in *Section* 8(b)(4) of Act)

1200 FACTORS MATERIAL TO APPLICABILITY OF SECTION 8(e)

1201 GENERALLY

1201—Cont.

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(petitioner's contractual promise to UMW to report and make contributions to specified U health and retirement funds based on specified amount, *on each ton of — coal* procured for use or sale by petitioner from producers not under contract with UMW was illegal under anti-trust and labor laws and thus valid defense to suit for such contributions by trustees of U funds)

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(while only Bd may provide affirmative remedies for ULPs, ct may not enforce contract provision which violates 8(e))

Lone Star Steel Company v. N.L.R.B. **639 F.2d 545 (C.A. 10, 1980)**

(Bd properly read *successorship clause* as applying only to kind of permanent disposition of assets that is outside scope of *Section 8(e)*)

1225 AGREEMENT BETWEEN LABOR ORGANIZATION AND EMPLOYER

1225-2500 Employers within section

N.L.R.B. v. Hotel and Restaurant Employees' Union Local 531 **623 F.2d 61 (C.A. 9, June 1980)**

(collective bargaining agreement between lessor-E and U containing clause that, if lessor leases premises all provisions of labor agreement *be applicable and binding upon lessee*, coupled with another clause that requires any E bound by agreement must recognize U, violative of 8(e), since contract effectively makes condition precedent to leasing that lessee-E must agree to recognize and contract with U, precisely effect of illegal U signatory clause)

1225-3300 Expressed agreement

Furriers Joint Council of New York, United Food and Commercial Workers International Union, AFL-CIO (The Resident Fur Buyers Association) **261 NLRB No. 106**

(*purchasing prohibitions* clause, limiting Es' (resident fur buyers') purchase of fur garments from sources whose workers work under terms and conditions prevailing in fur manufacturing industry, violative, since object of clause was calculated to satisfy U objectives elsewhere; not in bargaining unit of resident fur buyers but to labor relations of (fur garment) manufacturers)

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) **254 NLRB No. 093**

(extrinsic evidence necessary to show whether administration of ambiguous subcontracting clause lawful or unlawful; such evidence must be based on mutual consent or acquiescence of parties to contract)

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) **254 NLRB No. 093**

(Bd could not find contract unlawfully extended prohibition against subcontracting beyond jobsite work where U's attempt to compell contracting E to accept its interpretation of contract was resisted by E during instant hearing and prearbitration proceeding and provided no basis for finding contract clause in issue concerning subcontracting was violative of 8(e) of Act; requisite mutual consent or acquiescence to unlawful interpretation was not present in instant case)

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) **254 NLRB No. 093**

(although proviso to Section 8(e) makes lawful certain secondary clauses limiting subcontracting of work in construction industry, contract cannot provide that they be enforced by resort to economic *self-help*, notwithstanding *self-help and subcontracting provisions were found in different articles of contract*—)

1225-6700 Implied agreement

Pacific Maritime Association & ILWU Local 13 (Stone Tire Service and Off-Dock Unlimited **256 NLRB No. 122**

(*grandfather* clause providing that unit work, performed by non-U Ees prior to effective date of contract, may be done by same Ees at option of E, held not unlawful implied agreement; although clause could be interpreted as agreement that members of E association would c/d/b with subcontractors not expressly covered by clause, it does not warrant applying clause mechanistically w/o some proof that it was intended to be administered unlawfully; and there was no evidence regarding intent of parties during negotiation of agreement and no finding by ALJ of unlawful administration of clause)

Pacific Maritime Association & ILWU Local 13 (Stone Tire Service and Off-Dock Unlimited **256 NLRB No. 122**

(in finding no unlawful implied agreement that members of E association would c/d/b with nonsignatory subcontractors, Bd held statement by U representative that U was going to do all unit work at new facility and eventually all work in whole harbor to exclusion of rival U held not sufficient evidence of unlawful administration of contract; such statement to rival U representative made no reference to U's contract with E association and, in any event, no association member acquiesced in or gave consent to such statement)

1250 AGREEMENT 'ENTERED INTO' WITHIN STATUTORY MEANING

1250-3900 Signing or executing agreement

Pacific Maritime Association & ILWU Local 13 (Stone Tire Service and Off-Dock Unlimited **256 NLRB No. 12**

(memorandum of understanding under which E recognized its obligation to comply with provisions of E association-U contract, held to have constituted *entering into* of such contract provisons w/i purview of Sec. 8(e); E specifically agreed in memorandum to apply disputed provisions of contract; and even though no specific reference was made in memorandum to disputed provisions, it was binding of E because of its membership in E association)

1250-5000 Reaffirming, maintaining or enforcing agreement

General Truck Drivers, Warehousemen and Helpers, Local 467, Teamsters (Mike Sullivan & Associates, Inc.) **265 NLRB No. 214**

(U's demand through arbitral process that E comply with terms of agreement constituted reaffirmation of disputed clause and maintenance of its enforceability and thus resulted in an *entering into* w/i meaning of Sec. 8(e))

Furriers Joint Council of New York, United Food and Commercial Workers International Union, AFL-CIO (The Resident Fur Buyers Association) **261 NLRB No. 106**

(See *International Union, United Mine Workers, et al. (Garland Coal & Mining Company)*, 258 NLRB No. 11 (1981) for Bd's broad interpretation of words *to enter into*)

District 2, Marine Engineers Beneficial Association—Associated Maritime Officers, AFL-CIO **261 NLRB No. 046**

(U's telex to E of its intention to commence legal action in connection with alleged breach of agreement and institution of legal proceedings reaffirmed illegal contract w/i 10(b))

International Union, United Mine Workers of America; UMW District 21; UMW Local 2428 (Garland Coal & Mining Company) **258 NLRB No. 011**

(words *to enter into* have been interpreted broadly (by Bd) to encompass concepts of reaffirmation, maintenance, or giving effect to any agreement which is w/i scope of Section 8(e), notwithstanding agreement itself was executed outside Section 10(b) statute of limitations)

International Union, United Mine Workers of America; UMW District 21; UMW Local 2428 (Garland Coal & Mining Company) **258 NLRB No. 011**

(enforcing *repair and maintenance work* provision of NBCWA, providing for U subcontractor, at second and third steps of grievance procedure through its agents, Respondents International, District, Local and Mine Committee entered into agreement in violation of Section 8(e) of Act whether or not assented to or acquiesced in by other party to contract)

International Brotherhood of Electrical Workers, Local 6, AFL-CIO (Chronicle Broadcasting Company, KRON-TV) **257 NLRB No. 002**

(no violation, where GC failed to establish that U, through its conduct, *entered into* contract proscribed by 8(e) w/i 6 months of filing of original charge as required by 10(b))

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) **254 NLRB No. 093**

(notwithstanding that subcontracting provisions of contract became effective 6-months prior to filing of charge, U, by filing grievance relating to subcontracting provisions of contract, sought to enforce contract w/i 10(b) period, thereby bringing contract w/i perview of Section 8(e))

Chicago Dining Room Employees, Cooks & Bartenders Union, Local 42 (Clubmen, Inc., d/b/a Gaslight Club, Palmer House) **248 NLRB No. 083**

(U held to have reaffirmed agreement and maintained enforceability of clause in agreement, where U demanded compliance with the agreement and instituted suit in order to compel compliance)

Over-The-road, City Transfer, Cold Storage, Grocery and Market Drivers and Helpers, Inside Employees, Local 544, a/w Teamsters (Dahl & Curry, Inc.) **JD-71-81**

(although executed outside 10(b) period, U reaffirmed agreement w/i 10(b) by requesting and demanding that E adhere to its terms and not subcontract work to a certain company because it was not signatory to Master Agreement and thus brought violation w/i Sec. 10(b) orbit)

1275 OBJECTIVES PROSCRIBED

1275-0100 Generally

1275-0100—Cont.

Furriers Joint Council of New York, United Food and Commercial Workers International Union, AFL-CIO (The Resident Fur Buyers Association) **261 NLRB No. 106**
(*Section* 8(e) of Act was intended to supplement existing prohibitions against secondary boycotts. Congress intended that *Section* 8(e) embody same distinction between lawful primary and unlawful secondary boycott activity contained in *Section* 8(b)(4) of Act)

Furriers Joint Council of New York, United Food and Commercial Workers International Union, AFL-CIO (The Resident Fur Buyers Association) **261 NLRB No. 106**
(*purchasing prohibitions* clause, limiting Es' (resident fur buyers') purchase of fur garments from sources whose workers work under terms and conditions prevailing in fur manufacturing industry, violative, since object of clause was calculated to satisfy U objectives elsewhere; not in bargaining unit of resident fur buyers but to labor relations of (fur garment) manufacturers)

1275-3300 Cease or refrain from

1275-3333 Using products of any other employer

Lone Star Steel Company v. N.L.R.B. **639 F.2d 545 (C.A. 10, 1980)**
(applying *products* test from viewpoint of secondary E, it is *product* produced, furnished, or offered by such E that is relevant for finding violation of Section *8(e)* of Act; here *coal* and not lands from which coal was mined was *product*)

1275-6700 Cease doing business with any other person

Pacific Maritime Association & ILWU Local 13 (Stone Tire Service and Off-Dock Unlimited **256 NLRB No. 122**
(E's conduct in barring entry to its premises of other E's whose Ees were not represented by U having contract with E, not unlawful, since contract had no causal connection with E's decision to bar other Es from doing business on its premises; rather, E's action was result of its decision to provide, through subsidiary, services previously performed by other Es on its premises and, as such, was based on business competition, not on disputed terms of contract with U)

Pacific Maritime Association & ILWU Local 13 (Stone Tire Service and Off-Dock Unlimited **256 NLRB No. 122**
(*grandfather* clause providing that unit work, performed by non-U Ees prior to effective date of contract, may be done by same Ees at option of E, held not unlawful implied agreement; although clause could be interpreted as agreement that members of E association would c/d/b with subcontractors not expressly covered by clause, it does not warrant applying clause mechanistically w/o some proof that it was intended to be administered unlawfully; and there was no evidence regarding intent of parties during negotiation of agreement and no finding of ALJ of unlawful administration of clause)

Pacific Maritime Association & ILWU Local 13 (Stone Tire Service and Off-Dock Unlimited **256 NLRB No. 122**
(in finding no unlawful implied agreement that members of E association would c/d/b with nonsignatory subcontractors, Bd held statement by U representative that U was going to do all unit work at new facility and eventually all work in whole harbor to exclusion of rival U held not sufficient evidence of unlawful administration of contract; such statement to rival U representative made no reference to U's contract with E association and, in any event, no association member acquiesced in or gave consent to such statement)

Seattle Post-Intelligencer, A Division of The Hearst Corporation **JD-(SF)-323-81**
(no violation of Sec. 8(e) where E and U had collective-bargaining agreement covering independednt contractor dealers and upon expiration of contract E unilaterally converted all dealers to Ee status, and U and E signed new agreement containing U security clause; since no evidence that this agreement compelled or required independent contractor to become Ee subject to U security as conversion occurred prior to implementation of contract)

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**
(coercion of contractor with whom U had dispute to cease employing materialman to haul gravel to jobsite, unlawful)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**
(*Sec. 8(e)* proscribes *not secondary activity,* but *collective-bargaining contracts* whereby E ceases or agrees to c/d/b with any other person)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36, etc. v. N.L.R.B. **669 F.2d 759 (C.A.D.C., Feb. 1981)**
(violation, where U and contractors executed and maintained agreement that only signatory brokers to master agreement received subcontracts and only U truck operators would perform hauling services for building contractors in area since truck operators held independent contractors and provision designed to compel independent contractors to become U members, as condition of doing business)

1275-6730 What constitutes doing business

N.L.R.B. v. Hotel and Restaurant Employees' Union Local 531 **623 F.2d 61 (C.A. 9, June 1980)**
(*doing business* refers to continuing business relationship which is capable of being discontinued by one E in order to force another E to accede to U demands)

1275-6733-2500 Rental of or leasing facilities

District 2, Marine Engineers Beneficial Association—Associated Maritime Officers, AFL-CIO **261 NLRB No. 046**
(subcontracting arrangement, which in instant case was similar to lease arrangement, for operation of its flag ships constituted *during business* w/i meaning of 8(e) as E retained ownership in its vessels)

N.L.R.B. v. Hotel and Restaurant Employees' Union Local 531 **623 F.2d 61 (C.A. 9, June 1980)**
(collective bargaining agreement between lessor-E and U containing clause that, if lessor leases premises all provisions of labor agreement *be applicable and binding upon lessee,* coupled with another clause that requires any E bound by agreement must recognize U, violative of 8(e), since contract effectively makes condition precedent to leasing that lessee-E must agree to recognize and contract with U, precisely effect of illegal U signatory clause)

1275-6733-5000 Sale of capital assets

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U's proposal which in effect would require E to condition sale or conveyance of its operations upon successor's assumption of E's obligations under bargaining agreement, held not to relate to E's *doing business* w/i meaning of Sec. 8(e), since transfer of portion of E's business under that clause would involve no continuing relationship with the purchaser)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(proposal that would require E to condition sale or conveyance of its operations upon successor's assumption of E's obligations under bargaining agreement, not unlawful, even if conveyance of portion of E's business operations, restricted by proposed clause, constituted *doing business* w/i meaning of Sec. 8(e); effect of clause is primary because it serves to benefit only E's own Ees, and does not seek to enlist E's aid in affecting labor relations of anyone who is not employer of those same Ees)

N.L.R.B. v. Hotel and Restaurant Employees' Union Local 531 **623 F.2d 61 (C.A. 9, June 1980)**

Lone Star Steel Company v. N.L.R.B. **639 F.2d 545 (C.A. 10, 1980)**
(sale of coal mine used by steel producer for its own production of steel would be more akin to sale of portion of business entity, see *Harris Truck, 224 NLRB 100 (1976),* than to sale of ship in *Commerce Tankers, 196 NLRB 1100, enf'd 486 F.2d 907 (2nd Cir.) cert. denied 416 U.S. 970,* because steel producer not in business of selling coal mines)

Lone Star Steel Company v. N.L.R.B. **639 F.2d 545 (C.A. 10, 1980)**
(Bd properly read *successorship clause* as applying only to kind of permanent disposition of assets that is outside scope of *Section 8(e)*)

Lone Star Steel Company v. N.L.R.B. **639 F.2d 545 (C.A. 10, 1980)**
(*one shot* sale of capital assets, unlike lease or subcontract, does not create continuing business relationship between buyer and seller that would enmesh seller in U's dispute with non-signatory buyer where collective bargaining agreement contains clause restricting sales of assets only to Es recognizing U)

2500 EMPLOYEE OR UNION ACTION AUTHORIZED BY AGREEMENT

2501 GENERALLY

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(provision alleged to be violative of 8(e) not rendered lawful by another provision stating *any other exclusions from construction industry proviso, previously defined by NLRB or cts. shall continue to be applicable in interpreting (alleged unlawful provision); explicit self-contained and clearly illegal contractual provision ... will not be purged of illegality by vague and general savings clause*)

Griffith Company; et al. v. N.L.R.B. **660 F.2d 406 (C.A. 9, Oct 1981)**
(agreement prohibiting E from subcontracting work to any signatory subcontractor who was delinquent in required payments to benefit trusts, al-

2501—Cont.

though lawful as w/i construction industry proviso to Section 8(e), may not be enforced by self-help economic means proscribed by Section 8(b)(4), but must be enforced judicially)

2511 REFUSAL TO HANDLE PRODUCTS

2511-3300 Application of 8(e) proscription

Plumbers, Local Union 342 (Conduit Fabricators, Inc.) **251 NLRB No. 112**

(U's refusal to handle pipe prefabricated by one E, thus causing another E not to install pipe, unlawful, where U claimed entire fabrication of pipe since work not covered by work preservation clause inasmuch as entire fabrication had not been traditionally performed by U)

2522 REFUSAL TO WORK

2522-3300 Application of 8(e) proscription

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**

(agreement providing for use of self-help to enforce maintenance of benefit levels by subcontractors and others with whom E did business at jobsite or elsewhere and authorizing strike or other economic means for enforcing performance of grievance procedure duties held unlawful; agreements may not authorize enforcement by other than judicial means)

2522-6700 Effect of provision upon other agreements

Griffith Company; et al. v. N.L.R.B. **660 F.2d 406 (C.A. 9, Oct 1981)**

(otherwise lawful provision in master labor agreement prohibiting E from subcontracting work to any signatory subcontractors who were delinquent in required payments to common Ee fringe benefit trust funds not void on ground another provision permitting self-help held invalid since only proscribed clause negated)

2533 REFUSAL TO CROSS PICKET LINES

General Truck Drivers, Warehousemen and Helpers, Local 467, Teamsters (Mike Sullivan & Associates, Inc.) **265 NLRB No. 214**

(*picket line* clause of contract that granted Ee right to refuse to cross any picket line and prohibited E from discharging or disciplining Ee therefor found unlawfully broad on its face, since whatever the parties' intention, the clause could be applied to unlawful secondary picketing w/o fear of sanctions being imposed by E where it did not fall w/i the *construction industry proviso*)

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**

(picket line clause broad enough on its face to apply to secondary picketing having no connection with disputed jobsite, unlawful)

Griffith Company; et al. v. N.L.R.B. **660 F.2d 406 (C.A. 9, Oct 1981)**

(otherwise lawful provision in master labor agreement prohibiting E from subcontracting work to any signatory subcontractors who were delinquent in required payments to common Ee fringe benefit trust funds not void on ground another provision permitting self-help held invalid since only proscribed clause negated)

2544 REFUSAL TO FURNISH WORKERS

2544-3300 Application of 8(e) proscription

Griffith Company; et al. v. N.L.R.B. **660 F.2d 406 (C.A. 9, Oct 1981)**

(otherwise lawful provision in master labor agreement prohibiting E from subcontracting work to any signatory subcontractors who were delinquent in required payments to common Ee fringe benefit trust funds not void on ground another provision permitting self-help held invalid since only proscribed clause negated)

2544-6700 Effect of provision on other agreements

N.L.R.B. v. Hotel and Restaurant Employees' Union Local 531 **623 F.2d 61 (C.A. 9, June 1980)**

(collective bargaining agreement between lessor-E and U containing clause that, if lessor leases premises all provisions of labor agreement *be applicable and binding upon lessee*, coupled with another clause that requires any E bound by agreement must recognize U, violative of 8(e), since contract effectively makes condition precedent to leasing that lessee-E must agree to recognize and contract with U, precisely effect of illegal U signatory clause)

2577 ASSESSMENT OF PENALTIES UPON CONTRACT BREACH OR NON-PERFORMANCE

2577-3300 Application of 8(e) proscription

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. [illegible]**

(maintaining and giving effect to, and enforcing rules requiring that off-pier *stripping* and *stuffing* of containers done w/i 50 mile radius of port must be performed by U unlawful where such work not historically performed by U and U had no prescriptive right to perform it)

2583 SELF HELP

Pacific Northwest Chapter of The Associated Builders & Contractors, Inc. v. N.L.R.B. **628 F.2d 73 (C.A. 9, Apr 17, 1980)**

(although Us may lawfully strike or picket to obtain subcontractor agreement at construction site, enforcement of such agreement by self-help, unlawful, and clauses authorizing self-help enforcement, directly or through arbitration decisions, invalid, in view of exemption of construction industry from 8(e)'s prohibition against secondary boycott agreements but not from 8(b)(4)(ii)(B), Congress' intention that 8(e) clauses be enforced judicially rather than by self-help; and fact that Congress' intent would be circumvented by finding striking or picketing lawful)

2583-3300 Lawsuits

Griffith Company; et al. v. N.L.R.B. **660 F.2d 406 (C.A. 9, Oct 1981)**

(agreement prohibiting E from subcontracting work to any signatory subcontractor who was delinquent in required payments to benefit trusts, although lawful as w/i construction industry proviso to Section 8(e), may not be enforced by self-help economic means proscribed by Section 8(b)(4), but must be enforced judicially)

2583-6700 Any economic action necessary

Tri-State Building & Construction Trades Council, AFL-CIO (Stark Electric, Inc.) **262 NLRB No. [illegible]**

(effecting grievance-arbitration clause authorizing strikes to enforce subcontract clause prohibiting subcontracting to Es who do not observe same *conditions of employment* as enjoyed by Ees of all local Us affiliated with U, violative since term *conditions of employment* is so broad as to encompass non-economic provisions and accordingly, subcontracting clause was secondary; contract was not rendered lawful under construction industry proviso, notwithstanding subcontracting clause was limited to work performed on jobsite since self-help provision removes protection afforded by proviso)

2588 EXTENSION OF AGREEMENT TO NONSIGNATORY EMPLOYERS

Joint Council of Teamsters No. 42; et al. (Irvine Santa Fe Co.) **248 NLRB No. [illegible]**

(provision which would require contractor to c/d/b with independent contractor dump truck owner-operators on any terms other than those applicable to unit Ee drivers under master agreement, violative, since not w/i construction industry proviso where owner-operators engaged in transportation of materials between construction sites controlled by different contractors, or between sites up to 10 miles apart controlled by same contractor, since proviso does not apply to jobsite deliveries which are only small part of basically offsite transportation, notwithstanding sites controlled by same contractor)

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**

(signatory clauses allowing Es to do business only with subcontractors or persons maintaining agreement's benefit levels held secondary and unlawful)

N.L.R.B. v. Hotel and Restaurant Employees' Union Local 531 **623 F.2d 61 (C.A. 9, June 1980)**

(collective bargaining agreement between lessor-E and U containing clause that, if lessor leases premises all provisions of labor agreement *be applicable and binding upon lessee*, coupled with another clause that requires any E bound by agreement must recognize U, violative of 8(e), since contract effectively makes condition precedent to leasing that lessee-E must agree to recognize and contract with U, precisely effect of illegal U signatory clause)

3700 EMPLOYER ACTION LIMITED BY AGREEMENT

3740 PARTIAL RESTRAINT ON, OR CONDITIONING OF, SUBCONTRACTING

Joint Council of Teamsters No. 42; et al. (Irvine Santa Fe Co.) **248 NLRB No. [illegible]**

(provision which would require contractor to c/d/b with independent contractor dump truck owner-operators on any terms other than those applicable to unit Ee drivers under master agreement, violative, since not w/i construction industry proviso where owner-operators engaged in transportation of materials between construction sites controlled by different contractors, or between sites up to 10 miles apart controlled by same contractor, since proviso does not apply to jobsite deliveries which are only small part

3740—Cont.

of basically offsite transportation, notwithstanding sites controlled by same contractor)

Emery Air Freight Corporation JD-(NY)-36-81

(provision which requires primary E to perform certain ground work at air terminal which previously had been subcontracted to another company, violative as this work had never been performed by E's Ees but had been done by Ees of air carriers or their subcontractors and, therefore, not claimable by E's Ees)

3740-1700 Requiring subcontractor or lessee to be union signatory or agree to adhere to union contract

Tri-State Building & Construction Trades Council, AFL-CIO (Stark Electric, Inc.) 262 NLRB No. 080

(effecting grievance-arbitration clause authorizing strikes to enforce subcontract clause prohibiting subcontracting to Es who do not observe same *conditions of employment* as enjoyed by Ees of all local Us affiliated with U, violative since term *conditions of employment* is so broad as to encompass non-economic provisions and accordingly, subcontracting clause was secondary; contract was not rendered lawful under construction industry proviso, notwithstanding subcontracting clause was limited to work performed on jobsite since self-help provision removes protection afforded by proviso)

Furriers Joint Council of New York, United Food and Commercial Workers International Union, AFL-CIO (The Resident Fur Buyers Association) 261 NLRB No. 106

(*purchasing prohibitions* clause, limiting Es' (resident fur buyers') purchase of fur garments from sources whose workers work under terms and conditions prevailing in fur manufacturing industry, violative, since object of clause was calculated to satisfy U objectives elsewhere; not in bargaining unit of resident fur buyers but to labor relations of (fur garment) manufacturers)

District 2, Marine Engineers Beneficial Association—Associated Maritime Officers, AFL-CIO 261 NLRB No. 046

(agreement providing that *any operator employed ... to operate its U.S. flag ships shall have labor agreements with U* (U signatory clause) held unlawful because it furthered U objectives elsewhere as evidenced by U's admission in its complaint for TRO to compel specific performance of agreement and affidavit of U agent, e.g., members' jobs will be reduced, enforcement of agreements with contractors will be undermined, U's ability to attract new members will be reduced)

International Union, United Mine Workers of America; UMW District 21; UMW Local 2428 (Garland Coal & Mining Company) 258 NLRB No. 011

(enforcing *repair and maintenance* work provision of NBCWA, providing for U subcontractor, at second and third steps of grievance procedure through its agents, Respondents International, District, Local and Mine Committee entered into agreement in violation of Section 8(e) of Act whether or not assented to or acquiesced in by other party to contract)

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) 254 NLRB No. 093

(*U signatory clause* requiring E not to subcontract any work on jobsite unless subcontractor has signed agreement or agrees to sign agreement is secondary in nature where clause was concerned with labor relations of Es with whom primary E might do business rather than with labor relations of contracting E vis-a-vis its Ees)

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) 254 NLRB No. 093

(Bd could not find contract unlawfully extended prohibition against subcontracting beyond jobsite work where U's attempt to compell contracting E to accept its interpretation of contract was resisted by E during instant hearing and prearbitration proceeding and provided no basis for finding contract clause in issue concerning subcontracting was violative of 8(e) of Act; requisite mutual consent or acquiescence to unlawful interpretation was not present in instant case)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) 249 NLRB No. 038

(provisions which sought to require *independent contractor* owner-operators of trucks be treated as Ees of Es who were signatories to master agreement and be cleared by U, and where work of owner-operators consisted exclusively of hauling to and from construction sites and thus not w/i construction industry proviso of Section 8(e), unlawful; notwithstanding provisions subsequently amended)

Chicago Dining Room Employees, Cooks & Bartenders Union, Local 42 (Clubmen, Inc., d/b/a Gaslight Club, Palmer House) 248 NLRB No. 083

(contract provisions which require that, in event E leases portion of its premises where bargaining unit members are employed at time of lease, and if lessee employs any Ees in job classifications covered by agreement, then lessee must execute bargaining agreement or agree to be bound by its terms as condition precedent to lease transaction, unlawful, since the provisions have effect of U signatory clause; it requires lessee to become bound to the contract regardless of whether or not unit Ees lose their jobs)

Over-The-road, City Transfer, Cold Storage, Grocery and Market Drivers and Helpers, Inside Employees, Local 544, a/w Teamsters (Dahl & Curry, Inc.) JD-71-81

(contract clause requiring E to restrict subcontracting to Es signatory to agreement with appropriate U, held secondary since aimed at labor relations of subcontractor and are designed to satisfy U's objectives elsewhere than with E; U could have objected to subcontracting but once giving permission for subcontracting cannot restrict E's choice of subcontractor)

Teamsters, Local Union 222 (S.J. Groves & Sons Company JD-(SF)-118-80

(signatory clauses allowing Es to do business only with subcontractors or persons maintaining agreement's benefit levels held secondary and unlawful)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)

(U's proposed *leasing-licensing out* clause which would forbid E from licensing out its operations absent compliance with contract terms for licensee E's Ees, unlawful, since transfer under clause constitutes *doing business* w/i Sec. 8(e); proposed clause effectively controls labor relations of licensee-E and benefits U members generally rather than E's own Ees)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)

(U's insisting to impasse and striking to obtain E's agreement to clause providing that E could subcontract transportation of its product *only to contractor* employing members of U under parties' agreement, violative, since clause seeks to aid U members generally rather than those U members employed at E's plant; effect of clause is secondary)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)

(U's proposed clause which prohibits contracting out work customarily performed by E's Ees unless that work is performed by U members, unlawful)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)

(U's proposed clause that would permit construction work to be performed by *outside contractor as are designated by E* only when such work was contracted out *under the jurisdiction* of U and when qualified U members were not available, unlawful)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)

(U's proposed clause that specified that *contracting, subcontracting, leasing and subleasing and construction work* would be *conducted in accordance with* requirement of other clauses, unlawful, since clause would require E to comply with other clauses found herein to be illegal)

N.L.R.B. v. General Drivers, Local Union No. 89, a/w Teamsters 684 F.2d 359 (C.A. 6, July 1982)

(Respondent U not entitled to rely on *Sec.* 8(e) proviso which allows terms whereby E agrees not to subcontract jobsite work to Es who are not signatory members to contract, because collective bargaining agreement with E contained other provisions permitting U to enforce terms of agreement by economic self-help, *i.e.*, by a strike; job-site exemption in *Sec.* 8(e) does not apply where U retained right to enforce agreement by self-help measures, whether invoked or not)

Pacific Northwest Chapter of The Associated Builders & Contractors, Inc. v. N.L.R.B. 638 F.2d 73 (C.A. 9, Apr 17, 1981)

(clauses requiring subcontractors at construction site to be U signatories, permitting unlimited subcontracting so long as subcontractors have agreement with contracting U, held secondary since they are intended to satisfy U objectives involving Es and Ees outside bargaining unit and do not seek to preserve work for Ees of contracting E by limiting amount of subcontracting nor seek to protect Ees' wage and benefit standards by limiting subcontracting to parties who maintain equivalent standards)

Pacific Northwest Chapter of The Associated Builders & Contractors, Inc. v. N.L.R.B. 638 F.2d 73 (C.A. 9, Apr 17, 1981)

(subcontracting clause arrived at in bargaining relationship held protected by 8(e) proviso in view of practical difficulties in confining subcontractor agreements having U-non U or inter-U conflicts among workers; legislative history and construction industry provisions which favor broad subcontracting clauses; Connell decision construed as supporting validity of clauses in presence of bargaining relationship, regardless of presence or absence of U workers at jobsite; and substantial changes that would occur in construction industry upon narrow interpretation of proviso)

3740-1700—Cont.

N.L.R.B. v. Hotel and Restaurant Employees' Union Local 531 **623 F.2d 61 (C.A. 9, June 1980)**

(collective bargaining agreement between lessor-E and U containing clause that, if lessor leases premises all provisions of labor agreement *be applicable and binding upon lessee*, coupled with another clause that requires any E bound by agreement must recognize U, violative of 8(e), since contract effectively makes condition precedent to leasing that lessee-E must agree to recognize and contract with U, precisely effect of illegal U signatory clause)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36, etc. v. N.L.R.B. **669 F.2d 759 (C.A.D.C., Feb. 1981)**

(violation, where U and contractors executed and maintained agreement that only signatory brokers to master agreement received subcontracts and only U truck operators would perform hauling services for building contractors in area since truck operators held independent contractors and provision designed to compel independent contractors to become U members, as condition of doing business)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(*hotcargo* or *secondary contract* having sole purpose of making general contractor at construction site use only U subcontractors held not w/in construction industry proviso nor permissible under 8(f), since contract was not in context ofbargaining relationship inasmuch as U was not, nor contemplating becoming, representative of contractor's Ees, and contract was not offered to protect its Ees whom U might represent in future nor limited itself to *special problems inherent in common situs relationships*)

3740-5000 Work on area standards criteria

Tri-State Building & Construction Trades Council, AFL-CIO (Stark Electric, Inc.) **262 NLRB No. 080**

(effecting grievance-arbitration clause authorizing strikes to enforce subcontract clause prohibiting subcontracting to Es who do not observe same *conditions of employment* as enjoyed by Ees of all local Us affiliated with U, violative since term *conditions of employment* is so broad as to encompass non-economic provisions and accordingly, subcontracting clause was secondary; contract was not rendered lawful under construction industry proviso, notwithstanding subcontracting clause was limited to work performed on jobsite since self-help provision removes protection afforded by proviso)

3740-5900 Work preservation provision

N.L.R.B. v. International Longshoremen's Assn., AFL-CIO, et al. **447 US 490 (U.S. SCt. June 1980)**

(lawful *work preservation* agreement must pass two tests: (1) it must have as objective preservation of work traditionally performed by Ees represented by U; and (2) contracting E must have power to give Ees work in question - the so-called *right of control* test)

N.L.R.B. v. International Longshoremen's Assn., AFL-CIO, et al. **447 US 490 (U.S. SCt. June 1980)**

(*work of stuffing* and *stripping* containers used in shipping goods at waterfront facilities must focus on bargaining unit Ees' work, not on work of other Ees who may be doing same or similar work, and (Bd) must examine relationship between work as it existed before innovation (*the container revolution*) and as agreement propoks to preserve it)

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) **254 NLRB No. 093**

(contract clauses which are limited to primary considerations, such as preservation or protection of traditional work of Ees in bargaining units represented by labor organization, are not proscribed by Section 8(e) of Act)

International Union, United Mine Workersand Peabody Coal Company **253 NLRB No. 20**

(clause which provides that work shall be performed by UMWA members to the extent and in manner permitted by law found to have illegal secondary objective, i.e., coercion of subcontractor's Ees in to UMWA membership)

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **280 NLRB No. 004**

(maintaining and giving effect to, and enforcing rules requiring that off-pier *stripping* and *stuffing* of containers done w/i 50 mile radius of port must be performed by U unlawful where such work not historically perofrmed by U and U had no prescriptive right to perform it)

Seattle Post-Intelligencer, A Division of The Hearst Corporation **JD-(SF)-328-81**

(no violation of Sec. 8(e) where E and U had collective-bargaining agreement covering independednt contractor dealers and upon expiration of contract E unilaterally converted all dealers to Ee status, and U and E signed new agreement containing U security clause; since no evidence that this agreement compelled or required independent contractor to become Ee subject to U security as conversion occurred prior to implementation of contract)

Teamsters, Local Union 222 (S.J. Groves & Sons Company **JD-(SF)-118-80**

(U sought not to preserve but to acquire work for unit Ees)

Pacific Northwest Chapter of The Associated Builders & Contractors, Inc. v. N.L.R.B. **638 F.2d 73 (C.A. 9, Apr 17, 1981)**

(clauses requiring subcontractors at construction site to be U signatories, permitting unlimited subcontracting so long as subcontractors have agreement with contracting U, held secondary since they are intended to satisfy U objectives involving Es and Ees outside bargaining unit and do not seek to preserve work for Ees of contracting E by limiting amount of subcontracting nor seek to protect Ees' wage and benefit standards by limiting subcontracting to parties who maintain equivalent standards)

Pacific Northwest Chapter of The Associated Builders & Contractors, Inc. v. N.L.R.B. **638 F.2d 73 (C.A. 9, Apr 17, 1981)**

(contention that primary objective of preserving work w/i multi-E bargaining unit takes subcontracting clause outside 8(c), rejected, since clause does not limit subcontracting to E association members but allows subcontracting to nonmembers contracting with U; also, 8(c) applies to agreement which attempts to preserve work for multi-E unit rather than for single E's Ees; contention that work preservation for Ees of each contractor was an objective, thereby making clause lawful also rejected since, if an object of clause is to aid U members generally, object is secondary)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(work preservation doctrine provides generally that efforts to preserve work for Ees displaced by technological innovation (in instant case, *containerized shipping*) are not unlawful secondary activities and that U-management contracts with same purpose are not proscribed *hot cargo* agreements)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(under NLRA's proscription of secondary boycotts, work preservation agreements, by which parties seek to preserve work for contracting E's Ees when nature or location of that work has changed due to technological advances, as well as primary collective action enforcing their terms, are not considered illegal)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. **613 F.2d 890 (C.A.D.C.) (1979)**

(under *National Woodworking* 386 U.S. 612 (1967) *all surrounding circumstances* must be examined and this requires inquiry into work patterns both before and after technological innovation is introduced rather than just post-innovation work patterns because to do only latter would remove any opportunity for pre-innovation workers to preserve their work and Bd must show that new work is sufficiently unrelated to old work before ignoring traditional work patterns)

3750 LIMITATION UPON RENTAL OR USE OF FACILITIES

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's proposed *leasing-licensing out* clause which would forbid E from licensing out its operations absent compliance with contract terms for licensee E's Ees, unlawful, since transfer under clause constitutes *doing business* w/i Sec. 8(e); proposed clause effectively controls labor relations of licensee-E and benefits U members generally rather than E's own Ees)

N.L.R.B. v. Hotel and Restaurant Employees' Union Local 531 **623 F.2d 61 (C.A. 9, June 1980)**

(collective bargaining agreement between lessor-E and U containing clause that, if lessor leases premises all provisions of labor agreement *be applicable and binding upon lessee*, coupled with another clause that requires any E bound by agreement must recognize U, violative of 8(e), since contract

3750—Cont.

effectively makes condition precedent to leasing that lessee-E must agree to recognize and contract with U, precisely effect of illegal U signatory clause)

3758 LIMITATION UPON USE OF INDEPENDENT CONTRACTORS

Furriers Joint Council of New York, United Food and Commercial Workers International Union, AFL-CIO (The Resident Fur Buyers Association) **261 NLRB No. 106**

(*purchasing prohibitions* clause, limiting Es' (resident fur buyers') purchase of fur garments from sources whose workers work under terms and conditions prevailing in fur manufacturing industry, violative, since object of clause was calculated to satisfy U objectives elsewhere; not in bargaining unit of resident fur buyers but to labor relations of (fur garment) manufacturers)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

(provisions which sought to require *independent contractor* owner-operators of trucks be treated as Ees of Es who were signatories to master agreement and be cleared by U, and where work of owner-operators consisted exclusively of hauling to and from construction sites and thus not w/i construction industry proviso of Section 8(e), unlawful; notwithstanding provisions subsequently amended)

Seattle Post-Intelligencer, A Division of The Hearst Corporation **JD-(SF)-325-81**

(no violation of Sec. 8(e) where E and U had collective-bargaining agreement covering independednt contractor dealers and upon expiration of contract E unilaterally converted all dealers to Ee status, and U and E signed new agreement containing U security clause; since no evidence that this agreement compelled or required independent contractor to become Ee subject to U security as conversion occurred prior to implementation of contract)

International Union, United Mine Workersand Peabody Coal Company **253 NLRB No. 20**

(clause which provides that work shall be performed by UMWA members to the extent and in manner permitted by law found to have illegal secondary objective, i.e., coercion of subcontractor's Ees in to UMWA membership)

3770 LIMITATIONS UPON CONDITIONS OF SALE OF CAPITAL ASSETS

Lone Star Steel Company v. N.L.R.B. **639 F.2d 545 (C.A. 10, 1980)**

(Bd properly read *successorship clause* as applying only to kind of permanent disposition of assets that is outside scope of *Section 8(3)*)

3770-5000 Requiring purchaser to be union signatory

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U's proposal which in effect would require E to condition sale or conveyance of its operations upon successor's assumption of E's obligations under bargaining agreement, held not to relate to E's *doing business* w/i meaning of Sec. 8(e), since transfer of portion of E's business under that clause would involve no continuing relationship with the purchaser)

3780 DIMINUTION OF UNIT WORK

3780-3300 Unit work as defined by agreement

Plumbers, Local Union 342 (Conduit Fabricators, Inc.) **251 NLRB No. 112**

(U's refusal to handle pipe prefabricated by one E, thus causing another E not to install pipe, unlawful, where U claimed entire fabrication of pipe since work not covered by work preservation clause inasmuch as entire fabrication had not been traditionally performed by U)

3780-6700 Fairly claimable unit work

Plumbers, Local Union 342 (Conduit Fabricators, Inc.) **251 NLRB No. 112**

(U's refusal to handle pipe prefabricated by one E, thus causing another E not to install pipe, unlawful, where U claimed entire fabrication of pipe since work not covered by work preservation clause inasmuch as entire fabrication had not been traditionally performed by U)

Emery Air Freight Corporation **JD-(NY)-36-81**

(provision which requires primary E to perform certain ground work at air terminal which previously had been subcontracted to another company, violative as this work had never been performed by E's Ees but had been done by Ees of air carriers or their subcontractors and, therefore, not claimable by E's Ees)

4300 EMPLOYER ACTION REQUIRED BY AGREEMENT

Emery Air Freight Corporation **JD-(NY)-36-81**

(provision which requires primary E to perform certain ground work at air terminal which previously had been subcontracted to another company, violative as this work had never been performed by E's Ees but had been done by Ees of air carriers or their subcontractors and, therefore, not claimable by E's Ees)

4350 COMPLIANCE WITH FRINGE BENEFIT GUARANTEE CLAUSES

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(if U may not maintain damage action for violation of hot cargo clause, it also may not enforce hot cargo clause in action for specific performance)

Griffith Company; et al. v. N.L.R.B. **660 F.2d 406 (C.A. 9, Oct 1981)**

(provision in multi-E agreement that should contractor become delinquent in payments to fringe benefit trust funds, fund administrator may commence legal proceedings to hold general contractor who contracts work to delinquent subcontractor liable for accrued delinquencies arising from subcontractors' failure to make fund payments on previous jobs; that upon notice from trust administrator general contractor liable for any delinquencies of their subcontractors, held lawful as w/i construction industry proviso of Section 8(e), since proviso extends to contractual provisions which further common interests of workers at jobsite

4375 COMPLIANCE WITH ROYALTY ASSESSMENT CLAUSE

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(if U may not maintain damage action for violation of hot cargo clause, it also may not enforce hot cargo clause in action for specific performance)

5000 CONSTRUCTION INDUSTRY EXEMPTION

5014 SCOPE AND PURPOSE, GENERALLY

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) **254 NLRB No. 093**

(although proviso to Section 8(e) makes lawful certain secondary clauses limiting subcontracting of work in construction industry, contract cannot provide that they be enforced by resort to economic *self-help*, notwithstanding *self-help and subcontracting provisions were found in different articles of contract*—)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(contention that definition of jobsite work in construction industry proviso of 8(e) should be indentical to definition of jobsite work in Davis-Bacon Act, rejected, since that Act broader in coverage as remedial statute than 8(e) proviso)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(transportation of materials between construction sites controlled by different contractors not w/i construction proviso whether or not both actual construction sites, nor is transportation of material to sites 10 miles apart controlled by same contractor w/i proviso since drivers spend little time on jobsite compared to offsite travel and purpose of proviso has little relevance to persons having such incidental contact with site)

Griffith Company; et al. v. N.L.R.B. **660 F.2d 406 (C.A. 9, Oct 1981)**

5042 AGREEMENT RELATING TO CONTRACTING OR SUBCONTRACTING

Tri-State Building & Construction Trades Council, AFL-CIO (Stark Electric, Inc.) **262 NLRB No. 080**

(effecting grievance-arbitration clause authorizing strikes to enforce subcontract clause prohibiting subcontracting to Es who do not observe same *conditions of employment* as enjoyed by Ees of all local Us affiliated with U, violative since term *conditions of employment* is so broad as to encompass non-economic provisions and accordingly, subcontracting clause was secondary; contract was not rendered lawful under construction industry proviso, notwithstanding subcontracting clause was limited to work performed on jobsite since self-help provision removes protection afforded by proviso)

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) **254 NLRB No. 093**

(notwithstanding that subcontracting provisions of contract became effective 6-months prior to filing of charge, U, by filing grievance relating to subcontracting provisions of contract, sought to enforce contract w/i 10(b) period, thereby bringing contract w/i perview of Section 8(e))

5042—Cont.

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) 254 NLRB No. 093

(extrinsic evidence necessary to show whether administration of ambiguous subcontracting clause lawful or unlawful; such evidence must be based on mutual consent or acquiescence of parties to contract)

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) 254 NLRB No. 093

(Bd could not find contract unlawfully extended prohibition against subcontracting beyond jobsite work where U's attempt to compell contracting E to accept its interpretation of contract was resisted by E during instant hearing and prearbitration proceeding and provided no basis for finding contract clause in issue concerning subcontracting was violative of 8(e) of Act; requisite mutual consent or acquiescence to unlawful interpretation was not present in instant case)

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) 254 NLRB No. 093

(although proviso to Section 8(e) makes lawful certain secondary clauses limiting subcontracting of work in construction industry, contract cannot provide that they be enforced by resort to economic *self-help*, notwithstanting *self-help and subcontracting provisions were found in different articles of contract*—)

Teamsters, Local Union 222 (S.J. Groves & Sons Company JD-(SF)-118-80

(agreement providing for use of self-help to enforce maintenance of benefit levels by subcontractors and others with whom E did business at jobsite or elsewhere and authorizing strike or other economic means for enforcing performance of grievance procedure duties held unlawful; agreements may not authorize enforcement by other than judicial means)

Donald Schriver, Inc., et al. v. N.L.R.B. 636 F.2d 859 (C.A.D.C. 1980)

(inclusion of subcontracting agreements in 8(f) prehire agreement, not unlawful, since agreements were sought in context of collective bargaining relationship as required under SCt's Connell decision which is satisfied when U seeks complete contractual relationship with E, and it is irrelevant that contract is merely a *prehire agreement* and U lacks majority status, since 8(f) provides means by which bargaining relationship is established in construction industry, and Congress recognized necessity for prehire agreements due to temporary nature of employment in industry)

Donald Schriver, Inc., et al. v. N.L.R.B. 636 F.2d 859 (C.A.D.C. 1980)

(subcontracting agreements which did not need to be renegotiated on each individual construction site or were not limited to particular job sites at which signatory U workers were already employed, not unlawful, since 8(e) proviso itself contains no limitation on subcontracting, subcontracting agreements in construction industry, as recognized by Congress and by legislative and case law, have not been limited to particular jobsites, renegotiation on job site basis or on U workers' presence at site would completely subvert industry's subcontracting agreements; and holding herein is not contrary to SCt's Connell decision)

Donald Schriver, Inc., et al. v. N.L.R.B. 636 F.2d 859 (C.A.D.C. 1980)

(agreements permitting subcontracting only with particular Us, not unlawful, since U's legitimate goals of organizing workers and standardizing working conditions are sufficient to justify U-specific agreements, nothing in statute suggests limitation on such agreements, nor is there any Congressional purpose that would be undermined if 8(e) is construed to permit them; moreover, legislative history supports proposition that such agreements in construction industry may be U-specific, such agreements were common at time 8(e) was enacted, and they are consistent with purposes of 8(e))

Donald Schriver, Inc., et al. v. N.L.R.B. 636 F.2d 859 (C.A.D.C. 1980)

(subcontracting agreements held not protected by construction industry proviso to 8(e), since subcontracting agreements lose protection of proviso if they contain terms to sanction strikes or other self-help measures to enforce agreements, and agreement herein authorized Us to take *any* action to enforce *any* settlement or decision obtained in grievance-arbitration process and thus included decisions concerning subcontracting agreements w/i its coverage; U's mere disclaimer of intent to utilize enforcement provision is not sufficient to cure contract defect)

N.L.R.B. v. General Drivers, Local Union No. 89, a/w Teamsters 684 F.2d 389 (C.A. 6, July 1982)

(Respondent U not entitled to rely on *Sec.* 8(e) proviso which allows terms whereby E agrees not to subcontract jobsite work to Es who are not signatory members to contract, because collective bargaining agreement with E contained other provisions permitting U to enforce terms of agreement by economic self-help, *i.e.*, by a strike; job-site exemption in *Sec.* 8(e) does not apply where U retained right to enforce agreement by self-help measures, whether invoked or not)

Griffith Company, et al. v. N.L.R.B. 660 F.2d 406 (C.A. 9, Oct 1981)

(provision in multi-E agreement that should contractor become delinquent in payments to fringe benefit trust funds, fund administrator may commence legal proceedings to hold general contractor who contracts work to delinquent subcontractor liable for accrued delinquencies arising from subcontractors' failure to make fund payments on previous jobs; that upon notice from trust administrator general contractor liable for any delinquencies of their subcontractors, held lawful as w/i construction industry proviso of Section 8(e), since proviso extends to contractual provisions which further common interests of workers at jobsite)

Pacific Northwest Chapter of The Associated Builders & Contractors, Inc. v. N.L.R.B. 638 F.2d 73 (C.A. 9, Apr 17, 1981)

(subcontracting clause arrived at in bargaining relationship held protected by 8(e) proviso in view of practical difficulties in confining subcontractor agreements having U-non U or inter-U conflicts among workers; legislative history and construction industry provisions which favor broad subcontracting clauses; Connell decision construed as supporting validity of clauses in presence of bargaining relationship, regardless of presence or absence of U workers at jobsite; and substantial changes that would occur in construction industry upon narrow interpretation of proviso)

Pacific Northwest Chapter of The Associated Builders & Contractors, Inc. v. N.L.R.B. 638 F.2d 73 (C.A. 9, Apr 17, 1981)

(contention that, even if 8(e) construction industry proviso authorizes clauses requiring subcontractors to have agreements with Us in general, it does not permit clauses requiring a bargaining agreement with a particular U, rejected, since language of proviso does not suggest such a limitation; prior to its enactment Congress was cognizant of ct case upholding *particular-U* agreement in which subsequent ct case concurred; and prohibition of *particular-U* subcontractor clauses would defeat some of the interests served by proviso)

Pacific Northwest Chapter of The Associated Builders & Contractors, Inc. v. N.L.R.B. 638 F.2d 73 (C.A. 9, Apr 17, 1981)

(picketing or striking to obtain subcontracting agreement, not unlawful, in view of conflicting legislative history; negative implication of 8(b)(4)(ii)(A) that picketing or striking to induce entry into 8(e) proviso agreement is lawful; Bd's acquiescence in cts' rejection of its position that such agreements had to be voluntary; present law that does not require limitation running counter to Act's plain words; and fact that picketing or striking to obtain agreement does not violate statutory rights of subcontractors' Ees) t does not violate statutory rights of subcon

Pacific Northwest Chapter of The Associated Builders & Contractors, Inc. v. N.L.R.B. 638 F.2d 73 (C.A. 9, Apr 17, 1981)

(although Us may lawfully strike or picket to obtain subcontractor agreement at construction site, enforcement of such agreement by self-help, unlawful, and clauses authorizing self-help enforcement, directly or through arbitration decisions, invalid, in view of exemption of construction industry from 8(e)'s prohibition against secondary boycott agreements but not from 8(b)(4)(ii)(B), Congress' intention that 8(e) clauses be enforced judicially rather than by self-help; and fact that Congress' intent would be circumvented by finding striking or picketing lawful)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO 493 F. Supp. 1218 (D Ct WI, 1980)

(*hotcargo* or *secondary contract* having sole purpose of making general contractor at construction site use only U subcontractors held not w/in construction industry proviso nor permissible under 8(f), since contract was not in context ofbargaining relationship inasmuch as U was not, nor contemplating becoming, representative of contractor's Ees, and contract was not offered to protect its Ees whom U might represent in future nor limited itself to *special problems inherent in common situs relationships*)

5056 WORK TO BE DONE AT CONSTRUCTION SITE

General Truck Drivers, Warehousemen and Helpers, Local 467, Teamsters (Mike Sullivan & Associates, Inc.) 265 NLRB No. 214

(picket line clause which purported to include delivery of materials to the jobsite, not protected thereby under construction industry proviso)

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) 254 NLRB No. 093

(delivery of materials to construction site does not constitute *on site work*)

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) 254 NLRB No. 093

(subcontracting clause which purports to include delivery of materials to construction site enjoys no ptorection under construction industry proviso to Section 8(e), since delivery of materials to construction site does not constitute *onsite* work)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) 240 NLRB No. 038

(offsite activity not per se secondary activity w/i Section 8(e); jobsite limitation in construction industry proviso has no relevance to primary or second-

5056—Cont.

any nature of activity as defined in *National Woodwork Manufacturers v. NLRB*)

Building Material and Dump Truck Drivers,
Teamsters Local Union No. 36 (Terra Trucking
Company) **249 NLRB No. 038**

(deliveries to and from jobsite not w/i construction industry proviso)

Building Material and Dump Truck Drivers,
Teamsters Local Union No. 36 (Terra Trucking
Company) **249 NLRB No. 038**

(provisions which sought to require *independent contractor* owner-operators of trucks be treated as Ees of Es who were signatories to master agreement and be cleared by U, and where work of owner-operators consisted exclusively of hauling to and from construction sites and thus not w/i construction industry proviso of Section 8(e), unlawful; notwithstanding provisions subsequently amended)

Joint Council of Teamsters No. 42; et al. (Associated
Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(mixing, delivery and pouring of readymix concrete; delivery of precast concrete pipe; bringing of tools, materials, and personnel to and from site of construction and delivery of landfill do not constitute jobsite work)

Teamsters, Local Union 222 (S.J. Graves & Sons
Company **JD-(SF)-118-80**

(E's transportation of gravel to work site held not to constitute onsite work and therefore not to be exempt according to Act's legislative history)

Joint Council of Teamsters, No. 42 v. N.L.R.B. **671 F.2d 305 (C.A. 9, Dec. 1981)**

(owner-operators of dump trucks who hauled materials from construction sites to remote dump sites or other construction sites held delivery persons not construction site workers; therefore not covered by on-site proviso)

5070 RELATION TO OTHER PROVISIONS OF ACT

Griffith Company; et al. v. N.L.R.B. **660 F.2d 406 (C.A. 9, Oct 1981)**

(agreement prohibiting E from subcontracting work to any signatory subcontractor who was delinquent in required payments to benefit trusts, although lawful as w/i construction industry proviso to Section 8(e), may not be enforced by self-help economic means proscribed by Section 8(b)(4), but must be enforced judicially)

Pacific Northwest Chapter of The Associated
Builders & Contractors, Inc. v. N.L.R.B. **638 F.2d 73 (C.A. 9, Apr 17, 1981)**

(although Us may lawfully strike or picket to obtain subcontractor agreement at construction site, enforcement of such agreement by self-help, unlawful, and clauses authorizing self-help enforcement, directly or through arbitration decisions, invalid, in view of exemption of construction industry from 8(e)'s prohibition against secondary boycott agreements but not from 8(b)(4)(ii)(B), Congress' intention that 8(e) clauses be enforced judicially rather than by self-help; and fact that Congress' intent would be circumvented by finding striking or picketing lawful)

6200 GARMENT INDUSTRY EXEMPTION

6225 PERSONS EXEMPTED BY PROVISO

Furriers Joint Council of New York, United Food
and Commercial Workers International Union,
AFL-CIO (The Resident Fur Buyers
Association) **261 NLRB No. 106**

(*purchasing prohibitions* clause, limiting Es' (resident fur buyers') purchase of fur garments from sources whose workers work under terms and conditions prevailing in fur manufacturing industry, violative, since object of clause was calculated to satisfy U objectives elsewhere; not in bargaining unit of resident fur buyers but to labor relations of (fur garment) manufacturers)

Furriers Joint Council of New York, United Food
and Commercial Workers International Union,
AFL-CIO (The Resident Fur Buyers
Association) **261 NLRB No. 106**

(*Resident Fur Buyers* in fur garment industry not in any way responsible for manufacture of garments and are not involved in employment of workers involved in manufacture; resident buyers are simply involved in selling and shipping; garment industry proviso was intended to extend to process of production and not to transportation, shipping or selling of garments)

6250 ACTIVITY EXEMPTED BY PROVISO

Furriers Joint Council of New York, United Food
and Commercial Workers International Union,
AFL-CIO (The Resident Fur Buyers
Association) **261 NLRB No. 106**

(*Resident Fur Buyers* in fur garment industry not in any way responsible for manufacture of garments and are not involved in employment of workers involved in manufacture; resident buyers are simply involved in selling and shipping; garment industry proviso was intended to extend to process of production and not to transportation, shipping or selling of garments)

6275 RELATION TO OTHER PROVISIONS OF ACT

Pacific Northwest Chapter of The Associated
Builders & Contractors, Inc. v. N.L.R.B. **638 F.2d 73 (C.A. 9, Apr 17, 1981)**

(picketing or striking to obtain subcontracting agreement not unlawful, in view of conflicting legislative history; negative implication of 8(b)(4)(ii)(A) that picketing or striking to induce entry into 8(e) proviso agreement is lawful; Bd's acquiescence in cts' rejection of its position that such agreements had to be voluntary; present law that does not require limitation running counter to Act's plain words; and fact that picketing or striking to obtain agreement does not violate statutory rights of subcontractors' Ees)

7500 AFFIRMATIVE DEFENSES

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(petitioner's contractual promise to UMW to report and make contributions to specified U health and retirement funds based on specified amount, *on each ton of — coal* procured for use or sale by petitioner from producers not under contract with UMW was illegal under anti-trust and labor laws and thus valid defense to suit for such contributions by trustees of U funds)

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(third party beneficiaries, like Trustees of benefit funds, are subject to contract defenses of nonperforming promisors; pension fund trustees have no special status which exempts them from general rule that cts do not enforce illegal contracts)

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(ct must reach merits of illegality defense in order to determine whether contract clause at issue has any legal effect)

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(if U may not maintain damage action for violation of hot cargo clause, it also may not enforce hot cargo clause in action for specific performance)

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(where 8(e) defense is raised by party which 8(e) was designed to protect, and where defense is not directed to collateral matter but to portion of contract for which enforcement is sought ct, must entertain the defense)

8700 SAVINGS CLAUSE

General Drivers, Local Union No. 89, a/w
Teamsters (Robert E. McKee, Inc.) **254 NLRB No. 093**

(not effective where clause was generalized and not specifically addressed to self-enforcement of agreements protected by construction industry proviso in Section 8(e))

590 PREHIRE AGREEMENTS - SECTION 8(f)

0100 GENERALLY

N.L.R.B. v. Haberman Construction Company 641 F.2d 351 (C.A. 5, Apr. 1981)

(while it is an ULP for E under 8(a)(1) and 8(a)(2) and for U under 8(b)(1)(A) to enter into bargaining agreement with minority U, Sec. 8(f) specifically provides that it shall not be an ULP for E to make an agreement with U covering Ees engaged in building and construction industry prior to establishment of U's majority status, and Sec. 8(f) contract is voidable until such time as U achieves majority support in appropriate unit)

2500 QUALIFICATION OF PARTIES TO ENTER AGREEMENT

5000 PERMISSIBLE CONDITIONS OF AGREEMENTS

5001 GENERALLY

Donald Schriver, Inc., et al. v. N.L.R.B. 636 F.2d 839 (C.A.D.C. 1980)

(inclusion of subcontracting agreements in 8(f) prehire agreement, not unlawful, since agreements were sought in context of collective bargaining relationship as required under SCt's Connell decision which is satisfied when U seeks complete contractual relationship with E, and it is irrelevant that contract is merely a *prehire agreement* and U lacks majority status, since 8(f) provides means by which bargaining relationship is established in construction industry, and Congress recognized necessity for prehire agreements due to temporary nature of employment in industry)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO 493 F. Supp. 1218 (D Ct WI, 1980)

(*hotcargo* or *secondary contract* having sole purpose of making general contractor at construction site use only U subcontractors held not w/in construction industry proviso nor permissible under 8(f), since contract was not in context of bargaining relationship inasmuch as U was not, nor contemplating becoming, representative of contractor's Ees, and contract was not offered to protect its Ees whom U might represent in future nor limited itself to *special problems inherent in common situs relationships*)

5001-5000 Establishment of union's majority under section 9 prior to agreement not required

Giordano Construction Co. 256 NLRB No. 010

(U, originally recognized under *Section* 8(f), can achieve *Section* 9(a) status by (1) demonstrating that it had achieved majority status *among Ees who make up a permanent and stable work force of the E* or (2) by demonstrating majority status of Ees employed at particular jobsite)

Giordano Construction Co. 256 NLRB No. 010

(existing 8(f) agreement cannot bar election ptn, since U failed to demonstrate that it had achieved representational status under *Section* 9(a) of the Act; E had no ongoing jobsites and had none since well prior to filing of instant ptn and had no permanent and stable work force; mere fact U might indeed have represented majority of Ees at E's previous job sites is of no consequence inasmuch as U must demonstrate its majority at each new jobsite in order to establish its representational status under 9(a) and convert its contract with E to one that possesses bar qualities)

5001-7500 Applies only to initial recognition situations

Construction Erectors, Inc. 252 NLRB No. 045

(Bd held U achieved majority status under 9(a) in stable unit at time of execution of multisite contract, where payroll charts established a permanent complement of at least six unit ironworkers, U dispatched through its hiring hall at least a majority of E's ironworkers, such referrals switched from one project to another, and U-security provisions applied to all unit Ees' thus stable work force on date of execution of contract was distinguishable from those hired by a contruction industry E on project-by-project schedule with no personnel carryover)

Construction Erectors, Inc. 252 NLRB No. 045

(repudiating multisite contract, violative, notwithstanding E's contention that it was unenforceable as pre-hire agreement, where, although first contract between E and U fell into category of Sec. 8(f) agreement, at least by time of the contract here in question, U had achieved majority status in stable unit of E's Ees)

Queen City Paving Co., Inc. JD-(SF)-136-80

(E and Us violated Act by entering into, maintaining, and enforcing collective bargaining agreements covering bargaining units since qcr existed where petitions had been filed, elections held, and objections to election and challenged ballots were under Bd consideration; Sec. 8(f) was no defense because of existence of qcr)

5067 SPECIFICATION OF MINIMUM TRAINING OR EXPERIENCE LEVELS OF EMPLOYEES

N.L.R.B. v. Custom Sheet Metal & Service Co., Inc. 666 F.2d 484 (C.A. 10, Dec. 1981)

(Bd's R/O, which required E to execute 8(f) contract but not give effect to those provisions (8 day U security and qualification for employment clause) which would be unlawful if applied to E who was no longer engaged in construction work but was manufacturing concern, set aside, where, especially latter clause, is so basic to contract and so interwoven with all its terms that it must stand or fall as an entirety; furthermore, no savings and severability clause in contract)

5083 EMPLOYMENT PRIORITY BASED UPON LENGTH OF SERVICE

5083-5000 In geographical area

Local No. 17, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (American Bridge Division, United States Steel Corporation) JD-593-81

(attempting to cause E to discriminate against all *permit men* (not U members) violative. Defense that Sec. 8(f)(4) allowed such U conduct as attempt to provide priority to workers in particular geographical area, rejected, since U failed to so qualify request)

7500 EFFECT OF AGREEMENT

7550 DOES NOT BAR PETITION

Giordano Construction Co. 256 NLRB No. 010

(existing 8(f) agreement cannot bar election ptn, since U failed to demonstrate that it had achieved representational status under *Section* 9(a) of the Act; E had no ongoing jobsites and had none since well prior to filing of instant ptn and had no permanent and stable work force; mere fact U might indeed have represented majority of Ees at E's previous job sites is of no consequence inasmuch as U must demonstrate its majority at each new jobsite in order to establish its representational status under 9(a) and convert its contract with E to one that possesses bar qualities)

7563 PETITION IS BARRED

7563-5000 Under Section 9(a)

Giordano Construction Co. 256 NLRB No. 010

(existing 8(f) agreement cannot bar election ptn, since U failed to demonstrate that it had achieved representational status under *Section* 9(a) of the Act; E had no ongoing jobsites and had none since well prior to filing of instant ptn and had no permanent and stable work force; mere fact U might indeed have represented majority of Ees at E's previous job sites is of no consequence inasmuch as U must demonstrate its majority at each new jobsite in order to establish its representational status under 9(a) and convert its contract with E to one that possesses bar qualities)

Precision Striping, Inc. v. N.L.R.B. 642 F.2d 1144 (C.A. 9, Mar 23, 1981)

(in Sec. 8(f) pre-hire agreement situation, ct held contract bar rule applies when U obtains majority support and thereby transforms pre-hire agreement

7563-5000—Cont.

into Sec. 9(a) contract which prohibits challenges to incumbent U's majority status during term of an agreement of 3 years or less)

7875 ESTABLISHMENT OF SECTION 8(d) BARGAINING OBLIGATION

7875-0100 Generally

Construction Erectors, Inc. **265 NLRB No. 095**
(on remand from U.S. Court of Appeals, Bd found E's repudiation of collective bargaining agreement before its termination date, unlawful, since workforce in bargaining unit had become permanent and stable and U obtained majority support w/i unit of Ironworkers during period w/i effective term of applicable contract; E moved its Ees from job to job and did not regularly assign Ees to single jobs and then to no subsequent jobs; 10 of 15 Ees in core group were U members and worked 75% of total days on which Ironworkers were employed)

Hageman Underground Construction; etc. **253 NLRB No. 067**
(non-U company found herein single E with company that executed 8(f) agreement held bound by agreement at all existing and future jobsites, where U at one time represented majority of Ees who constituted a permanent and stable group of backhoe operators and E did not generally hire on project-by-project basis; this established irrebuttable presumption of majority status during length of contract and whether U enjoyed such status at time E repudiated contract irrelevant)

Precision Striping, Inc. v. N.L.R.B. **642 F.2d 1144 (C.A. 9, Mar 23, 1981)**
(E's duty to bargain and to honor Sec. 8(f) pre-hire agreement is contingent upon U's obtaining majority support in unit, and when U obtains such support, pre-hire agreement becomes a Sec. 9(a) contract executed by E with U representing Ee majority in unit)

7875-5000 Must define projects or area to which applicable

Gordon L. Rayner and Frank H. Clark, d/b/a Bay Area Sealers **251 NLRB No. 017**
(E held obligated to recognize and bargain with U for prospective as well as current jobsites, since (a) E's Ees had tendered their designation cards w/i determinative payroll period, and (b) U had signed authorization cards from majority in unit of E's permanent Ees when it demanded recognition, so that contract was not 8(f) prehire contract valid only for current jobsite as E contended)

Land Equipment Inc. **248 NLRB No. 098**
(where E employs stable complement of Ees majority need not be established at each jobsite)

D'Angelo & Khan, Inc. **248 NLRB No. 062**
(where E entered into 8(f) prehire agreement with local when it first worked at jobsite w/i local's jurisdiction, its refusal to apply agreement to Ees at succeeding jobsite held not unlawful, since prehire agreement did not give rise to presumption of local's majority status at original jobsite; furthermore, regardless of local's majority status at original site, provisions of 8(a)(5) do not apply unless U can demonstrate its majority status at succeeding sites, record here showed Local did not have majority support at the succeeding site)

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(repudiation of contract unlawful, where 8(f) pre-hire agreement was transformed into bargaining agreement when U achieved majority status in relevant bargaining unit composed of Ees at E's two construction projects rather than on project by project basis, and rebuttable presumption of continuing majority status applied to unit notwithstanding potential change in its Ee composition and eventual relocation to other, future projects)

8700 ENFORCEMENT OF AGREEMENT

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**
(ct denied enforcement of Bd order requiring project-by-project E, having 8(f) prehire contract with U, to reinstate discriminatees, who were constructively discharged when they quit, to construction projects not yet begun at time of ULPs; history of Sec. 8(f) and its interpretation by Bd and cts establish that U must reestablish its majority status at each affected jobsite before it can enforce Sec. 8(f) agreement with a project-by-project E)

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**
(ct denied enforcement of Bd order requiring project-by-project E operating under 8(f) prehire contract to reinstate discriminatees, to construction projects not yet begun at time of ULPs; Bd cases which have drawn line between *project-by-project* and *stable work force* situations reaffirm rule that U must reestablish its majority status before it can enforce 8(f) agreement with project-by-project E; and Bd herein sought to restroe discriminatees to economic position they might have attained despite E's lawful right not to rehire them at termination of porjects in progress)

The Carpenters District Council of North Central Texas v. North Texas Contractor Assoc. et al. **No. CA3-76-1151-F (D Ct. TX, Feb. 21, 1979 (unreported))**
(when U did not have majority status, it could not enforce contract provision which called for arbitration of disputes)

593 PICKETING AND STRIKES AT HEALTH CARE INSTITUTIONS (SECTION 8(g)

0100 GENERALLY

2000 ACTIVITY SUBJECT TO NOTICE REQUIREMENT

2025 FORMS OF ACTIVITY

2025-3300 Picketing

Local Union No. 200, General Service Employees' Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc. etc.) 263 NLRB No. 016

(picketing by U vice president, and 2 business agents at hospital w/o giving notice to E violative where picketers agents of U and sympathy strikers with another U which had given proper notice; Sec. 8(g) requires 10-day notice for *any* strike, fact that U represented no Ees at hospital does not relieve it of notice obligation; compliance by one U does not fulfill statutory requirement for another which may later join dispute; fact sympathy picketing covered 2 month period, was evidence of breadth of support for strike precluding *de minimus* finding)

District 1199, National Union of Hospital and Health Care Employees, Retail, Wholesale and Department Store Union, AFL-CIO 256 NLRB No. 017

(picketing hospital premises w/o first giving 10 days written notice as required by Sec. 8(g) of Act, violative, notwithstanding fact that picketing was limited in duration and did not disrupt services in any way)

Sheet Metal Workers Local Union 324, AFL-CIO (Lake Shore Hospital and Health Related Facility) 254 NLRB No. 064

(construction U which picketed construction site of addition to hospital w/o giving hospital required notice violated Act where picket signs did not make clear that U's dispute was not with hospital and had potential to disrupt health care services)

Bricklayers & Allied Craftsmen, Local 40 252 NLRB No. 030

(U's contention that notice requirements of Sec. 8(g) were inapplicable because U did not represent, or seek to represent, health care Ees or because health care Ees did not engage in picketing or other concerted refusal to work rejected; here, the picketing, directed at hospital although disavowing any appeal to hospital Ees, had potential to disrupt health care services at hospital, and was subject to notice requirements of Sec. 8(g))

2025-4000 Strikes

East Chicago Rehabilitation Center, Inc. 259 NLRB No. 135

(striking Ees did not lose protections afforded health care Ees under Act, notwithstanding E's contention that strike caused disruptions in patient care, where walkout involved fewer than half of day-shift Ees, with remaining Ees and supervisors working as scheduled, strike lasted only 2 hours and there was no showing that strike jeopardized any patient's safety or health)

Montefiore Hospital and Medical Center v. N.L.R.B 621 F.2d 510 (C.A. 2, 1980)

(doctors' strike in sympathy with striking unionized Ees at health care institution held protected as to Sec. 8(g) notwithstanding lack of notice to E, in view of 8(g) language applying only to labor organizations and not individuals, legislative history focusing on large scale and not individual activity, and purpose of giving health care institutions enough notice to arrange for patient care - doctors here created no danger or risk of harm to patients)

2025-6000 Work stoppages

Barry S. Seinf, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group 264 NLRB No. 019

(Ees of medical clinic who refused to work until management heard their grievances do not constitute *labor organization;* and thus, were not required to give notice under *Sec. 8(g) of Act* of intended work stoppage; however, 8(g) *of Act* does not apply only to work stoppages in support of bargaining demands)

Charleston Nursing Center 257 NLRB No. 046

(Sec. 8(g) does not apply to work stoppage at health care institution in which no labor organization is involved)

A & D Davenport Transportation, Inc. and Sun-Fair Special Service Transportation, A Division of A & D Davenport Transportation, Inc. 256 NLRB No. 079

(E's contention that it was a health care institution and that Ees forfeited protection of Act by engaging in concerted refusal to work w/o giving 10 days notice pursuant to Sec. 8(g) of Act rejected, since strictures of Sec. 8(g) apply only to labor organizations as defined in Sec. 2(5) and here, group (unaffiliated with any existing labor organization) was totally unstructured and was doing nothing more than presenting grievances and thus was not statutorily defined labor organization)

Leisure Lodge Nursing Home 250 NLRB No. 134

(unorganized Ees at nursing home who threatened to strike w/o giving 10 days notice did not violate Act as Health Care Amendments only apply when labor organization is involved)

Leisure Lodge Nursing Home 230 NLRB No. 124

(half hour work stoppage at nursing home to present grievances, protected)

Ruehle's Paramedic Ambulance, Inc. JD-129-82

(no violation by giving warnings to Ees who, frustrated by lack of movement in contract negotiations, engaged in one day concerted work stoppage by calling in sick, as Ees failed to give 10-day notice to E, provider of ambulance services, who was found herein to be health care institution)

Local 144, Hotel, Hospital Nursing Home and Allied Health Services Union, SEIU, AFL-CIO (Miklos Taube, et al., d/b/a Cliffside Nursing Home) JD-(NY)-45-81

(work stoppage of health care Ees at nursing home called by U to further its grievance demands w/o giving 10 days written notice to E and FMCS, unlawful and not *de minimis,* despite its relative brevity, where it was not provoked by E and caused harm to home's incapacitated residents)

2050 LOCATION OF ACTIVITY

2050-3300 At health care institution proper

Local Union No. 200, General Service Employees' Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc. etc.) 263 NLRB No. 016

(picketing by U vice president, and 2 business agents at hospital w/o giving notice to E violative where picketers agents of U and sympathy strikers with another U which had given proper notice; Sec. 8(g) requires 10-day notice for *any* strike, fact that U represented no Ees at hospital does not relieve it of notice obligation; compliance by one U does not fulfill statutory requirement for another which may later join dispute; fact sympathy picketing covered 2 month period, was evidence of breadth of support for strike precluding *de minimus* finding)

2050-6700 Related construction sites

Sheet Metal Workers Local Union 324, AFL-CIO (Lake Shore Hospital and Health Related Facility) 254 NLRB No. 064

(construction U which picketed construction site of addition to hospital w/o giving hospital required notice violated Act where picket signs did not make clear that U's dispute was not with hospital and had potential to disrupt health care services)

4000 NOTICE REQUIREMENT

4001 GENERALLY

East Chicago Rehabilitation Center, Inc. 259 NLRB No. 135

(U's failure to give 8(g) notice did not deprive walkout of its protected character where it would not have been possible for U to have given 8(g) notice contemplated by Act since it had no prior notice of walkout and did everything it could to end it)

4001—Cont.

District 1199, National Union of Hospital and Health Care Employees, Retail, Wholesale and Department Store Union, AFL-CIO **256 NLRB No. 017**
(picketing hospital premises w/o first giving 10 days written notice as required by Sec. 8(g) of Act, violative, notwithstanding fact that picketing was limited in duration and did not disrupt services in any way)

Laborers', Local 1253 (St. Mary's Hospital of Roswell, Inc.) **248 NLRB No. 030**
(no notice required where health care institution is only secondary E)

4028 TO WHOM NOTICE MUST BE GIVEN

Laborers', Local 1253 (St. Mary's Hospital of Roswell, Inc.) **248 NLRB No. 030**
(U's failure to conform to Sec. 8(g) requirements for giving notice to FCMS and health care institution not violative, where U made it clear it was picketing only primary E contractor and limited picketing to places reasonably close to primary dispute's situs, and secondary health care institution could have established reserve gates but did not do so)

4036 BY WHOM NOTICE MUST BE GIVEN

Local Union No. 200, General Service Employees' Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc. etc.) **263 NLRB No. 016**
(picketing by U vice president, and 2 business agents at hospital w/o giving notice to E violative where picketers agents of U and sympathy strikers with another U which had given proper notice; Sec. 8(g) requires 10-day notice for *any* strike, fact that U represented no Ees at hospital does not relieve it of notice obligation; compliance by one U does not fulfill statutory requirement for another which may later join dispute; fact sympathy picketing covered 2 month period, was evidence of breadth of support for strike precluding *de minimus* finding)

East Chicago Rehabilitation Center, Inc. **259 NLRB No. 135**
(failure of Ees to provide 8(g) notice did not render walkout unprotected since notice requirements of Sec. 8(g) run to Us, not Ees; failure of Ees to give such notice prior to striking health care institution does not deprive strike of its normally protected character)

Mt. Carmel Hospital **255 NLRB No. 110**
(Sec. 8(g) applys only to labor organizations, not to LPN engaged in sympathy strike in support of nurses' economic strike; sympathy striker is not required to give notice)

Hospital and Institutional Workers' Union, Local 250, SEIU, AFL-CIO(Affiliated Hospitals of San Francisco) **255 NLRB No. 081**
(U's honoring picket lines of another U at hospital and thus engaging in a strike and concerted refusal to work there w/o providing 10-day advance written notice to them and to FMCS, unlawful)

Oakwood Manor, Inc., d/b/a Danville Nursing Home **254 NLRB No. 108**
(walkout by 5 aides in protest over assignment to fewer hours and accusations of vandalism of Ee's car held protected and discharge for walkout held violative; Ees did not lose protection by their failure to give 10 days notice required by 8(g) as no U called, instigated or promoted work stoppage)

Sheet Metal Workers Local Union 324, AFL-CIO (Lake Shore Hospital and Health Related Facility) **254 NLRB No. 064**
(construction U which picketed construction site of addition to hospital w/o giving hospital required notice violated Act where picket signs did not make clear that U's dispute was not with hospital and had potential to disrupt health care services)

Leisure Lodge Nursing Home **250 NLRB No. 134**
(unorganized Ees at nursing home who threatened to strike w/o giving 10 days notice did not violate Act as Health Care Amendments only apply when labor organization is involved)

Villa Care, Inc., d/b/a Edmonds Villa Care Center **249 NLRB No. 095**
(walkout by two nurses aides held not to have lost protection under Sec. 8(g), notwithstanding their failure to give 10 days' notice of intent to strike, since Sec. 8(g) does not apply where labor organization is not involved, and strike here did not involve labor organization, and E and U were not then discussing issue which precipitated strike)

Rushie's Paramedic Ambulance, Inc. **JD-128-82**
(no violation by giving warnings to Ees who, frustrated by lack of movement in contract negotiations, engaged in one day concerted work stoppage by calling in sick, as Ees failed to give 10-day notice to E, provider of ambulance services, who was found herein to be health care institution)

Montefiore Hospital and Medical Center v. N.L.R.B **621 F.2d 510 (C.A. 2, 1980)**
(doctors' strike in sympathy with striking unionized Ees at health care institution held protected as to Sec. 8(g) notwithstanding lack of notice to E, in view of 8(g) language applying only to labor organizations and not individuals, legislative history focusing on large scale and not individual activity, and purpose of giving health care institutions enough notice to arrange for patient care - doctors here created no danger or risk of harm to patients)

Methodist Hospital of Kentucky, Inc. v. N.L.R.B. **619 F.2d 563 (C.A. 6, 1980)**
(striking Ees were not required to comply with 10-day notice requirement of Sec. 8(g) since strike was already in progress on effective date of health care amendments and absent proof of specific individual misconduct E may not deprive a protected Ee of any rights under Act)

4063 TIMELINESS OF NOTICE

Hospital and Institutional Workers' Union, Local 250, SEIU, AFL-CIO(Affiliated Hospitals of San Francisco) **255 NLRB No. 081**
(striking and picketing of E-members of multi-E hospital association w/o providing Es and FMCS with 10-days advance written notice of date and time of commencement of strike, unlawful notwithstanding U sent timely strike notice to both w/o date and time and followed it with notice to hospitals only of date and time, since timely notice of date and time of strike's commencement are mandatory; moreover, FMCS was never sent notice of date and time at all)

Jules V. Lane, P.C. d/b/a American Dental Centers **JD-(NY)-110-82**
(notice to E deficient because it was received no earlier than 9 days before strike and did not state date and time strike would commence)

4070 CONTENT OF NOTICE

Hospital and Institutional Workers' Union, Local 250, SEIU, AFL-CIO(Affiliated Hospitals of San Francisco) **255 NLRB No. 081**
(striking and picketing of E-members of multi-E hospital association w/o providing Es and FMCS with 10-days advance written notice of date and time of commencement of strike, unlawful notwithstanding U sent timely strike notice to both w/o date and time and followed it with notice to hospitals only of date and time, since timely notice of date and time of strike's commencement are mandatory; moreover, FMCS was never sent notice of date and time at all)

Jules V. Lane, P.C. d/b/a American Dental Centers **JD-(NY)-110-82**
(notice to E deficient because it was received no earlier than 9 days before strike and did not state date and time strike would commence)

6000 CONFORMANCE OF ACTIVITY TO NOTICE

6050 ACTIVITY COMMENCED SUBSEQUENT TO TIME NOTICED

Bricklayers & Allied Craftsmen, Local 40 **252 NLRB No. 030**
(U's picketing of hospital 10 days after time it had specified in notice it had given to hospital and FMCS, violative where picketing did not occur w/i reasonable time period after scheduled date; U gave no further notice of contemplated picketing and no explanation for delay in commencing picketing or for failure to give another, timely notice)

6087 DE MINIMUS ACTIVITY

Local Union No. 200, General Service Employees' Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc. etc.) **263 NLRB No. 016**
(picketing by U vice president, and 2 business agents at hospital w/o giving notice to E violative where picketers agents of U and sympathy strikers with another U which had given proper notice; Sec. 8(g) requires 10-day notice for *any* strike, fact that U represented no Ees at hospital does not relieve it of notice obligation; compliance by one U does not fulfill statutory requirement for another which may later join dispute; fact sympathy picketing covered 2 month period, was evidence of breadth of support for strike precluding *de minimus* finding)

Local 144, Hotel, Hospital Nursing Home and Allied Health Services Union, SEIU, AFL-CIO (Miklos Taube, et al., d/b/a Cliffside Nursing Home) **JD-(NY)-45-81**
(work stoppage of health care Ees at nursing home called by U to further its grievance demands w/o giving 10 days written notice to E and FMCS, unlawful and not *de minimis,* despite its relative brevity, where it was not provoked by E and caused harm to home's incapacitated residents)

8000 THREATS TO STRIKE, PICKET OR ENGAGE IN WORK STOPPAGE

Leisure Lodge Nursing Home **250 NLRB No. 134**
(unorganized Ees at nursing home who threatened to strike w/o giving 10 days notice did not violate Act as Health Care Amendments only apply when labor organization is involved)

596 PROCEDURE IN ULP PROCEEDINGS

0100 GENERALLY

Livingston Powdered Metal, Inc. v. N.L.R.B. 669 F.2d 133 (C.A. 3, Jan. 1982)

(while Bd, having extremely heavy case load, must necessarily rely upon compliance with procedural rules to function efficiently, and as part of process reasonable time limitations must be observed, ct held there are instances where unreasoning insistence upon technical rules results, not in proper disposition of case, but in injustice; and failure to take remedial measures, when such incidents occur constitutes an abuse of discretion)

0125 APPLICABILITY AND EFFECT OF APA

0125-0100 Generally

Douglas Aircraft Company, Component of McDonnell Douglas Corporation 260 NLRB No. 180

(E's contention that ALJ's finding that E unlawfully maintained and enforced unlawful no-distribution rules violated E's due process rights and APA on ground, among others, that E was not given proper notice that validity of rules was in issue and that E was not afforded opportunity to present evidence, rejected, where E was aware of C allegation that its conduct was a continuing violation encompassing E's rules; E cannot claim surprise since it put rules into evidence; and C clearly put E on notice that rules were related to incident alleged in C)

0125-5600 Section 6 - Ancillary Matter (5 USC Sec. 553)

Ventura Coastal Corporation 264 NLRB No. 054

(although there was substantial merit to E's claim that APA mandate that an agency conclude matters brought before it w/i a *reasonable time* was disobeyed by GC's issuance of C 19 months after charge was filed, C not dismissed, since . . . *Bd is not required to place the consequences of its own delay, even if inordinate, upon wronged employees to the benefit of wrongdoing employers*; and E has not shown that its defense was prejudiced by GC's delay)

0125-9200 Section 10–application; definitions (5 USC Sec. 701(a)

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC 610 F.2d 1221 (C.A. 4)

(under APA Sec. 701(a) judicial review of GC's refusal to issue complaint, which would otherwise be available under APA Sec. 702, is precluded by Sec. 3(d) of Act; legislative history shows it was intent of Congress that GC's discretion as to issuance of complaints should ordinarily be checked by his political responsibility to President and Congress, not by judicial review, and therefore his *final authority* in most instances precludes judicial review of his decision regarding issuance of ULP complaint)

0125-9600 Section 10(a)–right of review (5 USC 702)

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC 610 F.2d 1221 (C.A. 4)

(under APA Sec. 701(a) judicial review of GC's refusal to issue complaint, which would otherwise be available under APA Sec. 702, is precluded by Sec. 3(d) of Act; legislative history shows it was intent of Congress that GC's discretion as to issuance of complaints should ordinarily be checked by his political responsibility to President and Congress, not by judicial review, and therefore his *final authority* in most instances precludes judicial review of his decision regarding issuance of ULP complaint)

0125-9800 Section 10(c) - Final agency action

Federal Trade Commission et al. v. Standard Oil Company of California 445 US 903 (U.S. SCt. Dec. 1980)

(FTC's issuance of C averring reason to believe respondent acted unlawfully held not *final agency action* under 10(c) of APA and is not judicially reviewable before administrative adjudication concludes, even though issuance is *a part of a final disposition* and therefore is *agency action*; ct left open the question whether issuance of C is unreviewable because it is *committed to agency discretion by law*)

Federal Trade Commission et al. v. Standard Oil Company of California 445 US 903 (U.S. SCt. Dec. 1980)

(FTC's issuance of C averring it had *reason to believe* respondent acted unlawfully was not *final agency action*, since issuance was not a definitive ruling or regulation and had no legal force or practical effect upon respondent's business other than disruptions that accompany any major litigation, and immediate judicial review would serve neither effeciency nor enforcement of FTC's enabling Act)

Federal Trade Commission et al. v. Standard Oil Company of California 445 US 903 (U.S. SCt. Dec. 1980)

(respondent's contention that its mtn for dismissal of FTC C, averring that there was *reason to believe* respondent acted unlawfully, constituted administrative exhaustion, rejected; while respondent may well have exhausted its administrative remedy as to averment of reason to believe, FTC's refusal to reconsider issuance of C did not render C a *definitive* action constituting *final agency action*, since FTC's refusal did not augment C's legal force or practical effects upon respondent nor diminish concerns for efficiency and enforcement of FTC's enabling Act)

Federal Trade Commission et al. v. Standard Oil Company of California 445 US 903 (U.S. SCt. Dec. 1980)

(respondent's contention that FTC's issuance of C constituted final agency action on ground that respondent will suffer irreparable harm from causing expense and disruption of litigating matter, unless issuance of C is reviewed immediately, rejected; expense and annoyance of litigation is part of social burden of living under government, and mere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury)

Federal Trade Commission et al. v. Standard Oil Company of California 445 US 903 (U.S. SCt. Dec. 1980)

(E's contention that FTC's issuance of C constituted final agency action on ground that E's challenge to C can never be reviewed unless reviewed before FTC's adjudication is concluded, rejected, since speculation that unlawfulness of issuance of C is likely to be *insulated* from any review if deferred until appelate review of c/d order is not persuasive; ct of appeals has power to review alleged unlawfulness in issuance of C since ct, under FTC's enabling Act, can order FTC to take additional evidence, and APA provides for review of FTC's action on review of final agency action)

Federal Trade Commission et al. v. Standard Oil Company of California 445 US 903 (U.S. SCt. Dec. 1980)

(concern that C averring reason to believe respondent acted unlawfully would be *insulated* from review because alleged unlawfulness would be moot if respondent prevailed in adjudication does not support conclusion that issuance of C is *final agency action*; rather, a principal reason to await termination of agency proceedings is to obviate all occasion for judicial review, and thus possibility that respondent's challenge may be made moot warrants requirement that it pursue adjudication, not shortcut it)

0137 APPLICABILITY OF FEDERAL RULES OF EVIDENCE

East Texas Motor Freight 262 NLRB No. 101

(*Federal Rules of Civil Procedure*, which are applicable in U.S. District Cts, are not controlling in administrative hearings before Bd; GC and charging party are not preferred litigants before Bd and are under same obligation to produce relevant evidence where aporopriate)

East Texas Motor Freight 262 NLRB No. 101

(mtn to strike *all* testimony of witness concerning violence outside U hall denied even though witness refused to respond to clearly material questions; mtn to rehabilitate witness to consider his testimony concerning above act of violence also denied. See Bd's *R/R* 102.44)

Teamsters, Local Union 215 (B & W Construction Company) 251 NLRB No. 168

(contention that U's presettlement discussions with Ee-members concerning ULP charges filed with Bd against U by one of them were inadmissible as

0137—Cont.

privileged conversations under Rule 408 of Federal Rules of evidence, rejected)

0175 EFFECT OF PRIOR PROCEEDINGS (See also, RES JUDICATA 750-0000)

Schorr Stern Food Corp. **248 NLRB No. 050**

(Bd's findings and conclusions in ULP case are binding and may not be relitigated in subsequent backpay proceeding, and applicability of contract, adjudicated in present ULP proceeding, cannot be litigated at compliance stage herein)

Chef's Pantry, Inc. v. N.L.R.B. **654 F.2d 458 (C.A. 6, 1981)**

(Bd did not waive ULP charges stemming from first election campaign by withdrawing first representation ptn and conducting valid intervening election)

0175-2500 Where outstanding order prohibits conduct alleged in new complaint

Accessory Controls and Equipment Corporation **JD-590-81**

0175-5000 Where ULP proceeding based in whole or part upon facts certified in R proceeding

0175-5025 No relitigation in related subsequent ULP proceeding of issues resolved in R proceeding

Wickes Furniture, A Division of The Wickes Corporation **261 NLRB No. 151**

(*Sec.* 102.67(f) of Bd's R/R, concerning *request for review* applies with equal force to proposition that Respondent is precluded from relitigating issues which were or could have been litigated in prior R proceeding, whether R proceeding involves decision made in first instance by Bd, RD's decision which Bd has declined to review, RD's report which Bd has adopted, or hearing officer's report which Bd has adopted)

Air Transit, Inc. **256 NLRB No. 044**

(while R case findings in *related* subsequent ULP proceeding are not subject to relitigation, Bd held that in instant ULP case, which involved independent violations unrelated to prior R case, findings in such R case are subject to challenge and may be litigated; subject to reconsideration and to any additional evidence adduced in ULP case, Bd may accord a certain *persuasive relevance, a kind of 'administrative comity'* to prior R case findings)

Air Transit, Inc. **256 NLRB No. 044**

(in ULP case involving independent violations of Act unrelated to prior R case and in which E did not offer any additional evidence to support its denial of any violation of Act, Bd considered its prior decision and affd its previous findings that E's taxi drivers were Ees, rather than independent contractors, and were entitled to full protection of Act)

Hedison Manufacturing Company **249 NLRB No. 096**

(where in prior R proceeding challenge to ballot of floorlady on ground she was supervisor was overruled, and in instant ULP proceeding ALJ found he was prohibited by R/R Sec. 102.67(f) from relitigating her status, Bd ruled that, since she was not alleged to have engaged in any ULPs and her status would not affect finding of U's majority support, it was not necessary to make new determination as to her status or to consider GC's assertion that such determination would be consistent with Bd's Serv-U-Stores decision (Cote))

Power Service Co., T and T Truck and Trailer Leasing, Inc., Night Hawk Motor Transportation, Inc., and York Motor Transport, Inc. **JD-161-82**

(E status and jurisdiction)

0175-5025-2500 Where resolved by Board

C & D Battery Division—Eltra Corporation **263 NLRB No. 106**

Dutch Boy, Inc., Glow-Lite Division **262 NLRB No. 001**

(Ees' supervisory status)

Sav-On Drugs, Inc. **253 NLRB No. 045**

(E not entitled to rely on RD's findings in underlying R case as defense in ULP case where Bd granted review of RD's decision, since decision was thus not final, and decision and findings were subject to reversal; nor did lack of stay of RD's order justify E's reliance on RD's findings in ULP case)

0175-5025-3300 Where stipulated by parties

Flair Molded Plastics, Inc. **250 NLRB No. 017**

(that U is a labor organization)

0175-5025-5000 Where no request for review under Rule 102.67(f)

[illegible] River Electric Cooperative, Inc. **265 NLRB No. 128**

(issue of Ee's managerial status properly before ALJ, notwithstanding issue was litigated in R proceeding, since Bd R/R provides that failure to request review of RD's decision, as in case herein, precludes relitigation of same issue in any *related* subsequent ULP proceeding; Bd's current position is that related proceeding is one where issue comes up, for example, in Sec. 8(a)(5) case based on certification of representative, but does not include case where independent violations of Sec. 8(a)(1) are alleged, as is case herein)

F. A. Bartlett Tree Expert Co. **258 NLRB No. 100**

(E's failure to raise issue of RD's failure to transmit complete record in R-case at that time constitutes waiver precluding it from raising it in ULP case)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**

(Ees' supervisory status determined in underlying R case may not be relitigated in C case absent newly discovered evidence, changed circumstances affecting R case findings or other extraordinary circumstances; see Bd's *R/R. Section* 102.67(f))

Fall River Savings Bank v. N.L.R.B. **649 F.2d 50 (C.A. 1, May 1981)**

(Bd acted w/i its discretion when it refused to grant mtn for reconsideration where E could have raised U merger issue at representation hearing, and its failure to do so until ULP hearing is untimely)

St. Anthony Hospital Systems v. N.L.R.B. **655 F.2d 1028 (C.A. 10, Aug 1981)**

(failure of non-profit hospital, run by religious order, to raise before Bd in R proceeding constitutionality of Bd's assertion of jurisdiction on ground that it is religious organization exempt from governmental regulation under First Amendment, precluded hospital from raising issue before Bd or ct in ULP case. *While statutory jurisdiction of Bd may be challenged at any time, facts upon which Bd determines it has jurisdiction may be challenged only upon timely exception, in absence of which Bd's findings are not open to attack in proceeding for enforcement*)

0175-5025-7900 Where request for review denied

Madison Detective Bureau, Inc. **250 NLRB No. 062**

0175-5050 Issues as to which relitigation precluded

0175-5050-3300 Unit determination

Brooklyn Psychosocial Rehabilitation Institute, Inc. **264 NLRB No. 009**

(GC's mtn for summary judgment granted where unit issue concerning application of *N.L.R.B. v. Yeshiva University*, 444 U.S. 672 (1980) to instant proceeding was fully litigated in prior R proceeding; E's reliance on *Ithaca College*, 261 NLRB No. 83 (1982), *Thiel College*, 261 NLRB No. 84 (1982), and *Duquesne University of The Holy Ghost*, 261 NLRB No. 85 (1982), decided subsequent to *Yeshiva*, was misplaced inasmuch as those cases were similar to *Yeshiva* and E has failed to show how instant faculty exercises comparable authority in making academic as well as nonacademic policy)

Foodland, Inc., d/b/a Super H Discount **261 NLRB No. 143**

(ALJ refused to call witnesses and develop lines of testimony sought by E, since unit determination was not before him, having been determined in representation proceedings)

Burns Electronic Security Services, Inc. **256 NLRB No. 129**

(where ct found that record developed at original R hearing was deficient in light of new and relevant information introduced at ULP hearing and that original certification based on inadequate record, Bd on remand found that in view of these *unusual circumstances* it should reconsider unit determination based on information developed at both hearings rather than apply rule against relitigation of representation in ULP proceedings)

0175-5050-6700 Objections to election

Wickes Furniture, A Division of The Wickes Corporation **261 NLRB No. 151**

(*Sec.* 102.67(f) of Bd's R/R, concerning *request for review* applies with equal force to proposition that Respondent is precluded from relitigating issues which were or could have been litigated in prior R proceeding, whether R proceeding involves decision made in first instance by Bd, RD's decision which Bd has declined to review, RD's report which Bd has adopted, or hearing officer's report which Bd has adopted)

Foodland, Inc., d/b/a Super H Discount **261 NLRB No. 143**

(ALJ refused to call witnesses and develop lines of testimony sought by E, since objections to election were not before him, having been determined in representation proceedings)

Wright & Lopez of Alabama **250 NLRB No. 051**

0175-5075 Issues as to which relitigation permitted

0175-5075-1900 Actions constituting unfair labor practices

Air Transit, Inc. **256 NLRB No. 044**

(while R case findings in *related* subsequent ULP proceeding are not subject to relitigation, Bd held that in instant ULP case, which involved independent violations unrelated to prior R case, findings in such R case are subject to challenge and may be litigated; subject to reconsideration and to any additional evidence adduced in ULP case, Bd may accord a certain *persuasive relevance, a kind of 'administrative comity'* to prior R case findings)

Air Transit, Inc. **256 NLRB No. 044**

(in ULP case involving independent violations of Act unrelated to prior R case and in which E did not offer any additional evidence to support its denial of any violation of Act, Bd considered its prior decision and affd its

0175-5075-1900—Cont.

previous findings that E's taxi drivers were Ees, rather than independent contractors, and were entitled to full protection of Act)

EMR Photoelectric, A Division of Sangamo Weston Inc. 251 NLRB No. 214
(Bd's findings and conclusions as to objections to election in R case are not binding upon ALJ where same conduct is alleged as ULPs, since issues drawn are different in the two types of proceedings)

Rock Hill Telephone Company v. N.L.R.B. 605 F.2d 139 (C.A. 4, 1979)
(Bd could relitigate supervisory status of Ee even though he was found supervisor in representation proceeding under 29 C.F.R. Section 102.67(f), since that regulation does not necessarily bar relitigation in ULP proceedings of violations other than 8(a)(5))

N.L.R.B. v. Markle Manufacturing Company of San Antonio 623 F.2d 1122 (C.A. 5, 1980)
(doctrine of collateral estoppel did not preclude Bd from determining whether E committed ULPs by failing to reinstate economic strikers who allegedly committed charged violence where fact issue of such misconduct was not determined in previous case, in which Bd acting on E's complaint charging strike violence and misconduct by U agents, entered consent order agreed to by E and U that directed cessation of strike violence; moreover, Bd was not barred from litigation of violence issue on theory that Bd was taking inconsistent positions with respect to same matter in successive suits)

0175-5075-5000 Supervisory status of employee

Crown Cork & Seal Company, Inc. 255 NLRB No. 004
(Ees' supervisory status determined in underlying R case may not be relitigated in C case absent newly discovered evidence, changed circumstances affecting R case findings or other extraordinary circumstances; see Bd's *R/R, Section* 102.67(f))

Hedison Manufacturing Company 249 NLRB No. 096
(where in prior R proceeding challenge to ballot of floorlady on ground that she was supervisor was overruled, Bd held her status could be relitigated in instant ULP proceeding since she was expressly alleged to be supervisor and to have engaged in unlawful conduct in her supervisory capacity (Di Carlo))

Cardinal Heating and Cooling, Inc. JD-835-79
(although agreement between U and E involving exclusion of Ee from bargaining unit because he was supervisor may be of *persuasive relevance* in subsequent complaint proceeding dealing with representation, it is not conclusive and does not preclude litigation of supervisory issue in *unrelated* ULP proceeding)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. 643 F.2d 687 (C.A. 10, Mar 2, 1981)
(ULP proceedings under Sec. 8(a)(1) or (3) are not so related to prior R proceedings that relitigation of common issues is precluded under Section 102.67(f) of Bd's R/R)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. 643 F.2d 687 (C.A. 10, Mar 2, 1981)
(different policy considerations underlie determination of *supervisor* in R and ULP proceedings)

0175-7500 Prior court decision

A. Duie Pyle, Inc. 263 NLRB No. 092
(State Ct's Contempt of injunction order issued against U and number of its members, including Ees allegedly unlawfully discharged for purported picket line misconduct during strike, held not to relate to issue of whether Ees' conduct was sufficiently egregious to deny them protection of Act)

Penntech Papers, Inc.; etc. 263 NLRB No. 033
(Bd holding that three corporations were single E not precluded by principles of res judicata or collateral estoppel based on outcome in prior decisions of federal cts in suit under Section 301 of Act by Us to compel arbitration under bargaining agreement in view of lack of identity of either cause of action or issues involved, since in ct suit issue was whether, under Federal common law, parent corporations bound by bargaining agreements of subsidiaries, and herein issue is whether three corporations single integrated enterprise so as to constitute single E under Bd criteria)

Pegasy Continental Corp. 260 NLRB No. 168
(in partial summary judgment proceeding on backpay specification, Bd rejected GC's contention that E was challenging remedy already decreed and that E had obligation under ct of appeals' judgment to make discriminatees whole for losses suffered; judgment of ct had no immediate relevancy to issues raised by GC's mtn; moreover, E's answer was sufficiently specific to constitute denial of specification's allegation involved herein)

United Technologies Corporation 260 NLRB No. 008
(prior litigation in which Bd and ct of appeals had found E's rule prohibiting solicitation on plant premises not unlawful held not to bar consideration of validity of rule in instant case in view of intervening SCt's decision in *Magnavox* which overruled fundamental assumption of Bd and ct, on which decisions were based, that U can contractually waive Ees' right to engage in solicitation)

Service Employees International Union Local 250, AFL-CIO v. N.L.R.B. 640 F.2d 1042 (C.A. 9, 1981)
(ct agreed with Bd that it lacked jurisdiction to rule on Section 8(a)(3) charge where prior ct had determined that E had not committed ULPs under Sections 8(a)(1), (4) and (5) but deemed it unnecessary to give consideration to 8(a)(3) charge and did not remand it to Bd; prior ct's opinion was final under Sections 10(e) and (f), and barred further proceedings arising from same transaction under doctrine of res judicata)

George Banta Company, Inc., Banta Division v. N.L.R.B. 686 F.2d 10 (C.A.D.C., Aug. 1982)
(E's contention that because settlement stipulation was approved and enforced in prior circuit court of appeals decision in another circuit, that decision's order was enforceable only through contempt proceeding in circuit of prior ct decision rather than by Bd's actions herein rejected; central issue in prior decision was whether E could withdraw from settlement stipulation because of Bd's delay in approving settlement and was thus entirely collateral to litigation herein involving compatibility of E's *Preferential Reinstatement System* with reinstatement rights guaranteed by E in settlement)

0175-8100 Prior ULP proceeding

American Laundry Machinery, Inc. 263 NLRB No. 131
(ALJ's order granting E's mtn for summary judgment to dismiss grounded, *inter alia*, on RD's investigation and administrative dismissal of prior ULP charges vacated, notwithstanding earlier charges covered some of same allegations, where such charges were subject of only administrative investigation and were not adjudicated)

United Technologies Corporation 260 NLRB No. 008
(prior litigation in which Bd and ct of appeals had found E's rule prohibiting solicitation on plant premises not unlawful held not to bar consideration of validity of rule in instant case in view of intervening SCt's decision in *Magnavox* which overruled fundamental assumption of Bd and ct, on which decisions were based, that U can contractually waive Ees' right to engage in solicitation)

Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.) 257 NLRB No. 043
(Bd does not consider ALJs' decisions to which no exceptions are filed to show proclivity to violate Act and this is not inconsistent with its policy of considering formal settlement agreements which do not contain nonadmissions clauses as evidence of proclivity to violate Act as the latter are formally reviewed and approved by Bd while former are adopted *pro forma* and not published)

Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.) 257 NLRB No. 043
(prior decision prohibiting Sec. 8(b)(7)(B) conduct may be used to show proclivity to violate Sec. 8(b)(7)(C))

Accessory Controls and Equipment Corporation JD-590-81
(Board Order entered pursuant to settlement agreement which did not contain non-admissions clause has same *res judicata* effect as decision entered after answer and hearing)

Accessory Controls and Equipment Corporation JD-590-81
(where GC administratively dismisses allegations, this precludes their litigation in any future proceeding)

0181 EFFECT OF PENDING PROCEEDINGS

Shaw Industries, Inc., a Division of Crystal Springs Shirt Corp.; et al. 255 NLRB No. 117
(E was not prejudiced or denied due process notwithstanding 2 year delay between time charge filed and hearing where delay caused by Bd waiting until another case involving same E was adjudicated; E had timely notice that matter would be brought to hearing and of allegations to be litigated; E had obligation to preserve its records and documents)

Westinghouse Electric Corporation JD-(ATL)-60-81
(Respondent may be charged with separate additional violations of law occurring during pendency of judicial review of Bd's underlying decisions and orders)

Seligman and Associates, Inc. v. N.L.R.B. 639 F.2d 307 (C.A. 6, 1981)
(notwithstanding RD decision in representation case was still pending before Bd, Bd's findings in ULP case of E-Ee relationship and appropriate unit was proper since issue was relevant to Bd's request for bargaining order and fully litigated below; Bd's findings supported by substantial evidence where it showed E's full and centralized control over Ees and Ees had common interest necessary to comprise appropriate unit)

0181-5000 Judicial proceedings

Construction, Production & Maintenance Laborers' Local Union 383, Laborers (Carter-Glogau Laboratories, Inc.) 260 NLRB No. 192
(ALJ declined to grant Respondent U's request to delay decision pending its appeal to circuit ct of appeal of district ct's granting of Section 10(j) inj in

0181-5000—Cont.

this case; Bd thus not precluded from delaying its decision if appropriate, but ALJ's delay would preclude Bd from determining delay not appropriate; further, justice should not be delayed and circuit cts have indicated they prefer Bd to proceed to decide underlying ULP case)

ayward Do-Nut Co., Inc. **256 NLRB No. 072**
(pending 9th Circuit decision on prior 8(a)(5) finding, refusal to furnish information on wage rates and Ee benefits, held violative as pending charges do not relieve party from bargaining obligations)

Miami Foundry Corporation **252 NLRB No. 002**
(mtn to stay ULP proceedings pending final disposition of ptn for arrangement under Chapter XI of Bankruptcy Act denied where Bd has exclusive jurisdiction to hear and decide ULP cases to final disposition)

0188 FAILURE TO EXHAUST OTHER REMEDIES

Bay Shipbuilding Corp. **263 NLRB No. 166**
(E's contention issuance of C alleging it unlawfully refused to apply bargaining agreement to Ees transferred to newly established department was contrary to policies of Act since U's rights might have been pursued through other proceedings including unit clarification and/or arbitration, rejected; E, having chosen to resolve matter itself, rather than by filing UC ptn, has violated Act if it took erroneous view as to unit and UC proceeding would not provide remedy for that violation, E has not requested deferral to arbitration, and U is not precluded from exercising its rights under Act by not proceeding to arbitration)

Ventura County District Council of Carpenters
(Commercial Industrial Constructors, Inc.) **259 NLRB No. 028**
(failure of U members to exhaust internal U remedies after being fined by U for working behind its picket line for neutral E at construction site at which U had labor dispute with another E held not to preclude processing of 8(b)(1)(A) and 8(b)(4)(B) C, since implementation of Act depends on initiative of individuals whose complete freedom from coercion against making complaints to Bd is important in functioning of Act; and Congress has not incorporated Sec. 101(a)(4) of LRMDA, requiring exhaustion of internal U remedies, into NLRA)

Local 24, Hotel & Restaurant Employees (George
Dore, an Individual) **JD-414-82**
(U's defense to alleged unlawful failure to refer and removal from job referral list of U member, who had filed charges with Bd, on ground he was not entitled to relief from Bd because he failed to exhaust internal U remedies, rejected, where existence of such remedies was not established, and if it were, Ee rights to seek Bd assistance may not be held hostage to U requirement that its own remedies be exhausted first)

0400 LIMITATION OF ACTIONS

0401 GENERALLY

Comet Corporation **261 NLRB No. 188**
(E's assistance to shop and safety committee outside 10(b) period which was subject of earlier charge held unlawful in view of breach of settlement agreement where E w/i 10(b) period continued to unlawfully assist and bargain with committee)

Henry Cauthorne, an individual, t/a Cauthorne
Trucking **256 NLRB No. 115**
(asserted *unlawful* recognition of U occurring more than 6 months prior to filing charge that E had unilaterally ceased payments into U's health and welfare fund and pension fund, no defense to charge since *Section 10(b) was applicable to refusal-to-bargain defense that bargaining relationship was unlawfully established* by E's recognition of minority U)

0420 SECTION 10(b) 6-MONTH LIMITATION

Electron Tube Division of Litton Systems, Inc. **260 NLRB No. 140**
(respondent E's argument that amendment of complaint at trial to show its correct name violated Sec. 10(b) because E originally named in complaint and respondent E were not single E rejected, since it was apparent that respondent E had not been misled or confused, that it had defended with full knowledge of identification of parties, and that it had not been prejudiced by technical error)

Electron Tube Division of Litton Systems, Inc. **260 NLRB No. 140**
(E's argument that RD failed to revoke formally his letter dismissing charge, and that his failure to do so activated Sec. 10(b), rejected, since E's argument involved procedural error at local level, and not statutory or substantive right or duty; further, E's attorney, as well as E and E's manager of industrial relations personally were notified that RD withdrew dismissal of charge)

Botany 500, A Division of Rapid-American
Menswear, Inc. **251 NLRB No. 075**
(ULP allegations not time barred where original charge, naming subsidiary as E, whose assets and liabilities were transferred to respondent, was timely filed, and amended charge, while filed outside 10(b) period, was identical to original charge except for naming respondent as E; failure to originally name respondent as E was clearly a misnomer and is not fatal to pleadings)

Charmer Industries, Inc. **260 NLRB No. 031**
(where charge and C alleged that Es unilaterally changed procedures for collecting c.o.d. payments by having salesmen replace delivery drivers, represented in another unit, in making collections, ALJ rejected Es' contention that C was barred under Sec. 10(b) on ground that change itself came about through bargaining regarding duties of drivers and that, since neither charge nor C alleged unlawful failure to bargain about effects of change upon working conditions of salesmen, there was a variance between allegations and proof which required dismissal of proceeding)

Actors' Equity Association **247 NLRB No. 172**
(allegations of enforcement of disparate U dues with respect to Ee held not timely, where only action taken by U w/i 10(b) period was U's counterclaim in Ee's ct suit, for dues U had previously determined Ee owed; meanwhile, levy of dues, Ee's appeal therefrom, and rejection of appeal occurred more than 6 months before filing of charge)

The Chesapeake and Potomac Telephone Company
v. N.L.R.B. **687 F.2d 633 (C.A. 2, Aug. 1982)**
(C alleging unlawful refusal to provide U requested information not barred by 10(b), notwithstanding E's contention U failed to file charge w/i 6 months of E's prior refusals to do so, where refusal complained of herein occurred w/i 10(b) period, and was independent ULP; while ULP charge arising out of refusal to abide by contract must be filed w/i 6 months of repudiation of contract, E's refusals to furnish information herein were not repudiations of contract, and E continued to have duty to bargain with U and to furnish requested information)

0420-0100 Generally

Taft Broadcasting Company, WBRC-TV **264 NLRB No. 028**
(where issue of timeliness of charge was not raised at hearing, and E was aware of facts, E's failure to raise 10(b) defense is waiver)

Penntech Papers, Inc.; etc. **263 NLRB No. 033**
(Section 10(b) does not preclude liability of two corporations which were not named or served with amended charge until 7 months after alleged violation where they were held to be single E with corporation named and served w/i 10(b) period)

R. J. E. Leasing Corp. **262 NLRB No. 049**
(E's execution of pre-hire agreement with minority U not barred from consideration by Sec. 10(b); while actual date of its execution was not disclosed by evidence, Ees first became aware w/i 10(b) period that agreement was in effect; 6-month limitation does not begin to run until party affected by ULP is on actual or constructive notice of events giving rise to charges, thus estopping wrongdoer engaged in fraudulent concealment of wrongful conduct from using such concealment to permit 10(b) defense)

Borden Chemical, A Division of Borden, Inc. **261 NLRB No. 006**
(contention alleged unlawful refusal to furnish information outside Section 10(b) period, rejected, notwithstanding E's consistent failure to furnish U requested information was manifested more than 6 months prior to filing of charge and fact requestor, who was representative of International was not signatory to contract currently in effect, where request was repeated w/i 10(b) period and International representative had been spokesman for Local U and his request paralleled that of Local Safety Committee)

Danmar Company d/b/a Madison South
Convalescent Center **260 NLRB No. 106**
(E's argument that allegation of unlawful interrogation was barred by Sec. 10(b) held erroneous where interrogation occurred five months before charge was filed relating specifically to wrongful discharge of two Ees, one of whom was same Ee who was subjected to interrogation; complaint need not be restricted to precise allegations of charge; so long as there is timely charge, complaint may allege any matter closely related to or growing out of charged conduct, or related to controversy which relates back to or defines charge more precisely)

Drukker Communications, Inc., and Its Wholly
Owned Subsidiary The Daily Advance, Inc. **258 NLRB No. 097**
(Section 10(b) is subject to equitable principles and may be tolled where Respondent has fraudulently concealed its unlawful conduct)

St. Mary's Home, Inc. t/a St. Mary's Infant Home **258 NLRB No. 134**
(violation established where action involved might have occurred outside 10(b) period, since 10(b) as statute of limitations is affirmative defense which respondent must prove, and neither respondent nor record provided evidence that such action occurred outside 10(b) period)

Knapp Foods, Inc. d/b/a Hi-Lo Foods **247 NLRB No. 146**
(burden of proving facts which support defense of limitations necessarily rests upon one who pleads it, since statute of limitations contained in Section 10(b) is affirmative defense)

0420-0100—Cont.

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**

(Bd may deal with conduct occurring subsequent to filing of charge if it is *related to* ULPs alleged in charge and grows out of them while proceeding is pending before Bd, and if it is of *same class* of violations as those alleged in charge; moreover, charge does not serve purpose of a pleading since its purpose is solely to set Bd's investigative machinery in motion; and thus Bd has broad leeway to found a C on events not specified in charge as long as it does not initiate proceeding on its own)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**

(unlike a charge, a C need not be filed and served w/i 10(b) six-month period)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**

(consideration of suspension of Ee, not specifically alleged in any ULP charge filed prior to suspension, not barred, since earlier charges covered suspension of Ee for attending negotiations at another plant after absenting himself w/o leave; such conduct is clearly related to denial of vacation leave as time off to attend bargaining sessions at other plants and occurred w/i same general time period and were part of E's interrelated efforts to discourage inclusion of outsiders on bargaining teams; and earlier charges adequately informed E that its leave denials had been challenged)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**

(consideration of suspension of Ee, not specifically alleged as 8(a)(3) violation in any ULP charge filed prior to suspension, not barred on grounds earlier charges did not specify an 8(a)(3) violation, since what is crucial is that C, not charge, notify E of charges against him; in any event, consolidated amended C herein alleged suspension as 8(a)(3) violation)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**

(E's cited cases for proposition that events occurring after original charge is filed and more than 6 months prior to filing of amended charge are barred held unpersuasive since they dealt with amended charges encompassing prior events, while instant case involves inclusion of subsequent events w/i prior charges; and cited cases were decided before Fant Milling decision issued and did not apply its test determining inclusion of subsequent events)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**

(C based on E's refusal to execute and apply E association's contract with U held barred by Sec. 10(b) where, although such conduct occurred w/i 10(b) period, E's withdrawal from group bargaining transpired outside 10(b) period; since C based upon allegedly unlawful withdrawal was barred by limitations, that event cannot serve to infuse with illegality E's otherwise permissible refusal to sign contract that it did not itself negotiate)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**

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N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**

(in finding C based on E's refusal to execute and apply E association's contract with U barred by Sec. 10(b), even though E's conduct occurred w/i 10(b) period, inasmuch as C based upon E's alleged unlawful withdrawal from group bargaining was barred by 10(b) limitation, ct relied on authoritative precedent, legislative purpose, Act's goal of stabilizing existing bargaining relationships, and fact that application of 10(b) bar does not work undue hardship on U)

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**

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N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 198**

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N.L.R.B. v. International Union of Operating Engineers, Local 571, AFL-CIO **626 F.2d 846 (C.A. 8, 198**

(purpose of application of Sec. 10(b) to evidentiary matters not circumvented by introduction of pre-10(b) period events here where there is no risk that evidence has lost its probative value and there had been no intervening change in circumstances)

N.L.R.B. v. Antonino Carilli, d/b/a Antonininos Restaurant **648 F.2d 1206 (C.A. 9, June 1981)**

(contention allegations not in original complaint barred by Section 10(b) rejected, since all allegations except unlawful interogation took place w/i 10(b) period, and interrogation covered by language *by this and other Acts* in original charge which was sufficiently specific because it was amplified by consolidated complaint)

0420-1200 Has effect of statute of limitations

Taft Broadcasting Company, WBRC-TV **264 NLRB No. 0**

Federal Management Co., Inc. **264 NLRB No. 0**

(Sec. 10(b) is a statute of limitations and is not jurisdictional in nature and, since it is an affirmative defense, it is waived if not timely raised, as here, where E did not raise issue in its pleadings or at hearing)

East Texas Motor Freight **262 NLRB No. 1**

(unlawful conduct outside 10(b) *period* not violative nor can such conduct be used to establish Respondent's U animus in instant case)

Wine and Liquor Store Employees Union, Local 122, a/w Distillery Workers (Harvey Estin, d/b/a Oz Liquor Co.) **261 NLRB No. 132**

(Sec. 10(b) defense to allegation of complaint that U violated Sec. 8(b)(1)(A) and (2) by initiating arbitration proceedings and later settling matter held waived notwithstanding E did not file charge giving rise to proceeding w/i 10(b) period where U did not attempt to raise Sec. 10(b) as bar to allegation of complaint; Bd considers Sec. 10(b) a statute of limitations and therefore waived if it is not timely raised)

Furriers Joint Council of New York, United Food and Commercial Workers International Union, AFL-CIO (The Resident Fur Buyers Association) **261 NLRB No. 106**

(See *International Union, United Mine Workers, et al. (Garland Coal & Mining Company),* 258 NLRB No. 11 (1981) for Bd's broad interpretation of words *to enter into*)

Al Bryant, Inc., Harrisburg Drywall and Construction Corporation, and Al Bryant Associates, Inc. **260 NLRB No. 010**

(10(b) period limited remedy requiring Es, found single E herein, to apply collective bargaining agreements to Ees in non-U operations, i.e., make Ees whole for loss of earnings, other compensation, and reimburse U trust fund)

Al Bryant, Inc., Harrisburg Drywall and Construction Corporation, and Al Bryant Associates, Inc. **260 NLRB No. 010**

(10(b) defense that was not affirmatively raised in E's various answers was timely raised at hearing w/o prejudice to parties, and ALJ held that E need not amend answer accordingly)

Drukker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. **258 NLRB No. 097**

(when Respondent unilaterally relocated portion of its operation w/o bargaining with U; Section 8(a)(5) allegation dismissed where relocation took place outside 10(b) period and both U and Ees had received actual notice of relocation prior to 6-month period preceding filing of charge)

St. Mary's Home, Inc. t/a St. Mary's Infant Home **258 NLRB No. 134**

(violation established where action involved might have occurred outside 10(b) period, since 10(b) as statute of limitations is affirmative defense which respondent must prove, and neither respondent nor record provided evidence that such action occurred outside 10(b) period)

International Union, United Mine Workers of America; UMW District 21; UMW Local 2428 (Garland Coal & Mining Company) **258 NLRB No. 011**

(words *to enter into* have been interpreted broadly (by Bd) to encompass concepts of reaffirmation, maintenance, or giving effect to any agreement which is w/i scope of Section 8(e), notwithstanding agreement itself was executed outside Section 10(b) statute of limitations)

0420-1200—Cont.

McKesson Drug Company **257 NLRB No. 084**
(10(b) defense is affirmative defense and was waived where it was not pleaded or litigated and was first raised in briefs to ALJ)

Henry Cauthorne, an individual, t/a Cauthorne Trucking **256 NLRB No. 115**
(asserted *unlawful* recognition of U occurring more than 6 months prior to filing charge that E had unilaterally ceased payments into U's health and welfare fund and pension fund, no defense to charge since *Section 10(b) was applicable to refusal-to-bargain defense that bargaining relationship was unlawfully established* by E's recognition of minority U)

U.S. Utilities Corporation **254 NLRB No. 095**
(applies to layoffs but not to refusal to arbitrate during 10(b) period claims of layoffs in violation of contract)

Chrysler Corporation-Amplex Division of Chrysler Corporation **JD252-81**
(charge filed two days after allegedly unlawful event–exercise of superseniority by U trustees, to detriment of charging parties, rather than inception of contractual superseniority clause–timely as being well w/i 10(b) period)

Lee Office Equipment **JD-(SF)-86-81**

Wholly Foods, Inc. **JD-(SF)-16-81**
(10(b) defense waived where not affirmatively raised before, or at least during, trial proceedings)

N.L.R.B. v. Vitronic Division of Penn Corporation **630 F.2d 561 (C.A. 8, 1979)**
(Section 10(b) defense waived where not raised until exceptions to ALJ's decision since six months period is *statue of limitations, and is not jurisdictional. It is an affirmative defense, and if not timely raised, is waived*)

0420-2500 Not jurisdictional

Federal Management Co., Inc. **264 NLRB No. 023**

McKesson Drug Company **257 NLRB No. 084**

Red Roof Inns III Co., Inc. **JD-142-82**
(Sec. 10(b) defense waived where E did not raise it in timely manner; limitation period of Sec. 10(b) is not jurisdictional in nature, but is affirmative defense which is waived unless timely raised; complaint allegation involved facts which were w/i knowledge of E, and specifically alleged that no-solicitation rule was maintained since date more than 6 months prior to filing of either charge in case; nevertheless, E invoked Sec. 10(b) for first time in its post hearing brief)

N.L.R.B. v. Vitronic Division of Penn Corporation **630 F.2d 561 (C.A. 8, 1979)**
(Section 10(b) defense waived where not raised until exceptions to ALJ's decision since six months period is *statue of limitations, and is not jurisdictional. It is an affirmative defense, and if not timely raised, is waived*)

0420-5000 Runs from effective date of ULP

A & T Manufacturing Company **265 NLRB No. 201**
(charge of issuance of unlawful warning dismissed since not w/i Section 10(b) period where warning not addressed in any charge until over 7 months after latest date warning would have been issued; further implementation of disciplinary system under which warning issued not alleged to be violative nor was matter fully litigated at hearing)

International Brotherhood of Electrical Workers, Local 6, AFL-CIO (Chronicle Broadcasting Company, KRON-TV) **257 NLRB No. 082**
(no violation, where GC failed to establish that U, through its conduct, *entered into* contract proscribed by 8(e) w/i 6 months of filing of original charge as required by 10(b))

South Shore Hospital **256 NLRB No. 001**
(amended 8(a)(3) charge that E withheld from unit Ees wage increases it granted non-unit Ees not barred by 10(b) as conduct as conduct in original charge and was closely related)

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) **254 NLRB No. 093**
(notwithstanding that subcontracting provisions of contract became effective 6-months prior to filing of charge, U, by filing grievance relating to subcontracting provisions of contract, sought to enforce contract w/i 10(b) period, thereby bringing contract w/i perview of Section 8(e))

Associated Grocers **253 NLRB No. 005**
(charge barred by 10(b) where U learned during negotiations that job would be eliminated but took no action)

Bay Medical Center, Inc. **252 NLRB No. 199**
(contention that charge alleging violation of Section 8(a)(5) not filed w/i 10(b) period, notwithstanding Respondent had refused to bargain for period of four years until *legalities of unit question are decided* during which period it was engaged in litigation before Bd and cts, where complaint herein alleged unilateral reduction in Ees' working hours upon their transfer to new facility and unit question could have been resolved prior to completion of new facility thus permitting Respondent to bargain by its own admission; 10(b) period commenced at time of E's unilateral reduction of hours)

Dardanell Enterprises, Inc. **250 NLRB No. 090**
(charge not barred by fact that U's initial request to bargain outside 10(b) period since Bd treats request as continuing)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(charge barred where outside 10(b) period)

Pick-Mt Laurel Corporation v. N.L.R.B. **625 F.2d 476 (C.A. 3, 1980)**
(remand to Bd for further consideration of use of date of filing charge rather than date of refusal to bargain in measuring 10(b) limitation period, where ALJ found that benchmark date for exclusion of evidence was date when ULP charge was filed, while E contended that when Act is not being given its literal application to filing of charge but is being used to bar evidence in defending against such charge, 10(b) period should be measured from time of E's refusal to bargain)

0420-8050 What constitutes effective date

Jackson Engineering Co. **265 NLRB No. 175**
(allegations of unlawful payments made by E to U officials in form of kickbacks from business referred to E by U held not time barred, although last payment was made prior to 6 months before filing of charges; Sec. 10(b) limitation does not begin to run on alleged ULPs until person adversely affected is put on notice of Act constituting it, and payments herein came to light at criminal proceedings which occurred w/i 10(b) period; thus, concealment of payments prevented timely filing of charges, and 10(b) period is therefore tolled until criminal proceeding disclosed such conduct)

General Truck Drivers, Warehousemen and Helpers, Local 467, Teamsters (Mike Sullivan & Associates, Inc.) **265 NLRB No. 214**
(one charge filed same month as, and another two months after, arbitration evidentiary hearing about discharge committed a year earlier, not time-barred, since they were well w/i six months of the arbitration proceedings involving the same subject matter as the charges)

American Olean Tile company, Inc. **265 NLRB No. 206**
(10(b) period did not begin until U, through actual transfers, was first appraised of E's unlawful plan to grant preferential transfers to Ees who abandoned economic strike or who made individual offers to return over those economic strikers on whose behalf U made uncondition offer to return to work and had seniority over reinstated strikers)

Abbey Medical/Abbey Rents, Inc. **264 NLRB No. 129**
(E's refusal to make contractually mandated fringe benefits is a continuing violation and each failure to contribute is a separate violation from which the 6-month period can be computed)

Danzansky-Goldberg Memorial Chapels, Inc. **264 NLRB No. 112**
(charge alleging unlawful electronic eavesdropping timely filed, notwithstanding filed ten months after listening device removed, since essence of eavesdropping is secrecy, and charge filed w/i few days after Charging Party learned of eavesdropping)

Local 714, Operating Engineers (Contractors Foundation Drilling Company) **262 NLRB No. 142**
(10(b) period does not start to run with local U's action in firing discriminatee but rather with date International notified him that his appeal was denied because appeal to International is necessary step in establishing with finality propriety of local's fine)

Stage Employees, Local 695 (Twentieth Century-Fox Film Corp.) **261 NLRB No. 086**
(interpretation or application of contested contractual provisions by means of arbitrator's arbitral award is reaffirmation of contract and starts 10(b) period running from time of award notwithstanding contract executed and all subsequent conduct complained of occurred prior to 6 months of filing of charge)

Computer Sciences Corporation Applied Technology Division, Huntsville Center **259 NLRB No. 085**
(Ee handbook containing violative provision not outside 10(b) period notwithstanding provision was implemented 2 years prior to date charge filed where plan still in effect at time of charge)

Drukker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. **258 NLRB No. 097**
(when Respondent unilaterally relocated portion of its operation w/o bargaining with U; Section 8(a)(5) allegation dismissed where relocation took place outside 10(b) period and both U and Ees had received actual notice of relocation prior to 6-month period preceding filing of charge)

International Brotherhood of Electrical Workers, Local Union No. 323 (Drexel Properties, Inc.) **255 NLRB No. 102**
(charge alleging U's violation of 8(b)(1)(B) not time barred notwithstanding U's disciplinary proceeding originally instituted outside of 6 month period where U started second proceeding against member within period and alleged violations of U rules were same in both)

E & E Bus Lines, Inc. **255 NLRB No. 137**
(10(b) period does not begin to run until alleged unlawful activity which is basis of charge becomes known to Charging Party)

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Pacific Intercom Co. **255 NLRB No. 061**
(when respondent fraudulently conceals its unlawful conduct 10(b) period of limitations is tolled from date on which ULPs commenced until U acquires knowledge of ULPs; 10(b) period is tolled for purposes of fashioning remedy as well as filing charge)

Southern Newspapers, Inc., d/b/a The Baytown Sun **255 NLRB No. 022**
(six-month limitation period does not begin to run on alleged ULP until person adversely affected is put on notice, actually or constructively; and such notice of E's alleged unlawful shift change was attributed to U where U steward, who worked closely with U and attended all negotiating sessions, had knowledge relating to alleged ULPs; no concealment on E's part occurred since steward and all unit Ees knew about shift change made by E)

Crown Cork & Seal Company, Inc. **255 NLRB No. 056**
(6-months limitations period does not begin to run until party affected by ULP is on actual or constructive notice of material events giving rise to charge)

Joe Carroll Orchestras & Entertainment Agency, Inc. d/b/a Meyer Davis Orchestra; et al. **254 NLRB No. 153**
(contention that complaint is time-barred because E's statement that he would not resume negotiations antedated 6 month filing period, rejected since in alleged 8(a)(5) violations when U subsequently requested negotiations and E refused Bd follows *continuing violation* theory)

Bay Medical Center, Inc. **252 NLRB No. 159**
(Section 10(b) period commenced at time of E's implementation of unilateral reduction in Ees' hours upon their transfer to new facility, rather than upon reduction in hours upon prior temporary transfer to another existing facility pending completion of new facility, or upon E's announcement of contemplated changes, since change upon final act of transfer was subject of complaint)

Inland Typographers, Inc. **252 NLRB No. 003**
(10(b) period begins to run when U first has notice of unlawful unilateral change)

American Bakeries Co., Inc. **249 NLRB No. 170**
(date of actual discharge, and not date of notice of intent to discharge Ee, determined timeliness of charge; events occurring before discharge formed background for charge)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(by delivering payroll records at arbitration hearing, and thereafter allowing U to inspect other records in connection with bargaining agreement, E did not repudiate bargaining relationship sufficiently to begin running of 10(b) period)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(Bd precluded from remedying E's failure to make benefit payments to trustee prior to 10(b) period as U had knowledge of such nonpayment and took no action under Act to get E to comply with contract, however, every monthly failure to submit contractual payment to fund is separate and distinct violation and E liable for delinquincies w/i 10(b) period)

McCormick-Boyett Plumbing Company **JD-(ATL)-93-82**
(Section 10(b) period for charge alleging unlawful refusal to sign and honor multi-E bargaining agreement began running when E specifically informed U it was not going to sign agreement which was w/i 10(b) period, rather than from U's letter asking E to sign new agreement which was outside 10(b) period, since E's failure to reply to or comply with request to sign agreement did not put U on notice of act constituting ULP)

Stratford Visiting Nurses Association **JD-(NY)-86-82**
(E's contention that allegation of unlawful unilateral change was barred by Sec. 10(b), rejected where E's memo to Ee advising her of prospective change delayed effective date; letter expressly stated to Ee that change would not become effective until transition period of 90 days, at which time Sec. 10(b) period began to run)

Teamsters Local Union No. 688, a/w Teamsters (Ritepoint, Division of Penn Corp.) **JD-403-81**
(where ULP alleged is U's maintenance of rule unlawful on its face, GC's failure to establish distribution of rule w/i 10(b) period did not bar complaint, since rule would remain unlawful while outstanding and date of distribution does not terminate its effectiveness; nor did fact rule not implemented w/i 10(b) period bar complaint where allegation is mere distribution and maintenance of rule, unlawful)

Chrysler Corporation-Amplex Division of Chrysler Corporation **JD283-81**
(charge filed two days after allegedly unlawful event—exercise of superseniority by U trustees, to detriment of charging parties, rather than inception of contractual superseniority clause—timely as being well w/i 10(b) period)

Lee Office Equipment **JD-(SF)-86-81**
(6-month period runs from time U became aware of E's practice of subcontracting unit work)

Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO (Samuel M. Moody, an Individual) **JD-(SF)-88-81**
(C against U for breach of duty of fair representation not barred by Sec. 10(b) period where Ees, although suspicious of contract provision at earlier date, did not definitely know that they were bound by 10 percent CPI wage cap negotiated by U and ratified by unit until their suspicions were confirmed at meeting prior to receipt of paycheck with limited increase and exactly 60 days prior to filing C)

General Marine Transport Corporation v. N.L.R.B. **619 F.2d 180 (C.A. 2, 1980)**
(10(b) period began to run from date that charging party could have filed charge for E's initial repudiation of multi-E association contract since E's subsequent repeated repudiations of contract were only repetitions of its earlier conduct rather than separate ULP's)

General Marine Transport Corporation v. N.L.R.B. **619 F.2d 180 (C.A. 2, 1980)**
(10(b) period begins to run from time of initial repudiation of contract and actions taken as result of this repudiation, which normally would be violative, are time barred if charge is filed more than 6 months after repudiation as charge *inescapably grounded* on time barred event; namely, repudiation of contract; ct rejected *continued violation* theory)

N.L.R.B. v. Southern Plasma Corp. **626 F.2d 1287 (C.A. 5, 1980)**
(E's closing of part of business rather than deal with U and reopening department with new Ees violative at time of reopening as ct treated closing of 1 of 2 departments as temporary shutdown of total operation since closing of department not doneto dampen unionism in other department)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(notwithstanding supervisor (also president of U) did not negotiate bargaining agreement w/i 6 month period of charges being filed, 10(b) period did not begin to run because as U President he was responsible for processing grievances; though only 1 grievance filed and it became subject of ULP charge in instant case does not alter result because official's dual role itself may account for lack of grievances)

Ernestine Bentley, Bonnie Collins, Ben Hall and Vera Hall v. N.L.R.B. **653 F.2d 243 (C.A. 6, 1981)**
(although Bd found that three sisters had been discriminated against by E by its refusal to hire them because of their father's reputation as an active U supporter, substantial evidence supported conclusion that ULPs occurred more than 6 months before charges were filed, and were therefore barred by Sec. 10(b))

N.L.R.B. v. Allied Products' Corporation, Richard Brothers Division **629 F.2d 1167 (C.A. 6, 1980)**
(contrary to E's contention, Bd did not disregard ct's remand to reconsider Bd's make-whole remedy in light of ct's theory of applicability of 10(b) limitations period which differs from that upon which Bd relied, where Bd accepted ct's finding that charging party did not become aware of E's unlawful suspension of merit wage review program until certain date, agreed that 10(b) limitations period was tolled until then, and consequently expanded its make whole remedy to include those Ees who had suffered before that date by reason of suspension of the scheme)

Peerless Roofing Co., Ltd. v. N.L.R.B. **641 F.2d 734 (C.A. 9, Apr 4, 1981)**
(limitations period did not begin to run until at least date of first trust fund payment E failed to make)

N.L.R.B. v. Plumbers and Steamfitters Local No. 40 **642 F.2d 456(T) (C.A. 9, Feb 19, 1981)**
(where Charging Party was not given notice that his name was unlawfully removed from hiring hall dispatch list, filing was w/i 10(b) where Charging Party filed after he acquired knowledge of Act)

0420-6200 Six-month period dates from first charge

K & E Bus Lines, Inc. **255 NLRB No. 137**
(*Section 10(b) of Act provides that no complaint should issue based upon ULP occuring more than 6 months prior to filing charge. This section, however, only relates to actual filing of charges and, once charge has been timely filed, control over and disposition of that charge is vested exclusively with GC pursuant to Section 3(d) of Act, who has decision to act on charge as he deems fit*)

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**
(U to reimburse each applicant or Ee who made payments to U for its referral system when in actuality no such system existed; liability limited by Section 10(b) to 6-month period prior to filing and service of original charge)

Pick-Mt Laurel Corporation v. N.L.R.B. **625 F.2d 476 (C.A. 3, 1980)**
(remand to Bd for further consideration of use of date of filing charge rather than date of refusal to bargain in measuring 10(b) limitation period, where ALJ found that benchmark date for exclusion of evidence was date when ULP charge was filed, while E contended that when Act is not being given its literal application to filing of charge but is being used to bar evidence in defending against such charge, 10(b) period should be measured from time of E's refusal to bargain)

0420-6250 Reinstatement of charge after withdrawal

Kennicott Bros. Company **256 NLRB No. 002**
(RD did not abuse discretion by reinstating charge at U's request, notwithstanding Sec. 10(b) limitations, where U had withdrawn charge in reliance on RD statement that any request to reinstate decertification ptn that had been dismissed because of pendency of charge would be denied, but Bd had permitted reinstatement of ptn, only to rectify effects of faulty determination by returning U to *status quo ante*)

Nevada County Publishing Co., d/b/a The Union **251 NLRB No. 143**
(amendment to complaint to include additional allegation of ULP which had previously been administratively dismissed from original charge by RD not time-barred by 10(b))

0420-6250-3000 Prior charge cannot be revived to earlier date, absent equitable considerations

Winer Motors, Inc. **265 NLRB No. 185**
(Bd held charge, although originally timely filed, could not, subsequent to its withdrawal, be reinstated beyond normal 6-month period prescribed in Sec. 10(b) notwithstanding RD had approved withdrawal of charge; Bd held allowance for reinstatement of withdrawn charges for equitable reasons is w/o legal justification and accordingly overruled *Silver Bakery of Newton*)

Kennicott Bros. Company **256 NLRB No. 002**
(E's mtn for summary judgment contending that RD's reissuance of complaint a year after alleged ULP was time-barred by Sec. 10(b), denied since Bd was not compelled by equities of case to overrule GC's reinstatement of timely filed charge where U acted timely throughout case and E was not prejudiced by and did not detrimentally change position in reliance on GC's actions; GC struck proper balance between Sec. 10(b)'s policy barring stale litigation and the Act' broad remedial policy, and RD did not abuse discretion by reinstating complaint on basis of U's reliance on his incorrect opn)

0420-6275 Reinstatement of charge after dismissal

Brookwood Furniture, Division of U.S. Industries **JD-(Atl)-4-82**
(RD did not abuse his discretion when he reinstated charge after he dismissed it on basis of newly discovered evidence)

0420-8700 Amendment of charge

Michigan Consolidated Gas Company **261 NLRB No. 080**
(even assuming alleged ULP oocurred outside 10(b) period of original charge, amended charge filed shortly before end of 10(b) period held timely filed where it related back to and is properly encompassed w/i original charge as *other acts*; and both charges arose out of same ocurse of conduct by E and alleged same violations)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(alleged violations subject of separate charge filed more than 6 months after events alleged as unlawful held not time-barred since such events were brought into instant litigation by amendment to broadly phrased complaint which alleged numerous incidents of interference and discrimination and incidents at issue were of same character as others alleged as unlawful in original complaint; under the circumstances, specific charge was superfluous and allegations were sufficiently related to original charges and complaint to be amended)

Leyendecker Paving, Inc. **247 NLRB No. 010**
(although charge says nothing about *more onerous* work, ALJ allowed amendment to complaint over 10(b) objection, where other allegations properly flowed from charges, albeit in most general way, and amended charge was closely related to those *violations*)

0420-8725 Amended charge may allege ULP committed within 6 months of service of original charge

Carbonex Coal Company **262 NLRB No. 159**
(complaint amended at hearing to conform to evidence which changed date of alleged violation to 6 weeks earlier falls within 10(b) period notwithstanding allegation not specifically included in amended charge which was filed outside 10(b) period where substance of allegation of amended charge is sufficiently related to allegations in original charge)

Gocat, Inc. **257 NLRB No. 030**
(GC's amendment of complaint to include additional discriminatee discharged for U activities held proper where alleged violation was closely related to violations already named in original charge and occurred w/i six months before filing of charge; moreover, E was put on notice by language in complaint that it was charged also with *other acts of conduct* which has been held to form *sufficient basis for later specific allegations*)

R & S Transport, Inc. **286 NLRB No. 089**
(ALJ allowed RD to amend C to add discriminatees who had previously filed charges which were dismissed by RD as time barred where valid charge on which C issued named certain discriminatees and *others* and thus was broad enough to support amended C)

High Energy Corporation **JD-100-82**
(where charge filed w/i 6 months of alleged violative discharges and all Ees named in complaint were discharged for engaging in 1 act of protected concerted activity, then fact that some discriminatees not named in original charge immaterial)

0420-8750 New ULP after original charge and more than 6 months before amended charge may not be included

Graphic Arts International Union, Local 261 (Sale-Niagara, Inc.) **JD-202-82**
(amended charge alleging that U, in addition to violating 8(b)(1)(A) as alleged in original charge, also violated 8(b)(3) held untimely, since it was filed more than 6 months after alleged ULP, and although untimely allegation may have related to and have been part of underlying controversy of original charge, such factor was not sufficient to permit amended charge to relate back and support otherwise untimely allegation)

0420-8775 May relate back to original charge

Washington Beef Producers, Inc. **264 NLRB No. 155**
(amending charge to include allegation of unlawful conduct outside Sec. 10(b) period does not bar ULP finding since matter involved was related to timely filed charge)

Ventura Coastal Corporation **264 NLRB No. 054**
(settlement agreement disposed of all E's presettlement conduct notwithstanding some conduct was subject of charge filed after RD approved of settlement, since there were no reservations in settlement agreement or conduct not *readily discoverable* by GC; Ee's knowledge of conduct unknown to GC was imputed to GC, and all E's presettlement actions concerned interference with Ees' organizing, were sufficiently related to withstand Sec. 10(b) attack and not rendered undiscoverable by Bd's internal restrictions as contended; moreover allegedly discriminatory postsettlement conduct was inextricably linked with presettlement conduct)

Ventura Coastal Corporation **264 NLRB No. 054**
(allegation added to C at trial by amendment after 10(b) period held time barred; *relation-back* doctrine, whereby allegations sufficiently related to matters in a timely charge may be added to C and considered timely, did not apply since allegation had been included in prior charge which was withdrawn)

Howard Johnson Motor Lodge **261 NLRB No. 123**
(allegations added by amendment outside Section 10(b) period which identified interrogator in allegation in original complaint as officer of E and set forth additional instance of interrogation, not untimely, since merely extension of and directly related to interrogation involved in charge and alleged in complaint)

Indian Head Lubricants, Inc. **261 NLRB No. 003**
(no need to amend complaint when all new allegations relate back to original charge)

Cobb Theatres, Inc. **260 NLRB No. 111**
(amending complaint at hearing proper where allegations in amendment related back to matters set forth in original complaint)

Gould, Inc. **260 NLRB No. 092**
(violations added to complaint just prior to hearing held not time barred because no new charge filed as they deal with related matters and arose out of events covered by original charge)

Gocat, Inc. **257 NLRB No. 030**
(GC's amendment of complaint to include additional discriminatee discharged for U activities held proper where alleged violation was closely related to violations already named in original charge and occurred w/i six months before filing of charge; moreover, E was put on notice by language in complaint that it was charged also with *other acts of conduct* which has been held to form *sufficient basis for later specific allegations*)

K & E Bus Lines, Inc. **285 NLRB No. 137**
(amendment of charge after 6 months Section 10(b) period which modified description of nature of discrimination, not improper, since change in nature of discrimination minor and in view of catch all language of charge, Respondent had adequate notice, and failed to raise issue of 10(b) period at hearing)

R & S Transport, Inc. **295 NLRB No. 009**
(ALJ allowed RD to amend C to add discriminatees who had previously filed charges which were dismissed by RD as time barred where valid charge on which C issued named certain discriminatees and *others* and thus was broad enough to support amended C)

Nevada County Publishing Co., d/b/a The Union **251 NLRB No. 143**
(amendment to complaint to include additional allegation of ULP which had previously been administratively dismissed from original charge by RD not time-barred by 10(b))

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(amendment of C to allege additional violation proper where sufficiently related to allegations in original C notwithstanding would otherwise be outside 10(b) period)

High Energy Corporation **JD-100-82**
(where charge filed w/i 6 months of alleged violative discharges and all Ees named in complaint were discharged for engaging in 1 act of protected

0420-8775—Cont.

concerted activity, then fact that some discriminatees not named in original charge immaterial)

Methodist Hospital of Indiana, Inc. JD-85-82
(where 8(a)(3) charge was filed and included *other acts* language and, after complaint alleging 8(a)(1) violations issued, 8(a)(3) charge was dismissed, broad language of initial charge was sufficient to support additional 8(a)(1) allegation, as dismissal of 8(a)(3) charge only did not void entire charge)

Eastern Maine Medical Center v. N.L.R.B. 658 F.2d 1 (C.A. 1, 1981)
(contention that amendment of complaint during hearing added allegation of violation by act which occurred more than six months before amendment and amendment was thus timebarred by 10(b), rejected, since nexus between amendment and original charge was not so attentuated as to make ALJ's allowing amendment abuse of discretion; act named in amendment occurred in midst of, and was of a piece with, acts alleged to be violative in original charge, and E was on notice, because of range of charges, that all its 10(b) period conduct would be investigated)

Rock Hill Telephone Company v. N.L.R.B. 605 F.2d 139 (C.A. 4, 1979)
(additional allegations sufficiently related to original timely charge and complaint)

J. M. Tanaka Construction, Inc. v. N.L.R.B. 675 F.2d 1029 (C.A. 9, Apr. 1982)
(amendment of complaint during hearing was within ALJ's discretion as it was related to same series of allegedly ULPs designed to keep company, found alter ego, herein nonunion)

N.L.R.B. v. Antonino Carilli, d/b/a Antoninino's Restaurant 648 F.2d 1206 (C.A. 9, June 1981)
(*actions before Bd are not subject to technical pleading requirements of private law suit. Charge need not be technically precise so long as it generally informs party charged as to nature of alleged violations. General allegations in charge may be later supplemented or amplified by more specific allegations which relate back to date charge was filed)*

0420-9500 Consolidation of cases

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. 658 F.2d 968 (C.A. 4, Sept. 1981)
(consideration of allegations of consolidated amended Cs that E refused to make plant premises available for bargaining or to pay Ees for work time lost during negotiations, not barred, where allegations were clearly grounded in viable charges of which E had ample notice; charges, while not specifically alleging refusals, contained catchall language which encompassed such allegations; refusals were part of E's opposition to U's inclusion of outsiders in negotiations; and other Us had filed charges claiming that similar refusals were part of E's coordinated opposition)

0440 CONSIDERATION OF TIME-BARRED EVENTS AS BACKGROUND TO EXPLAIN LATER EVENTS PERMISSIBLE

Electrical Workers, Local Union No. 66 (Houston Lighting and Power Company) 262 NLRB No. 061
(events surrounding U member's efforts to resign from U and to revoke checkoff authorization occurring more than 6 months prior to filing of charge relied on as background only to C allegation that U unlawfully failed and refused to give effect to such efforts of member w/i 10(b) period)

Henry J. Kaiser Company 259 NLRB No. 001
(pre-10(b) facts may be used as background to establish motivation for ULPs as well as to explain alleged violations occurring w/i 6-month period)

Electrical Workers, Local 1701 (Dynalectric Company) 252 NLRB No. 119
(while U representative's conduct outside 10(b) period may be used to ascertain his motive for action taken w/i such period, it is not to be inferred that he was motivated by unlawful considerations in his refusal in instant case to refer non-U applicants, in absence of evidence demonstrating that his actions herein were mere continuation of his prior conduct)

0440-0100 Generally

S. L. Industries Inc. and Extruded Products, Corp. 252 NLRB No. 151
(evidence adduced at hearing as to execution of contract between E and minority U and received before complaint was amended to show preferential treatment to U, admissable to show E animus to petitioner and as bearing on credibility of witness, E's president)

0440-1200 Where purpose is for fuller understanding of contention

Air Products and Chemicals, Inc. 263 NLRB No. 045
(E's extreme hostility to U organizers during prior campaign, one year earlier, used as background in evaluating ULP allegations in instant proceeding)

Artley Incorporated 260 NLRB No. [illegible]
(conduct of both E and Ee which occurred outside 10(b) period admissible as background evidence of both E's growing hostility to Ee and Ee's persistent militant U position)

Pick-Mt. Laurel Corporation 259 NLRB No. 084
(on ct remand predecessor E's illegal practice of requiring Ees to join U and sign checkoff authorizations on first day of work which continued into 10(b) period, and its recognition and negotiation of bargaining agreement with U w/o designation by any member of unit, all of which occurred outside Section 10(b) period, considered in determining legality of successor E's withdrawal of recognition of U based on reasonable good faith doubt of U's majority)

Marriott In-Flite Service, A Division of Marriott Corporation 258 NLRB No. [illegible]
(E's implementation of certain benefits and wage increases after allegedly forcing U's agreement thereto by presenting U with Hobson's choice may be utilized to shed light on bargaining positions and events alleged in complaint alleging Section 8(a)(5) violation, notwithstanding events occured outside 10(b) period)

Clearwater Finishing Company, A Division of United Merchants and Manufacturers, Inc. 254 NLRB No. 183

Pandair Freight, Inc. 253 NLRB No. 134
(although E's memo dated outside 10(b) period could not provide basis for ULP complaint, it was compelling background evidence of E's hostility to Ee's U activities and its intention to discover pretextual rationale for Ee's discharge should he persist in engaging in U activities)

The Motor Convoy, Inc. 252 NLRB No. 178

Cumberland Farms Dairy, Inc. 250 NLRB No. 140
(supervisor's statements made outside 10(b) period that E could not fire one Ee for signing U authorization card or stop another Ee from joining U although not usable as evidence of ULPs, could serve as indicator of motivation of supervisor attributable to E)

American Bakeries Co., Inc. 249 NLRB No. 170
(date of actual discharge, and not date of notice of intent to discharge Ee, determined timeliness of charge; events occurring before discharge formed background for charge)

Local 394, Laborers' (Building Contractors Association of New Jersey) 247 NLRB No. [illegible]
(U's failure to refer alleged discriminatees outside 10(b) period admissible as evidence of animosity and as background to support finding of unlawful refusal to refer w/i 10(b) period)

Wright Motors, Inc. JD-266-81
(it was necessary to evaluate conduct outside 10(b) period, not alone as background matter shedding light on acts w/i 10(b) period but also because it was essential to determine whether prior extensions of U's certification year had run out due to *compliance* with Bd and ct orders or not)

Pick-Mt Laurel Corporation v. N.L.R.B. 625 F.2d 476 (C.A. 3, 1980)
(contrary to Bd's holding that Sec. 10(b) precluded E from relying on execution of illegal prehire agreement by predecessor E as basis to support reasonably based doubt of U's majority status, ct held that, even though successor E could not use pre-10(b) evidence to nullify contract, E should be permitted to admit evidence to shed light upon its refusal to bargain as background evidence buttressing E's analysis of various timely events which allegedly gave rise to its good faith doubt of majority status)

N.L.R.B. v. Southern Plasma Corp. 626 F.2d 1287 (C.A. 5, 1980)

N.L.R.B. v. Laredo Coca Cola Bottling Company 613 F.2d 1338 (C.A. 5) (1980)
(ALJ's consideration of supervisor's statements, held proper notwithstanding the statements were made more than six months before charge was filed; ALJ considered the statements as background evidence for *adducing E's motivation for its acts w/i 10(b) period*)

N.L.R.B. v. International Union of Operating Engineers, Local 571, AFL-CIO 634 F.2d 866 (C.A. 8, 1980)

0440-2500 Striker's right to reinstatement within period may be based on time-barred events

Giddings & Lewis, Inc. 264 NLRB No. 078
(terminating recall rights of economic strikers by E's six-month renewal notification requirement by which Ees were obligated to notify E of their interest to remain on preferential hire list, violative, where such requirement was inherently destructive of Ee reinstatement rights under *Laidlaw* and E gave no sufficient business justification to shift such burden of notification to Ees as prerequisite to preserve statutory recall rights; remedy not barred by Sec. 10(b) of Act)

0440-5000 Enforcement within period of contract illegal in execution because of time-barred events

Pick-Mt. Laurel Corporation 259 NLRB No. 084
(on ct remand predecessor E's illegal practice of requiring Ees to join U and sign checkoff authorizations on first day of work which continued into 10(b)

0440-5000—Cont.

period, and its recognition and negotiation of bargaining agreement with U w/o designation by any member of unit, all of which occurred outside Section 10(b) period, considered in determining legality of successor E's withdrawal of recognition of U based on reasonable good faith doubt of U's majority)

Actors' Equity Association 247 NLRB No. 172

(Bd's consideration of maintenance and enforcement of U security agreements and U's dues structure held not barred; since violation rests on U's dues structure in conjunction with contracts, circumstances at time of execution of contracts are not critical; moreover, there was at least one instance of enforcement of U security provision w/i 10(b) period; contention that dues checkoff was *benign* because U did not seek imposition of job related sanction to compel dues payment, and such *benign* acts are not ULPs, rejected)

N.L.R.B. v. Vitronic Division of Penn Corporation 630 F.2d 561 (C.A. 8, 1979)

(complaint alleging unlawful E's refusal to retain replaced economic strikers on preferential hiring list and reinstate where strikers had failed to comply with its requirement that strikers renew their continued interest in reinstatement six months following sending of initial request for reinstatement form to strikers not barred where w/i Section 10(b) period on basis that E's establishment of requirement that former strikers renew their continued interest in employment was outside 10(b) period since basis of charge is termination not establishment of notification requirement)

0440-7500 Minority status of union recognized before limitations period

Pick-Mt. Laurel Corporation 259 NLRB No. 034

(on ct remand predecessor E's illegal practice of requiring Ees to join U and sign checkoff authorizations on first day of work which continued into 10(b) period, and its recognition and negotiation of bargaining agreement with U w/o designation by any member of unit, all of which occurred outside Section 10(b) period, considered in determining legality of successor E's withdrawal of recognition of U based on reasonable good faith doubt of U's majority)

S. L. Industries Inc. and Extruded Products, Corp. 252 NLRB No. 151

Pick-Mt Laurel Corporation v. N.L.R.B. 625 F.2d 476 (C.A. 3, 1980)

(contrary to Bd's holding that Sec. 10(b) precluded E from relying on execution of illegal prehire agreement by predecessor E as basis to support reasonably based doubt of U's majority status, ct held that, even though successor E could not use pre-10(b) evidence to nullify contract, E should be permitted to admit evidence to shed light upon its refusal to bargain as background evidence buttressing E's analysis of various timely events which allegedly gave rise to its good faith doubt of majority status)

Pick-Mt Laurel Corporation v. N.L.R.B. 625 F.2d 476 (C.A. 3, 1980)

(where E proferred defense of good faith doubt of U's majority status, ct held E could reasonably consider pre-10(b) circumstances because *sweetheart* relationship evidenced by unlawful prehire contract entered into by predecessor E sheds light on its commission of independent ULP in assisting U w/i 10(b) period; however, since successor E did not make clear the relationship, if any, between unlawful assistance during 10(b) period and its claim of good faith doubt, ct deemed it best left to Bd, which had not previously considered issue, to consider it in the first instance)

0460 LIMITATION NOT APPLICABLE TO CONTINUING ULP

Enterprise Products Company 265 NLRB No. 083

(Sec. 8(a)(5) charge not barred because filed more than 6 months after initial request to bargain was made, where U's demand was continuing one in view of U's actions in dilegently pursuing R proceeding and in pressing ULP charges)

Stage Employees, Local 695 (Twentieth Century-Fox Film Corp.) 261 NLRB No. 086

(interpretation or application of contested contractual provisions by means of arbitrator's arbitral award is reaffirmation of contract and starts 10(b) period running from time of award notwithstanding contract executed and all subsequent conduct complained of occurred prior to 6 months of filing of charge)

Al Bryant, Inc., Harrisburg Drywall and Construction Corporation, and Al Bryant Associates, Inc. 260 NLRB No. 010

(notwithstanding fact that one of 2 Us suspected, outside 10(b), that E was operating non-U, charge was timely filed because E's failure w/i 10(b) to execute or abide by contract was continuing violation)

Chesapeake and Potomac Telephone Company 259 NLRB No. 030

(U's charge timely where w/i prior 6 months it had served subpoena in which it requested same information as before and E again refused to comply; refusal found unlawful standing alone and as part of continuing violation)

Computer Sciences Corporation Applied Technology Division, Huntsville Center 258 NLRB No. 085

(Ee handbook containing violative provision not outside 10(b) period notwithstanding provision was implemented 2 years prior to date charge filed where plan still in effect at time of charge)

K & S Circuits, Inc. 255 NLRB No. 163

(maintenance of overly-broad no-distribution rule requiring E's permission violative, notwithstanding that rule was promulgated before Sec. 10(b) limitations period)

Southern Newspapers, Inc., d/b/a The Baytown Sun 255 NLRB No. 022

(E's refusal to bargain concerning E's unilateral change in Ees' shift hours, unlawful, where U's request was made w/i 10(b) period and, even though shift change occurred outside 10(b) period, such request revived E's original unlawful refusal to bargain concerning shift change)

Child Day Care Center, Verona, Virginia and Baltimore Regional Joint Board, Amalgamated Clothing and Textile Workers Union Health and Welfare Fund 252 NLRB No. 164

(Sec. 10(b) no bar to finding of violation since, after E's assistance in original establishment and recognition of U in pre 10(b) period, E's assistance to U continued into 10(b) period where E allowed U to use its premises to hold meetings during which Ees were paid, and U business agent who handled grievance of Charging Party w/i 10(b) period was on broad of trustees of E)

Dardanell Enterprises, Inc. 250 NLRB No. 050

(charge not barred by fact that U's initial request to bargain outside 10(b) period since Bd treats request as continuing)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. 249 NLRB No. 003

(Bd precluded from remedying E's failure to make benefit payments to trustee prior to 10(b) period as U had knowledge of such nonpayment and took no action under Act to get E to comply with contract, however, every monthly failure to submit contractual payment to fund is separate and distinct violation and E liable for delinquincies w/i 10(b) period)

Local 1115, Joint Board, Nursing Home & Hospital Employees—Florida Division (B & K Investments, Inc., d/b/a Towne House convalescent Center) 248 NLRB No. 167

(U's mtn to dismiss C as time-barred under 10(b), denied, where GC alleged that a number of U's actions occurred w/i 6 months of filing of charge, and mtn to dismiss under 10(b) in prior proceeding was denied because U's refusal to bargain was alleged to be a continuing violation)

United States Postal Service 248 NLRB No. 002

(issuance of complaint alleging that basic arrangement between E and U by which they restricted power of Ees to revoke checkoff to single annual event rather than at will and effective twice yearly as prior to enactment of exception to NLRA embodied in Section 1205(b) of Postal Reorganization Act, not barred by Section 10(b), notwithstanding that the ULP charge was filed after more than five years subsequent to date when E and U made alleged basic arrangement; the arrangement was continued to at least time of hearing herein)

Red Roof Inns III Co., Inc. JD-142-82

(pertinent allegation of complaint was not *inescapably grounded* on events predating 10(b) period and GC may challenge maintenance of no-solicitation rule, notwithstanding E's contention that allegation must be dismissed because rule was promulgated more than 6 months prior to filing of either charge in case where rule was alleged to be unlawful on its face, and rule was maintained by E at least until date well w/i 10(b) period)

Technicolor, Inc. JD-(SF)-37-82

(amended C alleging additional facts of discrimination against Ee not time-barred, since conduct alleged in amendment were acts of discrimination which occurred after filing of charge and statements concerning unlawful motivation for such acts)

General Marine Transport Corporation v. N.L.R.B. 619 F.2d 180 (C.A. 2, 1980)

(10(b) period begins to run from time of initial repudiation of contract and actions taken as result of this repudiation, which normally would be violative, are time barred if charge is filed more than 6 months after repudiation as charge *inescapably grounded* on time barred event; namely, repudiation of contract; ct rejected *continued violation* theory)

0465 TOLLING OF PERIOD

Autoprod, Inc. 268 NLRB No. 042

(Sec. 10(b) is of no avail to E where he delayed contributions to U funds and wage increases mandated by arbitration award as this constitutes refusal to bargain and failure to meet each payment constitutes illegal act, and tolls application of Sec. 10(b). Thus, failure to make payments continued to filing of charge and constituted unlawful ongoing refusal)

Rayel Electric Company 260 NLRB No. 190

(10(b) period not tolled until U became aware of E's ULP of violating bargaining agreement)

0465—Cont.

Drukker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. **258 NLRB No. 097**
(Section 10(b) is subject to equitable principles and may be tolled where Respondent has fraudulently concealed its unlawful conduct)

Pacific Intercom Co. **255 NLRB No. 061**
(when respondent fraudulently conceals its unlawful conduct 10(b) period of limitations is tolled from date on which ULPs commenced until U acquires knowledge of ULPs; 10(b) period is tolled for purposes of fashioning remedy as well as filing charge)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction **596 F.2d 378 (C.A. 9, 1979)**
(charge held timely filed where although events on which charged was based, E's hiring of separate non-U carpentry crew, occurred before 10(b) period, they were not known by U until 10(b) period, because E fraudulently concealed their occurrence by assuring U that it would no longer employ carpenters, thus tolling 10(b) period)

0600 AVAILABILITY OF BOARD PROCESSES TO PARTIES ENGAGING IN INVIDIOUS DISCRIMINATION

0700 FURTHER CONSIDERATION, RECONSIDERATION

Axelson, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(petitioner's mtn to consolidate and/or for reconsideration on ground Bd decision in instant decertification proceeding overruling objection to election should be considered together with subsequent Bd decision finding violation by E on basis of conduct which was subject of objection, denied, where E did not seek to have ULP case consolidated or considered with instant proceeding until after ULP decision issued; contentions that consideration will facilitate final, just resolution of issues and relief to be accorded, and that relief granted for E's violation is wholly inadequate, rejected)

Axelson, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(petitioner's mtn to consolidate and/or for reconsideration based on allegedly inconsistent decisions as result of Bd decision finding violation on basis of conduct which was subject of previously overruled objection to election in instant decertification proceeding denied as untimely; findings of fact are based on respective records in each case, and record herein shows insufficient evidence to warrant setting aside election; to extent petitioner argues Bd's findings herein are erroneous on record then before it, regardless of record in ULP case, petitioner's second mtn for reconsideration is a year late)

Axelson, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(petitioner's mtn to consolidate and/or for reconsideration as result of Bd finding of 8(a)(1) violation on basis of conduct which was subject of previously overruled objection to election in instant decertification proceeding, denied; Bd rejected contention that, since (8a)(1) conduct *a fortiori* interferes with election, such finding invalidates retroactively Bd's conclusion herein that E's conduct did not warrant setting election aside; *a fortiori* principle was attempt by Bd to avoid *mechanical approach* and Bd looks to economic realities of E-Ee relationship in determining whether to set aside election)

Axelson, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(petitioner's mtn to consolidate and/or for reconsideration as result of Bd finding of 8(a)(1) violation on basis of conduct which was subject of previously overruled objection to election in instant decertification proceeding, denied; effect of narrow ruling herein was that, if U has won election despite E's campaign against it, election results stand as against mechanical insistence on *laboratory conditions;* and fact that E's conduct was later found violative does not cast issue into any light significantly different from that in which Bd first examined it)

0800 CHARGE

0801 GENERALLY

C & D Battery Division—Eltra Corporation **263 NLRB No. 106**
(E's contention that charge did not properly allege 8(a)(5) violation, rejected, where charge alleged that E had *refused under 8(a)(5) to bargain with U concerning the discriminatory layoff in violation of its own seniority policy;* while it may well be, as E contends, that whether layoff was discriminatory or in violation of its seniority policy is irrelevant regarding violation of 8(a)(5), essence of charge was that E refused to bargain concerning layoff and, as such, properly alleged 8(a)(5) violation)

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. **683 F.2d 305 (C.A. 9, July 1982)**
(E's contention that it was denied due process by litigation of matters outside C, rejected, since actions before Bd are not subject to technical pleading requirements that govern private lawsuits; charge need not be technically precise as long as it generally informs charged party of nature of alleged violations; and where issue is fully and fairly litigated at administrative hearing, Bd may find ULP even though no specific charge is made in C)

0822 MAY BE FILED BY ANY PERSON

Operating Engineers, Local 926 (George L. Smith, II, Georgia World Congress Center) **254 NLRB No. 116**
(even corporation that acted *ultra vires* when it filed charge)

Patio Lodge, Inc., and Fountain Lodge, Inc. **JD-(ATL)-60-82**
(charging party-U had standing to file charge notwithstanding E's contention no relationship between U which represented Ees and charging party, where evidence of merger of these two Us, never contested merger, E did not timely raise issue of standing; further, under Bd's R/R Section 101.9 anyone may file charges)

Chrysler Corporation-Amplex Division of Chrysler Corporation **JD282-81**
(fact that Ee was not detrimentally affected by enforcement of contractual superseniority clause did not jeopardize his right to file charge nor taint instant complaint)

0833 MOTIVATION IN FILING IMMATERIAL

0833-5000 Board will determine abuse of process

Stage Employees, Local No. 249 (General Cinema Corporation of Texas, et al.) **265 NLRB No. 093**
(panel majority did not agree with one member's position that E abused Bd's processes by exercising its right to require Bd to reconsider its prior holding herein; majority deemed member's proposal, based on E's reiteration of frivolous contentions, that E should be assessed $100 to cover portion of expenditures of Bd resources involved in responding to E's wasteful action, unwarranted and punitive)

0844 PARTICULARITY NOT ESSENTIAL

N.L.R.B. v. Antonino Carilli, d/b/a Antonino's Restaurant **640 F.2d 1206 (C.A. 9, June 1981)**
(actions before Bd are not subject to technical pleading requirements of private law suit. Charge need not be technically precise so long as it generally informs party charged as to nature of alleged violations. General allegations in charge may be later supplemented or amplified by more specific allegations which relate back to date charge was filed)

0844-1700 Purpose to set Board investigation in motion

Flex Plastics, Inc. **262 NLRB No. 078**
(charge is not formal pleading and it is not function of charge to apprise Respondent of exact nature of allegations against him. That is function of C. Its purpose is merely to set in motion Bd's investigatory machinery. Only limitation is that C may not issue on matters *so completely outside...the charge that the Bd may be said to be initiating the proceeding on its own mtn.*)

0844-3300 Lack of does not invalidate proceeding

Turner Tool And Joint Rebuilders Corporation **256 NLRB No. 101**

0844-6700 Not pleadings

Flex Plastics, Inc. **262 NLRB No. 078**
(charge is not formal pleading and it is not function of charge to apprise Respondent of exact nature of allegations against him. That is function of C. Its purpose is merely to set in motion Bd's investigatory machinery. Only limitation is that C may not issue on matters *so completely outside...the charge that the Bd may be said to be initiating the proceeding on its own mtn.*)

Storta Sons Construction Co., Inc. **260 NLRB No. 173**

N.L.R.B. v. Antonino Carilli, d/b/a Antonino's Restaurant **640 F.2d 1206 (C.A. 9, June 1981)**
(actions before Bd are not subject to technical pleading requirements of private law suit. Charge need not be technically precise so long as it generally informs party charged as to nature of alleged violations. General allegations in charge may be later supplemented or amplified by more specific allegations which relate back to date charge was filed)

0844-8300 Purpose to notify charged party of nature of allegation

Storta Sons Construction Co., Inc. **260 NLRB No. 173**

Turner Tool And Joint Rebuilders Corporation **256 NLRB No. 101**

0855 TIMELINESS OF SERVICE TO STOP 10(b) PERIOD

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(even though 6-month period lapsed on a Sunday, a day before charges were served through mail, ct held that, pursuant to Bd's R/R, period extended to following day, Monday, making service of charge by mail on that day, as well as U's filing of charges, timely)

0855—Cont.

N.L.R.B. v. Preston H. Haskell Company **616 F.2d 136 (C.A. 5, 1980)**
(even though 6-month period lapsed on a Sunday, a day before charges were served through mail, ct held that, pursuant to Bd's R/R, period extended to following day, Monday, making service of charges by mail on that day, as well as U's filing of charges, timely) ●M>0448359608550000000710800428

N.L.R.B. v. Preston H. Haskell Company

Seligman and Associates, Inc. v. N.L.R.B. **639 F.2d 307 (C.A. 6, 1981)**
(personal service of charge upon manager at one of E's management jobs w/i six month limit constituted sufficient and timely service upon E)

0866 AMENDMENT OF CHARGE

0866-2500 Not equivalent to withdrawal of original charge

Charge Card Association **247 NLRB No. 119**
(ammended charge dropping particular allegation is withdrawal of charge in that particular)

0877 WITHDRAWAL OF CHARGE

0877-0100 Generally

Union Mining Company of Allegany County, Inc. **264 NLRB No. 052**
(allegations of unlawful disciplinary warning and demotion were properly before ALJ where GC timely moved to amend complaint to include them and ALJ properly granted GC's mtn, notwithstanding attachments to respondent's brief of letter from RD informing respondent that a charge had been withdrawn and a charge of unlawful disciplinary warning and demotion, since subsequent withdrawal of apparently parallel charges is clearly outside the record and irrelevant to the disposition of the amended complaint here)

The Perlman-Rocque Company (North) **257 NLRB No. 002**
(where local filed charges that E violated 8(a)(2) and (1) by entering into a contract with, and attempting to force its Ees to join, another local, then withdrew these charges, and neither first local nor GC has, since withdrawal, requested finding of these violations, E held not to have violated 8(a)(1) by any action such as that alleged above)

APD Transport Corp. and Its Alter Ego, National Book Consolidators, Inc. **253 NLRB No. 056**
(mtn for summary judgment granted where E failed to show good cause for failure to file timely answer; and request to withdraw charges and dismiss complaint because of settlement agreement denied since settlement agreement did not provide substantial remedy, some Ees objected to settlement terms of private settlement agreement, and settlement agreement would not effectuate policies of Act)

0877-7500 Withdrawn charge may not be reinstated to circumvent 10(b) period

Winer Motors, Inc. **265 NLRB No. 185**
(Bd held charge, although originally timely filed, could not, subsequent to its withdrawal, be reinstated beyond normal 6-month period prescribed in Sec. 10(b) notwithstanding RD had approved withdrawal of charge; Bd held allowance for reinstatement of withdrawn charges for equitable reasons is w/o legal justification and accordingly overruled *Silver Bakery of Newton*)

Ventura Coastal Corporation **264 NLRB No. 054**
(allegation added to C at trial by amendment after 10(b) period held time barred; *relation-back* doctrine, whereby allegations sufficiently related to matters in a timely charge may be added to C and considered timely, did not apply since allegation had been included in prior charge which was withdrawn)

Kennicott Bros. Company **256 NLRB No. 002**
(RD did not abuse discretion by reinstating charge at U's request, notwithstanding Sec. 10(b) limitations, where U had withdrawn charge in reliance on RD statement that any request to reinstate decertification ptn that had been dismissed because of pendency of charge would be denied, but Bd had permitted reinstatement of ptn, only to rectify effects of faulty determination by returning U to *status quo ante*)

Kennicott Bros. Company **256 NLRB No. 002**
(E's mtn for summary judgment contending that RD's reissuance of complaint a year after alleged ULP was time-barred by Sec. 10(b), denied since Bd was not compelled by equities of case to overrule GC's reinstatement of timely filed charge where U acted timely throughout case and E was not prejudiced by and did not detrimentally change position in reliance on GC's actions; GC struck proper balance between Sec. 10(b)'s policy barring stale litigation and the Act' broad remedial policy, and RD did not abuse discretion by reinstating complaint on basis of U's reliance on his incorrect opn)

0877-8000 Charging party's request for permission to withdraw charge

Jackson Engineering Co. **265 NLRB No. 175**
(although charging parties' request to withdraw their charges is denied by RD, ALJ has discretionary authority to approve such requests made before him, even if GC objects)

Jackson Engineering Co. **265 NLRB No. 175**
(request by charging parties to withdraw their charges against E and U on ground that criminal conviction of U officers involved in unlawful kickback arrangement with E, and their subsequent removal from U, obviates need for any further proceedings herein, denied, since criminal proceedings did not resolve issue as to whether U and/or E are responsible for conduct of U officers, and E's Ees and U membership are entitled to clear and unequivocal statement by posting of notice that E and U do not, and will not countenance such behavior on part of its officers and agents)

Jackson Engineering Co. **265 NLRB No. 175**
(charging parties' request to withdraw their charges against E and U based on *Midwest Piping* allegations in regard to E's signing of contract with U during existence of qcr, denied; to permit withdrawal would be contrary to policies of Act since, if allegations are sustained, E and U will have been found to have unilaterally abrogated to themselves Bd's function of resolving qcr; moreover, despite defunctness of U, remedy would still be meaningful since, assuming violations are found, substantial number of Ees would be entitled to refund of dues they paid pursuant to union security clause)

0888 DISMISSAL OF CHARGE

0888-0100 GENERALLY

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. **623 F.2d 1173 (C.A. 7, 1980)**
(RD empowered to reverse original dismissal of Ee's charge, notwithstanding that Ee's appeal of RD's dismissal of charge was still pending; since Ee's appeal remained alive, E remained on notice that a charge might still be brought contesting her discharge)

Foley-Wismer & Becker and Shurtleff & Andrews Construction v. N.L.R.B. **695 F.2d 424 (C.A. 9, Dec. 1982)**
(E's request for review of GC's dismissal of charge against U, denied, since GC has *final authority* on whether to issue C on ULP charges, and his decision is not reviewable in any judicial forum)

0888-2500 Because of settlement of issues by parties

Ventura Coastal Corporation **264 NLRB No. 054**
(settlement agreement disposed of all E's presettlement conduct notwithstanding some conduct was subject of charge filed after RD approved of settlement, since there were no reservations in settlement agreement or conduct not *readily discoverable* by GC; Ee's knowledge of conduct unknown to GC was imputed to GC, and all E's presettlement actions concerned interference with Ees' organizing, were sufficiently related to withstand Sec. 10(b) attack and not rendered undiscoverable by Bd's internal restrictions as contended; moreover allegedly discriminatory postsettlement conduct was inextricably linked with presettlement conduct)

0888-6700 Appeal to General Counsel from RD dismissal

0888-6767 Reinstatement of charge

Fluid Packaging Company, Inc. **247 NLRB No. 196**
(where after dismissing allegation of unlawful discharge from original charge, RD, upon charging pary's appeal to GC, reconsidered and again included deleted charge, Bd's overruling ALJ's refusal to permit GC to amend complaint to include deleted charge, proper, since charge remained alive and pending during appeal process)

1200 PARTIES

1201 GENERALLY

Axelson, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(U which was vitally interested party in instant decertification proceeding but was not party and did not have opportunity to participate in related ULP case held not bound by record made in latter case)

N.L.R.B. v. Wayne Electric, Inc., Electrical Installation and Services, and Wayne E. Steward **636 F.2d 1227(T) (C.A. 9, 1980)**
(owner of two businesses both of which found guilty of ULP's liable for backpay award notwithstanding he was not specifically named as party because obligations of proprietorship are obligations of its owner)

1201-5000 Definition (Rule 102.8)

Senftner Volkswagen Corporation **257 NLRB No. 028**

1220 CHARGING PARTY

Senftner Volkswagen Corporation **257 NLRB No. 028**
(charging party is a party under Sec. 102.8 of Bd's R/R and under Sec. 102.38 of R/R any party has right to cross-examine witnesses; therefore, since charging party is granted full participatory rights, it is reasonable to infer that he is entitled to any pre-trial affidavits in same manner as respondent is)

1220—Cont.

Ver Cee Provisions, Inc. 256 NLRB No. 125
(on issue of whether or not individual may file 8(a)(5) charge, ALJ noted that for almost 40 years Bd has held, as provided in its R/R, Sec. 102.9, that *any person* may file a charge; ALJ was satisfied that there was no procedural impediment to finding violation of 8(a)(5) in case here if evidence warranted it)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 147
(contention that charging party, E's representative has no standing or valid interest permitting him to file charge in instant 8(b)(1)(B) proceeding, rejected, in view of R/R Sec. 102.9)

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) 249 NLRB NO. 147
(contention that charging party, E's bargaining representative, was equitably barred in instant 8(b)(1)(B) proceeding from obtaining any relief sought, rejected, since clean *hands* doctrine does not operate against charging party inasmuch as proceedings are brought not for vindication of private rights but are brought in public interest and to effectuate statutory policy)

Patio Lodge, Inc., and Fountain Lodge, Inc. JD-(ATL)-40-82
(charging party-U had standing to file charge notwithstanding E's contention no relationship between U which represented Ees and charging party, where evidence of merger of these two Us, never contested merger, E did not timely raise issue of standing; further, under Bd's R/R Section 102.9 anyone may file charges)

Chrysler Corporation-Amplex Division of Chrysler Corporation JD252-81
(fact that Ee was not detrimentally affected by enforcement of contractual superseniority clause did not jeopardize his right to file charge nor taint instant complaint)

1240 DISCRIMINATEES

Conoy Drilling Company 254 NLRB No. 019
(where original charge alleged 12 individuals had been improperly denied reinstatement, amended charge listed only 3 of the 12, complaint alleged only 3 unlawful denials of reinstatement, violations will only be found for 3 named Ees)

1260 NECESSARY PARTIES

1260-0100 Generally

Sumco Manufacturing Co., Inc. Summit Grinding Company 251 NLRB No. 046
(exceptions taken by respondents as to correct name of one of respondents held untimely where respondents never raised issue as to correct name of respondent until exceptions were filed with Bd and respondents did not contend that they suffered any prejudice due to use of alleged incorrect name)

N.L.R.B. v. Doug Neal Management Company 620 F.2d 1133 (C.A. 6, 1980)
(enforcement denied where order not supported by substantial evidence as Ees discharged because E installed automated equipment which eliminated work of Ees, and indispensable party, owner of building, not joined; making building manager party not sufficient, especially where Bd ordered reinstatement of 3 discharged Ees)

1260-1000 Subsidiary of parent

Trans-State Lines, Inc. 256 NLRB No. 116
(renewed mtn, in GC's brief, to amend C to reflect possible subsidiary relationship among 3 corporations providing trucking service, denied as untimely, where original mtn was made and denied at hearing when GC was preparing to rest; 2 of corporations did not appear and were not accorded procedural *due process*; counsel for GC was aware of facts approximately one week before hearing)

1260-1500 Parent of subsidiary

Musicians Union Local 47, etc. (American Broadcasting Company, etc.) 255 NLRB No. 065
(international not indispensable party to proceeding against local for allegedly unlawfully withholding paychecks, transmitted by Es through U, from charging party for nonpayment of dues; there was no allegation that either bargaining agreement or procedure for transmitting checks violated Act; rather, allegations pertained to manner in which local implemented such procedure; evidence does not show that international participated in or was aware of local's procedure; and Congress has made it clear that international Us are not to be held liable for acts of their locals on basis of relationship between them)

Brockway Motor Trucks, Division of Mack Trucks, Inc. 251 NLRB No. 033
(where parent company was not named in proceeding until after ct remanded to Bd, it will not be named as R as it was never afforded opportunity to defend itself against ULP charges or litigate its relationship with E; determination can be made at compliance stage of proceeding)

1260-8000 Trustee in bankruptcy

Wintz Motor Freight, Inc./Wintz Transportation Company/U.S. Trustee William Westphal 265 NLRB No. 121
(Bd dismissed U.S. Trustee as respondent to ULP proceeding where Bd found that Trustee was not an *alter ego*, a successor, or a trustee-in-bankruptcy for respondent company)

Belair Chateau Hospital, Inc., d/b/a University Heights Hospital JD-(SF)-213-82
(deletion of trustee in bankruptcy as party respondent from original complaint pursuant to ct order does not bar GC from raising issue of trustee's derivative liability for first time in backpay proceeding)

1260-8500 International Union

Plumbers, Local Unions Nos. 141, 229, 681 and 706 (International Paper Company, Southern Kraft Division) 252 NLRB No. 181
(although C unclear, international U treated as Respondent because it participated in negotiations, insisted upon inclusion of R clause in contract, was named in charge, served with pleadings and required to effectuate full relief)

1260-9000 Alter ego of employer

Teckwal Corp. and E.M. Andrews Sales, Inc. 263 NLRB No. 122
(affiliated enterprise (*alter ego*) of E held to share obligation with E, named party in original ULP proceeding, to provide backpay, notwithstanding Es' contention that backpay specification should not include *alter ego* as liable for moneys due because Bd's original order did not apply to *alter ego*, since Es had admitted their single E status in original ans, and it is established that liability may be imposed upon party to supplemental proceeding even if that party had not been party to ULP proceeding if it is *sufficiently closely related* to party found in original proceeding to have committed ULPs)

F & F Construction Co., Inc., and Roland L. Barker, d/b/a R. L. Barker Construction Company 262 NLRB No. 98
(in supplemental proceedings, contention of individual who was not party to underlying ULP case and was found herein to be alter ego of company involved in ULP case, that proceeding against him should be dismissed held w/o merit, where, after issuance of Bd decision in ULP case, individual as owner of company involved in ULP case discontinued that company and formed sole proprietorship doing same business; furthermore, individual had ample time to address alter ego issue after RD had amended backpay specification upon learning of proprietary operations)

1270 PARTY IN INTEREST

N.L.R.B. v. Local No. 12, Operating Engineers 673 F.2d 1094 (C.A. 9, Apr. 1982)
(Bd order requiring U to reimburse E for monies it unwilling contributed to U-trust funds for its president and vice-president enforced where Bd determined that U had committed ULP by requiring E to contribute; however, ct cannot require Bd to order E reimbursed for similar contributions to trusts which were not subject of ULP charge)

1290 ADEQUACY OF IDENTIFICATION OF PARTIES

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) 253 NLRB No. 099
(inclusion in make-whole order of all nonmember applicants for job referral as well as individual charging parties, proper where amended charge and consolidated complaint alleged that Ees who were not members of U and applicants for employment who were not members suffered discrimination, so that U was put on notice as to who were alleged to be discriminatees; further, nature of evidence adduced at hearing put U on notice of allegation that its referral system inherently favored members over nonmembers)

1600 SERVICE OF DOCUMENTS

1633 SERVICE BY PARTIES (RULE 102.112)

Victor Electric Company JD-368-82
(E's mtn to dismiss on grounds that charge was served by RD rather than Charging Party denied because jurisdiction is not conditioned on any procedural right under R/R 102.14 to insist on service by Charging Party)

1650 DATE OF SERVICE (RULE 102.113)

American Federation of Musicians, Local No. 76, AFL-CIO (National Association of Orchestra Leaders) JD-(SF)-184-82
(application for legal fees and expenses *filed* with Bd when received and not when stamped in)

1683 SERVICE OF CHARGE OR COMPLAINT

1683-4700 Service on alter ego

Sturdevant Sheet Metal & Roofing Company, Inc., and Orion Trading Company, Inc., d/b/a Sturdevant Roofing Company v. N.L.R.B. 363 F.2d 271 (C.A. 10, Nov. 1980)
(where second E is found *alter ego* of its predecessor E, service on predecessor E constitutes service on second E)

1683-5000 Service on agent

Iowa Parcel Service, Inc. and Iowa Express Distribution, Inc. JD-238-82
(individual and company were constructively served and given sufficient notice of charges against them to be afforded due process of law where receipt for charge sent by certified mail to company's parent company was returned signed by *authorized agent,* and receipts for charges and complaints sent by mail to both individual and company were returned marked *Refused*)

Andrews Security Service, Inc. JD-(SF)-14-82
(service on director is valid service on corporation)

Andrews Security Service, Inc. JD-(SF)-14-82
(service of order of reopening of hearing on director of E sufficient as she was agent of E)

1683-5800 Service on joint representative

Local Union No. 46 Metallic Lathers and Reinforcing Iron Workers (Cement League) 259 NLRB No. 010
(service of charge naming predecessor U as Respondent and president of that U as agent does not deny successor U of due process where president of predecessor U is also agent of successor U as assistant to president of that U)

1683-6000 Need not be personal service

1683-6050 Service by mail sufficient

Basic Tool & Supply Co., Inc. 264 NLRB No. 013
(affidavit of service of the charges, transmittal letter, and certified mail return receipt card confirm both filing and service)

Iowa Parcel Service, Inc. and Iowa Express Distribution, Inc. JD-238-82
(individual and company were constructively served and given sufficient notice of charges against them to be afforded due process of law where receipt for charge sent by certified mail to company's parent company was returned signed by *authorized agent,* and receipts for charges and complaints sent by mail to both individual and company were returned marked *Refused*)

Crawford Development Corporation, d/b/a Crawford Dairyland of Frankfort, Indiana JD-563-81
(where charge was deposited with Postal Service as certified mail, service was effective notwithstanding E did not receive charge and GC could not produce return receipt)

1683-8000 Date of service is date of mailing

St. John Medical Center 252 NLRB No. 077
(timely for 10(b) purposes)

Crawford Development Corporation, d/b/a Crawford Dairyland of Frankfort, Indiana JD-563-81

N.L.R.B. v. Preston H. Haskell Company 616 F.2d 136 (C.A. 5, 1980)
(even though charges were received 2 days after mailing date)

N.L.R.B. v. Preston H. Haskell Company 616 F.2d 136 (C.A. 5, 1980)
(even though charges were received 2 days after mailing date)

2000 CONDUCT OF INVESTIGATION

2001 GENERALLY

Chattanooga Glass Company 265 NLRB No. 097
(in remanding case to ALJ who had dismissed C alleging unlawful discharge of Ee, on ground that prior settlement of unlawful threat to discharge Ee barred litigation since all ULPs preceded settlement, Bd held that GC's having knowledge of Ee's discharge, standing alone, was not sufficient basis to obligate GC to conduct investigation of charge, since GC knew only that Ee had been terminated at time settlement became effective and did not know any of the particulars of the termination)

Chattanooga Glass Company 265 NLRB No. 097
(in remanding case to ALJ who had dismissed C alleging unlawful discharge of Ee, on ground that prior settlement of unlawful threat to discharge Ee barred litigation since all ULPs preceded settlement, Bd disagreed with ALJ's conclusion that correlation between discharge threat and Ee's letter to GC's office, mentioning his termination, should have put Region on notice to investigate Ee's termination, since 9 months' interval between two alleged incidents was too great a time frame for GC to have divined from Ee's letter a correlation between two incidents)

Chattanooga Glass Company 265 NLRB No. 097
(in remanding case to ALJ who had dismissed C alleging unlawful discharge of Ee, on ground that prior settlement of unlawful threat to discharge Ee barred litigation since all ULPs preceded settlement, Bd disagreed with ALJ's conclusion that circumstances surrounding E's discharge were *readily discoverable through investigation* w/i meaning of *Steves Sash & Door* decision, since at time RD approved settlement in prior case, investigation of charge was completed, E had agreed to settlement; and when RD accepted settlement, no Bd agent was on notice Ee had been terminated and, therefore, investigation of such incident could not be planned)

Lafayette Steel Erector, Inc. 260 NLRB No. 160
(due process not denied where RD did not investigate E's position with respect to charges until after E filed answer to C)

2010 CASE FILES

Schorr Stern Food Corp. 248 NLRB No. 050
(although documents pertaining to correspondence between respondent and RD, and also internal memorandum between GC and RD, had erroneously been placed in *formal* instead of *informal* case file, Bd held backpay proceeding before ALJ was not prejudiced as result, and did not require ALJ to disqualify himself from case or to dismiss backpay specification; documents were either not relevant to backpay proceeding or were otherwise not prejudicial, and E's counsel was given full opportunity at hearing to examine documents)

Schorr Stern Food Corp. 248 NLRB No. 050
(documents which had been erroneously placed in *formal* instead of *informal* case file in backpay proceeding before ALJ, entered in rejected exhibit file, rather than merely being marked for identification and forwarded to GC's office for inclusion in informal file)

2080 INTERVIEWING RESPONDENT'S AGENTS

Central Freight Lines, Inc. v. N.L.R.B. 653 F.2d 1023 (C.A. 5, Aug 1981)
(E's mtn to quash C on grounds that investigatory interview of Ee denied it due process because examiner took affidavit from *supervisor,* treating him as Ee, w/o contacting E's attorney held irrelevant to outcome of litigation since ct upheld finding that Ee was not supervisor and therefore it followed that there was no impropriety in investigation)

2400 RULINGS AND AUTHORITY OF REGIONAL DIRECTOR

Feld & Sons, Inc. t/a Today's Man 263 NLRB No. 041
(unless extraordinary circumstances present themselves to justify direct contact with party in proceeding, Region is obliged to deal exclusively with party's attorney, since Bd, in its dealings with respondents, has accepted and followed principle of legal ethics requiring that, so long as attorney-client relationship exists, attorneys dealing with matter involved are prohibited from communicating with the client)

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. 623 F.2d 1173 (C.A. 7, 1980)
(RD empowered to reverse original dismissal of Ee's charge, notwithstanding that Ee's appeal of RD's dismissal of charge was still pending; since Ee's appeal remained alive, E remained on notice that a charge might still be brought contesting her discharge)

2425 TO TAKE SETTLEMENTS

Ramona A. Drabena, et al. v. N.L.R.B. 612 F.2d 1095 (C.A. 8)
(where parties stipulated that U had violated 8(b)(1)(A), ct found no abuse of agency discretion when Bd, in accordance with its long-standing policy, entered consent cease-and-desist order against U but did not require U to pay backpay to individual Ees who lost work on account of U's unlawful practices)

2450 Authority to issue complaint

Transportation Enterprises, Inc. v. N.L.R.B. 630 F.2d 421 (C.A. 5, 1980)
(Bd and its regional offices are free to reconsider their own decisions in light of changing circumstances and needs, but reversal of previous jurisdictional finding, which was *final,* must be applied *prospectively* only)

2800 SETTLEMENTS

2801 GENERALLY

Teamsters, Local Union 215 (B & W Construction Company) 251 NLRB No. 164
(contention that U's presettlement discussions with Ee-member involved herein and fellow-member who had filed ULP charges against U were inadmissible as privileged conversations under Federal Rules of Evidence, and that U's conduct with respect to member herein prior to fellow-member's settlement is barred from litigation, rejected; fellow-member's case, not that of member herein, was settled and latter's expulsion from U and filing of charges with Bd occurred several months after settlement of fellow-member's case; consequently, expulsion of member herein was independent of fellow member's settlement agreement)

Interstate Paper Supply Company, Inc. 251 NLRB NO. 189
(contrary to ALJ's misgivings as to whether any presettlement conduct should be considered at all, Bd held that, based on E's postsettlement ULP, its presettlement conduct clearly may be basis for further ULP findings)

2801—Cont.

Thermo Transport, Inc. **JD-584-80**
(private agreement between E and two of summarily-found discriminatees whereby, in lieu of backpay possibly due them by virtue of E's ULPs, discriminatees agreed to become equal partners with stock ownership in new E aided corporation held violative, since agreement interfered with application of Bd's remedies, which are provided as public right)

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(ct discusses Bd's procedures and its R/R dealing with various kinds of agreements settling ULP cases)

Southwestern Bell Telephone Company v. N.L.R.B. **667 F.2d 470 (C.A. 5, Feb. 1982)**
(Bd is bound by settlement agreements that it participates in and approves where parties abide by agreements)

2801-2000 Purpose and objectives

Hollows Manufacturing Co. **260 NLRB No. 137**
(where parties engaged in collective bargaining subsequent to Bd order in prior case which effectively remedies ULP's found in this case, and filed joint mtn to modify ALJ recommended order in this case, this is in effect settlement agreement and since GC does not oppose mtn, Bd grants mtn of parties)

APD Transport Corp. and Its Alter Ego, National Book Consolidators, Inc. **253 NLRB No. 056**
(mtn for summary judgment granted where E failed to show good cause for failure to file timely answer; and request to withdraw charges and dismiss complaint because of settlement agreement denied since settlement agreement did not provide substantial remedy, some Ees objected to settlement terms of private settlement agreement, and settlement agreement would not effectuate policies of Act)

Service and Hospital Employees International Union, Local 150, AFL-CIO (Watertown Health Care Centers, Inc., etc.) **JD-588-80**

Quality Masonry Company and Top Quality Masonry, Inc. **DS-1538-81 (09/25/81)**
(objection to precluding use of Stipulation in State Court proceedings w/o merit, since Bd may only be concerned with enforcing Act and not with perfecting or preserving any collateral actions parties may have in other forums)

Racine Building and Construction Trades Council (A.R.S. Builders, Inc.) **DS-1363-80 (06/01/80)**
(to avoid unnecessary litigation)

2801-4000 Policy of Board

Teamsters, Local Union 215 (B & W Construction Company) **251 NLRB No. 164**
(Bd reversed ALJ's finding that U unlawfully punished Ee-member by having him discharged for filing ULP charges against U with Bd, where alleged conduct by U occurred prior to date when settlement covering member's charges was executed; it is Bd policy to bar presettlement conduct from ULP litigation, and there was no contention that any of the exceptions to such policy apply)

N.L.R.B. v. Franklin Art Glass Studios, Inc. **678 F.2d 106 (C.A. 6, Mar. 1982)**
(private settlements to which Bd is not party are not binding on Bd)

2801-6000 Authority and discretion of Board

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(E's contention that Bd could not rely on settlement agreement, revoked by RD, which provided that E would not refuse to bargain with U and would furnish U with requested information, rejected; Bd may elect either to rely upon settlement agreement and apply sanctions for alleged violations, or it may void agreement and prosecute underlying violations; however, once Bd elected to revoke approval of settlement agreement and proceed to prosecute underlying charge, Bd lost option to enforce terms of voided agreement)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 5) (1980)**
(Bd has wide discretion in determining whether representation election has been fairly conducted and its decision warranted special respect on review; however such discretion is not unlimited)

Operating Engineers, Local Union No. 132 v. N.L.R.B. **No. 79-2285-CH, Oct. 1, 1979, DC S.D. WV (unreported)**
(Bd order granting mtn to set aside *on-th-record settlement agreements* and consolidating settled cases with another pending C case held unlawful, since settlement agreements had been consummated and conditions thereof performed and accomplished; action was abuse of Bd's powers and denial of petitioner's constitutional rights)

2801-7000 Conditions of settlement

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. [illegible]**
(ALJ refused to approve settlement of charges alleging operation of hiring hall in unlawful manner, notwithstanding institution of new hiring hall procedures and referral system subsequent to issuance of complaint, since discontinuance of ULP does not dissipate its effect and obviate need for remedial order; further, alleged discriminatees not offered anything to make them whole for losses they may have suffered due to U's failure to refer them)

2801-8000 Effect of nonadmissions clause

Carpenters Union Local No. 1622, UBCJA (Robert Wood & Associates, Inc. **262 NLRB No. [illegible]**
(broad order to remedy unlawful secondary boycott warranted in view of Respondent U's proclivity to violate Act as demonstrated by charges of similar violations in three other cases and resulting formal settlement stipulations since stipulations did not contain nonadmissions clause; not necessary for cases to be consolidated since Respondent's actions in each case warranted issuance of broad remedial order)

Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.) **257 NLRB No. 042**
(informal settlement agreement, in contrast with formal settlements, containing nonadmissions clause will not be used to show proclivity to violative Act)

Racine Building and Construction Trades Council (A.R.S. Builders, Inc.) **DS-1363-80 (06/01/80)**
(Settlement Stipulation containing limited nonadmission clause insisted upon by respondent approved by Bd since such clauses constitute consideration for settlement; charging party protected because admissions adequate to secure ct order enforcing Bd order and Bd need not hold hearing so that charging party would be able to rely on Bd's factual finding in Sec. 303 suit)

Building and Construction Trades Council of Philadelphia and Vicinity, AFL-CIO **DS-1347-80 (06/01/80)**
(charging party's objection to broad nonadmission clause because clause might preclude contempt citation in ct of appeal or jeopardize possibility of Section 303 suit, rejected, since contempt not precluded if warranted and Federal Rules of Evidence precludes use of settlement stipulation to establish Respondent's liability; further, substantial remedy provided outweighed possible detriment that language might prevent introduction of Settlement Stipulation for purposes permissible under Federal Rules)

Building and Construction Trades Council of Philadelphia and Vicinity, Local Union No. 420 **DS-1364-80**
(charging party's objections to settlement stipulation clause making stipulation inadmissible in ct as admission against respondent, overruled and stipulation approved; Bd rejected contentions that (1) clause could rule out possibility of contempt citation in ct of appeals; (2) clause could seriously burden charging party's collateral rights under Act's Sec. 303 by preventing it from introducing into evidence Bd'[illegible]ministrative action; and (3) limitations in clause upon charging party's right to use stipulation would deprive it of due process of law; see also DS-1366-80)

N.L.R.B. v. Markle Manufacturing Company of San Antonio **623 F.2d 1122 (C.A. 5, 1980)**
(waiver provision of settlement stipulation, pursuant to which Bd entered consent order agreed to by E and U directing cessation of strike violence by U, applied only to proceeding in which stipulation was made; application to all other cases in which alleged U violence might be issue would destroy effect of U's nonadmission clause in consent order)

2801-8500 Effect of waiver of right to reinstatement

N.L.R.B. v. Markle Manufacturing Company of San Antonio **623 F.2d 1122 (C.A. 5, 1980)**
(waiver provision of settlement stipulation, pursuant to which Bd entered consent order agreed to by E and U directing cessation of strike violence by U, applied only to proceeding in which stipulation was made; application to all other cases in which alleged U violence might be issue would destroy effect of U's nonadmission clause in consent order)

2820 FORMAL SETTLEMENTS

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(informal settlement agreements should be scrutinized more closely than formal agreements)

2820-0100 Generally

Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.) **257 NLRB No. 042**
(formal settlement agreements which do not contain nonadmissions clause may be relied on to establish proclivity to violate Act)

2820-2000 Remedy provisions

2820-2500—Cont.

Detroit Building and Construction Trades Council, AFL-CIO **259 NLRB No. 129**
(informal settlement agreement, rather than formal settlement agreement, sufficient to remedy all violations alleged in consolidated complant against Respondent-Building Trades Council, since settlement provided for full and complete remedy; record did not show that Council had demonstrated proclivity to engage in violations of Section 8(b)(4) of Act)

2820-9000 Board order

Accessory Control and Equipment Corporation **248 NLRB No. 001**
(where parties did not agree to include in formal settlement agreement provision for ct enforcement, Bd refused to amend ALJ's recommended order to so provide)

2840 INFORMAL SETTLEMENTS

T. Marshall Corp., T/A Cliffside Health Care Center **JD-(NY)-29-82**
(where parties at hearing reached settlement agreement which ALJ found to be fair, equitable, and dispositive of all allegations raised by the complaint, respondent, in order to dispose of pending proceeding, made, and ALJ granted, mtn to withdraw its answer-- so that allegations of complaint were deemed true-- and to consent to entry of recommended order)

Straus Communications, Inc. v. N.L.R.B. **625 F.2d 458 (C.A. 2, 1980)**
(informal settlement agreements should be scrutinized more closely than formal agreements)

2840-2800 Remedy provisions

St. Francis Hospital **263 NLRB No. 109**
(no violation where ULP was remedied by informal settlement agreement entered into in prior case covering same time period as instant case involving same E but different charging party and unit; RD had never set aside this settlement agreement; E had fully remedied ULP regarding invalid *no-solicitation; no-distribution rules* and it would not effectuate policies of act to find violation in this regard in instant case)

Detroit Building and Construction Trades Council, AFL-CIO **259 NLRB No. 129**
(informal settlement agreement, rather than formal settlement agreement, sufficient to remedy all violations alleged in consolidated complant against Respondent-Building Trades Council, since settlement provided for full and complete remedy; record did not show that Council had demonstrated proclivity to engage in violations of Section 8(b)(4) of Act)

2840-4000 Approval of

Thermo Transport, Inc. **JD-584-80**
(private agreement between E and two of summarily-found discriminatees whereby, in lieu of backpay possibly due them by virtue of E's ULPs, discriminatees agreed to become equal partners with stock ownership in new E sided corporation held violative, since agreement interfered with application of Bd's remedies, which are provided as public right)

2840-6000 After Administrative Law Judge decision

Kerasotes Rialto Theatre Corporation **JD-428-82**
(after ALJ issued decision dismissing C and exceptions filed with Bd, Bd granted joint mtn, by Respondent and GC, requesting case be remanded to RD for purposes of approval of bilateral settlement of ULP case)

2860 UNILATERAL SETTLEMENTS

2860-1400 Authority of General Counsel and Board to settle with less than all parties

Service and Hospital Employees International Union, Local 150, AFL-CIO (Watertown Health Care Centers, Inc., etc.) **JD-589-80**

2860-2800 Notice to nonconsenting party

2860-2850 Failure to respond

Indiana Broadcasting Corporation **DS-1571-81 (12/29/81)**
(Stipulation for Entry of Board Order approved by Bd notwithstanding that charging party did not execute Stipulation nor was GC signatory to it, since charging party did not submit objections to settlement and GC advised Bd it did not object to stipulation)

2860-4900 Opportunity to inspect investigatory file

Building and Construction Trades Council of Philadelphia and Vicinity, Local Union No. 420 **DS-1364-80**
(charging party's objections to settlement stipulation clause making stipulation inadmissible in ct as admission against respondent, overruled and stipulation approved; Bd rejected contentions that (1) clause could rule out possibility of contempt citation in ct of appeals; (2) clause could seriously burden charging party's collateral rights under Act's Sec. 303 by preventing it from introducing into evidence Bd's administrative action; and (3) limitations in clause upon charging party's rightto use stipulation would deprive it of due process of law; see also DS-1366-80)

2860-7000 Consideration of objections

2860-7037 By Administrative Law Judge

Local 394, Laborers' (Building Contractors Association of New Jersey) **267 NLRB No. 008**
(ALJ refused to approve settlement of charges alleging operation of hiring hall in unlawful manner, notwithstanding institution of new hiring hall procedures and referral system subsequent to issuance of complaint, since discontinuance of ULP does not dissipate its effect and obviate need for remedial order; further, alleged discriminatees not offered anything to make them whole for losses they may have suffered due to U's failure to refer them)

2860-8400 Basis of objections

2860-8410 Other type of proceedings more appropriate

2860-8410-5000 Hearing

Service and Hospital Employees International Union, Local 150, AFL-CIO (Watertown Health Care Centers, Inc., etc.) **JD-589-80**
(charging party's request that proceeding be litigated rejected where settlement agreement fully remedied allegations of complaint; nor does desire to assure res judicata justify litigation)

Interstate Truck Service **DS-1454-80**
(where parties had negotiated both informal settlement agreement and formal settlement stipulation and had agreed that in event of respondent's noncompliance with terms of settlement agreement, such agreement would be set aside and settlement stipulation activated, ALJ denied respondent's request for hearing on issue of compliance, since parties had agreed that compliance was matter to be determined by RD and had made no provision for a hearing)

Wilkes-Barre Printing Pressmen and Assistants Union, Local 137 **DS1449-80**
(E's objections to settlement stipulation on grounds that: (1) it failed to specify that Ee participants in strike were not protected by act because strike was unlawful; (2) stipulation included nonadmission clause; and (3) broader distribution of notice provisions would have been more appropriate than remedy provided; held w/o merit, since remedial provisions of stipulation provided substantially all relief that would have been attained if matter was litigated successfully and complaint did not allege strike to be ULP strike, therefore settlement does not address issue of lawfulness of strike)

Racine Building and Construction Trades Council (A.R.S. Builders, Inc.) **DS-1363-80 (06/01/80)**
(Settlement Stipulation containing limited nonadmission clause insisted upon by respondent approved by Bd since such clauses constitute consideration for settlement; charging party protected because admissions adequate to secure ct order enforcing Bd order and Bd need not hold hearing so that charging party would be able to rely on Bd's factual finding in Sec. 303 suit)

United Mine Workers of America **DS-1311-80 (02/04/80)**
(objection to Stipulation because pattern of unlawful conduct could only be interdicted by litigating cases before ALJ, Bd and cts, and U's unlawful conduct such that it requires specific remedial relief found w/o merit where Settlement remedies all ULP charges in C and in event U does not comply Bd is empowered to seek contempt in circuit ct)

2860-8410-6700 Contempt

District No. 17, United Mine Workers of America **DS-1684-82 (09/10/82)**
(settlement stipulation containing nonadmissions clause approved where contempt order is outstanding against Respondent and thus any secondary conduct constituting violation by Respondent will result in appropriate punishment; additionally Settlement Stipulation provides for new court consent judgment that will broaden previous prohibitions; moreover, Charging Party's request that Settlement Stipulation be rejected because it does not prohibit all picketing is denied as such prohibition would likely be unconstitutional as well as in conflict with other provisions of Act)

Lodge 34, International Association of Machinists and Aerospace Workers, AFL-CIO **DS-1606-81 (03/02/82)**
(objection that stipulation should include accompanying consent or waiver to contempt adjudication and schedule of fines rejected since, in event there is noncompliance with ct judgment in future, appropriate action will be taken with respect to contempt proceedings; further, contempt adjudication which has now been entered by ct is broad enough to encompass type of conduct subject to instant settlement)

2860-8420 Remedy provisions insufficient

Knights Building Materials, Inc. **DS-1632-82 (04/28/82)**
(settlement stipulation approved by Bd did not require Respondent to execute last collective bargaining agreement allegedly negotiated by parties, where it fully remedied ULP's alleged in complaint; moreover, there was no

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finalized collective-bargaining agreement and Respondent's representative had limited bargaining authority)

2860-8420-1700 Notice provisions inadequate

Western Conference of Teamsters **DS-1661-82 (09/16/82)**
(objection that notice-posting provision was inadequate because not all those who had been affected by illegal picketing would receive copy of notice w/o merit since this was standard notice-posting remedy and would ensure that most, if not all, of those affected by E's conduct would receive notice that E was committed not to engage in prohibited Sec. 8(b)(7)(c) conduct)

District No. 17, United Mine Workers of America (Marrowbone Development Company) **DS-1680-82 (09/10/82)**
(objection to notice posting provision held w/o merit, since requirement that respondent post *at its business offices, U halls, and the business offices and U halls of its constituent local Us, and all places where notices are customarily posted is sufficiently broad to ensure that members and Ees are informed of notice's content)*

Automobile Workers, (UAW), AFL-CIO and Its Local No. 1712 (Sun Electric Corp) **DS-1631-82 (06/03/82)**
(objection to stipulation on ground that it did not provide for publication of Notice to Ees and Members in local newspaper of general circulation, rejected since there was no indication of dispersed groups of Ees who could not be reached through normal posting procedures)

Wilkes-Barre Printing Pressmen and Assistants Union, Local 137 **DS1449-80**
(E's objections to settlement stipulation on grounds that: (1) it failed to specify that Ee participants in strike were not protected by act because strike was unlawful; (2) stipulation included nonadmission clause; and (3) broader distribution of notice provisions would have been more appropriate than remedy provided; held w/o merit, since remedial provisions of stipulation provided substantially all relief that would have been attained if matter was litigated successfully and complaint did not allege strike to be ULP strike, therefore settlement does not address issue of lawfulness of strike)

West Coast Industrial Relations Association, Inc., N.C. **DS-1434-80**
(objections that settlement stipulation (1) did not name individual Ees subject to c/d order, (2) did not require Notice to be posted at E's clients' facilities but permitted posting at 1 client's facility, (3) included nonadmission clause and (4) did not require U pay legal costs and fees incurred by Bd and E, held w/o merit, since settlement applied to *all* Ees of E, E's clients not subject to c/d order, nonadmission clause, alone, no basis for disapproving settlement; since case not litigated but settled, Settlement Stipulation adequately remedies alleged ULPs w/o assessing costs and fees to U)

Wilkes-Barre Printing Pressmen and Assistants Union, Local 137 (Wilkes-Barre Publishing Company) **DS-1309-80 (01/24/80)**
(notice posting requirement which called for posting at Respondents business offices, meeting halls and other places where notices to members are customarily posted and posting at company's facility, if it is willing, constitutes adequate notice of settlement)

2860-8420-3700 Trust funds

Quality Masonry Company and Top Quality Masonry, Inc. **DS-1538-81 (09/25/81)**
(settlement stipulation's failure to provide for liquidated damages in delinquent trust fund payments and interest, not objectionable where Stipulation provided for 100% repayment of monies owed)

2860-8420-6200 Order provisions inadequate

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(ALJ refused to approve settlement of charges alleging operation of hiring hall in unlawful manner, notwithstanding institution of new hiring hall procedures and referral system subsequent to issuance of complaint, since discontinuance of ULP does not dissipate its effect and obviate need for remedial order; further, alleged discriminatees not offered anything to make them whole for losses they may have suffered due to U's failure to refer them)

Atlantic, Cape May, etc., Building Trades Council, et al. (Altamonte Construction Company) **DS-1413-80**
(objection to stipulation that although Us were permitted to picket unlawfully over 3-1/2 months prior to settlement, they will suffer no detriment held w/o merit; statute does not provide for punitive measures against respondents and purpose of Bd remedies is to resolve the *status quo ante*; see also DS-1414 and DS-1415)

Local Union No. 542, Operating Engineers (Ritter Bros., Inc.) **DS-1672 (02/11/83)**
(broad order not required in view of lack of sufficient recent history of ULPs by E to indicate proclivity to violate Act)

Western Conference of Teamsters **DS-1661-82 (09/16/82)**
(objection that c/d order was insufficient because it failed to spell out in more detail than statutory language what it was that U must not do w/o merit since order was drafted in form always used by Bd where it concluded that Sec. 8(b)(7)(c) has been violated)

Western Conference of Teamsters **DS-1661-82 (09/16/82)**
(objection that stipulation represented savings of further litigation only if U voluntarily behaved itself, and that if U violated order, contempt proceedings might be necessitated w/o merit where in stipulation U agreed to consent judgment before any appropriate Circuit Court of Appeals)

Automobile Workers, (UAW), AFL-CIO and Its Local No. 1712 (Sun Electric Corp) **DS-1631-82 (06/03/82)**
(objection to stipulation on ground that there was no provision requiring Us to provide financial compensation for property damage allegedly caused by them, rejected since monetary damages for loss of personal property is not appropriate remedy to seek through administrative proceeding)

Local Union 2398, United Mine Workers of America (Pyramid Mining, Inc.) **DS-1690 (03/08/82)**
(objection to stipulation on grounds that Order and Notice is not directed to members of Us, rejected, since Order and Notice to Us' officers, agents and representatives, rather than to its members, comports with standard Bd procedures)

Lodge 34, International Association of Machinists and Aerospace Workers, AFL-CIO **DS-1606-81 (03/02/82)**
(objection that scope of stipulation should be co-extensive with 10(j) injunction in that it should extend to U members, strikers and all other persons acting in concert or participation with U, rejected since it is not w/i scope of Sec. 8(b) for Bd order to extend to individual U members except as they act as agents of U; however, it judgment enforcing Bd order will extend also to those who, with notice, are in active concert and participation with U)

Plumbers, Local Union No. 525 (B. P. Williams Company Plumbing and Heating) **DS-1463-81**
(objections to stipulation on grounds that E repeatedly violated secondary boycott provision of Act and delayed settling, rejected, where stipulation fully remedies allegations in consolidated complaints, providing as it does for entry of formal Bd order and consent ct judgment)

West Coast Industrial Relations Association, Inc., N.C. **DS-1434-80**
(objections that settlement stipulation (1) did not name individual Ees subject to c/d order, (2) did not require Notice to be posted at E's clients' facilities but permitted posting at 1 client's facility, (3) included nonadmission clause and (4) did not require U pay legal costs and fees incurred by Bd and E, held w/o merit, since settlement applied to *all* Ees of E, E's clients not subject to c/d order, nonadmission clause, alone, no basis for disapproving settlement; since case not litigated but settled, Settlement Stipulation adequately remedies alleged ULPs w/o assessing costs and fees to U)

Local 598, Plumbers (Guy F. Atkinson Company, etc.) **DS-1426-80**
(objections to settlement stipulation, that (1) order did not require respondent to c/d ULPs against *other persons,* (2) work in dispute described too narrowly, and (3) settlement contained nonadmission clause, dismissed where GC advised party that his review of stipulation revealed that it provided full and complete remedy for ULPs alleged; inclusion of nonadmission clause not valid basis for objection where settlement effectuated purposes of Act)

Teamsters Joint Council No. 39 of The IBT, et al., (Lake Line Express, Inc.) **DS-1374-80**
(objections that: c/d language vague, Settlement Stipulation admissions inadequate to protect charging party, posting period too short, no need for consent decree, failure to receive notice to members, failure to include other E in notice, no requirement to mail notices to stewards of Es involved, denial of hearing at which objections could be litigated overruled where admissions sufficient to secure ct judgment enforcing Bd's order, 60 day posting period adequate, second notice mailed to members, E not included in order not named in C, posting sufficient, no hearing provided at this point in procedure)

Building and Construction Trades Council of Philadelphia and Vicinity, et al. **DS-1320-80 (02/01/80)**
(where Bd approved Settlement Stipulation, no merit was found in individual Ee's argument that provision in Notice concerning status of local's contract will give other Ees impression that Bd approved U contract)

Wilkes-Barre Printing Pressmen and Assistants Union, Local 137 (Wilkes-Barre Publishing Company) **DS-1309-80 (01/24/80)**
(stipulation fully remedies allegation of complaint where it provides for entry of formal Bd order and consent court judgment)

2860-8420-6700 Reinstitute operation

Lion Uniform, Janesville Apparel Division **247 NLRB No. 123**
(where ALJ approved settlement agreement which did not require E who had violatively transferred work to another plant to resume operations, Bd reversed ALJ's approval in light of fact that no evidence that such resumption would endanger E's economic viability)

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Lion Uniform, Janesville Apparel Division 247 NLRB No. 123
(settlement agreement which did not require E to resume its original operation at plant not approved by Bd where replacement operation only provided Ees with seasonal work and was thus not substantially equivalent)

2860-8420-7400 Cessation of picketing

Local Union NO. 2271, UNited Mine Workers of America (Elk Run Coal Company, Inc.) DS-1635-82 (09/10/82)
(request that settlement stipulation should be rejected because it does not prohibit *all* picketing not persuasive, since such prohibition would in all likelihood be unconstitutional, as well as in conflict with other sections of Act)

Lodge 34, International Association of Machinists and Aerospace Workers, AFL-CIO DS-1606-81 (03/02/82)
(objection that stipulation should extend its prohibitions to include, in all cases, locations near or away from picket line rejected, since allegations in complaint which occurred away from picket line are approximately treated in Bd order in that those specific prohibitions extend to locations away from picket line; further, broad c/d provision proscribes all further restraint or coercion at, or away from, picket line)

Knitgoods Workers' Union, Local 155, International Ladies' Garment Workers Union, AFL-CIO DS-1453-80
(objection that stipulation does not provide for cessation of picketing and organizing activities of U held w/o merit, since stipulation fully remedies allegations of complaint providing as it does for formal Bd order and consent ct judgment)

2860-8420-8200 Continuing misconduct

Atlantic, Cape May, etc., Building Trades Council, et al. (Altemose Construction Company) DS-1413-80
(objection that settlement stipulation legitimizes respondent Us picketing after 10-day hiatus held w/o merit; Us have right to conduct lawful area standards picketing and purpose of hiatus was to provide clear break between respondents' prior unlawful picketing and commencement of any new and lawful picketing that might occur; see also DS-1414 and DS-1415)

Lodge 34, International Association of Machinists and Aerospace Workers, AFL-CIO DS-1606-81 (03/02/82)
(objection to stipulation that by making no reference to numerous violations since date of amended complaint, stipulation has essentially ignored and left unremedied those violations, rejected since, to hold that complaint must always be amended where there is evidence of continuing unlawful conduct would unnecessarily delay entry of Bd order and ct judgment where, as in instant case, order and judgment are broad enough to provide complete remedy for alleged unlawful conduct)

United Food and Commercial Workers International Union, Local No. 4-P, AFL-CIO (Sunstar Foods, Inc.) DS-1532-81 (09/04/81)
(no evidence had been presented to Region of any continuing picket line misconduct in violation of stipulation that could be attributed to U; after entry of court judgment, further picket line misconduct, attributable to U, would be subject to contempt proceeding)

Produce, Refrigerated & Processed Foods and Industrial Workers, Local No. 630, Teamsters (Delco Produce, Inc.) DS-1411-80
(absence of limitation on number of U's representatives entering E's premises does not preclude approval of settlement stipulation which provides for Bd order prohibiting unlawful secondary picketing and entry of ct judgment enforcing Bd order subjecting U to contempt proceeding for any unlawful secondary conduct violative of ct's judgment)

2860-8440 Backpay provisions

Local 394, Laborers' (Building Contractors Association of New Jersey) 247 NLRB No. [illegible]
(ALJ refused to approve settlement of charges alleging operation of hiring hall in unlawful manner, notwithstanding institution of new hiring hall procedures and referral system subsequent to issuance of complaint, since discontinuance of ULP does not dissipate its effect and obviate need for remedial order; further, alleged discriminatees not offered anything to make them whole for losses they may have suffered due to U's failure to refer them)

Quality Masonry Company and Top Quality Masonry, Inc. DS-1530-81 (09/28/81)
(where Stipulation provided only 80% backpay to discriminatees, and no backpay to Ees not referred because of E's failure to use U hiring hall, not objectionable, since remedy was in accord with Bd remedies in negotiated settlements and provided for substantial settlement which clearly effectuates purposes of Act)

Local Lodge No. 39, Brotherhood of Railway Carmen of the United States and Canada (Evans Railcar Division of Evans Products Company) DS-1480-80
(failure to include backpay remedy upheld where Ees committed violent acts on picket line)

Ramona A. Drobena, et al. v. N.L.R.B. 612 F.2d 1095 (C.A. 8)
(where parties stipulated that U had violated 8(b)(1)(A), ct found no abuse of agency discretion when Bd, in accordance with its long-standing policy, entered consent cease-and-desist order against U but did not require U to pay backpay to individual Ees who lost work on account of U's unlawful practices)

2860-8445 Litigation expenses

Western Conference of Teamsters DS-1661-82 (09/16/82)
(objection that stipulation did not provide for attorney's fees as remedy w/o merit since, by settling, charging party would eliminate need to incur further costs with respect to proceedings following issuance of ALJ's decision)

West Coast Industrial Relations Association, Inc., N.C. DS-1434-80
(objections that settlement stipulation (1) did not name individual Ees subject to c/d order, (2) did not require Notice to be posted at E's clients' facilities but permitted posting at 1 client's facility, (3) included nonadmission clause and (4) did not require U pay legal costs and fees incurred by Bd and E, held w/o merit, since settlement applied to *all* Ees of E, E's clients not subject to c/d order, nonadmission clause, alone, no basis for disapproving settlement; since case not litigated but settled, Settlement Stipulation adequately remedies alleged ULPs w/o assessing costs and fees to U)

2860-8450 Other charges pending

Building and Construction Trades Council of Philadelphia and Vicinity, et al. DS-1320-80 (02/08/80)
(contention that settlement of allegations inappropriate because of close relation between violation covered in settlement and alleged violation in another case before Bd involving Ee rejected)

2860-8460 Nonadmissions clause

Electrical Workers, Local Union 340 (Rex Moore Electrical Company) DS-1665 (82/10/20)
(objection to stipulation on ground that it contains nonadmission clause, rejected; fact that nonadmission clause negates *res judicata* effects of settlement stipulation is immaterial. Bd only concerned with enforcing Act in present ULP and not with perfecting or preserving any collateral actions parties may have. Moreover, it provides sufficient deterrent for future unlawful conduct as Respondent would be subject to possible contempt citation)

Automobile Workers, (UAW), AFL-CIO and Its Local No. 1712 (Sun Electric Corp) DS-1631-82 (05/03/82)
(objection to stipulation on ground that it contained nonadmission clause, rejected; stipulation effectuated policies of Act since remedy provided for was identical to that which would be achieved through successful litigation)

St. Paul Building and Construction Trades Council, AFL-CIO; and Twin City Carpenters District Council, AFL-CIO, and Carpenters Local No. 87, AFL-CIO DS-1521-81 (07/14/81)
(inclusion of nonadmission clause was not valid basis for objection and rejecting settlement stipulation where settlement effectuated policies of Act)

Local Union No. 892, Teamsters (Hudson Riverside Realty Associates, Inc.) DS-1488-81 03/30/81
(objection that stipulation contains non-admission clause and therefore is not proof that respondent had engaged in egregious conduct w/o merit; purposes of NLRA, as amended, are remedial and not punitive and it would be contrary to statutory purpose and unnecessary waste of government resources to litigate matter solely for establishing *proof of guilt* on part of respondent)

Westinghouse Electric Corporation DS-1456-80
(inclusion of nonadmission does not preclude approval of settlement which effectuates policies of Act)

Laborers' International Union of North America, Local Union No. 1184, AFL-CIO DS-1388-80
(inclusion of *nonadmission* clause was not valid basis for objection and rejecting settlement stipulation where settlement effectuated policies of Act)

Building and Construction Trades Council of Philadelphia and Vicinity, AFL-CIO DS-1367-80 (06/01/80)
(charging party's objection to broad nonadmission clause because clause might preclude contempt citation in ct of appeal or jeopardize possibility of Section 303 suit, rejected, since contempt not precluded if warranted and Federal Rules of Evidence precludes use of settlement stipulation to establish Respondent's liability; further, substantial remedy provided outweighed possible detriment that language might prevent introduction of Settlement Stipulation for purposes permissible under Federal Rules)

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Plumbers Local Union No. 420 (Refinery and Industrial Maintenance, Inc. DS-1365-80 (07/08/80)
(notwithstanding non admission clause might prevent charging party from introducing Settlement Stipulation into evidence for purposes permissible under Rule 408 of FRE, substantial remedy provided far outweighs harm to Charging Party)

Building and Construction Trades Council of Philadelphia and Vicinity, Local Union No. 420 DS-1364-80
(charging party's objections to settlement stipulation clause making stipulation inadmissible in ct as admission against respondent, overruled and stipulation approved; Bd rejected contentions that (1) clause could rule out possibility of contempt citation in ct of appeals; (2) clause could seriously burden charging party's collateral rights under Act's Sec. 303 by preventing it from introducing into evidence Bd's administrative action; and (3) limitations in clause upon charging party's rightto use stipulation would deprive it of due process of law; see also DS-1366-80)

Wilkes-Barre Printing Pressmen and Assistants Union, Local 137 (Wilkes-Barre Publishing Company). DS-1309-80 (01/24/80)
(inclusion in settlement of nonadmissions clause not valid basis for objection)

2860-8470 No findings of facts and/or conclusions of law

Quality Masonry Company and Top Quality Masonry, Inc. DS-1538-81 (09/25/81)
(use of words *actually employed* in Settlement Stipulation did not preclude finding in compliance stage that persons performing unit work were Ees and not independent contractors)

United Food and Commercial Workers International Union, Local No. 4-P, AFL-CIO (Sunstar Foods, Inc.) DS-1532-81 (09/04/81)
(Bd does not require that stipulation contain specific findings of fact of every factual allegation in complaint in order to have complete and effective settlement)

Racine Building and Construction Trades Council (A.R.S. Builders, Inc.) DS-1363-80 (04/01/80)
(Settlement Stipulation containing limited nonadmission clause insisted upon by respondent approved by Bd since such clauses constitute consideration for settlement; charging party protected because admissions adequate to secure ct order enforcing Bd order and Bd need not hold hearing so that charging party would be able to rely on Bd's factual finding in Sec. 303 suit)

2860-8480 Court decision

Atlantic, Cape May, etc., Building Trades Council, et al. (Altemose Construction Company) DS-1413-80
(objection that settlement stipulation did not provide for immediate ct enforcement and the underlying violations are excluded from consideration in contempt proceedings of priviously enforced Bd orders held w/o merit; insistence upon inclusion of provisions for entry of ct judgments unwarranted because none of the three respondents have prior history of 8(b)(4)(B) conduct; as to allegations of 8(b)(1)(A) conduct, while there is history of such conduct by two locals, sufficiently borad judgments have been obtained against them in other proceedings; see also DS-1414 and DS-1415)

2860-8485 Prejudice to rights in court litigation

Electrical Workers, Local Union 340 (Rex Moore . Electrical Company) DS-1665 (82/10/20)
(objection to stipulation on ground that it contains nonadmission clause, rejected; fact that nonadmission clause negates *res judicata* effects of settlement stipulation is immaterial. Bd only concerned with enforcing Act in present ULP and not with perfecting or preserving any collateral actions parties may have. Moreover, it provides sufficient deterrent for future unlawful conduct as Respondent would be subject to possible contempt citation)

Quality Masonry Company and Top Quality Masonry, Inc. DS-1538-81 (09/25/81)
(objection to precluding use of Stipulation in State Court proceedings w/o merit, since Bd may only be concerned with enforcing Act and not with perfecting or preserving any collateral actions parties may have in other forums)

Memphis Building & Construction Trades Council, AFL-CIO DS-1423-80
(Bd approved Stipulation notwithstanding charging party's objection that provision in Stipulation that ...*neither this Stipulation nor its contents shall be used or referred to in any other legal proceeding or action* could prejudice its rights in current litigation against Respondent in Federal Ct; Bd was satisfied that Stipulation remedies fully allegations of complaint providing as it does for entry of Bd order and Ct judgment)

2860-8490 Waiver of rights

Plumbers Local Union No. 420 (Refinery and Industrial Maintenance, Inc. DS-1365-80 (07/08/
(notwithstanding non admission clause might prevent charging party fro introducing Settlement Stipulation into evidence for purposes permissibl under Rule 408 of FRE, substantial remedy provided far outweighs harm t Charging Party)

Southwestern Bell Telephone Company v. N.L.R.B. 667 F.2d 470 (C.A. 5, Feb 1982
(U's right to information may be expressly wavied and here where U signe settlement agreement which specified that it could not remove items fro company premises or make copies thereof but that company would mak copies available upon written request of Ee, it waived its right to E information)

2880 SETTING ASIDE OF SETTLEMENT AGREEMENT

Conair Corporation 261 NLRB No. 17
(E's objection to Ee's testimony about E's statements to make it better fo Ees, on ground that informal settlement agreement had been entered into with RD and, while subsequently settlement was disaffirmed, all complaint and charges had been satisfactorily settled by RD and there was no authority to reopen events, overruled, since Bd has consistently followed SC precedent and has held that commission of post settlement ULPs authorize RD to set aside earlier agreement and to seek remedial order directed both to presettlement and post settlement conduct)

2880-6700 Basis for setting aside

Local 3489, Steelworkers (Stran Steel Corporation, a Division of National Steel Corporation) 253 NLRB No. 12
(mtn to set aside settlement agreement on procedural grounds that U local and international did not file answers to notice to show cause why settlement agreement should not be vacated, denied, as such mechanical rule sacrifice exercise of sound judgment based upon all circumstances)

Feld & Sons, Inc. t/a Today's Man 263 NLRB No. 061
(setting aside of settlement agreement not warranted assertedly because E's attorneys and RD engaged in misconduct on ground that E was not aware that agreement signed by him did not include disposition of perjury allegations against him arising in proceeding herein; perjury charges were never represented by RD to have been disposed of in settlement agreement, and E was fully aware and properly advised as to all terms of settlement, and E specifically knew that settlement did not encompass perjury allegations but did resolve all ULP charges and possible Sec. 12 violations in connection with interference with Bd proceedings)

Feld & Sons, Inc. t/a Today's Man 263 NLRB No. 061
(setting aside of settlement agreement not warranted on grounds that E and Bd were operating under *mutual mistake of fact* as to material element of agreement where, although E may have been misinformed by its counsel a to RD's suggestion that, if E and U were to agree on contract, U might intercede with GC not to pursue perjury charges against E arising from his conduct in proceeding herein, it was not factor in E's decision to settle since U's intercession became academic when no contract was executed with U, of which E was aware when he signed settlement agreement)

Feld & Sons, Inc. t/a Today's Man 263 NLRB No. 061
(setting aside of settlement agreement not warranted on ground that Bd ha failed to ensure that E was adequately and properly represented in settlement negotiations because Region was aware of *conflict of interest* between E and its attorney representing E in proceeding, and Region should have consulted directly with E instead of his attorney thereafter; E was in fact aware of whatever conflict may have existed but continued to employ attorney with full authority to represent him; and if RD had dealt directly with E he would have violated strictures of Canons of Professional Ethics and Bd policy)

Feld & Sons, Inc. t/a Today's Man 263 NLRB No. 061
(setting aside of settlement agreement not warranted on ground that RD, in violation of Bd's Case Handling Manual, failed to report to GC possibility of Sec. 12 violation involving E's conduct in proceeding herein; even assuming Manual directed RD to report incident in question, failure to do so did not, *ipso facto*, invalidate agreement, nor did public policy require such result, since RD's failure to report was totally unrelated to only issue involved herein involving question whether alleged misconduct existed when settlement agreement was executed, and failure to notify GC played no part in E's decision to execute)

Jacques Syl Knitwear, Inc./Bignotti, Inc. 254 NLRB No. 15
(approval of informal settlement agreement withdrawn and hearing resumed where ALJ found that there was no *meeting of the minds* among parties to settlement agreement concerning challenged ballots)

467 East Gilbert Street Corporation d/b/a Medical Center Convalescent Hospital 247 NLRB No. 07
(Bd rejected proposed settlement between E, U, and Ee since it did not include, *inter alia*, an offer of reinstatement to discriminatee)

2880-6720 Side notices

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Deister Concentrator Company, Inc. **253 NLRB No. 040**
(where E posted side notice along with settlement agreement, agreement not set aside where E also took significant remedial actions in compliance with agreement)

2880-6750 Postsettlement conduct breaching agreement necessary

A & T Manufacturing Company **265 NLRB No. 201**
(RD setting aside informal settlement agreement warranted in view of E's subsequent ULPs including denial of representation at disciplinary interview and threat)

Local 3489, Steelworkers (Stran Steel Corporation, a Division of National Steel Corporation) **263 NLRB No. 129**
(litigation of allegations of violations held barred by settlement agreement which was not violated by any action of local U. If any breach of agreement occurred, it was done by International which was not party to settlement agreement)

Local 3489, Steelworkers (Stran Steel Corporation, a Division of National Steel Corporation) **263 NLRB No. 129**
(statements by various officials of local that member could not run for U office held not threat of reprisal or promise of benefit but lawful expressions of opinion; hence, no repudiation of settlement agreement where only international had power to determine his eligibility and it was not party to settlement agreement)

St. Francis Hospital **263 NLRB No. 109**
(no violation where ULP was remedied by informal settlement agreement entered into in prior case covering same time period as instant case involving same E but different charging party and unit; RD had never set aside this settlement agreement; E had fully remedied ULP regarding invalid *no-solicitation; no-distribution rules* and it would not effectuate policies of act to find violation in this regard in instant case)

Eaton Corporation **262 NLRB No. 018**
(settlement agreement reinstated, since RD's action in vacating settlement held groundless)

Comet Corporation **261 NLRB No. 188**
(E's assistance to shop and safety committee outside 10(b) period which was subject of earlier charge held unlawful in view of breach of settlement agreement where E w/i 10(b) period continued to unlawfully assist and bargain with committee)

St. Rita's Medical Center **261 NLRB No. 067**
(Settlement Agreement reinstated and C dismissed insofar as it alleged postsettlement violations which were dismissed)

Ivan-Ivan and Foodarama, Inc. d/b/a Foodarama **260 NLRB No. 046**
(may only be set aside where independent evidence of subsequent or continuing ULP, and ULP must be substantial. E's statement to Ee which gave expression of unlawful surveillance does not warrant setting aside as ULP not substantial)

Cambridge Contracting, Inc. and Cambridge Chemical Corp. **259 NLRB No. 184**
(settlement agreement set aside after filing of ULP charge reinstated after determination that E did not breach settlement agreement or engage in any new ULP's)

Chasen Brothers, Inc., d/b/a Ann's-Schneider Bakery **259 NLRB No. 162**
(where RD set aside settlement agreement based on ULP allegations agreement reinstated after Bd found no evidence of ULP's)

Research Products/Blankenship Company **256 NLRB No. 063**
(RD's determination that settlement agreement be set aside was amply supported where E continued to breach its bargaining obligation subsequent to date of settlement agreement by committing further similar and related ULPs)

Crown Cork & Seal Company, Inc. **255 NLRB No. 084**

Vere Cinema Corp. **254 NLRB No. 167**
(settlement agreement may not be set aside unless subsequent violations establishing failure to comply with its terms are proven; moreover, presettlement agreement misconduct may be used to prove E's motive or object in its postsettlement activities; here agreement set aside due to E's unlawful refusal to bargain)

Roadway Express, Inc. **254 NLRB No. 026**
(when U announced it would not comply with settlement agreement, RD exceeded its authority by setting aside agreement and issuing notice of hearing based on presettlement conduct since charged party fully complied with settlement agreement and has committed no further ULPs)

Deister Concentrator Company, Inc. **253 NLRB No. 040**
(reinstatement of settlement agreement which was set aside by GC after E allegedly refused to bargain and committed other ULPs, proper where ALJ found E had engaged in hard bargaining and subsequent violations differed greatly from those which occurred prior to settlement agreement and E was in substantial compliance with settlement agreement)

Retail Store Employees Union Local 214, Affiliated With United Food & Commercial Workers International Union, AFL-CIO & CLC (Pick-N-Save Warehouse Foods, Inc.) **252 NLRB No. 086**
(picketing to force E to recognize U, unlawful, where picketing commenced on two occasions w/i 12 months after valid 9(c) election; settlement agreement reached after first period of picketing set aside and Bd may reach earlier picketing which was subject matter of settlement agreement)

Furr's Cafeterias, Inc. **251 NLRB No. 125**
(setting aside settlement agreement appropriate where E engaged in postsettlement violations of the Act)

U. S. Reduction Company **JD-(ATL)-13-82**
(settlement agreement set aside where E by its actions breached spirit of settlement agreement as well as letter of its specific obligations therein)

Teamsters Local No. 600, a/w Teamsters (Poplar Bluff Express) **JD-226-82**
(RD's vacating and setting aside settlement agreement proper where U continued unlawful picketing after settlement agreement was approved)

Nabisco, Inc. **JD-(SF)-34-82**
(no basis for setting aside settlement agreement in first of 2 consolidated cases brought by same charging party where allegations in second of 2 consolidated cases were found to be w/o merit; thus, no postsettlement conduct to serve as basis for setting aside settlement and settlement agreement reinstated)

Nabisco, Inc. **JD-(SF)-34-82**
(in considering whether any postsettlement conduct is sufficient to warrant setting settlement aside, can consider presettlement conduct only as background evidence or indicator of credibility in appraising E's motives and objectives)

Willard A. Selle, Inc. d/b/a Selle Insulation Company **JD-528-81**
(setting aside of settlement agreement inappropriate since no violation of agreement where E made proposal marked final insisting on industrial terms which would permit it to use skilled insulators in variety of non-insulation jobs when need arose as it had during illegal strike of U journeymen, in view of fact E had adopted different method of operation during illegal strike and proposals were to allow it to continue operating in same manner)

Penn, Inc.; J. Penn Inc.; and Riverside Warehouse, Inc. **JD-441-81**
(failed to comply with requirements of agreement)

Russell Handy, d/b/a Handy Service Lines **JD-721-81**
(RD properly withdrew approval of settlement agreement where Respondent failed to comply with posting requirements of agreement and committed ULPs during period covered by agreement)

Building 76 Auto/Truck Plaza **JD-(SF)-15-81**
(informal settlement agreement reinstated after ALJ's decision to uphold discharge of same individual who was subject of this earlier settlement agreement covering her unlawful constructive discharge; however, both GC and E precluded from litigating constructive discharge underlying settlement agreement and has not yet breached any of its terms)

Magic Mountain Corporation **JD-337-80**
(RD properly set aside settlement agreement which called for reinstatement of ski patrol member to former or substantially equivalent position where Ee was reinstated to job handling sewage disposal)

United States Postal Service **JD-(SF)-273-79**
(settlement reinstated where complaint alleged conduct that occured before and after settlement agreement, and though all allegations fully litigated, finding of no violations relatinng to post settlement allegations established that E had fully complied with settlement agreement)

Seale Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(RD's revocation of informal settlement agreements, in view of subsequent ULPs, not abuse of discretion)

Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC v. Standard-Coosa-Thatcher Carpet Yarn Division, Inc. **516 F.Supp. 1070 (D Ct AL, June 1981)**
(RD may set aside settlement agreement and reinstate ULP charges when terms of agreement have been breached)

Operating Engineers, Local Union No. 132 v. N.L.R.B. **No. 79-2385-CH, Oct. 1, 1979, DC S.D. WV (unreported)**
(Bd order granting mtn to set aside *on-th-record settlement agreements* and consolidating settled cases with another pending C case held unlawful, since settlement agreements had been consumated and conditions thereof performed and accomplished; action was abuse of Bd's powers and denial of petitioner's constitutional rights)

2880-6775 Coercion

East Texas Motor Freight **262 NLRB No. 101**

(veiled threat concerning Ee's intra-U activity which was also subject of settlement agreement)

2880-6787 Failure to restore *status quo*

United Steelworkers of America, AFL-CIO-CLC, On Behalf of Its Local Union No. 15167 (Memphis Folding Stairs, Inc.) **258 NLRB No. 068**

(setting aside settlement agreement proper where U failed to pay backpay as provided)

Lion Uniform, Janesville Apparel Division **247 NLRB No. 123**

(where Bd finds discriminatory conduct, restoration of *status quo ante* is proper remedy unless wrongdoer can demonstrate that normal remedy would endanger its continued viability)

Andrews Security Service, Inc. **JD-(SF)-14-82**

(after mtn of E's attorney, to withdraw from case on ground that E was *defunct and insolvent* was granted, and E presented no defense in reopened hearing, GC's mtn to set aside settlement agreement for noncompliance was granted)

2880-7500 Effect on stipulation contained in agreement

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**

(ct held that E which had breached settlement agreement could not complain about stipulation of Bd's jurisdiction over E not being set aside when settlement agreement was dissolved; stipulation was freely entered into, never withdrawn, and still part of record in underlying ULP case; moreover E's accountant's testimony on E's gross receipts supported finding of jurisdiction)

3200 COMPLAINT

3201 GENERALLY

Federal Trade Commission et al. v. Standard Oil Company of California **445 US 903 (U.S. SCt. Dec. 1980)**

(FTC's issuance of C averring it had *reason to believe* respondent acted unlawfully was not *final agency action*, since issuance was not a definitive ruling or regulation and had no legal force or practical effect upon respondent's business other than disruptions that accompany any major litigation, and immediate judicial review would serve neither effeciency nor enforcement of FTC's enabling Act)

Federal Trade Commission et al. v. Standard Oil Company of California **445 US 903 (U.S. SCt. Dec. 1980)**

(respondent's contention that its mtn for dismissal of FTC C, averring that there was *reason to believe* respondent acted unlawfully, constituted administrative exhaustion, rejected; while respondent may well have exhausted its administrative remedy as to averment of reason to believe, FTC's refusal to reconsider issuance of C did not render C a *definitive* action constituting *final agency action*, since FTC's refusal did not augment C's legal force or practical effects upon respondent nor diminish concerns for efficiency and enforcement of FTC's enabling Act)

Federal Trade Commission et al. v. Standard Oil Company of California **445 US 903 (U.S. SCt. Dec. 1980)**

(issuance of C averring reason to believe respondent acted unlawfully held not *collateral* order subject to review since issuance of C is a step toward, and will merge in, decision on merits; consequently, review of such preliminary step should abide review of final order)

Federal Trade Commission et al. v. Standard Oil Company of California **445 US 903 (U.S. SCt. Dec. 1980)**

(in holding that FTC's issuance of C averring there was *reason to believe* respondent acted unlawfully is not *final agency action* reviewable by ct before administrative adjudication concludes, ct was not encouraging issuance of Cs by FTC w/o conscientious compliance with *reason to believe* obligation in FTC's enabling Act, since adjudicatory proceedings following issuance of C may lost for months or years, result in substantial expense to respondent, and divert management personnel from their corporate duties)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**

(unlike a charge, a C need not be filed and served w/i 10(b) six-month period)

3201-5000 Purpose of complaint

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**

(C serves two purposes: to present clear and concise statement of facts upon which Bd's jurisdiction is predicated and to indicate clearly and concisely acts which are claimed to constitute ULPs)

3212 GENERAL COUNSEL AUTHORITY OVER COMPLAINT

3212-1700 Final authority under Section 3(d) for issuance

K & E Bus Lines, Inc. **255 NLRB No. 137**

(*Section 10(b) of Act provides that no complaint should issue based upon ULP occuring more than 6 months prior to filing charge. This section, however, only relates to actual filing of charges and, once charge has been timely filed, control over and disposition of that charge is vested exclusively with GC pursuant to Section 3(d) of Act, who has decision to act on charge as he deems fit*)

The Motor Convoy, Inc. **252 NLRB No. 175**

(where first charge filed dismissed, GC issuance of second complaint on same issue based on newly discovered evidence proper absent abuse of discretion; contentions of *res judicata* rejected)

Ace Beverage Co. **250 NLRB No. 066**

(contention that GC's authority and discretion in compliance matters is analogous to that granted him under Sec. 3(d) of Act with respect to issuance of complaints, and that, therefore, his action in compliance matters is also final, rejected, since in compliance matters GC does not act on his own initiative as he does in issuance of complaints but as Bd agent in effectuating remedy ordered)

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**

(under APA Sec. 701(a) judicial review of GC's refusal to issue complaint, which would otherwise be available under APA Sec. 702, is precluded by Sec. 3(d) of Act; legislative history shows it was intent of Congress that GC's discretion as to issuance of complaints should ordinarily be checked by his political responsibility to President and Congress, not by judicial review, and therefore his *final authority* in most instances precludes judicial review of his decision regarding issuance of ULP complaint)

3212-1750 Refusal to issue within administrative discretion

Chef's Pantry, Inc. **247 NLRB No. 018**

(matter alleged in charge but not alleged in complaint not considered as ULP issue since GC exercised his statutory authority to decline to issue complaint on matter which was clearly before him, and maintained that posture during hearing; however, conduct in question served as basis for objection to election which was sustained)

Laurie L. Abraham v. Graphic Arts International Union, AFL-CIO, CLC, et al. **592 F.2d 1189 (D Ct DC, 1980)**

(C that GC failed to perform his official duty by refusing to issue ULP C against E dismissed since Sec. 3(d) of NLRA provided GC with unreviewable discretion to refuse to issue ULP C)

3212-2000 Consideration of untimely filed appeal is within discretion of General Counsel upon good cause shown Rule 102.19(a)

St. Luke's Memorial Hospital, Inc. v. N.L.R.B. **623 F.2d 1173 (C.A. 7, 1980)**

(Bd's issuance of complaint based on Ee's charge, not abuse of discretion notwithstanding that previously RD had decided not to issue the complaint and Ee's appeal of RD's decision was untimely by two days; Ee's lawyer gave GC lawyer gave GC sufficient reasons for his unability to comply, with normal time for filing appeal)

3212-3300 Refusal to issue not reviewable by Board or courts

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO **252 NLRB No. 196**

(U not permitted to present evidence in proceeding alleging violation of Section 8(b)(7)(c) regarding possibility of alter ego, joint E, or successorship relationship between picketed E with which E had longstanding relationship, thus rendering picketing for continued rather than for initial recognition, where same theories had been rejected by GC in refusing to issue complaint in prior ULP case; final statutory authority to decide whether U should obtain hearing on its charges rests with GC; *Bd will not act as forum that GC, for reasons satisfactory to himself has thought it proper to dismiss*)

George Banta Company, Inc., Banta Division v. N.L.R.B. **626 F.2d 354 (C.A. 4, July 1980)**

(ct lacks jurisdiction over GC's decision to withdraw C and not prosecute further charge in C; controlling factor is that character of GC's decision is fundamentally prosecutorial and is not final order)

3212-3300—Cont.

Associated Builders and Contractors, Inc.,
Baltimore Metropolitan Chapter v. John S.
Irving, GC **610 F.2d 1221 (C.A. 4)**
(ct affirmed district ct's dismissal of action by E association for declaratory judgment and writ of mandamus against GC to declare unlawful GC's refusal to file requested complaint and to require him to file complaint; GC's refusal to issue complaint is ordinarily not reviewable by federal cts unless failure to act turns on mistake of law, and GC's opinion in instant case that state agency is not statutory E, and therefore proscriptions of Sec. 8(e) do not apply was not in excess of his statutorily delegated authority)

Associated Builders and Contractors, Inc.,
Baltimore Metropolitan Chapter v. John S.
Irving, GC **610 F.2d 1221 (C.A. 4)**
(in dismissing action for declaratory judgment and writ of mandamus against GC to declare unlawful GC's refusal to file complaint and to require him to do so, ct held that, unless ct can ascertain that GC acted in excess of his statutorily delegated authority, ct has no jurisdiction to require him to issue complaint, and case dismissed for want of jurisdiction, since Act is not so clear that ct can say with reasonable certainty that GC exceeded his delegated authority in ruling that state agency was not statutory E)

United Food and Commercial Workers
International Union Local No. 576, AFL-CIO
v. N.L.R.B. **675 F.2d 346 (C.A.D.C., Apr. 1982)**
(where Bd erred in applying *Times Square* doctrine by refusing to entertain U's defense based upon evidence that GC had previously considered in refusing to issue complaint, ct directed Bd to reopen 8(b)(7)(C) proceeding to hear evidence on U's defense that picketed E was in reality alter ego of, joint E with, or successor of another E with whom U had contract covering Ees in question; such action would not constitute interference by Bd with Gc's *final authority* under Sec. 3(d); moreover, charged party has right to full hearing on its defense)

3212-4100 Refusal to issue where charge allegations covered by outstanding Board order or court judgment

Accessory Controls and Equipment Corporation **JD-590-81**

3212-5800 Amendment of complaint may not be made by other parties

Penntech Papers, Inc.; etc. **263 NLRB No. 033**
(ALJ's granting Charging Party's mtn to amend C to allege unlawful failure to bargain regarding decision to close one of its plants in addition to allegation in C of failure to bargain regarding effects of plant closing, improper, where GC had resisted Charging Party's attempt to amend C at hearing and therefore issue not properly before ALJ, notwithstanding contention issue fully litigated at hearing and that GC cannot limit scope of judicial decision and where proof was admitted w/o objection)

3212-6700 Theory of case determined by General Counsel

Signal Transformer Co., Inc. **265 NLRB No. 033**
(Charging Party may not pursue contention in attempt to add allegations to complaint, which GC has refused to do)

Amax Coal Company, a Division of Amax, Inc. v.
N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(Bd's refusal to decide either whether parties reached impasse on U's contract proposals, or whether there would be violation even if they did reach impasse not abuse of Bd's discretion, since GC did not include the issues in C and they were not fully litigated)

3212-8700 Reinstitution of charge after dismissal

Operating Engineers Local 406 (Ford, Bacon &
Davis Construction Corporation) **262 NLRB No. 006**
(RD's dismissal of charge not res judicata)

3212-9100 Right to litigate allegations in face of settlement agreement

Ventura Coastal Corporation **264 NLRB No. 084**
(settlement agreement disposed of all E's presettlement conduct notwithstanding some conduct was subject of charge filed after RD approved of settlement, since there were no reservations in settlement agreement or conduct not *readily discoverable* by GC; Ee's knowledge of conduct unknown to GC was imputed to GC, and all E's presettlement actions concerned interference with Ees' organizing, were sufficiently related to withstand Sec. 10(b) attack and not rendered undiscoverable by Bd's internal restrictions as contended; moreover allegedly discriminatory postsettlement conduct was inextricably linked with presettlement conduct)

L.B. Priester & Son, Inc. **282 NLRB No. 034**
(where E had signed informal settlement agreement to pay 3 Ees backpay claims and later U filed charge against E alleging 8(a)(5) violations and conduct was found to constitute non compliance with settlement agreement, settlement agreement set aside, litigation of those violations covered by vacated settlement agreement proper, ALJ's finding of violation and remedy for all violations proper)

Redding 76 Auto/Truck Plaza **JD-(SF)-15-81**
(informal settlement agreement reinstated after ALJ's decision to uphold discharge of same individual who was subject of this earlier settlement agreement covering her unlawful constructive discharge; however, both GC and E precluded from litigating constructive discharge underlying settlement agreement and has not yet breached any of its terms)

3225 FORM AND CONTENT OF COMPLAINT

3225-0800 Scope of complaint

H. H. Robertson Company **263 NLRB No. 173**
(U's imposition of fine on supervisor-member held unlawful, notwithstanding imposition of fine not specifically alleged in C, where C did allege unlawful filing of internal disciplinary charges which is closely related to fine and thus fine falls w/i *general language of complaint*; further, matter fully litigated where U did not object to testimony regarding fine)

Advanced Mining Group, Div. of Republic Corp.,
Lucerne Facility **260 NLRB No. 073**
(although E discriminated against six *temporaries*, findings were limited to three Ees alleged, by GC in C to have been discriminated against)

Lacks Industries, Inc. **JD-346-82**
(threatening to close plant is a very specific allegation and should be pleaded specifically and not as *unspecified adverse action*; pleading under such umbrella puts E under a burden and in an untenable position when it comes to preparing a defense)

Apex International Management Service **JD-(ATL)-86-81**
(failure of successor E to pay benefits to Ees accrued under predecessor's contract and continue *checkoff* held violative notwithstanding they were not specifically stated in complaint, since complaint did allege that E refused to meet and bargain with U, violations were *closely related* to this allegation, and therefore fell w/i *the general language of the complaint*)

3225-3300 Particularity not required

Sherwood Ford, Inc. **264 NLRB No. 116**
(E's mtn to dismiss C denied, notwithstanding contention that charge alleging violations by E of Sec. 8(a)(1) and (3) by not paying Ees holiday pay because they were not members of U was technically inadequate to support C alleging that E violated only Sec. 8(a)(1) by discharging Ee for protesting E's failure to pay holiday pay since C dealt with same events as charge and E made no contention of being misled either factually or legally by apparent differences between charge and C, mtn aimed only at technical adequacy of charge, and parties had full opportunity to litigate issues)

Operating Engineers Local 406 (Ford, Bacon &
Davis Construction Corporation) **262 NLRB No. 006**

Pyromatics, Inc. **251 NLRB No. 141**
(E's mtn to dismiss complaint on ground that Ee's discharge was not specifically alleged as violation, denied; charge contained general 8(a)(1) allegation, and such charge is sufficient to support complaint alleging discharge of Ees in violation of Sec.8(a)(1); pleading of all the evidence in the charge is not required)

Apex International Management Service **JD-(ATL)-86-81**
(failure of successor E to pay benefits to Ees accrued under predecessor's contract and continue *checkoff* held violative notwithstanding they were not specifically stated in complaint, since complaint did allege that E refused to meet and bargain with U, violations were *closely related* to this allegation, and therefore fell w/i *the general language of the complaint*)

The Procter & Gamble Manufacturing Co., et al. v.
N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**
(C is not to be judged by rigid pleading rules; it is sufficient if E has notice of basis of charges against him; and absent a special showing of detriment, lack of specifics in C is tolerated)

3225-5000 Sufficient to inform respondent of nature of allegations

T.R.W. Bearings Division, A Division of T.R.W.,
Inc. **257 NLRB No. 047**
(Bd did not conclude in instant proceeding that prohibitions against solicitation during *working time* contained in E's Ee handbook and posted notice were in violation of Sec. 8(a)(1), where violation was not alleged in complaint to be unlawful nor had E otherwise been put on notice that presumptive lawfulness of those prohibitions was to be challenged or otherwise litigated)

Atlas Minerals, Division of Atlas Corporation **256 NLRB No. 022**
(while record did not support finding that Ee filed C with federal agency involved in regulating Ee working conditions, for which Ee was assertedly suspended, C herein may be taken to have sufficient breadth to include theory that Ee was suspended not for filing C with agency, but rather for

3225-5000—Cont.

being Ees' representative while participating in agency's inspection of E's operations)

Gorman Company, a Division of the United States Gypsum Company 284 NLRB No. 041
(E's contention that complaint should be dismissed since it was denied fundamental due process in absence of prior notification of testimony to be elicited or of accusations against U and in view of conclusionary nature of allegations in complaint, rejected, since bill of particulars which had been prepared and served pursuant to order of ALJ clarified issues and issues so clarified were fully litigated)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) 283 NLRB No. 098
(inclusion in make-whole order of all nonmember applicants for job referral as well as individual charging parties, proper where amended charge and consolidated complaint alleged that Ees who were not members of U and applicants for employment who were not members suffered discrimination, so that U was put on notice as to who were alleged to be discriminatees; further, nature of evidence adduced at hearing put U on notice of allegation that its referral system inherently favored members over nonmembers)

Plumbers, Local 388 (Charles Featherly Construction Co.) 282 NLRB No. 062
(finding of violation proper, notwithstanding allegations of complaint that Respondents' threatened to picket jobsite inadequate to state violation since it might be presumed that Respondents' would engage in lawful picketing and were giving secondary E opportunity to restrict picketing by establishing gate for non-U contractor, as allegation of complaint sufficient to put Respondents' on notice that statements were in issue and threat was fully litigated)

N.L.R.B. v. Tenneco, Inc. 659 F.2d 124 (C.A. 9, 1981)
(E's contention that it was not sufficiently apprised of charge prior to hearing before Bd rejected where Bd correctly concluded that complaint clearly put company on notice that GC was alleging violation of Sec. 8(a)(1) under *Weingarten*)

Soft Drink Workers Union Local 812, Teamsters v. N.L.R.B. 657 F.2d 1252 (C.A.D.C., Oct. 1980)
(where U, engaged in consumer picketing at neutral retail store against sale of nonlocal soft drinks, had no conventional labor dispute with store or nonlocal suppliers, ct rejected U's contention that Bd was obligated to prove a *labor dispute* because GC's complaint had alleged such dispute; such erroneous allegation in no way prejudiced U, which had clear notice of essential charges against it and full opportunity to argue its position before Bd)

3225-8300 Augmenting allegations through motion for bill of particulars

Gorman Company, a Division of the United States Gypsum Company 284 NLRB No. 041
(E's contention that complaint should be dismissed since it was denied fundamental due process in absence of prior notification of testimony to be elicited or of accusations against U and in view of conclusionary nature of allegations in complaint, rejected, since bill of particulars which had been prepared and served pursuant to order of ALJ clarified issues and issues so clarified were fully litigated)

3225-9000 Defective complaints

Flair Molded Plastics, Inc. 280 NLRB No. 017
(typographical error in C allegation which did not obscure sense or meaning of C does not prejudice Respondent and C valid)

3237 RELATIONSHIP TO CHARGE

3237-0100 Generally

Camay Drilling Company 284 NLRB No. 019
(where original charge alleged 12 individuals had been improperly denied reinstatement, amended charge listed only 3 of the 12, complaint alleged only 3 unlawful denials of reinstatement, violations will only be found for 3 named Ees)

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. 683 F.2d 305 (C.A. 9, July 1982)
(E's contention that it was denied due process by litigation of matters outside C, rejected, since actions before Bd are not subject to technical pleading requirements that govern private lawsuits; charge need not be technically precise as long as it generally informs charged party of nature of alleged violations; and where issue is fully and fairly litigated at administrative hearing, Bd may find ULP even though no specific charge is made in C)

3237-3300 Legally sufficient relationship between subject matter of charge and complaint only requirement

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) 282 NLRB No. 086

Connecticut Distributors, Inc. 285 NLRB No. 170
(GC's issuance of complaint alleging violations not specifically recited in charges proper where allegation was present in charge which was earlier withdrawn and charges on which C issued are sufficiently related to complaint)

Lexington Shipbuilding Company 249 NLRB No. 091
(mtn to strike allegation of unlawful interrogation, denied; evidence of interrogation was uncovered during Bd's investigation of charge that E discharged Ee for U organizing activity, and interrogation was closely related to charge where it was part of E's conduct during dischargee's organizing activity; moreover E responded to C and did not object to testimony on the subject)

Technicolor, Inc. JD-(SF)-37-81
(amended C alleging additional facts of discrimination against Ee not time-barred, since conduct alleged in amendment were acts of discrimination which occurred after filing of charge and statements concerning unlawful motivation for such acts)

Robert Bosch Corporation JD-220-81
(mtn to dismiss amendment to C granted where Section 8(a)(3) allegation in charge based on different factual allegations than those involved in new Section 8(a)(5) allegations and are not closely enough related to allow amendment)

Rock Hill Telephone Company v. N.L.R.B. 605 F.2d 139 (C.A. 4, 1979)
(additional allegations sufficiently related to original timely charge and complaint)

N.L.R.B. v. Allen's I.G.A. Foodliner 651 F.2d 436 (C.A. 6, May 1981)
(U's unspecific original charge (discharge of Ee and *by other acts*) followed by amended complaint specifically alleging E's anti-U pts and announcement of increased benefits legally sufficient to include E's ULPs)

3237-6700 Contents of charge do not limit scope of complaint

Sherwood Ford, Inc. 264 NLRB No. 126
(E's mtn to dismiss C denied, notwithstanding contention that charge alleging violations by E of Sec. 8(a)(1) and (3) by not paying Ees holiday pay because they were not members of U was technically inadequate to support C alleging that E violated only Sec. 8(a)(1) by discharging Ee for protesting E's failure to pay holiday pay since C dealt with same events as charge and E made no contention of being misled either factually or legally by apparent differences between charge and C, mtn aimed only at technical adequacy of charge, and parties had full opportunity to litigate issues)

Flex Plastics, Inc. 262 NLRB No. 078
(charge is not formal pleading and it is not function of charge to apprise Respondent of exact nature of allegations against him. That is function of C. Its purpose is merely to set in motion Bd's investigatory machinery. Only limitation is that C may not issue on matters *so completely outside...the charge that the Bd may be said to be initiating the proceeding on its own mtn.*)

Storto Sons Construction Co., Inc. 260 NLRB No. 170
(any conduct which occurs during 6-month period prior to filing charge may form basis of ULP finding if complaint issuing based on charge alleges conduct to be ULP even though charge itself does not allege it to be ULP and here where charge alleged discrimination against members of U, discrimination against member of another U which occurred w/i 6-month period may be properly alleged in complaint)

High Energy Corporation JD-109-82
(where charge filed w/i 6 months of alleged violative discharges and all Ees named in complaint were discharged for engaging in 1 act of protected concerted activity, then fact that some discriminatees not named in original charge immaterial)

N.L.R.B. v. Allen's I.G.A. Foodliner 651 F.2d 436 (C.A. 6, May 1981)
(U's unspecific original charge (discharge of Ee and *by other acts*) followed by amended complaint specifically alleging E's anti-U pts and announcement of increased benefits legally sufficient to include E's ULPs)

3250 VARIANCE BETWEEN COMPLAINT AND CHARGE, PROOF, OR FINDINGS

Turnbull Enterprises, Inc. 259 NLRB No. 122
(mtn to dismiss C on ground variance existed between charge and C in that charge did not allege refusal to contribute to U's health and welfare fund, denied, where 8(a)(5) allegation in charge broadly alleged refusal to bargain with U; Bd has continually held that such charge justifies more specific allegations similar to those made by GC herein)

3250—Cont.

Conroy Drilling Company **254 NLRB No. 019**
(where original charge alleged 12 individuals had been improperly denied reinstatement, amended charge listed only 3 of the 12, complaint alleged only 3 unlawful denials of reinstatement violations will only be found for 3 named Ees)

Charmer Industries, Inc. **250 NLRB No. 031**
(where charge and C alleged that Es unilaterally changed procedures for collecting c.o.d. payments by having salesmen replace delivery drivers, represented in another unit, in making collections, ALJ rejected Es' contention that C was barred under Sec. 10(b) on ground that change itself came about through bargaining regarding duties of drivers and that, since neither charge nor C alleged unlawful failure to bargain about effects of change upon working conditions of salesmen, there was a variance between allegations and proof which required dismissal of proceeding)

Chef's Pantry, Inc. **247 NLRB No. 018**
withdrawal of objection to election did not preclude consideration of refusal to bargain allegation, or any conduct alleged in remaining objections which relates to it; pleadings fully apprised E of matters to be litigated and GC opened no *new areas* at hearing which were not covered by amended consolidated complaint, extant charges upon which it was based, and objections to be heard)

N.L.R.B. v. Blake Construction Co., Inc., etc. **663 F.2d 272 (C.A.D.C., Aug. 1981)**
(APA and Bd's R/R require that C inform E of violations asserted; Bd may not make findings or order remedies not charged in C or litigated in subsequent hearing)

3250-3300 Complaint may allege ULP's not set forth in charge

Southwest Research Institute **JD(SF)-276-79**
(E's contention that issue of Ee questionaire was beyond jurisdiction of this tribunal rejected, since, notwithstanding absence of allegations in the charge concerning questionaire, such allegations were included in complaint, E's answer addressed itself to the issue, and E did not object to receipt of evidence regarding questionaire, but cross-examined GC's witnesses and called witnesses of its own, fully litigating issue)

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. **683 F.2d 305 (C.A. 9, July 1982)**
(E's contention that it was denied due process by litigation of matters outside C, rejected, since actions before Bd are not subject to technical pleading requirements that govern private lawsuits; charge need not be technically precise as long as it generally informs charged party of nature of alleged violations; and where issue is fully and fairly litigated at administrative hearing, Bd may find ULP even though no specific charge is made in C)

3250-3333 If of similar nature

Wolf Street Supermarkets, Inc. d/b/a Jim's Big M; and Big M Supermarkets, Inc. **264 NLRB No. 150**
(C alleged discrimination in hiring prior to January 11, and fact that E may have discriminated in hiring after that date was mentioned at hearing; two allegations are sufficiently related that if fully litigated second allegation could have been decided, however mere statement does not constitute full litigation)

Union Mining Company of Allegany County, Inc. **264 NLRB No. 052**
(no denial of due process to respondent by amendment of complaint at start of second day of hearing to include allegation whose subject matter was reasonably related to that in original charge since it grew out of very proceedings initiated by charge, issue was fully litigated, and respondent had not requested continuance)

Ventura Coastal Corporation **264 NLRB No. 054**
(allegation added to C at trial by amendment after 10(b) period held time barred; *relation-back* doctrine, whereby allegations sufficiently related to matters in a timely charge may be added to C and considered timely, did not apply since allegation had been included in prior charge which was withdrawn)

Flex Plastics, Inc. **262 NLRB No. 078**
(charge is not formal pleading and it is not function of charge to apprise Respondent of exact nature of allegations against him. That is function of C. Its purpose is merely to set in motion Bd's investigatory machinery. Only limitation is that C may not issue on matters *so completely outside...the charge that the Bd may be said to be initiating the proceeding on its own mtn.*)

Randall E. Wheeler, Kevin E. Wheeler, and Edmund J. Wheeler, A General Partnership d/b/a Wheelco Co. **260 NLRB No. 109**
(where complaint clearly describes conduct alleged to be ULP, GC's failure to allege which subsection of Act has been violated, or allegation of wrong subsection does not preclude Bd from considering and deciding issue, provided charged party was not misled and issue fully litigated)

Pace Oldsmobile, Inc. **256 NLRB No. 111**
(statements not specifically alleged in complaint to violate Act found *sufficiently related to the subject matter of the complaint to justify a specific finding of a violation* where other statements made during same conversation were alleged in complaint as violative of Act)

Connecticut Distributors, Inc. **255 NLRB No. 170**
(GC's issuance of complaint alleging violations not specifically recited in charges proper where allegation was present in charge which was earlier withdrawn and charges on which C issued are sufficiently related to complaint)

Eastern Maine Medical Center **253 NLRB No. 024**
(allegation that E solicited Ees to decertify U held not barred by 10(b), even though it was contained in amended charge filed more than 6 months after the events, since original charge was broad enough to encompass allegation, specifically in its *catch-all language* that *by the above and other acts* E violated Act inasmuch as allegation was sufficiently related to first charge to become part of complaint)

Eastern Maine Medical Center **253 NLRB No. 024**
(even though matter of impasse was not specifically alleged in complaint, it was fully litigated and fell w/i general scope of refusal to bargain allegations of complaint)

Red Food Store **252 NLRB No. 023**
(dismissal of allegations in complaint appropriate since there was fatal variance between charge and complaint where allegations relating to certain Ees were not part of controversy to which charge was addressed)

American Pistachio Corporation **249 NLRB No. 174**
(no finding of violation where GC did not allege conduct in C, did not add it by amendment at trial, and did not make any allegation in C broad enough to encompass it; and respondent was not put on notice that conduct was in issue)

Charge Card Association **247 NLRB No. 119**
(mtn to amend complaint denied where in prior related case that particular charge was withdrawn and moreover in instant case there is no conduct to support similar charge)

Technicolor, Inc. **JD-(SF)-37-82**
(amended C alleging additional facts of discrimination against Ee not time-barred, since conduct alleged in amendment were acts of discrimination which occurred after filing of charge and statements concerning unlawful motivation for such acts)

Robert Bosch Corporation **JD-220-81**
(mtn to dismiss amendment to C granted where Section 8(a)(3) allegation in charge based on different factual allegations than those involved in new Section 8(a)(5) allegations and are not closely enough related to allow amendment)

Eastern Maine Medical Center v. N.L.R.B. **658 F.2d 1 (C.A. 1, 1981)**
(contention that amendment of complaint during hearing added allegation of violation by act which occurred more than six months before amendment and amendment was thus timebarred by 10(b), rejected, since nexus between amendment and original charge was not so attentuated as to make ALJ's allowing amendment abuse of discretion; act named in amendment occurred in midst of, and was of a piece with, acts alleged to be violative in original charge, and E was on notice, because of range of charges, that all its 10(b) period conduct would be investigated)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. **691 F.2d 1133 (C.A. 4, Sept. 20, 1982)**
(E is not denied due process where complaint alleged 8(a)(3) violation and ALJ found 8(a)(1) violation for retaliation for engaging in protected concerted activity. Conduct alleged to be violative was the same and matter was fully litigated)

3250-3367 If within 10(b) period

Carbonex Coal Company **262 NLRB No. 139**
(complaint amended at hearing to conform to evidence which changed date of alleged violation to 6 weeks earlier falls within 10(b) period notwithstanding allegation not specifically included in amended charge which was filed outside 10(b) period where substance of allegation of amended charge is sufficiently related to allegations in original charge)

Storis Sons Construction Co., Inc. **260 NLRB No. 173**
(any conduct which occurs during 6-month period prior to filing charge may form basis of ULP finding if complaint issuing based on charge alleges conduct to be ULP even though charge itself does not allege it to be ULP and here where charge alleged discrimination against members of U, discrimination against member of another U which occurred w/i 6-month period may be properly alleged in complaint)

St. Mary's Home, Inc. t/a St. Mary's Infant Home **258 NLRB No. 134**
(ALJ found allegation of unlawful promulgation of rule in complaint not barred by 10(b) where it was not affirmatively shown to have been promulgated before 10(b) date and it was not substantially different from issue of

3250-3367—Cont.

unlawful maintenance of rule, was covered by general 8(a)(1) charge and fully litigated)

K & E Bus Lines, Inc. 255 NLRB No. 137

(Respondent's contention that amended complaint that issued as result of amended charge contained specifications beyond original charge and such specifications were issued after expiration of six month period for filing charges, rejected, since specifications in amended complaint clearly related to issues raised in GC's original complaint, nor did Respondent raise 10(b) issue in reply to complaint or at hearing)

Smithtown General Hospital JD-752-80

(amendment to C during hearing to allege 8(a)(2) violation allowed where amendment conformed to the evidence and U failed to show that admission of such evidence would prejudice his actions; Sec. 10(b) prohibition not applicable as 8(a)(2) allegation closely related to other alleged violations in charge and occurred w/i 6 months of filing charge; furthermore, dismissal of 8(b) charge not related to any Sec. 8(a)(2) allegations which can occur w/o any U involvement)

3250-6700 Cure of variance

Gehrich & Gehrich, Inc. 250 NLRB No. 073

(E cannot be found to have violated 8(a)(5) by unilaterally implementing wage increases exceeding E's preimpasse offers to U, where matter was not fully and fairly litigated since neither original nor amended complaint alleged such violation and GC raised issue for first time in post-hearing brief to ALJ)

Price's Pic-Pac Supermarkets, Inc. 256 NLRB No. 123

(threat not specifically aleged in complaint but closely related to other allegations found violative)

3262 AMENDMENTS TO COMPLAINT

White Coffee Corporation 261 NLRB No. 149

(where E's refusal to reinstate ULP strikers was not alleged as violation in complaint or amended complaint and counsel for GC stated at beginning and end of hearing that only remedy sought was for other actions, ALJ erred in finding refusal unlawful and providing corresponding remedy, since E had no notice that this action was at issue, full record was not developed on the matter, and ALJ has authority to amend complaint only where GC seeks or consents to amendment or evidence on matter has been received into record w/o objection)

B. E. & K., Inc. 252 NLRB No. 036

(GC's mtn to amend complaint, contained in his brief, to specifically allege interrogation of Ee during specified time period, denied, in view of manner of litigation of interrogation issue and, since matter has been fully litigated, it warrants a finding; and if it were necessary that matter be formally alleged, an order to show cause would be required; moreover, *briefs* should not be used as means of making *motions*)

Chester Valley, Inc. 251 NLRB No. 190

(mtn for leave to amend C to allege additional ULPs, granted, notwithstanding E's contention that mtn should be denied because GC failed to present any evidence supporting amended allegation and because amendment at conclusion of all testimony was improper; E's brief neither claims that E would have offered additional evidence at hearing if C had included proposed amendment nor claims existence of any evidence, not already in record, which supports E's position on merits of proposed amendment; moreover, E's brief deals with proposed amendment on its merits)

N.L.R.B. v. Chester Valley, Inc. 652 F.2d 263 (C.A. 2, June 1981)

(contrary to E's contention, it was proper for ALJ to allow amendment of complaint to include additional charge since E was given full and fair opportunity to rebut charge)

3262-3300 Time of amendment

3262-3325 Before hearing

R & S Transport, Inc. 255 NLRB No. 059

(ALJ allowed RD to amend C to add discriminatees who had previously filed charges which were dismissed by RD as time barred where valid charge on which C issued named certain discriminatees and *others* and thus was broad enough to support amended C)

Centre Engineering, Inc. 253 NLRB No. 028

(violation found though not alleged in complaint as complaint was amended prior to hearing, facts fully litigated at hearing and sufficiently related to subject matter of complaint)

3262-3350 During hearing

Union Mining Company of Allegany County, Inc. 264 NLRB No. 052

(no denial of due process to respondent by amendment of complaint at start of second day of hearing to include allegation whose subject matter was reasonably related to that in original charge since it grew out of very proceedings initiated by charge, issue was fully litigated, and respondent had not requested continuance)

Taurus Waste Disposal, Inc. 263 NLRB No. 0

(mtn to amend complaint denied, where mtn made after all parties had rested case prior to close of hearing, notwithstanding E had stipulated to action alleged to be violative, since mtn not timely made, issue not fully litigated, and E was not appraised it would have to defend against allegations and asserted it would have to call additional witnesses to do so)

Carbonex Coal Company 262 NLRB No. 1

(complaint amended at hearing to conform to evidence which changed date of alleged violation to 6 weeks earlier falls within 10(b) period notwithstanding allegation not specifically included in amended charge which was filed outside 10(b) period where substance of allegation of amended charge is sufficiently related to allegations in original charge)

American Pacific Concrete Pipe Company, Inc. 262 NLRB No. 1

(amendment of complaint at hearing to include Sec. 8(a)(2) proper where original complaint alleged Sec. 8(a)(5) violations and these are closely related to and occurred within 6 months of filing of charge and are supported by same record evidence)

Cobb Theatres, Inc. 260 NLRB No. 111

(amending complaint at hearing proper where allegations in amendment related back to matters set forth in original complaint)

Ingram Farms, Inc. 258 NLRB No. 137

(exception to mtn granted at hearing to amend complaint denied where allegated ULP took place 1 week before hearing and ALJ offered E additional time to prepare defense and it did not do so)

Arkansas-Best Freight System, Inc. 257 NLRB No. 0

(granting GC's mtn at hearing to amend complaint not improper since mtn was made early enough in hearing to obviate any possible *surprise*)

Trans-States Lines, Inc. 256 NLRB No. 116

(renewed mtn, in GC's brief, to amend C to reflect possible subsidiary relationship among 3 corporations providing trucking service, denied as untimely, where original mtn was made and denied at hearing when GC was preparing to rest; 2 of corporations did not appear and were not accorded procedural *due process*; counsel for GC was aware of facts approximately one week before hearing)

Clinton Corn Processing Company, A Division of Standard Brands Inc. 253 NLRB No. 004

(amendment of complaint at hearing to allege maintenance of unlawful no-solicitation rule proper since amendment closely related to allegation in original complaint of maintenance of unlawful no-solicitation rule and issue was fully litigated)

Weather Tamer, Inc. and Tuskegee Garment Corporation 253 NLRB No. 006

(mtn to amend complaint denied where E was not fully appraised of facts, trial was at end of second day when mtn was first made and subject would be merely cumulative)

S. L. Industries Inc. and Extruded Products, Corp. 252 NLRB No. 151

(evidence adduced at hearing as to execution of contract between E and minority U and received before complaint was amended to show preferential treatment to U, admissable to show E animus to petitioner and as bearing on credibility of witness, E's president)

Classic Truck Rental Corp. 251 NLRB No. 0

(E's contention that by permitting GC to amend complaint allegation of discrimination after GC rested, E's representative was denied opportunity to confront and cross-examine alleged discriminatee on issue, rejected, where GC had intended to move to amend before resting and rested only to indicate that he would not call additional witnesses; and after motion to amend was granted, E was given opportunity to reopen his case and call alleged discriminatee but declined to do so)

J. M. Tanaka Construction, Inc. 249 NLRB No. 028

(amendment of C to allege additional violation proper where sufficiently related to allegations in original C notwithstanding would otherwise be outside 10(b) period)

L.B.L., d/b/a China Night of Superior JD-373-82

(mtn to amend C alleging additional 8(a)(1) violations and 8(a)(3) discharge, denied where hearing had been scheduled for 9 months, no notice of intent to amend, E was unrepresented and was specifically advised that no such findings would be made, and proposed 8(a)(3) was so unrelated to allegations in charge or C as to be outside of 10(b))

Robert Bosch Corporation JD-220-81

(mtn to dismiss amendment to C granted where Section 8(a)(3) allegation in charge based on different factual allegations than those involved in new Section 8(a)(5) allegations and are not closely enough related to allow amendment)

Smithtown General Hospital JD-752-80

(amendment to C during hearing to allege 8(a)(2) violation allowed where amendment conformed to the evidence and U failed to show that admission of such evidence would prejudice his actions; Sec. 10(b) prohibition not applicable as 8(a)(2) allegation closely related to other alleged violations in charge and occurred w/i 6 months of filing charge; furthermore, dismissal of

3262-3350—Cont.

8(b) charge not related to any Sec. 8(a)(2) allegations which can occur w/o any U involvement)

J. M. Tanaka Construction, Inc. v. N.L.R.B. **675 F.2d 1029 (C.A. 9, Apr. 1982)**
(amendment of complaint during hearing was within ALJ's discretion as it was related to same series of allegedly ULPs designed to keep company, found alter ego, herein nonunion)

Hadley Fruit Orchards, Inc. **JD-(SF)-121-82**
(mtn to amend C granted, where alleged violations which were added had been discovered during immediate preparation for hearing, were related to types of violations alleged in C, and were based on underlying material already fully litigated insofar as GC's case in chief was concerned)

3262-3362 After hearing

Douglas & Lomason Company **253 NLRB No. 039**
(ALJ denied GC's mtn to amend complaint to allege new violation where E had no notice of such violation, did not litigate it, and GC offered no excuse for failure to amend at an earlier date)

Chester Valley, Inc. **251 NLRB No. 190**
(GC's mtn for leave to amend complaint so as to allege that E violated 8(a)(5) by offering to deal directly with Ees, denied, where 8(a)(5) allegations of complaint were dismissed because demand for bargaining limited to E's two-plant facility substantially deviated from appropriate three-facility unit)

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(GC's request in his brief to Bd for additional 8(a)(1) finding denied where issue not litigated at hearing and Respondent had no notice that legality of its conduct was in question, and thus did not defend against it; mtn to conform pleadings to proof is insufficient to add to C new allegation of specific unlawful conduct)

The Nestle Company **248 NLRB No. 106**
(mtn to amend complaint subsequent to hearing to include comment allegedly made by supervisor to Ee, denied, since matter sought to be added was not introduced with notice that it was to be subject of new and independent allegation of Sec. 8(a)(1) violation, and Bd found that matter was not fully litigated at hearing)

E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge **JD-490-81**
(Respondent's mtns to strike allegations of complaint regarding jurisdiction and subsequently to amend answer to deny allegations, contending GC did not adduce evidence supporting allegation, denied, where Respondent had admitted allegations in answer, since mtns thus untimely and prejudicial to GC inasmuch as GC relied on Respondent's admission and correctly did not burden record with unnecessary evidence)

L. R. Bob Spillers Painting Co. **JD-(SF)-169-80**
(when GC amends C after hearing and only bare *prima facie* case has been presented during hearing this is not enough to support violation as issue has not been fully litigated because Respondent had no opportunity to present defense)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**
(Bd properly allowed to amend C after hearing to allege violation based on E's use of application forms which contained questions as to Ee's U activities where substantial amount of testimony concerning use of these forms presented at hearing)

3262-6700 Adequacy of notice to respondent

Taurus Waste Disposal, Inc. **263 NLRB No. 028**
(mtn to amend complaint denied, where mtn made after all parties had rested case prior to close of hearing, notwithstanding E had stipulated to action alleged to be violative, since mtn not timely made, issue not fully litigated, and E was not appraised it would have to defend against allegations and asserted it would have to call additional witnesses to do so)

Right-Gard Corporation **261 NLRB No. 177**
(amendment of complaint allowed, notwithstanding 6-month statutory period provided in Sec. 10(b) had expired, since amendment related to ULP alleged in original complaint; E's counsel was advised that if lateness of amendment prejudiced his defense, ample time would be provided to overcome any such prejudice)

Ingram Farms, Inc. **258 NLRB No. 137**
(exception to mtn granted at hearing to amend complaint denied where allegated ULP took place 1 week before hearing and ALJ offered E additional time to prepare defense and it did not do so)

Sheet Metal Workers International Association, Local Union No. 20, AFL-CIO (The Employers Association of Sheet Metal Workers, etc.) **253 NLRB No. 018**
(where complaint was narrowly drawn and raised only one issue, GC's raising of another issue for first time in exceptions to ALJ's decision w/o previously attempting to raise or litigate it held not to sufficiently put respondent on notice of issue as one to be litigated)

E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge **JD-490-81**
(Respondent's mtns to strike allegations of complaint regarding jurisdiction and subsequently to amend answer to deny allegations, contending GC did not adduce evidence supporting allegation, denied, where Respondent had admitted allegations in answer, since mtns thus untimely and prejudicial to GC inasmuch as GC relied on Respondent's admission and correctly did not burden record with unnecessary evidence)

Eastern Maine Medical Center v. N.L.R.B. **658 F.2d 1 (C.A. 1, 1981)**
(contention that amendment of complaint during hearing added allegation of violation by act which occurred more than six months before amendment and amendment was thus timebarred by 10(b), rejected, since nexus between amendment and original charge was not so attentuated as to make ALJ's allowing amendment abuse of discretion; act named in amendment occurred in midst of, and was of a piece with, acts alleged to be violative in original charge, and E was on notice, because of range of charges, that all its 10(b) period conduct would be investigated)

3262-6780 Continuance to prepare to meet new allegations

Clear Pine Mouldings, Inc. v. N.L.R.B. **632 F.2d 721 (C.A. 9, 1980)**
(contrary to E's contention, ALJ did not err in allowing amendment to complaint where E had opportunity to prepare its defense and issue was fully litigated)

3275 AMENDMENT TO CONFORM PLEADINGS TO PROOF

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(GC's request in his brief to Bd for additional 8(a)(1) finding denied where issue not litigated at hearing and Respondent had no notice that legality of its conduct was in question, and thus did not defend against it; mtn to conform pleadings to proof is insufficient to add to C new allegation of specific unlawful conduct)

3282 AMENDMENT TO INCLUDE ULP'S FULLY LITIGATED

Homemaker Shops, Inc. **261 NLRB No. 080**
(mtn at hearing to amend complaint to include allegation of violation and admit disputed testimony thereof into record, granted where allegation was fully litigated and closely related to other allegations in complaint)

Connecticut Distributors, Inc. **255 NLRB No. 170**
(mtn to amend complaint denied where alleged violation not fully litigated)

Clinton Corn Processing Company, A Division of Standard Brands Inc. **253 NLRB No. 084**
(amendment of complaint at hearing to allege maintenance of unlawful no-solicitation rule proper since amendment closely related to allegation in original complaint of maintenance of unlawful no-solicitation rule and issue was fully litigated)

The Nestle Company **248 NLRB No. 106**
(mtn to amend complaint subsequent to hearing to include comment allegedly made by supervisor to Ee, denied, since matter sought to be added was not introduced with notice that it was to be subject of new and independent allegation of Sec. 8(a)(1) violation, and Bd found that matter was not fully litigated at hearing)

Smyth Manufacturing Company, Inc.; Beacon Industries **247 NLRB No. 164**
(mtn by charging party, not joined by GC, to amend complaint to allege violation of 8(a)(3) by January and March layoffs, denied, since neither month's layoffs was fully litigated as 8(a)(3) violation where only failure to bargain over March layoff decision had been alleged)

Vitco Steel Supply Corp. **JD-103-80**
(GC's request that E be found to have conditioned future bargaining on U's withdrawal of ULP charges denied as not fully litigated, notwithstanding E's having introduced testimony to contrary, where U failed to amend complaint to include allegation after ALJ's comments had put GC on notice that E might have violated Act in this way)

Clear Pine Mouldings, Inc. v. N.L.R.B. **632 F.2d 721 (C.A. 9, 1980)**
(contrary to E's contention, ALJ did not err in allowing amendment to complaint where E had opportunity to prepare its defense and issue was fully litigated)

3298 DISMISSAL OF COMPLAINT

Merrell M. Williams; Boy's Restaurant, Inc.; Girl's Restaurant; Jumbo's d/b/a Farm Boy Restaurant; Farm Boy Restaurants Nos. 2 and 3 **265 NLRB No. 070**
(E's mtn to dismiss C denied, notwithstanding E's argument that C should be dismissed because of unwarranted delay in its prosecution, which worked to prejudice of E, where delay in case resulted from administrative actions by Regional Office and Office of GC which reduced amount of evidence and issues to be heard against E; moreover, doctrine of laches has no application to cases brought before Bd)

3298—Cont.

Case, Inc. 265 NLRB No. 069
(where ct did not sustain Bd order based on finding E's unilateral change unlawful, Ees who had struck because of said change were therefore economic rather than ULP strikers and complaint dismissed, since allegations and issues litigated concerned only ULP strikers and were dependent upon Bd's order being sustained; nor was there basis for finding E liable under *Laidlaw* doctrine even if Ees were economic strikers where there was no allegation, litigation or record evidence of *Laidlaw* violation)

Ventura Coastal Corporation 264 NLRB No. 054
(although there was substantial merit to E's claim that APA mandate that an agency conclude matters brought before it w/i a *reasonable time* was disobeyed by GC's issuance of C 19 months *after* charge was filed, C not dismissed, since . . . *Bd is not required to place the consequences of its own delay, even if inordinate, upon wronged employees to the benefit of wrongdoing employers;* and E has not shown that its defense was prejudiced by GC's delay)

Turnbull Enterprises, Inc. 259 NLRB No. 122
(mtn to dismiss C on ground of laches because of postponement of original hearing as result of GC's reconsideration of appeal by charging party of RD's refusal to incorporate certain allegations of charge into C, denied)

Turnbull Enterprises, Inc. 259 NLRB No. 122
(E's mtn to dismiss C alleging unlawful discontinuance of contributions to U's health and welfare fund because of provisions of Bankruptcy Act, denied, where E purchased facility involved free and clear of all liens and other interests, and trustee in bankruptcy continued to make payments to U's health and welfare fund in accordance with practice established by debtor under contract with U)

Atlas Minerals, Division of Atlas Corporation 256 NLRB No. 022
(uranium mining company's mtn to dismiss C on ground its allegations were w/i exclusive jurisdiction of Mine Safety and Health Administration and beyond jurisdiction of Bd, *denied,* since nothing in Mine Safety Act deprives Bd of its general power, set forth in Sec. 10(a) of NLRA, to prevent ULPs affecting commerce, which shall not be affected by any other means of adjustment or prevention that has been established by agreement, law, or otherwise; and ALJ herein is not empowered to determine if C should have issued, but only to determine if its allegations have merit)

Memphis Furniture Manufacturing Co. 252 NLRB No. 025
(ALJ's finding that E acted unlawfully by unilaterally modifying contract found tantamount to ruling on E'smotion to dismiss complaint notwithstanding ALJ did not specifically rule on said motion)

R. N. Beard Company 248 NLRB No. 016
(although it would have been better if ALJ had issued decision setting forth his reasons for dismissal of complaint, Bd held failure to do so was nonprejudicial error and remand in compliance with R/R Sec. 102.45 unnecessary, where ALJ set forth on the record his reasons for dismissing complaint, GC had fully argued merits of dismissal, and no party has requested remand for purpose of issuance of decision)

Actors' Equity Association 247 NLRB No. 172
(allegations in amendment to complaint concerning invalidity of U security provisions dismissed, where RD's prior determination of mootness had not been abandoned for any substantive reason, there was no more apparent reason for remedial order now than when original complaint issued, and there is no other apparent purpose to be served by deciding merits of issue)

3600 NOTICE OF HEARING

Lighthouse For The Blind of Houston 248 NLRB No. 178
(lack of notice in formal C held nonprejudicial to E, and mtn for summary judgment granted; E had notice of ULP charges against it when served with copy of C and had opportunity to prepare its ans and defense; GC did not seek hearing but instead filed mtn for summary judgment of which E had full and fair notice; and E's challenge to Bd's certification on statutory grounds is normally resolved by summary judgment, not hearing)

Lighthouse For The Blind of Houston 248 NLRB No. 178
(lack of formal notice of hearing at initial issuance of C, while not preferable, does not, w/o more, constitute denial of due process or subversion of rulemaking process)

3675 POSTPONEMENT OF HEARING

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-621-81
(E's contention that adjournment of hearing should have been longer than 2-day recess granted by ALJ because more time was needed to prepare E's case as result of last-minute change of counsel, rejected; short time E's new counsel had to prepare case was due to circumstances over which E alone had control; any harm to E's ability to adequately prepare case was more than offset by harm inherent in delay of hearing for at least a month due to circumstances herein; and E proffered no excuse in dilatoriness in selecting counsel)

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-621-81
(in backpay proceeding, RD and GC did not agree with E to postpone hearing so that E could prepare its case where, at time of alleged agreement, only E's answer and amended answer had been filed and thus neither RD nor GC was on notice that E intended to broaden scope of hearing by litigating issues other than those raised by answers; and GC opposed E's mtn for leave to file second amended answer on ground there were no previous indications that E was disputing appropriateness of specification's backpay formula)

4000 ANSWER TO COMPLAINT

4017 TIME FOR FILING

4017-3300 Time allowed

N.L.R.B. v. Zeno Table Company, Inc. 610 F.2d 567 (C.A. 9, 1979)
(Sec. 10(e) of Act does not limit ct's review of Bd's treatment of answer to complaint as untimely; however, review is limited to whether Bd abused its discretion in refusing to consider answer)

Sherwood Coal Company 252 NLRB No. 074
(E's failure to file answer due to its attorney's delinquency in reviewing complaint not *good cause* for failure to file)

4017-6700 Effect of late filing

Exxon Company, U.S.A. 253 NLRB No. 077
(mtn to strike answer to amended complaint, late by 9 days, denied where U brief contends GC made representations which lulled it into filing late answer and also U had filed timely answer to original complaint)

World Service Corporation and/or Peggs Run Coal Company; and World Service Corporation, Debtor in Possession 247 NLRB No. 201
(where Respondent was debtor in possession and refused to file answer to complaint contending that bankruptcy court has exclusive jurisdiction over all controversies affecting debtor, this does not constitute *good cause* for failure to file mtn and summary judgment granted)

Hillcrest Packing Co., Inc. 247 NLRB No. 187
(Respondent's reason for its untimely filing of answer to complaint does not meet *good cause* standard where asserted reason is failure of its attorney to file but Respondent itself had notice that no answer had been filed and had itself promised to file answer)

Mahler Sales Co., Inc. JD-(SF)-312-79
(in rejecting GC's contention that statute of limitations began running when U became aware of unilateral change at time E gave U Ee handbook, ALJ dismissed complaint because it was not timely filed where initial change occurred to U knowledge more than six months prior to filing)

4017-6750 *Good cause* standard

N.L.R.B. v. Zeno Table Company, Inc. 610 F.2d 567 (C.A. 9, 1979)
(ct, in instant case, limited to question whether Bd abused its discretion in applying *extraordinary circumstance* rather than *good cause* standard to E's reasons for late filing of its answer)

N.L.R.B. v. Zeno Table Company, Inc. 610 F.2d 567 (C.A. 9, 1979)
(*good cause*standard is not as strict as *extraordinary circumstances* and former is used to ensure that Bd makes decisions on merits dispite technical and inadvertent noncompliance with procedural rules)

N.L.R.B. v. Zeno Table Company, Inc. 610 F.2d 567 (C.A. 9, 1979)
(possibility E had *good cause* for failure to file timely answer; namely, GC knew of E's attorney's absence due to vacation and short delay occasions by attorney's untimely filing did not appear to cause prejudice to any party)

N.L.R.B. v. Zeno Table Company, Inc. 610 F.2d 567 (C.A. 9, 1979)
(enforcement denied and case remanded so that Bd may consider whether *good cause* excused late filing of E's answer)

4033 EFFECT OF FAILURE TO FILE

Oldwick Materials, Inc. 264 NLRB No. 153
(notwithstanding E filed ans to C which alleged that E violated Sec. 8(a)(4) by discharging Ee for testifying at Bd hearing, its failure to file ans to amended C that alleged same Ee was laid off rather than discharged allowed Bd to grant mtn for summary judgment because of failure to file timely ans as amended C changed factual basis for violation to which no denial was made)

Suburban Plumbing & Heating, Inc. 261 NLRB No. 012
(mtn for default judgment granted where respondent failed to file answer to complaint as required under Bd R/R Sec. 102.20; accordingly, allegations of complaint deemed to be admitted and found to be true)

American Steel Line Co. 253 NLRB No. 066
(allegations of complaint were deemed admitted and found to be true where (1) respondent failed to answer, or show good cause for not doing so, after RD informed it that its letter accusing U of illegal activities did not comply with Bd's rules regarding valid answers, stated that respondent should inform RD if it wished its letter to constitute an answer, and extended time for answering and (2) even if deemed an answer, letter did not meet Bd requirement that an answer specifically admit, deny or explain each allegation of complaint)

4033—Cont.

Urban Laboratories, Inc. **249 NLRB No. 116**
(where E was acting *pro se* and failed to ans C, allegations deemed admitted; moreover, fact that E is not attorney does not constitute good cause for failure to file timely ans)

SPS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 009**
(mtn for summary judgment granted where one of 2 respondents had filed ans to original C but neither respondent had filed ans to amended C)

Kirlis Contractors, Inc. and Joseph J. Defiore, d/b/a Joseph J. Defiore, Builders **247 NLRB No. 063**
(motion for summary judgment granted where respondent failed to request extension of time to file answer and then ignored Region's offered extension of time)

Iowa Parcel Service, Inc. and Iowa Express Distribution, Inc. **JD-238-82**
(failure to answer constituted admission of charges)

4042 EFFECT OF WITHDRAWAL OF ANSWER

Malnic Wrecking, Inc. **263 NLRB No. 156**
(E's withdrawal of answer to mtn for summary judgment has same effect as failure to file answer)

T. Marshall Corp., T/A Cliffside Health Care Center **JD-(NY)-29-82**
(where parties at hearing reached settlement agreement which ALJ found to be fair, equitable, and dispositive of all allegations raised by the complaint, respondent, in order to dispose of pending proceeding, made, and ALJ granted, mtn to withdraw its answer– so that allegations of complaint were deemed true– and to consent to entry of recommended order)

Stevens Ford, Inc. **JD-856-81**
(withdrawal of answer to complaint constituted admission as to substantially all allegations of complaint)

Speyl Masonry, Inc. **JD-32-81**
(mtn for summary judgment granted where E withdrew its answer during course of hearing and all allegations in complaint deemed admitted)

4067 SUFFICIENCY OF FORM AND CONTENT

American Steel Line Co. **249 NLRB No. 053**
(where Respondent answered C with letter, Regional Office asked Respondent if letter constituted ans and Respondent never replied; letter held improper asw as it does not specifically admit, deny or explain each of facts alleged in C)

4067-2800 Particularity required

Aircraft Magnesium, A Division of Grico Corporation **265 NLRB No. 172**
(E admitted it had refused to bargain with U of predecessor's Ees by failing to specifically deny this allegation in complaint)

DPM of Kansas, Inc. **261 NLRB No. 030**
(E's contention that under R/R Sec. 102.20 its statement that it is w/o sufficient knowledge to admit or deny that it has refused to bargain constitutes denial raising material issues of fact, rejected because Respondent may not, w/o explanation validly deny knowledge of its own actions alleged in C but must specifically deny allegations. Sec. 102.20 qualified by Sec. 102.21)

Amada Enterprises, d/b/a View Heights Convalescent Hospital **255 NLRB No. 013**
(failure to specifically deny or explain any allegations in complaint, then allegation will be deemed to be admitted and to be true; *Section 102.20 Bd's R/R, Series 8, as amended*)

American Steel Line Co. **253 NLRB No. 046**
(allegations of complaint were deemed admitted and found to be true where (1) respondent failed to answer, or show good cause for not doing so, after RD informed it that its letter accusing U of illegal activities did not comply with Bd's rules regarding valid answers, stated that respondent should inform RD if it wished its letter to constitute an answer, and extended time for answering and (2) even if deemed an answer, letter did not meet Bd requirement that an answer specifically admit, deny or explain each allegation of complaint)

Varco Phone Parts Corp. **250 NLRB No. 153**
(E's letters purporting to be answers to C held inadequate and not in compliance with Bd's R/R Sec. 102.20, since they did not specifically admit, deny, or explain C allegations; even assuming letters constituted proper answer, they admitted facts which established a violation and raised only matters which may more appropriately be raised at compliance proceeding)

Pipeline Construction Workers, Local 692 (Fulhgum Construction Corporation) **248 NLRB No. 151**
(GC's mtns to strike Respondent's ans and for summary judgment granted where ans merely denied allegations of C and stated Respondent had made own investigations that disclosed allegations were unfounded)

4067-5000 Sufficiency of statement of defense

G. F. Business Equipment, Inc. **256 NLRB No. 040**
(GC's mtn to strike portions of answer to complaint, denied, notwithstanding Respondent's denials did not present meritorious defense to allegations of complaint, since denials could be viewed as attempt by Respondent to preserve position)

Pipeline Construction Workers, Local 692 (Fulhgum Construction Corporation) **248 NLRB No. 151**
(GC's mtns to strike Respondent's ans and for summary judgment granted where ans merely denied allegations of C and stated Respondent had made own investigations that disclosed allegations were unfounded)

4067-7500 Adequacy of general denial

E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge and E. and W. Management, Inc. d/b/a The Token Lounge and David Erf, A Sole Proprietorship d/b/a Pete and Ann's **265 NLRB No. 088**
(Bd ordered hearing limited to determination of amount of discriminatees' gross backpay, interim earnings, and related expenses and not Es' general backpay liability, where Bd construed Es' response to Notice To Show Cause as amended ans, notwithstanding fact that Es' general denial in original ans was inadequate under R/R Sec. 102.54, and such amended ans clarified general denial to refer specifically to amount of tips earned by discriminatees which was not matter w/i Es' knowledge)

Pipeline Construction Workers, Local 692 (Fulhgum Construction Corporation) **248 NLRB No. 151**
(GC's mtns to strike Respondent's ans and for summary judgment granted where ans merely denied allegations of C and stated Respondent had made own investigations that disclosed allegations were unfounded)

4075 STRIKING OF FALSE, FRIVOLOUS OR SHAM ANSWER

The Westin Hotel **261 NLRB No. 141**
(mtn to strike portions of E's answer to mtn for summary judgment on grounds that they were contrary to facts admitted, denied, because mtn constituted endeavor by E to preserve its position)

M.H.T. Corporation, d/b/a Dollar Rent-A-Car **250 NLRB No. 168**
(jurisdictional facts admitted in prior R case and fact of receipt of request to bargain admitted in instant C case)

4079 STRIKING OF PORTIONS OF ANSWER

Coca Cola Bottling Company of Buffalo, Inc. **264 NLRB No. 016**
(GC's mtn to strike portions of answer which alleged, as defense to alleged unlawful unilateral changes, that certification was erroneous because unit was inappropriate, denied; while E's answer, defenses, and response to GC's mtn for summary judgment were found herein not to present meritorious defense to allegations, such defenses should not be struck in that they could be viewed as endeavor by E to preserve its position)

Hoosier Energy Division of Indiana Statewide Rural Electric Cooperative, Inc. **247 NLRB No. 011**
(GC's motion to strike portions of answer and amended answer denied, notwithstanding defenses raised therein do not raise meritorious defense to allegations of complaint, since defenses could be viewed as endeavor of Respondent to preserve position)

4083 AMENDMENT OF ANSWER

E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge and E. and W. Management, Inc. d/b/a The Token Lounge and David Erf, A Sole Proprietorship d/b/a Pete and Ann's **265 NLRB No. 088**
(Bd ordered hearing limited to determination of amount of discriminatees' gross backpay, interim earnings, and related expenses and not Es' general backpay liability, where Bd construed Es' response to Notice To Show Cause as amended ans, notwithstanding fact that Es' general denial in original ans was inadequate under R/R Sec. 102.54, and such amended ans clarified general denial to refer specifically to amount of tips earned by discriminatees which was not matter w/i Es' knowledge)

Formaloy Corp. **JD-(ATL)-87-81**
(post-hearing mtn to amend ans to state it was w/o knowledge of assertions contained in certain paragraphs of C warranted in view of numerous amendments to C by GC at hearing)

E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge **JD-498-81**
(Respondent's mtns to strike allegations of complaint regarding jurisdiction and subsequently to amend answer to deny allegations, contending GC did not adduce evidence supporting allegation, denied, where Respondent had admitted allegations in answer, since mtns thus untimely and prejudicial to GC inasmuch as GC relied on Respondent's admission and correctly did not burden record with unnecessary evidence)

4091 ADMISSION BY ANSWER

4091—Cont.

Rome Baking Company 263 NLRB No. 064
(Bd's assertion of jurisdiction proper where C set forth that E met Bd's statutory and discretionary jurisdictional amount standards and E apparently admitted to them in its answer and then did not attempt to amend its answer to deny allegations of jurisdiction)

Amado Enterprises, d/b/a View Heights Convalescent Hospital 258 NLRB No. 013
(failure to specifically deny or explain any allegations in complaint, then allegation will be deemed to be admitted and to be true; *Section 102.20 Bd's R/R, Series 8, as amended*)

SSS Typographers, Inc. d/b/a Ace Typographers and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions 262 NLRB No. 017
(mtn for summary judgment granted, notwithstanding E's denial of complaint allegation that it had refused to bargain on specified date, where E's answer admitted complaint allegation that U had requested it to bargain, and various exhibits attached to mtn for summary judgment conclusively established that E had refused to bargain on specified date)

E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge JD-698-81
(Respondent's mtn to strike allegations of complaint regarding jurisdiction and subsequently to amend answer to deny allegations, contending GC did not adduce evidence supporting allegation, denied, where Respondent had admitted allegations in answer, since mtn then untimely and prejudicial to GC inasmuch as GC relied on Respondent's admission and correctly did not burden record with unnecessary evidence)

4400 CONSOLIDATION AND SEVERANCE OF PROCEEDING

4401 GENERALLY

4401-5000 Authority of Regional Director

Classic Truck Rental Corp. 251 NLRB No. 056
(where at time RD's order consolidating cases had issued, ALJ had ordered consolidation of cases with earlier cases and had reopened hearing, ALJ held that, since hearing had been reopened, any question concerning further consolidation would more appropriately be handled through motion to him rather than through RD)

4401-7500 Authority of Board

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. 658 F.2d 968 (C.A. 4, Sept. 1981)
(consolidation is w/i sound discretion of Bd and will not be disturbed where parties are given fair hearing and no showing of prejudice is made; moreover, any injury potentially caused by failure to issue a consolidated C is obviated when E has notice of charges against him)

Operating Engineers, Local Union No. 132 v. N.L.R.B. No. 79-2255-CH, Oct. 1, 1979, DC S.D. WV (unreported)
(Bd order granting mtn to set aside *on-th-record settlement agreements* and consolidating settled cases with another pending C case held unlawful, since settlement agreements had been consummated and conditions thereof performed and accomplished; action was abuse of Bd's powers and denial of petitioner's constitutional rights)

4425 PROCEEDINGS CONSOLIDATED

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. 658 F.2d 968 (C.A. 4, Sept. 1981)
(failure to issue one consolidated C covering E's four plants in four separate Bd regions held not abuse of Bd's discretion where GC's transfer of all charges to one Bd region, issuance of consolidated Cs for three plants, and consolidation of all cases for hearing, gave E indisputable notice of GC's theory of prosecution; ALJ made separate findings of fact and conclusions of law for each plant in single decision and did not illogically mix occurrences at plants; and E demonstrated no prejudice and did not claim inability to litigate any issue)

The United Credit Bureau of America, Inc. v. N.L.R.B. 643 F.2d 1017 (C.A. 4, Mar. 1981)
(procedural due process not denied E by ALJ consolidating case where issue of whether 8(a)(4) violation occurred when E sued in state ct discharges in initial case and notice of consolidation ambiguous and sent day before trial as E's action at hearing regarding 8(a)(4) case demonstrated it suffered no resulting prejudice because E (1)Ppresented no evidence, and (2) asserted no claim of inadequate notice or prejudice)

4425-6700 Consolidation of CA and election objections proceedings proper

Konkin Charter Service, Inc. 259 NLRB No. 1
(where R case consolidated with C cases for limited purpose of taking evidence on challenged ballots, RD ordered to open ballots of Ees held eligible and issue certification if U received majority, where U never filed objections to election, notwithstanding E held to have committed ULPs)

4450 CONSOLIDATION CRITERIA

4450-3300 Appropriate where

4450-3350 Same respondent

The Dow Chemical Company, Texas Division 250 NLRB No. 10
(mtn to consolidate denied where cases involve different units of Ees and different factual backgrounds which are best treated separately notwithstanding same E)

4450-6700 Inappropriate where

Axelson, Inc., subsidiary of U.S. Industries, Inc. 263 NLRB No. 010
(petitioner's mtn to consolidate and/or for reconsideration on ground Bd decision in instant decertification proceeding overruling objection to election should be considered together with subsequent Bd decision finding violation by E on basis of conduct which was subject of objection, denied, where E did not seek to have ULP case consolidated or considered with instant proceeding until after ULP decision issued; contentions that consideration will facilitate final, just resolution of issues and relief to be accorded, and that relief granted for E's violation is wholly inadequate, rejected)

Axelson, Inc., subsidiary of U.S. Industries, Inc. 263 NLRB No. 010
(petitioner's mtn to consolidate and/or for reconsideration based on allegedly inconsistent decisions as result of Bd decision finding violation on basis of conduct which was subject of previously overruled objection to election in instant decertification proceeding denied as untimely; findings of fact are based on respective records in each case, and record herein shows insufficient evidence to warrant setting aside election; to extent petitioner argues Bd's findings herein are erroneous on record then before it, regardless of record in ULP case, petitioner's second mtn for reconsideration is a year late)

Axelson, Inc., subsidiary of U.S. Industries, Inc. 263 NLRB No. 010
(petitioner's mtn to consolidate and/or for reconsideration as result of Bd finding of 8(a)(1) violation on basis of conduct which was subject of previously overruled objection to election in instant decertification proceeding, denied; Bd rejected contention that, since (8a)(1) conduct *a fortiori* interferes with election, such finding invalidates retroactively Bd's conclusion herein that E's conduct did not warrant setting election aside; *a fortiori* principle was attempt by Bd to avoid *mechanical approach* and Bd looks to economic realities of E-Ee relationship in determining whether to set aside election)

Axelson, Inc., subsidiary of U.S. Industries, Inc. 263 NLRB No. 010
(petitioner's mtn to consolidate and/or for reconsideration as result of Bd finding of 8(a)(1) violation on basis of conduct which was subject of previously overruled objection to election in instant decertification proceeding, denied; effect of narrow ruling herein was that, if U has won election despite E's campaign against it, election results stand as against mechanical insistence on *laboratory conditions*; and fact that E's conduct was later found violative does not cast issue into any light significantly different from that in which Bd first examined it)

4450-6717 Different issues

United States Postal Service 263 NLRB No. 063
(consolidation of Bd cases involving different units, factual backgounds and allegations not appropriate)

The Dow Chemical Company, Texas Division 250 NLRB No. 102
(mtn to consolidate denied where cases involve different units of Ees and different factual backgrounds which are best treated separately notwithstanding same E)

4450-6725 Decision in one case already issued

Sullivan Transfer Co. 247 NLRB No. 117
(consolidation not appropriate where Sec. 8(b)(4)(D) conduct did not occur before E engaged in alleged Sec. 8(a)(3) conduct, additionally two separate proceedings were already held and 10(k) proceeding was already pending before Bd when ALJ's decision issued)

4450-6775 Proceedings tried separately

United Brotherhood of Carpenters & Joiners of America, Local Union No. 743 262 NLRB No. 038

Sullivan Transfer Co. 247 NLRB No. 117
(consolidation not appropriate where Sec. 8(b)(4)(D) conduct did not occur before E engaged in alleged Sec. 8(a)(3) conduct, additionally two separate proceedings were already held and 10(k) proceeding was already pending before Bd when ALJ's decision issued)

4475 SEVERANCE OF PROCEEDINGS

4475-3300 Appropriate where

4475-3300—Cont.

East Texas Motor Freight **262 NLRB No. 101**
(Bd severed part of instant case and remanded that aspect for further hearing to determine whether U steward participated in assault on dissident U member by use of municipal ct judgment wherein U steward was found guilty of assault in issue)

Semi-Alloys, Inc. **260 NLRB No. 137**
(in considering whether it would be appropriate to reopen *R* case investigation for ULP proceeding where Bd had previously adopted Supplemental Report on objections to election in overruling E's exceptions w/o prejudice, Bd adopted ALJ's recommendation that RC case be severed from instant ULP proceeding and Certification of Results of Election be reinstated based upon principles set out in *Albuquerque Publishing* and other cited cases)

St. Joseph Hospital Corporation **260 NLRB No. 089**
(GC's mtn to sever CG cases from CA case granted where Us have agreed to and have in fact begun to comply with ALJ's recommended order in CG cases, all parties to proceedings have been advised of mtn to sever and do not oppose mtn, no exceptions have been taken to ALJ's findings in CG cases, remedies sought in those cases are not interrelated, and no prejudice will result to any of the parties from severance of the cases)

Humana Corp. d/b/a Sunrise Hospital Medical Center **254 NLRB No. 176**
(severance of one case involving separate E permitted at trial over objections of charging party as that case was in process of settling out and such action is in discretion of RD)

Photo-Sonics, Inc.; et al. **254 NLRB No. 069**
(inasmuch as challenged ballots overruled by RD were sufficient in number to affect results of election, R case ordered severed from C cases and remanded to RD for revised tally of ballots)

Madison Manufacturing Company **249 NLRB No. 096**
(Bd severed and remanded discharge cases to ALJ for supplemental decision, where ALJ erred in precluding E's witnesses, whose testimony was relevant to events surrounding discharges, from testifying because E's official had refused to comply with subpoena and to testify)

Sun-Dor Pak, Inc. **249 NLRB No. 107**
(where ALJ erred in dismissing 8(a)(5) allegation that E unlawfully changed job classifications and rates of pay after election herein but before outcome of election had been determined and record shows that changes did occur but fails to show compelling economic considerations, Bd ordered C alleging unlawful changes be severed from proceedings and final disposition be postponed until outcome of election is resolved)

4475-4700 Inappropriate where

Daniel Construction Company, A Division of Daniel International Corporation **264 NLRB No. 079**
(evidence in instant cases showed that 2 plant sites (15 miles distant from each other) were subject to common ultimate managerial control and allegations relating to sites were assertedly based on single catalytic U organizing effort affecting both locations; no reason present, in instant case, for separate treatment of separate locations)

R. E. Nichols of Ohio, Inc. **258 NLRB No. 002**
(mtn to sever ULP case from backpay case involving same parties denied as in discretion of ALJ; moreover, evidence presented in backpay proceeding is admissible to establish present motivation and complete background for most recently alleged ULP)

4800 INTERVENTION

4801 GENERALLY

General Teamsters Local 162 (K-Lines, Inc.) **249 NLRB No. 019**
(where U did not learn of Motion for Summary Judgment or Notice to Show Cause until 1 day after deadline for receipt of responses, and inasmuch as only minor 1-day delay was involved, Bd accepted U's documents and treated its mtn to intervene on the merits)

General Teamsters Local 162 (K-Lines, Inc.) **249 NLRB No. 019**
(U's mtn to intervene in summary judgment proceeding against respondent U on ground U was authorized representative of Ees involved by reason of Joint Council's decision, denied; Joint Council decision is not binding on Bd, U does not claim to represent Ee majority in unit, granting mtn would undermine Bd's authority to determine scope of unit and would fragment unit, E never approved or was party to Joint Council proceeding, and respondent U's assertion of jurisdiction over Ees herein was not claimed to be unlawful)

5200 DISCOVERY

Flite Chief, Inc.; et al. **258 NLRB No. 148**
(in backpay proceeding, Es held not to have been denied due process nor prejudiced by application of Bd's R/R concerning the taking of depositions, since original and amended backpay specifications and notice of hearing disclosed discriminatees' interim earnings, periods when they were employed, and names of interim Es, and Es were provided with copies of all compliance forms filled out by discriminatees and with correspondence from interim Es; and Es clearly indicated desire to pursue traditional discovery and not preservation of testimony of witness unavailable for trial which is purpose of Bd's R/R)

Westinghouse Electric Corporation **JD-(ATL)-88-81**
(requested information (personnel records) *not discovery* concerning pending charges where information was relevant for ascertaining validity of grievance already in grievance-arbitration channels)

5250 NOT PROVIDED FOR BY ACT

Maywood, Inc. **251 NLRB No. 129**
(Bd's failure to provide for discovery not a violation of due process of law, since discovery is not constitutional right in administrative proceedings)

5600 DEPOSITIONS

5601 GENERALLY

Ford Paint and Varnish Company **264 NLRB No. 186**
(no merit in E's exception to ALJ's refusal to give it opportunity to secure deposition from former Ee who had left state 2 weeks prior to hearing where E at no time made appropriate written request as required by Sec. 102.30 of R/R)

Bill Johnson's Restaurants, Inc. v. N.L.R.B. **660 F.2d 1335 (C.A. 9, Nov 1981)**
(ct did not decide whether the taking of deposition after lawsuit filed and inquiring into U activities of person deposed w/o any safeguards violative)

5650 AVAILABLE FOR GOOD CAUSE SHOWN

5650-2300 May not be taken for purposes of discovery

Flite Chief, Inc.; et al. **258 NLRB No. 148**
(backpay proceeding)

5650-6700 Use limited to preserving evidence for trial

Flite Chief, Inc.; et al. **258 NLRB No. 148**
(backpay proceeding)

6000 SUBPOENAS

6001 GENERALLY

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. **683 F.2d 305 (C.A. 9, July 1982)**
(E's assertion that Bd and ALJ drew adverse inferences from its refusal to comply with subpoena issued by GC held w/o merit, where ALJ drew no such inference and Bd did not address question because it found that direct evidence at hearing established the charges)

6001-5000 Nature and Scope

N.L.R.B. v. General Motors Corporation **510 F.Supp. 328 (DC S.D. OH, Sept. 1980)**
(order requiring obedience to *subpoenas duces tecum and ad testificandum* granted where Bd sought information, during R case investigation, concerning: Ee job descriptions; equipment descriptions; comparison of supervision; management; and description of physical changes in (E's) plants; all before E relocated its appliance operation, and now during conversion of appliance plants to light body truck and engine assembly plants, since information was related to matter under investigation; information would clarify issues of relationship of Ees in unit well have with entire production processing E's facilities)

6001-5033 'Attendance and testimony of witnesses'

Asbestos Workers, Local No. 17 (Catalytic, Inc.) **266 NLRB No. 089**
(ALJ's refusal to grant GC subpoena for Ee upon his withdrawal from case and to grant continuance for appealing denial upheld where GC made proffer of testimony expected from Ee and that testimony was substantially same as that given by other Ee witnesses)

6020 AUTHORITY TO ISSUE

N.L.R.B. v. General Motors Corporation **510 F.Supp. 328 (DC S.D. OH, Sept. 1980)**
(merits of instant case, where Bd sought order requiring obedience to its subpoenas, before Bd not District Ct; ct's limited scope of review, which is, whether information sought by Bd relates to or touches matter under investigation, not whether ptn has merits must be kept in focus)

6040 ISSUANCE OF SUBPOENAS

6040-2000 Application to Board

6040-2033 Upon application of 'party'

6040-2033—Cont.

Serendippity-Un-Ltd and Tigerrr, Inc. 263 NLRB No. 100

(E's contention that he failed to have his intended witnesses appear at hearing assertedly because he was not timely advised of subpoena process to assure their appearance at hearing, rejected, where about 1 month before hearing E was instructed by GC concerning procedure for procuring blank subpoenas from RD, and at no time did E assert that Bd subpoenas were sought or refused)

6040-4000 Showing of relevancy and adequacy of identification of documents requested not prerequisite

N.L.R.B. v. International Medication Systems, Ltd. 640 F.2d 1110 (C.A. 9, Apr 2, 1981)

(District Ct *may undertake only extremely limited inquiry* in deciding whether to enforce subpoenas; *Agency need not even show probable cause to believe that law has been violated*, only some reasonable basis for believing that information will prove relevant)

6040-5000 Determinable on motion to revoke

General Motors Corporation, Delco Moraine Division 257 NLRB No. 146

(Bd found it unnecessary to review contention that ALJ erred in refusing to quash subpoena duces tecum obtained by U ordering E to produce timestudy worksheets sought by U herein where record fully established relevance of timestudies and related materials to U's processing of grievance concerning production standards)

6040-6000 Prehearing investigatory subpoenas available only to Regional Director

Martins Ferry Hospital Association v. N.L.R.B. 654 F.2d 455 (C.A. 3, 1981)

(E's suit for mandamus relief, seeking order compelling Bd to issue subpoenas to it during investigative stage directing field examiner and U's involved in ULP proceeding to turn over originals or copies of authorization cards denied; Bd's interpretation of *proceedings* as applying only after Bd has issued complaint is not clearly wrong and duty imposed by Sec. 11(1) of Bd's R/R is not so clearly established that E has established clear and certain right and is entitled to mandamus relief)

6060 REVOCATION

6060-3300 Time for filing petition to revoke

6060-3350 Within 5 days of service of subpoena

Valley Camp Coal Company 265 NLRB No. 149

(where Bd issued *subpoena ad testificandum* directing newspaper editor to testify at ULP hearing about article she had written on closing of E's operation, and she was granted TRO from district ct restraining Bd from enforcing subpoena which was later vacated by Ct of Appeals for failure to utilize available administrative remedies, request for special permission to appeal ALJ's order denying mtn to revoke subpoena denied under R/R Sec. 102.31(b) since initial mtn to revoke was not filed w/i 5 days of service; moreover, contention that compliance with subpoena will impinge on Constitution's guarantee of free press under *Branzburg* rejected)

6060-6700 Grounds for revocation

6060-6725 Rule 102.118

Central Freight Lines, Inc. 259 NLRB No. 063

(*subpenas duces tecum* served on RD and field examiner *revoked* on mtn of GC, since GC had not given his written consent to RD and field examiner to produce documents described in subpenas, or to appear at trial and testify; documents sought had no probative value; *Section 102.118 of Bd's R/R* precluded production of documents described in *subpenas duces tecum*)

N.L.R.B. v. Silver Spur Casino 623 F.2d 571 (C.A. 9, 1980)

(R/R 102.118 cannot alone be basis for revocation of properly issued subpoena in absence of some valid evidentiary objection or priviledge; here Bd found evidentiary priviledge which protected informal investigatory and trial preparatory process of administrative agencies)

6060-6730 Improper service

Shaw Industries, Inc., a Division of Crystal Springs Shirt Corp.; et al. 255 NLRB No. 117

(oral mtn to quash GC's *subpoena duces tecum* granted where service was defective because not served on anyone authorized to receive service; moreover, E did produce certain evidence relative to subpoena; absence of written mtn to quash did not result in prejudice to GC)

6060-6735 Immaterial to case

Drakker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. 258 NLRB No. 097

(mtn to quash subpoena requesting Bd agent to testify at ULP hearing granted where Respondent made no attempt to obtain testimony of other persons who had same knowledge as Bd agent and thus there were no special circumstances requiring privilege shielding Bd personnel from testifying in Bd cases to be waived)

Behring International, Inc. 252 NLRB No. 085

(ALJ properly revoked subpoena of Bd agent whose testimony E wanted to adduce concerning her investigation of initial charge as well as certain affidavits on ground that testimony and documents would have contained admissions from various witnesses, obtained when Bd agent solicited withdrawal of original charge; testimony sought fell w/i limited evidentiary privilege which protects investigatorial and trial-preparatory processes of regulatory agencies such as Bd; moreover, evidence sought is irrelevant to any issue herein)

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N.T. Enloe Memorial Hospital v. N.L.R.B. 682 F.2d 790 (C.A. 9, July 1982)

(where E's subpoena requesting U to bring to hearing documents reflecting number of its Ees who belonged to U was revoked, even if Bd erred in revoking subpoena such error is harmless as evidence of U membership has been held irrelevant in proving lack of majority support in support of E's refusal to bargain)

N.L.R.B. v. Silver Spur Casino 623 F.2d 571 (C.A. 9, 1980)

(Bd properly upheld quashing subpoenas directed to field examiner with respect to his alleged statement that ULP charges would probably be dismissed, where others were present during conversations with field examiner and Es showed no reason why examining those people was not possible or would not have produced information similar to that which they sought from field examiner; moreover, there was doubt whether information sought was sufficiently material to Es' case to outweigh investigatory privilege)

6060-6750 Claim of privilege

Valley Camp Coal Company 265 NLRB No. 149

(where Bd issued *subpoena ad testificandum* directing newspaper editor to testify at ULP hearing about article she had written on closing of E's operation, and she was granted TRO from district ct restraining Bd from enforcing subpoena which was later vacated by Ct of Appeals for failure to utilize available administrative remedies, request for special permission to appeal ALJ's order denying mtn to revoke subpoena denied under R/R Sec. 102.31(b) since initial mtn to revoke was not filed w/i 5 days of service; moreover, contention that compliance with subpoena will impinge on Constitution's guarantee of free press under *Branzburg* rejected)

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(ALJ properly revoked subpoena of Bd agent whose testimony E wanted to adduce concerning her investigation of initial charge as well as certain affidavits on ground that testimony and documents would have contained admissions from various witnesses, obtained when Bd agent solicited withdrawal of original charge; testimony sought fell w/i limited evidentiary privilege which protects investigatorial and trial-preparatory processes of regulatory agencies such as Bd; moreover, evidence sought is irrelevant to any issue herein)

Behring International, Inc. v. N.L.R.B. 675 F.2d 83 (C.A. 3, Apr. 1982)

(Bd did not err in upholding ALJ's revocation of subpoena *duces tecum* served on Bd agent who had investigated earlier charge against E, since information sought by E fell w/i *limited evidentiary privelege which protects informal investigatorial and trial-preparatory processes of regulatory agencies such as NLRB;* and E was furnished with witnesses' prior statements and no prejudice resulted)

N.L.R.B. v. Silver Spur Casino 623 F.2d 571 (C.A. 9, 1980)

(R/R 102.118 cannot alone be basis for revocation of properly issued subpoena in absence of some valid evidentiary objection or priviledge; here Bd found evidentiary priviledge which protected informal investigatory and trial preparatory process of administrative agencies)

Ray Marshall, Secretary of Labor v. Brite Metal Treating, et al. No. C77-1105 (D Ct. Ohio, June 30, 1978 (unreported)

(subpoena issued by defendant in OSHA proceeding against Bd attorney for his work product quashed where defendant failed to seek GC's permission for disclosure)

6060-6775 Prejudicial

6060-6775—Cont.

Behring International, Inc. v. N.L.R.B. 675 F.2d 83 (C.A. 3, Apr. 1982)

(Bd did not err in upholding ALJ's revocation of subpoena *duces tecum* served on Bd agent who had investigated earlier charge against E, since information sought by E fell w/i *limited evidentiary privelege which protects informal investigatorial and trial-preparatory processes of regulatory agencies such as NLRB;* and E was furnished with witnesses' prior statements and no prejudice resulted)

6080 ENFORCEMENT

6080-0100 Generally

Feld & Sons, Inc. t/a Today's Man 263 NLRB No. 041

(contention that GC's failure to seek Federal ct enforcement of *subpoena duces tecum* demanding that E produce documentary evidence of its official's conversation with corporate counsel somehow excused official's defiance of ALJ's direction to answer questions on such issue at hearing, rejected, since GC may not be forced to seek enforcement of validly issued subpoena at whim of party that refuses to comply with it; moreover, E's defiance of Bd authority in one instance does not justify its failure to cooperate in another)

N.L.R.B. v. International Medication Systems, Ltd. 640 F.2d 1110 (C.A. 9, Apr 2, 1981)

(Bd lacked authority to deny E opportunity to present rebuttal evidence where denial was intended as sanction for E's refusal to comply with subpoena since Bd failed to have subpoena enforced in District Ct; challenges to agency subpoenas must be resolved by judiciary before compliance can be compelled)

6400 STIPULATION AND TRANSFER TO BOARD

Karl Kallmann d/b/a Love's Barbeque Restaurant No. 62 JD-(SF)-200-82

(in proceeding on ct remand of reinstatement and make whole issues, in which charging party would not enter into stipulation entered into by GC and E and agreed to by trustee in bankruptcy, GC's mtn to accept stipulation granted, where charging party failed to respond to order to show cause, stipulation appeared to resolve issues posed by remand, and there was no indication any evidence could be presented that would lead to more satisfactory resolution of issues; moreover, further prolongation of proceeding might only deprive discriminatees altogether of even partial monetary relief)

6800 SUMMARY JUDGMENT

6801 GENERALLY

Wine and Liquor Store Employees Union, Local 122, a/w Distillery Workers (Harvey Entin, d/b/a Oz Liquor Co.) 261 NLRB No. 152

(summary judgment not warranted with respect to allegation that U attempted to enforce in state ct agreement settling matter set for arbitration, notwithstanding GC's assertion that ct's mention of U's notice of cross-mtn conclusively showed that U sought to confirm arbitration award in state ct, where there was no clear evidence that state ct decision cited by GC concerned matter set for arbitration and then settled by parties and U denied pertinent allegation)

Charmer Industries, Inc. 250 NLRB No. 031

(Bd's denial of Es' mtn for summary judgment based on favorable arbitration award held binding on ALJ as law of case, notwithstanding Es' contention that under FRCP denial of mtn for summary judgment is interlocutory in nature and not res judicata)

Lighthouse For The Blind of Houston 248 NLRB No. 178

(lack of notice in formal C held nonpreducial to E, and mtn for summary judgment granted; E had notice of ULP charges against it when served with copy of C and had opportunity to prepare its ans and defense; GC did not seek hearing but instead filed mtn for summary judgment of which E had full and fair notice; and E's challenge to Bd's certification on statutory grounds is normally resolved by summary judgment, not hearing)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession 682 F.2d 72 (C.A. 3, June 1982)

(in denying Bd's application for enforcement of its summary judgment in 8(a)(5) proceeding against debtor-in-possession who had obtained bankruptcy ct's permission to reject bargaining agreement, which was affirmed by district ct, ct, upon remanding to cts below, emphasized that application for enforcement was not entered after reception of evidence by ALJ and Bd review of record, and held that denial of enforcement does not preclude Bd from processing charges through full hearing governed by bankruptcy ct's determination on remand and guided by ct's views expressed herein)

Livingston Powdered Metal, Inc. v. N.L.R.B. 669 F.2d 133 (C.A. 3, Jan. 1982)

(although Bd's action was nominally a summary judgment, it was in reality a default, since in summary judgment there is no dispute about relevant facts while in default defendant's contentions, as here, are not considered but rather *ex parte* allegations of adversary are accepted as true; possibility that an injustice may occur is much more likely in those circumstances, since controversies are decided upon a procedural technicality instead of ruling on merits; and, consequently, in a default case, more exacting judicial scrutiny is in order)

Livingston Powdered Metal, Inc. v. N.L.R.B. 669 F.2d 133 (C.A. 3, Jan. 1982)

(in case in which Bd issued summary judgment considered by ct to be in reality a default, ct held that where injustice may result in default judgments by administrative agencies, consideration must be given to questions whether prejudice to plaintiff and meritorious defense on defendant's part exist, and standard of liberality rather than strictness should be applied; any doubt should be resolved in favor of setting aside the judgment so that cases may be decided on their merits; and a relevant factor is whether default was wilfully caused by defendant)

Bokum Resources Corporation v. N.L.R.B. 655 F.2d 1021 (C.A. 10, 1981)

6801-0000 Board authority to use summary procedure

Jefferson Electric Co., Inc. 261 NLRB No. 129

(E's subsequent recognition of U, occuring after its initial, unlawful refusal to bargain, insufficient to withstand *Motion for Summary Judgment,* since Ees' statutory rights had been violated)

World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession 247 NLRB No. 201

(where Respondent was debtor in possession and refused to file answer to complaint contending that bankruptcy court has exclusive juriediction over all controversies affecting debtor, this does not constitute *good cause* for failure to file mtn and summary judgment granted)

Straus Communications, Inc. v. N.L.R.B. 625 F.2d 458 (C.A. 2, 1980)

(E's contention that Bd erred in granting summary judgment in favor of GC, on ground mtn for summary judgment upon which Bd based its decision involved disputed issues of fact, rejected, where there was no dispute regarding substance of U's ULP charges, allegations in complaint, or terms of parties' settlement agreement; E's disagreement with Bd's conclusions from undisputed facts does not support a challenge to Bd's use of its summary judgment power)

6833 NOTICE TO SHOW CAUSE PROCEDURE

Hyatt Regency New Orleans 260 NLRB No. 066

(Respondent not prejudiced by fact that Bd denied its request for review 1 day after Order and Notice To Show Cause issued in case where it presented no evidence showing prejudice)

Clean and Shine 255 NLRB No. 180

(mtn for reconsideration denied where E failed to answer complaint due to its admitted negligence after having been afforded two separate opportunities to file and subsequently failed to file timely answer to duly served Notice to Show Cause in response to mtn for summary judgment due to unsupported contention that E relied on Bd agent's alleged misrepresentations that it was too late)

Varco Phone Parts Corp. 250 NLRB No. 153

(E's response to show cause held not to constitute good cause for failure to file proper answer w/i meaning of Bd's R/R Sec. 102.20, where response did not deny commission of any ULPs and, therefore, allegations of C stood uncontroverted, and response did not explain why E failed to contact RD concerning an answer or extension of time for filing an answer)

Sierra Vista Hospital, Inc. 249 NLRB No. 067

(where Bd had denied E's mtn to revoke certification in companion case in which E failed to produce any evidence pertaining to conflict of interest as result of supervisory participation in positions of authority in nurses' association, and GC's mtn for summary judgment was still pending in instant case, Bd ordered that cause be shown why Bd should not now issue second supplemental D/O granting GC's mtn for summary judgment)

6833-0000 Notice to parties

Harbor Construction Company, Inc.; et al. 259 NLRB No. 076

(service of consolidated complaint and *Notice To Show Cause* on organizations which were *alter egos* and a *Single E* held sufficient where two organizations were served with statutory requirements and remainder, as denoted by affidavit of service, were served documents in issue at same address shared by all respondents which had common ownership and supervision)

Kochevar Enterprises, Inc. 256 NLRB No. 129

(although attempt was made to file response to Notice to Show Cause, such attempt was rejected by Bd due to respondent's failure to provide Bd with proof of service of the response on other parties involved in matter)

6867 CIRCUMSTANCES OF USE

6867—Cont.

SSS Typographers, Inc. d/b/a Ace Typographers and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions **262 NLRB No. 017**
(mtn for summary judgment granted, notwithstanding E's denial of complaint allegation that it had refused to bargain on specified date, where E's answer admitted complaint allegation that U had requested it to bargain, and various exhibits attacked to mtn for summary judgment conclusively established that E had refused to bargain on specified date)

SSS Typographers, Inc. d/b/a Ace Typographers and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions **262 NLRB No. 017**
(mtn for summary judgment granted, notwithstanding E assertedly refused to bargain on ground that it had been informed by written ptn that U did not have Ee majority, where alleged ptn was submitted w/i decertification year w/i which certified U's majority is irrebutably presumed)

N.L.R.B. v. Fun Striders, Inc. **647 F.2d 171(T) (C.A. 9, Mar 1981)**
(Bd's summary judgment proper, notwithstanding E's contention that political party campaigning for U created conditions sufficient to preclude summary judgment; setting aside of election is justified only when third party misconduct, attributalbe to neither party to election, creates atmosphere of fear or reprisal rendering free expression of Ees' choice impossible; and third party conduct can be attributed to U only where instigated, authorized, solicited, ratified, condoned or adopted by U; however, facts herein did not require hearing on either issue, and ct did not accord *controlling weight* to issue of U responsibility)

6867-0100 Generally

Mr. B. IGA, Inc. **265 NLRB No. 111**
(more than 3-year delay from time of processing E's objecticns to election in R case to time of mtn for summary judgment in C case, during which 3 of E's 4 stores were sold, number of Ees in unit was reduced from 19 to 3 and complete turnover of Ees in unit, not defense to mtn where Bd's affirmance of RD's Supplemental Decision clearly indicated that issues were considered by Bd; *delay* not *special circumstance* requiring Bd to reexamine its decision in underlying R case)

The United Credit Bureau of America, Inc. v. N.L.R.B. **643 F.2d 1017 (C.A. 4, Mar. 1981)**
(in ALJ hearing where GC presented E's C from state civil action against Ee for filing ULP charge, Bd's finding violation of 8(a)(4) was judgment on merits rather than de facto grant of summary judgment)

N.L.R.B. v. Electro-Food Machinery, Inc. **621 F.2d 956 (C.A. 9, 1980)**
(summary judgment proper disposition where Respondent did not contest factual issue of whether final offer had been accepted but rather advanced affirmative defense that U's constitution precluded accepted offer from constituting final agreement)

Local 175, Automobile Workers, (UAW) v. N.L.R.B. **645 F.2d 1151 (C.A.D.C. Mar 1981)**
(use of summary judgment procedure to decide merits of complaint improper where Bd had only asked parties to submit briefs on propriety of disposition of issues via summary judgment)

6867-3000 Where answer inadequate

Peter Pan Ambulance Service, Inc. **265 NLRB No. 137**
(answer by letter in which E neither admitted, denied, nor explained any of C allegations and only objected to consolidation of the cases for hearing was not acceptable answer under R/R Sec. 102.20)

We-Care Trading Co., Ltd. **265 NLRB No. 086**
(letter to GC stating U had agreed to withdraw charge and that complaint was untrue)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **264 NLRB No. 087**
(allegations of gross backpay specification, except as to interim earnings, deemed admitted as true and GC's Motion for Partial Summary Judgment granted where respondent filed general denial w/o specifically denying gross backpay allegations, providing alternative formula, or explaining his failure to do so; assertion, in answer to NOtice to Show Cause, that he lacked knowledge because GC had subpoenaed his records held untimely and inadequate to explain his failure to seek information from GC, trial record, or elsewhere; general denial concerning interim earnings, however, sufficient to raise issue warranting hearing)

China Best, Inc., d/b/a Lai Gang **264 NLRB No. 144**
(mtn for summary judgment granted where Respondent wrote Bd after Notice to Show Cause why mtn for summary judgment should not be granted issued, stating it did not answer complaint because financially unable to retain counsel and requested second election because U had called in *ex-Ees* to vote, since Respondent did not established good cause under Bd's R/R Sec. 102.20 why allegations of complaint should not be deemed admitted inasmuch as letter lacked required specificity to serve as answer, nor timely filed nor duly served)

Material Transportation Co., Inc. and its successor Sco-Ric Trucking, Inc. **263 NLRB No. 128**
(GC's mtn for partial Summary Judgment denied where GC alleged that Respondent failed to supply supporting figures as required and that alleged successor-E failed to file timely answer; Bd found that E's answer contained more than general denial in that it alleged percentage reduction in work for each discriminatee and satisfied requirements of Sec. 102.54(b); Bd also held that matter of successorship is properly in issue and denied mtn for partial Summary Judgment against that E ordering hearing to determine successorship)

Sonny Stewart's Enterprises, Inc., d/b/a Harbor House **(263 NLRB No. 030**
(summary judgment granted where Respondent failed to file ans to back pay specification, notwithstanding it did notify GC 5 weeks after ans due that it had gone out of business as this is not timely response nor does it relieve respondent of its obligation to ans backpay specification)

DPM of Kansas, Inc. **261 NLRB No. 080**
(E's contention that under R/R Sec. 102.20 its statement that it is w/o sufficient knowledge to admit or deny that it has refused to bargain constitutes denial raising material issues of fact, rejected because Respondent may not, w/o explanation validly deny knowledge of its own actions alleged in C but must specifically deny allegations. Sec. 102.20 qualified by Sec. 102.21)

International Printing and Graphic Communications Union, Local 391 (Salem Gravure Division of World Color Press, Inc.) **259 NLRB No. 108**
(Bd granted mtn for summary judgment where allegations of complaint were deemed to be admitted true since U did not file proper answer pursuant to R/R Sec. 102.20 because it did not specifically admit, deny, or explain each of the facts alleged in the complaint w/i 10 days from service of complaint, or w/i extended time afforded it by GC nor did U show good cause for its failure to do so)

Parisian Manicure Mfg. Co., Inc. and its Alter ego Allure Marketing Corp., and James V. Nucito and Roseanne Nucito, Individuals **258 NLRB No. 068**
(E's letter stating *We Deny the allegations stated in notice you sent us* held insufficient answer)

6867-3300 In absence of answer

Oldwick Materials, Inc. **264 NLRB No. 183**
(notwithstanding E filed ans to C which alleged that E violated Sec. 8(a)(4) by discharging Ee for testifying at Bd hearing, its failure to file ans to amended C that alleged same Ee was laid off rather than discharged allowed Bd to grant mtn for summary judgment because of failure to file timely ans as amended C changed factual basis for violation to which no denial was made)

Raymond E. Virgili d/b/a Raymond E. Virgili Painting Contractor, etc. **263 NLRB No. 185**
(by debtor in possession)

Mahnis Wrecking, Inc. **263 NLRB No. 186**
(E's withdrawal of answer to mtn for summary judgment has same effect as failure to file answer)

Local 3489, Steelworkers (Stran Steel Corporation, a Division of National Steel Corporation) **263 NLRB No. 129**
(mtn to set aside settlement agreement on procedural grounds that U local and international did not file answers to notice to show cause why settlement agreement should not be vacated, denied, as such mechanical rule sacrifice exercise of sound judgment based upon all circumstances)

Fenestrol Window Manufacturers, Inc. f/k/a Fenestrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **263 NLRB No. 090**
(mtn for summary judgment on backpay specification granted where allegations of specification stand uncontroverted because of E's failure to file ans to mtn and to respond to notice to show cause; and since E and its *alter ego* or successor as well as interim trustee appointed by ct on E's ptn for bankruptcy, who was invited to answer specification, all failed to file ans or offer any explanation for such failure, allegations of specification deemed to be true; accordingly, E and successor ordered to comply with Bd's make whole and reinstatement order)

Martin Arsham Sewing Co. **260 NLRB No. 175**
(allegations of backpay specification deemed admitted to be true and Bd so found)

Nelson Electric, Gary C. Nelson, Inc., and Gary C. Nelson Electric **260 NLRB No. 065**
(allegations of backpay specification deemed admitted as true, since E's mtn to stay proceeding did not specifically deny or respond to allegations as required by Sec. 102.54(b) of Bd's R/R or explain E's failure to file timely answer)

Ashland Construction Company and Simon & Chemency, Inc., Architects **258 NLRB No. 079**
(withdrawal of answer has same effect as failure to file answer)

6867-3300—Cont.

Bemis, Inc. 256 NLRB No. 020
(allegations of complaint deemed admitted as true where respondent withdrew its answer to complaint; withdrawal of answer of necessity has same effect as failure to file)

Shulman Air Freight, Inc.; James L. Garrity, Trustee in Bankruptcy 255 NLRB No. 197
(allegations of specification found to be true where respondents had not filed answer to specification nor had requested extension of time; they also failed to file response to Notice to Show Cause or offered, satisfactory explanation to do so)

Magi-Clean, Inc. 255 NLRB No. 049
(mtn for summary judgment granted and backpay specification deemed admitted as true where respondent failed to file answer to specification and made no response to notice to show cause)

Painters and Allied Trades, Local Union No. 297, a/w International Brotherhood of Painters and Allied Trades of The United States and Canada, AFL-CIO-CLC (Kim, Inc.) 254 NLRB No. 168
(no good cause having been shown for failure to file answer, allegations of complaint deemed admitted and found to be true, and motion for summary judgment granted)

A. N. O. Packaging Company, Inc. 254 NLRB No. 110
(in absence of good cause for failure to answer complaint, motion for summary judgment granted upon E's failure to file answer to notice to show cause, thus making allegations of motion stand uncontroverted, and failure to answer RD's notification to E that, due to E's failure to file answer, GC would move for summary judgment)

Bighorn Beverage 254 NLRB No. 081
(concerning backpay specification)

United Inventories of Dallas, Inc. and United Physical Inventories, Inc. 253 NLRB No. 157
(*summary judgment* awarded in backpay proceeding, since Respondent did not file answer to (backpay) specification nor offer any explanation for its failure to do so)

IPC, Inc. 252 NLRB No. 080
(allegations of backpay specification deemed admitted to be true)

Collier's Superfood, Inc. d/b/a Willow Street IGA 252 NLRB No. 011
(Respondent withdrew answers to complaints and failed to respond to Notice To Show Cause)

American Ham Company, Inc. 251 NLRB No. 194
(where E failed to answer backpay specification and had not offered any explanation for failure to do so, allegations of specification deemed to be true and so found by Bd w/o taking of evidence in support of allegations)

D. V. Copying and Printing, Inc. 250 NLRB No. 085
(summary judgment granted where respondent failed to submit timely ans notwithstanding on last date to file ans respondent requested extension because respondent failed to show proper cause; moreover, fact that respondent now alleges that its counsel and his secretary were both ill at time ans due not determinative as it should have been alleged at that time)

Medallion Automotive Systems, Inc. 249 NLRB No. 131
(allegations of amended complaint deemed admitted and found to be true where after E's attorney advised counsel for GC that E was no longer functioning and that bankruptcy proceedings were being planned, E failed to file answer to amended complaint despite warnings by counsel for GC of consequences, and E further failed to file response to notice to show cause)

SPS Painting and Drywall, Inc.; James Sesch d/b/a J. Sesch Painting and Drywall 249 NLRB No. 009
(mtn for summary judgment granted where one of 2 respondents had filed ans to original C but neither respondent had filed ans to amended C)

Fieldston Ambulance & Medical Systems, Ltd.; et al. 248 NLRB No. 170
(GC's mtn for summary judgment granted where Es failed to file ans to backpay specification and made no response to Bd's notice to show cause)

Formsley Corp. JD-(ATL)-87-81
(summary judgment granted to extent of determining E's failure to deny allegation in C)

Speed Mercury, Inc. JD-32-81
(mtn for summary judgment granted where E withdrew its answer during course of hearing and all allegations in complaint deemed admitted)

6867-3325 Where answer untimely filed

B. K. Restaurants Olean, Inc., d/b/a Burger King Restaurant 265 NLRB No. 022
(where E filed ans to backpay specification nearly 4 months after expiration of second extension of time in which to do so, and failed to advance explanation for failure to file timely ans, Bd, in summary judgment proceeding, deemed allegations of specification to be true and so found w/o taking any evidence in support of such allegations)

B. K. Restaurants Olean, Inc., d/b/a Burger King Restaurant 265 NLRB No. 022
(where for the first time in summary judgment proceeding on backpay specification E asserted that it failed to file timely ans to specification because it had notified Regional Office informally that it disputed specification and that it was seeking legal counsel with experience before Bd, Bd held E's assertions did not adequately explain or justify E's failure to file timely ans; moreover, according to uncontroverted allegations of mtn for summary judgment, E withdrew any dispute as to bakcpay and was represented by counsel throughout period during which timely ans could have been filed)

China Best, Inc., d/b/a Lai Gong 264 NLRB No. 144
(mtn for summary judgment granted where Respondent wrote Bd after Notice to Show Cause why mtn for summary judgment should not be granted issued, stating it did not answer complaint because financially unable to retain counsel and requested second election because U had called in *ex-Ees* to vote, since Respondent did not established good cause under Bd's R/R Sec. 102.20 why allegations of complaint should not be deemed admitted inasmuch as letter lacked required specificity to serve as answer, nor timely filed nor duly served)

Stafford Construction Co. 261 NLRB No. 064
(mtn for summary judgment granted on backpay specification and net backpay due each discriminatee is as stated in specification, where E filed untimely ans and failed to file response to notice to show cause why mtn for summary judgment should not be granted; consequently, allegations of mtn for summary judgment stand uncontroverted and since E offered no explanation for failure to file ans, in accord with Bd's R/R, allegations of specification are deemed to be true and are so found w/o taking of evidence)

Electro-Mechanical Industries, Inc. 261 NLRB No. 670
(summary judgment granted where E explained that he failed to file timely answer because he had been hospitalized for one week, was than urged to file promptly, filed 8 and 3 days after summary judgment mtn was filed but failed to serve answer on all parties)

Clean and Shine 255 NLRB No. 180
(mtn for reconsideration denied where E failed to answer compliant due to its admitted negligence after having been afforded two separate opportunities to file and subsequently failed to file timely answer to duly served Notice to Show Cause in response to mtn for summary judgment due to unsupported contention that E relied on Bd agent's alleged misrepresentations that it was too late)

Livingston Powdered Metal, Inc. 253 NLRB No. 073
(Summary Judgment granted where E, after receiving extensions, mailed answer to complaint on date that answer was to be filed with RD who did not receive answer until after GC's mtn for summary judgment had been mailed to Bd; Section 102.114(b) of R/R states that filing date means that document must be received by Bd on that date)

APD Transport Corp. and Its Alter Ego, National Book Consolidators, Inc. 253 NLRB No. 066
(mtn for summary judgment granted where E failed to show good cause for failure to file timely answer; and request to withdraw charges and dismiss complaint because of settlement agreement denied since settlement agreement did not provide substantial remedy, some Ees objected to settlement terms of private settlement agreement, and settlement agreement would not effectuate policies of Act)

American Steel Line Co. 253 NLRB No. 046
(allegations of complaint were deemed admitted and found to be true where (1) respondent failed to answer, or show good cause for not doing so, after RD informed it that its letter accusing U of illegal activities did not comply with Bd's rules regarding valid answers, stated that respondent should inform RD if it wished its letter to constitute an answer, and extended time for answering and (2) even if deemed an answer, letter did not meet Bd requirement that an answer specifically admit, deny or explain each allegation of complaint)

Charter Co. 252 NLRB No. 007
(mtn for summary judgment granted, where E filed untimely answer to complaint over 2 months after deadline set for filing, E offered no explanation for its untimely answer, and it did not respond to notice to show cause; consequently, in accordance with Bd's R/R, allegations of complaint are deemed to be admitted and are found to be true)

Varco Phono Parts Corp. 250 NLRB No. 153
(summary judgment granted where E failed to file acceptable answer w/i 10 days from service of C, or w/i extended time afforded it by RD, and no good cause for E's failure to do so was shown; consequently, allegations of C are deemed to be admitted true)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession 682 F.2d 72 (C.A. 3, June 1982)
(where debtor-in-possession untimely responded to 8(a)(5) C and notified Bd that bankruptcy ct had shortly before granted its mtn to reject labor contract on which C was based, ct held Bd erred as matter of law and misused its discretion in granting mtn for summary judgment; while not condoning

6867-3325—Cont.

failure to file, ct refused to enforce Bd order that cavalierly refused to recognize outstanding federal ct order directly relating to proceedings before Bd; technical breach did not excuse Bd's refusal to recognize ct order and to explain its reasons for doing so)

National Book Consolidators, Inc. v. N.L.R.B. **672 F.2d 323 (C.A. 3, Mar. 1982)**

(ct denied enforcement in case where Bd had granted summary judgment against E, held to be alter ego, for failure to file answer to ULP charges since *good cause* was shown to justify late filing of such answer in view of U's delay of withdrawing complaint after written settlement of ULPs had been signed by parties and E had been lulled into belief by RD's several extensions of time in accommodation of settlement that such settlement would be acceptable in lieu of an answer)

Kessler Institute For Rehabilitation v. N.L.R.B. **669 F.2d 138 (C.A. 3, Jan. 1982)**

(Bd Rule, Sec. 102.114, provides, inter alia, maximum time period for Bd to receive documents with additional 3 day period allowed if Bd uses mail to serve notice of right to file documents, and further, if time period ends on Sunday or holiday (Saturday considered holiday), these days are not counted in response period and 3 day mailing period is tacked on beginning on 2nd day following such Sunday or holiday)

Livingston Powdered Metal, Inc. v. N.L.R.B. **669 F.2d 133 (C.A. 3, Jan. 1982)**

(where Bd issued summary judgment because E's ans mailed on day designated for filing was received 7 days late on ground that pleading mailed on due date is always delinquent because in no event could it reach Bd before end of business day, ct held that an ans will be accepted if it is mailed before due date, even though late on arrival; and equities herein require acceptance of ans, even though not mailed until due date of extension period granted to E)

Livingston Powdered Metal, Inc. v. N.L.R.B. **669 F.2d 133 (C.A. 3, Jan. 1982)**

(Bd abused its discretion in issuing summary judgment because E's counsel filed untimely ans, since Bd should have considered inexperience of E's counsel in Bd cases, disruption of his practice by personal problems, fact that counsel was not a chronic late filer or dilatory in proceedings and that delay in filing was not factor which would have delayed resolution of case on merits; moreover, E was barred from presenting a meritorious defense which GC had been timely apprised of, and Bd will have to consider intervening ct decision dealing with issue herein)

6867-6700 Where issue has or could have been previously resolved

American Laundry Machinery, Inc. **263 NLRB No. 131**

(ALJ's order granting E's mtn for summary judgment to dismiss grounded, *inter alia*, on RD's investigation and administrative dismissal of prior ULP charges vacated, notwithstanding earlier charges covered some of same allegations, where such charges were subject of only administrative investigation and were not adjudicated)

American Laundry Machinery, Inc. **263 NLRB No. 131**

(ALJ's order granting E's mtn for summary judgment to dismiss grounded, *inter alia*, on non-Bd settlement purporting to settle all matters between E and U, vacated since matter was not ripe for summary judgment and allegations raised issues best resolved through formal hearing where there was sharp disagreement among parties as to what non-Bd settlement did or did not purport to include)

Jersey Shore Medical Center **263 NLRB No. 105**

(summary judgment granted where Bd rejected E's assertion that hearing was warranted based on newly discovered evidence of copy of collective bargaining agreement that indicates greater magnitude of U misrepresentation, where E did not show why contract was previously unavailable or newly discovered)

Cambridge Taxi Company **260 NLRB No. 119**

(E's mtn for summary judgment granted where instant charge was filed prior to settlement agreement between parties notwithstanding instant charge was not specifically listed in agreement since settlement agreements dispose of *old* issues involving presettlement conduct of parties unless prior violations were unknown to GC, not readily discoverable by investigation, or specifically reserved from settlement agreement by mutual understanding of parties. Omitting charge from settlement agreement does not constitute specific reservation)

Net Television, Inc., a Wholly Owned Subsidiary of Educational Broadcasting Corporation **252 NLRB No. [illegible]**

(summary judgment denied where RD erroneously refused E's request to withdraw stipulation prior to representation election that Ee was supervisor which E entered into with belief that two other Ees who occupied analogous positions were also supervisors but were determined afterwards not to be supervisors by RD; stipulation did not factually address Ee's actual job duties and authority nor was Ee's status litigated in that regard)

Franklin Art Glass Studios, Inc. **2[illegible]0 NLRB No. [illegible]**

Divine Providence Hospital of Pittsburgh **248 NLRB No. 078**

(mtn for summary judgment granted where all issues raised by E were or could have been litigated in prior R proceeding, E does not offer to adduce at hearing newly discovered or previously unavailable evidence nor allege any special circumstances which would require Bd to reexamine R-case decision)

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**

(E's mtn for summary judgment based on E's claim that charging party had refused E's unconditional offer of reinstatement, denied since issue of whether E in fact made unconditional offer of reinstatement had not yet been resolved and case involved other issues which had been resolved contrary to E)

6867-6708 Jurisdiction

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**

(Bd's assertion of jurisdiction in prior R case underlying instant ULP proceeding held res judicata of every contention raised in R case to avoid Bd's jurisdiction as well as any contention that could have been raised)

N.L.R.B. v. Southeast Association For Retarded Citizens, Inc., d/b/a Southeast Work Training Center **666 F.2d 428 (C.A. 9, Jan. 1982)**

(no denial of due process where E claims that Bd relied on allegedly coerced stipulation as basis for its jurisdiction and such claim was first raised in answer to GC's mtn for summary judgment, as claim could have been litigated in prior proceeding; moreover due process was not denied and coercion was not involved where E voluntarily submitted information that GC could have subpoenaed)

St. Elizabeth Community Hospital v. N.L.R.B. **626 F.2d 123 (C.A. 9, 1980)**

(First Amendment challenge to Bd's jurisdiction over charitable hospital operated by religious order held timely raised, notwithstanding contention that issue could have been litigated at R proceedings before RD and no new or previously unavailable evidence was offered or special circumstances alleged to require Bd's consideration, since it is sufficient that hospital raised First Amendment issue in R proceedings before Bd and did not defer its challenge to enforcement proceedings; case remanded to Bd for further consideration in light of SCt's opinion in *NLRB v. Catholic Bishop*, 440 U.S. 490)

6867-6712 Failure to refer Region's investigatory file

Prairie Tank Southern, Inc. **261 NLRB No. 117**

(E's failure to previously argue that RD improperly failed to transmit complete record in underlying R case to Bd not justified by Region's refusal in instant case to enter into stipulation to effect that affidavits taken during Region's investigation of R case not forwarded to Bd. E may not now raise this as defense to failure to bargain, since no requirement that RDs enter into such stipulations, and E was familiar with requirements for filing exceptions to elections and what constitutes record thereunder; further, E had notice through RD's report as to what would constitute record)

Knickerbocker Foods, Inc., A Division of Knickerbocker Meats, Inc. **260 NLRB No. 121**

(statements of witnesses which were before RD in his disposition of election objections and challenged ballots are expressly excluded from definition of *documentary evidence* in Sec. 102.69(g)(1)(ii) of R/R, and this accords with Bd policy of protecting investigatory affidavits from disclosure when witnesses have not testified at hearing, thus E was not denied due process and party which wants Bd to consider statements of witnesses must append them to its submission to Bd)

Harvard Folding Box Co., Inc. **259 NLRB No. 102**

(no denial of due process by RD's failure to forward E's witness's affidavit to Bd upon request for review, since (a) it was not part of record under R/R 102.69(g) being expressly excluded from record under 1981 amendment to Sec. 102.69 and (b) was not prejudiced thereby, where E attached affidavit to mtn to reopen record and Bd considered it as part of record but found it raised no material issue of fact or law warranting reversal or modification of certification)

Colonial Manor 1977, Inc. **253 NLRB No. 131**

(RD's failure to foweard to Bd affidavits obtained during investigation of objections held not to make Bd's review of R proceeding improper; RD's decision was final decision on the record, Bd's R/R require request for review to be self-contained document enabling Bd to rule on basis of its contents w/o recourse to record, it was no abuse of Bd's discretion to deny request solely on basis of RD's decision and E's request for review which presented no substantial and material issue of fact; and action herein accords with Bd's policy of expeditiously resolving qcr)

Allis Chalmers Corporation **252 NLRB No. [illegible]**

(mtn for summary judgment granted notwithstanding E's contention that Bd's review of RD's report on objections was defective because entire investigative recard was not before it when it adopted report, and that Bd should consider entire record in underlying R proceeding suplemented by

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proper hearing; Bd properly exercised its discretion in adopting RD's decision inasmuch as E's exceptions raised no substantial or material issues to warrant a hearing, and instant finding is supported by Act's policy of expeditiously resolving R questions; Bd declined to follow Prestolite, 592 F.2d 306 (C.A. 6) and Cambridge Wire 622 F.2d 1195 (C.A. 4))

N.L.R.B. v. Claxton Manufacturing Company, Inc. 613 F.2d 1364 (C.A. 5) (1980)
(RD must make available relevant information discovered in course of investigation of representation election, at least to extent that E has pointed him toward it, whether it favors successful party or objector regardless of whether it was referred to by objectors affidavits or is independently turned up by investigation)

N.L.R.B. v. RJR Archer Inc., Filmco Division 617 F.2d 161 (C.A. 6, 1980)
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

N.L.R.B. v. Advanced Systems, Inc. 681 F.2d 918 (C.A. 9, Apr. 1982)
(Bd's interpretation that Rule 102.69(g) required less extensive record to be transferred to Bd in R cases where no hearing was held than in cases where hearing was held, held error by ct.)

N.L.R.B. v. Advanced Systems, Inc. 681 F.2d 918 (C.A. 9, Apr. 1982)
(remanded for evidentiary hearing Bd refused to hold w/o reviewing documentary evidence underlying RD's report on objections and w/o making such evidence part of record for judicial review. RD did not send any documentation relied on in report and only documentary evidence before Bd was affidavit attached to exceptions. RD's failure to transmit documents not harmless since not submitted by objecting E either)

6867-6725 Unit determination

Brooklyn Psychosocial Rehabilitation Institute, Inc. 264 NLRB No. 009
(GC's mtn for summary judgment granted where unit issue concerning application of *N.L.R.B. v. Yeshiva University*, 444 U.S. 672 (1980) to instant proceeding was fully litigated in prior R proceeding; E's reliance on *Ithaca College*, 261 NLRB No. 83 (1982), *Thiel College*, 261 NLRB No. 84 (1982), and *Duquesne University of The Holy Ghost*, 261 NLRB No. 85 (1982), decided subsequent to *Yeshiva*, was misplaced inasmuch as those cases were similar to *Yeshiva* and E has failed to show how instant faculty exercises comparable authority in making academic as well as nonacademic policy)

Benchmark Industries, Inc. 262 NLRB No. 031
(*Respondent's mere assertion in its opposition to mtn for summary judgment that it has unspecified information to submit concerning appropriateness of unit does not suffice as offer of newly discovered or previously unavailable evidence* that would require Bd to reexamine decision made in underlying R proceeding)

The Medical Center at Bowling Green 261 NLRB No. 120
(contention that E was not obligated to bargain because unit placement of certain Ees was unresolved, rejected since neither basic appropriateness of the certified unit was affected nor parties obligation to bargain with respect to that unit)

The Trustees of The Masonic Hall and Asylum Fund 261 NLRB No. 049
(mtn for summary judgment that E violated 8(a)(5) by refusing to furnish requested information on wage, fringe benefit, and employment data granted where E defended its refusal on grounds that certified unit was not appropriate, since E offered no new evidence concerning appropriateness of certified unit -- which had already been litigated -- and no evidence to rebut presumptive relevance of information requested)

Penstone Corporation 260 NLRB No. 188

Milton College 260 NLRB No. 047
(GC's mtn for summary judgment denied and proceeding remanded for hearing concerning appropriateness of unit of college's faculty members where E claimed that SCt's intervening *Yeshiva* decision, holding certain faculty members managerial, rendered previously stipulated unit of faculty members' inappropriate; SCt's decision, issued following initial stipulation herein, constituted substantial change regarding managerial status of faculty members; there was no allegation of change in faculty's duties or authority; issue was not previously litigated; and E cannot be held to have knowledgeably waived ct decision which postdated unit stipulation)

Milton College 260 NLRB No. 047
(in denying GC's mtn for summary judgment in proceeding in which GC claimed that college, which had stipulated appropriateness of faculty members' unit, had effectively wavied litigation of appropriateness of such unit, asserted by E to be inappropriate because of SCt's intervening *Yeshiva University* decision holding certain faculty members to be managerial, Bd held that, since waiver implies knowledge of a right before it can be waived, E cannot be held to have knowledgeably waived a ct decision which issued some 9 months following initial stipulation herein)

Mercury Marine Division of Brunswick Corporation 259 NLRB No. 110
(in prior UC case)

Mr. B. IGA, Inc. 255 NLRB No. 111
(more than 3-year delay from time of processing E's objections to election in R case to time of mtn for summary judgment in C case, during which 3 of E's 4 stores were sold, number of Ees in unit was reduced from 19 to 3 and complete turnover of Ees in unit, not defense to mtn where Bd's affirmance of RD's Supplemental Decision clearly indicated that issues were considered by Bd; *delay* not *special circumstance* requiring Bd to reexamine its decision in underlying R case)

Globe Products Corp. 254 NLRB No. 185
(E's mtn for summary judgment granted where RD found that election ptn was not premature even if E's plans for expansion were not speculative as work force at hearing would constitute 50 percent of its contemplated Ees and 100 percent of job classifications and Ees' right to immediate representation outweighed potential evil of disenfranchisement of prospective voters)

Valley View Hospital 252 NLRB No. 160
(GC's mtn for summary judgment denied where RD had found unit including RNs appropriate in view of stipulation of parties; however, there was no testimony at R hearing which would indicate RNs were technical Ees, or performed duties different from those implied in their job classification, and stipulation alone cannot override mandate of 9(b) requiring professional Ees to vote on inclusion in unit with non-professional Ees)

Big Y Foods, Inc. 251 NLRB No. 122
(E's contention that Bd had not fulfilled its statutory duty to make unit determination in its Decision and Direction of Elections and summary judgment fails because of new issue that could not have been previously raised held w/o merit; Bd had found that either Unit A *or* Unit B was appropriate, and therefore affirmative duty placed on Bd by Sec. 9(b) was not violated by allowing Ees to express their desires in elections)

Colorado Aggregate Company, Inc. 250 NLRB No. 160
(concerning Ees of two separate and distinct facilities of E)

Formaloy Corp. JD-(ATL)-87-81
(primary judgment granted to extent of determination of appropriate unit, since both E and GC agreed to unit by written stipulation)

Burns Electronic Security Services, Inc. v. N.L.R.B. 624 F.2d 403 (C.A. 2, 1980)
(remanded for reconsideration of question of whether Ees known as *Operator/Runners* were guards w/i meaning of Sec. 9(b)(3) where Bd held determined Ees were not guards on basis of R hearing only, did not consider relevant information introduced at ULP hearing on related charge and avoided addressing inconsistency between classification of Ees in present case and Ees with same title in three Bd decisions involving same E, notwithstanding Bd's argument that R/R Sec. 102.67(f) required party to produce all abvailable evidence at R hearing rather than attempt to relitigate unit issue at ULP hearing)

6867-6790 Failure to hold hearing on objections to election

Semco Printing Center, Inc. 265 NLRB No. 073
(in summary judgment proceeding, Bd rejected E's contention that it is entitled to hearing on specified objections to election, where Bd, prior to adopting findings and recommendations of RD's report with respect to objections, considered report, exceptions thereto, and entire record and, by its adoption of portion of report recommending that objections herein be overruled, necessarily found that such objections raised no material issue warranting a hearing)

Bleyer Industries, Inc. 260 NLRB No. 035
(refusal of some Ees on E's season recall list to return to work does not constitute newly discovered evidence relevant to preelection determination of voting eligibility of those Ees)

F. W. Woolworth Co. 258 NLRB No. 176
(mtn for summary judgment on refusal to bargain complaint denied and E entitled to hearing on underlying objections to election since E raised litigable material issues of fact where certified representative had merged with another U and while intended merger was raised in objections to election, there was no consideration in R case of actual merger and issue of U's successorship)

Allis Chalmers Corporation 252 NLRB No. 063
(mtn for summary judgment granted notwithstanding E's contention that Bd's review of RD's report on objections was defective because entire investigative record was not before it when it adopted report, and that Bd should consider entire record in underlying R proceeding suplemented by proper hearing; Bd properly exercised its discretion in adopting RD's decision inasmuch as E's exceptions raised no substantial or material issues to warrant a hearing, and instant finding is supported by Act's policy of expeditiously resolving R questions; Bd declined to follow Prestolite, 592 F.2d 306 (C.A. 6) and Cambridge Wire 622 F.2d 1195 (C.A. 4))

N.L.R.B. v. U. S. Cablevision Corp. 614 F.2d 341 (C.A. 2) (1980)
(whether hearing on objections required or not, ct stated *conduct of representation elections is the very architype of a purely administrative function with no quasi about it, concerning which cts should not interfere save for the most glaring*

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discrimination or abuse however, if party demonstrates by prima facie evidence existence of substantial and material factual issues which if resolved in its favor, would require setting aside election hearing is required)

N.L.R.B. v. South Mississippi Electric Power Association 616 F.2d 837 (C.A. 5, 1980)
(*neither constitution nor Congress grant a right to a full evidentiary hearing in U election challenges where factual issues unresolved not substantial or material, hearing not required*)

N.L.R.B. v. Claxton Manufacturing Company, Inc. 613 F.2d 1364 (C.A. 5) (1980)
(enforcement denied where Bd improperly granted summary judgment in ULP case despite E's showings of atmosphere of fear and coercion that would tend to interfere with election and possible *Sewell* violations; hearing was required o.. E's objections)

N.L.R.B. v. Claxton Manufacturing Company, Inc. 613 F.2d 1364 (C.A. 5) (1980)
(RD must make available relevant information discovered in course of investigation of representation election, at least to extent that E has pointed him toward it, whether it favors successful party or objector regardless of whether it was referred to by objectors affidavits or is independently turned up by investigation)

N.L.R.B. v. RJR Archer Inc., Filmco Division 617 F.2d 161 (C.A. 6, 1980)
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes an abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

N.L.R.B. v. By-Land Enterprises, Inc., d/b/a By-Land Convalescent Hospital Dkt. No. 78-1713 (C.A. 9, March 21, 1979 (unreported))
(failure to hold evidentiary hearing on E's objections to elections did not deny E right to due process of law)

6867-6758 Challenges to ballots

McCrometer, Division of Ametek, Inc. 261 NLRB No. 136
(upon reconsideration, Bd denied GC's mtn for summary judgment since certification was improvidently granted where U challenged ballots on ground voters were not unit Ees, and RD chose not to conduct hearing on challenged ballots but rather to sustain challenges on basis of evidence apparently gathered from U during his investigation, and E offered to provide witnesses to support its contention that Ees in question shared sufficient community of interest with other unit Ees so as to require their inclusion)

Jacques Syl Knitwear, Inc./Biquette, Inc. 254 NLRB No. 150
(approval of informal settlement agreement withdrawn and hearing resumed where ALJ found that there was no *meeting of the minds* among parties to settlement agreement concerning challenged ballots)

Mercy Hospital of Buffalo 668 F.2d 661 (C.A. 2, Jan. 1982)
(Bd's granting summary judgment in 8(a)(5) case that ballot of clerk at hospital had been successfully challenged by U – and U therefore correctly certified – because clerk was member of religious order sponsoring and, according to Bd's findings, controlling hospital held error, where only alleged indicia of control relied on by Bd are the religious order's majority membership on board of trustees and the top administrator's membership in the order; moreover Bd granted summary judgment without holding evidenciary hearing to permit more extensive fact finding)

6867-6766 Objection to conduct affecting election

Sonoma Vineyards, Inc. 264 NLRB No. 085
(E's cross-mtn for withdrawal of order transferring proceeding to Bd and Notice to Show Cause denied since Bd rejected alleged newly discovered evidence showing bias on part of Bd agent who conducted election where agent's comments at polls regarding U's ability to overcome challenges to ballots were not, if stated, overheard by voters as to have impact on election, and furthermore, agent's subsequent employment with U 3 years after election is not evidence of bias nor contravenes R/R 102.119 inasmuch as there is no evidence that former agent is representing U in any capacity before Bd in this proceeding; accordingly Bd granted mtn for summary judgment)

ARA Services, Inc. 269 NLRB No. 26
(S.J. granted where E refused to bargain alleging invalid certification of U because U threatened Ees with deportation for their illegal alien status if they did not vote for U; however no evidence was introduced at original hearing to show that Ee who made statement was agent of U; thus E's offer of such statements as proof of interference with election are not determinative because they do not provide new evidence regarding agency status)

Racraft Foundry 261 NLRB No. 194
(E's defense to summary judgment proceeding denied where it alleged contention that was included as one of its objections to election in underlying R proceeding but was subsequently withdrawn by E. Having raised defense once but withdrew it, E is estopped from raising same issue in subsequent litigation, and it cannot qualify as newly discovered evidence)

Hyatt Hotels, Inc., d/b/a Hyatt Regency Phoenix 256 NLRB No. 106
(Bd held that E did not raise meritorious defense to mtn for summary judgment in case involving technical 8(a)(5) violation where E raised for first time question of Ee's supervisory status in regard to impact of Ee's alleged organizational and other U activities on election; however, RD had previously made determination of Ee's supervisory status concerning which Bd denied E's request for review and Bd held that instant case is a *related subsequent ULP proceeding which precludes relitigation of issues under R/R Sec. 102.67(f)*)

Hanes Dye and Finishing Company 258 NLRB No. 140
(summary judgment granted where after hearing on objections to election and Bd issuance of certification to U, E sought to reopen hearing but could not satisfy requirement that evidence sought to be introduced was newly discovered or unavailable to E at time of hearing)

Howard Johnson Company, d/b/a Howard Johnson Distribution Center 248 NLRB No. 068
(granting GC's mtn for summary judgment, held warranted even if GC neglected to affix to copy of mtn mailed to E U's letter requesting recognition and E's response thereto, since E had possession of the two documents)

6867-6790 Defenses raised in prior 10(k) determination proceeding

United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry, Local Union NO. 741 (The Ashton Company, Inc.)
(issues raised and litigated in prior 10(k) proceeding may not be relitigated in subsequent ULP proceeding alleging violations of Section 8(b)(4)(D) which are based in part on factual determinations made in prior 10(k) proceeding)

6867-6800 Failure to litigate present allegations in prior proceeding

We Transport, Inc. Towne Bus Corp. 265 NLRB No. 114
(mtn denied where argument that presumption of single-location unit should not apply to public service; i.e., bus company, because state law prohibits such unit fragmentation among Ees, providing public services could have been litigated in R-proceeding)

Racraft Foundry 261 NLRB No. 194
(E's defense to summary judgment proceeding denied where it alleged contention that was included as one of its objections to election in underlying R proceeding but was subsequently withdrawn by E. Having raised defense once but withdrew it, E is estopped from raising same issue in subsequent litigation, and it cannot qualify as newly discovered evidence)

F. W. Woolworth Co. 258 NLRB No. 176
(mtn for summary judgment on refusal to bargain complaint denied and E entitled to hearing on underlying objections to election since E raised litigable material issues of fact where certified representative had merged with another U and while intended merger was raised in objections to election, there was no consideration in R case of actual merger and issue of U's successorship)

Harrison Steel Castings Company 256 NLRB No. 187
(E's mtn for summary judgment on ground GC's failure to litigate instant allegations in earlier consolidated cases precluded him from litigating such allegations, denied, where GC was not aware of those allegations at time of earlier proceeding nor should he reasonably have discovered circumstances of allegations during earlier investigation; prosecution herein does not subject E to unnecessary harassment, and instant allegations are completely separate from prior litigation; and to compel GC to litigate all ULPs occurring during pendency of other litigation would allow E to delay indefinitely litigation of any charges by committing further ULPs)

St. Mary's Home, Inc. t/a St. Mary's Infant Home 258 NLRB No. 147
(E's assertion that U was not same labor organization that petitioned for certification, rejected as E did not mention alleged change in U's identity in its Request for Review; moreover, Bd had already held in earlier case that new international U was continuation of and successor to representational rights of Retail Clerks International Association and Amalgamated Meat Cutters which 2 Us had merged)

Maremont Corp. World Parts Division 269 NLRB No. 060
(E's mtn for summary judgment on ground that GC's failure to litigate instant allegations known to him at time of earlier hearing, precluded GC from litigating such allegations herein, denied; although aware of such allegations, GC was not therefore compelled to litigate allegations in prior proceeding, or not at all; there was no attempt to relitigate factual matters previously litigated under different provision of Act, alleged violations in both proceedings were not roughly concurrent, and there was no settlement agreement precluding litigation of presettlement conduct known to GC at time of execution of settlement).

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Movement Corp. World Parts Division **249 NLRB No. 043**
(E's mtn for summary judgment on ground that GC's failure to litigate instant allegations known to him at time of earlier hearing, precluded GC from litigating such allegations herein, denied; instant case does not subject E to unnecessary harassment since GC attempted to litigate allegations herein in earlier proceeding but ALJ denied mtn to amend C; having sufficient notice to prepare case herein, E may not now successfully argue that it has been prejudiced; and E's argument, if accepted, would severely restrict GC's legitimate exercise of discretion in expeditious litigation of outstanding Cs)

6867-6900 Where no factual dispute

Semco Printing Center, Inc. **265 NLRB No. 073**
(mtn for summary judgment granted where no material issues of fact existed with regard to E's refusal to furnish information sought by U concerning Ees' rate of pay, benefits, seniority dates, and related information, since such information is presumptively relevant for bargaining purposes and must be furnished upon request, and E herein had not attempted to rebut relevance of information)

Valley Mfg., Inc. **264 NLRB No. 171**
(GC's mtn for summary judgment granted where allegations of 8(a)(5) in C were admitted by E in affidavit when considered in conjunction with other documents attached to GC's mtn and assertions in GC's mtn itself; accordingly, all allegations of C held to be true and no material issues of fact remained for determination)

Stephens College **260 NLRB No. 143**
(mtn for summary judgment denied where case involves supervisory status of full-time faculty members and SCt's decision in *N.L.R.B. v. Yeshiva University* rejected *collective authority* theory RD relied on in his finding of nonsupervisory status; therefore genuine issue exists which cannot be resolved on current record)

Honda of America Mfg., Inc. **259 NLRB No. 055**
(E's contention that its application of *Japanese approach to labor relations* should be considered held w/o merit and not special circumstance warranting further consideration by Bd)

Schoemer Construction Company **258 NLRB No. 173**
(mtn for summary judgment granted where E admitted it was bound by bargaining agreement and had failed to make payments into fringe benefit funds as provided therein)

Steinbaum Laundry, Inc., Brooks, Inc. d/b/a Rutters Linen Service **256 NLRB No. 176**
(summary judgment granted since no material issues of fact existed with regard to E's refusal to furnish information sought by U, where E admitted it refused to furnish requested information, and its defense on grounds U's certification was improper was rejected because it was attempt to relitigate issue which was or could have been litigated in prior R proceeding and which E was not entitled to do)

Zeigler Coal Company **256 NLRB No. 169**
(mtn for summary judgment granted where E's only reply to bargaining request was letter in which it asserted that current contract contained agreement that U would not seek to represent Ees in recently certified unit during life of contract covering another unit)

Eskimo Radiator Mfg. Co. **255 NLRB No. 043**
(no factual issue where E's refusal to furnish U wage, fringe benefit, and employment data concerning unit Ees was based on its contention that it had no obligation to supply such information and did not challenge relevance of information sought which has been held to be presumptively relevant)

W. F. Hall Printing Company **250 NLRB No. 122**
(mtn for summary judgment granted where it is admitted that E sent Ees letter, using language substantially same as that which has recently been found unlawful, requesting them to refuse to sign U authorization cards and also to report to E if any Ee harrassed them about signing U authorization cards)

Colony Printing and Labeling, Inc. **249 NLRB No. 002**
(and there was no matter in issue that required hearing before an ALJ; statements, admittedly made by E, constituted ULPs)

6867-9100 Obligation to bargain resolved in prior unfair labor practice

Robertshaw Controls Company **265 NLRB No. 032**
(summary judgment granted finding that E's failure to furnish U with requested information violated 8(a)(5), in view of Bd's decision in a prior case that E had obligation to bargain with U at all times pertinent herein)

6867-9500 Backpay proceeding

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **264 NLRB No. 087**
(allegations of gross backpay specification, except as to interim earnings, deemed admitted as true and GC's Motion for Partial Summary Judgment granted where respondent filed general denial w/o specifically denying gross backpay allegations, providing alternative formula, or explaining his failure to do so; assertion, in answer to NOtice to Show Cause, that he lacked knowledge because GC had subpoenaed his records held untimely and inadequate to explain his failure to seek information from GC, trial record, or elsewhere; general denial concerning interim earnings, however, sufficient to raise issue warranting hearing)

Fenestrol Window Manufacturers, Inc. f/k/a Fenestrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **263 NLRB No. 090**
(mtn for summary judgment on backpay specification granted where allegations of specification stand uncontroverted because of E's failure to file ans to mtn and to respond to notice to show cause; and since E and its *alter ego* or successor as well as interim trustee appointed by ct on E's ptn for bankruptcy, who was invited to answer specification, all failed to file ans or offer any explanation for such failure, allegations of specification deemed to be true; accordingly, E and successor ordered to comply with Bd's make whole and reinstatement order)

Sonny Stewart's Enterprises, Inc., d/b/a Harbor House **(263 NLRB No. 030**
(summary judgment granted where Respondent failed to file ans to back pay specification, notwithstanding it did notify GC 5 weeks after ans due that it had gone out of business as this is not timely response nor does it relieve respondent of its obligation to ans backpay specification)

Alamo Cement Company, d/b/a Portland Cement Company **262 NLRB No. 37**
(where parties entered into informal settlement agreement and dispute arose over amount of backpay due under its terms and RD issued backpay specification and notice of hearing alleging amount due; Respondent's use of general denial for disputing accuracy of formula and figures used not sufficient under Sec. 102.54(b) and (c) of R/R and summary judgment granted as to these portions; however, general denial is sufficient with respect to amount of intermin earnings contained in specification to raise issue warranting hearing on that matter)

Sun Inn, Inc. d/b/a San Antonio Inn **261 NLRB No. 129**
(where respondent failed to file timely answer to backpay specification and Notice to Show Cause, allegations of backpay specification were deemed admitted as true)

Ace Masonry, Inc. **261 NLRB No. 131**
(pursuant to Sec. 102.54 of Bd's R/R, allegations of backpay specification were deemed true and admitted w/o taking of supporting evidence where respondent was informed of provisions of SEc. 102.54 by backpay specification and letter from RD but failed to answer specification)

Stafford Construction Co. **261 NLRB No. 064**
(mtn for summary judgment granted on backpay specification and net backpay due each discriminatee is as stated in specification, where E filed untimely ans and failed to file response to notice to show cause why mtn for summary judgment should not be granted; consequently, allegations of mtn for summary judgment stand uncontroverted and since E offered no explanation for failure to file ans, in accord with Bd's R/R, allegations of specification are deemed to be true and are so found w/o taking of evidence)

Fugazy Continental Corp. **260 NLRB No. 168**
(GC's mtn for partial summary judgment on net backpay allegation in specification, and mtn to strike E's answers thereto, denied, where E's answers made general denials to specification's allegations and, since E's general denials on issue of interim earnings is directly related to computation and accuracy of net backpay which, in turn, is dependent upon data derived from interim earnings, E's general denials are sufficient to require hearing on issue)

Fugazy Continental Corp. **260 NLRB No. 168**
(in partial summary judgment proceeding on backpay specification, GC's mtn to strike portions of E's answers, which either deny generally or fail to explain adequately allegations of specification, granted, since E's answers are nonresponsive and not in conformity with Bd's R/R)

Fugazy Continental Corp. **260 NLRB No. 168**
(GC's mtn for partial summary judgment with respect to certain allegations in backpay specification granted since E's answers thereto are general denials and not adequately explained and, therefore are deemed to be admitted as true)

Fugazy Continental Corp. **260 NLRB No. 168**
(in partial summary judgment proceeding on backpay specification, E held precluded from introducing into evidence any controverting issues not properly raised in its answers)

Fugazy Continental Corp. **260 NLRB No. 168**
(in partial summary judgment proceeding on backpay specification, Bd rejected GC's contention that E was challenging remedy already decreed and that E had obligation under ct of appeals' judgment to make discriminatees whole for losses suffered; judgment of ct had no immediate relevancy to issues raised by GC's mtn; moreover, E's answer was sufficiently specific to constitute denial of specification's allegation involved herein)

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William Minter Masonry Contractor, Inc. 260 NLRB No. 157

(allegations of backpay specification deemed admitted to be true and so found where respondent did not specifically deny allegations as required by Sec. 102.54(b) and did not adequately explain failure to so deny)

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) 258 NLRB No. 098

(GC's mtn for summary judgment with respect to backpay specification issued to respondent U, denied; although U's original ans, amounting to general denial of entire backpay specification, would not have been adequate under Bd's R/R, U's subsequently submitted documents stating that general denial was based on lack of information concerning discriminatees' employment prior to their present jobs, were construed by Bd as an amended ans which adequately raised interim earnings issue; and since interim earnings are not generally w/i knowledge of respondent, a general denial is sufficient to place them in issue)

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) 258 NLRB No. 098

(although denying GC's mtn for summary judgment and ordering hearing concerning portion of backpay specification dealing with interim earnings raised as issue by respondent U's amended ans, Bd held that, inasmuch as U had not raised issues in its original ans or amended ans regarding other matters in backpay specification pertaining to backpay period or gross backpay, U's general denial was not sufficient to bring such matters in issue)

Marine Machine Works, Inc.; et al. 256 NLRB No. 004

(in summary judgment proceeding on backpay specification, Bd held E's ans constituting a general denial failed to comply with Bd's R/R Sec. 102.54(b) and (c) as to compliance matters w/i E's knowledge. where ans did not dispute accuracy of specification's figures or provide any alternative formula for computing amounts owed; and inasmuch as Ees' hours worked and pay rates are presumed to be w/i E's knowledge, ans was insufficient to deny specification's allegations concerning gross backpay and amounts owed to benefit funds)

Marine Machine Works, Inc.; et al. 256 NLRB No. 004

(in summary judgment proceeding on backpay specification, Bd held general denials in E's answers of allegations concerning interim earnings were sufficient to require hearing on such issue since it is not presumed that amount of interim earnings is normally w/i knowledge of E)

Marine Machine Works, Inc.; et al. 256 NLRB No. 004

(in summary judgment proceeding on backpay specification, Bd held Es' general denials of allegation in specification regarding their status as successor Es were sufficient to require hearing on whether they are successors obligated to remedy ULPs herein, since they were not made parties to underlying ULP proceedings and thus never had opportunity to present evidence at hearing as to their liability)

Marine Machine Works, Inc.; et al. 256 NLRB No. 004

(in summary judgment proceeding on backpay specification, Bd held E's general denial as to all allegations were insufficient under Bd's R/R Sec. 102.54(b) and (c); and since no explanation or response to notice to show cause was filed, E is deemed to have admitted all allegations in specification, except those regarding interim earnings, to be true)

Magi-Clean, Inc. 255 NLRB No. 049

(mtn for summary judgment granted and backpay specification deemed admitted as true where respondent failed to file answer to specification and made no response to notice to show cause)

Seven Motors Ltd., d/b/a Mazda South; et al. 252 NLRB No. 116

D. V. Copying and Printing, Inc. 260 NLRB No. 005

(summary judgment granted where respondent failed to submit timely ans notwithstanding on last date to file ans respondent requested extension because respondent failed to show proper cause; moreover, fact that respondent now alleges that its counsel and his secretary were both ill at time ans due not determinative as it should have been alleged at that time)

Chemtronics, Inc. 260 NLRB No. 006

(back pay specification deemed admitted as true and GC's mtn for summary judgment granted since ans not timely nor sufficient in form or content where 11 months from service of purported ans due in part to numerous extensions to allow E to obtain new labor counsel, and 5 months after E aware of its counsel's failure to file ans response was not ans prepared by new counsel but affidavit by E's vice-president)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L.A. Inhalation Therapy Services JD-(SF)-209-82

(GC's contention in mtn for summary judgment that amended backpay specification should be found true and recommended order should issue w/o taking evidence in support of allegations since Respondent failed to answer amended backpay specification, rejected, where Respondent had filed ans to original backpay specification as Bd's R/R states Respondents *may* rather *shall* amend its ans; thus, Respondent may rely on ans already submitted w/o having specification deemed admitted on basis of failure to answer amended specification)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L.A. Inhalation Therapy Services JD-(SF)-209-82

(backpay specification as to interim earnings remained uncontradicted and deemed true, notwithstanding Respondent's general denial as to interim earnings and that general denial sufficient to defeat summary judgment since Bd does not presume interim earnings w/i knowledge of Respondent, inasmuch as hearing ordered and held and Respondent failed to avail itself of opportunity to contest interim earning figure which GC had burden of establishing)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L.A. Inhalation Therapy Services JD-(SF)-209-82

(Respondent filed general denial to backpay specification but disputed end of backpay period, and thereafter, GC filed amended specification modifying backpay period in line with Respondent's objections to which Respondent filed no ans, nor appeared at hearing, nor responded to Notice To Show Cause, Mtn for Summary Judgment granted in view of lack of specificity in ans which under Bd's R/R allegations are deemed admitted, thereby precluding Respondent from offering evidence)

6884 DISMISSAL OF COMPLAINT OR ALLEGATIONS CONTAINED THEREIN

Rochester Institute of Technology 264 NLRB No. 135

(E's mtn to dismiss all allegations in 8(a)(5) case because RD revoked U's certification based on U's disclaimer of interest in representing Ees, denied, since alleged violation occurred when U was Ee bargaining representative, and subsequent disclaimer by U does not alter fact that E violated Act and that remedy is necessary for such violation)

Royal Zenith Corporation 263 NLRB No. 83

(Respondent's mtn to dismiss complaint granted where Charging Party's testimony on cross-examination false and contradictory so as to render his entire testimony not credible and where charging party violated ALJ's instructions not to discuss testimony with others)

Cambridge Taxi Company 260 NLRB No. 119

(E's mtn for summary judgment granted where instant charge was filed prior to settlement agreement between parties notwithstanding instant charge was not specifically listed in agreement since settlement agreements dispose of *old* issues involving presettlement conduct of parties unless prior violations were unknown to GC, not readily discoverable by investigation, or specifically reserved from settlement agreement by mutual understanding of parties. Omitting charge from settlement agreement does not constitute specific reservation)

Kennicott Bros. Company 256 NLRB No. 083

(E's mtn for summary judgment contending that RD's reissuance of complaint a year after alleged ULP was time-barred by Sec. 10(b), denied since Bd was not compelled by equities of case to overrule GC's reinstatement of timely filed charge where U acted timely throughout case and E was not prejudiced by and did not detrimentally change position in reliance on GC's actions; GC struck proper balance between Sec. 10(b)'s policy barring stale litigation and the Act' broad remedial policy, and RD did not abuse discretion by reinstating complaint on basis of U's reliance on his incorrect opn)

Electrical Workers, Local 1701 (Dynalectric Company) 262 NLRB No. 119

(where GC refused to consent to respondent's motion for dismissal of specified allegation, ALJ felt obliged to reserve decision thereon and subsequently made ruling disposing of issue)

Pyromectics, Inc. 251 NLRB No. 141

(E's mtn to dismiss complaint on ground that Ee's discharge was not specifically alleged as violation, denied; charge contained general 8(a)(1) allegation, and such charge is sufficient to support complaint alleging discharge of Ees in violation of Sec.8(a)(1); pleading of all the evidence in the charge is not required)

6892 GRANTING OF LIMITED SUMMARY JUDGMENT

Tucson Yellow Cab, Inc., A Debtor in Possession 265 NLRB No. 063

(Bd complied with inj of U.S. Bankruptcy Ct in granting summary judgment only to extent that Bd found E had committed ULPs w/o ordering normal remedies; Bd retained jurisdiction over present case pending outcome of bankruptcy)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand 264 NLRB No. 087

(allegations of gross backpay specification, except as to interim earnings, deemed admitted as true and GC's Motion for Partial Summary Judgment granted where respondent filed general denial w/o specifically denying gross backpay allegations, providing alternative formula, or explaining his failure to do so; assertion, in answer to NOtice to Show Cause, that he lacked knowledge because GC had subpoenaed his records held untimely and inadequate to explain his failure to seek information from GC, trial record,

6892—Cont.

or elsewhere; general denial concerning interim earnings, however, sufficient to raise issue warranting hearing)

The Westin Hotel **261 NLRB No. 141**
(mtn to strike portions of E's answer to mtn for summary judgment on grounds that they were contrary to facts admitted, denied, because mtn constituted endeavor by E to preserve its position)

Itt Lighting Fixtures, Division of ITT Corporation **258 NLRB No. 155**
(E's mtn for partial summary judgment denied, contrary to E's contention that Bd dismiss certain paragraphs (relating to transfer of U adherent to allegedly more onerous position) of amendment to consolidated complaint on ground that it was prohibited by Sec. 10(b) period and that neither RD nor GC had jurisdiction since above case had been transferred to Bd earlier, where Bd determined that there were material issues to be resolved at administrative hearing concerning objectionable paragraphs)

World's Best Janitorial Services, Inc. **255 NLRB No. 103**
(where E did not file ans to certain paragraphs of C but sent RD letter which was interpreted to be general denial of two paragraphs of the C, Bd granted GC's mtn for Limited Summary Judgement as to other allegations contained in C and remanded for hearing on allegations contained in these two paragraphs)

Formaloy Corp. **JD-(ATL)-87-81**
(primary judgment granted to extent of determination of appropriate unit, since both E and GC agreed to unit by written stipulation)

Formaloy Corp. **JD-(ATL)-87-81**
(summary judgment granted to extent of determining E's failure to deny allegation in C)

7000 JUDGMENT ON THE PLEADINGS

I.S.G. Extrusion Toolings, Inc. **262 NLRB No. 007**
(U's mtn for judgment on pleadings granted since no factual issues in dispute and E obligated to bargain with U, notwithstanding its closing of facility, its bankruptcy ptn and order of bankruptcy ct prohibiting payment of any debt of E by debtor in possession w/o permission of ct)

Dellinger Excavating, Inc. **261 NLRB No. 061**
(granted where respondent filed no answer to complaint)

V. Pangori & Sons, Inc., and David Currell,
Receiver in Bankruptcy **240 NLRB No. 070**
(mtn for judgment on the pleadings granted, since respondents failed to file answer to complaint)

7100 DEFAULT JUDGMENT

Urban Excavating Company **264 NLRB No. 041**
(mtn for default judgment granted in absence of answer to complaint alleging failure and refusal to make required payments into fringe benefit funds and to allow audit of its books and records to verify compliance persuant to collective bargaining agreement. Such audit provided for in contract)

D & J Gravel Company, Inc. **261 NLRB No. 054**
(mtn for default judgment granted where Respondent failed to answer complaint and failed to file answer to notice to show cause)

7200 ALJ's QUALIFICATION AND AUTHORITY

7201 GENERALLY

Classic Truck Rental Corp. **251 NLRB No. 056**
(where at time RD's order consolidating cases had issued, ALJ had ordered consolidation of cases with earlier cases and had reopened hearing. ALJ held that, since hearing had been reopened, any question concerning further consolidation would more appropriately be handled through motion to him rather than through RD)

7250 QUALIFICATION REQUIREMENTS

7250-3000 Substitution in event of unavailability

7250-3080 Preparation of report by new ALJ

Illinois Bell Telephone Company **259 NLRB No. 167**
(Bd upheld credibility findings of ALJ who wrote decision after trial judge died where such credibility findings were based on factors other than demeanor, and, in consonance with Bd policy set forth in *Standard Dry Wall*)

7250-4500 Motions to disqualify

Conair Corporation **261 NLRB No. 178**
(Bd denied E's mtn to disqualify ALJ, to vacate his decision and have hearing *de novo* assertedly because at settlement conference attended by ALJ and occurring before his decision issued E's counsel had informed participants that, because of economic changes unrelated to issues herein, E planned to move its operations to Hong Kong, which assertedly prejudiced ALJ's finding that E had repeatedly threatened to do so if Ees supported U and also prejudiced ALJ's findings of other violations)

7250-4533 Adequacy of facts alleged

Al Bryant, Inc., Harrisburg Drywall and
Construction Corporation, and Al Bryant
Associates, Inc. **260 NLRB No. 010**
(Bd rejected E's request that Bd listen to tapes of hearing as Bd reviewed record and decision, found no evidence of bias, hostility or prejudice although some of ALJ's statements may have been ill-chosen)

7250-4550 Procedural adequacy

Twin County Trucking, Inc. **259 NLRB No. 078**
(mtn to disqualify ALJ allegedly for showing bias by expressing off-the-record opinion of case's merits before respondent presented evidence, denied where E did not object on the record and did not comply with Bd's disqualification procedures)

7250-4567 Timeliness

Sanford Home For Adults **253 NLRB No. 153**
(respondents contention to Bd that ALJ should disqualify himself for having engaged in ex parte communication with RD, rejected, since contentions untimely filed as respondents delayed filing until after ALJ's decision issued; moreover, communication in no way addressed merits of complaint; rather, limited to settlement possibilities specifically allowable under Sec. 102.130 of Bd's R/R)

Pioneer Natural Gas Company **253 NLRB No. 060**
(Bd found no merit in E's contention that ALJ was prejudiced against E and unduly pressured it to settle case by alleged off-the-record comments where it was incumbent upon counsel for E immediately to request that any alleged comments be repeated on record, to make timely objection thereto, and to move that ALJ disqualify himself; moreover, E's claim of impropriety was not made until after ALJ had issued decision and thus not timely raised; in any event, ALJ's findings were fully supported by record evidence)

N.L.R.B. v. Sanford Home For Adults **669 F.2d 35 (C.A. 2, Dec. 1981)**
(ALJ's ex parte communication with GC held no basis for ALJ's disqualification, where respondents did not comply with R/R Sec. 102.37 requiring timely filing of affidavit alleging grounds for disqualification; parties, informed of communication, stated they were satisfied with ALJ's explanation concerning communication and did not raise objection until well after ALJ's decision; moreover, communication was entirely proper under R/R Sec. 102.130 permitting communication regarding settlement of case, which conversation herein dealt with and did not inappropriately deal with merits of case)

7250-5000 Disqualification for bias and prejudice

Serendippity-Un-Ltd and Tigerrr, Inc. **263 NLRB No. 100**
(E's contention that ALJ suffered from unspecified *conflict of interest* which caused him to be biased in favor of GC, rejected, and E's mtn for stay of proceedings, hearing *de novo* before different ALJ, and request for consideration by full Bd, denied, where ALJ conducted hearing in irreproachably impartial manner and, in fact, was extremely sensitive to E's representative status in proceedings as nonattorney and frequently allowed him to deviate from Bd's R/R)

Serendippity-Un-Ltd and Tigerrr, Inc. **263 NLRB No. 100**
(E's mtn for stay of proceeding and trial *de novo* before new ALJ on ground ALJ herein was unqualified due to prior knowledge of case as result of prejudice inherent in pre-hearing settlement conference initiated by ALJ, denied; Bd's R/R Sec. 102.35 authorized ALJ to hold settlement conference, and E failed to allege sufficient ground for disqualification under Bd's R/R Sec. 102.37; and there was no allegation of ALJ's knowledge *ex parte* of any evidence, unlawful contact with parties, or similar disabling element; nor did E support allegation of prejudice or wrongdoing by affidavit required by Sec. 102.37)

Penn Color, Inc. **261 NLRB No. 058**
(merely because ALJ resolved important factual conflicts in favor of GC's witnesses is no basis for finding that bias and partiality existed; total rejection of an opposed view cannot of itself impugn the integrity or competence of trier of fact)

Scherr Stern Food Corp. **248 NLRB No. 090**
(although documents pertaining to correspondence between respondent and RD, and also internal memorandum between GC and RD, had erroneously been placed in *formal* instead of *informal* case file, Bd held backpay proceeding before ALJ was not prejudiced as result, and did not require ALJ to disqualify himself from case or to dismiss backpay specification; documents were either not relevant to backpay proceeding or were otherwise not prejudicial, and E's counsel was given full opportunity at hearing to examine documents)

Ampco Metal Division of Ampco-Pittsburgh
Corporation **247 NLRB No. 091**
(contention that ALJ in original hearing should be disqualified because of bias and prejudice from participation in supplemental hearing, and that hearing de novo should be held before different ALJ, rejected)

7250-5030 Bias must appear on face of record

7250-5020—Cont.

Heads and Threads Company, a Division of MSL Industries, Inc. **261 NLRB No. 115**
(no bias of ALJ found in absence of statements or other evidence on record indicating bias or prejudice; contention that ALJ's former service as counsel to GC interfered with his impartiality or fairness, rejected)

Al Bryant, Inc., Harrisburg Drywall and Construction Corporation, and Al Bryant Associates, Inc. **260 NLRB No. 010**
(where party desires that ALJ disqualify himself, it must take action before ALJ files decision. Objection to conduct at hearing may be included in record)

Redlands Christian Migrant Association **260 NLRB No. 027**
(respondent's contention that ALJ was biased as result of its refusal to settle case rejected in view of lack of conduct by ALJ showing improper attempt to secure settlement or of indication in his findings and conclusions that he prejudged case or showed bias)

N.L.R.B. v. Webb Ford, Inc. **689 F.2d 733 (C.A. 7, Sept. 1982)**
(where ALJ evidenced some bias towards E, although not enough to warrant finding abuse of discretion, this bias detracts from weight accorded his credibility findings and ct subjected them to closer scrutiny than unusual, concluding that there is insufficient evidence to support ALJ's conclusions and remand case for further proceedings before different ALJ)

7250-5040 Intemperate language

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(no impropriety, bias and lack of due process evidenced by ALJ's failure to credit testimony of E's witnesses and his use of words and phrases that are incisively descriptive and damning to E; ct's reading of cold record did nothing to instill confidence in testimony of E's witnesses, and substantial evidence supports finding that E's firing of U activists was particularly petty and vindictive)

7250-5050 Improper conduct of hearing, credibility resolution or inferences

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **268 NLRB No. 161**
(charge of bias w/o merit and Bd noted attorney's prior groundless accusations against ALJ's; attorney behaved unprofessionally at hearing but Bd will not at this time institute disciplinary proceedings against him)

McLean Hospital, A Division of Massachusetts General Hospital **264 NLRB No. 068**
(no bias shown by ALJ in interpreting testimony at hearing as contended where there was no evidence ALJ prejudged case or demonstrated bias against charging party in analysis or discussion of the evidence)

Local No. 3, Electrical Workers (Nixdorf Computer Corporation) **282 NLRB No. 082**
(ALJ's taking judicial notice of credibility findings made in another case held not reversible error, notwithstanding fact that it is generally inappropriate for ALJ to rely on credibility findings made in another case; here, ALJ did not predicate his credibility resolutions on credibility findings in companion case, but rather based his resolutions on demeanor of witnesses and record as whole)

N.L.R.B. v. Aluminum Cruiser, Inc. **620 F.2d 116 (C.A. 6, 1980)**
(ct held E did not receive fair and impartial hearing where during hearing ALJ made several inexcusable and injudicious attacks upon E's president, one of which was particularly directed to his ethnic background, which could not but taint entire proceeding)

N.L.R.B. v. Webb Ford, Inc. **689 F.2d 733 (C.A. 7, Sept. 1982)**
(standard in determining whether ALJ's display of hostility and bias requires setting aside his findings and conclusions and remanding case before new ALJ is exacting one, and requires that ALJ's conduct be so extreme that it deprives hearing of that fairness and impartiality necessary to that fundamental fairness required by due process)

7250-5060 Resolution of all issues against respondent not evidence of bias

Dimensions in Metal, Inc. **258 NLRB No. 078**
(no basis for finding that bias and partiality existed merely because ALJ resolved important factual conflicts in favor of GC's witnesses)

Tom's Ford, Inc. **253 NLRB No. 125**
(no basis for finding ALJ biased merely because he resolved important factual conflicts in favor of GC's witnesses)

Holliston Manufacturing Company v. N.L.R.B. **643 F.2d 33 (C.A. 1, Mar 11, 1981)**
(ct held, contrary to E's contention of bias on part of ALJ based on fact that ALJ ruled against E, that ALJ's conduct was proper throughout administrative hearing; ct stated, *even had the ALJ's ruling in fact been erroneous a judicial ruling made in the ordinary course is not to be translated into bias by disappointed counsel*)

N.L.R.B. v. Jack August Enterprises, Inc. **583 F.2d 575 (C.A. 1)**
(no impropriety, bias and lack of due process evidenced by ALJ's failure to credit testimony of E's witnesses and his use of words and phrases that are incisively descriptive and damning to E; ct's reading of cold record did nothing to instill confidence in testimony of E's witnesses, and substantial evidence supports finding that E's firing of U activists was particularly petty and vindictive)

Miami Springs Properties, Inc., and James H. Kinley and Associates, Joint Employers v. N.L.R.B. **653 F.2d 276 (C.A. 6, Aug 1981)**
(contention that ALJ was biased against company, w/o merit where ALJ made careful assessments of facts and testimony, and his conclusions were well supported by the record)

7250-5080 Crediting all witnesses for one party and/or discrediting all witnesses for another

White Coffee Corporation **261 NLRB No. 140**

Twin County Trucking, Inc. **259 NLRB No. 076**
(contention that because ALJ credited GC's witnesses and discredited E's witnesses, his credibility resolutions were erroneous, biased or prejudiced, rejected)

Research Products/Blankenship Company **258 NLRB No. 088**
(no error where ALJ credited all of GC's witnesses over E's witnesses)

7250-7000 Conduct of prehearing conferences

7250-7084 Settlement conference

Serendippity-Un-Ltd and Tigerrr, Inc. **263 NLRB No. 100**
(E's mtn for stay of proceeding and trial *de novo* before new ALJ on ground ALJ herein was unqualified due to prior knowledge of case as result of prejudice inherent in pre-hearing settlement conference initiated by ALJ, denied; Bd's R/R Sec. 102.35 authorized ALJ to hold settlement conference, and E failed to allege sufficient ground for disqualification under Bd's R/R Sec. 102.37; and there was no allegation of ALJ's knowledge *ex parte* of any evidence, unlawful contact with parties, or similar disabling element; nor did E support allegation of prejudice or wrongdoing by affidavit required by Sec. 102.37)

7600 HEARING

7601 GENERALLY

Marine Machine Works, Inc.; et al. **256 NLRB No. 004**
(in denying GC's mtn for summary judgment in proceeding on backpay specification, Bd ordered hearing limited to determination of net interim earnings of discriminatees and to issue of whether Es are successor Es responsible for remedying ULPs herein)

Mosey Manufacturing Company, Inc. **255 NLRB No. 077**
(C case on remand from circuit ct to Bd retaines its status as ULP proceeding thereby enabling Bd, which had accepted remand, to remand proceedings to RD who in turn ordered case returned to ALJ rather than ordering hearing)

The Saloon, Inc. **247 NLRB No. 156**
(GC's contention that, in addition to alleged violations, certain other violations should be found, based on evidence adduced during trial, rejected, since it would be unfair inasmuch as respondent was never put on notice that such conduct was under scrutiney)

7601-5000 Procedural due process required

7601-5001 Generally

N.L.R.B. v. Sanford Home For Adults **669 F.2d 35 (C.A. 2, Dec. 1981)**
(due process not denied on ground Bd had predetermined outcome of case when it sought 10(j) inj; if such claim were accepted, Bd would preclude itself from fulfilling its obligation to review and decide whether ULPs had occurred under Sec. 10(c), by meeting its obligation to seek inj under Sec. 10(j); such result would be completely out of keeping with Congressional intent to delegate such duties to Bd; moreover, in seeking 10(j) inj, Bd does not decide merits of labor dispute, rather, it need only show reasonable cause to believe ULPs have occurred)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(no denial of due process merely because hearing on remand is conducted in context of ULP proceeding rather than R proceeding)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(E had full and fair hearing where, it was ably represented by counsel, had opportunity to produce evidence and cross examine adverse witnesses, and demonstrated no prejudice as result of GC's dual role at hearing)

7601-5001—Cont.

N.L.R.B. v. Blake Construction Co., Inc., etc. **663 F.2d 272 (C.A.D.C., Aug. 1981)**
(APA and Bd's R/R require that C inform E of violations asserted; Bd may not make findings or order remedies not charged in C or litigated in subsequent hearing)

N.L.R.B. v. Blake Construction Co., Inc., etc. **663 F.2d 272 (C.A.D.C., Aug. 1981)**
(E's substantial claim of lack of due process at hearing upheld, since failure to object at Bd level does not invariably deprive ct of ability to decide that hearing was fundamentally flawed for lack of due process; and ct review is not precluded, in absence of objection below, when Bd has patently traveled outside orbit of its authority)

7601-5025 Hearing not required in absence of issues to hear

McCrometer, Division of Ametek, Inc. **261 NLRB No. 136**
(upon reconsideration and denying GC's mtn for summary judgment, Bd directed hearing pursuant to R/R 102.69 to resolve substantial and material issues of fact and law where U had challenged ballots on ground voters were not unit Ees; and E, in opposition to challenges, submitted letter which noted that challenged Ees were permitted to vote in previous election involving same unit and petitioning U, specifically identified Ees' supervisor, and made clear and unequivocal offer to identify other witnesses and to cooperate in processing affidavits)

Fugazy Continental Corp. **260 NLRB No. 168**
(where backpay specification raised issue dealing with franchise agreement between E and discriminatees as franchise drivers, Bd held E's contention regarding franchise as having appreciated in value and ALJ's ruling which narrowed scope of issue to *capital loss situations* raised sufficient controversy to warrant hearing on the matter)

Keystone Pretzel Bakery, Inc. **256 NLRB No. 089**
(upon consideration of parties' statements of position, Bd concluded, contrary to contention, further hearing was unnecessary)

7601-5050 Requirement not obviated by fact decision justified on merits

N.L.R.B. v. Blake Construction Co., Inc., etc. **663 F.2d 272 (C.A.D.C., Aug. 1981)**
(even where record contains evidence supporting a R/O, ct will not grant enforcement in absence of either a supporting allegation in C or a meaningful opportunity to litigate underlying issue in the hearing itself)

7601-5075 Not denied because of delay in holding hearing

Shaw Industries, Inc., a Division of Crystal Springs Shirt Corp.; et al. **255 NLRB No. 117**
(E was not prejudiced or denied due process notwithstanding 2 year delay between time charge filed and hearing where delay caused by Bd waiting until another case involving same E was adjudicated; E had timely notice that matter would be brought to hearing and of allegations to be litigated; E had obligation to preserve its records and documents)

7612 CONTINUANCE OF HEARING

7612-3300 Discretionary with ALJ

A & A Ornamental Iron, Inc. **259 NLRB No. 138**
(ALJ's denial of continuance held not abuse of discretion)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

7612-6700 Grounds for continuance

7612-6767 Insufficient

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(E's mtn for continuance properly denied by ALJ where examination of record showed ALJ did not abuse his discretion in denying E's mtn)

7612-6767-2800 Absence of witnesses

Quebecor Group, Inc. Philadelphia Journal Division **258 NLRB No. 125**
(ALJ did not abuse his discretion when he denied Respondent's request for continuance in order to call former Ee as witness where Respondent was on notice that Ee would be necessary witness as he was named in complaint and Respondent made no showing that his whereabouts were unknown or he was otherwise unavailable)

Robert Batchelor d/b/a Batchelor Electric Co., a sole proprietorship **254 NLRB No. 186**
(request to remand case and reopen hearing denied where E's request for continuance of hearing was denied initially by RD almost 2 weeks before opening of hearing, did not ask ALJ for continuance during hearing and E failed to show any reason why it could not have taken steps to insure witness's appearance at hearing)

Leland Detroit Mfg. Co. **JD-489-82**
(on GC's mtn and his own order to show cause, ALJ resumed hearing which had been adjourned for 9 months because E's sole witness, its president, was unavailable to testify due to illness, since witness was still unavailable and E did not indicate when witness would be available and would not agree to the taking of his testimony outside hearing, or calling as witness E's vice-president who obviously was knowlegeable on matters in question)

7612-6767-4500 Obtaining evidentiary records for hearing

Ampco Metal Division of Ampco-Pittsburgh Corporation **247 NLRB No. 091**
(E's motion for continuance to obtain criminal record of witness for impeachment purposes, denied, where issue was first raised at original hearing, E had ample opportunity prior to supplemental hearing herein to obtain such record, and further delay in instant hearing is unwarranted)

7612-6767-5000 Engagement of counsel in other proceeding

Local 32E, Service Employees International Union, AFL-CIO (Cadillac Fairview Shopping Centers (U.S.) Ltd. d/b/a The Galleria **259 NLRB No. 100**
(fact that ALJ failed to grant further postponement of hearing held not arbitrary, capricious nor denial of E's right to hearing where E was granted postponement and agreed to new Bd hearing date, and subsequently E's counsel established trial ct hearing date which created conflict)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**
(due process not denied where hearing proceeded w/o Respondent's labor counsel when counsel failed to appear at hearing w/o submitting timely written request for second continuance and w/o justifying giving precedence to other matter, and at subsequent reconvening of hearing failing to appear w/o any previous form of request for continuance)

7612-6767-8700 Grounds created by party's own action

Flite Chief, Inc.; et al. **258 NLRB No. 148**
(Es' request for continuance of hearing, made after all testimony was completed, in order to obtain testimony of missing witness, denied, where, although unsuccessful in attempt to serve subpoena on witness, E did not request a continuance until a few days before date of hearing and at least 8 weeks after they were unable to serve witness)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(continuance to prepare defense denied where factual basis for GC's amendment arose from materials submitted by Respondent in response to *subpoena duces tecum* and Respondent cannot claim surprise as to legal implications of requested documents)

J. M. Tanaka Construction, Inc. **249 NLRB No. 028**
(where Respondent's counsel withdrew from case 14 days prior to hearing continuance denied because withdrawal caused by fact that counsel also represented co-defendant in case and defendants had created this untenable situation themselves)

Ron-Bob, Inc. t/a Crazy Horse Saloon **JD-621-81**
(E's contention that adjournment of hearing should have been longer than 2-day recess granted by ALJ because more time was needed to prepare E's case as result of last-minute change of counsel, rejected; short time E's new counsel had to prepare case was due to circumstances over which E alone had control; any harm to E's ability to adequately prepare case was more than offset by harm inherent in delay of hearing for at least a month due to circumstances herein; and E proffered no excuse in dilatoriness in selecting counsel)

J. M. Tanaka Construction, Inc. v. N.L.R.B. **675 F.2d 1029 (C.A. 9, Apr. 1982)**
(denial of contoinuance when E found alter ego herein substituted new counsel after case failed to settle was not abuse of discretion nor denial of due process where focus of hearing was alter ego status and relevant facts were within its own knowledge; counsel should have foreseen that settlement failure might necessitate his withdrawal from representation of one of the parties)

7618 PRODUCTION OF WITNESSES

7618-8000 Obligation on General Counsel to produce witnesses to resolve ambiguity in offer of reinstatement

N.L.R.B. v. Consolidated Dress Carriers, Inc., et al. **693 F.2d 277 (C.A. 2, Nov. 1982)**
(ct held that, in inquiring as to Ees' actual understanding of *reinstatement* language of mailgrams, found facially ambiguous by ct, although E has ultimate burden of persuasion on issue of validity of offer of reinstatement, Bd has an initial obligation to produce Ees to testify on their understanding of offer)

7625 SEPARATION OF WITNESSES

Gossen Company, a Division of the United States Gypsum Company **254 NLRB No. 041**
(mtn to exclude testimony of witnesses who had been permitted by E's counsel to read portions of transcript prior to testifying in alleged violation of sequestration arrangement, denied in circumstances herein where parameters of sequestration arrangement negotiated among counsel had not been precisely denied)

7625-3300 Discretionary with ALJ

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. **255 NLRB No. 096**

(no merit in E's exception to ALJ's refusal to sequester one or both of named discriminatees during hearing which was conducted in accordance with then-existing procedural rules; E was not prejudiced by ALJ's refusal to exclude discriminatees from any part of hearing; although one discriminatee was present while other discriminatee testified, their testimony differed in phraseology, order, emphasis, and details regarding area of their overlapping testimony; and finally, principal area of corroboration between testimony of discriminatees did not involve violation by E)

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**

(ALJ's ruling permitting sequestration of witnesses on mtn of charging party which was made after GC's first witness had completed direct testimony w/i ALJ's discretion since respondent did not demonstrate that ruling had prejudiced its case)

N.L.R.B. v. Wilhow Corporation, d/b/a Town and Country Supermarkets **666 F.2d 1294 (C.A. 10, Dec. 1981)**

(ALJ has authority to sequester witnesses, but fact that he did not is not necessarily reversible error where credibility findings made apart from testimony of unsequestered witness)

7625-8700 Failure to abide by sequestration order

Victor Electric Company **JD-368-82**

(testimony of witness who spoke with earlier witness in violation of sequestration order, credited, where his testimony did not deviate from that contained in his pretrial affidavit, therefore E not prejudiced; furthermore E's attorney did not move to strike testimony of witness who violated order)

7637 EXAMINATION OF WITNESSES

7637-0100 Generally

Arizona Public Service Company **247 NLRB No. 054**

(ALJ's ruling sustaining GC's objection to question to U representative by E's counsel at hearing regarding what U's bargaining posture would have been had E not refused to bargain over mandatory subject of subcontracting of unit work held not prejudicial to E's defense, since inquiry was directed at subjective intentions of U's negotiators about a proposal which they never tendered to E)

7637-3300 Leading questions

Stanley M. Feil, Inc. **250 NLRB No. 065**

(*reliability of answers to questions is enhanced when the questions are nonleading and simply put to witness so as to elicit exactly what was said. Such has resulted in procedural requirements that witnesses be questioned in a nonleading manner, even on cross-examination, before leading questions can be used*)

United States Steel Corporation, Geneva Works **JD-(SF)-122-81**

(question held not leading since it was as susceptible of *yes* answer as of *no* answer and thus did not contain element of suggestion)

7637-5800 *Surprise* testimony adduced at hearing

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. **683 F.2d 305 (C.A. 9, July 1982)**

(E's claim of *surprise* at specific factual contentions brought forth at hearing held w/o merit where E failed to object to introduction of vast majority of evidence; E's extensive cross-examination of witnesses who testified concerning *surprise* factual allegations belied E's claim that it was prejudiced by introduction of such testimony; and even if charge was lacking in specificity, record conclusively demonstrated that *surprise* factual issues were fully and fairly litigated at hearing)

7637-6700 Cross-examination

Feld & Sons, Inc. t/a Today's Man **263 NLRB No. 041**

(ALJ properly granted mtn to strike entire testimony of E's official because of his defiance of ALJ's order to respond to questions on cross-examination, which ALJ had properly directed him to do; although official's conversations with E's corporate counsel were protected by attorney-client privilege, official may not assert privilege where E petitioned Bd to set aside settlement agreement, contending that official executed it upon self-serving advice of attorneys representing E in proceeding; Bd cannot reasonably evaluate E's contention w/o knowing whether official also received advice on subject from other attorneys)

Silverman's Men's Wear, Inc. **263 NLRB No. 023**

(Bd upheld ALJ's ruling that E might not cross-examine U officer about organizing campaigns other than one involved in proceeding herein; E's opportunity to test U officer's memory was ample in context of issues directly involved in proceeding)

Rai Research Corporation **257 NLRB No. 127**

(where Bd directed that record be reopened after ALJ decision issued so that E could cross-examine Ee, Bd rejected E's contentions that hiatus between direct and cross exams was prejudicial or that ALJ failed to give adequate consideration to evidence on cross because he did not want to reverse his previously published decision)

7637-6725 Exclusion of questions on relevant matters within scope of direct examination improper

Feld & Sons, Inc. t/a Today's Man **263 NLRB No. 041**

(E's contention raised in exception to ALJ's overruling of E's objection to cross-examination of E's attorneys on ground testimony should have been excluded because it was hearsay as well as beyond scope of direct examination and irrelevant, rejected, where at hearing E only objected on latter grounds; since E did not then object that it was hearsay, it may not now claim to have meritorious exception to ALJ's ruling on hearsay grounds; moreover, ALJ correctly ruled that questioning was related to direct examination issues and was relevant)

7650 PRODUCTION OF STATEMENTS OF WITNESSES

7650-0100 Generally

East Texas Motor Freight **262 NLRB No. 101**

(where all tapes of bugged conversations that were w/i knowledge of GC (though he in no way suggested, assisted or participated in any electronic surveillance) were produced, and opposing party had sufficient opportunity to cross examine witness who made these tapes; mtn to strike testimony of said witness for failure to produce all tapes made as required under Jencks Act as adopted by Bd, denied)

Ronald Hackenberger d/b/a Ron's Trucking Service v. N.L.R.B. **628 F.2d 966 (C.A. 6, 1980)**

(ct held that E failed to establish that Bd had improperly computed back pay of discharged Ee where ct rejected E's contention that E was prevented from showing that Ee failed to act reasonably to mitigate his damages because Bd denied FOIA request for information in its possession relating to interim employment, since counsel for E failed to request continuance or adjournment in order to familiarize himself with this material when information concerning interim employment was provided at or near beginning of supplemental back pay proceeding)

7650-0150 Rule 102.118

Kawasaki Motors Corporation, U.S.A. **257 NLRB No. 069**

(under Sec. 102.118(b)(1), requirement that a witness' statements be furnished upon request to opposing counsel prior to cross-examination applies only to statements which are in existence at time of witness' testimony and which relate to subject matter of the testimony, so that GC had no obligation to furnish respondent with statements witnesses gave government agency subsequent to their testimony at Bd hearing)

Senatner Volkswagen Corporation **257 NLRB No. 058**

(charging party is a party under Sec. 102.8 of Bd's R/R and under Sec. 102.38 of R/R any party has right to cross-examine witnesses; therefore, since charging party is granted full participatory rights, it is reasonable to infer that he is entitled to any pre-trial affidavits in same manner as respondent is)

7650-2000 What constitutes statement

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**

(Bd agent writing something while witness spoke and nothing more did not qualify as statement w/i R/R 102.118(d))

7650-4000 Producible only after witness has testified

Hedison Manufacturing Company v. N.L.R.B. **643 F.2d 32 (C.A. 1, Mar 11, 1981)**

(E not entitled to statements made to Bd counsel by Ees who never testified before ALJ)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **618 F.2d 6 (C.A. 6, 1980)**

7650-4025 Witness called by respondent

Ducane Heating Corporation **254 NLRB No. 099**

(Bd declined to rule on E's objection to ALJ's ruling that while E did not need to turnover to GC pretrial statement it took from witness ALJ would consider refusal as element in determining credibility, since ALJ did not draw any such inference)

7650-4075 Available to charging party

Senatner Volkswagen Corporation **257 NLRB No. 058**

(charging party is a party under Sec. 102.8 of Bd's R/R and under Sec. 102.38 of R/R any party has right to cross-examine witnesses; therefore, since charging party is granted full participatory rights, it is reasonable to infer that he is entitled to any pre-trial affidavits in same manner as respondent is)

7662 CONDUCT OF HEARING BY ALJ

7662—Cont.

Kawasaki Motors Corporation, U.S.A. **257 NLRB No. 069**
(GC's exception to ALJ's finding that GC knowingly offered as exhibit a document which was not a true copy meritorious, since there is no evidence that GC knew that copy offered was not true copy until *voir dire* examination of a witness revealed that fact, whereupon GC obtained true copy, and true copy differed only in collateral respects from copy GC had originally offered)

7662-1400 Rulings on motion

Royal Zenith Corporation **263 NLRB No. 82**
(Respondent's mtn to dismiss complaint granted where Charging Party's testimony on cross-examination false and contradictory so as to render his entire testimony not credible and where charging party violated ALJ's instructions not to discuss testimony with others)

Feld & Sons, Inc. t/a Today's Man **263 NLRB No. 041**
(ALJ properly granted mtn to strike entire testimony of E's official because of his defiance of ALJ's order to respond to questions on cross-examination, which ALJ had properly directed him to do; although official's conversations with E's corporate counsel were protected by attorney-client privilege, official may not assert privilege where E petitioned Bd to set aside settlement agreement, contending that official executed it upon self-serving advice of attorneys representing E in proceeding; Bd cannot reasonably evaluate E's contention w/o knowing whether official also received advice on subject from other attorneys)

T.R.E. Co. d/b/a L. D. Brinkman Southeast **261 NLRB No. 025**
(ALJ rejected E's mtn to strike Ee's testimony because of violation of ALJ's sequestration order to which Ee was subject since violation of ALJ's order was not significant and, in any case not prejudicial to E)

Quebecor Group, Inc. Philadelphia Journal Division **258 NLRB No. 125**
(ALJ did not abuse his discretion when he denied Respondent's request for continuance in order to call former Ee as witness where Respondent was on notice that Ee would be necessary witness as he was named in complaint and Respondent made no showing that his whereabouts were unknown or he was otherwise unavailable)

General Motors Corporation, Delco Moraine Division **257 NLRB No. 146**
(E's argument that U was obligated to overturn prior arbitration decisions through arbitral forum in order to reassert its statutory right to requested information and contention that ALJ's refusal to admit evidence of parties' arbitration history was biased, rejected where E presented no evidence that U's statutory right was considered by arbitrators or that U acquiesced in E's interpretation of said decisions or otherwise clearly and unmistakably waived its statutory right to requested data)

Rai Research Corporation **257 NLRB No. 127**
(E's exception to ALJ's refusal to grant mtn to strike Ee's testimony about card signatures because Ee violated ALJ's instructions not to discuss testimony held w/o merit as he only briefly mentioned during conversation that he had testified at hearing)

Kawasaki Motors Corporation, U.S.A. **257 NLRB No. 069**
(E's mtn for mistrial correctly denied due to fair hearing and lack of prejudice; GC's recording witness's testimony or disturbing E's counsel's papers was prevented by ALJ; GC's offering not-true copy of document in evidence was corrected by offering true copy, which differed little from first copy offered; GC's failure to share tape transcription cost did not prevent completing record or ALJ's considering tapes' content; E's counsel allowed to further cross-examine witnesses whose statements GC failed to provide before cross-examination; and E's request for witnesses' statements not in existence when witnesses testified correctly denied)

Dura-Vent Corporation **257 NLRB No. 083**
(ALJ denied mtn by representative of local television station to film portions of proceeding, based upon Bd's traditional position opposing filming of courtroom; if Bd's position is to be changed it should be done by Bd and not by ALJ)

Pace Oldsmobile, Inc. **256 NLRB No. 111**
(E's mtn to reopen hearing to adduce evidence that GC's witness was discharged by his most recent E for embazzlement in order to impeach witness's credibility, denied as lacking sufficient importance or relevance to justify reopening, since (a) evidence did not exist at time of trial and thus was not newly discovered and (b) as witness had only been charged with, not convicted of alleged conduct, E could only question him as to his conduct but could not prove it by extrinsic evidence)

G. F. Business Equipment, Inc. **256 NLRB No. 040**
(GC's mtn to strike portions of answer to complaint, denied, notwithstanding Respondent's denials did not present meritorious defense to allegations of complaint, since denials could be viewed as attempt by Respondent to preserve position)

Fertilizer Company of Texas, Inc. **254 NLRB No. 103**
(where ALJ admitted E's mtn to dismiss or alternatively for Summary Judgment on grounds of defective complaint because it failed to allege that U had majority status or E was successor but he failed to rule on mtn, Bd denied mtn as lacking in merit since it agreed with ALJ that E unlawfully withdrew recognition from U)

Justak Brothers and Company, Inc. **253 NLRB No. 146**
(respondent's mtn to strike from GC's brief its arguments based on documents denied where respondent neither challenged authenticity of documents nor sought to explain them)

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(E's mtn to strike testimony of alleged discriminatee on grounds that GC failed to produce statement allegedly made by discriminatee to Bd's Regional Office held properly denied by ALJ where examination of record showed that alleged statement never existed)

Crown Cork & Seal Company, Inc. **253 NLRB No. 035**
(Bd denied mtn to strike certain portions of GC's brief to ALJ where GC did not file exceptions or brief with Bd and brief to ALJ was not formally before Bd; furthermore, E did not suffer any prejudice by ALJ ruling denying mtn since ALJ made no credibility findings concerning objectionable material)

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) **253 NLRB No. 096**
(mtn to dismiss 8(b)(4)(B) complaint on grounds that Charging Party did not respond to subpoena ad testificandum, denied because public policy matters are being litigated; furthermore, Respondent could have sought enforcement of subpoena or introduced secondary evidence)

Electrical Workers, Local 1701 (Dynaelectric Company) **252 NLRB No. 119**
(where GC refused to consent to respondent's motion for dismissal of specified allegation, ALJ felt obliged to reserve decision thereon and subsequently made ruling disposing of issue)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall **249 NLRB No. 069**
(respondents' mtn to postpone trial denied absent showing of good cause therefor and in view of scheduling of trial date 4 months before, respondents' failure to file ans to GC's amended C, and GC's counsel's own commitments and preparation for trial in other cases)

Alumbaugh Coal Corporation **247 NLRB No. 112**
(exceptions to ALJ's denial of E's mtn to dismiss complaint and objection because of participation on behalf of charging party by individual who was regional Bd Ee at time of representation p'n and charge, and subsequently joined law firm of counsel for charging party; his participation was minimal and not shown to have prejudiced E's rights)

Ridgeway Trucking Company and Sand & Stone Transport, Inc. **JD-23-82**
(ALJ granted GC's mtn to reopen record to receive exhibits of company's articles of incorporation, with amendments, and annual reports for purposes of impeachment of testimony as to identity of officer and director of company)

Master Metal Products **JD-(SF)-221-81**
(GC's mtn to dismiss denied where mtn made after hearing at which evidence relevant to complaint had been introduced; peremptory withdrawal not permitted at this stage and to afford parties due process, decision on merits is warranted)

7662-2800 Rulings on objections

Bide-A-Wee Home Association **248 NLRB No. 110**
(E's exception to ALJ's rulings overruled, as Bd found that rulings were correct and that E had failed to show prejudice thereby where E's purpose was only to show more of Ee's U activity than it had already shown, and result would have been same)

Pace, Inc.; J. Pace Inc.; and Riverside Warehouse, Inc. **JD-441-81**
(objection to holding hearing denied where Respondent alleged that issues arising from ULP alleged against it are moot due to its discontinuance of its business)

7662-4200 Exclusion or admission of evidence

Central Storage and Transfer Co. of Harrisburg **263 NLRB No. 089**
(ALJ erred in admitting testimony concerning alleged job offer where offer occured during course of settlement negotiations)

Silverman's Men's Wear, Inc. **263 NLRB No. 023**
(Bd upheld ALJ's refusal to allow testimony to demonstrate post-election changes in bargaining unit on ground that any issue of change in unit was beyond scope of hearing; furthermore, absent special circumstances, there is irrebuttable presumption that majority status of certified U continues for 1 year from date of certification; as E's refusal to bargain occurred during certification year, presumption was clearly applicable; moreover, even if E's refusal to bargain had not occurred during certification year, factor of Ee turnover did not establish that U had lost majority status)

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7662-4200—Cont.

East Texas Motor Freight **262 NLRB No. 101**
(mtn to strike *all* testimony of witness concerning violence outside U hall denied even though witness refused to respond to clearly material questions; mtn to rehabilitate witness to consider his testimony concerning above act of violence also denied. See Bd's *R/R* 102.44)

East Texas Motor Freight **262 NLRB No. 101**
(where all tapes of bugged conversations that were w/i knowledge of GC (though he in no way suggested, assisted or participated in any electronic surveillance) were produced, and opposing party had sufficient opportunity to cross examine witness who made these tapes; mtn to strike testimony of said witness for failure to produce all tapes made as required under Jenks Act as adopted by Bd, denied)

Zero Corporation, Zero East Division **262 NLRB No. 064**
(E waived its right to contest authenticity of cards which, may have been dated at different times than they were signed, where it did not object to admission of cards into evidence during hearing but raised objections to authenticity in brief to ALJ)

Charles H. McCauley Associates, Inc. **261 NLRB No. 122**
(ALJ erred in not allowing evidence to be taken at hearing about unconditional offer of reinstatement by E and rejection by discriminatee, but instead relegated taking of such evidence to compliance stage)

Weirton Steel, Division of National Steel Corporation **259 NLRB No. 091**
(no merit to E's exception to ALJ's ruling excluding abstract of its payroll records, notwithstanding E's contention that payroll records were voluminous and therefore abstract should have been permitted under Federal Rules of Evidence 1005; 28 U.S.C.A., where at hearing, E offered neither to introduce original payroll records into evidence, not to demonstrate that records could not conveniently be examined in hearing room)

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising **257 NLRB No. 022**
(Respondent not prejudiced by ALJ's refusal to admit documentary evidence of its wage increase practices where ALJ's finding that Respondent had no regular pattern of granting wages agreed with Respondent's position)

Luk, Inc. **255 NLRB No. 136**
(record not reopened to admit evidence relating to complaint filed by Charging Party with state Civil Rights Commission where ALJ had properly ruled that evidence of proceedings before commission was inadmissible for purpose of impeaching Charging Party's testimony)

K & K Transportation Corp., Inc. **254 NLRB No. 087**
(affidavit of Ee not admissible where Ee did not testify at hearing and proponent of statement did not make good faith effort to obtain declarant's presence at hearing to meet Federal Rules of Evidence, Sec. 804(a) unavailability test)

Ducane Heating Corporation **254 NLRB No. 030**
(Bd declined to rule on E's objection to ALJ's ruling that while E did not need to turnover to GC pretrial statement it took from witness ALJ would consider refusal as element in determining credibility, since ALJ did not draw any such inference)

Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C. **253 NLRB No. 054**
(E not prejudiced by ALJ's revoking subpena of material allegedly demonstrating conflicts that would disable petitioner from representing E's Ees, where record provided adequate basis for determining appropriateness of petitioner's representation; further evidence did not warrant depriving Ees of their right to choose petitioner as their representative)

Greens Disposal Service **253 NLRB No. 047**
(remand, since ALJ refused to admit evidence of misconduct, but E's offer of proof, which, if true, and considered in light most favorable to E, would bar reinstatement, for purpose of taking evidence on whether alleged strike misconduct barred reinstatement of strikers and issuing decision on whether E violated Sections 8(a)(3) and (1) by its refusal to reinstate)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(ritht to question validity of authorization cards not waived by failure to object to authenticity of cards and their admission into evidence; further, where issue of validity of cards raised and litigated by cross-examination of authenticating witnesses and discussion in brief of testimony regarding possible misrepresentation in solicitation, validity of cards should be considered on merits)

Nice-Pak Products, Inc. **248 NLRB No. 173**
(where E failed to produce evidence in response to subpoena but then during trial introduced material based on that evidence, admission proper where GC examined materials at start of hearing and had opportunity to examine list after it was intorduced into evidence)

Cerhomes Coal Company **248 NLRB No. 107**
(charging party's mtn to strike factual allegations of Respondent's exceptions based on certain exhibits which ALJ had refused to accept into evidence denied because Respondent had excepted to evidentiary rulings and having done so may present arguments based upon such exhibits notwithstanding GC and charging party were not able to cross examine witnesses concerning disputed exhibits)

Sparkie's Special Delivery & Messenger Service, Inc. **247 NLRB No.**
(ALJ's statement at hearing that he believed Bd had juridiction and then directed parties not to brief on issue of jurisdiction over E, not prejudicial, notwithstanding that ALJ subsequently dismissed complaint because he found that GC had failed to establish that Bd has jurisdiction; statement was made after GC made his decision as to what evidence to put in record on issue of jurisdiction)

American Bumper and Mfg. Co. **JD-136-82**
(use of voluntary affidavit of former supervisor taken by Bd agent during investigation and w/o E's knowledge admissable to show (any) prior contradictory statements admissable under Federal Rules of Evidence)

Atlanta Baking Company, Inc. **JD-220-80**
(ALJ reaffirmed rejection of respondent's exhibits showing that RD had declined to issue C after investigating charges against respondents similar to those herein, since GC has exclusive authority to issue Cs, so that RD's dismissal of similar charges was not *res judicata*, and the exhibits thus contained no probative evidence applicable herein)

N.L.R.B. v. Savin Business Machines Corporation **649 F.2d 89 (C.A. 1, May 1981)**
(ALJ's admission of transcript of tape recording Ee surreptitiously prepared of his conversation with his supervisor for limited purpose of varifying credibility held not error, since Bd has wide discretion in evidentiary decisions, and E was offered opportunity during continuance to inspect tape and compare it with transcript)

N.L.R.B. v. Savin Business Machines Corporation **649 F.2d 89 (C.A. 1, May 1981)**
(ALJ could properly deny E's mtn to reopen record to admit, on issue of Ee's credibility, evidence that Ee had participated in robbery at company year after his discharge, since to extent evidence was at all relevant to credibility, ALJ was not bound to open the record on that issue alone)

Hedison Manufacturing Company v. N.L.R.B. **643 F.2d 32 (C.A. 1, Mar 11, 1981)**
(invocation of principle of *Bannon Mills* against E held fully warranted where E refused to produce tape of speech by E's official after GC subpoenaed it as evidence of ULPs; ct rejected contention that tape was attorney work product or that Ees who heard speech must testify first)

N.L.R.B. v. Catalina Yachts **679 F.2d 180 (C.A. 9, June 1982)**
(E's complaint that ALJ erred in failing to force two Bd agents to testify in response to E's subpoena, rejected in view of E's failure to comply with 29 C.F.R. Sec. 102.118(a)(1) and to show how testimony, if admissible, would have helped its case)

N.L.R.B. v. Steven Davis and Michael Provenzano, d/b/a Carlton's Market **642 F.2d 350 (C.A. 9, Apr 28, 1981)**
(ALJ's refusal to allow Ee to be questioned as to whether fair election would be possible in near future, correct in view of language in *Gissel*)

N.L.R.B. v. Steven Davis and Michael Provenzano, d/b/a Carlton's Market **642 F.2d 350 (C.A. 9, Apr 28, 1981)**
(ALJ's exclusion of E's offer to testify as to present attitude toward Us and intentional hiring of Ees with proU sympathies after certain date, not improper; if in error, error was harmless, since record contained evidence of events occurring after date named by E and judge dtermined that altered behavior when facing Bd charges was not surprising and probably not a reliable guide to future conduct)

N.L.R.B. v. Hansa Mold, Inc. **634 F.2d 635(T) (C.A. 9, 1980)**
(ALJ's admission of testimony, if in error as contended, was harmless error where he stressed that his findings and conclusions were not dependent upon the challenged testimony)

N.L.R.B. v. International Medication Systems, Ltd. **640 F.2d 1110 (C.A. 9, Apr 2, 1981)**
(Bd lacked authority to deny E opportunity to present rebuttal evidence where denial was intended as sanction for E's refusal to comply with subpeona since Bd failed to have subpoena enforced in District Ct; challenges to agency subpoenas must be resolved by judiciary before compliance can be compelled)

7662-4900 Effect of stipulation

Ducane Heating Corporation **254 NLRB No. 030**
(where parties stipulated that any benefits announced during meeting was E's *usual and customary prectice* and for which no violation can be found; ALJ bound by stipulation and no violation found notwithstanding one benefit announced did not fall w/i E's *usual and customary practice*)

7662-7700 Ex parte contacts

Feld & Sons, Inc. t/a Today's Man **263 NLRB No. 041**
(request by E's corporate counsel in letter to ALJ for deletion of language in ALJ's decision concerning counsel's activities seeking other attorneys representing E in proceedings to fabricate testimony as defense in perjury

7662-7700—Cont.

case against E, denied, where letter constituted *ex parte* communication under R/R Sec. 102.128(e) and, pursuant to Sec. 102.132, was placed on public record of proceedings with permission to all parties to file with Bd rebuttal to facts or contentions in counsel's letter; however, Bd did not invoke GC's suggested penalties against counsel under R/R Sec. 102.133(b) prohibiting *ex parte* communication)

N.L.R.B. v. Sanford Home For Adults **669 F.2d 35 (C.A. 2, Dec. 1981)**
(ALJ's ex parte communication with GC held no basis for ALJ's disqualification, where respondents did not comply with R/R Sec. 102.37 requiring timely filing of affidavit alleging grounds for disqualification; parties, informed of communication, stated they were satisfied with ALJ's explanation concerning communication and did not raise objection until well after ALJ's decision; moreover, communication was entirely proper under R/R Sec. 102.130 permitting communication regarding settlement of case, which conversation herein dealt with and did not inappropriately deal with merits of case)

7662-8400 Control of conduct of counsel

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **265 NLRB No. 161**
(charge of bias w/o merit and Bd noted attorney's prior groundless accusations against ALJ's; attorney behaved unprofessionally at hearing but Bd will not at this time institute disciplinary proceedings against him)

Catalina Yachts **250 NLRB No. 048**
(Bd rejected charging party's mtn to bar respondent's attorneys from further practice before Bd because alleged misconduct was not of such aggravated character as to warrant such action)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(ALJ refused to countenance conduct of respondent's attorney who engaged in such tactics as preventing Bd from exercising its statutory authority, engaged in unwarranted attacks upon Bd personnel, and engaged in other conduct for purpose of inducing error into record upon appeal; due process suffered at hands of one who was most plaintiff in demanding it)

N.L.R.B. v. Friendly Ice Cream Corporation **677 F.2d 170 (C.A. 1, May 1982)**
(GC's seeking to bolster her witnesses by endorsing them as having *truthfully testified* is practice that would be improper in both criminal and civil ct proceedings)

7662-9200 Misconduct or error by Administrative Law Judge

Woodruff & Sons, Inc. **265 NLRB No. 043**
(ALJ improperly required E to show in unlawful discharge case that contended extraordinary damage sustained by discharged Ee's truck was in fact related to way in which Ee drove it; E merely needed to show that it relied on damage as real reason for discharge)

The New York Times Company **265 NLRB No. 045**
(case remanded for hearing *de novo* before different ALJ where ALJ at hearing dismissed C alleging E violated Sec. 8(a)(5) by refusing to supply U with Ee job evaluation reports on grounds that information was allegedly available from other sources (Ees); ALJ erred as matter of law as fact that Ees may have information and may be willing to give it to U does not relieve E of its obligations under Act. Moreover, ALJ inpunged good faith of U and questioned whether GC and charging party were abusing Bd processes, in contravention of Bd policy to not only avoid partiality and prejudgment but even appearance thereof)

Al Bryant, Inc., Harrisburg Drywall and Construction Corporation, and Al Bryant Associates, Inc. **260 NLRB No. 010**
(Bd rejected E's request that Bd listen to tapes of hearing as Bd reviewed record and decision, found no evidence of bias, hostility or prejudice although some of ALJ's statements may have been ill-chosen)

Lay Food Stores, Inc. d/b/a Ken's IGA **259 NLRB No. 035**
(ALJ's refusal to compare signatures for purpose of authenticating authorization cards and his failure to place signature samples in rejected exhibits file, erroneous but not prejudicial)

Sanford Home For Adults **253 NLRB No. 153**
(respondents contention to Bd that ALJ should disqualify himself for having engaged in ex parte communication with RD, rejected, since contentions untimely filed as respondents delayed filing until after ALJ's decision issued; moreover, communication in no way addressed merits of complaint; rather, limited to settlement possibilities specifically allowable under [illegible] 102.130 of Bd's R/R)

Pioneer Natural Gas Company **25[illegible] NLRB No. 003**
(Bd found no merit in E's contention that ALJ was prejudiced against E and unduly pressured it to settle case by alleged off-the-record comments where it was incumbent upon counsel for E immediately to request that any alleged comments be repeated on record, to make timely objection thereto, and to move that ALJ disqualify himself; moreover, E's claim of impropriety was not made until after ALJ had issued decision and thus not timely raised; in any event, ALJ's findings were fully supported by record evidence)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(E's contention that bias of ALJ deprived it of fair trial, rejected, notwithstanding indications in record and ALJ's decision of hostility and impatience by ALJ towards E and its counsel, since *no indication that this apparent attitude in any way affected fairness of hearing or integrity of record; nor does fact ALJ found for GC and against E in all but one instance and that a number of ALJ's findings were reversed by ct does not, w/o more, show bias*)

N.L.R.B. v. Aluminum Cruiser, Inc. **620 F.2d 116 (C.A. 6, 1980)**
(ct held E did not receive fair and impartial hearing where during hearing ALJ made several inexcusable and injudicious attacks upon E's president, one of which was particularly directed to his ethnic background, which could not but taint entire proceeding)

7682 PROCEDURAL DUE PROCESS AT HEARING

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. **683 F.2d 305 (C.A. 9, July 1982)**
(E's contention that it was denied due process by litigation of matters outside C, rejected, since actions before Bd are not subject to technical pleading requirements that govern private lawsuits; charge need not be technically precise as long as it generally informs charged party of nature of alleged violations; and where issue is fully and fairly litigated at administrative hearing, Bd may find ULP even though no specific charge is made in C)

7682-0100 Generally

Master Metal Products **JD-(SF)-231-81**
(GC's mtn to dismiss denied where mtn made after hearing at which evidence relevant to complaint had been introduced; peremptory withdrawal not permitted at this stage and to afford parties due process, decision on merits is warranted)

7682-3300 Due process not denied by

Douglas Aircraft Company, Component of McDonnell Douglas Corporation **260 NLRB No. 180**
(E's contention that ALJ's finding that E unlawfully maintained and enforced unlawful no-distribution rules violated E's due process rights and APA on ground, among others, that E was not given proper notice that validity of rules was in issue and that E was not afforded opportunity to present evidence, rejected, where E was aware of C allegation that its conduct was a continuing violation encompassing E's rules; E cannot claim surprise since it put rules into evidence; and C clearly put E on notice that rules were related to incident alleged in C)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(contention that, since ULP conduct alleged herein included conduct found to support U's objections to election, Bd cannot give E fair hearing because it has already considered facts which U presented to it ex parte w/o hearing, rejected; since Bd's decision was based on E's own written materials and its own witnesses' admissions, no hearing is required; issues herein, which differ in the two types of proceedings, will be decided upon evidence submitted in instant case; and Bd's findings as to objections are not binding on ALJ nor must results necessarily be consistent because cases arise out of same situation)

Bristol Spring Manufacturing Company **247 NLRB No. 034**
(respondent not denied due process by nature of hearing on remand from court, since it had ample opportunity to present its evidence and rebut testimony and failed to meet its burden of showing any prejudice to its substantive rights by GC's active participation in the hearing, even if such was departure from his customary role in proceedings of this kind)

Ronald Hackenberger d/b/a Ron's Trucking Service v. N.L.R.B. **628 F.2d 966 (C.A. 6, 1980)**
(ct held that E failed to establish that Bd had improperly computed back pay of discharged Ee where ct rejected E's contention that E was prevented from showing that Ee failed to act reasonably to mitigate his damages because Bd denied FOIA request for information in its possession relating to interim employment, since counsel for E failed to request continuance or adjournment in order to familiarize himself with this material when information concerning interim employment was provided at or near beginning of supplemental back pay proceeding)

7682-3365 Refusal to allow substitution for employer's designated representative

I/O Optics Limited, U.S.A. **251 NLRB No. 037**
(ALJ did not abuse discretion in not permitting E's designated representative to participate in hearing and assist E's counsel in preparation of defense pursuant to Rule 615 of Federal Rules of Evidence, or in not adjourning hearing until representative would be available, where individual originally designated was unable to participate and ALJ refused to allow another

7682-3305—Cont.

designated representative to participate as requested by E because second individual had been sequestered as witness as problem was E's own creation)

7682-3308 Being joined as party in proceedings

America Air Filter Company, Inc. **258 NLRB No. 010**

(E's rights in ULP proceeding not prejudiced by its not having been named as E and not having participated in representation proceeding, where it had ample opportunity to and did fully litigate in ULP proceeding its joint E status with the E who was named as E in the representation proceeding)

7682-3313 Consideration of objection to election in ULP proceeding

Salem Village I, Inc., Salem Village II, Inc., and Salem Village III, Inc. **263 NLRB No. 111**

(on ct remand to hold hearing on objections to election before ALJ, Bd treated as mtn for reconsideration of Board's Order Remanding Proceeding to RD for Hearing, E's letter contending that ULP hearing on objections was illegal and in contempt of ct; mtn was denied since longstanding Bd policy provides for such hearing and avoids delay that would result from reinstatement of representation ptn)

Salem Village I, Inc., Salem Village II, Inc., and Salem Village III, Inc. **263 NLRB No. 111**

(contention that E would be prejudiced by holding hearing on election objections in ULP proceeding rejected as GC takes nonadversarial role at this type of hearing as would be the case if proceedings had not proceeded beyond representation stage)

Polyflex M Company **258 NLRB No. 108**

(E's contention due process denied where upon ct's denial of enforcement and remand to Bd of alleged Section 8(a)(5) violation its objections to election were considered in ULP proceeding rather than in R hearing, rejected, since hearing granted E satisfied requirement of due process; further, E has not alleged any specific prejudice resulting from consideration of its objections in ULP hearing)

7682-3314 Admission of incompetent evidence

Southern Newspapers, Inc., d/b/a The Baytown Sun **258 NLRB No. 022**

(E's request, opposed by GC, that record be reopened to admit copy of U's contract proposal presented to E after trial herein on grounds U's proposal supports contention that charge herein was filed in order to enhance U's strength at bargaining table, denied, since proffered evidence was prepared after trial and is irrelevant to any charge herein; moreover, E's allegation that charge was filed with Bd's encouragement as coercive device was not proved at trial and was not supported by proferred evidence)

N.L.R.B. v. Catalina Yachts **679 F.2d 180 (C.A. 9, June 1982)**

(ct found no merit in E's contention that Bd denied it due process during hearing by admitting recording and transcript of its counsel's speech, notwithstanding E's argument that Bd admitted tapes and transcript which were unlawfully obtained and irrelevant to case, where there was no close connection between preparation of case by government and *so-called* theft; Fourth Amendment does not apply to Bd's proceedings; and furthermore, Bd did not rely on this evidence alone in making its findings)

7682-3318 Failure of General Counsel to obtain documents

Duquesne Heating Corporation **254 NLRB No. 030**

(Bd declined to rule on E's objection to ALJ's ruling that while E did not need to turnover to GC pretrial statement it took from witness ALJ would consider refusal as element in determining credibility, since ALJ did not draw any such inference)

7682-3320 Failure to comply with subpoena

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) **253 NLRB No. 006**

(mtn to dismiss 8(b)(4)(B) complaint on grounds that Charging Party did not respond to subpoena ad testificandum, denied because public policy matters are being litigated; furthermore, Respondent could have sought enforcement of subpoena or introduced secondary evidence)

U.S. Bus, Inc. **JD-391-82**

(where E failed to comply with subpoena requesting jurisdictional information, ALJ conducted hearing and allowed GC to adduce secondary evidence obtained from R-case hearing involving same E and also other reports filed with ICC and Maryland Public Service Commission)

N.L.R.B. v. International Medication Systems, Ltd. **640 F.2d 1110 (C.A. 9, Apr 2, 1981)**

(Bd lacked authority to deny E opportunity to present rebuttal evidence where denial was intended as sanction for E's refusal to comply with subpoena since Bd failed to have subpoena enforced in District Ct; challenges to agency subpoenas must be resolved by judiciary before compliance can be compelled)

7682-3328 Refusal to sequester witness

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. **255 NLRB No. [illegible]**

(no merit in E's exception to ALJ's refusal to sequester one or both of named discriminatees during hearing which was conducted in accordance with then-existing procedural rules; E was not prejudiced by ALJ's refusal to exclude discriminatees from any part of hearing; although one discriminatee was present while other discriminatee testified, their testimony differed in phraseology, order, emphasis, and details regarding area of their overlapping testimony; and finally, principal area of corroboration between testimony of discriminatees did not involve violation by E)

Illinois Bell Telephone Company **255 NLRB No. 063**

(ALJ's refusal to sequester each C.P. during testimony of other proper where neither C.P. was alleged discriminatee, both appeared *pro se* testified not only to matters of common involvement but also about their separate meetings with E, and their separate attempts to counter E's action; ALJ's decision w/i descretionary guidelines set forth in *Unga Painting Corp.* 237 NLRB 1306)

Kenhin Charter Service, Inc. **250 NLRB No. 117**

(ALJ's failure to sequester discriminatee during testimony of other discriminatee not prejudicial error where hearing was conducted prior to *Unga Painting Corp.* 237 NLRB 1306, in which Bd held absent special circumstances mtn to sequester should be granted when a discriminatee is testifying about events as to which another discriminatee has, will or may testify; under rules in effect at time of hearing ALJ was w/i discretion in refusing to sequester discriminatee)

Local Union 633, Plumbers (B & W Construction Company) **249 NLRB No. 011**

(ALJ's ruling permitting sequestration of witnesses on mtn of charging party which was made after GC's first witness had completed direct testimony w/i ALJ's discretion since respondent did not demonstrate that ruling had prejudiced its case)

7682-3337 Violation of sequestration rule

Belcher Towing Company **265 NLRB No. 159**

(GC's mtn to strike testimony of E's witness on ground that sequestration rule had been violated, denied, where, although witness should not have been shown transcript of prior testimony of Ees, witness could properly have been questioned and prepared for trial by counsel on basis of specific allegations made by Ees and, thus, witness' reading of transcript resulted in little, if any, prejudice to GC's case; in these circumstances, due process would not be served by denying E benefit of its witness' testimony)

7682-3342 Admission of stipulation of adverse parties

East Texas Motor Freight **262 NLRB No. 101**

(*hearsay* evidence of incident of violence (outside U meeting hall) given weight of stipulated facts where both Respondents stipulated to its receipt)

7682-3349 Absence of party's counsel at hearing

Local 32E, Service Employees International Union, AFL-CIO **259 NLRB No. 180**

Wean United, Inc. **255 NLRB No. 134**

(contention that sequestration of E's personnel manager denied E of any corporate representative held w/o merit, where at all times during hearing E's director of industrial relations who had entered his appearance on behalf of E was present; and E did not demonstrate that personnel manager who was to be E's principal witness was essential to presentation of E's case or that E in fact was prejudiced by his exclusion)

Jacques Syl Knitwear, Inc. **247 NLRB No. 191**

(due process not denied where hearing proceeded w/o Respondent's labor counsel when counsel failed to appear at hearing w/o submitting timely written request for second continuance and w/o justifying giving precedence to other matter, and at subsequent reconvening of hearing failing to appear w/o any previous form of request for continuance)

7682-3356 Denial of motion to file reply brief

The Nestle Company, Inc. **251 NLRB No. 142**

(ALJ accepted and considered respondent's reply brief, notwithstanding GC correctly argued that Bd's R/R do not provide for submission of reply briefs, because GC was not prejudiced thereby)

7682-3363 Board rules and procedures

East Texas Motor Freight **262 NLRB No. 101**

(*Federal Rules of Civil Procedure*, which are applicable in U.S. District Cts, are not controlling in administrative hearings before Bd; GC and charging party are not preferred litigants before Bd and are under same obligation to produce relevant evidence where appropriate)

East Texas Motor Freight **262 NLRB No. 101**

(mtn to strike *all* testimony of witness concerning violence outside U hall denied even though witness refused to respond to clearly material questions; mtn to rehabilitate witness to consider his testimony concerning above act of violence also denied. See Bd's *R/R* 102.44)

7682-3363—Cont.

Quebecor Group, Inc. Philadelphia Journal Division **258 NLRB No. 125**
(Respondent's post hearing exhibits relating to work history of discriminatee is not part of record and cannot be considered under Sec. 102.45(b) of Bd's R/R where Respondent presented no evidence to show documents it wished to produce were unavailable at time of trial)

The Nestle Company, Inc. **251 NLRB No. 142**
(ALJ accepted and considered respondent's reply brief, notwithstanding GC correctly argued that Bd's R/R do not provide for submission of reply briefs, because GC was not prejudiced thereby)

7682-3370 Limitation of examination of witnesses

Humana Corp. d/b/a Sunrise Hospital Medical Center **254 NLRB No. 176**
(ALJ sustained GC's objection to charging party calling witnesses after Respondent amended its answer essentially to admit factual allegations of complaint and GC and Respondent rested w/o adducing any evidence because record complete and would support findings on all allegations)

Hedison Manufacturing Company **249 NLRB No. 096**
(Bd held ALJ, while fully warranted in precluding E's official from testifying because he refused to comply with subpoena and to testify, erred in precluding E from calling witnesses other than official; since E's asserted reasons for discharges involved herein must rest upon testimony of witnesses as to relevant events, *best evidence* rule involved in cases relied on by ALJ held not applicable to discharges; accordingly, Bd severed and remanded discharge cases to ALJ for supplemental decision)

Arizona Public Service Company **247 NLRB No. 054**
(ALJ's ruling sustaining GC's objection to question to U representative by E's counsel at hearing regarding what U's bargaining posture would have been had E not refused to bargain over mandatory subject of subcontracting of unit work held not prejudicial to E's defense, since inquiry was directed at subjective intentions of U's negotiators about a proposal which they never tendered to E)

Hedison Manufacturing Company v. N.L.R.B. **643 F.2d 32 (C.A. 1, Mar 11, 1981)**
(ct held no prejudicial error where ALJ was fully warranted in invoking principle of *Bannon Mills* by precluding E's official from testifying in E's case because he refused to comply with GC's subpoena to appear and testify; furthermore, E's contention that Bd counsel should have sought enforcement of its subpoena delaying proceedings further instead of invoking *Bannon Mills* held frivolous, as well as E's assertion that such decision not to seek enforcement deprived it opportunity to contest subpoena)

N.L.R.B. v. Webb Ford, Inc. **689 F.2d 733 (C.A. 7, Sept. 1982)**
(ct reversed ALJ's credibility findings of former supervisor on 2 grounds: 1) ALJ failed to allow cross examination on his work record at E, and 2) failed to give proper weight to circumstances under which supervisor left E's employ. Here, supervisor was fired on grounds he felt unjust; therefore, this testimony from embittered ex-Ee cannot support finding that E was illegally motivated in firing another Ee when there is ample evidence good cause existed)

7682-3375 Conduct of Counsel

George Banta Company, Inc., Banta Division v. N.L.R.B. **686 F.2d 10 (C.A.D.C., Aug. 1982)**
(E's contention that Bd order violated due process because Bd counsel incorrectly asserted at hearing that legality of E's preferential reinstatement system (PRS) depended on whether strike concerned ULPs, rejected since violation found was violation alleged in C, ALJ's rulings must have given E notice that ALJ considered nature of strike irrelevant to charges against PRS, counsel's comments hardly demonstrated coherent theory of case on which E could have relied and counsel's shifts in position were irrelevant because legal theories and policy conceptions of Bd counsel are not binding on Bd)

7682-3384 Revocation of subpoena

Howard Johnson Company **250 NLRB No. 161**
(ALJ properly revoked E's subpenas directed to RD and U seeking authorization cards and related documents, even though ptns for revocation may not have conformed to Bd's R/R, where E was in no way prejudiced thereby, and material sought was irrelevant to issues herein since GC based C on U's winning of election and not on majority of authorization cards; moreover, E made no claim that it had obtained prior written consent for disclosure of official information as required by Bd's R/R)

Howard Johnson Company **250 NLRB No. 161**
(ALJ properly revoked E's subpenas directed to Bd's associate executive secretary seeking information regarding Bd decisions as to E's requests for review of RD's D/O directing election; since E did not actually receive from Bd copies of telegrams denying its requests for review, E was not prejudiced by revocation of its subpenas, and E made no claim that it had obtained prior written consent for disclosure of information as required by Bd's R/R)

7682-3391 Absence of specific allegations or notice where adequate notice exists

Conair Corporation **261 NLRB No. 178**
(although not alleged in C that E's mailgram to Ees terminated them in violation of 8(a)(3), Bd found such violation, where C specifically alleged mailgram threatened discharge in violation of 8(a)(1) and alleged other 8(a)(3) violations; although E asserted that law and interpretaion of facts do not support finding of violation, E did not contend that it was precluded from adducing any exculpatory facts or that it would have altered its presentation of case; issue was fully litigated, and all operative facts underlying finding of 8(a)(3) and (1) violations are in record)

Trans-States Lines, Inc. **256 NLRB No. 116**
(renewed mtn, in GC's brief, to amend C to reflect possible subsidiary relationship among 3 corporations providing trucking service, denied as untimely, where original mtn was made and denied at hearing when GC was preparing to rest; 2 of corporations did not appear and were not accorded procedural *due process*; counsel for GC was aware of facts approximately one week before hearing)

Southern Newspapers, Inc., d/b/a The Baytown Sun **255 NLRB No. 022**
(E's exception to finding of instance of unlawful refusal to bargain, overruled, where, although not specifically alleged, instance of refusal to bargain was fully litigated, and although E asserts it has no notice of specific basis for violation found, its arguments before Bd are limited to the law, sufficiency of facts, and interpretation of facts now in record; moreover, E does not allege that it was precluded from adducing any exculpatory acts, nor does it argue that it would have altered conduct of its case had it but received notice)

Southern Newspapers, Inc., d/b/a The Baytown Sun **255 NLRB No. 022**
(although refusal-to-bargain violation was not exact one alleged, it was related to allegations in complaint which assert that E committed that category of ULP, issue was fully and fairly litigated, E has not been prejudiced, and due process requires no more)

Lighthouse For The Blind of Houston **248 NLRB No. 178**
(lack of notice in formal C held nonpreducial to E, and mtn for summary judgment granted; E had notice of ULP charges against it when served with copy of C and had opportunity to prepare its ans and defense; GC did not seek hearing but instead filed mtn for summary judgment of which E had full and fair notice; and E's challenge to Bd's certification on statutory grounds is normally resolved by summary judgment, not hearing)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. **691 F.2d 1133 (C.A. 4, Sept. 20, 1982)**
(E is not denied due process where complaint alleged 8(a)(3) violation and ALJ found 8(a)(1) violation for retaliation for engaging in protected concerted activity. Conduct alleged to be violative was the same and matter was fully litigated)

The United Credit Bureau of America, Inc. v. N.L.R.B. **643 F.2d 1017 (C.A. 4, Mar. 1981)**
(procedural due process not denied E by ALJ consolidating case where issue of whether 8(a)(4) violation occurred when E sued in state ct dischargee in initial case and notice of consolidation ambiguous and sent day before trial as E's action at hearing regarding 8(a)(4) case demonstrated it suffered no resulting prejudice because E (1) presented no evidence, and (2) asserted no claim of inadequate notice or prejudice)

7682-3398 Dual role of GC represenative in consolidated complaint and representation proceedings

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(E had full and fair hearing where, it was ably represented by consel, had opportunity to produce evidence and cross examine adverse witnesses, and demonstrated no prejudice as result of GC's dual role at hearing)

7682-6700 Due process denied by

Trans-States Lines, Inc. **256 NLRB No. 116**
(renewed mtn, in GC's brief, to amend C to reflect possible subsidiary relationship among 3 corporations providing trucking service, denied as untimely, where original mtn was made and denied at hearing when GC was preparing to rest; 2 of corporations did not appear and were not accorded procedural *due process*; counsel for GC was aware of facts approximately one week before hearing)

7682-6723 Failure to advise respondent of specific charge in complaint

7682-6725—Cont.

The Metallic Lathers' Union of New York and Vicinity Local 46 of The Wood, Wire and Metal Lathers' International Union (Building Contractors Association, Inc. and The Cement League) **260 NLRB No. 086**
(where GC failed to put unlawful discrimination against non member for steward referrals question in issue at hearing, nor was it alleged in complaint, complaint dismissed as U denied opportunity to litigate matter fully and to present evidence justifying conduct; U did not receive notice of issue until GC filed post-hearing brief)

Modular Designs, Inc. **JD-(SF)-271-81**
(ALJ made no finding on alleged 8(a)(1) violation of E's action of posting suggestion box and asking Ees to air out their complaints where GC raised issue for first time in post-hearing brief which deprived E of notice of alleged violation, and issue was not suffficiently litigated at hearing)

N.L.R.B. v. Blake Construction Co., Inc., etc. **663 F.2d 272 (C.A.D.C., Aug. 1981)**
(enforcement of bargaining order denied because of failure to provide due process to E, where allegations of 8(a)(5) violation based on E's failure to apply U contract to non-U Ees, although contained in charge, were not specifically pleaded in C; Bd's claim that E was actually aware that 8(a)(5) violations were in issue and had ample opportunity to prevent its defense, rejected; and Bd's reliance on principle that material issue may be decided by Bd, regardless of whether it has been specifically pleaded is not supported by the record; nor did E have opportunity to litigate its 8(a)(5) defenses)

7682-6750 Raising issue previously conceded by General Counsel to respondent

Herman Brothers, Inc. **264 NLRB No. 064**
(where GC specifically limits scope of allegations and specifically agrees that certain facts or theories are not at issue in case and ALJ agrees at hearing that facts and theories are so limited, then ALJ erred when he found violation based on conduct which had been thus excluded)

The Moore Company, Inc., Div. of Easco Corp. **264 NLRB No. 159**
(ALJ erred in not passing on whether incident constituted violation, notwithstanding at one point in hearing Counsel for GC stated that testimony in regard to incident was being offered only as background, since alleged as violation in C and noted at later point in hearing)

7690 MISCONDUCT OF PARTIES

Quebecor Group, Inc. Philadelphia Journal Division **258 NLRB No. 125**
(Bd not bound by determinations of disciplinary board of State in ruling on allegations of misconduct by counsel for GC)

7691 PARTICIPATION BY PARTIES

7691-2500 Self representation

Serendippity-Un-Ltd and Tigerrr, Inc. **263 NLRB No. 100**
(notwithstanding that E was a nonlawyer representing himself in proceedings herein, E's alleged misunderstanding of either Bd's R/R or ALJ's statements during pre-trial conference concerning days scheduled for hearing held no basis for having Bd permit such alleged confusion to unreasonably delay or overturn its hearings)

7691-5000 Introduction of documentary evidence

Progressive Medical Group, Inc., t/a Walnut Hill Convalescent Center **260 NLRB No. 039**
(although notes taken at bargaining meeting by E's official were admitted after they were authenticated by him, notes of such meeting were ruled inadmissible where it was subsequently shown that official had flatly misrepresented process whereby handwritten notes were transcribed into typewritten minutes; and since official also displayed open partisanship, his uncorroborated testimony on any subject would not be found reliable)

St. Regis Paper Company **247 NLRB No. 185**
(correct to draw adverse inference from Respondent's failure to submit documentary evidence in support of its contention that *transfer of work was economically motivated*)

8000 ALJ DECISION AND PROPOSED FINDINGS

8001 GENERALLY

Cardio Data Systems Corp. **264 NLRB No. 011**
(ALJ improperly omitted discussion of a number of C allegations, since ALJ has obligation to make findings of fact and reach conclusions of law with respect to all allegations of misconduct set forth in C; ALJ's remarks that C is duplicative and that certain testimony is repetitive of ULPs previously found by him provides no guidance as to why no findings were made on remaining C allegations which GC repeated in his cross-exceptions; moreover, evidence to support allegations were not basis for allegations discussed by ALJ)

Marathon Letourneau Company, Longview Division **256 NLRB No. [illegible]**
(ALJ did not consider case citations in GC's brief to ALJ decisions since until Bd rules thereon there is no precedent value)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(Bd's findings and conclusions as to objections to election in R case are not binding upon ALJ where same conduct is alleged as ULPs, since issues drawn are different in the two types of proceedings)

United Artists Theatre Circuit, Inc. (Moving Picture Projectionists, Local No. 150, Stage Employees) **250 NLRB No. 135**
(where ALJ had failed to make critical credibility determinations regarding conflict in testimony of GC's witnesses--who claimed that on a certain date U and respondent E had reached oral agreement on terms of contract--and E's witnesses--who denied that such agreement was reached on that date--, Bd remanded proceeding for ALJ to make credibility determination regarding conflicting testimony)

Sparkie's Special Delivery & Messenger Service, Inc. **247 NLRB No. 064**
(ALJ's statement at hearing that he believed Bd had jurisdiction and then directed parties not to brief on issue of jurisdiction over E, not prejudicial, notwithstanding that ALJ subsequently dismissed complaint because he found that GC had failed to establish that Bd has jurisdiction; statement was made after GC made his decision as to what evidence to put in record on issue of jurisdiction)

8001-4000 Decision must be based on record only

Herman Brothers, Inc. **264 NLRB No. 064**
(where GC specifically limits scope of allegations and specifically agrees that certain facts or theories are not at issue in case and ALJ agrees at hearing that facts and theories are so limited, then ALJ erred when he found violation based on conduct which had been thus excluded)

Zero Corporation, Zero East Division **262 NLRB No. 064**
(E waived its right to contest authenticity of cards which, may have been dated at different times than they were signed, where it did not object to admission of cards into evidence during hearing but raised objections to authenticity in brief to ALJ)

Quebecor Group, Inc. Philadelphia Journal Division **258 NLRB No. 125**
(Respondent's post hearing exhibits relating to work history of discriminatee is not part of record and cannot be considered under Sec. 102.45(b) of Bd's R/R where Respondent presented no evidence to show documents it wished to produce were unavailable at time of trial)

Service Garage, Inc. **247 NLRB No. 115**
(ALJ's finding of no U animus on E's part based on his observation of E and Ees during hearing but not while testifying is impermissible reliance on conduct not w/i record)

8001-4400 ALJ's failure to detail conflicts in evidence not indication that such evidence not considered

Berger Transfer and Storage, Inc. **253 NLRB No. 003**
(failure to explicate reasons for crediting witnesses where there is conflicting testimony on record not error where credibility findings are inherently consistent with ALJ's uncontroverted findings)

Kiawah Island Company, Ltd. **247 NLRB No. 080**

Elder Moving & Storage Company, Inc. **JD-129-82**
(ALJ's failure to detail each of credibility considerations taken into account is not to be deemed failure on his part to have fully considered it)

8001-4700 ALJ's resolution of important factual conflicts against party not bias

The Martin-Brower Company **263 NLRB No. 025**

Limestone Apparel Corp. **255 NLRB No. 101**
(resolved in favor of GC)

Nevada Resort Association; Summa Corporation, d/b/a Castaways Hotel; et al. **250 NLRB No. 118**
(allegation of bias based on ALJ's resolution of important factual conflicts in favor of witnesses testifying for U held w/o merit)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(E's contention that bias of ALJ deprived it of fair trial, rejected, notwithstanding indications in record and ALJ's decision of hostility and impatience by ALJ towards E and its counsel, since *no indication that this apparent attitude in any way affected fairness of hearing or integrity of record; nor does fact ALJ found for GC and against E in all but one instance and that a number of ALJ's findings were reversed by ct does not, w/o more, show bias*)

8001-4800 ALJ's substitution of his judgment for that of party

Inland Steel Company **257 NLRB No. 065**
(E must demonstrate that same action would have taken place in the absence of protected conduct and E bears burden of explaining its motivation; ALJ

8001-4800—Cont.

can not meet burden of E by supplying explanation which E himself did not advance)

Appalachian Power Company John E. Amos Plant **250 NLRB No. 038**
(ALJ found, based on entire record, that surface bargaining charge had no merit; contrary finding would place ALJ in judgment upon substantive terms of collective bargaining agreement)

8001-5000 ALJ bound by Board precedent and dispositions

Robert King d/b/a Regency At The Rodeway Inn **255 NLRB No. 133**
(ALJ's must apply established Bd precedent that has not been reversed by Bd or Supreme Court)

Howard Johnson Company **250 NLRB No. 161**
(ALJ held that Bd's denials of E's requests for review of RD's D/O directing election are binding on ALJ; E is free to request Bd to reconsider its determination and, in event of adverse decision, to seek ct review, but Bd's dispositions are not reveiwable by ALJ)

Charmer Industries, Inc. **250 NLRB No. 031**
(Bd's denial of Es' mtn for summary judgment based on favorable arbitration award held binding on ALJ as law of case, notwithstanding Es' contention that under FRCP denial of mtn for summary judgment is interlocutory in nature and not res judicata)

8025 FORM AND CONTENT

8025-0100 Generally

Washington Beef Producers, Inc. **264 NLRB No. 155**
(where ALJ had considered record evidence carefully and determined that one of the briefs submitted to him fully and accurately recited the relevant facts, ALJ may rely in Decision on that statement of facts; Bd noted Sec. 102.42 does not expressly permit such use of a party's brief, and Bd does not encourage wholesale substitution of a party's formulation of major portion of facts for ALJ's description of the facts in his own words)

8025-3300 Specificity of findings and conclusions

Grane Trucking Company **261 NLRB No. 059**
(Bd found U adherent's protected concerted activity to have clearly dictated E's change in his working conditions, notwithstanding fact that ALJ declined to state specifically that E's asserted reasons for change were pretextual, where ALJ rejected as specious each of E's asserted economic justifications and stated that E failed to adduce probative evidence that change was needed)

Fertilizer Company of Texas, Inc. **254 NLRB No. 183**
(where ALJ admitted E's mtn to dismiss or alternatively for Summary Judgment on grounds of defective complaint because it failed to allege that U had majority status or E was successor but he failed to rule on mtn, Bd denied mtn as lacking in merit since it agreed with ALJ that E unlawfully withdrew recognition from U)

N.L.R.B. v. Steven Davis and Michael Provenzano, d/b/a Carlton's Market **642 F.2d 350 (C.A. 9, Apr 20, 1981)**
(ALJ clearly stated the reasons upon which she rested her conclusion that remedies short of a bargaining order would be ineffectual)

8050 PREPARATION BY ALJ WHO DID NOT PRESIDE AT TRIAL

Huttig Sash and Door Company **263 NLRB No. 163**
(where ALJ died before he issued decision and E agreed to waive hearing *de novo* and to permit credibility resolutions to be determined by one who did not observe witnesses' demeanor at hearing, Bd deferred to ALJ's credibility findings and held that they were not contrary to preponderance of evidence on record as whole)

8075 VARIANCE BETWEEN FINDINGS AND COMPLAINT

Cox Enterprises, Inc., d/b/a Atlanta Newspapers **264 NLRB No. 120**
(although C alleged that discharge was unlawful under Sec. 8(a)(3) for engaging in U activities, Bd found that discharge was unlawful under Sec. 8(a)(1) since Bd is not precluded from finding that conduct alleged as unlawful violates Act in different respect. Allegation was fully litigated; C was amended and E was thereafter afforded opportunity to present additional evidence pertaining to this allegation)

White Coffee Corporation **261 NLRB No. 149**
(where E's refusal to reinstate ULP strikers was not alleged as violation in complaint or amended complaint and counsel for GC stated at beginning and end of hearing that only remedy sought was for other actions, ALJ erred in finding refusal unlawful and providing corresponding remedy, since E had no notice that this action was at issue, full record was not developed on the matter, and ALJ has authority to amend complaint only where GC seeks or consents to amendment or evidence on matter has been received into record w/o objection)

N.L.R.B. v. Antonino Carilli, d/b/a Antonininе's Restaurant **648 F.2d 1206 (C.A. 9, June 1981)**
(issue fully litigated and E not prejudiced by incomplete memory of GC's witness regarding alleged statement of E's owner that E was non-U where testimony regarding statement was supported by three other witnesses and E examined each of these witnesses)

8075-0100 Generally

The Moore Company, Inc., Div. of Eusco Corp. **264 NLRB No. 159**
(ALJ erred in not passing on whether incident constituted violation, notwithstanding at one point in hearing Counsel for GC stated that testimony in regard to incident was being offered only as background, since alleged as violation in C and noted at later point in hearing)

U. S. Reduction Company **JD-(ATL)-13-82**
(complaint held sufficiently broad to provide basis for finding that demotion of Ee violated Sec. 8(a)(1) where complaint alleged that Ee was demoted because of her U activities *and because she engaged in concerted activities with other Ees*; moreover, E raised issue of concerted activity in its defense as part of operative facts of Ee's demotion and in doing so put in issue legitimacy of its actions in this regard; further, E addressed and argued concerted activity premise in its brief)

Continental Air Transport Co., Inc. **JD-125-82**
(reinstatement and backpay not precluded by GC's failure to seek such relief in C where after GC's request for remedy E was offered opportunity to provide *reasonably specific statement of any evidence it wished to produce in connection with appropriateness of remedy; nothing in Bd's rules requires that GC include in C remedy he seeks and even if GC represents to ALJ that no relief is being sought as to particular Ee, this does not preclude Bd from requiring E to offer reinstatement and backpay*)

Visu-Craft By H.B.S., Inc. **JD-887-79**
(E held to have violated Act by maintaining and enforcing unlawful security clause notwithstanding violation not alleged in complaint where legality of provision presented as matter to be considered at hearing and was closely related to allegations of unlawful assistance to U and unlawful discharge pursuant to provision)

George Banta Company, Inc., Banta Division v. N.L.R.B. **686 F.2d 10 (C.A.D.C., Aug. 1982)**
(E's contention that Bd's order based liability under strike settlement stipulation on allegation neither made in C nor litigated at hearing, rejected notwithstanding ct's agreement with E that C did not allege E's violation of any term of settlement and that serious issue of due process would exist had Bd based its order solely on unrelated agreement that played no part in proceedings before ALJ, where from outset of hearings E was on notice that its Ee's poststrike reinstatement rights would be determined by settlement agreement)

8075-5000 Findings on issues fully litigated

Teamsters Local Union No. 528 (Associated Grocers Co-Op) **265 NLRB No. 065**
(while C did not allege U representative's statement refusing to process dischargee's grievance over his termination as independent violation of 8(b)(1)(A), incident was fully litigated at hearing and was so central to C allegation as to justify finding of violation)

Admiral Merchants Motor Freight, Inc. **265 NLRB No. 016**
(no prejudice to E by finding statements violative which were not alleged as such where they were fully litigated and closely related to alleged violations)

Conair Corporation **261 NLRB No. 178**
(although not alleged in C that E's mailgram to Ees terminated them in violation of 8(a)(3), Bd found such violation, where C specifically alleged mailgram threatened discharge in violation of 8(a)(1) and alleged other 8(a)(3) violations; although E asserted that law and interpretaion of facts do not support finding of violation, E did not contend that it was precluded from adducing any exculpatory facts or that it would have altered its presentation of case; issue was fully litigated, and all operative facts underlying finding of 8(a)(3) and (1) violations are in record)

Penn Color, Inc. **261 NLRB No. 058**
(although complaint did not specifically allege all violations found by ALJ, issues were fully litigated and record fully supported ALJ's conclusions)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**
(although E discriminated against six *temporaries*, findings were limited to three Ees alleged, by GC in C to have been discriminated against)

Inland Steel Company **250 NLRB No. 024**
(although not alleged in complaint, supervisor's statement to Ee held unlawful threat, since statement was closely related to subject matter of complaint and was fully litigated)

8075-5000—Cont.

Rei Research Corporation 257 NLRB No. 127
(urging Ees to sign pins indicating opposition to U held violative; though conduct not specifically alleged in complaint it was fully litigated)

Mark I Tune-Up Centers, Inc. 256 NLRB No. 138
(while complaint did not specifically alleg surveillance as violation and was not amended to allege such violation, E's conduct in coercing Ee to maintain surveillance of fellow Ees and to inform on their U activities, unlawful, since allegation was sufficiently related to subject matter of complaint to warrant specific finding of violation, facts were fully litigated at hearing, and E had opportunity to offer evidence on the point)

United Brotherhood of Carpenters and Joiners of America, Carpenters' District Council of Western Pennsylvania and Industrial Local No. 2605, AFL-CIO (DeRose Industries, Inc.) 256 NLRB No. 092
(U president's threatening Ee that his time card would be pulled if he did not pay U assessed fine, violative; although not specifically alleged in complaint as separate violation of Sec. 8(b)(1)(A), issue was fully litigated)

Southern Newspapers, Inc., d/b/a The Baytown Sun 255 NLRB No. 022
(E's exception to finding of instance of unlawful refusal to bargain, overruled, where, although not specifically alleged, instance of refusal to bargain was fully litigated, and although E asserts it has no notice of specific basis for violation found, its arguments before Bd are limited to the law, sufficiency of facts, and interpretation of facts now in record; moreover, E does not allege that it was precluded from adducing any exculpatory acts, nor does it argue that it would have altered conduct of its case had it but received notice)

Photo-Sonics, Inc.; et al. 254 NLRB No. 069
(issue of legality of threat to close plant if *Ees* selected U properly before Bd notwitiistanding it was not alleged in complaint where issues was closely related to and took place in course of events which were alleged as ULPs and fully litigated)

Justak Brothers and Company, Inc. 253 NLRB No. 146
(supervisor's telling Ee that he *was on his way out* because he had been passing out U cards, held violative, notwithstanding complaint did not allege remarks constituted ULPs, since GC's brief so contended and matter was fully litigated)

Ross M. Alexander d/b/a A & B Janitorial Service 253 NLRB No. 064
(unlawfulness of no-solicitation rule, although not alleged in complaint, found proper issue in case and fully litigated where E injected rule into proceedings as defense to allegation in complaint of another violation)

Pioneer Natural Gas Company 253 NLRB No. 003
(Bd rejected E's contention that unlawful discharge was not embodied in allegations of complaint and therefore denial of due process, where issue of whether Ee was discharged for her insistence that another Ee take racial complaint to supervisor, was fully litigated and misconduct found was clearly related to conduct specifically alleged)

Plumbers, Local 388 (Charles Featherly Construction Co.) 252 NLRB No. 062
(finding of violation proper, notwithstanding allegations of complaint that Respondents' threatened to picket jobsite inadequate to state violation since it might be presumed that Respondents' would engage in lawful picketing and were giving secondary E opportunity to restrict picketing by establishing gate for non-U contractor, as allegation of complaint sufficient to put Respondents' on notice that statements were in issue and threat was fully litigated)

Behring International, Inc. 252 NLRB No. 055
(although not alleged in complaint, unlawful conduct held closely related to matters actually alleged, formed part of alleged misconduct, and was fully litigated at hearing)

Illinois Bell Telephone Company 251 NLRB No. 128

Furr's Cafeterias, Inc. 251 NLRB No. 125
(although issue was not specifically alleged in complaint, Bd affirmed ALJ's finding independent 8(a)(5) violation where issue was fully litigated, and related to heart of complaint which alleged other instances of disregard of obligation to bargain with U; moreover, operative event regarding this matter was essentially admitted by E)

Post Manufacturing Company 251 NLRB No. 153
(and record fully supported conclusion, and violation found is closely related to violations alleged in complaint)

Weyerhaeuser Company 251 NLRB No. 097
(Bd and ALJ expected to pass upon issue although not specifically alleged to be ULP in complaint if matter was fully litigated)

Norton Concrete Company of Longview, Inc. 249 NLRB No. 172
(where issue is fully litigated at hearing it is not necessary that it have been specifically alleged in C for ALJ to make finding)

Pilgrim Life Insurance Company 249 NLRB No. 140
(Respondent not deprived of due process where threat not alleged in C held to be violation since allegation fully litigated)

Hack Manufacturing Company v. N.L.R.B. 693 F.2d 1176 (C.A. 8, Dec. 1982)
(although complaint did not raise issue of contract duration, it contained general allegations bringing E's bad faith in negotiations into question, matter of contract duration was raised and fully litigated, and E was not unfairly surprised)

Cain's Generator and Armature Company, Inc. v. N.L.R.B. 628 F.2d 933 (C.A. 6, 1980)
(Bd's finding of violative wage increase was consistent with matters alleged and litigated and cannot serve as basis to reverse Bd's decision by ct)

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. 683 F.2d 305 (C.A. 9, July 1982)
(E's contention that it was denied due process by litigation of matters outside C, rejected, since actions before Bd are not subject to technical pleading requirements that govern private lawsuits; charge need not be technically precise as long as it generally informs charged party of nature of alleged violations; and where issue is fully and fairly litigated at administrative hearing, Bd may find ULP even though no specific charge is made in C)

Hadley Fruit Orchards, Inc. JD-(SF)-121-82
(where some instances of actions that might be unlawful had neither been plead as violations in original C nor *amended in*, ALJ made findings on each of them since they had come into the record w/o objection and appeared to have been litigated as fully as respondent chose to litigate any violations that had been alleged)

N.L.R.B. v. Tricor Products, Inc., and/or C & J Pattern Co. 636 F.2d 266 (C.A. 10, 1980)
(ct upheld Bd's finding of constructive discharge, notwithstanding contention that issue was not properly before Bd because it was not alleged in complaint, since matter was fully heard where Ee testified about confrontation with E which resulted in his termination, E did not challenge accuracy of Ee's testimony, and it appears that Ee and E were only persons who could shed any light on circumstances surrounding Ee's termination)

8075-7500 Findings on issues not fully litigated

Electrical Workers, Local Union No. 1186 (Pacific Electrical Contractors Association, etc.) 264 NLRB No. 097
(where conduct not alleged in C and Respondent not otherwise put on notice that evidence of this conduct might be basis of finding of independent violation and even after hearing GC did not argue before ALJ that this conduct violated Act, nor did ALJ include it in his statement of case, issues not fully litigated and *ALJ's conclusion that this conduct constituted violation improperly intrudes on GC's authority to frame case*)

United Sanitation Services, Division of Sanitas Service Corp. 262 NLRB No. 173
(Bd did not adopt ALJ's finding that supervisor unlawfully threatened Ee, where supervisor's statement was not alleged in complaint to be violation, ALJ inadvertently credited incorrect translation of Ee's testimony, and issue was not fully litigated at hearing)

Beck Studios, Inc. 260 NLRB No. 044
(record did not support ALJ's findings concerning Ee's recall and later termination where these events were neither alleged in complaint as ULPs nor fully litigated)

Marathon Letourneau Company, Longview Division 256 NLRB No. 084
(Bd did not adopt ALJ's finding that E's maintenance of no-solicitation and no-distribution rule w/o delineating or explicating a special purpose for such rules was unlawful, where facial validity of rules was not raised in complaint nor put in issue at hearing, and consequently E was denied opportunity fully to litigate issue of rules' validity and to present evidence justifying them, if necessary)

International Brotherhood of Pottery & Allied Workers, AFL-CIO (Colton Manufacturing, Inc.) 254 NLRB No. 035
(issue of denial of fair representation by U's failure to communicate to Ees rules and policies governing to whom strike benefits disbursements would be paid which was not alleged in complaint which alleged only unlawful refusal to pay accrued strike benefits to strikers who resigned from U and returned to work for E, held not fully litigated where nothing in GC's oral argument put U on notice and there was no notice of theory until submission of GC's post-trial brief)

Canney Drilling Company 254 NLRB No. 0[illegible]
(where complaint did not allege E's unilateral implementation of its final wage as violation, no violation will be found as issue not sufficiently litigated at hearing; moreover, this issue is of such magnitude that when it is raised first time post hearing, this places undue burden on E, depriving him opportunity to present defense)

Valley Cabinet & Mfg., Inc. 253 NLRB No. 0[illegible]
(where violation was neither alleged in complaint nor litigated at hearing ALJ finding of violation not adopted by Bd)

8075-7500—Cont.

Yellow Taxi Company of Minneapolis, d/b/a Suburban Yellow Taxi Company **249 NLRB No. 035**
(violation not found where GC did not allege claimed ULP in C nor advance it as theory of C and GC and E resolved issue by settlement agreement in prior, related proceeding)

Hemly Hardwood Lumber Co. **JD-285-81**
(interrogation which would otherwise be held violative, not held unlawful, where not alleged in complaint and matter not fully litigated since E not on notice and thus made no effort to refute testimony regarding interrogation, nor did GC in post trial brief allege interrogation as violation)

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(since due process forbids ALJ from gratuitously interjecting new issues into case and deciding them sua sponte, ct held E's granting of wage increase which was held violative of Section 8(a)(1) not violative of Section 8(a)(5) where E did not have notice at hearing that its good faith in dealing with U on or before relevant date was in issue and issue was not fully litigated)

Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO, Local 576, et al. v. N.L.R.B. **663 F.2d 223 (C.A.D.C., Dec. 1980)**
(no violation found where complaint alleged only alter ego theory which did not give E notice of GC's alternative theory that E went out of business w/o notifying U and bargaining over decision)

8400 EXCEPTIONS AND BRIEFS

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(E's extensive exceptions and brief challenging several of ALJ's findings such as factual finding that there was no evidence regarding E's statement to Ee pertaining to disciplinary warning, overruled; ALJ's error was insignificant in given instance and did not undermine ALJ's decision; E's other exceptions, neither separately nor cumulatively, cast any doubt on ALJ's finding of unlawful conduct on part of E)

8433 EXCEPTIONS

Together We Stand Women's Guild Day Care Center **256 NLRB No. 064**
(to extent that respondent's exceptions asserted existence of facts that were not part of formal record, Bd was unable to consider such evidence absent showing that it was newly discovered or not previously available; to extent portion of exceptions why he considered motion to reopen record, that motion denied)

Eastern Maine Medical Center **253 NLRB No. 024**
(E's mtn to strike charging party's answer to its exceptions on ground answer raised issues not dealt w/i E's exceptions and constituted new exceptions which were not timely filed, denied; charging party's suggestion of additional remedies in responde to E's exceptions regarding ALJ recommended provisions does not justify striking entire answer, particularly since E was afforded opportunity and did file response with respect to those issues)

8433-0100 Generally

Serendippity-Un-Ltd and Tigerrr, Inc. **263 NLRB No. 100**
(GC's mtn to strike E's exceptions to ALJ's decision, denied, where, although Bd did not condone E's unwarranted, unsubstantiated, and defamatory attacks on Bd processes and policies, Bd decided not to strike E's exceptions on such basis)

Bay Medical Center, Inc. **252 NLRB No. 159**
(where E had consistently refused to bargain with charging party on basis that unit was inappropriate rather than on basis charging party lacked authority to demand bargaining and had admitted identity of bargaining agent in answer, E is estopped to assert in exceptions to ALJ's decision that charging party lacked authority to demand bargaining)

8433-2500 Who may file

Lincoln Technical Institute, Inc. **256 NLRB No. 032**
(alleged discriminatee who did not file ULP charge, seek to intervene at any stage in proceeding or participate in any manner as party to proceeding may not file exceptions to ALJ decision that is not excepted to by any party; statue requires that notice of ALJ decision be served on parties and w/o such notice it becomes impossible for Bd to enforce time limits for filing exceptions; moreover, alleged discriminatee could have filed charge or moved to intervene and having chosen to rely upon representation provided by U and GC cannot after the hearing complain about that representation)

Land Equipment Inc. **248 NLRB No. 098**
(Bd did not disturb ALJ's description of unit absent exceptions thereto by either party notwithstanding intervenor's contention that description was incorrect)

Leonard Giacalone v. N.L.R.B. **682 F.2d 427 (C.A. 3, June 1982)**
(discriminatee does not have standing to file exceptions to ALJ's decision where U was charging party as Bd's rules contemplate that exceptions are to be filed only by parties to proceedings)

8433-3300 Time for filing

Serendippity-Un-Ltd and Tigerrr, Inc. **263 NLRB No. 100**
(GC's mtn to strike E's exceptions to ALJ's decision, denied, where GC was not substantially prejudiced as result of late service of exceptions, since GC had adequate time to prepare a brief in opposition to exceptions)

Evans Brothers Barber & Beauty Salons, Inc. **256 NLRB No. 023**
(Bd accepted U's exceptions notwithstanding E's contention they were untimely filed where E had received copies two days after exceptions were due in Washington and since copies were postmarked as of date they were due and assuming exceptions themselves were mailed on same date, U could not have harbored reasonable expectation they would reach Bd by filing date; assuming E's speculation was correct, Bd noted E had adequate time to answer exceptions, and E did not raise nor did Bd perceive any prejudice due to late filing)

Fremont Manufacturing Division, The Oil Gear Company, Inc. **255NLRB No. 113**
(E's exceptions, mailed prior to last day on which timely exceptions could be filed, but filed a week after last day for filing rejected as being not timely filed under Bd's R/R)

Maine Forest, Inc., formerly known as Claude Carrier, Inc. **JD-(NY)-59-80**
(rejection of exceptions filed by E in French, not unfair and prejudicial, where exceptions were not timely filed, copies were not served on other parties to proceeding, and it really was not necessary for E to address exceptions in French)

Kessler Institute For Rehabilitation v. N.L.R.B. **669 F.2d 138 (C.A. 3, Jan. 1982)**
(Bd Rule, Sec. 102.114, provides, inter alia, maximum time period for Bd to receive documents with additional 3 day period allowed if Bd uses mail to serve notice of right to file documents, and further, if time period ends on Sunday or holiday (Saturday considered holiday), these days are not counted in response period and 3 day mailing period is tacked on beginning on 2nd day following such Sunday or holiday)

8433-5000 Effect of failure to file or late filing

First Termite Control Co., Inc. **265 NLRB No. 200**
(GC's mtn to strike company's brief as untimely filed, denied where GC suffered no prejudices by brief reaching ALJ 3 days late and jurisdictional issue deserved full explication from company)

Axelson, Inc., subsidiary of U.S. Industries, Inc. **263 NLRB No. 010**
(where no exceptions were filed to ALJ's findings and conclusions in ULP case with respect to 8(a)(1) violations found therein, Bd's adoption of ALJ's ultimate findings and conclusions does not carry with it approval of each and every comment by ALJ on the evidence, but only those that are essential to his ultimate findings; thus, Bd's decision should not be taken as adopting ALJ's gratuitous dictum which it was asked to consider in instant related decertification proceeding and which, in any event, could not be made from fair reading of record)

Yellow Taxi Company of Minneapolis, d/b/a Suburban Yellow Taxi Company **262 NLRB No. 089**
(Bd is not bound by ALJ's findings, even in absence of exceptions and can reevaluate conclusions reached by ALJ based on record in case)

Cimpl Transporation Company **256 NLRB No. 173**
(exceptions and briefs timely filed where Bd received documents w/i time allowed but GC received these documents 10 days after filing date; furthermore GC had adequate opportunity to answer these exceptions and briefs)

Teamsters & Auto Truck Drivers, Local No. 85 (William Volker and Company) **253 NLRB No. 089**
(GC's mtn to strike brief in support of exceptions granted where R's brief untimely filed)

P. J. Gear & Sons, Inc. **252 NLRB No. 028**
(request granted though E, acting on own behalf, notified Bd prior to deadline for filing exceptions that it intended to file exceptions and there was possibility that it would need extension of time, and then asked for extension prior to deadline although request not received until after date)

Wismer and Becker, Contracting Engineers **251 NLRB No. 086**
(on ct remand, Bd affirmed ALJ's finding that U's general refusal to make referrals was not unlawful, where GC failed to litigate such issue; U was w/o adequate notice from hearing and briefs that refusal was issue as independent violation and was deprived of opportunity to present relevant defense evidence, GC also failed to comply with Bd's R/R by not filing specific exceptions concerning issue, and it would be difficult to infer that GC intended to maintain issue as part of theory of case as it was originally presented to Bd)

8433-5000—Cont.

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(where Respondent filed cross-exceptions and answering brief but Bd failed to receive them prior to its decision, Bd's original order rescinded in order for it to be able to consider those documents)

8433-5033 Adoption as Board order under section 10(c)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(in absence of exception to ALJ findings Bd may still review findings since Bd has authority to modify or set aside any finding or order made or issued by it until case shall have been filed in ct)

8433-5800 Service

Fashionline Ltd. **256 NLRB No. 067**
(GC's mtn to strike exceptions of third party to dispute between respondent E and U denied, notwithstanding exceptions did not conform in all particulars with R/R Secs. 102.46, 102.112, and 102.113, where third party was not party to ULPs committed by respondent E)

8433-6700 Form and specificity required

A & T Manufacturing Company **263 NLRB No. 201**
(mtn to strike GC and Charging Party's exceptions for failure to comply with requirements of BD's R/R Section 102.46(b) in that questions of procedure, fact, law or policy to which exceptions taken not set forth specifically, and grounds for exceptions and portions of record relied on in support of position not stated, denied, notwithstanding GC's and Charging Party's exceptions did not comply fully with requirements of rule, since exceptions sufficiently designated portions of decision claimed erroneous)

Stage Employees, Local No. 249 (General Cinema Corporation of Texas, et al.) **265 NLRB No. 093**
(respondent E's mtn for reconsideration of Bd's decision on ground of alleged *exceptions* to ALJ's decision dismissing C against E in its entirety, denied, where Bd had previously found that E's *exceptions* did not meet requirements of R/R Sec. 102.46(b) in that they failed to identify any portion of ALJ's decision to which E objected, and now E complains that ALJ did not make additional rulings or comments that E would have found favorable in its bargaining relationship with charging U; moreover, subject matter of exceptions was not contained in C and issues were not litigated at hearing)

Serendippity-Un-Ltd and Tigerrr, Inc. **263 NLRB No. 100**
(GC's mtn to strike E's exceptions to ALJ's decision, denied, where, although exceptions did not fully comply with specificity requirements of Bd's R/R Sec. 102.46(b), they sufficiently designated portions of decision E claims were erroneous; moreover, GC has not shown prejudice as result of any deficiency)

Fashionline Ltd. **256 NLRB No. 067**
(GC's mtn to strike exceptions of third party to dispute between respondent E and U denied, notwithstanding exceptions did not conform in all particulars with R/R Secs. 102.46, 102.112, and 102.113, where third party was not party to ULPs committed by respondent E)

Virecon, Inc. **256 NLRB No. 037**
(although E's exceptions and brief in support thereof did not conform in all particulars with R/R Sec. 102.46(c), they were not so deficient as to warrant striking)

Poppin Fresh Pies, Inc. **256 NLRB No. 051**
(dismissal of 8(a)(1) violation was not before Bd where GC excepted to ALJ's failure to find Sec. 8(a)(3) and (1) violations but exception grounded on U activities only)

Wismer and Becker, Contracting Engineers **251 NLRB No. 086**
(GC's exception to ALJ's dismissal of all allegations of complaint not found violations of Act lacked specificity required by Bd's R/R and was not adequate notice of request to consider issue of general refusal to refer which ALJ had found not unlawful; R/R Sec. 102.46(b))

Ditch Witch of Central Illinois, Inc. **248 NLRB No. 052**
(resubmitting to Bd brief that was originally submitted to ALJ is insufficient to place in issue any finding of ALJ that Bd can review in regards to specific *exceptions*)

Maine Forest, Inc., formerly known as Claude Carrier, Inc. **JD-(NY)-89-81**
(rejection of exceptions filed by E in French, not unfair and prejudicial, where exceptions were not timely filed, copies were not served on other parties to proceeding, and it really was not necessary for E to address exceptions in French)

N.L.R.B. v. Blake Construction Co., Inc., etc. **663 F.2d 272 (C.A.D.C., Aug. 1981)**
(while E's exceptions to Bd's bargaining order were not precise and detailed, they were quite different from general pro forma objections found to be impermissibly vague; it goes against the grain to uphold a finding of a violation not charged in C, never acknowledged in hearing, and objected to in some detail before Bd, simply because magic phrase *due process* was not used in E's objections; Sec. 10(e) does not require such a triumph of technical pleading over fundamental fairness)

8433-9900 Cross exceptions

Fugazy Continental Corp.; Elite Services, Inc. **265 NLRB No. 18**
(E's mtn to reject GC's cross-exceptions as untimely filed, denied, where cross-exceptions, sent by certified mail bearing date 3 days in advance of deadline date but not received by Bd until after deadline, held to have been mailed in reasonable time for GC to have expected timely receipt; moreover, E had adequate time in which to answer cross-exceptions and has not shown that it was prejudiced by late receipt)

Hyatt On Union Square **265 NLRB No. 090**
(E's *conditional* cross-exceptions stating that if Bd did not adopt recommended order, E wished to except to various rulings made by ALJ, treated as cross-exceptions since Bd has no provision for cross-exceptions conditioned on its disposition of case)

Save-It Discount Foods, Inc. **263 NLRB No. 097**
(when GC filed cross-exception to part of ALJ order, and Respondent filed document labeled *answering brief* which was not response to GC cross-exception but was instead reply to GC's answering brief to Respondent's exceptions, this is abuse of Bd's processes which limit parties to one brief in support of, and one brief in opposition to, each set of exceptions and cross-exceptions)

St. Mary's Home, Inc. t/a St. Mary's Infant Home **258 NLRB No. 134**
(GC's mtn to strike portion of respondent's response to GC's exceptions as attempt to *thrust its evidence before the Board ex parte* denied since Bd found response is more properly characterized as argument, which is not bound by strictures applicable to posthearing submission of evidence)

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising **257 NLRB No. 022**
(GC's mtn to strike Respondent's mtn to overrule GC's exceptions granted notwithstanding GC did not file answering brief as such brief is not required under Sec. 102.46(d) of R/R)

Thermo King Corporation **247 NLRB No. 048**
(U's motion for special leave to file answering brief to E's cross-exceptions granted for limited purpose of answering questions raised in such exceptions; however, such brief not considered insofar as it exceeded scope of E's cross-exceptions (R/R Sec. 102.46(f)(1))

8467 BRIEFS

Inland Steel Company **259 NLRB No. 024**
(ALJ granted GC's mtn to disregard writings appended to E's brief, which appeared to be arbitration decisions, since E did not offer the proferred written evidence nor authenticate it at hearing)

8467-0100 Generally

Save-It Discount Foods, Inc. **263 NLRB No. 097**
(when GC filed cross-exception to part of ALJ order, and Respondent filed document labeled *answering brief* which was not response to GC cross-exception but was instead reply to GC's answering brief to Respondent's exceptions, this is abuse of Bd's processes which limit parties to one brief in support of, and one brief in opposition to, each set of exceptions and cross-exceptions)

Feld & Sons, Inc. t/a Today's Man **263 NLRB No. 041**
(GC's and parties' mtn to strike all references in E's brief to testimony of E's official, contending that, since ALJ struck all of official's testimony, it is not properly basis for argument in brief, granted, since Bd affirmed ALJ's ruling)

A & A Ornamental Iron, Inc. **259 NLRB No. 138**
(ALJ expressed his disappointment that, as a matter of commonsense courtesy, neither GC nor respondent's attorney notified him that they were waiving their right to file briefs and, as a result, clerical Ee expended needless time and energy in attempts to determine whether briefs were filed, lost in the mail, or misplaced)

B. E. & K., Inc. **252 NLRB No. 036**
(*briefs* should not be used as means of making *motions*, such as motion to amend complaint made herein)

Ernst Construction, Div. of Ernst Steel Corporation **JD-826-79**
(where ALJ was informed that U's representative had not received copy of E's brief, ALJ, in absence of mtn to strike E's brief, reminded E's counsel of his obligation to forward copies of all post-hearing documents to all parties)

8467-2800 Time for filing

Avatar, Inc., d/b/a Downtowner Motor Inn **262 NLRB No. 131**
(Bd denied GC's mtn to strike respondent's late-filed supplemental brief, notwithstanding technical failure to comply with Bd's R/R, in view of fact it contained no argument and only called attention to recent Bd decision, Bd's R/R calls for liberal construction, and decision to allow receipt was procedural and thus w/i Bd's discretion)

8467-2000—Cont.

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**
(ALJ treated GC's brief, mailed 4 days before due date but not received until 4 days after such date, as timely filed)

Otis Elevator Company, A Wholly Owned Subsidiary of United Technologies **255 NLRB No. 005**
(E's mtn to strike GC's brief in support of ALJ's decision on ground that such brief must be filed w/i same time limit as is permitted for filing of exceptions, and that GC failed to file timely answering brief to E's exceptions, denied; although not in technical compliance with R/R Sec. 102.46(a), GC's brief qualified as timely answering brief pursuant to Sec. 102.46(d) which does not require specificity as claimed by E; moreover, R/R are to be liberally construed, receipt of brief is w/i Bd's discretion, and E has failed to show it was prejudiced by brief's receipt)

Kessler Institute For Rehabilitation v. N.L.R.B. **669 F.2d 138 (C.A. 3, Jan. 1982)**
(Bd Rule, Sec. 102.114, provides, inter alia, maximum time period for Bd to receive documents with additional 3 day period allowed if Bd uses mail to serve notice of right to file documents, and further, if time period ends on Sunday or holiday (Saturday considered holiday), these days are not counted in response period and 3 day mailing period is tacked on beginning on 2nd day following such Sunday or holiday)

8467-4000 Form and content

Forster Beverage Corporation **268 NLRB No. 035**
(where E included in its brief to Bd a decertification ptn with an Ee ptn attached and argued that it is part of record since ALJ took official notice of decertification ptn, Bd noted that ALJ only took official notice to show that decertification ptn was on file so Bd struck Ee ptn and all references to it because ALJ never made Ee ptn part of record, only acepted decertification ptn for limited purpose and Ee ptn was never proven authentic)

Serendippity-Un-Ltd and Tigerrr, Inc. **263 NLRB No. 100**
(E's mtn in brief, opposed by GC, to include State unemployment board of review decision in evidence relating to *quit* of alleged discriminatee, granted; while E failed to assert that proffered document was newly discovered or not in existence during hearing, and while such previously unmentioned document would ordinarily be rejected upon GC's opposition, document placed in record on theory that its omission was result of E's oversight, especially since other documents pertaining to alleged discriminatee were in evidence)

Feld & Sons, Inc. t/a Today's Man **263 NLRB No. 041**
(GC's and parties' mtn to strike certain portions of E's brief and attached exhibits, and to strike all references in E's brief to Corporate Counsel's letter to attorneys representing E in proceedings, granted, since exhibits and references were not admitted into evidence at hearing and, therefore, are not part of record in this proceeding; moreover, consideration of such documents would deny parties opportunity for *voir dire* and cross-examination and would violate R/R)

Viracon, Inc. **256 NLRB No. 037**
(although E's exceptions and brief in support thereof did not conform in all particulars with R/R Sec. 102.46(c), they were not so deficient as to warrant striking)

Otis Elevator Company, A Wholly Owned Subsidiary of United Technologies **255 NLRB No. 005**
(U's mtn to strike portions of E's brief in support of its exceptions, which referred to report resulting from study of E's operations on which E based transfer of unit work, granted; E's claim that it wished to make part of record portions of summary of report which it repeatedly refused to provide U, stretches bounds of credibility; E's proffered documents are not part of official transcript and appear to have been edited; and admission of documents would deny GC and U opportunity for cross-examination and voir dire examination as to documents' authenticity)

United States Postal Service **JD-420-81**
(allegation made for first time in brief not considered by ALJ since respondent had no opportunity to defend against it)

8467-6000 Reply

Local 513, Plumbers (Master Plumbers and Heating Contractors of the Twin Cities (Benton Harbor and St. Joseph, MI)) **264 NLRB No. 059**
(Respondent's mtn to submit reply brief *to correct significant factual distortions* and give Respondents opportunity to reply to newly announced theory of GC, denied, since GC's facts as set forth in brief did not materially deviate from record and theory set forth in GC's brief substantially that given during trial)

Southern Newspapers, Inc., d/b/a The Baytown Sun **255 NLRB No. 022**
(at GC's request, E's brief in reply to GC's brief stricken since Bd's R/R do not provide for reply briefs and, in any event, E's reply brief is unnecessary since it raises same issue treated in E's original brief)

8500 RECORD IN UNFAIR LABOR PRACTICE PROCEEDING

8550 AUGMENTATION

Rai Research Corporation **257 NLRB No. 127**
(where Bd directed that record be reopened after ALJ decision issued so that E could cross-examine Ee, Bd rejected E's contentions that hiatus between direct and cross exams was prejudicial or that ALJ failed to give adequate consideration to evidence on cross because he did not want to reverse his previously published decision)

Custom Wood Interiors, Inc. **248 NLRB No. 023**
(mtn for leave to introduce new evidence denied where only effect of proffered evidence would be *only to circumstantially bear upon witness' credibility* which was not crucial to Bd's acceptance of ALJ's finding of violation)

8600 ORAL ARGUMENT

Pick-Mt. Laurel Corporation **259 NLRB No. 034**
(request for oral argument denied since records, briefs and various submissions adequate to dispose of issues presented)

Ironworkers, Local 483 (Building Contractors Association of New Jersey) **248 NLRB No. 009**
(oral argument denied because record, exceptions, and briefs adequately represented issues and positions of parties)

8800 BOARD DECISION

8801 GENERALLY

Livingston Powdered Metal, Inc. v. N.L.R.B. **669 F.2d 133 (C.A. 3, Jan. 1982)**
(although Bd's action was nominally a summary judgment, it was in reality a default, since in summary judgment there is no dispute about relevant facts while in default defendant's contentions, as here, are not considered but rather *ex parte* allegations of adversary are accepted as true; possibility that an injustice may occur is much more likely in those circumstances, since controversies are decided upon a procedural technicality instead of ruling on merits; and, consequently, in a default case, more exacting judicial scrutiny is in order)

8801-5000 Requirements of APA Sec. 8(b) 5 USC 557(c)

Masonic Homes of California, Inc. **258 NLRB No. 006**
(Bd did not rely on decision not reported in published volumes of Bd Decisions)

8801-7500 Retroactive application

Documation, Inc. **263 NLRB No. 052**
(it is Bd's established policy that, following pronouncement of new rule of law, it should be applied retroactively; that is, to the case in which it arises and to all pending cases)

8820 DECISIONAL PROCESS

8820-0100 Generally

Hall-Brooke Hospital, a division of Hall-Brooke Foundation, Inc. **645 F.2d 158 (C.A. 2, Mar 31, 1981)**
(E's contention that 2 Bd members, who dissented in full Bd decision setting aside election because of U's improper use of election campaign material but were majority in 3-member panel decisions in instant case and other cases dealing with similar issue but not invalidating elections, refused to adopt full Bd's decision in prior case, rejected; such contention should not be made lightly, and ct sees no reason for overcoming strong presumption against it; moreover, proposed decisions of panels are circulated to entire Bd, and nonparticipating member may request full Bd attention)

8820-2500 Delegation to three member panel discretionary

A.G.S. Graphics, A Division of George Lithograph Co. **265 NLRB No. 120**
(policy of Bd for same panel which decides case to pass on request for reconsideration of panel decision and for full Bd to consider such request only if panel refers it to full Bd)

8840 FORM AND CONTENT

Hi-Craft Clothing Co. v. N.L.R.B. **660 F.2d 910 (C.A. 3, Oct. 1981)**
(Bd's failure, in citing own decision as authority for its holding in case herein, to cite ct decision denying enforcement of Bd order was misleading and subject to justifiable criticism; Bd thereby indicated that it should apply its own rules on national basis and that therefore it will not defer to reviewing cts; better approach for Bd would be to accept first ruling of ct or else seek reversal in SCt or statutory change by Congress; and shopping in number of cts for favorable decision should be subject to searching and critical review)

8840-2500 Reasons for decision must be made clear

8840-2500—Cont.

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)

(Bd can satisfy requirement of ct to articulate factors (not just conclusions) that justify imposition of bargaining order over remedy of ordering new election by adopting findings and reasonings of ALJ if latter provides statement of reasons; furthermore, merely changing effective date of bargaining order from what ALJ set did not require separate statement by Bd; statement required to assist reviewing ct in determining whether standards of *Gissel* have been satisfied)

N.L.R.B. v. Haberman Construction Company 641 F.2d 351 (C.A. 5, Apr. 1981)

(Bd is authorized to change its mind and modify its construction of Act in light of its cumulative experience, but when it does so it must at least carefully explain its reasons and follow controlling law; it is duty of Bd, not of cts, to clearly set forth intent of its decisions and to explain departure from precedent)

Seattle-First National Bank v. N.L.R.B. 638 F.2d 1221 (C.A. 9, 1981)

(where Bd's finding that E bargained in bad faith was based solely on contract proposals and Bd made no findings which assertedly demonstrated bad faith, nor with respect to E's contention parties unable to agree because of U's unreasonable proposals and hard bargaining, remand to Bd to determine whether record as a whole, including course of negotiations as well as contract proposals, support finding of bad faith, since determination of whether E was engaged in impermissible *surface bargaining* or permissible *hard bargaining* can only be made upon consideration of *totality of circumstances*)

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)

(where Bd failed to give any justification for its different treatment of 2 branches of State's gambling industry (jai alai and horse or dog racing), identical in all comparable respects, where as to former it asserted jurisdiction, latter it declined to do so, Bd abused its Sec. 14(c)(1) discretion)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(conclusory statement by Bd that access is needed to neutralize effects is not sufficient to justify grant of access; assumptions must be supported by evidence in record; Bd must find reasonable forseeability that Ees at those plants where access is imposed have suffered coercive effects from E's unlawful conduct and that access remedy is necessary to cure those effects)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(enforcement of stringent *access* remedy denied where Bd failed to make findings that corporatewide remedies were necessary to offset coercive or chilling effects caused by E conduct at issue, even as that conduct was magnified by existence of previous violations of Act)

8840-2510 Not necessary as to ancillary issues

East Bay Chevrolet dba Time Chevrolet v. N.L.R.B. 659 F.2d 1006 (C.A. 9, Oct. 1981)

(no remand where Bd did not discuss U's requests for costs and attorney fees as this issue was ancillary to major questions presented)

8840-3700 Decision only on issues raised by facts, pleadings and exceptions in case

Forester Beverage Corporation 265 NLRB No. 035

(where E included in its brief to Bd a decertification ptn with an Ee ptn attached and argued that it is part of record since ALJ took official notice of decertification ptn, Bd noted that ALJ only took official notice to show that decertification ptn was on file so Bd struck Ee ptn and all references to it because ALJ never made Ee ptn part of record, only acepted decertification ptn for limited purpose and Ee ptn was never proven authentic)

Salem Village I, Inc., Salem Village II, Inc., and Salem Village III, Inc. 263 NLRB No. 111

(on ct remand, hearing on objections was limited only to those issues raised before Bd in E's original objections, as ct opn does not say that it intended to ignore 10(e) limitation and refers only to objections that were discussed)

Feld & Sons, Inc. t/a Today's Man 263 NLRB No. 041

(GC's and parties' mtn to strike certain portions of E's brief and attached exhibits, and to strike all references in E's brief to Corporate Counsel's letter to attorneys representing E in proceedings, granted, since exhibits and references were not admitted into evidence at hearing and, therefore, are not part of record in this proceeding; moreover, consideration of such documents would deny parties opportunity for *voir dire* and cross-examination and would violate R/R)

Lashaw Corporation 260 NLRB No. 020

(Bd considered witness's testimony notwithstanding ALJ sustained objection to it and excluded evidence)

Northeastern Dodge, Inc. 258 NLRB No. 118

(although E did not except to findings on which violation premised, it did except to ALJ's Conclusion of Law and Recommended Order thereon; accordingly Bd considered issues to be before it)

S. Freedman Electric, Inc. 256 NLRB No. 060

(GC's mtn to strike affidavit from E's brief granted where affidavit was not introduced as evidence at hearing is not part of record and contains factual allegations which were not subjected to cross-examination)

Together We Stand Women's Guild Day Care Center. 256 NLRB No. 064

(to extent that respondent's exceptions asserted existence of facts that were not part of formal record, Bd was unable to consider such evidence absent showing that it was newly discovered or not previously available; to extent portion of exceptions why he considered motion to reopen record, that motion denied)

Poppin Fresh Pies, Inc. 256 NLRB No. 081

(dismissal of 8(a)(1) violation was not before Bd where GC excepted to ALJ's failure to find Sec. 8(a)(3) and (1) violations but exception grounded on U activities only)

Jack Thompson Oldsmobile, Inc. 256 NLRB No. 014

(no deferral where issue was not raised until after hearing and thus not fully litigated; in addition two members of Bd panel would find deferral inappropriate since complaint alleged 8(a)(3) violation)

N.L.R.B. v. Advanced Systems, Inc. 681 F.2d 918 (C.A. 9, Apr. 1982)

(Bd abused discretion when: 1) adopted RD's report w/o reviewing underlying documents because E failed to append to its exceptions documents given by it to RD; and 2) failed to include this documentation in record to ct. No waives by E for failure to raise issue of complete record during Bd proceeding as E didn't discover fact until Bd filed its certificate of record. Bd Rule 102.69(g) to ambiguous to put E on notice complete record not sent to Bd, nor did RD's report give notice documents secured by RD himself would be excluded from record or clearly indicate that E's documents would be excluded unless appended to exceptions)

N.L.R.B. v. Advanced Systems,' Inc. 681 F.2d 913 (C.A. 9, Apr. 1982)

(where RD failed to submit full record to Bd, Bd's contention that it was entitled to rely on RD's report w/o resort to full administrative record in view of lack of specificity of E's exceptions to report, rejected, since difficulty in determining whether exceptions materially dispute RD's findings stems not from E's lack of specificity but from RD's failure to disclose evidentiary basis for his conclusion)

8860 FINDINGS

8860-0100 Generally

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. 629 F.2d 305 (C.A. 3, 1980)

(Bd not required to give elaborate explanation of factors warranting bargaining order but to estimate impact of ULPs on liklihood of fair rerun-election)

8860-1200 Board may make de novo findings on basis of record

Building Material & Dump Truck Drivers, Local Union NO. 420, Teamsters (Leonard Worthington, an Individual) 257 NLRB No. 161

(Bd upheld ALJ's finding of ULP notwithstanding ALJ failed to articulate his analyses of E's motivation in terms of *Wright Line* where his findings satisfied analytical objectives)

8860-2500 Adequate if ultimate facts on which order is based appear

Castle Instant Maintenance/Maid, Inc. 256 NLRB No. 029

(ALJ application of *Wright Line* test to pretext case though unnecessary, did not alter correct result)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(conclusory statement by Bd that access is needed to neutralize effects is not sufficient to justify grant of access; assumptions must be supported by evidence in record; Bd must find reasonable forseeability that Ees at those plants where access is imposed have suffered coercive effects from E's unlawful conduct and that access remedy is necessary to cure those effects)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(enforcement of stringent *access* remedy denied where Bd failed to make findings that corporatewide remedies were necessary to offset coercive or chilling effects caused by E conduct at issue, even as that conduct was magnified by existence of previous violations of Act)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(enforcement denied where Bd order at issue could not be justified as *remedial*, and could only be explained as *punitive, since need for mitigating coercive effects not present in record before access* was awarded at unorganized plants of E)

8860-3300 Board not bound by ALJ reasoning or use of data

8860-3300—Cont.

Yellow Taxi Company of Minneapolis, d/b/a Suburban Yellow Taxi Company **262 NLRB No. 089**
(Bd is not bound by ALJ's findings, even in absence of exceptions and can reevaluate conclusions reached by ALJ based on record in case)

Fertilizer Company of Texas, Inc. **254 NLRB No. 185**
(in finding that E unlawfully withdrew recognition; Bd did not rely on ALJ's finding that E was successor as GC did not allege more litigate successorship issue)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(Bd not inhibited by references drawn by ALJ but may draw legitimate inferences from proven facts)

N.L.R.B. v. Hawthorne Mazda, Inc. **659 F.2d 1089(T) (C.A. 9, Aug 1981)**
(Bd is free to draw its own inferences from evidence in record and reviewing ct will uphold Bd's finding even where ALJ interpreted facts differently)

Karl Kallmann, d/b/a Love's Barbeque Restaurant, No. 62 v. N.L.R.B. **640 F.2d 1094 (C.A. 9, 1981)**
(ct rejected E's contention that evidence supporting Bd's determination must be stronger when Bd disagrees with ALJ's findings than when it agrees; in any event, Bd did not disagree with ALJ's assessment of witness credibility, but drew different inferences from testimony itself which is entitled to judicial deference due to Bd's special expertise in drawing these kinds of inferences)

8860-3500 Board not bound by its previous reasoning or decisions

Kahn's Auto Company, Division of Consolidated Foods Co. **256 NLRB No. 147**
(mtn for reconsideration denied where mtn raised no substantial issue not considered by Bd in its original decision and sufficient evidence was adduced at hearing to allow proper application of test established in *Kraft Foods, Inc.*, 251 NLRB No. 6 (1980) determining when reinstatement was warranted to remedy violation of *Weingarten* rights)

Precision Striping, Inc. v. N.L.R.B. **642 F.2d 1144 (C.A. 9, Mar 23, 1981)**
(Bd may change its mind about prior ruling, but when it does so it is *obliged to set forth its reasoning in favor of change in order to avoid appearance of arbitrariness*)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(while agency is free to change its policies as it determines are in public interest, it must supply reasoned analysis indicating why its departure from precedent)

8860-4100 Board not bound by ALJ recommendations

Penntech Papers, Inc.; etc. **263 NLRB No. 033**
(on exception, Bd revised ALJ's description of bargaining units, for which ALJ had relied on portions of C admitted by Respondent, as inaccurate as not fully reflective of job classifications set forth in bargaining agreement and description of largest unit omitted, in view of fact GC's and Charging Party's revised job descriptions identical and consistent with job descriptions in bargaining agreement)

Charles Batchelder Company, Inc. **250 NLRB No. 009**
(question of motivation where alleged unlawful discharge involved is to be resolved by determination based on consideration and weighing of all relevant evidence and not one to be answered by crediting or discrediting E's professed reason for discharge)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(Bd has broad discretion to fashion remedies to effectuate policies of Act because relation of remedy to policy is singularly connected to Bd's competenceand knowledge gained from experience; therefore, since Bd, notALJ, was given such discretion, Bd's rejection of ALJ's recommended remedy is of no consequence)

8860-4500 Will not overrule ALJ's credibility resolutions unless contrary to clear preponderance of all relevant evidence

Vic Koenig Chevrolet **263 NLRB No. 088**
(in evaluating conflicting testimony where demeanor factor is not primary basis, factors which Bd considers are: weight of evidence, established or admitted facts, inherent probabilities, and reasonable influences drawn from record as whole)

Right-Gard Corporation **261 NLRB No. 177**
(reversal of ALJ's credibility resolutions not warranted, notwithstanding E's contention that hearing was tainted by conduct of witness who allegedly threatened and pushed other witnesses outside courtroom while waiting to testify)

Lasher Corporation **260 NLRB No. 020**
(overruled)

United States Postal Service **260 NLRB No. 009**
(notwithstanding that Bd had doubts about ALJ's handling of credibility resolutions, Bd adopted ALJ's recommendations in favor of Respondent, since ultimate result (concerning ULPs) would not be changed; GC failed to present *prima facie* case)

United States Postal Service **260 NLRB No. 009**
(notwithstanding that Bd had doubts about ALJ's handling of credibility resolutions, Bd adopted ALJ's recommendations in favor of Respondent, since ultimate result (concerning ULPs) would not be changed; GC failed to present *prima facie* case)

Gerson Electric Construction Company **259 NLRB No. 088**
(GC's contention that ALJ failed to make any findings concerning one witness' testimony, rejected; inasmuch as ALJ based his credibility findings upon *his observation of witness demeanor*, it was implicit in his general statement regarding credibility that he discredited testimony of witness in question since it conflicted with facts as described by other witnesses whose testimony ALJ, completely credited; consequently, in considering GC's exceptions to certain credibility findings of ALJ, Bd has also reviewed his implicit resolution with respect to witness herein

Edgcomb Metals Co., One of The Williams Companies **254 NLRB No. 140**
(Bd overruled ALJ's finding of unlawful threat of plant closure where U president's testimony relied on by ALJ was of doubtful value in establishing particulars of alleged incident and not sufficient to sustain violation)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 1, Sep. 1981)**
(ALJ's credibility resolutions stand unless they are unreasonable)

Consolidation Coal Company v. N.L.R.B. **669 F.2d 482 (C.A. 7, Jan. 1982)**
(where ALJ's credibility determinations rested not on demeanor, despite general preliminary statement that demeanor was factor in ALJ's conclusions, but on an analysis of testimony, they deserve less than usual deference and here find Bd's determination not supported by substantial evidence)

N.L.R.B. v. Winco Petroleum Company and Cooper Oil Company, Inc., Successor Employer **668 F.2d 973 (C.A. 8, Jan. 1982)**
(successor's actual knowledge of pending ULPs of predecessor inferred by ALJ in credibility determinations which were supported by substantial evidence that during sale negotiations seller referred to *U problems* as one reason for selling, company's financial report included amount for legal fees and was shown to successor, predecessor's son testified to successor's awareness of pending ULP proceedings, predecessor stated that labor proceedings against company were not *secret*, and proximity and similarity of predecessor and successor's enterprises)

N.L.R.B. v. Brooks Cameras, Inc. **691 F.2d 912 (C.A. 9, Nov. 1982)**

McDonnell Douglas Corporation v. N.L.R.B. **655 F.2d 932 (C.A. 9, 1981)**
(where Bd found ULP, remand to ALJ for credibility findings was unnecessary, since E never clearly asked Bd for such relief and Bd found sufficient facts established by uncontradicted testimony to permit it to conclude that Ee was discharged for his U activitiy, and to reject as pretextual explanations offered by E)

8860-4700 Board may independently evaluate ALJ's credibil ity resolutions

Herman Brothers, Inc. **264 NLRB No. 064**
(where ALJ's credibility resolutions not based on demeanor, but upon facts and inferences drawn from testimony Bd can draw own credibility conclusions)

Humes Electric, Inc. **263 NLRB No. 159**
(Bd will examine record *de novo* and make credibility findings, when appropriate, that comport with record evidence as a whole and with inferences fairly drawn therefrom where ALJ may have misstated or confused certain of relevant record evidence and testimony presented in instant case)

Illinois Bell Telephone Company **259 NLRB No. 167**
(Bd upheld credibility findings of ALJ who wrote decision after trial judge died where such credibility findings were based on factors other than demeanor, and, in consonance with Bd policy set forth in *Standard Dry Wall*)

N.L.R.B. v. Brooks Cameras, Inc. **691 F.2d 912 (C.A. 9, Nov. 1982)**

8860-5000 Specificity required

N.L.R.B. v. Bob's Big Boy Family Restaurants, a Division of Marriott Corporation **693 F.2d 904 (C.A. 9, Dec. 1982)**
(where objectives of contract stability and adequate Ee representation conflict, Bd must exercise its discretion to reach appropriate balance, but it must give explicit recognition to both sides of balance)

8860-5000—Cont.

N.L.R.B. v. United States Postal Service **671 F.2d 503(T) (C.A. 9, Feb. 1982)**
(Bd order denied enforcement where Bd revised ALJ's credibility findings without sufficient justification)

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. **686 F.2d 1362 (C.A. 11, Sept. 1982)**
(where Bd failed to give any justification for its different treatment of 2 branches of State's gambling industry (jai alai and horse or dog racing), identical in all comparable respects, where as to former it asserted jurisdiction, latter it declined to do so, Bd abused its Sec. 14(c)(1) discretion)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(conclusory statement by Bd that access is needed to neutralize effects is not sufficient to justify grant of access; assumptions must be supported by evidence in record; Bd must find reasonable forseeability that Ees at those plants where access is imposed have suffered coercive effects from E's unlawful conduct and that access remedy is necessary to cure those effects)

8860-6300 Decision limited to facts of case

S. Freedman Electric, Inc. **256 NLRB No. 068**
(GC's mtn to strike affidavit from E's brief granted where affidavit was not introduced as evidence at hearing is not part of record and contains factual allegations which were not subjected to cross-examination)

8860-7500 Express finding not necessary on all points

East Bay Chevrolet dba Time Chevrolet v. N.L.R.B. **659 F.2d 1006 (C.A. 9, Oct. 1981)**
(no remand where Bd did not discuss U's requests for costs and attorney fees as this issue was ancillary to major questions presented)

McDonnell Douglas Corporation v. N.L.R.B. **655 F.2d 932 (C.A. 9, 1981)**
(where Bd found ULP, remand to ALJ for credibility findings was unnecessary, since E never clearly asked Bd for such relief and Bd found sufficient facts established by uncontradicted testimony to permit it to conclude that Ee was discharged for his U activitiy, and to reject as pretextual explanations offered by E)

8860-8300 Disavowal of ALJ's statements

Southwestern Bell Telephone Company **251 NLRB No. 062**
(Bd disavowed ALJ's gratuitous comments regarding right of E to limit participation of U representative at an investigatory interview of Ee)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(Bd disavowed ALJ's statement that U's objective during strike, as an alternative to obtaining more money, is to put E out of business if he does not yield)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(while agreeing with ALJ that strike was economic at its inception, Bd disavowed his characterization of GC's withdrawal of one 8(a)(5) complaint allegation to the effect that as of date strike started, E unlawfully paid its strike replacements higher wages than it had offered during negotiations as a *legal admission* that strike was an economic one)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**
(while agreeing with ALJ's finding that E's inistence during negotiations on proposal depriving strikers of accrual of seniority for period they were on strike was unlawful, Bd disavowed ALJ's reliance on any adverse effect E's seniority plan might have on strikers' pensions, vacation, or other substantive benefits)

Western Care, Inc. d/b/a Western Care Nursing Home (United Food and Commercial Workers International Union, Local 684, AFL-CIO-CLC) **250 NLRB No. 084**
(Bd disavowed ALJ's characterization of E as being myopic in her legal obligations but incapable of firing anyone for U related reasons where record showed E was capable of blatant discriminatory conduct)

8860-8700 Findings of cumulative violations not necessary where order on those found would provide adequate remedy for others alleged

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**

Mobile Home Estates, Inc. **259 NLRB No. 183**

Musicians Union Local 47, etc. (American Broadcasting Company, etc.) **258 NLRB No. 065**
(GC's failure to produce evidence in 8(b)(1)(A) and (2) proceeding in support of allegations that Es, other than E whose operations were found to warrant assertion of jurisdiction, satisfied Bd's jurisdictional standards held not material, since operations of company found engaged in commerce were sufficient to establish jurisdiction, and U's action relative to such company sufficed of itself to establish violation; additional findings based on similar U actions would be cumulative and would not warrant change in remedy)

Western Care, Inc. d/b/a Western Care Nursing Home (United Food and Commercial Workers International Union, Local 684, AFL-CIO-CLC) **250 NLRB No. 084**

MGM Grand-Reno, Inc. **249 NLRB No. 133**

Clearwater Finishing Company, a Division of United Merchants and Manufacturers, Inc. v. N.L.R.B. **670 F.2d 464 (C.A. 4, Feb. 1982)**
(ct held that ALJ's additional findings as evidence of E's bad faith outside enumerated allegations in unreasonably withholding dues checkoff, dilatory tactics during bargaining, and circulation of Ee handbook containing an anti-U statement cannot serve as basis of a determination of an ULP and therefore finding is invalid; moreover, finding that non-alleged facts are evidence of bad faith was merely cumulative and non-alleged facts were not necessary element of Bd's finding of bad faith)

8860-9100 Variance between findings and complaint

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(Bd's finding *multitude* of other acts displaying anti-U animus of E and its supervisors, though not alleged as independent violations, were relevant in assessing violations that were alleged in complaint)

8860-9101 Generally

Greyhound Food Management, Inc. d/b/a Burger King **258 NLRB No. 178**
(where ALJ failed to make finding with respect to C allegation that E engaged in misconduct violative of 8(a)(5), Bd found that E engaged in such unlawful conduct since record established presence of all necessary elements of such violation under rationale of Gissel and Trading Post)

Pease Company **251 NLRB No. 080**
(although unlawful reinstatement of strikers was not specifically alleged in complaint, it was closely related to failure to reinstate allegation, and since composite testimony of strikers involved was credited regarding issue, finding of violation was warranted)

Clearwater Finishing Company, a Division of United Merchants and Manufacturers, Inc. v. N.L.R.B. **670 F.2d 464 (C.A. 4, Feb. 1982)**
(ct held that ALJ's additional findings as evidence of E's bad faith outside enumerated allegations in unreasonably withholding dues checkoff, dilatory tactics during bargaining, and circulation of Ee handbook containing an anti-U statement cannot serve as basis of a determination of an ULP and therefore finding is invalid; moreover, finding that non-alleged facts are evidence of bad faith was merely cumulative and non-alleged facts were not necessary element of Bd's finding of bad faith)

8860-9150 Findings on issues fully litigated

RAHCO, Inc. **265 NLRB No. 030**

Paul Distributing Co., Inc. **264 NLRB No. 179**
(allegation that E requested Ee to contact U and inform it Ees had changed their minds and no longer wanted U representation, although not alleged in C, sufficiently related to subject matter of complaint and uncontrovertedly testified to at hearing to support finding that E solicited Ees to abandon U)

H. H. Robertson Company **263 NLRB No. 173**
(violation of Sec. 8(b)(1)(B) found notwithstanding C did not precisely allege violation of subsection (B) where C alleged same action violated Sec. 8(b)(1)(A), factual issues fully litigated and GC argued matter in brief)

H. H. Robertson Company **263 NLRB No. 173**
(U's imposition of fine on supervisor-member held unlawful, notwithstanding imposition of fine not specifically alleged in C, where C did allege unlawful filing of internal disciplinary charges which is closely related to fine and thus fine falls *w/i general language oc complaint*; further, matter fully litigated where U did not object to testimony regarding fine)

Vulcan-Hart Corporation (St. Louis Division) **263 NLRB No. 084**
(conduct not alleged or argued as 8(a)(3) violation will support finding of 8(a)(3) violation where conduct was fully litigated and found 8(a)(1) violation, same facts support findings of both 8(a)(1) and (3), and 8(a)(1) and (3) subsections of the Act were related as to this particular conduct)

Knapp Corporation **262 NLRB No. 171**
(E who held Ee meeting and told Ees present that they had been chosen to attend based on their influence in shop and their strong *interest in the organizing activities* violated Act; not withstanding such conduct was not alleged as violation in C where E's actions are uncontroverted and and closely relate to subject matter of C)

Fertilizer Company of Texas, Inc. **254 NLRB No. 183**
(although E's poll was not alleged violative of 8(a)(5), violation was found as poll was alleged violative of 8(a)(1), was fully litigated, and there is no difference in facts which support finding of violation under both sections)

8860-9150—Cont.

Hacienda Hotel and Casino **254 NLRB No. 007**
(Bd held discharge of individuals unlawful, notwithstanding not alleged in complaint, since fully litigated where other Ee whose discharge had been alleged unlawful was discharged at same time for identical conduct and relevant issues were same, individual and another Ee who was discharged testified, E had opportunity to cross-examine and presented rebuttal evidence)

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**
(violation where E failed to apply contract to all Ees in appropriate unit and failed after contract's expiration to continue to maintain provisions of contract or to bargain for a new contract covering all unit Ees while erroneously insisting that a large number of Ees were not included in unit; although failure to apply existing contract to all unit Ees was not alleged as violation, matter was fully litigated, since it and later violation both turned on question of who was in appropriate unit)

The Baughman Company **248 NLRB No. 186**
(exception to ALJ's finding of unlawful unilateral change in Ees' workweek on grounds that it was not alleged in C overruled, since matter was reasonably related to C's other allegations and was fully litigated)

Vulcan-Hart Corporation (St. Louis Division) **248 NLRB No. 145**
(plant manager's statement to U vice-president in presence of Ees, that *there would be no meetings in (plant) lunchroom because U had filed charges against him* held violative, since statement was *not merely threat* but actual revocation of permission to use lunchroom; notwithstanding alleged violation was couched in terms of threat, issue of use of lunchroom was presented and litigated as *actual revocation*)

8860-9175 Findings on issues not fully litigated

Electric Hose and Rubber Company **262 NLRB No. 014**
(E's modification of its Ees' medical insurance program which occured before election ptn filed not violative of Sec. 8(a)(1) because not alleged as ULP in C but arose only in context of an objection to election and thus was not litigated as ULP. E presented no evidence regarding its action and thus allegation was never fully litigated)

Modern Manufacturing Company, Inc. **261 NLRB No. 078**
(although Bd agreed with ALJ that E's statement that he terminated one Ee and laid off another for engaging in U activity violated 8(a)(1), Bd disavowed ALJ's finding that layoff violated 8(a)(3) since neither complaint nor GC's brief alleged such violation and this issue was not fully litigated during hearing)

Overhead Door Corporation (Todco Division) **261 NLRB No. 094**
(discharge assertedly for strike misconduct, lawful where, contrary to complaint allegations, misconduct was found to have occurred; ALJ's reliance on delay in discharge to find discharge unlawful, unwarranted; complaint alleged nonoccurrence of misconduct rather than delay in discharge, neither party addressed delay issue, and record was silent as to reason for delay)

Fertilizer Company of Texas, Inc. **254 NLRB No. 183**
(in finding that E unlawfully withdrew recognition; Bd did not rely on ALJ's finding that E was successor as GC did not allege nor litigate successorship issue)

Sacramento District Council of Carpenters, AFL-CIO (Garry L. Denny, an Individual Proprietorship, d/b/a Gary Denny Construction) **254 NLRB No. 132**
(Bd overruled ALJ conclusion that U unlawfully used grievance procedure to secure compliance with hiring hall provisions where this issue was neither alleged nor fully litigated)

Safeway Stores, Inc. **252 NLRB No. 095**
(order narrowed and E ordered to furnish only that information which complaint alleged it refused to furnish since E's failure as to other information requested was not litigated)

Wismer and Becker, Contracting Engineers **251 NLRB No. 086**
(on ct remand, Bd affirmed ALJ's finding that U's general refusal to make referrals was not unlawful, where GC failed to litigate such issue; U was w/o adequate notice from hearing and briefs that refusal was issue as independent violation and was deprived of opportunity to present relevant defense evidence, GC also failed to comply wtih Bd's R/R by not filing specific exceptions concerning issue, and it would be difficult to infer that GC intended to maintain issue as part of theory of case as it was originally presented to Bd)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. **251 NLRB No. 179**
(Bd reversed ALJ finding of joint Es where issue was neither alleged in complaint nor fully litigated at hearing, and Stipulation for Certification Upon Consent Election listed Es separately)

The Nestle Company **248 NLRB No. 106**
(mtn to amend complaint subsequent to hearing to include comment allegedly made by supervisor to Es, denied, since matter sought to be added was not introduced with notice that it was to be subject of new and independent allegation of Sec. 8(a)(1) violation, and Bd found that matter was not fully litigated at hearing)

N.L.R.B. v. Hasbro Industries, Inc. **672 F.2d 978 (C.A. 1, Feb. 1982)**
(ct found no violation by E's purported remarks where they had not been alleged as violative in complaint or fully litigated but had been received in evidence by ALJ as *background* with assurance they would not be made basis for finding separate violation)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(Bd's refusal to decide either whether parties reached impasse on U's contract proposals, or whether there would be violation even if they did reach impasse not abuse of Bd's discretion, since GC did not include the issues in C and they were not fully litigated)

Huck Manufacturing Company v. N.L.R.B. **693 F.2d 1176 (C.A. 5, Dec. 1982)**
(ct held it was improper for Bd to find that E's speech was unlawful, since unlawfulness of speech was neither alleged in C nor litigated at hearing)

8880 ORDERS (See also 600 REMEDIAL ORDERS)

8880-5000 Consistency between order and decision required

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(enforcement of stringent *access* remedy denied where Bd failed to make findings that corporatewide remedies were necessary to offset coercive or chilling effects caused by E conduct at issue, even as that conduct was magnified by existence of previous violations of Act)

9000 COSTS AND FEES

Pacific Coast Metal Trades District Council and Seattle Metal Trades Council **260 NLRB No. 152**
(U not entitled to attorney's fees where ALJ's finding of no violation was based on credibility resolutions so that this case does not constitute frivolous litigation)

East Bay Chevrolet dba Time Chevrolet v. N.L.R.B. **659 F.2d 1006 (C.A. 9, Oct. 1981)**
(U was not entitled to litigation costs and attorney fees where E's defenses in refusing to bargain were not without merit or frivolous, i.e. defense rests on credibility determination)

9100 AWARDS OF ATTORNEY FEES AND OTHER EXPENSES UNDER EQUAL ACCESS TO JUSTICE ACT

9106 LEGISLATIVE HISTORY

Tilton Rack and Basket Corporation **JD-(NY)-99-82**
(legislative history of EAJA relating to provision for award of fees and expenses to eligible parties, unless government can establish that its position in litigation was *substantially justified* establishes that standard for government's position is essentially one of *reasonableness* and not to be equated with *a substantial probability of prevailing*)

American Federation of Musicians, Local No. 76, AFL-CIO (National Association of Orchestra Leaders) **JD-(SF)-184-82**

Malcolm Boring Co., Inc. B.C. Malcolm and Bruce C. Malcolm **JD-(SF)-80-82**
(in determining whether enterprise is eligible for attorney and expenses under Equal Access to Justice Act by meeting its requirement that met worth of enterprise be less than $5 million, ALJ rejected claim that value of enterprise should be determined by deducting depreciation from cost; legislative history shows that, in order to avoid need to determine whether property depreciated or appreciated, it was established that, in determining value of assets, cost of acquisition rather than fair market value should be used)

9112 COVERED PROCEEDINGS

9112-2000 Date pending before Board

St. Jude Industrial Park Board **265 NLRB No. 087**
(request made by Respondent, for attorney's fees pursuant to EAJA 8 days prior to Bd's issuance of regulations pertaining to EAJA, denied as being premature as request did not compact with required procedure; denial in no way prejudiced properly executed request)

Granite State Minerals, Inc. **261 NLRB No. 098**
(request filed with Bd for attorneys fees under Equal Access to Justice Act and Section 102.143 of Bd's Rules and Regulations, denied, since Bd had no jurisdiction inasmuch as any request for award must be filed with appropriate ct of appeals when case decided by Bd before October 1, 1981)

9112-2000—Cont.

Tyler Business Services, Inc. v. N.L.R.B. 695 F.2d 73 (C.A. 4, Nov. 24, 1982)
(no award of fees for proceedings before Bd which ended with denial of mtn for reconsideration before effective date of EAJA)

9112-4000 Unfair labor practice proceeding in which complaint issues

Quiley Manufacturing Company, Inc. JD-355-82
(no adversary adjudication pending before Bd on October 1, 1981, effective date of EAJA, notwithstanding GC filed *pro forma* mtn with ALJ to conclude case on October 22, 1981, as out-of-Board settlement reached on February 17, 1981. Case over when settlement agreed upon and all that was left was compliance. Nothing left to be adjudicated; no appeals pending and matters in issue had been resolved by parties to their mutual satisfaction prior to date EAJA came into effect)

9118 ELIGIBILITY FOR AN AWARD

9118-1200 Respondent in adjudicatory proceeding

Power Contractors, Ltd. JD-(SF)-268-82
(GC's mtn to dismiss granted in EAJA case where former counsel for defunct corporation filed application on his own behalf to recover fees and expenses and not on behalf of respondent corporation, or any trustee, conservator, executor, or any other individual or entity authorized to act on behalf of defunct corporation; furthermore, GC found to be substantially justified in issuing complaint and proceeding to trial in underlying case)

9118-2500 Prevailing party

Duncan Crane Service, Inc. JD-(SF)-270-82
(where prior to hearing parties agreed to arbitrate differences and charge was withdrawn and C dismissed award of attorney's fees to Respondent denied as no one won or lost case and it cannot be fairly said that applicant prevailed in ULP case; moreover, even if applicant considered to be prevailing party no evidence in record to establish whether allegations in C had merit)

Tilton Rack and Basket Corporation JD-(NY)-99-82
(legislative history of EAJA relating to provision for award of fees and expenses to eligible parties, unless government can establish that its position in litigation was *substantially justified* establishes that standard for government's position is essentially one of *reasonableness* and not to be equated with *a substantial probability of prevailing*)

Tilton Rack and Basket Corporation JD-(NY)-99-82
(application of E who prevailed on certain, but not on all issues, for attorney's fees and expenses pursuant to EAJA, dismissed, where, had GC's evidence been credited he might well have prevailed, and it was only after resolution of *bona fide* credibility issues that E prevailed; it is not GC's function to resolve such issues is absence of a hearing, and in this context, GC's position was not unreasonable and was *substantially justified* under EAJA requirement for government's establishment of such position so as to preclude award of fees and expenses to E)

Quiley Manufacturing Company, Inc. JD-355-82
(E not prevailing party where Ees put back to work pursuant to out-of-Board settlement notwithstanding E did not need to post notice and no backpay liability, since no indication from record that there was definite backpay liability nor do we know whether Ees had interim earnings to negate any gross backpay amount)

N.L.R.B. v. Doral Building Services, Inc. 680 F.2d 647 (C.A. 9, June 1982)
(application for fees under Equal Access to Justice Act denied, since Respondent has not prevailed on merits of underlying action; award of fees *at this time* would be inappropriate; See *Hanrahan v. Hampton*, 446 U.S. 754 (1979) where ct defined *prevailing party*)

Stanley Spencer, et al. v. N.L.R.B. 548 F.Supp. 256 (DC DC, July 1982)
(*prevailing party* not limited to cases in which party has prevailed through entry of final judgment following full trial on merits. Party may have *prevailed* for purposes of award of attorney fees and costs even if action settled by stipulation on consent decree)

9118-5000 Significant discrete substantive portion of covered proceeding

Stanley Spencer, et al. v. N.L.R.B. 548 F.Supp. 256 (DC DC, July 1982)
(where position of U.S. was *substantially justified* no award for attorney fees will be made under EAJA. Test of whether Government action is substantially justified is one of reasonableness both in law and fact. Burden of proof is on Government to show *substantial justification* but does not raise presumption that Government position was not substantially justified simply because it lost the case)

9118-7500 Financial eligibility

9118-7596 Any other partnership, corporation, association, or public or private organization with net worth not exceeding $5 million and no more than 500 employees

American Federation of Musicians, Local No. 76, AFL-CIO (National Association of Orchestra Leaders) JD-(SF)-184-82
(GC's contention that for purposes of determining U's net worth under Sec. 504 of Act local U must be considered integral part of international and international's net worth added to that of local's to determine whether local has net worth that excludes it from coverage, rejected, since would nullify purpose of Act as set forth in Sec. 202(a) inasmuch as such lumping together of net worth of local involved, and perhaps all other affiliated locals, with that of international would result in that only Us covered by Act would be small, independent, in plant groups)

Malcolm Boring Co., Inc. B.C. Malcolm and Bruce C. Malcolm JD-(SF)-80-82
(application of respondent U, following dismissal of C, for attorney fees and expenses under Equal Access to Justice Act (EAJA), denied, where U's net worth exceeded $5 million at time adversary adjudication was initiated and, consequently, U was excluded from EAJA's coverage undr its provision requiring net worth of less than that amount to be eligible; U's claim for depreciation from cost of its real estate and other property, so as to have net worth of less than $5 million, was disallowed, in view of legislative history showing that cost of acquisition, and not market value, is determinative)

9130 APPLICATION FOR AWARD

9130-2000 Timeliness

Haynes-Trane Service Agency, Inc. 265 NLRB No. 136
(application for award of attorney fees discmissed for lack of jurisdiction where received by Bd 33 days after final judgment, since compliance with 30 day filing period after order entered prerequisite to jurisdiction under EAJA and under Bd's Rule Section 102.114(b) *filing* is accomplished when Bd receives document to be filed)

St. Jude Industrial Park Board 265 NLRB No. 087
(request made by Respondent, for attorney's fees pursuant to EAJA 8 days prior to Bd's issuance of regulations pertaining to EAJA, denied as being premature as request did not comport with required procedure; denial in no way prejudiced properly executed request)

Columbia Manufacturing Corporation 265 NLRB No. 012
(under Sec. 102.27 of Bd's R/R if ALJ dismisses C on mtn before issuing his decision and no party files request for review of order, case is considered closed as of date of issuance of order notwithstanding 10 day period that request for review can be filed; therefore, when application for award filed 33 days after order issued, filing was untimely)

Lord Jim's 264 NLRB No. 147
(if 30th day fell on Sunday, Bd did not decide whether service on Monday would be proper service)

Lord Jim's 264 NLRB No. 147
(30 day filing requirement is jurisdictional and will be *strictly* construed)

Farrens Tree Surgeons, Inc. 264 NLRB No. 090
(application for attorney's fees under EAJA must be filed w/i 30 days after entry of BD's final order, and here, application made prior to Bd order and Bd will not consider it at this time)

Monark Boat Company 262 NLRB No. 124
(application for award of attorneys fees and expenses filed on 31st day after final judgment, dismissed since 30-day filing period is jurisdictional prerequisite to application under EAJA)

Pacific Coast Metal Trades District Council and Seattle Metal Trades Council 260 NLRB No. 182
(Bd will not consider request for attorney's fees under Equal Access to Justice Act where request is premature as such request must be filed within 30 days *after* entry of Bd's final order and here made in response to charging party's exception to ALJ decision)

Wyandotte Savings Bank 260 NLRB No. 130
(E's request under Equal Access to Justice Act for award of fees incurred by E in ct case in which enforcement of Bd's order was denied, plus legal fees and costs incurred by E before Bd, dismissed, since, pursuant to Sec. 2412(d)(3) of Equal Access to Justice Act, Bd has no jurisdiction because instant matter is pending before ct of appeals; moreover, Bd's D/O was issued prior to date such Act became applicable to administrative adjudications)

Furriers Joint Council of New York, UFCW International Union, AFL-CIO JD-(NY)-98-82
(to be timely filed application must be received w/i 30 days of final disposition in adversary adjudication, and here application was mailed on 30th day and not received until 31st day and was thus not timely)

9130-2000—Cont.

American Federation of Musicians, Local No. 76, AFL-CIO (National Association of Orchestra Leaders) **JD-(SF)-184-82**

(application received by Bd 5 minutes after close of business on 30th day after final order timely filed w/i Sec. 504(a) of EAJA which requires application w/i 30 days after final disposition of adversary adjudication, since neither statute nor Bd's R/R Sec. 102.149(a) keyed specifically to applications under EAJA make mention of close of business, interpretation precluding filing 5 minutes late too harsh, and GC not prejudiced; further papers that started time requirement running filed by mail which under R/R 102.114(b) allow 3 extra days)

American Federation of Musicians, Local No. 76, AFL-CIO (National Association of Orchestra Leaders) **JD-(SF)-184-82**

(application for legal fees and expenses *filed* with Bd when received and not when stamped in)

Gerson Electric Construction Company **JD-209-82**

(application for fees and expenses for successful defense of ULP C, untimely where, although material mistakenly sent in place of application was received on Monday after Saturday due date, application itself was not received until Tuesday, 3 days beyond statutory period, and neither statute nor implementing regulations provide for extension of filing date)

9130-2050 Extension of time for filing

Haynes-Trane Service Agency, Inc. **265 NLRB No. 136**

(filing application for award of attorney fee w/i 30 days after issuance of Bd's final order is jurisdictional prerequisite which Bd has nc authority to extend)

099130-4000 Place for filing

Lord Jim's **264 NLRB No. 147**

(service on Regional Office is not proper service. Application must be filed in triplicate with Bd in Washington, D.C. RD also required to be served with copy of application, but this is additional requirement and not alternative requirement)

9154 DEFENSES

9154-0100 Generally

Enerhaul, Inc. **263 NLRB No. 121**

(finding GC established *prima facie* case not prerequisite to finding GC's position was reasonable in law and fact; Bd will continue to analyze *EAJA* application and on case-by-cse basis)

Malcolm Boring Co., Inc., B. C. Malcolm and Bruce C. Malcolm **JD-(SF)-217-82**

(burden is on Agency to make positive showing that its position and actions during course of proceedings were substantially justified. Test is one of reasonableness in law and fact)

9154-3300 General Counsel's position substantially justified

Enerhaul, Inc. **263 NLRB No. 121**

(application for attorney's fees and expenses under *Equal Access To Justice Act* (EAJA) dismissed, since position of GC was *substantially justified*; legislative history of *EAJA* characterized *substantially justified* as test of reasonableness; *where the Government can show that its case had a reasonable basis both in law and fact, no award will be made*)

Farmer's Pride, Inc. **JD-457-82**

(E's application for attorney fees under EAJA denied, where decision hinged on credibility of witnesses based in large measure on the demeanor of witnesses at hearing. Such credibility issues are not subject of resolution by GC in investigative stage of ULP proceeding)

Bakery, Workers Union, Local No. 213 (Krispy Kreme Division, Beatrice Foods Co.) **JD-467-82**

(application for attorney's fees and expenses under EAJA dismissed where, although GC did not prevail, GC's position was reasonable in law and fact; for most part, ALJ's decision in C proceeding turned on credibility resolutions and GC's position was *substantially justified*)

Power Contractors, Ltd. **JD-(SF)-260-82**

(standard imposed by EAJA should not be read as raising presumption that GC's position was not substantially justified simply because GC did not prevail)

Rodell Watts III, an Individual d/b/a Watts Transfer and Delivery Service, and Super-Rite Freightways, Inc. **JD-322-82**

(where GC relied on testimony of several of his witnesses he was justified in issuing complaint and going to trial; fact that ALJ did not credit witnesses does not remove initial justification; moreover, fact that GC did not uncover during his investigation what was ultimately E's winning defense does not mean that GC was not *substantially justified*)

Malcolm Boring Co., Inc., B. C. Malcolm and Bruce C. Malcolm **JD-(SF)-217-82**

(where bargaining agreement language was ambiguous as to what type of shop work was covered, interpertation put forth by GC was reasonable one, though not prevailing one, and this constituted substantial justification)

American Federation of Musicians, Local No. 76, AFL-CIO (National Association of Orchestra Leaders) **JD-(SF)-184-82**

(*government has burden of establishing that its actions were substantially justified; lack of substantial justification is not established simply by government's loss of case; where government's case weak or tenuous there is no substantial justification, and where government's case is strong both in fact and law but government loses because of adverse credibility or legal findings there is substantial justification*)

American Federation of Musicians, Local No. 76, AFL-CIO (National Association of Orchestra Leaders) **JD-(SF)-184-82**

(GC had substantial justification for his position as to issuance of complaint on Section 8(b)(4)(i)(ii)(A) and (B) charge, notwithstanding ALJ found no violation, where decision turned on whether individual with whom U had dispute was Ee of E or independent contractor, similar fact situations have led to differing results, and GC presented serious argument to support his contention that law required individual be found independent contractor)

Midwestern Builders, Inc. **JD-230-82**

(award of fees and expenses denied, notwithstanding applicant's successful defense of ULP complaint, since GC's position was *substantially justified* where GC presented evidence in support of its position which, had that evidence been found probative, would have caused it to prevail)

Wyandotte Savings Bank v. N.L.R.B. **682 F.2d 119 (C.A. 6, July 1982)**

(application for award of attorney fees under *EAJA* denied, since ct found that *the position of the United States* (NLRB in instant case) *was substantially justified; notwithstanding that Bd was losing party or that its position was contrary to prior ct precedent (concerning scope of unit in branch offices of bank), position taken by Bd was reasonable attempt to reopen a close (unit) question)*

9160 COMPENSATED FEES AND EXPENSES

9160-5000 Compensated fees

9160-5030 Motion to Board for increase of maximum rate

Columbia Manufacturing Corporation **262 NLRB No. 004**

(ptn requesting Bd to engage in rule making for purpose of raising agent or attorney fees recoverable pursuant to Equal Access to Justice Act and Sec. 102.145 of Bd's rules, denied as unwarranted where reasons advanced by petitioner--prevailing rate or alleged improper agency action--may not constitute justification under Act or rules, and there appears to have been no change in circumstance since Act and rules became effective)

International Maintenance Systems Group, Inc. **262 NLRB No. 002**

(mtn to amend Sec. 102.145 of Bd's rules to provide for increase in fees payable to *agents and attorneys* from $7 to $140 per hour because there were no regularly practicing attorneys in movant's locale with sufficient expertise to defend GC's ULP allegations who charge $75, denied, since, as shown by the mtn, reasonable fees in certain circumstances exceeded $75 before passage of the Act, Congress must have been aware of that when it set the fee, and there appears to be no change in circumstances since passage)

Allied Lettercraft Co., Inc. **262 NLRB No. 003**

(mtn denied where higher fees requested were common at time Congress passed Act and there has been no change in circumstances since that time)

9172 FORM OF PROCEEDINGS BEFORE ADMINISTRATIVE LAW JUDGE

9172-2800 Sealing of net worth exhibit

Malcolm Boring Co., Inc., B. C. Malcolm and Bruce C. Malcolm **JD-(SF)-217-82**

9172-4200 Preference for resolution of issues on pleadings

Malcolm Boring Co., Inc., B. C. Malcolm and Bruce C. Malcolm **JD-(SF)-217-82**

(request for hearing to determine whether GC's actions were unreasonable or not, denied, as documents in the record are sufficient to resolve that issue)

9178 BOARD DECISION

9178-3300 Decision only on issues raised by facts, pleadings and exceptions in case

Enerhaul, Inc. **263 NLRB No. 121**

(finding GC established *prima facie* case not prerequisite to finding GC's position was reasonable in law and fact; Bd will continue to analyze *EAJA* application and on case-by-cse basis)

9200 REOPENING OF RECORD AND REMAND

9233 CIRCUMSTANCES WARRANTING REOPENING OF RECORD

IPCO Hospital Supply Corporation, Cheshire Lake Division **255 NLRB No. 116**
(E's mtn to reopen card and admit into evidence affidavit of attorney stating that each eligible striking Ee was offered reinstatement as soon as job became available, granted and Bd then found that economic strikers had no right to immediate reinstatement)

9233-0100 Generally

Lincoln Hills Nursing Home, Inc.; et al. **257 NLRB No. 145**
(mtn to reopen record denied where E seeks to admit evidence which does not fall into exceptions i.e. newly discovered evidence or previously unavailable evidence)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(Bd abused discretion when it refused to reopen record to receive evidence of sale of facility since bona fides of E's intent to sell facility was central issue, actual sale w/i few months was highly relevant)

9233-1600 Consideration of offer of proof

N.L.R.B. v. Pre-Engineered Building Products, Inc. **603 F.2d 134 (C.A. 10, 1979)**
(where predecessor business had essentially collapsed at time of E's take over and E of necessity had to rebuild both production demand and work force, ct held Bd was arbitrary in denying E's mtn to reopen record for purpose of adducing evidence to determine whether E had acquired full complement of Ees at time E refused to bargain with predecessor's U)

United Food and Commercial Workers International Union Local No. 576, AFL-CIO v. N.L.R.B. **675 F.2d 346 (C.A.D.C., Apr. 1982)**
(where Bd erred in applying *Times Square* doctrine by refusing to entertain U's defense based upon evidence that GC had previously considered in refusing to issue complaint, ct directed Bd to reopen 8(b)(7)(C) proceeding to hear evidence on U's defense that picketed E was in reality alter ego of, joint E with, or successor of another E with whom U had contract covering Ees in question; such action would not constitute interference by Bd with Gc's *final authority* under Sec. 3(d); moreover, charged party has right to full hearing on its defense)

9233-3300 Previously unavailable evidence

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**
(ALJ did not lack authority to reopen hearing sua sponte after original close of hearing to receive testimony of witness previously considered unavailable; ALJ's authority to reopen hearing under Bd's R/R Sec. 102.35(h) is based upon Bd's authority to take further testimony under Sec. 10(e), reopening was timely before issuance of ALJ's decision, no party was prejudiced thereby, and interests of justice were served; moreover, since District Cts may on own initiative order new trial after entry of judgment, a fortiori, trial judge has power to reopen record prior to judgment entry)

ABC Trans-National Transport, Inc. **247 NLRB No. 025**
(mtn to reopen record denied where respondent failed to show that proffered evidence was unavailable at time of hearing)

9233-5000 Evidence previously presented but not considered

N.L.R.B. v. BJR Archer Inc., Filmco Division **617 F.2d 161 (C.A. 6, 1980)**
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

9233-6700 Newly discovered evidence

Palm Oldsmobile, Inc. **256 NLRB No. 111**
(E's mtn to reopen hearing to adduce evidence that GC's witness was discharged by his most recent E for embezzlement in order to impeach witness's credibility, denied as lacking sufficient importance or relevance to justify reopening, since (a) evidence did not exist at time of trial and thus was not newly discovered and (b) as witness had only been charged with, not convicted of alleged conduct, E could only question him as to his conduct but could not prove it by extrinsic evidence)

9233-6780 Must be such as to probably change outcome

Chef's Pantry, Inc. **247 NLRB No. 018**
(although it was error to reject U's proffer of evidence purporting to show that E violated Act, it was not necessary to reopen hearing to take proferred testimony since offer of proof showed that receipt of such evidence would not materially affect decision or remedy in the case)

9250 CIRCUMSTANCES NOT WARRANTING REOPENING OF RECORD

University of San Francisco **265 NLRB No. 188**
(pursuant to Bd's R/R Sec. 102.65(e)(1), Bd denied U's mtn to reopen record for introduction of written exhibit of arbitrator's decision involving university members represented by U, since document was neither newly discovered nor previously unavailable, and, moreover, is only marginally relevant to issues herein and would have no effect on Bd's decision were it considered)

The Exchange Bank **264 NLRB No. 111**
(E's mtns to reopen record denied where evidence sought to be introduced, even if considered, would not alter Bd's decision since issues of reinstatement raised therein or E's possible merger with another bank had no bearing on its commission of ULPs; E not precluded from submitting evidence concerning reinstatement of discriminatees at compliance stage of proceeding)

Taft Broadcasting Company, WBRC–TV **264 NLRB No. 028**
(mtn to reopen record denied where ALJ found E violated Sec. 8(a)(5) and E wishes to introduce evidence that parties executed contract after date of hearing to enable Bd to determine that it did not violate Act; violation occured when E dealt directly with Ees and that conduct tends to undermine U status; moreover, evidence that E has fulfilled its bargaining obligation can be presented during compliance hearing)

Cardio Data Systems Corp. **264 NLRB No. 011**
(even though Bd was unable to resolve conflicting testimony in absence of credibility resolutions by ALJ, Bd declined to remand case for additional credibility resolutions regarding allegation of unlawful threat by E, which ALJ erroneously failed to rule on; in view of Bd's conclusions herein that E had made other unlawful threats, any additional finding of unlawful conduct based on allegation herein would not significantly change the remedy)

Jim Causley Pontiac, Division Jim Causley, Inc. **263 NLRB No. 130**
(E's contention in its ptn to reopen hearing that specific finding of fact as to whether E knew of concertedness of Ee's activities could not be made on basis of record because GC failed to call E's president to testify about his knowledge or lack thereof of nature of Ee's activities held w/o merit, since GC was under no affirmative obligation to call E's president as witness and E was not precluded in any way from calling him)

United States Postal Service **263 NLRB No. 043**
(reopening of record to take evidence on collateral issues not appropriate since it would delay issuance of decision)

Polis Wallcovering Co., et al. **262 NLRB No. 180**
(charging party's mtn to reopen record assertedly because it was not presented at hearing *through inadvertence* and because counsel deemed it unnecessary to do so at time of hearing denied, since charging party alleged neither extraordinary circumstances nor any other matter satisfying requirements of Sec. 102.48(d))

Wine and Liquor Store Employees Union, Local 122, a/w Distillery Workers (Harvey Entin, d/b/a Oz Liquor Co.) **261 NLRB No. 152**
(remand of case for hearing solely on allegation that U attempted to enforce in state ct agreement settling matter set for arbitration not warranted since determination that U violated Act as alleged would not materially affect remedy)

Cone Bros. Bakery, Inc. **259 NLRB No. 181**
(Bd denied mtn to reopen record to adduce evidence that E's assets have been foreclosed and were being liquidated, and that involuntary bankruptcy ptn had been filed against company where this evidence if established would not affect Bd findings, R/R Sec. 102.48(d)(1); furthermore, such matters are more appropriately handled at compliance stage)

Loy Food Stores, Inc. d/b/a Ken's IGA **259 NLRB No. 035**
(Bd denied E's request that record be reopened and/or amended to include averred facts that discharged Ees accepted E's unconditional offers of reinstatement where, even assuming Ees were reinstated, they were not given any backpay for period between their discharges and their reinstatement and as such reinstatements were insufficient to erase effects of E's ULPs or ensure free and fair election among E's Ees)

American Radio Association, AFL-CIO **258 NLRB No. 170**
(E's mtn to reopen record on ground that, since case was heard by ALJ who had dismissed C because picketing for recognition in one-person unit did not fall w/i 8(b)(7)(A) proscription, E had hired another Ee in same category as person in unit, and certification had been issued by RD to incumbent U, denied, since certification issue is not properly before Bd and upon which it is not passing and, in any event, certification occurred subsequent to events herein and therefore does not affect outcome of case)

International Union of Operating Engineers, Local 926 (Oliver B. Cannon, Inc.) **258 NLRB No. 143**
(E's mtn to reopen record to admit affidavit of individual who allegedly could not be contacted during hearing and whose affidavit allegedly resolved certain matters discussed at hearing, denied, since E could have subpoened individual as witness, nor has E shown that evidence in affidavit

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was unobtainable at time of hearing through another source, or that evidence is vital to outcome of instant proceeding)

Research Products/Blankenship Company **258 NLRB No. 003**
(mtn to reopen record to consider whether U gave requisite notice to Federal Mediation and Conciliation Service prior to its ULP strike denied since such notice is not condition precedent to ULP strike)

Pace Oldsmobile, Inc. **256 NLRB No. 111**
(E's mtn to reopen hearing to adduce evidence that GC's witness was discharged by his most recent E for embezzlement in order to impeach witness's credibility, denied as lacking sufficient importance or relevance to justify reopening, since (a) evidence did not exist at time of trial and thus was not newly discovered and (b) as witness had only been charged with, not convicted of alleged conduct, E could only question him as to his conduct but could not prove it by extrinsic evidence)

Together We Stand Women's Guild Day Care Center **256 NLRB No. 064**
(to extent that respondent's exceptions asserted existence of facts that were not part of formal record, Bd was unable to consider such evidence absent showing that it was newly discovered or not previously available; to extent portion of exceptions why he considered motion to reopen record, that motion denied)

Connecticut Distributors, Inc. **255 NLRB No. 170**
(mtn to reopen record to determine reinstatement rights of additional alleged discriminatees other than those litigated at hearing denied where Charging Party was present at hearing and at no time raised or attempted to litigate reinstatement rights of these individuals)

K & E Bus Lines, Inc. **255 NLRB No. 137**
(mtn to reopen record for receipt of newly discovered evidence regarding Bd's assertion of jurisdiction over E with connection with exempt entity, denied, since evidence not *newly discovered* where concerned events occurred after close of trial; further, evidence was cumulative and was not shown to require result different from decision to assert jurisdiction on basis of E's control over employment conditions)

General Electric Company **255 NLRB No. 092**
(mtn to reopen record in order to present evidence regarding alleged unlawful Ee attitude survey, denied, where survey essential component of alleged subsequent institution of Ee *sounding board* committees and connection between survey and *sounding board* fully litigated)

Garrett Railroad Car & Equipment, Inc. **255 NLRB No. 087**
(E's mtn to reopen record denied notwithstanding E's contention that Bd's recent *Wright LIne* decision necessitated taking additional evidence concerning basis for discharge of striking Ee where record established that Ee did not engage in misconduct for which he was discharged)

Otis Elevator Company, A Wholly Owned Subsidiary of United Technologies **255 NLRB No. 005**
(E's mtn to supplement record by including additional exhibits on ground ALJ misapprehended certain evidence and improperly resolved certain credibility issues, denied, where exhibits were available to E at time of hearing but were not then offered; responsibility of making a record supporting party's position devolves upon it during hearing and before record is closed; granting of mtn would leave record open indefinitely; and exhibits are self-serving documents which would deny other parties opportunity to engage in voir dire or cross-examination)

Robert Batchelor d/b/a Batchelor Electric Co., a sole proprietorship **254 NLRB No. 156**
(request to remand case and reopen hearing denied where E's request for continuance of hearing was denied initially by RD almost 2 weeks before opening of hearing, did not ask ALJ for continuance during hearing and E failed to show any reason why it could not have taken steps to insure witness's appearance at hearing)

Jasiak Brothers and Company, Inc. **253 NLRB No. 146**
(E's mtn to reopen record to allow it to introduce transcript of hearing and decision by state employment office denied, where state agency's decision undoubtedly was rendered under statute with different definitions, policies, and purposes from those of Act; furthermore, E did not show that ULP issue was considered by state agency and Bd's decision must be based upon independent consideration and evaluation of evidence recieved in ULP proceeding)

Williamsport Plumbing and Heating Co., Inc. **253 NLRB No. 121**
(E's contention in its exceptions that discharged Ees were supervisors under Act rejected as untimely where issue of supervisory status was raised neither in pleadings nor at hearing before ALJ)

Seafarers International Union of North America, Pacific District, AFL-CIO, and Its Affiliates (American Pacific Container Lines, Inc. (AMPAC)) **252 NLRB No. 105**
(U's mtns to reopen record denied where proffered documents to be added to record would not constitute evidence to support U's contentions)

St. Francis Hospital **252 NLRB No. 174**
(E's mtn to reopen record which asserts that subsequent to hearing, Ee was arrested for distributing marijuana, pleaded guilty to charge, and that E has policy of discharging such Ees, more appropriately left to complaince stage of proceeding)

Herman Brothers, Inc. **252 NLRB No. 121**
(mtn to reopen record for purpose of introducing into evidence arbitration award concerning discharge alleged unlawful herein which was issued subsequent to hearing, denied, since it had been concluded deferral to previous arbitration award involving discharge would contravene policies of Act)

Wismer and Becker, Contracting Engineers **251 NLRB No. 086**
(on ct remand to Bd for determination of whether U's general refusal to make referrals was not unlawful as found by ALJ, Bd held it would be improper exercise of its power to remand case for second hearing, since doing so would violate Bd procedures and Sec. 10(e) and would substantially delay resolution of case involving 24 proven discriminatees for almost 6 years in order to allow litigation of theory which GC had never properly advocated before Bd)

Bacchus Wine Cooperative, Inc., and Bacchus Wine International **251 NLRB No. 207**
(Bd declined to reopen record to admit evidence of E's alleged *business reverses* making reinstatement of unlawfully discharged Ees to comparable positions impossible, since such matters are more appropriately handled at compliance stage of proceeding)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(E's mtn to reopen record to receive allegedly new, previously unavailable evidence of previously unavailable witness denied where E had failed to allege that witness was crucial to its case and E had failed to request continuance)

Owen Lee Floor Service, Inc. **250 NLRB No. 070**
(Respondent's mtn to reopen record to introduce memorandum allegedly refuting Bd holding it alter ego, denied, absent evidence memorandum was newly discovered, that Respondent excusably ignorant of its existence and acted with due diligence to uncover and introduce it; further, when C was amended to allege alter ego relationship ALJ allowed Respondent additional time to rebut evidence on issue and Respondent never availed itself of opportunity)

Talbert Manufacturing, Inc. **250 NLRB No. 026**
(Bd denied respondent's mtn for leave to adduce additional evidence purportedly showing that one of its witnesses testified truthfully at hearing, since respondent had had opportunity to bolster witness's testimony when it was placed in issue at hearing, and Bd will not reopen record to admit evidence which merely relates to credibility)

American Pistachio Corporation **249 NLRB No. 174**
(mtn to reopen record for receipt of additional evidence denied where evidence was neither newly discovered nor unavailable at hearing; moreover it would not have affected result if accepted)

R. N. Beard Company **248 NLRB No. 016**
(although it would have been better if ALJ had issued decision setting forth his reasons for dismissal of complaint, Bd held failure to do so was nonprejudial error and remand in compliance with R/R Sec. 102.45 unnecessary, where ALJ set forth on the record his reasons for dismissing complaint, GC had fully argued merits of dismissal, and no party has requested remand for purpose of issuance of decision)

Ironworkers, Local 483 (Building Contractors Association of New Jersey) **248 NLRB No. 006**
(mtn for remand to RD for taking further evidence denied because there was no adequate showing that proffered evidence was newly discovered or previously unavailable)

Actors' Equity Association **247 NLRB No. 172**
(U's mtn for leave to reopen record to adduce further evidence regarding certain issue and to file brief in response to issues raised in GC's exceptions and supporting brief denied, where U failed to show any extraordinary circumstances warranting reopening of record, and issue in question was considered at hearing and all parties had opportunity to present evidence relating thereto)

Tartan Marine Company **247 NLRB No. 073**
(mtn to reopen record to determine if bargaining order warranted on basis of Ee turnover, and lapse of time since ULPs, denied, notwithstanding dismissal of complaint in prior case in which E was Respondent)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(mtn at end of trial to reopen record to receive evidence of numerous measures taken by E *to assure compliance* with Act, which evidence assertedly was not proffered during hearing because available since that time, denied; evidence is of minimal relevance, it would not alter conclusions as to remedy, and it involves matters of general compliance with labor laws rather than substantive obligations; moreover, events took place well after operative misconduct and were not addressed specifically to its redress)

N.L.R.B. v. Midwest Zayre, Inc. **670 F.2d 661 (C.A. 6, Feb. 1982)**
(where case which had been decided under *Shopping Kart* doctrine was remanded at Bd's request for reconsideration under reinstated *Hollywood*

9250—Cont.

Ceramics rule, and thereafter E's refusal to bargain with U was held unlawful under both rules, E was not prejudiced by not being permitted to file a statement regarding issues on remand, since they were the same issues as those originally submitted to the Bd, and E had already argued them, even urging Bd to return to *Hollywood Ceramics* rule)

N.L.R.B. v. Antonino Carilli, d/b/a Antoninino's Restaurant 648 F.2d 1206 (C.A. 9, June 1981)
(mtn to reopen hearing to permit introduction of letter which was purportedly signed by 13 of 18 Ees allegedly in bargaining unit expressing opposition to U properly denied, where letter was written three days after hearing and mtn was filed more than three months after letter written and more than month after ALJ rendered decision; further, no evidence effect of serious and numerous ULPs had diminished absent allegation identities of Ees or supervisors had changed by time letter written)

McDonnell Douglas Corporation v. N.L.R.B. 655 F.2d 932 (C.A. 9, 1981)
(where Bd found ULP, remand to ALJ for credibility findings was unnecessary, since E never clearly asked Bd for such relief and Bd found sufficient facts established by uncontradicted testimony to permit it to conclude that Ee was discharged for his U activitiy, and to reject as pretextual explanations offered by E)

N.L.R.B. v. R & H Masonry Supply, Inc. 627 F.2d 1013 (C.A. 9, Sept. 1980)
(Bd did not abuse its discretion where it denied E's mtn to reopen hearing to receive testimony of its president since E's affidavit did not set forth any new evidence which would be added nor explain why its president could not have been present at original hearing; further, E did not move for continuance until 11 days before original hearing)

Mar-Len Cabinets, Inc. 262 NLRB No. 172
(reopening of record on ground that Bd should permit E to call witnesses from mediation services to establish that it was general knowledge in area that U, in sending 8(d)(3) notice to mediation services of contract termination or modification with respect to E associations, also intended to five notice to mediation services with regard to all individual memorandum agreement Es, not warranted)

9258 REMAND FOR DE NOVO HEARING

The New York Times Company 265 NLRB No. 045
(case remanded for hearing *de novo* before different ALJ where ALJ at hearing dismissed C alleging E violated Sec. 8(a)(5) by refusing to supply U with Ee job evaluation reports on grounds that information was allegedly available from other sources (Ees); ALJ erred as matter of law as fact that Ees may have information and may be willing to give it to U does not relieve E of its obligations under Act. Moreover, ALJ inpunged good faith of U and questioned whether GC and charging party were abusing Bd processes, in contravention of Bd policy to not only avoid partiality and prejudgment but even appearance thereof)

Ampco Metal Division of Ampco-Pittsburgh Corporation 247 NLRB No. 091
(contention that ALJ in original hearing should be disqualified because of bias and prejudice from participation in supplemental hearing, and that hearing de novo should be held before different ALJ, rejected)

9267 CIRCUMSTANCES WARRANTING REMAND

9267-1700 Normally deferral issues

Maine Yankee Atomic Power Company 258 NLRB No. 112
(case in which ALJ improperly deferred issue to arbitration regarding E's unilateral creation of position outside unit remanded to ALJ for full decision on merits and for appropriate recommended order as to E's obligation to bargain over matter at issue)

9267-3300 To receive additional evidence

Chattanooga Glass Company 265 NLRB No. 097
(Bd remanded case, for further hearing for taking evidence on merits of alleged ULPs, to ALJ who had dismissed C alleging unlawful discharge on ground that prior settlement of unlawful threat to discharge allegation barred litigation since all ULPs preceded settlement, where GC's knowledge of discharge at time of settlement, standing alone, was not sufficient basis to obligate GC to conduct investigation of the termination, and circumstances surrounding termination were not *readily discoverable through investigation*)

Multimatic Products, Inc. 263 NLRB No. 49
(proceedings remanded to ALJ to adduce further evidence and make appropriate findings concerning allegations of fraud on part of U and improper conduct by Regional Office personnel, and how that conduct, to extent engaged in, affected validity of ALJ's rulings, findings, conclusions, and recommended Order, where ALJ had failed to make significant findings concerning evidence of fraud and misconduct presently in record, and record evidence relating to fraud and misconduct was far from complete)

Milton College 260 NLRB No. 047
(GC's mtn for summary judgment denied and proceeding remanded for hearing concerning appropriateness of unit of college's faculty members where E claimed that SCt's intervening *Yeshiva* decision, holding certain faculty members managerial, rendered previously stipulated unit of faculty members' inappropriate; SCt's decision, issued following initial stipulation herein, constituted substantial change regarding managerial status of faculty members; there was no allegation of change in faculty's duties or authority; issue was not previously litigated; and E cannot be held to have knowledgeably waived ct decision which postdated unit stipulation)

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) 258 NLRB No. [illegible]
(in summary judgment proceeding on backpay specification in which respondent U's amended ans sufficiently raised issue as to interim earnings but its general denial as to backpay period or computation of gross backpay was insufficient to bring such matters into issue, Bd remanded case for hearing limited to determination of discriminatees' interim earnings, including whether or not they enjoyed any interim employment during backpay period)

Rai Research Corporation 257 NLRB No. 127
(where Bd directed that record be reopened after ALJ decision issued so that E could cross-examine Ee, Bd rejected E's contentions that hiatus between direct and cross exams was prejudicial or that ALJ failed to give adequate consideration to evidence on cross because he did not want to reverse his previously published decision)

Greens Disposal Service 253 NLRB No. 047
(remand, since ALJ refused to admit evidence of misconduct, but E's offer of proof, which, if true, and considered in light most favorable to E, would bar reinstatement, for purpose of taking evidence on whether alleged strike misconduct barred reinstatement of strikers and issuing decision on whether E violated Sections 8(a)(3) and (1) by its refusal to reinstate)

Van Dorn Plastic Machinery Co., Division of Van Dorn Company 253 NLRB No. 029
(case remanded to ALJ for purpose of conducting further hearing on issue of E's objection to election under *General Knit of California, Inc.*, 239 NLRB 619, where ALJ relied solely on formal papers submitted in R proceeding in analyzing E's objection and resolved the case entirely on application of standard set out in *Shopping Kart Food Market, Inc.*, and, on last day of hearing in the R proceeding, w/o knowledge of parties to the R proceeding, Bd, in *General Knit of California, Inc.*, overruled *Shopping Kart Food Market, Inc.*)

Local 90, Operative Plasterers and Cement Masons' International Association of the United States and Canada, AFL-CIO (Southern Illinois Builders Association) 252 NLRB No. 108
(remand to RD for purpose of ascertaining whether discriminatee incurred medical expenses for which he is entitled to recover under E's health and welfare plan; Bd rejected discriminatee's plan that medical claims be submitted directly to carrier for determination of coverage)

Reliable Roofing Company, Inc. 250 NLRB No. 069
(E's mtn for reconsideration granted to consider evidence relevant to Bd's finding that E unlawfully withdrew from multi-E bargaining; i.e., whether multi-E group actually existed or E's withdrawal privileged and further contention that compliance with resulting order would force E into bankruptcy, since E's submissions, if accepted as accurate, would be deemed sufficient to dismiss C)

Hedison Manufacturing Company 249 NLRB No. 096
(Bd severed and remanded discharge cases to ALJ for supplemental decision, where ALJ erred in precluding E's witnesses, whose testimony was relevant to events surrounding discharges, from testifying because E's official had refusal to comply with subpoena and to testify)

Bandag, Incorporated v. N.L.R.B. 583 F.2d 765 (C.A. 5)
(Ee turnover between ULPs and Bd order is relevant in determining whether *Gissel* order should be used but Bd not required to reopen record to determine whether fair election could be held regardless of turnover since time of hearing where other evidence, such as, card majority, past union activity, and E responses to such activity support such finding)

Ellman Corporation v. N.L.R.B. 688 F.2d 22 (C.A. 6, Sept. 1982)
(remand for hearing on E's objections to election that Ee who was U supporter had intimidated other Ees in voting in underlying R case, where Bd had adopted RD's report on objections overruling objections and recommending U be certified and granted mtn for summary judgment in ULP proceeding alleging refusal to bargain, w/o benefit of underlying evidence on which RD based recommendation)

9267-3700 Explication of basis for findings and conclusions concerning merits

Vitek Electronics, Inc. v. N.L.R.B. 653 F.2d 785 (C.A. 3, June 1981)
(where E's data on objections to election based on U's misrepresentations raised *substantial and material issues* which RD resolved not through hearing

9267-3700—Cont.

but through administrative investigation, and thereby deprived E of opportunity to meet RD's arguments and also deprived ct and Bd of adequate basis to evaluate process by which RD arrived at finding that U's misrepresentations were immaterial, ct remanded case with directions to RD to conduct hearing on E's objections and for appropriate findings on need for any further hearings prior to any recommendation to certify results of election)

N.L.R.B. v. Amalgamated Clothing and Textile Workers Union, AFL-CIO, and its Local Union No. 1566 **662 F.2d 1044 (C.A. 4, Oct. 1981)**

(Bd did not abuse its discretion in reopening record to allow introduction of full collective bargaining agreement between E and U rather than excerpts which had been introduced since agreement was quite relevant to question of responsibility of International as well as Local for violation of Sec. 8(b)(1)(A); Us offered no objection when parts of collective bargaining agreement were introduced at hearing and reopening was sought before order or decision by Bd)

9267-5000 Misconduct of Administrative Law Judge in conduct of hearing

The New York Times Company **265 NLRB No. 045**

(case remanded for hearing *de novo* before different ALJ where ALJ at hearing dismissed C alleging E violated Sec. 8(a)(5) by refusing to supply U with Ee job evaluation reports on grounds that information was allegedly available from other sources (Ees); ALJ erred as matter of law as fact that Ees may have information and may be willing to give it to U does not relieve E of its obligations under Act. Moreover, ALJ inpunged good faith of U and questioned whether GC and charging party were abusing Bd processes, in contravention of Bd policy to not only avoid partiality and prejudgment but even appearance thereof)

9267-6700 For additional findings

Coca Cola Bottling Company of Buffalo, Inc. **264 NLRB No. 016**

(where GC, in his complaint and mtn for summary judgment, alleged E unlawfully made unilateral changes in terms and conditions of employment after U's certification, and E raised defenses thereto on factual grounds, Bd found that genuine issues of material fact existed and remanded case to RD for hearing before ALJ to determine whether unilateral changes were ULPs as alleged)

East Texas Motor Freight **262 NLRB No. 101**

(Bd severed part of instant case and remanded that aspect for further hearing to determine whether U steward participated in assault on dissident U member by use of municipal ct judgment wherein U steward was found guilty of assault in issue)

Deauville Hotel **256 NLRB No. 078**

(Bd remanded case involving two discharges of same Ee for further proceedings to resolve credibility conflicts in order to determine whether circumstances, including E's animus, lapse of time, and possible causal connection between reinstated discriminatee's illegal demotion and quarrel with his replacement, warrant forfeiture of Ee's right to second reinstatement and backpay after date of second discharge; GC did not have to amend complaint to include second discharge)

Warehouse Groceries Management, Inc. **254 NLRB No. 021**

(remanded to ALJ for additional findings of whether Ee attempted to revoke authorization card and whether such attempt occurred subsequent to E's ULP's)

Greens Disposal Service **253 NLRB No. 047**

(remand, since ALJ refused to admit evidence of misconduct, but E's offer of proof, which, if true, and considered in light most favorable to E, would bar reinstatement, for purpose of taking evidence on whether alleged strike misconduct barred reinstatement of strikers and issuing decision on whether E violated Sections 8(a)(3) and (1) by its refusal to reinstate)

Savannah Wholesale Company **251 NLRB No. 087**

(where ALJ credited Ee to extent that he found E had knowledge of fellow Ee's U activity before latter was discharged, but ALJ did not resolve credibility issue as to whether statement indicating E's knowledge was actually a threat as alleged, Bd, being unable to make determination on 8(a)(1) allegation, severed such allegation and remanded to ALJ for appropriate findings)

United Artists Theatre Circuit, Inc. (Moving Picture Projectionists, Local No. 150, Stage Employees) **250 NLRB No. 135**

(where ALJ had failed to make critical credibility determinations regarding conflict in testimony of GC's witnesses--who claimed that on a certain date U and respondent E had reached oral agreement on terms of contract--and E's witnesses--who denied that such agreement was reached on that date--, Bd remanded proceeding for ALJ to make credibility determination regarding conflicting testimony)

Bullock's **247 NLRB No. 040**

(remand for further findings (1) as to whether dischargee had obtained information in Ees' performance evaluations innocently or wrongfully and whether such activity was therefore concerted and protected or not, (2) as to other alleged reasons for her discharge and (3) resolution of conflict between testimony of dischargee and other Ee so as to make determination as to whether discharge violated 8(a)(1))

9267-7500 Pursuant to direction of court

Foundation For Comprehensive Health Services **261 NLRB No. 017**

(upon ct remand to Bd to determine whether exclusion of social worker from unit of professional Ees at medical care facility would preclude, under ct's *disparity of interest* test, effective representation of such Ees, and whether such exclusion would create group of Ees eluding representation, Bd directed hearing to determine unit status of social worker under ct's test as law of the case, including question as to whether additional persons have been hired in such classification; and also, inasmuch as social worker's challenged ballot could now be determinative, directed hearing on all challenged ballots)

Fort Vancouver Plywood Company **252 NLRB No. 142**

(on remand, original order, reinstating nonshareholder discriminatees affirmed where Respondent had not met its burden of proving that, to the time of present hearing, it would have eliminated jobs of any of discriminatees for other than unlawful reasons)

N.L.R.B. v. Maidsville Coal Company, Inc. **693 F.2d 1119 (C.A. 4, Nov. 1982)**

(though ct did not consider E affidavit made to ct which purported to show that composition of workforce had changed dramatically since alleged ULPs committed, ct directed Bd on remand to consider *inter alia*, this affidavit)

Eliason Corporation v. N.L.R.B. **688 F.2d 22 (C.A. 6, Sept. 1982)**

(remand for hearing on E's objections to election that Ee who was U supporter had intimidated other Ees in voting in underlying R case, where Bd had adopted RD's report on objections overruling objections and recommending U be certified and granted mtn for summary judgment in ULP proceeding alleging refusal to bargain, w/o benefit of underlying evidence on which RD based recommendation)

9287 CIRCUMSTANCES NOT WARRANTING REMAND

Fry Foods, Inc. **256 NLRB No. 031**

(request that Bd remand proceeding to another ALJ because *record was not complete when judgment was made* on ground that U.S. district ct issued its decision on criminal contempt charges against E after ALJ had issued his decision herein, denied; decision of district ct is matter of which Bd takes judicial notice and, furthermore, Bd found nothing in ct opn which would warrant reversal of ALJ's findings)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **618 F.2d 6 (C.A. 6, 1980)**

(notwithstanding valid objection to election, because of delinquency on part of E to raise objection Bd did not abuse its discretion in refusing to reopen record)

9600 FURTHER CONSIDERATION, RECONSIDERATION OR MODIFICATION OF ORDER

Clean and Shine **255 NLRB No. 180**

(mtn for reconsideration denied where E failed to answer complaint due to its admitted negligence after having been afforded two separate opportunities to file and subsequently failed to file timely answer to duly served Notice to Show Cause in response to mtn for summary judgment due to unsupported contention that E relied on Bd agent's alleged misrepresentations that it was too late)

9601 GENERALLY

A.G.S. Graphics, A Division of George Lithograph Co. **265 NLRB No. 129**

(policy of Bd for same panel which decides case to pass on request for reconsideration of panel decision and for full Bd to consider such request only if panel refers it to full Bd)

Kaiser Foundation Hospitals and Kaiser Foundation Health Plan of Oregon **259 NLRB No. 078**

(Bd R/R Sec. 102.48(d)(3) provides that filing of motion for reconsideration *shall not operate to stay the effectiveness* of the Bd's action)

Daiser Foundation Hospitals and Kaiser Foundation Health Plan of Oregon **259 NLRB No. 078**

(Bd R/R Sec. 102.148(c) provides that filing of motion for reconsideration does not stay time for filing application for award under Equal Access to Justice Act)

9625 BOARD AUTHORITY TO RECONSIDER OR MODIFY ORDER

9625-3300 Where record not yet filed in Court of Appeals

9625-3300—Cont.

Haddon House Food Products, Inc. and Flavor Delight, Inc. **260 NLRB No. 146**
(mtn for reconsideration and modification of Bd order and for reopening of record and rehearing denied, since Bd no longer possesses jurisdiction to modify order after Ct of Appeals issued its decision granting enforcement of Bd order, as modified, and subsequently, following denial of writs of certiorari by U.S. Supreme Ct, Ct of Appeals entered it judgment therein)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(in absence of exception to ALJ findings Bd may still review findings since Bd has authority to modify or set aside any finding or order made or issued by it until case shall have been filed in ct)

9650 CIRCUMSTANCES WARRANTING RECONSIDERATION

Stage Employees, Local No. 249 (General Cinema Corporation of Texas, et al.) **265 NLRB No. 093**
(respondent E's mtn for reconsideration of Bd's decision on ground of alleged *exceptions* to ALJ's decision dismissing C against E in its entirety, denied, where Bd had previously found that E's *exceptions* did not meet requirements of R/R Sec. 102.46(b) in that they failed to identify any portion of ALJ's decision to which E objected, and now E complains that ALJ did not make additional rulings or comments that E would have found favorable in its bargaining relationship with charging U; moreover, subject matter of exceptions was not contained in C and issues were not litigated at hearing)

9650-3700 Denied where request sought Board reconsideration of panel decision

Farmland Soy Processing Company **265 NLRB No. 118**
(E's *Motion For Reconsideration En Banc* denied by 3 member panel where mtn did not raise substantial issue warranting reconsideration of Bd's finding that discriminatee was engaged in protected concerted activity w/i meaning of Act; E attempt to negate record evidence by characterizing Ee's complaints as relating to plant operations rather than safety rejected, as 2 issues are not mutually exclusive)

9650-5000 Denied where all matters raised in motion had been previously considered

A.G.S. Graphics, A Division of George Lithograph Co. **265 NLRB No. 129**
(three member Bd panel's refused to refer to full Bd Respondent's request that GC's mtn for summary judgment and its response thereto be considered by Bd *en banc* alleging underlying R case improperly decided by Bd, since Respondent presented no matters not previously considered)

Kahn's Auto Company, Division of Consolidated Foods Co. **256 NLRB No. 147**
(mtn for reconsideration denied where mtn raised no substantial issue not considered by Bd in its original decision and sufficient evidence was adduced at hearing to allow proper application of test established in *Kraft Foods, Inc.*, 251 NLRB No. 6 (1980) determining when reinstatement was warranted to remedy violation of *Weingarten* rights)

N.L.R.B. v. Lane Aviation Corporation **615 F.2d 759 (C.A. 6) (1980)**
(Bd erred in reopening case after it had issued decision where moving party did not adduce any previously unexamined evidence in support of their mtn to reopen since all issues suggested by affidavits attached to mtn were thoroughly explored before ALJ and at Bd's initial hearing nor were there allegations of supervening events or extraordinary circumstances as required under R/R 102.48(d); thus Bd contravened its own regulations which an administrative agency has no power to do)

9675 CIRCUMSTANCES WARRANTING MODIFICATION OF ORDER

R & H Masonry Supply, Inc. **259 NLRB No. 163**
(supplemental order modified to delete certain language no longer necessary after ct remanded to Bd for elimination of requirement that E reestablish in trucking operation)

MCC Pacific Valves, A Unit of Mark Controls Corporation **253 NLRB No. 090**
(R/O amended to include additional Ees entitled to backpay and reinstatement)

Advance Pattern and Machine Corporation d/b/a Gibraltar Sprocket Company **JD-51-80**
(order requiring reinstatement of discriminatorily discharged strikers modified by agreement of parties to not require reinstatement of 2 strikers who engaged in picket line misconduct; hearing on issue unnecessary where parties resolved disputed questions)

9800 COURT REMAND

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession **682 F.2d 72 (C.A. 3, June 1982)**
(in finding Bd improperly granted mtn for summary judgment against debtor-in-possession, ct held that debtor's rejection of bargaining agreement would not affect its Sec. 8(d) obligations prior to date of bankruptcy ptn, and monetary claim resulting from Bd order is then governed by bankruptcy law and may be filed as creditor's claim in bankruptcy ct; as to post-bankruptcy ptn charges, Bd must await bankruptcy ct's determination on remand from ct herein before proceeding to consider such charges, and if bankruptcy ct permits rejection, Bd will be precluded from finding any post-ptn ULPs)

N.L.R.B. v. Pre-Engineered Building Products, Inc. **603 F.2d 134 (C.A. 10, 1979)**
(where predecessor business had essentially collapsed at time of E's take over and E of necessity had to rebuild both production demand and work force, ct held Bd was arbitrary in denying E's mtn to reopen record for purpose of adducing evidence to determine whether E had acquired full complement of Ees at time E refused to bargain with predecessor's U)

9900 OTHER PROCEDURAL MATTERS

Knogo Corporation **265 NLRB No. 138**
(unilateral changes in employment conditions of Ees made by E violative in instant case in event Bd affirms ALJ decision in pending C cases and R case concerning same Respondent, that E had duty to bargain with U)

Servair, Inc. **265 NLRB No. 014**
(resolution of whether discriminatee, who had been reinstated voluntarily, and thereafter left his employment, forfeited his right to reinstatement and partial backpay, left to compliance stage of proceedings)

Lincoln Technical Institute, Inc. **256 NLRB No. 032**
(individual non party discriminatee may appeal Bd decision to ct of appeals as provided for in Section 10(f) of Act but this does not provide for participation by non parties at earlier stages in Bd proceedings)

Mosey Manufacturing Company, Inc. **255 NLRB No. 077**
(C case on remand from circuit ct to Bd retaines its status as ULP proceeding thereby enabling Bd, which had accepted remand, to remand proceedings to RD who in turn ordered case returned to ALJ rather than ordering hearing)

Safeway Stores, Inc. **252 NLRB No. 184**
(any dispute over application of guidelines concerning costs of compilation and furnishing requested information will be treated in compliance stage of proceeding)

Adams Delivery Service, Inc. **JD-(SF)-275-81**
(bankrupt E's application for removal of proceeding to bankruptcy court found ineffective due to exemption of Bd proceedings from removal statute, and Bd held to have retained jurisdiction to determine merits of case)

600 REMEDIAL ORDER PROVISIONS

601 GENERALLY

2500 NATURE AND PURPOSE

2514 EFFECTUATION OF POLICIES OF ACT (10(c))

F.M.L. Supply, Inc. 258 NLRB No. 083

(Bd does not refuse to invoke remedies where Respondent's concealment of conduct injures parties entitled to protection of Act; Respondent estopped from denying consciously deceptive conduct (appearing to be party to successive U contracts) over long period of time)

Pacific Intercom Co. 255 NLRB No. 061

(where E which had unlawfully dealt directly with Ees during term of bargaining agreement, paying less than contract wage and failing to make payments to pension fund, and failed to use hiring hall as required by contract, subsequently signed and then repudiated another in series of agreements, in order to effectuate policies of Act make whole remedy extended to time of beginning of ULPs during prior contract rather than beginning with latest contract which was repudiated)

Independent Stave Company 248 NLRB No. 025

(pay over to U sum of money, plus interest thereon, equal to sum of all dues checked off and not remitted to U)

J. P. Stevens & Co., Inc. v. N.L.R.B. 623 F.2d 322 (C.A. 4, 1980)

(Bd's choice of remedy in matter w/i its own discretion, open only to limited review; Bd's choice of remedy should stand *unless it can be shown that order (to pay U's reasonable negotiating expenses and Bd's and U's reasonable litigation costs) is patent attempt to achieve ends other than those which can fairly be said to effectuate policies of the Act*)

Graves Trucking, Inc. v. N.L.R.B. 692 F.2d 470 (C.A. 7, Nov. 1982)

(where Bd ordered make-whole remedy for U steward who was physically assaulted by supervisor while engaged in protected concerted activity, ct found that backpay award, although itself effectuating purposes of Act, was an abuse of discretion where it was left open-ended until after Ee's injury *no longer precludes him from performing his former or a substantially equivalent job*, and Bd admitted limited expertise in matters involving personal injury where tort remedies are available; ct held that two-year period would provide substantial remedy even if steward's disability lasted longer)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. 679 F.2d 673 (C.A. 7, May 1982)

(standard of review of Bd's remedies is abuse of discretion)

N.L.R.B. v. Potter Electric Signal Company 600 F.2d 120 (C.A. 8, 1980)

(where Ees were discharged for fight that resulted in shutting down production line, inclusion of reinstatement and backpay in Bd's R/O, inappropriate notwithstanding that discharge was based on results of investigatory interviews conducted w/o presence of U in violation of 8(a)(1); Ees were discharged for cause and not for requesting U presence, and Bd does not have power to order reinstatement or back pay for Ees discharged for obvious personal misconduct, because to do so would violate section 10(c). See, *Fibreboard*, 379 US 203)

N.L.R.B. v. Carbonex Coal Company 679 F.2d 200 (C.A. 10, May 1982)

(under section 10(c) of Act, Bd has considerable discretion in fashioning remedy for ULPs)

Warehouse Union, Local 860, Teamsters v. N.L.R.B. 652 F.2d 1022 (C.A.D.C., Apr 1981)

(Bd remedy ordering U to make clerical Ees whole for their loss of wages (due to U's unlawful conduct) upheld, since award of backpay is w/i authority of Bd and in keeping with policies of Act)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(notwithstanding that Bd's affirmative remedies may appear *punitive* in context of individual case concerning recidivist violators of Act, they are clearly *remedial*, and are therefore proper, in context of total conduct of recidivist violator)

Teamsters Local 115 v. N.L.R.B. (Haddon House Food Products, Inc.) 640 F.2d 392 (C.A.D.C. 1981)

(access remedies ordered by Bd which were designed to assist U in communicating with Ees and to assist Ees in hearing U's side of story w/o fear of retaliation did not constitute *a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act*)

2528 PROTECTION OF PUBLIC, NOT PRIVATE, RIGHTS

Thermo Transport, Inc. JD-584-80

(private agreement between E and two of summarily-found discriminatees whereby, in lieu of backpay possibly due them by virtue of E's ULPs, discriminatees agreed to become equal partners with stock ownership in new E aided corporation held violative, since agreement interfered with application of Bd's remedies, which are provided as public right)

2542 PREVENTING RECURRENCE OF UNLAWFUL ACTIVITY

Latrobe Steel Company v. N.L.R.B. 630 F.2d 171 (C.A. 3, 1980)

(in absence of Bd orders for reinstatement and backpay, sole effect of finding of ULP is issuance of c/d order which prevents similar (violative) activity in future; no hardship to E where Bd retroactively changed its position regarding presence or absence of stenographers at negotiating sessions, now found to constitute *non-mandatory* subject of bargaining)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(powers of Bd are remedial, not punitive, and Bd may not justify order solely on ground that it will deter future violations of Act)

2556 REMOVAL, DISSIPATION, OR AVOIDANCE OF CONSEQUENCES OF ULPS

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) 262 NLRB No. 006

(remedy (requesting Es hire applicants from hiring hall for employment they would have had but for U's unlawful conduct) for U's failure to refer applicants from hiring hall to Es, inappropriate in instant case where discrimination found involved short term or temporary jobs)

Whitehall Packing Company, Inc. and W.P.C., Ltd. 257 NLRB No. 043

(where E ordered to bargain with U over effects of its decision to transfer operations and of its later decision to shutdown completely, E ordered to pay back pay so that parties bargaining is not entirely devoid of economic consequences for E)

McMillan Cartage, Inc. 257 NLRB No. 018

(limited backpay ordered in refusal to bargain case where E ceased operations, since such order is appropriate remedy even where such violation was unaccompanied by discriminatory shutdown of operations)

Trans-States Lines, Inc. 256 NLRB No. 116

(R/O necessary in 8(a)(1) and 8(a)(3) case where Bd found that E made no *timely, unambiguous,* and *specific* repudiation of E's unlawful conduct and repudiation was not adequately publicized to Ees)

United States Postcl Service 253 NLRB No. 158

(in order for E to repudiate unlawful conduct and thereby relieve himself of liability for such conduct, E's repudiation must be timely, unambiguous, specifically describe the conduct, and disavow it as unlawful; it must also be free of other proscribed conduct, and E must adequately publish repudiation to Ees involved, engage in no proscribed conduct after publication, and give assurances to Ees that in future E will not interfere with exercise of Ees' statutory rights)

United States Postal Service 253 NLRB No. 158

(E's prompt ameliorative action in posting notice disclaiming any intent to induce Ees to relinquish right to file grievances as result of excellance awards issued to some Ees partly because they had not filed grievances, herein found to constitute unlawful implied promise of benefits to other Ees, held not to preclude issuance of remedial order, since notice failed to recognize unlawful nature of E's actions and to assure Ees that E will not in

2556—Cont.

future engage in similar conduct, and E did little more than reassert right to issue unlawful awards)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(U entitled to both certification and bargaining order if it wins election after revised tally of ballots is issued; bargaining order will issue only to correct any unilateral changes E may have made during time it had obligation to bargain with U)

Apple Tree Chevrolet, Inc. **251 NLRB No. 076**
(Bd proceeds with tabulation of challenged votes for election results not out of any doubt concerning bargaining order remedy, but so as not to preclude U from enjoying any benefits to which it may otherwise be entitled as certified representative; moreover, Bd's established procedure to provide both remedies is because certification alone would not suffice to correct any unilateral changes E may institute between period when bargaining obligation commenced and issuance of certification, and further prolong E's refusal to bargain based on U's institution of still another ULP proceeding)

Southwestern Bell Telephone Company **247 NLRB No. 027**
(*modus operandi* for providing information on job vacancies filled and applications filed, unless parties otherwise agree in writing, enunciated in remedy provided by ALJ)

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(E's refusal to reinstate certain Ees and its discharge of others for strike misconduct cannot support back-pay order in instant case since there was no ULP strike)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(Bd has power-and indeed obligation-to take into account history of recalcitrance in designing remedial order)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(access to bulleting boards granted in cases in which E had extended history of unlawful conduct as well as in cases in which such access was ordered to remedy *flagrant violation, outrageous conduct,* or *a gross interference with Ees' organizational rights*)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(well-coordinated unlawful campaign at one plant may produce chilling effects throughout corporate structure)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(*access* as remedial measure at unorganized plants (of E) may be predicated on Bd's finding that E's unlawful bargaining strategy at organized plant has chilled Ee rights at (E's) unorganized plants; *access* is ordered to remedy effects of unlawful behavior and *not* to punish or deter E)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(burden lies upon Bd to substantiate its conclusion that access is necessary remedy to offset consequences of unlawful E conduct)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(Bd was clearly entitled to consider extensive record of past unlawful activity of E in shaping its remedial order in instant case)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(enforcement of stringent *access* remedy denied where Bd failed to make findings that corporatewide remedies were necessary to offset coercive or chilling effects caused by E conduct at issue, even as that conduct was magnified by existence of previous violations of Act)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(history alone could not justify relief (*corporatewide access*) ordered in instant case, since statements concerning E's *continuing pattern of unlawful conduct* were insufficient to substantiate conclusion that *corporatewide access* was needed to offset coercive or chilling effects produced corporatewide by unlawful conduct of E)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(propriety of access as organizational tool and propriety of U access as remedial measure are 2 separate questions involving different considerations; former need finding that U unable to reach Ees through other channels of communication; as to latter, critical inquiry is whether E conduct is of such nature that access is needed to offset harmful effects that have been produced by such conduct)

2570 RESTORATION OF STATUS QUO ANTE

Monongahela Steel Company and Youngstown Steel Corporation **265 NLRB No. 031**
(principle that proper remedy in cases involving discriminatory conduct is restoration of *status quo ante* unless the wrongdoer can demonstrate that normal remedy would endanger its continued viability is based on Bd's policy that wrongdoer, rather than innocent victim, should bear hardships of unlawful action, and latter has the burden of showing that restoration would result in undue hardship)

Turnbull Enterprises, Inc. **259 NLRB No. 122**
(in cases involving violation of 8(a)(5) based on E's unilaterally altering existing benefits, it is Bd's established policy to order restoration of status quo ante to the extent feasible where there is no evidence that to do so would impose an undue or unafir burden on E)

Nansemond Convalescent Center, Inc. **255 NLRB No. [illegible]**
(in order to place E and U in as nearly same situation as posible which existed during early negotiations it was ordered that upon resumption of bargaining and for 8 months thereafter U be regarded as if initial certification year had not expired)

Empire Gas, Inc. of Denver **254 NLRB No. 076**
(E's conduct in discharging Ees and supervisor for bringing concerted pressure upon E for some favorable resolution of their complaint regarding futher bonus payments, in addition to reflecting general disregard for rights of Ees quaranteed by Act, created atmosphere of coercion requiring restoration of *status quo ante* in order to dissipate effects of such unlawful conduct; reinstatement of all those affected, including discharged supervisor, is both necessary and fully warranted)

Intermountain Rural Electric Association **253 NLRB No. 164**
(order of Bd that E reinstitute its pension-plan as it existed as of December 31, 1978, although allegedly unqualified by reason of *IRS ruling* 78-403, doesnot preclude parties from bargaining over any proposed change intended to retain *IRS* qualification; order restored *status quo ante* and placed parties in position they would have enjoyed but for E's illegal conduct)

Pittsburgh–Des Moines Steel Co. **253 NLRB No. 086**
(request for order that upon resumption of bargaining E place before U those same proposals for contract which was before U prior to E's ULPs denied, since normal bargaining order will suffice to remedy violation)

Scott Printing Corporation **249 NLRB No. 134**
(Bd's remedy rescinding contract of sale to *alter ego* appropriate to restore *status quo ante,* since contract of sale was *sham* transaction)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. **248 NLRB No. 099**
(in cases involving discriminatory termination of operations, restoration of *status quo ante* continues to be proper remedy unless wrongdoer can demonstrate that normal remedy would endanger its continued viability)

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**
(where Bd finds discriminatory conduct, restoration of *status quo ante* is proper remedy unless wrongdoer can demonstrate that normal remedy would endanger its continued viability)

Safeway Trails, Inc. **JD-462-82**
(*Supplemental Decision* sets forth method, in instant case, of computing: amounts of backpay; pension plan payments; discriminatee pension contributions; E pension contributions; interest provisions; and pension fund payments)

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**
(although remedial power of Bd is broad and discretionary, Bd may not order remedies which are in fact punitive; purpose of remedial order under Act is to restore conditions that existed in absence of ULPs, and a remedy which grants rights to which a party would not have been entitled in absence of violations is punitive as to other party and is therefore unenforceable)

N.L.R.B. v. Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. **653 F.2d 304 (C.A. 7, July 1981)**
(where E unilaterally changed insurance plans and its action resulted in some favorable and some unfavorable changes to Ees, Bd's supplemental order held w/i scope of ct remand and consistent with precedent where order provided both for restoration of working conditions or benefits improperly denied and for monetary compensation for any losses sustained)

2584 REMEDIAL, NOT PUNITIVE

International Brotherhood of Electrical Workers, et al. v. Foust RD **442 U.S. 42 (S Ct US, 1979)**
(punitive damages were not permitted under Railway Labor Act for U's breach of duty of fair representation)

International Brotherhood of Electrical Workers, et al. v. Foust RD **442 U.S. 42 (S Ct US, 1979)**
(fundamental purpose of fair representation suits is to compensate for injuries caused by violations of Ees' rights)

Stage Employees, Local No. 249 (General Cinema Corporation of Texas, et al.) **265 NLRB No. 093**
(panel majority did not agree with one member's position that E abused Bd's processes by exercising its right to require Bd to reconsider its prior holding

2584—Cont.

herein; majority deemed member's proposal, based on E's reiteration of frivolous contentions, that E should be assessed $100 to cover portion of expenditures of Bd resources involved in responding to E's wasteful action, unwarranted and punitive)

Barry S. Solof, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group **264 NLRB No. 019**
(since discriminatees were not subject to notice requirement of Sec. 8(g) of Act, they also were not subject to penalties set out in Sec. 8(d) of Act)

Carpenter Sprinkler Corporation v. N.L.R.B. **605 F.2d 60 (C.A. 2, 1979)**
(ct found too broad and refused to enforce Bd's orders to restore wages and terms of employment to *status quo ante*, make retroactive payments to U welfare and pension fund if U so desired, and to reimburse strike replacements for difference between wage and benefits actually received and those they would have received if E had not unilaterally altered them; respondent was small E in economically depressed region with good bargaining relations and the orders were financially crippling)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(Bd's remedial order concerning *company-wide dissemination of notice and access to company plants*, not punitive since notice and access order was designed to counteract use E made at other plants of its ULPs in bargaining at instant plant)

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**
(although remedial power of Bd is broad and discretionary, Bd may not order remedies which are in fact punitive; purpose of remedial order under Act is to restore conditions that existed in absence of ULPs, and a remedy which grants rights to which a party would not have been entitled in absence of violations is punitive as to other party and is therefore unenforceable)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd's power to command affirmative action is remedial not punitive and is to be exercised in aid of Bd's authority to restrain violations and as means of removing consequences of violation which thwart purposes of Act)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(bargaining orders are always remedial and are designed to set matters as they would have been in absence of E's misconduct)

Graves Trucking, Inc. v. N.L.R.B. **692 F.2d 470 (C.A. 7, Nov. 1982)**
(ct held that Bd's make-whole remedy for U steward who suffered injuries during incident with supervisor, found herein unlawful due to fact that steward was engaged in protected concerted activity, did tend to effectuate policies of Act and was not punitive in nature, notwithstanding that remedy did overlap injured party's tort remedy)

N.L.R.B. v. Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. **653 F.2d 304 (C.A. 7, July 1981)**
(where E unilaterally changed insurance plans and its action resulted in some favorable and some unfavorable changes to Ees, Bd's supplemental order held w/i scope of ct remand and consistent with precedent where order provided both for restoration of working conditions or benefits improperly denied and for monetary compensation for any losses sustained)

Brotherhood Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC v. N.L.R.B. **624 F.2d 819 (C.A. 8, 1980)**
(as violation for collecting assessment only technical in nature and U could still go against members who paid assessment but now request reimbursement, or pass proper assessment against members, Bd order, by placing heavy burden on U for locating and reimbursing all members who paid said assessment, held punitive and not appropriate)

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. **683 F.2d 305 (C.A. 9, July 1982)**
(contention that dues reimbursement remedy is inappropriate in situation herein involving illegal assistance to U by E and misrepresentations by U in soliciting U authorization cards, on ground such remedy is punitive rather than compensatory, rejected, since remedy would effectuate policy of Act by returning to Ees money paid to support U they did not freely choose to join)

Harding Glass Industries, Inc. v. N.L.R.B. **672 F.2d 1330 (C.A. 10, Feb. 1982)**
(award of reinstatement and backpay to Ees engaged in ULP strike against E who had unlawfully withdrawn from multi-E unit held not punitive and in accord with Act, where, after striking against E association, U negotiated new contract with it; upon strikers return, E offered them work under terms of old contract, claiming that for that reason award was punitive; however, such offer was invalid since E was bound by new contract, and strikers were not obligated to accept contract terms inferior to those they were intitled to)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(powers of Bd are remedial, not punitive, and Bd may not justify order solely on ground that it will deter future violations of Act)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(notwithstanding that Bd's affirmative remedies may appear *punitive* in context of individual case concerning recidivist violators of Act, they are clearly *remedial*, and are therefore proper, in context of total conduct of recidivist violator)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(*access* as remedial measure at unorganized plants (of E) may be predicated on Bd's finding that E's unlawful bargaining strategy at organized plant has chilled Ee rights at (E's) unorganized plants; *access* is ordered to remedy effects of unlawful behavior and *not* to punish or deter E)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(enforcement denied where Bd order at issue could not be justified as *remedial*, and could only be explained as *punitive, since need for mitigating coercive effects not present in record before access* was awarded at unorganized plants of E)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(refund reimbursement of *take home* fee declined, since many commission drivers who paid it may have made profit in doing so; Bd imposed only remedial, not punative relief; injury was ambiguous)

3700 AUTHORITY OF BOARD

3701 GENERALLY

R. J. E. Leasing Corp. **262 NLRB No. 49A**
(matters of remedy (in instant case, Bd ordered E to withdraw wage increases or other benefits established pursuant to invalid contract) are traditionally w/i Bd's province, and may be addressed by Bd *sua sponte*)

F.M.L. Supply, Inc. **258 NLRB No. 083**
(Bd does not refuse to invoke remedies where Respondent's concealment of conduct injures parties entitled to protection of Act; Respondent estopped from denying consciously deceptive conduct (appearing to be party to successive U contracts) over long period of time)

International Technical Products Corporation, and its Subsidiary, Rel, Inc.; et al. **249 NLRB No. 183**
(bankruptcy ct's order allowing successor E to purchase predecessor's assets free of all liens, claims, and encumbrances cannot affect Bd's order which requires that successor E make predecessor's discriminatees whole for backpay due them since, unlike bankruptcy ct's order which affects only assets of bankrupt, Bd order, which enforces public rather than private right, reaches beyond assets of E and attaches to employing entity itself)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(Bd's choice of remedy in matter w/i its own discretion, open only to limited review; Bd's choice of remedy should stand *unless it can be shown that order (to pay U's reasonable negotiating expenses and Bd's and U's reasonable litigation costs) is patent attempt to achieve ends other than those which can fairly be said to effectuate policies of the Act*)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd has broad latitude in ascertaining appropriate remedial measures, and its decision must be given *special respect*; ct will not disturb Bd's order unless it is patent attempt to achieve ends other than those which effectuate policies of Act)

N.L.R.B. v. Columbia Building Materials, Inc. **624 F.2d 193(T) (C.A. 9, 1980)**
(Bd's task is to fashion remedy for ULPs that will restore economic status quo that would have existed but for ULP; backpay order herein w/i remedial authority of Bd since it does no more than return affected Ees to economic state which they would have enjoyed absent unilateral wage change)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(Bd has broad authority to grant U access to company property as part of remedial order, however, Bd must make clear that such access is necessary to offset adverse effects of unlawful E conduct)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(imposition of remedies is matter of special administrative competence, subject to very limited judicial review; selection of remedies made by Bd must stand, *unless it can be shown that the order is patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act*)

3725 LIMITATION OF SECTION 8(d)

3725—Cont.

Clearwater Finishing Company, a Division of United Merchants and Manufacturers, Inc. v. N.L.R.B. 670 F.2d 464 (C.A. 4, Feb. 1982)
(ct held that Bd's order that E grant proposed wage increase retroactively was beyond scope of its authority where such term was mandatory subject of bargaining; ct found that rule of *H.K. Porter* applied equally to orders requiring agreement on subjects of bargaining in cases arising under Sec. 8(a)(1) and 8(a)(5))

3750 WHERE NO VIOLATION OF ACT

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)
(cab companies not liable for *dues and initiation fees which (U) - would have received* had it been recognized as representative of lessee-drivers, since companies committed no ULP in refusing to recognize U)

3775 FRIVOLOUS LITIGATION

Stage Employees, Local No. 249 (General Cinema Corporation of Texas, et al.) 265 NLRB No. 093
(panel majority did not agree with one member's position that E abused Bd's processes by exercising its right to require Bd to reconsider its prior holding herein; majority deemed member's proposal, based on E's reiteration of frivolous contentions, that E should be assessed $100 to cover portion of expenditures of Bd resources involved in responding to E's wasteful action, unwarranted and punitive)

Standard Refinery Union, Inc. JD-632-80
(assessment of litigation expenses against respondent U, unwarranted where dispute concerning correctness or incorrectness of E's name was compared to typical *8(a)(5)* type proceeding wherein parties seek to test underlying certification proceeding; pleadings were not frivolous)

Hedison Manufacturing Company v. N.L.R.B. 643 F.2d 32 (C.A. 1, Mar 11, 1981)
(ct held costs against E in favor of Bd to include counsel fees and all expenses where ct concluded that E's ptn for review was filed only for purposes of delay in view of experience of E's counsel and totally frivolous nature of contentions before this ct; F.R.Civ.P. 11)

J. P. Stevens & Co., Inc. v. N.L.R.B. 668 F.2d 767 (C.A. 4, Jan. 1982)
(Bd's award of organization and litigation expenses - in extension of frivolous-debatable exception as suggested in *Heck's* – not abuse of discretion where Bd carefully articulated reason for new rule and for application here, namely E's resolute resistance to unionization and its history of litigation before Bd and courts, which Bd has not only power but obligation to take into account)

J. P. Stevens & Co., Inc. v. N.L.R.B. 623 F.2d 322 (C.A. 4, 1980)
(*not-debatable* defense not same as *frivolous* defense; terms are not necessarily coextensive)

East Bay Chevrolet dba Time Chevrolet v. N.L.R.B. 659 F.2d 1006 (C.A. 9, Oct. 1981)
(U was not entitled to litigation costs and attorney fees where E's defenses in refusing to bargain were not without merit or frivolous, i.e. defense rests on credibility determination)

5000 SCOPE OF ORDERS

5025 BREADTH IN RELATION TO SPECIFIC VIOLATION

5025-0100 Generally

Florida Steel Corporation v. N.L.R.B. 620 F.2d 79 (C.A. 5, 1980)
(in exercising its great discretion in determining what curative measures are needed with respect to a particular violation, Bd may properly consider past conduct which may affect scope of effective remedy; however, remedial order is to be based on conduct found unlawful in current proceedings, and Bd is not empowered to monitor on continuing basis activities of E or U found to have committed ULPs or to impose on periodic basis additional requirements because of a past violation)

N.L.R.B. v. Transcon Lines 599 F.2d 719 (C.A. 5, 1979)
(where Bd found ban on U dissident's distribution of anti-U material in drivers' room at truck terminal unlawful, but issued broad order against any interference with Ee distributions generally, ct required Bd to issue a properly narrowed order)

5025-3300 Broad orders

Anchor Briggs, Inc. 265 NLRB No. 038
(broad c/d order warranted in view of nature of E's ULPs in refusal to reinstate striker, threats to close plant, and surveillance)

Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. 248 NLRB No. 040
(ct refused to enforce as too overly broad Bd order which provided that E c/d generally from refusing to bargain in good faith with U)

Weather Tamer, Inc. and Tuskegee Garment Corporation 253 NLRB No. 036
(broad order warranted where E laid off all but skeleton work force one week after Bd agent scheduled pre-election hearing and closed plant after U won election)

5025-3301 Generally

Allied Stores Of N.Y., Inc., d/b/a Gertz 262 NLRB No. 119
(order requiring E to allow Ees to post U campaign literature and precluding E from promulgating nondiscriminatory rule prohibiting Ee access to bulletin boards and blackboard held too broad as there is no statutory right for Ees or U to use such boards and E could conceivably promulgate nondiscriminatory rule)

Oakwood Manor, Inc., d/b/a Danville Nursing Home 254 NLRB No. 108
(broad order issued in view of unlawful conduct of interrogations, threats of plant closure, discriminatory work assignments and discriminatory discharges which reached most, if not all, Ees)

Patry Bee, Inc. 249 NLRB No. 125
(broad order issued in view of serious and egregious nature of violations)

Owen Joint Corporation 248 NLRB No. 076
(narrow rather than broad order appropriate where E had not been shown to have proclivity to violate Act, or to have engaged in such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental statutory rights)

5025-3309 Repetition of ULPs likely

Service Employees Union Local 77, Service Employees International Union, AFL-CIO (Thrust IV) 264 NLRB No. 082
(broad order appropriate where U's picketing exhibited blatent disregard of and willingness to violate Act, as U representative admitted his unlawful intent to ignore reserve gate system and picket when it knew that no Ees of primary were present and stated that they *were picketing jobsite and not gate*)

Longshoremen's Association, Local 1180 (Kenneth E. Mason, an Individual) 263 NLRB No. 134
(broad c/d order not warranted, notwithstanding Respondent had twice previously entered into informal settlement agreements involving identical alleged misconduct, since informal settlement agreement not basis for finding proclivity to violate Act)

Rosa M. Alexander d/b/a A & B Janitorial Service 253 NLRB No. 064

N.L.R.B. v. Circo Resorts, Inc., d/b/a Circus, Circus 646 F.2d 403 (C.A. 9, May 1981)
(inj against ULPs other than ones specified may be justified where there is a danger of their commission in the future because of E's past course of conduct)

5025-3318 Prior ULP proceedings against same respondent

Thurston Motor Lines, Inc. 263 NLRB No. 154
(broad order warranted in unlawful discharge case as E was found in violation of Sections 8(a)(1), (3) and (5) of Act in another recent case and thus has demonstrated proclivity to violate Act)

Longshoremen's Association, Local 1180 (Kenneth E. Mason, an Individual) 263 NLRB No. 134
(broad c/d order not warranted, notwithstanding Respondent had twice previously entered into informal settlement agreements involving identical alleged misconduct, since informal settlement agreement not basis for finding proclivity to violate Act)

Florida Steel Corporation 262 NLRB No. 102
(on remand and in light of E's prior order for corporatewide mailing, posting, publication of Bd's notice, reading it to Ee groups, and U access to 2 plants where ULPs occurred; however, requests for bulletin board access and names and addresses of Ees were denied)

Carpenters Union Local No. 1622, UBCJA (Robert Wood & Associates, Inc. 262 NLRB No. 138
(broad order to remedy unlawful secondary boycott warranted in view of Respondent U's proclivity to violate Act as demonstrated by charges of similar violations in three other cases and resulting formal settlement stipulations since stipulations did not contain nonadmissions clause; not necessary for cases to be consolidated since Respondent's actions in each case warranted issuance of broad remedial order)

Talbert Manufacturing, Inc. 256 NLRB No. 103
(where E found to have violated Act twice w/i 1 year and on both occasions E found to have engaged in widespread violations)

Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.) 257 NLRB No. 042
(informal settlement agreement, in contrast with formal settlements, containing nonadmissions clause will not be used to show proclivity to violative Act)

5025-3318—Cont.

South Shore Hospital 256 NLRB No. 001
(broad order warranted where E demonstrated proclivity to violate Act by 8(a)(5) violation in prior case and 8(a)(1), (3) and (5) in instant case)

St. Francis Hospital 252 NLRB No. 174
(broad order appropriate where same E had been found to have committed numerous violations of Act 2 years before)

5025-3337 Violation goes to heart of Act

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric 265 NLRB No. 203
(Bd issued narrow instead of broad c/d order recommended by ALJ because E's conduct *goes to the heart of the Act,* since this is insufficient basis upon which to grant broad c/d order where it was not shown that E had proclivity to violate Act or engaged in such egregious or widespread misconduct as to demonstrate disregard for Ees' fundamental statutory rights)

Conair Corporation 261 NLRB No. 178

United Parcel Service, Inc. 261 NLRB No. 134
(broad cease and desist order warranted in view of E's previous violations, proclivity for violating Act and engagement in such egregious and widespread, misconduct as to demonstrate general disregard for Ees' fundamental Section 7 rights)

Penn Color, Inc. 261 NLRB No. 058
(unlawful discharge of leading U advocate)

Taylor-Dunn Manufacturing Company 252 NLRB No. 118

5025-3332 Violation of fundamental employee rights

Cell-Acc, Inc. 262 NLRB No. 012
(*broad order* appropriate in instant case in view of E's numerous ULPs (interrogations, threats to close plant and discharge) and their pervasiveness in unit of only 4 Ees; E had engaged in such egregious and widespread misconduct as to demonstrate general disregard for its Ees' fundamental statutory rights)

United Parcel Service, Inc. 261 NLRB No. 134
(broad cease and desist order warranted in view of E's previous violations, proclivity for violating Act and engagement in such egregious and widespread, misconduct as to demonstrate general disregard for Ees' fundamental Section 7 rights)

Heads and Threads Company, a Division of MSL Industries, Inc. 261 NLRB No. 115

Emerson G. M. Diesel, Inc. 258 NLRB No. 168
(broad order appropriate because of number and extent of ULPs showing general disregard for Ees' fundamental statutory rights)

Timberline Energy Corporation 258 NLRB No. 037
(broad order warranted; in view of nature and extent of vioiations committed: laying of, refusing to rehire, interrogating and threatening Ees, paying benefits for no U representation, forming Ee committees and invalid no-solicitation rule, as E has exhibited general disregard for Ees' statutory rights)

Precision Graphics, Inc. 256 NLRB No. 057
(threat of plant closure was egregious violation warranting issuance of broad order)

Richland Co. & Assoc., Division of McDonald Construction, Inc. 256 NLRB No. 026

Mazda of Anchorage 253 NLRB No. 112
(broad inj relief appropriate in view of E's egregious and widespread misconduct where it refused to bargain, unlawfully discharged Ees, granted pay raises to discourage support for U, threatened to close facility, proposed to Ee that they convert their status to independent contractors, and threatening to lock Ees out)

Owen Joint Corporation 248 NLRB No. 076
(narrow rather than broad order appropriate where E had not been shown to have proclivity to violate Act, or to have engaged in such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental statutory rights)

General Rental Co. d/b/a Avis Rent–A–Car 247 NLRB No. 188
(narrow injunctive order rather than broad order, appropriate where, although E's ULP included discharge of Ee because of his U activities, U had not been shown that E had proclivity to violate Act or had engaged in such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental rights)

N.L.R.B. v. Blake Construction Co., Inc., etc. 663 F.2d 272 (C.A.D.C., Aug. 1981)
(broad order appropriate where E's refusal to negotiate contract pay rates for U's new members culminated in transparent turnover of all company activities to alter ego solely to abrogate its statutory obligations in *general disregard for Ees' fundamental statutory rights,* E's action was exacerbated by deplorable techniques used in individual bargaining with Ees to lower their pay rates, and by making Ees choose between lower or higher take home pay, depending on inclusion of benefits; and mere fact that E had no prior record of ULPs does not, in itself, dissipate egregiousness of E's conduct)

5025-3345 ULPs indicate general opposition to purposes and policies of Act

Marlene Industries Corporation; et al. 255 NLRB No. 192
(broad c/d order warranted by reason of wholesale discharges and other discriminations at all plants involved, graphically displaying E's propensity generally to violate Act)

5025-3354 Unlawful conduct continued after settlement agreement

Longshoremen's Association, Local 1180 (Kenneth E. Mason, an Individual) 263 NLRB No. 134
(broad c/d order not warranted, notwithstanding Respondent had twice previously entered into informal settlement agreements involving identical alleged misconduct, since informal settlement agreement not basis for finding proclivity to violate Act)

5025-3372 Planned program of using unlawful tactics

Mazda of Anchorage 253 NLRB No. 112
(broad inj relief appropriate in view of E's egregious and widespread misconduct where it refused to bargain, unlawfully discharged Ees, granted pay raises to discourage support for U, threatened to close facility, proposed to Ee that they convert their status to independent contractors, and threatening to lock Ees out)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)
(Bd has power-and indeed obligation-to take into account history of recalcitrance in designing remedial order)

5025-3379 Discriminatory conduct of a serious nature

Rodeway Inn of Las Vegas 252 NLRB No. 053
(in light of standards set forth in *Hickmott Foods, Inc.* and widespread misconduct of E which clearly demonstrates general disregard for its Ees' fundamental statutory rights, Bd used broad inj language *in any other manner*)

5025-6700 Narrow orders

Behring International, Inc. 252 NLRB No. 055
(E's violations which included unlawful subcontracting, layoffs, interrogations, promises and threats held not to meet test of egregious or widespread misconduct as to demonstrate general disregard for Ees' statutory rights, and only *like or related conduct* proscribed rather than broad c/d order issued)

5025-6701 Generally

Fall River Savings Bank 260 NLRB No. 125
(violations which included unilateral elimination of compensatory time-off for Saturday overtime, and unilateral institution of 6-day work week, and constructive discharge of Ee by forcing her resignation due to this 6-day work week held not to justify broad order)

United States Postal Service 250 NLRB No. 156
(narrow order substituted for broad order where E made threats of disciplinary action in violation of 8(a)(1))

Owen Joint Corporation 248 NLRB No. 076
(narrow rather than broad order appropriate where E had not been shown to have proclivity to violate Act, or to have engaged in such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental statutory rights)

Wyman-Gordon Company v. N.L.R.B. 654 F.2d 134 (C.A. 1, 1981)
(broad order not necessary where major violation overruled)

5025-6770 No history of previous ULPs

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)
(notwithstanding that Bd's affirmative remedies may appear *punitive* in context of individual case concerning recidivist violators of Act, they are clearly *remedial,* and are therefore proper, in context of total conduct of recidivist violator)

5025-6775 No proclivity to violate Act shown

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric 265 NLRB No. 203
(Bd issued narrow instead of broad c/d order recommended by ALJ because E's conduct *goes to the heart of the Act,* since this is insufficient basis upon which to grant broad c/d order where it was not shown that E had proclivity to violate Act or engaged in such egregious or widespread misconduct as to demonstrate disregard for Ees' fundamental statutory rights)

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 106
(Bd modified ALJ's language *in any other like manner,* which is akin to broad language *in any other manner,* by substituting *in any like or related*

5025-6775—Cont.

manner, since ALJ's broad injunctive language was not appropriate where E had not demonstrated proclivity to violate Act nor had engaged in conduct so widespread as to demonstrate general disregard for Ees' fundamental statutory rights)

5050 PERSONS BOUND BY ORDER

5050-0800 Persons not named in charge

Penntech Papers, Inc.; etc. **263 NLRB No. 033**
(Section 10(b) does not preclude liability of two corporations which were not named or served with amended charge until 7 months after alleged violation where they were held to be single E with corporation named and served w/i 10(b) period)

5050-1000 Persons not named in complaint

Sachs Electric Company **248 NLRB No. 092**
(neither E association nor E-member held liable for U's action in unlawfully requesting that members of sister Us, who had been referred out of U's hiring hall quit their jobs in favor of unemployed members of U inasmuch as complaint did not specify either one as respondent with respect to incident and their liability was not fully litigated)

N.L.R.B. v. Wayne Electric, Inc., Electrical Installation and Services, and Wayne E. Steward **636 F.2d 1227(T) (C.A. 9, 1980)**
(owner of two businesses both of which found guilty of ULP's liable for backpay award notwithstanding he was not specifically named as party because obligations of proprietorship are obligations of its owner)

5050-1500 Successor employers

Beverly Enterprises, Inc. t/a Cumberland Nursing & Convalescent Center **263 NLRB No. 061**
(*successor E liable for unremedied ULPs of predecessor E where it had actual notice of ULPs of predecessor. It is unnecessary that ULP charges be filed prior to takeover, but successor E must have notice of facts of ULP at time of take over of operation*)

Beverly Enterprises, Inc. t/a Cumberland Nursing & Convalescent Center **263 NLRB No. 061**
(successor E bears responsible for remedying unlawful discharge by predecessor E where it failed to meet its burden of establishing it was w/o knowledge of predecessor's ULPs at time it took over operation, and those individuals who made decision to discharge Ee worked for successor and successor admitted reason it did not offer reinstatement to dischargee was her unlawful discharge)

Petros Coal Corporation and Blue Coal Corporation **257 NLRB No. 016**
(mtn for summary judgment granted and backpay specification deemed admitted as true where E, found successor herein, failed to file answer; E and successor E held jointly and severely responsible for back pay remedy)

Marine Machine Works, Inc.; et al. **256 NLRB No. 094**
(in summary judgment proceeding on backpay specification, Bd held Es' general denials of allegation in specification regarding their status as successor Es were sufficient to require hearing on whether they are successors obligated to remedy ULPs herein, since they were not made parties to underlying ULP proceedings and thus never had opportunity to present evidence at hearing as to their liability)

Navajo Freight Lines, Inc. **254 NLRB No. 166**
(E, as successor, held not liable for predecessor's 8(a)(5) ULPs since E was unaware of predecessor's ULP litigation; fact that predecessor's shop superintendent, who had knowledge of ULP litigation, continued to work for E has no probative value in establishing E's knowledge prior to its employment of superintendent; pendency of ULP charge against predecessor for several months before business changed hands does not warrant inference that E was aware of charge; and sales agreements indemnification provisions did not refer to ULP charge and limited indemnification to amount in excess of money involved in ULP litigation)

Navajo Freight Lines, Inc. **254 NLRB No. 166**
(although under State laws applicable herein surviving corporation is liable for obligations of disappearing corporation, ALJ, in light of SCt's Golden State Bottling case, held that successor E w/o knowledge of predecessor's ULP litigation is not obligated under Act to remedy predecessor's ULPs, unless successor has expressly contracted to do so)

Winco Petroleum and Cooper Oil Company, Inc., Successor Employer **242 NLRB No. 150**
(order requiring successor E to bargain with predecessor's U, held appropriate, where predecessor voluntarily recognized and bargained with U, violated 8(a)(1), (3) and (5) and was required under *Gissel* to bargain with U, and successor E purchased predecessor's business with actual knowledge of predecessor's ULPs)

Westwood Import Company, Inc. **251 NLRB No. 162**
(successor E responsible for remedying its predecessors refusal to bargain where it purchased business with full knowledge of predecessor's ULPs)

International Technical Products Corporation, and its Subsidiary, Rel, Inc.; et al. **249 NLRB No. 183**
(bankruptcy ct's order allowing successor E to purchase predecessor's assets free of all liens, claims, and encumbrances cannot affect Bd's order which requires that successor E make predecessor's discriminatees whole for backpay due them since, unlike bankruptcy ct's order which affects only assets of bankrupt, Bd order, which enforces public rather than private right, reaches beyond assets of E and attaches to employing entity itself)

Power Service Co., T and T Truck and Trailer Leasing, Inc., Night Hawk Motor Transportation, Inc., and York Motor Transport, Inc. **JD-161-82**
(successor E liable for acts of its predecessor where record supported finding that there was substantial identity of interest among Respondents)

Marine Machine Works, Inc.; et al. **JD-(SF)-227-81**
(Respondent which acquired assets of predecessor E, continued its business w/o change or interruption, with same supervisors and Ees, and was aware of ULP charges against E and potential liability at time of sale is successor E and obligated to remedy ULP's of predecessor E)

N.L.R.B. v. Hot Bagels and Donuts of Staten Island, Inc., and Amboy Baking, Inc. **622 F.2d 1113 (C.A. 2, 1980)**
(ability to secure reduction in sales price by purchasing corporation because of outstanding Bd order is factor in supporting its policy of enforcing orders against successors; however, here, where purchaser and seller owned by same individual and therefore unlikely to profit from any price reduction, this factor becomes irrelevant)

N.L.R.B. v. Hot Bagels and Donuts of Staten Island, Inc., and Amboy Baking, Inc. **622 F.2d 1113 (C.A. 2, 1980)**
(Bd's R/O enforced against successor E who had knowledge of outstanding order as public policy is served because *Ees who have been retained by successor will understandably view their job situation as unaltered*; thus, those Ees who were witness to predecessor's attempt to chill U activity might well be discouraged from U activity at successor)

N.L.R.B. v. Winco Petroleum Company and Cooper Oil Company, Inc., Successor Employer **668 F.2d 973 (C.A. 8, Jan. 1982)**
(ct held that substantial evidence supported Bd's findings that E who bought company was successor E and obligated to remedy predecessor E's ULPs where (1) successor E acquired company with actual knowledge of pending ULP charges, (2) there was little or no interruption in business operations at company as result of acquisition, (3) successor E continued to operate enterprise w/o substantial change, and (4) a majority of successor E's Ees at acquired enterprise were predecessor E's Ees)

N.L.R.B. v. Winco Petroleum Company and Cooper Oil Company, Inc., Successor Employer **668 F.2d 973 (C.A. 8, Jan. 1982)**
(Bd properly applied principles of *Golden State Bottling Co.* in issuing bargaining order against successor E where predecessor voluntarily recognized U and then unlawfully repudiated its recognition, successor had actual knowledge of pending ULP proceedings when it acquired enterprise, successor E retained predecessor's Ees in same positions, successor operated enterprise with little or no interruption and w/o substantial change, and predecessor's Ees constituted majority of successor's Ees in relevant bargaining unit)

N.L.R.B. v. Winco Petroleum Company and Cooper Oil Company, Inc., Successor Employer **668 F.2d 973 (C.A. 8, Jan. 1982)**
(ct recognized that the consequence of finding successorship under *Golden State Bottling Co.,* successor E must remedy ULPs committed by predecessor although successor E had not been found guilty of committing any ULPs itself)

Westwood Import Co. Inc., and Gamut Designs, Inc., d/b/a Westwood Import Co. v. N.L.R.B. **681 F.2d 664 (C.A. 9, July 1982)**
(substantial evidence supported ALJ's finding that circumstances were appropriate to impose upon successor E duty to remedy predecessor E's ULPs)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(modified order was not addressed to successor E where sucessor E had already done what original order would have required to be done)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(in proper case Bd may order successor E which has not violated Act to remedy its predecessor's ULPs)

5050-3400 Multi-employer association

Sachs Electric Company **248 NLRB No. 092**
(E association and E-member held not liable for U's unlawful conduct in discriminating against U members in matter of placement on exclusive hiring hall referral list where adequate safeguards were present in form of appeals committee arbitration procedure provided for in contract; consequently, Es

5050-3400—Cont.

had not turned over their hiring practices to U so as to subject themselves to absolute liability for all wrongful acts of U)

5050-3800 Members of multi-employer association

Sachs Electric Company **248 NLRB No. 092**
(E association and E-member held not liable for U's unlawful conduct in discriminating against U members in matter of placement on exclusive hiring hall referral list where adequate safeguards were present in form of appeals committee arbitration procedure provided for in contract; consequently, Es had not turned over their hiring practices to U so as to subject themselves to absolute liability for all wrongful acts of U)

5050-5700 Partners

N.L.R.B. v. Wayne Electric, Inc., Electrical Installation and Services, and Wayne E. Steward **636 F.2d 1227(T) (C.A. 9, 1980)**
(owner of two businesses both of which found guilty of ULP's liable for backpay award notwithstanding he was not specifically named as party because obligations of proprietorship are obligations of its owner)

5050-6200 Receiver or trustee in bankruptcy

Nathan Yorke, Trustee in Bankruptcy, Successor in Bankruptcy, or alter ego To The Seeburg Corporation and Seeburg Service Parts Co., a single employer **259 NLRB 105**
(where E terminated operations suddenly due to order of trustee in bankruptcy, Ees who were laid off after trustee took over and those employed at date of shutdown entitled to backpay for E's refusal to bargain over effects of closing because E still had valuable assets which would have given U some measure of bargaining power and shutdown was not because of *calamitous event*)

Retail Delivery Service, Inc., and Robert A. Baime, Esq. **JD-486-80**
(as receiver of E under Bankruptcy Act and trustee in bankruptcy, named individual has been successor in law or *alter ego* of E, and Bd's order of reparation for backpay due Ee is provable against said trustee as debt of bankrupt E owed to Bd as agent for Ee)

Belair Chalmers Hospital, Inc., d/b/a University Heights Hospital **JD-(SF)-213-80**
(trustee in bankruptcy derivatively liable for bankrupt E hospital's unlawful discharges where trustee knew of claims of unlawfully discharged Ees and had ample opportunity to shield itself against continuing accrual of backpay by offering reinstatement to claimants, course it deliberately eschewed)

5050-7200 Local union

Local 513, Plumbers (Master Plumbers and Heating Contractors of the Twin Cities (Benton Harbor and St. Joseph, MI)) **264 NLRB No. 059**
(where business agent of 1 local held agent of 2 other locals, and acting pursuant to this agency he violated Act, his local held liable for backpay because while committing proscribed acts he was doing so in his capacity as representative of his own local)

5050-7400 Single integrated enterprise

Penntech Papers, Inc.; etc. **263 NLRB No. 033**
(Section 10(b) does not preclude liability of two corporations which were not named or served with amended charge until 7 months after alleged violation where they were held to be single E with corporation named and served w/i 10(b) period)

5050-7600 Joint employers

Industrial Personnel Corp. v. N.L.R.B. **657 F.2d 226 (C.A. 8, 1981)**
(ct enforced order requiring manufacturing company and personnel company providing drivers for manufacturing company's trucking operations to bargain on joint-E basis with U which had contract with personnel company at time companies entered into agreement for providing drivers and now sought to represent drivers of both companies)

5050-7900 Alter ego

Master Food Services, Inc., Noah Robinson, and Al Williams d/b/a A & W Catering Co. **262 NLRB No. 105**
(sole stockholder who personally controlled operation of company who managed college cafeteria held personally liable as alter ego)

F & F Construction Co., Inc., and Roland L. Barker, d/b/a R.L. Barker Construction Company **262 NLRB No. 98**
(individual d/b/a sole proprietorship, liable notwithstanding he was not respondent in underlying ULP case since he was found herein to be alter ego of respondent company, where he had discontinued that company's operations and formed sole proprietorship after issuance of Bd decision in the ULP case)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**
(individual who operated his business under variety and succession of corporate names and structures each of which, had been *alter egos* held individually liable for ULPs he personally committed; circumstances warranted *piercing corporate veil* where individual threatened to *close down* and reopen under new name as he had done in past)

5050-8100 Employers jointly engaging in ULPs

Penntech Papers, Inc.; etc. **263 NLRB No. 033**
(Section 10(b) does not preclude liability of two corporations which were not named or served with amended charge until 7 months after alleged violation where they were held to be single E with corporation named and served w/i 10(b) period)

5050-8300 Unions jointly engaged in ULP

Local Lodge Number 5, Boilermakers (Reger Construction Company, Inc.) **249 NLRB No. 105**
(international U held equally responsible with local U for violations because of status of international vice president as *trustee* of local, his awareness of and participation in local's discrimination involved in layoffs of Ees by E, and his condonation and ratification of such acts)

5050-9100 Agents of employer

5050-9137 President of corporation

5050-9137-3300 As individual

G and M Lath and Plaster Co., Inc. and Its Alter Ego, Central Texas Lath & Plastering Inc.; et al. **252 NLRB No. 137**
(president and sole stockholder of corporation performing lath and plaster work held personally liable to remedy ULPs)

G and M Lath and Plaster Co., Inc. and Its Alter Ego, Central Texas Lath & Plastering Inc.; et al. **252 NLRB No. 137**
(sole proprietor of corporation that supplies plastering and stucco materials held not to be personally liable for ULPs, notwithstanding corporation was alter ego of subcontracting corporation and president of such subcontracting operation was held solely liable, where proprietor of alter ego had no financial interest in corporation prior to receiving its stock in payment of a debt and neither took part in management of nor received any income from project where ULPs were committed)

5050-9137-6700 Liability limited to misconduct in which president actively participated

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**
(individual who operated his business under variety and succession of corporate names and structures each of which, had been *alter egos* held individually liable for ULPs he personally committed; circumstances warranted *piercing corporate veil* where individual threatened to *close down* and reopen under new name as he had done in past)

5050-9162 Principal stockholder of corporation

Master Food Services, Inc., Noah Robinson, and Al Williams d/b/a A & W Catering Co. **262 NLRB No. 105**
(sole stockholder who personally controlled operation of company who managed college cafeteria held personally liable as alter ego)

5050-9600 Agents of union

5050-9656 Trustee of funds

N.L.R.B. v. Clerks and Checkers Local No. 1593, International Longshoremen's Association, AFL-CIO, et al. **644 F.2d 408 (C.A. 5, May 4, 1981)**
(welfare, vacation, and pension fund administered by E-U trustees held agent of both E and U for limited purpose of accepting contributions from U ordered by Bd to remedy U's discrimination against U member resulting in his loss of contractual fringe benefits; for such purpose, fund is mere receptacle into which U must pay contributions in order to carry out Bd's backpay order and make Ee-beneficiaries whole for U's ULP)

N.L.R.B. v. Clerks and Checkers Local No. 1593, International Longshoremen's Association, AFL-CIO, et al. **644 F.2d 408 (C.A. 5, May 4, 1981)**
(limited agency of welfare, vacation, and pension fund, administered jointly by E-U trustees to receive U contributions in order to remedy U's discrimination against U member resulting in his loss of contractual fringe benefits held not to conflict with common law principles or with ERISA provisions requiring trustees of such fund not be subject to control of any other person or organization, since it does not extend to trustees' decision involving investment of trust funds or determination of eligibility requirements for benefits)

5050-9656—Cont.

N.L.R.B. v. Clerks and Checkers Local No. 1593, International Longshoremen's Association, AFL-CIO, et al. **644 F.2d 406 (C.A. 5, May 4, 1981)**
(compliance by welfare, vacation, and pension fund, administered jointly by E-U trustees, and its acceptance of U contributions in order to remedy U's discrimination against U member resulting in his loss of contractual benefits held to fall squarely w/i fiduciary duty of fund's trustees imposed by ERISA and common law requiring administration of trust solely in interest of its beneficiaries; moreover, trustees have duty to take possession of trust property as soon as reasonably possible)

5062 INDIVIDUAL LIABILITY OF OFFICERS, AGENTS, AND REPRESENTATIVES

Concrete Manufacturing Company and its Directors
(Bd found no merit to E director's assertion that Bd was w/o jurisdiction to determine issues raised by GC's *Mtn for Determination of Personal Liability* since, in *N.L.R.B. v. C.C.C Associates, Inc., et al,* 306 F.2d 534 (2d Cir. 1962) it clearly upheld authority of Bd to conduct post-decisional inquiries relating to questions of derivative liability; moreover, in first supplemental decision, Bd reserved jurisdiction to consider issue of personal liability at later date)

Concrete Manufacturing Company and its Directors **262 NLRB No. 092**
(Bd found no merit to E director's assertion that Bd was w/o jurisdiction to determine issues raised by GC's *Motion for Determination of Personal Liability* since, in *N.L.R.B. v. C.C.C. Associates, Inc., et al.,* 306 F.2d 534 (2d Cir. 1962) it clearly upheld authority of Bd to conduct post-decisional inquiries relating to questions of derivative liability; moreover, in first supplemental decision, Bd reserved jurisdiction to consider issue of personal liability at later date)

Concrete Manufacturing Company and its Directors
(action of E president and plant manager, members of E board of directors, directing E president as chairman of retirement committee to distribute retirement plan *surplus* for personal use of retirement plan's beneficiaries, including E president and plant manager, at time when board had actual knowledge of Bd's Decision providing for backpay to discriminatees and conversion of assets by E president and plant manager to their own personal use, warranted *piercing corporate veil,* and imposing personal liability on them to satisfy Bd's ct-enforced backpay order)

Concrete Manufacturing Company and its Directors **262 NLRB No. 092**
(action of E president and plant manager, members of E board of directors, directing E president as chairman of retirement committee to distribute retirement plan *surplus* for personal use of retirement plan's beneficiaries, including E president and plant manager, at time when board had actual knowledge of Bd's Decision providing for backpay to discriminatees and conversion of assets by E president and plant manager to their own personal use, warranted piercing corporate veil, and imposing personal liability on them to satisfy Bd's ct-enforced backpay order)

Miami Foundry Corporation **252 NLRB No. 002**
(mtn granted dismissing former owner and president of corporation as individual respondent where he was not individually *alter ego* of single integrated enterprise which, resulted from corporaton's acquisition of another corporations stock)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**
(individual who operated his business under variety and succession of corporate names and structures each of which, had been *alter egos* held individually liable for ULPs he personally committed; circumstances warranted *piercing corporate veil* where individual threatened to *close down* and reopen under new name as he had done in past)

Ardizzoni v. N.L.R.B. **663 F.2d 130 (C.A.D.C., Oct. 1980)**
(clause in decree (*E, its officers, agents, successors, and assigns, abide by and perform*) effectuating Bd order necessary as integral part of judgment issued by ct upholding and enforcing Bd order, w/o such direction Bd incapable of effectuating its ct affirmed order)

5075 TERRITORIAL SCOPE OF ORDERS

5075-1100 Limited to plant or plants where ULPs occurred

Daniel Construction Company, A Division of Daniel International Corporation **264 NLRB No. 079**
(extraordinary remedy that Respondent be required to post notices at 4 job sites involved in instant case and *at all of its other construction sites w/i the continental U.S.* held unnecessary, since circumstances (ULPs ordered by high-level supervision) which were present in *Daniel Construction Company, a Division of Daniel International Corporation,* 244 NLRB No. 106, did not appear to be present in instant case)

Arkansas-Best Freight System, Inc. **257 NLRB No. 063**
(Bd limited rescision of E's policy statement and concurrent posting of appropriate notice, solely to facility involved in present proceeding since record is devoid of evidence indicating that E's policy statement was posted or implemented at any of its other facilities)

Pacific Erectors, Inc. **256 NLRB No. 066**
(E who unlawfully withdrew recognition from U with which it had short-form agreement for particular job site required only to apply terms of master agreement consistent with short-form agreement and only to job site involved herein)

Crown Cork & Seal Company, Inc. **258 NLRB No. 004**
(rather than encompassing all of E's operations which are subject to Bd's jurisdiction)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(*direct plant access for U organizers* as remedy limited to site of ULP, but not warranted *unless alternative means of access are clearly unavailable or have been tried and found wanting*)

5075-2200 All of employer's plants

J. P. Stevens & Co., Inc. v. N.L.R.B. **668 F.2d 767 (C.A. 4, Jan. 1982)**
(Bd's refusal of U's request for companywide bargaining order held properly supported by evidence)

J. P. Stevens & Co., Inc. v. N.L.R.B. **638 F.2d 676 (C.A. 4, 1980)**
(ct upheld corporate-wide remedies imposed by Bd in light of E's extraordinary history of lawlessness)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(ct recognizes that Bd can order E to cease ULPs at its other plants on proof of violation at one location when company-wide policy is involved)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(well-coordinated unlawful campaign at one plant may produce chilling effects throughout corporate structure)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(*access* as remedial measure at unorganized plants (of E) may be predicated on Bd's finding that E's unlawful bargaining strategy at organized plant has chilled Ee rights at (E's) unorganized plants; *access* is ordered to remedy effects of unlawful behavior and *not* to punish or deter E)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(history alone could not justify relief (*corporatewide access*) ordered in instant case, since statements concerning E's *continuing pattern of unlawful conduct* were insufficient to substantiate conclusion that *corporatewide access* was needed to offset coercive or chilling effects produced corporatewide by unlawful conduct of E)

5075-3300 All of employer's construction

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(Bd ordered that Respondents c/d from threatening and picketing with object of forcing or requiring Es, or inducing and encouraging Ees, in violation of Sections 8(b)(4)(i) and (ii), to cease d/b/b with non-U contractor generally rather than only at construction projects at which violations took place herein)

Wright & Lopez of Alabama **250 NLRB No. 051**
(Bd included construction contractor's geographic locations in its unit description that were included in *commerce statement and Stipulation for Certification Upon Consent Election* agreement duly executed by E, notwithstanding E denied doing business at one location described; E could move to amend certification in appropriate proceeding)

5087 TIME LIMITATION OF ORDER

Land Equipment Inc. **248 NLRB No. 098**
(order applying contract retroactively to date it was signed including period beyond 10(b) period, appropriate where respondent had actively attempted to conceal from U 1)existence of one company it had formed to supply labor to its other company with which U had contract and 2) fact that some Ees dispatched by U to latter company appeared on former company's payroll)

7500 AFFIRMATIVE DEFENSES

7512 CLEAN HANDS DOCTRINE

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's contention that estoppel exists as result of actions by Bd, GC, and U whereby E was deprived of right to hearing on U's objections to election, and hearing on complaint issued against U and, consequently, GC and U do not seek bargaining order with *clean hands,* rejected, where there was no impropriety on U's part or any irregularity in actions of Bd or GC, E did not show it had any *right* to hearing on objections or to require that GC not settle complaint against U, and this is not proper forum for assessing remedy against U)

7515 LACHES

7515—Cont.

C & D Transfer 253 NLRB No. 080
(Bd rejected E argument that backpay should not be computed from date of discharge because approximately 2 years had elapsed from date charge was filed until date of ALJ decision since laches is not defense to backpay obligation)

7516 DELAY IN BOARD PROCEEDINGS

Mr. B. IGA, Inc. 255 NLRB No. 111
(more than 3-year delay from time of processing E's objections to election in R case to time of mtn for summary judgment in C case, during which 3 of E's 4 stores were sold, number of Ees in unit was reduced from 19 to 3 and complete turnover of Ees in unit, not defense to mtn where Bd's affirmance of RD's Supplemental Decision clearly indicated that issues were considered by Bd; *delay* not *special circumstance* requiring Bd to reexamine its decision in underlying R case)

Motor Inn of Perrysburg, Inc. d/b/a Holiday Inn of Perrysburg v. N.L.R.B. 647 F.2d 692 (C.A. 6, May 1981)
(long delay between filing C and action of Bd in ordering *Gissell* remedy, rather than 3rd election, made its imposition in instant case abuse of Bd discretion w/i meaning of *Clark's Gamble Corp. v. NLRB* 422 F.2d 845 (6th Cir.), *cert. denied,* 400 U.S. 867 (1970))

7518 TRIVIALITY OF VIOLATION

Ray-Lec, A Division of Genuine Parts Company 265 NLRB No. 211

Hudson Oxygen Therapy Sales Company 264 NLRB No. 004
(even if E's conduct in promulgating and posting of no-solicitation, no-distribution, no-access rules, herein found unlawful, was minimal, remedial order warranted, notwithstanding fact that rules are no longer posted on company bulletin boards, where rule remained in Ee handbook and *de minimis* issue is not present)

East Bay Newspapers, Inc., d/b/a Contra Costa Times 265 NLRB No. 076
(where E technically violated Act by maintaining *no-solicitation* rule which failed to specify that Ees were free to engage in solicitation during working time, but promptly upon learning of change in Bd law promulgated announcement reflecting change to allow Ees to solicit during non-work time, no remedy is necessary)

Robert King d/b/a Regency At The Rodeway Inn 255 NLRB No. 133
(supervisor's questioning of Ee as to whether she knew who was passing around U ptn violative and not so *de minimis* as to require no remedial order notwithstanding U activity had ended by time of interrogation, E engaged in no other unlawful acts, statutory rights of only 1 Ee violated and that Ee did not communicate that fact to other Ees)

Foundation of California State University, Sacramento 255 NLRB No. 029
(c/d order necessary to remedy E's threats, made after U demanded recogniton, to enforce schedule and attendance policies more strictly if U came in and predictions of detrimental consequences of U's wage demands, notwithstanding contention R/O not warranted in view of triviality of violations and subsequent certification of U)

Campbell Industries JD-(SF)-108-81
(no necessity for remedial order for violation of *Section* 8(b)(1)(A), since violation stood in isolation and U, in instant case, was guilty of no other transgression of statute; *Local 100, Transport Workers of America, AFL-CIO (Liberty Coaches, Inc.,)* 230 NLRB 536 (1977) controlling; U perpetrated technical violation of 8(b)(1)(A))

N.L.R.B. v. Local 1445, United Food and Commercial Workers International Union, AFL-CIO (Gallahue's Supermarkets) 647 F.2d 214 (C.A. 1, Apr 1981)
(U's contention that its failure to notify Ees of their dues obligations before demanding discharge of nonpaying Ees, to whom U's discharge demands were never communicated and none of whom was fired, was such a minor violation as to not warrant enforcement of Bd order, rejected; Bd's discretion in framing remedies is broad and in absence of abuse of that discretion ct should defer to Bd's judgment)

Skrl Die Casting, Inc. v. N.L.R.B. 651 F.2d 1218 (C.A. 6, June 1981)
(E's unlawful statements and denial of overtime to Ee when considered in context of record as a whole and, since isolated, were not sufficient to support finding E was not bargaining in good faith, and did not convert economic strike to ULP strike)

N.L.R.B. v. Brooks Cameras, Inc. 691 F.2d 912 (C.A. 9, Nov. 1982)
(where Bd did not seriously challenge ALJ's finding that interrogation was isolated and minimal, issuance of remedial order was abuse of Bd's discretion, notwithstanding Bd's selection of remedy entitled to great deference)

7524 CURRENT OR ANTICIPATED LITIGATION

Maywood Do-Nut Co., Inc. 256 NLRB No. 072
(request to dismiss complaint or stay proceedings alleging refusal to furnish information on wage rates and Ee benefits, pending Circuit Ct decision prior 8(a)(5) case denied, as pendency of collateral litigation does not suspend E's duty to bargain)

7530 SETTLEMENT OR WITHDRAWAL OF CHARGES

St. Francis Hospital 263 NLRB No. 109
(no violation where ULP was remedied by informal settlement agreement entered into in prior case covering same time period as instant case involving same E but different charging party and unit; RD had never set aside this settlement agreement; E had fully remedied ULP regarding invalid *no-solicitation; no-distribution rules* and it would not effectuate policies of act to find violation in this regard in instant case)

Hedison Manufacturing Co. 260 NLRB No. 137
(where parties engaged in collective bargaining subsequent to Bd order in prior case which effectively remedies ULP's found in this case, and filed joint mtn to modify ALJ recommended order in this case, this is in effect settlement agreement and since GC does not oppose mtn, Bd grants mtn of parties)

Chassen Brothers, Inc., d/b/a Ann's-Schneider Bakery 259 NLRB No. 162
(where RD set aside settlement agreement based on ULP allegations agreement reinstated after Bd found no evidence of ULP's)

7539 NO NEED FOR REMEDY IN VIEW OF EXISTING BARGAINING SITUATION

International Brotherhood of Painters and Allied Trades, Local Union No. 567 (Painting & Decorating Contractors of California and Nevada, Inc., Reno Chapter) 263 NLRB No. 180
(no violation, since any unlawful refusal by U to consider E's proposals for contract changes cured by fact parties untimately bargained and reached contract, notwithstanding differing interpretations of reopener clause which U initially contended justified its refusal to consider E's proposals since only U had given notice of intent to negotiate changes in agreement, and in its view any party wishing to make changes in agreement must notify other party 90 days before expiration of agreement)

Foundation of California State University, Sacramento 255 NLRB No. 029
(c/d order necessary to remedy E's threats, made after U demanded recogniton, to enforce schedule and attendance policies more strictly if U came in and predictions of detrimental consequences of U's wage demands, notwithstanding contention R/O not warranted in view of triviality of violations and subsequent certification of U)

7540 ACTIONS NOT BASED ON UNION ANIMUS

Golden Day Schools, Inc. v. N.L.R.B. 644 F.2d 834 (C.A. 9, May 8, 1981)
(discriminatees' asserted misconduct did not bar their reinstatement with backpay where E's violations were egregious; and Ees' conduct was not of quality or extent that might reasonably be thought to threaten future amicable relations between E and Ees; E *acted with flagrant disregard for its Ees' rights under Act* refusal (by Bd) to reinstate discriminatee would put premium on E's misconduct)

7542 ECONOMIC OR OTHER HARDSHIP

Schnadig Corporation 265 NLRB No. 020
(backpay awarded to those laid off Ees adversely affected by E's unilaterally adopted change in policy regarding seniority viz a viz layoff, notwithstanding E's financial position and that layoff decision was for economic reasons, since E's unlawful change resulted in different Ees being laid off and those victimized by change should be compensated; determination of specific reinstatements and backpay left to compliance stage)

J. D. Candler Roofing Company, Inc. 258 NLRB No. 053
(U given option of requiring compliance by E with terms and conditions of labor agreement negotiated between it and multi-E bargaining association, or individually negotiating separate agreement with E, where compliance with Bd's order could cause E to cease business, hurting all its Ees and community at large)

Friday Canning Corporation 258 NLRB No. 052
(E's defense to order requiring it to reopen migrant labor camp on grounds of economic loss and camp has been torn down may be raised in compliance proceeding)

Acme Wire Works, Inc. 251 NLRB No. 209
(E's argument that if it had been required to pay amount specified in backpay proceeding it would have been forced out of business speculative; E bound by terms of collective-bargaining agreement)

7542—Cont.

Apex International Management Service JD-(ATL)-86-81

(costliness insufficient reason to refuse remedy to correct effects of ULP)

Reliable Roofing Company, Inc. JD-237-81

(there is no authority which requires or even permits dismissal of C on basis that E's compliance with Bd's bargaining order, particularly financial obligations attached thereto, would cause E's bankruptcy; Bd has rejected defenses based upon defunctness of a business enterprise or its inability to satisfy monetary liabilities imposed by its order, and has held that uncollectability of judgment is not basis for absolving E from liability; Bd's order enforces a public rather than a private right and order is fashioned w/o regard to wrongdoer's past, present, or future state of assets)

Reliable Roofing Company, Inc. JD-237-81

(where compliance with financial obligations imposed by Bd order threatens E's continued viability, appropriate adjustments in financial liability with proper assessment of priorities must be made at compliance stage; dismissal of C in mitigation of order's effect on E would deny charging party and public benefits of remainder of Bd's negative and affirmative remedial provisions, and E's obligation is to comply with as much of Bd order as it can)

Reliable Roofing Company, Inc. JD-237-81

(contention that E's compliance with Bd order imposing financial obligations on E would cause E's bankruptcy, and thereby would hurt Ees, other creditors, and community at large, rejected; there is no reason why Ees who were harmed by E's wrongful conduct should bear burden of those losses for benefit of others who were not so wronged; relieving debtor of its obligations would deprive affected Ees of compensation for their losses, while enabling E, at Ees' expense, to consummate what may be more favorable arrangement with its other creditors)

The Chesapeake and Potomac Telephone Company v. N.L.R.B. 687 F.2d 633 (C.A. 2, Aug. 1982)

(E's contention that compliance with Bd order requiring E to furnish information requested by U for arbitration requested by U for arbitration of grievance resulting from suspension of Ee would be unduly burdensome because it would require search of *thousands of files* rejected, where E's own personnel guide instructed supervisors to check with personnel department for data on previous suspensions in order to avoid disparity; and ALJ made clear that order did not require search of *thousands of files* and that problems of burdensomeness could be dealt with in compliance stage)

N.L.R.B. v. Atlantic International Corporation and its wholly owned subsidiaries, Atlantic Manufacturing Corporation and Atlantic Marketing Corporation 664 F.2d 1231 (C.A. 4, Nov. 1981)

(make-whole remedy ordered by Bd was properly w/i its broad discretion even considering critical financial condition of E)

N.L.R.B. v. R & H Masonry Supply, Inc. 627 F.2d 1013 (C.A. 9, Sept. 1980)

(ct refused to enforce Bd's order to reestablish its trucking operation where E had unlawfully sold trucks, discharged drivers, and contracted out hauling since major capital expense involved would put undue burden on E in view of its small size and slim profit margin)

7554 FEDERAL, STATE OR LOCAL LAWS

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(*anyone sued upon a contract may set up as a defense that it is a violation of Act of Congress, and if found to be so, that fact will constitute a good defense to the action*—; a defendant proferring defense of illegal contract seeks only to be relieved of an illegal obligation and does not ask any affirmative remedy based on antitrust or labor laws)

A & B Janitorial Service, Inc. JD-(SF)-169-81

(Bd has authority to order reinstatement of illegal aliens knowingly hired by E. Contention against public policy since US immigration law prohibits individual who does not have green card from engaging in employment and reinstatement would require E to violate state law which prohibits knowingly employing alien not entitled to lawful residence in US if such employment would have adverse effect on lawful resident workers rejected. Illegal alien not exception to *employee* in Act. Bd has no expertise or authority in immigration, and it has not been determined by state SCt whether state law is enforceable as in conflict with US immigration law.)

7560 GENERAL COUNSEL'S FAILURE TO REQUEST REMEDY

Arizona Public Service Company 247 NLRB No. 054

(absent any request by GC for order requiring reinstatement of status quo ante in case involving unlawful refusal by E to bargain over subcontracting of unit work, and absent allegations or evidence of unilateral action by E, order requiring unit Ees to be *made whole* held unwarranted)

Continental Air Transport Co., Inc. JD-128-82

(reinstatement and backpay not precluded by GC's failure to seek such relief in C where after GC's request for remedy E was offered opportunity to provide *reasonably specific statement of any evidence it wished to produce in connection with appropriateness of remedy; nothing in Bd's rules requires that GC include in C remedy he seeks and even if GC represents to ALJ that no relief is being sought as to particular Ee, this does not preclude Bd from requiring E to offer reinstatement and backpay*)

7563 GENERAL COUNSEL'S FAILURE TO ALLEGE VIOLATION OR TAKE EXCEPTION

Richdel, Inc. 265 NLRB No. 064

(R/O not necessary assuming supervisor's remark to Ee that another Ee *could get fired* for forming U was unlawful, where remark was not alleged to be violation nor was it subject of exception)

7575 RESPONDENT'S SUBSEQUENT COMPLIANCE WITH ACT

Alle Arecibo Corporation and Alle Industries Ltd. 264 NLRB No. 163

(E's responding to threat of ULP charge by supplying U most of information it originally requested warranted R/O prohibiting repeat performance by E since compliance has never been defense to ULP allegation)

Robertshaw Controls Company 263 NLRB No. 128

(no-solicitation rule which was not limited to worktime presumptively invalid as is no distribution rule not limited to work areas; moreover, R/O is appropriate notwithstanding E changed the rules where he made no announcements to Ees of any change and did not assure Ees that in future he would not interfere with their Sec. 7 rights; additionally, fact that former rules have not been enforced for substantial period of time does not remove necessity for such order)

Service Spring Company, A Division of Garlock, Inc., A Wholly-Owned Subsidiary of Colt Industries 263 NLRB No. 103

(telling Ees they could not wear U insignia violative and although E later told Ees they could wear such insignia, this retraction does not fully remedy ULP and remedial order appropriate)

The Broyhill Company 260 NLRB No. 183

(posting of notice that disavowed supervisor's unlawful statements, declared it would not in that manner or any other manner interfere with Ees' Sec. 7 rights, and named those rights on day after E learned of said statements obviated need for additional remedial action; posting 5 weeks after ULP was timely and sooner than posting in litigated cases; publication was adequate where notice was on E's bulletin board and 3 Ees testified to seeing it–to imply that other Ees might have had no chance to see it was speculation; and notice was sufficiently specific although it did not name supervisor or mention circumstances, since Bd notices do not do so)

J. P. Stevens & Co., Inc. v. N.L.R.B. 638 F.2d 676 (C.A. 4, 1980)

(ct rejected E's contention that Bd wrongly failed to consider as mitigating factor its *voluntary* actions aimed at insuring compliance with Act where E's present *voluntary* action is no guaranty of future compliance; furthermore, ct noted that ct-enforced order provides substantially greater protection to Ees)

7584 RESPONDENT'S LIMITED FINANCIAL RESOURCES

N.L.R.B. v. R & H Masonry Supply, Inc. 627 F.2d 1013 (C.A. 9, Sept. 1980)

(ct refused to enforce Bd's order to reestablish its trucking operation where E had unlawfully sold trucks, discharged drivers, and contracted out hauling since major capital expense involved would put undue burden on E in view of its small size and slim profit margin)

7585 NO LOSS SUFFERED

Hanes Corporation 260 NLRB No. 077

(where E violated Act by refusing to bargain over discretionary aspects of its non violative unilateral decision to layoff Ees, make-whole remedy is inappropriate as layoffs were inevitable and no basis on which to predicate a finding that any identifiable Ee suffered loss of pay; moreover, situation is analogous to refusal to bargain over effects of plant closure where there was no duty to bargain over decision to close, backpay remedy runs only from time of Bd decision; here, cause of loss of pay, the layoff, has long since ended so consequently, no loss of pay can be suffered after this decision)

7590 MOOTNESS

Hollander Home Fashion Corp. 258 NLRB No. 142

(finding Mister Softee case inapposite and relying on Georgia Hosiery Mills case, Bd held E's removal of unlawfully imposed written warnings from personnel files of Ees involved did not moot matter or obviate need for appropriate remedy)

Strite-Anderson Mfg. JD-178-82

(E's admitted refusal to bargain, after contract expired, because of U's pending ULP charges, unlawful; no remedy ordered, however, since bargaining obligation had been rendered moot because U was no longer major-

7590—Cont.

ity representative and to bargain with minority representative would have been unlawful)

7590-0100 Generally

Seligman and Associates, Inc. v. N.L.R.B. **639 F.2d 307 (C.A. 6, 1981)**
(ct held Bd's reinstatement order not mooted by E's partial compliance)

7590-0900 Compliance with ALJ's decision or settlement agreement

St. Francis Hospital **263 NLRB No. 109**
(no violation where ULP was remedied by informal settlement agreement entered into in prior case covering same time period as instant case involving same E but different charging party and unit; RD had never set aside this settlement agreement; E had fully remedied ULP regarding invalid *no-solicitation; no-distribution rules* and it would not effectuate policies of act to find violation in this regard in instant case)

United States Postal Service **JD-(SF)-273-79**
(settlement reinstated where complaint alleged conduct that occured before and after settlement agreement, and though all allegations fully litigated, finding of no violations relatinng to post settlement allegations established that E had fully complied with settlement agreement)

7590-1000 Compliance with Board decision

N.L.R.B. v. Fourco Glass Company, Rolland Division **646 F.2d 863 (C.A. 4, Apr 1981)**
(although E violated Act by unilaterally terminating incentive pay program and implementing new wage plan with new hourly rate, Bd order was moot as E and U renegotiated their contract in light of E's economic difficulties)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(E's sale of plant to unrelated successor who fulfilled all requirements of Bd order did notrender order moot)

7590-1400 Revision or rescission of invalid rule

East Bay Newspapers, Inc., d/b/a Contra Costa Times **263 NLRB No. 076**
(where E technically violated Act by maintaining *no-solicitation* rule which failed to specify that Ees were free to engage in solicitation during working time, but promptly upon learning of change in Bd law promulgated announcement reflecting change to allow Ees to solicit during non-work time, no remedy is necessary)

Charleston Area Medical Center, Inc. **JD-405-82**
(although E had maintained violative no-solicitation rule, where rule was corrected 1 year prior to U campaign, and in any event was never enforced, then there is no current violation)

Hayes International Corporation **JD-(ATL)-29-81**
(E's contention that no cease-and-desist order or remedial order is necessary because it has rescinded its no-soliciation and no-distribution rules and has not attempted to enforce them rejected, since, it has not published any recision, rescinded the rules or attempted to rescind them)

J. P. Stevens & Co., Inc. v. N.L.R.B. **668 F.2d 767 (C.A. 4, Jan. 1982)**
(charging party and Bd entitled to relief despite apparent mootness or duplication of remedies which might result from promulgation of new distribution policy--pursuant to ct order--that E claims was made, especially where as here E continually has eschewed voluntary relief and has evidenced unconcern for Bd orders)

7590-1800 Change in ownership or management of business

Apex International Management Service **JD-(ATL)-86-81**
(failure of successor to pay vacation and sick benefits accrued under predecessor's contract, violative)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(E's sale of plant to unrelated successor who fulfilled all requirements of Bd order did notrender order moot)

7590-2700 Discontinuance of business

ABC Trans-National Transport, Inc. v. N.L.R.B. **642 F.2d 675 (C.A. 3, Feb 19, 1981)**
(although ct affd Bd finding that E's failure to bargain over decision to close facility violated Act, ct denied enforcement of Bd's bargaining order in that it would require E to engage in *futile activity*; ct decision to deny enforcement was w/o prejudice to Bd to commence additional proceedings to develop futility issue and order another remedy)

7590-3100 Discontinuance of illegal conduct

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 008**
(institution of new hiring hall procedures and referral system subsequent to issuance of complaint alleging operation of hiring hall in unlawful manner did not obviate need for remedial order since discontinuance of ULP does not dissipate its effect)

N.L.R.B. v. Local 1445, United Food and Commercial Workers International Union, AFL-CIO (Gallahue's Supermarkets) **647 F.2d 214 (C.A. 1, Apr 1981)**
(Bd order enforced notwithstanding that U had ceased its unlawful activity of failing to inform Ees of their dues obligations before demanding discharge of nonpaying Ees; Bd enforcement action is mooted only when party can establish that there is no reasonable expectation that wrong will be repeated; U has not conceded illegality of its conduct; and Bd may reasonably desire finality of judicial resolution of its own decisions as well as a ct order to serve as pointed deterrent against resumption of illegal practices)

7590-8100 Repudiation of threats of reprisal or promises of benefit

Lake Development Management Co. **259 NLRB No. 069**
(E's threat to discharge Ees for U activity during discussion with Ee concerning U meeting, violative notwithstanding E's contention that threat was effectively retracted, since E's subsequent statement to Ees that they could attend U meetings w/o fear of termination was not effective repudiation of E's unlawful conduct, where E's statement did not disavow E's threat as unlawful, disavow E's other contemporaneous unlawful conduct, or give assurances to Ees that E in future would not interfere with Sec. 7 rights)

High Energy Corporation **259 NLRB No. 097**
(contention that assurances by E that plant would not close down if U came in, effectively retracted statement made by plant manager that plant would be closed down in event of unionization, rejected; although there was adequate publication of E's statement, it was not timely, having been delayed for a month from time of manager's statement so that Ees could fully ponder impact of manager's threat and threats to the same effect by other supervisors; moreover, E admitted no wrongdoing and did not assure Ees that in future E would not interfere with Ees' rights by such coercive conduct; nor did he address other violative conduct by other supervisors)

United States Postal Service **253 NLRB No. 158**
(E's prompt ameliorative action in posting notice disclaiming any intent to induce Ees to relinquish right to file grievances as result of excellence awards issued to some Ees partly because they had not filed grievances, herein found to constitute unlawful implied promise of benefits to other Ees, held not to preclude issuance of remedial order, since notice failed to recognize unlawful nature of E's actions and to assure Ees that E will not in future engage in similar conduct, and E did little more than reassert right to issue unlawful awards)

7596 CHANGED CIRCUMSTANCES

7596-0800 Change in Board policy

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(case remanded to Bd where Bd decision left ct uncertain about basis of its award for litigation expenses; Bd should explicate more fully its reasons for requiring *reimbursement* in instant case as Bd required to make reasoned explanation for departing from its precedents)

7596-1200 Intervening court decision

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**
(where Bd issued bargaining order and ct set it aside, remanding to Bd for further proceedings and Bd reinstated bargaining order, ct affirmed Bd, E's institution of new plant rules while bargaining order set aside violative as Bd may make bargaining order retroactive to date U achieved majority status)

N.L.R.B. v. Robin American Corporation **667 F.2d 1170 (C.A. 5, Feb. 1982)**
(Bd order requiring E to bargain over all future closings of any department, too broad in light of subsequent SCt decision that economically motivated decision to shut down part of business was not mandatory subject of bargaining and refusal to bargain over it did not violate duty to bargain; only portion of order concerning department whose closing was motivated by antiU animus enforced)

7596-2400 Bankruptcy

Construction Erectors, Inc. **265 NLRB No. 095**
(notwithstanding E filed voluntary ptn under chapter 7 of Bankruptcy Code and E is currently defunct, Bd issued R/O. Mere discontinuance in business does not render moot issues of ULP's alleged against E)

Polar Air Sheet Metal Company **264 NLRB No. 172**
(where E filed ptn in bankruptcy after unlawfully failing to sign multi-E agreement, Bd issued traditional order requiring retroactive application of contract and granting make-whole remedy; Bd declined to grant moratorium on E's liability for remedy's monetary provisions, since to do so requires reliance on unwarranted assumptions concerning E's current financial viability; no action was taken on bankruptcy ptn even though filed several months after commission of ULPs; after filing of ptn, E continued operations and kept payroll obligations current; and Bd cannot assume that order will adversely affect E's stability and economic recovery or Ees)

7596-2400—Cont.

I.S.G. Extrusion Toolings, Inc. 262 NLRB No. 087
(Bd is not deprived of its jurisdiction or authority to process ULP complaint to final disposition notwithstanding adjudication of Respondent as bankrupt)

International Technical Products Corporation, and its Subsidiary, Ral, Inc.; et al. 249 NLRB No. 183
(bankruptcy ct's order allowing successor E to purchase predecessor's assets free of all liens, claims, and encumbrances cannot affect Bd's order which requires that successor E make predecessor's discriminatees whole for backpay due them since, unlike bankruptcy ct's order which affects only assets of bankrupt, Bd order, which enforces public rather than private right, reaches beyond assets of E and attaches to employing entity itself)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession 682 F.2d 72 (C.A. 3, June 1982)
(in finding Bd improperly granted mtn for summary judgment against debtor-in-possession, ct held that debtor's rejection of bargaining agreement would not affect its Sec. 8(d) obligations prior to date of bankruptcy ptn, and monetary claim resulting from Bd order is then governed by bankruptcy law and may be filed as creditor's claim in bankruptcy ct; as to post-bankruptcy ptn charges, Bd must await bankruptcy ct's determination on remand from ct herein before proceeding to consider such charges, and if bankruptcy ct permits rejection, Bd will be precluded from finding any post-ptn ULPs)

Shippers Interstate Service, Inc. v. N.L.R.B. 618 F.2d 9 (C.A. 7, 1980)

7596-2800 Insolvency

N.L.R.B. v. Hot Bagels and Donuts of Staten Island, Inc., and Amboy Baking, Inc. 622 F.2d 1113 (C.A. 2, 1980)
(fact that title to equipment is now vested in bank, and that foreclosure sale intervened between predecessor's disappearance and successor's emergence pose no legal bar to Bd's finding of successorship where *employing industry* test is met)

7596-4200 Disclaimer of interest by union

Rochester Institute of Technology 264 NLRB No. 135
(E's mtn to dismiss all allegations in 8(a)(5) case because RD revoked U's certification based on U's disclaimer of interest in representing Ees, denied, since alleged violation occurred when U was Ee bargaining representative, and subsequent disclaimer by U does not alter fact that E violated Act and that remedy is necessary for such violation)

7596-4400 Discontinuance of business

Construction Erectors, Inc. 265 NLRB No. 095
(notwithstanding E filed voluntary ptn under chapter 7 of Bankruptcy Code and E is currently defunct, Bd issued R/O. Mere discontinuance in business does not render moot issues of ULP's alleged against E)

ABC Trans-National Transport, Inc. v. N.L.R.B. 642 F.2d 675 (C.A. 3, Feb 18, 1981)
(although ct affd Bd finding that E's failure to bargain over decision to close facility violated Act, ct denied enforcement of Bd's bargaining order in that it would require E to engage in *futile activity*; ct decision to deny enforcement was w/o prejudice to Bd to commence additional proceedings to develop futility issue and order another remedy)

Universal Security Instruments, Inc. v. N.L.R.B. 649 F.2d 247 (C.A. 4, May 1981)
(enforcement denied of part of Bd order requiring E to bargain over decision to close one of its plants where, by time of ct review, plant had been abandoned, lease on property had expired, and equipment removed more than three years earlier)

7596-5200 Sale of business

Scott Printing Corporation 249 NLRB No. 134
(Bd's remedy rescinding contract of sale to *alter ego* appropriate to restore *status quo ante*, since contract of sale was *sham* transaction)

N.L.R.B. v. Maywood Plant of Grede Plastics 628 F.2d 1 (C.A.D.C.)
(affirmative action ordered tobe taken by E in original order was eliminated from modified order, since that action had already been taken by successor towhom E sold plant)

7596-5900 Agreement between parties

N.L.R.B. v. Fourco Glass Company, Rolland Division 646 F.2d 863 (C.A. 4, Apr 1981)
(although E violated Act by unilaterally terminating incentive pay program and implementing new wage plan with new hourly rate, Bd order was moot as E and U renegotiated their contract in light of E's economic difficulties)

7596-8800 Change in operations

Friday Canning Corporation 255 NLRB No. 053
(E's defense to order requiring it to reopen migrant labor camp on grounds of economic loss and camp has been torn down may be raised in compliance proceeding)

7596-9600 Supervisor who engaged in unfair labor practices no longer employed

N.L.R.B. v. Axton Candy and Tobacco Company 645 F.2d 555 (C.A. 6, Apr 8, 1981)
(bargaining order warranted where U had card majority and in view of E's unlawful threats and granting of wage increases, notwithstanding E's contention of Ee turnover and that supervisor who made unlawful statements had been discharged)

625 ORDERS AGAINST EMPLOYERS

1100 CEASE-AND-DESIST ORDERS

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)
(c/d order with provision for posting notice only appropriate remedy for E's ULPs which consisted of unilateral transfer of bargaining unit work, refusal to provide information, wage increase and strike misconduct by supervisor where U had lost its majority status since provision otherwise justified requiring affirmative action would remain moot unless U regains its status. However, notice ordered posted indicating E was found to have violated Act)

1133 OMNIBUS CLAUSES

1133-2500 Broad orders (in any other manner)

Author Briggs, Inc. 265 NLRB No. 038
(broad c/d order warranted in view of nature of E's ULPs in refusal to reinstate striker, threats to close plant, and surveillance)

Coil-Acc, Inc. 262 NLRB No. 012
(*broad order* appropriate in instant case in view of E's numerous ULPs (interrogations, threats to close plant and discharge) and their pervasiveness in unit of only 4 Ees; E had engaged in such egregious and widespread misconduct as to demonstrate general disregard for its Ees' fundamental statutory rights)

Professional Air Traffic Controllers Organization 261 NLRB No. 132
(warranted in view of unlawful discharge of 4 leading U proponents)

S. E. Nichols of Ohio, Inc. 258 NLRB No. 002
(broad order proper where Respondent originally engaged in ULP 10 years prior to date of decision and has consistently delayed compliance, failed to comply with original D/O, made improper reinstatement offers; moreover, over 15-year-period Respondent has committed unlawful acts in response to attempts by Us to organize its other stores)

Welfare, Pension and Vacation Funds, Blasters,
Drillrunners and Miners Union Local No. 29,
etc. 256 NLRB No. 170
(appropriate in view of numerous 8(a)(1) and (4) violations including two discharges herein and 8(a)(1) discharge in prior case)

Anjo Engineering Corporation 256 NLRB No. 161
(warranted in view of E's ULPs including discriminatory discharge on election day and layoffs which had serious impact on Ee complement)

Pace Oldsmobile, Inc. 256 NLRB No. 111
(broad order appropriate in view of E's egregious misconduct demonstrating general disregard for Ees' fundamental statutory rights)

Chicago Magnesium Castings Company 256 NLRB No. 105
(broad order appropriate in view of E's continued pattern of serious unlawful conduct in prior case and here and demonstrated proclivity to violate the Act)

Le Roy Fantasies, Inc., and Hardwicke's Plum, Inc.,
A Joint Venture, d/b/a Maxwell's Plum 256 NLRB No. 036
(broad order warranted where E's ULP's were of such an egregious nature as to demonstrate E's general disregard for E's fundamental statutory rights)

Cutting, Inc. 255 NLRB No. 076
(broad order issued in view of E's multiple and flagrant violations)

Warehouse Groceries Management, Inc. 254 NLRB No. 021
(although bargaining order will issue on remand if ALJ finds card majority, broad order appropriate now in view of interrogation, threats of discharge and plant closure, solicitation of grievances, and denial of wage increase to principal Ee organizer)

Clark Manor Nursing Home Corp. 254 NLRB No. 054
(broad order warranted where, although E's ULPs perhaps could not be characterized as widespread, they were numerous, varied, and egregious and demonstrated deliberate disregard for Section 7 rights of Ees)

St. Francis Hospital 252 NLRB No. 174
(broad order appropriate where same E had been found to have committed numerous violations of Act 2 years before)

Rodeway Inn of Las Vegas 252 NLRB No. 053
(in light of standards set forth in *Hickmott Foods, Inc.* and widespread misconduct of E which clearly demonstrates general disregard for its Ees' fundamental statutory rights, Bd used broad inj language *in any other manner*)

Timet, A Division of Titanium Metals Corporation
of America 251 NLRB No. 157
(where unlawfully discharged Ee distributed letter derogatory to E after ALJ issued decision, Ee entitled to reinstatement as letter stated truth about his discharge and repeated his original offer to represent Ees concerning matters of common concern)

Brooks Cameras, Inc. 250 NLRB No. 116
(broad order warranted in view of egregious nature of E's retaliatory conduct directed at Ees because of their U-related activities and its attempt through unlawful discharges to undermine and destroy U's representative status among unit Ees)

Petroleum Electronics, Inc. and/or Cook
Enterprises, Inc. 250 NLRB No. 042
(appropriate where respondent's unlawful conduct, including interrogation and discharges of 5 Ees, was extensive and reached most of entire Ee complement)

Edward A. Utlaut Foundation, Inc. d/b/a
EdwardA. Utlaut Memorial Hospital and Fair
Oaks Nursing Home 249 NLRB No. 162

Standard Homes, Inc. 249 NLRB No. 146
(broad order inappropriate absent showing of proclivity to violate Act, or egregious and widespread misconduct as to demonstrate general disregard for Ees' statutory rights)

Heatilator Fireplace, Division of Vega Industries,
Inc. 249 NLRB No. 047
(nature of E's ULPs warranted issuance of broad cease-and-desist order under standards set forth in *Hickmott Foods* (directing Ees to observe and report on other Ees' U activities, violative))

Raimund Corsten Co., Inc. d/b/a Raycor Co. 249 NLRB No. 079
(severe nature of E's discharges dissipating one-half of the unit, coupled with other violations, warrants broad injunctive relief--under *Hickmott Foods* analysis)

Clinton Inn 249 NLRB No. 032
(broad order not warranted)

Sambo's Restaurant, Inc. 247 NLRB No. 122
(order warranted, in view of Es' misconduct that was widespread as to number of violations and egregious as to their nature)

Service Spring Company A Division of Garlock, Inc.
A Wholly-Owned Subsidiary of Colt Industries JD-123-82
(broad order warranted where ALJ in prior case recommended broad order, and conduct herein was sufficiently broad and intensive as to demonstrate E's general disregard or hostility to Act: ULPs extended over one year, were committed, approved and condoned by high management officials, continued after U was certified in Bd election and involved violations of Section 8(a)(1), (3) and (4))

1133-5000 Narrow orders (in any like or related manner)

Operating Engineers and Participating Employers
Pre-Apprentice, Apprentice and Journeyman
Affirmative Action Training Fund For Hawaii
and Operating Engineers Joint Apprenticeship
Committee For Hawaii 265 NLRB No. 131
(to remedy threat of discharge violative of Section 8(a)(1))

Jackson Dairy Products Company 258 NLRB No. 172
(conduct not egregious enough to warrant broad order)

Tri-State Building and Construction Trades
Council, AFL-CIO (Structures, Inc.) 257 NLRB No. 042
(where U particip[illegible] in formal settlement agreement under Sec. 8(b)(7)(B) which did not co[illegible] nonadmissions clause, this is insufficient to warrant broad c/d order in this case involving Sec. 8(b)(7)(C))

1133-5000—Cont.

Jack Thompson Oldsmobile, Inc. **256 NLRB No. 014**
(conduct not sufficiently egregious for broad order)

Go-Lightly Footwear, Inc. **251 NLRB No. [illegible]**

Saratoga County Economic Opportunity Council, Inc. **249 NLRB No. 074**
(notwithstanding E's admissions in its brief and in testimony in defense of specific ULPs before ALJ that it discharged Ees who refused to recant their prior protected concerted activities and that it offered improper support of organizational activities by Ees, Bd found ALJ's broad order unwarranted where matters relied on by ALJ were inadequate to indicate proclivity to violate Act since they were neither alleged nor litigated as violations and E's admissions did not indicate that E would ignore statutory rights of its Ees in future)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(order to c/d from in any like or related manner interfering with, restraining, or coercing Ees in exercise of their Section 7 rights not appropriate for Section 8(e) violations not directly involving Section 7 rights)

American Sunroof Corporation; et al. **248 NLRB No. 038**
(appropriate absent proclivity to violate Act or such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental rights)

Roath Packing Company, Inc. **247 NLRB No. 053**
(Bd order used narrow cease-and-desist language it traditionally provides to remedy 8(a)(3) and (1) violations)

N.L.R.B. v. Savin Business Machines Corporation **649 F.2d 89 (C.A. 1, May 1981)**
(narrow rather than broad order appropriate, where there was no evidence of continuing organizational activities or of broad scale unlawful activity by E)

1133-7900 Any other labor organization

Elk Brand Manufacturing Company **253 NLRB No. 132**
(exception to Bd order that it should be modified to delete phrase *any other U* held w/o merit; when E has discharged Ee in violation of 8(a)(3) for activities on behalf of particular U, requiring that E to c/d from discriminatory discharges of adherents only of that U would be wholly inadequate to secure Ee rights)

1150 ORDERS ON ISOLATED OR TRIVIAL ULPS

Lacks Industries, Inc. **JD-346-82**
(no remedy warranted for technical violation of 8(a)(1) which was isolated in nature and de minimis)

1167 CEASE-AND-DESIST ORDERS RELATING TO SPECIFIC VIOLATIONS

Arizona Public Service Company **247 NLRB No. 054**
(E ordered to c/d from insisting on unlawful placing of limits on scope of bargaining over subcontracting of unit work)

1167-0100 Generally

Trans-State Lines, Inc. **256 NLRB No. 116**
(R/O necessary in 8(a)(1) and 8(a)(3) case where Bd found that E made no *timely, unambiguous,* and *specific* repudiation of E's unlawful conduct and repudiation was not adequately publicized to Ees)

Hedison Manufacturing Company **249 NLRB No. 096**
(notwithstanding unresolved question regarding alleged unlawful discharges, herein remanded to ALJ, Bd issued order requiring E to c/d from engaging in unlawful activity and to bargain with U, since resolution of remanded issue did not affect Bd's conclusion that E's extensive ULPs had tendency to undermine U's majority and to impede election process, where ULPs ranged from discriminatory layoffs, unlawful imposition of conditions for transfer of Ees, threats of reprisal, and acts of surveillance and coercive interrogation directed at substantial number of Ees)

1167-5000 Unilateral and various other actions

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company **243 NLRB No. 189**
(Bd found c/d, rather than reinstatement with backpay, order appropriate notwithstanding Ee was discharged for conduct that was subject of unlawful investigatory interview, since discharge was for cause and no additional damaging information was obtained in interview)

Pronto Casting Company **243 NLRB No. 047**
(unilaterally discontinuing past practice of giving Ees annual Xmas gifts of turkeys, violative; E's subsequent correction of violation by giving turkeys to Ees later in February did not relieve E of the violation, and, contrary to contention, remedial order was warranted)

Navajo Freight Lines, Inc. **256 NLRB No. [illegible]**
(while predecessor E was apparently dissolved as legal entity when successor E took over its business, Bd should have opportunity during subsequent compliance proceedings to determine whether it was possible for predecessor, if it should ever resume business, to comply with order requiring it to c/d from engaging in 8(a)(5) conduct and to reimburse former Ees for loss of their vacation pay due to predecessor's unlawful unilateral action)

Kraft Foods, Inc. **251 NLRB No. [illegible]**
(c/d order, rather than make-whole remedy, appropriate as remedy for violation of Ee's *Weingarten* rights, since E negated *prima facie* showing of appropriateness of make-whole remedy by demonstrating that its decision to discipline Ee involved in forklift collision and fight with another Ee, was not based on information obtained at unlawful interview)

Coyne Cylinder Company **251 NLRB No. [illegible]**
(c/d order, rather than make-whole remedy appropraite for violation of Ee's *Weingarten* rights, where there was no evidence to indicate that any information obtained during unlawful interview which preceded Ee's discharge for smoking marijuana during his lunch breaks was relied on by E as basis for discharge)

Pease Company **251 NLRB No. [illegible]**
(E ordered to c/d from making any unilateral changes w/o first bargaining in good faith with U to either new contract or to impasse; nothing herein shall be construed as requiring E to rescind benefits previously granted to Ees but which were found unlawful)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**
(order requiring E to c/d from denying uncompensated leave and/or vacation time sought by Ees in order to serve on other Us' negotiating committees at other plants, enforced, since order remedies ULPs herein and was proper exercise of Bd's discretion; ct rejected E's contentions that order imposed new contractual terms w/o bargaining, and that E's business operations may be seriously disrupted because Bd placed no limitation upon uncompensated leave; moreover Bd improperly relied on 7th circuit's decision)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**
(c/d portion of order, requiring E not to refuse to sign agreed-upon contract because nonplant Ees will also sign it, held entitled to enforcement as a continuing obligation in order to prevent resumption or repetition of unlawful conduct; however, affirmative portion of order, requiring E to sign contract upon U's request, denied enforcement, since contract has by its own terms expired, and ct therefore declined to examine validity of Bd's affirmative order to sign)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**
(order requiring E to stop refusing to make plant premises available for bargaining sessions, to pay Ee negotiators for work time lost during negotiations, and to grant uncompensated leave and/or vacation time, held not to force E to capitulate on such bargaining issues nor to impose new contractual provisions, since E may refuse to bargain on its premises for other valid business reasons, it does not have to pay Ee negotiators indefinitely, and it is free to develop form of leave to be granted)

1167-6000 Section 8(e)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(order to c/d from in any like or related manner interfering with, restraining, or coercing Ees in exercise of their Section 7 rights not appropriate for Section 8(e) violations not directly involving Section 7 rights)

1167-6600 Superseniority

N.L.R.B. v. Stanley H. Egan and Donald R. Egan **638 F.2d 746 (C.A. 10, Aug 1980)**
(objection to Bd's order that U and E c/d from invoking and permitting invocation of superseniority for other than officers whose duties involve administration of agreement or processing of grievances on grounds that it is retroactive change in rules, rejected since Bd has right to announce new principles in adjudicative proceeding)

1167-6700 Threatening union members for engaging in strike activity

Seattle-First National Bank **256 NLRB No. 164**
(on ct remand for purpose of revising Bd order to limit U's economic strike activity in 46th floor foyer of E-owned building, directed against restaurant located on such floor, Bd issued revised order requiring E to c/d from threatening to cause arrest of individuals engaged in strike activity as long as such activity is peaceful, restricted to reasonable number of individuals, and does not unduly interfere with normal use of facilities or operation of

1167-8700—Cont.

businesses not associated with restaurant; such order adequately safeguards E's property rights while permitting U to engage in meaningful Sec. 7 activity)

Seattle-First National Bank **258 NLRB No. 164**
(on ct remand for Bd to consider whether modification of its order, requiring owner of building to c/d from threatening to cause arrest of picketers of struck restaurant located on 46th floor of E's building, is appropriate because picketers were not restaurant Ees, Bd held fact that U members are not restaurant Ees does not affect protected nature of their information disseminating activity concerning labor dispute; accordingly, modification of order in that respect is not required since revised order issued herein describing permissible strike activity ensures that E's property rights will be protected)

1600 REPETITIVE ORDERS

1900 ORDERS TO ALLEVIATE EFFECT OF FRIVOLOUS LITIGATION

1933 WHAT CONSTITUTES FRIVOLOUS LITIGATION

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(*extraordinary remedy* ordering E to reimburse U for its collective bargaining expenses appropriate only when defenses raised were so insubstantial as to be patently frivolous not when defenses, as in instant case, are clearly nonmeritorious)

Eastern Maine Medical Center **253 NLRB No. 024**
(while instant case was strong candidate for imposition of litigation expenses remedy, such remedy not imposed in view of Bd majority's position on issue to the effect that such remedy will not be imposed even in an egregious case of bad faith bargaining unless E's defenses are deemed *frivolous*; while many of E's defenses were wide of mark and unpersuasive, they cannot with confidence be labeled frivolous)

Hospitality Motor Inn, Inc. (Hotel & Restaurant Employees & Bartenders Union, Local No. 235) **250 NLRB No. 155**
(issues not frivolous where determination of whether E had objective basis for good faith doubt of U's majority status required an evaluation as to credibility of E's witness's testimony about U admission of loss of majority status)

Wellman Industries, Inc. **248 NLRB No. 029**
(E's positions regarding its refusal to bargain were twice rejected throughout course of litigation covering entire federal judiciary system, and its latest justification for refusal to bargain amounts to contention that its duty to bargain ceased by virtue of its own unlawful conduct, which precisely amounts to a frivolous position)

J. P. Stevens & Co., Inc. v. N.L.R.B. **668 F.2d 767 (C.A. 4, Jan. 1982)**
(Bd's award of organization and litigation expenses - in extension of frivilous-debatable exception as suggested in *Heck's* -- not abuse of discretion where Bd carefully articulated reason for new rule and for application here, namely E's resolute resistance to unionization and its history of litigation before Bd and courts, which Bd has not only power but obligation to take into account)

1967 TYPES OF ORDER PROVISIONS (SEE ALSO 625-5570)

1967-4900 Reimbursement to union for organizational and negotiation expenses

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(E must reimburse U for its bargaining expenses where E engaged in prolonged course of ULPs designed to thwart U's efforts to negotiate contract)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd adhered to position that reimbursement of U's litigation and negotiation expenses will not be ordered where E's defenses are *debatable* rather than *frivolous*, and in so doing Bd took into consideration role of charging party, remedial rather than punitive tenor of Bd orders, and inapplicability of collateral losses to framing of reimbursement order)

Wellman Industries, Inc. **248 NLRB No. 029**
(reimbursement of U's litigation and negotiation expenses in case involving *frivolous* defenses held not precluded by role of charging party; remedial aspects of such order predominate whatever deterrent effect such order may also have, and are well w/i Bd's authority; and such expenses resulting from frivolous refusal to bargain are not considered collateral)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd ordered reimbursement of U's litigation and negotiation expenses where E's refusal to bargain was not occasioned by reasonably debatable point of view but was meritless attempt to avoid its duty to bargain as evidenced by fact that E's positions were twice unsupported throughout course of litigation covering entire federal judiciary system, and E's latest justification for refusal to bargain amounts to contention that its duty to bargain ceased by virtue of its own unlawful conduct, which precisely amounts to a frivolous position)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to reimburse U for any excess organizing costs it reasonably incurred from date E willfully flouted its lawful duty to recognize U)

1967-5600 Reimbursement of litigation expenses (See also 625-5570)

Admiral Merchants Motor Freight, Inc. **265 NLRB No. 016**
(no reimbursement to GC and charging party of litigation expenses where, respondent was not repeat offender, did not engage in pattern of unlawful conduct, and -- although its conduct was specious -- did not intentionally use defenses meritless on their face in a clear attempt to burden the processes of the Bd and courts)

Carbonex Coal Company **262 NLRB No. 159**
(E not ordered to repay charging party for all litigation expenses as this is appropriate only when E raises patently frivolous defenses and here although without merit, defenses were not frivolous)

Litton Financial Printing Division, A Division of Litton Business Systems, Inc. **256 NLRB No. 077**
(U's request for attorney fees and costs made in its *Joinder to Motion for Summary Judgment*, denied, as reimbursement order was not justified under *Heck's Inc.*, 215 NLRB 765 (1974) and *Tiidee Products, Inc.*, 194 NLRB 1234 (1972))

Southern Newspapers, Inc., d/b/a The Baytown Sun **255 NLRB No. 022**
(denied, since defenses were not frivolous)

Clark Manor Nursing Home Corp. **254 NLRB No. 054**
(E ordered to reimburse Ees for legal expenses that they incurred in defense of trespass complaint brought against them by E; it is Bd's practice to order reimbursements of legal expenses arising from charges brought against Ee by E unlawfully motivated under Act)

Eastern Maine Medical Center **253 NLRB No. 024**
(while instant case was strong candidate for imposition of litigation expenses remedy, such remedy not imposed in view of Bd majority's position on issue to the effect that such remedy will not be imposed even in an egregious case of bad faith bargaining unless E's defenses are deemed *frivolous*; while many of E's defenses were wide of mark and unpersuasive, they cannot with confidence be labeled frivolous)

Safeway Stores, Inc. **252 NLRB No. 095**
(U's legal fees and expenses not assessed against E, notwithstanding U's contention that assessment justified by E's frivolous defenses to its clear obligation to furnish information and facts given other charges alleging failure to furnish information had been filed against E during past ten years, where all but two charges had been settled prior to ALJ's decision, and E had frequently furnished information to U but had never before been asked for this type of information)

Safeway Stores, Inc. **252 NLRB No. 184**
(assessment of reasonable legal fees and expenses incurred by U in pursuing charge that E refused to supply U requested information, denied where history of charges (against E) and settlements did not seem to show callous disregard by E of its collective-bargaining obligations)

Charmer Industries, Inc. **250 NLRB No. 031**
(circumstances insufficient to support allegation of frivolous litigation so as to warrant requiring respondent Es to bear costs of litigation herein)

Standard Homes, Inc. **249 NLRB No. 146**
(reimbursement of U and Bd for litigation costs not awarded where respondent's defense of its conduct were not patently frivolous)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd adhered to position that reimbursement of U's litigation and negotiation expenses will not be ordered where E's defenses are *debatable* rather than *frivolous*, and in so doing Bd took into consideration role of charging party, remedial rather than punitive tenor of Bd orders, and inapplicability of collateral losses to framing of reimbursement order)

Wellman Industries, Inc. **248 NLRB No. 029**
(reimbursement of U's litigation and negotiation expenses in case involving *frivolous* defenses held not precluded by role of charging party; remedial aspects of such order predominate whatever deterrent effect such order may also have, and are well w/i Bd's authority; and such expenses resulting from frivolous refusal to bargain are not considered collateral)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd ordered reimbursement of U's litigation and negotiation expenses where E's refusal to bargain was not occasioned by reasonably debatable point of view but was meritless attempt to avoid its duty to bargain as evidenced by fact that E's positions were twice unsupported throughout course of litigation covering entire federal judiciary system, and E's latest justification for refusal to bargain amounts to contention that its duty to bargain ceased by virtue of its own unlawful conduct, which precisely amounts to a frivolous position)

1967-5600—Cont.

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(E ordered to reimburse Bd and U for all litigation expenses, relating to meritorious ULP allegations and reasonably incurred as result of lengthy proceeding herein where, as in past, E reacted to organizing attempt by engaging in surveillance, creating impression thereof, promising and granting benefits, and unlawfully interfering with organizing campaign)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(disavowing ALJ's characterization of order requiring E to pay Bd and U litigation costs as *traditional in Stevens cases*, Bd noted that it reviews all cases on their merits and grants or denies remedies based on record as a whole)

Hedison Manufacturing Company v. N.L.R.B. **643 F.2d 32 (C.A. 1, Mar 11, 1981)**

(ct held costs against E in favor of Bd to include counsel fees and all expenses where ct concluded that E's ptn for review was filed only for purposes of delay in view of experience of E's counsel and totally frivolous nature of contentions before this ct; F.R.Civ.P. 11)

Liquor Salesmen's Union Local 2 of The State of New York, Distillery, Rectifying, Wine & Allied Workers' International Union, AFL-CIO v. N.L.R.B. **664 F.2d 318 (C.A. 2, July 1981)**

(U's ptn for review of Bd's order insofar as Bd did not act on U's request for attorneys' fees as part of remedy sought, denied where ct saw no merit in U's argument that Es engaged in frivolous litigation and similarly saw no basis for concluding that Bd abused its discretion in this connection)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**

(case remanded to Bd where Bd decision left ct uncertain about basis of its award for litigation expenses; Bd should explicate more fully its reasons for requiring *reimbursement* in instant case as Bd required to make reasoned explanation for departing from its precedents)

1967-6100 Reimburse union for bargaining expenses

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**

(*extraordinary remedy* ordering E to reimburse U for its collective bargaining expenses appropriate only when defenses raised were so insubstantial as to be patently frivolous not when defenses, as in instant case, are clearly nonmeritorious)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**

(case remanded to Bd where Bd decision left ct uncertain about basis of its award for litigation expenses; Bd should explicate more fully its reasons for requiring *reimbursement* in instant case as Bd required to make reasoned explanation for departing from its precedents)

1967-7000 Reimbursement to union of lost initiation fees, dues, etc. (See also 625-5596)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(cab companies not liable for *dues and initiation fees which (U) - would have received* had it been recognized as representative of lessee-drivers, since companies committed no ULP in refusing to recognize U)

1967-8400 Reimbursement to employees for lost benefits

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**

(E who unlawfully failed to make insurance payments ordered to reimburse Ees for payments Ees may have made to third party carriers)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(refund reimbursement of *take home* fee declined, since many commission drivers who paid it may have made profit in doing so; Bd imposed only remedial, not punative relief; injury was ambiguous)

1967-9800 Reinstitution of expired contract

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**

(ct denied enforcement of Bd order requiring project-by-project E, operating under 8(f) agreement, to restore contract as it applies to construction projects commenced after date on which ULPs occurred)

1967-9999 Other

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(request that order include imposition of *interim grievance procedure* whereby E is required to reduce to writing all its existing terms and conditions of employment and to discuss and process Ee grievances denied for reasons stated in *J. P. Stevens, 239 NLRB No. 95*)

2200 ORDERS RELATING TO AGREEMENTS

2201 GENERALLY

Polar Air Sheet Metal Company **264 NLRB No. 172**

(where E filed ptn in bankruptcy after unlawfully failing to sign multi-E agreement, Bd issued traditional order requiring retroactive application of contract and granting make-whole remedy; Bd declined to grant moratorium on E's liability for remedy's monetary provisions, since to do so requires reliance on unwarranted assumptions concerning E's current financial viability; no action was taken on bankruptcy ptn even though filed several months after commission of ULPs; after filing of ptn, E continued operations and kept payroll obligations current; and Bd cannot assume that order will adversely affect E's stability and economic recovery or Ees)

2233 INVALIDATION OF CONTRACTS

2233-0900 Contracts with dominated or unlawfully assisted unions

Baine Service Systems, Inc. **248 NLRB No. 087**

(cease giving effect to and cancel contract entered into by E and U which lacked majority status)

2267 ORDERS CONCERNING CONTRACTUAL BENEFITS

2267-3300 Restoration of benefits

2267-3325 Insurance coverage

Local 90, Operative Plasterers and Cement Masons' International Association of the United States and Canada, AFL-CIO (Southern Illinois Builders Association) **252 NLRB No. 108**

(remand to RD for purpose of ascertaining whether discriminatee incurred medical expenses for which he is entitled to recover under E's health and welfare plan; Bd rejected discriminatee's plan that medical claims be submitted directly to carrier for determination of coverage)

2267-3350 Checkoff provision

Diplomat Envelope Corporation **263 NLRB No. 075**

(E ordered to arbitrate Ee's discharge pursuant to grievance arbitration clause in expired contract which provided that *violation of contract or any previous contract shall survive expiration of contract*)

Potomac Iron Works, Inc.
(JD-264-82

(E ordered to give effect to its unilaterally discontinued dues checkoff provided for in contract and authorizations signed by its Ees, by deducting current dues from current earnings or by off-setting past dues against monies due any Ee under terms of order issued herein, thus assuring that dues will be paid by Ees primarily responsible for such payment and that remedy will effectuate national labor policy expressed in Sec. 302 of Act)

2267-6700 Make employees whole for loss of benefits

Styrest Nursing Home **JD-(ATL)-95-82**

(E ordered to make Ee whole who had been unlawfully denied disability benefits while ill at commencement and during strike, and overruling *Emerson Electric*, ordered that benefits should cease only when benefits exhausted or disability is ended rather than at date when she had previously affirmatively supported strike by joining picket line, inasmuch as benefits were form of compensation for past services and had vested, and did not constitute unfair strike financing by E further, remedy applied retroactively)

Rochester Institute of Technology **264 NLRB No. 135**

(where E had unlawfully withheld merit wage increases from unit Ees, Bd ordered E to make Ees whole by paying them the differences, if any, between their actual wages and wages they would have received had not merit increase programs been withheld and discontinued)

Polar Air Sheet Metal Company **264 NLRB No. 172**

(where E filed ptn in bankruptcy after unlawfully failing to sign multi-E agreement, Bd issued traditional order requiring retroactive application of contract and granting make-whole remedy; Bd declined to grant moratorium on E's liability for remedy's monetary provisions, since to do so requires reliance on unwarranted assumptions concerning E's current financial viability; no action was taken on bankruptcy ptn even though filed several months after commission of ULPs; after filing of ptn, E continued operations and kept payroll obligations current; and Bd cannot assume that order will adversely affect E's stability and economic recovery or Ees)

Diplomat Envelope Corporation **263 NLRB No. 075**

(where E signed memorandum of agreement but refused to sign contract, it was ordered to comply retroactively to its effective date and make Ees whole for losses suffered, i.e., wages and contributions to U funds and interest)

Pullman Building Company **251 NLRB No. 145**

(where Bd ordered appropriate trust funds be made whole for losses suffered due to E's ULPs, it left determination of interest, if any, to individual provisions of Ee benefit fund agreements)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**

(Bd left to compliance stage question of whether E must pay additional amounts into various funds in order to satisfy make-whole remedy since

2267-6700—Cont.

provisions of Ee benefit fund agreements were variable and complex and Bd did not provide at adjudicatory stage of proceeding for addition of interest at fixed rate on unlawfully withheld fund payments)

The Saloon, Inc. **247 NLRB No. 156**

(E who unlawfully ceased contributing to U's health and welfare fund ordered to pay contributions to extent they have not been made, and to reimburse Ees for contributions they may have made for maintenance of U fund, for any premiums they may have paid to insurance companies for medical and dental coverage, and for any medical or dental bills they paid directly to health care providers; reimbursement provisions held reasonable and appropriately tailored to facts of case)

2283 ORDERS CONCERNING BENEFITS UNLAWFULLY GRANTED

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**

(*upon request of U* revoke unilateral changes in rates of pay, wages, and other terms and conditions of employment until such time as E negotiates with U in good faith to *agreement* or *impasse* thereon)

2291 ORDERS CONCERNING BENEFITS UNLAWFULLY WITHHELD

Rochester Institute of Technology **264 NLRB No. 135**

(where E had unlawfully withheld merit wage increases from unit Ees, Bd ordered E to make Ees whole by paying them the differences, if any, between their actual wages and wages they would have received had not merit increase programs been withheld and discontinued)

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car **260 NLRB No. 118**

(make Ees whole for prize money and inspection money unlawfully withheld)

Computer Sciences Corporation Applied Technology Division, Huntsville Center **258 NLRB No. 085**

(amend violative stock purchase plan, and all Ee handbooks or other literature discribing it to eliminate provision which disqualified Ees from participating if they were members of U or bargaining unit)

Finger Lakes Plumbing & Heating Co., Inc. **254 NLRB No. 182**

(on reconsideration, Bd modified original order by deleting requirement that E make delinquent and future payments to industry advancement fund since fund is permissive, nonmandatory subject of bargaining)

Independent Stave Company **248 NLRB No. 025**

(pay over to U sum of money, plus interest thereon, equal to sum of all dues checked off and not remitted to U)

N.L.R.B. v. Wilker Brothers Company, Inc. **652 F.2d 660 (C.A. 6, June 1981)**

(enforcement of order to reimburse Helping Hand Fund, denied where Ees were not aware of E's pre-election reductions in contributions to Fund and thus were not affected by reduction in regard to their U activities)

3300 REINSTATEMENT ORDERS

3301 GENERALLY

Ganley Industries, Inc. **260 NLRB No. 189**

(three discriminatees, after having been reemployed by E, covered by traditional reinstatement order, since record was not clear that their restoration met statutory requirements (for reinstatement))

Babcock & Wilcox Co. **249 NLRB No. 099**

(where unlawfully discharged U president was permitted to retire voluntarily on disability, normal backpay and reinstatement order held not applicable, and since discharge probably made him ineligible to hold or retain U office, E ordered to correct its records, deleting any reference to *discharge* and simply substituting therefor, the term *retirement* or *retirement on disability, accompanied by notification to U of such action*)

Lion Uniform, Jamesville Apparel Division **247 NLRB No. 123**

(reinstatement order to remedy Sec. 8(a)(3) violation proper notwithstanding it imposes financial burden on E because E's unlawful conduct is root cause of burden and it and not Ees should bear burden)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**

(where strike not ULP strike, ct will not enforce Bd's order of reinstatement and backpay; record was devoid of evidence that impasse over nonmandatory subject (presence of stenographers at negotiating sessions) contributed to U's decision to strike)

3317 ENTITLEMENT OF EMPLOYEES TO REINSTATEMENT

3317-0100 Generally

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company **265 NLRB No. 189**

(Bd found c/d, rather than reinstatement with backpay, order appropriate notwithstanding Ee was discharged for conduct that was subject of unlawful investigatory interview, since discharge was for cause and no additional damaging information was obtained in interview)

N.L.R.B. v. Koenig Iron Works, Inc.; et al. **681 F.2d 130 (C.A. 2, June 1982)**

(details of reinstatement can be resolved after E agrees to return of strikers or in compliance hearings before Bd)

N.L.R.B. v. Markle Manufacturing Company of San Antonio **623 F.2d 1122 (C.A. 5, 1980)**

(consent order, which was agreed to by U and E and which directed cessation of strike violence by U, tolled any duty on part of E to reinstate strikers and any concomitant liability for back pay until second order determining fact issue of misconduct was entered since it shifted burden of proof on right to reinstatement and E was not required to reinstate Ees whose alleged conduct was subject of order unless and until alleged facts concerning violence were found not to have existed)

N.L.R.B. v. Potter Electric Signal Company **600 F.2d 120 (C.A. 8, 1980)**

(where Ees were discharged for fight that resulted in shutting down production line, inclusion of reinstatement and backpay in Bd's R/O, inappropriate notwithstanding that discharge was based on results of investigatory interviews conducted w/o presence of U in violation of 8(a)(1); Ees were discharged for cause and not for requesting U presence, and Bd does not have power to order reinstatement or back pay for Ees discharged for obvious personal misconduct, because to do so would violate section 10(c). See, *Fibreboard,* 379 US 203)

3317-0150 Fitness determination

John J. Canova d/b/a Canova Moving & Storage Co. **261 NLRB No. 092**

(while medical evidence would support finding that Ee was physically disabled for reinstatement purposes prior to date when he was medically declared unfit for former employment, his physical condition was not so disabling as to disqualify him from reinstatement until such date, where Ee had returned to work after suffering injury on job, after unlawful discharge he engaged in arduous interim employment, and doctor denoted that his condition enabled him to perform physically demanding duties during backpay period)

Pantex Towing Corporation **258 NLRB No. 113**

(where no basis existed for concluding Ee's conduct violated Congressional enactment dealing with mutiny and it did not appear Ee was prosecuted for any criminal offense in that respect, there was no impediment based upon accomodating marine and labor relations legislation to according Ee usual reinstatement and backpay remedy under Act)

High Performance Tube, Inc. **251 NLRB No. 181**

(discriminatorily discharged Ee denied reinstatement and backpay where took photographs of E's machines on which patents were pending and also of blueprints in E's office which he had entered w/o permission when at time Ee committed above acts he was on probation for copying list of E's competitor's engineers, backpay entitlement ends as of date E could have lawfully discharged him for above miscconduct)

N.L.R.B. v. Jacob E. Decker & Sons **636 F.2d 129 (C.A. 5, 1981)**

(reinstatement ordered for discriminatee who was conficted of felony for possession of marijuana after unlawful discharge as company permitted another Ee to work after felony conviction and during past 8 years only 1 or 2 Ees were discharged pursuant to alleged corporate policy and reinstatement would not create unacceptable employment relationship)

N.L.R.B. v. Chem Fab Corporation **691 F.2d 1252 (C.A. 8, Nov. 1982)**

(ct held that Bd did not abuse its discretion when it concluded that record proof of discharged Ee being arrested for dealing drugs and allegedly admitting sale of marijuana at E's plant, did not warrant denying discriminatee's reinstatement, especially in light of fact that E took no disciplinary action based on these allegations despite company rule making involvement with drugs cause for discharge and fact that E failed to contend that drug charges contributed to its decision to discharge)

3317-0300 Limited to persons named in complaint

N.L.R.B. v. Downslope Industries, Inc., and Greenbriar Industries, Inc. **676 F.2d 1114 (C.A. 6, Apr. 1982)**

3317-0900 Discriminatees

Vulcan-Hart Corporation (St. Louis Division) **263 NLRB No. 064**

(Ee who was discharged for insubordination, then offered reinstatement unlawfully conditioned on his resigning from local U presidency, was entitled to reinstatement with backpay; Act affords him same protection as it would individual denied initial employment because of his U activities)

Deauville Hotel **259 NLRB No. 117**

(Ee who had been unlawfully discharged from his position as head houseman and reinstated to a lesser position was found not to have forfeited his right to reinstatement to the position as head houseman and backpay therefor when he was discharged a second time allegedly for making threats on

3317-0900—Cont.

his supervisor's life and failing to respond to an instruction, where it was found that he did not make the threats as alleged and that his failure to respond immediately to an instruction did not appear serious enough to warrant loss of his right to reinstatement)

Model A and Model T Motor Car Reproduction Corporation **259 NLRB No. 077**

(Bd ordered reinstatement of Ee discriminatorily discharged for wearing U button where Bd, while not condoning Ee's conduct of returning to E's premises after being discharged and directing obscene language and threats of physical harm to managers, found that such abusive behavior was provoked by discriminatory discharge and did not warrant forfeiture of opportunity for reinstatement)

Flite Chief, Inc.; et al. **258 NLRB No. 148**

(E's backpay liability subsequent to specified date may, if necessary, be subject of further proceedings where as of date of hearing E had not made valid offer of reinstatement to discriminatees)

Pay 'N Save Foods, Inc. **257 NLRB No. 162**

(additional evidence can be presented by E as to forefeiture of reinstatement rights by dischargees at compliance stage of proceeding where E failed to establish sufficient basis to deny reinstatement rights to dischargees at C hearing before ALJ)

Deauville Hotel **256 NLRB No. 078**

(Bd remanded case involving two discharges of same Ee for further proceedings to resolve credibility conflicts in order to determine whether circumstances, including E's animus, lapse of time, and possible causal connection between reinstated discriminatee's illegal demotion and quarrel with his replacement, warrant forfeiture of Ee's right to second reinstatement and backpay after date of second discharge; GC did not have to amend complaint to include second discharge)

Firmat Manufacturing Corp. **255 NLRB No. 153**

(discriminatorily discharged apprentice under educational program held entitled to reinstatement although he was found not to be Ee w/i meaning of Sec. 2(3) of Act)

Montgomery Ward & Co., Inc. **254 NLRB No. 102**

(reinstate Ee discharged for theft where Ee confessed at interview at which he was denial *Weingarten* rights and E had no independent corroboration of theft)

National Car Rental System, Inc. **252 NLRB No. 027**

(offer unit Ees jobs with backpay at relocated facility which they would have been offered absent discrimination against them; E must dismiss, if necessary, any persons hired to replace these Ees as result of such discrimination)

Southwestern Bell Telephone Company **251 NLRB No. 061**

(reinstate discharged Ee where information leading to discharge obtained during interview at which Ee was unlawfully denied his *Weingarten* rights; notwithstanding Ee confessed to theft of company property during interview as E relied solely on confession in making his decision)

High Performance Tube, Inc. **251 NLRB No. 181**

(discriminatorily discharged Ee denied reinstatement and backpay where took photographs of E's machines on which patents were pending and also of blueprints in E's office which he had entered w/o permission when at time Ee committed above acts he was on probation for copying lest of E's competitor's engineers, backpay entitlement ends as of date E could have lawfully discharged him for above misconduct)

Ace Beverage Co. **250 NLRB No. 066**

(where supervisor was unlawfully demoted to salesman and thereafter participated in strike in latter capacity, Bd required his status as salesman not be considered or given any effect in assessing his right to reinstatement or in computing his backpay while he participated in strike or thereafter)

J. P. Stevens & Co., Inc. v. N.L.R.B. **638 F.2d 676 (C.A. 4, 1980)**

(reinstatement and backpay remedy held appropriate where ct rejected E's contention that discriminatee forfeited right to such remedy because of his previous conduct in pressuring other Ees into signing U cards and because he allegedly lied before ALJ; ct held that conduct of pressuring Ees was not of such degree that would deny Ee appropriate remedy and ct would not disturb ALJ's assessment of overall credibility of Ee in that Ee's dissembling was not sufficiently egregious to deny him proper remedy)

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**

(ct denied enforcement of Bd order requiring project-by-project E, having 8(f) prehire contract with U, to reinstate discriminatees, who were constructively discharged when they quit, to construction projects not yet begun at time of ULPs; history of Sec. 8(f) and its interpretation by Bd and cts establish that U must reestablish its majority status at each affected jobsite before it can enforce Sec. 8(f) agreement with a project-by-project E)

N.L.R.B. v. Jacob E. Decker & Sons **636 F.2d 129 (C.A. 5, 1981)**

(reinstatement ordered for discriminatee who was convicted of felony for possession of marijuana after unlawful discharge as company permitted another Ee to work after felony conviction and during past 8 years only 1 or 2 Ees were discharged pursuant to alleged corporate policy and reinstatement would not create unacceptable employment relationship)

N.L.R.B. v. Jacob E. Decker & Sons **636 F.2d 129 (C.A. 5, 1981)**

(backpay but not reinstatement ordered for discriminatorily discharged Ee as he was probationary Ee at time of discharge and would have been employed only until his conviction of felony because of his work history; backpay awarded until date of felony conviction)

N.L.R.B. v. Downslope Industries, Inc., and Greenbriar Industries, Inc. **676 F.2d 1114 (C.A. 6, Apr. 1982)**

(Ee who participated in confrontation that lead to unlawful mass discharge, and reasonably considered himself discharged, entitled to reinstatement. In mass discharge, motive of E, not individual actions of Ee, is focus of inquiry and E's motive was to squelch protected activity and unlawful riot spread to include Ee)

Alumbaugh Coal Corporation v. N.L.R.B. **635 F.2d 1380 (C.A. 8, 1980)**

(reinstatement denied to unlawfully discharged Ee who subsequently unlawfully failed to report earnings to State agency for purpose of obtaining unemployment compensation; Ee, rather than E, bears responsibility for his unlawful conduct for which he must assume consequences; Ee's dishonesty adversely affected E's unemployment reserve account which was charged for benefits wrongfully paid to Ee; and full reinstatement of Ee who abused process he now claims should grant him full relief is not justified; accordingly, reinstatement granted E with full backpay only for period preceding his unlawful postdischarge conduct)

Golden Day Schools, Inc. v. N.L.R.B. **644 F.2d 834 (C.A. 9, May 8, 1981)**

(discriminatees' asserted misconduct did not bar their reinstatement with backpay where E's violations were egregious; and Ees' conduct was not of quality or extent that might reasonably be thought to threaten future amicable relations between E and Ees; E *acted with flagrant disregard for its Ees' rights under Act* refusal (by Bd) to reinstate discriminatee would put premium on E's misconduct)

Western Clinical Laboratory, Inc. v. N.L.R.B. **633 F.2d 225(T) (C.A. 9, 1980)**

(substantial evidence supported Bd's finding that Ee was competent medical technologist and entitled to reinstatement)

N.L.R.B. v. R & H Masonry Supply, Inc. **627 F.2d 1013 (C.A. 9, Sept. 1980)**

(Bd's order to reinstate drivers whom E unlawfully discharged at time it sold its trucks and contracted out hauling not enforced since ct refused to enforce order requiring reestablishment of trucking operations; Bd may find some other remedy more appropriate; for example, compensating drivers until they find substantially equivalent employment)

Bellingham Frozen Foods, Inc. v. N.L.R.B. **626 F.2d 674 (C.A. 9, 1980)**

(E not required to reinstate office clerical Ee who was unlawfully discharged by predecessor E where E did not hire any of predecessor's office clericals and thus E was not successor with regard to predecessor's office clerical worker unit)

3317-1200 ULP strikers

Marlene Industries Corporation; et al. **255 NLRB No. 192**

(unlawfully discharged ULP strikers are entitled to proper reinstatement regardless of whether they have found regular and substantially equivalent employment elsewhere)

Marlene Industries Corporation; et al. **255 NLRB No. 192**

(ULP strikers who took employment with other Es and found it necessary purely for economic reasons to move to other locations should be accorded full and equitable opportunity to consider present offers of reinstatement back to their respective plants, free of any fears of recurrence of ULP practices against them)

Interstate Paper Supply Company, Inc. **251 NLRB NO. 189**

(provisions for reinstatement and make whole relief for strikers appropriate where economic strike was converted into ULP strike)

N.L.R.B. v. Koenig Iron Works, Inc.; et al. **681 F.2d 130 (C.A. 2, June 1982)**

(ULP strikers are entitled to immediate reinstatement, even if replacements have been hired, provided they made unconditional offers to return to work)

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. **No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)**

(ULP strikers held entitled to reinstatement since E is obligated to reinstate them to their former jobs and, if necessary, to discharge replacements hired after date of conversion, and replacements herein were not hired until after such date (civil contempt proceeding))

United Services For The Handicapped v. N.L.R.B. **678 F.2d 661 (C.A. 6, May 1982)**

(strikers held entitled to reinstatement where they were found to be ULP strikers since, while they obviously had economic demands, such demands cannot be said to have been sole reason for strike, and strikers were complaining at the time about continued harassment by E)

3317-1200—Cont.

Bellingham Frozen Foods, Inc. v. N.L.R.B. 626 F.2d 674 (C.A. 9, 1980)
(strikers entitled to unconditional reinstatement as ULP strikers where E had refused to bargain with U as representative of seasonal as well as nonseasonal workers and as E cannot unilaterally change scope of recognized bargaining unit, its attempt to do so made strike an unfair labor strike)

Harding Glass Industries, Inc. v. N.L.R.B. 672 F.2d 1330 (C.A. 10, Feb. 1982)
(where Ees engaged in economic strike against E association of which E was member, and E subsequently unlawfully withdrew from multi-E group, Ees hired in anticipation of forthcoming withdrawal and before strike was converted into ULP strike held replacements of ULP strikers and subject to replacement by strikers)

Harding Glass Industries, Inc. v. N.L.R.B. 672 F.2d 1330 (C.A. 10, Feb. 1982)
(award of reinstatement and backpay to Ees engaged in ULP strike against E who had unlawfully withdrawn from multi-E unit held not punitive and in accord with Act, where, after striking against E association, U negotiated new contract with it; upon strikers return, E offered them work under terms of old contract, claiming that for that reason award was punitive; however, such offer was invalid since E was bound by new contract, and strikers were not obligated to accept contract terms inferior to those they were intitled to)

3317-1500 Sympathy strikers

Shaw Industries, Inc., a Division of Crystal Springs Shirt Corp.; et al. 255 NLRB No. 117
(where basis of strike at plant was sympathy for ULP strikers at E's other plant, strikers also are ULP strikers and entitled to immediate reinstatement upon unconditional offer to return to work)

3317-1700 Economic strikers

Serendippity-Un-Ltd and Tigerrr, Inc. 263 NLRB No. 100
(Ees unlawfully discharged while engaged in lawful economic strike entitled to reinstatement and backpay from date of discharge until date they are offered reinstatement, even though Ees did not offer unconditionally to return or request reinstatement, since it is E who has acted unlawfully in discharging them, and burden is on E to undo his ULPs by offering immediate reinstatement and reimbursement for all losses attributable to E's unlawful action until he offers full and lawful reinstatement)

A. Duie Pyle, Inc. 263 NLRB No. 092
(Bd distinguished case herein in which it found that E unlawfully discharged striker, assertedly for picket line misconduct involving threatening statements to nonstrikeing Ee, and in which Bd required reinstatement, from case in which ct denied reinstatement to strikers because statements were made in context of strike marked by vandalism and harassment and were more than spontaneous picket line activity; here, threats were picket line rhetoric made where there was no reason to believe that they would be carried out, and such threats are not so egregious as to warrant denial of reinstatement)

Giddings & Lewis, Inc. 255 NLRB No. 093
(E's recall policy affording seniority preference for job vacancies to Ees who had been laid off over unreinstated (economic) strikers held violative, since policy constituted illegal grant of superseniority; policy was inherently discriminatory; E advanced no legitimate business justification in support of its policy; *Bancroft Cap Company*, 245 NLRB No. 86 (1979), *distinguished to cover relatively short term layoffs*)

Pennypower Shopping News, Inc. 253 NLRB No. 011
(E, by causing Ees reasonably to believe that they had been discharged, or that their continued employment status was questionable because of their strike activities, put Ees in position whereby they were under no obligation to seek reinstatement; reinstatement ordered by Bd)

Ace Beverage Co. 250 NLRB No. 066
(where supervisor was unlawfully demoted to salesman and thereafter participated in strike in latter capacity, Bd required his status as salesman not be considered or given any effect in assessing his right to reinstatement or in computing his backpay while he participated in strike or thereafter)

C-F Air Freight, Inc. 247 NLRB No. 060
(defense to order requiring reinstatement and backpay based on assertion that order was *unfair* and unjustified and that participation of Ees in strike herein, which was basis for other ULP cases brought against U and were subject of settlement agreements, was tantamount to Ees' ratification of U's alleged misconduct which they had not disclaimed responsibility for or knowledge of, rejected)

Childers Manufacturing Company, Inc. JD-(SF)-11-82
(best left for consideration in compliance proceedings are matters dealing with E's contention that backpay and reinstatement rights of unlawfully discharged economic strikers have been diminished by fact that some discharged Ees had been scheduled for layoff due to lack of work and that several Ees had been offered reemployment)

N.L.R.B. v. W. C. McQuaide, Inc. 617 F.2d 349 (C.A. 3, 1980)
(existence of bona fide replacements for economic strikers did not justify E's failure to offer strikers positions available, since economic striker is entitled to reinstatement if and when a job for which he is qualified becomes available; fact that his old job is occupied is no excuse for refusing to make reinstatement offer)

N.L.R.B. v. W. C. McQuaide, Inc. 617 F.2d 349 (C.A. 3, 1980)
(E's contention that it should be obligated to offer reinstatement only to those economic strikers who responded to its letter regarding reinstatement, rejected, where U's offer to return to work was bona fide and unconditional, E had no substantial business justification for failing to reinstate strikers, E's letter merely inquired into strikers' interest in future job openings and, consequently, strikers were under no obligation to respond to E's letter)

Newport News Shipbuilding and Dry Dock Company v. N.L.R.B. 631 F.2d 263 (C.A. 4, June 1980)
(where Ee was lawfully discharged because of his ringleader-role in unauthorized work stoppage, E not required to reinstate him even though he might not have lost his job had U represented him in more competent fashion)

3317-1800 Discharged strikers

Browning-Ferris Industries, Chemical Services, Inc. 259 NLRB No. 009
(Ees unlawfully discharged for refusing to cross picket line not required to unconditionally request reinstatement as E contended)

International Business Systems, Inc. 258 NLRB No. 017
(former striker who had secured equivalent employment elsewhere following E's refusal to reinstate entitled to offer of reinstatement and backpay where he never articulated unequivocal resolve not to accept reinstatement because of new employment)

Marlene Industries Corporation; et al. 258 NLRB No. 192
(unlawfully discharged ULP strikers are entitled to proper reinstatement regardless of whether they have found regular and substantially equivalent employment elsewhere)

3317-2300 Supervisors

Parker-Robb Chevrolet, Inc. 262 NLRB No. 058
(where E's shutdown of operation is unlawfully motivated by Ees' attempt to organize, there is no reason why reinstatement of supervisor active in organizing attempt is necessary for Ees to be aware of their statutory rights since Bd's traditional remedy for discriminatory closing, requiring reinstatement with backpay of unlawfully terminated Ees, would be adequate to remedy E's ULPs)

B. E. & K., Inc. 260 NLRB No. 001
(supervisory Ee who was violatively discharged only need be reinstated to rank-and-file position he held prior to his promotion to supervisor where purpose of promotion was solely to remove him from Act's protection)

Pennypower Shopping News, Inc. 253 NLRB No. 011
(supervisor included in reinstatement and backpay order, since E's conduct, including discharge of supervisor, was part of pattern of conduct aimed at coercing Ees in exercise of Sec. 7 rights)

DRW Corporation d/b/a Brothers Three Cabinets 248 NLRB No. 095
(vindication of Ees Section 7 rights is basis for reinstatement of violatively discharged supervisor not protecting supervisor for his engagement in U activity)

N.L.R.B. v. Southern Plasma Corp. 626 F.2d 1287 (C.A. 5, 1980)
(supervisors discharged for organizational activity not entitled to reinstatement, although it has been ordered where discharge had tendency to interfere with Sec. 7 rights of protected Ees)

N.L.R.B. v. Downslope Industries, Inc., and Greenbriar Industries, Inc. 676 F.2d 1114 (C.A. 6, Apr. 1982)
(discharge of supervisor who had complained of sexual harassment by another supervisor along with discharge of her supervisees who had been hired by supervisor and were either related to or friends of supervisor and who made similar complaints, unlawful, and supervisor ordered reinstated, since she was used as conduit to discharge her supervisees and squelch Section 7 activity or was an integral part of attempt by E to discourage exercise of Sec. 7 rights by Ees)

N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse 647 F.2d 905 (C.A. 9, June 1981)
(ct held that Bd applied wrong legal standard in holding that E violated 8(a)(1) by refusing to retain supervisor, and refused to order his reinstatement, since Congress had expressly chosen not to protect proU activities of supervisor and reinstating supervisor whenever discipline might have coercive effect on Ees would tend to override that will; coercive effect on Ees here could be eliminated by ordering reinstatement of Ees themselves)

3317-2900 Laid-off employees

Pace Oldsmobile, Inc. 256 NLRB No. 111
(E to reinstate Ee who was laid off unlawfully and dismiss, if necessary, any replacement hired for him from date of layoff)

3317-2900—Cont.

B. E. & K., Inc. **252 NLRB No. 036**
(various offers of jobs to laid off Ees held not bona fide *reinstatement offers*, where offers were consistent with E's design to get rid of U adherents at time of pending election)

Hudson Manufacturing Company **249 NLRB No. 096**
(laid off Ees held entitled to reinstatement and backpay w/o regard to any effect layoff might have had on them if parties had bargained in good faith about layoff; while Ees were laid off because of lack of work in their department, it was their refusal to accept unlawfully imposed restrictions on their transfers to other departments, and their acceptance of layoff instead, which ultimately caused their loss of employment plantwide, not merely their loss of employment in their department)

Kewaunee Bottling Company, Inc. **JD-338-82**
(Ee held entitled to reinstatement and backpay where he was laid off as result of E's unlawful unilateral elimination of job classification)

Lorard Industries, Limited **JD-293-82**
(in view of adverse economic conditions, determination of when, if at all, Ees would have been laid off or recalled, absent discrimination, left to compliance stage of instant proceeding; immediate reinstatement or recall not required if it appears in compliance stage Ees are not entitled thereto)

3317-3000 Discharged employees

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company **265 NLRB No. 189**
(Bd applied *Illinois Bell Telephone* standard for determining whether reinstatement and backpay were appropriate remedies for discharge following Weingarten violation as here – namely that where GC has shown that Ee was disciplined or discharged for conduct which was subject of unlawful investigatory interview, burden shifts to E to show that its decision to discipline or discharge was not based on information obtained at the interview; Bd found that discharge was not based on such information and only c/d order appropriate)

Fixtures Manufacturing Corporation **251 NLRB No. 107**
(Ee discharged after unlawfully administered polygraph test showed he had stolen company property ordered reinstated where E did not prove that Ee would have been discharged without results of test)

Illinois Bell Telephone Company **251 NLRB No. 128**
(where Ee was discharged based on information obtained during interview at which she was unlawfully denied presence of representative, reinstatement proper to rectify harm caused; also all references to disciplinary action taken must be expungent from E's files)

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**
(male Ees discharged pursuant to contract with U security clause unlawfully applied to them to be reinstated with backpay)

Continental Air Transport Co., Inc. **JD-125-82**
(reinstatement and backpay for Ee, appropriate, notwithstanding discharge not unlawful, where Ee was discharged for conduct which was subject of interview during which he was unlawfully denied right of U representation; particularly in circumstances where Ee might not have been discharged had U representative been present to present defense)

Childers Manufacturing Company, Inc. **JD-(SF)-11-82**
(reemployment of discharged Ee has no bearing on legality of discharge and, while it might reduce backpay, reemployment is not necessarily the same thing as reinstatement; accordingly, if E has offered unlawfully discharged Ees mere reemployment but not reinstatement, offers of reinstatement must be made to them)

N.L.R.B. v. Kahn's and Company, Division of Consolidated Food Company **694 F.2d 1070 (C.A. 6, Dec. 1982)**
(enforcement of backpay and reinstatement award to dischargee denied, notwithstanding E violated 8(a)(1) by unlawfully refusing dischargee's request to have U steward present when he was interviewed concerning his overstaying his allotted time in restroom, where he was discharged for cause, and his discharge was not affected in any way by the 8(a)(1) violation)

General Motors Corporation v. N.L.R.B. **674 F.2d 576 (C.A. 6, Apr. 1982)**
(enforcement of Bd's back pay and reinstatement order denied notwithstanding E unlawfully ignored Ee's request for U representation and obtained admission from Ee that he was at bowling alley, where report, of E's security officer concerning Ee's presence at nearby bowling alley during working hours, was independent evidence of *good cause* for discharge; E could have discharged Ee on basis of security officer's report alone; discharge for *good cause* precludes order of back pay and reinstatement; ct in instant case followed decisions of *Eighth Circuit*)

3317-8100 Employees hired for specified period or job

N.L.R.B. v. Haberman Construction Company **618 F.2d 288 (C.A. 5, 1980)**
(Bd remedy applying to future projects, proper)

3317-9400 Illegal alien

La Mousse, Inc. **259 NLRB No. 037**
(E to reinstate illegal-alien Ees whom it had constructively discharged for supporting U by bringing about their deportation by the immigration service)

A & B Janitorial Service, Inc. **JD-(SF)-169-81**
(Bd has authority to order reinstatement of illegal aliens knowingly hired by E. Contention against public policy since US immigration law prohibits individual who does not have green card from engaging in employment and reinstatement would require E to violate state law which prohibits knowingly employing alien not entitled to lawful residence in US if such employment would have adverse effect on lawful resident workers rejected. Illegal alien not exception to *employee* in Act. Bd has no expertise or authority in immigration, and it has not been determined by state SCt whether state law is enforceable as in conflict with US immigration law.)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. **672 F.2d 592 (C.A. 7, Feb. 1982)**
(offers of reinstatement to constructively discharged illegal alien Ees shall remain open for four years as legal re-entry may require years of effort)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. **672 F.2d 592 (C.A. 7, Feb. 1982)**
(award of reinstatement and backpay to illegal aliens who had been constructively discharged by E's notice to INS and permitted by INS to depart voluntarily, as opposed to deportation, held justified as vindication of policy of Act and to deter other Es from similar conduct)

3317-9600 Employees who quit

Penn-Dixie Steel Corporation, Joliet Bar Mill Division **253 NLRB No. 012**
(reinstatement and backpay warranted where Ee signed confession of misconduct and resigned during investigatory interview in which he was denied right to U representation)

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**
(ct denied enforcement of Bd order requiring project-by-project E, having 8(f) prehire contract with U, to reinstate discriminatees, who were constructively discharged when they quit, to construction projects not yet begun at time of ULPs; history of Sec. 8(f) and its interpretation by Bd and cts establish that U must reestablish its majority status at each affected jobsite before it can enforce Sec. 8(f) agreement with a project-by-project E)

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**
(ct denied enforcement of Bd order requiring project-by-project E operating under 8(f) prehire contract to reinstate discriminatees, to construction projects not yet begun at time of ULPs; Bd cases which have drawn line between *project-by-project* and *stable work force* situations reaffirm rule that U must reestablish its majority status before it can enforce 8(f) agreement with project-by-project E; and Bd herein sought to restore discriminatees to economic position they might have attained despite E's lawful right not to rehire them at termination of projects in progress)

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**
(ct denied enforcement of Bd order requiring project-by-project E operating under 8(f) prehire contract to reinstate Ees, who were constructively discharged when they quit because E decided to go *open shop*, to projects not yet begun at time of ULPs; inasmuch as it was found Ees were unwilling to work under *open shop* conditions which E would have lawfully offered, it can only be concluded that Ees would not have accepted employment on subsequent projects; therefore, finding that E would have rehired them is foreclosed by factual findings adopted by Bd)

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**
(ct denied enforcement of Bd order requiring E, operating under 8(f) prehire agreement, to reinstate Ees, who were constructively discharged at almost completed project, at new construction projects, and also to *make whole* portion of Bd's reinstatement order as it applied to construction projects commenced after date on which ULPs occurred)

N.L.R.B. v. Downslope Industries, Inc., and Greenbriar Industries, Inc. **676 F.2d 1114 (C.A. 6, Apr. 1982)**
(Ee who participated in confrontation that lead to unlawful mass discharge, and reasonably considered himself discharged, entitled to reinstatement. In mass discharge, motive of E, not individual actions of Ee, is focus of inquiry and E's motive was to squelch protected activity and unlawful not spread to include Ee)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ct cutoff backpay liability of E to economic striker who was unlawfully discharged from time Ee resigned but allowed backpay from time of discharge until date of resignation as Bd exceeded its authority to remedy violations)

3333 MANNER OF REINSTATEMENT

3333-2000 Reinstatement to former or substantially equivalent position

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(where discharged Ee accepted E's offer of reinstatement unlawfully conditioned on Ee's acceptance of different work schedule and was unlawfully laid off day following his reinstatement, Bd ordered E to reinstate Ee to position he held on day he was discharged or to substantially equivalent position)

3333-2012 Includes interim benefits and promotions

Gulf States United Telephone Company **253 NLRB No. 087**
(E required to offer discriminatee who was probationary Ee at time of unlawful discharge reinstatement as permanent Ee where he was discharged during probationary period, was considered satisfactory Ee and would have completed 90 days service absent his unlawful discharge)

N.L.R.B. v. Ford Motor Company **683 F.2d 156 (C.A. 6, July 1982)**
(order that E offer supervisory promotions to Ees who were unlawfully denied promotions and make Ees whole for loss of earnigs sustained by reason of unlawful denial, vacated; promotion to supervisory position is management responsibility and to be distinguished from Bd's power to order reinstatement to formerly held supervisory position or where position had been restructured into supervisory position by management)

3333-2025 Substantially equivalent position acceptable only if former position no longer exists

Arcadia Foods, Inc. **254 NLRB No. 128**
(failure to return ULP strikers to jobs to which they were entitled, violative, notwithstanding pay was same at both jobs)

3333-2037 Only within specified location or unit

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **247 NLRB No. 167**
(reinstatement to positions discriminatees occupied before unlawful transfer to another store)

3333-2047 Insufficient work for all discriminatees offered reinstatement

Division of Plessey Materials Corporation, Plessey Micro Science, A Wholly Owned Subsidiary of Plessey Inc. **263 NLRB No. 182**
(E may not lawfully retain any Ee junior in seniority to another Ee, qualified to perform same job, who remains on layoff in view of E's stated formula for layoffs and number of jobs available to discriminatees)

3333-2050 Position not substantially equivalent where

Laredo Packing Company **264 NLRB No. 037**
(offers of reinstatement to unlawfully discharged drivers to alternate non-driving positions does not toll E's backpay obligation; Ees who refused such interim work were under no obligation to accept offer of employment substantially unlike that of truck driving)

3333-2050-0900 Probationary employee

Gulf States United Telephone Company **253 NLRB No. 087**
(E required to offer discriminatee who was probationary Ee at time of unlawful discharge reinstatement as permanent Ee where he was discharged during probationary period, was considered satisfactory Ee and would have completed 90 days service absent his unlawful discharge)

Wright Plastic Products, Inc. **247 NLRB No. 101**
(determination of whether discriminatees who were rehired on probationary basis have been retained beyond probationary period left to compliance stage of proceeding)

3333-2050-1600 Harder work

Continental Distributing Co., Inc. **256 NLRB No. 091**
(reinstatement of discriminatee to more onerous job and prohibiting him from speaking to other Ees violative where reinstatement occurred after Ee filed charges with Bd to protest his unlawful discharge and allegations of stealing and drinking on job not supported by record)

3333-2050-2000 Less desirable work

Forester Beverage Corporation **265 NLRB No. 035**
(offers of reinstatement to economic strikers not valid where offers were to positions much less desireable than those strikers' left)

Carruthers Ready Mix, Inc. **262 NLRB No. 090**
(reinstatement to more strenuous job which caused Ee's back trouble, not proper reinstatement)

3333-2050-2400 More disagreeable work

Flite Chief, Inc.; et al. **258 NLRB No. 148**
(although E's letter to discriminatees was valid offer of reinstatement, backpay not tolled, where actual offers were mere subterfuge in that they did not offer discriminatees their former work schedule but provided shorter hours and/or graveyard shifts in lieu of day shifts and were concerted effort to provide work schedule which was so unacceptable that discriminatees would be forced to refuse offer)

3333-2050-3200 Different job classification

B. E. & K., Inc. **260 NLRB No. 081**
(supervisory Ee who was violatively discharged only need be reinstated to rank-and-file position he held prior to his promotion to supervisor where purpose of promotion was solely to remove him from Act's protection)

Charge Card Association **247 NLRB No. 119**
(E's offer to have strikers return to work only as probationary Ees not valid offer)

3333-2050-3900 Seasonal employment only

Lion Uniform, Janesville Apparel Division **247 NLRB No. 123**
(settlement agreement which did not require E to resume its original operation at plant not approved by Bd where replacement operation only provided Ees with seasonal work and was thus not substantially equivalent)

3333-2050-4700 Different location

Carruthers Ready Mix, Inc. **262 NLRB No. 090**
(reinstatement obligation not met by offering to employ and employing strikers at jobs at different locations from their former jobs where there was no evidence that the pay and benefits were the same as those for strikers' former jobs)

3333-2050-5100 Lower wages or salary

The Ballet Foundation of Milwaukee, Inc. **JD-219-82**
(offer of reemployment to principal dancer for coming season at salary which was less than salary he received from E during past season, not valid offer of reinstatement, since offer, in effect, required Ee to take demotion; Ee's refusal to accept offer cannot be deemed willful loss of employment)

Circle T. Corporation; Meat Men, Inc., d/b/a Royal T Meat **JD-(SF)-201-81**
(offer of reinstatement to Ee not valid where offer was for lesser position at lower wage rate than Ee had earned prior to E's ULP's which resulted in Ee's employment being terminated)

Circle T. Corporation; Meat Men, Inc., d/b/a Royal T Meat **JD-(SF)-201-81**
(offer of reinstatement to Ee not valid where offer of reinstatement was at rate of pay lower than that required by collective-bargaining agreement)

3333-4000 Reinstatement without prejudice to privileges and benefits

3333-4025 Seniority

Giddings & Lewis, Inc. **255 NLRB No. 093**
(recall strikers in a nondiscriminatory manner)

3333-6000 Discharge of replacements

Pace Oldsmobile, Inc. **256 NLRB No. 111**
(E to reinstate Ee who was laid off unlawfully and dismiss, if necessary, any replacement hired for him from date of layoff)

National Car Rental System, Inc. **252 NLRB No. 027**
(offer unit Ees jobs with backpay at relocated facility which they would have been offered absent discrimination against them; E must dismiss, if necessary, any persons hired to replace these Ees as result of such discrimination)

3333-8000 Validity of reinstatement offer

John J. Canova d/b/a Canova Moving & Storage Co. **261 NLRB No. 092**
(E's letter in response to U representative's demand that Ees who walked off job be returned to work held not valid offer of reinstatement, where letter was ambiguous and illusory statement of E's policy on critical topic; U representative, who was U organizer, was not shown to be agent for Ees; failure of U representative to communicate offer to Ees was immaterial since E should have done so itself; and Ees did not learn of offers of reinstatement during unemployment compensation hearing nor through extant letters)

Turner Tool And Joint Rebuilders Corporation **256 NLRB No. 101**
(offer of reinstatement by letter 3 weeks after discharge in which incorrect version of discharge was given held unconditional offer of reinstatement)

3333-8001 Generally

L. A. Water Treatment, Division of Chromalloy American Corporation **263 NLRB No. 022**
(no valid offer of reinstatement in view of absence of testimony concerning specific terms of offers made and ALJ's finding that offer caused uncertainty and that Ee believed that acceptance would have been tantamount to admission of wrongdoing on his part)

Magnolia Manor Nursing Home, Inc. **260 NLRB No. 040**
(issues presented by E's letters, sent out after charge had been filed, offering former Ees a job, to whose characterization as offers of reinstatement E had

3333-8001—Cont.

objected, and by other offers of employment made pursuant to ct proceeding held matters to be resolved in compliance proceeding)

3333-8001-5800 Must be offer of employment

L. A. Water Treatment, Division of Chromalloy American Corporation 263 NLRB No. 022
(valid offer of reinstatement not made to Ee during encounter with U business representative where E had previously manifested intention to withdraw offer and to withdraw U business representative's authority to make further offers to Ee; additionally, U business representative merely stated that he would *take a shot* at having Ee return to work and was not making clear reinstatement offer)

3333-8001-7800 Obligation on General Counsel to produce witnesses to resolve ambiguity in offer of reinstatement

N.L.R.B. v. Consolidated Dress Carriers, Inc., et al. 693 F.2d 277 (C.A. 2, Nov. 1982)
(ct held that, in inquiring as to Ees' actual understanding of *reinstatement* language of mailgrams, found facially ambiguous by ct, although E has ultimate burden of persuasion on issue of validity of offer of reinstatement, Bd has an initial obligation to produce Ees to testify on their understanding of offer)

3333-8033 Mechanics of offer

3333-8033-1200 Receipt of offer

Seyforth Roofing Company of Alabama, Inc. 263 NLRB No. 048
(adequate offer of reinstatement not communicated to striker where he testified w/o contradiction that he did not receive or have any secondary knowledge of offer sent to him in care of another illegally discharged striker or offers to other strikers but E may show in compliance proceeding that its method of notification was reasonable under the circumstances)

Carruthers Ready Mix, Inc. 262 NLRB No. 090
(E's offer to reinstate striker insufficiently communicated where telephone calls to striker's residence were not answered or a message was left with third party but never received by striker, and letter sent by ordinary mail was not received by striker)

Carruthers Ready Mix, Inc. 262 NLRB No. 090
(reinstatement offer requirements met where striker received but did not respond to letter containing offer of reinstatement or E's contacts through another individual because he did not desire to return to work for E)

Burnup & Sims, Inc. 256 NLRB No. 142
(offer of reinstatement mailed to address on Ee's employment application, tax withholding form, and paycheck constituted good faith offer of reinstatement sufficient to toll E's backpay liability notwithstanding that street address on envelope was misnumbered, since Ee had received registered letter from E previously with misnumbered street address; mail carrier knew Ee and would probably put letter for Ee in right box; E's failure to verify Ee's address does not establish lack of good faith; no showing that alternative means for communicating with Ee were available)

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 054
(offer of reinstatement communicated to discriminatee's roommate not valid offer)

3333-8033-3700 Offer by ordinary mail or telephone

Carruthers Ready Mix, Inc. 262 NLRB No. 090
(E's offer to reinstate striker insufficiently communicated where telephone calls to striker's residence were not answered or a message was left with third party but never received by striker, and letter sent by ordinary mail was not received by striker)

Carruthers Ready Mix, Inc. 262 NLRB No. 090
(communication of reinstatement offer insufficient, where E knowingly sent letter to wrong address)

Carruthers Ready Mix, Inc. 262 NLRB No. 090
(letter sent to last known address and not returned or returned as *not deliverable* sufficient, where Ee had not informed E of change of address)

Carruthers Ready Mix, Inc. 262 NLRB No. 090
(attempted communication with striker sufficient where person answering telephone said that striker had moved w/o notifying landlord of his new address and phone number and he had notified E either)

Burnup & Sims, Inc. 256 NLRB No. 142
(offer of reinstatement mailed to address on Ee's employment application, tax withholding form, and paycheck constituted good faith offer of reinstatement sufficient to toll E's backpay liability notwithstanding that street address on envelope was misnumbered, since Ee had received registered letter from E previously with misnumbered street address; mail carrier knew Ee and would probably put letter for Ee in right box; E's failure to verify Ee's address does not establish lack of good faith; no showing that alternative means for communicating with Ee were available)

3333-8033-4000 Offer through union as agent

Birmingham Ornamental Iron Company 251 NLRB No. 118
(E's collective offer to reinstate ULP strikers through U as strikers' agent upon U's unconditional offer on behalf of strikers to return to work fulfills E's obligation to notify strikers date they should return to work)

Palas Corporation JD-(SF)-28-82
(neither reinstatement nor backpay obligation of E tolled where E's offer of reinstatement was made by asking U to dispatch discriminatees to E rather than being made *directly* to discriminatees themselves)

3333-8033-7500 Time limit must be reasonable

Forester Beverage Corporation 265 NLRB No. 028
(E who offered economic striker reinstatement but only gave him 24 hours to consider offer did not validly offer striker reinstatement)

Mid-County Transit Mix, Inc. 264 NLRB No. 107
(E's telephone call to striker to report to work next morning at 6 a.m. not valid offer of reinstatement since did not allow reasonable period of time to consider whether to return)

L. A. Water Treatment, Division of Chromalloy American Corporation 263 NLRB No. 022
(valid offer of reinstatement not made where offer was phrased to require that Ee return to work *immediately*, thereby clearly failing to afford Ee sufficient time in which to make considered choice concerning his employment or to give adequate notice to his current E; that E gave Ee extra day to reflect upon offer did not alter Bd's finding)

Marlene Industries Corporation; et al. 255 NLRB No. 192
(letters offering ULP strikers in reinstatement failed to allow reasonable amount of time for acceptance to work and generally were invalid as not having been made in good faith; assuming letters were received at earliest, the next day, less than 1 day was provided for strikers to report for work next morning as *directed*, and less than 3 working days to report for work by specified deadline)

3333-8067 Circumstances of offer

3333-8067-1200 Must be in good faith

Sneva's Rent-A-Car JD-(SF)-283-82
(letters offering reinstatement in context of unretracted warning that reinstated Ee would be denied opportunity to earn income on nondistriminatory basis found neither unconditional nor in good faith and thus not valid)

3333-8067-4400 What constitutes unconditional offer

Pace Motor Lines, Inc. 260 NLRB No. 199
(merely asking ULP striker if he was working and then stating that E had some work available or sending another striker telegram stating there was *a possibility* that there may be a job did not constitute valid offers of reinstatement which would toll backpay where these communications were not sufficiently specific, unequivocal, and unconditional)

Consolidated Freightways 253 NLRB No. 137
(placement of warning letter in Ee's personnel file as prerequisite to his reinstatement renders reinstatement offer conditional and, thus, inadequate)

Sneva's Rent-A-Car JD-(SF)-283-82
(letters offering reinstatement in context of unretracted warning that reinstated Ee would be denied opportunity to earn income on nondistriminatory basis found neither unconditional nor in good faith and thus not valid)

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-621-81
(E's letter to discharged Ees following issuance of complaint but prior to hearing held not unconditional offer of reinstatement where letter could be construed as proposing that if Ees refuse to accept E's limited backpay offer, offer of reinstatement will be withdrawn; since offer must be wholly unconditional in order to be valid and letter is ambiguous as to whether it includes such unconditional offer, any ambiguity must be construed in favor of Ees and against E)

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-621-81
(in finding E's letter to discharged Ees to be invalid offer of reinstatement because offer was not wholly unconditional, ALJ found further support for such conclusion in circumstances surrounding preparation of letter which showed that E intended to offer a *package deal*, consisting of offer of reinstatement that would toll backpay along with a limited offer as to amount of backpay, with the understanding that backpay offer was contingent on offer of reinstatement being declined by Ees)

3333-8067-5000 Must not be conditioned on

Cooperative De Credito Y Ahorro Vegabajena 261 NLRB No. 161
(back pay not tolled where tentative settlement agreement conditioned strikers' reinstatement on their accepting *other* terms of settlement agreement; thus, it was conditional, rather than unconditional, offer of reinstatement)

3333-8067-5060 Admission of wrongdoing

L. A. Water Treatment, Division of Chromalloy American Corporation 263 NLRB No. 022
(no valid offer of reinstatement in view of absence of testimony concerning specific terms of offers made and ALJ's finding that offer caused uncertainty

3333-8067-5060—Cont.

and that Ee believed that acceptance would have been tantamount to admission of wrongdoing on his part)

3333-8067-5067 Application as a new employee

Stouts and Stouts, Inc. **254 NLRB No. 105**

(reinstatement of discriminatees as *probationary Ees* does not satisfy remedial requirements of Act; such reinstatement was *conditional)*

Circle T. Corporation; Meat Men, Inc., d/b/a Royal
T Meat **JD-(SF)-201-81**

(offers of reinstatement not valid since they required Ees to reapply for jobs with E, thereby rendering offers conditional)

3333-8067-8700 Need not include offer of backpay

Consolidated Freightways **253 NLRB No. 137**

(while valid offer of reinstatement must be specific, unequivocal, and unconditional, refusal to include accrued backpay in otherwise valid offer of reinstatement does not render offer inadequate; imposition of such requirement would nullify right to litigate lawfulness of discharge)

3341 APPLICATION FOR REINSTATEMENT

3341-0100 Generally

Matlock Truck Body & Trailer Corp., and Its Agent
Roy L. Matlock **248 NLRB No. 075**

(no abandonment of job as bar to reinstatement where discriminatee did not respond to letter from E to U giving ULP strikers deadline to return to work absent evidence discriminatee was aware of letter and since discriminatee had previously made application to return to work, burden was on E to reinstate)

Matlock Truck Body & Trailer Corp., and Its Agent
Roy L. Matlock **248 NLRB No. 075**

(once offer made to return to work by strikers, burden shifts to E to reinstate them)

3341-2500 Requirement that application be made

Convair Corporation **261 NLRB No. 178**

(unlawfully discharged ULP strikers are not required to request reinstatement in order to activate E's backpay obligation; backpay obligation arose when through its words and/or action E caused its *Ees reasonably to believe that they had been discharged or that their continued employment status was questionable because of their participation in strike)*

Brookline Corporation d/b/a Hi Fi Buys **257 NLRB No. 166**

(Ees under no obligation to seek reinstatement where ambiguity and confusion caused Ees to believe that they had been discharged)

Inta-Roto, Inc. **252 NLRB No. 111**

(ULP strikers who were unlawfully notified that they had been permently replaced found not violatively discharged because despite this notification, no evidence to show that request for reinstatement would be *utterly futile* and Ee required to request to be reinstated)

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**

(backpay begins from date of discharge of economic strikers rather than from date of written notification of discharge or from strikers' offer to return to work since presumption offer to return to work at time of discharge would have been futile)

Matlock Truck Body & Trailer Corp., and Its Agent
Roy L. Matlock **248 NLRB No. 075**

(offer by U on behalf of all ULP strikers sufficient)

Andersen Sand & Gravel Company **JD-655-80**

(backpay runs from date of ULP strikers' discharges rather than from their unconditional offer to return to work, since Bd no longer requires such offer to start running of backpay period)

Garrett Railroad Car & Equipment, Inc. v.
N.L.R.B. **683 F.2d 731 (C.A. 3, June 1982)**

(where E unlawfully discharged striker and did not show that Ee was unwilling to return to work or that he would have refused offer of reinstatement as required by *Abilities and Goodwill* 241 NLRB 27 which shifted burden of proof to wrongdoer, backpay was awarded to date of ULP discharge rather than end of strike)

Brown & Root, Inc. v. N.L.R.B. **634 F.2d 816 (C.A. 5, 1980)**

(Bd did not exceed its remedial powers when it ordered Ees who were discharged for participation in protected work stoppage reinstated and backpay, notwithstanding Ees never requested reinstatement, since in view of unlawful discharges application for reinstatement would have been ritualistic)

N.L.R.B. v. Tamaro Foods, Inc. **692 F.2d 1171 (C.A. 8, Nov. 1982)**

(reinstatement and backpay justified although strikers did not request reinstatement or offer to return to work)

3341-5000 Adequacy

Barry S. Solof, M.D., A Professional Corporation,
d/b/a The Victoria Medical Group and The
West Jefferson Medical Group **264 NLRB No. 019**

(adequacy of E's offers of reinstatement to some of discharged Ees should be disposed of in compliance stage of instant proceedings)

Flatiron Paving Company d/b/a Flatiron Materials
Company **250 NLRB No. 080**

(Bd does not require *artistic request for reinstatement* but rather, in each case, determines whether facts warrant conclusion that individual desired reinstatement)

3341-7500 What constitutes unconditional application

Pease Company **251 NLRB No. 080**

(U's letter to E held continuing, effective, and unconditional application for reinstatement of all strikers, where letter clearly advised E that application was on behalf of its Ees, and E had no reasonable basis upon which to conclude that application was on behalf of less than all of the strikers, or that it was on behalf of anyone other than the strikers; fact that many strikers submitted individual requests did not vitiate validity of U's application)

3350 Affirmative Defenses

Matlock Truck Body & Trailer Corp., and Its Agent
Roy L. Matlock **248 NLRB No. 075**

3350-0400 Failure to apply for reinstatement

Bodolay Packaging Machinery, Inc. **263 NLRB No. 038**

(E's obligation to reinstate discriminatee not extinguished by Ee's failure to respond to registered letter mailed to him offering reinstatement where evidence showed Ee never received letter)

Browning-Ferris Industries, Chemical Services, Inc. **259 NLRB No. 009**

(Ees unlawfully discharged for refusing to cross picket line not required to unconditionally request reinstatement as E contended)

Scioto Coca-Cola Bottling Company **251 NLRB No. 105**

(backpay begins from date of discharge of economic strikers rather than from date of written notification of discharge or from strikers' offer to return to work since presumption offer to return to work at time of discharge would have been futile)

Garrett Railroad Car & Equipment, Inc. v.
N.L.R.B. **683 F.2d 731 (C.A. 3, June 1982)**

(where E unlawfully discharged striker and did not show that Ee was unwilling to return to work or that he would have refused offer of reinstatement as required by *Abilities and Goodwill* 241 NLRB 27 which shifted burden of proof to wrongdoer, backpay was awarded to date of ULP discharge rather than end of strike)

Brown & Root, Inc. v. N.L.R.B. **634 F.2d 816 (C.A. 5, 1980)**

(Bd did not exceed its remedial powers when it ordered Ees who were discharged for participation in protected work stoppage reinstated and backpay, notwithstanding Ees never requested reinstatement, since in view of unlawful discharges application for reinstatement would have been ritualistic)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**

(ct held proper Bd order of reinstatement and back pay from date of unlawful discharge for Ee until offered reinstatement by E as consistent with remedial policies of Act)

3350-0700 Refusal of reinstatement offer

Dennis G. Maietta and Frank M. Maietta t/a
Maietta Contracting **265 NLRB No. 161**

(E was not required to offer reinstatement second time to discriminatee where valid offer had been made, and Ee failed to respond to such offer)

Seyforth Roofing Company of Alabama, Inc. **263 NLRB No. 048**

(striking Ees, having been unlawfully discharged, and having subsequently declined E's offer of reinstatement, retained their status as economic strikers, with rights attendant to that status)

Don Pizzolato, Inc. **249 NLRB No. 136**

(where Ee did not return application form to former E, this was not considered rejection of valid offer of reinstatement as application clearly indicated interview was needed and was conditional offer)

Matlock Truck Body & Trailer Corp., and Its Agent
Roy L. Matlock **248 NLRB No. 075**

(no abandonment of job as bar to reinstatement where discriminatee did not respond to letter from E to U giving ULP strikers deadline to return to work absent evidence discriminatee was aware of letter and since discriminatee had previously made application to return to work, burden was on E to reinstate)

3350-0700—Cont.

Custom Wood Interiors, Inc. **248 NLRB No. 023**

N.L.R.B. v. Trident Seafoods Corp. **642 F.2d 1148 (C.A. 9, Mar 23, 1981)**

(where wrongly discharged Ees seek back pay from E, Bd policy places burden upon E of proving that Ees would not have accepted timely offer of reinstatement, had one been made)

3350-1100 Misconduct during strike

3350-1133 Reinstatement not barred

3350-1133-1500 Where non-strikers are aggressors

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(involvement in exchange of words and threats with nonstriker not bar to reinstatement and backpay where nonstrikers were agressors and strikers act was in self defense, further, incident too minor to bar reinstatement on backpay where no blows struck, and no damage to property or person)

3350-1133-2500 Misconduct must be such as to render employee unsuitable for further employment

Enterprise Products Company **265 NLRB No. 083**

(E's contention that reinstatement should be denied Ees inasmuch as they were suspected of theft of E's business property because of business information they were accused of conveying through U to Bd in course of instant proceeding, rejected; E's labeling of Ees' action as theft did not bring it w/i conduct considered by Bd as causing them to become unemployable)

The Martin-Brower Company **263 NLRB No. 025**

(post discharge behavior of discriminatee did not disqualify him from backpay and reinstatement where Ee, after being notified of his discharge, overtly demonstrated his anger because he believed discharge was unfair and complications in his wife's pregnancy added to his emotional state)

San Diego County Association For The Retarded **259 NLRB No. 136**

(E's contention that strikers are barred from reinstatement because of their written appeal to parents of retarded students and public, for support concerning their efforts to resolve their grievances, rejected, since appeals by strikers to third parties for support concerning labor dispute issues with E do not deprive strikers of reinstatement rights)

J. W. Microelectronics Corporation **259 NLRB No. 050**

(black Ee's remarks about caucasians being animals in context of E's statement that he had no solution for white community's verbal and physical harassment of black Ees held not so egregious as to render black Ee unfit for further service with E)

Fort Vancouver Plywood Company **252 NLRB No. 142**

(on remand, original order, reinstating nonshareholder discriminatees affirmed where Respondent had not met its burden of proving that, to the time of present hearing, it would have eliminated jobs of any of discriminatees for other than unlawful reasons)

Golden Day Schools, Inc. v. N.L.R.B. **644 F.2d 834 (C.A. 9, May 8, 1981)**

(discriminatees' asserted misconduct did not bar their reinstatement with backpay where E's violations were egregious; and Ees' conduct was not of quality or extent that might reasonably be thought to threaten future amicable relations between E and Ees; E *acted with flagrant disregard for its Ees' rights under Act* refusal (by Bd) to reinstate discriminatee would put premium on E's misconduct)

3350-1133-2550 Balancing of misconduct in light of ULP

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(ULP striker spitting at foreman and using profane language towards superintendent not sufficient misconduct to bar reinstatement, particulary since ULP striker)

3350-1133-6200 Minor misconduct

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(involvement in exchange of words and threats with nonstriker not bar to reinstatement and backpay where nonstrikers were agressors and strikers act was in self defense, further, incident too minor to bar reinstatement on backpay where no blows struck, and no damage to property or person)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(striker following car of non-striker insufficient to bar reinstatement and backpay where no threats made nor was there any attempt to run striker off road and non-striker not followed home)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(striking auto of non-striking Ee with picket sign impulsive trivial incident which did not bar reinstatement)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(striker holding gun not sufficient misconduct to deny reinstatement since non-striker not threatened by gun where he did not report incident to police or attempt to have striker arrested)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(ULP striker spitting at foreman and using profane language towards superintendent not sufficient misconduct to bar reinstatement, particulary since ULP striker)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(ULP striker striking side of non-striking Ee's car as non-striking Ee passing through gate of E's plant)

3350-1133-6700 Insulting or profane language

Model A and Model T Motor Car Reproduction Corporation **259 NLRB No. 077**

(Bd ordered reinstatement of Ee discriminatorily discharged for wearing U button where Bd, while not condoning Ee's conduct of returning to E's premises after being discharged and directing obscene language and threats of physical harm to managers, found that such abusive behavior was provoked by discriminatory discharge and did not warrant forfeiture of opportunity for reinstatement)

3350-1133-8700 Threats

A. Duie Pyle, Inc. **263 NLRB No. 092**

(Bd distinguished case herein in which it found that E unlawfully discharged striker, assertedly for picket line misconduct involving threatening statements to nonstrikeing Ee, and in which Bd required reinstatement, from case in which ct denied reinstatement to strikers because statements were made in context of strike marked by vandalism and harassment and were more than spontaneous picket line activity; here, threats were picket line rhetoric made where there was no reason to believe that they would be carried out, and such threats are not so egregious as to warrant denial of reinstatement)

Penn Color, Inc. **261 NLRB No. 098**

(Ee's remark to supervisor *Dead men tell no tales* held insufficient basis for denying Ee reinstatement with backpay, where statement was made in heat of Ee's discharge and was unaccompanied by threatening gestures, and it was ambiguous and at worst nothing more than a rough remark by Ee under stress of an unlawful discharge)

3350-1167 Reinstatement barred

3350-1167-0400 Balancing of misconduct in light of ULPs

Hillside Avenue Pharmacy, Inc. **265 NLRB No. 205**

(denial of reinstatement to Ee, while requiring E to provide Ee with backpay until he has obtained substantially equivalent employment elsewhere, appropriate, where E's denial of Ee's unemployment claim for no apparent reason, rather than actual discharge, provoked Ee's behavior in endangering E by proceeding with his car after E had intentionally placed himself in physical danger by bodily blocking Ee's car; remedy herein takes into account childish and unacceptable behavior of both parties, with particular consideration given to nature of provocation and reaction thereto; and neither party will shoulder entire blame for individual misconduct)

Hillside Avenue Pharmacy, Inc. **265 NLRB No. 205**

(in denying reinstatement to discriminatorily discharged Ee, while requiring E to provide Ee with backpay until he has obtained substantially equivalent employment elsewhere, Bd noted that in cases such as this involving misconduct engaged in by both parties, it has held that E ought not to be allowed, as a matter of course, to profit from his own warongful misconduct and be wholly exonerated from Act's sanctions because Ee likewise was at fault)

N.L.R.B. v. Kahn's and Company, Division of Consolidated Food Company **694 F.2d 1070 (C.A. 6, Dec. 1982)**

(enforcement of backpay and reinstatement award to dischargee denied, notwithstanding E violated 8(a)(1) by unlawfully refusing dischargee's request to have U steward present when he was interviewed concerning his overstaying his allotted time in restroom, where he was discharged for cause, and his discharge was not affected in any way by the 8(a)(1) violation)

General Motors Corporation v. N.L.R.B. **674 F.2d 576 (C.A. 6, Apr. 1982)**

(enforcement of Bd's back pay and reinstatement order denied notwithstanding E unlawfully ignored Ee's request for U representation and obtained admission from Ee that he was at bowling alley, where report, of E's security officer concerning Ee's presence at nearby bowling alley during working hours, was independent evidence of *good cause* for discharge; E could have discharged Ee on basis of security officer's report alone; discharge for *good cause* precludes order of back pay and reinstatement; ct in instant case followed decisions of *Eighth Circuit*)

3350-1167-0400—Cont.

N.L.R.B. v. Illinois Bell Telephone Company 674 F.2d 618 (C.A. 7, Mar. 1982)
(remanded for further proceedings to determine if E should reinstate Ee whose *Weingarten* rights were violated for if E can show that Ee's discharge was not solely dependent upon evidence obtained from her during unlawful interview, but that discharge was supported by other independent evidence available to it at time of discharge if need not reinstate Ee)

3350-1167-0900 Commission of crime

Indian Head Lubricants, Inc. 261 NLRB No. 003
(reinstatement not required for Ee who accepted bribe from E to vote against U; also, backpay award is inappropriate as Ee's *flagrant and malicious subversions of Act's purposes bars him from participating in these processes*)

N.L.R.B. v. Jacob E. Decker & Sons 636 F.2d 129 (C.A. 5, 1981)
(reinstatement ordered for discriminatee who was conficted of felony for possession of marijuana after unlawful discharge as company permitted another Ee to work after felony conviction and during past 8 years only 1 or 2 Ees were discharged pursuant to alleged corporate policy and reinstatement would not create unacceptable employment relationship)

N.L.R.B. v. Jacob E. Decker & Sons 636 F.2d 129 (C.A. 5, 1981)
(backpay but not reinstatement ordered for discriminatorily discharged Ee as he was probationary Ee at time of discharge and would have been employed only until his conviction of felony because of his work history; backpay awarded until date of felony conviction)

Montgomery Ward & Co., Inc. v. N.L.R.B. 664 F.2d 1095 (C.A. 8, Nov. 1981)
(*make whole* relief, including back pay and reinstatement, *improper* where Ees were discharged for admittedly stealing goods from E and not for requesting U assistance at investigatory interview; Section 10(c) of Act, precludes back pay order and reinstatement under such circumstances)

3350-1167-2700 Abuse of Act's provisions

Indian Head Lubricants, Inc. 261 NLRB No. 003
(reinstatement not required for Ee who accepted bribe from E to vote against U; also, backpay award is inappropriate as Ee's *flagrant and malicious subversions of Act's purposes bars him from participating in these processes*)

3350-1167-6300 Picket line violence

Glydon's, Inc. JD-(SF)-142-81
(failure to reinstate wrongfully discharged Ee who captained strike during which rocks and bottles were hurled into E's parking lot, E's operations manager was spat upon and obscenities yelled at him, and strike captain was arrested and booked by police, not violative since Ee was involved in sufficiently serious misconduct warranting denial of his reinstatement)

3350-1167-7200 Other violence

Hillside Avenue Pharmacy, Inc. 265 NLRB No. 205
(denial of reinstatement to Ee, while requiring E to provide Ee with backpay until he has obtained substantially equivalent employment elsewhere, appropriate, where E's denial of Ee's unemployment claim for no apparent reason, rather than actual discharge, provoked Ee's behavior in endangering E by proceeding with his car after E had intentionally placed himself in physical danger by bodily blocking Ee's car; remedy herein takes into account childish and unacceptable behavior of both parties, with particular consideration given to nature of provocation and reaction thereto; and neither party will shoulder entire blame for individual misconduct)

3350-1500 Violations of other laws

N.L.R.B. v. Mutual Maintenance Service Co., Inc. 632 F.2d 33 (C.A. 7, 1980)
(although ct affirmed Bd's finding that U adherent was discharged because of his U activities, ct denied portion of Bd order concerning reinstatement of Ee where Ee defrauded federal government and former E of unemployment compensation benefits, notwithstanding that current E was aware and even encouraged this Ee to work for E under alias while collecting unemployment compensation)

3350-1800 Commission of crime

United States Postal Service 254 NLRB No. 030
(since decision to discharge was not based on confession of theft during unlawful *Weingarten* interview but on investigation which followed eye witness accounts of theft, reinstatement and back were not warranted)

N.L.R.B. v. Chem Fab Corporation 691 F.2d 1252 (C.A. 8, Nov. 1982)
(ct held that Bd did not abuse its discretion when it concluded that record proof of discharged Ee being arrested for dealing drugs and allegedly admitting sale of marijuana at E's plant, did not warrant denying discriminatee's reinstatement, especially in light of fact that E took no disciplinary action based on these allegations despite company rule making involvement with drugs cause for discharge and fact that E failed to contend that drug charges contributed to its decision to discharge)

3350-2100 Falsification of employment application

Garden State Motors Co. JD-100-80
(reinstatement and backpay ordered notwithstanding Ee's concealment of larceny conviction where conviction record was 20 years old and followed by relatively unblemished record; order contained proviso that order would not require reinstatement or backpay if it appeared in compliance stage that Ee was not entitled thereto under Bd precedent)

3350-2500 Solicitation of employer's customers

Vulcan Fuel Corporation JD-842-79
(laid off Ee not rendered unfit for reinstatement because Ee won bid for work previously performed by E since Ee was former entrepreneur who correctly believed he was wrongfully laid off and there is no reason to presume Ee took advantage of any confidential information in formulating bid)

3350-2800 Criticism of employer

San Diego County Association For The Retarded 259 NLRB No. 136
(E's contention that strikers are barred from reinstatement because of their written appeal to parents of retarded students and public, for support concerning their efforts to resolve their grievances, rejected, since appeals by strikers to third parties for support concerning labor dispute issues with E do not deprive strikers of reinstatement rights)

3350-3400 Participation in illegal strike

Newport News Shipbuilding and Dry Dock Company v. N.L.R.B. 631 F.2d 263 (C.A. 4, June 1980)
(where Ee was lawfully discharged because of his ringleader-role in unauthorized work stoppage, E not required to reinstate him even though he might not have lost his job had U represented him in more competent fashion)

3350-4000 Lack or loss of skill for original job or different job

The Ballet Foundation of Milwaukee, Inc. JD-219-82
(reinstatement of principal dancer at *an appropriate interval* after Bd Order so as to allow discriminatee to condition himself for job is matter to be handled in compliance procedures)

3350-5600 Abolition of job

The Shaw College at Detroit, Inc. v. N.L.R.B. 623 F.2d 408 (C.A. 6, 1980)
(reinstatement of 10 college instructors inappropriate where no anti-U motivation in layoff, college had legitimate financial reason for not renewing contracts, and college had no duty to continue to employ during negotiations)

N.L.R.B. v. R & H Masonry Supply, Inc. 627 F.2d 1013 (C.A. 9, Sept. 1980)
(Bd's order to reinstate drivers whom E unlawfully discharged at time it sold its trucks and contracted out hauling not enforced since ct refused to enforce order requiring reestablishment of trucking operations; Bd may find some other remedy more appropriate; for example, compensating drivers until they find substantially equivalent employment)

3350-5900 Employee would have been discharged or laid off for nondiscriminatory reasons

Kenshin Charter Service, Inc. 250 NLRB No. 117
(discriminatee who was driver not reinstated since E's insurance carrier subsequent to discharge excluded from liability coverage any vehicle driven by discriminatee)

Digital Paging Systems of Toledo, Inc. 248 NLRB No. 015
(dischargee entitled to reinstatement and backpay since discharge motivated by U activity notwithstanding E seriously contemplated discharging Ee for poor sales prior to discovery of U activity or might have later discharged her for low sales)

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand 247 NLRB No. 167
(reinstatement of discriminatority discharged Ee ordered notwithstanding Ee guilty of falsifying time card as E had no knowledge of Ee's action until after discharge and no evidence presented to prove that Ee would have been discharged for this action)

A.S.U., a subsidiary of Intermedco JD-(SF)-161-80
(where discriminatee would have been discharged at later time for lawful reasons, backpay tolled as of that time and reinstatement not ordered)

Montgomery Ward & Co., Inc. v. N.L.R.B. 664 F.2d 1095 (C.A. 8, Nov. 1981)
(*make whole* relief, including back pay and reinstatement, *improper* where Ees were discharged for admittedly stealing goods from E and not for requesting U assistance at investigatory interview; Section 10(c) of Act, precludes back pay order and reinstatement under such circumstances)

3350-6100 Misconduct constituting cause for discharge

3350-6100—Cont.

Salt River Valley Water Users' Association **262 NLRB No. 129**
(reinstatement and make-whole remedy appropriate notwithstanding Ee discharged for refusing to answer questions at investigatory interview (no interview held to have occurred) at which he was denied presence of U representative as he was disciplined for engaging in protected concerted activity and not for any underlying misconduct)

Dansville Hotel **259 NLRB No. 117**
(Ee who had been unlawfully discharged from his position as head houseman and reinstated to a lesser position was found not to have forfeited his right to reinstatement to the position as head houseman and backpay therefor when he was discharged a second time allegedly for making threats on his supervisor's life and failing to respond to an instruction, where it was found that he did not make the threats as alleged and that his failure to respond immediately to an instruction did not appear serious enough to warrant loss of his right to reinstatement)

Taracorp Industries, A Division of Taracorp, Inc. **257 NLRB No. 049**
(reinstatement with backpay held appropriate, notwithstanding Ee was lawfully terminated for misbehavior, where E denied Ee's request for representation at investigatory interview)

Fort Vancouver Plywood Company **252 NLRB No. 142**
(on remand, original order, reinstating nonshareholder discriminatees affirmed where Respondent had not met its burden of proving that, to the time of present hearing, it would have eliminated jobs of any of discriminatees for other than unlawful reasons)

N.L.R.B. v. Steinerfilm, Inc. **669 F.2d 845 (C.A. 1, Feb. 1982)**
(Bd may order reinstatement of Ee whose rudeness and abusive language were result of unjustified treatment by E and does not exceed permissible limits)

N.L.R.B. v. Kahn's and Company, Division of Consolidated Food Company **694 F.2d 1070 (C.A. 6, Dec. 1982)**
(enforcement of backpay and reinstatement award to dischargee denied, notwithstanding E violated 8(a)(1) by unlawfully refusing dischargee's request to have U steward present when he was interviewed concerning his overstaying his allotted time in restroom, where he was discharged for cause, and his discharge was not affected in any way by the 8(a)(1) violation)

General Motors Corporation v. N.L.R.B. **674 F.2d 576 (C.A. 6, Apr. 1982)**
(enforcement of Bd's back pay and reinstatement order denied notwithstanding E unlawfully ignored Ee's request for U representation and obtained admission from Ee that he was at bowling alley, where report, of E's security officer concerning Ee's presence at nearby bowling alley during working hours, was independent evidence of *good cause* for discharge; E could have discharged Ee on basis of security officer's report alone; discharge for *good cause* precludes order of back pay and reinstatement; ct in instant case followed decisions of *Eighth Circuit*)

N.L.R.B. v. Chem Fab Corporation **691 F.2d 1252 (C.A. 8, Nov. 1982)**
(ct held that Bd did not abuse its discretion when it concluded that record proof of discharged Ee being arrested for dealing drugs and allegedly admitting sale of marijuana at E's plant, did not warrant denying discriminatee's reinstatement, especially in light of fact that E took no disciplinary action based on these allegations despite company rule making involvement with drugs cause for discharge and fact that E failed to contend that drug charges contributed to its decision to discharge)

3350-7000 Unavailability of employee for work

Nebraska Bulk Transport, Inc. v. N.L.R.B. **608 F.2d 311 (C.A. 8, 1979)**
(notwithstanding Bd's finding that truckdriver was discharged because of U activities, ct held that remedy of reinstatement of unlawfully discharged Ee was inappropriate where truckdriver possessed bad driving record that would disqualify him from driving because he would not be covered under E's liability insurance policy)

3350-7300 Employee voluntarily quit

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(backpay and reinstatement awarded to discriminatee who had announced prior to her unlawful discharge her intention to leave in order to seek more renumerative employment, since such motivation presupposes obtaining other employment before leaving E)

N.L.R.B. v. Downslope Industries, Inc., and Greenbrier Industries, Inc. **676 F.2d 1114 (C.A. 6, Apr. 1982)**
(no reinstatement of Ee who returned to work for E after her unlawful discharge by E and then voluntarily quit)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ct cutoff backpay liability of E to economic striker who was unlawfully discharged from time Ee resigned but allowed backpay from time of discharge until date of resignation as Bd exceeded its authority to remedy violations)

3350-7400 Employee does not wish to return to work for employer

Don Pizzolato, Inc. **249 NLRB No. 136**
(fact that Ee did not wish to return to job does not relieve E of obligation to make valid offer of reinstatement)

Hotel Employees Union Local 471 (Arasery, Inc.) **JD-361-82**
(reinstatement not ordered since discriminatees were college students who were only interested in seasonal employment at time of ULP but have since graduated)

3350-7600 Employee was searching for other employment prior to discharge

A.S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(backpay and reinstatement awarded to discriminatee who had announced prior to her unlawful discharge her intention to leave in order to seek more renumerative employment, since such motivation presupposes obtaining other employment before leaving E)

3350-8100 Employee has regular and substantialy equivalent employment elsewhere

Shaw Industries, Inc., a Division of Crystal Springs Shirt Corp.; et al. **255 NLRB No. 117**
(Ee who obtained interim employment did not abandon her employment with E where she always intended to return to work at E and made attempts to return even before strike ended)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(fact discriminatee who was ULP striker was fully employed during strike does not bar backpay where his earnings were substantially lower than he was making at E and he was not obligated to search for better employment nor does fact accepted interim employment indicate he was no longer interested in employment with E)

3350-9100 Mitigating circumstances

Colgate-Palmolive Company **257 NLRB No. 028**
(reinstatement of Ee unlawfully denied his right to preinterview consultation with U steward, not appropriate since steward did participate in all stages of disciplinary interview as well as in postinterview investigation leading to E's decision to discharge Ee, and E even provided time during interview for the requested private consultation)

3350-9800 Employee's prior misconduct on job

Continental Distributing Co., Inc. **256 NLRB No. 091**
(reinstatement of discriminatee to more onerous job and prohibiting him from speaking to other Ees violative where reinstatement occurred after Ee filed charges with Bd to protest his unlawful discharge and allegations of stealing and drinking on job not supported by record)

Albuquerque's Best Tires, d/b/a A. B. Tires **JD-(SF)-283-81**
(supervisor's unauthorized entry into E's safe, thus giving others access to personnel records and other contents is sufficient to preclude reinstatement)

J. P. Stevens & Co., Inc. v. N.L.R.B. **638 F.2d 676 (C.A. 4, 1980)**
(reinstatement and backpay remedy held appropriate where ct rejected E's contention that discriminatee forfeited right to such remedy because of his previous conduct in pressuring other Ees into signing U cards and because he allegedly lied before ALJ; ct held that conduct of pressuring Ees was not of such degree that would deny Ee appropriate remedy and ct would not disturb ALJ's assessment of overall credibility of Ee in that Ee's dissembling was not sufficiently egregious to deny him proper remedy)

3367 ULPS INVOLVED

Timberland Packing Corporation **261 NLRB No. 027**
(backpay specification held to cover non-members as well as members of U where contract referred to *all employees*, E's actions indicated belief that contract covered all Ees, U believed it covered all Ees, and ct allowed E to purge itself by bargaining with U as representative of unit Ees, which had been defined by Bd and ct as all Ees)

3367-7000 Section 8(a)(5) violations

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising **257 NLRB No. 022**
(E ordered to supply U with requested wage and benefit information of Ees outside bargaining unit notwithstanding parties have already negotiated collective bargaining agreement as this information is pertinent to future contract negotiations)

3383 SPECIAL TYPES OF REINSATEMENT ORDERS

3383-0900 Conditional orders

3383-0900—Cont.

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(E's request that language in ALJ's recommended order be modified by conditioning the order of reinstatement with phrase *to the extent it has not done so*, denied, since issue of whether E in fact made unconditional offer of reinstatement had not yet been resolved)

3383-0936 Conditioned on resumption of operations

Beech Branch Coal Company **260 NLRB No. 122**
(although E presently not engaged in business involved herein, Bd ordered conditional reinstatement of discriminatees premised E's on resumption of same or substantially similar business)

Ahrens Aircraft, Inc. **259 NLRB No. 112**
(reinstatement not conditioned on E's resumption of operations, notwithstanding Ee complement had fallen from 118 Ees to 35 Ees *skeleton crew* where no proof that discriminatees would not have been among Ees retained as part of *skeleton crew*)

Limestone Apparel Corp. **255 NLRB No. 101**
(offer of reinstatement shall be made consistent with extent of (E's) future operations)

R & H Masonry Supply, Inc. **254 NLRB No. 139**
(E who violated Act by contracting out bargaining unit work ordered to reinstate discriminatorily terminated Ees in event that it reestablishes its trucking operation)

Routh Packing Company, Inc. **247 NLRB No. 053**
(E to hire economic strikers on preferential basis if E or successor resumes operations)

ABC Trans-National Transport, Inc. **247 NLRB No. 025**

3383-0958 Conditioned on restitution of payments for early retirement

The A.S. Abell Company **JD-221-81**
(where E made *buy-out* payments to Ees either in lump sum or installments for taking early retirement, and Ees who recieved lump sums were unable to make lump sum restitution of such payments before reinstatement as required by E, it is reasonable to require full reimbursement in advance of reinstatement by Ees who received lump sum payments and to require periodic payments by Ees who received installment payments in same ratio as E made periodic buy-out payments to them in the first instance)

The A.S. Abell Company **JD-221-81**
(Ees who received *buy-out* payments from E for taking early retirement but were unable to make lump sum restitution of such payments to E before being reinstated, as required by E, such Ees who demonstrated *desire* to return to work held entitled to credit for backpay and fringe benefits on same basis as other Ees who accepted E's offer of reinstatement)

3383-0981 Reinstate ULP strikers upon application

Marlene Industries Corporation; et al. **258 NLRB No. 192**
(copy of notice to accompany reinstatement offer and reasonable period not to exceed 2 weeks to be provided after prompt request of discriminatee in order that he or she can give fair departure notice to interim E, and make necessary arrangements to return to work at his or her former plant)

3383-0990 Reinstate economic strikers upon application or as vacancies arise thereafter

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(E's failure to offer position to former economic striker, unlawful, where E filled position with nonstriker after unconditional offer to return to work made on behalf of strikers)

N.L.R.B. v. Marr Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ct held proper Bd order of reinstatement and back pay from date of unlawful discharge for Ee until offered reinstatement by E as consistent with remedial policies of Act)

3383-1800 Identity of persons and entitlement to reinstatement to be determined at compliance stage

Division of Plessey Materials Corporation, Plessey Micro Science, A Wholly Owned Subsidiary of Plessey Inc. **263 NLRB No. 182**
(seniority of discriminatees)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(Ees of *alter ego* of E)

3383-2700 To plant or job other than discriminatee's former plant or job

3383-2781 To position to which employee would have been promoted or assigned absent discrimination

N.L.R.B. v. Ford Motor Company **683 F.2d 156 (C.A. 6, July 1982)**
(order that E offer supervisory promotions to Ees who were unlawfully denied promotions and make Ees whole for loss of earnings sustained by reason of unlawful denial, vacated; promotion to supervisory position is management responsibility and to be distinguished from Bd's power to order reinstatement to formerly held supervisory position or where position had been restructured into supervisory position by management)

3383-3600 Reinstatement on basis of seniority

Division of Plessey Materials Corporation, Plessey Micro Science, A Wholly Owned Subsidiary of Plessey Inc. **263 NLRB No. 182**
(E may not lawfully retain any Ee junior in seniority to another Ee, qualified to perform same job, who remains on layoff in view of E's stated formula for layoffs and number of jobs available to discriminatees)

Giddings & Lewis, Inc. **258 NLRB No. 093**
(recall strikers in a nondiscriminatory manner)

Motor Freight Express, Inc. **JD-531-80**
(remove discriminatee's name from *Do-not-use* list and reinstate him to hiring pool of casual dock workers; employment as full time Ee not proper where speculation involved as to whether he would have been hired as full-time Ee)

3383-6300 Preferential hiring

Central Transport, Inc. **247 NLRB No. 198**
(remedy modified to include E establishing preferential hiring list and placing discriminatee's name at top of list)

Routh Packing Company, Inc. **247 NLRB No. 053**
(E to hire economic strikers on preferential basis if E or successor resumes operations)

3383-8500 Make employees whole for loss suffered due to delay in reinstatement

Cable Vision, Inc. **249 NLRB No. 062**
(ULP strikers were not reinstated w/i 5 days from date of unconditional application for reinstatement)

3900 PERSONS ENTITLED TO BACKPAY

Sachs Electric Company **248 NLRB No. 092**
(determination of how many and which of a number of discriminatees were laid off by E or quit because of U's unlawful, request that they do so and suffered loss of earnings as result held appropriate matter for compliance stage of proceeding)

Alfred M. Lewis, Inc. **250 NLRB No. 183**
(Bd held that Ee's discharge was *solely* result of E's unlawful production quotas and disciplinary system and that dischargee was therefore entitled to reinstatement and backpay in accordance with court decision)

N.L.R.B. v. Potter Electric Signal Company **600 F.2d 120 (C.A. 8, 1980)**
(where Ees were discharged for fight that resulted in shutting down production line, inclusion of reinstatement and backpay in Bd's R/O, inappropriate notwithstanding that discharge was based on results of investigatory interviews conducted w/o presence of U in violation of 8(a)(1); Ees were discharged for cause and not for requesting U presence, and Bd does not have power to order reinstatement or back pay for Ees discharged for obvious personal misconduct, because to do so would violate section 10(c). See, *Fibreboard*, 379 US 203)

Alfred M. Lewis, Inc. v. N.L.R.B. **681 F.2d 1184 (C.A. 9, July 1982)**
(requiring reinstatement and backpay for Ees fired solely as result of unlawful production quota system necessarily includes relief for Ees who reacted negatively to the system and developed poor attitude as result)

3901 GENERALLY

Transportation Enterprises, Inc. v. N.L.R.B. **630 F.2d 421 (C.A. 5, 1980)**
(Bd and its regional offices may not render jurisdictional decisions, and then overrule them *retroactively* and thereby transform E's interim behavior, legal when pursued, into illegal ULPs; E's conduct after formal declaration by Bd that he is not covered by Act and before re-examination of that issue, cannot subsequently be branded ULP subjecting E to liability for back-pay)

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers **614 F.2d 134 (C.A. 7) (1980)**
(E may, w/o incurring back pay liability, refrain from reinstating discriminatorily discharged Ee during period when employment would not have been available for him even absent discrimination)

3905 EMPLOYEES UNLAWFULLY INDUCED TO RETIRE

The A.S. Abell Company **JD-221-81**
(Ee who was unlawfully induced to retire early from E's employment by receiving specified *buy-out* sum from E held not eligible to receive backpay or lost benefits where Ee refused Ees offer of reinstatement because she preferred other employment which she had secured)

3912 PROBATIONARY EMPLOYEE

3912—Cont.

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 084
(at time of strike)

3925 UNSPECIFIED BUT SIMILARLY SITUATED DISCRIMINATEES

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) 253 NLRB No. 008
(Inclusion in make-whole order of all nonmember applicants for job referral as well as individual charging parties, proper where amended charge and consolidated complaint alleged that Ees who were not members of U and applicants for employment who were not members suffered discrimination, so that U was put on notice as to who were alleged to be discriminatees; further, nature of evidence adduced at hearing put U on notice of allegation that its referral system inherently favored members over nonmembers)

Ironworkers, Local 483 (Building Contractors Association of New Jersey) 248 NLRB No. 006
(non-member discriminatee of local's unlawful hiring hall preferential policy limited to backpay period to when he filed his separate charge because GC expressly limited relief requested for him and it would be inequitable to place discriminatee in class of unnamed beneficiaries of ULP order whose cut-off date for backpay would be six months before initial charges were filed)

3937 LIMITED TO EMPLOYEES WHOSE STATUS WAS LITIGATED AT HEARING

Frank Mascali Construction G.C.P. Co; Frank Mascali Construction Co., Inc. 251 NLRB No. 032
(backpay limited to Ees found discriminated against at hearing where no general pattern of discrimination by U in operation of referral system existed)

American Postal Workers Union, AFL-CIO, Memphis Local (U.S. Postal Service) 250 NLRB No. 105
(U to make whole all Ees as to whom there was evidence of loss of benefits due to U's unlawful policy, but not to include Ees who were not named in complaint and whose status was not litigated at hearing, since that would be contrary to Bd precedent and would enable GC to engage in unwarranted fishing expedition at compliance stage of proceeding)

Ironworkers, Local 483 (Building Contractors Association of New Jersey) 248 NLRB No. 006
(non-member discriminatee of local's unlawful hiring hall preferential policy limited to backpay period to when he filed his separate charge because GC expressly limited relief requested for him and it would be inequitable to place discriminatee in class of unnamed beneficiaries of ULP order whose cut-off date for backpay would be six months before initial charges were filed)

3947 EMPLOYEES WHO DECLINED TRANSFERS AFTER UNLAWFUL CLOSING

Universal Security Instruments, Inc. v. N.L.R.B. 649 F.2d 247 (C.A. 4, May 1981)
(enforcement denied of backpay order involving Ees who declined transfers after partial closing notwithstanding E's unlawful failure to bargain over effects of its closure decision and unlawful offer to transfer Ees unilaterally; placing these Ees on preferential hiring list was sufficient)

3950 PERSONS HIRED AFTER EFFECTIVE DATE OF NEW CONTRACT

Deluxe Poster Co., Inc., d/b/a Johnson Printers 257 NLRB No. 011
(Ee who did not start to work for E, until after pay period (during which cost-of-living increase became effective) started not eligible for that quarter's increase where contract provided that Ee must be employed before its effective date or on date becomes effective)

3967 UNIT EMPLOYEES

F & F Construction Co., Inc., and Roland L. Barker, d/b/a R. L. Barker Construction Company 262 NLRB No. 98
(foremen of laborer crews who worked along with laborers and had no supervisory attributes, eligible for backpay as laborers' unit members; and foremen who worked as laborer briefly during pertinent period before becoming supervisory foremen, eligible only for that period)

F & F Construction Co., Inc., and Roland L. Barker, d/b/a R. L. Barker Construction Company 262 NLRB No. 98
(Ees who worked at repair facility cleaning yard and digging trenches with jackhammer and Ee who dug ditches, shoveled concrete and used rake, eligible for backpay as laborers' unit members)

F & F Construction Co., Inc., and Roland L. Barker, d/b/a R. L. Barker Construction Company 262 NLRB No. 98
(mechanic and welder at repair facility who worked on field equipment eligible for backpay as operating engineers' unit members, but mechanics who worked on dump trucks, not eligible)

F & F Construction Co., Inc., and Roland L. Barker, d/b/a R. L. Barker Construction Company 262 NLRB No. 98
(policeman who, when off-duty, worked as laborer crew member and donned his uniform and directed E's traffic only as need arose, eligible for backpay as laborers' unit member)

F & F Construction Co., Inc., and Roland L. Barker, d/b/a R. L. Barker Construction Company 262 NLRB No. 98
(Ee who worked as operating engineer long after he ceased to be an owner, eligible for backpay as member of operating engineers' unit)

Deluxe Poster Co., Inc., d/b/a Johnson Printers 257 NLRB No. 011
(Ee who worked in areas separate from unit Ees not included in bargaining unit and ineligible for backpay where her contact with bargaining Ees is minimal and her interests are closely aligned with non-bargaining unit Ees, notwithstanding work she performed quite similar to bargaining unit, received same fringe benefits and is paid only slightly less)

Circle T. Corporation; Meat Max, Inc., d/b/a Royal T Meat JD-(SF)-201-81
(stockholder should be included in bargaining unit and was therefore properly included as backpay claimant in backpay specification where he had no effective voice in formulation and determination of corporate policy and he enjoyed no preferential treatment)

3982 LAID OFF EMPLOYEES

Schnadig Corporation 265 NLRB No. 020
(backpay awarded to those laid off Ees adversely affected by E's unilaterally adopted change in policy regarding seniority viz a viz layoff, notwithstanding E's financial position and that layoff decision was for economic reasons, since E's unlawful change resulted in different Ees being laid off and those victimized by change should be compensated; determination of specific reinstatements and backpay left to compliance stage)

3985 PERSONS DISCRIMINATORILY DENIED EMPLOYMENT

Dunmar Company d/b/a Madison South Convalescent Center 260 NLRB No. 106
(Bd left to compliance stage determination of job availability and possible backpay liability where E failed to establish that applicants were not qualified for employment had their applications been lawfully considered)

Pacific Erectors, Inc. 256 NLRB No. 066
(Ees who were members of U entitled to backpay for hours they would have worked if E had continued to apply provisions of hiring hall agreement with their U for duration of project herein and had not unlawfully recognized another U)

Kenneth and Mary M. McGlaughlin, Copartners, d/b/a Hudson-High Super Duper 247 NLRB No. 159
(discriminatee entitled to backpay from date he would have stated work at E had E not unlawfully withdrawn offer of position notwithstanding E may be overstaffed since at time of acceptance of job offer there was vacancy)

3989 STRIKERS

American Olean Tile company, Inc. 265 NLRB No. 296
(make whole remedy ordered where E transferred Ees who had abandoned strike or made direct appeal to E after strike ended and had been reinstated to positions not substantially equivalent to pre-strike positions, but when positions substantially equivalent became vacant they were given preference to these positions over more senior economic strikers on whose behalf U had made unconditional offer to return to work. Order to run from time less senior Ees transferred to substantially equivalent positions until senior Ees receive valid offer of reinstatement)

Convair Corporation 261 NLRB No. 178
(unlawfully discharged ULP strikers are not required to request reinstatement in order to activate E's backpay obligation; backpay obligation arises when through its words and/or action E caused its *Ees reasonably to believe that they had been discharged or that their continued employment status was questionable because of their participation in strike)*

Pacific Erectors, Inc. 256 NLRB No. 066
(Bd held Ees who were discharged after participation in economic strike in support of discharged Ees not entitled to backpay where they did not unconditionally request reinstatement and there was no allegation of ULP in regard to their termination)

3989—Cont.

Interstate Paper Supply Company, Inc. 251 NLRB NO. 189
(provisions for reinstatement and make whole relief for strikers appropriate where economic strike was converted into ULP strike)

B. N. Beard Company 248 NLRB No. 016
(ULP strikers unlawfully discharged as of time they went out on strike held entitled to backpay from date of discharge to date they are offered reinstatement, rather than from date they request reinstatement to date E offers them reinstatement)

Childers Manufacturing Company, Inc. JD-(SF)-11-82
(economic strikers unlawfully discharged because of their strike activity held entitled to offers of reinstatement and backpay from date of their unlawful discharge)

Childers Manufacturing Company, Inc. JD-(SF)-11-82
(best left for consideration in compliance proceedings are matters dealing with E's contention that backpay and reinstatement rights of unlawfully discharged economic strikers have been diminished by fact that some discharged EEs had been scheduled for layoff due to lack of work and that several Ees had been offered reemployment)

K-P Graphics, Inc. d/b/a Impression Northwest JD-(SF)-187-80
(unlawfully discharged strikers should receive back pay from dates their discharge letters were issued to date upon which they were reinstated)

Garrett Railroad Car & Equipment, Inc. v. N.L.R.B. 683 F.2d 731 (C.A. 3, June 1982)
(where E unlawfully discharged striker and did not show that Ee was unwilling to return to work or that he would have refused offer of reinstatement as required by *Abilities and Goodwill* 241 NLRB 27 which shifted burden of proof to wrongdoer, backpay was awarded to date of ULP discharge rather than end of strike)

Latrobe Steel Company v. N.L.R.B. 630 F.2d 171 (C.A. 3, 1980)
(where strike not ULP strike, ct will not enforce Bd's order of reinstatement and backpay; record was devoid of evidence that impasse over nonmandatory subject (presence of stenographers at negotiating sessions) contributed to U's decision to strike)

Transportation Enterprises, Inc. v. N.L.R.B. 630 F.2d 421 (C.A. 5, 1980)
(E's refusal to reinstate certain Ees and its discharge of others for strike misconduct cannot support back-pay order in instant case since there was no ULP strike)

N.L.R.B. v. Mars Sales & Equipment Co. 626 F.2d 567 (C.A. 7, 1980)
(ct cutoff backpay liability of E to economic striker who was unlawfully discharged from time Ee resigned but allowed backpay from time of discharge until date of resignation as Bd exceeded its authority to remedy violations)

3989-5000 Resigned as precondition to accepting new employment

Harowe Servo Controls, Inc. 250 NLRB No. 120
(resignation by ULP striker in order to accept other jobs during strike does not automatically eliminate striker as striking Ee absent unequivocal evidence of intent to permanently sever employment relationship; i.e., if new E required resignations to be submitted, such submission did not constitute unequivocal abandonment of employment)

3995 FOREIGN NATIONALS OR RESIDENTS

Long Beach Youth Center, Inc., a/k/a Long Beach Youth Home (formerly Trailback, Inc.) JD-(SF)-54-81
(pursuant to backpay settlement stipulation, ALJ found amount of gross backpay due discriminatee as that set forth in stipulation and issued order that, in event discriminatee, presently residing abroad, appears at Regional Office w/i reasonable time, E be given opportunity to cross-examine him regarding his search for work, interim earnings, and any other matters relating to his net backpay so that his net backpay can be determined, and Bd should retain jurisdiction in complaince stage for that limited purpose)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. 672 F.2d 592 (C.A. 7, Feb. 1982)
(in computing backpay, Ees will be unavailable for work when not lawfully entitled to be employed in US and backpay shall be placed in escrow up to one year)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. 672 F.2d 592 (C.A. 7, Feb. 1982)
(award of reinstatement and backpay to illegal aliens who had been constructively discharged by E's notice to INS and permitted by INS to depart voluntarily, as opposed to deportation, held justified as vindication of policy of Act and to deter other Es from similar conduct)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. 672 F.2d 592 (C.A. 7, Feb. 1982)
(in computing backpay for constructively discharged illegal aliens, Bd may, if it sees fit, modify award by setting minimum period of six months during which backpay will be awarded on assumption that Ee would have been able to work 6 months more before Immigration and Naturalization Service would have caught up with illegal alien had E not unlawfully turned him in)

3999 OTHERS

Deluxe Poster Co., Inc., d/b/a Johnson Printers 257 NLRB No. 011
(high school student who participated in co-operative educational program not included in unit and not eligible for backpay because of participation in co-op program, hired at significantly less than other bargaining unit Ees, worked different hours and no evidence he could have expected fulltime employment upon graduation)

Price Pfister, A Division of Norris Industries 256 NLRB No. 021
(Ee who was suspended after E held violative investigatory interview not entitled to backpay where E did not base his decision to suspend Ee on basis of information obtained at interview, but had reached decision prior to interview)

Jimmy Kilgore Trucking Company 254 NLRB No. 112
(reasserting that proper and effective realization of statutory policy requires that transgressor bear burden of consequences of its illegal acts, Bd ordered respondent E to make former Ee of non-respondent E, whose unlawful termination E had caused, to make such Ee whole for losses suffered as a result until he either is reinstated to former position or obtains substantially equivalent employment elsewhere; limiting liability to period prior to date respondent E notifies other E that it has no objection to Ee's employment is insufficient, but such notice is also required)

Berger Transfer and Storage, Inc. 253 NLRB No. 002
(regular part-time Ees included in bargaining unit and eligible for remedial benefits)

Hedison Manufacturing Company 249 NLRB No. 096
(laid off Ees held entitled to reinstatement and backpay w/o regard to any effect layoff might have had on them if parties had bargained in good faith about layoff; while Ees were laid off because of lack of work in their department, it was their refusal to accept unlawfully imposed restrictions on their transfers to other departments, and their acceptance of layoff instead, which ultimately caused their loss of employment plantwide, not merely their loss of employment in their department)

The A.S. Abell Company JD-221-81
(Ees who received *buy-out* payments from E for taking early retirement but were unable to make lump sum restitution of such payments to E before being reinstated, as required by E, such Ees who demonstrated *desire* to return to work held entitled to credit for backpay and fringe benefits on same basis as other Ees who accepted E's offer of reinstatement)

Long Beach Youth Center, Inc., a/k/a Long Beach Youth Home (formerly Trailback, Inc.) JD-(SF)-54-81
(unopposed mtn to dismiss backpay claim of discriminatee granted where discriminatee, who was provided with opportunity to seek review of backpay order, failed to do so)

Stearns-Roger, Inc. JD-10-81
(recommended where reinstatement inappropriate because E no longer had any Ees at construction site)

N.L.R.B. v. National Car Rental System, Inc. 672 F.2d 1182 (C.A. 3, Feb. 1982)
(Bd order, remedying E's unlawful refusal to bargain about effects of relocation of its facility, by giving each unlawfully terminated Ee at least 2 weeks' pay, with possibility of increased compensation if E continued to refuse to bargain, held not punitive, where such backpay was provided to remedy 8(a)(5) violation; remedy was not abuse of Bd's discretion, since 8(a)(3) and 8(a)(5) awards would be w/i Bd's discretion if made singly, and there is nothing punitive in remedying both violations which are separate and distinct)

4400 BACKPAY ORDERS

J.J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation v. N.L.R.B. 645 F.2d 148 (C.A. 2, Mar 21, 1981)
(E's interrogation and solicitation were minor violations and did not support bargaining order or award of back pay)

4401 GENERALLY

Hillside Avenue Pharmacy, Inc. 265 NLRB No. 205
(in denying reinstatement to discriminatorily discharged Ee, while requiring E to provide Ee with backpay until he has obtained substantially equivalent employment elsewhere, Bd noted that in cases such as this involving misconduct engaged in by both parties, it has held that E ought not to be allowed, as a matter of course, to profit from his own warongful misconduct and be wholly exonerated from Act's sanctions because Ee likewise was at fault)

Schnadig Corporation 265 NLRB No. 020
(whether counsel for GC seeks backpay remedy immaterial since Bd has full authority over remedial aspects of decisions)

4401—Cont.

C. R. Adams Trucking, Inc., and Michael Cams 262 NLRB No. 067
(assertion that Bd should assume partial responsibility for backpay award because of 2-year delay between hearing and ALJ's decision was rejected as liability could have been avoided by reinstatement offer)

Hanes Corporation 260 NLRB No. 077
(where E violated Act by refusing to bargain over discretionary aspects of its non violative unilateral decision to layoff Ees, make-whole remedy is inappropriate as layoffs were inevitable and no basis on which to predicate a finding that any identifiable Ee suffered loss of pay; moreover, situation is analogous to refusal to bargain over effects of plant closure where there was no duty to bargain over decision to close, backpay remedy runs only from time of Bd decision; here, cause of loss of pay, the layoff, has long since ended so consequently, no loss of pay can be suffered after this decision)

Whitehall Packing Company, Inc. and W.P.C., Ltd. 257 NLRB No. 043
(where E ordered to bargain with U over effects of its decision to transfer operations and of its later decision to shutdown completely, E ordered to pay back pay so that parties bargaining is not entirely devoid of economic consequences for E)

Otis Elevator Company, A Wholly Owned Subsidiary of United Technologies 255 NLRB No. 066
(where record was not clear whether specified classification was included in unit and did not specify total number of Ees laid off, whether they were part of unit, and dates of their respective layoffs, Bd, for purpose of determining backpay, deferred determination of such matters to compliance stage)

Montgomery Ward & Co., Inc. 254 NLRB No. 102
(Ee discharged for theft could be ordered reinstated with backpay where discharge resulted from interview in which E violated Act by refusing to allow Ee to have U representative present and obtained confession and discharge based solely on confession; however, where Ee also confessed at Bd hearing, as of that date Ee forfeits right to reinstatement or futher backpay)

Babcock & Wilcox Co. 249 NLRB No. 099
(where unlawfully discharged U president was permitted to retire voluntarily on disability, normal backpay and reinstatement order held not applicable, and since discharge probably made him ineligible to hold or retain U office, E ordered to correct its records, deleting any reference to *discharge* and simply substituting therefor, the term *retirement* or *retirement on disability, accompanied by notification to U of such action*)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. 617 F.2d 977 (C.A. 3, 1980)
(ct enforced Bd's backpay order to all Ees at unlawfully closed plant involving two units each represented by different U, notwithstanding that E negotiated agreement as to effects of closing with one U; remedial order was not improper because closing harmed all Ees and agreement with one U regarding severance pay would not remedy 8(a)(3) violation, and remedial orders directed to non-parties are appropriate if fairly encompassed in C and adequately proved at hearing)

N.L.R.B. v. Clerks and Checkers Local No. 1593, International Longshoremen's Association, AFL-CIO, et al. 644 F.2d 408 (C.A. 5, May 4, 1981)
(when supplementing Bd's backpay awards Bd is granted broad discretion in formulating remedies to make Ees whole and to effectuate policies of Act)

N.L.R.B. v. Lyon & Ryan Ford, Inc. 647 F.2d 745 (C.A. 7, Apr 1981)
(backpay remedy for discharged ULP strikers appropriate and w/i Bd's discretion; retroactive application of *Abilities & Goodwill* remedy proper where Bd demonstrated that such application would further rather retard operation of backpay rule, would not create substantial injustice or undue hardship for either party, and would not provide windfall to striking Ees)

N.L.R.B. v. Wayne Electric, Inc., Electrical Installation and Services, and Wayne E. Steward 626 F.2d 1227(T) (C.A. 9, 1980)
(owner of two businesses both of which found guilty of ULP's liable for backpay award notwithstanding he was not specifically named as party because obligations of proprietorship are obligations of its owner)

N.L.R.B. v. Columbia Building Materials, Inc. 634 F.2d 193(T) (C.A. 9, 1980)
(Bd's task is to fashion remedy for ULPs that will restore economic status quo that would have existed but for ULP; backpay order herein w/i remedial authority of Bd since it does no more than return affected Ees to economic state which they would have enjoyed absent unilateral wage change)

Douglas Aircraft Company, a component of McDonnell Douglas Corporation v. N.L.R.B. 609 F.2d 383 (C.A. 9, 1979)
(conditioning award of backpay on withdrawal of ULP charge repugnant to purposes and policies of Act)

Harding Glass Industries, Inc. v. N.L.R.B. 672 F.2d 1330 (C.A. 10, Feb. 1982)
(award of reinstatement and backpay to Ees engaged in ULP strike against E who had unlawfully withdrawn from multi-E unit held not punitive and in accord with Act, where, after striking against E association, U negotiated new contract with it; upon strikers return, E offered them work under terms of old contract, claiming that for that reason award was punitive; however, such offer was invalid since E was bound by new contract, and strikers were not obligated to accept contract terms inferior to those they were intitled to)

4410 LIMITED BACKPAY ORDER

C & E Distributing, Inc./Carbon-Emery Enterprises, Inc. 265 NLRB No. 074
(limited backpay order added to order that E bargain regarding effects of cessation of business in order to assure meaningful bargaining, to make Ees whole for losses suffered as result of E's failure to bargain, and to recreate to some degree situation in which parties bargaining positions are not entirely devoid of economic consequences for E)

National Car Rental System, Inc. 252 NLRB No. 037
(*limited backpay* requirement accompanied bargaining order requiring E to bargain with U w/i 5 days of decision concerning effects of its closing facility as result of sale and relocation; back pay order designed to make whole Ees for losses, if any, suffered as result of violation and to recreate in some practicable manner situation in which U's bargaining position is not entirely devoid of economic consequences for E)

4412 SUCCESSORS

Winco Petroleum and Cooper Oil Company, Inc., Successor Employer 252 NLRB No. 150
(successor E required to pay stipulated amount of backpay due backpay claimants who were Ees of E's predecessor, where E had purchased predecessor's business with actual knowledge of E's unremedied ULPs)

4417 JOINT BACKPAY LIABILITY

4417-0100 Generally

Teckwal Corp. and E.M. Andrews Sales, Inc. 263 NLRB No. 122
(affiliated enterprise (*alter ego*) of E held to share obligation with E, named party in original ULP proceeding, to provide backpay, notwithstanding Es' contention that backpay specification should not include *alter ego* as liable for moneys due because Bd's original order did not apply to *alter ego*, since Es had admitted their single E status in original ans, and it is established that liability may be imposed upon party to supplemental proceeding even if that party had not been party to ULP proceeding if it is *sufficiently closely related* to party found in original proceeding to have committed ULPs)

Rayel Electric Company 260 NLRB No. 190
(where E was sole proprietorship when complaint issued and incorporated during course of hearing, order and notice provided joint and several liability to E as individual and as corporation)

4417-1400 Joint employers

Sneve's Rent-A-Car JD-(SF)-283-82
(taxicab fleet owner jointly liable with another taxicab business owner for unlawful discharge of driver of latter's cab, where former not only was found joint E with latter herein but also participated in discharge and reinstatement decisions with latter)

4417-2100 Separate and individual employers

Jimmy Kilgore Trucking Company 254 NLRB No. 112
(reasserting that proper and effective realization of statutory policy requires that transgressor bear burden of consequences of its illegal acts, Bd ordered respondent E to make former Ee of non-respondent E, whose unlawful termination E had caused, to make such Ee whole for losses suffered as a result until he either is reinstated to former position or obtains substantially equivalent employment elsewhere; limiting liability to period prior to date respondent E notifies other E that it has no objection to Ee's employment is insufficient, but such notice is also required)

4417-2300 Predecessor and successor employers

Women Care, Inc. 264 NLRB No. 060
(seller E and buyer jointly and severally liable for backpay where seller unlawfully discharged several Ees and refused to reinstate ULP strikers upon their application to return to work; seller had stipulated Bd's order is binding, sale was made with notice to buyer, buyer acknowledged liability in entering backpay stipulation)

Marlene Industries Corporation; et al. 258 NLRB No. 192
(successor and predecessor Es held jointly and severally responsible for making whole ULP strikers and Ee who was unlawfully denied employment)

Ridgeway Trucking Company and Sand & Stone Transport, Inc. JD-23-82
(where ULPs occurred while predecessor was in bankruptcy proceedings and it survived those proceedings, continuing in same operation, with only

4417-2500—Cont.

change in ownership successor E is jointly liable with predecessor for remedying ULPs)

Belair Chateau Hospital, Inc., d/b/a University Heights Hospital **JD-(SF)-213-80**

(trustee in bankruptcy derivatively liable for bankrupt E hospital's unlawful discharges where trustee knew of claims of unlawfully discharged Ees and had ample opportunity to shield itself against continuing accrual of backpay by offering reinstatement to claimants, course it deliberately eschewed)

4417-2700 Seller and purchaser

Marlene Industries Corporation; et al. **255 NLRB No. 192**

(parent company and subsidiaries held jointly and severally liable together with respondent E for any loss of earnings suffered by Ees as result of E's unlawful conduct against them where, on mtn of GC, parent company and subsidiaries had been joined as parties respondent with E whose assets parent company had purchased while proceeding was pending before Bd)

4417-2800 Successor employers

Colonie Hill Ltd., and John Smythe Food Services Inc., Successor to Colonie Hill, Ltd. and Lackman Food Services of Hauppauge, Inc. **256 NLRB No. 150**

(successor E found jointly and severally liable with predecessor E who unlawfully discharged Ee where successor failed to deny notice of predecessor's ULP or to offer evidence of lack of notice)

4417-3500 Employers and individual charged with derivative liability

Lee Simmons and Beverly McKinstry Simmons, A Partnership, d/b/a Elmendorf and Fort Richardson Barber Concessions **JD-(SF)-186-82**

(partners and partnership entity their officers, agents, successors and assigns jointly and severally liable to make discriminatees whole for backpay due)

4417-4200 Firms found to be single employer

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **618 F.2d 6 (C.A. 6, 1980)**

(parent corporation and subsidiaries held liable notwithstanding violation committed by 1 subsidiary where *single enterprise* test met)

4417-5600 Employer and alter ego

Teckwal Corp. and E.M. Andrews Sales, Inc. **263 NLRB No. 122**

(affiliated enterprise (*alter ego*) of E held to share obligation with E, named party in original ULP proceeding, to provide backpay, notwithstanding Es' contention that backpay specification should not include *alter ego* as liable for moneys due because Bd's original order did not apply to *alter ego*, since Es had admitted their single E status in original ans, and it is established that liability may be imposed upon party to supplemental proceeding even if that party had not been party to ULP proceeding if it is *sufficiently closely related* to party found in original proceeding to have committed ULPs)

Custom Manufacturing Company (Successor to Zion Industries, Inc.—Curtain and Drapery Division); etc. **259 NLRB No. 066**

(in backpay proceeding, drapery company held alter ego of 3 other companies which were successively formed earlier and each followed pattern of discontinuing its drapery business and commending scaled-down operation; changes in companies' operations did not represent abrupt shift but another step in evolution of drapery business from manufacturer to broker and from residential to institutional customers; there was no real hiatus between alter ego and preceding company since it was spinoff of former business and it was not so changed as to put it beyond Bd's backpay order)

Acme Apparel, Inc. and Harry A. Meyer, an Individual **JD-(SF)-91-81**

(sole owner held individually liable together with corporation to remedy ULPs)

4417-8400 Employer and union

Wismer and Becker, Contracting Engineers **251 NLRB No. 086**

(E's backpay liability would not be altered if Bd were to find that U's general refusal to refer Ees was independent violation of Act, since U would be held solely liable for illegal refusal to refer; however, E would be secondarily liable for its ultimate acquiescence in U's demand to discharge direct hires; such liability is unaffected by separate issue of alleged unlawful refusal to refer individuals for employment)

Schorr Stern Food Corp. **240 NLRB No. 050**

(under circumstances herein, E held liable for entire backpay award rather than having damages apportioned between E and U)

4417-8425 Jointly and severally liable

H. H. Robertson Company **263 NLRB No. 173**

(U and E jointly liable for unlawful discharges where U pressured E to discharge Ees and E condoned and participated in Us attempts to cause terminations, notwithstanding supervisor's oppositions to discharges since he was overruled by higher authority)

Harsh Investment Corporation d/b/a The Claremont Resort Hotel and Tennis Club **260 NLRB No. 034**

(U and E jointly and severably for Ees discriminatory discharge but U's backpay liability will end 5 days after it notifies E that it has no objection to employment of Ee)

Q.V.L. Construction, Inc. **260 NLRB No. 139**

(E's telling individual to apply for job through referral system run by U, which subsequently discriminated against him because he was not U member violative, and E held jointly and severally liable with U for discriminatory operation of referral system; U held primarily, and E secondarily liable for any backpay due individual because of discriminatory operation of referral hall, since even if E had investigated U's operation of referral system, it would not have discovered discrimination against Ee)

Versatile Services, Inc. **258 NLRB No. 109**

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**

(U's backpay liability found jointly and several with E's liability and extends from date of discharge until five days after date U gives written notice to E and each discriminatee that it no longer has any objection to their immediate reinstatement, and thereafter until it joins E in submitting consent order to dismiss ct proceeding instituted by it for preliminary inj restraining E from reinstating wrongfully discharged Ees)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**

(where E delegates hiring to U under U referral system it is responsible if U operates system discriminatorily, even if E has no knowledge of U's discrimination, and thus U and E are normally jointly and severally liable for any back pay due, but here where even if E had investigated it would have been unable to discover discriminatory practices of U, U will be held primarily liable and E secondarily liable)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. **679 F.2d 673 (C.A. 7, May 1982)**

(E's bargaining with U that lacked majority support among E's Ees, violative and E and U were jointly and severally liable to make whole unlawfully discharged Ees)

Carpenters, Local # 308 v. N.L.R.B. **690 F.2d 661 (C.A. 8, July 1982)**

(broad order requiring E jointly and severally with U to make whole discriminatee, who was denied referral by U and consequently employment by E, for any loss of earnings from date of denial of employment until discontinuance of unlawful discrimination is consistent with Bd's usual policy of resolving such issues in compliance proceedings wherein temporary nature of work for which discriminatee's application was denied will undoubtedly be considered)

N.L.R.B. v. Pacific Coast Utilities Service, Inc. **638 F.2d 73 (C.A. 9, Apr. 1980)**

(joint and several back pay liability of E and U proper where E wrongfully discharged Ee and U failed to represent him fairly and impartially)

N.L.R.B. v. Stanley H. Egan and Donald R. Egan **658 F.2d 746 (C.A. 10, Aug 1980)**

(U and E jointly and severally liable for applying superseniority clause to U trustee and U guard as E acceded to U's request)

4417-8475 Union primarily, employer secondarily, liable

Q.V.L. Construction, Inc. **260 NLRB No. 139**

(E's telling individual to apply for job through referral system run by U, which subsequently discriminated against him because he was not U member violative, and E held jointly and severally liable with U for discriminatory operation of referral system; U held primarily, and E secondarily liable for any backpay due individual because of discriminatory operation of referral hall, since even if E had investigated U's operation of referral system, it would not have discovered discrimination against Ee)

Exxon Company, U.S.A. **253 NLRB No. 027**

(where U alone administers health plan, U primarily liable to make whole any present or former nonU unit members or their estates who may have suffered reduced insurance coverage or increased insurance costs by U's charging nonU Ees service fee as condition to continue in contractually established U medical plan)

Frank Mascali Construction G.C.P. Co.; Frank Mascali Construction Co., Inc. **251 NLRB No. 032**

(where E delegates hiring to U under U referral system it is responsible if U operates system discriminatorily, even if E has no knowledge of U's discrimination, and thus U and E are normally jointly and severally liable for any back pay due, but here where even if E had investigated it would have been unable to discover discriminatory practices of U, U will be held primarily liable and E secondarily liable)

4433 COMPUTATION OF AMOUNT OF BACKPAY

4433—Cont.

P.J. Gear & Son, Inc. **JD-305-82**
(E's proposed method of calculating backpay amounts due discriminatees held untimely, where Region's backpay specification was year or more in the making, of which E was aware, and month before hearing E suggested entirely new approach for calculating backpay; regardless of its feasibility, E's proposed method would be terrible injustice to discriminatees who have been waiting 3 years to be compensated for E's ULPs against them and would have to wait further for monies due them while Region begins calculations anew on basis of E's suggested method)

P.J. Gear & Son, Inc. **JD-305-82**
(E's proposed method of calculating backpay due discriminatees rejected where E's proposal was untimely made, and Region demonstrated diligence in attempting to obtain from E and other sources information necessary for accurate backpay specification; and despite E's delay in furnishing information and inconsistencies between such information and other information sources, Region frequently gave E benefit of doubt in arriving at its backpay figures)

4433-0100 Generally

Boston Cement Masons & Asphalt Layers Union Local No. 534 (Duron Maguire Eastern Corp.) **265 NLRB No. 158**
(U's defense to backpay specification on ground that backpay was not computed in accordance with ct and Bd decisions, rejected, where, after remand to Bd of its successive supplemental decisions, ct granted summary judgment and enforced Bd's second supplemental decision but did not address itself to any computations or make any references to period of backpay liability)

John J. Canova d/b/a Canova Moving & Storage Co. **261 NLRB No. 092**
(GC's contention that *unusual conditions resulting from labor dispute* during first quarter required that measure of gross backpay for Ee be associated to the immediately following second quarter, rejected, since departure from customary *adjusted average hours formula* was not warranted by Ee walkout and discharges, even though they had destabilizing effect on normal business routine; however, in recognition of practical effect disruption had on calculation of backpay, certain provisions were made to avoid artificial result in calculations)

Great Plains Beef Company **255 NLRB No. 185**
(discriminatee not awarded backpay to which he would otherwise be entitled where he failed to report interim employment to Bd agent as he was instructed to do, and denied, until confronted on cross examination, that he had been paid by U for picketing, since such concealment of interim earnings constituted abuse of Bd's processes and his failure or refusal to recall what other information he failed to supply Bd rendered ascertainment of interim earnings impossible)

Ace Beverage Co. **250 NLRB No. 066**
(Bd found no jurisdictional bar to review of GC's action in compliance stage and to issues raised by mtn for determination of compliance with Bd's order, since Sec. 101.13(b) of Bd's Statements of Procedures provides that, despite compliance, Bd's order is continuing one and that closing of case is conditioned upon continued compliance with order, which is equally true when proposed backpay formula fails to comply with order as it is when respondent has breached compliance provisions)

Ace Beverage Co. **250 NLRB No. 066**
(GC's backpay formula rejected, since it did not comport with Bd's order entitling Charging Party (CP) to backpay he would have earned as supervisor from date he was unlawfully demoted to salesman until reinstated or offered reinstatement to former position; strike settlement agreement on which GC premised formula, claiming that agreement waived CP's right to recall to his salesman's position which he held at time of strike, is unrelated to violation found, and irrelevant to his backpay rights; consequently, agreement neither mitigated nor extinguished E's backpay liability)

Ace Beverage Co. **250 NLRB No. 066**
(in finding GC's backpay formula defective since not comporting with Bd's order entitling Charging Party (CP) to backpay he would have earned as supervisor from date he was unlawfully demoted to salesman until reinstated or offered reinstatement to former position, Bd rejected contention that CP's participation in strike as salesman was intervening event which made strike settlement agreement, waiving salesmen's right to recall, applicable to him; since E's wrongdoing placed CP in circumstances herein, he must bear burden of making CP whole w/o reliance on agreement)

Ace Beverage Co. **250 NLRB No. 066**
(where supervisor was unlawfully demoted to salesman and thereafter participated in strike in latter capacity, Bd required his status as salesman not be considered or given any effect in assessing his right to reinstatement or in computing his backpay while he participated in strike or thereafter)

Ron-Bob, Inc. t/a Crazy Horse Saloon **JD-621-81**
(Bd is not required to attain mathematical precision in its formulas for determining gross backpay; rather, any formula which approximates what discriminatees would have earned had they not been discriminated against is acceptable if it is not unreasonable or arbitrary in the circumstances)

Ron-Bob, Inc. t/a Crazy Horse Saloon **JD-621-81**
(in computing average hours worked per week by each discriminatee, ALJ held principle justifying exclusion of weeks as not being representative when discriminatees worked an unusually low number of hours was not applicable herein where number of hours worked by each discriminatee varied considerably from week to week and, therefore, it appeared that they did not work substantially regular schedules)

Ron-Bob, Inc. t/a Crazy Horse Saloon **JD-621-81**
(in determining average hours worked per week, ALJ excluded weeks in which an unusually low number of hours was worked in order to take into account absences from work which are not likely to recur during backpay period; ALJ also excluded week in which discriminatees were discharged since discharge is not expected to recur during backpay period and consequently week is not representative of discriminatee's work pattern; however, weeks in which discriminatees did not work at all included in determination since there was no showing such absences were due to nonrecurring causes)

Ron-Bob, Inc. t/a Crazy Horse Saloon **JD-621-81**
(calculations in backpay specification properly based on 13 weeks per calendar quarter in accordance with Bd's usual practice)

Childers Manufacturing Company, Inc. **JD-(SF)-11-82**
(reemployment of discharged Ee has no bearing on legality of discharge and, while it might reduce backpay, reemployment is not necessarily the same thing as reinstatement; accordingly, if E has offered unlawfully discharged Ees mere reemployment but not reinstatement, offers of reinstatement must be made to them)

U. S. Postal Service **JD-(SF)-90-81**

4433-0700 Partial backpay

Ace Beverage Co. **250 NLRB No. 066**
(where supervisor was unlawfully demoted to salesman and thereafter participated in strike in latter capacity, Bd ordered his participation in strike, regardless of status, constituting withholding of services from E, be taken into account in backpay computation)

4433-1400 Method of determining what employee would have earned

Timberland Packing Corporation **261 NLRB No. 027**
(E's ignoring Ees' past work experience and starting Ees with wages of apprentice on first step of ladder not precluded by contract, history of negotiations of industry practice; even where industry did consider past experience, it was on voluntary basis)

Wayne Trophy Corp. **254 NLRB No. 104**
(absent unusual circumstances *formula utilized is one which averages actual prediscriminatory hours of discriminatee and projects that average into backpay period; purpose served is to account for absences, lost hours or other factors which because of a pattern may reasonably be accepted average for backpay period*)

P.J. Gear & Son, Inc. **JD-305-82**
(amounts of backpay due discriminatees, set forth in backpay specification, held correct, where Region's field examiner, in solving backpay problem resulting from absence of witnesses, who were not made available for some unexplained reason, made reasonable assumptions on basis of documentary evidence regarding work done before and after discharges; and in determining kind of work discriminatees performed, field examiner relied on information obtained from discriminatees themselves)

4433-1410 Employee's earnings prior to discrimination

United Contractors Inc., JMCO Trucking Inc., Joint Employers **260 NLRB No. 031**
(average weekly earnings of discriminatees during weeks preceeding unlawful layoffs held appropriate method of computing backpay in absence payroll records for replacement drivers, where business was irregular and subject to occasional slack periods during normally busy summer months (period of unlawful layoff) though layoffs were not caused by such slack periods, and same unit work was performed by non-unit Ees)

Wayne Trophy Corp. **254 NLRB No. 104**
(where discriminatee had pattern of absenteeism prior to her discharge which was not attributable to demonstrable illness, weeks during which Ee worked far below average number of hours not excluded in projecting average for backpay period)

Wayne Trophy Corp. **254 NLRB No. 104**
(overtime pay included where prior to his discharge discriminatee had performed maintenance work prior to regular hours and subsequent to his discharge work had been contracted out since work was still available had discriminatee continued his employment with E)

Highview, Inc. **250 NLRB No. 090**
(appropriate measure of hours worked is average of each calendar quarter of entire last period of employment before discriminatory discharge where Ee had long absence due to illness in last calendar quarter preceeding discharge)

4433-1410—Cont.

Ron-Bob, Inc. t/a Crazy Horse Saloon **JD-621-81**
(backpay formula for calculating average weekly hours based on 9-month period rather than E's proposed 12-month period prior to termination of discriminatees held proper, where 9-month period was based on compliance officer's determination that hours worked during *shakedown* period after E had begun operations would not be representative of average hours worked during discriminatees' employment; shorter period was long enough to represent with reasonable accuracy discriminatees' earnings; and E failed to meet its burden of showing that its proposed longer period would result in a more accurate representation)

Abrahamson Chrysler-Plymouth, Inc. **JD-65-80**
(because of seasonality factors in automobile sales, representative period for determining amount of backpay due salesman was average weekly earnings over prior two full calendar years before discharge rather than just average weekly earnings for 9 week period that Ee worked in calendar year of his discharge)

Karl Kallmann, d/b/a Love's Barbeque Restaurant, No. 62 v. N.L.R.B. **640 F.2d 1094 (C.A. 9, 1981)**
(backpay award appropriate where successor refused to hire former Ees because of anti-U animus; however, ct would not enforce order to extent that backpay was set at wage scale prior to successor's takeover of business which would in effect force E to abide by terms of predecessor's contract and act as penalty in view of E's reduction of wages upon takeover of business)

4433-1420 Earnings of comparable employee during backpay period

Teamsters, Local 70 (Nielson Freight Lines) **265 NLRB No. 034**
(where U discriminatorily refused to refer Ee to job for which he was requested by E, backpay is computed based on earnings of Ee who was dispatched at approximately the same time as discriminatee should have been, and who had successful long term employment based on fact that discriminatee was requested by E after interview and no reason to believe he would not have been successful Ee)

International Association of Heat and Frost Insulators and Asbestos Workers Local No. 53 (Insul-Contractors, Inc.) (Betty Ruth Turner) **262 NLRB No. 111**
(backpay computed as difference between what Ee received prior to discrimination and that received after discriminatory referral)

Storta Sons Construction Co., Inc. **260 NLRB No. 173**
(backpay for discriminatees determined by formula which computes whether the number of Ees during backpay period exceeded number during prebackpay period as revealed by evidence of work performed by Ees hired subsequent to application for work by discriminatees)

3 States Trucking, Inc., and Its Successor, Southern Illinois Minerals Corporation **252 NLRB No. 153**
(discriminatee and another Ee comparable where both employed in same classification, paid same wage rate, Ee first laborer hired after discriminatee so seniority almost identical)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(average of weekly hours Ee worked prior to discharge plus amount of wage increase granted to two comparable Ees)

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(determination of Ee's gross earnings during backpay period made by using average wages of E's Ee U members from date of unlawful refusal to hire as it takes into account probability of earnings of one who would have been hired on date of Ee's unlawful refusal to hire)

4433-1430 Earnings of replacement during backpay period

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(basis for computation of hours discriminatees would have worked during backpay period was hours of Ees of subcontractor who replaced discriminatees rather than two Ees not included in mass discharge whose positions and duties were unique and hence not similar to those of discriminatees)

United Contractors INc., JMCO Trucking Inc., Joint Employers **260 NLRB No. 031**
(hours actually worked by replacement drivers including non-unit Ees held appropriate measure for backpay; contention that E historically assigned work during slack periods to senior non-unit Ees and laid off more junior unit Ees, rejected)

Tri-Maintenance & Contractors, Inc. **257 NLRB No. 014**
(earnings of replacement Ees during backpay period are appropriate measure of gross backpay of discriminatees; *time sheets* listing replacements' time allocated to various facilities served by E *unreliable* indicator of time actually spent at various locations, since they were not authenticated and were, merely *allocations* of time for accounting purposes)

4433-1435 Earnings of representative employee group

Laredo Packing Company **264 NLRB No. 037**
(discriminatee who was part-time Ee for several years while he attended school entitled to backpay of full-time Ee where Ee would have been available for full-time employment upon his graduation)

Hack Manufacturing Company **254 NLRB No. 088**
(striking Ees to be paid for last day worked prior to strike at same rate nonstriking Ees paid for working during period of strike and not amount paid nonstrikers on last day before strike)

4433-1440 Employee's rate of absenteeism prior to discrimination to be considered

Wayne Trophy Corp. **254 NLRB No. 104**
(where discriminatee had pattern of absenteeism prior to her discharge which was not attributable to demonstrable illness, weeks during which Ee worked far below average number of hours not excluded in projecting average for backpay period)

The A.S. Abell Company **JD-221-81**
(where Ee, due to serious injury she received at work, was absent from work for lengthy periods of time during 2 years used as base period to compute rate of absenteeism, her period of absence during first year disregarded and second year's absence used to arrive at her absentee percentage rate)

The A.S. Abell Company **JD-221-81**
(GC's contention that Ee's pay should not be diminished by an absentee factor in accordance with Bd's Casehandling Manual which instructs that absence such as Ee's is *de minimis* and is to be disregarded, rejected; while manual may be useful for other purposes, where absentee factor is known and E insists upon it, as here, it should be applied)

4433-1440-5000 Except when due to specific illness

Highview, Inc. **250 NLRB No. 090**
(appropriate measure of hours worked is average of each calendar quarter of entire last period of employment before discriminatory discharge where Ee had long absence due to illness in last calendar quarter preceeding discharge)

4433-1470 Terms and conditions of employment in unlawfully terminated or expired contract

L.B. Priester & Son, Inc. **252 NLRB No. 034**
(E was free to hire Ees at any skill level but obligated under contract to pay all but apprentices journeymen rates)

Acme Wire Works, Inc. **251 NLRB No. 209**

4433-1475 Terms and conditions of employment assuming no ULPs and agreement on contract

Deluxe Poster Co., Inc., d/b/a Johnson Printers **257 NLRB No. 011**
(backpay due discriminatees not to be offset by merit increases Ees did receive which though not included in terms of unsigned collective bargaining agreement were customarily granted where E failed to prove that it would not have followed its past practice if had complied with terms of collective bargaining agreement)

4433-1480 Pay raise which employee would have received absent discrimination

S. E. Nichols of Ohio, Inc. **258 NLRB No. 002**
(where discriminatees were good workers, it is not unreasonable to compute backpay based on better paying jobs in store that other Ees who started with discriminatees were moved up to)

Eastern Maine Medical Center **253 NLRB No. 024**
(to remedy discriminatorily withheld wage increases, E ordered to reimburse affected Ees for increases they would have received from date of withholding of increases to present by paying them difference between their actual wages and wages they would have received had increases originally been granted them)

Eastern Maine Medical Center **253 NLRB No. 024**
(while wage increase, received by Ees some substantial period of time after increase had been discriminatorily withheld from them, might have tolled some backpay liability, resolution of such issue left to compliance stage)

Service Garage, Inc. **247 NLRB No. 115**

J. D. Industrial Insulation Company, Inc. **JD-(SF)-175-81**
(where E had no contractual obligation to pay wages called for by multi-E association contract with U in same industry, E nevertheless unilaterally and voluntarily matched or surpassed wages called for by said contract and increased wage rates on same date as called for by contract, it was determined that E would have raised discriminatees' wage rate on date called for by said contract, and discriminatee's wage rate thereafter should be computed accordingly)

4433-1485 Overtime pay which employee would have received absent discrimination

4433-1485—Cont.

Henry J. Kaiser Company **259 NLRB No. 001**

4433-2800 Gross backpay

Ron-Bob, Inc. t/a Crazy Horse Saloon **JD-621-81**

(Bd is not required to attain mathematical precision in its formulas for determining gross backpay; rather, any formula which approximates what discriminatees would have earned had they not been discriminated against is acceptable if it is not unreasonable or arbitrary in the circumstances)

4433-2833 Items included

The A.S. Abell Company **JD-221-81**

(where E had paid Ees yearly extra *benefit shifts* constituting time off with pay, regarded herein as additional benefits, and it was impossible to determine when Ees would have taken such shifts and at what rate of pay, gross backpay figure computed by alloting yearly number of benefit shifts among 4 quarters, excluding specified number of days off in each quarter to determine backpay amount diminished by appropriate absentee factor, mutiplying such days by shift rate for that quarter, and adding such amount to diminished figure)

4433-2833-2700 Bonuses

Bob Maddox Plymouth, Inc. **256 NLRB No. 136**

(E ordered to pay Christmas Club bonus, i.e., amount equal to what E's Christmas Club contribution would have been had Ees continued working during backpay period)

4433-2833-4100 Health and/or welfare fund payments

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**

(reimbursement of cost of insurance premiums which E furnished gratis)

4433-2833-4500 Retirement fund payments

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**

(Ee's pension benefit credit reinstated retroactively and U, because of its 8(b)(1)(A) conduct, ordered to pay pension fund amount necessary to vest Ee with pension credit for hours worked during backpay period)

Safeway Trails, Inc. **JD-462-82**

4433-2833-5000 Overtime premiums

Wayne Trophy Corp. **254 NLRB No. 104**

(overtime pay included where prior to his discharge discriminatee had performed maintenance work prior to regular hours and subsequent to his discharge work had been contracted out since work was still available had discriminatee continued his employment with E)

4433-2833-5500 Wage increase

Colonie Hill Ltd., and John Smythe Food Services Inc., Successor to Colonie Hill, Ltd. and Lackman Food Services of Hauppauge, Inc. **256 NLRB No. 150**

(GC failed to sustain burden of showing that discriminatee would have been promoted to supervisor and was therefore entitled to supervisor's backpay for part of backpay period rather than unit Ee's wages; discriminatee had only acted as supervisor briefly on two occasions and GC's witness who supervised him did not consider him qualified to be a supervisor)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**

(amount of wage increase based on total increase given to two comparable Ees rather than 71 percent of average wage increases received by discriminatee compared to two comparable Ees while he worked)

Debarnardi Brothers, Inc. **JD-(SF)-286-82**

(pay Ee, who was lawfully discharged, increase (in wages unlawfully denied) that he would have received from date request was denied until date of his (lawful) discharge)

4433-2833-6300 Medical expenses

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**

(discriminatee entitled to unreimbursed medical expenses which would have been covered by E's group insurance)

Madline Industries, Inc. **261 NLRB No. 182**

(notwithstanding finding that unlawfully discharged Ee incurred willful loss of earnings by leaving interim job w/o compelling or justifying means and thereafter did not make an honest good faith effort to obtain interim work, Ee did not willfully incur loss of his medical insurance benefits and is entitled to reimbursement for such lost medical benefits where interim jobs did not provide insurance coverage and there is no evidence as to how much it would have cost Ee to obtain comparable individual insurance coverage at his own expense)

Colonie Hill Ltd., and John Smythe Food Services Inc., Successor to Colonie Hill, Ltd. and Lackman Food Services of Hauppauge, Inc. **256 NLRB No. 150**

(Ee entitled to reimbursement for medical and dental expenses, as Ee were parties to contract entitling Ees to such benefits)

Local 90, Operative Plasterers and Cement Masons' International Association of the United States and Canada, AFL-CIO (Southern Illinois Builders Association) **252 NLRB No. 108**

(remand to RD for purpose of ascertaining whether discriminatee incurred medical expenses for which he is entitled to recover under E's health and welfare plan; Bd rejected discriminatee's plan that medical claims be submitted directly to carrier for determination of coverage)

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**

(Ee reimbursed for losses and expenses caused by U's unlawful 8(b)(1)(A) conduct against him by requiring U reimburse Ee for lost health insurance benefit coverage applicable to unreimbursed medical expenses incurred and his personal premium expenses incurred in securing for himself essentially comparable insurance)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**

(out of pocket medical expenses incurred when E was not covered by insurance at his interim employment, less savings in cost of insurance, included; notwithstanding contention striker could have insured himself)

4433-2833-8600 Additional insurance premiums paid by discriminatee

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**

(reimbursement of cost of insurance premiums which E furnished gratis)

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**

(Ee reimbursed for losses and expenses caused by U's unlawful 8(b)(1)(A) conduct against him by requiring U reimburse Ee for lost health insurance benefit coverage applicable to unreimbursed medical expenses incurred and his personal premium expenses incurred in securing for himself essentially comparable insurance)

4433-2833-9100 Vacation benefits

Marlene Industries Corporation; et al. **255 NLRB No. 192**

(discriminatees' backpay calculations included paid vacation if they would have qualified for it absent discrimination practiced against them)

The A.S. Abell Company **JD-221-81**

(GC's claim for payment of vacation benefits to terminated Ees, as provided for in contract, disallowed where, absent some evidence of absentee rates of Ees, it was impossible to calculate their entitlement to vacation benefits, and GC failed to meet burden of establishing Ees' rights to such employment benefits)

The A.S. Abell Company **JD-221-81**

(where vacation benefits due terminated Ees were not converted into dollar amounts by backpay specification, nor by E or GC, and neither record nor contract specified rates of pay to be used in payment of vacation which has been earned but not taken, rate in effect at date of Ees' return to work applicable to shift that Ees were working when terminated held applicable)

4433-2833-9600 Contributions to pension plan

Acme Wire Works, Inc. **251 NLRB No. 209**

(to be paid directly to discriminatee since he has been out of industry for 24-month period and thus entitled to withdraw his monies from fund under agreement)

Acme Wire Works, Inc. **251 NLRB No. 209**

(E must contribute full amount discriminatee entitled to notwithstanding lower amount would maintain vesting rights as this would result in windfall to E and deprive pension fund of its full entitlement)

J. D. Industrial Insulation Company, Inc. **JD-(SF)-175-81**

(E not required to make contributions to contractually-established trust funds as part of backpay remedy for discriminatorily discharged Ees where ct had determined that E was neither legally bound by the multi-E association contract nor equitably estopped from denying compliance with its terms since, although E had voluntarily contributed to funds in past, E had not agreed in writing to do so under Sec. 302(c)(5)(B) of the Act)

4433-2867 Items excluded

Eastgate I.G.A. Foodliner **253 NLRB No. 106**

(Bd held E's backpay liability would continue past date when discriminatee became permanent part-time Ee at market he had been *moonlighting* from regular employment and earnings from such part-time employment constituted alternate earnings not to be deducted from E's gross backpay liability as interim earnings)

The A.S. Abell Company **JD-221-81**

(Ees held not entitled to personal leave benefits under contract for year of backpay period preceding year in which they were reinstated, where contract provided that such leave must be taken in year in which entitlement occurs or be cancelled; Ees received backpay for all the time they would have been available for work during backpay period; and if it were also found that Ees are entitled to personal leave they could not take during the

4433-2867—Cont.

preceding year, they would receive benefit which they could not have taken if they had been working)

Maine Forest, Inc., formerly known as Claude Carrier, Inc. **JD-(NY)-59-80**
(amount reimbursed E's *skidder* operators for expenses incurred as owners and operators of *skidder* machine, excluded, since concept of reimbursement for skidder ownership and operation was based on compensation for expenses rather than allowance for profit to skidder owner)

4433-4200 Deductions from gross backpay

4433-4209 Recoupment of backpay

Plasticrafts, Inc. **249 NLRB No. 161**
(E's make whole obligation for unlawful withholding of wage increases during election and negotiating period diminished by wage increases granted subsequent to period where such increase divided over backpay period equivalent to monthly average of increases over past representative period of employment)

4433-4217 Interim earnings

Great Plains Beef Company **255 NLRB No. 185**
(discriminatee not awarded backpay to which he would otherwise be entitled where he failed to report interim employment to Bd agent as he was instructed to do, and denied, until confronted on cross examination, that he had been paid by U for picketing, since such concealment of interim earnings constituted abuse of Bd's processes and his failure or refusal to recall what other information he failed to supply Bd rendered ascertainment of interim earnings impossible)

Ace Beverage Co. **250 NLRB No. 066**
(where supervisor was unlawfully demoted to salesman and thereafter participated in strike in latter capacity, Bd required that his earnings as salesman for period between demotion and striking be entertained as offset against gross backpay owing him as supervisor during such period)

4433-4217-0100 Generally

The A.S. Abell Company **JD-221-81**
(where E's figures for interim earnings were derived from Ee's tax returns and such figures differed from compliance officer's calculations, precedence given to tax returns, although tax returns themselves would have been more satisfactory; since tax returns did not show earnings by quarters, total of earnings shown on returns distributed equally by quarters)

4433-4217-2500 Items included

The A.S. Abell Company **JD-221-81**
(Ee's interim earnings asserted by GC to be supplementary income not deductible from gross backpay not excluded from interim earnings, even though it would tend to penalize Ee, who also engaged in supplementory employment while working for E, for being energetic Ee, since GC failed to meet burden that earnings should be excluded)

4433-4217-2510 Earnings from self-employment

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(where discriminatee and wife also operated restaurant and filling station, fifty percent of earnings stated in IRS return)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(earnings placed in escrow account held reportable in year earned rather than in year released from escrow and reported to IRS)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(sales tax paid in year following collection held deductible in year paid where included on IRS return for year paid)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(self-employment should be treated like any other interim employment in measuring backpay liability)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(moneys earned during period of discrimination from a supplemental job which discriminatee also held during his employment with respondent/E are not deductible from gross backpay as interim earnings)

The A.S. Abell Company **JD-221-81**
(money received by Ee from small business which he established with associates but which was subsequently liquidated held distribution of capital and not income and not included in interim earnings)

The A.S. Abell Company **JD-221-81**
(living expenses recieved by Ee from small business he and associates established away from home included in interim earnings and valued at minimal rate in view of communal nature of living arrangements of Ee and his associates)

4433-4217-2515 Tips

Flite Chief, Inc.; et al. **238 NLRB No. 148**
(where discriminatee voluntarily chose to work 32-hour instead of 40-hour week her backpay tips reduced by number of days she willfully reduced her interim work)

4433-4217-2545 Wages paid in equivalency for fringe benefits

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**
(wages paid to Ee in equivalency for fringe benefits on government funded jobs, if established as paid to Ee, would properly qualify as offsets to mitigate U's insurance expenses; and also available to offset pension benefits)

4433-4217-2580 Early retirement benefits

The A.S. Abell Company **JD-221-81**
(where Ees were unlawfully induced to retire early by receiving specified *buy-out* sum from E, net backpay for each quarter computed on basis of formula consisting of number of benefit and regular shifts available in quarter, shift wage rates, and Ee's attendance percentage rate to arrive at gross backpay, deducting therefrom interim earnings and portion of buy-out sum which together will equal amount of gross backpay, leading either to point that buy out sum is exhausted or to excess of buy-out over gross backpay and interim earnings)

4433-4217-2590 Workmen's compensation award included to extent it is payment for lost wages

John J. Canova d/b/a Canova Moving & Storage Co. **261 NLRB No. 092**
(amount paid Ee under workmen's compensation award in form of permanent disability indemnity excluded from interim earnings since, unlike temporary disability payments which are substitute for lost wages, permanent disability payment was for permanent bodily impairment designed to indemnify Ee for impairment of future earning capacity)

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(workmen's compensation award should be considered as interim earnings offset from backpay only so long as award is forthcoming so as to be used in backpay determinations and will not delay compliance beyond period of 30 days after ALJ's order; if not w/i 30 day period, issue of such contended interim earnings should be foreclosed)

The A.S. Abell Company **JD-221-81**
(workmen's compensation earnings included in interim earnings only to the extent that they are substitute for earnings but not to the extent that they constitute damages)

4433-4217-2595 Social Security disability payments

The A.S. Abell Company **JD-221-81**
(Social Security disability payments received by Ee who was a deaf mute which severely limited his employment away from E included in interim earnings since payments were not due to injury but because his disability prevented him from deriving income from employment and, as such, payments are analogous to part of workmen's compensation that are a substitute for lost wages)

4433-4217-5000 Items excluded

4433-4217-5012 Strike benefits

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 084**

Robert E. Anderson and Richard E. Anderson, Co-Partners d/b/a Anderson Cabinets **JD-316-80**

4433-4217-5050 Collateral benefits

Medline Industries, Inc. **261 NLRB No. 182**
(payment of medical expenses by father of Ee who was unlawfully discharged, whether deemed gift, loan, conditional loan or meeting moral obligation to one's offspring, constituted collateral benefit which is not an offset against Ee's claim for lost benefits because such payment did not constitute compensation to Ee for services performed)

Ace Masonry, Inc. **252 NLRB No. 022**
(*collateral* losses not part of additional amounts to be determined at compliance stage)

4433-4217-5055 Unemployment compensation

Ron-Bob, Inc. t/a Crazy Horse Saloon **JD-621-81**

4433-4217-5075 Earnings during hours when discriminatee would not have worked for employer

S. E. Nichols of Ohio, Inc. **258 NLRB No. 002**
(earnings from second job which Ee held during time of employment with E not classified as *interim* earnings and not deducted from backpay determination)

S. E. Nichols of Ohio, Inc. **258 NLRB No. 002**
(where discriminatee took position as manager of store which required her to spend many hours at store, including those she previously worked for Respondent, the hours which would have been worked for Respondent are

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not excluded from her backpay earnings where it was requirement of job to work so many hours and she could not have worked for Respondent and as manager of store at same time)

Teamsters Local 559, an affiliate Of The International Brotherhood of Teamsters (Mashkin Freight Lines, Inc.) **257 NLRB No. 006**
(Bd held that discriminatee's earnings from moonlighting job were not includable as interim earnings where Ee only worked on Sundays at second job and there was no evidence that he worked for previous E on Sundays)

Eastgate I.G.A. Foodliner **253 NLRB No. 106**
(Bd held E's backpay liability would continue past date when discriminatee became permanent part-time Ee at market he had been *moonlighting* from regular employment and earnings from such part-time employment constituted alternate earnings not to be deducted from E's gross backpay liability as interim earnings)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(moonlighting earnings)

Maine Forest, Inc., formerly known as Claude Carrier, Inc. **JD-(NY)-59-80**
(money discriminatees earned during mud season when E's logging operation was shut down and no backpay accrued, not deducted from backpay which accumulated while E was operating)

4433-4217-5087 Income which discriminatee would have earned absent discrimination

Deluxe Poster Co., Inc., d/b/a Johnson Printers **257 NLRB No. 011**
(backpay due discriminatees not to be offset by merit increases Ees did receive which though not included in terms of unsigned collective bargaining agreement were customarily granted where E failed to prove that it would not have followed its past practice if had complied with terms of collective bargaining agreement)

4433-4217-7500 Deductions

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(discriminatee entitled to reimbursement for tools left at E's, notwithstanding discriminatee never personally went to E's to claim tools, absent offer by E to return tools or evidence tools still intact because if not for E's ULPs, Ee would not have been forced to purchase new tools)

The A.S. Abell Company **JD-221-81**
(expenses incurred in obtaining and keeping interim employment deducted from interim earnings)

4433-4217-7508 Tools and equipment used for interim employment

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(cost of tools purchased in connection with interim employment allowed, notwithstanding discriminatee's admission tools not condition of employment for interim job and tools had resale value, since Respondent neither formally contested tool expense claim, nor sought to rebut testimony that tools were needed)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(where business occupied one floor and half of basement and family occupied one floor and half of basement, fifty percent of rent is deductible)

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(total phone bill less amount of average personal phone bill before Ee commenced business held deductible where extension of business phone is installed in Ee's apartment)

4433-4217-7510 Travel expenses incurred in seeking interim employment

3 States Trucking, Inc., and Its Successor, Southern Illinois Minerals Corporation **252 NLRB No. 153**
(gasoline costs incurred while job hunting)

Plumbers Local Union No. 83 (Power City Plumbing & Heating Inc.) **JD-38-80**
(15 cents rather than 10 cents per mile, held appropriate reimbursement rate for Ee's travel expenses in seeking job; 10-cent per mile figure is unreasonable in light of general inflation rate since 1964 when it was introduced as Federal Government's reimbursement rate and today's spiralling costs for operating motor vehicles)

4433-4217-7520 Travel expenses incurred in going to and from interim job

Petroleum Helicopters, Inc. **243 NLRB No. 009**
(where discriminatory transfer resulted in increased commuting costs for discriminatee, E ordered to make Ee whole for any monetary losses he may have suffered)

Mid-America Machinery Company **258 NLRB No. 044**

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(amounts expended for lease of tank truck and permit, although illegal to use lease of another under state law, and estimated milage from IRS return held deductible)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**

Adams Delivery Service, Inc. **JD-(SF)-275-81**

4433-4217-7530 Moving expenses for interim employment out of town

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(discriminatee entitled to moving expenses, notwithstanding he voluntarily quit interim employment and moved to another area since discriminatee did not fail to mitigate damages where job market in new area comparable to that in E's area)

Flite Chief, Inc.; et al. **258 NLRB No. 148**
(discriminatee's moving expenses incurred upon obtaining out-of-town interim employment included in net backpay where E's evidence failed to disprove discriminatee's testimony or to show suitable jobs were available for her or that she rejected suitable employment in local area; and while E's statistical analysis may, at most, create element of doubt, any doubt must be resolved in favor of discriminatee rathe than E)

4433-4217-7540 Room and board for interim employment out of town

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(discriminatee who was transferred out of state during his interim employment not entitled to additional compensation for meals during period out of state since he would have had to spend same amoutat had he been w/i state working for same E)

4433-4217-7575 Training expenses

George A. Angle d/b/a Kansas Refined Helium Company **252 NLRB No. 162**
(expenses for travelling to attend *Success Motivation Institute* meeting)

4433-4217-9900 Other

The A.S. Abell Company **JD-221-81**
(money received by Ee for working catered affair out of state and money he won at race track on visit back home held not interim earnings where money was received during period in which Ee was disqualified from gross backpay while out of state for family reasons)

4433-4233 Willful loss of earnings

S. E. Nichols of Ohio, Inc. **238 NLRB No. 082**
(fact that discriminatee was unemployed for almost 8 years out of 9 year backpay period does not remove her from eligibility for backpay where record shows she actively sought employment for entire period and failure to find employment was based on her lack of skills and smallness of town)

4433-4233-0100 Generally

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(while conduct of discriminatee after close of backpay period has no dispositive significance on issue of willful loss of earnings, where evidence w/i backpay periods tended to show discriminatees lack of serious interest in employment, his later conduct tending to show same lack of employment interest has *some persuasive significance in shedding light on his earlier state of mind*)

4433-4233-0400 Failure to seek or accept interim employment

Laredo Packing Company **264 NLRB No. 087**
(E's backpay liability tolled where discriminatee did not make diligent effort to find employment notwithstanding fact he registered with state employment commission)

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(E has burden of showing discriminatee willfully incurred loss and any uncertainty resolved against E; burden not met by showing lack of success in binding interim employment or low interim earnings; rather, E must affirmatively demonstrate that Ee neglected to make reasonable efforts to find interim work)

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(discriminatee's substantial reliance on U hiring hall as basic means of obtaining interim employment did not constitute such unreasonable limiting of employment opportunities as to constitute willful idleness where discriminatee obtained regular employment at his skill level)

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(playing guitar in tavern on weekends not serious search for comparable employment where discriminatee not professional musician, had no aspirations for musical career, pay was less than made at job from which discharged)

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(discriminatee who was laborer had falled to make serious search for comparable interim employment where only one job listed on NLRB's backpay

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data sheet was weekend job playing guitar in tavern and other jobs held were very short term and low paying; further, discriminatee failed to show very many applications and comparable jobs were available in area)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(no willful loss of earnings since discriminatee held to have made substantial efforts to obtain comparable employment, notwithstanding discriminatee's perfunctionery testimony as to job search, where he had filed detailed reports of his efforts with compliance officer and absent evidence discriminatee refused employment offers)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(no willful loss of earnings where discriminatee turned down jobs because of low pay, entailed work out of his craft or involved revolving or night shifts)

John J. Canova d/b/a Canova Moving & Storage Co. 261 NLRB No. 092
(Ee made diligent search for interim work where he regularly and sincerely sought employment, attempted to augment initial part-time employment with additional income or a substituted full-time position, and used newspapers and U offices as sources of prospective employment; his testimony that he visited many more firms than he chose to record was persuasive, and his purfunctory manner and ultimate cessation of making periodic reports to compliance officer was natural human trait)

Michael M. Schaefer, an individual proprietor 261 NLRB No. 042
(no willful loss of earnings where discriminatee registered with state employment office applied to three Es, and worked off loans by friend by working in friend's business)

A & W Products Company, Inc. 261 NLRB No. 015
(no wilful loss of earnings where Ee sought any available job at numerous places of business in area where she lived, applied at plants located 16 miles from her home and reported to state unemployment office every two weeks for job referrals)

Flite Chief, Inc.; et al. 258 NLRB No. 148
(E may mitigate his backpay liability by showing *willfully incurred* loss by a *clearly identifiable refusal to take desirable new employment;* but since affirmative defense burden is upon E to prove necessary facts, such burden is not met by presenting evidence of lack of Ee success in obtaining interim employment or of low interim earnings; rather, E must affirmatively show that Ee *neglected to make reasonable efforts to find interim work*)

Flite Chief, Inc.; et al. 258 NLRB No. 148
(although discriminatee must make *reasonable efforts to mitigate loss of income, he is held only to reasonable exertions in this regard, not the highest standard of diligence;* success is not the measure of sufficiency of discriminatee's search for interim employment, since the law *only requires an honest good faith effort,* and reasonableness of effort is determined by considering discriminatee's skills and qualifications, his age, and labor conditions in his area)

Flite Chief, Inc.; et al. 258 NLRB No. 148
(in determining whether discriminatee has made reasonable search for interim employment, test is whether record establishes that discriminatee has diligently sought employment during entire backpay period, and uncertainty in evidence is resolved against E as wrongdoer)

Flite Chief, Inc.; et al. 258 NLRB No. 148
(discriminatee held not to have willfully failed to seek interim employment, even though compliance forms showed she had made only 15 documented employment contacts in 3-year period, where her testimony and compliance forms showed she sought appropriate employment on at least 45 occasions; in addition, she perused newspaper help-wanted ads, registered with her local and with State unemployment office, and occasionally checked back with local and visited unemployment office every other week)

Mid-America Machinery Company 258 NLRB No. 044
(refusal of position not substantially equivalent with that held with E, not willful loss of earnings)

Great Plains Beef Company 255 NLRB No. 185
(no willful loss of earnings notwithstanding discriminatee who had been employed at meatpacking plant sought employment at only one of several meat packing plants in area, absent specific evidence there were jobs available at plants for which he would have qualified)

Great Plains Beef Company 255 NLRB No. 185
(burden on E to show that discriminatee would have been successful in securing interim employment; general assertion of need in area for skills which discriminatee possessed is not sufficient to meet burden)

Great Plains Beef Company 255 NLRB No. 185
(no willful loss of earnings where discriminatee during three weeks of unemployment applied to one E for work related to his recent experience, two other Es, went to two unemployment offices several times, and consulted friends and newspaper)

Sargent Electric Company 255 NLRB No. 018
(no willful loss of earnings during backpay period where Ee had substantial interim earnings throughout period in question, made repeated and continued contacts with business agents whenever out of work, and with due diligence, accepted their suggestions and referrals whenever job opportunities existed)

Sargent Electric Company 255 NLRB No. 018
(E failed to show that Ee did not exercise reasonable diligence in searching for employment during backpay period where he worked for number of enterprises and remained in regular contact with various locals and International during periods of unemployment)

Top Manufacturing Company, Inc. 254 NLRB No. 124
(5 months was not too long period of time for ULP strikes to rely primarily upon U's employment facility to secure work, especially where respondent E failed to carry its burden of demonstrating that suitable alternative work opportunities in non-U shops were available)

Wayne Trophy Corp. 254 NLRB No. 104
(fact discriminatee has low or even non-existant interim earnings does not of itself prove his or her failure to seek employment during backpay period)

Wayne Trophy Corp. 254 NLRB No. 104
(where discriminatee asserted she sought employment at various Es during backpay period Respondent did not meet its burden of proof regarding its claim that discriminatee did not seek employment during period where it failed to call as witnesses representatives of Es from whom discriminatee claimed to have sought employment, despite fact that these reports had been turned over to Respondent before trial)

Highview, Inc. 250 NLRB No. 090
(test of whether discriminatee has made reasonable search for employment is whether he/she had dilligently sought other employment during entire backpay period, and fact that discriminatee had no interim earnings during backpay period is not probative upon issue of whether discriminatee made diligent search for work)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock 248 NLRB No. 075

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock 248 NLRB No. 075
(no willful loss of earnings since job at different E never actually offered him where striker stated he intended to return to E's employ when strike ended)

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-621-81
(E's contention that list of places where discriminatee applied for work indicates that she did not make as extensive a search as she indicated in her testimony, rejected, where discriminatee's abbreviated list of places that she applied to and which was prepared for hearing was due to discriminatee's difficulty in remembering names of potential Es that she contacted more than a year earlier)

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-621-81
(E did not establish that discriminatee failed to follow up initial contacts with potential interim Es and thereby incurred willful loss of earnings, where discriminatee credibly testified that following some of her applications or interviews for employment, if prospective E told her that she would be contacted, discriminatee nonetheless called back, but in other cases she did not do so because she was left with impression that that's the way it was, *don't call us, we'll call you*)

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-621-81
(discriminatee held not to have willfully failed to seek interim employment where she was unsuccessful in her attempts through various means to find work similar to job she had with E or even dissimilar work)

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-621-81
(discriminatee held not to have willfully failed to seek interim employment where she allegedly did not seek reemployment with interim E after giving birth inasmuch as she was not in fact asked at hearing whether she had sought such reemployment afterwards)

The A.S. Abell Company JD-221-81
(backpay claimant held to have made reasonable and diligent efforts to find interim employment where, during backpay period, he followed pattern of contacting firms in printing industry for type of job he performed in E's employ, and of checking want ads; obtained job dispensing beer at tavern until he was laid off; obtained employment with printing firm until it went out of business; and worked as maintenance man until he was reinstated by E)

The A.S. Abell Company JD-221-81
(E's contention that backpay claimant should be penalized for 3 weeks when he admittedly did not seek employment immediately following his termination under E's unlawful early retirement program, rejected, since claimant need not instantly seek new work; rather, test is whether, on record as a whole, he has diligently sought employment during entire backpay period)

Pacific Coast Utilities Service, Inc. JD-(SF)-272-81
(no willful loss of earnings where during 3 month period discriminatee registered with U hiring hall and state unemployment office, read want ads and applied for several jobs, notwithstanding at beginning of period occupied with claim against his former E, indicated not willing to take any job at any pay, and limited search to home county; nor did discriminatee jeopard-

4433-4233-0400—Cont.

ize his status as job seeker by his effort to change from jointer to E-lumper since both unskilled occupations)

Cardinal Heating and Cooling, Inc. JD-215-81
(discriminatee who limited his search for interim employment to local area because he had transportation problems did not incurr willfull loss of employment)

Cardinal Heating and Cooling, Inc. JD-215-81
(discriminatee allowed reasonable time (ALJ says 2 weeks not unreasonable) before commencing his search for employment)

Mckenna Contractors, A Joint Venture JD-(SF)-281-80
(not established where discriminatee sought employment both in and outside geographical area of his former employment and acted reasonably in seeking work at the different locations)

DeLorean Cadillac, Inc. v. N.L.R.B. 614 F.2d 554 (C.A. 6) (1980)
(uncorroborated testimony of party who tends to benefit from award of reinstatement or backpay should be subject to strict scrutiny and where discriminatee produced no corroborating witnesses or tangible evidence of his efforts to secure equivalent position and E produced witnesses who testified that discriminatee did not approach them for job, ct held discriminatee was not diligent in seeking employment)

N.L.R.B. v. Hopcroft Art & Stained Glass Works, Inc. 692 F.2d 63 (C.A. 8, Nov. 5, 1982)
(notwithstanding E's argument that discharged Ee failed to diligently search for alternate employment, ct found there was substantial evidence on record as a whole to support ALJ's finding that dischargee's backpay should not be reduced for that reason)

Alfred M. Lewis, Inc. v. N.L.R.B. 681 F.2d 1154 (C.A. 9, July 1982)
(E's burden of proving that discriminatorily discharged Ee failed to make diligent search for interim work not met, where record did not show discriminatee's efforts were insincere and, moreover, his period of unemployment coincided with period of substantial unemployment in the area)

4433-4233-0800 Self-employment

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(discriminatee's casual self-employment not willful loss of earnings where discriminatee did not limit efforts to obtain interim earnings to such employment but also sought other work during backpay period)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(discriminatee's quitting interim job for self employment not willful loss of earnings where discriminatee left job because of chemical vapors which were not associated with job at Respondent's; further, after discriminatee determined that self-employment was not profitable, he promptly sought other employment)

Top Manufacturing Company, Inc. 254 NLRB No. 124
(fact that ULP striker's self-employment was not financial success when compared to what he had been earning during his employment with respondent did not demonstrate that he failed to diligently pursue his business, that he failed to devote full time to it or that he incurred willful loss of earnings)

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 084
(self-employment is not tantamount to withdrawal from job market)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock 248 NLRB No. 075
(no willful loss of earnings where discriminatee operated business for about six months but ceased operation when it proved to be unprofitable)

4433-4233-1300 Failure to retain interim employment

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(no willful loss of earnings that would preclude discriminatee from receiving backpay where discriminatee's leaving interim job was not with intent of having idleness subsidized by E but because of dispute over pay increase and concern about handling hazardous substances, and where other more acceptable positions available and accepted that had same, or greater, backpay mitigating features than interim job from which Ee quit)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(no willful loss of earnings where instrument technician quit similarly named interim job to unsuccessfull try construction work with his father because interim job was cross craft job involving instrumentation and electrical work and he was concered over hazard of working with high voltage which was not involved in job with Respondent, nor was decision to enter construction work unreasonable since discriminatee guaranteed salary and possibility of share of profits, and subsequent decline of residential construction did not evidence intention to avoid interim earnings)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(no willful loss of earnings where discriminatee quit interim employment because he was required to work graveyard shift not unreasonable since sufficiently more onerous than job he had occupied at Respondent's inasmuch as he was not required to work graveyard shift at Respondent's; discriminatee's duty to mitigate damages limited to duty to seek and remain on interim job which was substantially comparable to one he occupied before unlawful discharge)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(no willful loss of earnings where discriminatee laid off from interim employment through no fault of his own)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(discriminatee's quitting interim job for self employment not willful loss of earnings where discriminatee left job because of chemical vapors which were not associated with job at Respondent's; further, after discriminatee determined that self-employment was not profitable, he promptly sought other employment)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(Respondent's contention backpay tolled since discriminatee who had been working as *traveller* in construction industry voluntarily left job, rejected, where U permissibly requested that travellers leave job in order to make room for local workers)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(no willful loss of earnings where discriminatee who had been working on interim jobs away from his home and family returned to his family for brief period rather than take another job in distant state)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(E's contention discriminatee not entitled to backpay where he quit interim job at which he was making higher hourly wage than at E and moving to California; rejected, since E failed in its burden to show that discriminatee's overall earnings (including overtime) at interim employment would have been at least equal to those he would have received at E; therefore, discriminatee did not willfully avoid offsetting interim earnings by quitting interim job. Moving to California didn't reflect willful failure to seek comparable interim employment, because California is area with comparable employment opportunities)

Medline Industries, Inc. 261 NLRB No. 182
(willful loss of earnings is evidenced when claimant exhibits a propensity to quit jobs for myriad of reasons)

Mid-America Machinery Company 258 NLRB No. 044
(contention that discriminatee was discharged from interim employment for drunkeness, rejected where only proof offered was interim E's business records w/o testimony as to their truth)

S. E. Nichols of Ohio, Inc. 258 NLRB No. 002
(discriminatee who quit interim employment after being wrongly accused of theft from cash register quit for justifiable course and is not deprived of claim for backpay after that period of employment)

J. S. Alberici Construction Co., Inc. 249 NLRB No. 102
(Ee did not engage in willful loss of earnings during backpay period where he left interim employment because he was not receiving benefit of having health, welfare, and pension contributions made to U funds and wanted to work where such would be done)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock 248 NLRB No. 075
(discriminatee not barred from further claims for backpay where he quit interim employment which involved long commute)

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-621-81
(discriminatee's quitting of interim employment while pregnant, on instructions of her physician, held not willful loss of earnings where employment with E differed from work performed during interim employment and discriminatee was able to perform work but not the latter)

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-621-81
(E's contention that discriminatee failed to make adequate search for interim employment on ground that she did not testify that she left interim employment for a *compelling and justifiable reason*, rejected; although discriminatee was called as E's witness she was not asked why she left interim employment, and thus E has not demonstrated that she quit such job or that, if she did, she did not have good reason for doing so)

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-621-81
(no willful loss of earnings existed where discriminatee quit her part-time interim job since it was reasonable to conclude that discriminatee would reject part-time work when she had been offered and expected to receive full-time employment, and E did not adduce evidence in support of its contention that had discriminatee remained part-time Ee she would have had time to continue seeking a more satisfactory job)

N.L.R.B. v. Hopcroft Art & Stained Glass Works, Inc. 692 F.2d 63 (C.A. 8, Nov. 5, 1982)
(backpay award was not reduced where Ee voluntarily quit interim employment because he was physically incapable of performing job due to injury received during said interim employment; but backpay was reduced where Ee voluntarily quit other interim employment due to personal problems with E's manager)

4433-4233-1500 Failure to work full time at interim employment

Flite Chief, Inc.; et al. 258 NLRB No. 148
(backpay of discriminatee who voluntarily chose to work 32-hour instead of 40-hour week for family reasons, reduced accordingly but offset by number of hours she occasionally worked over 32 hours per week)

Flite Chief, Inc.; et al. 258 NLRB No. 148
(where discriminatee voluntarily chose to work 32-hour instead of 40-hour week her backpay tips reduced by number of days she willfully reduced her interim work)

4433-4233-1600 Acceptance of lower paying job

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(discriminatee who accepted jobs that paid less than job from which unlawfully discharged entitled to difference between what he earned in interim employment and what Respondent would have paid him, notwithstanding contention discriminatee never sought comparable employment, absent evidence better paying jobs available which discriminatee either avoided or turned down)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(no willful loss of earnings where discriminatee turned down jobs because of low pay, entailed work out of his craft or involved revolving on night shifts)

Great Plains Beef Company 255 NLRB No. 185
(no willful loss of earnings where discriminatee who had been employed in meat packing plant accepted job at hourly rate less than that paid in unionized meat packing plants in area absent evidence such jobs were available and where pay differential offset by commuting cost; further, it is often matter of necessity for discriminatees to accept jobs paying less than former wage and no requirement that he hold out until appearance of substantially equivalent employment)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock 248 NLRB No. 075
(fact discriminatee who was ULP striker was fully employed during strike does not bar backpay where his earnings were substantially lower than he was making at E and he was not obligated to search for better employment nor does fact accepted interim, employment indicate he was no longer interested in employment with E)

Pacific Coast Utilities Service, Inc. JD-(SF)-272-81
(no willful loss of earnings where during 5 month period discriminatee registered with U hiring hall and state unemployment office, read want ads and applied for several jobs, notwithstanding at beginning of period occupied with claim against his former E, indicated not willing to take any job at any pay, and limited search to home county; nor did discriminatee jeopardize his status as job seeker by his effort to change from jainter to B-lumper since both unskilled occupations)

N.L.R.B. v. Tama Meat Packing Corp. 634 F.2d 1071 (C.A. 8, 1980)
(backpay claimant made good faith effort to mitigate damages where, during 2-day suspension even before he was unlawfully terminated, he sought aid of two state employment agencies and obtained new job same day he was terminated; E's contention that claimant's failure to apply at plant giving higher rate of pay than new job was paying was claimant's dislike for type of work involved, rejected; claimant, after expeditiously finding new employment, had no duty to apply for another type of position)

Alfred M. Lewis, Inc. v. N.L.R.B. 681 F.2d 1154 (C.A. 9, July 1982)
(job offered discriminatee not *equivalent* employment where it required acceptance of 60 percent pay cut w/i 3 months after Ee's unlawful discharge; indeed, acceptance of such a drastic pay cut so soon after discharge might subject Ee to reduction in back pay on ground that he had willfully incurred a loss)

4433-4233-1800 Registration with USES or state employment office

Laredo Packing Company 264 NLRB No. 037
(E's backpay liability tolled where discriminatee did not make diligent effort to find employment notwithstanding fact he registered with state employment commission)

3 States Trucking, Inc., and Its Successor, Southern Illinois Minerals Corporation 252 NLRB No. 153
(Ee who attends trade school classes but registers with state unemployment services and continues job search not rendered unavailable for work by virtue of school attendance)

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-431-81
(E's contention that discriminatee failed to make adequate search for interim employment on ground she failed to register with employment agencies, rejected; law imposes no positive obligation on discriminatee so to register, although it is a relevant factor in determining reasonableness of effort in seeking employment)

4433-4233-2700 Search for jobs out of town

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(E's contention discriminatee not entitled to backpay where he quit interim job at which he was making higher hourly wage than at E and moving to California; rejected, since E failed in its burden to show that discriminatee's overall earnings (including overtime) at interim employment would have been at least equal to those he would have received at E; therefore, discriminatee did not willfully avoid offsetting interim earnings by quitting interim job. Moving to California didn't reflect willful failure to seek comparable interim employment, because California is area with comparable employment opportunities)

4433-4233-3100 Acceptance of job outside local job market

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(no willful loss of earnings where discriminatee who had been working on interim jobs away from his home and family returned to his family for brief period rather than take another job in distant state)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(willful loss of earnings where discriminatee who worked as laborer and construction worker moved to cold climate where season for construction work shorter, notwithstanding move was motivated by poor health of mother who was resident of area, since this motivation irrelevant in regard to backpay computation)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(E's contention discriminatee not entitled to backpay where he quit interim job at which he was making higher hourly wage than at E and moving to California; rejected, since E failed in its burden to show that discriminatee's overall earnings (including overtime) at interim employment would have been at least equal to those he would have received at E; therefore, discriminatee did not willfully avoid offsetting interim earnings by quitting interim job. Moving to California didn't reflect willful failure to seek comparable interim employment, because California is area with comparable employment opportunities)

Cardinal Heating and Cooling, Inc. JD-215-81
(discriminatee who limited his search for interim employment to local area because he had transportation problems did not incurr willfull loss of employment)

4433-4233-4000 Preparing for, and attending, Board proceeding

Iowa Beef Processors, Inc. 255 NLRB No. 177
(Ee not entitled to backpay compensation for time spent at Bd hearings)

4433-4233-4500 Removal from labor market

Mid-America Machinery Company 258 NLRB No. 044
(Ee not removed from job market by attendance at morning and evening program of instruction where he sought employment during that period and would have taken it if offered)

Sargent Electric Company 255 NLRB No. 018
(no willful loss of earnings during period when Ee attended bible college in another city since it could not be determined that he had withdrawn from labor market as he was devoting only few evening hours for college studies while otherwise working 8-hour day, and there were no indications that he had permanently abandoned his work for full-time studies)

Top Manufacturing Company, Inc. 254 NLRB No. 124
(no willful removal from labor market where ULP striker waited 3 weeks at start of backpay period to see whether his promised job would materialize, especially where, as here, he checked to make sure that it was realistic for him to wait for promised employment)

3 States Trucking, Inc., and Its Successor, Southern Illinois Minerals Corporation 252 NLRB No. 153
(Ee who attends trade school classes but registers with state unemployment services and continues job search not rendered unavailable for work by virtue of school attendance)

Cardinal Heating and Cooling, Inc. JD-215-81
(discriminatee considered to have removed himself from labor market for 2-week period during which he helped his family move)

N.L.R.B. v. Hopcroft Art & Stained Glass Works, Inc. 692 F.2d 63 (C.A. 8, Nov. 5, 1982)
(notwithstanding E's argument that discharged Ee failed to remain in the labor market, ct found there was substantial evidence on record as a whole to support ALJ's finding that dischargee's backpay should not be reduced for that reason)

4433-4233-4525 Leaving geographical area of former employment

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(willful loss of earnings since discriminatee by going abroad for long period to country where he well knew wage structure was lower than U.S. took himself out of comparable labor market and went into form of retirement)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(willful loss of earnings where discriminatee who worked as laborer and construction worker moved to cold climate where season for construction work shorter, notwithstanding move was motivated by poor health of mother who was resident of area, since this motivation irrelevant in regard to backpay computation)

4433-4233-4525—Cont.

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127

(E's contention discriminatee not entitled to backpay where he quit interim job at which he was making higher hourly wage than at E and moving to California; rejected, since E failed in its burden to show that discriminatee's overall earnings (including overtime) at interim employment would have been at least equal to those he would have received at E; therefore, discriminatee did not willfully avoid offsetting interim earnings by quitting interim job. Moving to California didn't reflect willful failure to seek comparable interim employment, because California is area with comparable employment opportunities)

M Restaurants, Incorporated d/b/a The Mandarin v. N.L.R.B. 621 F.2d 336 (C.A. 9, 1980)

(unlawfully discharged Ee who was unable to find work for 18 months and then left country for 1 year period during which time he earned minimal salary found not to have voluntarily left labor market; *discharged Ee is not confined to the geographical area of former employment; he or she remains in the labor market by seeking work in any area with comparable employment opportunities*)

4433-4233-4833 Pregnancy

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-421-81

(discriminatee held unavailable for interim employment during backpay period for a period of 5 months due to pregnancy, where E adduced no evidence to support its claim that Ees who were unable to work due to pregnancy or other physical disability were routinely terminated rather than put on temporary leave of absence)

4433-4233-4850 Illness and/or bereavement

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127

(discriminatee who had mononucleosis during backpay period not entitled to amount he would have been paid under E's paid sick leave program, absent evidence discriminatee, met requirement of E's sick leave program that he be under care of physician and in view of lack of full litigation of facts due to absence of notice to E that GC intended to seek disability pay for discriminatee)

Michael M. Schaefer, an individual proprietor 261 NLRB No. 042

(E failed to establish discriminatee had not secured work because of drinking problem)

The A.S. Abell Company JD-221-81

(consideration given to pattern of illness and disability suffered by Ee during backpay period when Ee, although feeling unwell, continued mostly unsuccessfully to seek interim employment by various means, including participation in job assistance programs, sought employment in other states, was confined to bed for period of time due to auto accident and, finally, after medical examination he was informed he was medically disabled from work)

The A.S. Abell Company JD-221-81

(E's claim that Ee was disabled from work during portion of applicable quarters disallowed where Ee, although admitting he did not feel well, insisted that if he could have found work he was seeking he could have worked; it was E's burden to show Ee was removed from job market during periods in question but did not do so, and penalty herein would be based entirely on speculation; moreover, E's claim Ee should be accorded only disability pay one entire quarter rejected, since E failed to explain that Ee was so disabled)

The A.S. Abell Company JD-221-81

(fact that Ee, who E claimed was disabled during entire quarter and was too ill to participate in job assistance program that Ee had applied for, was rejected after being hired by interim E, who had higher medical standard than Ee could meet, held not in an of itself to disqualify Ee as E claimed)

4433-4233-4880 On strike or refusal to cross picket line

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127

(discriminatee who began working for Respondent during strike at his former E and returned to former E only after strike had been settled subsequent to his unlawful discharge entitled to backpay for period during which he honored picket line at former E, notwithstanding E's contention discriminatee was never bona fide Ee and honoring picket line constituted willful loss of earnings, since duty to mitigate damages does not encompass strikebreaking and Respondent did not establish discriminatee would have returned to former E after strike settlement had he not been unlawfully discharged)

4433-4233-5400 Rejection of invalid reinstatement offer

Laredo Packing Company 264 NLRB No. 037

(offers of reinstatement to unlawfully discharged drivers to alternate non-driving positions does not toll E's backpay obligation; Ees who refused such interim work were under no obligation to accept offer of employment substantially unlike that of truck driving)

4433-4233-6700 Reinstated claimant's withdrawal from higher paying position

N.L.R.B. v. Texas Meat Packing Corp. 634 F.2d 1071 (C.A. 8, 1980)

(backpay claimant who, shortly after reinstatement at higher paying position to which he was entitled, withdrew therefrom and returned to his old job at lower rate of pay, held not entitled to have backpay computed on basis of higher paying position; claimant's voluntary withdrawal constituted independent intervening cause which was unrelated to E's discriminatory acts, and no evidence exists that claimant would have accepted and remained in higher paying position at time E discriminated against him; any other conclusion would compensate claimant beyond foreseeable wage loss he suffered)

4433-4233-7200 Accepting job involving shorter work week

Medline Industries, Inc. 261 NLRB No. 182

(unlawfully discharged Ee not entitled to backpay in particular quarter because difference between interim earnings and gross backpay is attributable to fact that he incurred willful loss of earnings by quitting full-time job and working part time; had he worked full time for the entire quarter his earnings would probably have exceeded his gross backpay)

Association of Apartment Owners of The Whaler on Kaanapali Beach 255 NLRB No. 010

(where E was unlawfully motivated in reducing Ee's hours but Ee had requested some reduction in hours, backpay awarded for amount of reduction determined to be involuntary)

4433-4233-7600 Accepting less than regular interim employment salary

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127

(no willful loss of earnings nor denial of backpay results therefrom where discriminatee who was pipefitter took sales job in department store at less pay, since discriminatee did not leave his trade by choice but was laid off from interim job as pipefitter, and absent evidence pipefitting jobs available; further, layoff of pipefitters at interim E was not unusual)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127

(willful loss of earnings where discriminatee voluntarily left interim job comparable to that held with Respondent to take lesser paying job that he enjoyed more with musical group since Respondnet is not obliged to subsidize such ventures)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock 248 NLRB No. 078

(fact discriminatee who was ULP striker was fully employed during strike does not bar backpay where his earnings were substantially lower than he was making at E and he was not obligated to search for better employment nor does fact accepted interim employment indicate he was no longer interested in employment with E)

Cardinal Heating and Cooling, Inc. JD-215-81

(discriminatee who searched for interim employment for 10 weeks w/o success was w/i reasonable time allowed before penalty would attach for not taking lower level employment)

4433-4233-7900 Accepting dissimilar job

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127

(no willful loss of earnings nor denial of backpay results therefrom where discriminatee who was pipefitter took sales job in department store at less pay, since discriminatee did not leave his trade by choice but was laid off from interim job as pipefitter, and absent evidence pipefitting jobs available; further, layoff of pipefitters at interim E was not unusual)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127

(no willful loss of earnings where instrument technician quit similarly named interim job to unsuccessfull try construction work with his father because interim job was cross craft job involving instrumentation and electrical work and he was concered over hazard of working with high voltage which was not involved in job with Respondent, nor was decision to enter construction work unreasonable since discriminatee guaranteed salary and possibility of share of profits, and subsequent decline of residential construction did not evidence intention to avoid interim earnings)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127

(discriminatee who accepted jobs that paid less than job from which unlawfully discharged entitled to difference between what he earned in interim employment and what Respondent would have paid him, notwithstanding contention discriminatee never sought comparable employment, absent evidence better paying jobs available which discriminatee either avoided or turned down)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127

(no willful loss of earnings where discriminatee turned down jobs because of low pay, entailed work out of his craft or involved revolving on night shifts)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127

(willful loss of earnings where discriminatee voluntarily left interim job comparable to that held with Respondent to take lesser paying job that he enjoyed more with musical group since Respondnet is not obliged to subsidize such ventures)

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-421-81

(discriminatee need not accept interim employment on shift different from that she had worked prior to discharge by E)

4433-4233-7900—Cont.

Cardinal Heating and Cooling, Inc. **JD-215-81**
(discriminatee who searched for interim employment for 10 weeks w/o success was w/i reasonable time allowed before penalty would attach for not taking lower level employment)

4433-4233-8100 Failure to seek work after layoff or discharge from interim job

The A.S. Abell Company **JD-221-81**
(backpay claimant who was typesetter in E's employ and had obtained interim employment dispensing beer at tavern until he was laid off need not have thereafter *lowered his sights* and sought employment such as bartending, where claimant was willing to accept other employment besides typesetting, and his reluctance to seek further bartending jobs was not willful loss of earnings since claimant should not be required to seek employment which he rationally believes, as claimant did, may be physically hazardous due to affrays that often occur in such employment)

4433-4250 Severance payments

W. R. Grace & Co., Construction Products Division **247 NLRB No. 094**
(ALJ's proration of severance pay over weeks remaining in quarter after layoffs, and deduction of prorated amount from backpay liability, proper where record did not establish in what week of the quarter severance pay was normally paid)

4433-4267 Premiums for insurance or medical coverage which discriminatee would have paid absent discrimination

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **248 NLRB No. 075**
(out of pocket medical expenses incurred when E was not covered by insurance at his interim employment, less savings in cost of insurance, included; notwithstanding contention striker could have insured himself)

4433-4283 No deduction for periods when employee would not have worked for employer

Maine Forest, Inc., formerly known as Claude Carrier, Inc. **JD-(NY)-59-80**
(money discriminatees earned during mud season when E's logging operation was shut down and no backpay accrued, not deducted from backpay which accumulated while E was operating)

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers **614 F.2d 134 (C.A. 7) (1980)**
(backpay award not enforced and remanded to Bd for new hearing on whether reduction of back pay award was justified where Bd ignored uncontradicted evidence that its back pay formula was inapplicable in instant case; work of discriminatee was irregular and during slack periods newer Ees were laid off)

4433-4291 Adjustment for absenteeism

The A.S. Abell Company **JD-221-81**
(gross backpay of claimant computed on basis of percentage rate of absenteeism during years used as base period; disregarded were unusual and lengthy absences in years when claimant was out of work due to illness and to surgical operation; also disregarded was low percentage annual attendance figure when he worked only short periods of time between recovery from operation and his unlawful termination)

4433-5600 Interest

Fegazy Continental Corp. **260 NLRB No. 168**
(inasmuch as ct of appeals enforced Bd's backpay order providing for interest to be paid at 6 percent, Bd required that such rate be used in computing interest due on backpay)

W. R. Grace & Co., Construction Products Division **249 NLRB No. 094A**
(where Bd's D/O, as enforced by ct, does not include interest award, Bd, in exercise of its discretion and depending on circumstances, has awarded interest either from ALJ's supplemental decision adjudicating total net backpay obligation or from commencement of some earlier period; accordingly, upon reconsideration and finding no circumstances which warranted limiting award of interest to period following ALJ's supplemental decision, Bd found it appropriate to award interest on net backpay obligation from commencement of backpay period)

Clifford Cook, d/b/a Pinnacle Company and Pinnacle Roofing Co., Inc. **JD-(SF)-196-79**
(make payments, *w/o interest,* into trust fund)

4433-5601 Generally

Iron Workers Union, Local 378 (Judson Steel Corporation) **262 NLRB No. 086**
(in second supplemental decision, Bd ordered interest to be paid on backpay at rate of 6 percent as ordered in Bd's original decision rather than interest as computed by method set forth in *Florida Steel* and recommended by ALJ, since that method is not applicable in cases in which an earlier Bd order providing for different interest has been enforced by court of appeals, as here)

S. E. Nichols of Ohio, Inc. **259 NLRB No. 002**
(interest rate as set forth in *Florida Steel* applicable to backpay provided for ULP which occurred after date of decision, but backpay still owing discriminatee from violation which was found by Bd and enforced by ct prior to that decision, computed at prior lower rate)

Henry Cauthorne, an individual, t/a Cauthorne Trucking **256 NLRB No. 115**
(Bd did not provide for interest at fixed rate on fund payment due as part of its *make whole* remedy because provisions of Ee benefit fund agreements are variable and complex leaving such determination for compliance stage)

North Cambria Fuel Company, Inc. v. N.L.R.B. **645 F.2d 177 (C.A. 3, Apr 10, 1981)**
(ct rejected E's contentions that 12% interest rate on backpay was improper because it bore no relation to loss sustained by Ee who had not had use of his money, did not reflect cost of money to average consumer, and exceeded 6% legal rate of interest in state; interest rate imposed here was rationally related to Bd objective of discouraging Es from *borrowing* from Ees instead of paying backpay awards promptly; furthermore, legal interest rate in state has no bearing on what interest rate is appropriate to effectuate goal of federal labor legislation)

4433-5633 Computed at Internal Revenue service's 'adjusted prime rate'

Boston Cement Masons & Asphalt Layers Union Local No. 534 (Duron Maguire Eastern Corp.) **265 NLRB No. 158**
(ALJ properly applied *adjusted prime rate* of IRS as interest rate herein as prescribed in *Florida Steel* since, although Bd refused to apply *Florida Steel* in *Sargent Electric* case in which earlier Bd order providing for different interest rate had been enforced by ct as in instant case, in *Sargent Electric* Bd's order issued prior to *Florida Steel* while here Bd's order issued after that decision; and Bd's failure to follow *Florida Steel* in its second supplemental decision in instant proceeding was inadvertent error)

Olympic Medical Corporation **250 NLRB No. 011**
(use of automatically adjusting *adjusted prime rate* for determining interest rate as established in *Florida Steel Corp.,* 231 NLRB 651, reaffirmed over fixed rate formula; automatically adjusting rate is preferable because of its link with interest rates of private industry and therefor provides a fairer method for setting interest rate on backpay and other monetary remedies)

U. S. Postal Service **JD-(SF)-90-81**
(GC's request that 9 percent interest be paid on any backpay due, denied, since Bd has not approved of such rate)

4433-7000 Woolworth formula

Melones Contractors, A Joint Venture **JD-(SF)-281-80**
(Woolworth formula used notwithstanding E's contention that, because during quarters 1 and 4 of certain year Ee earned more money than he would have earned had he worked at E, Ee's excess earnings must be carried forward to quarters 1 and 2 of the following year so as to avoid windfall for Ee and improper punitive measure as to E)

4433-7001 Generally

Robert E. Cashdollar, Sr., d/b/a Nelson Metal Fabricating **259 NLRB No. 141**
(use of *F. W. Woolworth Company,* 90 NLRB 289 (1950), quarterly backpay computation formula approved in instant proceeding and Ees awarded appropriate amount of backpay notwithstanding that over backpay period Ees earned more at other jobs than they would have earned at E and when offered reinstatement Ees refused; purpose of quarterly balancing is to discourage delay of offer of reinstatement; such offer tolls backpay liability)

4433-7037 Expenses in search from interim work allocable to quarter in which incurred

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(Respondent's defense that since discriminatee's earnings overall during backpay period exceeded what he would have earned at Respondent if not discriminatorily discharged, then Respondent should not be liable for special claims by purchase of medical insurance or mileage in working for interim E, rejected; backpay is computed on quarterly basis (*Woolworth* formular); therefore special claims can only be treated as offset to interim earnings in quarter incurred rather than backpay period as a whole)

4433-9200 Limitation on backpay

McMillian Cartage, Inc. **257 NLRB No. 018**
(limited backpay ordered in refusal to bargain case where E ceased operations, since such order is appropriate remedy even where such violation was unaccompanied by discriminatory shutdown of operations)

4450 BACKPAY PERIOD

Karl Kallmann, d/b/a Love's Barbeque Restaurant, No. 62 v. N.L.R.B. **640 F.2d 1094 (C.A. 9, 1981)**
(where successor E had unilaterally reduced wages w/o consulting U, discriminatees were not entitled to have backpay set at prior wage rate for entire

4450—Cont.

period of backpay but only for that portion of backpay period which represented reasonable time for bargaining, after which E would have been free to reduce wage rate)

4450-0100 Generally

Marlene Industries Corporation; et al. 255 NLRB No. 192
(in absence of offer of reinstatement to discharged striker, E remains free to avoid or reduce its backpay liability by establishing that Ee would not have accepted offer if made, or by any other evidence showing incurrence of willful loss of earnings)

Eastgate I.G.A. Foodliner 253 NLRB No. 106
(Bd resolves uncertainties in record regarding deductions from gross backpay figure against E; backpay claimant rather than wrongdoer receives benefit of any doubt regarding such deductions)

4450-2500 Beginning of period

4450-2501 Generally

Hudson Chemical Company 258 NLRB No. 009
(E's *backpay* obligation governed by remedy given by Bd majority in *Drug Package Company, Inc.* 228 NLRB 108 (1977) and not by views of majority of Bd panel deciding instant case)

4450-2502 Date of Board order

Hanes Corporation 260 NLRB No. 077
(where E violated Act by refusing to bargain over discretionary aspects of its non violative unilateral decision to layoff Ees, make-whole remedy is inappropriate as layoffs were inevitable and no basis on which to predicate a finding that any identifiable Ee suffered loss of pay; moreover, situation is analogous to refusal to bargain over effects of plant closure where there was no duty to bargain over decision to close, backpay remedy runs only from time of Bd decision; here, cause of loss of pay, the layoff, has long since ended so consequently, no loss of pay can be suffered after this decision)

4450-2503 10(b) period cut off

M & G Convoy, Inc. 260 NLRB No. 145
(where E had policy of refusing to transfer Ees to new facility for unlawful reasons, remedial order was effective to start of 10(b) period rather than from date E closed facility)

4450-2503-5800 Effect of Board's prior order

Pease Company 251 NLRB No. 080
(where issue of backpay for ULP strikers was, in substance, question concerning compliance with Bd's order in prior case against E, Bd held limitations of Sec. 10(b), applicable to charges in present proceeding, inapplicable to strikers' backpay award, beginning of which is controlled by Bd's prior order; accordingly, strikers are entitled to backpay, not from 6 months prior to filing of charge in instant proceeding, but beginning 5 days after E's receipt of U's unconditional reinstatement application to such time as they are offered reinstatement)

4450-2507 Date of discriminatory action

Serendippity-Un-Ltd and Tiperrr, Inc. 263 NLRB No. 100
(Ees unlawfully discharged while engaged in lawful economic strike entitled to reinstatement and backpay from date of discharge until date they are offered reinstatement, even though Ees did not offer unconditionally to return or request reinstatement, since it is E who has acted unlawfully in discharging them, and burden is on E to undo his ULPs by offering immediate reinstatement and reimbursement for all losses attributable to E's unlawful action until he offers full and lawful reinstatement)

Cooperativa De Credito Y Ahorro Vegabajena 261 NLRB No. 161

White Coffee Corporation 261 NLRB No. 149
(backpay period to begin at end of E's vacation when Ee learned that E would not permit him to return to work)

Tamara Foods, Inc. 258 NLRB No. 180
(Ees unlawfully discharged while lawfully striking entitled to backpay from date of discharge until date offered reinstatement and not required to request reinstatement)

Whitehall Packing Company, Inc. and W.P.C., Ltd. 257 NLRB No. 043
(where Ees were refused employment at new operation for unlawful reasons backpay commences from date new operation began and ends with date E lawfully shutdown operation as they would have been lawfully terminated on shutdown date)

Pacific Intercom Co. 255 NLRB No. 061
(where E which had unlawfully dealt directly with Ees during term of bargaining agreement, paying less than contract wage and failing to make payments to pension fund, and failed to use hiring hall as required by contract, subsequently signed and then repudiated another in series of agreements, in order to effectuate policies of Act make whole remedy extended to time of beginning of ULPs during prior contract rather than beginning with latest contract which was repudiated)

Brockway Motor Trucks, Division of Mack Trucks, Inc. 251 NLRB No. 083
(where E unlawfully failed to bargain with U over partial terminations of operations and later closed all operations, backpay period extends from time Ees terminated notwithstanding on strike at that time to date of termination of all operations)

Newspaper Printing Corporation 250 NLRB No. 122
(relief granted to Ees who suffered monetary losses by reason of E's unlawful unilateral action limited to that period of time from effective date of changes (unilateral) until agreement on those changes by parties)

Trojan Transportation, Inc. 249 NLRB No. 084
(period for computation of backpay and seniority commenced from date of unlawful discharges, notwithstanding E's contention that period should have commenced from date discriminatees' replacements were added to work force, since discriminatees were not recalled but were unlawfully discharged; however, E permitted to attempt to mitigate its backpay liability by showing in compliance proceedings that discriminatees would have been laid off for economic reasons at some time after date of discharges, had Ees not been unlawfully discharged)

Anderson Sand & Gravel Company JD-485-80
(backpay runs from date of ULP strikers' discharges rather than from their unconditional offer to return to work, since Bd no longer requires such offer to start running of backpay period)

Associated Truck Lines, Inc. v. N.L.R.B. 664 F.2d 884(T) (C.A. 6, Jan 9, 1981)
(backpay ordered from time dischargee's reinstatement was unlawfully conditioned on resignation of U steward rather than date of his termination)

N.L.R.B. v. Northeast Oklahoma City Manufacturing Company 631 F.2d 669 (C.A. 10, Sept. 1980)
(Bd properly imposed backpay liability from date of strikers' discharge, rather than 5 days after strikers made unconditional offer to return to work, where strike was immediately abandoned after Ees were discharged and they made request for reinstatement through U; moreover, any request for reinstatement would have been futile as indicated by E's response to one Ee's request to come back to work, and E's refusal to return U steward's telephone calls for negotiations on getting Ees back to work)

4450-2507-2500 Unlawful discharge of striker

Inland Steel Company 264 NLRB No. 015
(sympathy striker discharged for refusal to cross picket line due backpay from date of discharge until offered reinstatement rather than from date of termination of strike to date reinstatement offered)

Diversified Case Company, Inc. 263 NLRB No. 119
(backpay awarded to discriminatorily discharged strikers to run from date of discharge, not date strike began)

Childers Manufacturing Company, Inc. JD-(SF)-11-82
(economic strikers unlawfully discharged because of their strike activity held entitled to offers of reinstatement and backpay from date of their unlawful discharge)

Marlene Industries Corporation; et al. 255 NLRB No. 192
(unlawfully discharged ULP strikers entitled to backpay from dates of unlawful discharges to date on which they receive from Es valid offers of reinstatement or to date on which they were fully reinstated, whichever is earlier)

Scioto Coca-Cola Bottling Company 251 NLRB No. 188
(backpay begins from date of discharge of economic strikers rather than from date of written notification of discharge or from strikers' offer to return to work since presumption offer to return to work at time of discharge would have been futile)

Carbonex Coal Company 248 NLRB No. 107

C & W Mining Co., Inc. and/or C. & W Hauling Co., Inc. 248 NLRB No. 039

K-P Graphics, Inc. d/b/a Impression Northwest JD-(SF)-187-80
(unlawfully discharged strikers should receive back pay from dates their discharge letters were issued to date upon which they were reinstated)

Garrett Railroad Car & Equipment, Inc. v. N.L.R.B. 683 F.2d 731 (C.A. 3, June 1982)
(where E unlawfully discharged striker and did not show that Ee was unwilling to return to work or that he would have refused offer of reinstatement as required by *Abilities and Goodwill* 241 NLRB 27 which shifted burden of proof to wrongdoer, backpay was awarded to date of ULP discharge rather than end of strike)

N.L.R.B. v. Mars Sales & Equipment Co. 626 F.2d 567 (C.A. 7, 1980)
(ct cutoff backpay liability of E to economic striker who was unlawfully discharged from time Ee resigned but allowed backpay from time of discharge until date of resignation as Bd exceeded its authority to remedy violations)

4450-2507-5000 Mitigatory circumstances

Wonder Markets, Inc. 249 NLRB No. 042
(in light of Bd finding that E's offer to Ee of another job was not substantially equivalent to his former position, discriminatee cannot be put under obligation to accept such job to toll or mitigate lost wages and thereby reduce E's backpay obligation)

4450-2507-7500 Date of impact of action

Deberardi Brothers, Inc. JD-(SF)-286-82
(pay Ee, who was lawfully discharged, increase (in wages unlawfully denied) that he would have received from date request was denied until date of his (lawful) discharge)

4450-2514 Date work became available for discriminatee

Waveline, Inc. 258 NLRB No. 087
(Bd ordered backpay remedy for economic striker who was unlawfully refused reinstatement where Bd rejected E's asserted business reasons for refusing to reinstate striker, and where E's unexplained refusal to provide subpenaed information w/i E's control concerning E's poststrike hiring of new Ees warranted adverse inference that a position became available after strike that discriminatee could have filled)

4450-2514-5000 Seasonal work

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers 614 F.2d 134 (C.A. 7) (1980)
(E may, w/o incurring back pay liability, refrain from reinstating discriminatorily discharged Ee during period when employment would not have been available for him even absent discrimination)

4450-2528 Date vacancies for which discriminatees were qualified were filled

American Olean Tile company, Inc. 265 NLRB No. 206
(make whole remedy ordered where E transferred Ees who had abaondoned strike or made direct appeal to E after strike ended and had been reinstated to positions not substantially equivalent to pre-strike positions, but when positions substantially equivalent became vacant they were given preference to these positons over more.senior economic strikers on whose behalf U had made unconditional offer to return to work. Order to run from time less senior Ees transferred to substantially equivalent positions until senior Ees receive valid offer of reinstatement)

4450-2542 Five days after ULP strikers' unconditional application for reinstatement

Parkview Nursing Center II Corp. 260 NLRB No. 037
(E's backpay obligation with regard to ULP strikers unlawfully refused reinstatement held to have begun as of date strikers made unconditional offer to return to work)

International Business Systems, Inc. 258 NLRB No. 017
(where E rejected strikers unconditional offer to return to work back pay period begins when strikers offered to return to work rather than 5 days after strikers offer to return to work)

Hudson Chemical Company 258 NLRB No. 009
(E's *backpay* obligation governed by remedy given by Bd majority in *Drug Package Company, Inc.* 228 NLRB 108 (1977) and not by views of majority of Bd panel deciding instant case)

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern 254 NLRB No. 045
(if E has already rejected, or hereafter rejects, unduly delays, or attaches unlawful conditions to its offer of reinstatement, 5-day period serves no useful purpose and backpay will commence as of unconditional offer to return to work)

M. A. Harrison Manufacturing Company, Inc. 253 NLRB No. 097

Interstate Paper Supply Company, Inc. 251 NLRB NO. 109
(backpay liability commences as of date of unconditional offer to return to work where E rejects, unduly delays, or ignores any unconditional offer to return to work, or attaches unlawful conditions to its offer, since customary 5 day waiting period for liability to attach would serve no useful purpose in regard to accommodating Ees' interest in returning to work as quickly as possible and E's need to effectuate such return in orderly manner)

Appalachian Power Company John E. Amos Plant 250 NLRB No. 038
(five day delay in returning either ULP or economic strikers to work after E had accepted their unconditional offer to return to work held not violative in view of fact that all strikers, in instant case, were duly returned to work)

Safeway Trails, Inc. v. N.L.R.B. 641 F.2d 930 (C.A.D.C. Sept 18, 1981)
(E's contention that backpay should not run from 5 days after unconditional offer to return to work but be tolled until violation was found at second Bd hearing–after remand from ct–rejected, absent involvement of new policy, *special factor* making award unfair, or reliance on pending decision, since burden resulting from illegal action must fall on wrongdoer)

N.L.R.B. v. Northeast Oklahoma City Manufacturing Company 631 F.2d 669 (C.A. 10, Sept. 1980)
(Bd properly imposed backpay liability from date of strikers' discharge, rather than 5 days after strikers made unconditional offer to return to work, where strike was immediately abandoned after Ees were discharged and they made request for reinstatement through U; moreover, any request for reinstatement would have been futile as indicated by E's response to one Ee's request to come back to work, and E's refusal to return U steward's telephone calls for negotiations on getting Ees back to work)

4450-2546 Date of strikers' unconditional offer to return to work

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) 259 NLRB No. 037
(backpay, in instant case, for reinstated ULP strikers commenced from their *first offer* to return to work rather than 5 days after they requested reinstatement, since E ignored strikers' unconditional offer to return to work; 5 day period served no useful purpose in providing reasonable accomodation between interests of Ees in returning to work quickly as possible and E's need to effectuate that return in orderly manner)

International Business Systems, Inc. 258 NLRB No. 017
(where E rejected strikers unconditional offer to return to work back pay period begins when strikers offered to return to work rather than 5 days after strikers offer to return to work)

Shaw Industries, Inc., a Division of Crystal Springs Shirt Corp.; et al. 255 NLRB No. 117

4450-2556 Date discriminatee was physically able to return to work

John J. Canova d/b/a Canova Moving & Storage Co. 261 NLRB No. 092
(doctor's testimony, based on Ee's medical record, that he would not have permitted Ee to return to work after injury on job, held not to extinguish E's backpay liability, since Ee did return to work and remained employed until his unlawful discharge, and it is speculative as to how much time might have passed before Ee's deteriorating physical condition would have caused him to cease working for E; consequently, backpay to run until date Ee was medically declared unfit for former employment)

4450-2570 Date of discriminatory refusal to recall after nondiscriminatory layoff or discharge

Talbert Manufacturing, Inc. 250 NLRB No. 103
(backpay to run from date striker who was on sick leave at time strike began should have been reinstated but for E's unlawful refusal to accept his offer to return to work)

4450-2577 Date discriminatee requests reinstatement after abandoning strike

Mid-America Machinery Company 258 NLRB No. 044
(backpay period found to have begun on day ULP strikers note unconditionally requesting reinstatement was left for and read by E)

Routh Packing Company, Inc. 247 NLRB No. 053
(backpay awarded all strikers not permanently replaced as soon after their unconditional offer to return to work as their individual positions were open)

4450-5000 End of period

4450-5001 Generally

The Leavenworth Times, A Division of Thomson Newspapers, Inc. JD-(SF)-308-79
(where Ees lost money each week for three years following unlawful failure to provide merit increase, E's obligation to backpay not cut off by subsequent bargaining agreement between E and U, notwithstanding that the agreement provided salary for Ees; backpay case was excluded from the collective-bargaining)

Graves Trucking, Inc. v. N.L.R.B. 692 F.2d 470 (C.A. 7, Nov. 1982)
(where Bd ordered make-whole remedy for U steward who was physically assaulted by supervisor while engaged in protected concerted activity, ct found that backpay award, although itself effectuating purposes of Act, was an abuse of discretion where it was left open-ended until after Ee's injury *no longer precludes him from performing his former or a substantially equivalent job*, and Bd admitted limited expertise in matters involving personal injury where tort remedies are available; ct held that two-year period would provide substantial remedy even if steward's disability lasted longer)

4450-5006 Valid offer of reinstatement

Mid-County Transit Mix, Inc. 264 NLRB No. 197
(letter from E to striker, inquiring if striker was still interested in his job not valid offer of reinstatement which would terminate backpay obligation)

4450-5006—Cont.

Inland Steel Company **264 NLRB No. 018**
(sympathy striker discharged for refusal to cross picket line due backpay from date of discharge until offered reinstatement rather than from date of termination of strike to date reinstatement offered)

Mid-America Machinery Company **238 NLRB No. 044**
(backpay period found to have ended date discriminatee received offer of reinstatement, rather than date of E's letter making offer, since E delayed receipt of letter by sending it through the Bd and as party violating the Act should bear the consequences of any ambiguity)

Burnup & Sims, Inc. **256 NLRB No. 142**
(offer of reinstatement mailed to address on Ee's employment application, tax withholding form, and paycheck constituted good faith offer of reinstatement sufficient to toll E's backpay liability notwithstanding that street address on envelope was misnumbered, since Ee had received registered letter from E previously with misnumbered street address; mail carrier knew Ee and would probably put letter for Ee in right box; E's failure to verify Ee's address does not establish lack of good faith; no showing that alternative means for communicating with Ee were available)

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(unlawfully discharged ULP strikers entitled to backpay from dates of unlawful discharges to date on which they receive from Es valid offers of reinstatement or to date on which they were fully reinstated, whichever is earlier)

Reeves Rubber, Inc. **252 NLRB No. 026**
(backpay liability not tolled, since E's one-time telephone calls to Ee w/o reaching him did not constitute bona-fide effort to recall, especially where E failed to contact person whose name Ee had given as a reference, send Ee a letter or contact his U)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(offer of reinstatement communicated to discriminatee's roommate not valid offer)

General Meats, Inc. **247 NLRB No. 153**
(where Bd and ct ordered reinstatement of 3 discriminatees and Ees were rehired as helpers rather than drivers and subsequently quit, Ees found constructively discharged and additional backpay ordered from cutoff date of original backpay specification)

Marriott In-Flight Services, A Division of Marriott Corporation **JD-157-81**
(rejection of reinstatement offer did not toll backpay period where discriminatee was offered reinstatement, or backpay in the alternative; offer was therefore conditional and was at least ambiguous in regard to whether or not discriminatee was being offered reinstatement on same terms and conditions under which he had been previously employed)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ct held proper Bd order of reinstatement and back pay from date of unlawful discharge for Ee until offered reinstatement by E as consistent with remedial policies of Act)

4450-5006-2500 Offer of reinstatement to some discriminatees tolls backpay as to those offered reinstatement

A & A Ornamental Iron, Inc. **259 NLRB No. 138**
(backpay of job applicant unlawfully refused employment tolled as of date E subsequently wrote letter to applicant offering him employment, rather than later date when Ee wrote E refusing its job offer)

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**
(offer of reinstatement to economic striker did not toll his backpay or E's continuing obligation to reinstate him where, Ee made specific request for additional time in which to consider offer notwithstanding E's offer made shortly after U's unconditional offer to return to work, E's offer did not require Ee to start work by specified date and Ee told Ee he was considering another position)

4450-5006-4000 On receipt in foreign country of offer of reinstatement

N.L.R.B. v. Sure-Tan Inc., & Surak Leather Co. **672 F.2d 592 (C.A. 7, Feb. 1982)**
(offers of reinstatement to constructively discharged illegal aliens written in English and mailed to last known Mexico address were inadequate because delivery was not verified and Ees' native language was Spanish; new offers will terminate backpay accrual)

4450-5006-5000 Offer of reinstatement to some ULP strikers tolls backpay as to those offered reinstatement

Lucy's, Inc. **JD-832-79**

4450-5006-7500 Offer must be kept open for reasonable period of time

N.L.R.B. v. Consolidated Dress Carriers, Inc., et al. **693 F.2d 277 (C.A. 2, Nov. 1982)**
(ct remanded case on circumstances surrounding alleged offer of reinstatement in regard to understanding of Ees generally about mailgrams sent to economic strikers directing them to report for work the following day, and as to knowledge of particular Ees of practice, if any, of E of rehiring strikers who appeared later than date mentioned in alleged offer)

4450-5024 Last day for acceptance of offer

Seyforth Roofing Company of Alabama, Inc. **263 NLRB No. 048**
(backpay obligation tolled, not on date of E's letter offering reinstatement, but on last day on which Ees could reply thereto pursuant to letter's terms)

4450-5043 Date discriminatee obtains substantially equivalent employment elsewhere

Hillside Avenue Pharmacy, Inc. **265 NLRB No. 208**
(denial of reinstatement to Ee, while requiring E to provide Ee with backpay until he has obtained substantially equivalent employment elsewhere, appropriate, where E's denial of Ee's unemployment claim for no apparent reason, rather than actual discharge, provoked Ee's behavior in endangering E by proceeding with his car after E had intentionally placed himself in physical danger by bodily blocking Ee's car; remedy herein takes into account childish and unacceptable behavior of both parties, with particular consideration given to nature of provocation and reaction thereto; and neither party will shoulder entire blame for individual misconduct)

Brinkerhoff Signal Drilling Co. **264 NLRB No. 049**
(economic strikers who were unlawfully refused reinstatement ordered reimbursed for sum of money they would normally have earned from period of E's failure to reinstate to date on which they secured regular, substantially similar employment with another E or were reinstated)

Carruthers Ready Mix, Inc. **262 NLRB No. 090**
(backpay period did not end on day that economic striker obtained new job, since E had burden of proving it was substantially equivalent job but presented no evidence on the issue; backpay period, which began when E had position for economic striker who had unconditionally offered to return to work, ended when striker expressly refused to return to work)

International Business Systems, Inc. **258 NLRB No. 017**
(former striker who had secured equivalent employment elsewhere following E's refusal to reinstate entitled to offer of reinstatement and backpay where he never articulated unequivocal resolve not to accept reinstatement because of new employment)

Eastgate I.G.A. Foodliner **253 NLRB No. 106**

W. R. Grace & Co., Construction Products Division **247 NLRB No. 094**
(E's backpay liability under *Transmarine* remedy not affected by Ee's obtaining substantially equivalent work after U's failure to bargain in good faith had already terminated E's backpay liability)

4450-5045 Date discriminatee abandoned employment

Mid-County Transit Mix, Inc. **264 NLRB No. 107**
(striker had not abandoned interest in reinstatement where he had never informed E he was satisfied with venture he had started during strike and wished to remain in it)

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(E's contention discriminatee formed intent not to return to E's employ but remain at job he had obtained, rejected, notwithstanding discriminatee stated he now believed future brighter at interim job than with E, since at time of alleged abandonment of interest in reinstatement, E had not made offer of reinstatement nor had Bd ordered reinstatement; therefore, discriminatee's testimony as to his subjective intentions at the time therefore does not establish any conscious or knowing waiver of potential right to reinstatement)

Carruthers Ready Mix, Inc. **262 NLRB No. 090**
(backpay period did not end on day that economic striker obtained new job, since E had burden of proving it was substantially equivalent job but presented no evidence on the issue; backpay period, which began when E had position for economic striker who had unconditionally offered to return to work, ended when striker expressly refused to return to work)

International Business Systems, Inc. **258 NLRB No. 017**
(former striker who had secured equivalent employment elsewhere following E's refusal to reinstate entitled to offer of reinstatement and backpay where he never articulated unequivocal resolve not to accept reinstatement because of new employment)

Top Manufacturing Company, Inc. **254 NLRB No. 124**
(by virtue of ULP striker's resignation from employment with respondent E at end of strike, E's backpay obligation was tolled as of date of letter of resignation)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(resignation by ULP striker in order to accept other jobs during strike does not automatically eliminate striker as striking Ee absent unequivocal evidence of intent to permanently sever employment relationship; i.e., if new E required resignations to be submitted, such submission did not constitute unequivocal abandonment of employment)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(constructive discharge does not constitute willful loss of earnings)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(self-employment is not tantamount to withdrawal from job market)

4450-5048 Date of misconduct barring reinstatement

Colorado Forge Corporation **260 NLRB No. 004**
(backpay and reinstatement forfeited after date when dischargee willfully misrepresented his employment status with E and forged E's signature on savings and loan association loan application verification request)

Montgomery Ward & Co., Inc. **254 NLRB No. 102**
(Ee discharged for theft could be ordered reinstated with backpay where discharge resulted from interview in which E violated Act by refusing to allow Ee to have U representative present and obtained confession and discharge based solely on confession; however, where Ee also confessed at Bd hearing, as of that date Ee forfeits right to reinstatement or futher backpay)

High Performance Tube, Inc. **251 NLRB No. 181**
(discriminatorily discharged Ee denied reinstatement and backpay where took photographs of E's machines on which patents were pending and also of blueprints in E's office which he had entered w/o permission when at time Ee committed above acts he was on probation for copying list of E's competitor's engineers, backpay entitlement ends as of date E could have lawfully discharged him for above misconduct)

High Performance Tube, Inc. **JD-(ATL)-45-82**
(backpay period ceased on date E learned of Ee's misconduct of having in his possession blue prints, papers, pictures, packet of information which could hurt E and for which he could lawfully be discharged)

4450-5052 Date discriminatee was medically declared unfit for former employment

John J. Canova d/b/a Canova Moving & Storage Co. **261 NLRB No. 092**

4450-5054 Date of conviction for crime

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(conviction and imprisonment of unlawfully discharged Ee would require disqualification of Ee from reinstatement and backpay beyond date of conviction)

N.L.R.B. v. Jacob E. Decker & Sons **636 F.2d 129 (C.A. 5, 1981)**
(backpay but not reinstatement ordered for discriminatorily discharged Ee as he was probationary Ee at time of discharge and would have been employed only until his conviction of felony because of his work history; backpay awarded until date of felony conviction)

4450-5060 Date discriminatee would have been terminated or laid off for non- discriminatory reasons

H. H. Robertson Company **263 NLRB No. 173**
(E's liability for backpay ended when construction job for which discriminatees hired was completed, or when offered reinstatement to Ees)

Whitehall Packing Company, Inc. and W.P.C., Ltd. **257 NLRB No. 043**
(where Ees were refused employment at new operation for unlawful reasons backpay commences from date new operation began and ends with date E lawfully shutdown operation as they would have been lawfully terminated on shutdown date)

Debarnardi Brothers, Inc. **JD-(SF)-286-82**
(pay Ee, who was lawfully discharged, increase (in wages unlawfully denied) that he would have received from date request was denied until date of his (lawful) discharge)

Ron-Bob, Inc. t/a Crazy Horse Saloon **JD-621-81**
(E's contention that it intentionally replaced all Ees who had worked for E's previous management and that consequently all discriminatees would have left its employ as of date such replacement had been completed, rejected, where under E's new management Ees had either quit or were discharged, and there was no evidence that there was any decision to replace all Ees who worked under prior management; rather, evidence that Ees were discharged only because of scheduling problems or misconduct or because they quit belies such assessment)

A-S.U., a subsidiary of Intermedco **JD-(SF)-161-80**
(where discriminatee would have been discharged at later time for lawful reasons, backpay tolled as of that time and reinstatement not ordered)

4450-5063 Date when difference in disparate discipline began

Ervin Szewczyga and Gerald Treichel v. N.L.R.B. **686 F.2d 962 (C.A.D.C., Aug. 1982)**
(backpay for U stewards who were unlawfully discharged rather than given lesser discipline of suspension imposed on rank and file Ees for participation in unprotected walkout limited to period by which stewards' discipline exceeded suspension given other strikers rather than beginning at date of discharge)

4450-5072 Date discriminatees resigned

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ordering reinstatement and backpay for Ee following his resignation would subject E to award of back pay for not making futile gesture of offer of reinstatement to one who prior to his discharge voluntarily withheld his work product and after discharge indicated he no longer wanted employment with E; thus, burden must be placed on Ee to indicate he desires reinstatement)

4450-5084 Date employer ceased operations

Whitehall Packing Company, Inc. and W.P.C., Ltd. **257 NLRB No. 043**
(where Ees were refused employment at new operation for unlawful reasons backpay commences from date new operation began and ends with date E lawfully shutdown operation as they would have been lawfully terminated on shutdown date)

Brockway Motor Trucks, Division of Mack Trucks, Inc. **251 NLRB No. 023**
(where E unlawfully failed to bargain with U over partial terminations of operations and later closed all operations, backpay period extends from times Ees terminated notwithstanding on strike at that time to date of termination of all operations)

Alpha-X Corporation **JD-632-81**

4450-5090 End of period in 8(a)(5) case

Newspaper Printing Corporation **250 NLRB No. 132**
(relief granted to Ees who suffered monetary losses by reason of E's unlawful unilateral action limited to that period of time from effective date of changes (unilateral) until agreement on those changes by parties)

4450-5090-0100 Generally

Penntech Papers, Inc.; etc. **263 NLRB No. 033**
(for failure to bargain over effects of closing one plant, E ordered to pay Ees employed at closed facility backpay at rate Ees paid when last in E's employ from five days after issuance of decision until one of following occurs: E bargains to agreement on effects of closing; impasse; failure of U to request bargaining w/i five days of E's notice of desire to bargain; subsequent failure of U to bargain in good faith; sum to any Ee not to exceed amount Ee would have earned from date of closing to time Ee secured equivalent employment or date E shall have offered to bargain, whichever occurs sooner; however, Ees shall receive minimum of 2 weeks pay)

Gulf States **261 NLRB No. 119**
(where E laid off Ees w/o first bargaining with U over its decision, Bd ordered backpay remedy from date of layoffs until date bargaining obligation is met)

Hillcrest Furniture Manufacturing Co., Inc. **253 NLRB No. 009**

Circle T. Corporation; Meat Men, Inc., d/b/a Royal T Meat **JD-(SF)-201-81**
(backpay period properly included period beyond expiration of collective bargaining agreement since it is well established that wages and pension contribution provisions survive expiration of collective-bargaining agreement until new agreement, or good faith bargaining impasse is reached)

4450-5090-1700 Agreement reached on mandatory subjects of bargaining

Ferro Mechanical Corp. **249 NLRB No. 083**
(where there has been unlatual termination of operations w/o bargaining)

4450-5090-3300 Impasse reached on mandatory subjects of bargaining

Penntech Papers, Inc.; etc. **263 NLRB No. 033**

Ferro Mechanical Corp. **249 NLRB No. 083**
(where there has been unilateral termination of operations w/o bargaining)

4450-5090-5000 Failure of union to request bargaining within 5 days after receiving notice of employer's desire to bargain

Penntech Papers, Inc.; etc. **263 NLRB No. 033**

Ferro Mechanical Corp. **249 NLRB No. 083**
(where there has been unilateral termination of operations w/o bargaining)

4450-5090-6700 Failure of union to bargain in good faith

Penntech Papers, Inc.; etc. **263 NLRB No. 033**

W. R. Grace & Co., Construction Products Division **247 NLRB No. 094**
(U terminated E's backpay liability by its failure to bargain, neither revealing Ees' rejection of E's repeated offer nor making counterproposals)

W. R. Grace & Co., Construction Products Division **247 NLRB No. 094**
(E's backpay liability under *Transmarine* remedy not affected by Ee's obtaining substantially equivalent work after U's failure to bargain in good faith had already terminated E's backpay liability)

4450-5090-8300 Minimum of 2 weeks backpay ordered

Penntech Papers, Inc.; etc. **263 NLRB No. 033**

4450-5093 Date of offer of employment to individual who was refused employment because of lack of union membership

Q.V.L. Construction, Inc. **260 NLRB No. 139**

4450-7500 Tolling of backpay

4450-7500—Cont.

Flite Chief, Inc.; et al. **258 NLRB No. 146**

(although E's letter to discriminatees was valid offer of reinstatement, backpay not tolled, where actual offers were mere subterfuge in that they did not offer discriminatees their former work schedule but provided shorter hours and/or graveyard shifts in lieu of day shifts and were concerted effort to provide work schedule which was so unacceptable that discriminatees would be forced to refuse offer)

Flite Chief, Inc.; et al. **258 NLRB No. 146**

(backpay not tolled where no reason was shown for E's failure to restore discriminatees to their former jobs and work schedules, their positions still existed, and there was no evidence that positions were held by Ees with greater seniority than discriminatees)

4450-7501 Generally

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**

(U's backpay liability found jointly and several with E's liability and extends from date of discharge until five days after date U gives written notice to E and each discriminatee that it no longer has any objection to their immediate reinstatement, and thereafter until it joins E in submitting consent order to dismiss ct proceeding instituted by it for preliminary inj restraining E from reinstating wrongfully discharged Ees)

Safeway Trails, Inc. v. N.L.R.B. **641 F.2d 930 (C.A.D.C. Sept 18, 1981)**

(E's contention that backpay should not run from 5 days after unconditional offer to return to work but be tolled until violation was found at second Bd hearing–after remand from ct–rejected, absent involvement of new policy, *special factor* making award unfair, or reliance on pending decision, since burden resulting from illegal action must fall on wrongdoer)

4450-7501-3300 8(a)(3) cases

Pace Motor Lines, Inc. **260 NLRB No. 189**

(merely asking ULP striker if he was working and then stating that E had some work available or sending another striker telegram stating there was *a possibility* that there may be a job did not constitute valid offers of reinstatement which would toll backpay where these communications were not sufficiently specific, unequivocal, and unconditional)

A & A Ornamental Iron, Inc. **259 NLRB No. 138**

(backpay of job applicant unlawfully refused employment tolled as of date E subsequently wrote letter to applicant offering him employment, rather than later date when Ee wrote E refusing its job offer)

Wonder Markets, Inc. **249 NLRB No. 042**

(in light of Bd finding that E's offer to Ee of another job was not substantially equivalent to his former position, discriminatee cannot be put under obligation to accept such job to toll or mitigate lost wages and thereby reduce E's backpay obligation)

4450-7501-6700 Non-8(a)(3) cases

Boston Cement Masons & Asphalt Layers Union Local No. 534 (Duron Maguire Eastern Corp.) **265 NLRB No. 158**

(ALJ properly applied standards for tolling backpay set forth in *Pen and Pencil* decision rather than those set forth in later decisions overruling *Pen and Pencil* where Bd's order (as well as ct enforcement) and backpay specification both issued prior to overruling of *Pen and Pencil*; moreover, U failed to comply with standard of later decisions requiring that U affirmatively request E to reinstate discriminatees in order to toll backpay)

4450-7540 Unavailability of work

Everspray Enterprises, Inc. **259 NLRB No. 127**

(Bd rejected E's contention that it was improper to base gross backpay figures on E's gross receipts during backpay periods since this work allegedly would not have been available to discriminatees, had they been reinstated, because of picketing and other U activities during period, where, upon remand to take additional evidence, E failed to prove that work performed by E or its contractors would not have been available to discriminatees had they been offered reinstatement to their former positions)

4450-7560 Unavailability of discriminatee for work

Inland Empire Meat Company **255 NLRB No. 172**

(period when discriminatee voluntarily absented himself from job market while on his honeymoon not included in backpay period)

Inland Empire Meat Company **255 NLRB No. 172**

(contention that claimant's picketing and rejection of E's reinstatement offer show claimant was unavailable for work rejected; uncertainty as to whether claimant would have picketed had he not been discriminatorily discharged is resolved against E, and claimant rejected E's reinstatement offer made 2 years after strike began because he had started his own business)

Inland Empire Meat Company **255 NLRB No. 172**

(contention that claimant was unavailable for work during 2 weeks he worked for his brother-in-law rejected since the nature of the work or whether he worked on fixed schedule was not clear, and uncertainty is resolved against E)

Inland Empire Meat Company **255 NLRB No. 172**

(claimant found unavailable for work during week when he had regular work of such a nature that he was voluntarily not in job market)

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**

(offer of reinstatement to economic striker did not toll his backpay or E's continuing obligation to reinstate him where, Ee made specific request for additional time in which to consider offer notwithstanding E's offer made shortly after U's unconditional offer to return to work, E's offer did not require Ee to start work by specified date and Ee told Ee he was considering another position)

4450-7560-4000 Pregnancy

Wayne Trophy Corp. **254 NLRB No. 104**

(mere fact discriminatee, became pregnant during backpay period does not warrant conclusion she was unavailable for work)

4450-7560-6000 Illness, injury, or other absences

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**

(discriminatee who had mononucleosis during backpay period not entitled to amount he would have been paid under E's paid sick leave program, absent evidence discriminatee, met requirement of E's sick leave program that he be under care of physician and in view of lack of full litigation of facts due to absence of notice to E that GC intended to seek disability pay for discriminatee)

4450-7560-6033 Does not toll backpay when caused by employee's constructive discharge

S. E. Nichols of Ohio, Inc. **258 NLRB No. 002**

(failure to reinstate discriminatee to her former position or equivolent position which resulted in her constructive discharge does not toll backpay period)

4450-7560-6050 Does not toll backpay when caused by discriminatory transfer

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**

(where discriminatee's illness *risk of living generally* rather than result of interim employment presumption warranted that discriminatee would have become ill if he had remained in Respondent's employ and would have received any sick pay customarily paid by Respondent)

4450-7560-6075 Does not toll backpay when made possible by nature of interim employment

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**

(discriminatee's injury at interim job did not toll backpay since direct result of unlawful discharge and period of disability will not be excluded)

4450-7560-7000 Discriminatee-student returns to school

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**

(full time college student not entitled to backpay for period of school term)

4450-7560-8000 Discriminatee in Armed Forces

Diversified Case Company, Inc. **263 NLRB No. 119**

(where discriminatee enlisted in armed forces after his discriminatory discharge E ordered to immediately pay him portion of net backpay between date of discharge and date he entered service w/o awaiting final determination of full amount of award)

4450-7567 Hiring hall registration

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) **261 NLRB No. 040**

(backpay not tolled by multiple hiring hall registration of members of sister locals (travelers))

4450-7575 Rejection of valid offer of reinstatement

Pepsi-Cola Bottling Company of Mason City, Iowa **251 NLRB No. 028**

(offer of reinstatement to economic striker did not toll his backpay or E's continuing obligation to reinstate him where, Ee made specific request for additional time in which to consider offer notwithstanding E's offer made shortly after U's unconditional offer to return to work, E's offer did not require Ee to start work by specified date and Ee told Ee he was considering another position)

Flatiron Paving Company d/b/a Flatiron Materials Company **250 NLRB No. 080**

(liability for back pay not tolled by *invalid* offer of reinstatement)

Palan Corporation **JD-(SF)-28-82**

(neither reinstatement nor backpay obligation of E tolled where E's offer of reinstatement was made by asking U to dispatch discriminatees to E rather than being made *directly* to discriminatees themselves)

California Pacific Signs, Inc. **JD-(ATL)-76-81**

(where E proved that it mailed valid offers of reinstatement to 2 discriminatees, to which neither responded, backpay is tolled as of date Ees were requested to return to work)

4450-7575—Cont.

Newspaper Printing Corporation JD-203-80
(E's offer of reinstatement conditioned on admission of U error and Ees' waiver of backpay not effective to toll backpay; nor is Bd bound by waiver of backpay made by Ee in order to regain job)

4450-7580 Strike

Inland Empire Meat Company 255 NLRB No. 172
(E created uncertainty as to whether claimant would have joined strike if he had not been discriminatorily discharged; uncertainty was not resolved by dischargee's participation in strike or E's offer of reinstatement 2 years later; therefore uncertainty was resolved against E and entire strike period included in backpay award period)

Alfred M. Lewis, Inc. v. N.L.R.B. 681 F.2d 1154 (C.A. 9, July 1982)
(where there was no uncertainty about whether Ee would have taken part in strike, ct held there was no reason to include pay for strike period in the back pay award)

4450-7585 Strike settlement agreement

Cooperativa De Credito Y Aharro Vegabajena 261 NLRB No. 161
(back pay not tolled where tentative settlement agreement conditioned strikers' reinstatement on their accepting *other* terms of settlement agreement; thus, it was conditional, rather than unconditional, offer of reinstatement)

4450-7586 Voluntary quit

N.L.R.B. v. Hopcroft Art & Stained Glass Works, Inc. 692 F.2d 63 (C.A. 8, Nov. 5, 1982)
(backpay award was not reduced where Ee voluntarily quit interim employment because he was physically incapable of performing job due to injury received during said interim employment; but backpay was reduced where Ee voluntarily quit other interim employment due to personal problems with E's manager)

George A. Angle v. N.L.R.B. 683 F.2d 1296 (C.A. 10, July 1982)
(Ee's backpay period tolled as of date he voluntarily quit; his improper conduct prior to quit should not bear on earlier periods of discharge, and earlier misconduct, if any, was not sufficiently egregious to remove him from protection of the Act)

4467 AFFIRMATIVE DEFENSES

4467-0100 Generally

DeLorean Cadillac, Inc. v. N.L.R.B. 614 F.2d 554 (C.A. 6) (1980)
(uncorroborated testimony of party who tends to benefit from award of reinstatement or backpay should be subject to strict scrutiny and where discriminatee produced no corroborating witnesses or tangible evidence of his efforts to secure equivalent position and E produced witnesses who testified that discriminatee did not approach them for job, ct held discriminatee was not diligent in seeking employment)

4467-2300 Conduct constituting cause for discharge

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(where Respondent contends discriminatee's discharge from interim employment due to discriminatee's willful misconduct justifies deduction from backpay, Respondent has burden of showing willful misconduct was true reason for discharge)

Montgomery Ward & Co., Inc. 254 NLRB No. 102
(Ee discharged for theft could be ordered reinstated with backpay where discharge resulted from interview in which E violated Act by refusing to allow Ee to have U representative present and obtained confession and discharge based solely on confession; however, where Ee also confessed at Bd hearing, as of that date Ee forfeits right to reinstatement or futher backpay)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock 248 NLRB No. 075
(in determining whether strike misconduct bars backpay fact strike was ULP strike and E's ULPs taken into consideration)

Montefiore Hospital and Medical Center v. N.L.R.B 621 F.2d 510 (C.A. 2, 1980)
(discharged doctors who had struck w/o notice in sympathy with health care institution Ees denied backpay for period of discharge by ct which held their picket-line statements improper and, unlike their sympathy strike, unprotected)

Golden Day Schools, Inc. v. N.L.R.B. 644 F.2d 834 (C.A. 9, May 8, 1981)
(discriminatees' asserted misconduct did not bar their reinstatement with backpay where E's violations were egregious; and Ees' conduct was not of quality or extent that might reasonably be thought to threaten future amicable relations between E and Ees; E *acted with flagrant disregard for its Ees' rights under Act* refusal (by Bd) to reinstate discriminatee would put premium on E's misconduct)

4467-2350 Commission of crime

United States Postal Service 254 NLRB No. 080
(since decision to discharge was not based on confession of theft during unlawful *Weingarten* interview but on investigation which followed eye witness accounts of theft, reinstatement and back were not warranted)

Montgomery Ward & Co., Inc. v. N.L.R.B. 664 F.2d 1095 (C.A. 8, Nov. 1981)
(*make whole* relief, including back pay and reinstatement, *improper* where Ees were discharged for admittedly stealing goods from E and not for requesting U assistance at investigatory interview; Section 10(c) of Act, precludes back pay order and reinstatement under such circumstances)

4467-2500 Participation in strike misconduct

C-F Air Freight, Inc. 247 NLRB No. 060
(defense to order requiring reinstatement and backpay based on assertion that order was *unfair* and unjustified and that participation of Ees in strike herein, which was basis for other ULP cases brought against U and were subject of settlement agreements, was tantamount to Ees' ratification of U's alleged misconduct which they had not disclaimed responsibility for or knowledge of, rejected)

4467-3500 Concealment of interim earnings

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127
(discriminatee who failed to disclose interim earnings until questioned by counsel at hearing not penalized as to backpay inasmuch as while discriminatee should have informed Bd fully of all interim earnings, it is recognized such accurate reporting is not always possible, and in remedying ULPs, Bd's concerned with public rather than private rights, determing future violations and making whole individual discriminatees, nor should discriminatee's failure to provide earnings records result in windfall for E)

N.L.R.B. v. Flite Chief, Inc., etc. 640 F.2d 989 (C.A. 9, 1981)
(where backpay claimant wilfully conceals interim employment from Bd with intent to fraudulently increase issuance of backpay specification, all backpay was disallowed from date claimant was first employed by interim E whose earnings have been concealed until claimant discloses these earnings to Bd)

4467-3600 Employee gave false testimony at hearing

Service Garage, Inc. 256 NLRB No. 153
(although Bd disagreed with ALJ's finding that unlawfully discharged Ee admitted lying about his age at initial hearing for fear of losing current job was sufficiently egregious to amount to abuse of Bd procedures and to warrant forfeiture of Ee's right to reinstatement and limitation of backpay; Bd, however, held that Ee's original falsification of same critical information on employment application barred his entitlement to reinstatement and any backpay where E proved that it would not have hired Ee but for its reliance on application information whose falsity was discovered subsequent to Ee's unlawful discharge)

Laborers International Union of North America, Local 1136 (Southern Illinois Builders Association) JD-477-81
(discriminatees who made deliberate misrepresentations in their pretrial affidavits found ineligible to receive bakcpay)

J. P. Stevens & Co., Inc. v. N.L.R.B. 638 F.2d 676 (C.A. 4, 1980)
(reinstatement and backpay remedy held appropriate where ct rejected E's contention that discriminatee forfeited right to such remedy because of his previous conduct in pressuring other Ees into signing U cards and because he allegedly lied before ALJ; ct held that conduct of pressuring Ees was not of such degree that would deny Ee appropriate remedy and ct would not disturb ALJ's assessment of overall credibility of Ee in that Ee's dissembling was not sufficiently egregious to deny him proper remedy)

4467-5300 Employee's misrepresentations on employment application

Service Garage, Inc. 256 NLRB No. 153
(although Bd disagreed with ALJ's finding that unlawfully discharged Ee admitted lying about his age at initial hearing for fear of losing current job was sufficiently egregious to amount to abuse of Bd procedures and to warrant forfeiture of Ee's right to reinstatement and limitation of backpay; Bd, however, held that Ee's original falsification of same critical information on employment application barred his entitlement to reinstatement and any backpay where E proved that it would not have hired Ee but for its reliance on application information whose falsity was discovered subsequent to Ee's unlawful discharge)

Overnite Transportation Company 254 NLRB No. 011
(backpay remedy appropriate, notwithstanding omission by discriminatee on his employment application of his prior E and discharge because of auto accident, where E continued to employ other drivers eventhough they falsified their applications, company official told Ee to omit this part of his employment history, and E hired Ee despite this knowledge)

4467-7200 Discontinuance of employer's operations

4467-7200—Cont.

Nathan Yorke, Trustee in Bankruptcy, Successor in Bankruptcy, or alter ego To The Seeburg Corporation and Seeburg Service Parts Co., a single employer **259 NLRB 105**

(where E terminated operations suddenly due to order of trustee in bankruptcy, Ees who were laid off after trustee took over and those employed at date of shutdown entitled to backpay for E's refusal to bargain over effects of closing because E still had valuable assets which would have given U some measure of bargaining power and shutdown was not because of *calamitous event*)

Prineville Stud Company **256 NLRB No. 068**

(E liable for backpay where it had unlawfully closed its plant; E's claim that it would have been unable to operate at least half of the time due to freezing condition not substantiated where it was shown that during other cold spells E heated water pipes so he could continue operations)

4467-7700 Employee would have been discharged, laid off, suspended, etc. for nondiscriminatory reasons

Hanes Corporation **260 NLRB No. 077**

(where E violated Act by refusing to bargain over discretionary aspects of its non violative unilateral decision to layoff Ees, make-whole remedy is inappropriate as layoffs were inevitable and no basis on which to predicate a finding that any identifiable Ee suffered loss of pay; moreover, situation is analogous to refusal to bargain over effects of plant closure where there was no duty to bargain over decision to close, backpay remedy runs only from time of Bd decision; here, cause of loss of pay, the layoff, has long since ended so consequently, no loss of pay can be suffered after this decision)

United States Postal Service **260 NLRB No. 030**

(make-whole remedy not recommended for Ee who was denied U representation at investigatory interview that she reasonably believed would result in disciplinary action where E met burden of showing that decision to discipline was not based upon any information obtained at interview)

High Performance Tube, Inc. **251 NLRB No. 181**

(discriminatorily discharged Ee denied reinstatement and backpay where took photographs of E's machines on which patents were pending and also of blueprints in E's office which he had entered w/o permission when at time Ee committed above acts he was on probation for copying lest of E's competitor's engineers, backpay entitlement ends as of date E could have lawfully discharged him for above misconduct)

N.L.R.B. v. Kahn's and Company, Division of Consolidated Food Company **694 F.2d 1070 (C.A. 6, Dec. 1982)**

(enforcement of backpay and reinstatement award to dischargee denied, notwithstanding E violated 8(a)(1) by unlawfully refusing dischargee's request to have U steward present when he was interviewed concerning his overstaying his allotted time in restroom, where he was discharged for cause, and his discharge was not affected in any way by the 8(a)(1) violation)

General Motors Corporation v. N.L.R.B. **674 F.2d 576 (C.A. 6, Apr. 1982)**

(enforcement of Bd's back pay and reinstatement order denied notwithstanding E unlawfully ignored Ee's request for U representation and obtained admission from Ee that he was at bowling alley, where report, of E's security officer concerning Ee's presence at nearby bowling alley during working hours, was independent evidence of *good cause* for discharge; E could have discharged Ee on basis of security officer's report alone; discharge for *good cause* precludes order of back pay and reinstatement; ct in instant case followed decisions of *Eighth Circuit*)

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers **614 F.2d 134 (C.A. 7) (1980)**

(backpay award not enforced and remanded to Bd for new hearing on whether reduction of back pay award was justified where Bd ignored uncontradicted evidence that its back pay formula was inapplicable in instant case; work of discriminatee was irregular and during slack periods newer Ees were laid off)

4467-8100 Receipt of sum in satisfaction of claims

Michael M. Schaefer, an individual proprietor **261 NLRB No. 042**

(E's contention that U had waived payment of net backpay to each discriminatee in consideration for E entering into bargaining agreement, and that each discriminatee except two had waived backpay by accepting settlement, rejected, since such commitment will be honored only if ULPs substantially remedied and individual may not bargain away or compromise backpay due him/her, inasmuch as backpay is public rather than private right)

4467-9100 Rejection of reinstatement offer

Laredo Packing Company **264 NLRB No. 037**

(offers of reinstatement to unlawfully discharged drivers to alternate non-driving positions does not toll E's backpay obligation; Ees who refused such interim work were under no obligation to accept offer of employment substantially unlike that of truck driving)

Charles H. McCauley Associates, Inc. **261 NLRB No. 122**

(ALJ erred in not allowing evidence to be taken at hearing about unconditional offer of reinstatement by E and rejection by discriminatee, but instead relegated taking of such evidence to compliance stage)

California Pacific Signs, Inc. **JD-(ATL)-76-81**

(where E proved that it mailed valid offers of reinstatement to 2 discriminatees, to which neither responded, backpay is tolled as of date Ees were reqested to return to work)

California Pacific Signs, Inc. **JD-(ATL)-76-81**

(E who in good faith mails *bona fide* offer of reinstatement to discriminatorily discharged Ee at Ee's last known address is relieved of further backpay liability whether or not offer is received by addressee)

Newspaper Printing Corporation **JD-280-80**

(E's offer of reinstatement conditioned on admission of U error and Ees' waiver of backpay not effective to toll backpay; nor is Bd bound by waiver of backpay made by Ee in order to regain job)

4467-9800 Employee illegal alien

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. **672 F.2d 592 (C.A. 7, Feb. 1982)**

(in computing backpay, Ees will be unavailable for work when not lawfully entitled to be employed in US and backpay shall be placed in escrow up to one year)

4483 ULPS INVOLVED

4483-8300 Section 8(a)(5) violation

McMillan Cartage, Inc. **257 NLRB No. 018**

(limited backpay ordered in refusal to bargain case where E ceased operations, since such order is appropriate remedy even where such violation was unaccompanied by discriminatory shutdown of operations)

5500 REIMBURSEMENT ORDERS

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**

(where E unlawfully refused to make its plant premises available for bargaining negotiations and to pay participating Ees for work time lost during negotiations, Bd's order requiring reimbursement of Us for sums expended as rent for alternative meeting facilities and payment to participating Ees held w/i Bd's discretion to remedy ULPs, since order requires only that E correct injuries suffered by Us and Ees during negotiations)

5514 DUES, INITIATION FEES, AND ASSESSMENTS

Jackson Engineering Co. **265 NLRB No. 175**

(where, at time E and U were negotiating midterm contract modifications, contract was tainted by concurrent unlawful concealed payments made by E to U officials in form of kickbacks from all business referred to E by U, E and U ordered, jointly and severally, to reimburse all present and former Ees, except those who joined [illegible] U cards prior to the effective date of contract, for moneys paid by [illegible] withheld from them after such effective date for initiation fees, dues, or other obligations of membership in U)

Herman Brothers, Inc. **264 NLRB No. 064**

(U and E not required to reimburse Ees for monies deducted pursuant to coercively obtained dues-checkoff authorizations since Ees were subject to lawful U-security provision obligating them to pay U sums deducted)

Bay Shipbuilding Corp. **263 NLRB No. 166**

(no reimbursement of dues to remedy E's refusal to apply contract to Ees transferred to newly established department, absent E's noncompliance with dues checkoff procedure)

Fox Painting Company **263 NLRB No. 071**

(where E executed and implemented multi E contract, served on negotiating committee which negotiated addendum to contract and implemented addendum though E did not execute addendum, he is bound by contract and addendum and liable for all payments to funds set forth in agreements save industry advancement fund and for any loss of dues not collected under checkoff provision of agreement)

General Instrument Corporation, Amtote Systems Division **262 NLRB No. 149**

(U and E jointly severably liable to reimburse Ees for unlawfully checked off dues where notwithstanding valid U-security clause dues were without during first 45 days of employment and Ees had not executed check-off authorization cards and had no obligation to pay dues or fees during that period)

R. J. E. Leasing Corp. **262 NLRB No. 049**

(E ordered to reimburse Ees for all initiation fees, dues, assessments, or any other monies which may have been exacted on behalf of unlawfully assisted minority U with whom E had entered into pre-hire agreement containing U security provision before any Ees had been hired at facility covered by agreement)

5514—Cont.

Dura-Vent Corporation **257 NLRB No. 083**
(E ordered to reimburse U for loss of dues where E's wrongful actions clearly included its repudiation of check-off provision)

Ross M. Alexander d/b/a A & B Janitorial Service **253 NLRB No. 064**
(E to reimburse Ees for dues collected pursuant to unlawful checkoff to extent not already reimbursed)

Strochmann Brothers Company **252 NLRB No. 139**
(remedy to include reimbursement of Ees for any dues and initiation fees deducted from their wages and remitted to U unlawfully recognized by E)

O.K. Machine & Tool Corp. and Gyrotronics, Inc. **251 NLRB No. 030**
(male Ees, to whom contract with U security clause was unlawfully applied to be reimbursed for initiation fees and dues paid pursuant to contract)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(Bd refused to order reimbursement of initiation fees, dues, and contributions for U benefit funds deducted as result of enforcement of provisions held violative of Section 8(e) to individuals who were held independent contractors since insufficient evidence as to losses directly attributable to actual coercion; further, make whole reimbursement order generally over broad and inappropriate in context of Section 8(e) violations and aggrieved independent contractors may prove damage claim under Section 303 of Act)

Baine Service Systems, Inc. **248 NLRB No. 087**
(E and U ordered to reimburse Ees for all moneys extracted from them by unlawfully requiring them to join U; order does not apply to Ees who joined U prior to employment with E)

J. F. Swick Insulation Co., Inc. **247 NLRB No. 086**
(E-member of multi-E association ordered to pay U any loss of dues suffered as result E-member's unlawful refusal to sign and abide by multi-E contract containing valid U dues-checkoff provision)

Peninsula Shipbuilders' Association v. N.L.R.B. **663 F.2d 488 (C.A. 4, Sep. 1981)**
(ct enforced Bd order holding E and incumbent U jointly and severally liable to reimburse Ees who had effectively revoked their check-off authorizations although on non-U forms in contravention of provision in extended bargaining agreement, where substantial evidence showed that such provision which required use of U revocation forms was facially invalid under LMRA Sec. 302(c)(4) and revocation procedure as actually enforced was ULP, in view of Ees' lack of easy, general access to U forms, Ees were not sufficiently informed about revocation requirement, and Ees had to appear personally at U hall to sign forms)

Mountaineer Shaft and Tunnel Construction Company **624 F.2d 050 (C.A. 6, 1980)**
(ct held Bd w/o authority to order reimbursement of initiation fees and dues checked off, where Ees had *voluntarily* signed authorization cards which permitted checkoff, notwithstanding E unlawfully recognized U and locked out Ees to force them to ratify contract and affirm U as their bargaining agent)

Brotherhood Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC v. N.L.R.B. **624 F.2d 819 (C.A. 8, 1980)**
(as violation for collecting assessment only technical in nature and U could still go against members who paid assessment but now request reimbursement, or pass proper assessment against members, Bd order, by placing heavy burden on U for locating and reimbursing all members who paid said assessment, held punitive and not appropriate)

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. **683 F.2d 305 (C.A. 9, July 1982)**
(dues reimbursement remedy held appropriate where coercion of Ees was established by fact that Ees joined U, which E unlawfully assisted, after U made misrepresentations to them that their selection for permanent jobs hinged upon their U membership)

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. **683 F.2d 305 (C.A. 9, July 1982)**
(contention that dues reimbursement remedy is inappropriate in situation herein involving illegal assistance to U by E and misrepresentations by U in soliciting U authorization cards, on ground such remedy is punitive rather than compensatory, rejected, since remedy would effectuate policy of Act by returning to Ees money paid to support U they did not freely choose to join)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36, etc. v. N.L.R.B. **649 F.2d 789 (C.A.D.C., Feb. 1981)**
(U and contractors not ordered to reimburse indpendent contractors-truck operators-for dues, fees and contributions paid to U under unlawful 8(e) contract which required operators to join U as U members receive benefits, and since no violation of Section 8(b)(4)(ii)(A) alleged make whole remedy would be punitive and beyond power of Bd as no showing operators were coerced into joining U)

5535 PAYMENTS REWARDING NONSTRIKERS

Huck Manufacturing Company **254 NLRB No. 008**
(striking Ees to be paid for last day worked prior to strike at same rate nonstriking Ees paid for working during period of strike and not amount paid nonstrikers on last day before strike)

5547 DIVIDENDS ON STOCK INVESTMENT

Weirton Steel, Division of National Steel Corporation **259 NLRB No. 091**
(where E had unlawfully deprived Ees of stock investment plan, Bd ordered E to compensate Ees for dividends on stock that would have been purchased by E's matching contributions; however, E not required to compensate Ees for dividends that would have been earned on *Ee* purchases of E's stock since this would go beyond Bd's requirement that Ees be made whole for losses suffered as result of E's unlawful action)

5548 MEDICAL EXPENSES

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(discriminatee entitled to unreimbursed medical expenses which would have been covered by E's group insurance)

Hassett Maintenance Corporation **260 NLRB No. 135**
(E who unilaterally changed health insurance plans at expiration of contract ordered to make Ees whole for loss of medical benefits to extent that costs which would have been paid by old plan were not actually paid by new plan)

Hudson Chemical Company **258 NLRB No. 009**
(after E unlawfully ceased contributing towards maintenance of coverage for Ee benefits)

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(Bd ordered make whole remedy to include reimbursing Ees for any medical, dental, or other expenses ensuing from E's unlawful failure to make such contributions; furthermore, E ordered to reimburse Ees for any contributions Ees themselves may have made for maintenance of contractual health and welfare, pension, industry and apprenticeship funds after E unlawfully discontinued contributions)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(for any medical or dental bills Ees have paid directly to health care providers that contract would have covered, as well as any premiums Ees have paid to insurance companies to continue medical and dental coverage in absence of E's required contributions)

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**
(E to reinburse Ees for medical and dental bills which contractual policies would have covered as well as premiums Ees may have paid to third-party insurance companies to continue coverage)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(E who unlawfully failed to make insurance payments ordered to reimburse Ees for payments Ees may have made to third party carriers)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **246 NLRB No. 075**
(out of pocket medical expenses incurred when E was not covered by insurance at his interim employment, less savings in cost of insurance, included; notwithstanding contention striker could have insured himself)

Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. **248 NLRB No. 040**
(Bd ordered E to make whole any Ee who lost money as result of unlawful unilateral change in organizations administering health care insurance plans)

The Saison, Inc. **247 NLRB No. 156**
(E who unlawfully ceased contributing to U's health and welfare fund ordered to pay contributions to extent they have not been made, and to reimburse Ees for contributions they may have made for maintenance of U fund, for any premiums they may have paid to insurance companies for medical and dental coverage, and for any medical or dental bills they paid directly to health care providers; reimbursement provisions held reasonable and appropriately tailored to facts of case)

5549 SICK LEAVE

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(discriminatee who had mononucleosis during backpay period not entitled to amount he would have been paid under E's paid sick leave program, absent evidence discriminatee, met requirement of E's sick leave program that he be under care of physician and in view of lack of full litigation of facts due to absence of notice to E that GC intended to seek disability pay for discriminatee)

5550 CONTRIBUTIONS TO WELFARE, PENSION AND OTHER FUNDS

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(reimbursement of cost of insurance premiums which E furnished gratis)

Capitol City Lumber Company **263 NLRB No. 102**
(E ordered to pay all unpaid welfare and pension fund contributions due under contract and, if either fund had cancelled coverage, to reimburse unit Ees, with interest, for any loss of claims and benefits suffered as result)

Diplomat Envelope Corporation **263 NLRB No. 078**
(where E refused to sign agreed upon agreement and unilaterally ceased payments to U pension, welfare and annuity funds, E was ordered to make payments and compensate funds for administration costs incurred by processing retroactive payments)

Fox Painting Company **263 NLRB No. 071**
(where E executed and implemented multi E contract, served on negotiating committee which negotiated addendum to contract and implemented addendum though E did not execute addendum, he is bound by contract and addendum and liable for all payments to funds set forth in agreements save industry advancement fund and for any loss of dues not collected under checkoff provision of agreement)

Taurus Waste Disposal, Inc. **263 NLRB No. 028**
(E ordered to make payments into benefit funds which it had unlawfully failed to do after expiration of contract; however, determination of any additional amounts, including interest, required to satisfy make whole remedy, left to compliance stage because of variety and complexity of benefit fund agreements)

Taurus Waste Disposal, Inc. **263 NLRB No. 028**
(to satify make whole remedy for failure to make payments into Ee benefits funds any additional amounts, including interest, these amounts may be determined depending on circumstances of each case, by reference to documents governing funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to unlawful withholding, which might include loss of return on investment of portions of funds withheld, additional administrative costs etc. but not collateral losses)

Hassett Maintenance Corporation **260 NLRB No. 135**
(E who unilaterally changed health insurance plans at expiration of contract ordered to make Ees whole for loss of medical benefits to extent that costs which would have been paid by old plan were not actually paid by new plan)

Turnbull Enterprises, Inc. **259 NLRB No. 122**
(where E unlawfully discontinued payment of contributions to U's health and welfare fund, Bd ordered E, upon written request from U, to rescind insurance company's current plan, established under agreement with U, and immediately reestablish health and welfare fund plan by making retroactive contributions on behalf of Ees from day following receipt of U's request, and to continue such payments until E negotiates in good faith with U to new agreement or impasse)

Turnbull Enterprises, Inc. **259 NLRB No. 122**
(where E unlawfully discontinued payment of contributions to U's health and welfare fund whose plan provided for 6 months' future benefits on basis of previous 6 months' earned coverage, Bd, rather than requiring such payment from date of U's bargaining demand until date current agreement was reached with U, required payment of retroactive contributions which will purchase Ees 6 months of future coverage, commencing from day following receipt of U's request that health and welfare fund be reinstituted until date E fulfills its bargaining obligation)

Turnbull Enterprises, Inc. **259 NLRB No. 122**
(in ordering payment of contributions to E's unlawfully discontinued health and welfare fund, commencing from day following E's receipt of U's request that health and welfare fund be reinstated, Bd provided that U shall request reinstatement of health and welfare fund w/i 20 days of date of order herein, and if U does not do so, then private carrier's insurance plan in effect under parties' current contract shall remain in effect; upon reinstatement of coverage under health and welfare fund plan, E may discontinue payment of Ee premiums to contract insurer)

Turnbull Enterprises, Inc. **259 NLRB No. 122**
(in ordering E to reinstate U's health and welfare fund plan unlawfully discontinued by E, and considering fact that, due to health and welfare fund's 6-month eligibility requirement, Ees. hired shortly prior to date health and welfare fund's coverage becomes effective pursuant to Bd's order herein, might not qualify for fund benefits until 6 months later, Bd required E to make premium payments during such interim period for Ees hired under current contract with U providing for coverage by private insurance carrier until each Ee qualifies for coverage under fund)

Turnbull Enterprises, Inc. **259 NLRB No. 122**
(in ordering reinstatement of U's health and welfare fund as remedy for E's unlawful discontinuance of contributions to fund, Bd did not require E to pay double insurance premiums by making contributions to fund for entire period involved during part of which Ees were covered under contract with U providing for private insurer in place of fund plan; requiring full fund contributions would impose undue burden on E and constitute windfall to fund inasmuch as contract insurer has presumably already paid substantial portion of Ees' benefits durinig period in question)

Turnbull Enterprises, Inc. **259 NLRB No. 122**
(in ordering retroactive payment of unlawfully discontinued contributions to U's health and welfare fund, Bd also ordered E to compensate fund for administration costs and other expenses and loss of interest incurred by fund as result of its acceptance of retroactive payments; determination of such amounts left to compliance proceedings, should U request reinstatement of fund)

Turnbull Enterprises, Inc. **259 NLRB No. 122**
(in ordering retroactive payments of unlawfully discontinued contributions to U's health and welfare fund, Bd did not provide for interest at a fixed rate on fund payments due as part of *make-whole* remedy; such additional amounts may be determined, depending upon circumstances of each case, by reference to governing provisions in fund's documents and, in absence of such provisions, by reference to evidence of any loss directly attributable to E's unlawful action, including loss of return on investment of portion of funds withheld, additional administrative costs, etc., but not on collateral losses)

Turnbull Enterprises, Inc. **259 NLRB No. 122**
(in ordering payments of unlawfully discontinued contributions to U's health and welfare fund, Bd provided that, irrespective of whether U requests reinstatement of fund plan, specific Ees who suffered actual damage in loss of benefits be made whole by recovering those damages, with E reimbursing them for actual cost to the extent those costs would have been paid by the fund minus the costs which were actually paid by private insurer carrier under agreement with U)

Turnbull Enterprises, Inc. **259 NLRB No. 122**
(in ordering retroactive payments of unlawfully discontinued contributions to U's health and welfare fund, Bd did not permit E to elect to make contributions to fund in lieu of compensating Ees for loss of benefits; instead, Bd required that Ees be made whole for loss of benefits after date on which fund coverage ceased until date E fully complies with order herein; and amounts due shall be computed in accordance with *Cole Protection Service, Inc.*, 182 NLRB 682)

Turnbull Enterprises, Inc. **259 NLRB No. 122**
(E's failure to make contributions to U's health and welfare fund constituted unilateral change in terms and conditions of employment, notwithstanding substitution of another plan with private insurance carrier under contract with U; E's refusal to incorporate fund plan into contract with U increased total amount of contributions E failed to make and placed U in increasingly difficult position regarding reinstitution of fund plan, and many differences between fund's plan and private carrier's plan presented substantive grounds for concern by Ees)

F.M.L. Supply, Inc. **258 NLRB No. 083**
(ancillary questions of interest or penalties due, in instant case, on E's delinquent payments to U trust funds not deferrable to compliance stage of proceedings, since contract contained explicit language defining delinquent contributions which were mandatory liquidated damages)

Hudson Chemical Company **258 NLRB No. 009**
(after E unlawfully ceased contributing towards maintenance of coverage for Ee benefits)

Camay Drilling Company **254 NLRB No. 019**
(determining E's contributions still owing to Ee benefit fund)

Kraft Plumbing and Heating, Inc. **252 NLRB No. 126**
(Bd ordered make whole remedy to include reimbursing Ees for any medical, dental, or other expenses ensuing from E's unlawful failure to make such contributions; furthermore, E ordered to reimburse Ees for any contributions Ees themselves may have made for maintenance of contractual health and welfare, pension, industry and apprenticeship funds after E unlawfully discontinued contributions)

Pullman Building Company **251 NLRB No. 145**
(where Bd ordered appropriate trust funds be made whole for losses suffered due to E's ULPs, it left determination of interest, if any, to individual provisions of Ee benefit fund agreements)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**

Ortiz Funeral Home Corp. (Local 1034, Teamsters, **250 NLRB No. 100**

Dial Tuxedos, Inc. **250 NLRB No. 064**
(question of whether E must pay any additional amounts into benefit funds in order to satisfy Bd's *make whole* remedy left to compliance stage of instant case, since provisions of Ee benefit fund agreements were variable and complex)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 087**
(whether E must pay additional amounts into benefit funds in order to satisfy make whole remedy left to compliance stage)

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Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **240 NLRB No. 038**

(Bd refused to order reimbursement of initiation fees, dues, and contributions for U benefit funds deducted as result of enforcement of provisions held violative of Section 8(e) to individuals who were held independent contractors since insufficient evidence as to losses directly attributable to actual coercion; further, make whole reimbursement order generally over broad and inappropriate in context of Section 8(e) violations and aggrieved independent contractors may prove damage claim under Section 303 of Act)

Argano Electric Corp. **248 NLRB No. 049**

(payable to funds of U with which E had current contract but with whom E chose not to continue recognition and honor contract)

Scherr Stern Food Corp. **248 NLRB No. 080**

(remedial order which provides literally only for reimbursement to discriminatees for lost welfare or pension benefits, does not preclude order in subsequent backpay proceeding, directing E to make payments into trust fund)

B. N. Beard Company **248 NLRB No. 016**

(E ordered to pay to U pension fund contributions unlawfully withheld; however, Bd does not provide at adjudicatory stage of proceeding for addition of interest on withheld payments; Bd left to compliance stage question whether E must pay additional amounts by reference to governing provisions of fund's documents and, absent such provisions, to any evidence of any loss directly attributable to withholding action, but not collateral losses)

The Saloon, Inc. **247 NLRB No. 156**

(E who unlawfully ceased contributing to U's health and welfare fund ordered to pay contributions to extent they have not been made, and to reimburse Ees for contributions they may have made for maintenance of U fund, for any premiums they may have paid to insurance companies for medical and dental coverage, and for any medical or dental bills they paid directly to health care providers; reimbursement provisions held reasonable and appropriately tailored to facts of case)

Safeway Trails, Inc. **JD-462-82**

(*Supplemental Decision* sets forth method, in instant case, of computing: amounts of backpay; pension plan payments; discriminatee pension contributions; E pension contributions; interest provisions; and pension fund payments)

The A.S. Abell Company **JD-221-81**

(pension contributions owed by E on behalf of terminated Ees computed, as provided in contract, on basis of number of shifts available to be worked during backpay period reduced by Ee's absentee factor)

Carpenter Sprinkler Corporation v. N.L.R.B. **606 F.2d 60 (C.A. 2, 1979)**

(order for retroactive payments to U welfare, health and pensions funds, inappropriate since order is unclear in absence of allowance for offsetting retroactive payments with benefits awarded, bargaining history is good, and change in benefits should have been subject to bargaining, not ordered by Bd)

N.L.R.B. v. Wilker Brothers Company, Inc. **652 F.2d 660 (C.A. 6, June 1981)**

(enforcement of order to reimburse Helping Hand Fund, denied where Ees were not aware of E's pre-election reductions in contributions to Fund and thus were not affected by reduction in regard to their U activities)

N.L.R.B. v. Henry Cauthorne, an individual, t/a Cauthorne Trucking **691 F.2d 1023 (C.A.D.C., Oct. 1982)**

(where E violated Sec. 8(a)(5) by discontinuing contributions to health and welfare fund after collective-bargaining agreement expired and Bd found liability for period running to date of its Order, case remanded to Bd for determination of whether because parties resumed bargaining after unilateral change they did not reach impasse at some point. E's liability will run from date of change to date when parties execute new agreement or reach lawful impasse)

5550-5000 Credit to pension fund for past service

Dellwood Foods, Inc., f/k/a Deltown Foods, Inc. **JD-(SF)-213-81**

(predecessor's Ees who were discriminatorily denied transfer to purchaser's facility because U representing Ees of purchaser refused to clear nonmember Ees for employment, were entitled to past service pension credit where evidence in record as whole showed terms of executed Settlement Stipulation, although not *clear and unambiguous*, was intended to provide for full past service pension credit to discriminatees for all prior employment in industry)

5554 CAFETERIA PRIVILEGES

Henry Vogt Machine Company **251 NLRB No. 040**

(E to make Ees whole for any losses occasioned by its withdrawing privilege of eating lunch at E's subsidized cafeteria)

5563 ALLOWANCES FOR EQUIPMENT ETC.

Standard Homes, Inc. **249 NLRB No. 146**

(reimbursement ordered of safety shoe allowance unlawfully withheld under contract)

5570 LITIGATION COSTS AND EXPENSES (SEE ALSO 625-1967-5600)

Ferrous Tree Surgeons, Inc. **264 NLRB No. 090**

(GC did not engage in frivolous litigation where ALJ's conclusion that E did not violate Act was based on credibility determination)

Conair Corporation **261 NLRB No. 178**

(award of attorney's fees and organizational expenses not appropriate where on record as a whole defenses were not *patently frivolous*, even though violations found were flagrant and repetitious)

Turnbull Enterprises, Inc. **239 NLRB No. 122**

(Bd adopted ALJ's recommendation that there was no basis for granting attorney's fees or litigation expenses in case involving unlawful discontinuance by E of contributions to U's health and welfare fund; in ALJ's view, the Bd in *Heck's* (215 NLRB 765) did not imply that *credibility* test was the exclusive measure in determining whether to award litigation expenses; and other questions were present herein which gave rise to *debatable* issues)

Standard Homes, Inc. **249 NLRB No. 146**

(reimbursement of U and Bd for litigation costs not awarded where respondent's defense of its conduct were not patently frivolous)

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 082**

(E's request for reimbursement to itself and to Bd of investigative, processing, and litigation expenses incurred by each of them in instant 8(b)(7)(A) proceedings and in 8(a)(2) proceedings brought by U against E, on ground U prolonged various proceedings as subterfuge which permitted it to continue its unlawful conduct for extended period of time, denied, where litigation was not frivolous but dealt with serious and legitimate issues which are debatable)

Bill Johnson's Restaurants, Inc. **249 NLRB No. 026**

(E ordered to make Ees whole for all legal expenses incurred by them in defense of E's state civil lawsuit brought against them for libel and wrongful interference, which proceeding arose out of filing of ULP charges by Ees with Bd and their concerted protected activities)

Wellman Industries, Inc. **248 NLRB No. 029**

(Bd ordered reimbursement of U's litigation and negotiation expenses where E's refusal to bargain was not occasioned by reasonably debatable point of view but was meritless attempt to avoid its duty to bargain as evidenced by fact that E's positions were twice unsupported throughout course of litigation covering entire federal judiciary system, and E's latest justification for refusal to bargain amounts to contention that its duty to bargain ceased by virtue of its own unlawful conduct, which precisely amounts to a frivolous position)

Whitehall Packing Company, Inc. **JD-14-81**

(E ordered to withdraw or otherwise effectuate dismissal of civil suit unlawfully brought against U for filing ULP charges against E and to reimburse U and representatives for all attorney fees and legal costs incurred as result of E's unlawful action)

H. H Fredericksen Co. **JD-(SF)-64-80**

(request by E, who was subject of dismissed complaint, for litigation expenses, denied, where, assuming Bd may require its statutorily independent GC to reimburse respondents when complaints filed against them have been dismissed, GC's determination to proceed had not been frivolously reached, and his decision was not unreasonable, or lacked a rationally justifiable foundation)

5570-0100 Generally

Admiral Merchants Motor Freight, Inc. **265 NLRB No. 016**

(no reimbursement to GC and charging party of litigation expenses where, respondent was not repeat offender, did not engage in pattern of unlawful conduct, and – although its conduct was specious – did not intentionally use defenses meritless on their face in a clear attempt to burden the processes of the Bd and courts)

Eastern Maine Medical Center **253 NLRB No. 034**

(while instant case was strong candidate for imposition of litigation expenses remedy, such remedy not imposed in view of Bd majority's position on issue to the effect that such remedy will not be imposed even in an egregious case of bad faith bargaining unless E's defenses are deemed *frivolous*; while many of E's defenses were wide of mark and unpersuasive, they cannot with confidence be labeled frivolous)

Textual Corp. **253 NLRB No. 032**

(Bd did not require E to reimburse U for reasonable litigation costs incurred in connection with instant proceeding, since Bd did not find that E's defenses were *neither substantive nor occasioned by a reasonably debatable point of view*)

5570-0100—Cont.

Safeway Stores, Inc. **252 NLRB No. 095**
(U's legal fees and expenses not assessed against E, notwithstanding U's contention that assessment justified by E's frivolous defenses to its clear obligation to furnish information and facts given other charges alleging failure to furnish information had been filed against E during past ten years, where all but two charges had been settled prior to ALJ's decision, and E had frequently furnished information to U but had never before been asked for this type of information)

Safeway Stores, Inc. **252 NLRB No. 186**
(assessment of reasonable legal fees and expenses incurred by U in pursuing charge that E refused to supply U requested information, denied where history of charges (against E) and settlements did not seem to show callous disregard by E of its collective-bargaining obligations)

Wellman Industries, Inc. **248 NLRB No. 029**
(Bd adhered to position that reimbursement of U's litigation and negotiation expenses will not be ordered where E's defenses are *debatable* rather than *frivolous*, and in so doing Bd took into consideration role of charging party, remedial rather than punitive tenor of Bd orders, and inapplicability of collateral losses to framing of reimbursement order)

Wellman Industries, Inc. **248 NLRB No. 029**
(reimbursement of U's litigation and negotiation expenses in case involving *frivolous* defenses held not precluded by role of charging party; remedial aspects of such order predominate whatever deterrent effect such order may also have, and are well w/i Bd's authority; and such expenses resulting from frivolous refusal to bargain are not considered collateral)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(disavowing ALJ's characterization of order requiring E to pay Bd and U litigation costs as *traditional in Stevens cases*. Bd noted that it reviews all cases on their merits and grants or denies remedies based on record as a whole)

Liquor Salesmen's Union Local 2 of The State of New York, Distillery, Rectifying, Wine & Allied Workers' International Union, AFL-CIO v. N.L.R.B. **664 F.2d 318 (C.A. 2, July 1981)**
(U's ptn for review of Bd's order insofar as Bd did not act on U's request for attorneys' fees as part of remedy sought, denied where ct saw no merit in U's argument that Es engaged in frivolous litigation and similarly saw no basis for concluding that Bd abused its discretion in this connection)

5570-5000 Types of litigation expenses

Autoprod, Inc. **265 NLRB No. 042**
(E ordered to reimburse Bd for its costs and expenses incurred in investigation of this proceeding, including salaries, witness fees, transcript costs, etc., due to its long history of intransigence in repudiating contract, failing to fully implement arbitration award, etc.)

Litton Financial Printing Division, A Division of Litton Business Systems, Inc. **256 NLRB No. 077**
(U's request for attorney fees and costs made in its *Joinder to Motion for Summary Judgment*, denied, as reimbursement order was not justified under *Heck's Inc.*, 215 NLRB 765 (1974) and *Tiidee Products, Inc.*, 194 NLRB 1234 (1972))

Clark Manor Nursing Home Corp. **254 NLRB No. 054**
(E ordered to reimburse Ees for legal expenses that they incurred in defense of trespass complaint brought against them by E; it is Bd's practice to order reimbursements of legal expenses arising from charges brought against Ees by E unlawfully motivated under Act)

Rolligon Corporation **254 NLRB No. 004**
(Bd did not accept ALJ's recommendation that Bd should administratively require U, which distributed Bd subpenas to attend Bd R hearing, to pay subpenaed Ees witness and mileage fees; although statements signed by Ees did not constitute explicit waiver of their right to such fees, issue of money owed for fees is matter between U and subpenaed Ees that has not been raised by either party and is not before Bd; moreover, there is no administrative process whereby Bd could compel such payment)

United Food and Commercial Workers, Local No. 1063 (Hoachman Employees Independent Union) **249 NLRB No. 082**
(reimbursement denied of all investigative, processing, and litigation expenses incurred by Bd and by E, charging party herein, in processing instant 8(b)(7)(A) proceedings and in processing 8(a)(2) charges filed by U against E)

Sachs Electric Company **248 NLRB No. 082**
(Bd declined to reimburse U member whom U discriminatorily refused to register on hiring hall referral list for *out-of pocket expenses* in taking to arbitration his claim that he was entitled to such listing; such order unwarranted in view of availability of Bd's processes for determination regarding U's ULPs and adequacy of Bd's backpay and registration remedy)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(E ordered to reimburse Bd and U for all litigation expenses, relating to meritorious ULP allegations and reasonably incurred as result of lengthy proceeding herein where, as in past, E reacted to organizing attempt by engaging in surveillance, creating impression thereof, promising and granting benefits, and unlawfully interfering with organizing campaign)

5580 BARGAINING EXPENSES OF UNION

Marriott In-Flite Services, A Division of Marriott Corporation **258 NLRB No. 099**
(no reimbursement of U for reasonable costs of participating in collective bargaining negotiations in which E failed to bargain in good faith since award of litigation or other expenses appropriate only where Respondent raises patently frivolous defenses and herein E's defenses, although unmeritorious, were not patently frivolous)

Eastern Maine Medical Center **253 NLRB No. 034**
(Bd declined to adopt ALJ's recommended order requiring E to reimburse U for any and all expenses incurred in bargaining with E from beginning of 10(b) period until date on which bargaining ended, in view of absence of proclivity on E's part to violate Act once its actions have been adjudicated unlawful)

Harowe Servo Controls, Inc. **250 NLRB No. 120**
(E must reimburse U for its bargaining expenses where E engaged in prolonged course of ULPs designed to thwart U's efforts to negotiate contract)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(case remanded to Bd where Bd decision left ct uncertain about basis of its award for litigation expenses; Bd should explicate more fully its reasons for requiring *reimbursement* in instant case as Bd required to make reasoned explanation for departing from its precedents)

5584 JOINT LIABILITY OF UNION AND EMPLOYER

General Instrument Corporation, Antenna Systems Division **262 NLRB No. 149**
(U and E jointly severally liable to reimburse Ees for unlawfully checked off dues where notwithstanding valid U-security clause dues were without during first 45 days of employment and Ees had not executed check-off authorization cards and had no obligation to pay dues or fees during that period)

Central States, Southeast and Southwest Areas Pension Fund d/b/a Three Hundred South Grand Company **257 NLRB No. 175**
(E and U ordered jointly and severally to reimburse Ee sum equal to difference between contractual wage and rate she was actually paid, where E permitted supervisor to handle grievances of members of U in which supervisor held positions of president and member of executive board, and U breached duty of fair representation by not giving her grievance protesting not being paid contract wage fair consideration)

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 081**
(U's backpay liability found jointly and several with E's liability and extends from date of discharge until five days after date U gives written notice to E and each discriminatee that it no longer has any objection to their immediate reinstatement, and thereafter until it joins E in submitting consent order to dismiss ct proceeding instituted by it for preliminary inj restraining E from reinstating wrongfully discharged Ees)

Baine Service Systems, Inc. **248 NLRB No. 067**
(E and U ordered to reimburse Ees for all moneys extracted from them by unlawfully requiring them to join U; order does not apply to Ees who joined U prior to employment with E)

Peninsula Shipbuilders' Association v. N.L.R.B. **663 F.2d 488 (C.A. 4, Sep. 1981)**
(ct enforced Bd order holding E and incumbent U jointly and severally liable to reimburse Ees who had effectively revoked their check-off authorizations although on non-U forms in contravention of provision in extended bargaining agreement, where substantial evidence showed that such provision which required use of U revocation forms was facially invalid under LMRA Sec. 302(c)(4) and revocation procedure as actually enforced was ULP, in view of Ees' lack of easy, general access to U forms, Ees were not sufficiently informed about revocation requirement, and Ees had to appear personally at U hall to sign forms)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. **679 F.2d 673 (C.A. 7, May 1982)**
(E's bargaining with U that lacked majority support among E's Ees, violative and E and U were jointly and severally liable to make whole unlawfully discharged Ees)

N.L.R.B. v. Eldorado Manufacturing Corporation and United Steelworkers of America, AFL-CIO **660 F.2d 1207 (C.A. 7, Sep. 1981)**
(in denying enforcement of Bd order, ct held joint and several backpay liability should not be imposed on E and U since, by analogy to Sec. 301(a) of LMRA, such liability should be imposed only if discharges were contrary to bargaining contract and if U breached its duty of fair representation, which

5584—Cont.

were not present herein; likewise, record did not show that any Sec. 7 rights of dischargees were responsible for their discharge)

Brotherhood Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC v. N.L.R.B. 634 F.2d 919 (C.A. 8, 1980)
(E held jointly, rather than secondarily, liable with U for reimbursement of unlawfully withheld U assessments since both E and U violated Act; further, bargaining agreement contained idemnification clause which shifted entire reimbursement obligation to U)

5596 ORGANIZING AND NEGOTIATING EXPENSES OF UNION

Conair Corporation 261 NLRB No. 178
(award of attorney's fees and organizational expenses not appropriate where on record as a whole defenses were not *patently frivolous*, even though violations found were flagrant and repetitious)

Wellman Industries, Inc. 248 NLRB No. 029
(Bd adhered to position that reimbursement of U's litigation and negotiation expenses will not be ordered where E's defenses are *debatable* rather than *frivolous*, and in so doing Bd took into consideration role of charging party, remedial rather than punitive tenor of Bd orders, and inapplicability of collateral losses to framing of reimbursement order)

Wellman Industries, Inc. 248 NLRB No. 029
(reimbursement of U's litigation and negotiation expenses in case involving *frivolous* defenses held not precluded by role of charging party; remedial aspects of such order predominate whatever deterrent effect such order may also have, and are well w/i Bd's authority; and such expenses resulting from frivolous refusal to bargain are not considered collateral)

Wellman Industries, Inc. 248 NLRB No. 029
(Bd ordered reimbursement of U's litigation and negotiation expenses where E's refusal to bargain was not occasioned by reasonably debatable point of view but was meritless attempt to avoid its duty to bargain as evidenced by fact that E's positions were twice unsupported throughout course of litigation covering entire federal judiciary system, and E's latest justification for refusal to bargain amounts to contention that its duty to bargain ceased by virtue of its own unlawful conduct, which precisely amounts to a frivolous position)

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(E ordered to reimburse U for any excess organizing costs it reasonably incurred from date E willfully flouted its lawful duty to recognize U)

5598 MAKE WHOLE REMEDY

Diplomat Envelope Corporation 263 NLRB No. 075
(where E signed memorandum of agreement but refused to sign contract, it was ordered to comply retroactively to its effective date and make Ees whole for losses suffered, i.e., wages and contributions to U funds and interest)

Towne Waste Disposal, Inc. 263 NLRB No. 038
(to satisfy make whole remedy for failure to make payments into Ee benefits funds any additional amounts, including interest, these amounts may be determined depending on circumstances of each case, by reference to documents governing funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to unlawful withholding, which might include loss of return on investment of portions of funds withheld, additional administrative costs etc. but not collateral losses)

L. A. Water Treatment, Division of Chromalloy American Corporation 263 NLRB No. 022
(make-whole remedy appropriate for violation of Ee's *Weingarten* rights since GC made *prima facie* showing that unlawful interview occurred and that Ee was discharged for failing to provide assurances at interview that he would no longer be insubordinate, and E did not meet burden of demonstrating that discipline was not based on information obtained at interview)

Petroleum Helicopters, Inc. 263 NLRB No. 009
(where discriminatory transfer resulted in increased commuting costs for discriminatee, E ordered to make Ee whole for any monetary losses he may have suffered)

United States Postal Service 260 NLRB No. 030
(make-whole remedy not recommended for Ee who was denied U representation at investigatory interview that she reasonably believed would result in disciplinary action where E met burden of showing that decision to discipline was not based upon any *information obtained at interview*)

Turnbull Enterprises, Inc. 259 NLRB No. 122
(in ordering retroactive payments of unlawfully discontinued contributions to U's health and welfare fund, Bd did not provide for interest at a fixed rate on fund payments due as part of *make-whole* remedy; such additional amounts may be determined, depending upon circumstances of each case, by reference to governing provisions in fund's documents and, in absence of such provisions, by reference to evidence of any loss directly attributable to E's unlawful action, including loss of return on investment of portion of funds withheld, additional administrative costs, etc., but not on collateral losses)

Turnbull Enterprises, Inc. 259 NLRB No. 122
(in ordering payments of unlawfully discontinued contributions to U's health and welfare fund, Bd provided that, irrespective of whether U requests reinstatement of fund plan, specific Ees who suffered actual damage in loss of benefits be made whole by recovering those damages, with E reimbursing them for actual cost to the extent those costs would have been paid by the fund minus the costs which were actually paid by private insurer carrier under agreement with U)

Turnbull Enterprises, Inc. 259 NLRB No. 122
(in ordering retroactive payments of unlawfully discontinued contributions to U's health and welfare fund, Bd did not permit E to elect to make contributions to fund in lieu of compensating Ees for loss of benefits; instead, Bd required that Ees be made whole for loss of benefits after date on which fund coverage ceased until date E fully complies with order herein; and amounts due shall be computed in accordance with *Cole Protection Service, Inc.*, 182 NLRB 682)

Turnbull Enterprises, Inc. 259 NLRB No. 122
(in ordering that E make whole Ees for benefits they were entitled to under E's unlawfully discontinued health and welfare fund, Bd required that E notify, in writing, all Ees and former Ees that qualified for entitlement of benefits, since fund plan provided for future coverage for 6 months, regardless of whether individual remains employed, on basis of contribution made during his employment)

Henry Cauthorne, an individual, t/a Cauthorne Trucking 256 NLRB No. 115
(Bd did not provide for interest at fixed rate on fund payment due as part of its *make whole* remedy because provisions of Ee benefit fund agreements are variable and complex leaving such determination for compliance stage)

Price Pfister, A Division of Norris Industries 256 NLRB No. 021
(Ee who was suspended after E held violative investigatory interview not entitled to backpay where E did not base his decision to suspend Ee on basis of information obtained at interview, but had reached decision prior to interview)

Pacific Intercom Co. 255 NLRB No. 061
(where E which had unlawfully dealt directly with Ees during term of bargaining agreement, paying less than contract wage and failing to make payments to pension fund, and failed to use hiring hall as required by contract, subsequently signed and then repudiated another in series of agreements, in order to effectuate policies of Act make whole remedy extended to time of beginning of ULPs during prior contract rather than beginning with latest contract which was repudiated)

Aeronca, Inc. 253 NLRB No. 026
(make Ees whole for loss of benefits due them by paying them *value* of lost benefits, Christmas turkey)

Tolmich, Inc. d/b/a Orange County Metal Processing 252 NLRB No. 177
(*collateral losses* not included in *make-whole* remedy)

Kraft Plumbing and Heating, Inc. 252 NLRB No. 126
(Bd ordered make whole remedy to include reimbursing Ees for any medical, dental, or other expenses ensuing from E's unlawful failure to make such contributions; furthermore, E ordered to reimburse Ees for any contributions Ees themselves may have made for maintenance of contractual health and welfare, pension, industry and apprenticeship funds after E unlawfully discontinued contributions)

National Car Rental System, Inc. 252 NLRB No. 027
(*limited backpay* requirement accompanied bargaining order requiring E to bargain with U w/i 5 days of decision concerning effects of its closing facility as result of sale and relocation; back pay order designed to make whole Ees for losses, if any, suffered as result of violation and to recreate in some practicable manner situation in which U's bargaining position is not entirely devoid of economic consequences for E)

General Motors Corporation 251 NLRB No. 121
(Bd ordered make-whole remedy, including reinstatement and backpay, where E did not sustain its burden of establishing that it would have discharged Ee even in absence of unlawful *Weingarten* interview)

Kraft Foods, Inc. 251 NLRB No. 006
(c/d order, rather than make-whole remedy, appropriate as remedy for violation of Ee's *Weingarten* rights, since E negated *prima facie* showing of appropriateness of make-whole remedy by demonstrating that its decision, to discipline Ee involved in forklift collision and fight with another Ee, was not based on information obtained at unlawful interview)

Coyne Cylinder Company 251 NLRB No. 198
(c/d order, rather than make-whole remedy appropriate for violation of Ee's *Weingarten* rights, where there was no evidence to indicate that any information obtained during unlawful interview which preceded Ee's discharge for smoking marijuana during his lunch breaks was relied on by E as basis for discharge)

5598—Cont.

Ohio Masonic Home 251 NLRB No. 089
(where E cannot meet burden to show that decision to discipline Ee was not based upon information obtained during unlawful interview, make-whole remedy such as reinstatement, backpay, and expungement of all disciplinary records will be ordered; if E meets burden, make-whole remedy will not be ordered and, instead, traditional c/d order will be sufficient to remedy 8(a)(1) violation)

Ohio Masonic Home 251 NLRB No. 089
(make-whole remedy for suspended Ee appropriate where decision to suspend was based, at least in part, on information obtained at E's unlawful interview with Ee; during interview E interrogated E regarding complaints E had received from E's supervisor and suspended Ee after she had explained circumstances surrounding complaints, which leads to conclusion that Ee was suspended because she did not have satisfactory explanation in response to complaints, rather than merely because there had been some complaints)

Newspaper Printing Corporation 250 NLRB No. 132
(relief granted to Ees who suffered monetary losses by reason of E's unlawful unilateral action limited to that period of time from effective date of changes (unilateral) until agreement on those changes by parties)

Angelus Block Co., Inc., Amari, Inc. 250 NLRB No. 127
(*collateral losses* not included in any additional amounts determined in order to satisfy Bd's *make-whole* remedy)

Campo Slacks, Inc. and J & E Sportswear, Inc. 250 NLRB No. 057
(whether E must pay additional amounts into benefit funds in order to satisfy make whole remedy left to compliance stage)

Plasticrafts, Inc. 248 NLRB No. 161
(E's make whole obligation for unlawful withholding of wage increases during election and negotiating period diminished by wage increases granted subsequent to period where such increase divided over backpay period equivalent to monthly average of increases over past representative period of employment)

Stearns-Roger, Inc. JD-10-81
(recommended where reinstatement inappropriate because E no longer had any Ees at construction site)

Whelly Foods, Inc. JD-(SF)-16-81
(ALJ did not impose remedial relief beyond that to which GC formally limited himself, where although ALJ had found that E waived 10(b) defense, GC did not seek full make-whole remedy but merely reached back 6 months prior to filing of charge; any other course by ALJ would raise serious due process question)

N.L.R.B. v. Allied Products' Corporation, Richard Brothers Division 629 F.2d 1167 (C.A. 6, 1980)
(contrary to E's contention, Bd did not disregard ct's remand to reconsider Bd's make-whole remedy in light of ct's theory of applicability of 10(b) limitations period which differs from that upon which Bd relied, where Bd accepted ct's finding that charging party did not become aware of E's unlawful suspension of merit wage review program until certain date, agreed that 10(b) limitations period was tolled until then, and consequently expanded its make whole remedy to include those Ees who had suffered before that date by reason of suspension of the scheme)

5598-5000 Interest

Construction Erectors, Inc. 252 NLRB No. 045
(remedial order contained no provision for interest on E's obligation to fringe benefit trusts where such contract provisions dealing with Ee benefit funds are variable and complex and Bd traditionally leaves such determinations of interest on unlawfully withheld fund payments to compliance stage)

Pullman Building Company 251 NLRB No. 148
(where Bd ordered appropriate trust funds be made whole for losses suffered due to E's ULPs, it left determination of interest, if any, to individual provisions of Ee benefit fund agreements)

5599 OTHER FEES

Tolmich, Inc. d/b/a Orange County Metal Processing 252 NLRB No. 177
(*collateral losses* not included in *make-whole* remedy)

Angelus Block Co., Inc., Amari, Inc. 250 NLRB No. 127
(interest payments on additional amounts E must pay into benefit funds to satisfy Bd's *make-whole* remedy)

Angelus Block Co., Inc., Amari, Inc. 250 NLRB No. 127
(*collateral losses* not included in any additional amounts determined in order to satisfy Bd's *make-whole* remedy)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)
(refund reimbursement of *take home* fee declined, since many commission drivers who paid it may have made profit in doing so; Bd imposed only remedial, not punitive relief; injury was ambiguous)

6600 BARGAINING ORDERS

J.J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation v. N.L.R.B. 645 F.2d 148 (C.A. 2, Mar 21, 1981)
(E's interrogation and solicitation were minor violations and did not support bargaining order or award of back pay)

6601 GENERALLY

Martin City Ready Mix 264 NLRB No. 066
(in determining whether bargaining order is appropriate, Bd will consider *extensiveness of E's ULPs in terms of past effect on election conditions and likelihood of recurrence in future*)

Dutch Boy, Inc., Glow-Lite Division 262 NLRB No. 001
(Ees representational sentiment, once expressed through authorization cards, would, on balance, be better protected by issuance of bargaining order rather than by traditional remedies where possibility of erasing effects of E's ULPs and of insuring fair rerun election, was slight)

Lincoln Technical Institute, Inc. 256 NLRB No. 032
(bargaining order not appropriate notwithstanding E withdrew recognition from U and rescinded contract after U struck in violation of no-strike clause; discharge of all Ees because of strike support not violative and it is unknown whether new Ees desire representation)

EMR Photoelectric, A Division of Sangamo Weston Inc. 251 NLRB No. 214
(E's contention that estoppel exists as result of actions by Bd, GC, and U whereby E was deprived of right to hearing on U's objections to election, and hearing on complaint issued against U and, consequently, GC and U do not seek bargaining order with *clean hands*, rejected, where there was no impropriety on U's part or any irregularity in actions of Bd or GC, E did not show it had any *right* to hearing on objections or to require that GC not settle complaint against U, and this is not proper forum for assessing remedy against U)

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(exhibits containing instructions given to supervisors concerning their obligations under labor laws and which were admitted into evidence held not to make bargaining order herein inappropriate since instructions were not transmitted to Ees and did not seek to retract or dissipate past ULPs; moreover, instructions were given over 1 year after refusal to bargain, and propriety of bargaining order must be appraised at time of ULPs and not at time Bd is deciding case)

Arizona Public Service Company 247 NLRB No. 084
(while E *bought time* by its unlawful refusal to bargain over subcontracting of unit work, it was not evident how such advantage could be negated by Bd's remedial order and, on other hand, U is not w/o practical recourse under circumstances, including filing of appropriate charges and seeking additional relief from Bd)

Harvey & Madding, Inc., d/b/a Dublin Honda JD-(ATL)-97-81
(outcome of election does not determine whether or not bargaining order should issue)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)
(bargaining order to remedy ULPs including wage increases, failure to bargain regarding effect of closing of facilities and failure to furnish information, not warranted, since result would be to either compel parties to engage in continued futile negotiations, or to force upon Ees unwanted representation)

N.L.R.B. v. Koenig Iron Works, Inc.; et al. 681 F.2d 130 (C.A. 2, June 1982)
(bargaining order appropriate where E refused to bargain notwithstanding a long time had passed since ULPs had accurred. See *Glomac Plasters v. N.L.R.B.* 600 F.2d 3 (2nd Cir. 1979))

J.J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation v. N.L.R.B. 645 F.2d 148 (C.A. 2, Mar 21, 1981)
(although Bd, in weighing need for bargaining orders, apparently continues to refuse to consider subsequent events and current conditions, ct held both circumstances are relevant)

N.L.R.B. v. Jamaica Towing, Inc. 632 F.2d 208 (C.A. 2, 1980)
(bargaining order proper only if after objective review of all of relevant surrounding circumstances, including nature of E's misbehavior and any later events bearing on its impact on Ees, it may be reasonably concluded that Ees will be unable to exercise free choice in supervised rerun election)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. 629 F.2d 305 (C.A. 3, 1980)
(Bd not required to give elaborate explanation of factors warranting bargaining order but to estimate impact of ULPs on liklihood of fair rerun-election)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. 629 F.2d 305 (C.A. 3, 1980)
(Bd may consider ULPs committed subsequent to election in determining whether to issue bargaining order as they demonstrate E's continued opposition to unionization)

6601—Cont.

Kenworth Trucks of Philadelphia, Inc. v. N.L.R.B. **580 F.2d 55 (C.A. 3)**
(in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 46 L.W. 4301 (U.S. April 3, 1978) ct, on review, determined that so long as ALJ had provided statement of reasons for recommending bargaining order and so long as Bd had specifically indicated its adoption of findings and reasoning of ALJ, need for separate elaboration by Bd of factors prompting bargaining order appeared to have been met in instant case)

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**
(although Bd properly ordered E to bargain, ct denied enforcement of order in view of lapse of time between ULPs and ct's consideration of order, special nature of employment in construction industry, and ct's holding that E's ULPs were not the reason for loss of U's majority status after termination of current projects)

Bandag, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 5)**
(ct has held that because of unusual nature of *Gissel* bargaining order Bd should look to events subsequent to ULP in order to determine appropriateness of (bargaining) order)

N.L.R.B. v. Borg Warner Corporation; et al. **660 F.2d 324 (C.A. 6, Oct. 1981)**
(where subsidiary of corporation transferred operations to another subsidiary w/o prior bargaining with incumbent U, bargaining order held appropriate since subsidiary E continued to operate same business enterprise as alter ego of subsidiary which had its operations taken over)

Seligman and Associates, Inc. v. N.L.R.B. **639 F.2d 307 (C.A. 6, 1981)**
(notwithstanding RD decision in representation case was still pending before Bd, Bd's findings in ULP case of E-Ee relationship and appropriate unit was proper since issue was relevant to Bd's request for bargaining order and fully litigated below; Bd's findings supported by substantial evidence where it showed E's full and centralized control over Ees and Ees had common interest necessary to comprise appropriate unit)

N.L.R.B. v. Ohio Masonic Home **620 F.2d 138 (C.A. 6, 1980)**
order enforced and election upheld where E did not sustain burden of establishing that Bd acted arbitrarily, capriciously, and abused its discretion in overruling objections and ordering certification)

N.L.R.B. v. Peninsula Association for Retarded Children and Adults **627 F.2d 202 (C.A. 9, 1980)**

Peoples Gas System, Inc. v. N.L.R.B. **629 F.2d 35 (C.A.D.C., 1980)**
(purpose of bargaining order is to deter future violations of Act and not to be used as punitive measure)

6601-5000 Status quo ante

Carbonex Coal Company **262 NLRB No. 159**
(where E committed serious and extensive ULP's including refusing to notify and bargain with U about transfer of work from one mine to another, discriminatorily accelerated opening of second mine, transfered Ees represented by preferred U and hired new Ees through hiring hall of that U without recalling unit Ees and prematurely recognized favored U by entering into contract containing U-security, checkoff and hiring hall provisions, bargaining order necessary to restore *status quo ante*)

Michigan Consolidated Gas Company **261 NLRB No. 080**
(where E unlawfully removed newly certified unit Ees from existing merit and COLA program covering non-unit Ees, and unilaterally canceled scheduled wage increase due unit Ees, E ordered to restore *status quo ante* by reinstituting Ees' participation in program retroactively to date scheduled for its implementation and by awarding them benefits they would have received under program since then; to hold that bargaining is adequate substitute for remedial action would unwarrantedly relieve E of its statutory obligation to maintain existing benefits during negotiations and ignore rights of Ees)

The Mead Corporation **256 NLRB No. 106**
(E required to reinstate its unlawfully withdrawn offer concerning wage rate adjustments for consideration by U for reasonable period of time (20 days), since it is Bd's policy to order restoration of *status quo ante* to extent feasible where there is no evidence that to do so would impose undue or unfair burden on E; remedy not barred by *H. K. Porter Co., Inc., Disston Division-Danville Works v. N.L.R.B* 397 U.S. 99 (1970) since remedy merely requires E to do what it had previously agreed to do)

Nansemond Convalescent Center, Inc. **255 NLRB No. 089**
(in order to place E and U in as nearly same situation as posible which existed during early negotiations it was ordered that upon resumption of bargaining and for 8 months thereafter U be regarded as if initial certification year had not expired)

Intermountain Rural Electric Association **253 NLRB No. 164**
(order of Bd that E reinstitute its pension-plan as it existed as of December 31, 1978, although allegedly unqualified by reason of *IRS ruling* 78-403, doesnot preclude parties from bargaining over any proposed change intended to retain *IRS* qualification; order restored *status quo ante* and placed parties in position they would have enjoyed but for E's illegal conduct)

Pittsburgh-Des Moines Steel Co. **233 NLRB No. 086**
(request for order that upon resumption of bargaining E place before U those same proposals for contract which was before U prior to E's ULPs denied, since normal bargaining order will suffice to remedy violation)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**
(rationale for granting retroactive bargaining order is to re-establish conditions as they existed before E's unlawful campaign and not place U in a disadvantaged position)

Arizona Public Service Company **247 NLRB No. 064**
(E ordered, immediately upon U's request to bargain in good faith over any proposed lawful restrictions on subcontracting of unit work; since there was no allegation or evidence that E unilaterally altered its subcontracting practices, and absent any request therefor by GC, order requiring reinstatement of status quo ante or order requiring unit Ees to be *made whole* is unwarranted)

6607 APPROPRIATE ONLY FOR MAJORITY REPRESENTATIVE

Air Products and Chemicals, Inc. **263 NLRB No. 045**
(Ee ptn which indicated that Ees withdrew their support from U and withdrew their applications for membership not valid proof that U no longer enjoyed valid support where it was prepared two weeks after U requested recognition and well after E had embarked upon course of serious ULPs)

Trend Construction Corporation and General Electric Corporation, Individually and as Joint Employers **263 NLRB No. 044**
(bargaining order not appropriate, where U had ceased to represent majority of Ees in unit due to Ee turnover prior to commission of any ULPs, and loss not attributable to E)

Zero Corporation, Zero East Division **263 NLRB No. 064**

United Supermarkets, Inc. **261 NLRB No. 179**
(finding that E's extensive and serious ULPs did not require nonmajority bargaining order because totality of E's conduct did not completely foreclose possibility of holding fair election, Bd directed second election, but ordered extraordinary access and notice remedies)

United Supermarkets, Inc. **261 NLRB No. 179**
(Bd held nonmajority bargaining order not warranted where, E's activity subsided well in advance of election, last 2 unlawful discharges occurred more than 2 months before election, E waged less aggressive campaign against unit Ees herein despite U's victory in earlier election in another unit, most violations involved single supervisor and single Ee, supervisors' remarks linking unionization to possible job displacement had less severe impact than management official's threat to close plant, and impact of ULPs was diffused because of 7 different locations involved)

United Supermarkets, Inc. **261 NLRB No. 179**
(while refusing to issue nonmajority bargaining order, Bd ordered, instead, extraordinary access and notice remedies in recognition of E's unlawful conduct, where case presented widespread ULPs which although, severe, did not constitute the exceptional first category *Gissel* case which would warrant a nonmajority bargaining order)

United Supermarkets, Inc. **261 NLRB No. 179**
(although E's extensive ULPs were so outrageous and pervasive as to render fair election impossible, nonmajority bargaining order not issued and, instead, remedial action directed that would emphatically inform Ees of their statutory rights and assure that E will respect such rights and afford U opportunity to participate in restoration and reassurance of Ee rights by engaging in further organizational efforts free of further restraint and coercion)

University Townhouses Cooperative **260 NLRB No. 187**
(bargaining order not appropriate where parties did not request such remedy nor did record show that U obtained majority status)

Medical Investors Association **260 NLRB No. 124**
(bargaining order appropriate where U had majority status at time it made demand and E refused to accept demand letter and subsequently discharged most of unit)

G.T.A. Enterprises, Inc. d/b/a Restaurant Horikawa **260 NLRB No. 029**
(not appropriate where U did not have majority at time E began ULP's)

Williams and Lane, Inc. **254 NLRB No. 074**
(where E began new non-U plant and violated Act by requiring Ees to resign from U if they desired transfer, bargaining order not appropriate remedy where U never represented majority of Ees at new plant, Region made determination that there was no accretion to unit at first plant U never sought election nor sought recognition on basis of proof of majority)

Alco Venetian Blind Co., Inc. **263 NLRB No. 161**
(bargaining order inappropriate where majority of Ee support was not clearly established by lawful E poll or by initial picketing of Ee majority)

6607—Cont.

Gordonsville Industries, Inc. 252 NLRB No. 054
(bargaining order appropriate notwithstanding possibility that U might win election after counting unopened ballots)

Sumco Manufacturing Co., Inc. Summit Grinding Company 251 NLRB No. 066
(burden of proving U ever represented majority of Ees in appropriate unit not met)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 087
(notwithstanding E clearly *flaunted the Act* in instant case, Bd did not issue requested *bargaining order* based on its decision in *United Dairy Farmers Cooperative Association*, 242 NLRB No. 179 (1979), inasmuch as there was no showing that U, in instant case, previously enjoyed majority support in the unit; Bd balanced interest of preventing outrageous ULPs with principal of majority rule)

Hinky Dinky Super Markets, Inc. 247 NLRB No. 169
(bargaining order, based upon U's valid card majority, warranted where E's misconduct was pervasive and flagrant in nature by discharging Ee after reducing his working hours, interrogations and unlawful no-solicitation rule)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. 629 F.2d 305 (C.A. 3, 1980)
(bargaining order appropriate where E has engaged in ULPs and at one point U had support of majority of Ees)

Massey Stores, Inc., d/b/a Kermit Super Valu v. N.L.R.B. 631 F.2d 328 (C.A. 4, Oct. 1980)
(not appropriate, where U did not represent majority of Ees at time it demanded recognition since cards on which it based demand were invalid)

J. P. Stevens & Co., Inc. v. N.L.R.B. 612 F.2d 881 (C.A. 4)
(Bd's denial of bargaining order appropriate where ULP's occurred 18 months prior to time U allegedly obtained majority status and neither undermined majority strength nor demonstrated any impediment to an election)

N.L.R.B. v. Haberman Construction Company 641 F.2d 351 (C.A. 5, Apr. 1981)
(E's contention that Bd's bargaining order was unenforceable because it mandated bargaining w/o regard to U's majority status, rejected, since propriety of order does not normally depend on existence of majority status throughout period between time of ULPs and time for enforcement of Bd's order; rather, relevant date for determining E's duty to bargain and, thus, propriety of bargaining order is time of ULPs; however, ct denied enforcement of order in view of lapse of time between ULPs and ct's review of order and because of other considerations)

N.L.R.B. v. Agricom Oilseeds, Inc. 639 F.2d 789(T) (C.A. 9, 1981)
(bargaining order proper where 11 of 14 Ees signed cards and E had engaged in unlawful interrogation and discriminatory discharges)

6609 MAY BE APPROPRIATE IN CASES OF EXCEPTIONAL UNFAIR LABOR PRACTICES ALTHOUGH MAJORITY NOT ESTABLISHED

Peal Distributing Co., Inc. 264 NLRB No. 179
(Bargaining Order not appropriate remedy where U never attained card majority even though E committed some ULPs there were no captive audience speeches, no mass appeals to Ees, no acts of surveillance, no wholesale retalitory terminations, no orchestrated escalation of anti-U activity, moreover, E's ULPs occurred only on 3 days immediately after it learned of Ees' U activity, involved encounters with individual Ees and id not continue. Also violative layoff of Ee mitigated by E's recall of him)

Conair Corporation 261 NLRB No. 178
(issuance of nonmajority bargaining order, appropriate, in view of extreme gravity of E's violations consisting of numerous discriminatory discharges, mass discharge of ULP strikers, repeated threats of discharges and plant closure, discriminatory refusal to reinstate and delay in reinstating strikers, and discharge of reinstated strikers; coercive message of such conduct was carried to every Ee in relatively large unit by highest executive officials who openly committed many ULPs and by managerial officials who used mass communications with Ees to insure maximum dissemination of unlawful threats, solicitation of grievances, and promises of benefits)

Conair Corporation 261 NLRB No. 178
(issuance of nonmajority bargaining order, appropriate, in view of repetition and timing of ULPs, since repetitions of unlawful discharges or threats of plant closure and other violations multiply strength and duration of impression left on Ees; same multiplier effect results from manner in which E timed its unlawful conduct consisting of swift and severe retaliation against U's organizational efforts, increase in violations as election neared, and unlawful discharges even after election; in moment and duration, timing of E's ULPs underscored its opposition to unionization and impressed on Ee mentories drastic consequences of seeking U representation)

Conair Corporation 261 NLRB No. 178
(nonmajority bargaining order held appropriate in instant *exceptional* case since it is type of *Gissel* case which warrants order *w/o need of inquiry into majority status on the basis of cards or otherwise*; neither Bd's traditional remedies nor extraordinary access and notice remedies can effectively dissipate lingering effects of E's massive and unrelenting coercive conduct which foreclosed any possibility of holding fair election; and bargaining order is the only way to restore to Ees statutory right to make uncoerced determination whether they wish to be represented)

Conair Corporation 261 NLRB No. 178
(in exceptional *Gissel* category 1 case warranting issuance of nonmajority bargaining order, risk of imposing minority U on Ees for interim remedial bargaining period is greatly outweighed by risk that, w/o a bargaining order, all Ees would be indefinitely denied their statutory right to make a fair determination whether they desire U representation; there is nothing permanent in a bargaining order and if, after effects of E's acts have worn off, Ees desire to disavow U, they can do so by filing a decertification pet)

Conair Corporation 261 NLRB No. 178
(in *Gissel* category 1 case, nonmajority bargaining order, rather than extraordinary remedies order held appropriate to vindicate Ees' right of self-determination; moreover, reasonable basis exists for concluding that U would have had majority but for E's ULPs inasmuch as U had approximately 46 percent card showing, and even after 9 months of E's ULPs, approximately one-third of voters still cast ballots for U)

Conair Corporation 261 NLRB No. 178
(critical predicate to issuance of nonmajority, bargaining order is Bd's finding that E's unlawful conduct fits *Gissel* category 1 description which warrants a bargaining order *w/o need of inquiry into majority status on basis of cards or otherwise*; consequently, Bd would not necessarily withhold bargaining order in absence of close election vote, high majority percentage card showing, or any other affirmative showing of reasonable basis for projecting U's majority support; accordingly, in view of E's *outrageous* and *pervasive* ULPs herein completely foreclosing fair election, Bd issued nonmajority bargaining order)

Conair Corporation 261 NLRB No. 178
(Bd did not adopt ALJ's limitation of reasonable access to U representatives provisions of order if Bd issued certification or nonmajority bargaining order where such provisions were necessary to dissipate effects of illegal conduct)

Fred Lewis Carpets, Inc. 260 NLRB No. 198
(appropriateness of nonmajority bargaining order discussed)

6612 TO REMEDY ULP'S WHICH PRECLUDE FAIR ELECTION

Belcher Towing Company 265 NLRB No. 159
(U's request that bargaining order be entered against E despite absence of evidence that U at any time represented majority of Ees, denied; while E's ULPs were serious, they did not fall into category of *outrageous and pervasive* ULPs such as those in case upon which U relied)

Pace Oldsmobile, Inc. 265 NLRB No. 197
(on remand from ct, bargaining order held warranted in view of E's ULPs including payment of full cost of insurance, threats to discharge all Ees if U selected, to move plant elsewhere if U came in, loss of benefits, interrogation, layoff of U adherent and refusal to reinstate ULP strikers; substantial turnover of Ees did not dissipate effect of ULPs and obviate need for bargaining order where unlawfully instituted insurance premium payments continued to be received by Ees, and in view of fact E engaged in *hallmark* violations of discharge and threat of plant closure, and E's actions before and after strike would be repeated topic of conversation)

Enterprise Products Company 265 NLRB No. 060
(bargaining order appropriate where E, from first indications of Ee U activity until 3 days before election, engaged in numerous and repeated violations of Act, and then, after election and continuing into course of hearing herein, engaged in further violations; and such massive and egregious violations would render fair rerun election impossible)

Schnadig Corporation 265 NLRB No. 020
(appropriate, in view of E's threats to close plant, maintenance of overly broad no solicitation and no distribution rule, promise of promotion to U adherent in return for opposition to U, layoffs and discharges which undermined majority and likely residual effect of ULPs since E never gave Ees any assurances it would not close plant in reprisal if they voted for U)

Arthur Briggs, Inc. 265 NLRB No. 030
(appropriate, in view of E's campaign to undermine U's majority beginning even before demand for recognition, which included unlawful threats of plant closure, refusal to reinstate strikers and surveillance, which dissipated U's majority and in view of likelihood of lingering violations where principal perpetrator was E owner's and unit small)

De Queen General Hospital 264 NLRB No. 080
(appropriate)

6612—Cont.

House of Cycle, Inc., t/a Kay Motors 264 NLRB No. 137
(inappropriate where there were no *hallmark* violations, *unit packing* – though serious – would not necessarily have lingering adverse effect where Ees did not know about it, and traditional remedies could eradicate effects of E's ULPs)

Larid Printing, Inc. 264 NLRB No. 040
(election set aside and bargaining order warranted where U had authorization card majority, in view of E's numerous violations in effort to defeat U including interrogations, threats, requiring immediate repayment of loans, discharges, and prohibition against talking about U on E's premises, particularly since Ee complement was small, many violations committed by high level officials and E's unlawful conduct continued after election)

The Exchange Bank 264 NLRB No. 111
(inappropriate, where U had ceased to exist as labor organization, and therefore no longer represented Ees)

The Exchange Bank 264 NLRB No. 111
(appropriate, notwithstanding almost 3 years passed since E first engaged in conduct found unlawful herein, where E's unlawful conduct consisted, *inter alia*, of threats of discharge and discharge of two leading U adherents, and which resulted in dissolution of one U and attempted destruction of majority support for succeeding U)

Martin City Ready Mix 264 NLRB No. 066
(appropriate where E's actions fell in category of *less extraordinary* cases marked by *less pervasive* practices including illegal layoff of 5 Ees who signed cards in 8-Ee unit notwithstanding all 5 have since voluntarily quit and not been replaced; timing layoff on next working day after R ptn was received; promises of benefits and threats of plant closure; E-party to celebrate U's defeat in election; small size of unit and E's failure to offer reassurances that conduct would not recur all of which have tendency to undermine U's majority strength and impede election processes)

Granite City Journal, Inc. 262 NLRB No. 140
(appropriate, where instances of E's misconduct were not isolated but consisted of repeated acts of interrogation, threats of discharge and loss of job opportunities, creation of impression of surveillance, pressure upon Ees to spy on one another and constructive discharge of one Ee; as result, 2 months after organizational drive began with well over majority of Ees signing cards, U lost election by 2 votes; moreover, impact of ULPs committed solely by one company official was not minimized because just a few Ees were subjected thereto since, in small shop, official's conduct could hardly remain secret)

Granite City Journal, Inc. 262 NLRB No. 140
(bargaining rather than c/d order appropriate, notwithstanding replacement of sole malfeasor by new company president; E was not absolved of responsibility for former official's acts by virtue of his discharge and, if E wished to disassociate itself from his actions it could have issued reassurances to Ees by publicly condemning official's practices and offering reinstatement to unlawfully discharged Ees; and bargaining order may be needed even where ULPs have ceased, since order is designed to deter future misconduct as it is to remedy post election damage)

Granite City Journal, Inc. 262 NLRB No. 140
(appropriate despite Ee turnover, where core of Ees, who were part of U's initial majority, remained in E's employ and had not sought to withdraw their authorization cards; and to take Ee turnover into account would merely afford added inducement to E to indulge in ULPs in order to defeat U in election and, in addition to attrition of U support from delay in accomplishing results, Ee turnover would help E to hold out for better chance of victory)

Coil-Acc, Inc. 262 NLRB No. 012
(bargaining order, based on U's majority status as indicated by authorization cards, appropriate where E's ULPs tended to undermine U's majority strength and impede election process)

Onan, a Division of Ona Corporation 261 NLRB No. 187
(E's ULPs found sufficiently flagrant to warrant entry of remedial bargaining order, although no request for recognition was made to E by U)

Comet Corporation 261 NLRB No. 188
(appropriate, in view of E's unlawful discharges instigating, assisting and reorganizing minority U, and promulgation of unlawfully broad no solicitation and no access rules)

United Supermarkets, Inc. 261 NLRB No. 179
(although E's extensive ULPs were so outrageous and pervasive as to render fair election impossible, nonmajority bargaining order not issued and, instead, remedial action directed that would emphatically inform Ees of their statutory rights and assure that E will respect such rights and afford U opportunity to participate in restoration and reassurance of Ee rights by engaging in further organizational efforts free of further restraint and coercion)

Parker-Robb Chevrolet, Inc. 262 NLRB No. 058
(appropriate, since E's conduct before and after U demanded recognition tended to undermine U's majority status and impede fair election in view of E's unlawful interrogations, threat of closure and discharge, and creation of impression of surveillance, followed by unlawful discharge of 6 card signers out of total of 13 who signed cards in unit of 17 Ees; possibility of erasure of effects of ULPs and fair rerun election by use of traditional remedies is slight, and authorization cards provide more reliable measure of Ees' desire than second election)

Pedro's Inc., d/b/a Pedro's Restaurant 261 NLRB No. 148
(inappropriate, where 8(a)(1) violations can adequately be remedied by c/d order inasmuch as violations consisted of interrogation which involved approximately a dozen Ees out of unit of 110 Ees, solicitation of grievances and promised remedies which did not include any promise of benefits, granting of benefit consisting of posting of promotional opportunities pursuant to existing promotion policy, threat of discharge made to one Ee which was not direct but rather implied and veiled threat, and unlawful promulgation of no-solicitation rule)

Pedro's Inc., d/b/a Pedro's Restaurant 261 NLRB No. 148
(on ct remand and as law of the case, Bd held bargaining order was inappropriate where ct, contrary to Bd, found E's implementation of insurance plan on which Bd had relied heavily in concluding bargaining order was warranted, was not unlawful; and remaining 8(a)(1) violations can adequately be remedied by means of ct-enforced c/d order)

Scott Glass Products, Inc. 261 NLRB No. 129
(appropriate in view of unlawful wage increase, solicitation of grievances, and threats of futility of unionization, plant closure and job loss)

Professional Air Traffic Controllers Organization 261 NLRB No. 132
(where E discharged 4 leading U adherents unlawfully, E engaged in conduct so *serious, pervasive, egregious and substantial* that fair and free election would be impossible)

Heads and Threads Company, a Division of MSL Industries, Inc. 261 NLRB No. 115
(appropriate in view of E's program of ULPs involving upper management which included unlawful discharge, offer of promotion conditioned on abandoning U, changes in working conditions, refusal to reinstate ULP strikers, and threats of killing Ee, discharge, loss of benefits, reprisal, and permanent replacement of ULP strikers)

Modern Manufacturing Company, Inc. 261 NLRB No. 078
(appropriate in view of unlawful interrogation, impression of surveillance, layoffs, discharges refusal to rehire, solicitation of grievances and aid in defeating U, threats, and promises of benefits)

Penn Color, Inc. 261 NLRB No. 058
(appropriate, where E engaged in numerous ULPs which had tendency to undermine U's majority status and impede election process; unlawful discharge of leading U advocate went *to the very heart of the Act*; E's threats of plant closure were most effective means of destroying Ee support for U; and E's remedying of Ees' principal grievance through granting of substantial increase of insurance benefits, will have lingering effect by reminding Ees whenever they receive such benefits of E's action, which they are likely to communicate to new Ees)

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant 261 NLRB No. 051
(appropriate, where U had card majority at time of demand for bargaining, in view of E's unlawful interrogation, threat of closure, offer to consider benefits if Ees singed anti-U ptn, unilateral granting of wage increases and discontinuance of benefits, closure of its facility and layoff of Ees for two and a half weeks w/o warning, and discharge of U adherent; notwithstanding only 5 of the 14 Ees who signed ptn and 11 of 23 Ees employed at time of signing are still employed by E)

Ja-Wex Sportswear, Ltd. and Iris Sportswear, Inc. 260 NLRB No. 172
(appropriate, in view of serious and pervasive character of ULPs consisting of repeated threats to close plant, including those made on the very morning of election, and commission of other violations, all of which occurred in context of small work force; E's contention that at most GC had demonstrated only a series of minor violations and that established law precluded issuance of bargaining order, rejected)

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car 260 NLRB No. 118
(appropriate where E embarked on course of unlawful conduct in small unit of 13 Ees w/i one week of U's demand for recognition, including discharges, transfers to night shift, reduced working hours, threat of plant closure, interrogation of U activities, created impression of surveillance, withheld monetary prize awards and insurance sales commissions)

Gentile Pontiac 260 NLRB No. 056
(appropriate, where in concentrated period of time E engaged in open and persistent opposition to Ees' organizational efforts by engaging in various and successive 8(a)(1) violations which reached each Ee in small shop; such conduct, accompanied by discharge of chief U organizer, which removed one-fourth of proposed unit, constituted misconduct so serious and coercive that it was likely to have lasting inhibitive effect on Ees; and c/d order would not root out coercive effect upon Ees of E's unlawful conduct nor deter E from continuing ULPs committed by company president and his sole supervisor)

6612—Cont.

Gentile Pontiac 260 NLRB No. 096
(appropriate, even though none of the Ees who signed authorization cards remained in E's employ, since to take Ee turnover into account would merely afford added inducement to E to indulge in ULPs; although bargaining order will impose U on Ees who had no voice in selecting it, Ees can, after effects of ULPs have worn off, disavow U by filing R ptn; and propriety of bargaining order to effectively cure ULPs and to implement will of majority previously expressed outweigh any consideration that might be given to Ee turnover)

Twin County Trucking, Inc. 259 NLRB No. 078
(appropriate in view of unlawful threats, grant of benefits, interrogation, discharges, calling organizing futile, preferring other U, refusal to bargain, and withdrawal of recognition)

Lay Food Stores, Inc. d/b/a Ken's IGA 259 NLRB No. 035
(order appropriate in view of increasing seriousness of E's ULPs in correlation with declining success of U's organizational activities)

Roth's IGA Foodliner, Inc. 259 NLRB No. 015
(appropriate in view of E's unlawful threats, interrogation, bribery, promise of benefits and instruction not to join U)

La Mousse, Inc. 259 NLRB No. 007
(appropriate in view of unlawful interrogation, solicitation of grievances, promise and grant of benefits, unilateral changes, discharges and constructive discharges)

American Display Manufacturing Co., Inc. 259 NLRB No. 006
(election set aside and bargaining order to be issued, if after counting of ballots U did not win election, in view of fact U had authorization cards from 33 out of 47 unit Ees, and in view of E's ULPs including suggesting formation of Ee committee to bargain with U and threatening plant closure)

Valley Plaza, Inc. d/b/a Captain Nemo's 258 NLRB No. 076
(bargaining order appropriate where possibility of erasing effects of past ULPs and conducting fair and meaningful election is slight)

Glengarry Contracting Industries, Inc. 258 NLRB No. 156
(appropriate in view of unlawful interrogation, threats of loss of work, plant closure and discharge, discharges and layoffs, and promises of wage increases and improved benefits)

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation 258 NLRB No. 142
(Gissel bargaining order appropriate where, contrary to ALJ's finding that E's three-day anti-U campaign a month and a half prior to election could be eradicated by more conventional remedies, Bd held that absence of further ULPs during that period did not lessen negative imprint of E's shortlived, but concentrated and effective campaign to undermine U's majority)

S. W. Hart & Company, Pty. Ltd., d/b/a Solahart of Fresno 258 NLRB No. 192
(appropriate in view of unlawful interrogation, changing of method of paying Ees, requirement that Ees provide own uniforms, trucks, material and tools, transfer of part of unit, and subcontracting of work)

Jaybil Steel Products, Inc.; etc. 258 NLRB No. 157
(election ordered set aside and bargaining order to be issued, if as consequence of revised tally after counting of challenged ballots, U loses election, in view of E's numerous ULPs including threats of discharges and plant removal, promises of benefits, changes in method of compensation, discharges and offers of reemployment conditioned on U rejection)

Greyhound Food Management, Inc. d/b/a Burger King 258 NLRB No. 178
(appropriate, where election was precluded by E's conduct which included uninterrupted ULPs until day of election, involving all supervisors and high management officials and directed at all Ees including Ees of high school age highly susceptible to E's manipulation)

Greyhound Food Management, Inc. d/b/a Burger King 258 NLRB No. 178
(appropriate, where election was precluded by E's conduct which included numerous threats of plant closure which constituted ULPs recognized as serious ULPs having substantial impact on Ee attitudes and reactions, and thus upon Ees' free choice)

Greyhound Food Management, Inc. d/b/a Burger King 258 NLRB No. 178
(appropriate, where election was precluded by E's conduct which included threats of plant closure coupled with unlawful grants of benefits, thereby sending clear message to Ees that vote for U would jeopardize one's employment and that vote against U would lead to improved terms and conditions of employment and thereby instilling in Ees strong fear of U representation which would continue in event of second election; and traditional c/d remedy will not erase effect of such fear not enable Ees to participate in uncoerced rerun election)

Greyhound Food Management, Inc. d/b/a Burger King 258 NLRB No. 178
(appropriate, where election was precluded by E's conduct which included widespread acts of interrogation, surveillance, and solicitation of grievances, and thereby signaled to Ees E's displeasure at U activity and lengths E would go to stifle Ees' right of self-organization; such unlawful conduct would not soon be forgotten and c/d order will not eradicate its lingering effects nor deter recurrence of ULPs since they were committed by top management officials, none of whom has left employ of E who has made no effort to neutralize effect of ULPs)

Greyhound Food Management, Inc. d/b/a Burger King 258 NLRB No. 178
(appropriate, since E's unlawful conduct tended to undermine U's majority status, where during short 2-month period E engaged in pervasive and widespread ULPs, and destructive impact on Ees of such conduct was heightened since directed at relatively small complement of Ees in highly integrated work force which undergirded E's threatened closure of its facility)

Kawasaki Motors Corporation, U.S.A. 257 NLRB No. 069
(Gissel order not appropriate where there has been no showing of card majority)

Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. 257 NLRB No. 048
(appropriate in view of interrogation, threats of reprisals, implied promises of benefits, statements that timing of warnings was due to U activity, post-election interrogation about Ee's testimony before Bd, threats, discriminatory enforcement of work rules and discharge based thereon)

Isadore Spiegel, an Individual t/a Spiegel Trucking Company; Spiegel Trucking Company, Inc.; I & L Trucking Company, Inc. 257 NLRB No. 020
(bargaining order appropriate in light of E's outrageous and pervasive ULPs especially discharging all but one Ee after they had signed U authorization cards)

Pace Oldsmobile, Inc. 256 NLRB No. 111
(appropriate in view of unlawful promises and grant of benefits, threats of loss of benefits, discharge, closing of facility, interrogation, layoff, and failure to reinstate ULP strikers)

Great Scot of Florida, Inc. 256 NLRB No. 126
(bargaining order appropriate where E was guilty of various ULPs such as unlawful interrogation, threats to cut work hours, granting of benefits to one group of Ees and not another, and threat to close)

Price's Pic-Pac Supermarkets, Inc. 256 NLRB No. 123
(order appropriate in view of unlawful discharges, interrogation, polling of Ees, threats of discharge and store closure, and surveillance)

Precision Graphics, Inc. 256 NLRB No. 097
(E's threat of plant closure warranted issuance of bargaining order to better protect Ee sentiment since it is unlikely Ees would soon forget threats to their livelihood, where E's clearly understood threat made 3 days after Ees designated U as their representative, and E's subsequent alleged repudiation of unlawful threat was ineffective and was continuation of prior direct threat or at least veiled threat that if U won election E still had same options as before)

Keystone Pretzel Bakery, Inc. 256 NLRB No. 099
(on remand, Bd held that neither passage of time resulting from delay in Bd's issuance of its Decision and in seeking enforcement of its Order in case nor Ee turnover in bargaining unit dissipated impact of E's ULPs and adhered to original conclusion that Ees' sentiment, as expressed through their authorization cards, would be better protected by issuance of bargaining order than by traditional remedies)

Vireson, Inc. 256 NLRB No. 037
(appropriate, since possibility of erasing effects of E's ULPs and of ensuring fair rerun election by use of traditional means was slight)

Le Roy Fantasies, Inc., and Hardwicke's Plum, Inc., A Joint Venture, d/b/a Maxwell's Plum 256 NLRB No. 036
(barbaining order warranted where E emberked on extensive and pervasive campaign to thwart Ees' organizational efforts and to rid itself of U by destroying its majority support)

Highland Plastics, Inc. 256 NLRB No. 028
(bargaining order proper since E committed certain ULPs; such as, threat of loss of employment, discharge of U adherents and threat of plant closure which are considered *hallmark* violations which have lasting inhibitive effect and notwithstanding E experienced substantial Ee turnover since validity of bargaining order depends on evaluation of situation at time ULPs committed)

Richland Co. & Assoc., Division of McDonald Construction, Inc. 256 NLRB No. 026
(barbaining order appropriate, in view of extensive and serious ULPs, including egregious threat to close plant if U won election, in very small bargaining unit)

Kovah Kenner, Inc. 256 NLRB No. 008
(appropriate in view of E's solicitation of grievances, discriminatory discharge, refusal to reinstate economic striker and other discriminatory actions against U adherents)

6612—Cont.

Samuel J. Wade, an Individual d/b/a Major Cab Company 255 NLRB No. 181

(bargaining order appropriate where fair election impossible because E undermined U's majority status by numerous ULPs such as unlawful threats of plant closure and discharge, interrogations, and actual discharges of U adherents)

C. E. Wilkinson & Sons, Inc. 255 NLRB No. 176

(appropriate, where E's campaign of serious and extensive ULPs had tendency to undermine U's strength and impede election process, there was likelihood of E's misconduct recurring during election campaign, and possibility of erasing effects of E's ULPs and of ensuring fair election by use of traditional remedies was slight)

Sanitas Care, Inc. d/b/a Parkview Acres Convalescent Center 255 NLRB No. 149

(bargaining order appropriate where E engaged in various ULPs such as threats of discharge and loss of wage increase, interrogations, discharges, and requiring U adherent to work under less desirable conditions)

Southern Moldings, Inc. 255 NLRB No. 115

(appropriate, in view of numerous and extensive ULPs; fact that E's unlawful conduct extended beyond election to eve of ULP hearing revealed continuing hostility toward U and reduced possibility of erasing effects of E's ULPs and of ensuring fair rerun election by use of traditional Bd remedies)

Edmund Homes, Inc. 255 NLRB No. 106

(appropriate in view of E's unlawful threats, interrogation, promises of benefit and discharge of 7 of 11 card signers, a course of conduct designed to undermine Ees' organizational efforts)

Doug Hartley, Inc. 255 NLRB No. 097

(bargaining order warranted in view of unlawful mass discharg of entire unit of 11 Ees 4 days after 8 Ees in unit signed authorization cards)

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. 255 NLRB No. 098

(bargaining order appropriate where E unlawfully discharged two Ees and unilaterally granted wage increase to Ee)

Dimo Ambulette Service, Inc. 255 NLRB No. 002

(appropriate, in view of pervasive ULPs which tended to destroy and undermine majority status of U)

United Oil Manufacturing Co., Inc. 254 NLRB No. 179

(bargaining order appropriate, where fair election involving small unit would be impossible because of E's ULPs, such as granting wage increases and promotions to U adherents and then denying them overtime benefits as reinstated ULP strikers; by its actions E clearly demonostrated to all Ees that it alone controlled their economic destiny)

Jensen's Motorcycle, Inc. d/b/a Honda of San Diego 254 NLRB No. 165

(bargaining order necessary to remedy effect of unlawful layoffs notwithstanding discriminatees were all reinstated as effects of discrimination are longlasting)

Ed Chandler Ford, Inc. 254 NLRB No. 082

(appropriate where day after U made its demand, E threatened to discharge Ees for their U activity, threatened Ees with loss of benefits if U got in, and prohibited Ees from discussing U at any time during workday, effects of which are unlikely to be eradicated by c/d remedial order but which would remain to interfere with Ees' expressing free choice in second election)

Hasbro Industries, Inc. 254 NLRB No. 070

(appropriate, where E granted substantial wage increases to entire unit; made it clear to 4 Ees that selecting U would mean closing department; distributed letters to each Ee's home advising that U victory would in essence be tantamount to sacrifice of existing benefits; gave 1 Ee impression that his U activities were under surveillance; and subjected another Ee to interrogation concerning his U sentiments)

Warehouse Groceries Management, Inc. 254 NLRB No. 021

(if card majority is found on remand, bargaining order warranted in view of interrogation, threats of discharge and plant closure, solicitation of grievances, and denial of wage increase to principal Ee organizer)

Warehouse Groceries Management, Inc. 254 NLRB No. 021

(if card majority is found on remand, bargaining order warranted in view of interrogation, threats of discharge and plant closure, solicitation of grievances, and denial of wage increase to principal Ee organizer)

Eastern Steel Company 253 NLRB No. 163

(bargaining order appropriate where E discharged 2 of 3 Ee unit, interrogated all unit Ees, forbade them to discuss U and threatened to withdraw Xmas bonuses, insurance benefits and pension plan)

Peoples Gas System, Inc. 253 NLRB No. 150

(on remand Bd did not hold bargaining order appropriate in view of extraordinary amount of time that had elapsed since E's initial refusal to bargain and Bd's prior issuance of bargaining order, and fact U had lost election; however, second election ordered in view of E's initial withdrawal of recognition since reasonable to assume E's act led to U's loss of majority; mailing of notice of election to Ees not ordered nor was E ordered to allow U access to its property since U will be furnished list of Ees)

Alco Venetian Blind Co., Inc. 253 NLRB No. 161

(inappropriate where only ULPs are isolated statements that E would close plant before recognizing U and vague promise that changes would be made and things would get better)

Justak Brothers and Company, Inc. 253 NLRB No. 146

(bargaining order appropriate in view of E's pervasive ULPs and E's refusal to bargain)

Montgomery Ward & Co., Inc. 253 NLRB No. 023

(appropriate, where U had card majority and in view of E's ULPs, particularly wage increases)

Winco Petroleum and Cooper Oil Company, Inc., Successor Employer 252 NLRB No. 150

(order requiring successor E to bargain with predecessor's U, held appropriate, where predecessor voluntarily recognized and bargained with U, violated 8(a)(1), (3) and (5) and was required under *Gissel* to bargain with U, and successor E purchased predecessor's business with actual knowledge of predecessor's ULPs)

Independent Association of Steel Fabricators, Inc.; etc. 252 NLRB No. 129

(on ct remand, Bd in issuing bargaining order overruled ALJ finding that member of E-association withdrew from association and executed contract with outside U while entertaining good faith doubt of incumbent U's continued majority, where record was devoid of any objective factors w/i E's knowledge on which it could have reasonably relied to conclude that majority of its seven Ees no longer supported incumbent U)

Independent Association of Steel Fabricators, Inc.; etc. 252 NLRB No. 129

(where ALJ conditioned bargaining order upon member of E association's resumption of steel fabricating, Bd held bargaining order was appropriate and deleted ALJ's condition, since record was unclear whether warehousing work being performed by E's Ees was bargaining unit work prior to E's discontinuation of fabrication operations; in any event, Bd will leave for appropriate subsequent proceedings question whether warehousing Ees are properly w/i that unit)

Rodeway Inn of Las Vegas 252 NLRB No. 063

(E ordered to bargain where E engaged in unlawful promises of benefits to induce its Ees to abandon U activities, made numerous threats in reprisal to Ees' U organizing activities, and interrogated its Ees to undermine U's majority strength and impede election process; nature and extent of E's ULP conduct especially warranted bargaining order where 40 percent of 5 person bargaining unit were exposed to ULP conduct)

Apple Tree Chevrolet, Inc. 251 NLRB No. 076

(Gissel order affirmed on remand, notwithstanding ct reversal of Bd finding of unlawful discharge, since E's other misconduct as affirmed by ct dissipated U's strength and possibility of erasing effects of such ULPs by use of traditional remedies was slight)

United Services For The Handicapped 251 NLRB No. 117

(U card majority rather than election provides more reliable test of Ees' R desires where E's ULPs precluded holding of fair election)

Chester Valley, Inc. 251 NLRB No. 190

(bargaining order appropriate where E's conduct, taken as a whole, could lead Ees to believe that direct negotiations with E already was and would be as favorable to them as what they could obtain through U, and that vote for U would cause E to become less generous to Ees; such ULPs would likely leave lingering effect on presently employed Ees who benefited from E's ULPs and on new Ees to whom events surrounding ULPs would be conveyed)

Chester Valley, Inc. 251 NLRB No. 190

(bargaining order appropriate where possibility of erasing effects of E's ULPs and ensuring fair election by merely issuing c/d order and posting of notice is slight at best and, on balance, bargaining order should issue on basis of authorization cards signed by majority of Ees at time of hearing; although Bd seems to draw no distinction between *category one* and *category two* cases described in Gissel, ALJ noted that he regarded instant case as being in *category two*)

EMR Photoelectric, A Division of Sangamo Weston Inc. 251 NLRB No. 214

(E's contention that second election should be directed rather than bargaining order issued because it has not previously been found to have violated Act, and has not been charged with further violations since first election, rejected, where E's conduct prevented free and fair election in first place, and its unlawful conduct continued to affect old and new Ees which could not be wiped out by passage of time)

6612—Cont.

EMR Photoelectric, A Division of Sangamo Weston Inc. 251 NLRB No. 214

(E's contention that no bargaining order should be issued because of U representative's misconduct during U organizing campaign, rejected, since U is not thereby disqualified from representing E's Ees inasmuch as issue herein is whether E should be ordered to bargain with U, not with U representative who may no longer be associated with U, or may not be U representative for bargaining with E)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting 251 NLRB No. 027

(bargaining order warranted where ULPs committed by E constituted show of brute force, resulting in termination of only those Ees who had shown support for U, and impact of such discharges in small unit had far greater effect than in larger unit and made fair election impossible; consequently, E's ULPs may not be remedied merely by use of Bd's traditional remedies)

Stanley M. Feil, Inc. 250 NLRB No. 065

(appropriate, in view of E's unlawful interrogation and granting of benefits which particularly has tendency to undermine majority and impede election process by providing as much if not all they hoped to gain through U representation)

Brooks Cameras, Inc. 250 NLRB No. 116

(appropriate, where E followed refusal to bargain with U having card majority with illegal discharge of approximately one-half of unit Ees, including U organizer)

Magnesium Casting Company, Inc. 250 NLRB No. 107

(bargaining order warranted, in view of discharge of leading U adherent, discharge of other Ees for pretextual reasons, coercive interrogation and threats involving in one instance E's highest plant official, and continuation of E's egregious conduct at time of hearing w/o any abatement or remedy therefor)

Discotron Equipment Inc., d/b/a Xenon 250 NLRB No. 024

(appropriate in view of E's unlawful interrogation and discharges, where U had majority and had demanded recognition)

Pilgrim Life Insurance Company 249 NLRB No. 140

(appropriate, in view of E's campaign of intimidation and coercion after it learned of U organizing campaign which included threat to close business and to discharge Ees, and in view of its subsequent unlawful discharge of 10 U activists out of 27 Ee unit)

Patsy Bee, Inc. 249 NLRB No. 125

(Bd held, contrary to ALJ, that E's conduct warranted bargaining order; inasmuch as E not only attempted to thwart representation desire of Ees but in the process intentionally sought to abort free election, odds for free choice in rerun election were minimal)

Hedison Manufacturing Company 249 NLRB No. 096

(notwithstanding unresolved question regarding alleged unlawful discharges, herein remanded to ALJ, Bd issued order requiring E to c/d from engaging in unlawful activity and to bargain with U, since resolution of remanded issue did not affect Bd's conclusion that E's extensive ULPs had tendency to undermine U's majority and to impede election process, where ULPs ranged from discriminatory layoffs, unlawful imposition of conditions for transfer of Ees, threats of reprisal, and acts of surveillance and coercive interrogation directed at substantial number of Ees)

Battery Bill, Inc. 249 NLRB No. 030

(appropriate, in view of unlawful discharges, interrogations, and threats)

Digital Paging Systems of Toledo, Inc. 248 NLRB No. 015

(appropriate, where all members of unit had signed authorization cards and there was unlawful interrogation and discharge)

American Sunroof Corporation; et al. 248 NLRB No. 098

(inappropriate where ULPs not so egregious as to preclude holding of fair and reliable election)

Ditch Witch of Central Illinois, Inc. 248 NLRB No. 052

(*Gissel* order appropriate where E's course of serious ULPs included coercive interrogations and discriminatory discharges which destroyed U majority status immediately after U demand for recognition)

Permanent Label Corporation 248 NLRB No. 021

(violations of Section 8(a)(1), (3) and (4))

Jacques Syl Knitwear, Inc. 247 NLRB No. 191

(appropriate, in view of E's unlawful interrogation, threatening of plant closure and permanent replacement of ULP strikers if they did not abandon strike, refusal to reinstate strikers or to pay strikers accrued vacation pay, offering to strikers additional pay to abandon strike, and creating impression of surveillance)

Pay 'N Save Corporation 247 NLRB No. 116

(bargaining order issued since discriminatory discharge of leading U adherents had especially pervasive effect on other Ees, and impact of discharges in small unit had far greater effect than in larger one and practically makes fair election impossible)

Tartan Marine Company 247 NLRB No. 073

(appropriate, where U had card majority, in view of E's unlawful interrogations, threats, solicitation of Ees to withdraw U cards, encouraging Ee not to honor Bd subpoena, denial of wage increases, and refusal to rehire U adherent)

Tartan Marine Company 247 NLRB No. 073

(mtn to reopen record to determine if bargaining order warranted on basis of Ee turnover, and lapse of time since ULPs, denied, notwithstanding dismissal of complaint in prior case in which E was Respondent)

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. 247 NLRB No. 090

(after count of discriminatees' ballots, if revised tally of ballots does not show that majority of votes have been cast for U, issuance of bargaining order is warranted, since E's unlawful conduct precluded likelihood of fair second election)

J. P. Stevens and Company, Inc. 247 NLRB No. 044

(bargaining order appropriate where E's ULPs were severe and widespread, were of character which would linger, and were incapable of being dissipated under traditional remedies which also would not prevent their recurrence; moreover, denial of bargaining order would create in minds of Ees notion that E could successfully flout law and escape bargaining obligation simply by virtue of passage of time)

J. P. Stevens and Company, Inc. 247 NLRB No. 044

(GC's request for prospective company-wide bargaining order covering future bargaining requests whenever U secures either a card majority or certification, denied, since this was not a certification refusal to bargain case and no need exists for such order, and requested remedy is not appropriate for Gissel refusal to bargain since bargaining order based on card majority requires Bd's assessment of facts and its remedial authority in each case; moreover, GC has readily available litigation to accomplish same result)

Jamaica Towing, Inc. 247 NLRB No. 042

(bargaining order proper where, even though E's violations were not in category of exceptional cases and violations could not be characterized as *outrageous*, they were at least sufficiently serious and extensive, and their effect so lingering, that they fall w/i second category of *less extraordinary cases* marked by less pervasive practices which still have tendency to undermine majority strength and impede election processes)

Jamaica Towing, Inc. 247 NLRB No. 042

(upon ct remand, Bd affirmed its issuance of bargaining order, where E deliberately engaged in preelection unlawful conduct designed to convince Ees that their demands would be met through direct dealing and that U representation would in no way be advantageous to them, and E thereby so thoroughly chilled Ees' desire for representation as to cause them to reject election process; in view of small number of unit Ees and impact of E's conduct upon them, inference is that such conduct would continue to influence Ees' free choice in rerun election)

L.B.L., d/b/a China Night of Superior JD-373-82

(appropriate in view of discharge of 3 Ees on mourning after they met with U agent, reduction in hours of Ee, speech on day before election which substantially interfered with election, promise of benefits, threat of no wage increase, threat to close, threat not to bargain in good faith, threaten Ee with civil suit for taping E meetings)

J.A.G. Freight Systems, Inc. JD-(NY)-31-82

(appropriate, in view of unlawful substantial wage increase given large number of unit Ees after U demanded recognition)

Normike Contractors, Inc. JD-(NY)-51-81

(appropriate, in view of E's unlawful interrogation of Ees, threats of plant closing, and discharge of Ees in order to undermine U's majority status)

Lucky Lion Edgewater, Inc. d/b/a Lucky Lion JD-(SF)-349-80

(bargaining order appropriate where U majority was clearly shown, threats of plant closure and discrimination or loss of employment were made by E and threats were shortly followed by discriminatory discharge of two-fifths of unit; coercive atmosphere created by E so dissipated probability that fair and reliable election could be conducted with certainty that bargaining order is only effective remedy)

Marlboro Trucking Co., Inc., C-J Construction Co., Inc., Suburban Yellow Cab, Inc. JD-441-80

(bargaining order appropriate in view of Es' open hostility to organizational activity, their readiness to act on it, their threats of discharge, and subsequent unlawful discharge of Ee and majority status U enjoyed at time of ULPs)

Carlina Knitting Co., Inc., et al. JD-321-80

(not appropriate where ULPs are not so *outrageous* or *pervasive* as to impede election process or make likelihood of fair election impossible)

Hart Ski Mfg. Co., Inc. JD-11-80

(appropriate, in view of lingering effects of E's unlawful threats, encouragement of formation and domination of Ee committee, retaliatory layoff of Ees, and refusal to bargain with outside U which had majority)

6612—Cont.

N.L.R.B. v. Hasbro Industries, Inc. 672 F.2d 978 (C.A. 1, Feb. 1982)
(appropriate in view of unlawful interrogation, large post-election wage increases for unit Ees, and threats of loss of existing benefits and closing of department if U was selected)

N.L.R.B. v. Magnesium Casting Company, Inc. 668 F.2d 13 (C.A. 1, Dec. 1981)
(ct held Gissel order appropriate, rejecting E's objections to Bd's ULP findings regarding discharges of U adherents and validity determinations of several authorization cards, where ct held that challenged Bd findings were supported by substantial evidence)

Hedison Manufacturing Company v. N.L.R.B. 643 F.2d 32 (C.A. 1, Mar 11, 1981)
(ct enforced Bd bargaining order where *there were too many established ULPs to question Bd's decision*)

N.L.R.B. v. Chester Valley, Inc. 652 F.2d 263 (C.A. 2, June 1981)
(bargaining order not warranted where ct overturned ALJ's finding of hallmark violation - granting of unusually large wage increases - and believed remaining practices were insufficient to justify bargaining order; remaining unfair practices were numerous but fell into less coercive category and almost all consisted of implied rather than overt threats or promises and thus were less likely to have strong and lasting effect; ct also noted good deal of Ee turnover in bargaining unit from time of hearings to time of Bd's bargaining order)

Coating Products, Inc. v. N.L.R.B. 648 F.2d 108 (C.A. 2, May 1981)
(bargaining order proper where E reassigned and constructively discharged U activist and granted substantial pay and fringe benefits during U campaign as this conduct is likely to have lasting inhibiting effect on work force, notwithstanding Bd failed to explicate exactly why bargaining order proper)

J.J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation v. N.L.R.B. 645 F.2d 148 (C.A. 2, Mar 21, 1981)
(rerun election instead of bargaining order, appropriate, where 8(a)(1) violations were very minor infractions and were not communicated to other Ees; unlawful grant of wage increase was made under mitigating circumstances consisting of absence of anti-U motivation or of likelihood that anti-U conduct will be repeated; decision to grant increase was based on misconceived judgment of counsel; when increase was announced Ees understood it was delayed by Bd election proceedings; and because of Ee turnover, bargaining order could easily impose upon Ees U not desired by majority)

N.L.R.B. v. Jamaica Towing, Inc. 632 F.2d 208 (C.A. 2, 1980)
(bargaining order not warranted where E's ULPs consisted of interrogations, expression of opposition to U, threats of less overtime, stricter enforcement of workrules and implied promises that some of Ees' demands would be met as none of E's statements were ever put into effect and 38 percent of workforce left unit for reasons unrelated to E's ULPs; moreover, Bd, on remand, failed to elicit evidence regarding changed composition of workforce and whether Bd order might impair Ee rights, doing more harm than good)

United Oil Manufacturing Co., Inc. v. N.L.R.B. 672 F.2d 1208 (C.A. 3, Feb. 1982)
(bargaining order enforced where U had majority status at relevant times, senior company official engaged in serious pre-and post-strike ULPs including interrogation, grant of promotions and wage increases, denial of overtime benefits, all of which were communicated to significant portion of unit Ees, and Bd concluded that E's conduct conveyed powerful message which cannot be erased or forgotten)

United Oil Manufacturing Co., Inc. v. N.L.R.B. 672 F.2d 1208 (C.A. 3, Feb. 1982)
(pre-majority status ULPs can be relied upon by Bd in issuing bargaining order)

N.L.R.B. v. Eastern Steel Company 671 F.2d 104 (C.A. 3, Feb. 1982)
(appropriate, in view of reduction of unit through unlawful discharges intended to dissuade Ees from selecting U, effect of discharges in small unit, coercive interrogation, prohibition against Ees' discussion of U until after election, threats of punishment if U were chosen, participation of high level of manangement in unlawful conduct, attempt to remove Ee from unit even after charge was pending, and fact that in small work force Ees' free choice in election is undiscernible and delay in bargaining in order to have election merely allows ULPs to affect voters' behavior)

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)
(appropriate, in view of E's numerous ULPs which included unlawful discharges, suspensions, interrogations, granting of benefits and threats)

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)
(in some circumstances, ULPs committed prior to demand for recognition may be considered, in determining whether E's unlawful conduct was sufficiently pervasive to undermine U's majority support and to make fair rerun election impossible. Forbidding Bd consideration of such conduct sets artificial time barrier and ignores possible cumulative effect of antiU activity)

N.L.R.B. v. Garry Manufacturing Company 630 F.2d 934 (C.A. 3, 1980)
(E ordered to bargain, especially in view of solicitation of grievances via E's telephone hot line and more stringent application of disciplinary rules to U adherents as well as numerous other statutory violations)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. 617 F.2d 977 (C.A. 3, 1980)
(ct enforced Bd's bargaining order where E's ULPs tended to undermine U's majority strength and make fair election impossible because of nature of ULPs which involved implied threat to close plant communicated to significant percentage of Ees, participation of senior company officials in ULPs, and fact that factors undermining first election would be present at any future election)

N.L.R.B. v. Maidsville Coal Company, Inc. 693 F.2d 1119 (C.A. 4, Nov. 1982)
(Gissel order must be supported by specific detailed reasons why election will not adequately reflect Ee preference and why traditional remedy of c/d order will not erase Sec. 8(a)(1), (3) and (5) violations and protect Ee rights)

N.L.R.B. v. Apple Tree Chevrolet, Inc. 671 F.2d 838 (C.A. 4, Mar. 1982)
(8(a)(1) violations alone are not enough to support *Gissel* order)

N.L.R.B. v. Apple Tree Chevrolet, Inc. 671 F.2d 838 (C.A. 4, Mar. 1982)
(enforcement of bargaining order denied, where ct found E's solicitation of grievances, announcement of benefits or interrogation of Ees not so coercive in long-term impact as to render likelihood of fair rerun election non-existent or even highly improbable; furthermore, there is no indication that E's misconduct will recur, and asserted dissipation of U's majority is highly speculative)

J. P. Stevens & Co., Inc. v. N.L.R.B. 668 F.2d 767 (C.A. 4, Jan. 1982)
(approproiate in view of implementation of *floor* on profit-sharing, grant of supplemental employment benefits, interference with Ee literature distribution on election eve and day, encouraging Ee repudiation of their authorization cards in testimony before Bd, and pattern of unlawful conduct to reverse Ee pro-U sentiment)

Air Express International Corporation v. N.L.R.B. 659 F.2d 610 (C.A. 5, Oct. 1981)
(bargaining order held warranted where certified unit was merged with newly acquired facility and operation relocated at acquired facility's site 7 to 9 miles nearby, majority of Ees of certified unit were discriminatorily discharged, and presumption that these Ees would have transferred was not rebutted, and, therefore, would have constituted majority of unit at new site)

N.L.R.B. v. Robin American Corporation 654 F.2d 1022 (C.A. 5, 1981)
(bargaining order held appropriate in view of E's outrageous and pervasive ULPs such as unlawful threats and interrogations, unlawful layoffs and discharges, unlawful abolition of department, unlawful solicitation of strikers to return to work, and refusal to reinstate ULP strikers)

N.L.R.B. v. Dadco Fashions, Inc. 632 F.2d 493 (C.A. 5, Dec. 1980)
(appropriate, where U had card majority and in view of E's pervasive ULPs including threats to close plant, creating impression of surveillance, and soliciting withdrawal of authorization cards, notwithstanding passage of time)

N.L.R.B. v. Dadco Fashions, Inc. 632 F.2d 493 (C.A. 5, Dec. 1980)
(*in case not involving remand ct should evaluate appropriateness of bargaining order as of date of ULP proceedings, not as of date matter comes before ct*)

Chromalloy Mining and Minerals Alaska Division, Chromalloy American Corporation v. N.L.R.B. 620 F.2d 1120 (C.A. 5, 1980)
(appropriate, notwithstanding ULPs concerned only one person each, since they were important because of closeness of election results and small size of bargaining unit; moreover E had history of resisting unionization)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. 585 F.2d 752 (C.A. 5)
(not warranted, notwithstanding unlawful interrogation, discharges which were corrected w/i 48 hours, creation of impression of surveillance)

United Services For The Handicapped v. N.L.R.B. 678 F.2d 661 (C.A. 6, May 1982)
(Bd properly rejected ALJ's policy considerations in refusing to issue bargaining order on ground E was nonprofit public service organization dependent upon public financial support, and properly concluded that bargaining order was appropriate, where E's threats and harassment were given continuing effect by permanent discharge of Ees, and conclusion that fair election was tainted by continuing impact of threat of discharge, together with reality of permanent discharge of other Ees w/o reinstatement)

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Stanley M. Feil, Inc. v. N.L.R.B. 674 F.2d 567 (C.A. 6, Mar. 1982)
(bargaining order appropriate although ULPs found were less than *outrageous and pervasive*, since nonetheless they were sufficient to tend to undermine U's majority strength and interfere with electoral process)

N.L.R.B. v. Gibraltar Industries, Inc. and Case, Inc. 653 F.2d 1091 (C.A. 6, July 1981)
(bargaining order not enforced since Bd's lack of analysis regarding residual impact of ULPs was fatal to bargaining order, especially where ct found record did not support many of Bd's ULP determinations)

N.L.R.B. v. Retail Clerks Union Local No. 31, United Food & Commercial Workers International Union, AFL-CIO 655 F.2d 88 (C.A. 6, 1981)
(bargaining order not enforced in view of large increase in number of Ees in unit, passage of time since first election, and nature of ULPs found by Bd)

N.L.R.P. v. Arrow Molded Plastics, Inc. 653 F.2d 280 (C.A. 6, July 1981)
(bargaining order not appropriate since E's ULPs were not so pervasive as to undermine U's previous card majority impede election process and interfere with Ees' freedom to select bargaining representative, notwithstanding unlawful granting and withholding of benefit, unlawful no-distribution rule, since *misconduct fell far short of actual or threatened anti-U plant closures, disciplinary discharges or Ee surveillance which characterizes cases in which ct enforced bargaining orders*)

N.L.R.B. v. Rexair, Inc. 646 F.2d 249 (C.A. 6, Apr 1981)
(bargaining order not enforced where Bd failed to support its conclusion that bargaining order was only satisfactory remedy or to give any analysis of causal connection between ULPs and conclusion that election process was undermined)

N.L.R.B. v. Axton Candy and Tobacco Company 645 F.2d 555 (C.A. 6, Apr 8, 1981)
(bargaining order warranted where U had card majority and in view of E's unlawful threats and granting of wage increases, notwithstanding E's contention of Ee turnover and that supervisor who made unlawful statements had been discharged)

A To Z Portion Meats, Inc. v. N.L.R.B. 643 F.2d 390 (C.A. 6, Mar. 18, 1981)
(ct denied enforcement of bargaining order based primarily on Bd's erroneous finding of unlawful discharge)

N.L.R.B. v. Naum Brothers, Inc. 637 F.2d 589 (C.A. 6, Mar 17, 1981)
(ct enforced Bd's bargaining order in view of E's (1) promise and grant of substantial wage increases and improved benefits given to virtually all of members of bargaining unit; (2) general and individual communications with Ees regarding possible closure of store in event of unionization; and (3) discriminatory discharge of Ee during election campaign)

Dean Products, Inc. and American Metals Corp. v. N.L.R.B. 613 F.2d 162 (C.A. 6)
(inappropriate where there were no discharges, widespread discrimination or harassment, where plant closing was for economic reasons, effect of ULP's would quickly dissipate, and finding of threat of sham bargaining was not supported by substantial evidence)

N.L.R.B. v. Century Moving & Storage, Inc. 683 F.2d 1087 (C.A. 7, July 1982)
(enforcement of bargaining order denied in view of mitigating circumstances indicating that ordinary remedies would be effective to ensure fair election)

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)
(appropriate, in view of E's unlawful interrogation, threats, and violence upon picketers)

Montgomery Ward & Co., Inc. v. N.L.R.B. 668 F.2d 291 (C.A. 7, Dec. 1981)
(ct denied enforcement of Gissel bargaining order where, after determining that two of three challenged authorization cards were valid, ct found that U had not attained majority support from Ees in bargaining unit; ct remanded case for purposes of allowing parties to consider any remaining cards which were not considered below)

Red Oaks Nursing Home, Inc. v. N.L.R.B. 633 F.2d 503 (C.A. 7, 1980)
(bargaining order inappropriate, notwithstanding Bd's finding of U majority status through card authorizations and E conduct violative of 8(a)(1), where E's conduct was not so outrageous or exceptional as to warrant bypassing a rerun election)

N.L.R.B. v. Winco Petroleum Company and Cooper Oil Company, Inc., Successor Employer 668 F.2d 973 (C.A. 8, Jan. 1982)
(Bd properly applied principles of *Golden State Bottling Co.* in issuing bargaining order against successor E where predecessor voluntarily recognized U and then unlawfully repudiated its recognition, successor had actual knowledge of pending ULP proceedings when it acquired enterprise, successor E retained predecessor's Ees in same positions, successor operated enterprise with little or no interruption and w/o substantial change, and predecessor's Ees constituted majority of successor's Ees in relevant bargaining unit)

N.L.R.B. v. Ely's Foods Inc., d/b/a Scotto's I.G.A. 656 F.2d 290 (C.A. 8, 1981)
(appropriate, where U had majority, in view of E's unlawful promise of wage increase if U defeated, threats of discharge, closure, and interrogation)

Patsy Bee, Inc. v. N.L.R.B. 654 F.2d 515 (C.A. 8, 1981)
(ct held Bd abused its discretion by issuing bargaining order, denied enforcement thereof, and remanded case to Bd for further proceedings where evidence established that E's ULPs had had little impact on Ees' allegiance to U; and, contrary to Bd, ct found that the E's speech upon which Bd had primarily relied in issuing its bargaining order was not unlawful and that Bd had offered no explanation for its finding other than a conclusory statement)

N.L.R.B. v. Suburban Ford, Inc. 646 F.2d 1244 (C.A. 8, Apr 1981)
(bargaining order warranted as to salesmen's unit in view of timing of unlawful conduct: 2 days after U requested recognition E told 2 Ees they were disloyal and at next weekly sales meeting E cancelled bonus contest, transferred Ees between new and used car sales, recalled demonstrators, discharged Ees and after he filed ULP charge reinstated him)

N.L.R.B. v. Suburban Ford, Inc. 646 F.2d 1244 (C.A. 8, Apr 1981)
(bargaining order not warranted as to clerical unit as evidence does not show that unlawful conduct against Ees in salesmen's unit, in which bargaining order was found warranted herein, also affected clerical workers or that by hiring four additional clerical Ees after U obtained majority tainted election)

Faith Garment Company, Division of Dunhall Pharmaceutical, Inc. v. N.L.R.B. 630 F.2d 630 (C.A. 8, 1980)
(Bd did not abuse its discretion in issuing Gissel bargaining order where U enjoyed majority status by virtue of authorization cards, and effect of numerous ULPs on part of E tended to undermine this majority and impede election process)

N.L.R.B. v. Antonino Carilli, d/b/a Antonimino's Restaurant 648 F.2d 1206 (C.A. 9, June 1981)
(bargaining order appropriate where Bd's determination that decertification election precluded by E informing Ees it intended to operate w/o U and suggesting Ees either resign from U or seek work elsewhere, implying that better benefits coming w/o U and unilaterally implemented benefits supported by substantial evidence; contention order inappropriate since would impose minority U on Ees rejected, as contention based on letter signed by purported majority of Ees which expressed opposition to U since letter written after hearing and mtn to reopen proceeding to permit introduction of letter denied)

N.L.R.B. v. Circo Resorts, Inc., d/b/a Circus, Circus 646 F.2d 403 (C.A. 9, May 1981)
(although extreme case clearly warranting order to bargain as a matter of law was not involved, bargaining order held appropriate since U's majority status could not be viewed as *minor case* w/i Gissel standards, need for order was greater since small bargaining unit was involved, and pattern of activity engaged in by E during short period of time, including discharge for U activity and refusal to replace discharged Ees, indicated concentrated effort to nip U organization in the bud)

N.L.R.B. v. Steven Davis and Michael Provenzano, d/b/a Carlton's Market 642 F.2d 350 (C.A. 9, Apr 28, 1981)
(bargaining order justified in view of adequate inquiry by Bd into whether fair election could be held and sufficiently explicit reasons given for order where impact of past ULPs had not been dissipated and they were so pervasive that traditional remedies were inadequate)

N.L.R.B. v. Leavitt J. Cafer, Eunice Cafer, and Travelodge International, Inc., a partnership, d/b/a Marysville Travelodge 637 F.2d 1309 (C.A. 9, 1981)
(appropriate)

Clear Pine Mouldings, Inc. v. N.L.R.B. 632 F.2d 721 (C.A. 9, 1980)
(contention that bargaining order is inappropriate because U lost majority status and because U directed campaign of violence and intimidation against Ees rejected, in light of E's ULPs found herein and insufficient evidence to invoke *Laura Modes* doctrine where record does not reflect that U was foregoing the *peaceful, legal process*)

N.L.R.B. v. Richard Tischler, Martin Rader and Donald Connelly, Sr., a limited partnership, d/b/a Devon Gables Nursing Home, et al. 615 F.2d 509 (C.A. 9) (1980)
(bargaining order rather than c/d order appropriate, in view of E's refusal of U's demand for recognition on basis of card majority and its commission of

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numerous ULPs; possibility of erasing effects of past ULPs and insuring fair election by traditional remedies was slight)

N.L.R.B. v. Chatfield-Anderson Co., Inc., dba Trans-Span Co. 606 F.2d 266 (C.A. 9, 1979)

(inappropriate where ULPs were trivial and more severe violations were mitigated before election by express disavowals of company president; violations sufficient to justify setting aside election and remand case to Bd for preparation of appropriate judgment)

N.L.R.B. v. Western Drug 600 F.2d 1324 (C.A. 9, 1979)

(inappropriate where before ULP charges were tried all Ees in unit voluntarily resigned for reasons unrelated to the ULP, there was no unusual delay in trying the charges, and Bd's findings did not suggest any alternative ground for concluding that election would not reflect present Ees' true wishes)

Teamsters Local 115 v. N.L.R.B. (Haddon House Food Products, Inc.) 640 F.2d 392 (C.A.D.C. 1981)

(ct agreed with Bd that U never demonstrated majority status that would make bargaining order appropriate under Bd precedents)

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Vinyl-Fab Industries, Inc. 265 NLRB No. 133

(Bd reiterated its policy that *bargaining order* was required where serious widespread notice and repetitiveness of E's threats, solicitations, and promises, small size of bargaining unit, E's swift retaliation against organizing campaign, and fact that individuals making threats, president and plant manager, clearly had authority to carry them out; *possibility of erasing effects of past practices and of insuring a fair election—is slight and Ee sentiment, once expressed through cards,—better protected by a bargaining order)*

Martin City Ready Mix 264 NLRB No. 066

(in *Gissel* test, ULPs susceptible to bargaining orders are divided into (1) *exceptional* cases marked by *outrageous* and *pervasive* ULPs; and (2) *less extraordinary* cases marked by *less pervasive* practice; various courts of appeals require Bd to indicate specifically which category ULPs are classified and clearly explicate reasons for order)

I. E. Steigerwald Co., Inc. 263 NLRB No. 068

Air Products and Chemicals, Inc. 263 NLRB No. 045

(bargaining order proper where E committed such serious ULPs as threats to close plant, threatening to discharge leading U supporter, and these activities continued until day of election and resulted in U losing election with great disparity between number of Ees who signed authorization cards and number who ultimately voted for U)

R. L. White Company, Inc. 262 NLRB No. 069

(bargaining order necessary notwithstanding Bd did not affirm all of ALJ's findings of violations where E had committed so many serious ULPs including threats of plant closure and discharge of Ee for U activity that possibility of erasing effects of ULPs and ensuring fair rerun election is slight)

Flex Plastics, Inc. 262 NLRB No. 078

(bargaining order granted where E unlawfully withdrew recognition from certified U after contract expired and impasse arose; encouraged Ees to join concertedly among themselves to bargain with E w/o U, unlawfully recognized in house shop committee and executed contract)

Zero Corporation, Zero East Division 262 NLRB No. 064

Conair Corporation 261 NLRB No. 178

(in determining whether E's unlawful conduct was so *outrageous* and *pervasive* as to fall w/i first *Gissel* category of *exceptional cases* warranting bargaining order, absent showing of majority status, Bd held that factors to be considered are the *gravity, extent, timing, and constant repetition* of violations found; while focusing on repetition of specific ULPs w/i single case, Bd has noted that recidivism is an important element to be weighed; however, it is not a prerequisite to placing E's conduct in first *Gissel* category and, in instant case, there was no evidence that E engaged in ULPs predating those herein)

Progressive Supermarkets, Inc. 259 NLRB No. 074

(bargaining order proper where U had originally had almost unanimous Ee support and due to E's campaign statements threatening more onerous working conditions, dire consequences of unionization, loss of benefits, threat to discharge 1 Ee and discharge of another Ee, resulting in U losing election; possibility of fair re-run election slight)

Greyhound Food Management, Inc. d/~/a Burger King 259 NLRB No. 178

(authorization card held not invalid even though it showed signing date 2 days after Regional Office date-stamped its receipt; in deciding whether bargaining order based upon 8(a)(1) violations should be issued, it is irrelevant whether or not a demand was even made, it is common experience for Ees to misdate card, and month and year appearing on card coincided with month and year appearing on all cards)

Eastern Maine Medical Center 253 NLRB No. 034

(E's reliance on *Gissel* for arguing against imposition of bargaining order held misplaced, since bargaining order herein arose by virtue of Bd certification and remains intact because of E's failure to abide by its statutory duty to bargain in good faith; bargaining order remedy is not based on whether card majority is better indicator of free choice than new Bd election, but rather on E's failure to bargain and other conduct prior to decertification election which was set aside because of E's unlawful conduct)

Gordonsville, Industries, Inc. 252 NLRB No. 054

(bargaining order appropriate notwithstanding possibility that U might win election after counting unopened ballots)

Independent Association of Steel Fabricators, Inc.; etc. 252 NLRB No. 129

(on ct remand, Bd issued bargaining orders against several Es who withdrew from E association and executed individual contracts with outside U w/o notifying incumbent U)

Apple Tree Chevrolet, Inc. 251 NLRB No. 076

(Bd proceeds with tabulation of challenged votes for election results not out of any doubt concerning bargaining order remedy, but so as not to preclude U from enjoying any benefits to which it may otherwise be entitled as certified representative; moreover, Bd's established procedure to provide both remedies is because certification alone would not suffice to correct any unilateral changes E may institute between period when bargaining obligation commenced and issuance of certification, and further prolong E's refusal to bargain based on U's institution of still another ULP proceeding)

Century Moving & Storage, Inc. 251 NLRB No. 083

(E's discriminatory conduct directed to two known U supporters and affecting two of seven unit Ees, violative and remedy was bargaining order, since conduct was calculated and tended to dissipate and erode possibility of holding free election)

Ely's Foods Inc., d/b/a Scotty's I.G.A. 249 NLRB No. 132

Spearin, Preston & Burrows, Inc. 248 NLRB No. 135

(bargaining order inappropriate; in absence of ULP findings or agreement to permit majority status to be determined by other means, E need not bargain with U that has not demonstrated its majority status by means of an election)

Grandee Beer Distributors, Inc. 247 NLRB No. 163

(appropriate remedy where E threatened to discharge all driver-warehousemen in unit, unit was very small, E unlawfully promised insurance benefits and granted wage increase; moreover, E had prior background of violating Act to discourage U activity)

Hinky Dinky Super Markets, Inc. 247 NLRB No. 169

(bargaining order, based upon U's valid card majority, warranted where E's misconduct was pervasive and flagrant in nature by discharging Ee after reducing his working hours, interrogations and unlawful no-solicitation rule)

Wright Plastic Products, Inc. 247 NLRB No. 101

(bargaining order necessary where E reacted swiftly and severely to organizational activity by discharging half of work force, threatening to close plant, w/i 1 week of initial organizational activity as such activity indicates that E is deeply committed to its anti-U position and substantial likelihood exists that it would resume its ULPs if second election were directed)

Jamaica Towing, Inc. 247 NLRB No. 042

(while instant case did not include factors in hallmark type of case in which bargaining orders issue, such as discharge for U activity or direct threats to close or curtail operations, other types of conduct substantially similar to that involved herein, while perhaps less dramatic in nature, can and do affect Ees to such an extent that bargaining order is usually warranted, and instant case graphically demonstrates such severity of impact inasmuch as E's misconduct caused Ees to repudiate U before election)

Jamaica Towing, Inc. 247 NLRB No. 042

(since bargaining orders have basic purposes of protecting Ee sentiments reached attime of card signing by majority of unit Ees and deterring E's future misbehavior, validity of bargaining order rests on evaluation of situation as of time unlawful conduct was committed)

Jamaica Towing, Inc. 247 NLRB No. 042

(prejudicial impact of E's unlawful preelection conduct held not dissipated by Ee turnover since commission of ULPs and by passage of time since issuance of bargaining order; to delete bargaining order on basis of Ee turnover would reward, rather than deter, E guilty of preelection ULPs, and delay due to passage of time hardly denied justice to wrongdoer, for during period of delay, E enjoyed fruits of its misconduct which was directed precisely at avoiding bargaining obligation it still seeks to avoid)

Chef's Pantry, Inc. 247 NLRB No. 018

(since effect of ULPs may be easily dissipated by Bd's standard remedies, new election, ordered after remedies are invoked, would be likely to fairly reflect true desires of Ees)

Chef's Pantry, Inc. 247 NLRB No. 018

(violations found held not sufficiently severe to warrant finding of violation of Sec. 8(a)(5) with accompanying barging order)

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National King Coal, Inc. JD-(SF)-24-81

N.L.R.B. v. American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. 670 F.2d 1236 (C.A. 1, Feb. 1982)
(before bargaining order should issue Bd must articulate specific examples and precise reasons for concluding that: (1) E's ULPs so undermined U's majority that conducting fair election would be unlikely; (2) E's unlawful conduct likely to continue; and (3) ordinary remedies of backpay, reinstatement, and posting of notices would be inadequate to insure fair election)

N.L.R.B. v. Amber Delivery Service, Inc. 651 F.2d 57 (C.A. 1, June 1981)
(where E's violation of Act consisted of borderline violations having minimal impact on election, with no threats of reprisal or direct coercion, and no evidence that E will continue its violative actions, an election is preferred method of determining bargaining representative and bargaining order not warranted)

N.L.R.B. v. Pace Oldsmobile, Inc. 681 F.2d 99 (C.A. 2, May 1982)
(Bd's order finding various ULP's upheld but case remanded for determination if ULP's were serious enough to require bargaining order where Bd failed to analyze likelihood of fair and free election when it determined that bargaining order was necessary)

J.J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation v. N.L.R.B. 645 F.2d 148 (C.A. 2, Mar 21, 1981)
(rerun election and not bargaining order held preferred remedy for E conduct tainting U election since issuance of bargaining order in lieu of new election is only proper if surrounding circumstances, nature of E's misbehavior, and later events bearing on its impact on Ees, show that Ees will be unable to exercise free choice in rerun election)

J.J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation v. N.L.R.B. 645 F.2d 148 (C.A. 2, Mar 21, 1981)
(new election is preferable over bargaining order which should only be issued when there is substantial danger that Ees will be inhibited from adhering to U, and it is error to hold that bargaining orders should be liberally granted as remedies despite evidence that new election would suffice)

J.J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation v. N.L.R.B. 645 F.2d 148 (C.A. 2, Mar 21, 1981)
(while grant of significant economic benefits to Ees is often characterized as *hallmark* ULP which will justify bargaining order in absence of mitigating circumstances or evidence that conduct is not serious, such violation does not automatically preclude fair second election or mandate a bargaining order, since circumstances may exist where grants of economic benefits, even combined with additional ULPs, are insufficient to support bargaining order; and Bd must analyze nature of hallmark violation and surrounding events to assess potential for uncoerced election)

Grandee Beer Distributors, Inc. v. N.L.R.B. 630 F.2d 928 (C.A. 2, 1980)
(although granting enforcement of order to c/d underlying violations, ct denied enforcement of bargaining order where record revealed neither lingering inhibitory effect nor likelihood of recurrence, and as such, did not warrant extraordinary remedy of bargaining order)

N.L.R.B. v. Eastern Steel Company 671 F.2d 104 (C.A. 3, Feb. 1982)
(by adopting findings of ALJ who conducted hearing, Bd satisfied ct's requirement that justification for bargaining be sufficiently articulated to permit meaningful appellate review; enforcement should not be denied because ALJ did not write down inescapable inference that bargaining order should issue; ALJ's reasoning process was sufficiently discernible for review; and remand for clearer statement would postpone for lengthy period of time issuance of bargaining order herein)

K & K Gourmet Meats, Inc. v. N.L.R.B. 640 F.2d 460 (C.A. 3, 1981)
(not appropriate remedy where ULP's were not of serious nature and effects were erased by Ees vote to strike as this shows that Ees did not believe E's promise of benefits)

United Dairy Farmers Cooperative Association v. N.L.R.B. 633 F.2d 1054 (C.A. 3, 1980)
(Bd has remedial authority to issue bargaining order in absence of card majority and election victory if E has committed such *outrageous* and *pervasive* ULPs that there is no reasonable possibility that free and uncoerced election could be held; ct remanded case for BD to consider in first instance whether facts in case rise to *outrageous and pervasive* conduct which sanctions issuance of such bargaining orders)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. 629 F.2d 305 (C.A. 3, 1980)
(where implied threats of plant closure communicated to significant number of Ees by senior company officials, psychological impact on all Ees is unlikely to dissipate and factors undermining first election would be present at future election; therefore bargaining order proper remedy)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. 617 F.2d 977 (C.A. 3, 1980)
(E's defense to bargaining order on ground that Bd gerrymandered two units so that it could issue bargaining order and that Bd's orders, directing reelection in one unit while ordering bargaining in another unit, were inconsistent, rejected; Bd did not abuse its considerable discretion in setting the bargaining units, and Bd did not make inconsistent findings because neither R nor ULP proceeding presented Bd with question whether free election could be held in second unit)

Rapid Manufacturing Co. v. N.L.R.B. 612 F.2d 144 (C.A. 3)
(enforcement of bargaining order denied where pre-majority conduct did not fall w/i Gissel *exceptional* case category inasmuch as three ULPs involved cannot be classed as *pervasive* in relation to two month organizational drive nor as *outrageous* since neither company officials nor large number of Ees nor immediate drastic consequences were involved; moreover, pre-majority conduct could not have undermined majority strength which is essential requirement of Gissel *less extraordinary* type of case)

Rapid Manufacturing Co. v. N.L.R.B. 612 F.2d 144 (C.A. 3)
(enforcement of bargaining order denied where post-majority conduct did not fall w/i Gissel *less extraordinary* type of case inasmuch as occurrence of 2-month election campaign cannot be considered *pervasive* nor was case *extraordinary* since conduct had limited impact on labor force and no senior company officials committed or sanctioned any ULPs)

Rapid Manufacturing Co. v. N.L.R.B. 612 F.2d 144 (C.A. 3)
(while it is for Bd and not cts to make determination as to effects on election process of ULPs of varying intensity because of Bd's knowledge and expertise, ct held that it would be remiss in its judicial function if, on record as sparse as herein, it were to enforce a bargaining order which, on every count, could not even be regarded as colorably in compliance with Gissel)

Rapid Manufacturing Co. v. N.L.R.B. 612 F.2d 144 (C.A. 3)
(E's failure to publicly rebuke perpetrators of ULPs held not to warrant issuance of bargaining order since E's failure to do so did not constitute substantial evidence that fair rerun election would not be possible inasmuch as any continuing impact which E's failure may have had could be corrected by c/d order and posting of notice)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. 691 F.2d 1133 (C.A. 4, Sept. 20, 1982)

J. P. Stevens & Co., Inc. v. N.L.R.B. 612 F.2d 881 (C.A. 4)
(Bd's denial of bargaining order appropriate where ULP's occurred 18 months prior to time U allegedly obtained majority status and neither undermined majority strength nor demonstrated any impediment to an election)

Air Express International Corporation v. N.L.R.B. 659 F.2d 610 (C.A. 5, Oct. 1981)
(Gissel order is invoked when U that has only informal evidence of majority status is refused recognition because formal election either fails or is likely to fail because of company's ULPs; bargaining orders are also appropriate where recognition unlawfully withdrawn from certified U)

United Services For The Handicapped v. N.L.R.B. 678 F.2d 661 (C.A. 6, May 1982)
(while election is preferred method of determining Ees' choice of bargaining representative, SCt has held that bargaining order may issue w/o an election in *exceptional* cases marked by *outrageous* and *pervasive* practices which nonetheless still have tendency to undermine majority strength and impede election processes)

United Services For The Handicapped v. N.L.R.B. 678 F.2d 661 (C.A. 6, May 1982)
(in *Gissel* bargaining order cases, usual deference given to Bd findings is lessened when Bd orders less preferred remedy of bargaining order w/o holding new election, and bargaining orders have not been enforced when Bd made no findings as to residual impact or likelihood of recurrence of any ULPs, when they are based on conclusory statements, or when Bd's reasoning consisted simply of reciting conclusions w/o factual explication; moreover, to determine appropriateness of bargaining order, analysis must be based on whether fair election can be held and on present effects of past or present ULPs)

Shrl Die Casting, Inc. v. N.L.R.B. 651 F.2d 1218 (C.A. 6, June 1981)
(E's unlawful statements and denial of overtime to Ee when considered in context of record as a whole and, since isolated, were not sufficient to support finding E was not bargaining in good faith, and did not convert economic strike to ULP strike)

Motor Inn of Perrysburg, Inc. d/b/a Holiday Inn of Perrysburg v. N.L.R.B. 647 F.2d 692 (C.A. 6, May 1981)
(long delay between filing C and action of Bd in ordering *Gissel* remedy, rather than 3rd election, made its imposition in instant case abuse of Bd

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discretion w/i meaning of *Clark's Gamble Corp. v. NLRB* 422 F.2d 845 (6th Cir.), *cert. denied*, 400 U.S. 867 (1970))

Justak Brothers and Company, Inc. v. N.L.R.B. 664 F.2d 1074 (C.A. 7, Nov. 1981)

N.L.R.B. v. Wehrenberg Theatres, Inc., d/b/a Melba Theatre and Skyvue Drive-In 690 F.2d 159 (C.A. 8, Oct. 1982)

N.L.R.B. v. Hitchiner Manufacturing Company 634 F.2d 1110 (C.A. 8, 1980)
(threats of plant closure and terminating coffee breaks and actual discharge of leading U adherent)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. 621 F.2d 890 (C.A. 8, 1980)
(bargaining orders not limited to *exceptional* cases marked by *outrageous* and *pervasive* ULPs ... SCt approved *Bd's use of bargaining orders in less extraordinary cases marked by less pervasive practices which nonetheless still have tendency to undermine majority strength and impede election processes*)

Pay'N Save Corporation v. N.L.R.B. 641 F.2d 697 (C.A. 9, Mar 9, 1981)
(bargaining order appropriate, since probable impact of E's ULPs, is increased when small bargaining unit is involved; bargaining order not precluded by Bd's failure to consider E's good faith and lack of anti-U animus since key to issuance of such order is whether commission of serious ULPs interfered with election processes)

N.L.R.B. v. Peninsula Association for Retarded Children and Adults 627 F.2d 202 (C.A. 9, 1980)
(bargaining order not justified where violations (interrogation of Ees) relatively mild, occurred 4 months prior to election, person responsible for interrogations no longer employed at time election held and election preferred method of selecting bargaining representative)

N.L.R.B. v. Bighorn Beverage 614 F.2d 1238 (C.A. 9) (1980)
(proper where only 1 Ee violatively discharged because of small size (4 Ees) of bargaining unit)

N.L.R.B. v. Bighorn Beverage 614 F.2d 1238 (C.A. 9) (1980)
(determination of whether bargaining order warranted is task, not for reviewing cts, but for Bd based on its expert estimate as to effects on election of the ULPs)

N.L.R.B. v. Western Drug 600 F.2d 1324 (C.A. 9, 1979)
(enforcement of Bd order requiring E to bargain with U, denied where, although E's misconduct was not outrageous, Bd applied *Gissel* criteria w/o examining present context, including fact that all unit Ees had resigned before the ULP charges were tried; Ee turnover should be considered when, as here, E's misconduct is serious but not outrageous)

N.L.R.B. v. Willhow Corporation, d/b/a Town and Country Supermarkets 666 F.2d 1294 (C.A. 10, Dec. 1981)
(Bd has great latitude in determining whether E's ULP vitiates fair election process, thus requiring bargaining order based on majority of U authorization cards)

N.L.R.B. v. Willhow Corporation, d/b/a Town and Country Supermarkets 666 F.2d 1294 (C.A. 10, Dec. 1981)
(loss of employment due to U activity is *hallmark* violation which has residual effect on Ees and taints possibility of free election)

Peoples Gas System, Inc. v. N.L.R.B. 629 F.2d 35 (C.A.D.C., 1980)
(bargaining order not justified where Bd did not balance E's, U's and Ees rights in determining necessity of order; Bd failed to consider whether Ees wanted U representation and here an election was held 2 years after E committed ULP and U was defeated)

Road Sprinkler Fitters Local Union No. 669, etc. v. N.L.R.B. 681 F.2d 11 (C.A.D.C., June 1982)
(E's delayed reinstatement of striking Ees particularly serious ULP and bargaining order proper)

6612-8000 May not be ordered where results of valid election not set aside

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. 251 NLRB No. 179
(appointment of E's agent to be observer at election constituted objectionable conduct sufficient to set aside election and issuance of bargaining order in event that one of the joint representatives which previously collected significant number of U cards did not receive majority of valid votes)

Jeffrey Manufacturing Division, Dresser Industries, Inc. v. N.L.R.B. 654 F.2d 944 (C.A. 4, 1981)
(inappropriate where unnecessary because, by virtue of ct's conclusions as to eligibility of voters in Bd election, evidence indicated that U prevailed in election and thus never lost its majority status, and Bd's *Gissel* bargaining order had been predicated on dissipation of U support by E's pervasive misconduct)

L'Eggs Products, Inc. v. N.L.R.B. 619 F.2d 1337 (C.A. 9, 1980)
(unlawful discharge of 1 Ee not sufficient basis for bargaining order where U campaign began weeks after discharge and cards were also obtained long after discharge)

6612-8700 Order operates from date of either employer's misconduct precluding fair election or union's demand for recognition

Village IX, Inc. d/b/a Shenanigans 264 NLRB No. 122

Knogo Corporation 262 NLRB No. 171
(proper notwithstanding fact that many of E's ULPs predate U's majority)

Dutch Boy, Inc., Glow-Lite Division 262 NLRB No. 001

Conair Corporation 261 NLRB No. 178
(E ordered to bargain from date E commenced its unlawful campaign by threatening plant closure and loss of benefits if Ees supported U)

Parker-Robb Chevrolet, Inc. 262 NLRB No. 058
(E's duty to bargain extended to date U both achieved majority status and demanded recognition and bargaining)

Jo-Wax Sportswear, Ltd. and Iris Sportswear, Inc. 260 NLRB No. 172
(bargaining order dated from first date on which E renewed its coercive campaign after U had obtained signed authorization cards from majority of Ees)

Wehrenberg Theatres, Inc. d/b/a Melba Theatre and Skyvue Drive-In 260 NLRB No. 001
(date E unlawfully discharged Ee)

Ahrens Aircraft, Inc. 259 NLRB No. 112

Pantex Towing Corporation 258 NLRB No. 113
(bargaining ordered as of date on which U requested recognition where record did not precisely pinpoint date on which E began its unlawful conduct, to thwart Ees' organizational rights and E's other ULPs were otherwise individually remedied)

G.E.S., Inc., d/b/a Big Star No. 185 258 NLRB No. 046
(appropriate in view of interrogation, threats of plant closure, excessive wage increase, solicitation of grievance, and grant of benefit to adjust grievance)

Maidsville Coal Co., Inc. 257 NLRB No. 148
(bargaining order to run from date U demanded recognition, notwithstanding ULP's began prior to this date where ULP's are remedied by Order; bargaining obligation did not arise until request made)

Precision Graphics, Inc. 256 NLRB No. 077
(from date of demand)

Viracon, Inc. 256 NLRB No. 077
(bargaining order dated from day on which demand for recognition was made and day on which E embarked upon its course of ULP conduct)

Richland Co. & Assoc., Division of McDonald Construction, Inc. 256 NLRB No. 026
(in view of fact that U's request for bargaining predated beginning of 10(b) period, E's bargaining obligation held to start as of date 6 months prior to service of charge, where E's first ULP, which occurred outside 10(b) period, may not now be found to be ULP but may be considered as evidence shedding light on E's conduct w/i such period)

C. E. Wilkinson & Sons, Inc. 255 NLRB No. 176
(bargaining obligation arose as of date E embarked on its course of unlawful conduct)

Southern Moldings, Inc. 255 NLRB No. 118
(order operated from date of U's demand for recognition)

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. 255 NLRB No. 098
(bargaining order retroactive to date E received U's bargaining demand and at which time U enjoyed majority status)

Hasbro Industries, Inc. 254 NLRB No. 070
(order to operate from date of U's demand for recognition)

Ralph Nenner, M.D., Louis Oren, M.D. et al., A Partnership d/b/a Dugdale General Hospital 253 NLRB No. 092

Rodeway Inn of Las Vegas 252 NLRB No. 083
(in absence of alleged violation of Sec. 8(a)(5) of Act and where U has not made demand for recognition, E ordered to bargain with U as of date on which E began its campaign of ULPs, after U had already achieved majority status)

Coating Products, Inc. 251 NLRB No. 170

Chester Valley, Inc. 251 NLRB No. 190
(date ULPs began)

Amber Delivery Service, Inc. 250 NLRB No. 016
(where E embarked on series of ULPs, including some designed to change status of its Ees to independent contractors, immediately after it received U

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pts; moreover, necessity for bargaining order not changed by fact that lawful discharges caused U to lose its majority status)

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home 249 NLRB No. 162
(order to operate from date E's misconduct began)

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation 249 NLRB No. 126

Marcus J. Lawrence Memorial Hospital 249 NLRB No. 090
(bargaining order warranted where E threatened Ees with loss of jobs and gave all Ees raise while objections pending which precludes second election)

Cas Walker's Cash Stores Inc. 249 NLRB No. 041
(order to operate from date of U's demand for recognition)

Pay 'N Save Corporation 247 NLRB No. 184
(order dated from date upon which E commenced its ULPs)

Transitank Car Corporation JD-(ATL)-8-82
(appropriate from date of U's demand for recognition in view of unlawful threats, interrogation, grant of benefits, impression of surveillance, discharges, issuance of warnings, denial of benefits, and solicitation rule)

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)

Road Sprinkler Fitters Local Union No. 669, etc. v. N.L.R.B. 681 F.2d 11 (C.A.D.C., June 1982)

6612-9100 Order operates from date employer withdrew recognition

Air Express International Corporation v. N.L.R.B. 659 F.2d 610 (C.A. 5, Oct. 1981)
(where U enjoyed recognition from date it was certified to date E relocated plant at which time E withdrew recognition, bargaining order was retroactive to date of relocation rather than to earlier date on which E first refused to bargain in good faith as 8(a)(5) violations herein did not amount to withdrawal of recognition)

Air Express International Corporation v. N.L.R.B. 659 F.2d 610 (C.A. 5, Oct. 1981)
(in relocation non-*Gissel* case, composition of bargaining unit is determined at time of relocation (or after reasonable shakedown period) otherwise, situation would create undesirable incentive to delay through litigation)

6612-9200 Order operates from date union attains majority status

Fugazy Continental Corp.; Elite Services, Inc. 265 NLRB No. 165
(E's duty to recognize and bargain with U held to have commenced as of date U received majority vote in election, and it was unnecessary for ALJ to base E's obligation to bargain on *Gissel* basis, since U had demonstrated majority support among E's Ees in properly conducted and valid Bd election)

Washington Beef Producers, Inc. 264 NLRB No. 155
(E required to bargain upon U's request from date that U achieved majority status after E had commenced its unlawful course of conduct)

Parker-Robb Chevrolet, Inc. 262 NLRB No. 058
(E's duty to bargain extended to date U both achieved majority status and demanded recognition and bargaining)

Marion Rohr Corporation 261 NLRB No. 130
(where U had card majority but did not make continuing demand for recognition, Bd issued bargaining order retroactive to date of majority in view of E's series of intimidatory statements and threats of loss of benefits, discharges, layoffs, and shutdown of plant)

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car 260 NLRB No. 118
(from date E refused U's demand for recognition)

Greyhound Food Management, Inc. d/b/a Burger King 259 NLRB No. 178
(bargaining order made effective from date on which majority status was attained, demand for recognition was made, and first ULP was committed, all of which happened on same day)

Bel Research Corporation 257 NLRB No. 127

Warehouse Groceries Management, Inc. 256 NLRB No. 018
(bargaining order effective upon date on which U acquired authorization cards from majority of Ees in unit)

Justak Brothers and Company, Inc. 253 NLRB No. 146
(E's bargaining obligation arose on date U demanded recognition rather than on date U obtained majority status and E's ULPs began)

S. L. Industries Inc. and Extruded Products, Corp. 253 NLRB No. 151
(U entitled to both certification and bargaining order if it wins election after revised tally of ballots is issued; bargaining order will issue only to correct any unilateral changes E may have made during time it had obligation to bargain with U)

Permanent Label Corporation 248 NLRB No. 031
(order operates from date E refused to bargain after U had majority)

Jeffrey Manufacturing Division, Dresser Industries, Inc. 248 NLRB No. 097

Alumbaugh Coal Corporation 247 NLRB No. 112
(from date U did attain majority status in past)

Frederick's Foodland, Inc. d/b/a Bucyrus Foodland North and Bucyrus Foodland South 247 NLRB No. 030
(where U demanded recognition before attaining majority status, Bd held such demand as continuing after U had established majority status)

Formasky Corp. JD-(ATL)-97-81
(in order to provide adequate remedy)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. 629 F.2d 305 (C.A. 3, 1980)
(where Bd issued bargaining order and ct set it aside, remanding to Bd for further proceedings and Bd reinstated bargaining order, ct affirmed Bd, E's institution of new plant rules while bargaining order set aside violative as Bd may make bargaining order retroactive to date U achieved majority status)

Alumbaugh Coal Corporation v. N.L.R.B. 635 F.2d 1380 (C.A. 8, 1980)
(Bd properly issued bargaining order where E's serious ULPs impaired possibility of free election; operative date of order is date on which U attained majority status rather than subsequent date on which U requested recognition when, according to E, it no longer had majority status; Bd did not abuse its discretion by excluding from unit Ee who began work after U had majority status, and also by excluding Ee whose lease with E so aligned his interest with management as to extinguish his community of interest with other Ees)

6618 APPROPRIATE DESPITE INCREASE IN UNIT EMPLOYEES SINCE ULPS

Amber Delivery Service, Inc. 250 NLRB No. 016
(where E embarked on series of ULPs, including some designed to change status of its Ees to independent contractors, immediately after it received U pts; moreover, necessity for bargaining order not changed by fact that lawful discharges caused U to lose its majority status)

J.J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation v. N.L.R.B. 645 F.2d 148 (C.A. 2, Mar 31, 1981)
(in ordering new election instead of enforcing Bd's bargaining order, ct held effect of such order could be to impose upon Ees U not desired by great majority of them where, as result of high Ee turnover, less that 37% of Ees who voted in original election were still working; and, since E did not deliberately create delay and ULP involved was not egregious, risk of such unwanted imposition is not warranted)

Justak Brothers and Company, Inc. v. N.L.R.B. 664 F.2d 1074 (C.A. 7, Nov. 1981)

L'Eggs Products, Inc. v. N.L.R.B. 619 F.2d 1337 (C.A. 9, 1980)
(remand to Bd to consider additional evidence pertaining to necessity of bargaining order where ct reversed Bd on one ULP finding, as this is independent ground for review and differs from situation where ct upholds Bd order in toto)

N.L.R.B. v. Willow Corporation, d/b/a Town and Country Supermarkets 666 F.2d 1294 (C.A. 10, Dec. 1981)
(bargaining order appropriate notwithstanding 6 of 12 Ees who signed authorization cards sent letter to E, U and RD retracting desire to have U represent them-as Ee's retrenchment was product of E's unlawful conduct)

N.L.R.B. v. Willow Corporation, d/b/a Town and Country Supermarkets 666 F.2d 1294 (C.A. 10, Dec. 1981)
(appropriate despite fact that only 1 out of 12 Ees who signed U authorization cards presently employed)

6621 WHERE EMPLOYER HAS INDEPENDENT KNOWLEDGE OF UNION'S MAJORITY

Meads of Anchorage 260 NLRB No. 112
(appropriate, where E admitted that majority of unit Ees had designated and selected U as their bargaining representative, and it had refused U's request for bargaining)

English Brothers Pattern and Foundry 260 NLRB No. 067
(E who threatened to close plant before it would bargain with U, violatively polled Ees, finding majority support for U ordered to bargain as it waived its right to election and bound by results of poll)

6623 IN ABSENCE OF DEMAND FOR RECOGNITION

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Rodeway Inn of Las Vegas 262 NLRB No. 093
(in absence of alleged violation of Sec. 8(a)(5) of Act and where U has not made demand for recognition, E ordered to bargain with U as of date on which E began its campaign of ULPs, after U had already achieved majority status)

Grenader Beer Distributors, Inc. 247 NLRB No. 163
(proper remedy)

6625 BARGAINING CONCERNING PARTICULAR SUBJECT

6625-2000 Relocation of employees at plant transferred to new locality

Otis Elevator Company, A Wholly Owned Subsidiary of United Technologies 255 NLRB No. 066
(GC's request that E be required to restore status quo by returning transferred unit work to its original location, denied, since there was no evidence tending to show anti-U animus or that changes were not economically motivated; instead, E ordered to c/d from further transferring of any Ees w/o first bargaining in good faith over decision and effects resulting therefrom; as for Ees already transferred, they will not be compelled to return to old location as long as E complies with all other aspects of order herein)

6625-2400 Subcontracting of work

Arizona Public Service Company 247 NLRB No. 094
(E ordered, immediately upon U's request to bargain in good faith over any proposed lawful restrictions on subcontracting of unit work; since there was no allegation or evidence that E unilaterally altered its subcontracting practices, and absent any request therefor by GC, order requiring reinstatement of status quo ante or order requiring unit Ees to be *made whole* is unwarranted)

6625-3300 Partial closing of business

Whitehall Packing Company, Inc. and W.P.C., Ltd. 257 NLRB No. 043
(E not ordered to bargain over decision to transfer operations from one plant to other where decision economically motivated and E eventually closed all its operations)

ABC Trans-National Transport, Inc. v. N.L.R.B. 642 F.2d 675 (C.A. 3, Feb 19, 1981)
(although ct affd Bd finding that E's failure to bargain over decision to close facility violated Act, ct denied enforcement of Bd's bargaining order in that it would require E to engage in *futile activity*; ct decision to deny enforcement was w/o prejudice to Bd to commence additional proceedings to develop futility issue and order another remedy)

Universal Security Instruments, Inc. v. N.L.R.B. 649 F.2d 247 (C.A. 4, May 1981)
(enforcement denied of part of Bd order requiring E to bargain over decision to close one of its plants where, by time of ct review, plant had been abandoned, lease on property had expired, and equipment removed more than three years earlier)

N.L.R.B. v. Robin American Corporation 667 F.2d 1170 (C.A. 5, Feb. 1982)
(Bd order requiring E to bargain over all future closings of any department, too broad in light of subsequent SCt decision that economically motivated decision to shut down part of business was not mandatory subject of bargaining and refusal to bargain over it did not violate duty to bargain; only portion of order concerning department whose closing was motivated by antiU animus enforced)

6625-3600 Effect of partial closing on unit employees

Penntech Papers, Inc.; etc. 263 NLRB No. 033

Whitehall Packing Company, Inc. and W.P.C., Ltd. 257 NLRB No. 043
(E must bargain with U over effects of its decision to transfer operations and of its later decision to shutdown completely)

6625-4400 Effect of change in operations on unit employees

Armour Oil Company 253 NLRB No. 148
(restore *status quo ante* by restoring to unit Ees at closed terminal work which it (E) transferred to open terminal, and fulfill statutory duty to bargain)

6625-4800 Effect of termination of operations on employees

Nathan Yorke, Trustee in Bankruptcy, Successor in Bankruptcy, or alter ego To The Seaberg Corporation and Seaberg Service Parts Co., a single employer 239 NLRB 308
(debtor-in-possession ordered to bargain with U over effects of shutdown of operations)

Whitehall Packing Company, Inc. and W.P.C., Ltd. 257 NLRB No. 043
(E not ordered to bargain over decision to transfer operations from one plant to other where decision economically motivated and E eventually closed all its operations)

Whitehall Packing Company, Inc. and W.P.C., Ltd. 257 NLRB No. 043
(E must bargain with U over effects of its decision to transfer operations and of its later decision to shutdown completely)

R & H Masonry Supply, Inc. 254 NLRB No. 139
(bargain concerning decision and effects of termination of trucking operation on unit Ees)

Cleveland Freight Lines, Inc. 264 NLRB No. 009
(where E who had recognized U for 20 years and had current contract closed plant w/o bargaining over decision and effects thereof, backpay ordered until earliest of one of following: E bargains to agreement on decision to close and effects, impasse, U fails to request bargaining w/i 5 days of decision or E's notice to bargain, or U's failure to bargain in good faith)

N.L.R.B. v. National Car Rental System, Inc. 672 F.2d 1182 (C.A. 8, Feb. 1982)
(Bd order, remedying E's unlawful refusal to bargain about effects of relocation of its facility, by giving each unlawfully terminated Ee at least 2 weeks' pay, with possibility of increased compensation if E continued to refuse to bargain, held not punitive, where such backpay was provided to remedy 8(a)(5) violation; remedy was not abuse of Bd's discretion, since 8(a)(3) and 8(a)(5) awards would be w/i Bd's discretion if made singly, and there is nothing punitive in remedying both violations which are separate and distinct)

N.L.R.B. v. National Car Rental System, Inc. 672 F.2d 1182 (C.A. 8, Feb. 1982)
(while modifying Bd's order by rejecting its requirement that E bargain with U at new facility after closing E's old operation and terminating unionized Ees at such operation, but enforcing Bd's order requiring monetary awards for separate and distinct violations of 8(a)(3) and 8(a)(5), ct, even assuming that E has complied with Bd order and U has not requested bargaining over effects of closing, held that such assumption does not affect its consideration of whether to enforce Bd's order; any issues about compliance may be litigated, if necessary, in further proceedings)

Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO, Local 576, et al. v. N.L.R.B. 663 F.2d 223 (C.A.D.C., Dec. 1980)
(E not ordered to bargain over effects of closing where complaint did not allege that E closed and only alleged alter ego theory which was rejected by ALJ and Bd)

6625-8000 Conditions of employment of trainees

United States Steel Corporation 248 NLRB No. 090
(Es to bargain on request concerning any future summer training schools to be attended by unlicensed Ees represented by U)

6637 BARGAIN WITH DESIGNATED EMPLOYEE REPRESENTATIVE

Taurus Waste Disposal, Inc. 263 NLRB No. 038
(E ordered to bargain with U where it had demonstrated by its dilatory and evasive tactics in bargaining for new agreement and unlawful withdrawal of recognition of U after expiration of contract, its refusal to so bargain)

Museum Associates d/b/a Los Angeles County Museum of Art v. N.L.R.B. 688 F.2d 1278 (C.A. 9, Sept. 1982)
(ct affd Bd order to bargain where ct could not find that Bd had no foundation in evidence for its determination that Art Museum had sufficient control over labor relations to allow for meaningful bargaining to warrant exercising jurisdiction under Act nor could ct say that Bd acted contrary to law; E's contention that it was exempt from Act because it was substantially controlled by county so it could neither bargain meaningfully nor implement effectively contract with U rejected; however, ct noted that if county takes over funding for unit Ees as contended, E would be free to reapply to Bd)

6637-4000 Successor to certified or contracting union

Warehouse Groceries Management, Inc. 254 NLRB No. 021
(if ALJ finds card majority on remand, bargaining order may issue to successor U formed by merger of U designated on authorization cards with another U, since designated U continued to exist as evidenced by successor U's retention of some offices, all property rights and assumption of all assets and liabilities, including contract obligations)

6637-8000 Negotiating committee including employees outside appropriate unit

Circle K Corporation JD-(SF)-222-80
(E to bargain with full U negotiating committee containing designated Ee members with which it had previously refused to bargain)

6650 BARGAIN IN GOOD FAITH

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N.L.R.B. v. Nevis Industries, Inc., d/b/a Fresno Townehouse 647 F.2d 905 (C.A. 9, June 1981)
(Bd did not err in ordering E to bargain with U representing engineers; had E not unlawfully refused to retain engineers, they would have comprised a majority of the bargaining unit, and E would have been required — as successor E— to bargain with their representative under *Burns*)

6650-0100 Generally

Pullman Building Company 251 NLRB No. 145
(E to comply with *Master Agreement* retroactively to date ULPs began rather than from 6 months before charge was filed, since 10(b) period was tolled for remedy as well as for charge where U through no fault of its own did not immediately become aware of E's ULP's)

N.L.R.B. v. Maywood Plant of Grede Plastics 628 F.2d 1 (C.A.D.C.)
(customary remedy when E's refusal to bargain is incident to sponsorship of decertification campaign is order directing E to meet with U and bargaining good faith)

6650-1100 Not to withdraw from tentative agreements

The Mead Corporation 256 NLRB No. 108
(E required to reinstate its unlawfully withdrawn offer concerning wage rate adjustments for consideration by U for reasonable period of time (20 days), since it is Bd's policy to order restoration of *status quo ante* to extent feasible where there is no evidence that to do so would impose undue or unfair burden on E; remedy not barred by *H. K. Porter Co., Inc., Disston Division-Danville Works v. N.L.R.B* 397 U.S. 99 (1970) since remedy merely requires E to do what it had previously agreed to do)

6650-1200 Execute agreed contract

6650-1201 Generally

Wisdom Industries, Inc. 257 NLRB No. 164
(giving retroactive effect to contract terms)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. 658 F.2d 968 (C.A. 4, Sept. 1981)
(c/d portion of order, requiring E not to refuse to sign agreed-upon contract because nonplant Ees will also sign it, held entitled to enforcement as a continuing obligation in order to prevent resumption or repetition of unlawful conduct; however, affirmative portion of order, requiring E to sign contract upon U's request, denied enforcement, since contract has by its own terms expired, and ct therefore declined to examine validity of Bd's affirmative order to sign)

6650-1205 As of original agreement date

Western Truck Services, Inc. 252 NLRB No. 096
(Bd ordered E to execute bargaining agreement containing terms and conditions agreed upon by E and U and give effect to contract retroactively from date of refusal making Ees whole for any losses they incurred as a result of E's unlawful refusal to abide by terms of agreement)

6650-1210 As of effective date of agreements with other bargaining unions

East Bay Chevrolet dba Time Chevrolet v. N.L.R.B. 659 F.2d 1006 (C.A. 9, Oct. 1981)
(enforcement denied and case remanded to Bd where R/O improperly prescribed substantive provision for future agreement between E and U; namely, effective date of agreement be made retroactive to effective date of agreement between E and 3 Us representing other units of E, notwithstanding in previous successful negotiations, all 4 Us had conducted joint bargaining with E association of which E had properly withdrawn from)

6650-1277 Contract's expiration date extended

Dolter Concentrator Company, Inc. 253 NLRB No. 040
(bargain for 1 year from date of settlement agreement less 3 months past settlement in which U made no request for bargaining)

6650-1280 Union given option of signing contract or bargaining

N.L.R.B. v. Sumner Home For The Aged 593 F.2d 754 (C.A. 6, 1979)
(where U agreed in advance to accept whatever proposals E submitted covering certain mandatory subjects of bargaining that remained unresolved, R/O requiring E to propose contract terms covering these unresolved issues and to execute contract if U agreed to proposals, denied enforcement, since it is doubtful U representative has legal authority to make any such commitment or that Bd or ct has authority to enforce such contract; furthermore, since U free to reject contract there was no contract agreed to by both parties)

6650-2000 Honor contract

Pullman Building Company 251 NLRB No. 145
(E to comply with *Master Agreement* retroactively to date ULPs began rather than from 6 months before charge was filed, since 10(b) period was tolled for remedy as well as for charge where U through no fault of its own did not immediately become aware of E's ULP's)

6650-3700 Furnish information

6650-3701 Generally

Colgate-Palmolive Company 261 NLRB No. 007
(if costs of furnishing requested health and safety information substantial, parties to bargain as to allocation of costs of retrieving it and if no agreement is reached, U is to receive access to records from which it can reasonably compile requested information to extent records do not include trade secrets or individual medical records with identifying medical data)

6650-3704 Substances used in manufacturing process

Plough, Inc. 262 NLRB No. 141
(E violated Act when it refused to supply U with list of chemical substances it used and also any warnings or instructions it had regarding substances; however, Bd recognized E's legitimate interest in protecting confidential, proprietary and/or trade secret information and E ordered to turn over to U list of substances to which it asserts no trade secrets defense and for those to which it raised such defense parties ordered under procedure set forth in *Minnesota Mining and Manufacturing* 261 NLRB No. 2 to reach some satisfactory agreement through collective-bargaining to arrive at appropriate safeguards)

Minnesota Mining and Manufacturing Company 261 NLRB No. 002
(parties should bargain in good faith regarding conditions under which needed information (names of substances E claims to constitute *trade secrets,*) may be furnished to U with appropriate safeguards protective of E's legitimate proprietary interests yet maintained)

Minnesota Mining and Manufacturing Company 261 NLRB No. 002
(E must furnish list of those substances which do not constitute E's proprietary trade secrets)

Colgate-Palmolive Company 261 NLRB No. 007
(parties to bargain over method of providing U with necessary health and safety information as to substances used in plant while safeguarding E's and its suppliers' legitimate propreitary interests)

Borden Chemical, A Division of Borden, Inc. 261 NLRB No. 006
(E ordered to furnish U information about materials purchased, stored, or processed at its chemical manufacturing facility to which E asserts no trade secret defense; as to those substances to which E claims constitute confidential trade secret information, parties to bargain in good faith)

6650-3714 All relevant and necessary information

Southwestern Bell Telephone Company 247 NLRB No. 037
(*modus operandi* for providing information on job vacancies filled and applications filed, unless parties otherwise agree in writing, enunciated in remedy provided by ALJ)

6650-3735 Wage and financial data

General Motors Corporation, Delco Moraine Division 257 NLRB No. 146
(E to supply timestudies and related materials as limited by parties' stipulation)

625-6650-3753 Photocopies of relevant documents

American Telephone and Telegraph Company—Long Lines Department 250 NLRB No. 098
(refusal to provide U with photocopies of requested documents necessary to process five grievances violative where, although E would rather furnish the information by reading to note-takers or permitting U to hand-copy documents, photocopying procedure would have been much less costly to E and U, and would have given U greater assurance of accuracy and completeness of information furnished)

6650-3756 Seniority list

Safeway Stores, Inc. 252 NLRB No. 186
(furnish U information relating to seniority of, *interalia,* handicapped Ees)

6650-5600 Bargain for reasonable period after remedying ULPs

The Mead Corporation 256 NLRB No. 108
(reinstate withdrawn *last maintenance offer* for consideration of U for period of 20 conservative days)

6650-7000 Bargain until contract is achieved or impasse reached

M. A. Harrison Manufacturing Company, Inc. 253 NLRB No. 097
(*upon request of U* revoke unilateral changes in rates of pay, wages, and other terms and conditions of employment until such time as E negotiates with U in good faith to *agreement* or *impasse* thereon)

6662 CONDITIONAL ORDERS

6662-3300 Conditioned on resumption of operations

6662-3300—Cont.

Apex International Management Service JD-(ATL)-06-81
(bargaining order conditioned upon successor E's again becoming E of Ees in unit where another E had replaced successor but if successor subsequently made winning bid for unit work, it would again become unit Ees' E)

6662-5000 On discriminatees' acceptance of unilateral change

South Carolina Education Association JD-(ATL)-6-82
(where E violated Act by unilaterally promoting 4 unit Ees to supervisory positions, thus reducing unit by 25%, it is ordered to restore *status quo ante* regarding promotion of these Ees but conditioned on desires of Ees as expressed through their bargaining agent)

6662-7000 On union's demand for reinstatement of benefit plan

Hassett Maintenance Corporation 260 NLRB No. 135
(where E unilaterally changed health insurance plans at expiration of contract, U required to request reinstatement of old plan within 20 days of date of Order and if it does not, new plan will remain in effect; in addition, if U requests that the old plan be reinstated E must keep new plan in effect until all Ees are covered by old plan to insure that no new Ees are left without coverage)

6675 EXTENSION OF CERTIFICATION YEAR

Coca Cola Bottling Company of Buffalo, Inc. 264 NLRB No. 016
(where E was found to have unlawfully refused to bargain with U after its certification, Bd, in order to insure Ees will be accorded services of U for period provided by law, construed initial period of certification as beginning on date E commences to bargain in good faith with U)

Wings Company, Inc. 263 NLRB No. 021
(U certification year extended for 6 months from time E makes requested financial material available to U)

Schnelli Enterprises, Inc. d/b/a Cellar Restaurant 262 NLRB No. 094
(in order to place E and U in bargaining posture they would have been in but for E's unlawful conduct, Bd directed that, upon resumption of bargaining in good faith and for 4 months thereafter, E must regard U as if initial year of certification had not yet expired)

M. A. Harrison Manufacturing Company, Inc. 256 NLRB No. 071
(certification extended through one year after E commences to bargain in good faith pursuant to Bd's order)

Eastern Maine Medical Center 253 NLRB No. 034
(certification year not extended since E's refusal to bargain dated from 6 months before first ULP charge was filed, which fell almost at end of original certification year; consequently, bargaining obligation imposed herein is a general one to extend for a *reasonable period in which it can be given a fair chance to succeed*)

Libbie Convalescent Center a/k/a Libbie Rehabilitation Center, Inc. 251 NLRB No. 116
(not appropriate where E withdrew recognition shortly after end of certification year but no finding of bad-faith bargaining)

Carbonex Coal Company 248 NLRB No. 107
(extended to 1 year from time E commences to bargain in good faith)

Bureau of Rehabilitation of The National Capital Area JD-262-82
(upon resumption of bargaining and for six months thereafter, U is to be regarded as if initial year of certification had not yet expired)

J. P. Stevens & Co., Inc. v. N.L.R.B. 623 F.2d 322 (C.A. 4, 1980)
(ct found no abuse of discretion in Bd's refusal to extend certification for two years; if E complied with bargaining order, one more year of bargaining should suffice; if not, it will again be charged and *year will not have begun to run*)

Air Express International Corporation v. N.L.R.B. 659 F.2d 610 (C.A. 5, Oct. 1981)
(remand to modify order for U's certified status to extend for remainder of certification year from date E withdrew recognition rather than from date E first failed to bargain in good faith)

6687 AFFIRMATIVE DEFENSES

6687-0800 Cessation or removal of operations

ABC Trans-National Transport, Inc. v. N.L.R.B. 642 F.2d 675 (C.A. 3, Feb 19, 1981)
(although ct affd Bd finding that E's failure to bargain over decision to close facility violated Act, ct denied enforcement of Bd's bargaining order in that it would require E to engage in *futile activity*; ct decision to deny enforcement was w/o prejudice to Bd to commence additional proceedings to develop futility issue and order another remedy)

6687-0900 Change in operations

Pantex Towing Corporation 258 NLRB No. 113
(GC's mtn in opposition to admission in instant appeal of affidavit and charter agreement as attachments to E's exceptions in support of E's contention that recommended bargaining order was no longer appropriate denied; issues raised by documents can be more properly decided at compliance stage of proceeding and issues were properly raised by E)

6687-1200 Change in ownership

Armitage Lamp Company 260 NLRB No. 129
(change in stock ownership does not absolve continuing corporation of responsibility under Act)

6687-2000 Loss of union's majority

Peoples Gas System, Inc. 253 NLRB No. 180
(on remand Bd did not hold bargaining order appropriate in view of extraordinary amount of time that had elapsed since E's initial refusal to bargain and Bd's prior issuance of bargaining order, and fact U had lost election; however, second election ordered in view of E's initial withdrawal of recognition since reasonable to assume E's act led to U's loss of majority; mailing of notice of election to Ees not ordered nor was E ordered to allow U access to its property since U will be furnished list of Ees)

N.L.R.B. v. Anton Candy and Tobacco Company 645 F.2d 555 (C.A. 6, Apr 8, 1981)
(bargaining order warranted where U had card majority and in view of E's unlawful threats and granting of wage increases, notwithstanding E's contention of Ee turnover and that supervisor who made unlawful statements had been discharged)

Cartwright Hardware Company, Inc. v. N.L.R.B. 600 F.2d 268 (C.A. 10, 1979)
(bargaining order appropriate notwithstanding voluntary quit of three U members since presumption of continuing majority after expiration of contract justifies enforcement of order)

6687-2550 Employee turnover

Pace Oldsmobile, Inc. 265 NLRB No. 197
(on remand from ct, bargaining order held warranted in view of E's ULPs including payment of full cost of insurance, threats to discharge all Ees if U selected, to move plant elsewhere if U came in, loss of benefits, interrogation, layoff of U adherent and refusal to reinstate ULP strikers; substantial turnover of Ees did not dissipate effect of ULPs and obviate need for bargaining order where unlawfully instituted insurance premium payments continued to be received by Ees, and in view of fact E engaged in *hallmark* violations of discharge and threat of plant closure, and E's actions before and after strike would be repeated topic of conversation)

Martin City Ready Mix 264 NLRB No. 066
(turnover in Ee complement did not render bargaining order inappropriate in absence of evidence that effects of ULPs, have been vitiated; contention that no Ee sentiment remains to be protected as all who signed cards have voluntarily quit, rejected, as this assumes only those who signed cards supported U)

S.M.C. Rest. Corp. d/b/a Poletti's Restaurant 261 NLRB No. 051
(appropriate, where U had card majority at time of demand for bargaining, in view of E's unlawful interrogation, threat of closure, offer to consider benefits if Ees singed anti-U ptn, unilateral granting of wage increases and discontinuance of benefits, closure of its facility and layoff of Ees for two and a half weeks w/o warning, and discharge of U adherent; notwithstanding only 5 of the 14 Ees who signed ptn and 11 of 23 Ees employed at time of signing are still employed by E)

Jo-Wez Sportswear, Ltd. and Iris Sportswear, Inc. 260 NLRB No. 173
(no defense to issuance of bargaining order)

Lincoln Technical Institute, Inc. 256 NLRB No. 033
(bargaining order not appropriate notwithstanding E withdrew recognition from U and rescinded contract after U struck in violation of no-strike clause; discharge of all Ees because of strike support not violative and it is unknown whether new Ees desire representation)

N.L.R.B. v. Pace Oldsmobile, Inc. 681 F.2d 99 (C.A. 2, May 1982)
(remand to Bd to consider whether changes in Ee work force (10 new Ees out of work force of 21) have made bargaining order now inappropriate even if it had been appropriate at earlier time)

N.L.R.B. v. Jamaica Towing, Inc. 632 F.2d 208 (C.A. 2, 1980)

Chromalloy Mining and Minerals Alaska Division, Chromalloy American Corporation v. N.L.R.B. 620 F.2d 1120 (C.A. 5, 1980)
(although events such as Ee turnover occurring after E committed ULPs are relevant to decision as to whether to issue bargaining order, Bd may decide other considerations require bargaining order, such as here, where there is history of opposition to unionization and discriminatory refusal to recall, which indicated that E's antiU animus was partly responsible for turnover)

Bandag, Incorporated v. N.L.R.B. 583 F.2d 765 (C.A. 5)
(Ee turnover between ULPs and Bd order is relevant in determining whether *Gissel* order should be used but Bd not required to reopen record to determine whether fair election could be held regardless of turnover since time of hearing where other evidence, such as, card majority, past union activity, and E responses to such activity support such finding)

6687-2550—Cont.

N.L.R.B. v. English Brothers Pattern and Foundry 679 F.2d 787 (C.A. 9, June 1982)
(E who conducted polls among its Ees both collectively and individually after U demanded bargaining, bound by affirmative results of polls and subsequent refusal to bargain violative)

6687-2900 Union's disclaimer of interest

Rochester Institute of Technology 264 NLRB No. 138
(while ordinarily Bd would order E to c/d from failing and refusing, upon request, to bargain with U, Bd did not issue bargaining order herein since U had disclaimed interest in further representing unit Ees)

6687-6100 Union misconduct

L'Eggs Products, Inc. v. N.L.R.B. 619 F.2d 1337 (C.A. 9, 1980)
(bargaining order proper notwithstanding U engaged in retaliatory conduct against Ee who testified against U at Bd hearing where conduct occurred 6 weeks after Ee testified, hearing almost completed and no evidence that conduct had any effect on testimony of any witness at hearing)

N.L.R.B. v. Maywood Plant of Grede Plastics 628 F.2d 1 (C.A.D.C.)

6687-8000 Existence of question concerning representation

Dura-Vent Corporation 257 NLRB No. 083
(E's exception to ALJ's recommendation that E be ordered to bargain with U on ground that such order was improper because qcr had been raised in R case held w/o merit, since Bd authorized RD to process R case to conclusion in face of outstanding complaint in instant case because it concluded that fair election could still be conducted; further, ALJ's recommended Order was narrowly drawn, merely requiring E to engage in limited bargaining to remedy precise ULP found)

6687-9600 Illegal contract provision

Intermountain Rural Electric Association 253 NLRB No. 164
(order of Bd that E reinstitute its pension-plan as it existed as of December 31, 1978, although allegedly unqualified by reason of *IRS ruling* 78-403, doesnot preclude parties from bargaining over any proposed change intended to retain *IRS* qualification; order restored *status quo ante* and placed parties in position they would have enjoyed but for E's illegal conduct)

7700 NOTICE REQUIREMENTS

7701 GENERALLY

Atlas Minerals, Division of Atlas Corporation 256 NLRB No. 022
(more lengthy than usual notice required to be posted in view of *off the record* threats to new and returning Ees concerning resort to federal agency regulating working conditions, thereby creating impression, which would be difficult to remedy by usual Bd notice, that E maintained both a formal, public, and proper set of rules, and a second, secret, or confidential set of rules controlling Ees' job security)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. 658 F.2d 968 (C.A. 4, Sept. 1981)
(E's contention that notice required it to meet and bargain with U bargaining committees including outsiders, even though the Bd specifically found that E did not refuse to bargain, rejected, since, read in light of accompanying order, E must c/d from refusing to bargain with Us by engaging in unlawful conduct found by Bd herein)

7707 NECESSITY FOR POSTING

Florida Steel Corporation v. N.L.R.B. 620 F.2d 79 (C.A. 5, 1980)
(Bd acted w/i permissible limits in ordering E to give notice, by letter, by posting, and by reading, to Ees that it would not interfere with Ees' exercise of their statutory rights and would provide U with information relevant to its performance of responsibilities as Ee representative; in view of E's use of ULP at one plant as part of its campaign against unionization elsewhere in its corporate structure, ct required that notice be provided to Ees at all of E's plants)

7714 TIME OF POSTING

7714-0000 Other

Douglas & Lomason Company 253 NLRB No. 029
(respondent's request that Bd issue its notice to Ees immediately so that it could be posted at once denied because Bd finds it inappropriate to issue a notice before Bd has decided a case and issued a decision therein)

J. P. Stevens and Company, Inc. 247 NLRB No. 064
(E ordered to post notice for 1 year in view of severity of ULPs, 1-year time span w/i which they occurred, and delay between violations and implementation of remedy)

7728 PLACE OF POSTING

Enterprise Products Company 265 NLRB No. 083
(posting of notice not extended to E's facilities not involved in instant proceeding)

7728-0600 All locations where ULPs occurred

Daniel Construction Company, A Division of Daniel International Corporation 264 NLRB No. 079
(extraordinary remedy that Respondent be required to post notices at 4 job sites involved in instant case and *at all of its other construction sites in the continental U.S.* held unnecessary, since circumstances (ULPs ordered by high-level supervision) which were present in *Daniel Construction Company, a Division of Daniel International Corporation,* 244 NLRB No. 106, did not appear to be present in instant case)

ABC Liquors, Inc. 263 NLRB No. 174
(notice to be posted only at warehouse and retail store where the ULPs occurred rather than at all E's stores in area)

Red Food Store 252 NLRB No. 020
(posting notices only at E's store where ULPs occurred appropriate)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. 658 F.2d 968 (C.A. 4, Sept. 1981)
(Bd did not err in issuing order requiring posting of a common notice at E's four plants involved in consolidated cases herein, since affirmative relief will be carried out in individual plants; E's contention that Bd used specific acts at one plant to bolster finding of unlawful four-plant scheme to defeat coordinated bargaining is w/o merit)

7728-1200 All locations

Randall E. Wheeler, Kevin E. Wheeler, and Edmund J. Wheeler, A General Partnership d/b/a Wheelco Co. 260 NLRB No. 129
(where E has lawfully closed plant where ULP's occurred, it is not required to post notice at other plants which were not involved in ULP's but is required to mail notice to all Ees who were in its employ on date final notice was given of plant's closure)

Giant Food, Inc. 253 NLRB No. 182

J. P. Stevens and Company, Inc. 247 NLRB No. 064
(notice dealing with ULPs at E's facility at one location ordered posted for 1 year on companywide basis; notice to be signed by company president, members of board of directors, and highest official of plant at which notice is posted)

J. P. Stevens & Co., Inc. JD-131-81
(where E engaged in ULPs at one of its plants, E ordered to post in each of its plants copies of notice signed by highest management official of plant in which notice is posted)

J. P. Stevens & Co., Inc. v. N.L.R.B. 623 F.2d 322 (C.A. 4, 1980)
(Bd's remedial order concerning *company-wide dissemination of notice and access to company plants,* not punitive since notice and access order was designed to counteract use E made at other plants of its ULPs in bargaining at instant plant)

N.L.R.B. v. Delchamps, Inc. 653 F.2d 225 (C.A. 5, Aug 1981)
(notwithstanding that only 3 stores of 17 stores bargaining unit were involved in ULP proceeding *Notice to Ees* posted at all 17 stores, appropriate, since ULPs affected more than one of E's stores in unit and there was close association between all of E's stores; ends of Act best achieved by posting notices at all 17 stores)

Florida Steel Corporation v. N.L.R.B. 620 F.2d 79 (C.A. 5, 1980)
(Bd acted w/i permissible limits in ordering E to give notice, by letter, by posting, and by reading, to Ees that it would not interfere with Ees' exercise of their statutory rights and would provide U with information relevant to its performance of responsibilities as Ee representative; in view of E's use of ULP at one plant as part of its campaign against unionization elsewhere in its corporate structure, ct required that notice be provided to Ees at all of E's plants)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)
(well-coordinated unlawful campaign at one plant may produce chilling effects throughout corporate structure)

7728-2200 All locations where employees affected by unfair labor practices

Burnup & Sims, Inc. 256 NLRB No. 143
(mail notices to homes of Ees employed as of date of discharges and/or are presently employed on E's cable splicing crew at only location affected by E's ULPs rather than to each of E's Ees working in Southern California)

7728-3600 All locations in two or more states

Florida Steel Corporation 262 NLRB No. 182
(on remand and in light of E's prior order for corporatewide mailing, posting, publication of Bd's notice, reading it to Ee groups, and U access to 2 plants where ULPs occurred; however, requests for bulletin board access and names and addresses of Ees were denied)

7742 MANNER OF NOTICE

7742-0100 Generally

Carbonex Coal Company 262 NLRB No. 259

(charging party's request that E be required to mail notice to Ees, read to assembled Ees, and publish in local paper denied as those special nature remedies all designed for special situations and notice posting is sufficient here)

7742-1700 Mailed

Florida Steel Corporation 262 NLRB No. 102

(on remand and in light of E's prior order for corporatewide mailing, posting, publication of Bd's notice, reading it to Ee groups, and U access to 2 plants where ULPs occurred; however, requests for bulletin board access and names and addresses of Ees were denied)

United Supermarkets, Inc. 261 NLRB No. 179

(E ordered to mail copies of notice to home address of each Ee employed in its retail grocery stores comprising area-wide division)

United Supermarkets, Inc. 261 NLRB No. 179

(E ordered to post copies of notice at each of its retail grocery stores comprising area-wide division)

Conair Corporation 261 NLRB No. 178

(mailed notice required to be in both Spanish and English where approximately 75 to 80 percent of E's Ees were Spanish speaking)

Randall E. Wheeler, Kevin E. Wheeler, and Edmund J. Wheeler, A General Partnership d/b/a Wheelco Co. 260 NLRB No. 109

(where E has lawfully closed plant where ULP's occurred, it is not required to post notice at other plants which were not involved in ULP's but is required to mail notice to all Ees who were in its employ on date final notice was given of plant's closure)

McMillan Cartage, Inc. 257 NLRB No. 018

(in view of fact that E is no longer in operation and its former Ees may be in different locations)

Marlene Industries Corporation; et al. 255 NLRB No. 192

(mail notice to each Ee currently employed and to each striker, except to those Ees covered by dismissed allegations)

Humana Corp. d/b/a Sunrise Hospital Medical Center 254 NLRB No. 176

(mail to every current Ee as well as every U represented Ee at 1 of its facilities whose employment ended since first date of E's misconduct notice setting forth Ee's potential criminal liability associated with giving willfully false statements in Bd proceeding as requested by E)

Robert Batchelor d/b/a Batchelor Electric Co., a sole proprietorship 254 NLRB No. 156

(where E's Ees reported directly to jobsites at which E's jobs were of varying and often short duration)

Peoples Gas System, Inc. 253 NLRB No. 150

(on remand Bd did not hold bargaining order appropriate in view of extraordinary amount of time that had elapsed since E's initial refusal to bargain and Bd's prior issuance of bargaining order, and fact U had lost election; however, second election ordered in view of E's initial withdrawal of recognition since reasonable to assume E's act led to U's loss of majority; mailing of notice of election to Ees not ordered nor was E ordered to allow U access to its property since U will be furnished list of Ees)

Eastern Maine Medical Center 253 NLRB No. 024

(Bd ordered that notices be mailed to homes of all present Ees and all those employed w/i 10(b) period whether in bargaining unit or not, in view of E's extensive violations and evidence that unlawful conduct was motivated by desire to squelch unionization, and because of passage of time since commencement of ULPs due to protracted nature of instant proceedings)

National Car Rental System, Inc. 252 NLRB No. 027

Wells Fargo Guard Services, A Division of Baker Protective Services, Inc. 252 NLRB No. 013

(where security guards work at 25 different facilities and do not regularly visit main office, mailing notices to their home addresses is most effective means of reaching Ees)

Capriccio Restaurant, Inc. 249 NLRB No. 100

(mailed to Ees employed by E during time of ULPs)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall 249 NLRB No. 009

(mail signed copies of notice to all laid-off Ees who were bargaining unit members)

Wellman Industries, Inc. 248 NLRB No. 029

Sambo's Restaurant, Inc. 247 NLRB No. 122

(mail to current Ees and all Ees on payroll at time ULPs were committed)

J. P. Stevens and Company, Inc. 247 NLRB No. 044

(E ordered to mail copy of Bd notice to home of each of its Ees at all of its plants, together with explanatory letter signed by highest official of recipient's plant)

The Haskell Company JD-74-82

(notice mailed to all Ees employed during period ULPs committed because second election ordered and Ees were in construction industry and transfer from job to job)

Apex International Management Service JD-(ATL)-86-81

(to former Ees at their home addresses, since E no longer occupied plant where it committed ULPs; posting notices impracticable where plant occupied by another E)

J. P. Stevens & Co., Inc. JD-131-81

(E ordered to mail to each Ee at plant at which E engaged in ULPs and to each Ee at another of Ees involved plants copy of signed notice, together with letter signed by highest official of recipient's plant, informing Ees of Bd's decision relating to plant at which ULPs occurred)

Shulman Air Freight, Inc. JD-(SF)-39-80

(*rather than posted* in view of fact that E's involved facility had ceased operation prior to instant ULP charge, complaint and hearing)

Florida Steel Corporation v. N.L.R.B. 630 F.2d 79 (C.A. 5, 1980)

(Bd acted w/i permissible limits in ordering E to give notice, by letter, by posting, and by reading, to Ees that it would not interfere with Ees' exercise of their statutory rights and would provide U with information relevant to its performance of responsibilities as Ee representative; in view of E's use of ULP at one plant as part of its campaign against unionization elsewhere in its corporate structure, ct required that notice be provided to Ees at all of E's plants)

7742-3300 Read by company official or Board agent

Florida Steel Corporation 262 NLRB No. 102

(on remand and in light of E's prior order for corporatewide mailing, posting, publication of Bd's notice, reading it to Ee groups, and U access to 2 plants where ULPs occurred; however, requests for bulletin board access and names and addresses of Ees were denied)

United Supermarkets, Inc. 261 NLRB No. 179

(owner of retail grocery stores ordered to personally sign copies of notices mailed to Ees and posted at all of its retail grocery stores comprising area-wide division)

United Supermarkets, Inc. 261 NLRB No. 179

(E ordered to convene during working time all Ees at its retail grocery stores comprising area-wide division, and have E's owner read to assembled Ees contents of notice; E also required to afford Bd reasonable opportunity to provide for attendance of Bd agent at any such assembly)

Conair Corporation 261 NLRB No. 178

(notice to be read by individual who is owner and company president to assembled Ees, with reasonable opportunity provided for attendance of Bd agent at reading)

Marlene Industries Corporation; et al. 255 NLRB No. 192

(E ordered to convene during working time by departments and shifts all its Ees currently employed in each of respective plants, and at its option either have notices read by plant manager of such plant or provide facilities for and permit Bd agent to read such notices to said Ees; if it is decided that notices are to be read by particular plant manager, Bd to be afforded reasonable opportunity to provide for attendance of Bd agent)

F.W.I.L. Lundy Bros. Restaurant, Inc. 248 NLRB No. 087

(Bd ordered notice to Ees be read by either owner or manager of E with requirement for attendance of Bd agent when notice read; reassurances that anti-U campaign will end must come from *top* from which it emanated; therefore, Bd required notice be read by management and not Bd Agent)

Wellman Industries, Inc. 248 NLRB No. 029

Sambo's Restaurant, Inc. 247 NLRB No. 122

(notice to be read to current Ees assembled for that purpose by district manager; Bd to be afforded reasonable opportunity to provide for attendance of Bd agent)

J. P. Stevens and Company, Inc. 247 NLRB No. 044

(notice ordered read during working time by highest managerial official at plant or by Bd agent)

J. P. Stevens & Co., Inc. JD-131-81

Florida Steel Corporation v. N.L.R.B. 630 F.2d 79 (C.A. 5, 1980)

(Bd acted w/i permissible limits in ordering E to give notice, by letter, by posting, and by reading, to Ees that it would not interfere with Ees' exercise of their statutory rights and would provide U with information relevant to its performance of responsibilities as Ee representative; in view of E's use of ULP at one plant as part of its campaign against unionization elsewhere in its corporate structure, ct required that notice be provided to Ees at all of E's plants)

Teamsters Local 115 v. N.L.R.B. (Haddon House Food Products, Inc.) 640 F.2d 392 (C.A.D.C. 1981)

(ct modified Bd's order with regard to notice provision to require E to *have a responsible officer of Respondent read* the Bd notice rather than specified individual – here the president and owner of respondent E)

7742-5000 Published in newspaper of general circulation

Conair Corporation **261 NLRB No. 178**

Electric Hose and Rubber Company **262 NLRB No. 014**
(where E published ad in newspaper prior to election which was found to be meritorious objection but never alleged to be ULP, it is not necessary to order E to publish announcement of settlement of these charges as Bd's usual remedies will adequately rectify objectionable conduct)

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(publish in newspapers of general circulation the essential terms and provisions of order, once a week for 4 consecutive weeks)

Eastern Maine Medical Center **253 NLRB No. 024**
(Bd declined to adopt ALJ's recommended order requiring E to publish notices in newspaper of general circulation and to post notices for 1-year period unless impasse or contract is reached prior to that time, in view of absence of proclivity on E's part to violate Act once its actions have been adjudicated unlawful)

F.W.I.L. Lundy Bros. Restaurant, Inc. **240 NLRB No. 057**
(Bd ordered that E publish in local newspapers of general circulation copy of notice *two times per week for a period of 4 weeks,* since Bd deemed requirement to have been necessary part of remedy because it served to *emphatically—inform Ees of their Section 7 rights and assure Ees that Respondent will respect those rights*)

7742-8700 Notice published in employer's daily bulletin or other company publications

Conair Corporation **261 NLRB No. 178**
(publication required to have notice in both Spanish and English were 75 to 80 percent of E's Ees were Spanish speaking)

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(notice to be included in appropriate company publications, such as Ee newsletters)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(copy of notice to be included in appropriate company publications)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd's requirement for inclusion of notice in *appropriate company publications* not warranted, since notice is to be given to Ees otherwise by mailing, by posting, and by reading, and additional requirement for inclusion of publication notices cannot be sustained inasmuch as only purpose would be to give notice of E's violations to E's customers, suppliers, and other public members which, although it might deter persons from violating Act, is an exaction which neither makes Ees whole nor assures them that they can bargain with E through representatives of their own choosing)

7742-9200 Distribution to employees

Florida Steel Corporation **262 NLRB No. 102**
(on remand and in light of E's prior order for corporatewide mailing, posting, publication of Bd's notice, reading it to Ee groups, and U access to 2 plants where ULPs occurred; however, requests for bulletin board access and names and addresses of Ees were denied)

Atlas Minerals, Division of Atlas Corporation **256 NLRB No. 022**
(E ordered to distribute notice to new Ees in its training program for one calendar year where unlawful threat concerning resort to federal agency involved in regulating working conditions occurred during formal Ee training program and undermined Ees' access to agency which was critically important to insuring Ees' health and safety)

7756 PERSONS REQUIRED TO POST AND/OR MAIL NOTICES

7756-3000 Members of multi-employer association

Marco Polo Resort Motel **257 NLRB No. 198**
(requirement that entire multi-E association post notice where only one E member had violated Act not necessary since no indication other Es would engage in similar conduct)

7756-5000 Predecessor employer

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(ct deferred to Bd's judgment that it would effectuate purposes of Act for predecessor E to mail notices to former Ees that it would not again violate their rights, notwithstanding it was no longer their E)
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N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**

7756-8700 Employer who went out of business

C. Elton Johnson, d/b/a Print-Quic **261 NLRB No. 109**
(where shortly before E sold business one of its supervisors committed ULP threat, it was required to mail notice to all its former Ees stating that if he ever went into business again, he would not condone such conduct)

C. Elton Johnson, d/b/a Print-Quic **262 NLRB No. 109**
(where shortly before E sold business one of its supervisors committed ULP threat, it was required to mail notice to al its former Ees stating that if he ever went into business again, he would not condone such conduct)

7770 PERSONS REQUIRED TO SIGN NOTICES

7770-1100 Board of Directors

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(notice shall be signed by chairman of board of directors, corporation president, and plant manager)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(notice dealing with ULPs at E's facility at one location ordered posted for 1 year on companywide basis; notice to be signed by company president, members of board of directors, and highest official of plant at which notice is posted)

7770-1200 Company president

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(notice shall be signed by chairman of board of directors, corporation president, and plant manager)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(notice dealing with ULPs at E's facility at one location ordered posted for 1 year on companywide basis; notice to be signed by company president, members of board of directors, and highest official of plant at which notice is posted)

7770-6000 Manager

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(notice shall be signed by chairman of board of directors, corporation president, and plant manager)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(all notices to be signed personally by E's district manager)

7784 FORM AND CONTENTS OF NOTICE

N.L.R.B. v. Charles H. McCauley Associates, Inc. **657 F.2d 685 (C.A. 5, 1981)**
(ct enforced Bd order requiring E to notify Ees that it will not forbid U activities, discharge or threaten to discharge Ees for U activities, or restrain or coerce Ees in exercise of their statutory rights)

7784-1000 Notice in foreign language

Conair Corporation **261 NLRB No. 178**
(notice required to be posted in both Spanish and English at E's facility, where approximately 75 to 80 percent of E's Ees were Spanish speaking)

La Mousse, Inc. **259 NLRB No. 007**
(notices to be posted in Spanish as well as in English)

Jaybil Steel Products, Inc.; etc. **258 NLRB No. 157**
(notice to be issued in Spanish also where substantial number of E's Ees were primarily Spanish speaking)

Art Steel of California, Inc. **256 NLRB No. 140**
(translation of official English language notice into Spanish language to be simultaneously posted alongside notice attached to decision where substantial number of E's Ees spoke Spanish)

Viracon, Inc. **256 NLRB No. 087**
(E required to post notice to Ees in Spanish as well as in English in view of fact that substantial number of Ees are Spanish speaking)

Hollander Home Fashion Corp. **255 NLRB No. 142**
(notice to be posted in both Spanish and English)

Capriccios Restaurant, Inc. **240 NLRB No. 100**
(bilingual notice required to include Spanish version)

7784-2000 Language inappropriate

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(Bd required to revise language of notice to avoid possibility of any misunderstanding which might arise due to interpretation that E had been ordered to recognize U at all plants, instead of just 2 plants involved herein)

7784-5000 Employees free to join or not join union

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company **265 NLRB No. 106**
(where decertification election was set aside because of denial of access to incumbent U's non-Ee representatives, thereby seriously interfering with Ees' right to deal with E through their chosen representative, RD required to include in notice of new election specified language consistent with Bd's decisions in *The Lufkin Rule Co.,* 147 NLRB 341 and *Bush Hog, Inc.,* 167 NLRB 1575)

7784-8500 Employer will not interfere with employees' right to resort to Board processes

Don Pizzolato, Inc. **249 NLRB No. 136**
(E will not discharge Ees for participating in conferences on representation pts at Bd offices)

7784-9500 Extraordinary remedies

7784-9500—Cont.

Florida Steel Corporation **262 NLRB No. 102**
(on remand and in light of E's prior order for corporatewide mailing, posting, publication of Bd's notice, reading it to Ee groups, and U access to 2 plants where ULPs occurred; however, requests for bulletin board access and names and addresses of Ees were denied)

Humana Corp. d/b/a Sunrise Hospital Medical Center **264 NLRB No. 176**
(mail to every current Ee as well as every U represented Ee at 1 of its facilities whose employment ended since first date of E's misconduct notice setting forth Ee's potential criminal liability associated with giving willfully false statements in Bd proceeding as requested by E)

United Dairy Farmers Cooperative Association v. N.L.R.B. **633 F.2d 1054 (C.A. 3, 1980)**
(ct affd Bd order of imposition of extraordinary election remedies for two years or until Bd certification which included right by U to reasonable access to E blackboards and to Ees on premises; right by U to equal time to respond to any address by E regarding U representation; right to give 30 minute address prior to any Bd election; posting, mailing and public reading to Ees by E of Bd's notice; reprinting of notice in local newspapers and company publications; and for one year, receipt by U of names and addresses of all current Ees)

8800 ORDERS TO REMEDY SPECIFIC VIOLATIONS

8817 SECTION 8(a)(1)

Hudson Oxygen Therapy Sales Company **264 NLRB No. 004**
(E's claim that Ees felt free to engage in open solicitation in violation of E's rule, both before and after E's posting of unlawful rule prohibiting such activity, held not to preclude issuance of remedial order, since, Ees' subjective state of mind is not probative evidence of restraint and coercion in violation of 8(a)(1))

8817-0300 Rescind changes in work schedule

RJR Communications, Inc. **248 NLRB No. 124**
(resume discriminatorily discontinued 6 o'clock newscast)

8817-0400 Rescind unlawful rules against union activity

Saint Vincent's Hospital **265 NLRB No. 006**
(E's rule which prohibited wearing of any type of insignia violative as overly broad where it prohibited such insignia at all locations on E's property while Ees were on duty or in uniform; moreover remedy is necessary notwithstanding E revised rule to make it non violative as this does not constitute effective repudiation since rule was in effect over 2 years)

Robertshaw Controls Company **263 NLRB No. 128**
(no-solicitation rule which was not limited to worktime presumptively invalid as is no distribution rule not limited to work areas; moreover, R/O is appropriate notwithstanding E changed the rules where he made no announcements to Ees of any change and did not assure Ees that in future he would not interfere with their Sec. 7 rights; additionally, fact that former rules have not been enforced for substantial period of time does not remove necessity for such order)

John Cuneo, Inc. **253 NLRB No. 110**
(discussions regarding U at any time on E's plant premises)

N.L.R.B. v. Transcon Lines **599 F.2d 719 (C.A. 5, 1979)**
(where Bd found ban on U dissident's distribution of anti-U material in drivers' room at truck terminal unlawful, but issued broad order against any interference with Ee distributions generally, ct required Bd to issue a properly narrowed order)

N.L.R.B. v. John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart **677 F.2d 44 (C.A. 9, Feb. 1982)**
(E violated Act by discriminatorily enforcing its *antibutton* policy against U adherent and not other types of buttons but Bd order barring any *antibutton* policy is overbroad and case remanded for modification of Bd order to prohibit only unreasonable restrictions on types of buttons or insignia which may be worn)

8817-0600 Rescind or amend unlawful savings or profit sharing plan

Computer Sciences Corporation Applied Technology Division, Huntsville Center **258 NLRB No. 085**
(amend violative stock purchase plan, and all Ee handbooks or other literature discribing it to eliminate provision which disqualified Ees from participating if they were members of U or bargaining unit)

8817-0700 Rescind or make bonus payments

Checker Cab Company of Virginia, Inc., d/b/a Avis Rent-A-Car **260 NLRB No. 118**
(make Ees whole for prize money and inspection money unlawfully withheld)

8817-0900 Hire discriminatee

Mount Desert Island Hospital **259 NLRB No. 080**
(E ordered to hire discriminatee it had refused to hire because he had engaged in protected concerted activity during prior term of employment, and if necessary to dismiss any Ee hired since discrimination for which position he qualifies)

8817-1000 Reinstate independent contract of employee's relative and pay whatever sums are required thereunder

Operating Engineers, Local 400 **265 NLRB No. 169**
(Bd ordered make-whole remedy to independent contractor who had her contract for janitorial services unlawfully terminated because Ee who was her husband had engaged in protected activity, where remedy of reinstatement of such contract and payment of sums required thereunder was necessary to eliminate fully coercive effects notwithstanding E's *financial adversity* or that violation in this case was *unusual* one)

8817-1200 Permit union to address employees on company time

Conair Corporation **261 NLRB No. 178**
(in response to any address made by E to its Ees on question of U representation; provision shall apply for period of 2 years from date of posting)

Conair Corporation **261 NLRB No. 178**
(in order to deliver 30-minute speech prior to any election in which U may participate; provision shall apply for period of 2 years from date of posting)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(E to give notice and equal time and facilities for U to respond to any address by E to its Ees on question of U representation; this provision to apply for 2 years from date of posting of notice or until RD has issued appropriate certification upon election, whichever comes first)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(E to afford U right to deliver 30-minute speech to Ees on working time prior to any Bd election which may be scheduled in which U is a participant; this provision to apply for 2-year period from date of posting of notice or until RD has issued appropriate certification upon election, whichever comes first)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(if E convenes any Ees at any plant during 2-year period following entry of order and addresses Ees on question of U representation, E ordered to give U reasonable notice thereof and afford 2 U representatives opportunity to attend and, upon request, permit U representative to address Ees for same amount of time)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(if w/i next 2 years, Bd schedules election in which U participates, Bd ordered E to afford at least 2 U representatives reasonable access to each facility to deliver 30 minute speech to Ees on working time; date thereof to be w/i 10 working days before but not w/i 48 hours prior to any election)

8817-1500 Grant union reasonable access to employer's facilities in nonwork areas during employees' nonwork time

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company **265 NLRB No. 106**
(E ordered to rescind restrictive rules concerning U's access to its premises and adhere to access provisions of contract so long as U remains Ee representative and no adequate offer of opportunity to bargain a modification or an impasse is reached in bargaining over change in access provision)

St. Francis Hospital **263 NLRB No. 109**
(*equal access* remedy warranted in extraordinary cases only and in instant case conventional bargaining order was sufficient to remedy E's ULPs; no-solicitation, no-distribution rule not binding on Es and such rule may be lawfully used to limit access of non Ee organizers to Ees as long as it is applied in nondiscriminatory manner and U has other reasonable means of communication with Ees)

Sambo's Restaurant, Inc. **247 NLRB No. 122**
(granted for 6-month period upon request; this provision to apply for 2 years from date of posting of notice or until RD has issued appropriate certification upon election, whichever comes first)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(*access* as remedial measure at unorganized plants (of E) may be predicated on Bd's finding that E's unlawful bargaining strategy at organized plant has chilled Ee rights at (E's) unorganized plants; *access* is ordered to remedy effects of unlawful behavior and *not* to punish or deter E)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(conclusory statement by Bd that access is needed to neutralize effects is not sufficient to justify grant of access; assumptions must be supported by evidence in record; Bd must find reasonable forseeability that Ees at those plants where access is imposed have suffered coercive effects from E's unlawful conduct and that access remedy is necessary to cure those effects)

8817-1500—Cont.

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)
(propriety of access as organizational tool and propriety of U access as remedial measure are 2 separate questions involving different considerations; former need finding that U unable to reach Ees through other channels of communication; as to latter, critical inquiry is whether E conduct is of such nature that access is needed to offset harmful effects that have been produced by such conduct)

8817-1600 Grant union reasonable access to bulletin boards

Allied Stores Of N.Y., Inc., d/b/a Gertz 262 NLRB No. 119
(order requiring E to allow Ees to post U campaign literature and precluding E from promulgating nondiscriminatory rule prohibiting Ee access to bulletin boards and blackboard held too broad as there is no statutory right for Ees or U to use such boards and E could conceivably promulgate nondiscriminatory rule)

United Supermarkets, Inc. 261 NLRB No. 179
(in case involving issuance of extraordinary remedies in nonmajority U situation, Bd provided for 2-year period in which E is required to grant U access to E's bulletin boards and to its nonwork areas)

Conair Corporation 261 NLRB No. 178
(provision shall apply for period of 2 years from date of posting of notice)

Marlene Industries Corporation; et al. 265 NLRB No. 192
(upon request, grant U access to plant bulletin boards at all places where notices to Ees are customarily posted, at each of involved plants for period of one year from date of request)

Sambo's Restaurant, Inc. 247 NLRB No. 122
(and to all places where notices to Ees are customarily posted granted for period of 6 months upon request)

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(E ordered to grant U, upon request made w/i 2 years of date of order herein, reasonable access to plant bulletin boards and to customary posting places at each plant for 1 year from date of request)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)
(access to bulleting boards granted in cases in which E had extended history of unlawful conduct as well as in cases in which such access was ordered to remedy *flagrant violation, outrageous conduct, or a gross interference with Ees' organizational rights*)

8817-1700 Grant union companywide access to bulletin boards

United Supermarkets, Inc. 261 NLRB No. 179
(in case involving issuance of extraordinary remedies in nonmajority U situation, Bd limited application of order provision, requiring E operating retail grocery chain to grant U reasonable access to bulletin boards, to stores comprising area-wide division involved herein, rather than to all of E's stores)

8817-2000 Give union list of employees' names and addresses

United Supermarkets, Inc. 261 NLRB No. 179
(in case involving issuance of extraordinary remedies in nonmajority U situation, Bd limited application of order provision, requiring E operating retail grocery chain to make available to U list of names and addresses of Ees, to stores comprising areawide division involved herein, rather than to all of E's stores)

Conair Corporation 261 NLRB No. 178

Sambo's Restaurant, Inc. 247 NLRB No. 122
(upon request made w/i 1 year; this provision to apply for 2 years from date of posting of notice or until RD has issued appropriate certification upon election, whichever comes first)

J. P. Stevens and Company, Inc. 247 NLRB No. 044
(E ordered to immediately furnish, upon U's request, lists of names, addresses, and classifications of all Ees at each plant as of latest available payroll date and to furnish corrected current list to U at 6 month intervals during next 2 years)

8817-2500 Disavow antiunion petition

Polk Bros. Concrete Products 256 NLRB No. 128
(E violated Act where its plant manager first initiated U activity w/o knowledge of E and then solicited Ees to sign ptn disavowing interest in U especially where E had expressed its opposition to U, notwithstanding plant manager acted contrary to E's specific instructions not to involve himself with ptn; moreover, Ee's thought supervisor was speaking for E; therefore, R/O proper remedy)

8817-3000 Withdraw civil suit

Whitehall Packing Company, Inc. JD-14-81
(E ordered to withdraw or otherwise effectuate dismissal of civil suit unlawfully brought against U for filing ULP charges against E and to reimburse U and representatives for all attorney fees and legal costs incurred as result of E's unlawful action)

8817-5400 Destroy prints and negatives of photographs of strikers

United States Steel Corporation 258 NLRB No. 164

8817-5900 Expunge from Employee personnel records any reference to Employee's engaging in union activity

Allied Eastern States Maintenance Corporation, A Wholly-Owned Subsidiary of Allied Maintenance Corporation 261 NLRB No. 167
(disciplinary warning letter, referring to Ee's protected activities including giving advice to other Ees concerning their U or statutory rights, ordered by Bd to be expunged from records maintained by E)

8817-6000 Remove discriminatory warning notices from personnel files

Consolidated Freightways Corporation of Delaware 264 NLRB No. 076
(Bd ordered reprimands issued as direct result of E's unlawful interview in violation of *Weingarten* rights be expunged from discriminatee's personnel folder)

Washington Beef Producers, Inc. 264 NLRB No. 155
(Bd ordered E to expunge any references of unlawful discharges, warnings, or other unlawful conduct from records including personnel files of discriminatees)

South Nassau Communities Hospital 262 NLRB No. 146

New York University Medical Center 261 NLRB No. 118

Ivan-Ivan and Foodarama, Inc. d/b/a Foodarama 260 NLRB No. 046
(remove and expunge from E's records those individual Ee files which record tardiness, absenteeism, averages, shortages, customer complaints, and returned sales slips which were instituted and maintained to discourage Ees from selecting U. However, any information contained in above files required to be kept by law can be retained but not on individual Ee basis)

Riley-Beaird, Inc. 259 NLRB No. 180
(Bd ordered E to notify discriminatees in writing that it has removed unlawful written warnings, unexcused absences, adverse personnel actions, and references thereto from their personnel files)

Brockwood Furniture, Division of U.S. Industries 258 NLRB No. 028
(GC's request for order that E remove all warnings and reprimands from files of Ees issued after U campaign, rejected where there was no showing of connection between increased disciplinary actions and Ees' U activity or of disparate treatment to U advocates, or injury to Ees' Sec. 7 rights)

8817-6100 Expunge references to disciplinary action from employee's records

Key Opportunities, Inc. 265 NLRB No. 178
(Bd ordered E to expunge from its records any reference to discharge of discriminatees and to notify them in writing that this had been done, and that evidence of unlawful discharges will not be used as basis for future personnel action)

Hillside Avenue Pharmacy, Inc. 265 NLRB No. 206

Washington Beef Producers, Inc. 264 NLRB No. 155
(Bd ordered E to expunge any references of unlawful discharges, warnings, or other unlawful conduct from records including personnel files of discriminatees)

Serendippity-Un-Ltd and Tigerrr, Inc. 263 NLRB No. 100

Serendippity-Un-Ltd and Tigerrr, Inc. 263 NLRB No. 100
(in requiring E to expunge any references to discharges of unlawfully terminated Ees, Bd required E to notify them in writing that evidence of unlawful conduct will not be used as basis for future personnel actions against them)

A. A. Superior Ambulance Service 263 NLRB No. 069
(E required to expunge from its records any reference to discharges of discriminatees, to notify them in writing that this has been done and that evidence of unlawful discharges will not be used as basis for future personnel action)

Parr Lance Ambulance Service 262 NLRB No. 161

Moon Equipment Company 262 NLRB No. 076

Cora International Corporation 262 NLRB No. 071
(expunge reference to discharge and notify Ee in writing that this has been done and that evidence of unlawful discharge will not be used as basis for future personnel actions against him)

Sterling Sugars, Inc. 261 NLRB No. 071
(E required to expunge from its records any reference to unlawful discharge of Ee, to provide written notice of such expunction to him, and to inform him that E's unlawful conduct will not be used as basis for futher personnel actions concerning him)

8817-6100—Cont.

Calvin D. Johnson Nursing Home **261 NLRB No. 044**

Riley-Beaird, Inc. **289 NLRB No. 180**
(Bd ordered E to notify discriminatees in writing that it has removed unlawful written warnings, unexcused absences, adverse personnel actions, and references thereto from their personnel files)

United States Postal Service **256 NLRB No. 012**
(suspension letter and related documents)

Atlas Minerals, Division of Atlas Corporation **256 NLRB No. 022**
(suspension references)

I. T. O. Corporation of Baltimore **255 NLRB No. 138**
(E ordered to expunge from Ee's records any references to demotion for cause or any other job performance related reason, and to refrain from making any such report or statement to any other E, prospective E, or character or reference inquiry)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**
(expunge discriminatorily-prompted materials from Ee's files but exclude memoranda, relating to *write-up* of Ee's *admitted* overstaying his break, from general expungement requirement)

Montgomery Ward & Co., Inc. **254 NLRB No. 102**
(expunge and physically remove from records any reference to unlawful interview with Ee at which his confession for theft was obtained)

Prudential Insurance Company of America **254 NLRB No. 020**
(where E failed to prove that decision to write reprimand was not based on information obtained in unlawful *Weingarten* interview, it must remove references to incident in which Ee was accused of insubordination as memo is preposterous and was written to protect supervisor from future charges)

Texaco, Inc. **251 NLRB No. 063**
(where reprimand imposed on Ee as result of interview with Ee at which his U representative was unlawfully required to remain silent and Ee's admissions resulted in discipline)

Southwestern Bell Telephone Company **251 NLRB No. 061**
(written confession to theft of E's property obtained at interview in which Ee denied his *Weingarten* rights)

Illinois Bell Telephone Company **251 NLRB No. 128**
(where Ee was discharged based on information obtained during interview at which she was unlawfully denied presence of representative, reinstatement proper to rectify harm caused; also all references to disciplinary action taken must be expungent from E's files)

Ohio Masonic Home **251 NLRB No. 089**
(expunge any reference to interview, at which Ee was wrongfully denied a representative, including any suspension notice or reference to suspension)

Sullair P.T.O., Inc. **250 NLRB No. 104**
(reference to 8(a)(1) discharge)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**

Babcock & Wilcox Co. **249 NLRB No. 099**
(where unlawfully discharged U president was permitted to retire voluntarily on disability, normal backpay and reinstatement order held not applicable, and since discharge probably made him ineligible to hold or retain U office, E ordered to correct its records, deleting any reference to *discharge* and simply substituting therefor, the term *retirement* or *retirement on disability, accompanied by notification to U of such action*)

U. S. Postal Service **JD-(SF)-90-81**
(concerning *suspension* notice)

8817-6200 Notify employee that discriminatory disciplinary action is expunged from record

Frank J. Schroeder d/b/a National Apartment Leasing Company **263 NLRB No. 003**
(expunge from Ee's personnel file any reference to his unlawful discharge and notify him that this was done and that this unlawful discharge will not be used on basis for future personnel action against him)

South Nassau Communities Hospital **262 NLRB No. 146**

Moon Equipment Company **262 NLRB No. 076**
(upon notifying Ee of deletion from personnel records of references to Ee's unlawful discharge, E required to notify Ee that evidence of unlawful discharge will not be used as basis for future personnel action against him)

Riley-Beaird, Inc. **289 NLRB No. 180**
(Bd ordered E to notify discriminatees in writing that it has removed unlawful written warnings, unexcused absences, adverse personnel actions, and references thereto from their personnel files)

8817-6300 Expunge from employee personnel records that he quit employ

The Martin-Brower Company **263 NLRB No. 025**

Penn-Dixie Steel Corporation, Joliet Bar Mill Division **253 NLRB No. 012**
(where Ee signed confession of misconduct and resigned during investigatory interview in which he was denied *Weingarten* right to U R)

8817-8200 Cease soliciting false testimony

Humana Corp. d/b/a Sunrise Hospital Medical Center **254 NLRB No. 176**
(mail to every current Ee as well as every U represented Ee at 1 of its facilities whose employment ended since first date of E's misconduct notice setting forth Ee's potential criminal liability associated with giving willfully false statements in Bd proceeding as requested by E)

8817-8900 Orders concerning solicitation and/or distribution rules

Ameron Automotive Centers, A Division of The Kelly-Springfield Tire Co.; F. W. Woolworth Company d/b/a Woolco Division, Joint Employers **265 NLRB No. 088**
(E to rescind and annul its unlawful no-solicitation rules and permit solicitation by Ees for U during nonworking time in all portions of its premises-- except sales floors and service shops while they are open to customers-- and orderly organizational solicitation of Ees by nonEes, including U representatives, on sidewalks and in parking areas)

N.L.R.B. v. Westinghouse Electric Corporation **612 F.2d 1072 (C.A. 8)**
(Bd's overly broad order must be specifically amended to show that solicitation and distribution of literature by Ees may be done only when both soliciting Ee and solicited Ee are on personal time, company authorized work breaks or during nonworking hours, and in area of plant outside normal work area)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(Bd's orders that Es must c/d from *maintaining any rule or regulation prohibiting its Ees from soliciting on its premises after their shifts have been completed unless such prohibition is demonstrably necessary to maintain production, discipline or security* overly broad; since Es could prohibit Ees from soliciting during nonworking hours in public areas of their premises, Bd's order modified to read that Es must c/d from *maintaining any rule or regulation prohibiting its Ees from soliciting on its premises during nonworking hours in nonpublic areas of its premises*)

8817-9200 Cease threatening employees with discharge or other adverse action or taking such actions

Pacific Telephone and Telegraph Company 262 NLRB No. 127
(reinstate Ees discharged following violative *Weingarten* interview)

Pacific Telephone and Telegraph Company **262 NLRB No. 127**
(reinstate Ees discharged following violative *Weingarten* interview)

Kahn's and Company, Division of Consolidated Food Co. **253 NLRB No. 004**
(reinstate Ee discharged during unlawful investigative interview for evidence obtained after Ee was denied *Weingarten* right to R where E failed to show that decision to discipline was not based upon tainted information)

8817-9280 Because employee requests representative at interview

Salt River Valley Water Users' Association **262 NLRB No. 129**
(reinstatement and make-whole remedy appropriate notwithstanding Ee discharged for refusing to answer questions at investigatory interview (no interview held to have occurred) at which he was denied presence of U representative as he was disciplined for engaging in protected concerted activity and not for any underlying misconduct)

8817-9300 Award backpay for reduction in hours worked or pay raise withheld

J. J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation **249 NLRB No. 126**

8817-9800 Restore benefits

8817-9810 Merit Increases

Michigan Consolidated Gas Company **261 NLRB No. 080**
(restoration of *status quo ante* held necessary to remedy E's 8(a)(1) violations resulting from E's removal of newly certified unit Ees from existing merit and COLA program covering non-unit Ees and from cancellation of unit Ees' scheduled wage increases, where E's action was taken in order to give object lesson to unit Ees who had voted for U representation and to any other Ees desiring U representation, and E withheld scheduled wage increases with motivation of encouraging Ees to seek decertification of U)

8817-9510—Cont.

N.L.R.B. v. Travis Meat and Seafood Company, Inc. **623 F.2d 220 (C.A. 6, June 1980)**
(order requiring E to make Ees whole for loss of earnings due to discontinuance of merit wage program not enforced, where evidence does not show that amount and timing of merit increases created any pattern or practice beyond one year employment period but were awarded on *ad hoc* basis)

8817-9515 Cost of living adjustment program

Michigan Consolidated Gas Company **261 NLRB No. 080**
(restoration of *status quo ante* held necessary to remedy E's 8(a)(1) violations resulting from E's removal of newly certified unit Ees from existing merit and COLA program covering non-unit Ees and from cancellation of unit Ees' scheduled wage increases, where E's action was taken in order to give object lesson to unit Ees who had voted for U representation and to any other Ees desiring U representation, and E withheld scheduled wage increases with motivation of encouraging Ees to seek decertification of U)

8817-9520 Living quarter in company owned facility

Friday Canning Corporation **255 NLRB No. 082**
(E's defense to order requiring it to reopen migrant labor camp on grounds of economic loss and camp has been torn down may be raised in compliance proceeding)

8817-9700 Grant access to union representatives

United Supermarkets, Inc. **261 NLRB No. 179**
(in case involving issuance of extraordinary remedies in nonmajority U situation, Bd provided for 2-year period in which E is required to grant U access to E's bulletin boards and to its nonwork areas)

United Supermarkets, Inc. **261 NLRB No. 179**
(in event E convenes any group of its Ees and addresses them on question of U representation, E ordered to give U reasonable notice thereof and afford 2 U representatives reasonable opportunity to be present and, upon request, give one of them equal time and facilities to address Ees on question of representation)

Conair Corporation **261 NLRB No. 178**
(provision shall apply for period of 2 years from date of posting of notice)

Marine Industries Corporation; et al. **255 NLRB No. 192**
(permit reasonable number of U representatives access for reasonable periods of time to all canteens, rest and other nonwork areas)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(for 2-year period, upon U's request and w/o delay, E ordered to permit reasonable number of U representatives access to nonwork areas for reasonable periods of time for purpose of communicating orally and in writing with Ees during nonwork periods)

Sabine Towing & Transportation Company, Inc. v. N.L.R.B. **599 F.2d 663 (C.A. 5, 1979)**
(order granting to non-Ee U organizers access to E's property will not stand where GC fails to meet burden of proof that U efforts to communicate with Ees through usual channels are ineffective)

N.L.R.B. v. Villa Avila, Palm Springs Sun Dial and Tom Sawyer Construction Co. **673 F.2d 281 (C.A. 9, Mar. 1982)**
(general contractors ordered to allow U business agent access to job site to visit Ees of subcontractors; however, order also protects rights of property owner to be free of illegal or vexations incursions by persons with no legitimate business on their premises by allowing contractors to require any visitors to report to project office and state business and that in event of vandalism, illegal work stoppage or interference with work, owner or occupier may require visitor to be accompanied by its representative)

8833 SECTION 8(a)(2)

8833-1400 Disestablish company union

Homemaker Shops, Inc. **261 NLRB No. 080**
(E to withdraw recognition from and completely disestablish committee it had dominated and assisted as representative of any of its Ees)

Streamway Division of The Scott & Fetzer Co. **249 NLRB No. 084**
(E dominated and interfered with formation of in-plant Ee committee and contributed financial and other support to it)

South Nassau Communities Hospital **247 NLRB No. 067**
(*disestablishment* of Nursing Advisory Committee *not ordered,* since there was no allegation of E domination of Committee)

Formaley Corp. **JD-(ATL)-87-81**
(*standing committee* of management and Ee representatives)

Hart Ski Mfg. Co., Inc. **JD-11-80**

N.L.R.B. v. Metropolitan Alloys Corporation **624 F.2d 743 (C.A. 6, 1980)**
(violation where E introduced collective-bargaining agreement at office party, announced formation of U-like committee, conducted election for committee members, and then for 2 years ignored existence, only to reactivate it when U expressed interest in organizing its Ees, as *committee* was company-created sham; disestablishment proper remedy)

8833-2000 Withdraw and withhold recognition

Streamway Division of The Scott & Fetzer Co. **249 NLRB No. 084**
(E dominated and interfered with formation of in-plant Ee committee and contributed financial and other support to it)

Gas Walker's Cash Stores Inc. **249 NLRB No. 041**
(E to withdraw recognition of independent U it had assisted and any successor in E's stores in location involved in this case)

Smithtown General Hospital **JD-752-80**
(standard c/d order appropriate, as benefits U derived from initial E assistance were extinguished by Ees rescinding, cards per E's request, and ending U's status of *assisted* U; thus allowing U to continue serving as bargaining representative for Ee's already under contract)

View-Craft By H.B.S., Inc. **JD-887-79**
(no refund of dues which E collected pursuant to illegal checkoff agreement ordered where all but one Ee joined U voluntarily; nor was E ordered to cease recognizing U since no question of validity of recognition)

8833-2033 Until certified

Jackson Engineering Co. **265 NLRB No. 178**
(where, at time E and U were negotiating midterm contract modifications, contract was tainted by concurrent unlawful concealed payments made by E to U officials in form of kickbacks from all business referred to E by U, E ordered to withdraw and withhold all recognition from U, unless and until it has been duly certified by Bd)

R. J. E. Leasing Corp. **262 NLRB No. 049**

Easy-Heat Wirekraft, Division of Bristol Products, Inc. **257 NLRB No. 163**
(on remand Bd clarified affirmative order to provide that pre-violation relationship between E and Ee council may continue notwithstanding Bd order that E withdraw and withhold recognition from Ee council until certified by Bd)

Hollander Home Fashion Corp. **255 NLRB No. 142**

Dubuque Packing Company **JD-250-82**

Sav-On Drugs, Inc. **JD-(SF)-214-81**

8833-2067 Permanent withdrawal of recognition ordered where

8833-2067-2500 Employer dominated union

Homemaker Shops, Inc. **261 NLRB No. 080**
(E to withdraw recognition from and completely disestablish committee it had dominated and assisted as representative of any of its Ees)

Hart Ski Mfg. Co., Inc. **JD-11-80**

8833-2067-3700 Employer assisted union

Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home **249 NLRB No. 162**
(cease recognizing or bargaining with Ee grievance committee or anyone elected by Ees to become member thereof as the representative of its Ees concerning wages, hours or terms and conditions of employment, including grievances)

Smithtown General Hospital **JD-752-80**
(standard c/d order appropriate, as benefits U derived from initial E assistance were extinguished by Ees rescinding, cards per E's request, and ending U's status of *assisted* U; thus allowing U to continue serving as bargaining representative for Ee's already under contract)

8833-4200 Rescind contract

Jackson Engineering Co. **265 NLRB No. 178**
(E and U ordered to cease giving effect to contract unless and until U shall have been certified by Bd where, at time E and U were negotiating midterm contract modification, E made concealed payments involving large sums of money to U officials, representing 10-percent kickback from all business referred to E by U; such concurrent actions tainted and undermined parties' bargaining relationship and contract negotiated by them while payments were being made)

Jackson Engineering Co. **265 NLRB No. 178**
(in ordering E and U to cease giving effect to contract because, at time E and U were negotiating midterm contract modification, contract was tainted by concurrent unlawful concealed payments made by E to U officials in form of kickbacks from all business referred to E by U, Bd held fact that individuals participating in kickbacks did not engage in contract negotiations does not affect conclusion herein; although such individuals may not have personally participated therein, they were U's president and executive vice president, and E's president, and their divorce from actual negotiations is not determinative of issue)

R. J. E. Leasing Corp. **262 NLRB No. 049**
(nothing in order herein, requiring E to cease giving effect to unlawful prehire agreement with minority U, shall authorize or require withdrawal or

8833-4200—Cont.

elimination of any wage increase or other benefits, terms or conditions of employment which may have been established pursuant to agreement)

Ditzler Mechanical Contractors, Inc. 259 NLRB No. 084
(where U president was *high level* supervisor for E and had been for many years, collective bargaining agreement set aside, supervisor can no longer act as U president although E not required to depart from or vary substantiave terms, conditions and benefits for Ees currently in effect)

The Mead Corporation 256 NLRB No. 108
(cease giving effect to coerced agreement with assisted U)

St. Joseph's Hospital 254 NLRB No. 077
(no abrogation of bargaining agreement ordered where low level supervisor had served as member of U negotiating committee and supervisors had participated in contract ratification/strike vote where violation technical, confusion had existed as to supervisory status of individuals prior to Bd's denial of review of RD's decision holding individuals supervisors, apparent lack of conflict of interest, fact contract was result of hard bargaining and has been in effect for more than a year)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)
(Bd's actions to remedy U's failure to represent Ee enforced; Bd set aside collective bargaining agreement, decertified U, and ordered U to make Ee whole for differential between journeyman's scale and his actual wages for entire time of his employment with E)

8833-7900 Cease dealing with supervisor as union agent

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)
(Bd's remedies of ordering E and multi-E association to cease and desist to recognize or deal with supervisor as U official and ordering E not to permit supervisor to serve as U official held proper)

8833-8800 Inform employees solicitation for union will not be permitted

World Wide Press, Inc. JD-(SF)-12-80
(E, already subject to order requiring it to disestablish assisted U, ordered to inform Ees that solicitation and collection of dues on behalf of assisted U was in derogation of incumbent U's representative status and will not be permitted)

8833-9200 Reimbursement of dues paid under contract

Jackson Engineering Co. 265 NLRB No. 175
(where, at time E and U were negotiating midterm contract modifications, contract was tainted by concurrent unlawful concealed payments made by E to U officials in form of kickbacks from all business referred to E by U, E and U ordered, jointly and severally, to reimburse all present and former Ees, except those who joined or signed U cards prior to the effective date of contract, for moneys paid by or withheld from them after such effective date for initiation fees, dues, or other obligations of membership in U)

R. J. E. Leasing Corp. 262 NLRB No. 049
(E ordered to reimburse Ees for all initiation fees, dues, assessments, or any other monies which may have been exacted on behalf of unlawfully assisted minority U with whom E had entered into pre-hire agreement containing U security provision before any Ees had been hired at facility covered by agreement)

The Mead Corporation 256 NLRB No. 108

Ross M. Alexander d/b/a A & B Janitorial Service 253 NLRB No. 064
(E to reimburse Ees for dues collected pursuant to unlawful checkoff to extent not already reimbursed)

Alfred Satin d/b/a Hillcrest Nursing Home (Local 875, Teamsters) 251 NLRB No. 014

View-Craft By H.B.S., Inc. JD-887-79
(no refund of dues which E collected pursuant to illegal checkoff agreement ordered where all but one Ee joined U voluntarily; nor was E ordered to cease recognizing U since no question of validity of recognition)

Mountaineer Shaft and Tunnel Construction Company 624 F.2d 050 (C.A. 6, 1980)
(ct held Bd w/o authority to order reimbursement of initiation fees and dues checked off, where Ees had *voluntarily* signed authorization cards which permitted checkoff, notwithstanding E unlawfully recognized U and locked out Ees to force them to ratify contract and affirm U as their bargaining agent)

8850 SECTION 8(a)(3)

8850-0100 Generally

O.K. Machine & Tool Corp. and Gyrotronics, Inc. 251 NLRB No. 030
(Bd's order that E cease recognizing U as bargaining representative of E's male Ees unless and until such labor organization shall have demonstrated its majority status held appropriate remedy for E's unlawful extension of contract coverage to male Ees not in bargaining unit, notwithstanding order's resemblance to remedy for 8(a)(2) violation, which was not found in case; moreover, contrary to contention, order was given in recognition of existing situation rather than as sanction for unit based on sex)

Childers Manufacturing Company, Inc. JD-(SF)-11-82
(where discrimination is class-wide in scope, failure to name each specific member of class encompassed by E's discrimination and by Bd's remedial order is not defective so long as class itself is clearly defined, which in instant case was defined as being those Ees which E discharged on specified dates)

Anja Engineering Corporation v. N.L.R.B. 698 F.2d 292 (C.A. 9, Aug. 1982)
(enforcement of order directing second election based on finding of 8(a)(3) violation, denied where finding was not supported by record evidence; Bd's contention that election order was not properly reviewable pursuant to ptn for review here because R proceedings are reviewable only upon a charge that an E's refusal to bargain with the certified U violates 8(a)(5), rejected, since order for second election must fall with unsupported ULP finding on which it is based)

8850-0200 Bargain with representative

Marion Rohr Corporation 261 NLRB No. 130
(where U had card majority but did not make continuing demand for recognition, Bd issued bargaining order retroactive to date of majority in view of E's series of intimidatory statements and threats of loss of benefits, discharges, layoffs, and shutdown of plant)

8850-0300 Withdraw and withhold recognition

O.K. Machine & Tool Corp. and Gyrotronics, Inc. 251 NLRB No. 030
(E to withdraw and withhold recognition of U as representative of male Ees, who were not in bargaining unit, unless and until U demonstrates exclusive majority representative status)

8850-0500 Permit union to address employees on company time

Conair Corporation 261 NLRB No. 178
(in response to any address made by E to its Ees on question of U representation; provision shall apply for period of 2 years from date of posting)

Conair Corporation 261 NLRB No. 178
(in order to deliver 30-minute speech prior to any election in which U may participate; provision shall apply for period of 2 years from date of posting)

8850-0600 Transfer or offer to transfer employees

Mathews Ready Mix, Inc. 259 NLRB No. 092
(transfer Ee back to his original work location, pay Ee for time spent commuting to new facility and reimburse him for all travel expenses incurred as result of his unlawful transfer to new facility)

8850-0700 Offer employment to applicant

Finger Lakes Plumbing & Heating Co., Inc. 253 NLRB NO. 049
(instate Ees whose employment was illegally conditioned on acceptance of less than contract called for and who did not accept such employment)

Kenneth and Mary M. McGlaughlin, Copartners, d/b/a Hudson-High Super Duper 247 NLRB No. 199
(discriminatee entitled to backpay from date he would have stated work at E had E not unlawfully withdrawn offer of position notwithstanding E may be overstaffed since at time of acceptance of job offer there was vacancy)

8850-1000 Grant union reasonable access to bulletin boards

United Supermarkets, Inc. 261 NLRB No. 179
(in case involving issuance of extraordinary remedies in nonmajority U situation, Bd provided for 2-year period in which E is required to grant U access to E's bulletin boards and to its nonwork areas)

Conair Corporation 261 NLRB No. 178
(provision shall apply for period of 2 years from date of posting of notice)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)
(access to bulleting boards granted in cases in which E had extended history of unlawful conduct as well as in cases in which such access was ordered to remedy *flagrant violation, outrageous conduct, or a gross interference with Ees' organizational rights*)

8850-1500 Give union list of employees' names and addresses

United Supermarkets, Inc. 261 NLRB No. 179
(in case involving issuance of extraordinary remedies in nonmajority U situation, Bd limited application of order provision, requiring E operating retail grocery chain to make available to U list of names and addresses of Ees, to stores comprising areawide division involved herein, rather than to all of E's stores)

Conair Corporation 261 NLRB No. 178

8850-2300 Reopen unlawfully closed plant

Monongahela Steel Company and Youngstown Steel Corporation 268 NLRB No. 031
(reestablishment of discriminatorily closed plant, appropriate, since restoration of *status quo ante* was proper remedy for discriminatory conduct, where reestablishment of operation of plant, for which E had previously predicted

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8850-2300—Cont.

prosperity, was not shown by E to threaten its continued existence and was the only remedy to provide meaningful relief to victims of its discriminatory conduct)

8850-2500 Resume discriminatorily discontinued position or operations

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting 265 NLRB No. 161

(restore trucking operations and rescind subcontracting or other business relationship with subcontractor where E reduced operations and sold trucks in circumvention of ct order to reinstate discriminatees)

Rebel Coal Company, Inc. 259 NLRB No. 033

(E required to reopen and reestablish *auto* repair shop operation in order to restore *status quo ante* existing prior to E's discriminatory closing of the repair shop; normal *status quo ante* remedy herein appropriate, since it would not be unduly burdensome or endanger E's continued viability)

Amber Delivery Service, Inc. 250 NLRB No. 016

(rescind changes in working conditions in duties of owner-operator Ees where purpose of changes was unlawful attempt to convert Ee status to that of independent contractor)

C-F Air Freight, Inc. 247 NLRB No. 60

(E, who unlawfully closed its facility and subcontracted Ee's work, ordered to resume operations formerly performed at closed facility either at its former location or some other reasonable location w/i metropolitan area, where it was not shown that E would suffer undue hardship by application of Bd's usual remedies; moreover, E required to use its own Ees to perform work and to give preference for positions to discriminatees herein)

C-F Air Freight, Inc. 247 NLRB No. 60

(in ordering resumption of unlawfully closed operation, Bd rejected E's defense that order was *unfair* and *unjustified* since it was not supported by evidence, and it was not shown that E would suffer undue hardship by application of Bd's usual remedies)

United Dairy Farmers Cooperative Association v. N.L.R.B. 633 F.2d 1054 (C.A. 3, 1980)

(ct affd Bd's order that E dissolve paper corporations and contractual arrangements whereby drivers were ostensibly converted into independent contractors, and reestablish prior Ee system)

N.L.R.B. v. R & H Masonry Supply, Inc. 627 F.2d 1013 (C.A. 9, Sept. 1980)

(ct refused to enforce Bd's order to reestablish its trucking operation where E had unlawfully sold trucks, discharged drivers, and contracted out hauling since major capital expense involved would put undue burden on E in view of its small size and slim profit margin)

8850-3000 Restore benefits and privileges

Schorr Stern Food Corp. 248 NLRB No. 050

(discriminatees who worked more than 24 hours in holiday week, which was basis for GC's specification that they had worked *full time* as required under contract held entitled to holiday pay)

8850-3010 Wage increase

Schorr Stern Food Corp. 248 NLRB No. 050

(Ees held entitled to receive benefit of pay increase, which they would have been eligible to receive, but for discrimination against them, for period from 6 months prior to filing of charge to date of expiration of contract, notwithstanding E's claim that intervening memorandum agreement with U altered unit represented by U)

8850-3045 Vacations and vacation pay

Schorr Stern Food Corp. 248 NLRB No. 050

(discriminatees held entitled to vacation pay, depending on length of service, where E produced no evidence that discriminatees could not under any circumstances have received vacations or vacation pay during period in question; any doubt in such regard must be resolved against wrongdoing E)

Schorr Stern Food Corp. 248 NLRB No. 050

(fact that any discriminatee quit w/o notice held no basis for denial of vacation and sick pay benefits)

8850-3056 Employee grievance committee

General Electric Company 255 NLRB No. 092

(Bd refused to order reinstitution of unlawfully rescinded *sounding board* program-function was to solicit grievances-, since in fashioning remedy greater emphasis should be given to E's attempt to undermine U's primary purpose of representing Ees in matters concerning working conditions rather than to E's attempt to demonstrate power to unilaterally give and take away)

8850-3070 Cleanup time before quitting

Inland Steel Company 259 NLRB No. 024

(E ordered ro rescind announcement to Ees and published statement of rules regarding elimination of wash-up time and to restore to Ees their practice regarding wash-up time as it existed priot to announcement)

8850-3075 Hours of work

Inland Steel Company 259 NLRB No. 024

(E ordered ro rescind announcement to Ees and published statement of rules regarding shortened lunch periods and to restore to Ees their practice regarding lunch hours as it existed prior to announcement)

8850-3078 Disability leave benefits

Styrest Nursing Home JD-(ATL)-95-82

(E ordered to make Ee whole who had been unlawfully denied disability benefits while ill at commencement and during strike, and overruling *Emerson Electric*, ordered that benefits should cease only when benefits exhausted or disability is ended rather than at date when she had previously affirmatively supported strike by joining picket line, inasmuch as benefits were form of compensation for past services and had vested, and did not constitute unfair strike financing by E further, remedy applied retroactively)

Texaco Oil Company 259 NLRB No. 062

(those Ees who at onset of strike were sick or disabled entitled to accident or sick benefits during strike until they have affirmatively shown support of strike; fact those medically excused exhibited some strike support after medical release and testified if physically able they would have joined strike, irrelevant; nor did visit to picket line by Ee on leave manifest sufficient public support of strike to deny Ee continued entitlement to accident and sick benefits)

Texaco Oil Company 259 NLRB No. 062

(Ee who had been on sick leave at onset of strike lost his entitlement to sick benefits on date of doctor's release to return to work rather than later date when he commenced picketing)

8850-3080 Sick leave benefits

Texaco Oil Company 259 NLRB No. 062

(those Ees who at onset of strike were sick or disabled entitled to accident or sick benefits during strike until they have affirmatively shown support of strike; fact those medically excused exhibited some strike support after medical release and testified if physically able they would have joined strike, irrelevant, nor did visit to picket line by Ee on leave manifest sufficient public support of strike to deny Ee continued entitlement to accident and sick benefits)

Texaco Oil Company 259 NLRB No. 062

(Ee who had been on sick leave at onset of strike lost his entitlement to sick benefits on date of doctor's release to return to work rather than later date when he commenced picketing)

Schorr Stern Food Corp. 248 NLRB No. 050

(fact that any discriminatee quit w/o notice held no basis for denial of vacation and sick pay benefits)

8850-3500 Grant Union access to nonwork areas during nonworking time

United Supermarkets, Inc. 261 NLRB No. 179

(in case involving issuance of extraordinary remedies in nonmajority U situation, Bd provided for 2-year period in which E is required to grant U access to E's bulletin boards and to its nonwork areas)

United Supermarkets, Inc. 261 NLRB No. 179

(in event E convenes any group of its Ees and addresses them on question of U representation, E ordered to give U reasonable notice thereof and afford 2 U representatives reasonable opportunity to be present and, upon request, give one of them equal time and facilities to address Ees on question of representation)

Conair Corporation 261 NLRB No. 178

(provision shall apply for period of 2 years from date of posting of notice)

Marlene Industries Corporation; et al. 255 NLRB No. 132

(permit reasonable number of U representatives access for reasonable periods of time to all canteens, rest and other nonwork areas)

8850-4000 Rescind discriminatory policy

John Cuneo, Inc. 253 NLRB No. 110

(relating to Ee tardiness because of their U activities)

Talbert Manufacturing, Inc. 250 NLRB No. 026

(E to reinstate Ee bonus and make Ees whole for any bonus accrued prior, or subsequent, to discontinuation of bonus payments)

8850-4300 Extension of contract coverage

O.K. Machine & Tool Corp. and Gyrotronics, Inc. 251 NLRB No. 030

(E not to give effect to contract insofar as it applies to male Ees who were not in bargaining unit)

8850-4800 Expunge discriminatory disciplinary action from record

Enterprise Products Company 265 NLRB No. 063

(E ordered to expunge from records any reference to discharge of Ees assertedly for violating E's rule prohibiting dissemination of company infor-

8850-4500—Cont.

mation and to notify them in writing that such has been done and that evidence of such conduct will not be used as basis for future discipline against them)

Tressler Lutheran Home for Children t/a Frostburg Village of Allegany County Nursing Home **263 NLRB No. 042**
(rather than requiring E to expunge all warnings from files of discriminatees even though some of warnings were not discriminatorily motivated, Bd modified ALJ's recommended order so as to remedy only specific violations found)

Tressler Lutheran Home for Children t/a Frostburg Village of Allegany County Nursing Home **263 NLRB No. 042**
(E required to notify, in writing, state division of licensing and certification, police department, and any other state, municipal, or local agency contacted in connection with its charges against Ee found discriminatorily discharged herein, that all references to alleged patient abuse by her are rescinded and that she has been reinstated to her former position of employment)

The Martin-Brower Company **263 NLRB No. 025**
(and give to discriminatees, documents which E prepared to justify or memoralize pretexts on which E relied to defend such discrimination)

Frank J. Schroeder d/b/a National Apartment Leasing Company **263 NLRB No. 003**
(expunge from Ee's personnel file any reference to his unlawful discharge and notify him that this was done and that this unlawful discharge will not be used on basis for future personnel action against him)

South Nassau Communities Hospital **262 NLRB No. 146**

IMCO/International Measurement & Control Company, Inc. **261 NLRB No. 180**
(E ordered to expunge from its records any reference to its unlawful discharges and similar conduct, provide written notice of such expunction to those affected and inform them that E's unlawful conduct will not be used as basis for future personnel actions concerning them)

Penn Color, Inc. **261 NLRB No. 058**

Channel Island Development Corp., d/b/a The Lobster Trap & Casa Sirena Marina Hotel **259 NLRB No. 160**
(expunge from files any reference to unlawful discharges of discriminatees and notify them in writing that this has been done and that evidence of unlawful discharge will not be used as basis for future discipline against them)

The Celotex Corporation **259 NLRB No. 159**
(revoke, rescind and expunge from personnel files all warnings and suspensions issued to Ees as result of E unilaterally instituting policy of stricter enforcement of plant rules)

Ahrens Aircraft, Inc. **259 NLRB No. 112**
(expunge any reference to discriminatees discharges from E's files)

Inland Steel Company **259 NLRB No. 024**

Five Star Air Freight Corporation **255 NLRB No. 046**
(remove any record of suspension warning from Ee's personnel file and deliver such documents to her)

Glover Bottled Gas Corp. **255 NLRB No. 011**
(E ordered to expunge suspensions and any other form of disciplinary action as result of being unlawfully suspended, and to restore discriminatees to status they would otherwise have occupied)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**
(expunge discriminatorily-prompted materials from Ee's files but exclude memoranda, relating to *write-up* of Ee's *admitted* overstaying his break, from general expungement requirement)

Metropolitan Edison Company **252 NLRB No. 147**
(E ordered to revoke all its discipline of U officers and records thereof only to extent it was discriminatory, that is, exceeded discipline meted out to other Ees)

Pease Company **251 NLRB No. 080**
(E ordered to remove from Ee's personnel file and to rescind written warning issued to him for engaging in U activity, and to notify Ee of its action)

Suburban Ford, Inc. **248 NLRB No. 051**
(--and refrain from making any such report to prospective E, employment agency, unemployment insurance office or reference seeker or inquiry)

C & G Coal Corporation **247 NLRB No. 179**

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(expunge warning notices, suspensions or other notations dealing with Ees' discriminatory terminations; write letter to each affected Ee informing him or her of compliance herewith)

Better-Bilt Aluminum Products Co., Inc. **JD-225-80**
(and advise Ee in writing (that) Respondent has done so)

8850-4600 Notify employee that discriminatory disciplinary action is expunged from record

Enterprise Products Company **265 NLRB No. 083**
(E ordered to expunge from records any reference to discharge of Ees assertedly for violating E's rule prohibiting dissemination of company information and to notify them in writing that such has been done and that evidence of such conduct will not be used as basis for future discipline against them)

Inland Steel Company **259 NLRB No. 024**

8850-4700 Relocation expenses

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(Bd did not improperly order preferential hiring list and relocation expenses if E chose not to reopen plant closed in violation of 8(a)(3) and 8(a)(5); 8(a)(3) violation makes inapplicable doctrine that Bd may not set contract terms for parties in 8(a)(5) case, since remedy herein is designed to restore, as much as possible, situation prior to closing and not to impose contract terms)

8850-5000 Assign work on nondiscriminatory basis

Grandee Beer Distributors, Inc. **247 NLRB No. 163**
(offer discriminatee chance to drive large truck as frequently as he did prior to U activity commenced)

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(E ordered to expunge unexcused absences from records of Ees who were unlawfully charged therewith)

8850-5100 Preferential hiring list

Mueller Insulation Co. and The Mueller Company of Missouri, Inc., Successor Employer and/or Alter Ego **263 NLRB No. 095**
(Bd required preferential hiring list be established for those Ees for whom work is not available)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**
(Bd did not improperly order preferential hiring list and relocation expenses if E chose not to reopen plant closed in violation of 8(a)(3) and 8(a)(5); 8(a)(3) violation makes inapplicable doctrine that Bd may not set contract terms for parties in 8(a)(5) case, since remedy herein is designed to restore, as much as possible, situation prior to closing and not to impose contract terms)

8850-7500 Make payments to union welfare and pension funds which would have been made if not illegally terminated

Schorr Stern Food Corp. **248 NLRB No. 050**

Safeway Trails, Inc. **JD-462-82**
(*Supplemental Decision* sets forth method, in instant case, of computing: amounts of backpay; pension plan payments; discriminatee pension contributions; E pension contributions; interest provisions; and pension fund payments)

8850-7700 Make payment for discriminatees' idle equipment

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(E who unlawfully failed to make insurance payments ordered to reimburse Ees for payments Ees may have made to third party carriers)

8850-8000 Promote discriminatee to supervisory position

Ford Motor Company **251 NLRB No. 066**

N.L.R.B. v. Ford Motor Company **683 F.2d 156 (C.A. 6, July 1982)**
(order that E offer supervisory promotions to Ees who were unlawfully denied promotions and make Ees whole for loss of earnigs sustained by reason of unlawful denial, vacated; promotion to supervisory position is management responsibility and to be distinguished from Bd's power to order reinstatement to formerly held supervisory position or where position had been restructured into supervisory position by management)

8850-8200 Restore demoted employee to former job classification and pay

TRW-United Greenfield Division **260 NLRB No. 013**
(make discriminatee whole for any loss of pay suffered by demotion but did not order Ee reinstated to old position as discriminatee had left employment on his own)

8850-8300 Restore status of discriminatees disciplined for unexcused absences

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 138**
(E ordered to restore discriminatees who were unlawfully charged with unexcused absences, and as result may have been assessed some form of disciplinary action, to status they would have otherwise occupied had they

8850-8300—Cont.

not been so charged, and to make them whole for any loss of earnings they may have suffered as result of E's action)

8867 SECTION 8(a)(4)

Vulcan-Hart Corporation (St. Louis Division) 248 NLRB No. 145
(permit Ees and U to use lunchroom for U meetings as in past, and notify them they have permission to do so)

8867-7800 Permission to use premises for union meeting

N.L.R.B. v. Vulcan-Hart Corporation, (St. Louis Division) 642 F.2d 255 (C.A. 8, Mar 9, 1981)
(ct modified Bd order requiring E to permit Ees and U to use lunchroom for U meetings, permission for which E had discontinued in retaliation for U's filing of charge with Bd, by limiting order to such period as U is certified bargaining agent of Ees, providing that order may be modified by parties as result of collective bargaining, and that use of lunchroom by U may be withdrawn by E for any legitimate, nonpretextual reason which does not involve any element of anti-U animus)

8883 SECTION 8(a)(5)

8883-0100 Generally

Turnbull Enterprises, Inc. 259 NLRB No. 122
(in cases involving violation of 8(a)(5) based on E's unilaterally altering existing benefits, it is Bd's established policy to order restoration of status quo ante to the extent feasible where there is no evidence that to do so would impose an undue or unafir burden on E)

United Aircraft Corporation (Pratt and Witney Division) 247 NLRB No. 174
(E ordered to pay such portion of costs attributable to deletion from records of irrelevant nonbargaining unit information requested by U; accordingly, unless parties can agree on breakdown between reproduction and deletion costs, amount owed by Us shall be determined during compliance proceedings)

Arizona Public Service Company 247 NLRB No. 054
(in case involving E's unlawful refusal to bargain with U over subcontracting of unit work, it was held that affirmative orders should be appropriate to particular situation requiring redress and should be tempered by practical considerations)

Anjo Engineering Corporation v. N.L.R.B. 685 F.2d 292 (C.A. 9, Aug. 1982)
(enforcement of order directing second election based on finding of 8(a)(3) violation, denied where finding was not supported by record evidence; Bd's contention that election order was not properly reviewable pursuant to ptn for review here because R proceedings are reviewable only upon a charge that an E's refusal to bargain with the certified U violates 8(a)(5), rejected, since order for second election must fall with unsupported ULP finding on which it is based)

N.L.R.B. v. Maywood Plant of Grede Plastics 628 F.2d 1 (C.A.D.C.)
(where unrelated successor hadalready done what original order required E to do and what E no longer had authority to do, order was modified to eliminate affirmative action for E except for mailing of notices to former Ees that E would not again violate their rights)

8883-0400 Execute contract

Consolidation Coal Company 253 NLRB No. 104
(sign absentee policy agreement reached with U)

N.L.R.B. v. Custom Sheet Metal & Service Co., Inc. 666 F.2d 454 (C.A. 10, Dec. 1981)
(Bd's R/O, which required E to execute 8(f) contract but not give effect to those provisions (8 day U security and qualification for employment clause) which would be unlawful if applied to E who was no longer engaged in construction work but was manufacturing concern, set aside, where, especially latter clause, is so basic to contract and so interwoven with all its terms that it must stand or fall as an entirety; furthermore, no savings and severability clause in contract)

8883-0600 Expunge invalid disciplinary records

Van Dorn Plastic Machinery Co., Division of Van Dorn Company 265 NLRB No. 036
(E to rescind and expunge from its records all disciplinary actions resulting from unilateral change in attendance/tardiness program)

The Celotex Corporation 259 NLRB No. 159
(revoke, rescind and expunge from personnel files all warnings and suspensions issued to Ees as result of E unilaterally instituting policy of stricter enforcement of plant rules)

Jaybil Steel Products, Inc.; etc. 259 NLRB No. 157
(where issued pursuant to disciplinary system which E unlawfully unilaterally instituted)

8883-1000 Revoke and nullify individual employment contracts

Winifred D. Morio, RD v. The North American Soccer League and its Constituent Member Clubs 633 F.2d 217 (C.A. 2, Oct. 1980)
(where equity ct has *reasonable cause* to believe that flagrant ULPs' have been committed, remedy requiring E to revoke unilateral changes in employment conditions and individual player's contracts proper not withstanding final decision by Bd pending as E's practices threatened to render Bd's processes totally ineffective)

8883-1200 Terminate or rescind present arrangements

Merrill & Ring, Inc. 262 NLRB No. 039
(*restore the status quo ante* by rescinding its unlawful unilaterally imposed requirement that certain first shift Ees must work reasonable period of time before reporting for jury duty)

Turnbull Enterprises, Inc. 259 NLRB No. 122
(where E unlawfully discontinued payment of contributions to U's health and welfare fund, Bd ordered E, upon written request from U, to rescind insurance company's current plan, established under agreement with U, and immediately reestablish health and welfare fund plan by making retroactive contributions on behalf of Ees from day following receipt of U's request, and to continue such payments until E negotiates in good faith with U to new agreement or impasse)

Scott Printing Corporation 249 NLRB No. 134
(Bd's remedy rescinding contract of sale to *alter ego* appropriate to restore *status quo ante,* since contract of sale was *sham* transaction)

8883-1300 Furnish data concerning employment aptitude tests

Detroit Edison Company v. N.L.R.B. 99 U.S. 1123 (S Ct., 1979)
(ct declined to enforce Bd order requiring E to disclose certain information about employment aptitude tests requested by U in order to prepare for arbitration of grievances; in view of sensitive nature of information, minimal burden E's offer, upon receipt of consents from examinees, to disclose information placed upon U, and absence of evidence that E acted to frustrate U in discharge of its statutory responsibilities, ct rejected Bd's conclusion that E violated Act)

8883-1400 Resume discontinued operations

Glengarry Contracting Industries, Inc. 258 NLRB No. 156
(resume transferred operation at original location and reemploy Ees who formerly performed operation before it was transferred)

Whitinsall Packing Company, Inc. and W.P.C., Ltd. 257 NLRB No. 043
(E not ordered to resume operations to remedy ULP's where operation was shutdown permanently for economic reason)

Armour Oil Company 253 NLRB No. 148
(restore *status quo ante* by restoring to unit Ees at closed terminal work which it (E) transferred to open terminal, and fulfill statutory duty to bargain)

Weather Tamer, Inc. and Tuskegee Garment Corporation 253 NLRB No. 036
(E ordered to reinstate operation where work is being performed at another of E's facilities, equipment is rented or shared among various plants, notwithstanding city is negotiating lease of facility to new tenant as E may lease another facility)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. 248 NLRB No. 089
(E ordered to reestablish its own trucking operation which it has contracted out w/o making effort to prove economic necessity or to accommodate its drivers in finding other employment, and did not respond to U's subsequent bargaining request)

Wellman Industries, Inc. 248 NLRB No. 029
(reopen closed division and set aside layoffs and transfers, restore eliminated jobs and set aside reductions in pay and classifications if U so requests)

Smyth Manufacturing Company, Inc.; Beacon Industries 247 NLRB No. 164
(and reinstate Ees laid off)

Lion Uniform, Janesville Apparel Division 247 NLRB No. 123
(where ALJ approved settlement agreement which did not require E who had violatively transferred work to another plant to resume operations, Bd reversed ALJ's approval in light of fact that no evidence that such resumption would endanger E's economic viability)

8883-1500 Grant wage increase

Clearwater Finishing Company, a Division of United Merchants and Manufacturers, Inc. v. N.L.R.B. 670 F.2d 464 (C.A. 4, Feb. 1982)
(ct held that Bd's order that E grant proposed wage increase retroactively was beyond scope of its authority where such term was mandatory subject of bargaining; ct found that rule of *H.K. Porter* applied equally to orders

8883-1500—Cont.

requiring agreement on subjects of bargaining in cases arising under Sec. 8(a)(1) and 8(a)(5))

8883-1600 Terminate subcontracting and resume operation

Dennis G. Maletta and Frank M. Maletta t/a Maletta Contracting 265 NLRB No. 161

(restore trucking operations and rescind subcontracting or other business relationship with subcontractor where E reduced operations and sold trucks in circumvention of ct order to reinstate discriminatees)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. 248 NLRB No. 089

(in cases involving discriminatory termination of operations, restoration of *status quo ante* continues to be proper remedy unless wrongdoer can demonstrate that normal remedy would endanger its continued viability)

8883-1800 Reinstate cancelled or expired contracts

Bay Shipbuilding Corp. 263 NLRB No. 166

(Bd ordered make whole remedy to remedy E's unlawful refusal to apply bargaining agreement to Ees transferred to newly established department, including restoration to seniority pool with unit Ees in department from which transferred)

Pacific Erectors, Inc. 256 NLRB No. 066

(E who unlawfully withdrew recognition from U with which it had short-form agreement for particular job site required only to apply terms of master agreement consistent with short-form agreement and only to job site involved herein)

Pacific Intercom Co. 255 NLRB No. 061

(where E which had unlawfully dealt directly with Ees during term of bargaining agreement, paying less than contract wage and failing to make payments to pension fund, and failed to use hiring hall as required by contract, subsequently signed and then repudiated another in series of agreements, in order to effectuate policies of Act make whole remedy extended to time of beginning of ULPs during prior contract rather than beginning with latest contract which was repudiated)

N.L.R.B. v. Haberman Construction Company 641 F.2d 351 (C.A. 5, Apr. 1981)

(ct denied enforcement of Bd order requiring project-by-project E, operating under 8(f) agreement, to restore contract as it applies to construction projects commenced after date on which ULPs occurred)

8883-1900 Furnish wage and related data

Brown Newspaper Publishing Co., Inc. 238 NLRB No. 169

(E ordered to supply U with *aggregate* amounts paid to independent correspondents for editorial product and not amounts paid to individual writers as these writers are non-unit Ees and these amounts should remain confidential between E and those writers)

Press Democrat Publishing Company 238 NLRB No. 185

(E ordered to supply U with *aggregate* amounts paid to independent correspondents for editorial product and not amounts paid to individual writers as these writers are non-unit Ees and these amounts should remain confidential between E and those writers)

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising 257 NLRB No. 022

(E ordered to supply U with requested wage and benefit information of Ees outside bargaining unit notwithstanding parties have already negotiated collective bargaining agreement as this information is pertinent to future contract negotiations)

Minnesota Mining and Manufacturing Company 261 NLRB No. 002

(to extent that such information does not include individual medical records from which identifying data have not been removed)

Colgate-Palmolive Company 261 NLRB No. 007

(E to furnish requested health and safety information to extent it does not include generic names of substances used at plant which E and its suppliers consider their respective proprietary interests and trade secrets or medical records from which identifying data have not been removed)

8883-2000 Reinstate pension or insurance plan administrator

Wayne County Neighborhood Legal Services, Inc. 249 NLRB No. 180

Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. 606 F.2d 171 (C.A. 7, 1979)

(Bd's order to reinstate benefit plan administrator found disruptive where E's purpose was to cut costs, and Bd gave no justification for order)

8883-2400 Pay damages as compensation for refusal to bargain

Peerless Roofing Co., Ltd. 247 NLRB No. 072

(liquidated damages of 10 percent for each month E does not contribute to pension, welfare and similar trust funds found appropriate where contract, though expired, provide such remedy and additional payment was interpreted to mean 10 percent on entire sum due so not to constitute an unreasonable penalty)

8883-2500 Grant representation status at new location

Universal Security Instruments, Inc. 250 NLRB No. 092

(apply terms of collective bargaining agreement to Ees at new location)

N.L.R.B. v. National Car Rental System, Inc. 672 F.2d 1182 (C.A. 9, Feb. 1982)

(Bd order requiring E, who unlawfully failed to bargain over relocation of its facility, to recognize at new facility U that represented Ees at closed operation held abuse of Bd discretion since order is at least premature; there is no evidence E would recognize U at new facility if remedy requiring offer of employment to closed operation's terminated U Ees would result in majority, nor may such Ees even constitutes a majority; thus, injury done to current Ees by imposing on them U may not want is much greater than injury done by possibility that E will avoid U work force)

8883-2600 Pay backpay because of discontinuance of operations

C & E Distributing, Inc./Carbon-Emery Enterprises, Inc. 265 NLRB No. 074

(limited backpay order added to order that E bargain regarding effects of cessation of business in order to assure meaningful bargaining, to make Ees whole for losses suffered as result of E's failure to bargain, and to recreate to some degree situation in which parties bargaining positions are not entirely devoid of economic consequences for E)

Penntech Papers, Inc.; etc. 263 NLRB No. 033

(for failure to bargain over effects of closing one plant, E ordered to pay Ees employed at closed facility backpay at rate Ees paid when last in E's employ from five days after issuance of decision until one of following occurs: E bargains to agreement on effects of closing; impasse; failure of U to request bargaining w/i five days of E's notice of desire to bargain; subsequent failure of U to bargain in good faith; sum to any Ee not to exceed amount Ee would have earned from date of closing to time Ee secured equivalent employment or date E shall have offered to bargain, whichever occurs sooner; however, Ees shall receive minimum of 2 weeks pay)

Nathan Yorke, Trustee in Bankruptcy, Successor in Bankruptcy, or alter ego To The Seeburg Corporation and Seeburg Service Parts Co., a single employer 259 NLRB 105

(where E terminated operations suddenly due to order of trustee in bankruptcy, Ees who were laid off after trustee took over and those employed at date of shutdown entitled to backpay for E's refusal to bargain over effects of closing because E still had valuable assets which would have given U some measure of bargaining power and shutdown was not because of *calamitous event*)

Cleveland Freight Lines, Inc. 254 NLRB No. 038

(where E who had recognized U for 20 years and had current contract closed plant w/o bargaining over decision and effects thereof, backpay ordered until earliest of one of following: E bargains to agreement on decision to close and effects, impasse, U fails to request bargaining w/i 5 days of decision or E's notice to bargain, or U's failure to bargain in good faith)

National Car Rental System, Inc. 252 NLRB No. 027

(*limited backpay* requirement accompanied bargaining order requiring E to bargain with U w/i 5 days of decision concerning effects of its closing facility as result of sale and relocation; back pay order designed to make whole Ees for losses, if any, suffered as result of violation and to recreate in some practicable manner situation in which U's bargaining position is not entirely devoid of economic consequences for E)

Ferro Mechanical Corp. 249 NLRB No. 083

N.L.R.B. v. First National Maintenance Corp. 627 F.2d 596 (C.A. 2, July 1980)

Universal Security Instruments, Inc. v. N.L.R.B. 649 F.2d 247 (C.A. 4, May 1981)

(enforcement denied of backpay order involving Ees who declined transfers after partial closing notwithstanding E's unlawful failure to bargain over effects of its closure decision and unlawful offer to transfer Ees unilaterally; placing these Ees on preferential hiring list was sufficient)

8883-2700 Pay relocation expenses

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. 617 F.2d 977 (C.A. 3, 1980)

(Bd did not improperly order preferential hiring list and relocation expenses if E chose not to reopen plant closed in violation of 8(a)(3) and 8(a)(5); 8(a)(3) violation makes inapplicable doctrine that Bd may not set contract terms for parties in 8(a)(5) case, since remedy herein is designed to restore, as much as possible, situation prior to closing and not to impose contract terms)

8883-2800 Rescind unilateral changes

8883-2800—Cont.

Elias Mallouk Realty Corp. 265 NLRB No. 156

(E ordered to revoke unilateral wage increase if requested by incumbent U with which it had refused to bargain notwithstanding U did not ask for this remedy from ALJ)

Dunham-Bush, Inc. 264 NLRB No. 175

(rescind unlawfully promulgated work rule and any discipline imposed pursuant to rule)

B. F. Oil, Inc. 256 NLRB No. 171

(in addition to backpay as result of unlawful changes, Bd ordered that E reinstate discontinued shift differential and Sunday premium pay if U so requests)

Stewart Granite Enterprises 255 NLRB No. 291

(E to rescind insurance change and wage increase only if U requests same; no requirement that Ees be made whole—there having been no proof that changes worked to reduce Ees' wage or benefit levels)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting 251 NLRB No. 027

(ALJ's failure to include in his recommended order requirement that E rescind any unilateral changes he may have instituted subsequent to commencement of its bargaining obligation, held not improper; retroactive bargaining order re-establishes conditions existing before E's ULP activity began, and implicit in order herein is E's obligation to bargain over unilateral changes at U's request; moreover, there are no facts or allegations which could support finding that E instituted, or refused to bargain, over unilateral changes since onset of its bargaining obligation)

Charmer Industries, Inc. 250 NLRB No. 031

(Es required to cancel unilaterally instituted change in bill collection procedures whereby salesmen replaced delivery drivers in making c.o.d. collections, and to restore status quo ante to conditions which existed prior to change)

Talbert Manufacturing, Inc. 250 NLRB No. 026

(respondent if requested by U, to withdraw wage proposals it has implemented and reinstate cost-of-living raises)

8883-2812 Grievance procedures

The Chesapeake and Potomac Telephone Company v. N.L.R.B. 687 F.2d 633 (C.A. 2, Aug. 1982)

(E's contention that compliance with Bd order requiring E to furnish information requested by U for arbitration requested by U for arbitration of grievance resulting from suspension of Ee would be unduly burdensome because it would require search of *thousands of files,* rejected, where E's own personnel guide instructed supervisors to check with personnel department for data on previous suspensions in order to avoid disparity; and ALJ made clear that order did not require search of *thousands of files* and that problems of burdensomeness could be dealt with in compliance stage)

J. P. Stevens & Co., Inc. v. N.L.R.B. 668 F.2d 767 (C.A. 4, Jan. 1982)

(Bd's refusal of U's request for interim dispute resolution mechanism, held properly supported by evidence)

8883-2825 Disciplinary action taken without consulting union

Dunham-Bush, Inc. 264 NLRB No. 175

(rescind unlawfully promulgated work rule and any discipline imposed pursuant to rule)

Charmer Industries, Inc. 250 NLRB No. 031

(rescind any disciplinary actions which occurred because, under Es' unilateral change in procedures of collecting c.o.d. payments from customers, salesmen may have lost commissions or accounts due to their failure to personally collect such payments)

8883-2837 Make payments into trust fund

Rockland Lake Manor, Inc. 263 NLRB No. 142

(compensate trust funds for administration costs and other expenses incurred in acceptance of retroactive payments)

Taurus Waste Disposal, Inc. 263 NLRB No. 028

(E ordered to make payments into benefit funds which it had unlawfully failed to do after expiration of contract; however, determination of any additional amounts, including interest, required to satisfy make whole remedy, left to compliance stage because of variety and complexity of benefit fund agreements)

F.M.L. Supply, Inc. 258 NLRB No. 083

(ancillary questions of interest or penalties due, in instant case, on E's delinquent payments to U trust funds not deferrable to compliance stage of proceedings, since contract contained explicit language defining delinquent contributions which were mandatory liquidated damages)

Pacific Intercom Co. 255 NLRB No. 061

(where E which had unlawfully dealt directly with Ees during term of bargaining agreement, paying less than contract wage and failing to make payments to pension fund, and failed to use hiring hall as required by contract, subsequently signed and then repudiated another in series of agreements, in order to effectuate policies of Act make whole remedy extended to time of beginning of ULPs during prior contract rather than beginning with latest contract which was repudiated)

Ortiz Funeral Home Corp. (Local 1034, Teamsters, 250 NLRB No. 100

(E to make welfare fund and severance and retirement fund payments it had failed to make on behalf of unit Ees)

Traffic Control Services, Inc., and Its Trustee in Bankruptcy, Albert Rau 249 NLRB No. 077

(whether E must pay additional amounts into benefit fund in order to remedy unlawful discontinuance of payments left to compliance stage to be determined by provisions pertaining to each fund or evidence of loss directly attributable to unlawful withholding of payments)

Clifford Cook, d/b/a Pinnacle Company and Pinnacle Roofing Co., Inc. JD-(SF)-196-79

(make payments, *w/o interest,* into trust fund)

N.L.R.B. v. Antonino Carilli, d/b/a Antoninino's Restaurant 648 F.2d 1206 (C.A. 9, June 1981)

(E ordered, upon request of U w/i 60 days, to pay into health and pension trust fund all monies it unlawfully withheld from fund and continue payments until new bargaining agreement negotiated or impasse reached, notwithstanding contention order punitive in view of fact E had provided better insurance during period, since E had chosen to incur additional expense of program in order to undermine U)

Peerless Roofing Co., Ltd. v. N.L.R.B. 641 F.2d 734 (C.A. 9, Apr 4, 1981)

(Bd's remedy requiring E to make trust fund payments following expiration of collective bargaining agreement, not unlawful under Sec. 302(c)(5) where trust funds were established by documents separate and apart from collective bargaining agreement and E's obligation to make trust fund payments survived expiration date of collective bargaining agreement)

N.L.R.B. v. Henry Cauthorne, an individual, t/a Cauthorne Trucking 691 F.2d 1023 (C.A.D.C., Oct. 1982)

(where E violated Sec. 8(a)(5) by discontinuing contributions to health and welfare fund after collective-bargaining agreement expired and Bd found liability for period running to date of its Order, case remanded to Bd for determination of whether because parties resumed bargaining after unilateral change they did not reach impasse at some point. E's liability will run from date of change to date when parties execute new agreement or reach lawful impasse)

8883-2838 No recission where changes beneficial to employees

Post Manufacturing Company 251 NLRB No. 153

(nothing, in order remedying unlawful unilateral wage raise shall be construed as requiring recission of any wage increase or benefit which previously had been granted to unit Ees)

8883-2850 Resume deduction and transmittal of dues pursuant to checkoff

8883-2850-5000 Reimburse union for dues not transmitted

Independent Stave Company 248 NLRB No. 025

(pay over to U sum of money, plus interest thereon, equal to sum of all dues checked off and not remitted to U)

8883-2863 Reinstate pension and/or other benefit plans

Intermountain Rural Electric Association 253 NLRB No. 164

(order of Bd that E reinstitute its pension-plan as it existed as of December 31, 1978, although allegedly unqualified by reason of *IRS ruling* 78–403, doesnot preclude parties from bargaining over any proposed change intended to retain *IRS* qualification; order restored *status quo ante* and placed parties in position they would have enjoyed but for E's illegal conduct)

8883-2887 Reinstate number of hours worked as they existed

Wellman Industries, Inc. 248 NLRB No. 029

(restore discontinued third shifts and make overtime voluntary if U so requests)

8883-2909 Preferential hiring

Penntech Papers, Inc.; etc. 263 NLRB No. 033

(to remedy effects of its failure to bargain regarding effects of closing of one of its plants, E ordered to establish preferential hiring list of all terminated U Ees following seniority provisions in bargaining agreement, and, if operations resumed, offered Ees reinstatement)

Forro Mechanical Corp. 249 NLRB No. 083

(place on preferential hiring list all Ees unlawfully terminated as result of plant closure w/o bargaining and offer reinstatement in event E resumes any part of terminated operations)

8883-2900—Cont.

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. 617 F.2d 977 (C.A. 3, 1980)

(Bd did not improperly order preferential hiring list and relocation expenses if E chose not to reopen plant closed in violation of 8(a)(3) and 8(a)(5); 8(a)(3) violation makes inapplicable doctrine that Bd may not set contract terms for parties in 8(a)(5) case, since remedy herein is designed to restore, as much as possible, situation prior to closing and not to impose contract terms)

8883-3500 Furnish budget expenditures for nonunit work

Times-Herald, Inc. 258 NLRB No. 135

(affg prior supplemental decision, Bd ordered E publishing newspaper to furnish U information as to aggregate amount of E's editorial budget expended for production of 5 named newspaper columns produced by nonunit writers, with aggregate amount meaning total sum expended for the 5 columns; Bd based order on its finding that amounts paid to individual nonunit writers should remain confidential and that it is appropriate to protect such a writer from disclosure of his compensation to entity not representing him, particularly absent any demonstrated need by U to have such information on individual basis)

8883-4200 Restore benefits and privileges

Rochester Institute of Technology 264 NLRB No. 135

Carpenter Sprinkler Corporation v. N.L.R.B. 605 F.2d 60 (C.A. 2, 1979)

(order that wage and benefit levels be returned to *status quo ante* prior to E's unilateral change, inappropriate in view of basic disagreement over levels of wages and benefits, it being unfair to hold E to prior contract terms which caused it to withdraw from multi-E unit)

8883-4256 Health care services and benefits

Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. 248 NLRB No. 040

(where E's change in organizations administering health insurance plans was found unlawful unilateral change in health care insurance plans, Bd, although rescinding pursuant to ct remand portion of order requiring restoration of original organization, ordered E to restore all services and benefits available under original health plan, including basis used for computing charges or, in the alternative, payment of same level of benefits, and to provide *labor consultant* to handle Ees' insurance claims)

N.L.R.B. v. Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. 653 F.2d 304 (C.A. 7, July 1981)

(where E unilaterally changed insurance plans and its action resulted in some favorable and some unfavorable changes to Ees, Bd's supplemental order held w/i scope of ct remand and consistent with precedent where order provided both for restoration of working conditions or benefits improperly denied and for monetary compensation for any losses sustained)

N.L.R.B. v. Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. 653 F.2d 304 (C.A. 7, July 1981)

(E's contention that Bd's order as to health care services will allow windfalls to Ees, rejected, since Ees will receive no benefits above cost to Ee of the health services provided; and E offered no specific evidence to support its claim of administrative burden)

8883-4268 Bonus

Aeronca, Inc. 253 NLRB No. 026

(make Ees whole for loss of benefits due them by paying them *value* of lost benefits, Christmas turkey)

Talbert Manufacturing, Inc. 250 NLRB No. 026

(E to reinstate Ee bonus and make Ees whole for any bonus accrued prior, or subsequent, to discontinuation of bonus payments)

Production Plated Plastics, Inc. 247 NLRB No. 076

(E ordered to pay Christmas bonus and continue to pay bonus until it bargains in good faith with U or until U refuses to bargain in good faith over its cessation)

8883-4294 Hot lunch program

Henry Vogt Machine Company 251 NLRB No. 040

(E to reinstate subsidized cafeteria lunch privileges)

8883-4500 Restitution for unilateral changes

Van Dorn Plastic Machinery Co., Division of Van Dorn Company 265 NLRB No. 036

(E to make Ees whole for benefits lost as result of unilateral decision regarding paid lunch policy and for adverse effects of unilateral change in attendance/tardiness program including reinstatement as appropriate)

Henry Vogt Machine Company 251 NLRB No. 040

(E to make Ees whole for any losses occasioned by its withdrawing privilege of eating lunch at E's subsidized cafeteria)

Charmer Industries, Inc. 250 NLRB No. 031

(Es ordered to reimburse salesmen for added time and cost of performing their sales' duties resulting from Es' unlawful unilateral change in bill collection procedures whereby salesmen replaced delivery drivers in making c.o.d. collections)

8883-4525 For lost wages and benefits

Schnadig Corporation 265 NLRB No. 020

(where E had unlawfully adopted lower wage scale for new Ees, E ordered to make whole any Ee who has received wages lower than those he would have received if E had not changed wage scale)

Navajo Freight Lines, Inc. 254 NLRB No. 166

(while predecessor E was apparently dissolved as legal entity when successor E took over its business, Bd should have opportunity during subsequent compliance proceedings to determine whether it was possible for predecessor, if it should ever resume business, to comply with order requiring it to c/d from engaging in 8(a)(5) conduct and to reimburse former Ees for loss of their vacation pay due to predecessor's unlawful unilateral action)

8883-4550 Following expiration of contract

Taurus Waste Disposal, Inc. 263 NLRB No. 028

(E ordered to make payments into benefit funds which it had unlawfully failed to do after expiration of contract; however, determination of any additional amounts, including interest, required to satisfy make whole remedy, left to compliance stage because of variety and complexity of benefit fund agreements)

South Shore Hospital 256 NLRB No. 001

(rescind unilateral changes in wages, benefits and working conditions and make Ees whole for any losses incurred, i.e., overtime, call-in-work pay, vacations, health insurance coverage during certain unpaid leaves of absence, and shift differentials)

8883-4575 By successor

Saks & Company v. N.L.R.B. 634 F.2d 681 (C.A. 2, 1980)

(Bd's order rescinded where ct faound unilaterial imposition of terms and conditions of employment not violative as successor E did not indicate when it hired Ees of predecessor that it planned to hire them all or continue with same terms and conditions of employment)

8883-4700 Restitution for wages and benefits under contract

N.L.R.B. v. Columbia Building Materials, Inc. 624 F.2d 193(T) (C.A. 9, 1980)

(Bd's task is to fashion remedy for ULPs that will restore economic status quo that would have existed but for ULP; backpay order herein w/i remedial authority of Bd since it does no more then return affected Ees to economic state which they would have enjoyed absent unilateral wage change)

8883-4900 Offer to accept grievance for processing

U.S. Utilities Corporation 254 NLRB No. 055

(E ordered to arbitrate grievances over layoffs prior to 10(b) and to waive objections based on timeliness of any arbitral proceedings though not whether grievances were timely filed)

Southwestern Bell Telephone Company 251 NLRB No. 061

(In order to allow U to file grievance over Ee's discharge after they receive information which E originally refused to provide)

Newspaper Printing Corporation JD-203-80

(parties ordered to proceed directly to arbitration where E unlawfully refused to submit grievance to Joint Standing Committee which was third step in grievance procedure since to remand for consideration at third step *would merely be' accomodating run-around being engineered by Respondent and... requiring an empty ritual*)

8883-5400 Cease solicitation for dominated or assisted union

Cas Walker's Cash Stores Inc. 249 NLRB No. 041

8883-5600 Grant union representative access to plant

Peoples Gas System, Inc. 253 NLRB No. 150

(on remand Bd did not hold bargaining order appropriate in view of extraordinary amount of time that had elapsed since E's initial refusal to bargain and Bd's prior issuance of bargaining order, and fact U had lost election; however, second election ordered in view of E's initial withdrawal of recognition since reasonable to assume E's act led to U's loss of majority; mailing of notice of election to Ees not ordered nor was E ordered to allow U access to its property since U will be furnished list of Ees)

Tet Wah Restaurant 251 NLRB No. 010

Florida Steel Corporation v. N.L.R.B. 620 F.2d 79 (C.A. 5, 1980)

(Bd's *extraordinary* requirement for U access to plants at which U was Ee representative was justified for determining any repetition of conduct and for preventing impairment of U's effectiveness as representative; however, in requiring such access at E's non-U plants, Bd's order was not remedial with respect to charge involving interference with U as representative and cannot

8883-5600—Cont.

be sustained, particularly in view of other order provisions requiring notice be given to Ees throughout company of action taken on ULPs herein)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(*direct plant access for U organizers* as remedy limited to site of ULP, but not warranted *unless alternative means of access are clearly unavailable or have been tried and found wanting*)

8883-5633 Access to company bulletin board

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)

(access to bulleting boards granted in cases in which E had extended history of unlawful conduct as well as in cases in which such access was ordered to remedy *flagrant violation, outrageous conduct,* or *a gross interference with Ees' organizational rights*)

8883-6400 Furnish data concerning complaints filed with government agencies

Safeway Stores, Inc. v. N.L.R.B. 691 F.2d 953 (C.A. 10, Oct. 1982)

(E ordered to furnish U copies of EEO complaints and charges filed against E, with only names deleted as this is sufficient to protect members' rights)

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC v. N.L.R.B. 648 F.2d 18 (C.A.D.C., Nov. 1980)

(E must provide U with compilation of numbers, types, dates and alleged basis of discrimination complaints filed but not with copies of complaints themselves)

8883-6500 Furnish information and reports filed with government agencies

Safeway Stores, Inc. v. N.L.R.B. 691 F.2d 953 (C.A. 10, Oct. 1982)

(E ordered to furnish U information concerning handicapped Ees from records of recent audit by Office of Federal Compliance where one purpose of audit was to identify handicapped Ees, notwithstanding E's computer had no code identifying handicapped)

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC v. N.L.R.B. 648 F.2d 18 (C.A.D.C., Nov. 1980)

(E not required to furnish entire affirmative action plan (AAP) as it contains much information not relevant to collective bargaining; moreover, agency with which AAP is filed is prohibited by law from disclosing report and it would be incongruous to allow another agency to force its disclosure)

8883-7500 Restitution for wages and benefits under contract

RAHCO, Inc. 265 NLRB No. 030

(unilateral change in E's formula to determine wage raises made computation of raises unclear, remedy in *Master Slack Et. Al.* 230 NLRB 1054, 1057 (1977) was warranted)

G. Beamo Contractors, Inc. 261 NLRB No. 097

(E ordered to make Ees whole by making fringe benefit fund payments required by bargaining agreement. However, *because provisions of Ee benefit fund agreements are variable and complex, Bd does not provide at adjudicating stage of proceeding for addition of interest at fixed rate on unlawfully withheld fund payments* question of whether E must pay additional amounts into benefit fund in order to satisfy *make whole* remedy left to compliance stage. Additional amounts may be determined by reference to provisions in documents governing funds, or absent governing provisions, evidence of loss directly attributable to E's unlawful withholding)

Hewett Maintenance Corporation 260 NLRB No. 135

(E who unilaterally changed health insurance plans at expiration of contract ordered to make Ees whole for loss of medical benefits to extent that costs which would have been paid by old plan were not actually paid by new plan)

Carrothers Construction Company, Inc. 258 NLRB No. 015

(make whole any Ees for losses suffered due to Es' refusal to honor and apply terms of contract)

Pacific Intercom Co. 255 NLRB No. 061

(where E which had unlawfully dealt directly with Ees during term of bargaining agreement, paying less than contract wage and failing to make payments to pension fund, and failed to use hiring hall as required by contract, subsequently signed and then repudiated another in series of agreements, in order to effectuate policies of Act make whole remedy extended to time of beginning of ULPs during prior contract rather than beginning with latest contract which was repudiated)

Finger Lakes Plumbing & Heating Co., Inc. 253 NLRB NO. 049

(E to pay all contractually mandated contributions for fringe benefits which E unilaterally ceased paying after contract expired until it negotiates in good faith to agreement or impasse)

SFS Painting and Drywall, Inc.; James Seech d/b/a J. Seech Painting and Drywall 249 NLRB No. 009

(make Ees whole for medical expenses incurred which would have been covered by medical insurance plan if respondents had complied with contract and paid into contractual trust funds)

Carpenter Sprinkler Corporation v. N.L.R.B. 605 F.2d 60 (C.A. 2, 1979)

(order of restitution to strike replacements of difference between wages and benefits received and those they would have received absent E's unilateral change, not enforced; E received no notice of possible liability for such and striker replacements were fully aware of terms on which they were hired)

J. P. Stevens & Co., Inc. v. N.L.R.B. 668 F.2d 767 (C.A. 4, Jan. 1982)

(Bd's refusal to grant make-whole remedy related to profit-sharing plan held properly supported by evidence)

8883-8500 Bargain within a time certain from date of Board order

National Car Rental System, Inc. 253 NLRB No. 027

(*limited backpay* requirement accompanied bargaining order requiring E to bargain with U w/i 5 days of decision concerning effects of its closing facility as result of sale and relocation; back pay order designed to make whole Ees for losses, if any, suffered as result of violation and to recreate in some practicable manner situation in which U's bargaining position is not entirely devoid of economic consequences for E)

James F. Stanford, Inc. d/b/a Ace Machine Co. 249 NLRB No. 073

(for a period of no less than 1 year from date on which Respondent fully complies with other terms of (instant) Order)

8883-8600 Bargain on a specific schedule until agreement or impasse

8883-8633 Bargain on consecutive days

The Maxd Corporation 256 NLRB No. 108

(reinstate withdrawn *last maintenance offer* for consideration of U for period of 20 conservative days)

Eastern Maine Medical Center 253 NLRB No. 024

(Bd declined to adopt ALJ's recommended order requiring E to bargain 15 hours per week in presence of FMCS representative should U so request and to prepare written bargaining progress reports to be submitted to RD periodically, in view of absence of proclivity on E's part to violate Act once its actions have been adjudicate unlawful)

8883-8700 Consent to a request that an FMCS representative be present

Eastern Maine Medical Center 253 NLRB No. 024

(Bd declined to adopt ALJ's recommended order requiring E to bargain 15 hours per week in presence of FMCS representative should U so request and to prepare written bargaining progress reports to be submitted to RD periodically, in view of absence of proclivity on E's part to violate Act once its actions have been adjudicate unlawful)

8883-8800 Periodically submit bargaining progress report

Eastern Maine Medical Center 253 NLRB No. 024

(Bd declined to adopt ALJ's recommended order requiring E to bargain 15 hours per week in presence of FMCS representative should U so request and to prepare written bargaining progress reports to be submitted to RD periodically, in view of absence of proclivity on E's part to violate Act once its actions have been adjudicate unlawful)

8883-9200 Compensate employees for unlawful refusal to bargain

C & E Distributing, Inc./Carbon-Emery Enterprises, Inc. 265 NLRB No. 074

(limited backpay order added to order that E bargain regarding effects of cessation of business in order to assure meaningful bargaining, to make Ees whole for losses suffered as result of E's failure to bargain, and to recreate to some degree situation in which parties bargaining positions are not entirely devord of economic consequences for E)

Sedan Operators Cooperative, Inc., d/b/a Desoto Cab Company) JD-(SF)-158-82

(make whole Ees for loss of earnings suffered between time sign-up sheet for cabdrivers would have been posted if E had complied with U's request to post sign-up sheet and date that E actually conducted sign-ups)

8883-9400 Reimburse union for loss of dues not checked off

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant 259 NLRB No. 063

(reimburse U for any dues lost by U with regard to those Ees unlawfully solicited by E to tender revocations of their previously executed (checkoff) authorizations, since remedy returns parties to *status quo ante* existing prior to E's unlawful conduct notwithstanding contract had expired and E free to cancel checkoffs on his own)

8883-9600—Cont.

Ortiz Funeral Home Corp. (Local 1034, Teamsters,	250 NLRB No. 190
United States Steel Corporation	248 NLRB No. 090

(Es to make U whole for monetary losses resulting from Es' unilateral failure to check off dues and failure to issue Ees, while students, separate checks covering dues)

South Carolina Education Association	JD-(ATL)-6-82

650 ORDERS AGAINST UNIONS

1100 CEASE-AND-DESIST ORDERS

1101 GENERALLY

Local Union No. 46 Metallic Lathers and Reinforcing Iron Workers (Cement League) **259 NLRB No. 010**
(where successor U found liable for backpay liability incurred by predecessor U for its ULP's it is not subject to c/d order where it did not engage in ULPs)

1125 BROAD ORDERS

1125-0100 Generally

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(no broad order in view of Bd's discontinuation of automatic adoption of broad orders in discharge cases and fact that finding by other judicial bodies of violations of other statues by respondent international U does not establish proclivity to violate this Act)

1125-0125 Ineffectiveness of post Board and count orders

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**

1125-0137 Reliance on union policy leading to violations

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**
(broad order warranted in view of U's implementation of its policy of performing total job at worksite resulting in secondary boycott violations)

1125-0150 Proclivity to violate Act as basis for broad order

English Coal Company, Inc. **263 NLRB No. 165**
(broad c/d order appropriate where Bd relied upon formal settlement agreement, which did not contain nonadmissions clause, to show a proclivity to violate Act, and which contained language permitting later use in Bd-related proceedings)

Longshoremen's Association, Local 1180 (Kenneth E. Mason, an Individual) **263 NLRB No. 134**
(broad c/d order not warranted, notwithstanding Respondent had twice previously entered into informal settlement agreements involving identical alleged misconduct, since informal settlement agreement not basis for finding proclivity to violate Act)

Carpenters Union Local No. 1622, UBCJA (Robert Wood & Associates, Inc. **262 NLRB No. 138**
(broad order to remedy unlawful secondary boycott warranted in view of Respondent U's proclivity to violate Act as demonstrated by charges of similar violations in three other cases and resulting formal settlement stipulations since stipulations did not contain nonadmissions clause; not necessary for cases to be consolidated since Respondent's actions in each case warranted issuance of broad remedial order)

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(no broad order in view of Bd's discontinuation of automatic adoption of broad orders in discharge cases and fact that finding by other judicial bodies of violations of other statues by respondent international U does not establish proclivity to violate this Act)

1150 NARROW ORDERS

International Photographers of the Motion Picture Industry, Local 659, et al.(Medway Productions, Inc.) **250 NLRB No. 052**
(sufficient in circumstances of case)

Local 24, Hotel & Restaurant Employees (George Dorn, an Individual) **JD-414-82**
(narrow order issued to remedy U's failure and refusal to refer U member by removing his name from job referral list, since U was not shown to have proclivity for committing ULPs, and in operation of U hall distinction between objective discretion and an *ad hominem* approach to job referrals is easily blurred)

1175 CEASE-AND-DESIST ORDERS RELATING TO SPECIFIC VIOLATIONS

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**
(U ordered to c/d from applying its bylaw prohibiting members from allowing members of other Us to do work coming under U's jurisdiction, in such a manner as to induce or encourage its members to engage in unlawful secondary boycott activities, in support of U's claim to performance of total job at worksite; however, while application of bylaw under instant facts is restrained, bylaw itself may otherwise be validly implemented)

District Council No. 2 of The Brotherhood of Painters and Allied Trades, AFL-CIO (The Paintsmiths, Inc.) **253 NLRB No. 017**
(c/d order modified, on remand, *so as to apply only to situations where appointment of a steward would displace a worker who is already on the job*)

Plumbers, Local 388 (Charles Featherly Construction Co.) **252 NLRB No. 062**
(Bd ordered that Respondents c/d from threatening and picketing with object of forcing or requiring Es, or inducing and encouraging Ees, in violation of Sections 8(b)(4)(i) and (ii), to cease d/b/b with non-U contractor generally rather than only at construction projects at which violations took place herein)

75-5000 Section 8(e)

1175-5000 Section 8(e)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(order to c/d from in any like or related manner interfering with, restraining, or coercing Ees in exercise of their Section 7 rights not appropriate for Section 8(e) violations not directly involving Section 7 rights)

1600 ORDERS TO ALLEVIATE EFFECT OF FRIVILOUS LITIGATION

1633 What constitutes frivilous litigation

International Longshoremen's Association, AFL-CIO; et al. (The Terminal Corporation) **250 NLRB No. 004**
(litigation of *container* case not frivolous notwithstanding great body of prior Bd cases where circuit ct recently reversed Bd decision in similar case)

Standard Refinery Union, Inc. **JD-632-80**
(assessment of litigation expenses against respondent U, unwarranted where dispute concerning correctness or incorrectness of E's name was compared to typical *8(a)(5)* type proceeding wherein parties seek to test underlying certification proceeding; pleadings were not frivolous)

1667 Types of order provisions

1667-5000 Reimbursement of litigation expenses

Standard Refinery Union, Inc. **JD-632-80**
(assessment of litigation expenses against respondent U, unwarranted where dispute concerning correctness or incorrectness of E's name was compared to typical *8(a)(5)* type proceeding wherein parties seek to test underlying certification proceeding; pleadings were not frivolous)

N.L.R.B. v. Local 282, Teamsters **No. 29149, Mar. 28, 1980, C.A. 2 (unreported)**
(U violated Section 8(b)(4) by picketing neutral E during labor dispute with trucking company that performed delivery services for E and found in contempt for violating prior judgments and contempt adjudications and

1667-5000—Cont.

required to pay fine, refrain from committing further violations of prior adjudications, post appropriate notices, mail copies to all U members, be subject to prospective fines for additional violations, reimburse NLRB for all its expenses)

2200 ORDERS RELATING TO AGREEMENTS

2201 GENERALLY

Baine Service Systems, Inc. **248 NLRB No. 087**

(cease giving effect to and cancel contract entered into by E and U which lacked majority status)

2215 ORDER CONCERNING CONTRACTUAL BENEFITS

United Rubber, Cork, Linoleum and Plastic Workers of America, Local 878 (Goodyear Tire & Rubber Company) **255 NLRB No. 032**

(U ordered to post notice stating it will not prevent non-U unit Ees from receiving grievance pay, notwithstanding U has charged posititon and notified E that Ee entitled to pay)

2260 INVALIDATION OF CONTRACTS WITH INDIVIDUAL MEMBERS OF MULTI-EMPLOYER ASSOCIATION

Local Union No. 420, Plumbers (Paragon Mechanical) **254 NLRB No. 051**

(where U unlawfully coerced E into complying with local U agreement rather than agreed upon national contract by striking E and not giving proper notice under Sec. 8(d), U ordered to reimburse E for any expenditures it incurred pursuant to local agreement which it would not have incurred under national agreement)

3300 ORDERS RELATING TO REINSTATEMENT

3310 NOTIFYING EMPLOYER AND DISCRIMINATEE THAT UNION HAS NO OBJECTIONS TO, AND REQUESTS, REINSTATEMENT OF DISCRIMINATEE

Harsh Investment Corporation d/b/a The Claremont Resort Hotel and Tennis Club **260 NLRB No. 034**

(U and E jointly and severably for Ees discriminatory discharge but U's backpay liability will end 5 days after it notifies E that it has no objection to employment of Ee)

United Electrical, Radio & Machine Workers of America, Local 262 (Hemisphere Broadcasting, Inc.) **JD-437-80**

(U required to give E written notice that it has no objection to employment of Ee whose discharge U unlawful caused, and affirmatively to request that E reinstate Ee, and simultaneously to send copies of such notification to Ee; E's misconduct was so blatant as to require affirmative request to reinstate, and simultaneous notification to E and Ee was required since U had not previously taken any corrective action voluntarily)

3320 NOTIFY EMPLOYER AND DISCRIMINATEE THAT UNION HAS NO OBJECTIONS TO, AND REQUESTS, EMPLOYMENT OF DISCRIMINATEE

Pipefitters Union Local No. 120 (Schweitzer Dipple, Inc.) **260 NLRB No. 045**

(notice to E only)

4400 BACKPAY ORDERS

4401 GENERALLY

N.L.R.B. v. Clerks and Checkers Local No. 1593, International Longshoremen's Association, AFL-CIO, et al. **644 F.2d 408 (C.A. 5, May 4, 1981)**

(when supplementing Bd's backpay awards Bd is granted broad discretion in formulating remedies to make Ees whole and to effectuate policies of Act)

Warehouse Union, Local 860, Teamsters v. N.L.R.B. **652 F.2d 1022 (C.A.D.C., Apr 1981)**

(Bd remedy ordering U to make clerical Ees whole for their loss of wages (due to U's unlawful conduct) upheld, since award of backpay is w/i authority of Bd and in keeping with policies of Act)

4413 AS REMEDY FOR SECTION 8(e) VIOLATIONS

4413 AS REMEDY FOR SECTION 8(e) VIOLATIONS

4413-5000 Not appropriate

4413-5000 Not appropriate

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 030**

(Bd refused to order reimbursement of initiation fees, dues, and contributions for U benefit funds deducted as result of enforcement of provisions held violative of Section 8(e) to individuals who were held independent contractors since insufficient evidence as to losses directly attributable to actual coercion; further, make whole reimbursement order generally over broad and inappropriate in context of Section 8(e) violations and aggrieved independent contractors may prove damage claim under Section 303 of Act)

4416 SUCCESSOR UNION

Local Union No. 46 Metallic Lathers and Reinforcing Iron Workers (Cement League) **259 NLRB No. 010**

(successor U liable for back pay incurred through ULPs of its predecessor where it had knowledge of pending ULP at time it affiliated with predecessor)

Local Union No. 46 Metallic Lathers and Reinforcing Iron Workers (Cement League) **259 NLRB No. 010**

(where 2 international U's became affiliated and with wrongdoer international (by ratifying illegal acts of its local) becoming subdividison of other international U, latter U, and not subdivision, secondarily liable for backpay notwithstanding no comingling of funds between internationals since question of whether subdivision was successor to its original international not litigated; furthermore, local U which committed ULPs and which has since affiliated with 3rd international primarily liable for backpay)

4417 JOINT BACKPAY LIABILITY

4417-2000 International and local union

Local Union No. 46 Metallic Lathers and Reinforcing Iron Workers (Cement League) **259 NLRB No. 010**

(where 2 international U's became affiliated and with wrongdoer international (by ratifying illegal acts of its local) becoming subdividison of other international U, latter U, and not subdivision, secondarily liable for backpay notwithstanding no comingling of funds between internationals since question of whether subdivision was successor to its original international not litigated; furthermore, local U which committed ULPs and which has since affiliated with 3rd international primarily liable for backpay)

Local Lodge Number 5, Boilermakers (Reger Construction Company, Inc.) **249 NLRB No. 105**

4417-3000 Locals of same international

Local 714, Operating Engineers (Contractors Foundation Drilling Company) **262 NLRB No. 142**

(joint order not appropriate where discriminatee's home Local was not party to proceeding, did not receive formal notice of it nor participate in it and GC did not amend its complaint to include it as respondent)

4417-4000 International, local, and district council

Edward L. Nezelek, Inc. **257 NLRB No. 070**

(Local U held liable where E unlawfully deducted dues from Ees paycheck w/o checkoff authorization and District Council accepted dues where Local and District Council signed collective bargaining agreement and Local receives monthly subsidy from District Council)

4417-8000 Union and employer

4417-8025 Jointly and severally liable

General Instrument Corporation, Amtote Systems Division **262 NLRB No. 149**

(U and E jointly severably liable to reimburse Ees for unlawfully checked off dues where notwithstanding valid U-security clause dues were without during first 45 days of employment and Ees had not executed check-off authorization cards and had no obligation to pay dues or fees during that period)

Harsh Investment Corporation d/b/a The Claremont Resort Hotel and Tennis Club **260 NLRB No. 034**

(U and E jointly and severably for Ees discriminatory discharge but U's backpay liability will end 5 days after it notifies E that it has no objection to employment of Ee)

Port Jefferson Nursing Home and Health Related Facility **261 NLRB No. 092**

(U's backpay liability found jointly and several with E's liability and extends from date of discharge until five days after date U gives written notice to E and each discriminatee that it no longer has any objection to their immediate reinstatement, and thereafter until it joins E in submitting consent order to

4417-8025—Cont.

dismiss ct proceeding instituted by it for preliminary inj restraining E from reinstating wrongfully discharged Ees)

Baine Service Systems, Inc. **248 NLRB No. 087**
(E and U ordered to reimburse Ees for all moneys extracted from them by unlawfully requiring them to join U; order does not apply to Ees who joined U prior to employment with E)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. **679 F.2d 673 (C.A. 7, May 1982)**
(E's bargaining with U that lacked majority support among E's Ees, violative and E and U were jointly and severally liable to make whole unlawfully discharged Ees)

Brotherhood Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC v. N.L.R.B. **624 F.2d 819 (C.A. 8, 1980)**
(E held jointly, rather than secondarily, liable with U for reimbursement of unlawfully withheld U assessments since both E and U violated Act; further, bargaining agreement contained idemnification clause which shifted entire reimbursement obligation to U)

N.L.R.B. v. Pacific Coast Utilities Service, Inc. **638 F.2d 73 (C.A. 9, Apr. 1980)**
(joint and several back pay liability of E and U proper where E wrongfully discharged Ee and U failed to represent him fairly and impartially)

4417-8025-2500 Union responsible up to time it requests reinstatement for employee discharged pursuant to union security clause; thereafter, employer responsible

Sheet Metal Workers' Union Local 355 (Zinsco Electrical Products) **254 NLRB No. 092**
(where U unlawfully caused E to discharge Ee for not complying with U security provisions and E lacked culpability, U liable for losses of wages and benefits until Ee is reinstated or obtains substantially equivalent employment elsewhere unless E refuses U's request to reinstate Ee in which case from that time forward burden of backpay shifts to E)

4450 BACKPAY PERIOD

4450-2500 Beginning of period

4450-2825 Date of discrimination caused by union

Boston Cement Masons & Asphalt Layers Union Local No. 534 (Duron Maguire Eastern Corp.) **265 NLRB No. 158**
(period of U's backpay liability held to extend from date of discharge through date that employment of discriminatees would have ceased as result of E's completion of construction project, where U failed to comply with *Pen and Pencil* requirement, applicable when Bd's order and backpay specification issued, of notifying both E and discriminatees that it had no objection to their employment in order to toll backpay; moreover, U did not comply with later *Sheet Metal* and *Iron Workers* cases, since it failed to affirmatively request E to reinstate discriminatees)

Teamsters Local Union No. 528 (Associated Grocers Co-Op) **265 NLRB No. 065**
(U ordered to make dischargee whole for any loss of earnings he may have suffered as result of U's unlawful action in refusing to process his grievance over his termination, from date of discharge rather than from date U refused his request to file grievance)

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**
(U's notice to E that it did not object to immediate reinstatement of discriminatees and letter to Ees stating same in attempt to terminate backpay liability found invalid where conditioned on Ees maintaining U membership *to extent required by law;* additional notice to E also invalid where Ees were not informed individually and in writing)

4450-2850 Date discriminatee requested union to present grievance

Teamsters Local Union No. 528 (Associated Grocers Co-Op) **265 NLRB No. 065**
(U ordered to make dischargee whole for any loss of earnings he may have suffered as result of U's unlawful action in refusing to process his grievance over his termination, from date of discharge rather than from date U refused his request to file grievance)

4450-5000 End of period

4450-5005 Union notification of employer and discriminatee that it has no objection to discriminatee's reinstatement, reemployment or employment

Boston Cement Masons & Asphalt Layers Union Local No. 534 (Duron Maguire Eastern Corp.) **265 NLRB No. 158**
(period of U's backpay liability held to extend from date of discharge through date that employment of discriminatees would have ceased as result of E's completion of construction project, where U failed to comply with *Pen and Pencil* requirement, applicable when Bd's order and backpay specification issued, of notifying both E and discriminatees that it had no objection to their employment in order to toll backpay; moreover, U did not comply with later *Sheet Metal* and *Iron Workers* cases, since it failed to affirmatively request E to reinstate discriminatees)

Colonial Baking Company of Springfield **264 NLRB No. 072**
(U's backpay liability to Ee to be terminated after it notified E and Ee that it no longer had any objection to his employment with E; such liability to terminate 5 days after U tendered appropriate notices)

Q.V.L. Construction, Inc. **260 NLRB No. 139**
(liability shall terminate 5 days after notification to E and discriminatee)

C. B. Display Service, Inc. **260 NLRB No. 140**
(U's backpay liability to be tolled 5 days after U gives notice to E that it has no objection to hiring of discriminatee notwithstanding job U refused to refer him to was short term as discriminatee may have been hired for subsequent jobs absent discrimination; violation is a continuing one and will not be tolled until E notified)

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**
(U's notice to E that it did not object to immediate reinstatement of discriminatees and letter to Ees stating same in attempt to terminate backpay liability found invalid where conditioned on Ees maintaining U membership *to extent required by law;* additional notice to E also invalid where Ees were not informed individually and in writing)

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**
(U's backpay liability found jointly and several with E's liability and extends from date of discharge until five days after date U gives written notice to E and each discriminatee that it no longer has any objection to their immediate reinstatement, and thereafter until it joins E in submitting consent order to dismiss ct proceeding instituted by it for preliminary inj restraining E from reinstating wrongfully discharged Ees)

United Electrical, Radio & Machine Workers of America, Local 262 (Hemisphere Broadcasting, Inc.) **JD-437-80**
(backpay period ordered to run from date U unlawfully caused E to discharge Ee, until 5 days after U gives required written notice to E and Ee that it has no objection to E's employment of Ee)

Plumbers Local Union No. 83 (Power City Plumbing & Heating Inc.) **JD-38-80**
(where issue raised by charge was U's responsibility for causing Ee's discharge by subtle pressures on Ee-members not to work alongside Ee, U's statements of non-objection to E's employing Ee made to E's president at time when complaint based on the charge was still pending, held not unequivocal and not sufficient to toll backpay, especially since statements were not made to Ee and U did not discipline its agents and members who were found to have contributed to Ee's discharge)

Plumbers Local Union No. 83 (Power City Plumbing & Heating Inc.) **JD-38-80**
(U's letter sent allegedly to RD's office and to discriminatee stating that U had no further objection to E's employment of discriminatee, held insufficient to toll backpay, since there was no evidence that letter was received either by discriminatee or by RD and no evidence that copy of letter was sent to E)

4450-5049 Date that employment of discriminatees would have ceased as result of completion of construction project

Boston Cement Masons & Asphalt Layers Union Local No. 534 (Duron Maguire Eastern Corp.) **265 NLRB No. 158**
(period of U's backpay liability held to extend from date of discharge through date that employment of discriminatees would have ceased as result of E's completion of construction project, where U failed to comply with *Pen and Pencil* requirement, applicable when Bd's order and backpay specification issued, of notifying both E and discriminatees that it had no objection to their employment in order to toll backpay; moreover, U did not comply with later *Sheet Metal* and *Iron Workers* cases, since it failed to affirmatively request E to reinstate discriminatees)

4450-5065 Date union fulfills duty of fair representation

United Steelworkers of America, AFL-CIO-CLC, On Behalf of Its Local Union No. 15167 (Memphis Folding Stairs, Inc.) **238 NLRB No. 068**
(backpay is tolled as of time Ee is reinstated, obtains substantially equivalent employment or U secures consideration of her grievance and pursues it with due dilligence whichever is sooner)

4450-5063—Cont.

United Electrical, Radio and Machine Workers of America and Local 1105, United Electrical, Radio and Machine Workers of America (Westinghouse Electric Corporation) 254 NLRB No. 161

(U that unlawfully delayed filing grievance over promotion ordered to pay grievant backpay from time it should have filed grievance until time it did so notwithstanding grievance subsequently dismissed on its merits since backpay not contingent on outcome of grievance and U failed to prove that its delay in processing grievance did not cause her to be denied promotion)

4450-5072 Date discriminatee obtains substantially equivalent employment elsewhere

Boston Cement Masons & Asphalt Layers Union Local No. 534 (Duron Maguire Eastern Corp.) 265 NLRB No. 158

(U's defense to backpay specification on ground that its backpay liability should have ceased when discriminatees got jobs with Es under contract with U, rejected)

Teamsters Local 559, an affiliate Of The International Brotherhood of Teamsters (Mashkin Freight Lines, Inc.) 257 NLRB No. 006

(Bd found that job offered to discriminatee by another E was not substantially equivalent to position held by Ee before discharge, although same kind of work, where wages earned at new job were significantly lower than wages Ee had earned at previous position; U's back pay liability for refusing to process Ee's grievance in regard to his discharge was not tolled on date of new job but extends until E extended valid offer of reinstatement to discriminatee)

International Chemical Workers Union, Local No. 190 (FMC Corporation) 251 NLRB No. 204

(where U unlawfully refused to process grievance over discharge, and grievance became time barred under bargaining agreement as Bd will presume that arbitration procedure would have resulted in decision favorable to dischargee since failure to arbitrate is fault of U and it is proper to resolve doubts against wrongdoer)

4450-7500 Tolling (See headings under 625-4450-7500)

Port Jefferson Nursing Home and Health Related Facility 251 NLRB No. 092

(U's notice to E that it did not object to immediate reinstatement of discriminatees and letter to Ees stating same in attempt to terminate backpay liability found invalid where conditioned on Ees maintaining U membership *to extent required by law;* additional notice to E also invalid where Ees were not informed individually and in writing)

Port Jefferson Nursing Home and Health Related Facility 251 NLRB No. 092

(U's backpay liability found jointly and several with E's liability and extends from date of discharge until five days after date U gives written notice to E and each discriminatee that it no longer has any objection to their immediate reinstatement, and thereafter until it joins E in submitting consent order to dismiss ct proceeding instituted by it for preliminary inj restraining E from reinstating wrongfully discharged Ees)

4467 AFFIRMATIVE DEFENSES

4467-1800 Employer refused to reinstate discriminatee discharged pursuant to union security clause

Sheet Metal Workers' Union Local 355 (Zinsco Electrical Products) 254 NLRB No. 092

(where U unlawfully caused E to discharge Ee for not complying with U security provisions and E lacked culpability, U liable for losses of wages and benefits until Ee is reinstated or obtains substantially equivalent employment elsewhere unless E refuses U's request to reinstate Ee in which case from that time forward burden of backpay shifts to E)

4483 ULPS INVOLVED

4483-1700 Causing discrimination

Teamsters Local Union No. 515 (Cavalier Corporation) 259 NLRB No. 094

(where U discriminated against Ee who had resigned his U membership by processing grievance which resulted in his removal from position entailing overtime, it was ordered to withdraw grievance and process no further grievances because of his resignation and to reimburse him for lost overtime wages)

4483-2500 Refusing to process grievance

Henry J. Kaiser Company 259 NLRB No. 001

(Bd ordered U, which unlawfully failed to process Ee's discharge grievance, to pursue grievance in good faith with due diligence and to make Ee whole for any loss of earnings, notwithstanding that E most likely would assert that grievance was contractually time-barred and Ee could not show that discharge was contrary to U contract; Bd has not made a backpay award conditioned on merits of grievance, and Ee's lawful discharge has nothing to do with U's ULP; and since uncertainty whether processing of grievance would have resulted in milder or no discipline is to be resolved against wrongdoer)

Henry J. Kaiser Company 259 NLRB No. 001

(U ordered to make Ee whole for any loss of earnings he may have suffered as result of his lawful discharge for cause, where U unlawfully failed to process Ee's discharge grievance and grievance appeared contractually time-barred, but U might be able to prevail upon E to waive those limits; accordingly, backpay period is to run from date of discharge until U secures consideration of his grievance by E and thereafter pursues grievance with all due diligence, or Ee is reinstated by E or obtains substantially equivalent employment, whichever is sooner)

Central States, Southeast and Southwest Areas Pension Fund d/b/a Three Hundred South Grand Company 257 NLRB No. 178

(E and U ordered jointly and severally to reimburse Ee sum equal to difference between contractual wage and rate she was actually paid, where E permitted supervisor to handle grievances of members of U in which supervisor held positions of president and member of executive board, and U breached duty of fair representation by not giving her grievance protesting not being paid contract wage fair consideration)

Teamsters Local 559, an affiliate Of The International Brotherhood of Teamsters (Mashkin Freight Lines, Inc.) 257 NLRB No. 006

(Bd held, contrary to U's contention that backpay award was punitive and therefore prohibited because it was assessed w/o determination as to merit of discriminatee's grievance, that for purpose of allocating monetary responsibility, Bd presumed if grievance had been fully and fairly processed, it would have been found meritorious and discriminatee would have been reinstated with back pay)

Teamsters Local 559, an affiliate Of The International Brotherhood of Teamsters (Mashkin Freight Lines, Inc.) 257 NLRB No. 006

(where U had unlawfully failed to represent Ee concerning grievance relating to his discharge, burden is on U to show that barred grievance will be properly and promptly entertained by E and upon such showing Bd may find it proper to refrain from making backpay award but retain jurisdiction over entire case pending proper and prompt resolution of grievance)

International Chemical Workers Union, Local No. 190 (FMC Corporation) 251 NLRB No. 204

(where U unlawfully refused to process grievance over discharge, and grievance became time barred under bargaining agreement as Bd will presume that arbitration procedure would have resulted in decision favorable to dischargee since failure to arbitrate is fault of U and it is proper to resolve doubts against wrongdoer)

Local 99, International Ladies Garment Workers Union (Associated Retail Stores, Inc.) JD-(NY)-46-81

(where arbitrator rightfully found that Ee's discharge was legitimate, backpay is not appropriate remedy even if it was proved that U should have represented him in more competent fashion in filing grievance, since at worse, remark made by U leader could only be shown to restrain Ee in his access to Bd)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)

(Bd properly resolved uncertainty in merit of grievance against U which created such uncertainty by unlawful act, through its improper investigation of grievance which made it impossible to determine merits of grievance)

United Steelworkers of America, AFL-CIO-CLC v. N.L.R.B. 692 F.2d 1052 (C.A. 7, Nov. 1982)

(backpay not assessed against U for alleged breach of duty of fair representation by failing to process grievance where no finding by Bd grievance had merit. Otherwise, discharge grieved might not have violated contract and backpay thus punitive and Ee rewarded for her misconduct)

4483-3300 Breach of duty of fair representation

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) 262 NLRB No. 006

(loss of earnings to job applicants who refused referral from hiring hall because they were not informed of change in hiring hall procedure)

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) 262 NLRB No. 006

(remedy (requesting Es hire applicants from hiring hall for employment they would have had but for U's unlawful conduct) for U's failure to refer applicants from hiring hall to Es, inappropriate in instant case where discrimination found involved short term or temporary jobs)

4483-3300—Cont.

United Rubber, Cork, Linoleum and Plastic Workers of America, Local 878 (Goodyear Tire & Rubber Company) **255 NLRB No. 032**

(U ordered to post notice stating it will not prevent non-U unit Ees from receiving grievance pay, notwithstanding U has charged posititiion and notified E that Ee entitled to pay)

United Steelworkers of America, AFL-CIO-CLC v. N.L.R.B. **692 F.2d 1052 (C.A. 7, Nov. 1982)**

(backpay not assessed against U for alleged breach of duty of fair representation by failing to process grievance where no finding by Bd grievance had merit. Otherwise, discharge grieved might not have violated contract and backpay thus punitive and Ee rewarded for her misconduct)

4483-5000 Illegal fines

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**

(Ee reimbursed for losses and expenses caused by U's unlawful 8(b)(1)(A) conduct against him by requiring U reimburse Ee for lost health insurance benefit coverage applicable to unreimbursed medical expenses incurred and his personal premium expenses incurred in securing for himself essentially comparable insurance)

4483-6700 Causing loss of earnings by injuring employee

General Teamsters, Chauffeurs, Helpers and Yardmen, Local No. 470, a/w Teamsters (Connelly Containers, Inc.) **JD-469-81**

(no backpay to remedy unlawful granting of superseniority to steward for purpose of job selection, where no connection between driver seniority and earnings, thus no necessity to make whole senior Ees affected financially by operation of unlawful superseniority system)

5500 REIMBURSEMENT ORDERS

5511 DUES, INITIATION FEES, AND ASSESSMENTS

Jackson Engineering Co. **265 NLRB No. 175**

(where, at time E and U were negotiating midterm contract modifications, contract was tainted by concurrent unlawful concealed payments made by E to U officials in form of kickbacks from all business referred to E by U, E and U ordered, jointly and severally, to reimburse all present and former Ees, except those who joined or signed U cards prior to the effective date of contract, for moneys paid by or withheld from them after such effective date for initiation fees, dues, or other obligations of membership in U)

Hervitt Brothers, Inc. **264 NLRB No. 064**

(U and E not required to reimburse Ees for monies deducted pursuant to coercively obtained dues-checkoff authorizations since Ees were subject to lawful U-security provision obligating them to pay U sums deducted)

General Instrument Corporation, Amtote Systems Division **262 NLRB No. 149**

(U and E jointly severably liable to reimburse Ees for unlawfully checked off dues where notwithstanding valid U-security clause dues were without during first 45 days of employment and Ees had not executed check-off authorization cards and had no obligation to pay dues or fees during that period)

Electrical Workers, Local Union No. 66 (Houston Lighting and Power Company) **262 NLRB No. 061**

(U ordered to make member, whose resignation from U and revocation of dues checkoff authorization was unlawfully refused by U whole for any monies tendered to U by E during relevant period on behalf of member pursuant to checkoff provisions, together with interest thereon)

C. B. Display Service, Inc. **260 NLRB No. 140**

(U ordered to reimburse discriminatee for reinitiation fee and monthly dues he was unlawfully required to pay by U notwithstanding the complaint alleged a refusal to refer because of failure to pay dues in June and discriminatee paid dues 5 months later; moreover, fact that 5 months passed before U's unlawful demand was satisfied does not diminish propriety of reimbursement as this is necessary to remedy June demand for such money)

Pipefitters Union Local No. 120 (Schweizer Dipple, Inc.) **260 NLRB No. 045**

Berry-Mahurin Construction, Inc. **258 NLRB No. 171**

(U, which had unlawfully required job applicants to become members of local U and execute checkoff authorizations as prerequisite for referral in right to work state, ordered to reimburse individuals who had paid dues or initiation fees, either directly or through payroll deductions, unless individuals shown to have agreed to such payment voluntarily and w/o regard to referral system)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**

(Bd refused to order reimbursement of initiation fees, dues, and contributions for U benefit funds deducted as result of enforcement of provisions held violative of Section 8(e) to individuals who were held independent contractors since insufficient evidence as to losses directly attributable to actual coercion; further, make whole reimbursement order generally over broad and inappropriate in context of Section 8(e) violations and aggrieved independent contractors may prove damage claim under Section 303 of Act)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(U not required to reimburse independent contractor truck owner-operators for payment of initiation fees or dues resulting from enforcement of agreement unlawful under 8(e))

Actors' Equity Association **247 NLRB No. 172**

(where U maintained and enforced U security requirement that non-resident aliens pay dues of 5 percent of gross earnings while requiring significantly less dues from resident members, U ordered to reimburse all alien members for difference between amounts they paid as dues and amounts they would have paid if considered resident members)

Local 572, Teamsters (Ralphs Grocery Company) **247 NLRB No. 108**

(although U sought and caused unlawful discharge of Ee for failing to pay dues pursuant to U-security agreement, Bd did not order refund of reinitiation fee paid to obtain reinstatement and, instead, awarded Ee only loss of earnings incurred, since there was no evidence of inconsistent enforcement and no allegation that Ee did not actually owe the fee under U's bylaws)

International Brotherhood of Security Personel Officers and Guards, formerly known as L. Joseph Overton & Associates **JD-(NY)-44-82**

(refund unlawful retroactive dues and initiation fee)

Peninsula Shipbuilders' Association v. N.L.R.B. **663 F.2d 488 (C.A. 4, Sep. 1981)**

(ct enforced Bd order holding E and incumbent U jointly and severally liable to reimburse Ees who had effectively revoked their check-off authorizations although on non-U forms in contravention of provision in extended bargaining agreement, where substantial evidence showed that such provision which required use of U revocation forms was facially invalid under LMRA Sec. 302(c)(4) and revocation procedure as actually enforced was ULP, in view of Ees' lack of easy, general access to U forms, Ees were not sufficiently informed about revocation requirement, and Ees had to appear personally at U hall to sign forms)

Brotherhood Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC v. N.L.R.B. **624 F.2d 819 (C.A. 8, 1980)**

(as violation for collecting assessment only technical in nature and U could still go against members who paid assessment but now request reimbursement, or pass proper assessment against members, Bd order, by placing heavy burden on U for locating and reimbursing all members who paid said assessment, held punitive and not appropriate)

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. **683 F.2d 305 (C.A. 9, July 1982)**

(dues reimbursement remedy held appropriate where coercion of Ees was established by fact that Ees joined U, which E unlawfully assisted, after U made misrepresentations to them that their selection for permanent jobs hinged upon their U membership)

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. **683 F.2d 305 (C.A. 9, July 1982)**

(contention that dues reimbursement remedy is inappropriate in situation herein involving illegal assistance to U by E and misrepresentations by U in soliciting U authorization cards, on ground such remedy is punitive rather than compensatory, rejected, since remedy would effectuate policy of Act by returning to Ees money paid to support U they did not freely choose to join)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36, etc. v. N.L.R.B. **669 F.2d 759 (C.A.D.C., Feb. 1981)**

(U and contractors not ordered to reimburse indpendent contractors-truck operators-for dues, fees and contributions paid to U under unlawful 8(e) contract which required operators to join U as U members receive benefits, and since no violation of Section 8(b)(4)(ii)(A) alleged make whole remedy would be punative and beyond power of Bd as no showing operators were coerced into joining U)

5512 SERVICE FEES OR ASSESSMENTS IMPOSED ON NONMEMBERS

5512—Cont.

Exxon Company, U.S.A. **253 NLRB No. 027**
(U ordered to return to non U Ees all service fees imposed as prerequisite for unit members' receiving wages, hours, and terms and condition of employment for which U has bargained for)

5522 HIRING HALL FEES

Baine Service Systems, Inc. **248 NLRB No. 087**
(E and U ordered to reimburse Ees for all moneys extracted from them by unlawfully requiring them to join U; order does not apply to Ees who joined U prior to employment with E)

5522-3300 Service or referral fees

Highway and Local Motor Freight Employees, Local No. 667 (Spector Freight System, Inc.) **248 NLRB No. 035**
(U to reimburse each applicant or Ee who made payments to U for its referral system when in actuality no such system existed; liability limited by Section 10(b) to 6-month period prior to filing and service of original charge)

5534 MEDICAL INSURANCE OR EXPENSE

Exxon Company, U.S.A. **253 NLRB No. 027**
(U primarily liable to make whole present or former Ees or their estates who may have suffered reduced insurance coverage or increased insurance costs by charging nonU Ees service fee as condition to continue in U medical plant)

5555 REINSTATEMENT FEES

Teamsters Local 296, Sales Delivery Drivers, Warehousemen and Helpers Union w/o Teamsters (Northwest Publications, Inc.) **263 NLRB No. 104**
(where U violatively fined member/supervisor for performing certain prestart job tasks required of supervisor it is ordered to rescind fine and expunge all records of fine from its files)

Local 714, Operating Engineers (Contractors Foundation Drilling Company) **262 NLRB No. 142**
(Respondent local U required to reimburse discriminatee for his expenses in being reinstated to membership in good standing in his home local where Respondent Us notified home local not to accept discriminatee's dues and this violative conduct caused discriminatee to be suspended from his local)

Local 572, Teamsters (Ralphs Grocery Company) **247 NLRB No. 108**
(although U sought and caused unlawful discharge of Ee for failing to pay dues pursuant to U-security agreement, Bd did not order refund of reinitiation fee paid to obtain reinstatement and, instead, awarded Ee only loss of earnings incurred, since there was no evidence of inconsistent enforcement and no allegation that Ee did not actually owe the fee under U's bylaws)

N.L.R.B. v. Construction and Building Material Teamsters Local No. 291 **633 F.2d 291 (C.A. 9, 1980)**
(where U had unlawfully caused E to discharge Ee for delinquency in dues payments, U was not ordered to pay back to Ee reinitiation fee he had paid to regain his U membership; it is by means of this type of sanction that U can discourage delinquency, and nothing in this case suggested that failure to waive reinitiation fee did not comport with past practice)

5570 LITIGATION COSTS AND EXPENSES

N.L.R.B. v. Union Nacional De Trabajadores, et al. **611 F.2d 926 (C.A. 2, 1979)**

N.L.R.B. v. Local 282, Teamsters **No. 29149, Mar. 28, 1980, C.A. 2 (unreported)**
(U violated Section 8(b)(4) by picketing neutral E during labor dispute with trucking company that performed delivery services for E and found in contempt for violating prior judgments and contempt adjudications and required to pay fine, refrain from committing further violations of prior adjudications, post appropriate notices, mail copies to all U members, be subject to prospective fines for additional violations, reimburse NLRB for all its expenses)

5570-0100 Generally

District Union 227, United Food (The Kroger Co.) **247 NLRB No. 023**
(E's request that U be required to reimburse it for expenses incurred in defending Section 301 suit, filing of which was held to be violative, since object was to compel arbitration of discriminatorily motivated grievance concerning alleged misclassification of Ee who had crossed picket line, denied; cases involving suits by Es against individuals whose ULP charges had been dismissed distinguished as to level of misuse of judicial process)

5570-5000 Types of litigation expenses

Henry J. Kaiser Company **259 NLRB No. 001**
(Bd declined to grant attorney's fees to Ee, whose discharge grievance U unlawfully failed to process, which was requested in order that Ee might be represented by his own attorney during any grievance/arbitration proceeding; Bd's order herein requiring U, under backpay liability, to pursue grievance in good faith and with due diligence provides adequate incentive for U so that it will responsibly represent Ee in his grievance)

Electrical Workers, Local Union No. 1507 (General Electric Company) **252 NLRB No. 066**
(order requiring U to reimburse Ee for loss of wages and other expenses incurred as result of having to secure his rights through recourse to Bd's processes, inappropriate, where defenses which U had raised were debatable, rather than frivolous)

5577 WELFARE PENSION AND OTHER FUND PAYMENTS

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**
(wages paid to Ee in equivalency for fringe benefits on government funded jobs, if established as paid to Ee, would properly qualify as offsets to mitigate U's insurance expenses; and also available to offset pension benefits)

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**
(Ee's pension benefit credit reinstated retroactively and U, because of its 8(b)(1)(A) conduct, ordered to pay pension fund amount necessary to vest Ee with pension credit for hours worked during backpay period)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(Bd refused to order reimbursement of initiation fees, dues, and contributions for U benefit funds deducted as result of enforcement of provisions held violative of Section 8(e) to individuals who were held independent contractors since insufficient evidence as to losses directly attributable to actual coercion; further, make whole reimbursement order generally over broad and inappropriate in context of Section 8(e) violations and aggrieved independent contractors may prove damage claim under Section 303 of Act)

Operating Engineers, Local Union No. 12; et al. (Maas & Feduska, Inc.) **248 NLRB No. 175**
(reimburse E for all funds paid to U's trusts on behalf of all nonunit executives and supervisors)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U not required to reimburse independent contractor truck owner-operators for their contributions to U benefit funds as result of enforcement of agreement unlawful under 8(e))

N.L.R.B. v. Clerks and Checkers Local No. 1593, International Longshoremen's Association, AFL-CIO, et al. **644 F.2d 408 (C.A. 5, May 4, 1981)**
(welfare, vacation, and pension fund administered by E-U trustees held agent of both E and U for limited purpose of accepting contributions from U ordered by Bd to remedy U's discrimination against U member resulting in his loss of contractual fringe benefits; for such purpose, fund is mere receptacle into which U must pay contributions in order to carry out Bd's backpay order and make Ee-beneficiaries whole for U's ULP)

N.L.R.B. v. Clerks and Checkers Local No. 1593, International Longshoremen's Association, AFL-CIO, et al. **644 F.2d 408 (C.A. 5, May 4, 1981)**
(limited agency of welfare, vacation, and pension fund, administered jointly by E-U trustees to receive U contributions in order to remedy U's discrimination against U member resulting in his loss of contractual fringe benefits held not to confilict with common law principles or with ERISA provisions requiring trustees of such fund not be subject to control of any other person or organization, since it does not extend to trustees' decision involving investment of trust funds or determination of eligibility requirements for benefits)

N.L.R.B. v. Clerks and Checkers Local No. 1593, International Longshoremen's Association, AFL-CIO, et al. **644 F.2d 408 (C.A. 5, May 4, 1981)**
(compliance by welfare, vacation, and pension fund, administered jointly by E-U trustees, and its acceptance of U contributions in order to remedy U's discrimination against U member resulting in his loss of contractual benefits held to fall squarely w/i fiduciary duty of fund's trustees imposed by ERISA and common law requiring administration of trust solely in interest of its beneficiaries; moreover, trustees have duty to take possession of trust property as soon as reasonably possible)

Griffith Company; et al. v. N.L.R.B. **660 F.2d 406 (C.A. 9, Oct 1981)**
(contributions to joint E-Ee pension funds which were not extracted by unlawful means since collected under agreement w/i Section 8(e) construction industry proviso and Us did not engage in forbidden self help to compel compliance)

5577-7800 Credit to pension fund for past service

5570-7500—Cont.

Dellwood Foods, Inc., f/k/a Deltown Foods, Inc. **JD-(SF)-213-81**

(predecessor's Ees who were discriminatorily denied transfer to purchaser's facility because U representing Ees of purchaser refused to clear nonmember Ees for employment, were entitled to past service pension credit where evidence in record as whole showed terms of executed Settlement Stipulation, although not *clear and unambiguous,* was intended to provide for full past service pension credit to discriminatees for all prior employment in industry)

5582 LOSS OF EARNINGS

Painters Local Union No. 1178, (Roland Painting, Inc.) **265 NLRB No. 171**

(Bd ordered U to make Ee whole for any loss of earnings he may have suffered as result of U's unlawful failure to refer him for employment)

Teamsters Local Union No. 515 (Cavalier Corporation) **259 NLRB No. 094**

(where U discriminated against Ee who had resigned his U membership by processing grievance which resulted in his removal from position entailing overtime, it was ordered to withdraw grievance and process no further grievances because of his resignation and to reimburse him for lost overtime wages)

Electrical Workers, Local Union No. 1507 (General Electric Company) **252 NLRB No. 066**

(order requiring U to reimburse Ee for loss of wages and other expenses incurred as result of having to secure his rights through recourse to Bd's processes, inappropriate, where defenses which U had raised were debatable, rather than frivolous)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**

(U not required to reimburse independent contractor truck owner-operators for loss of income resulting from enforcement of agreement unlawful under 8(e); *make whole* remedy inappropriate for 8(e) violations)

International Longshoremen's Association, Local 1414 **JD-357-80**

(make whole discriminatee for any loss of earnings he may have suffered by not being referred to jobs in proper sequence as called for in U's bylaws because of outstanding debt to U's credit)

Newport News Shipbuilding and Dry Dock Company v. N.L.R.B. **631 F.2d 263 (C.A. 4, June 1980)**

(where Ee was lawfully discharged for leading unauthorized work stoppage, ct denied enforcement of Bd's order that U reimburse Ee for any wages he might have lost because of his discharge notwithstanding that U failed, in violation of 8(b)(1)(A), to represent Ee in more competent fashion; it is inappropriate to require U to bear responsibility for pay that Ee had no right to receive and would not have received even had U represented him in more competent fashion)

5588 JOINT LIABILITY OF UNION AND EMPLOYER

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**

(U's backpay liability found jointly and several with E's liability and extends from date of discharge until five days after date U gives written notice to E and each discriminatee that it no longer has any objection to their immediate reinstatement, and thereafter until it joins E in submitting consent order to dismiss ct proceeding instituted by it for preliminary inj restraining E from reinstating wrongfully discharged Ees)

Peninsula Shipbuilders' Association v. N.L.R.B. **663 F.2d 488 (C.A. 4, Sep. 1981)**

(ct enforced Bd order holding E and incumbent U jointly and severally liable to reimburse Ees who had effectively revoked their check-off authorizations although on non-U forms in contravention of provision in extended bargaining agreement, where substantial evidence showed that such provision which required use of U revocation forms was facially invalid under LMRA Sec. 302(c)(4) and revocation procedure as actually enforced was ULP, in view of Ees' lack of easy, general access to U forms, Ees were not sufficiently informed about revocation requirement, and Ees had to appear personally at U hall to sign forms)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. **679 F.2d 673 (C.A. 7, May 1982)**

(E's bargaining with U that lacked majority support among E's Ees, violative and E and U were jointly and severally liable to make whole unlawfully discharged Ees)

N.L.R.B. v. Eldorado Manufacturing Corporation and United Steelworkers of America, AFL-CIO **660 F.2d 1207 (C.A. 7, Sep. 1981)**

(in denying enforcement of Bd order, ct held joint and several backpay liability should not be imposed on E and U since, by analogy to Sec. 30(a) of LMRA, such liability should be imposed only if discharges were contrary to bargaining contract and if U breached its duty of fair representation, which were not present herein; likewise, record did not show that any Sec. 7 rights of dischargees were responsible for their discharge)

5591 PERSONS SUBJECT TO ORDER

N.L.R.B. v. Local No. 12, Operating Engineers **673 F.2d 1094 (C.A. 9, Apr. 1982)**

(Bd order requiring U to reimburse E for monies it unwilling contributed to U-trust funds for its president and vice-president enforced where Bd determined that U had committed ULP by requiring E to contribute; however, ct cannot require Bd to order E reimbursed for similar contributions to trusts which were not subject of ULP charge)

5597 EXPENDITURES MADE BY EMPLOYER UNDER INDIVIDUAL CONTRACT THAT EMPLOYER WOULD NOT HAVE MADE UNDER MULTI EMPLOYER OR INTERNATIONAL UNION CONTRACT

Local Union No. 420, Plumbers (Paragon Mechanical) **254 NLRB No. 051**

(where U unlawfully coerced E into complying with local U agreement rather than agreed upon national contract by striking E and not giving proper notice under Sec. 8(d), U ordered to reimburse E for any expenditures it incurred pursuant to local agreement which it would not have incurred under national agreement)

5598 MAKE WHOLE REMEDY

Joint Council of Teamsters, No. 42 v. N.L.R.B. **671 F.2d 305 (C.A. 9, Dec. 1981)**

(remanded to Bd to fashion appropriate make-whole remedy where U's violation of Section 8(e) caused independent contractors to pay to support U they did not freely choose to join; moreover, fact that U did not violate Section 8(b)(4) does not preclude award as truck owners were coerced into U membership by ULP)

6600 BARGAINING ORDERS

Colgate-Palmolive Company **261 NLRB No. 007**

(if costs of furnishing requested health and safety information substantial, parties to bargain as to allocation of costs of retrieving it and if no agreement is reached, U is to receive access to records from which it can reasonably compile requested information to extent records do not include trade secrets or individual medical records with identifying medical data)

Colgate-Palmolive Company **261 NLRB No. 007**

(parties to bargain over method of providing U with necessary health and safety information as to substances used in plant while safeguarding E's and its suppliers' legitimate propreitary interests)

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**

(Bd's traditional remedy of requiring respondent international U to demonstrate its majority status only by means of Bd certification held inappropriate where election, purporting to affiliate Ee committee with respondent U was ineffective and void because election was conducted in violation of minimal standards of democratic procedure or due process, and parties' existing agreement barred R election and record did not otherwise indicate possible raising of qcr; accordingly, Bd ordered respondent U to refrain from demanding or accepting recognition and bargaining unless and until majority of Ees have selected U)

Local #197, Electrical Workers, AFL-CIO (McLean County Electrical Contractors Association, Inc.) **JD-(SF)-369-80**

(no affimrative bargaining order directed; resolution as to whether bargaining best effectuated on single-E or multi-E basis left to parties with caveat that absent consent of all parties to any group bargaining, bargaining must be conducted on single-E basis)

7700 NOTICE PROVISIONS

7728 PLACE OF POSTING

7728-2100 Union's local business office

District Council No. 2 of The Brotherhood of Painters and Allied Trades, AFL-CIO (The Paintsmiths, Inc.) **253 NLRB No. 017**

7728-2800 Union meeting halls

District Council No. 2 of The Brotherhood of Painters and Allied Trades, AFL-CIO (The Paintsmiths, Inc.) **253 NLRB No. 017**

7742 MANNER OF NOTICE

7742-2500 Mailed

7742-2500—Cont

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) **261 NLRB No. 040**

(U ordered to mail copy of notice to each and every member of sister local (traveler) as well as to each and every local U to which travelers belonged at time of U's discrimination against them and to each and every local U w/i district)

International Photographers of The Motion Picture Industries, Local No. 644, etc. (King-Hitzig Productions) **259 NLRB No. 185**

(U to notify each E with whom it has contract by mailing each copy of notice stating that violative provisions will be given no further force or effect)

Hospital and Institutional Workers' Union Local 250 (Dameron Hospital Association) **248 NLRB No. 187**

7742-5000 Published in local newspaper of general circulation

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) **261 NLRB No. 040**

(Bd found it unnecessary to require E to publish notice in newspaper of general circulation, in view of fixed number of identified discriminatees and ALJ's provision for posting and distribution of notice)

7742-7500 Published in union publication

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) **261 NLRB No. 040**

(U required to place notice in any newsletter and/or newspaper sent to its members by U)

Musicians Union Local 47, etc. (American Broadcasting Company, etc.) **255 NLRB No. 065**

(in addition to posting of notices at its place of business and meeting places, U also ordered to publish notice in its monthly newspaper, since large number of U's members are dispersed over broad geographic area, and there is no assurance that notice posted in U's office would likely, during 60-day posting period, be observed by even substantial number of members; moreover, U's prior action in communicating with members showed that U regarded publication as only effective means of getting its messages to its members)

7742-9900 Other methods

Electrical Workers, Local Union No. 66 (Houston Lighting and Power Company) **262 NLRB No. 061**

(Bd did not adopt ALJ's recommended order that U member, whose resignation from U and revocation of dues checkoff was unlawfully refused by U, be provided with copies of notice for distribution among his fellow Ees)

7756 PERSONS REQUIRED TO POST NOTICES

7756-1400 Notice to be sent to employer to post if willing

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) **261 NLRB No. 040**

(U required to submit appropriate signed copies of notice to RD for submission to E for posting, should it be willing)

7770 PERSONS REQUIRED TO SIGN NOTICES

7770-2500 Union business agent

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**

(U business agent not required to personally sign and read notice as requested by GC where he was not personally involved in acts of violence of threats of violence)

7784 FORM AND CONTENTS OF NOTICE

7784-1200 In foreign language

Local 300, Cosmetic and Novelties Workers' Union, Affiliated With International Production Service and Sales Employees Union **257 NLRB No. 174**

(as well as in English, in view of fact that substantial number of E's Ees were French speaking)

7784-3700 Union does not object to, and requests, reinstatement or employment of discriminatee

C. B. Display Serice, Inc. **260 NLRB No. 140**

(U which violated Act by refusing to refer former member from exclusive hiring hall unless he reinstated his membership ordered to give written notice to E and discriminatee that it has no objections to hiring of discriminatee)

Port Jefferson Nursing Home and Health Related Facility **251 NLRB No. 092**

(U's notice to E that it did not object to immediate reinstatement of discriminatees and letter to Ees stating same in attempt to terminate backpay liability found invalid where conditioned on Ees maintaining U membership *to extent required by law;* additional notice to E also invalid where Ees were not informed individually and in writing)

7784-6700 Union will not include unlawful provision in contracts in future

International Photographers of The Motion Picture Industries, Local No. 644, etc. (King-Hitzig Productions) **259 NLRB No. 185**

(U to notify each E with whom it has contract by mailing each copy of notice stating that violative provisions will be given no further force or effect)

7784-6800 Contract provisions found unlawful will be given no further force or effect

Local No. 121, Plasterers (Associated Building Contractors of Lafayette, Inc.) **264 NLRB No. 029**

8200 REPAY MONETARY PENALTIES IMPOSED ON EMPLOYER FOR USE OF NONUNION MATERIALS

8800 AFFIRMATIVE ORDERS RELATING TO SPECIFIC VIOLATIONS

8811 SECTION 8(b)(1)

8811-3300 Section 8(b)(1)(A)

United Steelworkers of America, AFL-CIO-CLC (L & S Products, Inc.) **253 NLRB No. 129**

(international U ordered to take whatever steps necessary to restore status quo ante void affiliation election by ceasing to act as Ee representative and refraining from administering contract, disavowing any claim to recognition as Ee representative and election of officers of affiliated local, revising identity or alternatively dissolving such local, restoring to pre-existing labor organization any property or monies transferred to international, notifying E, its Ees, and pre-existing labor organization that it has taken foregoing actions, and preparing appropriate notices for posting)

8811-3301 Generally

Local 345, Utility Workers of New England, Inc (New England Power Service Company) **261 NLRB No. 073**

(Bd held that, in present posture of case involving third supplemental decision after two ct remands, Us should not now be required to mail to each member a letter advising them that Us violated Act; instead, posting of notice should be sufficient to inform members of Us' unlawful conduct)

8811-3314 Rescind contract

Jackson Engineering Co. **265 NLRB No. 175**

(E and U ordered to cease giving effect to contract unless and until U shall have been certified by Bd where, at time E and U were negotiating midterm contract modification, E made concealed payments involving large sums of money to U officials, representing 10-percent kickback from all business referred to E by U; such concurrent actions tainted and undermined parties' bargaining relationship and contract negotiated by them while payments were being made)

Jackson Engineering Co. **265 NLRB No. 175**

(in ordering E and U to cease giving effect to contract because, at time E and U were negotiating midterm contract modification, contract was tainted by concurrent unlawful concealed payments made by E to U officials in form of kickbacks from all business referred to E by U, Bd held fact that individuals participating in kickbacks did not engage in contract negotiations does not affect conclusion herein; although such individuals may not have personally participated therein, they were U's president and executive vice president, and E's president, and their divorce from actual negotiations is not determinative of issue)

8811-3316 Rescind unlawful fine, fees or assessments

United Steelworkers of America, Local 8831 (Chapin & Bangs Steel Company, Inc.) **JD-(NY)-97-80**

(fine imposed on U member for filing deauthorization ptn)

8811-3330 Keep records on hiring and referral operations

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**

(U to keep and retain for 2 years permanent written records of its hiring hall operations, make them available to RD and to nonmember applicants for inspection and copying, and submit four quarterly reports to RD concerning referral of nonmember applicants)

8811-3320—Cont.

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(ordered, notwithstanding U's failure to maintain written standards and records held not violation per se)

8811-3326 Expunge unlawful discipline from records

Hospital and Institutional Workers' Union Local 250 (Dameron Hospital Association) **248 NLRB No. 187**

8811-3333 Reimburse dues paid under contract

Jackson Engineering Co. **265 NLRB No. 175**
(where, at time E and U were negotiating midterm contract modifications, contract was tainted by concurrent unlawful concealed payments made by E to U officials in form of kickbacks from all business referred to E by U, E and U ordered, jointly and severally, to reimburse all present and former Ees, except those who joined or signed U cards prior to the effective date of contract, for moneys paid by or withheld from them after such effective date for initiation fees, dues, or other obligations of membership in U)

8811-3334 Reimburse employee for comparable health insurance secured at own expense

Exxon Company, U.S.A. **253 NLRB No. 027**
(U primarily liable to make whole present or former Ees or their estates who may have suffered reduced insurance coverage or increased insurance costs by charging nonU Ees service fee as condition to continue in U medical plant)

Local Union No. 418, Sheet Metal Workers' International Association, AFL-CIO (Young Plumbing & Supply, Inc.) **249 NLRB No. 128**
(Ee reimbursed for losses and expenses caused by U's unlawful 8(b)(1)(A) conduct against him by requiring U reimburse Ee for lost health insurance benefit coverage applicable to unreimbursed medical expenses incurred and his personal premium expenses incurred in securing for himself essentially comparable insurance)

8811-3335 Reimburse employee for lost wages

Pipefitters Union Local No. 120 (Schweizer Dipple, Inc.) **260 NLRB No. 045**

Teamsters Local Union No. 515 (Cavalier Corporation) **259 NLRB No. 094**
(where U discriminated against Ee who had resigned his U membership by processing grievance which resulted in his removal from position entailing overtime, it was ordered to withdraw grievance and process no further grievances because of his resignation and to reimburse him for lost overtime wages)

International Union of Operating Engineers, Local No. 139, AFL–CIO (C. F. Kalupa, Inc.) **256 NLRB No. 089**
(make whole discriminatee for lost wages suffered by U's failure to prosecute discharge grievance where U's conduct contributed to discharge by giving impression that U would not challenge discharge)

International Longshoremen's Association, Local 1414 **JD-357-80**
(make whole discriminatee for any loss of earnings he may have suffered by not being referred to jobs in proper sequence as called for in U's bylaws because of outstanding debt to U's credit)

8811-3337 Provide insurance coverage

Exxon Company, U.S.A. **253 NLRB No. 027**
(permit nonU Ees to participate in medical insurance plan w/o payment of service fee)

8811-3362 Process grievance to arbitration

Teamsters Local Union No. 528 (Associated Grocers Co-Op) **265 NLRB No. 065**
(where U unlawfully refused to process dischargee's grievance over his termination, U ordered to request E to reinstate him to his former position or, if it no longer exists, to substantially equivalent position; if E refuses to reinstate him, to request that E waive time limitation contained in grievance provision of contract and, if E agrees to do so, to process dischargee's grievance diligently through its proper conclusion)

Henry J. Kaiser Company **259 NLRB No. 001**
(Bd ordered U, which unlawfully failed to process Ee's discharge grievance, to pursue grievance in good faith with due diligence and to make Ee whole for any loss of earnings, notwithstanding that E most likely would assert that grievance was contractually time-barred and Ee could not show that discharge was contrary to U contract; Bd has not made a backpay award conditioned on merits of grievance, and Ee's lawful discharge has nothing to do with U's ULP; and since uncertainty whether processing of grievance would have resulted in milder or no discipline is to be resolved against wrongdoer)

8811-3372 Request reinstatement of dischargee

Teamsters Local Union No. 528 (Associated Grocers Co-Op) **265 NLRB No. 065**
(where U unlawfully refused to process dischargee's grievance over his termination, U ordered to request E to reinstate him to his former position or, if it no longer exists, to substantially equivalent position; if E refuses to reinstate him, to request that E waive time limitation contained in grievance provision of contract and, if E agrees to do so, to process dischargee's grievance diligently through its proper conclusion)

Teamsters Local Union No. 528 (Associated Grocers Co-Op) **265 NLRD No. 065**
(where U unlawfully refused to process dischargee's grievance over his termination, U ordered to request E to reinstate him to his former position or, if it no longer exists, to substantially equivalent position; if E refuses to reinstate him, to request that E waive time limitation contained in grievance provision of contract and, if E agrees to do so, to process dischargee's grievance diligently through its proper conclusion)

8811-3378 Revocation of certification

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(Bd ordered proper remedy in revoking U certification where U did not fairly represent all those in bargaining unit)

8811-3387 Abolish unlawfully maintained provision of constitution and bylaws

Elevator Constructors Local Union No. 8 v. N.L.R.B. **665 F.2d 376 (C.A.D.C., Sep. 1981)**
(ct enforced Bd order requiring U to abolish from its constitution and bylaws requirement that members pay fines before dues, where maintenance of such provision in conjunction with valid U security clause, was held unlawful)

8811-3392 Cease making threats

N.L.R.B. v. Union Nacional De Trabajadores, et al. **611 F.2d 926 (C.A. 2, 1979)**

8811-6700 Section 8(b)(1)(B)

8811-6717 Reinstate expelled member

Local 714, Operating Engineers (Contractors Foundation Drilling Company) **262 NLRB No. 142**
(where Respondent local's discriminatory action caused home local U to suspend member, Respondent must request that home local reinstate member)

8811-6733 Rescind unlawful fine; refund fine

Carpenters, Local Union 1098 (Basic Industries, Inc.) **JD-(ATL)-83-82**

Plumbers, Local 44 (W. R. Thomason, Inc.) **JD-(SF)-247-80**
(rescind fines even though remitted by international)

8811-6750 Expunge unlawful discipline from records

New York Newspaper Printing Pressman's Union No. 2 (New York News, Inc.) **249 NLRB No. 182**
(expunge record of unlawful suspension)

Carpenters, Local Union 1098 (Basic Industries, Inc.) **JD-(ATL)-83-82**

Plumbers, Local 44 (W. R. Thomason, Inc.) **JD-(SF)-247-80**
(expunge any records relating to finding of members, and request international to do so relating to its processing of charges)

8811-6775 Notify disciplined individual of revocation and rescission of discipline

Plumbers, Local 44 (W. R. Thomason, Inc.) **JD-(SF)-247-80**

8811-6783 Notify employer's representative and employer that Union has no objection to representative's employment or selection as representative

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(personnel relations officer)

8822 Section 8(b)(2)

International Photographers of The Motion Picture Industries, Local No. 644, etc. (King-Hitzig Productions) **259 NLRB No. 185**
(U to notify each E with whom it has contract by mailing each copy of notice stating that violative provisions will be given no further force or effect)

8822-1200 Notify employer that union withdraws its request for discharge of employee

8822-2200—Cont.

International Brotherhood of Security Personnel Officers and Guards, formerly known as L. Joseph Overton & Associates JD-(NY)-44-82
(for nonpayment of unlawful dues and initiation fee)

8822-3100 Notify employer and discriminatee that unionhas no objection to reinstate or hiring of discriminatee

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) 261 NLRB No. 040
(in regard to members of sister locals)

International Photographers of The Motion Picture Industries, Local No. 644, etc. (King-Hitzig Productions) 259 NLRB No. 185

Sheet Metal Workers' Union Local 355 (Zinsco Electrical Products) 254 NLRB No. 092
(where U unlawfully caused E to discharge Ee for not complying with U security provisions and E lacked culpability, U liable for losses of wages and benefits until Ee is reinstated or obtains substantially equivalent employment elsewhere unless E refuses U's request to reinstate Ee in which case from that time forward burden of backpay shifts to E)

Eldorado Manufacturing Corporation 249 NLRB No. 088
(U ordered to notify E in writing and to notify discriminatees in writing that it has no objection to their employment with unimpaired seniority and with all other rights and privileges previously enjoyed)

8822-3200 Notify employer, Regional Director, and discriminatee that union no longer objects to latter's employment

Local 24, Hotel & Restaurant Employees (George Dora, an Individual) JD-414-82

8822-3300 Cease maintaining or giving effect to bargaining agreement unless or until certified

Sav-On Drugs, Inc. JD-(SF)-214-81

8822-3500 Cease filing grievances for invalid reasons

Teamsters Local Union No. 515 (Cavalier Corporation) 259 NLRB No. 094
(where U discriminated against Ee who had resigned his U membership by processing grievance which resulted in his removal from position entailing overtime, it was ordered to withdraw grievance and process no further grievances because of his resignation and to reimburse him for lost overtime wages)

8822-4500 Keep records of hiring and referral operations

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) 253 NLRB No. 098
(U to keep and retain for 2 years permanent written records of its hiring hall operations, make them available to RD and to nonmember applicants for inspection and copying, and submit four quarterly reports to RD concerning referral of nonmember applicants)

8822-4533 Make records available to Regional Director

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) 261 NLRB No. 040
(U ordered to keep and retain, for duration of E's employment of unit Ees at project through means of U's hiring hall, permanent written record of its hiring hall operations and to make those available to RD, upon request)

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) 261 NLRB No. 040
(U ordered to preserve and, upon request, provide opportunity to RD or his agents for inspection and copying, all records necessary to determine amount of backpay due under terms of Order and to insure that its terms have been fully complied with)

8822-4567 Submit quarterly reports concerning employment of discriminatees

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) 261 NLRB No. 040
(U ordered to make quarterly reports to RD concerning registration, referral and employment of members of sister locals (travelers) for duration of E's employment of unit Ees at project)

8822-5000 Making hiring hall registers available for inspection

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) 261 NLRB No. 040
(U ordered to place its referral registers, for duration of E's employment of unit Ees at project, on table or ledge in its hiring hall for easy access; remedial period tailored to length of E's employment of unit referants at project)

8822-5800 Cease discriminatorily appointing union stewards

The PaintSmiths, Inc. v. N.L.R.B. 620 F.2d 1326 (C.A. 8, 1980)
(U ordered to not cause or attempt to cause E to appoint steward from outside of regular Ee complement modified to apply only to situations where appointment of steward would displace worker already on job)

8822-7500 Expunge from membership rolls name of validly resigned member

Electrical Workers, Local Union No. 66 (Houston Lighting and Power Company) 262 NLRB No. 061
(U ordered to expunge from its membership rolls name of member whose resignation from U and revocation of dues checkoff authorization was unlawfully refused by U, and to give appropriate notices to its parent body and any other intermediate body with which it is affiliated in same manner as it normally notifies such organizations)

8822-7700 Expunge uninon record of dues and/or fines and assessment delinquencies against member

Teamsters Local 296, Sales Delivery Drivers, Warehousemen and Helpers Union w/o Teamsters (Northwest Publications, Inc.) 263 NLRB No. 104
(where U violatively fined member/supervisor for performing certain prestart job tasks required of supervisor it is ordered to rescind fine and expunge all records of fine from its files)

8822-7800 Expunge from records all adverse entries respecting discriminatee's suspension from job referrals

Local 24, Hotel & Restaurant Employees (George Dora, an Individual) JD-414-82

8822-9100 Refer discriminatee to available employment and replace his name on job referral list

Local 24, Hotel & Restaurant Employees (George Dora, an Individual) JD-414-82

8822-9500 Make whole for any loss of pay because of discrimination

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) 261 NLRB No. 040
(U ordered to make each member of sister local (traveler) whole for any loss of earnings he may have suffered as result of having his dispatch to E delayed or denied by U; measure of earnings shall be wage or salary of position to which traveler would have been dispatched or employed, including supervisory positions; other non-wage benefits and entitlements, including accrued hours to be used for group eligibility under dispatch classification also restored to each traveler)

Pipefitters Union Local No. 120 (Schweizer Dipple, Inc.) 260 NLRB No. 045

International Photographers of The Motion Picture Industries, Local No. 644, etc. (King-Hitzig Productions) 259 NLRB No. 185

Teamsters Local Union No. 515 (Cavalier Corporation) 259 NLRB No. 094
(where U discriminated against Ee who had resigned his U membership by processing grievance which resulted in his removal from position entailing overtime, it was ordered to withdraw grievance and process no further grievances because of his resignation and to reimburse him for lost overtime wages)

Sheet Metal Workers' Union Local 355 (Zinsco Electrical Products) 254 NLRB No. 092
(where U unlawfully caused E to discharge Ee for not complying with U security provisions and E lacked culpability, U liable for losses of wages and benefits until Ee is reinstated or obtains substantially equivalent employment elsewhere unless E refuses U's request to reinstate Ee in which case from that time forward burden of backpay shifts to E)

8833 SECTION 8(b)(3)

8833-0100 Generally

Local #197, Electrical Workers, AFL-CIO (McLean County Electrical Contractors Association, Inc.) JD-(SF)-369-80
(no affirmative bargaining order directed; resolution as to whether bargaining best effectuated on single-E or multi-E basis left to parties with caveat that absent consent of all parties to any group bargaining, bargaining must be conducted on single-E basis)

8833-6100 Furnish information relevant to bargaining process

8833-6100—Cont.

National Union of Hospital and Health Care Employees, Division of RWDSU, AFL-CIO; et al. (Sinai Hospital of Baltimore, Inc.) **248 NLRB No. 086**
(U must formally request from Fund administering health and welfare plan that it provide information sought by E)

Asbestos Workers, Local No. 80 (West Virginia Master Insulators Association) **248 NLRB No. 022**
(information relating to U's referral system)

8833-9900 Cease using grievance and arbitration procedure to expand certified unit

Local 32B-32J, Service Employees International Union, AFL-CIO (Allied Maintenance Corporation) **258 NLRB No. 059**
(U required to withdrew its arbitration demand seeking to include school in unit covered by multi-E contract where it would be futile to pursue arbitration proceeding dealing with that issue when Bd had already decided that school was not included in bargaining unit covered by multi-E contract)

8844 Section 8(b)(4)

8844-8500 Cease and desist from applying bylaws in an unlawful manner

Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**
(U ordered to c/d from applying its bylaw, prohibiting members from allowing members of other Us to do work coming under U's jurisdiction, in such a manner as to induce or encourage its members to engage in unlawful secondary boycott activities, in support of U's claim to performance of total job at worksite; however, while application of bylaw under instant facts is restrained, bylaw itself may otherwise be validly implemented)

8844-9600 Reprint copy of notice in national publication

N.L.R.B. v. Union Nacional De Trabajadores, et al. **611 F.2d 926 (C.A. 2, 1979)**

8888 SECTION 8(e)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U not required to reimburse independent contractor truck owner-operators for payment of initiation fees or dues resulting from enforcement of agreement unlawful under 8(e))

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U not required to reimburse independent contractor truck owner-operators for their contributions to U benefit funds as result of enforcement of agreement unlawful under 8(e))

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(U not required to reimburse independent contractor truck owner-operators for loss of income resulting from enforcement of agreement unlawful under 8(e); *make whole* remedy inappropriate for 8(e) violations)

8888-0100 Generally

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Terra Trucking Company) **249 NLRB No. 038**
(order to c/d from in any like or related manner interfering with, restraining, or coercing Ees in exercise of their Section 7 rights not appropriate for Section 8(e) violations not directly involving Section 7 rights)

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(make Ees whole remedy generally inappropriate and overbroad in terms of 8(e) violations)

Joint Council of Teamsters, No. 42 v. N.L.R.B. **671 F.2d 305 (C.A. 9, Dec. 1981)**
(remanded to Bd to fashion appropriate make-whole remedy where U's violation of Section 8(e) caused independent contractors to pay to support U they did not freely choose to join; moreover, fact that U did not violate Section 8(b)(4) does not preclude award as truck owners were coerced into U membership by ULP)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36, etc. v. N.L.R.B. **669 F.2d 759 (C.A.D.C., Feb. 1981)**
(U and contractors not ordered to reimbruse indpendent contractors-truck operators-for dues, fees and contributions paid to U under unlawful 8(c) contract which required operators to join U as U members receive benefits, and since no violation of Section 8(b)(4)(ii)(A) alleged make whole remedy would be punative and beyond power of Bd as no showing operators were coerced into joining U)

675 PROCEEDINGS TO DETERMINE BACKPAY LIABILITY (FOR COMPUTATION OF BACKPAY SEE HEADINGS UNDER 625-4433)

0100 GENERALLY

Ace Beverage Co. **250 NLRB No. 066**

(contention that GC's authority and discretion in compliance matters is analogous to that granted him under Sec. 3(d) of Act with respect to issuance of complaints, and that, therefore, his action in compliance matters is also final, rejected, since in compliance matters GC does not act on his own initiative as he does in issuance of complaints but as Bd agent in effectuating remedy ordered)

Ace Beverage Co. **250 NLRB No. 066**

(Bd found no jurisdictional bar to review of GC's action in compliance stage and to issues raised by mtn for determination of compliance with Bd's order, since Sec. 101.13(b) of Bd's Statements of Procedures provides that, despite compliance, Bd's order is continuing one and that closing of case is conditioned upon continued compliance with order, which is equally true when proposed backpay formula fails to comply with order as it is when respondent has breached compliance provisions)

Adams Delivery Service, Inc. **JD-(SF)-275-81**

(bankrupt E's application for removal of proceeding to bankruptcy court found ineffective due to exemption of Bd proceedings from removal statute, and Bd held to have retained jurisdiction to determine merits of case)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**

(purpose of backpay orders is to make Ee whole for discrimination against him and to deter E from further unlawful activity)

1000 BACKPAY SPECIFICATION PROCEEDINGS

I.T.O. Corporation of Baltimore **265 NLRB No. 169**

(R/R 102.53 does not only limit backpay proceeding to determination of amount of money owed; purpose is to resolve controversy in compliance situations)

2000 TIME OF DETERMINATION

2050 DETERMINED IN ULP PROCEEDING

F & F Construction Co., Inc., and Roland L. Barker, d/b/a R. L. Barker Construction Company **262 NLRB No. 98**

(individual d/b/a sole proprietorship, liable notwithstanding he was not respondent in underlying ULP case since he was found herein to be alter ego of respondent company, where he had discontinued that company's operations and formed sole proprietorship after issuance of Bd decision in the ULP case)

2075 DETERMINATION LEFT TO COMPLIANCE STAGE OR SUPPLEMENTARY PROCEEDING

Salloff Publications, Inc. **265 NLRB No. 139**

(determination of what reduction in hours Ees suffered as result of unlawfully established and implemented seniority system)

C & E Distributing, Inc./Carlson-Emery Enterprises, Inc. **265 NLRB No. 074**

(determination of interest rates on welfare and benefit fund payments wrongfully withheld by E left to compliance stage)

Talbert Manufacturing, Inc. **264 NLRB No. 138**

Women Care, Inc. **264 NLRB No. 060**

(purchase agreement contained indemnity clause that purports to apportion liability for backpay between seller and purchaser; meaning and scope of clause purporting to apportion liability for backpay left to compliance stage)

Local No. 121, Plasterers (Associated Building Contractors of Lafayette, Inc.) **264 NLRB No. 029**

(Bd affirmed ALJ's refusal to allow respondent's counsel to continue questioning apprentice about his own opinion of his abilities as an apprentice and about jobs he had quit as relevant to backpay, since backpay issues should be resolved in compliance proceedings and testimony sought was not probative evidence as to knowledge and motivation of apprenticeship board members who decided to terminate apprentice, and evidence would have been merely cumulative)

Barry S. Selof, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group **264 NLRB No. 019**

(adequacy of E's offers of reinstatement to some of discharged Ees should be disposed of in compliance stage of instant proceedings)

Division of Plessey Materials Corporation, Plessey Micro Science, A Wholly Owned Subsidiary of Plessey Inc. **263 NLRB No. 182**

(seniority of discriminatees)

Diplomat Envelope Corporation **263 NLRB No. 075**

(amount that E must pay as part of make-whole remedy to Ee benefit fund contributions and interest was left to compliance stage)

Taurus Waste Disposal, Inc. **263 NLRB No. 028**

(E ordered to make payments into benefit funds which it had unlawfully failed to do after expiration of contract; however, determination of any additional amounts, including interest, required to satisfy make whole remedy, left to compliance stage because of variety and complexity of benefit fund agreements)

Carruthers Ready Mix, Inc. **262 NLRB No. 090**

(whether E would have reached striker for recall even had E filled vacancies with strikers after certain date before striker's starting his job with construction company and whether that job constituted regular and substantially equivalent employment left for compliance proceedings)

Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corporation) **262 NLRB No. 006**

(loss of earnings to job applicants who refused referral from hiring hall because they were not informed of change in hiring hall procedure)

G. Bosma Contractors, Inc. **261 NLRB No. 097**

(E ordered to make Ees whole by making fringe benefit fund payments required by bargaining agreement. However, *because provisions of Ee benefit fund agreements are variable and complex, Bd does not provide at adjudicating stage of proceeding for addition of interest at fixed rate on unlawfully withheld fund payments* question of whether E must pay additional amounts into benefit fund in order to satisfy *make whole* remedy left to compliance stage. Additional amounts may be determined by reference to provisions in documents governing funds, or absent governing provisions, evidence of loss directly attributable to E's unlawful withholding)

Charles H. McCauley Associates, Inc. **261 NLRB No. 122**

(ALJ erred in not allowing evidence to be taken at hearing about unconditional offer of reinstatement by E and rejection by discriminatee, but instead relegated taking of such evidence to compliance stage)

Plumbers Local Union No. 403, a/w Plumbers (Pullman Power Products) **261 NLRB No. 040**

(resolution of issues concerning possibility of unavailability of some of members of sister locals (travelers) for employment during certain times during backpay period deferred to compliance stage where question was not sufficiently litigated to permit conclusive determinations as to particular travelers)

T.H.E. Co. d/b/a L. D. Brinkman Southeast **261 NLRB No. 025**

(Bd deferred to compliance stage issue of whether E should not have to reinstate discriminatee even if his discharge was unlawful because he was allegedly drunk when he had accident while driving E's truck since there was insufficient evidence that such was E's general practice in like cases)

Q.V.L. Construction, Inc. **260 NLRB No. 129**

(among factors bearing on remedy properly left for consideration at compliance stage of proceeding involving E's telling individual to apply for job through referral system run by U which subsequently discriminated against

675-PROCEEDINGS TO DETERMINE BACKPAY LIABILITY (FOR COMPUTATION OF BACKPAY SEE HEADINGS UNDER 625-4433)

2075—Cont.

him because he was not U member were that job was largely staffed when individual tried to register for referral there, that little hiring took place after violation committed by U and E, and that U required certain tests to be passed prior to referral)

Earle Industries, Inc. **260 NLRB No. 163**
(determination of when reinstated discriminatee should have been recalled to job to which she was entitled left to compliance process or if no accomodation is reached, to back pay stage of proceedings where there was no indication one way or other in record whether other new Ees were hired for job to which discriminatee would have been entitled between time she was made permanent layoff and her recall, or thereafter)

Dammer Company d/b/a Madison Smith Convalescent Center **260 NLRB No. 106**
(Bd left to compliance stage determination of job availability and possible backpay liability where E failed to establish that applicants were not qualified for employment had their applications been lawfully considered)

Texaco, Inc. **259 NLRB No. 170**
(determination of exact date when Ee was released from medical care where record was not clear)

Weirton Steel, Division of National Steel Corporation **259 NLRB No. 091**
(determination of representative period for purpose of determining E's backpay liability left to compliance proceedings where issue was not fully litigated at hearing)

Twin County Trucking, Inc. **259 NLRB No. 078**
(mtn to reopen hearing to admit additional exhibits, denied where exhibits all post-dated hearing and were relevant only to amount of backpay due discriminatees, which was issue to be decided at compliance stage of proceedings)

Cardinal Systems, A Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant **259 NLRB No. 065**
(determination of amounts (of dues) actually lost by U, if any, left to compliance stage of instant proceedings as record did not reveal whether unlawfully solicited Ees otherwise continued to tender dues to U apart from checkoff mechanism)

Texaco Oil Company **259 NLRB No. 062**
(whether date Ee, who was on sick leave at onset of strike and unable to work during strike, began to picket should be determinative of when he was able to return to work, thus ending his entitlement to sick benefits, or if he was medically able to return to work earlier, left to compliance stage)

Texaco Oil Company **259 NLRB No. 062**
(date Ee who had been on sick leave at onset of strike entitlement to sick leave benefits ended left to compliance stage, where GC and Ee who have access to Ee's medical records failed to demonstrate extent of Ees entitlement to continuing sick benefits during strike, in particular date of medical release)

Texaco Oil Company **259 NLRB No. 062**
(date which Ee who had been on sick leave at onset of strike entitlement to sick leave benefits ended left to compliance stage, where only clear evidence of Ee's ability to return to work was medical release, but where also evidence Ee may have been able to return to work prior to medical release)

F.M.L. Supply, Inc. **258 NLRB No. 083**
(ancillary questions of interest or penalties due, in instant case, on E's delinquent payments to U trust funds not deferrable to compliance stage of proceedings, since contract contained explicit language defining delinquent contributions which were mandatory liquidated damages)

J. D. Candler Roofing Company, Inc. **258 NLRB No. 053**
(E was estopped from asserting its purported withdrawal from or nonmembership in multi-E association as defense to its failure to abide by terms of contract negotiated by multi-E association since, because of E's long history of participating in multi-group E bargaining arrangement involved, E was bound to give some positive notice of its intention not to participate or be bound by negotiations)

Thurston Motor Lines, Inc. **257 NLRB No. 171**
(Bd left to compliance stage issue of Ee's reinstatement and whether he rejected earlier offer of reinstatement)

Pay 'N Save Foods, Inc. **257 NLRB No. 162**
(additional evidence can be presented by E as to forefeiture of reinstatement rights by dischargees at compliance stage of proceeding where E failed to establish sufficient basis to deny reinstatement rights to dischargees at C hearing before ALJ)

Pace Oldsmobile, Inc. **256 NLRB No. 111**
(any loss of earnings ULP striker due to being reinstated to position other than his former position)

Marine Machine Works, Inc.; et al. **256 NLRB No. 004**
(in denying GC's mtn for summary judgment in proceeding on backpay specification, Bd ordered hearing limited to determination of net interim earnings of discriminatees and to issue of whether Es are successor Es responsible for remedying ULPs herein)

Marlene Industries Corporation; et al. **255 NLRB No. 192**
(deferral to compliance stage of proceeding the determination of whether certain individuals were ULP strikers and, if so, whether or not they were fully reinstated, entirely appropriate and w/i authority of compliance officer when record does not adequately establish Ee's status and/or degree, if any, of reinstatement)

Home Insulation Service, A Division of Sunstate Wholesalers **255 NLRB No. 080**
(whether E had made sufficient offer of reinstatement of strikers left to compliance stage)

Arcadia Foods, Inc. **254 NLRB No. 128**
(whether ULP strikers suffered loss of overtime opportunities and corresponding losses of wages following their improper reinstatements)

Camay Drilling Company **254 NLRB No. 019**
(determining E's contributions still owing to Ee benefit fund)

Sav-On Drugs, Inc. **253 NLRB No. 045**
(where GC moved to amend order to include those Ees who were later allegedly revealed to be in same situation as Ees included in decision and respondent did not reply to motion, Bd granted GC's alternative request to permit parties to litigate during compliance proceedings the status of the Ees in question)

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 096**
(backpay formula left to compliance stage of proceeding where there might be several classes of persons discriminated against for whom different approaches might be indicated)

St. Francis Hospital **252 NLRB No. 174**
(E's mtn to reopen record which asserts that subsequent to hearing, Ee was arrested for distributing marijuana, pleaded guilty to charge, and that E has policy of discharging such Ees, more appropriately left to complaince stage of proceeding)

Safeway Stores, Inc. **252 NLRB No. 184**
(any dispute over application of guidelines concerning costs of compilation and furnishing requested information will be treated in compliance stage of proceeding)

Bacchus Wine Cooperative, Inc., and Bacchus Wine International **251 NLRB No. 207**
(Bd declined to reopen record to admit evidence of E's alleged *business reverses* making reinstatement of unlawfully discharged Ees to comparable positions impossible, since such matters are more appropriately handled at compliance stage of proceeding)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(interest payments on additional amounts E must pay into benefit funds to satisfy Bd's *make-whole* remedy)

Dial Tuxedos, Inc. **250 NLRB No. 064**
(question of whether E must pay any additional amounts into benefit funds in order to satisfy Bd's *make whole* remedy left to compliance stage of instant case, since provisions of Ee benefit fund agreements were variable and complex)

Campo Slacks, Inc. and J & E Sportswear, Inc. **250 NLRB No. 057**
(whether E must pay additional amounts into benefit funds in order to satisfy make whole remedy left to compliance stage)

Carter of California, Inc., d/b/a Carter's Rental **250 NLRB No. 054**
(fruther hearing required to determine if 2 Ees quit during strike or are eligible for backpay)

Trojan Transportation, Inc. **249 NLRB No. 084**
(period for computation of backpay and seniority commenced from date of unlawful discharges, notwithstanding E's contention that period should have commenced from date discriminatees' replacements were added to work force, since discriminatees were not recalled but were unlawfully discharged; however, E permitted to attempt to mitigate its backpay liability by showing in compliance proceedings that discriminatees would have been laid off for economic reasons at some time after date of discharges, had Ees not been unlawfully discharged)

Traffic Control Services, Inc., and Its Trustee in Bankruptcy, Albert Ros **249 NLRB No. 077**
(whether E must pay additional amounts into benefit fund in order to remedy unlawful discontinuance of payments left to compliance stage to be determined by provisions pertaining to each fund or evidence of loss directly attributable to unlawful withholding of payments)

Farmingdale Iron Works, Inc., and Jerry Cardullo Iron Works, Inc. **249 NLRB No. 003**
(Bd left to compliance stage question of whether E must pay additional amounts into various funds in order to satisfy make-whole remedy since provisions of Ee benefit fund agreements were variable and complex and Bd did not provide at adjudicatory stage of proceeding for addition of interest at fixed rate on unlawfully withheld fund payments)

2075—Cont.

Bide-A-Wee Home Association **248 NLRB No. 110**
(E not precluded by Bd's order from attempting to prove in compliance stage of proceeding that unlawfully discharged strikers incurred willful loss of earnings by continued participation in strike after their date of discharge)

Charles H. McCauley Associates, Inc. **248 NLRB No. 6[illegible]**
(ALJ's ruling to exclude evidence of E's alleged unconditional offer of reinstatement, appropriate since issue of alleged offer of reinstatement is matter best raised during compliance stage of the proceeding)

Schorr Stern Food Corp. **248 NLRB No. 050**
(Bd's findings and conclusions in ULP case are binding and may not be relitigated in subsequent backpay proceeding, and applicability of contract, adjudicated in present ULP proceeding, cannot be litigated at compliance stage herein)

First Termite Control Co., Inc. **247 NLRB No. 106**
(E's contention that it made valid offers of reinstatement to discriminatees left to compliance stage of proceedings)

H. S. Brooks Electric, Inc., K & F Electric Co. Inc., and Waldemar Nikolai, Their Agent **247 NLRB No. 082**
(E's defense of assignment transferring assets to fund in question and of tender of offer to pay contributions to fund on behalf of discriminatees held not litigable herein but to be considered upon compliance)

Local 394, Laborers' (Building Contractors Association of New Jersey) **247 NLRB No. 005**
(extent to which discriminatees failed to avail themselves of hiring hall referrals or to sign roster and participate in new referral system instituted after issuance of original complaint alleging unlawful refusal to refer and operation of hiring hall in unlawful manner where new referral system was subject of recent charge)

Lorard Industries, Limited **JD-293-82**
(in view of adverse economic conditions, determination of when, if at all, Ees would have been laid off or recalled, absent discrimination, left to compliance stage of instant proceeding; immediate reinstatement or recall not required if it appears in compliance stage Ees are not entitled thereto)

The Ballet Foundation of Milwaukee, Inc. **JD-219-82**
(reinstatement of principal dancer at *an appropriate interval* after Bd Order so as to allow discriminatee to condition himself for job is matter to be handled in compliance procedures)

Shelby Processing Company, A Whooly Owned Subsidiary of Fasano Industries **JD-191-82**
(successor E's claim that it had ceased operations and was no longer in business)

Clifford Cook, d/b/a Pinnacle Company and Pinnacle Roofing Co., Inc. **JD-(SF)-196-79**
(make payments, *w/o interest,* into trust fund)

U. S. Postal Service **JD-(SF)-90-81**
(whether entitled to overtime payments)

Thermo Transport, Inc. **JD-584-80**
(backpay entitlement of discriminatees referred to *compliance* where issue of backpay allegedly due them was not litigated at ULP hearing)

W S H Construction Company, Inc., J. B. Shannon and James A. Hurd, Equipment Rental Company **JD-70-80**
(details of how many, if any, permanent replacements were hired and classification in which they worked, their hours, rates of pay, and the like, relegated to compliance stage of instant proceeding)

Quality Masonry Company and Top Quality Masonry, Inc. **DS-1538-81 (09/25/81)**
(use of words *actually employed* in Settlement Stipulation did not preclude finding in conpliance stage that persons performing unit work were Ees and not independent contractors)

N.L.R.B. v. Savin Business Machines Corporation **649 F.2d 89 (C.A. 1, May 1981)**
(evidence in support of E's allegations that Ee participated in robbery at company a year after his discharge may be introduced at compliance stage of proceedings on issues of Ee's right to reinstatement and backpay)

Graves Trucking, Inc. v. N.L.R.B. **692 F.2d 470 (C.A. 7, Nov. 1982)**
(where Bd found E was responsible for supervisor's physical assault on U steward who was engaged in protected concerted activity and ordered make-whole remedy, ct set aside Bd finding of continued disability and directed that these issues be considered and definitive findings made at compliance hearing)

Carpenters, Local # 308 v. N.L.R.B. **690 F.2d 661 (C.A. 8, July 1982)**
(broad order requiring E jointly and severally with U to make whole discriminatee, who was denied referral by U and consequently employment by E, for any loss of earnings from date of denial of employment until discontinuance of unlawful discrimination is consistent with Bd's usual policy of resolving such issues in compliance proceedings wherein temporary nature of work for which discriminatee's application was denied will undoubtedly be considered)

N.L.R.B. v. Trident Seafoods Corp. **642 F.2d 1148 (C.A. 9, Mar 23, 1981)**
(ct reaffirmed Bd's right to defer determination of amount of back pay liability until after its award has been enforced; E has opportunity at compliance proceedings to present all of its objections to individual back pay awards)

N.L.R.B. v. East Belden Corporation **634 F.2d 635(T) (C.A. 9, 1980)**
(E's complaint that amounts claimed for back wages were unreasonable was found not in issue in court proceeding but must await backpay proceeding)

4000 PLEADINGS

Ron-Bob, Inc. t/a Crazy Horse Saloon **JD-421-81**
(although it may have been prejudicial to GC to allow E to raise issues in second amended answer for first time nearly 8 months after backpay specification issued, it was appropriate to grant E opportunity to file such answer, since E's last-minute change in counsel, although not condoned, was motivated by original counsel's unfamiliarity with labor law and not by desire to prolong proceedings; Bd's R/R require ALJ to inquire fully into facts of case before him; and an insufficient answer may preclude E from litigating what may be meritorious defenses)

4015 IMPROPER OR LATE FILING OF, OR FAILURE TO FILE ANSWER

Nelson Electric, Gary C. Nelson, Inc., and Gary C. Nelson Electric **260 NLRB No. 003**
(allegations of backpay specification deemed admitted as true, since E's mtn to stay proceeding did not specifically deny or respond to allegations as required by Sec. 102.54(b) of Bd's R/R or explain E's failure to file timely answer)

Standard Materials, Inc. **252 NLRB No. 094**
(mtn to strike backpay specification because answer not sworn to and did not contain post office address as required by Bd's R/R, denied, where response to Notice to Show Cause for Summary Judgment cured above defects and was treated by Bd as amended answer though no amendment to Specification filed and Bd's R/R provide that its rules shall be liberally construed)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L.A. Inhalation Therapy Services **JD-(SF)-289-82**
(Respondent filed general denial to backpay specification but disputed end of backpay period, and thereafter, GC filed amended specification modifying backpay period in line with Respondent's objections to which Respondent filed no ans, nor appeared at hearing, nor responded to Notice To Show Cause, Mtn for Summary Judgment granted in view of lack of specificity in ans which under Bd's R/R allegations are deemed admitted, thereby precluding Respondent from offering evidence)

4025 SUFFICIENCY OF PLEADINGS

4025-0100 Generally

Teckwal Corp. and E.M. Andrews Sales, Inc. **263 NLRB No. 122**
(Es held precluded from amending ans to deny single E status which they previously admitted where Es offered no reason for change of position; import of Sec. 102.54(b) and (c) required more from Es than complete change in position w/o explanation or supporting affidavits)

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) **258 NLRB No. 098**
(in summary judgment proceeding on backpay specification in which respondent U's amended ans sufficiently raised issue as to interim earnings but its general denial as to backpay period or computation of gross backpay was insufficient to bring such matters into issue, Bd remanded case for hearing limited to determination of discriminatees' interim earnings, including whether or not they enjoyed any interim employment during backpay period)

4025-2000 General denial insufficient

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **264 NLRB No. 087**
(allegations of gross backpay specification, except as to interim earnings, deemed admitted as true and GC's Motion for Partial Summary Judgment granted where respondent filed general denial w/o specifically denying gorss backpay allegations, providing alternative formula, or explaining his failure to do so; assertion, in answer to NOtice to Show Cause, that he lacked knowledge because GC had subpoenaed his records held untimely and inadequate to explain his failure to seek information from GC, trial record, or elsewhere; general denial concerning interim earnings, however, sufficient to raise issue warranting hearing)

Fugazy Continental Corp. **260 NLRB No. 168**
(GC's mtn for partial summary judgment on net backpay allegation in specification, and mtn to strike E's answers thereto, denied, where E's answers made general denials to specification's allegations and, since E's general denials on issue of interim earnings is directly related to computation and accuracy of net backpay which, in turn, is dependent upon data derived from interim earnings, E's general denials are sufficient to require hearing on issue)

Fugazy Continental Corp. **260 NLRB No. 168**
(in partial summary judgment proceeding on backpay specification, GC's mtn to strike portions of E's answers, which either deny generally or fail to explain adequately allegations of specification, granted, since E's answers are nonresponsive and not in conformity with Bd's R/R)

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) **258 NLRB No. 098**
(GC's mtn for summary judgment with respect to backpay specification issued to respondent U, denied; although U's original ans, amounting to general denial of entire backpay specification, would not have been adequate under Bd's R/R, U's subsequently submitted documents stating that general denial was based on lack of information concerning discriminatees' employment prior to their present jobs, were construed by Bd as an amended ans which adequately raised interim earnings issue; and since interim earnings are not generally w/i knowledge of respondent, a general denial is sufficient to place them in issue)

Teamsters, Local No. 17 (Universal Studios and Warner Brothers, Inc.) **258 NLRB No. 098**
(although denying GC's mtn for summary judgment and ordering hearing concerning portion of backpay specification dealing with interim earnings raised as issue by respondent U's amended ans, Bd held that, inasmuch as U had not raised issues in its original ans or amended ans regarding other matters in backpay specification pertaining to backpay period or gross backpay, U's general denial was not sufficient to bring such matters in issue)

Jerome Fink & Sons, Inc. **258 NLRB No. 146**
(general denial of allegations of backpay specification insufficient to comply with Section 102.54 of R/R as wages and working hours of Ees are ordinarily w/i knowledge of E and here where violation involved unilateral change in wages, backpay involves what Ees should have received under contract and wages actually received)

Marine Machine Works, Inc.; et al. **256 NLRB No. 004**
(in summary judgment proceeding on backpay specification, Bd held E's ans constituting a general denial failed to comply with Bd's R/R Sec. 102.54(b) and (c) as to compliance matters w/i E's knowledge, where ans did not dispute accuracy of specification's figures or provide any alternative formula for computing amounts owed; and inasmuch as Ees' hours worked and pay rates are presumed to be w/i E's knowledge, ans was insufficient to deny specification's allegations concerning gross backpay and amounts owed to benefit funds)

Marine Machine Works, Inc.; et al. **256 NLRB No. 004**
(in summary judgment proceeding on backpay specification, Bd held general denials in E's answers of allegations concerning interim earnings were sufficient to require hearing on such issue since it is not presumed that amount of interim earnings is normally w/i knowledge of E)

Marine Machine Works, Inc.; et al. **256 NLRB No. 004**
(in summary judgment proceeding on backpay specification, Bd held E's general denial as to all allegations were insufficient under Bd's R/R Sec. 102.54(b) and (c); and since no explanation or response to notice to show cause was filed, E is deemed to have admitted all allegations in specification, except those regarding interim earnings, to be true)

Standard Materials, Inc. **252 NLRB No. 094**

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L.A. Inhalation Therapy Services **JD-(SF)-289-82**
(backpay specification as to interim earnings remained uncontradicted and deemed true, notwithstanding Respondent's general denial as to interim earnings and that general denial sufficient to defeat summary judgment since Bd does not presume interim earnings w/i knowledge of Respondent, inasmuch as hearing ordered and held and Respondent failed to avail itself of opportunity to contest interim earning figure which GC had burden of establishing)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L.A. Inhalation Therapy Services **JD-(SF)-289-82**
(general denial of allegations concerning interim earning in backpay specification is sufficient under R/R Section 102.54 to defeat mtn for summary judgment on that issue since Bd does not presume that amount of interim earnings is normally w/i knowledge of Respondent)

4025-4000 Grounds for disagreement must be stated

Michael M. Schaefer, an individual proprietor **261 NLRB No. 042**
(GC's mtn to strike figures in E's ans to backpay specification which alleged lesser number of hours per week which discriminatees would have worked but did not set forth any formula utilized to arrive at figures, granted since data w/i E's knowledge and failure to set forth fully or furnish supporting figures contrary to requirements of Bd's R/R Section 102.54(b))

Petros Coal Corporation and Blue Coal Corporation **257 NLRB No. 016**
(mtn for summary judgment granted and backpay specification deemed admitted as true where E, found successor herein, failed to file answer; E and successor E held jointly and severely responsible for back pay remedy)

Seven Motors Ltd., d/b/a Mazda South; et al. **252 NLRB No. 116**
(allegations of backpay specification accepted as true and summary judgment granted where Responsent failed to comply with requirement)

3 States Trucking, Inc., and Its Successor, Southern Illinois Minerals Corporation **252 NLRB No. 153**
(where backpay specification selected representative Ee for purpose of determining discriminatee's quarterly gross pay and E did not challenge that Ee's selection when it filed its answer and amended answer but did so on second day of backpay liability hearing, E precluded from raising issue)

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(ALJ's reliance on gross earnings formula contained in E's amendment to its ans to backpay specification held appropriate, notwithstanding GC's contention that reliance on formula did not satisfy requirements of Sec. 102.54(b) of Bd's R/R, since Respondent's original ans satisfied Section's requirements and GC did not object to proposed amendment)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L.A. Inhalation Therapy Services **JD-(SF)-289-82**

4025-6000 Respondent must give correct backpay figure

Michael M. Schaefer, an individual proprietor **261 NLRB No. 042**
(GC's mtn to strike figures in E's ans to backpay specification which alleged lesser number of hours per week which discriminatees would have worked but did not set forth any formula utilized to arrive at figures, granted since data w/i E's knowledge and failure to set forth fully or furnish supporting figures contrary to requirements of Bd's R/R Section 102.54(b))

Jerome Fink & Sons, Inc. **258 NLRB No. 146**
(general denial of allegations of backpay specification insufficient to comply with Section 102.54 of R/R as wages and working hours of Ees are ordinarily w/i knowledge of E and here where violation involved unilateral change in wages, backpay involves what Ees should have received under contract and wages actually received)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L.A. Inhalation Therapy Services **JD-(SF)-289-82**

4025-8000 Respondent must plead matters within its knowledge

Michael M. Schaefer, an individual proprietor **261 NLRB No. 042**
(GC's mtn to strike figures in E's ans to backpay specification which alleged lesser number of hours per week which discriminatees would have worked but did not set forth any formula utilized to arrive at figures, granted since data w/i E's knowledge and failure to set forth fully or furnish supporting figures contrary to requirements of Bd's R/R Section 102.54(b))

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L.A. Inhalation Therapy Services **JD-(SF)-289-82**
(backpay specification as to interim earnings remained uncontradicted and deemed true, notwithstanding Respondent's general denial as to interim earnings and that general denial sufficient to defeat summary judgment since Bd does not presume interim earnings w/i knowledge of Respondent, inasmuch as hearing ordered and held and Respondent failed to avail itself of opportunity to contest interim earning figure which GC had burden of establishing)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L.A. Inhalation Therapy Services **JD-(SF)-289-82**
(general denial of allegations concerning interim earning in backpay specification is sufficient under R/R Section 102.54 to defeat mtn for summary judgment on that issue since Bd does not presume that amount of interim earnings is normally w/i knowledge of Respondent)

4025-5080 Failure to deny or explain why information cannot be furnished constitutes admission

Mid-East Consolidation Warehouse, A Division of Ethan Allen, Inc. **265 NLRB No. 184**
(allegation of E's liability for retirement and profit-sharing plan payments deemed admitted as true where E denied allegation *as it is written* w/o further explanation, did not argue that it lacked adequate information about the plans to ascertain amounts due or make a mtn requesting that backpay specification be made more specific or deny that discriminatees were eligible for coverage under the plans)

4025-8050—Cont.

Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand **264 NLRB No. 057**

Fuguzy Continental Corp. **260 NLRB No. 168**

(GC's mtn for partial summary judgment with respect to certain allegations in backpay specification granted since E's answers thereto are general denials and not adequately explained and, therefore are deemed to be admitted as true)

Nelson Electric, Gary C. Nelson, Inc., and Gary C. Nelson Electric **260 NLRB No. 003**

(allegations of backpay specification deemed admitted as true, since E's mtn to stay proceeding did not specifically deny or respond to allegations as required by Sec. 102.54(b) of Bd's R/R or explain E's failure to file timely answer)

Bighorn Beverage **254 NLRB No. 081**

(*summary judgment* granted where E had not filed answer to backpay specification and had not offered any explanation for its failure to do so)

Ralph Schaffner, an Individual d/b/a Schaffner Construction Co. **252 NLRB No. 136**

(Respondent's contention that ptn for summary judgment in backpay proceeding should be stayed pending discharge of Respondent's ptn from Bankruptcy ct in which Bd and discriminatees are named as creditors, rejected, since adjudication in Bankruptcy does not deprive Bd of jurisdiction or authority to process ULP case to final disposition; since mtn to stay did not specifically deny or respond in any way to allegations of backpay specification, allegations of specification are deemed admitted)

4050 AMENDMENT OF PLEADINGS

Ron-Bob, Inc. t/a Crazy Horse Saloon **JD-621-81**

(where GC's amended backpay specification withdrew any claim for backpay for discriminatee during period covered by initial specification, liability for backpay subsequent to such period specifically reserved)

4050-0100 Generally

Standard Materials, Inc. **252 NLRB No. 094**

(mtn to strike backpay specification because answer not sworn to and did not contain post office address as required by Bd's R/R, denied, where response to Notice to Show Cause for Summary Judgment cured above defects and was treated by Bd as amended answer though no amendment to Specification filed and Bd's R/R provide that its rules shall be liberally construed)

Kraft Plumbing & Heating, Inc. **JD-(SF)-220-82**

(after hearing started, ALJ granted GC's mtn to substantially amend backpay specification and E's mtn to withdraw its ans)

High Performance Tube, Inc. **JD-(ATL)-45-82**

(E may amend its answer prior to hearing even in absence of amendment to specification)

4050-3300 Both General Counsel and respondent bound by pleadings

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**

(ALJ's reliance on gross earnings formula contained in E's amendment to its ans to backpay specification held appropriate, notwithstanding GC's contention that reliance on formula did not satisfy requirements of Sec. 102.54(b) of Bd's R/R, since Respondent's original ans satisfied Section's requirements and GC did not object to proposed amendment)

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L.A. Inhalation Therapy Services **JD-(SF)-289-82**

(Respondent filed general denial to backpay specification but disputed end of backpay period, and thereafter, GC filed amended specification modifying backpay period in line with Respondent's objections to which Respondent filed no ans, nor appeared at hearing, nor responded to Notice To Show Cause, Mtn for Summary Judgment granted in view of lack of specificity in ans which under Bd's R/R allegations are deemed admitted, thereby precluding Respondent from offering evidence)

4050-6700 Amendment to modify backpay period permitted

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L.A. Inhalation Therapy Services **JD-(SF)-289-82**

(Respondent filed general denial to backpay specification but disputed end of backpay period, and thereafter, GC filed amended specification modifying backpay period in line with Respondent's objections to which Respondent filed no ans, nor appeared at hearing, nor responded to Notice To Show Cause, Mtn for Summary Judgment granted in view of lack of specificity in ans which under Bd's R/R allegations are deemed admitted, thereby precluding Respondent from offering evidence)

4075 AFFIRMATIVE DEFENSES

4075-0100 Generally

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**

(under Bd's R/R Section 102.54 it was too late for E to dispute basis for measure of gross backpay for certain discriminatees in briefs, where it did not raise position in hearings)

Teckwal Corp. and E.M. Andrews Sales, Inc. **263 NLRB No. 122**

(Es held precluded from amending ans to deny single E status which they previously admitted where Es offered no reason for change of position; import of Sec. 102.54(b) and (c) required more from Es than complete change in position w/o explanation or supporting affidavits)

4075-5000 Defenses which may be raised in backpay proceeding

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**

(no willful loss of earnings nor denial of backpay results therefrom where discriminatee who was pipefitter took sales job in department store at less pay, since discriminatee did not leave his trade by choice but was laid off from interim job as pipefitter, and absent evidence pipefitting jobs available; further, layoff of pipefitters at interim E was not unusual)

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**

(where discriminatee's illness *risk of living generally* rather than result of interim employment presumption warranted that discriminatee would have become ill if he had remained in Respondent's employ and would have received any sick pay customarily paid by Respondent)

Material Transportation Co., Inc. and its successor Sco-Ric Trucking, Inc. **263 NLRB No. 133**

(GC's mtn for partial Summary Judgment denied where GC alleged that Respondent failed to supply supporting figures as required and that alleged successor-E failed to file timely answer; Bd found that E's answer constituted more than general denial in that it alleged percentage reduction in work for each discriminatee and satisfied requirements of Sec. 102.54(b); Bd also held that matter of successorship is properly in issue and denied mtn for partial Summary Judgment against that E ordering hearing to determine successorship)

Flite Chief, Inc.; et al. **258 NLRB No. 148**

(E may mitigate his backpay liability by showing *willfully incurred* loss by a *clearly identifiable refusal to take desirable new employment;* but since affirmative defense burden is upon E to prove necessary facts, such burden is not met by presenting evidence of lack of Ee success in obtaining interim employment or of low interim earnings; rather, E must affirmatively show that Ee *neglected to make reasonable efforts to find interim work*)

Lee Simmons and Beverly McKinstry Simmons, A Partnership, d/b/a Elmendorf and Fort Richardson Barber Concessions **JD-(SF)-186-82**

(service of copy of backpay specification and notice of hearing on attorney of record for respondent-partner in underlying ULP case (partnership dissolved since C case completed) held proper notice to partner though not served, since attorney filed timely ans to specification, appeared at hearing, participated in litigation on all issues and interests not prejudiced)

Ridgeway Trucking Company and Sand & Stone Transport, Inc. **JD-23-82**

(where Ee attempted to conceal interim earnings from Bd by failing to tell Bd that he had worked on irregular basis in orange grove, but told truth in time for correct backpay specification, Ee was awarded backpay)

N.L.R.B. v. Savin Business Machines Corporation **649 F.2d 89 (C.A. 1, May 1981)**

(evidence in support of E's allegations that Ee participated in robbery at company a year after his discharge may be introduced at compliance stage of proceedings on issues of Ee's right to reinstatement and backpay)

N.L.R.B. v. United Contractors Inc. and JMCO Trucking, Inc. joint employers **614 F.2d 134 (C.A. 7) (1980)**

(E may, w/o incurring back pay liability, refrain from reinstating discriminatorily discharged Ee during period when employment would not have been available for him even absent discrimination)

4075-6700 Defenses which may not be raised in backpay proceeding

H. S. Brooks Electric, Inc., K & F Electric Co. Inc., and Waldemar Nikolai, Their Agent **247 NLRB No. 082**

(defense that respondent is defunct held issue, not properly raised in backpay proceeding; is w/o legal significance and not an issue for Bd to resolve)

Lee Simmons and Beverly McKinstry Simmons, A Partnership, d/b/a Elmendorf and Fort Richardson Barber Concessions **JD-(SF)-186-82**

(individual's status as partner in partnership business in underlying ULP case, unless there were sufficient equitable considerations to warrant reopening record in underlying ULP case)

4075-7500 Defenses which must be raised in ULP proceeding

4075-7500—Cont.

Lee Simmons and Beverly McKinstry Simmons, A Partnership, d/b/a Elmendorf and Fort Richardson Barber Concessions JD-(SF)-186-82

(individual's status as partner in partnership business in underlying ULP case, unless there were sufficient equitable considerations to warrant reopening record in underlying ULP case)

4075-8500 Abandonment of defense

Kraft Plumbing & Heating, Inc. JD-(SF)-220-82

(after hearing started, ALJ granted GC's mtn to substantially amend backpay specification and E's mtn to withdraw its ans)

6000 BURDEN OF PROOF

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 054

6017 GENERAL COUNSEL HAS BURDEN OF PROVING GROSS BACKPAY

Flite Chief, Inc.; et al. 258 NLRB No. 148

Neely's Car Clinic 255 NLRB No. 188

(GC has burden of showing gross amount of backpay due; Ee is not required to establish sufficiency of his search for work)

George A. Angle d/b/a Kansas Refined Helium Company 252 NLRB No. 162

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock 248 NLRB No. 075

6017-3300 Estimates of actual income sufficient

Robert G. Shearer d/b/a George C. Shearer Exhibitors Delivery Service and/or Air Parcel Delivery Service, Inc. 262 NLRB No. 073

(where E changed method of compensating Ees from hourly to percentage of freight tare precluding for certain how much discriminatees would have earned during backpay period, ALJ accepted GC's method of taking average of hours worked for 6 months' period prior to ULPs adjusted for those changes that would have been expected to have occurred during backpay period)

3 States Trucking, Inc., and Its Successor, Southern Illinois Minerals Corporation 252 NLRB No. 153

(discriminatee and another Ee comparable where both employed in same classification, paid same wage rate, Ee first laborer hired after discriminatee so seniority almost identical)

Meatcorp (Formerly Seymour Packing Division of Seymour America, Inc.) 251 NLRB No. 047

6017-6700 ALJ must recommend most accurate method of computing backpay, not merely determine whether General Counsel's formula is reasonable

George A. Angle d/b/a Kansas Refined Helium Company 252 NLRB No. 162

J. S. Alberici Construction Co., Inc. 249 NLRB No. 102

(notwithstanding parties stipulated to interim earnings figures, ALJ's rejection of gross earnings formula to which interim earnings were keyed caused ALJ to reject interim earnings when they could not be utilized in gross earnings formula adopted by ALJ)

6025 GENERAL COUNSEL HAS BURDEN OF GOING FORWARD WITH EVIDENCE AFTER ISSUE HAS BEEN RAISED AS ACCURACY OF BACKPAY SPECIFICATION

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127

(once Respondent showed discriminatee quit comparable interim job burden shifts to GC to show decision to quit reasonable; absent such showing by GC, quitting is willful loss of earnings)

Tri-Maintenance & Contractors, Inc. 257 NLRB No. 014

(earnings of replacement Ees during backpay period are appropriate measure of gross backpay of discriminatees; *time sheets* listing replacements' time allocated to various facilities served by E *unreliable* indicator of time actually spent at various locations, since they were not authenticated and were, merely *allocations* of time for accounting purposes)

6033 RESPONDENT HAS BURDEN OF PROVING DEDUCTIONS FROM GROSS BACKPAY

6033-0100 Generally

Inland Empire Meat Company 255 NLRB No. 172

(E failed to meet its affirmative burden of proving that claimant did not diligently seek work during backpay period where it relied upon its examination of claimant and alleged impeachment of claimant's testimony where claimant's testimony about his diligent effort to find work was credited)

Wayne Trophy Corp. 254 NLRB No. 104

(fact discriminatee has low or even non-existant interim earnings does not of itself prove his or her failure to seek employment during backpay period)

Wayne Trophy Corp. 254 NLRB No. 104

(where discriminatee asserted she sought employment at various Es during backpay period Respondent did not meet its burden of proof regarding its claim that discriminatee did not seek employment during period where it failed to call as witnesses representatives of Es from whom discriminatee claimed to have sought employment, despite fact that these reports had been turned over to Respondent before trial)

3 States Trucking, Inc., and Its Successor, Southern Illinois Minerals Corporation 252 NLRB No. 153

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock 248 NLRB No. 075

Lee Simmons and Beverly McKinstry Simmons, A Partnership, d/b/a Elmendorf and Fort Richardson Barber Concessions JD-(SF)-186-82

(in seeking to mitigate his loss of income, Ee is held *only to reasonable exertions in this regard, not the highest standard of diligence*)

M Restaurants, Incorporated d/b/a The Mandarin v. N.L.R.B. 621 F.2d 336 (C.A. 9, 1980)

(when Bd establishes existence of ULP and gross amount of backpay due, burden shifts to E to *prove circumstances which would limit its liability*)

6033-1700 General Counsel's role in producing backpay claimants for cross-examination merely advisory and cooperative

Woonsocket Health Centre 263 NLRB No. 179

(where Ees entitled to backpay had moved to another city and did not appear at hearing, Bd awarded amount of backpay in specification and ordered backpay held in escrow for one year; RD to arrange with GC opportunity for E to examine Ees and other witnesses, determine amount of backpay due, and if amount of backpay due is reduced, this amount is to be returned to Ee and report to Bd w/i one year status of this matter)

Flite Chief, Inc.; et al. 258 NLRB No. 148

(although GC, as is customary, provided E with backpay specification containing amount of discriminatees' interim earnings and names of their interim Es, GC is not required to provide such information since burden is on E to prove that appropriate net backpay is less than alleged gross backpay amounts as set forth in the specification)

6033-2500 *Make-up* increases

Plasticrafts, Inc. 248 NLRB No. 161

(E's make whole obligation for unlawful withholding of wage increases during election and negotiating period diminished by wage increases granted subsequent to period where such increase divided over backpay period equivalent to monthly average of increases over past representative period of employment)

6033-3300 Willful idleness

I.T.O. Corporation of Baltimore 265 NLRB No. 169

(no willful loss where Ee did not register at hiring center some week days after unlawful demotion because he worked some weekend days)

I.T.O. Corporation of Baltimore 265 NLRB No. 169

(since sufficiency of efforts to mitigate backpay will be determined with respect to backpay period as whole; Ee's efforts during initial 4 weeks when he failed to register at hiring center was not considered in view of his overall efforts to mitigate loss of earnings and jobs available through hiring center were not substantially equivalent to foreman's job from which he was unlawfully demoted)

Woonsocket Health Centre 263 NLRB No. 179

(where willful loss of earnings began on date Ee quit interim job due to pregnancy, GC has duty to show date she began to look for work)

Woonsocket Health Centre 263 NLRB No. 179

(where Ee failed to answer newspaper ads for work as nurses aide because E's job was her first job in this work and she wanted different work, backpay was reduced to one month after discharge (adjustment period) until she accepted employment as nurses aide; registering at USES was insufficient search for work)

Big Three Industrial Gas & Equipment Co. 263 NLRB No. 127

(E has burden of showing discriminatee willfully incurred loss and any uncertainty resolved against E; burden not met by showing lack of success in binding interim employment or low interim earnings; rather, E must affirmatively demonstrate that Ee neglected to make reasonable efforts to find interim work)

6033-3300—Cont.

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(discriminatee's substantial reliance on U hiring hall as basic means of obtaining interim employment did not constitute such unreasonable limiting of employment opportunities as to constitute willful idleness where discriminatee obtained regular employment at his skill level)

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(no willful loss of earnings since discriminatee held to have made substantial efforts to obtain comparable employment, notwithstanding discriminatee's perfunctionary testimony as to job search, where he had filed detailed reports of his efforts with compliance officer and absent evidence discriminatee refused employment offers)

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(where Respondent contends discriminatee's discharge from interim employment due to discriminatee's willful misconduct justifies deduction from backpay, Respondent has burden of showing willful misconduct was true reason for discharge)

Flite Chief, Inc.; et al. **258 NLRB No. 148**
(E must show deductions due to willful loss of earnings)

Colonie Hill Ltd., and John Smythe Food Services
Inc., Successor to Colonie Hill, Ltd. and
Lackman Food Services of Hauppauge, Inc. **256 NLRB No. 150**
(assuming respondents raised issues regarding discriminatee's willful loss of earnings or amount of his interim earnings, their failure to present supporting evidence left their contentions unsupported and gross backpay specification unchanged)

Neely's Car Clinic **255 NLRB No. 188**
(no willful loss of earnings by mechanic's refusal to accept employment or *as needed* basis and to receive percentage of labor costs on jobs he performed since there was no guarantee work would be available)

Neely's Car Clinic **255 NLRB No. 188**
(no willful loss of earnings by taking work as musician after failing to find work as mechanic [illegible] this was not unreasonable removal of himself from appropriate job market)

3 States Trucking, Inc., and Its Successor, Southern
Illinois Minerals Corporation **252 NLRB No. 153**
(Ee who attends trade school classes but registers with state unemployment services and continues job search not rendered unavailable for work by virtue of school attendance)

Highview, Inc. **250 NLRB No. 090**
(test of whether discriminatee has made reasonable search for employment is whether he/she had dilligently sought other employment during entire backpay period, and fact that discriminatee had no interim earnings during backpay period is not probative upon issue of whether discriminatee made diligent search for work)

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(Ee did not engage in willful loss of earnings during backpay period where he left interim employment because he was not receiving benefit of having health, welfare, and pension contributions made to U funds and wanted to work where such would be done)

Downtown Ford Sales **JD-(SF)-275-82**
(where economic striker quit interim job and moved to another state, presumption exists that he quit not for personal reasons but for justifiable reasons)

Lee Simmons and Beverly McKinstry Simmons, A
Partnership, d/b/a Elmendorf and Fort
Richardson Barber Concessions **JD-(SF)-106-82**
(discriminatee's moving from one city to another w/i State in order to seek employment and while destitute, discriminatee accepted hospitality of his son in other city; discriminatee did not remove himself from labor market nor did he engage in conduct inconsistent with inclination to work and be self-supporting)

Ridgeway Trucking Company and Sand & Stone
Transport, Inc. **JD-23-82**
(no willful loss of earnings where Ee sought employment, registered with state agency for job referrals, accepted work in furniture store after failing to find work as driver or warehouseman and E has not shown that Ee refused any offer of employment)

Ridgeway Trucking Company and Sand & Stone
Transport, Inc. **JD-23-82**
(where Ee refused to work any Saturdays during back pay period and E testified w/o contradiction that Ee could have worked 6 of 12 Saturdays, backpay was reduced by amount he could have earned on 6 Saturdays)

Adams Delivery Service, Inc. **JD-(SF)-278-81**
(E failed to meet burden of showing Ee's wilful idleness where E called only U business representative as witness w/o calling Ee himself or U hiring hall dispatcher)

DeLorean Cadillac, Inc. v. N.L.R.B. **614 F.2d 554 (C.A. 6) (1980)**
(uncorroborated testimony of party who tends to benefit from award of reinstatement or backpay should be subject to strict scrutiny and where discriminatee produced no corroborating witnesses or tangible evidence of his efforts to secure equivalent position and E produced witnesses who testified that discriminatee did not approach them for job, ct held discriminatee was not diligent in seeking employment)

M Restaurants, Incorporated d/b/a The Mandarin
v. N.L.R.B. **621 F.2d 336 (C.A. 9, 1980)**
(unlawfully discharged Ee who was unable to find work for 18 months and then left country for 1 year period during which time he earned minimal salary found not to have voluntarily left labor market; *discharged Ee is not confined to the geographical area of former employment; he or she remains in the labor market by seeking work in any area with comparable employment opportunities*)

6033-5000 Interim earnings

Robert E. Cashdollar, Sr., d/b/a Nelson Metal
Fabricating **259 NLRB No. 141**
(use of *F. W. Woolworth Company,* 90 NLRB 289 (1950), quarterly backpay computation formula approved in instant proceeding and Ees awarded appropriate amount of backpay notwithstanding that over backpay period Ees earned more at other jobs than they would have earned at E and when offered reinstatement Ees refused; purpose of quarterly balancing is to discourage delay of offer of reinstatement; such offer tolls backpay liability)

Tri-Maintenance & Contractors, Inc. **257 NLRB No. 014**

Colonie Hill Ltd., and John Smythe Food Services
Inc., Successor to Colonie Hill, Ltd. and
Lackman Food Services of Hauppauge, Inc. **256 NLRB No. 150**
(assuming respondents raised issues regarding discriminatee's willful loss of earnings or amount of his interim earnings, their failure to present supporting evidence left their contentions unsupported and gross backpay specification unchanged)

Great Plains Beef Company **255 NLRB No. 185**
(burden on E to show that discriminatee would have been successful in securing interim employment; general assertion of need in area for skills which discriminatee possessed is not sufficient to meet burden)

Standard Materials, Inc. **252 NLRB No. 094**
(E's general assertion that discriminatees failed to seek and retain available interim employment sufficient to put issue into question; hearing ordered for this determination)

George A. Angle d/b/a Kansas Refined Helium
Company **252 NLRB No. 162**
(self-employment should be treated like any other interim employment in measuring backpay liability)

George A. Angle d/b/a Kansas Refined Helium
Company **252 NLRB No. 162**
(moneys earned during period of discrimination from a supplemental job which discriminatee also held during his employment with respondent/E are not deductible from gross backpay as interim earnings)

J. S. Alberici Construction Co., Inc. **249 NLRB No. 102**
(notwithstanding parties stipulated to interim earnings figures, ALJ's rejection of gross earnings formula to which interim earnings were keyed caused ALJ to reject interim earnings when they could not be utilized in gross earnings formula adopted by ALJ)

Downtown Ford Sales **JD-(SF)-275-82**
(economic striker did not waive backpay by signing statement that he was self employed because self employment treated like any other interim job but waived right to reinstatement at later date by telling E that he no longer wanted job)

6033-6700 Unavailability for interim employment because of illness

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(discriminatee's injury at interim job did not toll backpay since direct result of unlawful discharge and period of disability will not be excluded)

8000 PROCEDURE WHEN CLAIMANT IS UNAVAILABLE

8025 BACKPAY PLACED IN ESCROW UNTIL CLAIMANT CAN BE EXAMINED

Howard and Roberta Feldman Corporation d/b/a
L. A. Baker Electric **268 NLRB No. 203**
(determination of duration of escrow period for any backpay due discriminatee whose whereabouts were unascertainable at time of hearing left to compliance stage of proceedings when consideration can be given to all appropriate factors)

Woonsocket Health Centre **263 NLRB No. 179**
(where Ees entitled to backpay had moved to another city and did not appear at hearing, Bd awarded amount of backpay in specification and ordered backpay held in escrow for one year; RD to arrange with GC opportunity for E to examine Ees and other witnesses, determine amount of

8025—Cont.

backpay due, and if amount of backpay due is reduced, this amount is to be returned to Ee and report to Bd w/i one year status of this matter)

Tri-Maintenance & Contractors, Inc. 257 NLRB No. 014
(backpay for discriminatees who were not available so that any interim earnings could be determined will be paid to RD at amount set forth in specification. RD will hold money in escrow for 1 year (extension of additional year may be obtained) and when discriminatees are available and deductions for interim earnings are determined, RD will return such moneys to E)

Top Manufacturing Company, Inc. 254 NLRB No. 124
(Ee awarded net backpay as set out in RD's backpay specification to be held in escrow by RD for period not exceeding one year and at end of that year upon application by RD, additional year could be granted if Bd deemed it necessary, where discriminatee was unavailable at time of backpay hearing for respondent to examine him with respect to his interim earnings)

Carter of California, Inc., d/b/a Carter's Rental 250 NLRB No. 054
(held in escrow for period not to exceed 1 year at which time funds returned to E, however E still has obligation to discriminatee)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock 248 NLRB No. 075
(where discriminatee cannot be located backpay placed in escrow for one year; if discriminatees located, Respondent and GC shall be accorded opportunity to examine them concerning interim earnings and RD shall make final determination as to amounts which shall be deducted from backpay; if discriminatees not located w/i year, backpay in escrow returned to Respondent)

High Performance Tube, Inc. JD-(ATL)-48-82
(backpay due unavailable discriminatee will be paid to RD and held in escrow for one year and additional year if necessary; RD will arrange for E to examine him during this period in view of testimony regarding Ee's misconduct by having E's blue prints, papers, etc. in his possession)

Ridgeway Trucking Company and Sand & Stone Transport, Inc. JD-23-82

The A.S. Abell Company JD-221-81
(where neither GC, E, nor U, despite their reasonable efforts where able to locate Ees unlawfully induced to retire, order issued that, instead of having E pay gross backpay amounts to RD to be held in escrow for reasonable time while further efforts are made to locate Ees, jurisdiction be retained for 1 year from date of order herein with permission to GC, if he can locate Ees w/i such time, to move to reopen matter with regard to them; after 1 year, in absence of good cause shown to the contrary, backpay claims shall be dismissed)

California Pacific Signs, Inc. JD-(ATL)-76-81

9000 SETTLEMENTS OF BACKPAY

Long Beach Youth Center, Inc., a/k/a Long Beach Youth Home (formerly Trailback, Inc.) JD-(SF)-54-81
(ALJ approved settlement stipulation setting forth net backpay for certain discriminatees and providing for finding of gross backpay for foreign resident, and also providing for entry by ALJ of supplemental order pursuant to terms of settlement, for Bd's adoption, w/o awaiting exception period, of ALJ's recommendation as its supplemental order, and for filing of consent judgment with ct of appeals which enforced Bd's order)

9033 NECESSARY PARTIES

Lee Simmons and Beverly McKinstry Simmons, A Partnership, d/b/a Elmendorf and Fort Richardson Barber Concessions JD-(SF)-186-82
(service of copy of backpay specification and notice of hearing on attorney of record for respondent-partner in underlying ULP case (partnership dissolved since C case completed) held proper notice to partner though not served, since attorney filed timely ans to specification, appeared at hearing, participated in litigation on all issues and interests not prejudiced)

Belair Chateau Hospital, Inc., d/b/a University Heights Hospital JD-(SF)-213-80
(deletion of trustee in bankruptcy as party respondent from original complaint pursuant to ct order does not bar GC from raising issue of trustee's derivative liability for first time in backpay proceeding)

9067 GROUNDS FOR SETTING ASIDE

Michael M. Schaefer, an individual proprietor 261 NLRB No. 042
(E's contention that U had waived payment of net backpay to each discriminatee in consideration for E entering into bargaining agreement, and that each discriminatee except two had waived backpay by accepting settlement, rejected, since such commitment will be honored only if ULPs substantially remedied and individual may not bargain away or compromise backpay due him/her, inasmuch as backpay is public rather than private right)

Brockway Motor Trucks, Division of Mack Trucks, Inc. 251 NLRB No. 023
(where parent company was not named in proceeding until after ct remanded to Bd, it will not be named as R as it was never afforded opportunity to defend itself against ULP charges or litigate its relationship with E; determination can be made at compliance stage of proceeding)

Thermo Transport, Inc. JD-584-80
(private agreement between E and two of summarily-found discriminatees whereby, in lieu of backpay possibly due them by virtue of E's ULPs, discriminatees agreed to become equal partners with stock ownership in new E aided corporation held violative, since agreement interfered with application of Bd's remedies, which are provided as public right)

9500 BACKPAY STIPULATIONS

9550 EFFECT OF BACKPAY STIPULATION

Women Care, Inc. 264 NLRB No. 060
(Respondent's bound by backpay stipulation, notwithstanding Respondent did not execute stipulation until after it had breached it and consequently RD did not sign it, since Respondent had signed stipulation and made partial payments on backpay award)

700 GENERAL LEGAL PRINCIPLES

712 AGENCY PRINCIPLES

2500 COMMON LAW AGENCY PRINCIPLES APPLICABLE

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) **259 NLRB No. 037**

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(Bd instructed to apply same general agency principles as would cts in determining whether or not individual (cab driver) is an Ee or an independent contractor)

2550 ACTUAL AUTHORIZATION OR SUBSEQUENT RATIFICATION NOT CONTROLLING

N.L.R.B. v. Local 90, Plasterers **606 F.2d 189 (C.A. 7, 1979)**

(Bd may base finding of agency relationship on evidence that an individual was acting with knowledge and acquiescence of U and that he had implied authority to do what he did, since, under Section 2(13) of Act, labor organization's responsibility for acts of any individual is not dependent upon actual authorization or subsequent ratification)

5000 RESPONSIBIITY OF EMPLOYER OR UNION FOR ACTS AND STATEMENTS OF AGENTS AND OTHERS

5014 BASIS OF RESPONSIBILITY

5014-0100 Generally

Knaga Corporation **265 NLRB No. 130**

(conclusion that individual is not supervisor, is not dispositive of question of whether that individual is acting as agent for E; agency established by mutual consent of parties that agent act for principal or from conduct of principal)

United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canda, Local No. 195, AFL-CIO **JD-(SF)-330-81**

(finding of agency can not be made based upon fact action was designed to benefit U)

5014-0120 Actual authority

Escambia River Electric Cooperative, Inc. **265 NLRB No. 128**

(each member of E's board of trustees held agent of E, where by-laws conferred upon trustees powers normally associated with board of directors and officers of typical corporation, and trustees had complete control over management of corporation)

Belcor, Inc. d/b/a San Jose Care and Guidance Center **263 NLRB No. 152**

(Ee who was active in organizing for U, not U agent since he lacked actual or apparent authority where he had no authority to act for U in official capacity, and other Ees recognized that fact, nor was his serving as U's election observor, soliciting authorization cards and distributing U literature and materials sufficient to render him an agent)

Jacobs Marti & Sons, Inc. **264 NLRB No. 087**

(foreman found not supervisor but held agent as E's president authorized him to find out who started U campaign)

East Texas Motor Freight **242 NLRB No. 101**

(agency in instant case limited to contractual assignment of authority, i.e.: (1) investigation and presentation of grievances, and (2) transmission of messages and information; each incident evaluated to determine agency responsibility)

Consolidated Dress Carriers, Inc., et al. **259 NLRB No. 083**

(where striking Ees have signed U authorization cards, and joined in strike under U supervision, general agency is created which empowers U through its representatives to offer to return to work on behalf of all striking Ees w/o obtaining specific authorization from Ees to do so)

F & D Enterprises, Inc., d/b/a Westward Ho Hotel **251 NLRB No. 160**

(E did not violate Act when employment agency, acting as E's agent, refused to refer applicant for job with E because of his U membership, since E was not liable for employment agency's action inasmuch as employment agency was, at most, a special rather than a general agent; neither express nor apparent authority was conferred upon the agency to refer only nonU applicants, and E did not ratify the refusal to refer)

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**

(E not responsible for Ee's threat to fellow Ee that latter's paycheck would be withheld unless he signed card for U favored by E, since Ee was merely contributing to E's support of favored U w/o having real or apparent authority to do so)

Graves Trucking, Inc. v. N.L.R.B. **692 F.2d 470 (C.A. 7, Nov. 1982)**

(in affirming Bd finding the E was responible for physical assault by supervisor on U steward who was engaged in protected concerted activity since incident pertained to matters w/i responsibilities E had conferred on supervisor, ct concluded that E's single expression of disapproval after the fact did not suffice as a repudiation where such disapproval was not made known to all Ees affected and, in any event, was accompanied and followed by reiteration of supervisor's authority)

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. **675 F.2d 256 (C.A. 10, Apr. 1982)**

(apparent authority sufficient to determine whether multi-E bargaining unit is acting as agent of Es so as to bind individual E by bargaining unit's acts; whether specific acts were actually authorized or subsequently ratified not controlling)

5014-0140 Apparent authority

Redlands Construction Co., Inc., and Felts Construction Co. **265 NLRB No. 079**

(E's contention that signatories to bargaining agreement were not authorized by it to enter into agreement with U, rejected where signers were half owners of E and active in its management and at no instance was contract attacked by corporate denial of signatory agent's ostensible authority; rather, terms of contract were followed; thus, E held out individuals at time they signed contracts as having apparent authority to enter into agreements)

Redlands Construction Co., Inc., and Felts Construction Co. **265 NLRB No. 079**

(E's contention that one of its bargaining agreement signatories may have been member of U when he signed agreement was relevant to issue of whether he had apparent authority to sign contract, rejected since U membership does not debar individual from acting as agent of E in entering into contract with U)

RAHCO, Inc. **265 NLRB No. 030**

(although assistant assembly line supervisor was not statutory supervisor, E was responsible for his conduct where assistant regularly directed Ees' work pursuant to E's authorization, acted as assembly line supervisor on rare occasions when head supervisor was absent from work, and assistant wore gold hat which was emblem of management; E placed assistant in position whereby Ees would have just cause to believe he was acting for and on behalf of management)

Airborne Freight Corporation **253 NLRB No. 181**

(where company official's wife solicited individual as new hire, official's wife was found agent of company, since individual solicited had good reason to believe company official's wife was acting pursuant to company authority on basis of authority of her husband; moreover the company official ratified the solicitation by hiring the individual his wife had solicited)

Belcor, Inc. d/b/a San Jose Care and Guidance Center **263 NLRB No. 152**

(Ee who was active in organizing for U, not U agent since he lacked actual or apparent authority where he had no authority to act for U in official capacity, and other Ees recognized that fact, nor was his serving as U's election observor, soliciting authorization cards and distributing U literature and materials sufficient to render him an agent)

5014-0140—Cont.

East Texas Motor Freight **262 NLRB No. 101**

East Texas Motor Freight **262 NLRB No. 101**

(agency in instant case limited to contractual assignment of authority, i.e.: (1) investigation and presentation of grievances, and (2) transmission of messages and information; each incident evaluated to determine agency responsibility)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**

(Ees were led to believe that anti-U Ee group, known as *SCAB*, was acting on behalf of and with E's approval where E asked Ees to join *SCAB*, permitted SCAB members to use worktime for solicitation to join anti-U campaign and provided SCAB members and E's supervisors with time, equipment and *Vote No* buttons to promote anti-U campaign)

Progressive Medical Group, Inc., t/a Walnut Hill Convalescent Center **260 NLRB No. 039**

(agent appointed to negotiate bargaining agreement is deemed to have apparent authority to bind his principal in absence of clear notice to the contrary; in instant case, there was clear notice that E's agents had no independent authority to bind E and there was no clear notice that E's board of directors reserved right to act upon agreement only after it had been accepted by bargaining unit Ees)

The Maumee Stone Company, Union Quarry Division **259 NLRB No. 150**

(former owner of E spoke at Ees' meeting as agent of E where at time of meeting he was consultant to E, had past history of authority over Ees and E failed to disavow his statement which was inconsistent with claim that he spoke w/o authority)

The Maumee Stone Company, Union Quarry Division **259 NLRB No. 150**

(individual who spoke at Ees' meeting held agent of E, where he had past history of authority over Ees of E's quarry, was employed by company whose operations were apparently closely related to E's quarry operations, and took actions on behalf of quarry which were consistent with conclusion that he was still acting as *de facto* supervisor for E)

Delta Hosiery, Inc. **259 NLRB No. 139**

(unit Ee's poll of Ees about their U sympathies, violative, since such action was clearly viewed by Ees as act of management and management itself acquiesced in conduct)

Union Oil Company of California, Polymer PLant **258 NLRB No. 188**

(where lead operators were allowed to vote in election pursuant to stipulation, statements made by them are attributable to E as Ees considered them their bosses or supervisors and they are the only supervisors or management officials in plant on regular basis on second and third shifts)

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**

(E representative acting as chairman on joint E-U review board created by U and industry Es for purpose of dealing with individuals problems relating to industry work held joint agent of both U and Es in arranging for, convening, and presiding at meetings of review board; and since chairman was clothed with apparent authority by U representative to deal with problems of E herein, latter acted reasonably in believing chairman had been authorized to act as U's agent in handling his problems)

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**

(joint board's employment department created jointly by agreement of contracting Es and U to serve their mutual interests in providing a source of Ees for Es in industry held joint agent of Es and U; and U's advice to E that requests for Ees are to be made to department and E's testimony that he believed it was bound to seek referrals solely from department held to have created apparent authority in department to act for U)

Burnup & Sims, Inc. **256 NLRB No. 142**

(crew foreman of subcontractor engaged in cable splicing work for telephone company held supervisor and whose decision to grant time off to his *entire crew* E was bound, since foreman was management representative empowered to grant days off as well as directing work of splicing crew; crew could have reasonably believed that foreman was acting for and on behalf of E)

Harrison Steel Castings Company **262 NLRB No. 039**

(security guard at gatehouse clothed with apparent authority to restrict access of all who would enter company premises and that her comments to organizers not to distribute literature on public property adjacent to gatehouse were w/i scope of that authority)

Le Roy Fountain, Inc., and Hardwicke's Plum, Inc., A Joint Venture, d/b/a Maxwell's Plum **256 NLRB No. 036**

(working foreman held agent of E where she was vested with ostensible authority to affect personnel actions such as hiring and reprimands and held herself out as managerial official and she clearly was perceived as such)

Limestone Apparel Corp. **255 NLRB No. 101**

(statement of leadperson to Ee that Ee was *fired* imputable to management; although leadperson was not supervisor w/i meaning of Act; record established that E had placed leadperson in position where Ees could reasonably believe leadperson spoke on behalf of E whether or not her act was *actually authorized or subsequently ratified*)

Wm. Chalson & Co., Inc. **252 NLRB No. 006**

(Ee assistant foreman in his activities focusing on unlawful solicitation of anti-U petition from Ees, imputed unlawful activity to E by his apparent authority derived from management support and approval of his activities; solicitation campaign was implicitly adopted and supported by E's supervisors and Ees could reasonably believe that activities of assistant foreman reflected E's policy)

F & D Enterprises, Inc., d/b/a Westward Ho Hotel **251 NLRB No. 160**

(E did not violate Act when employment agency, acting as E's agent, refused to refer applicant for job with E because of his U membership, since E was not liable for employment agency's action inasmuch as employment agency was, at most, a special rather than a general agent; neither express nor apparent authority was conferred upon the agency to refer only nonU applicants, and E did not ratify the refusal to refer)

Tylertown Wood Products **251 NLRB No. 048**

(local minister who, allegedly acting as E's agent, made unlawful statements to Ees held not agent of E, since he was not placed in position to be identified with management in eyes of Ees and to translate to them policies and desires of management)

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**

(stewards of local U held agents of local and international Us where stewards' unlawful acts were w/i scope of their apparent authority, were not repudiated, disavowed or condemned by local or international and were thus ratified and condoned)

Streamway Division of The Scott & Fetzer Co. **249 NLRB No. 054**

(even though Ees were unable to specifically identify agent of E, E held responsible for conduct of member of firm employed by E to conduct attitude survey among Ees, where firm's member to whom critical remarks were attributed was placed in his position of apparent authority by E; even if firm did not rise to level of agent w/i Sec. 2(13), E is still responsible for its conduct under Sec. 2(2) under circumstances herein)

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**

(E not responsible for Ee's threat to fellow Ee that latter's paycheck would be withheld unless he signed card for U favored by E, since Ee was merely contributing to E's support of favored U w/o having real or apparent authority to do so)

Portsmouth Lumber Treating, Inc. **248 NLRB No. 160**

(E held responsible for statements of *yard foreman*, where E held him out as representative of management whose words could reasonably be understood to reflect position of Company)

Crane Sheet Metal, Inc. **248 NLRB No. 015**

(fact that agent itself was not sure it possessed authority to negotiate not controlling; it is apparent authority that it exhibits to third party that controls principal's responsibility)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(personnel office Ee held agent of E where he was placed in *strategic position* so that his apparent authority to act on E's behalf could be fairly implied and Ees could reasonably believe he reflected E's policy)

Chair Makers, Inc. **JD-(SF)-4-82**

(if not supervisor, lead person was agent for E, since lead person's conduct and regular duties caused sewing department Ees to reasonably believe lead person was acting on behalf of management)

Formaloy Corp. **JD-(ATL)-87-81**

(E accountable for acts of brother of part owner and officer of E where brother accorded different treatment from rank and file Ees and Ees could reasonably believe brother's anti-U activity reflected E's policy)

Teamsters Local 312 a/w Teamsters (William E. Coons, an Individual) **JD-370-81**

(assistant steward's threat of violence and actual assault on Ee held misconduct of agent w/i his apparent authority which created, by itself, responsibility of U; later actions of U president and U steward, in effect approving what assistant steward had done, including making threats of their own to Ee, constituted condonation and ratification by U of misconduct of assistant steward)

Brodart, Inc. **JD-140-81**

(supervisor who threatened to discharge Ees for complaining about hazardous working conditions, a protected activity violated Act notwithstanding he had no authority to implement threat as Ees may not have been aware that he lacked authority)

Broad Street Lincoln Mercury, Inc. **JD-200-80**

(E responsible for antiU campaign which it did nothing to disavow and which it permitted former owner and operator to carry on on its premises;

5014-0140—Cont.

former owner was parent of present owners and leased them one of buildings they used)

Batavia Nursing Convalescent Inn, Inc. **JD-23-80**
(whether or not individual considered to be *boss* fell w/i statutory definition of *supervisor* held that such individual was at all relevant times so clearly identified with E's management that he must be concluded to be agent of E)

Cardinal Heating and Cooling, Inc. **JD-835-79**
(contention that E's son was rank-and-file Ee rejected where E gave son *Guidelines for Management and Supervisor Personnel Prior to Representation Election* which demonstrated that son was aligned with management and at least apparent agent of E)

N.L.R.B. v. Advanced Systems, Inc. **681 F.2d 918 (C.A. 9, Apr. 1982)**
(remand for evidentiary hearing on whether threat by Ee member of U organizing committee, when coupled with apparent authority, so influenced voters in U representation election that it made free choice impossible, since close case on U agency where Ees considered member primary spokesman for U and it had been indicated member would be U steward after election, notwithstanding U had instructed organizing committee not to threaten Ees, and in view of other threats and vandalism, which viewed in light most favorable to objecting E, make prima facie showing that free election prevented)

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. **675 F.2d 256 (C.A. 10, Apr. 1982)**
(apparent authority sufficient to determine whether multi-E bargaining unit is acting as agent of Es so as to bind individual E by bargaining unit's acts; whether specific acts were actually authorized or subsequently ratified not controlling)

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. **675 F.2d 256 (C.A. 10, Apr. 1982)**
(test to determine multi-E unit's apparent authority is whether individual E has indicated unequivocal intention to be bound by group action and whether U has been notified of existence of group and delegation of bargaining authority to it and has assented to and entered upon negotiating with group's representative)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(responsibility for individual's conduct held correctly attributed to E either on basis thatindividual was a supervisor or that E was using individual in campaign to oust U)

5014-0160 Implied authority

Jacobo Marti & Sons, Inc. **264 NLRB No. 007**
(Ee held not supervisor because he exercised virtually no independent judgment; however, Ee held E's agent because while working on night shift Ee's duties were to keep eye on plant and report any and all problems to president)

Local 300, Cosmetic and Novelties Workers' Union, Affiliated With International Production Service and Sales Employees Union **257 NLRB No. 174**
(by conduct of principal)

Quality Drywall Company, Inc. **254 NLRB No. 075**
(individual held agent of E whether or not he was supervisor, where he conveyed information and distributed work assignments and materials to Ees; he could reasonably have been viewed by Ees as E's representative as he was clothed with implied authority to act for management)

5014-0180 Estoppel of principal

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**
(E estopped from denying responsibility for coercive interrogation and threats made by anti-U Ee group where E, by its conduct, led Ees to believe that anti-U group spoke for and with approval of E)

5014-0190 Adoption or ratification

Knogo Corporation **265 NLRB No. 130**
(by E's reprimand of Ee for circulating (anti-U) ptn during Ee's worktime, E showed that it neither acquiesced in, nor condoned, ptn, nor was Ee agent of E)

Hudson Oxygen Therapy Sales Company **264 NLRB No. 004**
(guard contracted for by E with security firm assertedly to protect E's property and Ees in event of strike held agent of E who is responsible for guard's action in arresting Ee engaged in election day U campaigning, notwithstanding E had not specifically authorized guard's action; moreover, even if agency did not exist at the time, E was responsible since it condoned and ratified guard's conduct by failing to disavow guard's acts after learning of his treatment of E)

Airborne Freight Corporation **263 NLRB No. 181**
(where company official's wife solicited individual as new hire, official's wife was found agent of company, since individual solicited had good reason to believe company official's wife was acting pursuant to company authority on basis of authority of her husband; moreover the company official ratified the solicitation by hiring the individual his wife had solicited)

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**
(even if Ees had acted on their own in refusing to work at jobsite with another U's members, U agent's later authorization of another Ee's refusal to work under same conditions constituted U ratification of prior conduct; express authorization is not essential to bind U, agency may be inferred from all the circumstances, U is in no different position than any other legal entity when agency issue is in dispute, and U may ratify acts of Ees by affirming prior acts which did not bind U when done)

Classic Industries, Inc. **254 NLRB No. 149**
(nonsupervisory foreman held agent of E where E used him as conduit for its instructions to Ees, clothed him with authority to receive requests for time off, assigned him to oversee performances of Ees on his shift and used him as company spokesperson among other Ees; therefore his actions in conducting election for Ee committee attributable to E whether or not E actually authorized or subsequently ratified them)

Arcadia Foods, Inc. **254 NLRB No. 128**
(E not responsible for supervisor circulating decertification ptn among Ees where supervisor was part of bargaining unit and record disclosed no evidence that E encouraged, authorized or ratified supervisor's activity or acted in such manner to lead Ees to reasonably believe that he was acting on behalf of E)

F & D Enterprises, Inc., d/b/a Westward Ho Hotel **251 NLRB No. 160**
(E did not violate Act when employment agency, acting as E's agent, refused to refer applicant for job with E because of his U membership, since E was not liable for employment agency's action inasmuch as employment agency was, at most, a special rather than a general agent; neither express nor apparent authority was conferred upon the agency to refer only nonU applicants, and E did not ratify the refusal to refer)

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**
(stewards of local U held agents of local and international Us where stewards' unlawful acts were w/i scope of their apparent authority, were not repudiated, disavowed or condemned by local or international and were thus ratified and condoned)

Teamsters Local 312 a/w Teamsters (William E. Coons, an Individual) **JD-378-81**
(assistant steward's threat of violence and actual assault on Ee held misconduct of agent w/i his apparent authority which created, by itself, responsibility of U; later actions of U president and U steward, in effect approving what assistant steward had done, including making threats of their own to Ee, constituted condonation and ratification by U of misconduct of assistant steward)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**
(threatening statements of U steward when telephoned by Ee to discuss latter's intentions of crossing picket line during strike held attributed to U where U's subsequent action against Ee and other members indicated steward's statements reflected U's official policy)

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. **675 F.2d 256 (C.A. 10, Apr. 1982)**
(apparent authority sufficient to determine whether multi-E bargaining unit is acting as agent of Es so as to bind individual E by bargaining unit's acts; whether specific acts were actually authorized or subsequently ratified not controlling)

5028 RESPONSIBILITY OF EMPLOYER FOR ACTS OF OTHERS

5028-0100 Generally

Knogo Corporation **265 NLRB No. 130**
(conclusion that individual is not supervisor, is not dispositive of question of whether that individual is acting as agent for E; agency established by mutual consent of parties that agent act for principal or from conduct of principal)

Behring International, Inc. **252 NLRB No. 095**
(in determining agency relationship, it is not necessary to find direct evidence that anti-U activities of Ees were authorized or subsequently ratified by E, since agency may be inferred from circumstances)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(where E chooses worker or supervisor as agent to communicate its anti-U position to Ees, and places him in a position identifying him with management so that Ees would reasonably understand that he spoke for manage-

5028-0100—Cont.

ment, E may not escape responsibility for his conduct in carrying out its anti-U campaign)

United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canda, Local No. 195, AFL-CIO **JD-(SF)-330-81**

(claim of agency made by purported agent does not establish such relationship)

5028-1200 Interdependent relationships with other employers

5028-1233 Familial relationship

Indian Head Lubricants, Inc. **261 NLRB No. 003**

(wife of E who is also corporate secretary found agent of E, notwithstanding she was not on payroll, where she spent substantial amount of time working in office during critical period and knew most of Ees on payroll)

Indian Head Lubricants, Inc. **261 NLRB No. 003**

(son of E in small family owned corporation found agent of E where he voiced anti-U sentiments which reflected views of his parents)

Cardinal Heating and Cooling, Inc. **JD-835-79**

(contention that E's son was rank-and-file Ee rejected where E gave son *Guidelines for Management and Supervisor Personnel Prior to Representation Election* which demonstrated that son was aligned with management and at least apparent agent of E)

5028-1267 Economic relationship

Dick Seidler Enterprises, d/b/a Joe & Dodie's Tavern **254 NLRB No. 045**

(former owner of E's restaurant held not to be agent of E, notwithstanding he told Ees he was receiving monthly payments from E for sale of business, where he had severed all connection with operation of business and apparently only visited restaurant in capacity of customer during time of organizing effort)

F & D Enterprises, Inc., d/b/a Westward Ho Hotel **251 NLRB No. 160**

(E did not violate Act when employment agency, acting as E's agent, refused to refer applicant for job with E because of his U membership, since E was not liable for employment agency's action inasmuch as employment agency was, at most, a special rather than a general agent; neither express nor apparent authority was conferred upon the agency to refer only nonU applicants, and E did not ratify the refusal to refer)

5028-2500 Nonsupervisory employees

Maremont Corporation, World Parts Division **251 NLRB No. 110**

(statement by personnel office secretary that E would close or relocate plant if U won election, not attributable to E, where personnel office secretary was nonunit Ee and not agent of E nor did E place her in position where Ees could reasonably believe she was speaking for management)

5028-2501 Generally

Butler Shoes New York, Inc. **263 NLRB No. 150**

(interrogation of Ee about his U activities not violative where it was not proved that questioner had been promoted to supervisor at time of interrogation)

United States Postal Service **252 NLRB No. 014**

(physician's remarks about U, made during physical examination of Ee, and his questioning of Ee as to why Ee wanted U representative with him at physical examination, not unlawful where, although physician was supervisor of nurses, he was not acting in supervisory capacity as to Ee being examined, and his question and remarks that Ee deserved discipline, which were due to his personal irritation, could neither be attributed to E nor reasonably be construed as threat of retaliation)

5028-2512 Acting in apparent concert with desires of employer

Elias Mallouk Realty Corp. **265 NLRB No. 186**

(superintendent of apartment house who sponsored appearance of E, E's attorney and official of U opposing incumbent U at meeting held during company time at which these individuals asked Ees to support U other than incumbent and who drove another superintendent Ee to meeting informing Ee E wanted Ee to attend; further, Ees who were handymen and porters had perceived ties to management of superintendents)

RAHCO, Inc. **265 NLRB No. 030**

(although assistant assembly line supervisor was not statutory supervisor, E was responsible for his conduct where assistant regularly directed Ees' work pursuant to E's authorization, acted as assembly line supervisor on rare occasions when head supervisor was absent from work, and assistant wore gold hat which was emblem of management; E placed assistant in position whereby Ees would have just cause to believe he was acting for and on behalf of management)

Jules V. Lane, D.D.S., P.C. **262 NLRB No. 013**

(assistant to director found E's agent in interrogating one Ee and threatening to discharge another as well as in announcing, in supervisors' presence, withdrawal of certain privileges, since Ees would have reasonably believed he spoke for management in view of his position and duties and fact that his interrogation and threats were consistent with and coincided in time with E's other ULPs)

Conair Corporation **261 NLRB No. 178**

(Ee who was inspector of various assembly line products held agent of E where Ee circulated among Ees, actively sought to persuade them to reject U, his activity was at least implicitly if not expressly supported by his supervisor, and Ees reasonably believed that Ee reflected company policy and acted for management)

Indian Head Lubricants, Inc. **261 NLRB No. 003**

(bookkeeper held agent of Ee where she had offered bribes to Ees in return for anti-U votes and E followed through and paid off)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**

(Ees were led to believe that anti-U Ee group, known as *SCAB*, was acting on behalf of and with E's approval where E asked Ees to join *SCAB*, permitted SCAB members to use worktime for solicitation to join anti-U campaign and provided SCAB members and E's supervisors with time, equipment and *Vote No* buttons to promote anti-U campaign)

NAB Construction Corporation **258 NLRB No. 090**

(non-supervisory Ee, who was given permission by E to meet with Ees on company property to discuss their possible affiliation with U found not to be agent of E where no supervisors attended meeting and E permitted representatives of competing U to also meet with Ees on company property)

Marhoefer Baking Company, Inc. **258 NLRB No. 071**

(Ee held agent of management where E assisted and encouraged Ee to carry message to Ees of its opposition to U)

Injected Rubber Products Corp. **258 NLRB No. 092**

(questioning of Ees reqarding their U views by leadmen imputed to E and unlawful, since leadmen held agents of E, notwithstanding not supervisor, since Ees could reasonably believe questioning was at direction of management where E had made it clear to Ees that leadmen were eyes of management for purpose of reporting to management, transmitted instructions and disciplinary notices, communicated with management if emergency during shifts where management not working and kept log book)

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising **257 NLRB No. 022**

(Ee who was found not to be supervisor but who interrogated Ees concerning their U activities did not cause E to violate Act where he was speaking for himself and was not agent of E)

G. F. Business Equipment, Inc. **252 NLRB No. 123**

(Ee who interviewed prospective Ees, explaining job duties, wages, informing Ees of their hire is agent of E as she is clothed with apparent authority and held agent, even if not supervisor)

Wm. Chaison & Co., Inc. **252 NLRB No. 006**

(Ee assistant foreman in his activities focusing on unlawful solicitation of anti-U petition from Ees, imputed unlawful activity to E by his apparent authority derived from management support and approval of his activities; solicitation campaign was implicitly adopted and supported by E's supervisors and Ees could reasonably believe that activities of assistant foreman reflected E's policy)

Regal Shoe Shops #2431 & 2340 **249 NLRB No. 179**

(former supervisory Ee rehired as strike replacement as assistant manager (not supervisor) found agent of E when he conveyed same anti-U message to Ees that E had conveyed and had knowledge of Ees U membership that could only have been obtained from E)

Jay-Em Corporation **JD-547-81**

(foreman who discussed Ees' evaluations with them and answered questions concerning their prospective wage increases held agent of E)

Connecticut Distributors, Inc. v. N.L.R.B **681 F.2d 127 (C.A. 2, June 1982)**

(E not responsible for actions of Ee who circulated decertification ptn. notwithstanding E supplied Ee with names of 4 attorneys to contact for information about decertification where such referral not improper; moreover, fact that E filed decertification ptn immediately after receipt of Ee's anti-U ptn may show condonation but it does not prove E played any role in securing Ee signatures)

N.L.R.B. v. International Medication Systems, Ltd. **640 F.2d 1110 (C.A. 9, Apr 2, 1981)**

(E responsible for actions of lead person who acted in context of other anti-U activity by supervisors as Ees might reasonably believe she was speaking for E)

5028-2535 Acting in presence of supervisors

Jules V. Lane, D.D.S., P.C. **262 NLRB No. 013**

(assistant to director found E's agent in interrogating one Ee and threatening to discharge another as well as in announcing, in supervisors' presence, withdrawal of certain privileges, since Ees would have reasonably believed

5028-2525—Cont.

he spoke for management in view of his position and duties and fact that his interrogation and threats were consistent with and coincided in time with E's other ULPs)

Nordstrom, Inc. JD-(SF)-142-82
(supervisor who was present when Ee asked another Ee to sign decertification ptn did not violate Act as mere physical proximity is insufficient to hold supervisor responsible for Ee's conduct)

5028-2530 Acting as messenger of supervisor

Knogo Corporation 265 NLRB No. 130
(*lead person's* alleged functions *conduct of information* from management to Ees insufficient to warrant vicarious liability of E for lead person's circulating (anti-U) ptn since transmittal of working orders is purely routine in nature)

NAB Construction Corporation 238 NLRB No. 090
(Spanish speaking Ee hired by E to communicate his instructions to Spanish speaking Ees held agent of E as he was in position which identified him with management)

5028-2537 Authority to act may be inferred from

Advanced Mining Group, Div. of Republic Corp.,
Lucerne Facility 260 NLRB No. 073
(Ees were led to believe that anti-U Ee group, known as *SCAB*, was acting on behalf of and with E's approval where E asked Ees to join *SCAB*, permitted SCAB members to use worktime for solicitation to join anti-U campaign and provided SCAB members and E's supervisors with time, equipment and *Vote No* buttons to promote anti-U campaign)

5028-2537-2000 Cooperation of supervisory employee

Wm. Chalson & Co., Inc. 252 NLRB No. 006
(Ee assistant foreman in his activities focusing on unlawful solicitation of anti-U petition from Ees, imputed unlawful activity to E by his apparent authority derived from management support and approval of his activities; solicitation campaign was implicitly adopted and supported by E's supervisors and Ees could reasonably believe that activities of assistant foreman reflected E's policy)

5028-2537-4000 Employer's failure to disavow conduct

Hillside Avenue Pharmacy, Inc. 265 NLRB No. 205
(E held responsible for threat made by his wife to Ees that E's facility would be closed if U got in, where E's conduct underscored such statement, and E at no time made any effort to negate it)

Knogo Corporation 265 NLRB No. 130
(by E's reprimand of Ee for circulating (anti-U) ptn during Ee's worktime, E showed that it neither acquiesced in, nor condoned, ptn, nor was Ee agent of E)

Limestone Apparel Corp. 255 NLRB No. 101
(statement of leadperson to Ee that Ee was *fired* imputable to management; although leadperson was not supervisor w/i meaning of Act; record established that E had placed leadperson in position where Ees could reasonably believe leadperson spoke on behalf of E whether or not her act was *actually authorized or subsequently ratified*)

Sentry Investigation Corp. 249 NLRB No. 130
(violation of Section 8(a)(1) where E failed to disavow threats of shop steward that if Ees changed bargaining representative they would lose their jobs to members of new representative with more seniority)

Hart Ski Mfg. Co., Inc. JD-11-80
(individual held agent of E since Ees could reasonably believe him to be speaking for E where he was part owner of company with which E had announced planned merger, was frequently present in plant coordinating corporate relationships and assisting with production technology, and E did not disavow his statements which were alleged to be violative)

5028-2537-6000 Subsequent ratification of employer

Knogo Corporation 265 NLRB No. 130
(by E's reprimand of Ee for circulating (anti-U) ptn during Ee's worktime, E showed that it neither acquiesced in, nor condoned, ptn, nor was Ee agent of E)

Indian Head Lubricants, Inc. 261 NLRB No. 003
(bookkeeper held agent of Ee where she had offered bribes to Ees in return for anti-U votes and E followed through and paid off)

Delta Hosiery, Inc. 259 NLRB No. 139
(unit Ee's poll of Ees about their U sympathies, violative, since such action was clearly viewed by Ees as act of management and management itself acquiesced in conduct)

Wm. Chalson & Co., Inc. 252 NLRB No. 006
(Ee assistant foreman in his activities focusing on unlawful solicitation of anti-U petition from Ees, imputed unlawful activity to E by his apparent authority derived from management support and approval of his activities; solicitation campaign was implicitly adopted and supported by E's supervisors and Ees could reasonably believe that activities of assistant foreman reflected E's policy)

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)
(actions of Ee who advertised himself to customers and Ees as Vice-president of E; occasionally interviewed applicants and made recommendations as to hiring and occasionally attended managerial meetings imputed to E, since actions may be imputed to E regardless of supervisory status where E placed Ee in position which reasonably fosters appearance and belief Ee acts on behalf of management and in view of ratification of statements by E)

5028-2537-8000 Failure to discipline

Knogo Corporation 265 NLRB No. 130
(by E's reprimand of Ee for circulating (anti-U) ptn during Ee's worktime, E showed that it neither acquiesced in, nor condoned, ptn, nor was Ee agent of E)

5028-2550 Company time, use of, indication that employee acts for employer

Elias Mallouk Realty Corp. 265 NLRB No. 156
(superintendent of apartment house who sponsored appearance of E, E's attorney and official of U opposing incumbent U at meeting held during company time at which these individuals asked Ees to support U other than incumbent and who drove another superintendent Ee to meeting informing Ee E wanted Ee to attend; further, Ees who were handymen and porters had perceived ties to management of superintendents)

Hart Ski Mfg. Co., Inc. JD-11-80
(individual held agent of E since Ees could reasonably believe him to be speaking for E where he was part owner of company with which E had announced planned merger, was frequently present in plant coordinating corporate relationships and assisting with production technology, and E did not disavow his statements which were alleged to be violative)

5028-2562 Employees have just cause to believe person acting for employer

Elias Mallouk Realty Corp. 265 NLRB No. 156
(superintendent of apartment house who sponsored appearance of E, E's attorney and official of U opposing incumbent U at meeting held during company time at which these individuals asked Ees to support U other than incumbent and who drove another superintendent Ee to meeting informing Ee E wanted Ee to attend; further, Ees who were handymen and porters had perceived ties to management of superintendents)

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Knogo Corporation 265 NLRB No. 130
(no *agency* where Ee could not be viewed as speaking for management as Ee did not attend management meetings or direct Ee meetings on behalf of management, or have supervisory authority)

RAHCO, Inc. 265 NLRB No. 030
(although assistant assembly line supervisor was not statutory supervisor, E was responsible for his conduct where assistant regularly directed Ees' work pursuant to E's authorization, acted as assembly line supervisor on rare occasions when head supervisor was absent from work, and assistant wore gold hat which was emblem of management; E placed assistant in position whereby Ees would have just cause to believe he was acting for and on behalf of management)

R. L. White Company, Inc. 262 NLRB No. 069
(Ee who had been supervisor prior to plant reorganization found to retain sufficient indicia of authority for E to be held responsible for anti-U activity)

Comair Corporation 261 NLRB No. 178
(Ee who was inspector of various assembly line products held agent of E where Ee circulated among Ees, actively sought to persuade them to reject U, his activity was at least implicitly if not expressly supported by his supervisor, and Ees reasonably believed that Ee reflected company policy and acted for management)

Jo-Wex Sportswear, Ltd. and Iris Sportswear, Inc. 260 NLRB No. 172
(floor lady who was salaried, distributed work to Ees, did no production work nor punched time card, and acted as translator of Spanish into English for E held agent of E where Ees reasonably believed she was reflecting company policy and was speaking and acting for management when she distributed favored U's literature to Ees and told them she was instructed to do so by E who confirmed that such was the case, and floor lady made anti-U statements similar to those made by E)

Injected Rubber Products Corp. 258 NLRB No. 092
(questioning of Ees regarding their U views by leadmen imputed to E and unlawful, since leadmen held agents of E, notwithstanding not supervisor, since Ees could reasonably believe questioning was at direction of management where E had made it clear to Ees that leadmen were eyes of manage-

5028-2562—Cont.

ment for purpose of reporting to management, transmitted instructions and disciplinary notices, communicated with management if emergency during shifts where management not working and kept log book)

Limestone Apparel Corp. 255 NLRB No. 101

(statement of leadperson to Ee that Ee was *fired* imputable to management; although leadperson was not supervisor w/i meaning of Act; record established that E had placed leadperson in position where Ees could reasonably believe leadperson spoke on behalf of E whether or not her act was *actually authorized or subsequently ratified*)

Classic Industries, Inc. 254 NLRB No. 149

(nonsupervisory foreman held agent of E where E used him as conduit for its instructions to Ees, clothed him with authority to receive requests for time off, assigned him to oversee performances of Ees on his shift and used him as company spokesperson among other Ees; therefore his actions in conducting election for Ee committee attributable to E whether or not E actually authorized or subsequently ratified them)

Arcadia Foods, Inc. 254 NLRB No. 128

(E not responsible for supervisor circulating decertification ptn among Ees where supervisor was part of bargaining unit and record disclosed no evidence that E encouraged, authorized or ratified supervisor's activity or acted in such manner to lead Ees to reasonably believe that he was acting on behalf of E)

Wm. Chalson & Co., Inc. 252 NLRB No. 006

(Ee assistant foreman in his activities focusing on unlawful solicitation of anti-U petition from Ees, imputed unlawful activity to E by his apparent authority derived from management support and approval of his activities; solicitation campaign was implicitly adopted and supported by E's supervisors and Ees could reasonably believe that activities of assistant foreman reflected E's policy)

B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg. 251 NLRB No. 179

(notwithstanding E referred to Ee as supervisor, Ee found to be an agent of E and not a supervisor,where Ee had none of the authority vested in supervisory personnel and relayed information from management to Ees; he had been placed by management in strategic position where Ees could reasonably believe he spoke on E's behalf)

Edgar L. Landen t/a Speed Mail Service 251 NLRB No. 064

(E responsible for acts of nonsupervisory Ee to whom he accorded visibly superior status, and whom he used as conduit to Ees concerning job assignments and layoffs so that Ees reasonably believed him allied with and speaking for management)

Bell Industries, Inc. JD-479-82

(individual who was purchasing agent held agent of E in view of Ee's long time employment with E, his hiring of Ees in past, occupies choice office, reference in conversations with Ees to E's attitude towards U, his custom of helping Ees with problems)

Fort Wayne Truck Parts & Equipment, Inc. JD-371-82

(*production scheduler* at manufacturer of truck parts and cab assemblies who attended weekly production meeting with acknowledged supervisors, engineering and purchasing personnel and which was not restricted to supervisors, held not agent of E, absent evidence E clothed him with authority or held him out to Ees as person who could speak for management or that Ees believed him to have such authority; further, he was paid hourly wage and punched time clock, but worked slightly different hours from other Ees)

Chair Makers, Inc. JD-(SF)-4-82

(if not supervisor, lead person was agent for E, since lead person's conduct and regular duties caused sewing department Ees to reasonably believe lead person was acting on behalf of management)

Illinois Valley Electric Cooperative, Inc. JD-281-81

(line superintendent held E's agent where he was strategically situated by general manager so that Ees could reasonably assume that he spoke on behalf of management)

Bailey Glass Company, Inc., and/or Blue Mountain Glass Mfg., Inc., d/b/a Bailey Glass JD-452-80

(E responsible for acts of Ee in regard to directly discussing with Ees insurance rates being negotiated where E placed Ee in position which identified him with management and Ees could reasonably believe that Ee's comments reflected management's position)

Hart Ski Mfg. Co., Inc. JD-11-80

(individual held agent of E since Ees could reasonably believe him to be speaking for E where he was part owner of company with which E had announced planned merger, was frequently present in plant coordinating corporate relationships and assisting with production technology, and E did not disavow his statements which were alleged to be violative)

Batavia Nursing Convalescent Inn, Inc. JD-23-80

(whether or not individual considered to be *has* fell w/i statutory definition of *supervisor* held that such individual was at all relevant times so clearly identified with E's management that he must be concluded to be agent of E)

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)

(actions of Ee who advertised himself to customers and Ees as Vice-president of E; occasionally interviewed applicants and made recommendations as to hiring and occasionally attended managerial meetings imputed to E, since actions may be imputed to E regardless of supervisory status where E placed Ee in position which reasonably fosters appearance and belief Ee acts on behalf of management and in view of ratification of statements by E)

N.L.R.B. v. Maywood Plant of Grede Plastics 628 F.2d 1 (C.A.D.C.)

(responsibility for individual's conduct held correctly attributed to E either on basis thatindividual was a supervisor or that E was using individual in campaign to oust U)

Hirsch, etc. v. Trim Lean Meat Products, Inc. 479 F.Supp. 1351 (DC DE, Jan. 1980)

(conduct of Ee held attributable to E, notwithstanding he was not supervisor, where he represented E at Ee meeting, represented management's position to Ee that he could return to work if he signed authorization card, and Ees regarded him as supervisor)

5028-2575 Related to supervisor

Rapid Manufacturing Co. v. N.L.R.B. 612 F.2d 144 (C.A. 3)

(ct was extremely dubious that evidence showing one of Ee's brothers was co-owner of plant and that another was a supervisor supported Bd's finding of agency; ct noted that its failure to deal with agency issue, in face of E's concession that substantial evidence supported ULP findings, in no way suggests that Ee who is related to company officials is, w/o more, an agent of E so that she may be precluded from expressing views on unionization during election campaign)

N.L.R.B. v. Willhow Corporation, d/b/a Town and Country Supermarkets 666 F.2d 1294 (C.A. 10, Dec. 1981)

(Ee who was married to store manager found agent of E due to small number of Ees at store, her visibility and role in store operations; formal supervisory authority is not necessary for E responsibility)

5028-2583 Family relationship to owner or officer

Hillside Avenue Pharmacy, Inc. 265 NLRB No. 205

(E held responsible for threat made by his wife to Ees that E's facility would be closed if U got in, where E's conduct underscored such statement, and E at no time made any effort to negate it)

Knogo Corporation 262 NLRB No. 171

(son of E's president found agent of E where he was employed at E as accountant, signed paychecks, lived with his parents, was beneficiary to large trust from E's stock and received sole income from E)

Ivan-Ivan and Foodarama, Inc. d/b/a Foodarama 260 NLRB No. 046

(wife of owner of store not agent where she was not Ee of store, holds no office or any ownership at all)

Berger Transfer and Storage, Inc. 263 NLRB No. 002

(wife of high company official who questioned striker about why Ees were engaged in U activities held agent for E where questioning done in presence of her husband)

Formaloy Corp. JD-(ATL)-87-81

(E accountable for acts of brother of part owner and officer of E where brother accorded different treatment from rank and file Ees and Ees could reasonably believe brother's anti-U activity reflected E's policy)

A-1 Building Materials JD-828-79

(Ee son of owners of E found to be supervisor and agent of E where parents own 100% of company stock, father held son out to Ees as his trainee successor and son gave work instructions and permission to leave work when his father was absent)

Rapid Manufacturing Co. v. N.L.R.B. 612 F.2d 144 (C.A. 3)

(ct was extremely dubious that evidence showing one of Ee's brothers was co-owner of plant and that another was a supervisor supported Bd's finding of agency; ct noted that its failure to deal with agency issue, in face of E's concession that substantial evidence supported ULP findings, in no way suggests that Ee who is related to company officials is, w/o more, an agent of E so that she may be precluded from expressing views on unionization during election campaign)

N.L.R.B. v. Mars Sales & Equipment Co. 626 F.2d 567 (C.A. 7, 1980)

(ct adopted Bd's conclusion that conduct of 3 Ees was attributable to E inasmuch as all 3 Ees were closely related to E's president, E was small family corporation with 2 of these 3 Ees sitting on board of directors)

5028-3000 Outsiders

5028-3010 Attorneys or other advisors

5028-5010—Cont.

Local Union No. 2362, Lumber, Production and Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Phost Construction, Inc.) **259 NLRB No. 120**

(attorney for primary E not agent for secondary E where attorney only agreed to transmit information to secondary E, and U merely *assumed* that attorney represented secondary)

Flair Molded Plastics, Inc. **250 NLRB No. 017**

(attorney of record)

Streamway Division of The Scott & Fetzer Co. **249 NLRB No. 054**

(even though Ees were unable to specifically identify agent of E, E held responsible for conduct of member of firm employed by E to conduct attitude survey among Ees, where firm's member to whom critical remarks were attributed was placed in his position of apparent authority by E; even if firm did not rise to level of agent w/i Sec. 2(13), E is still responsible for its conduct under Sec. 2(2) under circumstances herein)

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**

(attorney who had handled cases and other legal matters for E held E's agent acting as go-between with favored U in E's assistance and support of favored U, notwithstanding attorney was also U's agent with authority to sign contract with E on U's behalf)

5028-5030 Civic officials and others prominent in community

U. S. Electrical Motors, A Division of Emerson Electric Co. **261 NLRB No. 184**

(newspaper editor was not acting as E's agent in publishing article and editorial based on E's plant manager's remarks made at private club luncheon, since editor was not authorized to act on behalf of E but was acting in own interest in seeking and receiving permission to publish article based on plant manager's *off the record* remarks, and, although publication coincided in time and paralleled theme of E's unlawful anti-U statements in meetings held later, with Ees, the *off-the-record* remarks had contained none of the publication's allegedly unlawful statements)

Tylertown Wood Products **251 NLRB No. 048**

(local minister who, allegedly acting as E's agent, made unlawful statements to Ees held not agent of E, since he was not placed in position to be identified with management in eyes of Ees and to translate to them policies and desires of management)

5028-5040 Employees of independent contractor

Hudson Oxygen Therapy Sales Company **264 NLRB No. 004**

(guard contracted for by E with security firm assertedly to protect E's property and Ees in event of strike held agent of E who is responsible for guard's action in arresting Ee engaged in election day U campaigning, notwithstanding E had not specifically authorized guard's action; moreover, even if agency did not exist at the time, E was responsible since it condoned and ratified guard's conduct by failing to disavow guard's acts after learning of his treatment of E)

Methodist Hospital of Indiana, Inc. **JD-85-82**

(supervisor of contractor engaged to perform cleaning services held agent where he supervised Ees, attended meetings with E's supervisors and distributed E's literature)

5028-5048 Lessor

Broad Street Lincoln Mercury, Inc. **JD-208-80**

(E responsible for antiU campaign which it did nothing to disavow and which it permitted former owner and operator to carry on on its premises; former owner was parent of present owners and leased them one of buildings they used)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(length of lease term in no way affects relationship between taxi companies and their drivers while latter are operating leased vehicles)

5028-5054 Labor consultant

St. Francis Hospital **263 NLRB No. 109**

(entity engaged in business of representing E concerning labor relations and other matters and hired by E to conduct its anti-U campaign held not to have been co-manager of E's anti-U campaign or co-E with instant E (no agency alleged in C), since E's managers were instructed by E to accept advice and carry out instructions which came from labor relations advisor, but advisor did not have direct control over supervisors and did not deal with rank-and-file Ees)

Shirt Shed, Inc. **252 NLRB No. 042**

Logan Coca Cola Bottling Company **250 NLRB No. 164**

(interrogation of Ees by E's labor relations consultant violative where he neither advised them of purpose of questions nor indicated to them that participation was voluntary)

Methodist Hospital of Indiana, Inc. **JD-85-82**

(representative of management firm engaged to represent E in U negotiations, improving supervisory effectiveness, changing personnel policies, etc., held agent)

5028-5055 Other employers

Cardio Data Systems Corp. **264 NLRB No. 011**

(statement, herein found unlawful, made by general manager of company constituting single E with E herein, which was made on constituent company's stationery and was posted on bulletin board used by E to publicize similar statements made by E's management, held attributable to E)

Hassly Hardwood Lumber Co. **JD-285-81**

(remarks of speaker invited by E to address assembled Ees who informed Ees that he had closed firm because of U, and following which remarks E threatened to close plant if U came in, imputed to E and unlawful)

5028-5080 Persons related to employer's agents

Airborne Freight Corporation **263 NLRB No. 181**

(where company official's wife solicited individual as new hire, official's wife was found agent of company, since individual solicited had good reason to believe company official's wife was acting pursuant to company authority on basis of authority of her husband; moreover the company official ratified the solicitation by hiring the individual his wife had solicited)

5028-5090 Welfare fund and trustees

Warehousemen's Union Local 334 a/k/a Teamsters Union, Local No. 582 (The Crescent, Division of The Halle Brothers Company) **253 NLRB No. 109**

(authority of trustees limited to benefits agreed upon in bargaining agreement and changes in thrust agreement to include benefits rejected during collective bargaining held unlawful, notwithstanding agreement of majority of both E and U trustees, since trust agreements are mere products of collective bargaining and not extension thereof)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**

(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors,* 539 F.2d 222)

5028-6200 Employer association members and officers

Crane Sheet Metal, Inc. **248 NLRB No. 015**

(where E-association is clothed with authority to negotiate for E, its' actions will bind E notwithstanding it misrepresented to U or failed to inform U of crucial facts pertinent to basis or extent of its authority)

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. **675 F.2d 256 (C.A. 10, Apr. 1982)**

(apparent authority sufficient to determine whether multi-E bargaining unit is acting as agent of Es so as to bind individual E by bargaining unit's acts; whether specific acts were actually authorized or subsequently ratified not controlling)

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. **675 F.2d 256 (C.A. 10, Apr. 1982)**

(test to determine multi-E unit's apparent authority is whether individual E has indicated unequivocal intention to be bound by group action and whether U has been notified of existence of group and delegation of bargaining authority to it and has assented to and entered upon negotiating with group's representative)

5028-7500 Supervisory employees and management representatives

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**

(supervisor who was instructed in management meetings to speak to Ees concerning E's opposition to U and was furnished materials for such purpose held agent of E)

N.L.R.B. v. Cable Vision, Inc. **660 F.2d 1 (C.A. 1, Sept. 1981)**

(although supervisor did not work at E's operation involved herein but was supervisor at another of E's subsidiaries, his views concerning U, expressed to Ees at plant herein and alleged to be unlawful, held bound to carry weight)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**

(E held responsible for plant managers threats to U officials concerning contract negotiations; E is responsible when Ees have just cause to believe that a supervisor was acting for and on behalf of E, and U officials herein

5028-7500—Cont.

would be justified in believing that manager spoke for E in view of his position as plant manager and his role in previous contract negotiations)

5028-7501 Generally

Connecticut Distributors, Inc. 258 NLRB No. 170

(supervisor who was U member and included in bargaining unit found agent of E when he circulated decertification ptn)

St. Joseph's Hospital 254 NLRB No. 077

(*it is difficult to consider individual to be statutory supervisor w/o also considering her to be agent of E, of course Es can be agent w/o being supervisor*)

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(district ct erred when it found no reasonable cause to believe interrogations violated Act since unable to determine interrogator's actual or perceived authority where E had stipulated interrogator was supervisor; further, interrogator controlled assignment of work, Ees perceived they were threatened, particularly where they deliberately withheld information from supervisor)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. 643 F.2d 687 (C.A. 10, Mar 2, 1981)

(finding of supervisory status not always necessary before imputing individual's actions to E)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. 643 F.2d 687 (C.A. 10, Mar 2, 1981)

(in some circumstances supervisor's acts cannot be imputed to E)

5028-7501-5000 Effect of supervisor's erroneous inclusion in bargaining unit

Union Oil Company of California, Polymer PLant 258 NLRB No. 168

(where lead operators were allowed to vote in election pursuant to stipulation, statements made by them are attributable to E as Ees considered them their bosses or supervisors and they are the only supervisors or management officials in plant on regular basis on second and third shifts)

5028-7514 Authorization and ratification by employer of supervisor's acts

Times-Herald, Inc. 253 NLRB No. 066

(no violation when, in response to question asked by supervisory member of unit, E told him there was way Ees could end strike and referred him to Regional Office of Bd from which he thereafter received decertification ptn which he filed; there was no evidence that any Ee reasonably believed supervisor was acting on behalf of management, and GC failed to present any evidence relating to circumstances in which the solicitations for decertification of U were made)

Flexsteel Industries, Inc. JD-(SF)-274-79

(supervisor's friendly warnings to Ees concerning their U activities which were not ratified by or even know by E, not attributable to E)

5028-7514-2500 Expressly authorized

Advanced Mining Group, Div. of Republic Corp., Luzerne Facility 260 NLRB No. 073

(Ees were led to believe that anti-U Ee group, known as *SCAB*, was acting on behalf of and with E's approval where E asked Ees to join *SCAB*, permitted SCAB members to use worktime for solicitation to join anti-U campaign and provided SCAB members and E's supervisors with time, equipment and *Vote No* buttons to promote anti-U campaign)

5028-7514-8000 Unnecessary

Kimberly-Clark Corporation JD-(SF)-291-81

(threats of supervisor who was invested with authority to reprimand, discipline and discharge Ees imputed to E since he had authority to carry out threats; further, reasonable for Ees to believe supervisor could carry out threats and under Section 2(13) of Act whether supervisor's conduct actually authorized or subsequently ratified by E not controlling)

5028-7528 Indicia of power to bind

5028-7528-0100 Generally

Tri-Supply Company of Beaumont, Inc. JD-(SF)-29-80

(E was bound by assistant supervisor's post-election statements, notwithstanding fact that he exercised supervisory responsibilities relatively infrequently)

5028-7528-1200 Authority to negotiate on behalf of employer

Progressive Medical Group, Inc., t/a Walnut Hill Convalescent Center 260 NLRB No. 039

(agent appointed to negotiate bargaining agreement is deemed to have apparent authority to bind his principal in absence of clear notice to the contrary; in instant case, there was clear notice that E's agents had no independent authority to bind E and there was no clear notice that E's board of directors reserved right to act upon agreement only after it had been accepted by bargaining unit Ees)

5028-7528-2000 Employees have just cause to believe supervisor's acting for employer

Burnup & Sims, Inc. 256 NLRB No. 142

(crew foreman of subcontractor engaged in cable splicing work for telephone company held supervisor and whose decision to grant time off to his *entire crew* E was bound, since foreman was management representative empowered to grant days off as well as directing work of splicing crew; crew could have reasonably believed that foreman was acting for and on behalf of E)

Armour Oil Company 253 NLRB No. 148

(acting terminal manager at time of ULP held agent of E, since he was responsible for operation of terminal during period between terminal manager's termination and employment of new manager; Ees could reasonably have believed acting terminal manager was E's agent)

EMR Photoelectric, A Division of Sangamo Weston Inc. 251 NLRB No. 214

(E's general manager and its executive vice-president held agents of E where Ees were clearly justified in believing they were authorized to speak for management in expressing opposition to U)

Kimberly-Clark Corporation JD-(SF)-291-81

(threats of supervisor who was invested with authority to reprimand, discipline and discharge Ees imputed to E since he had authority to carry out threats; further, reasonable for Ees to believe supervisor could carry out threats and under Section 2(13) of Act whether supervisor's conduct actually authorized or subsequently ratified by E not controlling)

N.L.R.B. v. Proler International Corporation 635 F.2d 351 (C.A. 5, 1981)

5028-7528-5000 Minor supervisory duties

Butler-Johnson Corporation v. N.L.R.B. 608 F.2d 1303 (C.A. 9)

(comments by *low level supervisor* not conclusive as to E's liability since statements by low-level, marginal supervisors are less likely to influence Ees' decision than statements by high level officials which bear imprint of company policy)

Butler-Johnson Corporation v. N.L.R.B. 608 F.2d 1303 (C.A. 9)

(no violation, where no evidence E authorized remarks of *low level supervisor;* further, where *low level supervisor* had voted in election and Ees knew that his anti-U bias was personal Ees did not have just cause to believe he had made threatening remarks on behalf of management)

5028-7542 Self-organization, supervisors' own interest in, does not relieve employer of responsibility for their anti-union activity

5028-7542-3300 But inclusion in bargaining unit rebuts employer responsibility absent authorization or ratification

Robertshaw Controls Company 263 NLRB No. 128

(where supervisors were part of bargaining unit but Ees did not feel they were acting on behalf of management, their solicitation of Ees by circulating decertification petition is not attributable to E and thus not violative)

5028-7556 Supervisors' participation in union affairs imputable to employer

5028-7556-3300 Good faith immaterial

St. Joseph's Hospital 254 NLRB No. 077

(individual who was member of U negotiating committee agent of E after she had been held statutory supervisor by RD, notwithstanding E was not responsible for her presence on committee, no apparent conflict of interest or communication with management)

5028-7556-3333 Express authorization or ratification not necessary

Polk Bros. Concrete Products 256 NLRB No. 128

(E violated Act where its plant manager first initiated U activity w/o knowledge of E and then solicited Ees to sign ptn disavowing interest in U especially where E had expressed its opposition to U, notwithstanding plant manager acted contrary to E's specific instructions not to involve himself with ptn; moreover, Ee's thought supervisor was speaking for E; therefore, R/O proper remedy)

5028-7556-6700 Forms of participation

Maidsville Coal Co., Inc. 257 NLRB No. 148

(supervisor who had minimal contact with U and also friendly relationship with Ees still held agent of E and thus his interrogation of Ees concerning U violative)

St. Joseph's Hospital 254 NLRB No. 077

(individual who was member of U negotiating committee agent of E after she had been held statutory supervisor by RD, notwithstanding E was not responsible for her presence on committee, no apparent conflict of interest or communication with management)

5028-7570 Types of employees

Hollander Home Fashion Corp. 285 NLRB No. 142

(Ees who, acting solely on E's instruction, distributed authorization cards for favored U held agents for E who is accountable for their actions)

5028-7570-0300 Secretary

5028-7570-0300—Cont.

Management Training Corporation (Formerly Thiokol Corporation) **261 NLRB No. 013**
(confidential secretary who was excluded from unit not found agent of E where though her duties included relaying instructions and directions of E to Ees more of nexus is needed)

5028-7570-0600 Bookkeeper

Chester Valley, Inc. **251 NLRB No. 190**
(E held answerable for controller's promises of financial benefit to Ees, in view of E's admission in its answer that controller was E agent, controller's participation in E conference and compliance with company attorney's instructions in making promises, supervision over office staff, and fact that Ees had just cause to believe that controller had authority to advise them about what E's decision about wages and benefits would be)

5028-7570-1200 Foreman or immediate supervisor

Classic Industries, Inc. **254 NLRB No. 149**
(nonsupervisory foreman held agent of E where E used him as conduit for its instructions to Ees, clothed him with authority to receive requests for time off, assigned him to oversee performances of Ees on his shift and used him as company spokesperson among other Ees; therefore his actions in conducting election for Ee committee attributable to E whether or not E actually authorized or subsequently ratified them)

Arcadia Foods, Inc. **254 NLRB No. 128**
(E not responsible for supervisor circulating decertification ptn among Ees where supervisor was part of bargaining unit and record disclosed no evidence that E encouraged, authorized or ratified supervisor's activity or acted in such manner to lead Ees to reasonably believe that he was acting on behalf of E)

B. E. & K., Inc. **252 NLRB No. 036**
(E's denial of responsibility for allegedly unlawful acts of general foreman, who was U member and sympathetic to U cause, on ground he was U agent, rejected, where there was no evidence that he acted in latter capacity in committing alleged unlawful acts; or that, in conduct complained of, he did other than communicate what he knew or construed to be company policy; nor does evidence reveal circumstances that would have caused Ees to believe that foreman's statements were mere personal opinions)

Church's Fried Chicken, Inc. **JD-(SF)-301-79**
(E whose only retaliation against supervisor (who had engaged in unlawful surveillance and violence against Ees while attending U organizing meeting) was to demote him and assign him to a remote area violated Act as this did not effectively repudiate supervisor's actions)

Connecticut Distributors, Inc. v. N.L.R.B **681 F.2d 127 (C.A. 2, June 1982)**
(If Ee found supervisor and is also member of U, E is responsible for his circulation of anti-U petitions only if it encouraged, authorized, or ratified supervisor's activities)

5028-7570-2400 Individual trustees of union welfare fund

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) **614 F.2d 872 (C.A. 3) (1980)**
(U'sinsisting to impasse and striking to obtain E's participation in U's Section 302(c)(5) pension and welfare trust funds whose management trustee was not selected by E, violative, since trust fund's management trustees are collective bargaining representatives w/i meaning of Section 8(b)(1)(B); See *Associated Contractors*, 559 F.2d 222)

5028-7570-2800 Guards

Brunswick Hospital Center, Inc. **265 NLRB No. 112**
(threat made by E to guard that two striking nurses were troublemakers and no matter what outcome of strike would be, they would not be employed again by E held violative, notwithstanding threat was made to *guard* not member of unit of nurses; *guards* not supervisors as defined in Act and customary exclusionary language in Act does not presume guards are supervisors; both guards and nurses had Ee status, therefore threat was coercive)

Harrison Steel Castings Company **262 NLRB No. 059**
(security guard at gatehouse clothed with apparent authority to restrict access of all who would enter company premises and that her comments to organizers not to distribute literature on public property adjacent to gatehouse were w/i scope of that authority)

5028-7570-3000 Leadmen

Injected Rubber Products Corp. **258 NLRB No. 092**
(leadmen held agents of E, notwithstanding not supervisors, where E had made it clear that leadmen were eyes of management for purpose of reporting to management, transmitted instructions and disciplinary notices, communicated with management if emergency during shifts where management not present, and kept log books)

Injected Rubber Products Corp. **258 NLRB No. 092**
(questioning of Ees regarding their U views by leadmen imputed to E and unlawful, since leadmen held agents of E, notwithstanding not supervisor, since Ees could reasonably believe questioning was at direction of management where E had made it clear to Ees that leadmen were eyes of management for purpose of reporting to management, transmitted instructions and disciplinary notices, communicated with management if emergency during shifts where management not working and kept log book)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**
(responsibility for individual's conduct held correctly attributed to E either on basis thatindividual was a supervisor or that E was using individual in campaign to oust U)

5028-7570-3600 Officers, executives, etc.

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's general manager and its executive vice-president held agents of E where Ees were clearly justified in believing they were authorized to speak for management in expressing opposition to U)

N.L.R.B. v. Chester Valley, Inc. **652 F.2d 263 (C.A. 2, June 1981)**
(there was ample reason to conclude that Ees would believe company controller was speaking as representative of E where he was treated as member of management, participated in discussions with company counsel regarding organizing campaign, kept company records, supervised office staff and was consulted by Ees on payroll matters)

5028-7570-4800 Personnel counselor or staff member

J. P. Stevens and Company, Inc. **247 NLRB No. 044**
(personnel office Ee held agent of E where he was placed in *strategic position* so that his apparent authority to act on E's behalf could be fairly implied and Ees could reasonably believe he reflected E's policy)

5028-7570-5400 Personnel officials

Union Independiente De Empleados De Servicios Legales De Puerto Rico (Corporation de Servicios Legales De Puerto Rico, Inc.) **249 NLRB NO. 147**
(personnel relations officer held E's representative for purposes of collective bargaining and adjustment of grievances, notwithstanding U's contention that officer ceased to be such representative when he assertedly was relieved of his duties, where subsequent thereto officer continued to consider and recommend grievance dispositions, and E's offer to him of different managerial position was conditional and never effectuated)

Red Oaks Nursing Home, Inc. v. N.L.R.B. **633 F.2d 503 (C.A. 7, 1980)**
(Ee who had title of *personnel director*, held agent of management, notwithstanding that most of her duties were clerical in nature and some Ees regarded her as merely payroll clerk, where she often made contact with other Ees with respect to pay, insurance, and disciplinary matters and she was invited to management campaign strategy meeting because of her frequent contact with Ees on employment matters)

5028-7570-6000 Plant manager

Polk Bros. Concrete Products **256 NLRB No. 128**
(E violated Act where its plant manager first initiated U activity w/o knowledge of E and then solicited Ees to sign ptn disavowing interest in U especially where E had expressed its opposition to U, notwithstanding plant manager acted contrary to E's specific instructions not to involve himself with ptn; moreover, Ee's thought supervisor was speaking for E; therefore, R/O proper remedy)

Armour Oil Company **253 NLRB No. 148**
(acting terminal manager at time of ULP held agent of E, since he was responsible for operation of terminal during period between terminal manager's termination and employment of new manager; Ees could reasonably have believed acting terminal manager was E's agent)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's general manager and its executive vice-president held agents of E where Ees were clearly justified in believing they were authorized to speak for management in expressing opposition to U)

5028-7570-8000 Purchasing agent

Bell Industries, Inc. **JD-479-82**
(individual who was purchasing agent held agent of E in view of Ee's long time employment with E, his hiring of Ees in past, occupies choice office, reference in conversations with Ees to E's attitude towards U, his custom of helping Ees with problems)

5028-7570-9000 Inspector

Convair Corporation **261 NLRB No. 178**
(Ee who was inspector of various assembly line products held agent of E where Ee circulated among Ees, actively sought to persuade them to reject U, his activity was at least implicitly if not expressly supported by his supervisor, and Ees reasonably believed that Ee reflected company policy and acted for management)

5028-7570-9900 Other

5028-7570-9900—Cont.

Jules V. Lane, D.D.S., P.C. **262 NLRB No. 013**
(assistant to director found E's agent in interrogating one Ee and threatening to discharge another as well as in announcing, in supervisors' presence, withdrawal of certain privileges, since Ees would have reasonably believed he spoke for management in view of his position and duties and fact that his interrogation and threats were consistent with and coincided in time with E's other ULPs)

Atlas Minerals, Division of Atlas Corporation **256 NLRB No. 022**
(environmental coordinator at uranium mining company, who also functioned as substitute instructor for new Ees, held to have actual and apparent authority to act as instructor and agent of E who is accountable for coordinator's unlawful statements to Ees during training course)

5042 RESPONSIBILITY OF UNION FOR ACTS OF OTHERS

5042-0100 Generally

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**
(even if Ees had acted on their own in refusing to work at jobsite with another U's members, U agent's later authorization of another Ee's refusal to work under same conditions constituted U ratification of prior conduct; express authorization is not essential to bind U, agency may be inferred from all the circumstances, U is in no different position than any other legal entity when agency issue is in dispute, and U may ratify acts of Ees by affirming prior acts which did not bind U when done)

United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canda, Local No. 195, AFL-CIO **JD-(SF)-330-81**
(claim of agency made by purported agent does not establish such relationship)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U cannot abdicate responsibility to control its picket line with inaction where either U leaders or picket captains are present when picket line misconduct occurred)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U liable for picket conduct away from picket line which was reasonable extension of actions which occurred on picket line)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U's toleration of picket interference with ingress and egress to facility, unlawful)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U violated Act where pickets damaged vehicles in presence of U agents)

N.L.R.B. v. Local 90, Plasterers **606 F.2d 189 (C.A. 7, 1979)**
(Bd may base finding of agency relationship on evidence that an individual was acting with knowledge and acquiescence of U and that he had implied authority to do what he did, since, under Section 2(13) of Act, labor organization's responsibility for acts of any individual is not dependent upon actual authorization or subsequent ratification)

5042-3300 Affiliated organizations

District 30, United Mine Workers of America (Beth-Elkhorn Corporation) **JD-19-81**
(local, but not district, held liable for unlawfully causing discharge of nonmember of U by engaging in strike where committeeman stated, in presence of local official who did not dissent, that object of strike was to prevent nonmember from working, local's president stated that men who had been with U for years should be employed before a man who had left U, and his direction to Ees to return to work fell far short of bona fide effort to resolve dispute since he and other U representatives abstained from working after nonmember reported for work)

District 30, United Mine Workers of America (Beth-Elkhorn Corporation) **JD-19-81**
(while its constituent local was held responsible, district held not liable for discharge of nonmember of U caused by local's strike, where district's participation in events was minimal in absence of proof that district instigated, authorized or participated in strike; and district field representative's statement at contractual grievance meeting regarding desirability of hiring U member was too ambiguous to impose liability, and his silence when U representative restated reason for strike may not be construed to be either a condonation or ratification of strike)

5042-3310 Sister Local

Local 513, Plumbers (Master Plumbers and Heating Contractors of the Twin Cities (Benton Harbor and St. Joseph, MI)) **264 NLRB No. 009**
(business agent of one local U held agent of 2 other locals in different jurisdictions where, on request of latter locals, business agent provided workers from his own local to enable these locals, to whom Ees reported to, to fulfill their obligations pursuant to exclusive hiring hall clauses rather than allow contractors in their jurisdictions to hire nonmembers)

Plumbers, Local Union 119 (Kamtech, Inc.264 **NLRB No. 004**
(where at request of business manager of local with jurisdiction over jobsite, business agent of members own local (both admitted agents of their respective locals) went to jobsite and identified members of his local and business manager threatened these Ees with bodily harm in presence of business agent who did not disavow threats, members were told by both they faced internal U charges and neither wanted members working job, Bd held they were agents acting in concert with each other, agents for each other's local and that each U served as agent for other)

5042-3340 Building trades council

Carpenters, Local # 308 v. N.L.R.B. **690 F.2d 661 (C.A. 8, July 1982)**
(council formed by merger o f serveral local Us and which acted in furtherace of local's interest's in negotiating bargaining agreement, held agent of local Us)

5042-3350 System council

Berry-Mahurin Construction, Inc. **258 NLRB No. 171**
(council formed by merger of several Local Us and to which Locals delegated responsibility for negotiating bargaining agreements and dealing with E's concerning grievances, labor disputes, wages, and conditions of employment, held agent of Us)

5042-3370 Local as agent of international or Building Trades Council

Detroit Building and Construction Trades Council, AFL-CIO **259 NLRB No. 129**
(Respondent-Carpenters District Council *jointly* responsible with Respondent-Local No. 982 for violations of Section 8(b)(4) of Act where provisions of constitutional By-Laws and Working Rules of Carpenters District Council included Local No. 982 and provisions established that Local's business agent, in handling instant dispute, was acting under direct supervision and control of District Council which took no actions of disavowel)

Local Union No. 46 Metallic Lathers and Reinforcing Iron Workers (Cement League) **259 NLRB No. 010**
(where International ratified disciplinary measures of local these measures are chargeable to International)

United Steelworkers of America, AFL-CIO-CLC, On Behalf of Its Local Union No. 15167 (Memphis Folding Stairs, Inc.) **258 NLRB No. 068**
(representatives of Local held agents of International where it was regular practice for local U agents to handle grievances at initial steps of proceeding, and International was party to collective-bargaining agreement with E and was thus discriminatees bargaining representative)

International Union, United Mine Workers of America; UMW District 21; UMW Local 2428 (Garland Coal & Mining Company) **258 NLRB No. 011**
(Respondent International responsible for acts of its subordinates where it delegated its contractual and statutory duty for enforcement of its contract to Ee mine committee and Respondent district; agency created)

Magic Pan, Inc. v. N.L.R.B. **627 F.2d 105 (C.A. 7, 1980)**
(international U not acting as front for local U of different international U; local was not substitute for international but was international's agent for handling matters concerning election, processes, ULPs, collective bargaining and contract enforcement; E, presented no evidence that international U intended to cede its certification to local or to abandon its bargaining rights)

5042-3380 International or other parent body

Jones Motor Co., Inc. **260 NLRB No. 015**
(common carrier holding meetings with Ees and unilaterally implementing change in rental payments to owner-operators (Ees) for lease of tractor-trailers in contravention of terms of multi E contract (FNMA), not violative, notwithstanding E did not discuss changes with local Us that represented Ees since E did consult with Teamsters National Freight Industry Negotiating Committee who had represented locals in contract negotiations and was agent for purposes of negotiations. See *Spector Freight Systems, Inc., Viking Division,* 260 NLRB No. 14 (1982))

5042-3380-7800 International

5042-3380-7500—Cont.

Local 714, Operating Engineers (Contractors Foundation Drilling Company) 262 NLRB No. 142

(International U violated Act where it affirmed Local's unlawful action when it had all facts when discriminatee appealed local's action and is thus jointly liable with local to reimburse discriminatee for losses incurred due to discriminatory action)

International Union, United Mine Workers of America; UMW District 21; UMW Local 2428 (Garland Coal & Mining Company) 258 NLRB No. 011

(Respondent International responsible for acts of its subordinates where it delegated its contractual and statutory duty for enforcement of its contract to Ee mine committee and Respondent district; agency created)

5042-3390 Joint employer - union trusts

N.L.R.B. v. Clerks and Checkers Local No. 1593, International Longshoremen's Association, AFL-CIO, et al. 644 F.2d 408 (C.A. 5, May 4, 1981)

(welfare, vacation, and pension fund administered by E-U trustees held agent of both E and U for limited purpose of accepting contributions from U ordered by Bd to remedy U's discrimination against U member resulting in his loss of contractual fringe benefits; for such purpose, fund is mere receptacle into which U must pay contributions in order to carry out Bd's backpay order and make Ee-beneficiaries whole for U's ULP)

N.L.R.B. v. Clerks and Checkers Local No. 1593, International Longshoremen's Association, AFL-CIO, et al. 644 F.2d 408 (C.A. 5, May 4, 1981)

(limited agency of welfare, vacation, and pension fund, administered jointly by E-U trustees to receive U contributions in order to remedy U's discrimination against U member resulting in his loss of contractual fringe benefits held not to confllict with common law principles or with ERISA provisions requiring trustees of such fund not be subject to control of any other person or organization, since it does not extend to trustees' decision involving investment of trust funds or determination of eligibility requirements for benefits)

N.L.R.B. v. Clerks and Checkers Local No. 1593, International Longshoremen's Association, AFL-CIO, et al. 644 F.2d 408 (C.A. 5, May 4, 1981)

(compliance by welfare, vacation, and pension fund, administered jointly by E-U trustees, and its acceptance of U contributions in order to remedy U's discrimination against U member resulting in his loss of contractual benefits held to fall squarely w/i fiduciary duty of fund's trustees imposed by ERISA and common law requiring administration of trust solely in interest of its beneficiaries; moreover, trustees have duty to take possession of trust property as soon as reasonably possible)

N.L.R.B. v. Driver Salesmen, Warehousemen, Food Handlers, Clerical & Industrial Production Teamsters Union, Local No. 582, a/w Teamsters 670 F.2d 855 (C.A. 9, Mar. 1982)

(contrary to Bd which found Trust made up of U and E trustees was agent of U and that its establishment of new benefits for U members constituted unilateral contract modification in violation of Sec. 8(b)(3), ct held Bd did not establish that Trust was agent of U and that U *caused* Trust to violate trust agreement where Trust was lawfully established, E trustees were not coerced by U trustees in voting in favor of proposal, and U's distribution of information about new benefits did not demonstrate U control over Trust)

Griffith Company; et al. v. N.L.R.B. 660 F.2d 406 (C.A. 9, Oct 1981)

(actions of neither trust fund administrator of joint E-Ee benefit trust nor his counsel attributable to U since none of the following situations present: (1) provisions of bargaining agreement remove discretionary of administrator to administer funds solely for benefit of Ees (2) where trustee's actions which are in question were directed by U officials (3) where trustees actions which are in question are undertaken in their capacity as U officials rather than as trustees)

Griffith Company; et al. v. N.L.R.B. 660 F.2d 406 (C.A. 9, Oct 1981)

(administrator of benefit funds threat to send renewed notice to contractors which would trigger U's right to withhold services because of contractor's failure to pay trust fund delinquencies of its subcontractors as provided in contract not violative, since neither administrator nor his counsel is agent of U merely because they attempted to secure prompt payment of delinquencies, *officials, under duty to maximize trust assets for beneficiaries, sought to fulfill this obligation by means short of filing suit for breach of contract; thus, actions were not done on behalf of U but to protect interests of beneficiaries*)

5042-6700 Agents

5042-6701 Generally

N.L.R.B. v. Eldorado Manufacturing Corporation and United Steelworkers of America, AFL-CIO 660 F.2d 1207 (C.A. 7, Sep. 1981)

(U held not liable for acts of its agents herein since in order to do so it must be clearly shown that what was done was done by their agents *in accordance with their fundamental agreement of association*, and, in order to establish U's liability under doctrine of respondant superior, evidence must be offered that U *instigated, supported, ratified, or encouraged* activity in question; and it was not shown that either situation existed)

5042-6701-2500 Agency established by knowledge and acquiescence in performance of union functions

N.L.R.B. v. Local 90, Plasterers 606 F.2d 189 (C.A. 7, 1979)

(evidence that U maintained what was, in essence, an office in the home of U business representative in charge of U job referral system, and testimony that the representative's wife often answered the referral phone and added job applicants' names to *idle list* when her husband was away, held substantial evidence of knowledge and acquiescence on part of U in the wife's activities on its behalf)

5042-6701-5000 Agency may be established by conduct

Local 300, Cosmetic and Novelties Workers' Union, Affiliated With International Production Service and Sales Employees Union 257 NLRB No. 174

(former Ee of E hired by U, prior to election, who acted as interpreter for E's Haitian Ees held agent of U since at time of alleged unlawful statements made by her, she acted as interpreter at request of U, was paid by U for her services and Ees reasonably could have believed that her statements reflected U policy)

Six Flags Over Mid-America, Inc. 253 NLRB No. 013

(Ees' statement that E's agreement to second election amounted to admission of guilt not attributable to U where 1 Ee's presence to assist U in arriving at election agreement meant nothing more than that U utilized U adherent with personal knowledge of work force and E's operation to provide it with necessary information preliminary to reaching election agreement and other Ee's presence at counsel table to assist U's counsel did not suggest that he possessed any agency status)

5042-6701-5025 Failure to repudiate conduct

Truck Drivers Local Union No. 449, Teamsters, et al. (Universal Liquor Corp.) 265 NLRB No. 199

(where trustees of pension fund used authority under contract to refuse to accept contributions for regular full-time Ees from Es who allegedly failed to execute stipulation unlawfully interpreted by trustees as extending Es' obligation to make contributions for casual, seasonal, or part-time Ees, trustees held agents of U in view of fact that trustees acted pursuant to authority granted by contracts, and U did not protest trustees' actions but supported erroneous interpretation by joining in effort to collect additional contributions even to point of sacrificing pension benefits of all Ees)

General Teamsters Local 959, State of Alaska (Frontier Transportation Company) 248 NLRB No. 108

(where U business representative was present and nodded his head when U member threatened Ee with physical violence for refusing to join strike and for failing to honor U's picket line, U held responsible for the threats to Ee, since U business representative's conduct constituted tacit approval of the member's threats)

United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canda, Local No. 195, AFL-CIO JD-(SF)-330-81

(if pickets engage in misconduct in presence of U agent, and that agent fails to disavow that conduct and take corrective measures, U may be held responsible)

Local 200, Service Employees International Union, AFL-CIO (Lakeside Nursing Home, Inc.) JD-195-80

(U held responsible for misconduct of picketers and students making common cause with picketers, since E acquiesced in and ratified such misconduct where picket captains failed to disavow or restrain misconduct)

5042-6701-7500 Source of authority

Truck Drivers Local Union No. 449, Teamsters, et al. (Universal Liquor Corp.) 265 NLRB No. 199

(where trustees of pension fund used authority under contract to refuse to accept contributions for regular full-time Ees from Es who allegedly failed to execute stipulation unlawfully interpreted by trustees as extending Es' obligation to make contributions for casual, seasonal, or part-time Ees, trustees held agents of U in view of fact that trustees acted pursuant to authority granted by contracts, and U did not protest trustees' actions but supported erroneous interpretation by joining in effort to collect additional contributions even to point of sacrificing pension benefits of all Ees)

East Texas Motor Freight 262 NLRB No. 101

(agency in instant case limited to contractual assignment of authority, i.e.: (1) investigation and presentation of grievances, and (2) transmission of mes-

5042-6701-7500—Cont.

sages and information; each incident evaluated to determine agency responsibility)

Teamsters Local Union No. 574, a/w Teamsters (Lois Wheeler, an Individual) **259 NLRB No. 037**
(as E-U's Secretary-Treasurer had authority under by-laws to hire office Ees and to fix their compensation, this is sufficient authority to permit him to establish wages, hours, and conditions of employment on collective basis and/or individual basis w/o Executive Board approval, and therefore, could sign contract recognizing U of office clericals, and such could not be repudiated by new administration)

International Union, United Mine Workers of America; UMW District 21; UMW Local 2428 (Garland Coal & Mining Company) **258 NLRB No. 011**
(Respondent International responsible for acts of its subordinates where it delegated its contractual and statutory duty for enforcement of its contract to Ee mine committee and Respondent district; agency created)

5042-6750 Joint employer-union agents

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**
(E representative acting as chairman on joint E-U review board created by U and industry Es for purpose of dealing with individuals problems relating to industry work held joint agent of both U and Es in arranging for, convening, and presiding at meetings of review board; and since chairman was clothed with apparent authority by U representative to deal with problems of E herein, latter acted reasonably in believing chairman had been authorized to act as U's agent in handling his problems)

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**
(jointly established and administered board and trust funds, created by U and industry Es for purpose of administering Ee welfare and employment plans held agents of U and Es, where joint board and funds exist by virtue of bargaining agreement pursuant to which joint board and funds are administered, function of *chairman* or *trustee* is not distinct from his function as E, and U plays important role in dictating policies of joint board and of chairman of subsidiary review board and manner in which review board exercises its advisory authority)

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**
(joint board's employment department created jointly by agreement of contracting Es and U to serve their mutual interests in providing a source of Ees for Es in industry held joint agent of Es and U; and U's advice to E that requests for Ees are to be made to department and E's testimony that he believed it was bound to seek referrals solely from department held to have created apparent authority in department to act for U)

Stage Employees Union, Local 592 (William A. Thomas, an Individual) **JD-358-82**
(business agent of local U who was also supervisor and agent for E and made crew calls for assembling stage crews for E held dual agent; fact that he was agent for E did not prevent him from being agent of U as well since hiring authority can be dual agent)

5042-6767 Responsibility for acts within agent's scope of employment

5042-6767-0100 Generally

International Union, United Mine Workers of America; UMW District 21; UMW Local 2428 (Garland Coal & Mining Company) **258 NLRB No. 011**
(Respondent International responsible for acts of its subordinates where it delegated its contractual and statutory duty for enforcement of its contract to Ee mine committee and Respondent district; agency created)

5042-6767-5000 Apparent authority controlling

Boilermakers, Local Union No. 154 (Western Pennsylvania Service Contractors Association, etc.) **253 NLRB No. 098**
(an assistant in U's training program, who, when alone at hiring hall, had authority to refer individuals to jobs and who, insofar as visitors could tell, had authority generally to act and speak for U found to have been held out to public as U's agent)

5042-6767-8000 Express authorization not required

Local 398, Cosmetic and Novelties Workers' Union, Affiliated With International Production Service and Sales Employees Union **257 NLRB No. 174**

Teamsters Local 312 a/w Teamsters (William E. Conne, an Individual) **JD-378-81**
(assistant steward's threat of violence and actual assault on Ee held misconduct of agent w/i his apparent authority which created, by itself, responsibility of U; later actions of U president and U steward, in effect approving what assistant steward had done, including making threats of their own to Ee, constituted condonation and ratification by U of misconduct of assistant steward)

5042-6767-5000 Where authority not expressly limited

East Texas Motor Freight **262 NLRB No. 101**
(agency in instant case limited to contractual assignment of authority, i.e.: (1) investigation and presentation of grievances, and (2) transmission of messages and information; each incident evaluated to determine agency responsibility)

5042-6767-7500 Participation of agent in chain of union command

East Texas Motor Freight **262 NLRB No. 101**
(notwithstanding that U steward, when assaulting Ee outside of U meeting hall, was not acting as agent of U during assault, U's failure to reprimand steward or make any effort to prevent him from engaging in such conduct in future held violative, since failing to act in connection with preventing assault constituted condonation of steward's action by U)

5042-6783 Special types of agents

5042-6783-2000 Attorney

Cas Walker's Cash Stores Inc. **249 NLRB No. 041**

5042-6783-3000 Business agents

Local 513, Plumbers (Master Plumbers and Heating Contractors of the Twin Cities (Benton Harbor and St. Joseph, MI)) **264 NLRB No. 059**
(business agent of one local U held agent of 2 other locals in different jurisdictions where, on request of latter locals, business agent provided workers from his own local to enable these locals, to whom Ees reported to, to fulfill their obligations pursuant to exclusive hiring hall clauses rather than allow contractors in their jurisdictions to hire nonmembers)

East Texas Motor Freight **262 NLRB No. 101**

Detroit Building and Construction Trades Council, AFL-CIO **259 NLRB No. 129**
(Respondent-Carpenters District Council *jointly* responsible with Respondent-Local No. 982 for violations of Section 8(b)(4) of Act where provisions of constitutional By-Laws and Working Rules of Carpenters District Council included Local No. 982 and provisions established that Local's business agent, in handling instant dispute, was acting under direct supervision and control of District Council which took no actions of disavowel)

Consolidated Dress Carriers, Inc., et al. **259 NLRB No. 083**
(where striking Ees have signed U authorization cards, and joined in strike under U supervision, general agency is created which empowers U through its representatives to offer to return to work on behalf of all striking Ees w/o obtaining specific authorization from Ees to do so)

United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canda, Local No. 195, AFL-CIO **JD-(SF)-330-81**
(if pickets engage in misconduct in presence of U agent, and that agent fails to disavow that conduct and take corrective measures, U may be held responsible)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(officers, organizers and business agents are agents of U in context of strike w/i meaning of Section 2(2) of Act)

5042-6783-3200 Member of union official's family

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(foreman not agent of U notwithstanding U member and additionally brother of U's secretary-business manager where he did not need U approval to obtain contract with E, never held any U office, does not participate in U meetings, is not member of bargaining unit, and enjoyed no special privileges because of relationship to U's business manager; moreover, agency relationship is not created even though discharges foreman effectuated benefited U)

5042-6783-4000 Foreman

Tower Hotel Company, d/b/a Holiday Inn Riverfront **250 NLRB No. 010**
(foreman not agent of U notwithstanding U member and additionally brother of U's secretary-business manager where he did not need U approval to obtain contract with E, never held any U office, does not participate in U meetings, is not member of bargaining unit, and enjoyed no special privileges because of relationship to U's business manager; moreover, agency relationship is not created even though discharges foreman effectuated benefited U)

5042-6783-4500 Employee committee

5042-6783-4500—Cont.

International Union, United Mine Workers of America; UMW District 21; UMW Local 2428 (Garland Coal & Mining Company) **258 NLRB No. 011**
(Respondent International responsible for acts of its subordinates where it delegated its contractual and statutory duty for enforcement of its contract to Ee mine committee and Respondent district; agency created)

5042-6783-5500 Family member or relative

N.L.R.B. v. Local 90, Plasterers **606 F.2d 189 (C.A. 7, 1979)**
(wife of U business representative, held agent of U, where her husband was in charge of U's referral system; U phone which Ees would call for placement on U *idle list* was kept at her home; and, when her husband was away, she answered the referral phone, took names of Ees and placed same on the list)

5042-6783-7000 Officers and directors

Jackson Engineering Co. **265 NLRB No. 175**
(where U president was found to be U agent in unlawful arrangement entered into between U vice president and E for kickbacks by E by U, it was irrelevant that president was not indicted together with vice president for criminal conduct in connection with payments; proof necessary in criminal proceedings is different from evidence necessary to establish violation of Act; nor was it necessary to find that president received any payments from E, since it was sufficient to find that president condoned and approved vice president's activities)

Jackson Engineering Co. **265 NLRB No. 175**
(U's president and vice president held U agents in their participation in unlawful arrangement for receipt of kickbacks from E from all business referred to E by U, where arrangement arose out of E's decision to sign U contract; U's interests were furthered by increase in E's business resulting in more work for U members and more moneys paid to U; conduct of vice president, who received payments at U office and administered contract, can hardly be called *individual frolic* or *personal adventure*; and U president condoned and approved arrangement)

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) **259 NLRB No. 037**
(as E-U's Secretary-Treasurer had authority under by-laws to hire office Ees and to fix their compensation, this is sufficient authority to permit him to establish wages, hours, and conditions of employment on collective basis and/or individual basis w/o Executive Board approval, and therefore, could sign contract recognizing U of office clericals, and such could not be repudiated by new administration)

International Union of Petroleum and Industrial Workers, AFL-CIO (Chevron U.S.A. Inc.) **JD-(SF)-172-81**
(International responsible for actions of president of local where U constitution and bylaws was silent with regard to authority of local's president)

5042-6783-7300 Executive Board

East Texas Motor Freight **262 NLRB No. 101**

Electrical Workers Local Union No. 453 (National Electrical Contractors Association, Inc.) **258 NLRB No. 195**
(member of U's executive board found to be agent of U notwithstanding at time of his violative actions he had taken temporary job 175 miles from home and outside geographic jurisdiction of U where he never resigned from his position and in past had sat on trial board which passed upon charges involving discriminatee)

5042-6783-7400 Employee committee members

Eldorado Manufacturing Corporation **249 NLRB No. 088**
(shop steward and Ee committeemen held to have acted for U in requesting discharge of Ees, where GC established prima facie agency of steward and committeemen to act for U in matters of discharge and grievances, and U failed to rebut by adducing evidence that steward and committeemen were not agents or acted so far outside their actual, implied or apparent, authority as to require conclusion they did not bind U by their acts)

5042-6783-7800 Pickets, picket major's, etc.

United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canda, Local No. 195, AFL-CIO **JD-(SF)-330-81**
(where U authorizes picket line, it is required to retain control over picketing. If unwilling or unable to take necessary steps to control its pickets, U must bear responsibility for their misconduct)

United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canda, Local No. 195, AFL-CIO **JD-(SF)-330-81**
(if pickets engage in misconduct in presence of U agent, and that agent fails to disavow that conduct and take corrective measures, U may be held responsible)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(picket captains are agents of U w/i Section 2(13) of Act)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(individual U members cannot be considered agents of U *per se*; however, if picket line misconduct occurs, U responsible for pickets' actions even if particular picket who engaged in misconduct cannot be identified, and even responsible for misconduct away from picket line which was reasonable extension of actions which occurred on picket line)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U cannot abdicate responsibility to control its picket line with inaction where either U leaders or picket captains are present when picket line misconduct occurred)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U violated Act where pickets damaged vehicles in presence of U agents)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(U not responsible for threats and violence engaged in by pickets where these actions took place away from picket line and no evidence was introduced to prove that this was U venture or extension of picket line activity)

Local 144, Hotel, Hospital, Nursing Home, and Allied Health Services Union, S.E.I.U., AFL-CIO (Eden Park Management, Inc.) **JD-401-80**
(threats by unidentified picket to Ee as she walked home, unlawful, where picket left picket line to make threats)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(U held responsible for pickets' several acts and threats of violence where U authorized and organized pickets to act as its representative, and in its interest under supervision of its business agent, and U failed to disavow or take action against offending strikers)

5042-6783-8300 Trustee

Truck Drivers Local Union No. 449, Teamsters, et al. (Universal Liquor Corp.) **265 NLRB No. 199**
(where trustees of pension fund used authority under contract to refuse to accept contributions for regular full-time Ees from Es who allegedly failed to execute stipulation unlawfully interpreted by trustees as extending Es' obligation to make conttibutions for casual, seasonal, or part-time Ees, trustees held agents of U in view of fact that trustees acted pursuant to authority granted by contracts, and U did not protest trustees' actions but supported erroneous interpretation by joining in effort to collect additional contributions even to point of sacrificing pension benefits of all Ees)

Warehousemen's Union Local 334 a/k/a Teamsters Union, Local No. 582 (The Crescent, Division of The Halle Brothers Company) **253 NLRB No. 109**
(U trustee of joint benefit fund trust held agent of U and actions imputed to U where U trustee initiated proposal for change in benefits, U subsequently implemented change and held itself out as responsible for change; authority of trustee limited to benefit plans agreed upon in bargaining agreement, thus change to inside benefits rejected in bargaining unilateral and unlawful notwithstanding agreement of E's trustees, since trust agreements are mere products of collective bargaining and not extension thereof)

N.L.R.B. v. Driver Salesmen, Warehousemen, Food Handlers, Clerical & Industrial Production Teamsters Union, Local No. 582, a/w Teamsters **670 F.2d 855 (C.A. 9, Mar. 1982)**
(contrary to Bd which found Trust made up of U and E trustees was agent of U and that its establishment of new benefits for U members constituted unilateral contract modification in violation of Sec. 8(b)(3), ct held Bd did not establish that Trust was agent of U and that U *caused* Trust to violate trust agreement where Trust was lawfully established, E trustees were not coerced by U trustees in voting in favor of proposal, and U's distribution of information about new benefits did not demonstrate U control over Trust)

Griffith Company; et al. v. N.L.R.B. **660 F.2d 406 (C.A. 9, Oct 1981)**
(actions of neither trust fund administrator of joint E-Ee benefit trust nor his counsel attributable to U since none of the following situations present: (1) provisions of bargaining agreement remove discretionary of administrator to administer funds solely for benefit of Ees (2) where trustee's actions which are in question were directed by U officials (3) where trustees actions which

5042-6783-8300—Cont.

are in question are undertaken in their capacity as U officials rather than as trustees)

5042-6783-8400 Secretary

Q.V.L. Construction, Inc. **240 NLRB No. 139**

(U business agent's secretary held agent of U, notwithstanding U's argument that she was not agent but *non-member secretary* whose actions were not binding on U, where U admitted in its answer to complaint that she was agent of U and her actual tasks were fully intertwined with workings of hiring hall)

5042-6783-9000 Steward

East Texas Motor Freight **262 NLRB No. 101**

(notwithstanding that U steward, when assaulting Ee outside of U meeting hall, was not acting as agent of U during assault, U's failure to reprimand steward or make any effort to prevent him from engaging in such conduct in future held violative, since failing to act in connection with preventing assault constituted condonation of steward's action by U)

Teamsters Local Union No. 515 (Cavalier Corporation) **259 NLRB No. 094**

Local Lodge Number 5, Boilermakers (Regor Construction Company, Inc.) **249 NLRB No. 105**

(stewards of local U held agents of local and international Us where stewards' unlawful acts were w/i scope of their apparent authority, were not repudiated, disavowed or condemned by local or international and were thus ratified and condoned)

Eldorado Manufacturing Corporation **249 NLRB No. 068**

(shop steward and Ee committeemen held to have acted for U in requesting discharge of Ees, where GC established prima facie agency of steward and committeemen to act for U in matters of discharge and grievances, and U failed to rebut by adducing evidence that steward and committeemen were not agents or acted so far outside their actual, implied or apparent, authority as to require conclusion they did not bind U by their acts)

Teamsters Local 312 a/w Teamsters (William E. Coons, an Individual) **JD-378-81**

(assistant steward's threat of violence and actual assault on Ee held misconduct of agent w/i his apparent authority which created, by itself, responsibility of U; later actions of U president and U steward, in effect approving what assistant steward had done, including making threats of their own to Ee, constituted condonation and ratification by U of misconduct of assistant steward)

Sprinkmann Sons Corporation of Illinois **JD-763-80**

(U not liable for U stewards' statements as to allocation of overtime or use of tools, where U's constitution and by-laws do not indicate that stewards had any authority, apparent or implied, to make such statements, and bargaining agreement and by-laws do not give stewards responsibility to investigate and present grievances, authorize them to transmit messages and information originating from and authorized by U)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) **JD-(SF)-123-80**

(threatening statements of U steward when telephoned by Ee to discuss latter's intentions of crossing picket line during strike held attributed to U where U's subsequent action against Ee and other members indicated steward's statements reflected U's official policy)

5042-6783-9100 Observer

Anchor Inns, Inc. d/b/a Anchor Inn Hotel of St. Croix **262 NLRB No. 148**

(not agent)

Aero Warehouse, Inc. **JD-(NY)-48-81**

(service as U election observer does not constitute one agent of U)

5042-6783-9200 In-plant organizing committee members

Talbert Manufacturing, Inc. **264 NLRB No. 138**

(orally informing U representative of reduction in hours to be worked 4 days before implementing change, and indirect notice via member of in-plant committee notifying U of further reduction in hours 2 days before implementing this change held sufficient notice to allow U to request bargaining, and by U's failure to make request it waived its right to complain about E's failure to bargain)

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**

(threat by one member of inplant organizing committee to take another member to court because he quit going to U meetings, not unlawful absent actual or apparent authority)

Aero Warehouse, Inc. **JD-(NY)-48-81**

(in-plant organizing committee not agent of U where it was w/o any formal structure and was composed of any and all interested Ees who gave their support voluntarily and w/o pay)

PPG Industries, Inc., Lexington Plant, Fiber Glass Division **671 F.2d 817 (C.A. 4, Feb. 1982)**

(In-Plant Organizing Committee (IPOC) held agent of U notwithstanding full time professional U organizer active at plant, where IPOC members served as *eyes and ears* of U, Ees before becoming members of IPOC had to submit their names to U and members were asked to distribute U literature and to voice and demonstrate support for U)

N.L.R.B. v. Advanced Systems, Inc. **681 F.2d 918 (C.A. 9, Apr. 1982)**

(remand for evidentiary hearing on whether threat by Ee member of U organizing committee, when coupled with apparent authority, so influenced voters in U representation election that it made free choice impossible, since close case on U agency where Ees considered member primary spokesman for U and it had been indicated member would be U steward after election, notwithstanding U had instructed organizing committee not to threaten Ees, and in view of other threats and vandalism, which viewed in light most favorable to objecting E, make prima facie showing that free election prevented)

5042-6783-9300 Interpreter

Medical Investors Association **260 NLRB No. 124**

(Ee who acted as conduit for supervisor because he translated instructions from English to Spanish not found supervisor where he possessed no other indications of supervisory status)

Local 300, Cosmetic and Novelties Workers' Union, Affiliated With International Production Service and Sales Employees Union **257 NLRB No. 174**

(former Ee of E hired by U, prior to election, who acted as interpreter for E's Haitian Ees held agent of U since at time of alleged unlawful statements made by her, she acted as interpreter at request of U, was paid by U for her services and Ees reasonably could have believed that her statements reflected U policy)

Sag-Gard of Southern California, Inc. **JD-(SF)-36-82**

(Ee who acted as one of several interpreters but did not act as conduit between management and rank-and-file Ees held not agent of E)

5042-6783-9400 Unit chairman

United Steelworkers of America, AFL-CIO, CLC, Local 1981 (Major Safe Company, Inc.) **259 NLRB No. 067**

(U's unit chairman held agent of U where he was responsible for enforcing bargaining agreement, was required to report to U any infraction or violations of agreement of which he was aware, handled grievances on behalf of U and, in accordance with provisions of bargaining agreement, he was excused from work to do so w/o loss of pay)

5042-6783-9500 Rank-and-file employee

ARA Services, Inc. **263 NLRB No. 26**

(S.J. granted where E refused to bargain alleging invalid certification of U because U threatened Ees with deportation for their illegal alien status if they did not vote for U; however no evidence was introduced at original hearing to show that Ee who made statement was agent of U; thus E's offer of such statements as proof of interference with election are not determinative because they do not provide new evidence regarding agency status)

Davlan Engineering, Inc. **262 NLRB No. 104**

(solicitation of authorization cards by Ees, standing alone, does not make those Ees agents of U)

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**

(U held responsible for Ees' unlawful refusal to work at jobsite at which another U's members were performing work sought by Ees' U, where U was aware of refusal to work, Ees would have worked if directed to do so by U, and Ees were not disciplined even though contract prohibited strikes; consequently, U induced individuals to strike or refuse to perform services and ratified such conduct which was not merely an independent decision of workers or matter of their individual consciences but a reaction implicitly authorized by U and related to U's interests)

Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**

(even if Ees had acted on their own in refusing to work at jobsite with another U's members, U agent's later authorization of another Ee's refusal to work under same conditions constituted U ratification of prior conduct; express authorization is not essential to bind U, agency may be inferred from all the circumstances, U is in no different position than any other legal entity when agency issue is in dispute, and U may ratify acts of Ees by affirming prior acts which did not bind U when done)

Behring International, Inc. **252 NLRB No. 055**

(rank-and-file Ees held to have acted as E's agents in conducting unprecedented Ee meeting at plant, where E allowed such meeting, accepted Ees' signed request for withdrawal of U ptn and their list of requested job

5042-6783-9500—Cont.

improvements which had evolved from meeting, subsequently granted most of Ees' requests, and no Ees were questioned or reprimanded with respect to their long absences from their work stations to attend meeting)

Cas Walker's Cash Stores Inc. 249 NLRB No. 041

(E not responsible for Ee's threat to fellow Ee that latter's paycheck would be withheld unless he signed card for U favored by E, since Ee was merely contributing to E's support of favored U w/o having real or apparent authority to do so)

N.L.R.B. v. Morgan Health Care Center, Inc. 618 F.2d 127 (C.A. 1, 1980)

(fact Ee had been active in U's organization campaign does not establish agency relationship between Ee and U absent evidence either authorized or condoned conduct)

5042-6783-9600 Union adherent

Connecticut Foundry Company 247 NLRB No. 145

(fact that Ee serves as U observer at election or is prominant in organizing campaign does not make him U official and Bd is reluctent to set aside election due to conduct of such Ee)

Aero Warehouse, Inc. JD-(NY)-48-81

(card solicitation insufficient to show agency status)

5042-6783-9700 Rank-and-file member

N.L.R.B. v. Hudson River Aggregates, Inc. 639 F.2d 865 (C.A. 2, 1981)

(election set aside where Ees threatened fellow Ees with physical harm if U did not win election; moreover, it is immaterial that Ees were not agents of U)

5056 MEMBERS

Operating Engineers, Local Union No. 428 (Bechtel Power Corporation) JD-(SF)78-82

(U's contention that processing members internal U charge against supervisor fining him and ordering supervisor to trial was purely ministeral and free of animus, rejected, since charge on its face made clear charge was based on fact fellow member fired him and thus *clearly addressed action protected by Section 8(b)(1)(B))*

5056-0100 Generally

Tower Hotel Company, d/b/a Holiday Inn Riverfront 250 NLRB No. 010

(foreman not agent of U notwithstanding U member and additionally brother of U's secretary-business manager where he did not need U approval to obtain contract with E, never held any U office, does not participate in U meetings, is not member of bargaining unit, and enjoyed no special privileges because of relationship to U's business manager; moreover, agency relationship is not created even though discharges foreman effectuated benefited U)

5070 DEFENSES

5070-4000 Termination of authority

Electrical Workers Local Union No. 453 (National Electrical Contractors Association, Inc.) 258 NLRB No. 195

(member of U's executive board found to be agent of U notwithstanding at time of his violative actions he had taken temporary job 175 miles from home and outside geographic juridiction of U where he never resigned from his position and in past had sat on trial board which passed upon charges involving discriminatee)

5070-6000 Repudiation by employer or union

Teamsters Local Union No. 574, a/w Teamsters (Lola Wheeler, an Individual) 259 NLRB No. 037

(as E-U's Secretary-Treasurer had authority under by-laws to hire office Ees and to fix their compensation, this is sufficient authority to permit him to establish wages, hours, and conditions of employment on collective basis and/or individual basis w/o Executive Board approval, and therefore, could sign contract recognizing U of office clericals, and such could not be repudiated by new administration)

Pickering & Co., Inc. 254 NLRB No. 137

(E did not repudiate supervisor's unlawful threat to close plant if U won election where in nonviolative speech expressing its opposition to U, E did say that it intended to continue operation of plant regardless of outcome of election but no reference was made to supervisor's speech and for repudiation to be effective it must be timely, unambiguous, and adequately publized)

Kimberly-Clark Corporation JD-(SF)-291-81

(no effective repudiation of threats of E's assistant superintendent by disavowals and assurances of E's employee relations manager where not all threats repudiated and in view of subsequent proscribed conduct, and attempted disavowal by E's manager was untimely to effectively neutralize threats made ten months previously)

Church's Fried Chicken, Inc. JD-(SF)-301-79

(E whose only retaliation against supervisor (who had engaged in unlawful surveillance and violence against Ees while attending U organizing meeting) was to demote him and assign him to a remote area violated Act as this did not effectively repudiate supervisor's actions)

Graves Trucking, Inc. v. N.L.R.B. 692 F.2d 470 (C.A. 7, Nov. 1982)

(in affirming Bd finding the E was responsible for physical assault by supervisor on U steward who was engaged in protected concerted activity since incident pertained to matters w/i responsibilities E had conferred on supervisor, ct concluded that E's single expression of disapproval after the fact did not suffice as a repudiation where such disapproval was not made known to all Ees affected and, in any event, was accompanied and followed by reiteration of supervisor's authority)

5084 RATIFICATION OF ACTS OR STATEMENTS BY EMPLOYER OR UNION

St. Francis Hospital 263 NLRB No. 109

(entity engaged in business of representing E concerning labor relations and other matters and hired by E to conduct its anti-U campaign held not to have been co-manager of E's anti-U campaign or co-E with instant E (no agency alleged in C), since E's managers were instructed by E to accept advice and carry out instructions which came from labor relations advisor, but advisor did not have direct control over supervisors and did not deal with rank-and-file Ees)

East Texas Motor Freight 262 NLRB No. 101

(notwithstanding that U steward, when assaulting Ee outside of U meeting hall, was not acting as agent of U during assault, U's failure to reprimand steward or make any effort to prevent him from engaging in such conduct in future held violative, since failing to act in connection with preventing assault constituted condonation of steward's action by U)

Local Lodge Number 5, Boilermakers (Rager Construction Company, Inc.) 249 NLRB No. 108

(stewards of local U held agents of local and international Us where stewards' unlawful acts were w/i scope of their apparent authority, were not repudiated, disavowed or condemned by local or international and were thus ratified and condoned)

Teamsters Local 312 a/w Teamsters (William E. Coons, an Individual) JD-378-81

(assistant steward's threat of violence and actual assault on Ee held misconduct of agent w/i his apparent authority which created, by itself, responsibility of U; later actions of U president and U steward, in effect approving what assistant steward had done, including making threats of their own to Ee, constituted condonation and ratification by U of misconduct of assistant steward)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) JD-(SF)-123-80

(threatening statements of U steward when telephoned by Ee to discuss latter's intentions of crossing picket line during strike held attributed to U where U's subsequent action against Ee and other members indicated steward's statements reflected U's official policy)

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. 675 F.2d 256 (C.A. 10, Apr. 1982)

(evidence in instant case indicated that Es considered themselves to be segment of multi-E Association, retaining for themselves final authority to approve any contract negotiated by Association and U; U official had assured instant Es of separate negotiations and contracts for Es represented by multi-E Association)

725 CONTRACT LAW

0100 GENERALLY

New York Typographical Union No. 6 (Haber Typographers, Inc.) JD-(NY)-78-80

(in field of labor relations, if parties have agreed upon terms of bargaining agreement, they are bound by terms agreed upon notwithstanding failure to sign it)

N.L.R.B. v. Haberman Construction Company 641 F.2d 351 (C.A. 5, Apr. 1981)

(U and E's adoption of labor contract is not dependent on reduction to writing; instead, what is required is conduct manifesting an intention to abide by terms of an agreement)

0150 TECHNICAL RULES OF CONTRACT LAW NOT NECESSARILY CONTROLLING UNDER NLRA

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1982)

(third party beneficiaries, like Trustees of benefit funds, are subject to contract defenses of nonperforming promisors; pension fund trustees have no special status which exempts them from general rule that cts do not enforce illegal contracts)

Shawn's Launch Service, Inc. 261 NLRB No. 124

(tenent of contract law that new offer revokes former offer when offer has not been accepted not applicable to collective bargaining agreement situations, even when E's proposal had been rejected by U membership and U thereafter made counterproposal, E's original offer remained capable of acceptance)

Shawn's Launch Service, Inc. 261 NLRB No. 124

(*in context of labor disputes, and particularly Section 8(a)(5) violations; however, technical question of whether contract was accepted in traditional sense is perhaps less vital than it otherwise would be rather more crucial inquiry is whether two sides have reached agreement even though agreement might fall short of technical requirements of accepted contract*)

Deluxe Poster Co., Inc., d/b/a Johnson Printers 257 NLRB No. 011

(U's failure to sign contract does not affect its validity where parties agreed to substantial terms and conditions; E's failure to abide by contract violative)

Pepsi-Cola Bottling Company of Mason City, Iowa 251 NLRB No. 028

(since Bd not strictly bound by technical rules of contract law, fact that U rejected E's contract offer and even made counterproposals did not nullify offer; complete package proposal made on behalf of either party through negotiations remains viable, and upon accpetance *in toto* must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance, or defeated by an event upon which offer was expressly made contingent at time prior to acceptance)

El Rancho Market JD-(SF)-116-81

(basic contract law concerning principles of offer and acceptance, apply to formation of collective-bargaining agreement)

Pepsi-Cola Bottling Company of Mason City, Iowa v. N.L.R.B. 659 F.2d 87 (C.A. 8, 1981)

(technical rules of contract law covering offer and acceptance do not control whether bargaining agreement has been reached because, unlike commercial setting, NLRA compels E and U to bargain in good faith)

N.L.R.B. v. World Evangelism, Inc. 656 F.2d (C.A. 9, 1981)

(in determining whether parties agreed to contract, Bd is not bound by technical questions of traditional contract interpretation; Bd is free to use general contract principles adapted to collective bargaining context to determine whether two sides have reached agreement)

N.L.R.B. v. Electra-Food Machinery, Inc. 621 F.2d 956 (C.A. 9, 1980)

(Bd free to use general contract principles adapted to collective-bargaining context)

N.L.R.B. v. Penasquitos Gardens, Inc.; etc. 603 F.2d 225 (C.A. 9, 1979)

3300 FORMATION OF A CONTRACT

Glover Bottled Gas Corp. 255 NLRB No. 011

(agreement by E to purchase struck E's propane gas tanks, allowing E to perform struck work by filling struck E's gas tanks with his own product, held not true contract, in view of stated $1.00 consideration, failure to state purchase price, lack of requirement that purchase price ever be paid, and existence of repurchase clause; mere deletion of such clause did not cure lack of arms length contract, and to all intents and purposes struck E still owned tanks; however, when purchase price was agreed upon and paid, a true arms length purchase was consummated)

3325 OFFER

3325-1700 Must be unequivocal

N.L.R.B. v. Sumner Home For The Aged 293 F.2d 754 (C.A. 6, 1979)

(pre-strike agreement on certain contract terms contingent upon resolution of other unresolved major issues is not legally enforceable agreement)

3325-5000 No length of time specified for acceptance, reasonable time

Pepsi-Cola Bottling Company of Mason City, Iowa v. N.L.R.B. 659 F.2d 87 (C.A. 8, 1981)

(where contract proposal presented near beginning of strike as *offer to settle a contract and a strike,* offer contained no express time conditions for acceptance and remained open to be accepted 3 weeks later, a reasonble period)

3325-6700 When terminated

3325-6717 Rejection

Shawn's Launch Service, Inc. 261 NLRB No. 124

(tenent of contract law that new offer revokes former offer when offer has not been accepted not applicable to collective bargaining agreement situations, even when E's proposal had been rejected by U membership and U thereafter made counterproposal, E's original offer remained capable of acceptance)

3325-6717-3300 By counter offer

Pepsi-Cola Bottling Company of Mason City, Iowa 251 NLRB No. 028

(since Bd not strictly bound by technical rules of contract law, fact that U rejected E's contract offer and even made counterproposals did not nullify offer; complete package proposal made on behalf of either party through negotiations remains viable, and upon accpetance *in toto* must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance, or defeated by an event upon which offer was expressly made contingent at time prior to acceptance)

3325-6717-6700 By refusal

Shawn's Launch Service, Inc. 261 NLRB No. 124

(E's contention its refusal to sign agreement justified since when U had been informed by Ees of their unhappiness with contract and desire for greater benefits U effectively withdrew original offer from any further consideration by attempting after meeting with Ees to renegotiate terms before E could reasonably be expected to act and thus no agreement reached, rejected)

Pepsi-Cola Bottling Company of Mason City, Iowa 251 NLRB No. 028

(since Bd not strictly bound by technical rules of contract law, fact that U rejected E's contract offer and even made counterproposals did not nullify offer; complete package proposal made on behalf of either party through negotiations remains viable, and upon accpetance *in toto* must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance, or defeated by an event upon which offer was expressly made contingent at time prior to acceptance)

Pepsi-Cola Bottling Company of Mason City, Iowa v. N.L.R.B. 659 F.2d 87 (C.A. 8, 1981)

(contract offer remained open 3 weeks after offer, notwithstanding U rejected offer and intervening strike, where bargaining sessions occurred during this period at which E could have rescinded offer and circumstances do not indicate parties considered offer withdrawn)

Pittsburgh-Des Moines Corporation v. N.L.R.B. 663 F.2d 956 (C.A. 9, Dec. 1981)

(ct rejected proposition implicit in Bd's conclusion that in face of U's unequivocal rejection of E's offer, E was somehow committed to all por-

3325-6717-6700—Cont.

tions of the proposal as to which tentative agreement had been reached; that U could hold E to what U liked while rejecting that which it disapproved. Party may retract proposal before other side has accepted it)

3325-6733 Lapse of time or occurrence of condition

Pepsi-Cola Bottling Company of Mason City, Iowa v. N.L.R.B. 639 F.2d 87 (C.A. 8, 1981)
(contract offer, once made, will remain on table unless explicitly withdrawn by offeror or unless circumstances arise which would lead parties to reasonably believe that offer had been withdrawn)

Pepsi-Cola Bottling Company of Mason City, Iowa v. N.L.R.B. 639 F.2d 87 (C.A. 8, 1981)
(where contract proposal presented near beginning of strike as *offer to settle a contract and a strike,* offer contained no express time conditions for acceptance and remained open to be accepted 3 weeks later, a reasonble period)

3350 ACCEPTANCE

3350-0100 Generally

Shawn's Launch Service, Inc. 261 NLRB No. 124
(in context of labor disputes, and particularly Section 8(a)(5) violations; however, technical question of whether contract was accepted in traditional sense is perhaps less vital than it othewise would be rather more crucial inquiry is whether two sides have reached agreement even though agreement might fall short of technical requirements of accepted contract)

N.L.R.B. v. Electra-Food Machinery, Inc. 621 F.2d 956 (C.A. 9, 1980)
(acceptance of final offer of complete bargaining agreement manifests mutual assent and creates binding agreement)

3350-1400 By promise or act

United Paperworkers International Union and Its Local No. 795 (International Paper Company - Bagpak Division) 254 NLRB No. 173
(U's refusal to sign agreement with E which operated two facilities aimed at putting one facility on economic basis that would permit facility to remain open, unlawful, notwithstanding contention acceptance and implementation of agreement conditioned on approval by International's president of separation of dual plant unit into separate plant units, where E implemented economic terms of agreement and plant remained open, U acquiesced in implementation, adhered to its terms and deopped grievances and law suit)

McMillan Cartage, Inc. JD-(ATL)-48-81
(E adopted association contract by paying wage, cost of living and annual increases; and by attempting to negotiate changes in contract)

3350-2500 Must embody all the terms

N.L.R.B. v. Sumner Home For The Aged 293 F.2d 754 (C.A. 6, 1979)
(pre-strike agreement on certain contract terms contingent upon resolution of other unresolved major issues is not legally enforceable agreement)

N.L.R.B. v. Sumner Home For The Aged 293 F.2d 754 (C.A. 6, 1979)
(where U agreed in advance to accept whatever proposals E submitted covering certain mandatory subjects of bargaining that remained unresolved, R/O requiring E to propose contract terms covering these unresolved issues and to execute contract if U agreed to proposals, denied enforcement, since it is doubtful U representative has legal authority to make any such commitment or that Bd or ct has authority to enforce such contract; furthermore, since U free to reject contract there was no contract agreed to by both parties)

3350-4200 Must comply with terms of offer

3350-4250 Withdrawal of outstanding proposals

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(complete package proposal made on behalf of either party through negotiations remains viable, and upon acceptance in toto must be executed as part of statutory duty to bargain in good faith, unless expressly withdrawn prior to such acceptance or defeated by event upon which offer was expressly made contingent at time prior to acceptance)

Pittsburgh-Des Moines Corporation v. N.L.R.B. 663 F.2d 956 (C.A. 9, Dec. 1981)
(contract proposal, rejected by U during negotiations and subsequently withdrawn by E, ceased to exist and could no longer form basis for agreement where E's withdrawal was fully justified)

Pittsburgh-Des Moines Corporation v. N.L.R.B. 663 F.2d 956 (C.A. 9, Dec. 1981)
(ct rejected proposition implicit in Bd's conclusion that in face of U's unequivocal rejection of E's offer, E was somehow committed to all portions of the proposal as to which tentative agreement had been reached; that U could hold E to what U liked while rejecting that which it disapproved. Party may retract proposal before other side has accepted it)

3350-5000 Revocation of offer

3350-5067 Action taken by party

El Rancho Market JD-(SF)-116-81
(U by filing Sec. 8(a)(5) charge rejected contract)

Pittsburgh-Des Moines Corporation v. N.L.R.B. 663 F.2d 956 (C.A. 9, Dec. 1981)
(ct rejected proposition implicit in Bd's conclusion that in face of U's unequivocal rejection of E's offer, E was somehow committed to all portions of the proposal as to which tentative agreement had been reached; that U could hold E to what U liked while rejecting that which it disapproved. Party may retract proposal before other side has accepted it)

6700 CONSTRUCTION OF CONTRACT

6717 WRITTEN TERMS OF CONTRACT ARE CONCLUSIVE

N.L.R.B. v. South Central Bell Telephone Company 688 F.2d 345 (C.A. 5, Oct. 1982)
(incorporation by silence into contract of prior arbitration decision involving discipline also alleged to be violative of Act would be inconsistent where contract required express-written approval of parties before giving precendentral effect to disciplinary decisions)

6717-3700 Writing is interpreted as a whole and all writings forming part of same transaction are interpreted together

United Brotherhood of Carpenters & Joiners of America, Local Union No. 743 261 NLRB No. 028
(termination provisions included in memorandum agreement signed by U and E govern over termination provisions of agreement signed by U and multi E association and refusal of U to bargain after notice given under memorandum violative since latter agreement bound parties to all provisions of agreement save those specifically excluded in memorandum agreement. E did not become signatory to multi-E agreement by signing memorandum; furthermore, U had let other Es with identical termination clauses in their memorandum agreements terminate agreements prior to expiration year of multiE agreement)

Olinkraft, Inc. 252 NLRB No. 185
(provision in Supplemental Agreement that E would give U name of subcontractor, date, duration and scope of job refers back to collective bargaining agreement and refers only to new construction as opposed to routine maintenance)

6717-7500 Where words are ambiguous or have more than one meaning they are construed against one who drafted contract

Into-Reto, Inc. 252 NLRB No. 111

6733 CONTRACT INTERPRETATION

Timberland Packing Corporation 261 NLRB No. 027
(extrinsic evidence of negotiations and relevant bargaining history used to resolve ambiguities in labor contract)

6733-0100 Generally

Dunham-Bush, Inc. 264 NLRB No. 175
(Bd attempts to discern from contract the parties intent when that is possible)

Capitol City Lumber Company 263 NLRB No. 102
(where parties had negotiated 1-year contract with year-to-year extensions unless either party gave notice of cancellation but because U welfare and pension funds required 3-year commitment, they had included articles providing for 3-year contributions with yearly step-increases, E's failure to increase 2nd year amount and to make 3rd-year contributions after contract was terminated at end of 2nd year held unlawful, since contribution commitment survived contract, and parties' letter of understanding reiterated 3-year commitment and, although it seemed to contradict step-increase requirements, had to be construed consistently with contract)

General Drivers, Local Union No. 89, a/w Teamsters (Robert E. McKee, Inc.) 254 NLRB No. 093
(extrinsic evidence necessary to show whether administration of ambiguous subcontracting clause lawful or unlawful; such evidence must be based on mutual consent or acquiescence of parties to contract)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. 659 F.2d 830 (C.A. 7, Sept. 1981)
(although interpreting written instrument is matter of law in which ct is not obliged to follow interpretation of Bd, ct generally will exercise usual deference to Bd's expertise in this regard. Such deference extends only in so far as Bd's interpretation is supported by language of agreement and relevant and necessary extrinsic evidence)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)
(Bd's interpretation of contract terms entitled to deference from cts if interpretation is reasonable and not inconsistent with Act's policies)

6733-2000 Interpretation which gives reasonable, lawful, and effective meaning to all manifestations of intent is preferred

Air-Vac Industries, Inc., Leeward Constructors, Inc., Air-Vac Environmental Limited 259 NLRB No. 051

(supplemental agreement executed by parties not subject to oral condition subsequent in view of meticulous preliminary language preceeding terms of supplemental agreement leads one to conclude that if such undertaking contemplated by parties it would have been inserted in agreement, moreover, prior contemporaneous oral agreement may not alter terms of written contract)

Pacemaker Yacht Company, A Division of Mission Marine, Inc. v. N.L.R.B. 663 F.2d 455 (C.A. 3, Oct. 1981)

(as principle of coterminous interpretation had been adopted by Bd at time contract was negotiated, ct inferred that inclusion of two no-strike clauses, one expressly tied to arbitration clause and one prohibiting all strikes, was intended to waive Ees' right to strike over unforeseeable disputes including U fund's failure to pay insurance premiums)

6733-3000 Attempt to construe the contract as an implied agreement not to strike

Irvin H. Whitehouse & Sons Company 282 NLRB No. 140

(contract containing provision requiring disputes to be referred to Joint Local Trade Board for arbitration not found to contain no-strike clause where section concerning safety does not directly state that those disputes be submitted to final and binding arbitration and clause is silent as to fines or remedial actions)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)

(Bd analyzes language of collective bargaining agreement and factual circumstances of labor controversy to determine whether U has waived right to engage in sympathy strikes; contract need not explicitly prohibit sympathy strikes to show intent to waive right to engage in such activity)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)

(U does not necessarily waive right by failing to negotiate contractual confirmation and silence in bargaining agreement cannot be considered to be waiver even in light of bargaining history; failure to obtain contractual confirmation of right is evidence of *waiver only* if it shows that U thought right had been waived by other provisions of contract and sought to regain right)

6733-4000 When there is an inconsistency between specific and general provisions, specific will qualify general

Joint Council of Teamsters No. 42; et al. (Associated Independent Owner-Operators, Inc.) 248 NLRB No. 082

(provision alleged to be violative of 8(e) not rendered lawful by another provision stating *any other exclusions from construction industry proviso, previously defined by NLRB or cts, shall continue to be applicable in interpreting (alleged unlawful provision); explicit self-contained and clearly illegal contractual provision ... will not be purged of illegality by vague and general savings clause*)

6733-6000 Interpretation given by parties will be favored

N.L.R.B. v. Local 1034, Teamsters 651 F.2d 136 (C.A. 2, June 1981)

Pacemaker Yacht Company, A Division of Mission Marine, Inc. v. N.L.R.B. 663 F.2d 455 (C.A. 3, Oct. 1981)

(U agents' statements during strike that strike violated no-strike clause were probative of parties' intent at time contract was executed, notwithstanding fact that strike resulted from Ee dissatisfaction over U's administrative of insurance fund)

Denver Stereotypers and Electrotypers Union, Local No. 13 v. N.L.R.B. 623 F.2d 134 (C.A. 10, June 1980)

(in determining whether U, acting through its officers and members, breached its duty of fair representation, skill of union officers, as opposed to that of, in interpreting U's constitution and bylaws, is very relevant)

6733-7000 Past practices used in interpreting contract

Diplomat Envelope Corporation 263 NLRB No. 075

(E's refusal to sign agreement prepared by U pursuant to signed memorandum of agreement violative; contention that there was no meeting of minds on terms, e.g., increases in wages during 2d and 3d years, increases in annuity payments, and change in method of resolving disputes by substituting state board mediation for American Arbitration Association, rejected as any ambiguity over wages and annuity payments was resolved by bargaining history and memorandum provided for substitution of mediation for arbitration)

Diplomat Envelope Corporation 263 NLRB No. 075

(bargaining history of wage increases for 2d and 3d years and annuity payments in prior contract was supportive of finding that parties had *meeting of minds* on these issues when they signed memorandum agreement)

N.L.R.B. v. Northeast Oklahoma City Manufacturing Company 631 F.2d 669 (C.A. 10, Sept. 1980)

(Bd properly relied on E's past practice in interpreting contract to require that Ees' bonus payments be paid during second week of month, notwithstanding E's contention that there was no evidence that payments were *contractually due* at that time, where E had long established practice of paying bonuses second week of month, and contract language will be presumed to have meaning given it by such practice)

6733-7500 Extrinsic evidence not admissable to impeach written terms

Bob's Big Boy Family Restaurants, A Division of Marriott Corporation 259 NLRB No. 004

(on ct remand Bd held that extrinsic evidence must be excluded in contructing meaning of *members only* provision of health benefits provision)

6733-8000 Provisions interpreted

6733-8006 Wage increase

Diplomat Envelope Corporation 263 NLRB No. 075

(where prior contract contained clause that 2d and 3d year wage increase shall not be precedent for future contracts, purpose of clause was interpreted to prevent U from taking position of tying wage increases to competitors rather than to exclude clause from subsequent contract w/o specific oral discussions or agreements)

6733-8010 Duration and termination

Remodeling By Oltmanns, Inc. 263 NLRB No. 169

(refusal of E who was not member of multi-E association to abide by current contract between association and U, not unlawful, notwithstanding agreement with U in which E had agreed to abide by expired association bargaining agreement and to *be bound by terms of negotiated agreements with association during terms of agreement* since agreement was only meant to be temproary interim agreement with intent to bind E only for duration of next agreement with association and this agreement with association and this agreement expired)

6733-8020 No-strike clause

6733-8020 *No strike* clause

Inland Steel Company 264 NLRB No. 015

(waiver of right to engage in sympathy strikes will not be implied from general no-strike clause; prohibition on self-help only as extensive as grievance-arbitration procedure, thus when U foregoes right to strike it does so only with respect to disputes which are arbitrable and sympathy strikes precipitated by another U's dispute with same or different E raises no issue that can be resolved by resort to sympathy strikers' grievance procedure)

Inland Steel Company 264 NLRB No. 015

(Ees right to participate in sympathy strike not waived by no-strike clause since no-strike clause quid pro quo for grievance procedure and economic issues at root of strike against another E not arbitrable under contract between Ees' E and U; further, proviso that if violation of no-strike provision occurred there would be no negotiations until work resumed and no lockout provision further evidenced grievance procedure quid pro for no-strike/no lockout agreement and that only disputes between parties to agreement subject to discussion under grievance procedure; nor was there discussion of amendment of no-strike clause during long bargaining relationship)

St. Regis Paper Company 253 NLRB No. 162

(suspension or discharge of sympathy strikers for refusing to cross picket line at own E's premises in violation of no-strike clause not unlawful, where overall bargaining history pointed decisively to conscious waiver of right to engage in sympathy strikes during contract period)

Pacemaker Yacht Company, A Division of Mission Marine, Inc. v. N.L.R.B. 663 F.2d 455 (C.A. 3, Oct. 1981)

(where bargaining agreement contained 2 no-strike clauses: (1) for arbitrable issues, and (2) for nonarbitrable issues, Ees unmistakeably waived their right to strike notwithstanding nonarbitrable issue which percipitated strike was not enumerated during negotiations as being covered by latter clause)

N.L.R.B. v. South Central Bell Telephone Company 688 F.2d 345 (C.A. 5, Oct. 1982)

(while U officers may be disciplined more harshly than other strikers if officers flount affirmative contractual duties during illegal strike, herein no waiver found of officers' protected rights; E's contention contract ratified and incorporated by silence prior arbitration decision holding that imposition of longer suspensions on U stewards than other Ees participating in strike in violation of no strike agreement, rejected; silence is not dispositive of parties

6733-8020—Cont.

intent in labor contract. Giving equivalent to stare decisis effect to private arbitration decisions should be by express clause in contract)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. **659 F.2d 830 (C.A. 7, Sept. 1981)**

(where safety issue is one that must be submitted to binding arbitration, obligation not to strike over matter is considered to be coterminous and any stoppage violates implied no-strike clause unless safety hazard suddenly arose and presented immediate threat; i.e., *Washington Aluminum* situation)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. **659 F.2d 830 (C.A. 7, Sept. 1981)**

(2 requisites required for finding no-strike obligation; (1) contract imposes upon both parties duties of submitting to final and binding arbitration; and (2) matter is one which it has been agreed to will be covered by compulsory terminal arbitration)

N.L.R.B. v. Gould, Inc., Switchgear Division **638 F.2d 159 (C.A. 10, 1980)**

(sympathy strike is not prohibited by no-strike clause where clause is tied to grievance procedure and dispute underlying sympathy strike is not subject to grievance-arbitration machinery of contract; strike was spontaneous action to honor own U's informational picket line at own E's premises)

6733-8029 Accrued benefits

Stokely-Van Camp, Inc. **259 NLRB No. 128**

(contention that Ee must be working, i.e., not striking, and E was permitted to cancel vacations and withhold vacation pay, rejected where contract is silent in this regard)

Vesuvius Crucible Company **252 NLRB No. 179**

(refusal to pay economic strikers vacation pay accrued under expired contract, violative, fact contract limited vacation pay, computed on prior year's earnings, to its term did not free E from responsibility of paying these vacation benefits because they vested in Ees during term of contract and do not divest on expiration)

6733-8030 Effective date of contract

East Bay Chevrolet dba Time Chevrolet v. N.L.R.B. **659 F.2d 1006 (C.A. 9, Oct. 1981)**

(enforcement denied and case remanded to Bd where R/O improperly prescribed substantive provision for future agreement between E and U; namely, effective date of agreement be made retroactive to effective date of agreement between E and 3 Us representing other units of E, notwithstanding in previous successful negotiations, all 4 Us had conducted joint bargaining with E association of which E had properly withdrawn from)

6733-8038 Subcontracting clause

Olinkraft, Inc. **252 NLRB No. 185**

(provision in Supplemental Agreement that E would give U name of subcontractor, date, duration and scope of job refers back to collective bargaining agreement and refers only to new construction as opposed to routine maintenance)

6733-8040 Arbitration

Diplomat Envelope Corporation **263 NLRB No. 075**

(where prior contract provides for arbitration and memorandum agreement provides for state mediation board, parties agreed to substitute mediation for arbitration in new contract)

Metropolitan Edison Company v. N.L.R.B. **663 F.2d 478 (C.A. 3, Nov. 1981)**

(ct enforced Bd order where E disciplined U officers more harshly than other Ees who participated in illegal work stoppage since (1) agreement did not expressly impose duty on U officers to attempt to halt illegal work stoppage, and (2) ct is not bound by two previous arbitral interpretations of no-strike clause placing greater responsibilities on U officials to take affirmative steps to end illegal work stoppage; furthermore, substantial evidence supports Bd finding that U officers were not leaders of strike)

Pacemaker Yacht Company, A Division of Mission Marine, Inc. v. N.L.R.B. **663 F.2d 455 (C.A. 3, Oct. 1981)**

(as principle of coterminous interpretation had been adopted by Bd at time contract was negotiated, ct inferred that inclusion of two no-strike clauses, one expressly tied to arbitration clause and one prohibiting all strikes, was intended to waive Ees' right to strike over unforeseeable disputes including U fund's failure to pay insurance premiums)

16733-8042 Precedential value of grievance settlement

Consolidated Aluminum Corporation **258 NLRB No. 033**

(contract provisions providing that where U fails to appeal grievance it shall be deemed withdrawn w/o prejudice or precedent, and if E fails to render decision w/i time limits it shall be deemed granting of grievance by default w/o prejudice or precedent, did not manifest intent that all other grievance resolutions were to become precedent)

6733-8045 Management rights clause

Stokely-Van Camp, Inc. **259 NLRB No. 128**

(contention that Ee must be working, i.e., not striking, and E was permitted to cancel vacations and withhold vacation pay, rejected where contract is silent in this regard)

Laredo Packing Company **254 NLRB No. 001**

(U waived right to bargain regarding temporary termination of operations by virture of management rights clause which generally reserved to E right to *abolish or change operations determine extent to which plant will operate layoff Ees because of legitimate reasons sell...terminate, discontinue or transfer operations due to economic factors* and E's obligation to bargain was limited by agreement to permanent discontinuance of operations)

Laredo Packing Company **254 NLRB No. 001**

(*waiver of statutory right may not be lightly inferred but must be expressed in clear and unmistakable language. Bd will not find that contract terms of themselves confer on E management right to take unilateral action on mandatory subject of bargaining unless contract expressly or by necessary implication confers such a right*)

6733-8080 Union representation at disciplinary hearing

Prudential Insurance Company of America **254 NLRB No. 020**

(contract provision that *neither U nor its members shall interfere with E's right to interview Ee with respect to any phase of his work w/o presence of grievance committee* held not waiver of *Weingarten* rights)

6750 PAROL EVIDENCE

6750-0100 Generally

Memphis Furniture Manufacturing Co. **252 NLRB No. 025**

(evidence extrinsic to written contract resorted to where contract provision is ambiguous)

6750-2500 Agreements prior to or contemporaneous with an integrated agreement are admissible in evidence

6750-2567 To prove facts rendering agreement void or voidable for illegality, fraud, duress, mistake or insufficiency of consideration

R. J. E. Leasing Corp. **262 NLRB No. 049**

(parol evidence offered by E and U to change pre-hire contract rejected where language contained in contract was clear and unambiguous)

Air-Vac Industries, Inc., Leeward Constructors, Inc., Air-Vac Environmental Limited **259 NLRB No. 051**

(supplemental agreement executed by parties not subject to oral condition subsequent in view of meticulous preliminary language preceeding terms of supplemental agreement leads one to conclude that if such undertaking contemplated by parties it would have been inserted in agreement, moreover, prior contemporaneous oral agreement may not alter terms of written contract)

Skyline Corporation v. N.L.R.B. **613 F.2d 1328 (C.A. 5) (1980)**

(E's contention that there was mutual mistake of fact as to ending date of payroll period and date inserted in Stipulation for Certification upon Consent Election not grounds for relief because mistake by one party to agreement, where not induced by other falls on party making mistake)

6750-7500 Where language employed leaves meaning obscure, parties' previous negotiations are admissible to show meaning of agreement

6750-7550 Previous negotiations cannot give a meaning that is completely alien to the words

U.S. Utilities Corporation **254 NLRB No. 055**

(parole evidence insufficient to show that contract was not applicable to jobsites outside U's jurisdiction where contract clause requires Ees to be paid mileage when assigned to jobsites outside U's jurisdiction; additionally, rest of contract by its terms evidences no limitation on its application to only geographical area of U's jurisdiction)

8300 WITHDRAWAL FROM CONTRACT

8700 ILLEGAL PROVISIONS

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(illegal promises will not be enforced in cases controlled by federal law; ct permits defendant to set up contract's illegality (as defense), on account of public interest)

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**

(*rules of estoppel will not be permitted to thwart the purposes of statutes of the U.S.* even if petitioner waited over long to assert defense of illegality (waiting to after contract expired))

8700—Cont.

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(*anyone sued upon a contract may set up as a defense that it is a violation of Act of Congress, and if found to be so, that fact will constitute a good defense to the action*—; a defendant proferring defense of illegal contract seeks only to be relieved of an illegal obligation and does not ask any affirmative remedy based on antitrust or labor laws)

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(third party beneficiaries, like Trustees of benefit funds, are subject to contract defenses of nonperforming promisors; pension fund trustees have no special status which exempts them from general rule that cts do not enforce illegal contracts)

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(ct must reach merits of illegality defense in order to determine whether contract clause at issue has any legal effect)

9100 BREACH OF CONTRACT

Complete Auto Transit, Inc., et al. v. Reis et al. 451 US 401 (U.S. SCt. May 1981)

(E's ptn for damages from individual U members for breach of no-strike contract by engaging in strike unauthorized nor approved by U, dismissed; Sec. 301(a) does not sanction damage actions against individuals, whether or not U participated in or authorized strike; legislative history shows Congress intended to shield individuals from breach of no-strike clause, even though it might leave E unable to recover his losses; and Sec. 301(b)'s prohibition against money judgment against U from being enforced against individual U members does not suggest that Ees should be liable where U is not liable for strike)

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(petitioner's contractual promise to UMW to report and make contributions to specified U health and retirement funds based on specified amount, *on each ton of — coal* procured for use or sale by petitioner from producers not under contract with UMW was illegal under anti-trust and labor laws and thus valid defense to suit for such contributions by trustees of U funds)

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(illegal promises will not be enforced in cases controlled by federal law; ct permits defendant to set up contract's illegality (as defense), on account of public interest)

United Aircraft Corporation (Pratt and Witney Division) 247 NLRB No. 174

(contrary to E's contention that any breaches by it of strike settlement agreements with Us were nothing more than violations of U's private contract rights, Bd held such breaches were w/i cognizance of Act and must be remedied in the public interest; accordingly, since E's violations of agreements denied reinstatement of economic strikers who had done no more than engage in protected concerted activity, E's conduct was unlawfully discriminatory)

737 EVIDENCE

0100 GENERALLY

0150 FEDERAL RULES OF EVIDENCE, APPLICABILITY (SECTION 10(b))

H. H. Robertson Company **263 NLRB No. 173**
(Charging Party's testimony as to conversation he had with U's business agent who was allegedly presuring E to discharge him, which was offered against U w/o contradiction, not hearsay under Federal Rules of Evidence and admissible under Bd law; that testimony may be appropriately supplemented by Charging Party's testimony as to what E's area supervisor informed Charging Party what business agent was telling E which, although hearsay as to U, admissible to support other evidence)

N.L.R.B. v. Antonino Carilli, d/b/a Antoninino's Restaurant **648 F.2d 1206 (C.A. 9, June 1981)**
(actions before Bd are not subject to technical pleading requirements of private law suit. Charge need not be technically precise so long as it generally informs party charged as to nature of alleged violations. General allegations in charge may be later supplemented or amplified by more specific allegations which relate back to date charge was filed)

0150-5000 'So far as practicable'

International Business Systems, Inc. **258 NLRB No. 017**
(Bd not bound to strictly apply Federal Rules of Evidence)

International Association of Machinists and Aerospace Workers, AFL-CIO, an unincorporated labor organization v. Thomas C. Hendrix, et al. **No. 80-1071, Jan. 29, 1980, DC KS (unreported)**
(administrative proceedings are not bound by strict rules of court procedure or of evidence)

0150-5067 Parol evidence rule

Air-Vac Industries, Inc., Leeward Constructors, Inc., Air-Vac Environmental Limited **259 NLRB No. 051**
(supplemental agreement executed by parties not subject to oral condition subsequent in view of meticulous preliminary language preceeding terms of supplemental agreement leads one to conclude that if such undertaking contemplated by parties it would have been inserted in agreement, moreover, prior contemporaneous oral agreement may not alter terms of written contract)

1400 JUDICIAL AND OFFICIAL NOTICE

Fry Foods, Inc. **256 NLRB No. 031**
(request that Bd remand proceeding to another ALJ because *record was not complete when judgment was made* on ground that U.S. district ct issued its decision on criminal contempt charges against E after ALJ had issued his decision herein, denied; decision of district ct is matter of which Bd takes judicial notice and, furthermore, Bd found nothing in ct opn which would warrant reversal of ALJ's findings)

1401 GENERALLY

1401-8900 Other

Atlas Minerals, Division of Atlas Corporation **256 NLRB No. 022**
(judicial notice taken of agreement between GC and Mine Safety and Health Administration to the effect that, while safety and health activities may be protected solely under Mine Safety Act, many such activities may be protected under both Mine Safety Act and NLRA)

Seafarers International Union of North America, Pacific District, AFL-CIO, and Its Affiliates (American Pacific Container Lines, Inc. (AMPAC)) **252 NLRB No. 105**
(U's request which was filed with ALJ after hearing closed for judicial notice of exhibits from collateral suit of which GC was not party denied where other parties would not have opportunity to be heard as to propriety of taking judicial notice and tenor of matter noticed as moving party did not move to reopen record)

Local No. 3, Electrical Workers (Nixdorf Computer Corporation) **252 NLRB No. 082**
(ALJ's taking judicial notice of credibility findings made in another case held not reversible error, notwithstanding fact that it is generally inappropriate for ALJ to rely on credibility findings made in another case; here, ALJ did not predicate his credibility resolutions on credibility findings in companion case, but rather based his resolutions on demeanor of witnesses and record as whole)

Behring International, Inc. **252 NLRB No. 055**
(Bd took administrative notice of fact that, following close of hearing, a change occurred in leadership of Iran which was E's primary customer at facility involved herein, and left to compliance stage determination of timing and nature of impact of such leadership change on E's operations which E alleged resulted in its closing, as well as period during which Ees would have worked had it not been for E's unlawful layoff of Ees and subcontracting of its operations)

Madison Newspapers, Inc. **JD-157-82**
(no official notice taken of findings in decision to which exceptions have been filed and which is thus not final)

N.L.R.B. v. Big Bear Supermarkets #3 and its alter ego Richard Homes **640 F.2d 924 (C.A. 9, Apr 8, 1980)**
(ct declined U's request to take official notice of letters from E to Us concerning sale of E's stores, since U failed to establish that information in letters is not subject to reasonable dispute, as required by Fed. R. Evidence 201(b))

1450 SPECIFIC FACTS NOTICED

1450-0900 Board decisions

Magnesium Casting Company **259 NLRB No. 064**
(ALJ's official notice of prior case involving same E not taken until after Bd issued its decision and order in that case)

Marriott Corporation **251 NLRB No. 180**
(prior Bd decision holding that E's *In-Flight Services Division* had violated Secs. 8(a)(1) and (3) of Act at E's Tampa facility not taken into account in instant case, since: (a) issue of E's motive was not litigated; (b) acts in issue occurred in Tampa, not San Juan; (c) even in Tampa, E did not demonstrate *general disregard for its Ees' rights*)

Hospitality Motor Inn, Inc. (Hotel & Restaurant Employees & Bartenders Union, Local No. 235) **250 NLRB No. 155**
(request that ALJ take official notice of Bd's decision in related cases rejected where GC had proceeded in instant case w/o consolidation with said cases and prior to Bd decision in said cases)

Howard Johnson Company, d/b/a Howard Johnson Distribution Center **250 NLRB No. 071**
(to find U a labor organization)

Westinghouse Electric Corporation **JD-(ATL)-88-81**
(representative for appropriate unit)

Tripp Electric, Inc.; Triple B Electric; Robert Stephen Tripp d/b/a Coordinated Systems; Ronald J. Tripp d/b/a Integrated Systems **JD-(SF)-220-81**
(jurisdiction asserted over signatories to multi-E bargaining agreement where notice was taken that jurisdiction had been asserted over same multi-E association in prior Bd case, creating presumption of continuing jurisdiction which was not rebutted by E)

Ace Electrical Construction Corporation Advance Electric of New York, Inc.; et al. **JD-(NY)-79-81**
(status of local of Teamsters as labor organization, since U had been cited in prior Bd decisions as labor organization)

National Electric Coil, A Division of McGraw Edison Company **JD-235-81**
(official notice taken of Bd decision cited in memorandum submitted by respondent appropriate where memorandum contains no argument and deci-

1450-0900—Cont.

sion cited therein was not issued by Bd until after briefs in instant case were filed)

1450-2700 Commerce facts

New World's Restaurant d/b/a Sunbird Restaurant **JD-(SF)-288-82**
(in unpublished decision)

1450-4500 Federal laws, regulations, decisions, publications, etc.

The Bakery, Incorporated **259 NLRB No. 099**
(administrative notice taken of recently effective changes in Sec. 102.69(a) of the Bd's R/R, series 8, as amended; however, Respondent's contention that former Sec. 102.69(a) required transmittal to Bd of statements of witnesses as part of R case underlying alleged section 8(a)(5) violation proceeding herein, rejected; and GC's contention that in *no hearing* cases witnesses' statements always have been and still are excluded from record, accepted)

Alco Venetian Blind Co., Inc. **253 NLRB No. 161**
(official notice of inflation rate as reported by Bureau of Labor Statistics may not be taken to show that wage increases were not higher in percentage terms than wage increases in prior years because GC had no opportunity to respond to these figures at hearing)

Central Freight Lines, Inc. **250 NLRB No. 063**
(affidavit of witness who died prior to hearing, admissable to prove conversation between deceased and E's terminal manager, since affidavit met standards of *Rule 804(b)(5) of Federal Rules of Evidence*)

Lord Jim's **259 NLRB No. 164**
(judicial notice of district ct decision regarding merger of Us which was basis for decision as to whether there was successor U in Bd case)

1450-4800 State laws, regulation, decisions, publications etc.

Jaybil Steel Products, Inc.; etc. **258 NLRB No. 157**
(decision of state unemployment insurance appeal board denying benefits because charging party lost job through conduct, received into evidence; however, since ALJ drew differnet factual conclusions and ULP not considered by unemployment tribunal, award not given controlling weight).

1450-6300 Record in prior Board case need not be introduced as formal exhibit

Stop and Shop Companies, Inc. Medi Mart Division **259 NLRB No. 124**
(ALJ, in rejecting E's argument of alleged discriminatee's lack of involvement in prior ULP case in defense to E's alleged motivation in present ULP case , found that prior charge was filed at least partially on alleged discriminatee's behalf, and ALJ took official notice of fact that alleged discriminatee for whom ULP charge had been filed would provide affidavit to Bd in support thereof)

1450-7200 Record in prior R proceeding involving same parties

Bally's Park Place, Inc. **257 NLRB No. 132**
(intervenor U held labor organization where record in 2 prior RC cases disclosed that local was organized to deal with Es concerning wages, hours and working conditions and was found labor organization and nothing in recent cases casts doubt upon its qualification)

Colorado Aggregate Company, Inc. **250 NLRB No. 169**
(as term *record* is defined in Sections 102.68 and 102.69 of Bd's R/R)

Wright & Lopez of Alabama **250 NLRB No. 051**

Spring City Knitting Company **260 NLRB No. 033**

U.S. Bus, Inc. **JD-391-82**
(where E failed to comply with subpoena requesting jurisdictional information, ALJ conducted hearing and allowed GC to adduce secondary evidence obtained from R-case hearing involving same E and also other reports filed with ICC and Maryland Public Service Commission)

Power Service Co., T and T Truck and Trailer Leasing, Inc., Night Hawk Motor Transportation, Inc., and York Motor Transport, Inc. **JD-161-82**
(E status and jurisdiction)

1450-8100 Record in prior ULP case against same party

Building and Construction Trades Council of Philadelphia and Vicinity, AFL-CIO (Neshaminy Constructors, Inc.) **265 NLRB No. 147**
(where Council for Building and Construction Trades Council declined to stipulate that it is labor organization, Bd took administrative notice that it was found to be labor organization in prior cases)

Earle Industries, Inc. **260 NLRB No. 163**
(finding in *Earle Industries, Inc.*, 146 NLRB 536 (1964), that supervisor and plant manager had *propensity* to engage in violative 8(a)(1) conduct prior to instant hearing, not adopted by Bd, since earlier decision predated alleged violation in instant case by some 14 years and was too remote to support ALJ's finding)

Heatilator Fireplace, Division of Vega Industries, Inc. **260 NLRB No. 047**
(where E excepted to ALJ's taking official notice of its ULPs in prior case as evidence of E's U animus herein claiming few if any of its management personnel then employed still remained, Bd held E's prior ULPs may be noted as background here)

Chrysler Corporation-Amplex Division of Chrysler Corporation **JD252-81**
(formal pleadings and transcript from prior case involving same local were admitted into evidence in instant case, since they were relevant with respect to consideration of *res judicata* issue)

N.L.R.B. v. Local 483 and Local 11, Ironworkers **672 F.2d 1159 (C.A. 3, Feb. 1982)**
(referral in violation of consent decree in earlier Ironworkers' cases is not, ipso facto, violation of Sec. 8(b)(1)(A) and 8(b)(2))

N.L.R.B. v. Joseph, d/b/a Meat Packers International **605 F.2d 466 (C.A. 9, 1979)**

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(Bd was clearly entitled to consider extensive record of past unlawful activity of E in shaping its remedial order in instant case)

1450-8900 Other

Lee Simmons and Beverly McKinstry Simmons, A Partnership, d/b/a Elmendorf and Fort Richardson Barber Concessions **JD-(SF)-186-82**
(*cost of living* as determined by U.S. Department of Labor, Bureau of Labor Statistics USDL: 79-305 (April 29, 1979))

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**
(Bd will not consider extrinsic evidence to determine if ambiguous contract provisions were intended to have, or in practice had, illegal effects)

2800 BURDEN OF PROOF

Texas Department of Community Affairs v. Burdine **450 U.S. 248 (U.S. SCt., Mar. 1981)**
(in Title VII cases, defendant held to have burden – not of persuasion by a preponderance of the evidence that theirm employment action was lawful – but burden of production of admissable evidence of legitimate nondiscriminatory reason for rejection of plaintiff, or preference for another, sufficient to raise a genuine issue of fact and legally sufficient to justify judgment for defendant; burden of persuasion remains with plaintiff)

Sierra Vista Hospital, Inc. **249 NLRB No. 066**
(E failed to meet its burden of proving that there was clear and present danger of conflict of interest as result of supervisory participation in positions of authority in nurses' association so as to compromise association's bargaining integrity)

Cashmere Lumber Company **JD-(SF)-93-80**
(burden is on party alleging supervisory status to prove that it, in fact, exists)

Central Florida Sheet Metal Contractors Association, Inc. v. N.L.R.B. **664 F.2d 489 (C.A. 5, Dec. 1981)**
(burden of proof was not on U to show that trust fund was lawful under Sec. 302 of LMRA and not *union war chest*, but on GC to show that trust fund's providing for strike benefits changed it from mandatory to nonmandatory bargaining subject and made U's bargaining to impasse over it unlawful; potential surreptitious payments of strike benefits was sufficient basis for ct's finding fund violated Sec. 302, but not for GC's showing 8(b)(3) violation)

2810 STANDARD OF PROOF

Beth Israel Hospital and Geriatric Center v. N.L.R.B. **688 F.2d 697 (C.A. 10, Sept. 1982)**
(en banc ct held Bd must determine, when certifying bargaining unit in health care institutions, whether unit is appropriate w/o resorting to presumption that shifts to E burden of showing proffered unit is appropriate, and Bd must state why unit it chooses complies with Congress' admonition; Bd cannot rely on E's failure to show that units are inappropriate; if Bd declines to redetermine whether an appropriate unit was selected, then that issue is not addressed at ULP proceeding, and thus Federal Rule of Evidence 301 would not apply and E could challenge unit selection only through judicial review)

2810-3300 On General Counsel-preponderance of evidence

Virginia Electric Power Company **260 NLRB No. 075**
(proper standard for finding a violation at agency level is that violation must be proved by preponderance of the evidence)

2810-3300—Cont.

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(*section* 10(c), as well as Bd's own regulation, make clear that GC must prove E's guilt by preponderance of evidence to warrant finding that ULP has occurred)

N.L.R.B. v. Wilhow Corporation, d/b/a Town and Country Supermarkets **666 F.2d 1294 (C.A. 10, Dec. 1981)**
(to prove knowledge of U activity Bd did not need to prove *beyond a reasonable doubt* that E was aware of Ee's involvement where record allows fair inference of discriminatory motivation. Circumstantail evidence of E's knowledge and motive sufficient to prove Sec. 8(a)(3) violation)

2810-6700 On Respondent-rebut or meet presumption that violation occurred

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(E in section 8(a)(3) discharge case has no more than limited duty of producing evidence to balance, not to outweigh, evidence produced by GC; E has burden of going forward to meet prima facie case, but not burden of persuasion on ultimate issue of existence of violation; i.e., that there would be no discharge but for E's protected activity)

2850 BURDEN OF GOING FORWARD WITH PROOF

Texas Department of Community Affairs v. Burdine **450 U.S. 248 (U.S. SCt., Mar. 1981)**
(in Title VII cases after plaintiff proves by a preponderance of the evidence a prima facie case of discrimination, burden shifts to defendant to rebut presumption of discrimination by production of admissable evidence of legitimate nondiscriminatory reason for its employment action sufficient to raise a genuine issue of fact and legally sufficient to justify judgment for defendant; burden of persuasion remains with plaintiff)

2850-0100 Generally

RAHCO, Inc. **265 NLRB No. 030**
(burden of proving supervisory status rests on party alleging that such status exists)

Sheet Metal Workers International Association, Local Union No. 13, AFL-CIO (Sheet Metal Contractors Association Hudson & Bergen Counties, New Jersey) **259 NLRB No. 056**
(where U refuses to refer applicant because of improper U considerations, GC need not prove that jobs were available at the time of the request for referral)

Suburban Motor Freight, Inc. **247 NLRB No. 002**
(party seeking Bd deferral to arbitration award has burden of proving that issue of discrimination was litigated before arbitrator; Electronic Reproduction, 213 NLRB 758, overruled)

General Grocer Company **JD-591-80**
(ALJ noted that Bd has not adopted ct established requirement that U has burden of proof to demonstrate some objective justification for discriminatory conduct towards its members; instead, burden of proving violative motives or objectives is on GC)

A To Z Portion Meats, Inc. v. N.L.R.B. **643 F.2d 390 (C.A. 6, Mar. 18, 1981)**
(ct did not sustain Bd's finding of unlawful discharge where it found Bd's inference of E's knowledge of dischargee's U activity based solely on disbelief of E's stated reasons for discharge tantamount to compelling E to disprove prior knowledge)

2850-0600 Proving contract as bar to petition

The German School Society, Washington, D.C., d/b/a The German School of Washington, D.C. **260 NLRB No. 169**
(party asserting contract as bar to election bears burden of proving the facts establishing the applicability of contract bar doctrine)

2850-0800 In objections to election proceeding

Campbell Products Department, Harry T. Campbell Sons Company, Division of Flintkote Company **260 NLRB No. 161**
(the burden of proving its objections to elections is on party making objections and Bd staff has no duty to seek out evidence which would warrant setting aside election)

Burns International Security Services, Inc. **236 NLRB No. 165**
(U certified where E's contention that RD's investigation was inadequate was rejected because E failed to make out *prima facie* showing in connection with any of its timely objections, or demonstrate that material factual issues existed as to correctness of RD's findings)

N.L.R.B. v. Morgan Health Care Center, Inc. **618 F.2d 127 (C.A. 1, 1980)**
(burden on party urging overturning of Bd decision which refused to set election aside)

EDS-IDAB, Inc. v. N.L.R.B. **666 F.2d 971 (C.A. 5, Feb. 1982)**
(hearing required where company's prima facie evidence supporting objections to conduct of election related to specific events and people and raised substantial and material issues of fact as to whether the threats and violence were sufficient to destroy atmosphere necessary to exercise of free choice in election)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(burden is on objecting party to prove prejudice to fairness of election)

N.L.R.B. v. Metro-Truck Body, Inc. **613 F.2d 746 (C.A. 9) (1980)**
(contention by E, in objecting to election, that U had created racially inflamatory atmosphere precluding fair election, rejected, where E failed to *supply prima facie evidence presenting substantial and material factual issues which would warrant setting aside election*)

2850-1100 Beginning burden rests on General Counsel

Atlas Minerals, Division of Atlas Corporation **256 NLRB No. 022**
(GC made prima facie showing that Ee's protected concerted activity of participating, as miner's representative, in federal agency's safety inspection of mine was motivating factor in Ee's suspension assertedly because of safety infraction on job, in view of prior threats of termination for resorting to agency, timing of suspension shortly after inspection, and departure from usual practice in disciplining Ee for safety violation)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(Bd has burden of proving that discharge was motivated by anti-U animus)

2850-1133 Discriminatory reason for discharge or other action

Styrest Nursing Home **JD-(ATL)-96-82**
(warning and suspension notices for strike misconduct issued to Ees who were stipulated to have participated in strike proved GC's prima facie case; need not include showing of explicit motivation to punish strikers for participating in strike)

A. Duie Pyle, Inc. **263 NLRB No. 092**
(in order to prove *prima facie* case of discharge violative of 8(a)(1), GC must establish that violation occurred because (a) Ees, to E's knowledge, were engaged in protected concerted activity of lawful economic strike, and (b) E discharged or failed to reinstate Ees for alleged misconduct associated with their picketing activity)

L. A. Water Treatment, Division of Chromalloy American Corporation **263 NLRB No. 022**
(make-whole remedy appropriate for violation of Ee's *Weingarten* rights since GC made *prima facie* showing that unlawful interview occurred and that Ee was discharged for failing to provide assurances at interview that he would no longer be insubordinate, and E did not meet burden of demonstrating that discipline was not based on information obtained at interview)

Hillside Bus Corp. **262 NLRB No. 182**
(*To establish violation of Section 8(a)(3) it is incumbent on GC to adduce evidence supporting contention that Ee was unlawfully discharged. Should prima facie case of unlawful discharge be shown, burden of persuasion shifts to respondent to establish lawful reason for discharge. However, in assessing whether prima facie case has been presented, ALJ must view GC's evidence in isolation, apart from respondent's proferred defense. It is only after GC's prima facie requirement has been met that ALJ must consider respondent's defense*)

Webb-Centric Construction **254 NLRB No. 159**
(*under test articulated in Wright Line* GC is required to make prima facie showing sufficient to support inference that protected conduct was motivating factor in E's action... once such a prima facie case is established, burden is shifted to E to demonstrate that same action would have taken place even in absence of protected conduct. This shifting of burdens does not shift ultimate burden of GC to establish ULP by preponderance of evidence)

Herman Brothers, Inc. **252 NLRB No. 121**
(E's unlawful reasons for action must be *motivating factor* in its decision rather than constituting only part of reason; GC must make *prima facie* showing to support inference that protected conduct was motivating factor... once this is established, burden shifts to E to demonstrate same action would have taken place absent protected conduct)

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**
(under *dominant motive* test it is GC who in addition to establishing *prima facie* showing of unlawful motive, is further required to rebut E's asserted defense by showing that discharge would not have taken place in absence of Ees' protected activities)

Kraft Foods, Inc. **251 NLRB No. 086**
(c/d order, rather than make-whole remedy, appropriate as remedy for violation of Ee's *Weingarten* rights, since E negated *prima facie* showing of appropriateness of make-whole remedy by demonstrating that its decision, to

2850-1133—Cont.

discipline Ee involved in forklift collision and fight with another Ee, was not based on information obtained at unlawful interview)

General Telephone Company of Michigan 251 NLRB No. 099
(disciplining Ee for harassing two other Ees by various derogatory, threatening and vulgar remarks and spitting at one of them for their not having participated in strike held not violative where GC had not established that conduct was *prima facie* or, *in fact*, protected activity)

Charles Dom d/b/a Hopp Tapp Mfg. Co. 250 NLRB No. 154
(direct evidence of discriminatory motivation may be inferred from record as whole; economic justification no defense to discriminatory discharges or lay offs if selection of those Ees effected was because of their U activities)

Heatilator Fireplace, Division of Vega Industries, Inc. 249 NLRB No. 047
(where it was alleged that E violated 8(a)(3) by discharging Ee, E does not have burden of proving ignorance of Ee's U activity but, rather, it is GC who has burden of establishing E's knowledge of Ee's U activity)

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)
(in dual motive case, the initial inquiry is whether Bd has made a prima facie showing that a *significant improper motivation* underlay E's adverse action against an Ee; such a showing can rest either on independent evidence of anti-U animus or on circumstances surrounding the conduct itself)

N.L.R.B. v. Blackstone Company, Inc. 685 F.2d 102 (C.A. 3, Aug. 1982)
(where Bd found violation relying on *Wright Line* stating that E did not sustain burden of proof to show that Ee would have been discharged absent of his having engaged in protected activity after GC showed discriminatory motivation; remanded to Bd for reconsideration under Circuit's decision in *Behring International* No. 81-1937, which holds once GC has established prima facie case of discriminatory discharge, E should rebut this with evidence of legitimate business reason for its action but ultimate burden of proof does not shift from GC to E and E doesn't need to show lack of impermissible motive)

McLean Trucking Company v. N.L.R.B. 626 F.2d 1168 (C.A. 4, 1980)
(where valid reason to discharge Ee exists, it is not sufficient in order to establish violation *for Bd to declare that reasons were pretextual* but *burden which is on Bd is not simply to discover some evidence of improper motive, but to find affirmative reason why E rejected good cause and chose bad one and to present substantial basis of believable evidence pointing toward unlawful one)*

Electric Machinery Company v. N.L.R.B. 653 F.2d 958 (C.A. 5, Aug 1981)
(GC has burden of establishing that E's conduct was so egregious as to be *inherently destructive of important Ee rights* or that E acted with intent to discourage U membership)

N.L.R.B. v. Consolidated Freightways Corporation of Delaware 651 F.2d 436 (C.A. 6, Mar 1981)

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)
(E's contentions that RD has greater burden of proving by substantial evidence on record as a whole that E's actions motivated by anti-U animus, rejected, since that standard applicable only to determination of merits of ULP charge; in Section 10(j) or 10(l) inj cases ct need not, indeed should not, make finding of E motivation. It need only find reasonable cause for belief that there was such a motivation)

N.L.R.B. v. Brooks Cameras, Inc. 691 F.2d 912 (C.A. 9, Nov. 1982)
(when discharge motivated by both legitimate business and anti-U animus, or when business reasons may be pretext for termination motivated by hostility toward U, ULP may be found only if anti-U animus was moving cause of discharge. Bd must make showing that U activity was motivating factor; then burden shifts to E to establish that terminations would have occured absent protected U activity)

N.L.R.B. v. Adams Delivery Service, Inc. 623 F.2d 96 (C.A. 9, July 1980)
(Bd has burden of proving that moving cause for discharge was anti-U animus)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. 643 F.2d 687 (C.A. 10, Mar 2, 1981)
(in establishing that Ee's duties were changed and he was discharged in violation of *Section* 8(a)(1) and (3), Bd bears burden of proving that these actions were unlawfully motivated, and this burden must be met by substantial evidence)

2850-1133-0000 General Counsel may not rely on inferences

Lorid Printing, Inc. 264 NLRB No. 040
(where E presented evidence that discharge of Ee was for excessive absences and lateness, particularly in view of fact Ee's U activities limited to signing authorization card, its defense was accepted, but adverse inference, drawn from E's refusal to present time cards of other Ees which might show that Ees with equally bad attendance records not discharged, did not aid GC since adverse inference may not be used as substitute for affirmative evidence in establishing prima facie case; therefore no link to show that discharge was for U activities)

The Evening News Association 258 NLRB No. 020
(termination of technologically displaced telephone operator, U activist, subsequent to alleged refusal to transfer her to another clerical position w/I E's organization not violative where Ee refused to accept other clerical jobs offered by E; GC did not sustain burden of proving discrimination, since events relied on were outside 10(b) limitation period, and were subject to several inferrences none of which constituted ULP nor amplified character of any later conduct of E)

The Evening News Association 258 NLRB No. 020
(in absence of evidence of animus or hostility towards Ee based upon Ee's U activity, discriminatory motive may not be inferred)

Le Norse Company, a Subsidiary of Ingersoll Rand Company 247 NLRB No. 098
(where E's relocation of plant was based on legitimate economic reasons and E was under no legal duty to transfer unit Ees to new location, E's failure to transfer unit Ees while transfering non-unit Ees, not violative, notwithstanding that E did not offer legitimate business reasons for its disparate treatment of unit and not-unit Ees; GC did not claim that disparate treatment was illegally motivated, and it is presumed that an action was taken for lawful reasons, absent evidence of illegality)

2850-1150 Justification of superseniority contractual provision

Chrysler Corporation-Amplex Division of Chrysler Corporation JD252-81
(burden upon party (U in instant case) asserting legality of (super-seniority) clause to show substantial and legitimate justification for grant if extended beyond seniority and layoffs; see *N.L.R.B. v. Great Dane Trailers, Inc.* 388 U.S. 26, 33-34 (1967))

N.L.R.B. v. Stanley H. Egan and Donald R. Egan 658 F.2d 746 (C.A. 10, Aug 1980)
(superseniority clauses are discriminatory; therefore, those who are responsible for invoking or applying such clause to U officers must initially prove legitimate and substantial purpose. Exact proof which will be sufficient has to depend on surrounding circumstances of each case)

N.L.R.B. v. Stanley H. Egan and Donald R. Egan 658 F.2d 746 (C.A. 10, Aug 1980)
(minimum standard of proof Act requires for those invoking superseniority clause is that official duties and responsibilities of officer who receives superseniority must help to implement collective bargaining in meaningful way)

2850-1167 Illegality of wage increase

Chester Valley, Inc. 251 NLRB No. 190
(burden of dissociating anouncement of wage increase from pre-election campaign and thereby making it lawful is on E)

Chester Valley, Inc. 251 NLRB No. 190
(pre-election granting of wage increases which were appreciably larger than those granted in previous years, unlawful, where E failed to sustain burden of showing that as to Ees receiving more than statutory minimum wage, size of increases was governed by other than pendency of election)

N.L.R.B. v. Chester Valley, Inc. 652 F.2d 263 (C.A. 2, June 1981)
(where size of wage increases is in question, burden is on GC to demonstrate that increases were abnormally large and timed to influence Ees' organizational decision; once this is shown, GC has put forth *prima facie* case of interference with Ee rights, and burden shifts to E to establish that increases were consistent in size with those granted in prior years or that increases were timed so as not to interfere with Ee rights)

2850-1168 Whether union, denied access to employer's property, has other means of access to employees

Belcher Towing Company v. N.L.R.B. 614 F.2d 88 (C.A. 5, Mar. 1980)
(to sustain its burden of proving lack of alternative means of communication U need not have attempted communication by other means but show only that such attempts would have been unsuccessful under circumstances)

Belcher Towing Company v. N.L.R.B. 614 F.2d 88 (C.A. 5, Mar. 1980)
(remand to Bd to reconsider whether U had alternative means of communication with E's Ees where its agents were denied access to E's ship with burden on GC to prove lack of alternative means of communication rather than on E to show existence of means)

2850-1168—Cont.

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**

(burden lies upon Bd to substantiate its conclusion that access is necessary remedy to offset consequences of unlawful E conduct)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**

(propriety of access as organizational tool and propriety of U access as remedial measure are 2 separate questions involving different considerations; former need finding that U unable to reach Ees through other channels of communication; as to latter, critical inquiry is whether E conduct is of such nature that access is needed to offset harmful effects that have been produced by such conduct)

2850-1185 Appropriateness of unit

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**

(ct must insure that Bd's exercise of discretion, as to what unit is appropriate for bargaining, is not unreasonable, arbitrary, unsupported by evidence, or in conflict with congressional intent)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**

(requiring health care industry Es to bear burden of producing evidence that limited bargaining units are more inappropriate than broader bargaining units runs contrary to Congress' admonition)

2850-1186 Majority status of incumbent union

St. Francis Hospital **263 NLRB No. 109**

(burden of proof to establish invalidity of cards shifted to E where GC had established validity of cards to show U's majority status)

United Supermarkets, Inc. **261 NLRB No. 179**

(burden of proof is upon GC to establish by affirmative probative evidence that at some relevant time U represented majority of Ees in appropriate unit)

Siro Security Service, Inc. **247 NLRB No. 157**

(burden on GC to establish U does not represent majority of Ees at time of recognition; however, GC need not prove with mathematical certainty that U lacked majority support at time of recognition where there is evidence that E unlawfully assisted in U organizational campaign)

2850-1187 Unilateral change in terms and conditions of employment

Artim Transportation System, Inc. **264 NLRB No. 020**

(violation, where E failed to rebut GC's *prima facie* showing that E violated Sec. 8(a)(5) by unilaterally implementing changes in wage rate structures covered by multi-E association contract in circumstances which showed that E implemented changes w/o consulting in any manner with U and E did not effectively withdraw authority from multi-E association to bargain on its behalf with U negotiating committee)

Spector Freight System, Inc., Viking Division **260 NLRB No. 014**

(GC held not to have met his burden of proof where, in order to make out *prima facie* showing that E violated 8(a)(5) by unilaterally changing terms and conditions of employment, GC was required to show that E failed to bargain and reach agreement with designated bargaining representative before implementing changes, which in instant case was industry negotiating committee, but introduced evidence showing only that E had not reached agreement concerning changes with local's business agent; see also *Branch Motor Express Co.*, 260 NLRB No. 16)

2850-1188 Lawful recognition of incumbent union

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**

(GC sustained burden of proving that incumbent U was lawfully recognized, where recognition was granted during pre-election conference at Bd's office, incumbent's numerical majority was not challenged, at time of recognition no R ptn had been filed by rival U or any other U seeking Ee representation, and rival U did not move to intervene in R proceeding)

2850-1190 Refusal to refer

International Longshoremen's Association, Local 1414 **JD-357-80**

(unnecessary that GC demonstrate what specific jobs were available at time of discriminatory refusal to refer, inorder to establish violation)

2850-1700 Burden on party seeking to overturn results of election

Gulf Coast Automotive Warehouse Company, Inc. **248 NLRB No. 058**

(ALJ upon remand from Bd and ct found E failed to show that U engaged in pre-election misconduct involving Sewell rule which would warrant setting aside results of election)

N.L.R.B. v. Howard Johnson Company d/b/a Howard Johnson Distribution Center **650 F.2d 741 (C.A. 5, July 1981)**

(burden is heavy one, and objecting party must present specific evidence which on its face would warrant setting aside election. Party seeking to have Bd overrule RD's recommendation required under established Bd policy to supply Bd with specific evidence tantamount to offer of proof, which would warrant setting aside election before Bd will direct hearing or require RD to pursue investigation further)

N.L.R.B. v. Claxton Manufacturing Company, Inc. **613 F.2d 1364 (C.A. 9) (1980)**

(conclusory allegations are not sufficient to obtain hearing in representation case; losing party bears heavy burden)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 5, May 1981)**

J.F. Hink & Son v. N.L.R.B. **654 F.2d 729(T) (C.A. 9, July 1981)**

(Bd enjoys broad discretion in conducting and supervising representation elections, once complete, Bd conducted election is presumed legitimate accordingly, to be entitled to hearing, party making post-election objection or otherwise seeking to void election must supply prima facie evidence that presents substantial and material issues which would warrant setting aside election)

J.F. Hink & Son v. N.L.R.B. **654 F.2d 729(T) (C.A. 9, July 1981)**

(mtn for reconsideration after election held must be supported by prima facie evidence that presents *substantial and material* issues which warrant setting aside election since once completed, Bd-conducted election is presumed legitimate and standard for reversal of BD's denial of hearing on post election objection is *abuse of discretion*)

J.F. Hink & Son v. N.L.R.B. **654 F.2d 729(T) (C.A. 9, July 1981)**

(post-election objections based on U's (or international's) merger or change of affiliation with another U is not automatically entitled to hearing addressing is of *continuity of representation* i.e., whether successor U is continciation of elected U, or substantially different organization but objection must be supported by substantial and material evidence standard applicable to any post-election objection)

South Pacific Furniture, Inc. v. N.L.R.B. **627 NLRB No. 173 (C.A. 9, 1980)**

(hearing on objections to election not required where E, seeking to void Bd conducted election, did not supply *prima facie* evidence presenting substantial and material factual issues which would warrant setting election aside; E cannot demand evidentiary hearing simply to inquire further into unspecified possible election improprieties)

2850-2200 Failure to sustain burden justifies adverse inference

2850-2201 Generally

Wright Line, A Division of Wright Line, Inc. **251 NLRB No. 150**

(absence of any legitimate basis for action, of course, may form part of proof of GC's case)

2850-2233 Nonproduction of material evidence in one's possession raises adverse inference

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) **250 NLRB No. 023**

(U's own failure to maintain (out-of-work) records does not obviate its burden of rebutting GC's *prima facie* case of discrimination)

Aeronautic Corporation **JD-(Atl)-110-81**

(GC's mtn to strike economic matters related to E's defense granted where E failed to produce economic records to support his defense)

N.L.R.B. v. Chester Valley, Inc. **652 F.2d 263 (C.A. 2, June 1981)**

(rule that unfavorable inference shall be drawn against party which fails to introduce evidence known to be in its control will not apply where party has good reason to believe that its opponent has failed to meet its burden of proof; in such situation there is good faith belief that there is no need to offer further evidence, and therefore no inference can properly be drawn from non-production)

2850-2267 Nonproduction of material witness

International Business Systems, Inc. **258 NLRB No. 017**

(in determining whether strike was ULP or economic strike where 7 out of 12 strikers did not testify as to their motivation for striking, no assumption that witnesses GC did not call would have testified contrary to his position, since GC not obligated to call every witness to event and bringing 4 strikers to stand sufficient to avoid any adverse inference)

2850-2300 Remains with General Counsel if Employer's explanation is reasonable

2850-3300—Cont.

Navajo Freight Lines, Inc. **254 NLRB No. 166**
(responsibility of establishing that successor was w/o knowledge of predecessor's ULP's at time successor took over latter's operation rests with successor, and in instant case, successor made prima facie showing that it was w/o knowledge and GC failed to rebut such showing)

Blue Bird Body Company **251 NLRB No. 196**
(discharge of active U adherent for *goofing off* not violative where GC failed to prove by preponderance of evidence that discharge was motivated in whole or part by Ee's U activity)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(burden of persuasion with respect to ultimate question of determining causal link between bad motive and the discharge remains always with GC)

N.L.R.B. v. Blackstone Company, Inc. **685 F.2d 102 (C.A. 3, Aug. 1982)**
(where Bd found violation relying on *Wright Line* stating that E did not sustain burden of proof to show that Ee would have been discharged absent of his having engaged in protected activity after GC showed discriminatory motivation; remanded to Bd for reconsideration under Circuit's decision in *Behring International* No. 81-1937, which holds once GC has established prima facie case of discriminatory discharge, E should rebut this with evidence of legitimate business reason for its action but ultimate burden of proof does not shift from GC to E and E doesn't need to show lack of impermissible motive)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(when E shows legitimate reason for discharge of Ee, burden shifts to GC to prove improper motive moved E to discharge Ee)

Kansas City Power & Light Company v. N.L.R.B. **641 F.2d 553 (C.A. 8, Feb 4, 1981)**

Fun Striders, Inc. v. N.L.R.B. **658 F.2d 716 (C.A. 9, 1981)**
(in Sec. 8(a)(1) discharge case, if E demonstrates legitimate, substantial business reason for dismissal, burden shifts to Bd to establish that primary motivation for discharge was to penalize Ee for his protected activity)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(burden (of proof) to establish that primary motivation for E's replacing sympathy striker was to penalize Ee for engaging in protected activity shifts to GC once E had demonstrated legitimate business reason for replacing Ee)

N.L.R.B. v. Local 19, Hotel, Motel, Restaurant Employees and Bartenders Union, AFL-CIO **638 F.2d 1367(T) (C.A. 9, 1980)**
(where ALJ's decision to reject E's business justification reason for E's layoff not supported by substantial evidence and record contains no direct evidence of anti-U animous layoff's not violative)

N.L.R.B. v. First National Bank of Pueblo **623 F.2d 686 (C.A. 10, 1980)**
(once E comes forward with legitimate motive for dismissal, burden that discharge was unlawfully motivated, or improper notice contributed to discharge, on Bd; burden of establishing discharge was unlawfully motivated must be met by substantial evidence)

2850-4400 Shifts to respondent union or employer to establish affirmative defense

Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company **265 NLRB No. 189**
(Bd applied *Illinois Bell Telephone* standard for determining whether reinstatement and backpay were appropriate remedies for discharge following Weingarten violation as here – namely that where GC has shown that Ee was disciplined or discharged for conduct which was subject of unlawful investigatory interview, burden shifts to E to show that its decision to discipline or discharge was not based on information obtained at the interview; Bd found that discharge was not based on such information and only c/d order appropriate)

Rickel Home Centers, Division of Supermarkets General Corporation **262 NLRB No. 93**
(*deferral to arbitration award is affirmative defense in which burden of proof is assigned to moving party thus* burden is not met and defense not sustained where Respondent has not even offered arbitration award into evidence)

Henry J. Kaiser Company **259 NLRB No. 001**
(fact that U member of another local on traveler status, who frequently requested overtime from foreman who was member of local herein, was not given overtime work while others were, showed not only prima facie case of discrimination, which was not rebutted nor explained away by E, but also sufficiently established necessary predicate for U member's later actions in seeking to obtain processing of his grievance by U, herein charged with failure to process his grievance)

International Business Systems, Inc. **258 NLRB No. 017**
(burden on E to show that Ees that went out on strike and had not been reinstated struck for economic reasons rather than as result of ULPs, notwithstanding those particular Ees did not testify as to their motivation for striking, where other strikers testified they were motivated by E's ULPs; further, those strikers by going along with ULP strikers had manifested their support and acquired rights of those whom they supported)

Brookline Corporation d/b/a Hi Fi Buys **257 NLRB No. 166**
(*burden of results from ambiguity* (which caused Ees to believe they were discharged) *must fall on Respondent*)

Heartland Food Warehouse, Division of Purity Supreme Supermarkets **256 NLRB No. 148**
(*test in cases alleging violation of Section 8(a)(3) of Act where lawful as well as unlawful motive may exist for discharge, requires GC to make prima facie showing that Ees' protected activities motivated E's decision to discharge them. If the GC is successful, burden of proof is then shifted to E to show by preponderance of evidence that discharges would have occured even in absence of Ees' protected activities*)

Crown Cork & Seal Company, Inc. **255 NLRB No. 004**
(Section 10(b))

Fort Vancouver Plywood Company **252 NLRB No. 142**
(once unlawful discrimination has been established, burden is on wrongdoer *as to dimunition of damages — from the unavailability of a job at (its) plant for some reason unconnected with the discrimination*)

Ohio Masonic Home **251 NLRB No. 059**
(where GC shows that E conducted unlawful interview with Ee who was subsequently disciplined for conduct which was subject of interview, burden of going forward with evidence shifts to E to show that decision to discipline Ee was not based upon information obtained at interview)

Ashcraft's Market, Inc. **251 NLRB No. 025**
(*once objecting petitioner establishes that E has announced new benefits during critical period prior to election, burden shifts to E to establish announcement would have been forthcoming at time even if there was no U campaign*)

East Wind Enterprises **250 NLRB No. 101**
(burden on E to show layoff was motivated by business considerations where GC had established *prima facie* case of unlawful layoff)

N.L.R.B. v. Amber Delivery Service, Inc. **651 F.2d 57 (C.A. 1, June 1981)**
(after GC establishes *prima facie* case burden shifts to E to come forward with enough evidence to convince trier of fact that, under the circumstances, there is no longer preponderance of evidence establishing violation)

N.L.R.B. v. Chester Valley, Inc. **652 F.2d 263 (C.A. 2, June 1981)**
(where size of wage increases is in question, burden is on GC to demonstrate that increases were abnormally large and timed to influence Ees' organizational decision; once this is shown, GC has put forth *prima facie* case of interference with Ee rights, and burden shifts to E to establish that increases were consistent in size with those granted in prior years or that increases were timed so as not to interfere with Ee rights)

N.L.R.B. v. International Medication Systems, Ltd. **667 F.2d 1031(T) (C.A. 9, Dec. 1981)**
(once GC invokes presumption of U's majority support burden is on E of producing sufficient evidence to demonstrate that U was actually in minority or E had reasonable good faith doubt of U's majority support)

N.L.R.B. v. Trident Seafoods Corp. **642 F.2d 1148 (C.A. 9, Mar 23, 1981)**
(where wrongly discharged Ees seek back pay from E, Bd policy places burden upon E of proving that Ees would not have accepted timely offer of reinstatement, had one been made)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**
(ct did not extend rule placing burden upon E to come forward with evidence of legitimate and substantial business justification for its act to alleged violation of Sec. 8(a)(4) of Act, since rule was intended to be limited to Sec. 8(a)(3) violations where discrimination was in issue)

2850-4450 Where employer's actions inherently destructive

Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corporation **258 NLRB No. 142**
(Bd, contrary to ALJ, refused to assume from U's failure to list discharges among other alleged discriminatory discharges in its election objections or in original charge that this Ee's discharge did not play role in undermining or dissipation of U's majority status and it subsequent loss of election; E did not meet its burden to show that Ee's termination one day after intensively surveilled U meeting which Ee attended was not widely known fact of significance to unit Ees)

2850-4450—Cont.

Freezer Queen Foods, Inc. 249 NLRB No. 045

Vesuvius Crucible Company v. N.L.R.B. 668 F.2d 162 (C.A. 3, Nov. 1981)

Kansas City Power & Light Company v. N.L.R.B. 641 F.2d 553 (C.A. 8, Feb 4, 1981)

N.L.R.B. v. American Postal Workers Union 618 F.2d 1249 (C.A. 8, 1980)

2850-5500 Shifts to respondent where prima facie case established

A. Dale Pyle, Inc. 263 NLRB No. 092
(burden of going forward with evidence to rebut GC's *prima facie* case of discharge violative of 8(a)(1) shifts to E to establish *honest belief* that dischargees engaged in misconduct of such serious character as to lose protection of Act and to justify E in denying them reinstatement; upon establishing such *honest belief,* E is absolved from liability, except where GC carries further burden of affimratively proving that Ees did not, in fact, engage in conduct for which they were discharged, whereupon burden of rebutting GC's denials again shifts to E)

L. A. Water Treatment, Division of Chromalloy American Corporation 263 NLRB No. 022
(make-whole remedy appropriate for violation of Ee's *Weingarten* rights since GC made *prima facie* showing that unlawful interview occurred and that Ee was discharged for failing to provide assurances at interview that he would no longer be insubordinate, and E did not meet burden of demonstrating that discipline was not based on information obtained at interview)

Hillside Bus Corp. 262 NLRB No. 152
(*To establish violation of Section 8(a)(3) it is incumbent on GC to adduce evidence supporting contention that Ee was unlawfully discharged. Should prima facie case of unlawful discharge be shown, burden of persuasion shifts to respondent to establish lawful reason for discharge. However, in assessing whether prima facie case has been presented, ALJ must view GC's evidence in isolation, apart from respondent's proferred defense. It is only after GC's prima facie requirement has been met that ALJ must consider respondent's defense*)

Rickel Home Centers, Division of Supermarkets General Corporation 262 NLRB No. 93
(*deferral to arbitration award is affirmative defense in which burden of proof is assigned to moving party* thus burden is not met and defense not substained where Respondent has not even offered arbitration award into evidence)

Atlas Minerals, Division of Atlas Corporation 256 NLRB No. 022
(after Gc's prima facie case shifted burden to E, E failed to meet burden of showing that it would have suspended Ee because of safety infraction on job even if Ee had not engaged in protected conduct of acting as Ee representative during federal agency's safety inspection of E's operation, where suspension procedure was not consistent with E's past practice, no suspension under similar circumstances had occurred, Ees would likely perceive suspension as unprecedented, and suspension could reasonably be expected to have chilling effect on Ees' rights to utilize both agency and suspended Ee as their representative)

Webb-Centric Construction 254 NLRB No. 159
(*under test articulated in Wright Line* GC is required to make prima facie showing sufficient to support inference that protected conduct was motivating factor in E's action... once such a prima facie case is established, burden is shifted to E to demonstrate that same action would have taken place even in absence of protected conduct. This shifting of burdens does not shift ultimate burden of GC to establish ULP by preponderance of evidence)

The Board of Trustees of City Hospital, Inc. 254 NLRB No. 097
(discharge unlawful where GC made *prima facie* showing that Ee's protected activity was motivating factor in E's decision to discharge her and E did not establish affirmative defense nor did E carry out its burden of showing that its action concerning Ee would have been the same even in absence of protected conduct)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(under *dominant motive* test it is GC who in addition to establishing *prima facie* showing of unlawful motive, is further required to rebut E's asserted defense by showing that discharge would not have taken place in absence of Ees' protected activities)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(1947 amendment of Section *10(c)* of NLRA does not address *in part* or *dominant motive* analysis or allocations of burdens *but* legislative history of such amendment does; E required to make out what is actually affirmative defense to overcome *prima facie* case of wrongful motive)

Kraft Foods, Inc. 251 NLRB No. 086
(c/d order, rather than make-whole remedy, appropriate as remedy for violation of Ee's *Weingarten* rights, since E negated *prima facie* showing of appropriateness of make-whole remedy by demonstrating that its decision, to discipline Ee involved in forklift collision and fight with another Ee, was not based on information obtained at unlawful interview)

Siro Security Service, Inc. 247 NLRB No. 157
(where GC's evidence amounts to prima facie case of nonmajority status of recognized U)

N.L.R.B. v. American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. 670 F.2d 1236 (C.A. 1, Feb. 1982)
(after burden shifts to E to rebut prima facie case of GC, E must simply produce sufficient evidence *to balance, not to outweigh* evidence produced by GC)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)
(E in section 8(a)(3) discharge case has no more than limited duty of producing evidence to balance, not to outweigh, evidence produced by GC; E has burden of going forward to meet prima facie case, but not burden of persuasion on ultimate issue of existence of violation; i.e., that there would be no discharge but for E's protected activity)

N.L.R.B. v. Charles H. McCauley Associates, Inc. 657 F.2d 685 (C.A. 5, 1981)

2850-5550 Nondiscriminatory motive must be affirmatively shown by Employer where General Counsel's evidence permits inference of discrimination

RAHCO, Inc. 268 NLRB No. 030
(Bd affirmed ALJ's findings of ULPs where GC's *prima facie* showing was sufficient to support inference that protected conduct was *motivating factor* in E's decision and E failed to show same decision to change Ees conditions of employment would have occurred even in absence of protected conduct)

East Texas Motor Freight 262 NLRB No. 101
(discharge not violative where, notwithstanding GC made *prima facie* showing that E had unlawful motive for discharging Ee, E proved Ee would have been discharged because of long history of Ee's problems of discussions with other Ees while Ee was working, even in absence of Ee's protected activity; Ee was issued numerous lawful warnings concerning violation of E's lawful policy on solicitation in work areas on E's time)

Brookline Corporation d/b/a Hi Fi Buys 257 NLRB No. 166
(*burden of results from ambiguity* (which caused Ees to believe they were discharged) *must fall on Respondent*)

Limestone Apparel Corp. 255 NLRB No. 101
(finding of *pretext* necessarily means that reasons advanced by E either did not exist or were not in fact relied upon, thereby leaving in tact inference of wrongful motive established by GC)

Fort Vancouver Plywood Company 252 NLRB No. 142
(once unlawful discrimination has been established, burden is on wrongdoer *as to dimunition of damages — from the unavailability of a job at (its) plant for some reason unconnected with the discrimination*)

Kuno Steel Products Corp. etc. 252 NLRB No. 127
(Es failed to rebut GC's *prima facie* case establishing that Es did not meet their obligation to reinstate economic and unfair labor practice strikers to conditions current at time of strike by showing substantial business justification and thereby violated Act)

Herman Brothers, Inc. 252 NLRB No. 121
(E's unlawful reasons for action must be *motivating factor* in its decision rather than constituting only part of reason; GC must make *prima facie* showing to support inference that protected conduct was motivating factor... once this is established, burden shifts to E to demonstrate same action would have taken place absent protected conduct)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) 250 NLRB No. 023
(U's own failure to maintain (out-of-work) records does not obviate its burden of rebutting GC's *prima facie* case of discrimination)

MGM Grand-Reno, Inc. 249 NLRB No. 153
(wage increase granted during pendency of R ptn to segment of Ee complement held violative where E failed to overcome *strong presumption of (its) illegality*)

Manifold Services, Inc. JD-734-80
(discharges of Ees for their U activity, violative where GC established *prima facie* showing of E's unlawful notice and E failed to meet burden of showing discharges would have occured even in absence of U activity)

A.S.U., a subsidiary of Intermedco JD-(SF)-161-80
(*once finding made that Ee was illegally discharged, assertion that E would have been terminated or laid off in any case is in nature of affirmative defense and burden of proof on Respondent*)

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)
(E's burden to prove it had good reason sufficient in itself to make allegedly discriminatory job assignment did not impose an overall burden on E of proving itself *innocent* of violating Act; rather, it must simply come forward with enough evidence to convince trier of fact that, under the circumstances, there was no longer a preponderance of evidence establishing a violation)

2850-5550—Cont.

McLean Trucking Company v. N.L.R.B. 636 F.2d 1168 (C.A. 4, 1980)
(where valid reason to discharge Ee exists, it is not sufficient in order to establish violation *for Bd to declare that reasons were pretextual but burden which is on Bd is not simply to discover some evidence of improper motive, but to find affirmative reason why E rejected good cause and chose bad one and to present substantial basis of believable evidence pointing toward unlawful one)*

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. 636 F.2d 1255 (C.A. 7, 1980)
(ct rejected, as being unreasonable and not based on substantial evidence, Bd's conclusion that E's economic justification for discharges was sham; furthermore, Sec. 8(a)(1) violations alone are legally insufficient to show Bd met its burden of proof that Ees were discharged because of U activity)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. 643 F.2d 687 (C.A. 10, Mar 2, 1981)

2850-5575 Same disciplinary action would have taken place in absence of protected conduct

Bethlehem Steel Corporation 262 NLRB No. 027
(once GC has established *prima facie case w/i teachings of Wright Line that motivating factor for discharge was to discourage U activities, burden will shift to E to demonstrate that same action would have taken place even in absence of protected activity*)

Doug Hartley, Inc. 255 NLRB No. 097
(*GC must make prima facie showing sufficient to support inference that protected conduct was motivating factor in E's decision; once this is established burden will shift to E to demonstrate that same action would have taken place even in absence of protected conduct*)

Red Ball Motor Freight, Inc. 233 NLRB No. 111
(discharge violative where E failed to meet its burden that absent Ee's protectd activities her discharge would have occurred)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(in *Mt. Healthy* case, 429 U.S. 274 (1977), SCt established two-part test to be applied in dual motivation context; Ee must establish that protected conduct was *substantial or motivating* factor; once this is accomplished, burden shifts to E to demonstrate that it would have reached same decision absent protected conduct)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(absence of any legitimate basis for action, of course, may form part of proof of GC's case)

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(causation test to be followed in all cases alleging violations of Sec. 8(a)(3) or Sec. 8(a)(1) turning on E motivation: (1) GC required to make out *prima facie* showing sufficient to support inference that protected activity was a *motivating factor* in E's decision; and after this is established, (2) burden shifts to E to demonstrate that same action would have taken place in absence of protected conduct)

N.L.R.B. v. Blackstone Company, Inc. 685 F.2d 102 (C.A. 3, Aug. 1982)
(where Bd found violation relying on *Wright Line* stating that E did not sustain burden of proof to show that Ee would have been discharged absent of his having engaged in protected activity after GC showed discriminatory motivation; remanded to Bd for reconsideration under Circuit's decision in *Behring International* No. 81-1937, which holds once GC has established prima facie case of discriminatory discharge, E should rebut this with evidence of legitimate business reason for its action but ultimate burden of proof does not shift from GC to E and E doesn't need to show lack of impermissable motive)

N.L.R.B. v. Brooks Cameras, Inc. 691 F.2d 912 (C.A. 9, Nov. 1982)
(*when discharge motivated by both legitimate business and anti-U animus, or when business reasons may be pretext for termination motivated by hostility toward U, ULP may be found only if anti-U animus was moving cause of discharge. Bd must make showing that U activity was motivating factor; then burden shifts to E to establish that terminations would have occured absent protected U activity*)

2850-6600 Employer has burden of establishing good faith belief in misconduct warranting discharge

Styrest Nursing Home JD-(ATL)-95-82
(direct evidence that Ee committed acts constituting alleged misconduct not necessary in order to establish E's honest belief Ee committed acts; circumstantial evidence sufficient, and absent any proof by GC that punishment could be ascribed to motives other than alleged misconduct, E's motive held not to be unlawful and discipline lawful where misconduct (dropping nails against 2 trucks and damaging 1 tire) sufficient to warrant discipline imposed)

Allied Eastern States Maintenance Corporation, A Wholly-Owned Subsidiary of Allied Maintenance Corporation 251 NLRB No. 167
(discharge not violative, since E, by preponderance of evidence met burden of demonstrating that Ee would have been discharged even in absence of protected conduct of advising Ees as to their U rights)

Atlas Metal Parts Co., Inc. 252 NLRB No. 029
(*picket line activity is generally protected, and the duty of going forward with evidence of conduct which would remove mantle of statutory protection is upon Respondent if, upon such alleged misconduct, it bases its post-strike employment decisions*)

General Telephone Company of Michigan 251 NLRB No. 099
(E's disciplining Ees for alleged misconduct during strike, violative, where E failed to detail in record activity for which each striker was accused; E's *honest belief* that misconduct had occurred required some specifity in record linking particular Ees to particular allegations of misconduct in order to satisfy E's burden of proof)

2850-6650 General Counsel then has burden of proving misconduct did not occur

Styrest Nursing Home JD-(ATL)-95-82
(direct evidence that Ee committed acts constituting alleged misconduct not necessary in order to establish E's honest belief Ee committed acts; circumstantial evidence sufficient, and absent any proof by GC that punishment could be ascribed to motives other than alleged misconduct, E's motive held not to be unlawful and discipline lawful where misconduct (dropping nails against 2 trucks and damaging 1 tire) sufficient to warrant discipline imposed)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121

Wright Line, A Division of Wright Line, Inc. 251 NLRB No. 150
(absence of any legitimate basis for action, of course, may form part of proof of GC's case)

General Telephone Company of Michigan 251 NLRB No. 099
(E's suspension of Ee for striking security guard and trespassing on company property during course of strike held not violative where GC failed to establish either that conduct did not occur or that alleged conduct was protected activity)

2850-7000 Employer has burden of establishing existence of objective considerations on which good faith doubt of union's majority is based

Mingtree Restaurant, Inc. d/b/a Forbidden City Restaurant 265 NLRB No. 052
(supervisors' affidavits stating that majority of Ees expressed strong antiunion sentiments w/o stating what those statements were held not sufficient to show good faith doubt of U's majority status since affidavits merely tantamount to allegations but not proof of discontent)

St. Francis Hospital 263 NLRB No. 109
(burden of proof to establish invalidity of cards shifted to E where GC had established validity of cards to show U's majority status)

Wagner Distribution Services, Inc. d/b/a Distribution Services West 262 NLRB No. 096
(E's burden for rebuttal of presumption of continued majority after expiration of contract heavy one. E must come forward with evidence of objective considerations which would justify its claim of doubt of majority. *It is insufficient that E merely intuits nonsupport and good faith doubt may not depend solely on unfounded speculation or subjective state of mind*)

Westwood Import Company, Inc. 251 NLRB No. 162
(*after the expiration of valid collective bargaining agreement, U enjoys a rebuttable presumption that its majority representative status continues; such presumption may be effectively rebutted if E affirmatively establishes either (1) that at time of refusal to recognize U, U in fact no longer enjoyed majority support of unit Ees; or (2) that E's refusal was predicated on good faith doubt based on objective considerations; however, burden of rebutting presumption rests on party who would do so*)

N.L.R.B. v. Koenig Iron Works, Inc.; et al. 681 F.2d 130 (C.A. 2, June 1982)
(in considering evidence of support for U, court will look at Ee attitudes *before* E's refusal to bargain occurred and was E aware of this)

Bellwood General Hospital, Inc. v. N.L.R.B. 627 F.2d 98 (C.A. 7, 1980)
(sum total of: 70% turnover in personnel, statements of Ees regarding dissatisfaction with U, extremely low attendance at U meetings, lack of any grievance activity, during first contract term or of visits by U to E's facility, comulatively was sufficient to shift burden to GC to establish U's majority; ct refused to place burden on E of possibly committing ULP of bargaining with minority)

2850-7600 Burden on employer to establish legitimate business reasons for transfer of work

2850-7600—Cont.

St. Regis Paper Company **247 NLRB No. 105**
(burden upon Respondent of establishing, by credited and/or other probative evidence, that its conduct was result of legitimate business considerations)

2850-7700 On employer to show replacement of economic strikers or legitimate business reasons

Consolidated Drum Carriers, Inc., et al. **259 NLRB No. 083**
(E who refuses to reinstate economic strikers who make unconditional offers to return to work has burden of proving that strikers have been permanently replaced; burden not met where payroll records indicated E had work available for all striking Ees, no evidence of hiring of permanent replacements, or of decline in business or elimination of jobs)

2850-7800 Burden on employer to show lack of relevance of requested information that is presumptively relevant (See also 530-6067-6001-0000)

Leland Stanford Junior University **262 NLRB No. 017**
(*burden of proving that standard of relevance is or is not met shifts according to nature of information. Information about bargaining unit personnel such as wage data is so intrinsic to Ee relationship that it is considered presumptively relevant and E has burden of proving lack of relevance*)

2850-9300 To show net backpay

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(E has burden of showing discriminatee willfully incurred loss and any uncertainty resolved against E; burden not met by showing lack of success in binding interim employment or low interim earnings; rather, E must affirmatively demonstrate that Ee neglected to make reasonable efforts to find interim work)

Big Three Industrial Gas & Equipment Co. **263 NLRB No. 127**
(where Respondent contends discriminatee's discharge from interim employment due to discriminatee's willful misconduct justifies deduction from backpay, Respondent has burden of showing willful misconduct was true reason for discharge)

Great Plains Beef Company **255 NLRB No. 185**
(burden on E to show that discriminatee would have been successful in securing interim employment; general assertion of need in area for skills which discriminatee possessed is not sufficient to meet burden)

Wayne Trophy Corp. **254 NLRB No. 104**
(where discriminatee asserted she sought employment at various Es during backpay period Respondent did not meet its burden of proof regarding its claim that discriminatee did not seek employment during period where it failed to call as witnesses representatives of Es from whom discriminatee claimed to have sought employment, despite fact that these reports had been turned over to Respondent before trial)

Matlock Truck Body & Trailer Corp., and Its Agent Roy L. Matlock **348 NLRB No. 075**

Alan S. Dubin and Nicholas A. Micelli, A Partnership d/b/a L.A. Inhalation Therapy Services **JD-(SF)-289-82**
(backpay specification as to interim earnings remained uncontradicted and deemed true, notwithstanding Respondent's general denial as to interim earnings and that general denial sufficient to defeat summary judgment since Bd does not presume interim earnings w/i knowledge of Respondent, inasmuch as hearing ordered and held and Respondent failed to avail itself of opportunity to contest interim earning figure which GC had burden of establishing)

2850-9500 To show lack of knowledge of predecessor employer's unfair labor practices

Beverly Enterprises, Inc. t/a Cumberland Nursing & Convalescent Center **263 NLRB No. 061**
(successor E bears responsibility of establishing that it was w/o knowledge of ULPs of predecessor E at time it took over operation)

4200 SUFFICIENCY UPON REVIEW

4233 ALJ DECISION IS RECOMMENDATORY ONLY, NOT CONCLUSIVE ON BOARD

Edward Kopack, Sr. and Edward Kopack, Jr. v. N.L.R.B. **668 F.2d 946 (C.A. 7, Jan. 1982)**
(in reviewing questions of fact, ct of appeals has less discretion to overturn a Bd determination than Bd has to reject conclusions of ALJ; Bd is not bound by findings and conclusions of ALJ and is free to draw its own inferences as well as conclusions when its broader experience and expertise is applicable)

4233-2200 Credibility of witnesses, however, primarily for ALJ

Hummer Electric, Inc. **263 NLRB No. 199**
(Bd will examine record *de novo* and make credibility findings, when appropriate, that comport with record evidence as a whole and with inferences fairly drawn therefrom where ALJ may have misstated or confused certain of relevant record evidence and testimony presented in instant case)

Vulcan-Hart Corporation (St. Louis Division) **263 NLRB No. 017**
(Bd rejected charge of bias and prejudice on part of ALJ after careful review of entire record concluding that his credibility findings were not contrary to clear preponderance of all relevant evidence)

United States Postal Service **260 NLRB No. 009**
(notwithstanding that Bd had doubts about ALJ's handling of credibility resolutions, Bd adopted ALJ's recommendations in favor of Respondent, since ultimate result (concerning ULPs) would not be changed; GC failed to present *prima facie* case)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(witnesses' untruthfulness strengthens inference of unlawful motive under circumstances of ALJ's credibility findings)

North Cambria Fuel Company, Inc. v. N.L.R.B. **645 F.2d 177 (C.A. 3, Apr 10, 1981)**
(ct will not disturb credibility findings of ALJ as long as ALJ considers all relevant factors and sufficiently explains his or her resolutions; here ALJ fully explained her credibility findings showing that she considered various factors relevant to credibility such as demeanor, admissions, and self-interest)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. **643 F.2d 687 (C.A. 10, Mar 2, 1981)**
(merely because ALJ believed Ee's story (at hearing) does not furnish reason to overturn his credibility determinations)

4233-2233 'Demeanor evidence'

United States Postal Service **260 NLRB No. 009**

Service Garage, Inc. **247 NLRB No. 115**
(ALJ's finding of no U animus on E's part based on his observation of E and Ees during hearing but not while testifying is impermissible reliance on conduct not w/i record)

Edward Kopack, Sr. and Edward Kopack, Jr. v. N.L.R.B. **668 F.2d 946 (C.A. 7, Jan. 1982)**
(demeanor is often a major factor in ALJ's crediting testimony of one witness over that of another, and significant weight must be attributed to ALJ's findings based on demeanor because neither Bd nor reviewing ct has opportunity similarly to observe the testifying witness)

4233-2267 ALJ recommendation entitled to great weight

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**

4233-2267-3300 Especially where reasons stated for believing one witness rather than another

Clear Pine Mouldings, Inc. v. N.L.R.B. **632 F.2d 721 (C.A. 9, 1980)**

4267 PRESUMPTIONS AND INFERENCES

4267-0100 Generally

Blue Bird Body Company **251 NLRB No. 196**
(*knowledge*, like any other element in case, may be proven by circumstantial evidence if circumstances are such as to support reasonable inference)

Big Y Foods, Inc. v. N.L.R.B. **651 F.2d 40 (C.A. 1, June 1981)**
(reasonableness of presumption that meat department Ees and grocery Ees are represented in separate units can be demonstrated by citing cases revealing *the bargaining trend in the retail food industry generally*)

N.L.R.B. v. Parnell's Pride, Inc. **609 F.2d 1153 (C.A. 5, Jan. 1980)**
(presumption is procedural device *under which certain facts are held to call for uniform treatment with respect to their effect as proof of other facts*)

A To Z Portion Meats, Inc. v. N.L.R.B. **643 F.2d 390 (C.A. 6, Mar. 18, 1981)**
(ct found Bd's inference of E's prior knowledge of Ee's U activity based solely on ALJ's not crediting E's stated reasons for discharging U activist not supported by substantial evidence)

Edward Kopack, Sr. and Edward Kopack, Jr. v. N.L.R.B. **668 F.2d 946 (C.A. 7, Jan. 1982)**
(although giving particular weight to ALJ's evaluation of witness demeanor, ct held that decision of ALJ did not turn solely on demeanor evidence but was also based on inferences he drew from the facts; and since these factors do not depend on an assessment of demeanor, Bd, in exercise of its own expertise, can effectively draw its own inferences from the record)

4267-0100—Cont.

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. 683 F.2d 305 (C.A. 9, July 1982)

(E's assertion that Bd and ALJ drew adverse inferences from its refusal to comply with subpoena issued by GC held w/o merit, where ALJ drew no such inference and Bd did not address question because it found that direct evidence at hearing established the charges)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)

(use of rebuttable presumptions is tied to various rationale—judicial economy, regularity and fairness, probability, and public policy)

4267-2000 Where uncertainty exist as to merits of grievance, issue resolved against party creating uncertainty

International Union of Operating Engineers, Local No. 139, AFL–CIO (C. F. Kalupa, Inc.) 256 NLRB No. 089

(any uncertainty that grievance would have been found meritorious is direct result of U's unlawful conduct and is resolved in favor of injured and innocent Ee)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)

(Bd properly resolved uncertainty in merit of grievance against U which created such uncertainty by unlawful act, through its improper investigation of grievance which made it impossible to determine merits of grievance)

4267-2200 Failure to produce evidence peculiarly within party's knowledge raises adverse inference

Larid Printing, Inc. 264 NLRB No. 040

(where E presented evidence that discharge of Ee was for excessive absences and lateness, particularly in view of fact Ee's U activities limited to signing authorization card, its defense was accepted, but adverse inference, drawn from E's refusal to present time cards of other Ees which might show that Ees with equally bad attendance records not discharged, did not aid GC since adverse inference may not be used as substitute for affirmative evidence in establishing prima facie case; therefore no link to show that discharge was for U activities)

Polar Air Sheet Metal Company 264 NLRB No. 172

(no adverse inference drawn from E's failure to present data concerning its financial condition as of date of its withdrawal from multi-E bargaining, including listing of contracts for current projects, where E presented list of jobs it was engaged in almost 2 weeks after its withdrawal and, at hearing, presented Federal and state tax forms, yearly financial statement, testimony concerning gross revenue and profits, costs and expenses, and ptn in bankruptcy proceeding showing its assets and liabilities)

International Association of Heat and Frost Insulators and Asbestos Workers Local No. 53 (Insul-Contractors, Inc.) (Betty Ruth Turner) 262 NLRB No. 111

(is not basis for adverse inference; basis for inference rests on E's failure to produce records containing evidence peculiarly w/i its own knowledge in support of its defense in face of evidence of GC that practice has been in effect and continued in effect past date of alleged unlawful conduct)

United Supermarkets, Inc. 261 NLRB No. 179

(GC's request for application of adverse inference doctrine on ground that payroll records, which E failed to produce pursuant to GC's subpoena enforcement of which was not sought by GC, would have been adverse to E and would have established that U had majority status, denied; no case authority exists for applying adverse inference doctrine to determine U's majority; burden of proof is upon GC to establish by affirmative probative evidence that U had majority; and potential of thrusting minority representation upon Ees is too great when done so by application of adverse inference doctrine)

Professional Air Traffic Controllers Organization 261 NLRB No. 132

(negative inference was not drawn from E's failure to produce subpoenaed documents as record reflects confusion concerning their nature and existence)

Gentile Pontiac 260 NLRB No. 056

Isadore Spiegel, an Individual t/a Spiegel Trucking Company; Spiegel Trucking Company, Inc.; I & L Trucking Company, Inc. 257 NLRB No. 020

(ALJ permitted to draw adverse inferences against E where E refused to turn over subpoenaed materials including corporate books and records which ALJ ruled were relevant and material to proceedings)

Town & Country LP Gas Service Co. 255 NLRB No. 144

(E's failure to offer into evidence accounting substantiation to contradict testimony inapposite to E's position that it had economic justification to lay Ee off established inference that claimed documents would not support E's contentions)

Limestone Apparel Corp. 255 NLRB No. 101

(business records)

Suburban Ford, Inc. 248 NLRB No. 051

(E's *economic defense of business decline* rejected where chose not to introduce into evidence documentation of its annual reports, profits and loss figures etc. or any data for comparative purposes regarding personnel and income levels; failure to introduce such evidence justified inference that it would not support or assist contentions of party who originated them)

Grandee Beer Distributors, Inc. 247 NLRB No. 163

(failure to produce records showing routineness of raise given Ees which coincided with U activity)

St. Regis Paper Company 247 NLRB No. 105

(correct to draw adverse inference from Respondent's failure to submit documentary evidence in support of its contention that *transfer of work was economically motivated*)

Frank Briscoe Incorporated 247 NLRB No. 006

D & D Supermarket, Inc. JD-292-81

(where supervisor testified as to list that had been abstracted from accounting book maintained by him, but no effort was made to introduce *book*, inference warranted that production of *weak evidence where strong is available* that strong would have been adverse)

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-631-81

(E's contention in backpay proceeding that adverse inference should be drawn from discriminatee's failure to comply with *subpoenas duces tecum* requiring production of her tax returns, rejected, since failure to comply with subpoena was justified where discriminatee's husband prepared joint tax returns of which they made no copies; however, discriminatee had copies of her W-2 forms which she supplied to E's counsel at hearing)

Transportation By La Mar, Inc. JD-279-81

(discharge of U adherent allegedly because of complaints from customers of E held violative where E failed to testify as to complaints and failed to produce at hearing letters of complaint from *somebody...over at the University* (customer of E))

Lucky Lion Edgewater, Inc. d/b/a Lucky Lion JD-(SF)-349-80

(E's failure to produce documentation, solely w/i its control, to support claim of its financial difficulties, required drawing of adverse inference; accordingly, supervisor's statements, regarding impact of successful organizing campaign upon Ees, were not shown to be related to economic necessities and were not reasonable predictions but threats of retaliation)

4267-2700 Failure to comply with subpena raises adverse inference

International Association of Heat and Frost Insulators and Asbestos Workers Local No. 53 (Insul-Contractors, Inc.) (Betty Ruth Turner) 262 NLRB No. 111

(is not basis for adverse inference; basis for inference rests on E's failure to produce records containing evidence peculiarly w/i its own knowledge in support of its defense in face of evidence of GC that practice has been in effect and continued in effect past date of alleged unlawful conduct)

General Drivers & Helpers Union, Local No. 554 (Prairie Ford Truck Sales) 253 NLRB No. 006

Marlboro Trucking Co., Inc., C-J Construction Co., Inc., Suburban Yelow Cab, Inc. JD-441-80

(statutory jurisdiction asserted over Es, w/o regard to whether Es' operations met Bd's jurisdictional standards because Es failed to respond to numerous *subpoenas duces tecum* which sought jurisdictional information and evidence elicited at hearing demonstrated that revenues derived from Es' activities affecting interstate commerce were more than *de minimis*)

4267-3300 Failure to produce material witness raises adverse inference

Great Western Coca-Cola Bottling Company, d/b/a Houston Coca-Cola Bottling Company 265 NLRB No. 106

(allegation that Ees were told that they would be denied wage increases because of U, dismissed, since GC failed to prove allegation, where E denied making statement, and GC failed to elicit testimony of two Ees present when statement was assertedly made to testifying Ee, and it is reasonable to infer that they would not have corroborated latter's testimony)

Hudson Oxygen Therapy Sales Company 264 NLRB No. 004

(no adverse inference drawn from failure of witnesses to be called since they were equally available to both sides)

A. Dale Pyle, Inc. 263 NLRB No. 092

(no adverse inference drawn from GC's failure to produce U agent as witness where U was decertified and apparently lost interest in prosecuting case on behalf of Ees no longer supporting it; since drawing of inference is not mandatory, there must be some rational basis on which to support the position, and mere general suspicion is insufficient; moreover, even if generalized adverse inference were drawn, in absence of suggestion from E what support it seeks from it, same conclusion would nevertheless be reached)

4267-3300—Cont.

United Supermarkets, Inc. 261 NLRB No. 179

Bakery Workers Union, Local No. 213 (Krispy Kreme Division, Beatrice Foods Co.) 261 NLRB No. 114
(no adverse inference to be drawn from GC's failure to call former Ee as corroborating witness because he was equally available to E to refute testimony in support of C)

T.H.E. Co. d/b/a L. D. Brinkman Southeast 261 NLRB No. 025
(no adverse inference to be drawn by E's failure to ask witness about conversation since witness was equally available to GC)

Wayne Construction, Inc. 259 NLRB No. 082
(no adverse inference drawn against E, where witness was not called at hearing to corroborate testimony of E's superintendent in defense of charge, since prospective witness was equally available to be called as witness by both E and GC)

Local 32B-32J, Service Employees International Union, AFL-CIO (Allied Maintenance Corporation) 258 NLRB No. 059

Litton Mellonics Systems Division, A Division of Litton Systems, Inc. 258 NLRB No. 084

Ingram Farms, Inc. 258 NLRB No. 137

Anjo Engineering Corporation 256 NLRB No. 161
(no adverse significance attached to GC's failure to call Ee as witness or to absence of Ee from proceedings in view of Ee's serious hearing impairment)

Le Roy Fantasies, Inc., and Hardwicke's Plum, Inc., A Joint Venture, d/b/a Maxwell's Plum 256 NLRB No. 036
(E's supervisor's failure to appear permits inference that her testimony would have been adverse to E had she testified)

Castle Instant Maintenance/Maid, Inc. 256 NLRB No. 029
(failure to corroborate critical testimony concerning cause for discharge where other witness was present warrants inference that testimony was unreliable)

K & S Circuits, Inc. 255 NLRB No. 163
(inference adverse to E's position drawn where E failed to call as witnesses two supervisors with whom E had consulted about *real reason* for layoffs)

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. 255 NLRB No. 098
(failure of E to call witness who was available raised inference that had witness testified his testimony would have been adverse to E)

Limestone Apparel Corp. 255 NLRB No. 101

Appalachian Power Company, John E. Amos Plant 253 NLRB No. 135
(Ee who sought to invoke his *Weingarten* rights)

Memphis Furniture Manufacturing Co. 252 NLRB No. 025
(no basis found for reversing ALJ's credibility findings, notwithstanding his failure to draw adverse inference from fact U spokesman did not testify, where, in crediting chief U representative and discrediting E's attorney and industrial relations director, ALJ relied on E's minutes of crucial meeting, on nontestifying U spokesman's actions in meeting as shown by minutes, on E's attorney's letter to Bd, and on corroboration by Ee negotiating-team members of U representative's account of negotiations)

Wm. Chalson & Co., Inc. 252 NLRB No. 006
(unlawful motivation for layoffs inferred where individual who made selection for layoffs not called)

American Petrofina Company of Texas 247 NLRB No. 015
(Respondent's failure to produce as witnesses supervisors who could best corroborate testimony as to Charging Party's alleged deficiencies raised inference their testimony would not have corroborated that of other Respondent's witness)

Nabisco, Inc. JD-(SF)-34-82
(and detracts from strength of inference drawn by ALJ from E's branch manager's failure to testify concerning meetings between Ees and management)

Champion Plating Company JD-562-81
(inference only applies when witness' absence is unexplained)

United States Steel Corporation, Geneva Works JD-(SF)-122-81

Apollo Management Corporation d/b/a Golden Sails Inn JD-(SF)-293-80
(adverse inference warranted where charging party testified that an individual would substantiate her charge that she was discharged for filing workman's compensation claim but said individual did not testify, and in state proceeding also alleging charging party was discharged for filing workman's compensation claim in which individual did testify no liability was imposed on E; further, *production of weak evidence where strong evidence is available can lead only to conclusion that strong would be adverse*)

United Electrical, Radio & Machine Workers of America, Local 262 (Hemisphere Broadcasting, Inc.) JD-437-80
(failure to call respondent U's chief negotiator and strategist)

Classic Industries, Inc. v. N.L.R.B. 667 F.2d 205 (C.A. 1, Dec. 1981)

N.L.R.B. v. Laredo Coca Cola Bottling Company 613 F.2d 1338 (C.A. 5) (1980)
(where E did not produce its president as witness over issue of alleged coercive statements attributed to the president, but rather relied solely on testimony of office manager who stated that he did not recall *many specifics* of what E president said, ct declined to say that Bd's finding of violation *on the basis of credited testimony of several GC witnesses was inherently unreasonable or self-contradictory;* it is appropriate to infer that testimony of E president would have been adverse to E's position, since only contrary evidence offered by E was minimal and uncertain)

Rockingham Machine-Lunex Company v. N.L.R.B. 665 F.2d 303 (C.A. 8, Dec. 1981)
(E's contention that GC's failure to call as witness U agent, who attended every negotiation session and filed unlawful refusal to bargain charge, created inference, presumably on refusal to bargain issue, that his testimony would be unfavorable to U, rejected; rule permits adverse inference to be drawn in such a situation, but it does not create a conclusive presumption against party failing to call witness; if ct accepted E's interpretation, Bd would have to call every witness on every conceivable issue relevant to establishing an ULP, which obviously is not necessary)

Rockingham Machine-Lunex Company v. N.L.R.B. 665 F.2d 303 (C.A. 8, Dec. 1981)
(even if ct drew adverse inference unfavorable to U from U agent's failure to testify and drew every favorable inference to E that could be drawn from its agent's testimony, ct held latter's testimony, together with undisputed evidence, was sufficient to justify Bd's finding that E had unlawfully refused to bargain)

4267-3800 Offering spurious defense

Ross's Stores, Inc. 256 NLRB No. 076
(inference of illegal motive warranted where belated affirmative defense was advanced at hearing nine months after alleged unlawful discharge)

Nevada County Publishing Co., d/b/a The Union 251 NLRB No. 143
(E's assertions that its satisfaction with discharged Ee drastically declined over relatively short period of time and that E made no real effort to attempt to change Ee's work practices back to what they had been is strong evidence of untruthfulness of E's stated reasons for Ee's discharge)

Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW 248 NLRB No. 155
(abrupt refusal to allow newscaster to leave on long scheduled vacation which had been approved by her immediate supervisor well in advance, assertedly because of E's lack of funds and/or because E was unhappy with Ee's replacements, violative, where Ee had filed charges and testified against E in prior Bd proceeding; E's defenses were shifting and inconsistent leading to inference of real reason for E's action)

4267-4000 No presumption of relevancy where union seeks information about employees outside bargaining unit

N.L.R.B. v. A. S. Abell Company 624 F.2d 506 (C.A. 4, 1980)
(U bears burden of showing that information it seeks concerning Ees outside bargaining unit is relevant to bargaining issues)

4267-4400 Failure to testify concerning crucial point raises adverse inference

Daniel Construction Company, A Division of Daniel International Corporation 264 NLRB No. 079
(concerning *actual motive*)

Conair Corporation 261 NLRB No. 178

Earle Industries, Inc. 260 NLRB No. 163
(and GC's mtn to strike quoted portion of E's brief (no adverse inference should be drawn by failure of E to call supervisor because of her medical condition) granted, since E failed to explain, on record, why supervisor was not called as witness at hearing)

Danmor Company d/b/a Madison South Convalescent Center 260 NLRB No. 106
(E's failure to recall witness to deny testimony relied on by GC created inference that her testimony would not have been favorable to E)

Georgia Kraft Company, Woodcraft Division 258 NLRB No. 121
(no adverse inference drawn from striker's failure to testify regarding his conduct on picket line absent *prima facie* case of misconduct)

Cimpl Transportation Company 256 NLRB No. 173

Post Manufacturing Company 251 NLRB No. 183
(failure to provide testimony regarding E's affirmative defense that Ee, alleged to have solicited U cards, was discharged because he was too frequently away from his machine, warranted conclusion that testimony would not have supported E's defense)

4267-4400—Cont.

General Teamsters Local 959 (Northland Maintenance) 248 NLRB No. 100
(where respondent fails to testify about incident though called by both sides, ALJ not required to draw negative inference from this lack of testimony and credit charging party's version because its testimony is uncontroverted where ALJ feels there are reasonable grounds for concluding such testimony is false or contains improbabilities)

D & D Supermarket, Inc. JD-292-82
(where supervisor testified as to list that had been abstracted from accounting book maintained by him, but no effort was made to introduce *book*, inference warranted that production of *weak evidence where strong is available* that strong would have been adverse)

Lee Simmons and Beverly McKinstry Simmons, A Partnership, d/b/a Elmendorf and Fort Richardson Barber Concessions JD-(SF)-186-82
(that individual was partner in partnership)

Childers Manufacturing Company, Inc. JD-(SF)-11-82
(fact that E's witnesses, who were in best position to describe weight which E would have accorded alleged supervisor's recommendations as to their effectiveness in hiring and firing Ees, failed to provide such evidence warrants inference that had they testified regarding the matter, if would not have been favorable to E)

Manifold Services, Inc. JD-734-80
(concerning 2-hour meetings with unit Ees)

Albany Steel and Brass Corporation JD-227-80
(E's president who notified Ee of discharge)

Gar-Wood Detroit Truck Equipment Company JD-747-79
(Charging Party's failure to testify in regard to E's assertion that he voluntary quit rather than was discharged raises inference that he would have affirmed E's position)

4267-6600 Loss of majority due to ULP

Pittsburgh and New England Trucking Co. v. N.L.R.B. 643 F.2d 174 (C.A. 4, 1981)
(ct denied enforcement of Bd bargaining order in view of distinct possibility that ALJ could have concluded that causal connection between E's ULPs and U disaffection was lacking had ALJ not improperly declined to receive proffered testimony of Ee who had headed decertification campaign to the effect that ULPs had not affected her or other signers, that nothing had interfered with them nor had E interfered or discriminated against them in any way; barring such testimony as to Ee's state of mind was denying E most direct proof available on controverted issue)

4267-7100 Animus as motive for action

Cell-Ace, Inc. 262 NLRB No. 012
(sudden termination of U adherent w/i two days of U's request for recognition w/o notice and before end of his work week together with E's interrogation of, and threats to, its Ees warranted inference of discriminatory motive)

Onan, a Division of Onan Corporation 261 NLRB No. 187
(Bd held that Ee's job performance after returning to work from sick leave had been poor and was basis for discharge; moreover any adverse inference of unlawful motivation arising from E's assignment of arduous task to Ee upon his return was overcome by fact that Ee had not engaged in U activities since year before and that U had not campaigned at plant until after Ee was discharged)

The Evening News Association 258 NLRB No. 020
(in absence of evidence of animus or hostility towards Ee based upon Ee's U activity, discriminatory motive may not be inferred)

Pay 'N Save Foods, Inc. 257 NLRB No. 162
(*animus* towards U illustrated by negative reaction of E's president when he was presented with U wage scale of area meat market Ees by one of dischargees)

Pay 'N Save Foods, Inc. 257 NLRB No. 162
(circumstances, including timing of discharges upon E's learning of Ees' U activity and false explanation for discharges, size of plant, and fact Ees not circumspect in their discussions of U warrant inference that E's reference to Ees' attitude, as grounds for action, was allusion to their U sympathies)

Rose's Stores, Inc. 256 NLRB No. 076
(inference of illegal motive warranted where belated affirmative defense was advanced at hearing nine months after alleged unlawful discharge)

Crown Cork & Seal Company, Inc. 255 NLRB No. 004
(E's hostility to Ee (U advocate) was evidenced by E's adverse references to Ee's *attitude* which E had linked to Ee's protected efforts to obtain reinstatement of a discharged Ee)

Crown Cork & Seal Company, Inc. 255 NLRB No. 004
(failure to consider leading U advocate's wife's application for employment held violative, since inference was reasonable that she was not considered because of E's posture of hostility towards applicant's husband's U and protected concerted activities)

United Broadcasting Company of New Hampshire, INc. d/b/a WMUR–TV 263 NLRB No. 102
(discharge allegedly for protected activity not unlawful, since GC failed to make *prima facie* showing sufficient to support inference that Ee's protected activity was motivating factor for discharge; only evidence in regard to Ee's protected activity is that he had at one time been employed at unionized operation, and there is no showing of E hostility or animus toward U)

S. L. Industries Inc. and Extruded Products, Corp. 252 NLRB No. 151
(evidence adduced at hearing as to execution of contract between E and minority U and received before complaint was amended to show preferential treatment to U, admissible to show E animus to petitioner and as bearing on credibility of witness, E's president)

Swift and Company 250 NLRB No. 132
(supervisor's threat to discharge another Ee along with shifting reasons for discharge and disparate enforcement of rules indicating pretextual reasons for discharge evidence U animus)

Plumbers, Local Union 598 (Columbia Mechanical Contractors Association) 250 NLRB No. 023
(where U departs from its lawful contractual hiring hall rules and admitted standards of referral in denial of employment, action, standing alone, is discrimination which inherently encourages U membership)

Norton Concrete Company of Longview, Inc. 249 NLRB No. 172
(shifting defenses to charge of unlawful discharge during hearing gives rise to inference of unlawful motivation)

Eight In One Pet Products, Inc. JD-(NY)-106-82
(in absence of evidence of E's animus towards U, discriminatory motive (on part of E) may not be inferred)

Palas Corporation JD-(SF)-28-82
(inference, that foreman's action against Ees was motivated by his animus towards Ees, bolstered by foreman's disregard of seniority provision under contract)

Harvey & Madding, Inc., d/b/a Dublin Honda JD-(ATL)-97-81
(son's discussions with E, his father, who was hostile to U, concerning Ees' U activity)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)
(anti-U statements *plainly w/i (management's) rights ... do lend a significance to otherwise ambiguous events when the question is whether given course of conduct was actuated by anti-U animus*)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)
(witnesses' untruthfulness strengthens inference of unlawful motive under circumstances of ALJ's credibility findings)

McLean Trucking Company v. N.L.R.B. 626 F.2d 1168 (C.A. 4, 1980)
(where valid reason to discharge Ee exists, it is not sufficient in order to establish violation *for Bd to declare that reasons were pretextual* but *burden which is on Bd is not simply to discover some evidence of improper motive, but to find affirmative reason why E rejected good cause and chose bad one and to present substantial basis of believable evidence pointing toward unlawful one)*

N.L.R.B. v. Gulf States United Telephone Company 694 F.2d 92 (C.A. 5, Dec. 1982)
(ALJ found that summary discharge of Ee while he was on strike, w/o warnings, was evidence that discharge was for unlawful reasons; ALJ and Bd may rely on circumstantial evidence in drawing reasonable inferences about anti-U animus motivating employment decisions)

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)
(E's contentions that RD has greater burden of proving by substantial evidence on record as a whole that E's actions motivated by anti-U animus, rejected, since that standard applicable only to determination of merits of ULP charge; in Section 10(j) or 10(l) inj cases ct need not, indeed should not, make finding of E motivation. It need only find reasonable cause for belief that there was such a motivation)

N.L.R.B. v. Pfizer, Inc. 629 F.2d 1272 (C.A. 7, 1980)
(E's refusal to hire laborer for vacant position where reference check disclosed former E found him to be trouble maker, mentioned his U activities and stated would not rehire Ee not violative where evidence to support finding of E's U animous based on inferences and not supported by substantial evidence)

Golden Day Schools, Inc. v. N.L.R.B. 644 F.2d 834 (C.A. 9, May 8, 1981)
(discharge of U advocates assertedly for disparaging E, inducing parents to withdraw their children from E's day-care center and unsatisfactorily performing their work, violative where discharge followed immediately upon U organizing activity and E's anti-U bias was amplysupported by record; false assertions of lawful purpose support inference that declarant's motive was unlawful)otive was unlawful)

4267-7100—Cont.

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. **643 F.2d 687 (C.A. 10, Mar 2, 1981)**
(lapse of time between E's knowledge of Ee's U activities and Ee's change in duties and discharge did not negate inference of E's anti-U motivation, since supervisor's harassment of Ee (U adherent) originated during, and continued throughout, unionization period)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(factor of anti-U animus is germane to determination of whether proposed change in company's operations is mandatory subject of bargaining)

4267-7400 Majority status is presumed to survive timely withdrawal from multi-employer bargaining unit

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(rebuttable presumption of majority U support survives Es' withdrawal from multi-E unit is grounded on policy determination by Bd that industrial peace is more likely to be achieved by maintaining continuity in bargaining structure over enhancement of Ee free choice)

4267-7500 Employee's intent to authorize union to represent him presumed from signature on authorization card

Schnadig Corporation **265 NLRB No. 020**
(E's contention that where Ees were of low educational level GC could not rely on presumption which normally flows from E's authenticated signature on card to establish clear intent of authorization, but rather GC has burden of proving that each Ee who executed card clearly understood significance of document and intended to authorize U to represent him, rejected)

4267-7600 Extending superseniority of stewards to areas other than recall or layoff, presumptively unlawful

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**

4267-7900 In settlements, GC will meet its burden of proof in regard to allegations in complaint

Lion Uniform, Janesville Apparel Division **247 NLRB No. 123**
(in order for Bd to consider approval of settlement agreement it must assume that GC will carry its burden of proof with respect to allegations of complaint)

4267-8200 Solicitation of grievances raises inference of corrective action

St. Francis Hospital **249 NLRB No. 017**
(at E sponsored grievance meeting with Ees during critical period, E, in response to C, stating that he would *take a look and see what we can do* violated Act because he held out prospect of remedial action)

CTS Keene, Inc. **247 NLRB No. 141**
(no unlawful solicitation of grievances with implied promise to remedy them where supervisor who had initiated conversation with U adherent by asking how things were going, suggested adherent discuss her complaints regarding job bidding procedures with her immediate supervisor during scheduled job review, since not implied promise to remedy where Ee had received no satisfactory result from prior discussion with same supervisor)

4267-8800 Miscellaneous

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric **265 NLRB No. 203**
(ALJ held that when litigants seek to raise presumption with regard to letter's receipt by presenting evidence descriptive of routine office procedures followed with respect to mailings, such evidence is generally considered insufficient to raise presumption regarding letter's receipt, unless proffered witness claims actual, personal knowledge that routine was, in fact, followed completely; testimony that witness *always* follows same procedure is not sufficiently precise to raise presumption of receipt (Bd did not consider proof of mailing issue since presumption of receipt had otherwise been overcome)

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric **265 NLRB No. 203**
(presumption of due receipt by E of law firm's letter on behalf of U claiming majority representation of Ees, as basis for E's knowledge of Ees' U activities, held overcome, where E denied receipt of law firm's letter, and GC's proffered testimony that E, through one of its Ees, received letter from U, rather than from its law firm, did not warrant determination that law firm's letter had been delivered to E, in view of Ee's significantly restricted opportunity to discern whether some particular letter from U or its law firm had really been delivered)

Village IX, Inc. d/b/a Shenanigans **264 NLRB No. 122**
(fact that invitation to E's anniversary party was postmarked with date of party raises inference that invitations were not mailed until afternoon of party)

Hudson Oxygen Therapy Sales Company **264 NLRB No. 004**
(overreaction by E in diciplining Ee for violating work rule, even if valid, especially when rule had not been evenly enforced or necessary to maintain production standards, supports inference that Ee's violation of rule has been seized upon as pretext, and is supported only by invidious and discriminatory motive)

Oklahoma City Collection District of Browning-Ferris, Inc. **263 NLRB No. 012**
(remark by E *there goes that U man* which created impression of surveillance to Ee and which occurred during critical preelection period not found to be ground for setting aside election where Ee was terminated prior to election and that remark was not of serious enough nature to create presumption of dissemination to other Ees)

Mark I Tune-Up Centers, Inc. **256 NLRB No. 138**
(proof of mailing of properly addressed and stamped envelope, in this case involving letters to E by Ee on extended sick leave and containing doctor's medical reports concerning Ee, raises rebuttable presumption that it was received; if evidence tending to show nonreceipt is presented, question is for trier of fact, and general denial does not overcome presumption; here, Ee's testimony that he personally mailed properly addressed letters was credited, and it was found letters were received by E)

Five Star Air Freight Corporation **255 NLRB No. 046**
(inference that E was aware of Ees' U activity supported by fact that Ees were only ones identified as U spokesmen)

First National Maintenance Corporation **254 NLRB No. 028**
(inference that U did not represent majority of E's Ees gleaned from facts that: (1) no Ees had signed cards for U; (2) no Ees had paid dues to any U; (3) no notices, meetings or information concerning U had been brought to Ees' attention; and (4) U representative failed to appear at Bd hearing with any testimony or cards concerning U membership)

Pennypower Shopping News, Inc. **253 NLRB No. 021**
(where E created ambiguity and failed to clarify it, burden of results of that ambiguity must fall on E)

S. L. Industries Inc. and Extruded Products, Corp. **252 NLRB No. 151**
(after her reinstatement, Ee's being assigned full time to arduous machine work when she had shared time on machine with other Ees and being denied same lunch break given other Ees in department held violative, since inference was warranted that Ee was being made to suffer for her concerted action and U activities)

Behring International, Inc. **252 NLRB No. 083**
(in determining agency relationship, it is not necessary to find direct evidence that anti-U activities of Ees were authorized or subsequently ratified by E, since agency may be inferred from circumstances)

Kaufman DeDell Printing, Inc. **251 NLRB No. 002**
(adverse inference warranted where E's interrogation of Ee failed w/o explanation to testify as to alleged unlawful interrogation)

New Process Gear, Division of Chrysler Corporation **249 NLRB No. 158**
(transfer of Ee, who was witness in Bd hearing, fromhis desired second shift to less desirable day shift held violative where trans fer occurred on heels of Ee's testifying at Bd hearing; inference drawn that shift of job was not solely for business reasons, since E was motivated by desire to punish Ee for testifying against E in Bd proceeding; action was taken w/o regard to Ee's seniority or other contractual provisions)

Malibu Grand Prix Corp. **JD-(SF)-90-80**
(concerted refusal to work overtime presumptively protected where there was no bargaining relationship, only inchoate relationship with U which did not provide *structured procedures* for conflict resolution)

P.M.S. West, Inc. **JD-(SF)-47-80**
(small plant doctrine standing alone does not impute knowledge of U activity to E; there must be some direct evidence to support inference)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(E's discharging U advocate assertedly for violating E's rule against falsifying inspection reports, violative where apparent insignificance of rule along with E's history of treating rule as unimportant support inference that something more was involved than just breach of rule)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(from totality of evidence concerning circumstances of bargaining, Bd could rationally infer E had not bargained in good faith as required by Act)

Birmingham Ornamental Iron Company v. N.L.R.B. **615 F.2d 661 (C.A. 5) (1980)**
(U's receipt of a receipt for certified mail sent to E establishes presumption that E received letters)

Edward Kopack, Sr. and Edward Kopack, Jr. v. N.L.R.B. **668 F.2d 946 (C.A. 7, Jan. 1982)**
(in case involving disagreement between ALJ's decision that discharges were unlawful and Bd's conclusion to the contrary, ct held there was

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substantial evidence in support of Bd's inference that E's concern about dischargee's work habits was not a response to his protected activity but, rather, was due to pressure from company for which E was performing contractual services; nor were Bd's inferences *tenuous* or *arbitrary*, nor did its findings rest almost solely on testimonial evidence discredited either expressly or by clear implication by ALJ)

4267-8900 Employer has obligation to bargain over decision to partially close business

N.L.R.B. v. First National Maintenance Corp. **627 F.2d 596 (C.A. 2, July 1980)**

(there is presumption that E has obligation to bargain over decision to partially close business which may be rebutted by showing that purposes of statute would not be furthered by imposition of duty to bargain)

5600 WITNESSES

Serendippity-Un-Ltd and Tigerrr, Inc. **263 NLRB No. 100**

(E's contention that he failed to have his intended witnesses appear at hearing assertedly because he was not timely advised of subpoena process to assure their appearance at hearing, rejected, where about 1 month before hearing E was instructed by GC concerning procedure for procuring blank subpoenas from RD, and at no time did E assert that Bd subpoenas were sought or refused)

Serendippity-Un-Ltd and Tigerrr, Inc. **263 NLRB No. 100**

(E's failure to produce his intended witnesses at hearing held no basis for delaying or overturning hearing where, after hearing was adjourned so that E could produce his witnesses at hearing and one witness did not appear because of his fears of economic loss for taking time off to testify, E failed to produce his remaining witnesses)

Pittsburgh and New England Trucking Co. v. N.L.R.B. **643 F.2d 174 (C.A. 4, 1981)**

(ct denied enforcement of Bd bargaining order in view of distinct possibility that ALJ could have concluded that causal connection between E's ULPs and U disaffection was lacking had ALJ not improperly declined to receive proffered testimony of Ee who had headed decertification campaign to the effect that ULPs had not affected her or other signers, that nothing had interfered with them nor had E interfered or discriminated against them in any way; barring such testimony as to Ee's state of mind was denying E most direct proof available on controverted issue)

5601 GENERALLY

Behring International, Inc. **252 NLRB No. 055**

(contention that witness who was severed by E was disgruntled witness and therefore should not be credited, rejected, where witness' testimony was consistent with general fact pattern of case, and his testimony adverse to E was inconsistent with his interest in receiving hospitalization benefit payment from E)

Go-Lightly Footwear, Inc. **251 NLRB No. 008**

(GC had no obligation to call as witnesses a newspaper reporter and police officer who were present at picketing by Ees, and no presumption should be made because he failed to do so; neither person was employed by GC or was otherwise shown to be under his control, and E was in as good position to subpoena the two as was GC)

Hedison Manufacturing Company **249 NLRB No. 096**

(Bd held ALJ, while fully warranted in precluding E's official from testifying because he refused to comply with subpoena and to testify, erred in precluding E from calling witnesses other than official; since E's asserted reasons for discharges involved herein must rest upon testimony of witnesses as to relevant events, *best evidence* rule involved in cases relied on by ALJ held not applicable to discharges; accordingly, Bd severed and remanded discharge cases to ALJ for supplemental decision)

N.L.R.B. v. Friendly Ice Cream Corporation **677 F.2d 170 (C.A. 1, May 1982)**

(GC's seeking to bolster her witnesses by endorsing them as having *truthfully testified* is practice that would be improper in both criminal and civil ct proceedings)

Hedison Manufacturing Company v. N.L.R.B. **643 F.2d 32 (C.A. 1, Mar 11, 1981)**

(ct held no prejudicial error where ALJ was fully warranted in invoking principle of *Bannon Mills* by precluding E's official from testifying in E's case because he refused to comply with GC's subpoena to appear and testify; furthermore, E's contention that Bd counsel should have sought enforcement of its subpoena delaying proceedings further instead of invoking *Bannon Mills* held frivolous, as well as E's assertion that such decision not to seek enforcement deprived it opportunity to contest subpoena)

5601-1600 Witness claiming constitutional privilege against self incrimination

Teamsters, Local Union 215 (B & W Construction Company) **251 NLRB No. 164**

(upon not crediting witness because he was found unreliable and untrustworthy, ALJ found it unnecessary to strike witness' testimony on direct examination because he claimed privilege against self-incrimination on cross-examination; respondent's motion for receipt of certain documents pertaining to interlocutary appeal from ruling in connection with witness' claim of privilege, granted)

5601-5800 Board agent

Drukker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. **258 NLRB No. 097**

(mtn to quash subpoena requesting Bd agent to testify at ULP hearing granted where Respondent made no attempt to obtain testimony of other persons who had same knowledge as Bd agent and thus there were no special circumstances requiring privilege shielding Bd personnel from testifying in Bd cases to be waived)

5601-8300 Writing used to refresh memory

Riley-Beaird, Inc. **259 NLRB No. 190**

(where witness for E admitted on cross-examination that before testifying he had reviewed list of questions with E's attorney and retained a copy of the list while testifying, ALJ declined to order production of list under FRE 612 as well as attorney-client privilege encompassed in FRE 501, rejecting GC's contentions that (1) attorney-client privilege had been waived when questions were asked, (2) document was producible under Jencks Act, and (3) privilege was outweighed by interest in developing probative record)

Nordstrom, Inc. **JD-(SF)-142-82**

(memo made by witness concerning conversation she had not admissible into evidence as recorded recollection under Sec. 803(5) of Federal Rules of Evidence where witness did not express any doubt as to completeness or accuracy of her own recollection of conversation)

5650 CREDIBILITY

Colson Equipment, Inc. **257 NLRB No. 018**

(Bd independently evaluated witness' credibility where ALJ based his findings on factors other than demeanor; and reversed ALJ's finding that witness' uncontroverted testimony was not creditable; contrary to ALJ, Bd found that witness' testimony, while vague and rambling in places, was sufficiently direct and straightforward about supervisor's acts to establish a basis for finding the violative, that his testimony was not so confused as to cause the parties to restructure their presentations, and that absence of animus was not a credibility factor, since it was negated as such by Bd's finding of several violations)

Behring International, Inc. **252 NLRB No. 055**

(contention that witness who was severed by E was disgruntled witness and therefore should not be credited, rejected, where witness' testimony was consistent with general fact pattern of case, and his testimony adverse to E was inconsistent with his interest in receiving hospitalization benefit payment from E)

Ellis Hospital **JD-164-82**

(E's witness credited over GC's witnesses where former was management official who is no longer associated with E and has no apparent stake in outcome of instant proceeding, and his testimony concerning his statements to Ees was persuasive and internally consistent, whereas testimony of GC's witnesses, while seemingly credible, was sketchy and lacking in detail)

Ellis Hospital **JD-164-82**

(alleged specific incidents of interference with election and violation of Act held not proved by GC, where versions of incidents on both sides were attempts to recall events which occurred more than a year prior to witness' testimony, violations could only be found if precise words remembered by GC's witnesses were actually used and, although such witness' testimony seemed credible, on balance, testimony of E's witnesses was more believable and more accurately reflected what occurred and context in which discussions were held)

5650-0100 Generally

Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric **265 NLRB No. 203**

(when a witness' demeanor satisfies some trier of fact, not only that the witness' testimony is not true, but that the truth is the opposite of his story, such trier of fact may assume the truth of what the witness denies)

Right-Gard Corporation **261 NLRB No. 177**

(reversal of ALJ's credibility resolutions not warranted, notwithstanding E's contention that hearing was tainted by conduct of witness who allegedly threatened and pushed other witnesses outside courtroom while waiting to testify)

Nanticoke Homes, Inc. **261 NLRB No. 107**

(although ruling that surreptitiously recorded conversation and transcript thereof would only be admitted into evidence for purpose of credibility was error, it was not reversible error where evidence which was contained on tape was admitted by direct testimony of Ee who recorded tape)

Broadway Catering Corp. d/b/a Studio 54 **260 NLRB No. 166**

(relevant factor concerning credibility of testimony of co-owner Es herein was fact that they were convicted felons guilty of serious crime of income

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tax fraud, and dishonesty in so serious a matter bespeaks dishonesty in others)

Glover Bottled Gas Corp. **255 NLRB No. 011**

(while Ee was not the most accurate of witnesses and might give an inaccurate interpretation to a statement, his testimony concerning E's statement, herein found unlawful, was credited, since it was not deemed that Ee would invent allegations or fabricate a story out of whole cloth, and there was no denial or other testimony by E)

The Washington Post Company **254 NLRB No. 014**

(in U C proceeding, Bd found it unnecessary to make credibility resolutions, since it ordinarily does not do so in determining unit issues)

B. E. & K., Inc. **252 NLRB No. 036**

(weight given to actual sworn testimony, and credited, over stipulated testimony to same effect)

Dennis G. Maietta and Frank M. Maietta t/a Maietta Contracting **251 NLRB No. 027**

(where parties waived hearing and submitted case to ALJ for issuance of decision based on record in related proceeding for 10(j) inj and, consequently, ALJ based credibility findings on factors other than demeanor, Bd independently examined case record and found no basis for reversing ALJ's credibility determinations or his findings of fact based thereon)

Cumberland Farms Dairy, Inc. **250 NLRB No. 140**

(respondent's motion to expunge portion of ALJ's decision or alternatively to reopen the record and submit supplemental brief, denied because in that portion of ALJ's decision, ALJ's discussion regarding counsel for respondent goes to his credibility, which impacts on credibility of other witnesses in case)

C-F Air Freight, Inc. **247 NLRB No. 060**

(inaccuracy of recall of dates considered not impediment to veracity of any witness; instead, credibility resolutions based on ability of witnesses to recall events, demeanor of each witness, weight of respective evidence provided by witness, established or admitted facts, and inherent probabilities and reasonable inferences)

Dravo Corporation, Chris & Shaver Division **247 NLRB No. 064**

(Bd's established policy is not to overrule hearing officer's credibility resolutions unless they are clearly in error)

Edward Kopack, Sr. and Edward Kopack, Jr. v. N.L.R.B. **668 F.2d 946 (C.A. 7, Jan. 1982)**

(demeanor is often a major factor in ALJ's crediting testimony of one witness over that of another, and significant weight must be attributed to ALJ's findings based on demeanor because neither Bd nor reviewing ct has opportunity similarly to observe the testifying witness)

N.L.R.B. v. Chem Fab Corporation **691 F.2d 1252 (C.A. 8, Nov. 1982)**

(ct rejected E's contention that ALJ's crediting other Ees' versions of exchanges with discriminatee when different from discriminatee's version amounted to finding that discriminatee testified falsely)

5650-0900 Corroboration

Teamsters Local Union No. 528 (Associated Grocers Co-Op) **265 NLRB No. 065**

(in affg ALJ's findings, Bd found it unnecessary to rely on E's failure to call witnesses to corroborate testimony of U witness, since ALJ relied on independent grounds for his credibility resolutions, including demeanor)

Castle Instant Maintenance/Maid, Inc. **256 NLRB No. 029**

(failure to corroborate critical testimony concerning cause for discharge where other witness was present warrants inference that testimony was unreliable)

Technicolor, Inc. **JD-(SF)-37-82**

(lack of which strengthened determination of unreliability of witness)

N.L.R.B. v. Wilker Brothers Company, Inc. **652 F.2d 660 (C.A. 6, June 1981)**

(uncorroborated testimony of interested witness who stands to gain from back pay award should be subject to strict scrutiny)

N.L.R.B. v. Container Corporation of America **649 F.2d 1213 (C.A. 6, May 1981)**

(uncorroborated testimony of charging party and U vice president that plant manager in training allegedly threatened to *make it hard* on U members was not credited where it was not supported by other evidence and he was unable to recall with specificity contents of conversation as uncorroborated testimony of interested charging party does not amount to substantial evidence of ULP)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

(self-serving declarations made by E's witnesses not credited and fact that witnesses corroborated each other irrelevant where ALJ found GC's witnesses more credible)

5650-1000 Employee's alien status

Plywood Los Angeles, Inc. **257 NLRB No. 067**

(Ees' status as undocumented workers or illegal aliens is irrelevant to determining their credibility as witnesses)

5650-1200 Confusion and contradiction not crucial

Royal Zenith Corporation **263 NLRB No. 82**

(Respondent's mtn to dismiss complaint granted where Charging Party's testimony on cross-examination false and contradictory so as to render his entire testimony not credible and where charging party violated ALJ's instructions not to discuss testimony with others)

Flite Chief, Inc.; et al. **258 NLRB No. 148**

(in backpay proceeding involving validity of reinstatement offer, ALJ credited testimony of discriminatees who testified in clear, concise, and convincing manner, even though one of them occasionally exhibited a poor memory which was understandable considering passage of time between discharge, offer of reinstatement and trial)

Flite Chief, Inc.; et al. **258 NLRB No. 148**

(in determining backpay due discriminatee and inclusion of moving expenses incurred in obtaining interim employment out of town, based solely on her oral testimony unsubstantiated by any documents, ALJ found discriminatee's testimony convincing; while her memory appeared vague and limited, which should be attributed to 3-year passage of time, her efforts to recall were sincere and accurate)

Neely's Car Clinic **255 NLRB No. 188**

(discriminatee's testimony found not evasive as his inability to recollect specific's of each job contact two years after discharge was understandable and his testimony was clear and w/o internal contradiction)

5650-1500 Uncontradicted testimony

General Teamsters Local 959 (Northland Maintenance) **248 NLRB No. 100**

(where respondent fails to testify about incident though called by both sides, ALJ not required to draw negative inference from this lack of testimony and credit charging party's version because its testimony is uncontroverted where ALJ feels there are reasonable grounds for concluding such testimony is false or contains improbabilities)

National Steel Service Center, Inc. **JD-395-80**

(*trier of fact may find facts contrary to those presented by uncontradicted witness*)

Robert J. Wilson, RD v. Liberty Homes, Inc. **663 F.2d 620 (C.A. 7, Oct. 1981)**

(self serving statements of E representative not accepted merely because they are uncontradicted when record as whole casts reasonable doubt on accuracy of these statements)

5650-1800 Demeanor

Enterprise Products Company **265 NLRB No. 083**

(in evaluating credibility of witness, ALJ relied upon demeanor not only while witness was on stand but also while under ALJ's observation in hearing room)

Vic Koenig Chevrolet **263 NLRB No. 088**

(in evaluating conflicting testimony where demeanor factor is not primary basis, factors which Bd considers are: weight of evidence, established or admitted facts, inherent probabilities, and reasonsable influences drawn from record as whole)

Mobile Home Estates, Inc. **259 NLRB No. 182**

(Bd attaches great weight to credibility findings based on demeanor)

Gerson Electric Construction Company **259 NLRB No. 086**

(GC's contention that ALJ failed to make any findings concerning one witness' testimony, rejected; inasmuch as ALJ based his credibility findings upon *his observation of witness demeanor*, it was implicit in his general statement regarding credibility that he discredited testimony of witness in question since it conflicted with facts as described by other witnesses whose testimony ALJ completely credited; consequently, in considering GC's exceptions to certain credibility findings of ALJ, Bd has also reviewed his Bd implicit resolution with respect to witness herein)

Inland Steel Company **259 NLRB No. 024**

(witness who appeared to be giving his best recollection of factual issue involved, credited, where opposing witness was content to provide a superficial account)

Inland Steel Company **259 NLRB No. 024**

(witness who appeared more conscientious toward his role as witness, credited, where opposing witness had to be reminded as to inadequacy of his responses, on occasion appeared to be evasive, and did not flatly deny testimony of first witness)

Inland Steel Company **259 NLRB No. 024**

(supervisors' testimony to the effect that work assigned to Ee, alleged to be discriminatory because of its unpleasant nature, was considered favorably by other Ees, not credited, in view of sarcastic demeanor of supervisors while

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testifying, and credible testimony of alleged discriminatee's fellow Ees that they were not in fact envious of him)

Colson Equipment, Inc. 257 NLRB No. 015
(Bd independently evaluated witness' credibility where ALJ based his findings on factors other than demeanor; and reversed ALJ's finding that witness' uncontroverted testimony was not creditable; contrary to ALJ, Bd found that witness' testimony, while vague and rambling in places, was sufficiently direct and straightforward about supervisor's acts to establish a basis for finding the violative, that his testimony was not so confused as to cause the parties to restructure their presentations, and that absence of animus was not a credibility factor, since it was negated as such by Bd's finding of several violations)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. 672 F.2d 592 (C.A. 7, Feb. 1982)
(E's uncorroborated and self-serving denials that he made statements found unlawful herein or that he threatened or interrogated Ees was not credited where ALJ observed demeanor and found E's testimony hesitant and evasive)

5650-1833 Credibility based on demeanor within discretion of ALJ

United States Postal Service 260 NLRB No. 009

Brockwood Furniture, Division of U.S. Industries 258 NLRB No. 028
(contention that ALJ's credibility findings were unreasonable and inconsistent where ALJ questioned candor of one witness, yet credited testimony of another witness who could not produce documentation he alleged existed, w/o merit, since ALJ thoroughly evaluated witnesses' testimony in light of their demeanor)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)
(witnesses' untruthfulness strengthens inference of unlawful motive under circumstances of ALJ's credibility findings)

Central Freight Lines, Inc. v. N.L.R.B. 653 F.2d 1023 (C.A. 5, Aug 1981)
(in determining whether Ee was supervisor, Bd was not required to defer to conclusory testimony of others that Ee's duties were identical to those of one supervisor; Bd properly accepted view of ALJ, who observed demeanor of witnesses)

Sioux Products, Inc. v. N.L.R.B. 684 F.2d 1251 (C.A. 7, Aug. 1982)
(where ALJ's decision rests explicitly on his evaluations of demeanor, ct will weigh those findings more heavily)

5650-1867 Uncontradicted testimony may be disregarded in view of witness' demeanor

Sioux Products, Inc. v. N.L.R.B. 684 F.2d 1251 (C.A. 7, Aug. 1982)
(ALJ may not rely on unrefuted assertions of witness otherwise found to be lacking in credebility because this would effectively place burden of proof on E to refute testimony of otherwise admittedly unbelievable witness instead of GC)

5650-2400 Employment relationship not sufficient to disregard testimony

A-W Washington Service Station, Inc. 258 NLRB No. 014
(fact that witness is charging party is not enough, in itself, to discredit witness)

Pittsburgh Press Company 252 NLRB No. 075
(fact that witness testified adversely to E's interest at time she was still Ee of E tended to support witness's credibility)

Thurston Motor Lines, Inc. JD-(ATL)-99-81
(testimony of E's former safety director concerning speed of Ee's driving, credited, since director was no longer employed by E at time of hearing and had nothing to gain or lose by his testimony which was supported by documentation)

N.L.R.B. v. Rich's Precision Foundry, Inc. 667 F.2d 613 (C.A. 7, Dec. 1981)
(undenied testimony of Ee whose livelihood is controlled by E against whom he testifies should be given credence)

5650-3700 Failure to credit some testimony does not justify rejection of witness' entire testimony

Enterprise Products Company 265 NLRB No. 083
(in crediting any witness only in part, ALJ relied upon fact that subjective human perceptions of situations and events are subject to coloration and for suggestion imposed upon a predisposition and, making allowance for this, it is not uncommon to believe some but not all of a witness' testimony)

King Trucking Company 259 NLRB No. 079
(everything said by trustworthy witness not a fact)

Caffe Giovanni, Inc. d/b/a Giovanni's 259 NLRB No. 031
(nothing is more common than to believe some and not all of what a witness says)

Le Roy Fontaine, Inc., and Hardwicke's Plum, Inc., A Joint Venture, d/b/a Maxwell's Plum 256 NLRB No. 034
(trier of fact is not required to believe entirety of witness' testimony)

Flatiron Paving Company d/b/a Flatiron Materials Company 250 NLRB No. 080

B. N. Beard Company 248 NLRB No. 016

C-F Air Freight, Inc. 247 NLRB No. 060

Durango Boot, a Division of U.S. Industries, Inc. 247 NLRB No. 046
(nothing is more common in all kinds of judicial decisions than to believe some and not all of a witness' testimony)

National Steel Service Center, Inc. JD-395-80

Sioux Products, Inc. v. N.L.R.B. 684 F.2d 1251 (C.A. 7, Aug. 1982)
(ALJ may not rely on unrefuted assertions of witness otherwise found to be lacking in credebility because this would effectively place burden of proof on E to refute testimony of otherwise admittedly unbelievable witness instead of GC)

5650-4300 Failure to testify concerning crucial point may be considered

Cora International Corporation 263 NLRB No. 071
(where Ee testified that supervisor told him at time of co-worker's discharge that trying to bring U in was only reason he knew for discharge, ALJ credited Ee because supervisor did not testify and E gave no explanation)

Great Plains Beef Company 255 NLRB No. 188
(discriminatee not awarded backpay to which he would otherwise be entitled where he failed to report interim employment to Bd agent as he was instructed to do, and denied, until confronted on cross examination, that he had been paid by U for picketing, since such concealment of interim earnings constituted abuse of Bd's processes and his failure or refusal to recall what other information he failed to supply Bd rendered ascertainment of interim earnings impossible)

Nevada County Publishing Co., d/b/a The Union 251 NLRB No. 143
(failure of respondent's attorney to ask one of his witnesses to testify concerning important matter reinforced ALJ's finding of lack of credibility of witness)

General Teamsters Local 959 (Northland Maintenance) 248 NLRB No. 100
(where respondent fails to testify about incident though called by both sides, ALJ not required to draw negative inference from this lack of testimony and credit charging party's version because its testimony is uncontroverted where ALJ feels there are reasonable grounds for concluding such testimony is false or contains improbabilities)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. 635 F.2d 1255 (C.A. 7, 1980)
(supervisor's statement to Ee that she had nothing to worry about if she was not engaged in U activities constituted implied threat to the effect that Ee would have something to worry about if she did engage in such activities; inference is permissible from supervisor's failure to testify that his honest testimony would either have been damaging to case of E in some way or that it would not substantially have differed from Ee's testimony about this incident)

5650-4900 Impeachment

5650-4910 For criminal activity

5650-4910-0100 Generally

Waikiki Inn, Inc. d/b/a Hunan Village Restaurant JD-(NY)-47-82
(testimony concerning fact that one of GC's witnesses had received unemployment compensation while employed by E properly admitted during cross-examination for purpose of credibility determination as Federal Rules of Evidence, 404(a)(3), 405(b), and 608(b)(1) grant trial judges broad discretion in such cases)

Westinghouse Electric Corporation JD-(ATL)-88-81

5650-4910-2500 Only for felony or misdemeanor convictions involving deceit or falsification

Medical Investors Association 260 NLRB No. 124
(testimony of Ee who admitted taking job under false name so he could continue to collect unemployment benefits not discredited especially where testimony of other witnesses tends to support his testimony)

Ampco Metal Division of Ampco-Pittsburgh Corporation 247 NLRB No. 091
(in supplemental hearing, testimony of Ee credited, notwithstanding his prior criminal conviction for illegal possesion of drugs, where evidence revealed but single conviction of Ee occurring some 6 years before original hearing

5650-4910-2500—Cont.

herein and concerning type of misconduct which would not necessarily support inference of tendency to testify dishonestly under oath)

California Circuit Assembly/Anderson Circuits, Inc. JD-(SF)-71-82
(under Rule 609(a)(2) of Federal Rules of Evidence, crime involving dishonesty or false statement is always admissible evidence, and here where witness had been convicted of fraudulent receipt of aid for child, felony under state law, conviction taken into account in determining credability)

N.L.R.B. v. Local 90, Plasterers 606 F.2d 189 (C.A. 7, 1979)
(status of witness as *admitted felon* and fact that he pleaded guilty to three counts of violating state law regarding unauthorized use of recording device during telephone conversations, held to be not sufficient basis for striking his testimony in Bd proceeding from the record or for reversing credibility determinations of Bd)

5650-4910-5000 Convictions before hearing

East Texas Motor Freight 262 NLRB No. 101
(isolated 20-year conviction (for assault) too remote to warrant consideration on issue of credibility)

Ampco Metal Division of Ampco-Pittsburgh Corporation 247 NLRB No. 091
(in supplemental hearing, testimony of Ee credited, notwithstanding his prior criminal conviction for illegal possesion of drugs, where evidence revealed but single conviction of Ee occurring some 6 years before original hearing herein and concerning type of misconduct which would not necessarily support inference of tendency to testify dishonestly under oath)

Corbin-Dykes Electric Company JD-(SF)-208-82
(ALJ credited witness who approximately 10 years earlier had been convicted of crime of *safe burglary* for which he served prison term in view of long passage of time since crime was committed, witness' lack of any criminal activity thereafter, and ALJ's observations of witness on stand)

Westinghouse Electric Corporation JD-(ATL)-88-81

N.L.R.B. v. Local 90, Plasterers 606 F.2d 189 (C.A. 7, 1979)
(status of witness as *admitted felon* and fact that he pleaded guilty to three counts of violating state law regarding unauthorized use of recording device during telephone conversations, held to be not sufficient basis for striking his testimony in Bd proceeding from the record or for reversing credibility determinations of Bd)

5650-4940 Contradictory statements

Rockland Lake Manor, Inc. 263 NLRB No. 142
(trial testimony of E's Ee-witness contradicted by affidavit to Bd)

Royal Zenith Corporation 263 NLRB No. 82
(Respondent's mtn to dismiss complaint granted where Charging Party's testimony on cross-examination false and contradictory so as to render his entire testimony not credible and where charging party violated ALJ's instructions not to discuss testimony with others)

Harowe Servo Controls, Inc. 250 NLRB No. 120
(U's minutes of bargaining session, which contained information about data received from E, which was prepared under U auspices and attached to U agent's affidavit, held admission against interest where during trial U agent testified that he did not remember receiving data)

Ridgeway Trucking Company and Sand & Stone Transport, Inc. JD-23-82
(ALJ granted GC's mtn to reopen record to receive exhibits of company's articles of incorporation, with amendments, and annual reports for purposes of impeachment of testimony as to identity of officer and director of company)

5650-4940-5000 Board must produce witness' pretrial statements

United Steelworkers of America, AFL-CIO-CLC, On Behalf of Its Local Union No. 15167 (Memphis Folding Stairs, Inc.) 258 NLRB No. 068
(witness's pretrial affidavit credited rather than testimony at trial which demonstrated refusal or inability to sufficiently recollect facts surrounding subject matter of testimony)

5650-4950 Consistent statements

Monroe Medi-Trans, Inc. 256 NLRB No. 107
(ALJ did not err in refusing to allow into evidence Ee's letter to E's president thanking him for having been a fair E, since it was in no way inconsistent, as asserted, with Ee's testimony concerning unlawful remarks attributed to E's general manager)

5650-5500 Miscellaneous reasons for crediting or discrediting testimony

Standard Motor Products, Inc. 265 NLRB No. 068
(E credited as witness in denying that he made allegedly coercive statements to Ee who was U adherent, in view of his demeanor, generally good recall, recollections made w/o hesitation, logicality and plausibility of his explanations made with sincerity, and improbability that he would make coercive remarks regarding U to known U adherent not made to other Ees none of whom attributed such remarks to him)

Standard Motor Products, Inc. 265 NLRB No. 068
(Ee witness not credited regarding allegedly coercive statements made to him by E, in view of his demeanor; pecuniary interest, as allegedly discriminatorily discharged Ee, in outcome of proceeding; record as a whole; and fact that E, as staunch U supporter, who was well aware of discharge of fellow Ees and alleged unlawfulness of it, did not reveal to Bd investigators any coercive remarks made to him until after his own discharge, which apparently prompted his recollection upon which 8(a)(1) allegation was based and was attributed to E prior to discharge of fellow Ees)

Moon Equipment Company 262 NLRB No. 076
(where ALJ credited terminated Ee's version of conversation between him and company official at time of Ee's allegedly unlawful discharge, ALJ's failure to make credibility resolution of fellow Ee's adverse testimony concerning conversation held not improper, since ALJ, by crediting terminated Ee's version of what was said, implicitly discredited fellow Ee's version to the extent the two were inconsistent; moreover, since fellow Ee specifically testified that Ee told him he was fired, his testimony corroborated that of terminated Ee)

Moon Equipment Company 262 NLRB No. 076
(no weight given to testimony of witness concerning statement she claimed was made to her by allegedly unlawfully discharged Ee that he had quit, where witness testified year after statement was supposed to have been made, she did not remember anything else that was said by Ee, did not know if she had more than one conversation with Ee on day statement was supposedly made, nor where at company's facility nor at what time of day it was made)

Conair Corporation 261 NLRB No. 178
(E's witnesses held not credible where, while testimony of GC's witnesses was given in fortright manner, was generally unequivocal and clear, corroborative and consistent with other evidence, testimony of E's principal witnesses was for the most part contradictory, evasive, guarded and quite defensive, at times unclear and equivocal, and in some instances of such incredible nature as to be unworthy of belief; and, significantly, witnesses consistently contradicted not only their own testimony given both at hearing and in previously acquired affidavits, but also that of each other)

Conair Corporation 261 NLRB No. 178
(E's witnesses held not credible where departure from their affidavits was so substantial and their testimony varied so dramatically from affidavits that it could not have been accidental)

T.H.E. Co. d/b/a L. D. Brinkman Southeast 261 NLRB No. 025
(Ee-witness who testified as to identity of car's driver who allegedly engaged in surveillance of U activities discredited, given time of day, his distance from road, poor lighting conditions and fact that two other Ee-witnesses were unable to identify driver, one of whom was much closer to road for portion of incident)

Alcar Industries, Inc. 260 NLRB No. 094
(testimony of witness not credited where he testified in evasive manner, avoided giving complete answers unless pressed to do so, gave inconsistent testimony which he changed in several material respects, and displayed memory not as complete as that of other witnesses)

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040
(credibility resolved against E because of his hostile and suspicious attitude toward Us, Bd, women, and blacks; his inherently incredible testimony; large volume of testimony against him, most of it consistent, corroborative, and unimpeached; his own corroboration of his anti-U remarks; and fact that GC's witnesses for most part were sincere and truthfull witnesses who would not be given to fabrication)

Progressive Medical Group, Inc., t/a Walnut Hill Convalescent Center 260 NLRB No. 039
(although notes taken at bargaining meeting by E's official were admitted after they were authenticated by him, notes of such meeting were ruled inadmissible where it was subsequently shown that official had flatly misrepresented process whereby handwritten notes were transcribed into typewritten minutes; and since official also displayed open partisanship, his uncorroborated testimony on any subject would not be found reliable)

Gerson Electric Construction Company 259 NLRB No. 086
(testimony of Ee allegedly unlawfully laid off during temporary shut down of construction job, not credited where Ee left clear impression that his version of facts was tailored to meet counsel's legal theory as opposed to representing his best recollection of past events; his testimony contained overstatements and exaggerations which were contradicted not only by E's witness but also by co-Ee; and his testimony as to E's ability to continue job, instead of closing it down, was wholly unconvincing)

Caffe Giovanni, Inc. d/b/a Giovanni's 259 NLRB No. 031
(Ee's testimony concerning one aspect of E's conduct while observing Ee on picket line, not credited, where Ee's affidavit given 4 days after incident omitted mention of it; it cannot be gainsaid that one's memory is fresher immediately after an event than 8 months later)

5650-5500—Cont.

Blackstone Company, Inc. 258 NLRB No. 126
(witness not discredited because of his religious beliefs, which fell outside of mainstream of organized Western Religion)

Flite Chief, Inc.; et al. 258 NLRB No. 148
(testimony of witness not credited in view of self-serving nature of testimony, demeanor of all witnesses, review of their testimony, weighing of established facts, and reasonable inferences drawn from record)

Jimmy Kilgore Trucking Company 254 NLRB No. 112
(fact that witnesses were all related held but one factor bearing on their overall credibility and not determinative that they should all be discredited on that account, where commulative weight of such sequestered witnesses' testimony, in light of extensive cross-examination, indicated that their version of event testified to was more probable than that of E)

General Telephone Company of Michigan 251 NLRB No. 099
(witness using such terms as *felt that* and *to the effect that* renders uncertain content and import of his remarks)

Thermo King Corporation 247 NLRB No. 048
(GC's witnesses not credited where their testimony lacked consistency and logic and was undermined by their own statements, principal witness was evasive and reluctant to testify and in some instances his testimony was contrived or fabricated, and review of entire testimonial record and briefs coupled with due regard for logic of probability, demeanor of witnesses, and S Ct's Walton Mfg decision were basis for credibility resolutions herein)

Local No. 12, Operating Engineers (Enterprise Aggregates Corp.; Jones, Jones, and Jones) JD-(SF)-254-82
(credibility of testimony of neutral E's witness in secondary boycott proceeding over that of respondent U's representative was based on corroboration by another witness of neutral E, inherent probabilities, demonstrated candor and reasonable inference from record as well as demeanor, status of E's witnesses as disinterested non-parties, and logical inferences drawn from neutral E's conduct; E's witnesses were not involved in primary dispute, had no apparent animosity toward U, employed U members, and had no reason t testify other than to their recollection of what occurred)

5650-5550 Leading questions

United States Steel Corporation, Geneva Works JD-(SF)-122-81
(question held not leading since it was as susceptible of *yes* answer as of *no* answer and thus did not contain element of suggestion)

5650-6200 Partiality of witnesses

A-W Washington Service Station, Inc. 258 NLRB No. 014
(fact that witness is charging party is not enough, in itself, to discredit witness)

N.L.R.B. v. Container Corporation of America 649 F.2d 1213 (C.A. 6, May 1981)
(uncorroborated testimony of charging party and U vice president that plant manager in training allegedly threatened to *make it hard* on U members was not credited where it was not supported by other evidence and he was unable to recall with specificity contents of conversation as uncorroborated testimony of interested charging party does not amount to substantial evidence of ULP)

N.L.R.B. v. Webb Ford, Inc. 689 F.2d 733 (C.A. 7, Sept. 1982)
(ct reversed ALJ's credibility findings of former supervisor on 2 grounds: 1) ALJ failed to allow cross examination on his work record at E, and 2) failed to give proper weight to circumstances under which supervisor left E's employ. Here, supervisor was fired on grounds he felt unjust; therefore, this testimony from embittered ex-Ee cannot support finding that E was illegally motivated in firing another Ee when there is ample evidence good cause existed)

5650-6900 Self-serving nature of testimony affects credibility

Flite Chief, Inc.; et al. 258 NLRB No. 148

Apollo Clothes, Inc. JD-296-82
(shifting explanations for Ee's discharge, resting on self-serving inaccurate and inconsistent testimony, are evidence that E seeks to conceal true reasons for discharge because true reasons or causes (protesting *homework* and pursuing duties as U steward) are improper)

N.L.R.B. v. Wilker Brothers Company, Inc. 652 F.2d 690 (C.A. 6, June 1981)
(uncorroborated testimony of interested witness who stands to gain from back pay award should be subject to strict scrutiny)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. 672 F.2d 592 (C.A. 7, Feb. 1982)
(E's uncorroborated and self-serving denials that he made statements found unlawful herein or that he threatened or interrogated Ees was not credited where ALJ observed demeanor and found E's testimony hesitant and evasive)

N.L.R.B. v. Rich's Precision Foundry, Inc. 667 F.2d 613 (C.A. 7, Dec. 1981)
(testimony of wholly credible witness not untrustworthy merely because he has financial interest in outcome of hearing)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. 636 F.2d 1255 (C.A. 7, 1980)
(ct overruled Bd's finding of unlawful threat based on Ee's testimony alleging that supervisor told her to be careful about her U activities because E intended to get rid of every Ee on U list; Ee's testimony was incomplete, self-serving, and none of Ee's allegations were mentioned in sworn affidavit Ee gave to Bd; furthermore, supervisor's testimony that members of management uttered anti-U statements in meetings with Ees was also discredited where record indicated that such testimony was refuted by 15 other witnesses and that he was biased for being fired after only 3 months in E's employment)

L'Eggs Products, Inc. v. N.L.R.B. 619 F.2d 1337 (C.A. 9, 1980)
(self-serving declarations made by E's witnesses not credited and fact that witnesses corroborated each other irrelevant where ALJ found GC's witnesses more credible)

5650-7400 Testimony of witnesses where sequestration violated

Gossen Company, a Division of the United States Gypsum Company 254 NLRB No. 041
(mtn to exclude testimony of witnesses who had been permitted by E's counsel to read portions of transcript prior to testifying in alleged violation of sequestration arrangement, denied in circumstances herein where parameters of sequestration arrangement negotiated among counsel had not been precisely denied)

5650-7500 Testimony of witnesses whose statements are lost or destroyed need not be struck

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. 250 NLRB No. 131
(Bd did not strike testimony of GC's witness where respondent did not allege bad faith on part of GC and presented no evidence to establish that it was prejudiced by failure to produce alleged statement where such statement has been destroyed or lost in good faith)

5650-7800 Testimony against employer by employee while in employ of employer not likely false

Rome Baking Company 263 NLRB No. 004

Conair Corporation 261 NLRB No. 178
(testimony of GC's witnesses, pursuant to subpoena, who were still Ees of E at time they testified is not likely to be false since testimony was given at considerable risk, including loss of employment or promotion)

McKesson Drug Company 257 NLRB No. 054
(weight given to testimony of still employed employee where he testified against self-interest)

Le Roy Fantasies, Inc., and Hardwicke's Plum, Inc., A Joint Venture, d/b/a Maxwell's Plum 256 NLRB No. 036

Sanitas Care, Inc. d/b/a Parkview Acres Convalescent Center 255 NLRB No. 149
(ALJ considered fact that witnesses were still employed by E at time they testified adversely to E's position in making credibility resolution)

Harper & Arterburn Co., Inc. 255 NLRB No. 105

Botany 500, A Division of Rapid-American Menswear, Inc. 251 NLRB No. 075
(Ee who testified adversely to E concerning alleged E ULPs, not credited, even though she was still in E's embloy; while individual's act in testifying against own pecuniary interests tends to support reliability of individual as witness, in present instance witness was friend of charging party and was closely aligned with her in internal U matters; while such factors by themselves do not serve as basis for rejecting witness' testimony they tend to show that she was not disinterested in disposition of charging party's case)

Durango Boot, a Division of U.S. Industries, Inc. 247 NLRB No. 046

Chef's Pantry, Inc. 247 NLRB No. 018

Roadway Express, Inc. JD-(SF)-238-82
(Ees testifying adversely to their E's interests not credited in view of the state of the record; while Bd has credited testimony of such witnesses, it would be intellectually dishonest to ignore witnesses' testimonial inconsistencies and contradictions in favor of blindly utilizing boradly stated principle in making credibility resolutions)

Thurston Motor Lines, Inc. JD-(ATL)-99-81
(testimony of E's former safety director concerning speed of Ee's driving, credited, since director was no longer employed by E at time of hearing and had nothing to gain or lose by his testimony which was supported by documentation)

5650-7800—Cont.

Retailer's Coupon Redemption Co., Inc. JD-194-80

N.L.R.B. v. Savin Business Machines Corporation 649 F.2d 89 (C.A. 1, May 1981)

(no basis to upset ALJ's resolution of credibility conflict in favor of charging party's witness, since w/i reason ALJ's judgment on credibility controls, and witness testified against E while still employed and would not likely have fabricated incident he testified to)

Standard-Coosa-Thatcher Carpet Yarn Division, Inc. v. N.L.R.B. 691 F.2d 1133 (C.A. 4, Sept. 20, 1982)

(mere fact that Ee exposes himself to retaliation by testifying against his E has little bearing on credibility)

Sioux Products, Inc. v. N.L.R.B. 684 F.2d 1251 (C.A. 7, Aug. 1982)

5650-7900 Testimony of witness may be credited in part

Enterprise Products Company 265 NLRB No. 083

(in crediting any witness only in part, ALJ relied upon fact that subjective human perceptions of situations and events are subject to coloration and for suggestion imposed upon a predisposition and, making allowance for this, it is not uncommon to believe some but not all of a witness' testimony)

T.H.E. Co. d/b/a L. D. Brinkman Southeast 261 NLRB No. 025

(despite discrediting Ee-witness's testimony on one point, Bd found no basis therein for disturbing ALJ's crediting his testimony as to other matters)

Gary Concrete Products, Inc. JD-(ATL)-65-82

5650-8100 Testimony of biased witness may be disregarded

Magnolia Manor Nursing Home, Inc. 260 NLRB No. 040

(in determining that E's testimony lacked credibility, ALJ took into consideration E's remarks suggesting racial bias only insofar as they appeared to be relevant to labor issues herein; while not discrediting him as witness solely because he made those remarks, ALJ held that, in context of case, they reflected on his general credibility)

N.L.R.B. v. Webb Ford, Inc. 689 F.2d 733 (C.A. 7, Sept. 1982)

(ct reversed ALJ's credibility findings of former supervisor on 2 grounds: 1) ALJ failed to allow cross examination on his work record at E, and 2) failed to give proper weight to circumstances under which supervisor left E's employ. Here, supervisor was fired on grounds he felt unjust; therefore, this testimony from embittered ex-Ee cannot support finding that E was illegally motivated in firing another Ee when there is ample evidence good cause existed)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. 636 F.2d 1255 (C.A. 7, 1980)

(ct overruled Bd's finding of unlawful threat based on Ee's testimony alleging that supervisor told her to be careful about her U activities because E intended to get rid of every Ee on U list; Ee's testimony was incomplete, self-serving, and none of Ee's allegations were mentioned in sworn affidavit Ee gave to Bd; furthermore, supervisor's testimony that members of management uttered anti-U statements in meetings with Ees was also discredited where record indicated that such testimony was refuted by 15 other witnesses and that he was biased for being fired after only 3 months in E's employment)

5650-8700 Testimony of witnesses found unreliable as to one issue may be disregarded as to other issues

Delco Air Conditioning Division, General Motors Corporation v. N.L.R.B. 649 F.2d 390 (C.A. 6, May 1981)

(ct held that substantial evidence on record did not support Bd finding that E unlawfully conditioned Ee's reinstatement on his resignation as U committeeman where ALJ, although completely discrediting Ee's version of his initial discharge, credited Ee's uncorroborated testimony concerning E's alleged condition for Ee's reinstatement; furthermore, ct was unwilling to enforce backpay award upon uncorroborated testimony of Ee who would be beneficiary of reinstatement and backpay award)

6300 WEIGHT AND SUFFICIENCY

6301 GENERALLY

Steadman v. Securities and Exchange Commission 446 US 917 (U.S. SCt. Feb. 1981)

(*substantial evidence* phrase of SEc. 7 of the Administrative Procedure Act which provides that agency must not impose sanctions unless *supported by and in accordance with reliable, probative and substantial evidence* requires that agency decision be based on quality of evidence rather than setting standard of quality; and in accordance with weight of evidence to justify, if trial were to jury, refusal to direct verdict. Thus, SEC properly used preponderance-of-evidence rather than clear-and-convincing standard of proof in determining whether anti-fraud provision of federal securities law violated)

Teamsters Local Union No. 326 (The Firestone Plastics Company) 253 NLRB No. 074

(contention that increased initiation fee restrained applicants from accepting jobs with E rejected; evidence of increase in ratio of number of interviews of applicants to number of jobs filled by E valueless where E failed to give basis for his figures or describe records he consulted to refresh his recollection)

B. E. & K., Inc. 252 NLRB No. 036

(weight given to actual sworn testimony, and credited, over stipulated testimony to same effect)

United Artists Theatre Circuit, Inc. (Moving Picture Projectionists, Local No. 150, Stage Employees) 250 NLRB No. 135

(U's quiescence–when it heard that E did not agree with U that E and U had reached agreement on terms of contract–found not evidence that U concurred with E, where U members ratified the agreement that U claimed had been reached and so notified E, and E acted in accordance with contractual terms that U claimed they had reached agreement on)

Carbonex Coal Company 248 NLRB No. 107

(ALJ's refusal to accept into evidence summaries of E's economic condition at time it instituted layoffs, since that information was not available to E at time it made its decision, reversed by Bd because this factor goes to weight to be accorded evidence not its admissibility)

D & D Supermarket, Inc. JD-292-82

(where supervisor testified as to list that had been abstracted from accounting book maintained by him, but no effort was made to introduce *book*, inference warranted that production of *weak evidence where strong is available* that strong would have been adverse)

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 628 (C.A. 7, Oct. 1981)

(E's contentions that RD has greater burden of proving by substantial evidence on record as a whole that E's actions motivated by anti-U animus, rejected, since that standard applicable only to determination of merits of ULP charge; in Section 10(j) or 10(l) inj cases ct need not, indeed should not, make finding of E motivation. It need only find reasonable cause for belief that there was such a motivation)

N.L.R.B. v. Eskimo Radiator Mfg. Co. 688 F.2d 1315 (C.A. 9, Oct. 1982)

(threats of physical harm attributable to Ees who are not agents of U are *entitled to less weight* in determining whether free election was possible)

6325 SUSPICION, CONJECTURE OR BELIEF

G.T.A. Enterprises, Inc. d/b/a **Restaurant Horikawa** 260 NLRB No. 029

(Bd revised ALJ finding of violation based on E's unlawful surveillance of Ees where Bd found that finding based on *subjective impressions* of witnesses, not *objective observations*)

Wal-Mart Stores, Inc. JD-(ATL)-55-81

(although sequence of events may give rise to suspicion as to whether actions taken by respondent were based on unlawful motivation, mere suspicion is not sufficient to support finding of violation of Act)

6350 EFFECT OF CORROBORATION

N.L.R.B. v. Container Corporation of America 649 F.2d 1213 (C.A. 6, May 1981)

(uncorroborated testimony of charging party and U vice president that plant manager in training allegedly threatened to *make it hard* on U members was not credited where it was not supported by other evidence and he was unable to recall with specificity contents of conversation as uncorroborated testimony of interested charging party does not amount to substantial evidence of ULP)

6375 NONPARTY STATEMENTS

Six Flags Over Mid-America, Inc. 263 NLRB No. 013

(less weight to be accorded to conduct of rank-and-file Ees than that of parties to election in considering election objections)

7000 SPECIFIC KINDS OF EVIDENCE

7006 ADMISSIONS

7006-3700 By affidavit

Harowe Servo Controls, Inc. 250 NLRB No. 120

(U's minutes of bargaining session, which contained information about data received from E, which was prepared under U auspices and attached to U agent's affidavit, held admission against interest where during trial U agent testified that he did not remember receiving data)

Wolverine World Wide, Inc. JD-188-80

(pretrial statements adduced to impeach witnesses may be used as affirmative evidence, especially where statements contain admissions or declarations against interest)

7012 AFFIDAVITS

7012—Cont.

Economy Fire and Casualty Co. **264 NLRB No. 083**

(where Ee testified that she had no present recollection of supervisor's comment, Ee read statements from affidavit given to Bd agent 2-1/2 months after incident occurred into record as hearsay exception under Rule 803(5))

Geary Motor Sales, d/b/a Geary Ford **261 NLRB No. 169**

(GC's mtn to strike affidavits presented with respondent's exceptions in support of its contentions, granted where, *inter alia*, affidavits were not previously made part of record and matters therein were not shown to constitute new or previously unavailable evidence)

Comair Corporation **261 NLRB No. 178**

(E's witnesses held not credible where departure from their affidavits was so substantial and their testimony varied so dramatically from affidavits that it could not have been accidental)

Milton College **260 NLRB No. 047**

(in summary judgment proceeding, Bd denied GC's mtn to strike affidavit submitted by college's dean enumerating duties and authority of faculty members in support of claim that they are managerial under SCt's intervening *Yeshiva University* decision and that, consequently, previously stipulated unit of faculty members was inappropriate; Bd rejected GC's contentions that dean, employed only a few months when certification issued, had insufficient time to determine faculty's actual duties and authority and that, if affidavit is not stricken, little, if any, weight should be given to it)

Zeigler Coal Company **256 NLRB No. 169**

(U agent's affidavit and attached exhibit of E's reply letter to bargaining request, submitted in support of GC's mtn for summary judgment, held admissible notwithstanding affidavit was sworn *to best of memory, information, knowledge and belief* rather than *personal knowledge* since agent had personal knowledge of all key facts asserted as shown by entire affidavit including exhibits, and reply letter was held self-authenticating)

Vitek Electronics, Inc. v. N.L.R.B. **653 F.2d 785 (C.A. 3, June 1981)**

(in remanding for hearing on objections, ct rejected RD's contention that RD is entitled to ignore issues of fact raised by affidavits not *setting forth such facts as would be admissible in evidence* (Fed. R. Civ. P. 56(e)), where RD did not draw any distinction between hearsay and nonhearsay evidence and ct could not assume that this was sole or dispositive basis for decision not to hold hearing; Rule 56(e) does not apply, and even if it did and evidence relating to objections was solely hearsay, it might still be admissible; and narrations of affidavits were not hearsay for all purposes)

7012-2000 Of witnesses who did not testify

Georgia Kraft Company, Woodkraft Division **258 NLRB No. 121**

(admissible under Sec. 804(b)(5) notwithstanding GC not informed of its intended use since GC waived its right to notice)

Poppin Fresh Pies, Inc. **256 NLRB No. 051**

(Ee's affidavit in Spanish was accorded no weight where Ee was not present at hearing and Bd agent who prepared affidavit did not testify though requested to by Respondent and prevented from doing so by GC, and thereby deprived E of opportunity at cross-examination, notwithstanding U agent who was present when Bd agent prepared affidavit authenticated affidavit)

K & K Transportation Corp., Inc. **254 NLRB No. 087**

(affidavit of Ee not admissible where Ee did not testify at hearing and proponent of statement did not make good faith effort to obtain declarant's presence at hearing to meet Federal Rules of Evidence, Sec. 804(a) unavailability test)

Justak Brothers and Company, Inc. **253 NLRB No. 146**

(prehearing affidavit admitted into evidence to show that during meeting at U hall, Ee asked *one of his companions*, who was not named in affidavit, to put Ee's name on card for U, notwithstanding Ee was unavailable to testify at hearing, where general purposes of Federal Rules of Evidence and interests of justice were best served by admission of affidavit)

Central Freight Lines, Inc. **255 NLRB No. 063**

(affidavit of witness who died prior to hearing, admissible to prove conversation between deceased and E's terminal manager, since affidavit met standards of *Rule 804(b)(5) of Federal Rules of Evidence*)

Justak Brothers and Company, Inc. v. N.L.R.B. **664 F.2d 1074 (C.A. 7, Nov. 1981)**

(where signatures on W-4 form and authorization card different, Ee's affidavit explaining that he had authorized another Ee to sign his authorization card admissible since E was informed that affidavit would be used as soon as GC learned Ee would be unavailable to testify)

7015 BUSINESS RECORDS

Electric Hose and Rubber Company **262 NLRB No. 014**

(elimination of overtime during U organizing campaign not violative where E introduced its projections of production needs upon which its decision was based but did not produce actual production records and GC did not prove that E, in fact, did not base its decision on these projections but acted out of U animus)

Carbonex Coal Company **248 NLRB No. 107**

(ALJ's refusal to accept into evidence summaries of E's economic condition at time it instituted layoffs, since that information was not available to E at time it made its decision, reversed by Bd because this factor goes to weight to be accorded evidence not its admissibility)

7015-5000 Authentication of

First Termite Control Co., Inc. **265 NLRB No. 200**

(on ct remand, freight bills were re-introduced to show that E met legal jurisdictional standard, and qualified witness who was completely familiar with preparation of bills of lading and could vouch for their accuracy testified and authenticated bills for admission under business records exception to hearsay rule)

7018 CIRCUMSTANTIAL EVIDENCE

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. **No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)**

(E's motivation for unlawful action taken against Ee due to Ee's U activities may be proven by circumstantial evidence, including timing of action taken, hostility towards unionization in general and discriminatee in particular, and shifting nature and/or insubstantiality of explanation offered by E for its action (civil contempt proceeding))

7018-0100 Generally

Pay 'N Save Foods, Inc. **257 NLRB No. 162**

(circumstances, including timing of discharges upon E's learning of Ees' U activity and false explanation for discharges, size of plant, and fact Ees not circumspect in their discussions of U warrant inference that E's reference to Ees' attitude, as grounds for action, was allusion to their U sympathies)

7018-3300 Direct evidence of purpose to violate statute seldom obtainable

Blue Bird Body Company **251 NLRB No. 196**

(*knowledge*, like any other element in case, may be proven by circumstantial evidence if circumstances are such as to support reasonable inference)

Irwin County Electric Membership Cooperative **247 NLRB No. 195**

(*direct evidence of discriminatory motivation is not necessary to support finding of discrimination and such intent may be inferred from record as a whole*)

N.L.R.B. v. Proler International Corporation **635 F.2d 351 (C.A. 5, 1981)**

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**

(state of mind of E officials who make decision to discharge Ee reflects motive for discharge; GC will rarely be able to produce direct evidence of official's state of mind and therefore GC can only produce circumstantial evidence from which Bd can infer finding of improper motive)

Seattle-First National Bank v. N.L.R.B. **638 F.2d 1221 (C.A. 9, 1981)**

(*since it would be extraordinary for a party directly to admit a bad faith intention his motive must of necessity be ascertained from circumstantial evidence*)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. **643 F.2d 687 (C.A. 10, Mar 2, 1981)**

(reasonable inference of knowledge of U support may be established by circumstantial evidence such as: supervisor's singling out discriminatee for derision regarding subpoena and supervisor's interest in inducing discriminatee not to honor it; supervisor's multiple references to Ee's *U brothers* as well as small size of market in which both supervisor and Ee worked)

7018-6700 Sufficient in light of absence of rebuttal

Douglas & Lomason Company **253 NLRB No. 039**

(although it was not certain that it was supervisor who posted anti-U petition, there was sufficient circumstantial evidence to make that likely; his failure to rebut that necessary inference was persuasive to find violation)

7021 EXHIBITS

Ron-Bob, Inc. t/a Crazy Horse Saloon **JD-621-81**

(in determining in backpay proceeding whether E's or GC's exhibits listing weekly hours worked by discriminatees should be credited where discrepancies occurred, ALJ accepted GC's figures as accurate, where E's exhibit, although having few discrepancies, contained omissions regarding hours and weeks worked by certain discriminatees during specified periods and also listed hours worked during one week by another discriminatee under another discriminatee's name)

7024 EVIDENCE RELATING TO PARTICULAR EVENTS OR FACTS

7024-1700 Commerce data

Musicians Union Local 47, etc. (American Broadcasting Company, etc.) **255 NLRB No. 065**

(GC's failure to produce evidence in 8(b)(1)(A) and (2) proceeding in support of allegations that Es, other than E whose operations were found to warrant assertion of jurisdiction, satisfied Bd's jurisdictional standards held

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not material, since operations of company found engaged in commerce were sufficient to establish jurisdiction, and U's action relative to such company sufficed of itself to establish violation; additional findings based on similar U actions would be cumulative and would not warrant change in remedy)

7024-1750 Summaries and testimony proper if 'facilities for proper cross- examination' provided

N.L.R.B. v. First Termite Control Co., Inc. 646 F.2d 424 (C.A. 9, May 1981)
(freight bill, introduced by Bd into evidence to prove substantial amount of lumber purchased from out of state by entity which supplied lumber to E, was inadmissable *hearsay*, since authenticating witness was Ee of supplier and not of carrier that prepared freight bill; witness had no knowledge of circumstances under which freight bill was prepared and was not custodian or other qualified witness necessary in order to admit this hearsay under business records exception, Federal Rules of Evidence 803(6))

7024-2200 State and local courts records and decisions

Author Briggs, Inc. 268 NLRB No. 038
(acquittal in criminal trial of act which is contended herein to be misconduct of striker justifying refusal to reinstate, cannot be given collateral estoppel effect in this proceeding)

East Texas Motor Freight 262 NLRB No. 191
(Bd severed part of instant case and remanded that aspect for further hearing to determine whether U steward participated in assault on dissident U member by use of municipal ct judgment wherein U steward was found guilty of assault in issue)

7024-3300 Events occurring before ULP alleged in complaint may be given weight

Bandag, Incorporated v. N.L.R.B. 583 F.2d 765 (C.A. 5)
(Bd's finding *multitude* of other acts displaying anti-U animus of E and its supervisors, though not alleged as independent violations, were relevant in assessing violations that were alleged in complaint)

N.L.R.B. v. Savair Manufacturing Company 611 F.2d 169 (C.A. 6, 1979)
(order based on 8(a)(1) violation enforced, since Bd entitled to conclude from testimony of company official that E refused to hire Ee in 1976 because he was *trouble* during Ees' walkout in 1969)

Rockingham Machine-Lunar Company v. N.L.R.B. 665 F.2d 303 (C.A. 8, Dec. 1981)
(notwithstanding that ALJ improperly relied on *backgound* evidence to find that E committed ULPs, ct held that other evidence in record was sufficient to support Bd's findings of violations)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)
(Bd has power-and indeed obligation-to take into account history of recalcitrance in designing remedial order)

7024-3350 Events covered by settlement may be considered as background

English Coal Company, Inc. 263 NLRB No. 165
(broad c/d order appropriate where Bd relied upon formal settlement agreement, which did not contain nonadmissions clause, to show a proclivity to violate Act, and which contained language permitting later use in Bd-related proceedings)

Arnold Ready Mix Corporation 259 NLRB No. 026
(ALJ allowed introduction of prior settlement agreement involving alleged discriminatory discharge of dischargee for background material and to reflect on U animus of E)

Nabisco, Inc. JD-(SF)-34-82
(in considering whether any postsettlement conduct is sufficient to warrant setting settlement aside, can consider presettlement conduct only as background evidence or indicator of credibility in appraising E's motives and objectives)

7024-3375 Settlement agreements not admissible

Central Storage and Transfer Co. of Harrisburg 263 NLRB No. 089
(ALJ erred in admitting testimony concerning alleged job offer where offer occured during course of settlement negotiations)

Lord Jim's 259 NLRB No. 164
(settlement agreement in suit of 5 Us' trust funds could not be used as admission that E had recognized or had contract with U into which these 5 Us were merged)

East Wind Enterprises 250 NLRB No. 101
(letter from E's counsel to GC written during course of settlement negotiations and was part thereof, inadmissable; See, *Federal Rules of Evidence, Rule 408*)

7024-3800 Events occurring prior to filing of petition

Blue Bird Body Company 251 NLRB No. 196
(prepetition conduct may be considered in determining whether party has engaged in objectionable conduct where such prepetition conduct lends *meaning and dimension* to post-election conduct)

Mastercraft Leather Manufacturing Company, Inc. 249 NLRB No. 065
(E's statement to Ee, threatening to close shop if U came in, excluded from consideration as objectionable conduct since it occurred before filing of ptn)

Turner Shoe Company, Inc. and Carmen Athletic Industries, Inc. 249 NLRB No. 029
(although E's speech to Ees emphasizing strikes, plant closing, and loss of jobs resulting from unionization was made prior to filing of operative ptn and cannot serve as basis for setting aside election, it was considered insofar as it provided background in evaluating E's post-ptn conduct)

7024-4200 Offers of settlement or compromise

East Wind Enterprises 250 NLRB No. 101
(letter from E's counsel to GC written during course of settlement negotiations and was part thereof, inadmissable; See, *Federal Rules of Evidence, Rule 408*)

7024-5000 Facts established at hearing before other agencies

7024-5033 Arbitration tribunal

General Motors Corporation, Delco Moraine Division 257 NLRB No. 146
(E's argument that U was obligated to overturn prior arbitration decisions through arbitral forum in order to reassert its statutory right to requested information and contention that ALJ's refusal to admit evidence of parties' arbitration history was biased, rejected where E presented no evidence that U's statutory right was considered by arbitrators or that U acquiesced in E's interpretation of said decisions or otherwise clearly and unmistakably waived its statutory right to requested data)

Classic Truck Rental Corp. 251 NLRB No. 056
(contrary to ALJ, Bd did not rely on contents of mediation arbitrator's letter, advising E to suspend Ee, in finding that E's disciplinary action against Ee was not unlawful, since Ee's misconduct provided sufficient cause for disciplining Ee)

7024-5067 Unemployment compensation agency

Armored Transport of Nevada, Inc. 265 NLRB No. 209
(unemployment compensation decision showing that Ee was discharged for cause was admitted but would not be controlling)

Western Publishing Co., Inc. 263 NLRB No. 145
(ALJ erred in refusing to admit into evidence copy of decision made by State Department of Labor concerning unemployment compensation claimed by Charging Parties; such decision, although not controlling as to findings of fact or conclusions of law, has some probative value and is admissible into evidence)

Serendippity-Un-Ltd and Tigerrr, Inc. 263 NLRB No. 100
(E's mtn in brief, opposed by GC, to include State unemployment board of review decision in evidence relating to *quit* of alleged discriminatee, granted; while E failed to assert that proffered document was newly discovered or not in existence during hearing, and while such previously unmentioned document would ordinarily be rejected upon GC's opposition, document placed in record on theory that its omission was result of E's oversight, especially since other documents pertaining to alleged discriminatee were in evidence)

Serendippity-Un-Ltd and Tigerrr, Inc. 263 NLRB No. 100
(although documents supporting conclusions of State unemployment bureau that Ees *quit* w/o *just cause* were received in evidence, such documents not given governing weight in interpreting statutory questions whether Ees *quit* or whether they left work while engaging in concerted protected activity; in defining *quit*, purpose and ends of State statute are not necessarily consistent with protections afforded by Act; and interpretation of events under State statute cannot control, much less bind, Bd concerning whether action of Ees amounted to *quit* under Act)

E. I. Dupont De Nemours 263 NLRB No. 015
(opinion of state unemployment compensation commission not binding on Bd)

Bethlehem Steel Corporation 262 NLRB No. 027
(decision of state unemployment security division regarding Charging Party's unemployment compensation claim excluded where decision appealed)

Bethlehem Steel Corporation 262 NLRB No. 027
(decision of state unemployment security division appeals referee regarding Charging Party's unemployment compensation claim admitted)

Bethlehem Steel Corporation 262 NLRB No. 027
(statement of E submitted to state unemployment agency in regard to Charging Party's unemployment compensation claim, admitted, since materials related to reasons E discharged Charging Party)

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Bethlehem Steel Corporation 262 NLRB No. 027
(materials submitted to state unemployment compensation agency regarding Charging Party's claim for unemployment compensation including statement from E regarding Charging Party's attendance records, and affidavits, admitted, where E did not object to authenticity of any of the materials)

Bethlehem Steel Corporation 262 NLRB No. 027
(transcript of tape made at hearing before state unemployment compensation agency regarding Charging Party's unemployment compensation claims admitted, but ALJ only considered parts which were material)

Emory Nursing Home, Inc. d/b/a Emory Convalescent Home 260 NLRB No. 071
(decisions of state unemployment commissions have probative value but are not controlling)

Lashner Corporation 260 NLRB No. 020
(proceedings at employment Services Board of Review admitted for probative value, although not conclusive evidence)

Lattimer Associates Limited 258 NLRB No. 132
(Bd found merit in GC's exception to /ALJ's admission into evidence of transcript and decision of state unemployment compensation bd pertaining to dischargee's claim for benefits, since it is well established that ALJ and Bd decisions *must be based upon an independent consideration and evaluation of the evidence received in this ULP proceeding;* furthermore, it was not shown that ULP issue was considered by state agency in reaching its decision)

Jaybil Steel Products, Inc.; etc. 258 NLRB No. 157
(decision of state unemployment insurance appeal board denying benefits; because charging party lost job through conduct, received into evidence; however, since ALJ drew differnet factual conclusions and ULP not considered by unemployment tribunal, award not given controlling weight)

Justak Brothers and Company, Inc. 253 NLRB No. 146
(E's mtn to reopen record to allow it to introduce transcript of hearing and decision by state employment office denied, where state agency's decision undoubtedly was rendered under statute with different definitions, policies, and purposes from those of Act; furthermore, E did not show that ULP issue was considered by state agency and Bd's decision must be based upon independent consideration and evaluation of evidence recieved in ULP proceeding)

Moss Equipment Company 262 NLRB No. 076
(findings of state employment agency, contrary to ALJ's finding that Ee was discharged for engaging in protected activity, held not binding on ALJ who based his findings on other evidence of record herein)

7024-6700 Facts established at hearing in other Board cases

7024-6717 Admission and decision based thereon not conclusive

Marriott Corporation 251 NLRB No. 180
(prior Bd decision holding that E's *In-Flight Services Division* had violated Secs. 8(a)(1) and (3) of Act at E's Tampa facility not taken into account in instant case, since: (a) issue of E's motive was not litigated; (b) acts in issue occurred in Tampa, not San Juan; (c) even in Tampa, E did not demonstrate *general disregard for its Ees' rights*)

N.L.R.B. v. Local 483 and Local 11, Ironworkers 672 F.2d 1159 (C.A. 3, Feb. 1982)
(Bd's finding that Us referral operation discriminated against non-members or those to whom membership was denied was not supported by substantial evidence that referral was in fact based on U membership or activity and case remanded, as earlier *Ironworkers* cases were not dispositive of issues of proof; hire, unlike earlier cases, contractors' requisition registers were in evidence, and U officers testified as to mechanics of hiring hall operation)

N.L.R.B. v. Local 483 and Local 11, Ironworkers 672 F.2d 1159 (C.A. 3, Feb. 1982)
(referral in violation of consent decree in earlier Ironworkers' cases is not, ipso facto, violation of Sec. 8(b)(1)(A) and 8(b)(2))

7024-6733 R proceeding

Gurabo Lace Mills, Inc. 265 NLRB No. 044
(E who issued warnings to two Ees two days after it received notice R hearing would be held found to have violated Act in as much as warnings were issued in retaliation for U activities; however, no evidence that warnings, standing alone, were issued for purpose of influencing outcome of hearing; therefore, R-hearing not tainted and evidence of supervisory status of Ee adduced at hearing considered along with evidence presented at ULP hearing for determination of supervisory status in second hearing)

St. Francis Hospital 263 NLRB No. 109
(Bd's factual findings in related R case not binding in subsequent ULP proceedings because issues are different in R and ULP proceedings)

Westinghouse Electric Corporation JD-(ATL)-88-81
(representative for appropriate unit)

7024-6742 10(k) proceeding

Ironworkers, Local No. 86, (Kulama Erectors) 264 NLRB No. [illegible]
(although rank-and-file E-members of U were not its agents, their involvement in repeated threats to walk out if rival U's members were allowed to perform disputed work relied upon as backgound evidence in assessing threats made by individuals who admittedly were U agents)

7024-6783 Where present parties were parties to earlier proceedings

Knapp Corporation 265 NLRB No. 130
(unilateral changes in employment conditions of Ees made by E violative in instant case in event Bd affirms ALJ decision in pending C cases and R case concerning same Respondent, that E had duty to bargain with U)

Local 3, Electrical Workers (Northern Telecom, Inc.) 265 NLRB No. 029
(in finding violation Bd relied, *inter alia*, on prior Bd decisions that U's history before Bd demonstrated its proclivity to engage in unlawful secondary activity in support of its claim to telephone interconnect work being performed by Ees represented by another U)

Earle Industries, Inc. 260 NLRB No. 163
(finding in *Earle Industries, Inc.*, 146 NLRB 536 (1964), that supervisor and plant manager had *propensity* to engage in violative 8(a)(1) conduct prior to instant hearing, not adopted by Bd, since earlier decision predated alleged violation in instant case by some 14 years and was too remote to support ALJ's finding)

International Business Systems, Inc. 259 NLRB No. 017
(admission of warning letters issued to Ee but held in prior proceeding to be unlawful change in method of communication w/i disciplinary system, error, where letters ordered expunged in prior proceeding; however, ALJ not precluded from considering incidents documented in letters since E found to have merely unlawfully changed means it used to communicate w/i disciplinary system and not underlying disciplinary standards or to have altered system to rid it self of U adherents)

Chrysler Corporation-Amplex Division of Chrysler Corporation JD252-81
(formal pleadings and transcript from prior case involving same local were admitted into evidence in instant case, since they were relevent with respect to consideration of *res judicata* issue)

Standard Refinery Union, Inc. JD-633-80
(determination of correctness or incorrectness of name of E made in prior Bd cases concerning same E was controlling in instant case by virtue of Bd's denial of respondent U's request for review as regards such determination)

7024-7500 Interim employment during backpay period

Flite Chief, Inc.; et al. 258 NLRB No. 148
(E may mitigate his backpay liability by showing *willfully incurred* loss by a *clearly identifiable refusal to take desirable new employment;* but since affirmative defense burden is upon E to prove necessary facts, such burden is not met by presenting evidence of lack of Ee success in obtaining interim employment or of low interim earnings; rather, E must affirmatively show that Ee *neglected to make reasonable efforts to find interim work*)

Flite Chief, Inc.; et al. 258 NLRB No. 148
(in determining whether discriminatee has made reasonable search for interim employment, test is whether record establishes that discriminatee has diligently sought employment during entire backpay period, and uncertainty in evidence is resolved against E as wrongdoer)

Flite Chief, Inc.; et al. 258 NLRB No. 148
(in determining backpay due discriminatee and inclusion of moving expenses incurred in obtaining interim employment out of town, based solely on her oral testimony unsubstantiated by any documents, ALJ found discriminatee's testimony convincing; while her memory appeared vague and limited, which should be attributed to 3-year passage of time, her efforts to recall were sincere and accurate)

Neely's Car Clinic 255 NLRB No. 188
(where doubt is raised by testimony of E witnesses where discriminatee applied for jobs, such doubt must be resolved against wrongdoer responsible for existence of uncertainty)

7024-8300 Majority status of union

Silverman's Men's Wear, Inc. 263 NLRB No. 023
(Bd upheld ALJ's refusal to allow testimony to demonstrate post-election changes in bargaining unit on ground that any issue of change in unit was beyond scope of hearing; furthermore, absent special circumstances, there is irrebuttable presumption that majority status of certified U continues for 1 year from date of certification; as E's refusal to bargain occurred during certification year, presumption was clearly applicable; moreover, even if E's refusal to bargain had not occurred during certification year, factor of Ee turnover did not establish that U had lost majority status)

Lexington Cartage Company, Inc. 259 NLRB No. 085
(ptn signed by all members of unit stating they wished to renounce U irrelevant and not admissible into evidence in hearing on alleged unlawful refusal to bargain, since signed during certification year during which pre-

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sumption is not rebuttable, absent unusual circumstances; pin not unusual circumstances that would justify E's refusal to bargain)

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 082**
(in 8(b)(7)(A) proceeding, U's evidence tending to show that incumbent U's majority may have been tainted and not uncoerced held insufficient to rebut conclusion that incumbent had been lawfully recognized; U's evidence of sporadic substitution for supervisors by Ees participating in U activities, supervisor's election to U office, apparent acceleration of dues checkoff, and brief nature of, and rapidly concluded, negotiations had little probative value in support of U's contentions)

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**
(sum total of: 70% turnover in personnel, statements of Ees regarding dissatisfaction with U, extremely low attendance at U meetings, lack of any grievance activity, during first contract term or of visits by U to E's facility, cumulatively was sufficient to shift burden to GC to establish U's majority; ct refused to place burden on E of possibly committing ULP of bargaining with minority)

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**
(refusal to allow E to introduce into evidence U's membership list obtained after withdrawal of recognition improper, notwithstanding membership not correlative with U support, since low membership is *clearly probative* to issue of U's continued majority and admissibility is not determined solely by what evidence E could have relied on upon in making decision to withdraw recognition)

7024-8800 Objective evidence of card majority

Schnadig Corporation **265 NLRB No. 020**
(testimony of specialist in reading education as to level of difficulty of wording on authorization card, irrelevant, since *has no practical application insofar as predicting whether individual Ees during organizing campaign would understand, upon reading and signing card, that they were authorizing U to represent them*)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(secondary evidence is sufficient to establish identity of card signer and his/her act of signing card; witness providing such secondary evidence need not have actually seen Ee sign card so long as he can identify the card as having been executed by signatory Ee)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(*fact card undated does not destroy its validity. Collateral evidence may be relied upon to establish when undated card was signed and such evidence may include officially noticed Regional Office time and date stamps if card was submitted to Bd in support of R pin*)

Montgomery Ward & Co., Inc. **253 NLRB No. 023**
(right to question validity of authorization cards not waived by failure to object to authenticity of cards and their admission into evidence; further, where issue of validity of cards raised and litigated by cross-examination of authenticating witnesses and discussion in brief of testimony regarding possible misrepresentation in solicitation, validity of cards should be considered on merits)

Tartan Marine Company **247 NLRB No. 073**
(lost card not counted since w/o card it cannot be determined if individual authorized U to represent him on any of the critical dates litigated)

7024-8900 Subjective motivation in signing card

Carlina Knitting Co., Inc., et al. **JD-321-80**
(subjective testimony adduced at hearing held unreliable and does not prove that Ees, when they signed card, did not want U, or that they were tricked into signing cards)

7024-9100 Events at union meeting

East Texas Motor Freight **262 NLRB No. 101**
(U's inaction not violative where physical altercation took place outside of U meeting hall in presence of U agents; none of U agents knew who participated in brief fight that occurred at some distance from where agents were positioned)

7024-9500 Appropriateness of unit

Broadway Catering Corp. d/b/a Studio 54 **260 NLRB No. 166**
(in resolving question of appropriateness of unit in 8(a)(5) proceeding in which E refused to produce subpenaed records, Bd based its unit finding on testimony of GC's witnesses and on testimony of E's witnesses on matters not covered by GC's subpenas)

7024-9900 Other

Woodruff & Sons, Inc. **265 NLRB No. 043**
(ALJ improperly required E to show in unlawful discharge case that contended extraordinary damage sustained by discharged Ee's truck was in fact related to way in which Ee drove it; E merely needed to show that it relied on damage as real reason for discharge)

John J. Canova d/b/a Canova Moving & Storage Co. **261 NLRB No. 092**
(in backpay proceeding involving question of Ee's physical disability condition, it is proper to give greater weight to opinion of physician specializing in field in which Ee's impairment lies than to an opinion of his general practitioner)

7025 IDENTIFICATION EVIDENCE

N.L.R.B. v. Gulf States United Telephone Company **694 F.2d 92 (C.A. 5, Dec. 1982)**
(ct held that ALJ did not abuse his discretion in admitting identification evidence where, over E's objections that proper foundation had not been laid, ALJ asked witness, who as customer had allegedly complained to E about Ee's conduct, whether witness could select Ee from group of spectators in courtroom, and witness failed to be able to do so; admissibility of identification evidence lies w/i sound discretion of trial judge)

7030 EXPERT TESTIMONY

Local No. 121, Plasterers (Associated Building Contractors of Lafayette, Inc.) **264 NLRB No. 029**
(ALJ's refusal to allow respondent to present expert witness to testify about apprenticeship programs generally and their standards for operation as irrelevant, affirmed since witness had no knowledge of operations of respondent's apprenticeship program and did not participate in decision to terminate apprentice herein; moreover, rejected evidence would have been merely cumulative)

7036 EXPERT KNOWLEDGE OF BOARD

N.L.R.B. v. Boston Beef Co., Inc. **652 F.2d 223 (C.A. 1, July 1981)**
(ct reluctant to substitute its judgment on issue of whether Ee was casual rather than regular part-time Ee, where Bd possessed significant expertise and minor factual differences are so important, so long as substantial evidence supported Bd's conclusion)

North Cambria Fuel Company, Inc. v. N.L.R.B. **645 F.2d 177 (C.A. 3, Apr 10, 1981)**
(Bd is entitled to deference in drawing line between strike misconduct and protected activity)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(Bd has special expertise in classifying *mandatory* and *non-mandatory* subjects of bargaining; Congress delegated primary responsibility of defining scope of duty to bargain to Bd)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(deference (from ct) is due Bd's interpretation of labor contracts because such contracts are different in nature and scope from ordinary commercial contracts and, as such, labor contract interpretation falls w/i area of Bd's special expertise)

7042 HEARSAY

7042-0100 Generally

H. H. Robertson Company **263 NLRB No. 173**
(hearsay admissible if rationally probative in face and if corroborated by something more than slightest amount of other evidence. Bd jealously guards its discretion to rely on hearsay testimony in proper circumstance)

Feld & Sons, Inc. t/a Today's Man **263 NLRB No. 041**
(E's contention raised in exception to ALJ's overruling of E's objection to cross-examination of E's attorneys on ground testimony should have been excluded because it was hearsay as well as beyond scope of direct examination and irrelevant, rejected, where at hearing E only objected on latter grounds; since E did not then object that it was hearsay, it may not now claim to have meritorious exception to ALJ's ruling on hearsay grounds; moreover, ALJ correctly ruled that questioning was related to direct examination issues and was relevant)

Injected Rubber Products Corp. **258 NLRB No. 092**
(testimony of leadman-agent of E-concerning comments by E's management held not hearsay since *statement by party's agent concerning matter w/i scope of agency*)

United Rubber, Cork, Linoleum and Plastic Workers of America, Local 878 (Goodyear Tire & Rubber Company) **255 NLRB No. 032**
(Bd not bound to apply strickly Federal Rules of Evidence concerning hearsay)

Vitek Electronics, Inc. v. N.L.R.B. **653 F.2d 785 (C.A. 3, June 1981)**
(in remanding for hearing on objections, ct rejected RD's contention that RD is entitled to ignore issues of fact raised by affidavits not *setting forth such facts as would be admissible in evidence* (Fed. R. Civ. P. 56(e)), where RD did not draw any distinction between hearsay and nonhearsay evidence and ct could not assume that this was sole or dispositive basis for decision not to hold hearing; Rule 56(e) does not apply, and even if it did and

7042-0100—Cont.

evidence relating to objections was solely hearsay, it might still be admissible; and narrations of affidavits were not hearsay for all purposes)

Rockingham Machine-Lunex Company v. N.L.R.B. **665 F.2d 303 (C.A. 8, Dec. 1981)**
(where ALJ ruled that unauthenticated transcripts of post-strike negotiations were hearsay but admitted them for limited purpose of showing *essence* of what occurred at negotiations and then improperly relied on transcripts to establish truth of matter asserted therein, ct held there was other evidence that was more than sufficient to support Bd's finding of violations)

7042-0120 What constitutes hearsay

Jimmy Kilgore Trucking Company **254 NLRB No. 112**
(Ee's testimony as to what he was told by company official held not inadmissible hearsay, where official's statement was in nature of work instructions given to Ee and others in accordance with E's existing work practice and procedure)

Capriccios Restaurant, Inc. **249 NLRB No. 100**
(testimony of E that detective told him that discriminatee had been accused of harassing a pregnant woman held not hearsay, where it was not being offered for truth of matter being asserted by detective but rather was offered to show basis for E's fear of discharging discriminatee before E's departure overseas, as result of which his pregnant wife would be left alone)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**
(although testimony of general contractor and party in interest herein regarding his own statements made to various subcontractors in course of his attempts to get them to schedule work at jobsite was not hearsay, Bd held general contractor's testimony regarding responses made by the subcontractors was self-serving hearsay)

N.L.R.B. v. National Car Rental System, Inc. **672 F.2d 1182 (C.A. 3, Feb. 1982)**
(in case involving issue of whether E unlawfully discriminated against U members in refusing to transfer them to new facility after closing old operation, ct held testimony of witnesses, to the effect that U members were not going to be transferred, was not inadmissible hearsay, where witnesses' statements were not offered to prove that any Ees wanted to transfer rather, statements were offered to show that Ees asked about transferring, and significance of statements lies solely in fact that they were made and no issue is raised as to truth of anything asserted)

N.L.R.B. v. First Termite Control Co., Inc. **646 F.2d 424 (C.A. 9, May 1981)**
(freight bill, introduced by Bd into evidence to prove substantial amount of lumber purchased from out of state by entity which supplied lumber to E, was inadmissable *hearsay*, since authenticating witness was Ee of supplier and not of carrier that prepared freight bill; witness had no knowledge of circumstances under which freight bill was prepared and was not custodian or other qualified witness necessary in order to admit this hearsay under business records exception, Federal Rules of Evidence 803(6))

7042-0140 District Court rules of evidence applicable

International Business Systems, Inc. **258 NLRB No. 017**
(statements of strikers before strike regarding their grievances, fears and intent to strike fall w/i exception to hearsay rule as then existing state of mind or emotion; further, Bd not bound to strictly apply Federal Rules of Evidence)

7042-0160 Hearsay may be excluded

G.T.A. Enterprises, Inc. d/b/a **Restaurant Horikawa** **260 NLRB No. 029**
(statements made by former agent of E to discriminatee properly excluded as hearsay where offered for truth of statement, although if agent was still employed would be admissible under F.R.E. 801 (d)(2)(D) as an admission by party opponent)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(testimony of witness, who was nonstriking Ee, concerning what his children reported to him regarding phone call they had received allegedly made by striking Ee who threatened witness' family excluded as hearsay and held not w/i exception to hearsay rule, since it did not have equivalent circumstantial guarantee of trustworthiness necessary for admission)

N.L.R.B. v. First Termite Control Co., Inc. **646 F.2d 424 (C.A. 9, May 1981)**
(freight bill, introduced by Bd into evidence to prove substantial amount of lumber purchased from out of state by entity which supplied lumber to E, was inadmissable *hearsay*, since authenticating witness was Ee of supplier and not of carrier that prepared freight bill; witness had no knowledge of circumstances under which freight bill was prepared and was not custodian or other qualified witness necessary in order to admit this hearsay under business records exception, Federal Rules of Evidence 803(6))

7042-0180 Hearsay may be given weight

Cooperativa De Credito Y Ahorro Vegabajena **261 NLRB No. 161**
(*hearsay* testimony of one of E's managers not sufficient proof of threatened assault on picket line, to overcome another witness's credible denial)

7042-0180-2500 Where admitted without objection

C & D Transfer **258 NLRB No. 080**
(hearsay testimony of dischargee that he was told by fellow Ee that E had told him dischargee was fired because he had filed application for U membership held competent where such testimony was not objected to or contradicted by either E or fellow Ee in their testimony)

Avon Mirror & Distributing Co. **247 NLRB No. 033**

7042-0180-5000 Where corroborated

H. H. Robertson Company **263 NLRB No. 173**
(hearsay admissable if rationally probative in face and if corroborated by something more than slightest amount of other evidence. Bd jealously guards its discretion to rely on hearsay testimony in proper circumstance)

American Spring Bed Manufacturing Co., d/b/a American Chain Link Fence Co. **255 NLRB No. 098**
(hearsay testimony, although not always entitled to as much weight as direct testimony, can constitute substantial evidence, particularly when there are circumstances which corroborate its credibility)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) **248 NLRB No. 111**
(testimony of general contractor and party-in-interest herein regarding responses made by various subcontractors in course of his attempts to get them to schedule work at jobsite, held self-serving hearsay not to be given significant weight, since testimony was not corroborated, either by testimony from subcontractors involved in conversations or by any documentary evidence)

7042-0180-7500 Where not contradicted

H. H. Robertson Company **263 NLRB No. 173**
(Charging Party's testimony as to conversation he had with U's business agent who was allegedly presuring E to discharge him, which was offered against U w/o contradiction, not hearsay under Federal Rules of Evidence and admissible under Bd law; that testimony may be appropriately supplemented by Charging Party's testimony as to what E's area supervisor informed Charging Party what business agent was telling E which, although hearsay as to U, admissible to support other evidence)

C & D Transfer **258 NLRB No. 080**
(hearsay testimony of dischargee that he was told by fellow Ee that E had told him dischargee was fired because he had filed application for U membership held competent where such testimony was not objected to or contradicted by either E or fellow Ee in their testimony)

7042-0180-7600 Existing state of mind or emotion

International Business Systems, Inc. **258 NLRB No. 017**
(statements of strikers before strike regarding their grievances, fears and intent to strike fall w/i exception to hearsay rule as then existing state of mind or emotion; further, Bd not bound to strictly apply Federal Rules of Evidence)

International Business Systems, Inc. **258 NLRB No. 017**
(statements of strikers before strike regarding their grievances, fears and intent to strike fall w/i exception to hearsay rule as then existing state of mind of emotion; further, Bd not bound to strictly apply Federal Rules of Evidence)

7042-0190 Exceptions to the hearsay rule

Cumberland Farms Dairy of New York, Inc. **258 NLRB No. 120**
(Bd overruled ALJ admission of hearsay testimony of foreman concerning E's statement to him of why he discharged Ee as *present sense impression* exception where 10-minute lapse between discharge and E's subsequent offer of explanation to foreman was significantly more than *slight* and failed to meet any reasonable application of *substantial contemporaneity* standard; F.R.E.-Advisory Committee's Note - Rule 803(1); also, record establishes that foreman was not present when Ee was discharged, so as to provide *check on accuracy* of E's stated reason, and E himself did not appear as witness, McCormick's Law of Evidence)

Dallas Stage Employees, Local Union 127 (Mulberry Square Productions) **247 NLRB NO. 110**
(contention that conversation between E and International U was inadmissible because International was not party to proceeding, rejected, where testimony of conversation was admissible since it went to E's state of mind in reaching decision to terminate Ee)

Local Union No. 3, Electrical Workers (Nixdorf Computer Corporation) **JD-(NY)-18-80**
(testimony of witness, who was nonstriking Ee, concerning what his children reported to him regarding phone call they had received allegedly made by striking Ee who threatened witness' family excluded as hearsay and held not w/i exception to hearsay rule, since it did not have equivalent circumstantial guarantee of trustworthiness necessary for admission)

7042-0190-0100 Generally

G.T.A. Enterprises, Inc. d/b/a **Restaurant Horikawa** 260 NLRB No. 029

(statements made by former agent of E to discriminatee properly excluded as hearsay where offered for truth of statement, although if agent was still employed would be admissible under F.R.E. 801 (d)(2)(D) as an admission by party opponent)

Nordstrom, Inc. JD-(SF)-142-82

(memo made by witness concerning conversation she had not admissible into evidence as recorded recollection under Sec. 803(5) of Federal Rules of Evidence where witness did not express any doubt as to completeness or accuracy of her own recollection of conversation)

7042-0190-2500 Recorded recollection

Economy Fire and Casualty Co. 264 NLRB No. 003

(where Ee testified that she had no present recollection of supervisor's comment, Ee read statements from affidavit given to Bd agent 2-1/2 months after incident occurred into record as hearsay exception under Rule 803(5))

7042-2500 Admission against interest not within hearsay rule

East Texas Motor Freight 262 NLRB No. 101

(*hearsay* evidence of incident of violence (outside U meeting hall) given weight of stipulated facts where both Respondents stipulated to its receipt)

America Air Filter Company, Inc. 238 NLRB No. 010

United Rubber, Cork, Linoleum and Plastic Workers of America, Local 878 (Goodyear Tire & Rubber Company) 255 NLRB No. 032

(admissions by party opponent are not hearsay and witnesses' testimony that U representatives told him they skipped Ee intentionally when computing eligibility for grievance pay because he was not U member, admissible)

Harowe Servo Controls, Inc. 250 NLRB No. 120

(U's minutes of bargaining session, which contained information about data received from E, which was prepared under U auspices and attached to U agent's affidavit, held admission against interest where during trial U agent testified that he did not remember receiving data)

7042-5000 Business entries

Marathon Letourneau Company, Longview Division 256 NLRB No. 084

(document properly rejected since it was not properly authenticated and it was offered to prove its contents, where document was purported to be summary of information extracted from E's business records but was not itself a document prepared in ordinary course of business and it therefore failed to qualify under business record exception to hearsay rule, and E failed to proffer as witness person who prepared document and does not now offer to show unavailability of such witness)

N.L.R.B. v. First Termite Control Co., Inc. 646 F.2d 424 (C.A. 9, May 1981)

(freight bill, introduced by Bd into evidence to prove substantial amount of lumber purchased from out of state by entity which supplied lumber to E, was inadmissable *hearsay*, since authenticating witness was Ee of supplier and not of carrier that prepared freight bill; witness had no knowledge of circumstances under which freight bill was prepared and was not custodian or other qualified witness necessary in order to admit this hearsay under business records exception, Federal Rules of Evidence 803(6))

7042-7500 Testimony as to witness' own conversations not hearsay

Consolidated Dress Carriers, Inc., et al. 259 NLRB No. 083

(testimony as to witness conversations with deceased individual admissible as exception to hearsay rule where witness deemed forthright and responsive and testimony consistent with admissions of another witness)

Carpenters District Council of Sabine Area and Vicinity and Carpenters Local 753 (Gulf Coast Construction Company) 248 NLRB No. 111

(although testimony of general contractor and party in interest herein regarding his own statements made to various subcontractors in course of his attempts to get them to schedule work at jobsite was not hearsay, Bd held general contractor's testimony regarding responses made by the subcontractors was self-serving hearsay)

7042-8700 Statements of deceased persons or persons too ill to testify

A & T Manufacturing Company 265 NLRB No. 201

(ALJ erred in admitting affidavit of individual who executed same for use in other litigation. GC averred at hearing that affiant was unable to testify w/i meaning of Rule 804(a)(2) and (4) of Federal Rules of Evidence because of physical illness and contended affidavit admissable under Rule 804(b)(5); however, GC failed to present any medical evidence to support its avverment that witness unable to appear because of illness so serious that taking of testimony poerd threat to witness's health)

Enterprise Products Company 265 NLRB No. 083

(Bd's criteria regarding credibility resolutions deemed properly to be less stringently applied where, as here, onset of final illness of E official, who was involved in many instances herein, was now deceased, occurred after GC had presented his witnesses and at time of hearing E knew what his testimony would be but made no efforts to preserve his testimony concerning events involving official which, fortunately, occurred in presence of other witnesses)

Consolidated Dress Carriers, Inc., et al. 259 NLRB No. 083

(testimony as to witness conversations with deceased individual admissible as exception to hearsay rule where witness deemed forthright and responsive and testimony consistent with admissions of another witness)

Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions 259 NLRB No. 019

(affidavit of deceased dischargee which GC furnished sufficiently in advance of trial with certain names deleted held admissible pursuant to hearsay exception of F.R.C.P. Rule 804, although better policy would have been to furnish affidavit w/o deletions since need for affidavit as evidence outweighed any internal policy relating to confidentiality, where unedited affidavit was furnished at trial and counsel was advised that he would be given time to prepare concerning affidavit)

Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions 259 NLRB No. 019

(affidavit of deceased dischargee held admissible where trustworthiness of affidavit in regard to being given by interested party to proceeding was subject to careful and cautious consideration and to close scrutiny with weight to be given subject to consideration of all circumstances and facts)

Fenestrol, Inc., A Subsidiary of Yonkers Plate Glass Co. 251 NLRB No. 113

(*ex parte* affidavit of deceased declarant admissible, notwithstanding Respondent's contention it was not advised of particulars of affidavit as required by Federal Rules of Evidence 804(b)(5) since GC met requirement by having advised Respondent in writing that it intended to use affidavit to support allegations of complaint including unlawful suspension of declarant)

Fenestrol, Inc., A Subsidiary of Yonkers Plate Glass Co. 251 NLRB No. 113

(*ex parte* affidavits of deceased declarant admissible under Federal Rules of Evidence 804(b)(5) hearsay exception where statement corroborated by testimony since ct has discretion to admit such affidavits where necessity for receipt is shown and affidavit consistent with circumstantial evidence)

Fenestrol, Inc., A Subsidiary of Yonkers Plate Glass Co. 251 NLRB No. 113

(*ex parte* affidavits of deceased declarant admissible under Federal Rules of Evidence 804(b)(5) hearsay exception where statement corroborated by testimony since ct has discretion to admit such affidavits where necessity for receipt is shown and affidavit consistent with circumstantial evidence)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. 248 NLRB No. 089

(Bd may consider as evidence statements of persons who are deceased, but such evidence must be scrutinized with great care)

Central Freight Lines, Inc. v. N.L.R.B. 653 F.2d 1023 (C.A. 5, Aug 1981)

(Bd erred in relying on affidavit of deceased Ee to support finding that E violated 8(a)(1); Rule 804(b)(5) of Federal Rules of Evidence did not apply where affidavit had no guaranty of trustworthiness of any kind)

7045 BEST EVIDENCE

Kawasaki Motors Corporation, U.S.A. 237 NLRB No. 069

(GC's exception to ALJ's finding that GC knowingly offered as exhibit a document which was not a true copy meritorious, since there is no evidence that GC knew that copy offered was not true copy until *voir dire* examination of a witness revealed that fact, whereupon GC obtained true copy, and true copy differed only in collateral respects from copy GC had originally offered)

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. 683 F.2d 305 (C.A. 9, July 1982)

(contrary to E's contention, ct held that Bd and ALJ did not rely on secondary evidence in concluding that E committed alleged ULPs where, while ALJ specifically stated he was considering secondary evidence only to corroborate primary evidence, Bd concluded that direct evidence offered in support of charges was so substantial that it need not consider propriety of ALJ's use of secondary evidence for any purpose)

7051 IMMATERIAL OR IRRELEVANT EVIDENCE

Realty Maintenance Inc., d/b/a National Cleaning Company 265 NLRB No. 173

(GC's evidence reasonably relevant to U's requesting information about E's relationship to other companies so as to resolve grievance about contractual violations and subcontracting although, U did not make request until 5-13 months after U official received C from E's Ee who was paid by one of the

7051—Cont.

other companies; since U official received all Cs during contract term and was not time-barred from filing grievances about them, his testimony about them was not irrelevant; and U was entitled to delay asserting rights to determine whether Cs were due to error or showed pattern of subcontracting unit work)

Local No. 121, Plasterers (Associated Building Contractors of Lafayette, Inc.) 264 NLRB No. 029
(Bd affirmed ALJ's refusal to allow respondent's counsel to continue questioning apprentice about his own opinion of his abilities as an apprentice and about jobs he had quit as relevant to backpay, since backpay issues should be resolved in compliance proceedings and testimony sought was not probative evidence as to knowledge and motivation of apprenticeship board members who decided to terminate apprentice, and evidence would have been merely cumulative)

Local No. 121, Plasterers (Associated Building Contractors of Lafayette, Inc.) 264 NLRB No. 029
(ALJ's rejection as irrelevant of three letters from Es regarding apprentice's performance on job offered as exhibits by E, affirmed where date of letters was later than date of apprenticeship board's decision to terminate apprentice, letters were clearly prepared in contemplation of litigation, and rejected evidence would have been merely cumulative)

Local No. 121, Plasterers (Associated Building Contractors of Lafayette, Inc.) 264 NLRB No. 029
(ALJ's refusal to allow respondent to present expert witness to testify about apprenticeship programs generally and their standards for operation as irrelevant, affirmed since witness had no knowledge of operations of respondent's apprenticeship program and did not participate in decision to terminate apprentice herein; moreover, rejected evidence would have been merely cumulative)

Shen-Valley Meat Packers, Inc. 261 NLRB No. 144
(any evidence of parties' *understanding* of contract's expiration date, which contract expressly stated as being otherwise, is irrelevant to determination of contract's duration for contract-bar purposes; and if such evidence were necessary to determine expiration date, contract would be ineffective as a bar)

Twin County Trucking, Inc. 259 NLRB No. 078
(mtn to reopen hearing to admit additional exhibits, denied where exhibits all post-dated hearing and were relevant only to amount of backpay due discriminatees, which was issue to be decided at compliance stage of proceedings)

United Artists Theatre Circuit, Inc. (Moving Picture Projectionists, Local No. 150, Stage Employees) 250 NLRB No. 135
(dispute between GC and U as to whether exclusion of certain individuals at certain locations from coverage by contract in question constituted disclaimer of interest by U in representing those individuals found irrelevant to proceeding concerning dispute as to whether U and E had reached agreement on terms of contract from whose coverage said individuals were excluded)

N.L.R.B. v. A. S. Abell Company 624 F.2d 506 (C.A. 4, 1980)
(*relevancy* in cases should be determined under *discovery-type standard* where *cts of necessity must follow a more liberal standard as to relevancy*)

N.L.R.B. v. Charles H. McCauley Associates, Inc. 657 F.2d 685 (C.A. 8, 1981)
(Bd's refusal to accept as evidence on ULP charges an offer of reinstatement that E had assertedly sent Ee a month after his discharge and Ee had refused held not error, since reinstatement is not relevant except as it pertains to remedy)

Pay'N Save Corporation v. N.L.R.B. 641 F.2d 697 (C.A. 9, Mar 9, 1981)
(Bd properly sustained relevancy objection to admission of ptn for election which E contended was evidence that bargaining order was inappropriate, where such ptn was signed after E unlawfully discharged U adherents)

7054 OFFER OF PROOF

Greens Disposal Service 253 NLRB No. 047
(remand, since ALJ refused to admit evidence of misconduct, but E's offer of proof, which, if true, and considered in light most favorable to E, would bar reinstatement, for purpose of taking evidence on whether alleged strike misconduct barred reinstatement of strikers and issuing decision on whether E violated Sections 8(a)(3) and (1) by its refusal to reinstate)

Healdsburg General Hospital 247 NLRB No. 030
(E's offer of proof did not meet its *heavy burden* of showing *direct* conflict of interest disqualifying nurses association from acting as Ee representative on ground association is subject to control by supervisor-members; there was no evidence that any member of association's board of directors could influence board to advance competitive position of any E as against E, and there was no proof of possible financial conflict of interest between association and E or that presence of supervisory nurses of other Es in positions of authority conflict with E's interests)

Dravo-Groves Company JD-(ATL)-93-81
(offer of proof regarding evidence in prior settled case, rejected, since GC's contention regarding it, if accepted, would have resulted in litigation of settled case w/o setting aside settlement, giving up its benefits or giving notice to respondent)

Pittsburgh and New England Trucking Co. v. N.L.R.B. 643 F.2d 174 (C.A. 4, 1981)
(ct denied enforcement of Bd bargaining order in view of distinct possibility that ALJ could have concluded that causal connection between E's ULPs and U disaffection was lacking had ALJ not improperly declined to receive proffered testimony of Ee who had headed decertification campaign to the effect that ULPs had not affected her or other signers, that nothing had interfered with them nor had E interfered or discriminated against them in any way; barring such testimony as to Ee's state of mind was denying E most direct proof available on controverted issue)

7060 OPINION EVIDENCE (NONEXPERT) MAY BE GIVEN WEIGHT

Service Garage, Inc. 247 NLRB No. 115
(witnesses may not testify to matters outside their personal knowledge nor give opinions unless based on their own perception so that ALJ's reliance on Ee-witness's lack of testimony that he had been laid off for U activity is improper)

7067 EVIDENCE AS TO STATE OF MIND

7069-5000 Initiation of decertification petition

Pittsburgh and New England Trucking Co. v. N.L.R.B. 643 F.2d 174 (C.A. 4, 1981)
(ct denied enforcement of Bd bargaining order in view of distinct possibility that ALJ could have concluded that causal connection between E's ULPs and U disaffection was lacking had ALJ not improperly declined to receive proffered testimony of Ee who had headed decertification campaign to the effect that ULPs had not affected her or other signers, that nothing had interfered with them nor had E interfered or discriminated against them in any way; barring such testimony as to Ee's state of mind was denying E most direct proof available on controverted issue)

7072 SELF-SERVING STATEMENTS

Apollo Clothes, Inc. JD-296-82
(shifting explanations for Ee's discharge, resting on self-serving inaccurate and inconsistent testimony, are evidence that E seeks to conceal true reasons for discharge because true reasons or causes (protesting *homework* and pursuing duties as U steward) are improper)

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 630 (C.A. 7, Oct. 1981)
(self serving statements of E representative not accepted merely because they are uncontradicted when record as whole casts reasonable doubt on accuracy of these statements)

7078 STIPULATIONS

Ducane Heating Corporation 254 NLRB No. 030
(where parties stipulated that any benefits announced during meeting was E's *usual and customary practice* and for which no violation can be found; ALJ bound by stipulation and no violation found notwithstanding one benefit announced did not fall w/i E's *usual and customary practice*)

EMR Photoelectric, A Division of Sangamo Weston Inc. 251 NLRB No. 214
(E's stipulation regarding supervisory status of Ee, as to whom there was little evidence in regard to his duties or position, given very little weight, where GC was not party to stipulation and, in this instance, it would not be admission against interest)

7078-5000 Effect of stipulation on stipulating parties

Clear Lam Packaging, Inc. 265 NLRB No. 96
(*Norris Thermador* list not dispositive of challenged voters' eligibility to vote where challenged on grounds of statutory supervisory status as this is exception to rule)

East Texas Motor Freight 262 NLRB No. 101
(*hearsay* evidence of incident of violence (outside U meeting hall) given weight of stipulated facts where both Respondents stipulated to its receipt)

Firestone Corporation 260 NLRB No. 180
(E, in C case, cannot challenge appropriateness of unit, since E had stipulated to unit's appropriateness in R proceeding and U was certified as bargaining representation for E's Ees in unit)

Construction, Production & Maintenance Laborers' Local Union 383, Laborers (Carter-Glogau Laboratories, Inc.) 260 NLRB No. 193
(where stipulated facts included 26 instances of various threats, damage to property, assaults, throwing nails on E's property, pursuing nonstriking Ees in autos, and blockage of entrance to E's facility, dismissal of blockage and damage allegations as generally isolated and minor, denied; *Totality of U's acts as course of conduct lends support to finding that each action is separately violative of Act. Failure of U to rebut or supply an explaining context to*

7078-5000—Cont.

admitted conduct sustains violation in each instance and when taken as single course of conduct)

Construction, Production & Maintenance Laborers' Local Union 383, Laborers (Carter-Glogau Laboratories, Inc.) **260 NLRB No. 193**

(where stipulation of facts by its terms stated that U's conduct as to allegations *Intimidated and coerced non-striking Ees* U has admitted necessary restraint and coercion which sustains finding of violation of Section 8(b)(1)(A))

North Shore University Hospital **259 NLRB No. 121**

(in view of procedural situation herein creating *special circumstances*, ALJ held E's stipulation to consent election did not waive its right to present evidence concerning extent of supervisory participation in nurses' association in instant 8(a)(5) proceeding; under the circumstances, consideration of merits of issues presented does not violate Bd's *relitigation prohibition;* however, this does not mean future cases involving challenge to qualification of nurses associations on basis of alleged supervisory or managerial domination will not require Ees to raise and litigate such issues in R proceeding)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**

(E's contention that its stipulation in R case, that Ee was supervisory is not binding on ALJ in instant ULP case and that E should not be responsible for Ee's anti-U conduct, rejected; while this was clearly so insofar as instant ULP case did not involve eligibility to vote, stipulation was received in evidence w/o objection and was treated as substantive evidence; as to Ee, it was treated as admission against interest as to Ee's status)

The Salvation Army of Massachusetts Dorchester Day Care Center **247 NLRB No. 062**

(Bd held stipulation specifying that E is engaged in commerce w/i meaning of Act did not foreclose inquiry by Bd to determine whether assertion of jurisdiction would be contrary to Bd's jurisdictional policy)

7078-6700 Effect of stipulation on nonstipulating parties

Karl Kallmann d/b/a Love's Barbeque Restaurant No. 62 **JD-(SF)-200-82**

(in proceeding on ct remand of reinstatement and make whole issues, in which charging party would not enter into stipulation entered into by GC and E and agreed to by trustee in bankruptcy, GC's mtn to accept stipulation granted, where charging party failed to respond to order to show cause, stipulation appeared to resolve issues posed by remand, and there was no indication any evidence could be presented that would lead to more satisfactory resolution of issues; moreover, further prolongation of proceeding might only deprive discriminatees altogether of even partial monetary relief)

7084 STATEMENTS OF WITNESSES TO COUNSEL OR BOARD AGENT IN PREPARATION OF TRIAL

7084-0100 Generally

Stanley M. Feil, Inc. **250 NLRB No. 065**

(E's proffered of unsigned pre-trial statement allegedly made by Ee to and notarized by E's attorney and witnessed by E's vice-president, for purpose of impeachment, rejected)

7084-5400 Production of statements of witnesses required

Ducane Heating Corporation **254 NLRB No. 030**

(Bd declined to rule on E's objection to ALJ's ruling that while E did not need to turnover to GC pretrial statement it took from witness ALJ would consider refusal as element in determining credibility, since ALJ did not draw any such inference)

Hedison Manufacturing Company v. N.L.R.B. **643 F.2d 32 (C.A. 1, Mar 11, 1981)**

(E not entitled to statements made to Bd counsel by Ees who never testified before ALJ)

7084-5430 For purpose of cross-examination of particular witness

Kawasaki Motors Corporation, U.S.A. **257 NLRB No. 069**

(GC's failure to provide respondent with witnesses' statements until after cross-examination of witnesses had begun or been completed, though erroneous, found not prejudicial where respondent was allowed to further cross-examine witnesses whose statements had not been timely *furnished*, there was no evidence of bad faith, and GC furnished statements promptly upon discovering their existence)

American Bumper and Mfg. Co. **JD-136-82**

(use of voluntary affidavit of former supervisor taken by Bd agent during investigation and w/o E's knowledge admissible to show (any) prior contradictory statements admissible under Federal Rules of Evidence)

7084-5467 Memoranda prepared by witness after interview not statements under Jencks Act

Fotomat Corporation v. N.L.R.B. **634 F.2d 320 (C.A. 6, 1980)**

7084-7000 Rules & Regulations 102.118

Kawasaki Motors Corporation, U.S.A. **257 NLRB No. 069**

(under Sec. 102.118(b)(1), requirement that a witness' statements be furnished upon request to opposing counsel prior to cross-examination applies only to statements which are in existence at time of witness' testimony and which relate to subject matter of the testimony, so that GC had no obligation to furnish respondent with statements witnesses gave government agency subsequent to their testimony at Bd hearing)

Coca-Cola Bottling Company of Bloomington, Indiana, Inc. **250 NLRB No. 131**

(Bd agent writing something while witness spoke and nothing more did not qualify as statement w/i R/R 102.118(d))

7084-8400 Affidavits of employees not involved in hearing - confidential and privileged matter

North Electric Company, Plant No. 10, Gray, Tennessee **262 NLRB No. 174**

(Bd accepted as law of the case ct's remand instruction to review Ee's affidavit obtained by RD during investigation of objections, but noted that it continues to be Bd policy that affidavits independently acquired by RD during investigation of objections are confidential and not part of record)

7085 BOARD FILE

Chrysler Corporation-Amplex Division of Chrysler Corporation **JD252-81**

(formal pleadings and transcript from prior case involving same local were admitted into evidence in instant case, since they were relevant with respect to consideration of *res judicata* issue)

7087 STATISTICAL DATA

Teamsters Local Union No. 326 (The Firestone Plastics Company) **253 NLRB No. 074**

(contention that increased initiation fee restrained applicants from accepting jobs with E rejected; evidence of increase in ratio of number of interviews of applicants to number of jobs filled by E valueless where E failed to give basis for his figures or describe records he consulted to refresh his recollection)

7088 POLYGRAPH TEST

Armored Transport of Nevada, Inc. **265 NLRB No. 209**

(report from polygraph examiner with regard to polygraph test administered to Ee was introduced into evidence to show report received by E regarding Ee and not to establish accuracy of polygraph machine or accuracy of examiner in interpreting mechanical markings made during test)

7090 TELEPHONE CONVERSATION

N.L.R.B. v. Local 90, Plasterers **606 F.2d 189 (C.A. 7, 1979)**

(Bd's admission of recordings, and transcripts of recordings, of telephone conversation between Ee and U business representative and between Ee and the representative's wife, held proper, notwithstanding that use of recording device during conversations violated state law and that the state cts would not admit these recordings as evidence at trial; there was no argument that the recording violated any federal statute or the Constitution; and federal, not state law governs admission of evidence in federal proceedings)

7096 TAPE RECORDINGS

Village IX, Inc. d/b/a Shenanigans **264 NLRB No. 122**

(where ALJ admitted transcript of tape recording of E-held meeting for purpose of impeachment and then quoted from it in decision, ALJ did not improperly rely on transcript as direct evidence but to demonstrate accuracy of an Ee's testimony)

East Texas Motor Freight **262 NLRB No. 101**

(where all tapes of bugged conversations that were w/i knowledge of GC (though he in no way suggested, assisted or participated in any electronic surveillance) were produced, and opposing party had sufficient opportunity to cross examine witness who made these tapes; mtn to strike testimony of said witness for failure to produce all tapes made as required under Jenks Act as adopted by Bd, denied)

Nanticoke Homes, Inc. **261 NLRB No. 107**

(although ruling that surreptitiously recorded conversation and transcript thereof would only be admitted into evidence for purpose of credibility was error, it was not reversible error where evidence which was contained on tape was admitted by direct testimony of Ee who recorded tape)

Building Material & Dump Truck Drivers, Local Union No. 420, Teamsters (Leonard Worthington, an Individual) **257 NLRB No. 161**

(tape recordings made by charging party during staff meeting admitted as substantive evidence reflective of what was said at meeting, not merely for purposes of impeaching charging party)

7096—Cont.

Plumbers and Steamfitters Local Union No. 598, AFL-CIO (Rust/W.S.H.) **255 NLRB No. 071**

(tape recordings surreptitiously made by CP of conversations between himself and Respondent U and Bd agent admissible in evidence; 1 tape was of face to face conversation with U official, concerned CP's desire to pay U dues, register on out-of-work list, was not for illegal purpose; second tape of telephone conversation with Bd agent not violative of Federal wiretapping statute as CP took part in conversation, was attempting to exercise his rights under Act, was not engaged in any illegal Act; moreover, neither conversation involved making contract proposals or negotiating collective bargaining agreements)

Maywood Do-Nut Co., Inc. **248 NLRB No. 080**

(exclusion of surreptitiously recorded tapes offered in evidence in instant case, held proper, since the tapes were concerned with collective bargaining and thus fall squarely w/i rule established by Bd in *Carpenter Sprinkler Corporation*, 238 NLRB No. 139)

Ryder Truck Lines, Inc. **JD-(ATL)-36-82**

(tape recording made by charging party of two separate telephone conversations between himself and two supervisors admitted where recording was done merely to protect Ee's Sec. 7 rights)

Levi Strauss & Company **JD-158-80**

N.L.R.B. v. Savin Business Machines Corporation **649 F.2d 89 (C.A. 1, May 1981)**

(ALJ's admission of transcript of tape recording Ee surreptitiously prepared of his conversation with his supervisor for limited purpose of verifying credibility held not error, since Bd has wide discretion in evidentiary decisions, and E was offered opportunity during continuance to inspect tape and compare it with transcript)

Carpenter Sprinkler Corporation v. N.L.R.B. **605 F.2d 60 (C.A. 2, 1979)**

(Bd was w/i its discretion in fashioning rule in this case that surreptitiously prepared tape recordings are inadmissible as evidence)

N.L.R.B. v. Local 90, Plasterers **606 F.2d 189 (C.A. 7, 1979)**

(Bd's admission of recordings, and transcripts of recordings, of telephone conversation between Ee and U business representative and between Ee and the representative's wife, held proper, notwithstanding that use of recording device during conversations violated state law and that the state cts would not admit these recordings as evidence at trial; there was no argument that the recording violated any federal statute or the Constitution; and federal, not state law governs admission of evidence in federal proceedings)

N.L.R.B. v. Catalina Yachts **679 F.2d 180 (C.A. 9, June 1982)**

(ct found no merit in E's contention that Bd denied it due process during hearing by admitting recording and transcript of its counsel's speech, notwithstanding E's argument that Bd admitted tapes and transcript which were unlawfully obtained and irrelevant to case, where there was no close connection between preparation of case by government and *so-called* theft; Fourth Amendment does not apply to Bd's proceedings; and furthermore, Bd did not rely on this evidence alone in making its findings)

N.L.R.B. v. Maywood Do-Nut Co., Inc., **659 F.2d 108 (C.A. 9, Oct. 1981)**

(Bd properly excluded from evidence tape recording which E made secretly at bargaining session with U, for permitting introduction, into evidence of such tape recordings would severely inhibit willingness of parties to express themselves freely, thus, interfering with smooth functioning of collective bargaining process)

7098 *SURPRISE* TESTIMONY

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. **683 F.2d 305 (C.A. 9, July 1982)**

(E's claim of *surprise* at specific factual contentions brought forth at hearing held w/o merit where E failed to object to introduction of vast majority of evidence; E's extensive cross-examination of witnesses who testified concerning *surprise* factual allegations belied E's claim that it was prejudiced by introduction of such testiminy; and even if charge was lacking in specificity, record conclusively demonstrated that *surprise* factual issues were fully and fairly litigated at hearing)

8400 ADMISSIBILITY

8401 GENERALLY

Associated Milk Producers, Inc. **269 NLRB No. 131**

(ALJ improperly excluded evidence which was not only relevant but crucial to an informed legal assessment of E's reasons for discharging U adherent and therefore to protection of his statutory rights, notwithstanding fact that GC offered evidence during rebuttal stage and not during his case-in-chief)

Local Union No. 3, Electrical Workers (L. M. Ericsson Telecommunications, Inc., New York Division) **257 NLRB No. 167**

(witness' testimony met standard for receipt of his statement as a past recollection recorded, where witness failed to recall particular fact but after being shown his prior testimony in related District Ct proceeding, he agreed that since he had so testified in ct and recalled it then, it must be true; although not explicitly read into record, witness' statement was received in summary form; see Rule 803(5) Federal Rules of Evidence)

J. P. Stevens and Company, Inc. **247 NLRB No. 044**

(E's exhibits containing written and video-tape instructions prepared by E's counsel and given to supervisors concerning their obligations under labor law held admissible and copies thereof should be provided to GC and U; although exhibits deal essentially with compliance matters, they are useful in providing a full record)

8401-1600 Effect of form and order of evidence offered

Progressive Medical Group, Inc., t/a Walnut Hill Convalescent Center **260 NLRB No. 039**

(although notes taken at bargaining meeting by E's official were admitted after they were authenticated by him, notes of such meeting were ruled inadmissible where it was subsequently shown that official had flatly misrepresented process whereby handwritten notes were transcribed into typewritten minutes; and since official also displayed open partisanship, his uncorroborated testimony on any subject would not be found reliable)

Stanley M. Feil, Inc. **250 NLRB No. 065**

(E's proffered of unsigned pre-trial statement allegedly made by Ee to and notarized by E's attorney and witnessed by E's vice-president, for purpose of impeachment, rejected)

8401-2200 Incompetent evidence

First National Maintenance Corporation **254 NLRB No. 028**

(payroll record, *other* than one agreed upon to be admitted into evidence, held inadmissable, since it was for different period of time than document agreed upon and no good cause was shown as to why it should have been admitted)

8401-2500 Authentication of documents

First Termite Control Co., Inc. **265 NLRB No. 200**

(on ct remand, freight bills were re-introduced to show that E met legal jurisdictional standard, and qualified witness who was completely familiar with preparation of bills of lading and could vouch for their accuracy testified and authenticated bills for admission under business records exception to hearsay rule)

Zero Corporation, Zero East Division **262 NLRB No. 064**

(E waived its right to contest authenticity of cards which, may have been dated at different times than they were signed, where it did not object to admission of cards into evidence during hearing but raised objections to authenticity in brief to ALJ)

Stanley M. Feil, Inc. **250 NLRB No. 065**

(E's proffered of unsigned pre-trial statement allegedly made by Ee to and notarized by E's attorney and witnessed by E's vice-president, for purpose of impeachment, rejected)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**

(where authorship of document in dispute, there was inadequate foundation for their admiscibility)

8401-4400 Limitation of purpose of evidence

Chester Valley, Inc. **251 NLRB No. 190**

(GC's failure to limit purpose for which he offered letter which stated that E had decided to give Ees wage increase on specified date required that letter be given its natural probative effect)

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**

(Bd will not consider extrinsic evidence to determine if ambiguous contract provisions were intended to have, or in practice had, illegal effects)

8401-8800 References to state court proceeding

Local 157, Plumbers (Local 204, Laborers) **248 NLRB No. 032**

(E's mtn to strike from U's brief all references to state ct proceeding, denied, since the fact that such references concern state ct proceeding involving different legal issues goes to their weight and not their admissibility)

8401-8900 Evidence inadmissible under State law

N.L.R.B. v. Local 90, Plasterers **606 F.2d 189 (C.A. 7, 1979)**

(Bd's admission of recordings, and transcripts of recordings, of telephone conversation between Ee and U business representative and between Ee and the representative's wife, held proper, notwithstanding that use of recording device during conversations violated state law and that the state cts would not admit these recordings as evidence at trial; there was no argument that

8401-5500—Cont.

the recording violated any federal statute or the Constitution; and federal, not state law governs admission of evidence in federal proceedings)

8401-6600 Parol evidence

R. J. E. Leasing Corp. **262 NLRB No. 049**
(parol evidence offered by E and U to change pre-hire contract rejected where language contained in contract was clear and unambiguous)

Joe Carroll Orchestras & Entertainment Agency, Inc. d/b/a Meyer Davis Orchestra; et al. **284 NLRB No. 153**
(parole evidence rule did not preclude testimony as to whether new contract subject to ratification by members where there is material issue whether or not contract adopting expired agreement intended thereby to incorporate ratification provision contained in expired contract)

Schorr Stern Food Corp. **248 NLRB No. 050**
(in backpay proceeding E held precluded from presenting evidence regarding modification of contract, since such evidence would be immaterial and Bd had adjudicated issue in question in ULP proceeding herein)

8401-7790 Testimony regarding decedent's statements or conduct

Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions **259 NLRB No. 019**
(testimony of witness concerning statements made to him by deceased dischargee inadmissible as hearsay under F.R.C.P. Rule 804)

8401-8400 Affidavit of decedent

A & T Manufacturing Company **265 NLRB No. 201**
(ALJ erred in admitting affidavit of individual who executed same for use in other litigation. GC averred at hearing that affiant was unable to testify w/i meaning of Rule 804(a)(2) and (4) of Federal Rules of Evidence because of physical illness and contended affidavit admissable under Rule 804(b)(5); however, GC failed to present any medical evidence to support its avverrment that witness unable to appear because of illness so serious that taking of testimony posed threat to witness's health)

Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions **259 NLRB No. 019**
(affidavit of deceased dischargee which GC furnished sufficiently in advance of trial with certain names deleted held admissible pursuant to hearsay exception of F.R.C.P. Rule 804, although better policy would have been to furnish affidavit w/o deletions since need for affidavit as evidence outweighed any internal policy relating to confidentiality, where unedited affidavit was furnished at trial and counsel was advised that he would be given time to prepare concerning affidavit)

Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions **259 NLRB No. 019**
(affidavit of deceased dischargee held admissible where trustworthiness of affidavit in regard to being given by interested party to proceeding was subject to careful and cautious consideration and to close scrutiny with weight to be given subject to consideration of all circumstances and facts)

Fenestrol, Inc., A Subsidiary of Yonkers Plate Glass Co. **251 NLRB No. 113**
(*ex parte* affidavit of deceased declarant admissible, notwithstanding Respondent's contention it was not advised of particulars of affidavit as required by Federal Rules of Evidence 804(b)(5) since GC met requirement by having advised Respondent in writing that it intended to use affidavit to support allegations of complaint including unlawful suspension of declarant)

Central Freight Lines, Inc. **250 NLRB No. 063**
(affidavit of witness who died prior to hearing, admissable to prove conversation between deceased and E's terminal manager, since affidavit met standards of *Rule 804(b)(5) of Federal Rules of Evidence*)

Central Freight Lines, Inc. v. N.L.R.B. **653 F.2d 1023 (C.A. 5, Aug 1981)**
(Bd erred in relying on affidavit of deceased Ee to support finding that E violated 8(a)(1); Rule 804(b)(5) of Federal Rules of Evidence did not apply where affidavit had no guaranty of trustworthiness of any kind)

8401-8500 Affidavit of unavailable witness

A & T Manufacturing Company **265 NLRB No. 201**
(ALJ erred in admitting affidavit of individual who executed same for use in other litigation. GC averred at hearing that affiant was unable to testify w/i meaning of Rule 804(a)(2) and (4) of Federal Rules of Evidence because of physical illness and contended affidavit admissable under Rule 804(b)(5); however, GC failed to present any medical evidence to support its avverrment that witness unable to appear because of illness so serious that taking of testimony posed threat to witness's health)

N.L.R.B. v. First Termite Control Co., Inc. **646 F.2d 424 (C.A. 9, May 1981)**
(freight bill, introduced by Bd into evidence to prove substantial amount of lumber purchased from out of state by entity which supplied lumber to E, was inadmissable *hearsay*, since authenticating witness was Ee of supplier and not of carrier that prepared freight bill; witness had no knowledge of circumstances under which freight bill was prepared and was not custodian or other qualified witness necessary in order to admit this hearsay under business records exception, Federal Rules of Evidence 803(6))

8433 EXCLUSION OF EVIDENCE

OMC Stern Drive, A Division of Outboard Marine Corporation **253 NLRB No. 062**
(E's exception to exclusion by ALJ of certain evidence it sought to admit into record, overruled, where proffered evidence was not relevant to issues in case and E was not prejudiced by its exclusion)

8433-0100 Generally

Electrical Workers, Local 1701 (Dynalectric Company) **283 NLRB No. 129**
(GC's contention that journeyman's test given referral applicants for electricians' jobs was unfair and discriminatory, rejected, where electrician with considerable experience testified test was fair notwithstanding his failure to pass test; GC's attempt to introduce other examinations into evidence to show that, perhaps, instant examination was more difficult held entirely irrelevant in view of electrician's testimony)

8433-0150 Prejudicial exclusions only significant

Local No. 121, Plasterers (Associated Building Contractors of Lafeyette, Inc.) **264 NLRB No. 029**
(ALJ's refusal to allow respondent to present expert witness to testify about apprenticeship programs generally and their standards for operation as irrelevant, affirmed since witness had no knowledge of operations of respondent's apprenticeship program and did not participate in decision to terminate apprentice herein; moreover, rejected evidence would have been merely cumulative)

Associated Milk Producers, Inc. **239 NLRB No. 131**
(ALJ improperly excluded evidence which was not only relevant but crucial to an informed legal assessment of E's reasons for discharging U adherent and therefore to protection of his statutory rights, notwithstanding fact that GC offered evidence during rebuttal stage and not during his case-in-chief)

8433-0150-2500 No prejudice where excluded evidence is cumulative

Local No. 121, Plasterers (Associated Building Contractors of Lafeyette, Inc.) **264 NLRB No. 029**
(Bd affirmed ALJ's refusal to allow respondent's counsel to continue questioning apprentice about his own opinion of his abilities as an apprentice and about jobs he had quit as relevant to backpay, since backpay issues should be resolved in compliance proceedings and testimony sought was not probative evidence as to knowledge and motivation of apprenticeship board members who decided to terminate apprentice, and evidence would have been merely cumulative)

Local No. 121, Plasterers (Associated Building Contractors of Lafeyette, Inc.) **264 NLRB No. 029**
(ALJ's rejection as irrelevant of three letters from Es regarding apprentice's performance on job offered as exhibits by E, affirmed where date of letters was later than date of apprenticeship board's decision to terminate apprentice, letters were clearly prepared in contemplation of litigation, and rejected evidence would have been merely cumulative)

8433-0150-5000 No prejudice where excluded evidence is immaterial

Humana Corp. d/b/a Sunrise Hospital Medical Center **284 NLRB No. 176**
(ALJ sustained GC's objection to charging party calling witnesses after Respondent amended its answer essentially to admit factual allegations of complaint and GC and Respondent rested w/o adducing any evidence because record complete and would support findings on all allegations)

American Cast Iron Pipe Company, a corporation v. N.L.R.B. **600 F.2d 132 (C.A. 8, 1979)**
(ALJ did not err in refusing to admit exhibits of documents which E contended contained false or maliciously false statements against it and were distributed in violation of its rule prohibiting distribution of such material, since falsity or malicious falsity of documents irrelevant where rule which E attempted to enforce overbroad since it prohibited distribution of merely false documents)

8433-0150-7500 No prejudice where ALJ assumed existence of fact to be proved

Lamar Advertising Associates of Dayton d/b/a Lamar Outdoor Advertising **287 NLRB No. 022**
(Respondent not prejudiced by ALJ's refusal to admit documentary evidence of its wage increase practices where ALJ's finding that Respondent had no regular pattern of granting wages agreed with Respondent's position)

8433-1700 Privileged evidence

8433-1750 Attorney - client

8433-1750—Cont.

Upjohn Co. et al. v. United States et al. **449 US 925 (U.S. SCt. Jan. 1981)**
(ct upheld E's contention that questionnaires, memoranda, notes of interviews conducted by its attorneys among Ees protected from disclosure by attorney-client privilege and constitute work product of attorney prepared in anticipation of litigation; further, *control group* test (officers and agents responsible for directing company's actions in response to legal advice does not apply as attorneys need information from all Ees to enable them to give sound advice; Rule 26(b)(3) of FRCP provides that work product can't be disclosed w/o showing of substantial need and inability to obtain equivalent w/o undue hardship)

Feld & Sons, Inc. t/a Today's Man **263 NLRB No. 041**
(ALJ properly granted mtn to strike entire testimony of E's official because of his defiance of ALJ's order to respond to questions on cross-examination, which ALJ had properly directed him to do; although official's conversations with E's corporate counsel were protected by attorney-client privilege, official may not assert privilege where E petitioned Bd to set aside settlement agreement, contending that official executed it upon self-serving advice of attorneys representing E in proceeding; Bd cannot reasonably evaluate E's contention w/o knowing whether official also received advice on subject from other attorneys)

Tuf-Flex Glass, A Part Of Libby-Owens-Ford Company **263 NLRB No. 003**
(Hearing Officer did not commit error by denying mtn to have *subpena duces tecum* revoked where E required to produce affidavits taken from Ees by its counsel as E only required to produce them after Ees had testified at hearing, use restricted to impeaching witnesses and did not cover matters w/i scope of their corporate duties which could bind E but covered statements made by nonsupervisory Ees about upcoming election)

Riley-Beaird, Inc. **259 NLRB No. 180**
(where witness for E admitted on cross-examination that before testifying he had reviewed list of questions with E's attorney and retained a copy of the list while testifying, ALJ declined to order production of list under FRE 612 as well as attorney-client privilege encompassed in FRE 501, rejecting GC's contentions that (1) attorney-client privilege had been waived when questions were asked, (2) document was producible under Jencks Act, and (3) privilege was outweighed by interest in developing probative record)

8433-3300 Subjects improperly excluded

8433-3333 8(a)(1) or (2)

8433-3333-0900 Evidence in 8(b)(7)(A) proceeding designed to establish employer's unlawful assistance and/or domination of incumbent union

United Food and Commercial Workers, Local No. 1063 (Heathman Employees Independent Union) **249 NLRB No. 052**
(evidence relating to E's assistance to, and/or domination of incumbent U not precluded, where such evidence is not designed to establish existence of 8(a)(2) violation but, rather, is proffered as defense against assertion that incumbent U was lawfully recognized; it is inequitable to conclude U is precluded from litigating a legal defense, and U's evidence is directly addressed to words of Act placing burden on GC to prove 8(b)(7)(A) violation by showing *lawful recognition* was granted to incumbent U)

8433-6700 Subjects properly excluded

8433-6712 8(a)(3)

8433-6712-0000 That employer had made unconditional offer of reinstatement

Charles H. McCauley Associates, Inc. **248 NLRB No. 047**
(ALJ's ruling to exclude evidence of E's alleged unconditional offer of reinstatement, appropriate since issue of alleged offer of reinstatement is matter best raised during compliance stage of the proceeding)

8433-6718 8(a)(5)

8433-6718-2000 Evidence relating to continuing union majority

Lexington Cartage Company, Inc. **259 NLRB No. 085**
(ptn signed by all members of unit stating they wished to renounce U irrelevant and not admissible into evidence in hearing on alleged unlawful refusal to bargain, since signed during certification year during which presumption is not rebuttable, absent unusual circumstances; ptn not unusual circumstances that would justify E's refusal to bargain)

Bellwood General Hospital, Inc. v. N.L.R.B. **627 F.2d 98 (C.A. 7, 1980)**
(refusal to allow E to introduce into evidence U's membership list obtained after withdrawal of recognition improper, notwithstanding membership not correlative with U support, since low membership is *clearly probative* to issue of U's continued majority and admissibility is not determined solely by what evidence E could have relied on upon in making decision to withdraw recognition)

8433-6724 Hearsay

Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions **259 NLRB No. 019**
(testimony of witness concerning statements made to him by deceased dischargee inadmissible as hearsay under F.R.C.P. Rule 804)

First Termite Control Co., Inc. **247 NLRB No. 186**
(freight bills made out by railroad and in custody of E held to have indicia of trustworthiness required by Federal Rules of Evidence for admission of hearsay evidence and therefor not excluded for purposes of showing E met legal jurisdictional standard)

N.L.R.B. v. First Termite Control Co., Inc. **646 F.2d 424 (C.A. 9, May 1981)**
(freight bill, introduced by Bd into evidence to prove substantial amount of lumber purchased from out of state by entity which supplied lumber to E, was inadmissible *hearsay*, since authenticating witness was Ee of supplier and not of carrier that prepared freight bill; witness had no knowledge of circumstances under which freight bill was prepared and was not custodian or other qualified witness necessary in order to admit this hearsay under business records exception, Federal Rules of Evidence 803(6))

8433-6724-0000 Exception because of *circumstantial guarantees of trustworthiness* under Federal Rule of Evidence 804

Poppin Fresh Pies, Inc. **256 NLRB No. 091**

Beaird-Poulan Division, Emerson Electric Company **247 NLRB No. 180**
(no exception)

8433-6727 Subjective evidence concerning prior state of mind

Advanced Mining Group, Div. of Republic Corp., Lacoste Facility **260 NLRB No. 073**
(Ee's personal and subjective reaction to coercive conduct and charges pending are not legitimate or bona fide subject of an attorney's preparation for litigation)

Flagler Memorial Park **247 NLRB No. 204**
(hypothetical testimony relating to effect of previously unknown U constitutional provisions on minds of voters relating to their actions 3 years before, rejected as wholly unreliable)

8433-6731 Impeaching evidence

Village IX, Inc. d/b/a Shenanigans **264 NLRB No. 122**
(where ALJ admitted transcript of tape recording of E-held meeting for purpose of impeachment and then quoted from it in decision, ALJ did not improperly rely on transcript as direct evidence but to demonstrate accuracy of an Ee's testimony)

8433-6736 Abstracts of payroll records dividends on stock investment

Weirton Steel, Division of National Steel Corporation **259 NLRB No. 091**
(no merit to E's exception to ALJ's ruling excluding abstract of its payroll records, notwithstanding E's contention that payroll records were voluminous and therefore abstract should have been permitted under Federal Rules of Evidence 1005; 28 U.S.C.A., where, at hearing, E offered neither to introduce original payroll records into evidence, nor to demonstrate that records could not conveniently be examined in hearing room)

8433-6762 Records and testimony of Board representative

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(Bd properly upheld quashing subpoenas directed to field examiner with respect to his alleged statement that ULP charges would probably be dismissed, where others were present during conversations with field examiner and Es showed no reason why examining these people was not possible or would not have produced information similar to that which they sought from field examiner; moreover, there was doubt whether information sought was sufficiently material to Es' case to outweigh investigatory privilege)

8433-6764 Subject matter beyond scope of hearing

C.J.R. Industries **250 NLRB No. 184**
(contention that evidence of unlawful motive in hiring should not have been considered with respect to 8(a)(5) claim because no allegation or finding that E violated 8(a)(3) was made held w/o merit, since claim was based upon alleged successorship obligation, and element of continuity or work force between predecessor and successor is critical; GC must show either that E hired or retained requisite complement of former Ees *or* that it decided not to hire former Ees because of their U affiliation)

8433-6772 Contents of settlement negotiations

Nathan Yorke, Trustee in Bankruptcy, Successor in Bankruptcy, or alter ego To The Seeburg Corporation and Seeburg Service Parts Co., a single employer **259 NLRB 105**
(evidence of what was said during settlement negotiations properly disregarded on grounds that it constituted *compromise negotiations* w/i meaning of Rule 408 of Federal Rules of Evidence notwithstanding compromise offers made by party to nonparty)

8433-6772—Cont.

Stratford Visiting Nurses Association JD-(NY)-86-82
(settlement negotiations relating to alleged agreement to bargain if proof of majority status was shown held inadmissable w/i meaning of Rule 408 of Federal Rules of Evidence)

8433-6775 Testimony of or concerning government conciliators

N.L.R.B. v. Joseph Macaluso, Inc., d/b/a Lemon Tree 618 F.2d 51 (C.A. 9, 1980)
(subpoena of Federal Mediation and Conciliation Service mediator properly revoked where E sought mediator's testimony regarding bargaining sessions since *public interest in maintaining perceived and actual impartiality of Federal Mediators does outweigh benefits derivable from testimony*)

8433-6788 Evidence in settled case involving same parties

Nabisco, Inc. JD-(SF)-34-82
(in considering whether any postsettlement conduct is sufficient to warrant setting settlement aside, can consider presettlement conduct only as background evidence or indicator of credibility in appraising E's motives and objectives)

Dravo-Graves Company JD-(ATL)-93-81
(objecttion to admission in instant case of evidence of charging party's concerted activities in prior settled case involving same parties, sustained as improper and prejudicial to respondent where such concerted activities were not contended to play a part in ULP alleged herein, and settlement of prior case had not been set aside)

8433-6796 Refusal to produce evidence under subpoena bars party's own use of it

Ron-Bob, Inc. t/a Crazy Horse Saloon JD-621-81
(E's failure to produce subpoenad payroll records on first day of hearing in backpay proceeding did not preclude their admission on E's behalf where non-production was not due to deliberate attempt to conceal relevant evidence but to lack of opportunity by E's recently retained counsel to determine whether records could be produced, or even to examine them; records were made available to GC upon resumption of recessed hearing and also to compliance officer for preparation of backpay specification; and denial of records to subpoenaed party is w/i ALJ's discretion)

Hedison Manufacturing Company v. N.L.R.B. 643 F.2d 32 (C.A. 1, Mar 11, 1981)
(invocation of principle of *Bannon Mills* against E held fully warranted where E refused to produce tape of speech by E's official after GC subpoenaed it as evidence of ULPs: ct rejected contention that tape was attorney work product or that Ees who heard speech must testify first)

8467 EVIDENCE RELATING TO EVENTS BARRED BY 6-MONTH LIMITATION

8467-3300 Admissible for background purposes

Clearwater Finishing Company, A Division of United Merchants and Manufacturers, Inc. 254 NLRB No. 155

Electrical Workers, Local 1701 (Dynalectric Company) 252 NLRB No. 119
(while U representative's conduct outside 10(b) period may be used to ascertain his motive for action taken w/i such period, it is not to be inferred that he was motivated by unlawful considerations in his refusal in instant case to refer non-U applicants, in absence of evidence demonstrating that his actions herein were mere continuation of his prior conduct)

Local 394, Laborers' (Building Contractors Association of New Jersey) 247 NLRB No. 085
(U's failure to refer alleged discriminatees outside 10(b) period admissible as evidence of animosity and as background to support finding of unlawful refusal to refer w/i 10(b) period)

8467-6700 Admissible to test credibility of witnesses

S. L. Industries Inc. and Extruded Products, Corp. 232 NLRB No. 151
(evidence adduced at hearing as to execution of contract between E and minority U and received before complaint was amended to show preferential treatment to U, admissable to show E animus to petitioner and as bearing on credibility of witness, E's president)

750 RES JUDICATA

0100 GENERALLY

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**

Charmer Industries, Inc. **250 NLRB No. 031**
(Bd's denial of Es' mtn for summary judgment based on favorable arbitration award held binding on ALJ as law of case, notwithstanding Es' contention that under FRCP denial of mtn for summary judgment is interlocutory in nature and not res judicata)

Wayne County Neighborhood Legal Services, Inc. **249 NLRB No. 180**
(Bd's assertion of jurisdiction in prior R case underlying instant ULP proceeding held res judicata of every contention raised in R case to avoid Bd's jurisdiction as well as any contention that could have been raised)

Schorr Stern Food Corp. **248 NLRB No. 050**
(Bd's findings and conclusions in ULP case are binding and may not be relitigated in subsequent backpay proceeding, and applicability of contract, adjudicated in present ULP proceeding, cannot be litigated at compliance stage herein)

0150 PRIOR COURT DECISION

Teamsters, Local 70 (Nielson Freight Lines) **265 NLRB No. 034**
(where contempt proceeding involved issue of actual motivation for U's refusal to dispatch discriminatee, backpay proceeding involves issue of his actual eligibility for a *by-name* dispatch and thus is not *res judicata* and evidence pertaining to that question is properly admissible)

United Technologies Corporation **260 NLRB No. 008**
(prior litigation in which Bd and ct of appeals had found E's rule prohibiting solicitation on plant premises not unlawful held not to bar consideration of validity of rule in instant case in view of intervening SCt's decision in *Magnavox* which overruled fundamental assumption of Bd and ct, on which decisions were based, that U can contractually waive Ees' right to engage in solicitation)

Fotomat Corporation v. N.L.R.B. **634 F.2d 320 (C.A. 6, 1980)**
(*res judicata* applied where ct previously had affirmed district ct's denial of E's FOIA claim for reports of Bd agents concerning conduct of election)

Service Employees International Union Local 250,
AFL-CIO v. N.L.R.B. **640 F.2d 1042 (C.A. 9, 1981)**
(ct agreed with Bd that it lacked jurisdiction to rule on Section 8(a)(3) charge where prior ct had determined that E had not committed ULPs under Sections 8(a)(1), (4) and (5) but deemed it unnecessary to give consideration to 8(a)(3) charge and did not remand it to Bd; prior ct's opinion was final under Sections 10(e) and (f), and barred further proceedings arising from same transaction under doctrine of res judicata)

2500 FORMS OF APPLICATION

2533 COLLATERAL ESTOPPEL - SUBSEQUENT PROCEEDING BASED ON DIFFERENT CAUSE OF ACTION

Authur Briggs, Inc. **265 NLRB No. 038**
(E not entitled to rely on informal settlement agreement entered into after C issued on its charge against U of strike misconduct which inflicted damage to E's property to justify its refusal to reinstate striker who inflicted damage, since collateral estoppel did not apply where E consented to agreement and facts not adjudicated; further, in absence of final order burden did not shift to GC to establish striker's right to reinstatement by virtue of Bd's seemingly inconsistent positions on issuance of two complaints)

Pennatech Papers, Inc.; etc. **263 NLRB No. 033**
(Bd holding that three corporations were single E not precluded by principles of res judicata or collateral estoppel based on outcome in prior decisions of federal cts in suit under Section 301 of Act by Us to compel arbitration under bargaining agreement in view of lack of identity of either cause of action or issues involved, since in ct suit issue was whether, under Federal common law, parent corporations bound by bargaining agreements of subsidiaries, and herein issue is whether three corporations single integrated enterprise so as to constitute single E under Bd criteria)

International Business Systems, Inc. **258 NLRB No. 017**
(admission of warning letters issued to Ee but held in prior proceeding to be unlawful change in method of communication w/i disciplinary system, error, where letters ordered expunged in prior proceeding; however, ALJ not precluded from considering incidents documented in letters since E found to have merely unlawfully changed means it used to communicate w/i disciplinary system and not underlying disciplinary standards or to have altered system to rid it self of U adherents)

International Business Systems, Inc. **258 NLRB No. 017**
(GC allowed to litigate issue of whether strike was ULP strike or economic strike, notwithstanding E's contention issue should have been litigated in proceeding in which legality of E's actions which allegedly caused strike were held unlawful but in which U and GC's objection to litigation of issue had been sustained)

International Brotherhood of Electrical Workers,
Local 453 (Southern Sun Electric Corporation) **252 NLRB No. 103**
(Bd not prevented from litigating case between same parties with different issues and time periods involved)

Wonder Markets, Inc. **249 NLRB No. 042**
(although discriminatee was involved in an incident that justified discharge of another Ee in previous cause of action, Bd rejected theories of *res judicata* and collateral estoppel as bars to relitigating reinstatement issue in the instant backpay proceeding where discriminatee was not party to previous ULP hearing and instant case involved different issue which Ee is entitled to litigate as matter of due process)

N.L.R.B. v. Markle Manufacturing Company of
San Antonio **633 F.2d 1122 (C.A. 5, 1980)**
(doctrine of collateral estoppel did not preclude Bd from determining whether E committed ULPs by failing to reinstate economic strikers who allegedly committed charged violence where fact issue of such misconduct was not determined in previous case, in which Bd acting on E's complaint charging strike violence and misconduct by U agents, entered consent order agreed to by E and U that directed cessation of strike violence; moreover, Bd was not barred from litigation of violence issue on theory that Bd was taking inconsistent positions with respect to same matter in successive suits)

2550 COLLATERAL ESTOPPEL SUBSEQUENT PROCEEDING BASED ON SAME CAUSE OF ACTION

Sabine Towing and Transportation Co., Inc. **263 NLRB No. 019**
(parties held estopped from seeking reconsideration of determination in prior proceedings involving same parties that seamen were reasonably accessible to non-Ee U organizers at locations away from E's premises, where circumstances in instant case were not materially different from those essential to judgment previously reached)

Joint Council of Teamsters No. 42; et al. (Associated
Independent Owner-Operators, Inc.) **248 NLRB No. 082**
(dump truck operators were held independent contractors in prior Bd decisions involving same parties herein or their privies and under principles of res judicata and collateral estoppel parties are foreclosed from litigating status of operators)

Chrysler Corporation-Amplex Division of Chrysler
Corporation **JD252-81**
(doctrines of *res judicata* and *collateral estoppel* do not bar litigation of ULP practices alleged in instant case where GC did not expressly renounce possibility of examining in future other allegedly impermissible superseniority clauses in prior case involving same local)

2567 DIRECT ESTOPPEL - SUBSEQUENT PROCEEDING BASED ON SAME CAUSE OF ACTION

Accessory Controls and Equipment Corporation **JD-890-81**
(Board Order entered pursuant to settlement agreement which did not contain non-admissions clause has same *res judicata* effect as decision entered after answer and hearing)

5000 EFFECTS OF APPLICATION

5025 NOT CONCLUSIVE AS TO QUESTIONS OF FACT NOT ACTUALLY LITIGATED

Walter B. Cooke, Inc. **262 NLRB No. 074**
(Region's dismissal and approval of withdrawal of charges not res judicata as to new charges involving same conduct since there was no adjudication on the merits)

International Business Systems, Inc. **258 NLRB No. 017**
(GC allowed to litigate issue of whether strike was ULP strike or economic strike, notwithstanding E's contention issue should have been litigated in proceeding in which legality of E's actions which allegedly caused strike were held unlawful but in which U and GC's objection to litigation of issue had been sustained)

First National Maintenance Corporation **254 NLRB No. 028**
(underlying R case to instant C case, which was remanded to ALJ, not *res judicata* concerning allegations in C where ULP charges were not filed until after Bd's decision in R case)

Chrysler Corporation-Amplex Division of Chrysler Corporation **JD252-81**
(doctrines of *res judicata* and *collateral estoppel* do not bar litigation of ULP practices alleged in instant case where GC did not expressly renounce possibility of examining in future other allegedly impermissible superseniority clauses in prior case involving same local)

5032 NOT OPERATIVE WHERE PARTIES ARE DIFFERENT

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(decision in 301 suit not res judicata where although ULP charges were pending alleging unauthorized checkoff of U dues neither NLRB or Charging Parties were parties to suit, Ees from whose pay dues were allegedly unlawfully withheld failed to appear; nor did ct express desire to dispose of ULP issue)

Wonder Markets, Inc. **249 NLRB No. 042**
(although discriminatee was involved in an incident that justified discharge of another Ee in previous cause of action, Bd rejected theories of *res judicata* and collateral estoppel as bars to relitigating reinstatement issue in the instant backpay proceeding where discriminatee was not party to previous ULP hearing and instant case involved different issue which Ee is entitled to litigate as matter of due process)

5043 NOT OPERATIVE WHERE NON-8(a)(5) CASE INVOLVES PRIOR REPRESENTATION CASE FINDINGS

Escambia River Electric Cooperative, Inc. **265 NLRB No. 128**
(issue of Ee's managerial status properly before ALJ, notwithstanding issue was litigated in R proceeding, since Bd R/R provides that failure to request review of RD's decision, as in case herein, precludes relitigation of same issue in any *related* subsequent ULP proceeding; Bd's current position is that *related* proceeding is one where issue comes up, for example, in Sec. 8(a)(5) case based on certification of representative, but does not include case where independent violations of Sec. 8(a)(1) are alleged, as is case herein)

St. Francis Hospital **263 NLRB No. 109**
(Bd's factual findings in related R case not binding in subsequent ULP proceedings because issues are different in R and ULP proceedings)

5087 OPERATIVE ONLY AGAINST SAME PARTY INVOLVED IN PRIOR CASE

St. Francis Hospital **263 NLRB No. 109**
(no violation where ULP was remedied by informal settlement agreement entered into in prior case covering same time period as instant case involving same E but different charging party and unit; RD had never set aside this settlement agreement; E had fully remedied ULP regarding invalid *no-solicitation; no-distribution rules* and it would not effectuate policies of act to find violation in this regard in instant case)

Newport News Shipbuilding and Dry Dock Company **253 NLRB No. 096**
(decision in 301 suit not res judicata where although ULP charges were pending alleging unauthorized checkoff of U dues neither NLRB or Charging Parties were parties to suit, Ees from whose pay dues were allegedly unlawfully withheld failed to appear; nor did ct express desire to dispose of ULP issue)

Standard Refinery Union, Inc. **JD-632-80**
(determination of correctness or incorrectness of name of E made in prior Bd cases concerning same E was controlling in instant case by virtue of Bd's denial of respondent U's request for review as regards such determination)

7500 FINDINGS OF OTHER TRIBUNALS BASED ON SAME EVIDENCE NOT BINDING ON BOARD

Pennstech Papers, Inc.; etc. **263 NLRB No. 080**
(Bd holding that three corporations were single E not precluded by principles of res judicata or collateral estoppel based on outcome in prior decisions of federal cts in suit under Section 301 of Act by Us to compel arbitration under bargaining agreement in view of lack of identity of either cause of action or issues involved, since in ct suit issue was whether, under Federal common law, parent corporations bound by bargaining agreements of subsidiaries, and herein issue is whether three corporations single integrated enterprise so as to constitute single E under Bd criteria)

Knit Tuck Welt Ltd. **JD-(NY)-42-81**
(adverse determination against alleged discriminatee by unemployment compensation board not collateral estoppel against party charging unlawful discharge; Ee was not a party to unemployment compensation proceeding which involved different definitions, policies and purposes than those of NLRA)

762 LACHES

0100 GENERALLY

Terminal Enterprises, Inc. **289 NLRB No. 122**
(mtn to dismiss C on ground of laches because of postponement of original hearing as result of GC's reconsideration of appeal by charging party of RD's refusal to incorporate certain allegations of charge into C, denied)

2000 ELEMENTS OF LACHES

2025 PARTY MUST BE UNREASONABLE IN HIS DELAY AFTER LEARNING FACTS

Marine Officers Association, Teamsters Union Local No. 54 (Riverway Co.) **269 NLRB No. 182**
(where E unilaterally chartered out all its motor vessels and then chartered them back with crews who were non-U at time when valid agreement existed between E and U, and U made only limited protest at time of change, and this change existed for 3 years at which time it began to picket E, U found to have acquiesced in E's change in operations and to no longer have labor dispute with E; thus, U's dispute lies with E who control non-U crews and not with original E and its picketing is violative)

4000 POSSIBLE EXCUSES FOR DELAY

6000 COMPLAINANT NORMALLY WOULD BE BARRED IF APPLICABLE STATUTE OF LIMITATIONS IN ANALOGOUS SITUATIONS HAS RUN

8000 NOT AVAILABLE AGAINST BOARD

Merrell M. Williams; Boy's Restaurant, Inc.; Girl's Restaurant; Jumbo's d/b/a Farm Boy Restaurant; Farm Boy Restaurants Nos. 2 and 3 **265 NLRB No. 070**
(E's mtn to dismiss C denied, notwithstanding E's argument that C should be dismissed because of unwarranted delay in its prosecution, which worked to prejudice of E, where delay in case resulted from administrative actions by Regional Office and Office of GC which reduced amount of evidence and issues to be heard against E; moreover, doctrine of laches has no application to cases brought before Bd)

775 WAIVER

0100 GENERALLY

Milton College 260 NLRB No. 047

(since waiver implies knowledge of a right before it can be waived, there is no waiver when such knowledge is lacking)

1200 MAY BE VERBAL OR IN WRITING

Talbert Manufacturing, Inc. 264 NLRB No. 138

(orally informing U representative of reduction in hours to be worked 4 days before implementing change, and indirect notice via member of in-plant committee notifying U of further reduction in hours 2 days before implementing this change held sufficient notice to allow U to request bargaining, and by U's failure to make request it waived its right to complain about E's failure to bargain)

Old Pueblo Lodge No. 933, Machinists (Hughes Aircraft Company) JD-(SF)-123-80

(U by signing strike amnesty agreement effectively waived right to discipline Ees for crossing picket line where agreement prohibited reprisals against Ees who worked for E during strike)

2500 MAY RESULT FROM IMPLICATION OR USAGE

Inland Steel Company 264 NLRB No. 015

(no waiver of right to participate in sympathy strike by prior failure to contend broad no-strike provision did not encompass sympathy strikes, notwithstanding prior to refusal herein no member of U with which E had agreement had refused to cross picket line established by Ees of another E on E's premises during 35 year bargaining relationship, nor had U ever contended it had right to engage in sympathy strikes or urged its members to do so as past failure by U to assert statutory right does not stop subsequent assertion of that right)

Aeronca, Inc. 253 NLRB No. 026

(E's unilateral discontinuance of long standing practice of giving turkey bonus to Ees at Christmas w/o bargaining with U held violative where U had not waived its right to bargain over matter notwithstanding that contract contained broad *zipper* clause and no *maintenance-of-benefits* clause; contention that provisions in contract constituted waiver by U refuted by extensive past bonus practice)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)

(waiver of right to strike or engage in sympathy strike may be implied by binding arbitration clause; even in case of express no-strike clause, waiver of right to strike is generally coterminous with scope of arbitration clause)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)

(Bd analyzes language of collective bargaining agreement and factual circumstances of labor controversy to determine whether U has waived right to engage in sympathy strikes; contract need not explicitly prohibit sympathy strikes to show intent to waive right to engage in such activity)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)

(U does not necessarily waive right by failing to negotiate contractual confirmation and silence is bargaining agreement cannot be considered to be waiver even in light of bargaining history; failure to obtain contractual confirmation of right is evidence of *waiver only* if it shows that U thought right had been waived by other provisions of contract and sought to regain right)

3700 ASSENT MUST BE CLEAR, IT WILL NOT BE INFERRED FROM DOUBTFUL LANGUAGE OR FACTS

RAHCO, Inc. 265 NLRB No. 036

Inland Steel Company 264 NLRB No. 015

Methodist Hospital of Gary, Inc. 263 NLRB No. 054

(U does not effectively waive statutory right merely by presenting proposal for its contractual guarantee and thereafter signing contract which fails to include such guarantee)

Premium Fine Coal, Inc. 262 NLRB No. 060

(opening of 2 determinative challenged ballots cast by individuals who were alleged discriminatees in pending ULP proceeding, appropriate in seeking to resolve qcr expeditiously, where theirs were the only challenged ballots, and they clearly and voluntarily waived their right to secrecy of their ballots and requested that their ballots be opened by voluntarily submitting signed affidavits)

Minnesota Mining and Manufacturing Company 261 NLRB No. 003

(U did not waive its right to request health and safety information, since right was derived from Section 8(d) of Act and contract between E and U contained no such waiver either in *clear and unmistakable* language, or even impliedly)

Colgate-Palmolive Company 261 NLRB No. 007

(contention that by agreeing to a health and safety clause in the contract U waived right to receive health and safety information on request, rejected; neither contract language nor record as a whole showed requisite *clear and unmistakable waiver* of right to such information)

Borden Chemical, A Division of Borden, Inc. 261 NLRB No. 006

(no waiver of U's right to request list of materials and chemicals purchased, stored, or processed at E's chemical manufacturing facility where U never proposed contractual provision which would have committed E to provide requested list, when in presenting health and safety proposal E did not state it should be dispositive of prior request for list, U negotiators never consciously relinquished list request and mere silence when confronted with presentation of counter proposal cannot be construed as relinquishment)

Texaco Oil Company 259 NLRB No. 062

(E's contention that right of Ees who are or disabled at onset of strike to refrain from declaring their position on strike while medically excused, thus not becoming strikers and losing right to contractual accident and sick benefits, was waived by U's request for reopening of contract and strike pursuant to reopener clause, rejected, since requirement that any waiver of protected right must be clear and explicit not met)

Chesapeake and Potomac Telephone Company 259 NLRB No. 030

(contract's statement that E was to supply U with personnel records and that arbitration was to be conducted according to Rules of American Arbitration Association, not waiver of U's right to certain requested information which U might find necessary to make judgment whether to proceed to arbitration concerning a grievance)

General Motors Corporation, Delco Moraine Division 257 NLRB No. 146

(E's argument that U was obligated to overturn prior arbitration decisions through arbitral forum in order to reassert its statutory right to requested information and contention that ALJ's refusal to admit evidence of parties' arbitration history was biased, rejected where E presented no evidence that U's statutory right was considered by arbitrators or that U acquiesced in E's interpretation of said decisions or otherwise clearly and unmistakably waived its statutory right to requested data)

Tocco Division of Park-Ohio Industries, Inc. 257 NLRB No. 044

(waiver of U's right to be consulted about relocation of unit work must be *clear and unmistakable* and was not found in contract clause providing severance pay if plant is closed or transferred or by E's bargaining request that U submit proposal restricting E's freedom to transfer work, as burden is on E to obtain waiver)

The Mead Corporation 256 NLRB No. 108

(fact that contract article concerning wage rate adjustments specifies legal effect of agreement or lack of agreement by parties during mid-term (contract) negotiations, held not waiver of Ee rights and may not be equated with express relinquishment by U of its rights to demand bargaining especially in view of U's vigorous assertion of its position during negotiations,

3700—Cont.

and its demand that E promise to make wage adjustments rather than merely discuss them)

Armour Oil Company **253 NLRB No. 149**
(contract language that —*closing of plant or any department or single operation—shall not be deemed a lockout*, by itself, did not constitute clear and unmistakable waiver of U's right to be consulted about change in E's operations)

Armour Oil Company **253 NLRB No. 148**
(U did not waive its right to be afforded opportunity to bargain about subsequent *wholesale* reassignment of trucks which adversely effected unit Ees' working conditions when it acquiesced in *isolated wholesale* reassignment of trucks which did not *adversely* effect unit Ees' working conditions)

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **253 NLRB No. 096**
(waiver over particular subject matter must be shown to be clear and unmistakable; in absence of explicit waiver language in contract, Bd requires probative extrinsic evidence that parties intended waiver)

National Car Rental System, Inc. **252 NLRB No. 027**
(contract's *zipper clause* waiving parties' bargaining rights over subject matter not included, or referred to, in contract or w/i contemplation or knowledge of parties when they negotiated agreement held not waiver of effects of E decision to sell and relocate operations, since general *zipper clause* did not amount to *clear specific and unmistakable waiver* by U of right to be consulted regarding effects of elimination of all unit positions)

Angelus Block Co., Inc., Amari, Inc. **250 NLRB No. 127**
(*zipper clause* not waiver where record did not establish what, if any, specific proposals were considered during contract negotiations nor even whether parties were agreed on precisely what provisions they were agreeing to exclude)

Western Die Casting Company **JD-(SF)-86-82**
(E's contention that U waived right to represent unit Ees in processing grievance because 2 members of 4 person *in-plant grievance committee* who attempted to present grievances were no longer Ees of E, rejected, since neither U's contract provisions with E nor its constitution, considered either separately or together, merited inference that U clearly and unmistakably waived Ees' statutory right to select their own grievance processors)

N.L.R.B. v. South Central Bell Telephone Company **688 F.2d 345 (C.A. 5, Oct. 1982)**
(while U officers may be disciplined more harshly than other strikers if officers flount affirmative contractual duties during illegal strike, herein no waiver found of officers' protected rights; E's contention contract ratified and incorporated by silence prior arbitration decision holding that imposition of longer suspensions on U stewards than other Ees participating in strike in violation of no strike agreement, rejected; silence is not dispositive of parties intent in labor contract. Giving equivalent to stare decisis effect to private arbitration decisions should be by express clause in contract)

Prudential Insurance Company of America v. N.L.R.B. **661 F.2d 398 (C.A. 5, Nov. 1981)**
(right to U representation at investigatory interview effectively waived in agreement between insurance company and U by provision *neither U nor its members shall interfere with right of E to interview any agent with respect to any phase of his work w/o grievance committee being present* notwithstanding contention that waiver not clear and unmistakable, since it referred to grievance committee rather than U representative, right not focused on during negotiations, and provision predated Weingarten, where E had recognized grievance committee as essentially same as U representative)

Seligman and Associates, Inc. v. N.L.R.B. **639 F.2d 307 (C.A. 6, 1981)**
(ct held prior withdrawal of same charge did not constitute waiver thereof and equitable doctrine of estoppel not applicable to preclude discriminatees from filing charge a second time)

Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. **606 F.2d 171 (C.A. 7, 1979)**
(lack of prohibition against change in administrator in contract, not waiver where administrator was specified and no change expressly authorized)

Kansas City Power & Light Company v. N.L.R.B. **641 F.2d 553 (C.A. 8, Feb 4, 1981)**
(*although right to strike may be waived by appropriate provisions in bargaining agreement, such waiver of protected right must be expressed in clear and unmistakable language*)

5000 WAIVER OF PROCEDURAL PROVISIONS

5012 UNFAIR LABOR PRACTICES

F. A. Bartlett Tree Expert Co. **250 NLRB No. 180**
(E's failure to raise issue of RD's failure to transmit complete record in R-case at that time constitutes waiver precluding it from raising it in ULP case)

Rock Hill Telephone Company v. N.L.R.B. **605 F.2d 139 (C.A. 4, 1979)**
(U's right to assert that conduct violated Act not waived by its withdrawal of objections to election based on said conduct)

5025 RIGHT TO OBJECT TO ELECTION

Knapp-Sherrill Company **263 NLRB No. 069**
(E estopped from challenging procedures employed in merger of two local U's two years after it took place where it satisfied all elements of estoppel—knowledge, intent, mistaken belief and detrimental reliance; had knowledge of U merger, was aware it had right to refuse to recognize it as successor, and after merger E dealt with successor as its Ees' bargaining representative including forwarding dues payments, adjusting grievances, and bargaining over terms of proposed midterm wage reopener, and local relied on E's business as usual approach to its detriment when it took no further action to establish its status as collective-bargaining representative)

5060 RIGHT TO SEC.10(b) DEFENSE

Taft Broadcasting Company, WBRC–TV **264 NLRB No. 028**
(where issue of timeliness of charge was not raised at hearing, and E was aware of facts, E's failure to raise 10(b) defense is waiver)

5088 SUBPENAED WITNESSES' WAIVER OF WITNESS AND MILEAGE FEES

Rolligon Corporation **254 NLRB No. 004**
(Bd did not accept ALJ's recommendation that Bd should administratively require U, which distributed Bd subpenas to attend Bd R hearing, to pay subpenaed Ees witness and mileage fees; although statements signed by Ees did not constitute explicit waiver of their right to such fees, issue of money owed for fees is matter between U and subpenaed Ees that has not been raised by either party and is not before Bd; moreover, there is no administrative process whereby Bd could compel such payment)

6200 APPLICABILITY TO BOARD

7500 ELECTION OF REMEDIES (ANALOGOUS TO WAIVER)

7550 PARTY WHO HAS A CHOICE OF SEVERAL RIGHTS OR REMEDIES ADOPTS ONE AND DESTROYS ALL RIGHTS TO OTHERS

Professional Porter & Window Cleaning Co., Division of Prapaco, Inc. **263 NLRB No. 034**
(no deference where arbitrator considered only contractual issue of discharge for cause by Ee's letter, signed by 8 other Ees, to former E criticizing work of subcontractor and present E of Ee as Bd found that question of the nature of the protected concerted activity was not presented to or considered though arbitrator aware that charge filed. Grievant not required to raise any statutory issue and is not deprived of statutorily created forum for adjudication of ULP charges)

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC v. N.L.R.B. **648 F.2d 18 (C.A.D.C., Nov. 1980)**
(Title VII's (anti discrimination) purpose and procedures strongly suggest that individual does not forfeit his private cause of action if he first pursues grievance to final arbitration under nondiscrimination clause of bargaining agreement)

8700 WAIVER OF PROTECTED RIGHTS

Laredo Packing Company **254 NLRB No. 001**
(*waiver of statutory right may not be lightly inferred but must be expressed in clear and unmistakable language. Bd will not find that contract terms of themselves confer on E management right to take unilateral action on mandatory subject of bargaining unless contract expressly or by necessary implication confers such a right*)

AMCAR Division, ACF Industries, Incorporated **247 NLRB No. 130**
(U did not waive Ees' right to engage in sympathy strikes or to honor picket lines of other Us picketing at E's plant, where contract's no-strike provision did not expressly refer to such activity, and bargaining history shows U understood no-strike clause as not covering activity in question; while E adopted contrary position, U did not capitulate to E's interpretation but preserved its ability to contest E's position)

8712 RIGHT TO OBSERVE PICKET LINE

United States Steel Corporation **264 NLRB No. 010**
(Bd will not defer to arbitrators' award which is repugnant to Act, and here where arbitrator upheld suspension of sympathy striker for violating contractual no-strike clause deferral is inappropriate because Bd and cts have held that waiver of right to engage in sympathy strikes will not be inferred from general no strike clause and any waiver must be clear and unmistakable and there is no such evidence of waiver; moreover, under *doctrine of coer-*

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[illegible] application Bd and cts have refused to find sympathy strike to be encompassed in broad no-strike pledges)

Inland Steel Company 264 NLRB No. 015
(no waiver of right to participate in sympathy strike by prior failure to contend broad no-strike provision did not encompass sympathy strikes, notwithstanding prior to refusal herein no member of U with which E had agreement had refused to cross picket line established by Ees of another E on E's premises during 35 year bargaining relationship, nor had U ever contended it had right to engage in sympathy strikes or urged its members to do so as past failure by U to assert statutory right does not stop subsequent assertion of that right)

Inland Steel Company 264 NLRB No. 015
(waiver of right to engage in sympathy strikes will not be implied from general no-strike clause; prohibition on self-help only as extensive as grievance-arbitration procedure, thus when U foregoes right to strike it does so only with respect to disputes which are arbitrable and sympathy strikes precipitated by another U's dispute with same or different E raises no issue that can be resolved by resort to sympathy strikers' grievance procedure)

St. Regis Paper Company 253 NLRB No. 162
(as right of Ees to honor picket line of U other than their own is right granted by statute, Bd will not infer that Ees' own U has waived right to engage in sympathy strikes unless waiver is clear and unmistakable; Bd considers contract provisions which do not specifically refer to sympathy strikes or crossing picket lines, to be ambiguous and will find waiver in them only where parties' intent to waive is clearly evident from relevant bargaining history)

St. Regis Paper Company 253 NLRB No. 162
(suspension or discharge of sympathy strikers for refusing to cross picket line at own E's premises in violation of no-strike clause not unlawful, where overall bargaining history pointed decisively to conscious waiver of right to engage in sympathy strikes during contract period)

Geiger & Peters, Inc. JD-(SF)-245-81
(U business agent's assuring E that U would man job and any Ee refusing to cross picketing U's picket line would be handled as if he had quit held not to constitute waiver of Ees' right to honor lawful picket line where there was no clear and unmistakable extrinsic evidence that business agent had authority to and did waive Ees' right to honor picket line)

N.L.R.B. v. Gould, Inc., Switchgear Division 638 F.2d 159 (C.A. 10, 1980)
(no waiver of right to engage in sympathy strike in honor of own U's lawful picket line at E's premises where contract's no-strike clause does not expressly prohibit sympathy strikes and no evidence that parties intended such prohibition)

8718 RIGHT TO REINSTATEMENT AND/OR BACKPAY

Michael M. Schaefer, an individual proprietor 261 NLRB No. 042
(E's contention that U had waived payment of net backpay to such discriminatees in consideration for E entering into bargaining agreement, and that each discriminatee except two had waived backpay by accepting settlement, rejected, since such commitment will be honored only if ULPs substantially remedied and individual may not bargain away or compromise backpay due him/her, inasmuch as backpay is public rather than private right)

Villa Care, Inc., d/b/a Edmonds Villa Care Center 249 NLRB No. 095
(dischargees' statement at hearing that they did not wish to return to work for E held not to constitute waiver of right to reinstatement, since questions which led to responses were not valid offers of reinstatement, and E had not otherwise offered them reinstatement)

Newspaper Printing Corporation JD-303-80
(E's offer of reinstatement conditioned on admission of U error and Ees' waiver of backpay not effective to toll backpay; nor is Bd bound by waiver of backpay made by Ee in order to regain job)

N.L.R.B. v. Shaw Industries, Inc., A Division of Crystal Springs Shirt Corp.; etc. 671 F.2d 1377(T) (C.A. 5, Mar. 1982)
(Ees who did not respond to E's letter which was mere invitation to apply for work rather than unconditional offer to return did not waive right to reinstatement because their response would have been futile as those who responded were merely placed on preferential hiring list since their jobs had been filled by strike replacements)

George Banta Company, Inc., Banta Division v. N.L.R.B. 686 F.2d 10 (C.A.D.C., Aug. 1982)
(E's contention that its preferential reinstatement system was *negotiated and accepted by U* and thus constituted waiver of whatever statutory reinstatement rights strikers may have had, rejected since waiver of statutory rights must be demonstrated by *express statement in contract to that effect* and agreement provided no support for suggestion that clear and unmistakable waiver of statutory rights took place)

8725 RIGHT TO STRIKE AGAINST ULP MAY BE WAIVED BY EXPLICIT CONTRACTUAL PROVISION

ITT Continental Baking Company American Bakeries Company, Inc. 253 NLRB No. 149
(right to strike over health and safety disputes held waived by no-strike clause which contains explicit promise not to strike during such proceedings, i.e., grievance and arbitration proceedings)

Pacemaker Yacht Co., A Division of Mission Marine, Inc. 253 NLRB No. 095
(discharge and failure to reinstate Ees who struck E, contrary to contractual no-strike clause, to protest failure of U's health and welfare fund to fulfill its contractual medical insurance obligations held violative, since *no-strike* pledge relied upon by E did not constitute clear and unequivocal waiver of Ees' right to strike against actions of third party (*Fund*) which affected terms and conditions of employment)

Pacemaker Yacht Co., A Division of Mission Marine, Inc. 253 NLRB No. 095
(U cannot waive Ees' right to strike over issue of medical payments from U fund to insurance carrier by *ad hoc* statements of purported intent of collective bargaining agreement in view of essentially conflicting interests of U and Ees regarding Fund)

Anderson Sand & Gravel Company JD-455-80
(held ULP strike where Ees of 1 U struck to protest hiring of Ees represented by different U who were not subject of contract of first U and E's unilaterally contracting with outside U for work claimed by first U, notwithstanding no-strike clause and U representative attempt to get Ees back to work and statement that walkout violated contract)

Pacemaker Yacht Company, A Division of Mission Marine, Inc. v. N.L.R.B. 663 F.2d 455 (C.A. 3, Oct. 1981)
(as principle of coterminous interpretation had been adopted by Bd at time contract was negotiated, ct inferred that inclusion of two no-strike clauses, one expressly tied to arbitration clause and one prohibiting all strikes, was intended to waive Ees' right to strike over unforeseeable disputes including U fund's failure to pay insurance premiums)

Kansas City Power & Light Company v. N.L.R.B. 641 F.2d 553 (C.A. 8, Feb 4, 1981)
(*although right to strike may be waived by appropriate provisions in bargaining agreement, such waiver of protected right must be expressed in clear and unmistakable language*)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)
(right to engage in sympathy strikes may be waived by collective bargaining agreement)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)
(waiver of right to strike or engage in sympathy strike may be implied by binding arbitration clause; even in case of express no-strike clause, waiver of right to strike is generally coterminous with scope of arbitration clause)

8731 RIGHT TO BARGAIN OVER MANDATORY SUBJECTS

RAHCO, Inc. 265 NLRB No. 030

Milwaukee Spring Division of Illinois Coil Spring Company 265 NLRB No. 038
(E's decision to relocate work from U to non-U plant, to layoff Ees as consequence during term of agreement solely because of higher labor costs, absent U's consent, is midterm repudiation of agreement in violation of Sec. 8(d), Sec. 8(a)(1), (3), (5); moreover, U did not waive right to bargain notwithstanding management rights clause; such clause reserves for E right to decide whether and how products will be manufactured; it does not grant E right to transfer its operation. Thus, absent explicit language, U has not waived its right to object to E's decision)

Ciba-Geigy Pharmaceuticals Division 264 NLRB No. 134
(U did not waive right to bargain over new Attendance Control Program by its failure in past not to request bargaining when E unilaterally implemented new rules and regulations since right once waived is not lost forever, and each time bargainable incident occurs-each time new rules are issued-U has option to request bargaining or not. Nor by its failure to request bargaining at meeting in which E gave U copy of new program, as U was presented with *fait accompli* since E told U on same day Ees were notified that program would be effective in ten days yet E had been studying matter over many months w/o notice to U)

Talbert Manufacturing, Inc. 264 NLRB No. 128
(orally informing U representative of reduction in hours to be worked 4 days before implementing change, and indirect notice via member of in-plant committee notifying U of further reduction in hours 2 days before implementing this change held sufficient notice to allow U to request bargaining,

8731—Cont.

and by U's failure to make request it waived its right to complain about E's failure to bargain)

C. Elton Johnson, d/b/a Print-Quic **261 NLRB No. 109**
(where E announced to U his intention to sell business and U failed to ask for further details concerning impact on Ees, it its right to bargain with E)

C. Elton Johnson, d/b/a Print-Quic **262 NLRB No. 109**
(where E announced to U his intention to sell business and U failed to ask for further details concerning impact on Ees, it waived its right to bargain with E)

Wagner Distribution Services, Inc. d/b/a Distribution Services West **262 NLRB No. 096**
(no waiver of right to bargain over change in shift hours since waiver must be clear and unmistakable and mere conversation of shop steward with U official regarding E's intent to change hours of shift not sufficiently reliable notice to trigger U's obligation to request bargaining)

Tocco Division of Park-Ohio Industries, Inc. **257 NLRB No. 044**
(U did not waive right to be consulted about transfer of unit work to another plant by contract clause providing severance pay in event of plant closure or transfer, or by bargaining request that U submit proposal restricting work transfer as burden is on E to obtain *clear and unmistakable* waiver)

The Mead Corporation **256 NLRB No. 108**
(fact that contract article concerning wage rate adjustments specifies legal effect of agreement or lack of agreement by parties during mid-term (contract) negotiations, held not waiver of Ee rights and may not be equated with express relinquishment by U of its rights to demand bargaining especially in view of U's vigorous assertion of its position during negotiations, and its demand that E promise to make wage adjustments rather than merely discuss them)

Sheltering Pines Convalescent Hospital **255 NLRB No. 182**
(where state enacted law, which provided for payments to nursing care facilities to be used for raising wages, after E and U had signed collective-bargaining agreement providing for automatic wage increases, E who used state monies to fund contractually provided for increases violated Act when it refused to bargain with U over disbursement of state funds; these funds directly related to terms and conditions of employment, U did not waive its right to bargain where law not enacted until after contract signed)

Laredo Packing Company **254 NLRB No. 001**
(U waived right to bargain regarding temporary termination of operations by virtue of management rights clause which generally reserved to E right to *abolish or change operations determine extent to which plant will operate layoff Ees because of legitimate reasons sell...terminate, discontinue or transfer operations due to economic factors* and E's obligation to bargain was limited by agreement to permanent discontinuance of operations)

Armour Oil Company **253 NLRB No. 148**
(contract language that *—closing of plant or any department or single operation—shall not be deemed a lockout,* by itself, did not constitute clear and unmistakeable waiver of U's right to be consulted about change in E's operations)

Armour Oil Company **253 NLRB No. 148**
(U did not waive its right to be afforded opportunity to bargain about subsequent *wholesale* reassignment of trucks which adversely effected unit Ees' working conditions when it acquiesced in *isolated wholesale* reassignment of trucks which did not *adversely* effect unit Ees' working conditions)

M. A. Harrison Manufacturing Company, Inc. **253 NLRB No. 097**
(defense of *waiver* not available to E where E granted unit Ees merit wage increases, percentage wage increases, and extra paid holiday w/o giving U sufficient opportunity to bargain over those unilateral changes which it wanted to do, E and U had made no attempt to bargain on any economic issue during initial negotiations, hence neither party could contend that impasse had been reached justifying unilateral action)

National Broadcasting Co., Inc. **253 NLRB No. 023**
(E's refusal to bargain over its saving plan being part of collective bargaining agreement, violative, as it is mandatory subject of bargaining; moreover, U did not waive its right to bargain over plan where E made brief reference to plan in response to U question and made clear to U that plan only available to non-U Ees notwithstanding U failed to press for savings plan at that time)

National Car Rental System, Inc. **252 NLRB No. 027**
(U's failure to specifically request *effects* bargaining when it learned of sale and relocation of segments of E's rental operations not waiver of U's right to effects bargaining where E's announcement that entire unit was being terminated precluded U request to bargain; E had indicated that any attempt at bargaining would have been futile)

Dial Tuxedo, Inc. **260 NLRB No. 064**
(E unilaterally granting unit Ees Blue Cross and Blue Shield insurance benefits after contract containing provisions for E contributions to U's health plan and insurance fund had expired, held violative, where U had not waived its right to bargain *on the health and insurance issue*; no *impasse* had been reached; and change in benefits was not consistent with any previously rejected offer)

California Pacific National **JD-(SF)-260-81**
(where E posted new rules concerning Ees taking home company vehicles (mandatory subject of bargaining) on bulletin board and U failed to protest change, it waived its right to do so and E's failure to negotiate not violative)

N.L.R.B. v. Carbonex Coal Company **679 F.2d 200 (C.A. 10, May 1982)**
(whether U has waived its right to bargain over layoff by failing to raise issue or by agreeing to E's action is question of fact to be determined by Bd and to be upheld (by ct) if supported by substantial evidence)

8733 RIGHT TO DISCIPLINE UNION OFFICERS FOR BREACH OF AFFIRMATIVE CONTRACTUAL DUTIES

N.L.R.B. v. South Central Bell Telephone Company **688 F.2d 345 (C.A. 5, Oct. 1982)**
(while U officers may be disciplined more harshly than other strikers if officers flount affirmative contractual duties during illegal strike, herein no waiver found of officers' protected rights; E's contention contract ratified and incorporated by silence prior arbitration decision holding that imposition of longer suspensions on U stewards than other Ees participating in strike in violation of no strike agreement, rejected; silence is not dispositive of parties intent in labor contract. Giving equivalent to stare decisis effect to private arbitration decisions should be by express clause in contract)

8735 RIGHT TO APPROVE NEW REPRESENTATIVE

Knapp-Sherrill Company **263 NLRB No. 069**
(E estopped from challenging procedures employed in merger of two local U's two years after it took place where it satisfied all elements of estoppel—knowledge, intent, mistaken belief and detrimental reliance; had knowledge of U merger, was aware it had right to refuse to recognize it as successor, and after merger E dealt with successor as its Ees' bargaining representative including forwarding dues payments, adjusting grievances, and bargaining over terms of proposed midterm wage reopener, and local relied on E's business as usual approach to its detriment when it took no further action to establish its status as collective-bargaining representative)

8737 RIGHT TO SOLICIT OR DISTRIBUTE

Harper-Grace Hospitals, Inc. **264 NLRB No. 089**
(U's acceding to contract providing for U bulletin board did not waive Ee's right to solicit or distribute antiU literature at hospital, since E and U could not lawfully prohibit Ees from doing so)

United Technologies Corporation **260 NLRB No. 068**
(in finding E's maintenance and enforcement of rule prohibiting solicitation during all paid nonworking time unlawful, Bd held that, in view of SCt's decision in *Magnovox,* ban on solicitation was not rendered lawful by U contract provision waiving Ees' right to engage in solicitation)

Pioneer Finishing Corporation v. N.L.R.B. **667 F.2d 199 (C.A. 1, Nov. 1981)**
(contract which contained specific limitations on access of U officials to E's premises to performance of specific duties, not including distribution of literature, and established bulletin board for posting official notices does not waive Ees' rights to circulate literature dealing with employment conditions)

8743 STRIKERS' RIGHTS

Airport Parking Management **264 NLRB No. 062**
(refusal to reinstate ULP strikers upon unconditional offer to return notwithstanding they had been replaced to work, unlawful; contention that parties should defer to strike settlement agreement rejected, since it would extinguish strikers' rights, and settlement agreement did not constitute waiver of those rights)

Downtown Ford Sales **JD-(SF)-275-82**
(economic striker did not waive backpay by signing statement that he was self employed because self employment treated like any other interim job but waived right to reinstatement at later date by telling E that he no longer wanted job)

8750 FAILURE TO OBJECT TO ELECTION NOT WAIVER OF PREELECTION ULP'S

Connecticut Foundry Company **247 NLRB No. 145**
(E who signed agreement in which U agreed that *We will not restrain or coerce Ees of E in the exercise of rights guaranteed in Section 7 of Act* (not conventional request to proceed) waived its rights to have election set aside due to ULP's which were part or could have been part of settlement agreement it entered into with U, thereby enabling election to take place before end of posting period, effectively waived its right to protest U's ULP's committed prior to execution of agreement)

8755 WITHDRAWAL OF ELECTIONS PETITION NOT WAIVER OF PRE-ELECTION UNFAIR LABOR PRACTICE'S

Chef's Pantry, Inc. v. N.L.R.B. **654 F.2d 498 (C.A. 6, 1981)**

(Bd did not waive ULP charges stemming from first election campaign by withdrawing first representation ptn and conducting valid intervening election)

8770 PROTEST NOT ENOUGH WITHOUT REQUEST FOR BARGAINING

Morco, Inc. d/b/a Towne Plaza Hotel **258 NLRB No. 016**

(unilateral pay raise not violative where U never demanded bargaining over unilateral pay raise itself while engaging in bargaining over issue of wages; in such circumstances, U must be held to have waived its right to bargain over pay raise)

8775 CONTRACT WAIVER OF RIGHTS TO BARGAIN CONCERNING MATTERS NOT COVERED

Dunham-Bush, Inc. **264 NLRB No. 175**

(if parties have collective-bargaining agreement which is silent as to certain terms and conditions of employment, but requires renewed bargaining to impasse over those particular terms, absent *clear and unmistakable* waiver of bargaining)

Methodist Hospital of Gary, Inc. **263 NLRB No. 054**

(right to use company cafeteria for U election, waivable; however, not waived where at relevant time contract had expired and E's contention right waived based only on failure of contract to include provision affording use of company property for U elections where U had requested such provision since U does not effectively waive statutory right merely by presenting proposals for its contractual guarantee and thereafter signing contract which fails to include guarantee)

Minnesota Mining and Manufacturing Company **261 NLRB No. 002**

(U did not waive its right to request health and safety information, since right was derived from Section 8(d) of Act and contract between E and U contained no such waiver either in *clear and unmistakable* language, or even impliedly)

National Car Rental System, Inc. **252 NLRB No. 027**

(contract's *zipper clause* waiving parties' bargaining rights over subject matter not included, or referred to, in contract or w/i contemplation or knowledge of parties when they negotiated agreement held not waiver of effects of E decision to sell and relocate operations, since general *zipper clause* did not amount to *clear specific and unmistakable waiver* by U of right to be consulted regarding effects of elimination of all unit positions)

Henry Vogt Machine Company **251 NLRB No. 040**

(Bd found U's failure to bring up issue of cafeteria privilege for laboratory Ees during bargaining not tantamount to a waiver where there was no *clear and unequivocal* evidence of U's *conscious relinquishment* of right to bargain and no clear and unequivocal notice by E that privileges would be withdrawn)

American Telephone and Telegraph Company—Long Lines Department **250 NLRB No. 008**

(U's statutory right to photocopies of requested documents, not waived regardless of contention that E rejected U's demand for photocopies during contract negotiations and that bargaining agreement contained *zipper* clause; waiver of statutory right, unlike waiver of *rates of pay, wages, hours of employment, or other conditions of employment,* requires *conscious relinquishment* by U)

Southwestern Bell Telephone Company **247 NLRB No. 027**

(contention that U had waived its right to requested information because requirement was not in contract with E, rejected, since failure to incorporate statutory right in collective agreement does not justify inference of waiver thereof)

Rochester Methodist Hospital **JD-506-81**

(E's refusal to bargain for dental plan during contract term held not violative where such proposals were discussed and eliminated as part of final agreement which was settlement of all issues and waiver was clearly intended and clearly expressed)

Pacemaker Yacht Company, A Division of Mission Marine, Inc. v. N.L.R.B. **663 F.2d 455 (C.A. 3, Oct. 1981)**

(where bargaining agreement contained 2 no-strike clauses: (1) for arbitrable issues, and (2) for nonarbitrable issues, Ees unmistakeably waived their right to strike notwithstanding nonarbitrable issue which percipitated strike was not enumerated during negotiations as being covered by latter clause)

N.L.R.B. v. Pepsi-Cola Distributing Company of Knoxville, Tennessee, Inc. **646 F.2d 1173 (C.A. 6, May 1981)**

(general waiver clause which does not refer specifically to waiver of a portion of compensation, not clear and unmistable waiver of U's right to bargain over that portion of compensation)

8787 RIGHT TO ASSISTANCE OF UNION REPRESENTATIVE AT INVESTIGATORY INTERVIEW

United States Postal Service **256 NLRB No. 012**

(denial of Ee's request for U representation at disciplinary interview, unlawful, where there was no waiver of U representation consonant with Bd standards for waiver of Ee's Weingarten rights; even if contract could be interpreted as waiving Ee's rights of U representation, it was not clear that waiver would apply herein since contract waiver was ambiguous; moreover, E had reasonable fear of discipline in view of prior similar situation, and E not only denied request but also failed to offer Ee option of continuing interview unaccompanied by U representative or having no interview at all)

Montgomery Ward & Co., Inc. **254 NLRB No. 102**

(E who held investigatory meeting with Ees and refused to allow them to have U representative present while he questioned them regarding stolen merchandise and cash violated Act; moreover, waiver Ees signed at beginning of interview, agreeing to be interviewed and acknowledging that they were free to leave at anytime does not constitute waiver of *Weingarten* rights where request for U representation made subsequent to signing)

Montgomery Ward & Co., Inc. **254 NLRB No. 102**

(waiver to be effective must specifically waive right to U representation)

Prudential Insurance Company of America **254 NLRB No. 020**

(contract provision that *neither U nor its members shall interfere with E's right to interview Ee with respect to any phase of his work w/o presence of grievance committee* held not waiver of *Weingarten* rights)

General Motors Corporation **251 NLRB No. 121**

(E proceeding with interview after Ee requested U representation interfered with Ee's *Weingarten* rights; no voluntary waiver of these rights occurred where Ee was constrained to respond to E's inquiries)

Prudential Insurance Company of America **251 NLRB No. 213**

(where contract provision which waived unit Ees right to *Weingarten* representation had been in contract since 19 years prior to that decision and U has consistently taken position that it was not waiving its rights, provision is not waiver of those rights)

Airco Alloys, a Division of Airco, Inc. **249 NLRB No. 081**

(*Weingarten* rights not waived where U agreed that probationary Ee could be discharged at sole discretion of E since probationary Ees have all rights of Ees under Act)

Continental Air Transport Co., Inc. **JD-125-81**

(language in contract directed to grievance and arbitration procedure which excluded from that procedure discharge of probationary Ees did not waive Ee's right of U representative; type of interview held with Ee was not part of grievance procedure, and *obligations imposed by Weingarten class of cases are not imposed as part of duty imposed by Section 8(a)(5) in light of Sections 8(d) and 9(a) to bargain about grievance*)

Prudential Insurance Company of America v. N.L.R.B. **661 F.2d 398 (C.A. 5, Nov. 1981)**

(right to U representation at investigatory interview effectively waived in agreement between insurance company and U by provision *neither U nor its members shall interfere with right of E to interview any agent with respect to any phase of his work w/o grievance committee being present* notwithstanding contention that waiver not clear and unmistakable, since it referred to grievance committee rather than U representative, right not focused on during negotiations, and provision predated Weingarten, where E had recognized grievance committee as essentially same as U representative)

Prudential Insurance Company of America v. N.L.R.B. **661 F.2d 398 (C.A. 5, Nov. 1981)**

(since right to U representation at investigatory interview only inheres at Ee's request, Ee's silence can be effective waiver of right)

Super Valu Xenia, a Division of Super Valu Stores, Inc. v. N.L.R.B. **627 F.2d 13 (C.A. 6, 1980)**

(ct held contrary to Bd that Ee during disciplinary interview waived any right to U representation when Ee decided to proceed with meeting w/o U stewards present)

N.L.R.B. v. Illinois Bell Telephone Company **674 F.2d 618 (C.A. 7, Mar. 1982)**

(Ee found not to have waived her right to have U representative present at investigatory interview, where after being informed U steward that she requested was not on premises she was not informed that she might terminate interview or suspend it until U officer could be present)

8799 CONTRACTUAL RIGHTS OR BENEFITS

Saint Marys Hospital **260 NLRB No. 178**

(Us waived right to reopen contract and bargain over dental plan by discussion of formal proposal concerning dental care during negotiations though specifics of plan later adopted for nonbargaining unit Ees were not discussed, and elimination of this proposal from final agreement as this was conscious relinquishment of proposal for dental plan in contracts)

Tenneco Oil Company **260 NLRB No. 062**

(E's contention that right of Ees who are or disabled at onset of strike to refrain from declaring their position on strike while medically excused, thus not becoming strikers and losing right to contractual accident and sick benefits, was waived by U's request for reopening of contract and strike pursuant to reopener clause, rejected, since requirement that any waiver of protected right must be clear and explicit not met)

Walker Die Casting, Inc. **255 NLRB No. 034**

(instituting minimum wage rates higher than offered U, violative as U did not waive its bargaining rights over minimum rates by permitting rates above contract rate during prior contract term)

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **263 NLRB No. 096**

(waiver over particular subject matter must be shown to be clear and unmistakable; in absence of explicit waiver language in contract, Bd requires probative extrinsic evidence that parties intended waiver)

Pacemaker Yacht Co., A Division of Mission Marine, Inc. **263 NLRB No. 096**

(U cannot waive Ees' right to strike over issue of medical payments from U fund to insurance carrier by *ad hoc* statements of purported intent of collective bargaining agreement in view of essentially conflicting interests of U and Ees regarding Fund)

Exxon Company, U.S.A. **263 NLRB No. 027**

(failure of E to demand bargaining over U's unilateral change by requiring nonU Ees to pay service fee for U's administration of health insurance plan held not waiver, where U gave no notice of change and where both E and U considered that service fee was intra-U dispute)

Exxon Company, U.S.A. **263 NLRB No. 027**

(U did not waive right to bargain over E's unilateral charge by allowing nonU Ees to participate in medical insurance plan formerly available to nonunit Ees, notwithstanding E's action was in response to Ee protest over U's unilateral action in charging service fee to nonU Ees for participating in contractually agreed-upon U medical plan)

ITT McDonnel and Miller, A Unit of Fluid Handling Division of International Telephone and Telegraph Corp. **JD-337-82**

(in deferring to arbitration alleged unlawful prohibition against posting of grievances on E's bulletin boards made available to U under contract, ALJ rejected GC's contention that right to post grievances exists under contract's provision for U posting, and that there was no evidence U expressly waived its right to post grievances; use of E's bulletin boards is not a statutory right, and if, as GC alleges, right herein is derived from contract, it is incongruous to place any significance on lack of evidence that one party waived a right whose very existence is at issue)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**

(Bd analyzes language of collective bargaining agreement and factual circumstances of labor controversy to determine whether U has waived right to engage in sympathy strikes; contract need not explicitly prohibit sympathy strikes to show intent to waive right to engage in such activity)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1363 (C.A. 9, Jun 1981)**

(U does not necessarily waive right by failing to negotiate contractual confirmation and silence is bargaining agreement cannot be considered to be waiver even in light of bargaining history; failure to obtain contractual confirmation of right is evidence of *waiver only* if it shows that U thought right had been waived by other provisions of contract and sought to regain right)

787 ESTOPPEL

2000 ELEMENTS OF ESTOPPEL

Knapp-Sherrill Company **265 NLRB No. 060**
(E estopped from challenging procedures employed in merger of two local U's two years after it took place where it satisfied all elements of estoppel—knowledge, intent, mistaken belief and detrimental reliance; had knowledge of U merger, was aware it had right to refuse to recognize it as successor, and after merger E dealt with successor as its Ees' bargaining representative including forwarding dues payments, adjusting grievances, and bargaining over terms of proposed midterm wage reopener, and local relied on E's business as usual approach to its detriment when it took no further action to establish its status as collective-bargaining representative)

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**

2033 INTENTIONALLY CAUSING PARTY TO BELIEVE FACTS TO BE OTHER THAN WHAT THEY REALLY ARE

F.M.L. Supply, Inc. **258 NLRB No. 083**
(Bd does not refuse to invoke remedies where Respondent's concealment of conduct injures parties entitled to protection of Act; Respondent estopped from denying consciously deceptive conduct (appearing to be party to successive U contracts) over long period of time)

F.M.L. Supply, Inc. **258 NLRB No. 083**
(notwithstanding that E did not have signed contract with U, E was estopped from denying it was bound by residential and commercial agreements between multiE group, of which E was not member, and U, since E held itself out to its Ees under U contract by hiring through U hiring hall and making payments into various U trust funds; E's conduct was consciously deceptive (to its Ees and U) over long period and manifest desire to take advantage of U's miscalculation concerning existence of contract)

Pacific Intercom Co. **255 NLRB No. 041**
(violation, where E, which had had succession of previous agreements with U entered into 8(f) agreement with U which matured into full bargaining relationship when majority of Ees in unit joined U, embarked on long journey of unlawful conduct aimed at deceiving U and depriving Ees of fruits of collective bargaining by entering into private arrangement with Ees to pay them less than contractual wage rate, and avoided use of U hiring hall; contention that majority of Ees were coerced by E to join U and E paid U dues, rejected, as such conduct 8(a)(2) violation; therefore E estopped from asserting its own unlawful conduct as defense to U's majority status)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(no equitable estoppel where U did not lack information or means of obtaining information as to status of E's membership in multi-E association but took no action to clarify ambiguity as to such status)

2067 KNOWING OF SUCH BELIEF AND OF POSSIBLE CHANGE IN POSITION IN RELIANCE THEREON, REASONABLE STEPS TO NOTIFY PARTY OF TRUE STATE OF FACTS WERE NOT TAKEN

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(no equitable estoppel where no detrimental reliance by U on E's conduct suggesting membership in multi-E association)

4000 TYPES OF ESTOPPEL

4025 ESTOPPEL BY SILENCE

Post Manufacturing Company **261 NLRB No. 036**
(U not estopped from singling out layoff of one Ee when Ee was laid off in middle of series of layoffs and U had never requested that E bargain about previous layoffs, since legality of other layoffs was not at issue in instant case; E has generally refused to recognize or bargain with U until ct of appeals enforced prior Bd Order directing E to do so)

Bristol Spring Manufacturing Company **267 NLRB No. 034**
(respondent held estopped, on remand from court to determine purpose and effect of specific U conduct, to assert that local U had no authority to act for certified representative at such late date in proceedings)

4037 EQUITABLE ESTOPPEL

F.M.L. Supply, Inc. **258 NLRB No. 083**
(notwithstanding that E did not have signed contract with U, E was estopped from denying it was bound by residential and commercial agreements between multiE group, of which E was not member, and U, since E held itself out to its Ees under U contract by hiring through U hiring hall and making payments into various U trust funds; E's conduct was consciously deceptive (to its Ees and U) over long period and manifest desire to take advantage of U's miscalculation concerning existence of contract)

Seligman and Associates, Inc. v. N.L.R.B. **639 F.2d 307 (C.A. 6, 1981)**
(ct held prior withdrawal of same charge did not constitute waiver thereof and equitable doctrine of estoppel not applicable to preclude discriminatees from filing charge a second time)

N.L.R.B. v. J. D. Industrial Insulation Company, Inc. **615 F.2d 1289 (C.A. 10, 1980)**
(no equitable estoppel where U did not lack information or means to obtain information as to E's membership status in muiti-E association, and there was detrimental reliance by U on E conduct suggesting membership)

4075 ESTOPPEL BY MISREPRESENTATION THAT ONE WHO HAS NO AUTHORITY TO ACT HAS SUCH AUTHORITY (SEE ALSO AGENCY 712-5028)

Cabinet Shop & Supply Co., Inc. **JD-(SF)-262-82**
(E estopped from challenging Ee's authority to execute contract with U where both parties performed under the agreement)

6000 ESTOPPEL OF BOARD

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's contention that estoppel exists as result of actions by Bd, GC, and U whereby E was deprived of right to hearing on U's objections to election, and hearing on complaint issued against U and, consequently, GC and U do not seek bargaining order with *clean hands*, rejected, where there was no impropriety on U's part or any irregularity in actions of Bd or GC, E did not show it had any *right* to hearing on objections or to require that GC not settle complaint against U, and this is not proper forum for assessing remedy against U)

6001 GENERALLY

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**
(while agency is free to change its policies as it determines are in public interest, it must supply reasoned analysis indicating why its departure from precedent)

6005 ADVICE OF BOARD AGENT

Vanity Fair Mills, Inc., Clarke Mills Division **296 NLRB No. 168**
(ptn improperly dismissed, notwithstanding filed w/i insulated period of 60 days prior to third anniversary of contract for more than three years and that prior to filing of ptn in proper form parties had executed new contract, where petitioner acted on advice of Regional Office which was unaware of and did not attempt to find out origination date and duration of contract)

6012 GENERAL COUNSEL'S RULINGS OR OTHER ACTIONS

United Food and Commercial Workers International Union, Local No. 576, AFL-CIO **282 NLRB No. 196**
(U not permitted to present evidence in proceeding alleging violation of Section 8(b)(7)(c) regarding possibility of alter ego, joint E, or successorship

6012—Cont.

relationship between picketed E with which E had longstanding relationship, thus rendering picketing for continued rather than for initial recognition, where same theories had been rejected by GC in refusing to issue complaint in prior ULP case; final statutory authority to decide whether U should obtain hearing on its charges rests with GC; *Bd will not act as forum that GC, for reasons satisfactory to himself has thought it proper to dismiss*)

United Food and Commercial Workers International Union Local No. 576, AFL-CIO v. N.L.R.B. **678 F.2d 306 (C.A.D.C., Apr. 1982)**
(where Bd erred in applying *Times Square* doctrine by refusing to entertain U's defense based upon evidence that GC had previously considered in refusing to issue complaint, ct directed Bd to reopen 8(b)(7)(C) proceeding to hear evidence on U's defense that picketed E was in reality alter ego of, joint E with, or successor of another E with whom U had contract covering Ees in question; such action would not constitute interference by Bd with Gc's *final authority* under Sec. 3(d); moreover, charged party has right to full hearing on its defense)

6050 PRIOR COMPLAINT PROCEEDING

6050-5800 Effect of settlement agreement

Anthur Briggs, Inc. **265 NLRB No. 038**
(E not entitled to rely on informal settlement agreement entered into after C issued on its charge against U of strike misconduct which inflicted damage to E's property to justify its refusal to reinstate striker who inflicted damage, since collateral estoppel did not apply where E consented to agreement and facts not adjudicated; further, in absence of final order burden did not shift to GC to establish striker's right to reinstatement by virtue of Bd's seemingly inconsistent positions on issuance of two complaints)

Southwestern Bell Telephone Company v. N.L.R.B. **667 F.2d 470 (C.A. 5, Feb. 1982)**
(Bd is bound by settlement agreements that it participates in and approves where parties abide by agreements)

6075 RETROACTIVE APPLICATION OF CHANGED POLICY

6075-6700 Proper

Kahn's Auto Company, Division of Consolidated Foods Co. **256 NLRB No. 147**
(mtn for reconsideration denied where mtn raised no substantial issue not considered by Bd in its original decision and sufficient evidence was adduced at hearing to allow proper application of test established in *Kraft Foods, Inc.*, 251 NLRB No. 6 (1980) determining when reinstatement was warranted to remedy violation of *Weingarten* rights)

6094 COLLATERAL COURT LITIGATION

Anthur Briggs, Inc. **265 NLRB No. 038**
(acquittal in criminal trial of act which is contended herein to be misconduct of striker justifying refusal to reinstate, cannot be given collateral estoppel effect in this proceeding)

Penntech Papers, Inc.; etc. **263 NLRB No. 033**
(Bd holding that three corporations were single E not precluded by principles of res judicata or collateral estoppel based on outcome in prior decisions of federal cts in suit under Section 301 of Act by Us to compel arbitration under bargaining agreement in view of lack of identity of either cause of action or issues involved, since in ct suit issue was whether, under Federal common law, parent corporations bound by bargaining agreements of subsidiaries, and herein issue is whether three corporations single integrated enterprise so as to constitute single E under Bd criteria)

8000 ESTOPPEL OF PARTIES

Kaiser Steel Corp. v. Mullins et al. **455 U.S. 72 (U.S. SCt. Jan. 1981)**
(*rules of estoppel will not be permitted to thwart the purposes of statutes of the U.S.* even if petitioner waited over long to assert defense of illegality (waiting to after contract expired))

Knapp-Sherrill Company **263 NLRB No. 060**
(E estopped from challenging procedures employed in merger of two local U's two years after it took place where it satisfied all elements of estoppel—knowledge, intent, mistaken belief and detrimental reliance; had knowledge of U merger, was aware it had right to refuse to recognize it as successor, and after merger E dealt with successor as its Ees' bargaining representative including forwarding dues payments, adjusting grievances, and bargaining over terms of proposed midterm wage reopener, and local relied on E's business as usual approach to its detriment when it took no further action to establish its status as collective-bargaining representative)

Advanced Mining Group, Div. of Republic Corp., Lucerne Facility **260 NLRB No. 073**
(E estopped from denying responsibility for coercive interrogation and threats made by anti-U Ee group where E, by its conduct, led Ees to believe that anti-U group spoke for and with approval of E)

Navajo Freight Lines, Inc. **254 NLRB No. 166**
(E's refusal to negotiate area practices agreement on ground that U's acceptance of E association agreement constituted waiver of negotiations for area practices agreement and was bar to and estopped ULP charges, unlawful, in view of circumstances herein, which included fact that U members voted to accept E association's negotiated settlement agreement rather than enter into separate negotiations with E, which was option contained in settlement agreement, and such agreement did not support argument that U waived right to negotiate for area practices agreement or to file ULP charges regarding E's refusal to do so)

Bay Medical Center, Inc. **252 NLRB No. 159**
(where E had consistently refused to bargain with charging party on basis that unit was inappropriate rather than on basis charging party lacked authority to demand bargaining and had admitted identity of bargaining agent in answer, E is estopped to assert in exceptions to ALJ's decision that charging party lacked authority to demand bargaining)

EMR Photoelectric, A Division of Sangamo Weston Inc. **251 NLRB No. 214**
(E's contention that estoppel exists as result of actions by Bd, GC, and U whereby E was deprived of right to hearing on U's objections to election, and hearing on complaint issued against U and, consequently, GC and U do not seek bargaining order with *clean hands*, rejected, where there was no impropriety on U's part or any irregularity in actions of Bd or GC, E did not show it had any *right* to hearing on objections or to require that GC not settle complaint against U, and this is not proper forum for assessing remedy against U)

Knit Tuck Welt Ltd. **JD-(NY)-42-81**
(adverse determination against alleged discriminatee by unemployment compensation board not collateral estoppel against party charging unlawful discharge; Ee was not a party to unemployment compensation proceeding which involved different definitions, policies and purposes than those of NLRA)

N.L.R.B. v. Welfed Catfish, Inc. **674 F.2d 1076 (C.A. 5, May 1982)**
(E is estopped from challenging election on ground that pro-U conduct of one of its supervisors influenced outcome of election where conduct occurred one month prior to election and E made no effort to communicate to Ees that it disavowed supervisor's conduct, though E did tell supervisor to stop such conduct and he complied and notwithstanding U knew about pro-U conduct and did nothing)

Arco Electric Company v. N.L.R.B. **618 F.2d 698 (C.A. 10, 1980)**
(estoppel against E's repudiating new multi-E bargaining agreement, created, where E did not notify U of intent not to renew bargaining obligation under expired contract but rather, for 15 months after effective date of new agreement, availed itself of benefits of U hiring hall for referral of Ees, and implemented terms of the new contract, including paying contract wage scale, making deductions, and remitting payments, to various trust funds)

800 COURT PROCEEDINGS

817 PROCEEDINGS FOR ENFORCEMENT OR REVIEW OF BOARD DECISIONS AND ORDERS

0100 GENERALLY

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession 682 F.2d 72 (C.A. 3, June 1982)

(in denying Bd's application for enforcement of its summary judgment in 8(a)(5) proceeding against debtor-in-possession who had obtained bankruptcy ct's permission to reject bargaining agreement, which was affirmed by district ct, ct, upon remanding to cts below, emphasized that application for enforcement was not entered after reception of evidence by ALJ and Bd review of record, and held that denial of enforcement does not preclude Bd from processing charges through full hearing governed by bankruptcy ct's determination on remand and guided by ct's views expressed herein)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)

(for purposes of affirming no less than reversing its orders, appellate ct cannot intrude upon the domain which Congress has exclusively entrusted to administrative agency)

0175 NATURE OF PROCEEDINGS UNDER 10(e) AND (f)

Service Employees International Union Local 250, AFL-CIO v. N.L.R.B. 640 F.2d 1042 (C.A. 9, 1981)

(ct agreed with Bd that it lacked jurisdiction to rule on Section 8(a)(3) charge where prior ct had determined that E had not committed ULPs under Sections 8(a)(1), (4) and (5) but deemed it unnecessary to give consideration to 8(a)(3) charge and did not remand it to Bd; prior ct's opinion was final under Sections 10(e) and (f), and barred further proceedings arising from same transaction under doctrine of res judicata)

0500 JURISDICTION

0501 GENERALLY

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(--federal cts may decide labor law questions that emerge as collateral issues in suits brought under independent federal remedies, including the anti-trust laws)

Blue Cross and Blue Shield of Michigan, a non-profit Michigan Corporation v. N.L.R.B. 609 F.2d 240 (C.A. 6, 1979)

(statutorily-created administrative and legal remedies, not eschewed in favor of immediate review by district court, even where party presents claim of Constitutional violations; as general rule, parties are required to employ statutorily provided administrative and legal remedies before seeking general equitable relief)

Rockford Redi-Mix Co., Inc. v. Glen Zipp, RD 632 F.2d 30 (C.A. 7, 1980)

(contrary to E's contention that appeal herein may be treated as ptn for review of final Bd order, ct held jurisdiction under 10(b) may not be obtained on appeal from district ct holding that it had no jurisdiction to review Bd decision denying certification to expedited election conducted pursuant to 8(b)(7)(C) during period in which challenges to validity of election were being resolved)

Hall of Mississippi, Inc. v. N.L.R.B. No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))

(district ct w/o jurisdiction to hear E's due process claims against Bd discovery rules; proper forum for review is ct of appeals)

0550 ORDER REVIEWED MUST BE 'FINAL ORDER' UNDER SECTION 10(c)

0550-0100 Generally

Blue Cross and Blue Shield of Michigan, a non-profit Michigan Corporation v. N.L.R.B. 609 F.2d 240 (C.A. 6, 1979)

(district ct's decision to exercise jurisdiction over hearing officer's decision to close preelection hearing, held erroneous, since Bd decisions in U certification proceedings are not directly reviewable in cts; such decisions are normally reviewable only where dispute concerning correctness of certification eventuates in finding by Bd that ULP has been committed)

0550-1300 Not final orders

Linda Willenbrink, et al. v. N.L.R.B. 612 F.2d 1086 (C.A. 8)

(Bd determinations under sec. 9 in certification proceeding are not directly reviewable under sec. 10(f) as final orders of Bd and orders concerning representation matters are only reviewable when representation proceedings are drawn into question by ptn for enforcement or review of Bd order made under sec. 10(c) to restrain ULP)

0550-3125 Dismissal of representation case

Transportation Enterprises, Inc. v. N.L.R.B. 630 F.2d 421 (C.A. 5, 1980)

(decisions of RD, if not set aside by Bd,are entitled to same weight as determinations by Bd; RD's opinion *final* determination binding parties where party with prerogative to appeal to Bd did not do so)

0550-3337 Direction of election or certification

Hall-Brooke Hospital, a division of Hall-Brooke Foundation, Inc. 645 F.2d 158 (C.A. 2, Mar 31, 1981)

(certification decision under Secs. 10(e) and 10(f))

Smitty's Super Markets, Inc., a Missouri Corporation v. N.L.R.B. No. 80-3019-CV-S, June 11, 1980, DC W.D. MO (unreported)

(District Ct lacked jurisdiction to review Bd's refusal to hold election as scheduled where 8(b)(7)(c) charges pending alleging picketing for R for more than 30 days w/o filing election ptn, since jurisdiction to review NLRB decisions lies in Cts of Appeals with narrow exception of cases where Bd is alleged to have exceeded authority)

0550-3375 Refusal to issue complaint

George Banta Company, Inc., Banta Division v. N.L.R.B. 626 F.2d 354 (C.A. 4, July 1980)

(ct lacks jurisdiction over GC's decision to withdraw C and not prosecute further charge in C; controlling factor is that character of GC's decision is fundamentally prosecutorial and is not final order)

Pacific Southwest Airlines v. N.L.R.B. 611 F.2d 1309 (C.A. 9, Jan. 1980)

(GC's decision not to issue C is not subject to review by Ct of appeals whether or not GC's decision considered *final order* or not as Section 3(d) of Act provides that GC has final authority on behalf of Bd in investigation of charges and issuance of C)

0550-3390 Closing of preelection hearing

Blue Cross and Blue Shield of Michigan, a non-profit Michigan Corporation v. N.L.R.B. 609 F.2d 240 (C.A. 6, 1979)

(district ct's exercise of jurisdiction, assertedly on basis of *Leedom v. Kyne*, 358 U.S. 184, to review hearing officer's decision to close preelection hearing, held unwarranted, since the review preceded Bd's Section 10 orders; *Leedom v. Kyne* is not authority in instant case for avoidance of statutory requirement that Bd proceedings be reviewed by ct of appeals after *final order* by Bd)

0550-3395 Determination in 10(k) proceeding

Automobile Workers (UAW) and its Local 1519 v. N.L.R.B. 619 F.2d 580 (C.A. 6, Apr. 1980)

Foley-Wismer & Becker and Shurtleff & Andrews Construction v. N.L.R.B. 695 F.2d 424 (C.A. 9, Dec. 1982)

(Bd's ptn to ct for original en banc hearing, asserting that ct lacks appellate jurisdiction because Bd's order quashing 10(k) hearing is not final order subject to review by ct as sought by Es herein, and that prior precedent to the contrary should be overruled, denied, since no judge requested a vote on

0550-3395—Cont.

the original en banc hearing suggestion, and thus the suggestion was deemed denied)

Foley-Wismer & Becker and Shartlaff & Andrews Construction v. N.L.R.B. **695 F.2d 424 (C.A. 9, Dec. 1982)**
(after argument and panel's request for en banc review to determine whether Bd order quashing 10(k) hearing was reviewable and whether *Waterways Terminal* decision to that effect should be overruled, ct en banc determined that such quashing order was reviewable and case was accordingly returned to three-judge panel for decision on merits)

Foley-Wismer & Becker and Shartlaff & Andrews Constructors v. N.L.R.B. **682 F.2d 770 (C.A. 9, July 1982)**
(Bd order quashing notice of 10(k) hearing held appealable since, in contrast to 10(k) work assignment award whereby machinery for resolving dispute has been set in motion, such machinery is taken out of operation by quashing notice of 10(k) hearing; to allow appeals to be taken from 10(k) awards would involve cts in direct interference with normal operation of 8(b)(4)(D) machinery, whereas no such interruption is entailed when appeals are allowed from orders quashing 10(k) hearing inasmuch as it is not possible to interrupt process which has already come to an end)

Foley-Wismer & Becker and Shartlaff & Andrews Constructors v. N.L.R.B. **682 F.2d 770 (C.A. 9, July 1982)**
(Bd order quashing of 10(k) hearing held appealable sice distinction between 10(k) awards and quashing 10(k) hearings is that in latter case disputing U can continue picketing w/o engaging in ULP and picketed E cannot secure hearing on propriety of picketing, and unless cts can review Bd decision to quash 10(k) hearing, there is likelihood of no judicial review; this contrasts with chance of repetitive review should 10(k) awards be made reviewable when cts would have to review both award and ULP determination, contrary to policy against premature and piecemeal appellate proceedings)

Foley-Wismer & Becker and Shartlaff & Andrews Constructors v. N.L.R.B. **682 F.2d 770 (C.A. 9, July 1982)**
(ct declined to overrule its decision in *Waterway Terminals* case that Bd order quashing 10(k) hearing is appealable; SCt's decision in *ITT v. Electrical Workers*, in which SCt focused on idea that 10(k) award is not a final disposition and therefore hearing out of which award originates is not an adjudication, did not explicitly address situation herein where, instead of issuing 10(k) award, Bd quashed notice of of 10(k) hearing; and in view of substantive differences between 10(k) awards and quashing of 10(k) hearing, *ITT* provides no basis for overruling *Waterway*)

0550-6700 FINAL ORDERS

Pacific Southwest Airlines v. N.L.R.B. **611 F.2d 1309 (C.A. 9, Jan. 1980)**
(GC's decision not to issue C is not subject to review by Ct of appeals whether or not GC's decision considered *final order* or not as Section 3(d) of Act provides that GC has final authority on behalf of Bd in investigation of charges and issuance of C)

0550-6775 Order quashing notice of Sec. 10(k) hearing

Foley-Wismer & Becker and Shartlaff & Andrews Constructors v. N.L.R.B. **682 F.2d 770 (C.A. 9, July 1982)**
(Bd order quashing notice of 10(k) hearing held appealable since, in contrast to 10(k) work assignment award whereby machinery for resolving dispute has been set in motion, such machinery is taken out of operation by quashing notice of 10(k) hearing; to allow appeals to be taken from 10(k) awards would involve cts in direct interference with normal operation of 8(b)(4)(D) machinery, whereas no such interruption is entailed when appeals are allowed from orders quashing 10(k) hearing inasmuch as it is not possible to interrupt process which has already come to an end)

Foley-Wismer & Becker and Shartlaff & Andrews Constructors v. N.L.R.B. **682 F.2d 770 (C.A. 9, July 1982)**
(Bd order quashing of 10(k) hearing held appealable sice distinction between 10(k) awards and quashing 10(k) hearings is that in latter case disputing U can continue picketing w/o engaging in ULP and picketed E cannot secure hearing on propriety of picketing, and unless cts can review Bd decision to quash 10(k) hearing, there is likelihood of no judicial review; this contrasts with chance of repetitive review should 10(k) awards be made reviewable when cts would have to review both award and ULP determination, contrary to policy against premature and piecemeal appellate proceedings)

Foley-Wismer & Becker and Shartlaff & Andrews Constructors v. N.L.R.B. **682 F.2d 770 (C.A. 9, July 1982)**
(ct declined to overrule its decision in *Waterway Terminals* case that Bd order quashing 10(k) hearing is appealable; SCt's decision in *ITT v. Electrical Workers*, in which SCt focused on idea that 10(k) award is not a final disposition and therefore hearing out of which award originates is not an adjudication, did not explicitly address situation herein where, instead of issuing 10(k) award, Bd quashed notice of of 10(k) hearing; and in view of substantive differences between 10(k) awards and quashing of 10(k) hearing, *ITT* provides no basis for overruling *Waterway*)

Foley-Wismer & Becker and Shartlaff & Andrews Constructors v. N.L.R.B. **682 F.2d 770 (C.A. 9, July 1982)**
(in holding that Bd order quashing notice of 10(k) hearing is appealable, ct declined to rely on reasoning that such order should be treated like a refusal of GC to issue complaint on ULP charge, which is not appealable; differences between those situations have been spelled out previously by ct and stand in need of no further elaboration herein)

Foley-Wismer & Becker and Shartlaff & Andrews Constructors v. N.L.R.B. **682 F.2d 770 (C.A. 9, July 1982)**
(in declining to overrule its decision in *Waterway Terminals* case that Bd order quashing notice of 10(k) hearing is appealable, ct declined to give deference to other circuit cts which have concluded that such order is not appealable; although ct's primary duty must always be to apply the law as it understands Congress to have written it, there is much to be said for view that *a sister circuit's reasoned decision deserves great weight and precedential value*; however, reasoned decision of this ct is just as deserving of deference, and *Waterway* is such a decision)

0575 STANDING AS 'PERSON AGGRIEVED' UNDER SECTION 10(f)

0575-0100 Generally

Industrial Personnel Corp. v. N.L.R.B. **657 F.2d 226 (C.A. 8, 1981)**
(although alleged ULP occurred w/i jurisdiction of another circuit ct, ct herein noted that parties petitioning for review of Bd's order in instant case took advantage of Sec. 10(f) and chose instant ct which had issued decision in prior case favorable to petitioning parties' position)

Linda Willenbrink, et al. v. N.L.R.B. **612 F.2d 1088 (C.A. 8)**
(Bd determinations under sec. 9 in certification proceeding are not *directly* reviewable under sec. 10(f) as final orders of Bd and orders concerning representation matters are only reviewable when representation proceedings are drawn into question by ptn for enforcement or review of Bd order made under sec. 10(c) to restrain ULP)

Linda Willenbrink, et al. v. N.L.R.B. **612 F.2d 1088 (C.A. 8)**
(ptn for review dismissed since ct lacked jurisdiction to review matter where ct had remanded case to Bd and cannot regain it until proper appeal is perfected by person with standing under Sec. 10(f) of Act; petitioners herein have no such standing since harm they urge relates to Bd's reinstatement of strikers allegedly to block decertification proceeding and therefore such charge goes to Bd certification action not related to any pending ULP charge over which ct has jurisdiction so as to be reviewable under 10(f))

0900 VENUE

0925 APPROPRIATE CIRCUIT OR DISTRICT

Liquor Salesmen's Union Local 2 of The State of New York, Distillery Workers v. N.L.R.B. **664 F.2d 1200 (C.A.D.C., Mar. 1981)**
(ct disapproved of *unseemly practice* of use of 28 U.S.C. Sec. 2112(a) as a tool by parties to forum-shop among circuits, and stated its intention to utilize its statutory and inherent authority to curb such abuse)

Liquor Salesmen's Union Local 2 of The State of New York, Distillery Workers v. N.L.R.B. **664 F.2d 1200 (C.A.D.C., Mar. 1981)**
(unlike Sec. 10(e), which authorizes Bd to seek enforcement only in circuit in which ULPs allegedly took place, Sec. 10(f) places D.C. Ct of Appeals on a par with cts of appeals for circuits in which alleged ULPs occurred; by expressly acknowledging D.C. Ct of Appeals as alternative forum, Congress apparently sought to assist aggrieved losing party desiring review, but no such assistance is due a person who has substantially prevailed before Bd)

Liquor Salesmen's Union Local 2 of The State of New York, Distillery Workers v. N.L.R.B. **664 F.2d 1200 (C.A.D.C., Mar. 1981)**
(petitioner has standing to appeal Bd order w/i meaning of Sec. 10(f) if there is demonstrated an *adverse effect* on petitioner; however, it is not clear how petitioner, which received all the relief it requested from Bd, was actually affected by Bd's refusal to rule specifically on U's mtn for summary judgment, which refusal does not even amount to a technical aggrievement; while it would have been proper to dismiss U's ptn because U lacked standing to ptn ct for review; ct preferred to follow precedent and transfer ptn to ct wherein E had filed later ptn)

0925-0000 Where 'person' resides

0925-5000—Cont.

Ithaca College v. N.L.R.B. 623 F.2d 224 (C.A. 2, 1980)

0925-6000 Having greatest aggrievement

Ithaca College v. N.L.R.B. 623 F.2d 224 (C.A. 2, 1980)
(venue would most probably lie in circuit where most parties reside and/or where party suffering greatest aggrievement resides)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. 694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)
(ct of first filing by U of ptns for review of Bd order noted that if it were to transfer ptns to circuits in which Es had subsequently filed ptns for review, question of standing would be one for transferee ct, since aggrievement insufficient to warrant respecting petitioner's choice of forum may well be aggrievement sufficient to withstand dismissal; thus, mtns to dismiss are properly referred to transferee ct having venue to decide the question)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. 694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)
(where U was sufficiently aggrieved to withstand transfer of its ptns for review from ct of U's first filing to other circuits in which Es had subsequently filed, and such determination necessarily mandated that mtn to dismiss be denied, ct held merits of mtn to dismiss are properly discussed before mtn to transfer, since any inquiry into sufficiency of U's aggrievement for purposes of determining venue must begin with determining whether alleged aggrievement is even capable of withstanding a mtn to dismiss)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. 694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)
(U held *person aggrieved* w/i meaning of Sec. 10(f) for obtaining ct review of Bd order requiring Es to furnish U with all information requested, except information alleged to be confidential or proprietary, which was relegated to good faith bargaining process; U at least has standing to challenge (1) relegation of contested information to mandatory bargaining which by itself does not ensure its release; (2) refusal of Bd to address merits of disclosure; and (3) denial of relief sought, i.e., immediate release of disputed information, either unconditionally or with Bd-prescribed conditions)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. 694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)
(in finding U had standing as *person aggrieved* to obtain ct review of Bd order requiring Es to furnish U with all information requested, except allegedly confidential or proprietary information, which was relegated to bargaining, ct held that whether Bd has power to balance competing U and E interests prior to bargaining and order release of relevant information, and whether and how Bd should have exercised its power, as opposed to remanding information to bargaining, are questions on merits, answers to which do not negate standing to raise questions)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. 694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)
(in finding U had standing as *person aggrieved* to obtain ct review of Bd order requiring Es to furnish U with all information requested, except allegedly confidential or proprietary information, which was relegated to bargaining, ct held that, if withheld information does indeed concern potential health and safety hazards to Ees, as claimed by U, delay involved herein, consisting of E's resistance to disclosure for close to 5 years, and now Bd's order allowing Es to continue withholding data through more years of bargaining and litigation, is itself additional aggrievement to U)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. 694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)
(U's choice of forum by first filing ptn for review in instant ct, sustained, and Es' mtn for transfer to circuits in which they had filed ptns for review, denied, since U did not fall w/i statutory exception mandating transfer to another circuit when filing party is not aggrieved, where Bd, although granting order requiring E to furnish almost all information requested by U, denied disclosure order against E as to proprietary and confidential information, which cannot be deemed insignificant or inconsequential)

0925-7500 Where 'person' transacts business

S.L. Industries, Inc., and Extruded Products Corporation v. N.L.R.B. 673 F.2d 1 (C.A 1, Feb. 1982)
(appeal of Bd order dismissed for lack of proper venue because E does not transact business in this circuit w/i meaning of Act; Sec. 10(f) of Act provides jurisdiction where person *resides or transacts business* and E's only contacts with this circuit are its purchases and sales to individuals and businesses located here and its *exclusive representation* arrangement with one customer located here are not enough for E has no offices, storage facilities, corporate records or telephone listings and no Ees in any state in circuit)

F. W. Woolworth Co. v. N.L.R.B. 655 F.2d 151 (C.A. 8, 1981)
(jurisdiction appropriately invoked under NLRA Sec. 10(f) in circuit wherein petitioner for review transacts business)

0950 PETITIONS FILED IN MORE THAN ONE CIRCUIT

Liquor Salesmen's Union Local 2 of The State of New York, Distillery Workers v. N.L.R.B. 664 F.2d 1200 (C.A.D.C., Mar. 1981)
(where ptns for review of Bd order have been filed in different circuits, ct of first filing has discretion under 28 U.S.C. Sec. 2112(a) to transfer proceedings to any other ct *for the convenience of the parties in the interest of justice;* in so doing, cts have placed special emphasis on choice of forum of party aggrieved by Bd order, but where both parties are genuinely aggrieved, forum preference persists and E, U, and Bd perceive that ct of first filing will hear case absent good reason to transfer it elsewhere)

Liquor Salesmen's Union Local 2 of The State of New York, Distillery Workers v. N.L.R.B. 664 F.2d 1200 (C.A.D.C., Mar. 1981)
(preference for forum in which first ptn for review is filed is subject to certain exceptions including one where first ptn is filed by party who is not substantially aggrieved or has received substantially all the relief contemplated; moreover, possibility of transfer is reserved for the special case where the *inconsequential* character or the deficiency in findings or relief is established by petitioner's stipulation or other pleadings or representations; and transfer from ct of first filing will be warranted in *special case* for this reason)

Liquor Salesmen's Union Local 2 of The State of New York, Distillery Workers v. N.L.R.B. 664 F.2d 1200 (C.A.D.C., Mar. 1981)
(while it is normally assumed that U first filed ptn for review in ct herein because it was aggrieved, and not for purpose of forum shopping, such first filing will be disregarded if it appears from the insubstantiality of the pleadings that U filed first largely to secure a forum believed favorable to it)

Liquor Salesmen's Union Local 2 of The State of New York, Distillery Workers v. N.L.R.B. 664 F.2d 1200 (C.A.D.C., Mar. 1981)
(petitioner has standing to appeal Bd order w/i meaning of Sec. 10(f) if there is demonstrated an *adverse effect* on petitioner; however, it is not clear how petitioner, which received all the relief it requested from Bd, was actually affected by Bd's refusal to rule specifically on U's mtn for summary judgment, which refusal does not even amount to a technical aggrievement; while it would have been proper to dismiss U's ptn because U lacked standing to ptn ct for review, ct preferred to follow precedent and transfer ptn to ct wherein E had filed later ptn)

Liquor Salesmen's Union Local 2 of The State of New York, Distillery Workers v. N.L.R.B. 664 F.2d 1200 (C.A.D.C., Mar. 1981)
(U's choice of forum by filing first in ct herein is entitled to no weight where U received all the relief it request from Bd; U failed to indicate to ct any additional or different relief Bd or ct can award it; and, if Bd is required, as contended by U, to rule in writing on U's mtn for summary judgment, either by its own regulations or *entire concept* of due process, its failure to do so is harmless error)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. 694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)
(E's contention that U's ptns for review filed in instant ct should be transferred to respective circuits in which Es had subsequently filed ptns on ground that Es were prejudiced because of failure to receive notice of Bd's decision until after U had filed ptns herein and, therefore, U's first filing was ineffective and premature, rejected; ct's prior decision has expressly validated Bd's simultaneous mailing notification procedure and has rejected proposition that one's address or vagaries of postal service can render ptns for review premature for purposes of first filing rule)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. 694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)
(E's mtn to transfer U's first-filed ptn for review from instant ct to respective circuits in which Es had subsequently filed ptns, on ground clerk of ct herein failed to comply with FRAP 15(c) requirement that he serve respondents with copy of ptn, even though Es were mistakenly named as respondents in U's original ptn; Es, as parties to agency proceedings, are not proper respondents to ptn for review and, were not entitled to service; even if Es were so entitled FRAP 3(d) states that failure of clerk to serve notice shall not affect validity of appeal)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. 694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)
(Es' contention that U's failure to serve copy of ptns for review on Es as required by FRAP 15(c) is ground for dismissal, or alternatively, for invalidating U's first-filing of ptn herein and transferring to circuits in which Es had subsequently filed, rejected; noncompliance with 15(c) is defect that is *not jurisdictional in nature* and thus not determinative of first-filing priority; and 15(c) has no relation to considerations of transfer since, even if U's ptn were hand-delivered to E, E would not have been able to effect prior or contemporaneous filing of ptn herein)

0950—Cont.

Oil Workers, Local Union No. 6-418 v. N.L.R.B. **694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)**

(ct held U's failure to serve copy of ptns for review on Es as required by FRAP 15(c) did not deprive U of its victory in venue race to instant ct, rejecting Es' claim that U's noncompliance with rule 15(c) invalidated U's first-filing of ptns herein and required transfer to circuits in which Es, who had also intervened herein, had filed ptns; under circumstances herein, U's failure to comply with rule in no way prejudiced Es' right to appeal w/i time allowed by law or to protect their interests by intervention in instant ct)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. **694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)**

(U's choice of forum by first filing ptn for review in instant ct, sustained, and Es' mtn for transfer to circuits in which they had filed ptns for review, denied, since U did not fall w/i statutory exception mandating transfer to another circuit when filing party is not aggrieved, where Bd, although granting order requiring E to furnish almost all information requested by U, denied disclosure order against E as to proprietary and confidential information, which cannot be deemed insignificant or inconsequential)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. **694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)**

(U's choice of forum by first filing ptn for review in D.C. Circuit Ct herein, sustained, and Es' mtn for transfer to circuits in which they had filed ptns, denied, since statutory provision *for the convenience of the parties in the interest of justice* is served by retention of ptns herein, where both Bd and U counsel are w/i ct's venue, impact of litigation goes beyond interests of one region, Bd consolidated cases involving geographically widely separated plants, and Congress has specifically placed D.C. Circuit Ct on par with circuits in which alleged ULPs occurred)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. **694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)**

(U's choice of forum by first filing ptn for review in instant ct, sustained , and Es' mtn for transfer to circuits in which they had filed ptns for review, denied, where there was currently pending in this ct ptn for review of Bd's decision in another case that was consolidated with 2 cases herein; such decision involves substantially same issues as herein, and there is also Bd ptn for enforcement of third decision pending in this ct; hence, these cases are best heard in single proceeding in interests of uniformity and judicial efficiency)

0975 MOTIONS FOR TRANSFER TO ANOTHER COURT

S.L. Industries, Inc., and Extruded Products Corporation v. N.L.R.B. **673 F.2d 1 (C.A 1, Feb. 1982)**

(where no petition filed seeking transfer of venue, ct does not have power to transfer under terms of Sec. 2112(a) of Judicial Code; further no factors present in case point to perferable circuit, therefore case dismissed for lack of venue)

Liquor Salesmen's Union Local 2 of The State of New York, Distillery Workers v. N.L.R.B. **664 F.2d 1200 (C.A.D.C., Mar. 1981)**

(ct of first filing, which has discretion when presented with mtn to transfer brought under 28 U.S.C. Sec. 2112(a), takes into consideration location of counsel, location of parties, whether impact of litigation is local to one region, whether one circuit is more familiar with the same parties and issues than other cts, caseloads of respective cts, and whether there is but one truly aggrieved party)

Liquor Salesmen's Union Local 2 of The State of New York, Distillery Workers v. N.L.R.B. **664 F.2d 1200 (C.A.D.C., Mar. 1981)**

(although U first filed ptn for review in ct herein, ct transferred case to ct in which E later filed ptn, where E, unlike U, is truly aggrieved party and properly filed ptn in transferee ct since both E and U are located in area w/i such ct's jurisdiction wherein alleged ULPs took place, and law firms engaged by both parties are also located there, and convenience of parties, and more importantly convenience of counsel, are relevant factors in deciding whether to transfer; moreover, Bd itself suggested case be transferred to transferee ct)

Liquor Salesmen's Union Local 2 of The State of New York, Distillery Workers v. N.L.R.B. **664 F.2d 1200 (C.A.D.C., Mar. 1981)**

(although U first filed ptn for review in ct herein, ct transferred case to ct in which E later filed ptn, where U received all relief it requested from Bd, it was not substantially aggrieved by Bd's denial of its request for attorney's fees; U's aggrievement relates to no part of underlying dispute between E and U; Bd grants attorney's fees only in rare cases, and cts rarely reverse Bd's denial of such fees; and Bd's imposition of remedies is matter of administrative competence, subject to very limited judicial review)

Liquor Salesmen's Union Local 2 of The State of New York, Distillery Workers v. N.L.R.B. **664 F.2d 1200 (C.A.D.C., Mar. 1981)**

(while ct of first filing, as herein, should not delve into merits of underlying dispute lest there be an appeal w/i an appeal, ct held parties' moving papers showed that filing U's protest of routine denial of counsel fees was ancillary to dispute; in such circumstances, ct of first filing can subordinate forum preference of U which substantially prevailed before Bd and sought review only of Bd's refusal to grant it ancillary relief; and ct may exercise discretion under 28 U.S.C. Sec. 2112 to retain case or transfer it to appropriate circuit)

Liquor Salesmen's Union Local 2 of The State of New York, Distillery Workers v. N.L.R.B. **664 F.2d 1200 (C.A.D.C., Mar. 1981)**

(in transferring case, in which U first filed ptn for review with ct herein, to another circuit in which E had later filed ptn, ct held residence of parties, although not a major factor, is considered by ct and, although not dispositive of mtn to transfer, place where ULP occurred is not irrelevant)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. **694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)**

(ct of first filing by U of ptns for review of Bd order noted that if it were to transfer ptns to circuits in which Es had subsequently filed ptns for review, question of standing would be one for transferee ct, since aggrievement insufficient to warrant respecting petitioner's choice of forum may well be aggrievement sufficient to withstand dismissal; thus, mtns to dismiss are properly referred to transferee ct having venue to decide the question)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. **694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)**

(E's contention that U's ptns for review filed in instant ct should be transferred to respective circuits in which Es had subsequently filed ptns on ground that Es were prejudiced because of failure to receive notice of Bd's decision until after U had filed ptns herein and, therefore, U's first filing was ineffective and premature, rejected; ct's prior decision has expressly validated Bd's simultaneous mailing notification procedure and has rejected proposition that one's address or vagaries of postal service can render ptns for review premature for purposes of first filing rule)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. **694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)**

(E's mtn to transfer U's first-filed ptn for review from instant ct to respective circuits in which Es had subsequently filed ptns, on ground clerk of ct herein failed to comply with FRAP 15(c) requirement that he serve respondents with copy of ptn, even though Es were mistakenly named as respondents in U's original ptn; Es, as parties to agency proceedings, are not proper respondents to ptn for review and, were not entitled to service; even if Es were so entitled FRAP 3(d) states that failure of clerk to serve notice shall not affect validity of appeal)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. **694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)**

(Es' contention that U's failure to serve copy of ptns for review on Es as required by FRAP 15(c) is ground for dismissal, or alternatively, for invalidating U's first-filing of ptn herein and transferring to circuits in which Es had subsequently filed, rejected; noncompliance with 15(c) is defect that is *not jurisdictional in nature* and thus not determinative of first-filing priority; and 15(c) has no relation to considerations of transfer since, even if U's ptn were hand-delivered to E, E would not have been able to effect prior or contemporaneous filing of ptn herein)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. **694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)**

(ct held U's failure to serve copy of ptns for review on Es as required by FRAP 15(c) did not deprive U of its victory in venue race to instant ct, rejecting Es' claim that U's noncompliance with rule 15(c) invalidated U's first-filing of ptns herein and required transfer to circuits in which Es, who had also intervened herein, had filed ptns; under circumstances herein, U's failure to comply with rule in no way prejudiced Es' right to appeal w/i time allowed by law or to protect their interests by intervention in instant ct)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. **694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)**

(U's choice of forum by first filing ptn for review in instant ct, sustained, and Es' mtn for transfer to circuits in which they had filed ptns for review, denied, since U did not fall w/i statutory exception mandating transfer to another circuit when filing party is not aggrieved, where Bd, although granting order requiring E to furnish almost all information requested by U, denied disclosure order against E as to proprietary and confidential information, which cannot be deemed insignificant or inconsequential)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. **694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)**

(U's choice of forum by first filing ptn for review in D.C. Circuit Ct herein, sustained, and Es' mtn for transfer to circuits in which they had filed ptns, denied, since statutory provision *for the convenience of the parties in the interest of justice* is served by retention of ptns herein, where both Bd and U counsel are w/i ct's venue, impact of litigation goes beyond interests of one

0975—Cont.

region, Bd consolidated cases involving geographically widely separated plants, and Congress has specifically placed D.C. Circuit Ct on par with circuits in which alleged ULPs occurred)

Oil Workers, Local Union No. 6-418 v. N.L.R.B. 694 F.2d 1289 (C.A.D.C., Nov. 30, 1982)
(U's choice of forum by first filing ptn for review in instant ct, sustained , and Es' mtn for transfer to circuits in which they had filed ptns for review, denied, where there was currently pending in this ct ptn for review of Bd's decision in another case that was consolidated with 2 cases herein; such decision involves substantially same issues as herein, and there is also Bd ptn for enforcement of third decision pending in this ct; hence, these cases are best heard in single proceeding in interests of uniformity and judicial efficiency)

1400 STAY OF BOARD ORDER

1475 STAY DENIED

N.L.R.B. v. Evans Plumbing Company 639 F.2d 291 (C.A. 5, 1981)
(enforcement granted where Bd ordered E who filed voluntary bankruptcy ptn to reinstate with backpay two discriminatorily discharged Ees since, contrary to E's contention, ct held that Bd proceeding falls w/i statutory exemption to automatic stay provision of Bankruptcy Act of 1978)

2300 PARTIES

2301 GENERALLY

Lincoln Technical Institute, Inc. 256 NLRB No. 032
(individual non party discriminatee may appeal Bd decision to ct of appeals as provided for in Section 10(f) of Act but this does not provide for participation by non parties at earlier stages in Bd proceedings)

2380 PERSON 'AGGRIEVED'

Leonard Giacalone v. N.L.R.B. 682 F.2d 427 (C.A. 3, June 1982)
(discriminatee does not have standing to file exceptions to ALJ's decision where U was charging party as Bd's rules contemplate that exceptions are to be filed only by parties to proceedings)

2700 INTERVENTION

2750 PERSONS ENTITLED TO INTERVENE

2750-2000 WHERE COMPLAINT DISMISSED

Leonard Giacalone v. N.L.R.B. 682 F.2d 427 (C.A. 3, June 1982)
(discriminatee does not have standing to file exceptions to ALJ's decision where U was charging party as Bd's rules contemplate that exceptions are to be filed only by parties to proceedings)

3200 PLEADINGS

3233 FAILURE TO RAISE ISSUE IN PLEADINGS DOES NOT PRECLUDE CONSIDERATION ON MERITS WHERE ARGUED

N.L.R.B. v. Highway and Local Motor Freight Employees, Local Union No. 667 654 F.2d 254 (C.A. 6, 1981)
(U's contention that pleadings before Bd never raised issue of whether referral service was bona fide rejected, since at beginning of hearing, GC explained that it was his position that there was not a bona fide referral service; therefore U was sufficiently on notice and issue was fully litigated at hearing)

3600 CONSOLIDATION OF PROCEEDINGS

4100 RECORD

Vitek Electronics, Inc. v. N.L.R.B. 653 F.2d 785 (C.A. 3, June 1981)
(ct found it unnecessary to grant E's mtn to amend record on review for purpose of informing ct as to RD's failure to submit to Bd affidavits resulting from RD's ex parte investigation of E's objection to election, since E's request could affect Bd's decision only on one of E's request could affect Bd's decision only on one of E's objections; and, as result of RD's lack of explanation in disposing of E's affidavits regarding such objection, ct was unable to dispose of threshold issue of whether or not absence of hearing on such objection was justified)

4125 CASE MUST BE HEARD ON RECORD CERTIFIED BY BOARD

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. 618 F.2d 6 (C.A. 6, 1980)
(notwithstanding valid objection to election, because of delinquency on part of E to raise objection Bd did not abuse its discretion in refusing to reopen record)

N.L.R.B. v. Catalina Yachts 679 F.2d 180 (C.A. 9, June 1982)
(denial of continuance for purpose of having Ee who had given affidavit to Bd investigator available for examination could not be raised on appeal where record showed no request for continuance; in any event E failed to show how absence of Ee prejudiced case)

N.L.R.B. v. Don Burgess Construction Corporation, d/b/a Burgess Construction 596 F.2d 378 (C.A. 9, 1979)

4175 CONTENTS OF RECORD

N.L.R.B. v. A. S. Abell Company 624 F.2d 506 (C.A. 4, 1980)
(no special significance attaches to ALJ's findings where ALJ and Bd reach different legal conclusions based on same facts; while ct reviews Bd's decision, ALJ's decision is part of record)

4175-2000 Record of complaint proceeding

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)
(conclusory statement by Bd that access is needed to neutralize effects is not sufficient to justify grant of access; assumptions must be supported by evidence in record; Bd must find reasonable forseeability that Ees at those plants where access is imposed have suffered coercive effects from E's unlawful conduct and that access remedy is necessary to cure those effects)

4175-8000 Record of representation proceeding

N.L.R.B. v. Nixon Gear, Inc. 649 F.2d 906 (C.A. 2, May 1981)
(Bd's contention that some affidavits in record before ct were not part of formal record in initial proceeding on objections to election before RD, rejected, since alleged technical defect in record was of no significance inasmuch as Bd's field examiner witnessed the depositions and thus ct assumed RD considered them when he stated that all evidence including sworn statements of witnesses, documentary evidence, and parties' statements of position had been fully considered)

N.L.R.B. v. Decibel Products, Inc. 657 F.2d 727 (C.A. 5, 1981)
(enforcement of bargaining order denied and case remanded for consideration on basis of entire record; it was error for Bd to consider nothing but RD's report in determining whether E committed ULP)

N.L.R.B. v. Klinger Electric Corporation, Klinger Electronics Division and Klinger Manufacturing Division 656 F.2d 76 (C.A. 5, 1981)
(ct found that affidavits comprising all related evidence underlying RD's decision on objections to election must be considered part of record relied upon by RD but did not remand case for *supplementation* of the record with said affidavits or *reconsideration* by Bd where RD had forwarded affidavits to ct under seal, and ct had found that they would not add weight to respondent's case or affect Bd's decision but that they allowed ct to verify existency and accuracy of evidence quoted by RD in his decision)

N.L.R.B. v. Klinger Electric Corporation, Klinger Electronics Division and Klinger Manufacturing Division 656 F.2d 76 (C.A. 5, 1981)
(ct found no substantial interest in BD's maintaining *confidentiality* of affidavits gathered during RD's investigation of objections to election where affidavits were used as an evidentiary basis for RD's decision, since contents were no longer confidential, and RD could screen out affiant's name and portions of affidavit irrelevant to testimony used in RD decision before incorporating affidavits in the record)

N.L.R.B. v. Klinger Electric Corporation, Klinger Electronics Division and Klinger Manufacturing Division 656 F.2d 76 (C.A. 5, 1981)
(ct found that RD could reach a decision on objections to election w/o endangering confidentiality of affidavits gathered during his own investigation by not including them in the record, because they are not essential for decision; objecting party bears burden of adducing prima facie proof of facts sufficient to invalidate election, and RD could reach a decision based only on evidence offered by objecting party)

N.L.R.B. v. Klinger Electric Corporation, Klinger Electronics Division and Klinger Manufacturing Division 656 F.2d 76 (C.A. 5, 1981)
(contrary to Bd, ct interpreted contents of record to be filed in the ct of appeals in a review or enforcement case as set forth in the first sentence of Sec. 102.69(g) as applying to all such proceedings, whether or not a hearing had been required; it also held that any reasonable interpretation of *documentary evidence* included all portions of affidavits or other documents relevant to the evidentiary basis of the RD's decision and recommendation)

4175-5000—Cont.

N.L.R.B. v. Klinger Electric Corporation, Klinger Electronics Division and Klinger Manufacturing Division 686 F.2d 76 (C.A. 5, 1981)

(28 USC Sec 2112(b) requires that affidavits used as the evidentiary basis of decisions of the RD and the Bd must be part of the record available to ct of appeals in its review of those decisions; if those affidavits were not available or offered slightest basis for different Bd action, ct of appeals would be required to remand case to Bd for completion of record and reconsideration of the case)

N.L.R.B. v. Fodyce Company, Inc. 674 F.2d 529 (C.A. 6, Mar. 1982)

(although ct did not condone RD's apparent failure to transmit entire record to Bd, ct was convinced in this case that remand could not avail objecting party and would only cause further delay in vindication of its Ees' collective bargaining rights)

Revco D.S., Inc. and/or White Cross Stores, Inc., No. 14 v. N.L.R.B. 653 F.2d 264 (C.A. 6, July 1981)

(issues raised by E's objections to election not sufficiently substantial and material to require remand to Bd to consider additional affidavits that E claimed were uncovered during RD's investigation but not included in the *record* before the Bd)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center 652 F.2d 856 (C.A. 9, Aug 1981)

(any error in RD's failure to send to Bd, in transmitting election report, underlying documentation gathered during region's *ex parte* investigation and to submit E's affidavits and other documentation held harmless, where E filed all documents it had given RD when it filed its exceptions with Bd)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center 652 F.2d 856 (C.A. 9, Aug 1981)

(where Bd certified U w/o benefit of hearing or full record, ct would construe the *well pleaded factual assertions ... most favorably to (the excepting party)*; and if factual assertions create material issue of fact, ct will remand to the Bd to order a hearing, and if not, ct will affirm Bd's decision)

4175-5067 Does not include material from investigatory file of post-election issues

N.L.R.B. v. Allis-Chalmers Corporation 680 F.2d 1166 (C.A. 7, June 1982)

(ct denied enforcement of bargaining order, set aside certification, and remanded case to Bd for appropriate action where Bd had adopted RD's findings and conclusions as to objections to election w/o seeing evidence relied on by RD)

N.L.R.B. v. Allis-Chalmers Corporation 680 F.2d 1166 (C.A. 7, June 1982)

(where Bd has adopted RD's decision over-ruling objections to election w/o seeing evidence in RD's investigatory file on which decision was based, neither Bd nor ct could review fairness or accuracy of RD's decision; ct thus denied enforcement of bargaining order, set aside certification, and remanded case to Bd for appropriate action)

4500 BRIEFS AND ORAL ARGUMENT

5000 DEFAULT JUDGMENT

Livingston Powdered Metal, Inc. v. N.L.R.B. 669 F.2d 133 (C.A. 3, Jan. 1982)

(in case in which Bd issued summary judgment considered by ct to be in reality a default, ct held that where injustice may result in default judgments by administrative agencies, consideration must be given to questions whether prejudice to plaintiff and meritorious defense on defendant's part exist, and standard of liberality rather than strictness should be applied; any doubt should be resolved in favor of setting aside the judgment so that cases may be decided on their merits; and a relevant factor is whether default was wilfully caused by defendant)

5075 SCOPE OF COURT REVIEW OF RECORD

N.L.R.B. v. G and M Lath and Plaster Co., Inc. 670 F.2d 580 (C.A. 5, Mar. 1982)

(Bd entitled to enforcement of its order by default where respondents failed to submit briefs or appear at oral argument, and offered no explanation for failure to do so; after examining record and Bd's decision, ct found order was not unreasonable and was supported by the findings)

5400 SUMMARY ENFORCEMENT

5401 GENERALLY

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(petitioner's contractual promise to UMW to report and make contributions to specified U health and retirement funds based on specified amount, on *each ton of — coal* procured for use or sale by petitioner from producers not under contract with UMW was illegal under anti-trust and labor laws and thus valid defense to suit for such contributions by trustees of U funds)

Ithaca College v. N.L.R.B. 623 F.2d 224 (C.A. 2, 1980)

(Ct of Appeals clearly has power to order entry of summary judgment to non-movant, given appropriate circumstances)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession 682 F.2d 72 (C.A. 3, June 1982)

(where debtor-in-possession untimely responded to 8(a)(5) C and notified Bd that bankruptcy ct had shortly before granted its mtn to reject labor contract on which C was based, ct held Bd erred as matter of law and misused its discretion in granting mtn for summary judgment; while not condoning failure to file, ct refused to enforce Bd order that cavalierly refused to recognize outstanding federal ct order directly relating to proceedings before Bd; technical breach did not excuse Bd's refusal to recognize ct order and to explain its reasons for doing so)

5467 'EXTRAORDINARY CIRCUMSTANCES' EXCEPTION OF 10(e) APPLICABLE

Detroit Edison Company v. N.L.R.B. 99 U.S. 1123 (S Ct., 1979)

(E's failure to raise issue before Bd and ct of appeals as to whether information requested by U regarding E's aptitude testing program would be of any actual or potential relevance to performance of U's statutory duties held foreclosed from consideration herein by Sec. 10(e); E's contention that it had *no practical reason* to object was not an *extraordinary circumstance* excusing E's neglect to press an exception before Bd)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession 682 F.2d 72 (C.A. 3, June 1982)

(ct rejected Bd's contention that, because of debtor-in-possession's untimely filing of ans, ct may not consider debtor's 8(a)(5) defense based on disruption caused by reorganization proceedings, because such excuse was not w/i 10(e) *extraordinary circumstances* exception; Sec. 10(e) is inapplicable because debtor's objection was urged when Bd could have taken meaningful notice thereof; although debtor's response was exceedingly tardy, Bd was required to utilize *good cause* standard ensuring that Bd makes decisions on merits despite technical noncompliance with procedural rules)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession 682 F.2d 72 (C.A. 3, June 1982)

(Bd improperly failed to accept debtor-in-possession's untimely ans to 8(a)(5) C and to consider its defense for failure to file based on disruption caused by reorganization proceedings; involvement in such proceedings is not itself sufficient reason for delay, but drastic circumstances herein involving severe reduction in debtor's work force in business associated with most distressed industry, and pre-bankruptcy company's long involvement in active reorganization gave Bd *good cause* for accepting untimely ans and proceeding to consider debtor-in-possession's apparently persuasive arguments)

Livingston Powdered Metal, Inc. v. N.L.R.B. 669 F.2d 133 (C.A. 3, Jan. 1982)

(Sec. 10(e) does not bar ct review of Bd's issuance of summary judgment because E failed to demonstrate *extraordinary circumstances* to excuse its failure to file timely ans; less stringent standard of *good cause* under Bd's R/R Sec. 102.20 applies to late filing of ans as opposed to the *extraordinary circumstances* test under Sec. 10(e) which is intended to prevent litigant from raising matter in cts which had never been presented to Bd for consideration; but E herein did so and gave Bd opportunity to rule on question involved)

Arthur N. Stephenson v. N.L.R.B. 614 F.2d 1210 (C.A. 9) (1980)

(E failed to comply with Sec. 10(e) and waived his right to raise issue before ct regarding contradictory evidence that Bd allegedly erroneously refused to consider, where E's statement of position on remand was ambiguous and caused Bd to interpret it as requesting resolution of charge w/o resolution of contradictory evidence, and E's counsel stated to ct that extraordinary circumstances did not exist)

N.L.R.B. v. Zeno Table Company, Inc. 610 F.2d 567 (C.A. 9, 1979)

(Sec. 10(e) of Act does not limit ct's review of Bd's treatment of answer to complaint as untimely; however, review is limited to whether Bd abused its discretion in refusing to consider answer)

5900 SCOPE OF JUDICIAL REVIEW

5901 GENERALLY

Federal Trade Commission et al. v. Standard Oil Company of California 449 US 908 (U.S. SCt. Dec. 1980)

(issuance of C averring reason to believe respondent acted unlawfully held not *collateral* order subject to review since issuance of C is a step toward, and will merge in, decision on merits; consequently, review of such preliminary step should abide review of final order)

5901—Cont.

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)

(ct reviewed comprehensively issues and evidence where Bd summarily affirmed ALJ's decision with only minor modification of resulting order, where ALJ's decision did not merit summary affirmance)

Jaime Andino d/b/a Jaime Andino Trucking v. N.L.R.B. 619 F.2d 147 (C.A. 1, 1980)

(reviewing ct may not displace Bd's choice between two fairly conflicting views, even though ct would justifiably have made a different choice had the matter been before it de novo, and such standard is not modified when Bd and its ALJ disagree)

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. 658 F.2d 934 (C.A. 2, Sept. 1981)

(refusal to bargain pursued in good faith and on substantial grounds is an appropriate means of obtaining judicial review of Bd's certification of U as Ee representative)

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. 658 F.2d 934 (C.A. 2, Sept. 1981)

(determination of whether election was tainted by coercive effect of pro-U supervisory conduct is essentially a matter of drawing inferences, and agency's conclusions based upon such inferences should not be set aside by reviewing ct unless they transgress bounds of reason)

Hall-Brooke Hospital, a division of Hall-Brooke Foundation, Inc. 645 F.2d 158 (C.A. 2, Mar 31, 1981)

(careful judicial scrutiny of Bd's action is necessary in face of accusations of failure to abide by precedent since cts have obligation to ensure that administrative agencies adhere to enunciated policies and procedures)

N.L.R.B. v. Browning-Ferris Industries of Pennsylvania, Inc. 691 F.2d 1117 (C.A. 3, Oct. 1982)

(ct held E waived Bd's finding that E fired Ees because of their protected concerted activities, where E failed to raise such issue on appeal)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession 682 F.2d 72 (C.A. 3, June 1982)

(ct held that, where state of law is settled, prerequisites for determination of reversible error consist of specific acts or omissions by trial ct constituting legal error, properly suggested as error to trial ct and, if uncorrected at that level, then properly presented for review to appelate ct which, in order to find reversible error, must be able to determine that appellant properly identified the error and requested trial ct to take legally appropriate action)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession 682 F.2d 72 (C.A. 3, June 1982)

(in suit brought in bankruptcy ct by debtor-in-possession seeking rejection of bargaining agreement, and in which Bd, having ordered compliance with agreement, intervened, ct vacated bankruptcy ct's judgment, affirmed by district ct, permitting rejection of agreement, and remanded to district ct with direction to remand to bankruptcy ct, where bankruptcy ct, had not set forth reasoned elaboration of its decision; since ct could not determine what movitated ct's decision and could not properly determine whether there was legal error, it remanded for consideration in light of precepts announced herein)

Livingston Powdered Metal, Inc. v. N.L.R.B. 669 F.2d 133 (C.A. 3, Jan. 1982)

(although Bd's action was nominally a summary judgment, it was in reality a default, since in summary judgment there is no dispute about relevant facts while in default defendant's contentions, as here, are not considered but rather *ex parte* allegations of adversary are accepted as true; possibility that an injustice may occur is much more likely in those circumstances, since controversies are decided upon a procedural technicality instead of ruling on merits; and, consequently, in a default case, more exacting judicial scrutiny is in order)

Hi-Craft Clothing Co. v. N.L.R.B. 660 F.2d 910 (C.A. 3, Oct. 1981)

(SCt's decisions on deference that reviewing ct should accord agency's interpretation of statute demonstrate two lines of cases on the subject; thus, SCt has acquiesced in BD's position as a reasonable interpretation of Act, even through issue could have, with equal reason, been resolved either way, and Bd determination is to be accepted if it has warrant in the record and a reasonable basis in law; on the other hand, SCt has refused to yield to Bd's finding which was fundamentally inconsistent with Act or amounted to movement into new area of regulation which Congress had not committed to it)

Hi-Craft Clothing Co. v. N.L.R.B. 660 F.2d 910 (C.A. 3, Oct. 1981)

(in regard to deference that reviewing ct should accord agency's statutory interpretation, ct may not simply abdicate its responsibility by citing series of cases that extend *great deference to administrative conclusions*, inasmuch as cts are not obliged to rubber stamp adminstrative decisions that they deem inconsistent with statutory mandate or that frustrate congressional policy underlying statute)

Hi-Craft Clothing Co. v. N.L.R.B. 660 F.2d 910 (C.A. 3, Oct. 1981)

(in regard to deference that reviewing ct should accord agency's statutory interpretation, a distinction has been made between whether issue is factual or legal; if the latter, then there may be less deference to agency and more independent review by cts; however, difficulty arises when matter is one of *mixed law and fact*; nevertheless, distinction has some value in a situation where there are no factual disputes and then tendency is toward a less inhibited approach by cts)

Hi-Craft Clothing Co. v. N.L.R.B. 660 F.2d 910 (C.A. 3, Oct. 1981)

(in regard to deference that reviewing ct should accord agency's statutory interpretation, the nature of the question determines standard to be applied; thus, if issue falls outside area generally entrusted to agency, and one in which cts have special competence, such as the common law or constitutional law, there is little reason for judiciary to defer to an administrative interpretation)

Hi-Craft Clothing Co. v. N.L.R.B. 660 F.2d 910 (C.A. 3, Oct. 1981)

(in regard to deference that reviewing ct should accord statutory interpretation by agency whose interpretation is considered w/i its *specialized* knowledge, cts are still not free to relinquish their responsibility of judicial review or to subordinate their competence to administrative *expertness*; however, where agency has been entrusted with wide discretion in technical area and Congress has designated agency as primary source for interpretation and application of statute, ct ought to refrain from substituting own lawmaking for that of agency, so long as latter's lawmaking is not irrational)

Hi-Craft Clothing Co. v. N.L.R.B. 660 F.2d 910 (C.A. 3, Oct. 1981)

(in regard to deference that reviewing ct should accord agency's statutory interpretation, SCt has been less inclined to be influenced by administrative construction of its own authorization statute; thus, agency ruling that broadens its own jurisdiction is examined carefully; however, when agency has participated in legislative activity leading to its authorization, generally more respect will be accorded administrative interpretation; and if construction is longstanding, it is often considered more authoritative because those having matters before agency come to rely upon its interpretation)

N.L.R.B. v. A. G. Parrott Company 630 F.2d 212 (C.A. 4, 1980)

(while reviewing cts should be slow to overturn an administrative decision, cts are not left to sheer acceptance of Bd's conclusions and they are not obliged to rubber-stamp affirmance of decisions that they deem inconsistent with a statutory mandate or that frustrate congressional policy)

N.L.R.B. v. Haberman Construction Company 641 F.2d 351 (C.A. 5, Apr. 1981)

(Bd is authorized to change its mind and modify its construction of Act in light of its cumulative experience, but when it does so it must at least carefully explain its reasons and follow controlling law; it is duty of Bd, not of cts, to clearly set forth intent of its decisions and to explain departure from precedent)

N.L.R.B. v. Haberman Construction Company 641 F.2d 351 (C.A. 5, Apr. 1981)

(in denying enforcement of Bd order, ct relied on fact that Bd rendered its finding w/o single citation to previous Bd or ct decisions, and its extremely brief and unenlightening opinion which was issued despite order's possible conflict with Bd's previously enunciated principle on which dissent citing conflicting case was based)

Florida Steel Corporation v. N.L.R.B. 620 F.2d 79 (C.A. 5, 1980)

(Bd has broad latitude in ascertaining appropriate remedial measures, and its decision must be given *special respect*; ct will not disturb Bd's order unless it is patent attempt to achieve ends other than those which effectuate policies of Act)

Amoco Production Company v. N.L.R.B. 613 F.2d 107 (C.A. 5, Mar. 1980)

(if review is of a decision agency alone is authorized to make and which it has not made, or for which grounds invoked are inadequate, reviewing ct may not canvass the record and form its own conclusion, for that would amount to substituting judicial judgment for one which Congress has decreed the agency is authorized to make, and the only solution is to remand to the agency)

N.L.R.B. v. Schwan's Sales Enterprises, Inc. 687 F.2d 163 (C.A. 6, Sept. 1982)

(Bd's finding of 8(a)(1) violations held supported by substantial evidence, even though evidence was slight and ct or any other body reveiwing case in first instance might easily have reached conclusion contrary to that of ALJ and Bd)

5901—Cont.

Harper and Arterburn Co., Inc. v. N.L.R.B. **683 F.2d 492 (C.A. 6, June 1982)**

(SCt has cautioned cts against abdicating role as independent decision-makers by granting finality to Bd's orders; Congress did not contemplate that cts are obliged to sustain decision w/o reference to how heavily the countervailing evidence may preponderate; instead, Congress made clear that ct is not barred from setting aside Bd decision when it cannot conscientiously find substantial evidence supporting that decision, when viewed in light of entire record, including evidence opposed to Bd's view)

Midwest Stock Exchange, Inc.; et al. v. N.L.R.B. **620 F.2d 629 (C.A. 7, 1980)**

(cts of appeals bear responsibility of reviewing Bd's specific application of its rules initially promulgated under its *wide discretion,* establishing procedures and safeguards for conducting R elections; where Bd has promulgated standards governing conduct of election, those standards are controlling until Bd announces a change and its reason for it, and Bd's application of its standards must be reasonably consistent with its previous decision)

Anja Engineering Corporation v. N.L.R.B. **685 F.2d 293 (C.A. 9, Aug. 1982)**

(enforcement of order directing second election based on finding of 8(a)(3) violation, denied where finding was not supported by record evidence; Bd's contention that election order was not properly reviewable pursuant to ptn for review here because R proceedings are reviewable only upon a charge that an E's refusal to bargain with the certified U violates 8(a)(5), rejected, since order for second election must fall with unsupported ULP finding on which it is based)

N.L.R.B. v. Stanley H. Egan and Donald R. Egan **628 F.2d 746 (C.A. 10, Aug 1980)**

(Bd order is reviewed for consistency with Act and for rationality, but if it satisfies these criteria; Bd's application of rule, if supported by substantial evidence will be enforced)

N.L.R.B. v. Blake Construction Co., Inc., etc. **663 F.2d 272 (C.A.D.C., Aug. 1981)**

(E's substantial claim of lack of due process at hearing upheld, since failure to object at Bd level does not invariably deprive ct of ability to decide that hearing was fundamentally flawed for lack of due process; and ct review is not precluded, in absence of objection below, when Bd has patently traveled outside orbit of its authority)

N.L.R.B. v. Blake Construction Co., Inc., etc. **663 F.2d 272 (C.A.D.C., Aug. 1981)**

(while deferring to laudatory objective of 10(e) to give Bd first opportunity to resolve *on the merits* questions urged on review of its orders, cts are and should be reluctant to enforce orders emanating from proceedings contrary to clear requirements of APA and devoid of basic due process guarantees unless there has been a deliberate bypassing of Bd's rules; here, Bd could not have examined ALJ's findings w/o discovery in record of ongoing debate between E's and GC's counsels as to relevance of point at issue herein)

Peoples Gas System, Inc. v. N.L.R.B. **629 F.2d 35 (C.A.D.C., 1980)**

(ct has responsibility to carefully examine Bd's findings and reasonings to assure that Bd has considered factors relevant to its choice of remedy, that remedy is remedial not punitive, and effectuates purposes of Act)

5901-3300 Standard of review same over cases announcing general principles

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**

(Bd's adoption of *Mt. Healthy* test, to extent it establishes new standard or set of legal presumptions, reviewed by ct for legal error, giving due deference to Bd's expertise in interpreting act it administers; see *Mt. Healthy City School District Board of Education v. Doyle,* 429 U.S. 274 (1977))

Presbyterian/St. Luke's Medical Center v. N.L.R.B. **653 F.2d 450 (C.A. 10, July 1981)**

(*for purposes of affirming no less than reversing its orders, appellate ct cannot intrude upon the domain which Congress has exclusively entrusted to administrative agency*)

5901-3800 Reviewable *final agency action*

Federal Trade Commission et al. v. Standard Oil Company of California **449 US 980 (U.S. SCt. Dec. 1980)**

(FTC's issuance of C averring reason to believe respondent acted unlawfully held not *final agency action* under 10(c) of APA and is not judically reviewable before administrative adjudication concludes, even though issuance is *a part of a final disposition* and therefore is *agency action;* ct left open the question whether issuance of C is unreviewable because it is *committed to agency discretion by law*)

Federal Trade Commission et al. v. Standard Oil Company of California **449 US 980 (U.S. SCt. Dec. 1980)**

(FTC's issuance of C averring it had *reason to believe* respondent acted unlawfully was not *final agency action,* since issuance was not a definitive ruling or regulation and had no legal force or practical effect upon respondent's business other than disruptions that accompany any major litigation, and immediate judicial review would serve neither efficiency nor enforcement of FTC's enabling Act)

Federal Trade Commission et al. v. Standard Oil Company of California **449 US 980 (U.S. SCt. Dec. 1980)**

(E's contention that FTC's issuance of C constituted final agency action on ground that E's challenge to C can never be reviewed unless reviewed before FTC's adjudication is concluded, rejected, since speculation that unlawfulness of issuance of C is likely to be *insulated* from any review if deferred until appelate review of c/d order is not persuasive; ct of appeals has power to review alleged unlawfulness in issuance of C since ct, under FTC's enabling Act, can order FTC to take additional evidence, and APA provides for review of FTC's action on review of final agency action)

Federal Trade Commission et al. v. Standard Oil Company of California **449 US 980 (U.S. SCt. Dec. 1980)**

(concern that C averring reason to believe respondent acted unlawfully would be *insulated* from review because alleged unlawfulness would be moot if respondent prevailed in adjudication does not support conclusion that issuance of C is *final agency action;* rather, a principal reason to await termination of agency proceedings is to obviate all occasion for judicial review, and thus possibility that respondent's challenge may be made moot warrants requirement that it pursue adjudication, not shortcut it)

5901-6700 Enforcement mandatory where Board has acted properly

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**

(no remand where there was substantial evidence (of illegal motive) to support Bd's findings of ULP)

N.L.R.B. v. Boston Beef Co., Inc. **652 F.2d 223 (C.A. 1, July 1981)**

(ct's standard of review concerning *challenged ballot* is restricted to analysis of whether Bd abused its discretion in sustaining challenge and certifying U)

N.L.R.B. v. Boston Beef Co., Inc. **652 F.2d 223 (C.A. 1, July 1981)**

(ct reluctant to substitute its judgment on issue of whether Ee was casual rather than regular part-time Ee, where Bd possessed significant expertise and minor factual differences are so important, so long as substantial evidence supported Bd's conclusion)

United States Steel Corporation, Inland Steel Company, Bethlehem Steel Corporation v. N.L.R.B. **644 F.2d 206 (C.A. 3, Mar 19, 1981)**

(ct must accept Bd's findings of 8(a)(1) and 8(a)(5) violations if they are supported by substantial evidence on record as whole, even if we (ct) would have resolved issue differently in first instance)

N.L.R.B. v. Delchamps, Inc. **653 F.2d 225 (C.A. 5, Aug 1981)**

(Bd's R/O should not be altered by ct unless order was *patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act*)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**

(reviewing ct must not substitute its judgment for that of agency but must decide only whether agency made reasonable finding, not whether it made correct finding; difference between two depends on how strongly reviewing ct disagrees with finding)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**

(if Bd makes finding of discriminatory discharge, ct must enforce finding if reasonable person might have concluded from entire record that improper motive moved E to discharge Ee; but if ct decides that reasonable person could only have either concluded that proper motives moved E to discharge or been unable to conclude whether proper or improper motives moved E, ct must refuse to enforce Bd's finding of discriminatory discharge)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**

(cts must give great weight to Bd's determination of relevance of information regarding wages of nonunit Ees requested at mid-term by U, if only because it is finding on mixed question of law and fact which is w/i particular expertise of Bd)

Bunting, Incorporated v. N.L.R.B. **583 F.2d 765 (C.A. 8)**

(illegality of discharge of leading U advocate assertedly because of his refusal to obey order to assist with heavy unloading work upheld where substantial evidence justified Bd's conclusion that asserted reason for discharge was pretextual; discharge was mixed motive firing; E's anti-U animus and other anti-U actions justified Bd's conclusion)

5901-6700—Cont.

Golden Day Schools, Inc. v. N.L.R.B. 644 F.2d 834 (C.A. 9, May 8, 1981)
(Bd's determination, that E met $250,000 standard for exercising jurisdiction over *day-care center* rather than $1,000,000 standard for *educational institutions* will not be set aside *in the absence of extraordinary circumstances, such as unjust discrimination*)

McDonnell Douglas Corporation v. N.L.R.B. 655 F.2d 932 (C.A. 9, 1981)
(ct must accept Bd's decision (concerning Ee's supervisory status) if it is supported by record and has reasonable basis in law)

K Mart Corporation v. N.L.R.B. 626 F.2d 704 (C.A. 9, 1980)
(ct will accept inferences drawn by Bd from external conduct even if another inference seems more plausible so long as supported by substantial evidence)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)
(enforcement denied where Bd erred in accepting presumptively appropriate unit restricted to registered nurses at single facility of E's 3 hospitals in single city, since there was sufficient evidence adduced to sustain appropriateness of all professional unit excluding physicians; evidence was sufficient to sustain finding of inappropriateness of proposed unit had it been accepted)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. 643 F.2d 687 (C.A. 10, Mar 2, 1981)
(w/o any necessity of searching for contrary alternative inferences that might also be drawn from record evidence)

The Wackenhut Corporation v. N.L.R.B. 666 F.2d 464 (C.A. 11, Jan. 1982)
(ct looks only to see if Bd has reasonably exercised its discretion and will not interfere (in election process) except in cases of glaring discrimination or abuse)

Warehouse Union, Local 860, Teamsters v. N.L.R.B. 652 F.2d 1022 (C.A.D.C., Apr 1981)
(Bd remedy ordering U to make clerical Ees whole for their loss of wages (due to U's unlawful conduct) upheld, since award of backpay is w/i authority of Bd and in keeping with policies of Act)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)
(enforcement of stringent *access* remedy denied where Bd failed to make findings that corporatewide remedies were necessary to offset coercive or chilling effects caused by E conduct at issue, even as that conduct was magnified by existence of previous violations of Act)

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. 600 F.2d 930 (C.A.D.C., 1979)
(enforcement denied where ct felt that Bd majority findings on ultimate factual question were not supported by substantial evidence on record considered a whole; 8(a)(4) charge in issue)

Retail Store Employees Union, Local 1001 v. N.L.R.B. 600 F.2d 280 (C.A.D.C.)
(Bd's finding that land title companies were neutrals with respect to U's dispute with title insurance company, whose policies of title insurance they sold, and accounted for 95% of revenues of land title companies, affirmed where findings of neutrality were based on substantial evidence)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)
(enforcement denied since ct was able to determine that lessees in instant case were independent contractors; nor would enforcement have been granted w/o first having received from Bd intelligible rationale for distinctions it drew between Ees and independent contractors)

5907 FINDINGS OF FACT

5907-3000 Reviewable as to whether supported by 'substantial evidence on the record considered as a whole'0331

Stanley M. Feil, Inc. v. N.L.R.B. 674 F.2d (C.A. 6, Mar. 1982)
(ct held Bd's findings that E violated 8(a)(1) by coercively interrogating Ees, threatening less desirable working conditions and by granting new benefit during U's organizing efforts were supported by substantial evidence on the whole record)

Peter Frattaroli, et al. v. N.L.R.B. 590 F.2d 15 (C.A. 1, 1978)
(Bd's opn failed to refute ALJ's factual findings on remand and is thus not supported by substantial evidence; its efforts to undercut these findings in its brief to ct do not meet its official obligation)

N.L.R.B. v. Hudson River Aggregates, Inc. 639 F.2d 865 (C.A. 2, 1981)
(enforcement denied where no evidence in record to support Bd's finding of non coercive atmosphere during election especially in view of fact that hearing officer who had opportunity to observe witnesses reached opposite conclusion)

Jamesway Corporation v. N.L.R.B. 676 F.2d 63 (C.A. 3, Mar. 1982)
(ct, in determining whether particular incident so disrupted election as to warrant setting it aside, must satisfy itself that Bd's determination regarding impact of incident at issue is supported by substantial evidence on record considered as whole; ct rejected Bd contention that proper standard of review in instant case was whether Bd acted arbitrarily in exercise of its discretion)

N.L.R.B. v. Local 483 and Local 11, Ironworkers 672 F.2d 1159 (C.A. 3, Feb. 1982)
(Bd's finding that Us referral operation discriminated against non-members or those to whom membership was denied was not supported by substantial evidence that referral was in fact based on U membership or activity and case remanded, as earlier *Ironworkers* cases were not dispositive of issues of proof; hire, unlike earlier cases, contractors' requisition registers were in evidence, and U officers testified as to mechanics of hiring hall operation)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. 617 F.2d 977 (C.A. 3, 1980)
(drawing line between prediction and implied threat is often one of great difficulty, and possibility that statement contains implied threat must be viewed from Ees' point of view; for that reason Bd expertise is particularly relevant to determination of whether latent threat lies hidden in E's words, while ct's scope of review is limited to inquiry whether Bd's determination is reasonable and supported by substantial evidence)

Central Freight Lines, Inc. v. N.L.R.B. 626 F.2d 1301 (C.A. 5, Aug. 1980)
(*prior case law establishes that even the Bd's determination involving statements alleged to be in violation of Section 8(a)(1) of the Act are to be reviewed under the usual substantial evidence standard. The focus is on whether or not the words themselves or the context in which they are used suggest an element of coercion*)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)
(substantial evidence supported Bd's finding that foreman at sheet metal contractor was supervisor where he made recommendations to owners of E about who they should assign to particular jobs, spent 75% of his time checking on jobs to see how they were progressing, assigned Ees to work, asked Ees to put in overtime and transferred Ees from one job to another on owners' orders)

N.L.R.B. v. Laredo Coca Cola Bottling Company 613 F.2d 1338 (C.A. 5) (1980)
(in assessing E's activity alleged to constitute unlawful restraint or coercion, relevant inquiry is not limited to examining ostensible meaning or likely impact on Ees of E's statement; scope of inquiry must encompass entire pattern of E conduct)

N.L.R.B. v. Purnell's Pride, Inc. 609 F.2d 1153 (C.A. 5, Jan. 1980)
(where Bd made unit determination, ct must inquire whether Bd acted w/i its discretion in assessing preponderance of circumstantial evidence under *all* relevant criteria)

N.L.R.B. v. Foelgas Company, Inc. 674 F.2d 529 (C.A. 6, Mar. 1982)
(ample evidence supported Bd's conclusion that all propane gas distributor's 26 offices need not be included in *appropriate* bargaining unit)

N.L.R.B. v. Industry Products Company 673 F.2d 164 (C.A. 6, Mar. 1982)
(upon consideration of briefs and oral arguments of counsel together with record on appeal, ct concluded Bd's findings that respondent committed 8(a)(1) violations and that particular individual was Ee rather than supervisor were supported by substantial evidence; ct also concluded that Bd did not abuse its discretion in ordering respondent to bargain with U)

Beverly Enterprises, dba Beverly Manor Convalescent Centers 661 F.2d 1095 (C.A. 6, Oct. 1981)
(petitioner cannot seek review of RD's credibility determination and his assessment of conflicting evidence presented to him, only can get review based on sufficiency for support for what RD did find)

N.L.R.B. v. Retail Clerks Union Local No. 31, United Food & Commercial Workers International Union, AFL-CIO 655 F.2d 88 (C.A. 6, 1981)
(because factual findings adopted by Bd were supported by substantial evidence, they could not be disturbed on appeal)

A To Z Portion Meats, Inc. v. N.L.R.B. 643 F.2d 390 (C.A. 6, Mar. 18, 1981)
(ct found Bd's inference of E's prior knowledge of Ee's U activity based solely on ALJ's not crediting E's stated reasons for discharging U activist not supported by substantial evidence)

N.L.R.B. v. Sovakis Industries, Inc. 633 F.2d 217(T) (C.A. 6, 1980)
(although ct might have viewed various aspects of the 8(a)(1), (3), and (5) charges differently if it were fact-finders herein and if charges were isolated from each other, cumulative effect of evidence convinced ct that it could

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5907-2000—Cont.

not appropriately hold ALJ's findings of fact and conclusions of law adopted by Bd as not supported by substantial evidence)

Machine Tool and Gear, Inc. v. N.L.R.B. 630 F.2d 216(T) (C.A. 6, 1980)
(determination of whether Ee is supervisor or not is question of fact, and Bd's finding here that Ee was not supervisor is conclusive since it is supported by substantial evidence)

N.L.R.B. v. Franklin Property Company, Inc., d/b/a The Hilton Inn 617 F.2d 447 (C.A. 5, 1980)
(ct enforced Bd order where there was substantial evidence to support findings that E coercively interrogated and threatened Ees)

Montgomery Ward & Co., Inc. v. N.L.R.B. 668 F.2d 291 (C.A. 7, Dec. 1981)
(Bd's decision, contrary to E's contention, to count Ee's card supported by substantial evidence where language on card expressing representational purpose was neither canceled nor negated)

N.L.R.B. v. Mars Sales & Equipment Co. 626 F.2d 567 (C.A. 7, 1980)
(economic striker whose job has not been permanently promised to replacement at time striking Ee is discharged is entitled to reinstatement; determination of whether job has been permanently promised is question of fact for ct review to see if it is supported by substantial evidence)

The PaintSmiths, Inc. v. N.L.R.B. 620 F.2d 1326 (C.A. 8, 1980)
(standard applies even where Bd has reversed ALJ, especially where Bd had adopted ALJ's credibility determinations and findings of fact but drawn different conclusions of law)

Congress of Independent Unions and Southern Sun Electric Corporation v. N.L.R.B. 620 F.2d 172 (C.A. 8, 1980)
(ct's obligation was to review record in entirety, for substantiality of evidence must take into account whatever in record fairly detracts from its weight; thus, history of dispute and language of picket signs and letters sent by respondent U to picketed E must be considered together in order to determine whether U's picketing exhibited recognitional objective)

N.L.R.B. v. Oil Workers, Local 6-578 619 F.2d 708 (C.A. 8, 1980)
(on reviewing entire record, ct concluded that there was substantial evidence in record to support Bd's finding that each Ee resigned from U before crossing picket line in violation of U constitution and thus, no longer bound by U conditions)

N.L.R.B. v. Bob's Big Boy Family Restaurants, a Division of Marriott Corporation 693 F.2d 904 (C.A. 9, Dec. 1982)
(ct denied enforcement of Bd order requiring E to bargain with U certified by Bd notwithstanding contract-bar rule which Bd found did not preclude election initiated by ptn filed outside *window period* because of erroneous dates of duration printed on cover of circulated contract, where Bd abused its discretion by presuming w/o foundation that E *contributed to the confusion over contract dates* since record does not show that E caused in any way or even knew about misprint on cover of booklet reproducing contract)

Zapex Corporation and BDM Services Company v. N.L.R.B. 621 F.2d 328 (C.A. 9, 1980)
(whether E has permanently replaced economic striker is factual question and Bd's finding reviewable under *substantial evidence* standard of Section 10(e))

N.L.R.B. v. Carbonex Coal Company 679 F.2d 200 (C.A. 10, May 1982)
(whether U has waived its right to bargain over layoff by failing to raise issue or by agreeing to E's action is question of fact to be determined by Bd and to be upheld (by ct) if supported by substantial evidence)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)
(*for purposes of affirming no less than reversing its orders, appellate ct cannot intrude upon the domain which Congress has exclusively entrusted to administrative agency*)

N.L.R.B. v. First National Bank of Pueblo 623 F.2d 686 (C.A. 10, 1980)
(evidence may properly be considered less substantial when ALJ who *has observed witnesses and lived with case* has drawn conclusions different from those reached by Bd especially where credibility issues are important)

N.L.R.B. v. Brewton Fashions, Inc., a Division of Judy Bond 682 F.2d 918 (C.A. 11, Aug. 1982)
(Bd's finding that two women who were discharged for refusing to push heavy cart were treated differently from others who also refused held supported by substantial evidence on record as whole but not by everything in record and court will not displace Bd's choice)

Arthur N. Stephenson v. N.L.R.B. 614 F.2d 1210 (C.A. 9) (1980)
(in determining whether substantial evidence on the record as a whole supports conclusion that legitimate business reason was motivating factor, i.e., the *but-for* cause of discharge, ct must not limit its consideration to supporting evidence while excluding contradictory evidence)

5907-2001 Generally

N.L.R.B. v. Magnesium Casting Company, Inc. 668 F.2d 13 (C.A. 1, Dec. 1981)
(ct held Gissel order appropriate, rejecting E's objections to Bd's ULP findings regarding discharges of U adherents and validity determinations of several authorization cards, where ct held that challenged Bd findings were supported by substantial evidence)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. 662 F.2d 899 (C.A. 2, Sep. 1981)
(no remand where there was substantial evidence (of illegal motive) to support Bd's findings of ULP)

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)
(ct upholds findings of fact if supported by substantial evidence on the record as a whole; and substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; ct supports inferences that Bd draws from those facts, and its application of statutory standards to those facts or inferences as long as they are reasonable)

N.L.R.B. v. Cable Vision, Inc. 660 F.2d 1 (C.A. 1, Sept. 1981)
(ct will not substitute its judgment for that of Bd when choice is between two fairly conflicting views, even though ct would justifiably have made a different choice had the matter been before it de novo)

N.L.R.B. v. Maine Caterers, Inc., et al. 654 F.2d 131 (C.A. 1, July 1981)
(so long as Bd's position represents between two fairly conflicting views, it should be enforced even if ct would justifiably have made different choice had matter been before it *de novo*)

N.L.R.B. v. Boston Beef Co., Inc. 652 F.2d 223 (C.A. 1, July 1981)
(ct's standard of review concerning *challenged ballot* is restricted to analysis of whether Bd abused its discretion in sustaining challenge and certifying U)

N.L.R.B. v. Amber Delivery Service, Inc. 651 F.2d 57 (C.A. 1, June 1981)
(ct will uphold Bd decision when it represents *a choice between two fairly conflicting views* if supported by evidence)

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. 658 F.2d 934 (C.A. 2, Sept. 1981)
(ct rejected Bd's attempt now made before ct to distinguish Bd's prior similar cases from instant case in which it reached opposite result from those cases in finding that supervisors' pro-U conduct did not interfere with election because their authority was ministerial and limited; no such limitations of authority are delineated in opinions of RD, hearing officer, or Bd which would now permit such characterizations of the various indicia of supervisory authority; moreover, ct cannot now accept counsel's post-hoc rationalizations for disparate treatment in these cases)

N.L.R.B. v. Charles Batchelder Company, Inc. 646 F.2d 33 (C.A. 2, Mar 1981)
(ct will not engage in *but for* analysis where Bd found that impermissable ground was only basis for discharge and refusal to rehire; ct will look for substantial evidence to support pretext finding)

Behring International, Inc. v. N.L.R.B. 675 F.2d 83 (C.A. 3, Apr. 1982)

United States Steel Corporation, Inland Steel Company, Bethlehem Steel Corporation v. N.L.R.B. 644 F.2d 286 (C.A. 3, Mar 19, 1981)
(ct must accept Bd's findings of 8(a)(1) and 8(a)(5) violations if they are supported by substantial evidence on record as whole, even if we (ct) would have resolved issue differently in first instance)

Tri-State Truck Service, Inc. v. N.L.R.B. 615 F.2d 65 (C.A. 3, 1980)
(Bd's finding that two Ees were unlawfully discharged for engaging in protected concerted activity reversed in absence of substantial evidence on record as whole that E knew of such concerted activity from telephone conversation with individual Ee who only asked about time and one-half for working on Saturday with no indication that subsequent decision of refusing to work was made on other than an individual basis; furthermore, E's knowledge that two discharged Ees lived together does not infer knowledge of concerted activity)

American Thread Company v. N.L.R.B. 631 F.2d 316 (C.A. 4, Sept. 1980)
(Bd's decision supported by substantial evidence notwithstanding Bd drew different inferences and conclusions from evidence than did the ALJ; Bd, not ALJ, is ultimately vested with responsibility for determining whether ULP has been committed)

5907-2001—Cont.

Hutzler Brothers Company v. N.L.R.B. **630 F.2d 1012 (C.A. 4, 1980)**
(ct reversed Bd finding that E unlawfully denied U organizers access to store Ees since GC had not sustained his burden of proving that U had no other reasonable means of communicating with Ees; absent effort by U to communicate by other possibly available means, Bd could only infer inadequate access from physical evidence of structure and location of plant, working habits of Ees, and conduct of E)

United States Postal Service v. N.L.R.B. **614 F.2d 384 (C.A. 4) (1980)**
(where factual and legal theory of pretext discharge relied upon by Bd in ct to support finding of violation was completely different from factual and legal theory of *Weingarten* violation upon which evidentiary hearing was conducted before ALJ and case decided by Bd, ct held substantial evidence test was not met)

TRW, Incorporated v. N.L.R.B. **654 F.2d 307 (C.A. 5, 1981)**
(determination that E's reason for discharging Ee is pretextual in finding of fact that is subject to plenary review)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(in reviewing reasonableness of Bd's findings under substantial evidence test, ct must review reasonableness of conclusion Bd drew from record and must determine how reasonable person might view record)

Amoco Production Company v. N.L.R.B. **613 F.2d 107 (C.A. 5, Mar. 1980)**
(in making factual determination of whether affiliated U was successor to independent U, ct must consider whether changes have occurred in rights and obligations of U's leadership and membership, and in relationships between putative bargaining agent, its affiliate, and E; however, such factual determination is for Bd to make initially)

Childers Products Company v. N.L.R.B. **683 F.2d 242 (C.A. 6, Feb 1981)**
(refusal to bargain with certified U unlawful where U won election, eight votes to six, and evidence supported Bd finding that two additional Ees were ineligible to vote in the election on ground they were supervisors)

The Kroger Company v. N.L.R.B. **647 F.2d 634 (C.A. 6, Oct 1980)**
(ct set aside Bd's dismissal of complaint against U for picketing secondary E's grocery stores and remanded case for further proceedings where there was no substantial evidence in record to support Bd's finding that cessation of business of secondary E would not have been result of successful boycott of primary E's paper bags, since such bags were necessary for every purchase made at stores and thus lost their separate identity and merged into secondary E's operation of grocery stores)

Edward Kopack, Sr. and Edward Kopack, Jr. v. N.L.R.B. **668 F.2d 946 (C.A. 7, Jan. 1982)**
(ct cited SCt's *Universal Camera* decision to the effect that, in case of a disagreement between ALJ and Bd, evidence supporting a conclusion may be less substantial when impartial, experienced examiner who has observed witnesses and lived with case has drawn conclusions different from Bd's than when he has reached same conclusion; examiner's findings are to be considered along with consistency and inherent probability of testimony, and significance of his report depends largely on importance of credibility in the particular case)

Edward Kopack, Sr. and Edward Kopack, Jr. v. N.L.R.B. **668 F.2d 946 (C.A. 7, Jan. 1982)**
(in assessing the *substantial evidence* standard in SCt's *Universal Camera* decision, ct declined to weigh merits of E's contention that Bd's decision holding, contrary to ALJ, that discharge was not unlawful should be upheld if record *offers a rational basis for the Bd's conclusion;* ct noted, however, that it has interpreted substantial evidence test as requiring *such evidence as a reasonable mind might accept as adequate to support a conclusion*)

Edward Kopack, Sr. and Edward Kopack, Jr. v. N.L.R.B. **668 F.2d 946 (C.A. 7, Jan. 1982)**
(in case involving disagreement between ALJ's decision that discharges were unlawful and Bd's conclusion to the contrary, ct rejected dischargees' argument that Bd erred in overruling ALJ because his contentions were supported by substantial evidence and, therefore, Bd is subject to reversal by ct; framing issue on review as being *whether Bd erred* is inconsistent with SCt's decision in *Universal Camera* which establishes level of scrutiny which must be applied to Bd decision by reviewing ct; it does not apply to standard of review which Bd must apply to ALJ's determination)

Edward Kopack, Sr. and Edward Kopack, Jr. v. N.L.R.B. **668 F.2d 946 (C.A. 7, Jan. 1982)**
(in reviewing questions of fact, ct of appeals has less discretion to overturn a Bd determination than Bd has to reject conclusions of ALJ; Bd is not bound by findings and conclusions of ALJ and is free to draw its own inferences as well as conclusions when its broader experience and expertise is applicable)

N.L.R.B. v. Eldorado Manufacturing Corporation and United Steelworkers of America, AFL-CIO **660 F.2d 1207 (C.A. 7, Sep. 1981)**
(ct's discussion of facts of case followed ALJ's findings where based on substantial evidence but not when based on scintilla evidence or when contrary to the record)

Southern Indiana Gas and Electric Co. v. N.L.R.B. **657 F.2d 878 (C.A. 7, Aug 1981)**
(substantial evidence standard requires ct to review entire record, including evidence which detracts from Bd's decision, even though evidence supporting Bd's conclusion, viewed by itself, might seem *substantial;* if record, considered in its entirety, *clearly precludes Bd's decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters w/i its special competence,* the Bd's decision must be set aside)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. **635 F.2d 1255 (C.A. 7, 1980)**
(ct rejected, as being unreasonable and not based on substantial evidence, Bd's conclusion that E's economic justification for discharges was sham; furthermore, Sec. 8(a)(1) violations alone are legally insufficient to show Bd met its burden of proof that Ees were discharged because of U activity)

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. **683 F.2d 305 (C.A. 9, July 1982)**
(ct held substantial evidence supported Bd's conclusion that its factual findings demonstrated that unlawful E assistance to U and U misrepresentation in soliciting U authorization cards coerced Ees in their selection of bargaining agent, and such conclusion was inherently reasonable and well w/i discretion of Bd whose interpretation of Act is entitled to considerable deference)

N.L.R.B. v. Catalina Yachts **679 F.2d 180 (C.A. 9, June 1982)**
(ct found no merit in E's contention that Bd's findings were not based on substantial evidence where findings were supported by testimony of E's witnesses and in other instances, findings were based on credibility resolutions made by ALJ; E's argument relied on discredited testimony)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center **652 F.2d 856 (C.A. 9, Aug 1981)**
(where Bd certified U w/o benefit of hearing or full record, ct would construe the *well pleaded factual assertions ... most favorably to (the excepting party);* and if factual assertions create material issue of fact, ct will remand to the Bd to order a hearing, and if not, ct will affirm Bd's decision)

Western Clinical Laboratory, Inc. v. N.L.R.B. **633 F.2d 225(T) (C.A. 9, 1980)**
(ct cannot reject Bd's choice between two fairly conflicting views even if it would have decided matter differently had it been before ct originally)

N.L.R.B. v. Silver Spur Casino **623 F.2d 571 (C.A. 9, 1980)**
(Es' contention that Bd demanded more evidence than required to rebut presumption of U's majority support rejected; substantial evidence on record supported Bd's decision and policies and goals of Act are best served by enforcement of Bd's orders on Es' refusal to bargain)

N.L.R.B. v. Best Products Company, Inc. **618 F.2d 70 (C.A. 9, 1980)**
(notwithstanding Bd's finding that Ee's suspension was unlawfully motivated by Ee's U activity and not her excessive absenteeism, ct denied enforcement where Bd's finding was supported not by substantial evidence but circumstantial inferences of pretextual motivation and U animus)

N.L.R.B. v. Big Bear Supermarkets #3 and its alter ego Richard Homes **640 F.2d 924 (C.A. 9, Apr 8, 1980)**
(where ultimate findings of Bd are contrary to those of ALJ's ct must pay particular attention to standards of review of Bd's findings of fact; standard of review does not change because Bd reaches conclusion contrary to ALJ, and Bd's findings of fact must be upheld if supported by substantial evidence on the record as a whole; moreover, in light of Bd's special expertise, ct will defer to reasonable derivative inferences drawn by Bd from credited evidence)

N.L.R.B. v. Joseph, d/b/a Meat Packers International **609 F.2d 446 (C.A. 9, 1979)**
(enforcement refused where ct could not look at entire record including demeanor findings, and find that there was substantial evidence supporting Bd's finding of ULP)

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(conclusory statement by Bd that access is needed to neutralize effects is not sufficient to justify grant of access; assumptions must be supported by evidence in record; Bd must find reasonable foreseeability that Ees at those plants where access is imposed have suffered coercive effects from E's unlawful conduct and that access remedy is necessary to cure those effects)

5907-2001—Cont.

Service Employees International Union, Local 250, AFL-CIO v. N.L.R.B. **600 F.2d 930 (C.A.D.C., 1979)**

(enforcement denied where ct felt that Bd majority findings on ultimate factual question were not supported by substantial evidence on record considered a whole; 8(a)(4) charge in issue)

5907-2033 Erroneous findings immaterial where other evidence sustains conclusions

N.L.R.B. v. Local 19, Hotel, Motel, Restaurant Employees and Bartenders Union, AFL-CIO **628 F.2d 1357(T) (C.A. 9, 1980)**

(where ALJ's decision to reject E's business justification reason for E's layoff not supported by substantial evidence and record contains no direct evidence of anti-U animous layoff's not violative)

5907-4000 Court determines sufficiency of evidence supporting admitted or uncontested findings

Amoco Production Company v. N.L.R.B. **613 F.2d 107 (C.A. 5, Mar. 1980)**

(case remanded to Bd where ct was left wondering why Bd had decided that affiliated U was successor to independent U and, while it would be possible for ct to review record and determine whether affiliated U was a continuation of old U under a new name or substantially different organization, ct held this was a factual determination to be made by Bd and precedent required ct to avoid substituting its own judgment for that of Bd)

Aeroplastics, Inc. v. N.L.R.B. **610 F.2d 485 (C.A. 6, 1980)**

Aeroplastics, Inc. v. N.L.R.B. **610 F.2d 485 (C.A. 6, 1979)**

5907-8000 Court may not encroach upon fact-finding prerogatives of Board

N.L.R.B. v. Cable Vision, Inc. **660 F.2d 1 (C.A. 1, Sept. 1981)**

(while ct might not have decided issue as did Bd if ct were viewing matter de novo, it could not say that there was no substantial evidence supporting ALJ's and Bd's finding that evidence of *significant improper motivation* outweighed evidence of proper motive produced by E)

N.L.R.B. v. Boston Beef Co., Inc. **652 F.2d 223 (C.A. 1, July 1981)**

(ct reluctant to substitute its judgment on issue of whether Ee was casual rather than regular part-time Ee, where Bd possessed significant expertise and minor factual differences are so important, so long as substantial evidence supported Bd's conclusion)

N.L.R.B. v. Koenig Iron Works, Inc.; et al. **681 F.2d 130 (C.A. 2, June 1982)**

(determination of sufficiency of E's evidence regarding loss of majority status or good faith doubt is question of fact for Bd which is subject to limited review)

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. **658 F.2d 934 (C.A. 2, Sept. 1981)**

(while ct, contrary to Bd herein, might be inclined to infer that groupleaders possessed sufficient authority to warrant holding that their extensive pro-U involvement in U campaign was coercive upon Ees, determination of such coercive effects must initially lie with Bd, since adjudication of this issue is clearly committed in first instance to Bd; reviewing ct's substitution of counsel's rationale or its discretion for that of Bd is incompatible with orderly function of process of judicial review)

Electrical Products Division of Midland-Ross Corporation v. N.L.R.B. **617 F.2d 977 (C.A. 3, 1980)**

(ct's scope of review as to factual findings is narrow and it may only reverse if Bd's finding is not supported by substantial evidence; it is for Bd to draw inferences and assess credibility, and ct may not substitute its assessment of evidence for Bd's if there are conflicting versions in record)

N.L.R.B. v. Haberman Construction Company **641 F.2d 351 (C.A. 5, Apr. 1981)**

(even if ct disagrees with Bd's finding that E repudiated its contract obligations, ct cannot reverse such finding since it is not ct's province to substitute its judgment for that of the Bd when Bd has drawn plausible inference from competent evidence)

N.L.R.B. v. Digital Paging Systems of Toledo, Inc. **659 F.2d 725 (C.A. 6, Sep 1981)**

(conflicts in evidence are for Bd to resolve and, if supported by substantial evidence, such resolutions must be accepted by ct)

N.L.R.B. v. Supreme Bumpers, Inc., d/b/a Precision Plating **648 F.2d 1076 (C.A. 6, May 1981)**

(ct granted enforcement of Bd order, notwithstanding sharp factual dispute presented by record, where there was substantial evidence to support findings of Bd, which accepted ALJ's recommendations)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. **679 F.2d 673 (C.A. 7, May 1982)**

(even though Bd chose one of conflicting inferences)

Edward Kopack, Sr. and Edward Kopack, Jr. v. N.L.R.B. **668 F.2d 946 (C.A. 7, Jan. 1982)**

(in case involving disagreement between ALJ's decision that discharges were unlawful and Bd's conclusion to the contrary, ct stated it is not bound to uphold ALJ's findings because they are supported by substantial evidence; it is Bd's decision, rather than that of ALJ, which is subject to scrutiny by reviewing ct under substantial evidence test; and, if there is evidence to support each of two conflicting views, Bd's findings must be allowed to stand despite fact ct might have reached opposite conclusion on its own)

St. Charles Journal, Inc. v. N.L.R.B. **679 F.2d 759 (C.A. 8, June 1982)**

(ct will not displace Bd's choice between two fairly conflicting views of evidence merely because it might justifiably have reached different result were matter before it de novo)

N.L.R.B. v. Associated General Contractors of California, Inc. **633 F.2d 766 (C.A. 9, 1980)**

(Bd's determination on issue of relevancy of information sought (roster of membership) by U is given great weight, either because it is finding of fact or because it is finding on mixed question of law and fact which is w/i expertise of BD)

N.L.R.B. v. Bighorn Beverage **614 F.2d 1238 (C.A. 9) (1980)**

N.L.R.B. v. Alson Mfg. Aerospace Division of Alson Industries, Inc. **599 F.2d 1057 (C.A. 9, 1979)**

(following ct remand to Bd for full evidentiary hearing on E's objections to election and after careful analysis of evidence produced at evidentiary hearing, ct enforced Bd's order upholding certification of U, notwithstanding ct would have preferred second election, in view of U's calling E's document circulated to Ees prior to election *all lies* when it was merely campaign propaganda and in view of U representatives' presence at polling area on election day)

N.L.R.B. v. Carbonex Coal Company **679 F.2d 200 (C.A. 10, May 1982)**

(fact finding not prerogative of reviewing ct even in light of new standards set by Bd)

N.L.R.B. v. Carbonex Coal Company **679 F.2d 200 (C.A. 10, May 1982)**

(whether U has waived its right to bargain over layoff by failing to raise issue or by agreeing to E's action is question of fact to be determined by Bd and to be upheld (by ct) if supported by substantial evidence)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. **643 F.2d 687 (C.A. 10, Mar 2, 1981)**

(w/o any necessity of searching for contrary alternative inferences that might also be drawn from record evidence)

N.L.R.B. v. Dillon Stores, Division of Dillon Companies, Inc. **643 F.2d 687 (C.A. 10, Mar 2, 1981)**

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**

(in reviewing merits, ct is bound by Bd's factual determinations if they are supported by substantial evidence on record as whole; if Bd has made *plausible inference from evidence* ct may not overturn its findings, although if deciding case *de novo* ct might have made contrary findings)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. **603 F.2d 862 (C.A.D.C.)**

(Bd's interpretation of issues is entitled to no particular deference where issues involved are purely legal or otherwise outside Bd's particular expertise; Bd's vacillation in regard to question of status of cab leasing-independent contractor-made attitude of judicial deference to its decision especially inappropriate)

5907-8800 Weight given ALJ findings

N.L.R.B. v. Steinerfilm, Inc. **669 F.2d 845 (C.A. 1, Feb. 1982)**

(notwithstanding Bd revised ALJ's conclusion, ct need not employ degree scrutiny more stringent than that used when Bd upholds ALJ where disagreement was not as to credibility determinations but only as to drawing inferences and legal conclusions from facts)

N.L.R.B. v. Chester Valley, Inc. **652 F.2d 263 (C.A. 2, June 1981)**

(ct not persuaded with E's objections to ULP finding which challenged sufficiency of evidence and credibility findings of ALJ; ct noted in particular its reluctance to interfere with credibility judgments of an ALJ)

5907-8500—Cont.

Garrett Railroad Car & Equipment, Inc. v. N.L.R.B. **683 F.2d 731 (C.A. 3, June 1982)**
(where Bd disagrees with ALJ's finding of fact, Bd's finding must be supported by substantial evidence, and evidence may be less substantial where there is disagreement between ALJ and Bd)

Kenworth Trucks of Philadelphia, Inc. v. N.L.R.B. **580 F.2d 55 (C.A. 3)**
(in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.,* 46 L.W. 4301 (U.S. April 3, 1978) ct, on review, determined that so long as ALJ had provided statement of reasons for recommending bargaining order and so long as Bd had specifically indicated its adoption of findings and reasoning of ALJ, need for separate elaboration by Bd of factors prompting bargaining order appeared to have been met in instant case)

N.L.R.B. v. Supreme Bumpers, Inc., d/b/a Precision Plating **648 F.2d 1076 (C.A. 6, May 1981)**
(ct granted enforcement of Bd order, notwithstanding sharp factual dispute presented by record, where there was substantial evidence to support findings of Bd, which accepted ALJ's recommendations)

Sioux Products, Inc. v. N.L.R.B. **684 F.2d 1251 (C.A. 7, Aug. 1982)**
(where ALJ's decision rests explicitly on his evaluations of demeanor, ct will weigh those findings more heavily)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**
(ct bound by ALJ's credibility findings, since his assessments were supported by substantial evidence in record and were not shocking to ct's conscience)

Anjo Engineering Corporation v. N.L.R.B. **685 F.2d 292 (C.A. 9, Aug. 1982)**
(enforcement denied, since Bd's finding that GC had established *prima facie* case of wrongful discharge failed due to lack of substantial record evidence of E's knowledge of Ees' views on U representation at time of discharge)

N.L.R.B. v. Catalina Yachts **679 F.2d 180 (C.A. 9, June 1982)**
(credibility findings of ALJ will be overturned *only if clear preponderance of evidence convinces us that they are incorrect*)

Zapex Corporation and BDM Services Company v. N.L.R.B. **621 F.2d 328 (C.A. 9, 1980)**
(disagreement between ALJ and Bd as to whether economic strikers were permanently replaced was not difference of opinion as to credibility of witnesses or E's motivation, but drawing of different conclusions from same facts, ALJs determinations as to facts remain intact)

N.L.R.B. v. Big Bear Supermarkets #3 and its alter ego Richard Homes **640 F.2d 924 (C.A. 9, Apr 8, 1980)**
(credibility resolutions of ALJ are entitled to special weight, and Bd's findings contrary to those resolutions will be subjected to particularly critical scrutiny)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(ALJ's decision given special weight when contrary to Bd's especially when credibility involved)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(Bd's finding that discharge of Ee violative not supported by substantial evidence where his driving record resulted in problem in insuring him; further, ALJ's finding that there was insufficient evidence of discriminatory motive entitled to weight)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**
(discharge not violative where for temper outbursts about which Ee had been warned earlier; further, weight must be given to ALJ's conclusion there was no discriminatory motive for discharge)

5911 CREDIBILITY RESOLUTIONS

N.L.R.B. v. Hasbro Industries, Inc. **672 F.2d 978 (C.A. 1, Feb. 1982)**
(overruling of ALJ's determination of credibility not warranted, since neither side's witnesses were altogether consistent, and ALJ was in best position to judge credibility of witness whose grasp of English was an issue)

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(ALJ's credibility resolutions stand unless they are unreasonable)

N.L.R.B. v. Savin Business Machines Corporation **649 F.2d 89 (C.A. 1, May 1981)**
(no basis to upset ALJ's resolution of credibility conflict in favor of charging party's witness, since w/i reason ALJ's judgment on credibility controls, and witness testified against E while still employed and would not likely have fabricated incident he testified to)

N.L.R.B. v. Chester Valley, Inc. **652 F.2d 263 (C.A. 2, June 1981)**
(ct not persuaded with E's objections to ULP finding which challenged sufficiency of evidence and credibility findings of ALJ; ct noted in particular its reluctance to interfere with credibility judgments of an ALJ)

Behring International, Inc. v. N.L.R.B. **675 F.2d 83 (C.A. 3, Apr. 1982)**
(credibility resolutions generally rest with ALJ when he considers all relevant factors in his explanation)

N.L.R.B. v. Keystone Pretzel Bakery, Inc. **674 F.2d 197 (C.A. 3, Apr. 1982)**
(ct could not accept Bd's conclusion that company officer's jocular remark, *Here is your check. U steward* to Ee was coercive; ALJ, who heard and saw Ee testify that he considered exchange to be joke, was in far better position than Bd to evaluate incident; it was trivial matter and should not have been elevated to stature of ULP)

North Cambria Fuel Company, Inc. v. N.L.R.B. **645 F.2d 177 (C.A. 3, Apr 10, 1981)**
(ct will not disturb credibility findings of ALJ as long as ALJ considers all relevant factors and sufficiently explains his or her resolutions; here ALJ fully explained her credibility findings showing that she considered various factors relevant to credibility such as demeanor, admissions, and self-interest)

Eastern Engineering & Elevator Co., Inc. v. N.L.R.B. **637 F.2d 191 (C.A. 3, 1980)**
(Bd's order not supported by substantial evidence based on testimonial evidence not credited by ALJ, where Bd, contrary to Bd policy and legal precedent, rejected ALJ's acceptance of witness' testimony because ALJ *did not give specific reasons for crediting it;* Bd relied on testimony of witness discredited by ALJ on basis of demeanor, notwithstanding Bd's disclaimer of intent not to do so; and Bd's inferred conclusion that violation occurred is not supported by narrative or historical facts presented in evidence which must have logical and rational connection with fact to be inferred)

Clearwater Finishing Company, a Division of United Merchants and Manufacturers, Inc. v. N.L.R.B. **670 F.2d 464 (C.A. 4, Feb. 1982)**
(ct held that ALJ's credibility determinations were supported by substantial evidence and from such credited statements it was reasonable to infer that E was attempting to induce U to abandon backhelp by offering greater benefits to unit already represented by U; same evidence supports Bd's findings that these statements constituted bad faith bargaining)

N.L.R.B. v. E-Systems, Inc., ECI Division **642 NLRB No. 113 (C.A. 5, Apr 4, 1981)**
(ct must determine if Bd's credibility determinations are supported by substantial evidence; if credibility choice is based on inadequate reason, or no reason ct not compelled to respect it and will not do so)

N.L.R.B. v. Proler International Corporation **635 F.2d 351 (C.A. 5, 1981)**
(credibility resolutions regarding whether E told economic strikers they would be *fired* or be *replaced* affirmed since *credibility resolutions are peculiarly w/i province of trial examiner and Bd and are entitled to affirmance unless inherently unreasonable or self-contradictory* and ct found no such contradictions)

N.L.R.B. v. Lloyd Wood Coal Co., Inc. **585 F.2d 752 (C.A. 5)**
(credibility resolutions preculiarly province of Bd)

Thomas Industries, Inc. v. N.L.R.B. **687 F.2d 863 (C.A. 6, Sept. 1982)**
(ALJ's credibility resolutions should be affirmed unless they are inherently unreasonable or self-contradictory)

N.L.R.B. v. Container Corporation of America **649 F.2d 1213 (C.A. 6, May 1981)**
(uncorroborated testimony of charging party and U vice president that plant manager in training allegedly threatened to *make it hard* on U members was not credited where it was not supported by other evidence and he was unable to recall with specificity contents of conversation as uncorroborated testimony of interested charging party does not amount to substantial evidence of ULP)

Delco Air Conditioning Division, General Motors Corporation v. N.L.R.B. **649 F.2d 390 (C.A. 6, May 1981)**
(ct held that substantial evidence on record did not support Bd finding that E unlawfully conditioned Ee's reinstatement on his resignation as U committeeman where ALJ, although completely discrediting Ee's version of his initial discharge, credited Ee's uncorroborated testimony concerning E's alleged condition for Ee's reinstatement; furthermore, ct was unwilling to enforce backpay award upon uncorroborated testimony of Ee who would be beneficiary of reinstatement and backpay award)

N.L.R.B. v. Naum Brothers, Inc. **637 F.2d 589 (C.A. 6, Mar 17, 1981)**
(Bd's finding that discharge was violative supported by substantial evidence where there was ample evidence in record supporting inferences drawn by

5911—Cont.

ALJ and her credibility determinations; that contrary inferences and credibility determinations may also have been supported by record is not relevant on appeal; ct's function is not to make *de novo* review)

N.L.R.B. v. Webb Ford, Inc. **689 F.2d 733 (C.A. 7, Sept. 1982)**

(ct reversed ALJ's credibility findings of former supervisor on 2 grounds: 1) ALJ failed to allow cross examination on his work record at E, and 2) failed to give proper weight to circumstances under which supervisor left E's employ. Here, supervisor was fired on grounds he felt unjust; therefore, this testimony from embittered ex-Ee cannot support finding that E was illegally motivated in firing another Ee when there is ample evidence good cause existed)

Sioux Products, Inc. v. N.L.R.B. **684 F.2d 1251 (C.A. 7, Aug. 1982)**

(where ALJ's decision rests explicitly on his evaluations of demeanor, ct will weigh those findings more heavily)

Sioux Products, Inc. v. N.L.R.B. **684 F.2d 1251 (C.A. 7, Aug. 1982)**

(ALJ may not rely on unrefuted assertions of witness otherwise found to be lacking in credibility because this would effectively place burden of proof on E to refute testimony of otherwise admittedly unbelievable witness instead of GC)

N.L.R.B. v. Sure-Tan, Inc., and Surak Leather Co. **672 F.2d 592 (C.A. 7, Feb. 1982)**

(ct will fault Bd for accepting ALJ's credibility determinations only when such determinations are inherently incredible, unreasonable or conflict with clear preponderance of evidence)

Consolidation Coal Company v. N.L.R.B. **669 F.2d 482 (C.A. 7, Jan. 1982)**

(where ALJ's credibility determinations rested not on demeanor, despite general preliminary statement that demeanor was factor in ALJ's conclusions, but on an analysis of testimony, they deserve less than usual deference and here find Bd's determination not supported by substantial evidence)

Edward Kopack, Sr. and Edward Kopack, Jr. v. N.L.R.B. **668 F.2d 946 (C.A. 7, Jan. 1982)**

(demeanor is often a major factor in ALJ's crediting testimony of one witness over that of another, and significant weight must be attributed to ALJ's findings based on demeanor because neither Bd nor reviewing ct has opportunity similarly to observe the testifying witness)

Edward Kopack, Sr. and Edward Kopack, Jr. v. N.L.R.B. **668 F.2d 946 (C.A. 7, Jan. 1982)**

(SCt's use of term *credibility* in *Universal Camera* case was intended to distinguish witness demeanor from credibility determinations inherent in ALJ's findings which have been termed *derivative inferences*, and when they are reached by ALJ they are important to review by ct since they contribute to amount of evidence weighed against that supporting Bd in determining whether Bd decision is supported by substantial evidence; but to extent that ALJ's decision rests explicitly on his evaluation of demeanor, ct is required to weigh those particular findings more heavily)

Edward Kopack, Sr. and Edward Kopack, Jr. v. N.L.R.B. **668 F.2d 946 (C.A. 7, Jan. 1982)**

(although giving particular weight to ALJ's evaluation of witness demeanor, ct held that decision of ALJ did not turn solely on demeanor evidence but was also based on inferences he drew from the facts; and since these factors do not depend on an assessment of demeanor, Bd, in exercise of its own expertise, can effectively draw its own inferences from the record)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. **636 F.2d 1255 (C.A. 7, 1980)**

(although ct is usually bound by credibility choices of ALJ, ct may disregard these credibility determinations where ct finds them to be unreasonable, self-contradictory or based on inadequate reasoning)

Midwest Stock Exchange, Inc., et al. v. N.L.R.B. **636 F.2d 1255 (C.A. 7, 1980)**

(ct overruled Bd's finding of unlawful threat based on Ee's testimony alleging that supervisor told her to be careful about her U activities because E intended to get rid of every Ee on U list; Ee's testimony was incomplete, self-serving, and none of Ee's allegations were mentioned in sworn affidavit Ee gave to Bd; furthermore, supervisor's testimony that members of management uttered anti-U statements in meetings with Ees was also discredited where record indicated that such testimony was refuted by 15 other witnesses and that he was biased for being fired after only 3 months in E's employment)

N.L.R.B. v. Iowa Beef Processors, Inc. **675 F.2d 1004 (C.A. 8, Apr. 1982)**

(ct will not overturn findings of ALJ based on credibility determinations *unless they shock our conscience*)

N.L.R.B. v. Winco Petroleum Company and Cooper Oil Company, Inc., Successor Employer **668 F.2d 973 (C.A. 8, Jan. 1982)**

(successor's actual knowledge of pending ULPs of predecessor inferred by ALJ in credibility determinations which were supported by substantial evidence that during sale negotiations seller referred to *U problems* as one reason for selling, company's financial report included amount for legal fees and was shown to successor, predecessor's son testified to successor's awareness of pending ULP proceedings, predecessor stated that labor proceedings against company were not *secret*, and proximity and similarity of predecessor and successor's enterprises)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**

(ct bound by ALJ's credibility findings, since his assessments were supported by substantial evidence in record and were not shocking to ct's conscience)

N.L.R.B. v. Brooks Cameras, Inc. **691 F.2d 912 (C.A. 9, Nov. 1982)**

N.L.R.B. v. United States Postal Service **671 F.2d 503(T) (C.A. 9, Feb. 1982)**

(Bd order denied enforcement where Bd revised ALJ's credibility findings without sufficient justification)

N.L.R.B. v. Hawthorne Mazda, Inc. **659 F.2d 1089(T) (C.A. 9, Aug 1981)**

(ct will not sustain factual finding of Bd that rests solely on evidence discredited by ALJ)

N.L.R.B. v. Hansa Mold, Inc. **634 F.2d 635(T) (C.A. 9, 1980)**

(ct would not disturb contested credibility findings where there was no clear preponderance of evidence showing ALJ's credibility determinations to be incorrect)

Western Clinical Laboratory, Inc. v. N.L.R.B. **633 F.2d 225(T) (C.A. 9, 1980)**

(of Bd will not be overturned by ct absent *exceptional circumstances*)

N.L.R.B. v. Adams Delivery Service, Inc. **623 F.2d 96 (C.A. 9, July 1980)**

(credibility resolutions left to trier of fact)

N.L.R.B. v. Columbia Building Materials, Inc. **624 F.2d 193(T) (C.A. 9, 1980)**

(ct upheld Bd's finding based primarily on credibility determination that E's hiring Ees at *trainee* rate which was below contract rate was unlawful since testimony on which Bd relied not inherently incredible)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

(self-serving declarations made by E's witnesses not credited and fact that witnesses corroborated each other irrelevant where ALJ found GC's witnesses more credible)

Weather Tamer, Inc. and Tuskegee Garment Corporation v. N.L.R.B. **676 F.2d 483 (C.A. 11, May 1982)**

(ALJ did not err in crediting testimony of witness notwithstanding other witness's testimony was inconsistent in several respects; ct respected credibility choice; it was not inherently unreasonable)

Butler-Johnson Corporation v. N.L.R.B. **608 F.2d 1303 (C.A. 9)**

(ALJ's decision given special weight when contrary to Bd's especially when credibility involved)

5914 CONCLUSIONS OF LAW

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. **658 F.2d 934 (C.A. 2, Sept. 1981)**

(ct held Bd's conclusions of law with reference to E's objections to election were not supported by essential findings relative to two issues: (1) whether, based upon evidence and findings of fact, group leaders who engaged in pro-U activity during critical period were *supervisors*, setting forth criteria for such; and (2) if so, whether their pro-U activities affected Ees' votes; since Bd only looked at groupleaders' challenged ballots, it avoided issue regarding whether any ballots cast were affected by groupleaders' conduct)

5914-0100 Generally

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**

(decisions of U.S. Ct of Appeals is law which Bd must follow in cases arising in particular judicial circuit)

N.L.R.B. v. Frederick Memorial Hospital, Inc. **691 F.2d 191 (C.A. 4, Oct. 1982)**

(ct cannot in first instance adjudicate whether certification of unit is consistent with congressional intent; nor can ct adequately review Bd's decision and order unless Bd discloses why certification of unit comports with necessity of preventing proliferation of bargaining units)

5914-1200 Application of intervening change in law while case is on appeal

Peavey Company v. N.L.R.B. **648 F.2d 460 (C.A. 7, May 1981)**
(ct considered unlawful discharge under *Wright Line* test and found Ees discharge not based on pretextual reasons and not violative)

5914-2500 Weight given ALJ conclusions

N.L.R.B. v. Cable Vision, Inc. **660 F.2d 1 (C.A. 1, Sept. 1981)**
(degree of weight and likely interpretation to be given supervisor's allegedly unlawful statements held to depend upon context, and ALJ is likely to understand that context better than reviewing ct)

N.L.R.B. v. Cable Vision, Inc. **660 F.2d 1 (C.A. 1, Sept. 1981)**
(ALJ is primarily responsible for judgments as to credibility and his conclusion that E's statements were unlawful was reasonable)

Kenworth Trucks of Philadelphia, Inc. v. N.L.R.B. **580 F.2d 55 (C.A. 3)**
(in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 46 L.W. 4301 (U.S. April 3, 1978) ct, on review, determined that so long as ALJ had provided statement of reasons for recommending bargaining order and so long as Bd had specifically indicated its adoption of findings and reasoning of ALJ, need for separate elaboration by Bd of factors prompting bargaining order appeared to have been met in instant case)

N.L.R.B. v. Webb Ford, Inc. **689 F.2d 733 (C.A. 7, Sept. 1982)**
(where ALJ evidenced some bias towards E, although not enough to warrant finding abuse of discretion, this bias detracts from weight accorded his credibility findings and ct subjected them to closer scrutiny than unusal, concluding that there is insufficient evidence to support ALJ's conclusions and remand case for further proceedings before different ALJ)

5914-5000 Experienced judgment of Board entitled to great weight

N.L.R.B. v. Concord Furniture Industries, Inc., d/b/a Bradford Furniture Company **675 F.2d 426 (C.A. 1, Mar. 1982)**
(weight given to Bd's expertise and judgment particularly apt in determination of supervisory status)

N.L.R.B. v. Boston Beef Co., Inc. **652 F.2d 223 (C.A. 1, July 1981)**
(ct reluctant to substitute its judgment on issue of whether Ee was casual rather than regular part-time Ee, where Bd possessed significant expertise and minor factual differences are so important, so long as substantial evidence supported Bd's conclusion)

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. **630 F.2d 25 (C.A. 1, 1980)**
(Bd decision that impasse alone does not justify E's unilateral withdrawal from multi-E bargaining association subject to only limited review where Congress intended to leave to Bd's *specialized judgment... questions concerning multi-E bargaining* and here Bd has struck reasonable balance)

J.J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation v. N.L.R.B. **643 F.2d 148 (C.A. 2, Mar 21, 1981)**
(Bd's findings with respect to supervisory determinations are entitled to *special weight* in light of its expertise in this area)

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(while deference is to be given to agency's intepretation of statute it administers, it is cts that have final responsibility under constitution on matters of statutory interpretation)

The Catholic Medical Center of Brooklyn and Queens, Inc., et al. v. N.L.R.B. **620 F.2d 20 (C.A. 2, 1980)**
(agency's conclusions based upon inferences it draws not to be set aside by reviewing ct unless they transgress bounds of reason)

Latrobe Steel Company v. N.L.R.B. **630 F.2d 171 (C.A. 3, 1980)**
(Bd has special expertise in classifying *mandatory* and *non-mandatory* subjects of bargaining; Congress delegated primary responsibility of defining scope of duty to bargain to Bd)

N.L.R.B. v. Garry Manufacturing Company **630 F.2d 934 (C.A. 3, 1980)**
(cts should defer to Bd expertise, particularly where Ees may be especially sensitive to implied threats)

J. P. Stevens & Co., Inc. v. N.L.R.B. **638 F.2d 676 (C.A. 4, 1980)**
(ct deferred to Bd's expertise in finding posted notice stating that signing U card can have *serious consequences* unlawfully coercive especially in context of E's history of misconduct; moreover, notice was posted only day after known U activist disappeared from plant)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**
(ct recognizes that Bd can order E to cease ULPs at its other plants on proof of violation at one location when company-wide policy is involved)

N.L.R.B. v. South Central Bell Telephone Company **688 F.2d 345 (C.A. 5, Oct. 1982)**
(judgment of Bd is subject to judicial review; but if its construction of statute is reasonably defensible, it should not be rejected merely because cts might prefer another view of statute; but enforcement of Bd orders refused where orders had no reasonable basis in law, fundamentally inconsistent with structure of Act or attempt to usurp major policy decisions properly made by Congress)

N.L.R.B. v. L. B. Priester & Son, Inc. **669 F.2d 355 (C.A. 5, Mar. 1982)**
(in case involving alleged untimely withdrawal from multi-E bargaining unit, respect for Bd's expertise is particularly proper because of Congress deliberate inaction with regard to multi-E bargaining as this indicates commitment by Congress of the issues raised to Bd's specialized judgment)

Vicksburg Hospital, Inc. v. N.L.R.B. **653 F.2d 1070 (C.A. 5, Aug 1981)**
(Bd has wide discretion in determining whether election has been fairly conducted, and its decisions warrant special respect on review)

N.L.R.B. v. Jaggars-Chiles-Stovall, Inc. **639 F.2d 1344 (C.A. 5, 1981)**
(*wage data on Ees outside bargaining unit must meet standard of relevance before it must be surendered to U but NLRB determination of relevance of information sought in particular case must be given great weight by courts if only because it is finding of law and fact w/i expertise of Bd*)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. **619 F.2d 332 (C.A. 5, 1980)**
(ct accords special deference to Bd's expertise in determining supervisory status under substantial evidence test because gradations of authority w/i organization can be so subtle)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. **615 F.2d 1100 (C.A. 5, 1980)**
(cts must give great weight to Bd's determination of relevance of information regarding wages of nonunit Ees requested at mid-term by U, if only because it is finding on mixed question of law and fact which is w/i particular expertise of Bd)

N.L.R.B. v. Medical Mutual of Cleveland, Inc. **659 F.2d 726 (C.A. 6, Sept. 1981)**
(oral argument not needed, since Bd's findings, that E coercively interrogated one Ee and violatively discharged another Ee for filing charges with Bd, were supported by substantial evidence including evidence opposed to Bd's view; standard of review does not allow ct to set aside Bd's choice between two conflicting views of evidence, even though ct may have reached different conclusion after *de novo* hearing)

C & D Foods, Inc. v. N.L.R.B. **626 F.2d 578 (C.A. 7, 1980)**
(Bd's bargaining order enforced since E's objections concerning certification of inappropriate unit were properly overruled by Bd as being w/i its expertise and discretion to exclude Ees of five grow-out farms as being agricultural Ees and to exlcude Ees of sixth grow-out operation as lacking a community of interest with Ees of properly certified unit)

N.L.R.B. v. C & D Foods, Inc. **626 F.2d 578 (C.A. 7, July 1980)**
(determination of *agricultural Ee* properly left, in first instance to Bd, *whose special duty is to apply this broad statutory language to varying fact patterns*; Bd's determination must be accepted by reviewing ct *if it has warrant in the record and a reasonable basis in law*)

The PaintSmiths, Inc. v. N.L.R.B. **620 F.2d 1326 (C.A. 8, 1980)**
(Bd decision based on dissent in prior Bd case does not merit deference where there has been no significant change in decisional law)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. **621 F.2d 890 (C.A. 8, 1980)**
(it is for Bd, and *not the cts*, to make determination based on its expert estimate as to effects on election process of ULPs of varying intensity)

N.L.R.B. v. Brooks Cameras, Inc. **691 F.2d 912 (C.A. 9, Nov. 1982)**
(where issue is E's motive behind Ee discharge, determination of motive is particularly w/i purview of Bd)

N.L.R.B. v. World Evangelism, Inc. **656 F.2d (C.A. 9, 1981)**
(Bd's interpretation of Act is entitled to considerable deference, and must be upheld if reasonably defensible)

N.L.R.B. v. Hawthorne Mazda, Inc. **659 F.2d 1089(T) (C.A. 9, Aug 1981)**
(Bd is free to draw its own inferences from evidence in record and reviewing ct will uphold Bd's finding even where ALJ interpreted facts differently)

N.L.R.B. v. Southern California Edison Company **646 F.2d 1352 (C.A. 9, Jun 1981)**
(deference (from ct) is due Bd's interpretation of labor contracts because such contracts are different in nature and scope from ordinary commercial contracts and, as such, labor contract interpretation falls w/i area of Bd's special expertise)

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Karl Kallmann, d/b/a Love's Barbeque Restaurant, No. 62 v. N.L.R.B. 640 F.2d 1094 (C.A. 9, 1981)
(ct rejected E's contention that evidence supporting Bd's determination must be stronger when Bd disagrees with ALJ's findings than when it agrees; in any event, Bd did not disagree with ALJ's assessment of witness credibility, but drew different inferences from testimony itself which is entitled to judicial deference due to Bd's special expertise in drawing these kinds of inferences)

Seattle-First National Bank v. N.L.R.B. 638 F.2d 1221 (C.A. 9, 1981)
(ct has uniformly deferred to expertise of Bd to make initial determination whether E's conduct demonstrates an unwillingness to bargain in good faith)

N.L.R.B. v. Associated General Contractors of California, Inc. 633 F.2d 766 (C.A. 9, 1980)
(Bd's determination on issue of relevancy of information sought (roster of membership) by U is given great weight, either because it is finding of fact or because it is finding on mixed question of law and fact which is w/i expertise of Bd)

K Mart Corporation v. N.L.R.B. 626 F.2d 704 (C.A. 9, 1980)
(ct will accept inferences drawn by Bd from external conduct even if another inference seems more plausable so long as supported by substantial evidence)

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. 625 F.2d 850 (C.A. 9, 1980)
(issue of whether current three year contract was bar to election ptn remanded to Bd to explain, why *membership* as used in contract should be interpreted differently depending on whether word appeared in U security clause or health benefit clause, and whether petitioner, to its detriment, reasonably relied on contract's cover dates in determining when to file election ptn; Bd must follow its own precedent by excluding extrinsic evidence from its consideration or explain why its rules should be disregarded; ct not allowed to substitute different rationale for that provided by Bd)

Sohio Petroleum Co., a division of Sohio Natural Resources Co. v. N.L.R.B. 625 F.2d 223 (C.A. 9, June 1980)
(ct will not disturb Bd's (unit) determination unless there has been abuse of discretion and bargaining unit is clearly inappropriate; issue of bargaining unit determination is w/i particular expertise of Bd)

N.L.R.B. v. Chet Monez Ford 624 F.2d 193(T) (C.A. 9, 1980)
(ct will defer to Bd's expertise in assessing impact of ULP's with regard to U's subsequent loss of majority support notwithstanding record is silent as to actual impact)

N.L.R.B. v. International Harvester Company 618 F.2d 85 (C.A. 9, 1980)
(in Bd's interpretation of mandatory bargaining provisions)

N.L.R.B. v. Richard Tischler, Martin Rader and Donald Connelly, Sr., a limited partnership, d/b/a Devon Gables Nursing Home, et al. 615 F.2d 509 (C.A. 9) (1980)
(deference accorded to Bd's conclusions rather than to ALJ's where Bd did not disagree with ALJ's assessment of credibility of witnesses, but rather drew different inferences from statements made by witnesses upon whom ALJ relied)

Crane Sheet Metal, Inc. and Hartley Sheet Metal Company, Inc. v. N.L.R.B. 675 F.2d 256 (C.A. 10, Apr. 1982)

N.L.R.B. v. Bartlett-Collins Company 639 F.2d 652 (C.A. 10, 1981)
(in reviewing Bd decision as to whether issue constitutes mandatory bargaining subject, ct must give considerable deference to Bd's judgment; Congress delegated to Bd primary responsibility of marking out scope of statutory duty to bargain and classification of bargaining subjects is matter concerning which Bd has special expertise)

N.L.R.B. v. Bartlett-Collins Company 639 F.2d 652 (C.A. 10, 1981)
(reasonableness of Bd's construction concerning issue of presence of court reporter as mandatory subject of bargaining is not altered because Bd reverses its previous rulings as long as new position is fully explained and is fair and reasoned one w/i scope of Bd's authority)

Lone Star Steel Company v. N.L.R.B. 639 F.2d 545 (C.A. 10, 1980)
(classification of bargaining subjects as *terms or conditions of employment* is matter of special Bd expertise; Bd's judgment as to what is mandatory bargaining subject is entitled to considerable deference)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)
(imposition of remedies is matter of special administrative competence, subject to very limited judicial review; selection of remedies made by Bd must stand, *unless it can be shown that the order is patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act*)

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)
(Bd's interpretation of issues is entitled to no particular deference where issues involved are purely legal or otherwise outside Bd's particular expertise; Bd's vacillation in regard to question of status of cab leasing-independent contractor-made attitude of judicial deference to its decision especially inappropriate)

5914-7500 Consideration may be given to fact Board and ALJ reached different results

N.L.R.B. v. Steinerfilm, Inc. 669 F.2d 845 (C.A. 1, Feb. 1982)
(notwithstanding Bd revised ALJ's conclusion, ct need not employ degree scrutiny more stringent than that used when Bd upholds ALJ where disagreement was not as to credibility determinations but only as to drawing inferences and legal conclusions from facts)

N.L.R.B. v. Hudson River Aggregates, Inc. 639 F.2d 865 (C.A. 2, 1981)
(enforcement denied where no evidence in record to support Bd's finding of non coercive atmosphere during election especially in view of fact that hearing officer who had opportunity to observe witnesses reached opposite conclusion)

K & K Gourmet Meats, Inc. v. N.L.R.B. 640 F.2d 460 (C.A. 3, 1981)

N.L.R.B. v. A. S. Abell Company 624 F.2d 506 (C.A. 4, 1980)
(no special significance attaches to ALJ's findings where ALJ and Bd reach different legal conclusions based on same facts; while ct reviews Bd's decision, ALJ's decision is part of record)

Central Freight Lines, Inc. v. N.L.R.B. 653 F.2d 1023 (C.A. 5, Aug 1981)
(ct reviews Bd's findings, but where its findings conflict with those of ALJ, record, including ALJ's report, must be subjected to particular scrutiny)

The Berry Schools v. N.L.R.B. 653 F.2d 966 (C.A. 5, Aug 1981)
(where Bd has reversed decision of ALJ finding of no unlawful behavior, ct has obligation to examine evidence and findings of Bd more critically than if two were in agreement)

N.L.R.B. v. Datapoint Corporation 642 F.2d 123 (C.A. 5, Apr 8, 1981)
(where Bd does not accept factual findings of ALJ, ct's examination of record and Bd's findings must be especially critical when Bd disagrees with some of ALJ's credability determinations)

N.L.R.B. v. Ridgeway Trucking Company 625 F.2d 122 (C.A. 5, 1980)
(Bd's decision cannot be reversed where it merely draws different inference than ALJ from established facts, provided there is substantial evidence; here, ALJ refused to credit testimony of two Ees who accused E of specifically firing them and Bd did not refute finding and did not accept those witness' credibility either but reached its conclusion from remainder of record, relying on facts accepted as credible by ALJ)

N.L.R.B. v. Brazos Electric Power Cooperative, Inc. 615 F.2d 1100 (C.A. 5, 1980)
(judicial deference to Bd's legal conclusion as to relevance of information sought was not lessened as result of contrary legal inference drawn by ALJ)

N.L.R.B. v. Town & Country LP Gas Service Company 687 F.2d 187 (C.A. 7, Aug. 1982)
(where Bd and ALJ reached different conclusions, ct examined evidence carefully but upheld Bd decision where Bd only rejected ALJ's reasoning process and not subsidiary factual findings)

Colson Equipment, Inc. v. N.L.R.B 673 F.2d 221 (C.A. 8, Mar. 1982)
(ct held Bd's conclusion, which overturned ALJ, that E threatened or interrogated Ees was not supported by substantial evidence)

The PaintSmiths, Inc. v. N.L.R.B. 620 F.2d 1326 (C.A. 8, 1980)
(ct attached no significance to Bd's acceptance of ALJ's findings of fact but rejection of his conclusions of law)

N.L.R.B. v. Brooks Cameras, Inc. 691 F.2d 912 (C.A. 9, Nov. 1982)
(ct must uphold factual determinations of Bd if, considering evidence as whole, its findings are based upon substantial evidence when Bd and ALJ make contrary findings, this standard does not change; deference accorded fact findings runs in favor of Bd, but ALJs findings as part of record must be weighed along with other opposing evidence, against evidence supporting Bd's decision)

Doug Hartley, Inc. v. N.L.R.B. 669 F.2d 579 (C.A. 9, Feb. 1982)

Karl Kallmann, d/b/a Love's Barbeque Restaurant, No. 62 v. N.L.R.B. 640 F.2d 1094 (C.A. 9, 1981)
(ct rejected E's contention that evidence supporting Bd's determination must be stronger when Bd disagrees with ALJ's findings than when it agrees; in any event, Bd did not disagree with ALJ's assessment of witness credibility, but drew different inferences from testimony itself which is entitled to judicial deference due to Bd's special expertise in drawing these kinds of inferences)

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Zapex Corporation and BDM Services Company v. N.L.R.B. 621 F.2d 328 (C.A. 9, 1980)
(disagreement between ALJ and Bd as to whether economic strikers were permanently replaced was not difference of opinion as to credibility of witnesses or E's motivation, but drawing of different conclusions from same facts, ALJs determinations as to facts remain intact)

Butler-Johnson Corporation v. N.L.R.B. 608 F.2d 1303 (C.A. 9)
(ALJ's decision given special weight when contrary to Bd's especially when credibility involved)

N.L.R.B. v. First National Bank of Pueblo 623 F.2d 686 (C.A. 10, 1980)
(evidence may properly be considered less substantial when ALJ *who has observed witnesses and lived with case* has drawn conclusions different from those reached by Bd especially where credibility issues are important)

N.L.R.B. v. Maywood Plant of Grede Plastics 628 F.2d 1 (C.A.D.C.)
(Bd has broad discretion to fashion remedies to effectuate policies of Act because relation of remedy to policy is singularly connected to Bd's competenceand knowledge gained from experience; therefore, since Bd, notALJ, was given such discretion, Bd's rejection of ALJ's recommended remedy is of no consequence)

5921 MIXED QUESTIONS OF LAW AND FACT

N.L.R.B. v. Yeshiva University 440 U.S. 906 (U.S. SCt, Feb 20, 1980)
(where mixed question of fact and law exists and Bd failed to make relevant findings of fact SCt upheld ct of appeals factual findings that faculty of Yeshiva University operated enterprise and were managerial Ees and overruled Bd's finding that faculty were professional Ees w/i meaning of Act)

Hi-Craft Clothing Co. v. N.L.R.B. 660 F.2d 910 (C.A. 3, Oct. 1981)
(in regard to deference that reviewing ct should accord agency's statutory interpretation, a distinction has been made between whether issue is factual or legal; if the latter, then there may be less deference to agency and more independent review by cts; however, difficulty arises when matter is one of *mixed law and fact;* nevertheless, distinction has some value in a situation where there are no factual disputes and then tendency is toward a less inhibited approach by cts)

N.L.R.B. v. Associated General Contractors of California, Inc. 633 F.2d 766 (C.A. 9, 1980)
(Bd's determination on issue of relevancy of information sought (roster of membership) by U is given great weight, either because it is finding of fact or because it is finding on mixed question of law and fact which is w/i expertise of Bd)

5928 DISCRETION IN EXERCISE OF JURISDICTION

N.L.R.B. v. Pincus Brothers, Inc. - Maxwell 620 F.2d 367 (C.A. 3, 1980)
(enforcement denied where Bd committed error in declining to defer to arbitration award as clearly repugnant to Act where arbitrator had determined that E had discharged Ee for just cause; Ee's conduct arguably unprotected and where arbitration award arguably characterizable as not inconsistent with Bd policy, Bd must defer to arbitrator's decision)

N.L.R.B. v. Pincus Brothers, Inc. - Maxwell 620 F.2d 367 (C.A. 3, 1980)
(in reviewing Bd's refusal to defer to arbitration award as clearly repugnant to Act, ct applied abuse of discretion standard based on substantial evidence of record to support reasonableness of Bd's actions, as opposed to reviewing Bd's decision under an error of law standard)

N.L.R.B. v. South Central Bell Telephone Company 688 F.2d 343 (C.A. 5, Oct. 1982)
(standard of review used in evaluating Bd application of *Spielberg* doctrine regarding deferral to arbitration is abuse of discretion standard)

Transportation Enterprises, Inc. v. N.L.R.B. 630 F.2d 421 (C.A. 5, 1980)
(Bd and its regional offices may not render jurisdictional decisions, and then overrule them *retroactively* and thereby transform E's interim behavior, legal when pursued, into illegal ULPs; E's conduct after formal declaration by Bd that he is not covered by Act and before re-examination of that issue, cannot subsequently be branded ULP subjecting E to liability for back-pay)

Caterpillar Tractor Co. v. N.L.R.B. 638 F.2d 140 (C.A. 7, Sept. 1981)
(Bd did not abuse its discretion by refusing to defer to grievance-arbitration procedure alleged unlawful discontinuance of Ees' right to request transfers involving down-grading, since Bd's determination that determinative issue required interpretation of Act rather mere contract interpretation, not unreasonable)

Golden Day Schools, Inc. v. N.L.R.B. 644 F.2d 834 (C.A. 9, May 8, 1981)
(Bd's determination, that E met $250,000 standard for exercising jurisdiction over *day-care center* rather than $1,000,000 standard for *educational institutions* will not be set aside *in the absence of extraordinary circumstances, such as unjust discrimination*)

N.L.R.B. v. Safeway Stores, Inc. 622F.2d 425 (C.A. 9, 1980)
(Bd not required to defer to arbitrator's decision on grievability of Ees' transfers where sole issue presented to Bd was whether E had committed ULP by refusing to produce requested documents to defend its decision to transfer Ees)

5932 PROTECTED NATURE OF ACTIVITY

St. Regis Paper Company v. N.L.R.B. 623 F.2d 487 (C.A. 6, 1980)
(discharge and failure to reinstate Ees who struck E during critical period to gain recognition for U, rival of petitioner, not unlawful, since if E, during pendency of election proceedings, had recognized rival U as bargaining agent, E would have been guilty of interference with Bd's election procedures as well as ULP in violation of Section 8(a)(1) of Act)

5935 UNIT DETERMINATIONS

Big Y Foods, Inc. v. N.L.R.B. 651 F.2d 40 (C.A. 1, June 1981)
(only pertinent limitation on Bd's unit determinations is Sec. 9(b) statutory direction to NLRB to make decision *in each case.* This statutory direction invalidates conclusive presumption but does not invalidate rebuttable presumption)

Big Y Foods, Inc. v. N.L.R.B. 651 F.2d 40 (C.A. 1, June 1981)
(*The issue as to what unit is appropriate for bargaining is one for which no absolute rule of law is laid down by statute, and none should be by decision. It involves of necessity a large measure of informed discretion, and the decision of the Board, if not final, is rarely to be disturbed... Packard Motor Car Co. v. N.L.R.B.*, 330 U.S. 485, 491-492 (1947))

Big Y Foods, Inc. v. N.L.R.B. 651 F.2d 40 (C.A. 1, June 1981)
(Court may set aside NLRB Sec. 9(b) determination only if Bd has not disclosed basis of its determination, or determination is not supported by substantial evidence, or determination is in violation of Act, or some other statute, or Constitution, or is arbitrary or unreasonable)

Burns Electronic Security Services, Inc. v. N.L.R.B. 624 F.2d 403 (C.A. 2, 1980)
(remanded for reconsideration of question of whether Ees known as *Operator/Runners* were guards w/i meaning of Sec. 9(b)(3) where Bd had determined Ees were not guards on basis of R hearing only, did not consider relevant information introduced at ULP hearing on related charge and avoided addressing inconsistency between classification of Ees in present case and Ees with same title in three Bd decisions involving same E, notwithstanding Bd's argument that R/R Sec. 102.67(f) required party to produce all available evidence at R hearing rather than attempt to relitigate unit issue at ULP hearing)

Tressler Lutheran Home For Children, t/a Frostburg Village of Allegany County Nursing Home v. N.L.R.B. 677 F.2d 302 (C.A. 3, Apr. 1982)
(Bd given considerable discretion in shaping bargaining units)

N.L.R.B. v. H. M. Patterson & Son, Inc. 636 F.2d 1014 (C.A. 5, 1981)
(*Bd unit determinations involve of necessity large measure of informed discretion and should not be set aside unless reviewing ct finds that Bd exercised its discretion in an arbitrary or capricious manner*)

N.L.R.B. v. Purnell's Pride, Inc. 609 F.2d 1153 (C.A. 5, Jan. 1980)
(Bd has broad discretion in making unit determination; it must select *an* appropriate unit, not *the most* appropriate unit)

N.L.R.B. v. Continental Corporation of Michigan, Inc. d/b/a Holiday Inn West 612 F.2d 257 (C.A. 6)
(Bd has very broad discretion in determining bargaining units; See *Packard Motor Car Co. v. N.L.R.B.*, 330 U.S. 485 (1947))

Hendricks County Rural Electric Membership Corporation v. N.L.R.B. 627 F.2d 766 (C.A. 7, July 1980)
(Bd's finding that Ee was not confidential Ee not supported by substantial evidence where only standard applied was *labor nexus* and upon remand Bd did not reopen proceedings to take evidence under different *Bell Aerospace* 416 U.S. 267 (1974), standard)

Mary Thompson Hospital, Inc. 621 F.2d 858 (C.A. 7, 1980)
(Ct refused to enforce Bd's order that E bargain with separate unit of licensed sanitary engineers apart from other engineering and maintenance department Ees at hospital since in finding unit appropriate Bd failed to heed congressional admonition to avoid fragmentation of units at health care facilities but rather applied traditional community of interests standard)

N.L.R.B. v. HMO International/California Medical Group Health Plan, Inc. 678 F.2d 806 (C.A. 9, June 1982)
(where E refused to bargain on ground that Bd certified RN unit should have included LVNs, Bd on remand must state why Ees' tasks and E's personnel policies mandated that RNs be classified as professional Ees and

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LVNs as technical Ees, why RNs should not be preliminarily certified in same unit with LVNs with proviso of a *Sonotone* election, and how precisely it proposed to modify its traditional community of interest standard so as to implement herein the congressional nonproliferation mandate)

Tomy Corporation, A Wholly Owned Subsidiary of Tomy Kogyo, Inc. v. N.L.R.B. 667 F.2d 1032 (C.A. 9, Dec. 1981)

(Bd's legal conclusions concerning appropriateness of bargaining unit will be credited on appeal unless clearly arbitrary)

Tomy Corporation, A Wholly Owned Subsidiary of Tomy Kogyo, Inc. v. N.L.R.B. 667 F.2d 1032 (C.A. 9, Dec. 1981)

(ct upheld Bd's determination that seasonal Ees with only a day of service with E were eligible to vote, but in ct's view whether seasonal Ees who have minimal time of employment with company can be said to have substantial mutual interest with permanent Ees in working conditions is questionable; however ct's review of a Bd determination that particular bargaining unit is appropriate is narrowly circumscribed; and here ct did not find abuse of discretion by Bd, and Bd's other factual findings were supported by substantial evidence)

Alaska Statebank v. N.L.R.B. 653 F.2d 1285 (C.A. 9, Aug 1981)

(assuring Ees of free exercise of their rights is paramount criterion in determining what will be bargaining unit. Bd's judgment as to what bargaining unit will serve this purpose will rarely be disturbed on appeal. Because this is area where special expertise is needed, Bd has exceptionally broad discretion in determining appropriate or capricious, Bd's legal conclusion - that unit is appropriate or inappropriate-will be credited on appeal)

Spring City Knitting Company v. N.L.R.B. 647 F.2d 1011 (C.A. 9, June 1981)

(Bd has discretion to define appropriate bargaining unit and should not be overturned unless it has abused its discretion)

Sohio Petroleum Co., a division of Sohio Natural Resources Co. v. N.L.R.B. 625 F.2d 223 (C.A. 9, June 1980)

(ct will not disturb Bd's (unit) determination unless there has been abuse of discretion and bargaining unit is clearly inappropriate; issue of bargaining unit determination is w/i particular expertise of Bd)

Sohio Petroleum Co., a division of Sohio Natural Resources Co. v. N.L.R.B. 625 F.2d 223 (C.A. 9, June 1980)

(unit of power station Ees only who produced electricity for oil production complex in Alaska, appropriate, since they share community of interest, have their own separate work station, supervision, and no interchange with other Ees; Bd only required to pick *appropriate* unit not *most appropriate* unit)

Beth Israel Hospital and Geriatric Center v. N.L.R.B. 688 F.2d 697 (C.A. 10, Sept. 1982)

(en banc ct held Bd must determine, when certifying bargaining unit in health care institutions, whether unit is appropriate w/o resorting to presumption that shifts to E burden of showing proffered unit is appropriate, and Bd must state why unit it chooses complies with Congress' admonition; Bd cannot rely on E's failure to show that units are inappropriate; if Bd declines to redetermine whether an appropriate unit was selected, then that issue is not addressed at ULP proceeding, and thus Federal Rule of Evidence 301 would not apply and E could challenge unit selection only through judicial review)

St. Anthony Hospital Systems v. N.L.R.B. 655 F.2d 1028 (C.A. 10, Aug 1981)

(*Bd has been granted broad discretion in determining appropriate bargaining units, and its decisions will be set aside only shown to be arbitrary or capricious*)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)

(ct must insure that Bd's exercise of discretion, as to what unit is appropriate for bargaining, is not unreasonable, arbitrary, unsupported by evidence, or in conflict with congressional intent)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)

(enforcement denied where Bd erred in accepting presumptively appropriate unit restricted to registered nurses at single facility of E's 3 hospitals in single city, since there was sufficient evidence adduced to sustain appropriateness of all professional unit excluding physicians; evidence was sufficient to sustain finding of inappropriateness of proposed unit had it been accepted)

Local 627, Operating Engineers v. N.L.R.B. 595 F.2d 844 (C.A.D.C., 1979)

(Bd's unit determinations will not be overturned by ct unless they are arbitrary and unreasonable, and ct may not substitute its own judgment for rationally supported position adopted by Bd which has discretion to choose an appropriate unit and select among several appropriate ones)

5935-0100 Generally

N.L.R.B. v. Living and Learning Centers, Inc. 652 F.2d 209 (C.A. 1, June 1981)

(E must show Bd's unit determination was *clearly not appropriate* rather than that another unit determination would be more appropriate)

N.L.R.B. v. Frederick Memorial Hospital, Inc. 691 F.2d 191 (C.A. 4, Oct. 1982)

(Bd may not depend solely on traditional community of interest test when making unit determination for health care institution Ees but must give due consideration to congressional admonition against proliferation of bargaining units; Bd decision must clearly explain *manner in which its unit determination... implement(s) or reflect(s) that admonition*; Bd cannot leave its explanation to implication or argument of its counsel)

N.L.R.B. v. Frederick Memorial Hospital, Inc. 691 F.2d 191 (C.A. 4, Oct. 1982)

(ct cannot in first instance adjudicate whether certification of unit is consistent with congressional intent; nor can ct adequately review Bd's decision and order unless Bd discloses why certification of unit comports with necessity of preventing proliferation of bargaining units)

N.L.R.B. v. Frederick Memorial Hospital, Inc. 691 F.2d 191 (C.A. 4, Oct. 1982)

(ct remanded case involving Bd's certification of bargaining unit composed of registered nurses at hospital and denied enforcement of Bd's order, notwithstanding E's argument that legislative history of health care amendments established that only unit composed of all E's professional Ees was appropriate, where acceptance of such argument would deny Bd flexibility in unit determination that Congress intended to preserve; moreover, validity of unit of registered nurses was not foreclosed if Bd considered all relevant factors, including prevention of proliferation of bargaining units in reaching its decision)

N.L.R.B. v. Parnell's Pride, Inc. 609 F.2d 1153 (C.A. 5, Jan. 1980)

(where Bd made unit determination, ct must inquire whether Bd acted w/i its discretion in assessing preponderance of circumstantial evidence under *all* relevant criteria)

L. M. Berry and Company v. N.L.R.B. 668 F.2d 247 (C.A. 6, Jan. 1982)

(determination of appropriate bargaining unit under Sec. 9(b) *lies largely w/i discretion of Bd, whose decision, if not final, is rarely to be disturbed*)

N.L.R.B. v. Columbus Hi, Inc., d/b/a Columbus Hilton Inn 652 F.2d 614 (C.A. 6, Feb 1981)

(Bd did not abuse its discretion in including educable mentally retarded Ees in bargaining unit)

Justak Brothers and Company, Inc. v. N.L.R.B. 664 F.2d 1074 (C.A. 7, Nov. 1981)

(Bd's unit determination will not be overturned unless it is arbitrary and unreasonable)

N.L.R.B. v. C & D Foods, Inc. 626 F.2d 578 (C.A. 7, July 1980)

(Bd not required to choose most appropriate unit but only to choose appropriate unit w/i range of several units in given factual situation; ct has recognized that Bd has vast discretion in deciding appropriate unit)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. 621 F.2d 890 (C.A. 8, 1980)

(Bd may give same effect to stipulation in R case that Es were joint Es as it gives to litigated determination)

5935-5000 Supervisory status of employee

Maine Yankee Atomic Power Company v. N.L.R.B. 624 F.2d 347 (C.A. 1, 1980)

(shift operating supervisors (SOS) at nuclear power plant found statutory supervisors where they: are in charge of control room, required to be there at all times, give responsible directions requiring use of independent judgment to two lower level classes, salaries 17 percent higher than lower level Ees, attend management meetings; responsibility level high due to complex, criterial character of job requirements; fact that SOS must inform his supervisor if emergency occurs does not strip him of authority to act)

Maine Yankee Atomic Power Company v. N.L.R.B. 624 F.2d 347 (C.A. 1, 1980)

(Bd must not ignore E job description which gave Ee-supervisory status where record contained real evidence as to Ee's supervisory duties)

United States Steel Corporation, Inland Steel Company, Bethlehem Steel Corporation v. N.L.R.B. 644 F.2d 286 (C.A. 3, Mar 19, 1981)

(E's Ees who attended special summer school which prepared Ees to take Coast Guard licensing examination which would qualify passing applicants for supervisory positions, held to be supervisory trainees, since students attending school for purpose of becoming licensed officers, that is, nonbargaining unit Ees)

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Monongahela Power Company v. N.L.R.B. 687 F.2d 608 (C.A. 4, 1981)

(control room foremen (CRF's) found supervisors where they are in charge of control room and thus operation of entire power plant; they coordinate activities of operators and maintenance men during startup and shutdown, act quickly and independently in emergency situations; therefore fact that they do not have authority with regard to hiring, firing, etc. is not controlling as test for supervisory status is disjunctive)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)

(substantial evidence supported Bd's finding that foreman at sheet metal contractor was supervisor where he made recommendations to owners of E about who they should assign to particular jobs, spent 75% of his time checking on jobs to see how they were progressing, assigned Ees to work, asked Ees to put in overtime and transferred Ees from one job to another on owners' orders)

Beverly Enterprises, dba Beverly Manor Convalescent Centers 661 F.2d 1095 (C.A. 6, Oct. 1981)

(on question of supervisory status of LPNs at nursing home, Bd must determine: Do LPN activities respecting patient care involve independent professional judgment? If not LPNs properly included in unit. If yes, and that independent professional judgment exercised primarily in connection with patient care, not in interest of her E, then LPNs should be included; however, if judgment exercised in interest of her E, then supervisor and not included in unit)

Beverly Enterprises, dba Beverly Manor Convalescent Centers 661 F.2d 1095 (C.A. 6, Oct. 1981)

(1974 amendments did not alter the pertinent law, or change way in which Bd should approach question of supervisory status of health care professionals)

Seligman and Associates, Inc. v. N.L.R.B. 639 F.2d 307 (C.A. 6, 1981)

(notwithstanding RD decision in representation case was still pending before Bd, Bd's findings in ULP case of E-Ee relationship and appropriate unit was proper since issue was relevant to Bd's request for bargaining order and fully litigated below; Bd's findings supported by substantial evidence where it showed E's full and centralized control over Ees and Ees had common interest necessary to comprise appropriate unit)

N.L.R.B. v. Berger Transfer & Storage Co. 678 F.2d 679 (C.A. 7, May 1982)

(*Bd shall be affirmed in its determination if its findings supported by substantial evidence. If, when so viewed in its entirety, record contains such relevant evidence as reasonable mind might accept as adequate to support a conclusion, ct must accept findings*)

Southern Indiana Gas and Electric Co. v. N.L.R.B. 657 F.2d 878 (C.A. 7, Aug 1981)

(ct found inapposite cases cited by Bd in support of its decision that system supervisors at electrical utility were supervisors, finding that Bd's asserted distinctions between cited cases and case herein reflected only semantic differences; Bd decisions, relied upon by Bd, were undermined by denial of enforcement in such cases; in respect to ct decisions concerning supervisory independent discretion, Bd's view was clearly contrary to existing ct law; and Bd relied on case which did not provide sufficient grounds on which ct could base conclusion)

N.L.R.B. v. Ely's Foods Inc., d/b/a Scotto's I.G.A. 656 F.2d 290 (C.A. 8, 1981)

(ct must give deference to Bd's determination on this issue. Ct agreed with Bd and ALJ that individual *in charge of* meat department at grocery store superviser w/i Act, since he exercised independent judgment with regard to work functions where he set hours, successfully recommended pay raises and reprimands)

McDonnell Douglas Corporation v. N.L.R.B. 655 F.2d 932 (C.A. 9, 1981)

(ct must accept Bd's decision (concerning Ee's supervisory status) if it is supported by record and has reasonable basis in law)

McDonnell Douglas Corporation v. N.L.R.B. 655 F.2d 932 (C.A. 9, 1981)

(to qualify as supervisor, it is only necessary that person supervise statutory *Ees* directly or indirectly through chain of command)

5935-7500 Independent contractor status

Local 777, Democratic Union Organizing Committee v. N.L.R.B. 603 F.2d 862 (C.A.D.C.)

(Bd instructed to apply same general agency principles as would cts in determining whether or not individual (cab driver) is an Ee or an independent contractor)

5942 CONDUCT OF ELECTIONS AND CERTIFICATION OF UNIONS

5942-0100 Generally

Hall-Brooke Hospital, a division of Hall-Brooke Foundation, Inc. 645 F.2d 158 (C.A. 2, Mar 31, 1981)

(in reviewing Bd's action in not setting aside election to which objections were raised allegedly because of improper use of campaign material, ct noted that Bd is entrusted with broad discretion in creating and enforcing standards to ensure fair election)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. 649 F.2d 589 (C.A. 8, May 1981)

(R elections are not to be set aside lightly)

Sohio Petroleum Co., a division of Sohio Natural Resources Co. v. N.L.R.B. 625 F.2d 223 (C.A. 9, June 1980)

(where first election was only was only referendum on whether Ees desired separate representation for unit and second election was held to determine which U would be Ees' bargaining representative, *second election* was *not a runoff,* and Bd properly permitted more than two choices on ballot)

N.L.R.B. v. Biomedical Resources Corporation of Northern California 624 F.2d 192(T) (C.A. 9, 1980)

(election will be invalidated only if material fact has been misrepresented, opponent has no opportunity to reply and election process is impaired)

Worley Mills, Inc. v. N.L.R.B. 685 F.2d 362 (C.A. 10, July 1982)

(Bd has broad discretion in supervising elections and will not be overturned unless record shows interference was present to extent that inference can be drawn that conduct materially affected election)

N.L.R.B. v. General Motors Corporation 510 F.Supp. 338 (DC S.D. OH, Sept. 1980)

(Bd will conduct R election if: (1) involved E's business affects commerce; (2) qcr exists; (3) group of Ees which U seeks to represent is appropriate unit; and (4) petitioner has made *sufficient showing of interest* to justify holding election)

5942-2000 Mechanics of election

New England Lumber Division of Diamond International Corporation v. N.L.R.B. 646 F.2d 1 (C.A. 1, Apr 1981)

(designation of U official as observer at election does not warrant overturning election absent evidence official engaged in improper conduct while acting in that capacity)

N.L.R.B. v. Carroll Contracting and Ready-Mix, Inc. 636 F.2d 111 (C.A. 5, 1981)

(acts not attributable to U warrant setting aside election if acts disrupted voting procedure or destroyed atmosphere necessary to (Ees') exercise of free choice in R election)

Summa Corporation d/b/a Frontier Hotel v. N.L.R.B. 625 F.2d 293 (C.A. 9, Aug. 1980)

(where breach of election agreement occurs, results of election should be overturned only if breach is material or prejudicial)

5942-4000 Counting of ballots

The Wackenhut Corporation v. N.L.R.B. 666 F.2d 464 (C.A. 11, Jan. 1982)

(ballot printed in Spanish and cast by Spanish speaking Ee with word *NO* written in both *SI* and *NO* boxes held valid, since intent of voter was free from doubt)

5942-6000 Rulings on challenges

N.L.R.B. v. Boston Beef Co., Inc. 652 F.2d 223 (C.A. 1, July 1981)

(ct's standard of review concerning *challenged ballot* is restricted to analysis of whether Bd abused its discretion in sustaining challenge and certifying U)

New England Lumber Division of Diamond International Corporation v. N.L.R.B. 646 F.2d 1 (C.A. 1, Apr 1981)

(Bd has broad discretion to interpret ambiguities in Stipulation for Certification Upon Consent Election and here stipulation provided that observers must be nonsupervisory Ees of E (division of large company) and U's use of Ee, U president employed at another division of company, as observer found consistent with terms of stipulation)

N.L.R.B. v. Biomedical Resources Corporation of Northern California 624 F.2d 192(T) (C.A. 9, 1980)

(where 2 supervisors signed U authorization cards and voted, subject to challenge, in election, this is not sufficient misconduct to warrant setting aside election; their activity was minor and they did not threaten or coerce other Ees to vote for U)

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The Wackenhut Corporation v. N.L.R.B. 666 F.2d 464 (C.A. 11, Jan. 1982)
(ct looks only to see if Bd has reasonably exercised its discretion and will not interfere (in election process) except in cases of glaring discrimination or abuse)

5942-8000 Rulings on objections

N.L.R.B. v. Morgan Health Care Center, Inc. 618 F.2d 127 (C.A. 1, 1980)
(ct will reverse Bd's decision in regard to alleged interference with election only where Bd has abused discretion)

N.L.R.B. v. U. S. Cablevision Corp. 614 F.2d 341 (C.A. 2) (1980)
(whether hearing on objections required or not, ct stated *conduct of representation elections is the very architype of a purely administrative function with no quasi about it, concerning which cts should not interfere save for the most glaring discrimination or abuse* however, if party demonstrates by prima facie evidence existence of *substantial and material factual issues which if resolved in its favor, would require setting aside election* hearing is required)

N.L.R.B. v. ARA Services, Inc. 678 F.2d 435 (C.A. 3, Apr. 1982)
(where objections involve extemedly close election, *even minor misconduct cannot be summarily excused on ground that it could not have influenced election*)

Jamesway Corporation v. N.L.R.B. 676 F.2d 63 (C.A. 3, Mar. 1982)
(ct, in determining whether particular incident so disrupted election as to warrant setting it aside, must satisfy itself that BD's determination regarding impact of incident at issue is supported by substantial evidence on record considered as whole; ct rejected Bd contention that proper standard of review in instant case was whether Bd acted arbitrarily in exercise of its discretion)

Wells Fargo Guard Services, A Division of Baker Protective Services, Inc. v. N.L.R.B. 659 F.2d 363 (C.A. 3, Sep. 1981)
(ct must consider validity of certification where Bd's decision that E was guilty of ULP (in refusing to bargain) was premised on certification of election)

Season-All Industries, Inc. v. N.L.R.B. 654 F.2d 932 (C.A. 3, 1981)
(enforcement denied and case remanded to Bd where RD denied hearing on E's objection to election on ground that rank-and-file Ee was U agent whose electioneering activities influenced co-workers outside polling place while they were waiting to vote; RD failed to assume truth of E's allegation and, instead, substituted facts gleaned from his ex parte investigation for E's allegation, and thereby completely controverted E's allegation; as result, RD's findings were not only not supported by evidence but, even more seriously, they precluded E from participating in evidentiary hearing)

Season-All Industries, Inc. v. N.L.R.B. 654 F.2d 932 (C.A. 3, 1981)
(E's assertions, in support of objection to election in effort to obtain hearing on objection overruled by RD, were more than sufficient to prima facie warrant setting aside election where E's proffer was neither conclusory nor vague, referred to specific events (time, place, and conversations), and specifically identified person whose conduct was being challenged)

Anchor Inns, Inc., d/b/a Anchor Inn Hotel of St. Croix v. N.L.R.B. 644 F.2d 292 (C.A. 3, Mar 20, 1981)
(in order to obtain evidentiary hearing objector's proffer of evidence must prima facie warrant setting aside election, the proffer may not be conclusory or vague; it must point to specific events and specific people, on the other hand, an evidentiary hearing is not required when, if all evidence proffered by objecting party is accepted as true, no ground for produced which would warrant setting aside election)

N.L.R.B. v. Carroll Contracting and Ready-Mix, Inc. 636 F.2d 111 (C.A. 5, 1981)
(acts not attributable to U warrant setting aside election if acts disrupted voting procedure or destroyed atmosphere necessary to (Ees') exercise of free choice in R election)

N.L.R.B. v. Claxton Manufacturing Company, Inc. 613 F.2d 1364 (C.A. 5) (1980)
(RD must make available relevant information discovered in course of investigation of representation election, at least to extent that E has pointed him toward it, whether it favors successful party or objector regardless of whether it was referred to by objectors affidavits or is independently turned up by investigation)

ATR Wire and Cable Company v. N.L.R.B. 671 F.2d 188 (C.A. 6, Feb. 1982)
(ct held that Bd abused its discretion by adopting RD's report on objections to election since RD failed to transmit U affidavits obtained *in camera* to Bd upon which RD relied)

Mid America Media, Inc., WTRX-AM v. N.L.R.B. 663 F.2d 17 (C.A. 6, Oct 1981)
(no hearing required, since objections to R election did not raise substantial and material factual issues)

Randall, Burkart/Randall Division of Textron, Inc. v. N.L.R.B. 638 F.2d 951 (C.A. 6, 1981)
(ct affd Bd's findings of unlawful refusal to bargain with certified U where Bd properly overruled E's objections to representation election; U agents did not engage in improper campaign activities, innocuous and isolated events of misconduct during critical period were not sufficient to vacate election nor significant to admit pre-ptn events of misconduct, and there was no evidence proffered to demonstrate that these occurances interfered with voters' choice or impugned integrity of election)

N.L.R.B. v. Curtis Noll Corporation, Curtis Industries Division 634 F.2d 1027 (C.A. 6, 1980)
(enforcement denied and E's objections to consent election remanded to Bd for further consideration where evidence relied upon by RD concerning determination of E's objections was not transmitted to Bd, hence was not transmitted to ct; ct held that Bd had abused its discretion by adopting report of RD when RD failed to transmit to Bd evidence relied upon by RD)

N.L.R.B. v. Ohio Masonic Home 620 F.2d 138 (C.A. 6, 1980)
order enforced and election upheld where E did not sustain burden of establishing that Bd acted arbitrarily, capriciously, and abused its discretion in overruling objections and ordering certification)

N.L.R.B. v. RJR Archer Inc., Filmco Division 617 F.2d 161 (C.A. 6, 1980)
(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes on abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

N.L.R.B. v. Allis-Chalmers Corporation 680 F.2d 1166 (C.A. 7, June 1982)
(ct denied enforcement of bargaining order, set aside certification, and remanded case to Bd for appropriate action where Bd had asopted RD's findings and conclusions as to objections to election w/o seeing evidence relied on by RD)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. 649 F.2d 589 (C.A. 8, May 1981)
(for review of Bd's decision regarding *objections to election*, standard is whether Bd acted w/i *wide degree of discretion* vested in it by Congress regarding R matters)

N.L.R.B. v. All-Weather Architectural Aluminum, Inc. 692 F.2d 76 (C.A. 9, Nov. 1982)
(where E only supplied partial list until a few days before election and then complied and U received complete list on day before election, U was precluded from using list in any effective manner and Bd did not abuse discretion in overturning election)

N.L.R.B. v. Eskimo Radiator Mfg. Co. 688 F.2d 1315 (C.A. 9, Oct. 1982)
(closeness of vote is only one factor Bd and cts consider in scrutinizing pre-election conduct)

J.F. Hink & Son v. N.L.R.B. 654 F.2d 729(T) (C.A. 9, July 1981)
(mtn for reconsideration after election held must be supported by prima facie evidence that presents *substantial and materiel* issues which warrant setting aside election since once completed, Bd-conducted election is presumed legitimate and standard for reversal of BD's denial of hearing on post election objection is *abuse of discretion*)

J.F. Hink & Son v. N.L.R.B. 654 F.2d 729(T) (C.A. 9, July 1981)
(post-election objections based on U's (or international's) merger or change of affiliation with another U is not automatically entitled to hearing addressing is of *continuity of representation* i.e., whether successor U is contínciation of elected U, or substantially different organization but objection must be supported by substantial and material evidence standard applicable to any post-election objection)

Spring City Knitting Company v. N.L.R.B. 647 F.2d 1011 (C.A. 9, June 1981)
(abuse of discretion standard is to be applied to denials by Bd of evidentiary hearings on election objections)

N.L.R.B. v. Biomedical Resources Corporation of Northern California 624 F.2d 192(T) (C.A. 9, 1980)
(party challenging election has heavy burden to show coercion took place and is not entitled to evidentiary hearing unless it supplies prima facie evidence presenting substantial and material factual issues which would warrant setting aside election)

N.L.R.B. v. Metro-Truck Body, Inc. 613 F.2d 746 (C.A. 9) (1980)
(contention by E, in objecting to election, that U had created racially inflamatory atmosphere precluding fair election, rejected, where E failed to

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supply prima facie evidence presenting substantial and material factual issues which would warrant setting aside election)

Crown Cork & Seal Company, Inc. v. N.L.R.B. 659 F.2d 127 (C.A. 10, Sept. 1981)
(hearing required on objections only if request shows by *prima facie* evidence existence of substantial and material factual dispute which, if resolved in its favor, would require setting aside election. No hearing required where Bd assumes truth of party's contentions, and then rules as matter of law that, assuming facts alleged, conduct does not warrant setting aside election)

The Wackenhut Corporation v. N.L.R.B. 666 F.2d 464 (C.A. 11, Jan. 1982)
(ct looks only to see if Bd has reasonably exercised its discretion and will not interfere (in election process) except in cases of glaring discrimination or abuse)

5944 DETERMINATIONS AS TO EFFECTS OF ULPS ON REPRESENTATION ELECTIONS

Wells Fargo Guard Services, A Division of Baker Protective Services, Inc. v. N.L.R.B. 659 F.2d 363 (C.A. 3, Sep. 1981)
(ct must consider validity of certification where Bd's decision that E was guilty of ULP (in refusing to bargain) was premised on certification of election)

N.L.R.B. v. Permanent Label Corporation 657 F.2d 512 (C.A. 3, 1981)
(Bd can satisfy requirement of ct to articulate factors (not just conclusions) that justify imposition of bargaining order over remedy of ordering new election by adopting findings and reasonings of ALJ if latter provides statement of reasons; furthermore, merely changing effective date of bargaining order from what ALJ set did not require separate statement by Bd; statement required to assist reviewing ct in determining whether standards of *Gissel* have been satisfied)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. 629 F.2d 305 (C.A. 3, 1980)
(bargaining order appropirate where E has engaged in ULPs and at one point U had support of majority of Ees)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. 629 F.2d 305 (C.A. 3, 1980)
(Bd not required to give elaborate explanation of factors warranting bargaining order but to estimate impact of ULPs on liklihood of fair rerun-election)

N.L.R.B. v. Gulf States Canners, Inc. 634 F.2d 215 (C.A. 5, 1981)
(Bd did not abuse discretion in determining that U's offer to purchase gasoline for Ees who transported other workers to U meetings and/or campaigned on behalf of U at their fellow Ees' homes did not have such tendency to influence election that new election would be required)

Anchortank, Inc. v. N.L.R.B. 618 F.2d 1153 (C.A. 5, 1980)
(E who refused to bargain by making unilateral changes in mandatory subjects *on ground that election is invalid does so at his own risk, and if election challenge proves fruitless, order by Bd based on refusal to bargain will be enforced*)

N.L.R.B. v. Claxton Manufacturing Company, Inc. 613 F.2d 1364 (C.A. 5) (1980)
(enforcement denied where Bd improperly granted summary judgment in ULP case despite E's showings of atmosphere of fear and coercion that would tend to interfere with election and possible *Savair* violations; hearing was required on E's objections)

N.L.R.B. v. Claxton Manufacturing Company, Inc. 613 F.2d 1364 (C.A. 5) (1980)
(although it would be difficult to make sufficient showing to have election set aside where U won election by wide margin, ct must consider possibility that objectionable conduct itself contributed to margin of victory)

Bandag, Incorporated v. N.L.R.B. 583 F.2d 765 (C.A. 5)
(Ee turnover between ULPs and Bd order is relevant in determining whether *Gissel* order should be used but Bd not required to reopen record to determine whether fair election could be held regardless of turnover since time of hearing where other evidence, such as, card majority, past union activity, and E responses to such activity support such finding)

Randall, Burkart/Randall Division of Textron, Inc. v. N.L.R.B. 638 F.2d 951 (C.A. 6, 1981)
(ct affd Bd's findings of unlawful refusal to bargain with certified U where Bd properly overruled E's objections to representation election; U agents did not engage in improper campaign activities, innocuous and isolated events of misconduct during critical period were not sufficient to vacate election nor significant to admit pre-ptn events of misconduct, and there was no evidence proffered to demonstrate that these occurances interfered with voters' choice or impugned integrity of election)

Seligman and Associates, Inc. v. N.L.R.B. 639 F.2d 307 (C.A. 6, 1981)
(notwithstanding RD decision in representation case was still pending before Bd, Bd's findings in ULP case of E-Ee relationship and appropriate unit was proper since issue was relevant to Bd's request for bargaining order and fully litigated below; Bd's findings supported by substantial evidence where it showed E's full and centralized control over Ees and Ees had common interest necessary to comprise appropriate unit)

N.L.R.B. v. Ely's Foods Inc., d/b/a Scotto's I.G.A. 656 F.2d 290 (C.A. 8, 1981)
(ct enforced Bd's bargaining order; nothwithstanding Bd and ALJ's statement of factual finding as basis for order less than desireable and presented marginal case for bypassing election procedure, where record as whole supported order, in view of U's majority and fact E's location in small town with limited labor market made possibility of erasing ULP's by traditional methods slight; further, after effects of ULPs have worn off, Ees can disavow U by filing R ptn)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. 621 F.2d 890 (C.A. 8, 1980)
(it is for Bd, and *not the cts,* to make determination based on its expert estimate as to effects on election process of ULPs of varying intensity)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. 621 F.2d 890 (C.A. 8, 1980)
(bargaining orders not limited to *exceptional* cases marked by *outrageous* and *pervasive* ULPs ... SCt approved *Bd's use of bargaining orders in less extraordinary cases marked by less pervasive practices which nonetheless still have tendency to undermine majority strength and impede election processes*)

Anja Engineering Corporation v. N.L.R.B. 685 F.2d 292 (C.A. 9, Aug. 1982)
(enforcement of order directing second election based on finding of 8(a)(3) violation, denied where finding was not supported by record evidence; Bd's contention that election order was not properly reviewable pursuant to ptn for review here because R proceedings are reviewable only upon a charge that an E's refusal to bargain with the certified U violates 8(a)(5), rejected, since order for second election must fall with unsupported ULP finding on which it is based)

N.L.R.B. v. Antonino Carilli, d/b/a Antonino's Restaurant 648 F.2d 1206 (C.A. 9, June 1981)
(bargaining order appropriate where Bd's determination that decertification election precluded by E informing Ees it intended to operate w/o U and suggesting Ees either resign from U or seek work elsewhere, implying that better benefits coming w/o U and unilaterally implemented benefits supported by substantial evidence; contention order inappropriate since would impose iminority U on Ees rejected, as contention based on letter signed by purported majority of Ees which expressed opposition to U since letter written after hearing and mtn to reopen proceeding to permit introduction of letter denied)

Episcopal Homes Foundation dba Los Gatos Meadows, a California non-profit corporation v. N.L.R.B. 644 F.2d 888(T) (C.A. 9, Mar 5, 1981)
(no hearing required of E's objections where E failed to make prima facie showing of U involvement in alleged threats or vandalism or that conduct actually affected any votes)

N.L.R.B. v. Bighorn Beverage 614 F.2d 1238 (C.A. 9) (1980)
(determination of whether bargaining order warranted is task, not for reviewing cts, but for Bd based on its expert estimate as to effects on election of the ULPs)

5949 JURISDICTIONAL DISPUTE DETERMINATIONS

Automobile Workers (UAW) and Its Local 1519 v. N.L.R.B. 619 F.2d 580 (C.A. 6, Apr. 1980)
(Bd has express authority to settle work assignment disputes as stated in Section 10(k) whenever person has engaged in *Section 8(b)(4)(D)* ULP)

Retail Store Employees Union, Local 1001 v. N.L.R.B. 600 F.2d 280 (C.A.D.C.)
(Bd's finding that land title companies were neutrals with respect to U's dispute with title insurance company, whose policies of title insurance they sold, and accounted for 93% of revenues of land title companies, affirmed where findings of neutrality were based on substantial evidence)

5953 SECONDARY BOYCOTT DETERMINATIONS

N.L.R.B. v. International Longshoremen's Assn., AFL-CIO, et al. 447 US 490 (U.S. SCt. June 1980)
(lawful *work preservation* agreement must pass two tests: (1) it must have as objective preservation of work traditionally performed by Ees represented by U; and (2) contracting E must have power to give Ees work in question - the so-called *right of control* test)

5953—Cont.

N.L.R.B. v. International Longshoremen's Assn., AFL-CIO, et al. 447 US 490 (U.S. SCt. June 1980)

(*work of stuffing* and *stripping* containers used in shipping goods at waterfront facilities must focus on bargaining unit Ees' work, not on work of other Ees who may be doing same or similar work, and (Bd) must examine relationship between work as it existed before innovation (*the container revolution*) and as agreement proposes to preserve it)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. 613 F.2d 890 (C.A.D.C.) (1979)

(work preservation doctrine provides generally that efforts to preserve work for Ees displaced by technological innovation (in instant case, *containerized shipping*) are not unlawful secondary activities and that U-management contracts with same purpose are not proscribed *hot cargo* agreements)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. 613 F.2d 890 (C.A.D.C.) (1979)

(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. 613 F.2d 890 (C.A.D.C.) (1979)

(under NLRA's proscription of secondary boycotts, work preservation agreements, by which parties seek to preserve work for contracting E's Ees when nature or location of that work has changed due to technological advances, as well as primary collective action enforcing their terms, are not considered illegal)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. 613 F.2d 890 (C.A.D.C.) (1979)

(ct's understanding of legality of work preservation agreements controlled by *National Woodwork Manufacturers Association v. NLRB*, 386 U.S. 612 (1967) and *NLRB v. Enterprise Association of Steam, etc. Pipefitters, 429 U.S. 507 (1977)*)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. 613 F.2d 890 (C.A.D.C.) (1979)

(Bd erred as matter of law by ignoring traditional work patterns when defining work in contraversy; being work of loading and unloading ocean-borne cargo)

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. 613 F.2d 890 (C.A.D.C.) (1979)

(under *National Woodworking* 386 U.S. 612 (1967) *all surrounding circumstances* must be examined and this requires inquiry into work patterns both before and after technological innovation is introduced rather than just post-innovation work patterns because to do only latter would remove any opportunity for pre-innovation workers to preserve their work and Bd must show that new work is sufficiently unrelated to old work before ignoring traditional work patterns)

5956 REMEDIAL ORDER PROVISIONS

Detroit Edison Company v. N.L.R.B. 99 U.S. 1123 (S Ct., 1979)

(although Bd has broad discretion in devising remedial orders, and relationship of remedy to policy is peculiarly a matter for administrative competence, Bd's choice of remedy does not constitute a blank check for arbitrary action; ct's role in reviewing ptns for enforcement under 10(e) is not that of a passive conduit)

Soule Glass and Glazing Co., et al. v. N.L.R.B. 682 F.2d 1055 (C.A. 1, May 1981)

(*Bd has great discretion in fashioning appropriate remedies which will effectuate policies of Act and reviewing ct is required to grant great deference to Bd's remedial order unless order is patent attempt to achieve ends other than those which can fairly be said to effectuate policies of Act; however, it is also plainly true where ct reverses underlying ULP finding, corresponding remedy will not be enforced; also, it is implicit in abuse of discretion review that the remedy must be in reasonable proportion to violation*)

N.L.R.B. v. Local 1445, United Food and Commercial Workers International Union, AFL-CIO (Gallahue's Supermarkets) 647 F.2d 214 (C.A. 1, Apr 1981)

(Bd's discretion in framing remedies is broad and in absence of abuse of that discretion ct should defer to Bd's judgment)

N.L.R.B. v. Chester Valley, Inc. 652 F.2d 263 (C.A. 2, June 1981)

(bargaining order not warranted where ct overturned ALJ's finding of hallmark violation - granting of unusually large wage increases - and believed remaining practices were insufficient to justify bargaining order; remaining unfair practices were numerous but fell into less coercive category and almost all consisted of implied rather than overt threats or promises and thus were less likely to have strong and lasting effect; ct also noted good deal of Ee turnover in bargaining unit from time of hearings to time of Bd's bargaining order)

N.L.R.B. v. Jamaica Towing, Inc. 632 F.2d 208 (C.A. 2, 1980)

(bargaining order not warranted where E's ULPs consisted of interrogations, expression of opposition to U, threats of less overtime, stricter enforcement of workrules and implied promises that some of Ees' demands would be met as none of E's statements were ever put into effect and 38 percent of workforce left unit for reasons unrelated to E's ULPs; moreover, Bd, on remand, failed to elicit evidence regarding changed composition of workforce and whether Bd order might impair Ee rights, doing more harm than good)

Grandee Beer Distributors, Inc. v. N.L.R.B. 630 F.2d 928 (C.A. 2, 1980)

(although granting enforcement of order to c/d underlying violations, ct denied enforcement of bargaining order where record revealed neither lingering inhibitory effect nor likelihood of recurrence, and as such, did not warrant extraordinary remedy of bargaining order)

Latrobe Steel Company v. N.L.R.B. 630 F.2d 171 (C.A. 3, 1980)

(in absence of Bd orders for reinstatement and backpay, sole effect of finding of ULP is issuance of c/d order which prevents similar (violative) activity in future; no hardship to E where Bd retroactively changed its position regarding presence or absence of stenographers at negotiating sessions, now found to constitute *non-mandatory* subject of bargaining)

Latrobe Steel Company v. N.L.R.B. 630 F.2d 171 (C.A. 3, 1980)

(where strike not ULP strike, ct will not enforce Bd's order of reinstatement and backpay; record was devoid of evidence that impasse over nonmandatory subject (presence of stenographers at negotiating sessions) contributed to U's decision to strike)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. 629 F.2d 305 (C.A. 3, 1980)

(purpose of backpay orders is to make Ee whole for discrimination against him and to deter E from further unlawful activity)

J. P. Stevens & Co., Inc. v. N.L.R.B. 623 F.2d 322 (C.A. 4, 1980)

(Bd's choice of remedy in matter w/i its own discretion, open only to limited review; Bd's choice of remedy should stand *unless it can be shown that order (to pay U's reasonable negotiating expenses and Bd's and U's reasonable litigation costs) is patent attempt to achieve ends other than those which can fairly be said to effectuate policies of the Act*)

J. P. Stevens & Co., Inc. v. N.L.R.B. 623 F.2d 322 (C.A. 4, 1980)

(ct recognizes that Bd can order E to cease ULPs at its other plants on proof of violation at one location when company-wide policy is involved)

J. P. Stevens & Co., Inc. v. N.L.R.B. 623 F.2d 322 (C.A. 4, 1980)

(Bd's remedial order concerning *company-wide dissemination of notice and access to company plants*, not punitive since notice and access order was designed to counteract use E made at other plants of its ULPs in bargaining at instant plant)

J. P. Stevens & Co., Inc. v. N.L.R.B. 623 F.2d 322 (C.A. 4, 1980)

(ct found no abuse of discretion in Bd's refusal to extend certification for two years; if E complied with bargaining order, one more year of bargaining should suffice; if not, it will again be charged and *year will not have begun to run*)

J. P. Stevens & Co., Inc. v. N.L.R.B. 612 F.2d 881 (C.A. 4)

(where Bd granted extraordinary relief, applying corporate-wide relief for acts committed at single plent, ct upheld decision as Bd acted w/i its discretion to remedy ULPs)

Air Express International Corporation v. N.L.R.B. 659 F.2d 610 (C.A. 5, Oct. 1981)

(in relocation *non-Gissel* case, composition of bargaining unit is determined at time of relocation (or after reasonable shakedown period) otherwise, situation would create undisirable incentive to delay through litigation)

N.L.R.B. v. Delchamps, Inc. 653 F.2d 225 (C.A. 5, Aug 1981)

(Bd's R/O should not be altered by ct unless order was *patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act*)

5956—Cont.

Brown & Root, Inc. v. N.L.R.B. 634 F.2d 816 (C.A. 5, 1980)
(function of Bd, not cts, to fashion remedies)

N.L.R.B. v. Dadco Fashions, Inc. 632 F.2d 493 (C.A. 5, Dec. 1980)
(*in case not involving remand ct should evaluate appropriateness of bargaining order as of date of ULP proceedings, not as of date matter comes before ct*)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)
(Bd's remedies of ordering E and multi-E association to cease and desist to recognize or deal with supervisor as U official and ordering E not to permit supervisor to serve as U official held proper)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)
(Bd's actions to remedy U's failure to represent Ee enforced; Bd set aside collective bargaining agreement, decertified U, and ordered U to make Ee whole for differential between journeyman's scale and his actual wages for entire time of his employment with E)

Abilene Sheet Metal, Inc. et al. v. N.L.R.B. 619 F.2d 332 (C.A. 5, 1980)
(Bd ordered proper remedy in revoking U certification where U did not fairly represent all those in bargaining unit)

Bandag, Incorporated v. N.L.R.B. 583 F.2d 765 (C.A. 5)
(ct has held that because of unusual nature of *Gissel* bargaining order Bd should look to events subsequent to ULP in order to determine appropriateness of (bargaining) order)

Bandag, Incorporated v. N.L.R.B. 583 F.2d 765 (C.A. 5)
(bargaining orders are always remedial and are designed to set matters as they would have been in absence of E's misconduct)

N.L.R.B. v. Travis Meat and Seafood Company, Inc. 653 F.2d 233 (C.A. 6, June 1980)
(order requiring E to make Ees whole for loss of earnings due to discontinuance of merit wage program not enforced, where evidence does not show that amount and timing of merit increases created any pattern or practice beyond one year employment period but were awarded on *ad hoc* basis)

N.L.R.B. v. Sumner Home For The Aged 293 F.2d 754 (C.A. 6, 1979)
(where U agreed in advance to accept whatever proposals E submitted covering certain mandatory subjects of bargaining that remained unresolved, R/O requiring E to propose contract terms covering these unresolved issues and to execute contract if U agreed to proposals, denied enforcement, since it is doubtful U representative has legal authority to make any such commitment or that Bd or ct has authority to enforce such contract; furthermore, since U free to reject contract there was no contract agreed to by both parties)

United Steelworkers of America, AFL-CIO-CLC v. N.L.R.B. 692 F.2d 1052 (C.A. 7, Nov. 1982)
(no violation where grievant failed to show grievance violated bargaining agreement; Bd erred when it held only necessary for grievance to be *not clearly frivolous*, Bd contention that *U is not its function to decide merits of grievance* rejected; since Bd must pass on merits of claim to extent affects U's liability. Otherwise, assessment of backpay against U would be speculive and punitive)

United Steelworkers of America, AFL-CIO-CLC v. N.L.R.B. 692 F.2d 1052 (C.A. 7, Nov. 1982)
(Bd has broad authority to fashion remedial orders. *Such awards will not be disturbed unless it can be shown that the order is patent attempt to achieve ends other than those which can fairly be said to effectuate policies of the Act*)

N.L.R.B. v. Gold Standard Enterprises, Inc., et al. 679 F.2d 673 (C.A. 7, May 1982)
(standard of review of Bd's remedies is abuse of discretion)

N.L.R.B. v. Mutual Maintenance Service Co., Inc. 632 F.2d 33 (C.A. 7, 1980)
(although ct affirmed Bd's finding that U adherent was discharged because of his U activities, ct denied portion of Bd order concerning reinstatement of Ee where Ee defrauded federal government and former E of unemployment compensation benefits, notwithstanding that current E was aware and even encouraged this Ee to work for E under alias while collecting unemployment compensation)

N.L.R.B. v. Winco Petroleum Company and Cooper Oil Company, Inc., Successor Employer 668 F.2d 973 (C.A. 8, Jan. 1982)
(ct recognized that the consequence of finding successorship under *Golden State Bottling Co.*, successor E must remedy ULPs committed by predecessor although successor E had not been found guilty of committing any ULPs itself)

Montgomery Ward & Co., Inc. v. N.L.R.B. 664 F.2d 1095 (C.A. 8, Nov. 1981)
(*make whole relief*, including back pay and reinstatement, *improper* where Ees were discharged for admittedly stealing goods from E and not for requesting U assistance at investigatory interview; Section 10(c) of Act, precludes back pay order and reinstatement under such circumstances)

Tipton Electric Company and Professional Furniture Company v. N.L.R.B. 621 F.2d 890 (C.A. 8, 1980)
(bargaining orders not limited to *exceptional* cases marked by *outrageous* and *pervasive* ULPs ... SCt approved *Bd's use of bargaining orders in less extraordinary cases marked by less pervasive practices which nonetheless still have tendency to undermine majority strength and impede election processes*)

N.L.R.B. v. Brooks Cameras, Inc. 691 F.2d 912 (C.A. 9, Nov. 1982)
(while Bd's selection of remedy for ULPs entitled to great deference, *cts role in reviewing remedial orders not merely that of rubber stamp*, and ct held it was abuse of Bd's discretion to issue remedial order to remedy interrogation where Bd did not seriously challenge ALJ's finding that interrogation was isolated and minimal)

Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO v. N.L.R.B. 683 F.2d 305 (C.A. 9, July 1982)
(Bd has broad discretion in fashioning remedies to effectuate Act's policies in light of circumstances of each case and ct will overturn Bd's choice of dues reimbursement remedy only where reimbursement is shown to be punitive rather than compensatory or where Bd orders reimbursement absent showing that Ees were coerced in their choice of bargaining representative)

N.L.R.B. v. Local No. 12, Operating Engineers 673 F.2d 1094 (C.A. 9, Apr. 1982)
(Bd order requiring U to reimburse E for monies it unwilling contributed to U-trust funds for its president and vice-president enforced where Bd determined that U had committed ULP by requiring E to contribute; however, ct cannot require Bd to order E reimbursed for similar contributions to trusts which were not subject of ULP charge)

East Bay Chevrolet dba Time Chevrolet v. N.L.R.B. 659 F.2d 1006 (C.A. 9, Oct. 1981)
(enforcement denied and case remanded to Bd where R/O improperly prescribed substantive provision for future agreement between E and U; namely, effective date of agreement be made retroactive to effective date of agreement between E and 3 Us representing other units of E, notwithstanding in previous successful negotiations, all 4 Us had conducted joint bargaining with E association of which E had properly withdrawn from)

N.L.R.B. v. Antonino Carilli, d/b/a Antoninino's Restaurant 648 F.2d 1206 (C.A. 9, June 1981)
(bargaining order appropriate where Bd's determination that decertification election precluded by E informing Ees it intended to operate w/o U and suggesting Ees either resign from U or seek work elsewhere, implying that better benefits coming w/o U and unilaterally implemented benefits supported by substantial evidence; contention order inappropriate since would impose minority U on Ees rejected, as contention based on letter signed by purported majority of Ees which expressed opposition to U since letter written after hearing and mtn to reopen proceeding to permit introduction of letter denied)

N.L.R.B. v. Sambo's Restaurant, Inc. 641 F.2d 794 (C.A. 9, Apr 6, 1981)
(Bd's *sua sponte* adoption of unargued remedies not statutory *extraordinary circumstances* under Section 10(e) that would allow E to assert objection for first time on appeal, since rehearing (before Bd) was available to E; on appeal after Bd rehearing, ct would have benefit of Bd's expert opinion when ct reviewed Bd's determination)

Seattle-First National Bank v. N.L.R.B. 651 F.2d 1272 (C.A. 9, Nov 1980)
(Bd's order requiring E to cease and desist threatening to cause arrest of picketers in its building too broad and Bd ordered to revise order to place limits on U's picketing which will accomodate U's Section 7 rights and E's private property rights)

N.L.R.B. v. Wilhow Corporation, d/b/a Town and Country Supermarkets 666 F.2d 1294 (C.A. 10, Dec. 1981)
(Bd has great latitude in determining whether E's ULP vitiates fair election process, thus requiring bargaining order based on majority of U authorization cards)

Warehouse Union, Local 860, Teamsters v. N.L.R.B. 652 F.2d 1022 (C.A.D.C., Apr 1981)
(Bd remedy ordering U to make clerical Ees whole for their loss of wages (due to U's unlawful conduct) upheld, since award of backpay is w/i authority of Bd and in keeping with policies of Act)

United Steelworkers of America v. N.L.R.B. 646 F.2d 616 (C.A.D.C., Feb 1981)
(imposition of remedies is matter of special administrative competence, subject to very limited judicial review; selection of remedies made by Bd must stand, *unless it can be shown that the order is patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act*)

5956—Cont.

United Steelworkers of America v. N.L.R.B. **646 F.2d 616 (C.A.D.C., Feb 1981)**
(enforcement of stringent access remedy denied where Bd failed to make findings that corporatewide remedies were necessary to offset coercive or chilling effects caused by E conduct at issue, even as that conduct was magnified by existence of previous violations of Act)

Ardizzoni v. N.L.R.B. **663 F.2d 130 (C.A.D.C., Oct. 1980)**
(clause in decree (*E, its officers, agents, successors, and assigns, abide by and perform*) effectuating Bd order necessary as integral part of judgment issued by ct upholding and enforcing Bd order; w/o such direction Bd incapable of effectuating its ct affirmed order)

Peoples Gas System, Inc. v. N.L.R.B. **625 F.2d 35 (C.A.D.C., 1980)**
(bargaining order not justified where Bd did not balance E's, U's and Ees rights in determining necessity of order; Bd failed to consider whether Ees wanted U representation and here an election was held 2 years after E committed ULP and U was defeated)

N.L.R.B. v. Henry Cauthorne, an individual, t/a Cauthorne Trucking **691 F.2d 1023 (C.A.D.C., Oct. 1982)**
(where E violated Sec. 8(a)(5) by discontinuing contributions to health and welfare fund after collective-bargaining agreement expired and Bd found liability for period running to date of its Order, case remanded to Bd for determination of whether because parties resumed bargaining after unilateral change they did not reach impasse at some point. E's liability will run from date of change to date when parties execute new agreement or reach lawful impasse)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36, etc. v. N.L.R.B. **669 F.2d 759 (C.A.D.C., Feb. 1981)**
(*Bd remedial order may not be disturbed unless it can be shown that order is patent attempt to achieve ends other than those which can fairly be said to effectuate policies of Act*)

5963 BACKPAY DETERMINATIONS

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ct cutoff backpay liability of E to economic striker who was unlawfully discharged from time Ee resigned but allowed backpay from time of discharge until date of resignation as Bd exceeded its authority to remedy violations)

N.L.R.B. v. Mars Sales & Equipment Co. **626 F.2d 567 (C.A. 7, 1980)**
(ct held proper Bd order of reinstatement and back pay from date of unlawful discharge for Ee until offered reinstatement by E as consistent with remedial policies of Act)

N.L.R.B. v. Columbia Building Materials, Inc. **624 F.2d 193(T) (C.A. 9, 1980)**
(*when backpay order is entered it should stand unless order is patent attempt to achieve ends other than those which can fairly be said to effectuate policies of Act; backpay order involved here, which does no more than return affected Ees to economic state which they would have enjoyed absent unilateral wage modification, cannot be said to achieve ends other than those which would effectuate Act*)

Consolidated Freightways v. N.L.R.B. **669 F.2d 790 (C.A.D.C., Dec. 1981)**
(ct remanded case, brought before ct on issue of whether backpay award was tolled by E's conditional offer of reinstatement, for Bd to explicate circumstances, if any, under which an inquiry into whether an Ee would have rejected valid offer of reinstatement; Bd failed to distinguish or overrule cases that emphasize actual reasons why Ee refuses an offer of reinstatement even when validity of offer itself is challenged)

5970 INTERPRETATION OF STATUTES

N.L.R.B. v. Hendricks County Rural Electric Membership Corp. **454 US 170 (U.S. SCt. Dec. 1981)**
(construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong, especially where Congress has refused to alter the administrative construction)

Donald Schriver, Inc., et al. v. N.L.R.B. **635 F.2d 859 (C.A.D.C. 1980)**
(ct held Bd's interpretation of scope of construction industry proviso to 8(e) was entirely consistent with its legislative history and purposes for which it was enacted; in matters of statutory construction ct is bound to give considerable deference to interpretation of statute by Bd)

Mary Thompson Hospital, Inc. **621 F.2d 858 (C.A. 7, 1980)**
(Bd should heed congressional admonition to avoid fragmentation of units in health care facilities rather than applying traditional community of interest standards)

Ford Motor Co. v. N.L.R.B. **305 U.S. 364 (S. Ct US, 1979)**
(in enacting Sec. 8(d), Congress delegated to Board primary responsibility of marking out scope of statutory language and of statutory duty to bargain; Bd's view that in-plant food prices and services are mandatory subjects of bargaining is entitled to considerable deference and should be enforced)

New York Telephone Co. et al. v. New York State Department of Labor, et al. **440 U.S. 519 (S Ct., 1979)**
(NLRA does not preclude state from enacting unemployment compensation law which pays benefits to strikers notwithstanding fact that this law put majority of financial burden on struck E and enabled strikers to extend length of strike; Legislative history of NLRA indicates that Congress recognized potential conflict between state law and Act but did not intend to preempt that exercise of state power)

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(while deference is to be given to agency's intepretation of statute it administers, it is cts that have final responsibility under constitution on matters of statutory interpretation)

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(Bd's failure to conduct hearing was arbitrary, capricious and unlawful where its order denying E review, of issue of whether full-time faculty members of college were managerial or supervisory Ees, was based on its statutory interpretation which had been rejected by Ct of Appeals and Supreme Court)

N.L.R.B. v. Electrical Workers, Local Union No. 73 **621 F.2d 1035 (C.A. 9, June 1980)**
(major concern of Congress in enacting 8(b)(1)(B) of NLRA, was to prevent Us from forcing Es into or out of multi-E bargaining units and to guarantee that E's bargaining representative would be completely faithful to E's desires)

N.L.R.B. v. Electrical Workers, Local Union No. 73 **621 F.2d 1035 (C.A. 9, June 1980)**
(U activity prohibited by Section 8(b)(1)(B) includes: (1) picketing company in attempt to force E to dismiss labor relations consultant thought to be *anti-U*, (2) attempting to force Es to join or resign from multi-E bargaining associations, (3) attempting to force Es to select foremen from ranks of U members, (4) expelling U-member foreman from U for assigning unit work in violation of bargaining agreement, and (5) penalizing U members for performing nonU supervisory duties during strike and forbidding them from resigning from U to avoid further threats)

N.L.R.B. v. Electrical Workers, Local Union No. 73 **621 F.2d 1035 (C.A. 9, June 1980)**
(ct found U's fining of its member for working in non-U shop and who was grievance arbiter for E, not violative, since U neither represented company's Ees nor had it demonstrated desire to represent such Ees; U had no incentive to either influence company's choice of bargaining representative or affect representative's loyalty to E; acts did not deprive E of loyal bargaining representative)

5977 INTERPRETATION OF ADMINISTRATIVE REGULATIONS

Kessler Institute For Rehabilitation v. N.L.R.B. **669 F.2d 138 (C.A. 3, Jan. 1982)**
(Bd Rule, Sec. 102.114, provides, inter alia, maximum time period for Bd to receive documents with additional 3 day period allowed if Bd uses mail to serve notice of right to file documents, and further, if time period ends on Sunday or holiday (Saturday considered holiday), these days are not counted in response period and 3 day mailing period is tacked on beginning on 2nd day following such Sunday or holiday)

N.L.R.B. v. The Cambridge Wire Cloth Company, Inc. **622 F.2d 1195 (C.A. 4, 1980)**
(where RD determines that objections to election do not require hearing, RD, and not objecting party, is responsible for transmitting *whole* record (all evidence considered in reaching decision) to Bd for its review on appeal, notwithstanding R/R 102.69(g) places responsibility for submission of documents on objecting party)

Sohio Petroleum Co., a division of Sohio Natural Resources Co. v. N.L.R.B. **625 F.2d 223 (C.A. 9, June 1980)**

5984 DISCRETIONARY ADMINISTRATIVE POLICIES

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(Bd's failure to conduct hearing was arbitrary, capricious and unlawful where its order denying E review, of issue of whether full-time faculty members of college were managerial or supervisory Ees, was based on its statutory interpretation which had been rejected by Ct of Appeals and Supreme Court)

5984—Cont.

J. P. Stevens & Co., Inc. v. N.L.R.B. 623 F.2d 322 (C.A. 4, 1980)
(ct found no abuse of discretion in Bd's refusal to extend certification for two years; if E complied with bargaining order, one more year of bargaining should suffice; if not, it will again be charged and *year will not have begun to run*)

Sohio Petroleum Co., a division of Sohio Natural Resources Co. v. N.L.R.B. 625 F.2d 223 (C.A. 9, June 1980)
(where first election was only was only referendum on whether Ees desired separate representation for unit and second election was held to determine which U would be Ees' bargaining representative, *second election* was *not a runoff*, and Bd properly permitted more than two choices on ballot)

N.L.R.B. v. Metro-Truck Body, Inc. 613 F.2d 746 (C.A. 9) (1980)
(*Sec. 9(c)(1)(A) substantial interest requirement* is not jurisdictional prerequisite to Bd action; rather it is *administrative expedient only*, adopted to enable Bd to determine for itself whether or not further proceedings and warranted)

Douglas Aircraft Company, a component of McDonnell Douglass Corporation v. N.L.R.B. 609 F.2d 352 (C.A. 9, 1979)
(Bd must defer to arbitrator's award notwithstanding he clarified reasons for award after charge filed with RD and stated 2 independent reasons for denying backpay, one of which repugnant to Act; furthermore if reasoning behind award is susceptible to 2 interpretations, one permissable and one impermissible under Act, permissible one should be accepted in order to give arbitration *hospitable acceptance*)

N.L.R.B. v. Zeno Table Company, Inc. 610 F.2d 567 (C.A. 9, 1979)
(ct, in instant case, limited to question whether Bd abused its discretion in applying *extraordinary circumstance* rather than *good cause* standard to E's reasons for late filing of its answer)

Presbyterian/St. Luke's Medical Center v. N.L.R.B. 653 F.2d 450 (C.A. 10, July 1981)
(ct must insure that Bd's exercise of discretion, as to what unit is appropriate for bargaining, is not unreasonable, arbitrary, unsupported by evidence, or in conflict with congressional intent)

5991 CONTRACT CONSTRUCTION

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)
(illegal promises will not be enforced in cases controlled by federal law; ct permits defendant to set up contract's illegality (as defense), on account of public interest)

Pacemaker Yacht Company, A Division of Mission Marine, Inc. v. N.L.R.B. 663 F.2d 455 (C.A. 3, Oct. 1981)
(as principle of coterminous interpretation had been adopted by Bd at time contract was negotiated, ct inferred that inclusion of two no-strike clauses, one expressly tied to arbitration clause and one prohibiting all strikes, was intended to waive Ees' right to strike over unforseeable disputes including U fund's failure to pay insurance premiums)

N.L.R.B. v. South Central Bell Telephone Company 688 F.2d 345 (C.A. 5, Oct. 1982)
(*whether there is a law of the contract between parties once arbitrator decides issue and what effect, if any, is to be given precedent are not primary, if at all, questions for judicial resolution*)

Irvin H. Whitehouse & Sons Co. v. N.L.R.B. 659 F.2d 830 (C.A. 7, Sept. 1981)
(although interpreting written instrument is matter of law in which ct is not obliged to follow interpretation of Bd, ct generally will exercise usual deference to Bd's expertise in this regard. Such deference extends only in so far as Bd's interpretation is supported by language of agreement and relevant and necessary extrinsic evidence)

Pittsburgh-Des Moines Corporation v. N.L.R.B. 663 F.2d 956 (C.A. 9, Dec. 1981)
(ct rejected proposition implicit in Bd's conclusion that in face of U's unequivocal rejection of E's offer, E was somehow committed to all portions of the proposal as to which tentative agreement had been reached; that U could hold E to what U liked while rejecting that which it disapproved. Party may retract proposal before other side has accepted it)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)
(Bd's interpretation of contract terms entitled to deference from cts if interpretation is reasonable and not inconsistent with Act's policies)

N.L.R.B. v. Southern California Edison Company 646 F.2d 1352 (C.A. 9, Jun 1981)
(deference (from ct) is due Bd's interpretation of labor contracts because such contracts are different in nature and scope from ordinary commercial contracts and, as such, labor contract interpretation falls w/i area of Bd's special expertise)

District 1199E, National Union of Hospital and Health Care Employees v. N.L.R.B. 613 F.2d 1102 (C.A.D.C.) (1980)
(unless Bd's construction of contract which differs from that of arbitrator is arbitrary or capricious Bd's interpretation is entitled to great weight)

6300 ADDUCTION OF ADDITIONAL EVIDENCE

6301 GENERALLY

N.L.R.B. v. Amalgamated Clothing and Textile Workers Union, AFL-CIO, and its Local Union No. 1566 662 F.2d 1044 (C.A. 4, Oct. 1981)
(cts generally have shown same deference to Bd as to district ct in its decisions with regard to whether to reopen record in particular case, and will not upset decision of Bd in those matters absent abuse of discretion)

6375 EVIDENCE WHICH MAY NOT BE ADDUCED

6375-2500 Cumulative evidence

Clearwater Finishing Company, a Division of United Merchants and Manufacturers, Inc. v. N.L.R.B. 670 F.2d 464 (C.A. 4, Feb. 1982)
(ct held that ALJ's additional findings as evidence of E's bad faith outside enumerated allegations in unreasonably withholding dues checkoff, dilatory tactics during bargaining, and circulation of Ee handbook containing an anti-U statement cannot serve as basis of a determination of an ULP and therefore finding is invalid; moreover, finding that non-alleged facts are evidence of bad faith was merely cumulative and non-alleged facts were not necessary element of Bd's finding of bad faith)

6375-5000 Events subsequent to Board order

L'Eggs Products, Inc. v. N.L.R.B. 619 F.2d 1337 (C.A. 9, 1980)
(Bd, not ct, must receive new evidence if it is proper for it to be received)

6800 CONTENTIONS NOT RAISED BEFORE BOARD

6801 GENERALLY

Soule Glass and Glazing Co., et al. v. N.L.R.B. 652 F.2d 1055 (C.A. 1, May 1981)
(E's failure to request post-hearing reopening of record to receive additional evidence on issue not alleged in charge or amended complaint did not foreclose E from raising issue before courts where E amply preserved its appelate rights on issue in its exceptions to ALJ's decision)

6817 ISSUES NOT RAISED BEFORE BOARD WILL NOT BE CONSIDERED BY COURT

Mercy Hospital of Buffalo 668 F.2d 661 (C.A. 2, Jan. 1982)
(Bd's contention that petitioner was precluded from raising particular claim in ptn for review because it had not previously challenged Bd's finding, rejected in view of Bd's statement in its decision which could only have been designed to rebut the claim that Bd contends petitioner did not make)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)
(Bd's refusal to decide either whether parties reached impasse on U's contract proposals, or whether there would be violation even if they did reach impasse not abuse of Bd's discretion, since GC did not include the issues in C and they were not fully litigated)

Amax Coal Company, a Division of Amax, Inc. v. N.L.R.B. (Mine Workers, Local No. 1854) 614 F.2d 872 (C.A. 3) (1980)

N.L.R.B. v. Maidsville Coal Company, Inc. 693 F.2d 1119 (C.A. 4, Nov. 1982)

The Edward J. DeBartolo Corporation v. N.L.R.B. 662 F.2d 264 (C.A. 4, Oct 1981)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. 658 F.2d 968 (C.A. 4, Sept. 1981)
(although remedy issue, regarding reimbursement of Us for their share of rental cost of alternative meeting facilities for holding negotiations necessitated by E's refusal to hold negotiation meetings on its premises, was not fully litigated, ct considered such remedy issue on its merits, since GC and E litigated ALJ's finding that E violated Act by refusing to make its plant premises available for bargaining sessions)

6817—Cont.

N.L.R.B. v. Clerks and Checkers Local No. 1593, International Longshoremen's Association, AFL-CIO, et al. **644 F.2d 408 (C.A. 5, May 4, 1981)**
(ct declined to consider lack of due process in issuance of Bd order requiring health, welfare, and pension fund to accept contributions from U in order to remedy U's discrimination against U member resulting in his loss of contractual fringe benefits; contention that task of recalculating benefits is an impossible one and costs thereof would be astronomical was not made herein until case was on appeal and then even not clearly presented until oral argument)

N.L.R.B. v. Fry Foods, Inc. **609 F.2d 267 (C.A. 6, 1979)**
(contention that election should be invalidated because E found that supervisor was U supporter and had coercively influenced Ees to vote for U, rejected, since E failed to present evidence on the question at representation hearing and subsequent threats failed to object to certification of U or appeal results of election in timely fashion)

N.L.R.B. v. Wehrenberg Theatres, Inc., d/b/a Melba Theatre and Skyvue Drive-In **690 F.2d 159 (C.A. 8, Oct. 1982)**
(where E for first time on appeal raised issue that Bd should have excluded Ee from unit because he was supervisor's son, ct is w/o jurisdiction to consider issue)

N.L.R.B. v. Mr. B. IGA, Inc. **677 F.2d 32 (C.A. 8, Apr. 1982)**
(ct agreed that *objection made during course of representation proceeding must be reasserted in subsequent ULP case in order to be preserved for review by ct;* E, during certification proceedings, initially raised, but later abandoned, its objection that managers' participation tainted election, and did not raise such objection in ULP case before Bd)

N.L.R.B. v. Winco Petroleum Company and Cooper Oil Company, Inc., Successor Employer **668 F.2d 973 (C.A. 8, Jan. 1982)**
(where successor was held obligated to remedy predecessor's ULPs, ct rejected successor's contention that such liability order would deprive it of due process because validity of underlying ULP charges against predecessor was not an issue in supplemental proceedings on successorship and should be enforced first before going against successor since successor did not raise this argument before Bd and had not advanced any extraordinary circumstances to excuse its failure to do so)

Tobey Fine Papers of Kansas City, Division of Distribix, Inc. v. N.L.R.B. **659 F.2d 841 (C.A. 8, Apr. 1981)**
(E's claim that record did not support Bd's finding as to reason for withdrawal from multi-E bargaining association could not be considered by ct where E did not attempt to resist brief of GC made before Bd as to actual motivation for its withdrawal)

N.L.R.B. v. Sambo's Restaurant, Inc. **641 F.2d 794 (C.A. 9, Apr 6, 1981)**
(Bd's *sua sponte* adoption of unargued remedies not statutory *extraordinary circumstances* under Section 10(e) that would allow E to assert objection for first time on appeal, since rehearing (before Bd) was available to E; on appeal after Bd rehearing, ct would have benefit of Bd's expert opinion when ct reviewed Bd's determination)

N.L.R.B. v. W. Carter Maxwell, dba Pioneer Concrete Co. **637 F.2d 698 (C.A. 9, 1981)**
(ct will not consider whether Bd applied proper standard to determine if discharge violated Act where E did not raise issue before Bd or on appeal to ct)

Harding Glass Industries, Inc. v. N.L.R.B. **672 F.2d 1330 (C.A. 10, Feb. 1982)**
(issue as to whether E's withdrawal from multi-E unit was permissible in light of separate agreement with U by another member of multi-E group w/o any protest by other members held not properly before ct where record was devoid of any information regarding what impact agreement had on other Es when separately contracting E continued working during strike; and, since distinction between permanent and interim agreements was not explored, ct could not make factual determination regarding matter for first time on record before it)

Harding Glass Industries, Inc. v. N.L.R.B. **672 F.2d 1330 (C.A. 10, Feb. 1982)**
(ct declined to consider E's argument that its withdrawal from multi-E unit was justified because of separate agreement entered into with U by another member of multi-E group, where issue had not been raised by E at time of withdrawal and was never presented to ALJ or Bd but was raised later as an after thought)

R. W. Harmon & Sons, Inc. v. N.L.R.B. **664 F.2d 248 (C.A. 10, Nov. 1981)**
(ct did not address E's claim that Bd abused its discretion in abandoning one facet of jurisdictional test where E did not raise issue until ULP proceeding; party cannot raise issue in ULP proceeding or on appeal that could have been, but was not raised in R proceeding, and E had not suggested any compelling circumstances which would make exception to rule applicable)

St. Anthony Hospital Systems v. N.L.R.B. **655 F.2d 1028 (C.A. 10, Aug 1981)**
(failure of non-profit hospital, run by religious order, to raise before Bd in R proceeding constitutionality of Bd's assertion of jurisdiction on ground that it is religious organization exempt from governmental regulation under First Amendment, precluded hospital from raising issue before Bd or ct in ULP case. *While statutory jurisdiction of Bd may be challenged at any time, facts upon which Bd determines it has jurisdiction may be challenged only upon timely exception, in absence of which Bd's findings are not open to attack in proceeding for enforcement*)

6825 THEORY OF CASE NOT RELIED UPON BY BOARD WILL NOT BE CONSIDERED BY COURT

N.L.R.B. v. Fixtures Manufacturing Corporation **669 F.2d 547 (C.A. 8, Jan. 1982)**
(although Bd did not cite *Wright Line* case issued same day as this decision that test may be applied as Bd's analysis was consistent with *Wright Line* framework)

Construction Erectors, Inc. v. N.L.R.B. **661 F.2d 801 (C.A. 9, Nov 1981)**
(ct will not rely on facts in Bd's brief to support Bd's order where Bd did not rely on such evidence to find that E had permanent and stable work force at time it signed Sec. 8(f) contract)

6833 OBJECTIONS NOT URGED BEFORE BOARD MAY NOT BE CONSIDERED

N.L.R.B. v. Fry Foods, Inc. **609 F.2d 267 (C.A. 6, 1979)**
(contention that election should be invalidated because E found that supervisor was U supporter and had coercively influenced Ees to vote for U, rejected, since E failed to present evidence on the question at representation hearing and subsequent threats failed to object to certification of U or appeal results of election in timely fashion)

N.L.R.B. v. Blake Construction Co., Inc., etc. **663 F.2d 272 (C.A.D.C., Aug. 1981)**
(enforcement of bargaining order denied, notwithstanding Bd's contention that E is barred by Sec. 10(e) from raising due process claim because it failed to do so before Bd; E, in fact, excepted to ALJ's finding of 8(a)(5) violation at issue herein, even though not expressly asserting due process objections to conduct of hearing; although E's objections were not precise or detailed, they were not pro forma objections found to be impermissibly vague, and Bd was otherwise apprised that E intended to press question now presented)

6833-2000 Failure to except to proposed findings and order conclusive

N.L.R.B. v. Proler International Corporation **635 F.2d 351 (C.A. 5, 1981)**
(where E failed to object to language of Bd's c/d order before Bd, it is barred from subsequently raising issue, absent unusual circumstances)

N.L.R.B. v. Rich's Precision Foundry, Inc. **667 F.2d 613 (C.A. 7, Dec. 1981)**

6833-2825 Except where Board enlarges order

N.L.R.B. v. Local 345, Utility Workers of New England **612 F.2d 598 (C.A. 1)**
(where ALJ's *Order* did not include all items in *Remedy* section, no exceptions filed, and Bd adopted *pro forma* ALJ's recommended D/O, Bd has no right to clarify its Order where such modification imposes additional and material burdens on Respondents w/o allowing parties to be heard on propriety of additional relief notwithstanding party filed no exceptions with Bd and Bd has inherent power to modify its orders)

N.L.R.B. v. First National Maintenance Corp. **627 F.2d 596 (C.A. 2, July 1980)**
(condition to right to object to enforcement of remedy ordered by NLRB is that party opposing order must have excepted to remedial portion of order before NLRB, and fact that GC's exceptions to order requested further relief does not have effect of notifying Bd that E would raise issue)

6833-9000 Unless failure to do so excused because of extraordinary circumstances

N.L.R.B. v. Robin American Corporation **667 F.2d 1170 (C.A. 5, Feb. 1982)**
(contrary to Bd's contention, SCt's pronouncement of new doctrine subsequent to Bd's order held *extraordinary circumstance* justifying E's failure to object until it petitioned for rehearing, since SCt's decision overruled previously controlling doctrine; at time Bd issued its order, objected-to portion of order was in accord with circuit ct's precedent, so that objection to order would have been futile if not frivolous)

6833-5000—Cont.

N.L.R.B. v. Tri-State Warehouse & Distributing, Inc. and Public Warehousing Corporation **677 F.2d 31 (C.A. 6, Apr. 1982)**

(respondent's contention that fact they were not represented by counsel at time Bd's decision was received constituted extraordinary circumstances excusing failure to file objections to Bd's decision and order, rejected, where they were represented by counsel before ALJ, they did not allege difficulty in obtaining counsel for pecuniary or other reasons and did not dispute that decision to forego services of counsel was their own)

N.L.R.B. v. Advanced Systems, Inc. **681 F.2d 918 (C.A. 9, Apr. 1982)**

(Bd abused discretion when: 1) adopted RD's report w/o reviewing underlying documents because E failed to append to its exceptions documents given by it to RD; and 2) failed to include this documentation in record to ct. No waives by E for failure to raise issue of complete record during Bd proceeding as E didn't discover fact until Bd filed its certificate of record. Bd Rule 102.69(g) to ambiguous to put E on notice complete record not sent to Bd, nor did RD's report give notice documents secured by RD himself would be excluded from record or clearly indicate that E's documents would be excluded unless appended to exceptions)

N.L.R.B. v. Sambo's Restaurant, Inc. **641 F.2d 794 (C.A. 9, Apr 6, 1981)**

(Bd's *sua sponte* adoption of unargued remedies not statutory *extraordinary circumstances* under Section 10(e) that would allow E to assert objection for first time on appeal, since rehearing (before Bd) was available to E; on appeal after Bd rehearing, ct would have benefit of Bd's expert opinion when ct reviewed Bd's determination)

Stephens Institute, a corporation d/b/a Academy of Art College v. N.L.R.B. **620 F.2d 720 (C.A. 9, 1980)**

(SCt decision in *Yeshiva* inapplicable to instant case and therefore not the *extraordinary development* which might otherwise excuse appellant's failure to raise the managerial employee exception before the Bd)

Teamsters Local 115 v. N.L.R.B. (Haddon House Food Products, Inc.) **640 F.2d 392 (C.A.D.C. 1981)**

(where Bd, sua sponte, adopted new remedies and neither GC nor U as charging party had taken exception to ALJ's failure to impose such remedies, and notwithstanding that E did not petition for reconsideration concerning new remedies, ct is not precluded from hearing E's objections, since filing for judicial review by another aggrieved party can constitute extraordinary circumstances that *prevent a matter which should have been presented to the Board from having been presented at proper time*)

6833-5800 Objections must be specific

Ervin Szewczuga and Gerald Treichel v. N.L.R.B. **686 F.2d 962 (C.A.D.C., Aug. 1982)**

(respondent's request for remand to Bd to consider arbitrator's decision which upheld alleged unlawful discharges of stewards for participation in unprotected walkout, rejected, since argument before Bd in general terms that stewards' discipline was contractually authorized not adequate to put Bd on notice under Sec. 10(e) that issue might be raised on appeal, contention intervening ct decision announced after briefing but before oral argument *extraordinary circumstances* excusing failure to raise issue rejected, since decision did not overrule any precedent so as to justify reliance on arbitration award)

6833-7000 Issues not seen to be important until controlling decision in another case

N.L.R.B. v. Carbonex Coal Company **679 F.2d 200 (C.A. 10, May 1982)**

(10th Cir. Ct does not believe that it must apply Bd's *Wright Line* standard to cases decided by Bd *before* change; cases were en route (to ct) on date of change)

Ervin Szewczuga and Gerald Treichel v. N.L.R.B. **686 F.2d 962 (C.A.D.C., Aug. 1982)**

(respondent's request for remand to Bd to consider arbitrator's decision which upheld alleged unlawful discharges of stewards for participation in unprotected walkout, rejected, since argument before Bd in general terms that stewards' discipline was contractually authorized not adequate to put Bd on notice under Sec. 10(e) that issue might be raised on appeal, contention intervening ct decision announced after briefing but before oral argument *extraordinary circumstances* excusing failure to raise issue rejected, since decision did not overrule any precedent so as to justify reliance on arbitration award)

6833-8400 Objections concerning orders

N.L.R.B. v. Local 343, Utility Workers of New England **612 F.2d 598 (C.A. 1)**

(where ALJ's *Order* did not include all items in *Remedy* section, no exceptions filed, and Bd adopted *pro forma* ALJ's recommended D/O, Bd has no right to clarify its Order where such modification imposes additional and material burdens on Respondents w/o allowing parties to be heard on propriety of additional relief notwithstanding party filed no exceptions with Bd and Bd has inherent power to modify its orders)

N.L.R.B. v. First National Maintenance Corp. **627 F.2d 596 (C.A. 2, July 1980)**

(condition to right to object to enforcement of remedy ordered by NLRB is that party opposing order must have excepted to remedial portion of order before NLRB, and fact that GC's exceptions to order requested further relief does not have effect of notifying Bd that E would raise issue)

Hedstrom Co., a subsidiary of Brown Group, Inc. v. N.L.R.B. **629 F.2d 305 (C.A. 3, 1980)**

(E's objection that Bd failed to take additional testimony or request statements of position or briefs from counsel on remand overruled as E is precluded from raising this objection where E made no effort to introduce new evidence, filed no statements or briefs during entire time case pending before Bd on remand; moreover, E did not move for reconsideration or leave to adduce additional evidence after Bd issued decision)

The Procter & Gamble Manufacturing Co., et al. v. N.L.R.B. **658 F.2d 968 (C.A. 4, Sept. 1981)**

(Bd's contention that, since E failed to file ptn for reconsideration of affirmative relief issue, it cannot under Sec. 10(e) now assert any objection absent extraordinary circumstances not present herein, rejected, since there was sufficient compliance with Sec. 10(e) inasmuch as issue was briefed and argued to Bd)

N.L.R.B. v. Robin American Corporation **667 F.2d 1170 (C.A. 5, Feb. 1982)**

(contrary to Bd's contention, SCt's promouncement of new doctrine subsequent to Bd's order held *extraordinary circumstance* justifying E's failure to object until it petitioned for rehearing, since SCt's decision overruled previously controlling doctrine; at time Bd issued its order, objected-to portion of order was in accord with circuit ct's precedent, so that objection to order would have been futile if not frivolous)

N.L.R.B. v. Sambo's Restaurant, Inc. **641 F.2d 794 (C.A. 9, Apr 6, 1981)**

(Bd's *sua sponte* adoption of unargued remedies not statutory *extraordinary circumstances* under Section 10(e) that would allow E to assert objection for first time on appeal, since rehearing (before Bd) was available to E; on appeal after Bd rehearing, ct would have benefit of Bd's expert opinion when ct reviewed Bd's determination)

6850 MOOTNESS OF ISSUES

Pet, Inc. v. N.L.R.B. **641 F.2d 545 (C.A. 8, Jan 30, 1981)**

(appeal found not moot although U's conduct of consumer boycott was terminated for present with negotiation of new labor contract)

Stanley Spencer, et al. v. N.L.R.B. **548 F.Supp. 256 (DC DC, July 1982)**

(Bd's mtn to dismiss on ground of mootness was granted where plaintiff *engineers* received in interim full relief that they were seeking: Bd determination that they are *professional Ees* and decertification election was held)

Stanley Spencer, et al. v. N.L.R.B. **548 F.Supp. 256 (DC DC, July 1982)**

(mootness doctrine requires dismissal whenever (1) it can be said with assurance that there is no reasonable expectation... that alleged violation will recur, ... and (2) interim relief or events have completely and irrevocably eradicated effects of alleged violation)

6850-5000 Changes after Board order affecting propriety of enforcement may be considered

N.L.R.B. v. St. Regis Paper Company **674 F.2d 104 (C.A. 1, Mar. 1982)**

(in responding to E's contention that after three years Bd order was so outdated as to be moot and incapable of enforcement, ct, although it normally does not take into account changes in circumstances when reviewing Bd proceedings, recognized that E's interim actions of closing two garages involved in initial complaint and transferring operations to reopened non-U facility at another location was fundamental change, and enforcing Bd order would require E to bargain in unit at which there is no basis for assuming U currently enjoys support of any Ees)

N.L.R.B. v. Maywood Plant of Grede Plastics **628 F.2d 1 (C.A.D.C.)**

(ct in its supervisory role may decline to enforce affirmative orders which have become futile at time enforcement is sought)

6867 SUBJECT MATTER JURISDICTION MAY BE QUESTIONED AT ANYTIME

St. Anthony Hospital Systems v. N.L.R.B. **655 F.2d 1028 (C.A. 10, Aug 1981)**

(failure of non-profit hospital, run by religious order, to raise before Bd in R proceeding constitutionality of Bd's assertion of jurisdiction on ground that it is religious organization exempt from governmental regulation under First

6867—Cont.

Amendment, precluded hospital from raising issue before Bd or ct in ULP case. *While statutory jurisdiction of Bd may be challenged at any time, facts upon which Bd determines it has jurisdiction may be challenged only upon timely exception, in absence of which Bd's findings are not open to attack in proceeding for enforcement)*

6875 LACK OF INDISPENSABLE PARTY MAY BE RAISED AT ANYTIME

N.L.R.B. v. Doug Neal Management Company **620 F.2d 1133 (C.A. 6, 1980)**
(notwithstanding issue of indispensable party had not been previously raised, ct not precluded from *sua sponte* raising it)

7200 JUDGMENT

7217 ISSUANCE OF JUDGMENT

N.L.R.B. v. South Central Bell Telephone Company **688 F.2d 345 (C.A. 5, Oct. 1982)**
(judgment of Bd is subject to judicial review; but if its construction of statute is reasonably defensible, it should not be rejected merely because cts might prefer another view of statute; but enforcement of Bd orders refused where orders had no reasonable basis in law, fundamentally inconsistent with structure of Act or attempt to usurp major policy decisions properly made by Congress)

7233 ENFORCEMENT OF BOARD ORDER

N.L.R.B. v. Fry Foods, Inc. **609 F.2d 267 (C.A. 6, 1979)**
(enforcement granted where ct concluded that substantial evidence supported Bd's findings of 8(a)(1), (2), (3), (4) and (5) violations, and that E's conduct was one of the most obvious examples of an E's complete defiance of the Act which had come before the ct in recent years)

N.L.R.B. v. Campbell 66 Express, Inc. **609 F.2d 312 (C.A. 7, 1979)**
(enforcement of Bd's finding of unlawful discharge denied, since there was *more than convincing* evidence that E had good reason to discharge Ee and there was no substantial evidence of anti-U animus)

7233-3300 As modified

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(Ct may adjust its relief to exigencies of case in accordance with equitable principles which govern judicial action)

N.L.R.B. v. Turner Tool and Joint Rebuilders Corporation **670 F.2d 637 (C.A. 5, Mar. 1982)**
(where E violated Act by discharging U adherent on pretext that he had violated rule requiring Ees to remain in working area, order modified to delete provision requiring posting of notice which stated that E would not unlawfully threaten Ee caught out of work area with discharge because E's rule can be validly enforced and rest of notice remedies E's violation of threatening or discharging Ees on basis of U or organizational talks)

Ardizzoni v. N.L.R.B. **663 F.2d 130 (C.A.D.C., Oct. 1980)**
(clause in decree (*E, its officers, agents, successors, and assigns, abide by and perform*) effectuating Bd order necessary as integral part of judgment issued by ct upholding and enforcing Bd order; w/o such direction Bd incapable of effectuating its ct affirmed order)

7242 DENIAL OF ENFORCEMENT OF BOARD ORDER

N.L.R.B. v. Decibel Products, Inc. **657 F.2d 727 (C.A. 5, 1981)**
(enforcement of bargaining order denied and case remanded for consideration on basis of entire record; it was error for Bd to consider nothing but RD's report in determining whether E committed ULP)

N.L.R.B. v. Doug Neal Management Company **620 F.2d 1133 (C.A. 6, 1980)**
(enforcement denied where order not supported by substantial evidence as Ees discharged because E installed automated equipment which eliminated work of Ees, and indispensable party, owner of building, not joined; making building manager party not sufficient, especially where Bd ordered reinstatement of 3 discharged Ees)

7250 MODIFICATION OF JUDGMENT

7250-1700 Board action as prerequisite for modification

N.L.R.B. v. Associated General Contractors of California, Inc. **633 F.2d 766 (C.A. 9, 1980)**
(Bd's order ordering E Association to furnish Us full membership roster modified to include *Open Shop and Open Shop Specialty* members only where record established relevance of roster of those members only)

7283 VACATION OF JUDGMENT

7283-7900 Vacated because of intervening Supreme Court decision

Brockway Motor Trucks, Division of Mack Trucks, Inc. v. N.L.R.B. **656 F.2d 32 (C.A. 3, 1981)**
(in view of SCt's decision in *First National Maintenance Corp.* holding that E is not required to bargain with U over its decision to shut down part of its business purely for economic reasons, ct ordered that Bd's consent to a decree denying enforcement of Bd's bargaining and backpay order shall be approved, that ptns for enforcement and review shall be dismissed, that Bd dismiss ULP charges, and that costs shall be imposed on Bd with question of amount reserved until appropriate motion is filed by E)

Kenworth Trucks of Philadelphia, Inc. v. N.L.R.B. **580 F.2d 55 (C.A. 3)**
(in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 46 L.W. 4301 (U.S. April 3, 1978) ct, on review, determined that so long as ALJ had provided statement of reasons for recommending bargaining order and so long as Bd had specifically indicated its adoption of findings and reasoning of ALJ, need for separate elaboration by Bd of factors prompting bargaining order appeared to have been met in instant case)

7292 RECALL OF MANDATE

A To Z Portion Meats, Inc. v. N.L.R.B. **643 F.2d 390 (C.A. 6, Mar. 18, 1981)**
(ct treated ptn for clarification as ptn for recall of mandate, since ptn for clarification is one procedure by which necessity for recall of mandate may be brought to ct's attention; ct's power to recall its mandate is rooted in inherent power of the ct)

7700 REHEARING

7750 GROUNDS FOR

N.L.R.B. v. Sambo's Restaurant, Inc. **641 F.2d 794 (C.A. 9, Apr 6, 1981)**
(Bd's *sua sponte* adoption of unargued remedies not statutory *extraordinary circumstances* under Section 10(e) that would allow E to assert objection for first time on appeal, since rehearing (before Bd) was available to E; on appeal after Bd rehearing, ct would have benefit of Bd's expert opinion when ct reviewed Bd's determination)

7775 REQUEST TO VACATE TREATED AS PETITION FOR REHEARING

N.L.R.B. v. Koenig Iron Works, Inc.; et al. **681 F.2d 130 (C.A. 2, June 1982)**
(ct refused to vacate decision and reconsider in light of *Bonanno Linen Service, Inc. v. N.L.R.B.* 50 U.S.L.W. 4087 where considerable time has passed since original decision, remand would be necessary to give effect to *Bonanno*, and public interest is best served by not exercising discretionary power to reopen decision 4 years old)

8100 REMAND TO BOARD

The Dow Chemical Company v. N.L.R.B. **636 F.2d 1352 (C.A. 3, 1980)**
(ct declined to remand case to Bd to determine whether, independent of U's breach of contract's no-strike clause, E's post-strike discharge of strikers and termination of contract with U were unlawful; strike was material breach of contract, no *Boys Markets* injunction was available to E, and unless E were to submit to ongoing coercion, new hires to operate plant were a necessity; moreover, there was loss of majority status among new hires, and 9 years had elapsed since events herein transpired)

8101 GENERALLY

Soule Glass and Glazing Co., et al. v. N.L.R.B. **652 F.2d 1055 (C.A. 1, May 1981)**
(no remand for Bd to determine if ULPs found by ct converted economic strike into ULP strike since ct held ULPs not supported by substantial evidence; *remand and inevitable return to ct for another review would prolong controversy, w/o any indication that more appropriate adjudication would be achieved)*

N.L.R.B. v. Nixon Gear, Inc. **649 F.2d 906 (C.A. 2, May 1981)**
(upon denying enforcement of Bd order because Bd had improperly refused to order hearing on E's objections to election, ct did not remand proceedings for further hearing in view of great expense and delay to which E had been subjected by Bd's refusal, E's lessened prospects of prevailing at hearing due to delay and witness' fading memories and unavailability, narrow one-vote election victory by U, and change in E's labor force and question as to whether U still had majority support)

Ithaca College v. N.L.R.B. **623 F.2d 224 (C.A. 2, 1980)**
(remand to Bd not appropriate and proceedings dismissed where petitioner sought no remand, Bd refused to resolve issue of faculty status and college had been put to needless expense and unwarranted prejudicial publicity; passage of time undoubtedly accompanied by changes in faculty personnel)

8101-3300 Effect of remand

8101-3350 'Law of the case' binding on Board

8101-3350—Cont.

Peter Frattaroli, et al. v. N.L.R.B. **590 F.2d 15 (C.A. 1, 1978)**
(on remand for new evidence on issue of whether or not U had in fact operated legitimate exclusive hiring hall service provided for in contract, ct's prior opinion that there was not substantial evidence thereof was law of case, and ct rejected Bd's holding that, given existence of contract providing for exclusive hiring hall, evidence thereof was irrelevant, and system as operated was legitimate)

N.L.R.B. v. Flite Chief, Inc.; et al. **566 F.2d 1182 (C.A. 9, 1979)**
(absent demonstration of significant modification of situation since prior unpublished memorandum decision involving same parties, such decision remains law of case for purposes of res judicata or collateral estoppel even though under ct's rules unpublished memorandum does not have precedential weight)

8150 PURPOSE OF REMAND

Albertson's, Inc. v. N.L.R.B. **661 F.2d 939(T) (C.A. 9, Sep. 1981)**
(case remanded where Bd abused its discretion in not deferring to arbitrator's decision that discharge was for cause)

8150-1100 Reconsideration in light of court opinion

Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. **248 NLRB No. 040**
(pursuant to ct remand, Bd rescinded portion of its order requiring E to restore original organization administering health care insurance plan in place of new insurance company whose unilateral substitution by E for original organization was found unlawful unilateral change by Bd as well as by ct)

N.L.R.B. v. Transportation Management Corp. **674 F.2d 130 (C.A. 1, Apr. 1982)**
(ct remanded case to Bd for reconsideration under *Wright Line* standard where Bd based finding of violation on E's failure of *overcoming* GC's prima facie case; ct has upheld Bd's imposing burden of neutralizing GC's prima facie case on E but to impose a greater burden is outside Bd's authority)

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. **658 F.2d 934 (C.A. 2, Sept. 1981)**
(case remanded for reconsideration of Bd's finding that pro-U activities of groupleaders, found supervisory, did not interfere with election)

N.L.R.B. v. Mercy Hospital Association **606 F.2d 22 (C.A. 2, 1979)**
(ct remand for reconsideration of appropriateness of separate unit of maintenance Ees in hospital in light of congressional admonition against proliferation of units in health care field)

Behring International, Inc. v. N.L.R.B. **675 F.2d 83 (C.A. 3, Apr. 1982)**
(case remanded to Bd for reconsideration in light of ct's opn that Bd misallocated burden of proof; Bd held that E failed to substantiate its economic defense because it could not justify timing of discharges; relevance of that observation was not clear from Bd's decision since lay-offs occurred soon after election and, therefore, could not have affected it; E did articulate legitimate business reason for discharges, and GC did not prove that E's real motive was anti-U animus)

Season-All Industries, Inc. v. N.L.R.B. **654 F.2d 932 (C.A. 3, 1981)**
(upon determining that Bd improperly denied hearing with respect to E's objection to election on ground that rank-and-file Ee was U agent whose electioneering activities outside polling place influenced co-workers, ct remanded case for evidentiary hearing and further proceedings consistent with ct's opinion)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**
(impermissibly broad order remanded to Bd for modification with respect to requirements for U access to plants and inclusion of notice in appropriate company publications)

N.L.R.B. v. Gulf States Canners, Inc. **598 F.2d 896 (C.A. 5)**
(remand to apply appropriate standard in assessing whether action justifies setting aside election)

The Kroger Company v. N.L.R.B. **645 F.2d 634 (C.A. 6, Oct 1980)**
(ct set aside Bd's dismissal of compalint against U for picketing secondary E's grocery stores and remanded case for further proceedings where there was no substantial evidence in record to support Bd's finding that cessation of business of secondary E would not have been result of successful boycott of primary E's paper bags, since such bags were necessary for every purchase made at stores and thus lost their seperate identity and merged into secondary E's operation of grocery stores)

Patsy Bee, Inc. v. N.L.R.B. **654 F.2d 515 (C.A. 8, 1981)**
(ct held Bd abused its discretion by issuing bargaining order, denied enforcement thereof, and remanded case to Bd for further proceedings where evidence established that E's ULPs had had little impact on Ees' allegiance to U; and, contrary to Bd, ct found that the E's speech upon which Bd had primarily relied in issuing its bargaining order was not unlawful and that Bd had offered no explanation for its finding other than a conclusory statement)

N.L.R.B. v. Foundation For Comprehensive Health Services **654 F.2d 731(T) (C.A. 9, July 1981)**
(bargaining order denied and case remanded to Bd for reconsideration of determination of bargaining unit at health care services foundation and application of *disparity of interest test* to exclusion of only one professional Ee, a social worker, from unit of family nurse practitioners, physician assistants, and registered nurses; Bd to also consider whether exclusion of classification of social workers, whose numbers are expected to increase, would create residual group of Ees eluding classification)

National Association of Broadcast Employees and Technicians, Local 531, AFL-CIO, CLC **634 F.2d 635(T) (C.A. 9, 1980)**
(ct denied Bd order and remanded case back to Bd where it had not addressed question of reasonableness of U's constitutional rule making resignations ineffective for at least 60 days which Bd incorrectly found to be unenforceable for vagueness and ambiguity against members who submitted resignations and subsequently were fined for violating U boycott)

St. Elizabeth Community Hospital v. N.L.R.B. **625 F.2d 123 (C.A. 9, 1980)**
(First Amendment challenge to Bd's jurisdiction over charitable hospital operated by religious order held timely raised, notwithstanding contention that issue could have been litigated at R proceedings before RD and no new or previously unavailable evidence was offered or special circumstances alleged to require Bd's consideration, since it is sufficient that hospital raised First Amendment issue in R proceedings before Bd and did not defer its challenge to enforcement proceedings; case remanded to Bd for further consideration in light of SCt's opinion in *NLRB v. Catholic Bishop*, 440 U.S. 490)

Bob's Big Boy Family Restaurants, a Division of Marriott Corporation v. N.L.R.B. **625 F.2d 850 (C.A. 9, 1980)**
(issue of whether current three year contract was bar to election ptn remanded to Bd to explain, why *membership* as used in contract should be interpreted differently depending on whether word appeared in U security clause or health benefit clause, and whether petitioner, to its detriment, reasonably relied on contract's cover dates in determining when to file election ptn; Bd must follow its own precedent by excluding extrinsic evidence from its consideration or explain why its rules should be disregarded; ct not allowed to substitute different rationale for that provided by Bd)

Pedro's Inc., d/b/a Pedro's Restaurant v. N.L.R.B. **652 F.2d 1005 (C.A.D.C., Apr 1981)**
(where ct enforced Bd's order in part, case remanded to Bd for consideration as to whether bargaining order remains appropriate in light of ct's decision and of conditions in bargaining unit at time Bd renders its decision)

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. **676 F.2d 826**
(remanded for Bd to determine whether double-breasted E engaged in conduct that deprived E's U company of work which, in light of E's past practice, U company would otherwise have been expected to perform; if Bd finds that E did engage in such conduct, it should either apply *clear and unmistakable* waiver standard to test whether U agreed to that conduct, or explain why different standard is appropriate; if Bd concludes that there was unwaived denial of U's statutory rights, it should devise appropriate remedy)

Cook Paint and Varnish Company v. N.L.R.B. **648 F.2d 712 (D Ct D.C., Apr 1981)**
(ct remanded case for further proceedings as to whether U steward was entitled to special protection due to his status as U steward in regard to being compelled to answer questions at pre-arbitration interview concerning grievance of fellow Ee in which steward may have been initially responsible for processing grievance; altho ct recognized possible serious infringement on protected activity if representatives were required to submit to compulsory interviews, it indicated that *blanket rule* would be inappropriate)

8150-1700 Reconsideration in light of changed circumstances

N.L.R.B. v. St. Regis Paper Company **674 F.2d 104 (C.A. 1, Mar. 1982)**
(ct remanded case so Bd could consider whether circumstances justify application of bargaining order, now addressed to defunct garage, to any location other than defunct garage, and whether any purpose remains to be served by enforcing such order at this time where E had closed down garage with Ees that Bd had previously determined to be accreted to unit at headquarters which subsequently closed down and transferred operations to reopened facility at another location)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**
(remand to Bd to consider additional evidence pertaining to necessity of bargaining order where ct reversed Bd on one ULP finding, as this is independent ground for review and differs from situation where ct upholds Bd order in toto)

8150-2300 Reconsideration in light of intervening decisions of other courts

8150-2200—Cont.

N.L.R.B. v. Koenig Iron Works, Inc.; et al. 681 F.2d 130 (C.A. 2, June 1982)
(ct refused to vacate decision and reconsider in light of *Bonanno Linen Service, Inc. v. N.L.R.B.* 50 U.S.L.W. 4087 where considerable time has passed since original decision, remand would be necessary to give effect to *Bonanno*, and public interest is best served by not exercising discretionary power to reopen decision 4 years old)

8150-3300 Reconsideration in light of subsequent Board decision

N.L.R.B. v. Steinerfilm, Inc. 669 F.2d 845 (C.A. 1, Feb. 1982)
(where Bd and ALJ in pre *Wright LIne* decision first found evidence of anti-U motive and then found reason for discharge pretextual remand for consideration under *Wright Line*, not necessary)

Cedar Coal Company v. N.L.R.B. 678 F.2d 1197 (C.A. 4, May 1982)
(case remanded to Bd for reconsideration in light of *Wright Line* decision)

N.L.R.B. v. The Cambridge Wire Cloth Company, Inc. 622 F.2d 1195 (C.A. 4, 1980)
(remand to Bd to consider applicability of present day controlling case law to E's objections to election based on alleged misrepresentation by U where Bd decision based on *Shopping Kart*, which has since been overruled by *General Knit Co.*)

Skyline Corporation v. N.L.R.B. 613 F.2d 1328 (C.A. 5) (1980)
(where RD made decision on objections to elections using *Hollywood Ceramics* standard and Bd later adopted less stringent *Shopping Kart* standard before returning to former standard and Bd's adoption of RD's decision occurred under latter standard, *Shopping Kart*; no denial of due process where Bd merely adopted report as written as it is not assumed that Bd considered objection under standard other than that used by RD)

8150-4400 Clarification of Board order

Easy-Heat Wirekraft, Division of Bristol Products, Inc. 257 NLRB No. 163
(on remand Bd clarified affirmative order to provide that pre-violation relationship between E and Ee council may continue notwithstanding Bd order that E withdraw and withhold recognition from Ee council until certified by Bd)

N.L.R.B. v. HMO International/California Medical Group Health Plan, Inc. 678 F.2d 806 (C.A. 9, June 1982)
(where Bd failed to give weight to nonproliferation policy of health care amendments and failed to apply court-mandated test based on legislative history of amendments as to whether *disparity of interest* of Ees in different classifications required a number of units, Bd was to state on remand precisely how it proposed to modify its traditional community of interest standard so as to implement herein the congressional amendment's nonproliferation mandate)

N.L.R.B. v. HMO International/California Medical Group Health Plan, Inc. 678 F.2d 806 (C.A. 9, June 1982)
(where E refused to bargain on ground that Bd certified RN unit should have included LVNs, Bd on remand must state why Ees' tasks and E's personnel policies mandated that RNs be classified as professional Ees and LVNs as technical Ees, why RNs should not be preliminarily certified in same unit with LVNs with proviso of a *Sonotone* election, and how precisely it proposed to modify its traditional community of interest standard so as to implement herein the congressional nonproliferation mandate)

N.L.R.B. v. John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's At The Mart 677 F.2d 44 (C.A. 9, Feb. 1982)
(E violated Act by discriminatorily enforcing its *antibutton* policy against U adherent and not other types of buttons but Bd order barring any *antibutton* policy is overbroad and case remanded for modification of Bd order to prohibit only unreasonable restrictions on types of buttons or insignia which may be worn)

Consolidated Freightways v. N.L.R.B. 669 F.2d 790 (C.A.D.C., Dec. 1981)
(ct remanded case, brought before ct on issue of whether backpay award was tolled by E's conditional offer of reinstatement, for Bd to explicate circumstances, if any, under which an inquiry into whether an Ee would have rejected valid offer of reinstatement; Bd failed to distinguish or overrule cases that emphasize actual reasons why Ee refuses an offer of reinstatement even when validity of offer itself is challenged)

8150-4900 Fashion appropriate remedy

Mussell Trailer Corporation v. N.L.R.B. 682 F.2d 753 (C.A. 8, July 1982)
(remand to Bd to determine when E, in exercise of reasonable business judgment, would have been forced to close operations and discharge Ees; backpay should be computed from date of actual discharge to date Ees would have been discharged in absence of anti-U animus)

Joint Council of Teamsters, No. 42 v. N.L.R.B. 671 F.2d 305 (C.A. 9, Dec. 1981)
(remanded to Bd to fashion appropriate make-whole remedy where U's violation of Section 8(e) caused independent contractors to pay to support U they did not freely choose to join; moreover, fact that U did not violate Section 8(b)(4) does not preclude award as truck owners were coerced into U membership by ULP)

Karl Kallmann, d/b/a Love's Barbeque Restaurant, No. 62 v. N.L.R.B. 640 F.2d 1094 (C.A. 9, 1981)
(remand appropriate where Bd order requiring successor E to reinstate all forty of predecessor's unionized Ees was held unenforceable since E was not provided opportunity to show that fewer than forty jobs would have been available regardless of discrimination)

Karl Kallmann, d/b/a Love's Barbeque Restaurant, No. 62 v. N.L.R.B. 640 F.2d 1094 (C.A. 9, 1981)
(backpay award appropriate where successor refused to hire former Ees because of anti-U animus; however, ct would not enforce order to extent that backpay was set at wage scale prior to successor's takeover of business which would in effect force E to abide by terms of predecessor's contract and act as penalty in view of E's reduction of wages upon takeover of business)

N.L.R.B. v. R & H Masonry Supply, Inc. 627 F.2d 1013 (C.A. 9, Sept. 1980)
(remand for more appropriate remedy than reinstatement of drivers whom E discharged at time it unlawfully sold trucks and contracted out hauling since ct refused to enforce order to reestablish trucking operations; Bd may find some other remedy more appropriate; for example, compensating drivers until they find substantially equivalent employment)

Mass & Feduska, Inc. v. N.L.R.B. 632 F.2d 714 (C.A. 9, 1980)
(case remanded to Bd to fashion appropriate remedy for 8(b)(3) violation, where ct found, contrary to Bd, that U's threat to strike to compel payment by E of E's contribution to fringe-benefit trust funds on behalf two Ees, who were statutory supervisors, was violative of 8(b)(3))

Peoples Gas System, Inc. v. N.L.R.B. 625 F.2d 35 (C.A.D.C., 1980)
(where bargaining order found inappropriate case remended for Bd to consider appropriate remedies, including direction of second election)

N.L.R.B. v. Henry Cauthorne, an individual, t/a Cauthorne Trucking 691 F.2d 1023 (C.A.D.C., Oct. 1982)
(where E violated Sec. 8(a)(5) by discontinuing contributions to health and welfare fund after collective-bargaining agreement expired and Bd found liability for period running to date of its Order, case remanded to Bd for determination of whether because parties resumed bargaining after unilateral change they did not reach impasse at some point. E's liability will run from date of change to date when parties execute new agreement or reach lawful impasse)

8150-5500 Consideration of offer of proof

Albion Corporation d/b/a Brooks Towers, Inc. v. N.L.R.B. 682 F.2d 874 (C.A. 10, July 1982)
(where ct had remanded to Bd for consideration of newly discovered evidence, fact that Bd retained its original conclusion does not warrant ct to conclude that Bd ignored directions of remand where substantial evidence supports Bd's decision)

N.L.R.B. v. Pre-Engineered Building Products, Inc. 603 F.2d 134 (C.A. 10, 1979)
(where predecessor business had essentially collapsed at time of E's take over and E of necessity had to rebuild both production demand and work force, ct remanded case for Bd to take evidence, pursuant to E's offer of proof, to determine when E acquired full complement of Ees and whether, at that point, E was under obligation to bargain with U)

United Food and Commercial Workers International Union Local No. 576, AFL-CIO v. N.L.R.B. 675 F.2d 346 (C.A.D.C., Apr. 1982)
(where Bd erred in applying *Times Square* doctrine by refusing to entertain U's defense based upon evidence that GC had previously considered in refusing to issue complaint, ct directed Bd to reopen 8(b)(7)(C) proceeding to hear evidence on U's defense that picketed E was in reality alter ego of, joint E with, or successor of another E with whom U had contract covering Ees in question; such action would not constitute interference by Bd with Gc's *final authority* under Sec. 3(d); moreover, charged party has right to full hearing on its defense)

8150-6600 Rerun election

Arrow Molded Plastics, Inc. 265 NLRB No. 174

J.J. Newberry Co., A Wholly Owned Subsidiary of McCrory Corporation v. N.L.R.B. 645 F.2d 148 (C.A. 2, Mar 21, 1981)
(remand to Bd with directions to order rerun election, where Bd's bargaining and make-whole orders were vacated)

8150-6600—Cont.

N.L.R.B. v. Loewy Drug Company, Inc. 595 F.2d 1217(T) (C.A. 4, 1979)

(where challenged ballot which had been ordered counted was destroyed election set aside and new election ordered in which current Ees shall determine whether they wish to be represented by U, provided U makes new showing of interest w/i 60 days)

8150-7700 Additional findings

N.L.R.B. v. GAIU Local 13-B, Graphic Arts International Union 682 F.2d 304 (C.A. 2, June 1982)

(U's mtn to remand to Bd for taking of additional evidence allegedly in defense of action found unlawful and order concerning it which was sought to be enforced, denied where U had not made an offer of specific proof as to alleged defense, or filed cross-exceptions or moved for reconsideration of reopening of record)

United Dairy Farmers Cooperative Association v. N.L.R.B. 633 F.2d 1054 (C.A. 3, 1980)

(Bd has remedial authority to issue bargaining order in absence of card majority and election victory if E has committed such *outrageous* and *pervasive* ULPs that there is no reasonable possibility that free and uncoerced election could be held; ct remanded case for BD to consider in first instance whether facts in case rise to *outrageous* and *pervasive* conduct which sanctions issuance of such bargaining orders)

N.L.R.B. v. Fixtures Manufacturing Corporation 669 F.2d 547 (C.A. 8, Jan. 1982)

(remand for Bd finding whether or not it agrees with ALJ that polygraph test implicated Ee in thefts and he would have been discharged in absence of U activity, as meaning of written report of test is unclear)

General Thermo, Inc. v. N.L.R.B. 664 F.2d 195 (C.A. 8, Nov. 1981)

(ct remanded portion of Bd decision relating to U adherent's discharge where credibility issue remained in regard to what happened at investigatory meeting in light of Ee's abusive, insubordinate conduct, and whether management had intention to fire Ee prior to meeting or discharge was actual result of Ee's conduct)

N.L.R.B. v. Teamsters Union Local No. 378, a/w Teamsters 672 F.2d 741 (C.A. 9, Mar. 1982)

(case remanded for factual determinations 1) regarding existence of solidarity agreement among multi-E association's E-members, or 2) whether notice of such solidarity agreement had been sent to U prior to negotiations, either of which would be determinative in concluding whether, as found by Bd, U violated 8(b)(3) by separately negotiating agreement with E which had withdrawn from multi-E bargaining unit w/o unit's consent)

N.L.R.B. v. International Medication Systems, Ltc. 640 F.2d 1110 (C.A. 9, Apr 2, 1981)

(where secondary evidence was essential to finding that Ees were improperly discharged and Bd lacked authority to bar rebuttal evidence as sanction against E for refusing to comply with subpoena, case remanded for taking of additional evidence and opportunity to seek enforcement of subpoena in District Ct)

District 1199E, National Union of Hospital and Health Care Employees v. N.L.R.B. 613 F.2d 1102 (C.A.D.C.) (1980)

(remand for further analysis of collective bargaining agreement and arbitrator's interpretation of it where arbitrator decided E had not complied with agreement with regard to contracting out but ALJ and Bd decided contracting out proper since E complied with bare notice and bargaining requirements of *Fibreboard* since not clear to what extent ALJ and Bd considered contract and arbitrator's interpretation of it in view of strong policy favoring deference to arbitrator's interpretation of bargaining agreement)

8150-7710 Objections to election

N.L.R.B. v. ARA Services, Inc. 678 F.2d 435 (C.A. 3, Apr. 1982)

(upon concluding that E was improperly denied evidentiary hearing with respect to its objection which asserted that threats and coercion tainted representation election, enforcement of Bd's order denied and case remanded for evidentiary hearing as to that issue)

Wells Fargo Guard Services, A Division of Baker Protective Services, Inc. v. N.L.R.B. 659 F.2d 363 (C.A. 3, Sep. 1981)

(enforcement denied and case remanded to Bd for evidentiary hearing where issue, of whether allegedly unfit leader remained in control of U, had significant impact on election won by U; strictness of Bd action in setting aside first election because of E's distributing altered facsimile ballot prior to election when contrasted with its flexibility in certifying U after second election supplies additional reason for remand)

Season-All Industries, Inc. v. N.L.R.B. 654 F.2d 932 (C.A. 3, 1981)

(upon determining that Bd improperly denied hearing with respect to E's objection to election on ground that rank-and-file Ee was U agent whose electioneering activities outside polling place influenced co-workers, ct remanded case for evidentiary hearing and further proceedings consistent with ct's opinion)

Anchor Inns, Inc., d/b/a Anchor Inn Hotel of St. Croix v. N.L.R.B. 644 F.2d 292 (C.A. 3, Mar 20, 1981)

(ct remanded for previously denied hearing on E's objections to election and held Bd had erred in denying mtn for reconsideration after certification, not withstanding contentions that individual who made allegedly objectionable remarks not agent of U, and that proferred evidence had been available prior to certification, where affidavits reasonably supported claim of U agency and admitted withholding evidence from Bd agent due to threats which supported allegation of objectionable conduct)

N.L.R.B. v. The Cambridge Wire Cloth Company, Inc. 622 F.2d 1195 (C.A. 4, 1980)

(where RD determines that objections to election do not require hearing, RD, and not objecting party, is responsible for transmitting *whole* record (all evidence considered in reaching decision) to Bd for its review on appeal, notwithstanding R/R 102.69(g) places responsibility for submission of documents on objecting party)

N.L.R.B. v. Decibel Products, Inc. 657 F.2d 727 (C.A. 5, 1981)

(case remanded for Bd to consider entire record compiled in connection with RD's report on objections to election along with his report)

Hickory Springs Manufacturing Company v. N.L.R.B. 645 F.2d 506 (C.A. 5, May 21, 1981)

(record established that E entitled to hearing before Bd on questions of whether alleged preelection threats as to what would happen to Ees who crossed picket line and drove E's trucks, and picket line violence were made or adopted by U and if such conduct interfered in representation election since threats were conditioned on U winning election and strike ensued)

Kusan Manufacturing Company, a Division of Kusan, Inc. v. N.L.R.B. 673 F.2d 150 (C.A. 6, Mar. 1982)

(hearing required where allegations established factual questions attacking basic fairness of election and Ee affidavits detail specific threats against Ees who failed to announce public support for U)

Loose Leaf Hardware, Inc. v. N.L.R.B. 666 F.2d 1036 (C.A. 6, Dec. 1981)

Revco D.S., Inc. and/or White Cross Stores, Inc., No. 14 v. N.L.R.B. 653 F.2d 264 (C.A. 6, July 1981)

(issues raised by E's objections to election not sufficiently substantial and material to require remand to Bd to consider additional affidavits that E claimed were uncovered during RD's investigation but not included in the *record* before the Bd)

N.L.R.B. v. Curtis Noll Corporation, Curtis Industries Division 634 F.2d 1027 (C.A. 6, 1980)

(enforcement denied and E's objections to consent election remanded to Bd for further consideration where evidence relied upon by RD concerning determination of E's objections was not transmitted to Bd, hence was not transmitted to ct; ct held that Bd had abused its discretion by adopting report of RD when RD failed to transmit to Bd evidence relied upon by RD)

N.L.R.B. v. Pinkerton's, Inc. 621 F.2d 1322 (C.A. 6, June 1980)

(where objections had been filed on basis of U's letter alleging *average contribution* of Ees based only on subtraction of salaries from income and E had answered in letter which set forth other items which must be deducted from income to determine profitability but not amounts, bargaining order based on certification must be denied, since RD did not rule on whether profitability was important issue and did not hold hearing to determine whether figures misleading, E's version must be accepted; however, since remand for hearing on other grounds, remand also for hearing on what knowledge Ees had with respect to profits of E)

N.L.R.B. v. RJR Archer Inc., Filmco Division 617 F.2d 161 (C.A, 6, 1980)

(where E filed objections to election based on U misconduct and filed affidavits of supervisory Ees substantiative allegations but RD, w/o hearing, recommended certification of election, Bd's adoption of recommendation w/o ordering hearing or having before it complete Regional Office file constitutes an abuse of discretion as being arbitrary and capricious; certification set aside and remanded to Bd for hearing)

8150-7710—Cont.

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. **676 F.2d 314 (C.A. 8, Apr. 1982)**

(case remanded to Bd for evidentiary hearing on E's objections to election with regard to alleged coercion and misstatements since material factual issues were raised in these areas)

N.L.R.B. v. Winburn Tile Manufacturing Company **663 F.2d 44 (C.A. 8, Oct 1981)**

(case remanded to Bd for evidentiary hearing on E's objections to R proceedings where E specifically controverted subsidiary factual determination made by RD in his finding, adopted by Bd, that 2 individuals were supervisors, and offered proof which, if true, would rebut evidence presented by U)

Beaird-Poulan Division, Emerson Electric Company v. N.L.R.B. **649 F.2d 589 (C.A. 8, May 1981)**

(no denial of due process merely because hearing on remand is conducted in context of ULP proceeding rather than R proceeding)

Pinetree Transportation Company v. N.L.R.B. **686 F.2d 740 (C.A. 9, Aug. 1982)**

(case remanded for evidentiary hearing where it was clear that E raised substantial and material issues of fact regarding readability of Notice of Election in its objections before RD and Bd)

Tanforan Park Food Purveyors Council and the Hapsmith Company v. N.L.R.B **656 F.2d 1358 (C.A. 9, 1981)**

(ct remanded to Bd for hearing on whether retranslation of notice of election in Samoan into English by Samoan unit Ee suggested that Samoan version of notice was so garbled and confusing that Bd did not meet duty to present election notices to Ees in languages they understand)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center **652 F.2d 856 (C.A. 9, Aug 1981)**

(ct remanded case to Bd for hearing, since affidavits submitted by E with its exceptions to RD's rulings on objection to election alleging *Savair* violation raised such substantial and material factual issues that Bd should have ordered hearing; affidavits stated that Ees had signed recognition slips to avoid paying dues after U activist promised affiants fee waivers for signing recognition slips before election, and evidence adduced at hearing might support a finding that U either authorized or condoned activist's conduct so as to give him agency status)

N.L.R.B. v. Belcor, Inc. d/b/a San Jose Care & Guidance Center **652 F.2d 856 (C.A. 9, Aug 1981)**

(where E had submitted with its objections to election an index card concerning U meeting on which *Mandatory Attendance* was written and contended that U meeting held w/i 24 hours before election was not voluntary and not exempt form *Peerless Plywood* rule ct could not affirm RD's finding to contrary on basis of record w/o supporting documentation therefor and remanded case for hearing to resolve substantial and material issues raised by index card)

8150-7715 Challenges to ballots

Mercy Hospital of Buffalo **668 F.2d 661 (C.A. 2, Jan. 1982)**

(where Bd found that U had successfully challenged hospital clerk's ballot on ground that clerk was member of religious order controlling hospital and lacked community of interest with lay Ees, ct remanded case to Bd to reconsider that ruling -- even if on remand it still finds control -- and take into account comparability of wages, differential access to areas of hospital, and uniqueness of Ee's part-time employment)

N.L.R.B. v. Polyflex M Company **622 F.2d 128 (C.A. 5, 1980)**

(case remanded to Bd for evidentiary hearing where Ee affidavit raised substantial and material issue that would warrant setting aside election by presenting prima facie case that U representatives made statements which were subject to reasonable interpretation by Ees that they could avoid initiation fees by joining U prior to election)

N.L.R.B. v. Pinkerton's, Inc. **621 F.2d 1322 (C.A. 6, June 1980)**

(remand for evidentiary hearing on whether ballots were in fact sent to Ees who did not receive them, particularly in view of fact no proof of mailing had been presented)

N.L.R.B. v. Consolidated Liberty, Inc., d/b/a Hy-Land Convalescent Hospital **672 F.2d 788 (C.A. 9, Mar. 1982)**

(case remanded to Bd so that RD can supply Bd with contested ballots because w/o ballots Bd cannot consider all relevant evidence which was before RD, where as here E supplied all other relevent evidence to Bd to support its objections)

Crown Coach Corporation v. N.L.R.B. **626 F.2d 865(T) (C.A. 9, 1980)**

(enforcement denied and case remanded for further hearing where ct found prejudicial error in denial of E during hearing on objections to election to question Ee witness on issue of U agency in regard to Ee misconduct)

8150-7725 Determination of majority status

N.L.R.B. v. Pace Oldsmobile, Inc. **681 F.2d 99 (C.A. 2, May 1982)**

(remand to Bd to consider whether changes in Ee work force (10 new Ees out of work force of 21) have made bargaining order now inappropriate even if it had been appropriate at earlier time)

Pick-Mt Laurel Corporation v. N.L.R.B. **625 F.2d 476 (C.A. 3, 1980)**

(where Bd erred in applying total exclusion of evidence from pre-10(b) period, ct remanded case to Bd for reconsideration of ALJ's finding that E did not have reasonable grounds based on objective considerations for believing that U did not enjoy majority support at time E refused to bargain)

N.L.R.B. v. Scott Printing Corporation and J&J House of Composition **612 F.2d 783 (C.A. 3)**

(remand to Bd to determine if Bd should have allowed E to assert good faith doubt in U's majority status because ALJ failed to find that U did not represent majority of Ees and Bd adopted ALJ's findings, thus there are no findings on record concerning good faith doubt defense)

Construction Erectors, Inc. v. N.L.R.B. **661 F.2d 801 (C.A. 9, Nov 1981)**

(remand to determine whether U had majority support and that it was permanent and stable workforce in unit at that time prior to construction industry E's repudiation of Sec. 8(f) agreements as E claimed that it employed no U members at time E repudiated contract and ct found that work force was not permanent and stable at time contract was signed)

8150-7727 Appropriateness of unit

N.L.R.B. v. Purnell's Pride, Inc. **609 F.2d 1153 (C.A. 5, Jan. 1980)**

(remand to Bd to articulate reasons for its approval of RD's unit determination where rationale for designation of production and maintenance Ees of poutry company's processing division as separate unit not sufficiently set forth to permit proper judicial review)

St. Anthony Hospital Systems v. N.L.R.B. **655 F.2d 1028 (C.A. 10, Aug 1981)**

(remand for determination of appropriate unit and its effect on E's duty to bargain in view of Bd's holding that had improperly relieved GC of burden of establishing ULP occured by holding unit of registered nurses at hospital presumptively appropriate and E had duty of rebutting presumption)

Computer Sciences Corporation, as successor to Federal Electric Corporation v. N.L.R.B. **677 F.2d 804 (C.A. 11, June 1982)**

(ptn by Bd for adjudication that alleged successor E was in civil contempt of prior judgment which granted enforcement of bargaining order issued against E's competitor, which E had underbid for government contract, dismissed on grounds that highly factual issue of whether bargaining unit remains appropriate existed and this requires more complete development of factual record by Bd and falls w/i its statutory authority to make unit determinations)

8150-7728 Unilateral change

Aaron Brothers Company, a Division of Chromalloy American Corp. v. N.L.R.B. **661 F.2d 750 (C.A. 9, Nov. 1981)**

(case remanded to Bd to determine whether E granted wage increase as continuation of company wage policy)

8150-7730 Supervisory status

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. **658 F.2d 934 (C.A. 2, Sept. 1981)**

(case remanded for reconsideration of Bd's finding that pro-U activities of groupleaders, found supervisory, did not interfere with election, where Bd's conclusory holding that groupleaders were *minor* supervisors was not based on any analysis as to distinction between *major* and *minor* supervisors, and no explanation was given as to what factors were taken into consideration in arriving at such a distinction; and cases relied upon by Bd are inapposite or distinguishable and provide no authority for finding groupleaders *minor* supervisors)

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. **658 F.2d 934 (C.A. 2, Sept. 1981)**

(case remanded for reconsideration of Bd's finding that pro-U activities of groupleaders, found supervisory, did not interfere with election, where Bd improperly applied principle that E cannot rely on supervisors' pro-U conduct, ignored by E, for setting aside election, since E herein, because of possible finding of ULPs for interfering with their activities if found not

8150-7730—Cont.

supervisory, was precluded from such interference inasmuch as Bd failed to rule on their supervisory status at E's request)

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. **658 F.2d 934 (C.A. 2, Sept. 1981)**
(case remanded for reconsideration of Bd's finding that pro-U activities of groupleaders, found supervisory, did not interfere with election, since, contrary to Bd, unlikelihood of fear of supervisory retaliation where Ee shares E's anti-U views is not determinative of issue of coerciveness of supervisory pro-U participation in U campaign inasmuch as supervisor might recommend or cause adverse treatment of Ee by disguising true motive in innumerable ways; likelihood of such occurrence is less important than possibility that Ee might fear such retribution and act accordingly)

ITT Lighting Fixtures, Division of ITT Corporation v. N.L.R.B. **658 F.2d 934 (C.A. 2, Sept. 1981)**
(case remanded for reconsideration of Bd's finding that pro-U activities of groupleaders, found supervisory, did not interfere with election, where Bd made no attempt to either distinguish or reconcile instant case with contrary Bd decisions in similar cases; and due to lack of specific findings and articulated reasons for distinction between instant case and contrary decisions, ct cannot properly review Bd's action; Bd cannot circumvent its obligation to explain its departere from precedent simply by failing to make necessary factual determinations which would bring a case w/i bounds of precedent)

N.L.R.B. v. Tio Pepe, Inc. **629 F.2d 964 (C.A. 4, 1980)**
(ct denied enforcement of bargaining order and remanded case to Bd for evidentiary hearing on two issues advanced in E's mtn to reopen record since E made sufficient *prima facie* factual showing of after-discovered evidence that *captains* had promised other dining room Ees that, if U won, captain's distribution of pooled tips would be adjusted in their favor, which, if sustained later at full hearing, would undermine Bd's reasons for its denial of supervisory status for *captains* in unit of dining room Ees and further significantly affect election by way of monetary inducement for U support)

8150-7735 Determination of impact of employer's unfair labor practices on employees' union adherence

N.L.R.B. v. Pace Oldsmobile, Inc. **681 F.2d 99 (C.A. 2, May 1982)**
(Bd's order finding various ULP's upheld but case remanded for determination if ULP's were serious enough to require bargaining order where Bd failed to analyze likelihood of fair and free election when it determined that bargaining order was necessary)

8150-7738 Validity of reinstatement offer

N.L.R.B. v. Consolidated Dress Carriers, Inc., et al. **693 F.2d 277 (C.A. 2, Nov. 1982)**
(ct remanded case on circumstances surrounding alleged offer of reinstatement in regard to understanding of Ees generally about mailgrams sent to economic strikers directing them to report for work the following day, and as to knowledge of particular Ees of practice, if any, of E of rehiring strikers who appeared later than date mentioned in alleged offer)

8150-7740 Backpay determination

N.L.R.B. v. Charles H. McCauley Associates, Inc. **657 F.2d 685 (C.A. 5, 1981)**
(remand to determine whether E, as claimed, had offered reinstatement to Ee which Ee assertedly had refused; if so, reinstatement portion of order should be deleted, and Ee should be entitled to backpay only for period between discharge and reinstatement offer)

N.L.R.B. v. United Contractors Inc. and IMCO Trucking, Inc. joint employers **614 F.2d 134 (C.A. 7) (1980)**
(backpay award not enforced and remanded to Bd for new hearing on whether reduction of back pay award was justified where Bd ignored uncontradicted evidence that its back pay formula was inapplicable in instant case; work of discriminatee was irregular and during slack periods newer Ees were laid off)

8150-7745 Basis of justification for no solicitation, no distribution rule

Belcher Towing Company v. N.L.R.B. **614 F.2d 88 (C.A. 5, Mar. 1980)**
(remand to Bd to reconsider whether U had alternative means of communication with E's Ees where its agents were denied access to E's ship with burden on GC to prove lack of alternative means of communication rather than on E to show existence of means)

Baylor University Medical Center v. N.L.R.B. **662 F.2d 56 (C.A.D.C., Aug. 1981)**
(ct rejected Bd's ruling that vending areas were not immediate patient care areas and remanded case to Bd with instruction to consider whether evidence submitted by E is sufficient to overcome *St. John's* presumption; evidence as it now stands in record-showing location of vending areas as *off corridors* and indicating they are regularly used by patients and their visitors–suggests that ban during daytime hours would probably be permissible)

Baylor University Medical Center v. N.L.R.B. **662 F.2d 56 (C.A.D.C., Aug. 1981)**
(record did not support Bd's total invalidation of E's solicitation ban in its cafeteria and vending areas; ct's disapproval of Bd's method of dealing with evidence that (1) approximately 40% of cafeteria's patrons were non-Ees, and (2) exterior grounds of hospital complex are convenient place for solicitation and are widely used by Ees, required remand to Bd)

8150-7750 Motivation for respondent's action

N.L.R.B. v. Gorman Machine Corporation **683 F.2d 11 (C.A. 1, July 1982)**
(remand for reconsideration in light of burdens of proof announced in NLRB v. Wright Line, 662 F.2d 899 held unnecessary because Bd did not rely on burdens of proof but found reason for discharge was pretext)

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**
(remand to determine E's motivation for discharges where Bd had failed to adequately assess validity of rule prohibiting distribution of wage data pursuant to which Ees discharged; Bd would be required to determine whether application of rule impermissibly burdened protected activity, or whether E was not compelled to allow distribution of wage data on its property because other means available to disseminate material; anti U motivation irrelevant if rule itself invalid)

Livingston Powdered Metal, Inc. v. N.L.R.B. **669 F.2d 133 (C.A. 3, Jan. 1982)**
(to determine validity of E's defense that closure of plant and discharge of Ees, found unlawful by Bd, was because of economic reasons rather than anti-U animus)

N.L.R.B. v. Gorman Machine Corporation **remand for reconsideration in light of burdens of proof announced in NLRB v. Wright Line, 662 F.2d 899 held unnecessary because Bd did not rely on burdens of proof but found reason for discharge was pretext)**

Carlson Roofing Co., Inc. v. N.L.R.B. **627 F.2d 77 (C.A. 7, 1980)**
(no remand for evidence of U animous to establish 8(a)(3) violation where 8(a)(1) violation carries same remedy)

8150-7755 For consideration of appropriate relief

Peter Frattaroli, et al. v. N.L.R.B. **590 F.2d 15 (C.A. 1, 1978)**

8150-7760 Not necessary where facts clear from record

N.L.R.B. v. Wright Line, A Division of Wright Line, Inc. **662 F.2d 899 (C.A. 2, Sep. 1981)**
(no remand where there was substantial evidence (of illegal motive) to support Bd's findings of ULP)

Vesuvius Crucible Company v. N.L.R.B. **668 F.2d 162 (C.A. 3, Nov. 1981)**
(no remand to Bd where ct concluded there was insufficient evidence to support either determination that E's conduct was *inherently destructive* or finding of anti-U motivation in E's conduct in refusing to pay accrued vacation benefits because of dispute over interpretation of contract terms)

8150-7765 Basis of credibility findings

N.L.R.B. v. Webb Ford, Inc. **689 F.2d 733 (C.A. 7, Sept. 1982)**
(where ALJ evidenced some bias towards E, although not enough to warrant finding abuse of discretion, this bias detracts from weight accorded his credibility findings and ct subjected them to closer scrutiny than usual, concluding that there is insufficient evidence to support ALJ's conclusions and remand case for further proceedings before different ALJ)

N.L.R.B. v. Mar-Len Cabinets, Inc. **659 F.2d 995 (C.A. 9, Oct. 1981)**
(ct remanded to Bd to determine whether U's notice to Mediation Services was sufficient to appraise Services of potential dispute which might relieve E of duty to notify Services, notwithstanding E was initiating party and, thus, render permissible E's failure to abide by terms of contract, where E timely informed U it did not wish to be bound by master outside agreement but not Mediation Service, later U notified E association and Mediation Services it wished to reopen agreement; after new agreement negotiated, U took position E bound by new agreement because E's notice ineffective since not sent to Mediation Services)

8150-7770 Determination of jurisdictional dispute

N.L.R.B. v. Preler International Corporation **635 F.2d 381 (C.A. 8, 1981)**
(remand for purpose of determining there was substantial business justification for E's failure to reinstate economic strikers upon their unconditional offer to return to work, where case was tried on theory that strike had been

8150-7770—Cont.

converted into ULP strike by alleged discharge when E refused reinstatement, and no proof was offered as to who was not reinstated and whether there was substantial business justifications for company's failure to reinstate)

8150-7776 Coercion in obtaining authorization cards

N.L.R.B. v. Masonic Homes of California, Inc. **624 F.2d 88 (C.A. 9, July 1980)**

(Ee's statement that U representative told her to sign authorization card right away because if she did she would not have to pay any initiation fee was prima facie proof of illegal fee waiver offer; E should have evidentiary hearing on issue)

8150-7777 Explain basis for decision

Texas Instruments Incorporated v. N.L.R.B. **599 F.2d 1067 (C.A. 1, 1979)**

(remand to determine E's motivation for discharges where Bd had failed to adequately assess validity of rule prohibiting distribution of wage data pursuant to which Ees discharged; Bd would be required to determine whether application of rule impermissibly burdened protected activity, or whether E was not compelled to allow distribution of wage data on its property because other means available to disseminate material; anti U motivation irrelevant if rule itself invalid)

N.L.R.B. v. Pace Oldsmobile, Inc. **681 F.2d 99 (C.A. 2, May 1982)**

(Bd's order finding various ULP's upheld but case remanded for determination if ULP's were serious enough to require bargaining order where Bd failed to analyze likelihood of fair and free election when it determined that bargaining order was necessary)

N.L.R.B. v. Local 483 and Local 11, Ironworkers **672 F.2d 1159 (C.A. 3, Feb. 1982)**

(Bd's finding that Us referral operation discriminated against non-members or those to whom membership was denied was not supported by substantial evidence that referral was in fact based on U membership or activity and case remanded, as earlier *Ironworkers* cases were not dispositive of issues of proof; here, unlike earlier cases, contractors' requisition registers were in evidence, and U officers testified as to mechanics of hiring hall operation)

Kenworth Trucks of Philadelphia, Inc. v. N.L.R.B. **580 F.2d 55 (C.A. 3)**

(in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 46 L.W. 4301 (U.S. April 3, 1978) ct, on review, determined that so long as ALJ had provided statement of reasons for recommending bargaining order and so long as Bd had specifically indicated its adoption of findings and reasoning of ALJ, need for separate elaboration by Bd of factors prompting bargaining order appeared to have been met in instant case)

N.L.R.B. v. Maidsville Coal Company, Inc. **693 F.2d 1119 (C.A. 4, Nov. 1982)**

(remand to detail reasons for Gissel order and why election will not adequately show Ee preference and c/d order erase coercion from Sec. 8(a)(1), (3) and (5) violations found)

J. P. Stevens & Co., Inc. v. N.L.R.B. **623 F.2d 322 (C.A. 4, 1980)**

(case remanded to Bd where Bd decision left ct uncertain about basis of its award for litigation expenses; Bd should explicate more fully its reasons for requiring *reimbursement* in instant case as Bd required to make reasoned explanation for departing from its precedents)

J. P. Stevens & Co., Inc. v. N.L.R.B. **612 F.2d 881 (C.A. 4)**

(remand not warranted where Bd failed to discuss denial of litigation expenses because costs are awarded only for frivolous or dilatory litigation and issues here were arguable and brought in good faith)

Seattle-First National Bank v. N.L.R.B. **638 F.2d 1221 (C.A. 9, 1981)**

(where Bd's finding that E bargained in bad faith was based solely on contract proposals and Bd made no findings which assertedly demonstrated bad faith, nor with respect to E's contention parties unable to agree because of U's unreasonable proposals and hard bargaining, remand to Bd to determine whether record as a whole, including course of negotiations as well as contract proposals, support finding of bad faith, since determination of whether E was engaged in impermissible *surface bargaining* or permissible *hard bargaining* can only be made upon consideration of *totality of circumstances*)

Press Democrat Publishing Co., etc. v. N.L.R.B. **629 F.2d 1320 (C.A. 9, 1980)**

(remand for clarification on remedy ordering publishing company to disclose amounts paid to non-unit editorial writers where Bd ordered inconsistent remedies in *Times Herald, 237 NLRB 922*, and *Amphlett, 237 NLRB 955*, and inadequate explanation for maintaining confidentiality between E and non-unit writers failed to provide sufficient basis for review)

8150-7788 Primary or secondary objectives of union

N.L.R.B. v. International Longshoremen's Assn., AFL-CIO, et al. **447 US 490 (U.S. SCt. June 1980)**

(case remanded to Bd for further proceedings to find if *CONASA ILA Rules* on containers have lawful work *preservation* objective)

Pet, Inc. v. N.L.R.B. **641 F.2d 545 (C.A. 8, Jan 30, 1981)**

(ct declined to consider issues not ruled on by Bd, whether primary and subsidiaries are separate persons under 8(b)(4), whether U's publicity is violative of 8(b)(4)(ii) and whether U's first amendment rights were violative as these questions must initially be committed to Bd's discretion)

8150-7798 Mandatory or nonmandatory subject of bargaining

Newspaper Guild, Local 10 v. N.L.R.B. **636 F.2d 550 (C.A.D.C. 1980)**

(remanded for substantive determination with respect to Code of Ethics for journalists and Office Rules and to determine whether any particular subject matter is or is not mandatory subject of bargaining)

8150-7799 Other

Mercy Hospital of Buffalo **668 F.2d 641 (C.A. 2, Jan. 1982)**

(where Bd had found that religious order controled hospital through its members serving as hospital administrator and trustees, ct remanded case Bd to consider nature of trustees' power and responsibility, scope of administrator's authority, and evidence of organization's financial control of hospital in reconsidering question of control)

Pick-Mt Laurel Corporation v. N.L.R.B. **625 F.2d 476 (C.A. 3, 1980)**

(remand to Bd for further consideration of use of date of filing charge rather than date of refusal to bargain in measuring 10(b) limitation period, where ALJ found that benchmark date for exclusion of evidence was date when ULP charge was filed, while E contended that when Act is not being given its literal application to filing of charge but is being used to bar evidence in defending against such charge, 10(b) period should be measured from time of E's refusal to bargain)

N.L.R.B. v. Charles H. McCauley Associates, Inc. **657 F.2d 685 (C.A. 5, 1981)**

(remand to determine whether E, as claimed, had offered reinstatement to Ee which Ee assertedly had refused; if so, reinstatement portion of order should be deleted, and Ee should be entitled to backpay only for period between discharge and reinstatement offer)

Anchortank, Inc. v. N.L.R.B. **618 F.2d 1153 (C.A. 5, 1980)**

(Bd's 8(a)(1) findings, concerning interview Ee was compelled to attend, vacated and case remanded to Bd so Bd could determine what type of interview was conducted; record contained no evidence concerning occurrences at interview)

Amoco Production Company v. N.L.R.B. **613 F.2d 107 (C.A. 5, Mar. 1980)**

(case remanded to Bd where ct was left wondering why Bd had decided that affiliated U was successor to independent U and, while it would be possible for ct to review record and determine whether affiliated U was a continuation of old U under a new name or substantially different organization, ct held this was a factual determination to be made by Bd and precedent required ct to avoid substituting its own judgment for that of Bd)

Newspaper Drivers and Handlers Local Union No. 372, a/w Teamsters v. N.L.R.B. **682 F.2d 116 (C.A. 6, June 1982)**

(case remanded to Bd for determination of U's claim that E should be equitably estopped from asserting a position inconsistent with its past conduct and representations)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. **675 F.2d 125 (C.A. 6, Apr. 1982)**

(although affirming finding that discharged Ee's filing of MIOSHA complaint was protected concerted activity, ct for second time remanded case to Bd to determine whether E had *actual* knowledge of *concertedness* of Ee's actions where Bd on previous remand had relied on evidence already submitted and applied wrong standard in holding that it was sufficient if E *knew or should have known* that Ee's actions were concerted)

Jim Causley Pontiac, Division Jim Causley, Inc. v. N.L.R.B. **620 F.2d 122 (C.A. 6, 1980)**

(ct remanded case to Bd for finding on issue, not addressed by Bd, as to whether E knew that Ee's complaints were concerted activity)

Blue Cross and Blue Shield of Michigan, a non-profit Michigan Corporation v. N.L.R.B. **609 F.2d 240 (C.A. 6, 1979)**

(remand to district court for dismissal of E's complaint that Bd hearing officer's closing of preelection hearing violated E's rights to due process of law, since courts are w/o jurisdiction to review U representation proceedings prior to *final orders* by Bd)

Jack Thompson Oldsmobile, Inc. v. N.L.R.B. **684 F.2d 458 (C.A. 7, July 1982)**

(ct remanded case to Bd to consider whether contract authorized E to require salesmen to observe *turnover* rule as condition precedent to receipt of sales commission, and, if so whether 50% commission reduction was excessive in light of E's injury due to loss of *turnover* customers, before determining whether 50% reduction in salesmen's commissions for failure to abide by *turnover* rule was unilateral change in wage structure)

8150-7799—Cont.

N.L.R.B. v. Allis-Chalmers Corporation **680 F.2d 1166 (C.A. 7, June 1982)**

(ct denied enforcement of bargaining order, set aside certification, and remanded case to Bd for appropriate action where Bd had adopted RD's findings and conclusions as to objections to election w/o seeing evidence relied on by RD)

Hendricks County Rural Electric Membership Corporation v. N.L.R.B. **603 F.2d 25 (C.A. 7, 1979)**

(ct remanded to Bd for determination as to whether dischargee was statutory Ee or *confidential Ee* under Taft-Hartley Act as broadly interpreted in Bell Aerospace rather than whether she acted in confidential capacity regarding labor relations under narrower B.F. Goodrich test)

L'Eggs Products, Inc. v. N.L.R.B. **619 F.2d 1337 (C.A. 9, 1980)**

(reconsideration of bargaining order partly based on unlawful discharge finding by Bd where ct overruled Bd finding of ULP)

N.L.R.B. v. International Medication Systems, Ltd. **640 F.2d 1110 (C.A. 9, Apr 2, 1981)**

(where secondary evidence was essential to finding that Ees were improperly discharged and Bd lacked authority to bar rebuttal evidence as sanction against E for refusing to comply with subpoena, case remanded for taking of additional evidence and opportunity to seek enforcement of subpoena in District Ct)

N.L.R.B. v. Zeno Table Company, Inc. **610 F.2d 567 (C.A. 9, 1979)**

(enforcement denied and case remanded so that Bd may consider whether *good cause* excused late filing of E's answer)

United Scenic Artists, Local 829, Brotherhood of Painters and Allied Trades, AFL-CIO v. N.L.R.B. **655 F.2d 1267 (C.A.D.C., 1981)**

(ct reversed Bd's finding of unlawful secondary boycott by U and remanded for development of adequate evidence in support of Bd's unstated assumption that U knew general contractor possessed contractual control when U encouraged subcontractor's Ees not to work on prefabricated material supplied to subcontractor by general contractor and informed subcontractor it would assess him for time it would have taken his Ees to fabricate said material)

8150-8800 Modification of order

Local 345, Utility Workers of New England (New England Power Service Company) **250 NLRB No. 007**

(where ct remanded case to Bd to allow parties opportunity to present objections to proposed amendments to R/O which Bd, *sua sponte*, made to ALJ's order, parties could not once again contest ULP findings adopted by Bd as this exceeded scope of remand)

N.L.R.B. v. Chester Valley, Inc. **652 F.2d 263 (C.A. 2, June 1981)**

(ct denied enforcement and remanded to Bd since revised order was necessary in view of ct's holding as to impermissibility of bargaining order and vacating of Bd's holding as to violation of 8(a)(5))

Air Express International Corporation v. N.L.R.B. **659 F.2d 610 (C.A. 5, Oct. 1981)**

(remand to modify order for U's certified status to extend for remainder of certification year from date E withdrew recognition rather than from date E first failed to bargain in good faith)

Florida Steel Corporation v. N.L.R.B. **620 F.2d 79 (C.A. 5, 1980)**

(impermissibly broad order remanded to Bd for modification with respect to requirements for U access to plants and inclusion of notice in appropriate company publications)

Pattern Makers' Association of Detroit and Vicinity, Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. **622 F.2d 267 (C.A. 6, 1980)**

(remand to consider modification of order to cease giving preference in referral to U leaders and to reinstate policy of giving Es 5 names from which to choose, where subsequent to Bd decision new bargaining agreement was ratified which provides that hiring hall is to be operated under modified rule-of-5 which gives Es choice among U members but which protects U officers against potential hiring discrimination)

Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc. **606 F.2d 171 (C.A. 7, 1979)**

(remand for consideration of more limited remedy than disruptive order to reinstate Blue Cross as health program administrator)

East Bay Chevrolet dba Time Chevrolet v. N.L.R.B. **659 F.2d 1006 (C.A. 9, Oct. 1981)**

(enforcement denied and case remanded to Bd where R/O improperly prescribed substantive provision for future agreement between E and U; namely, effective date of agreement be made retroactive to effective date of agreement between E and 3 Us representing other units of E, notwithstanding in previous successful negotiations, all 4 Us had conducted joint bargaining with E association of which E had properly withdrawn from)

N.L.R.B. v. Chatfield-Anderson Co., Inc., dba Truss-Span Co. **606 F.2d 266 (C.A. 9, 1979)**

(inappropriate where ULPs were trivial and more severe violations were mitigated before election by express disavowals of company president; violations sufficient to justify setting aside election and remand case to Bd for preparation of appropriate judgment)

8150-9900 Other

N.L.R.B. v. Connecticut Foundry Company **680 F.2d 871 (C.A. 2, July 1982)**

(no remand for hearing on challenges to voters and election objections where 4 years have passed since election because company's burden would be too difficult, U election victory was very narrow, workforce at E has probably changed and so no way of knowing that U enjoys majority support; therefore new election ordered)

8600 COSTS AND FEES

Hedison Manufacturing Company v. N.L.R.B. **643 F.2d 32 (C.A. 1, Mar 11, 1981)**

(ct held costs against E in favor of Bd to include counsel fees and all expenses where ct concluded that E's ptn for review was filed only for purposes of delay in view of experience of E's counsel and totally frivolous nature of contentions before this ct; F.R.Civ.P. 11)

Brockway Motor Trucks, Division of Mack Trucks, Inc. v. N.L.R.B. **656 F.2d 32 (C.A. 3, 1981)**

(in view of SCt's decision in *First National Maintenance Corp.* holding that E is not required to bargain with U over its decision to shut down part of its business purely for economic reasons, ct ordered that Bd's consent to a decree denying enforcement of Bd's bargaining and backpay order shall be approved, that ptns for enforcement and review shall be dismissed, that Bd dismiss ULP charges, and that costs shall be imposed on Bd with question of amount reserved until appropriate motion is filed by E)

Stanley Spencer, et al. v. N.L.R.B. **548 F.Supp. 256 (DC DC, July 1982)**

(reasonable costs awarded to plaintiffs who initially were denied relief by Bd but were ultimately successful in obtaining all relief they had sought in a judicial forum, namely, new findings by Bd, even if no causal nexus whatsoever found between actions of Bd and prosecution of lawsuit by plaintiffs)

8667 AWARDS OF ATTORNEY FEES UNDER FRAP 38

N.L.R.B. v. Lance Investigation Service, Inc. **680 F.2d 1 (C.A. 2, May 1982)**

(Bd awarded costs and counsel fees)

J. P. Stevens & Co., Inc. v. N.L.R.B. **612 F.2d 881 (C.A. 4)**

(remand not warranted where Bd failed to discuss denial of litigation expenses because costs are awarded only for frivolous or dilatory litigation and issues here were arguable and brought in good faith)

N.L.R.B. v. Catalina Yachts **679 F.2d 180 (C.A. 9, June 1982)**

(ct assessed double costs to E, notwithstanding Bd rather than E petitioned ct, where Bd was forced to ptn ct for enforcement of its decision due to E's refusal to follow Bd's decision; E's resistance to Bd's findings was frivolous and E resisted enforcement as delaying tactic)

N.L.R.B. v. East Wind Enterprises **664 F.2d 754 (C.A. 9, Dec. 1981)**

(award of attorneys' fees, which Bd requested on ground that petitioner had taken frivolous appeal to delay enforcement, declined by ct, notwithstanding it found no merit to appeal, since it had not been practice in this circuit to award attorneys' fees; ct declared, however, that henceforth it would be more favorably disposed to such requests in order to preserve all parties' rights under NLRA and to protect its own docket)

Stanley Spencer, et al. v. N.L.R.B. **548 F.Supp. 256 (DC DC, July 1982)**

(attorneys fees denied where Bd's initial denial of plaintiff's decertification ptn w/o determining whether they were professional Ees in mixed unit as position adopted by Bd has reasonable basis in law and fact, notwithstanding Bd later made exception to its longstanding rule after plaintiffs filed lawsuit and processed second decertification ptn)

9100 CERTIORORI TO SUPREME COURT

9600 SUPREME COURT PROCEDURES

9675 REMAND FROM SUPREME COURT

H. A. Artists & Associates, Inc., et al. v. Actors' Equity Assn. et al. **451 US 704 (U.S. SCt. May 1981)**

(remand for ct to determine whether franchise fees U charges agent associates are permissible, component of exempt regulatory system; U's justification for fees inadequate and if U did not impose fees on agents no reason to believe that any of its legitimate interests would be affected)

9675—Cont.

N.L.R.B. v. International Longshoremen's Assn., AFL-CIO, et al. 447 US 490 (U.S. SCt. June 1980)

(case remanded to Bd for further proceedings to find if *CONASA ILA Rules on containers* have lawful *work preservation* objective)

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. 441 U.S. 281 (S Ct US, 1979)

(decision to disclose petitioner's reports is reviewable agency action under APA and petioner is person adversely affected and aggreived w/i APA provision affording right of judicial review of agency action; remand to ct to consider whether contemplated disclosures would violate APA)

Malone, Commissioner of Labor and Industry For Minnesota v. White Motor Corp. et al. 435 U.S. 497 (SCt, 1978)

(claims of impariment of contractual obligations and violation of due process remanded to District Ct where State enacted statute after collective bargaining agreement took effect)

N.L.R.B. v. Baylor University Medical Center 439 U.S. 9 (SCt, 1980)

(judgment refusing to enforce Bd order vacated and case remanded to D.C. Ct of Appeals for reconsideration of no-solicitation rule with respect to hospital cafeteria in light of ct's decision in *Beth Israel Hospital v. N.L.R.B. No. 77-152 (June 22, 1978)*)

833 PROCEEDINGS ON CONTEMPT OF COURT JUDGMENT

0100 GENERALLY

N.L.R.B. v. Leslie Metal Arts Company, Inc. 677 F.2d 529 (C.A. 6, June 1980)

(E cannot collaterally attack terms of Bd's broad order in contempt proceeding, since E had full opportunity to challenge terms of Bd's order back at time Bd sought enforcement)

N.L.R.B. v. ARC Industries, Inc. and SJODIN No. 74-1203, July 15, 1980, DC N.D. IL (unreported)

(where respondents wish to settle compliance dispute on basis of their mere promise to comply with pertinent judgment in future and Bd has reason to believe that such promise is hollow and meaningless, Bd has right, and perhaps is even duty bound, to seek to have contempt order entered both to carry out remedial purposes of Act and to put teeth in ct judgments and orders entered pursuant to it)

0125 BOARD ONLY MAY INSTITUTE CONTEMPT PROCEEDINGS

N.L.R.B. v. Union Nacional De Trabajadores, et al. 611 F.2d 926 (C.A. 2, 1979)

(private settlement agreement between E and U withdrawing ULP charge cannot estop NLRB from seeking contempt order against U because interested private party cannot initiate proceedings for contempt order based on prior Bd enforced order)

0150 CONTEMPT PROCEEDINGS AS ULTIMATE SANCTION TO OBTAIN COMPLIANCE

0150-7500 With Section 10(j) injunction

Humphrey v. Southside Electric Cooperative, Inc. No. CA-78-0466-R, May 21, 1979, DC E.D. VA (unreported)

(ct found E in *civil contempt* for violating its order based upon its consideration of pleadings, evidence, arguments of counsel and entire record in instant case; E ordered to purge itself from contempt and to pay petitioner and U compensatory relief; failure to fully comply with ct orders will bring *$25,000-compliance fine* imposed by ct)

0175 CONTEMPT NOT EXCLUSIVE SANCTION FOR BOARD FOR VIOLATIONS SUBSEQUENT TO DECREE

0175-5000 Board proceedings on new complaint may be appropriate where violations involve circumstances unrelated to outstanding judgment

Computer Sciences Corporation, as successor to Federal Electric Corporation v. N.L.R.B. 677 F.2d 804 (C.A. 11, June 1982)

(Bd should have proceeded on pending ULP C lodged with it rather than resorting first to courts to resolve issue in contempt proceeding)

1700 PROCEDURE

1701 GENERALLY

N.L.R.B. v. Union Nacional De Trabajadores, et al. 611 F.2d 926 (C.A. 2, 1979)

(party cited for contempt of permanent inj may not collaterally attack validity of underlying decree)

N.L.R.B. v. Leslie Metal Arts Company, Inc. 677 F.2d 529 (C.A. 6, June 1980)

(E cannot collaterally attack terms of Bd's broad order in contempt proceeding, since E had full opportunity to challenge terms of Bd's order back at time Bd sought enforcement)

1714 PARTIES SUBJECT TO CITATION

1714-5000 Officer of corporation responsible for failure to carry out judgment

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 78-4222, Sept. 2, 1980, C.A. 2, (unreported)

(president and vice-president of corporation held personally liable for contumacious conduct where they had notice and knowledge of prior ct enforcement decree and were involved in committing ULP in underlying proceeding, repeated such conduct here in greater intensity, and are bound under rule 65(d) of FRCP and by prior judgment which specifically ran against them)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(ct held special master was correct in finding company's chairman of the board and executive vice president should be held in civil contempt, along with company, for violation of consent decree)

1714-7500 Successors

Computer Sciences Corporation, as successor to Federal Electric Corporation v. N.L.R.B. 677 F.2d 804 (C.A. 11, June 1982)

(ptn by Bd for adjudication that alleged successor E was in civil contempt of prior judgment which granted enforcement of bargaining order issued against E's competitor, which E had underbid for government contract, dismissed on grounds that highly factual issue of whether bargaining unit remains appropriate existed and this requires more complete development of factual record by Bd and falls w/i its statutory authority to make unit determinations)

1735 DENIAL OF PETITION

Computer Sciences Corporation, as successor to Federal Electric Corporation v. N.L.R.B. 677 F.2d 804 (C.A. 11, June 1982)

(ptn by Bd for adjudication that alleged successor E was in civil contempt of prior judgment which granted enforcement of bargaining order issued against E's competitor, which E had underbid for government contract, dismissed on grounds that highly factual issue of whether bargaining unit remains appropriate existed and this requires more complete development of factual record by Bd and falls w/i its statutory authority to make unit determinations)

5306 SUMMARY JUDGMENT

N.L.R.B. v. ARC Industries, Inc. and SJODIN No. 74-1203, July 15, 1980, DC N.D. IL (unreported)

(summary judgment improper where there are genuine issues of material fact as to whether respondents are in contempt of any judgment or order of ct)

1756 HEARING ON PETITION

1756-8300 Standard of proof

1756-8333 Civil contempt

Florida Steel Corporation v. N.L.R.B. 648 F.2d 233 (C.A. 5, June 1981)

(proper standard of proof in civil contempt is by clear and convincing evidence. In civil, as opposed to criminal contempt, E's intent is not at issue, only its actual compliance with order. Thus, absence of wilfullness on part of E's top management cannot relieve E from civil contempt)

N.L.R.B. v. Crockett-Bradley, Inc., et al. 598 F.2d 971 (C.A. 5, 1979)

1770 EVIDENCE

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 78-4222, Sept. 2, 1980, C.A. 2, (unreported)

(in civil contempt proceeding Bd is required to produce clear and convincing evidence that respondents have engaged in contemptuous conduct, and such evidence is more than mere preponderance of evidence; moreover, Bd need not show that conduct was wilful)

1770—Cont.

N.L.R.B. v. Craft Metals, Inc. **Dkt. Nos. 74-3052 and 74-3101, (C.A. 5, Jan. 5, 1979 (unreported))**

(affidavits taken by Bd in its investigation fall w/i FOIA Exemption 7(A) and need not be disclosed prior to hearing even in civil contempt cases as herein; there is no distinction between enforcement proceedings before ALJ and contempt proceedings as both are instituted to enforce compliance with Act, and Bd's prosecutorial function remains the same; risk of intimidation of witnesses because of premature disclosure is no less a risk in contempt cases; and it is irrelevant that there is no reason to suspect that E herein would attempt to coerce a witness)

N.L.R.B. v. Craft Metals, Inc. **Dkt. Nos. 74-3052 and 74-3101, (C.A. 5, Jan. 5, 1979 (unreported))**

(applying FOIA Exemption 7(A) in contempt proceeding, Special Master required Bd, ten days prior to hearing, to provide E with summary of expected testimony of exempted witnesses w/o disclosing their names, and required Bd, on day any such witness is to testify, to provide E with any affidavit or prior statement of such witness w/i its possession)

1777 STANDARD OF REVIEW OF MASTER'S REPORT

1777-5000 Subsidiary findings of fact must be affirmed unless 'clearly erroneous'

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. **635 F.2d 492 (C.A. 5, Jan. 1981)**

N.L.R.B. v. Crockett-Bradley, Inc., et al. **598 F.2d 971 (C.A. 5, 1979)**

1785 DECISION BY COURT

N.L.R.B. v. A.W. Thompson, Inc. **651 F.2d 1141 (C.A. 5, July 1981)**

(E found in civil contempt for withdrawing recognition from E after 2 previous ct orders ordering it to bargain with U)

1792 REMAND

1792-6700 For additional findings

Computer Sciences Corporation, as successor to Federal Electric Corporation v. N.L.R.B. **677 F.2d 804 (C.A. 11, June 1982)**

(ptn by Bd for adjudication that alleged successor E was in civil contempt of prior judgment which granted enforcement of bargaining order issued against E's competitor, which E had underbid for government contract, dismissed on grounds that highly factual issue of whether bargaining unit remains appropriate existed and this requires more complete development of factual record by Bd and falls w/i its statutory authority to make unit determinations)

N.L.R.B. v. Blevins Popcorn Company **639 F.2d 1173 (C.A.D.C., July 1981)**

(remand for master to apply proper standard of proof for civil contempt—clear and convincing evidence rather than proof beyond reasonable doubt—to record in determining whether E had violated contempt and purgation order, to give special attention to whether E's adherence to proposals disadvantageous to U supported inference of bad faith bargaining, and to reconsider his finding that E properly withheld usual December wage increase)

1796 COSTS OF PROCEEDINGS

1796-3300 Discretion of ct

Humphrey v. Southside Electric Cooperative, Inc. **No. CA-78-0466-R, May 21, 1979, DC E.D. VA (unreported)**

1796-6700 Taxable costs

1796-6742 Costs of litigation

N.L.R.B. v. Union Nacional De Trabajadores, et al. **611 F.2d 926 (C.A. 2, 1979)**

(U president and U that were in civil contempt of ct's decree enforcing Bd order must purge themselves of contempt by obeying previous order, pay all Bd costs including attorney's salaries)

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. **No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)**

(E ordered to pay Bd all costs and expenditures, including reasonable attorneys' salaries incurred by Bd in investigation, preparation, presentation, and final disposition of proceeding; unless agreed upon by parties, amount to be fixed by ct upon submission by Bd of verified statement of costs and expenses)

N.L.R.B. v. A.W. Thompson, Inc. **651 F.2d 1141 (C.A. 5, July 1981)**

N.L.R.B. v. Bruce Cartage, Inc. **654 F.2d 456 (C.A. 6, July 1981)**

(paying to Bd all costs and expenses, including attorneys' salaries, incurred by Bd in investigation, preparation, and final disposition in this proceeding)

N.L.R.B. v. Teamsters, Local 85 **No. 71-1293, Mar. 4, 1980, C.A. 9 (unreported)**

(ct of appeals approved settlement agreement reached by Bd and the U which was found in civil contempt of ct's decree; U agreed to purge itself of contempt by paying approximately half the Bd's bill of costs and expenses, including counsel fees incurred in preparing contempt proceedings)

N.L.R.B. v. Nichols of Ohio, Inc. et al. **No. 72-1493 (D Ct. OH, Dec. 27, 1978 (unreported))**

(Bd to be reimbursed for all costs and expenditures including reasonable counsel fees)

Humphrey v. Southside Electric Cooperative, Inc. **No. CA-78-0466-R, May 21, 1979, DC E.D. VA (unreported)**

1796-6756 Master's fees, stenographic costs, or printing costs

N.L.R.B. v. A.W. Thompson, Inc. **651 F.2d 1141 (C.A. 5, July 1981)**

Humphrey v. Southside Electric Cooperative, Inc. **No. CA-78-0466-R, May 21, 1979, DC E.D. VA (unreported)**

3300 ACTIONS CONSTITUTING CONTEMPT OF JUDGMENTS

3301 GENERALLY

Humphrey v. Southside Electric Cooperative, Inc. **No. CA-78-0466-R, May 21, 1979, DC E.D. VA (unreported)**

(ct found E in *civil contempt* for violating its order based upon its consideration of pleadings, evidence, arguments of counsel and entire record in instant case; E ordered to purge itself from contempt and to pay petitioner and U compensatory relief; failure to fully comply with ct orders will bring *$25,000-compliance fine* imposed by ct)

3301-5000 Conduct not specifically enjoined but within terms of decree

3301-5050 But may be considered in determining violation of decree

N.L.R.B. v. Leslie Metal Arts Company, Inc. **677 F.2d 529 (C.A. 6, June 1980)**

(E's mtn for *summary judgment*, in action by Bd to have E held in contempt decree of Bd order because violations subject to contempt action occurred in plants not involved in prior cases, denied where Bd's use of *broad order* was directed to E and was intended to protect *all* of E's Ees at *all* of E's plants w/o limitation to specific plant or conduct)

3311 8(a)(1) JUDGEMNTS

3311-4000 Interference

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. **No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)**

(promising Ees benefits to induce them to abandon U)

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. **No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)**

(informing Ees that presence of U prevented E from granting new benefits such as medical and pension plans)

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. **No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)**

(soliciting Ee repudiation of U)

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. **No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)**

(threatening to close shop; there is no free speech protection for threats of reprisal or promises of benefit, and such statements are ULPs per se)

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. **No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)**

(inclusion of question concerning U membership in employment applications is effort to discourage Ees from exercising statutory rights)

Florida Steel Corporation v. N.L.R.B. **648 F.2d 233 (C.A. 5, June 1981)**

(E held in civil contempt since it had violated previous orders of ct prohibiting U from in any manner interfering with, restraining or coercing Ees in exercise of their rights under Section 7 of Act by its misstatement of law and implied threats that electing U would delay wage increases and other bene-

3311-4000—Cont.

fits and that signing U meeting attendance roster or authorization card would jeopardize Ees employment relationship)

3333 8(a)(3) JUDGMENTS

3333-2000 Discharge, layoff, or demotion or other conduct after entry of decree

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(sending ULP strikers letter informing them that they had been permanently replaced when, in fact, no replacements had been hired at that time; while letter was sent to strikers on tenth day of strike, it is reasonable to conclude that discharges occurred on or near first day of strike)

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(changing leading U adherent's working conditions by subjecting his work to closer scrutiny, even if only motivated in part by his U activities)

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(E's justification for sending letter, herein found unlawful, to leading U adherent on ground that he was low producer held pretext, where letter did not accuse Ee of general lack of productivity but dealt with problem occurring on a specific day and involving special circumstances)

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(failing to offer ULP striker reinstatement upon his application)

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(offering jobs to returning ULP strikers which did not conform to their pre-discharge jobs)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(consent order violated by E's refusal to grant merit increases to ULP strikers upon their reinstatement, since strikers would have received increase but for strike, in view of fact that 99 per cent of nonstriking Ees received increase during period of strike)

3333-7000 Failure to offer reinstatement

David D. Sutherland, d/b/a Manco Auto Painting and Body Work v. N.L.R.B. 656 F.2d 359 (C.A. 8, Aug. 1981)

3333-9000 Inadequate offer of reemployment to discriminatees

N.L.R.B. v. Nichols of Ohio, Inc. et al. No. 72-1493 (D Ct. OH, Dec. 27, 1978 (unreported))

(delayed and inadequate reinstatement of salesclerks where they received lower pay, were assigned cleaning rather than selling jobs and worked fewer hours)

3344 8(a)(5) JUDGMENTS

3344-1400 Unilateral change in working conditions without consent of union

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(unilaterally changing terms of drivers' compensation; change from hourly to per load basis not justified by economic considerations)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(consent order violated by E's failure to reinstate its former practice of paying Christmas bonus to leadmen and leadwomen upon U's request)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(consent order violated by E's unilateral change of morning break time)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(consent order violated by E's failure to rescind unilaterally instituted new merit evaluation system)

3344-4200 Refusal to bargain in good faith

N.L.R.B. v. A.W. Thompson, Inc. 651 F.2d 1141 (C.A. 5, July 1981)

(E found in civil contempt for withdrawing recognition from E after 2 previous ct orders ordering it to bargain with U)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(refusal to bargain not unlawful in view of impasse; ct stated that it could not as a matter of law hold that E's refusal to concede on one issue – arbitrability of merit increases – constituted bad faith bargaining)

N.L.R.B. v. Crockett-Bradley, Inc., et al. 598 F.2d 971 (C.A. 5, 1979)

(evidence of failure to bargain in good faith as ordered held insufficient to warrant finding of contempt, and special master's determination of bad faith on basis of reasonableness of E's position found improper; U termed its own proposals *negotiating tactics* but when E attempted to use negotiating tactics U called them *bad faith;* and conclusion that E was *surface bargaining* was found not proper when parties were at *proposal stage*)

3344-4900 Refusal to sign contract

N.L.R.B. v. Goodsell & Vocke, Inc. 645 F.2d 680 (C.A. 9, Feb. 1981)

(ct found E in contempt for failure to comply with judgment enforcing Bd order finding E to have committed ULP by withdrawing from contractor's association; E was ordered to, *inter alia,* sign bargaining contract and preserve records relevant to determination of back pay and fringe benefits due as result of judgment, to reconstruct existing records that were incomplete, post Bd's remedial notice and pay fine for each violation and an additional fine for each day that each such violation continues)

3344-6400 Bypassing union

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(by dealing directly with certain Ees culminating in signing of individual contracts with such Ees; such unilateral action is a per se violation of E's bargaining obligation)

3355 8(b)(1)(A) JUDGMENTS

N.L.R.B. v. Union Nacional De Trabajadores, et al. 611 F.2d 926 (C.A. 2, 1979)

(U president and U that were found in violation of Act and required to publish in newspapers Bd's notice were in civil contempt of Bd's order when U, adjacent to Bd's required notice published side notice published side notice which contained statements destroying substance and purpose of required notice and expressed U's intention to threaten and use violence in future; side notice not protected by first amendment where it did not express U's political opinion but eviscerated Bd's lawful publication requirement)

N.L.R.B. v. Union Nacional De Trabajadores, et al. 611 F.2d 926 (C.A. 2, 1979)

(U president and U that were found in violation of Sections 8(b)(1)(A) and 8(b)(4)(ii)(B) of LMRA were in civil contempt of ct decree when U members picketing struck gas station threatened violence and other reprisals against 2 Ees of gas station, notwithstanding that Ees were employed by security firm that was engaged by gas station operator to provide individuals to pump gas and report threats to persons and damage to property)

3377 8(b)(4) JUDGMENTS

N.L.R.B. v. Union Nacional De Trabajadores, et al. 611 F.2d 926 (C.A. 2, 1979)

(U president and U that were found in violation of Act and required to publish in newspapers Bd's notice were in civil contempt of Bd's order when U, adjacent to Bd's required notice published side notice published side notice which contained statements destroying substance and purpose of required notice and expressed U's intention to threaten and use violence in future; side notice not protected by first amendment where it did not express U's political opinion but eviscerated Bd's lawful publication requirement)

N.L.R.B. v. Union Nacional De Trabajadores, et al. 611 F.2d 926 (C.A. 2, 1979)

(U president and U that were found in violation of Sections 8(b)(1)(A) and 8(b)(4)(ii)(B) of LMRA were in civil contempt of ct decree when U members picketing struck gas station threatened violence and other reprisals against 2 Ees of gas station, notwithstanding that Ees were employed by security firm that was engaged by gas station operator to provide individuals to pump gas and report threats to persons and damage to property)

3388 NOTICE PROVISIONS OF JUDGMENT

David D. Sutherland, d/b/a Manco Auto Painting and Body Work v. N.L.R.B. 656 F.2d 359 (C.A. 8, Aug. 1981)

3399 COURT COSTS

David D. Sutherland, d/b/a Manco Auto Painting and Body Work v. N.L.R.B. 656 F.2d 359 (C.A. 8, Aug. 1981)

5000 TERMS OF PURGATION OF ADJUDICATION IN CONTEMPT

5001 GENERALLY

5001—Cont.

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(company and its president and vice president required to purge themselves by fully complying with prior ct enforcement decrees, and not in any way by action or inaction commit, engage in, induce, encourage, permit or condone any violation of such decrees)

5017 SPECIFIC REMEDIAL PROVISIONS

5017-1200 8(a)(1) judgments

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(E ordered to refrain from threats of discharge, plant closure, withholding of benefits or any other reprisals for U activity, and also from promising benefits and communicating to Ees that E will not bargain with U; and to eliminate from employment application forms and from prehiring interviews questions concerning applicant's U membership status)

5017-1217 Allow union access to employer's premises

Florida Steel Corporation v. N.L.R.B. 648 F.2d 233 (C.A. 5, June 1981)

(ct refused Bd's request that E be ordered to upon request of any U w/i six months of judgment to immediately grant to U and their representatives access to company bulletin boards and all places where notices to Ees are customarily posted for one year to remedy its contempt of previous ct orders by its misstatements of law and implied threats via videotape that electing U would delay increases in wages and benefits and that signing U meeting attendance roster or authorization card might affect Ees' employment with E, since violations not flagrant and portion of tape relating to wage increases and other benefits deleted)

5017-3700 8(a)(3) judgments

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(E ordered to refrain from changing working conditions or in any other manner discriminating against Ees because of their U activities)

5017-3733 Backpay

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(E ordered to make discharged strikers whole; amount, unless agreed upon, to be computed by Bd in supplemental proceeding, subject to review by ct)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(company ordered to accord all Ees who struck on January 16, 1977 rights of ULP strikers, including credit for 10 cent merit increase awarded nonstrikers during strike, and make them whole for losses due to lack of said rights and merit increases)

5017-3750 Preserve and make available records

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(records and data necessary to compute amount of backpay)

N.L.R.B. v. Bruce Cartage, Inc. 654 F.2d 456 (C.A. 6, July 1981)

(so Bd will be able to compute backpay for discriminatees and any documents required by Bd to monitor compliance with contempt order)

5017-3767 Reinstatement

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(E required to offer reinstatement to discharged ULP strikers since, like other unlawfully discharged Ees, they are entitled to offers of reinstatement w/o necessity of signalling abandonment of strike)

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(E ordered to offer reinstatement to ULP strikers to former jobs or substantially equivalent positions)

5017-5000 8(a)(5) judgments

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(E ordered to refrain from bargaining directly with Ees over wages, hours, and other conditions of employment)

5017-5010 Reimburse employees for losses of wages and benefits

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(company ordered to rescind unilaterally instituted Ee evaluation systems, institute evaluation system agreed upon by the parties, and make Ees whole for losses resulting from unilateral actions)

5017-5020 Notify union that company is ready to resume bargaining

N.L.R.B. v. A.W. Thompson, Inc. 651 F.2d 1141 (C.A. 5, July 1981)

5017-5030 Rescind unilateral change and reinstate previous practice

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(company ordered to reinstate unilaterally discontinued Christmas bonus paid leadmen and leadwomen and make them whole for monetary losses resulting from unilateral discontinuation)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(company ordered to reinstate former, unilaterally rescinded, morning break schedule if requested by U)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(company ordered to restore *status quo ante* by resuming unilaterally shut down operations and offering to reinstate to their former positions Ees unilaterally transferred as result of shutdowns)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(company ordered to rescind unilaterally instituted Ee evaluation systems, institute evaluation system agreed upon by the parties, and make Ees whole for losses resulting from unilateral actions)

5017-5035 Cease and desist from making unilateral changes without notice to union and reasonable opportunity to bargain

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(E ordered to refrain from making unilateral changes in wages, hours, working conditions and other terms and conditions of employment, and from failing to give U adequate notice of such contemplated changes and failing to bargain with U with respect thereto)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

5017-5040 Sign contract embodying terms agreed upon in negotiations

N.L.R.B. v. Goodsell & Vocke, Inc. 645 F.2d 680 (C.A. 9, Feb. 1981)

(ct found E in contempt for failure to comply with judgment enforcing Bd order finding E to have committed ULP by withdrawing from contractor's association; E was ordered to, *inter alia*, sign bargaining contract and preserve records relevant to determination of back pay and fringe benefits due as result of judgment, to reconstruct existing records that were incomplete, post Bd's remedial notice and pay fine for each violation and an additional fine for each day that each such violation continues)

5017-5060 Upon request, bargain with union, and if understanding is reached, sign agreement

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(moreover, recognition not to be withdrawn from U w/o order of the ct)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(company ordered to bargain, on U's request, to full agreement or impasse and embody any understanding in signed agreement)

5017-5065 Set bargaining dates

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(company ordered to, on U's request, set initial bargaining date w/i 15 days of entry of adjudication and bargain no less than two consecutive days per

5017-5065—Cont.

week during regular business hours until all contract proposals have been considered and action taken in relation thereto)

5033 NOTICE PROVISIONS

Florida Steel Corporation v. N.L.R.B. 648 F.2d 233 (C.A. 5, June 1981)

(ct refused Bd's request that E be ordered to mail copies of notice and contempt adjudication to each of its Ees and provide RD with list of names and addresses of all Ees to whom notice mailed together with proof of mailing to remedy E's contempt of previous ct orders by its misstatements of law and implied threats via videotape that electing U would delay increases in wages and benefits and that signing U meeting attendance roster or authorization card might affect Ees' employment with E, since violations not flagrant and portion of tape relating to wage increases and other benefits deleted when Bd questioned its use)

5033-1200 Post at employer's plants

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(in conspicuous places and all places where notices to Ees are customarily posted, for period of 60 consecutive days)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(company ordered to post at office and manufacturing facilities for 60 days copies of contempt adjudication and notice (in form supplied by Bd) signed by company's chairman and executive vice president stating that they and E were found in contempt and will undertake action ordered in purgation in earlier order and this contempt adjudication)

5033-3300 Contents

5033-3363 Individual corporate officers adjudged in contempt and ordered to purge themselves by taking action set forth

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(contempt adjudication and forms supplied by Bd to be signed by company's president and vice president, individually and as company officers, which states that company and officers have been adjudicated in civil contempt for violating, disobeying, and failing to comply with ct's judgment, and that officers will immediately take action in purgation set forth in contempt adjudication)

5033-3375 Union adjudged in contempt and ordered to purge itself by taking action set forth

N.L.R.B. v. Local 282, Teamsters No. 29149, Mar. 28, 1980, C.A. 2 (unreported)

(U violated Section 8(b)(4) by picketing neutral E during labor dispute with trucking company that performed delivery services for E and found in contempt for violating prior judgments and contempt adjudications and required to pay fine, refrain from committing further violations of prior adjudications, post appropriate notices, mail copies to all U members, be subject to prospective fines for additional violations, reimburse NLRB for all its expenses)

5033-6700 Method of notice

5033-6733 By employer

5033-6733-2500 Distribution to all employees individually

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(E ordered to mail to each present Ee and former Ees employed since date latter of two prior enforcement judgments was entered, and to provide list of names and addresses of all Ees and former Ees to whom documents were mailed, together with proof of mailing)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(company ordered to duplicate at its own expense notice and contempt adjudication signed by chariman of the board, and vice president and mail copies to present present and former Ees, and to provide RD with list of names and addresses of Ees to whom documents were mailed, and with proof of mailing)

5033-6733-5000 Posting in Plant

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(in conspicuous places and all places where notices to Ees are customarily posted, for period of 60 consecutive days)

N.L.R.B. v. Goodsell & Vocke, Inc. 645 F.2d 680 (C.A. 9, Feb. 1981)

(ct found E in contempt for failure to comply with judgment enforcing Bd order finding E to have committed ULP by withdrawing from contractor's association; E was ordered to, *inter alia*, sign bargaining contract and preserve records relevant to determination of back pay and fringe benefits due as result of judgment, to reconstruct existing records that were incomplete, post Bd's remedial notice and pay fine for each violation and an additional fine for each day that each such violation continues)

5033-6733-6300 By mail

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(E ordered to mail to each present Ee and former Ees employed since date latter of two prior enforcement judgments was entered, and to provide list of names and addresses of all Ees and former Ees to whom documents were mailed, together with proof of mailing)

5033-6733-7800 Read notice at meeting

Florida Steel Corporation v. N.L.R.B. 648 F.2d 233 (C.A. 5, June 1981)

(ct refused Bd's request that E be ordered to convene during working hours all Ees and read to its Ees contents of notice in presence of Bd representative to remedy E's contempt of previous ct orders by its misstatements of law and implied threats via videotape that electing U would delay wage increases and other benefits and that singing U meeting attendance roster or authorization card might jeopardize Ees' employment relationship with E, since violations not flagrant and portion of tape relating to wage increases and other benefits deleted when Bd questioned its use)

5033-6767 By union

5033-6767-7000 Publication in newspaper of general circulation

N.L.R.B. v. Union Nacional De Trabajadores, et al. 611 F.2d 926 (C.A. 2, 1979)

(U president and U that were found in violation of Act and required to publish in newspapers Bd's notice were in civil contempt of Bd's order when U, adjacent to Bd's required notice published side notice published side notice which contained statements destroying substance and purpose of required notice and expressed U's intention to threaten and use violence in future; side notice not protected by first amendment where it did not express U's political opinion but eviscerated Bd's lawful publication requirement)

5033-6767-8300 Read notice at meeting

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(convened during working hours; Bd agent to read notice at E's option)

5067 REPORT OF COMPLIANCE WITH JUDGMENT

5067-3300 To court

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(E ordered to file sworn statements with clerk of ct and copy thereof with RD w/i 10 days of adjudication and at end of 60 day posting period, showing what steps have been taken by company and by corporate officers, also found in contempt, to comply with ct's direction)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(company ordered to file sworn statement with clerk of ct and copy with RD w/i 15 days after adjudication of contempt and at end of posting period showing steps taken by company, chairman and executive vice president to comply with ct's directions)

5067-6700 To Regional Director

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. No. 75-4222, Sept. 2, 1980, C.A. 2, (unreported)

(E ordered to file sworn statements with clerk of ct and copy thereof with RD w/i 10 days of adjudication and at end of 60 day posting period, showing what steps have been taken by company and by corporate officers, also found in contempt, to comply with ct's direction)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. 635 F.2d 492 (C.A. 5, Jan. 1981)

(company ordered to file sworn reports signed by company, its chairman and executive vice president, and by U representative with RD every 30 days summary of nature and course of bargaining and append minutes, proposals, counterproposals, and written communications between parties about bargaining; separate reports may be filed in case of exceptions)

5067-6700—Cont.

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. **635 F.2d 492 (C.A. 5, Jan. 1981)**

(company ordered to furnish RD with writing signed under oath by each officer, director, supervisor and negotiating representative of E that he or she has been furnished with a copy of contempt adjudication and ct's judgments and order and has read and understands them and will act accordingly)

6700 SANCTIONS TO ENFORCE JUDGMENT

6701 GENERALLY

6701-5000 Nature and purpose

N.L.R.B. v. Blevins Popcorn Company **639 F.2d 1173 (C.A.D.C., July 1981)**

(criminal contempt is used to punish intentional misconduct and requires criminal procedural safeguard of use of reasonable doubt standard of proof; civil contempt, however, is used to obtain compliance or to compensate for damages resulting from noncompliance, and therefore, even third stage of proceeding -- in which noncompliance may be determined and penalty assessed -- is not criminal and punitive and requires use of only clear and convincing standard of proof, and intent is irrevelent)

6725 FINES

N.L.R.B. v. Vanguard Oil and Service, Inc., et al. **No. 75-6222, Sept. 2, 1980, C.A. 2, (unreported)**

(ct declined to levy fines against company and its president and vice president in view of financial burdens that will be placed on company by remedies proposed herein, and fact that financial condition of company, and presumably its principal officers, had significantly deteriorated during relevant period; moreover, company's president was only minimally involved in unlawful activities)

N.L.R.B. v. A.W. Thompson, Inc. **651 F.2d 1141 (C.A. 5, July 1981)**

(E, found in contempt for withdrawing recognition from U for 3rd time, ordered to pay Bd all costs and expenditures, including counsel fees incurred by Bd, and all costs relative to Special Master; however, in light of change in ownership prospective fines not imposed)

Florida Steel Corporation v. N.L.R.B. **648 F.2d 233 (C.A. 5, June 1981)**

(ct refused Bd's request for prospective fine of E since not case of flagrant violation that would justify extraordinary remedy where E judged in civil contempt of previous ct orders by its misstatement of law and implied threats that electing U would delay wage increases and other benefits and that signing U meeting attendance roster cr authorization care might jeopardize Ees employment relationship with E; fact E has long history of litigation does not justify extraordinary remedies *since remedy must be proportionate to illegal conduct at hand*)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. **635 F.2d 492 (C.A. 5, Jan. 1981)**

(company ordered to pay $30,000 for past non compliance with ct's order of which it has been found in contempt)

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. **635 F.2d 492 (C.A. 5, Jan. 1981)**

(to assure compliance with ct's order and contempt adjudication, ct imposed daily fines of $2,500 against company and $500 against its chairman and executive vice president and anyone with knowledge of order acting with them to violate order, to commence 15 days from entry of order and continue so long as respondents fail to comply)

N.L.R.B. v. Goodsell & Vocke, Inc. **645 F.2d 680 (C.A. 9, Feb. 1981)**

(ct found E in contempt for failure to comply with judgment enforcing Bd order finding E to have committed ULP by withdrawing from contractor's association; E was ordered to, *inter alia*, sign bargaining contract and preserve records relevant to determination of back pay and fringe benefits due as result of judgment, to reconstruct existing records that were incomplete, post Bd's remedial notice and pay fine for each violation and an additional fine for each day that each such violation continues)

N.L.R.B. v. Nichols of Ohio, Inc. et al. **No. 72-1493 (D Ct. OH, Dec. 27, 1978 (unreported))**

(prospective compliance fine of $10,000 on E and further compliance fine of $200 per day for each further day of noncompliance)

Humphrey v. Southside Electric Cooperative, Inc. **No. CA-78-0466-R, May 21, 1979, DC E.D. VA (unreported)**

(ct found E in *civil contempt* for violating its order based upon its consideration of pleadings, evidence, arguments of counsel and entire record in instant case; E ordered to purge itself from contempt and to pay petitioner and U compensatory relief; failure to fully comply with ct orders will bring *$25,000-compliance fine* imposed by ct)

6750 PERSONAL ATTACHMENT OR COMMITMENT

N.L.R.B. v. Bancroft Manufacturing Company, Inc., et al. **635 F.2d 492 (C.A. 5, Jan. 1981)**

(ct reserved jurisdiction to issue attachment against respondents and any officer or agent of E responsible for failure to purge respondents of contempt, as well as to substantially increase amount of compliance fines)

8300 DEFENSES

8307 ABSENCE OF WILLFULLNESS

Florida Steel Corporation v. N.L.R.B. **648 F.2d 233 (C.A. 5, June 1981)**

(proper standard of proof in civil contempt is by clear and convincing evidence. In civil, as opposed to criminal contempt, E's intent is not at issue, only its actual compliance with order. Thus, absence of wilfullness on part of E's top management cannot relieve E from civil contempt)

850 PROCEEDINGS ANCILLARY TO BOARD PROCEEDING

2000 SUBPOENA ENFORCEMENT PROCEEDINGS

2017 JURISDICTION OF U.S. DISTRICT COURTS

N.L.R.B. v. Valley West Welding Company, Inc. No. 78-1379, Sept. 7, 1979, C.A. 6 (unreported)

(parties against whom subpoena issued by ALJ nor GC required to seek review of these orders from Bd, because when Bd filed ptn to enforce subpoenas in District Ct that ct had full jurisdiction to determine propriety of enforcement)

Rockford Redi-Mix Co., Inc. v. Glen Zipp, RD 632 F.2d 30 (C.A. 7, 1980)

(district ct had no jurisdiction to review Bd decision denying certification to expedited election conducted pursuant to 8(b)(7)(C) during period in which challenges to validity of election were being resolved; ct rejected contention that Bd's rule that election becomes valid under 8(b)(7)(B) when all challenges and objections to it have been resolved is contrary to Act when applied to expedited election conducted under 8(b)(7)(C))

2017-3300 Exclusive under Section 11

N.L.R.B. v. Interstate Dress Carriers, Inc. Local 102 and Local 20408 No. 79-481, Sept. 17, 1979, DC NJ (unreported)

(notwithstanding district ct's jurisdiction over that part of case dealing with subpoena enforcement and desirability of deciding all issues in one action, district ct dismissed E's counterclaim to Bd's enforcement of subpoena against it, since counterclaim issues could be considered in enforcement or review proceeding, and then ct of appeals would have exclusive jurisdiction)

2033 SCOPE OF COURT INQUIRY

2033-2000 Pendency of proceeding before Board

Ithaca College v. Thomas W. Seeler, RD (unreported) (D Ct. NY, 1978)

(E's C seeking to enjoin pending Bd election and to require Bd to re-open hearing dismissed by ct for lack of jurisdiction, since Bd did not act contrary to specific provision of Act but, rather, exercised its statutory power, no substantial constitutional question was involved, and E failed to show likelihood of success on the merits and irreparable injury)

N.L.R.B. v. General Motors Corporation 510 F.Supp. 338 (DC S.D. OH, Sept. 1980)

(merits of instant case, where Bd sought order requiring obedience to its subpoenas, before Bd not District Ct; ct's limited scope of review, which is, whether information sought by Bd relates to or touches matter under investigation, not whether ptn has merits must be kept in focus)

2033-3000 Agency's purpose in issuing subpoena

N.L.R.B. v. International Medication Systems, Ltd. 640 F.2d 1110 (C.A. 9, Apr 2, 1981)

(District Ct *may undertake only extremely limited inquiry* in deciding whether to enforce subpoenas; *Agency need not even show probable cause to believe that law has been violated*, only some reasonable basis for believing that information will prove relevant)

N.L.R.B. v. General Motors 510 F.Supp. 341 (D Ct OH, Nov 7, 1980)

(Bd entitled to order requiring E to comply with subpoenas seeking information on job description, equipment, supervision and management where information needed to determine appropriateness of bargaining unit; however, E entitled to stay pending appeal where there is likelihood that E will prevail on appeal, E will suffer irreparable harm if stay denied, no potential harm to other parties; public interest best served by preserving E's right to appeal rather than by expediency)

N.L.R.B. v. General Motors Corporation 510 F.Supp. 338 (DC S.D. OH, Sept. 1980)

(merits of instant case, where Bd sought order requiring obedience to its subpoenas, before Bd not District Ct; ct's limited scope of review, which is, whether information sought by Bd relates to or touches matter under investigation, not whether ptn has merits must be kept in focus)

2033-4000 Administrative regularity of issuance of subpoena

Fugazy Continental Corp. of Connecticut v. N.L.R.B. 514 F.Supp. 718 (D Ct NY, Feb 1981)

(alleged alter ego E which was not named in subpoena and not served does not have standing to contest relevancy of subpoena's requested documents issued to Respondent E; alter ego's rights will attach during appeal proceedings, additionally will have right to argue relevancy of subpoened materials which are introduced as evidence during ULP hearing)

Fugazy Continental Corp. of Connecticut v. N.L.R.B. 514 F.Supp. 718 (D Ct NY, Feb 1981)

(District Ct must be reticent to examine alleged procedural irregularities in underlying administrative proceedings insofar as piecemeal appeals will disrupt resolution of labor disputes)

2033-6000 Exhaustion of administrative remedies to quash subpoena

Johanna Maurice, Business Editor The charleston Daily Mail v. N.L.R.B. 691 F.2d 182 (C.A. 4, July 1982)

(injunctive order preventing Bd from enforcing subpoena, vacated where individual who was subpoenaed had failed to invoke procedure provided by Bd regulations to challenge subpoena and failed to show herein that she would be irreparably injured by requirement to exhaust available administrative remedies before seeking judicial relief; individual can make any defense to subpoena before Bd that she could make before ct, and Bd cannot even enforce subpoena w/o recourse to ct)

Hedison Manufacturing Company v. Robert S. Fuchs, RD C.A. No. 78-0498 (D Ct. RI, Oct. 10, 1978 (unreported))

(in denying E a protective order to defer introduction of tape recording of speech of E's president to Ees, ct noted E had failed to exhause administrative remedies)

2033-8000 Relevance of materials requested or testimony sought to matters under investigation

N.L.R.B. v. Valley West Welding Company, Inc. No. 78-1379, Sept. 7, 1979, C.A. 6 (unreported)

(ptn for rehearing on ct's denial of enforcement of Bd's subpoena ad testificandum and duces tecum, denied, for differing reasons including lack of relevancy, overbroadness and Bd's lack of power, or that protective order would not adequately assure confidentiality)

N.L.R.B. v. International Medication Systems, Ltd. 640 F.2d 1110 (C.A. 9, Apr 2, 1981)

(District Ct *may undertake only extremely limited inquiry* in deciding whether to enforce subpoenas; *Agency need not even show probable cause to believe that law has been violated*, only some reasonable basis for believing that information will prove relevant)

N.L.R.B. v. Interstate Dress Carriers, Inc. No. 79-481, Oct. 22, 1979, DC NJ (unreported)

(mtn for discovery against Bd made in Bd suit to enforce a subpoena in an election case, denied on grounds that access to Bd records should be available only as available in Bd proceedings and FOIA did not permit district ct, having only statutory, rather than general jurisdiction, to enforce on Bd disclosure obligation)

Fugazy Continental Corp. of Connecticut v. N.L.R.B. 514 F.Supp. 718 (D Ct NY, Feb 1981)

(alleged alter ego E which was not named in subpoena and not served does not have standing to contest relevancy of subpoena's requested documents issued to Respondent E; alter ego's rights will attach during appeal proceedings, additionally will have right to argue relevancy of subpoened materials which are introduced as evidence during ULP hearing)

2033-8000—Cont.

N.L.R.B. v. General Motors **510 F.Supp. 341 (D Ct OH, Nov 7, 1980)**

(Bd entitled to order requiring E to comply with subpoenas seeking information on job description, equipment, supervision and management where information needed to determine appropriateness of bargaining unit; however, E entitled to stay pending appeal where there is likelihood that E will prevail on appeal, E will suffer irreparable harm if stay denied, no potential harm to other parties; public interest best served by preserving E's right to appeal rather than by expediency)

N.L.R.B. v. General Motors Corporation **510 F.Supp. 338 (DC S.D. OH, Sept. 1980)**

(order requiring obedience to *subpoenas duces tecum and ad testificandum* granted where Bd sought information, during R case investigation, concerning: Ee job descriptions; equipment descriptions; comparison of supervision; management; and description of physical changes in (E's) plants; all before E relocated its appliance operation, and now during conversion of appliance plants to light body truck and engine assembly plants, since information was related to matter under investigation; information would clarify issues of: relationship of Ees in unit well have with entire production procession E's facilities)

2050 MATERIALS SOUGHT BY SUBPOENA

2050-2000 List of employees and employment data

N.L.R.B. v. Martins Ferry Hospital Association **649 F.2d 445 (C.A. 6, May 1981)**

(ct held district ct's granting of subpoena duces tecum for W-4 form or other forms bearing Ees' signatures in order for Bd to ascertain authenticity of U authorization cards proper since necessary for Bd to determine validity of U claim of majority where U is alleging ULPs which preclude fair election and is requesting bargaining order; however, to protect Ees' privacy order modified to allow E to provide legible copies of W-4 forms made by copying machine obliterating all information on form except full name and address, social security number, and signature of Ee, and date W-4 form was signed)

2050-6000 Statements of witnesses

Ray Marshall, Secretary of Labor v. Brite Metal Treating, et al. **No. C77-1105 (D Ct. OH, June 30, 1978 (unreported))**

(subpoena issued by defendant in OSHA proceeding against Bd attorney for his work product quashed where defendant failed to seek GC's permission for disclosure)

2050-8000 Eligible voter name and address list

N.L.R.B. v. Interstate Dress Carriers, Inc. Local 102 and Local 20408 **No. 79-481, Sept. 17, 1979, DC NJ (unreported)**

(E's am defending against Bd's subpoena enforcement remedy held moot where Bd had obtained Excelsior list itself rather than underlying documents from which to prepare it which Bd had subpoenaed)

N.L.R.B. v. Thom Brown Shoes, Inc. **No. 79-C-3173, Feb. 20, 1980, DC E.D. NY (unreported)**

(names and addresses of Ees eligible to vote in R proceeding were proper subject of Bd *subpoena duces tecum*)

2083 DEFENSES TO COMPLIANCE

2083-1400 Attorney-client privilege

Upjohn Co. et al. v. United States et al. **445 US 925 (U.S. SCt. Jan. 1981)**

(ct upheld E's contention that questionaires, memoranda, notes of interviews conducted by its attorneys among Ees protected from disclosure by attorney-client privilege and constitute work product of attorney prepared in anticipation of litigation; further, *control group* test (officers and agents responsible for directing company's actions in response to legal advice does not apply as attorneys need information from all Ees to enable them to give sound advice; Rule 26(b)(3) of FRCP provides that work product can't be disclosed w/o showing of substantial need and inability to obtain equivalent w/o undue hardship)

2083-2000 Infringement of constitutional rights

N.L.R.B. v. Interstate Dress Carriers, Inc. Local 102 and Local 20408 **No. 79-481, Sept. 17, 1979, DC NJ (unreported)**

(notwithstanding district ct's jurisdiction over that part of case dealing with subpoena enforcement and desirability of deciding all issues in one action, district ct dismissed E's counterclaim to Bd's enforcement of subpoena against it, since counterclaim issues could be considered in enforcement or review proceeding, and then ct of appeals would have exclusive jurisdiction)

Pegasy Continental Corp. of Connecticut v. N.L.R.B. **514 F.Supp. 718 (D Ct NY, Feb 1981)**

(person has no Fourth Amendment basis for challenging subpoenas directed at business records of third party)

Hellison Manufacturing Company v. Robert S. Fuchs, RD **C.A. No. 78-0498 (D Ct. RI, Oct. 10, 1978 (unreported))**

(there is no Fifth or Fourteenth Amendment issue involved in admissibility of evidence in ULP proceeding)

2083-8400 Danger of misuse of information sought

N.L.R.B. v. Martins Ferry Hospital Association **649 F.2d 445 (C.A. 6, May 1981)**

(ct held district ct's granting of subpoena duces tecum for W-4 form or other forms bearing Ees' signatures in order for Bd to ascertain authenticity of U authorization cards proper since necessary for Bd to determine validity of U claim of majority where U is alleging ULPs which preclude fair election and is requesting bargaining order; however, to protect Ees' privacy order modified to allow E to provide legible copies of W-4 forms made by copying machine obliterating all information on form except full name and address, social security number, and signature of Ee, and date W-4 form was signed)

N.L.R.B. v. Valley West Welding Company, Inc. **No. 78-1379, Sept. 7, 1979, C.A. 6 (unreported)**

(ptn for rehearing on ct's denial of enforcement of Bd's subpoena ad testificandum and duces tecum, denied, for differing reasons including lack of relevancy, overbroadness and Bd's lack of power, or that protective order would not adequately assure confidentiality)

2091 BASIS FOR COURT ACTION

Maurice Business Editor, Charleston Daily Mail v. N.L.R.B. **691 F.2d 182 (C.A. 4, July 1981)**

(ct denied Bd's mtn for stay pending appeal of district ct's granting of preliminary inj against enforcement of Bd's subpoena directed to newspaper editor in attempt to compel his testimony as non-party witness in ULP proceeding; ct's decision based on its assessment and balancing of likelihood of success on merits of appeal, harm to Bd if stay is denied and to editor if granted, and effect of granting or denying the stay upon interests of public)

4000 INJUNCTIVE RELIEF UNDER SECTION 10(j)

4001 GENERALLY

4001-5000 Nature of proceeding

N.L.R.B. v. Clara Frankel, d/b/a Surfside Nursing Home **No. 80-C-3418, Dec. 23, 1980, DC E.D. NY (unreported)**

(Sec. 10(j) gives district ct power to enjoin alleged ULPs even before such charges have become subject of formal proceedings before ALJ or Bd; ct may so act if there is reasonable cause to believe that respondent has committed an ULP, and if grant of injunctive relief is just and proper under the circumstances)

4001-7500 Purpose of proceeding to maintain status quo pending Board determination

Arthur Eisenberg, RD v. Wellington Hall Nursing Home, Inc. **651 F.2d 902 (C.A. 3, May 1981)**

(unavailability of injunction bond was no reason for permitting change in status quo which risks giving ongoing effect to what may be ULP)

Advertisers Manufacturing Company v. N.L.R.B. **677 F.2d 544 (C.A. 7, Apr. 1982)**

(district ct's Sec. 10(j) inj affirmed where there is reasonable cause to believe E's post-election unilateral changes, which Bd has under review, did constitute violations and, contrary to E's belief, does not order E to bargain, but merely restores the *status quo* in significant terms and conditions of employment, as of the date of election)

4008 COURT PROCEDURE

4008-8000 Intervention

4008-8033 Charging party

Robert J. Wilson, RD v. Liberty Homes, Inc. **500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)**

(U's mtn to intervene in 10(j) proceeding denied, where there was no possibility that outcome will adversely affect U's ability to protect its interests, and Congress excluded charging parties such as U from participating in 10(j) actions, empowering only Bd to do so)

4016 TEMPORARY RESTRAINING ORDER

4016-7500 Criteria for granting

4016-7501 Generally

4016-7501—Cont.

Robert J. Wilson, RD v. Liberty Homes, Inc. **663 F.2d 620 (C.A. 7, Oct. 1981)**

(three factors must be considered when determining appropriateness of Section 10(j) relief: (1) traditional equitable considerations such as the need to preserve or restore status quo; (2) need to prevent frustration of basic remedial purposes of Act; and (3) degree to which public interest is affected by continuing violation. Appellate review of relief fashioned by district ct is limited to determination of whether district ct abused its discretion in granting such relief)

Robert J. Wilson, RD v. Liberty Homes, Inc. **663 F.2d 620 (C.A. 7, Oct. 1981)**

(in 10(j) or 10(l) case, ct need not, indeed should not, make finding of E motivation. It need only find reasonable cause for belief that there was such motivation)

Robert J. Wilson, RD v. Liberty Homes, Inc. **500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)**

(request that E be enjoined from interrogating Ees concerning U, threatening Ees for conduct protected by Act, and discharging them for anti-U reasons, denied, since such conduct is already illegal under Act which provides for redressing such violations)

4016-7544 Danger of repetition

Humphrey v. Southside Electric Cooperative, Inc. **No. CA-78-0466, June 12, 1978, DC E.D. VA (unreported)**

(RD entitled to *temporary inj*, pending final disposition of ULPs before Bd, enjoining E from refusing to recognize and bargain with U, unilaterally reclassifying Ees and increasing wages, and distributing letters encouraging Ees to abandon U, where ct had reasonable cause to believe E had engaged in alleged ULPs and such conduct would have been repeated or continued unless enjoined; ct made and filed its *Findings of Fact and Conclusions of Law* upon consideration of *record as a whole*)

4024 HEARING

4024-8000 Discovery

N.L.R.B. v. Martins Ferry Hospital Association **649 F.2d 445 (C.A. 6, May 1981)**

(contention ct denied E due process by permitting Bd to engage in pretrial discovery in subpoena enforcement proceedings while denying E equal discovery, rejected; since if current investigation conducted by GC should result in filing of complaint, E will be entitled to hearing and opportunity to refute evidence obtained by subpoena, and any failure on part of Bd to conduct due process hearing can be challenged before Bd and is subject to ct review)

4032 SCOPE OF COURT INQUIRY

N.L.R.B. v. Clara Frankel, d/b/a Surfside Nursing Home **No. 80-C-3418, Dec. 23, 1980, DC E.D. NY (unreported)**

(in deciding whether 10(j) inj would be *just and proper*, district ct must, under 2nd circuit's General Electric 10(j) standard, consider whether circumstances are extraordinary, whether traditional equitable principles support affirmative application of Sec. 10(j), and whether the public interest would be served by accelerating invocation of remedy sought by charging party)

Robert J. Wilson, RD v. Liberty Homes, Inc. **500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)**

(outcome of Bd proceedings on merits of case is relevant to ct decision on 10(j) ptn; however, success on merits is only one of the factors to be weighed when making *just and proper* determination)

4032-3300 Commerce jurisdiction

Louis V. Baldovin, Jr., RD v. International Longshoremen's Association, AFL-CIO, et al. **626 F.2d 445 (C.A. 5, 1980)**

(inj denied since no basis to believe U's refusal to load grain aboard ships bound for Russia in order to protest Russia's invasion of another country, and avoid enhancing economic status of Russia *affected commerce*, where only political decision by foreign government could satisfy U's grievance; notwithstanding U's action affected producers and transporters of grain and those who loaded it aboard ships; boycott secondary in that U did not seek to affect labor relations of E's with which it had contract or terms and conditions of employment of their Ees)

4032-6700 Reasonable cause to believe unfair labor practice has occurred

Kaynard, RD v. Mego Corp., et al. **633 F.2d 1026 (C.A. 2, 1980)**

(RD is not required to show that a ULP occurred, or that governing precedents are in perfect harmony, but that there is *reasonable cause to believe that a Court of Appeals will enforce a Bd decision finding a ULP*)

Arthur Eisenberg, RD v. Wellington Hall Nursing Home, Inc. **651 F.2d 902 (C.A. 3, May 1981)**

(reasonable cause for belief that E had anti-U motivation (in discharging unit Ees) satisfied on record in instant case)

Robert J. Wilson, RD v. Liberty Homes, Inc. **663 F.2d 620 (C.A. 7, Oct. 1981)**

(district ct had reasons to believe that E's subcontracting of unit work was motivated by anti-U considerations and hence unlawful where E knew Ees were engaged in U activity, supervisor had warned Ees U representation was critical mistake and E made no commitments regarding subcontracting until after U filed ULP charges)

Robert J. Wilson, RD v. Liberty Homes, Inc. **663 F.2d 620 (C.A. 7, Oct. 1981)**

(E's contentions that RD has greater burden of proving by substantial evidence on record as a whole that E's actions motivated by anti-U animus, rejected, since that standard applicable only to determination of merits of ULP charge; in Section 10(j) or 10(l) inj cases ct need not, indeed should not, make finding of E motivation. It need only find reasonable cause for belief that there was such a motivation)

Robert J. Wilson, RD v. Liberty Homes, Inc. **663 F.2d 620 (C.A. 7, Oct. 1981)**

(evidentiary burden on RD in 10(j) proceeding is not as great as burden on Bd in enforcement action. If evidence viewed in light most favorable to RD would reasonably support finding violation of Act has occured, RD has discharged his relatively insubstantial burden and the district ct may grant appropriate relief since district ct's reasonable cause determination is factual one it may not be disturbed on appeal unless clearly erroneous)

Hirsch, etc. v. Trim Lean Meat Products, Inc. **479 F.Supp. 1351 (DC DE, Jan. 1980)**

(district's ct's sole function is to determine whether reasonable cause and just and proper standards have been met, and not to determine ultimate merits of case before it)

N.L.R.B. v. Clara Frankel, d/b/a Surfside Nursing Home **No. 80-C-3418, Dec. 23, 1980, DC E.D. NY (unreported)**

(Sec. 10(j) gives district ct power to enjoin alleged ULPs even before such charges have become subject of formal proceedings before ALJ or Bd; ct may so act if there is reasonable cause to believe that respondent has committed an ULP, and if grant of injunctive relief is just and proper under the circumstances)

Samuel M. Kaynard, RD v. Mego Corp. **484 F.Supp. 167 (D Ct NY, 1980)**

(to decide whether bargaining unit is accretion to existing unit or not, it must first be determined that such bargaining unit truly represents uncoerced majority of Ees involved; here, majority of Ees at new plant had expressly disavowed bargaining representative who had entered into contract with E; thus, reasonable cause exists to support claim that recognition of U at new plant constitutes ULP)

4032-6733 On facts

Kaynard, RD v. Mego Corp., et al. **633 F.2d 1026 (C.A. 2, 1980)**

(RD had reasonable cause to believe that E and U representing its Ees at old plant had violated 8(a)(3), (2) and (1) and 8(b)(2) and (1)(A) respectively by using accretion clause of their contract for old plant's Ees to extend contract coverage to Ees at E's new plant where incumbent U did not represent majority of Ees there, who had shown support of rival U and had different work and separate scheduling from Ees at old plant)

Robert J. Wilson, RD v. Liberty Homes, Inc. **663 F.2d 620 (C.A. 7, Oct. 1981)**

(in 10(j) or 10(l) case, ct need not, indeed should not, make finding of E motivation. It need only find reasonable cause for belief that there was such motivation)

Hirsch, etc. v. Trim Lean Meat Products, Inc. **479 F.Supp. 1351 (DC DE, Jan. 1980)**

(great deference is to be accorded petitioner's evidence and legal theories; so long as evidence favorable to petitioner lies within range of rationality, it is to be accepted and where more than one inference is possible, inferences favorable to petitioner may be drawn)

Daniel Silverman, RD v. Major League Baseball Player Relations Committee, Inc. et al. **516 F.Supp. 588 (D Ct NY, June 1981)**

(ptn for inj pending disposition ofplayer-association's charge that multi-owner committee failed to provide requested financial information, denied for lack ofreasonable cause to believe ULP was committed; Es are not required to disclose financial condition except when claiming inability to pay during bargaining sessions--as Es here did not--and statements by individuals not authorized to determine committee's position did not put *inability* to pay in issue)

4032-6733—Cont.

Farkas, etc. v. Connector Manufacturing Company **No. C-1-80-115, Apr. 14, 1980, DC S.D. OH (unreported)**

(inj granted since petitioner had reasonable cause to believe ULPs had occurred in view of timing of E's revision of no-solicitation rule when it became aware of organizational campaign, interrogation accompanied by threats, granting of increased wages and fringe benefits, and support, interference or domination by E of labor organization; and since Bd's ultimate goal is to insure that fair election is conducted free of effects of any ULPs, inj is necessary to preserve status quo that existed prior to commission of alleged ULPs)

Humphrey v. Southside Electric Cooperative, Inc. **No. CA-78-0466, June 12, 1978, DC E.D. VA (unreported)**

Robert J. Wilson, RD v. Liberty Homes, Inc. **500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)**

(in determining whether RD has reasonable cause to believe that E violated Act, ct is limited to determining whether evidence exists which supports finding of reasonable cause, resolving all factual disputes in favor of RD; and burden of proof that he must sustain is relatively light)

Robert J. Wilson, RD v. Liberty Homes, Inc. **500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)**

(evidence was sufficient to support reasonable cause belief that E violated 8(a)(5) where E refused U's demand for recognition after it had obtained authorization cards from 100% of Ees; RD's argument that E's offer to recognize U for limited purpose of negotiating Ees' terminations is not sufficient to satisfy E's obligation to bargain in good faith is substantial and not frivolous)

Robert J. Wilson, RD v. Liberty Homes, Inc. **500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)**

(in its discussion of reasonable cause ct did not evaluate evidence that E had legitimate business reasons for deciding to terminate its trucking operations because they were operating at a financial loss, since ct need only decide whether there is evidence to support finding of illegal conduct; motivation is irrelevant if E was additionally motivated by anti-U considerations)

Robert J. Wilson, RD v. Liberty Homes, Inc. **500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)**

(E's mtn to alter or amend 10(j) order on ground that ct's finding that RD's burden of proof was *relatively insubstantial* was improper and that evidence was insufficient to show a likelihood of violation of Act, denied; clear and convincing evidence for finding reasonable cause is not required and RD's burden is relatively insubstantial; in any event, evidence was sufficient even under more vigorous *likelihood of violation* standard proposed by E)

4039 CRITERIA FOR GRANT OF RELIEF

4039-0100 Generally

Robert J. Wilson, RD v. Liberty Homes, Inc. **663 F.2d 620 (C.A. 7, Oct. 1981)**

(*three factors must be considered when determining appropriateness of Section 10(j) relief: (1) traditional equitable considerations such as the need to preserve or restore status quo; (2) need to prevent frustration of basic remedial purposes of Act; and (3) degree to which public interest is affected by continuing violation. Appellate review of relief fashioned by district ct is limited to determination of whether district ct abused its discretion in granting such relief*)

Robert J. Wilson, RD v. Liberty Homes, Inc. **500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)**

(order to resume subcontracted operations and to reinstate Ees held just and proper since, unless interim relief is provided, delay inherent in Bd's processes will make order ineffective and Bd order alone will provide no relief to Ees; U will be harmed because unit it represented will have been irremediably dissipated, and general unionism will suffer since Ees, having suffered because of association with U, will avoid any future involvement with Us; and Es and Ees alike need to know that ULPs will not go w/o effective redress)

4039-2000 Purpose of Act frustrated absent relief

Winifred D. Morio, RD v. The North American Soccer League and its Constituent Member Clubs **632 F.2d 217 (C.A. 2, Oct. 1980)**

(where equity ct has *reasonable cause* to believe that flagrant ULPs' have been committed, remedy requiring E to revoke unilateral changes in employment conditions and individual player's contracts proper not withstanding final decision by Bd pending as E's practices threatened to render Bd's processes totally ineffective)

Robert J. Wilson, RD v. Liberty Homes, Inc. **663 F.2d 620 (C.A. 7, Oct. 1981)**

(district ct erred where in Section 10(j) proceeding it declined to order E to c/d from interrogating, restraining or discriminating against Ees in violation of Act, notwithstanding contention order unnecessary since conduct sought to be enjoined is already made illegal by Act and Act provides adequate procedures for redressing violations, inasmuch as if mere availability of ultimate ULP sanctions were held to obviate need for interim relief, there would be no need for Section 10(j))

Robert J. Wilson, RD v. Liberty Homes, Inc. **500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)**

(in determining whether ordering E to resume subcontracted operations and to recognize and bargain with U is just and proper, it is appropriate to consider (1) need for inj to prevent frustration of basic remedial purpose of Act, (2) degree to which public interest will be affected by continuing violation of Act, and (3) traditional equitable considerations)

4039-4000 Threat to public interest

Arthur Eisenberg, RD v. Wellington Hall Nursing Home, Inc. **651 F.2d 902 (C.A. 3, May 1981)**

(interest is in integrity of collective bargaining process)

Daniel Silverman, RD v. Major League Baseball Player Relations Committee, Inc. et al. **516 F.Supp. 588 (D Ct NY, June 1981)**

(ct refused to grant inj, notwithstanding its desire in public interest to prevent possible strike, since there was no reasonable cause to believe ULP had been committed, and association had apparently filed charge insincerely and as bargaining tactic)

N.L.R.B. v. Clara Frankel, d/b/a Surfside Nursing Home **No. 80-C-3418, Dec. 23, 1980, DC E.D. NY (unreported)**

(second circuit ct of appeals has delineated reach of Act's *just and proper* requirement under Sec. 10(j) which should be applied in public interest and not in vindication of purely private rights)

Kaynard, RD v. Courier Life Publications, Inc. **No. 79-C-2610, May 13, 1980, DC E.D. NY (unreported)**

(ct held that RD was not entitled to Sec. 10(j) inj enjoining E from, *inter alia,* interrogating Ees and discharging Ees to discourage U membership, where ULP charges were still pending before ALJ for final disposition and any delay pending this decision would have minimum impact on U's organizational efforts; furthermore, ct also denied ptn to order E to reinstate discharged Ees and bargain with U for above-stated reasons)

Robert J. Wilson, RD v. Liberty Homes, Inc. **500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)**

(in determining whether ordering E to resume subcontracted operations and to recognize and bargain with U is just and proper, it is appropriate to consider (1) need for inj to prevent frustration of basic remedial purpose of Act, (2) degree to which public interest will be affected by continuing violation of Act, and (3) traditional equitable considerations)

Robert J. Wilson, RD v. Liberty Homes, Inc. **500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)**

(E's mtn to alter or amend 10(j) order requiring E to resume subcontracted operations, reinstate terminated Ees, and bargain with U on ground that impact of E's conduct was not grave enough to warrant 10(j) inj, denied, since there may be widespread and serious repercussions from E's ULPs, reasonably believed to have been committed; threat to public interest may be substantial, and degree to which public interest is affected is only one of several factors to be considered in ruling upon a 10(j) ptn)

4039-6000 Imminent danger of irreparable harm

Kaynard, RD v. Mego Corp., et al. **633 F.2d 1026 (C.A. 2, 1980)**

(TRO held just and proper and not abuse of discretion which enjoined E from recognizing U which represented its Ees at old plant as representative of its Ees at new plant pending Bd's final disposition of ULP charges, since, notwithstanding lack of flagrant or egregious violations or great urgency, advantages of U's incumbency as bargaining representative over rival U supported by majority of Ees might corrode Ees' free and uncoerced choice)

Arthur Eisenberg, RD v. Wellington Hall Nursing Home, Inc. **651 F.2d 902 (C.A. 3, May 1981)**

(refusal (by district ct) to order reinstatement (of discharged Ees) was abuse of discretion that *Section* 10(j) affords in view of potential for irreparable harm to certified U from loss of 8 U supporters in small bargaining unit)

N.L.R.B. v. Clara Frankel, d/b/a Surfside Nursing Home **No. 80-C-3418, Dec. 23, 1980, DC E.D. NY (unreported)**

(request for issuance of 10(j) inj denied where ct was satisfied that alleged harm to U from accused conduct of E can be alleviated by Bd order directing reinstatement of discharged Ees with appropriate backpay awards, and such order would result if Bd eventually condemns E's conduct as ULP; potential impact of such order negates conclusion that harm suffered by U

4039-6000—Cont.

and its members as result of E's conduct is or will be irreparable or extraordinary)

4039-8000 Maintenance of status quo

Arthur Eisenberg, RD v. Wellington Hall Nursing Home, Inc. 651 F.2d 902 (C.A. 3, May 1981)

(unavailability of injunction bond was no reason for permitting change in status quo which risks giving ongoing effect to what may be ULP)

Hirsch, etc. v. Trim Lean Meat Products, Inc. 479 F.Supp. 1351 (DC DE, Jan. 1980)

N.L.R.B. v. Clara Frankel, d/b/a Surfside Nursing Home No. 80-C-3418, Dec. 23, 1980, DC E.D. NY (unreported)

(inj is most appropriately issued where aim is to preserve the *status quo* and to prevent alteration in legal relations; it is most difficult to justify when it would establish *pro tempore* new legal relations, require action that could effect job turnover, and would be useless to assure finality in anything that it brought about)

Kaynard, RD v. Haym Salomon Home For The Aged, et al. No. CIV. 80-1568, Sept. 5, 1980, DC E.D. NY (unreported)

(inj denied where relief Bd seeking-reinstate U as bargaining agent, reinstate dismissed Ees-is whole of relief sought as ultimate goal; purpose of inj is to preserve status quo-here 80% of nursing home Ees replaced, past deplorable condition of home largely caused by former Ees-; thus reinstatement creates risk that conditions will revert jeopodizing health of patients; moreover, if Bd proves complaint, backpay will be provided, rinstatement scheme will screen out Ees whose dismissal would have been justified based on cause)

Farkas, etc. v. Connector Manufacturing Company No. C-1-80-115, Apr. 14, 1980, DC S.D. OH (unreported)

(inj granted since petitioner had reasonable cause to believe ULPs had occurred in view of timing of E's revision of no-solicitation rule when it became aware of organizational campaign, interrogation accompanied by threats, granting of increased wages and fringe benefits, and support, interference or domination by E of labor organization; and since Bd's ultimate goal is to insure that fair election is conducted free of effects of any ULPs, inj is necessary to preserve status quo that existed prior to commission of alleged ULPs)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(E's mtn to alter or amend 10(j) order requiring E to bargain with U on ground that order is improper because it does not result in restoration of status quo since status quo prior to E's subcontracting of operations was that Ees were not represented by U, denied; restoration of status quo is not the only consideration relevant to 10(j) decision; other considerations are to prevent frustration of basic remedial purpose of Act, which favors bargaining order herein; moreover, U's majority status was never in doubt, and status quo appropriately includes organized work force entitled to good faith bargaining)

4039-9000 Stage of proceeding before Board

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(issue of whether district ct properly found reasonable cause to believe Act violated and issued temporary inj not moot, notwithstanding Bd had meanwhile issued decision on merits dismissing ULP charges, since neither party had sought order from district ct dissolving inj or suggested mootness)

4047 SCOPE OF RELIEF

4047-1700 Within discretion of court

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(in Section 10(j) inj proceeding where *ct has reasonable cause to believe that particularly flagrant ULPs have been committed, just and proper relief includes any remedy ordinarily fashioned by Bd in ULP proceeding despite fact final decision by Bd in ULP proceeding still pending*)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(so long as Bd has reasonable cause to believe that charged party in 10(j) proceeding has violated Act, district ct has jurisdiction to order whatever relief is deemed just and proper)

4047-5800 Persons affected

N.L.R.B. v. Clara Frankel, d/b/a Surfside Nursing Home No. 80-C-3418, Dec. 23, 1980, DC E.D. NY (unreported)

(in 10(j) proceeding, Bd's concern that reinstatement order would have little practical effect since, if it does issue, such order would come down many months in future after economic exigencies would force discharged U members to seek other employment, held outside of instant inquiry in accordance with 2nd circuit's holding in General Electric)

N.L.R.B. v. Clara Frankel, d/b/a Surfside Nursing Home No. 80-C-3418, Dec. 23, 1980, DC E.D. NY (unreported)

(since discharged U members were offered reinstatement to their jobs by E, which was same relief sought in 10(j) proceeding herein, ct held grant of such reinstatement, which dischargees refused, through extraordinary remedy of 10(j) inj would run counter to traditional equitable principles)

4047-8300 Duration

Kaynard, RD v. Mego Corp., et al. 633 F.2d 1026 (C.A. 2, 1980)

(ct modified inj to provide that it terminate by specified date if ALJ had not rendered decision by then and by another specified date if in case of appeal Bd had then rendered final decision by then; inj reduces GC's incentive for speed by granting considerable portion of desired relief, and Ees herein have been unrepresented more than a year)

Harold Boire, RD v. SAS Ambulance Service, Inc. dba Florida Ambulance Service et al. No. 80-1112, Oct. 20, 1980, DC M.D. FL (unreported)

(until final disposition of matter by Bd)

Joseph A. Szabo, Acting RD v. Kantor Pepsi-Cola Bottling Co. of Beloit, Wisconsin No. 79-C-176, Nov. 30, 1979, DC W.D. WI (unreported)

(District ct granted mtn to vacate 10(j) inj in view of dismissal of C by ALJ as first determination to emerge in administrative process to resolve reasonableness of RD cause to believe Act violated)

4055 COURT DECISION

4055-6700 Ultimate relief is for Board

N.L.R.B. v. Clara Frankel, d/b/a Surfside Nursing Home No. 80-C-3418, Dec. 23, 1980, DC E.D. NY (unreported)

(ct denied ptn for 10(j) inj, noting that problem involving maze of labor-management problems involved herein should be adjudicated by BD which was the expert agency designed by Congress to untangle labor disputes, and that the public interest would best be served by leaving matter to ALJ and Bd)

Humphrey v. Southside Electric Cooperative, Inc. No. CA-78-0466, June 12, 1978, DC E.D. VA (unreported)

Humphrey v. Southside Electric Cooperative, Inc. No. CA-78-0466, June 12, 1978, DC E.D. VA (unreported)

4057 COURT OF APPEALS REVIEW

4057-0100 Generally

4057-0150 Mootness

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(issue of whether district ct properly found reasonable cause to believe Act violated and issued temporary inj not moot, notwithstanding Bd had meanwhile issued decision on merits dismissing ULP charges, since neither party had sought order from district ct dissolving inj or suggested mootness)

4057-5000 Scope of review

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(evidentiary burden on RD in 10(j) proceeding is not as great as burden on Bd in enforcement action. If evidence viewed in light most favorable to RD would reasonably support finding violation of Act has occured, RD has discharged his relatively insubstantial burden and the district ct may grant appropriate relief since district ct's reasonable cause determination is factual one it may not be disturbed on appeal unless clearly erroneous)

4057-5050 Legal conclusions

4057-5050—Cont.

Arthur Eisenberg, RD v. Wellington Hall Nursing Home, Inc. 651 F.2d 902 (C.A. 3, May 1981)

(order of ct of appeals granting injunctive relief pending appeal shall remain in effect until such time as order consistent with opinion in instant case is entered in district ct)

4057-5075 Need for equitable relief

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(three factors must be considered when determining appropriateness of Section 10(j) relief: (1) traditional equitable considerations such as the need to preserve or restore status quo; (2) need to prevent frustration of basic remedial purposes of Act; and (3) degree to which public interest is affected by continuing violation. Appellate review of relief fashioned by district ct is limited to determination of whether district ct abused its discretion in granting such relief)

4057-7000 Procedure

4057-7060 Remand to Regional Director

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(remand to RD to enter c/d order which district ct had erred when it refused to so enter in Section 10(j) proceeding, notwithstanding contention order unnecessary since conduct sought to be enjoined is already made illegal by Act and Act provides adequate procedures for redressing violations; if mere availability of ultimate ULP sanctions were held to obviate need for interim relief, there would be no need for Section 10(j))

4070 EMPLOYER CONDUCT INVOLVED

4070-0800 Assistance to union

Hirsch, etc. v. Trim Lean Meat Products, Inc. 479 F.Supp. 1351 (DC DE, Jan. 1980)

(inj warranted where there existed reasonable cause to believe that E aided U in solicitation of cards and granted recognition to U before plant was in full operation)

Samuel M. Kaynard, RD v. Mego Corp. 484 F.Supp. 167 (D Ct NY, 1980)

(to decide whether bargaining unit is accretion to existing unit or not, it must first be determined that such bargaining unit truly represents uncoerced majority of Ees involved; here, majority of Ees at new plant had expressly disavowed bargaining representative who had entered into contract with E; thus, reasonable cause exists to support claim that recognition of U at new plant constitutes ULP)

Edwin Youngblood, RD v. Solar Excavating, Inc. 486 F.Supp. 159 (D Ct OK, 1980)

(request for temporary inj denied where E had recognized U w/o election and evidence does not show that ULP's were so pervasive as to raise serious question that majority of Ees did not freely sign U authorization cards)

4070-1700 Discharges

Arthur Eisenberg, RD v. Wellington Hall Nursing Home, Inc. 651 F.2d 902 (C.A. 3, May 1981)

(reasonable cause for belief that E had anti-U motivation (in discharging unit Ees) satisfied on record in instant case)

Hirsch, etc. v. Trim Lean Meat Products, Inc. 479 F.Supp. 1351 (DC DE, Jan. 1980)

(reinstatement order warranted where Ees reasonably believed to have been discharged in violation of Section 8(a)(3))

4070-2100 Surveillance, coercion, interrogation, intimidation

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(district ct erred when it found no reasonable cause to believe interrogations violated Act since unable to determine interrogator's actual or perceived authority where E had stipulated interrogator was supervisor; further, interrogator controlled assignment of work, Ees perceived they were threatened, particularly where they deliberately withheld information from supervisor)

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(district ct erred where in Section 10(j) proceeding it declined to order E to c/d from interrogating, restraining or discriminating against Ees in violation of Act, notwithstanding contention order unnecessary since conduct sought to be enjoined is already made illegal by Act and Act provides adequate procedures for redressing violations, inasmuch as if mere availability of ultimate ULP sanctions were held to obviate need for interim relief, there would be no need for Section 10(j))

Hirsch, etc. v. Trim Lean Meat Products, Inc. 479 F.Supp. 1351 (DC DE, Jan. 1980)

(inj warranted where there existed reasonable cause to believe that E questioned Ees about their U activities, solicited aid of Ees in discouraging U activities, threatened Ees with loss of jobs if they persisted in U activities, created an impression of surveillance, and threatened move or shutdown of plant should U activities continue)

Raymond A. Jacobson, RD v. Womentco Coca-Cola Bottling Company of Nashville, Inc. No. 79-3554-NA-CV, Dec. 26, 1979, DC M.D. TN (unreported)

(ct refused to issue inj where it found that there was no reasonable cause to believe that alleged ULP's had been committed)

Humphrey v. Southside Electric Cooperative, Inc. No. CA-78-0466, June 12, 1978, DC E.D. VA (unreported)

(RD entitled to *temporary inj,* pending final disposition of ULPs before Bd, enjoining E from refusing to recognize and bargain with U, unilaterally reclassifying Ees and increasing wages, and distributing letters encouraging Ees to abandon U, where ct had reasonable cause to believe E had engaged in alleged ULPs and such conduct would have been repeated or continued unless enjoined; ct made and filed its *Findings of Fact and Conclusions of Law* upon consideration of *record as a whole*)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(evidence was insufficient for finding reasonable cause to believe that E committed independent 8(a)(1) violations when its manager questioned Ees and warned them against joining U; whether conduct reasonably induced fear of reprisal depends upon authority that Ees perceived him as having, but there was no evidence to indicate extent of manager's actual or perceived authority; however, manager's actual authority does not determine E's liability)

4070-2500 Distributing of anti-union literature

Humphrey v. Southside Electric Cooperative, Inc. No. CA-78-0466, June 12, 1978, DC E.D. VA (unreported)

(RD entitled to *temporary inj,* pending final disposition of ULPs before Bd, enjoining E from refusing to recognize and bargain with U, unilaterally reclassifying Ees and increasing wages, and distributing letters encouraging Ees to abandon U, where ct had reasonable cause to believe E had engaged in alleged ULPs and such conduct would have been repeated or continued unless enjoined; ct made and filed its *Findings of Fact and Conclusions of Law* upon consideration of *record as a whole*)

4070-3400 Discontinuance or subcontracting of operation

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(district ct had reasons to believe that E's subcontracting of unit work was motivated by anti-U considerations and hence unlawful where E knew Ees were engaged in U activity, supervisor had warned Ees U representation was critical mistake and E made no commitments regarding subcontracting until after U filed ULP charges)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(ample evidence existed from which RD could conclude that E's decision to subcontract its trucking operations was not motivated by legitimate business reasons, but instead, at least in part, by anti-U considerations, in view of E's announcement of decision to subcontract after U demanded recognition; expenditure, prior to announcement, of considerable capital to improve trucking operations; gradual and not unexpected increase in costs of operation; and retention of trucking operations at its other plants)

4070-5000 Refusal to recognize

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(district ct properly determined there was reasonable cause to believe E had committed ULPs rendering fair election impossible where it unlawfully subcontracted unit work, and thus its refusal to bargain on basis of authorization cards violative of 8(a)(5))

Humphrey v. Southside Electric Cooperative, Inc. No. CA-78-0466, June 12, 1978, DC E.D. VA (unreported)

(RD entitled to *temporary inj,* pending final disposition of ULPs before Bd, enjoining E from refusing to recognize and bargain with U, unilaterally reclassifying Ees and increasing wages, and distributing letters encouraging Ees to abandon U, where ct had reasonable cause to believe E had engaged in alleged ULPs and such conduct would have been repeated or continued unless enjoined; ct made and filed its *Findings of Fact and Conclusions of Law* upon consideration of *record as a whole*)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(there was reasonable cause to believe E unlawfully refused to bargain where, although authorization cards alone from 100% of Ees do not create duty to bargain, E's unilateral decision to subcontract out work and to discharge its Ees left U powerless to indicate its majority status by means of

4070-5000—Cont.

election since U's R ptn was dismissed because termination of operations was imminent; and it is for Bd to decide whether refusal to bargain, when coupled with conduct which frustrates Bd electoral procedures, constitutes an 8(a)(5) violation)

4070-6700 Refusal to bargain in good faith

Winifred D. Morio, RD v. The North American Soccer League and its Constituent Member Clubs 632 F.2d 217 (C.A. 2, Oct. 1980)

(where equity ct has *reasonable cause* to believe that flagrant ULPs' have been committed, remedy requiring E to revoke unilateral changes in employment conditions and individual player's contracts proper not withstanding final decision by Bd pending as E's practices threatened to render Bd's processes totally ineffective)

Harold Boire, RD v. SAS Ambulance Service, Inc. dba Florida Ambulance Service et al. No. 80-1112, Oct. 20, 1980, DC M.D. FL (unreported)

(10(j) inj granted and E restrained from refusing to bargain with U notwithstanding that 2 members of U bargaining committee had been unlawfully discharged by E prior to attempted negotiations; circumstances did not suggest species of ill-will between parties that would justify E's refusal to bargain; circumstances were not permissable exception to rule under criteria of *General Electric Company v. NLRB*, 412 F.2d 512 (2d Cir. 1969) where negotiator's hostility toward E was held to be sufficient to sustain finding that E's refusal to bargain was not ULP)

Winifred D. Morio, RD v. The North American Soccer League and its Constituent Member Clubs 501 F.Supp. 633 (DC S.D. NY, Aug. 1980)

(inj to render voidable contract provisions warranted, where E admitted unilateral changes of employment conditions by entering into individual contracts with Ees after U was certified and by modifying, continuing, extending, or renewing contracts which were entered into prior to certification)

Humphrey v. Southside Electric Cooperative, Inc. No. CA-78-0466, June 12, 1978, DC E.D. VA (unreported)

(RD entitled to *temporary inj*, pending final disposition of ULPs before Bd, enjoining E from refusing to recognize and bargain with U, unilaterally reclassifying Ees and increasing wages, and distributing letters encouraging Ees to abandon U, where ct had reasonable cause to believe E had engaged in alleged ULPs and such conduct would have been repeated or continued unless enjoined; ct made and filed its *Findings of Fact and Conclusions of Law* upon consideration of *record as a whole*)

4078 UNION CONDUCT INVOLVED

4078-2800 Strikes

Johansen v. Operating Engineers, Local 12 (Maas & Feduska, Inc.) No. CV 2765 (D Ct. CA, Aug. 2, 1978 (unreported))

(inj granted where U engaged in economic actions including strikes and withholding of services of Ee members, in furtherance of demand that E withdraw its ptn for review of Bd's D/O in violation of Sec. 8(b)(3))

4078-5600 Refusal to negotiate in good faith

Johansen v. Operating Engineers, Local 12 (Maas & Feduska, Inc.) No. CV 2765 (D Ct. CA, Aug. 2, 1978 (unreported))

(inj granted where U engaged in economic actions including strikes and withholding of services of Ee members, in furtherance of demand that E withdraw its ptn for review of Bd's D/O in violation of Sec. 8(b)(3))

Hirsch, etc. v. Trim Lean Meat Products, Inc. 479 F.Supp. 1351 (DC DE, Jan. 1980)

(bargaining order appropriate where U represented majority of appropriate unit when it demanded recognition, E's ULP's had effect of undermining U's majority status, and free and unhampered election would not be possible due to E's anti-U conduct)

4085 RELIEF AGAINST EMPLOYERS

4085-0100 Generally

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(E's mtn to alter or amend 10(j) order on ground that RD had originally refused to issue complaint and then 7 months later, after review and remand by Bd, filed instant 10(j) ptn, denied, where issue was adequately covered in ct's order, and E has not raised any new arguments that would justify reexamination of issue here)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(in deciding E's mtn to suspend 10(j) inj pending appeal to circuit ct, district ct considers (1) likelihood that E will prevail on merit of its appeal, (2) whether E will suffer irreparable harm if inj is not stayed, (3) whether RD will suffer substantial harm if inj is stayed, and (4) the public interest)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(in denying E's mtn, made pursuant to Rule 62(c) of FRCP, ct noted that its enumerated factors (merits of E's appeal to circuit ct, irreparable harm to E if inj is not stayed and substantial harm to RD if stayed, and public interest) are generally considered by lower cts in connection with Rule 62(c) mtns)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(E's mtn to suspend 10(j) inj pending appeal to circuit ct, denied, since standard used by circuit ct makes likelihood of success for E less than probable inasmuch as its standard for sustaining district ct's finding is to determine whether evidence and inferences drawn therefrom support conclusion that there is reasonable cause to believe violation has occurred; moreover, requested relief would likely be enforced by circuit ct if ordered by Bd)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(in denying E's mtn to suspend 10(j) inj, ct rejected E's contention that likelihood of success before Bd must be treated as important consideration; under 10(j), requirement that Bd must have reasonable cause to believe charged party has violated Act is much more easily satisfied than requirement that RD be likely to prevail before Bd; moreover, 10(j) injs are unlike other preliminary injs which require showing of likelihood of success on merits; to require same showing in 10(j) actions, Rule 62(c) of FRCP would effectively replace reasonable cause standard)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(E's mtn to suspend 10(j) inj denied where interest of, and potential harm to RD, E, and public were evaluated at hearing and led to conclusion that issuance of inj was just and proper, and such conclusion is warranted on mtn herein where E has suggested no reason why it could not have produced evidence on matters it has raised herein at 10(j) hearing; and in view of damaging delay in instant case, additional evidence will not now be considered)

4085-0800 Bargain with majority representative

Samuel M. Kaynard, RD v. Palby Lingerie, Inc. 625 F.2d 1047 (C.A. 2, 1980)

(district ct's granting interim bargaining order appropriate, where, based on authorization cards, U had clear majority and E then engaged in such egregious ULP's as to make fair election impossible; fact that no final unit determination had yet been made did not preclude issuance of bargaining order where there was substantial basis for RD's unit determination and if bargaining order were denied by ct, later Bd approval of unit determination would come at time when those violating Act might have been able to accomplish their unlawful objective before being placed under any legal restraint)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(order requiring E, who subcontracted operations and terminated Ees, to bargain with U held just and proper, since by the time Bd finally rules on charges and obtains enforcement of any consequent orders, U support among Ees may have eroded thereby unfairly diminishing U's bargaining strength; delay in permitting E to avoid negotiations with U will deny benefits of potential bargaining agreement during such period; order only requires that E bargain and not that it reach any agreement; and no reason exists to suspect bargaining order will artificially enhance U's strength)

4085-1700 Recognize and bargain with certified union

Harold Boire, RD v. SAS Ambulance Service, Inc. dba Florida Ambulance Service et al. No. 80-1112, Oct. 20, 1980, DC M.D. FL (unreported)

4085-2900 Resume operations

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(E's mtn to alter or amend 10(j) order requiring E to resume subcontracted operations, reinstate terminated Ees, and bargain with U on basis of claimed new evidence negating RD's key element of case that U activity predated Ees' knowledge of E's decision to subcontract, denied, such evidence is immaterial inasmuch as evidence exists from which BD could conclude that reasonable cause exists to believe E knew of Ees' U activities prior to deciding to subcontract, and that such decision was motivated at least in part by anti-U considerations)

4085-2900—Cont.

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(E's mtn to alter or amend 10(j) order requiring E to resume subcontracted operations, reinstate terminated Ees, and bargain with U on ground ct failed to give proper weight to evidence showing that decision to subcontract was made prior to U organizing activity and was motivated solely by legitimate business considerations, denied, since ct does not weigh evidence and determine facts; instead, it assumes all factual disputes will be resolved by Bd in RD's favor and then determines whether those facts, with all reasonable inferences, indicate reasonable cause to believe violation occurred)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(E's mtn for new trial or to alter or amend 10(j) order requiring E to resume subcontracted operations on ground ct was in error in arriving at amount that resumption would cost which E claimed would be much higher than ct's figure, denied; ct's amount was reasonably arrived at in view of evidence, and E's claim for higher amount rested on statement in answer to ptn but E failed to produce evidence regarding costs; E will not now be granted new hearing in order to come forward with evidence that it could have presented at hearing)

4085-3300 Reinstate employees

Samuel M. Kaynard, RD v. Palby Lingerie, Inc. 625 F.2d 1047 (C.A. 2, 1980)

(district ct's order that E offer reinstatement to two active and open U supporters was just and proper where their discharges risked serious impact on Ee interest in unionization)

Samuel M. Kaynard, RD v. Palby Lingerie, Inc. 625 F.2d 1047 (C.A. 2, 1980)

(reinstatement warranted where Ees testified that Ee was discharged when she failed to heed instructions of E agents to cease distributing U literature on company premises during lunch break, since E articulated no special circumstances adequate to overcome presumption against restrictions on Ee distributions; alternatively, reinstatement also warranted on theory that E enforced its no distribution policy in discriminatory manner, where prior to U's organizing efforts, E permitted such activities on sale of candy by Ees during lunch period)

Samuel M. Kaynard, RD v. Palby Lingerie, Inc. 625 F.2d 1047 (C.A. 2, 1980)

(reinstatement warranted for U activist whose belief that she had been subjected by E to pattern of harassment and discriminatory assignments was supported by record and buttressed conclusion that she had been constructively discharged)

Arthur Eisenberg, RD v. Wellington Hall Nursing Home, Inc. 651 F.2d 902 (C.A. 3, May 1981)

(refusal (by district ct) to order reinstatement (of discharged Ees) was abuse of discretion that *Section* 10(j) affords in view of potential for irreparable harm to certified U from loss of 8 U supporters in small bargaining unit)

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(district ct's order to restore operation which E had subcontracted and offer reinstatement to Ees who were terminated as result of subcontracting proper, where ct had reasonable cause to believe Act violated and E failed to demonstrate that such remedy would endanger its continued viability and here cost of restoring operations not unduly burdensome expenditure in view size of company, extent of operations and nature of violations; further, unless interim relief is provided, strong likelihood that if and when Bd does order E to resume operations, delay inherent in Bd processes will cause order to be ineffective)

Hirsch, etc. v. Trim Lean Meat Products, Inc. 479 F.Supp. 1351 (DC DE, Jan. 1980)

(reinstatement order warranted where Ees reasonably believed to have been discharged in violation of Section 8(a)(3))

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(E's contention that order to resume subcontracted operations and to reinstate Ees would be improper and unjust because RD had originally ruled charges did not warrant issuance of complaint and then 7 months later, after review and remand by Bd, filed instant 10(j) ptn, rejected; RD has satisfied reasonable cause requirement and is entitled to same consideration that ptn would receive if it came to ct w/o having gone first through Bd's appeal procedure; after Bd's remand, ptn was filed promptly; and E has not shown that it has been harmed by delay)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(E's contention that order to resume subcontracted trucking operations and to reinstate Ees would be improper and unjust because of financial burden it would impose, rejected, since E, who maintains several plants through country, cannot be characterized as a relatively small company; E failed to come forward with evidence that financial costs of resumption of operations will be a substantial burden; there is reason to believe that resumption will have a remedial effect; and resumption will not be wasted since E continues to stay in business)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(E's mtn to alter or amend 10(j) order requiring E to resume subcontracted operations, reinstate terminated Ees, and bargain with U on basis of claimed new evidence negating RD's key element of case that U activity predated Ees' knowledge of E's decision to subcontract, denied, such evidence is immaterial inasmuch as evidence exists from which BD could conclude that reasonable cause exists to believe E knew of Ees' U activities prior to deciding to subcontract, and that such decision was motivated at least in part by anti-U considerations)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(E's mtn to alter or amend 10(j) order requiring E to resume subcontracted operations, reinstate terminated Ees, and bargain with U on ground ct failed to give proper weight to evidence showing that decision to subcontract was made prior to U organizing activity and was motivated solely by legitimate business considerations, denied, since ct does not weigh evidence and determine facts; instead, it assumes all factual disputes will be resolved by Bd in RD's favor and then determines whether those facts, with all reasonable inferences, indicate reasonable cause to believe violation occurred)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(E's mtn to suspend 10(j) inj requiring reinstatement of Ees terminated when their work was subcontracted, on ground they are now employed elsewhere, denied, since E is only required to offer Ees reemployment and if Ees decline offer because satisfied with other employment, E will be spared expense of reemploying them and of purchasing trucks necessary for them to perform their duties; but if Ees still desire fromer jobs, it is just and proper that they now be offered them)

4085-4800 Restore operation

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(district ct's order to restore operation which E had subcontracted and offer reinstatement to Ees who were terminated as result of subcontracting proper, where ct had reasonable cause to believe Act violated and E failed to demonstrate that such remedy would endanger its continued viability and here cost of restoring operations not unduly burdensome expenditure in view size of company, extent of operations and nature of violations; further, unless interim relief is provided, strong likelihood that if and when Bd does order E to resume operations, delay inherent in Bd processes will cause order to be ineffective)

4085-4900 Render contract provisions voidable

Winifred D. Morio, RD v. The North American Soccer League and its Constituent Member Clubs 501 F.Supp. 633 (DC S.D. NY, Aug. 1980)

(inj to render voidable contract provisions warranted, where E admitted unilateral changes of employment conditions by entering into individual contracts with Ees after U was certified and by modifying, continuing, extending, or renewing contracts which were entered into prior to certification)

4085-8000 Bargain in good faith

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(bargaining order appropriate in Section 10(j) proceeding to remedy Section 8(a)(5) violation since RD made showing U once had majority and that E had engaged in ULPs so as to make fair election impossible, where E after refusing to bargain with U on basis of authorization cards had subcontracted operations and discharged Ees; in absence of such order, purpose of Act apt to be frustrated since before Bd can rule on charges, U support may erode, and longer E permitted to avoid negotiating with U longer Ees denied benefits of bargaining agreement)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(E's mtn to alter or amend 10(j) order requiring E to resume subcontracted operations, reinstate terminated Ees, and bargain with U on basis of claimed new evidence negating RD's key element of case that U activity predated Ees' knowledge of E's decision to subcontract, denied, such evidence is immaterial inasmuch as evidence exists from which BD could conclude that reasonable cause exists to believe E knew of Ees' U activities prior to deciding to subcontract, and that such decision was motivated at least in part by anti-U considerations)

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(E's mtn to alter or amend 10(j) order requiring E to resume subcontracted operations, reinstate terminated Ees, and bargain with U on ground ct failed to give proper weight to evidence showing that decision to subcontract was made prior to U organizing activity and was motivated solely by legitimate business considerations, denied, since ct does not weigh evidence and determine facts; instead, it assumes all factual disputes will be resolved by Bd in

4085-8000—Cont.

RD's favor and then determines whether those facts, with all reasonable inferences, indicate reasonable cause to believe violation occurred)

Robert J. Wilson, RD v. Liberty Homes, Inc. **500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)**

(E's mtn to alter or amend 10(j) order requiring E to bargain with U on ground that order is improper because it does not result in restoration of status quo since status quo prior to E's subcontracting of operations was that Ees were not represented by U, denied; restoration of status quo is not the only consideration relevant to 10(j) decision; other considerations are to prevent frustration of basic remedial purpose of Act, which favors bargaining order herein; moreover, U's majority status was never in doubt, and status quo appropriately includes organized work force entitled to good faith bargaining)

4085-8500 Cease and desist from interrogation, interference or coercion

Robert J. Wilson, RD v. Liberty Homes, Inc. **663 F.2d 620 (C.A. 7, Oct. 1981)**

(district ct erred where in Section 10(j) proceeding it declined to order E to c/d from interrogating, restraining or discriminating against Ees in violation of Act, notwithstanding contention order unnecessary since conduct sought to be enjoined is already made illegal by Act and Act provides adequate procedures for redressing violations, inasmuch as if mere availability of ultimate ULP sanctions were held to obviate need for interim relief, there would be no need for Section 10(j))

4093 RELIEF AGAINST UNIONS

4093-4000 Instruct members to cease striking or picketing

Johansen v. Operating Engineers, Local 12 (Maas & Feduska, Inc.) **No. CV 2765 (D Ct. CA, Aug. 2, 1978 (unreported))**

(U enjoined from engaging in economic actions, including strikes and withholding services of Ee members, and required to notify every U member employed by E that U has no objection to Ees' performing services for E where U took economic action to force E to withdraw ptn to review Bd's D/O in violation of Sec. 8(b)(3))

4093-8000 Bargain in good faith

Johansen v. Operating Engineers, Local 12 (Maas & Feduska, Inc.) **No. CV 2765 (D Ct. CA, Aug. 2, 1978 (unreported))**

(U enjoined from engaging in economic actions, including strikes and withholding services of Ee members, and required to notify every U member employed by E that U has no objection to Ees' performing services for E where U took economic action to force E to withdraw ptn to review Bd's D/O in violation of Sec. 8(b)(3))

6000 INJUNCTIVE RELIEF UNDER SECTION 10(l)

6001 GENERALLY

George Squillacote, RD v. Racine Building & Construction Trades Council, AFL-CIO **483 F.Supp. 1218 (D Ct WI, 1980)**

(10(l)injunctive relief is interlocutory pending final determination of ULP charges before Bd)

6001-6200 Jurisdiction of District Court

6001-6275 After remand from court of appeals to Board

William A. Pascarell, Acting RD v. New York Shipping Association, Inc., etc. **650 F.2d 19 (C.A. 3, May 1981)**

(U's contention that district ct which Bd had petitioned for mandatory inj in 8(b)(4)(B) cases should have referred the Bd to the ct of appeals from which pending ULP cases were remanded for consideration of pendents lite relief, rejected as inconsistent with structure of the Act, since ct of appeals has authority under 10(e) to grant temporary relief only in connection with enforcement of a Bd order, and, if it has any power to enforce a Bd order pending a remand, such power in no way preempts district ct's authority or Bd's duty under 10(l))

6001-7500 Nature and purpose

6001-7560 Preservation of status quo

Union De Tronquistas De Puerto Rico, Local 901, etc. v. Arlook, etc. of N.L.R.B. **586 F.2d 872 (C.A. 1, 1980)**

(Sec. 10(l) inj may be just and proper where necessary to preserve status quo so that Bd's ultimate decision will not be rendered moot by intervening events, or where necessary to prevent disruptions in commerce or future ULP's)

Reed Johnston, RD v. Thonet, a Simmons Company **No. C-C-78-257 (D CT. NC, Dec. 22, 1978 (unreported))**

(reinstatement of two Ees held *just and proper* to restore and preserve status quo where Bd met its burden of establishing reasonable cause to believe that the ULP's occurred, and its theories of fact and law were substantial and not frivolous)

6007 PROCEDURE

6007-4200 Parties

6007-4250 Intervention

6007-4250-5000 Charging party

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(request by general contractor who, as primary E, was charging party, to enjoin U from engaging in consumer appeal publicity directed against restaurant which contractor was constructing, denied, since publicity was not directed at contractor but at restaurant because of its contracting policies, and 8(b)(4) publicity proviso encompasses U's publicity which appeared *truthful* and was result of primary dispute with restaurant; moreover, contractor was not party to action herein and Bd, as petitioner, did not seek relief requested by contractor)

6007-7000 Dismissal

Raymond A. Jacobsen, RD v. Wometco Coca-Cola Bottling Company of Nashville, Inc. **No. 79-3554-NA-CV, Dec. 26, 1979, DC M.D. TN (unreported)**

(ct refused to issue inj where it found that there was no reasonable cause to believe that alleged ULP's had been committed)

6007-8400 Discovery

N.L.R.B. v. Martins Ferry Hospital Association **649 F.2d 445 (C.A. 6, May 1981)**

(contention ct denied E due process by permitting Bd to engage in pretrial discovery in subpoena enforcement proceedings while denying E equal discovery, rejected; since if current investigation conducted by GC should result in filing of complaint, E will be entitled to hearing and opportunity to refute evidence obtained by subpoena, and any failure on part of Bd to conduct due process hearing can be challenged before Bd and is subject to ct review)

6014 TEMPORARY RESTRAINING ORDER

6014-5600 Evidence

6014-5667 Sufficiency

Samuel M. Kaynard v. Local 259, United Automobile Aerospace and Agricultural Implement Workers of America **No. CV-80-2305, Oct. 10, 1980, DC E.D. NY (unreported)**

(when *reasonable cause to believe* turns on disputed issues of fact, RD may assume these in favor of charge and District Ct should sustain him if his choice is w/i range of rationality. If differing inferences may fairly be drawn from facts he has found, he may choose one more favorable to charging party, and this too should be upheld)

6014-8400 Relief

6014-8425 'Must be just and proper'

William A. Pascarell, Acting RD v. New York Shipping Association, Inc., etc. **650 F.2d 19 (C.A. 3, May 1981)**

(where appellant Us contended that district ct must under 10(l) determine what inj relief was *just and proper*, ct of appeals held that, given Bd's obligation to seek pendente lite relief against 8(b)(4) violations, district ct could not be held to have erred in refusing to permit a change in status quo by allowing Us to put into effect contractual Rules on Containers which involved non-frivolous substantial ULP charges and would have put the freight consolidators out of business while the Bd hearing went forward)

6021 SCOPE OF COURT INQUIRY

6021-0100 Generally

D'Amico v. Teamsters, Local 639 **No. 80-1537, July 18, 1980, DC DC (unreported)**

(10(l) inj against U engaged in strike, denied, since 10(l) grant of jurisdiction to district ct is not a mandate to grant Bd an inj whenever it decides it has reasonable cause to believe an ULP is occurring; rather, statutory language *just and proper* means ct should apply *general equitable criteria* whenever Bd seeks inj; and it would be unjust and improper to break ongoing strike by inj which, because of unlikelihood that Bd will succeed on merits, would be inconsistent with overall purpose of Act)

6021-0100—Cont.

Robert J. Wilson, RD v. Liberty Homes, Inc. 500 F.Supp. 1120 (DC W.D. WI, Aug. 1980)

(in 10(l), as in 10(j), proceeding, ct's task is limited to determining whether there is reasonable cause to believe that respondent engaged in ULPs, resolving all factual disputes in favor of RD who faces a relatively insubstantial burden of proof in such proceedings)

George Squillacote, RD v. Racine Building & Construction Trades Council, AFL-CIO 483 F.Supp. 1218 (D Ct WI, 1980)

(prerequisite for granting injunction is finding by ct that *reasonable cause* exists to believe that violation has been committed and that injunction relief is *just and proper*)

6021-5000 Standard of court's inquiry

6021-5009 Commerce

Louis V. Baldovin, Jr., RD v. International Longshoremen's Association, AFL-CIO, et al. 626 F.2d 445 (C.A. 5, 1980)

(inj denied since no basis to believe U's refusal to load grain aboard ships bound for Russia in order to protest Russia's invasion of another country, and avoid enhancing economic status of Russia *affected commerce*, where only political decision by foreign government could satisfy U's grievance; notwithstanding U's action affected producers and transporters of grain and those who loaded it aboard ships; boycott secondary in that U did not seek to affect labor relations of E's with which it had contract or terms and conditions of employment of their Ees)

6021-5036 Reasonableness of regional director's interpretation

Union De Tronquistas De Puerto Rico, Local 901, etc. v. Arlook, etc. of N.L.R.B. 586 F.2d 872 (C.A. 1, 1980)

(ct must conclude that legal theories relied on by RD are not w/o substance)

Samuel M. Kaynard v. Local 259, United Automobile Aerospace and Agricultural Implement Workers of America No. CV-80-2305, Oct. 10, 1980, DC E.D. NY (unreported)

(when *reasonable cause to believe* turns on disputed issues of fact, RD may assume those in favor of charge and District Ct should sustain him if his choice is w/i range of rationality. If differing inferences may fairly be drawn from facts he has found, he may choose one more favorable to charging party, and this too should be upheld)

6021-5073 Reasonable cause to believe Act has been violated

Union De Tronquistas De Puerto Rico, Local 901, etc. v. Arlook, etc. of N.L.R.B. 586 F.2d 872 (C.A. 1, 1980)

(ct must determine whether RD has reasonable cause to believe that elements of ULP are present, and RD need only show existence of credible evidence even if disputed, together with reasonable inferences which support his conclusions; district ct's findings herein held not erroneous)

William A. Pascarell, Acting RD v. New York Shipping Association, Inc., etc. 650 F.2d 19 (C.A. 3, May 1981)

(district ct held not to have erred in issuing preliminary inj upon finding that there was reasonable cause to believe ULP was present and Bd's legal theory was substantial and not frivolous; district ct thus applied standard which is settled law of the circuit)

Allen, RD v. Hotel and Restaurant Employees Union, Local 2 No. 80-2447 WHO, June 18, 1980, DC N.D. CA (unreported)

(RD entitled to temporary inj in order to enjoin U for 60 days from picketing E pending final disposition of ULP charges before Bd where objects of picketing were to force E to recognize U and to force Ees to select U as their representative; district ct had reasonable cause to believe that picketing violated Section 8(b)(7)(c) and that it would likely be repeated or continue unless enjoined)

D'Amico v. Teamsters, Local 639 No. 80-1537, July 18, 1980, DC DC (unreported)

(10(l) inj against U engaged in strike, denied, since Bd failed to satisfy ct that there is *reasonable cause to believe* U violated Act where it was unlikely Bd could establish that two companies involved herein were operated independently of each other, and its contention companies were wholly unconcerned with each other's labor problems was frivolous inasmuch as companies shared ownership, facilities, equipment, workers, and advertising; and president of one company involved himself in other company's dealings with Ees, participated in its contract negotiations, and was kept abreast of its labor relations)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO 483 F. Supp. 1218 (D Ct WI, 1980)

(U's picketing, questioning workers on site, or calling and writing letters to neutral subcontractors and owner of site had objective of inducing or encouraging such individuals to c/d/b with primary general contractor, and U's direct and indirectpressure on secondary parties had as its goal pressuring of primary E to agree to U's contract demands; consequently, reasonable cause exists to believe 8(b)(4)(B) was violated)

Joseph H. Solien, RD v. Teamsters Local No. 610 484 F.Supp. 1240 (DC E.D. MO, Feb. 1980)

(*statutory standard of reasonable cause is satisfied if there is any showing of formal issues which must be resolved by Bd*)

Milo V. Price, RD v. Operating Engineers, Local 953 Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))

(reasonable cause to believe ULP exists where U, having dispute with contractor employed by neutral E, picketed gate set aside for exclusive use of neutral Ees and caused such Ees to engage in work stoppages, even though a gate had been reserved by E for exclusive use of contractor's Ees)

Samuel M. Kaynard v. Local 259, United Automobile Aerospace and Agricultural Implement Workers of America No. CV-80-2305, Oct. 10, 1980, DC E.D. NY (unreported)

6021-5081 Existence of ULP not within court's province

Edwin H. Bennett, Acting RD v. Local 456, Teamsters 78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))

(in passing upon application for inj, ct is not called upon to finally decide issues presented, rather ct's role is limited to determining whether there is some significant possibility that picketing herein would violate the Act)

George Squillacote, RD v. Racine Building & Construction Trades Council, AFL-CIO 483 F.Supp. 1218 (D Ct WI, 1980)

(ct isnot called upon to decide whether violation has been committed; rather, Congressplaced ultimate determination with Bd, subject to review by cts of appeals)

6028 EVIDENCE

6028-0100 Generally

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(E's contentions that RD has greater burden of proving by substantial evidence on record as a whole that E's actions motivated by anti-U animus, rejected, since that standard applicable only to determination of merits of ULP charge; in Section 10(j) or 10(l) inj cases ct need not, indeed should not, make finding of E motivation. It need only find reasonable cause for belief that there was such a motivation)

6028-3300 Quantum

Robert J. Wilson, RD v. Liberty Homes, Inc. 663 F.2d 620 (C.A. 7, Oct. 1981)

(E's contentions that RD has greater burden of proving by substantial evidence on record as a whole that E's actions motivated by anti-U animus, rejected, since that standard applicable only to determination of merits of ULP charge; in Section 10(j) or 10(l) inj cases ct need not, indeed should not, make finding of E motivation. It need only find reasonable cause for belief that there was such a motivation)

6049 GRANT OF RELIEF

6049-1200 Considerations in denying relief

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO 483 F. Supp. 1218 (D Ct WI, 1980)

(request by general contractor who, as primary E, was charging party, to enjoin U from engaging in consumer appeal publicity directed against restaurant which contractor was constructing, denied, since publicity was not directed at contractor but at restaurant because of its contracting policies, and 8(b)(4) publicity proviso encompasses U's publicity which appeared *truthful* and was result of primary dispute with restaurant; moreover, contractor was not party to action herein and Bd, as petitioner, did not seek relief requested by contractor)

6049-1250 Mootness

6049-1250—Cont.

Winifred D. Morio, RD v. Operating Engineers, Local Union No. 94-94A **79-Civ. 626-CSH (D Ct. NY, Feb. 26, 1979 (unreported))**

(no inj granted where picketing has ceased after settlement of contract issues because there must be existing condition for inj to issue notwithstanding possibility exists that U could revert to prior illegal conduct)

6049-1287 Failure to establish reasonable cause

D'Amico v. Teamsters, Local 639 **No. 80-1537, July 18, 1980, DC DC (unreported)**

(10(l) inj against U engaged in strike, denied, since Bd failed to satisfy ct that there is *reasonable cause to believe* U violated Act where it was unlikely Bd could establish that two companies involved herein were operated independently, of each other, and its contention companies were wholly unconcerned with each other's labor problems was frivolous inasmuch as companies shared ownership, facilities, equipment, workers, and advertising; and president of one company involved himself in other company's dealings with Ees, participated in its contrate negotiations, and was kept abreast of its labor relations)

Joseph H. Solien, RD v. Teamsters Local No. 610 **484 F.Supp. 1240 (DC E.D. MO, Feb. 1980)**

(inj not granted since no reasonable cause to believe Act violated where U was not picketing for recognition but for purpose of disseminating information that that E was not paying area standards in view of signs which stated Ees of E who were represented by another U were not being paid wages comparable to those paid to Ees represented by U which was picketing and that picketing was informational rather than for recognition)

Samuel M. Kaynard v. Local 259, United Automobile Aerospace and Agricultural Implement Workers of America **No. CV-80-2305, Oct. 10, 1980, DC E.D. NY (unreported)**

(when *reasonable cause to believe* turns on disputed issues of fact, RD may assume these in favor of charge and District Ct should sustain him if his choice is w/i range of rationality. If differing inferences may fairly be drawn from facts he has found, he may choose one more favorable to charging party, and this too should be upheld)

6049-2500 Considerations in granting relief

William A. Pascarell, Acting RD v. New York Shipping Association, Inc., etc. **680 F.2d 19 (C.A. 3, May 1981)**

(where appellant Us contended that district ct must under 10(l) determine what inj relief was *just and proper*, ct of appeals held that, given Bd's obligation to seek pendente lite relief against 8(b)(4) violations, district ct could not be held to have erred in refusing to permit a change in status quo by allowing Us to put into effect contractual Rules on Containers which involved non-frivolous substantial ULP charges and would have put the freight consolidators out of business while the Bd hearing went forward)

6049-2525 Damage to employer's business

Edwin H. Bennett, Acting RD v. Local 456, Teamsters **78 Civ. 1673 (D Ct. NY, Oct. 10, 1978 (unreported))**

(equitable relief found just and proper in view of tremendous pressure which could be brought to bear by picketing neutral Es with correspondingly little impact on primary E)

6049-2550 Nature of conduct involved

Milo V. Price, RD v. Operating Engineers, Local 953 **Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))**

(U, having dispute with contractor employed by neutral E, picketed gate set up by neutral E for exclusive use of its Ees, even though E had also reserved a gate for exclusive use of contractor's Ees)

6049-2583 Resumption or continuation of conduct

Allen, RD v. Hotel and Restaurant Employees Union, Local 2 **No. 80-2447 WHO, June 18, 1980, DC N.D. CA (unreported)**

(RD entitled to temporary inj in order to enjoin U for 60 days from picketing E pending final disposition of ULP charges before Bd where objects of picketing were to force E to recognize U and to force Ees to select U as their representative; district ct had reasonable cause to believe that picketing violated Section 8(b)(7)(c) and that it would likely be repeated or continue unless enjoined)

6049-3700 Duration of injunction

6049-3767 Until final adjudication of Board

Allen, RD v. Hotel and Restaurant Employees Union, Local 2 **No. 80-2447 WHO, June 18, 1980, DC N.D. CA (unreported)**

(RD entitled to temporary inj in order to enjoin U for 60 days from picketing F pending final disposition of ULP charges before Bd where objects of picketing were to force E to recognize U and to force Ees to select U as their representative; district ct had reasonable cause to believe that picketing violated Section 8(b)(7)(c) and that it would likely be repeated or continue unless enjoined)

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO **483 F. Supp. 1218 (D Ct WI, 1980)**

(pending final disposition by Bd, U enjoined from engaging in picketing, orders, directives, instructions, requests or appeals, or by any other means, in threatening, coercing, or restraining neutral Es in order to force them to c/d/b/ with primary E, or to force or require primary E to entire into agreement prohibited by Sec. 8(e))

Milo V. Price, RD v. Operating Engineers, Local 953 **Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))**

(it is just and proper that, pending final disposition by Bd, U be enjoined from continuation or repetition of conduct giving reasonable cause to believe that U violated Act by picketing neutral E's gate reserved for exclusive use by its Ees, even though a gate had been set up for exclusive use by Ees of contractor with whom U had dispute)

6049-3775 Only so long as reserved gate is properly used

Milo V. Price, RD v. Operating Engineers, Local 953 **Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))**

(should primary E, its Ees, suppliers for whose exclusive use a gate was reserved by neutral E, be permitted to use such gate, then provisions of injunctive order herein shall be stayed and shall be reinstated only upon good cause shown in ct)

6049-7500 Acts charged and similar acts

6049-7522 'Any like or related acts or conduct'

Milo V. Price, RD v. Operating Engineers, Local 953 **Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))**

(it may fairly be anticipated that unless enjoined U will continue to repeat acts and conduct specified herein or similar or like acts and conduct in violation of 8(b)(4)(B)(i) and (ii))

6049-7588 Relief must be 'just and proper'

Milo V. Price, RD v. Operating Engineers, Local 953 **Civ 78 618C (D Ct. NM, Aug. 31, 1979 (unreported))**

(it is just and proper that, pending final disposition by Bd, U be enjoined from continuation or repetition of conduct giving reasonable cause to believe that U violated Act by picketing neutral E's gate reserved for exclusive use by its Ees, even though a gate had been set up for exclusive use by Ees of contractor with whom U had dispute)

6063 COURT OF APPEALS REVIEW

6063-4000 Procedure

6063-4050 Remand to District Court

Arthur Eisenberg, RD v. Wellington Hall Nursing Home, Inc. **651 F.2d 902 (C.A. 3, May 1981)**

(order of ct of appeals granting injunctive relief pending appeal shall remain in effect until such time as order consistent with opinion in instant case is entered in district ct)

6063-6000 Scope of review

Union De Tronquistas De Puerto Rico, Local 901, etc. v. Arlook, etc. of N.L.R.B. **586 F.2d 872 (C.A. 1, 1980)**

(on appeal from order granting injunctive relief, role of this ct is usual limited one; it applies the clearly erroneous standard to district ct's findings and reviews for errors of law and abuse of discretion)

6063-6033 Findings of District Court will not be disturbed where not plainly erroneous

Arthur Eisenberg, RD v. Wellington Hall Nursing Home, Inc. **651 F.2d 902 (C.A. 3, May 1981)**

(refusal (by district ct) to order reinstatement (of discharged Ees) was abuse of discretion that *Section* 10(j) affords in view of potential for irreparable harm to certified U from loss of 8 U supporters in small bargaining unit)

6084 CONDUCT INVOLVED

6084-0100 Generally

6084-0150 Conduct charged against same party in other proceeding may be considered

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(*—federal cts may decide labor law questions that emerge as collateral issues in suits brought under independent federal remedies, including the anti-trust laws*)

6084-2100 Coercion, intimidation, violence

Union De Tronquistas De Puerto Rico, Local 901, etc. v. Arlook, etc. of N.L.R.B. 586 F.2d 872 (C.A. 1, 1978)

(district ct did not err in granting inj restraining U from violating 8(b)(4)(A) pending final disposition by Bd of ULP charges alleging U attempted to induce Ee to stop work and threatened E with future problems in order to force him to become member of multi-E association which represented trucking firms in their negotiations with U)

6084-2700 Common situs picketing

Milo V. Price, RD v. Construction, Production & Maintenance Laborers' Local Union No. 383, International Union of North America, AFL-CIO No. Civ 80-63 PHX, Feb. 7, 1980, DC AZ (unreported)

6084-3100 Reserved gate picketing

Milo V. Price, RD v. Construction, Production & Maintenance Laborers' Local Union No. 383, International Union of North America, AFL-CIO No. Civ 80-63 PHX, Feb. 7, 1980, DC AZ (unreported)

Milo V. Price, RD v. Operating Engineers, Local 953 Civ 78 610C (D Ct. NM, Aug. 31, 1979 (unreported))

(it is just and proper that, pending final disposition by Bd, U be enjoined from continuation or repetition of conduct giving reasonable cause to believe that U violated Act by picketing neutral E's gate reserved for exclusive use by its Ees, even though a gate had been set up for exclusive use by Ees of contractor with whom U had dispute)

6084-3400 Consumer boycott

Edwin H. Bennett, Acting RD v. Local 456, Teamsters 78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))

(U enjoined from picketing Franchisees of primary E where Franchisees were found to be neutrals in U's dispute with primary E; moreover picketing of Franchisees was held not to be protected struck product picketing where business at Franchisees' stores was derived almost exclusively from sale of primary E's products)

6084-4800 Jurisdictional strike - 8(b)(4)(D) conduct

Automobile Workers (UAW) and Its Local 1519 v. N.L.R.B. 619 F.2d 580 (C.A. 6, Apr. 1980)

(when E has been acting in accord with ultimate Bd *Section 10(k)* ruling, E is not liable for damages to disappointed U; even in a *LMRA Section 301* suit)

6084-6100 Picketing

6084-6175 Recognition picketing

Johansen v. Plumbers, Local 398 (Robbins Plumbing and Heating) No. CV 78-2939 (D Ct. CA, Aug. 9, 1978 (unreported))

(inj granted where U had not filed timely ptn for election)

Johansen v. Carpenters, Local 1752 (Eastport Development Co.) No. CV 78-2520 (D Ct. CA (unreported))

(inj granted where U had not filed timely ptn for election)

Joseph H. Solien, RD v. Teamsters Local No. 610 484 F.Supp. 1240 (DC E.D. MO, Feb. 1980)

(inj not granted since no reasonable cause to believe Act violated where U was not picketing for recognition but for purpose of disseminating information that that E was not paying area standards in view of signs which stated Ees of E who were represented by another U were not being paid wages comparable to those paid to Ees represented by U which was picketing and that picketing was informational rather than for recognition)

6084-6800 Product boycott

Edwin H. Bennett, Acting RD v. Local 456, Teamsters 78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))

(U enjoined from picketing Franchisees of primary E where Franchisees were found to be neutrals in U's dispute with primary E; moreover picketing of Franchisees was held not to be protected struck product picketing where business at Franchisees' stores was derived almost exclusively from sale of primary E's products)

6084-7000 Secondary boycott

Scott v. Joint Council of Teamsters (Calif. Dump Truck Owners Assn.) No. CV-79-0139 (D Ct. CA, Jan. 26, 1979 (unreported))

(finding reasonable cause to believe U violated 8(b)(4)(ii)(B), ct granted temporary inj, pending final disposition by Bd, whereby U was enjoined from in any manner threatening or coercing owner-operators of for-hire dump trucks used by Es to leave construction project until they became members in good standing)

6084-9000 Maintaining or enforcing agreement prohibited by 8(e)

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(ct must reach merits of illegality defense in order to determine whether contract clause at issue has any legal effect)

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(while only Bd may provide affirmative remedies for ULPs, ct may not enforce contract provision which violates 8(e))

Scott v. Joint Council of Teamsters (Calif. Dump Truck Owners Assn.) No. CV-79-0139 (D Ct. CA, Jan. 26, 1979 (unreported))

(finding reasonable cause to believe Us and E associations in construction industry violated 8(e), ct granted temporary inj, pending final disposition by Bd, whereby Us and E associations were enjoined from maintaining or enforcing contract provisions which designated work to be done at site of construction as including any driving to, from or in connection with hauling materials to or from any source or disposal site on the one hand, and a geographical site of construction on the other hand)

6091 DEFENSES

6091-1000 Ally-relationship of secondary Employer

Edwin H. Bennett, Acting RD v. Local 456, Teamsters 78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))

(Franchisees of primary E held neutral Es with respect to U's dispute with primary E, notwithstanding that primary E and Franchisees were wholly dependent on each other for economic survival, where each Franchise was owned by person or persons having no affiliation with primary E, and U only sought to picket some but not all of 750 Franchises with correspondingly little impact on primary E)

6091-1600 Consumer picketing

International Longshoremen's Association, AFL-CIO and Council of North Atlantic Shipping Associations v. N.L.R.B. 613 F.2d 890 (C.A.D.C.) (1979)

(Bd and cts are required, in course of deciding cases, to apply general congressional proscription (against secondary boycotts) in various specific contexts: e.g., in cases where there are ally Es; in common situs situations; in consumer picketing cases; and in context of work preservation agreements such as those in instant case)

Edwin H. Bennett, Acting RD v. Local 456, Teamsters 78 Civ. 1675 (D Ct. NY, Oct. 10, 1978 (unreported))

(picketing struck E's products held not w/i decision of Tree Fruits, 377 U.S. 58, where neutral Franchisees sold almost exclusively products of struck E, and thus picketing which followed struck products was necessarily aimed at the Franchisee's business in general)

6091-6400 Publicity proviso

George Squillacote, RD v. Racine Building Construction Trades Council, AFL-CIO 490 F. Supp. 1218 (D Ct WI, 1980)

(request by general contractor who, as primary E, was charging party, to enjoin U from engaging in consumer appeal publicity directed against restaurant which contractor was constructing, denied, since publicity was not directed at contractor but at restaurant because of its contracting policies, and 8(b)(4) publicity proviso encompasses U's publicity which appeared *truthful* and was result of primary dispute with restaurant; moreover, contractor was not party to action herein and Bd, as petitioner, did not seek relief requested by contractor)

Joseph H. Solien, RD v. Teamsters Local No. 610 484 F.Supp. 1240 (DC E.D. MO, Feb. 1980)

(inj not granted since no reasonable cause to believe Act violated where U was not picketing for recognition but for purpose of disseminating information that that E was not paying area standards in view of signs which stated

6091-8400—Cont.

Ees of E who were represented by another U were not being paid wages comparable to those paid to Ees represented by U which was picketing and that picketing was informational rather than for recognition)

8000 INJUNCTIVE RELIEF UNDER SECTION 10(a)

867 PROCEEDINGS COLLATERAL TO BOARD PROCEEDINGS

0100 GENERALLY

Kaiser Steel Corp. v. Mullins et al. 455 U.S. 72 (U.S. SCt. Jan. 1981)

(*–federal cts may decide labor law questions that emerge as collateral issues in suits brought under independent federal remedies, including the anti-trust laws*)

2500 PROCEEDINGS AGAINST AGENCY

2520 PROCEEDINGS TO ENJOIN OR MANDAMUS BOARD ACTION

2520-0100 Generally

Fugazy Continental Corp. of Connecticut v. N.L.R.B. 514 F.Supp. 718 (D Ct NY, Feb 1981)

(interlocutory rulings of Bd in course of proceedings involving ULPs may not be reviewed by District Ct except in very limited circumstances)

2520-2500 Standing to institute action

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)

(where State filed suit in district ct to enjoin election and obtain declaratory judgment that Bd lacked jurisdiction over labor disputes involving jai alai players, ct granted E's mtn to appear as *amicus curiae* because it had interest in outcome of litigation. E was precluded from joining State as party plaintiff because decision to hold election is non-final order and district ct must ordinarily dismiss, for want of subject matter jurisdiction, E or U challenges to such decision)

Fugazy Continental Corp. of Connecticut v. N.L.R.B. 514 F.Supp. 718 (D Ct NY, Feb 1981)

(cts have not taken expansive view of standing; instead, they have located its boundaries w/i personal and introspective setting)

2520-3700 Parties

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)

(where State filed suit in district ct to enjoin election and obtain declaratory judgment that Bd lacked jurisdiction over labor disputes involving jai alai players, ct granted E's mtn to appear as *amicus curiae* because it had interest in outcome of litigation. E was precluded from joining State as party plaintiff because decision to hold election is non-final order and district ct must ordinarily dismiss, for want of subject matter jurisdiction, E or U challenges to such decision)

2520-6200 Jurisdiction of court

2520-6201 Generally

Newport News Shipbuilding and Dry Dock Company v. N.L.R.B. 633 F.2d 1079 (C.A. 4, 1980)

(E's contention that Bd's dismissal of decertification ptn violated Ees' Sec. 7 rights to freely choose their own representative and forced unwanted action on unwilling majority, rejected; Bd is required, in conducting 9(c)(1) investigation and hearing, to observe Congressional mandate; Act's general goals of free choice and majority rule do not contain a grant of federal jurisdiction, nor does the arguable contravention of those goals permit jurisdiction under Kyne)

Newport News Shipbuilding and Dry Dock Company v. N.L.R.B. 633 F.2d 1079 (C.A. 4, 1980)

(district ct did not have jurisdiction to issue order compelling Bd to reinstate R ptn and to conduct investigation to determine if there were sufficient grounds for hearing on decertification ptn; contention that Bd's action was arbitrary and reviewable because of limited scope of Bd's investigation, rejected, since RD had conducted investigation and ct does not judge accuracy of Bd's selective investigative technique; Bd has authority to determine scope of investigation necessary to act on decertification ptn)

Fugazy Continental Corp. of Connecticut v. N.L.R.B. 514 F.Supp. 718 (D Ct NY, Feb 1981)

(District Ct must be reticent to examine alleged procedural irregularities in underlying administrative proceedings insofar as piecemeal appeals will disrupt resolution of labor disputes)

Newport News Shipbuilding and Dry Dock Company, et al. v. N.L.R.B. No. 80-16-NN, June 6, 1980, DC E.D. VA (unreported)

(mtn to amend ct's judgment filed by E denied where ct did not have authority to authorize E to grant pay raises to Ees in classification involved in litigation for past three years concerning certification of bargaining unit)

2520-6201-5000 Board actions reviewable under Sections 10(e) and (f)

Blue Cross and Blue Shield of Michigan, a non-profit Michigan Corporation v. N.L.R.B. 609 F.2d 240 (C.A. 6, 1979)

(*final orders* made reviewable by Sections 10(e) and (f) in courts of appeal do not include Bd decisions in certification proceedings under Section 9(c))

United Food and Commercial Workers, Local 400, a/w United Food and Commercial Workers, AFL-CIO v. N.L.R.B. 694 F.2d 276 (C.A.D.C., Nov. 1982)

(Bd's *Excelsior* requirement does not specifically appear in NLRA and cannot reasonably be viewed as *statutory mandate* violation under *Leedom v. Kyne* exception where Bd failed to send U complete list of Ees eligible to vote prior to R election. Therefore, district ct lacked jurisdiction to order Bd to order another election as Bd decision in this election case is not final agency action that is subject to judicial review)

Iowa Beef Processors, Inc. v. N.L.R.B. No. 80-L-62, Apr. 10, 1980, DC NE (unreported)

(district ct granted Bd's mtn to dismiss E's request for injunctive relief since it lacked jurisdiction to interfere with pending Bd proceeding where Bd did not violate Sec. 10(e) under *Kyne* exception by issuing ULP C or including E in backpay proceeding since theory of joint Es and common control by E was not raised in previous proceeding in which E was not party)

2520-6201-7500 Jurisdiction under APA Section 10, 5 U.S.C. Section 701, et seq.

Steadman v. Securities and Exchange Commission 446 US 917 (U.S. SCt. Feb. 1981)

(Sec. 7(c) of APA which provides that agency may not impose sanctions or issue order unless *supported by and in accordance with reliable, probative, and substantial evidence* requires agency decision be in accordance with weight of evidence; by contrast Sec. 10(e) does not permit reviewing ct to weigh the evidence, but only determine that there is in record such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; to conclude that phrase *substantial evidence* in 7(c) defines scope of judicial review would make substantial evidence language of 10(e) redundant)

Federal Trade Commission et al. v. Standard Oil Company of California 445 US 903 (U.S. SCt. Dec. 1980)

(FTC's issuance of C averring reason to believe respondent acted unlawfully held not *final agency action* under 10(c) of APA and is not judically reviewable before administrative adjudication concludes, even though issuance is *a part of a final disposition* and therefore is *agency action*; ct left open the question whether issuance of C is unreviewable because it is *committed to agency discretion by law*)

2520-6225 No jurisdiction except where constitutional issue or agency action contrary to express statutory provision

Blue Cross and Blue Shield of Michigan, a non-profit Michigan Corporation v. N.L.R.B. 609 F.2d 240 (C.A. 6, 1979)

(statutorily-created administrative and legal remedies, not eschewed in favor of immediate review by district court, even where party presents claim of Constitutional violations; as general rule, parties are required to employ

2520-6225—Cont.

statutorily provided administrative and legal remedies before seeking general equitable relief)

Orange Belt District Council of Painters No. 48 v. N.L.R.B. 634 F.2d 635(T) (C.A. 9, 1980)

(District Ct lacked subject matter jurisdiction since not established that NLRB's decision not to hold election fell w/i narrow exception to reviewability created by *Leedom v. Kyne* absent violation of statute or regulation by NLRB in application of contract bar rule)

United Food and Commercial Workers, Local 400, a/w United Food and Commercial Workers, AFL-CIO v. N.L.R.B. 694 F.2d 276 (C.A.D.C., Nov. 1982)

(federal district cts w/o jurisdiction to review Bd rulings in R proceedings since proceedings are nonadversarial actions and do not result in issuance of judicially reviewable final orders; Bd orders reviewable where they form basis of subsequent ULP charge or in rare instances where: (1) Bd has contravened clear and specific statutory mandate; (2) Bd has deprived party of its constitutional rights; or (3) Bd has interfered with government's conduct of foreign relations)

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) v. N.L.R.B. No. 78 C 749 (D Ct. IL, Sept. 28, 1978 (unreported))

(determination of whether E is carrier or not is factual in nature and not dependant solely on construction of statute; thus, District Ct precluded from jurisdiction)

Smitty's Super Markets, Inc., a Missouri Corporation v. N.L.R.B. No. 80-3019-CV-S, June 11, 1980, DC W.D. MO (unreported)

(District Ct lacked jurisdiction to review Bd's refusal to hold election as scheduled where 8(b)(7)(c) charges pending alleging picketing for R for more than 30 days w/o filing election ptn, since jurisdiction to review NLRB decisions lies in Cts of Appeals with narrow exception of cases where Bd is alleged to have exceeded authority)

Newport News Shipbuilding and Dry Dock Company v. N.L.R.B. 498 F.Supp. 267 (D Ct. VA, 1980)

(district ct had jurisdiction to review Bd order entered in decertification proceeding where suit was to strike down order of Bd dismissing ptn for decertification of bargaining representative w/o making statutory investigation, and complaint raised substantial question whether actions of Bd were in excess of its delegated powers and contrary to statutory mandate)

2520-6225-0100 Generally

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)

(plaintiff who cannot seek review of Bd's order in Court of Appeals but who claims that Bd violated his federal rights has right to repair to district court under any statute that may grant district ct power to hear his claim)

Staco Sales, Inc. v. N.L.R.B. No. 79-2990, Feb. 25, 1980, DC DC (unreported)

(District Ct lacks jurisdiction to hear challenge to propriety or legality of ULP proceeding; must go to Bd and, on review, to Ct of Appeals)

National Engineers and Professionals Association, et al. v. N.L.R.B. et al. CV78-2130-RMT (D Ct. CA, July, 31, 1978 (unreported))

(ct has no constitutional basis to assert jurisdiction where U seeking to have ct award inj relief requiring Bd to hold mail ballot election because generally District Cts lack jurisdiction to review Bd rulings in R proceedings and issue does not fall w/i any exceptions to rule)

2520-6225-2000 Actions found contrary to express statutory provision

Newport News Shipbuilding and Dry Dock Company v. N.L.R.B. 633 F.2d 1079 (C.A. 4, 1980)

(party claiming ct jurisdiction in case involving Bd's dismissal of decertification ptn must show that Bd order was made in excess of its delegated powers and contrary to specific prohibition of Act; Kyne exception to initial exclusiveness of Bd's determination in R proceedings is narrowly to be construed and should not be used to review alleged Bd errors of fact; ct jurisdiction is appropriate only when there is a strong and clear demonstration that a clear, specific, and mandatory provision of Act has been violated)

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)

(district ct had jurisdiction over C that challenged Bd's jurisdiction over labor disputes in jai alai industry and asked for declaratory judgment as C alleged Bd abused its discretion under Sec. 14(c)(1) of Act because it directly contravened firm policy Bd had established for identical Ees in horse or dog racing branches of State's gambling industry; furthermore, jurisdiction impinged on State industry in violation of tenth amendment. These claims obviously arise under Constitution or law of U.S.; therefore, ct had jurisdiction under 28 U.S.C. Sec. 1331)

Physicians National House Staff Association et al. v. John H. Fanning et al. 642 F.2d 492 (C.A.D.C. Jul 11, 1981)

(*Leedom v. Kyne* exception to rule that Bd orders in representation proceedings are unreviewable requires showing that Bd acted w/o statutory authority and violated a specifically identified *clear and mandatory* provision of the Act)

International Association of Machinists and Aerospace Workers, AFL-CIO, an unincorporated labor organization v. Thomas C. Hendrix, et al. No. 80-1071, Jan. 29, 1980, DC KS (unreported)

(district ct has power to strike down orders of Bd made in excess of Bd's delegated powers and contrary to specific prohibitions or mandates of Act)

Amsoil, Inc., a Delaware Corporation v. N.L.R.B. 525 F.Supp. 839 (DC MN, Nov. 1981)

(district cts have jurisdiction, apart from review provisions of Act, to strike down orders which contravene an express statutroy mandate)

Operating Engineers, Local Union No. 132 v. N.L.R.B. No. 79-2388-CH, Oct. 1, 1979, DC S.D. WV (unreported)

(District Ct, under its general equity powers, has jurisdiction to restrain Bd from exceeding its powers as administrative agency to detriment of one affected by its illegal acts)

2520-6225-4000 Actions found not contrary to express statutory provisions

Touche Ross & Co.; et al. v. Securities and Exchange Commission, et al. Dkt. No. 78-6098 (C.A. 2, May 10, 1979 (unreported))

(Myers v. Bethlehem Shipbuilding Corp. principle of no judicial relief for supposed or threatened injury before prescribed administrative remedy exhausted still viable and Leedom v. Kyne exception interpreted narrowly)

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) v. N.L.R.B. 599 F.2d 816 (C.A. 7, 1979)

(appellate ct upheld district ct's decision that it lacked subject matter jurisdiction to review Bd decision dismissing representation ptn on grounds that company was excluded from NLRA Sec. 2(2) definition of E as it was an air carrier subject to jurisdiction of RLA, and that its petitioned-for truckdrivers' work was integral part of its air carrier operations; Bd did not disregard clear, specific statutory directive, and there was support for its decision)

Physicians National House Staff Association et al. v. John H. Fanning et al. 642 F.2d 492 (C.A.D.C. Jul 11, 1981)

(ct of appeals affd D. Ct's dismissal of suit seeking to overturn Bd's determination that members of nonprofit hospital staff consisting of physicians serving as interns, residents and clinical fellows were not Ees but students, and have them declared Ees' legislative history of the Act and case law show that Bd certification decisions are not to be subject to judicial review and, although Congress discussed treatment of hospital staff as Ees, it did not mandate such treatment in the 1974 amendments, and the instant case therefore does not come w/i *Leedom v. Kyne* exception)

United Food and Commercial Workers, Local 400, a/w United Food and Commercial Workers, AFL-CIO v. N.L.R.B. 694 F.2d 276 (C.A.D.C., Nov. 1982)

(Bd's *Excelsior* requirement does not specifically appear in NLRA and cannot reasonably be viewed as *statutory mandate* violation under *Leedom v. Kyne* exception where Bd failed to send U complete list of Ees eligible to vote prior to R election. Therefore, district ct lacked jurisdiction to order Bd to order another election as Bd decision in this election case is not final agency action that is subject to judicial review)

Florida Board of Business Regulation, etc., et al., v. N.L.R.B. 497 F.Supp. 599 (D Ct. FL, 1980)

(State would have standing to seek review if ULP proceedings ensue; problem is that *no* ULP proceedings may ensue (see p. 7))

Florida Board of Business Regulation, etc., et al. v. N.L.R.B. 497 F.Supp. 599 (D Ct. FL, 1980)

(District Ct will assert jurisdiction under *Leedom v. Kyne*, 358 U.S. 184, where circumstances show that party seeking relief will not otherwise have avenue for review if jurisdiction declined, and here, if E acceded to certification and Bd order so that no ULP proceeding will ensue, State may be precluded from seeking review under Sec. 10 of Act; alternatively, D Ct could assert jurisdiction under *Fay v. Douds*, 172 F.2d 720 since there is

2520-6225-4000—Cont.

substantial claim by State that action taken by Bd has violated constitutional rights of complaining party; State's 10th Amendment rights)

Carol Estes and 166 Other Warehouse Facility Employees v. N.L.R.B. No. 78-4068 (D Ct. KS, Jan. 5, 1979 (unreported))

(ct lacked jurisdiction over suit challenging Bd's application of its *blocking charge rule* to decertification ptn; at time RD applied rule and dismissed ptn, there were pending not merely ULP charges filed by U but formal Cs issued on behalf of Bd concerning those charges, and it was reasonable to assume RD had some idea whether U's charges were substantial and whether representation election could fairly be held)

The Jewish Hospital Association of Louisville, Kentucky, Inc. v. John H. Fanning, et al. No. C 79-0206-L(B), Aug. 9, 1979, DC W.D. KY (unreported)

(where certification order valid on its face ct lacks jurisdiction to set it aside as health care facilities are subject to provisions of NLRA)

Gene Patterson v. N.L.R.B. 626 F.2d 862(T) (D Ct NC, 1979)

(ct held that it lacked subject-matter jurisdiction over Bd's exercise of *blocking charge* rule; Bd had exercised discretion specifically entrusted to it by Congress and cts and applied rule to ongoing, not stale, ULP proceedings, not mechanistically, but with consideration for E's statement of position as well as its history of ULPs)

Signode Corporation v. N.L.R.B. No. C-1-79-615, Nov. 1, 1979, DC S.D. OH (unreported)

(mtn for temporary restraining order and permanent inj, denied, where mtn sought to enjoin ULP proceeding; district ct is w/o jurisdiction over the matter and, contrary to petitioner's contention, *Leedom v. Kyne* is inapplicable since Bd had not acted *in excess of its delegated powers and contrary to a specific prohibition in the Act*)

Hall of Mississippi, Inc. v. N.L.R.B. No. C-79-2363 (D Ct. TN, May 22, 1979 (unreported))

(district ct has no jurisdiction to review Bd decision under *Leedom v. Kyne* rationale, 358 U.S. 184, unless there was clear disregard by NLRB of specific and unambiguous statutory directive contained in the Act)

Combustion Engineering, Inc., etc. v. Curtis L. Mack, RD, etc. CIV-2-79-67 (D Ct. TN, May 8, 1979 (unreported))

(no denial of due process by Bd refusal to delay election to permit E to retain additional counsel; Bd orders in certification proceedings are not directly reviewable by cts and none of the judicially recognized exceptions appear to be applicable to instant situation where E had not engaged sufficient counsel to handle its labor-management matters seasonably)

2520-6225-6000 Actions found to raise constitutional questions

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)

(district ct had jurisdiction over C that challenged Bd's jurisdiction over labor disputes in jai alai industry and asked for declaratory judgment as C alleged Bd abused its discretion under Sec. 14(c)(1) of Act because it directly contravened firm policy Bd had established for identical Ees in horse or dog racing branches of State's gambling industry; furthermore, jurisdiction impinged on State industry in violation of tenth amendment. These claims obviously arise under Constitution or law of U.S.; therefore, ct had jurisdiction under 28 U.S.C. Sec. 1331)

Florida Board of Business Regulation, etc., et al. v. N.L.R.B. 497 F.Supp. 599 (D Ct. FL, 1980)

(District Ct will assert jurisdiction under *Leedom v. Kyne*, 358 U.S. 184, where circumstances show that party seeking relief will not otherwise have avenue for review if jurisdiction declined, and here, if E acceded to certification and Bd order so that no ULP proceeding will ensue, State may be precluded from seeking review under Sec. 10 of Act; alternatively, D Ct could assert jurisdiction under *Fay v. Douds*, 172 F.2d 720 since there is substantial claim by State that action taken by Bd has violated constitutional rights of complaining party; State's 10th Amendment rights)

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD 482 F.Supp. 489 (D Ct. IL)

(GC's refusal to issue complaint based upon alleged ULPs, not violation of a constitutional right, and hence district ct lacked subject matter jurisdiction to review GC's refusal)

2520-6225-8000 Actions found not to raise constitutional questions

Florida Board of Business Regulation, etc., et al. v. N.L.R.B. 497 F.Supp. 599 (D Ct. FL, 1980)

(Bd's assertion of jurisdiction over jai alai industry does not violate Tenth Amendment, as regulation if that industry does not impose a direct obligation upon the state but is indirect interference through Congressional effort to regulate same object)

Fugazy Continental Corp. of Connecticut v. N.L.R.B. 514 F.Supp. 718 (D Ct NY, Feb 1981)

(person has no Fourth Amendment bar's for challenging subpoenas directed at business records of third party)

Combustion Engineering, Inc., etc. v. Curtis L. Mack, RD, etc. CIV-2-79-67 (D Ct. TN, May 8, 1979 (unreported))

(no denial of due process by Bd refusal to delay election to permit E to retain additional counsel; Bd orders in certification proceedings are not directly reviewable by cts and none of the judicially recognized exceptions appear to be applicable to instant situation where E had not engaged sufficient counsel to handle its labor-management matters seasonably)

2520-6237 Actions for declaratory judgment

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)

(where State's C asked district ct to enjoin Bd ordered R election and sought declaration that Bd lacked statutory authority and constitutional authority to regulate labor disputes in jai alai industry as a whole, ct does not have jurisdiction, absent extraordinary circumstances to enjoin election but it does have subject matter jurisdiction over whether Bd can regulate labor disputes in jai alai industry as this is not subject to *extraordinary circumstances* rule set forth in *Boire v. Greyhound Corp.* 376 U.S. at 478)

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)

(district ct had jurisdiction over C that challenged Bd's jurisdiction over labor disputes in jai alai industry and asked for declaratory judgment as C alleged Bd abused its discretion under Sec. 14(c)(1) of Act because it directly contravened firm policy Bd had established for identical Ees in horse or dog racing branches of State's gambling industry; furthermore, jurisdiction impinged on State industry in violation of tenth amendment. These claims obviously arise under Constitution or law of U.S.; therefore, ct had jurisdiction under 28 U.S.C. Sec. 1331)

2520-6800 Court procedure

International Association of Machinists and Aerospace Workers, AFL-CIO, an unincorporated labor organization v. Thomas C. Hendrix, et al. No. 80-1071, Jan. 29, 1980, DC KS (unreported)

(ct's power to grant TRO is discretionary; factors considered are: 1) probability that plaintiff will succeed on merits; 2) significance of threat of irreparable injury to plaintiff; 3)balance between injury and injury that granting order would inflict on defendants and 4) public interest)

2520-6850 Stay of order pending appeal

Newport News Shipbuilding and Dry Dock Company, et al. v. N.L.R.B. No. 80-16-NN, June 6, 1980, DC E.D. VA (unreported)

(ct denied Bd mtn for stay pending appeal of earlier ct order requiring Bd to investigate and report on whether reasonable cause to believe question of R affecting commerce existed, where Bd would suffer no demonstrable harm in performing its usual duties, and other parties involved would be substantially harmed by Bd's failure to carry out ct order promptly)

2520-7500 Board actions sought to be enjoined

2520-7533 Representation proceedings

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)

(where State's C asked district ct to enjoin Bd ordered R election and sought declaration that Bd lacked statutory authority and constitutional authority to regulate labor disputes in jai alai industry as a whole, ct does not have jurisdiction, absent extraordinary circumstances to enjoin election but it does have subject matter jurisdiction over whether Bd can regulate labor disputes in jai alai industry as this is not subject to *extraordinary circumstances* rule set forth in *Boire v. Greyhound Corp.* 376 U.S. at 478)

2520-7533-4200 Conduct of election

Orange Belt District Council of Painters No. 48 v. N.L.R.B. 634 F.2d 635(T) (C.A. 9, 1980)

(District Ct lacked subject matter jurisdiction since not established that NLRB's decision not to hold election fell w/i narrow exception to reviewability created by *Leedom v. Kyne* absent violation of statute or regulation by NLRB in application of contract bar rule)

2520-7533-4200—Cont.

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)

(district ct had jurisdiction over C that challenged Bd's jurisdiction over labor disputes in jai alai industry and asked for declaratory judgment as C alleged Bd abused its discretion under Sec. 14(c)(1) of Act because it directly contravened firm policy Bd had established for identical Ees in horse or dog racing branches of State's gambling industry; furthermore, jurisdiction impinged on State industry in violation of tenth amendment. These claims obviously arise under Constitution or law of U.S.; therefore, ct had jurisdiction under 28 U.S.C. Sec. 1331)

Monterey Peninsula Country Club v. N.L.R.B. No. C-80-1459, May 6, 1980, DC N.D. CA (unreported)

(E's application for temporary restraining order and/or preliminary inj against holding R election, denied, where there was no claim that Bd's election order was in excess of its power or that Bd powers cannot be extended to E's country club, and E's claim that Bd rulings at hearing deprived it of constitutional due process and that Bd lacked jurisdiction over its operation may be reviewed at proper time by ct of appeals)

Gould, Inc. v. Robert S. Fuchs, et al. 486 F.Supp. 164 (D Ct. CT, 1980)

(Bd's mtn to dismiss for lack of jurisdiction E's mtn for preliminary inj or writ of mandamus to set aside Bd's postponement of election under its *blocking charge* policy, granted for case not w/i *Leedom v. Kyne* exception to Sec. 10 limitation on appellate cts' jurisdiction to review Bd's nonfinal orders; postponement was pursuant to exercise of Bd's discretion in formulating *blocking charge* policy and not in excess of delegated powers for failure to analyze whether to postpone or conduct election, or in contravention of specific prohibition of Act for failure to conduct election)

National Engineers and Professionals Association, et al. v. N.L.R.B. et al. CV78-2138-RMT (D Ct. CA, July, 31, 1978 (unreported))

(ct has no constitutional basis to assert jurisdiction where U seeking to have ct award inj relief requiring Bd to hold mail ballot election because generally District Cts lack jurisdiction to review Bd rulings in R proceedings and issue does not fall w/i any exceptions to rule)

Florida Board of Business Regulation, etc., et al. v. N.L.R.B. 497 F. Supp. 599 (D Ct. FL, 1980)

(on remand, ct denies State's request for preliminary inj to enjoin Bd from asserting jurisdiction over jai alai industry in R proceeding; Bd's action held not arbitrary and capricious in absence of showing that Bd's unwillingness to assert jurisdiction over dog and horse racing industries prejudiced state interest)

International Association of Machinists and Aerospace Workers, AFL-CIO, an unincorporated labor organization v. Thomas C. Hendrix, et al. No. 80-1071, Jan. 29, 1980, DC KS (unreported)

(district ct denied TRO against Bd conducting election at E's plant where U contended fair election could not be held at that location but RD had considered U's objections in making decision and RD's discretionary decision can only be overturned when found to be arbitrary or capricious)

2520-7567 Unfair labor practice proceeding

Amsoil, Inc., a Delaware Corporation v. N.L.R.B. 525 F.Supp. 839 (DC MN, Nov. 1981)

(in action by E seeking to enjoin Bd from proceeding with hearing until after E is permitted to take depositions in preparation for hearng, ct dismissed action for lack of subject matter of jurisdiction, since Sec. 10(b), providing that Bd proceedings shall be conducted in accordance with *rules of evidence* applicable in district cts, relates only to introduction of evidence at hearing, leaving Bd free to establish prehearing procedures; moreover, E should be able to obtain review in ct of appeals of denial of depositions in event Bd should rule against it)

2520-7567-5000 Conduct of hearing

Signode Corporation v. N.L.R.B. No. C-1-79-615, Nov. 1, 1979, DC S.D. OH (unreported)

(mtn for temporary restraining order and permanent inj, denied, where mtn sought to enjoin ULP proceeding; district ct is w/o jurisdiction over the matter and, contrary to petitioner's contention, *Leedam v. Kyne* is inapplicable since Bd had not acted *in excess of its delegated powers and contrary to a specific prohibition in the Act*)

2520-7567-7800 Revocation of settlement agreement

Operating Engineers, Local Union No. 132 v. N.L.R.B. No. 79-2388-CH, Oct. 1, 1979, DC S.D. WV (unreported)

(Bd order granting mtn to set aside *on-th-record settlement agreements* and consolidating settled cases with another pending C case held unlawful, since settlement agreements had been consumated and conditions thereof performed and accomplished; action was abuse of Bd's powers and denial of petitioner's constitutional rights)

2520-8700 Board action sought to be mandated

2520-8733 Representation proceedings

2520-8733-1200 Processing of petition

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. 686 F.2d 1362 (C.A. 11, Sept. 1982)

(Bd's decision to take jurisdiction over jai alai Ees and not race track Ees is arbitrary as Bd treated 2 industries, identical in all comparable respects, differently, and gave no reasons for doing so; thus, where Bd asserts right to act arbitrarily in its decision to assert jurisdiction, this is abuse of discretion)

Newport News Shipbuliding and Dry Dock Company v. N.L.R.B. 498 F.Supp. 267 (D Ct. VA, 1980)

(mandate to require Bd to reinstate decertification ptn and conduct investigation to determine whether there was reasonable cause to believe qcr existed, granted, where RD's decision to dismiss decertification ptn was arbitrarily made w/o meaningful investigation, or consideration given to long term of bargaining sessions between U and E or any reasoning behind RD's reversal of earlier decision that qcr did exist, and Bd's terse telegraphic affirmance on review gave no reasons for its judgment)

2520-8733-2500 Conduct of election

Gould, Inc. v. Robert S. Fuchs, et al. 486 F.Supp. 164 (D Ct. CT, 1980)

(Bd's mtn to dismiss for lack of jurisdiction E's mtn for preliminary inj or writ of mandamus to set aside Bd's postponement of election under its *blocking charge* policy, granted for case not w/i *Leedom v. Kyne* exception to Sec. 10 limitation on appellate cts' jurisdiction to review Bd's nonfinal orders; postponement was pursuant to exercise of Bd's discretion in formulating *blocking charge* policy and not in excess of delegated powers for failure to analyze whether to postpone or conduct election, or in contravention of specific prohibition of Act for failure to conduct election)

2520-8733-7500 Vacation of certification

Newport News Shipbuilding and Dry Dock Company v. N.L.R.B. 633 F.2d 1079 (C.A. 4, 1980)

(Sec. 9(c)(1) prohibits ct from ordering Bd to conduct hearing in R case since hearing must be provided only after Bd has reasonable cause to believe qcr exists; since Bd met its statutory obligation by conducting investigation, ct cannot interfere with Bd's evaluation of investigation short of Bd's arbitrary action, and Bd's decision herein to dismiss decertification ptn, whether right or wrong, was not arbitrary)

Semi-Alloys, Inc. v. Winifred D. Morio, RD 490 F.Supp. 422 (D Ct. NY, 1980)

(where RD revoked certification of election after U presented newly discovered evidence of E's ULPs, E's mtn for injunction on TRO against RD to keep her from conducting hearing denied for lack of jurisdiction where no statutory provision prohibiting RD's action exists, administrative remedies have not been exhauted and E will be able to obtain review of Bd's actions in circuit ct)

2520-8767 Unfair labor practice proceeding

2520-8767-7500 Issuance of prehearing subpoenas

Martins Ferry Hospital Association v. N.L.R.B. 654 F.2d 455 (C.A. 6, 1981)

(E's suit for mandamus relief, seeking order compelling Bd to issue subpoenas to it during investigative stage directing field examiner and U's involved in ULP proceeding to turn over originals or copies of authorization cards denied; Bd's interpretation of *proceedings* as applying only after Bd has issued complaint is not clearly wrong and duty imposed by Sec. 11(1) of Bd's R/R is not so clearly established that E has established clear and certain right and is entitled to mandamus relief)

2540 PROCEEDINGS TO ENJOIN OR MANDATE GENERAL COUNSEL ACTION

2540-5000 Jurisdiction of court

2540-5001 Generally

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC 610 F.2d 1221 (C.A. 4)

(in dismissing action for declaratory judgment and writ of mandamus against GC to declare unlawful GC's refusal to file complaint and to require him to do so, ct held that, unless ct can ascertain that GC acted in excess of his statutorily delegated authority, ct has no jurisdiction to require him to issue complaint, and case dismissed for want of jurisdiction, since Act is not so clear that ct can say with reasonable certainty that GC exceeded his delegated authority in ruling that state agency was not statutory E)

[illegible] No statutory basis for jurisdiction to review

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**
(GC's refusal to file complaint alleging ULP)

Blue Cross and Blue Shield of Michigan, a non-profit Michigan Corporation v. N.L.R.B. **609 F.2d 240 (C.A. 6, 1979)**
(remand to district court for dismissal of E's complaint that Bd hearing officer's closing of preelection hearing violated E's rights to due process of law, since courts are w/o jurisdiction to review U representation proceedings prior to *final orders* by Bd)

Laurie L. Abraham v. Graphic Arts International Union, AFL-CIO, CLC, et al. **592 F.2d 1189 (D Ct DC, 1980)**
(C that GC failed to perform his official duty by refusing to issue ULP C against E dismissed since Sec. 3(d) of NLRA provided GC with unreviewable discretion to refuse to issue ULP C)

Semi-Alloys, Inc. v. Winifred D. Morio, RD **490 F.Supp. 432 (D Ct. NY, 1980)**
(where RD revoked certification of election after U presented newly discovered evidence of E's ULPs, E's mtn for injunction on TRO against RD to keep her from conducting hearing denied for lack of jurisdiction where no statutory provision prohibiting RD's action exists, administrative remedies have not been exhauted and E will be able to obtain review of Bd's actions in circuit ct)

The Fort Miller Company Inc. v. Thomas W. Seeler, RD **(78-CV-482 Dec. 11, 1978, D Ct. NY) (unreported)**
(ct had no jurisdiction to enjoin Bd from conducting any further investigation of objections to election on basis that objections did not comply with Bd's R/R which require short statement of reasons for objections since plaintiff's only recourse for review was under sections 10(e) and (f) of Act where Bd did not act in excess of its powers or contrary to Act; herein, procedure followed by RD was practical and fundementally fair and evidence furnished by U satisfied provisions of Bd's R/R)

2540-5067 Arbitrary and capricious action constituting denial of constitutional due process

Florida Board of Business Regulation Department of Business Regulation, etc. v. N.L.R.B. **686 F.2d 1362 (C.A. 11, Sept. 1982)**
(Bd's decision to take jurisdiction over jai alai Ees and not race track Ees is arbitrary as Bd treated 2 industries, identical in all comparable respects, differently, and gave no reasons for doing so; thus, where Bd asserts right to act arbitrarily in its decision to assert jurisdiction, this is abuse of discretion)

The Fort Miller Company Inc. v. Thomas W. Seeler, RD **(78-CV-482 Dec. 11, 1978, D Ct. NY) (unreported)**
(ct had no jurisdiction to enjoin Bd from conducting any further investigation of objections to election on basis that objections did not comply with Bd's R/R which require short statement of reasons for objections since plaintiff's only recourse for review was under sections 10(e) and (f) of Act where Bd did not act in excess of its powers or contrary to Act; herein, procedure followed by RD was practical and fundamentally fair and evidence furnished by U satisfied provisions of Bd's R/R)

2540-6700 Action sought to be enjoined

N.L.R.B. v. Shippers Interstate Service, Inc. **No. FB-78-00662, May 16, 1979, DC N.D. IN (unreported)**
(Chapter XI automatic stay provision of Bankruptcy Act applies to proceedings before NLRB, and therefore bankruptcy ct was not w/o jurisdiction to restrain Bd from commencing or continuing proceedings against debtor)

The Fort Miller Company Inc. v. Thomas W. Seeler, RD **(78-CV-482 Dec. 11, 1978, D Ct. NY) (unreported)**
(ct had no jurisdiction to enjoin Bd from conducting any further investigation of objections to election on basis that objections did not comply with Bd's R/R which require short statement of reasons for objections since plaintiff's only recourse for review was under sections 10(e) and (f) of Act where Bd did not act in excess of its powers or contrary to Act; herein, procedure followed by RD was practical and fundamentally fair and evidence furnished by U satisfied provisions of Bd's R/R)

2540-6800 Action sought to be mandated

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC **610 F.2d 1221 (C.A. 4)**
(ct affirmed district ct's dismissal of action by E association for declaratory judgment and writ of mandamus against GC to declare unlawful GC's refusal to file requested complaint and to require him to file complaint; GC's refusal to issue complaint is ordinarily not reviewable by federal cts unless failure to act turns on mistake of law, and GC's opinion in instant case that state agency is not statutory E, and therefore proscriptions of Sec. 8(e) do not apply was not in excess of his statutorily delegated authority)

Ray Marshall, Secretary of Labor v. Brite Metal Treating, et al. **No. C77-1105 (D Ct. OH, June 30, 1978 (unreported))**
(subpoena issued by defendant in OSHA proceeding against Bd attorney for his work product quashed where defendant failed to seek GC's permission for disclosure)

2540-8367 Issuance and prosecution of complaint

Raymond T. Kolinske v. William A. Lubbers, et al. **516 F.Supp. 1171 (D Ct DC, June 1981)**
(district ct lacked jurisdiction where non-U member in agency shop sought writ of mandamus directing GC to issue complaints charging ULPs against U and local for failure to pay him strike benefits unless he participated in picketing and for U's collection of fees allocated to be spent on programs in which he may not participate since GC has unreviewable discretion to refuse to institute ULP complaint)

Laurie L. Abraham v. Graphic Arts International Union, AFL-CIO, CLC, et al. **592 F.2d 1189 (D Ct DC, 1980)**
(C that GC failed to perform his official duty by refusing to issue ULP C against E dismissed since Sec. 3(d) of NLRA provided GC with unreviewable discretion to refuse to issue ULP C)

Rockford Redi-Mix Co., Inc. v. Glenn Zipp, RD **482 F.Supp. 489 (D Ct IL)**
(ptn to require RD and GC to reverse their decision not to issue complaint or alleged ULP charges, dismissed, since the decision was w/i RD's and GC's discretion and ct has no jurisdiction to mandamus the RD and GC)

Iowa Beef Processors, Inc. v. N.L.R.B. **No. 80-L-62, Apr. 10, 1980, DC NE (unreported)**
(in applying traditional test and standards promulgated in Second Circuit, district ct denied E's request for preliminary inj (and inj pending appeal) against Bd, GC, and RD from prosecuting backpay specification and ULP C, since ct found no irreparable injury and no probability of success on merits; and ct also felt no need to reach question of fair ground for litigation since there was no balance of hardships tipping decidedly toward E)

2590 ACTIONS FOR DECLARATORY JUDGMENT

Newport News Shipbuilding and Drydock Company v. Peninsula Shipbuilders' Association, et al. **631 F.2d 263 (C.A. 4, Apr. 1981)**
(district ct improperly denied Bd's mtn to intervene in declaratory judgment action brought against U by E seeking judicial construction of bargaining agreement's check-off revocation provision, enforcement of which was alleged unlawful in Bd C issued while district ct action was pending; Bd had right to intervene since (1) it had interest in subject matter of action, (2) disposition of action impaired or impeded Bd's ability to protect that interest, and (3) its interest was not adequately represented by existing parties)

Newport News Shipbuilding and Drydock Company v. Peninsula Shipbuilders' Association, et al. **631 F.2d 263 (C.A. 4, Apr. 1981)**
(Bd had right to intervene in D.Ct in declaratory judgment action brought against U by E seeking judicial construction of checkoff revocation provision, enforcement of which was alleged unlawful in Bd C issued while D.Ct action was pending; Bd had necessary interest in action's subject matter derived from its role as primary tribunal for adjudicating ULPs and from its responsibility for preventing and remedying them; there was real possibility of inconsistent adjudications; and Bd had legitimate interest to protect its exclusive or concurrent jurisdiction)

Newport News Shipbuilding and Drydock Company v. Peninsula Shipbuilders' Association, et al. **631 F.2d 263 (C.A. 4, Apr. 1981)**
(a party may not evade Bd's exclusive jurisdiction by contriving in ct of law an ostensible contract dispute when true issue is one of an ULP and Bd had right to intervene to protect its jurisdiction and processes in district ct's declaratory judgment action brought against U by E seeking judicial construction of bargaining agreement's check-off revocation provision, enforcement of which was alleged unlawful in Bd C issued while district ct action was pending)

Newport News Shipbuilding and Drydock Company v. Peninsula Shipbuilders' Association, et al. **631 F.2d 263 (C.A. 4, Apr. 1981)**
(Bd properly intervened in E's declaratory judgment action in D.Ct against U for judicial construction of check-off revocation provision, enforcement of which was alleged unlawful in Bd C issued while D.Ct action was pending, since Bd's protection of its interest was thereby impeded inasmuch as finding that provision was valid gave parties final unappealed decision; even if not entitled to res judicata or collateral estoppel effect in Bd proceeding, judgment created for Bd *practical disadvantage* warranting intervention of right)

2590—Cont.

Newport News Shipbuilding and Drydock Company v. Peninsula Shipbuilders' Association, et al. 631 F.2d 263 (C.A. 4, Apr. 1981)

(Bd's status as amicus curiae after being denied intervention in D.Ct declaratory judgment action brought against U by E seeking judicial construction of bargaining agreement's check-off revocation clause, enforcement of which was alleged unlawful in Bd C issued while D.Ct action was pending, did not relieve practical impediment to Bd's ability to protect its interest; as amicus, Bd was deemed to lack *standing* to challenge contractual provision; and lacking party status, Bd had no right to seek review by appeal of any decision affecting its interests)

Newport News Shipbuilding and Drydock Company v. Peninsula Shipbuilders' Association, et al. 631 F.2d 263 (C.A. 4, Apr. 1981)

(Bd properly intervened in E's declaratory judgment action in D.Ct against U for judicial construction of check-off revocation provision, enforcement of which was alleged unlawful in Bd C issued while D.Ct action was pending, since Bd had right to intervene in order to protect its jurisdiction and processes against possibility of ct judgment in conflict with its own in pending ULP proceeding where Bd's interests in subject matter of ct action were not adequately represented by parties)

Newport News Shipbuilding and Drydock Company v. Peninsula Shipbuilders' Association, et al. 631 F.2d 263 (C.A. 4, Apr. 1981)

(where D.Ct improperly denied Bd's mtn to intervene in declaratory judgment proceeding brought against U by E seeking judicial construction of bargaining agreement's check-off revocation provision, enforcement of which was alleged unlawful in Bd C issued while D.Ct action was pending, ct remanded action to admit Bd by intervention as party defendant for limited purpose of prosecuting on appeal, if so disposed, from D.Ct's judgment; based upon such ct's rejection of Bd's contentions as amicus curiae in proceedings, Bd had *appealable interest* in D.Ct)

Associated Builders and Contractors, Inc., Baltimore Metropolitan Chapter v. John S. Irving, GC 610 F.2d 1221 (C.A. 4)

(ct affirmed district ct's dismissal of action by E association for declaratory judgment and writ of mandamus against GC to declare unlawful GC's refusal to file requested complaint and to require him to file complaint; GC's refusal to issue complaint is ordinarily not reviewable by federal cts unless failure to act turns on mistake of law, and GC's opinion in instant case that state agency is not statutory E, and therefore proscriptions of Sec. 8(e) do not apply was not in excess of his statutorily delegated authority)

2595 DISCOVERY

N.L.R.B. v. Martins Ferry Hospital Association 649 F.2d 445 (C.A. 6, May 1981)

(U authorization cards exempt from disclosure. *authorization cards are investigatory records in possession of Bd for enforcement purposes. Authorization cards are not discoverable by E under any rule of the Bd, and discovery cannot be obtained under Freedom of Information Act*)

N.L.R.B. v. Martins Ferry Hospital Association 649 F.2d 445 (C.A. 6, May 1981)

(contention ct denied E due process by permitting Bd to engage in pretrial discovery in subpoena enforcement proceedings while denying E equal discovery, rejected; since if current investigation conducted by GC should result in filing of complaint, E will be entitled to hearing and opportunity to refute evidence obtained by subpoena, and any failure on part of Bd to conduct due process hearing can be challenged before Bd and is subject to ct review)

Ray Marshall, Secretary of Labor v. Brite Metal Treating, et al. No. C77-1105 (D Ct. OH, June 30, 1978 (unreported))

(subpoena issued by defendant in OSHA proceeding against Bd attorney for his work product quashed where defendant failed to seek GC's permission for disclosure)

5000 PROCEEDINGS BY BOARD TO PROTECT BOARD JURISDICTION

Peninsula Shipbuilders' Association v. N.L.R.B. 663 F.2d 488 (C.A. 4, Sep. 1981)

(where U did not honor Ees' revocation of their checkoff authorizations because not on U forms as required by contract provision, ct rejected Bd contentions that district ct lacked jurisdiction because there was neither case nor contraversy since U and E were aligned on interpretation of disputed provision, and that district ct abused its discretion by not deferring to Bd's primary jurisdiction or by not staying action pending resolution of ULP proceeding; issue of E's rights to defense and indemnification in regard to provision presented live case to district ct; and ct also had jurisdiction under LMRA Sec. 301)

5001 GENERALLY

In Re: Charles K. Sewell 690 F.2d 403 (C.A. 4, Sept. 1982)

(appellate ct is authorized to issue a writ of mandamus pursuant to All Writs Act in aid of its jurisdiction to confine inferior ct to lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so, but only in exceptional circumstance amounting to judicial usurpation of power; moreover petitioner must show that he had no other adequate means to attain the desired relief, a showing of simple error being insufficient)

5020 ENJOINING STATE EXERCISE OF JURISDICTION

5020-3300 STATE COURT PROCEEDINGS

Bill Johnson's Restaurants, Inc. v. N.L.R.B. 660 F.2d 1335 (C.A. 9, Nov 1981)

(all state actions for libel are preempted unless they are based upon defamatory statements published with knowledge of their falsity or with reckless disregard of truth or falsity. While state courts have competency to determine whether E who brings libel suit has evidence to support allegations, but so does Bd in deciding whether filing libel suit is ULP. If Bd does decide it preempts further action by state ct)

Arel Lynn Rodgers v. John H. Fanning, et al. No. 78-1074 (D Ct. KS, Jan. 17, 1979 (unreported))

(Bd's mtn for dismissal of third party C filed by individual for indemnity against Bd in malicious prosecution suit brought by E in state ct against individual for filing false charges and willfully fabricating evidence in prior Bd ULP proceeding, granted; suits against Bd are suits against the United States and cannot be maintained w/o consent of Congress, and exclusive remedy for tort claims is Federal Tort Claims Act which, however, excludes any claims arising out of malicious prosecution; consequently, third party C against Bd cannot be maintained)

Arel Lynn Rodgers v. John H. Fanning, et al. No. 78-1074 (D Ct. KS, Jan. 17, 1979 (unreported))

(Bd's mtn to dismiss malicious prosecution suit brought by E in state ct against discharged Ee for filing false charges and willfully fabricating evidence in prior Bd ULP proceeding, denied; although preemption is required when state law clearly conflicts with policies established by federal law, threat that malicious prosecution suits would chill exercise of right of access to Bd is insufficient to outweigh interests of state in protecting its citizens from such suits)

Arel Lynn Rodgers v. John H. Fanning, et al. No. 78-1074 (D Ct. KS, Jan. 17, 1979 (unreported))

(Bd's mtn to dismiss malicious prosecution suit brought by E in state ct against discharged Ee for filing false charges and willfully fabricating evidence in prior Bd ULP proceeding, denied; although preemption is required when activities are either arguably protected or arguably prohibited, preemption is not justified when aggrieved party does not have a reasonable opportunity to invoke Bd's jurisdiction which E could not have done herein and, consequently, arguably protected nature of Ee's conduct was not sufficient to justify preemption)

Arel Lynn Rodgers v. John H. Fanning, et al. No. 78-1074 (D Ct. KS, Jan. 17, 1979 (unreported))

(Bd's mtn to stay malicious prosecution proceedings in state ct brought by E against discharged Ee for filing false charges and fabricating evidence in prior Bd ULP proceeding, granted; Bd's primary jurisdiction does not extend to cases in which E, as herein, has no acceptable method of invoking, or inducing other party to invoke Bd's jurisdiction; consequently, while action was not necessarily preempted, ct deferred to Bd's determination of probable cause to believe that suit herein infringes on protected conduct and stayed action pending Bd's determination)

5060 INTERVENTION IN FEDERAL COURT PROCEEDINGS

5060-0500 All Writs Act, 28 U.S.C. Section 1651(a)

In Re: Charles K. Sewell 690 F.2d 403 (C.A. 4, Sept. 1982)

(appellate ct is authorized to issue a writ of mandamus pursuant to All Writs Act in aid of its jurisdiction to confine inferior ct to lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so, but only in exceptional circumstance amounting to judicial usurpation of power; moreover petitioner must show that he had no other adequate means to attain the desired relief, a showing of simple error being insufficient)

In Re: Charles K. Sewell 690 F.2d 403 (C.A. 4, Sept. 1982)

(mandamus petitioned for by company official, with Bd as intervenor, on ground that U action in district ct against him because of company's refusal to bargain was preempted by Bd law, granted and appellate ct held district ct action must be dismissed)

5060-1700 Actions under 28 U.S.C. Section 1337

5060-1750 To protect jurisdiction

Newport News Shipbuilding and Drydock Company v. Peninsula Shipbuilders' Association, et al. **631 F.2d 263 (C.A. 4, Apr. 1981)**

(district ct improperly denied Bd's mtn to intervene in declaratory judgment action brought against U by E seeking judicial construction of bargaining agreement's check-off revocation provision, enforcement of which was alleged unlawful in Bd C issued while district ct action was pending; Bd had right to intervene since (1) it had interest in subject matter of action, (2) disposition of action impaired or impeded Bd's ability to protect that interest, and (3) its interest was not adequately represented by existing parties)

Newport News Shipbuilding and Drydock Company v. Peninsula Shipbuilders' Association, et al. **631 F.2d 263 (C.A. 4, Apr. 1981)**

(Bd had right to intervene in D.Ct in declaratory judgment action brought against U by E seeking judicial construction of checkoff revocation provision, enforcement of which was alleged unlawful in Bd C issued while D.Ct action was pending; Bd had necessary interest in action's subject matter derived from its role as primary tribunal for adjudicating ULPs and from its responsibility for preventing and remedying them; there was real possibility of inconsistent adjudications; and Bd had legitimate interest to protect its exclusive or concurrent jurisdiction)

Newport News Shipbuilding and Drydock Company v. Peninsula Shipbuilders' Association, et al. **631 F.2d 263 (C.A. 4, Apr. 1981)**

(a party may not evade Bd's exclusive jurisdiction by contriving in ct of law an ostensible contract dispute when true issue is one of an ULP and Bd had right to intervene to protect its jurisdiction and processes in district ct's declaratory judgment action brought against U by E seeking judicial construction of bargaining agreement's check-off revocation provision, enforcement of which was alleged unlawful in Bd C issued while district ct action was pending)

Newport News Shipbuilding and Drydock Company v. Peninsula Shipbuilders' Association, et al. **631 F.2d 263 (C.A. 4, Apr. 1981)**

(Bd properly intervened in E's declaratory judgment action in D.Ct against U for judicial construction of check-off revocation provision, enforcement of which was alleged unlawful in Bd C issued while D.Ct action was pending, since Bd's protection of its interest was thereby impeded inasmuch as finding that provision was valid gave parties final unappealed decision; even if not entitled to res judicata or collateral estoppel effect in Bd proceeding, judgment created for Bd *practical disadvantage* warranting intervention of right)

Newport News Shipbuilding and Drydock Company v. Peninsula Shipbuilders' Association, et al. **631 F.2d 263 (C.A. 4, Apr. 1981)**

(Bd's status as amicus curiae after being denied intervention in D.Ct declaratory judgment action brought against U by E seeking judicial construction of bargaining agreement's check-off revocation clause, enforcement of which was alleged unlawful in Bd C issued while D.Ct action was pending, did not relieve practical impediment to Bd's ability to protect its interest; as amicus, Bd was deemed to lack *standing* to challenge contractual provision; and lacking party status, Bd had no right to seek review by appeal of any decision affecting its interests)

Newport News Shipbuilding and Drydock Company v. Peninsula Shipbuilders' Association, et al. **631 F.2d 263 (C.A. 4, Apr. 1981)**

(Bd properly intervened in E's declaratory judgment action in D.Ct against U for judicial construction of check-off revocation provision, enforcement of which was alleged unlawful in Bd C issued while D.Ct action was pending, since Bd had right to intervene in order to protect its jurisdiction and processes against possibility of ct judgment in conflict with its own in pending ULP proceeding where Bd's interests in subject matter of ct action were not adequately represented by parties)

Newport News Shipbuilding and Drydock Company v. Peninsula Shipbuilders' Association, et al. **631 F.2d 263 (C.A. 4, Apr. 1981)**

(where D.Ct improperly denied Bd's mtn to intervene in declaratory judgment proceeding brought against U by E seeking judicial construction of bargaining agreement's check-off revocation provision, enforcement of which was alleged unlawful in Bd C issued while D.Ct action was pending, ct remanded action to admit Bd by intervention as party defendant for limited purpose of prosecuting an appeal, if so disposed, from D.Ct's judgment; based upon such ct's rejection of Bd's contentions as amicus curiae in proceedings, Bd had *appealable interest* in D.Ct)

5060-1900 Section 301 suits

Peninsula Shipbuilders' Association v. N.L.R.B. **663 F.2d 488 (C.A. 4, Sep. 1981)**

(where U did not honor Ees' revocation of their checkoff authorizations because not on U forms as required by contract provision, ct rejected Bd contentions that district ct lacked jurisdiction because there was neither case nor controversy since U and E were aligned on interpretation of disputed provision, and that district ct abused its discretion by not deferring to Bd's primary jurisdiction or by not staying action pending resolution of ULP proceeding; issue of E's rights to defense and indemnification in regard to provision presented live case to district ct; and ct also had jurisdiction under LMRA Sec. 301)

Automobile Workers (UAW) and Its Local 1519 v. N.L.R.B. **619 F.2d 580 (C.A. 6, Apr. 1980)**

(when E has been acting in accord with ultimate Bd *Section 10(k)* ruling, E is not liable for damages to disappointed U; even in a *LMRA Section 301* suit)

5060-6700 Bankruptcy proceedings

In re W. T. Grant Company, and Charles G. Rodman, as Trustee of the Estate of W.T. Grant Company, Bankrupt v. Alton Rinier, as agent for Certain Employees of Bankrupt **620 F.2d 319 (C.A. 2, 1980)**

(ct held executory contract of Ees of debtor-in-possession is binding on latter if it receives benefits under it which occurred here when debtor-in-possession permitted workers to continue in its employ during Chapter XI proceeding)

In re W. T. Grant Company, and Charles G. Rodman, as Trustee of the Estate of W.T. Grant Company, Bankrupt v. Alton Rinier, as agent for Certain Employees of Bankrupt **620 F.2d 319 (C.A. 2, 1980)**

(ct held severance pay claims of bankrupt's Ees are entitled to first priority as costs and expenses of administration; severance pay is compensation for termination and is not a form of wages that accrues from day to day)

N.L.R.B. v. Evans Plumbing Company **639 F.2d 291 (C.A. 5, 1981)**

(enforcement granted where Bd ordered E who filed voluntary bankruptcy ptn to reinstate with backpay two discriminatorily discharged Ees since, contrary to E's contention, ct held that Bd proceeding falls w/i statutory exemption to automatic stay provision of Bankruptcy Act of 1978)

N.L.R.B. v. Trans-Coal Barge Co. and Vincent J. Shannon, Trustee **No. 3-78-0199, Dec. 31, 1979, DC N.D. CA (unreported)**

(trustee's objection to Bd's claim for backpay against bankrupt, overruled, even though Bd's claim was not timely filed, where due to procedural irregularity on part of bankrupt, ct assumed Bd did not receive notice of bar date for filing claim which arose during bankruptcy proceeding)

N.L.R.B. v. Trans-Coal Barge Co. and Vincent J. Shannon, Trustee **No. 3-78-0199, Dec. 31, 1979, DC N.D. CA (unreported)**

(even in absence of procedural irregularity resulting in overruling of trustee's objection to Bd's backpay claim against bankrupt, bankruptcy ct would overrule trustee's objection, in view of appeals ct's *liberality in amendments* rule)

N.L.R.B. v. Trans-Coal Barge Co. and Vincent J. Shannon, Trustee **No. 3-78-0199, Dec. 31, 1979, DC N.D. CA (unreported)**

(although automatic stay under Bankruptcy Act would appear to apply to Bd's ULP C involving backpay claim against bankrupt, bankruptcy ct held that, in instant liquidating proceeding, it was appropriate for ct to *stay its hand* and terminate automatic stay since Bd has necessary specialized expertise for litigation of dispute, and there is no apparent reason why such expertise should be bypassed in favor of litigation in bankruptcy ct)

N.L.R.B. v. Trans-Coal Barge Co. and Vincent J. Shannon, Trustee **No. 3-78-0199, Dec. 31, 1979, DC N.D. CA (unreported)**

(in terminating automatic stay under Bankruptcy Act and permitting Bd to proceed with ULP C and determination of backpay against bankrupt, bankruptcy ct, recognizing trustee's dilemma in deciding whether to contest C or not to proceed in the matter, advised delay on part of all parties to await determination of availability of assets and, if contrary to trustee's wishes, matter is pursued, trustee could seek instructions from ct on question of defending against C)

N.L.R.B. v. Trans-Coal Barge Co. and Vincent J. Shannon, Trustee **No. 3-78-0199, Dec. 31, 1979, DC N.D. CA (unreported)**

(while terminating automatic stay under Bankruptcy Act and permitting Bd to proceed with ULP C involving backpay claim against bankrupt, bankruptcy ct did not terminate automatic stay and reserved jurisdiction over question of priority to be given any backpay claim in connection with ULP and any distributions to be made by trustee on account of such claim)

N.L.R.B. v. Shippers Interstate Service, Inc. **No. FB-78-00662, May 16, 1979, DC N.D. IN (unreported)**

(Chapter XI automatic stay provision of Bankruptcy Act applies to proceedings before NLRB, and therefore bankruptcy ct was not w/o jurisdiction to restrain Bd from commencing or continuing proceedings against debtor)

5060-6733 To prove claim

Charles G. Rodman, as Trustee of The Estate of W.T. Grant Company, Bankrupt, etc. v. Alton Rinier, as agent for certain employees of Bankrupt, etc. **No. 75-B-1735 (KTD) Aug. 29, 1979, DC S.D. NY (unreported)**

(Ees held entitled to recover full amount of severance apy guaranteed them by contracts as expenses of administration where E as debtor-in-possession during Chapter XI bankruptcy proceedings had failed to formally reject executory severance agreements and had received benefits of service of its experienced personnel)

5060-6767 To protect proceeding or order

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession **682 F.2d 72 (C.A. 3, June 1982)**

(in suit brought in bankruptcy ct by debtor-in-possession seeking rejection of bargaining agreement, and in which Bd, having ordered compliance with agreement, intervened, ct vacated bankruptcy ct's judgment, affirmed by district ct, permitting rejection of agreement, and remanded to district ct with direction to remand to bankruptcy ct, where bankruptcy ct, had not set forth reasoned elaboration of its decision; since ct could not determine what movitated ct's decision and could not properly determine whether there was legal error, it remanded for consideration in light of precepts announced herein)

Shippers Interstate Service, Inc. v. N.L.R.B. **618 F.2d 9 (C.A. 7, 1980)**

(where company is being reorganized rather than liquidated and assets are not threatened, Bankruptcy Rule 11-44 shall not apply and regulatory proceedings of NLRB are not subject to automatic stay provisions of that rule)

The Seeburg Corporation, et al. v. N.L.R.B. **No. 79-B-39597, Nov. 13, 1980, DC N.D. IL (unreported)**

(order staying Bd's ULP proceedings vacated and bankruptcy judge ordered to refrain from hearing ULP charges, since proceedings by BD are not automatically stayed by bankruptcy filing; all bankrupt's assets were being sold to single entity with full knowledge of ULP charges and possibility of backpay assessment which made transfer of assets *a reorganization,* and not *a liquidation;* ULP charges and question of successorship left to Bd's superior expertise)

5060-6767-5000 Circumstances to be considered by bankruptcy court in rejection of bargaining agreement

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession **682 F.2d 72 (C.A. 3, June 1982)**

(in case involving determination of propriety of debtor-in-possession's rejection of bargaining agreement giving rise to 8(a)(5) C, ct held debtor-in-possession is new entity, separate and apart from pre-bankruptcy company, and does not become party to executory contract unless it assumes contract; and, since debtor-in-possession is not party to contract, it is not bound by Sec. 8(d), but burden of persuading bankruptcy ct to permit rejection is on debtor-in-possession or trustee)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession **682 F.2d 72 (C.A. 3, June 1982)**

(while usual test for rejection of executory contracts in bankruptcy situation is *business judgment* test, i.e., whether rejection would benefit estate, impact of rejection of bargaining agreement on workers' rights, calling for more stringent examination of evidence to justify rejection, requires *thorough scrutiny and careful balancing of equities on both sides;* such test accommodates NLRA's labor policies but does not erect impossible barriers to rejection of labor contracts in violation of bankruptcy law's policies and plots a middle course requiring sensitive weighing of competing interests)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession **682 F.2d 72 (C.A. 3, June 1982)**

(ct rejected test predicating permission to reject bargaining agreement by debtor-in-possession on showing that burdensome bargaining agreement will thwart efforts to save failing enterprise from collapse; such test goes well beyond *balancing of the equities* test and, by basing rejection on determination that failure to reject will make successful arrangement impossible and allowing rejection only when equities favor debtor, it may make it impossible to predict success of reorganization until very late and unduly exalts perpetuation of bargaining agreement over whether Ees will have jobs at all)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession **682 F.2d 72 (C.A. 3, June 1982)**

(among factors to be considered by bankruptcy ct when debtor-in-possession rejects bargaining agreement is fact that debtor remains an E and is required by NLRA to bargain with representative of Ees who retain right to strike should negotiations fail; and consequences of strike on precarious business must be weighed; moreover, under bankruptcy laws, Ees may assert monetary claim for breach of contract, and both impact of claim against debtor and adequacy of relief Ees might obtain through claim procedures must be considered)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession **682 F.2d 72 (C.A. 3, June 1982)**

(bankruptcy ct's proper approach for protecting bargaining agreements w/o unduly advancing NLRA's interests over interests of Ees and of debtor's creditors requires that debtor demonstrate that continuation of bargaining agreement would burden estate and then make factual presentation to permit bankruptcy ct to weigh competing claims under labor contract and other claims; Ees' rights under national labor policy and sacrifices of other creditors must be considered and determination made that rejection of labor contract will assist debtor to achieve satisfactory reorganization)

N.L.R.B. v. Bildisco and Bildisco, Debtor-In-Possession **682 F.2d 72 (C.A. 3, June 1982)**

(proper approach by bankruptcy ct in considering propriety of rejection of bargaining agreements by debtor-in-possession requires that, under circumstances of distressed economy in construction industry affecting debtor herein, bankruptcy ct should consider that it would be in interest of workers to be afforded opportunity to continue to work under less generous financial benefits than to insist upon absolute payment of contractual benefits, and it could well conclude that it is in public interest for Ees to work w/o advantage of contractual fringe benefits than not to work at all)

In The Matter Of: The Connecticut Celery Company **No. H-79-146, July 9, 1980, DC CO (unreported)**

(E debtor-in-possession was denied permission to reject executory contract, as it would be inequitable to shift so much of burden of reorganization to U Ees by depriving them of pension rights and U Ees might be forced to choose between their jobs and U membership)

In The Matter Of: The Connecticut Celery Company **No. H-79-146, July 9, 1980, DC CO (unreported)**

(though bankruptcy ct empowered to reject collective bargaining agreements, decision to reject should not be based solely on whether it will improve financial status of debtor; furthermore, no support in law for use of *comparison of competition* test - unfavorable competitive situation forced on bankrupt by that contract - to determine burdensomeness of labor contract)

In The Matter Of: The Connecticut Celery Company **No. H-79-146, July 9, 1980, DC CO (unreported)**

(before ct will allow labor agreement to be rejected it must be shown that agreement is so onerous that, if enforced, it would cause collapse of debtor with ensuing loss of U Ees' jobs and would tip the equities decidedly in favor of rejection of contract)

7500 CERTIFICATION OF QUESTIONS TO BOARD BY COURT

The Carpenters District Council of North Central Texas v. North Texas Contractor Assoc. et al. **No. CA3-76-1151-F (D Ct. TX, Feb. 21, 1979 (unreported))**

(on mtn of Bd that it could only decide contractual questions which ct had asked Bd to decide in context of ULP proceedings, ct withdrew its certification of questions to Bd)

8700 AWARDS OF ATTORNEY FEES AND OTHER EXPENSES UNDER EQUAL ACCESS TO JUSTICE ACT (EAJA)

8733 COVERED PROCEEDINGS

8733-2000 Date pending before Court

Tyler Business Services, Inc. v. N.L.R.B. **695 F.2d 73 (C.A. 4, Nov. 24, 1982)**

(contrary to GC's contention, fees for appellate ct proceeding where ptn for review and cross ptn for enforcement were pending at time EAJA became effective held recoverable, since test for recovery is whether case was pending on effective date, not when fees were incurred; SCt has approved fee awards for work performed before effective date of applicable authorizing statute, and rationale in those SCt cases applies here since statutes involved in those cases and statute herein address similar concerns)

8733-6000 Court proceeding on review of Board order

Tyler Business Services, Inc. v. N.L.R.B. **695 F.2d 73 (C.A. 4, Nov. 24, 1982)**

(contrary to GC's contention, fees for appellate ct proceeding where ptn for review and cross ptn for enforcement were pending at time EAJA became effective held recoverable, since test for recovery is whether case was pending on effective date, not when fees were incurred; SCt has approved fee awards for work performed before effective date of applicable authorizing statute, and rationale in those SCt cases applies here since statutes involved in those cases and statute herein address similar concerns)

8750 ELIGIBILITY FOR AN AWARD

8750-2500 Prevailing party

Tyler Business Services, Inc. v. N.L.R.B. 695 F.2d 73 (C.A. 4, Nov. 24, 1982)

(E awarded costs and attorney's fees related to appellate ct proceeding denying cross-ptn for enforcement on ptn for review, since petitioner prevailed and not only did GC fail to show that his position was substantially justified, but his position also lacked a reasonable factual basis where he failed to address a hiatus in his proof)

8767 DEFENSES

8767-3300 General Counsel's position substantially justified

Tyler Business Services, Inc. v. N.L.R.B. 695 F.2d 73 (C.A. 4, Nov. 24, 1982)

(E awarded costs and attorney's fees related to appellate ct proceeding denying cross-ptn for enforcement on ptn for review, since petitioner prevailed and not only did GC fail to show that his position was substantially justified, but his position also lacked a reasonable factual basis where he failed to address a hiatus in his proof)

8783 COMPENSATED FEES AND EXPENSES

8783-6000 Compensated fees for proceeding before Court

Tyler Business Services, Inc. v. N.L.R.B. 695 F.2d 73 (C.A. 4, Nov. 24, 1982)

(E awarded costs and attorney's fees related to appellate ct proceeding denying cross-ptn for enforcement on ptn for review, since petitioner prevailed and not only did GC fail to show that his position was substantially justified, but his position also lacked a reasonable factual basis where he failed to address a hiatus in his proof)

883 PROCEEDINGS UNDER OTHER STATUTES

2500 FREEDOM OF INFORMATION ACT

2501 GENERALLY

Louis Alirez v. N.L.R.B. No. 79-Z-1243, Feb. 26, 1980, DC CO (unreported)

(FOIA is to be broadly construed and its basic policy is in favor of disclosure; its exemptions are to be narrowly construed, with all doubts resolved in favor of disclosure; and burden is on administrative agency to prove that documents sought are w/i statutory exemptions from disclosure)

Nissen Foods (USA) Co., Inc. v. N.L.R.B. 540 F.2d 584 (DC E.D. PA, June 1982)

(in testing validity of Bd's refusal to disclose requested information, ct observed that FOIA seeks to insure disclosure and not suppression, and that all exemptions are subject to narrow construction)

2501-3300 Purpose of Act

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. 441 U.S. 281 (S Ct US, 1979)

(FOIA purely disclosure statute and petitioner not afforded private right of action to enjoin agency disclosures of material submitted by petitioner)

N.L.R.B. v. Thom Brown Shoes, Inc. No. 79-C-3173, Feb. 20, 1980, DC E.D. NY (unreported)

(compliance with *Excelsior rule* not violative of Ees' rights to privacy and E's citation to FOIA inapposite to E's obligation under *Excelsior rule,* notwithstanding Ees are free to resist U attempts to solicit them at home; E ordered to comply with Bd's *subpoena duces tecum* to supply *Excelsior list*)

2501-3350 Not intended as discovery device

N.L.R.B. v. Martins Ferry Hospital Association 649 F.2d 445 (C.A. 6, May 1981)

(U authorization cards exempt from disclosure. *authorization cards are investigatory records in possession of Bd for enforcement purposes. Authorization cards are not discoverable by E under any rule of the Bd, and discovery cannot be obtained under Freedom of Information Act*)

Stero Sales, Inc. v. N.L.R.B. No. 79-2990, Feb. 25, 1980, DC DC (unreported)

(Congress did not intend for FOIA to be used as broad discovery tool by litigants involved in proceeding before NLRB)

2501-6700 Legislative history

Forsham et al. v. Harris, Secretary of Health, Education, and Welfare, et al. 445 U.S. 169 (U.S. SCt. Mar. 1980)

(legislative reports concerning history of FOIA clarify that confidential information *submitted to a government—agency, obtained by the government or given to an agency* otherwise subject to disclosure, were made *exempt* from disclosure under FOIA)

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. 441 U.S. 281 (S Ct US, 1979)

(Legislative history of FOIA shows provisions exempting specified material from disclosure were only meant to permit agency to withhold information—not meant to mandate non disclosure)

2517 PUBLICLY AVAILABLE DOCUMENTS

2517-2000 Final orders of Board

Masonic Homes of California, Inc. 258 NLRB No. 006

(Bd did not rely on decision not reported in published volumes of Bd Decisions)

2533 INDEXING OBLIGATION

Stero Sales, Inc. v. N.L.R.B. No. 79-2990, Feb. 25, 1980, DC DC (unreported)

(mtn for Summary Judgment denied where Bd only advanced generalized claims of exemption w/o providing either *Vaughn* index or supporting affidavits to show number and nature of documents withheld, description of procedures used in reviewing requested documents, and no explanation why all documents must be exempted in their entirety; therefore, ct is unable to determine whether or not Bd is entitled to judgment as matter of law)

2550 PRODUCIBILITY OF DOCUMENTS

2550-0100 Generally

John S. Irving, GC v. Anthony DiLapi, et al. and Interstate Dress Carriers, Inc. 600 F.2d 1027 (C.A. 2, 1979)

Madeira Nursing Center, Inc. v. N.L.R.B. (Emil C. Farkas, RD) 615 F.2d 728 (C.A. 6) (1980)

(applicability of FOIA exemptions must be determined in context of specific individual documents and request for *any documents indicating Region's final determination of the petitioner's showing of interest or lack thereof* is too general)

Nissen Foods (USA) Co., Inc. v. N.L.R.B. 540 F.2d 584 (DC E.D. PA, June 1982)

(E's request for *in camera* inspection of Bd documents E sought under FOIA, denied, since it is discretionary matter, and ct did not believe that such inspection would aid in its decision)

2550-0112 Requirement of adequate identification

Kissinger v. Reporters Committee For Freedom of The Press et al. 445 US 136 (U.S. SCt. Mar. 1980)

(FOIA requires requestor to adequately identify records which are sought)

Stero Sales, Inc. v. N.L.R.B. No. 79-2990, Feb. 25, 1980, DC DC (unreported)

(mtn for Summary Judgment denied where Bd only advanced generalized claims of exemption w/o providing either *Vaughn* index or supporting affidavits to show number and nature of documents withheld, description of procedures used in reviewing requested documents, and no explanation why all documents must be exempted in their entirety; therefore, ct is unable to determine whether or not Bd is entitled to judgment as matter of law)

2550-0125 Obligation to create documents

Forsham et al. v. Harris, Secretary of Health, Education, and Welfare, et al. 445 U.S. 169 (U.S. SCt. Mar. 1980)

(FOIA applies to records which have been, *in fact,* obtained, and not to records which merely *could have been* obtained; FOIA imposes no duty on agency to create records)

Kissinger v. Reporters Committee For Freedom of The Press et al. 445 US 136 (U.S. SCt. Mar. 1980)

(only the *Federal Records Act,* and not the *FOIA,* requires an agency to actually create records, even though agency's failure to do so deprives public of information which might have otherwise been available to it)

2550-0150 Neutralization

Louis Alirez v. N.L.R.B. 676 F.2d 423 (C.A. 10, Apr. 1982)

(deletion of names and other identifying data in informant statements obtained during investigation, Bd notes of interviews with informants, and bid-sheets listing instances in which Ees were passed over for promotion found inadequate to prevent serious privacy invasions because informant and persons discussed could be readily identified)

2550-6700 Agency records

Forsham et al. v. Harris, Secretary of Health, Education, and Welfare, et al. 445 U.S. 169 (U.S. SCt. Mar. 1980)

(FOIA applies to records which have been, *in fact,* obtained, and not to records which merely *could have been obtained;* FOIA imposes no duty on agency to create records)

2550-0700—Cont.

Kissinger v. Reporters Committee For Freedom of The Press et al. 445 US 136 (U.S. SCt. Mar. 1980)

(physical location of notes of telephone conversations does not render them *agency records*; papers were not in control of agency at any time; agency did not generate papers; papers were never entered into agency files nor were they used by agency for any purpose)

2550-1000 Confidential information

Forsham et al. v. Harris, Secretary of Health, Education, and Welfare, et al. 445 U.S. 169 (U.S. SCt. Mar. 1980)

(legislative reports concerning history of FOIA clarify that confidential information *submitted to a government—agency, obtained by the government or given to an agency* otherwise subject to disclosure, were made *exempt* from disclosure under FOIA)

2550-1400 Advice and appeals memoranda

N.L.R.B. v. Martins Ferry Hospital Association No, C-2-78-786 (D Ct. OH, Feb. 5, 1979 (unreported))

(advice memorandum privileged from disclosive under Exemption 5 of FOIA as an intra-agency memorandum setting forth GC's strategy in putative litigation before Bd)

2550-2100 Intra-agency memoranda

Nissin Foods (USA) Co., Inc. v. N.L.R.B. 540 F.2d 584 (DC E.D. PA, June 1982)

(Bd's conclusions with regard to two of the ULP charge investigations of E's plant held not to make facts underlying those investigations subject to disclosure, since dismissed charges are *factually related* to pending ones)

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))

(memorandum transmitting Regional Office file to Office of Appeals with Acting RD's comment on appeal at time when no action whatever had begun on deciding appeal, held w/i Exemption 5 protection of predecisional communications; RD's comment was clearly intra-agency advisory opn w/i scope of *executive privilege*)

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))

(memorandum to acting RD setting forth acting Regional attorney's Review of Appeals in a case, hold exempt as intra-agency predecisional communication)

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))

(memorandum prepared by Bd Ee assigned to investigate case for consideration by RD in making final determination whether to issue C, held exempt, where memorandum recommends action on basis of tentative conclusions reached by a committee of Bd Ees)

2550-3800 Statements of witnesses

Polynesian Cultural Center v. N.L.R.B. 582 F.2d 467 (C.A. 9, July 1979)

(Ee's affidavit taken in ULP proceeding privileged from disclosure under exemption 7(A) of FOIA notwithstanding it was taken in different and technically closed case where Ee was potential witness in pending ULP proceeding between same parties and affidavit contained information relevant to such proceeding)

Lewis Alirez v. N.L.R.B. 676 F.2d 423 (C.A. 10, Apr. 1982)

(informant statements obtained during investigation, Bd notes of interviews with informants, and bid-sheet indicating 39 instances in which 10 Ees were passed over for promotion held exempt from disclosure under 7(c) because information contained therein was of highly intimate and personal nature and their disclosure would result in serious invasions of privacy subjecting Bd informants and others to embarrassment or reprisals from plaintiff, who was charging party before Bd, and E)

Trustees of Boston University v. N.L.R.B. No. 79-1319-K, June 30, 1980, DC MA (unreported)

(Bd's deletions from affidavits in cases with closed files of affiants' home addresses, Bd agents' names and material *to protect confidentiality and privacy interests* and from one inflamatory allegations not exempt under 7(A) in view of FOIA's strong pro-disclosure policy and Congress' clear intention to circumscribe 7(A)'s applicability where Bd's basis is speculative fear of *chilling* prospective witnesses' candor in unspecified future proceedings)

Trustees of Boston University v. N.L.R.B. No. 79-1319-K, June 30, 1980, DC MA (unreported)

(ct assumed legitimate private interests were protected by portions of material deleted from affidavits in closed cases to protect confidentiality, which included names and identifying material and allegations of criminal activity; in balancing public and private interests, ct sought guidance from parties as to whether it might properly consider (a) E's and public's interest, need for, and use of information requested and (b) whether E's ULPs described in affidavits might affect public interest)

Fullerton Transfer and Storage Limited, Inc. v. N.L.R.B. No. C-76-208-Y, Feb. 12, 1980, DC N.D. OH (unreported)

(notwithstanding proceedings have been concluded, under Exemptions 7(A) and (D) Bd need not release affidavits of witnesses not called to testify as potential harm to such confidential sources which said exemptions were designed to prevent still exists)

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))

(report by Bd Ee summarizing facts related to him in interview with certain, named individual, held w/i scope of Exemption 5, especially since signed affidavit of said individual relating to same factual matters had been made available to party seeking report)

Hall of Mississippi, Inc. v. N.L.R.B. No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))

(district ct is w/o jurisdiction to entertain E's C of Bd's refusal to issue investigatory subpoenas requested under 29 USC Section 161(l), where subpoenas required prehearing release of all evidence in Bd's control pertaining to the charges, including documents as well as names, addresses, and statements of witnesses; prehearing discovery questions are committed to Bd's discretion)

The Capital Times Company v. N.L.R.B. 483 F.Supp. 267 (D Ct. WI) (1980)

(refusal to disclose statements and affidavits obtained by Bd agents during their investigation of ULP charge filed by plaintiff upheld notwithstanding that charge was dismissed and case closed; *exemption 7(a) of FOIA* correctly relied upon by Bd, since statements sought by plaintiff were relevant to pending enforcement proceeding which grew out of labor controversy in which plaintiff was involved but not as party)

2550-4200 Names of witnesses

Trustees of Boston University v. N.L.R.B. No. 79-1319-K, June 30, 1980, DC MA (unreported)

(Bd's deletions from affidavits in cases with closed files of affiants' home addresses, Bd agents' names and material *to protect confidentiality and privacy interests* and from one inflamatory allegations not exempt under 7(A) in view of FOIA's strong pro-disclosure policy and Congress' clear intention to circumscribe 7(A)'s applicability where Bd's basis is speculative fear of *chilling* prospective witnesses' candor in unspecified future proceedings)

Trustees of Boston University v. N.L.R.B. No. 79-1319-K, June 30, 1980, DC MA (unreported)

(where Bd contended identity of undisclosed affiant was protected as *identity of a confidential source,* ct granted Bd's mtn for leave to file for *in camera* inspection of affidavit allegedly containing highly inflammatory accusations of criminal activity on part of official of E by affiant who was then Ee of E, and ordered hearing for parties to discuss (a) wieghing of affiant's interest against public disclosure of affiant's identity and (b) special circumstances regarding affiant relevant to issue of confidentiality)

Fullerton Transfer and Storage Limited, Inc. v. N.L.R.B. No. C-76-208-Y, Feb. 12, 1980, DC N.D. OH (unreported)

(notwithstanding proceedings have been concluded, under Exemptions 7(A) and (D) Bd need not release affidavits of witnesses not called to testify as potential harm to such confidential sources which said exemptions were designed to prevent still exists)

Hall of Mississippi, Inc. v. N.L.R.B. No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))

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The Capital Times Company v. N.L.R.B. 483 F.Supp. 267 (D Ct. WI) (1980)

(refusal to disclose statements and affidavits obtained by Bd agents during their investigation of ULP charge filed by plaintiff upheld notwithstanding that charge was dismissed and case closed; *exemption 7(a) of FOIA* correctly relied upon by Bd, since statements sought by plaintiff were relevant to pending enforcement proceeding which grew out of labor controversy in which plaintiff was involved but not as party)

2550-4700 Hearing Officer's report

2550-4700—Cont.

Scott Management Company et al. v. N.L.R.B. 626 F.2d 1327 (C.A. 6, Aug. 1980)

(issue of whether hearing officer's report was exempt from public disclosure remanded to District Ct to be examined *in camera* to determine if document would not flow freely w/i agency unless protected from public disclosure)

2550-7000 Authorization cards

John S. Irving, GC v. Anthony DiLapi, et al. and Interstate Dress Carriers, Inc. 600 F.2d 1027 (C.A. 2, 1979)

(authorization cards are exempt from discovery during Bd proceedings and from disclosure under FOIA, but here where cards are material to defendants defense of criminal charges against them their fundamental right to due process of law must be balanced against confidentiality of cards and disclosure is proper but only to defendants' attorneys)

American Airlines, Inc. v. National Mediation Board; et al. 588 F.2d 863 (C.A. 2, 1978)

(U authorization cards held exempt from disclosure as commercial information where U supplied information to National Mediation Board in reliance on regulations that it would be kept confidential; information relates to delicate area of labor relations as it deals with U's effort to obtain majority support and certification and disclosure would adversely affect U's competative position with other Us and e itself)

N.L.R.B. v. Martins Ferry Hospital Association 649 F.2d 445 (C.A. 6, May 1981)

(U authorization cards exempt from disclosure. *authorization cards are investigatory records in possession of Bd for enforcement purposes. Authorization cards are not discoverable by E under any rule of the Bd, and discovery cannot be obtained under Freedom of Information Act*)

Howard Johnson Company, Inc. v. N.L.R.B. 618 F.2d 1 (C.A. 6, 1980)

(district ct reversed and case remanded to Bd with directions to enter summary judgment in favor of Bd position on U authorization cards falling w/i exemption 6 of FOIA)

Madeira Nursing Center, Inc. v. N.L.R.B. (Emil C. Farkas, RD) 615 F.2d 728 (C.A. 6) (1980)

(Exemption 6 of FOIA precludes E from obtaining signed U authorization cards or other Bd documents which reveal voting preferences of individual Ees because such disclosure would be an invasion of personal privacy; ct held authorization cards fell w/i meaning of *similar files* of exemption refusing to give term narrow and technical meaning)

N.L.R.B. v. Martins Ferry Hospital Association No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))

(authorization cards are important to Bd's investigation of ULP and are exempt from disclosure under Exemption 7(A) of FOIA notwithstanding that initially cards were executed and forwarded to Bd for purpose then only, at best, indirectly related to law enforcement; and under Exemption 6 to prevent unwarranted invasion of personal privacy for if Ees knew E would be able to see signed cards they might be reluctant to sign)

2567 SCOPE OF EXEMPTIONS

Nissen Foods (USA) Co., Inc. v. N.L.R.B. 540 F.2d 584 (DC E.D. PA, June 1982)

(in testing validity of Bd's refusal to disclose requested information, ct observed that FOIA seeks to insure disclosure and not suppression, and that all exemptions are subject to narrow construction)

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. No. 78-187 (D Ct. PA, Dec. 11, 1978 (unreported))

(Office of Appeals case progress sheet which memmorialized case history on appeal indicating information such as when appeal was filed and when it was decided, not exempt under FOIA)

2567-3300 Exemption 4

Chrysler Corporation v. Harold Brown, Secretary of Defense, et al. 441 U.S. 281 (S Ct US, 1979)

(Legislative history of FOIA shows provisions exempting specified material from disclosure were only meant to permit agency to withhold information—not meant to mandate non disclosure)

American Airlines, Inc. v. National Mediation Board; et al. 588 F.2d 863 (C.A. 2, 1978)

(U authorization cards held exempt from disclosure as commercial information where U supplied information to National Mediation Board in reliance on regulations that it would be kept confidential; information relates to delicate area of labor relations as it deals with U's effort to obtain majority support and certification and disclosure would adversely affect U's competative position with other Us and e itself)

Quickie Manufacturing Corp. v. N.L.R.B. No. 78-2012 (D Ct. NJ, Dec. 26, 1978 (unreported))

(Bd Form 4069 held more appropriate under Exemption 5 regarding *memorandums* than Exemption 4, since it involves a particular document rather than general information)

2567-5000 Exemption 5

Upjohn Co. et al. v. United States et al. 449 US 928 (U.S. SCt. Jan. 1981)

(ct upheld E's contention that questionnaires, memoranda, notes of interviews conducted by its attorneys among Ees protected from disclosure by attorney-client privilege and constitute work product of attorney prepared in anticipation of litigation; further, *control group* test (officers and agents responsible for directing company's actions in response to legal advice does not apply as attorneys need information from all Ees to enable them to give sound advice; Rule 26(b)(3) of FRCP provides that work product can't be disclosed w/o showing of substantial need and inability to obtain equivalent w/o undue hardship)

Federal Open Market Committee of The Federal Reserve System v. Merrill 443 U.S. 340 (June 1979)

(Exemption 5 incorporates qualified privilege for confidential commercial information to the extent that this information is generated by Government itself in process leading up to awarding contract)

Federal Open Market Committee of The Federal Reserve System v. Merrill 443 U.S. 340 (June 1979)

(sensitivity of commercial secrets involved and harm inflicted on Government by premature disclosure are relevant criteria for determining applicability of Exemption 5 privilege; if these criteria are met then slight delay in publication of such information as authorized in 12 CRF Sec. 271.5 is permitted under Exemption 5)

Scott Management Company et al. v. N.L.R.B. 626 F.2d 1327 (C.A. 6, Aug. 1980)

(issue of whether hearing officer's report was exempt from public disclosure remanded to District Ct to be examined *in camera* to determine if document would not flow freely w/i agency unless protected from public disclosure)

Anthony Mallin v. N.L.R.B., et al. No. 78-C-1753, May, 31, 1979, DC E.D. IL (unreported)

(documents not drafted by persons with decision-making power found neither final opns nor explanations of final opns and exempt)

Quickie Manufacturing Corp. v. N.L.R.B. No. 78-2012 (D Ct. NJ, Dec. 26, 1978 (unreported))

(Form 4069 held not *final opn* compelling disclosure but exempt because w/i executive privilege protecting *memoranda* which would *intrude on predecisional processes*)

Buffalo Newspaper Guild, Local 26 The Newspaper Guild, AFL-CIO v. N.L.R.B. No. CIV-78-639, Apr. 9, 1980, DC W.D. NY (unreported)

(where documents consist of recommendations by one NLRB Ee to another for particular actions relating to prosecution of closed actions, they are w/i scope of exemption (5), since disclosure could have severe impact on *frank discussion* in writing of *legal and policy matters* on which effective operation of government agencies depends to large extent; additionally, these recommendations would appear to be squarely w/i atty work-product privilege incorporated into structure of exemption (5))

N.L.R.B. v. Martins Ferry Hospital Association No. C-2-78-785 (D Ct. OH, Feb. 5, 1979 (unreported))

(advice memorandum privileged from disclosive under Exemption 5 of FOIA as an intra-agency memorandum setting forth GC's strategy in putative litigation before Bd)

Nissen Foods (USA) Co., Inc. v. N.L.R.B. 540 F.2d 584 (DC E.D. PA, June 1982)

(E not entitled to records forming basis of Bd attorney's comments purportedly admitting to attorney acting on E's behalf that ULP charges against E were w/o merit, since exemption 5, based on *executive privilege* and protection of attorney's *work product*, exempts such information; executive privilege exempts pre-decisional inter- and intra-office memoranda; however, disclosure is warranted after agency forms final opinion; and attorney's work product is applicable here since notes, interview, etc. of Bd attorneys were compiled in anticipation of litigation by agency having such *basic function*)

Nissen Foods (USA) Co., Inc. v. N.L.R.B. 540 F.2d 584 (DC E.D. PA, June 1982)

(E held not entitled to documents and witnesses' statements regarding Bd attorney's comments purportedly admitting to attorney acting on E's behalf that ULP charges against E were w/o merit; unlike ct case in which waiver of FOIA's executive privilege was found, disclosures herein were of limited nature, did not reveal specific contents of withheld documents, and no disclosures with particularity took place; moreover, conversations with Bd's attorney were viewed as *settlement talks*, and statements were made to party with interests antagonistic to those of E)

Nissen Foods (USA) Co., Inc. v. N.L.R.B. 540 F.2d 584 (DC E.D. PA, June 1982)

(E held not entitled to information regarding RD's statements to newspaper that Bd found *violations* at E's plant, since, unlike case in which ct ruled waiver had taken place where government incorporated exempt document

2567-5000—Cont.

into final agency decision, no such documentary release occurred here; no authority was found where general statements by agency official either to attorney or newspaper served as basis for release of inter-agency memoranda; and allowing such release would prevent, or at least inhibit, Bd agents from informally discussing pending matter with anyone, including parties to proceeding)

Nissen Foods (USA) Co., Inc. v. N.L.R.B. 540 F.2d 584 (DC E.D. PA, June 1982)

(Bd's conclusions with regard to two of the ULP charge investigations of E's plant held not to make facts underlying those investigations subject to disclosure, since dismissed charges are *factually related* to pending ones)

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. No. 78-187 (D Ct. PA, Dec. 11, 1978 (unreported))

(memorandum transmitting Regional Office file to Office of Appeals with Acting RD's comment on appeal at time when no action whatever had begun on deciding appeal, held w/i Exemption 5 protection of predecisional communications; RD's comment was clearly intra-agency advisory opn w/i scope of *executive privilege*)

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. No. 78-187 (D Ct. PA, Dec. 11, 1978 (unreported))

(memorandum to acting RD setting forth acting Regional attorney's Review of Appeals in a case, held exempt as intra-agency predecisional communication)

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. No. 78-187 (D Ct. PA, Dec. 11, 1978 (unreported))

(memorandum prepared by Bd Ee assigned to investigate case for consideration by RD in making final determination whether to issue C, held exempt, where memorandum recommends action on basis of tentative conclusions reached by a committee of Bd Ees)

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. No. 78-187 (D Ct. PA, Dec. 11, 1978 (unreported))

(report by Bd Ee summarizing facts related to him in interview with certain, named individual, held w/i scope of Exemption 5, especially since signed affidavit of said individual relating to same factual matters had been made available to party seeking report)

2567-6700 Exemption 6

Howard Johnson Company, Inc. v. N.L.R.B. 618 F.2d 1 (C.A. 6, 1980)

(district ct reversed and case remanded to Bd with directions to enter summary judgment in favor of Bd position on U authorization cards falling w/i exemption 6 of FOIA)

Madeira Nursing Center, Inc. v. N.L.R.B. (Emil C. Farkas, RD) 615 F.2d 728 (C.A. 6) (1980)

(Exemption 6 of FOIA precludes E from obtaining signed U authorization cards or other Bd documents which reveal voting preferences of individual Ees because such disclosure would be an invasion of personal privacy; ct held authorization cards fell w/i meaning of *similar files* of exemption refusing to give term narrow and technical meaning)

N.L.R.B. v. Martins Ferry Hospital Association No. C-2-78-788 (D Ct. OH, Feb. 5, 1979 (unreported))

(authorization cards are important to Bd's investigation of ULP and are exempt from disclosure under Exemption 7(A) of FOIA notwithstanding that initially cards were executed and forwarded to Bd for purpose then only, at best, indirectly related to law enforcement; and under Exemption 6 to prevent unwarranted invasion of personal privacy for if Ees knew E would be able to see signed cards they might be reluctant to sign)

2567-8300 Exemption 7

2567-8367 1974 Amendment

2567-8367-1400 Exemption 7(A)

Polynesian Cultural Center v. N.L.R.B. 582 F.2d 467 (C.A. 9, July 1979)

(Ee's affidavit taken in ULP proceeding privileged from disclosure under exemption 7(A) of FOIA notwithstanding it was taken in different and technically closed case where Ee was potential witness in pending ULP proceeding between same parties and affidavit contained information relevant to such proceeding)

Louis Alirez v. N.L.R.B. No. 79-Z-1243, Feb. 26, 1980, DC CO (unreported)

(former Ee's request, following Bd's denial of his appeal from its refusal to file charge against E, for affidavits of witnesses relating to investigation of charges filed by Ee with Bd, granted, since exemption 7(A) is not applicable, and Bd submitted no evidence that release of documents to former Ee would inhibit future investigations at E's plant, or elsewhere)

Trustees of Boston University v. N.L.R.B. No. 79-1319-K, June 30, 1980, DC MA (unreported)

(Bd's deletions from affidavits in cases with closed files of affiants' home addresses, Bd agents' names and material *to protect confidentiality and privacy interests* and from one inflammatory allegations not exempt under 7(A) in view of FOIA's strong pro-disclosure policy and Congress' clear intention to circumscribe 7(A)'s applicability where Bd's basis is speculative fear of *chilling* prospective witnesses' candor in unspecified future proceedings)

Quickie Manufacturing Corp. v. N.L.R.B. No. 78-3012 (D Ct. NJ, Dec. 26, 1978 (unreported))

(Form 4069 would not be held exempt under Exemption 7, since asserted possible use in future ULP proceeding is not sufficient where ct precedent has held relationship to pending formal proceeding was required)

Buffalo Newspaper Guild, Local 26 The Newspaper Guild, AFL-CIO v. N.L.R.B. No. CIV-78-630, Apr. 9, 1980, DC W.D. NY (unreported)

(plaintiff's action to compel Bd to produce files in several closed NLRB cases dismissed, since there was clear risk of premature disclosure of Bd's hand which would be likely to result in interference with enforcement proceedings, where the government has yet to present its *case in ct* in cases to which plaintiff is party, brought on C of same individual and involving same industry and closely related charges to closed files that plaintiff seeks)

Fullerton Transfer and Storage Limited, Inc. v. N.L.R.B. No. C-76-298-Y, Feb. 12, 1980, DC N.D. OH (unreported)

(notwithstanding proceedings have been concluded, under Exemptions 7(A) and (D) Bd need not release affidavits of witnesses not called to testify as potential harm to such confidential sources which said exemptions were designed to prevent still exists)

N.L.R.B. v. Martins Ferry Hospital Association No. C-2-78-788 (D Ct. OH, Feb. 5, 1979 (unreported))

(authorization cards are important to Bd's investigation of ULP and are exempt from disclosure under Exemption 7(A) of FOIA notwithstanding that initially cards were executed and forwarded to Bd for purpose then only, at best, indirectly related to law enforcement; and under Exemption 6 to prevent unwarranted invasion of personal privacy for if Ees knew E would be able to see signed cards they might be reluctant to sign)

Nissen Foods (USA) Co., Inc. v. N.L.R.B. 540 F.2d 584 (DC E.D. PA, June 1982)

(information compiled during Bd investigation leading to ULP charges held exempt under 7(A), since hearing is currently in recess; such records, used for *law enforcement purposes* relate to formal proceeding that is pending and are protected from release prior to completion of enforcement proceeding; even if new document summarized information for non-law enforcement purposes, it would nevertheless continue to meet threshold requirements of exemption; if released, documents could lead to witness intimidation and permit respondent in NLRB proceeding to construct defenses against violation)

The Capital Times Company v. N.L.R.B. 483 F.Supp. 247 (D Ct. WI) (1980)

(refusal to disclose statements and affidavits obtained by Bd agents during their investigation of ULP charge filed by plaintiff upheld notwithstanding that charge was dismissed and case closed; *exemption 7(a) of FOIA* correctly relied upon by Bd, since statements sought by plaintiff were relevant to pending enforcement proceeding which grew out of labor controversy in which plaintiff was involved but not as party)

2567-8367-4200 Exemption 7(C)

Louis Alirez v. N.L.R.B. 676 F.2d 423 (C.A. 10, Apr. 1982)

(informant statements obtained during investigation, Bd notes of interviews with informants, and bid-sheet indicating 39 instances in which 10 Ees were passed over for promotion held exempt from disclosure under 7(c) because information contained therein was of highly intimate and personal nature and their disclosure would result in serious invasions of privacy subjecting Bd informants and others to embarrassment or reprisals from plaintiff, who was charging party before Bd, and E)

Louis Alirez v. N.L.R.B. 676 F.2d 423 (C.A. 10, Apr. 1982)

(Exemption 7(C) calls for balancing of competing interests analogous to balancing used for exemption 6, i.e., individual's right of privacy must be weighed against preservation of public's right to government information and initial inquiry must be directed to determining whether there is serious invasion of privacy; if disclosure will cause serious invasion of privacy, it must be determined what public interest is served by disclosure and both interests must be weighed. All doubts are resolved in favor of disclosure)

Louis Alirez v. N.L.R.B. No. 79-Z-1243, Feb. 26, 1980, DC CO (unreported)

(Bd's claim of exemption under 7(C) or 7(D) with regard to release of investigatory file sought by former Ee following Bd's denial of his appeal

2567-8367-4200—Cont.

from its refusal to file charge against E, rejected, where no absolute guaranty of confidentiality was claimed by Bd even though an *expressed assurance* of confidentiality was granted to one witness: such an assurance should not operate so as to insure total anonymity, and fellow Ees are not to be regarded as confidential sources; SCt's Robbins Tire and Rubber Co. case distinguished)

Anthony Mallin v. N.L.R.B., et al. No. 78-C-1753, May, 31, 1979, DC E.D. IL (unreported)

(names of attorneys handling plaintiff's case withheld as there is no public interest outweighing attorney's interest in privacy; identity of agency official responsible for decision is sufficient disclosure)

Trustees of Boston University v. N.L.R.B. No. 79-1319-K, June 30, 1980, DC MA (unreported)

(ct assumed legitimate private interests were protected by portions of material deleted from affidavits in closed cases to protect confidentiality, which included names and identifying material and allegations of criminal activity; in balancing public and private interests, ct sought guidance from parties as to whether it might properly consider (a) E's and public's interest, need for, and use of information requested and (b) whether E's ULPs described in affidavits might affect public interest)

2567-8367-5600 Exemption 7(D)

Louis Alirez v. N.L.R.B. No. 79-Z-1243, Feb. 26, 1980, DC CO (unreported)

(Bd's claim of exemption under 7(C) or 7(D) with regard to release of investigatory file sought by former Ee following Bd's denial of his appeal from its refusal to file charge against E, rejected, where no absolute guaranty of confidentiality was claimed by Bd even though an *expressed assurance* of confidentiality was granted to one witness: such an assurance should not operate so as to insure total anonymity, and fellow Ees are not to be regarded as confidential sources; SCt's Robbins Tire and Rubber Co. case distinguished)

Trustees of Boston University v. N.L.R.B. No. 79-1319-K, June 30, 1980, DC MA (unreported)

(where Bd contended identity of undisclosed affiant was protected as *identity of a confidential source,* ct granted Bd's mtn for leave to file for *in camera* inspection of affidavit allegedly containing highly inflammatory accusations of criminal activity on part of official of E by affiant who was then Ee of E, and ordered hearing for parties to discuss (a) wieghing of affiant's interest against public disclosure of affiant's identity and (b) special circumstances regarding affiant relevant to issue of confidentiality)

Fullerton Transfer and Storage Limited, Inc. v. N.L.R.B. No. C-76-208-Y, Feb. 12, 1980, DC N.D. OH (unreported)

(notwithstanding proceedings have been concluded, under Exemptions 7(A) and (D) Bd need not release affidavits of witnesses not called to testify as potential harm to such confidential sources which said exemptions were designed to prevent still exists)

2583 SUITS TO ENFORCE OBLIGATION

2583-0200 Withholding of agency records

Kissinger v. Reporters Committee For Freedom of The Press et al. 445 US 136 (U.S. SCt. Mar. 1980)

(agency's failure to sue a third party to obtain possession is not a *withholding* under the FOIA; Act only obligates agency to provide access to documents which it, in fact, has created and retained)

Forsham et al. v. Harris, Secretary of Health, Education, and Welfare, et al. 445 U.S. 169 (U.S. SCt. Mar. 1980)

(must be established for an individual to obtain access to documents through FOIA action)

2583-0500 Court jurisdiction

Kissinger v. Reporters Committee For Freedom of The Press et al. 445 US 136 (U.S. SCt. Mar. 1980)

(jurisdiction of Federal Ct to ensure private access to requested materials under FOIA is dependent upon a showing that agency has (1) *improperly;* (2)*withheld;* (3)*agency records*; judicial authority can only be invoked if agency has contravened all three components of obligation)

2583-1500 Court procedure

John S. Irving, GC v. Anthony DiLapi, et al. and Interstate Dress Carriers, Inc. 600 F.2d 1027 (C.A. 2, 1979)

Van Borg, Allen, Weinberg & Roger v. N.L.R.B. 686 F.2d 1356 (C.A. 9, 1981)

(ct vacated summary judgment and remanded FOIA case that denied disclosure of certain affidavits and agency memoranda relating to terminated ULP proceedings where reasons for district ct decision, which did not enter findings of fact or conclusions of law, were not apparent from record and where reviewing ct was unable to determine which exemption district ct applied to each document withheld and what relevent undisputed facts provided basis for nondisclosure of other documents)

Louis Alirez v. N.L.R.B. No. 79-Z-1243, Feb. 26, 1980, DC CO (unreported)

(former Ee's mtn for summary judgment for disclosure of Bd's investigatory file, granted, where, following Bd's denial of his appeal from its refusal to file charge against E, Ee filed instant action under FOIA; however, Bd may excise name, address and phone number of each witness on all documents, and names of persons other than plaintiff should be omitted from documents)

N.L.R.B. v. Interstate Dress Carriers, Inc. No. 79-481, Oct. 22, 1979, DC NJ (unreported)

(mtn for discovery against Bd made in Bd suit to enforce a subpoena in an election case, denied on grounds that access to Bd records should be available only as available in Bd proceedings and FOIA did not permit district ct, having only statutory, rather than general jurisdiction, to enforce on Bd disclosure obligation)

2583-2000 Exhaustion of administrative remedies

Steco Sales, Inc. v. N.L.R.B. No. 79-2998, Feb. 25, 1980, DC DC (unreported)

Quickie Manufacturing Corp. v. N.L.R.B. No. 78-3012 (D Ct. NJ, Dec. 26, 1978 (unreported))

(plaintiff not required to exhaust administrative remedies by appealing GC's refusal of FOIA request since Bd's adament position against disclosure of documents relative to elections and its winning SCt reversal of decision in only circuit where its position was rejected have shown appeal would be futile; decision whether to require exhaustion of administrative remedies is discretionary, and plaintiff's time constraint given the imminence of the election outweighs considerations favoring requirement of an administrative appeal)

The Capital Times Company v. N.L.R.B. 483 F.Supp. 247 (D Ct. WI) (1980)

(statutory policy allows agency to determine *first* the merits of FOIA request)

2583-4000 Enjoining of Board proceedings

Hall of Mississippi, Inc. v. N.L.R.B. No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))

(although district ct does have jurisdiction to hear plaintiff's claims under FOIA and if appropriate to order production of Bd records, the ct lacks power to enjoin Bd proceedings in order to enforce requirements of FOIA)

2583-5590 Issuance of subpoenas

Hall of Mississippi, Inc. v. N.L.R.B. No. C-79-2263 (D Ct. TN, May 22, 1979 (unreported))

(district ct is w/o jurisdiction to entertain E's C of Bd's refusal to issue investigatory subpoenas requested under 29 USC Section 161(l), where subpoenas required prehearing release of all evidence in Bd's control pertaining to the charges, including documents as well as names, addresses, and statements of witnesses; prehearing discovery questions are committed to Bd's discretion)

2583-6000 Stays pending appeal

National Steel Products Company v. N.L.R.B. C78-293A (D Ct GA, Oct. 12, 1978 (unreported))

(ct granted Bd stay on order prohibiting Bd from conducting consolidated R and ULP hearing unless Bd turned over requested statements of witnesses, since decision by SCt in *Robbins Tire and Rubber Co.* virtually ensures that Bd will succeed on merits of appeal and made issuance of inj improper and unnecessary to protect any legally cognizable rights or plaintiff)

2583-8000 Attorney's fees and costs

Westinghouse Electric Corporation v. N.L.R.B. 497 F.Supp. 82 (D Ct PA, 1980)

(notwithstanding Bd's denial of plaintiff's FOIA request for affidavit from closed file of current Ee of E, and Bd's subsequent disclosure immediately prior to oral arguments in this ct on cross mtns for summary judgment, ct denied E's ptn for attorney's fees where benefit from disclosure to public was marginal, interest in affidavit was private one, purpose of prior FOIA litigation was argumentation of civil discovery for potential use in other litigation, E was not indigent, and refusal by Bd to disclose was not unreasonable)

Joseph Horne Co., a Division of Associated Dry Goods Corporation v. N.L.R.B. No. 78-157 (D Ct. PA, Dec. 11, 1978 (unreported))

(request for reasonable attorney's fees from United States, denied as inappropriate even assuming, as contended, that party requesting such fees had *substantially prevailed,* because substantial portion of file it requested had been disclosed since commencement of instant litigation; both parties had

2583-8000—Cont.

operated in good faith toward resolving controversy and each should bear its own counsel fees)

Long Mott v. N.L.R.B. [illegible]

[illegible]

2583-[illegible] Exhaustion of administrative remedies

[illegible]

[illegible] Enjoining of Board proceedings

[illegible]

[illegible] Issuance of subpoenas

[illegible]

[illegible] Stays pending appeal

[illegible]

2583-[illegible] Attorney's fees and costs

[illegible]

9000 SUNSHINE ACT

[illegible]

2587-4347-0600 Exemption 7(D)

Davis, Grinnan v. N.L.R.B. No. 79-Z-1243, Feb. 26, 1980, DC CO (unreported)

[illegible]

2583 SUITS TO ENFORCE OBLIGATION

[illegible] Withholding of agency records

[illegible]

[illegible] Court jurisdiction

[illegible]

[illegible] Court procedures

[illegible]

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